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Briefing on How To Use the Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6302 of June 10, 1991

Father's Day, 1991

By the President of the United States of America

A Proclamation

During the past few months, as the United States has welcomed home its Persian Gulf veterans, we have spoken frequently of heroes. It is a name we give to individuals of great faith and courage, to those who have inspired us by their selflessness and generosity and by their extraordinary devotion to duty. Today we honor a very special kind of hero: our Nation's dads.

Being a good father begins with unconditional love and a lifelong commitment to others. Yet it also requires virtues that we associate with more celebrated heroes—virtues such as strength, courage, and perseverance. Day after day, a father labors and sacrifices to protect and to provide for his family. Although his love might often go unspoken, it is revealed in countless other ways: in the long hours of work that are devoted to meeting the material needs of his children; in many late nights of quiet planning and worry; and in his constant efforts to teach, encourage, discipline, and guide.

Between the daily demands and the everyday frustrations of parenting, a father might not feel like a hero, but in the eyes of his children he is very, very special. Youngsters treasure their father's attention and affection, and his presence alone gives them a warm sense of security and reassurance. In him they have a beloved champion and friend.

While many heroes of youth are forgotten over time, a loving and responsible father is a lifelong role model for his children. His lessons have great and lasting value because they center around the things that give our lives dignity and meaning: love and faith, service and self-sacrifice.

No medal could ever convey all of the honor and thanks that are due to our Nation's dads; thus, on this Father's Day, let us pray that God will reward them with His choicest blessings. And whether we do so in person, across the miles, or in loving memory, let each of us remember our own father with renewed appreciation and respect.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 16, as Father's Day. I urge all Americans to observe that day with appropriate ceremonies as a mark of appreciation and abiding affection for their fathers. I direct government officials to display the flag of the United States on all Federal Government buildings, and I encourage all Americans to display the flag at their homes and other suitable places on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-15]

Alteration of Airport Radar Service Area at Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Port Columbus International Airport, OH, Airport Radar Service Area (ARSA). This action adjusts the lower vertical limits of the outer circle of the ARSA by removing a segment of that airspace from the regulatory status. This alteration eliminates the altitude stratification of the outer circle of the current ARSA.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On November 14, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations to alter the Port Columbus International Airport ARSA (55 FR 47483). Interested parties were invited to participate in this rulemaking process by submitting comments on the proposal to the FAA. Section 71.501 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The following written comments were received in support of the proposed action:

The Experimental Aircraft Association (EAA) submitted comments endorsing the proposal and emphasizing the need for consistency in the floor of the designated airspace. EAA stated that raising the floor of the outer ring of the ARSA will increase flight safety because pilots will have a greater amount of airspace in which to overfly the surface based obstructions in the area and will reduce the amount of aircraft noise in the area below the flight path.

The Public Utilities and Aviation Department and the Ohio Experimental Aircraft Association Sport Aviation submitted written comments which were similar to EAA's supporting the proposal. Each organization commented on the benefits of simplifying the airspace to improve navigation and providing general aviation additional airspace to transit over a densely populated area.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) alters the ARSA at the Port Columbus International Airport, Columbus, OH. This location is a public airport with an operating control tower served by a Level IV Radar Approach Control Facility. Operations in this ARSA require that pilots establish and maintain two-way radio communication with air traffic control (ATC) while in the airspace. Altering the ARSA will raise the floor 300 feet between the 127° bearing and 008° bearing and within the 5-10 mile DME radius of the airport. The modification will establish a floor of 2,500 feet throughout the designated airspace.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This Order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this final rule is not "major" as defined in the Executive Order and, therefore, a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to the rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Costs

The FAA estimates the total monetary costs of implementing the rule to be zero, because the modification is relieving in nature and will not impose any additional administrative costs on the FAA for either personnel or equipment. Also, the rule will not impose any additional costs on general aviation users since it will require no additional avionics equipment or circumnavigation.

The rule will not result in a reduction in safety (in terms of an increased likelihood of a midair collision) due to a contraction of the subject ARSA airspace. The FAA contends that the reduction in ARSA airspace will be insignificant and of no consequence to Port Columbus ATC's ability to maintain aircraft separation.

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Benefits

The rule is expected to accrue potential benefits primarily in the form of increased operating efficiency for visual flight rules (VFR) operators and aircraft noise relief for the City of Columbus, OH. These benefits are discussed below.

For VFR aircraft operators, the rule will simplify the ARSA by making the floor 2,500 feet mean sea level (MSL) throughout the outer circle. Simplifying the floor of the ARSA's outer circle will increase efficiency for VFR pilots operating below the ARSA. Affected pilots will have more airspace to maneuver in while having fewer restrictions placed on them by the constraints of the ARSA. Simplifying the outer circle of the ARSA will also establish a single standard altitude for pilot reference. The rule will also be of special benefit to transient pilots who are not familiar with the current stratification of the ARSA's outer circle.

Comparison of Costs and Benefits

The estimated monetary cost of the rule is zero. There will be no costs incurred for additional equipment or personnel for the FAA, nor any reduction in aviation safety for aircraft operators. The potential qualitative benefits will be increased efficiency for aircraft operators.

On balance, the FAA contends that this rule is cost-beneficial.

International Trade Impact Assessment

This rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The FAA has determined that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. This determination is based on the belief that none of the small entities, such as air taxi operators, will incur additional equipment or operating costs. Therefore, this rule requires no flexibility analysis.

Federalism Implications

The regulation adopted will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation" the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Port Columbus International Airport, Columbus, OH [Revised]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-nautical-mile radius of the Port Columbus International Airport and that airspace extending upward from 2,500 feet MSL to 4,800 feet MSL within a 10-nautical-mile radius of the Port Columbus Airport.

Issued in Washington, DC, on June 4, 1991.

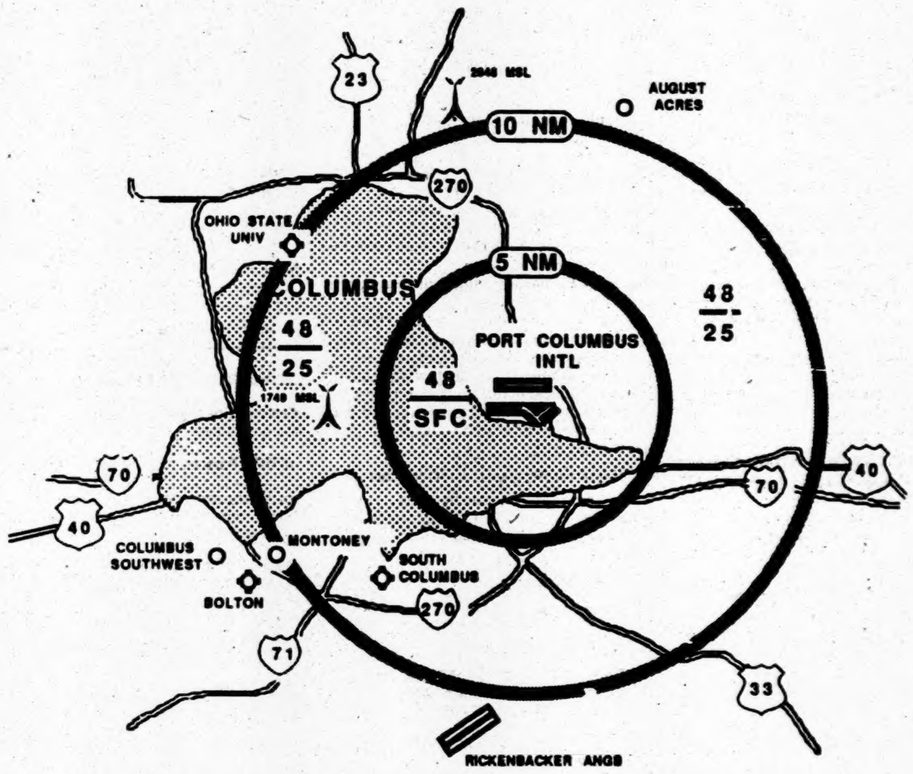
Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA
COLUMBUS, OHIO
FIELD ELEVATION - 814 FEET

(NOT TO BE USED FOR NAVIGATION)



Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
(ATP - 220)

[FR Doc. 91–14052 Filed 6–12–91; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-29279]

Delegation of Authority to Director of Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its regulation concerning Organization and Program Management, to delegate authority to the Director of the Division of Market Regulation to grant, pursuant to sections 17A(b) and 19(a) of the Act (15 U.S.C. 78q-1(b), 78s(a)): (1) An extension of a temporary clearing agency registration, for up to two years or such longer period as the clearing agency consents; and (2) the withdrawal of an application to become a registered clearing agency, at any time prior to final determination of such application by the Commission, upon submission of a request for such a withdrawal by the applicant. This amendment should facilitate prompt yet careful review and consideration of such temporary extensions and withdrawals of application for clearing agency registration.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Jack Dregni, Esq., (202) 504-2542, Office of Securities Processing Regulation, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced an amendment to rule 30-3 of its regulation concerning Organization and Program Management [1] by adding to the rule new paragraph (a)(50), which authorizes the Director, pursuant to sections 17A(b) and 19(a) of the Act (15 U.S.C. 78q-1(b), 78s(a)): (1) To grant an extension to a temporary clearing agency registration, for up to two years or such longer period as the clearing agency consents; and (2) to grant the withdrawal of an application to become a registered clearing agency, at any time prior to final determination of such application by the Commission, upon submission of a request for such a withdrawal by applicant. Section 17A(b)(2) [2] of the Act provides that: "[a] clearing agency may be registered under the terms and conditions hereinafter provided in this subsection and in accordance with the provisions of section 19(a) of this title." Moreover, section 19(a) [3] provides that: "[t]he Commission shall grant such registration if it finds that the requirements of this title and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such registration if it does not make such finding." The Commission currently has the authority to grant and extend temporary registrations, pending satisfaction by the applicant of the requirements of section 17A(b) [4] of the Act. The Commission also may permit withdrawals of such an application to register as a clearing agency, pursuant to such authority.

The delegation of this authority will conserve the resources of the Commission and the Division, by providing for the more expeditious treatment of requests for such exemptions to the Commission itself for resolution. [5]

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act, [6] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organizations and functions.

Text of Amendment

The Commission hereby amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 77w, 78d-1, 78d-2, 78w, 78*l*, 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77sss, 80a-37, and 80b-11, unless otherwise noted.

2. 17 CFR 200.30-3 is amended by adding new paragraph (a)(50) to read as follows:

§ 200.30-3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(50) Pursuant to sections 17A(b) and 19(a) of the Act (15 U.S.C. 78q-1(b) and 78s(a)):

(i) To authorize the issuance of orders granting an extension to a temporary clearing agency registration, for up to two years or such longer period as the clearing agency consents.

(ii) To authorize the issuance of orders granting the withdrawal of an application to become a registered clearing agency, at any time prior to final determination of such application by the Commission, upon submission of a request for such withdrawal by applicant.

* * * * *

By the Commission.

Dated: June 7, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14075 Filed 6-12-91; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 200.30-3.

[2] 15 U.S.C. 78q-1(b)(2).

[3] 15 U.S.C. 78s(a).

[4] 15 U.S.C. 78q-1(b).

[5] In any particular case where the Director believes it appropriate, the Director still may submit a request for a temporary extension of clearing agency registration or withdrawal of application.

[6] 5 U.S.C. 553(b)(A).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Order No. 528-B; Docket No. RM91-2-000; Docket Nos. RP88-118-017, TA84-2-9-018, and TA85-1-8-000]

Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs and Tennessee Gas Pipeline Co.

Issued June 6, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying requests for rehearing of Order No. 528-A, 56 FR 5929 (Feb. 14, 1991), the Commission's order on rehearing of Order No. 528, 55 FR 47863 (Nov. 16, 1990), which addressed the remand of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC*, 893 F.2d 349 (D.C. Cir. 1989), *cert. denied*, 111 S.Ct. 277 (1990).

The Commission reiterates its intention that the principles and guidelines set forth in Order No. 528 and Order No. 528-A are to be treated as general statements of policy, and that, as such, they are not subject to the notice and comment requirements of the Administrative Procedure Act. The Commission states that parties remain free in individual cases to contend that the particular facts of those cases require flexibility in the application of those policies. the Commission indicates its intent to address the substantiave issues raised in the requests for rehearing of Order No. 528-A as they arise in individual proceedings on pipelines' filing under Order No. 528.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Darrell Blakeway, (202) 208-0224, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

I. Introduction

On January 31, 1991, the Commission issued Order No. 528-A [1] in the above-captioned proceedings in response to various requests for rehearing of Order No. 528. [2] Order No. 528 was an order on remand and statement of policy in response to the decision by the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC (AGD-II)*. [3] The court concluded in *AGD-II* that the purchase deficiency method for allocating take-or-pay settlement costs in accordance with the Commission's policy statement in Order No. 500 [4] violates the filed rate doctrine. [5] Order No. 528 stayed the collection of take-or-pay fixed charges based on a purchase deficiency allocation method by pipelines affected by *AGD-II*, and set forth certain general principles under which pipelines could file revised tariff provisions to replace the stayed provisions. Order No. 528-A generally denied rehearing of Order No. 528, but made several changes to the policies articulated in Order No. 528. Twenty applicants filed requests for rehearing seeking rehearing or clarification of Order No. 528-A. [6] This order denies rehearing of those requests.

II. Discussion

Certain pipelines and producers argue that Order No. 528-A, as well as Order No. 528, should not have been issued until after issuance of a notice of proposed rulemaking, and receipt and consideration of comments, in accordance with the provisions of the Administrative Procedure Act (APA). [7] They argue that Order No. 528-A is a substantive rule, and does not fall into any of the categories under APA section 553 (b) or (d) that would exempt it from the requirement of receiving comments and giving at least 30 days notice before its effective date.

The requests for rehearing that address substantive issues focus primarily on the portions of Order No. 528-A in which the Commission modified certain aspects of the policies set forth in Order No. 528: The limitations on the percentage of settlement costs that can be recovered via the volumetric surcharge, the reallocation to the fixed charges of the pipelines' larger customers of 50 percent of the take-or-pay settlement costs that would otherwise be allocated to the small customers' fixed charges, Order No. 528-A's policy on true-up mechanisms for take-or-pay volumetric surcharges and the prohibition against adjusting a volumetric surcharge to reflect underrecovery due to discounting, and the statement in Order No. 528-A encouraging pipelines and parties to consider designing mileage-sensitive volumetric surcharges. Applicants also reiterate a variety of their objections to the Commission's policies on recovering take-or-pay settlement costs that have previously been addressed in Order No. 528-A and orders in the Order No. 500 series.

The arguments that the Commission violated the APA by not providing notice of a proposed rulemaking and receiving comments on the proposal are all based on the applicants' characterizations of the Commission's statements in Order No. 528-A as "binding norms" or "regulations." However, as explained in Order No. 528-A, the Commission intended the various statements which the applicants describe as "binding" to be general statements of policy. The Commission expressly stated that:

> [it] does not intend to apply the guidelines as binding rules. Rather, it will evaluate each pipeline proposal on its merits in the pipeline's individual case and, in light of comments of the pipeline and other interested parties, determine in those cases the just and reasonable allocation method for the pipelines in question. [8]

While some of the statements of policy in Order Nos. 528 and 528-A are expressed as if they were mandatory, parties remain free in individual cases to contend that the particular facts of those cases require flexibility in the application of those policies. For example, in requiring a true-up mechanism for volumetric surcharges to recover certain new or reclassified take-or-pay costs, the Commission's concern was the pipelines not overrecover such costs. The Commission will consider any reasonable proposal for a mechanism that will accomplish that goal in the circumstances of a given pipeline system.

In Order No. 528, the Commission set forth the principles and guidelines we expected pipelines to follow in filing revised allocations of take-or-pay costs. In Order No. 528-A, we clarified our views to some extent and modified certain aspects of the policies originally set forth. However, it is not our intention to continue that process in this docket. As the Commission stated with respect to its Order No. 500 passthrough policy in Order No. 500-H, "by deciding to act through a policy statement, the Commission contemplated that its policy would be developed and refined on a case-by-case basis * * *." [9] The Commission intends to do the same with respect to our Order No. 528 policy.

Most of the issues raised in the requests for rehearing of Order No. 528-A have also been raised (or can be raised) in proceedings on pipelines' revised take-or-pay filings under Order No. 528. If the policies of Order No. 528 or 528-A, or the application of those policies, are contested in proceedings on such filings, the Commission will consider the arguments about those policies with regard to the record in those proceedings. Accordingly, all of the requests for rehearing will be denied, without prejudice to rulings on

[1] 54 FERC ¶ 61,095 (1991).

[2] 53 FERC ¶ 61,163 (1990).

[3] 893 F.2d 349 (D.C. Cir. 1989), *cert. denied sub nom. Berkshire Gas Co.* v. *Associated Gas Distributors*, 111 S.Ct. 277 (1990).

[4] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 52 FR 30,334 (Aug. 14, 1987) (Interim Rule), FERC Stats. & Regs., Regulations Preambles ¶ 30,761.

[5] Under the filed rate doctrine, a pipeline may not charge a rate for service that is different from the rate on file with the Commission for that service during the period in question. See T3Arkansas Louisiana Gas Co. v. *Hall*, 453, U.S. 571, 578 (1981); and *Columbia Gas Transmission Corp.* v. *FERC*, 831 F.2d 1135 (D.C. Cir. 1987), *modified on reh'g*, 844 F.2d 879 (D.C. Cir. 1988).

[6] The applicants for rehearing are listed in appendix A.

[7] 5 U.S.C. 551 *et seq.* and section 701 *et seq.* (1988).

[8] 54 FERC ¶ 61,095 at p. 61,294 (1991).

[9] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs., Regulations Preambles ¶ 30,867 at p. 31,575 (1989) (Order No. 500-H).

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issues raised in those requests that have been raised (or can be raised) in proceedings on filings under Order No. 528.

The Commission Orders

The requests for rehearing of Order No. 528-A are denied.

By the Commission. Commissioner Trabandt concurred with a separate statement to be issued later.

Lois D. Cashell,

Secretary.

Appendix A—Requests for Rehearing of Order No. 528-A

1. Pacific Gas and Electric Company
2. Enron (Transwestern, Northern Natural)
3. American Public Gas Association
4. Missouri Public Service Commission
5. National Fuel Gas Supply Corp.
6. Tennessee Small General Service Customer Group and Western Kentucky Gas Company
7. Alabama-Tennessee Natural Gas
8. Algonquin Gas Transmission Co. and Texas Eastern Transmission Corp.
9. ANR Pipeline Co. and CIG
10. Arkla Energy Resources
11. Atlantic Gas Light Company and Chattanooga Gas Co.
12. CNG Transmission Corp.
13. Indicated Customers
14. Marathon Oil Co.
15. National Association of Gas Consumers
16. Natural Gas Supply Association and Indicated Shippers
17. New England Gas Distributors
18. Panhandle Eastern Pipe Line Company and Trunkline Gas Co.
19. Tennessee Gas Pipeline Co.
20. Tennessee Valley Municipal Gas Association

[FR Doc. 91-14035 Filed 6-12-91; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Fermenta Animal Health Co.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Norman J. Turner, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 10150 North Executive Hills Blvd., P.O. Box 901350, Kansas City, MO 64190-1350, has informed FDA of changes in its corporate headquarters address that involve deleting reference to a P.O. box (i.e., 901350) and changing the zip code from 64190-1350 to 64153. FDA is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) to reflect the new address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379).

2. Section 510.600 is amended in the table in paragraph (c)(1) in the entry "Fermenta Animal Health Co.," and in the table in paragraph (c)(2) in the entry "054273" by revising the sponsor address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153	054273
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
054273	Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153.
* * * * *	

Dated: June 7, 1991.

George A. Mitchell,

Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 91-14119 Filed 6-12-91; 8:45 am]
BILLING CODE 4160-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket Nos. RM 90-2 and 89-1]

Refund of Excess Fees; Berne Implementation Act Technical Amendments

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rules; corrections.

SUMMARY: The Copyright Office is correcting an error in the authority section of the final regulation governing refunds of excess fees submitted to the Office and an error in designation of a subparagraph relating to the formalities of copyright notice after adoption of the Berne Implementation Act. Both of the rules appeared in the Federal Register on February 26, 1991 (56 FR 7813 and 7815).

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: The Copyright Office issued final regulations on February 26, 1991 with respect, *inter alia*, to its policy of refunds of excess fees submitted to the Office. On that same day, the Office also issued regulations governing copyright notice requirements in light of the Berne Implementation Act.

For the refund of excess fees regulation, the final clause to the authority citation for part 201 should have read "§ 201.19 is also issued under 17 U.S.C. 115" instead of "§ 210.19 is also issued under 17 U.S.C. 115." 56 FR at 7813.

For the copyright notice regulation, the reference to § 202.3(b)(5)(i)(D) should have read § 202.3(b)(6)(i)(D). 56 FR at 7813.

Accordingly, the following corrections are made:

In Docket RM 90-2, Refund of Excess Fees published in the Federal Register on February 26, 1991 (56 FR 7815):

PART 201—[CORRECTED]

The authority statement to part 201 on page 7813, second column, lines 49 to 50, is corrected to read "§ 210.19 is also issued under 17 U.S.C. 115," instead of "§ 201.19 is also issued under 17 U.S.C. 115."

In Docket RM 89-1, Berne Implementation Act; Technical Amendments published in the Federal Register on February 26, 1991 (56 FR 7815):

§ 202.3 [Corrected]

The reference to § 202.3(b)(5)(i)(D), second column, lines 57 to 63, is corrected to read "4. Section 202.3(b)(6)(i)(D) is revised to read as follows:

§ 202.3 [Amended]

* * * * *

(b) * * *

(6) * * *

(i) * * *."

Dated: June 5, 1991.

Ralph Oman,

Register of Copyrights.

[FR Doc. 91-14029 Filed 6-12-91; 8:45 am]
BILLING CODE 1410-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3961-4]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Revised Regulations Controlling Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions consist of revised volatile organic compound (VOC) emissions regulations applicable in the entire State of New Hampshire and were submitted on November 21, 1989. The intended effect of this action is to approve New Hampshire's revised VOC regulations to correct identified deficiencies in these regulations. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will be effective on July 15, 1991.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

FOR FURTHER INFORMATION CONTACT: Joanne Knight, (617) 565-3270; FTS 835-3270.

SUPPLEMENTARY INFORMATION: On June 13, 1990 (55 FR 23950), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire. The NPR proposed approval of State Implementation Plan (SIP) revisions submitted by the State of New Hampshire through its Air Resources Division (ARD) on November 21, 1989. The revisions consist of revised volatile organic compound (VOC) emissions regulations in Chapter Env-A 1200 of New Hampshire's Administrative Rules Governing Air Pollution as well as other miscellaneous amendments to Chapters Env-A 100, 800, and 900 dealing with definitions, test methods, and recordkeeping requirements. The Technical Support Document (TSD), dated December 14, 1990, further identifies these rules.

On May 25, 1988, EPA sent a letter to John H. Sununu, then Governor of New Hampshire, pursuant to section 110(a)(2)(H) of the Clean Air Act (CAA), as amended in 1977, notifying him that the New Hampshire SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the New Hampshire portion of the Boston-Lawrence-Salem Consolidated Metropolitan Statistical Area (CMSA), and in the New Hampshire portion of the Portsmouth-Dover-Rochester Metropolitan Statistical Area (MSA), plus the remaining portion of Strafford County. On November 8, 1989, EPA sent a letter to Judd Gregg, Governor of New Hampshire, pursuant to section 110(a)(2)(H) of the CAA, as amended in 1977, notifying him that the New Hampshire SIP was substantially inadequate to achieve the NAAQS for ozone in the Manchester MSA plus the remaining portion of Merrimack County and the remaining portions of Hillsboro and Rockingham Counties outside of the Boston-Lawrence-Salem CMSA.

Finally, on June 16, 1988, EPA sent a letter to the Director of New Hampshire's Department of Environmental Services' ARD outlining the corrections that needed to be made to New Hampshire's existing VOC regulations to eliminate the identified deficiencies and inconsistencies in the regulations as compared to EPA's national guidance.

In addition to the SIP call letters sent directly to the State, EPA published an information notice on the call for a SIP revision and on guidance documents, including the May 25, 1988, document: "Issues Regulating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (the "Bluebook"). (See 53 FR 34500 (September 7, 1988).) The deficiencies noted in the SIP call letters were based on inconsistencies with existing Control Techniques Guideline (CTG) documents, as specified in the Bluebook.

EPA requested the State to respond to the SIP calls in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs. The first phase of the response to the SIP call consists of (1) correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the areas' base year emissions inventory.

The revised VOC regulations submitted by New Hampshire on November 21, 1989, are in response to EPA's May 25, 1988, June 16, 1988, and November 8, 1989 letters. This action approves the necessary revisions to New Hampshire's VOC regulations as required by the SIP call.

EPA's review of the SIP submittal indicates that New Hampshire has addressed all but one of the deficiencies and inconsistencies in the existing VOC regulations identified by EPA in its letters of May 25, 1988, June 16, 1988, and November 8, 1989. New Hampshire has not fully addressed one outstanding SIP call deficiency pertaining to single source SIP regulations applicable to nine VOC sources. EPA will publish a separate NPR in the future addressing this issue. Also, subsequent to EPA's letter to ARD specifying deficiencies in the New Hampshire ozone SIP, EPA identified additional provisions in New Hampshire's VOC regulations which may be inconsistent with EPA guidance. EPA will work with ARD to promptly

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address these inconsistencies in the near future. Among these inconsistencies, the definition of paper coating in New Hampshire does not explicitly include saturation operations. However, there are no sources excluded from regulation due to this omission. In the future, as New Hampshire revises its regulations pursuant to section 182(2)(b)(2)(B) of the Clean Air Act Amendments of 1990, the State will be required to revise its definition of paper coating to include explicitly saturation operations.

New Hampshire's SIP revisions containing the amendments in Chapters Env–A 100, 800, 900 and 1200 of New Hampshire's Administrative Rules Governing Air Pollution were submitted on November 21, 1989. The specific content of the revised regulations and the rationale for EPA's action were explained in the NPR and will not be restated here. EPA received no public comments on the NPR.

Since the time EPA proposed approval of New Hampshire's correction of the identified Reasonably Available Control Technology (RACT) deficiencies, the Clean Air Act Amendments of 1990 were adopted (Pub. L. 101–549, 104 Stat. 2399). The amendments do not affect the present action nor do they require reproposal of this rule. The amended Act supports New Hampshire's submittal of these RACT rule corrections by requiring States to submit RACT corrections by May 15, 1991. (See section 182(a)(2)(A).) Moreover, the Act requires that these RACT corrections serve to establish RACT within the State SIP, as required under section 172 of the pre-amended Act, as that section has been interpreted in guidance issued by the Agency. The guidance referred to includes the CTGs and the Bluebook.

Final Action

EPA is approving the SIP revisions which contain the revised VOC regulations for the State of New Hampshire. These revisions correct deficiencies in New Hampshire's VOC regulations identified by EPA.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 12, 1991.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 5, 1991.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(43) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(43) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on November 21, 1989.

(i) Incorporation by reference.

(A) Letter form the New Hampshire Air Resources Division dated November 21, 1989 submitting a revision to the New Hampshire State Implementation Plan.

(B) Amendments to regulations for the State of New Hampshire's Administrative Rules Governing Air Pollution in Chapters Env–A 100, 800, 900 and 1200 which were effective November 16, 1989.

(C) Letter from Robert W. Varney, Commissioner of the Department of Environmental Services of New Hampshire, to John B. Hammond, Acting Director of the New Hampshire Office of Legislative Services, dated November 15, 1989, adopting final rules.

§ 52.1525 [Amended]

3. Table 52.1525 is amended by adding the following lines. In the chart below the date approved by EPA and the Federal Register citation will be the publication date and citation of this document.

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted State	Date approved EPA	Federal Register citation	52.1520	Comments
Organizational rules: Definitions	CH air 100	11/16/89	June 13, 1991	[*FR* citation from published date].	(c)(43)	Approved Part Air 101.791; Revision to Part Air 101.98.
Testing requirements	CH air 800	11/16/89	June 13, 1991	[*FR* citation from published date].	(c)(43)	Approved Part Air 804; Revision to Part Air 802.07.
Owner operator obligations	CH air 900	11/16/89	June 13, 1991	[*FR* citation from published date].	(c)(43)	Approved Part Air 901.021, 901.022, 901.05; Revision to Part Air 901.02.
Prevention, abatement and control of stationary source air pollution	CH air 1200	11/16/89	June 13, 1991	[*FR* citation from published date].	(c)(43)	Approved Part Air 1204.19; revisions to Part Air 1204.01—,16.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN. Docket No. 91-1; FCC 91-119]

Closed-Caption Decoder Requirements for Television Receivers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (FCC) is adopting rules that set performance and display standards, as well as marketing regulations, for circuitry that is required to be built into television receivers in order to display closed-captioned television transmissions. These rules are being adopted in response to the provisions of the Television Decoder Circuitry Act of 1990, Public Law 101-431, which requires that most television receivers manufactured or imported for use in the United States be equipped with such circuitry by July 1, 1993. The rules should serve the needs of the deaf, hearing-impaired and others by expanding the accessibility of closed-caption technology.

EFFECTIVE DATE: This regulation is effective July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Richard B. Engelman, Chief, Technical Standards Branch, Office of Engineering and Technology (202) 653-6288.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Report and Order in General Docket No. 91-1, FCC 91-119, adopted April 12, 1991, and released April 15, 1991. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the FCC's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC.

Summary of the Report and Order

1. Closed captioning is used to provide a visual depiction of information simultaneously being provided on the audio portion of a television signal. Captions are considered to be closed because they are only viewable if the viewer activates a special decoder. Under the Commission's present rules, closed captions are permitted to be transmitted on line 21 of the vertical blanking interval of the television broadcast signal. The rules do not, however, specify either the caption encoding format or the resulting display characteristics. This information has been contained instead in specifications written by the Public Broadcasting Service (PBS) and the National Captioning Institute (NCI).

2. On October 15, 1990, the Television Decoder Circuitry Act of 1990 (Decoder Act) was enacted into law. The aim of this legislation is to serve the needs of the deaf, hearing-impaired and others by expanding the accessibility of closed-caption technology. The legislation is intended to reduce significantly the cost to consumers of receiving closed captioning, make closed captioning more widely available, and create market incentives for broadcasters to invest in and provide more closed-captioned programming. Specifically, the Decoder Act amends the Communications Act of 1934, as amended, by:

(1) Requiring that television receivers with picture screens 13 inches or greater be equipped to display closed-captioned television transmissions;

(2) Making it illegal to ship in interstate commerce, manufacture, assemble, or import any television receiver that is subject to closed-caption decoder requirements, except in accordance with Commission rules;

(3) Requiring the Commission to promulgate rules providing performance and display standards for such built-in decoder circuitry;

(4) Requiring that the built-in decoder circuitry be able to receive and display closed captions that are transmitted on line 21 of the vertical blanking interval and that conform to the PBS/NCI specifications; and,

(5) Directing the Commission to take appropriate action to ensure that closed-captioning service continues to be available as new video technology is developed.

These changes become effective on July 1, 1993. The Decoder Act directs the Commission to promulgate rules implementing this legislation within 180 days of the effective date, *i.e.* by April 12, 1991.

3. In response to the Decoder Act legislation, the Television Receiver Committee of the Electronic Industries Association (EIA) established a joint task force of television receiver manufacturers and closed-caption service providers to develop a television receiver display standard for closed captioning. The EIA task force developed a proposed standard based in large measure on the existing PBS/NCI specifications. The task force did propose that some new features (such as permitting captioning anywhere on the screen) not in the present PBS/NCI specifications be added; and, at the same time, proposed that certain existing features (such as color characters and text services) be made optional or be allowed to be implemented in different ways.

4. On January 3, 1991, the Commission adopted a Notice of Proposed Rule Making (Notice) in the above-captioned proceeding. See 56 FR 1376, January 14, 1991. The Notice proposed amending part 15 of the Commission's rules to implement the provisions of the Decoder Act. The Notice requested comments on the scope of the Decoder Act and the task force's proposed standard. The Commission specifically requested comments on issues concerning new features, color characters, italic characters, lower-case characters, character background, smooth scrolling, caption size, caption channels, and text services.

5. Comments were received from 38 individuals and organizations. Reply comments were received from 10 parties. More than 65 written late-filed and *ex parte* comments were also received and made part of the record.

6. In its Report and Order, the Commission adopted standards that conform closely to the PBS/NCI specifications, and also provide improvements in closed-caption capabilities. These improvements include the ability to display captions anywhere on the television screen. Captions are currently limited to the top and bottom portions of the screen. To provide adequate flexibility for manufacturers to develop cost-effective approaches to closed captioning, the Commission allowed a few aspects of the PBS/NCI specifications to be optional or to be achieved in a different manner. The Commission generally adopted the task force's proposed standards, with certain changes, and is including the standards within Part 5 of its rules. The Commission also adopted marketing regulations necessary to implement the requirements of the Decoder Act.

7. Final Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action: The promulgation of these rules is mandated by the Television Decoder Circuitry Act of 1990, Public Law 101-431. The Commission is adopting performance and display standards for closed-caption decoder circuitry that will be required in most television receivers by July 1, 1993. It is also adopting associated marketing regulations.

II. Summary of the issues raised by the Public Comments to Response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered: The Notice proposed display standards that were developed by a task force composed of television manufacturers and closed-caption service providers. These standards provided manufacturers some flexibility in how closed-captions could be displayed. The new rules adopt many of these proposals.

8. Accordingly, it is ordered that, Pursuant to the authority contained in section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and sections 3 and 4 of the Television Decoder Circuitry Act of 1990, Public Law 101-431, title 47 of the Code of Federal Regulations, part 15, is amended as set forth below. These rules and regulations are effective 30 days after publication in the **Federal Register**. *It is further ordered*, That this proceeding is terminated.

List of Subjects in 47 CFR Part 15

Television, Communications equipment, Deaf, Bilingual education, Motion pictures.

Part 15 of title 47 of the CFR is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Sections 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended. 47 U.S.C. Sections 154, 302, 303, 304, and 307.

2. Section 15.119 is added to subpart B to read as follows:

§ 15.119 Closed Caption Decoder Requirements for Television Receivers.

(a) Effective July 1, 1993, all TV broadcast receivers with picture screens 13 inches or larger in diameter shipped in interstate commerce, manufactured, assembled, or imported from any foreign country into the United States shall comply with the provisions of this section.

(b) Transmission format. Closed-caption information is transmitted on line 21 of field 1 of the vertical blanking interval of television signals, in accordance with § 73.682(a)(22) of this chapter.

(c) Operating modes. The television receiver will employ customer-selectable modes of operation for TV and Caption. A third mode of operation, Text, may be included on an optional basis. The Caption and Text Modes may contain data in either of two operating channels, referred to in this document as C1 and C2. The television receiver must decode both C1 and C2 captioning, and must display the captioning for whichever channel the user selects. The TV Mode of operation allows the video to be viewed in its original form. The Caption and Text Modes define one or more areas (called "boxes") on the screen within which caption or text characters are displayed.

Note. For more information regarding Text mode, see "Television Captioning for the Deaf: Signal and Display Specifications", Engineering Report No. E-7709-C, Public Broadcasting Service, dated May 1990, and "TeleCaption II Decoder Module Performance Specification", National Captioning Institute, Inc., dated November 1985. These documents are available, respectively, from the Public Broadcasting Service, 1320 Braddock Place, Alexandria, VA 22314 and from the National Captioning Institute, Inc., 5203 Leesburg Pike, Falls Church, VA 22041.

(d) Screen format. The display area for captioning and text shall fall within the safe caption area as defined in paragraph (n)(12) of this section. This display area will be further divided into 15 character rows of equal height and 32 columns of equal width, to provide accurate placement of text on the screen. Vertically, the display area begins on line 43 and is 195 lines high, ending on line 237 on an interlaced display. All captioning and text shall fall within these established columns and rows. The characters must be displayed clearly separated from the video over which they are placed. In addition, the user must have the capability to select a black background over which the captioned letters are displaced.

(1) Caption mode. In the Caption Mode, text can appear on up to 4 rows simultaneously anywhere on the screen within the defined display area. In addition, a solid space equal to one column width may be placed before the first character and after the last character of each row to enhance legibility. The caption area will be transparent anywhere that either:

(i) No standard space character or other character has been addressed and no accompanying solid space is needed; or,

(ii) An accompanying solid space is used and a "transparent space" special character has been addressed which does not immediately precede or follow a displayed character.

(2) [Reserved]

(e) Presentation format. In analyzing the presentation of characters, it is convenient to think in terms of a non-visible cursor which marks the screen position at which the next event in a given mode and data channel will occur. The receiver remembers the cursor position for each mode even when data are received for a different address in an alternate mode or data channel.

(1) Screen addressing. Two kinds of control codes are used to move the cursor to specific screen locations. In Caption Mode, these addressing codes will affect both row and column positioning. In Text Mode, the codes affect only column positioning. In both modes, the addressing codes are optional. Default positions are defined for each mode and style when no addressing code is provided.

(i) The first type of addressing code is the Preamble Address Code (PAC). It assigns a row number and one of eight "indent" figures. Each successive indent moves the cursor four columns to the right (starting from the left margin). Thus, an indent of 0 places the cursor at Column 1, an indent of 4 sets it at Column 5, etc. The PAC indent is non-destructive. It will not affect the display to the left of the new cursor position on the indicated row. Note that Preamble Address Codes also set initial attributes for the displayable characters which follow. See paragraph (h) of this section and the Preamble Address Code table.

(ii) The second type of addressing code is the Tab Offset, which is one of three Miscellaneous Control Codes. Tab Offset will move the cursor one, two, or three columns to the right. The character cells skipped over will be unaffected; displayable characters in these cells, if any, will remain intact while empty cells will remain empty, in the same manner that a PAC indent is non-destructive. A Tab Offset command will be acted upon only if received immediately after a PAC and before any displayable characters or Mid-Row Codes. A Tab Offset command received after any code other than a PAC will be ignored. (If data for the alternate data channel or mode are received between the PAC and the Tab Offset, the Tab Offset will still be acted upon.)

(2) [Reserved]

(f) Caption Mode. There are three styles of presenting text in Caption Mode: roll-up, pop-on, and paint-on. Character display varies significantly with the style used, but certain rules of character erasure are common to all styles. A character, once displayed, can be erased by addressing another character to the same screen location or, in displayed memory, by backspacing

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over the character from a subsequent location on the same row. The entire displayed memory will be erased instantly by receipt of an Erase Displayed Memory command. Both displayed memory and non-displayed memory will be entirely erased simultaneously by either: The user switching receiver channels or data channels (C1/C2) or fields (F1/F2) in decoders so equipped; the loss of valid data (see paragraph (j) of this section); or, selecting non-captioning receiver functions which use the display memory of the decoder. These are the only instances in which caption memory will be erased. Receipt of an End of Caption command will cause a displayed caption to become non-displayed (and vice versa) without being erased from memory. Changing the receiver to a non-captioning mode which does not require use of the decoder's display memory will leave that memory intact, and the decoder will continue to process data as if the caption display were selected.

(f) Roll-up. Roll-up style captioning is initiated by receipt of one of three Miscellaneous Control Codes that determine the maximum number of rows displayed simultaneously, either 2, 3 or 4 contiguous rows. These are the three Roll-Up Caption commands.

(i) The bottom row of the display is known as the "base row". The cursor always remains on the base row. Rows of text roll upwards into the contiguous rows immediately above the base row to create a "window" 2 to 4 rows high.

(ii) The Roll-Up command, in normal practice, will be followed (not necessarily immediately) by a Preamble Address Code indicating the base row and the horizontal indent position. If no Preamble Address Code is received, the base row will default to Row 15 or, if a roll-up caption is currently displayed, to the same base row last received, and the cursor will be placed at Column 1. If the Preamble Address Code received contains a different base row than that of a currently displayed caption, the entire window will move intact (and without erasing) to the new base row immediately.

(iii) The base row given in the Preamble Address Code takes precedence over the number of roll-up rows given in the Roll-Up Caption command. If the Preamble Address Code indicates Rows 1, 2, or 3 as the base row, any rows which would display above the window will be lost.

(iv) Each time a Carriage Return is received, the text in the top row of the window is erased from memory and from the display. The remaining rows of text are each rolled up into the next highest row in the window, leaving the base row blank and ready to accept new text. This roll-up must appear smooth to the user, and must take no more than 0.533 seconds to complete. The cursor is automatically placed at Column 1 (pending receipt of a Preamble Address Code).

(v) Increasing or decreasing the number of roll-up rows instantly changes the size of the active display window, appropriately turning on or off the display of the top one or two rows. A row which is turned off should also be erased from memory.

(vi) Characters are always displayed immediately when received by the receiver. Once the cursor reaches the 32nd column position on any row, all subsequent characters received prior to a Carriage Return, Preamble Address Code, or Backspace will be displayed in that column replacing any previous character occupying that address.

(vii) The cursor moves automatically one column to the right after each character or Mid-Row Code received. A Backspace will move the cursor one column to the left, erasing the character or Mid-Row Code occupying that location. (A Backspace received when the cursor is in Column 1 will be ignored.)

(viii) The Delete to End of Row command will erase from memory any characters or control codes starting at the current cursor location and in all columns to its right on the same row. If no displayable characters remain on the row after the Delete to End of Row is acted upon, the solid space (if any) for that row should also be erased to conform with the following provisions.

(ix) If a solid space is used for legibility, it should appear when the first displayable character (not a transparent space) or Mid-Row Code is received on a row, not when the Preamble Address Code, if any, is given. A row on which there are no displayable characters or Mid-Row Codes will not display a solid space, even when rolled up between two rows which do display a solid space.

(x) If the reception of data for a row is interrupted by data for the alternate data channel or for Text Mode, the display of caption text will resume from the same cursor position if a Roll-Up Caption command is received and no Preamble Address Code is given which would move the cursor.

(xi) Receipt of a Resume Caption Loading command (for pop-on style) or a Resume Direct Captioning command (for paint-on style) will not affect a roll-up display. Receipt of an End of Caption command will erase the roll-up caption. Receipt of a Roll-Up Caption command will cause any pop-on or paint-on caption to be erased from displayed memory and non-displayed memory.

(g) Pop-on. Pop-on style captioning is initiated by receipt of a Resume Caption Loading command. Subsequent data are loaded into a non-displayed memory and held there until an End of Caption command is received, at which point the non-displayed memory becomes the displayed memory and vice versa. (This process is often referred to as "flipping memories" and does not automatically erase memory.) An End of Caption command forces the receiver into pop-on style if no Resume Caption Loading command has been received which would do so. The display will be capable of 4 full rows, not necessarily contiguous, simultaneous anywhere on the screen.

(i) If no Preamble Address Code is received, the cursor will begin at the same screen position where it was left after the previous caption (or at Row 1, Column 1 when the receiver is first turned on or after a screen erase caused by the user switching data channels or fields or by loss of valid data). Preamble Address Codes can be used to move the cursor around the screen in random order to place captions on Rows 1 to 15. Carriage Returns and Backspaces have no effect on cursor location during caption loading.

(ii) The cursor moves automatically one column to the right after each character or Mid-Row Code received. Once the cursor reaches the 32nd column position on any row, all subsequent characters received prior to an End of Caption, or a Preamble Address Code, will replace any previous character at that location.

(iii) If a Backspace command or a Delete to End of Row command is received during caption loading, it will be ignored.

(iv) If data reception is interrupted during caption loading by data for the alternate caption channel or for Text Mode, caption loading will resume at the same cursor position if a Resume Caption Loading command is received and no Preamble Address Code is given that would move the cursor.

(v) Characters remain in non-displayed memory until an End of Caption command flips memories. The caption will be erased without being displayed upon receipt of an Erase Non-Displayed Memory command, a Roll-Up Caption command, or if the user switches receiver channels, data channels or fields, or upon the loss of valid data (see paragraph (j) of this section).

(vi) A pop-on caption, once displayed, remains displayed until one of the

standard caption erasure techniques is applied or until a Roll-Up Caption command is received. Characters within a displayed pop-on caption will be replaced by receipt of the Resume Direct Captioning command and paint-on style techniques (see below).

(3) Paint-on. Paint-on style captioning is initiated by receipt of a Resume Direct Captioning command. Subsequent data are addressed immediately to displayed memory without need for an End of Caption command.

(i) If no Preamble Address Code is received, the cursor will begin at the same screen position where it was left after the previous caption (or at Row 1, Column 1 when the receiver is first turned on or after a screen erase caused by the user switching receiver channels or data channels or fields or by loss of valid data).

(ii) Preamble Address Codes can be used to move the cursor around the screen in random order to display captions on Rows 1 to 15. Carriage Returns have no affect on cursor location during direct captioning. The cursor moves automatically one column to the right after each character or Mid-Row Code is received. Receipt of a Backspace will move the cursor one column to the left, erasing the character or Mid-Row Code occupying that location. (A Backspace received when the cursor is in Column 1 will be ignored.) Once the cursor reaches the 32nd column position on any row, all subsequent characters received prior to a Preamble Address Code or Backspace will be displayed in that column replacing any previous character occupying that location.

(iii) The Delete to End of Row command will erase from memory any characters or control codes starting at the current cursor location and in all columns to its right on the same row. If no displayable characters remain on the row after the Delete to End of Row is acted upon, the solid space (if any) for that element should also be erased.

(iv) If the reception of data is interrupted during direct captioning by data for the alternate caption channel or for Text Mode, the display of caption text will resume at the same cursor position if a Resume Direct Captioning command is received an no Preamble Address Code is given which would move the cursor.

(v) Characters remain displayed until one of the standard caption erasure techniques is applied or until a Roll-Up Caption command is received. An End of Caption command leaves a paint-on caption fully intact in non-displayed memory. In other words, a paint-on style caption behaves precisely like a pop-on style caption which has been displayed.

(g) Character format. Characters are to be displayed on the screen within a character "cell" which is the height and width of a single row and column. The following codes define the displayable character set. Television receivers manufactured prior to January 1, 1996 and having a character resolution of 5 × 7 dots, or less, may display the allowable alternate characters in the character table. A statement must be in a prominent location on the box or other package in which the receiver is to be marketed, and information must be in the owner's manual, indicating the receiver displays closed captioning in upper case only.

Character Set Table

Special Characters

These require two bytes for each symbol. Each hex code as shown will be preceded by a 11h for data channel 1 or by a 19h for data channel 2. For example: 19h 37h will place a musical note in data channel 2.

HEX	Example	Alternate	Description
30	®	See note [1]	Registered mark symbol.
31	°		Degree sign.
32	½		½.
33	¿		Inverse query.
34	™	See note [1]	Trademark symbol.
35	¢		Cents sign.
36	£		Pounds Sterling sign.
37	♪		Music note.
38	à	A	Lower-case a with grave accent.
39			Transparent space
3A	è	E	Lower-case e with grave accent.
3B	â	A	Lower-case a with circumflex.
3C	ê	E	Lower-case e with circumflex.
3D	î	I	Lower-case i with circumflex.
3E	ô	O	Lower-case o with circumflex.
3F	û	U	Lower-case u with circumflex.

[1] Note: The registered and trademark symbols are used to satisfy certain legal requirements. There are various legal ways in which these symbols may be drawn or displayed. For example, the trademark symbol may be drawn with the "T" next to the "M" or over the "M". It is perfered that the trademark symbol be superscripted, i.e., XYZ™. It is left to each individual manufacturer to interpret these symbols in any way that meets the legal needs of the user.

Standard characters

HEX	Example	Alternate	Description
20			Standard space.
21	!		Exclamation mark.
22	"		Quotation mark.
23	#		Pounds (number) sign.
24	$		Dollar sign.
25	%		Percentage sign.
26	&		Ampersand.
27	'		Apostrophe.
28	(		Open parentheses.
29	)		Close parentheses.
2A	á	A	Lower-case a with acute accent.
2B	+		Plus sign.
2C	,		Comma.
2D	-		Minus (hyphen) sign.
2E	.		Period.
2F	/		Slash.
30	0		Zero.
31	1		One.
32	2		Two.
33	3		Three.
34	4		Four.
35	5		Five.
36	6		Six.
37	7		Seven.
38	8		Eight.
39	9		Nine.
3A	:		Colon.
3B	;		Semi-colon.
3C	<		Lees than sign.
3D	=		Equal sign.
3E	>		Greater than sign.
3F	?		Question mark.
40	@		At sign.
41	A		Upper-case A.
42	B		Upper-case B.
43	C		Upper-case C.
44	D		Upper-case D.
45	E		Upper-case E.
46	F		Upper-case F.
47	G		Upper-case G.
48	H		Upper-case H.
49	I		Upper-case I.
4A	J		Upper-case J.
4B	K		Upper-case K.
4C	L		Upper-case L.
4D	M		Upper-case M.
4E	N		Upper-case N.
4F	O		Upper-case O.
50	P		Upper-case P.
51	Q		Upper-case Q.
52	R		Upper-case R.
53	S		Upper-case S.
54	T		Upper-case T.
55	U		Upper-case U.
56	V		Upper-case V.
57	W		Upper-case W.
58	X		Upper-case X.
59	Y		Upper-case Y.
5A	Z		Upper-case Z.
5B	[		Open bracket.
5C	é	E	Lower-case e with acute accent.
5D	]		Close bracket.
5E	í	I	Lower-case i with acute accent.
5F	ó	O	Lower-case o with acute accent.
60	ú	U	Lower-case u with acute accent.
61	a	A	Lower-case a.
62	b	B	Lower-case b.
63	c	C	Lower-case c.
64	d	D	Lower-case d.
65	e	E	Lower-case e.
66	f	F	Lower-case f.
67	g	G	Lower-case g.
68	h	H	Lower-case h.
69	i	I	Lower-case i.
6A	j	J	Lower-case j.
6B	k	K	Lower-case k.
6C	l	L	Lower-case l.

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HEX	Example	Alternate	Description
6D	m	M	Lower-case m.
6E	n	N	Lower-case n.
6F	o	O	Lower-case o.
70	p	P	Lower-case p.
71	q	Q	Lower-case q.
72	r	R	Lower-case r.
73	s	S	Lower-case s.
74	t	T	Lower-case t.
75	u	U	Lower-case u.
76	v	V	Lower-case v.
77	w	W	Lower-case w.
78	x	X	Lower-case x.
79	y	Y	Lower-case y.
7A	z	Z	Lower-case z.
7B	ç	C	Lower-case c with cedilla.
7C	÷		Division sign.
7D	Ñ		Upper-case N with tilde.
7E	ñ	R	Lower-case n with tilde.
7F	■		Solid block.

(h) Character attributes.—(1) Transmission of attributes. A character may be transmitted with any or all of four attributes: color, italics, underline, and flash. All of these attributes are set by control codes included in the received data. An attribute will remain in effect until changed by another control code or until the end of the row is reached. Each row begins with a control code which sets the color and underline attributes. (White non-underlined is the default if no Preamble Address Code is received before the first character on an empty row.) Attributes are not affected by transparent spaces within a row.

(i) All Mid-Row Codes and the Flash On command are spacing attributes which appear in the display just as if a standard space (20h) had been received. Preamble Address Codes are non-spacing and will not alter any attributes when used to position the cursor in the midst of a row of characters.

(ii) The color attribute has the highest priority and can only be changed by the Mid-Row Code of another color. Italics has the next highest priority. If characters with both color and italics are desired, the italics Mid-Row Code must follow the color assignment. Any color Mid-Row Code will turn off italics. If the least significant bit of a Preamble Address Code or of a color or italics Mid-Row Code is a 1 (high), underlining is turned on. If that bit is a 0 (low), underlining is off.

(iii) The flash attribute is transmitted as a Miscellaneous Control Code. The Flash On command will not alter the status of the color, italics, or underline attributes. However, any color or italics Mid-Row Code will turn off flash.

(iv) Thus, for example, if a red, italicized, underlined, flashing character is desired, the attributes must be received in the following order: a red Mid-Row or Preamble Address Code, an italics Mid-Row Code with underline bit, and the Flash On command. The character will then be preceded by three spaces (two if red was assigned via a Preamble Address Code).

(2) Display of attributes. The underline attribute will be displayed by drawing a line beneath the character in the same color as the character. The flash attribute will be displayed by causing the character to blink from the display at least once per second. The italic attribute must be capable of being displayed by either a special italic font, or by the modification of the standard font by slanting. The user may be given the option to select other methods of italic display as well. The support of the color attributes is optional. If the color attributes are supported, they will be displayed in the color they have been assigned. If color attributes are not supported, the display may be in color, but all color changes will be ignored.

(i) Control codes. There are three different types of control codes used to identify the format, location, attributes, and display of characters: Preamble Address Codes, Mid-Row Codes, and Miscellaneous Control Codes.

(1) Each control code consists of a pair of bytes which are always transmitted together in a single field of line 21 and which are normally transmitted twice in succession to help insure correct reception of the control instructions. The first of the control code bytes is a non-printing character in the range 10h to 1Fh. The second byte is always a printing character in the range 20h to 7Fh. Any such control code pair received which has not been assigned a function is ignored. If the non-printing character in the pair is in the range 00h to 0Fh, that character alone will be ignored and the second character will be treated normally.

(2) If the second byte of a control code pair does not contain odd parity (see paragraph (j) of this section), then the pair is ignored. The redundant transmission of the pair will be the instruction upon which the receiver acts.

(3) If the first byte of the first transmission of a control code pair fails the parity check, then that byte is inserted into the currently active memory as a solid block character (7Fh) followed by whatever the second byte is. Again, the redundant transmission of the pair will be the controlling instruction.

(4) If the first transmission of a control code pair passes parity, it is acted upon immediately. If the next frame contains a perfect repeat of the same pair, the redundant code is ignored. If, however, the next frame contains a different but also valid control code pair, this pair, too, will be acted upon (and the receiver will expect a repeat of this second pair in the next frame). If the first byte of the expected redundant control code pair fails the parity check and the second byte is identical to the second byte in the immediately preceding pair, then the expected redundant code is ignored. If there are printing characters in place of the redundant code, they will be processed normally.

(5) There is provision for decoding a second data channel. The second data channel is encoded with the same control codes and procedures already described. The first byte of every control code pair indicates the data channel (C1/C2) to which the command applies. Control codes which do not match the data channel selected by the user, and all subsequent data related to that control code, are ignored by the receiver.

MID-ROW CODES

Data channel 1	Data channel 2	Attribute description
11 20	19 20	White.
11 21	19 21	White Underline.
11 22	19 22	Green.
11 23	19 23	Green Underline.
11 24	19 24	Blue.
11 25	19 25	Blue Underline.
11 26	19 26	Cyan.
11 27	19 27	Cyan Underline.
11 28	19 28	Red.
11 29	19 29	Red Underline.
11 2A	19 2A	Yellow.
11 2B	19 2B	Yellow Underline.
11 2C	19 2C	Magenta.
11 2D	19 2D	Magenta Underline.
11 2E	19 2E	Italics.
11 2F	19 2F	Italics Underline.

MISCELLANEOUS CONTROL CODES

Data channel 1	Data channel 2	Mnemonic	Command description
14 20	1C 20	RC	Resume Caption Loading.
14 21	1C 21	BS	Backspace.
14 22	1C 22	AOF	Reserved (formerly Alarm Off).
14 23	1C 23	AON	Reserved (formerly Alarm On).
14 24	1C 24	DER	Delete to End of Row.
14 25	1C 25	RU2	Roll-Up Captions-2 Rows.
14 26	1C 26	RU3	Roll-Up Captions-3 Rows.
14 27	1C 27	RU4	Roll-Up Captions-4 Rows.
14 28	1C 28	FON	Flash On.

MISCELLANEOUS CONTROL CODES—Continued

Data channel 1	Data channel 2	Mnemonic	Command description
14 29	1C 29	RDC	Resume Direct Captioning.
14 2A	1C 2A	TR	Text Restart.
14 2B	1C 2B	RTD	Resume Text Display.
14 2C	1C 2C	EDM	Erase Displayed Memory.

MISCELLANEOUS CONTROL CODES—Continued

Data channel 1	Data channel 2	Mnemonic	Command description
14 2D	1C 2D	CR	Carriage Return.
14 2E	1C 2E	ENM	Erase Non-Displayed Memory.
14 2F	1C 2F	EOC	End of Caption (Flip Memories).

MISCELLANEOUS CONTROL CODES—Continued

Data channel 1	Data channel 2	Mnemonic	Command description
17 21	1F 21	TO1	Tab Offset 1 Column.
17 22	1F 22	TO2	Tab Offset 2 Columns.
17 23	1F 23	TO3	Tab Offset 3 Columns.

PREAMBLE ADDRESS CODES

	Row 1	Row 2	Row 3	Row 4	Row 5	Row 6	Row 7	Row 8	Row 9	Row 10	Row 11	Row 12	Row 13	Row 14	Row 15
First byte of code pair:															
Data Channel 1	11	11	12	12	13	13	14	14	15	15	16	16	17	17	18
Data Channel 2	19	19	1A	1A	1B	1B	1C	1C	1D	1D	1E	1E	1F	1F	1B
Second byte of code pair:															
White	40	60	40	60	40	60	40	60	40	60	40	60	40	60	40
White Underline	41	61	41	61	41	61	41	61	41	61	41	61	41	61	41
Green	42	62	42	62	42	62	42	62	42	62	42	62	42	62	42
Green Underline	43	63	43	63	43	63	43	63	43	63	43	63	43	63	43
Blue	44	64	44	64	44	64	44	64	44	64	44	64	44	64	44
Blue Underline	45	65	45	65	45	65	45	65	45	65	45	65	45	65	45
Cyan	46	66	46	66	46	66	46	66	46	66	46	66	46	66	46
Cyan Underline	47	67	47	67	47	67	47	67	47	67	47	67	47	67	47
Red	48	68	48	68	48	68	48	68	48	68	48	68	48	68	48
Red Underline	49	69	49	69	49	69	49	69	49	69	49	69	49	69	49
Yellow	4A	6A	4A	6A	4A	6A	4A	6A	4A	6A	4A	6A	4A	6A	4A
Yellow Underline	4B	6B	4B	6B	4B	6B	4B	6B	4B	6B	4B	6B	4B	6B	4B
Magenta	4C	6C	4C	6C	4C	6C	4C	6C	4C	6C	4C	6C	4C	6C	4C
Magenta Underline	4D	6D	4D	6D	4D	6D	4D	6D	4D	6D	4D	6D	4D	6D	4D
White Italics	4E	6E	4E	6E	4E	6E	4E	6E	4E	6E	4E	6E	4E	6E	4E
White Italics Underline	4F	6F	4F	6F	4F	6F	4F	6F	4F	6F	4F	6F	4F	6F	4F
Indent 0	50	70	50	70	50	70	50	70	50	70	50	70	50	70	50
Indent 0 Underline	51	71	51	71	51	71	51	71	51	71	51	71	51	71	51
Indent 4	52	72	52	72	52	72	52	72	52	72	52	72	52	72	52
Indent 4 Underline	53	73	53	73	53	73	53	73	53	73	53	73	53	73	53
Indent 8	54	74	54	74	54	74	54	74	54	74	54	74	54	74	54
Indent 8 Underline	55	75	55	75	55	75	55	75	55	75	55	75	55	75	55
Indent 12	56	76	56	76	56	76	56	76	56	76	56	76	56	76	56
Indent 12 Underline	57	77	57	77	57	77	57	77	57	77	57	77	57	77	57
Indent 16	58	78	58	78	58	78	58	78	58	78	58	78	58	78	58
Indent 16 Underline	59	79	59	79	59	79	59	79	59	79	59	79	59	79	59
Indent 20	5A	7A	5A	7A	5A	7A	5A	7A	5A	7A	5A	7A	5A	7A	5A
Indent 20 Underline	5B	7B	5B	7B	5B	7B	5B	7B	5B	7B	5B	7B	5B	7B	5B
Indent 24	5C	7C	5C	7C	5C	7C	5C	7C	5C	7C	5C	7C	5C	7C	5C
Indent 24 Underline	5DF	7D	5D	7D	5D	7D	5D	7D	5D	7D	5D	7D	5D	7D	5D
Indent 28	5E	7E	5E	7E	5E	7E	5E	7E	5E	7E	5E	7E	5E	7E	5E
Indent 28 Underline	5F	7F	5F	7F	5F	7F	5F	7F	5F	7F	5F	7F	5F	7F	5F

Note.—All indent codes (second byte equals 50h–5fh, 70th–7fh) assign white as the color attribute.

(j) Data rejection. The receiver should provide an effective procedure to verify data. A receiver will reject data if the data is invalid, or if the data is directed to the data channel or field not selected by the user. Invalid data is any data that fails to pass a check for odd parity, or which, having passed the parity check, is assigned no function.

(1) If a print character fails to pass a check for parity, a solid block (7Fh) should be displayed in place of the failed character. In addition, valid data can be corrupted in many ways and may not be suitable for display. For example, repeated fields, skipped fields and altered field sequences are all possible from consumer video equipment and might present meaningless captions.

(2) The receiver will ignore data rejected due to being directed to a deselected field or channel. However, this will not cause the display to be disabled.

(k) Automatic display enable/disable. The receiver shall provide an automatic enable/disable capability to prevent the display of invalid or incomplete data, when the user selects the Caption Mode. The display should automatically become enable after the receiver verifies the data as described in paragraph (j) of this section. The display will be automatically disabled when there is a sustained detection of invalid data. The display will be re-enabled when the data verification process has been satisfied once again.

(l) Compatibility with cable security systems. Certain cable television security techniques, such as signal encryption and copy protection, can alter the television signal so that some methods of finding line 21 will not work. In particular, counting of lines or timing from the start of the vertical blanking interval may cause problems. Caption decoding circuitry must function properly when receiving signals from any cable security system that was designed and marketed prior to April 5,

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1991. Further information concerning such systems is available from the National Cable Television Association, Inc., Washington, DC, and from the Electronic Industries Association, Washington, DC.

(m) Labelling and consumer information requirements. The box or other package in which the individual television receiver is to be marketed shall carry a statement in a prominent location, visible to the buyer before purchase, which reads as follows:

This television receiver provides display of television closed captioning in accordance with § 15.119 of the FCC rules.

Receivers that do not support color attributes or text mode, as well as receivers that display only upper-case characters pursuant to paragraph (g) of this section, must include with the statement, and in the owner's manual, language indicating that those features are not supported.

(n) Glossary of terms. The following terms are used to describe caption decoder specifications:

(1) Base row: The bottom row of a roll-up display. The cursor always remains on the base row. Rows of text roll upwards into the contiguous rows immediately above the base row.

(2) Box: The area surrounding the active character display. In Text Mode, the box is the entire screen area defined for display, whether or not displayable characters appear. In Caption Mode, the box is dynamically redefined by each caption and each element of displayable characters within a caption. The box (or boxes, in the case of a multiple-element caption) includes all the cells of the displayed characters, the non-transparent spaces between them, and one cell at the beginning and end of each row within a caption element in those decoders that use a solid space to improve legibility.

(3) Caption window: The invisible rectangle which defines the top and bottom limits of a roll-up caption. The window can be 2 to 4 rows high. The lowest row of the window is called the base row.

(4) Cell: The discrete screen area in which each displayable character or space may appear. A cell is one row high and one column wide.

(5) Column: One of 32 vertical divisions of the screen, each of equal width, extending approximately across the full width of the safe caption area as defined in paragraph (n)(12) of this section. Two additional columns, one at the left of the screen and one at the right, may be defined for the appearance of a box in those decoders which use a solid space to improve legibility, but no displayable characters may appear in those additional columns. For reference, columns may be numbered 0 to 33, with columns 1 to 32 reserved for displayable characters.

(6) Displayable character: Any letter, number or symbol which is defined for on-screen display.

(7) Display disable: To turn off the display of captions or text (and accompanying background) at the receiver, rather than through codes transmitted on line 21 which unconditionally erase the display. The receiver may disable the display because the user selects an alternate mode, e.g., TV Mode, or because no valid line 21 data is present.

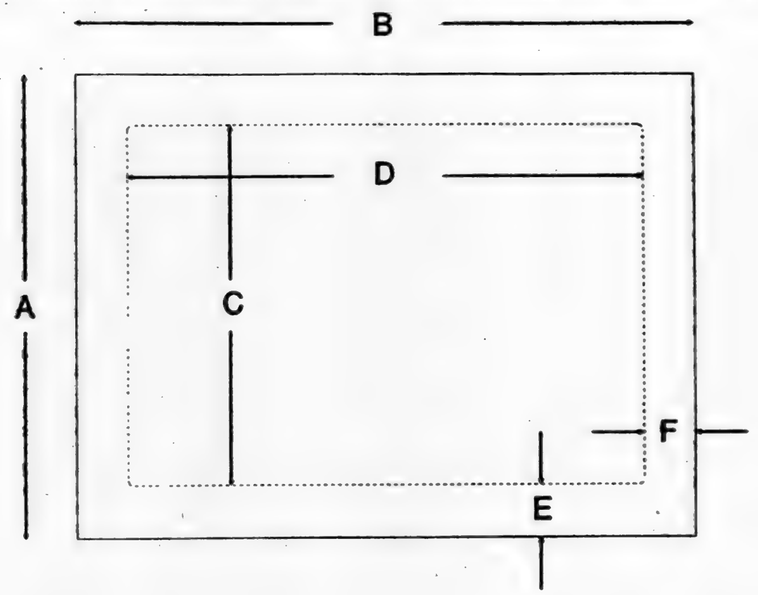
(8) Display enable: To allow the display of captions or text when they are transmitted on line 21 and received as valid data. For display to be enabled, the user must have selected Caption Mode or Text Mode, and valid data for the selected mode must be present on line 21.

(9) Element: In a pop-on or paint-on style caption, each contiguous area of cells containing displayable characters and non-transparent spaces between those characters. A single caption may have multiple elements. An element is not necessarily a perfect rectangle, but may include rows of differing widths.

(10) Erase Display: In Caption Mode, to clear the screen of all characters (and accompanying background) in response to codes transmitted on line 21. (The caption service provider can accomplish the erasure either by sending an Erase Displayed Memory command or by sending an Erase Non-Displayed Memory command followed by an End of Caption command, effectively making a blank caption "appear".) Display can also be erased by the receiver when the caption memory erasure conditions are met, such as the user changing TV channels.

(11) Row: One of 15 horizontal divisions of the screen, extending across the full height of the safe caption area as defined in paragraph (n)(12) of this section.

(12) Safe caption area: The area of the television picture within which captioning and text shall be displayed to ensure visibility of the information on the majority of home television receivers. The safe caption area is specified as shown in the following figure:



The dimensions of the above figure shall be as follows:

Label	Dimensions	Percent of television picture height
A	Television picture height	100.0
B	Television picture width	133.33
C	Height of safe caption area	80.0
D	Width of safe caption area	106.67
E	Vertical position of safe caption area.	10.0
F	Horizontal position of safe caption area.	13.33

(13) Special characters: Displayable characters (except for "transparent space") which require a two-byte sequence of one non-printing and one printing character. The non-printing byte varies depending on the data channel. Regular characters require unique one-byte codes which are the same in either data channel.

(14) Text: When written with an upper-case "T", refers to the Text Mode. When written with a lower-case "t", refers to any combination of displayable characters.

(15) Transparent space: Transmitted as a special character, it is a one-column-wide space behind which program video is always visible (except when a transparent space immediately precedes or follows a displayable character and solid box is needed to make that character legible).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[40 FR Doc. 91-13604 Filed 6-12-91; 8:45 am]

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 705, 706, 719, 726, and 752

[AIDAR Notice 91-4]

Disadvantaged Enterprises

AGENCY: Agency for International Development, IDCA.

ACTION: Interim rule with request for comments.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to implement the requirements of section 567 of the FY 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act concerning requirements for contracting and subcontracting with disadvantaged enterprises.

DATES: Effective Date: Interim rule is effective on May 9, 1991; comments must be received on or before July 15, 1991.

ADDRESSES: Comments should be sent to Kathleen O'Hara, MS/PPE, room 1600I SA-14, Agency for International Development, Washington, DC 20523-1435.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, MS/PPE, telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The Agency is implementing legislative changes in the provisions concerning contracting with disadvantaged enterprises.

The changes to tthe limitation of applicability to FY 1990 funds. The provisions will be applicable to funds from FY 1991 and later as long as the Agency's appropriation acts continue to provide authority.

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Previously, the less than full and open competitive procedures in AIDAR 706.302–71 were applicable only to small disadvantaged business concerns. Under the new legislation, AID is now authorized to use less than full and open competition under the circumstances set forth in AIDAR 706.302–71 for contracts with small disadvantaged business concerns, colleges and universities which are historically black or which have a student body of more than 40 percent Hispanic Americans, and disadvantaged private voluntary organizations. This procedure now requires the contracting officer to obtain competition to the maximum practicable extent, but no longer requires the contracting officer to certify that two or more responsible offers can reasonably be anticipated.

The definitions of economically disadvantaged individuals and socially disadvantaged individuals are amended to conform with the FAR definition, except that they specifically include women. The previous asset test used to determine economic disadvantage is dropped in accordance with a legislative change which defines such individuals by reference to section 8(d) of the Small Business Act, instead of section 133 of the 1977 International Development and Food Assistance Act which required an asset test.

The disadvantaged enterprise representation is amended to include the additional categories of organizations eligible under the procedures covering other than full and open competition.

The changes being made by this notice are not considered significant rules under FAR section 1.301 and subpart 1.5. This notice will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. It is not considered a major rule under Executive Order 12291, and has been submitted to OMB for review. This notice does not establish any information collection as contemplated by the Paperwork Reduction Act.

Accordingly, for the reasons set out in the Preamble, 48 CFR chapter 7 is amended as follows:

1. The authority citations in parts 705, 706, 719, 726 and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 705—PUBLICIZING CONTRACT ACTIONS

Subpart 706.2—Synopsis of Proposed Contract Actions

2. Section 705.202(c) is revised to read as follows:

705.202 Exceptions.

* * * * *

(c) Advance notice is not required for contract actions undertaken in accordance with § 706.302–71.

3. Section 705.207 is revised to read as follows:

705.207 Preparation and transmittal of certain synopses.

The responsible contracting officer shall notify AID's Office of Small and Disadvantaged Business Utilization (OSDBU) at least seven business days before publicizing a solicitation in the Commerce Business Daily for an acquisition:

(a) Which is to be funded from amounts made available for development assistance or for assistance for famine recovery and development in Africa; and

(b) Which is expected to exceed $100,000.

For exceptions, see 726.104.

PART 706—COMPETITION REQUIREMENTS

Subpart 706.3—Other Than Full and Open Competition

4. Section 706.302–5 is revised to read as follows:

706.302–5 Authorized or required by statute.

Sec. 567 of the fiscal year 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act authorizes AID to contract with certain disadvantaged enterprises using other than full and open competition. The provisions implementing this authority are set forth in 706.302–71 and part 726.

5. Section 706.302–71 is revised to read as follows:

706.302–71 Small disadvantaged businesses.

(a) *Authority.* (1) Citation: fiscal year 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act, Sec. 567.

(2) Except to the extent otherwise determined by the Administrator, not less than ten percent of amounts made available for development assistance and for assistance for famine recovery and development in Africa shall be used only for activities of disadvantaged enterprises (as defined in 726.101). In order to achieve this goal, AID is authorized to use other than full and open competition to award contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged businesses as defined in 726.101), historically black colleges and universities, colleges and universities having a student body of which more than 40 percent of the students are Hispanic Americans, and private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged, as the terms are defined in 726.101.

(b) *Application.* This authority may be used only if the Agency determines in accordance with 726.103 that:

(1) The acquisition is to be funded from amounts referred to in paragraph (a)(2) of this section;

(2) Award of the acquisition to an eligible organization is appropriate to meet the requirement in paragraph (a)(2) of this section; and

(3) After considering whether the acquisition can be made under the authority of section 8(a), award under section 8(a) is not practicable.

(c) *Limitations.* (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances.

(2) Use of this authority is not subject to the requirements in FAR 6.303 and FAR 6.304, provided that the contract file includes a certification by the contracting officer stating that the procurement is being awarded pursuant to 706.302–71 and that the application requirements and limitations of 706.302–71 (b) and (c) have been complied with.

PART 719—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 719.2—Policies

6. Section 719.272 is revised to read as follows:

719.272 Small disadvantaged business policies.

In addition to the requirements in FAR part 19, part 726 provides for contracting and subcontracting with small disadvantaged businesses and other disadvantaged enterprises based on section 567 of the fiscal year 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act.

PART 726—OTHER SOCIOECONOMIC PROGRAMS

7. Section 726.000 is revised to read as follows:

726.000 Scope of part.

This Part supplements FAR part 19 and implements section 567 of the fiscal year 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act concerning disadvantaged enterprises which requires in general that not less than ten percent of the aggregate amount made available for development assistance and for assistance for famine recovery and development in Africa shall be made available to disadvantaged enterprises. See part 705 and part 706 for additional provisions on publicizing contract actions and using other than full and open competition.

Subpart 726.1—General

8. Section 726.101 is revised to read as follows:

726.101 Definitions.

(a) *Controlled by socially and economically disadvantaged individuals* means management and daily business are controlled by one or more such individuals.

(b) *Disadvantaged enterprises* means U.S. organizations or individuals that are:

(1) Business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals;

(2) Institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities;

(3) Colleges or universities having a student body in which more than 40 percent of the students are Hispanic American; or

(4) Private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

(c) *Economically disadvantaged individuals* has the same meaning as in FAR 19.001, except that the term includes women.

(d) *Owned by socially and economically disadvantaged individuals* means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

(e) *Small disadvantaged business* has the same meaning as in FAR 19.001.

(f) *Socially disadvantaged individuals* has the same meaning as in FAR 19.001, except that the term includes women.

9. Section 726.102 is revised to read as follows:

726.102 Policy.

AID promotes participation in its projects by disadvantaged enterprises. In order to achieve the goals in foreign assistance appropriation acts, contracts which are to be funded from amounts made available for development assistance and for famine recovery and development in Africa are subject to the following policies:

(a) Authority in section 8(a) of the Small Business Act (15 U.S.C. 637(a)) shall be used to the maximum practicable extent;

(b) Other than full and open competition in contracting with certain disadvantaged enterprises shall be authorized in accordance with 706.302–71;

(c) Subcontracting with disadvantaged enterprises shall be carried out in accordance with subpart 726.3;

(d) In accordance with 705.207, the Office of Small and Disadvantaged Business Utilization (OSDBU) shall be notified at least seven business days before publicizing a proposed procurement in excess of $100,000.

10. Section 726.104 is amended by removing the phrase "Section 579(b) of Pub. L. 101–167" from the second sentence and adding the phrase "Sec. 567 of the fiscal year 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act" in its place.

Subpart 726.2—Determination of Status

11. Section 726.201 is amended by revising the section heading and paragraph (a) to read as follows:

726.201 Determination of status as a disadvantaged enterprise.

(a) To be eligible for an award under AIDAR 706.302–71 providing for other than full and open competition, the contractor must qualify, as of both the date of submission of its offer and the date of contract award, as a small disadvantaged business (as defined in 726.101), an historically black college or university, a college or university in which more than 40 percent of the students are Hispanic Americans, or a private voluntary organization controlled by individuals who are socially and economically disadvantaged. The contracting officer shall insert the provision at 752.226–1 in any solicitation or contract to be awarded under the provisions of 706.302–71.

* * * * *

Subpart 726.3—Subcontracting Requirement

12. Section 726.301(a) is revised to read as follows:

726.301 Subcontracting with disadvantaged enterprises.

(a) In addition to the requirements in FAR subpart 19.7, any new contract or modification which constitutes new procurement (except for a contract or modification with a disadvantaged enterprise as defined in 726.101) with respect to which more than $500,000 is to be funded with amounts made available for development assistance or for assistance for famine recovery and development in Africa shall contain a provision requiring that not less than ten percent of the dollar value of the contract must be subcontracted to disadvantaged entities.

* * * * *

PART 752—TEXTS OF PROVISIONS AND CLAUSES

13. Section 752.226–1 is revised to read as follows:

752.226–1 Determination of status as disadvantaged enterprise.

As prescribed in 726.201, insert the following provision:

Disadvantaged Enterprise Representation

(April 1991)

The offeror/contractor shall submit a representation in the following form to the contracting officer:

(a) *Representation.* The offeror represents that:

(1) It ☐ is, ☐ is not a small disadvantaged business.

(2) It ☐ is, ☐ is not an historically black college or university, as designated by the Secretary of Education pursuant to 34 CFR 608.2.

(3) It ☐ is, ☐ is not a college or university having a student body in which more than 40 percent of the students are Hispanic American.

(4) It ☐ is, ☐ is not a private voluntary organization which is controlled by individuals who are socially and economically disadvantaged.

(b) *Definitions.* (1) *Asian Pacific Americans,* as used in this provision means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei,

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Republic of the Marshall Islands, or the Federated States of Micronesia.

(2) *Controlled by socially and economically disadvantaged individuals* means management and daily business are controlled by one or more such individuals.

(3) *Native Americans*, as used in this provision means American Indians, Eskimos, Aleuts, and native Hawaiians.

(4) *Owned by socially and economically disadvantaged individuals* means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

(5) *Small business concern*, as used in this provision, means a U.S. concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualifies as a small business under the criteria and size standards in 13 CFR part 121.

(6) *Small disadvantaged business*, as used in this provision, means a small business concern that:

(i) Is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals; and

(ii) Has its management and daily business controlled by one or more such individuals.

(7) *Subcontinent Asian Americans*, as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(c) *Qualified groups*. The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and women.

(End of Provision)

14. Section 752.226–2 is revised to read as follows:

752.226–2 Subcontracting with disadvantaged enterprises.

As prescribed in 726.301, insert the following clause:

Subcontracting With Disadvantaged Enterprises

(April 1991)

Note: This clause does not apply to prime contractors that qualify as disadvantaged enterprises as described below.

(a) Not less than ten (10) percent of the dollar value of this contract shall be subcontracted to disadvantaged enterprises as described in paragraph (b) of this clause.

(b) Disadvantaged enterprises are U.S. organizations or individuals that are:

(1) Business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals;

(2) Institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities;

(3) Colleges and universities having a student body in which more than 40 percent of the students are Hispanic American; or

(4) Private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

(c) *Definitions*. (1) *Controlled by socially and economically disadvantaged individuals* means management and daily business are controlled by one or more such individuals.

(2) *Owned by socially and economically disadvantaged individuals* means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

(3) *Socially and economically disadvantaged individuals* has the same meaning as in FAR 19.001, except that the term also includes women. Any individual who certifies that he or she is a Black American, Hispanic American, Native American (as defined in FAR 19.001), Asian-Pacific American (as defined in FAR 19.001), Subcontinent-Asian American (as defined in FAR 19.001), or a woman shall be presumed to be socially and economically disadvantaged individual.

(d) Contractors should require representations from their subcontractors regarding their status as a disadvantaged enterprise. Contractors acting in good faith may rely on such representations by their subcontractors.

(End of Clause)

Dated: May 9, 1991.

John F. Owens,

Procurement Executive.

[FR Doc. 91–13742 Filed 6–12–91; 8:45 am]

BILLING CODE 9110–01–M

Proposed Rules

Federal Register
Vol. 56, No. 114
Thursday, June 13, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214 and 274a

[INS No. 1403–91]

Nonimmigrant Classes; Students, F Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: Section 221(a) of the Immigration Act of 1990 (IMMACT 90), provides a three-year off-campus employment program for F–1 students. To implement this off-campus employment provision and to clarify and streamline the current procedures for F–1 student employment authorization and extension of stay, the Immigration and Naturalization Service is proposing rule changes. The proposed changes would significantly simplify the F–1 student regulation and improve efficiency in the administration of the student-school program.

DATES: Written comments must be received on or before July 15, 1991.

ADDRESSES: Please submit written comments in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. Please include INS number 1403–91 on the mailing envelope to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Pearl B. Chang, Senior Immigration Examiner, Immigration and Naturalization Service, Examinations Division, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION:

Background

1. Pilot Off-Campus Employment Program

Section 221(a) of the Immigration Act of 1990 (IMMACT 90), establishes a three-year off-campus employment program for F–1 students. Beginning October 1, 1991, F–1 students in good academic standing are authorized to work, part-time and off-campus for a specific employer after having been in F–1 nonimmigrant student status for one year, if the employer provides the educational institution and the Secretary of Labor with an attestation that it has recruited for at least 60 days for the position, and that it will pay wages comparable to those paid to domestic workers.

The Department of Labor (DOL) will set forth regulations that employers must follow in their recruitment efforts. If the Secretary of Labor determines that an employer has falsified information on the attestation, the employer will be disqualified from employing foreign students under this program. The Congress has also directed that the INS Commissioner submit, before April 1, 1994, a report on the impact of the pilot program on prevailing wages and a recommendation on whether to extend the program

The labor-and-wage attestation requirement is intended to "ensure that businesses across the country can find the employees they need without displacing American workers". (101 Cong. Rec. 8674, daily ed. Oct. 2, 1990.) The attestation-requirement will supersede the current procedure which requires that the students show unforeseen economic necessity. The Congress has made it clear that the purpose of this provision is to "strengthen the protection against abuse which could occur under current law as interpreted by the INS". ibid.

2. Student Employment Authorization Procedures

(i) The Current Procedure

Under current student regulations, a designated school official at the institution where an F–1 student is enrolled is delegated the authority to grant employment authorization. After verifying a student's eligibility for an initial period of practical training, a DSO may authorize employment on the student's Form I–20 ID copy. An F–1 student must apply to the Service for employment authorization when he or she seeks approval for off-campus employment or the second period of practical training after completion of studies.

(ii) The Proposed Employment Authorization Document (EAD) Rule of July 13, 1990

On July 13, 1990, the Service published a proposed rule in the **Federal Register** at 55 FR 28767 to amend the student employment regulation to require the use of the standard employment authorization application, Form I–765. Under the proposed rule of July 13, 1990, all students seeking off-campus employment or practical training would have had to apply to the Service in person for work authorization. Those who were granted work authorization would have been issued an employment authorization document (EAD). To apply for the EAD for practical training, an F–1 student would first have been required to obtain a recommendation from the DSO and a job-offer letter. The proposed rule of July 13, 1990, was not finalized because the Service wanted to revise its original proposal to incorporate the pilot off-campus employment provision of IMMACT 90.

(iii) Comments to the Proposed Rule of July 13, 1990

The educational community expressed great concern about the proposed rule change. The commenters almost unanimously urged the Service to maintain the "status quo;" they wanted the DSOs to retain the authority to approve practical training and requested that F–1 students be exempt from the EAD requirement. However, recognizing the Service's interest in developing a uniform document that the employers can easily recognize, a large number of commenters also stated that they would support the EAD if the proposed changes could be modified to ease the logistical burden on students.

The Service has adopted many of the educational community's suggestions in this new issue of proposed procedures, such as hiring additional staff, streamlining the student employment authorization process, and giving students more flexibility in selecting the time and location for EAD applications. In the new proposed rule, only students seeking post-completion practical

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training would be required to apply for an EAD.

Proposed Change

In its effort to implement the pilot off-campus employment provision for F-1 students, the Service is also proposing to simplify the procedures for F-1 student employment authorization and extension of stay. The proposed changes would reduce the paperwork burden for the students and schools and improve the F-1 student program's operational efficiency.

1. Extension of Stay

The current procedures for extension of stay have been characterized as burdensome and difficult to follow. School officials and Service officers have made repeated requests that these procedures be simplified. To streamline the process, the Service is proposing to eliminate the requirement for extension of stay. An F-1 student would be admitted for the time during which he or she is pursuing a full course of study at an educational institution approved by INS for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus sixty days. As long as the student maintains status and completes a full course of study within the time period given by the designated school official (DSO) on the Form I-20 A-B/I-20 ID (Certificate of Eligibility for Nonimmigrant Student Status), no extension of stay is required.

To allow a student sufficient time to complete a full course of study, the DSO should make a reasonable estimate based on the time an average foreign student would need to complete a similar program in the same discipline. The DSO may add onto the estimated completion time a grace period of not more than one year to allow for family emergency, illness, or any academically-related adjustment problem.

Since an F-1 student who maintains a full-time course load and makes normal progress in a full course of study should be able to complete the program in a timely fashion, any F-1 student who fails to meet the expected completion date as indicated on the Form I-20 A-B/I-20 ID would be considered out of status. An F-1 student who fails to complete a full course of study in a timely manner must apply to the Service for reinstatement to regain F-1 status. The request for reinstatement would be approved if the student can establish valid reasons for exceeding the completion date.

It is the Service's belief that the purpose of the extension of stay requirement can be effectively served by other elements of the F-1 student program, such as the requirements for full-time enrollment, normal progress toward completion, and bona fide student-status as the condition for employment benefits. With the DSOs acting as the gate-keepers, the Service can successfully monitor the F-1 students through the automated student-school information system.

2. On and Off-Campus Employment

The current student employment program has five major components: on-campus employment, off-campus employment, curricular practical training, pre-completion practical training, and post-completion practical training. The procedures have been characterized as unduly complicated and not enforceable. Calls for reform have been heard in both the private and public sectors.

The proposed rule would revise the current employment program to incorporate the new off-campus employment provision of IMMACT 90, eliminating pre-completion practical training, and authorizing off-campus employment with a specific employer incident to status. Students seeking on or off-campus employment are exempt from the requirement for an INS-issued EAD.

3. Practical Training

Under the proposed rule, an F-1 student seeking practical training would not have to prove that a similar employment opportunity is not available in his or her home country. Because practical training is intended to give the students the opportunity to round off their academic studies, the DSO would only have to certify that the employment was commensurate with the student's educational level and related directly to the student's major area of study.

(i) Curricular Practical Training

Curricular practical training, internships, work-study programs, and cooperative programs, for which students are awarded academic credits, would still be authorized by the DSO. Curricular practical training is offered by sponsoring employers through cooperative agreements with the schools. Participants in such programs do not have to look for employment in the open market, and the sponsoring employers can rely on the schools for verification of the student's employment eligibility. Consequently, the proposed rule acknowledges that curricular practical training is offered as an integral part of the curriculum and that participation in these programs is incident to F-1 status. No EAD is required of students seeking this type of training. A student who has received one year or more of full-time curricular practical training is ineligible for practical training after completion of studies.

(ii) Post-Completion Practical Training

Practical training after completion of studies is limited to no more than twelve months in the aggregate. Only those students who have been enrolled lawfully and full-time in an INS-approved institution for at least nine months may be authorized employment for practical training. Students seeking employment authorization for post-completion practical training must apply to the Service for an EAD. The application for employment authorization must be made on Form I-765 with the required fee and a recommendation for post-completion practical training by the DSO. The Service will adjudicate the Form I-765 and issue an EAD on the basis of the DSO's recommendation unless the student is found otherwise ineligible.

4. Revision of Form I-538

Form I-538, Application by Nonimmigrant Student for Extension of Stay, School Transfer, and Permission to Accept or Continue Employment or Practical Training, will be revised to serve the sole purpose of school certification, and may be used by the DSOs for reporting employment authorization or by the students as a supporting document to Form I-765. Since the employment application function of Form I-538 will be assumed by Form I-765, the revised Form I-538 will only be a school certification. Certification made by a DSO on a photocopied Form I-538 is acceptable. Students seeking reinstatement (F-1) or extension of stay (M-1 only) after October 1, 1991, will be required to use the revised Form I-539, Application to Extend Time of Temporary Stay.

Revisions to Form I-538 have been forwarded to the Office of Management and Budget (OMB) for review and clearance.

5. Effective Date

Employment authorizations granted on I-20 ID (Student) Copies prior to October 1, 1991, will remain valid until they expire. F-1 students granted only the first period of post-completion practical training by the DSO before October 1, 1991, and who wish to continue employment for the second six-month period, must apply to the Service for authorization under the new procedure. Those who choose before October 1, 1991, to split the two periods of post-completion practical training will be required to apply to the Service for the remaining six months upon completion of a new course of study. (The application on Form I-765 must be supported by a certified statement to that effect from the DSO.) Under the proposal, students will no longer be allowed to split post-completion practical training into two periods after October 1, 1991.

Copies of the final rule and a notice to employers, which can be shown to employers by the students, will be distributed to all schools authorized to accept foreign students.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

New information collection requirements contained in this regulation are being submitted to OMB for review and approval under the provisions of the Paperwork Reduction Act. Control numbers for previously approved information collections are contained in 8 CFR 299.5 Display of Control Numbers.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

8 CFR Part 274a

Administrative practice and procedures, Aliens.

Accordingly, INS is proposing to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1184, 1186a, 1187, and 8 CFR part 2.

2. Section 214.2 is amended by revising paragraph (f), the first two sentences of the introductory text of paragraph (m)(14)(ii), and paragraph (m)(14)(iii) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) *Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs*—(1) *Admission of student*—(i) *Eligibility for admission.* A nonimmigrant student and his or her accompanying spouse and minor children may be admitted into the United States in F-1 and F-2 classifications for duration of status under section 101(a)(15)(F)(i) of the Act, if the student:

(A) Presents a properly completed Certificate of Eligibility for Nonimmigrant (F-1) Student Status, Form I-20 A-B/I-20 ID, which is issued by a school approved by INS for attendance by foreign students;

(B) Has documentary evidence of financial support in the amount indicated on the I-20 A-B/I-20 ID form; and

(C) Intends to attend the school specified in the student's visa except where the student is exempt from the requirement for a visa, in which case the student must intend to attend the school indicated on the I-20 A-B/I-20 ID.

(ii) *Disposition of Form I-20 A-B/I-20 ID.* Form I-20 A-B/I-20 ID contains two copies, the I-20 School Copy and the I-20 ID (Student) Copy. For purposes of clarity, the entire Form I-20 A-B/I-20 ID shall be referred to as Form I-20 A-B and the I-20 ID (student) copy shall be referred to as I-20 ID. When an F-1 student applies for admission with a new Form I-20 A-B, the inspecting officer shall:

(A) Transcribe the student's admission number on Form I-94 onto his or her Form I-20 A-B (for students seeking initial admission only);

(B) Endorse all copies of the I-20 A-B form;

(C) Return the I-20 ID to the student; and

(D) Forward the I-20 School Copy to the Service's processing center for data entry. (The school copy of Form I-20 A-B will be sent back to the school as a notice of the student's admission after data entry.)

(2) *I-20 ID.* An F-1 student is expected to safekeep the initial I-20 ID bearing the admission number and any subsequent copies which have been issued to him or her. Should the student lose his or her current I-20 ID, a replacement copy bearing the same information as the lost copy, including any endorsement for employment and notations, may be issued by the designated school official (DSO).

(3) *Spouse and minor children following to join student.* The spouse and minor children following to join an F-1 student are eligible for admission to the United States if the F-1 student is or will be within sixty days, enrolled in a full course of study or is engaged in approved practical training following completion of studies. The eligible spouse and minor children of an F-1 student may be admitted in F-2 status if they present the F-1 student's current I-20 ID with proper endorsement by the DSO. A new Form I-20 A-B is required where there has been any substantive change in the information on the student's current I-20 ID.

(4) *Temporary absence.* An F-1 student returning to the United States from a temporary absence of five months or less may be readmitted for attendance at an INS-approved educational institution, if the student presents:

(i) A current I-20 ID properly endorsed by the DOS for reentry if there s no substantive change ont he most recent I-20 ID; or

(ii) A new Form I-20 A-B if there has been any substantive change in the information on the student's most recent I-20 ID, such as in the case of a student who has changed the educational program or intends to transfer to another INS-approved institution, or advance to a higher level of study.

(5) *Duration of status*—(i) *General.* An F-1 student is admitted for the time during which he or she is pursuing a full course of study at an educational institution approved by INS for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus sixty days to prepare for departure from the United States. The student is considered to be maintaining status if he or she is making normal progress toward completing a full course of study.

(ii) *Advance in educational levels.* An F-1 student who continues from one educational level to another is considered to be maintaining status, provided that the transition to the new educational program is accomplished according to transfer procedures outlined in paragraph (f)(8) of this section.

(iii) *Annual vacation.* An F-1 student at an academic institution is considered to be in status during the annual (or summer) vacation if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar who takes only one vacation a year during any one of the quarters or trimesters instead of during the summer is

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considered to be in status during that vacation, if the student has completed the equivalent of an academic year prior to taking the vacation.

(vi) *Illness or medical conditions.* A student who is compelled by illness or other medical conditions to interrupt or reduce a full course of study is considered to be in status during the illness or other medical condition. The student must resume a full course of study upon recovery.

(6) *Full course of study*—(i) *General.* Sucessful completion of the full course of study must lead to the attainment of a specific educational or professional objective. A "full course of study" as requried by section 101(a)(15)(F)(i) of the Act means:

(A) Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a DSO as a full course of study;

(B) Undergraduate study at a college or university, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all udnergraduate students who are enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;

(C) Study in a post-secondary language, liberal arts, fine arts or other non-vocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning within paragraph (c)(1) or (c)(2) of § 214.3, and which has been certified by a designated school official to consist of at least twelve clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;

(D) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at lease twenty two clock hours a week if the dominant part of the course of study consists of laboratory work; or

(E) Study in a primary or academic high school curriculum certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

(ii) *Institution of higher learning.* For purposes of this paragraph, a college or university is an institution of higher learning which awards recognized associate, bachelor's, master's, doctorate, or professional degrees. Schools which devote themselves exclusively or primarily to vocational, business, or language instruction are classifiable as M–1 schools and therefore are not covered by the F–1 visa program.

(iii) *Reduced course load.* The designated school official may advise an F–1 student to engage in less than a full course of study due to initial English language difficulties, unfamiliarity with American teaching methods, reading requirements, or improper course level placement. An F–1 student authorized to reduce course load by the DSO in accordance with the provisions of this paragraph is considered to be maintaining status.

(7) *Extension of stay*—(i) *General.* An F–1 student is admitted for duration of status. The student is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completing his or her educational objective. An F–1 student who completes a full course of study within the time period indicated on the Form I–20 A–B may progress to a higher level of study without requesting extension of stay from the Service.

(ii) *Completion date on Form I–20 A–B.* When determining the program completion date on Form I–20 A–B, the DSO should make a reasonable estimate based on the time an average foreign student would need to complete a similar program in the same discipline. A grace period of no more than one year may be added onto the DSO's estimate.

(iii) *Failure to complete the educational program in a timely manner.* An F–1 student who is unable to complete the educational program within the time period written on the Form I–20 A–B is considered to be out of status and must apply for reinstatement under the provisions of paragraph (f)(16) of this section. The applicant must establish that there are valid reasons for exceeding the projected completion date.

(8) *School transfer*—(i) *Eligibility.* An F–1 student who is maintaining status may transfer to a different school by following the notification procedure prescribed in paragraph (f)(8)(ii) of this section. An F–1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school-transfer and must apply for reinstatement under the provisions of paragraph (f)(16) of this section.

(ii) *Transfer procedure.* To transfer schools, an F–1 student must first notify the school he or she is attending of the intent to transfer, then obtain a Form I–20 A–B, issued in accordance with the provisions of 8 CFR 214.3(k), from the school to which he or she intends to transfer. The transfer will be effected only if the F–1 student completes the Student Certification portion of the Form I–20 A–B and returns the form to a designated school official on campus within 15 days of beginning attendance at the new school.

(iii) *Notification.* Upon receipt of the student's Form I–20 A–B, the DSO must:

(A) Note "transfer completed on (date)" on the student's I–20 ID in the space provided for the DSO's remarks, thereby acknowledging the student's attendance;

(B) Return the I–20 ID to the student;

(C) Submit the I–20 School copy to the Service's Data Processing Center within 30 days of receipt from the student; and

(D) Forward a photo-copy of the Form I–20 A–B to the school from which the student transferred.

(9) *Employment*—(i) *On-campus employment.* On-campus employment must either be performed on the school's premises (including on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria), or at an off-campus location which is educationally affiliated with the school. In the case of off-campus locations, the educational affiliation must be associated with the school's established curriculum and the employment must be an integral part of the student's educational program. Employment authorized under this paragraph must not exceed twenty hours a week while school is in session. An F–1 student authorized to work under this paragraph may, however, work full-time when school is not in session. The student may not engage in on-campus employment after completion of the student's course or courses of study, except employment for practical training as authorized under paragraph (f)(10) of this section.

(ii) *Off-campus employment*—(A) *General.* An F–1 student is authorized to work off-campus on a part-time basis after having been in F–1 status for one full year provided that he or she is in good academic standing as determined by the DSO and that the employer has filed a labor-and-wage attestation as required by section 221(a)(2) of IMMACT 90. Part-time off-campus employment authorized under this section is limited to no more than twenty hours a week when school is in session. A student who is granted off-campus employment authorization may work full-time only when school is not in session. A student may accept off-campus employment only after his or her I–20 ID has been endorsed to that effect by that DSO. The employment authorization is terminated when the student transfers schools or fails to maintain status. A temporary absence of less than five months from the United States during the annual vacation may be counted as part of the one-year in status requirement.

(B) *Procedure for off-campus employment authorization.* An eligible F–1 student may make a request for off-campus employment authorization to the DSO on Form I–538, Certification by Designated School Official. By certifying on Form I–538 that the student is eligible for off-campus employment in accordance with paragraph (f)(9)(i) of this section, the DSO may authorize off-campus employment for the period of validity of the labor attestation as determined by the Secretary of Labor. The DSO must forward the school certification to the INS processing center with a copy of the labor attestation attached. The authorization on the student's I–20 ID should read "employment with (name of employer) at (location) recommended from (date) to (date)." Off-campus employment authorized by the DSO under this provision is incident to the student's status and employer-specific and, therefore, exempt from the EAD requirement.

(C) *Attestation.* Section 221(a) of IMMACT 90 provides that an F–1 student may be authorized to accept employment off-campus only if the prospective employer provides the educational institution with an attestation following the procedures set forth by the Secretary of Labor. The employer must attest to the effect that it has actively recruited domestic labor for at least 60 days for the position and will accord the student worker the same wages and working conditions as domestic workers similarly employed.

(iii) *Internship with an international organization.* A bona fide F–1 student who has been offered employment by a recognized international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) must apply for employment authorization, in person, to the INS district office having jurisdiction over his or her residence. A student seeking employment authorization under this provision is required to present a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship, an I–20 ID endorsed by the DSO within the last 30 days, and a completed Form I–765, Application for Employment Authorization, with the fee fixed by § 103.7(b).

(10) *Practical training.* Practical training is available to F–1 students who have been lawfully enrolled on a full-time basis in an INS-approved college, university, conservatory, or seminary for at least nine consecutive months. An eligible F–1 student may request employment authorization for practical training in a position which is directly related to his or her major area of study. There are two types of practical training available:

(i) *Curricular practical training programs.* An F–1 student may be authorized, by the DSO, to participate in a curricular practical training program which is an integral part of an established curriculum, such as alternate work/study, internship, or cooperative education. Students who have received one year or more of full-time curricular practical training are ineligible for post-completion practical training. A request for authorization for curricular practical training must be made to the DSO on Form I–538. Upon approving the request for authorization, the DSO shall:

(A) Certify the Form I–538 and send the form to the Service's data processing center;

(B) Endorse the student's I–20 ID with "full-time (or part-time) curricular practical training authorized from (date) to (date)"; and,

(C) Sign and date the I–20 ID before returning it to the student. A student may begin curricular practical training only after receiving his or her I–20 ID with the DSO endorsement.

(ii) *Post-completion practical training*—(A) *General.* An F–1 student may apply to INS for authorization for temporary employment for practical training after completion of studies. Post-completion practical training generally will be authorized on recommendation of the DSO, whether or not the student intends to continue another full-course of study after completing the authorized practical training. Authorization for post-completion practical training may be granted for a maximum of 12 months and takes effect only after the student has completed the course of study. In any event, a student must complete practical training within a 13-month period following the completion of studies. An F–1 student may be authorized to engage in post-completion practical training only once for the duration of student status. Students in English language training programs are ineligible for practical training after completion of studies.

(B) *Request for recommendation for post-completion practical training.* A student may request recommendation for practical training during a 90-day period which begins 60 days before and ends 30 days after the completion of the course of study. A student must make the request for recommendation for post-completion practical training to the DSO on Form I–538, accompanied by his or her current I–20 ID.

(C) *Action on request for recommendation for practical training.* If approving a request for recommendation for post-completion practical training, a designated school official must:

(*1*) Certify on Form I–538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level;

(*2*) Endorse and date the I–20 ID to show that post-completion practical training in the student's major field of study is recommended beginning on (date of completion of the course of study); and

(*3*) Return to the student the I–20 ID and send to the INS data processing center the school certification on Form I–538.

(11) *Employment authorization.* As required by the regulations at 8 CFR 274a, an F–1 student seeking practical training (excluding curricular practical training) under paragraph (f)(10) of this section may not accept employment until he or she has been issued an Employment Authorization Document (EAD) by the Service. An F–1 student must apply in person for the EAD on Form I–765 at the Service office having jurisdiction over his or her residence, during the same 90-day period when the DSOs are authorized to recommend practical training. The application for employment authorization must include the following documents:

(i) A completed Form I–765, with the fee set by § 103.7(b); and

(ii) A DSO's recommendation for practical training on I–20 ID.

(12) *Decision on application for employment authorization.* The Service

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shall adjudicate the Form I-765 and issue an EAD on the basis of the DSO's recommendation unless the student is found otherwise ineligible. The district director shall notify the applicant of the decision and, if the application is denied, of the reason or reasons for the denial. The applicant may not appeal the decision.

(13) *Temporary absence from the United States of F-1 student granted employment authorization.* (i). A student returning from a temporary trip abroad with an unexpired off-campus employment authorization on his or her I-20 ID may resume employment only if the student is readmitted to attend the same school which granted the employment authorization.

(ii) An F-1 student who has an unexpired EAD issued for post-completion practical training and who is otherwise admissible may return to the United States to resume employment after a period of temporary absence. An I-20 ID is not required.

(14) *Effect of strike or other labor dispute.* Any employment authorization, whether or not part of an academic program, is automatically suspended upon certification by the Secretary of Labor or the Secretary's designee to the Commissioner of the Immigration and Naturalization Service or the Commissioner's designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this paragraph, "place of employment"means wherever the employer or a joint employer does business.

(15) *Spouse and children of F-1 student.* The F-2 spouse and children of an F-1 student may not accept employment.

(16) *Reinstatement to student status*—(i) *General.* A district director may consider reinstating an F-1 student who makes a request for reinstatement on Form I-539, the Application to Extend Time of Temporary Stay, accompanied by a properly completed Form I-20 A-B from the school the student is attending or intends to attend, if the student:

(A) Establishes to the satisfaction of the district director that the violation of status resulted from circumstances beyond the student's control or that failure to receive reinstatement to lawful F-1 status would result in extreme hardship to the student;

(B) Is currently pursuing, or intending to pursue, a full course of study at the school which issued the Form I-20 A-B;

(C) Has not engaged in unauthorized employment; and

(D) Is not deportable on any ground other than section 241(a)(1)(B) or (c)(i) of the Act.

(ii) *Decision.* If the district director reinstates the student, the district director shall endorse Form I-20 A-B to indicate that the student has been reinstated, return the I-20 ID to the student, and forward the school copy of the form to the Service's processing center for data entry. If the district director does not reinstate the student, the student may not appeal that decision.

* * * * *

(m) * * *

(14) * * *

(ii) *Application.* An M-1 student must apply for permission to accept employment for practical training on Form I-765, with the fee set by § 103.7(b), accompanied by his or her I-20 ID. The student must submit the application in person to the Service office having jurisdiction over the student's residence.* * *

(iii) *Duration of practical training.* When the student is authorized to engage in employment for practical training, he or she will be issued an employment authorization document. The M-1 student may not begin employment until he or she has been issued an employment authorization document by the Service. One month of employment authorization will be granted for each four months of full-time study that the M-1 student has completed. However, an M-1 student may not engage in more than six months of practical training in the aggregate. The student will not be granted employment authorization if he or she cannot complete the requested practical training within six months.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

4. Section 274a.12 is amended by revising paragraphs (b)(6), (c)(3), and (c)(6) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(6) A nonimmigrant (F-1) student who is in valid nonimmigrant student status and pursuant to 8 CFR 214.2(f) is seeking:

(i) On-campus employment for not more than twenty hours per week when school is in session or full-time employment when school is not in session if the student intends and is eligible to register for the next term or session. Part-time on-campus employment is authorized by the school and no specific endorsement by a school official or Service officer is necessary;

(ii) Part-time off-campus employment authorization based on an approved attestation from the employer pursuant to 8 CFR 214.2(f) and who presents an I-20 ID endorsed by the designated school official; or

(iii) Curricular practical training (internships, cooperative training programs, or work-study programs which are part of an established curriculum) after having been enrolled full-time in an INS-approved institution for at least nine months. Curricular practical training (part-time or full-time) is authorized by the Designated School on the student's I-20 ID; no Service endorsement is necessary.

* * * * *

(c) * * *

(3) A nonimmigrant (F-1) student who:

(i) Is seeking employment for purposes of practical training (excluding curricular practical training) pursuant to 8 CFR 214.2(f), provided the alien will be employed only in an occupation which is directly related to his or her area of studies and that he or she presents a school certification on Form I-538 and an I-20 ID endorsed by the designated school official; or

(ii) Has been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) and who presents a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship (the F-1 student must also present an I-20 ID endorsed by the DSO in the last 30 days);

* * * * *

(6) A nonimmigrant (M-1) student seeking employment for practical training pursuant to 8 CFR 214.2(m) following completion of studies. The alien may be employed only in an occupation or vocation directly related to his or her course of study as recommended by the endorsement of the designated school official on I-20 ID;

* * * * *

Dated: May 30, 1991.

Gene McNary,

Commissioner, Immigration and Natualization Service.

[FR Doc. 91-13821 Filed 6-12-91; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ANM-5]

Proposed Alteration of VOR Federal Airway V-524

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of VOR Federal Airway V-524 located between Hayden, CO, and Laramie, WY. The establishment of this route is necessary to provide a more direct route between Hayden and Laramie. This action would improve traffic flow and reduce flying time. This action would also reduce controller workload.

DATES: Comments must be received on or before July 29, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 91-ANM-5, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055-4056.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ANM-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-524 located between Hayden, CO, and Laramie, WY. This route would be established to improve the flow of traffic by providing a direct route between Hayden, CO, and Laramie, WY. The airport is experiencing considerable increases in air traffic especially during ski seasons. As this trend is projected to continue, the demand for adequate navigable airspace mandates this change. This action would improve existing routes within this region while providing additional routes to accommodate increasing air traffic. This route would also reduce fuel cost and flying time by providing a more direct route. This proposal would reduce pilot/controller communications. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposal regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-524 [Amended]

By removing the words "From Laramie, WY," and substituting the words "From Hayden, CO; Laramie, WY;"

Issued in Washington, DC, on May 29, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-14053 Filed 6-12-91; 8:45 am]

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DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 241

Proposal To Amend Regulations for Flood Control and Agricultural Water Supply Cost Sharing Requirements Under the Ability To Pay Provision

AGENCY: U.S. Army, Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to amend procedures for flood control projects, and to establish initial guidelines for agricultural water supply projects for "ability to pay" determinations. This amendment will fully implement legislation mandating the determination of the eligibility of sponsors of flood control and agricultural water supply projects to receive reductions in non-Federal cost share requirements.

DATES: Written comments must be received by August 13, 1991.

ADDRESSES: Submit comments to HQUSACE, Director of Civil Works, attn: CECW–PA, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Donald L. Barnes (202)272–0120.

SUPPLEMENTARY INFORMATION: A final rule for flood control projects implementing section 103(m) of Public Law 99–662 was published in the Federal Register (54 FR 40678, October 2, 1989). This proposal will amend these guidelines in accordance with the directive language in section 305 of Public Law 101–640, and eliminate application of the ability to pay test to certain projects built under the Corps' continuing authorities program. The proposed rule makes two major changes for flood control projects. First, the rule will modify the income test to eliminate reference to state income. Second, the benefits test will be replaced with a new floor for cost share reduction equalling the value for lands, easements, rights-of-way, relocations, and dredged material disposal areas (LERRD), plus five percent cash. This new floor, which section 306 directs, will not permit deferred payments for any of the non-Federal cost-share, allowed under previous guidelines. This proposed rule will also establish procedures for ability to pay determinations for agricultural water supply projects, as directed in section 305. This determination will be made by comparing the change in net farm income resulting from the project to the annualized non-Federal share of project costs, during the early years of project life, to determine if relief should be provided by permitting deferred payments of the standard non-Federal share.

The Use of Per Capita Income To Determine Project Eligibility for Flood Control Projects

The proposed amendment will establish eligibility for reductions in the non-Federal share using the per capita personal income of the project area (with county income as the surrogate for project area income). In making these revisions to the existing rule two of our guiding principles continue to be: (a) That the rule should not be any more complex than is necessary; and, (b) that it should be based on easily accessible, publically available data. We conclude that a standard measure of income is the appropriate statistic to use. We recognize that by keeping the formula relatively simple, there is a possibility that a subtle aspect of a single project may be missed. At the same time, we have proposed an approach which can be easily understood and uniformly applied. This advantage far outweighs any disadvantages. We have maintained our decisions from the previous rule that projects built for the protection of Indian tribes or reservations can be evaluated for ability to pay considerations based on estimated average income for the Indian tribe or reservation, and that projects in all U.S. Territories will be eligible for the full amount of cost-share reduction.

The Eligibility Factors for Flood Control

To be eligible for any cost-share reduction, a project must have an Eligibility Factor that exceeds zero. This factor is determined by an income test which compares the per capita income of people in the project area (as measured by county income data) to the national average. If the county per capita income value is significantly lower than the national average, a project will be eligible for a full or partial reduction in the standard cost share. In no case, however, will the non-Federal cost-share be less than the value of lands, easements, rights-of-way, relocations, and disposal areas (LERRD) plus five percent of the total project cost in cash. The maximum non-Federal cost-share is 50 percent of the total project cost, pursuant to section 103(a)(3) of Public Law 99–662.

Eligibility Factors for all U.S. counties will be published annually in an Engineering Circular. These factors will range from one, for counties fully eligible under the ability to pay criteria, fractional amounts for counties subject to partial eligibility, to zero for counties without eligibility. The degree of eligibility is based on the county per capita income ranking relative to other counties nationwide. Counties with a per capita income less than the per capita income of two-thirds of the counties in the United States are eligible for consideration for full or partial reduction in traditional cost share. This reflects our view that the ability to pay provision should only apply in exceptional circumstances. This is also consistent with section 322 of Public Law 101–640, which defines a low income community as one which is located in a county with a per capita income less than the per capita income of two-thirds of the counties in the United States. The proposed rule will continue to allow eligibility for full application of relief to 20 percent of all counties (eligibility factor of 1.0), and eligibility for partial application to 13⅓ percent of all counties (fractional eligibility, factors ranging from zero to 1.0). The factors will be based on the three latest years of available information on per capita income. We believe that this represents the most up-to-date economic profile on a project area which can be applied uniformly to all projects.

For purposes of illustration, assuming that a project includes LERRD with a value equaling 10 percent of total project costs, the standard cost share for a flood control project (that is, without regard to an ability to pay determination) would be 25 percent. Under the ability to pay provision outlined in this proposed rule, if this project were eligible for a full reduction under the income test, the non-Federal share would be reduced to 15 percent (10 percent LERRD plus 5 percent cash). If the project were eligible for a partial reduction (the project in a county with a fractional Eligibility Factor, for example 0.60) the reduction for this project would be computed as follows: The reduced non-Federal share = 25-0.60x(25-15) = 17 percent. If a project is located in more than one county (benefits accrue to residents and business in more than one county), the Eligibility Factor for the project will be a weighted average of the factors for the project, with the weights equalling the percentage of benefits in each county. For example, if the benefits are equally distributed in counties having factors of 1.00 and 0.80, the project factor is 0.90.

Maximum Cost Share Reductions Under the Ability to Pay Provision for Flood Control Projects

Section 305 of Public Law 101–640 specifies procedures that limit the maximum reduction in the non-Federal cost share for structural flood control projects. In accordance with this statute, the minimum non-Federal cost share is 5 percent of the total project cost in cash plus all LERRD. Any reduction in cost share is therefore limited to any cash requirement to bring the non-Federal share up to 25 percent of the total project cost, which is the standard (minimum) non-Federal cost share for structural flood control projects pursuant to section 103 of Public Law 99–662. Although section 305 is silent on procedures for nonstructural flood control, previous rules were consistently applied to all flood control projects, structural and nonstructural, and we believe that still good policy. Accordingly, there will be no reduction below the 25 percent non-Federal share of nonstructural projects (or nonstructural components of projects), for any project where the associated LERRD exceeds 20 percent of total project costs.

Other Flood Control Issues

In order to apply the ability to pay procedures for nonstructural projects, project features need to be appropriately classified as construction or LERRD. For example, the costs of raising structures for floodproofing purposes, are construction costs and not part of relocations. Any real estate costs associated with the raising of structures would be part of LERRD. Costs for LERRD also include actual amounts expended for relocation assistance provided under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, Public Law 91–646. Further definitions of LERRD are contained in Corps of Engineers Regulations: "Real Estate Handbook", ER 405–1–12; and, "Local Cooperation Agreements for New Start Construction Projects", ER 1165–2–131.

In cases where a project is eligible for both credits under the provisions of section 104 of Public Law 99–662, and a cost share reduction under ability to pay, the ability to pay calculation should be made first. Credits would then be applied against the non-Federal share as adjusted. The application of credits is subject to a separate regulation, ER 1165–2–29, published in the Federal Register, Nov. 18, 1987 (33 CFR 240).

Ability to pay determinations for projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands, require a separate analysis to apply the cost sharing waiver, called for by section 1156 of Public Law 99–662. For these projects, the non-Federal share is computed using the ability to pay formula with an Eligibility Factor equal to 1.0, and using the section 1156 calculation described in Engineering Regulation, "Local Cooperation Agreements for New Start Construction Projects" (ER 1165–2–131). The non-Federal share will be the lower of the two calculations.

Ability to pay rules will apply to small flood control projects constructed under the following authorities: Section 205 of the 1948 Flood Control Act, (33 U.S.C. 701s), and section 208 of the 1954 Flood Control Act, (33 U.S.C. 701g). The proposed rule will not apply to emergency bank protection projects constructed under section 14 of the 1946 Flood Control Act, (33 U.S.C. 701r).

Applicability of Ability to Pay Procedures to Projects for Agricultural Water Supply

Section 8 of the Flood Control Act of 1944, Public Law 78–534, provides that Corps reservoirs may include the agricultural water supply purpose, upon the recommendation of the Secretary of the Interior. Section 8 applies only to the 17 western states to which Reclamation Law applies, and repayment schedules for construction costs and determinations of the ability of non-Federal interests to repay, are made in accordance with Reclamation Law. Agricultural water supply may be included as part of a multiple-purpose Corps reservoirs outside the 17 western states, with non-Federal interests bearing 35 percent of reservoir costs allocated to this purpose. The 35 percent non-Federal share is paid during construction, and the sponsor receives credit for any LERRD costs assigned to agricultural water supply. The proposed ability to pay rule applies to the projects implemented outside of Reclamation Law. The costs of distribution and delivery systems necessary to utilize the water from Corps multiple-purpose reservoirs, are entirely a non-Federal responsibility, and do not enter into ability to pay determinations.

The Eligibility Factors for Agricultural Water Supply

A project providing agricultural water has a direct and relatively immediate effect on net farm income. Irrigation provides an increase in both the quantity of water which can be applied to crops and opportunities to improve the timing of its application. National Economic Development (NED) benefits for agricultural water supply are estimated as the change in net farm income. The estimated change in net farm income is based on representative farm budgets in combination with data concerning farming practices and productivities. Agricultural water provides opportunities to increase productivity, which translates into increases in net farm income. The ability to pay test for agricultural water supply consists of a calculation of the expected change in aggregate net farm income, representing the sum of all farm incomes for farms using project supplied water. Under the proposed ability to pay procedures, if projections of expected annual aggregate net farm income for the first five calendar years following project construction, are less than 35 percent of the annualized project costs allocated to the agricultural water supply purpose in any year, the non-Federal sponsor is eligible for relief through deferred payments of the cost share. Farm income is one indicator of ability to pay. Comments are solicited on the adequacy of this criteria.

Maximum Cost Share Relief Under the Ability to Pay Provision for Agricultural Water Supply Projects

Unlike flood control projects which depend on future occurrence of prevented or reduced flooding, agricultural water supply projects are forecast to have a direct and relatively immediate effect on net farm income. Project benefits will be an important source of income available for project funding, no matter how poor the project area is before implementation. The increase in farm income should be sufficient to cover 100 percent of the cost of any justified project, over the project life. If, however, during the first five years of project operation for agricultural water supply purposes, the projected annual benefits are less than 35 percent of the annualized project cost, non-Federal interests will be allowed to defer with interest the non-Federal share of costs allocated to agricultural water supply, under section 103(k) of Public Law 99–662. This provision allows payments over a period not to exceed thirty years, with interest at a rate determined pursuant to section 106 of Public Law 99–662.

E.O. 12291 and Regulatory Flexibility Act

This rule is not a major rule within the meaning of Executive Order 12291, because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the

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ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. section 605(b) I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Furthermore, the number of entities affected by this rule is small, and it imposes few, if any, administrative burdens of any sort on small entities.

List of Subjects in 33 CFR Part 241

Agricultural water supply, Community facilities, Flood control, Intergovernmental relations, Water resources.

For reasons set out in the preamble, 33 CFR part 241 is proposed to be revised as follows:

PART 241—FLOOD CONTROL AND AGRICULTURAL WATER SUPPLY COST SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION

Sec.

241.1 Purpose.
241.2 Applicability.
241.3 References.
241.4 General Policy.
241.5 Procedures for estimating the alternative cost share for flood control.
241.6 Procedures for estimating the alternative cost share for agricultural water supply.
241.7 Application for test.

Authority: 33 U.S.C. 2201, *et seq.*

§ 241.1 Purpose.

This regulation gives general instructions on the implementation of section 103(m) of Public Law 99–662, as amended by section 305 of Public Law 101–640, for application to flood control and agricultural water supply projects.

§ 241.2 Applicability.

This regulation applies to all U.S. Army Corps of Engineers Headquarters (HQUSACE) elements and Major Subordinate Commands and District Commands of the Corps of Engineers having Civil Works responsibilities.

§ 241.3 References.

(a) Water Resources Development Act, 1986, Public Law 99–662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*

(b) Water Resources Development Act, 1990, Public Law 101–640, 104 Stat. 4604, 33 U.S.C. 2201 *et seq.*

(c) U.S. Water Resources Council, Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, March 10, 1983.

(d) Office of Personnel Management, FPM Bulletin 591–30.

(e) Office of Personnel Management, FPM Bulletin 591–32.

(f) U.S. Army Corps of Engineers, Engineer Regulation 1105–2–29.

(g) U.S. Army Corps of Engineers, Engineer Regulation 1105–2–131.

(h) U.S. Army Corps of Engineers, Engineer Regulation 405–1–12.

§ 241.4 General policy.

(a) Procedures described herein propose an "ability to pay" test which will be applied to all flood control and agricultural water supply projects. As a result of the application of the test, some projects will be cost shared by non-Federal interests at a lower level than would be required under the provisions of section 103 of Public Law 99–662, 33 U.S.C. 2213, as amended by section 305 of Public Law 101–640, 33 U.S.C. 2201. The "standard share", as used herein, refers to the non-Federal share that would apply to the project before any ability to pay consideration.

(b) Section 103(m), as amended, requires that all cost sharing agreements for flood control and agricultural water supply covered by the terms of section 103(a), 103(b), or 103(c)(3) be subject to the ability to pay test. The test must therefore by applied not only to projects specifically authorized by Congress, but to the continuing authority projects for flood control, constructed under section 205 of the 1948 Flood Control Act, as amended (33 U.S.C. 701s), and section 208 of the 1954 Flood Control Act, as amended (33 U.S.C. 701g).

(c) The proposed rule will not be applied to projects constructed for agricultural water supply in the 17 western states where Reclamation Law governs the repayment of construction costs. The proposed rule is applicable to new projects providing agricultural water supply storage outside the 17 western states, but not to the reallocation of storage at existing projects.

(d) The ability to pay test will be conducted independently of any analysis of a project sponsor's ability to finance its ultimate share of proposed project costs. The ability to finance is addressed in a statement of financial capability which considers current borrowing constraints, alternative sources of liquidity, etc. It is therefore much more narrowly defined than the ability to pay test, which considers the underlying resource base of the community as a whole. The ability to pay test shall not be used to affect project scope, or to change budgetary priorities among projects competing for scarce Federal funds.

(e) Any reductions in the level of non-Federal cost sharing as a result of the application of this test will be applied to construction costs only. Operations, maintenance, replacement, and rehabilitation responsibilities are unaffected by the ability to pay test.

(f) When projects are eligible for credits as outlined in Engineer Regulation 1105–2–29, reference § 241.3(f), the ability to pay test will be applied before any adjustments are made for credits. If the ability to pay test results in a lower non-Federal share, the allowable amount of credits will be limited by the lower share.

(g) Projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands require a separate analysis to apply the cost sharing waiver called for by section 1156 of Public Law 99–662. The ability to pay calculation is computed separately from the section 1156 calculation, and the reduction in the non-Federal share will be the lesser of the two computations.

(h) The test is based on the following principles:

(1) Since the standard non-Federal cost share is substantially less than full costs in every case, the ability to pay test is proposed to be structured so that reductions in the level of cost sharing, or the deferral of payments will be granted in only a limited number of cases of severe economic hardship.

(2) The test will depend on the economic circumstances within the project area in which the project is located.

(i) The non-Federal interests may, at their discretion, waive the application of the ability to pay test. In this case, the non-Federal interest shall be considered to have the ability to pay the standard cost share and no further economic inquiry will be required.

§ 241.5 Procedures for Estimating the Alternative Cost Share for Flood Control.

(a) *Income test.* (1) Projects may qualify for the full amount of the reduction in cost sharing or for a partial amount, depending on eligibility factors based on the current economic resources of the project area.

(2) Calculations of eligibility factors will be performed by HQUSACE and distributed annually to all Major Subordinate Commands and District Commands via Engineering Circulars, as soon as new data is available. The factors are based on county per capita personal income for each of the three latest calendar years for which the information is available, in the county or counties where the project beneficiaries are located (the project area). Source: Dept. of Commerce, Bureau of Economic Analysis, as published yearly in the April Survey of Current Business. (If the project beneficiaries are located in Alaska or Hawaii, the per capita income of the county is divided by one plus the percentage used in the Federal Governments's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK or Oahu, HI.). The indices for the county per capita incomes are compared to the national average (U.S. average=100).

(3) When the project area, as determined by the location of the project's beneficiaries, includes more than one county, a composite project area index is calculated taking a weighted average of the county index numbers, the weights being equal to the relative levels of benefits received in each county. For example, if the benefits are equally distributed in counties having factors of 1.00 and 0.80, the project factor is 0.90.

(4) Projects will be eligible for a full reduction in cost share when the project eligibility factor is 1.00. The eligibility factors will be selected so that 20 percent of all the U.S. counties have a factor of 1.00. Projects will be eligible for a partial reduction in cost share when the project area eligibility factor is a fractional amount between zero and 1.00. Nationwide, 13.33 percent of all counties have been selected to have fractional eligibility factors. The remaining 66.67 percent of all U.S. counties, having an eligibility factor of zero, are not eligible for any reduction in the standard cost share prescribed by section 103 of Public Law 99–662.

(5) Since estimates of per capita income for Puerto Rico, Guam, and other U.S. Territories are well below the national average, the eligibility factors for projects in these areas is administratively established to be equal to 1.00.

(6) For flood control projects sponsored by Native American tribes or villages, the EF will be calculated using tribe or village per capita income as a percentage of the national average per capita income. It is acceptable, but not required that the data be obtained from the Bureau of the Census, American Indians, Eskimos and Aleuts on Identified Reservations and in Historic Areas of Oklahoma (Excluding Urbanized Areas), part 1, table 10, or General Social and Economic Characteristics—United States Summary (1980), table 252. Since both sources contain information for Native Americans living on reservations, rather than all Tribe or Village members, the sources should be used only when appropriate, or when no better information is available.

(b) Application of the Ability to Pay Formula to the Basic Cost Sharing Provisions of Section 103, Public Law 99–662. (1) The actual reduction for both structural and nonstructural flood control projects is determined by applying the ability to pay Eligibility Factors to the standard flood control cost sharing provisions of section 103 of Public Law 99–662, 33 U.S.C. 2213. Any reduction is limited to the difference between the standard cost share, and the sum of 5 percent of the total project cost plus the value of LERRD requirements. The following examples are provided for illustrative purposes:

Example 1

—Assume the EF is 1.00 (eligible for full reduction)
—Assume value of LERRD is 10 percent of total project cost

The standard non-Federal cost share is 25 percent (5 percent, plus LERRD, plus 10 percent additional cash).

The revised non-Federal cost share is 15 percent (5 percent, plus LERRD).

Example 2

—Assume EF is 0.50 (eligible for partial reduction)
—Assume LERRD is 10 percent of total project cost

The standard non-Federal cost share is 25 percent (5 percent, plus LERRD, plus 10 percent additional cash).

The revised non-Federal cost share is 20 percent (5 percent, plus LERRD, plus 5 percent additional cash (0.50×10 percent)).

Example 3

—Assume an EF of 1.0 (eligible for full reduction)
—Assume a value for LERRD of 30 percent of total project cost

The non-Federal cost share under ability to pay is 35 percent (non-Federal share cannot be less than 5 percent cash plus LERRD).

(2) The maximum share of project costs assignable to non-Federal interests is limited to 50 percent for structural flood control and 25 percent for nonstructural flood control, pursuant to section 103 of Public Law 99–662.

§ 241.6 Procedures for Estimating the Alternative Cost Share for Agricultural Water Supply.

(a) A project providing agricultural water supply has a direct and relatively immediate effect on net farm income. This effect differs from flood control projects which depend on the future occurrence of (prevented or reduced) flooding. Thus, both the nature of the ability to pay test and the form of relief for agricultural water supply will differ from that of flood control.

(b) The National Economic Development (NED) benefits for agricultural water supply projects are estimated as the change in net farm income resulting from the project. The estimated change in net farm income is based on representative farm budgets in combination with the data concerning farming practices and productivities. The same farm budget analyses used in estimating NED benefits will be used for the ability to pay determinations.

(c) The ability to pay test consists of a calculation of the expected change in aggregate net farm income, representing the sum of all farm incomes for farms using project supplied water. If projections of average annual aggregate net farm income, for the first 5 calendar years of project operation, do not exceed 35 percent of the annualized project costs allocated to the agricultural water supply purpose in any one year, the non-Federal sponsor is eligible for relief through deferred payments of its cost share, under section 103(k) of Public Law 99–662.

§ 241.7 Application of Test.

(a) A preliminary ability to pay test will be applied during the study phase of any proposed project. If the ability to pay cost share is lower than the standard share, the revised estimated cost share will be used for budgetary and other planning purposes.

(b) The official application of the ability to pay test will be made at the time the Local Cooperation Agreement (LCA) between the Corps of Engineers and the non-Federal sponsor is signed. Since the standard level of cost sharing will not be known until the end of project, the ability to pay determination will be made using estimated costs.

(c) The LCA for all projects subject to the ability to pay test will include a clause indicating the results of the test. If the project is eligible for a lower non-Federal share:

(1) The revised share will be specified in the LCA (there will be no recalculation of this share once the LCA is signed).

(2) An exhibit will be attached to the LCA giving the project calculations supporting the reduction in cost share.

(d) If at the time of project completion, the standard non-Federal share based on actual costs is less than the ability to pay share specified in the LCA, the standard share will apply.

Approved

Dennis C. Cochrane,

Colonel, GS, Executive, OASA(CW).

[FR Doc. 91–14009 Filed 6–12–91; 8:45 am]

BILLING CODE 3710–08–M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 744

[OPTS-62100A; FRL 3927-9]

Proposed Land Application of Sludge from Pulp and Paper Mills Using Chlorine Derivative Bleaching Processes; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, correction.

SUMMARY: EPA issued a proposed rule on land application of sludge from pulp and paper mills using chlorine derivative bleaching processes in the Federal Register of May 10, 1991 (51 FR 21802). Under unit XIV.C—the discussion on the Paperwork Reduction Act, the paragraph estimating the public burden for information collection was inadvertently omitted. This document corrects that omission.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

In FR Doc. 91-11105 (EPA Docket OPTS-62100), published in the Federal Register of May 10, 1991 (51 FR 21802), unit XIV.C. is corrected to read as follows:

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1585) and a copy may be obtained from Sandy Farmer, Information Policy Branch, 401 M St., SW. (PM-223), Washington, DC 20460, or be calling (202) 382-2740.

Public burden for collecting the information required by this proposed rule is estimated to average 516 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposed rule.

Dated: June 6,1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91-14100 Filed 6-12-91; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 212

[FRA Docket No. RSSP-3, Notice No. 4]

RIN 2130-AA65

Revision of State Safety Participation Regulations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to revise its regulations on state participation in safety inspections and investigations (49 CFR part 212) to respond to the expanded state participation authority contained in the Hazardous Materials Transportation Uniform Safety Act of 1990. The proposed rule would permit the participation of state hazardous materials inspectors in FRA's safety program and make other minor changes in the regulations designed to facilitate expanded state participation while assuring proper coordination of Federal and state inspection activities.

DATES: (1) Written comments (three copies) must be received no later than August 12, 1991. Comments received after that date will be considered so far as possible without incurring additional expense or delay.

(2) An informal public hearing will be held at 10 a.m. on August 21, 1991, in room 2230, 400 Seventh Street, SW., Washington, DC. Any person who desires to make an oral statement should notify the Docket Clerk before August 12, 1991, by phone or mail. Prepared statements (five copies) must be received no later than August 12, 1991.

ADDRESSES: (1) Written comments should identify the docket number and should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, room 8209, 400 Seventh Street, SW., Washington, DC 20590. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours in room 8209 of the Nassif Building at the above address. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date the comments were received and return the postcard to the addressee.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, Office of Safety, Federal Railroad Administration, Washington, DC 20590. Telephone: (202) 366-0510. Arnold Gross, Office of Safety, Federal Railroad Administration, Washington, DC 20590. Telephone: (202) 366-0536. Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC 20590. Telephone: (202) 366-0635 or (202) 366-0628.

SUPPLEMENTARY INFORMATION: Section 206 of the Federal Railroad Safety Act of 1970 (Safety Act), 45 U.S.C. 435, provides for a state role in investigation and surveillance activities with respect to safety regulations issued by FRA. Regulations implementing section 206 of the Safety Act, referred to as the State Participation Program, were published on December 18, 1973 (38 FR 34748), amended on November 26, 1974 (40 FR 55508) and now are found at 40 CFR part 212. The 1970 Safety Act, however, initially did not permit state participation with respect to the older Federal railroad safety laws, such as the Safety Appliance Acts (45 U.S.C. 1-16), the Hours of Service Act (45 U.S.C. 61-64b), the Signal Inspection Act (49 U.S.C. 26), and the Locomotive Inspection Act (45 U.S.C. 22-34), and FRA's state participation regulations reflected this limitation.

Section 4 of the Federal Railroad Safety Authorization Act of 1980, Public Law No. 96-423, 94 Stat 1812 (October 10, 1980), authorized FRA to expand the state program to include participation in investigative and surveillance activities under the older Federal railroad safety statutes. Regulations implementing this expansion and revising 49 CFR part 212 were published on September 16, 1982 (47 FR 41048). However, because the Hazardous Materials Transportation Act ("HMTA"), 49 App. U.S.C. 1801 *et seq.*, was not among the statutes referred to in the 1980 amendment, states were not yet authorized to enforce the Federal regulations issued under that statute.

Section 28 of the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101-615, 104 Stat. 3244 (November 16, 1990) amended section 206 of the Safety Act to permit state inspection and surveillance under any Federal regulation "related to railroad safety." The legislative history makes clear that the amendment was expressly intended to make the hazardous materials regulations issued under the HMTA is one of the Federal railroad safety laws covered by FRA's state participation program. 136 Cong. Rec. S16867 (daily ed. October 23, 1990) (statement of Sen. Exon). Pursuant to that authority, FRA now proposes to revise part 212 to include qualification requirements for state personnel engaged in the inspection of railroads, shippers, and manufacturers who transport hazardous materials by railroad, offer such materials for transportation by railroad, offer such materials for transportation by railroad, or manufacture bulk containers for the transport of such materials by railroad. Also, this proposal makes minor changes, where necessary, to include shippers and manufacturers as regulated entities.

Participation Requested

Interested parties are encouraged to participate on this proposal by submitting written data, views or comments. Those who submit comments in writing must do so in triplicate and should identify the regulatory docket number and notice number. All comments received will be available for examination by interested parties at any time during regular working hours in room 8209, Nassif Building, 400 Seventh Street SW., Washington, DC.

In addition, FRA will conduct a public hearing on August 21, 1991 at 10 a.m. The hearing will be informal, and not a judicial or evidentiary hearing. Interested persons may present oral or written statements at the hearing. All statements will be made a part of the record and will be a matter of public record. Any person who wishes to make an oral statement at the hearing should notify the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration (202-366-0635) before August 12, 1991, stating the amount of time required for presentation. FRA will consider fully all submissions, and may make changes to this proposal in the final rule where warranted by the comments received.

Section-by-Section Analysis

Subpart A—General

Section 212.3

Section 212.3(d) would be amended to include The Hazardous Materials Transportation Act as one of the Federal railroad safety laws that are subject to the state participation program. This amendment reflects the expanded authority granted FRA and the states in the new hazardous material transportation legislation. Also, a definition for "manufacturer" has been added in § 212.3(e) to clarify those entities who will be subject to the regulations.

Subpart B—State/Federal Roles

Section 212.101

Section 212.101(b)(1) and (c) would be amended to include shippers and manufacturers who offer hazardous materials for transportation by railroad, or manufacture bulk containers for the transport of such materials by railroad.

Section 212.105

Section 212.105(e)(1)(i) would be amended to require that the State Request for Agreement contain an assertion that it maintains jurisdiction over safety practices applicable to shippers and manufactuers, as the Agreement currently must assert with respect to railroad facilities within state boundaries.

Section 212.109

Section 212.109 would be amended to include shippers and manufactuers as subjects of joint planning inspections, as this section currently requires with respect to railroads.

Subpart C—State Inspection Personnel

Section 212.201

Section 212.201(d)(5) would be amended to require that State personnel possess basic knowledge of the organization of shippers and manufactuers who are subject to the Federal hazardous materials transportation regulations, as is currently required with respect to railroads. Section 212.201(f) is a technical amendment incorporating numeric changes that occur with the addition of §§ 212.229 and 212.231.

Section 212.227

The new §212.227 prescribes qualification standards for state hazardous materials inspectors. These standards are intended to insure that, at a minimum, state inspection personnel are (1) fully competent to measure conditions and practices observed with respect to railroads, shippers, and manufacturers against applicable Federal requirements; (2) capable of understanding the safety consequences of conditions and practices observed; and (3) able to communicate effectively in conversation and in written reports.

Section 212.229

Section 212.229 would permit the creation of an "apprentice" hazardous materials inspector. This trainee position is similar to those permitted in other safety disciplines, and through the use of a structured training curriculum, would allow the development of an apprentice to the status of a qualified inspector.

Section 212.231

Section 212.231 in this proposal is the former §212.227. Only the section number would be changed to allow for the addition of §§212.227 and 212.229.

Regulatory Impact

E. O. 12291 and DOT Regulatory Policies and Procedures

This proposal has been evaluated in accordance with existing regulatory policies and procedures and is considered to be nonmajor under Executive Order 12291. Also, it is not considered to be significant under DOT policies and procedures (44 FR 11304, February 26, 1979) since it would merely conform the provisions of the existing regulatory program to the new statutory authorization.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed rules to assess their impact on small entities. This proposal will only affect state governments and will not have an adverse economic impact on any entity because it does not place any new requirements or burdens on the public. Therefore, it is certified that the proposal will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no information collection requirements in these proposed FRA regulations. Consequently, no estimate of a public reporting burden is required.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the environmental

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impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. These proposed regulations meet criteria establishing this as a non-major action for environmental purposes.

Federalism Implications

FRA's state participation program permits the states to join in existing Federal railroad safety inspection activities. Participation by the states is entirely voluntary, and the addition of state hazardous materials inspectors that is contemplated by this proposal will not change the voluntary nature of the program in any way.

This proposed rule does not directly regulate the States, does not in any way interfere with functions essential to the States' separate and independent existence, and does not displace the States' freedom to structure integral operations in areas of traditional governmental functions. Also, the proposal does not affect the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 212

Hazardous materials transportation, Railroad safety.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend part 212, title 49, Code of Federal Regulations as follows:

1. The authority citation for part 212 is revised to read as follows:

Authority: Secs. 202, 205, 206, and 207 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 434, 435, and 436); and section 28 of the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101-615, 104 Stat. 3244 (November 16, 1990), and 49 CFR 1.49.

2. By amending the table of contents to redesignate § 212.227 as § 212.231 and to add the following sections to subpart C—State Inspection Personnel, as follows:

Subpart C—State Inspection Personnel

* * * * *

212.227 Hazardous materials inspector.
212.229 Apprentice hazardous materials inspector.
212.231 Inapplicable qualification requirements.

3. By amending §212.3 to revise paragraphs (d)(5) and (d)(6); redesignate paragraph (e) as paragraph (f); and add a new paragraph (e) to read as follows:

§ 212.3 Definitions.

* * * * *

(d) * * *

(5) The Accident Reports Act, as amended (45 U.S.C. 38–42);

(6) The Hours of Service Act, as amended (45 U.S.C. 61–64b); and

(7) The Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*, as it pertains to shipment or transportation by railroad.

(e) *Manufacturer* means a person that manufacturers, fabricates, marks, maintains, reconditions, repairs, or tests containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by railroad.

* * * * *

4. By amending § 212.101 to revise paragraphs (b)(1) and (c) to read as follows:

§ 212.101 Program principals.

* * * * *

(b)(1) The national railroad safety program is carried out in part through the issuance of mandatory Federal safety requirements and through inspection efforts designed to monitor compliance with those requirements. FRA and State inspections determine the extent to which the railroads, shippers, and manufacturers have fulfilled their obligations with respect to inspection, maintenance, training, and supervision. The FRA and participating States do not conduct inspections, of track, equipment, signal systems, operating practices, and hazardous materials handling for the railroads, shippers, and manufacturers.

* * * * *

(c) It is the policy of the FRA to maintain direct oversight of railroad, shipper, and manufacturer conditions and practices relevant to safety by conducting inspections and investigations in concert with participating State agencies.

5. By amending §212.105 to revise paragraph (e)(l)(i) to read as follows:

§ 212.105 Agreements.

* * * * *

(e) * * *

(l) * * *

(i) The agency has jurisdiction over safety practices applicable to railroad, shipper, and manufacturer facilities, equipment, rolling stock, and operations in that State;

* * * * *

6. By revising § 212.109 to read as follows:

§ 212.109 Joint planning of inspections.

Prior to the beginning of each calendar year, each participating State applying for grant assistance under subpart D of this part shall develop, in conjunction with the FRA Regional Director of Railroad Safety of the region in which the State is located, an annual work plan for the conduct of investigative and surveillance activities by the State agency. The plan shall include a program of inspections designed to monitor the compliance of the railroads, shippers, and manufacturers operating within the State (or portion thereof) with applicable Federal railroad safety laws and regulations. In the event the participating State and the FRA Regional Director of Railroad Safety cannot agree on an annual work plan, the Associate Administrator shall review the matter.

7. By amending § 212.201 to revise paragraph (d)(5) and paragraph (f) as follows:

§ 212.201 General qualifications of State inspection personnel.

* * * * *

(d) * * *

(5) Basic knowledge of rail transportation functions, the organization of railroad, shipper, and manufacturer companies, and standard industry rules for personal safety.

* * * * *

(f) In addition to meeting the requirements of this section, each inspector, and apprentice inspector shall meet the applicable requirements of §§ 212.203 through 212.229 of this subpart.

8. By redesignating existing § 212.227 as §212.231 without any change in text as follows:

§ 212.231 Inapplicable qualifications requirements.

* * * * *

9. By adding new §§ 212.227 and 212.229 to read as follows:

§ 212.227 Hazardous materials inspector.

(a) The hazardous materials inspector is required, at a minimum, to be able to conduct independent inspections to determine compliance with all pertinent sections of the Federal hazardous materials regulations (49 CFR parts 171 through 174 and 179), to make reports of those inspections and findings, and to recommend the institution of enforcement actions when appropriate to promote compliance.

(b) The hazardous materials inspector is required, at a minimum, to have at least four years of recent experience in developing, administering, or performing managerial functions in connection with the hazardous materials regulations. Successful completion of the apprentice training program may be substituted for this four year experience requirement.

(c) The hazardous materials inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of the transportation and operating procedures employed in the railroad, shipping, and manufacturing industries associated with the transportation of hazardous materials by railroad, and the responsibilities and duties of industry personnel in executing those procedures;

(2) Knowledge and ability to understand and detect deviations from the Department of Transportation's Hazardous Materials Regulations, including Federal requirements and industry standards for the manufacturing of bulk packaging used in the transportation of hazardous materials by railroads;

(3) Knowledge of the physical and chemical properties and chemical hazards associated with hazardous materials that are transported by railroad;

(4) Knowledge of the proper remedial actions required to bring railroad, shipper, and manufacturing facilities into compliance with the Federal regulations; and

(5) Knowledge of the proper remedial actions required when a hazardous materials transportation accident or incident occurs.

§ 212.229 Apprentice hazardous materials inspector.

(a) The apprentice hazardous materials inspector must be enrolled in a program of training prescribed by the Associate Administrator leading to qualification as a hazardous materials inspector. The apprentice may not participate in investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) An apprentice hazardous materials inspector shall demonstrate a basic knowledge of the chemical hazards associated with hazardous materials that are transported by railroad, including requirements such as shipping papers, marking, labeling, placarding, and the manufacturing and maintenance of packaging associated with these shipments.

Issued in Washington, DC, on June 7, 1991.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 91-14037 Filed 6-12-91; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Atlantic Sea Scallop Fishery; Public Hearing

50 CFR Part 650

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary adjustment of standards; notice of a public hearing and request for comments.

SUMMARY: NMFS will hold a public hearing, in conjunction with a meeting of the New England Fishery Management Council (Council), to solicit public input on a temporary adjustment of the meat count/shell height standards for Atlantic sea scallops.

DATES: The public hearing will be held on June 25, 1991, beginning at 11 a.m. Written comments will also be accepted and must be received by June 25, 1991, at the address given below.

ADDRESSES: The hearing will be held at the King's Grant Inn, Route 128 at Trask Lane, Danvers, Massachusetts. Written comments should be addressed to Richard Roe, Director, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Senior Resource Policy Analyst, Fishery Management Operations, NMFS Northeast Region, 508–281–9331.

SUPPLEMENTARY INFORMATION: Section 650.22 of the regulations implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) (50 CFR 650) provides authority to the Regional Director to adjust temporarily the meat count/shell height standards upon finding that specific criteria are met. The standards can be adjusted within a range from 25 to 40 meats per pound and may be adjusted no more than 5 meats by any one adjustment. The Regional Director has considered the criteria specified in § 650.22(c) and has decided to recommend an adjustment to the standards from 30 to 33 meats per pound (shell height from 3⅛ inches to 3⅛ inches) for the period July 1, 1991, through September 30, 1991.

The regulations require the Regional Director to hold a public hearing on this recommendation in conjunction with the Council meeting during which the recommendation is discussed. A public hearing has been scheduled in conjunction with the June 25, 1991, meeting of the Council. This public hearing is to provide opportunity for public comment on this recommendation. The Regional Director may modify this recommendation based on comments from the Council or the public. After consideration of the full record, a final determination will be made by the Regional Director whether or not to adjust the standards. If the Regional Director determines that the standards should be adjusted, notice will be published in the **Federal Register.**

Dated: June 7, 1991.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 91-13984 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 56, No. 114
Thursday, June 13, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 7, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) an estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

- National Agricultural Statistics Service, Water Quality/Food Safety Survey Program, On occasion, Farms; 5,750 responses; 1,925 hours, Larry Gambrell (202) 447–7737.

New Collection

- Food and Nutrition Service, School Nutrition Dietary Assessment Study, One time surveys, Individuals or households; State or local governments; 9,649 responses; 6,558 hours, Leslie Christovich (703) 756–3133.

Extension

- Food and Nutrition Service, Food Coupon Accountability Report, FNS–250, Monthly, State or local governments; 26,796 responses; 80,388 hours David Walters (703) 756–3385.

Reinstatement

- Office of International Cooperation and Development Automated Skills Inventory System (ASIST), OICD Form 73, Annually, Individuals or households; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 1,000 responses; 1,000 hours Allen Wilder or Nancy Croft (202) 245–5717.

- Farmers Home Administration, 7 CFR 1942–J, Technical Assistance and Training Grants, On occasion; Monthly; Quarterly, Non-profit institutions; 985 responses; 1,005 hours, Jack Holston (202) 382–9736.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 91–14073 Filed 6–12–91; 8:45 am]
BILLING CODE 3410–01–M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.
Date: June 27, 1991.
Place: Capitol Holiday Inn, 550 C Street, SW., Washington, DC 20024.
Time: 8:30 a.m.
Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes: (1) Status of financial matters, (2) cost reductions and fees, (3) status of standards and regulations, (4) spring wheat protein calibration report, (5) sprout damage in wheat, (6) wheat classification (2163), (7) international monitoring report, (8) implementation of the "Grain Quality Title" of the Food, Agricultural, Trade, and Conservation Act of 1990, (9) status of research programs, (10) dust recombination research, (11) type approval and equipment calibration, and (12) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact John C. Foltz, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 382–0219.

Dated: June 7, 1991.

John C. Foltz,
Administrator.

[FR Doc. 91–14240 Filed 6–12–91; 8:45 am]
BILLING CODE 3410–EN–M

Forest Service

Oil and Gas Leasing Analysis, Ochoco National Forest and Crooked River National Grassland, Crook, Grant, Harney, Jefferson, and Wheeler Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposal to identify Ochoco National Forest and Crooked River National Grassland lands that would be available for oil and gas leasing. Under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and 36 CFR part 228 regulations, the Forest Service authorizes the Bureau of Land Management (BLM) to offer National Forest System lands for oil and gas leasing. The decision to authorize leasing will be made in a two-stage analysis process. The first stage identifies the lands that are available. This EIS will accomplish the first stage. The second stage authorizes the BLM to offer leases for land previously identified as available. Before the Forest Service authorizes the BLM to offer leases, a separate analysis will be conducted and disclosed in an appropriate NEPA analysis.

DATES: Comments concerning the scope of the analysis should be received in writing by July 15, 1991.

ADDRESSES: Send written comments to Ochoco National Forest, P.O. Box 490, Prineville, OR 97754.

FOR FURTHER INFORMATION CONTACT: Deborah Tout, Lands and Minerals Assistant (503) 447–9506, Ochoco National Forest, 3000 E. 3rd St. Prineville, OR 97754.

SUPPLEMENTARY INFORMATION:

The Ochoco National Forest proposes to identify lands under its jurisdiction that are available for oil and gas leasing. The decision reached through this analysis may result in an amendment to the Ochoco National Forest and Crooked River National Grassland Land and Resource Management Plans. The Regional Forester will then notify the BLM as to which lands are available for leasing.

The EIS will address the environmental effects of leasing in various management areas defined in the Ochoco National Forest and Crooked River National Grassland Land and Resource Management Plans that were approved on August 1, 1989. The scope of the EIS will be confined to those issues of oil and gas leasing and will not address the land allocations that were made in the Forest and Grassland Plans.

Each Management Area will be placed in one of the following categories: (1) Lands which are legally unavailable for leasing; (2) Lands which are administratively unavailable for leasing; (3) Lands which are open to oil and gas leasing subject to the terms and conditions of the standard oil and gas lease form; and (4) Lands which are open to oil and gas leasing but subject to constraints that will require the use of lease stipulations. In addition, the conditions under which waivers, exceptions and modifications of lease stipulations may be granted will be identified.

Riparian area disturbance, visual impacts, and social and economic impacts have been identified as preliminary issues. This list of issues will be verified, expanded or modified based on public scoping for this proposal.

This analysis will be based on the type and amount of post-leasing activity that is reasonably foreseeable within the next 10 years. Under an interagency agreement between the Forest Service and the BLM, the BLM has assessed the potential for oil and gas occurrence and established a reasonably foreseeable development scenario for the Ochoco National Forest and Crooked River National Grassland. The BLM estimates that one to three exploratory wells will be drilled during the next ten years. Each exploratory well would require two to six acres for a well pad and a maximum of one-quarter mile of access road. The extimated success rate for these wells would be no more than ten percent. No field development is expected to occur in the next ten years.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information from Federal, State, and local agencies, Tribes, and other individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues;
2. Identifying issues to be analyzed in depth;
3. Eliminating insignificant issues or those which have been covered by the Land and Resource Management Plans FEIS;
4. Developing alternatives;
5. Identifying potential environmental effects of the alternatives (i.e. direct, indirect and cumulative effects and connected actions); and
6. Determining potential cooperating agencies and task assignments.

The following alternatives have been identified: (1) No action alternative (No leasing); (2) Alternative which authorizes leasing with the stipulations listed in the Plan; and (3) Identify all lands which are not legally unavailable for leasing as open to oil and gas leasing subject to the terms and conditions of the standard oil and gas lease form. Additional alternatives may be developed during the scoping or analysis processes.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by October, 1991. At that time, copies of the draft EIS will be distributed by interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days frm the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after competition of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by April, 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period. Thomas A. Schmidt, Forest Supervisor, Ochoco National Forest, is the responsible official. As the responsible official, he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: June 4, 1991.

Thomas A. Schmidt,
Forest Supervisor.

[FR Doc. 91–14049 Filed 6–12–91; 8:45 am]
BILLING CODE 3410–11–M

Granite Mountain Timber Sales, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for a set of proposals to implement there timber sales scheduled to sell in

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Fiscal Year 1992: Little Granite, Pebble, and Baldy Timber Sales. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber harvest and road construction levels. The proposed action is preliminary, and detailed alternatives will be developed. The alternatives will include a no action alternative, involving no timber harvest or road construction, and additional alternatives to respond to issues generated during the scoping process. The proposed projects are in compliance with the direction in the 1989 Okanogan National Forest Land and Resource Management Plan (Forest Plan) which provides the overall guidance for management of the area and the proposed projects. Portions of the proposed projects lie within the Granite Mountain Roadless Area, and would be implemented in Fiscal Year 1993 on both the Tonasket and Winthrop Ranger Districts. The Granite Mountain Roadless Area is located approximately 10 miles southwest of Conconully, Washington. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by July 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Craig Bobzien, Project Coordinator, Winthrop Ranger District, P. O. Box 579, Winthrop, WA 98862.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Craig Bobzien, Project Coordinator, Winthrop Ranger District, P.O. Box 579, Winthrop, WA 98862 (telephone: (509) 996–2266).

SUPPLEMENTARY INFORMATION: The proposed action is listed below:

Fiscal year	Sale name	Legal desc.	Acres	Net MMBF	Road cons	Miles recon	Harvest method	Yarding system	Management area
93	Little Granite	T35N,R24E, Secs 7,8,17–20 and 28–33; T34N, R24E, Secs 4–9,16,17 T35N, R23E, Secs 13, 23–25.	7000	11.5	9.0	2.0	Various	Tractor & Cable	25
93	Pebble	T35N,R22E, Secs 1–5,9–13; T36N, R22E, Secs 22,26,28, 32–36.	1700	12.0	26.0	1.0	Various	Tractor, Cable & Helicopter.	25/5
93	Baldy	T36N,R23E, Secs 19,20,28,29,31–33; T35N,R23E, Secs 4,5,8,9.	350	3.0	8.0	1.0	Shelter-wood, clearcut, sanitation/ salvage.	Tractor & Cable	12

Because of geographic proximity, similarity of issues, and the schedule of the proposed timber sales, the environmental analysis for the three sales will be documented in one EIS.

A number of issues have been identified to date. The major issues focus on health and growth of forest stands, management of the roadless area, effects on lynx habitat, and effects on the visible areas along the Midddle Salmon Boulder Creek Road. Public meetings will be held in Okanogan, Washington and the Methow Valley to review existing information and facilitate public scoping.

This EIS will tier to the Forest Plan. The Forest Plan provides forest-wide standards and guidelines, management area standards and guidelines, and desired future conditions for the various lands on the Forest. This direction is provided for management practices that will be utilized during the implementation of the Forest Plan.

The Granite Mountain Analysis Area contains about 40,000 acres. Approximately 27,700 acres of this is in the Granite Mountain Roadless Area. The Analysis Area is allocated to the following Management Areas (MA):

—Approximately 63 percent is in Management Area 25 which is designed to intensively manage the timber and range resources.

—Approximately 22 percent is in Management Area 12 which is designed to provide habitat to support a stable lynx population over the long term while accessing the area for the purpose of growing and producing merchantable wood fiber.

—Approximately 13 percent is in Management Area 5 which is designed to provide opportunities for recreation and viewing scenery in a roaded natural setting. Approximately 2500 acres will be managed with a visual quality objective of retention, and the remaining 2,816 acres will be managed with a visual quality objective of partial retention.

—Approximately 2 percent is in Management Area 14 which is designed to provide a diversity of wildlife habitat, including deer winter range, while growing and producing merchantable wood fiber.

The analysis will evaluate a range of alternatives. Alternatives to be evaluated range from no-action, with no timber harvest or road construction to alternatives that may propose timber harvest up to 28.5 MMBF and 43 miles of road construction.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, Native American Tribes, and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested members of the public of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (e.g. newsletters, correspondence, etc.).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by April, 1992. Your comments and suggestions are encouraged and should be in writing.

The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully considered and responded to in the final EIS.

The final EIS is scheduled to be completed by July, 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Sam Gehr, Forest Supervisor, Okanogan National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: June 6, 1991.

John R. Hoek,

Acting Forest Supervisor.

[FR Doc. 91–14048 Filed 6–12–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1991 Annual Survey of Manufactures.

Form Number(s): MA–1000(S), (L), (B).

Agency Approval Number: 0607–0449.

Type of Request: Revision of a currently approved collection.

Burden: 197,000 hours.

Number of Respondents: 63,000.

Avg Hours Per Response: 3 hours and 8 minutes.

Needs and Uses: The Census Bureau conducts the Annual Survey of Manufactures (ASM) to provide key measures on manufacturing activity during intercensal periods. Federal agencies use the ASM's results as benchmarks for their statistical programs, including the Federal Reserve Board's Index of Industrial Production, the Bureau of Economic Analysis estimates of the gross national product, and the International Trade Administration's Industrial Outlook publication.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–14043 Filed 6–12–91; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: National Clearinghouse for Federal Audit Reports – Institutions of Higher Education and Other Non–profit Organizations.

Form Number(s): SAC–4.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 23,000 hours.

Number of Respondents: 92,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Single Audit Act of 1984 (Pub.L. 98–502) requires state and local governments that receive $100,000 or more in Federal financial assistance during their fiscal year to have an annual audit of their financial operations. Newly issued OMB Circular A–133 requires institutions of higher education and other non–profit institutions receiving $25,000 or more in Federal financial assistance during their fiscal year to have audits of their financial operations. The OMB has directed the Census Bureau to identify those institutions that received $25,000 or more in Federal financial assistance during the fiscal year that began on or after January 1, 1990. We will survey institutions of higher education and non–profit institutions reporting $100,000 or more in total revenue to request information on the type and extent of Federal assistance they receive and to require that recipients of $100,000 or more in Federal financial assistance forward an audit report to the Census Bureau.

Affected Public: Non–profit institutions.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–14044 Filed 6–12–91; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

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Agency: Bureau of the Census.
Title: 1992 Census of Retail Trade.
Form Number(s): Various.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 1,016,900 hours.
Number of Respondents: 1,145,000.
Avg Hours Per Response: 54 minutes.
Needs and Uses: The Bureau of the Census will conduct the 1992 Census of Retail Trade to measure the economic activity of more than 2.5 million retail establishments. This census will produce basic statistics by kind of business for number of establishments, sales, payroll, and employment. It also will yield a variety of subject statistics, including sales by merchandise line, sales by class of customer, and other industry-specific measures. The Federal government uses information from the economic censuses in its computation of the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. State and local governments use the information for policy-making, planning, and program administration. Industry, business, schools, and the general public use information from the economic censuses for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

Affected Public: State or local governments; Businesses or other for-profit organizations; Small businesses or organizations.

Frequency: Every five years.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 91-14045 Filed 6-12-91; 8:45 am]
BILLING CODE 3510-07-F

Foreign-Trade Zones Board

[Docket No. 32-91]

Foreign-Trade Zone 142—Salem, NJ

Application for Subzone; Lignotock Auto Interior Components Plant, Westampton Township, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Salem Port Authority, grantee of FTZ 142, requesting special-purpose subzone status for the automotive interior door trim panel assembly plant of Lignotock Corporation (Lignotock) (subsidiary of Lignotock Technische Formiteile GmbH, Germany), located in Westampton Township, Burlington County, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 30, 1991.

The Lignotock plant (105,000 sq. ft. on 10 acres) is located on Oxmead Road in the Township of Westampton, Burlington County, New Jersey, some 25 miles form Philadelphia. The facility (150 employees) is used to produce finished automobile door trim panels for auto assembly plants using foreign, prefabricated, wood-fiber panels manufactured by its parent company in Germany. Foreign subcomponents account for approximately 50 percent of the material value of the finished panels, and they include fiber board mats, steel retainers, and door panels.

Zone procedures would exempt Lignotock from Customs duty payments on foreign materials used in products that are exported. On door panels shipped to domestic auto assembly plants with subzone status, Customs duties would be paid when finished autos leave the assembly plants and the duty rate for complete autos (2.5%) could be applied. On aftermarket sales, Lignotock could chose the duty rate that applies to door trim panels (3.1%). The duty rates for door panel materials range from zero to 5.7 percent. The application indicates that zone savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 10 Causeway Street, suite 801, Boston, MA 02222-1056; and, Colonel Kenneth Clow, District Engineer, U.S. Army Engineer District Philadelphia, U.S. Custom House, 2nd and Chestnut Streets, Philadelphia, PA 19106-2991.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 28, 1991.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

City of Salem Municipal Port Authority, 465 East Broadway, Salem, New Jersey 08079.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 4, 1991.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 91-14109 Filed 6-12-91; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

Sanctions for Violations of an Administrative Protective Order

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of status of investigations into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

SUMMARY: This is a notice of the status of investigations into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8916.

SUPPLEMENTARY INFORMATION: The International Trade Administration, U.S. Department of Commerce (ITA) wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to administrative protective order ("APO") during the course of these proceedings. In order that the gravity with which the ITA views APO violations might be better appreciated, the ITA is publishing the following report on recent allegations that the provisions of an APO have been violated. The investigation consisted of a situation where one or more of the individuals failed to take adequate precautions to ensure the security of business proprietary materials and failed to return or destroy such materials at the completion of the proceeding. In this case, however, the APO violations were found to be inadvertent, there was no disclosure of confidential information, and therefore, the violations caused no harm to the submitter of the information.

The specific charges that we investigated, and actions that we would regard as APO violations, include the following:

1. Failure to mark the data released under APO "Confidential Information Subject to Protective Order" in red to reflect its status;

2. Failure to maintain a log to indicate who received each document subject to APO;

3. Providing erroneous certification regarding the destruction of APO materials and subsequently returning such materials in untimely fashion.

In this case, (1) the individuals involved were required to attend a seminar on the proper procedures for protecting proprietary data; (2) the individuals were required to submit to the ITA office procedures for law firm implementation to ensure the protection of business proprietary information received pursuant to administrative protective order and (3) the individuals involved were issued private reprimands which warned that future violations by them or others associated with their law firm could be treated more severely.

Serious harm can result from inadvertent or other disclosures of proprietary information obtained under APO. The ITA will continue to investigate vigorously allegations that the provisions of its APOs have not been observed faithfully, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to proprietary information, and debarment from practice before the ITA.

This notice is published pursuant to 19 CFR 354.15(e) (1990).

Dated: May 15, 1991.
Roger W. Wallace,
Deputy Under Secretary for International Trade.
[FR Doc. 91-14115 Filed 6-12-91; 8:45 am]
BILLING CODE 3510-DS-M

[A-423-801]

Preliminary Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Belgium

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that coated groundwood paper (CGP) from Belgium is being or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of CGP from Belgium, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 20, 1991.

EFFECTIVE DATES: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Steve Alley or John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 377-3630, (202) 377-1766 or (202) 377-2778, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that CGP from Belgium is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 25, 1991 (56 FR 2900), the following events have occurred. On February 21, 1991, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of CGP from Belgium (56 FR 7059).

On February 22, 1991, the Department presented its questionnaire to K.N.P. Belgie N.V. (KNP) which accounted for more than 60 percent of exports by volume to the United States during the period of investigation, in accordance with 19 CFR 353.42(b). On March 15, 1991, we received a response to Section A of the questionnaire. On April 10, 1991, we received a response to Sections B and C of the questionnaire. We issued a deficiency letter to KNP on April 29, 1991, and received a response to it on May 13, 1991. On May 28, 1991, petitioner alleged that critical circumstances exist with respect to CGP from Belgium. We are currently considering the sufficiency of this allegation.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of CGP from Belgium to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and

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"Foreign Market Value" sections of this notice. We compared U.S. sales of CGP to sales of identical and similar CGP sold in Belgium.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, as all U.S. sales were made to an unrelated party prior to importation into the United States. Exporters sales price methodology is inappropriate because the subject merchandise was not introduced into the inventory of KNP's related U.S. selling agent, KNP's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer, and this was the customary commercial channel for sales of this merchandise between the parties involved.

We have denied KNP's request that we exclude from our analysis certain sales made on a trial basis to a U.S. customer because the total quantity of these sales constituted a significant portion of total U.S. sales.

We calculated purchase price based on packed, f.o.b. port and delivered prices. We made deductions, where appropriate, for containerization expenses, foreign inland freight, ocean freight, foreign inland and marine insurance, U.S. duty, U.S. and foreign brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Belgian value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. KNP had a viable home market with respect to sales of CGP during the POI.

We calculated FMV based on delivered prices to related and unrelated customers in the home market. For purposes of this preliminary determination, we included sales to a related customer, pursuant to 19 CFR 353.45 of the Department's regulations, since we preliminarily determine that the prices paid by this related customer were comparable to the prices paid by unrelated customers. We made deductions, where appropriate, for containerization expenses, foreign inland freight and insurance, discounts and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56 of the Department's regulations, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and direct advertising expenses. We allowed an adjustment for direct advertising expenses only for home market sales of CGP in sheet form because the advertising was directed at second-level customers (*i.e.*, printers) rather than at the original purchaser. In the case of sales of CGP in roll form, the merchant acts only as a sales agent, and the first customer is the printer. Therefore, we have reclassified direct advertising expenses related to these sales as an indirect adjustment. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We recalculated KNP's imputed credit expenses incurred on home market and U.S. sales net of discounts. We recalculated credit expenses for those U.S. sales which had not been shipped prior to receipt of the deficiency response, using the average credit period reported for all sales for which payment had been received. For the U.S. imputed credit calculation, we used KNP's home market interest rate because KNP does not borrow funds in the U.S. market. We also recalculated KNP's direct advertising expenses by allocating the total expense over total value as opposed to total weight of sales during the POI.

We made adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with 19 CFR 353.56(a)(2). Where commissions were paid in one market and not the other, we allowed an adjustment for indirect selling expenses in the second market to offset commissions paid in the first market, in accordance with 19 CFR 353.56(b).

We recalculated KNP's home market and U.S. indirect advertising and selling expenses by allocating these expenses over the total value as opposed to total weight of sales during the POI. We also recalculated KNP's home market and U.S. inventory carrying costs by backing out all charges and adjustments from the gross unit price used in the calculation of these expenses.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57. In accordance with section 776(c) of the Act, we have used best information available for the difference in merchandise adjustments because KNP failed to properly match three U.S. products to similar home market products. As best information available, we used the highest calculated difference in merchandise adjustment contained in KNP's revised response.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CGP from Belgium, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
K.N.P. Belgie	41.67
All Others	41.67

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 26, 1991, and rebuttal briefs no later than July 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 5, 1991, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: June 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14110 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-405-801]

Preliminary Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Finland

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that coated groundwood paper (CGP) from Finland is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of CGP from Finland, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 20, 1991.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Bill Crow, or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1776 (202) 377-0116, or (202) 377-8830, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that CGP from Finland is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 25, 1991 (56 FR 2900), the following events have occurred. On February 21, 1991, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of CGP from Finland (56 FR 7059).

On February 22, 1991, the Department presented its questionnaire to Kymmene Corporation (Kymmene) and Veitsiluoto Oy (Veitsiluoto). The Department also presented its questionnaire to United Paper Mills Ltd./Repola Oy (United-Repola), which refers to the corporate entity which resulted from the December 31, 1990, merger of Rauma-Repola Oy and United Paper Mills Ltd. These companies together accounted for more than 60 percent of exports by volume to the United States during the period of investigation, in accordance with 19 CFR 353.42(b).

On March 11, 1991, we received responses to Section A of the questionnaire from the three named respondents. In addition, we received a response to section A of the questionnaire from Metsä-Serla Oy (Metsä-Serla), a voluntary respondent. On April 10, 1991, we received responses to sections B and C of the questionnaire from all four respondents. We issued deficiency letters to Kymmene, United/Repola, and Veitsiluoto on April 29, 1991, and to Metsä-Serla on May 2, 1991. We received responses to these letters from Kymmene, United/Repola, and Veitsiluoto on May 13, 1991, and from Metsä-Serla on May 15, 1991. On May 22, 1991, we issued a request to Kymmene for further clarification of sales data. On May 24, 1991, Kymmene submitted a response to the May 22, 1991, letter.

On May 28, 1991, petitioner alleged that critical circumstances exist with respect to CGP from Finland. We are currently considering the sufficiency of this allegation.

On May 31, 1991, United/Repola and Veitsiluoto submitted new computer tapes of their U.S. and home market sales. Due to the late date on which these tapes were received, however, we did not rely on them in making our preliminary determination.

Scope of Investigation

The product covered by this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g., calcium carbonate*), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

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Use of a Single Weighted-Average Margin for Two Respondents

Although not expressly required by the Act, the Department has a long-standing practice of calculating a separate dumping margin for each manufacturer or exporter investigated. However, when the Department determines that two companies are sufficiently related for purposes of an investigation, it calculates a single weighted-average margin for those companies. See Certain Granite Products from Spain, 53 FR 24337 (1988), Steel Wheels from Brazil, 54 FR 8780 (1989), and Gray Portland Cement and Clinker from Japan, 56 FR 12156 (1991). Based on the administrative record, we preliminarily determine that, for purposes of this investigation, it is appropriate to calculate a single weighted-average margin for United-Repola and Metsä-Serla.

The administrative record documents the existence of a close and intertwined relationship between Metsä-Serla and United/Repola. First, the two companies have the same principle shareholder, Osuuskunta Metsäliitto, which is a cooperative whose members own 49% of Finland's privately-held forests. In addition, of the United/Repola shares held by Osuuskunta Metsäliitto, the majority is held in Metsä-Serla's name. United/Repola also has direct ownership and voting rights in Metsä-Serla. Furthermore, in March 1991, Oy Metsä-Botnia Ab, a subsidiary of Metsä-Serla which produces paper pulp, was reorganized with new ownership as follows: Metsä-Serla Oy (approx. 30%), Osuuskunta Metsäliitto (23%), United/Repola (approx. 45%), and others (2%).

Second, the two companies share common members of their boards of directors. The chairman of Metsä-Serla's board of directors, is a director of Repola Oy, the parent company of United Paper Mills, Ltd. Metsä-Serla's President and board member serves on the board of directors of Osuuskunta Metsäliitto, and the president of Osuuskunta Metsäliitto serves on the board of directors of Repola Oy. Such relationships indicate that there is common access to pertinent sales and manufacturing information.

Third, even though each company currently maintains separate manufacturing facilities for the production of CGP, the production facilities at both companies consist of similar types of equipment. Therefore, it would not be necessary to retool extensively either plant's facilities before implementing a decision to restructure either company's manufacturing priorities. In addition, the administrative record establishes that Metsä-Serla and United Paper Mills Ltd./Repola Oy are beginning to merge vital manufacturing operations. Rauma-Repola's 1990 annual report states that in "November (1990), Rauma-Repola, United Paper Mills, Osuuskunta Metsäliitto and Metsä-Serla Oy agreed that the project to build a new pulp mill approved by Rauma-Repola at the end of 1989 would be implemented by Oy Metsä-Botnia Ab. At the same time, it was decided to build a higher capacity mill than originally planned, and also to defer the start of construction for two years." (Annual Report at page 7.)

Fourth, the companies are on record as striving for broad-based cooperation. According to the 1990 Annual Report of Rauma-Repola, the degree of intercompany ownership and management has a specific purpose: "In June (1990), the principal shareholders of Rauma-Repola Oy and United Paper Mills Ltd. entered into an agreement providing, among other things, for cooperation between the new Repola Corporation and the Metsä-Serla Group, one of the parties to that agreement. Under the terms of the shareholders' agreement, the Metsä-Serla Group and its main shareholder Osuuskunta Metsäliitto have the opportunity to increase their combined interest in Repola Corporation to 25%." (Annual Report at page 7.) Metsä-Serla's 1990 annual report echoes the importance of collaboration with United/Repola: "As a result of Metsä-Serla's significant shareholding in Repola Ltd., cooperation with United Paper Mills, which is owned by Repola, got under way. One concrete result was the decision to implement pulp mill investments on a joint basis." Annual Report at page 8. The annual report goes on to note that "Metsä-Serla acquired a significant holding in United Paper Mills Ltd. with the aim of increasing collaboration between forest industry companies in western Finland. Following signature of the shareholder agreement in June and the exchange of shares by the signing parties, there is now significant cross-share ownership." (Annual Report at page 11.)

Based on the fact that Metsä-Serla and United/Repola (1) recognize their substantial cross-ownership and co-investments as "significant" in operational decisions, (2) share company officials with access to pertinent sales and manufacturing information, (3) have similar CGP production facilities, and (4) have established a protocol for increased collaboration at the behest of their shareholders, which has resulted in cooperation in vital production decisions, we have preliminarily concluded that it is appropriate to give these companies a single, weighted-average margin.

Fair Value Comparisons

To determine whether sales of CGP from Finland to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. For Kymmene, United/Repola, and Veitsiluoto, we compared U.S. sales of CGP to sales of CGP in Finland. For Metsä-Serla, we compared U.S. sales of CGP to sales of CGP in the United Kingdom.

United States Price

We based United States price on purchase price for all companies, in accordance with section 772(b) of the Act because all U.S. sales were made to unrelated parties prior to importation into the United States. Exporters sales price methodology is not appropriate because the subject merchandise was not introduced into the inventory of the respondents' related U.S. selling agent(s) acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer, and this was the customary commercial channel for sales of this merchandise between the parties involved.

Kymmene

We excluded from our analysis certain sales which respondent claimed were sales of defective merchandise which could not be sold in normal commerce because these sales were made in small quantities. We also excluded resales from our analysis because the sales subject to examination under the antidumping statute occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage, foreign handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage, U.S. handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. For two customers, Kymmene's narrative response for rebates did not correspond to the amounts reported on the computer tape. Accordingly, we calculated rebate amounts for these customers based on Kymmene's narrative response. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Finnish value-added tax that would have been collected if the merchandise had not been exported.

Metsä-Serla

We excluded trial sales from our analysis because these were made in small quantities at prices that did not reflect normal pricing practices. We also excluded from our analysis resales of damaged or "obsolete" merchandise because the sales subject to examination under the antidumping statute occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. For certain sales, Metsä-Serla reported no charge for U.S. inland freight. As best information available (BIA), we used the weighted-average charge for those sales for which Metsä-Serla reported a U.S. inland freight charge. In addition, we made deductions, where appropriate, for discounts and rebates. For one sale, we were unable to determine the value of the rebate reported by Metsä-Serla. As BIA, we used the weighted-average rebate amount of those sales for which Metsä-Serla reported this rebate. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Finnish value-added tax that would have been collected if the merchandise had not been exported.

United/Repola

We excluded trial sales from our analysis because these were sales made in small quantities at prices that did not reflect normal pricing practices. We also excluded from our analysis a resale of merchandise because the sale subject to examination under the antidumping statute occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Finnish value-added tax that would have been collected if the merchandise had not been exported.

Veitsiluoto

We excluded trial sales from our analysis because these were made in small quantities at prices that did not reflect normal pricing practices. We also excluded from our analysis certain sales of inferior "Grade-B" merchandise because these sales were made in small quantities. We excluded resales of damaged or "obsolete" merchandise from our analysis because the sales subject to examination under the antidumping statute occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We adjusted purchase price for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. For certain sales, Veitsiluoto reported no charge for U.S. inland freight. As BIA, we used the weighted-average charge for those sales for which Veitsiluoto reported a U.S. inland freight charge. Also, for certain sales, Veitsiluoto also reported no marine insurance charge. As BIA, we used the weighted-average charge for those sales for which Veitsiluoto reported a marine insurance charge. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Finnish value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. Kymmene, United/Repola and Veitsiluoto had viable home markets with respect to sales of CGP during the POI. For Metsä-Serla, the volume of home market sales was less than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with section 353.48 of the Department's regulations. Because Metsä-Serla volume of sales of similar CGP to its largest third country, the United Kingdom, were adequate, within the meaning of 19 CFR 353.49(b)(1), we based FMV on sales to the United Kingdom.

Kymmene

We excluded two sales from our analysis which respondent claimed were shipments of trial reels delivered to the customer free of charge. We also excluded from our analysis certain sales of damaged merchandise because these sales were made in small quantities.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made adjustments to the reported prices for billing errors, where appropriate. We also made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and after-sale storage expenses. For home market sales, we recalculated the interest rate reported by Kymmene to reflect the weighted-average cost of funds for the POI. For the preliminary determination, we also recalculated credit expenses in both markets for those sales which had been shipped prior to receipt of the deficiency response, but for which payment had not been received by Kymmene. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. In addition, we recalculated credit expenses in both markets for those sales which had not been shipped prior to receipt of the deficiency response, using the average credit period reported for all sales for which payment had been received. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales.

We made adjustments, where appropriate, for differences in commissions, in accordance with 19 CFR 353.56(a)(2), when we determined that such commissions were paid at arms-length prices. Where commissions were paid in one market and not the other, we

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allowed an adjustment for indirect selling expenses in the second market to offset commissions paid in the first market, in accordance with 19 CFR 353.56(b). We recalculated home market indirect selling expenses reported for a related distributor to reflect the percentage shown in the narrative response. We also recalculated U.S. indirect selling expenses reported as per ton amounts to reflect a percentage of sales value. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Metsä-Serla

We excluded trial sales from our analysis because these were made in small quantities at prices that did not reflect normal pricing practices. We also excluded from our analysis certain sales of damaged merchandise because the sales subject to examination under the antidumping statute occurred outside the POI.

We calculated FMV based on delivered prices to related and unrelated customers in the United Kingdom. For the purposes of this preliminary determination, we included sales to related customers, pursuant to 19 CFR 353.45, since we preliminarily determine that the prices paid by those customers were comparable to the prices paid by unrelated customers.

We made adjustments for billing errors, where appropriate. We made deductions, where appropriate, for discounts, rebates, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.K. brokerage and handling, and U.K. inland freight charges. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses and after-sale storage expenses. We Metsä-Serla's imputed credit expenses incurred in both markets by adjusting gross unit price for billing errors and discounts, where appropriate. For U.S. sales through the Madden Corporation (Madden), we recalculated imputed credit expenses using Madden's short-term borrowing rate. For the preliminary determination, we also recalculated credit expenses in both markets for those sales which had been shipped prior to receipt of the deficiency response, but for which payment had not been received by Metsä-Serla. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales.

We made adjustments, where appropriate, for differences in commissions, in accordance with 19 CFR 353.56(a)(2), when we determined that such commissions were paid at arms-length prices. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57. In one instance, we determined that Metsä-Serla had not followed the Department's matching criteria listed in appendix V of the questionnaire in making its product comparisons. In this case, we rematched this U.S. product to its most similar third country comparison product. Because there was not sufficient information on the record to calculate the actual difference in merchandise adjustment for this comparison, we used the largest difference in merchandise adjustment on record for Metsä-Serla as BIA.

United/Repola

We calculated FMV based on delivered prices to related and unrelated customers in the home market. For the purposes of this preliminary determination, we included sales to related customers, pursuant to 19 CFR 353.45, since we preliminarily determine that the prices paid by those customers were comparable to the prices paid by unrelated customers.

We made adjustments for billing errors, where appropriate. We made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and after-sale storage expenses. We recalculated United/Repola's imputed credit expenses incurred on U.S. and home market sales by adjusting gross price for billing errors and discounts, where appropriate. For U.S. sales through Madden, we recalculated imputed credit expenses using Madden's short-term borrowing rate. For the preliminary determination, we also recalculated credit expenses in both markets for those sales which had been shipped prior to receipt of the deficiency response, but for which payment had not been received by United/Repola. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales. We also recalculated warranty expenses using United/Repola's revised information on the value of its sales during the POI.

We made adjustments, where appropriate, for differences in commissions, in accordance with 19 CFR 353.56(a)(2), when we determined that such commissions were paid at arms-length prices. We also made a circumstance of sale adjustment for differences in the amount of value-added taxes.

Finally, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with CFR 353.57.

Veitsiluoto

We excluded from our analysis certain sales of damaged merchandise because the sales subject to examination under the antidumping statute occurred outside the POI.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made adjustments for billing errors, where appropriate. We made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. For those sales where no packing costs were reported, we applied the same charge as reported for sales of identical merchandise.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses and after-sale storage expenses. We recalculated Veitsiluoto's imputed credit expenses incurred on U.S. and home market sales by adjusting gross price for billing errors and discounts, where appropriate. For U.S. sales through Madden , we recalculated imputed credit expenses using Madden's short-term borrowing rate. For the preliminary determination, we also recalculated credit expenses in both markets for those sales which had been shipped prior to receipt of the deficiency response, but for which payment had not been received by Veitsiluoto. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales. We also recalculated warranty expenses using Veitsiluoto's revised information on the value of its sales during the POI.

We made adjustments, where appropriate, for differences in commissions, in accordance with 19 CFR 353.56(a)(2), when we determined that such commissions were paid at arms-length prices. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

On May 28, 1991, the respondents requested that the Department adjust for temporary fluctuations in the U.S. dollar and the Finnish markka under 19 CFR 353.60(b). We were unable to consider the currency conversion issue in our preliminary determination due to the late date on which the claim was made. However, we will consider this claim for our final determination.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CGP from Finland, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Kymmene Corporation	27.92
Metsä-Serla Oy	25.92
United Paper Mills Ltd./Repola Oy	25.92
Veitsiluoto Oy	30.41
All Others	27.58

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determiantion. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all priviledge and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 26, 1991, and rebuttal briefs no later than July 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 6, 1991, at 2 p.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the Federal Register. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: June 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14111 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-803]

Preliminary Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From France

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that coated groundwood paper (CGP) from France is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of CGP from France, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 20, 1991.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Steve Alley or John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-8830 (202) 377-1766 or (202) 377-2778, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that CGP from France is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 25, 1991 (56 FR 2990), the following events have occurred. On

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February 21, 1991, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of CGP from France (56 FR 7059).

On February 22, 1991, the Department presented its questionnaire to Feldmuehle Beghin, S.A. (Feldmuehle), which accounted for more than 60 percent of exports by volume to the United States during the period of investigation (POI), in accordance with 19 CFR 353.42(b). On March 15, 1991, we received the response to section A of the questionnaire. On April 10, 1991, we received responses to sections B and C of the questionnaire. We issued a deficiency letter to Feldmuehle on April 29, 1991, and received responses to it on May 13 and 14, 1991.

On May 28, 1991, petitioner alleged that critical circumstances exist with respect to imports of CGP from France. Since we determine that petitioner's allegation is sufficient, we are requesting shipment data from Feldmuehle, and will preliminarily determine whether critical circumstances exist by June 27, 1991.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of 1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); 2) GE brightness; or 3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The POI is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of CGP from France to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of CGP to sales of identical CGP in France.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, because all U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price methodology is not appropriate since the subject merchandise was not introduced into the inventory of Feldmuehle's related U.S. selling agent, Feldmuehle's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer, and this was the customary commercial channel for sales of this merchandise between the parties involved.

We disregarded trial and sample sales made during the POI because these accounted for a very small percentage of U.S. sales by volume. We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for loading, foreign inland freight, freight forwarding, movement insurance, ocean freight, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the French value-added and parafiscal sales taxes that would have been collected had the French government taxed the exports.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. Feldmuehle had a viable home market with respect to sales of CGP during the POI.

We calculated FMV based on f.o.b. factory and delivered prices to unrelated customers in the home market. We disregarded sales made through a related party in the home market because these accounted for a very small percentage by volume of home market sales. We made deductions, where appropriate, for loading, foreign inland freight, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing, third party payments, and warranty expenses. We recalculated Feldmuehle's imputed credit expenses incurred on home market sales by deducting VAT and discounts from the gross unit price. We recalculated Feldmuehle's imputed credit expenses incurred on U.S. sales by using the home market interest rate to calculate these expenses. We also made circumstance of sale adjustments, where appropriate, for differences in the amounts of value-added and sales taxes.

We made adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with 19 CFR 353.56(a)(2). Where commissons were paid in one market and not the other, we allowed an adjustment for indirect selling expenses in the second market to offset commissions paid in the first market, in accordandce with 19 CFR 353.56(b), We did not make an adjustment for commissions paid to related parties in the home market because Feldmuehle did not claim that these were at arm's length.

We recalculated Feldmuehle's inventory carrying costs incurred on its home market sales by backing out all charges and adjustments from gross unit price.

Currency Conversion

We made currency conversions bases on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

On May 13, 1991, Feldmuehle requested that the Department adjust for fluctuations in the exchange rate between the U.S. dollar and the French franc under 19 CFR 353.60(b). We were unable to consider Feldmuehle's request in our preliminary determination due to the late date on which the claim was made. However, we will verify information submitted by Feldmuehhle in support of this claim and consider it for our final determination.

Verification

As provided in section 776(b) of the Act, we will verify the information that we use in making our final determination.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CGP from France, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin Percentage
Feldmuehle Beghin, S.A.	31.49
All Others	31.49

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 26, 1991, and rebuttal briefs no later than July 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in a case or rebuttal briefs. Tentatively, the hearing will be held on August 2, 1991, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the Federal Register. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: June 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14172 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-809]

Preliminary Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Germany

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that coated groundwood paper (CGP) from Germany is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. customs Service to suspend liquidation of all entries of CGP from Germany, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 20, 1991.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Steve Alley or John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3630, (202) 377-1766 or (202) 377-2778, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that CGP from Germany is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 25, 1991 (56 FR 2998), the following events have occurred. On February 21, 1991, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of CGP from Germany (56 FR 7059).

On February 22, 1991, the Department presented its questionnaire to Haindl Papier GmbH (Haindl) and MD Papier GmbH (MD) which together accounted for more than 60 percent of exports by volume to the United States during the period of investigation (POI), in accordance with 19 CFR 353.42(b). On March 15, 1991, we received responses to section A of the questionnaire. On April 10, 1991, we received responses to sections B and C of the questionnaire. We issued deficiency letters to Haindl and MD on April 29, 1991, and received responses to them on May 13 and May 14, 1991. On May 28 and May 30, 1991, we received revised section B responses from Haindl and MD. Due to the late date on which these responses were received, however, we did not rely on them in making our preliminary determination.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of (1) basis weight (*e.g.*, pounds per ream or grams per one square meter sheet); (2) GE brightness; or (3) the form in which it is sold (*e.g.*, reels sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated

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groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The POI is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of CGP from Germany to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of CGP to sales of identical and similar CGP sold in Germany.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, because all U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price methodology is not appropriate because the subject merchandise was not introduced into the inventories of related U.S. selling agents, these selling agents acted only as processors of sales-related documentation and communication links with the unrelated U.S. customers, and these were the customary commercial channels for sales of this merchandise between the parties involved.

Haindl Papier GmbH

We calculated purchase price based on packed, delivered prices. We excluded trial sales from our analysis because these sales were made in very small quantities. We made deductions, where appropriate, for loading charges, foreign inland freight, freight forwarding, ocean freight, marine insurance, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the German value-added tax that would have been collected had the German government taxed the exports.

MD Papier GmbH

We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for containerization expenses, handling charges, foreign inland freight, ocean freight, transportation insurance, U.S. duty, U.S. brokerage, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the German value-added tax that would have been collected had the German government taxed the exports.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. Both Haindl and MD had viable home markets with respect to sales of CGP during the POI.

Haindl Papier GmbH

We calculated FMV based on f.o.b. factory and delivered prices to unrelated customers in the home market. We excluded all home market sales to related parties in our analysis because they constituted a very small percentage by volume of home market sales made during the POI. We made deductions, where appropriate, for loading charges, foreign inland freight, freight forwarding, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act. We recalculated packing costs for both U.S. and home market sales because we did not consider machinery costs to be part of packing costs.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and technical service expenses. We recalculated Haindl's imputed credit expenses incurred on home market sales by deducting both discounts and rebates from the gross unit price used in the calculation of imputed credit expenses to be consistent with Haindl's narrative response. We allowed imputed credit expenses incurred on U.S. sales to be calculated using a home market interest rate.

We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes in the two markets.

We allowed an adjustment for home market indirect selling expenses to offset commissions paid to unrelated parties in the U.S. market, in accordance with 19 CFR 353.56(b). We did not consider related party commissions paid on U.S. sales to be commissions because Haindl claimed that these were intracompany transfers of funds. We recalculated Haindl's inventory carrying costs incurred in the home market by backing out all charges and adjustments from the gross unit price used in the calculation of these expenses. In addition, we reclassified credit insurance, reported as a direct selling expense by Haindl, as an indirect selling expense used as part of the offset to commissions paid in the U.S. market.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

MD Papier GmbH

We calculated FMV based on f.o.b. factory and delivered prices to related and unrelated customers in the home market. For purposes of this preliminary determination, we included sales to a related customer, pursuant to 19 CFR 353.22(b), since we preliminarily determine that the prices paid by this customer were at arm's length. We excluded from FMV sales made in U.S. dollars because they were made in very small quantities. We made deductions, where appropriate, for foreign inland freight, transportation insurance, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit, factoring fees and expenses, and warranty expenses. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

We recalculated MD's imputed credit expenses incurred on home market sales by deducting discounts from the gross unit price used in the calculation of these expenses. For purposes of the preliminary determination, we recalculated credit expenses for those sales which had been shipped prior to the date of the deficiency response, but for which payment had not yet been received by MD. For these sales, we used the date of receipt of the deficiency response as the date of payment since this was the last known date for which credit was outstanding. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales. We also recalculated MD's home market warranty expenses based on actual 1990 warranty expenses.

We also allowed an adjustment for home market indirect selling expenses to offset commissions paid in the U.S. market, in accordance with 19 CFR 353.56(b). We recalculated MD's inventory carrying costs incurred in the home market by backing out all charges and adjustments from the gross unit price used in the calculation of these expenses. In addition, we reclassified credit insurance, reported by MD as direct selling expenses, as indirect selling expenses used as part of the offset to commissions paid in the U.S. market.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

On May 29, 1991, and on June 4, 1991, Haindl and MD respectively requested that the Department adjust for temporary fluctuations in the exchange rate between the U.S. dollar and the German mark under 19 CFR 353.60(b). We were unable to consider the currency conversion issued in our preliminary determination due to the late date on which the claims were made. However, we will consider these claims for our final determination.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CGP from Germany, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin Percentage
Haindl Papier GmbH	31.13
MD Papier GmbH	32.12
All Others	31.74

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 26, 1991, and rebuttal briefs no later than July 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 2, 1991, at 2 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Intrested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: June 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14113 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-807]

Preliminary Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From the United Kingdom

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that coated groundwood paper (CGP) from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of CGP from the United Kingdom, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 20, 1991.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Bill Crow, or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1776 (202) 377-0116, or (202) 377-8830, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department preliminarily determines that CGP from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 25, 1991 (56 FR 2900), the following events have occurred. On February 21, 1991, the ITC preliminarily

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determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of CGP from the United Kingdom (56 FR 7059).

On February 22, 1991, the Department presented its questionnaire to Caledonian Paper plc (Caledonian), which accounted for more than 60 percent of exports by volume to the United States during the period of investigation, in accordance with 19 CFR 353.42(b). On March 11, 1991, we received the response to Section A of the questionnaire. On April 10, 1991, we received the response to sections B and C of the questionnaire. We issued a deficiency letter to Caledonian on April 29, 1991, and received a response to it on May 13, 1991.

Scope of Investigation

The product covered by this investigation is coated groundwood paper. For purposes of this investigation, coated groundwood paper is paper coated on both sides with kaolin (China clay) or other inorganic substances (*e.g.*, calcium carbonate), of which more than ten percent by weight of the total fiber content consists of fibers obtained by mechanical processes, regardless of: (1) basic weight (*e.g.*, pounds per ream or grams per one square meter sheet); (2) GE brightness; or (3) the form in which it is sold (*e.g.*, reels, sheets, or other forms). "Paperboard" is specifically excluded from the scope of this investigation. For purposes of this investigation, paperboard is defined to be coated groundwood paper 12 points (0.012 inch) or more in thickness.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4810.21.00.00, 4810.29.00.00, and 4823.59.40.40. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1990, through December 31, 1990.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of CGP from the United Kingdom to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of CGP to sales of identical or similar CGP in the United Kingdom.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Act, where U.S. sales were made to an unrelated party prior to importation into the United States. Exporter's sales price (ESP) methodology is not appropriate because the subject merchandise was not introduced into the inventory of Caledonian's related U.S. selling agent, Caledonian's related U.S. selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customer, and this was the customary commercial channel for sales of this merchandise between the parties involved. Where sales to the first unrelated purchaser took place after importation into the United States, we based United States price on ESP, in accordance with section 773(c) of the Act. We excluded from our analysis a resale of merchandise imported prior to the POI and rejected by the original purchaser because the sale subject to examination under the antidumping statute occurred outside the POI.

We calculated purchase price based on packed, delivered prices. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. port charges, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the United Kingdom value-added tax that would have been collected if the merchandise had not been exported.

We calculated ESP based on packed, delivered prices. We made deductions, where appropriate, for foreign brokerage, foreign port charges, ocean freight, marine insurance, U.S. duty, U.S. customs fees, U.S. port charges, U.S. brokerage and handling, and U.S. inland freight charges, in accordance with section 772(d)(2) of the Act. In accordance with section 772(e)(2) of the Act, we made additional deductions for discounts, credit expenses, warranty expenses, post-sale warehousing expenses, indirect selling expenses, and inventory carrying costs. We recalculated credit expenses for shipments to a bankrupt customer, based on the average payment period for all other ESP sales. We recalculated U.S. indirect selling expenses reported as per ton amounts to reflect a percentage of sales value. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the United Kingdom value-added tax that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of CGP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of CGP to the volume of third country sales of CGP, in accordance with section 773(a)(1) of the Act. Caledonian had a viable home market with respect to sales of CGP during the POI, and thus we calculated FMV based on delivered prices to unrelated customers in the home market, in accordance with section 773(a)(1)(A) of the Act.

For comparison to purchase price sales, we made deductions, where appropriate, for billing errors. We also made deductions, where appropriate, for foreign inland freight, foreign loading charges, discounts, and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act. Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing, and warranty expenses. For purposes of the preliminary determination, we recalculated credit expenses for those sales which had been shipped prior to receipt of the deficiency response, but for which payment had not yet been received by Caledonian. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the receipt of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. In addition, we recalculated credit expenses for those sales which had not been shipped prior to receipt of the deficiency response, using the average credit period reported for all sales for which payment had been received. For purposes of the final determination, we anticipate that we will have actual dates of shipment and payment for all sales. We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

For comparison to ESP sales, we made deductions, where appropriate, for billing errors. We also made deductions, where appropriate, for foreign inland freight, foreign loading charges, credit expenses, warranty expenses, discounts, and rebates. For purposes of the preliminary determination, we recalculated credit expenses for those sales which had been shipped prior to receipt of the deficiency response, but for which payment had not yet been received by Caledonian. For those sales, we used the number of days between shipment of the merchandise from the mill and the date of the receipt of the deficiency response as date of payment, since this was the last date known for which credit was outstanding. In addition, we recalculated credit expenses for those sales which had not been shipped prior to receipt of the deficiency response, using the average credit period reported for all sales for which payment had been received. For purposes of the final determination, we anticipate that we will have actual dates for shipment and payment for all sales.

We also deducted home market indirect selling expenses, which included inventory carrying expenses and other indirect selling expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with 19 CFR 353.56(b). We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

Where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

On May 29, 1991, respondent requested that the Department apply the provisions of 19 CFR 353.60(b) to account for the effect of temporary fluctuations in the exchange rate between the British pound and the U.S. dollar during the POI. This request was not submitted in time to be considered for purposes of this preliminary determination. The Department, will, however, consider respondent's request for purposes of the final determination.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CGP from the United Kingdom, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until futher notice. The weighted-average dumping margins are as follows:

	Margin percentage
Manufacturer/producer/exporter	
Caledonian Paper plc	33.90
All Others	33.90

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 26, 1991, and rebuttal briefs no later than July 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 5, 1991, at 2 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: June 6, 1991.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14114 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-503]

Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on lamb meat from New Zeland for the period April 1, 1989 through March 31, 1990. We preliminarily determine the total bounty or grant to be 10.17 percent *ad valorem* for Melville Developments Ltd. (Lamb Gourmet), 0.41 percent *ad valorem* for Fortex, 0.30 percent *ad valorem* for Weddel New Zealand, 0.26 percent *ad valorem* for Alive Exports, 0.26 percent *ad valorem* for Lowe Walker, and 1.48 percent *ad valorem* for all other firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

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SUPPLEMENTARY INFORMATION:

Background

On September 5, 1990, the Department of Commerce (the Department) published in the Federal Register a notice of "Opportunity to Request Administrative Review" (55 FR 36300) of the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). On September 6, 1990, the New Zealand Meat Producers Board requested an administrative review of the order. We initiated the review, covering the period April 1, 1989 through March 31, 1990, on October 26, 1990 (55 FR 43153). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The Department published the final results of its last administrative review on October 23, 1990 (55 FR 42750).

Scope of Review

Imports covered by this review are shipments of lamb meat, other than prepared, preserved or processed, from New Zealand. This merchandise is currently classifiable under item numbers 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000 and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1989 through March 31, 1990, and two programs.

Analysis of Programs

(1) *Export Market Development Taxation Incentive (EMDTI)*

Under the EMDTI, established in the 1979 Amendment to the Income Tax Act of 1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets and obtaining market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. The tax credit for tax returns filed during the review period was 40 percent of the total qualifying expenditures, and the normal corporate tax rate in New Zealand was 33 percent. Because the program is limited to exporters, we preliminarily determine that it confers an export bounty or grant. Five exporters claimed EMDTI tax credits for lamb meat exports to the United States on their tax returns filed during the review period.

Since exporters may claim a tax credit equal to 40 percent of the qualifying expenditures but may not deduct these expenditures from income, which is taxable at 33 percent, the net benefit to the exporters is 7 percent of the qualifying expenditures. To calculate the benefit, we took 7 percent of each exporter's qualifying expenditures relating to lamb meat exports to the United States and divided that amount by its total sales of lamb meat exports to the United States during the review period. We then weight-averaged the resulting benefits by each company's proportion of total lamb meat exports to the United States during the review period, excluding those companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program during the review period to be 9.91 percent *ad valorem* for Melville, 0.15 percent *ad valorem* for Fortex, 0.04 percent *ad valorem* for Weddel New Zealand, zero for Alive Exports, zero for Lowe Walker, and 1.22 percent *ad valorem* for all other firms.

Effective with the government fiscal year beginning April 1, 1990, the Government of New Zealand eliminated the EMDTI tax credit, and all formerly eligible expenditures are subject to the rules for ordinary business expenses in calculating taxable income. Therefore, for purposes of cash deposits of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero for all firms.

(2) *Livestock Incentive Scheme*

The Livestock Incentive Scheme (LIS) was introduced in 1976 in order to encourage farmers to increase permanently their number of livestock. Under the scheme, a farmer engaged in a stock increase program, for a minimum of one and a maximum of three years, could opt for one of two incentives: (1) An interest-free suspensory loan of NZ$12 for each additional stock unit carried; or (2) a deduction of NZ$24 from taxable income for each additional stock unit carried. If the livestock increase was met, farmers who elected to take out loans wrote the loans off as tax-free grants. For farmers electing the tax option, the provisional tax deduction could be applied toward tax liability in any of the three years after completion of the development program. Applications to participate in the LIS program was accepted until March 31, 1982. No new loans have been given under this program since 1983, and no tax credits have been authorized since the 1983/84 government fiscal year. During the 1989/90 government fiscal year (the review period), there were no outstanding loans that had not been converted to grants and no tax credits remaining to be claimed by lamb producers.

Because benefits under this program are available only to farmers with livestock herds, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and therefore confers a bounty or grant.

To calculate the benefit, we treated the loan amounts forgiven in prior years as grants and allocated those benefits over five years, the average useful life of breeding stock. The discount rate chosen was the average interest rate on overdrafts during the year in which the loans were forgiven. We added the value of the benefits from the grants and multiplied the result by a factor determined to represent the value of lamb as a percentage of total livestock production. We then divided that result by the total value of lamb products sold during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.26 percent *ad valorem* for all firms.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period April 1, 1989 through March 31, 1990 to be 10.17 percent *ad valorem* for Melville, 0.41 percent *ad valorem* for Fortex, 0.30 percent *ad valorem* for Weddel New Zealand, 0.26 percent *ad valorem* for Alive Exports, 0.26 percent *ad valorem* for Lowe Walker, and 1.48 percent *ad valorem* for all other firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent is *de minimis*.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported by Alive Exports, Fortex, Lowe Walker, and Weddel New Zealand, and to assess countervailing duties of 10.17 percent of the f.o.b. invoice price for Melville and 1.48 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms exported on or after April 1, 1989 and on or before March 31, 1990.

The termination of the EMDTI program reduces the total estimated bounty or grant to 0.26 percent *ad valorem*, a rate which is *de minimis*. Therefore, the Department intends to instruct the Customs Service not to collect cash deposits of estimated countervailing duties on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 5, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14116 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Little Rock, AR

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 U.S.C. 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period of October 1, 1991 to September 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contribution, or combinations thereof. The MBDC will operate in the Little Rock Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operations of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two (2) additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is July 15, 1991. Applicants should mail the completed application to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before July 15, 1991. Anticipated processing time of this award is 120 days.

Note: Please mail completed application to the following address: San Francisco Regional Office, 221 Main Street, room 1280, San Francisco, California 94105.

FOR APPLICATION KIT OR OTHER INFORMATION CONTACT: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara.

SUPPLEMENTARY INFORMATION:

Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained through the Dallas Regional Office. A pre-bid conference will be held on June 21, 1991, in the Federal Building, 700 West Capitol Avenue, room 2503, Little Rock, Arkansas 72201 at 1 p.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Notice: Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Notice: Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant

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or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Notice: Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Notice: Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination for funds and grounds for possible punishment by a fine or imprisonment.

Dated: June 7, 1991.

Melda Cabrera,

Regional Director.

[FR Doc. 91-14051 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Finding on a Petition To List all Species of Seahorses

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of finding on petition.

SUMMARY: NMFS announces a 90-day petition finding on a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioner did not present substantial information that listing of any of the species in the genus *Hippocampus* may be warranted.

DATES: Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be sent to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Office of Protected Resources, NMFS, (301) 427-2322.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) requires that NMFS make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the finding is positive, NMFS is required to commence promptly a review of the status of the involved species.

NMFS has received and made a finding on a petition by Marie C. Peronne to list all species of seahorses, Genus *Hippocampus*, on the list of endangered and threatened wildlife and plants. The petition contained no supporting documentation. NMFS wrote to the petitioner and asked whether she had additional information. Having received no response, NMFS has determined that the petition did not contain substantial information indicating that the action requested may be warranted.

Dated: June 3, 1991.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 91-14034 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on Amendment 4 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries.

DATES: Written comments will be accepted until July 15, 1991. The hearings are scheduled as follows: 1. June 19, 1991, 7 p.m., Cape May, New Jersey. 2. June 24, 1991, 7 p.m., Galilee, Rhode Island.

ADDRESSES: Comments should be addressed to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 South New Street, Dover, Delaware 19901.

The hearings will be held at the following locations: 1. Cape May—Cape May Extension Office, Dennisville Road, Cape May Court House, Cape May, New Jersey. 2. Galilee—Dutch Inn, Great Island Road, Galilee, Rhode Island.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council (302) 674-2331.

SUPPLEMENTARY INFORMATION: The amendment to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) is intended to revise the specification setting process for Atlantic mackerel, the time and area restrictions of foreign fishing, and the procedures for recommending conditions applicable to joint ventures and directed foreign fishing.

The management unit is all Atlantic mackerel, *Loligo pealei, Illex illecebrosus,* and butterfish under U.S. jurisdiction, excluding the Gulf of Mexico and the Caribbean Sea.

The objectives of the FMP are:

1. Enhance the probability of successful (i.e., the historical average) recruitment to the fisheries.

2. Promote the growth of the U.S commerical fishery, including the fishery for export.

3. Provide the greatest degree of freedom and flexibility to all harvesters of these resources consistent with the attainment of the other objectives of this FMP.

4. Provide marine recreational fishing opportunities, recognizing the contribution of recreational fishing to the national economy.

5. Increase understanding of the conditions of the stocks and fisheries.

6. Minimize harvesting conflicts among U.S. commercial, U.S. recreational, and foreign fishermen.

Alternative considered but not Adopted

The council considered taking no action at this time, which would mean that the FMP would continue in effect unchanged. Adoption of this alternative would mean that the improvements to the process of Americanization of the fishery incorporated in the amendment would not be implemented.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-14097 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; NMFS, Southwest Fisheries Science Center, (P77#50)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217-222).

1. Applicant

Dr. Izadore Barrett, Director, Science and Research Director, Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038.

2. Type of Permit

Scientific research under MMPA and scientific purposes under ESA.

3. Name and Number of Marine Mammals

1500 Bottlenose dolphin (*Tursiops truncatus*),
1500 Risso's dolphin (*grampus griseus*),
100 Short-finned pilot whales, (*Globicephala macrorhynchus*),
5000 Common dolphin (*Delphinus delphis*),
5000 Pacific white-sided dolphin (*Lagenorhynchus obliquidens*),
5000 Northern right-whale dolphin (*Lissodelphis borealis*),
100 Harbor porpoise (*Phocoena phocoena*),
100 Dall's porpoise (*Phocoenoides dalli*),
100 Killer whales (*Orcinus orca*),
100 Baird's beaked whales (*Berardius bairdii*),
100 Sperm whales (*Physeter macrocephalus*),
300 Humpback whales (*Megaptera novoeangliae*),
300 Blue whales (*Balaenoptera usculus*),
100 Fin whales (*B. physalus*),
100 Minke whales (*B. acutorostrata*),
1000 Gray whales (*Eschrichtius robustus*),
6 North Pacific right whales (*Eubalaena glacialis*).

4. Type of Take

The species listed above will be taken by harassment during the course of vessel-based photographic identification studies. Data collected by researchers will enhance existing research programs as well as provide detailed, supportive information for scheduled aerial surveys. Photographs will be added to various catalogues maintained by the researchers and other principal investigators. Additionally, information gained will be used to identify animals to determine patterns of movement and association among individuals. This will be used to define and verify stock structure of various cetacean species off California.

5. Location of Activity

Field work is planned to begin spring, 1991. Permit coverage is for coastal California for a 3-year period.

Concurrent with the publication of this notice in the **Federal Register,** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213/514-6196); and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115 (206/516-4020).

Dated: June 6, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-14025 Filed 6-12-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Charges for Certain Textile Products Produced or Manufactured in Korea

June 7, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting charges for certain textile products exported in 1990.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In accordance with a Memorandum of Understanding dated June 4, 1991 between the Governments of the United States and the Republic of Korea, the Chairman for the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct, for goods exported in 1990, charges made to the 1991 limit for Category 604, charging this same amount to the 1990 limit for Category 604. These charges shall remain charged to the 1991 Group I limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 1706, published on January 18, 1990; and 55 FR 51754, published on December 17, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 7, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: To facilitate implementation of the Memorandum of Understanding dated June 4, 1991 between the Governments of the United States and the Republic of Korea, I request that, effective on June 10, 1991, for goods exported in 1990, you deduct 1,344,524 square meters equivalent from the charges made to the 1990 Group I limit and charge 176,911 kilograms to the 1990 limit for Category 604 (see directive dated January 11, 1990). Also for goods exported in 1990, you are directed to deduct 176,911 kilograms from the charges made to the 1991 limit for Category 604 and charge 1,344,524 square meters equivalent to the 1991 Group I limit (see directive dated December 5, 1990).

This letter will be published in the **Federal Register.**

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Sincerely,
Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 91-14042 Filed 6-12-91; 8:45 am]
BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force Academy Request for Secondary School Transcript; USAFA Form 148; OMB No. 0701-0066.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 13.5 minutes.

Responses per Respondent: 1.

Number of Respondents: 22,900.

Annual Burden Hours: 5,152.5.

Annual Responses: 22,900.

Needs and Uses: This form is used to collect data on U.S. Air Force Academy candidate's high school academic performance for use in determining eligibility. Information is used to select appointees to the Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: June 7, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-14023 Filed 6-12-91; 8:45am]
BILLING CODE 3810-01-M

Office of the Secretary

Defense Base Closure and Realignment Commission; Meeting

ACTION: Announcement of public deliberation meetings of the Defense Base Closure and Realignment Commission.

SUMMARY: Open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC, in accordance with the following dates and times, with specific meeting locations as shown, or to be determined and published subsequently in the **Federal Register:** Thursday/Friday, June 13-14, 9:30 a.m. General Services Adminnistration Auditorium, 18th & L Streets, NW.; Saturday, June 15, 9:30 a.m. location to be determined: Monday/Tuesday, June 17-18, 9:30 a.m., location to be determined; Saturday and Sunday, 9:30 a.m. location to be determined. At these meetings, the Commission will conduct deliberation hearings on closure/realignment candidates.

In certain instances, less than 15 days notice is being given due to the nature of the deliberative process, which is proceeding more slowly than anticipated. The necessity to make informed decisions dictates the requirement for additional hearing dates.

FOR FUTHER INFORMATION: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: June 7, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liasion Officer, Department of Defense.
[FR Doc. 91-14021 Filed 6-12-91; 8:45am]
BILLING CODE 3810-01-M

Defense Base Closure and Realignment Commission; Meeting

ACTION: Announcement of public deliberation meetings of the Defense Base Closure and Realignment Commission.

SUMMARY: Additional open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC and other locations in accordance with the following dates and times, and at specific meeting locations as shown, or to be determined and published subsequently in the **Federal Register:** Washington, DC: Monday, June 17, 9:30 a.m., specific location to be determined, to receive congressional testimony and have public hearings on bases/installations newly added to the base closure and realignment list as follows: Staten Island Naval Station, Corps of Engineers, Fort Totten, Fort Hamilton, Fort Pickett, Fort A.P. Hill, Fort Buchanan, Indiantown Gap, Fort McCov and MacDill Air Force Base; Monday, June 17, 1:30 p.m., Marines Recruit Training Depot, San Diego, CA, to receive testimony on the proposed realignment or closure of the Naval Training Center, San Diego, Marine Training Depot, San Diego, Long Beach Naval Shipyard, and Naval Station Treasure Island; Tuesday, June 18, 3:30 p.m., Chamber of Commerce, San Angelo, Texas, to receive testimony on the proposed closure or realignment of Goodfellow Air Force Base; Thursday, June 20, 1 p.m., Plattsburgh Air Force Base, NY, to receive testimony on the proposed closure or realignment of Plattsburgh Air Force Base; Friday, June 21, 3 p.m., Naval Air Station, Meridian, to receive testimony on the proposed closure or realignment of Naval Air Station, Meridian; Friday, June 21, 9 a.m., Naval Air Station, Kingsville, to receive testimony on the proposed closure or realignment of Naval Air Station, Kingsville; Friday, Saturday and Sunday, June 28, 29 and 30, times to be determined, Washington, DC, specific location to be determined, to conduct deliberations on base closures and realignments.

Less than 15 days notice is being given in some instances due to the inclusion on June 7 of additional installations and/or organizations for possible closure and realignment and the decision to hold public hearings on these additions prior to the statutorily mandated deadline.

FOR FURTHER INFORMATION: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: June 11, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-14249 Filed 6-12-91; 8:45 am]
BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that closed meetings of a panel of the DIA Advisory Board have been scheduled as follows:

DATES: Thursday, July 18, 1991 (9 a.m. to 5 p.m.). Thursday, August 29, 1991 (9 a.m. to 5 p.m.).

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC. 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Dated: June 7, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-14022 Filed 6-12-91; 8:45 am]
BILLING CODE 3810-01-M

Department of the Army

Environmental Statement, Availability; Cameron Station VA

AGENCY: U.S. Army, Department of Defense.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for the Comprehensive Base Realignment/Closure and Fort Belvoir Development.

SUMMARY: On December 29, 1988, the Defense Secretary's Commission on Base Realignment and Closure recommended that Cameron Station be closed and the major activities relocated to Fort Belvoir, Virginia; elements of the Criminal Investigation Command at Fort Holabird and Fort Meade, Maryland, be consolidated at Fort Belvoir; the corrosion prevention and control related research at the Army Materials Technology Laboratory (AMTL), Massachusetts, be relocated to Fort Belvoir; and the Information Systems Command activity at Fort Belvoir be realigned to Fort Devens, Massachusetts.

This Draft Environmental Impact Statement (EIS) considers the impact of the commission's recommendations on Cameron Station and Fort Belvoir and the associated impacts of minor relocations to Fort Myer and Fort McNair. The impact of the Fort Belvoir Engineer Proving Grounds public/private development is also mentioned in this Draft EIS; however, separate National Environmental Policy Act (NEPA) analysis is being developed for that action. Actions proposed in the initial announcement of this EIS which are no longer under consideration include new construction for Headquarters, U.S. Army Materiel Command and Headquarters, U.S. Army Corps of Engineers at Fort Belvoir, and redevelopment by General Services Administration of a 70-acre parcel of land in Franconia near Springfield, Virginia. The impacts of the Commission's recommendation at Fort Holabird, Fort Meade, AMTL, and Fort Devens are being addressed in other NEPA analysis.

No significant environmental or human health effects are expected from actions at Cameron Station, Fort Myer and Fort McNair. Socioeconomic effects are minimal because the majority of the realigned personnel are neither entering nor leaving the study region.

The most significant effects on Fort Belvoir are an increase in traffic volumes and potential changes in commuter patterns. The Department of the Army is working with the local community to develop a plan to lessen these impacts.

The public is encouraged to comment on the Draft EIS. Public notices requesting input will be issued. A copy of the Draft EIS may be obtained by contacting Mr. Keith Harris (301) 962-4999, or writing to Commander, U.S. Army Corps of Engineers, Baltimore District, P.O. Box 1715, Baltimore, Maryland 21203.

Lewis D. Walker,
Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).
[FR Doc. 91-13997 Filed 6-12-91; 8:45 am]
BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 28 June 1991.

Time: 1030-1530 hours.

Place: Fort Monmouth, New Jersey.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet the PEO and CECOM RD&E Center representatives to discuss their views relative to the impact of establishing an Army Acquisition Corps on the recruitment, development and retention of professional engineering and scientific personnel. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 91-14078 Filed 6-12-91; 8:45 am]
BILLING CODE 3710-8-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 9 July 1991.

Time: 0830-1600 hours.

Place: U.S. Army Tank-Automotive Command RD&E Center, Warren, MI.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet with TACOM RD&E Center managers to discuss their efforts to capture indicators of quality of R&D work and personnel. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 91-14082 Filed 6-12-91; 8:45 am]
BILLING CODE 3710-8-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 8 July 1991.

Time: 1130-1600 hours.

Place: General Motors, Warren, MI.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet with GM representatives to discuss their initiatives for measuring and furthering the vitality of their professional R&D workforce. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be

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contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-14063 Filed 6-12-91; 8:45 am]

BILLING CODE 3710-8-M

Corps of Engineers, Department of the Army

Lake Greeson, Lake Ouchita, and DeGray Lake, AR; Intent To Prepare a Draft Supplemental Impact Statement

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DOD.

ACTION: Notice of intent to prepare a draft supplemental impact statement (DEIS) to the final EIS, operation and maintenance, Lake Greeson, Lake Ouchita, and DeGray Lake, Arkansas.

SUMMARY: The proposed action is to improve water quality and enhance the fishery in Lake Greeson, Arkansas, in addition to improving water quality and enhancing the fisheries on the little Missouri River below Narrows Dam.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Marcy, telephone (601) 631-5302. CELMK-OD-M, Post Office Box 60, Vicksburg, Mississippi 39181-0060.

SUPPLEMENTARY INFORMATION: 1. The proposed Lake Greeson/Little Missouri River Environmental Enhancement Project is part of the Narrows Dam/Lake Greeson project authorized by the Flood Control Act Law No. 228, approved 18 August 1941, as amended by the Flood Control Act of 22 December 1944. The final EIS for the Operation and Maintenance of Lake Greeson, Lake Ouachita, and DeGray Lake Arkansas was filed with the Council on Environmental Quality on 27 January 1978. The proposed Lake Greeson/Little Missouri River Environmental Enhancement Project was authorized by the Water Resources Development Act of 1990, section 1135(b), Public Law 99-662, approved 28 November 1990.

2. The proposed Lake Greeson/Little Missouri River Environmental Enhancement Project provides for improved water quality and enhanced fisheries in Lake Greeson, and the Little Missouri River below Lake Greeson. This will be accomplished placing solid steel plates on the trash racks to elevation 519 feet in front of two of the hydroelectric turbines in Narrows Dam. In addition, three lowhead weirs will be constructed, and random boulders will be placed in the Little Missouri River below Narrows Dam. The project would be cost-related with 75% of the costs incurred by the Corps of Engineers, and 25% by the Arkansas Game and Fish Commission.

3. Alternatives to be evaluated include the proposed project, no action, alternate trash rack platings, and construction of downstream features only. Environmental design will be incorporated into each of the structural alternatives.

4. a. Various scoping meetings and activities have been conducted to date. Additional meetings will be held throughout the evaluation process. All affected Federal, state, and local agencies and other parties are invited to participate in various scoping activities.

b. Significant issues tentatively identified include water quality, coldwater, warmwater and lake fisheries, cultural resources, and socioeconomic conditions. Additional environmental review and consultation requirements could be identified during the scoping process.

c. The following will be invited to participate as cooperating agencies: Environmental Protection Agency, U.S. Fish and Wildlife Service, Arkansas Game and Fish Commission.

5. A DEIS will be available for review by the public during Fiscal Year 1991.

John Roach,

Department of the Army Liaison with the Federal Register

[FR Doc. 91-14010 Filed 6-12-91; 8:45 am]

BILLING CODE 3710-GX-M

Federal Facilities at Sault Ste. Marie, MI; Intent to Prepare a Draft Environmental Impact Statement

AGENCY: U.S. Army, Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: This is a notice of intent to prepare a Draft Environmental Impact Statement Supplement III to the Final Environmental Impact Statement, Operation Maintenance, and Minor Improvements of the Federal Facilities at Sault Ste. Marie, Michigan; Operation of the Lock Facilities Prior to 1 April.

By regulation, at least one lock at Sault Ste. Marie, Michigan, must be in operation by 1 April of each year to accommodate commercial vessel traffic transuding the St. Marys River between Lakes Huron and Superior. Historically the locks have been opened as early as 15 March of each year given the reasonable demands of commerce. A proposal is being reviewed to fix the opening date between 15 March and 1 April of each year to make the shipping season predictable. An EIS supplement will be prepared to address this proposal.

FOR FURTHER INFORMATION CONTACT: Mr. Donald C. Williams, U.S. Army Engineer District, Detroit Environmental Analysis Branch, P.O. Box 1027, Detroit, Michigan 48231-1027, Telephone: Commercial: 313-226-6753, FTS: 226-6753.

SUPPLEMENTARY INFORMATION:

Previous Documents

The FEIS for Operations, Maintenance, and Minor Improvements of the Federal Facilities at Sault Ste. Marie, Michigan, was filed with CEQ in November 1977. Supplement I to this EIS, addressing Operation of the Locks to 8 January ± 1 week, was filed with the EPA in October 1979. Supplement II, addressing operation of the Locks to 31 January ± 2 weeks, was filed with the EPA in November 1989.

Alternatives

The alternatives to be considered are:

a. Fixing the opening date at 1 April of each year.

b. Basing an opening date between 15 March and 1 April on ice and weather criteria;

c. Fixing the opening date between 15 March and 1 April based on the findings of the economic and environmental studies.

Scoping Process

a. *Public involvement.* The Council on Environmental Quality Regulations for Implementing in Procedural Provisions of National Environmental Policy Act do not require scoping for supplemental EISes. No formal scoping meeting will be held. During and since the first and second Supplements (1979 and 1989) were issued, the Corps of Engineers has maintained coordination with various State and Federal Agencies and environmental groups including:

U.S. Department of Interior, Fish and Wildlife Service
U.S. Coast Guard
U.S. Department of Commerce, National Oceanic and Atmospheric Administration
Michigan Department of Natural Resources
Michigan Department of Transportation
Great Lakes Commission
Michigan United Conservation Clubs
Great Lakes United

Affected Federal, State and local agencies, affected Indian tribes, and other interested private organizations and parties are invited to participate.

b. *Significant issues.* Operation of the Locks prior to 1 April benefits industry and commercial navigation by allowing for reduced transportation rates and reduction of stockpiling costs. Specific environmental issues that will be addressed include the impacts on winter vessel transits, potential impacts from transit of oil through the Locks, effects on fish reproduction, and potential effects on formation of ice jams.

c. *Environmental review and consultation requirements.* The following laws will be addressed in the draft Supplement EIS: Archeological and Historic Preservation Act, as amended, 16 U.S.C. 469, *et seq.*; Clean Air Act, as amended, 42 U.S.C. 1857h-7, *et seq.*; Clean Water Act, as amended, 33 U.S.C. 1251, *et seq.*; Coastal Zone Management Act, as amended, 16 U.S.C. 1451, *et seq.*; Endangered Species Act, as amended, 16 U.S.C. 1531, *et seq.*; Estuary Protection Act, 16 U.S.C. 1221, *et seq.*; Federal Water Project Recreation Act, as amended, 16 U.S.C. 460-1(12), *et seq.*; Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661, *et seq.*; Land and Water Conservation Fund Act, as amended, 16 U.S.C. 1601-11, *et seq.*; Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401, *et seq.*; National Historic Preservation Act, as amended, 16 U.S.C. 470a, *et seq.*; National Environmental Policy Act, as amended, 42 U.S.C. 4321, *et seq.*; Rivers and Harbors Act, as amended, 33 U.S.C. 401, *et seq.*; Watershed Protection and Flood Prevention Act, 16 U.S.C. 1001, *et seq.*; and Wild and Scenic Rivers Act, as amended, 16 U.S.C. 1271, *et seq.*; The following Executive Orders and Memoranda will be addressed: Flood Plain Management (E.O. 11988); Protection of Wetlands (E.O. 11990); Environmental Effects Abroad of Major Federal Actions (E.O. 12114); Analysis of Impacts on Prime and Unique Farmlands (CEQ Memorandum, 11 Aug 1980); and Intergovernmental Review of Federal Programs (E.O. 12372).

Estimated Date of Draft EIS Supplement Release

It is anticipated that the draft Supplement will be available to the public in December 1992.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-14059 Filed 6-12-91; 8:45 am]

BILLING CODE 3710-GA-M

Inland Waterways User Board; Meeting

AGENCY: Department of the Army, COE, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. (92-463), announcement is made of the Following committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: July 16, 1991.

Place: Pittsburgh Vista Hotel, 1000 Penn Avenue, Pittsburgh, PA 15222-3873 (Tel. (800)—FOR VISTA).

Time: 8:30 a.m. to 4 p.m.

Proposed Agenda:

AM Session

8:30 Registration.

Business Session

—Administrative Announcements
—Chairman's Call to Order
—Executive Director's Comments
—Approval of Prior Meeting Minutes

Presentation of Information to the Board

9:20 Trust Fund Analysis.
10:15 Break.
10:30 Construction Projects Update.
11 Sargent Beach-Update and Status.
11:30 Lunch.

PM Session

Ohio River Division Presentations

1.—Lower Monongahela River Projects.
2.—Winfield Lock and Dam—Hazardous and Toxic Waste.
2:30 Break.
2:45 Public Comment Period.
3:45 Instructions to Board Staff.
4.—Adjourn.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

For further information, contact: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 220314-1000 at (202) 272-0146.

Hugh F. Boyd III,

Colonel, Corps of Engineers Executive Director of Civil Works.

[FR Doc. 91-14061 Filed 6-12-91; 8:45 am]

BILLING CODE 3710-RS-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 15, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;
(2) Title;
(3) Frequency of collection;
(4) The affected public;
(5) Reporting burden; and/or
(6) Recordkeeping burden; and
(7) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: June 7, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Application for State Grants under the Foreign Languages Assistance Act.
Frequency: Every Three Years.
Affected Public: State or local governments.

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Reporting Burden:
Responses: 53
Burden Hours: 742
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local governments to apply for funding under the Foreign Languages Assistance Program. The Department uses the information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: RSA–638–Supported Employment: Annual Caseload Report
Frequency: Annually
Affected Public: State or local government agencies.
Reporting Burden:
Responses: 84
Burden Hours: 84
Recordkeeping Burden:
Recordkeepers: 84
Burden Hours: 84
Abstract: This report is used by State Vocational Rehabilitation agencies to provide caseload data. The Department uses the information collected to assess the accomplishments of effective program management.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for Grants to Institutions to Encourage Minority Participants in Graduate Education
Frequency:
Affected Public: Non-profit businesses
Reporting Burden:
Responses: 125
Burden Hours: 500
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State Educational Agencies to apply for funding under the Institutions to Encourage Minority Participants program. The Department uses the information to make grant awards.

[FR Doc. 91–14017 Filed 6–12–91; 8:45 am]
BILLING CODE 4000–1–M

Fund for the Improvement and Reform of Schools and Teaching; Board Meeting

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board, Education.

ACTION: Notice of a partially closed meeting.

SUMMARY: This notice sets forth the schedule and agenda of a partially closed meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: June 26, 1991, 9 a.m.–5 p.m. (closed); June 27, 1991, 9 a.m.–12:30 p.m. (open).

PLACE: Quality Hotel, Capitol Hill, Lobby Conference room, 415 New Jersey Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Hill, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208–5524, (202) 219–1496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board was established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297). The Board was established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of FIRST on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by FIRST.

The FIRST Board Meeting will be closed to the public on June 26, from 9 a.m.–5 p.m. allowing time for the Board to read and discuss Schools and Teachers—School Level projects for funding. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. appendix 2) and under exemptions (4) and (6) of section 552b(c) (4 and 6) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b). Discussion during the closed portion of the meeting will involve disclosure of sensitive information about: (a) Applicants, (b) funding levels and requests, and (c) the names and comments of expert reviewers. Any such discussion would disclose commercial or financial information obtained from a person and privileged or confidential; and, would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (c) (4) and (6) of section 552b of title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b(c) will be available to the public within fourteen days of the meeting.

The meeting will be open to the public on June 27 from 9 a.m. to 12:30 p.m. The agenda for the open portion of the meeting will include the presentation of a report on the National Board for Professional Teaching Standards forum, a discussion on the Board's Mission Statement, nominations/renominations of five (5) members, and a discussion and Q&A session on AMERICA 2000.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement and Reform of Schools and Teaching from the hours of 8:30 a.m. to 5 p.m.

Dated: June 7, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–14013 Filed 6–12–91; 8:45 am]
BILLING CODE 4000–01

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91–469–000, et al.]

Tucson Electric Power Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 6, 1991.

Take notice that the following filings have been made with the Commission:

1. Tucson Electric Power Co.

[Docket No. ER91–469–000]

Take notice that on May 31, 1991 Tucson Electric Power Company (Tucson) tendered for filing an agreement entitled "1991 Short Term Power Sale Agreement Between Tucson Electric Power Company And San Diego Gas & Electric Company."

The parties request an effective date of July 1, 1991, and therefore request waiver of the Commission's regulations regarding filing.

Copies of the filing have been served upon all parties affected by this proceeding.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power & Light Co.

[Docket No. ER91–467–000]

Take notice that Pennsylvania Power & Light Company (PP&L) on May 31, 1991, tendered for filing a Supplement, dated as of May 31, 1991 ("First Supplemental Agreement"), to the Capacity and Energy Sales Agreement, dated December 21, 1990, between PP&L and GPU Service Corporation, as agent for Jersey Central Power & Light Company and Metropolitan Edison Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 100. The First Supplemental Agreement provides for an increase in the Installed Capacity Rate under the Agreement to reflect the increase in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 10, 1991 in Docket No. ER91–339–000, and which will become effective on June 1, 1991.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1991.

PP&L states that a copy of its filing was served on GPU Service Corporation, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Central Vermont Public Service Corp.

[Docket No. ER91–473–000]

Take notice that Central Vermont Public Service Corporation on June 3, 1991, tendered for filing as an initial rate schedule a contract under which CVPS had agreed to sell capacity and energy associated with CVPS peaking system to Vermont Public Power Supply Authority (VPPSA).

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule that was filed in this docket to become effective May 1, 1991.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Co.

[Docket No. ER91–464–000]

Take notice that Pennsylvania Power & Light Company (PP&L) on May 31, 1991, tendered for filing a Supplement, dated as of May 28, 1991 ("First Supplement Agreement"), to the Capacity and Energy Sales Agreement, dated February 23, 1990, between PP&L and Atlantic City Electric Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 99. The First Supplemental Agreement provides for an increase in the Installed Capacity Rate under the Agreement to reflect the increase in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 10, 1991 in Docket No. ER91–339–000, and which will become effective on June 1, 1991.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1991.

PP&L states that a copy of its filing was served on ACE, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Co.

[Docket No. ER91–470–000]

Take notice that on May 31, 1991, Southwestern Electric Power Company (SWEPCO) tendered for filing a Second Amendment, dated April 23, 1991, to the Letter Agreement, dated September 2, 1987, between SWEPCO and Empire District Electric Company (Empire). Under the Agreement, SWEPCO presently provides capacity to Empire, without reserves, and associated energy from time to time. The Second Amendment provides for a fixed monthly purchase by Empire of 5 MW of capacity without reserves for the period June 1, 1991 to November 30, 1991.

SWEPCO requests an effective date of June 1, 1991 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon Empire and the Missouri Public Service Commission. Copies are also available for inspection at SWEPCO's offices in Shreveport, Louisiana.

Comment date: June 21, 1991, in accordance with Standard Paragraph E end of this notice.

6. Pennsylvania Power & Light Co.

[Docket No. ER91–468–000]

Take notice that Pennsylvania Power & Light Company (PP&L) on May 31, 1991, tendered for filing a Supplement, dated as of May 31, 1991 (First Supplemental Agreement), to the Capacity Credit Sales Agreement, dated February 15, 1991, between PP&L and GPU Service Corporation, as agent for Jersey Central Power & Light Company, Pennsylvania Electric Company and Metropolitan Edison Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 102. The First Supplemental Agreement provides for an increase in the Installed Capacity Rate under the Agreement to reflect the increase in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 10, 1991 in Docket No. ER91–339–000, and which will become effective on June 1, 1991.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1991.

PP&L states that a copy of its filing was served on GPU Service Corporation, the Pennsylvania Public Utility Commission, and the New Jersey Board Public Utilities.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ES91–34–000]

Take notice that on June 4, 1991, UtiliCorp United Inc. ("Applicant") filed and application with the Federal Energy Regulatory Commission pursuant to § 204 of the Federal Power Act seeking authorization to issue not more than one million shares of common stock, par value $1.00 per share, pursuant to the UtiliCorp United Inc. Employee Stock Option Plan and for exemption from the Commission's competitive bidding regulations.

Comment date: July 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power & Light Co.

[Docket No. ER91–465–000]

Take notice that on May 31, 1991, Pennsylvania Power & Light Company (PP&L) tendered for filing a Capacity Credit Sales Agreement (Agreement) between PP&L and Atlantic City Electric Company (ACE), which complements the Capacity Credit Sales Agreement, dated February 23, 1990, between PP&L and ACE on file with the Commission as the Company's Rate Schedule FERC No. 99. The Agreement provides for the sale by PP&L to ACE of daily Generating Capacity Megawatts solely for ACE's use in the Pennsylvania-New Jersey-Maryland (PJM) Interconnection's planned and/or accounted-for installed capacity accounting.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1991. Service

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under the Agreement is expected to commence on June 1, 1991.

PP&L states that a copy of its filing was served on ACE, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Cogeneration Partners of America

[Docket No. QF90-176-001]

On May 30, 1991, Cogeneration Partners of America tendered for filing an amendment to their filing in this docket.

The amendment provides the Agreement of Limited Partnership for Vineland Cogeneration Limited Partnership.

Comment date: 21 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14036 Filed 6-12-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-29-NG]

North American Resources Co.; Application for Blanket Authorization To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 10, 1991, of an application filed by North American Resources Company (NARCo), requesting blanket authorization to export up to a total of 73 Bcf of natural gas from the United States to Canada and/or Mexico over a two-year period beginning on the date of first delivery. NARCo intends to use existing pipeline facilities at the international borders the U.S. shares with Canada and Mexico. The company states that it will notify DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m. Eastern time, July 15, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

John Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue SW., Washington, DC 20485, (202) 586-4523.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-6667.

SUPPLEMENTARY INFORMATION: NARCo is a Montana corporation with its principal place of business in Butte, Montana. The company requests authorization to make short-term and spot market sales with terms of up to two years. NARCo proposes to export for its own account or act as agent for the purchase or sale of gas owned by others. The company states that the terms of each transaction will be negotiated at arms-length and will reflect competitive market conditions.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NARCo's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 7, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-14087 Filed 6-12-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3954-8]

Region 6; Approval of PSD Permits and the Extension of a PSD Permit

Notice is hereby given that the Environmental Protection Agency (EPA), region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-500M-4—Shall Western E&P, Inc.—PSD-TX-500M-4 modifies PSD-TX-500M-3 to authorize: (1) The installation of a new sulfur recovery unit to replace a 3-stage Claus and tail gas incinerator; and (2) the debottlenecking of the facility to allow an increase in gas throughput from 180 to 290 MM SCFD. The existing CO_2 recovery plant is located off FM Road 1939, approximately 1.5 miles north of Denver City, Yoakum County Texas. This modified permit was issued on July 3, 1990.

2. PSD-TX-328M-3—Amerada Hess Corporation—PSD-TX-328M-3 modifies PSD-TX-328M-2 to authorize: (1) The installation of low emission combustors on the three Rolls-Royce Avon refrigeration compressor turbines; and (2) the reduction of inlet/treated gas compressor turbines from eleven to six and the refrigeration turbines from five to three. The existing gas processing plant is located on State Highway 214, approximately four miles northwest of Seminole, Gaines County, Texas. This modified permit was issued on July 3, 1990.

3. PSD-TX-118M-3—Union Carbide Chemicals and Plastics Company—PSD-TX-118M-3 modifies PSD-TX-118M-2 to authorize: (1) The production of the company's current product mix in one reactor, or operate both reactors to produce a single product; (2) the conversion of an existing isopentene storage tank to a crude n-hexane storage tank; (3) the installation of a new molecular sieve dryer, promoter supply system, catalyst blow tank and transfer system, product purge bin and moist purge bin filter; (4) replacement of a product discharge system on the G-2 Reactor with an "improved product discharge system;" and (5) a revision of the Intermittent Particulate Emission Table to increase the number of occurrences per year in order to allow production of new polyethylene resins. The existing Seadrift polyethylene plant is located on State Highway 185, approximately 14 miles south of Port Lavaca, Calhoun County, Texas. This modified permit was issued on July 17, 1990.

4. PSD-TX-752M-1—Quantum Chemical Corporation—PSD-TX-752M-1 modifies PSD-TX-752 to authorize: (1) The shipment of pyrolysis gasoline and vinyl acetate monomer by barges from an existing loading dock; and (2) changes in the Special Provisions to allow regeneration of the methyl acetate propadiene converter for 24 hours per year instead of 2 hours per year, and allow the decoking drum to operate 4352 hours per year instead of 2400 hours per year at the existing chemical plant located at 11603 Strang Road, La Porte, Harris County, Texas. This modified permit was issued on August 1, 1990.

5. PSD-TX-720M-2—Power Resources, Inc.—PSD-TX-720M-2 modifies PSD-TX-720M-1 to authorize the installation of a smaller diesel electric generator for gas turbine start-up and emergency stand-by use at the existing cogeneration facility located on Interstate 20, approximately one mile east of Big Spring, Howard County, Texas. This modified permit was issued on August 1, 1990.

6. PSD-TX-226M-6—Formosa Plastics Corporation Texas—PSD-TX-226M-6 modifies PSD-TX-226M-5 to authorize: (1) The operation of all 4 EDC crackers simultaneously, each limited to 8240 hours per year performance; and (2) the addition of Specific Conditions Numbers 7 and 13 for NESHAPS (subpart V) and NSPS (subpart W) for fugitive emissions. The existing chemical plant is located at 101 Formosa Drive, Point Comfort, Calhoun County, Texas. This modified permit was issued on August 3, 1990.

7. PSD-TX-334M-2—Oasis Pipeline Company—PSD-TX-334M-2 modifies PSD-TX-334M-1 to authorize the elimination of the RAC correction from the MEP-6 engines which are two-stroke, blower scavenged and intercooled. The RAC correction applies only to four-stroke naturally aspirated engines. The Winchester Compressor station is located on FM Road 448, approximately 11 miles southwest of Giddings, Fayette County, Texas. This modified permit was issued on September 10, 1990.

8. PSD-TX-493-1—CoGen Lyondell, Inc.—PSD-TX-493-1 modifies PSD-TX-493 to authorize the use of an ethane-propane fuel as an alternate to natural gas at the cogeneration facility located at 2330 Sheldon Road, Channelview, Harris County, Texas. This modified permit was issued on September 17, 1990.

9. PSD-TX-346M-2—Diamond Shamrock Refining and Marketing Company—PSD-TX-346M-2 modifies PSD-TX-346M-1 to authorize the removal of the continuous carbon monoxide monitor from the 20-P FCCU regenerator stack by meeting the waiver criteria in 40 CFR 60.105(2). The existing petroleum refinery is located on Highway 119, approximately seven miles southwest of Sunray, Moore County, Texas. This modified permit was issued on September 21, 1990.

10. PSD-TX-102M-4—Phillips Petroleum Company—PSD-TX-102M-4 modifies PSD-TX-102M-3 to authorize the CO boilers 409 and 410 to emit 393.3 lb/hr and 414 lb/hr of carbon monoxide, respectively. These emissions reflect the results of stack tests and satisfy BACT. The CO boilers were installed voluntarily in 1983, resulting in a 199.360 TPY decrease in CO. The refinery is located on State Highway 119, approximately three miles northeast of Borger, Hutchinson County, Texas. This modified permit was issued on September 26, 1990.

11. PSD-TX-771—Air Products Manufacturing Corporation—This permit, issued on October 9, 1990, authorizes the construction of a 210 MM

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Btu/hr boiler at the existing chemical facility located at 1423 Highway 225, Pasadena, Harris County, Texas.

12. PSD–TX–661M–1—Texas Utilities Electric Company—PSD–TX–661M–1 modifies PSD–TX–661 to authorize: (1) An increase of the allowable emission rate for particulate matter (PM10) from 5 lbs/hr to 20.6 lbs/hr while firing natural gas for each of the six turbines; and (2) an increase in the allowable annual electrical production for ech turbine from 163,00 MW–hrs/yr to 840,960 MW–hrs/yr, while requesting that the total annual electrical production of the six turbines be decreased from 981,000 MW–hrs/yr to 864,000 MM–hrs/yr. The existing power plant is located on Highway 163, approximately four miles southwest of Colorado City, Mitchell County, Texas. This modified permit was issued on October 10, 1990.

13. PSD–TX–459M–1—Amoco Chemical Company—PSD–TX–459M–1 modifies PSD–TX–459 to authorize the retrofit of the existing steam superheater and hot oil heater with low-nitrogen oxide burners at the Plant B Styrene Unit No. 2. The existing chemical plant is located at 2800 FM Road 519 East, Texas City, Galveston County, Texas. This modified permit was issued on October 30, 1990.

14. PSD–TX–453M–3—Fina Oil & Chemical Company—PSD–TX–453M–3 modifies PSD–TX–453M–2 to authorize the modification of the Claus Recovery Unit to allow for oxygen enrichment of the air feed to the portion of this unit known as Sulfur Recovery Unit No. 1. The existing refinery is located on Highway 366, Port Arthur, Jefferson County, Texas. This modified permit was issued on October 31, 1990.

15. PSD–TX–761M–1—Oxy Petrochemical, Inc. (Formerly CCPC Chemical)—PSD–TX–761M–1 modifies PSD–TX–761 to authorize the changes in: (1) Special Provision 8 to indicate applicability; (2) Special Provisions 6 and 7 from Rule 111.21 of Regulation I to rule 111.111(9)(1)(E); (3) Special Provision 12 to allow for an initial compliance determination of opacity of the decoking cyclones with the opportunity to request stack testing should opacity exceed 10% as identified in Special Provision No. 19 of State Permit R–4862A; and (4) Special Provision 9 to reflect a two year limit of maintenance of production records. The existing olefins plant is located at 1501 McKenzie Road, Corpus Christi, Nueces County, Texas. This modified permit was issued on October 31, 1990.

16. PSD–TX–732M–1—Oxy Petrochemical, Inc. (Formerly Cain Chemical)—PSD–TX–732M–1 modifies PSD–TX–732 to authorize: (1) The deletion of the air contaminants which are either unregulated specifically by the Federal Clean Air Act or permitted by the State permit at levels less than the significance levels at 40 CFR 52.21(b)(23)(i); (2) the requirement of fuel oil sampling for sulfur, beryllium, arsenic and mercury; and (3) the clarification that the particulate matter limit is measured by EPA Method 5. The existing chemical plant is located at 1 CCPC Boulevard, Corpus Christi, Nueces County, Texas. This modified permit was issued on October 31, 1990.

17. PSD–TX–768—Mobil Oil Corporation—This permit, issued on October 31, 1990, authorizes the construction of a new reformer, amine regeneration unit and two new sulfur recovery units. In addition, a crude unit, hydrocracker and coker will be modified. The existing refinery is located at the end of Burt Street, Beaumont, Jefferson County, Texas.

18. PSD–TX–702M–3—Mobil Producing Texas and New Mexico, Incorporated—PSD–TX–702M–3 modifies PSD–TX–702M–2 to authorize the replacement of the existing flare tip with a more efficient flare tip. The existing Salt Creek Gas Plant is located approximately seven miles northwest of Clairemont, Kent County, Texas. This modified permit was issued on November 23, 1990.

19. PSD–TX–776—Occidental Chemical Company—This permit, issued on December 5, 1990, authorizes the construction of a 245 MM Btu boiler at the existing chemical plant located on State Highway 361, approximately two miles northwest of Ingleside, San Patricio County, Texas.

20. PSD–TX–716M–4—Encogen One Partners, Ltd—PSD–TX–716M–4 modifies PSD–TX–716M–3 to authorize an increase in the currently allowed 10 pounds per hour particulate matter emission rate for the three combustion turbines when firing fuel oil. The cogeneration facility is located at the U.S. Gypsum plant in Sweetwater, Nolan County, Texas. This modified permit was issued on December 27, 1990.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Notice is hereby given that region 6, has extended the expiration date of the following PSD permit:

1. PSD–TX–32—Texas Utilities Services, Inc.—This permit, issued on September 22, 1977, authorized the construction of the Twin Oaks Steam Electric Station, which includes Units 1 and 2, auxiliary boilers and associated lignite, limestone and fly ash handling equipment. The Twin Oaks station is located on FM Road 979, approximately eleven miles east of Bremond, Robertson County, Texas. Construction was halted because the commercial operating date was deferred due to continued slow load growth in the commercial service area. On November 30, 1990, EPA region 6 extended the expiration date to May 30, 1992.

The PSD regulation at 40 CFR 52.21(r)(2) states that the Administrator may extend the 18-month period in which construction must commence if the company shows that an extension is justified.

A notice of EPA's proposed action to extend this PSD permit was published in a newspaper in the affected area of the facility.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals within 60 days of June 13, 1991. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirments of section 3 of Executive Order 12291.

Dated: May 28, 1991.

Robert E. Layton, Jr.,

Regional Administrator, Region 6.

[FR Doc. 91–14102 Filed 6–12–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3965–4]

General Preamble for Title I of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft document availability and of public meeting.

SUMMARY: The EPA is planning to publish a General Preamble that describes EPA's policy and technical judgements related to implementing Title I of the Clean Air Act Amendments of 1990 (the Amendments), primarily those concerning State implementation plan (SIP) submittals for nonattainment areas. The General Preamble provides advice to States and other interested parties concerning what would be acceptable plan submittals. This Preamble also serves as the basis for subsequent EPA approval or disapproval action on the SIP submittals.

The General Preamble will cover moderate area requirements for particulate matter, all submittals due in the first 6-year period from enactment of the Amendments (November 15, 1990—November 15, 1996) for ozone and carbon monoxide, and all submittal requirements for sulfur dioxide and lead. Supplements to the General Preamble addressing future or additional SIP submittals and related State or EPA actions will be issued at a later date.

The General Preamble will not be a regulation, but rather a notice of Agency policy. The Preamble does not supersede existing State regulations or approved SIP's and does not constitute final EPA action, The public will have an opportunity to comment on the SIP's developed by the States and the issues addressed in the General Preamble as reflected in the SIP's.

Because of the broad interest in the General Preamble and the complexities of the issues it will address, EPA believes the many parties potentially affected by the Preamble should have an opportunity to discuss its content with EPA before preparation of a final document. This notice announces the public availability of a staff working draft of the General Preamble and EPA's intent to conduct a 2-day public meeting to discuss the ozone and carbon monoxide issues of particular concern to the parties affected by the Title I provisions. The staff work products for sulfur dioxide, particulate matter below 10 microns (PM–10), and lead are also available for public review and comment. However, given the very narrow range of issues raised by these pollutants, EPA does not presently plan to focus the discussion on the staff work products at this meeting. The public docket will remain open for 30 days after the meeting for receipt of written comments on the staff working draft of the Preamble. The Agency plans to use this process to obtain public comment on the staff working draft before developing final policies and issuing the final General Preamble.

DATES: The public meeting will be held June 25 from 9 a.m. to 3 p.m.

ADDRESSES: The public meeting will be held at the Sheraton Reston at 11810 Sunrise Valley Drive, Reston, Virginia 22091 [Phone No. (703) 620–9000] Participants should advise the hotel that they are attending the EPA meetings on the General Preamble.

To assist EPA in Planning the public meeting, persons interested in attending should contact Ms. MaryLou Leonard at (703) 824–8240, telefax (703) 998–3333, Scientific and Commercial Systems Corporation, 4651 King Street suite 200, Alexandria, Virginia 22302, to give their name and affiliation. Registration closes on June 19, 1991.

Comments: Written comments are due on or before July 26, 1991. Comments should be submitted (in duplicate, if possible) to: Air Docket section (A–131), Attention: (Docket No. A–91–35, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Availability of Staff Working Draft of the General Preamble: The staff working draft of the General Preamble for ozone and carbon monoxide and staff work products on sulfur dioxide, PM–10, and lead are available for copying from the docket (address below), and single copies are available from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Draft General Preamble for Title I of the Clean Air Act Amendments of 1990." A reasonable fee may be charged for copying multiple copies.

Docket: Docket No. A–91–35 is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila C. Holman at (919) 541–0861 or Mr. Brock Nicholson at (919) 541–5517, Policy Development Section, Ozone/CO Programs Branch (MD–15), for issues related to ozone or carbon monoxide; Ms. Gwen Jacobs at (919) 541–5295 or Mr. Eric Ginsburg at (919) 541–0877, Sulfur Dioxide/Particulate Matter Programs Branch (MD–15), for issues related to sulfur dioxide, particulate matter, or lead; U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The General Preamble is a guidance document which will address many of the issues expected to arise in implementing title I of the Amendments. The EPA believes most of these issues stem from the new provisions for major stationary sources of oxides of nitrogen (NOx), modeling requirements, specific control requirements, procedures for tracking progress, and the interface between title V and title I requirements. The major issues associated with these elements of title I of the Amendments are briefly described below under "Agenda and Schedule for the Public Meeting."

The EPA is interested in obtaining input from the public and affected parties on these and other issues that will be addressed in the General Preamble. EPA solicits input on these issues through the process of this public meeting and associated comment period. In particular EPA is interested in the public's thoughts regarding the approach the staff draft has taken in addressing these issues. In formulating the Preamble, EPA will carefully consider the input generated from this process. The EPA will produce a summary report which will include the points, suggestions, and recommendations received as part of this public input process and EPA's decisions on the various issues to support the final preamble. The report will be included in the docket and made available to the public as a supporting document.

The purpose of the June 25–26 meeting is to provide an opportunity for the public to discuss, comment on, and ask questions about all topics pertaining to ozone and carbon monoxide. Because the requirements of sulfur dioxide, PM–10, and lead have not changed as significantly under the Amendments as for ozone and carbon monoxide, staff work products for these pollutants are more direct in their treatment of key statutory provisions. In the course of developing the staff work products, EPA consulted a variety of experts within the Agency, as well as officials in several State air pollution control agencies. Therefore, EPA does not intend to discuss these work products at this meeting, but will reconsider this approach if a significant number of requests are received by June 19. The public is specifically encouraged, however, to review these products and to submit written comments and views during the comment period.

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The emphasis at the June 25–26 meeting will be on gathering comments and questions rather than on presenting informational materials about the new requirements under the Amendments, except to the extent necessary to support discussion of the issues. In order to foster open discussion, the schedule for the meeting is structured around several recurring sessions that will provide different groups of participants the chance to discuss and comment on the issues under each of the different topics. In the interest of adhering to the schedule and ensuring that all topics are covered, EPA may find it necessary to limit the discussion on a given topic. Attendees are encouraged to come prepared to participate actively in the discussion of issues. The EPA requests that parties refrain from making formal oral presentations so as to permit more time for general discussion.

However, formal written presentations will be accepted at the meeting and during the comment period following the meeting.

The General Preamble will cover all criteria pollutants, but the current draft specifically addresses ozone and carbon monoxide and refers to final staff work products on sulfur dioxide, PM–10, and lead (contained in the docket and attached to the draft document). The final General Preamble document will integrate requirements for nonattainment area SIP's for all of the criteria pollutants.

General Agenda and Schedule for the Public Meeting

The topics to be covered at the meeting include, but are not limited to the following:

Ozone/Carbon Monoxide

Requirements for Sources of Oxides of Nitrogen. The Amendments established important new requirements for major sources of nitrogen oxides (NOx) which are located in ozone nonattainment areas. The requirements that apply to major sources of volatile organic compounds (VOC's) also apply to major NOx sources except in certain circumstances where the NOx reductions would not be beneficial overall in attaining the ozone national ambient air quality standard (NAAQS). These requirements are primarily (1) the adoption of State rules representing reasonably available control technology (RACT) on existing major NOx sources and (2) the review of new major NOx sources under the nonattainment new source review (NSR) provisions of section 173. The NSR provisions generally require sources to obtain offsets for their emissions and to install controls representing the lowest achievable emission rate.

Because of the implications for a large number of sources, it is important for the States and EPA to develop and apply appropriate and timely procedures for determining whether NOx control is needed. Issues arise in determining whether "air quality benefits" would be greater without NOx control, whether NOx controls would contribute to attainment, and whether "excess reductions" would result from the NOx controls. The EPA is considering simplified procedures that can be used to provide an early indication of the cases in which NOx control is warranted. These decisions could be verified later in more comprehensive demonstrations of attainment using photochemical dispersion modeling.

Additional issues arise in determining NOx RACT for affected sources and the relation of this requirement to the Title IV (acid rain) provisions.

Modeling. The Amendments specifically require serious and above ozone nonattainment areas to use photochemical grid modeling in preparing their demonstrations of attainment. Furthermore, the 4-year schedule provided to States for developing and submitting these modeling demonstrations reflects the difficulty and complexity of using these models.

The Amendments also require moderate and above ozone nonattainment areas to demonstrate that their plans, due within three years, will be sufficient to attain by the appropriate date. The following issues arise: (1) What type of model or other technique can be used within the three-year period to provide adequate assurance that the plan will provide for attainment, and (2) given that serious and above areas will be submitting photochemical grid modeling results in their demonstrations that are due four years after enactment, can this "4-year" demonstration also satisfy the requirement for moderate and above areas to demonstrate attainment in the "3-year" submittal?

Control Measures. The Amendments contain a number of specific control requirements for ozone nonattainment areas. Implementation of some of these controls raises certain issues (as described below) that need to be addressed in the General Preamble.

Certain RACT Rules: States are required to submit RACT rules within 2 years after enactment. The EPA, however, is required to issue Control Technique Guidelines (CTG's) for a number of significant stationary source categories within 3 years after enactment. The CTG's generally become the basis for State RACT rules for those specific source categories. Since the State RACT rules are required to cover all major VOC sources and some of EPA's CTG's will be for sources covered by the State rules, should the State be allowed to delay the development and adoption of certain RACT rules until EPA publishes those CTG's?

Requirements for "Nonconventional" Areas. The Amendments establish a classification system that was intended to cover all ozone and carbon monoxide nonattainment areas. However, there are several areas which have limited air quality data or "borderline" circumstances that are not addressed by the classification system. How should EPA establish requirements for these areas? What should be the attainment date for these areas?

Other Control Requirements. There are also issues of applicability and other specifications for NSR programs, motor vehicle inspection and maintenance programs, clean-fuel fleet programs, transportation control measures for ozone and carbon monoxide nonattainment areas, and gasoline vapor recovery programs for motor vehicle refueling (Stage II).

Tracking Progress. The Amendments contain important provisions directed at ensuring that States achieve the required progress toward attainment. In most cases this progress is based on reductions in the base emission inventory at a rate prescribed in the Amendments. When EPA finds these reductions are not occurring or when they have not been sufficient to provide for attainment in an area, the area becomes subject to additional control and planning requirements. Therefore, the methods used to calculate, project, and periodically update the emission inventory become of critical importance to an area and its sources.

Several questions arise regarding calculating and tracking emission reductions. Can, for example, emission reductions which result from improvements in the enforcement and monitoring of current regulations be counted toward the emission reduction requirements? Can NOx reductions which occur within the first 6 years after enactment be used to "offset" part of the VOC reduction requirements after that period? What steps should the State take every year (2 years, 3 years) to show that the planned emission reductions are occurring? What should be the requirements of the milestone demonstrations (due after the 6-year milestone and the 3-year periodic milestones)? What is the role of the emission statements (that are required of sources in ozone nonattainment areas) in tracking progress toward attainment and reasonable further progress (RFP)?

Issues also arise with respect to the actions that occur when adequate progress is not achieved. The Amendments contain two general types of provisions to address situations where an area does not attain the standard by the applicable date or where RFP requirements are not met. Areas that do not attain are "bumped up" to a higher classification and subject to the control and planning requirements of the new classification. Timing issues arise particularly with marginal ozone areas that do not attain by their deadline (3 years after enactment). These marginal areas would have difficulty adopting and implementing the required controls for moderate areas and achieving the mandated emission reductions quickly enough to avoid missing the attainment deadline for moderate areas. As a result, such marginal areas could eventually be "bumped up" to the serious classification and subject to even more stringent controls. What steps should these marginal areas be required to take early to avoid this situation? What modeling activities and rule development steps can be taken to expedite implementation of mesures that will achieve sufficient emission reductions to ensure attainment by the deadline for moderate areas?

The Amendments also require SIP's to include contingency measures to address cases where the attainment date is not met or RFP is not achieved. In general, States must submit measures that can be implemented without further action by the State or EPA in the event the area does not attain the NAAQs or RFP is not achieved. But how many such measures are needed? How much emission reduction should the measures be capable of achieving? What does it mean to implement the measures "without further action by the State or EPA"?

Title V Interface with Title I/ Economic Incentive Program. The EPA's proposed regulations for State operating permit programs (56 FR 21712, May 10, 1991) raised several questions concerning the relationship of SIP's under title I to permits under title V. The title I staff working draft of the Preamble discusses ways to resolve these questions and asks for comment on the approach presented.

First (in the operating permit preamble) is the question of how to account for growth that is not a title I modification. Two options are presented in the staff working draft, both of which account for this growth up front in the SIP demonstration and then track the growth actually occurring. The second question concerns how to avoid unnecessary SIP revisions for minor changes at a source. The staff working draft suggests several SIP elements that could be handled solely by permits and others that could be shared by SIP's and by permits. The third question relates to development of RACT "protocols," or ways of more flexibly determining compliance with RACT limits. The EPA is developing protocols for two source categories and studying others and expects to produce the protocols by late 1991. The last question concerns the use of marketable permits or allowance trading. The draft proposes some basic principles that should govern these measures and that, when developed further, should help answer some of the practical questions, such as how to measure and account for trades in ozone nonattainment areas.

The public meeting will begin on June 25 at 9 a.m. with a plenary session which will conclude at 10:30 a.m. The agenda will be divided into four 2.5 hours blocks over the 2-day period and will cover the topic areas listed above.

Dated: June 10, 1991.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 91–14203 Filed 6–12–91; 10:42 am]

BILLING CODE 6560–50–M

[FRL–3984–5]

Custom Industrial Services, Inc. Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122 (g) and (h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Custom Industrial Services, Inc. Site, Shelbyville, Kentucky with one hundred ninety nine (199) de minimis parties. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or consideration which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement and a list naming the de minimis parties are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365, 404–347–5059.

Written comment may be submitted to the person above by 30 days from the date of publication.

Dated: May 16, 1991.

H. Kirk Lucius,

Acting Director, Waste Management Division.

[FR Doc. 91–14103 Filed 6–12–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket No. 90–394; DA 91–649]

Albany Region Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the Albany area's (Region 30's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821–824/866–869 MHz spectrum for public safety to begin.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554 (202) 632–6497.

SUPPLEMENTARY INFORMATION:

1. On June 1, 1990, Region 30 (Albany) submitted its Public Safety Plan to the Commission for review. Region 30 is comprised of Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Ostego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Warren, and Washington counties. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region. On August 20, 1990, Region 30 filed revisions to the plan, based on conversations with the Commission's staff and on April 22, 1991, the Region furnished the Commission with a list of vacant channels.

2. The Region 30 Plan was placed on Public Notice for comments, 55 FR 36701 (Sept. 6, 1990). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Region 30 and find that it conforms with the National Public

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Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987) 53 FR 1022, January 15, 1988, and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in the Albany area. We note, however, that the channel allotments contained in the Albany Plan may need to be modified to conform to the Arrangements between the United States and Canada, effective October 22, 1990, concerning use of the 821-824/866-869 MHz bands. 5 FCC Rcd 5793 (1990).

4. Accordingly, *It Is Ordered*, That the Public Safety Radio Plan for Region 30 Is Accepted, subject to the provisions of paragraph 3 above. Furthermore, licensing of the 821-824/866-869 MHz band in Region 30 may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 91-14117 Filed 6-12-91; 8:45 am]

BILLING CODE 6712-01-M

Beaver Springs Broadcasting Ltd. et al., Applications for New FM Stations

1. The Commission has before it the following mutually exclusive applications for four new FM stations:

Applicant, City and state	File No.	MM docket No.
Issue heading and Applicants		
1. Comparative, All		
2. Ultimate, All		
III		
A. Riley M. Murphy; Buena Vista, CO.	BPH-891214MW	91-147
B. Alpine Broadcasting Corporation; Buena Vista, CO.	BPH-891214MX	
Issue heading and Applicant(s)		
1. Comparative, A,B		
2. Ultimate, A,B		
IV		
A. Radio Lumpkin, Inc.; Lumpkin, GA.	BPH-891214MI	91-145
B. Dixie Broadcasting Corporation; Lumpkin, GA.	BPH-891214MK	
C. Georgia Women in Broadcasting, Limited Partnership; Lumpkin, GA.	BPH891214MO	
D. Patricia C. Cannington; Lumpkin, GA.	BPH-891214MP	
E. Lumpkin Broadcasting Partners; Lumpkin, GA.	BPH-891214NC	
Issue heading and applicant(s)		
1. Air Hazard, C		
2. Comparative, A,B,C,D,E		
3. Ultimate, A,B,C,D,E		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standarized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone (202)-452-1422).

W. Jan Gay, Assistant Chief,

Audio Services Division, Mass Media Bureau.

[FR Doc. 91-14118 Filed 6-12-91; 8:45 am]

BILLING CODE 6712-01-M

Applicant, City and state	File No.	MM docket No.
II		
A. Roy William Mayhugh; Big Pine, CA.	BPH-891228MF	91-146
B. David A. and Mary Ann Digennaro; Big Pine, CA.	BPH-891228MI	
C. Janice D. and Jonathan Levin; Big Pine, CA.	BPH-891228ML	

FEDERAL MARITIME COMMISSION

[Docket No. 91-27]

American President Lines, Ltd. v. Cyprus Mines Corporation and Cyprus Minerals Co.; Filing of Complaint and Assignment

Notice is given that a complaint filed by American President Lines, Ltd. ("Complainant") against Cyprus Mines Corporation and Cyprus Minerals Company ("Respondents") was served June 7, 1991. Complainant alleges the Respondents engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by obtaining ocean transportation at less than the applicable rates and charges by misdescribing cargo.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 6, 1992, and the final decision of the Commission shall be issued by October 6, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14036 Filed 6-12-91; 8:45am]

BILLING CODE 6730-01-M

[Docket No. 91-25]

Transportation Services, Inc. as Agent for Seaboard Marine, Ltd., et al. v. Frutech International; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Incorporated as agent for Seaboard Marine, Ltd., Crowley Caribbean Transport, Inc. and Empresa Naviera Santa, Ltd. ("Complainants") against Frutech International ("Respondent") was served June 7, 1991. Complainants allege that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to the applicable tariff or service contracts for thirty shipments of watermelons, cantaloupes and honey dew melons from Puerto Cortes, Honduras to Miami, Florida between December 1990 and February 1991.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 6, 1992, and the final decision of the Commission shall be issued by October 6, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14039 Filed 6-12-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-26]

Transportation Services, Inc. as Agent for Seaboard Marine, Ltd., et al. v. Prever Marketing International, Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Incorporated as Agent for Seaboard Marine, Ltd., Crowley Caribbean Transport, Inc., and Empresa Naviera Santa, Ltd. ("Complainants") against Prever Marketing International ("Respondent") was served June 7, 1991. Complainants allege that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to the applicable tariffs or service contracts on thirty-two shipments of watermelons, cantaloupes and honey dew melons from Puerto Cortes, Honduras to Miami, Florida between December 1990 and February 1991.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 6, 1992, and the final decision of the Commission shall be issued by October 6, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14040 Filed 6-12-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-87]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR); Public Health Service (PHS); Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of the final versions of each of the third set of 30 final toxicological profiles prepared by ATSDR.

The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified the 200 hazardous substances determined by both Agencies to pose the most significant potential threat to human health. The lists were published in the Federal Register on April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43615; and October 17, 1990 (55 FR 42067).

Notice of the availability of drafts of the third set (30) of toxicological profiles for public review and comment was published in the Federal Register on October 17, 1989 (54 FR 42563), with notice that a 90-day public comment period would be provided for each profile, starting from the actual release date. Following the close of each comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments, the classification of and response to those comments, and other data submitted in response to the Federal Register notice bear the docket control number ATSDR-16. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia, between 8 a.m. and 4:30 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susie Tucker, Agency for Toxic Substances and Disease Registry, Division of Toxicology (E-29), 1600 Clifton Road NE., Atlanta, Georgia 30333, Telephone: (404-639-6000).

SUPPLEMENTARY INFORMATION: Availability. This notice announces the availability of each of the third set (30) of ATSDR's final toxicological profiles as mandated by CERCLA. Additional final profiles will be announced in the Federal Register as they become available. The following toxicological profiles are available through the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161, Telephone: (1-800-336-4700).

Toxicological profile	NTIS order No.	CAS No.
1. Acrolein	PB/91/180007/AS	107-02-8
2. Acrylonitrile	PB/91/180056/AS	107-13-1

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Toxicological profile	NTIS order No.	CAS No.
3. Ammonia	PB/91/180315/AS	7664-41-7
4. Asbestos	PB/91/180497/AS	1332-21-4
5. Bromoform	PB/91/180323/AS	75-25-2
Chlorodibromomethane		124-48-1
6. Chlorobenzene	PB/91/180505/AS	108-90-7
7. Chloromethane	PB/91/180331/AS	74-87-3
8. Copper	PB/91/180513/AS	7440-50-8
9. Creosote	PB/91/180349/AS	8001-58-9
10. Di-n-butylphthalate	PB/91/180521/AS	84-74-2
11. 1,2-Diphenylhydrazine	PB/91/180356/AS	122-66-7
12. 1,1-Dichloroethene	PB/91/180539/AS	75-34-3
13. cis-1,2-Dichloroethene	PB/91/180364/AS	156-59-2
trans-1,2-Dichloroethene		540-59-0
14. Endrin	PB/91/180547/AS	72-20-8
Endrin Aldehyde		7421-93-4
15. Ethylbenzene	PB/91/180372/AS	100-41-4
16. Ethylene Oxide	PB/91/180554/AS	75-21-8
17. Hexachlorobenzene	PB/91/180380/AS	118-74-1
18. Naphthalene	PB/91/180562/AS	91-20-3
2-Methylnaphthalene		91-57-6
19. Nitrobenzene	PB/91/180398/AS	91-20-3
20. Polycyclic Aromatic Hydrocarbons (PAHs) PB/91/181537/AS		
Acenaphthene		83-32-9
Acenaphthylene		208-96-8
Anthracene		120-12-7
Benzo(a)anthracene		56-55-3
Benzo(a)pyrene		50-32-8
Benzo(b)fluoranthene		205-99-2
Benzo(g,h,i)perylene		191-24-2
Benzo(k)fluoranthene		207-08-9
Chrysene		218-01-9
Dibenzo(a,h)anthracene		53-70-3
Fluoranthene		206-44-0
Fluorene		86-73-7
Indeno(1,2,3-cd)pyrene		193-39-5
Phenanthrene		85-01-8
Pyrene		129-00-0
21. Plutonium	PB/91/180406/AS	7440-07-5
22. Radium	PB/91/180414/AS	7440-14-4
23. Radon	PB/91/180422/AS	10043-92-2
24. Silver	PB/91/180430/AS	7440-22-4
25. Thorium	PB/91/18180448/AS	7440-29-1
26. Toxaphene	PB/91/180455/AS	8001-35-2
27. 1,1,1-Trichloroethene	PB/91/180463/AS	71-55-8
28. 2,4,6-Trichlorophenol	PB/91/181545/AS	88-06-2
29. Uranium	PB/91/180471/AS	7440-61-1
30. Total Xylenes	PB/91/181552/AS	1330-20-7

Dated: June 7, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-14176 Filed 6-12-91; 8:45 am]

BILLING CODE 4160-70-M

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for approval an existing information collection, Final Rule for the Child Abuse Prevention and Treatment Act.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Final Rule for the Child Abuse Prevention and Treatment Act.

OMB No.: 0980-0166.

Description: In order to receive a Basic State Grant under the Child Abuse and Neglect program, the Child Abuse Amendments of 1984 (Pub. L. 98-457) added a new section 4(b)(2)(K) to the Child Abuse Prevention and Treatment Act (the Act). This section requires States to establish programs and/or procedures within the Child Protective Services (CPS) system to respond to reports of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions (medical neglect).

Regulations were promulgated at 45 CFR 1340.15. Paragraph (d) of that section requires States to document compliance with the requirements of paragraph (c) by submitting a copy of the written programs and/or procedures developed, accompanied by documentation that the State has authority under State law for the CPS system to pursue any legal remedies as required.

The documentation submitted by the States will be used by the Department to determine whether the State has met the statutory requirements established in order to be eligible to receive Child Abuse and Neglect Basic State Grant funds. The award of Child Abuse and Neglect Basic State Grant funds is contingent upon State compliance with the eligibility requirements specified in the Act. The Department would be unable to determine State compliance without the documentation requested from the States.

Annual Number of Respondents: (approximately) 52.

Annual Frequency: 1.

Average Burden Hours Per Response: (varies) 4 to 700.

Total Burden Hours: 4,240.

Dated: June 6, 1991.

Dosna N. Givens,

Deputy Assistant Secretary for Children and Families.

[FR Doc. 91-14092 Filed 6-12-91; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

The Division of Tuberculosis Elimination (DTE), Center for Prevention Services (CPS), Centers for Disease Control (CDC); Meeting

Name: Adherence and Tuberculosis Elimination: Workshop on Research and Evaluation for the 1990s.

Time and Date: 8 a.m.-5 p.m., July 8-9, 1991.

Place: Holiday Inn Atlanta-Decatur Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the workshop is to review current research and to discuss and define future research needs.

Matters to be Discussed: State and local representatives of tuberculosis treatment centers and academic researchers in the areas of tuberculosis treatment, preventive therapy for tuberculosis, and patient adherence or compliance will discuss the current status of research on adherence both generically and as it relates to tuberculosis.

Contact Person for Additional Information: Esther Sasarteje, Ph.D., Behavioral Scientist, Clinical Research Branch, DTE, CPS, CDC, Mailstop E-30, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639-2544 or FTS 236-2544.

Dated: June 7, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-14047 Filed 6-12-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91H-0154]

Cardiac Pacemakers, Inc.; Premarket Approval of the Ventak® P Model 1600 AICD™ and the Model 2830 Software Module

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cardiac Pacemakers, Inc., St. Paul, MN, for premarket approval, under the Medical Device Amendments of 1976, of the Ventak® P Model 1600 AICD™ and the Model 2830 Software Module. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 2, 1991, of the approval of the application.

DATES: Petitions for administrative review by July 15, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mark D. Kramer, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1194.

SUPPLEMENTARY INFORMATION: On November 27, 1989, Cardiac Pacemakers, Inc., St. Paul, MN 55112-5798, submitted to CDRH an application for premarket approval of the Ventak® P Model 1600 AICD™ and the Model 2830 Software Module. The Ventak® P Model 1600 Automatic Implantable Cardioverter Defibrillator (AICD™) is indicated for the treatment of ventricular tachyarrhythmias in patients who are at high risk of sudden cardiac death. Such patients are defined as having experienced one or both of the following situations:

(1) Survived at least one episode of cardiac arrest presumably due to hemodynamically unstable ventricular tachyarrhythmia unassociated with acute myocardial infarction; and

(2) Experienced recurrent ventricular tachyarrhythmias in the absence of such previous arrest and are inducible into sustained hypotensive ventricular tachycardia or fibrillation despite conventional antiarrhythmia drug therapy.

On August 21, 1990, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 2, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Mark D. Kramer (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) 21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 15, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

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This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 31, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 91-14055 Filed 6-12-91; 8:45 am]

BILLING CODE 4160-01-M

Indian Health Service

Tribal Management Program for American Indians/Alaska Natives Grants Application Announcement

AGENCY: Indian Health Service, HHS.

ACTION: Notice of final funding priorities for competitive grant applications for Tribal Management Grants for American Indians/Alaska Natives.

SUMMARY: The Indian Health Service (IHS) announces the final funding priorities for fiscal year (FY) 1991 Tribal Management Grants for American Indians/Alaska Natives, under the authority of section 103(b)(2) of the Indian Self-Determination and Education Assistance Act, Public Law 93-628, as amended by Public Law 100-472, 25 U.S.C. 450h(b)(2).

Program Purpose: To improve the management capacity of a tribal organization to enter into a contract under Public Law 93-638.

Tribal management grants assist tribal organizations to assume operation of all or part of an existing IHS direct operation health care program by enabling them to develop and maintain their management capabilities.

Tribal Management grants are also available for tribal organizations under the authority of Public Law 93-638 section 103(e) for obtaining technical assistance from providers designated by the tribal organization, including tribal organizations that operate mature contracts, for the purposes of (1) program planning and evaluation, including the development of any management systems necessary for contract management, and the development of cost allocation plans for indirect cost rates, and (2) the planning, designing, monitoring, and evaluation of Federal health programs serving the tribe, including Federal administrative functions.

Tribal management grants may not be used to support operational programs or to supplant existing public and private resources. The grants may, however, be used as matching shares for other Federal grant programs that develop tribal capabilities to contract for the administration and operation of health programs.

These grants will be awarded and administered in accordance with the published program announcement in the **Federal Register** of March 19, 1991 (56 FR 11562); Department of Health and Human Services regulations governing Public Law 93-638 grants at 42 CFR 36.101 et seq. and 45 CFR part 92, Department of Health and Human Services Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Administration of Grants to Non-Profit recipients; the Public Health Service Grants Policy Statement; and applicable Office of Management and Budget circulars.

Program Funding Priorities: Only one tribal management grant will be awarded and funded to a tribe or tribal organization per funding cycle. Proposed funding priorities were published in the **Federal Register** of March 19, 1991 (56 FR 11562) for public comment. No comments were received during the 30-day comment period. Therefore, as proposed the following funding authorities will be retained as listed below.

Priority I

An Indian tribe that has received Federal recognition (new, restored, unterminated, funded or unfunded) within the past three (3) years and is in the process of establishing health care services. (Verification of documents is required, i.e.: Letter of Acknowledgment, **Federal Register** notice.)

Priority II

An Indian tribe or Indian tribal organization stating an interest in contracting IHS health programs for the first time. The feasibility study will address requirements for assumption of currently operated IHS health programs.

Priority III

An Indian tribe or Indian tribal organization planning to develop/update their health plan, develop tribal health management structure, human resource development, and evaluation studies to expand their operation of health programs.

Priority IV

An Indian tribe or Indian tribal organization currently operating all health programs previously provided by IHS, which plans to update its health plan, enhance its tribal health management structure, facilitate human resources development, and conduct evaluation studies.

Objective Review

Applications meeting eligibility requirements that are complete and conform to the published program announcement in the **Federal Register** of March 19, 1991 (56 FR 11562) will be reviewed by a centralized Ad Hoc Objective Review Committee (ORC) conducted at the IHS Headquarters and in accordance with PHS objective review procedures. The objective review process ensures nationwide competition for limited funding. The ORC will be comprised of IHS staff (40% or less) and other Federal or non-Federal individuals (60% or more) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewers assign a numerical score to each application, which will be used in making the final funding decision.

Evaluation Criteria

1. Introduction

—Does the Introduction have the funding priority identified and justified?
—Is only one project type selected?
—Is a specific/blanket tribal resolution attached to the application?
—Is the approved tribal resolution (specific/blanket) current?

2. Need for Assistance

—Is there an explanation of the reason for the project?
—Is the precise location of the project or area to be served by the proposed project including a map provided?
—Does it describe the overall and specific need for assistance by explaining the current situation or demand and unmet requirements (i.e., resources, staffing, equipment, training, etc.)?
—Are relevant statistical/historical data included?
—Is data collection, analysis and maintenance addressed?
—State impact of previous or current tribal management grant on this application.

3. Objective(s), Result and Benefit Expected

—Principal and subordinate objectives of the project are stated in realistic and measurable terms?
—The population, number of participants and personnel to benefit from the project are defined?
—The expected results, benefits and outcome or product to be derived from this project are identified?
—The relationship between this project and other work planned, anticipated, or underway which are supported by other Federal funds are identified?

4. Approach

—An outline of the plan of action and program activities to achieve each objective is provided? Activities need to be grouped under the objective they are designed to achieve. Indicate staff position responsible for each activity. Identifies IHS staff used for technical assistance, if any?
—Provides a workplan including start and completion calendar of activities?
—Identifies data collection, analysis and maintenance.
—If required, identifies the scope of work for a consultant or contractor?
—Describes any unusual features of the project, if any which may affect the project (i.e.: design, uniqueness, reduction in cost or time, or special social and community involvement)?
—Identifies the accomplishments, deliverables/outcomes to be achieved?
—Describes the evaluation component of the project to determine the achievement of the projected accomplishments (deliverables/outcomes)?
—Identifies who will conduct the evaluation to determine the achievements of the projected deliverables/outcomes?
—Identifies who in the tribal/organization structure will receive the final results of the grant?

5. Key Personnel

—Provides a position description and resume for professional staff.
—Are qualifications and experience of consultants or contractors identified where applicable?

6. Adequacy of Management Controls

—Prepares a budget and descriptive narrative. The budget narrative provides a rationale/justification of cost and purchasing of equipment (i.e., computer hardware/software).
—Describes adequacy of facilities and equipment for the project?
—Lists equipment purchases necessary for implementation of the project, include a narrative rationale and justification (i.e., computer hardware/software)? Identifies the IHS Area Office contact used to determine compatibility of any ADP equipment purchases with IHS systems?

FOR FURTHER INFORMATION CONTACT: Ms. Bea Bowman, Division of Community Services, Indian Health Service, Parklawn Building, room 6A-05, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6840.

This program is described at 93.228 in the Catalog of Federal Domestic Assistance (previously at 13.228). Executive order 12372, requiring intergovernmental review is not applicable to this program.

Dated: June 7, 1991.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 91-14041 Filed 6-12-91; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Wind River Irrigation Project; Proposed 1991 Guidelines

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

PURPOSE: Proposed 1991 Irrigation Season Procedural Guidelines for the Operation and Maintenance of the Wind River Irrigation Project (Project).

SUMMARY: The Code of Federal Regulations (25 CFR 171.1(c)) provides as follows: "The Officer in Charge is responsible for performing such work and taking any action which in his judgement is necessary for the proper operation, maintenance and administration of the irrigation project or unit."

Pursuant to this authority, the following operational procedures will be used to direct daily operations of the Bureau of Indian Affairs' Wind River Indian Irrigation Project (Project), for the 1991 irrigation season. These procedures will provide guidelines for irrigators to use in planning their irrigation requirements.

Our intent is to provide fair and equitable distribution of water in accordance with the Code of Federal Regulations and the Big Horn Water Decree (*In re: The General Adjudication of All Rights to Use Water in the Big Horn river System and All Other Sources*, State of Wyoming, Civil No. 4993)

These are interim procedures. They will be effective immediately and remain in effect while written data, views and arguments are received and evaluated, after which final procedures will be published.

Wind River Irrigation Project

Water Delivery Procedures

1. Under normal conditions water will be delivered at a base rate of 2 cubic feet per second (cfs) per 70 acres to Project lands with a decreed 1868 "reserved" water right, and 1 cfs per 70 acres to all other project lands.

2. Under drought conditions, all lands with a decreed 1868 "reserved" water right will be delivered water first at a base rate of 2 cfs per 70 acres. Any additional available water will be divided evenly among junior water users, unless voluntary rotation is requested, at a base rate of 1 cfs per 70 acres. For this purpose, drought will be determined on a unit by unit basis and is defined as water shortage which prevents water delivery to Project lands with a decreed 1868 "reserved" water right at a base rate of 2 cfs per 70 acres and to all other Project lands at a base rate of 1 cfs per 70 acres in any Project unit.

3. When water is available in any Project unit above the amount sufficient to fulfill water user needs under normal conditions, water will be delivered to Project lands without a decreed 1868 "reserved" water right to the extent that such lands are delivered water up to a base rate of 2 cfs per 70 acres. Water available after all water demands have been met at a base rate of 2 cfs per 70 acres will be deemed surplus water and will be apportioned pro rata among all water users in a Project unit.

4. In all cases, beneficial use is the limit and measure of water delivery to Project lands.

5. Drought, Normal and Surplus conditions will be determined under authority of the Officer in Charge of the Project in accordance with all applicable laws and regulations.

6. "Walton Right" claimants will receive water for their Project lands on a priority basis during drought conditions as all other Project lands having a decreed 1868 "reserved" water right, but only after such claimants have their Project lands decreed as being entitled to such priority by the District Court of the State of Wyoming.

7. The service or farm ditches into which water is delivered from project laterals must have ample capacity and be maintained by the water user in proper condition to receive water and convey it to the place of use with a minimum of loss. Water delivery will be refused to such ditches not satisfactorily maintained.

8. All fences, installations, or any other infringements on or across Project rights-of-way shall be approved by the Officer in Charge of the Project. In no event, however, shall any fence, installation or infringement interfere with the flow of water, passage of Project employees or equipment, or any

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other right and entitlement to the full use of the right-of-way by the Project.

9. Any person who without authority, interferes with the flow of water, opens or closes a headgate, changes a water control structure, cuts a ditch bank to divert water, or places an obstruction in such facilities to change the flow of water, as described in 25 CFR 171.6(b), shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) and shall be subject to prosecution for criminal violations pursuant to Title 18 of the United States Code. The possession or use of water, lawfully denied by the Officer in Charge of the Project, is prima facie evidence of guilt.

Alleged violations will be investigated by irrigation personnel and law enforcement officials of the Wind River Agency. If such investigation substantiates that a violation has occurred, the violator will be charged in the court of proper jurisdiction or appropriate administrative action will be taken.

This notice will be published and posted at the following locations:

U.S. Post Office	Newspaper
Riverton, WY 82501 Lander, WY 82520 Bureau of Indian Affairs: Wind River Agency, Fort Washakie, WY 82514.	Riverton Ranger, Riverton, WY 82501. Wyoming State Journal, Lander, WY 82520.

COMMENTS: Written comments must be submitted to the Superintendent of the Wind River Agency, Fort Washakie, Wyoming 82514 within 30 days after the publication of this notice in the **Federal Register** and before the close of business on the 30th day.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the code of Federal Regulations, Chapter 25, part 171, under the authority delegated to the Area director, by the Assistant Secretary of Indian Affairs and the Deputy Assistant Secretary of the Interior (Departmental Manual, chapter 3, part 230, (3.1 & 3.2)).

Norris M. Cole,

Acting Billings Area Director.

[FR Doc. 91-14011 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

[AK-963-4230-15; AA-70150]

Alaska Native Claims Selection

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Calista Corporation for approximately 43,895 acres. The lands involved are in the vicinity of Nyac, Alaska.

Seward Meridian, Alaska

(Unsurveyed)

T. 11 N., R. 59 W.,
Secs. 3, 4 and 5;
Secs. 7 to 10, inclusive;
Secs. 15 to 22, inclusive;
Secs. 30.
Containing approximately 10,136 acres.

T. 12 N., R. 59 W.,
Secs. 27, 28 and 29;
Secs. 32, 33 and 34.
Containing approximately 3,840 acres.

T. 10 N., R. 60 W.,
Secs. 4 to 8, inclusive;
Secs. 17 and 18.
Containig approximately 4,426 acres.

T. 11 N., R. 60 W.,
Secs. 2 to 6, inclusive;
Secs. 9, 10 and 11;
Sec. 16;
Sec. 21;
Secs. 24 to 33, inclusive.
Containing approximately 12, 725 acres.

T. 12 N., R. 60 W.
Secs. 31 to 35, inclusive.
Containing approximately 3,166 acres.

T. 10 N., R. 61 W.,
Secs. 1 to 4, inclusive;
Secs. 9 to 12, inclusive;
Sec. 15.
Containing approximately 5,760 acres.

T. 11 N., R. 61 W.
Secs. 27, 28 and 29;
Secs. 32, 33 and 34.
Containing approximately 3,840 acres.
Aggregating approximately 43,895 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 15, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Joan Biggs,

Land Law Examiner, Branch of Calista Adjudication

[FR Doc. 91-14054 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-JA-M

[AK-910-01-4830-02-ADVB]

Northern Alaska Advisory Council; Meeting

The Northern Alaska Advisory Council will conduct a field trip to the Seward Peninsula July 18 through July 21, 1991. There will be both on-the-ground visits and aerial over-flights of BLM-managed lands during the trip.

Two public meetings will be held in conjunction with the trip. Topics of discussion for both meetings will be:

(1) Seward Peninsula Resource Management Plan Issues,

(2) Fisheries, Wildlife and Recreation Opportunities,

(3) Cultural Resource Projects, and

(4) Reindeer Grazing Program and Caribou Habitat Management.

The Council will hold a public meeting Thursday, July 18, 1991, at the NANA Conference Room at the Drift Inn in Kotzebue, Alaska. The meeting will begin at 7 p.m., public comment will be taken from 7:30 to 8:30 p.m., and the meeting will end at 9 p.m.

The Council will hold a second public meeting Friday, July 19, 1991, at the Nome City Council Chambers in Nome, Alaska. The meeting will be taken from 7:30 to 8:30 p.m., and the meeting will end at 9 p.m.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474-2231.

Dated: June 3, 1991.

Don Ritchie,

Designated District Manager.

[FR Doc. 91-14015 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-JA-M

[UT-050-01-4320-14]

Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board meeting.

SUMMARY: The Richfield District Grazing Board will hold a meeting on August 6, 1991. The meeting will start at 10 a.m. in the District Office, 1s50 East 900 North, Richfield Utah. The agenda will be:

1. Election of Officers.
2. Program priorities F.Y. 93.
3. South Narrows Otter Creek Multiple Use Plan.
4. Change in class of livestock.
5. Update on Bison/Livestock Management.
6. Status of Henry Mountain Resource Area Planning.
7. Wild Horse and Burro program.
8. District forage condition.
9. Allotment Management Plan Development.

Interested persons may make oral statements to the Board between 1:15 p.m. and 2:15 p.m. or file written comments for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801-896-8221). For further information contact: Sheril Slack, District Range Conservationist at the above address.

Dated: June 6, 1991.

Sam Rowley,

Assistant District Manager, Resources.

[FR Doc. 91-14084 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-010-5101-09-YQKJ/GI-0111; NMNM80900]

Right-of-Way Application for 30 Inch Diameter Pipeline; Correction

In notice document 91-11604, page 22734 in the Thursday, May 16, 1991 issue, the legal description should be corrected to read as follows:

New Mexico Principal Meridian

T. 16 N., R. 17 W.,
Sec. 26, NW¼SW¼.
T. 24 N., R. 13 W.,
Sec. 30, lot 7, E½SW¼.
T. 28 N., R. 11 W.,
Sec. 7, SE¼SE¼;
Sec. 10, lot 3, SW¼SW¼;
Sec. 16, NE¼, W½SW¼, NW¼SE¼;
Sec. 20, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 21, W½NW¼;
Sec. 29, N½SW¼.
T. 29 N., R. 11 W.
Sec. 26, SE¼SW¼;
Sec. 33, lot 1;
Sec. 34, lot 1, E½SW¼, N½SE¼, S½NE¼;
Sec. 35, N½NW¼.

Dated: June 7, 1991.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 91-14094 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-FB-M

[CA-010-4212-13; CACA 28305]

Realty Action; Exchange of Public Land in Placer County, CA

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Selected Public Land

Placer County, California
T. 15 N., R. 10 E., MDM.
Sec. 6: W½ SE¼
Containing 80 acres, more or less.

This is an isolated tract surrounded on all four sides by private property. Located within BLM's Folsom Resource Area, the tract is being considered for a possible transfer to a nonprofit conservation organization such as the Nature Conservancy or the Trust for Public Land. In exchange the United States proposes to acquire important wetlands and waterfowl habitat located in the Central Valley of California.

The Central Valley was identified in 1986 by the International North American Waterfowl Management Plan as an area critically in need of waterfowl habitat development and protection. Approximately 60 percent of the waterfowl populations in the Pacific Flyway winter in the Central Valley were 93 percent of the marshlands have been destroyed during the past century. This proposal is consistent with the North American Waterfowl Management Plan and with the Central Valley Habitat Joint Venture. The proposal is also in conformance with the Bureau's land use plans.

The Federal land described above (surface and mineral estate) would be transferred subject to certain reservations, terms and conditions. There would be reserved to the United States a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945); also rights-of-way of record would be identified as prior existing rights. All necessary clearances including clearances for archeology, rare plants and animals would be completed prior to any conveyance of title by the United States.

ADDRESSES: In or before July 29, 1991, interested parties may submit comments to the BLM District Manager, c/o Folsom Resource Area Office, 63 Natoma St., Folsom, CA 95630.

FOR FURTHER INFORMATION: Contact Mike Kelley at (916) 985-4474 or at the address listed above.

D.K. Swickard,

Area Manager.

[FR Doc. 91-14081 Filed 6-12-91; 8:45 am]

BILLING CODE 4310-40-M

[CO-050-4212-13]

Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice of realty action, COC-51086, addressing addition of public land to exchange proposal in Chaffee County, Colorado.

SUMMARY: The following described public land has been selected by the exchange proponent to allow for equalization of appraised values:

Sixth Principal Meridian

T.14S., R.79W.
Sec. 13, SW¼SE¼
Sec. 23, N½SE¼
Sec. 24, N½SW¼, N½NE¼

The above is 280 acres and brings the total public land in the exchange proposal to 600 acres in Chaffee County. This amendment supplements the notice published in **Federal Register** dated November 28, 1990, Vol. 55 No. 229; 49431.

The purpose of the exchange is to acquire recreational land for the Arkansas Headwaters Recreational Area on the Arkansas River for rafting and fishing below Brown's Canyon.

The public land parcels are isolated and identified for disposal in the Royal Gorge MFP.

DATES: Comments will be accepted on or before July 29, 1991.

ADDRESSES: Known interested parties will be mailed a notice on this proposal.

All persons must submit comments to the District Manager, Bureau of Land Management, P.O. Box 2200, Canon City, Colorado 81215-2200. Please refer to case file COC-51086 for any comments submitted.

FOR FURTHER INFORMATION CONTACT: Mark Pyle, Realty Specialist, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 2200, Canon City, Colorado 81215-2200; Phone: (719) 275-0631.

SUPPLEMENTARY INFORMATION: The 160 acres west of Buena Vista is south of Highway 306 and divided by Chaffee County Road No. 339, and is open, flat grass land. The 120 acres is bordered by

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Chaffee County Road No. 328 and also open, flat grassland.

The publication of this notice segregates the public lands described above from the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, for a period of 2 years from the date of first publication.

Stuart L. Freer,
Associate District Manager.

[FR Doc. 91-14095 Filed 6-12-91; 8:45 am]
BILLING CODE 4310-JB-M

[NM-060-01-4333-10-803]

Intent To Prepare Resource Management Plan; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare resource management plan amendment and invitation to participate in the identification of the issues and planning criteria.

SUMMARY: The BLM, Carlsbad Resource Area, Carlsbad, New Mexico, is initiating the preparation of an amendment to the Carlsbad Resource Management Plan (RMP) which was completed in 1988. The amendment will be prepared along with the Roswell Resource Management Plan (RMP), announced in the **Federal Register** on August 25, 1989, Vol. 54, No. 164, page 35403.

The RMP Amendment will provide direction for future oil and gas exploration and development on federal mineral estate in the Carlsbad Resource Area, as well as analyzing the cumulative impacts associated with such exploration and development on approximately 2.2 million surface and 2.7 million subsurface acres. Resource programs which were not addressed in the 1988 Carlsbad RMP or which have undergone significant policy changes since its completion will also be addressed. The Code of Federal Regulations, title 43, subpart 1600, will be followed for this planning effort. The public is invited to participate in the planning process, beginning with the identification of issues and planning criteria in June 1991.

DATES: Comments relating to the Carlsbad Resource Area RMP amendment, or the scope of and the issues and planning criteria for the Roswell Resource Area's RMP will be accepted until August 16, 1991.

ADDRESSES: Send comments to Pat Kelley, RMP Team Leader, Bureau of Land Management, Roswell Resource Area, P.O. Drawer 1857, Roswell, New Mexico 88202.

FOR FURTHER INFORMATION CONTACT: Dick Manus, Carlsbad Area Manager, 505-887-6544, or Saundra L. Allen, Roswell Area Manager, 505-624-1790.

SUPPLEMENTARY INFORMATION: The planning area, covered by the RMPA, includes the public land and Federal mineral ownership in Lea and Eddy Counties, and a portion of Chaves County in southeastern New Mexico. The RMPA will address the exploration for, and the development of the oil and gas resources, as well as those resource programs which were not addressed in the RMP or which have had significant policy changes since its development. Examples of other programs which will be addressed are fire management and hazardous materials. These programs will be addressed as district-wide issues or concerns. The RMPA will be developed by an Interdisciplinary Team which will include specialists representing Range, Oil & Gas, Wildlife, Recreation, Archaeology, Lands, Surface Protection, Soils & Watershed, Fire Management, and Non-Energy Minerals. A comprehensive public participation plan has been prepared. Its goal is to involve interested or affected parties early and continuously throughout the planning process with localized one-on-one contacts, media coverage, direct mailings, and continued coordination with local, State, and other Federal agencies. Public meetings to receive input on the RMPA for the Carlsbad Resource Area, and to determine the scope of and to obtain input on the issues for the Roswell Resource Area's RMP will be held in the following locations: July 17, 1991, Roswell Public Library, Bondurant Room, 301 North Pennsylvania, Roswell, New Mexico; July 18, 1991, Hobbs City Hall, Meeting Room A, 300 North Turner, Hobbs, New Mexico; July 24, 1991, Fletcher Hall, Lincoln County Fairgrounds, Capitan, New Mexico; and July 25, 1991, Carlsbad Municipal Library Annex, Halagueno Park, Carlsbad, New Mexico. All of the meetings will be held from 1-4 p.m. in the afternoon and from 6-8 p.m. in the evening. A scoping package will be issued in June 1991. Complete records of the planning process will be available for public review at the following locations: For the Carlsbad RMPA, Carlsbad Resource Area, 101 East Mermod, Carlsbad, New Mexico; for the Roswell RMP, Roswell Resource Area, Federal Building, 5th and Richardson, Roswell, New Mexico. A Draft and Proposed Plan including a Draft and Final EIS will be published. Upon completion of this project a Record of Decision and Approved Plan will be published as separate documents for both the Roswell Resource Area and the Carlsbad Resource Area.

Dated: June 4, 1991.

Monte G. Jordan,
Associate State Director.

[FR Doc. 91-14080 Filed 6-12-91; 8:45 am]
BILLING CODE 4310-FB-M

[NM-940-01-4730-12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on May 30, 1991.

New Mexico Principal Meridian, New Mexico

T. 26 N., R. 16 W., Accepted March 8, 1991, for Group 870 NM.
T. 26 N., R. 17 W., Accepted March 8, 1991, for Group 870 NM.
T. 5 S., R. 16 W., Accepted April 19, 1991, for Group 880 NM.
T. 5 S., R. 1 E., Accepted April 19, 1991, for Group 768 NM.,

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

The plats will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504-1449. Copies may be obtained from this office upon payment of $2.50 per sheet.

John P. Bennett,
Chief, Cadastral Survey.

[FR Doc. 91 14012 Filed 6-12-91; 8:45 am]
BILLING CODE 4310-FB-M

[OR-943-4214-11; GP1-241; OR-19227A]

Proposed Continuation of Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Air Force proposes that the land withdrawal for the Coos Head Air National Guard Station continue for an additional 25 years and requests that the land involved remain closed to surface entry and mining.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

The Department of the Air Force proposes that the existing land withdrawal made by the Executive Order dated July 14, 1864, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The 43.38 acres involved are located in Secs. 2 and 3, T. 26 S., R. 14 W., in Coos County, approximately one mile northwest of Charleston on the Oregon coast.

The purpose of the withdrawal is to protect the Coos Head Air National Guard Station. The withdrawal currently segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The Department of the Air Force requests no changes in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: May 28, 1991.

Robert E. Mollohan,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-14014 Filed 6-12-91; 8:45 am]
BILLING CODE 4310-33-M

DEPARTMENT OF JUSTICE

Community Relations Service

Prejudice and Bigotry Related Crimes

AGENCY: Community Relations Service, DOJ.

ACTION: Notice of availability of funds.

SUMMARY: The Community Relations Service (CRS) announces availability of approximately $400,000 in Fiscal Year (FY) 1991 funds under title X of the Civil Rights Act of 1964, 42 U.S.C. section 2000(g) *et seq.* which established CRS to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin. This announcement governs the award of one or more Cooperative Agreements to private non-profit organizations or agencies, and under certain conditions, to for-profit organizations or agencies for projects to combat and respond to prejudice and bigotry-related crimes arising out of race, color or national origin. Substantial involvement of the Federal Government is anticipated during the conduct of this project.

DATES: The deadline for receipt of applications is July 29, 1991. Applications Postmarked on or before 5 p.m. (Eastern Daylight Time), shall be considered as timely applications.

ADDRESSES: Cooperative Agreement Application Form (SF 424), guidelines, and additional information regarding business management, administrative, or fiscal issues relating to the awarding of cooperative agreements under this Notice may be obtained from: Grants Management Office, United States Department of Justice, Community Relations Service, suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Attention: Cynthia A. Bowie, Grants Officer.

Proposal Application Packages may be obtained by contacting the Community Relations Service at (301) 492-5900.

Applicants should submit a completed signed original application and two (2) copies of the proposal and supporting documentation to the office indicated above.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical and program issues may be obtained from Barbara Huie, Chief, Planning Section, Office of Planning, Budget, and Evaluation, at the address given above; telephone 301/492-5900.

SUPPLEMENTARY INFORMATION:

Eligible Applicants

Eligible applicants are private non-profit organizations which are solely devoted to work in the area of prejudice and bigotry-related crime. They must compile data relative to such crimes; must provide training to law enforcement officers and other community workers concerning how best to respond to this type of conduct; must provide outreach and counseling to communities threatened by such activity; and must be conducting research related to various components of this activity.

For-profit organizations, incorporated under State law, which (a) can meet eligibility requirements indicated above and (b) can clearly demonstrate that only costs and not profits, fees, or other elements above costs have been budgeted, are also eligible to apply.

Consortiums or joint ventures between or among unrelated agencies or organizations, i.e., those where no formal affiliation or membership relationship exists, will not be considered for funding under the terms of this Notice.

Applicants must be able to start the proposed project by September 30, 1991.

Program Background and Objectives

Prejudice-related crimes in the United States are continuing at an alarming rate. The incidents in Howard Beach and Bensonhurst are only two of the more highly publicized examples. Countless individual Americans are acting out their prejudices in a variety of ways, in settings ranging from the neighborhood, to the campus, to places of employment and business. Perpetrators include not only members of organized white hate groups, but members of racial and ethnic minority groups as well.

The impact of a prejudice-related hate crime or act may extend far beyond the immediate victim. Such incidents of hate, whether rising to the level of crime or not, tear through the fabric of a community, endangering the network of human relations that constitutes the civil society. While the need for a law enforcement response to hate crime is a given, there is a comparable need for a community response to bring the pieces of the community back together and to strengthen it so that the potential for future hate incidents is diminished. An organized, broad-based community response also can mitigate the rise in racial tensions that often follows a hate incident.

There are a number of public and private sector organizations that collect

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information on hate incidents, usually against specific victim groups, and/or provide information on how to respond to such incidents. The Community Relations Service (CRS), U.S. Department of Justice, operates a national 800 number telephone hotline through which any individual can report hate incidents and provides direct assistance to communities in which racial tensions result from hate incidents.

In order to enhance the results achieved with the most efficient use of limited resources, CRS has established an initiative to pursue collaborative efforts in collection of data on hate incidents and documentation of community response models. The desired outcomes of the initiative are:

1. A series of materials (training curricula, guidelines, videotapes, bibliography, etc.) that assist groups such as law enforcement, human relations groups, neighborhood groups, church and other civic groups, and school groups, repond to the community-wide impact of hate incidents; and

2. Identification of minimum common data elements that agencies which collect data on hate incidents can use for development of a joint annual report on hate incidents. Note: As used herein, the term hate incident includes hate acts that might not be reportable under the Hate Crime Statistics Act of 1990.

In order to accomplish the outcomes outlined above, the Cooperative Agreement Recipient (hereinafter referred to as the Recipient) shall: (1) Administer a series of no less than four workshops of groups involved in combatting hate incidents (for example: educators, lawyers, law enforcement, civil rights organizations, etc.) to foster the collaborative process; (2) develop material for the initiative's deliverables based upon the collaborative process identified in the preceding clause; and (3) administer a national conference of no less than 100 persons for three to four days to introduce the materials developed. The Cooperative Agreement will cover the administrative costs for the workshops and conference, as well as travel costs for the participants, all development, printing, and production costs for the deliverables.

Application Contents

Applicants are required to set forth in detail a proposal that meets the program requirements described in this Notice. Applicants are required to submit a detailed program narrative addressing each of the following points:

1. Summary

A clear and concise overview, not exceeding four pages, of the proposed effort/project, summarizing the problem statement, project results, project methodology, and evaluation plan.

2. Applicant Qualifications

Detailed background information about the applicant organization reflecting its capabilities, experience, and accomplishments relevant to prejudice and bigotry-related crime:

(a) Work in the area;

(b) Compilation of data relative to such crimes;

(c) Provision of training to law enforcement officers and other community workers concerning how best to respond;

(d) Provision of outreach and counseling to communities threatened by such activity;

(e) Conduct of research related to various components of this activity; and

(f) Materials and literature relevant and related to the desired outcomes of this initiative.

3. Problem Statement

A brief description of the problem to be addressed by the proposed effort/project, including:

(a) Observations supported by statistical data, as appropriate; and

(b) Statements by authorities and other knowledgeable individuals, and comments by intended beneficiaries.

4. Project Results

Description of project objectives which are time-phased and measurable, reflecting results of the proposed effort/project.

This shall include identification of product deliverables—purpose, format, number of copies, and how deliverables from this initiative will contribute to the existing body of knowledge.

5. Project Methodology

Clear description of project activities and explanation of how and why they were selected. A plan reflecting tasks to be performed by period of performance shall be outlined, and a proposed milestone chart included. (Should award be made for conduct of the proposed project/effort, the milestone chart shall be updated and ratified at time of such award.) Narrative should reflect sequence of events and staffing pattern of the proposed effort/project.

This shall include:

(1) Proposal for each workshop—objectives, participants, agenda, materials to be used, and site;

(2) Proposal for national conference—objective, participants, agenda, materials to be used, and site; and

(3) Description of how deliverables will be developed.

6. Evaluation

A plan for on-going monitoring and evaluation of project activities and description of the criteria that will be used in measuring results.

7. Management Plan

A plan which identifies the agency/organization which will have overall fiscal and program responsibility, as applicable, and which:

a. Identifies the organizational structure and lines of authority;

b. Describes the overall staffing plan and staff qualifications for the program;

c. Includes a comprehensive plan for cooperation of activities between the various program components, if appropriate;

d. Includes proposed staff schedule (s);

e. Describes the role of consultants, if any, and the rationale for their use; and

f. Detailed narrative describing administrative program controls, records, and accountability.

8. Proposed Budget

Applicants are required to submit a comprehensive line item budget, and calculate as appropriate each of the following points:

a. Personnel;
b. Fringe Benefits;
c. Travel Costs;
d. Equipment;
e. Supplies;
f. Contractual Obligations;
Other; and
Indirect Costs.

9. Budget Narrative

A narrative explanation for each line item in each budget category must accompany the proposed budget.

10. Supportive Addenda Material

Applicants are required to submit the following material as addenda to the program proposal:

a. Organization/Agency Administration

(1) A copy of the Organization/Agency's Articles of Incorporation;

(2) A copy of the document verifying IRS status as a non-profit organization/agency, if applicable;

(3) A comprehensive organizational chart of the proposing agency and the proposed program;

(4) A list of officers and board members, if applicable;

(5) A list of professional affiliations and certifications; and

(6) Certification of the following requirements as a pre-condition of award:

(a) Certification of a Drug-Free Workplace;

(b) Certification of regarding lobbying restrictions; and

(c) Certification regarding debarment, suspension, and other responsibility matters.

b. Organizational/Agency Standards and Policies

(1) Personnel handbook and statement of standards of conduct; and

(2) Statement regarding professional and agency liability.

c. Staff

(1) Position descriptions and resumes for all existing staff who will be assigned to the proposed effort;

(2) Position descriptions for all personnel to be hired who will be assigned to the proposed effort; and

(3) Resumes of program consultants.

d. Finance and Budget

(1) A description of the financial management system of the applicant;

(2) A copy of the latest financial audit of the applicant; and

(3) A listing of other Federal, State, local or foundation grants or contracts administered by the applicant from 1989 to date.

This material should include information regarding the funding source, grant or contract number, level of financial support, propose of grant or contract, grant or contract performance period, and name, address, and telephone number of the grant or contract officer from the relevant agency.

e. Subcontracts

Subcontracts shall be governed by the provisions of OMB Circular A–110, attachment O, Procurement Standards.

Application Screening Criteria

The Community Relations Service will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the independent Community Relations Service Review Panel.

An application may be rejected if:

1. The application is from an ineligible applicant;

2. The application is received after the announced closing time and date; or

3. The application omits a comprehensive line item budget with appropriate narrative description, or a copy of the latest financial audit of the applicant.

Proposal Review

Proposals will be reviewed, evaluated, and competitively ranked by an independent review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Associate Director, Office of Policy, Budget and Evaluation. Awards will be subject to the availability of funds.

Review Criteria

Applicants must provide documentation of their ability or potential for working in collaboration with other groups involved in documenting or combatting hate incidents.

Applications will be competitively reviewed, evaluated and ranked by an independent review panel, according to the following weighted criteria:

1. The qualifications of the applicant organization or agency with respect to:

a. Demonstrated experience in working in collaboration with other groups involved in documenting or combatting hate incidents;

b. Demonstrated capacity for effective programmatic, fiscal management and accountability, including ability to produce quality print and video documents. (25 points)

2. The adequacy and coherency of the proposed program plan in terms of project results, project methodology, and collaboration with other organizations and agencies. (40 points)

3. The reasonableness of the proposed budget and the completeness of the budget narrative. (15 points)

4. The adequacy of the program evaluation plan. (5 points)

5. The degree to which the applicant provides for effective program management and accountability as demonstrated by administrative and programmatic controls and staffing structure. (15 points)

Award Instrument

The Community Relations Service will negotiate cooperative agreements with those applicants approved by the Associate Director, Office of Policy, Budget and Evaluation (OPBE). During these negotiations, the CRS will also conduct a site visit to the applicants' program facilities. The award is subject to the requirements of Office of Management and Budget (OMB) Circulars A–110 and A–122.

Awards normally will not exceed a 12 month project period. Funding will be for a 12 month budget period.

The estimated amount of available funds and the anticipated ranges of funding contained in this Notice are intended to serve as bench marks only. These estimates and ranges do not bind the Community Relations Service to any specific number of Cooperative Agreements or to any specific level of funding.

The Community Relations Service does not anticipate continuation of this program beyond the initial project and budget periods.

Post Assistance Requirements

1. Reporting Requirements

A successful applicant under this Notice will submit reports in accordance with the provisions of the general regulations which apply under OMB Circulars of A–110 and A–122. Recipients must submit quarterly and final progress reports. Expenditure reports are required 30 days after each quarter and 90 days after the budget period.

2. Audit

The recipient is subject to the audit provisions of OMB Circular A–133. The Applicant may budget audit costs.

3. Records

All financial and program records must be retained for three years after the end of the program and budget period.

Applications Delivered by Mail

Applicants must show proof of mailing:

1. A legible dated U.S. Postal Service postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; or

3. A dated shipping label, invoice, or receipt from a commercial carrier.

Private metered postmarks or mail receipts that are not dated by the U.S. Postal Service are not acceptable as proof of timely mailing.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with its local Post Office.

Applicants are encouraged to use registered or at least First Class mail. Applications received or postmarked after the announced closing date will not be considered and will be returned to the applicant.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the United States Department of Justice, Community

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Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815. The Grants Management Office will accept hand delivered applications between 9 a.m.–5 p.m., Eastern Standard Time, daily, except Saturdays, Sundays and Federal holidays. Applications that are hand delivered will not be accepted after 5 p.m., Eastern Standard Time, on the closing date.

Catalogue of Federal Domestic Assistance Number: 16.200

Dated: June 3, 1991.

Barbara Huie,

Chief, Planning Section, Office of Planning, Budget & Evaluation.

[FR Doc. 91–13998 Filed 6–12–91; 8:45 am]

BILLING CODE 4410–17–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that on June 3, 1991, a proposed Consent Decree in *United States* v. *Northern Aroostook Regional Incinerator Facility*, C.A. No. 89–0–115–B, was lodged with the United States District Court for the District of Maine. The United States filed the Complaint in this action on May 5, 1989 pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), alleging that three municipalities in Maine (Madawaska, Ft. Kent, and Frenchville) and a corporation owned by these municipalities (Northern Aroostook Regional Incinerator Facility) have violated the particulate emissions limits contained in the New Source Performance Standards for Incinerators, 40 CFR part 60, subpart E, and in section 104.2.C of the regulations of the Maine Department of Environmental Protections.

Under the proposed Consent Decree, the four defendants agree to cease operation of the incinerator no later than July 31, 1992, after initiating a waste recycling program. The defendants also agree that until the incinerator is closed they will adopt specified interim operating practices to reduce particulate emissions. Finally, the Consent Decree requires the defendants to pay a civil penalty of $125,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Northern Aroostock Regional Incinerator Facility;* DOJ No. 90–5–2–1–1301.

The proposed Consent Decree may be examined at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02202, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Washington, DC 20004 (202–347–2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction cost).

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–14008 Filed 6–12–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

Notice is hereby given that on May 29, 1991 a proposed Consent Decree was lodged with the United States District Court for the Northern District of Indiana, Hammond Division in *United States* versus *United States Smelting Lead Corporation*, Civil Action No. H 85–469 (N.D Ind.), an action brought pursuant to section 309 of the Clean Water Act, 33 U.S.C. 1319. The proposed Consent Decree would resolve certain Clean Water Act claims which the United States has asserted against United States Smelting Lead Corporation ("U.S.S. Lead") in connection with operations at its facility in East Chicago, Illinois.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of justice, Washington, DC 20530, and should refer to *United States* versus *United States Smelting Lead Corp.*, D.J. Ref. No.90–5–1–1–2319. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Indiana, Civil Division at 1001 Main Street, suite A, Dyer, Indiana 46311, and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $8.50 (25 cents per page reproduction costs) payable to Aspen Systems Corporation.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–14007 Filed 6–12–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Purusant to the National Cooperative Research Act of 1984; Gas Utilization Research Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. § 4301 *et. seq.* ("the Act"), Gas Utilization Research forum ("GURF") filed written notifications simultaneously with the Attorney General and the Federal Trade commission on May 13, 1991 concerning the identity of an additional member of GURF. The written notifications were filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstance.

The following is an additional party which has become a member of GURF: Gaz de France, 361, Ave. du President Wilson, B.P. 33, 93211 La Plaine Saint-Denis Cedex, France.

No other changes have been made in either the membership or planned activity of GURF.

On December 19, 1990, GURF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 16, 1991, 56 FR 1655. A notice of additional members to GURF was published on April 24, 1991, 56 FR 18837.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–14003 Filed 6–12–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Hydrocyclone Development Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Hydrocyclone Development Consortium (HDC) filed written notifications with the Attorney General and the Federal Trade Commission on May 15, 1991, concerning the identities of additional members of the HDC. The written notifications were filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following are additional parties which have become members of the HDC:

Texaco Inc, P.O. Box 425, Bellaire, Texas 77401.

Chevron Oil Field Research Company (a subsidiary of the Chevron Corporation), 1300 Beach Blvd., La Habra, CA 90631.

No other changes have been made in either the membership or planned activity of the HDC.

On January 17, 1991 the HDC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 14, 1991. 56 FR 6035.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–14004 Filed 6–12–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on April 29, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership and in its bylaws and policies and procedures and describing the status of its research activities. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies recently were accepted as active members of NCMS: Cargill Detroit Corporation, Concord Communications, Inc., Dynetics Corporation, Electro Scientific Industries, Inc., Parametric Technology Corporation.

The following organizations recently were accepted as affiliate members of NCMS: National Machine Tool Builders Association, University of Kentucky Center for Robotics and Manufacturing Systems.

On February 13, 1991, the NCMS Board of Directors enacted changes to NCMS's bylaws and policies and procedures.

Currently, NCMS has awarded contracts directed toward its objectives in the general areas of manufacturing data and factory control; manufacturing operations; manufacturing processes and materials; production equipment design, analysis, testing, and control; and technology transfer. Other projects directed toward those objectives are under consideration.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the **Federal Register** on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, November 7, 1990, February 5, 1991, and March 18, 1991, notices of which the Department published on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22964), August 28, 1990 (55 FR 35194), December 10, 1990 (55 FR 50786), and March 12, 1991 (56 FR 10444), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–14005 Filed 6–12–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") on April 25, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act limiting recovery of antitrust plaintiffs to actual damages under specific circumstances.

On August 8, 1988, OSF and the Open Software Foundation Research Institute, Inc. (the "Institute") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34594). On November 4, 1988, February 2, 1989, May 3, 1989, July 28, 1989, October 26, 1989, January 22, 1990, April 19, 1990, July 24, 1990, October 22, 1990, and January 28, 1991, OSF filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on November 25, 1988 (53 FR 47773), February 23, 1989 (54 FR 7893), August 25, 1989 (54 FR 35407), August 25, 1989 (54 FR 35408), November 29, 1989 (54 FR 49123), April 18, 1990 (55 FR 14493), May 21, 1990 (55 FR 20661), September 27, 1990 (55 FR 39528), December 26, 1990 (55 FR 53368), and April 3, 1991 (56 FR 13655), respectively.

The identities of the new, non-voting members of OSF are as follows:

Member	Date
Virginia Polytech Institute/State University Computing Center	01/15/91
Clarkson University	01/18/91
Hal Computer Systems, Inc.	01/23/91
University of Twente	01/25/91
University of Illinois at Chicago	01/29/91
Royal College Maria Cristina el Escorial	01/30/91
Prime Computer, Inc.	01/31/91
ASTEM of KYOTO	01/31/91
NEC Computer Systems, Ltd.	02/01/91
CRIM	02/01/91
Cranfield Institute of Tech-Post Grad	02/13/91
JC Penney	02/15/91
Centre for Development of Advanced Computing	02/18/91
Software Technologies Research Center	02/26/91
Hong Kong University of Science of Technology	03/01/91
The Chinese University of Hong Kong	03/13/91
Petrotechnical Open Software Corp.	03/15/91
Brigham Young University	03/20/91
Universitat Politecnica De Catalunya	03/26/91
Baylor College of Medicine	04/01/91
JUST System Corp.	04/11/91
University of Wisconsin-Milwaukee	04/16/91
National Central University	04/18/91

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–14006 Filed 6–12–91; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NOTICE [91–52]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

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ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by July 15, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0050), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271–5542.

Reports

Title: Patent Waiver Report.
OMB Number: 2700–0050.
Type of Request: Extension.
Frequency of Report: Annually.
Type of Respondent: Businesses or other for-profit.
Number of Respondents: 95.
Responses per Respondent: 1.
Hours per Response: 2.
Annual Responses: 190.
Annual Hours per Recordkeeper: 15.
Annual Burden Hours: 205.
Abstract-Need/Uses: The NASA Patent Waiver form which is completed by NASA contractors is designed to elicit information that is deemed necessary for the NASA Inventions and Contributions Board to evaluate the progress of development and commercialization for waived inventions. The NASA Patent Waiver Regulations require the waiver recipient to report on the utilization of waived inventions.

Dated: June 5, 1991.

D. A. Gerstner,
Director IRM Policy Division.

[FR Doc. 91–14058 Filed 6–12–91; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement to Enhance the Ability of U.S. Visual and Performing Artists and Arts Organizations to Participate at International Festivals and Exhibitions

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a cooperative agreement to carry out a project to enhance the ability of U.S. visual and performing artists and arts organizations to participate at international festivals and exhibitions and other events abroad. The tasks will include the administration of a process for the review of applications and awarding of grants to performing artists and arts organizations invited to international festivals, the administration of funds to represent the United States at significant international exhibitions, and the administration of a travel fund to assist performing and visual artists to participate in international conferences, residencies, or other international activities outside the framework of festivals and exhibitions. Eligibility is to apply for the cooperative agreement is limited to nonprofit organizations. Those interested in receiving the solicitation package should reference Program Solicitation PS 91–10 in their written request and include two (2) self-addressed labels. Verbal requests for the solicitation will not be honored.

DATES: Program Solicitation PS 91–10 is scheduled for release approximately July 2, 1991 with proposals due August 5, 1991.

ADDRESS: Requests for the solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

William I. Hummel,
Director, Contracts and Procurement Division.

[FR Doc. 91–14002 Filed 6–12–91; 8:45 am]

BILLING CODE 7537–01–M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: Catherine Wolhowe, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* July 9, 1991.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Museums and Historical Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.
2. *Date:* July 11, 1991.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Undergraduate Education, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.
3. *Date:* July 16, 1991.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Public Outreach, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.
4. *Date:* July 23, 1991.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Museums and Historical Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.
5. *Date:* July 25, 1991.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Scholarship/Research, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.
6. *Date:* July 11–12, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January 1, 1992.
7. *Date:* July 18–19, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January 1, 1992.
8. *Date:* July 25–26, 1991.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January 1, 1992.
9. *Date:* July 30, 1991.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications in Museums and Historical Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

Catherine Wolhowe,
Advisory Committee, Management Officer.

[FR Doc. 91–14093 Filed 6–12–91; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 152 to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance to be implemented within 30 days.

The amendment modified the Technical Specifications (TS) surveillance intervals for Table 4.1.1: Item 1—High Reactor Pressure; Item 3—Low Reactor Water Level; Item 4—Low-Low Reactor Water Level; Item 5—High Water Level in the Scram Discharge Volume Analog Scram; Item 27a—Scram Discharge Volume Water Level High Analog Rod Block; and Item 5a—High Water Level in the Scram Discharge Volume Digital Scram. A change correcting the bases for the control functions of the High Drywell Pressure Trip System, referenced in TS section 3.1, was also included.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 19, 1990 (55 FR 52112). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated December 19, 1990, (2) Amendment No. 152 to License No. DPR–16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), and (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 5th day of June 1991.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,
Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–14089 Filed 6–12–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–331]

Iowa Electric Light and Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49, issued to the Iowa Electric Light and Power Company, the Central Iowa Power Cooperative and the Corn Belt Power Cooperative (the licensee), for operation of the Duane Arnold Energy Center, located in Linn County, Iowa.

The amendment would revise the Technical Specifications (TSs) to eliminate conditional surveillances for the Emergency Core Cooling (ECCS), Reactor Core Isolation Cooling, (RCIC), Standby Liquid Control, (SLCS) and Standby Gas Treatment Systems (SGTS). Alternate methods of verifying operability of redundant trains of those systems would be included in revised surveillance requirements. The proposed changes would also extend the allowed out-of-service times (AOTs) for the RCIC and HPCI systems from 7 days to 14 days and would revise the LCOs pertaining to instances when the TSs require an orderly reactor shutdown to read "hot shutdown in 12 hours and cold shutdown within the following 24 hours," instead of "cold shutdown in 24 hours." These proposed changes are

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consistent with the Standard Technical Specifications for General Electric Boiling Water Reactors (NUREG–0123, Revision 3). In addition, a new LCO is proposed for the suppression pool spray subsystem, along with increased surveillances for ECCS keep-filled system pressure switches and HPCI suction transfer logic. Several minor editorial changes are also proposed.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the requested revisions do not impact any FSAR safety analysis involving these systems.

Although the proposed amendment would reduce the amount of testing of the ECCSs, SLCS, SGTS, RCIC, and their auxiliaries, reliability of these systems would not be decreased and the necessary assurance that the alternate systems/subsystems/components will operate when needed is provided by the ASME Section XI IST Program, which is currently required by the DAEC TSs.

The probability of human error will decrease with reduced testing. Human error such as misalignment of valves after the system is returned to its normal configuration following testing and the misdirection of the operators attention from monitoring and directing plant operations is less likely to occur if this testing is eliminated. Reducing the scope and frequency of surveillance testing, much of which is now required on a daily basis during LCOs, will decrease the probability of equipment failure which could require plant shutdown.

We have determined the allowed out-of-service time (AOT) for the HPCI and RCIC systems and for the low pressure ECCSs, utilizing the same methodology as was used to determine the LCOs presently in the DAEC TSs. Our analyses show that the AOTs for the HPCI and RCIC systems are greater than 14 days. Thus, allowing HPCI or RCIC to be out of service for 14 days prior to plant shutdown is conservative. These changes have no adverse effect on our present accident analyses.

Revising the shutdown LCO requirement from requiring the plant to be in cold shutdown in 24 hours to requiring hot shutdown in 12 hours and cold shutdown (or other condition not requiring equipment operability) in the following 24 hours is consistent with NRC guidance provided in the BWR Standard Technical Specifications (NUREG–0123, Revision 3). The new requirement will allow the reactor to be shutdown in a more controlled manner.

The additional surveillance and operability requirements for ECCS and support systems (*e.g.*, Maintenance of Filled Discharge Piping) provide additional assurance that equipment assumed to be operable in our accident analyses will be operable upon demand. Requiring operability of suppression pool sprays will ensure this function will be available if needed.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons.

Testing under our ASME section XI IST Program has demonstrated a high degree of reliability for the equipment tested. Therefore, those systems required to mitigate accidents evaluated in the DAEC FSAR will still be assured as operable and available. The reduction of surveillance testing on redundant systems when the ECCSs, SGTS, SLCS or RCIC systems are in an LCO will reduce the probability of equipment failure and human error. The deletion of this additional surveillance testing will not reduce the ability of redundant systems to mitigate a design basis accident.

All proposed changes revise only surveillance and administrative requirements. No change alters the plant design or its transient response. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident is not created. (sic)

(3) The proposed amendment will not involve a significant reduction in a margin of safety.

Removal of the existing operability testing requirements eliminates redundant testing which serves to degrade temporarily the alternative systems ability to perform or renders the systems out-of-service for the duration of the testing. These changes will not reduce the minimum required equipment operability requirements during an LCO or normal operating conditions given in the basis section of technical specifications for the ECCSs, SLCs, SGTS or RCIC system. The reduction in testing will decrease the possibility of equipment failure and human error. Therefore, the proposed amendment results in an increase in the plant safety margin compared to the existing testing requirements contained in the Technical Specifications.

Extending the AOTs for certain equipment is within the original licensing basis assumptions and will not invalidate any assumptions or input parameters for any DAEC event analysis. Extending the time period within which the DAEC must achieve cold conditions will allow for increased operator attention and minimal distractions for operators during shutdown, thus minimizing the risks of an unexpected operational transient.

Added surveillance testing for certain instrumentation and logic and the new LCO for suppression pool sprays will increase the margin of safety by assuring these systems will be available when needed.

Therefore, the margin of safety for the systems and the equipment contained in these systems will not be significantly reduced.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 15, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack Newman, Esq., Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 14, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and

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at the local public document room located at Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 7th day of June 1991.

For the Nuclear Regulatory Commission.

James R. Hall, Sr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects—III/IV/V; Office of Nuclear Reactor Regulation.

[FR Doc. 91-14000 Filed 6-12-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co., (Millstone Nuclear Power Station, Unit No. 1); Exemption

I.

The Northeast Nuclear Energy Company (the licensee) is the holder of Facility Operating License No. DPR-21 which authorizes operation of Millstone Nuclear Power Station, Unit No. 1. The license provides, among other things, that Millstone, Unit 1 is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility is a single-unit boiling water reactor at the licensee's site located in New London County, Connecticut.

II.

Title 10, CFR part 50, appendix J, section III.C requires containment isolation valves to undergo local leak rate (type C) testing. The purpose of the testing, and any subsequent repairs, is to assure that leakage through these valves will not result in an unacceptable release of containment atmosphere during, or following, a design basis accident. Appendix J, section III.C.1 states, in part,

Type C tests shall be performed by local pressurization. The pressure shall be applied in the same direction as that when the valve would be required to perform its safety function, unless it can be determined that the results from the tests for a pressure applied in a different direction will provide equivalent or more conservative results.

In addition, 10 CFR part 50, § 50.12 contains standards for issuance of exemptions from NRC rules, including those contained in appendix J to 10 CFR part 50.

III.

By letter dated April 29, 1988, as supplemented by letters dated May 19, 1989 and November 8, 1990, the licensee requested exemptions from the test requirements of appendix J, section III.C.1 for certain containment penetrations for Millstone Unit 1. The NRC staff's evaluation of the licensee's request for exemptions is summarized in Table 1. The details of the evaluation are contained in the NRC staff's Safety Evaluation dated June 5, 1991.

TABLE 1.—SUMMARY OF THE NRC STAFF'S EVALUATION OF MILLSTONE UNIT 1 APPENDIX J EXEMPTION REQUESTS

Penetration No.	Description	Status of requested exemption
X-20	Demineralized water system supply line	Denied.
X-21	Service air system supply line	Denied.
X-42	Standby liquid control system supply line	Denied.
X-22	Drywell compressor discharge line	Denied.
X-212	Reactor water cleanup (RWCU) system vent line into torus	Not needed.
X-25, 26, 202E and 205	Containment atmosphere control system lines	Acceptable.
X-15	RWCU system line from regenerative heat exchanger	Denied.
X-204 A, B, C and X-210 A, B	Emergency core cooling tie-ins to the torus	Denied.

IV.

Pursuant to 10 CFR 50.12(a)(2)(iii), the Commission may grant an exemption from a regulation if "Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted * * *". With regard to the requested exemptions from appendix J, section III.C.1 for penetration Nos. X-25, 26, 202E and 205, the Commission concludes that the objective of equivalent or conservative reverse direction testing and actuator shaft seal testing cannot be achieved simultaneously with existing piping configuration and that special circumstances are present in that the exorbative cost of equipment modifications, necessary to comply with appendix J, type C, test requirements are unjustified considering the small additional benefit that would be gained. The NRC staff considers, however, that the proposed alternative test procedures are the most conservative with the existing configuration and will test both valve seals to provide indication of the leak tightness of the containment boundaries and therefore, the requested exemptions from appendix J, type C restrictions on reverse direction testing of the subject AC system butterfly valves are acceptable.

V.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest. Therefore, the Commission hereby approves the following exemption request.

Exemptions are hereby granted from the requirements of 10 CFR part 50, appendix J, section III.C.1, which require local leak rate testing, as this requirement applies to Millstone Unit 1 containment penetrations Nos. X-25, 26, 202E and 205. These exemptions are conditional upon performance of the alternate testing proposed by the licensee.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the Exemption will have no significant impact on the environment (56 FR 25702).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 5th day of June 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-14091 Filed 6-12-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co.; Denial of Portion of Application for Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission has denied a portion of an amendment request by Virginia Electric and Power Company (the licensee), for amendments to Facility Operating License Nos. NPF-4 and NPF-7, issued to the licensee for operation of the North Anna Power Station, Unit Nos. 1 and 2, located in Louisa County, Virginia.

Notice of Consideration of Issuance of these amendments was published in the Federal Register on May 2, 1990 (55 FR 18416).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) by replacing the value of the cycle-specific parameter limits with a reference to the Core Operating Limits Report (COLR).

The NRC staff has concluded that the portion of the licensee's request regarding the inclusion of boron concentration in the COLR cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated June 7, 1991.

By July 15, 1991, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 355, Richmond, Virginia 23212, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated March 29, 1990, as supplemented May 8, August 6, and October 30, 1990, and (2) the Commission's letter to the licensee dated June 7, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, attention: Document Control Desk.

For the Nuclear Regulatory Commission.

Rajender Auluck,

Acting Director, Project Directorate II-2, Division of Reactor Projects I/II; Office of Nuclear Reactor Regulation.

[FR Doc. 91-14092 Filed 6-12-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Performance Management and Recognition System Review Committee; Meeting

The Office of Personnel Management announces the following meeting:

Name: Performance Management and Recognition System Review Committee Meeting.

Date and Time: June 27, 1991, 10 a.m. to 5 p.m.

Place: Room 7B09, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001.

Type of Meeting: Open.

Point of Contact: Ms. Doris Hausser, Chief of the Performance Management Division, room 7454, Office of Personnel Management, 1900 E Street NW., Washington DC 20415-0001.

Purpose of Meeting: To review the Performance Management and Recognition System and make recommendations for a fair and effective performance management system for Federal managers.

Agenda: June 27, 1991—Committee goals and objectives; scope of inquiry; research and resources on performance-based pay; basic issues and challenges facing the committee; committee administration; comments and observations; public input; closing.

SUPPLEMENTARY INFORMATION: The committee welcomes written data, views, or comments concerning systems for managing and recognizing the performance of Federal managers. All such submissions received by close of business June 20, 1991, will be provided to the committee members and included in the record of the June 27, 1991, meeting.

If time permits, the committee will consider oral presentations relating to agenda items. Persons wishing to address the committee orally at the June 27, 1991, meeting should submit a written request to be heard by close of business June 20, 1991. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed.

All communications regarding this committee should be addressed to the Point of Contact named above.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-14096 Filed 6-12-91; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Order No. 896; Docket No. C91-1]

Complaint of Alan Hall Manning, Renumbering Postal Boxes; Order on Filing of Complaint of Alan Hall Manning on Renumbering of Postal Boxes

Issued June 7, 1991.

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W. H. "Trey" LeBlanc, III; Patti Birge Tyson.

Notice is hereby given that on May 29, 1991, a document entitled "Service Complaint: Renumbering of the Postal Boxes" was filed by Alan Hall Manning and assigned the Docket No. C91-1. Mr. Manning asserts that the Postal Service plans to convert all post office boxes to 6-digit designations. Mr. Manning states that the policy has a nationwide impact on boxholders who have relied on permanent post office box numbers for business and personal correspondence. Mr. Manning states that forwarding service will only be available for one year after the change. Mr. Manning says the Postal Service's policy violates section 403(c) of the Postal Reorganization Act. That section prohibits unreasonable discrimination among users of the mails. Mr. Manning requests that the Commission hold a hearing on the complaint.

Under the Commission's rules of practice (39 CFR 3001.84) the Postal Service has 30 days to file an answer to a complaint. However, we are invoking rule 85 (39 CFR 3001.85) which provides for informal methods for resolution of complaints. It is Commission policy and practice "to encourage the resolution and settlement of complaints by informal procedures * * *" 39 CFR 3001.85. Those informal procedures have been used to resolve similar complaints, and we believe them to be the best alternative at this time. *See* Order No. 831 (Docket No. C89-2). In accordance with rule 85, the Chairman will appoint a coordinator of informal resolution efforts.

The scheduling of any formal procedures, such as the Postal Service's answer, any hearing dates and a due date for petitions to intervene will be postponed pending the outcome of the informal procedure. The Commission will notify the Postal Service and the parties of the scheduling of formal procedural steps if the informal procedure is found to be inadequate to resolve the situation.

It is ordered:

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(1) The Commission will use informal procedures, in accordance with section 85 of our rules of practice, in Docket No. C91–1.

(2) Further procedural dates, including the Postal Service's answer, will be established, if needed, in future orders.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 91–14020 Filed 6–12–91; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29278; File No. S7–20–91]

Public Disclosure of Material Short Security Positions

AGENCY: Securities and Exchange Commission.

ACTION: Concept release.

SUMMARY: The Securities and Exchange Commission is soliciting public comment on whether the Commission should require public reporting of material short security positions in publicly traded companies in a manner analogous to the current reporting requirement for material long security positions. The Concept Release is issued in connection with a rulemaking request received by the Commission. Following public comment, the Commission will determine whether such rulemaking or other action is appropriate.

DATES: Comments should be received on or before September 11, 1991.

ADDRESSES: Interested persons should submit three copies of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549, and should refer to File No. S7–20–91. All submissions will be made available for public inspection and copying at the Commission's Public Reference Section, room 1024, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Selwyn J. Notelovitz or George E. Scargle, Office of Legal Policy and Trading Practices, Division of Market Regulation, at (202) 272–2848, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission ("SEC" or "Commission") is publishing for public comment a rulemaking request submitted by the Association of Publicly Traded Companies ("APTC"),[1] which has petitioned the Commission to adopt a rule imposing a reporting requirement on individuals or groups holding short positions of five percent or more of any publicly traded issuer's equity securities ("APTC Petition").[2] The APTC Petition generally parallels rule 13d–1 under the Securities Exchange Act of 1934 ("Exchange Act")[3] and related Schedule 13D,[4] which requires persons that acquire more than five percent of a class of voting equity securities registered pursuant to section 12 of the Exchange Act[5] to disclose those positions within 10 days of such acquisition. The APTC Petition is intended to elicit information that may benefit issuers and market participants.[6]

The Subcommittee on Commerce, Consumer and Monetary Affairs of the House Commission on Government Affairs has held a series of oversight hearings investigating the market role of short selling.[7] Furthermore, since the filing of the APTC Petition, proposed Federal legislation entitled the "Shareholder Protection Act of 1990" was introduced during the second session of the 101st Congress which, among other things, would require the public reporting of material short positions in a manner similar to that advanced by the APTC Petition.[8] Although Congress did not take any action on the bill, the Commission understands that a similar bill may be submitted during the 102d Congress. In response to these proposals for a material short position reporting requirement, the Commission is publishing this release to solicit public comment on the basic concepts underlying the APTC Petition and related issues.

II. Role of Short Selling in the Market

A short sale[9] is the sale of a security that the seller does not own or that he owns but does not deliver.[10] In order to deliver the security to the purchaser, the short seller will borrow the security, typically from a broker-dealer or an institutional investor. The short seller later closes out the position by returning the security to the lender, typically by purchasing equivalent securities on the open market.[11] In general, short selling is utilized to profit from an expected downward price movement, or to hedge the risk of a long position in the same security or in a related security.

Short selling provides the market with two important benefits: Market liquidity and pricing efficiency. Substantial market liquidity is provided through short selling by market professionals, such as market makers, block positioners, and specialists, who facilitate the operation of the markets by offsetting temporary imbalances in the supply and demand for securities. To the extent that short sales are effected in the market by securities professionals, such short sale activities in effect add to the trading supply of stock available to purchasers and reduce the risk that the price paid by investors is artificially high because of a temporary contraction of supply. An exchange specialist, for example, is required to maintain price continuity and to minimize the effects of temporary disparities between supply and demand, *i.e.*, to maintain a fair and orderly market. Thus, the specialist may sell short in order to supply stock to satisfy purchase orders. While an over-the-counter ("OTC") market maker is not under the same affirmative obligation to maintain a fair and orderly market, OTC market makers frequently sell short in order to supply stock to fill customers' purchase orders. Similarly, block positioners may provide liquidity in the market through short sales to satisfy large customer purchase orders.

Arbitrageurs contribute to pricing efficiency by utilizing short sales to profit from price disparities between a stock and a derivative security, such as a convertible security or an option on that stock. For example, an arbitrageur may purchase a convertible security and sell the underlying stock short to profit from a current price differential between two economically similar positions.[12] In addition, where an issuer proposes to issue securities (of a class already outstanding) in exchange for the securities of another issuer, pursuant to a merger or exchange offer, arbitrageurs may sell short the security proposed to be issued to hedge their purchases of the security proposed to be acquired.

Short selling also contributes to the pricing efficiency of the equities markets. Efficient markets require that prices fully reflect all buy and sell interest. When a short seller speculates on a downward movement in a security, his transaction is a mirror image of the person who purchases the security based upon speculation that the security's price will rise. Both the purchaser and the short seller hope to profit by buying the security at one price and selling at a higher price—the primary difference being that the sequence of transactions is reversed. Market participants who believe a stock is "overvalued" may engage in short sales in an attempt to profit from the perceived divergence of prices from true economic values. Such short sellers add to stock pricing efficiency because their transactions assure that their perception of future stock price performance (and, inferentially, issuer performance) is reflected in the market price.

Some short selling may be effected for manipulative purposes.[13] It appears, however, that historically downward price manipulations have been less frequent than upward manipulations.[14]

III. Current Regulation of Short Sale Trading Practices

The Commission's regulation of short sale trading practices is conducted primarily pursuant to its authority under section 10(a) of the Exchange Act,[15] which grants the Commission plenary rulemaking authority to regulate short sales in securities registered on national securities exchanges. Section 10(a) prohibits, among other things, short selling by any person in contravention of such rules and regulations as the Commission may prescribe as necessary and appropriate in the public interest or for the protection of investors. Rule 3b-3 under the Exchange Act defines the term "short sale,"[16] and rule 10a-1 under the Exchange Act governs short sales generally.[17]

Rule 10a-1 is designed to prevent the market price of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange,[18] from being forced downward by unrestricted short selling. Paragraph (a) of Rule 10a-1 covers transactions in any security registered on a national securities exchange, if trades in such security are reported in the consolidated transaction reporting system,[19] and prohibits short sales with respect to those securities unless such sales occur on a "plus tick" (*i.e.*, at a price above the price at which the immediately preceding sale was effected), or "zero-plus tick" (*i.e.*, equal to the last sale price if it was higher than the last different price). The *per se* trading prohibitions of rule 10a-1 support the more general anti-manipulation and antifraud prohibitions of the Exchange Act.[20] As discussed below in greater detail, the Exchange Act does not contain any provision that requires the public reporting of material short security positions in publicly traded companies.

IV. Current Security Position Reporting Requirements

A. Exchange Act Reporting Requirements

The Exchange Act requires the public reporting of certain long security positions. The public interest in requiring such reporting relates to a variety of considerations, including transfers of corporate control, the impact of large institutional transactions upon the securities markets, and the trading of corporate insiders. While the APTC Petition has been analogized to the section 13(d) reporting requirement of the Exchange Act,[21] the Commission notes that the purpose of the APTC Petition does not appear to be closely related to that of the reporting requirements of section 13(d) or the other Exchange Act security reporting requirements discussed below.

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[1] The APTC, formerly the National Association of OTC Companies ("NAOTC"), represents approximately 800 exchange-listed and over-the-counter companies.

[2] See Letter from John F. Guion, President, NAOTC, to Richard C. Breeden, Chairman, SEC (December 8, 1989). The APTC Petition is contained in File No. S7–20–91, which is available for inspection in the Commission's Public Reference Section, room 1024, 450 Fifth Street, NW., Washington, DC 20549.

The APTC elaborated on its proposal during Congressional testimony:

"[T]he [APTC] Board of Directors voted to recommend that the Securities and Exchange Commission adopt a rule requiring that any person who directly or in concert with others sells short a number of shares of any class of equity securities, the accumulated number of which exceeds five percent of such class, shall, within ten days of crossing the threshold, send to the issuer of the security at its principal executive office by registered or certified mail, and to each market (NASDAQ or the exchanges) where the security is traded, and file with the Commission, a statement containing the information required on a designated Schedule."

Short Selling Activity in the Stock Market: The Effects on Small Companies and the Need for Regulation, Hearings Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Affairs, 101st Cong., 1st Sess. 182 (1989) ("Hearings") (Statement of John F. Guion, President, NAOTC). The APTC has since requested that, to the extent Rule 13d–1 under the Exchange Act, 17 CFR 240.13d–1, is amended to provide for a shortened reporting period (*i.e.*, from ten days to five days), a parallel change be made to its petition.

[3] 17 CFR 240.13d–1. See section IV.A.1. *infra*.

[4] 17 CFR 240.13d–101.

[5] 15 U.S.C. 78*l*.

[6] Hearings at 178–79.

[7] See Hearings, *supra* n.2. See also Memorandum Prepared by the Division of Market Regulation in Response to the Questions Contained in the Letter of November 3, 1989 from the Hon. Doug Barnard Regarding Short Selling. Hearings at 449–507.

[8] The Shareholder Protection Act of 1990, H.R. 5036, is significantly broader than the APTC Petition. In addition to proposing amendments to section 13 of the Exchange Act to require the public reporting of material short positions, H.R. 5036 also proposed amendments to Sections 8, 10, and 12 of the Exchange Act, 15 U.S.C. 78 i, j, and *l*.

[9] Rule 3b–3 under the Exchange Act, 17 CFR 240.3b–3, defines a short sale as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." Pursuant to rule 3b–3, a seller of an equity security subject to rule 10a–1 must aggregate all positions in that security in order to determine whether the seller has a "net long position." Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119. See also Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949 (interpreting staff no-action position with respect to the liquidation of index arbitrage positions).

[10] The latter situation is known as short selling "against the box" (*i.e.*, against a long position). Short sales "against the box" are used primarily for hedging purposes and for tax purposes (*e.g.*, to carry over a profit from year to year).

[11] In a short sale "against the box," the seller has the option of delivering to the security lender the security he owns. See n.10 *supra*.

[12] Such arbitrage activity is specifically recognized in exception (e)(7) of rule 10a–1, 17 CFR 240.10a–1(e)(7), the Commission's principal short sale regulation.

[13] The Commission notes that such manipulative trading practices are prohibited by the general antifraud provisions of the Exchange Act and the rules thereunder. See sections 9(a), 10(b), and 15(c)(1) of the Exchange Act, 15 U.S.C. 78i(a), 78j(b), and 78*o*(c)(1), and rules 10b–5 and 10c1–2, 17 CFR 240.10b–5 and 240.15c1–2.

[14] See, e.g., Hearings, *supra* n.2, at 428–32 (Statement of Richard G. Ketchum, Director, Division of Market Regulation and John H. Sturc, Associate Director, Division of Enforcement Before the House Committee on Government Affairs Subcommittee on Commerce, Consumer, and Monetary Affairs). Stock market manipulations may involve efforts to achieve an illegal profit by depressing the price of securities through: (i) Selling activity, including short sales, made for the purpose of inducing the sale of the security by others; or (ii) establishing a short position coupled with publicizing negative, materially misleading statements concerning the issuer. *Id.* at 428.

[15] 15 U.S.C. 78j(a).

[16] See n.9 *supra*.

[17] 17 CFR 240.10a–1.

[18] Although rule 10a–1 applies to any security registered on, or admitted to unlisted trading privileges ("UTP") on, a national securities exchange for which last sale information is reported pursuant to an effective reporting plan (which would include certain National Association of Security Dealers ("NASD") Automated Quotation ("NASDAQ")/National Market System ("NMS") designated securities), the Commission specifically excluded from the coverage of rule 10a–1 transactions in NASDAQ/NMS securities that are traded on a listed or unlisted basis. See Securities Exchange Act Release No. 22975 (March 6, 1986), 51 FR 8801 (adopting 17 CFR 240.10a–1(a)(1)(i)). See also n.19 *infra*.

[19] The "consolidated transaction reporting system," also known as the Consolidated Tape or the Consolidated System, refers to "the consolidated transaction reporting system for which a plan originally was submitted to the Commission pursuant to rule 17a–15 (subsequently amended and redesignated as rule 11Aa3–1) under the [Exchange] Act * * *." 17 CFR 240.11Ac1–1(a)(16). The Consolidated Tape Association ("CTA"), composed of various national securities exchanges and the NASD, collects and disseminates reports for transactions on those markets on the Consolidated Tape.

[20] See n.13 *supra*. See also rule 10b-21(T) under the Exchange Act, 17 CFR 240.10b-21(T), discussed *infra*.

[21] 15 U.S.C. 78m(d).

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1. Sections 13(d) and 13(g)

One of the purposes underlying the adoption of the Williams Act amendments to the Exchange Act,[32] which, among other things, added section 13(d) of the Exchange Act,[33] was to remove the element of secrecy from the transfer of control of an issuer, and to assure that shareholders would be aware of the control premium that might be paid for their shares.[34] The Domestic and Foreign Investment Act of 1977 [35] added section 13(g) to the Exchange Act[36] in order to fill a gap in the reporting requirements of sections 13(d) and 16(a) [37] for persons otherwise not covered by those reporting requirements. Sections 13(d) and (g) require the reporting of information with respect to long positions that is relevant to corporate control and its transfer.

The rules implementing sections 13(d) and 13(g) are set forth in Regulation 13D–G, which establishes specific filing and disclosure requirements, and provides standards for determining what constitutes on "acquisition" and "beneficial ownership" for purposes of these provisions.[38] Any person who, directly or indirectly, acquires beneficial ownership [39] of more than five percent of a class of equity security registered pursuant to section 12 of the Exchange Act,[40] is required by Rule 13d–1 to file a statement containing the information required by either Schedule 13D or 13G depending upon whether such person is subject to paragraph (a), (b), or (c) of Rule 13d–1.[41]

Under paragraph (a) of Rules 13d–1, a person who makes an acquisition of covered equity securities [42] that results in that person becoming the beneficial owner of more than five percent of a class of covered equity securities is required to file with the Commission, and send to the issuer and each exchange where the security is traded, a Schedule 13D within 10 days after such acquisition.[43] Paragraphs (b) and (c) of Rule 13d–1 permit a Schedule 13G to be filed and sent within forty-five days after the end of the calendar year by persons who otherwise would be required to file a Schedule 13D if the conditions specified in Rule 13d–1 are met.[44]

2. Section 13(f)

Section 13(f),[45] which was added to the Exchange Act by the Securities Acts Amendments of 1975,[46] requires institutional portfolio managers who exercise investment discretion over $100,000,000 or more of equity securities registered under section 12 to disclose their securities positions on a quarterly basis.[47] Section 13(f) was designed to create a central depository of data concerning the investment activities of large investment managers and thereby to facilitate the consideration of the public policy implications of their influence and impact upon the securities markets.[48]

3. Section 16(a)

Section 16(a) of the Exchange Act [49] requires every person who is directly or indirectly the beneficial owner of more than ten percent of any class of equity security registered pursuant to section 12 of the Exchange Act,[50] and every director or officer of an issuer of such security, to file with the Commission (and the exchange, if any, on which the security is listed) an initial report disclosing the amount of all equity securities of such issuer of which he or she is the beneficial owner and a further report within 10 days after the close of each calendar month in which there has been any change in such beneficial ownership. Rule 16a–3 [51] requires the filing of a Form 3 for initial reports of beneficial ownership and Form 4 for statements of changes in such beneficial ownership.[52] Section 16(a) is designed to facilitate the recovery by the issuer of short-swing profits made by corporate insiders,[53] as well as provide information concerning purchases and sales by insiders to public investors, which may indicate insider opinions of company prospects.[54]

B. Short Interest Reporting Requirements of the Self-Regulatory Organizations

The New York Stock Exchange ("NYSE"), American Stock Exchange ("Amex"), and the NASD have rules requiring member firms to report, as of the 15th of each month, aggregate short positions in all customer and proprietary accounts in securities listed on such exchanges or traded in NASDAQ.[55] Reports must be submitted by member firms not later than the second business day after the reporting settlement date. This information is published toward the end of the month in the *Wall Street Journal* and *Barrons*, among other publications The published information is set forth in tabular form and includes the current and prior month's aggregate short interest for those securities where either the current or last month's short interest exceeded 50,000 shares, the percentage change in short interest from the prior month, and the average daily trading volume.[56]

V. Recent Developments in Short Sale Regulation

Over the past three years, the Commission and the NASD have taken a number of significant steps to address perceived short selling abuses, with a principal focus on the OTC market. The Commission also believes that these steps may address in different ways many of the concerns underlying the APTC Petition.

In 1988, the Commission adopted Rule 10b–21(T) to address the concern expressed by the NASD and other commenters about the practice of short selling immediately prior to a public offering of securities with the covering purchases being made from the securities in the offering.[57] This practice permits the short seller to reduce significantly the economic risks associated with a short sale. Rule 10b–21(T) prohibits a person who effects a short sale of an equity security between the filing of a registration statement and the time at which sales of such equity security may be commenced, from covering the short sale with offered securities purchased from an underwriter or other broker or dealer participating in the offering. Rule 10b–21(T) thus does not prohibit all short sales prior to an offering, but abusive short selling is less likely because short sellers cannot utilize the availability of securities at a fixed price (in the offering) to cover their short positions. In sum, Rule 10b–21(T) benefits issuers by eliminating the effects of abusive short selling on the price of offered securities, but does not affect legitimate short selling of an issuer's securities.[58]

The Commission has approved a number of NASD actions to enhance short selling-related information, and to deal with potentially abusive aspects of "naked" short selling.[59] In 1986, the Commission approved an NASD rule filing requiring its members to mark all sales transaction as "long" or "short." [60] In the same release, the Commission approved an NASD rule filing requiring a member firm, prior to accepting a short sale order from a public customer, to make an affirmative determination that it will receive delivery of the security from the customer or that it can borrow the security on behalf of the customer for delivery by settlement date.[61] In July 1990, the Commission approved an NASD rule amendment that requires an NASD member to make an affirmative determination that it can borrow the security before effecting a short sale for its own account, with certain exceptions.[62]

In 1989, the Commission approved NASD rule amendments that imposed a mandatory buy-in for cash or guaranteed delivery for NASDAQ securities, where the buyer is a customer other than another NASD member, upon failure of a clearing corporation to effect delivery pursuant to a buy-in notice. [63] Upon a failure of a clearing corporation to make delivery of securities, NASD members are required to close the contract by purchasing for cash or guaranteed delivery on behalf of a public customer any portion of the securities not delivered through the clearing corporation buy-in process. The Commission, in approving the rule filing, stated that:

> * * * public customers' reasonable expectation that their securities have been delivered and are held by their broker-dealers should be met. Moreover, naked short selling potentially can present substantial manipulative concerns. While market short sellers are margined by [the clearing corporation], they enjoy substantially greater leverage than if they were required to borrow and deliver their securities. The ability of naked short sellers to employ this leverage to effect "bear raids" would appear to provide support for the NASD's decision to impose additional discipline on naked short selling.[64]

Moreover, the NASD has submitted for Commission approval a mandatory buy-in rule that requires a short seller's broker to buy-in securities for cash or guaranteed delivery when delivery has not occured within 10 business days after normal settlement date.[65] The rule would apply to customer and proprietary short sales in NASDAQ securities that have a clearing short position of 10,000 shares or more that is equal to at least one half of one percent of the issuer's total shares outstanding, but exempts transactions in corporate debt securities, *bona fide* market making activities, and fully hedged and arbitrage positions.

Finally, the NASD recently issued a notice soliciting comment from its members on a proposal to extend to NASDAQ/NMS securities short-sale regulation comparable to that for listed securities.[66] The NASD's consideration of a short sale rule is intended to respond to those NASDAQ/NMS issuers

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[32] Public Law No. 90–439, 82 Stat. 454 (1968).

[33] The Williams Act amendments also added sections 13(e) and 14(d)–(f) to the Exchange Act.

[34] See Full Disclosure of Corporate Equity Ownership and in Corporate Takeover Bids: Hearings on S. 510 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967); Disclosure of Corporate Equity Ownership, H.R. Rep. No. 1711, 90th Cong., 2d Sess. (1968).

[35] Title II of Pub. L. No. 95–213, 91 Stat. 1494 (1977).

[36] 15 U.S.C. 78m(g).

[37] 15 U.S.C. 78p(a).

[38] 17 CFR 240.13d–1 to 240.13d–102.

[39] The determination of "beneficial ownership" is governed by rule 13d–3, 17 CFR 240.13d–3. Although short sales by a 13D reporting person normally will not change that person's Rule 13d–3 beneficial ownership (since such sales do not change the amount of shares over which the reporting person has voting or investment power), such sales may require an amendment to the Schedule 13D since they may represent: a change in the source of funds (Item 3); a possible shift in purpose, particularly to the extent that a plan or proposal to dispose of securities of the issuer was not disclosed previously (Item 4); a "transaction" in the subject security (Item 5); or "contracts, agreements, understandings, or relationships * * * with respect to any securities of the issuer" (Item 6) requiring such material to be filed as an exhibit to the Schedule 13D (Item 7).

[40] 15 U.S.C. 78*l* See also section 13(d)(4) of the Exchange Act, 15 U.S.C. 78m(d)(4).

[41] The rule contains a number of exceptions. For example, a registered broker-dealer need not file a report if its holding of a security was not more than 5 percent at the end of the calendar year, and acquisitions of more than 5 percent during the course of the year were made in the ordinary course of business and not with the purpose or effect of changing or influencing control of the issuer. 17 CFR 240.13d–1(b).

[42] Because paragraph (d) of Rule 13d–1 excludes non-voting securities from its coverage, only voting equity securities are subject to the rule's reporting requirements.

[43] Rule 13d–2(a), 17 CFR 240.13d–2(a), requires the filing of an amendment to Schedule 13D promptly after any material change occurs in the facts set forth therein.

[44] Schedule 13G must be updated within forty-five days of the end of each calendar year to reflect any changes in the previous filing.

[45] 15 U.S.C. 7m(f).

[46] Public Law No. 94–29, 89 Stat. 97 (1975).

[47] See also Rules 13f–1 and 13f–2(T) under the Exchange Act, 17 CFR 240.13f–1 and 240.13f–2(T). Although section 13(f)(1)(E)(iii), 15 U.S.C. 78m(f)(1)(E)(iii), requires reporting of large sale transactions by institutional investors, the Commission notes that there is no provision requiring sellers to indicate whether reported sales are long sales or short sales.

The Commission also notes that Form 13F reports by institutional investors are granted confidential treatment by the Commission for up to one year where appropriate justification is furnished. See section 13(f)(3) of the Exchange Act, 15 U.S.C. 78m(f)(3), and Form 13F, Instruction D, 4 Fed. Sec. L. Rep. (CCH) ¶ 32,321 (1988). A pertinent factor relevant to a Commission determination to grant confidential treatment for Form 13F filings is protection against the premature disclosure of trading strategies to prevent competitive harm.

[48] See Report of Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 85 (1975).

[49] 15 U.S.C. 78p(a). The Commission recently approved amendments to the rules and reporting requirements adopted under section 16. See Securities Exchange Act Release No. 28869 (February 8, 1991), 56 FR 7242.

[50] 15 U.S.C. 78*l*.

[51] 17 CFR 240.16a–3.

[52] Form 5 is required to be filed to disclose transactions exempted from section 16(b). Moreover, if officers, directors, or principal security holders fail to file Forms 3, 4, or 5 as required, they are required to file a Form 5 at year-end, and those delinquencies must be disclosed by the issuer in filings with the Commission pursuant to new Item 405 of Regulation S–K, 17 CFR 229.405.

[53] See Section 16(b) of the Exchange Act, 15 U.S.C. 78p(b).

[54] See H. Rep. No. 1383, 73d Cong., 2d Sess. 13, 24 (1934). Section 16(c) of the Exchange Act, 15 U.S.C. 78p(c), prohibits corporate insiders from short selling covered equity securities.

[55] See NYSE Rule 421; Amex Rules 30 and 590; and Article III, Section 41 of the NASD Rules of Fair Practice.

[56] Some market technicians believe the relationship between the short interest and the daily trading volume is informative because it gives an indication of the likely impact if the short position were to be covered.

[57] 17 CFR 240.10b–21(T). See Securities Exchange Act Release No. 26028 (August 25, 1988), 53 FR 33455.

[58] The NASD has submitted to the Commission a proposed rule change that would amend the NASD Board of Governors' Prompt Receipt and Delivery Interpretation under Article III, Section 1 of the NASD's Rules of Fair Practice. *See* Securities Exchange Act Release No. 28789 (January 11, 1991), 56 FR 2057 (File No. SR–NASD–90–63). Subject to specified exceptions, the proposal would require members (including market makers) who engage in short selling in a proprietary account after a registration statement for a secondary offering of securities has been filed to obtain a representation from the seller of securities purchased to cover the short positions that the securities were not obtained from or through an underwriter or broker-dealer participating in the offering. The proposal is intended to address circumstances where short positions are covered without complying with Rule 10b–21(T). Additionally, the proposal would require that, in connection with any customer or proprietary short sale, the executing member must make a written record of its affirmative determination that securities are available to cover the short position.

[59] A short sale becomes a "naked" short sale when the short seller does not intend to borrow and deliver stock to settle the transaction. See also Finn, "NASD Actions Significantly Reduce 'Naked' Short Selling," 11 NASDAQ Notes 3–3 (May 1989).

[60] See Securities Exchange Act Release No. 23572 (August 28, 1986), 51 FR 31695 (File No. SR–NASD–86–17) (approving an amendment to Article III, section 21 of the NASD's Rules of Fair Practice and amending the Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities).

[61] *Id.*

[62] See Securities Exchange Act Release No. 28199 (July 5, 1990), 55 FR 28703 (File No. SR–NASD–89–5).

[63] See Securities Exchange Act Release No. 26804 (April 4, 1989), 54 FR 14404 (File No. SR–NASD–87–10) (approving an amendment to Section 59 of the NASD Uniform Practice Code, which governs Close–Out Procedures).

[64] *Id.*

[65] Securities Exchange Act Release No. 28192 (July 10, 1990), 55 FR 28972 (File No. SR–NASD–90–30).

[66] See NASD Notice to Members 91–2 (January 1991). Rule 10a–1 does not apply to transactions in NASDAQ/NMS securities. 17 CFR 240.10a–1(a)(1)(i). See nn. 18 and 19 *supra*. The NASD has reported that NASD members responded 25 in favor of, and 20 opposed to, a short sale rule for NASDAQ/NMS securities, while issuers expressed overwhelming support to such a rule by a margin of 212 to 6. The NASD Board of Governors has referred the proposal to its Trading, Institutional, and Issuer Affairs Committees for further study. See NASD, "Board Refers Short-Sale Concept to NASD Committees for Further Study." 10 *Subscriber Bulletin* (April 1991).

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that view a short-sale restriction as a desirable market characteristic.[87]

VI. Statutory Authority

There are two principal perspectives from which the short position reporting requirement recommended in the APTC Petition can be viewed. First, it may be seen as a reporting requirement to provide information relating to potentially significant market developments, analogous to Rule 13d–1. Second, the requirement can be viewed as a means reasonably designed to prevent fraudulent, manipulative, or deceptive conduct.

Sections 13(d), 13(f), and 13(g), as discussed above, require public reporting of material long (but not short) positions. The Commission believes that it may be desirable to obtain a similar specific grant of authority prior to imposing analogous reporting of material short positions on a class of persons and transactions not previously subject to the Commission's public disclosure scheme.[88] Therefore, the Commission preliminarily believes that additional legislative authority may be necessary or appropriate to require public reporting of short positions (particularly positions in solely over-the-counter securities) for market information purposes.

On the other hand, the Commission has broad authority to adopt rules that define, or provide a means reasonably designed to prevent, fraudulent, manipulative, or deceptive conduct. For example, the Commission exercised this authority in connection with potentially manipulative short selling in its adoption of rule 10b–21(T).[89] If the Commission were to determine that a short position reporting requirement is necessary or appropriate on this basis, the Commission believes that adequate authority for such a rule exists in the Exchange Act.[90]

VII. Request for Public Comment

Commenters are invited to address the above points and the following areas of inquiry. Commenters also should discuss any other relevant issues and concerns not specifically covered.

A. Existing measures

In view of the substantial recent developments in short sale regulation, including the NASD's measures to address "naked" short selling,[91] commenters are requested to present their views on the efficacy of these measures in addressing short sale abuses, or if the impact of these measures is not yet clear, on the appropriateness of monitoring their effectiveness prior to imposing additional short-sale regulation.[92]

B. SRO Short Position Reporting Requirements

The NYSE, Amex and NASD currently require members to disclose proprietary and customer open short positions on a monthly basis.[93] In view of this publicly available information, the Commission seeks comment, particularly from analysts and issuers, on how additional information relating to the composition of that short interest would be utilized. In this connection, comment is requested on whether more frequent reporting of aggregate open short interest would provide significant benefits as an alternative to, or in addition to, the APTC Proposal.

C. Market Effects

Implementation of the APTC Petition would assist issuers in identifying short sellers.[94] Some issuers have responded to short selling in their stock by attempting to reduce the supply of stock that has been or might be lent to short sellers. Such efforts have included urging that shareholders request delivery of their stock certificates, if they are currently in broker-dealer margin accounts and available for lending, or place them in cash accounts (these actions would require shareholders to fully pay for the securities). Issuers have also applied pressure against stock lenders.[95] Short sellers are potentially vulnerable to having their stock loans recalled (and thereby being forced to purchase shares to close out their short positions). This risk of "short squeezes" has no analogue with respect to long positions, and may be increased by a disclosure requirement. Comment is requested on the current and potential impact of such pressure on legitimate short sellers.

D. Liquidity Costs

Any disclosure requirement applicable to substantial investment positions—long or short—imposes additional liquidity costs.[96] For this reason, public disclosure of substantial investment positions has been limited to situations in which issues of control are significantly implicated.[97] In the case of substantial short sellers, the market would be aware of the amount of stock the short seller will need to cover the position. Comment is requested on the extent a disclosure requirement would affect the activity of large short sellers, and the cost of any such effect in terms of pricing efficiency.

E. Reporting Threshold

Comment is requested on the likely number of disclosure reports that would be produced by a reporting threshold of five percent of a class of voting equity securities registered pursuant to section 12 of the Exchange Act. Comment is also requested on the relative costs and benefits of a lower or higher threshold level.

F. Manipulative Short Selling

Commenters are requested to describe in detail instances of manipulative short selling within their knowledge and to indicate whether and in what manner the APTC Petition would have been effective in preventing such conduct. In this connection, comment should focus upon whether adoption of the APTC Petition is necessary as a "means reasonably designed to prevent fraudulent, manipulative, or deceptive conduct."[98]

G. Operational Considerations

The APTC Petition proposes a concept of short position reporting. The APTC Petition has referred to Rule 13d–1 to suggest the substance of an implementing rule.[99] Commenters are asked to consider the respects in which a short position reporting requirement should "paraphrase" or "mirror" the substance of rule 13d–1, including:

1. What types of market activity should be excepted from the reporting requirement (or permitted to be reported on a delayed basis)[100] and what are the bases for such exceptions? For example, should the short positions of stock exchange specialists, over-the-counter equity market makers, block positioners, third market makers, and options specialists and market makers, all of whom utilize short selling extensively in connection with their market-making operations, be excepted from a short position reporting requirement?[101] Should market participants that engage in *bona fide* hedging and arbitrage transactions be excepted, or would information on the nature of their positions have value to persons who use the aggregate short sale information, for example, because it would reveal that a large portion of the aggregate short position in a particular security was not based on an opinion of the merits of that security?

2. What information should be required about the filing person and the transaction(s) that established the short position?[102]

3. How should the concept of "beneficial ownership" used in section 13(d) and Regulation 13D–G be applied in connection with short positions?[103]

Dated: June 7, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary

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[87] Two alternatives would be a "tick test" based on last-sale prices or a "bid test" based on the current inside bid. See NASD Notice to Members 91–2 (January 1991).

[88] Section 13(h) of the Exchange Act, 15 U.S.C. 78m(h), authorizes the Commission to adopt appropriate reporting levels for the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value. Section 13(h) of the Exchange Act was added by the Market Reform Act of 1990, Public Law No. 101–342, 104 Stat. 963 (1990). Although Section 13(h) applies to short sales as well as to other transactions by large traders, large trader reporting was designed to aid the Commission in market monitoring and reconstruction, and was intended to provide the Commission with the tools to anticipate possible future market stress points. See H.R. Rep. No. 534, 101st Cong., 2d Sess. 23–25 (1990). The statute was not designed as a means of routinely making large trader reports publicly available. See section 13(h)(7). Accordingly, the Commission does not believe that it would be appropriate to use the authority in section 13(h) to create a public reporting obligation with respect to material short positions of the type proposed by the APTC.

[89] See the discussion of Rule 10b–21(T) in section V. *supra*. In addition, section 23(a)(1) of the Exchange Act, 15 U.S.C. 78w(a)(1), states, in pertinent part:

> The Commission, * * * shall * * * have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this title for which [it is] responsible or for the execution of the functions vested in [it] by this title, * * *."

This general grant of authority provides ample rulemaking power to the Commission, so long as the rule is reasonably related to the enabling legislation. See *Mourning* v. *Family Publications Services, Inc.*, 411 U.S. 356 (1973); *Touche Ross & Co.* v. *SEC*, 609 F.2d 570 (2d Cir. 1979).

[90] See, e.g., sections 10(a), 10(b), 15(c), and 23(a) of the Exchange Act, 15 U.S.C. 78j(a), 78j(b), 78o(c), and 78w(a). Of course, to the extent that short selling is used as a part of a fraudulent, manipulative, or deceptive scheme, the Commission presently can bring enforcement actions based upon violations of general or specific antifraud and anti-manipulation provisions of the securities laws.

[91] See the discussion of "naked" short selling in section V. *supra*.

[92] See, e.g., n.47 *supra*.

[93] See the discussion of the open short reporting requirements of the self-regulatory organizations in section IV.B. *supra*.

[94] The Commission notes, however, that even without a disclosure requirement, issuers are often able to identify substantial short sellers and/or lenders of their stock, presumably from their contacts with analysts, market makers, and financial advisors.

[95] See, e.g., Lowenstein and Steptoe, "Companies Shrink Supply of Stock in Defense Against Short Sellers," *Wall St. J.*, June 6, 1989, at C1.

[96] The Commission notes, however, that some short sellers willingly incur such liquidity costs by revealing their positions in order to convince others to sell the securities.

[97] See the discussion of the sections 13(d) and 13(g) reporting requirements in section IV.A.1. *supra*. See also the discussion of the section 13(f) confidentiality provisions in section IV.A.2. *supra*.

[98] See the statutory authority discussion in section VI. *supra*.

[99] See Hearings, *supra* n.2, at 178, 192 (Testimony and Statement of John F. Guion).

[100] *Cf.* 17 CFR 240.13d–1(b).

[101] The Commission notes that the APTC Petition envisions such exceptions for at least some of these categories of market participants acting in these capacities. See Hearings, *supra* n.2, at 178 (Statement of John F. Guion).

[102] See section 13(d) and Schedule 13D.

[103] See 17 CFR 240.13d–3 and 240.13d–4.

Dissenting Statement of Commissioner Fleischman

"Bear raids" via short sales evoke a deep-seated fear in the collective American securities-market subconscious. As in "speculation", some believe there is illegitimacy (if not evil) in short sales—that is, in selling securities that the seller does not own. Occasionally, those of us who are regulators curtsy in the direction of the economic literature that indicates the constructive role played by short selling in providing market liquidity and pricing efficiencies (see the three middle paragraphs of Part II. of the accompanying Release), but the potential for manipulation in all short selling drives us, institutionally, away from price neutrality and toward intervention designed to inhibit, constrict and in some cases preclude participation in the securities markets by those who would be "shorts". The suggestion in Part VI. of the Release that the Commission would likely deal with large short positions (if the Commission does take rulemaking action) under its antifraud authority reflects that institutional bias.

In the particular context of short selling into post-initial public offerings, where the prospects for negative impact on capital-raising by American business enterprises were magnified, this Commission faced great pressure over a fifteen-year time frame to throttle short selling. From initiation of a rulemaking project in 1973 to adoption of a final "*temporary*" rule in 1988, the Commission sought a method of vindicating the concerns of enterprise capital formation with minimal intrusion into legitimate market activities. Even as it adopted Rule 10b–21(T) on a temporary basis, the Commission served notice that it had done so in order to reserve for itself

> * * * the opportunity to analyze, at a later date, whether the rule is achieving its intended purpose. In this regard the Commission's staff will request the NASD and the exchanges to furnish statistical information for non-initial public offerings conducted after the adoption of the Rule for an eighteen-month period. The staff will then review this data and report to the Commission, within twenty-four months of adoption, whether the pricing impact the NASD believes is indicative of short selling persists and whether any new pricing impacts are observed.[104]

Despite the absence of any such report to date, the staff and the Commission now respond to a much broader request to utilize rulemaking as an effective limit on short selling by any single interest in any class of the equity securities of any publicly traded issuer, by requesting public comment on the rulemaking petition.

The questions asked under Part VII. of the Release are good questions, well balanced, that deserve to be asked. But they are questions for which, if the responses are to reflect more than instinct out of the commenters' collective subconscious, the results of the report promised by this Commission three years ago are crucial. The availability of pre- and post-intervention data would allow the Commission, informed observers, and the public generally, to obtain an understanding of what happened when the Commission intervened, surgically, in a narrow segment of the marketplace. That understanding seems to me requisite to intelligent comment on possible Commission intervention, broadside, into the public equity markets. This Commission has failed to fulfill its undertaking; in my view the Commission owes it to the public to do so, as a pre-condition to and a foundation for the request for public comment on additional rulemaking directed at short selling.

I therefore vote "no" to the publication of the foregoing request for public comment on the APTC rulemaking petition at this time.

[FR Doc. 91–14076 Filed 6–12–91; 8:45 am]

BILLING CODE 8010–01–M

[104] Release No. 34–28028, 41 SEC Docket (CCH) 927, 930 n.16 (August 25, 1988).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2507]

Alaska; Declaration of Disaster Loan Area

The State of Alaska with the exception of the Kodiak Island Borough constitutes a disaster area as a result of damages caused by extensive spring flooding which occurred beginning April 30, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 5, 1991 and for economic injury until the close of business on March 4, 1992 at the address

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listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795 or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125
For economic injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 250706 and for economic injury the number is 732100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 4, 1991.

Patricia Saiki,

Administrator.

FR Doc. 91–14068 Filed 6–12–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2502]

Kansas (With Contiguous Counties in Oklahoma & Nebraska); Amendment No. 1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated May 6, 8, 17, and 20, 1991, to the President's major disaster declaration of April 29, to include the counties of Jefferson, Wabaunsee and Washington in the State of Kansas as a disaster area as a result of damages caused by tornadoes, which occurred on April 26 and 27. This declaration is also amended to include damages from tornadoes which occurred on May 16 in the counties listed herein as well as the previously declared counties. The incidence period for this disaster has been established as April 26 through May 19, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Atchison, Clay, Cloud, Douglas, Geary, Jackson, Leavenworth, Lyon, Marshall, Morris, Osage, Pottowatomie, Republic, Riley, and Shawnee in the State of Kansas and the counties of Gage, Jefferson, and Thayer in the State of Nebraska may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 27, 1991, and for economic injury until the close of business on January 29, 1992.

The number assigned to this disaster for physical damage is 250212 and for economic injury the numbers are 730400 for Kansas, 731200 for Oklahoma, and 7316 for Nebraska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 5, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–14069 Filed 6–12–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2503]

Louisiana (With Contiguous Counties in Arkansas, Mississippi & Texas); Amendment No. 2, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated May 22 and 28, and June 3, 1991, to the President's major disaster declaration of May 3, to include the parishes of Avoyelles, Concordia, Iberville, Jackson, LaSalle, Lincoln, St. James, St. John the Baptist, and St. Tammany in the State of Louisiana as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 27. This declaration is also amended to correct the economic injury numbers for Louisiana and Arkansas listed in Amendment #1.

In addition, applications for economic injury loans from small businesses located in the contiguous parishes of East Baton Rouge, Livingston, Tangipahoa, West Baton Rouge, and West Feliciana in the State of Louisiana and the counties of Adams, Jefferson, and Wilkinson in the State of Mississippi may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 2, 1991, and for economic injury until the close of business on February 3, 1992.

The economic injury numbers are 731300 for Louisiana; 731400 for Arkansas; 731500 for Mississippi, and 7318 for Texas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 5, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–14066 Filed 6–12–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2499]

Louisiana (With Contiguous Counties in Texas & Arkansas); Amendment No. 2, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended to include Shelby County in the State of Texas which was inadvertently omitted as a contiguous county, and, in accordance with an amendment dated April 26, 1991, to the President's major disaster declaration of April 23, to establish the incident period for this disaster as beginning on April 12 and continuing through April 26, 1991.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 22, 1991, and for economic injury until the close of business on January 23, 1992.

The economic injury numbers are 729900 for Louisiana; 730000 for Texas; and 730100 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 5, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–14067 Filed 6–12–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2506]

Maine; Declaration of Disaster Loan Area

Aroostook County and the contiguous counties of Penobscot, Piscataquis, Somerset, and Washington in the State of Maine constitute a disaster area as a result of damages caused by severe spring flooding and ice jamming which occurred between April 6 and April 24, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 2, 1991 and for economic injury until the close of business on March 3, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd fl., Occidental Chemical Center, Niagara Falls, NY 14302 or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125
For economic injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 250806 and for economic injury the number is 732000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–14070 Filed 6–12–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1411]

Strategic Planning Group of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that the Strategic Planning Group (SPG) of the U.S. CCIR Organization will be held at 1:30 p.m., June 26, 1991, in room 1105 of the Department of State, 2201 C Street, NW., Washington, DC. Mr. James McKinney, Advanced Television Systems Committee, and Mr. Francis S. Urbany, BellSouth Corporation, serve as co-chairmen of the Group.

Under the framework of the U.S. Organization, the purpose of the SPG is to provide a forum to allow private sector members to focus on CCIR issues that have broad policy, economic and institutional implications for interested telecommunications-related industries and the U.S. Government.

The agenda of the meeting will include: (a) Review of ITU Administrative Council actions on the Report of the ITU High Level Committee; (b) Approval of a report from the SPG's Task Force on the Voluntary Group of Experts (VGE) relating to the Radio Regulations; and (c) Consideration of future activities of the SPG and related work program.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairmen. Entrance to the Department of State is controlled but can be facilitated by making attendance arrangements in advance. Persons planning to attend the meeting should contact the office of Richard Shrum, State Department; (202) 647–2592, fax (202) 647–7407, no later than two days before the meeting. Notification should include name, date of birth, and Social Security number. All attendees must use the C Street entrance.

Dated: June 4, 1991.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 91–13999 Filed 6–12–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

New Route Opportunities (U.S.-Brazil)

By this notice we invite applications from all certificated U.S. air carriers interested in being designated for service to Brazil and/or in receiving allocations for operating additional frequencies to Brazil.

During recent consultations held between representatives fo the United States and Brazilian Governments in Rio de Janeiro, a new amended agreement was concluded, *ad referendum*, which expands the services that United States carriers may provide to Brazil.

Under the terms of the amended agreement airlines designated by the Government of the United States for service to Brazil may operate over the following route:

From a point or points in the United States, via intermediate points, to Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador and beyond Brazil to Argentina, Uruguay, Paraguay and Chile.

The amended agreement provides for an increase in the number of U.S. carriers that may serve Brazil and the number of frequencies that may be operated for both combination and all-cargo services.

Designations

Under the existing agreement, four U.S. carriers may be designated for service to Brazil. Beginning January 1, 1992, a total of five airlines may be designated to perform scheduled combination (passengers and cargo) and all-cargo (property and mail) services. Within this limitation up to three airlines may be designated for scheduled combination services OR three airlines for scheduled all-cargo services. Until January 1, 1992, the existing designation provisions remain in effect. Currently, two airlines (American and Pan American) are designated for combination services and one airline (Federal Express) is designated for all-cargo services. One designation is currently available, and on January 1, 1992, the fifth designation becomes available. Based on the existing designations and the provisions of the amended agreement, we may use one designation for combination services and one for all-cargo services or both may be used for all-cargo services.

Combination Service Frequencies

Currently, U.S. carriers may operate 40 weekly combination service frequencies in the U.S.-Brazil market. As of May 15, 1991, U.S. carriers were operating 34 of the 40 available frequencies. (Pan American is allocated 20 frequencies and American 14 frequencies.) These frequencies increase to a total of 47 on July 1, 1991, to 56 on January 1, 1992, and to 61 on January 1, 1993. By Order 91–6–5,[1] the Department allocated 6 frequencies each to American Airlines, Inc. and Pan American World Airways, Inc. American's frequencies are effective immediately, and Pan American's frequencies are effective July 1, 1991, upon the frequency increase provided for under the amended agreement. Therefore, for the period July 1, 1991–December 31, 1991, one additional weekly frequency is available for combination services. Effective January 1, 1992, a total of 10 additional weekly frequencies will be available. Effective January 1, 1993, a total of 15 additional weekly frequencies will be available.

All-cargo Frequencies

Currently, the designated airline(s) of the United States may operate 8 round-trip all-cargo frequencies per week between the United States and Brazil. As of May 15, 1991, the U.S. designated

[1] Not published in Federal Register.

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carrier in the market was operating 6 weekly frequencies. As of January 1, 1992, the number of frequencies that may be operated will increase to a total of 12, and effective January 1, 1993, to a total of 14. All-cargo frequencies are defined as flights performed with wide-bodied freighter aircraft. If narrow-bodied aircraft are used, frequency levels increase in a ratio of 2 to 1 (*i.e.* 2 narrow-body frequencies equal one wide-body frequency). Therefore, through December 31, 1991, 2 wide-bodied (4 narrow-bodied) frequencies are available for allocation. Effective January 1, 1992, a total of 6 additional wide-bodied (12 narrow-bodied) frequencies will be available. As of January 1, 1993, there will be a total of 8 additional wide-bodied (16 narrow-bodied) frequencies available.

New Applications

We invite interested carriers to file applications for authority to serve these new route opportunities no later than June 26, 1991. Answers shall be due no later than July 3, 1991, and responsive pleadings no later than July 8, 1991. Carriers which have already filed for authority to serve between the U.S. and Brazil need not refile [2] unless they wish to supplement their requests as a result of changed circumstances.[3] Except as modified above with respect to filing and response dates, applications for certificate authority should be filed pursuant to part 302, subpart Q and applications for exemption authority should conform to the provisions of part 302, subpart D. Docket numbers will be individually assigned by the Department for each application received. Applications should be filed with the Department's Docket Section, room 4107, 400 Seventh Street SW., Washington, DC 20590. Procedures for acting on the applications filed will be established by future Department order.

Dated: June 7, 1991.

Paul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 91-14030 Filed 6-12-91; 8:45 am]

BILLING CODE 4910-62-M

[2] Arrow Air has already filed for authority to provide all-cargo service between the U.S. and Brazil (Docket 47582). Arrow proposes to operate three weekly round trips between Miami and Brazil (one round trip will serve Manaus, Rio de Janeiro, and Sao Paulo; and two round trips will serve Sao Paulo in conjunction with Arrow's service to Buenos Aires, Argentina).

[3] Interested parties may file competing applications and responsive pleadings to applications already filed in accordance with the dates specified above.

National Highway Traffic Safety Administration

[Docket No. 91-25-IP-NO. 1]

Navistar International and Mack Trucks, Inc.; Receipt of Petitions for Determination of Inconsequential Noncompliance

Navistar International (Navistar) of Fort Wayne, Indiana and Mack Trucks, Inc. (Mack) of Allentown, Pennsylvania have each petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (the Act) (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.106, Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses," on the basis that these noncompliances are inconsequential as they relate to motor vehicle safety.

This notice of petition receipt is published under section 157 of the Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petitions.

Paragraph S7.3.7 of Standard No. 106 requires that, except for hose reinforced by wire, an air brake hose shall withstand a tensile force of 8 pounds per inch of length before adjacent layers separate. As a result of a routine compliance test by the National Highway Traffic Safety Administration, it was discovered that certain air brake hoses (Weatherhead H33806 and H33808) manufactured by the Dana Corporation failed to comply with the adhesion requirement of Standard No. 106.

Upon finding the above mentioned noncompliance, NHTSA opened a noncompliance investigation numbered NCI 3166. As a result the Dana Corporation agreed to conduct a notification and remedy campaign. The recall campaign number is 90E-045. Both Navistar trucks and Mack trucks are equipped with these hoses and they are petitioning the agency in response to the notification issued by the Dana Corporation.

Navistar Petition

Navistar reported that 147,612 vehicles built between January 4, 1988, and June 29, 1990, could be equipped with the noncompliant hoses manufactured by Dana Corporation. The air brake hoses on these vehicles may not comply with the adhesion strength requirement of Standard No. 106.

In supporting its petition, Navistar included the following assertions:

Navistar believes the eight pound adhesion test set forth in subparagraph S7.3.7 of Standard 106 is directly derived from SAE standards developed in the 1960s. It is further believed that this test provision was a reflection of concern that brake hoses experiencing an adhesion problem under a vacuum condition could present a safety problem. No air brake hose in Navistar air brake systems are subjected to vacuum.

Navistar questions the possibility that an air brake hose assembly could experience a sudden and unexpected failure in actual vehicle service due to lower than required layer adhesion. It is not aware of anyone having been able to demonstrate the failure mode caused by this condition. All Navistar hose assemblies have crimped-on end fittings that capture the layers of hose. In the assembly state this negates the need for adhesion as a performance requirement. Once the hose is made into an assembly and used in a typical air brake system, Navistar projects no reduction in life expectancy resulting from low layer adhesion as compared to an assembly containing hose meeting the specification.

An additional factor that Navistar believes should be considered is the air brake system design. All Navistar trucks, truck-tractors and buses are manufactured with dual or split braking systems which provide emergency braking capability should failure of a component occur in the service brake system. The concept is similar to that used in all passenger cars. Air brake systems go one step further however, by providing an additional backup emergency feature, that being automatic application of the parking system (spring brakes) in the event all service and emergency reserve air pressure is depleted.

To demonstrate the effect of a hose failure in a worse case situation, a series of stopping tests was conducted at Navistar's test track. A short wheelbase single drive axle tractor with large steer axle brakes was used in the bobtail (empty) condition for the evaluation. This vehicle represents the least stable configuration found on the road today. The road surface was wet asphalt and stops were conducted at speeds varying from 20 to 50 mph. The right steer axle brake hose was selected to induce conditions which ranged from a small rupture to complete venting to atmosphere. The tractor was brought to a safe controlled stop within a twelve foot lane under all of these test conditions by means of the rear axle section of the dual brake system. Air pressure loss in the steer axle circuit was indicated by the air gauge, audible warning alarm and visual light.

Because of installation procedures, typical in the industry, the brake hoses are painted during the painting of the vehicle chassis. This, along with weathering and the effects of road contamination, makes it virtually impossible to identify the date codes on the hoses. As a result, the practical alternative is to change approximately 980,000 Weatherhead hoses. This would involve 865,000 hose assemblies that are in compliance with Standard 106. This would result in the disruption of many hose connections in a vehicle brake system, in excess of 85 percent of which would be unnecessary if the date codes were discernable.

Also, to correct this condition would place an undue burden on owners through disruption of commerce. Navistar estimates a minimum of four hours road time loss per vehicle to inspect and replace the hoses. Navistar asserts that the time and money loss to correct this condition combined with the risk of tampering with a satisfactorily performing system, far outweighs any possible benefit this action could provide.

Therefore, Navistar maintains that the adhesion noncompliance issue is inconsequential. While the hoses at issue here do not, in some instances, comply with the eight pound adhesion requirement, Navistar agrees that this is a technical noncompliance with Standard 106 and not safety related, and therefore, does not warrant a vehicle recall.

Mack Petition

Mack determined that 65,000 of its vehicles manufactured between January 15, 1988, and March 25, 1991, may be equipped with noncompliant air brake hose assemblies manufactured by Dana. It supports its petition with the following:

Because the air brake hoses in question have only been used as the trailer service/emergency hose assemblies connecting the tractor to the trailer and as jumper hoses connecting frame mounted brake valves to axle mounted tees or quick release valves and because its research has determined that none of the suspect air brake hoses have failed in service due to low adhesion, Mack believes that the hoses will not fail in any way to perform as designed.

Mack agreed with the Navistar assertion that the adhesion requirement more appropriately applies to hoses used in a vacuum application. However, the hoses on the Mack trucks are used in a pressure application, therefore Mack does not believe that the noncompliance with the adhesion requirement is consequential to safety in this case.

Mack holds the position that the condition of low adhesion resulting in buildup of air between plies, which can cause inward ballooning of the hose, can only occur if there is a pressure differential across the inner tube, i.e., if the pressure on the outside of the tube is higher than that on the inside. Mack believes that this condition is feasible in a vacuum application where the inside of the tube is normally at a pressure below atmospheric, however it does not believe it is feasible in the pressure application where the subject hoses exist.

The noncompliant hoses were subjected to internal pressures of 0 to 120 psi above atmospheric. Under this condition Mack envisioned two scenarios as to how a higher pressure can exist on the outside of the inner tube.

The first scenario requires that a path for air exist between the tube and the tube support, the plies at the cut end of the hose inside the fitting must separate and allow air to leak between the plies (this leak area must extend beyond the fitting to the unsupported hose), and this air must remain between the plies while the inner tube is exhausted. Mack believes this scenario is rendered invalid by the deisgn of the end fittings and hose. The end fittings used in its applcations prevent this type of failure. In the trailer hose application, the hose layers are forced together by a compression sleeve in the end fitting which prevents air from traveling between layers to the hose beyond the end fitting. Inside the fitting, the inner tube is held by a tube support preventing it from collapsing. In the jumper line application, a crimped end fitting produces this same effect. Again, the inner tube is supported from collapse by a tube support inside the fitting. The hoses in question consist of an inner tube, a braided layer and a cover. Only the inner tube is designed to contain air; both the braided layer and cover are permeable. This precludes air from being trapped between the layers.

The second scenario requires the following sequence of events: First, a path for air through the inner tube must exist; second, a buildup of pressure causing a spearation of plies must occur; and third, this air must then remain between the plies while the inner tube is exhausted. Mack believes that this scenario is not valid in the case of the subject hose because it has no reason to suspect that the inner tube of the hoses in question is prone to leakage. In addition, the layers of the hose are not designed to contain air as previously noted.

To support its conclusions, Mack requested that Dana-Weatherhead conduct testing that required twenty sections of suspect hose (with the adhesion values shown) to be subjected to 150 psi and 300 psi for one hour (simulating a hose in the spring brake circuit). Both types of end fittings were tested. Upon inspection, neither of the two conditions described above were found.

Mack stated that based on its review of warranty history and the testing done by Dana-Weatherhead, the noncompliance with S7.3.7 of Standard No. 106 will not affect the safety of Mack vehicles and is, therefore, inconsequential.

Interested persons are invited to submit written data, views and arguments on the Navistar and Mack petitions, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC. 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 15, 1991.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on June 10, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-14120 Filed 6-12-91; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

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SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "p" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before June 28, 1991.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Sreet SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
970–X	Callery Chemical Company, Pittsburgh, PA (See Footnote 1)	970
3187–X	PPG Industries, Inc., Pittsburgh, PA (See Footnote 2)	3187
4884–X	Union Carbide Industrial Gases, Inc., Danbury, CT (See Footnote 3)	4884
8214–X	TG (U.S.A.) Corporation, Perryville, MO (See Footnote 4)	8214
8645–X	Mining Services International Corporation (MSI), Salt Lake City, UT (See Footnote 5)	8645
8710–X	Akzo Chemicals, Inc., Chicago, IL (See Footnote 6)	8710
9162–X	Sun Pipe Line Company, Longview, TX (See Footnote 7)	9162
9616–X	ENPAC Corporation, Jacksonville, FL (See Footnote 8)	9616
9723–X	Aqua-Tech, Inc., Port Washington, WI (See Footnote 9)	9723
10050–X	Ceodeux, S.A., Lintgen, Luxembourg, G.D. (See Footnote 10)	10050
10229–X	United States Can Company, Oak Brook, IL (See Footnote 11)	10229
10256–X	Comdyne I, Inc., West Liberty, OH (See Footnote 12)	10256
10354X	BASF Corporation, Parsippany, NJ (See Footnote 13)	10354
10498–X	El Dorado Chemical Company, St. Louis, MO (See Footnote 14)	10498
10604–X	Werkzeugmaschinenfabrik Oerlikon-Buhrle AG, Zurich, Switzerland (See Footnote 15)	10604
10614–X	Tri-Gas Inc., Irving, TX (See Footnote 15)	10614

(1) To modify exemption to provide for an additional non-DOT specification outside container for transporting cylinders of diborane gas with dry ice.
(2) To modify exemption to provide for additional non-DOT specification outside container for use in transporting certain flammable liquids or organic peroxides.
(3) To authorize shipment of certain poisonous gases contained in cylinder comparable to Specification 4BW except they are constructed of stainless steel.
(4) To modify exemption to provide for an additional fiberboard box as outside packaging for use in transporting airbags.
(5) To authorize shipment of an oxidizer, n.o.s. in DOT Specification 103AL and 111A60AKW tank cars.
(6) To modify the exemption to provide for an additional cargo tank for the shipment of certain organic peroxide solutions, n.o.s.
(7) To renew and authorize modifications to the trailers of certain meter provers for shipment of hydrocarbon product classed as flammable liquids or gases.
(8) To modify the exemption to authorize cargo vessel as an additional mode of transportation.
(9) To modify the exemption to provide for 6.5 mil liners inside non-DOT spec. drums; authorize the use of DOT-spec. 12B fiber boxes and 21C fiber drums and increase the buffer zone to 6 feet.
(10) To renew, authorize cargo vessel and cargo only aircraft as additional modes of transportation, to decrease required valve cycles form 50,000 to 5,000 and to modify certain special provisions.
(11) To modify exemption to provide for shipment of certain compressed gases classed as nonflammable gas as consumer commodities.
(12) To modify exemption to provide for additional non-DOT specification cylinders for transporting flammable gases.
(13) To renew exemption originally issued on an emergency basis to authorize shipment of hydrochloric acid, corrosive material in DOT spec. 111A100W5 tank car tanks equipped w/ a relief set at 125 psi.
(14) To renew exemption originally issued on emergency to authorize shipmt. of Nitric acid, fuming (over 40 percent) classed as an oxidizer contain in DOT-spec. tank cars that are not equipped with AAR valve.
(15) To reissue exemption originally issued on an emergency basis to authorize shipment of certain Class A and B explosives by cargo only aircraft.
(16) To reissue exemption originally issued on emergency basis to authorize shipment of liquid oxygen or liquid nitrogen, nonflammable gases in non-DOT specification portable tanks.

Application No.	Applicant	Parties to exemption
4453–P	Cona, Inc., Tahlequah, OK	4453
6626–P	Gulf States Airgas, Theodore, AL	6626
6657–P	Gulf States Airgas, Theodore, AL	6657
6691–P	Gulf States Airgas, Theodore, AL	6691
7060–P	Ronson Aviation, Inc., Trenton, NJ	7060
8230–P	Mallinckrodt Specialty Chemicals Company, Paris, KY	8230
8843–P	Pengo Wireline of California, Inc., Bakersfield, CA	8843
8845–P	Pengo Wireline of California, Inc., Bakersfield, CA	8845
9108–P	Sierra Chemical Co., Sparks, NV	9108
9262–P	Pengo Wireline of California, Inc., Bakersfield, CA	9262
9275–P	Enviro Data Associates, Inc., Spring Lake, NJ	9275

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 7, 1991.

J. Suzanne Hegepeth,

Chief, Exemptions Branch Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91–14031 Filed 6–12–91; 8:45 am]

BILLING CODE 4910–60–M

Applications for Exemptions

AGENCY: Research and Sepcial Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 15, 1991.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTION

Application Number	Appplicant	Regulation(s) affected	Nature of exemption thereof
10603–N	Chesterfield Cylinders Limited, Chesterfield, Derbyshire, England.	49 CFR 173.301(h), 173.302(a)(1), 173.302(c)(3), 173.304(a), 173.305(a)(3), 173.34(a)(1).	To manufacture, mark and sell non-DOT specification seamless steel cylinders comparable to DOT Specification 3AA cylinders to transport commodities classed as flammable and nonflammable gases, liquified and non-flammable gases and mixtures. (Modes 1, 2, 3, 4)
10606–N	General Oil Equipment Co., Inc., Tonawanda, NY.	49 CFR 173.119, 173.29(c)(2)	To authorize the shipment of residue flammable liquids in non-specification containers for calibration of meters. (Mode 1)
10607–N	Emergency Technical Services Corporation, Schaumburg, IL.	49 CFR 173.302(a)	To authorize the transportation of damaged detector tubes containing boron trifluoride, classed as nonflammable gas, in salvage cylinder overpacks. (Mode 1)
10608–N	HCI Advance Chemical Distributors, Inc., Catoosa, OK.	49 CFR 176.67(i)(j)	To authorize chlorine filled tank cars to stand with connections attached during unloading without the physical presence of an unloader. (Mode 2)
10609–N	Steel Cylinder Manufacturing Ltd., Tilbury, Ontario, Canada.	49 CFR 178.37–4(a), 49 CFR Part 173(g)(h).	To authorize the manufacture, marking and sell of billet pierced DOT 3AA cylinders that are made from billets which are not inspected by an independent inspector after parting. (Modes 1, 2, 3, 4, 5)
10610–N	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 174.67(j)	To authorize chlorine filled tank cars to stand with unloading connectors attached without the physical presence of an unloader. (Mode 2)
10611–N	Allied-Signal, Inc., Morristown, NJ.	49 CFR 153.154	To authorize the shipment of various hazardous material in specially designed non-DOT specification containers. (Mode 1)
10618–N	Hughes Aircraft Company, Los Angeles, CA.	49 CFR 172.101, 173.92	To authorize shipment of two communication satellites equipped with nonspillable batteries; a rocket motor, class B explosive together with other hazardous materials aboard a cargo aircraft. (Mode 4)
10619–N	Tri-Gas Inc., Irving, TX	49 CFR 176.76(h), 178.338, 49CFR 173.318.	To authorize shipment of liquid oxygen, nitrogen or argon, nonflammable gases, in non-DOT specification portable tanks. (Modes 1, 3)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 7, 1991.

J. Suzanne Hedgpeth,

Chief, Exemptions Branch Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91–14032 Filed 6–12–91; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 7, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0001.
Form Number: CT–1.

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Type of Review: Revision.
Title: Employer's Annual Railroad Retirement and Unemployment Repayment Tax Return.
Description: Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA) and Railroad Unemployment Repayment Tax (RURT) taxes. Form CT-1 is used for this purpose. IRS uses the information to insure that the employer has paid the correct tax.
Respondents: State or local government, Businesses or other-profit, Federal agencies or employees, Small businesses or organizations.
Estimated Number of Respondents: 2,287.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 41 hours, 8 minutes.
Learning about the law or the form, 2 hours, 12 minutes.
Preparing the form, 5 hours, 46 minutes.
Copying, assembling, and sending the form to IRS, 48 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 119,067 hours.
OMB Number: 1545-1024.
Form Number: 8656.
Type of Review: Revision.
Title: Alternative Minimum Tax—Fiduciaries.
Description: This form was developed to assist fiduciaries in computing the alternative minimum tax under Code sections 55 thorugh 59. The minimum tax is determined by recomputing the distributable net income of the fiduciary on a minimum tax basis. The difference between the distributable net income for regular and minimum tax purposes becomes an adjustment for the beneficiary.
Respondents: Businesses or other-profit.
Estimated Number of Respondents: 1,300,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 7 hours, 56 minutes.
Learning about the law or the form, 4 hours, 34 minutes.
Preparing and sending the form to IRS, 5 hours, 4 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 32,166,120 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 91-14056 Filed 6-12-91; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System Notice and Additional Routine Use Statements

AGENCY: Department of Veterans Affairs.

ACTION: Amendment of system notice and additional routine use statements.

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existance and character of their system of records. Accordingly, the Department of Veterans Affairs (VA) published a notice of addition of a new system of records entitled "Health Care Provider Credentialing and Privileging Records–VA" (77VA11), which appeared on pages 30790 through 30793 of the **Federal Register** of July 27, 1990 (55 FR 30790). If no comments were received during the 30-day comment period, the routine uses in the system of records were to be effective on August 27, 1990. Due to comments that were received and indication that other individuals would like the opportunity to comment, notice was provided in the **Federal Register** of October 30, 1990 (55 FR 45716), that, while the rest of the system notice was effective upon publication on July 27, 1990, the routine uses were not effective on August 27, 1990, and that the comment period was reopened and extended until November 29, 1990.

Twelve comments were received concerning the system of records notice and the routine uses that were proposed for the records. Nine commenters expressed concern that one or more of the proposed routine uses would permit the disclosure of confidential and privileged medical quality assurance information that is protected from disclosure by title 38, United States Code, section 3305. However, quality assurance information that is protected by 38 U.S.C. 3305 and 38 CFR 17.500–17.540 is not within the scope of the Privacy Act and, therefore, shall not be included in this system of records or filed in a manner so that the information may be retrieved by reference to an individual identifier. Since information protected by section 3305 is not maintained in the Health Care Provider Credentialing and Privileging Records, or any other Privacy Act system of records, this type of information may not be disclosed pursuant to a routine use.

One comment concerned statements in the preamble of the notice which discussed the delienation of clinical privileges and the commenter pointed out that the statements imply a requirement to use a process for privileging individuals who are not independent practitioners that is identical to the proccess for physicians. There are, in fact, a number of options that are acceptable to VA and the Joint Commission on Accreditation of Healthcare Organizations for authorizing these individuals to perform activities which are considered outside the scope of their position. The intent of the notice is to describe the various items of information that are maintained in the records as a result of the credentialing and privileging processes. It is not the intent of the notice, however, to establish the policy as to how those processes will be accomplished. The statement "privileges are also delineated for those individuals for activities that are considered outside their routine professional duties and responsibilities" should have stated "privileges *may* also be delineated * * *

Two comments concerned proposed routine use number 4 which provides for the disclosure of record information to congressional offices when the request is made on behalf of the subject of the record. The commenters interpreted the routine use to permit the disclosure of confidential information concerning health care providers (clinical performance and competence and health status) when requests are made by a congressional office on behalf of third parties and the commenters expressed concerns about such disclosures. The purpose of the routine use, however, is to allow VA to make a disclosure of information about a health care provider to a congressional office only when the inquiry is made at the provider's request.

Two comments concerned proposed routine use number 13 which provides for the disclosure of record information to labor organizations. The commenters objected to the disclosure of information to a labor union concerning a health care provider's clinical competence and performance and health status. The purpose of the routine use is to permit the disclosure of information to labor organizations when the information is relevant and necessary to their duties of exclusive representations and the information is needed in order that they can represent their membership.

Confidential and privileged information concerning a health care provider would not be disclosed pursuant to the routine use.

Eleven comments addressed routine use number 11 which proposed disclosures of information concerning health care providers to patients or patient representatives when the information was needed by the patient to make a determination regarding treatment. The proposed routine use provided for the disclosure of "information concerning the health care provider's qualifications (professional education and training), experience, and professional performance." Many of the comments expressed concern that the routine use would provide for the disclosure of confidential and privileged medical quality assurance information which is protected from disclosure by 38 U.S.C. 3305. As previously stated, this type of information will not be maintained in the Health Care Provider Credentialing and Privileging Records, thus, such information may not be disclosed pursuant to the routine use. Commenters also expressed concern that the disclosure of professional performance information would not serve the goal of a more informed patient population, but would promote confusion and misunderstanding for the veteran and family because of misinterpretations of the information. One commenter stated that professional organizations are unable to come to standard conclusions on how to measure clinical competence and it would be a disservice to confuse the general public by imparting data and information that has not been embraced as a guarantee of quality care. The commenters further stated that the examining of a health care provider's professional performance is an integral component of the privileging and reprivileging processes. These processes ensure compliance with educational and training requirements and that the individual is qualified to perform procedures for which they have been clinically privileged. Based upon the comments received, the routine use has been revised to provide that "disclosure will be limited to information concerning the health care provider's professional qualifications (professional education, training and current licensure/certification status), professional employment history, and current clinical privileges."

Notice is hereby given that VA is considering adding three new routine use statements to the system of records. Two of the routine use statements concern disclosures to the National Practitioner Data Bank. The Health Care Quality Improvement Act of 1986 (Title IV of Pub. L. 99-660) set forth requirements for private sector health care facilities and organizations to report to the Secretary of the Department of Health and Human Services (HHS) adverse actions taken against physicians, dentists and other health care practitioners, reports on medical malpractice, sanctions taken by State Licensing Boards, and reduction of clinical privileges following peer review are to be reported to the National Practitioner Data Bank operated by a private contractor (The Unisys Corporation) on behalf of the Secretary.

Participation in the reporting provisions of Public Law 99-660 is not binding on VA. However, through a Memorandum of Understanding with the Secretary of HHS, the Secretary of Veterans Affairs may apply the requirements to VA physicians, dentists, health care practitioners, applicants for employment and health care facilities. VA participation will include accessing the Bank at the time of hiring and every two years thereafter and other times as deemed necessary by VA, and to report payments for medical malpractice claims and decisions that adversely affect clinical privileges for more than 30 days. Routine use number 18 is proposed to provide for disclosures for accessing the Bank and 19 is to provide for the disclosure of information contained in the records which the Department will disclose in reports to the Bank.

The third routine use, number 20, provides for the disclosure of certain information in response to inquiries from prospective health care entity employers. The information proposed for disclosure includes relevant information concerning the individual's professional employment history, final decisions which adversely effect the individual's clinical privileges, and information related to payments made in settlement of medical malpractice actions or claims.

In view of the information that is obtained from, and provided to, the National Practitioner Data Bank, the system notice has been amended to provide for the maintenance of that information. The categories of records and record source categories sections have been revised to reflect this amendment. Also, the system name has been retitled to read "Health Care Provider Records-VA."

Two sections of the system notice have been revised to reflect the reorganization of the Veterans Health Services and Research Administration that occurred since the system notice was initially published. The system location and system manager(s) sections have been revised, respectively, the location of the Regional Directors and Division Offices and the offices with responsibility for the records.

The routine uses provided in the **Federal Register** of July 27, 1990 (55 FR 30790), and routine use number 11 as herein amended are effective June 13, 1991.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the proposed routine use numbers 18, 19 and 20 in the system are effective July 15, 1991.

Aproved: June 5, 1991.

Edward J. Derwinski,
Secretary of Veterans Affairs.

Notice of System of Records

The system identified as 77VA11, "Health Care Provider Credentialing and Privileging Records—VA," appearing at 55 FR 30790 (July 27, 1990) is amended and set forth as follows:

77VA11

SYSTEM NAME:

Health Care Provider Records—VA.

SYSTEM LOCATION:

Records are maintained at each of the VA health care facilities. Address locations for VA facilities are listed in VA Appendix 1 at the end of this document. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 and/or Regional Directors' Offices. The Regional Directors and Division Offices are located at: Eastern Region, Baltimore, MD, with Regional Division Offices at Albany, NY, Baltimore, MD, Bedford, MA, and Pittsburgh, PA; Central Region, Ann Arbor, MI, with Regional Division Offices at Ann Arbor, MI, Indianapolis, IN, Minneapolis, MN, and St. Louis, MO; Southern Region, Jackson, MS, with Regional Division Offices at Atlanta, GA, Dallas, TX, Jackson, MS, and Tampa Bay, FL; and the Western Region, San Francisco, CA, with Regional Division Offices at Palo Alto, CA, Phoenix, AZ, Portland, OR, and Salt Lake City, UT.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning health care providers employed by VA and individuals who

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make application to VA and are considered for employment as health care providers. These individuals may include audiologists, dentists, dietitians, expanded-function dental auxiliaries, licensed practical or vocational nurses, nuclear medicine technologists, nurse anesthetists, nurse practitioners, nurses, occupational therapists, optometrists, clinical pharmacists, licensed physical therapists, physician assistants, physicians, podiatrists, psychologists, registered respiratory therapists, certified respiratory therapy technicians, diagnostic and therapeutic radiology technologists, social workers, and speech pathologists.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record may include information related to:

(1) The credentialing (the review and verification of an individual's qualifications for employment which includes licensure, registration or certification, professional education and training, employment history, experience, appraisals of past performance, health status, etc.) of applicants who are considered for employment;

(2) The privileging (the process of reviewing and granting or denying a provider's request for clinical privileges to provide medical or other patient care services, within well defined limits, which are based on an individual's professional license, registration or certification, experience, training, competence, health status, ability, and clinical judgment) of health care provider applicants who are considered for employment and VA health care providers who are permitted by law and by the medical facility to provide patient care independently and individuals whose duties and responsibilities are determined to be beyond the normal scope of activities for their profession;

(3) The periodic reappraisal of health care providers' professional credentials and the reevaluation of the clinical competence of providers who have been granted clinical privileges; and/or

(4) Accessing and reporting to the National Practitioner Data Bank.

The record will include the individual's name, address, date of birth, social security number, name of medical or professional school attended and year of graduation and may include information related to: The individual's license, registration or certification by a State licensing board and/or national certifying body (e.g., number, expiration date, name and address of issuing office, status including any actions taken by the issuing office or any disciplinary board to include previous or current restrictions, suspensions, limitations, or revocations); citizenship; hours and awards; professional society membership; professional performance, experience, and judgment (e.g., documents reflecting work experience, appraisals of the applicant and the applicant's past and current performance and potential); educational qualifications (e.g., name and address of institution, level achieved, transcript, information related to continuing education); Drug Enforcement Administration certification (e.g., current status, any revocations, suspensions, limitations, restrictions); information about mental and physical status; evaluation of clinical and/or technical skills; involvement in any administrative, professional or judicial proceedings, whether involving VA or not, in which professional malpractice on the individual's part is or was alleged; any actions, whether involving VA or not, which result in the limitation, reduction, revocation, or acceptance of surrender or restriction of the individual's clinical privileges; and, clinical performance information that is collected and used to support a determination of an individual's request for clinical privileges. Some information that is included in the record may be duplicated in an official personnel folder.

PURPOSE(S):

The information may be used for such purposes as: Verifying the individual's credentials and qualifications for employment and/or clinical privileges; advising prospective health care entity employers, health care professional licensing or monitoring bodies, the National Practitioner Data Bank, or similar entities of activities of VA and former VA health care personnel; accreditation of a facility by an entity such as the Joint Commission on Accreditation of Healthcare Organizations; audits, reviews and investigations conducted by staff of the health care facility, the Regional Directors and Division Offices, VA Central Office, and the VA Office of Inspector General; law enforcement investigations; quality assurance audits, reviews and investigations; personnel management and evaluations; employee ratings and performance evaluations; and, employee disciplinary or other adverse action, including discharge.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 210(c) and chapter 73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that a record maintained by VA to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevent to a Department decision concerning the hiring or retention of an employee, the issuance or reappraisal of clinical privileges, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefits.

3. A record from this system of records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of VA, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

4. Disclosure may be made to a congressional office from the record or an individual in response to an inquiry from the congressional office made at the request of that individual.

5. Disclosure may be made to NARA (National Archieves and Records Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

6. Records from this system of records may be disclosed to a Federal agency or

to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accept. standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

7. Information may be disclosed to private sector (i.e., non-Federal, State or local governments) agencies, organizations, boards, bureaus, or commissions (e.g., the Joint Commission on accreditation of Healthcare Organizations). Such disclosures may be made only when: (1) The records are properly constituted in accordance with VA requirements; (2) the records are accurate, relevant, timely, and complete; and (3) the disclosure is in the best interests of the Government (e.g., to obtain accreditation or other approval rating). When cooperation with the private sector entity, through the exchange of individual records, directly benefits VA's completion of its mission, enhances personnel management functions, or increases the public confidence in the VA's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity is to be furnished.

8. Informatin may be disclosed to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

9. Information may be disclosed to the Department of Justice and United states Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

10. Hiring, performance, or other personnel related information may be disclosed to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing, maintaining, or expanding any such relationship.

11. Information concerning a health care provider's professional qualifications and clinical privileges may be disclosed to a VA patient, or the representative or guardian of a patient who due to physical or mental incapacity lacks sufficient understanding and/or legal capacity to make decisions concerning his/her medical care, who is receiving or contemplating receiving medical or other patient care services from the provider when the information is needed by the patient or the patient's representative or guardian in order to make a decision related to the initiation of treatment, continuation or discontinuation of treatment, or receiving a specific treatment that is proposed or planned by the provider. Disclosure will be limited to information concerning the health care provider's professional qualifications (professional education, training and current licensure/certification status), professional employment history, and current clinical privileges.

12. Any information in this system which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program stat e or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

13. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

14. Disclosure may be made to the VA-appointed representative of an employee of all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

15. Information may be disclosed to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

16. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

17. Information may be disclosed to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

18. Identifying information in this system, including name, address, social security number and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/reprivileging of physicians, dentists and other health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention or termination of the applicant or employee.

19. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank or to a State or local government licensing

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board which maintains records concerning the issuance, retention or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession or specialty when under the following circumstances, through a peer review process that is undertaken pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, and/or professional misconduct has been assigned to a physician, dentist or other health care practitioner: (1) On any payment in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim; or, (2) on any final decision that adversely affects the clinical privileges of a physician, dentist or other health care practitioner for a period of more than 30 days. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

20. In response to a request about a specifically identified current or former employee from a prospective Federal or non-Federal health care entity employer, the following information may be disclosed: (a) Relevant information concerning the individual's professional employment history including the clinical privileges held by the individual; (b) relevant information concerning a final decision which results in a voluntary or involuntary limitation, reduction or loss of clinical privileges; and (c) relevant information concerning any payment which is made in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim and, when through a peer review process that is undertaken pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, and/or professional misconduct has been assigned to the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper documents and information included in the record may be stored on microfilm, magnetic tape or disk.

RETRIEVABILITY:

Records are retrieved by the names and social security numbers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas in VA health care facilities is restricted to VA employees on a "need to know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the health care facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to the DHCP (Decentralized Hospital Computer Program) computer room within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the DHCP system may be accessed by authorized VA employees. Access to file information is controlled at two levels; the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties.

3. Access to records in VA Central Office and the Regional Directors and Division Offices is only authorized to VA personnel on a "need-to-know" basis. Records are maintained in manned rooms during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel.

RETENTION AND DISPOSAL:

The record is maintained as long as the individual is employed with VA. If the individual transfers to another VA facility location, the record is transferred to the new employing location. Paper records and information stored on electronic storage media are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEMS MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Deputy Chief Medical Director (DCMD) (11), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Officials maintaining the system: Chief of Staff at the health care facility where the individuals made application for employment, or are or were employed, and the DCMD (11) for individuals who made application for employment to, or are or were employed at, VA Central Office.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they made application for employment, or are or were employed. Inquiries should include the employee's full name, social security number, date of application for employment or dates of employment, and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they made application for employment, or are or were employed.

CONTESTING RECORDS PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the applicant/employee, or obtained from State licensing boards, Federation of State Medical Boards, National Council of State Boards of Nursing, National Practitioner Data Bank, professional societies, national certifying bodies, current or previous employers and other health care facilitiers and staff, references, educational institutions, medical schools, VA staff, and VA patient medical records.

[FR Doc. 91-14033 Filed 6-12-91; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 114
Thursday, June 13, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 18, 1991, 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, June 19, 1991, 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Continuation of Presidential Primary Matching Fund Submission and Certification Procedures: Notice of Proposed Rulemaking (continued from meeting of May 23).

DATE AND TIME: Thursday, June 20, 1991, 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Continuation of Presidential Primary Matching Fund Submission and Certification Procedures: Notice of Proposed Rulemaking (If Necessary)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-14241 Filed 6-11-91; 2:37 pm]
BILLING CODE 6715-01-M

NATIONAL LABOR RELATIONS BOARD
Notice of Meeting

TIME AND DATE: 10:30 a.m., Tuesday, June 11, 1991.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDERED: Discussion of personnel matter.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, Telephone: (202) 254-9430.

Dated, Washington, D.C. _____
By direction of the Board.

John C. Truesdale,
Executive Secretary, National Labor Relations Board.

[FR Doc. 91-14211 Filed 6-11-91; 1:30 pm]
BILLING CODE 7545-01-M

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Corrections

Federal Register
Vol. 56, No. 114
Thursday, June 13, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 777

[Docket No. 910480-1060]

Western Red Cedar

Correction

In proposed rule document 91-12774 beginning on page 25054 in the issue of Monday, June 3, 1991, make the following correction:

§ 777.7 [Corrected]

On page 25056, in the first column, in § 777.7(c)(3), in the second line, "October 1, 1978" should read "October 1, 1979".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

[Docket No. 910354-1111]

RIN 0648-AD74

Western Pacific Bottomfish and Seamount Groundfish Fisheries

Correction

In rule document 91-12726 beginning on page 24351 in the issue of Thursday, May 30, 1991, make the following correction:

On page 24352, in the first column, in the SUMMARY, in the ninth line, "Notheastern" should read "Northwestern".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 90-4]

RIN 9000-AC43, 9000-AE12, 9000-AD85, 9000-AE00, 9000-AD32, 9000-AE01, 9000-AD66, 9000-AD21, 9000-AD57, 9000-AD05, 9000-AE05, 9000-AD73, 9000-AD02, 9000-AD78, 9000-AD81, 9000-AD77, and 9000-AD33

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

Correction

In rule document 91-8647 beginning on page 15142, in the issue of Monday, April 15, 1991, make the following corrections:

1. On page 15142, in the first column, under DATES:, in the third line, "and 25-225-11 (a)" should read "and 52.225-11 (a)".

2. On page 15156, in the third column, the heading that reads "52.224-1 [Amended]" should read "52.244-1 [Amended]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0188]

Drug Export: "A" HIVAG-Monoclonal

Correction

In notice document 91-12042 appearing on page 23296, in the issue of Tuesday, May 21, 1991, in the third column, in the first full paragraph, in the fifth line, "(21 (CFR 5.10)" should read "(21 CFR 5.10)".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No.N-91-3271]

Submission of Proposed Information Collection to the Office of Management and Budget

Correction

In notice document 91-12600 beginning on page 24530 in the issue of Thursday, May 30, 1991, make the following correction:

On page 24564, in the third column, at the end of the document the file line was omitted. It should read as follows:

[FR Doc. 91-12600 Filed 5-29-91; 8:45 am]

Billing Code 4210-27-M

BILLING CODE 1505-01-D

federal register

Thursday
June 13, 1991

Part II

Environmental Protection Agency

40 CFR Part 261

Special Wastes From Mineral Processing (Mining Waste Exclusion); Final Regulatory Determination and Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

[EPA/OSW-FR-91-016; FRL-3956-1]

40 CFR Part 261

RIN 2050-AC41

Final Regulatory Determination for Special Wastes From Mineral Processing (Mining Waste Exclusion)

AGENCY: Environmental Protection Agency.

ACTION: Final regulatory determination and final rule.

SUMMARY: Today's action presents the Agency's final regulatory determination required by section 3001(b)(3)(C) of the Resource Conservation and Recovery Act (RCRA) for 20 special wastes from the processing of ores and minerals. EPA has concluded that regulation under Subtitle C of RCRA is inappropriate for all 20 of the special wastes that were studied. EPA plans to address 18 of the wastes under subtitle D, possibly in the program being developed for mining wastes. For the remaining two wastes (phosphogypsum and process waste water from phosphoric acid production), EPA plans to proceed with the development and promulgation of a program under the Toxic Substances Control Act (TSCA) that will address their management, including possible regulations concerning waste minimization/pollution prevention for these wastes. In addition, EPA plans to use existing authorities under either RCRA Section 7003 or CERCLA section 106 to address any site-specific ground-water contamination problems that are believed to pose substantial and imminent endangerment to human health or the environment. EPA has also decided to postpone consideration of a possible ban on the utilization of one of the special wastes, slag from elemental phosphorus production in construction and/or land reclamation.

The rationale and salient facts used by the Agency to arrive at these decisions are provided below.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: For further information on the regulatory determination, contact the RCRA/Superfund hotline at (800) 424-9346 (toll free) or (703) 920-9810, or Bob Hall at (703) 308-8412.

SUPPLEMENTARY INFORMATION:

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Appendix B—Analysis of and Response to Public Comments on the Notice of Data Availability

I. Background

A. Statutory Authority

Today's notice is issued under the authority of section 3001(b)(3)(C) of RCRA, which requires that after completion of the Report to Congress mandated by section 8002(p) of RCRA, the Administrator must determine whether or not subtitle C regulation of the special study wastes is warranted. Wastes for which the exclusion is retained will continue to be subject to regulation under RCRA Subtitle D as solid wastes.

B. History of the Mining Waste Exclusion

In October, 1980, RCRA was amended by adding section 3001(b)(3)(A)(ii) to exclude "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under subtitle C of RCRA, pending completion of a study and a Report to Congress required by section 8002 (f) and (p) and a determination by the EPA Administrator either to promulgate regulations under subtitle C or that such regulations are unwarranted and that the exclusion should continue (as required by section 3001(b)(3)(C)). EPA modified its hazardous waste regulations in November 1980 to reflect this "Mining Waste Exclusion," and issued a preliminary, and quite broad, interpretation of the scope of its coverage. In particular, EPA interpreted the exclusion to include "solid waste from the exploration, mining, milling, smelting and refining of ores and minerals" (45 FR 76618, November 19, 1980).

In 1984, EPA was sued for failing to submit the Report to Congress and make the required regulatory determination by the statutory deadline (*Concerned Citizens of Adamstown* v. *EPA* No. 84-3041, D.D.C., August 21, 1985). In responding to this lawsuit, the Agency explained that it planned to propose a narrower interpretation of the scope of the Mining Waste Exclusion, so that it would encompass fewer wastes, and proposed to the Court two schedules: One for completing the section 8002 studies of extraction and beneficiation wastes and submitting the Report to Congress addressing these wastes, and one for proposing and promulgating a reinterpretation for mineral processing wastes. In so doing, the Agency, in effect, split the wastes that might be eligible for exclusion from regulation into two groups: Mining (mineral extraction and beneficiation) wastes, and mineral processing wastes. The Court agreed to this approach and established a schedule for the two tasks.

On December 31, 1985, EPA published the required Report to Congress on solid wastes from mineral extraction and beneficiation, and on July 3, 1986 (51 FR 24496) published a determination that regulation of such wastes under subtitle C of RCRA was not warranted. Since the determination was made, the Agency has been developing a tailored regulatory approach for these wastes under RCRA subtitle D.

In keeping with its Court-ordered directive to reinterpret the Mining Waste Exclusion for mineral processing wastes, in October, 1985, EPA proposed to narrow the scope of the Exclusion for mineral processing wastes to include only a few specific waste streams (see 50 FR 40292, October 2, 1985). However, the Agency did not specify the criteria that it used to identify these wastes, or to distinguish them from other wastes that were not identified as being eligible for the exclusion. In response to this proposal, many companies and industry organizations "nominated" wastes that they believed were eligible for the regulatory exemption. Faced with an inability at that time to articulate criteria that could be used to distinguish exempt from non-exempt wastes and the approaching Court-ordered deadline for final action, EPA withdrew its proposal on October 9, 1986 (51 FR 36233).

In July, 1988, the court in *Environmental Defense Fund* v. *EPA*, 852 F.2d 1316 (D. C. Cir. 1988), *cert. denied*, 109 S. Ct. 1120 (1989) held that EPA's withdrawal of its 1985 proposal was arbitrary and capricious, and ordered EPA to reinterpret the scope of the Exclusion for mineral processing wastes. In particular, EPA was directed by the court to restrict the scope of the Exclusion as it applied to mineral processing wastes to include only "large volume, low hazard" wastes. In a series of rulemaking notices, EPA has, during the past three years, established the boundaries of the Mining Waste Exclusion for mineral processing wastes, has articulated the criteria that were used to define "mineral processing," and has evaluated whether individual wastes are large volume and low hazard and, thus, eligible for the temporary exclusion provided by RCRA section 3001(b)(3)(A)(ii). This rulemaking process was completed with the publication of final rules on September 1, 1989 (54 FR 36592) and January 23, 1990 (55 FR 2322). With the completion of these notices, the Agency established that the temporary exemption from subtitle C requirements established by the Exclusion for mineral processing wastes and, therefore, the scope of the Report to Congress, was limited to 20 specific mineral processing wastes.

EPA then prepared and submitted a detailed and comprehensive Report to Congress addressing the 20 special mineral processing wastes, in compliance with the Court-ordered deadline. In addition to the explicit consideration of the eight study factors listed at section 8002(p) of RCRA, the Agency included in the Report a proposed regulatory status for each of the 20 special wastes. Thus, the Report serves both as an information source and as a tentative indication of the Agency's final determination. Accordingly, and in compliance with statutory directive, the Report, the data and analyses that underlie it, and the comments received on it have served as the primary basis for the regulatory decisions that are articulated in today's notice.

EPA did not complete the regulatory determination within the six month statutory deadline. As a result, the Environmental Defense Fund filed a new RCRA citizen's suit, which was settled by consent decree. *EDF* v. *EPA*, No. 91-0429 (D.D.C. Mar. 4, 1991). Under the terms of the consent decree, EPA must issue the regulatory determination no later than May 20, 1991. Today's decision is issued in compliance with that decree.

C. Overview of the Report to Congress

1. Scope of the Report

The scope of the Report to Congress was limited to 20 mineral processing wastes, representing 12 mineral commodity sectors. These wastes are generated by 91 facilities located in 29 states. The 20 wastes covered by the Report to Congress, organized by sector, follow:

Sector	Waste(s)
Alumina	Red and brown muds from bauxite refining.
Chromium (Sodium Chromate/dichromate).	Treated residue from roasting/leaching of chrome ore.
Coal gasification	Gasifier ash from coal gasification.
	Process wastewater from coal gasification.
Copper	Slag from primary processing.
	Calcium sulfate wastewater treatment plant sludge from primary processing.
	Slag tailings from primary processing.
Elemental Phosphorus.	Slag from primary production.
Ferrous Metals	Iron blast furnace APC dust/sludge.
	Iron blast furnace slag.
	Basic oxygen furnace and open hearth furnace APC dust/sludge.
	Basic oxygen furnace and open hearth furnace slag.
Hydrofluoric acid	Fluorogypsum.
	Process wastewater.
Lead	Slag from primary processing.
Magnesium	Process wastewater from primary magnesium processing by the anhydrous process.
Phosphoric acid	Phosphogypsum.
	Process wastewater.
Titanium tetrachloride.	Chloride process waste solids.
Zinc	Slag from primary processing.

2. Study Factors

The RTC addressed the following eight study factors required by section 8002(p) of RCRA:

1. The sources and volumes of such materials generated per year;
2. Present disposal and utilization practices;
3. Potential danger to human health and the environment from the disposal and reuse of such materials;
4. Documented cases in which danger to human health or the environment has been proved;
5. Alternatives to current disposal methods;
6. The costs of such alternatives;
7. The impacts of these alternatives on the use of phosphate rock, uranium ore, and other natural resources; and
8. The current and potential utilization of such materials.

In addition, the statute suggests that the Administrator may review studies and other actions of other federal and state agencies, and invite participation by other concerned parties, including industry and other federal and state agencies, with a view toward avoiding duplication of effort.

The Agency's approach in preparing this Report was to combine certain study factors, for purposes of analysis and exposition, into seven sections. The first section provides a brief overview of the industry, including the types of production processes used and the number and location of operating facilities that generate one or more of the mineral processing special wastes. The second section summarizes information on waste characteristics, generation, and current management practices (study factors 1 and 2), while the third section provides a discussion of potential for and documented cases of danger to human health or the environment (study factors 3 and 4). The fourth section (as suggested generally by section 8002(p) of RCRA), summarizes applicable federal and state regulatory controls. The fifth section discusses alternative waste management practices and potential utilization of the wastes (study factors 5 and 8), while the sixth section discusses costs and impacts of alternative practices (study factors 6 and 7). The seventh and final section summarizes and analyzes the findings of EPA's evaluation of the above study factors.

3. Preliminary Findings in the Report to Congress

The Report to Congress presented EPA's preliminary findings regarding the 20 special wastes from mineral processing, based on two separate approaches: (1) The application of the RCRA section 8002(p) study factors and (2) the application of the RCRA section 8002(p) study factors and additional considerations. A summary of the Agency's findings, prior to receipt and analysis of public comments, regarding the appropriate regulatory status of the 20 mineral processing special wastes covered in the RTC is provided below.

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REPORT TO CONGRESS TENTATIVE RECOMMENDATIONS [1]

Waste stream	Approach 1 (using 8002(p) study factors)		Approach 2 (using 8002(p) study factors and additional considerations)
	Full subtitle C	Subtitle C-minus	
Red and Brown Muds from Bauxite Refining	D	D	D
Treated Residue from Roasting/Leaching of Chrome Ore	D	D	D
Gasifier Ash from Coal Gasification	D	D	D
Process Wastewater from Coal Gasification	D	D	D
Slag from Primary Copper Processing	D	D	D
Slag Tailings from Primary Copper Processing	D	D	D
Slag from Elemental Phosphorus Production	D	D	D
Iron Blast Furnace Slag	D	D	D
Basic Oxygen Furnace and Open Hearth Furnace Slag from Carbon Steel Prod.	D	D	D
Fluorogypsum from Hydrofluoric (HF) Acid Production	D	D	D
Process Wastewater from Magnesium Processing	D	D	D
Slag from Primary Zinc Processing	D	D	D
Phosphogypsum from Phosphoric Acid Production	D	D	D
Process Wastewater from Phosphoric Acid Production	D	D	D
Air Pollution Control Dust/Sludge from Iron Blast Furnaces	D	D	D
Air Pollution Control Dust/Sludge from Basic Oxygen Furnaces and Open Hearth Furnaces from Carbon Steel Production	D	D	D
Slag from Primary Lead Processing	D	C	D
Calcium Sulfate Wastewater Treatment Plant Sludge from Primary Copper Processing	D	C	D
Process Wastewater from HF Acid Production	C	C	D
Chloride Process Waste Solids from Titanium Tetrachloride Production	D	C	D

[1] Source: USEPA. 1990. Report to Congress on Special Wastes from Mineral Processing, Vol. I, pp. 11–17.

a. Approach 1: Application of the RCRA Section 8002(p) Study Factors

1. Wastes EPA Tentatively Recommended to Remain Under RCRA Subtitle D

Using the study factors listed in RCRA section 8002(p), EPA examined: (1) The potential for and documented danger to human health and the environment; (2) the need for additional regulations; and (3) the costs and impacts of subtitle C regulation for the 20 special wastes. EPA's analysis did not merely evaluate whether the wastes should be treated as hazardous in light of the criteria under subtitle C for other wastes, but took into account Congress' desire to examine "special wastes" in a different light. EPA's analysis suggested that regulation under subtitle C of RCRA would be inappropriate for the following 16 mineral processing wastes:

- Red and brown muds from bauxite refining;
- Treated residue from roasting/leaching of chrome ore;
- Gasifier ash from coal gasification;
- Process wastewater from coal gasification;
- Slag from primary copper processing;
- Slag tailings from primary copper processing;
- Slag from elemental phosphorus production;
- Iron blast furnace slag;
- Basic oxygen furnace and open hearth furnace slag from carbon steel production;
- Air pollution control dust/sludge from iron blast furnaces;
- Air pollution control dust/sludge from basic oxygen furnaces and open hearth furnaces from carbon steel production;
- Fluorogypsum from hydrofluoric acid production;
- Process wastewater from primary magnesium processing by the anhydrous process;
- Process wastewater from phosphoric acid production;
- Phosphogypsum from phosphoric acid production; and
- Slag from primary zinc processing.

Three of these sixteen wastes (treated residue from roasting/leaching of chrome ore; process wastewater from coal gasification; and slag tailings from primary copper processing) were found not to pose an actual or potential danger to human health and the environment. The thirteen remaining wastes were identified as having some actual or potential hazard associated with current management practices or plausible mismanagement scenarios, and so were further evaluated.

EPA found that the potential risk associated with slag from primary zinc processing, process wastewater from primary magnesium processing by the anhydrous process, air pollution control (APC) dust/sludge from iron blast furnaces and from basic oxygen and open hearth furnaces used to make carbon steel, red and brown muds from bauxite refining, elemental phosphorus slag, and gasifier ash from coal gasification, was comparatively low; that is, the Agency found that management of these materials did not present a substantial hazard to human health or the environment. In particular, no documented damages attributable to these wastes were identified. In addition, State regulations are in effect for the one primary magnesium facility and revised/strengthened regulations have been proposed for the primary zinc processing facility. EPA also found that several facilities recycle rather than dispose of ferrous metal production APC dust. Therefore, the Agency found that subtitle C regulation was not appropriate. In the case of elemental phosphorus slag, the Agency found that while there appeared to be some significant hazards associated with use of the material in construction applications (that is, off-site utilization), the best means of dealing with this problem was through the use of authorities provided by RCRA section 3001(b)(3)(B)(iii) (which allows for special controls from phosphate rock mining and mineral processing wastes) rather than through imposition of the subtitle C hazardous waste management standards.

EPA identified four wastes that did not exhibit a hazardous characteristic (with the exception of one sample of copper slag at one facility) but for which documented cases of adverse environmental impacts that affected surface water were identified at at least one facility:

- Iron blast furnace slag;
- Slag from primary copper processing;
- Basic oxygen furnace and open hearth furnace slag from carbon steel production; and
- Fluorogypsum from hydrofluoric acid production.

For all four wastes, however, these surface water releases (one of which occurred via ground water) have been and/or are being addressed under existing regulatory authorities at the state and/or federal level. Therefore, the Agency concluded that regulation of these four wastes as hazardous would not provide additional protection to human health or the environment justifying the elimination of the special status of these wastes; thus, subtitle C regulation was not considered appropriate.

Phosphogypsum and phosphoric acid process wastewater were also of concern because damage case information indicated that both closed and currently active phosphogypsum stacks (in which both the phosphogypsum and the wastewater are managed) and wastewater cooling ponds have caused ground-water contamination at 15 of the 16 facilities for which monitoring data are available. The available waste composition data indicated that phosphogypsum tested EP toxic at one of the ten facilities with available data, and process wastewater exhibited the characteristic of corrosivity at most facilities and the EP-toxicity characteristic at some facilities. However, EPA also estimated that the total industry-wide, incremental annualized cost of either full subtitle C regulation or the Subtitle C-Minus scenario [1,2] for phosphogypsum and process wastewater, as compared to the Subtitle D-Plus scenario [3] developed for cost estimating purposes, could exceed $500 million and $50 million respectively, and could significantly affect several facilities. The Report estimated that economic impacts associated with subtitle C or C-Minus regulation at these facilities were expected to be significant, and it was unlikely that these facilities could pass along their higher costs. As a result, EPA tentatively concluded that regulation for these wastes was most appropriate under RCRA subtitle D.

[1,2] A subtitle C scenario that utilizes the flexibility provided by RCRA section 3004(x).

[3] A subtitle D program similar to those being developed for extraction and beneficiation wastes.

2. Wastes EPA Tentatively Considered for Regulation Under RCRA Subtitle C or D

EPA found, based on the information available at that time, that the remaining four wastes (calcium sulfate wastewater treatment plant sludge from primary copper processing, slag from primary lead processing, process wastewater from hydrofluoric acid production, and chloride process waste solids from titanium tetrachloride production) have posed or may pose a danger to human health or the environment. Available data indicated that all four of the wastes exhibit one or more of the characteristics of hazardous wastes. In particular, EPA found that all of the wastes except process wastewater from hydrofluoric acid production exhibit the characteristic of EP toxicity at at least one facility; process wastewater from hydrofluoric acid production was found to be corrosive at all facilities where it is generated. In addition, damages associated with these wastes were documented as follows: (1) Current lead slag management practices have resulted in surface water contamination; (2) ground-water contamination that may in part be attributable to calcium sulfate sludge from primary copper processing was found at one of the two facilities that generate the waste; and (3) ground-water contamination that may in part be attributable to chloride process waste solids from titanium tetrachloride production was identified at at least one facility that generates this waste. Furthermore, the Report stated that the Agency was not confident that current practices and regulations are adequate to prevent further danger to health or the environment from these four wastes.

Nevertheless, EPA tentatively concluded that regulation of three of the four wastes as hazardous (calcium sulfate wastewater treatment plant sludge from primary copper processing, slag from primary lead processing, and chloride process waste solids from titanium tetrachloride production), under full subtitle C was not appropriate due to cost considerations. The Agency's basis for this finding was a cost comparison between full subtitle C and the D-Plus scenario (with Subtitle D-Plus including subtitle D requirements similar to those being developed for extraction and beneficiation wastes) that showed that the costs for full subtitle C regulation would be significantly higher and the associated impacts would be more significant at nearly all facilities than the estimated costs of regulation under the Subtitle D-Plus scenario.

For process wastewater from hydrofluoric acid production, EPA found that the estimated compliance costs for regulation under full subtitle C and regulation under the Subtitle D-Plus scenario were comparable and that the likely economic impacts were not expected to be significant. Based on these factors, EPA tentatively concluded that process wastewater from hydrofluoric acid production may warrant regulation under subtitle C.

On the other hand, EPA also estimated the cost of managing these four wastes under a subtitle C scenario that utilizes the flexibility provided by RCRA section 3004(x) (Subtitle C-Minus).[4] The Agency then compared the costs for Subtitle C-Minus regulation (rather than full subtitle C regulation) to the estimated costs that might result from regulation under a subtitle D program similar to those being developed for extraction and beneficiation wastes (Subtitle D-Plus). EPA found that the estimated costs for the Subtitle C-Minus and Subtitle D-Plus scenarios are comparable for nearly all facilities. Assuming a Subtitle C-Minus scenario, EPA tentatively concluded that all four wastes might warrant regulation under subtitle C.

b. Approach 2: Application of the RCRA Section 8002(p) Study Factors and Additional Considerations

Sections 3001(b)(3) and 8002(p) of RCRA and the decision in *Environmental Defense Fund* v. *EPA*, 852 F.2d 1309 (D.C. Cir. 1988) make it clear that the Agency may and should consider the specific factors of section 8002(p) (1)–(8) in making its decision regarding the appropriate regulatory status of special wastes. In addition, the Agency stated in the Report that in making its regulatory determination, it might be appropriate to consider other factors relating to the broader goals and objectives of the Agency and RCRA, such as developing and maintaining strong state mining and mineral processing waste regulatory programs and facilitating implementation of federal programs.

Accordingly, EPA stated in the Report to Congress that in order to facilitate both development and maintenance of strong state programs and implementation of any federal regulations that may be necessary for mineral processing wastes, it might be

[4] The Subtitle C-Minus scenario that was considered in the RTC is hypothetical and was assumed only for the purpose of cost estimation; it does not necessarily represent what EPA would consider an appropriate regulatory program.

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appropriate to regulate all 20 of the special wastes under subtitle D of RCRA. In addition, the Report stated that some mining and mineral processing wastes might be excluded from any further federal regulation under RCRA.

In light of these considerations, the results of Approach 2 indicated that it might be appropriate for the waste streams identified under Approach 1 for potential subtitle C (full C or C-Minus) regulation not be subject to the hazardous waste management standards, but instead to be retained within the Mining Waste Exclusion. If such a finding was appropriate, EPA stated that it would need to be conditioned on the premise that major steps be taken to control releases from the facilities generating these waste streams. Some corrective measures are already being taken under a variety of Agency authorities (e.g., RCRA, Superfund, CWA) and more can and would be undertaken. EPA also asserted that the states must act to address the most immediate problems posed by these wastes, as well as any of the other mineral processing special wastes that have been found in the Report to pose significant actual or potential hazard to human health or the environment. To assist in this effort, EPA pledged to provide technical and other resource support to the involved states to improve their programs. If near term actions did not result in adequate control of such wastes, EPA would then take action to reconsider its regulatory determination and could designate certain waste streams as subtitle C hazardous wastes.

4. Public Comment Process

With publication of the Report to Congress, EPA initially established a 60-day public comment period that ended on September 28, 1990. In response to requests from several commenters, however, EPA extended the comment period to October 19, 1990. In addition, a public hearing on the Report was held in Washington, DC on October 17, 1990. EPA received 91 sets of written comments prior to the close of the comment period and eight late comments. All individual comments and a transcript from the public hearing are available for public inspection in the docket (Docket No. F–90–RMPA–FFFFF). The docket also contains a summary of all the comments presented at the hearings or submitted in writing. EPA's responses to those comments are provided in the docket, as well as in appendix A to this regulatory determination.

D. Supplemental Analysis and Notice of Data Availability

Supplemental analyses were conducted on five wastes that were addressed in the Report to Congress, including gasifier ash and process wastewater from coal gasification, basic oxygen furnace and open hearth furnace air pollution control dust/sludge, and phosphogypsum and process wastewater from phosphoric acid production. A Notice of Data Availability (NODA), which announced the availability of this information, was published in the **Federal Register** on January 7, 1991.

A 30-day public comment period was provided, which closed on February 6, 1991. As in the case of the Report to Congress, EPA received requests that it extend the comment period. However, EPA did not extend this comment period because of the need to proceed with the regulatory determination process as expeditiously as possible and because the Agency believed that the comment period provided was adequate. In addition, EPA took steps to ensure that commenters could make the maximum use of the time available. For example, EPA made the supplemental data publicly available as soon as possible, immediately following Agency signature, rather than waiting until the NODA was published in the **Federal Register**. Also, at the request of industry, EPA delayed the start of the public comment period until after the holidays.

Included in the new data was information on phosphoric acid process wastewater and phosphogypsum concerning generation and management of these wastes, the engineering feasibility and cost of alternative waste management practices, waste characteristics, ground water monitoring data, and state regulations. The Agency specifically solicited comments on the engineering feasibility and accuracy of cost estimates for the alternative waste management practices presented as part of the new data.

The Agency received 22 written comments addressing the NODA. All of the comments are available for public inspection in Docket No. F–91–RM2A–FFFFF. Agency responses to the comments are provided in the docket and appendix B to this regulatory determination.

II. Factors Considered in Making the Regulatory Determination

The RCRA statute, as amended, directs EPA to make a regulatory determination for the special study wastes based upon its Report to Congress and comments received from interested parties. The statute contains the following eight study factors:

1. The sources and volumes of such materials generated per year;
2. Present disposal and utilization practices;
3. Potential danger, if any, to human health and the environment from disposal and reuse of such materials;
4. Documented cases in which danger to human health or the environment has been proved;
5. Alternatives to current disposal methods;
6. The costs of such alternatives;
7. The impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and
8. The current and potential utilization of such materials.

In addition, RCRA section 8002(p) suggests that EPA review studies and actions of other federal and state agencies, and invite participation from concerned parties, including industry and other federal and state agencies in an attempt to avoid duplication of effort.

EPA has complied with the Congressional mandate in developing the required Report to Congress and soliciting and incorporating comments received from affected parties. In making today's regulatory determination, the Agency has relied upon the analysis of the eight study factors described as "Approach 1" in the RTC, modified slightly in response to public comments. EPA believes that this approach is most consistent with Congressional intent. To the extent that the Agency were otherwise to conclude that subtitle C regulation was warranted based upon consideration of all of these factors and information, EPA believes, upon further reflection, that it is unnecessary and probably inappropriate to look outside the Report to Congress, public comments, and supplemental technical information, as outlined for Approach 2 in the RTC, to justify a different determination.

In addition, as discussed in more detail in appendix A to this preamble, EPA believes that the so-called "additional factors" upon which Approach 2 was based are, in large part, already embodied within the contours of the inquiry that Congress intended for EPA to make in the Report and regulatory determination. The Report identifies (1) the development and maintenance of strong state mining and mineral processing regulatory programs, and (2) the facilitation of an integrated federal mining regulatory program as the key considerations under Approach 2. Section 8002(p)(5) instructs EPA to consider "alternatives to current disposal methods" as a factor in developing the Report and regulatory determination. Certainly, consideration of alternative state regulatory schemes, in addition to federal schemes, is contemplated by this section. Also, facilitation of a potential integrated federal mining program was actually considered by EPA in its cost estimates (reflected in the "Subtitle D-Plus scenario").

Nonetheless, EPA does not believe that it should rely on "possible" improved state programs to determine that subtitle C is not warranted unless EPA is confident that such programs are being developed and can address the problems associated with mineral processing wastes that may pose a significant risk. Thus, EPA believes that section 8002(p) requires that EPA not consider these factors in a way that would supplant any decision the Agency makes under the decision making methodology outlined in Approach 1.

In any event, EPA notes that the issue is effectively moot. As discussed below, EPA has determined, on the basis of Approach 1, that subtitle C is not appropriate for any of the 20 wastes analyzed. Thus, even if EPA were to employ Approach 2 as outlined in the Report, it would not change any of the decisions made today.

In "Approach 1," the Agency evaluated the RCRA section 8002(p) study factors by first assessing the need for additional regulatory controls (or absence thereof), then evaluating the options for appropriate requirements that could be applied to each individual waste stream for which additional controls might be in order, and, finally, estimating the associated costs and impacts. In applying the decision criteria, EPA believes that the factors that are most important in establishing the regulatory status of the special wastes should be given major emphasis. Therefore, potential risks posed and documented damages caused by the wastes, the need for additional regulations, and the costs and impacts that would be associated with more stringent regulatory controls are the focus of the three steps in the analytical process. The reason for this is that in the absence of a realistic showing of a potential risk and/or documented damages from current management (or in appropriate cases, plausible mismanagement), EPA believes that Congress would not intend to eliminate the special status of these wastes by imposing hazardous waste regulation under RCRA Subtitle C; if greater regulatory controls may be appropriate because of significant potential or documented danger, the costs and impacts of regulatory controls are the critical factors in determining whether a given alternative would conform to Congress' expressed goals for these wastes (adequate protection of human health and the environment and continued operation of the affected industries).

The overall decision making process as described in the RTC was left basically intact for the purpose of this regulatory determination. However, a number of specific changes have been made to the individual decision criteria in response to public comments; these changes are detailed below, and address the specific questions considered in this step-wise process, as well as how the answers to these questions interact when deciding whether to go from one step to the next.

The modified step-wise process that the Agency applied to the available information is outlined below.

Step 1. Does management of this waste pose human health/environmental problems? Might current practices cause problems in the future?

Critical to the Agency's decision making process is whether the special waste either has caused or may cause human health or environmental damage. To resolve these issues, EPA has posed the following key questions:

1. Has the waste, as currently managed, caused documented human health impacts or environmental damage?
2. Does EPA's analysis indicate that the waste may pose a significant risk to human health or the environment at any of the sites that generate it (or in off-site use), under either current management practices or plausible mismanagement scenarios?
3. Does the waste exhibit any of the characteristics of hazardous waste?

In the RTC, EPA concluded that further evaluation was necessary if the answer to any of these three questions was yes. However, numerous commenters argued that several of the damage cases included in the RTC do not represent today's conditions, for a variety of reasons, that the risk assessment conducted for the RTC tends to overstate risk, and that the leachate concentrations measured using the EP leach test overestimate actual leachate concentrations. Although EPA disagrees with many of the specific points made by commenters in support of these arguments, as discussed in appendix A to this preamble, the Agency believes that a more flexible decision making approach is warranted in response to the general concerns expressed.

Concluding that further evaluation is necessary if the answer to just one of the above questions is yes, without taking into account the overall certainty and conservativeness of that answer relative to the answers to the other questions, could unnecessarily lead the Agency into Step 2 of the decision making process.

Therefore, for this regulatory determination, EPA answered each of these questions and then considered the combined answers as a whole in deciding whether further evaluation was necessary. A fundamental concept in this approach was that no one question is more significant in reaching a decision regarding potential hazard than the others, as the answer to one question could offset, somewhat, the answer to another. That is, rather than following a very rigid approach of proceeding to Step 2 if the answer to just one question was yes, the Agency considered how the answers traded off, taking into account each answer's supporting weight of evidence and certainty.

For example, the scenario for a given waste could be that (1) there was not a documented damage case that could be attributed to the waste with reasonable certainty (i.e., the answer to question 1 was no); (2) the reasonably conservative risk analysis provided a sound basis for concluding that the potential for human health and environmental problems was low under current management practices or plausible mismanagement scenarios (i.e., the answer to question 2 was no); and (3) the waste exhibited the toxicity characteristic using the EP leach test (i.e., the answer to question 3 was yes), but only rarely and never for samples analyzed using the Synthetic Precipitation Leaching Procedure (SPLP). Under this scenario, EPA would have reached an overall low hazard conclusion because the balance of the information supporting the answers to questions 1 and 2 effectively outweighs, in the Agency's judgment, the answer to question 3.

By following this approach, the Agency considered all of the relevant information in making its decision on the potential for each waste to pose human health and environmental problems. If this analysis led the Agency to conclude that there is a reasonable potential for problems, then EPA concluded that further evaluation was necessary. If the conclusion was that the potential for problems is low, then the Agency determined that regulation of the waste under RCRA subtitle C is not appropriate. EPA believes that this "balancing" approach to the analysis in

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Step 1 allows EPA to determine with more precision the actual hazards posed by those wastes, consistent with the intent of the Bevill Amendment. 852 F.2d at 1314. EPA also notes that this analysis does not precisely match the approach EPA uses to list or identify non-special wastes as hazardous, but is more conservative in the direction of not imposing regulation unless the potential risk justifies elimination of special status.

Step 2. Is more stringent regulation necessary and desirable?

If the waste has caused or may potentially cause human health or environmental impacts as determined in Step 1, then EPA concluded that an examination of alternative regulatory controls was appropriate. Given the context and purpose of the study, the Agency focused on an evaluation of the likelihood that such impacts might continue or arise in the absence of more stringent regulation, and whether subtitle C would be an efficient mechanism for controlling these impacts. Specifically, the Agency posed three questions:

1. Are current practices adequate to limit contaminant release and associated risk?

2. Are current federal and state regulatory controls adequate to address the management of the waste?

3. Will Subtitle C effectively address problems associated with the waste without imposing significant unnecessary controls that are inconsistent with the special status of the waste?

Due to changes made in response to public comments, these questions differ from the questions presented for Step 2 in the RTC, in two ways. First, the Agency eliminated a question concerning the likelihood of new facilities opening in the future and generating and managing a special waste in a different environmental setting than those examined in the RTC. The Agency acknowledges that this is a relevant issue and considered it in the Report to Congress for each industry and waste that was studied. However, EPA agrees with public commenters that an analysis of this issue relies largely on conjecture about the potential conditions that might exist at a new facility, if one were to open. Therefore, the Agency believes that the potential for problems at hypothetical new facilities is less important than the other factors considered in the decision making process, and did not consider the question explicitly in developing the regulatory determination.

Second, several commenters argued that subtitle C regulation, even with Section 3004(x) flexibility, would impose numerous prescriptive standards that would not necessarily be needed to control the problems at a given facility or across a commodity sector. While EPA disagrees with many of the specific points made by these commenters in support of their arguments, as presented in the appendices to this preamble, the Agency agrees that the suitability of subtitle C controls relative to the magnitude and extent of the problem(s) defined in Step 1 is an important issue in the decision making process and the approach is also consistent with EPA's previous approach to making regulatory determinations under the Bevill Amendment, which focused on whether subtitle C, even with the use of Section 3004(x), might be too "cumbersome and uncertain" to accomplish the goals of effective regulation of the risks from special wastes, or put another way, whether subtitle C is the right "template" for regulating the special wastes at issue. 852 F.2d at 1313, 1315. Therefore, the Agency added the third question listed above for the purpose of developing today's regulatory determination.

EPA considered the answers developed for these questions together with the answers to the questions addressed in Step 1 to reach an overall conclusion on the need for further evaluation. If current practices or existing regulatory controls were found to be adequate, or Subtitle C would not be an effective regulatory alternative, and if the potential for actual future impacts was considered low (e.g., existing facilities in remote locations, low likelihood of actual risk, adequate federal or state regulatory controls already exist), then the Agency concluded that the waste should not be regulated under Subtitle C. Otherwise, further examination of regulatory alternatives was considered necessary.

Step 3. What would be the operational and economic consequences of a decision to regulate a special waste under Subtitle C?

If, based upon the previous two steps, EPA believed that a waste might be a candidate for regulation under subtitle C, then the Agency estimated and evaluated the costs and impacts of two regulatory alternatives that are based upon subtitle C, and one regulatory alternative that reflects one possible approach that might be taken under RCRA subtitle D ("Subtitle D-Plus"). Two evaluations were performed. The first focused on the magnitude, distribution, and significance of the incremental costs of regulation under full Subtitle C as compared to the Subtitle D-Plus scenario for each potentially affected facility. The second focused on incremental costs and impacts associated with regulation under a modified subtitle C ("Subtitle C-Minus") scenario, that incorporates waste management standards based upon site-specific risk potential, as compared to Subtitle D-Plus. The key questions in the Agency's decision making process for both comparisons were as follows:

1. Are predicted economic impacts associated with the full subtitle C (or Subtitle C-Minus in the case of the second comparison) scenario significant for any of the affected facilities?

2. Are these impacts substantially greater than those that would be experienced under the Subtitle D-Plus scenario?

3. What is the likely extent to which compliance costs could be passed through to product markets or input costs could be reduced, i.e., to what extent could regulatory cost burdens be shared?

4. In the event that costs are significant, could a large proportion of domestic capacity or product consumption be affected?

5. What effects would hazardous waste regulation have upon the viability of the beneficial use or recycling of the special waste?

In EPA's judgment, an ability to pass through costs or an absence of significant impacts suggested that subtitle C regulation (or Subtitle C-Minus in the case of the second comparison) might be appropriate for wastes that pose significant risk. In cases in which the subtitle C (or Subtitle C-Minus) scenario would impose widespread and significant impacts on facilities, result in reductions in domestic capacity or supply, and/or deter the safe and beneficial use of the waste, EPA concluded that regulation under some other regulatory authority, including Subtitle D or TSCA, might be more appropriate.

III. Regulatory Determination for the 20 Special Wastes From Mineral Processing

The following discussion presents EPA's conclusions regarding the appropriate regulatory status of each of the special wastes from mineral processing, based on information obtained by analyzing the statutory study factors in the manner outlined above. The information summarized here incorporates information received during the public comment period and additional refinement of the data

presented in EPA's July 1990 Report to Congress and January 1991 NODA.

EPA has decided that regulation under subtitle C is inappropriate for all 20 of the mineral processing wastes. For nine of the wastes, no comments were received that objected to EPA's tentative determination in the Report to Congress that regulation under subtitle C for these wastes is unwarranted. These nine wastes include:

(1) Red and brown muds from bauxite refining;

(2) Treated residue from roasting/leaching of chrome ore;

(3) Gasifier ash from coal gasification;

(4) Process wastewater from coal gasification;

(5) Fluorogypsum from hydrofluoric acid production;

(6) Iron blast furnace slag;

(7) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(8) Slag tailings from primary copper processing; and

(9) Process wastewater from primary magnesium processing by the anhydrous process.

For the remaining eleven wastes, EPA received at least one comment arguing that subtitle C regulations should be promulgated. EPA's determination rationale for each of these wastes follows.

Slag From Primary Copper Processing. An examination of available information regarding copper slag leads to the following findings regarding the three key questions outlined above for Step 1 in the Agency's decision making process.

First, copper slag rarely, if ever, exhibits a hazardous waste characteristic. Only one sample out of 70 exceeded EP-toxicity regulatory levels, for cadmium and lead. The Agency agrees with commenters that the accuracy of the one sample is questionable, because the cadmium concentrations in the EP leachate extract are inconsistently high compared to concentrations in the total sample analysis.

Second, although one commenter pointed out that the slag contains a number of constituents in concentrations that exceed the conservative risk screening criteria used in the Report to Congress, these concentrations by themselves do not demonstrate that the slag poses a significant hazard. An examination of the slag management practices and environmental conditions at the 10 active primary copper facilities indicates that copper slag currently generated at these facilities poses an overall low risk to human health and the environment. This is largely due to the fact that most of the active facilities are located in areas with low-risk environmental and exposure characteristics (e.g., very low precipitation and net recharge, large depths to ground water, large distances to surface water, and great distances to potentially exposed populations). As pointed out by several commenters, with whom EPA agrees, the Agency's risk modeling for copper slag was very conservative (tending to overestimate risks) and supports a conclusion that the slag poses low risks as currently managed.

Finally, following careful review of the information and public comments on the copper slag damage cases, EPA believes that the damages documented in the RTC for copper slag resulted from unusual circumstances that generally do not represent current management practices. For example, the damages at Commencement Bay (Puget Sound) were caused by the use of copper slag, as well as other wastes, as fill in a wetland or tideflats area. The nearby copper facility that generated the slag is now inactive, and the ten active primary copper processing facilities are generally concentrated in arid areas where it is very unlikely that slag could be disposed of in a wetland. Similarly, at the inactive copper facilities in Midvale, UT and El Paso, TX, environmental contamination has been caused by the co-management of slag from copper, lead, and/or zinc processing since the late 1800's. Based on the available damage case information, survey responses, and public comments, EPA believes that these cases do not reflect the industry norm today. In addition, EPA presently does not have damage case information that suggests that current copper slag management practices are causing problems.

Based on these findings, EPA concludes that current management of copper slag does not appear to pose significant human health or environmental hazards, and current slag management practices appear unlikely to cause problems in the future. As a result, Federal regulation under subtitle C is not appropriate. Given this finding, EPA did not evaluate the questions addressed in Steps 2 and 3 of the decision making methodology.

Slag From Elemental Phosphorus Production. Addressing the questions in Step 1 of the decision making process, the information included in the RTC and provided in public comments leads to the following major findings for elemental phosphorus slag.

First, elemental phosphorus slag does not exhibit any of the four characteristics of hazardous waste. One commenter contends that the slag is intrinsically dangerous because it is radioactive and contains toxic constituents. EPA agrees that the radionuclide content may pose a direct radiation threat when the slag is used off-site. (See further discussion on this issue later in this section and in section IV.) However, the slag contains few chemical constituents that exceed the RTC's conservative risk screening criteria by a significant margin, and none exceed regulatory levels that would qualify the slag for subtitle C controls.

Second, current on-site slag management practices and environmental conditions at the five active elemental phosphorus facilities generally pose a low risk via the ground-water and surface water exposure pathways. Significant risks via these pathways are limited by the low concentrations of potentially harmful constituents in slag leachate and the generally large size of slag particles that limit stormwater erosion potential. In addition, the potential for the slag piles to cause significant impacts to surface water is precluded by the relatively great distance (more than 500 meters) to the nearest water body at two facilities, the use of stormwater run-off controls at the slag piles at two facilities, and the large flow and assimilative capacity (30 cubic meters per second or 1,058 cubic feet per second) of the creek closest to the fifth facility. As the RTC and one commenter point out, one of the sites is located within a mile of a wetland, one site overlies an area of karst terrain, and one facility is located in a National Forest. While these facts are pertinent, the Agency believes, based on all the evidence, that existing management practices for elemental phosphorus slag should not significantly threaten these environments through the ground-water and surface water pathways, given the small potential for releases to these media.

Moreover, although one commenter points out that ground-water contamination has been observed at three of the five active facilities, available information on the documented damages at elemental phosphorus facilities indicates that the ground-water contamination is due to other wastes and waste management practices (e.g., historic unlined ponds used to store process wastewater). This supports the above finding that on-site management of the slag does not pose a significant ground-water risk.

On-site management at three facilities, however, may pose a

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moderate risk via the air exposure pathway due to the chromium, cadmium, and uranium-238 concentrations in the slag. Although the vitrified nature and generally large size of particles tends to limit wind erosion, there is some evidence that dust from slag piles may be blown into the air and potentially lead to exposures. As noted in the RTC and reiterated by one commenter, three of the facilities are located in fairly densely populated areas and three are located in agricultural areas where airborne depositon and subsequent food chain exposures are possible.

Based on these findings, EPA concludes that current on-site management practices for elemental phosphorus slag do not appear to pose a significant ground-water or surface water risk and are not likely to cause significant problems through these pathways in the future. However, there is some potential for airborne releases and resulting impacts; because of the Agency's desire to fully evaluate all potential risks, the Agency proceeded to Step 2 of its decision making process to evaluate whether more stringent regulation is necessary and desirable.

In this step, EPA made three basic findings:

- The relatively low to moderate risk from the on-site management of elemental phosphorus slag is expected to continue in the future in the absence of subtitle C regulation given current waste management practices and environmental conditions at the five active facilities. The slag characteristics and existing management practices at the five active facilities are unlikely to change significantly.
- None of the states where elemental phosphorus slag is generated specifically apply fugitive dust control requirements to slag piles. However, adequate authority and mechanisms already exist under the Clean Air Act to control this dust. For example, the National Ambient Air Quality Standards include a standard for the airborne concentration of particulate matter, and the dust could be controlled under the National Emission Standards for Hazardous Air Pollutants, if necessary.
- Regulation under subtitle C would impose significant and specific requirements (e.g., liners, caps, ground-water monitoring) that are directed at controlling releases/risks that do not appear to exist or are otherwise controlled and, thus, are not appropriate given the special status of the waste.[8]

Based on these combined findings from Steps 1 and 2, EPA concludes that regulation of elemental phosphorus slag under subtitle C is not appropriate under the circumstances. (Accordingly, EPA did not proceed to Step 3 of its decision making process.) EPA plans to further examine the potential impacts of fugitive dust emissions from elemental phosphorus slag piles and will determine whether controls for these releases are needed, and if so, whether they can be developed under the Clean Air Act.

The Agency is uncertain about the potential gamma radiation exposures and risks associated with off-site use of elemental phosphorus slag in construction and land reclamation. As discussed in more detail in section IV of this preamble, the Agency has postponed any decisions about the significance of this risk and the need for additional control of off-site uses pending more extensive review. In response to comments, EPA acknowledges that the RTC is in error in its statement that radon emissions from elemental phosphorus slag pose significant risks, as other EPA studies clearly show that the slag is not a significant source of radon emissions. However, the fact that radon gas emissions from elemental phosphorus slag are inconsequential does not eliminate concern about the potential for direct exposure to gamma radiation emitted from the slag.

Slag From Primary Zinc Processing. Regarding the questions raised in Step 1 of the Agency's decision making process, a careful review of the RTC information and public comments on zinc slag leads to the following three conclusions.

Based on available data, zinc slag frequently exhibits EP-toxicity, as 25 of 37 samples contained lead in concentrations that exceed the EP-toxicity regulatory level by a factor of between 5 and 13. Using the SPLP test, however, lead concentrations never exceeded the EP toxicity regulatory level, although the SPLP test has been shown on occasion to underestimate the amount of leachable lead in a sample.

At the same time, based on a review of existing waste management practices and predictive modeling results, EPA believes that zinc slag, as currently managed at the sole active facility in Monaca, PA, poses an overall low risk to human health and the environment. For example, the Agency predicts that metals leached from zinc slag at the Monaca facility would be largely bound to subsurface soil and would not reach the deep useable aquifer within 200 years. Even if a shallower aquifer exists at the site as the RTC and one commenter suggest, any shallow ground water that may become contaminated with slag leachate is likely to discharge, without being withdrawn for human use, into the adjacent Ohio River via the steep bluff adjoining the site. The Ohio River is very large at this point, and EPA modeling predicts that it can readily assimilate any chronic loading of contaminants that may occur, and any such release would be controlled through permitting under the Clean Water Act.

A portion of the zinc slag is also sold for use at off-site locations as road gravel or construction aggregate, and another portion is stockpiled until it can be sold for off-site use as a source of iron. Given the high concentrations of lead measured in EP leach tests of zinc slag, EPA recognizes that possible off-site use locations may be more conducive to releases and risks than the existing processing facility in Monaca, PA, although the Agency has no evidence that such risks are occurring or would occur. In fact, the Agency did not discover any damages attributable to such slags used off-site.

Third, EPA did not discover any damage cases attributed to zinc slag at the Monaca facility. Damage case studies at inactive sites did demonstrate the potential for surface water contamination via stormwater run-off from zinc slag piles, however. While these cases demonstrate the potential for problems if zinc slag is not properly controlled, they do not by themselves indicate that more stringent controls are needed for slag at the one active facility. In fact, the lack of documented damage associated with the active facility supports the conclusion that zinc slag as currently managed at that facility poses a low risk. One commenter argued that the lack of damage case data from the active facility may be a reflection of the inadequacy of the facility's environmental monitoring system, and not the absence of actual damage. However, the Agency believes that slag at the Monaca facility does not pose a threat, principally because the slag composition at the Monaca facility is not considered comparable to that of the inactive facilities, i.e., it arises from feedstocks having a different chemical composition. It should also be noted that with respect to the commenter's specific point, the facility has been in operation for over 50 years and there are no available monitoring data that show any evidence of damages resulting from the management of zinc slag.

The Agency considered these findings, by themselves, to be insufficient to support a final regulatory determination. Although on-site risks and damages at the sole active facility are low, the elevated EP leachate concentrations (as well as difficulties in interpreting the low SPLP leachate concentrations) and the prospect of zinc slag being managed at off-site locations that may present a problem prompted the Agency to proceed to Step 2 of its decision making process to determine whether more stringent regulation is necessary and desirable. In answer to the questions addressed in Step 2, the Agency found that:

- The waste management practices and environmental conditions that currently limit the potential for significant threats to human health and the environment at the Monaca facility are expected to continue in the future in the absence of subtitle C regulation. Similarly, management practices at off-site locations would not be expected to change significantly. The characteristics of the slag are also unlikely to change in the future.
- EPA's recently promulgated stormwater regulations (55 FR 47990, November 16, 1990) under the Clean Water Act will minimize the potential for adverse impacts of stormwater run-off from zinc slag piles in the future.
- The only potential problem associated with these slags that EPA has identified is with their off-site use or disposal. However, the Agency has no evidence that such use or disposal is resulting in environmental damage. Control under subtitle C would impose significant and specific requirements (e.g., liners, closure and post-closure care) that are directed at controlling releases/risks that do not appear to exist or are otherwise controlled and, thus, are not appropriate given the special status of the waste.

Finally, the Agency notes that the State of Pennsylvania has proposed regulations that would impose more stringent environmental controls on the on-site management and off-site use of zinc slag, although the exact nature and extent of these controls cannot be predicted with certainty. The proposed rule would require generators to certify that they have attempted to reuse and/or recycle the slag before disposal and would require permits to contain provisions for liners, leachate collection systems, monitoring wells, and disposal of leachate.

Based on these combined findings from Steps 1 and 2, EPA concluded that regulation of zinc slag under subtitle C is inappropriate under the circumstances. (As a result, the Agency did not proceed to evaluate the questions addressed in Step 3 of its decision making process.)

Air Pollution Control (APC) Dust/Sludge From Iron Blast Furnaces. Addressing the questions in Step 1 of the decision making process, the information provided in the RTC and in public comments on the RTC leads to the following findings for this waste.

First, EPA found that lead concentrations measured in iron blast furnace APC dust/sludge leachate using the EP leach test only occasionally exceeded the EP-toxicity regulatory level (4 out of 70 samples from 3 out of 16 facilities with data). In addition, the waste is recycled (completely at one facility and partially at another) at two of the three facilities where the waste was found to be EP-toxic. Although lead concentrations determined by SPLP analyses never exceeded the EP toxicity regulatory level, the Agency has difficulty interpreting these measurements because the SPLP test has been shown on occasion to underestimate the amount of leachable lead in a sample.

At the same time, based on an examination of the site specific conditions at 15 of the 26 facilities that generate this waste, current management practices and environmental conditions are highly variable, with the potential for contaminant releases existing at some sites. For example, there is potential for ground-water contamination at five facilities that manage at least some of the dust/sludge in surface impoundments, although the low EP leachate concentrations at these facilities (none exceeded the EP-toxicity regulatory levels) would appear to suggest that any such contamination would not likely be significant. The dust/sludge also consists of small particles that are amenable to release and transport via stormwater and wind erosion when the waste is managed in exposed piles. Due to site-specific management practices and environmental conditions, there appears to be some potential for migration into surface water at four facilities and a potential for airborne releases and exposures at seven facilities.

One commenter argued that risks posed by this waste could be substantially higher than reported, because, as the commenter pointed out, the RTC did not consider the site-specific conditions at all active facilities, inactive facilities that could be reactivated in the future, and potential new facilities. While the commenter raises a good point, the Agency notes that the sample of facilities examined in the RTC represents more than half (15) of the 26 active facilities and seven of the ten states where active facilities are located. Furthermore, the conditions examined in the RTC represent a wide diversity of management practices and environmental conditions. Specifically, all known management practices for the dust/sludge were represented by the 15 sample facilities, including disposal methods (landfills and ponds) and temporary storage methods (storage pads and transfer areas), such as might be present at facilities that recycle the waste or send it off-site for disposal. Some of these units are equipped with engineered controls to prevent releases (e.g., liners and run-off controls), while others are not. In terms of environmental conditions, the facilities examined represent a variety of depths to ground water, net recharge rates, distances to surface water, and proximities to potential receptors. As a consequence, the Agency believes that the facilities examined reasonably represent the conditions that might exist at the other facilities. EPA thus believes that the hazards that were evaluated reflect the diversity and nature of hazards posed by iron blast furnace APC dust/sludge at the other facilities.

Finally, despite the Agency's theoretical conclusions about the potential for iron blast furnace APC dust/sludge to be released into the environment at some facilities, EPA did not find any damage cases attributable to this waste, which EPA believes to be significant when evaluating the actual hazards posed by special wastes. One commenter alleged that there are such documented damage cases, but that EPA did not discover them because it did not review files for inactive sites and other key information sources. However, as stated in the Agency's responses to comments on the RTC's analytical methodology (see appendix A of this preamble), the Agency maintains the view that its damage case investigation effort for these and other wastes was comprehensive and thorough. The Agency closely evaluated the specific information sources referenced by the commenter and, though the information clearly shows environmental problems at ferrous metal production facilities, EPA does not believe that the damages can be attributed to the special wastes studied in the Report to Congress. For example, surface water and ground-water impacts were found related to "slag landfills" at two facilities, but the landfills contained a number of co-disposed wastes, including sludges, fly

[8] To be regulated under subtitle C the waste would have to be listed as a hazardous waste because it does not exhibit any of the four characteristics that would otherwise classify it as a hazardous waste.

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ash, waste acid, and coke plant tars, all of which may have contributed to the observed impacts.

In summary, this waste exhibits hazardous waste characteristics only rarely—only three facilities out of 16 with data generate dust/sludge that exhibits the toxicity characteristic, and even then the data suggest that the waste exhibits the characteristic only occasionally. Moreover, the waste is recycled (completely at one facility and partially at another) at two of the three facilities where it occasionally exhibits the toxicity characteristic. The Agency recognizes that existing waste characteristics, management practices, and environmental conditions could lead to releases at selected facilities. However, the low EP leachate concentrations at most facilities and the lack of documented cases of damage attributable to the dust/sludge indicate that the potential effects of such releases are not of sufficient magnitude to warrant removal of the special status of these wastes. In addition, EPA's recently promulgated stormwater regulations (55 FR 47990, November 16, 1990) under the Clean Water Act will minimize the potential for adverse impacts of stormwater runoff from the dust/sludge. Based on these findings, EPA concludes that regulation of this waste under subtitle C is inappropriate under the circumstances. (Accordingly, the Agency did not evaluate the questions addressed in Steps 2 and 3 of its decision making process.)

Basic Oxygen Furnace and Open Hearth Furnace Air Pollution Control (APC) Dust/Sludge From Carbon Steel Production. Based on a review of information in the RTC, supplemental analysis, and public comments on steel APC dust/sludge, EPA's responses to the questions in Step 1 of the decision making process are basically the same as those outlined above for iron blast furnace APC dust/sludge. Specifically:

- Steel APC dust/sludge appears to be EP-toxic only rarely. Of seven samples analyzed from five facilities, the concentration of selenium exceeded the EP-toxicity regulatory level in only one sample, and in this one case, only by a factor of 1.5. Selenium concentrations as determined by SPLP analyses did not exceed the EP-toxicity level.
- Based on an examination of the site-specific conditions at 11 facilities that generate the dust/sludge, current management practices and environmental conditions are highly variable, with the potential for contaminant releases existing at certain facilities. Like the iron blast furnace APC dust/sludge, however, there appears to be only a minor potential for ground-water contamination at a few facilities that manage the steel APC dust/sludge in impoundments. The steel APC dust/sludge consists of small particles that would be amenable to release and transport via stormwater and wind erosion if the waste is not properly controlled.
- EPA did not identify a single case of documented damage that can be attributed to steel APC dust/sludge.

Based on these findings, EPA concludes that subtitle C regulation for steel APC dust sludge is inappropriate under the circumstances that exist. (Therefore, the Agency did not employ Steps 2 and 3 of its decision making methodology.) The basic rationale for this conclusion is the same as that for iron blast furnace APC dust/sludge. That is, the dust/sludge rarely if ever exhibits a characteristic of hazardous waste. Although existing management practices and environmental conditions have the potential for environmental releases at certain facilities (although no evidence exists that such contamination has occurred or would occur), the waste's low contaminant concentrations and lack of damage cases indicate that the potential for adverse effects is not of sufficient magnitude to warrant removal of the special status of the waste. Thus, to the extent that additional controls may be justified, and state management controls are deemed to be inadequate, EPA may pursue appropriate controls for steel APC dust/sludge management under the Subtitle D program being developed for mineral extraction and beneficiation wastes.

Calcium Sulfate Wastewater Treatment Plant Sludge From Primary Copper Processing. In the Report to Congress, EPA tentatively recommended subtitle C regulation for this waste under Approach 1B. However, EPA received data in comments indicating that only one facility now generates and disposes of this sludge. In addition, as outlined in section II of this preamble, the Agency modified Step 2 of its decision making methodology in response to public comments to deemphasize consideration of potential threats that could exist at any new facilities that open in the future in favor of the other Step 2 factors, in light of the speculative nature of EPA's predictions regarding industry expansion. The possibility of expansion was an important factor contributing to the RTC's Subtitle C recommendation for this waste. EPA, therefore, has reconsidered the RTC tentative recommendation, focusing only on the remaining active generator (located in Garfield, UT).

Addressing the three questions considered in Step 1 of the decision making process:

- The sludge at the Garfield facility is EP-toxic for arsenic (7 out of 7 samples average 44 times the regulatory level), cadmium (6 of 7 samples average 3 times the regulatory level), and selenium (7 of 7 samples average 5 times the regulatory level). SPLP leach test concentrations, however, were below the subtitle C regulatory levels for all of the samples analyzed.
- One commenter argued that calcium sulfate sludge poses a large risk that should be controlled under subtitle C; however, based on a review of existing management practices and the arid setting of the Garfield facility, EPA believes that the hazards associated with calcium sulfate sludge at this site are low. Predictive modeling that accounts for the low net recharge and high evaporation rate, depth to ground water, and clayey subsurface at the site indicates that the potential for ground-water contamination is very low. Similarly, the potential for significant surface water contamination is negligible given the great distance of the sludge management units to the nearest surface water body (over 2 miles to the Great Salt Lake), and windblown dusting is significantly limited by the surface crust that forms on the dried sludge.
- No cases of documented damage caused by the sludge at the one active facility were discovered by EPA.

Even though the site-specific risk findings and lack of damage cases indicate that management of the sludge does not pose human health or environmental problems, the high intrinsic hazard of the sludge compelled EPA to consider additional factors before reaching a final regulatory determination. Therefore, EPA proceeded to Step 2 of its decision making process to examine whether more stringent regulation is necessary and desirable.

In Step 2, EPA found that current practices at the Garfield facility appear adequate to limit contaminant releases and associated risks in the future in the absence of subtitle C regulation. The sludge is well managed at present and the potential for releases appears to be precluded by the environmental conditions at this site. Specifically, potential releases to ground water are significantly limited by the site's very arid setting (liquids discharged to impoundments along with the sludge are expected to quickly evaporate and little precipitation and recharge is available to carry contaminants to the subsurface), clayey subsurface, and depth to ground water (8 meters to the water table and 90 meters to the uppermost useable aquifer). Because the nearest surface water near the sludge units, the Great Salt Lake, is over two miles away, significant releases to surface water also should not be a problem. Finally, the potential for significant releases to air is limited because a surface crust forms on the dried sludge, largely preventing the wind from blowing dust into the air, and because the dried sludge is exposed to the wind only temporarily before it is stabilized and buried in an on-site landfill.

EPA also found in Step 2 that existing state regulatory programs provide only limited controls over the management of calcium sulfate sludge. Some commenters argued that the RTC's analysis of state regulations significantly understates the regulatory requirements applicable to copper processing wastes. However, upon further consideration of available information and communication with state officials, EPA concludes that the states have been regulating copper processing wastes, including calcium sulfate sludge, only to a limited extent. However, as discussed below, the Agency does not believe, based on available information, that this limited regulation has resulted in any environmental problems.

Finally, EPA also concluded in Step 2 that Subtitle C regulation of calcium sulfate wastewater treatment plant sludge would impose significant and specific requirements (e.g., liners, caps, ground-water monitoring) that are directed at controlling releases/risks that do not appear to exist or are otherwise controlled and, thus, are not appropriate given the special status of the waste.

Based on these combined findings from Steps 1 and 2, EPA concluded that existing sludge management practices at the one facility in question currently limit the potential for damages. Therefore, considering all of these findings together, EPA concludes that subtitle C regulation of calcium sulfate sludge is inappropriate given the existing circumstances. (Accordingly, EPA did not evaluate the questions addressed in Step 3 of its decision making methodology.) EPA may address the generation and management of this sludge under the subtitle D program under development for the mining industry.

This subtitle D determination differs from the RTC's tentative recommendation for two reasons. First, potential human health and environmental problems at one copper processing facility were dropped from consideration because public comments indicate that the facility no longer generates and disposes of calcium sulfate sludge. Second, the Agency agreed with commenters that concerns expressed in the RTC about potential problems at new facilities that may open in the future are somewhat speculative. Therefore, EPA did not place as much weight on these concerns in making the regulatory determination as it did in the RTC.

Chloride Process Waste Solids from Titanium Tetrachloride Production. In the RTC, EPA tentatively recommended subtitle C regulation for this waste under Approach 1B. However, additional data submitted in public comments and reanalysis of the RTC data indicate that the waste is not EP-toxic for lead as indicated in the RTC [6] and, therefore, is EP-toxic only for chromium. In addition, this waste would currently be exempt from subtitle C regulation by 40 CFR 261.4(b)(6), which exempts wastes that are hazardous only because they exhibit the EP toxicity characteristic for chromium, contain only trivalent chromium, and are managed in non-oxidizing environments. For these reasons, EPA decided to reevaluate the RTC's tentative conclusions.

Considering the three questions in Step 1 of the Agency's decision making process, the Agency has made the following findings. First, the waste is characteristically hazardous only as a result of its chromium content, which is currently exempted from regulation under subtitle C of RCRA by § 261.4(b)(6)(i)(A). In addition, chromium concentrations in the waste solids measured using the SPLP leach test are below the EP-toxicity regulatory levels, as indicated by further analysis of the RTC data and information submitted in comments.

Second, based on an examination of existing conditions at the nine active titanium tetrachloride facilities, EPA found that current management of the waste solids may allow contaminants to migrate in the environment at certain sites, but that the potential for this migration to cause significant impacts is low. For example, there appears to be a potential for leachate from this waste to reach ground-water at half of the sites, but predictive modeling at the "most sensitive" site indicates that contaminant concentrations at the property boundary would be below drinking water standards. Similarly, the Agency's modeling predicts that concentrations of contaminants in surface waters near the sites would be well below human health and environmental protection benchmarks, and that the risks associated with the inhalation of windblown dust from the waste solids piles would be negligible.

One commenter argued that the risks posed by this waste are sufficiently high to warrant regulation under subtitle C. In particular, the commenter argued that chemical concentrations (e.g., of chromium, lead, radium, and arsenic) in the waste solids could be much higher than the few samples examined in the RTC, that the wastes threaten fragile ecosystems near several of the facilities, and that drinking water threats could exist if private wells were installed closer to existing facilities. While EPA agrees there is always a possibility that the waste could contain higher chemical concentrations than those reported, the Agency used 17 samples from 7 facilities and believes the resulting characterization of the waste is adequate. The Agency also recognizes that several sites are located near "fragile" ecosystems: Six of the nine active facilities are located within 1,600 meters (1 mile) of a wetland, one is located within 2,600 meters of an endangered species habitat, and three are located within 1,600 meters of a National Park, Wildlife Refuge, or Recreation Area. However, the Agency's conservative modeling predicts that it is very unlikely that contaminants released from the waste solids management units could migrate to these areas in harmful concentrations. Finally, EPA's ground-water modeling for the "worst-case" facility predicts that contaminant concentrations at the property boundary are below health-based and ground-water protection criteria. Therefore, it does not appear that releases to ground water would pose a serious threat to the environments surrounding each plant.

Third, EPA found no documented cases of damage attributable to titanium tetrachloride waste solids. No evidence of damages was uncovered in the RTC's comprehensive review of all nine active and two inactive titanium facilities, and no new damage case information was submitted in public comments.

Based on these findings, EPA concludes that regulation of titanium tetrachloride waste solids under RCRA Subtitle C is inappropriate under the

[6] The sole sample found to contain lead above the EP-toxic level was determined to be for the waste acids and entrained solids discharged to an on-site impoundment, not the titanium waste solids (the special waste) that settle to the bottom of the impoundment. EPA has determined, therefore, that this sample is not appropriate for use in characterizing the waste solids.

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circumstances. (Accordingly, the Agency did not evaluate Steps 2 and 3 of the decision making methodology.) Current on-site management practices do not appear to pose a significant risk. In addition, management practices are likely to be improving because the waste is currently comanaged with waste acids from titanium tetrachloride production, a waste that recently became subject to subtitle C controls. EPA plans to follow closely the changes in management practices that are expected to result from the change in regulatory status of the waste acids, changes that in some cases may result in management of the waste solids in units subject to subtitle C requirements. At those facilities where the waste is not managed in units regulated under subtitle C, EPA believes that releases that may occur can be adequately addressed under subtitle D given the special status of these wastes. In addition, in the final Toxicity Characteristic rulemaking, EPA indicated that it would re-evaluate the trivalent chromium exemption in § 261.4(b)(6) (55 FR 11812, March 29, 1990). If EPA finds that this exemption is not protective of human health and the environment and if an examination of titanium tetrachloride waste management shows any continuing or new problems, the Agency will reconsider this subtitle D determination for chloride process waste solids from titanium tetrachloride production.

Today's subtitle D determination is warranted and differs from the RTC's tentative recommendation primarily due to changes in the data base used to characterize the waste, such that the waste only exhibits the toxicity characteristic of hazardous waste for chromium and is exempt from subtitle C regulation. As discussed above, consideration of changes in management practices for waste solids that are expected as a result of the classification of waste acids from titanium tetrachloride production as a hazardous waste supports a subtitle D decision. In addition, if the decisionmaking process had been carried to Step 2, the fact that the Agency modified Step 2 of its decisionmaking methodology (in response to public comments) to deemphasize consideration of potential threats that could exist at any new facilities that open in the future, would also have contributed to the change from the subtitle C tentative recommendation in the RTC to today's subtitle D regulatory determination.

Slag from Primary Lead Processing. In the Report to Congress, EPA tentatively recommended subtitle C regulation for lead slag under decision making Approach 1B. Further Agency analyses in response to public comments, however, provided a clearer picture of the three damage cases presented in the Report and the risks associated with one facility's practice of shipping its slag off-site for disposal. EPA, therefore, reconsidered the RTC's tentative recommendation to account for this additional information.

Addressing Step 1 in the Agency's decision making process, which evaluates whether management of the waste poses human health or environmental problems, EPA made four basic findings. First, lead slag is EP-toxic using results of the EP leach test; EP-toxicity leach tests show that lead exceeded the regulatory level at all five active facilities in a total of 27 out of 101 samples; the maximum lead concentrations exceeded the regulatory level by a factor of 19. Cadmium concentrations exceeded the regulatory level at two facilities, by as much as a factor of seven. Arsenic, mercury, and selenium concentrations also exceeded the regulatory levels at the one facility that is only a refinery (the other facilities are either combined smelters and refineries or, in the case of one facility, only a smelter). No samples analyzed using the SPLP test contained contaminants in concentrations above the EP-toxicity regulatory levels; however, the SPLP test has been shown on occasion to underestimate the concentration of leachable lead in a sample.

Second, current practices for managing lead slag at the five active lead processing facilities appear to limit the potential for significant impacts caused by the slag. The potential for lead slag to cause significant surface water contamination at all but one facility is limited by the use of control systems that retain and treat stormwater run-off from slag piles prior to discharge, or by an expected small contaminant loading that is well within the assimilative capacity of nearby water bodies and is subject to control under the Clean Water Act. Risk modeling indicates that stormwater erosion of a lead slag pile at one facility could result in surface water contamination. However, due to releases to ground water from unlined wastewater ponds at this facility, the site is presently being cleaned up under the Superfund program, and any potential surface water impacts associated with erosion from the slag pile will be addressed as part of the site's overall Superfund response. EPA's recently promulgated stormwater regulations (55 FR 47990, November 16, 1990) under the Clean Water Act will also minimize the potential for adverse impacts of stormwater runoff from lead slag.

The Agency's modeling indicates that it is possible for some contaminants to leach from lead slag piles at two of the active facilities and migrate into underlying ground water. However, increased on-site concentrations of constituents in ground water are expected to be well within applicable drinking water standards. Air pathway modeling also indicates that it is very unlikely for lead slag piles to cause harmful concentrations of contaminants in the air at the nearest residences. One commenter contends that lead slag should be regulated under subtitle C because windblown dust from slag piles could pose a significant risk by resulting in an accumulation of contaminated dust in residential areas where people could be exposed directly. However, a Remedial Investigation/Feasibility Study at the facility in East Helena, MT has shown that slag management is a very minor contributor to windblown particulate matter and accumulated dust in the site environs.[7] As much as 95 percent of the lead particulate matter measured in air near the East Helena facility was found to come from ore processing areas and other sources, not the slag piles.

Third, there is a greater potential for human health and environmental risk at two off-site municipal landfills where lead slag from one facility is disposed, although the Agency has no evidence that such management does present a substantial hazard. Although the total quantity of slag that is shipped to these off-site landfills represents only 3 percent of the total quantity of slag that is generated, the slag that is shipped off-site is the highly concentrated refinery slag that is consistently EP-toxic for mercury, lead, cadmium, arsenic, and/or selenium.

Fourth, historical slag management practices have clearly caused ground-water contamination at one site, but steps have since been taken to help prevent this contamination from occurring in the future. The RTC reported damage cases at two other lead facilities, but close examination of the RTC data and information submitted in public comments has eliminated one of the damage cases and called the other one into question. Specifically, EPA's ongoing Superfund evaluation at the lead facility in East Helena, MT has

[7] Comprehensive Remedial Investigation/Feasibility Study—ASARCO Incorporated, East Helena, Montana, March 30, 1990.

demonstrated that ground-water contamination at that site has been caused by two on-site wastewater impoundments. Contribution to the problem from the lead slag pile is thought to be limited, though further study is planned. At the other site, located in Boss, MO, observed ground-water contamination is not clearly attributable to slag, as it too may have been caused by nearby wastewater impoundments. The Agency's risk modeling predicts that ground-water contamination from the slag pile at this site is unlikely.

Based on these findings, EPA concludes that the potential for lead slag to cause significant impacts is limited by the current management practices and conditions at the five active facilities, but there is some potential for adverse impacts that may be caused by the off-site disposal of relatively small quantities of lead slag from one facility. Therefore, EPA proceeded to Step 2 of its decision making process to evaluate whether more stringent regulation is necessary and desirable. In this step of the process, EPA found that:

- Current practices at the off-site landfills that are receiving lead slag for disposal may not be adequate to limit contaminant release and associated risk. As mentioned above, these are municipal landfills that may or may not be adequately equipped to contain contaminant migration from lead slag.
- In Nebraska, where all of the present off-site disposal of slag takes place, the slag could continue to be managed at off-site locations in the future with minimal state regulation. The other states where primary lead processing occurs have varying degrees of regulatory control. The State of Missouri, for example, where three facilities are located, has recently developed strengthened permitting, closure, maintenance, and financial assurance requirements for facilities that manage mineral processing wastes. In addition, stormwater run-off from lead slag piles into nearby surface waters is subject to control under the Clean Water Act in all three states where the slag is currently managed.
- Because subtitle C regulation would subject the slag to strict hazardous waste management standards, it would prevent the disposal of slag in municipal landfills. However, a subtitle C determination for this waste would also impose significant and specific requirements for on-site management (e.g., liners, closure and postclosure care, ground-water monitoring) that are directed at controlling releases/risks that do not appear to exist or are otherwise controlled at the five active lead processing facilities and, thus, are not appropriate given the special status of the waste. In particular, the Agency does not believe that it is appropriate to subject the entire industry to stringent subtitle C controls when any potential problems appear to be associated primarily with only 3 percent of the lead slag that is currently produced.

Based on the combined findings from Steps 1 and 2, EPA concludes that regulation of the waste under subtitle C is inappropriate under the circumstances. (Accordingly, EPA did not proceed to evaluate the questions addressed in Step 3 of its decision making process.) The Agency, therefore, will work to ensure that both on-site and off-site slag management practices are adequately protective under subtitle D and under the Clean Water Act. In particular, EPA will investigate further the offsite disposal practices used by the Omaha facility to determine the extent to which slag is currently co-disposed with municipal waste. If the management of this waste does prove to be problematic, EPA may, for example, classify co-disposal of the slag with municipal wastes as open dumping under RCRA section 4004. Open dumping is a prohibited practice under criteria promulgated under section 4004.

This determination differs from the RTC's tentative recommendation primarily because the Agency closely reexamined the three lead slag damage cases discussed in the Report to Congress in response to public comments. As outlined above, this examination determined that controls have already been established at one site to address the problem, that another case appears to be mainly if not entirely due to wastes other than lead slag, and that attribution of the third case to slag management practices is questionable. Therefore, an important factor in tentatively recommending Subtitle C regulation in the RTC has been removed.

Process Wastewater From the Production of Hydrofluoric Acid. EPA tentatively recommended subtitle C regulation for hydrofluoric (HF) acid process wastewater under Approach 1A and 1B in the Report to Congress. Additional data submitted in public comments and follow-up with the State of Louisiana, however, confirm that the documented damages cited in the Report are attributable to phosphoric acid wastewaters, and not HF process wastewater as reported in the RTC. EPA also found that two of the three active HF acid production facilities neutralize their wastewater. Accordingly, EPA has reconsidered the RTC's tentative recommendation.

Reconsidering the three questions addressed in Step 1 of the Agency's decision making process, the Agency reaches three basic findings. First, all nine samples of process wastewater analyzed (from two of three active facilities) exhibited the hazardous waste characteristic of corrosivity. However, no constituent concentrations exceeded EP-toxicity regulatory levels (all eight inorganic constituents with EP toxicity regulatory levels were measured in concentrations that were no more than 0.6 times the regulatory levels).

Second, as the RTC and one commenter who argued for subtitle C regulation pointed out, there is a relatively high potential for process wastewater to migrate into shallow ground water at the three active facilities. However, EPA does not believe that this migration will pose significant health risks, either because the shallow ground water is not likely to be used at close downgradient distances or because the waste management units are equipped with controls (e.g., a monitoring well network and slurry walls) to detect and help contain ground-water contamination.

One commenter identified a number of factors that would, according to the commenter, tend to make risks higher than presented in the RTC (e.g., the presence of shallow ground water, the current lack of liners beneath existing impoundments, the potential for changes in population and land use patterns leading to higher risks in the future, the wastewater's corrosivity, and the close proximity of each existing facility to wetlands). All of these factors were considered in the RTC and contribute to EPA's concern that shallow ground water near existing units may be affected. However, EPA does not agree that the RTC understates the potential impacts associated with this contamination, because the concentrations of contaminants in the wastewater are generally low. No constituents in the wastewater were measured in concentrations above the subtitle C regulatory levels, and few exceeded the highly conservative risk screening criteria used in the RTC by more than a factor of 10. Therefore, although the ground-water may become contaminated above levels of concern in the immediate vicinity of waste management units, contaminants are not expected to migrate downgradient to potential human or ecological exposure points.

Third, new data provided in comments appear to indicate that shallow ground water at one of the active facilities has been contaminated

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with sulfate, total dissolved solids (TDS), and fluoride.[9] Concentrations of sulfate and TDS in a few wells surrounding wastewater management units exceed upgradient concentrations and secondary drinking water standards (designed to prevent an unpleasant taste). Fluoride concentrations in the ground water exceed background concentrations but do not exceed the health-based drinking water criterion. Contamination above the sulfate and TDS standards appears to have migrated at least 50 meters downgradient from the units. No significant effect on pH has been observed, however, even though the very low pH of the wastewater would appear to pose the greatest threat. In addition, no data are available on the concentrations of metals and other constituents with subtitle C regulatory levels, but any contamination by these constituents is expected to be minor because concentrations in the wastewater are low, as discussed above. No other cases of documented damage attributable to HF acid process wastewater are known to exist.

Based on these findings, EPA concluded that additional waste management controls for HF acid process wastewater might be appropriate, and proceeded to Step 2 of its decision making process. In this step of the process, the Agency found that:

- Current practices at two of the three active facilities are probably adequate to limit contaminant release and associated risk. One of the two manages the wastewater in a surface impoundment bounded by a slurry wall and conducts ground-water monitoring, while the other neutralizes the wastewater prior to using it for gypsum transport.
- It does not appear that existing state controls adequately address the management of this waste at all facilities. Of the three states where active facilities are located (LA, TX, and KY), Louisiana appears to be most comprehensive in its regulation of hydrofluoric acid process wastewater. The other two states impose less stringent requirements, though Kentucky recently proposed new solid waste regulations that may address process wastewater more directly.
- Though the corrosivity of the wastewater is a potential concern, it does not appear to pose a significant problem at the three active facilities based on available ground-water monitoring data. In addition, the concentrations of RCRA Appendix VIII constituents in the waste are low enough that they are not expected to result in exceedances of applicable standards in ground water. Regulation under subtitle C would also impose significant and specific requirements (e.g., liners, financial responsibility) that are not appropriate given the special status of the waste.

Based upon the combined findings of Steps 1 and 2, EPA concludes that regulation of process wastewater from hydrofluoric acid production under subtitle C is inappropriate. Although the waste exhibits the hazardous waste characteristic of corrosivity, the low pH of the wastewater does not appear to pose significant human health or environmental hazards at the three active facilities. Moreover, the only constituents which were found in the wastewater at significant levels (e.g., sulfates, fluoride) are not listed in appendix VIII of part 261. Thus, aside from corrosivity, subtitle C would not identify or list this waste as hazardous under subtitle C. Consequently, to the extent that state programs are determined to be inadequate, the Agency plans to pursue methods within the developing subtitle D mining wastes program to control risks posed by this waste. (Accordingly, EPA did not proceed to evaluate the questions addressed in Step 3 of its decision making process.)

This determination differs from the RTC's tentative recommendation primarily because the Agency closely reexamined the reported damage case in response to public comments. As outlined above, this examination demonstrated that the damages described in the RTC are actually attributable to a different waste, rather than to HF acid process wastewater. Therefore, the primary reason for tentatively recommending subtitle C regulation in the RTC has been removed.

Phosphogypsum and Process Wastewater from Phosphoric Acid Production. The Report to Congress considered two special wastes from phosphoric acid production: Phosphogypsum and process wastewater. EPA believes that it is appropriate to address these two wastes together in this regulatory determination. Although the wastes do not necessarily have to be co-managed, all of the active phosphoric acid facilities presently manage the gypsum and wastewater together in one system, consisting of a phosphogypsum stack and associated impoundments.[9] Therefore, it is not possible to make a determination for one waste without, in practice, affecting the status of the other waste at all of the operating facilities. In addition, though the two wastes have distinct physical and chemical properties, it is very difficult to attribute environmental problems in the vicinity of the waste management units to one waste or the other. Moreover, given the existing co-management of the wastes, it is also appropriate to evaluate the two wastes together from the standpoint of alternative management practices and cost/economic impacts.

In the Report to Congress, EPA tentatively recommended Subtitle D-Plus regulation for both phosphogypsum and process wastewater. Since publishing the RTC, EPA has conducted a supplemental analysis of management technologies and state regulations for the two wastes, and received and evaluated public comments on the RTC and supplemental analysis. In addition, in response to public comments, EPA has more closely evaluated existing ground-water monitoring data for the active phosphoric acid facilities and analyzed the potential costs associated with the corrective action provisions in RCRA sections 3004(u) and 3008(h). EPA therefore reconsidered the RTC's tentative recommendation to account for this additional information.

Addressing Step 1 in the Agency's decision making process, which evaluates whether management of the wastes poses human health or environmental problems, EPA made three findings.

First, both the gypsum and process wastewater exhibit a characteristic of hazardous waste, but the gypsum appears to do so only rarely. Out of 11 facilities with data on the composition of phosphogypsum, only the gypsum at the facility in Rock Springs, WY exhibits the characteristic of EP-toxicity. Two out of two samples of phosphogypsum from this facility contained concentrations of chromium that exceed the toxicity characteristic regulatory level, by a factor of six, on average. This appears to be a characteristic restricted to gypsum derived from the processing of certain phosphate rock mined in Utah and processed at the Rock Springs facility. Available data indicate that the concentrations of chromium and other EP constituents in gypsum at facilities in Louisiana and Florida, which process rock from Florida, and facilities in Idaho and North Carolina, which process locally derived rock, are usually one to two orders of magnitude below the regulatory levels.

[9] This information does not constitute a documented damage case.

[9] The gypsum is slurried to the stack using process wastewater and large quantities of the wastewater are held in the interstitial pore spaces within a phosphogypsum stack.

In contrast, the process wastewater routinely exhibits the hazardous waste characteristic of corrosivity (i.e., it has a pH of less than 2). Out of 15 facilities with data, all process wastewater samples examined at six facilities had a pH less than 2 and most samples examined at six other facilities had a pH below 2. All of the pH values available for the other three plants with data are greater than or equal to 2. Process wastewater at three out of six facilities with data also exhibits the toxicity characteristic. A total of 19 of 19 wastewater samples from the three facilities contained cadmium concentrations that exceed the regulatory level (by a factor of four on average), and two out of two samples from one of the facilities also contained chromium concentrations that exceed the regulatory level (by a factor of two, on average).

Second, existing practices for managing phosphogypsum and process wastewater appear to pose substantial risks of environmental contamination and impacts through the ground-water and surface water pathways. Considering the hydraulic head created by gypsum stacks and process wastewater impoundments and the net recharge, depth to ground water, and subsurface permeability at the 20 active facilities, EPA believes that there is a moderate to high potential for ground-water contamination across the industry. This potential for ground-water contamination is limited significantly at the one Wyoming facility, which has equipped its waste management units with synthetic liners and a seepage collection ditch, but the units at most other facilities are either unlined or only lined with the clay and silt that naturally exist in the area. EPA's concern about potential ground-water contamination at the 11 facilities in Central Florida is compounded by the presence of underlying karst in the deep Floridan Aquifer; karst is prone to form caverns or solution cavities that can serve as contaminant migration pathways. Available data indicate that the background ground-water quality is suitable for drinking [10] and that there is either a private or public well, where potential human exposures could occur, within 1,600 meters (1 mile) downgradient of the waste management units at 14 of the 20 active facilities. In addition, 15 of the active facilities are located within 1,600 meters of a wetland and 16 facilities have waste management units within 500 meters (less than a third of a mile) of a surface water body where contamination could pose ecological threats. Phosphogypsum does not appear to pose a significant air pathway risk. Radon emissions to the air from gypsum stacks are controlled under the Clean Air Act at a level designed to ensure "acceptable" risk within an "ample margin of safety" (see 54 FR 51654, December 15, 1989). Windblown dust releases from gypsum stacks also appear to be effectively precluded by the crust that forms on the dried gypsum solids.

Third, a close examination of available monitoring data reveals that there are numerous cases of documented ground-water contamination across the industry. For example, out of 16 facilities with data, the phosphogypsum stacks and/or process wastewater ponds at 13 facilities appear to have caused groundwater contamination that exceeds background levels and primary (i.e., health-based) drinking water standards. Contamination by constituents with toxicity characteristic regulatory levels is seldom evident more than 500 meters from the waste management units, but other contaminants with health-based limits (gross alpha radiation, radium, and sodium) have migrated in potentially harmful concentrations over greater distances. Based on a review of the monitoring data and plant configurations, EPA believes that contamination above primary drinking water standards has migrated or is likely to migrate beyond the facility property boundary (unless corrective measures are implemented) at 12 of 15 facilities with data.

Based on these findings, EPA concluded that management of phosphogypsum and process wastewater poses potential health and environmental problems. Therefore, EPA proceeded to Step 2 of its decision making process to examine whether more stringent regulation is necessary or desirable. In this step, EPA found that:

- Current phosphogypsum and process wastewater management practices are often not adequate to limit contaminant release and associated risk. As discussed above, current management practices generally consist of disposal or storage in large unlined piles and ponds, typically in areas that are conducive to ground-water contamination.
- Current state and federal regulations generally do not appear adequate to control current and likely future ground-water contamination. Although Florida is in the process of developing strengthened regulations, the State presently permits the special waste units to contaminate ground water, usually as far as, but sometimes beyond, the facility property boundary. Given the intrinsic hazards of the wastes, the widespread potential for contaminant release and migration, and the potential for human and ecological exposures in the vicinity of active facilities, EPA believes a more stringent regulatory approach is needed.
- EPA believes that regulation under subtitle C would impose significant and specific requirements that are directed at controlling the types of releases/risks that have been documented for phosphoric acid production wastes across the industry.

Based on the combined findings from Steps 1 and 2, EPA concluded that existing management practices create the potential for environmental problems and that more stringent regulation is both necessary and desirable. EPA therefore seriously considered subtitle C regulation for the phosphoric acid wastes and proceeded to Step 3 of its decision-making process to evaluate the operational and economic consequences of a subtitle C determination.

In Step 3 of the decision-making process, EPA examined the costs and impacts of the three regulatory scenarios examined in the RTC and the Supplemental Analysis, and used the insights gained thereby in deciding whether the economic impacts of subtitle C (or C-Minus) regulation might cause extensive and significant economic dislocations within the phosphoric acid production industry. Cost impacts were reevaluated subsequent to release of the RTC and were based upon an integrated management strategy for controlling risks posed by the two special wastes in combination. This departure from the Agency's initial approach was required by new knowledge gained through additional plant visits and analysis; these findings are summarized in the Supplemental Analysis and discussed further in comment response documents.

Extensive comments received on the Supplemental Analysis have cast doubt upon the engineering feasibility of some of the waste management alternatives

[10] Background data for the surficial aquifers indicate that shallow ground water at the sites is generally drinkable, but low yields at the Florida sites limit uses primarily to irrigation and livestock watering. Lower aquifers, where present, are generally of equal or better quality, and appear to be either current or potential public drinking water supplies.

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presented in that document. Consequently, the Agency has based its cost analysis in support of today's regulatory determination on the use of lined phosphogypsum stacks and cooling ponds (Engineering Alternative 3 in the Supplemental Analysis). The technology required to implement this alternative has been amply demonstrated (i.e., is feasible), though the costs involved are higher than those of some of the other alternatives evaluated in the Supplemental Analysis. Because EPA is not confident at present that full subtitle C compliance is technically feasible for existing phosphoric acid plants, principally because of the predicted operational effects of the large-scale lime neutralization required for compliance (the only Engineering Alternatives that would comply with promulgated Subtitle C Land Disposal Restrictions (LDRs) for corrosive wastes rely on lime treatment), the cost and impact analyses conducted for today's notice focus exclusively on the Subtitle C-Minus and D-Plus scenarios.

EPA has estimated that the total industry-wide cost of compliance with the Subtitle C-Minus scenario (assuming implementation of Engineering Alternative 3) would be approximately $465 million annually, with an additional $15 million to $60 million required annually for corrective action, depending upon the analytical assumptions employed. Estimated annualized compliance costs for the Subtitle D-Plus scenario are approximately one-third lower, at about $330 million for the industry in total; corrective action costs under this scenario could range from $13 million to $48 million annually. These costs represent from 10.0 to 21.6 percent of the value of shipments (VOS) under Subtitle C-Minus, and from 8.2 to 15.2 percent of the VOS under Subtitle D-Plus (excluding corrective action costs), depending upon the facility involved. Costs of this magnitude exceed typical operating margins in the affected industry, could not be passed through, and hence, could not be sustained over an extended period.

As required by Section 8002(p)(7), EPA has also conducted an analysis of the impacts associated with the costs of regulatory compliance. Based upon the results of this analysis, the Agency has concluded that the costs and impacts of regulatory compliance under the Subtitle C-Minus and D-Plus scenarios would be highly significant for most phosphoric acid facilities, with C-Minus costs being particularly difficult to withstand. These costs would create economic hardship for and threaten the continued economic viability of many of the facilities in the industry. Consequently, the Agency has decided that while the management of phosphoric acid production wastes requires additional controls, hazardous waste controls under RCRA are too inflexible and costly for the industry to implement and remain economically viable. Even a less rigorous approach under the auspices of RCRA Subtitle D could impose costs and impacts that the domestic industry would find difficult to withstand. Therefore, the Agency has serious reservations regarding the economic feasibility of a traditional waste management program designed within the contours of the RCRA statute.

Given these facts and the need for action to address the risks posed by phosphoric acid production processes and associated wastes, EPA believes that a different approach is required. The Agency has therefore developed a two-pronged approach to address these wastes. First, the Agency will rely upon existing authorities under RCRA Section 7003 and CERCLA Section 106 to respond effectively to emergency situations that arise. In addition, EPA will accelerate the collection of facility-specific information, consider the risks posed by these facilities, and take appropriate action to contain or stabilize wastes at facilities that present a risk to human health and the environment. In this manner, EPA believes that it can respond appropriately to any problems that arise while developing a program that is both adequately protective of human health and the environment and economically feasible and achievable for affected industry.

Second, EPA believes that a regulatory program specifically designed to address the complex issues associated with phosphoric acid industry special wastes can be developed under authorities afforded by the Toxic Substances Control Act (TSCA). Like RCRA, TSCA provides a mechanism to address threats posed to human health and the environment and, unlike RCRA Subtitle C, does not contain prescriptive requirements. TSCA provides the additional and significant advantage of being broader in scope, and explicitly allows EPA to address various parts of the production and waste generation process itself. Therefore, EPA plans to proceed with examination of this problem under TSCA to consider how to develop a program that will address phosphoric acid production practices and processes to reduce the risks posed by phosphogypsum and process wastewater.

The TSCA regulatory investigation already underway will focus on developing risk management strategies to reduce or eliminate risks posed by phosphoric acid production wastes. EPA is evaluating the chemicals and the processes involved in phosphoric acid production and the resulting wastes to determine how TSCA authorities can best be used to reduce the toxicity and/or volume of these wastes. The Agency will analyze the efficacy and feasibility of some of the alternatives to current practices that were described in the Supplemental Analysis, with an emphasis on developing sound methods (in both a technical and economic sense) of reducing the toxicity and/or the volume of the special wastes. EPA will assess pollution prevention opportunities based on a phosphoric acid life-cycle analysis, the Supplemental Analysis, and other information obtained during the TSCA investigation. The investigation will also address the risk reduction potential and associated costs for identified regulatory options, such as restrictions on manufacturing, processing, or disposal. Depending on the results of this assessment, site specific risk reduction strategies may be considered as most appropriate. As specific wastes or toxicity reduction techniques are identified, EPA will work with the industry to implement the most promising alternatives as quickly as possible. EPA believes that by developing a tailored program under TSCA, the Agency will be able to more fully explore, promote, and enforce several promising pollution prevention and/or source reduction ideas (e.g., more efficient raw product filtration, fluosilicic acid recovery) than would be possible under a RCRA program.

In addition, EPA plans to further explore and evaluate containment strategies of various kinds, so that whatever wastes are generated will not result in contaminant releases to the environment. If information obtained or findings developed during the TSCA investigation are such that RCRA could better handle this matter, the Agency will revisit today's regulatory determination, and determine whether subtitle C regulation of the phosphoric acid special wastes remains inappropriate.

IV. Decision To Postpone Consideration of a Possible Ban on Elemental Phosphorus Slag Utilization

In the RTC, EPA found that the radionuclide content and potential for

radiation risk is a concern for slag from elemental phosphorus production. The primary basis for this finding was EPA's Idaho Radionuclide Study,[11] which estimated that average life-time cancer risks range from $4x10^{-4}$ to $1x10^{-3}$ in Soda Springs and Pocatello, Idaho as a result of the use of elemental phosphorus slag in a wide range of off-site construction applications. Based on these findings, EPA stated in the RTC that it planned to use the authority of RCRA section 3001(b)(3)(B)(iii) to ban the use of the slag in construction and/or land reclamation when the Agency issued its regulatory determination for mineral processing wastes. EPA solicited comments on the appropriate regulatory language that should be used and how such a ban should be implemented.

In response, five commenters questioned the validity of the Idaho Radionuclide Study. The commenters argued that the study was not conducted according to required procedures, has not been sufficiently peer-reviewed, contradicts epidemiological studies that show that cancer risks in Idaho are low, and suffers from several technical flaws. For example, according to the commenters, the data collection methodology was inadequate to support valid risk estimation, the study relies on a zero threshold low-dose risk model that is not supported by experimental evidence, and the study relies on aerial radiation measurements that exaggerate actual radiation levels. The commenters argued, therefore, that the Idaho study cannot be used as a basis for a decision to ban off-site uses of the slag.

Since the release of the RTC, the Idaho Radionuclide Study and supporting data have been distributed for review by industry, EPA's Science Advisory Board (SAB), and the Agency for Toxic Substances and Disease Registry. A public hearing on the study was also held in Soda Springs, ID on August 21, 1990. Because of the concerns raised, EPA has postponed its final determination on the validity of the study's conclusions until the Agency decides how to incorporate SAB's findings and after the Agency's review of information provided at the public hearing is completed. In addition, the Agency is postponing its consideration of a possible ban on elemental phosphorus slag utilization until it completes its review of the technical basis for such an action. EPA will propose a supplemental notice at the appropriate time.

[11] EPA, 1990, Idaho Radionuclide Study, Office of Research and Development, Las Vegas Facility, Las Vegas, NV, EPA/520/6-90/008, April 1990.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96-354), which amends the Administrative Procedures Act, requires Federal regulatory agencies to consider "small entities" throughout the regulatory process. The RFA requires in section 603 an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation. If so, regulatory alternatives that eliminate or mitigate the impacts must be considered.

EPA conducted a detailed analysis of the facilities and companies that generate the 20 special wastes from mineral processing during the preparation of the Report to Congress. The Agency established at that time that no companies that meet the definition of "small business" generate any of the special mineral processing wastes. Also, EPA has not received any information in public comment on the Report that would contradict this finding, and therefore concludes that today's action will not adversely affect small mineral processing companies. Consequently, an explicit Regulatory Flexibility Analysis is not required.

VI. Agency Initiatives

To follow up on the findings that have resulted in today's regulatory determination, EPA plans to continue several initiatives that directly relate to some of the mineral processing wastes addressed in this regulatory determination. These initiatives include the following four activities:

(1) Evaluation of the radiation exposures and risks associated with the off-site use of elemental phosphorus slag;

(2) Review of hazards posed by wastes containing diffuse naturally occurring radioactive material (NORM);

(3) development of a management program under RCRA Subtitle D for mineral extraction and beneficiation wastes; and

(4) Development of a program under TSCA addressing the phosphoric acid industry.

As discussed in section IV of this preamble, in April 1990, EPA released the Idaho Radionuclide Study, which provided an assessment of the direct radiation exposures and risks associated with the use of elemental phosphorus slag in construction in Soda Springs and Pocatello, Idaho. A public hearing on the study was held in Soda Springs, ID on August 21, 1990. EPA has also requested its Science Advisory Board (SAB) and other scientific organizations to review the study's underlying data, methodology, and conclusions. The SAB is scheduled to issue its findings this year. When available, EPA will review these findings together with other scientific and public inputs to define needs for further study. Final conclusions from this study will be used to help evaluate the need for any added controls on the off-site use of elemental phosphorus slag.

In a separate study, EPA is presently evaluating the characteristics, risks, and regulatory control options under TSCA for diffuse NORM wastes. The scope of this study is much broader than the Idaho Radionuclide Study, and includes phosphate and elemental phosphorus wastes, metal mining and mineral processing wastes (including wastes from bauxite and aluminum, copper, zinc, tin, titanium, and zirconium and hafnium processing), and a variety of other wastes (e.g., coal ash, oil and gas production scale, water treatment sludges, and certain consumer items). The purpose of the study is to determine whether the routine management of these wastes pose a sufficient radiological hazard to warrant additional regulatory controls. EPA plans to complete the study in the summer of 1991, at which time the Agency will begin to evaluate whether any added controls are necessary to limit the radiation hazards, what authorities exist for such controls, and what the form and substance of a NORM waste program might be. As appropriate, EPA will evaluate authorities and opportunities to address NORM wastes under RCRA, the Toxic Substances Control Act, and other programs.

EPA is in the process of developing a RCRA Subtitle D program for mineral extraction and beneficiation wastes. EPA plans to include those mineral processing wastes determined here to warrant regulation under subtitle D under the regulatory "umbrella" for extraction and beneficiation wastes, making it the extraction, beneficiation, and mineral processing wastes program. As the development of this program proceeds, the Agency may find it necessary to control certain mineral processing wastes, such as waste acids, that have little in common with the majority of extraction and beneficiation wastes under a separate regulatory program.

Finally, as discussed in the regulatory determination for the phosphoric acid wastes, EPA plans to proceed with an examination of phosphogypsum and process wastewater management under TSCA. EPA will consider how to

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develop a program under TSCA, including pollution prevention opportunities, that will address phosphoric acid production practices and processes to reduce the risks posed by these two wastes.

VII. Regulatory Determination Docket

The EPA RCRA docket is located at: United States Environmental Protection Agency, EPA RCRA Docket, room M2427, 401 M Street, SW., Washington, DC 20460.

The Docket is open from 9 a.m. to 4 p.m., Monday through Friday except for Federal holidays. The public must make an appointment to review docket materials. Call the docket clerk at (202) 475–0327 for appointments.

Documents related to this regulatory determination are available for inspection at the docket.

List of Subjects in 40 CFR Part 261

Hazardous waste, Waste treatment and disposal, Recycling, Reporting and recordkeeping requirements. Manifests.

Dated: May 20, 1991.

William K. Reilly,

Administrator.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is amended by revising the last sentence of the introductory text of paragraph (b)(7) to read as follows:

§ 261.4 Exclusions.

(b) * * *

(7) * * * For the purpose of § 261.4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes:

* * * * *

Note: The Following Appendices Will Not Appear in the Code of Federal Regulations.

Appendix A—Analysis of and Response to Public Comments on the Report to Congress

EPA received numerous public comments on the Report to Congress, including comments on the overall methodology used to evaluate the eight study factors and comments on the specific analysis and discussion of each of the 20 wastes. All of the comments are available for inspection in Docket No. F–90–RMPA–FFFFF. EPA has carefully considered each of these comments in developing this regulatory determination and includes in this appendix responses to certain major comments that have a particularly significant bearing on the Agency's final determination. All other comments and detailed responses are included in a supporting comment response background document, available for inspection in the RCRA docket.

I. Report to Congress Methodology

The Agency received a number of comments on the Report's scope (i.e., the particular wastes studied) as well as the approach that EPA used to evaluate five of the study factors: (1) Waste characteristics, generation, and current management practices; (2) potential danger to human health and the environment; (3) documented danger to human health and the environment; (4) compliance costs; and (5) economic impacts. Commenters did not raise significant methodological issues concerning the Agency's evaluation of Federal and State waste management controls or waste management alternatives and potential utilization.

A. Scope

Several commenters took exception to the Report's overall scope, with some stating that the scope was too narrow and some stating that the scope was too broad. The commenters that argued that the scope was too narrow said that EPA improperly narrowed the scope of the mining waste exclusion, leaving several mineral processing wastes potentially subject to subtitle C regulation when they should have been studied further in the Report to Congress. For example, one commenter said that certain wastes that exhibit a hazardous waste characteristic, such as coal tar wastes from historic town gas manufacturing, constituted exempt mineral processing wastes and should have been studied in the Report. The commenters that believed the scope was too broad said that EPA wrongly studied materials that are not solid wastes and thus not subject to RCRA regulation, such as some slags.

EPA believes the argument that the scope of the Report was too narrow is not an issue pertaining to the Report to Congress, but rather pertains to the scope of the Agency's final rulemakings interpreting the scope of the exclusion for mineral processing wastes. As EPA explained in the preambles to the rules as well as the Report to Congress, two final rules established the scope of the exemption for mineral processing, and EPA did not solicit further comment on this issue in the RTC. EPA also notes that the coal tar wastes mentioned in the comment are no longer generated (the last plant that manufactured gas for municipal use using coal closed in the 1970's) in high volumes (if they ever were), and the Bevill Amendment applies only to currently generated waste and historical stockpiles of currently generated waste. Moreover, the coal tar wastes remaining from historic town gas manufacturing are substantially different from the coal gas wastes studied in the Report to Congress, as the coal tar wastes have a different chemical makeup and were generated by different processes.

With respect to the argument that the scope of the Report is too broad, EPA acknowledges that some of the materials examined in the Report are not always solid wastes, depending on how they are managed in particular instances. In fact, if they are not defined as solid wastes under EPA's regulations, the Agency agrees that regulation under RCRA is not appropriate. However, the Agency believes that all of the materials examined are managed as a solid waste, as defined by RCRA regulations, at least part of the time at some facilities. Therefore, all of these wastes were appropriate for study in the mineral processing report.

B. Waste Characteristics, Generation, and Current Management Practices

One commenter argued that EPA's consideration of waste characteristics in the RTC did not recognize the variability in composition of a given waste from one facility to the next. According to the commenter, this variability provides support for a determination that subtitle C regulation is unwarranted because regulation under other state and federal authorities provides the flexibility necessary to address the geographic variability in waste characteristics (which subtitle C does not). For example, data for phosphogypsum and process wastewater from phosphate rock processing clearly demonstrate, according to the commenter, the variability of characteristics of these wastes and the relationship between that variability and the geographic origin of the phosphate rock being processed. The commenter went on to contend that the RTC used waste characterization data only to determine whether a waste contains constituents at concentrations of potential concern, ignoring the critical aspect of geographic variability.

EPA disagrees with this comment. Waste characteristics and the variability in chemical concentrations from one facility to the next were critical elements in the risk and cost analyses, as well as in the Agency's final decision making. Specifically, the variability in waste composition was

explicitly highlighted in the analysis of each waste's intrinsic hazard, and the facilities that were examined in the cost and economic impact portions of the analysis were selected as a function of whether their wastes exhibit a hazardous waste characteristic. If subtitle C regulation for a given waste warranted serious consideration based on an analysis of the study factors, EPA closely examined on a facility-by-facility basis the frequency and magnitude with which the waste exhibits a hazardous waste characteristic in order to reach a final regulatory determination.

C. Potential Danger to Human Health and the Environment

1. *Leaching Procedures.* Four commenters addressed the appropriateness of different laboratory leach tests used to measure contaminant concentrations in leachate from mineral processing waste samples. Three of the commenters objected to the RTC's use of data generated from the Extraction Procedure (EP) leach test. These commenters stated that EP leachate concentrations overestimate actual leachate concentrations because the EP test mimics an implausible mismanagement scenario in which mineral processing wastes are co-disposed with municipal solid waste in a municipal landfill and exposed to an organic leaching medium. In general, these commenters believed that analytical results from a distilled water leaching procedure or the Synthetic Precipitation Leaching Procedure (SPLP) would provide a more realistic assessment of the leachability of metals from mineral processing wastes under actual field conditions. In contrast, another commenter suggested that use of the EP leach test data is reasonable because, among other reasons, co-disposal with municipal wastes cannot be ruled out for some mineral processing wastes that are disposed off-site, and because at the time the RTC was being prepared, the EP leach test was the required procedure for determining whether a mineral processing waste would be regulated as EP toxic if the Bevill exemption was removed.

The Agency believes that the RTC's use of EP leach test data for mineral processing waste characterization and risk assessment is reasonable for three main reasons. First, use of the EP leachate data is a reasonably conservative approach. While several constituents were found to be present in higher concentrations in EP leachate than SPLP leachate for some samples that were tested using both procedures, results for the two tests are often similar (and for liquid wastes, they are identical since liquids are not leached, but simply compared directly to the appropriate regulatory concentration levels). There are also cases where EP leachate concentrations were found to be less than SPLP leachate concentrations. For example, the results of an EPA study [1] analyzing the validity of the SPLP test showed that the SPLP test has been shown on occasion to underestimate the amount of leachable lead in a sample.[2] Other constituents that are commonly present in higher concentrations in EP leachate than SPLP leachate include iron, zinc, aluminum, cadmium, copper, and nickel. In contrast, arsenic, vanadium, molybdenum, and barium are commonly found in higher concentrations in SPLP leachate than EP leachate. In addition to the fact that EP leachate concentrations appear reasonably conservative relative to the SPLP concentrations, the Agency believes use of the EP leachate data is reasonable because mineral processing wastes may be plausibly mismanaged in a municipal landfill in certain cases. For example, lead slag from one of the primary lead processing plants, and steel (basic oxygen furnace and open hearth furnace) air pollution control dust/sludge from one plant are presently shipped off-site for disposal in a municipal landfill. Given the existing regulatory regime, it is not inconceivable that other mineral processing wastes from other facilities could be disposed in a similar manner in the future.

Second, as noted by one of the commenters, the EP leach test at the time the RTC was being prepared was the legally required procedure for determining whether the mineral processing wastes under study exhibit the hazardous waste characteristic of EP toxicity. The test that has replaced the EP test, the Toxicity Characteristic Leaching Procedure, assumes the same mismanagement scenario and will also be used to determine the toxicity of wastes for regulatory purposes.

Third, the vast majority of available leachate data for mineral processing wastes are from EP leach tests. The amount of data from other laboratory leach tests or from samples of actual leachate collected in the field is insufficient to support a comprehensive evaluation.

The Agency recognizes that there are some uncertainties associated with using EP leachate data to estimate the concentrations of metals in leachate generated from the mineral processing wastes as they are currently managed. As a result, the differences between measured EP and SPLP leachate concentrations were factored into the Agency's decision making for this regulatory determination. Also, EPA acknowledges that the RTC's use of EP leachate data differs from the approach used in the Agency's previous rulemakings on mineral processing wastes (reinterpreting the scope of the Mining Waste Exclusion), but believes the reasons outlined above provide a sound basis for using the EP data in the analysis leading to the regulatory determination. In the previous rulemakings, the Agency used limited SPLP data in order to establish which wastes qualified as "low hazard" and thus were eligible for detailed study in the RTC (i.e., use of the SPLP data was a reasonable approach for selecting the wastes to be studies, because wastes that exhibit hazardous characteristics under the SPLP test are clearly not low hazard). For purposes of actually conducting a risk assessment, however, relying primarily on the EP leachate data is a reasonable, though more conservative approach. The overall conservativeness of EPA's risk assessment is discussed further below.

2. *Overall Conservativeness.* Five commenters stated that the risk assessment methodology in general relies on overly conservative assumptions that grossly overestimate risk and ignore contradictory real-life information. The commenters said the risk screening criteria used to evaluate the intrinsic hazard of each waste stream's composition are ultra-conservative, as they are based on worst-case assumptions regarding an unbroken chain of events that allow contaminant release, migration through the environment, and exposure to receptors.

While the Agency agrees that there are elements of the risk assessment methodology that tend to overestimate actual risks, these overestimates are offset somewhat by other elements of the methodology that tend to underestimate actual risks. The Agency acknowledges that most of the risk screening criteria are conservative, as stated throughout the RTC. However, the Agency used these criteria only for the purpose of analyzing the intrinsic

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[1] Performance Testing of Method 1312—QA Support for RCRA Testing. U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory, Las Vegas, NV. March 1989. Docket No. F–89–MWRP–FS002.

[2] Given recent data that indicate that lead is a health hazard at significantly lower levels than previously believed (U.S. Department of Health and Human Services. Toxicological Profile for Lead. Agency for Toxic Substances and Disease Registry. June 1990). EPA believes it is especially important that it not rely solely on a procedure that may underestimate lead leachability.

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hazard of each waste stream. EPA interpreted an exceedance of the criteria only as an indication that the risks of a given waste should be evaluated in more detail, not by itself as proof that the waste poses a significant risk. If a waste contained constituents in concentrations above the screening criteria, the analysis was supplemented with additional evaluation of conditions at actual facilities, and then further, if this evaluation indicated that there were potential problems, the Agency conducted risk modeling in order to develop final risk conclusions. The RTC then proceeded to evaluate the risk conclusions together with the damage case conclusions before reaching an overall finding on the hazards associated with each waste.

Overall, EPA believes that the risk assessment, while conservative, was reasonable in that EPA factored the uncertainties created by key assumptions in the risk assessment methodology into the regulatory decision making process for each waste stream. The approach that EPA used to evaluate potential human health and environmental problems is outlined in section II of this preamble and applied in section III, which presents the rationale for the final regulatory determination for specific wastes.

3. *Modeling Inadequacies.* One commenter argued that the Agency's risk modeling was inadequate and significantly underestimated risks because it did not adequately consider a number of specific factors. Important factors that the commenter alleged were left out or considered incorrectly include site-specific soil-water distribution coefficients (Kd's), the transport of metals in ground water by colloids, metal-organic complexing during ground-water transport, ground-water flow through karst terrains, storm events, evaporation and subsequent concentration of metals in small surface water bodies, and the transport of contaminated storm-water run-off to surface water bodies.

In general, EPA acknowledges these modeling limitations but believes most of them were unavoidable, forced in part by necessary limitations in the scope/complexity of the risk assessment, as well as by limitations in the state of ground-water modeling as a science. For example, the Agency agrees that Kd values are highly site-specific, but believes that modeling each site using actual Kd's would have required prohibitively extensive field measurements and verification. As a result, the Agency used the next best approach—EPA used its best professional judgment to select representative Kd values for each site and each contaminant, based on a review of data in the literature and an examination of available data on the soil composition at each site. In addition, with the possible exception of a few experimental models, the Agency is unaware of any reliable techniques for modeling the migration of colloids or the flow of ground water through karst. Overall, the Agency believes that its risk modeling approach accounts for the factors noted by the commenter in the best way possible, considering the study's time limitations. When significant factors could not be considered in the quantitative modeling exercise, they were considered in a qualitative manner so as to not compromise the overall completeness of the risk analysis.

4. *Lack of Consideration of Off-Site Use/Disposal and Future Changes.* One commenter argued that the risk assessment was deficient because it did not consider the risks associated with off-site use or disposal of the mineral processing wastes. This same commenter said the risk assessment is also fundamentally flawed because it analyzes risks only in terms of existing conditions at each facility that generates the mineral processing wastes, not accounting for possible future changes in water use patterns or population distributions.

While the Agency acknowledges that it did not rigorously model the risks associated with off-site use/disposal or possible future locations of new facilities, it disagrees that the RTC did not consider these factors.[3] Based on a review of the past disposal practices and potential utilization of each waste, only about half of the mineral processing wastes are candidates for off-site use or disposal, including copper slag, elemental phosphorus slag, all four of the ferrous metal production wastes, fluorogypsum, lead slag, phosphogypsum, and zinc slag. In the case of elemental phosphorus slag, the RTC relied on monitoring and risk modeling conducted by EPA's Office of Radiation Programs to evaluate the potential radiation hazards associated with off-site uses; as discussed in section VI of this preamble, EPA is in the process of re-examining the validity of this off-site modeling for elemental phosphorus slag. For the other wastes, EPA evaluated the observed and potential hazards associated with off-site use or disposal in the context of the wastes' damage case record and intrinsic hazard analysis, and factored the results of this evaluation into the overall hazard findings in each waste-specific chapter of the RTC. For example, before reaching conclusions about the hazards posed by iron blast furnace slag, a waste that has been shipped off-site for disposal and a variety of uses for decades, EPA searched for and evaluated any evidence of environmental damage caused by the off-site management practices. The conservative risk screening criteria used to evaluate each waste's intrinsic toxicity also were developed using hypothetical scenarios that might occur if the wastes were mismanaged (e.g., scenarios in which an inactive waste pile is not closed or maintained and people are allowed to come into direct contact with the waste). Therefore, the Agency believes that both off-site activities and possible future changes have been accounted for in the overall hazard conclusion for each waste stream. EPA also notes, however, that, as a general matter, the use of site-specific risk modeling and evaluation is appropriate for high-volume special wastes which are typically managed on-site.

5. *Treatment of Radionuclides in the Report to Congress.* One commenter claimed that EPA's treatment of radionuclides is different with respect to the four wastes tentatively proposed for removal from the Mining Waste Exclusion and the sixteen other wastes. The commenter argued that EPA has determined that some radionuclide risk exists for some of the sixteen wastes but instead of recommending subtitle C regulation, EPA merely expressed that it plans to further investigate the potential for exposure and associated radiation risk. This commenter added that if further investigation is warranted before regulatory action is taken on some wastes, the same principle should apply to all the wastes.

EPA could not evaluate the risks associated with radioactive constituents for all of the wastes studied in the RTC because the necessary data were not available. In addition, there presently are no controls for risks from radioactive materials under RCRA subtitle C, as there is not a hazardous waste characteristic test for radioactivity and no radionuclides or radioactivity levels are listed in appendix VIII to 40 CFR part 261 (Hazardous Constituents). As a result, concerns about residual radioactivity would not be resolved by removal of the Mining Waste Exclusion, because such an action would not result in subtitle C regulation unless the waste exhibits a RCRA hazardous characteristic.

To the extent that data were available on the radionuclide concentration in various wastes, EPA believes that it evaluated the data and made final regulatory determinations for the wastes in a consistent manner. That is, EPA uniformly compared available radionuclide concentration data for the wastes to risk screening criteria and developed conclusions on the intrinsic hazard of the wastes accordingly. The Agency then evaluated potential radiation risk as an element in the overall risk assessment for each waste, and combined the risk assessment conclusions with the other RCRA section 8002(p) study factors in accordance with the decision making methodology outlined in section II of this preamble in order to reach a final regulatory determination. Therefore, radiation risk was but one element in an overall evaluation process, and EPA consistently followed that process to reach appropriate determinations for each waste. To the extent that radioactivity appears to be a concern for a given waste, EPA believes that potential radiation risks should be addressed along with the waste's other potential threats within the regulatory framework determined to be appropriate (subtitle D in all cases). In addition, EPA is examining potential radiation risks associated with these and other materials in studies currently underway.

D. Documented Danger to Human Health and the Environment

One commenter contends that many of the damage cases cited in the RTC are not attributable to Bevill processing wastes. The commenter also stated that other damage cases cited by EPA resulted from historical management practices that have long since been discontinued by the mineral processing industry. A number of commenters made this assertion regarding specific mineral commodity sectors and wastes as well.

The Agency reexamined the RTC data and evaluated the information submitted in comments and eliminated some of the damage cases covered in the RTC for the purpose of this regulatory determination (see the comment-response background document in the docket for details). For example, EPA has eliminated the damage cases for lead slag at the ASARCO facility in East Helena, MT and for hydrofluoric acid process wastewater at the Allied facility in Geismar, LA because available information indicates that the contamination documented in the RTC is attributable to other wastes.

Furthermore, as discussed in the RTC, inclusion in the RTC of documented contaminant releases to the environment due to discontinued waste management practices does not necessarily demonstrate that releases from current management practices will occur. The Agency believes, however, that damage case information on past waste management practices is useful in demonstrating the potential for environmental and human health impacts, for two primary reasons. First, these damage cases provide information on combinations of management practices and site conditions that have resulted in environmental problems, which is useful for anticipating and avoiding future problems. Second, damage cases associated with past practices, like those associated with ongoing practices, are useful in demonstrating the kinds of impacts that can result when hazardous constituents are released from the wastes. If damage case information on past waste management practices was available, EPA evaluated the particular circumstances involved to determine if the case represents conditions that are likely to exist today. If, in EPA's judgment, a historical damage case did not apply to current management practices, it was used to supplement the risk conclusions in the sense that it could demonstrate how problems can occur in mismanagement scenarios, but it was not given the full status of a damage case in making the regulatory determination. However, if a historical damage case was found to represent today's management practices, it was considered equally with any damage cases for current management practices in developing the regulatory determination.

One commenter claimed that the Agency did not meet the standard set by Congress that damage cases should relate to the individual waste stream being studied. The commenter added that although relating damage to a specific stream may be difficult, it is essential if an analysis is to be meaningful.

EPA disagrees with this comment. As mentioned previously, the Agency reexamined the RTC data and evaluated the information submitted in comments and eliminated some of the damage cases covered in the RTC because the damages could not be attributed to a given waste stream being studied. In some of the cases that were retained for the purpose of this regulatory determination attribution to a sole waste stream was not possible, because wastes were co-managed, for example. However, the Agency believes that at least one of the special wastes being studied was contributing to the damages described in cases used for the regulatory determination. This view is based on EPA's review of available data on waste management practices and site conditions as reflected in state or EPA regional regulatory files.

One commenter argued that contrary to the Agency's position, the absence of damage cases is not a reliable indicator of the absence of potential hazard from the wastes studied in the Report. The commenter stated that the lack of damage cases can be attributed to two factors: Deficiencies and flaws in EPA's methodology for identifying damage cases, and inadequacies within state programs for identifying damage cases.

The Agency has reviewed these comments and maintains the view that its damage case investigation effort was comprehensive and thorough. Many sources were utilized to obtain information on facilities, including the National Priorities List (NPL) and other lists; federal, state, and local regulatory agencies; public interest or citizen's groups; and professional and trade associations. In addition, EPA followed up on general and specific examples cited in comments and has not found any additional damage cases. For example, EPA has reviewed the evidence suggested by one commenter linking observed damages to ferrous metal production wastes, and concludes that any such damages are not attributable to any of the four ferrous metal production wastes studied in the Report. The Agency acknowledges that although damages may have occurred at some facilities not identified in the Report, documentation of these damages was not available or non-existent. This is precisely why the RTC's findings about the hazards of each waste stream are based on both an analysis of damage cases and risks in the absence of any known damages. Moreover, EPA believes that the lack of documented damages for a given waste stream does not necessarily signify a lack of hazard from that waste stream, but believes that the attribution of damage cases to a waste stream is the most concrete evidence of such a hazard.

E. Estimation of Compliance Costs

1. *Incorrect Cost Estimates.* Several commenters claimed that EPA had seriously underestimated the total compliance costs associated with subtitle C regulations by failing to consider several pertinent elements,

[3] As discussed elsewhere, EPA did examine potential changes in exposure scenarios at existing facilities. For example, the Agency's risk modeling examined potential groundwater exposure points at locations closer to the facility than known current well locations (e.g., at the facility boundary).

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including: The cumulative financial impact of federal and state regulations (including the recent Bevill rulemakings); hydrogeological investigations that may include the construction of systems of ground-water monitoring wells; location requirements at facilities within a 100-year flood plain; land disposal restriction requirements; neutralization; recycling; remedial work to control releases; and closure activities. One commenter, on the other hand, asserted that EPA overstated the cost associated with compliance by assuming that more facilities exhibit hazardous waste characteristics than are indicated by available data. For example, the commenter stated that the Agency incorrectly assumed that wastewater at every facility would be regulated as hazardous, even though the wastewater may not actually exhibit hazardous waste characteristics at each operating plant.

The Agency generally disagrees with those commenters who argued that EPA underestimated compliance costs associated with subtitle C regulation. As part of its analysis, EPA did, in fact, address many of the cited compliance cost elements. In the Report to Congress, EPA accounted for ground-water monitoring systems, neutralization of wastes, location standards, land disposal restrictions (in some cases), and closure requirements. The cumulative impact of previous rulemakings is not relevant to the issue of whether the special mineral processing wastes studied in the Report to Congress can be managed under RCRA subtitle C without excessive additional costs being incurred by the regulated community. That is, the costs and impacts of regulating non-special mineral processing wastes under subtitle C have no relevance to today's regulatory determination. EPA acknowledges that, at certain facilities, corrective action requirements could result in potentially significant costs for some wastes and, thus, has given further consideration to the associated costs (further discussion of this issue is presented below).

On the other hand, EPA acknowledges that compliance costs may be overstated in certain instances in which wastes were assumed to exhibit a hazardous characteristic when in fact they may not. The Agency used this conservative assumption to overcome data limitations (i.e., a lack of EP-toxicity test data for some facilities) and to demonstrate the estimated magnitude of compliance costs at potentially affected facilities. While actual impacts may be less widely distributed, EPA believes that the approach employed was a reasonable way of demonstrating potential impacts to industry under subtitle C, as contemplated by the Bevill Amendment. In addition, the assumption of hazardousness at all facilities and the associated cost estimates did not affect the regulatory determination in a meaningful way (as discussed further below).

2. *Corrective Action Costs.* Several commenters complained that EPA failed to consider the appropriate costs associated with corrective action. Many of these commenters stated that by ignoring corrective action requirements under RCRA sections 3004(u) and 3008(h), EPA was failing to fulfill its statutory obligation under the Bevill Amendment, which requires EPA to study the costs of regulating Bevill wastes under subtitle C. A few of these commenters recommended that EPA revise its cost estimates to reflect necessary corrective action. One of these commenters also indicated that EPA has the information required to determine at least the range of likely corrective action costs.

In response to these comments, EPA has analyzed corrective action issues in further detail and estimated corrective action costs at certain facilities. EPA focused this analysis on only those wastes for which corrective action costs might influence the final regulatory determination: Phosphogypsum and process wastewater from phosphoric acid production. These are the only wastes for which application of EPA's decision making methodology required EPA to consider potential regulatory compliance costs. If cost had been a factor in the decision for the other 18 wastes, inclusion of corrective action costs would only have added support to the Agency's determination not to regulate these 18 wastes under subtitle C.

EPA's corrective action analysis reflects the probable response to the predominant source and type of contamination that has been observed at phosphoric acid facilities, namely contamination of underlying ground-water aquifers by the routine operation of gypsum stack-cooling pond complexes. The response strategy examined by EPA involves the installation of a ground-water containment system consisting of extraction wells (in some cases supplemented by a slurry wall) around the entire stack-pond complex. In this manner, contaminants entering the subsurface would be removed, thereby preventing them from further contaminating the affected aquifer(s). This strategy assumes that over time, existing contaminants present in the ground-water system would be diluted and/or attenuated to below MCLs (due in part to the gradual rise in ground-water pH caused by eliminating the continuous introduction of acidic process wastewater to an unlined stack/pond system), thereby obviating the need for active aquifer remediation activities over the entire contaminated area. The Agency has identified the facilities that would likely experience corrective action (under either a modified subtitle C or D situation), and has estimated the costs of implementing the response strategy described here. Details regarding EPA's methodology and the results of the analysis are provided in a Technical Background Document that they may be found in the supporting docket for today's notice. In general, corrective action costs are relatively modest [4], contrary to the unsupported statements of many commenters, and comprise approximately ten percent of total annualized compliance costs at the individual facility level.

3. *Land Disposal Restrictions Costs.* EPA received several comments stating that the Agency did not include specific estimates of costs associated with land disposal restrictions as they would apply to mineral processing waste types and sectors. One of these commenters argued that in the "third third" rule, EPA designates stabilization as BDAT for treating metal-bearing wastes, yet the Agency does not include stabilization costs in its RTC cost estimates. This commenter further argued that EPA should have considered the additional on- and off-site disposal costs associated with acquiring additional land for disposal on-site and transportation costs to a remote location.

Contrary to these assertions, EPA did evaluate land disposal restrictions costs for some of the wastes addressed in the Report to Congress, including sludges. These materials were assumed to be cement stabilized prior to disposal in subtitle C landfills. Moreover, the resulting increase in the volume of the wastes in question was explicitly factored into EPA's analysis, by calculating the incremental landfill volume required, adjusting the landfill design accordingly, and calculating the total cost of the necessary land disposal unit(s) for the wastes in question. In conducting the supplementary analysis of the phosphoric acid sector, the Agency also factored land disposal restriction costs (lime treatment) into the total costs for phosphogypsum disposal.

BDATs were not applied, and costs, therefore, were not calculated, for copper, lead, and zinc slags because of an assumption that slags, when generated, are similar to wastes that have been treated by vitrification (a BDAT). For this reason, stabilization was presumed to be an unnecessary management method for these wastes. (If stabilization is required, costs would increase, but this would not have affected the Agency's regulatory determination.) Transportation costs were not factored in for on-site management because data in EPA's possession and personal observations made during site visits to a substantial number of the facilities considered in the Report demonstrate that many, if not most, potentially affected facilities own land of adequate size contiguous with or close to their existing waste management units to construct new units of sufficient capacity.

4. *Costs Associated With Replacing Waste Management Units.* Some commenters argued that EPA failed to consider the costs associated with replacing subtitle C hazardous waste disposal facilities in the future (i.e., after the first operation is closed in year 15). These commenters suggested that such costs, when discounted to the present, are significant (i.e., on the order of 25 percent of the total compliance costs).

EPA acknowledges this comment to be true. A 15-year life without replacement of equipment or facilities was assumed for simplicity during the analysis. Data provided by facility operators in response to the 1989 SWMPF Survey and the Agency's understanding of relevant mineral commodity markets suggest that an assumed 15-year operating life is not unreasonable for some facilities. In other cases, however, it is unclear whether this is or is not a valid assumption. In those cases, the remaining life of the facilities cannot be predicted with accuracy. EPA acknowledges that in situations in which the facilities would continue to operate and would require new waste management units periodically, annualized compliance costs would increase over those reported in the RTC, even by 25 percent or more. In any event, such an increase does not effect today's regulatory determination.

5. *Accuracy of Cost Estimates.* EPA received several comments regarding the accuracy of its cost estimates. While many commenters argued that EPA provided inaccurate cost estimates for regulating the 20 special wastes, one commenter contends that, although EPA ignores many of the costliest elements of the subtitle C program, the Agency's economic analysis accurately demonstrates the high cost impacts of regulating Bevill wastes under subtitle C.

In its analysis, EPA employed an engineering design model and detailed cost analyses to develop realistic cost estimates of subtitle C regulation. After review of the comments and upon further analysis, EPA continues to stand by its cost estimates (as modified) as adequate and appropriate for their intended use as input to the regulatory determination, even though some cost considerations were excluded from the analysis for most wastes (e.g., corrective action). Furthermore, EPA notes that high costs alone are not determinative of appropriate regulatory status. Rather, the financial impact of such costs is the real measure of economic feasibility. Section F below provides additional comments on economic impacts.

6. *Maximum Flexibility.*

One commenter asserted that EPA should calculate subtitle C-Minus compliance costs on the basis of a realistic level of flexibility under RCRA section 3004(x) rather than on the maximum level of flexibility. Unless the maximum flexibility rules can be guaranteed, contends this commenter, firms may be faced with the unpalatable choice of investing in "maximum flexibility" waste disposal facilities in year one, only to find that they need "full subtitle C" facilities in year three.

As was clearly stated in the RTC, the purpose of EPA's evaluation of three regulatory scenarios was to demonstrate the range of potential compliance costs, not to articulate a new regulatory program (which was beyond the scope of the RTC). The Agency believes that using a hypothetical subtitle C-Minus scenario is appropriate for considering the feasibility of subtitle C regulation of special mineral processing wastes, because of the significant technical challenges that stringent regulation of special wastes (by definition) may pose. Moreover, the Agency believes that the "realistic" level of flexibility that may in fact be appropriate needs to be determined based on a detailed evaluation of site-specific conditions, which was not possible within the context of the RTC because of data limitations.

7. *Relative Costs of subtitle C, C-Minus, and subtitle D-Plus.* Several comments were submitted to EPA regarding the relative costs of the subtitle C, C-Minus, and subtitle D-Plus regulatory scenarios. Many of those who commented, recognizing the different cost implications of each scenario, encouraged a subtitle D determination, while others argued that because the differences in estimated costs among the scenarios for certain wastes are insignificant, a subtitle C determination should be promulgated. One commenter argues that with little cost difference, a subtitle C determination would offer greater environmental protection advantages. Another commenter stated that the differences between subtitle C-Minus and subtitle D-Plus regulation are likely to be especially apparent with respect to corrective action costs (which EPA did not include) because inclusion of the processing wastes under subtitle C-Minus may expose the facilities to the same corrective action requirements (and costs) as those under full subtitle C. This same commenter added that non-hazardous wastes should not be regulated under subtitle C (through application of corrective action) simply because such regulation is projected by EPA to be only slightly more costly than subtitle D regulations.

EPA responds that the cost of alternative management practices is but one of the study factors that EPA is required to consider; therefore, the regulatory determination is not being made on the basis of the comparative cost difference between subtitle C and D programs alone. The Agency does recognize that similar corrective action requirements might be applied under both subtitle C and C-Minus, and has examined the associated costs (as discussed above).

In addition, EPA notes that the regulatory scenarios that were used to estimate potential compliance costs were developed with consideration of the environmental protection that they would afford. Thus, it is not the case that subtitle C regulation necessarily would provide more environmental protection that the other scenarios considered. For example, in some cases, adequately protective design and operating standards for new waste management units under subtitle C-Minus and D-Plus have been defined by EPA to be identical.

F. Estimation of Economic Impacts

1. *Inaccurate Use of Price Data.* One commenter identified a specific concern

[4] The annualized compliance costs (ACC) of EPA's corrective action strategy for the twelve potentially affected facilities range from approximately $2.0 million to $8.9 million under the Subtitle C-Minus scenario, and from about $1.6 million to $5.7 million under the Subtitle D-Plus scenario.

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with EPA's use of estimated mineral prices in 1995, with no explanation as to how they were derived other than that they were reported by an EPA subcontractor. This commenter claimed that EPA did not verify its data by contracting industry sources.

Contrary to the commenter's claim, the Agency used industry experts retained for this purpose to estimate projected 1995 prices. Industry and affected facility input and review prior to the publishing of the RTC were not possible because of procedural constraints. Affected parties were, however, encouraged to review the RTC estimates during the public comment period. In response to comments received, EPA has in fact made corrections to the prices reported in the RTC for refined lead and merchant grade phosphoric acid, which had resulted from calculation and transcription errors; estimated impacts on the corresponding facilities and sectors have been revised in support of today's regulatory determination. As no alternative long-term price projections were suggested by commenters for the remaining primary mineral commodities, estimated long-term real prices remain as reported in the RTC.

Furthermore, the Agency notes two points that reduce the importance of the use or accuracy of the 1995 projected prices. First, while the prices are important in assessing the overall magnitude of the economic impacts, their accuracy will not greatly affect the difference between or relative impacts of subtitle C versus D regulation; that is, the magnitude of the impacts will be affected to a far greater extent than the relative differences between scenarios. Second, if the prices as used are potentially underestimated (in many cases, estimated 1995 prices are lower than current prices), the impacts in the RTC are overestimated because the estimated value of shipments (price multiplied by production quantity) would be smaller and the cost as a percentage of value of shipments, therefore, larger. This is the case for the majority of the sectors, and is consistent with EPA's objective of performing a conservative and defensible analysis. Only in the titanium tetrachloride sector were prices projected to increase significantly, raising the possibility that EPA's estimated value of shipments was overstated and the impacts on that sector were, therefore, underestimated. However, given the strength of that sector (as evidenced by the planned construction of several new domestic plants), EPA believes that the long-term projection of prices for that sector are reasonable and that impacts are not significantly understated.

2. *Impact on Industry.* Several commenters argued that industries producing primary copper, lead, zinc, and elemental phosphorus would be adversely affected by a subtitle C regulatory determination because the regulations would generate additional and substantial annual fixed costs that would have to be met regardless of market conditions. Several of these commenters argued that these costs are likely to remain fixed even in periods of slack demand, contributing to depressed profits during such periods. A few of these commenters further argued that a decreased profit margin would make the market less desirable to investors, thereby discouraging the overall economic growth of the industry.

EPA recognizes that increased costs that cannot be passed along reduce profits at all times, irrespective of market conditions. The costs of adequate environmental protection are, however, simply a component of the total cost of doing business. In trying to evaluate future trends and market conditions, the Agency did conduct qualitative analyses of sectors for which it believed the industry was subject to potentially significant compliance costs, and included the results of these analyses in the RTC. For example, the impacts discussions for the copper, ferrous metal, lead, phosphoric acid, titanium tetrachloride, and zinc sectors included examinations of both the present and future general competitive position of domestic producers, and the potential for compliance cost pass-through (discussed more fully below). EPA believes that its discussion of future trends and market conditions has adequately addressed the concerns regarding long-term impacts.

3. *Pass-Through Potential.* Several commenters indicated that EPA should not assume that the mineral processing industry can pass on the costs of new regulatory requirements to the product consumer in the form of higher prices. A few of these commenters noted that the world market sets the commodity prices; if American producers raise their prices, consumers will look to international markets, where products could be obtained at lower prices. These commenters agreed that higher pricing on mineral processing products could be devastating to the industry.

EPA understands that higher prices in any market can cause adverse impacts on the affected industry. EPA believes, however, that the commenters' suggestions that all mineral processors in all commodity sectors are "price takers" having no ability to pass on cost increases and therefore having to absorb them internally, is demonstrably untrue.

In general, the pass-through of compliance costs follows the path of least market resistance. Where all facilities in the affected sector face similar compliance costs and produce commodities for which there are few alternative supply sources or substitute materials, there is a high likelihood that moderate compliance costs can be passed forward in the form of higher product prices. On the other hand, where only a small proportion of facilities in a sector are affected, or alternative supplies or substitute materials are abundant, the opposite may be true. Similar possibilities exist in input and labor markets where the regulated sector may be able to negotiate wage or price concessions in order to remain in operation or continue operating at current levels. In all cases, the ability to pass through compliance costs depends on the initial incidence of compliance costs within the affected sector and the concentration and interdependency of buyers and sellers in relevant input and product markets. In the RTC, EPA discussed the market factors that, in combination, determine the extent to which regulatory compliance costs can be passed through for each affected commodity sector. In general, EPA found little substantive information or data in the comments received that suggested that the Agency's preliminary findings with respect to pass-through potential were incorrect.

II. Decision making Methodology for the Regulatory Determination

One commenter argued that EPA's second approach, which recommends that the Agency not regulate any of the wastes studied in the RTC as hazardous because of the potential for improved state mineral processing programs, is not authorized by the statute, is factually insupportable, and unlawful, adding that the authority for EPA's second approach does not arise from the study factors in section 8002(p) of RCRA and that EPA's regulatory determination must be directed by the specific provisions of the Bevill Amendment. This commenter further argued that states cannot regulate mineral processing wastes adequately without a national hazardous waste designation, stating that there are no federal programs for nonhazardous waste in place and no statutory authority to ensure that state nonhazardous waste programs adequately regulate mineral processing wastes. This same commenter stated that EPA's assertions in the RTC about the success of individual state mineral processing waste management control efforts are uncertain and impossible to assess at the present, and therefore cannot support the use of EPA's second approach. In addition, this commenter stated that by delaying regulatory action with EPA's second approach, EPA would substantially undermine the two principal objectives of RCRA: Overall protection of human health and the environment and the minimization of generation and land disposal of hazardous waste. Finally, the commenter argued that if the Agency decides to consider factors beyond the eight listed in section 8002(p), then it must consider all objectives and goals of the RCRA statute, not just a select few.

On the other hand, several commenters encouraged EPA to apply Approach 2 to its regulatory determination, stating that the development and maintenance of strong state programs and federal regulations under other statutory authorities is, in fact, mandated by RCRA. These commenters further argued that the flexibility offered by Approach 2 for regulation of the mineral processing industry is essential to its continued strength and growth, which the Bevill Amendment was enacted to ensure. Other commenters argued that the "other factors" discussed for Approach 2 were, in fact, embodied in the study factors and should be considered in Approach 1.

As was stated in section II of this preamble, EPA generally agrees that its regulatory determination should be based on the eight study factors outlined in section 8002(p) of RCRA, as embodied in the Report to Congress, as well as the public comments and additional information received in response to the Report (and developed by EPA to supplement the Report in response to comments). EPA also agrees that, to the extent that the Agency were otherwise to conclude that subtitle C regulation was warranted based upon consideration of all of these factors and information, that it would be improper to look outside the Report to Congress, public comments, and supplemental technical information to justify a different determination. Therefore, EPA has decided not to employ Approach 2 as outlined in the Report to Congress in making today's regulatory determination, and has instead employed an Approach 1 methodology (modified slightly, as discussed in the main text).

EPA also agrees somewhat with commenters who asserted that the so-called "additional factors" upon which Approach 2 was based are, in large part, already embodied within the contours of the inquiry that Congress intended for EPA to make in the Report and regulatory determination. The Report identifies (1) the development and maintenance of strong state mining and mineral processing regulatory programs, and (2) the facilitation of an integrated federal mining regulatory program as the key considerations under Approach 2. Section 8002(p)(5) instructs EPA to consider "alternatives to current disposal methods" as a factor in developing the Report and regulatory determination. Certainly, consideration of alternative state regulatory schemes, in addition to federal schemes, is contemplated by this section. In addition, facilitation of a potential integrated federal mining program was actually considered by EPA in its cost estimates (reflected in the "subtitle D-Plus scenario").

Nonetheless, EPA does not believe that it should rely on possible improved state programs to determine that subtitle C is not warranted unless EPA is confident that such programs are being developed and can address the problems associated with mineral processing wastes that may pose a significant risk. Thus EPA disagrees that section 8002(p) requires EPA to consider these factors in any way that would supplant a decision the Agency makes under the decision making methodology outlined in Approach 1.

In any event, EPA notes that the issue is effectively moot. As discussed in the section III of this preamble, EPA has been able to make its regulatory determination for all 20 wastes on the basis of a slightly modified Approach 1 alone. Subtitle C was found not to be warranted for any of the wastes analyzed. Thus, even if EPA were to employ Approach 2 as originally conceived in the Report, it would not change any of the decisions made today.

III. Wastes for Which Regulation Under RCRA Subtitle D is Generally Supported

Nine of the twenty special mineral processing wastes studied in the Report to Congress were found to pose few if any risks to public health or the environment. EPA tentatively recommended a subtitle D regulatory determination for these wastes in its Report and continues to believe that subtitle C regulation is unwarranted. The Agency received no comments on the Report suggesting a contrary position. The nine wastes include: (1) Red and brown muds from bauxite refining; (2) gasifier ash from coal gasification; (3) process wastewater from coal gasification; (4) slag tailings from primary copper processing; (5) fluorogypsum from hydrofluoric acid production; (6) treated residue from roasting/leaching of chrome ore; (7) process wastewater from primary magnesium processing by the anhydrous process; (8) basic oxygen furnace and open hearth furnace slag from carbon steel production; and (9) iron blast furnace slag. Therefore, the Agency is today finalizing its decision, as proposed in the RTC, for these nine wastes.

IV. Wastes for Which the Regulatory Determination is Contested

EPA received numerous comments regarding the Report's recommended regulatory determination for 11 wastes: (1) Slag from primary copper processing; (2) slag from elemental phosphorus production; (3) air pollution control dust/sludge from iron blast furnaces; (4) air pollution control dust/sludge from basic oxygen furnaces and open hearth furnaces from carbon steel production; (5) phosphogypsum from phosphoric acid production; (6) process wastewater from phosphoric acid production; (7) slag from primary zinc production; (8) calcium sulfate wastewater treatment plant sludge from primary copper processing; (9) process wastewater from hydrofluoric acid production; (10) slag from primary lead production; and (11) chloride process waste solids from titanium tetrachloride production. As discussed in section I.C.3 of this preamble, the Report tentatively recommended, based on decision making Approach 1, that the first seven of these wastes be regulated under subtitle D, while the last four be regulated under either subtitle C or D, depending on the scenario modeled.

The comments focused on the Report's analysis of the section 8002(p) study factors for each of these wastes, as well as the Report's tentative conclusions. EPA received at least one comment arguing that subtitle C regulation of each of the 11 wastes is warranted. The Agency has considered each of the comments it received, sometimes conducting additional analyses in response, and all of the comments and additional information have been taken into account in developing this final regulatory determination. EPA's responses to these comments are in the supporting comment-response background document.

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Appendix B—Analysis of and Response to Public Comments on the Notice of Data Availability

I. Engineering Feasibility and Cost of Alternative Management Practices for Phosphogypsum and Process Wastewater From Phosphoric Acid Production

A. Subtitle C-Minus and D-Plus Scenarios as the Basis for the Regulatory Determination

Twenty commenters questioned the appropriateness of using the Subtitle C-Minus and D-Plus scenarios as a basis for the regulatory determination. Specifically, the commenters contend that because these two scenarios are hypothetical and because regulatory requirements for the scenarios have not been established, the two scenarios cannot be used as a basis for a regulatory determination, and costs estimated for these two scenarios cannot be used to make a decision as to whether or not regulation under the existing subtitle C program is warranted. Furthermore, the commenters believed that the Agency assumption (and cost estimates resulting from that assumption) that certain sub-scenarios for management of process wastewater and/or phosphogypsum would be identical under a C-Minus scenario and a D-Plus scenario is illogical. The commenters concluded that EPA must make its decision between the subtitle C and subtitle D programs and not on variations (i.e., C-Minus and D-Plus) of the two programs.

EPA disagrees with these comments. Section 3004(x) of RCRA allows the Administrator to modify certain subtitle C requirements, *at his discretion*, so as to "take into account the special characteristics" of the wastes in question. Such modifications are "hypothetical" and have not been "established" to the extent that to date, none of the special wastes to which section 3004(x) applies have been regulated under RCRA subtitle C. As discussed at length in the RTC, the Subtitle C-Minus scenarios articulated in the RTC and in the Supplemental Analysis represent realistic (though maximal) application of the regulatory flexibility provided by the statute. The Agency has provided cost estimates for implementation of section 3004(x) flexibility because it believes that a tailored subtitle C program is less costly and may be less burdensome to industry so as to address the risks posed by phosphoric acid industry special wastes. The Agency recognizes that the contours of a prospective subtitle D program for mineral processing wastes have yet to be established. Nonetheless, EPA believes that for analytical purposes, it was appropriate to consider one possible approach to such a program, to estimate the costs and impacts that would result from implementation thereof, and to compare these estimates to those of the other regulatory scenarios, in order to develop an understanding of the potential differences between environmentally protective approaches to special wastes management under the provisions of the two potentially applicable portions of the RCRA statute. Finally, the fact that, in the Agency's view, adequately protective tailored approaches to waste management under subtitle C and subtitle D are very similar in terms of requirements and their costs does not in any way invalidate EPA's analysis. Rather, this suggests only that: (1) Current management controls are inadequate in some cases (as discussed at length in the RTC and elsewhere in today's notice, (2) that even under a Subtitle D program, certain site conditions and waste management practices (such as are found at many phosphoric acid plants) would require fairly stringent controls and changes in current practice to adequately protect the environment, and (3) that the flexibility afforded by section 3004(x) can be employed to develop management standards that are achievable while also ensuring protection of human health and the environment.

B. Technical Feasibility of Engineering Alternatives

The Agency received comments on several aspects of the feasibility of the engineering alternatives (discussed in the NODA). Several of the comments are summarized below; the remainder are addressed in the supporting comment response background document.

1. Use of Undemonstrated Technologies. Several commenters objected to EPA's presentation of engineering alternatives that incorporate certain technologies that are considered by the industry to be undemonstrated, unproven, and/or experimental. The commenters contend that waste management scenarios that utilize undemonstrated technologies cannot be used as alternatives to current waste management practices under the definition of section 8002(p) of RCRA. The commenters contend that each of the "Subtitle C compliance scenarios" (Engineering Alternatives 1, 2, and 7) incorporate one or more technologies that are not currently demonstrated in the industry as feasible. These technologies include the following:

- Segregation (hydraulic separation) of waste management units for process wastewater and phosphogypsum (Alternatives 1, 2, and 7);
- Neutralization of phosphogypsum slurry, disposal of limed gypsum on existing stacks, and return of transport water to the production process (Alternatives 1, 2, and 7);
- Recovery of fluosilicic acid from the reaction stage of phosphoric acid production (Alternatives 2 and 7); and
- Use of cooling towers and indirect cooling via heat exchangers to effect a closed-loop cooling system in lieu of a process wastewater cooling pond.

As an example of undemonstrated technology, the commenters stated that even though lime neutralization of process wastewater is used at some plants before NPDES-permitted discharge, neutralization of all process wastewater and subsequent recycle to the production process has not been successfully demonstrated at an existing plant. Because this technology and the other technologies are undemonstrated in the industry in the manner in which they are intended to be used in the engineering alternatives, the commenters argued that the subtitle C engineering alternatives cannot be used as a basis for a regulatory determination to regulate the industry under subtitle C.

EPA largely disagrees with these comments. The commenters' proposed definition of "demonstrated" is extreme and contrary to long-standing Agency policy. While EPA agrees that there must be an expectation that a given technology will perform adequately if it is to serve as the basis for a regulatory decision, the Agency does not agree that current use of the technology in the industry being examined is necessary. In fact, it is very often the case that technologies and techniques that have been developed elsewhere for different purposes are used by the Agency for achievement of new pollution control standards. This type of "technology transfer" is at the very heart of such programs as Clean Water Act Effluent Guidelines development and establishment of Best Demonstrated Available Technology (BDAT) requirements under the RCRA Subtitle C Land Disposal Restrictions.

With regard to the specific technologies that comprise engineering alternatives 1, 2, and 7, EPA believes that most, if not all, of these technologies have been demonstrated in other industrial applications and that their technical feasibility is not in question. The fact that they are not in use in the phosphoric acid industry is more reflective of an absence of strong regulatory controls and associated financial incentives than of the feasibility or availability of the technologies themselves. Specifically, EPA has at least anecdotal evidence that closed loop cooling and recovery of FSA from the reactor/flash cooler system have been successfully employed in other industries and in foreign phosphoric acid plants, respectively.

Moreover, EPA wishes to make clear that it believes that the commenters have misinterpreted the Agency's response to the statutory requirement to examine "alternatives to current disposal methods" and "the costs of such alternatives" (RCRA section 8002(p), study factors 5 and 6). As pointed out by the commenters, in the RTC, EPA discussed a number of alternatives to current waste management practices, focusing on techniques that have been applied on a commercial scale to reduce the quantity and/or toxicity of the special wastes considered in the Report. The intent of this discussion was to achieve *partial fulfillment of study factors 5 and 8 (potential utilization) by focusing on proven* means of source reduction and waste minimization as an alternative to on-site waste management. For most of the 20 special wastes considered in the RTC, opportunities for recycling and commercial use are quite limited, for various reasons. In contrast, EPA's approach to responding to the remainder of study factor 5 as well as study factor 6 was to articulate and estimate the costs of on-site waste management under alternative *regulatory* scenarios. The Agency believes that this context was and is the most relevant to the key decisions to be made (Subtitle C vs. Subtitle D regulation) based upon the findings of the RTC and subsequent analysis. Thus, there is no direct linkage between EPA's criterion for discussion of a waste management alternative or opportunity for utilization and the development and analytical implementation of the regulatory scenarios presented in the RTC and the Supplemental Analysis. Accordingly, EPA categorically rejects the commenters' assertion that a given technology, device, and/or practice must currently be in use within the domestic phosphoric acid industry in order for it to be considered "technically feasible." The Agency further rejects the commenters' suggestion that EPA's own methodology as articulated in the RTC compels such an approach, because commenters have misconstrued the Agency's analytical methods and underlying rationale.

The Agency acknowledges that there are significant uncertainties regarding the operational consequences of the lime treatment of phosphogypsum. Once again, however, commenters have based their arguments upon an inaccurate interpretation of EPA's analysis. The treatment of phosphogypsum contemplated in engineering alternatives 1, 2, and 7 assumes that the water being used to slurry the gypsum from the filter to the neutralization mixing basin would be *treated* process wastewater, not the "pond water" that is currently managed at active facilities.

Consequently, the laboratory test results reported by the commenters in support of their argument are, in the Agency's view, of questionable relevance, and by no means demonstrate that treated gypsum would present significant disposal and other operational problems.

Finally, EPA believes that the importance of the issue of segregation of the gypsum management and cooling water areas within a facility's waste management system has been overstated by the commenters. In the Supplemental Analysis, EPA discussed a number of different approaches for separately addressing contaminants contained in phosphogypsum slurry and contaminants condensed into cooling waters. In no case did EPA state (or even suggest) that a complete hydraulic separation between gypsum management units and cooling ponds would be either necessary or appropriate, even under a full subtitle C scenario. Indeed, the Supplemental Analysis recognizes that leachate will continue to be generated for many years from any existing gypsum stack. To the extent that this leachate or gypsum transport water (which would have been rendered non-hazardous under engineering alternatives 1, 2, and 7) might enter the cooling water pond, treatment or product recovery would occur through removal of this water to the treatment system or filter, respectively. In either case, "co-mingling" of separate hazardous wastes would not occur, obviating the need for complete hydraulic separation and any associated undesirable effects on plant water balance.

2. Feasibility of Lime Neutralization. Several commenters expressed doubt over the engineering feasibility of lime neutralization of both process wastewater and phosphogypsum, for several reasons, including the limited availability of lime to meet the demand that would be created and the formation of a silica gel that would interfere with waste management and production process operations.

Several commenters argued that the demand for lime imposed by any of the engineering alternatives that incorporate lime neutralization would place a severe burden on the United States lime production industry. The commenters stated that implementation of Engineering Alternative 1 (lime neutralization of all waste streams) would require the southeastern lime industry to triple its present capacity in the first year of implementation of the alternative to meet the additional demand. In addition to expressing their uncertainty over whether this demand could be met, the commenters also expressed concern over potential environmental impacts that the demand would create, including increased generation of carbon dioxide, increased fuel consumption, and the need for additional limestone strip mines.

In response to this comment, EPA has conducted additional analysis to determine whether implementation of Alternative 1 would impart significant impacts on lime supply, demand, and capacity within the relevant regions of the country. A description of this analysis and the results thereof may be found in the docket.[1] These results suggest several conclusions.

First, EPA agrees that adoption of engineering alternative 1 by the entire domestic industry would significantly increase the demand for lime in the regions of the country in which the active phosphoric acid plants are located, requiring an increase in lime production. In the western states (Idaho and Wyoming), this increase could probably be met through greater utilization of existing lime production capacity. In the south, uniform adoption of engineering alternative 1 would create demand in excess of regional supply, requiring shipments from other parts of the country (e.g., Ohio, Pennsylvania), installation of additional lime capacity, and/or imports of lime (probably from Mexico).

Second, the analysis of incremental lime demand presented by the commenters significantly overstates the impacts of new regulatory requirements, for several reasons. The estimates of lime demand presented by the commenters are substantially higher than EPA's estimates. Because the

[1] ICF Incorporated. 1991. Technical Background Document: Data and Analyses in Support of the Regulatory Determination for Special Wastes from Phosphoric Acid Production. Prepared for the Office of Solid Waste, US EPA.

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reasons for this difference have not been adequately explained in the materials submitted to the Agency. EPA continues to believe that its lime consumption estimates for engineering alternative 1 are valid. Moreover, in comparing demand with supply, commenters were quite selective in terms of which states and lime plants were defined as being located within the same region as the phosphoric acid plants. EPA believes that lime produced in Virginia, Kentucky, Illinois, Indiana, Missouri, and Texas is also available (in a logistical and economic sense) to the potentially affected phosphoric acid facilities, particularly those located in Louisiana, Texas, and North Carolina. Therefore, the gap between potential demand and existing supply is substantially narrower than that suggested by the commenters.

Third, the Agency acknowledges that implementation of any alternative that substantially increased the demand for lime would result in increased energy consumption and releases of carbon dioxide, a "greenhouse" gas, to the atmosphere. Because many lime and limestone producers are operating at levels substantially below their capacity, however, EPA is not convinced that opening of additional limestone mines would necessarily be required to any significant degree as a result of implementation of the engineering alternatives, though additional production from existing mines would clearly be needed.

Finally, and most importantly, the comments focus on a worst-case scenario under which every plant would lime treat all of its special wastes. Under a tailored subtitle C (C-Minus) program, this is but one option among many. EPA believes that most facility operators, when provided with the incentive to comply in a least-cost manner, would develop alternatives to lime treating all of their wastes, thus greatly reducing the amount of lime required and the importance of this issue.

Commenters also stated that a colloidal silica gel would be created during the neutralization of process wastewater and phosphogypsum. The commenters argued that this gel is likely to remain in suspension in both the gypsum transport water and the cooling pond process wastewater, which may pose significant problems in the operation of plant equipment when these waters are returned to the production process. In particular, several commenters stated that the gel would potentially "blind" (clog) the phosphogypsum filter when the treated gypsum transport water is returned to the filter and reused as filter washwater, resulting in decreased efficiency, increased downtime, and lost production. Commenters also indicated that they were unaware of any demonstrated technology to remove the gel from the phosphogypsum filters.

EPA is not convinced that the catastrophic operational effects predicted by the commenters would occur on a widespread and continuing basis if lime treatment of the special wastes were to be instituted, particularly if FSA recovery were to be practiced. Commenters have assumed that the engineering alternatives contemplated by EPA would involve continual treatment of process wastewater and phosphogypsum as they are *currently* generated, when in fact the alternatives were developed to address management of new waste streams having different chemical characteristics resulting from treatment and/or product recovery. Therefore, the appropriate question is whether lime treatment of process wastewater that has *not* reached a high equilibrium concentration of chemical contaminants would result in significant gel formation, not whether lime treatment of currently generated "pond water" would create such operational problems.

Nevertheless, EPA does have some concerns about the efficacy of a lime treatment strategy. For example, the Agency recognizes that for a period of time (perhaps one to two years), treatment of existing pond water would occur. To the extent that gel formation took place, operational difficulties might be significant. Because, however, implementation of today's decision does not require that lime treatment be implemented, EPA does not believe that resolution of this issue (which would require additional research) is necessary prior to a determination of the appropriate regulatory status of the special wastes from phosphoric acid production.

3. Feasibility of Separate Management of Phosphogypsum and Process Wastewater. Commenters expressed concern over the technical difficulty inherent in separately managing phosphogypsum and process wastewater so that no hydraulic communication between the two "circuits" is permitted. Because the integrated management of these two wastes is employed at all existing facilities and is, according to the commenters, essential to maintaining a negative water balance (i.e., zero discharge through NPDES outfalls), the commenters believed that the separate management of these two wastes is an undemonstrated technology that cannot be used to support a regulatory determination. One commenter performed a computer modeling study to predict his facility's water balance under Engineering Alternatives 1 and 7 and predicted that separate management of process wastewater and phosphogypsum at the facility would require treatment and discharge of excess process wastewater. Commenters indicated that the potential increase in discharge created by segregated management would be contrary to the objectives of the Clean Water Act effluent guidelines as well as NPDES requirements for the industry. Furthermore, the commenters pointed out that the Agency addressed neither the feasibility nor the cost of implementing separate management of the wastes.

As discussed above, the Agency has never suggested that it would require complete hydraulic separation of the areas dedicated to gypsum disposal and process water cooling. In addition, the computer simulation results submitted by the commenter assume no changes or adjustments in the operation of the plant, an assumption that is contrary to standard industry practice. Plants continually monitor water balance and modify their water management activities as needed to comply with discharge limits and operational requirements. EPA has received no convincing evidence that suggests that a new water balance could not be developed for affected plants, though admittedly, new equipment and piping might be necessary in some situations. Accordingly, EPA believes that the potential impacts on plant water balance and associated regulatory significance of the issue as suggested by the commenters are substantially overstated.

4. Land Required To Implement Subtitle C Compliance Alternatives. Some commenters contend that adequate amounts of land are unavailable to implement the subtitle C compliance alternatives (Alternatives 1, 2, and 7); hence, the commenters stated that implementation of these alternatives under subtitle C is infeasible. The commenters contend that the implementation of these alternatives would require the construction of new waste management and treatment units and expansion of existing waste management units on land that is in addition to acreage already occupied at the facilities. Specifically, the commenters stated that in order to implement Alternative 1 (lime

neutralization of all waste streams), additional land would be required for: (1) Extra filter capacity; (2) lime receiving and slaking facilities; (3) a 50-acre gypsum transport water pond; (4) an additional 50 acres of cooling ponds; (5) a cooling water neutralization basin; (6) a larger stack; and (7) cooling water sludge ponds. Many of the facilities that commented claimed that they did not have enough land available to accommodate all of these units, and many of these facilities reported that they could not purchase adjacent property of sufficient size.

EPA continues to believe that the availability and cost of land needed for regulatory compliance are not critical issues. As discussed in more detail below, the Agency believes that the commenters' estimates of the size of new required waste management units are significantly overstated. Also, additional land required for many of the items listed by the commenters (e.g., extra filter capacity, lime receiving and slaking facilities, neutralization basin) is quite modest in extent, particularly within the context of the vast scale of a domestic phosphoric acid plant (all of which are hundreds or thousands of acres in size). Moreover, to the extent that substantial new acreage is required for additional waste management units, land could be acquired that was not adjacent to the facility, i.e., the units could be sited at some distance from the plant. EPA believes that the incremental costs of managing the phosphoric acid wastes in this manner would be modest because the wastes are already piped (in slurry and liquid form) considerable distances (hundreds of yards) at some plants. Therefore, the Agency believes that "extending the pipeline," even for several miles, is not a significant issue, from either a feasibility or cost standpoint.

C. Costs of Engineering Alternatives

The Agency received comments on several aspects of the estimated costs of the engineering alternatives. Several of these comments are summarized below; the remainder are addressed in the supporting comment response background document.

1. Operating Year. Commenters argued that EPA significantly understated the costs of the engineering alternatives by basing its calculation of annual incremental compliance costs per ton of P_2O_5 output on a 365-day production year. The commenters contend that it is not possible for phosphoric acid facilities to operate 365 days in a year and that, due to necessary maintenance, facilities operate, on average, 330 days per year. Data submitted by individual facility operators in EPA's 1989 National Survey of Special Wastes from Mineral Processing Facilities demonstrate that most phosphoric acid plants operated for more than 350 days in 1988. Nonetheless, EPA recognizes that individual production lines within a given plant are subject to considerable down time for maintenance and repairs. Because the model plant used to evaluate the engineering alternatives in the Supplemental Analysis was based on a single production line, the Agency has revised its cost estimates to reflect the commenter's suggestion that a 330 day operating year be employed.

2. Capital Cost for Neutralization Sludge Ponds. Commenters argued that EPA seriously understated the capital cost of installing sludge disposal impoundments necessary to manage the calcium fluoride sludge that would be generated by lime neutralization of the cooling water component of process wastewater. The reasons given by the commenters are:

(1) EPA's capital cost was sufficient for only one year of sludge storage;

(2) The capital cost does not include the cost of acreage needed to provide adequate residence time for settling of solids in the treated cooling water; and

(3) Lining of the impoundment was not included and would be required.

EPA generally disagrees with this comment. The Agency recognizes that it did not provide complete information concerning engineering design assumptions in the Supplemental Analysis; this omission occurred because of extreme time constraints. EPA believes that many of the commenters' concerns arise from incorrect (though, in many cases, reasonable) inferences that they have made based upon the limited information that was available to them. First, the sludge settling/disposal impoundments referred to by the commenter were indeed designed to accommodate a 15 year accumulation of process wastewater treatment sludge. For engineering alternative 1, the impoundment was designed to contain 118,271,000 cubic feet of sludge (generation rate of 7.8 million cubic feet or 180 acre-feet per year). Using the same cost engineering model as employed for the RTC, EPA estimated that this impoundment would cover 64 acres (80 acres total, allowing for site preparation activities), and have a depth of 42 feet (14 foot dug out depth, 28 foot berm height).

Furthermore, as clearly stated in the Supplemental Analysis, the Agency believes that the volume of the sludge disposal impoundment (the vast majority of which would be available in the early years of operation) coupled with the large volume of the existing cooling pond, would provide adequate residence time for solids removal (settling) from the treated process wastewater stream. Commenters have provided no evidence or a rationale supporting their contention that EPA's assumptions in this regard might be invalid; EPA concludes, therefore, that its approach as described in the Supplemental Analysis was and is reasonable. Therefore, the Agency believes that the commenters' suggestion that the actual area required for treated process wastewater and sludge management (1,272 acres versus EPA's estimate of 80 acres) is significantly in error.

Finally, EPA does acknowledge that there is a distinct possibility that the sludge settling impoundments required under Alternative 1 would require composite liners, at least for facilities located in the State of Florida. Florida ground-water protection standards (which incorporate federal MCLs) allow individual permit writers, at their discretion, to require the installation of liners under new units to ensure adequate protection of the ground-water resource. Because the concentrations of lime-treated process wastewater contaminants such as sulfate and sodium are likely to be an order of magnitude or more above MCLs (they are *not* removed to any significant extent by lime treatment [2]), EPA has concluded that liners would probably be required as a permit condition for any CaF_2 sludge disposal impoundment(s) that would be built in Florida as part of a regulatory compliance strategy. Therefore, to the extent that such impoundments would actually be constructed in response to new regulations, EPA has underestimated the associated compliance costs in the Supplemental Analysis.

3. Cost of Separate Management of Phosphogypsum and Process Wastewater. The industry commenters stated that EPA failed to consider the capital costs and operating and maintenance costs involved with separately managing the cooling water and phosphogypsum slurry circuits. The commenters further contend that separate management of these waste streams would necessitate a major retrofit of current waste management units at existing production facilities.

[2] As depicted in the Supplemental Analysis, Exhibit 1, p. 12, and as suggested by numerous additional data submitted to the docket.

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The commenters estimated that the cost necessary to separate the gypsum and cooling water circuits (capital cost) at EPA's model plant would be at least $10 million.

As discussed above, the Agency has never stated that it would require complete hydraulic separation of the areas dedicated to gypsum disposal and process water cooling. Accordingly, EPA does not believe that a plant retrofit to achieve separation of these areas would be necessary or required.

D. Economic Impacts of Alternative Waste Management Practices

In general, all of the industry commenters considered implementation of the various alternatives under subtitle C to be economically intractable. Based on their analysis of the economic impacts they believe would be imposed by the implementation of engineering alternative 1, the commenters concluded that: (1) Implementation of the alternative would eliminate the industry's export markets; (2) it is possible that foreign producers could penetrate the domestic market; and (3) incremental compliance costs could not be reasonably passed on to suppliers, workers, or consumers. The commenters believed that these conclusions would apply equally to impacts posed by engineering alternatives 2 and 7.

EPA recognizes that implementation of engineering alternatives 1, 2, and 7 under a subtitle C framework would impose cost impacts that might be difficult for members of the domestic industry to withstand. The real issue, however, is the magnitude and distribution of the impacts that might be imposed by tailored subtitle C standards. Under the Subtitle C-Minus scenario presented in both the RTC and the Supplemental Analysis, facilities could achieve compliance by adopting strategies to either contain or reduce/eliminate contaminants in their special wastes. Presumably, they would do so in a manner that minimized costs, given their own operational strategies and site-specific conditions. Therefore, the cost estimates provided in the Supplemental Analysis should be viewed as upper-bound estimates; it is likely that actual costs and associated impacts would be lower (at least on a per ton P_2O_5 basis) than those estimated for the model plant.[8] This fact, coupled with diminished relevance of the cost impacts of full subtitle C regulation, suggests that many of the claims made by commenters are overstated.

II. Other Wastes Addressed in the Notice of Data Availability

EPA received no comments on the additional information regarding gasifier ash and process wastewater from coal gasification. However, the Agency did receive two comments addressing the supplemental analysis of basic oxygen furnace dust/sludge from carbon steel production. The Agency has taken the comments into account in developing this final regulatory determination. EPA's detailed responses to the comments are available for inspection in the docket.

[FR Doc. 91-12563 Filed 6-12-91; 8:45 am]
BILLING CODE 6560-50-M

[8] While this is true, estimated costs under the Subtitle D-Plus scenario are also very high.

federal register

Thursday
June 13, 1991

Part III

Environmental Protection Agency

40 CFR Parts 261, 264, and 265
Hazardous Waste Management System; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 264, and 265

[FRL-3963-6]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Administrative stay.

SUMMARY: The Environmental Protection Agency is today announcing an administrative stay of the hazardous waste listings F032, F034, and F035 in process areas at wood preserving plants. The primary effect of the stay is to conditionally extend the effective date of the drip pad management standards to February 6, 1992, for the upgrade of existing drip pads and to May 6, 1992, for the installation of new drip pads. Certain management standards for drip pads, the inclusion of past users of chlorophenolic formulations in the listing description for certain F032 wastes, and the scope of wastewaters with respect to waters that do not come into contact with preservative are also being stayed.

DATES: Effective Date: June 5, 1991. For reporting deadlines, see section VI of this preamble.

ADDRESSES: The official record for this administrative stay is identified as Docket Number F–91–WPWS–FFFFF and is located in the EPA RCRA Docket, room M2427, 401 M Street SW., Washington, DC 20460. The public must make an appointment in order to review docket materials by calling (202) 475–9327. The docket is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Edward L. Freedman, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 245–3657.

SUPPLEMENTARY INFORMATION: The contents of today's notice are listed in the following outline:

I. Background
II. Appropriate Effective Date for Drip Pad Standards
III. Substantive Standards for Drip Pads
IV. Pentachlorophenol Cross-Contamination
V. Scope of the Wastewater Listing
VI. Agency Action
VII. Effects On State Authorization
VIII. Paperwork Reduction Act

I. Background

On December 6, 1990, EPA promulgated regulations listing as hazardous various wastes generated from wood preserving processes that use chlorophenolic, creosote, and/or inorganic (arsenical and chromium) preservatives (55 FR 50450 (Dec. 6, 1990), adding hazardous wastes F032, F034, and F035 to the lists of hazardous wastes in 40 CFR 261.31). In addition, and of particular relevance for the present notice, the Agency promulgated standards for a new type of waste management unit, a drip pad (55 FR 50484–89, adding a new subpart W to parts 264 and 265 of the regulations). Drip pads receive drippage from treated wood immediately after the wood is removed from the treatment vessel. The pads are eligible for 90-day generator accumulation status under § 262.34 provided they are designed and operated in compliance with the subpart W standards (amended § 262.34(a)(2), 55 FR 50483–84). The standards vary somewhat for new and existing drip pads.

Because the rule was promulgated partially pursuant to the 1984 amendments and partially pursuant to preexisting authorities, the requirements take effect at different times in different states. As a HSWA rule, the F032 listing of various residues from wood preserving processes using, or that previously used, chlorophenolic formulations takes effect on June 6, 1991 in authorized and unauthorized States (55 FR 50469–70 and RCRA section 3001(e)). Drip pads used in connection with F032 wastes are likewise subject to the subpart W standards on June 6 in all States (*Id.* at 50470). The F034 and F035 listings and related management standards do not take effect immediately in authorized States since they were not adopted pursuant to HSWA (*Id.*).

II. Appropriate Effective Date for Drip Pad Standards

The first issue discussed in the present notice concerns the appropriate effective date for the drip pad standards. After the rule was promulgated, the American Wood Preservers Institute (AWPI), representing a significant segment of the wood preserving industry, conducted a survey to determine its members' ability to comply with the drip pad standards on June 6. Although results are somewhat fragmentary, it appears that a significant number of facilities subject to the June 6 date are unable to comply at that time. Extrapolation of the survey results in an estimate of 200 wood preserving facilities subject to the June 6 deadline (i.e. those managing F032 wastes, those in unauthorized States, and those in States authorized for the wood preserving rule), of which approximately 140 (70 percent) report that they are unable to comply on June 6.

The principal reasons cited for inability to comply are: (1) Difficulties in obtaining financing; (2) difficulties in obtaining a professional engineer's certification of compliance (see § 265.441(a), 55 FR 50487); and (3) difficulties in coordinating pad installation or upgrading activities with ongoing corrective action at the facility. In addition, there has been some discussion of difficulties in some climates of constructing pads during very cold or rainy seasons.

EPA has examined this information carefully, and conducted its own independent inquiries and site visits. The Agency's conclusion is that, although a significant percentage of facilities can comply with the June 6 effective date, a significant portion are unable to meet that date for legitimate reasons. In this regard, the Agency notes that it has phased in new design requirements for other types of regulated units to accommodate similar difficulties to those now facing certain wood preservers. See § 265.193(a) (phasing in secondary containment requirements for hazardous waste tanks); § 265.90(a) (groundwater monitoring requirements effective 18 months after promulgation date); 47 FR 16555 (April 16, 1982) (phasing in certain financial responsibility requirements). The Agency notes further that the issue of drip pad compliance effective date did not receive a great deal of attention during the rulemaking because the main focus of the industry's rulemaking comments challenged the need for listing these wastes at all, and also because the court-ordered November 15, 1990, promulgation date necessitated an expedited Agency review schedule.

III. Substantive Standards for Drip Pads

AWPI and other affected industry parties also questioned the appropriateness of requiring new drip pads to be sealed with an impermeable coating and to have liners and leak detection systems as well. In their view, this level of control is either redundant or unnecessary. In addition, they questioned the technical feasibility of finding an impermeable sealer for some arsenical solutions.

IV. Pentachlorophenol Cross-Contamination

A further issue that concerns the wood preserving industry is the scope of the F032 listing (for wastes from processes using pentachlorophenol as a preservative). As promulgated, this listing includes wastes generated by creosote or CCA plants that previously used chlorophenolic formulations. Although the rules provide a procedure whereby an individual facility can demonstrate that cross-contamination is no longer occurring (in which case the wastes from the process would still be hazardous but classified under either the F034 or F035 waste codes), the industry argues that these procedures are potentially unnecessary and impracticable. Furthermore, by including potentially cross-contaminated wastes within the scope of the F032 listing, more facilities become subject to the June 6 deadline, since the F032 listing takes effect on that date in both authorized and unauthorized States since it is a HSWA rule. This increases the number of wood preserving facilities potentially unable to comply with the drip pad standards on that date.

V. Scope of the Wastewater Listings

The wood preserving industry further questioned the scope of the listing of wood preserving wastewaters. Among other points, they contend that certain wastewaters are not hazardous because the wastewaters do not come in contact with process contaminants, and maintain further that processes can be reconfigured to avoid contamination of other water, such as rainwater. Because the listing applies to all wastewaters, however, these efforts would be without point because all the wastewaters would remain hazardous (unless and until delisted).

VI. Agency Action

A. EPA has determined to issue an administrative stay of the applicability of the F032, F034 and F035 listings to the process area receiving drippage of these wastes, i.e., the area potentially covered by the subpart W drip pad standards. As explained below, this stay is available only for wood preserving facilities meeting certain conditions intended to limit the extension to those facilities making bona fide efforts to comply with the rule. For existing drip pads, the stay will remain in effect until February 6, 1992, and for new drip pads, the stay will remain in effect until May 6, 1992.

The Agency has selected these dates for the following reasons. The Agency believes that two months of time beyond the June 6, 1991, effective date is necessary for wood preserving plants to determine and report their definite intentions as to compliance with the rule. The Agency believes that up to three additional months will be required for all facilities intending to come into compliance to fully investigate and obtain the necessary funding required to retrofit existing pads and to construct new pads. The retrofitting of existing drip pads will require less time than the construction of new drip pads. Thus, the Agency has allowed up to three additional months for the retrofitting of existing drip pads and up to six additional months for the construction of new drip pads. These estimates are consistent with information supplied by the wood preserving industry. Based on these estimates, the Agency feels that final compliance dates of February 6, 1992, and May 6, 1992, are reasonable compliance dates for plants with existing drip pads and newly constructed drip pads, respectively.

The effect of the administrative stay is that activities that would otherwise constitute disposal of F032, F034, or F035 wastes into the process area, or onto existing drip pads in process areas, are not covered by the respective wood preservative waste listings during the duration of the stay. The stay is limited to the process area, however. Thus, the listings are not stayed for F032, F034, or F035 wastes, including soil contaminated with these wastes, that are removed from this area. (During the term of the administrative stay, such removal would be considered generation of an F032, F034, or F035 waste. 53 FR 31147–49 (August 17, 1988).)

As noted above, the Agency intends (and AWPI expressly agrees) that this limited stay should apply only to those facilities that intend to comply with the subpart W standards and that are willing to make bona fide efforts to do so during the stay period. It obviously makes no sense to extend the rule's compliance date for facilities simply desiring to continue operations that are environmentally unsound (such as operating without a drip pad or with defective pads) until they are forced to close. Consequently, the Agency is making the stay applicable only to those facilities that comply with the conditions described below. Failure to comply with these conditions means that the listings remain in effect, in which case process area drippage can only occur lawfully for facilities with compliant drip pads, or for facilities in compliance with requirements for land disposal of hazardous waste (or other units meeting applicable technical standards). It should be noted that all portions of the rule that are not stayed remain in effect. For example, the stay does not affect the March 6, 1991, 3010 notification deadline for generators and TSDs handling F034 and F035 in unauthorized states or F032 in all states. Thus, those generators and TSDs that were managing the forementioned wastes, that had not previously notified the Agency of hazardous waste activity, and that did not submit a 3010 notification to the Agency by the deadline are in violation of that requirement.

First, by August 6, 1991, all wood preserving facilities affected by the stay (i.e., those otherwise subject to the June 6 compliance date) must notify either the Agency's applicable Regional Office or an authorized state of their intention to follow one of four courses of action: (1) To upgrade an existing drip pad by February 6, 1992; (2) to install a new drip pad by May 6, 1992; (3) the facility already has installed a drip pad in compliance with subpart W; or (4) the facility will cease operation by August 7. A facility notifying that it intends to cease operation must cease operation by August 7 or its drippage in the process area becomes subject to all applicable subtitle C regulations. The drip pads already installed in compliance with subpart W are not subject to regulation until February 6, 1992, and owners and operators of such pads need not submit any further notification to the Agency other than the August 6 notice. Facilities notifying that they intend to comply by February 6, 1992, or May 6, 1992, must further state that they will use best efforts to minimize drippage that occurs during the duration of the stay.

Second, on November 6, 1991, facilities intending to comply with drip pad standards must submit a second notification providing evidence that they are making good faith efforts to comply and have a reasonable expectation of doing so. To make this showing, the notification must include an estimate of the cost of compliance, and evidence of financing to pay this expense. Evidence could take the form of an agreement with a bank or other lending institution, or an escrow account dedicated to paying for installation of drip pads.

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Persons unable to make this demonstration would have to cease operation by November 7, 1991. (The scheme is somewhat similar to the statutory loss of interim status provisions which required certain facilities to certify that the facility was in compliance with financial responsibility and groundwater monitoring requirements by a particular date or to cease operation (RCRA section 3005(e)(2))). EPA repeats that the rule remains in effect for persons who do not comply with these conditions. EPA or the state, as appropriate, may in its discretion, allow a facility to operate beyond the November 6, 1991, deadline: *provided,* that (1) The respondent demonstrates that it cannot meet the November 6, 1991, deadline because of circumstances entirely beyond its control, despite its best efforts to comply (e.g., its impossibility of performance is due to corrective action being undertaken at the wood preserving facility pursuant to a federal or state order or permit), and (2) such authorization to operate is set forth in an enforceable compliance order.

B. EPA has also decided to issue a stay of the requirement that new drip pads be sealed, coated, or covered with an impermeable material (§ 264.572(a)(4), § 265.443(a)(4)). The Agency is taking this step because we are now convinced that this requirement is unnecessary for pads constructed with a liner and leak detection system provided the pad is maintained in good condition with actions taken to remedy any cracks that may develop. The liner would provide secondary containment, thus fulfilling the Agency's object in developing management standards for drip pads (55 FR at 50453). We consequently are staying this requirement. Thus, on May 6, 1992 (i.e., the date when new pads must comply with the regulatory standards), new pads will not be required to be sealed, coated, or covered with an impermeable material. EPA also intends to initiate rulemaking to determine whether to make this a permanent regulatory change.

EPA intends, however, that this requirement remain in place for existing pads, once those pads are required to comply with the regulatory standards, because few (if any) existing pads are known to have liner and leak detection systems that comply with the subpart W standards. Thus, on February 6, 1992, existing pads must be sealed, coated, or covered with an impermeable surface. Because existing pads need not have liner and leak detection systems (§§ 264.571, 265.441) the requirement of an impermeable surface is necessary to provide secondary containment. (The Agency has determined that commercially available sealants exist that would be appropriate for use at the pH of preservative solutions used by the wood preserving industry.)

C. The Agency is also staying the portion of the rule that included wastes from plants generating F034 or F035 wastes that previously used chlorophenolic formulations as within the scope of the F032 listing. Upon reflection, the Agency realizes that structuring the rule in this way is not serving any useful environmental purpose. Wastes from creosote or inorganic arsenical wood preserving processes that previously used chlorophenolics are already classified as hazardous under the F034 or F035 listings. The regulatory standards for F032, F034, and F035 wastes are identical, so that the F032 listing does not carry with it a stricter regulatory regime (55 FR at 50467). The only immediate regulatory consequence of the F032 listing for these plants is to make more facilities subject to the June 6 compliance date. As explained above in the discussion on compliance dates for drip pads, this consequence has negative features because many facilities that can comply with the drip pad standards with some additional time appear unable to do so by June 6 for legitimate reasons. Since the F032 listing does not result in different substantive regulation for the wastes other than the timing of the effective date, EPA has decided to stay the scope of the F032 listing so that it does not cover wastes from creosote or inorganic arsenical plants that previously used chlorophenolic preservatives as long as any wastes from that plant are regulated as F034 or F035 wastes. EPA also intends to initiate rulemaking to determine whether to permanently amend the F032 listing.

The Agency notes, however, that the issue of chlorophenolic cross-contamination will be relevant when EPA establishes treatment standards for the F032, F034 and F035 wastes under the land disposal restrictions program. The fact that a waste may be classified as F034/F035 rather than F032 does not prevent the Agency from promulgating treatment standards for the chlorophenolic formulation, and the various dioxins and furans that may be present in these wastes as a result of equipment cross-contamination. Thus, the Agency anticipates including standards for these constituents in all of the treatment standards for the listed wood preserving wastes.

D. Finally, EPA has decided to stay the listing of wastewaters so that the listing applies only to wastewaters that have come in contact with process contaminants, i.e., wood preserving solutions, spent preservatives, and the like. It is these process contaminants that make the wastewater hazardous, and the Agency did not intend for the listing to apply to uncontaminated wastewaters (see 56 FR 21955, May 13, 1991). Thus, if wastewaters are kept uncontaminated, they will not be (and should not) be covered by the listing. EPA intends to initiate rulemaking to determine whether to make this a permanent regulatory change.

Any wood preserver claiming that wastewater has not come in contact with process contaminants would have the burden of proving that this is the case. This is because the details of plant operation, and in particular wastewater management, are within the special knowledge of the wood preserving facility. See 50 FR at 643 (January 4, 1985) and cases there cited. The best (and perhaps only) way of showing no contamination would be to segregate uncontaminated waters (for example, non-contact cooling water) from normal process wastes and process areas. Such segregation also serves a useful waste minimization function by reducing the total volume of contaminated wastewater. Thus, the Agency views today's action as creating an incentive for waste minimization. Conversely, however, the Agency notes that if initially uncontaminated wastewater is mixed with contaminated wastewater (as in a centralized wastewater treatment system) or with process contaminants (such as rainwater falling on a process area drip pad), then the entire volume of wastewater is hazardous because of the mixture rule.

E. EPA is issuing this administrative stay pursuant to 5 U.S.C. 705 which provides that an agency may postpone the effective date of action taken by it when justice so requires, pending judicial review.[1] The Agency believes that this standard is satisfied here because it appears to be legitimately infeasible for a significant number of wood preserving facilities to comply with the drip pad standards by June 6.

In addition, the sealant requirement for new drip pads appears unnecessary and could add to the time needed to comply with drip pad standards. Inclusion of potentially cross-contaminated wastes within the F032 listing does not serve any direct

[1] AWPI has filed a petition for review of the December 6 rule.

regulatory purpose (given the uniform regulatory standards for F032, F034, and F035 wastes), and causes more facilities to be subject to the June 6 effective date with which they may be unable to comply. Inclusion of uncontaminated wastewaters within the scope of the listing is not necessary to further any legitimate environmental objective, and so should legitimately be stayed.

At the same time, the administrative stay is structured so as to prevent environmental abuses from uncontrolled drippage during the pendency of the stay, and is further structured to be available only to facilities making bona fide efforts to comply. A significant number of wood preservers thus could be harmed irreparably should the drip pad standards take effect on June 6. The conditions on the administrative stay, plus structuring the duration of the stay to allow time for clean-up of drippage contamination in existing process areas, also assures that the stay will be in the public interest. The Agency consequently finds that issuing this stay is in the interests of justice.[2]

VII. Effects on State Authorization

The effects of the administrative stay depend largely on whether the facility is managing a wood preserving waste identified by a HSWA-based listing (i.e., the F032 wastes), as opposed to the newly listed wastes (F034 and F035) for which the listing determinations were based on pre-HSWA authority.

As explained earlier, EPA considers that both the F032 listing and the new subpart W drip pad standards (when applied to the management of F032 wastes) are based on HSWA authority. As EPA explained in the December 6, 1990 notice (see 55 FR 50469), the HSWA-based F032 listing and related subpart W facility standards take effect simultaneously in all States, regardless of their authorization status. With respect to these HSWA-based requirements, the effect of the administrative stay is to defer in all States EPA's implementation and enforcement of these requirements beyond June 6, 1991, in accordance with the administrative stay schedule. According to the schedule for State program revisions contained in 40 CFR 271.21(e), the December 6, 1990 Wood Preservation Rule is subject to a July 1, 1992 deadline (July 1, 1993 if a statutory change is required) for States to modify their hazardous waste programs and thereafter seek approval from EPA for the program revision. Since the administrative stay would not extend any effective dates beyond May 6, 1992, EPA considers it very unlikely that any State will have received approval from EPA to implement the December 6, 1990 regulation under RCRA authority with earlier or more stringent effective dates than those set out in this stay. Nevertheless, States may modify their hazardous waste programs to adopt the Wood Preservative Rule in the interim. While EPA encourages States to follow the deferred effective dates announced in this stay, States may elect to implement the rule with effective dates earlier than those imposed under this stay, as a matter of State law.

In the case of facilities managing F034 and F035 wastes, the effect of the stay depends on whether the facility is located in an authorized or unauthorized State. The F034 and F035 listing determinations were promulgated pursuant to pre-HSWA authority, and EPA considers the subpart W drip pad standards that govern the management of F034 and F035 wood preserving wastes to also be based on pre-HSWA authority. According to the December 6, 1990 Rule notice, these wastes listings and facility standards would have been effective on June 6, 1991 only in those States that are not authorized for any part of RCRA. EPA implements the RCRA program in unauthorized States, and the effect of this stay will be to defer EPA's implementation and enforcement of the Wood preserving Rule's F034 and F035 provisions in accordance with the administrative stay schedule.

In authorized States, the pre-HSWA basis for the F034 and F035 listings (and related subpart W drip pad standards) means that these requirements cannot be implemented as RCRA requirements until the State has adopted the necessary program modifications and obtained approval for the necessary program modifications and obtained approval for the revisions from EPA. The modification schedule in 40 CFR 271.20(e) requires that States modify their programs by July 1, 1992 (July 1, 1993 if a statutory change is required) to adopt this regulation and thereafter seek approval of the revisions from EPA. Since the stay does not extend any effective dates beyond May 6, 1992, it is unlikely that States will become authorized for the F034 and F035 listings and facility standards before the deferred effective dates in the stay have already passed. However, facilities in both authorized states and unauthorized states should understand that states may adopt and implement wood preserving regulations as a matter of state law, prior to obtaining EPA approval. While EPA strongly encourages States to follow the deferred effective dates announced in this stay, States may elect to adopt wood preserving waste regulations with more stringent (e.g., earlier) effective dates than those announced in this administrative stay.

VIII. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The OMB approval number is 2050-015. The public reporting burden for the wood preserving rule (as published in the Federal Register on December 6, 1990), inclusive of the reporting requirements in this administrative stay, is estimated to result in a total of 271 hours per facility per year. The burden prior to this administrative stay was estimated to average 272 hours per facility per year.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 marked "Attention: Desk Officer for EPA."

Dated: June 5, 1991

F. Henry Habicht,

Acting Administrator.

List of Subjects

40 CFR Part 261

Hazards materials, Waste treatment and disposal, Recycling.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

[2] Although the Agency does not regard today's action as a rule, were it to be viewed as a rule the Agency believes that there is good cause for issuing it without prior notice and opportunity for comment and for making it immediately effective. This is borne out by the pending compliance date and infeasibility of compliance for a substantial number of facilities, and means of conditioning the stay to assure continued protection of human health and the environment. In addition, EPA has sought and obtained comment on this action not only from the wood preserving industry but from members of the environmental community and the waste treatment industry as well. There also was opportunity to comment on all of these issues during the rulemaking itself, so that further comment may be unnecessary.

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40 CFR Part 265

Air pollution control, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

For the reasons set out in the preamble, title 40, chapter I is amended as set forth below.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.31 is amended by revising the F032, F034, and F035 listings to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
F032 [1]	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (NOTE: The listing of wastewaters that have not come into contact with process contaminants is stayed administratively. The listing for plants that have previously used chlorophenolic formulations is administratively stayed whenever these wastes are covered by the F034 or F035 listings. These stays will remain in effect until further administrative action is taken.).	(T)
F034 [1]	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving process generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (NOTE: The listing of wastewaters that have not come into contact with process contaminants is stayed administratively. The stay will remain in effect until further administrative action is taken.).	(T)
F035 [1]	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving process generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. (NOTE: The listing of wastewaters that have not come into contact with process contaminants is stayed administratively. The stay will remain in effect until further administrative action is taken.).	(T)

[1] The F032, F034, and F305 listings are administratively stayed with respect to the process area receiving drippage of these wastes provided persons desiring to continue operating notify EPA by August 6, 1991 of their intent to upgrade or install drip pads, and by November 6, 1991 provide evidence to EPA that they have adequate financing to pay for drip pad upgrades or installation, as provided in the administrative stay. The stay of the listings will remain in effect until February 6, 1992 for existing drip pads and until May 6, 1992 for new drip pads.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

4. Section 264.572 is amended by revising paragraph (a)(4) to read as follows:

§ 264.572 Design and operating requirements.

(a) * * *

(4) Be impermeable, e.g., concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system.

Note: The requirement that new drip pads be impermeable, e.g., that new drip pads be sealed, coated, or covered with an impermeable material is administratively stayed. The stay will remain in effect until further administrative action is taken.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

6. Section 265.443 is amended by revising paragraph (a)(4) to read as follows:

§ 265.443 Design and operating requirements.

(a) * * *

(4) Be impermeable, e.g., concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system.

Note: The requirement that new drip pads be impermeable, e.g., that new drip pads be sealed, coated, or covered with an impermeable material is administratively stayed. The stay will remain in effect until further administrative action is taken.

* * * * *

[FR Doc. 91-13954 Filed 6-12-91; 8:45 am]

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federal register

Thursday
June 13, 1991

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories; Compliance Extensions for Early Reductions; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-3920-3]
RIN 2060-AC89

National Emission Standards for Hazardous Air Pollutants for Source Categories: Proposed Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The proposed rule would implement the provisions in section 112(i)(5) of the Clean Air Act (as amended in 1990) ("the Act"). Those provisions allow an existing source to obtain a six-year extension of compliance with an emission standard promulgated pursuant to section 112(d) of the Act if the source has achieved an emission reduction of 90 percent or more of hazardous air pollutants (95 percent or more for particulates) by certain dates specified in the Act. If the source is granted a compliance extension, an alternative emission limitation would be established by permit to ensure continued achievement of the emission reduction. The intended effect of the proposed rule is to establish requirements and procedures for source owners and operators to follow in order to obtain compliance extensions and for reviewing agencies to follow in evaluating requests for extensions.

DATES: *Comments.* Comments must be received on or before July 29, 1991.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 27, 1991, a public hearing will be held on July 11, 1991, beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Lina Hanzely at (919) 541-5673 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by June 27, 1991.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attention Docket Number A-90-47 (see Docket section below), room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Lina Hanzely (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5673.

Docket. Docket No. A-90-47, containing supporting information used in developing the proposed regulation and background information on the high-risk pollutant list, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M1500, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Documents. The emission estimating document may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "Procedures for Establishing Emissions for Early Reduction Compliance Extensions—Volume 1" (EPA-450/3-91-012a). The EPA also has prepared an enabling document which is intended to aid EPA Regional Offices and the States in implementing the rule. However, the information in this document also may be useful to the public and is available from the U.S. EPA Library (see above address). Please refer to "Enabling Document for Regulations Governing Compliance Extensions for Early Reductions for Hazardous Air Pollutants" (EPA-450/3-91-013).

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5421.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background and Purpose
  A. Clean Air Act Amendments: Provisions for Early Reductions
  B. Advantages of Early Reduction Program
  C. Coordination with States
  D. Participation of Interested Parties
  E. Judicial Review
II. Summary of and Rationale for Proposed Rule
  A. Applicability
  B. Definition of Source
  C. Demonstration of Early Reduction
  1. General
  2. High-Risk Pollutants
  3. Reduction Demonstration Procedures
  4. Base Year and Post-Control Emissions
  D. Enforceable Commitments
  E. Review of Base Year Emissions
  F. Permit Applications and Permits
  G. Selection of List of High-Risk Pollutants
  1. Criteria for Identifying High-Risk Pollutants
  2. Application of the Criteria
III. Administrative Requirements
  A. Public Hearing.
  B. External Participation.
  C. Docket.
  D. Paperwork Reduction Act.
  E. Executive Order 12291 Review
  F. Regulatory Flexibility Act Compliance.

I. Background and Purpose

A. Clean Air Act Amendments: Provisions for Early Reductions

On November 15, 1990, the Clean Air Act was amended, and significant changes were made to section 112 of the Act establishing national emission standards for hazardous air pollutants (HAP). One of the new features of the Act is a provision in section 112(i)(5) that allows an existing source to be granted a six-year extension of compliance with an otherwise applicable section 112(d) standard (MACT standard) upon demonstration by the owner or operator of the source that it has achieved a reduction of 90 percent or more in emissions of HAP (95 percent or more in the case of particulates). An enforceable emission limitation reflecting the reduction would then be established for the source by a permit. The emission reduction would have to be achieved before proposal of the applicable standard in most cases. However, the Act provides that a source achieving the reduction after a standard's proposal but before January 1, 1994, may qualify for the compliance extension if it makes an enforceable commitment (to achieve such reduction) before proposal of the standard.

The Act requires that the emission reduction be determined by comparing the post-control emissions with verifiable and actual emissions in a base year not earlier than 1987, except that 1985 or 1986 may be used as a base year if the emission data are based on information received by the Administrator before November 15, 1990, pursuant to an information request issued under section 114 of the Act. To qualify for an extension, the reduction would be calculated by comparing total base year and post-control HAP emissions from all emission points in the source. The only limit to this overall reduction calculation is with respect to "high-risk pollutants." Section 112(i)(5)(E) of the Act states that, "With respect to pollutants for which high risks of adverse public health effects may be associated with exposure to small

quantities including, but not limited to, chlorinated dioxins and furans, the Administrator shall by regulation limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 per centum reduction in such high-risk pollutants qualifying for an alternative emissions limitation under this paragraph." Section II.C. of this preamble includes a discussion of additional high-risk pollutants that are listed in today's proposed rule for which offsetting reductions of other HAPs would be limited.

Although the Act provides that a source may obtain a compliance extension and an alternative emissions limitation upon demonstration of the 90 (95) percent reduction, there is a further provision in section 112(i)(5)(A) that says, "Nothing in this paragraph shall preclude a State from requiring reductions in excess of those specified in this subparagraph as a condition of granting the extension * * *" In other words, a State may require that greater than a 90 (95) percent reduction of HAP emissions be achieved by the source in order to obtain a compliance extension. This topic is discussed further in section I.C. of this preamble.

B. Advantages of Early Reduction Program

The purpose of the section 112(i)(5) provision is to encourage early reductions in HAP emissions. It has the potential for substantial emission reductions well before the compliance date for MACT standards. Source owners and operators can realize benefits from participating in the early reduction program by obtaining more time to develop strategies for compliance with MACT standards in exchange for significantly reducing HAP emissions earlier than otherwise required and by being able to choose the means by which they reduce their HAP emissions. The early reduction option gives them an opportunity to design cost-effective emission reduction approaches for their facilities and reduce the cost of compliance over the long-term. In addition, participating companies will enjoy improved community relations when they become recognized as good corporate citizens that are concerned about improving the environment. Public and environmental exposure to HAP would be significantly reduced earlier than if sources delay control of emissions until they are subject to MACT standards. This early reduction results not only in lower annual emissions but also in lower overall emissions from the source over the long-term.

The potential long-term reduction of HAP emissions due to achieving early reductions can be illustrated in an example (see Table 1). Consider a source emitting HAP at a rate of 100 tons per year. Assume this source achieves a 90 percent reduction in HAP emissions, to a rate of 10 tons per year, just prior to proposal of an applicable MACT standard, and receives a six-year extension for compliance with the standard. In comparison, consider an identical 100 ton-per-year source which does not achieve early reductions but complies with a MACT standard three years after the standard is promulgated, according to the compliance schedule for the standard (the Act provides that the standard specify the compliance date, not to exceed three years after promulgation of the standard). For purposes of this example, the standard is assumed to reduce HAP emissions from the source to two tons per year (98 percent reduction).

To estimate the additional HAP emissions decrease due to early reductions, a comparison can be made of cumulative HAP emissions under each scenario during the ten years starting from the time the early reductions are made to the time both sources are complying with the MACT standard (which is after expiration of the six-year extension). The ten-year period includes one year from proposal (the time the early reduction must be achieved) to promulgation of the standard, three years from promulgation to the assumed compliance date of the standard, and six years for the compliance extension. During the ten years, the source reducing emissions early emits 10 tons per year or a total of 100 tons. The other source emits 100 tons per year for four years (period before it complies with the standard) and two tons per year for the remaining six years, for a total of 412 tons. Thus, even when the standards are very stringent, the early reduction program can produce significant additional HAP reductions.

A source may achieve reductions after proposal of an applicable standard and still participate in the early reduction program, provided the source reduces emissions before January 1, 1994 and enters into an enforceable commitment to achieve these reductions before proposal of the standard. In such cases, reductions do not occur as far in advance of compliance with a standard as in the previous example, and the net reduction of HAP emissions would be less but still significant.

TABLE 1.—EMISSIONS UNDER EARLY REDUCTIONS VS. MACT

Time (years)	MACT scenario	Early reduction scenario
From proposal to promulgation (year 1)	100	10
Year 2	100	10
Year 3	100	10
Year 4	100	10
Year 5	2	10
Year 6	2	10
Year 7	2	10
Year 8	2	10
Year 9	2	10
Year 10	2	10
Totals	[1] 412	[1] 100

Assumptions: 100 ton/yr source (uncontrolled); MACT achieves 98% control; MACT is effective 3 yrs after promulgation; 9 yrs after MACT promulgation MACT applies to source which received a compliance extension.

[1] Discounting the implicit valuation of these emission totals at a 3 percent social discount rate leads to present values of 380 tons/year under the MACT scenario and 85 tons/year under the early reduction scenario.

The EPA is strongly committed to encouraging emission sources to voluntarily reduce emissions of air toxics, and the provisions of the rule being proposed today are intended to provide sufficient flexibility to encourage source owners and operators to participate in the early reduction program. In addition, because the Act includes certain requirements a participating source must meet, the proposed rule also contains provisions to ensure that those requirements are met, as discussed in section II of this preamble. The regulatory nature of the early reduction program distinguishes it from another EPA program, the 33/50 Project (Industrial Toxics Project), which also is designed to encourage voluntary reduction of toxics releases, not only into the air but other environmental media as well.

The 33/50 (Industrial Toxics) Project was announced in February 1991 and is one of the major components of the Agency's pollution prevention strategy. The project establishes a national goal to reduce releases and offsite transfers of 17 chemicals by one-third by 1992 and one-half by 1995 with emphasis on the use of pollution prevention techniques. The baseline for these reduction goals is the 1988 Toxics Release Inventory (TRI). The Administrator is asking companies who produce or use these chemicals to participate in this program by making voluntary commitments to reduce their releases to all environmental media. Progress in achieving these goals will be monitored through the use of information reported to the TRI.

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The Agency intends to implement the 33/50 Project and the early reduction program in a coordinated manner to minimize confusion over their differing requirements and encourage participation. The early reduction program is being implemented by a rule defining procedures and requirements that must be followed to obtain a compliance extension. Any HAP emission reductions documented under the early reduction program also can be submitted and credited under the 33/50 Project. Reduction credits are not "used up" when applied to one of these programs. However, it is not necessarily the case that HAP reductions achieved and documented under the 33/50 Project will qualify a source for a compliance extension under the early reduction program. In general, the early reduction program documentation requirements are more stringent and, of course, sufficient control must be employed to achieve at least a 90 (95) percent reduction from base year HAP emissions in order to qualify.

As with the 33/50 Project, the Agency encourages participation in the early reduction program through the adoption of pollution prevention measures. The Agency defines pollution prevention as the use of materials, processes, practices, or products that avoid, reduce or eliminate wastes or toxic releases, through activities such as toxic use reduction, source reduction and closed-loop recycling.

C. Coordination With States

EPA will administer the early reduction program until States have approved permit programs under title V of the Act, and source owners or operators seeking compliance extensions will submit enforceable commitments and permit applications to the appropriate EPA Regional Office. EPA headquarters offices will be available to provide technical assistance and guidance to EPA Regional Offices and States in administering the early reduction program. After a State has an approved permit program, it will process and evaluate for approval the enforceable commitments and permit applications. The Agency solicits specific comment on whether it would improve the implementation of the early reduction program to delegate to the States review and acceptance of enforceable commitments prior to the approval of a State permit program under title V of the Act, as would be authorized in the State Programs provisions of section 112(l) of the Act. If EPA were to approve such delegations, EPA would anticipate using the delegation procedures set forth in 40 CFR part 61. EPA also solicits comment on whether such procedures would be appropriate for use in the early reduction program.

The involvement of State regulatory agencies, with or without approved permitting programs or delegated authority, will be very important to the success of the early reduction program. The proposed rule requires that source owners and operators send copies of enforceable commitments and permit applications to appropriate agencies in the States, and EPA will consult with State officials on applications that EPA processes. In addition, as the owner or operator attempts to comply with the requirements of the program at the Federal level, other procedures or requirements may apply to the source at the State level. For example, a source may be required to obtain State preconstruction and operating permits for any actions it undertakes under the early reduction program, or the source may have to meet separate control requirements imposed by existing State regulations for toxic air pollutants.

Thus, the States will be playing active roles, even at the outset, as sources reduce their HAP emissions to qualify for compliance extensions. Because of the potential for confusion or uncertainty to develop from differences in requirements for the early reduction program and existing State laws and regulations, EPA plans special coordination efforts to reduce these undesirable effects. The EPA will consult with the States to describe the features and advantages of the early reduction program and how EPA plans to administer the program prior to the States assuming administration responsibilities. In return, the States could share with EPA any conflicts or problems they envision, especially with regard to State air toxics regulations. The EPA Regional Offices also will consult with States regarding permit applications processed by EPA. The goal of these efforts is to foster EPA/State cooperation on the reduction of HAP emissions and ensure that all involved parties understand the requirements and procedures for early reduction demonstrations.

D. Participation of Interested Parties

The development of the proposed rule was closely coordinated with representatives of industry, environmental groups, State and local air pollution control agencies, and other special interest groups. Options for the rule's major provisions were presented and discussed with these and other interested parties at a meeting of the National Air Pollution Control Techniques Advisory Committee on January 29, 1991, and at four "roundtable" discussions in January, February, and March 1991. The views and concerns of these groups and individuals have been very helpful to the Agency in its attempt to develop a rule that will carry out the requirements of the Act, encourage the greatest possible early reduction of emissions consistent with the legislation, and hold to a minimum the difficulties that are inherent in any regulatory program. Comments on all aspects of the proposed rule are encouraged.

E. Judicial Review

Issuance of the permit establishing an alternative emissions limitation for a source would be considered a final Agency action and, as such, would be considered judicially reviewable. However, acceptance of an enforceable commitment by EPA would not be a final Agency action and would, therefore, not be judicially reviewable.

II. Summary of and Rationale for Proposed Rule

This section of the preamble includes discussion of the major provisions of the proposed rule, the rationale for the decisions that were made concerning them, and other options that were considered in making those decisions.

A. Applicability

The proposed rule applies to any existing source that wishes to obtain a six-year compliance extension from an applicable MACT standard by achieving early HAP emission reductions. The compliance extension would be obtained and authorized in accordance with section 112(i)(5) of the Act, as described in section I.A. of this preamble. As sections 112 (a)(4) and (a)(10) of the Act provide, an existing source is any source for which construction or reconstruction commenced prior to the date of proposal of an applicable standard. (See section II.B. for further definition of "source".) Any source commencing construction or reconstruction after proposal of an applicable standard would be considered a new source and could not apply for a compliance extension. The proposed rule also applies to State or local air pollution control agencies reviewing applications for compliance extensions and issuing permits with alternative emission limitations in accordance with a permit program approved under title V of the Act. The EPA Regional Offices will review applications and issue permits for sources located in States that do not have approved permit programs. Upon approval of their permit programs, States will assume the review and permitting activities.

B. Definition of Source

Section 112(i)(5)(A) of the Act specifies that the Administrator or a State with an approved permit program "* * * shall issue a permit allowing *an existing source*, for which the owner or operator demonstrates that *the source* has achieved a reduction of 90 per centum or more in emissions of hazardous air pollutants (95 per centum in the case of hazardous air pollutants which are particulates) from *the source*, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under subsection (d) for a period of 6 years from the compliance date for the otherwise applicable standard: *Provided*, That such reduction is achieved before the otherwise applicable standard under subsection (d) is first proposed." (emphasis added). The "emission limitation promulgated under subsection (d)" refers to an applicable hazardous air pollutant standard issued under section 112(d) of the Act (MACT standard).

"Existing source" is defined in section 112(a)(10) as "any stationary source other than a new source." "Stationary source" is given the same meaning under section 112 as under section 111(a). CAA section 112(a)(3). "Stationary source" under section 111(a) is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant." "Major source" is defined as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit * * * 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants."

The language of section 112(i)(5)(A) proceeds from the assumption that one can identify the "source" to which "the otherwise applicable standard" would apply. If EPA has made a determination as to what will constitute a "source" for a particular MACT standard, then it is that source that must achieve the 90 (95) percent early reduction in order to obtain an extension from the MACT compliance date. However, with one exception noted, below, at this time, EPA has not made any concrete determinations as to how it intends to define source for purposes of establishing MACT standards under section 112(d). Therefore, at this time EPA cannot define precisely an "existing k source" to which an otherwise applicable standard might apply for any particular source categories. EPA must define source for purposes of implementing the early reductions program.

At the outset, it must be noted that it is "[a] fundamental canon of statutory construction * * * that unless otherwise defined, words will be interpreted as taking their ordinary, contemporary meaning." *Perrin* v. *U.S.*, 100 S.Ct. 311, 313 (1979) citing *Burns* v. *Alcala*, 420 U.S. 575, 580–81 (1975). Because the terms, "building, structure, facility, or installation are not further defined in the statute they would normally assume their ordinary meaning."

Under *Chevron, USA, Inc.* v. *NRDC*, 467 U.S. 837 (1984), however, EPA has very broad legal discretion to determine whether strict application of the ordinary meaning rule is adequate to achieve the policies underlying the statute. If, in the Agency's reasonable judgment an alternative explanation better advances the statutory policies, EPA may adopt a definition that broadens or narrows the natural meaning of the language. Specifically, the Supreme Court has recognized in *Chevron* that EPA has broad discretion to define "source." Indeed the Court recognized in *Chevron* that if any Congressional intent can be discerned from the statutory language of section 111(a)(3), "the listing of overlapping, illustrative terms was intended to enlarge, rather than to confine, the scope of the Agency's power to regulate particular sources in order to best effectuate the policies of the Act." *Chevron*, 467 at 862 (1984). The use of the series of terms building, structure, facility, or installation is meant to convey an idea. Thus, a "source" can encompass "any discrete, but integrated operation, which pollutes." *Chevron*, 467 U.S. at 861. It could also encompass an entire plant.

EPA recognizes that, depending on a particular MACT standard, "source" may be defined broadly or narrowly, from an individual emission point up to and including an entire plant. EPA's definition of "source" proposed here today for purposes of the early reductions program is consistent with the broad flexibility encompassed under section 111(a)(3) and is designed to further the underlying purposes of the early reductions program. The definition represents EPA's best efforts to balance the statutory policy to encourage maximum participation in the program with the statutory constraints imposed by the requirements that 90 percent reduction must be achieved from an existing "source."

As set forth in § 63.73, EPA is proposing a multi-part definition of "source" for purposes of the early reductions program as follows:

(a) For the purposes of the early reductions program under this subpart only, source is defined as follows:

(1) A building, structure, facility or installation identified as a source in Appendix B;

(2) The entire contiguous facility;

(3) Any unit consisting of one of one or more emission points that can be characterized as a building, structure, facility, or installation;

(4) Any combination of sources defined in paragraph (a)(3), provided that emission reductions from the aggregation of sources constitutes significant reductions of hazardous air pollutant emissions of the entire contiguous facility under common ownership or control;

(5) Any individual emission point or combination of points, provided that emission reductions from such point or points constitutes a significant reduction of hazardous air pollutant emissions of the entire contiguous facility.

(b) for purposes of paragraphs (a)(4) and (a)(5) of this section, emission reductions from a source are considered significant if they are made from a hazardous air pollutant baseline of not less than (i) a total of 10 tons per year where the total base year emissions of hazardous air pollutants from the entire contiguous facility is greater than 25 tons per year or (ii) a total of 5 tons per year where the total base year emissions of hazardous air pollutants from the entire contiguous facility is 25 tons or less per year.

The scope of the definition is best illustrated by examples of "sources" that fall within this definition.

Under subparagraph (a)(1), EPA has, to date, only identified one type of emissions likely to be covered by a MACT standard. These are fugitive emissions sources from hazardous organic chemical facilities.

Fugitive emissions from equipment leaks covered in the Hazardous Organic NESHAP, or HON, to be proposed later this year have been identified with sufficient certainty to be considered separately. EPA has engaged in an extensive regulatory negotiation to establish MACT standards to be proposed for equipment leaks from HON facilities. See 56 FR 9315 (March 6, 1991). The negotiated regulation will apply to the collection of equipment (valve, pumps, connectors, etc.) within a process unit that either uses as a reactant or makes one of the organics listed as hazardous in section 112(b) of the Clean Air Act Amendments. For the purposes of the negotiated rule, the HON equipment leaks standard will cover all equipment from the feedstock

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storage tanks through end product disposition and wastewater treatment. The negotiating committee treated fugitive equipment leaks separately because they can occur throughout the plant wherever process equipment handles fluids and are not associated with any particular type of discrete emission point, e.g., storage or process vents. EPA recognizes that this coverage is for proposal purposes only. It may change as a result of the notice and comment process. Nevertheless, for purposes of early reductions, the definition of source for these types of emissions will be based on the regulatory language in the March 6 notice. EPA notes that tentatively identifying equipment leaks as a source for early reductions is in no way meant to limit how "source" will be defined for the purposes of any particular MACT standard, including the HON equipment leak standard.

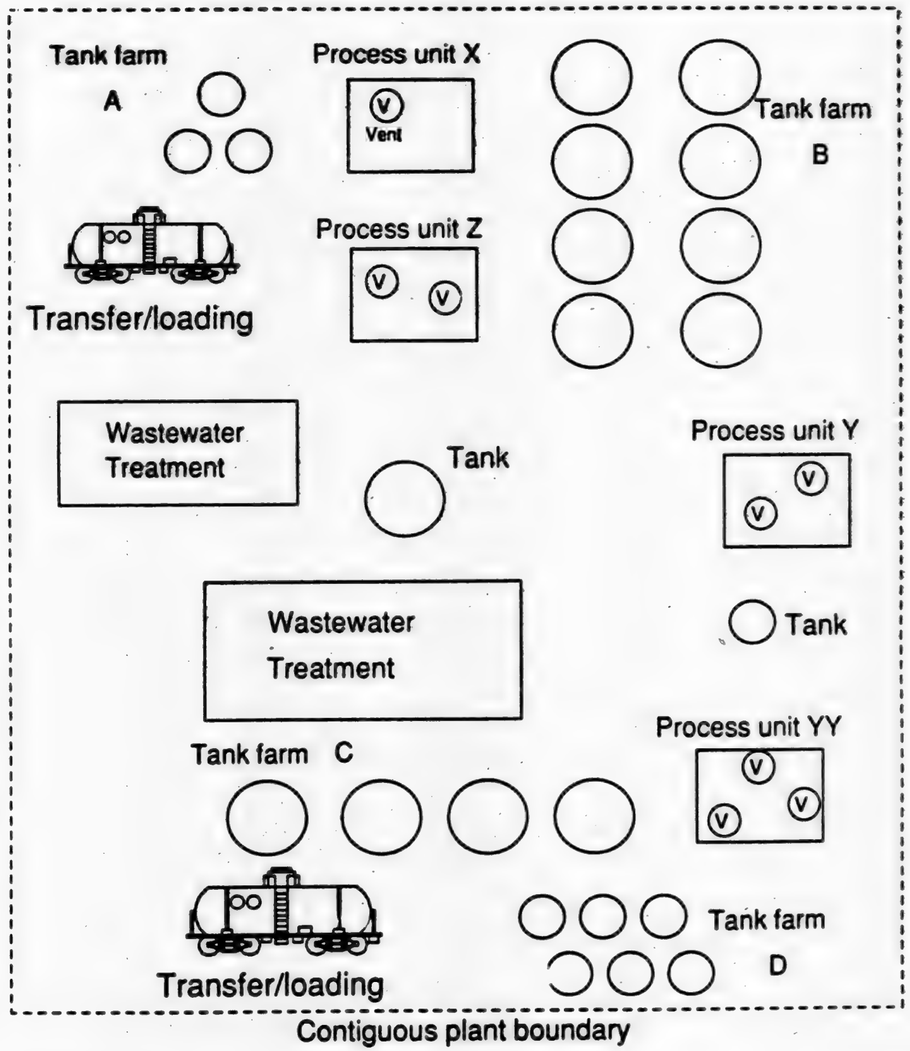
The second part of the definition, paragraph (a)(2) encompasses the entire contiguous facility. (See Figure 1.) Under paragraph (a)(2) of the definition, if an applicant designates the entire contiguous facility as the source and demonstrates sufficient reductions in total emissions of hazardous air pollutants from the contiguous facility, then the facility would receive a six year extension from any and all MACT standards applicable to the facility. A plantwide definition of source clearly falls with the definition of source under section 111(a)(3). *See Chevron, supra*, 467 U.S. at 861.

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Figure 1

Chemical Plant Schematic

Entire facility



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A "source" under paragraph (a)(3) may be defined to encompass less than an entire plant. However, only those units (building, structure, facility, or installation) identified as the source would be eligible for the six year MACT extension.

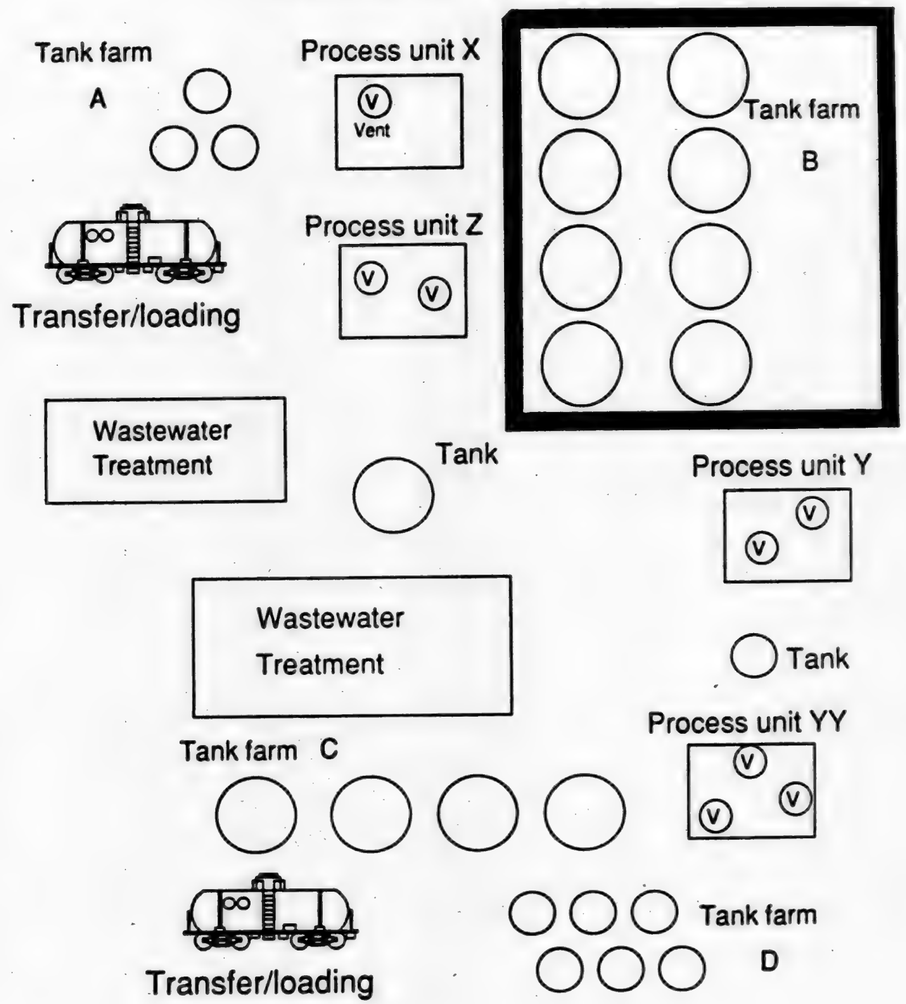
Under paragraph (a)(3), the applicant can identify a group of emission points that have a functional or geographical relationship to one another and characterize the collection of points as a facility or installation. For example, the applicant could identify a group of functionally similar points, such as all storage tanks identified in Figure 2, as a source and achieve qualifying reductions across that source. Alternatively, the applicant could identify all tanks in one of the four areas (A, B, C, or D) as a separate source because each of the 4 areas could be defined as a tank farm installation or facility and therefore fall within the definition of source under paragraph (a)(3). Thus, the applicant could identify the tanks in area B as a source (a tank farm storing chemical X) and achieve sufficient aggregate reduction from the entire tank farm, even if one or more of the individual tanks did not achieve a 90 percent reduction. Moreover, the applicant could take one or more of the eight tanks in tank farm B out of service and credit that reduction towards the overall reduction demonstration provided the shutdown was permanent. Under paragraph (a)(3), however, the applicant could not identify the tank farm as the source and then subdivide the tank farm to exclude a portion of the tanks because they were already partially controlled. (Figure 3). [This configuration of a source may, however, be acceptable under paragraph (a)(4) or (a)(5).]

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Figure 2

Chemical Plant Schematic

Functional and geographical

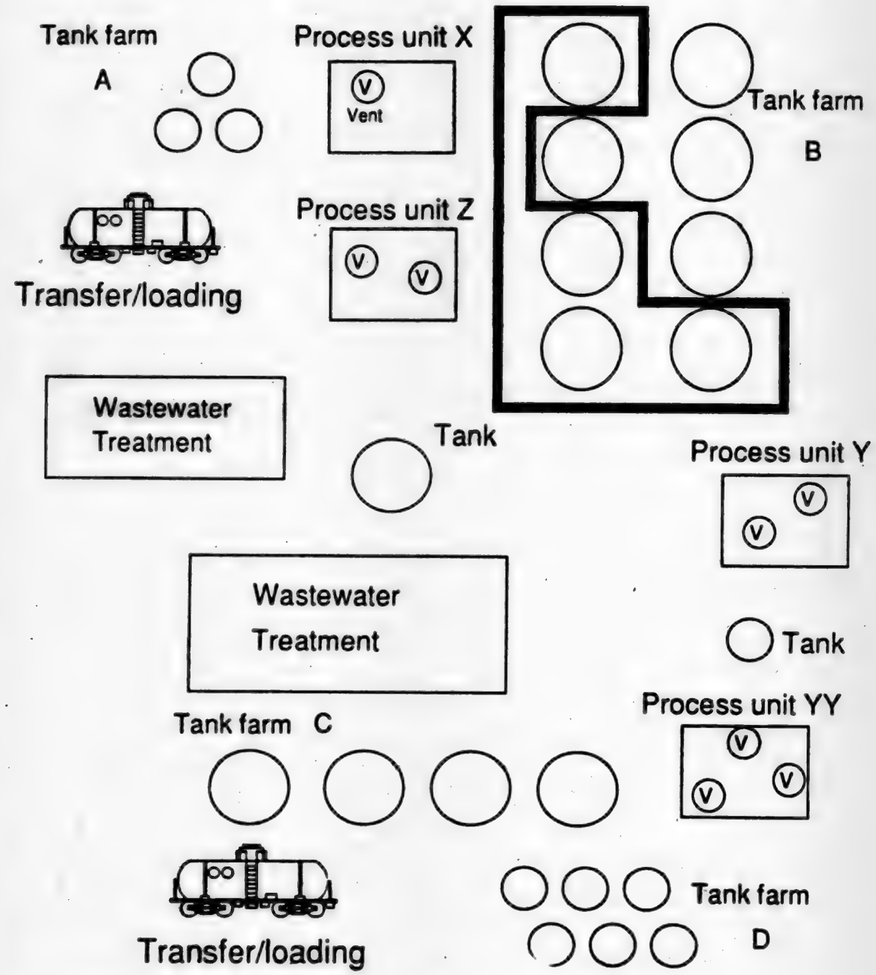


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Figure 3

Chemical Plant Schematic

Potentially Unacceptable Selective Grouping*



* Unacceptable if significance threshold specified in paragraph (b) of the source definition is not met.

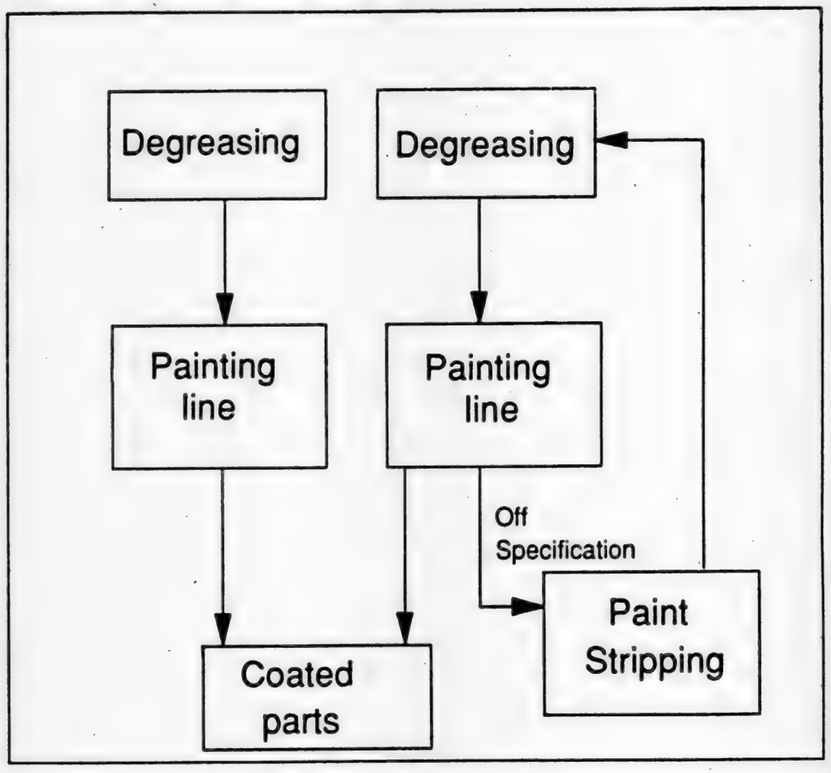
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Generally, geographic grouping to form a source would only be allowed for emission points of the same type within a logical physical area, as in the examples above. It would not be acceptable to aggregate as a source based on a geographical relationship several unrelated tanks, process vents, wastewater units, etc., simply because they were all located on the same side of the road. Such a collection of points may, however, be acceptable under paragraph (a)(5). However, if a building or other enclosed structure houses a collection of emission points, such a source definition would be consistent with section 111(a)(3)'s definition of source as "any building, structure, facility, or installation."

For example, a metal parts coating operation consisting of degreasers, painting lines, and paint strippers within a single enclosed structure could collectively be considered a source. See Figure 4.

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Figure 4
Metal Coating Operation



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Under paragraph (a)(3), the applicant could also identify a process or production unit as a source, such as all equipment associated with the production of chemical X. An applicant, therefore, could identify as one "source" the outlined areas in Figure 5 which constitute a process unit and include all tanks in Area A, the vents on Production Unit X, and the tanks in Area B. In Figure 5, if the applicant defines the process units as the raw material storage tanks, the production process vents, the completed product tanks, and the wastewater treatment system, then the combined HAP emissions of all such process components must be reduced. If this source definition is used, a 90 (95) percent reduction of each component would not be required provided the aggregate overall reductions are sufficient to qualify for a compliance extension. In many instances, however, some components of the plant will be shared by multiple process units, e.g., a wastewater treatment system. For common or shared facilities which serve or are linked with multiple process units, the applicant could consider the common facility as part of a single process unit or treat it as a separate source. The applicant has fairly broad flexibility to identify those logical points that constitute a process unit or production train. However, the applicant must achieve sufficient overall reductions in HAP emissions from the entire process unit as defined.

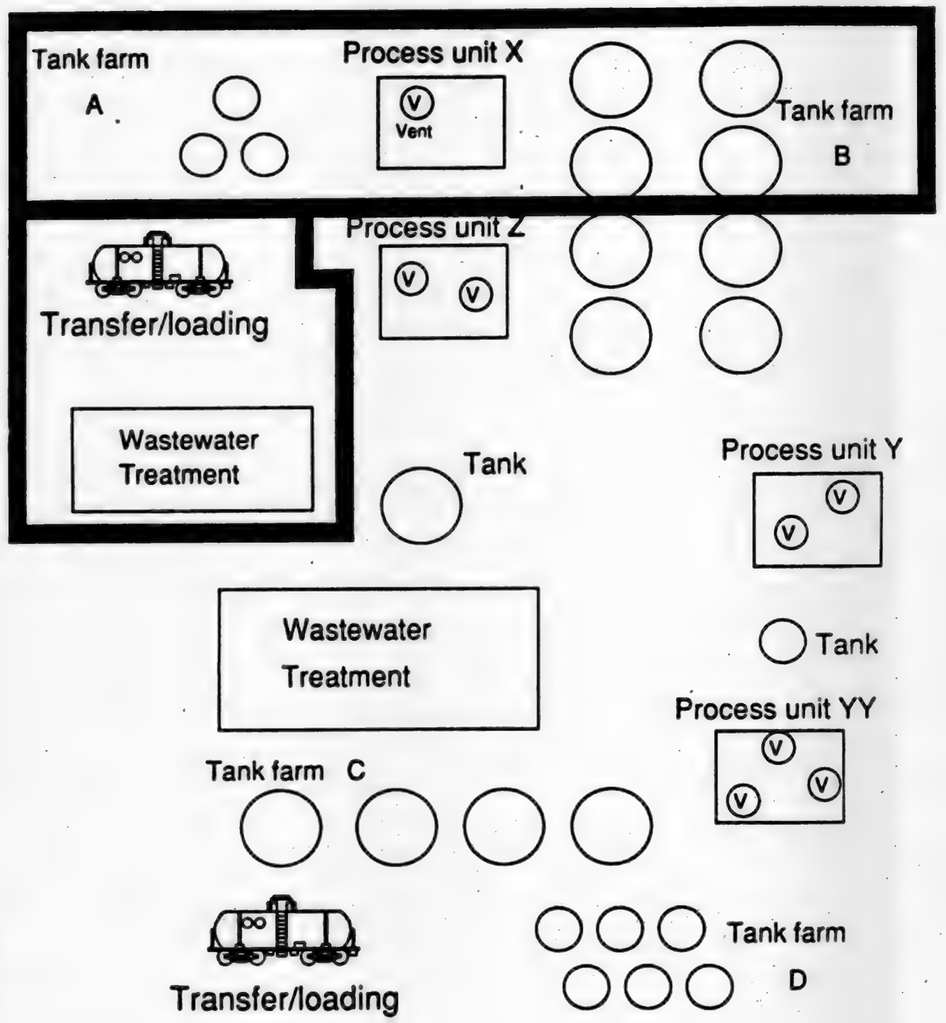
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Figure 5

Chemical Plant Schematic

Process train



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Under subparagraph (a)(4), a "source" may also encompass any combination of units that can be characterized as a building, structure, facility, or installation under paragraph (a)(3) of the definition provided that the aggregate reduction from such combined units represents a significant reduction of the plant total emissions. EPA has determined that for the purposes of the early reductions program a significant reduction of emissions of HAPs is a 90 (95) percent reduction from baseline emissions of at least 10 tons per year for plants emitting 25 tons per year or more during the baseline year, or a 90 (95) percent reduction from baseline emissions of at least 5 tons of HAPs for plants emitting less than 25 tons of HAPs during the baseline year.

Additionally, the conclusion that EPA may group together, or "bubble," sources without regard to whether each individual source is "functionally-related or geographically contiguous" to the others is suggested not only by the result in *Chevron* itself, but is also clearly implicit in the definition of "major source" in section 112(a)(1). This definition of "major source" for purposes of the title III air toxics program states that "any * * * *group of* stationary sources" may be considered as a single major "source," provided that they are "located within a contiguous area and under common control."[7] Thus, it follows that EPA may consider unrelated units that are under common ownership and control as a single "source" for purposes of the Early Reductions Program,[8] provided that the units all are under common control and are located "within a contiguous area," such as a common plant-site. The individual sources to be aggregated such as pieces of equipment, process units, tanks or buildings do not have to be located next to one another or to be functionally-related in order to be "bubbled," provided that they are all located within the same geographic area which is under common control, such as a plant-site. The conclusion that bubbling between unrelated process units is permissible for purposes of the early reduction program is confirmed not only by the statutory language and case law discussed above, but also by the statutory policies and legislative history of the early reduction program. In section 112(i)(5)(e), Congress authorized a form of emissions trading—offsetting early reductions of one hazardous air pollutant against reductions of other hazardous air pollutants for purposes of the early reduction program. "Bubbling" units is merely another form of emissions trading.[9]

Moreover, the legislative history indicates that Congress wanted EPA to encourage participation in the program. See H.R. Rep. No. 101-490, 101st Cong., 2d Sess. 332 (May 17, 1990) ("In the administration of this provision EPA thus should strive to encourage companies to take advantage of this incentive to reduce emissions early.") In addition, the significance threshold is designed to ensure that real substantial reductions are achieved and that the program is not trivialized. The flexibility afforded through aggregating process units or equipment units offers greater incentive to participate in the early reduction program. Greater overall participation in the program combined with a minimum threshold for early reductions achieved under the program will help ensure that the reductions achieved under the program are both real and substantial and the concomitant environmental benefits maximized and that the possibility for "gaming" the system is minimized.

Finally, the definition of source in this proposal includes, in paragraph (a)(5), any individual emission point or combination of such points within a contiguous facility under common ownership or control provided that such points meet the same significance threshold that is required under (a)(4). As with the bubbling of sources under paragraph (a)(4), EPA believes this definition will encourage greater overall participation in the program to the overall benefit of the environment. The significance threshold requirement for this portion of the definition will likewise serve to prevent trivializing the early reduction program.

These foregoing examples of the definition of source are meant to be illustrative only to demonstrate the types of groupings that may reasonably fall within the proposed definition of source for purposes of the early reduction program. Obviously, each plant is configured differently and it is impossible to contemplate all the combinations of emission points or units that may be unique to a particular contiguous facility. However, because EPA has not yet defined "source" for purposes of establishing MACT standards, the test for the definition of source under the early reduction program must be whether the application includes identifiable "sources" as that term is defined. EPA's proposed definition is an attempt to recognize the breadth of that flexibility.

The proposed definition provides the maximum benefit to an applicant who is capable of making reductions in various parts of its plant, and is trying to make reductions without actual knowledge as to how EPA will define various components of his plant as "sources" for purposes of particular MACT standards. Each source identified would receive extensions from the MACT standards applicable to it. If a plant owner or operator chose to reduce plantwide emissions sufficiently, the plant would receive an extension on all MACT standards applicable to it.

EPA's definition attempts to balance two competing concerns expressed during the public roundtable discussion. First, some asserted that some early reduction projects would not be undertaken unless broad flexibility was provided to combine independent but discrete points. In contrast, others wanted the definition to stimulate future projects to be undertaken and not allow random groupings that could allow reductions already achieved to shield other emissions from MACT coverage for six years. For example, the shutdown of a 100 ton unit could allow another 10 tons of emissions to avoid MACT for six years. Those taking this position considered this a "loss" in environmental terms.

After carefully considering these concerns, EPA has decided that in the particular circumstances of this rule, the proposed "source" definition serves the emission-reducing purpose of section 112(i)(5). EPA believes it must balance

[7] It is not beyond the limits of legal ingenuity to argue that something can be a "major source" without being a "source." This tortured reading is implausible, however. To the extent that Congress thought about the issue at all after *Chevron*, the language of section 112(a)(1) clearly suggests that Congress contemplated that a group of unrelated sources in a common area under common control could be considered a single source.

It is irrelevant for present purposes that in applying the limits for determining whether a source is "major," emissions from all of the collocated sources within common control must be considered. The important point for present purposes is that Congress clearly contemplated that a "group" of sources could be grouped together and considered as a single "source."

[8] This conclusion is limited to the context of the Early Reductions Program for several reasons. In particular, Congress specifically contemplated netting one hazardous pollutant against another for purposes of this program. Congress indicated in the legislative history that it wishes EPA to encourage participation in this program to obtain early reductions (see discussions below); and the statutory requirement for 90% reductions raises quite different factual and policy questions than might be applicable elsewhere.

[9] The only exception is for a separate category of high risk pollutants, such as dioxins and furans, which are to be treated differently.

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the environmental gains from inducing early reduction projects that otherwise would not have occurred against the emissions reduction "losses" from MACT compliance extensions associated with projects that would have occurred anyway.

EPA has concluded that "gains" are likely to outweigh "losses" because of the emission reduction requirement for a 90 percent reduction from baseline emission levels. Each project which in fact is induced by the proposed source definition will bring a "gain" of a 90 percent reduction from the baseline emissions level. In contrast, each project that would have occurred anyway will cause a "loss" of 10 percent of the baseline emissions level. Assuming projects of equal size, "loss" projects would have to outnumber "gain" projects by 10-to-1 before the proposed source definition would result in overall emissions.

The legislative history of the early reductions provision provides a clear indication that the purpose of the provisions was to provide an incentive to achieve early reductions. The Bill reported out by the House Energy and Commerce Committee was almost identical to the final Act with respect to the early reduction requirements. The Report accompanying that Bill stated that the purpose of the provision was to encourage early reductions, adding that:

> Owners and operators should have an incentive to use this option because it allows them greater flexibility to choose the means by which they will reduce their air toxics emissions and to make those reductions without waiting for prescribed standards and regulatory schedules. Clearly, early reductions achieved before emission controls are required by MACT will benefit the environment and communities near the facilities that make early reductions. In the administration of this provision EPA thus should strive to encourage companies to take advantage of this incentive to reduce emissions early.

Committee on Energy and Commerce, U.S. House of Representatives, Report No. 101–490, at 332 (May 17, 1990).

Thus, the House Committee expressed a clear intent that the provision be utilized to encourage early emission reductions.

The legislative history on the scope of the definition of "source" for purposes of section 112 also sheds some light on Congress' intent. While the Conference Report does not address the source definition issue, there are statements by Senator Durenberger submitted for the record which speak to the issue. Senator Durenberger was one of the managers of the bill in the Senate and the principle author of title III of the CAAA of 1990.

Conference report statements are typically considered to be the most reliable historical aids to statutory interpretations. See, e.g., *United States* v. *UAW*, 352 U.S. 567, 585–586 (1966). Statements of sponsors are not controlling legislative history but they are entitled to some consideration. See *Brock* v. *Pierce County*, 476 U.S. 253, 263 (1986) ("statements by individual legislators should not be given controlling effect, but when they are consistent with the statutory language, and other legislative history, they provide evidence of Congress' intent"). Moreover, several members cautioned about the use of statements of individual members on various provisions of the 1990 Amendments. See, e.g., 126 Cong. Rec. E 3714 (November 2, 1990) (Cong. Dingell) (only the statement of managers, which is part of the conference report reflects the views of all the managers or conferees in the House and Senate); (Cong. Waxman) (accurate legislative history is not necessarily reflected in the commentary of individual members) 126 Cong. Rec. E 3699 (November 2, 1990). These statements are consistent with customary use of legislative history, i.e. that one resorts to the legislative history in the first instance only where the plain language of the statute is not clear and that statements in conference reports agreed upon by all managers should be given higher precedence than individual statements by members.

A short time before final passage of the Bill by the Senate, Senator Durenberger made a number of specific statements about the early reductions provisions. The Senator reviewed a draft EPA paper concerning the definition of source and concluded that "creditable reductions must come from the same part of a plant site that is covered by the applicable MACT standard * * *. The owner cannot claim credit for reductions made at another part of the plant." 126 Cong. Rec. S.16928 (daily ed. October 27, 1990). Senator Durenberger's floor statement indicates that his interpretation of the source definition with respect to early reductions would require reductions to be demonstrated by individual MACT units. His statement also recognizes that what constitutes the "source" may vary from standard to standard and may range from a discrete portion of an entire contiguous facility to an entire facility. 126 Cong. Rec. S 16927, (3rd col.) (daily ed. October 27, 1990) (agreeing with EPA paper that a MACT standard may focus on a specific portion of a facility or may encompass the entire contiguous facility).

EPA believes that the definition of source proposed in § 63.73 is consistent with Senator Durenberger's statements. The Senator's statements start from the presumption that EPA has already identified the "source" to be regulated by a MACT standard. However, at the time many companies will undertake to make early reductions, EPA will not have determined what the "source" will be for purposes of the MACT standard. If EPA has not identified the "source" for purposes of MACT, it is impossible for an owner or operator to determine what portions of its plant it should control in order to receive a six year extension from MACT. Therefore, if EPA has not defined "source" as it may apply to any particular units within an entire contiguous facility, the owner or operator can achieve an overall qualifying reduction from the entire major source or it can choose any portions of the facility that meet the regulatory definition of source set forth in § 63.73.

This broad definition affords the plant owner or operator flexibility to participate in the early reductions program to the maximum extent possible and is consistent with the intent of the program as reflected in the House report cited above. Reading Senator Durenberger's statement as precluding such a definition ignores the fact that his statement proceeded from the assumption that the MACT source was identified at the time a source must commit to make (or actually make) the early reduction. As noted, this will often not be the case. Moreover, such a narrow reading of the provision would limit participation in the program to those situations where EPA has already sufficiently progressed in the development of the MACT standard to have an idea of what unit(s) at a plant will constitute a "source" for that particular MACT standard. Congress could not have meant to so restrict the early reductions program. Indeed, EPA believes the broad definition will encourage significant participation in the program. At the same time, the minimum threshold of reductions for applicants seeking to aggregate dissimilar process units (or other "sources") reflects EPA's policy to ensure significant reductions and not to trivialize the program so as to frustrate the purposes of the Act.

EPA's definition of "source" in this rule is an effort to "represent a reasonable accommodation of manifestly competing interests" in a manner it believes to effectuate the underlying policies of the Act. EPA believes the proposed definition of "source" is within the bounds of the Agency's discretion in light of the language of the statute, the underlying purposes of the early reductions provision, and the legislative history on the definition of source. See Memorandum from E. Donald Elliott, Assistant Administrator and General Counsel to William G. Rosenberg, Assistant Administrator for Air and Radiation, "Legal Opinion on the Definition of 'Source' for Early Reductions Program (Clean Air Act section 112(i)(5)." (May 9, 1991). Moreover, EPA believes that the proposed definition will provide owners and operators sufficient flexibility to encourage significant participation in the early reductions program to the overall benefit of the environment.

C. Demonstration of Early Reduction

1. General

Because there are many differences in sources, types of HAPs, procedures for establishing emission data, and emission control measures, it is neither possible nor desirable to prescribe by regulation a uniform manner in which the required emission reduction must be demonstrated. Each situation will be unique in some way. Thus, the proposed rule provides a framework of general rules that allow differing methods and procedures for demonstrating emission reduction achievement. However, owners or operators may find that this flexibility leads to uncertainty whether particular procedures for establishing emissions will be acceptable for demonstrating the emission reduction. To assist owners and operators, EPA will publish acceptable methods for documenting emissions for source categories that will be subject to MACT standards. The document will indicate the appropriate EPA reference method or conditional method that should be used for source testing emission points from the subject source, but the primary focus will be on how to establish emissions using an alternative method when source tests are not feasible. The document does not preclude a source owner or operator from establishing emissions using other methods or procedures that are appropriately documented. A notice announcing the availability of this document for the several categories in the first group (those for which standards will be proposed in the 1991–1993 time frame) will be published in a subsequent **Federal Register** notice.

The time period in which the early reduction may be demonstrated is limited by section 112(i) of the Act. In most cases, calendar year 1987 is the earliest year that can be used to calculate base year, or pre-control, emissions (see discussion of base year emissions below). The reduction must be achieved prior to proposal of an applicable MACT standard, with one exception. If the reduction is achieved after proposal of the standard, the source may still qualify for a compliance extension and alternative emission limitation if two conditions are met: (1) Before proposal of the standard, the source owner or operator makes an enforceable commitment (discussed in section II.D. of this preamble) to achieve the reduction, and (2) the reduction is achieved before January 1, 1994.

As a first step in an early reduction demonstration, an owner or operator must describe the source and how it conforms to one of the allowable source definition options. If the source will consist of an aggregation of equipment from the contiguous facility as allowed under § 63.73(a)(4) or (5) of the proposed rule, an owner or operator also must show that total base year emissions from the source are significant (i.e., 10 tons per year, except that 5 tons per year is considered significant in cases where the entire contiguous facility containing the source emits 25 tons per year or less).

To demonstrate that qualifying emission reductions have been achieved at the source, the owner or operator must sum the estimated emissions of all HAPs listed in section 112(b) of the Act that are emitted by the emission points in the source in the base year and compare the total with a similar sum for emissions following implementation of reduction measures. The post-control emissions sum must be ten percent or less of the sum for base year emissions, reflecting a 90 percent reduction as required to qualify for a compliance extension (five percent or less for hazardous air pollutants which are particulates, reflecting a 95 percent reduction). Thus, for a source containing more than one emission point, an owner or operator may control some emission points by less than 90 (95) percent and others by more than 90 (95) percent as long as total base year emissions from the source are reduced by 90 (95) percent. If the source emits any high-risk pollutants, the owner or operator must make a similar but separate reduction demonstration to document sufficient control of such high-risk pollutants. High-risk pollutants and the separate reduction demonstration required are discussed in more detail in sections II.C.2 and II.C.3 of this preamble, respectively.

Some sources may emit gaseous and particulate HAPs, possibly from the same emission point (e.g., a paint spray booth may emit particulate matter and gases, both types of emissions could contain HAPs). To demonstrate qualifying reductions from such sources, an owner or operator could show separate 90 percent and 95 percent reductions for the gaseous and particulate HAP, respectively. Alternatively, the proposed rule contains a provision (§ 63.74(g)) that would allow an owner or operator of such sources to qualify for an extension by combining the gaseous and particulate HAP emissions from the source and demonstrating achieving a combined percent reduction between 90 and 95. Determination of the new "target" percent reduction needed to qualify in this manner is made according to the equation in § 63.74(h) of the proposed rule and is based on the proportional amounts of gaseous and particulate HAPs emitted. For example, if a source emits equal amounts of gaseous and particulate HAPs, then the combined percent reduction necessary to qualify in this manner is halfway between 90 and 95, or 92.5 percent. The combined percent reduction demonstration for "mixed" sources of HAPs would provide additional emission control flexibility for the owner or operator and lead to increased participation in the early reduction program without changing the total amount of HAP emission reduction required to qualify for an extension, compared to separate 90 and 95 percent demonstrations for "mixed" sources. EPA specifically requests comments on this proposed approach for handling sources emitting gaseous and particulate HAPs.

To demonstrate achieving the HAP emission reduction required to qualify for an extension, source owners and operators may take credit for emission reductions achieved for any reason. All emission reductions since the base year are allowable for meeting the early reduction goal. The early reduction provisions in the Act and in the proposed rule do not distinguish between reductions achieved voluntarily and those that result from other regulatory requirements, including emission standards promulgated under section 112 prior to the Clean Air Act Amendments of 1990.

Emission reductions resulting from shutdown or curtailment of production also can be credited, provided that they are "permanent", i.e., for the duration of the 6-year MACT extension period. If a process or piece of equipment without a source is shutdown and another process or piece of equipment replaces it, any

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HAP emissions from the replacement unit must be counted in the demonstration of post-control emissions for the source. Additionally, if an owner or operator takes emission reduction credit for a shutdown in an early reduction demonstration and is granted a compliance extension but later wishes to restart the shutdown unit or startup a replacement unit (before the compliance extension expires), the owner or operator is obligated to maintain 90 (95) percent reduction of HAPs at the source and would have to make compensating additional reductions in HAPs to offset any HAP emissions added to the source from the restarted or replacement unit. Similarly, if emission reduction credit has been taken for reduced production or hours of operation, any subsequent plans to increase production at the source prior to the expiration of a compliance extension period would require compensating HAP reductions at the source to maintain the 90 (95) percent reduction. If compensating reductions are not made, the source will lose the compliance extension.

2. *High-Risk Pollutants*

Section 112(i)(5)(E) specifies that the Administrator shall limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 percent reduction in such high-risk pollutants qualifying for an alternative emissions limitation. This section also identifies chlorinated dioxins and furans as two pollutants to which such limitations must apply. The proposed regulation identifies 33 other pollutants to which such limitations shall apply.

In defining limitation for the purposes of this section, the EPA first considered prohibiting the offsetting of high-risk pollutants with other listed hazardous air pollutants. There is, however, a potential implementation difficulty with this approach. Several of the high-risk pollutants such as arsenic compounds, chromium compounds and dioxin can be emitted in trace amounts as an incidental by-product of industrial processes and fuel combustion. Achieving reductions of 90 percent or more in these trace amounts can be extremely difficult or technically infeasible. In such circumstances, strict adherence to the requirement to acheive a 90 or 95 percent reduction of any high-risk pollutant could preclude participation by some applicants. Such an outcome does not seem consistent with the intent of encouraging participation in the early reduction program.

Instead, the EPA has interpreted this limitation to allow offsets of higher risk pollutants with lower risk (less toxic) pollutants based on the relative toxicity of the pollutants involved, provided that the overall requirement of 90 percent reduction in HAP emissions from the soure is achieved. Where a measure of relative toxicity has been established, the proposed regulation provides for the greater reductions of lower risk pollutant emissions to offset emissions of higher risk pollutants. Where a measure of relative toxicity has not been established, as with noncarcinogens, EPA has established an interim policy which allows the offsetting of noncarcinogens based on the weighting factors assigned to the carcinogens in comparable groups.

The indexed offsetting system is based on estimates of the carcinogenic potency of the carcinogens on the HAP list. The EPA has concluded that comparable measures of relative toxicity for the listed noncarcinogens are not currently available, but has employed the carcinogen indexing system to obtain rough weightings for the high risk noncarcinogens. As more appropriate indices become available, EPA will amend the proposed system to include them.

Table 2 lists the 35 pollutants on the proposed high risk list along with their assigned relative weights. Section II.G. of this preamble describes the criteria and methods used to select the pollutants.

TABLE 2.—LIST OF HIGH RISK POLLUTANTS

	Weighting factor*
Carcinogens:	
2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
Benzidene	1,000
Bis(chloromethyl)ether	1,000
Asbestos	100
Chromium Compounds	100
Hydrazine	100
Arsenic Compounds (inorganic including arsine)	100
Chloromethyl Methyl Ether	10
Cadmium Compounds	10
Heptachlor	10
Beryllium Compounds	10
Acrylamide	10
Coke Oven Emissions	10
Hexachlorobenzene	10
Chlordane	10
Dichloroethyl ether [Bis(2-chloroethyl)ether]	10
1,3-Butadiene	10
Benzotrichloride	10
Ethylene dibromide (Dibromoethane)	10
Ethylene oxide	10
Vinyl chloride	10
Acrylonitrile	10
1,1,2,2-Tetrachloroethane	10
Vinylidene chloride (1,1-Dichloroethylene)	10
Benzene	10
1,2-Propylenimine (2-Methyl aziridine)	10

TABLE 2.—LIST OF HIGH RISK POLLUTANTS—Continued

	Weighting factor*
Noncarcinogens:	
2,4-Toluene diisocyanate	10
Acrolein	10
Acrylic acid	10
Chloroprene	10
Dibenzofurans	10
Mercury Compounds	10
Methyl isocyanate	10
Methylene diphenyl diisocyanate (MDI)	10
Phosgene	10

*HAP not on the high risk list have a weighting factor of 1.

The proposed high-risk list includes 28 carcinogens and nine noncarcinogens. Carcinogens are defined as those hazardous air pollutants with EPA weight of evidence classifications of A, B, or C and approved unit risk estimates (cancer potency factors). All other hazardous air pollutants are considered noncarcinogens for the purposes of this proposed regulation.

The methods used to formulate the list of high-risk pollutants, the list itself, and weighted offsetting scheme described in the following paragraphs are a direct response to the mandate in section 112(i)(5)(E) of the Act. This is warranted in the Early Reduction Program because of the flexibility allowed participants of the definition of source and method of reduction. It will also encourage participation in the program while ensuring that high risk pollutants are addressed. This list and the weighted offsetting scheme may not be applicable to or appropriate for programs designed to implement other sections in title III of the Act, that do not contain such flexibility or explicitly require the Administrator to limit offsetting among chemicals.

a. *Weighted index for carcinogens.* The list of hazardous air pollutants contains approximately 60 carcinogens with EPA-approved potency factors, 28 of which have been selected as high-risk pollutants. To establish the weighting factors, carcinogens on the high-risk list were ranked according to carcinogenic potency. The seven substances with the highest carcinogenic potency (2,3,7,8-tetrachlorodibenzo-p-dioxin, benzidene, bis(chloromethyl)ether, chromium compounds, asbestos, hydrazine, and arsenic compounds) were determined to warrant individual weighting factors based on the high relative toxicity of these compounds. Weighting for the remaining 19 carcinogens on the high-risk list was based on the geometric mean potency for this group. The geometric mean was chosen to represent this group since there was not as great a variation in potency, compared to the highest eligible carcinogens. The use of a consistent factor for these pollutants also simplifies the index for trades among carcinogens. A mean potency value was also obtained for the remaining carcinogens not on the high-risk list. The weighting factors shown in Table 2 represent the ratio of individual or mean factors to the mean value for the carcinogens not on the high-risk list, rounded to the nearest order of magnitude. The resulting factors provide a relative index of carcinogenicity, normalized to 1 for the non-high-risk carcinogens.

The weighting factors specify the equivalent offsets for trading among the listed carcinogens. For example, a source emitting one ton of hydrazine, with a weighting factor of 100, that wishes to participate in the early reduction program is unable to achieve a full 90 percent reduction in hydrazine emissions. Under the proposed system, the source has the option of offsetting this shortfall by achieving greater than necessary reductions of another HAP. If the actual hydrazine reduction was 0.8 tons (80 percent) and the source also emitted 40 tons of benzene, the hydrazine shortfall of 0.1 ton (the difference between the actual reduction and 90 percent) could be offset by reductions in benzene of 0.1 ton × 100/10 (the ratio of the weighting factors for hydrazine and benzene) or 1.0 tons. It would take 10 tons of additional reductions of a HAP with a weighting factor of 1 to offset the 0.1 ton shortfall in hydrazine reductions. (See section II.C.3 of this preamble for a more detailed explanation of demonstration qualifying early reductions when high-risk pollutants are involved.)

For the purposes of offsetting, pollutants with verified carcinogenic potency factors which also exhibit other toxic effects will be treated as carcinogens. Carcinogens without approved potency factors will be treated as noncarcinogens.

b. *Offsetting of noncarcinogens on the high-risk list.* In the absence of a comparable measure of relative toxicity, EPA has made an interim policy decision that offsetting reductions of noncarcinogens on the high-risk list (Table 2) will be keyed to the weighting of the carcinogens on this list. For the purposes of offsetting, the high-risk noncarcinogens are assumed to have a weighting factor of 10. Other noncarcinogens and carcinogens not on the high-risk list have a weight of 1 for the purposes of offsetting. As more appropriate indices become available for these pollutants, EPA will amend the proposed weighting system to include them.

The EPA requests comments on the method used to select the high-risk pollutants, described in section II.G. of this preamble, and on the above description of indexed offsetting for the purposes of implementing the early reduction program. The EPA in particular solicits comments on whether this approach represents, the best method for addressing those situations in which a source emits trace emissions of a high-risk pollutant, and on the impact of the high-risk pollutant list and offsetting system on the cost of participating in the program and potential emissions reductions.

3. *Reduction Demonstration Procedures.* To qualify for a compliance extension under the early reduction program, an owner or operator must demonstrate having achieved sufficient reductions (i.e., 90 percent, 95 percent, or a combined percentage between 90 and 95, as applicable) in (1) overall HAP emissions from the source and (2) high-risk pollutants from the source, if any are emitted.

To make the first demonstration, an owner or operator would calculate total base year emissions from the source by summing documented base year emission data accounting for all HAP emissions from each point in the source. Similarly, total post-control emissions would be calculated by summing documented emission data accounting for all post-control HAP emissions from the source. These two totals would be compared to show that the required overall reduction had been achieved.

If high-risk pollutants are emitted from the source, a second reduction demonstration is required. The second demonstration is similar to the first, but incorporates the high-risk pollutant weighting factors. Once again base year emissions are compared to post-control emissions. However, in this case before total base year or post-control emissions are calculated by summing emission data accounting for all emission points in the source, the owner or operator must multiply each individual emission number by the weighting factor associated with the pollutant emitted.

As a simple example, consider a reduction demonstration for a source emitting benzene and toluene. Assume benzene emissions are 20 tons in the base year and 3 tons per year after control, while toluene emissions are 200 tons in the base year and 18 tons following control. For the first demonstration, total base year emissions are 20 + 200 = 220 tons per year and total post-control emissions are 3 + 18 = 21 tons per year, which gives an overall HAP reduction of 90.5 percent. To make the second demonstration, the weighting factors are used before summing. According to Table 2, the weighting factors are 10 for benzene and 1 for toluene (any HAPs not on the high-risk list have a weighting factor of 1), and individual base year emissions adjusted for weighting factors are 20 × 10 = 200 tons for benzene and 200 × 1 = 200 tons for toluene. Total base year emissions adjusted for weighting factors are 200 + 200 = 400 tons per year. Similarly, total post-control emissions adjusted for weighting factors are 3 × 10 + 18 × 1 = 48 tons per year. Emission reduction considering high-risk pollutant weighting factors is 88 percent. Thus, in this example the source has demonstrated achieving a reduction in overall HAP emissions of 90.5 percent, but a reduction of only 88 percent when considering high risk pollutant weighting factors. To make up for the shortfall and qualify for a compliance extension, additional reductions of benzene or toluene would have to be made at the source (e.g., an additional toluene reduction of 8 tons per year would qualify the source by increasing the HAP reduction adjusted for weighting factors to 90 percent).

4. *Base Year and Post-Control Emissions.* There are a number of requirements for establishing base year and post-control emissions for a source. Emission data must be in the format of an annual emission rate (e.g., megagrams per year). The base year emission rate must represent actual and verifiable emissions for calendar year 1987 or later. However, emission rates for 1985 or 1986 may be acceptable if they are verifiable, based on data submitted to the Administrator pursuant to an information request issued under section 114 of the Act, and received by the Administrator prior to November 15, 1990. The base year must also be one in which emissions were not artificially or substantially greater than emissions in other years before the emission reduction measures were implemented. This means that the base year emissions should reflect a period of time in which production rates, operating hours, and other operating parameters were within normal conditions for the source. The owner or operator must provide information to demonstrate that all these conditions have been met. Emissions in excess of emission limits imposed by an applicable air pollution control law, regulation, or permit

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condition cannot be used as base year emission data. These requirements would ensure that the post-control emissions are compared to normal, typical, and lawful base-year emissions.

The proposed rule prohibits the use of EPA average emission factors for estimating base year equipment leak emissions. Use of these factors may produce significant overestimates of base year emissions in many cases. However, source owners or operators could establish base year estimates for equipment leaks specific to their sources consistent with other equipment leak emission estimating protocols already established by EPA in the document entitled "Protocols for Generating Unit-Specific Emission Estimates for Equipment Leaks of VOC and VHAP," EPA–450/3–88–010, October, 1988. These protocols allow the use of "leak/no leak" factors or "stratified" emission factors, while better approximate an individual source's actual emissions, as well as actual bagging data to establish source-specific emission factors. The source must have screening data on each component proposed to be covered within the source definition, with the exception of flanges and other connectors (a special formula is used to determine the appropriate number of these), to which the appropriate emission factors are applied to determine total equipment leak emissions. Also, a source owner or operator may propose an alternative estimating method to account for equipment leak emissions from the source. Such methods would be reviewed and approved or denied on a case-by-case basis.

To demonstrate the post-control emission rate, the source owner or operator would need to present verifiable and actual emission data for a year after 1987 (or 1985 or 1986, if allowed) and prior to the dates required for demonstration of the reduction, as discussed earlier. For both base year and post-control emissions, the presumption is that verifiable and actual data will consist of source test results using validated methods. A validated method is a measurement methodology with a demonstrated precision and bias over the measured concentration of the source's emission. A validated method may be an EPA Reference Method, conditional method, or a test method validated according to the protocol in Method 301. Because EPA does not have reference or conditional methods for all of the 189 compounds listed in the 1990 amendments, the Agency is proposing Method 301, a process for the validation of test methods developed by sources who wish to make early reduction demonstrations. Method 301, "The Field Validation of Emission Concentrations from Stationary Sources," is being proposed today in appendix A to 40 CFR part 63. A list of validated methods may be obtained from the Emission Measurement Technical Information Center (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. There may be cases, however, in which emission data may be established through methods other than source tests. Specifically, other methods may be used due to: (1) Lack of a test method; (2) the economic or technical infeasibility of testing; (3) the demonstration that emission data based on engineering principles, emission factors, or material balances are as accurate as results gained through testing, or (4) the emissions from the emission point in the source are small compared to total source emissions and errors in estimating emissions from such points will not have a significant effect on the accuracy of estimated total emissions from the source. A fifth reason, applicable to base year emissions only, would be that the base year conditions no longer exist for the emission point(s) and that source test results under current conditions could not be converted to base year conditions to establish emissions more accurately than could be obtained in other ways. Since there is a presumption of testing to define emissions, the source owner or operator would need to provide a justification based on one of these reasons to support the use of alternate methods. Acceptance of emissions data would be based on the appropriate use of test methods or other equivalent means of determining the emissions.

D. Enforceable Commitments

Section 112(i)(5) of the Act provides the opportunity for sources that achieve a 90 percent (95 percent for particulates) reduction in HAP emissions before proposal of an applicable MACT standard to obtain a six-year extension from compliance with the standard. Section 112(i)(5)(B) contains a special provision that is available to sources that would be subject to standards proposed before 1994.[4] Because of the short time prior to proposal of these standards, sources subject to the standards would not have the same amount of time as sources affected by later standards to plan for and achieve early reductions prior to proposal of the applicable MACT standard. Therefore, Congress provided that if a source could not achieve reductions prior to proposal, the source still could qualify for a compliance extension and an alternative emission limitation if it enters into an enforceable commitment, before proposal of the applicable MACT standard, to achieve the 90 (95) percent reduction prior to January 1, 1994. The provision further states that "such commitment shall be enforceable to the same extent as a regulation under this section." Sources subject to early MACT standards, but which nonetheless have achieved qualifying reductions before proposal, are not required to submit enforceable commitments to participate in the early reduction program. Such sources need only file a permit application demonstrating that qualifying reductions have been achieved (see section II.F of this preamble for a discussion of permit applications).

The proposed rule would require that, before proposal of an applicable MACT standard, the enforceable commitment be submitted to the EPA Regional Office and a copy to the State in which the source is located. If the State has an approved permit program under title V of the Act, the commitment must be sent to the appropriate state agency and a copy to the EPA Regional Office. (See list of Regional Office addresses at the end of this section for submittal of commitments or for assistance in obtaining addresses of State reviewing agencies.)

The commitment to achieve the early reductions before January 1, 1994, is binding on the source and is enforceable under section 113 of the Act. There are several required components of an enforceable commitment. The commitment shall contain information identifying the name and location of the source, a description of the source as defined according to this rule, the base year estimate of HAP emissions for the source, the general plan for reducing those emissions, and a statement, signed by a responsible official representing the owner or operator of the source, committing the source to achieve the necessary reductions before January 1, 1994. The description of the planned emission reduction measures does not bind the source to carrying out the plans exactly but should be in sufficient detail to demonstrate that the source owner or operator has given serious consideration to real emission reduction measures that can be implemented to qualify the source for the early reduction program.

The commitment is considered to be "enforceable". The Agency believes that once a source has made a commitment to achieve early reductions, an enforcement action may be brought against that source if it fails to achieve the reductions or if fraudulent information is contained in the commitment. Sources found submitting fraudulent information in the commitment for early reduction shall be subject to enforcement action under section 113 of the Act or other Federal statutes. All data and information submitted should be carefully reviewed by the owner or operator to assure accuracy and veracity. The EPA will ensure the integrity of information contained in the commitments by conducting audits of any or all submittals. The purpose of this activity is to encourage sources to ascertain that any commitment made is supported by acceptable emissions data. An enforceable commitment is a revocable commitment, and source owners or operators have the option to rescind such commitments before January 1, 1994. The proposed rule specifies that rescission requests be submitted by December 1, 1993, which will allow time before January 1, 1994 to alert the reviewing agency of the source's intention to withdraw. If a source elects to rescind its commitment prior to December 1, 1993, the source will be required to comply with the applicable MACT standard by the compliance date specified in the standard. Any source that does not rescind the commitment prior to December 1, 1993, and fails to achieve a 90 (95) percent reduction before January 1, 1994 will be subject to penalties for the emission reductions not achieved, until compliance is achieved with either the enforceable commitment or the MACT standard for all affected sources. The penalty may vary depending on the amount of pollutant reduction already achieved and control measures required to achieve the target reduction but in most situations will exceed the economic benefit to comply with the applicable MACT standard by the compliance date in the standard. Thus, the source would not only fail to obtain the six-year extension but would be subject to an enforcement action under section 113 of the Act.

The proposed detailed requirements for information to be contained in enforceable commitment are as follows:

1. Identifying information concerning the applicant and name of official contact person.

2. A general description of the source and information to verify that the source conforms to one of the allowable definitions of source.

3. A complete list of all HAP emission points that define the source for which the early reduction will be achieved.

4. A statement of base year emissions and the associated supporting basis accounting for all HAPs emitted from each emission point contained in the source (see section II.C.3 of this preamble for requirements pertaining to emission data submissions). Separate base year emissions for high-risk pollutants, discussed in section III.B.2 of this preamble, would be required in addition to the total HAP emissions for each emission point.

5. A general plan for achieving the required emission reductions, including descriptions of emission control equipment to be employed, process changes or modifications to be made, and any other emission reduction approaches upon which the source intends to rely. (The plan is not an enforceable part of the commitment.)

6. A statement of commitment, signed by a responsible official, certifying the accuracy and veracity of the base year emission data; providing the post-control emission level(s) necessary to achieve the 90 (95) percent reduction and qualify for the compliance extension; committing to achievement of the stated post-control emission level(s); and acknowledging that the base year emission data are being submitted in response to EPA under the authority of section 114 of the Act and that the commitment is subject to enforcement as specified in the proposed rule.

Although an enforceable commitment must be submitted prior to proposal of an applicable MACT standard, some sources may be unable to provide, within that time frame, supporting source test data as required for some emission points. Therefore, the proposed rule allows an owner or operator up to 180 days after the applicable MACT proposal date to submit test data for such emission points. However, in order to make a complete enforceable commitment submittal before proposal, the owner or operator still must provide the best substitute calculations of base year emissions for those emission points. When results from the source tests are available, the owner or operator must submit the results and amend the enforceable commitment to take them into account.

The base year emission data submitted in an enforceable commitment may be audited by the Agency. Fraudulent statements will be considered violations of section 114 of the Act and of this proposed rule and, thus, actionable under section 113; they can be considered, in appropriate cases, violations of 18 U.S.C. 1001, the general false swearing criminal provision of the Code. A source owner or operator should have a high degree of confidence in the emission numbers provided. Given the scope and effect of the Clean Air Act Amendments, resources of Federal, State, and local agencies and of source owners and operators will be taxed heavily, and should be expended only in serious activities to accomplish real environmental improvement. Thus, EPA encourages only those commitments to early reduction that are based on sound evaluation of HAP emission sources and emission reduction potential.

In determining what should be required in an enforceable commitment, the Administrator considered the purpose of a commitment and what would be needed to carry out that purpose. The only sources required to submit an enforceable commitment are those for which the early reduction of HAP emissions will occur after proposal of an applicable MACT standard and before January 1, 1994. The purpose of the commitment is, therefore, to encourage the source owner or operator to achieve a 90 (95) percent reduction earlier than otherwise required and to do so by extending the period otherwise provided for achieving the reduction (i.e. by the date of proposal of an applicable MACT standard) to January 1, 1994. In order to make such a commitment, a company will need to determine with at least some degree of accuracy that the planned emission reduction is achievable. To do this, emission points in the source must be identified and base year emissions from these points. An initial assessment of the types and effectiveness of appropriate emission reduction measures for these emission points should be made. Such information must be submitted as part of an acceptable enforceable commitment.

The Administrator could have required more information than that which is being proposed. In addition to the proposed requirements for documented base year emissions and a clear definition of the emission points in the source, he could have required detailed descriptions of planned control measures with calculations showing how the planned emission reduction would be achieved for each emission

[4] Currently, the EPA anticipates proposing section 112(d) standards before 1994 for the following source categories: Synthetic organic chemical manufacturing industry, coke ovens, dry cleaners using perchloroethylene and 1,1,1-trichloroethane, commercial sterilizers, chromium electroplating and chromic acid anodizing, industrial cooling towers, and halogenated solvent cleaners.

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point in the source. There are two reasons the proposed rule does not include this requirement. First, there is a very short time period between now and the scheduled date of proposal for early section 112(d) standards (about six months). Section 112(i)(5) of the Act and the proposed rule requires submittal of the enforceable commitment before proposal of an applicable standard. To require submittal of definite plans for specific emission control measures companies would have to obtain funding commitments from corporate officials and prepare full documentation for inclusion in the submittal. EPA believes that requiring such information within a short period of time poses an undue burden on companies.

A second reason for not requiring extensive details regarding plans for achieving the emission reduction is that it could legally bind the source to the specific measures in the commitment. The Administrator believes that the source owner or operator should be given flexibility to determine the best approach for achieving early reductions and should not required to implement an approach that was committed to at an early date if that approach later proves to be infeasible to implement, inferior to, or more costly than another approach. Therefore, EPA believes that the proposed requirement for submittal of general emission reduction plans, with submittal of specific approaches required later as part of the permit application is the most reasonable alternative that is consistent with the goals of the early reduction program.

Enforceable commitments are to be submitted to the appropriate EPA Regional Office at the following addresses:

Director, Air, Pesticides, and Toxics Management Division, EPA Region I (AAA), John F. Kennedy Federal Building, Boston, MA 02203
Director, Air and Waste Management Division, EPA Region II, Jacob K. Javits Federal Plaza, New York, NY 10278
Director, Air Toxics and Radiation Management Division, EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107
Director, Air Management Division, EPA Region 4, 345 Courtland Street, NE., Atlanta, GA 30365
Director, Air and Radiation Division, EPA Region 5, 230 South Dearborn Street, Chicago, IL 60604
Director, Air, Pesticides and Toxics Division, EPA Region 6, 1445 Ross Avenue, 12th Floor, suite 1200, Dallas, TX 75202
Director, Air and Toxics Division, EPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101
Director, Air and Toxics Division, EPA Region 8, 999 18th Street, suite 500, Denver, CO 80202–2405
Director, Air and Toxics Division, EPA Region 9, 1235 Mission Street, San Francisco, CA 94103
Director, Air and Toxics Division, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101

Enforceable commitments for several different sources within a contiguous facility may be aggregated into one submittal, providing the base year emissions and post-control emission levels committed to are identified separately for each source.

E. Review of Base Year Emissions

Each enforceable commitment and each permit application must contain base year emission data for each emission point in the source for which the applicant is requesting an early reduction extension. The Act requires that the base year emissions be "determined with respect to verifiable and actual emissions" and that the applicant show "there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures." In other words, the base year emissions should represent, as accurately as possible, actual emissions during a normal year of operation. This is important because the base year emissions determine the amount of emission reduction and the residual HAP emission level that will qualify the source for a compliance extension.

Considering their importance to the program, EPA plans to review base year data submitted in enforceable commitments to determine their adequacy, and also will provide the opportunity for the States and the public to review and comment on the data. Sources that have achieved or will achieve HAP reductions prior to proposal do not have to make enforceable commitments. However, EPA also will provide review of base year emission data from such a source if requested by the owner or operator. In order to provide applicants speedy review of their base year data, EPA is proposing the following review procedure.

No later than 30 days after receipt of a commitment, the EPA Regional Office will notify the applicant whether the base year emission contained in the submittal is complete or incomplete. At this point in the review process, EPA is judging only whether all information required for the emission data evaluation has been supplied, not whether the information is adequate for the purposes of the early reduction program. Where EPA determines the submission is incomplete, the deficiencies will be listed, and the applicant must correct and resubmit the base year emission data before further review can proceed.

Within 60 days of making a determination that a base year data submission is complete, EPA will judge its adequacy and give notice of the results. If EPA determines that the base year data represents actual and verifiable emissions, a notice will be published by advertisement in the area affected identifying the aggregate base year emissions number that is being proposed for approval for the source and noting the availability of the nonconfidential information contained in the enforceable commitment for public inspection in at least one location in the community in which the source is located and in the appropriate EPA Regional office. A 30-day public comment period will be provided, with an opportunity for extension to 60 days upon request. If EPA determines that the base year emissions are not approvable because they are incorrect or deficient in some manner, the applicant will be notified of the decision and the reasons for the decision. The applicant may correct and resubmit the base year emissions or choose not to revise the data. If revised base year emissions data are not received by the reviewing agency within 90 days of notifying the applicant of disapproval of base year emission data, the source will be considered to have withdrawn the enforceable commitment and a notice to that effect will be sent to the applicant. EPA is not proposing a time limit for submittal of revised data on the assumption that an applicant will resubmit its revised data as quickly as possible to provide adequate time after approval for implementation of the emission reduction plans. If the applicant chooses to submit corrected base year emission data, EPA will review the revised version within 30 days and, if approvable, will publish a notice to that effect by advertisement in the area affected.

If no adverse comments are received on base year emission data proposed for approval, it will be considered approved upon expiration of the comment period and a notice of the approval will be sent to the applicant and published by advertisement in the area affected. However, if adverse comments are received during the comment period and EPA agrees with the comments, notice will be given to the applicant of disapproval and the reasons for disapproval. Again, the applicant will be given the opportunity to correct the data and resubmit to EPA. If revised base year data are submitted to EPA that adequately address the adverse comments, EPA will send notice of the approval to the applicant and publish a notice containing the approved base year emission data for the source.

In cases where adverse comments are received on proposed base year emission data and EPA determines that the comments do not warrant changing the data, EPA will publish a notice approving the base year data without changes and its reasons for not accepting the adverse comments. Such approval of base year emission data does not constitute a final agency action and, therefore, is not judicially reviewable.

It is important to note that the proposed rule does not provide an absolute shield against changes to the base year emission data. EPA intends to provide assurance to the applicant that approved emission data will be honored and will not be subject to change arbitrarily. However, discovery of incorrect or fraudulent information in the emission data or supporting materials even after its initial approval, could potentially invalidate the base year data and require revision to it. In the case of fraudulent information, EPA may bring an enforcement action against the source owner or operator under section 113 of the Act (see § 63.90(b) of the proposed rule). Such discrepancies could be discovered at any stage of the process, including during review of the permit application. This possibility underscores the importance of the applicant submitting "verifiable and actual" data that have been carefully reviewed and approved by knowledgeable company officials.

This initial review of the base year emission data is not to be taken lightly. The EPA believes that adequate time will be provided for reviewers and commenters to examine the basis for the emission numbers. During this comment period, commenters are urged to present any criticisms regarding data quality and approach so that applicants can make appropriate modifications at that point and proceed with reasonable confidence that their emission data are acceptable. The EPA believes this approach will provide some level of certainty to participants concerning their base year emission data prior to their implementation of emission reductions. As noted, incorrect or fraudulent information cannot shield the applicant from further review at a later time.

During development of the proposed rule, industry representatives expressed concern about the Agency's plans to provide opportunity for public review and comment on base year emissions and supporting data and information. One concern was that the applicant may consider some of the supporting data and information to be confidential and, therefore, would not want it made available to the public. The EPA is sensitive to industry's need to keep certain information confidential. EPA will continue to follow its current regulations concerning the treatment of confidential data. This policy will be followed in the early reduction program. The categories of data that are considered "emission data", and therefore nonconfidential include: Identification of the facility and emission points, emission types (type of release point and specific pollutants), emission rates, release heights, descriptions of terrain and surrounding structures, stack or vent diameters at point of emission, release velocities, release temperatures, frequencies of releases, durations of releases, concentrations, densities of emission streams or average molecular weights, boiler or process design capacities, emission estimation methods, percent space heat, and hourly maximum design rates.

Once every month, EPA will publish in the Federal Register a list of any sources that have submitted enforceable commitments or base year emission data for review. Interested parties will be able to use these lists to identify the actions they wish to review and comment on and can contact the appropriate Regional Offices and State agencies for information.

F. Permit Applications and Permits

The request for a compliance extension and alternative emission limitation will be in the form of a permit application. The application should contain the elements necessary to demonstrate achievement of the early emission reduction as well as any additional information required for a complete permit application [as specified in regulations under part 70 or part 71, which implement permit programs required under title V of the Act as amended]. In most instances, the application must be received by the appropriate permitting authority before proposal of an applicable MACT standard. However, there are two exceptions. The first exception is for sources that previously made an enforceable commitment, where the permit application must be received no later than December 1, 1993 [which may be after proposal of an applicable standard]. The second exception is for sources which have achieved qualifying reductions prior to proposal of an applicable MACT standard but which are unable to submit a permit application before proposal, because the Federal permit program has not been initiated (i.e., part 71 Federal permitting regulations have not been promulgated) and the State does not have a permit program approved pursuant to title V of the Act. These programs will define the information needed for a complete permit application. This situation may arise within the next year or so, before part 71 regulations are promulgated and any State permitting programs are approved. Therefore, to take this situation into account, the proposed rule specifies that the deadline for submitting permit applications under the early reduction program is the later of the following dates: (1) The date of proposal of an applicable MACT standard; or (2) 120 days after promulgation of part 71 regulations or 120 days after approval of a State permit program under title V of the Act, whichever occurs first. It is recommended that owners or operators in this situation notify the appropriate EPA Regional Office of their intent to send in a permit application for the early reduction program. The EPA Regional Office, in turn, will notify the potential applicant when the part 71 regulations have been promulgated or the appropriate State has received approval for a title V permit program, whichever occurs earlier. This will give the applicant timely notice of an approaching permit application submittal deadline.

The permit application for sources with an enforceable commitment should contain the information necessary to demonstrate that a qualifying early reduction has been achieved or, where applicable, will be achieved by January 1, 1994 (as required in § 63.74 of the proposal rule). In the latter case, the source is required to provide, by March 31, 1994, additional data for any emission points for which emission data were not available on January 1, 1994. This second submittal allows the source time to provide required post-control emission data from tests conducted after final controls are in place, perhaps as late as December 31, 1993. The permit application should specify appropriate emission limitations for the source and the test method or equivalent means used for the determination. Current EPA plans, under proposed 40 CFR part 70 (56 FR 21712), would require that the permit be issued within nine months after receipt of the complete permit application. Until that time, the enforceable commitment would remain the enforceable instrument for the source. Section 112(i)(5)(B) of the Act

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provides that the commitment "shall be enforceable to the same extent as a regulation under this section."

If the relevant State has an approved title V permit program, it will be responsible for processing the application according to provisions in 40 CFR part 70 (scheduled for promulgation in November 1991). For sources in States without approved title V permit programs, applications should be submitted to the EPA Regional Office and will be processed according to provisions in 40 CFR part 71. (These regulations are scheduled for proposal in November 1991, and promulgation in May 1992, and will specify the time increments for evaluation and approval/denial of permit applications at the State and Federal levels.) A fee may be required by States to offset the costs of reviewing applications. (If EPA is the permitting authority, a fee as specified in 40 CFR part 71 would be required.)

If the application is denied, the source will be subject to applicable MACT standards. If the application is approved, the permitting authority will prescribe a source specific emission limitation to ensure the continued reduction in emissions at the level which qualified the source for the extension. Compliance monitoring, reporting, and recordkeeping requirements also would be included. The emission limitation would be established by a permit issued under title V of the Act (either by EPA or a State), would be effective and enforceable upon issuance, and would remain in effect until six years after the compliance date for the applicable standard, at which time the standard would take effect.

The permit application will provide a general description of the type of activity at the source which causes HAP emissions, identify the type of source category(ies) and the specific emission points that define the source for purposes of the early reduction demonstration, document the base year emissions accounting for all HAPs emitted from each emission point in the source, describe measures taken to achieve the early emission reduction, document post-control emissions accounting for each emission point in the source, provide calculations showing that the 90 (95) percent reduction has been achieved, and contain a certification by a responsible official of the source that the reduction was achieved. In addition, the application must specify methods for certification of compliance. Such methods would indicate how and when emissions will be monitored by the source owner or operator and how violations of the emission limits will be reported and corrected.

In determining whether to approve or deny a permit application, the permitting authority would evaluate available information, including that supplied by the source owner or operator and information received from public comments on the application. Specific to the demonstration of early reductions, the permitting authority would decide whether the information and data required had been provided and whether data were valid considering the following:

1. Were emission tests conducted in accordance with the procedures and requirements of the proposed rule?

2. Were justifications acceptable for using something other than testing to establish post-control emission data?

3. Are engineering calculations correct and the assumptions underlying the calculations valid?

4. Have emission factors been appropriately applied and can their use be reasonably expected to represent the emissions from the source accurately?

5. Are material balance data adequately documented by records and sufficiently accurate to give credible emission estimates?

6. Have all HAP emissions from each source for which a compliance extension is requested been documented and included in the calculations?

After evaluating a permit application containing an early reduction demonstration, the permitting authority will make a determination to either approve or deny it. If denied, the owner or operator will be notified of the reasons for denial, which may include any of the following:

1. The information provided by the owner or operator is incomplete.

2. The required 90 (95) percent reduction has not been demonstrated or it has not continued to be achieved after demonstration.

3. The base year or post-control emission data are incorrect or not sufficiently reliable or well-documented to determine with reasonable certainty that required reductions have been achieved. (Sources which submit base year emission data for review early, including sources which submit an enforceable commitment, will not be subject to a second base year review at the permit application stage. Note, however, that base year emission data could change at this stage if they are found to be based on incorrect or fraudulent information.

4. The emission of HAPs or the performance of emission control measures is sufficiently variable or unreliable as to preclude determination that the required reductions have been or will continue to be achieved.

If the application is approved, the reviewing agency would establish by permit issued under title V of the Act enforceable emissions limitations for the source reflecting the control which qualified the source for the compliance extension. The permit would also include operating conditions and compliance monitoring, reporting, and recordkeeping requirements necessary to ensure continuing compliance.

Although the demonstration of 90 (95) percent reduction of HAP emissions must be expressed in terms of actual annual emissions, the emission limitation may be expressed in a number of different ways. A numerical emission limitation in the same format as applicable source category standards would be preferable. However, that may not be possible if, for example, the early reduction is being achieved with emission control technology that is different from that on which the standard is based. A different format may be necessary in such a case, or a different time period for averaging emissions (e.g., 24 hours vs. 1 month) may be appropriate. The main objective in selecting the format and units of the emission limitation, and complementary monitoring, recordkeeping, and reporting requirements is to ensure continuing achievement of the 90 (95) percent reduction of emissions. Although a numerical emission limitation is the preferred format, if a numerical limitation is not feasible for technological or economic reasons, some other requirement could be established instead as long as it reflects the reduction which qualified the source for a compliance extension.

The emission limitation would be effective and enforceable immediately upon issuance of the permit for the source and would remain in effect until six years after the compliance date for the applicable section 112(d) standard, at which time the source would be required to comply with the standard. Since permits will be issued for periods not to exceed five years, there will be at least two permits in effect over the six-year compliance extension. The second and subsequent permits, which will be issued when the first one expires, will contain the alternative emission limitation for the remainder of the six-year extension.

Emission reductions of HAP for the purpose of obtaining an alternative emissions limitation under section 112(i)(5) of the Act are not creditable for the purpose of meeting an offset requirement under section 173(a)(1) of the Act. A source in a nonattainment area (an area where a national ambient air quality standard is exceeded) may need to obtain offsets for new construction or modification activities. The HAP reductions are not allowed as offsets in this instance because section 173(c)(2) of the Act states: "Emission reduction for purposes of any such offset reqirement." A source emitting HAPs either will have to comply with a standard issued under section 112(d) of the Act or an alternative emissions limitaton which is granted to the source in lieu of such a standard. Therefore, the reduction of HAP emissions under the early reduction program is a substitute for the reduction of HAP emissions as "required" under a MACT standard.

However, a source owner or operator may use as offsets any reductions in HAP emissions in excess of those required to qualify for an exemption under the early reduction program or reductions in non-HAP emissions which are obtained through use of the HAP emission reduction measures, if such reductions are not required by any other provision of the Act and meet any other requirements for offsets under title I of the Act. These reductions are allowed as offsets pursuant to 173(c)(2) of the Act which further states: "Incidental emission reductions which are not otherwise required by this Act shall be creditable as emission reductions for such purposes* * *." As a simple example, consider a source emitting ethylene (a non-HAP) and ethylene oxide (a HAP) which is controlled for purposes of qualifying for a compliance extension under the early reduction program. Assume that the control measures used reduce ethylene oxide emissions by 92 percent or 46 tons per year and also reduce ethylene emissions by 20 tons per year, although there is no requirement to reduce the ethylene emissions. Further, assume that the permit issued to the source requires a continuing 92 percent reduction. In this instance, the 20 ton per year reduction in ethylene emissions may be used, if needed, to offset an increase in volatile organic compound emissions from new construction or a modification of an existing source. Additionally, since the source achieved a 2 percent HAP reduction beyond that required to obtain an extension, the extra 2 percent reduction, or 1 ton per year in this example, may be used as an offset.

G. Selection of List of High-Risk Pollutants

As described in section II.C. of this preamble, EPA is proposing a list of high-risk pollutants. The methodology used to develop this list is considered reasonable and appropriate for the purposes of section 112(i)(5)(E). The intent of this provision is to limit the use of offsetting reductions in emissions of other hazardous air pollutants as counting towards the 90 percent reduction in the high-risk pollutants. Other provisions of section 112 may require ranking of the pollutants on the list of hazardous air pollutants in section 112(b)(1). For example, establishing lesser quantities under section 112(b)(1) and identifying the relative hazards to human health from emissions of each of the listed pollutants under section 112(g) involve assessments of the relative hazards associated with pollutants on the list. While the approach for identifying the high-risk pollutants in today's rulemaking may be found to be appropriate for these other provisions, different approaches may also be considered appropriate. The selection of today's approach for the purposes of section 112(i)(5)(E) is not intended to establish a precedent for the other provisions affected by hazard ranking or preclude the consideration of other alternatives. This section discusses the criteria and rationale for selection of this proposed list.

1. Criteria for Identifying High-Risk Pollutants

The screening analysis employed a three-tiered approach in which the hazardous air pollutants were evaluated according to specific criteria. Only those pollutants meeting the criteria of the first tier were further evaluated in the second tier. Similarly, only those meeting the criteria for the second tier were evaluated in the third tier. Following the third tier, EPA examined the resulting list as well as the pollutants eliminated, and added back several pollutants to the high-risk list based on additional considerations. Two pollutants (dibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin) were not screened using the tiered analysis because section 112(i)(5)(E) of the CAA specifically includes these pollutants on the high-risk list.

Prior to the screening process, available data on health effects for each of the pollutants were compiled. The health effects endpoints considered were carcinogenicity, reproductive and developmental toxicity, acute lethality, and systemic effects other than acute lethality (e.g., neurologic disorders). For carcinogens, there were two sources of information. The source for potency factors and weight-of-evidence (described below) was the Integrated Risk Information System (IRIS) which is administered by EPA's Office of Health and Environmental Assessment. The second source of information used to identify potential carcinogens of high concern was the hazard ranking developed to support reportable quantity adjustments under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), section 102.

The IRIS was also used to gather information on noncarcinogens having an EPA-verified inhalation reference concentration or oral reference dose. A reference concentration or reference dose is an estimate (with uncertainty spanning perhaps an order of magnitude or more) of the daily exposure to the human population (including sensitive subpopulations) that is likely to be without deleterious effects during a lifetime. Uncertainty factors are typically used to derive a reference concentration or reference dose from experimental data to account for factors such as sensitive human subpopulations and the uncertainty in extrapolating animal data to humans. For pollutants with neither a reference concentration nor reference dose, the primary source of information for health effects other than cancer was the Registry of Toxic Effects of Chemical Substances (RTECS), which is developed and maintained by the National Institute of Occupational Safety and Health. The RTECS data base is widely used as a toxicity data source by both industry and regulatory agencies. Although RTECS is not formally peer-reviewed, the data are from the scientific literature. The EPA recognizes the limitations associated with the lack of peer review, but believes for the initial step of compiling health effects information, RTECS represents one of most readily available comprehensive sources of information on toxicological endpoints other than cancer.

Information on the cancer potency factor, weight-of-evidence, and CERCLA hazard ranking was recorded for each carcinogen on the list where these data were available. The potency factor (i.e., the unit risk estimate) is an upper-bound estimate of the probability of an individual developing cancer as a result of exposure to a specified unit ambient concentration (e.g., 1 microgram per cubic meter) over a 70-year lifetime. The weight-of-evidence that a pollutant is a carcinogen is based on a classification scheme that considers the quality and adequacy of available health effects data. The weight-of-evidence classification scheme is described in

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EPA's Risk Assessment Guidelines of 1986 (EPA/600/8-87/045).

The CERCLA hazard ranking is a comprehensive evaluation of pollutants for potential carcinogenicity. Each pollutant was assigned a hazard ranking of "high", "medium", or "low." The hazard ranking is based on a review of human epidemiologic and/or animal bioassay data and a quantitative assessment of available data to calculate the relative strength of a pollutant to elicit a carcinogenic response. The hazard ranking methodology is described in the EPA document entitled Methodology for Evaluating Potential Carcinogenicity in Support of Reportable Quantity Adjustments Pursuant to CERCLA Section 102 (EPA/600/8-89/053).

Data pertinent to reproductive and developmental effects, acute lethality, and other systemic effects were also recorded for each substance on the list. For reproductive and developmental effects and effects other than acute lethality, the lowest observed effect level (LOEL) was recorded. The LOEL is the lowest dose or exposure level of a chemical in a study at which a statistically or biologically significant effect is observed in the exposed animal population. For acute effects, the dose or concentration of a chemical required to cause death in 50 percent of the exposed population (LD_{50} or LC_{50}) was recorded. The EPA recognizes that lethality is not an endpoint typically used in developing environmental regulations and that there are issues concerning route-to-route extrapolation associated with LD_{50}'s. However, other types of preferable data are lacking for certain acutely toxic substances. In this analysis, the LD_{50} was used as a screening value only in the absence of other types of data such as reference concentrations or LOELs.

Both human and animal studies for each health effects category were examined, and data from studies involving inhalation, ingestion, and dermal absorption routes of exposure were considered. Once the health effects data were compiled, the pollutants were evaluated on the basis of potency or toxicity in each health effects category.

a. *Tier 1 of the Analysis.* The first tier of the analysis focused on whether the available health effects data for a pollutant met certain criteria. A potential carcinogen could meet the criteria if it had an EPA-approved potency factor or if it had been designated as a CERCLA section 102 chemical of high concern for potential carcinogenicity. The basis for these criteria is that the health effects data for pollutants with an approved potency factor or a high-concern designation have been thoroughly reviewed by EPA. Cancer risk assessment information (i.e., a potency factor designation) is considered approved by EPA only after the development of a health assessment document, including review by EPA's Science Advisory Board (SAB) or by consensus on available chronic toxicity data by the Carcinogen Risk Assessment Verification Endeavor (CRAVE), an inter-disciplinary scientific panel of EPA experts. Similarly, the CERCLA methodology and the individual evaluations of the high-concern chemicals have received both extensive EPA and external review as part of the rulemaking process for reportable quantities under CERCLA section 102.

For carcinogens that also cause health effects other than cancer and for noncarcinogens, data used in support of development of an EPA-verified inhalation reference concentration or oral reference dose were given preference because the scientific studies have been extensively reviewed by EPA. If a verified reference concentration or dose was unavailable, the health effects data (i.e., the LOEL or LD_{50}) retrieved from RTECS was reviewed for quality of the scientific study. In examining the RTECS data, the following criteria were applied: (1) Only data from studies involving inhalation, oral ingestion and skin application routes of exposure were considered (not, for example, intraperitoneal or intravenous routes of exposure); (2) both human and animal studies in each category were examined; and (3) data from Eastern European studies were considered only if other data on a given endpoint were unavailable. Although the strength of the scientific basis for route-to-route extrapolation varies between substances, the lack of a complete inhalation data base for all hazardous air pollutants, as well as concern for possible indirect exposures, requires the consideration of noninhalation data.

It is possible that in the future additional verified potency factors or other health effects data may become available that indicate that a pollutant should be added to the high-risk list. In such a case, the CAA does not preclude the EPA from adding pollutants to the list. If EPA does add pollutants to the list, it is possible that a source already complying with an alternative emission limit may become subject to additional emission control requirements. The EPA solicits comments on whether or not a source already complying with alternative emission limits issued under section 112(i) should be exempted from any changes to the list of high-risk pollutants or whether these sources should be phased into compliance over a reasonable period of time, such as three years.

b. *Tier 2 of the Analysis.* The second tier of the evaluation was to determine which of the remaining pollutants merited further analysis based on potential for adverse public health effects under relevant exposure scenarios.

To evaluate this potential for carcinogens, generic exposure modeling was performed on 69 carcinogens for which approved potency factors were available. The EPA's Human Exposure Model was used for this exercise, and dispersion parameters representative of average conditions were assumed. The model provided an estimate of the ambient concentration in the vicinity of a source emitting 10 tons per year at an average release height of 10 meters under median meterological conditions. The predicted long-term ambient concentration at a distance from the source (500 meters) representing the location of nearby residences was recorded. This modeled ambient concentration was then compared to the concentration of each pollutant that would result in an increase in cancer risk of one in ten thousand to the most exposed individual. This risk level was selected to be consistent with the presumptive acceptable risk benchmark described in the National Emission Standard for Hazardous Air Pollutants for benzene proposed on September 14, 1989 (54 FR 38044). Pollutants that would not exceed the presumptive benchmark (when emitted in amounts of ten tons per year) were not given further consideration in the analysis. Pollutants with the potential to exceed the benchmark when emitted in quantities of 10 tons per year or less were retained for further evaluation in Tier 2.

The generic modeling assumptions selected for this tier of the analysis were considered reasonable, given the purposes of this analysis. Other assumptions could have been used and would have resulted in either more or fewer pollutants exceeding the presumptive risk level used for this tier. For example, decreasing the distance to the nearest resident or decreasing the release height would result in higher predicted maximum concentrations and, therefore, more pollutants exceeding the presumptive risk level. Conversely, increasing the distance to the nearest resident or increasing the release height would result in lower concentrations and fewer pollutants exceeding the risk level.

Generic parameters were considered appropriate for this analysis because the high-risk list is intended to address specific pollutants and to span a range of emission release and exposure situations that could be anticipated across source categories. The EPA requests comment on the appropriateness of the modeling assumptions that were used.

Noncarcinogens with verified inhalation reference concentrations or oral reference doses met the criteria for this tier if the modeled ambient concentration (using the same modeling parameters described above) exceeded the reference concentration or dose by at least one order of magnitude. Noncarcinogens without verified inhalation reference concentrations or oral reference doses met the criteria for this tier if the modeled ambient concentration exceeded either a pollutant's LOEL or LD_{50}, divided by uncertainty factors of 100 and 1000, respectively, for any of the health effects categories described above (i.e., acute lethality, reproductive/developmental effects, and systemic effects other than lethality).

Uncertainty factors were applied to the health effects benchmarks since the LOEL and LD_{50} values represent levels at which health effects are known to occur. These uncertainty factors are meant to account for variables such as interspecies variations and sensitive subpopulations. It should be noted, however, that the uncertainty factors used in this analysis do not account for all the factors typically considered in developing an inhalation reference concentration. In this sense, the analysis is not conservative.

By comparison, a reference concentration or reference dose represents the exposure level below which no deleterious effects are expected to occur over a lifetime of exposure. That is, the reference concentration or dose is a level at which the potential for public health effects would be considered negligible. To estimate a level at which public health risks could be potentially significant, the EPA deemed it appropriate to consider exposure levels one order of magnitude higher than the reference concentration or dose. These levels would therefore be somewhat higher than the reference concentration or dose but would still be below the level at which health effects are known to occur.

The Tier 2 screening criteria, in effect, selected for further analysis 14 pollutants having either a LOEL less than or equal to 0.1 mg/kg/day for reproductive/developmental effects and effects other than acute lethality, an LD_{50} less than or equal to 1.0 mg/kg/day for acute lethality, or reference concentration or dose less than 0.0003 mg/m^3 or 0.0009 mg/kg/day.

c. *Tier 3 of the Analysis.* The final tier in the screening process consisted of a review of nationwide emissions data to determine whether or not each remaining pollutant would actually be emitted by one or more sources in quantities sufficient to result in significant risk to public health. The primary source of emissions information was the 1989 Toxics Release Inventory (TRI). Because the TRI data base is limited to certain pollutants, source industrial classification (SIC) codes, and facility sizes, additional data were also gathered for each pollutant. These additional data were derived from in-house EPA data bases on source categories (e.g., the source category listing) and the 1990 Chemical Economics Handbook—SRI International for information on U.S. production and consumption of chemicals.

Sources with reported emissions were evaluated against the presumptive benchmarks for significant health risk potential described previously in Tier 2. If no source in the U.S. reported emissions of a given pollutant sufficient to exceed the benchmarks, the pollutant was not included on the list. If one or more sources exceeded the benchmarks with reported emissions of a listed pollutant the pollutant was retained for designation as a high-risk pollutant. The rationale for this decision was that one source emitting a listed pollutant could have an adverse impact on public health and should not be allowed to offset emissions of a high-risk pollutant with reductions in a less hazardous pollutant.

d. *Additional Considerations.* Based on the three tiers of analysis, 31 pollutants were identified as meeting the criteria for inclusion on the high-risk list. In examining those pollutants eliminated as a result of the screening tiers, however, EPA concluded that several carcinogens classified as Group A (known human carcinogens) should be retained on the list despite not meeting the exposure or significant source criteria. This resulted in the addition of 4 pollutants (benzene, benzidene, bis(chloromethyl)ether, and chloromethyl methyl ether). Section C.2. of this preamble contains the proposed list of high-risk pollutants (Table 2) and a description of the indexed weighting system that limits the participation of high-risk pollutants in the offsetting of emission reductions as part of early reduction demonstrations.

The EPA recognizes that a source's emissions may change from year to year. If emissions data become available that indicate that a pollutant should be added to the high-risk list, the CAA does not preclude EPA from doing so.

III. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed regulation in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preambles.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. External Participation

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and other regulatory agencies. In addition, a number of meetings were held with interested parties during development of the proposed regulation. The Administrator welcomes comments on all aspects of the proposed regulation.

C. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A))).

D. Paperwork Reduction Act

Information collection requirements associated with this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1582.01), and a copy may be obtained from (Sandy Farmer), Information Policy Branch, EPA, 401 M

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Street SW. (PM-223Y), Washington, DC 20460, or by calling (202) 382-2740. The public reporting burden for this collection of information is estimated to average 213 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. (This figure is obtained from the Supporting Statement prepared for the proposed rule.)

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223Y, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are specifically requested concerning the reporting burden on small entities and whether special provisions are needed to reduce it. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Executive Order 12291 Review

Under Executive Order 12291, OMB is required to judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The criteria set forth in section 1 of the Order for determining whether a regulation is a major rule are as follows: (1) Is likely to have an annual effect on the economy of $100 million or more; (2) is likely to cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governments; or (3) is likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office of Management and Budget (OMB) has concluded that this regulation meets the first criteria of a major regulation; that the regulation will likely have an annual effect on the economy of $100 million or more. The effect of this regulation is not adverse, however, and is realized as a savings to the economy. Because of the importance of proposing this regulation quickly, and because the annual effect is not adverse to the economy, a Regulatory Impact Analysis has not yet been prepared, but will be available at promulgation.

The proposed regulation presented in this notice was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the docket listed at the beginning of today's notice under ADDRESSES. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the ADDRESSES section of this preamble.

F. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the impact of the proposed rule is not significant.

List of Subjects in 40 CFR Part 63

Air pollution control, early emission reductions, hazardous air pollutants, compliance extensions, sources.

Dated: May 31, 1991.

F. Henry Habicht,

Acting Administrator.

It is proposed that 40 CFR chapter I be amended by adding part 63 to read as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

Subpart A—General Provisions

Subpart B—[Reserved]

Subpart C—List of Hazardous Air Pollutants, Petition Processes, Lesser Quantity Designation, Source Category List

Subpart D—Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants

Sec.

63.70 Applicability.
63.71 Definitions.
63.72 General provisions for compliance extensions.
63.73 Source.
63.74 Demonstration of early reduction.
63.75 Enforceable Commitments.
63.76 Review of base year emissions.
63.77 Application procedures.
63.78 Early reduction demonstration evaluation.
63.79 Approval of applications.
63.80 Enforcement.
63.81 Rule for special situations.

Appendix A—Test Methods

Appendix B—Sources Defined for Early Reduction Provisions

Authority: Clean Air Act (42 U.S.C. 7401 [et seq.], as amended, by Pub. L. 101-549).

Subpart A—General Provisions

[Reserved]

Subpart B—[Reserved]

Subpart C—List of Hazardous Air Pollutants, Petition Processes, Lesser Quantity Designation, Source Category List

[Reserved]

Subpart D—Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants

§ 63.70 Applicability.

The provisions of this subpart apply to an owner or operator of an existing source who wishes to obtain a compliance extension from a standard issued under section 112(d) of the Act. The provisions of this subpart also apply to a State or local agency acting pursuant to a permit program approved under title V of the Act. The Administrator will carry out the provisions of this subpart for any State that does not have an approved permit program.

§ 63.71 Definitions.

All terms used in this subpart not defined below are given the same meaning as in the Act or in subpart A of this part.

Act means the Clean Air Act as amended.

Actual emissions means the actual rate of emissions of a pollutant but does not include excess emissions from a malfunction. Actual emissions shall be calculated using the source's actual operating rates, and types of materials processed, stored, or combusted during the selected time period.

Artificially or substantially greater emissions means abnormally high emissions such as could be caused by equipment malfunctions, accidents, unusually high production or operating rates compared to historical rates, or other unusual circumstances.

EPA Conditional Method means any method of sampling and analyzing for air pollutants that has been validated by the Administrator but that has not been published as an EPA Reference Method.

EPA Reference Method means any method of sampling and analyzing for an air pollutant as described in appendix A of part 60, appendix B of part 61, or appendix A of part 63.

Equipment leaks means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

Existing source means any stationary source other than a new source.

Hazardous air pollutant means any air pollutant listed pursuant to section 112(b) of the Act.

High-risk pollutant means a hazardous air pollutant from the following list (corresponding Chemical Abstracts Service numbers are shown in parentheses next to the pollutant, where available): Acrolein (107028); acrylic acid (79107); acrylamide (79061); acrylonitrile (107131); arsenic compounds (inorganic, including arsine); asbestos (1332214); benzene (71432); benzidene (92875); benzotrichloride (98077); beryllium compounds; bis(chloromethyl)ether (542881); 1,3-butadiene (106990); cadmium compounds; chlordane (57749); chloromethyl methyl ether (107302); chloroprene (126998); chromium compounds; coke oven emissions; dichloroethyl ether (111444); dibenzofuran (132649); ethylene dibromide (106934); ethylene oxide (75218); heptachlor (76448); hexachlorobenzene (118741); hydrazine (302012); methylene diphenyl diisocyanate (101688); methyl hexyanate (624839); mercury compounds; phosgene (75445); 1,2-propylenimine (75558); 2,3,7,8-tetrachlorodibenzo-p-dioxin (1746016); 1,1,2,2-tetrachloroethene (79345); 2,4-toluene diisocyanate (584849); vinyl chloride (75014); and vinylidene chloride (75354).

Malfunction means any sudden failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset conditions or preventable equipment breakdown shall not be considered malfunctions.

New source means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under section 112(d) of the Act establishing an emission standard applicable to such source.

Not feasible to prescribe or enforce a numerical emission limitation means a situation in which the Administrator or a State determines that a pollutant (or stream of pollutants) listed pursuant to section 112(b) of the Act cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal law; or the application of measurement technology to a particular source is not practicable due to technological or economic limitations.

Permitting authority means either a State agency with an approved permitting program under title V of the Act or the Administrator in cases where the State does not have an approved permitting program.

Process or production unit means equipment or machinery connected together or assembled into a unit for the purpose of making a product or performing a function.

Responsible official means one of the following:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

[Note: The EPA does not require specific assignments or delegations of authority to responsible officials. The Agency will presume that these responsible corporate officers have the requisite authority to sign enforceable commitments under this subpart unless the corporation has notified the enforceable commitment reviewing agency to the contrary. Corporate procedures governing authority to sign enforceable commitments may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.]

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency, either a principal executive officer or ranking elected official. For the purposes of this subpart, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

Reviewing agency means a State agency with an approved permitting program under title V of the Act. An EPA Regional Office is the reviewing agency where the State does not have such an approved permitting program.

State means a State or local air pollution control agency.

§ 63.72 General provisions for compliance extensions.

(a) Except as provided in paragraph (f) of this section, a State acting pursuant to a permitting program approved under title V of the Act shall by permit allow an existing source to meet an alternative emission limitation in lieu of an emission limitation promulgated under section 112(d) of the Act for a period of 6 years from the compliance date of the otherwise applicable standard provided the source owner or operator demonstrates:

(1) According to the requirements of § 63.74 that the source has achieved a reduction of 90 percent (95 percent or more in the case of hazardous air pollutants which are particulates) in emissions of:

(i) Total hazardous air pollutants from the source,

(ii) Total hazardous air pollutants from the source as adjusted for high-risk pollutant weighting factors, if applicable.

(2) That such reduction was achieved before proposal of an applicable standard or, for sources eligible to qualify for an alternative emission limitation as specified in paragraph (c) of this section, before January 1, 1994.

(b) A source granted an alternative emission limitation shall comply with an applicable standard issued under section 112(d) of the Act immediately upon expiration of the six year compliance extension period specified in paragraph (a) of this section.

(c) An existing source which achieves the reduction specified in paragraph (a)(1) of this section after proposal of an applicable standard but before January 1, 1994, may qualify for an alternative emission limitation under paragraph (a) of this section if the source makes an enforceable commitment, prior to proposal of the applicable standard, to achieve such reduction. The enforceable commitment shall be made according to the procedures and requirements of § 63.75.

(d) For each permit issued to a source under paragraph (a) of this section, there shall be established as part of the permit an enforceable alternative emission limitation for hazardous air pollutants reflecting the reduction which qualified the source for the alternative emission limitation.

(e) An alternative emission limitation shall not be available with respect to standards or requirements promulgated to provide an ample margin of safety to protect public health pursuant to section 112(f) of the Act, and the Administrator will, for the purpose of determining whether a standard under section 112(f)

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of the Act is necessary, review emissions from sources granted an alternative emission limitation under this subpart at the same time that other sources in the category or subcategory are reviewed.

(f) Nothing in this regulation shall preclude a State from requiring hazardous air pollutant reductions in excess of 90 percent (95 percent in the case of particulate hazardous air pollutants) as a condition of such State granting an alternative emission limitation authorized in paragraph (a) of this section.

§ 63.73 Source.

(a) An alternative emission limitation may be granted under this subpart to an existing source. For the purposes of this subpart only, a source is defined as follows:

(1) A building structure, facility, or installation identified as a source by the EPA in appendix B;

(2) All portions of an entire contiguous facility under common ownership or control that emit hazardous air pollutants;

(3) Any portion of an entire contiguous facility under common ownership or control that emits hazardous air pollutants and can be identified as a facility, building, structure, or installation for the purposes of establishing standards under section 112(d) of the Act;

(4) Any combination of sources defined in paragraph (a)(3) of this section, provided that emission reduction from the aggregation of sources constitutes a significant reduction of hazardous air pollutant emissions of the entire contiguous facility under common ownership or control; or

(5) Any individual emission point or combination of emission points within a contiguous facility under common control, provided that emission reduction from such point or aggregation of points constitutes a significant reduction of hazardous air pollutant emissions of the entire contiguous facility.

(b) For purposes of paragraphs (a)(4) and (a)(5) of this section, emissions reductions are considered significant if they are made from base year emissions of not less than:

(1) A total of 10 tons per year of hazardous air pollutants where the total emissions of hazardous air pollutants in the base year from the entire contiguous facility is greater than 25 tons per; or

(2) A total of 5 tons per year of hazardous air pollutants where the total emissions of hazardous air pollutants in the base year from the entire contiguous facility is less than or equal to 25 tons per year.

§ 63.74 Demonstration of early reduction.

(a) An owner or operator applying for an alternative emission limitation shall demonstrate achieving early reductions as required by § 63.72(a)(1) by following the procedures in this section.

(b) An owner or operator shall establish the source for the purposes of this subpart by documenting the following information:

(1) A description of the source including: a site plan of the entire contiguous facility under common control which contains the source, markings on the site plan locating the parts of the site that constitute the source, and the activity at the source which causes hazardous air pollutant emissions;

(2) A complete list of all emission points of hazardous air pollutants in the source, including identification numbers and short descriptive titles; and

(3) A statement showing that the source conforms to one of the allowable definition options from § 63.73. For a source conforming to the option in § 63.73(a)(4) or (a)(5), the total base year emissions from the source, as determined pursuant to this section, shall be demonstrated to be at least:

(i) 5 tons per year, for cases in which total hazardous air pollutant emissions from the entire contiguous facility under common control are 25 tons per year or less as calculated under paragraph (n) of this section, or

(ii) 10 tons per year in all other cases.

(c) An owner or operator shall establish base year emissions for the source by documenting the following information:

(1) The base year chosen, where the base year shall be 1987 or later except that the base year may be 1985 or 1986 if the owner or operator of the source can demonstrate that emission data for the source for 1985 or 1986 was submitted to the Administrator pursuant to an information request issued under section 114 of the Act and was received by the Administrator prior to November 15, 1990;

(2) The best available data accounting for actual emissions, during the base year, of all hazardous air pollutants from each emission point listed in the source in paragraph (b)(2) of this section;

(3) The supporting basis for each emission number provided in paragraph (c)(2) of this section including;

(i) For test results submitted as the supporting basis, a description of the test protocol followed, any problems encountered during the testing, and a discussion of the validity of the method for measuring the subject emissions; and

(ii) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used, and a brief rationale for the validity of the calculation method used; and

(4) Evidence that the emissions provided under paragraph (c)(2) of this section are not artificially or substantially greater than emissions in other years prior to implementation of emission reduction measures.

(d) An owner or operator shall establish post-control emissions by documenting the following information:

(1) For the emission points listed in the source in paragraph (b)(2) of this section, a description of all control measures employed to achieve the emission reduction required by § 63.72(a)(1);

(2) The best available data on an annual basis accounting for actual emissions, after the base year and following employment of control measures, of all hazardous air pollutants from each emission point in the source listed in paragraph (b)(2) of this section;

(3) The supporting basis for each emission number provided in paragraph (d)(2) of this section including:

(i) For test results submitted as the supporting basis, a description of the test protocol followed, any problems encountered during the testing, and a discussion of the validity of the method for measuring the subject emissions; and

(ii) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used, and a brief rationale for the validity of the calculation method used.

(4) Evidence that all emission reduction was achieved prior to proposal of an applicable standard issued under section 112(d) of the Act or, for sources subject to enforceable commitments, prior to January 1, 1994;

(5) Evidence that none of the emission reduction achieved at a source was due to lower production rates or fewer hours of operation compared to the base year, unless such lower rates or hours are employed continuously until any compliance extension granted to the source expires and no compensating increase in rates or hours occurs at other facilities within the contiguous area under common control which contains the source or, if it occurs, does not result in emissions of hazardous air pollutants; and

(6) Evidence that emission reductions achieved due to shutdown of equipment will be permanent or will continue until the expiration of any compliance extension granted to such source. If shutdown equipment is replaced by new equipment, any hazardous air pollutant emissions from the new equipment shall be counted in the post-control emissions for the source.

(e) An owner or operator shall determine the following emission totals for the source, except that the emission totals specified in paragraphs (e) (3) and (4) of this section are not calculated when high-risk pollutants are not emitted from the source:

(1) Total base year emissions, calculated by summing all base year emission data from paragraph (c)(2) of this section;

(2) Total post-control emissions, calculated by summing all post-control emission data from paragraph (d)(2) of this section;

(3) Total base year emissions adjusted for high-risk pollutants, calculated by multiplying each emission number for a pollutant from paragraph (c)(2) of this section by the appropriate weighting factor for the pollutant from Table 1 and then summing all weighted emission data; and

(4) Total post-control emissions adjusted for high-risk pollutants, calculated by multiplying each emission number for a pollutant from paragraph (d)(2) of this section by the appropriate weighting factor for the pollutant from Table 1 and then summing all weighted emission data.

TABLE 1.—LIST OF HIGH RISK POLLUTANTS

	Weighting factor [1]
Carcinogens:	
2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
Benzidene	1,000
Bis(chloromethyl)ether	1,000
Asbestos	100
Chromium Compounds	100
Hydrazine	100
Arsenic Compounds (inorganic including arsine)	100
Chloromethyl Methyl Ether	10
Cadmium Compounds	10
Heptachlor	10
Beryllium Compounds	10
Acrylamide	10
Coke Oven Emissions	10
Hexachlorobenzene	10
Chlordane	10
Dichloroethyl ether (Bis(2-chloroethyl)ether)	10
1,3-Butadiene	10
Benzotrichloride	10
Ethylene dibromide (Dibromoethane)	10
Ethylene oxide	10
Vinyl chloride	10
Acrylonitrile	10
1,1,2,2-Tetrachloroethane	10
Vinylidene chloride (1,1-Dichloroethylene)	10
Benzene	10
1,2-Propylenimine (2-Methyl aziridine)	10
Noncarcinogens:	
2,4-Toluene diisocyanate	10
Acrolein	10
Acrylic acid	10
Chloroprene	10
Dibenzofurans	10
Mercury Compounds	10
Methyl isocyanate	10
Methylene diphenyl diisocyanate (MDI)	10
Phosgene	10

[1] HAP not on the high risk list have a weighting factor of 1.

(f) If particulate and gaseous hazardous air pollutants are emitted from the source, separate emission totals for particulate pollutants and gaseous pollutants shall be calculated pursuant to paragraphs (e)(1) through (e)(4) of this section, except for cases where a combined particulate and gaseous pollutant reduction demonstration is made.

(g) By comparing the emission totals calculated in paragraphs (e)(1) through (e)(4) of this section, an owner or operator shall show that both total base year emissions and total base year emissions adjusted for high-risk pollutants, as applicable, have been reduced by at least 90 percent for gaseous hazardous air pollutants emitted and 95 percent for particulate hazardous air pollutants emitted, or a combined percentage between 90 and 95 percent for sources emitting gaseous and particulate hazardous air pollutants, where the exact percentage is determined and documented according to the following paragraph.

(h) Where the owner or operator applies a combined percent reduction for gaseous and particulate emissions emitted from the source pursuant to paragraph (g) of this section, the percent reduction applied shall be calculated as follows:

$$\%_w = \frac{0.9\,(\Sigma M_g) + 0.05\,(\Sigma M_p}{\Sigma M_g + \Sigma M_p} \times 100$$

where:

$\%_w$ = the required weighted percent reduction

ΣM_g = the total mass rate (e.g., kg/yr) of all gaseous emissions

ΣM_p = the total mass rate of all particulate emissions

(i) The best available data representing actual emissions for the purpose of establishing base year or post-control emissions under this section shall consist of documented results from source tests using an EPA Reference Method, EPA Conditional Method, or the owner's or operator's source test method which has been validated pursuant to Method 301 of appendix A of this part. However, if one of the following conditions exists, an owner or operator may submit, in lieu of results from source tests, calculations based on engineering principles, emission factors, or material balance data as actual emission data for establishing base year or post-control emissions:

(1) No applicable EPA Reference Method, EPA Conditional Method, or other source test method exists;

(2) It is not technologically or economically feasible to perform source tests;

(3) It can be demonstrated to the satisfaction of the reviewing agency that the calculations will provide emission estimates of accuracy comparable to that of any applicable source test method;

(4) For base year emission estimates only, the base year conditions no longer exist at an emission point in the source and emission data could not be produced for such an emission point, by performing source tests under currently existing conditions and converting the test results to reflect base year conditions, that is more accurate than an estimate produced by using engineering principles, emission factors, or a material balance; or

(5) The emissions from one or a set of emission points in the source are small compared to total source emissions and potential errors in establishing emissions from such points will not have a significant effect on the accuracy of total emissions established for the source.

(j) For base year or post-control emissions established under this section that are not supported by source test data, the source owner or operator shall include the reason source testing was not performed.

(k) In cases where emission control measures have been employed less than a year prior to demonstrating emission reductions under this section, an owner or operator shall extrapolate post-control emission rate data to an annual basis and shall describe the extrapolation method as part of the supporting basis required under paragraph (d)(5) of this section.

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(l) The EPA average emission factors for equipment leaks cannot be used under this subpart to establish base year emissions for equipment leak sources.

(m) A source owner or operator shall not establish base year or post-control emissions, for any emission point in the source, that exceed allowable emission levels specified in any applicable law, regulation, or permit condition.

(n) For sources subject to paragraph (b)(3)(i) of this section, an owner or operator shall document total base year emissions from an entire contiguous facility under common control providing the information required pursuant to paragraphs (b)(2), (c)(2), and (e)(1) of this section for all hazardous air pollutants from all emission points in the contiguous facility under common control.

§ 63.75 Enforceable commitments.

(a) To make an enforceable commitment an owner or operator shall submit a commitment to achieve the early reductions required under § 63.72(a)(1) to the appropriate EPA Regional Office and a copy of the commitment to the appropriate State, except that the commitment shall be submitted to the State and a copy to the EPA Regional Office if the State has an approved permitting program under title V of the Act. A copy shall also be submitted to both the EPA Office of General Counsel (LE–132A), 401 M Street, SW., Washington, DC 20460 and the EPA Emission Standards Division (MD–13), Research Triangle Park, NC 27711; attention both to the Early Reductions Officer. The commitment shall contain:

(1) The name and address of the source;

(2) The name and telephone number of the source owner or operator or other responsible official who can be contacted concerning the commitment;

(3) An alternative mailing address if correspondence is to be directed to a location other than that given in paragraph (a)(1) of this section;

(4) All information specified in § 63.74 (b), (c) and (e)(1), which defines and describes the source and establishes the base year hazardous air pollutant emissions from the source;

(5) The general plan for achieving the required hazardous air pollutant emissions reductions at the source including descriptions of emission control equipment to be employed, process changes or modifications to be made, and any other emission reduction measures to be used; and

(6) A statement of commitment, signed by a responsible official of the source, containing the following:

(i) A statement providing the post-control emission levels for total hazardous air pollutants and high-risk pollutants, as applicable, from the source on an annual basis which reflect a 90 percent (95 percent for particulate pollutants) reduction from base year emissions;

(ii) A statement certifying that the base year emission data submitted as part of the enforceable commitment constitute the best available data for base year emissions from the source and are correct to the best of the responsible official's knowledge;

(iii) A statement that it is understood by the source owner or operator that submission of base year emissions constitutes a response to an EPA request under the authority of section 114 of the Act and that the commitment is subject to enforcement according to § 63.80; and

(iv) A statement committing the source owner or operator to achieving the emission levels, listed in paragraph (a)(6)(i) of this section, at the source before January 1, 1994.

(b) The following language may be used to satisfy the requirements of paragraphs (a)(6)(ii) through (a)(6)(iv) of this section:

> I certify to the best of my knowledge that the base year emissions given above are accurate and acknowledge that these estimates are being submitted in response to an EPA request under section 114 of the Act. Furthermore, I commit to achieve before January 1, 1994 the stated post-control emission level(s) at the source, which will provide the 90 (95) percent reduction required to qualify for the compliance extension, and acknowledge that this commitment is enforceable as specified in Title 40 Part 63 Subpart D of the *Code of Federal Regulations*.

(c) A commitment for a source shall be submitted prior to proposal of an applicable standard issued under section 112(d) of the Act. Commitments received after the proposal date shall be void.

(d) If test results for one or more emission points in a source are required to support base year emissions in an enforceable commitment but are not available prior to proposal of an applicable standard issued under section 112(d) of the Act, the test results may be submitted after the enforceable commitment is made but no later than 180 days after proposal of an applicable standard. In such cases, the enforceable commitment shall contain the best substitute emission data for the points in the source for which test results will be submitted later.

(e) An owner or operator may rescind such a commitment prior to December 1, 1993 without penalty and forfeit the opportunity to obtain a six year compliance extension under this subpart.

§ 63.76 Review of base year emissions.

(a) Pursuant to the procedures of this section, the appropriate reviewing agency shall review and approve or disapprove base year emission data submitted in an enforceable commitment under § 63.75 or in a request letter from an applicant that wishes to participate in the early reduction program but who is not required to submit an enforceable commitment. For review requests submitted to a State agency as the appropriate reviewing agency, a copy of the request also shall be submitted to the applicable EPA Regional Office. For review requests submitted to the EPA Regional Office as the appropriate reviewing agency, a copy of the request also shall be sent to the applicable State agency. Copies also shall be submitted to the EPA Office of General Counsel (LE–132A), 401 M Street, SW., Washington, DC 20460 and the EPA Emission Standards Division (MD–13), Research Triangle Park, NC 27711; to the attention of the Early Reductions Officer.

(b) Within 30 days of receipt of an enforceable commitment or base year emission data, the reviewing agency shall advise the applicant that:

(1) The base year emission data are complete as submitted; or

(2) The base year emission data are not complete and include a list of deficiencies that must be corrected before review can proceed.

(c) EPA will publish a notice in the **Federal Register** which contains a list, accumulated for the previous month, of the sources for which complete base year emission data have been submitted and which are undergoing review either in the EPA Regional Office or a State agency within the EPA region. The notice will contain the name and location of each source and a contact in the EPA Regional Office for additional information.

(d) Within 60 days of a determination that a base year emission data submission is complete, the reviewing agency shall evaluate the adequacy of the submission with respect to the requirements of § 63.74(b) and (c) and either:

(1) Determine to approve the submission and publish a notice, by advertisement in the area affected, providing the aggregate base year emission data for the source and the rationale for the proposed approval, noting the availability of the nonconfidential information contained in the submission for public inspection in at least one location in the community in which the source is located, providing for a public hearing upon request by an interested party, and establishing a 30 day public comment period that can be extended to 60 days upon request by an interested party; or

(2) Determine to disapprove the base year emission data and give notice to the applicant of the reasons for the disapproval. An applicant may correct disapproved base year data and submit revised data for review in accordance with this subsection, except that the review of a revision shall be accomplished within 30 days.

(e) If no adverse public comments are received by the reviewing agency on proposed base year data for a source, the data shall be considered approved at the close of the public comment period and a notice of the approval shall be sent to the applicant and published by the reviewing agency by advertisement in the area affected.

(f) If adverse comments are received and the reviewing agency agrees that corrections are needed, the reviewing agency shall give notice to the applicant of the disapproval and reasons for the disapproval. An applicant may correct disapproved base year emission data and submit revised emission data. If a revision is submitted by the applicant that, to the satisfaction of the reviewing agency, takes into account the adverse comments, the reviewing agency will publish by advertisement in the area affected a notice containing the approved base year emission data for the source and send notice of the approval to the applicant.

(g) If adverse comments are received and the reviewing agency determines that the comments do not warrant changes to the base year emission data, the reviewing agency will publish by advertisement in the area affected a notice containing the approved base year emission data for the source and the reasons for not accepting the adverse comments. A notice of the approval also shall be sent to the applicant.

(h) If an applicant submits revised emission data under paragraph (d)(2) or (f) of this section for a source subject to an enforceable commitment, the applicant also shall submit an amended enforceable commitment which takes into account the revised base year emissions.

(i) If revised base year emission data are not submitted by an applicant within 90 days of receiving a notice of disapproved base year emission data for a source that is subject to an enforceable commitment, the enforceable commitment shall be considered withdrawn and a notice to that effect shall be sent by the reviewing agency to the applicant.

§ 63.77 Application procedures.

(a) To apply for an alternative emission limitation under § 63.72, an owner or operator of the source shall file a permit application with the appropriate permitting authority.

(b) If filed with a State agency, the permit application shall contain a demonstration of early reduction for the source as prescribed in § 63.74 and the additional information required for a complete permit application as specified by the State's permitting program approved under title V of the Act.

(c) If filed with an EPA Regional Office, the permit application shall contain a demonstration of early reduction for the source as prescribed in § 63.74 and the additional information required for a complete permit application as specified by Federal permitting regulations under part 71.

(d) Permit applications under this section for sources not subject to enforceable commitments shall be submitted by the later of the following dates:

(1) The date of proposal of an otherwise applicable standard issued under section 112(d) of the Act, or

(2) 120 days after promulgation of part 71 regulations or 120 days after approval of a State permit program under title V of the Act, whichever occurs first.

(e) Permit applications for sources subject to enforceable commitments pursuant to § 63.75 shall be submitted no later than December 1, 1993.

(f) If a source test is the supporting basis for a post-control emission estimate for one or more emission points in the source but the test results are not available by the deadline for submittal of a permit application according to paragraph (d) of this section, the owner or operator shall provide the supporting basis no later than 90 days after the applicable deadline for submittal of the permit application or no later than March 31, 1994 for sources subject to an enforceable commitment.

(g) Review and disposition of permit applications submitted under this section will be accomplished according to part 70 regulations where a State agency is the appropriate permitting authority and according to part 71 regulations where an EPA Regional Office is the appropriate permitting authority.

§ 63.78 Early reduction demonstration evaluation.

(a) The permitting authority will evaluate an early reduction demonstration submitted by the source owner or operator in a permit application with respect to the requirements of § 63.74.

(b) An application for a compliance extension may be denied if, in the judgment of the permitting authority, the owner or operator has failed to demonstrate that the requirements of § 63.74 have been met. Specific reasons for denial include, but are not limited to:

(1) The information supplied by the owner or operator is incomplete;

(2) The required 90 percent reduction (95 percent in cases where the hazardous air pollutant is particulate matter) has not been demonstrated;

(3) The base year or post-control emissions are incorrect, based on methods or assumptions that are not valid, or not sufficiently reliable or well documented to determine with reasonable certainty that required reductions have been achieved; or

(4) The emission of hazardous air pollutants or the performance of emission control measures is sufficiently variable or unreliable as to preclude determination that the required reductions have been achieved or will continue to be achieved during the extension period.

§ 63.79 Approval of applications.

(a) If an early reduction demonstration is approved and other requirements for a complete permit application are met, the permitting authority shall establish by a permit issued pursuant to title V of the Act enforceable alternative emissions limitations for the source reflecting the reduction which qualified the source for the extension. However, if it is not feasible to prescribe a numerical emissions limitation for one or more emission points in the source, the permitting authority shall establish such other requirements, reflecting the reduction which qualified the source for an extension, in order to assure the source achieves the 90 percent or 95 percent reduction, as applicable.

(b) An alternative emissions limitation or other requirement prescribed pursuant to paragraph (a) of this section shall be effective and enforceable immediately upon issuance of the permit for the source and shall expire exactly six years after the compliance date of an otherwise applicable standard issued pursuant to section 112(d) of the Act.

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§ 63.69 Enforcement.

(a) All base year or post-control emissions information described in § 63.74 and required to be submitted as part of a permit application under § 63.77 or an enforceable commitment under § 63.75 shall be considered to have been requested by the Administrator under the authority of section 114 of the Act.

(b) Fraudulent statements contained in any base year or post-control emissions submitted to a State or EPA Regional Office under this subpart shall be considered violations of section 114 of the Act and of this regulation and, thus, actionable under section 113 of the Act and can be considered, in appropriate cases, violations of 18 U.S.C. 1002, the general false swearing provision of the United States Code.

(c) If a source subject to an enforceable commitment fails to achieve reductions before January 1, 1994, sufficient to qualify the source for an extension under this subpart, the source shall be considered to be in violation of the commitment and shall be subject to enforcement action under section 113 of the Act.

(d) If an early reduction demonstration in a permit application filed under § 63.77 is disapproved for a source not subject to an enforceable commitment, the owner or operator shall comply with an applicable standard issued under section 112(d) of the Act by the compliance date specified in such standard.

(e) If an early reduction demonstration in a permit application filed under § 63.77 is disapproved for a source that is subject to an enforceable commitment, the owner or operator shall comply with an applicable standard issued under section 112(d) of the Act by the compliance date specified in such standard and will be subject to enforcement action under section 113 of the Act.

(f) A violation of an alternative emission limitation or other requirement established by permit under § 63.70 (a) or (b) for the source is enforceable pursuant to the authority of section 113 of the Act notwithstanding any demonstration of continuing 90 percent (95 percent for hazardous air pollutants which are particulates) emission reduction over the entire source.

§ 63.81 Rule for special situations.

(a) If more than one standard issued under section 112(d) of the Act would be applicable to a source as defined under § 63.73, then the date of proposal referred to in § 63.72(a)(2), § 63.72(c), § 63.74(d)(6), § 63.75(c), and § 63.77(d) is the date the first applicable standard is proposed.

Appendix A—Test Methods

Method 301—Field Validation of Emission Concentrations from Stationary Sources

1. *Applicability and Principle*

1.1 Applicability. This Method, as specified in the applicable subpart, is to be used whenever a source owner or operator (hereafter referred to as an "analyst") proposes a test method to meet a U.S. Environmental Protection Agency (EPA) requirement in the absence of a validated method. This Method includes procedures for determining and documenting the quality, i.e., systematic error (bias) and random error (precision), of the measured concentrations of the source emissions.

1.1.1 If EPA currently recognizes an appropriate test method or considers the analyst's test method to be satisfactory for a particular source, the Administrator may waive the use of this protocol or may specify a less rigorous validation procedure. A list of validated methods may be obtained by contacting the Emission Measurement Technical Information Center (EMTIC), Mail Drop 19, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, 919/541-0200. Procedures for obtaining a waiver are in section 12.0.

1.1.2 This method includes optional procedures that may be used to expand the applicability of the proposed method. Section 7.0 involves ruggedness testing (Laboratory Evaluation), which demonstrates the sensitivity of the method to various parameters. Section 8.0 involves a procedure for including sample stability in bias and precision for assessing sample recovery and analysis times; section 9.0 involves a procedure for the determination of the practical limit of quantitation for determining the lower limit of the method. These optional procedures are required for waiver consideration method status. Section 12.0.

1.2 Principle. The purpose of these procedures is to determine bias and precision of a test method at a permissible emission concentration, e.g., emission standard, in the gas stream. The procedures involve (a) introducing known concentrations of an analyte or comparing the test method against a validated test method to determine the method's bias and (b) collecting multiple or collocated simultaneous samples to determine the method's precision.

1.2.1 Bias. Bias is established by comparing the method's results against a reference value and may be eliminated by dividing the measured concentration by an appropriate factor (i.e., average measured concentration/reference value). An offset bias may be handled accordingly. Methods that have bias correction factors outside 0.7 to 1.3 are unacceptable. Validated method to proposed method comparisons, section 6.2, requires a more restrictive test of central tendency and a lower correction factor allowance of 0.90 to 1.10.

1.2.2 Precision. At least two [i.e., paired] sampling trains shall be used to established precision. The precision of the method at the level of the emission standard shall not be greater than 50 percent relative standard deviation. For a validated method to proposed method equivalency comparisons, section 6.2, the analyst must demonstrate that the precision of the proposed test method is as precise as the validated method for acceptance.

2. *Definitions.*

2.1 Negative bias. Bias resulting when the measured result is less than the "true" value.

2.2 Paired trains. Two collocated and simultaneously operated sampling systems.

2.3 Positive bias. Bias resulting when the measured result is greater than the "true" value.

2.4 Proposed method. The sampling and analytical methodology selected for field validation using the method described herein.

2.5 Quadruplicate trains. Four collocated and simultaneously operated sampling train system.

2.6 Surrogate compound. A compound that serves as a model for the types of compound being analyzed. The model can be distinguished by the method from the compounds being analyzed.

3. *Reference Material*

The analyst shall obtain a known concentration of the reference material [i.e., analyte of concern] from an independent source such as a specialty gas manufacturer, specialty chemical company, or commercial laboratory. A list of vendors may be obtained from EMTIC (see section 1.2.1). The analyst should obtain the manufacturer's stability data of the analyte concentration and recommendations for recertification. If the reference material is in the gaseous state, the concentration(s) [multiple levels may be required to expand a method's concentration applicability] shall be within 0.20 to 5 times the average concentration in the sample gas stream.

3.1 Surrogate Reference Materials. The analyst may use surrogate compounds, e.g., for highly toxic or reactive organic compounds, provided the analyst can demonstrate to the Administrator's satisfaction that the surrogate compound behaves as the analyte. A surrogate may be an isotope or one that contains a unique element (e.g., chlorine) that is not present in the stack gas or a derivative of the toxic or reactive compound, if the derivative formation is part of the method's procedure. Laboratory experiments or literature data may be used to show behavioral acceptability.

3.2 Isotopically Labeled Materials. Isotope mixtures may contain the isotope and the natural analyte. For best results, the isotope labeled analyte concentration should be more than five times the natural concentration of the analyte. Deuterated compounds of interest may be in gaseous or liquid states. The gaseous form should be obtained in compressed-gas cylinders in high-purity nitrogen.

4. *EPA Performance Audit Material*

4.1 To assess the method bias independently, the analyst shall use (in addition to the reference material) an EPA performance audit material, if it is available. The analyst may contact EMTIC (see section 1.2.1) to receive a list of currently available EPA audit materials. If the analyte is listed, the analyst should request the audit material at least 30 days before the validation test. If an EPA audit material is not available, request documentation from the validation report reviewing authority that the audit material is currently not available from EPA. Include this documentation with the field validation report.

4.2 The analyst shall sample and analyze the performance audit sample three times according to the instructions provided with the audit sample. The analyst shall submit the three results with the field validation report. Although no acceptance criteria are set for these performance audit results, the analyst and reviewing authority may use them to assess the relative error of sample recovery, sample preparation, and analytical procedures and then consider the relative error in evaluating the measured emissions.

5. *Procedure for Determination of Bias and Precision in the Field*

The analyst shall select one of the sampling approaches below to determine the bias and precision of the data. After analyzing the samples, the analyst shall calculate the bias and precision according to the procedure described in section 6.0.

5.1 Isotopic Spiking. This approach shall be used only for methods that require gas chromatography/mass spectrometry (GC/MS) analysis. Bias and precision are calculated by procedures described in section 6.1.

5.1.1 Number of Samples and Sampling Runs. Collect a total of 12 samples using either paired (2) or quadruplet (4) collocated sampling trains. For paired trains, conduct six sampling runs. For quadruplet trains, conduct three sampling runs.

5.1.2 Spiking Procedure. Spike all 12 sampling trains with the reference material as follows. The spike shall be introduced as close to the tip of the probe as possible.

5.1.2.1 Gaseous Reference Material with Sorbent or Impinger Trains. Sample the reference material (in the laboratory or in the field) at a concentration equal to the level of the emission standard for the time required by the method, and then sample the gas stream for an equal amount of time. The time for sampling both the reference material and gas stream should be equal; however, the time should be adjusted to avoid sorbent breakthrough.

5.1.2.2 Gaseous Reference Material with Sample Container (Bag or Canister). Spike the containers after completion of the test run with an amount equal to the level of emission standards. The final concentration of the reference material shall approximate the level of the emission standard. The volume amount of reference material shall be less than 10 percent of the sample volume.

5.1.2.3 Liquid and Solid Reference Material with Sorbent or Impinger Trains. Spike the trains with an amount equal to the level of the emission standard before sampling the stack gas. The spiking should be done in the field; however, it may be done in the laboratory.

5.1.2.4 Liquid and Solid Reference Material with Sample Container (Bag or Canister). Spike the containers at the completion of each test run with an amount equal to the level of the emission standard.

5.2 Comparison Against a Validated Test Method. Bias and precision are calculated using the procedure described in section 6.2. This approach shall be used when a validated method is available and an alternative method is being proposed.

5.2.1 Number of Samples and Sampling Runs. Collect a total of 18 samples using paired trains or 16 samples using quadruplet sampling trains. For paired trains, conduct nine sampling runs. For quadruplet trains, conduct four sampling runs. In each run, the validated test method shall be used to collect and analyze half of the samples.

5.2.2 Performance Audit Exception. Conduct the performance audit as required in section 4.0 for the validated test method. Conducting a performance audit on the test method being evaluated is recommended.

5.2.3 Probe Placement and Arrangement. The probes should be placed in the same horizontal plane. For paired sample probes the arrangement should be that the probe tip is 2.5 cm from the outside edge of the other with the pitot tube on the outside of each probe. For quad probes, the tips shall be in a 6.0 cm × 6.0 cm square area measured from the inside edge of the probe tip with the pitot tube in the center.

5.3 Analyte Spiking. Bias and precision are calculated using the procedures described in section 6.3.

5.3.1 Number of Samples and Sampling Runs. Collect a total of 24 samples using quadruplet sampling trains. Conduct six sampling runs.

5.3.2 In each run, spike half of the sampling trains (two out of the four) according to the applicable procedure in sections 5.1.2.1 through 5.1.2.4.

6. *Calculations*

Data resulting from the procedures specified in section 5.0 shall be treated as follows to determine bias, correction factors, relative standard deviations, precision, and data acceptance.

6.1 Isotopic Spiking. Analyze the data for isotopic spiking tests as outlined in sections 6.1.1 through 6.1.6.

6.1.1 Calculate the numerical value of the bias using the results from the analysis of the isotopically spiked field samples and the calculated value of the isotopically labeled spike:

$$B = S_m - CS \qquad \text{Eq. 301-1}$$

where:

B = bias at the spike level;

S_m = mean of the measured values of the isotopically spiked samples;

CS = calculated value of the isotopically labeled spike.

6.1.2 Calculate the standard deviation of the S_i values as follows:

$$SD = \sqrt{\frac{\Sigma(S_i - S_m)^2}{(n-1)}} \qquad \text{Eq. 301-2}$$

where:

S_i = The measured value of the isotopically labeled analyte in the ith field sample;

n = The number of isotopically spiked samples, 12.

6.1.3 Calculate the standard deviation of the mean (SDM) as follows:

$$SDM = \frac{SD}{\sqrt{n}} \qquad \text{Eq. 301-3}$$

6.1.4 Test the bias for statistical significance by calculating the t-statistic,

$$t = \frac{|B|}{SDM} \qquad \text{Eq. 301-4}$$

and compare it with the critical value of the two-sided t-distribution at the 95-percent confidence level and n-1 degrees of freedom. This critical value is 1.80 for the eleven degrees of freedom when the procedure specified in section 5.1.2 is followed. If the calculated t-value is greater than the critical value the bias is statistically significant and the analyst should proceed to evaluate the correction factor.

6.1.5 Calculation of a correction factor. If the t-test does not show that the bias is statistically significant, proceed to the precision evaluation. If the method's bias is statistically significant, calculate the correction factor, CF using the following equation:

$$CF = \frac{1}{\frac{1+B}{CS}} \qquad \text{Eq. 301-5}$$

Multiply all analytical results by CF to obtain the final values.

6.1.6 Calculation of the relative standard deviation (precision). Calculate the relative standard deviation as follows:

$$RSD = \left(\frac{SD}{S_m}\right) \times 100 \qquad \text{Eq. 301-6}$$

where S_m is the measured mean of the isotopically labeled spiked samples.

6.2 Comparison with Validated Method.

Analyze the data for comparison with a validated method as outlined in sections 6.2.1 through 6.2.2.5. Conduct the following to determine if a proposed method produces results equivalent to a validated method. Make all necessary bias corrections for the validated method, as appropriate. If the proposed method fails either test, the method results are unacceptable, and conclude that the proposed method is not as precise or accurate as the validated method. For some highly cyclic emission sources additional precision checks may be necessary. The analyst should consult with the Administrator if a highly cyclic emission source is suspected.

6.2.1 Paired sampling trains.

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6.2.1.1 Precision. Determine the acceptance of the proposed method's variance with respect to the variability of the validated method results. If a significant difference is determined, the proposed method and the results are rejected. Proposed methods demonstrating F-values equal to or less than the critical value have acceptable precision.

6.2.1.2 Calculate the variance of the proposed method. S_p^2, using the following equation:

$$S_p^2 = \frac{\Sigma d_i^2}{2n} \qquad \text{Eq. 301–7}$$

where:

d_i = The difference between the validated method values and the proposed method values.

6.2.1.3 The F-test. Determine if the variance of the proposed method is significantly different from that of the validated method by calculating the F-value using the following equation:

$$F = \frac{S_p^2}{S_v^2} \qquad \text{Eq. 301–8}$$

where:

S_v^2 = the variability of the validated method that is furnished with it.

Compare the experimental F value with the critical value of F. The critical value is 1.0 when the procedure specified in section 5.2.1 for paired trains is followed. If the calculated F is greater than the critical value, the difference in precision is significant and the data and proposed method are unacceptable.

6.2.1.4 Bias analysis. Test the bias for statistical significance by calculating the t-statistic and determine if the mean of the differences between the proposed method and the validated method is significant at the 80-percent confidence level. Determine the bias (the mean of the differences, d_m) and the standard deviation, S_d, of the differences. Calculate the standard deviation of the mean of the differences, SD_d, using Equation 301–2 where:

d_i replaces S_i

d_m replaces S_m

Calculate the t-statistic using the following equation:

$$t = \frac{d_m}{\left(\frac{SD_d}{\sqrt{n}}\right)} \qquad \text{Eq. 301–9}$$

where n is the total number of paired samples. For the procedure in section 5.2.1, n equals nine. Compare the calculated t-statistic with the corresponding value from the table of the t-statistic. When nine runs are conducted, as specified in section 5.2.1, the critical value of the t-statistic is 0.889 for eight degrees of freedom. If the calculated t-value is greater than the critical value the bias is statistically significant and the analyst should proceed to evaluate the correction factor.

6.2.1.5 Calculation of a correction factor. If the method's bias is statistically significant, calculate the correction factor, CF, as follows:

$$CF = \frac{1}{1 + \frac{d_m}{V_m}} \qquad \text{Eq. 301–10}$$

where V_m is the mean of the validated method's values. Multiply all analytical results by CF to obtain the final values. The method results, and the method, are unacceptable if the correction factor is outside the range of 0.9 to 1.10.

6.2.2 Quadruplet sampling trains.

6.2.2.1 Acceptable precision for equivalency. Determine the acceptance of the proposed method's variance with respect to the variability of the validated method results. If a significant difference is determined the proposed method and the results are rejected.

6.2.2.2 Calculate the variance of the proposed method. S_p^2, using Equation 301–7.

6.2.2.3 The F-test. Determine if the variance of the proposed method is significantly different from that of the validated method by calculating the F-value using Equation 301–8. Compare the experimental F value with the critical value of F. The critical value is 1.0 when the procedure specified in section 5.2.2 for quadruplet trains is followed. If the calculated F is greater than the critical value, the difference in precision is significant the results and the proposed method are unacceptable.

6.2.2.4 Bias Analysis. Test the bias for statistical significance at the 80 percent confidence level by calculating the t-statistic. Determine the bias (mean of the differences between the proposed method and the validated method, d_m) and the standard deviation, SD_d, of the differences. Calculate the standard deviation of the mean of the differences, SD_d, using Equation 301–7 where:

$$d_i = \frac{(V_{1i} + V_{2i})}{2} - \frac{(P_{1i} + P_{2i})}{2} \qquad \text{Eq. 301–11}$$

and:

V_{1i} = The first measured value of the validated method in the ith test sample;

P_{1i} = The first measured value of the proposed method in the ith test sample.

Calculate the t-statistic using Equation 301–9 where n is the total number of test sample differences (d_i). For the procedure in section 5.2.2, n equals four. Compare the calculated t-statistic with the corresponding value from the table of the t-statistic and determine if the mean is significant at the 80-pescent confidence level. When four runs are conducted, as specified in section 5.2.2, the critical value of the t-statistic is 0.978 for three degrees of freedom.

If the calculated t-value is greater than the critical value the bias is statistically significant and the analyst should proceed to evaluate the correction factor.

6.2.2.4 Correction factor calculation. If the method's bias is statistically significant, calculate the correction factor, CF, using Equation 301–10. Multiply all analytical results by CF to obtain the final values. The method results, and the method, are unacceptable if the correction factor is outside the range of 0.9 to 1.10.

6.3 Analyte Spiking. Conduct sampling as described in section 5.3, and analyze the data for analyte spike testing as outlined in sections 6.3.1 through 6.3.6.

6.3.1 Bias. Calculate the numerical value of the bias using the results from the analysis of the spiked field samples, the unspiked field samples, and the calculated value of the spike:

$$B = S_m - M_m - CS \qquad \text{Eq. 301–12}$$

where:

B = bias at the spike level

S_m = mean of the spiked samples

M_m = mean of the unspiked samples

CS = calculated value of the spiked level.

6.3.2 Determine the precision of the spiked samples. Calculate the difference, d_i, between the pairs of the spiked proposed method measurements for each sampling run. Determine the standard deviation (SD_s) of the spiked values using the following equation:

$$SD_s = \sqrt{\frac{\Sigma d_i^2}{2n}} \qquad \text{Eq. 301–13}$$

where:

n = the number of samples.

6.3.3 Calculate the standard deviation of the mean using Equation 301–3.

6.3.4 Test the bias for statistical significance by calculating the t-statistic using Equation 301–4 and comparing it with the critical value of the two-sided t-distribution at the 95-percent confidence level and n–1 degrees of freedom. This critical value is 1.80 for the eleven degrees of freedom.

6.3.5 Calculaton of a correction factor. If the t-test does not show that the bias is statistically significant use all analytical results without correction. If the method's bias is statistically significant, calculate the correction factor using Equation 301–5. Multiply all analytical results by CF to obtain the final values.

6.3.6 Determination of precision of the unspiked samples. Calculate the standard deviation of the unspiked values using Equation 301–13 and the relative standard deviation of the proposed unspiked method using Equation 301–6.

7. Ruggedness Testing (Optional)

7.1 Laboratory Evaluation.

7.1.1 Ruggedness testing is a useful and cost-effective laboratory study to determine the sensitivity of a method to certain parameters such as sample collection rate, interferant concentration, collecting medium temperature, or sample recovery temperature. This section generally discusses the principle of the ruggedness test. A more detailed description is presented in citation 10 of section 12.0.

7.1.2 In a ruggedness test, several variables are changed simultaneously rather than one variable at a time. This reduces the number of experiments required to evaluate the effect of a variable. For example, the effect of seven variables can be determined in eight experiments rather than 128 (W.J. Youden, Statistical Manual of the Association of Official Analytical Chemists, Association of Official Analytical Chemists, Washington, DC, 1975, pp. 30–38).

7.1.3 Data from ruggedness tests are helpful in extending the applicability of a test method to different source concentrations or source categories.

8. Procedure for Including Sample Stability in Bias and Precision Evaluations (Optional)

8.1 Sample Stability.

8.1.1 The test method being evaluated must include procedures for sample storage and the time within which the collected samples shall be analyzed.

8.1.2 This section discusses the procedures for including the effect of storage time in bias and precision evaluations. The evaluation may be deleted if the test method specifies a time for sample storage.

8.2 Stability Test Design. The following procedures should be conducted to identify the effect of storage times on analyte samples. Store the samples according to the procedure specified in the test method.

8.2.1 For sample container (bag or canister) and impinger sampling systems set up in regards to section 5.1 and 5.3, analyze six of the samples at the minimum storage time. Then analyze the same six samples at the maximum storage time.

8.2.2 For sorbent sampling systems set up in regards to section 5.1 and 5.3 that require liquid extraction, extract six of the samples at the minimum storage time and extract six other samples at the maximum storage time. Analyze an aliquot of the first six extracts at both the minimum and maximum storage times. This will provide some freedom to analyze extract storage impacts.

8.2.3 For sorbent sampling systems set up in reference to section 5.1 and 5.3 that require thermal desorption, analyze six samples at the minimum storage time. Analyze another set of six samples at the maximum storage time.

8.2.4 For systems set up in accordance with section 5.2, the number of samples analyzed at the minimum and maximum storage times shall be half those collected (8 or 9).

9. Procedure for Determination of Practical Limit of Quantitation (Optional)

9.1. Practical Limit of Quantitation.

9.1.1 The practical limit of quantitation (PLQ) is the lowest level above which quantitative results may be obtained with an acceptable degree of confidence. For this protocol, the PLQ is defined as 10 times the standard deviation, s_o, at the blank level. This PLQ corresponds to an uncertainty of ±30 percent at the 99-percent confidence level.

9.1.2 The PLQ will be used to establish the lower limit of the test method.

9.2 Procedure I for Estimating s_o. This procedure is acceptable if the estimated PLQ is no more than twice the calculated PLQ. If the PLQ is greater than twice the calculated PLQ use Procedure II.

9.2.1 Estimate the PLQ and prepare a test standard at this level. The test standard could consist of a dilution of the reference material described in section 4.0.

9.2.2 Using the normal sampling and analytical procedures for the method, sample and analyze this standard at least seven times in the laboratory.

9.2.3 Calculate the standard deviation, s_o, of the measured values.

9.2.4 Calculate the PLQ as 10 times s_o.

9.3. Procedure II for Estimating s_o. This procedure is to be used if the estimated PLQ is more than twice the calculated PLQ.

9.3.1 Prepare two additional standards at concentration levels lower than the standard used in Procedure I.

9.3.2 Sample and analyze each of these standards at least seven times.

9.3.3 Calculate the standard deviation for each concentration level.

9.3.4 Plot the standard deviations of the three test standards as a function of the standard concentrations.

9.3.5 Draw a best-fit straight line through the data points and extrapolate to zero concentration. The standard deviation at zero concentration is s_o.

9.3.6 Calculate the PLQ as 10 times s_o.

10.0 Field Validation Report Requirements

The field validation report shall include a discussion of the regulatory objectives for the testing which describe the reasons for the test, applicable emission limits, and a description of the source. In addition, validation results shall include:

10.1 Summary of the results and calculations shown in Section 6.0.

10.2 Reference material certification and value(s).

10.3 Performance audit results or letter from the reviewing authority stating the audit material is currently not available.

10.4 Laboratory demonstration of the quality of the spiking system.

10.5 Discussion of laboratory evaluations.

10.6 Discussion of field sampling.

10.7 Discussion of sample preparations and analysis.

10.8 Storage times of samples (and extracts, if applicable).

10.9 Reasons for eliminating any results.

11. Followup Testing

The correction factor calculated in section 6.0 shall be used to adjust the sample concentrations in all followup tests conducted at the same source. These tests shall consist of at least three sample collections, and the average shall be used to determine the emission rate. The number of samples per sample collection period (run) of the method shall be as follows, depending on the validated method precision level:

11.1 Validated relative standard deviation (hRSD) ≤ ±15 Percent. One sample per run or three total samples.

11.2 Validated RSD ≤ ±30 Percent. Two samples per run or six total samples.

11.3 Validated RSD ≤ ±50 Percent. Three samples per run or nine total samples.

11.4 Equivalent method. One sample per run or three total samples.

12. Procedure for Obtaining a Waiver

12.1 Waiver. These procedures may be waived or a less rigorous protocol may be granted for site-specific applications. The following are three example situations for which a waiver may be considered.

12.1.1 "Similar" sources. If the test method has been validated previously at a "similar" source, the procedures may be waived provided the request can demonstrate to the satisfaction of the Administrator that the emission characteristics are "similar." The method's applicability to the "similar" source may be demonstrated by conducting a ruggedness test as described in section 8.0.

12.1.2 "Documented" methods. In some cases, bias and precision may have been documented through laboratory tests or protocols different from this method. If the analyst can demonstrate to the satisfaction of the Administrator that the bias and precision apply to a particular application, the Administrator may waive these procedures or parts of the procedures.

12.1.3 "Conditional" test methods. When the method has been demonstrated to be valid at several sources, the analyst may seek a "conditional" method designation from the Administrator. "Conditional" method status provides an automatic waiver from the procedures provided the test method is used within the stated applicability.

12.2 Application for Waiver. In general, the requester shall provide a thorough description of the test method, the intended application, and results of any validation or other supporting documents. Because of the many potential situations in which the Administrator may grant a waiver, it is neither possible nor desirable to prescribe the exact criteria for a waiver. At a minimum, the requester is responsible for providing the following.

12.2.1 A clearly written test method, preferably in the format of 40 CFR Part 60, appendix A Reference Methods. The method must include an applicability statement, concentration range, precision, bias (accuracy), and time in which samples must be analyzed.

12.2.2.2 Summaries (see section 10.0) of previous validation tests or other supporting documents. If a different procedure from that described in this method was used, the requester shall provide appropriate documents substantiating (to the satisfaction of the Administrator) the bias and precision values.

12.2.2.3 Results of testing conducted with respect to section 7.0, 8.0, and 9.0.

12.2.3 Discussion of the applicability statement and arguments for approval of the waiver. This discussion should address as applicable the following: Applicable regulation, emission standards, effluent characteristics, and process operations.

12.3 Requests for Waiver. Each request shall be in writing and signed by the analyst Submit requests to the Director, OAQPS, Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

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Appendix B—Sources Defined for Early Reduction Provisions

Source	Location of definition
1 Organic Equipment Leaks at Chemical Plants.	56 FR 9315, Announcement of Negotiated Rulemaking.

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Part V

Department of the Interior

Minerals Management Service

Intent to Prepare an Environmental Impact Statement for Outer Continental Shelf Lease Sale, Beaufort Sea Planning Area; Notice

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UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Proposed 1993 Lease Sale in the Beaufort Sea, Lease Sale 144
Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call for Information and Nominations (Call) is to gather information for proposed Outer Continental Shelf (OCS) Lease Sale 144. This proposed sale, located in the Beaufort Sea Planning Area, is tentatively scheduled for the latter part of 1993. Information and nominations on natural gas and oil leasing, exploration, and development and production within the Beaufort Sea Planning Area are sought from all interested parties. This initial planning and consultation step is part of the Area Evaluation and Decision Process and is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decisions in the leasing process pursuant to the OCS Lands Act (43 U.S.C. 1331-1356 (1988)) and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the OCS Lands Act, and with established departmental procedures.

Description of Area

The area of Call is located offshore the State of Alaska in the Beaufort Sea. The area available for nominations and comments consists of approximately 5,420 whole and partial blocks (about 29.5 million acres). Respondents may nominate and are asked to comment on any acreage within the entire Call area. A large scale map of the Beaufort Sea Planning Area (hereinafter referred to as the Call map) showing boundaries of the Call area on a block-by-block basis and a complete list of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service (MMS), 949 E. 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, telephone (907) 261-4621. The OPD's may be purchased from the Records Manager for $2.00 each.

Instructions on Call

Respondents are requested to nominate blocks within the Call area that they would like included in proposed OCS Lease Sale 144. Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Respondents are asked to submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Respondents are also requested to rank areas nominated according to priority of interest (e.g., priority 1 (high), 2 (medium), or 3 (low). Areas nominated that do not indicate priorities will be considered priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority.

Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or socioeconomic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments are also sought on potential conflicts with approved local coastal management plans (CMP's) that may result from the proposed sale and future OCS oil and gas activities. If possible, these comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 60 days following publication of this document in the Federal Register in envelopes labeled **"Nominations for Proposed Beaufort Sea Lease Sale 144,"** or **"Comments on the Call for Information and Nominations for Proposed Beaufort Sea Lease Sale 144,"** as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 E. 36th Avenue, Room 110, Anchorage, Alaska 99508-4302. Copies of the Call map showing indications of interest and any comments are to be sent to the Program Director, Office of Program Development and Coordination, Department of the Interior, Minerals Management Service, 1849 C Street, NW., MS-4230, Washington, D.C. 20240.

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Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to focus the analysis in the remainder of the sale process on areas indicated as having hydrocarbon potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area and to assess the possible need for additional information or studies and/or additional time to resolve potential conflicts. This information will be used to make a preliminary determination of potential advantages and disadvantages of gas and oil exploration and development to the Region and the Nation. A third purpose for this Call is to use the comments to initiate the scoping process for the EIS and analyze alternatives to the proposed action. The Notice of Intent to Prepare an Environmental Impact Statement (EIS) is located later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore oil and gas activities.

Existing Information

An extensive environmental as well as socioeconomic studies program has been under way in this area since 1975. The emphasis, including continuing studies, has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports may also be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone at (703) 487-4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Instructions on Call or by telephone at (907) 261-4620. Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Publications Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070-4817 or by calling (703) 787-1080.

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 144 in the Beaufort Sea off Alaska. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid MMS in determining the significant issues and alternatives to be analyzed in the EIS and the possible need for additional information.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal that may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Instructions on Call above. Comments should be enclosed in an envelope labeled **"Comments on the Notice of Intent to Prepare an EIS on the Proposed Beaufort Sea Lease Sale 144."** Comments are due no later than 45 days from publication of this Notice.

Director
Minerals Management Service

Barry Williamson

Approved:

Richard Roldan

Assistant Secretary, Land and Minerals Management

6/10/91
Date

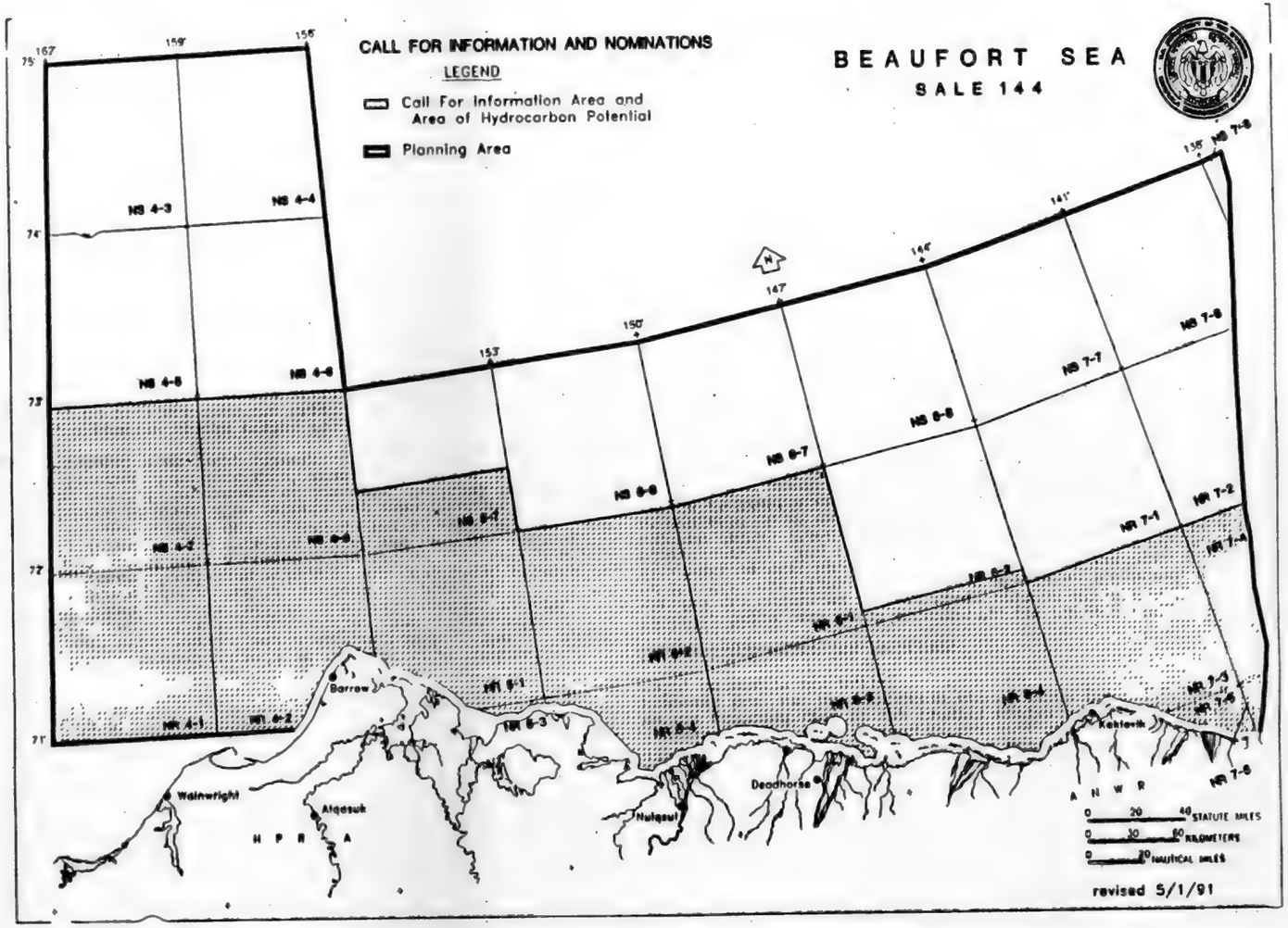
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Part VI

Department of the Interior

Minerals Management Service

Intent To Prepare an Environmental Impact Statement for Outer Continental Shelf Lease Sale, Central Gulf of Mexico Planning Area; Notice

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UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Gulf of Mexico OCS Region

Proposed 1993 Lease Sales

Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS
(Responses Due in 30 Days)

Purpose of Call

The purpose of the Call is to gather information for Outer Continental Shelf (OCS) Lease Sale 142 in the Central Gulf of Mexico (CGOM) Planning Area, tentatively scheduled for March 1993, and OCS Lease Sale 143 in the Western Gulf of Mexico (WGOM) Planning Area, tentatively scheduled for August 1993.

Information and nominations on leasing, exploration, and development and production within the CGOM and WGOM Planning Areas are sought from all interested parties. This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act (43 U.S.C. 1331-1356) (1988)), and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below.

Description of Area

The general area of this Call covers the entire central and western portions of the Gulf of Mexico between approximately 88 degrees W. longitude on the east and approximately 97 degrees W. longitude on the west and extends from the Federal-State boundaries seaward to the provisional maritime boundary between the United States and Mexico. The entire Call area is offshore the States of Texas, Louisiana, Mississippi, and Alabama. This area is divided into two planning areas.

The CGOM Planning Area is bounded on the east by approximately 88 degrees W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28 degrees N. latitude, thence east to approximately 92 degrees W. longitude, thence south to the provisional maritime boundary with Mexico which constitutes the southern boundary of the area. The northern part of the area is bounded by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area available for nominations and comments consists of about 47.8 million acres.

The WGOM Planning Area is bounded on the west and north by the Federal-State boundary and on the east by the CGOM Planning Area. The area extends south to the provisional maritime boundary with Mexico. The entire area is offshore Texas and, in deeper water, offshore Louisiana. The area available for nominations and comments consists of about 35.9 million acres.

A standard large-scale Call for Information Map depicting each planning area on a block-by-block basis is available without charge from:

Minerals Management Service
Public Information Unit
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123-2394
Telephone: (504) 736-2519

Areas Deferred from this Call

High Island Area, East Addition, South Extension, (Flower Gardens), Block A-375 and Block A-398 (WGOM).

Area Under Ongoing Discussions with the Navy

The Corpus Christi Naval Operations Area containing 340 blocks has been deferred from leasing in Western Gulf Sales 135 and 141 in accordance with a 1990 agreement with the Navy, but is not being deferred from this Call. The Minerals Management Service (MMS) will institute a review of the area to take into account possible changes in nearby oil and gas discovery and development patterns and will continue discussions with the Navy regarding future activities.

Instructions on Call

Indications of interest and comments must be received no later than 30 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed 1993 Lease Sales in the Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 1993 Lease Sales in the Gulf of Mexico." The standard Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated above.

The standard Call for Information Map delineates the Call area all of which has been identified by the MMS as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area

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that they wish to have included in proposed Sale 142 in the CGOM and proposed Sale 143 in the WGOM.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). We encourage respondents to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in the analysis of industry interest. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3 (low).

Respondents may also submit a detailed list of blocks nominated (by Official Protraction Diagram and Leasing Map designations) to ensure correct interpretation of their nominations. Specific questions may be directed to the Chief, Leasing Activities Section at (504) 736-2761. Official Protraction Diagrams and Leasing Maps can be purchased from the Public Information Unit referred to above.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological and socioeconomic conditions or conflicts, or other information which might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State Coastal Management Programs (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A third purpose for this Call is to use the comments collected to initiate the scoping process for the Environmental Impact Statement (EIS) and analyze alternatives to the proposed action. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. Fifth, comments may be used to point out potential conflicts between offshore oil and gas activities and a State CMP.

Existing Information

An extensive environmental studies program has been underway in this area since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies can be obtained from the Public Information Unit referenced above. The reports may also be ordered, for a fee, directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: (703) 487-4650.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico OCS Region (see address under "Description of Area") or by telephone at (504) 736-2896.

Summary Reports and Indices and technical and geological reports are available for review at the MMS, Gulf of Mexico OCS Region (see address under "Description of Area"). Copies of the Gulf of Mexico OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070.

Tentative Schedule

Final delineation of the areas for possible leasing will be made at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and the OCS Lands Act (43 U.S.C. 1331-1356) (1988).

The following is a list of tentative milestone dates preceding CGOM Sale 142 and WGOM Sale 143:

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	CGOM Sale 142	WGOM Sale 143
Comments due on the Call	July 1991	July 1991
Notice Of Intent Comments Due (Scoping)	July 1991	July 1991
Area Identification	August 1991	August 1991
Draft EIS published	April 1992	April 1992
Public Hearings held on Draft EIS	May 1992	May 1992
Proposed Notice Issued	May 1992	May 1992
Governors' Comments Due on Proposed Notice	July 1992	July 1992
Final EIS published	September 1992	September 1992
Final Notice of Sale published	February 1993	July 1993
Sale Date	March 1993	August 1993

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT
(Comments Due in 30 Days)

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.), the MMS is announcing its intent to prepare an EIS on the oil and gas leasing proposals known as Sale 142 in the CGOM, and Sale 143 in the WGOM, off the States of Texas, Louisiana, Mississippi, and Alabama. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties have the opportunity to aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposal which may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent to Prepare an EIS

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under "Description of Area." Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed 1993 Lease Sales in the Gulf of Mexico." Comments are due no later than 30 days from publication of this Notice. Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of the EIS.

Director, Minerals Management Service

Approved:

Barry Williamson

Assistant Secretary, Land and Minerals Management

Richard Roldan

6 10 91
Date

[FR Doc. 91-14004 Filed 6-12-91; 8:45 am]
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June 13, 1991

Part VII

Department of Health and Human Services

Public Health Service

Policies and Procedures for Dealing With Possible Scientific Misconduct in Extramural Research; Notice

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Department of Health and Human Services

Public Health Service

Policies and Procedures for Dealing with Possible Scientific Misconduct in Extramural Research

AGENCY: Public Health Service, HHS.

ACTION: Notice of Policies and Procedures.

SUMMARY: The Public Health Service (PHS) is announcing and seeking public comment on its policies and procedures for dealing with possible scientific misconduct in extramural research. These policies and procedures focus on the responsibilities of Federal officials and the relationships among Federal agencies that deal with possible misconduct in science and should be read in conjunction with the regulations previously promulgated which govern the responsibilities of applicant and awardee institutions, 42 CFR part 50, subpart A, "Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science," 54 FR 32449, August 8, 1989.

DATES: Comments on these policies and procedures are invited and must be submitted by August 12, 1991.

ADDRESSES: Written comments should be mailed to Dr. Lyle W. Bivens, Office of Scientific Integrity Review, 5515 Security Lane, Rockwall II Building, suite 11–13, Rockville, MD 20852, 301–443–5300, or delivered to the same location between 9 a.m. and 4 p.m. on weekdays, Federal holidays excepted. Comments received may be inspected at the same location during these hours.

FOR FURTHER INFORMATION CONTACT: Dr. Lyle W. Bivens, 301–443–5300.

SUPPLEMENTARY INFORMATION:

Background

These policies and procedures apply to all instances of possible scientific misconduct involving research, research training, or research-related activities for which funds have been provided or requested under the PHS Act and describe the respective roles and responsibilities of PHS offices and officials in monitoring, investigating, and resolving instances of possible scientific misconduct. They are issued under the authority of sections 201, 493(b), and 501(f) of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 202, 42 U.S.C. 289b(b), and 42 U.S.C. 290aa(f). Notice of the availability of these policies and procedures was previously announced in the **Federal Register** on Oct. 19, 1990, at 55 FR 42490.

Subsequent to publication of that notice, the United States District Court for the Western District of Wisconsin reached a decision in *Abbs and Board of Regents of the University of Wisconsin* v. *Sullivan*, C.A. No. 90–C–0470–C (Dec. 28, 1990), a suit in which Professor Abbs and the Board of Directors of the University of Wisconsin sought to enjoin PHS from investigating alleged scientific misconduct by Professor Abbs. The court ruled in favor of PHS on several issues involving due process, equal protection, and administrative res judicata. The court also ruled on the Administrative Procedure Act (APA) rulemaking requirements under 5 U.S.C. 553 and concluded that PHS failed to follow these requirements in establishing its policies and procedures for investigating possible scientific misconduct in extramural research. However, the decision does not indicate that the court considered the policies and procedures in the context of 42 CFR part 50, subpart A, which sets forth the PHS rules which apply to extramural institutions and scientists, adopted in accordance with APA requirements after consideration of extensive public comments received in response to an advance notice of proposed rulemaking and a notice of proposed rulemaking. The PHS disagrees with the court's ruling on the APA issue and is appealing its decision to the United States Court of Appeals for the Seventh Circuit.

The PHS believes that its policies and procedures, which provide guidance and instructions to PHS offices and officials for monitoring, investigating, and resolving instances of possible scientific misconduct in extramural research, are exempt from APA rulemaking requirements because they are interpretative rules and also fall within the exceptions for agency management, general policy or rules of procedure stated in 5 U.S.C. 553 and because they are based on provisions of 42 CFR part 50, subpart A, which have already been subject to notice and comment rulemaking. However, in order to remove any uncertainty regarding the legal basis for their adoption while the *Abbs* appeal is pending, the PHS has decided to proceed with immediate publication of the proposed policies for public comment. We also invite comments on the consistency of these policies and procedures with the provisions of 42 CFR part 50, subpart A. Following receipt and consideration of such comments as are submitted and adoption of appropriate amendments, the PHS will publish in the **Federal Register** a notice of its final policies and procedures.

In the interim the PHS will continue to follow these policies and procedures in investigating and resolving all instances of possible scientific misconduct in extramural research that do not involve incidents of possible scientific misconduct occurring in the Western District of Wisconsin. This is consistent with the PHS view that the *Abbs* decision on the APA issue is only controlling in the Western District of Wisconsin and is incorrect as a matter of law. Furthermore, the PHS believes that it is essential to proceed with existing and future investigations of possible scientific misconduct in order to protect subjects of misconduct investigations by resolving outstanding allegations against them as soon as possible, and to assure the public of the scientific integrity of research conducted with PHS funds. This approach is consistent with the short time frames for the inquiries and investigations which have been established by the regulations at 42 CFR part 50, subpart A, and these policies and procedures.

Request for Comments

The proposed policies and procedures are essentially the same in substance as the revised policies and procedures which were adopted on August 29, 1990, and for which a notice of availability was published at 55 FR 42490, Oct. 19, 1990. However, editorial and clarifying changes have been made and the document has been reformatted and provided with section numbers to facilitate its use and to make it easier to reference. Note that additional references to existing regulations have been added to clarify that requirements applicable to institutions and individuals outside the PHS are imposed through existing regulations and practices, not the policies and procedures contained in this document.

Language has also been added at several points throughout the document to clarify and explain the role of the Office of Scientific Integrity Review in monitoring the implementation by PHS agencies of these policies and procedures. Finally, the PHS has added a new § 1.13 which states that future revisions to the policies and procedures may be made without notice and comment, where PHS determines that immediate adoption of the revisions are in the public interest or where the revisions are unlikely to elicit substantial public comment or interest. This section is consistent with the PHS position that the APA does not require notice and comment for the proposed policies and procedures and is included in the document in anticipation that the *Abbs* decision to the contrary will be reversed on appeal.

The PHS has received a number of informal comments in response to the revised policies and procedures adopted August 29, 1990, expressing disagreement with the PHS policy of publishing findings of misconduct in the **Federal Register.** That policy, announced in the **Federal Register** on December 21, 1990, 55 FR 52327, had been adopted in response to some suggestions from the scientific community asking PHS to provide a regular procedure for notifying grantee institutions, the scientific community, and the general public of PHS findings and actions where scientific misconduct has been found. Upon further consideration, PHS has decided not to publish scientific misconduct findings in the **Federal Register** and to adopt more limited discretionary procedures for appropriate notification to grantee institutions and the scientific community, contained in § 1.11(c) of the proposal. The PHS specifically solicits comments on this issue, including the issue whether interested parties would prefer regular publication in the **Federal Register** of confirmed findings of misconduct. In addition, the PHS welcomes comments and suggestions regarding an appeal structure that should be incorporated in the policies and procedures. Interested parties should provide written comments on the following proposed policies and procedures no later than August 12, 1991, sent to the address set forth above.

Public Health Service Policies and Procedures for Dealing With Possible Scientific Misconduct in Extramural Research

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1.1 Applicability.
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Public Health Service—Policies and Procedures for Dealing With Possible Scientific Misconduct in Extramural Research

1.1 Applicability

The policies and procedures described to this document apply to all instances of possible scientific misconduct involving research, research training, or research related activities for which funds have been provided or requested under the Public Health Service (PHS) Act. This guidance is focused on the responsibilities of Federal officials and the relationships among Federal agencies that deal with possible misconduct in science. Responsibilities of applicant/awardee institutions are described in the Final Rule on "Responsibilities of Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science" (42 CFR part 50, subpart A; 54 FR 32446, August 8, 1989). The Final Rule and these policies and procedures describe the respective roles and responsibilities of institutions receiving PHS support and the PHS components providing support under the PHS Act. This guidance does not apply to Food and Drug Administration (FDA) regulated research which is covered by the FDA Bioresearch Monitoring Program (21 CFR parts 50, 56, 312, 812, and 813).

1.2 Guiding Principle

All actions taken by the PHS in response to instances of alleged, apparent, or actual scientific misconduct will be coordinated by the Office of Scientific Integrity (OSI) and take into consideration: (a) Safeguards for the affected parties, e.g., maximum feasible confidentiality, prompt and thorough inquiry and/or investigation, and opportunity to comment on or rebut all relevant allegations and/or findings; (b) the rights of informants, e.g., protection of their privacy to the maximum extent possible; (c) the need to ensure that the interests of the Government and the public are protected and (d) a commitment to ensuring the integrity of scientific research.

1.3 Assurance

The OSI is responsible for maintaining a list of institutions with satisfactory assurances under 42 CFR 50.103, and for making this information available to review, program, and grants management staff. No award may be made to an institution unless it has submitted a satisfactory assurance.

1.4 Definitions

"Misconduct" or "misconduct in science" is defined at 42 CFR 50.102 as fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

"Funded by" means the provision of monetary support for grants, cooperative agreements, fellowships, contracts, or interagency agreements, and includes subgrantees, subcontractors and individuals who work on the funded research project even though they do not receive compensation from the Federal funds.

"Institution", as defined at 42 CFR 50.102, means the public or private entity or organization (including Federal, state, and other agencies) that is applying for or is a recipient of financial assistance from the PHS, e.g. through grants or cooperative agreements, including continuation awards, whether competing or noncompeting. The organization assumes legal and financial accountability for the awarded funds and for the performance of the supported activity.

"Investigator" means the principal investigator, the coinvestigator(s), the program director or trainee(s) on a training grant, the recipient of a career award or fellowship or any other individual who conducts or is responsible for research or research training funded under the PHS Act.

"Inquiry", as defined at 42 CFR 50.102, means information-gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

"Investigation", as defined at 42 CFR 50.102, means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred. As carried out by the OSI, investigations evaluate the seriousness of misconduct, and, if possible, determine responsibility. If misconduct has already been confirmed, an investigation may nonetheless be necessary to determine the extent of any adverse effects resulting from the misconduct and any necessary remedial or follow-up actions (e.g., publications requiring retraction).

The "PHS ALERT" or "Public Health Service ALERT Records Concerning Individuals Under Investigation for Possible Misconduct in Science or Subject to Sanctions for Such Misconduct" is a system of records under the purview of the Privacy Act (47 FR 20381, May 12, 1982 (original publication), 56 FR 1310, January 11, 1991 (last publication)). The PHS ALERT is used for collecting, controlling, and disseminating to PHS officials on a need-to-know basis information that an individual applying for or currently (1) is under investigation for possible misconduct or a decision has been made to undertake such an investigation, or (2) has been subjected to a sanction at the conclusion of an investigation for

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misconduct (e.g. debarment by the Secretary, DHHS, from government-wide eligibility, including for research funding, for non-procurement activities under non-procurement debarment and suspension common rule and for procurement activities under the Federal Acquisition Regulations; disqualification by the Food and Drug Administration (FDA) from use of investigational drugs or other restrictions placed on such use; or in the case of scientists employed by the PHS, termination of employment). The information is used to aid PHS officials in making informed decisions regarding PHS funds or other benefits to that individual, but such information does not automatically result in a withholding of funds or other benefits. More detailed information on this system may be requested from the Director, OSI.

"Agency" or "funding agency" means each of the PHS agencies, as well as the awarding units within the Office of the Assistant Secretary for Health (OASH).

"Component" refers to the organizational units within an agency that have the delegated authority to conduct and/or make awards for scientific activities, e.g., Bureaus, Centers, Institutes, Divisions, or Offices.

"Program" is a set of plans and activities for a specific area of scientific or technical subject matter within the mission of a component.

"MPO" means Misconduct Policy Officer, i.e., the official designated by the agency administrator or component director to oversee and coordinate PHS, agency, or component implementation of policies related to misconduct in science. Such designation need not entail creation or change in title of a position, provided the functions described in this issuance can be appropriately discharged.

"OSI", as defined at 42 CFR 50.102, means the Office of Scientific Integrity, a component of the Office of the Director, of the National Institutes of Health (NIH), which oversees the implementation of all PHS policies and procedures related to scientific misconduct; monitors the individual investigations into alleged or suspected scientific misconduct conducted by institutions that receive PHS funds for biomedical or behavioral research projects or programs; and conducts investigations as necessary. OSI conducts inquiries or investigations upon request by the institution or, if in the judgment of the OSI, an institution cannot conduct or has not conducted an investigation that adequately resolves the issue(s). (See 54 FR 11080, March 16, 1989, for a statement of organization, functions, and delegations of authority relating to OSI).

"OSIR", as defined at 42 CFR 50.102, means the Office of Scientific Integrity Review, a component of the Office of the Assistant Secretary for Health (OASH), which is responsible for establishing overall PHS policies and procedures for dealing with misconduct in science, overseeing the activities of PHS research agencies, including the OSI, to ensure that these policies and procedures are implemented, and reviewing all final reports of investigations to ensure that any findings and recommendations are sufficiently documented. The OSIR also makes final recommendations to the Assistant Secretary for Health on whether any sanctions should be imposed and, if so, what they should be in any case where scientific misconduct has been established. (See 54 FR 11080, March 16, 1989, for a statement of organization, functions, and delegations of authority relating to OSIR).

1.5 Responsibilities

(a) Applicant and awardee institutions have primary responsibility for preventing, detecting, investigating, reporting and resolving possible or alleged scientific misconduct. However, it is expected that there will be a close working relationship between institutions and the PHS in fulfilling these responsibilities in accordance with 42 CFR part 50, subpart A, and these policies and procedures.

(b) The Director of the Office of Scientific Integrity (OSI) is responsible for overseeing the implementation of all PHS policies and procedures related to scientific misconduct, monitoring the individual investigations into alleged or suspected scientific misconduct conducted by institutions that receive PHS funds for biomedical or behavioral research projects or programs, and conducting investigations upon request by an institution or if an institution cannot conduct or has not conducted an adequate investigation.

(c) The Director of the Office of Scientific Integrity Review (OSIR) is responsible for establishing overall PHS policies and procedures for dealing with misconduct in science, overseeing the activities of OSI and the PHS research agencies to ensure that these policies and procedures are implemented, and reviewing all final reports of investigations to ensure that any findings and recommendations are sufficiently documented. The OSIR also makes final recommendations to the Assistant Secretary for Health on whether any sanctions should be imposed and, if so, what they should be in any case where scientific misconduct has been established. When in OSIR's judgment it is necessary to do so, OSIR may conduct its own investigation.

(d) The Assistant Secretary for Health (ASH), DHHS, is responsible for making final decisions regarding sanctions in cases of confirmed misconduct. In cases where debarment is recommended, the ASH will forward his recommendations to the DHHS debarment official.

(e) The Head of each PHS agency will:

(1) Provide leadership to ensure prompt reporting to the OSI of alleged or apparent misconduct in scientific activities currently or previously funded by the agency, or for which support has been requested;

(2) In consultation with the OSI, decide whether or not interim administrative actions should be taken to protect Federal interests during investigations of possible scientific misconduct;

(3) Identify an agency MPO.

(f) The Director of each awarding component will:

(1) Provide leadership to ensure implementation of these policies and procedures;

(2) Contribute to recommendations, as appropriate, to the Agency Head and the OSI on specific cases;

(3) Decide, in consultation with the agency head and OSI, on interim administrative actions to protect Federal interest during investigations of possible misconduct;

(4) Identify an individual to be the MPO for the component.

(g) The OSI shall maintain, update (as necessary), and distribute a list of names of individuals who have been appointed as agency-level and/or component-level MPOs.

(h) The OSI, in coordination with the OSIR, will work with MPOs to:

(1) Implement and, as appropriate, revise policies and procedures for dealing with possible scientific misconduct;

(2) Provide guidance to Agency staff regarding policies and procedures for dealing with possible misconduct in science;

(3) Coordinate intra- and inter-agency activities as necessary;

(4) Recommend to the agency head interim administrative actions, where appropriate;

(5) Provide guidance in collaboration with the Office of Extramural Research, NIH, (or comparable office(s) at other PHS agencies) and grants management staff to awardee institutions regarding their responsibilities for promoting adherence to high ethical standards in science and for dealing with instances of possible misconduct.

(i) Agency-level MPOs will:

(1) Make available to staff within the agency information on policies and procedures related to scientific misconduct;

(2) Notify the administrator of the agency, and when appropriate, other officials within the agency, of possible scientific misconduct;

(3) Ensure prompt reporting to the OSI of suspected or alleged misconduct;

(4) As requested, consult with the OSI on strategies for investigating alleged misconduct and/or recommendations for sanctions in cases of confirmed misconduct. Component-level MPOs will perform comparable functions with their respective components and will ensure prompt reporting of possible misconduct to the agency MPO.

(j) The Director of the OSI will create, maintain, and update records in the PHS ALERT. Entries will be made when there is:

(1) An investigation into possible scientific misconduct, and

(2) Implementation of sanctions based on the findings of an investigation. Immediately upon the completion of an investigation that does not confirm misconduct or justify continuance in the system, and upon the expiration of sanctions when misconduct has been found, the Director, OSI will remove the name from the PHS ALERT, and notify the named individual of the action.

(k) The OSI will promptly bring cases exclusively involving allegations other than scientific misconduct, e.g., possible misuse of Federal funds or other possible illegal acts, to the attention of the agency or department unit that has jurisdiction for such matters. Cases that also involve possible scientific misconduct will generally be handled jointly by the OSI and the other cognizant unit.

(l) The Office for Protection from Research Risks (OPRR), Office of Extramural Research, NIH, is responsible for investigating alleged or apparent violations of either DHHS regulations governing the protection of human subjects or PHS animal welfare policies by recipients of PHS research funds. Cases also involving alleged scientific misconduct will require coordination between the OSI and OPRR.

(m) The OSI shall consult throughout all aspects of its operations with the Office of General Counsel (OGC) on matters that involve current or potential litigation, require legal interpretation, or relate to other potential legal issues.

(n) The OSI shall refer all matters arising during an inquiry or investigation that involve a potential criminal violation to the Office of Inspector General (OIG). Where the OIG or another law enforcement agency is conducting a related investigation into potential criminal violations (or when it is likely that such an investigation will be conducted), that agency must be consulted during the scientific misconduct inquiry/investigation.

(o) The OSI shall consult promptly with non-PHS Federal agencies, e.g., the Department of Veterans Affairs or the National Science Foundation, on investigations that involve funding from those agencies to assure that the agencies are properly informed and investigations are effectively coordinated.

(p) The Division of Public Information, Office of Communication, NIH, will coordinate with the OSI (and where appropriate, other funding agency public inquiry offices) concerning inquiries from the media regarding cases of possible or confirmed misconduct. Any information provided in response to media requests should conform to the Freedom of Information Act policies as stated in section 1.12; "Protection of Records from Release Under the FOIA". Thus, information about scientific misconduct investigations will be provided only in those cases where there was a finding of misconduct, and the case has been closed. Press releases related to misconduct in science must be cleared by the agency's public affairs office, the OSI, OSIR, and the Office of the Secretary, DHHS, and if a release contains adverse information about an individual or an organization it must be issued in accordance with 45 CFR part 17.

(q) The OSI, in consultation with the funding agency and appropriate legislative offices, shall coordinate responses to Congressional inquiries directed to funding agencies regarding scientific misconduct policies and/or investigations. These responses shall be forwarded, through OSIR and the PHS Executive Secretariat, to the Deputy Assistant Secretary for Legislation (ASL) (Health) for approval before submission to Congress. In cases where the inquiry is directed to the PHS, the OSIR will consult with OSI, as appropriate, and will develop a response and forward it through the PHS Executive Secretariat to the Deputy ASL (Health).

(r) The OSI will provide to OSIR information on ongoing investigations that have been reported to OSI or that are being conducted by OSI. This information will include the date the investigation was begun, who is conducting the investigation, the name of the subject(s), the institution(s) involved, the nature of the allegation, and any special circumstances or concerns surrounding the case. OSI will also provide to OSIR completed inquiry reports which conclude that an investigation is not warranted. Additional information will be provided upon request or as special circumstances arise, such as litigation, significant and controversial new issues, or matters likely to come to the attention of the Assistant Secretary for Health or the Secretary. This includes information on ongoing inquiries which have special significance in terms of level of staff effort, public visibility or sensitivity, or are otherwise likely to come to the attention of senior Department staff. OSI will also provide to OSIR any information needed for reports to senior departmental officials, other Federal agencies, or to Congress or needed to conduct any special reviews or studies of the implementation of PHS misconduct policies.

1.6 Policy

(a) General

(1) The OSI, the OSIR and MPOs throughout the PHS will make a continuing effort to inform agency staff, scientific review groups, national advisory councils/boards (or equivalents) and the scientific community of the regulations, policies and procedures applicable to misconduct in science and to emphasize the importance placed on this matter by PHS.

(2) The OSI shall coordinate all PHS actions taken in response to instances of alleged or actual scientific misconduct. Actions taken by the PHS will be guided by the following principles:

(i) Safeguarding the interests and rights of respondents in scientific misconduct inquiries and investigations through maintaining maximum feasible confidentiality, conducting a prompt and thorough inquiry/investigation, providing the respondent(s) ample opportunity to suggest witnesses and present evidence, timely access to significant information pertinent to the misconduct issues being pursued in an inquiry/investigation (unless such disclosure would violate individual confidentiality or significantly impair the inquiry/investigation), right to representation by an attorney, and opportunity for reviewing, and providing written comments on, and written rebuttal of, the findings of an inquiry/investigation as well as on any proposals for sanctions in cases where misconduct has been confirmed;

(ii) Protecting to the maximum extent possible the rights of informants, e.g.,

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protecting them against retaliation for allegations brought in good faith, protecting their privacy to the maximum extent feasible; and

(iii) Safeguarding the interests of the Government and the public.

(b) Conduct of Inquiries/Investigations

OSI conducts inquiries or investigations into allegations of misconduct in science upon request by the institution(s) that would otherwise have responsibility for the inquiry/investigation under 42 CFR part 50, subpart A, or, if in the judgment of the OSI, an institution cannot conduct or has not conducted an investigation that adequately resolves the issues(s). In this regard, see 42 CFR 50.104 (a) (6). The procedures that would normally be followed by the OSI in conducting inquiries/investigations are set forth below.

(1) *Dealing with subjects of an inquiry/investigation.* When the OSI decides to initiate an inquiry or investigation, the individuals who are to be the subjects of the inquiry or investigation, the institutions where the subjects are currently employed and the institutions where they were employed at the time of the alleged misconduct, shall be notified of that fact before the inquiry or investigation commences, unless the OIG or a law enforcement agency conducting a related investigation requests otherwise. (See also § 1.7 (e)(2).) This notification will include information on the nature of the allegations or concerns and the focus of the inquiry or investigation. Subjects will also be informed of all allegations and issues that are being pursued in the inquiry/investigation and the opportunity to provide comments and other relevant information to the OSI, and, to be personally interviewed by OSI. Interviews are transcribed and interviewees are provided with a copy of the transcript and an opportunity to correct it and provide additional comments. Subjects of the inquiry or investigation may be represented by counsel, may propose witnesses to be interviewed, and may recommend members of any expert advisory panel convened by OSI to assist with the inquiry or investigation. No opportunity is provided for subjects to confront and cross-examine other witnesses interviewed by OSI. During the course of the inquiry or investigation, the subjects are provided access to any research data under review, may freely submit evidence to the OSI, both orally and in writing, and rebut issues and evidence under review by the OSI in the same manner, and are provided with an opportunity to review and comment on significant investigatory documents identified by OSI unless such disclosure would violate individual confidentiality or significantly impair the investigation. At the conclusion of the inquiry or investigation, subjects are provided with an opportunity to comment on and rebut the report and findings and subsequently to comment on proposed sanctions, if any.

(2) *Dealing with informants.* (i) If an informant requests anonymity, the OSI will make every effort to honor that request.

(ii) When an informant has made allegations to the OSI instead of to the pertinent institution, the OSI will review those allegations to determine if there are grounds for opening an inquiry. If so, the OSI will provide all pertinent information to the institution, requesting that the institution conduct an inquiry (the source of the allegation(s) will not be identified if he or she requests anonymity). If the institution is unable or unwilling to initiate its own inquiry, the OSI will conduct the inquiry and investigation, as appropriate, and maintain contact with and seek further information from the informant, as necessary.

(iii) The OSI will also maintain contact with and seek further information from informants when it otherwise conducts inquiries and/or investigations as provided in these policies and procedures.

(iv) When the OSI concludes an inquiry or investigation, the person who made the allegations will normally be provided with the parts of the draft report pertinent to his or her allegations, and provided an opportunity to review and comment on it. This is done in part to ensure the accuracy and completeness of the inquiry or investigation.

(c) Independent Review of Investigations

At the conclusion of an investigation, subjects are provided by OSI with an opportunity to comment on and rebut the proposed investigative findings and sanctions, if any. Following incorporation of any changes made in response to such comments, OSI will forward proposed findings and sanctions and any comments and rebuttal made by the subject(s), to OSIR for its independent review. OSIR will review this material for thoroughness, completeness and objectivity. If OSIR believes that any changes in investigative conclusions or proposed sanctions are appropriate, OSIR will consult with OSI to reach a final conclusion. OSIR will then prepare a decision memorandum for the ASH containing final recommendations for findings and sanctions for those found culpable of scientific misconduct. Fine decisions on misconduct findings and sanctions are made by the ASH, except for any proposed deberment which must be approved by the Deputy Assistant Secretary for Management and Acquisition and at the request of the individual is subject to review de novo at an administrative hearing as set forth at 45 CFR part 76.

(d) Availability of Information on Ongoing Inquiries or Investigations

(1) As a general rule, allegations or information developed in the course of an ongoing inquiry or investigation will be available only to the appropriate agency-level or component MPO, agencies conducting related investigations, the OSIR, and individuals who are involved in or associated with the actual conduct of an investigation or have direct responsibility for an ongoing or pending award. The OSI will inform other PHS agencies and/or other Federal organizations if OSI knows that such agencies have an active or pending award that might be affected; the information is pertinent to a decision to appoint an individual as an advisor, consultant, or reviewer; or the information is relevant to the regulatory responsibilities of another agency.

(2) Review of grant/cooperative agreement applications and contract proposals for scientific merit will ordinarily not be delayed by concerns about possible misconduct or by a pending or ongoing inquiry or investigation. To avoid influencing the review process, PHS awarding units generally will not inform members of scientific or objective review groups about instances of possible misconduct or the status of ongoing investigations. However, if certain instances have received such extensive publicity that the review may be compromised, the agency-level MPO should consult with the OSI as to whether the review should be deferred or the reviewers be informed about the status of activities with regard to the possible misconduct. Findings from completed investigations should be shared with scientific review groups whenever an accurate disclosure of the facts in the case is necessary to the objectivity and thoroughness of the review process.

(3) Directors of awarding components will normally consult with the OSI and the agency-level MPO and seek the advice of their national advisory councils/boards (or equivalents) on a potential competing grant, cooperative agreement, or contract award to an individual under investigation by the awardee institution or by the OSI. When a non-competing award is involved, the OSI and component agency-level MPOs will be consulted.

(4) In responding to any request(s) from a non-DHHS source for information about ongoing investigations, agency staff shall maintain the confidentiality of such information to the greatest extent possible under the provisions of the Freedom of Information Act (FOIA), the Privacy Act, and other applicable law. To the extent permitted by law, agency personnel will protect the identity, if desired by the subject, of any person who is the subject of an inquiry that is terminated without triggering an investigation or any person for whom an investigation fails to confirm misconduct. Also, to the extent permitted by law, it is PHS policy to protect the identities, if desired by the persons affected, of those who in good faith report apparent misconduct or furnish information about such apparent misconduct.

1.7 Procedures

(a) Reporting of Possible Misconduct

(1) PHS staff who receive a report or suspect an instance of possible misconduct shall immediately and confidentially inform the OSI and the component level MPO. The component-level MPO will then notify the director of the awarding component and the agency MPO. Documentation regarding possible scientific misconduct should not be placed in the official grant or contract file.

(2) The awarding component's MPO should document and assemble all information the component has received or that is deemed to be important to the full understanding of the possible misconduct, and should forward all such information immediately to the OSI.

(3) To the extent possible, the indentity of informants who do not wish to be known will be kept confidential.

(4) During the conduct of the initial review of applications, the Initial Review Group (IRG) may identify instances of suspected or possible misconduct, e.g., suspicions regarding possible plagiarism or questionable data in support of the proposed research.

The Executive Secretary of the IRG, in consultation with the IRG chairperson, his or her supervisor, and Section Chief (or Institute, Center or Division (ICD) Review Branch Chief) as necessary, must first determine, from the discussions of the IRG, if the review may proceed. Generally, what appears to be a relatively "minor" impropriety such as the unattributed use of small amounts of textbook material in the Background section of the application would not prevent the IRG from providing a fair review. The general principle is that if the IRG is able to provide an unbiased technical/scientific merit review, unaffected by the suspicions of misconduct, it should do so. Subsequently, the concerns of the IRG will be forwarded by the Executive Secretary to the OSI and the cognizant MPO for resolution.

In all such cases of suspected misconduct, it is essential that the Executive Secretary stress to the reviewers the seriousness of such allegations and the potential harm that may result if confidentiality is not strictly maintained. In addition, it is important for the Executive Secretary to assure the consultants that the suspicions identified will be taken seriously and pursued by the PHS.

In no instance shall the Executive Secretary or an IRG member communicate the IRG's concerns to the principal investigator or applicant institution. Instead immediately following the initial review group meeting, it is the responsibility of the Executive Secretary to communicate these concerns to the OSI and the cognizant MPO. As soon as possible thereafter, formal written communication of the concerns and the precise details of the IRG discussion will be forwarded to the OSI by the Executive Secretary through the Section Chief (or ICD Review Branch Chief or other PHS equivalent) and the cognizant MPO. Any subsequent communications with the principal investigator and/or applicant institution will be done only through the OSI.

It is important that the preparation of the summary statement be carefully monitored by the Section Chief (or the ICD Review Branch Chief or other PHS equivalent), in consulation with the OSI, to ensure that only appropriate details of the IRG's concerns are expressed in that document. In addition, the Executive Secretary should carefully monitor the priority scoring of the reviewers for that application. If it appears that the scoring has been influenced by concerns of possible misconduct, the Executive Secretary, in consultation with the Section Chief (or ICD Review Branch Chief or other PHS equivalent) and the OSI, should administratively defer the application for resolution of the identified issues.

During the conduct of the initial review, if it is determined that a fair review of an application cannot be carried out by any appropriate initial review group because of the existence of reviewers' concerns about possible misconduct, immediate deferral of the application is the correct course of action. The procedures for notifying the OSI and the MPO are the same as outlined above. The OSI will attempt to resolve the concerns so that the review may be completed during the next review cycle. If the IRG'S concerns are subsequently alleyed, review of the application should proceed to conclusion at the subsequent meeting. However, if the concerns remain, and if it is not appropriate or possible for the review to proceed, the application should be deferred while the OSI proceeds with the necessary steps to examine the identified issues.

(5) The OSI will gather all pertinent information available within the Federal sector and review all information available on the reported possible misconduct to determine if the matter appears to fall under the responsibility of the OSI and whether substantive information is available to warrant further action. When the OSI is not responsible for all or parts of the matter, it will be transferred to the appropriate agency or office for further evaluation and possible action. If the information reveals a possible situation of misconduct, it will be referred to the extramural institution for action under the provisions of the Final Rule, or, if the institution is unable or unwilling to pursue the matter, pursued directly by the OSI.

(6) The OSI, in consultation with other offices as appropriate, will review all reports and allegations to determine if there is a possibility of criminal misconduct. If this possibility exists, the OSI shall ensure that the matter is referred through appropriate channels to the OIG and shall coordinate efforts if a related investigation is initiated. If the applicant/awardee institution obtains a reasonable indication of possible criminal violations, the OSI must be informed within 24 hours. OSI will immediately notify the OIG.

(b) Inquiries

(1) If an allegation is brought to the attention of an institution, and it conducts an inquiry that indicates there is no need for an investigation, there is no requirement that this be reported to the OSI other than in aggregate form in the institution's annual report or as requested by OSI consistent with 42 CFR 50.103(d)(6).

(2) If an allegation is brought to the attention of the OSI, and an inquiry is warranted, the institution will be expected to carry out this responsibility.

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but if, in the judgment of OSI, there is demonstrable unwillingness or inability of the institution to conduct a thorough and fair inquiry, then the OSI will conduct the inquiry. In such instances, the rationale for this decision will be documented in the case file. If the institution conducts the inquiry at the request of the OSI, a copy of the inquiry report shall be provided to the OSI as soon as it is completed.

(3) When OSI conducts an inquiry or requests an institution to do so, the OSI shall direct that a search be made to identify all ongoing or pending PHS awards or applications involved in the case so that:

(a) As appropriate, all awarding components within each agency potentially involved, including review staff, may be informed; and

(b) The potential effects of any misconduct on the investigator's eligibility for ongoing or pending research support is duly considered.

(4) As a general rule, no more than 60 days should elapse between the reporting of an instance of possible misconduct and the completion of an inquiry, whether the inquiry is conducted by the institution or the OSI. However, in some circumstances 60 days may not be sufficient time. If the inquiry takes longer than 60 days to complete, the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period. At the conclusion of an inquiry conducted by the OSI, the determination as to whether to proceed with an investigation shall be documented. In the case of a report of an inquiry conducted by an institution at the request of the OSI, the OSI will review the Inquiry Report for objectivity, thoroughness and fairness. If the OSI accepts an institutional inquiry finding that an investigation is not warranted, that decision shall be documented and the institution appropriately notified. The OSI will provide the Inquiry Report to the OSIR.

(5) The determination of whether an inquiry justifies a formal investigation will be made on a case-by-case basis, and will consider the following factors:

(i) An evaluation of the composition of the institution's inquiry panel for scientific expertise and objectivity;

(ii) The accuracy and reliability of the source of information about the possible misconduct;

(iii) The scope of the incident(s) and the context in which it (they) became known;

(iv) The extent to which the alleged misconduct was thoroughly and expertly reviewed;

(v) Explanations and information, if any, provided by the subject(s) of the inquiry or other individuals interviewed;

(vi) Other information developed during the inquiry; and

(vii) The weight of the evidence.

The OSI will keep the cognizant agency and component MPOs fully informed of its decisions with respect to the need for an inquiry or investigation.

(c) Investigations

(1) As provided at 42 CFR 50.104(a)(1), an awardee institution's decision to initiate an investigation must be reported to the OSI on or before the date the investigation begins. The OSI will notify OSIR that an institutional investigation is being initiated. The OSI generally will defer formal fact-finding of its own pending receipt of the results of the institutional investigation. The OSI may request and review the institution's policies and procedures for dealing with possible scientific misconduct. The OSI will work with the institution as necessary to assist it in planning and carrying out an objective and thorough investigation.

(2) When the OSI decides to initiate an investigation, individuals that are to be investigated, and their institutions will be notified immediately in writing by the OSI. The written notification will include identification of the issues that are the focus of the investigation, together with a description of the process by which the investigation will be conducted. The respondent will be informed of the procedures to be followed; the institution will be advised about its responsibilities relative to the OSI investigation. The OSI will also inform OSIR that it is beginning an investigation.

(3) As a general rule, every reasonable effort should be made to complete an investigation and the report of findings within 120 days of initiation of the investigation. This time frame will, however, depend heavily on such factors as whether or not the instance of possible misconduct was an isolated event or part of a repeated pattern, whether the subject has already admitted culpability or disputes the allegations or other information suggesting his/her culpability, and other circumstances and complexities that may require time-consuming pursuit of facts. If an institution's investigation and the attendant report of findings cannot be completed in 120 days, the institution must notify the OSI and request an extension, which includes a progress report and an estimated date for completion. If an OSI investigation cannot be completed within 120 days, an interim report and an estimated schedule for completion of the final report must be prepared for OSIR, at the 120-day point. In both instances, a status report must be provided (by the institution to the OSI; by the OSI to the OSIR) every 60 days thereafter until the report of investigative findings is completed.

(4) If the matter involves an investigation of possible scientific misconduct and a concurrent investigation of criminal or other allegations is conducted by the Department of Justice, the Federal Bureau of Investigation or the Office of Inspector General (OIG), without the knowledge of the individual or institution, the OSI will consult with the agency's unit in whose jurisdiction the case falls, and will notify both the awarding component's MPO and its director as to what information, if any, may be disclosed to the subject(s) of the investigation. Disclosure should be made only after consultation with the OSI and appropriate OIG or other law enforcement officials. Depending upon the circumstances, the OSI may suspend or terminate its investigation in favor of the concurrent investigation.

(5) At the time of the decision to conduct an investigation, the OSI shall enter the name of the individual under investigation and the name of the relevant institution(s) in the "PHS ALERT".

(6) The methods and procedures for conducting an investigation will necessarily vary depending on a number of factors, including but not limited to: the nature of the allegation/evidence; the source(s) of information; the extent to which a pending application or current award(s) may be involved; whether an awardee institution has already conducted and documented its own investigation, and the extent to which documentation is available; the degree of publicity associated with the case; and any involvement of law enforcement agencies.

(7) An investigation may consist of a combination of activities such as, but not limited to:

(i) Review of readily available documents that the agency has already received from involved individuals and/or the institution;

(ii) Review of documents from the awarding component, the awardee institution or elsewhere;

(iii) Review of administrative procedures and/or methods at the awardee institution, including whatever investigative process the institution followed in dealing with the instance at hand;

(iv) Inspection of laboratory or clinical facilities, research materials, notebooks, research records or other products of research, and/or administrative records at the awardee institution;

(v) Interview of parties involved in or knowledgeable about the case; and

(vi) prompt receipt and evaluation of original primary data that form the basis for formal reports or are used as preliminary data on PHS applications. (Normally, institutions will be asked to promptly secure the original primary data, providing the investigator reasonable, but controlled, access to that data.)

(8) The draft report of an OSI investigation will be made available to the subject(s) of the investigation and to cognizant institutional officials who will be given 30 days to review and comment on it. Extension of the 30-day period may be granted if circumstances warrant. The comments of the subject(s) will be appended to the investigative report, but any material that would constitute an unwarranted invasion of privacy will be deleted. Comments will be given full consideration, and where appropriate, the investigative report will be revised or expanded. In addition, the subject(s) of the investigation will be given an opportunity to comment on proposed sanctions.

If they can be identified, the person(s) who raised the allegation should normally be provided with the parts of the draft investigative report normally pertinent to their allegation, and provided an opportunity to review and comment on it.

(9) The OSI shall be responsible for ensuring that appropriate consultation takes place among representatives of the involved awarding component(s), OGC, review staff and any other involved offices or agencies.

(10) If individuals who are not Federal employees are to be asked to participate in an OSI investigation as expert advisers, site visitors to the awardee institution, or in some other capacity, they must be appointed in a manner that ensures the official nature of their involvement and provides them with such legal protection as is available to Federal employees.

1.8 Interim Administrative Actions (For Pending Applications and Active Grants)

(a) Prior to completion of an investigation and consistent with 42 CFR 50.103 (d)(4) and 50.104 (a)(7) and (b), the component-level MPO may, on the basis of facts established in the investigation, recommend to the director of the awarding component that interim administrative actions be taken to protect the welfare of human or animal subjects or research, prevent inappropriate use of federal funds, or otherwise protect the public interest and safety. This recommendation shall be made only after consultation with the OIS, OGC, the agency MPO, and senior grants and/or contract management officials.

Interim actions affecting more than one awarding component should be discussed with the agency head(s) and senior grants and/or contract officials.

If an investigation is being conducted by a law enforcement agency or the OIG, the MPO should:

(1) Consult with OSI and OGC before recommending any action that might disclose or otherwise compromise the investigation, and

(2) Consult with the OSI, OGC, and OIG prior to implementing any administrative actions.

(b) The following principles should guide the selection of any interim administrative actions:

(1) Any interim restriction should be taken with a view toward protecting the rights of all involved parties and minimizing disruption to the project, the institution, and the activities of those involved in the project. It is particularly important to ensure the proper use of public funds, i.e., to ensure the fitness of the investigator to carry out PHS-supported research. Any interim action must comply with the procedures that would normally apply to the action, including appropriate notification to the institution.

(2) Interim action should be taken promptly if an investigation reveals serious failure to comply with the requirements for the protection of human or animal subjects, or the welfare of such subjects of research is or has been jeopardized. In such cases, the OSI will consult immediately with OPRR to determine how the human and/or animal subjects issues will be handled.

(3) An interim action may be initiated when information established during the course of an investigation indicates the need for such action. Temporary restrictions that are imposed should be reviewed periodically and modified, if warranted by additional facts or findings.

(c) To the extent permitted by law, interim administrative actions may include, but are not limited to, the following:

(1) Total or partial suspension of an award in accordance with 45 CFR 74.114 or Sec. 92.43;

(2) Total or partial suspension of eligibility of the subject(s) of an investigation for financial assistance (grants or cooperative agreements) in accordance with DHHS debarment regulations (45 CFR part 76) and for contracts in accordance with applicable regulations (48 CFR part 9, subpart 9.4 and 48 CFR part 309, subpart 309.4).

(3) Prescription or restriction of certain research activities, i.e., restrictions to protect any human or animal subjects of research whose welfare may be in jeopardy, such action to be taken in accordance with respectively, 45 CFR part 46 and the PHS Policy on the Humane Care and Use of Laboratory Animals.

(4) Grant conditions requiring special certification, assurances or other administrative arrangements to ensure that specific activities are carried out in a manner reflecting the responsible conduct of research and/or in compliance with applicable regulations or terms of the award and providing for recovery of funds if the conditions are not met (see 42 CFR 52.9 authorizing the imposition of conditions on grant awards when necessary to protect the public health or ensure the conservation of grant funds);

(5) More restrictive requirements for prior approval imposed as a condition of any grant awards in accordance with 42 CFR 52.9 and 45 CFR 74.103;

(6) Deferral of funding a noncompeting grant or cooperative agreement see 42 CFR 52.6(b)(3);

(7) Delay of award of a competing grant or cooperative agreement [see 42 CFR 52.5(b)];

(8) Delaying a contract award (see 48 CFR 52.214–10 and 52.215–16); and

(9) Restriction or suspension of the use of individuals under investigation as advisors or consultants to the agency [see 42 USC 282 (b)(6) and 42 CFR 52.5, 52h.3, and 52h.4].

(d) If not otherwise provided in the procedures governing the interim actions OSI and the awarding component will ensure that the subject(s) of the inquiry-investigation and the institution involved will be notified in writing in advance of the action and given an opportunity to make a written response unless there is an imminent risk of loss of Federal funds or of injury to humans or animal subjects of research.

(e) All interim administrative actions that are taken, and the reasons for taking them, must be fully and promptly recorded in the investigative files of the OSI. Information recorded in the official grant or contract files shall be limited to the minimum necessary to implement the action(s) and maintain confidentiality.

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1.9 Post-Investigational Actions

(a) As provided at 42 CFR 50.104 (a) and (b), upon receipt of an institution's final report of investigation, the OSI will review the investigative report and supporting documentation to determine if the investigation was performed in a timely manner and with sufficient objectivity, thoroughness, and competence. The OSI may ask the institution to provide additional information and if necessary perform its own investigation. In making decisions on pursuing its own investigations, the OSI will be guided by the statutory and regulatory direction that primary responsibility for the conduct of investigations and inquires lies with the institution, but the OSI reserves the right to perform its own investigation at any time prior to, during, or following an institution's investigation.

(b) In the case of an investigation conducted by an institution, the OSI will assemble a panel consisting of the Director, OSI, Deputy Director, OSI, and appropriate agency and/or component-level MPOs to evaluate the findings of the investigation and where appropriate, to make recommendations for sanctions (see 42 CFR 50.104 (a)(7) authorizing the imposition of sanctions by PHS). The Director, OSI may add other senior agency officials or other individuals to the panel as appropriate to accomodate the complexity and seriousness of the situation. The OSI will prepare a decision memorandum regarding disposition of the case, and will forward this memorandum and the proposed final report of investigative findings for concurrence to the Director, OSIR, routed through the agency head.

(c) Upon completion of an OSI investigation, the investigative team, after receiving comments on a "draft report" and proposed sanctions, as appropriate, from the complainant, respondent(s), and institution(s) shall prepare a final written report summarizing its findings. This report shall be provided to the cognizant MPO(s) and (where appropriate) the director(s) of the awarding component(s) for review and comment. The report, and any essential documentation to support the findings, together with the OSI recommendations for disposition of the case, including sanctions, where appropriate, will then be forwarded to the OSIR through the agency head.

(d) If there is an ongoing related law enforcement investigation, the OSI will provide the OIG an opportunity to review the report prior to releasing it.

(e) OSIR will independently review the proposed final report and recommendations prepared by OSI, any comments, rebuttal and relevant documentation submitted by the subject(s) of the investigation, and any other documentation from the OSI file deemed material by OSIR, in determining whether to concur with the proposed report and recommendation. OSIR may request investigation, if warranted, or ask OSI to communicate directly with the subject(s) of the investigation if there are any questions regarding comments or documentation submitted by the subject(s) or other parties to the investigation. If OSIR does not agree with any part of the report or recommendations, it will consult with OSI regarding any needed modifications to the report and recommendations. Following this review, OSIR will prepare a decision memo for the ASH, containing final recommendations regarding investigative findings and sanctions for those found culpable of scientific misconduct. Any proposed debarment must also be approved by the Deputy Assistant Secretary for Management and Acquisition.

(f) An investigation is not considered closed until concurrence with the OSI recommendations has been obtained from the OSIR, final decisions have been made by the ASH regarding sanctions (if any) or by the Deputy Assistant Secretary for Management and Acquisition if debarment or suspension of eligibility for financial assistance or contracts is the proposed sanction, and the subject(s) of the investigation and cognizant institutional officials have been notified in writing about the outcome of the decision-making process on sanctions. Notification shall be made by the Director, OSI.

(g) When an investigation confirms an instance of misconduct, the following procedures shall apply:

(1) When the ASH has taken final action on the investigation, the OSI will notify in writing the subject(s) of the investigation and appropriate institutional official(s) of the disposition of the case.

If the case involves an OSI review of an institutional investigation, the notification shall include a summary, or copy, of the PHS decisions made regarding the investigation and the sanctions imposed by the ASH. If a debarment is involved, the notification shall explain the debarment process.

If the case involves an OSI investigation, the notification shall include the final report and a summary, or copy, of the PHS decisions made regarding the investigation and the sanctions imposed by the ASH. If a debarment is involved, the notification shall explain the debarment process.

(2) OSI shall provide a copy of the notification to the component-level and agency-level MPO(s), the director of the awarding component, the person making the allegation (if known), members of the OSI investigative team, if any, and the OSIR.

(3) The director of the awarding component shall terminate any interim administration actions imposed during the investigation and apply the sanctions approved by the ASH.

(4) The OSI shall ensure that PHS ALERT system file(s) on the case are updated for the duration of any approved sanctions.

(5) The OSI shall prepare a notice that identifies publications found in the investigation to require correction or retraction for publication in the NIH Guide for Grants and Contracts.

(h) When an investigation fails to confirm an instance of misconduct, the following procedures shall apply:

(1) After concurrence from the OSIR has been received, the OSI shall notify in writing the subject(s) of the investigation, and appropriate institutional official(s).

If the case involves an OSI review of an institutional investigation, the notification shall include a summary, or copy, of the PHS decisions made regarding the investigation.

If the case involves an OSI investigation, the notification shall include the OSI report of the investigation and a summary, or copy, of the PHS decisions made regarding the investigation.

(2) The OSI shall provide a copy of the notification to the component-level and agency-level MPO(s); the director of the awarding component; the person making the allegation (if known); members of the OSI investigative team, if any, and the OSIR.

(3) The director of the awarding component shall terminate any existing interim administration actions.

(4) The OSI shall ensure that any files created on the case are removed promptly from the PHS ALERT System.

(5) If a competing application or proposal is pendng or anticipated in the near future, the component-level MPO will consult with the OSI and officials responsible for review in order to identify any actions needed to ensure the objectivity of the review, e.g., informing the Executive Secretary and reviewers of the outcome of the investigation. Generally, such an action should be taken only if there is reason to believe that reviewers have received incomplete or misleading information about the case, or have knowledge of the alleged misconduct from other sources.

(6) The OSI may prepare a notice on the findings and final disposition of the case for publication in the **Federal Register** if the accused desires such action.

(7) The OSIR shall prepare a case summary for the ASH.

1.10 Sanctions

Factors that should be considered in determining appropriate sanctions include but are not limited to the following:

(a) Need for reasonable consistency in the application of sanctions, i.e., violations of the same type or degree generally would call for the same kind of sanction(s);

(b) The nature of the misconduct, i.e., was the violation deliberate, the result of carelessness, or was it caused by factors that might not have been reasonably foreseen or controlled;

(c) Whether the incident of misconduct was an isolated event or part of a pattern; and

(d) The degree of seriousness or gravity of the violation (e.g., were data fabricated or falsified, or was human life or well-being jeopardized).

The sanctions listed below are not all-inclusive, and are provided for guidance. They are classified by degree of severity, ranging from those that constitute minimal restrictions (Group I) to those that are the most restrictive (Group III). They do not include possible criminal sanctions and/or civil monetary penalties, which may be applicable in some cases. In addition to the following sanctions, PHS may also seek to recover funds if they were expended for research that was fabricated, falsified or otherwise invalid because of misconduct in science and recovery from the institution is otherwise deemed appropriate. In accordance with statutory and regulatory authority, such recovery may be sought through cost disallowances, negotiation with the institution, offset against other PHS grants to the institution or through a civil recovery action in Federal Court.

Group I Sanctions

- Send a letter of reprimand for improper action to the individual and/or institution (see 42 CFR 50.104 (a)(7)).
- Require, for a specified period of time, that an individual, department, and/or institution obtain from the funding agency special prior approval of particular activities as a condition of award (see 42 CFR 52.9 and 45 CFR 74.7).

- Require, for a specified period of time, that an institutional official other than the individual found culpable of misconduct certify the accuracy and integrity of information provided in applications and/or reports generated under an award (see 42 CFR 52.9 and 45 CFR 74.7).
- Require, for a specified period of time, for any application or award, that the institution must provide a plan for supervision or oversight of scientific activities of the individual found guilty of misconduct (see 42 CFR 52.4 (f) and 52.9 and 45 CFR 74.7).

Group II Sanctions

- Pursuant to 42 CFR 52.6 and 52.9 and 45 CFR 74.7, restrict, for a specified period of time, specific activities or expenditures under an active award.
- Pursuant to 42 CFR 52.5 and 52h.8, require, for a specified period of time, special reviews of all requests for funding from the affected individual and/or institution to ensure that all reasonable steps have been taken to prevent repetition of the misconduct.
- Pursuant to the discretionary appointment authority of PHS components, restrict participation of involved individuals on peer review committees, advisory groups or in other related PHS activities for a specified period of time (see 42 CFR 52.5, 52h.3, and 52h.4).

Group III Sanctions

- Immediately suspend/terminate (an) active award(s) in accordance with 45 CFR 74.110–74.116.
- Withhold funding for specific future non-competing grants or contracts in accordance with 45 CFR 52.6 (b) (2)(and (3).
- Debar or suspend the individual for specfied period of time, declaring him or her ineligible, pursuant to 45 CFR part 76, for any participation in Federal grants and cooperative agreements, and, pursuant to 48 CFR subparts 9.4 and 309.4, contracts. (This action may be taken only by the Deputy Assistant Secretary for Management and Acquisition, OS.)

1.11 Sharing of PHS Findings of Misconduct

(a) The PHS ALERT should be used to implement post-investigational sanctions. Information retained in the official grant or contract file shall be limited to the minimum necessary to implement the action(s), in order to avoid unintended damage to individual reputations and prospects for funding. More detailed information will be maintained by the OSI.

(b) To ensure timely notice to the scientific community, the OSI shall prepare a notice for publication in the NIH Guide for Grants and Contracts identifying any publications found in a formal investigation to require correction or retraction. These notices will be indexed by the National Library of Medicine in the "comments" section of its Medline service.

(c) OSI may share investigational findings, including associated commentaries/rebuttals from the involved individual(s), department(s), and/or institution(s), with other PHS agencies, HHS agencies and non-Federal agencies or organizations, e.g., licensing boards, professional associations and journals, in accordance with the relevant provisions of the Privacy Act, Privacy Act System notice (pending publication), and the Freedom of Information Act. These actions should be reserved for cases of confirmed misconduct in which the seriousness of the misconduct, e.g., widespread dissemination of fabricated research findings, warrants sharing of information about the involved individual(s) and/or institution(s) with other Federal or non-Federal groups and/or organizations. These actions are not mandatory, but may be taken when the circumstances warrant. Decisions concerning such actions should be made jointly by the OSI and OSIR, in consultation with the OGC and the cognizant MPO(s).

1.12 Protection of Records From Release Under the FOIA (See also "Policy" item 12)

1. While an inquiry and/or investigation is pending, all records will be withheld from disclosure to the extent permitted by the FOIA. An inquiry is considered closed when a finding is made by the OSI that no investigation is warranted and that finding is communicated in writing to the subject(s) of the inquiry. An inquiry also is considered closed when a decision is made to conduct an investigation. However, the inquiry records automatically become part of the investigation records, and thus, are handled as indicated below.

An investigation is considered closed when one of the following events occurs:

(a) The investigative findings fail to confirm misconduct, and the subject(s) of the investigation is notified in writing of that finding.

(b) The investigative findings confirm misconduct; all final actions on the imposition of sanctions, including debarment if proposed, are completed; and the findings and final decisions are

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communicated in writing to the subject(s) of the investigation and the institution involved in the investigation. An investigation will not be considered closed where a civil recovery action or criminal prosecution is proposed, and the Department of Justice or the Office of the Inspector General has requested that the confidentiality of the records be maintained.

2. Records of closed inquiries in which there is not a finding of scientific misconduct will be withheld from disclosure to the extent permitted by the FOIA, unless a written request or written consent for disclosure is made by the subject(s) of the inquiry.

3. Records of closed investigations in which there is not a finding of scientific misconduct will be withheld to the extent permitted by the FOIA, unless a written request or written consent for disclosure is made by the subject(s) of the investigation.

4. The following records will be disclosed under the FOIA where there is a finding of misconduct in a closed investigation: The inquiry report of the OSI, if one has been prepared, and the final report of the OSI; all decision documents; all transcripts of any debarment hearing and legal briefs filed in debarment proceedings. Portions of these records may be withheld as specified below, and case-by-case determination will be made regarding the disclosure of other records requested under the FOIA. The PHS will normally withhold internal communications that are within a generally recognized evidentiary privilege and other records or portions of records if their disclosure (a) would constitute an unwarranted invasion of personal privacy or (b) would disclose investigative techniques, would interfere with enforcement proceedings or with an impartial adjudication, or would reveal confidential sources or endanger the physical safety of any individual.

1.13 Future Revisions

Future revisions to these policies and procedures may be made without advance notice and comment, where the Public Health Service determines that their immediate adoption is in the public interest or that such revisions are unlikely to elicit substantial public comment or interest. Such revisions will be published in final as a notice in the Federal Register.

Accordingly, the Public Health Service proposes to adopt the foregoing policies and procedures for dealing with possible scientific misconduct in extramural research.

Dated: April 15, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-14083 Filed 6-12-91; 8:45 am]

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federal register

Thursday
June 13, 1991

Part VIII

The President

Proclamation 6303—National Scleroderma Awareness Week, 1991

Proclamation 6304—Independence Day, 1991

Executive Order 12765—Delegation of Certain Defense Related Authorities of the President to the Secretary of Defense

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Title 3—

The President

Proclamation 6303 of June 11, 1991

National Scleroderma Awareness Week, 1991

By the President of the United States of America

A Proclamation

Scleroderma, which literally means "hard skin," is a connective tissue disorder in which excessive amounts of the protein collagen accumulate in the skin. In addition to the skin, scleroderma affects small blood vessels, muscles, and joints. It may also damage internal organs such as the esophagus, lungs, kidneys, and heart.

Although scleroderma can strike men and women of any age, it occurs most often in women during their childbearing years. The disease is often painful, and it may cause disfigurement, disability, and even death. The impact on victims and their families—in terms of both physical and emotional suffering—is enormous.

Fortunately, progress is being made in determining the cause of scleroderma and in developing more effective treatments for the disease. Researchers have developed an animal model that will help them to understand more about the nature and the progression of scleroderma. They have also made an important finding in the discovery of abnormalities in collagen-producing cells, known as fibroblasts, among scleroderma victims. Furthermore, they have found that treatment with specific agents, such as d-penicillamine, may retard the hardening of collagen in the skin.

As is the case with any other disease, it is very important to diagnose scleroderma in its early stages. Timely intervention, coupled with sound treatment, can improve the quality of life enjoyed by people with scleroderma until research yields a cure.

To enhance public awareness of scleroderma, the Congress, by House Joint Resolution 219, has designated the week beginning June 9, 1991, as "National Scleroderma Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning June 9, 1991, as National Scleroderma Awarness Week. I encourage the people of the United States to observe this week with appropriate programs and activities that will enhance their understanding of scleroderma and the need for continued research.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-14323
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Presidential Documents

Proclamation 6304 of June 11, 1991

Independence Day, 1991

By the President of the United States of America

A Proclamation

On July 4, 1776, with a firm reliance on the protection of Divine Providence, our Nation's Founders boldly declared America's Independence and affirmed the truth "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." They did so knowing that they risked nothing less than their lives, their fortunes, and their sacred honor. On this occasion, we celebrate that profound act of faith and courage and give thanks for the rich legacy of freedom that this country has enjoyed ever since.

That legacy has enabled us to enjoy unparalleled levels of security and prosperity, and it has inspired millions of people around the world in their own struggles for liberty and self-government. Thus, every picnic and parade, every backyard barbecue and public display of fireworks that makes the Fourth of July a favorite summer holiday carries deeper symbolism and meaning. Each resonates with the singular joy of a free people.

This year we are particularly grateful for the blessings of liberty because we have been reminded of the price that many brave and selfless individuals have been willing to pay to secure them. Just months ago, when forces led by a brutal tyrant invaded a small, defenseless country—raping, pillaging, and threatening not only the stability of an entire region but also vital interests of all freedom-loving peoples—thousands of courageous Americans answered the call of duty. Our celebration of Independence Day, 1991, is dedicated in a special way to them—to the regulars, reservists, National Guardsmen, and members of the United States Merchant Marine who helped to liberate Kuwait.

Of course, as we honor our Persian Gulf veterans, we also remember in prayer each of their comrades who made the ultimate sacrifice in service to our country. We salute with great pride and gratitude the military personnel who offered vital support for our mission from bases here at home and around the world, and we pay due tribute to all those who have served in the United States Armed Forces.

The Americans who fought tyranny and lawlessness in the Persian Gulf have upheld, once again, the principles that were first affirmed on these shores 215 years ago when our Nation's Founders elected "between submission or the sword." On this Independence Day—a day marked by triumphant homecomings and by the promise of a safer, more peaceful world—it is fitting that we recall the words that Thomas Jefferson wrote shortly before his death on July 4, 1826:

> All eyes are opened, or opening, to the rights of man . . . . These are grounds of hope for others. For ourselves, let the annual return of this day forever refresh our recollections of these rights, and an undiminished devotion to them.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby ask all Americans to join in celebrating this 215th anniversary of our Nation's Independence with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-14324
Filed 6-12-91; 11:46 am]
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Presidential Documents

Executive Order 12765 of June 11, 1991

Delegation of Certain Defense Related Authorities of the President to the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, and my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

Section 1. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 749 of title 10 of the United States Code to assign the command without regard to rank in grade to any commissioned officer otherwise eligible to command when two or more commissioned officers of the same grade or corresponding grades are assigned to the same area, field command, or organization.

Sec. 2. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7299a(a) of title 10 of the United States Code to direct that combatant vessels and escort vessels be constructed in a Navy or private yard, as the case may be, if the requirement of the Act of March 27, 1934 (ch. 95, 48 Stat. 503) that the first and each succeeding alternate vessel of the same class be constructed in a Navy yard is inconsistent with the public interest.

Sec. 3. For vessels, and for any major component of the hull or superstructure of vessels to be constructed or repaired for any of the armed forces, the Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7309(b) of title 10 of the United States Code to authorize exceptions to the prohibition in section 7309(a) of title 10 of the United States Code. Such exceptions shall be based on a determination that it is in the national security interest of the United States to authorize an exception. The Secretary of Defense shall transmit notice of any such determination to the Congress, as required by section 7309(b).

Sec. 4. The Secretary of Defense may redelegate the authority delegated to him by this order, in accordance with applicable law.

Sec. 5. This order shall be effective immediately.

THE WHITE HOUSE,
June 11, 1991.

George Bush

[FR Doc. 91-14322
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WHO: The Office of the Federal Register.

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Federal Register
Vol. 56, No. 115
Friday, June 14, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-04-AD; Amendment 39-7025; AD 91-12-14]

Airworthiness Directives; Dornier 228 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Dornier 228 series airplanes. This action requires a one-time modification of the alternating current (AC) electrical power supply wiring circuitry. The existing electrical system design could cause failure of both AC inverters if one malfunctioned. The actions specified by this AD are intended to prevent complete loss of AC electrical power.

DATES: Effective July 19, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 19, 1991.

ADDRESSES: Dornier Service Bulletin No. SB-228-171, dated July 20, 1990, that is discussed in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 3, D-8031 Wessling, Germany; Telephone (49.8153)-300; Facsimile (49.8153)-30.29.85. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. R. Stoer, Program Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Dornier 228 series airplanes was published in the **Federal Register** on March 6, 1991 (56 FR 9910). The action proposed a one-time modification of the alternating current (AC) electrical power supply wiring circuitry in accordance with the instructions in Dornier Service Bulletin No. SB-228-171, dated July 20, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The economic analysis paragraph that is discussed below, has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 44 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $170 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $26,840.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91-12-14 **Dornier:** Amendment 39-7025; Docket No. 91-CE-04-AD.

Applicability: Models Dornier 228-100, Dornier 228-101, Dornier 228-200, Dornier 228-201, and Dornier 228-202 airplanes (serial numbers 7000 through 7036, and 8000 through 8050), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent complete loss of alternating current (AC) electrical power, accomplish the following:

(a) Modify the electrical AC power supply system in accordance with the instructions in Dornier Service Bulletin No. SB-228-171, dated July 20, 1990.

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(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

(d) The modification required by this AD shall be done in accordance with Dornier Service Bulletin No. SB-228-171, dated July 20, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained upon request to Dornier Luftfahrt GmbH, P.O. Box 3, D-8031 Wessling, Germany. This information may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on July 19, 1991.

Issued in Kansas City, Missouri, on May 22, 1991.

Herman C. Belderok,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14170 Filed 6-13-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26547; Amdt. No. 1452]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION:

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on May 10, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME, § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective July 25, 1991

Flagstaff, AZ—Pulliam, VOR/DME RWY 21, Orig.
Freeport, IL—Albertus, VOR RWY 24, Amdt. 5
Freeport, IL—Albertus, NDB RWY 24, Amdt. 11
Freeport, IL—Albertus, RNAV RWY 6, Amdt. 4
Kingman, KS—Kingman Muni, VOR/DME RWY 18, Orig.
Winfield-Arkansas City, KS—Strother Field, VOR RWY 35, Amdt. 2, Cancelled
Alva, OK—Alva Muni, NDB RWY 35, Amdt. 4
Okmulgee, OK—Okmulgee Muni, VOR RWY 22, Amdt. 1
Okmulgee, OK—Okmulgee Muni, NDB RWY 17, Amdt. 3
Okmulgee, OK—Okmulgee Muni, ILS RWY 17, Amdt. 3
Wichita Falls, TX—Kickapoo Downtown Airpark, NDB-A, Amdt. 6
Wichita Falls, TX—Kickapoo Downtown Airpark, NDB RWY 35, Amdt. 2
Wichita Falls, TX—Kickapoo Downtown Airpark, RADAR-1, Amdt. 2
Wichita Falls, TX—Kickapoo Downtown Airpark, VOR/DME RNAV RWY 35, Amdt. 2

Effective June 27, 1991

Huntsville, AL—Huntsville Intl-Carl T. Jones Field, ILS RWY 18R, Amdt. 21
Telluride, CO—Telluride Regional, VOR/DME-A, Orig.
Miami, FL—Kendall-Tamiami Executive, NDB RWY 9R, Amdt. 7, Cancelled
Miami, FL—Kendall-Tamiami Executive, NDB RWY 9R, Orig.
Miami, FL—Kendall-Tamiami Executive, ILS RWY 9R, Amdt. 7
Elkins, WV—Elkins-Randolph CNTY-Jennings Randolph FLD, NDB-A, Amdt. 4 Cancelled
Manitowoc, WI—Manitowoc County, VOR RWY 17, Amdt. 13
Manitowoc, WI—Manitowoc County, VOR RWY 35, Amdt. 12
Manitowoc, WI—Manitowoc County, ILS RWY 17, Amdt. 2
Gillette, WY—Gillette-Campbell County, LOC/DME BC RWY 16, Amdt. 1

Effective May 30, 1991

Hyannis, MA—Barnstable Muni-Boardman/Polando Field, ILS RWY 15, Orig.

Effective April 30, 1991

Rocky Mount, NC—Rocky Mount-Wilson, ILS RWY 4, Amdt. 13

The FAA published an Amendment in Docket No. 26531, Amdt. No. 1450 to part 97 of the Federal Aviation Regulations (VOL 56 No. 81 Page 19259; dated April 26, 1991) under § 97.25 effective May 2, 1991, which is hereby amended as follows:

Keene, NH—Dillant-Hopkins, LOC RWY 2, Amdt. 1.

Change effective date to April 11, 1991.

[FR Doc. 91-14169 Filed 6-13-91; 8:45 am]

BILLING CODE 4910-13-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PNGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning July 1, 1991. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after July 1, 1991, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since June 1, 1991. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after July 1, 1991, which set reflects an increase of ¼ percent in the immediate interest rate from 6¾ percent to 7 percent.

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Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after July 1, 1991, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

APPENDIX B—[AMENDED]

2. Rate Set 92 of appendix B is revised and Rate Set 93 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuties, to compute the quantity "Cy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Before	Immediate annuity rate (%)	Deferred annuities				
	On or After				k_1	k_2	k_3	n_1	n_2
•	•	•	•	•	•	•			
92	5-1-91	7-1-91		8.75	1.0600	1.0475	1.0400	7	8
93	7-1-91			7.00	1.0625	1.0500	1.0400	7	8

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 91-14210 Filed 6-13-91; 8:45 am]
BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.1(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of July 1991.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the begining of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

• • • • •

(c) *Interest rates.*

For valuation dates occurring in the month:	The values for i_t are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
•			•			•			•			•			•	
July 1991..	.075	.07375	.0725	.07125	.07	.0675	.0675	.0675	.0675	.0675	.0625	.0625	.0625	.0625	.0625	.05875

Issued at Washington, DC., on this 11th day of June 1991.

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 91-14209 Filed 6-13-91; 8:45 am]
BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSM is approving a proposed amendment submitted by the State of Arkansas as a modification to its permanent regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, concerning operations extracting coal incidental to the extraction of other minerals, revises Arkansas' rules to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Arkansas program was conditionally approved by the Secretary of the Interior on November 21, 1980. Information on the general background, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Arkansas program was published in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning the Arkansas program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Submission of Program Amendment

By letter dated September 20, 1990 (administrative record No. AR-411), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment in response to a February 7, 1990, letter that OSM sent to Arkansas in accordance with 30 CFR 732.17(c).

Arkansas proposed to amend its program by adding new rules concerning the exemption for coal extraction incidental to the extraction of other minerals. Specifically, Arkansas proposed to amend the following sections of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC): § 702.1, scope; § 702.5, definitions; § 702.11, application requirements and procedures; § 702.12, contents of application for exemption, § 702.13, public availability of information; § 702.14, requirements for exemption; § 702.15, conditions of exemption and right of inspection and entry; § 702.16, stockpiling of minerals; § 702.17, revocation and enforcement; and § 702.18, reporting requirements.

OSM published a notice in the October 4, 1990, **FEDERAL REGISTER** (55 FR 40677) announcing receipt of the amendment and inviting public comment

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on the adequacy of the proposed amendment (administrative record No. AR–430). The public comment period ended November 5, 1990.

During its review of the proposed amendment, OSM identified concerns relating to ASCMRC § 700.10(d)(10), exemption for extraction of coal incidental to the extraction of other minerals; ASCMRC §§ 702.5(a) and 702.11(a) (1) and (2), definition of "cumulative measurement period;" ASCMRC § 702.11(d), application requirements and procedures; and ASCMRC § 702.17(a), revocation and enforcement. OSM notified Arkansas of the concerns by letter dated November 14, 1990 (administrative record No. AR–431). Arkansas responded in a letter dated December 10, 1990, by submitting an amendment package (administrative record No. AR–432) which revised these proposed rules.

OSM announced receipt of the revisions to the proposed amendment in a notice in the January 2, 1991, **Federal Register** (56 FR 51). In this notice, OSM reopened the public comment period. The reopened public comment period closed on January 17, 1991.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, as discussed below, that the proposed amendment as submitted by Arkansas on September 20, 1990, and as revised by it on December 10, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

1. Revisions to Arkansas's Rules That Are Substantially Identical to the Corresponding Federal Regulations

Arkansas proposes revisions to the following rules that either contain language that is the same as or similar to the corresponding Federal regulations and are nonsubstantive in nature, or add specificity without adversely affecting other aspects of the Arkansas program.

ASCMRC 700.10(d), concerning the applicability of the Arkansas program to operations where the extraction of coal is incidental to the extraction of other minerals (corresponding Federal regulation 30 CFR 700.11(a)(4)); and

ASCMRC part 702, concerning the exemption for coal extraction incidental to the extraction of other minerals, including § 702.1, scope; § 702.5, definitions; § 702.11, application requirements and procedures; § 702.12, contents of application for exemption, § 702.13, public availability of information; § 702.14, requirements for exemption; § 702.15, conditions of exemption and right of inspection and entry; § 702.16, stockpiling of minerals; § 702.17, revocation and enforcement; and § 702.18, reporting requirements (corresponding Federal regulation 30 CFR part 702).

Because the proposed revisions to these Arkansas rules either contain language that is the same as or similar to the corresponding Federal regulations and are nonsubstantive in nature, or add specificity without adversely affecting other aspects of the program, the Director finds that these proposed revisions to the Arkansas's rules are no less effective than the corresponding Federal regulations. Therefore, the Director approves the proposed revisions.

2. ASCMRC §§ 702.11(f) and 702.17(c), Administrative Review in Accordance with Section 29 of the Arkansas Surface Coal Mining and Reclamation Act of 1979 (Act)

Arkansas proposes at ASCMRC §§ 702.11(f) and 702.17(c)(2) that any person adversely affected by determinations made by Arkansas concerning exemptions from its Act for coal extraction incidental to the extraction of other minerals, or revocation and enforcement of these determinations, may request administrative review of such decisions in accordance with section 29 of its Act.

The corresponding Federal regulations at 30 CFR 702.11(f) and 702.17(c)(2) state that these adversely affected persons may request administrative review of such decisions "in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority."

43 CFR 4.1280 is applicable to formal administrative review of the decisions of the Director of OSM. Arkansas's referenced section 29 of its Act is also applicable to formal administrative review of decisions of the Arkansas regulatory authority.

Because Arkansas's proposed rules at ASCMRC §§ 702.11(f) and 702.17(c)(2), through their reference to section 29 of the Arkansas Act, do require that formal procedures be followed for requested administrative reviews, the Director finds that the proposed rules are no less effective than the corresponding Federal regulations at 30 CFR 702.11(f) and 702.17(c), which reference the formal administrative review procedures at 43 CFR 4.1280. The Director is approving the proposed rules.

IV. Public and Agency Comments

1. Public Comments

The Director solicited public comments on the proposed amendment and provided opportunity for a public hearing. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments from various Federal and State agencies with an actual or potential interest in the Arkansas program.

By letters dated October 25 and November 8, 1990, and January 15, 1991, the U.S. Army Corp of Engineers (the Management and Disposal Division and the Real Estate Division) responded that it had no comments on the proposed amendment (administrative record Nos. AR–424, AR–428, and AR–441).

By letters dated November 7, 1990, and January 17, 1991, the U.S. Soil Conservation Service responded, respectively, that it concurs with the proposed amendment and that it had no comments on the proposed amendment (administrative record Nos. AR–427 and AR–440).

By letter dated December 26, 1990, the Arkansas Department of Pollution Control and Ecology, National Pollutant Discharge Elimination System Division, responded that it had no comments on the proposed amendment (administrative record No. AR–439).

By letter dated January 21, 1991, the U.S. Fish and Wildlife Service responded that the proposed amendment would have no significant impacts on fish and wildlife resources, and that it had no objections to the proposed amendment (administrative record No. AR–442).

By telephone conversation on January 21, 1991, the U.S. Forest Service responded that it had no comments on the proposed amendment (administrative record No. AR–443).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM solicited concurrence from EPA (administrative record No. AR–445) for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

By letter dated October 15, 1990, EPA stated that it had no comments on the proposed amendment and concurred with it (administrative record No. AR–420).

4. State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation (ACHP), and Arkansas Historic Preservation Program (AHPP) Comments

Pursuant to 30 CFR 732.17(h)(4), all amendments that may have an effect on historic properties are to be provided to the SHPO and ACHP for comment. OSM solicited comments from these offices. By letter dated October 8, 1990, the SHPO responded that he had no objections to the proposed amendment (administrative record No. AR–417). ACHP did not respond to OSM's solicitation for comments.

By letter dated January 17, 1991, AHPP responded that it had no objections to the proposed amendment (administrative record No. AR–444).

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment as submitted by Arkansas on September 20, 1990, and as revised by it on December 10, 1990. The Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 904 codifying decisions concerning the Arkansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Requirements

1. Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Accordingly, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 7, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 904.15 is amended by adding paragraph (h) as follows:

§ 904.15 Approval of regulatory program amendments.

* * * * *

(h) The revisions to the following sections of the Arkansas Surface Mining and Reclamation Code (ASCMRC), as submitted to OSM by Arkansas on September 20, 1990, and as revised by Arkansas on December 10, 1990, are approved effective June 14, 1991: ASCMRC § 700.10(d) and part 702, concerning operations extracting coal incidental to the extraction of other minerals.

[FR Doc. 91–14166 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[Regulation 91–10]

Safety Zone Regulations: Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, mile 608.0 to 609.0. The zone is needed to protect all vessels and spectators from a safety hazard associated with a fireworks display sponsored by River Heritage Overlook Culture. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 9:30 p.m. e.d.s.t. on 04 July 1991. It terminates at 11:00 p.m. e.d.s.t. on 04 July 1991 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CWO R.L. Johnson (502) 582–5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is CWO R.L. Johnson, project officer for the Captain of the Port.

Discussion of Regulation

The event requiring this regulation will begin on 04 July 1991 at 9:30 p.m. e.d.s.t. and end on 04 July 1991 at 11:00 p.m. e.d.s.t. The fireworks display will take place at mile 608.5 on the Ohio River. The river closure is needed to protect river traffic and spectators.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new 165.T2026 is added to read as follows:

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§ 165.T2026 Safety Zone: All waters of the Ohio River from Mile 606.0 to 609.0.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River Mile 606.0 to 609.0.

(b) *Effective date.* This regulation becomes effective at 9:30 p.m. e.d.s.t. on 4 July 1991. It terminates at 11:00 p.m. e.d.s.t. on 4 July 1991, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The Captain of the Port's representative may be contacted on VHF radio Channel 16 during the event.

Dated: May 22, 1991.

D.W. Cleaveland,

Captain of the Port, Louisville, Kentucky.

[FR Doc. 91-14191 Filed 6-13-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251 and 293

RIN 0596-AA31

Land Uses; Wilderness

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule sets forth the procedures, terms, and conditions governing access for landowners whose properties or property interests lie within the boundaries of the National Forest System. The intended effect is to clarify the manner in which landowners may use National Forest lands for ingress and egress and to establish rules of procedure by which the Forest Service will act on requests for access. The rule is applicable to applications for new or renewed access authorizations and to use of National Forest System lands for access that currently exists without authorization.

EFFECTIVE DATE: July 15,1991.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Myers, Lands Staff, Forest Service, USDA, (202) 453-8248.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to establish new regulations for access across National Forest System lands to non-federally owned lands was published in the **Federal Register** on September 28, 1988 (53 FR 37795). In addition to inviting comments on the proposed rule through the **Federal Register**, the Forest Service encouraged Regional Foresters and Forest Supervisors to notify local interested parties of the proposal and to solicit written comments. The initial comment period was to expire November 28, 1988, and was extended to close on January 28, 1989 (53 FR 48277). The proposed rule and outreach effort on the rule generated responses and suggestions from 366 entities, including 305 individuals, 12 organizations, 31 industrial representatives, 6 Federal and State agencies, 1 Member of Congress, and 13 Forest Service employees.

Comments were received on all sections of the proposed rule. All comments received have been carefully considered and are addressed in this final rulemaking. In general, the majority of the comments received were supportive of the proposed regulations. A summary of the general comments received and a discussion of their disposition are addressed first, followed by section-by-section responses to specific comments.

General Comments

Numerous respondents argued that section 1323(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (16 U.S.C. 3210), (ANILCA) is a free-standing statute guaranteeing an absolute right of access to landowners. Many respondents objected to the degree of discretion that the proposed rulemaking would make available to the authorized officer in reaching access decisions. An often repeated position was that access is a vested property right and not a permissive right to be determined or regulated by a Federal agency. While ANILCA provides a statutory entitlement to access, the entitlement is not without qualification. The access is that "as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment" of the land. Therefore, the kind of access granted is a discretionary decision of the authorized officer based upon given circumstances. While access cannot be arbitrarily and capriciously denied, it need not be treated identically for all properties.

Several respondents argued that the right of access for inholders begins with the Organic Administration Act of 1897 (16 U.S.C. 478), and that the rights of "inholders" and "actual settlers" are identical. The 1897 Act has been construed by the Attorney General as only granting access rights to actual settlers, not their heirs or assigns. See 42 Op. Atty. Gen. 127 (1962); 1980 (Counsel-INF. OP) 4A OP. O.L.C. 30. The rights of actual settlers to use existing roads are covered in 36 CFR 212.8. The Attorney General also found that even an original settler's right to construct a wagon road was subject to "such rules and regulations as may be prescribed by the Secretary of Agriculture." Thus, the final rulemaking continues to make all access requests subject to the regulations.

Similarly, a number of respondents objected to the basic thrust of the proposed rules which they perceived to be an attempt to regulate private land use. To the contrary, these rules do not purport to give the Forest Service the right to tell a landowner what use may be made of non-Federal land. The rules merely implement the authority granted by ANILCA to limit the mode and manner of access across the Federal land to that which the authorized officer determines to be needed for the reasonable use of the private land. The law does not require the authorized officer to allow the construction of a facility on Federal land that would be required for a use on the non-Federal land that the authorized officer considers to be an unreasonable use of the non-Federal land. The decision of the authorized officer as to the reasonable use of the land being accessed would be subject to appeal under the regulations in part 217 of this title.

Several comments were received that urged that the rule be revised to either include or specifically exclude access for holders of grazing permits, mineral permits, oil and gas leases, Federal Energy Regulatory Commission hydroprojects, or other authorized uses of National Forest lands. Since these uses are authorized uses of Federal land, not non-Federal lands, they are outside of the scope of these regulations which are applicable only for access to non-Federal lands.

Noting that special use authorizations must be consistent with Forest Plans, as provided in 16 U.S.C. 1604(i), several respondents suggested that Forest Plan standards and guidelines, developed pursuant to the National Forest Management Act (NFMA), be specifically incorporated in access decisions. A suggestion was made that the regulations include direction to follow the National Environmental Policy Act (NEPA) process in all access decisions. It is not necessary to adopt these suggestions, because compliance with NFMA and NEPA is required for all Forest Service land management actions, as set-forth in 36 CFR part 219, NEPA compliance procedures (50 FR 26078), and other direction and need not be specifically directed to access applications. The preamble to the proposed rulemaking also explained that the Forest Service will conduct environmental analyses of access applications on a case-by-case basis.

Several respondents also expressed their concern that the Agency had not complied adequately with the requirements of Executive Order No. 12630. Although the Agency included a statement that the proposed rule had been reviewed for its effect on private land, they indicated that they disagreed with the finding that the rules had been found not to have significant taking implications. In compliance with Executive Order 12630, and this concern, a takings implication assessment was prepared for these regulations as an internal and predecisional management aid for use by Agency decisionmakers. A summary of its conclusions is included in the analysis of Regulatory and Environmental Impacts.

Section-by-Section Comments

Section 251.110. This section of the proposed rule stated that the rule was applicable to all applications for access to non-Federal land across National Forest System land. It also stated that use of existing Government-owned roads would be in accordance with the provisions of part 212 of chapter II of title 36 of the Code of Federal Regulations.

One respondent expressed concern that the proposed regulations appeared to require reauthorization or documentation of longstanding existing rights of access. These regulations cannot affect those rights-of-way that were legally established under the provisions of earlier authorities, such as the Act of July 26, 1866 (43 U.S.C. 932), nor can they affect rights that were reserved in conveyances to the United States or that were outstanding in third parties at the time the United States acquired the lands. However, the regulations are applicable to those roads constructed without authorization and to new or renewed occupancies. Access authorized by a currently valid special-use authorization will continue in effect until expiration, until there is a change in access needs that would necessitate the holder to request a change in the authorization, or until a management concern arises that would necessitate a revision of the authorization. In that event, access would be reauthorized under the guidance of these regulations. All applications for new access will be considered under these regulations. In response to these concerns, § 251.110(b) has been revised to make clear that the rules do not affect outstanding or reserved access rights, or current valid special-use authorizations.

Paragraph (c) of proposed § 251.110 directed the Agency to authorize such access as the authorized officer finds to be adequate to provide for reasonable use and enjoyment of the non-federally owned land. Twelve respondents opposed this paragraph and § 251.114(b) on the basis that it was inappropriate for a Forest Service officer to determine the kind of access that would be authorized to enable the landowner to use his or her land. As a matter of principle, the respondents objected to the Forest Service making determinations which could affect the use and value of private lands that possibly might be to the disadvantage of the landowner. A few comments indicated concerns about the consistent application of this provision due to Forest Service personnel reassignments and varying personalities. One respondent requested definition of the term "reasonable use" to limit the latitude for interpretation.

Section 1323(a) of ANILCA requires the Secretary of Agriculture to provide "such access * * * as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof * * *." Thus the law itself directs the Agency to make a decision as to the reasonable use of the non-Federal land for the purposes of determining what is reasonable access across Federal land. This provision does not authorize direct control or use of non-Federal land, but rather provides a basis for determining the appropriate private access use of the Federally owned land. The term "reasonable use" is a relative term that must be considered on a case-by-case basis. Its application and use in each individual case is subject to review through the administrative appeal process. Therefore, a definition for the term is not included in the final rule. The Agency will work with landowners to assure that their access needs are given appropriate consideration along with the protection of the National Forest lands to be crossed. Where legal access is determined to exist as reserved or outstanding rights, landowners may exercise such rights.

One of the purposes of these regulations is to provide for consistent application of the law. If a party believes that a decision has been made in an individual case that is not consistent with the facts, the decision would be subject to review through the administrative appeals process.

Paragraph (d) of this section would require that any access use of a land-disturbing nature or the use of Government-owned transportation facilities not authorized for general public use be authorized by an appropriate special-use authorization. Five respondents agreed with the provisions of this rule. No adverse comments were received. This provision is continued in the final rule, but it is corrected to also include the use of road-use permits as an authorizing document, an unintended omission in the proposed rule.

Paragraph (f) excluded conservation units in Alaska from the effect of these rules. One respondent indicated that the provisions of these regulations should be made applicable to those non-federally owned inholdings within Conservation Units that are covered by section 1110(b) of the Alaska National Interest Lands Conservation Act. The Department agrees with this recommendation and language has been added to extend the scope of these rules to include those inholdings.

Section 251.111 Definitions. This section defined several terms used in the rules. Five respondents opposed the definition of "access" in that it excluded rights-of-way for utilities or other services. The proposed regulations are based on section 1323(a) and the definition of access in the previously cited 1962 Attorney General's opinion. Utility and service rights-of-way are beyond the intent and purpose of the statutory authorities pertaining to access. As appropriate, and upon proper application by the landowner or service-providers, utility and other services may be authorized under title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) (FLPMA), or other authority, and may be placed under or adjacent to a road or other access facility. Accordingly, this definition is not changed.

One respondent advanced the theory that legislative history and other sources indicate an intent by Congress to establish that "access" means "road access". Although road access may indeed be appropriate in many situations, the law and the legislative history of section 1323(a) provide no basis on which to limit the definition to road access. Therefore, the final rule retains the definition of "access" as proposed.

Many respondents opposed the definition of "adequate access" as clumsy and overly restrictive and provided constructive suggestions on alternative wording to clarify the term. The final rule contains a modified definition based on these suggestions.

Three respondents urged that the definition of "Landowner(s)" be expanded to include anyone owning a non-Federal land interest. The final rule adopts this suggestion.

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Another respondent suggested that the rule clarify that lands held in trust by the Government for Native American landowners are not affected by these proposed rules. This suggestion has not been adopted. These lands have been conveyed to the Indians by a patent and share most of the characteristics of other non-Federal lands. Moreover, section 1323(a) of ANILCA did not provide for an exception for these lands.

Section 251.112 Application Requirements. This section of the proposed rule required the application to conform to the requirements of 36 CFR 251.54 and to include a statement of the intended and historical modes of access. Three respondents objected to the proposed rule requiring landowners to include information on historical and present uses of the land to be accessed, expressing a concern that such a requirement is irrelevant to current access needs and could be construed as an effort by the FS to limit access to historic or present levels.

In the proposed rule, information on the historic use was one of the factors to be considered in § 251.112(b) in the determination of reasonable use and enjoyment of the non-Federal owned land. For the reasons set forth later in the discussion of the changes made to that section, this information would no longer be required when the land is completely surrounded by National Forest land. However, where the possibility exists that access rights over non-Federal land may exist, information is needed on those rights to allow the Forest Service to determine access needs over National Forest System lands. The final rule has been revised to require historic access information only when the possibility exists that the landowner may have access rights across adjoining non-Federal lands.

One respondent expressed concern over the applicability of provisions of 36 CFR 251.54(i) regarding denial of applications. This respondent asserted that access applications may not be denied since ANILCA section 1323(a) guarantees adequate access. Experience in implementing section 1323(a) since its enactment has demonstrated that there are situations where applications have been denied for reasons cited in § 251.54(i); however, none of these denials are known to have resulted in landowners not having adequate access to their property. The Department agrees that section 1323(a) prevents the use of the current regulations to totally deny access, but it does not prevent its use to deny an application for a route across National Forest land when adequate access is available, or can be made available, over another route or by alternative means. Thus, no revision concerning this point was made in the final rule. However, § 251.112 is further subdivided and reorganized in the final rule to improve its readability.

Section 251.113 Instrument of Authorization. This section of the proposed rule provided that access would be authorized by use of a special-use authorization or, where applicable, an easement in accordance with 36 CFR part 212.

Ten respondents indicated unqualified agreement with the rule as written. However, other respondents objected to the provision to authorize access by special-use authorization, requesting instead that access be authorized by easement. As defined in 36 CFR 251.51 (1988) the term "special use authorization" means "a permit, term permit, lease, or easement * * *." Thus, the term "special-use authorization" is sufficiently broad to respond to the concern, and the use of the term continues in the final rule.

Several respondents indicated that they considered the requirement to secure a special-use authorization as a significant change in direction by the Forest Service. They stated that landowners had not been required to obtain such an authorization in the past. A review of the regulations shows that permits have been required by the Secretary since as early as 1911 and possibly earlier. Regulation L-36 issued March 18, 1911, by then Secretary of Agriculture James Wilson, required that, with the exception of state or county roads, "permits are necessary for the construction of all wagon roads over (National Forest) lands." This requirement has been continued and expanded in all subsequent regulations and is retained in the final rule.

Section 251.114 Criteria, Terms and Conditions. The proposed rule established criteria for determining when an access grant is required and when it is discretionary, provided criteria for determining reasonable use and enjoyment, and established a requirement that landowners provide reciprocal rights-of-way needed by the Agency and upgrade existing roads where necessary to accommodate the additional traffic generated by the development of the private land. It also provided direction for authorizing access through Wilderness. This section generated the largest number of comments on the proposed rule. Forty-seven respondents provided suggestions or commented on this section. Responses received were addressed to specific criteria, terms, and conditions and are discussed by paragraph below.

Paragraph (a) provided that, where there is existing access to a property, access grants across National Forest lands are discretionary. Three respondents agreed that where access exists, the Agency should have no responsibility to provide additional access. Nine respondents agreed in principle, but expressed concern that existing access may not be economical, adequate, or feasible based on a landowner's changing needs. Several respondents suggested the addition of the word "adequate" to overcome their concerns.

The Agency has no obligation to provide a landowner with a less costly or a more economically advantageous access where other access exists which can be utilized or made adequate through the landowner's efforts and without Forest Service involvement. Nevertheless, as a matter of practice, the Agency works with landowners, who have indicated that a change in access routes is desired, to develop and evaluate alternatives to make an environmentally sound access decision. While the Agency may have no obligation to provide access over alternative routes, this rule does not prevent it from doing so when it is mutually beneficial.

Having considered these comments, the Department feels that the rule should address this issue by clearly specifying that no obligation exists in those cases where the access across other non-National Forest land or public roads provides adequate access.

This provision has been moved in the final rule to § 251.110 and designated as paragraph (g) because it is more appropriate to that section. The other paragraphs in § 251.114 have been redesignated in the final rule as the result of this change.

Paragraph (b) of the proposed rule established criteria for the authorizing officer to use in determining what constitutes reasonable use and enjoyment of non-Federal land. Three respondents supported paragraph (b) as proposed, stating that the text assures protection of Federal lands and resources.

Nine respondents objected to this provision, stating that a Forest Service determination of need, or of reasonable use and enjoyment of non-Federal lands, is a Federal pre-emption of local zoning authority and an intrusion into private affairs. As noted in the discussion of general comments. Section 1323(a) of ANILCA requires the Secretary of Agriculture to provide such access as the Secretary deems adequate to accommodate the reasonable use and enjoyment of the land; therefore, a determination of what constitutes reasonable use and enjoyment must be made. It is not the intent of this rulemaking to regulate the uses made on non-Federal land; that is a function of the State and local governments. A landowner's use of non-Federal land is limited by these regulations only to the extent that the facilities and modes of access authorized on the Federal land limit the use and enjoyment of the non-Federal land to that which is determined to be reasonable by the authorizing officer. The authorized officer's determination of what constitutes reasonable use and enjoyment of the non-Federal property is only pertinent to the decisionmaking process on the use to be made of the Federal land. The final rule retains the provision for the authorizing officer to determine what constitutes reasonable use and enjoyment of the non-Federal property because that is what the statute requires.

Others suggested that commercial forest management and mineral development be stated clearly as reasonable uses of private inholdings. Whether a particular use is reasonable or unreasonable depends on the characteristics of the individual piece of property and must be decided on a case-by-case basis. The final rule does not include a list of uses that are to be considered as reasonable uses in all cases, because it is very unlikely that a given use would always be a reasonable use on all non-Federal parcels of land.

Seven respondents objected to the reliance on the past use of the property as determining the reasonable use of the property. They stated that the landowner would not have the option of implementing new uses and would be limited to the access exercised for past uses. In effect, they argued this would result in a freeze of private land uses at current levels. These concerns were considered to be valid and as a result, this provision is not included in the final rulemaking.

For essentially the same reasons, several respondents expressed concern with paragraph (b)(2) in regard to the level of use existing on the date of designation in a congressionally designated area. After review of the comments, this paragraph has been determined to be unnecessarily restrictive and has been deleted.

Several respondents objected to the provisions of paragraph (b)(3) which provided that to be considered a reasonable use of the private land, the use must be appropriate and in keeping with the uses on surrounding land. These respondents expressed the view that the ANILCA section 1323(a) guarantee of access is absolute and adequate access must be granted even if the access results in some degradation or is not in keeping with the uses of adjacent Federal lands. This view was not accepted since the plain language of section 1323(a) clearly establishes that the access provided for is "subject to such terms and conditions as the Secretary of Agriculture may prescribe," including the rules and regulations applicable to ingress and egress to or from the National Forest System. The final rule omits paragraph (b)(3), but paragraph (a) of § 251.114 incorporates the contemporaneous use of similarly situated land as a basis for determining reasonable use and enjoyment of the property.

Paragraph (c) of proposed § 251.114 would require a landowner to pay an appropriate fee for an access authorization in accordance with the provisions of § 251.57 of this part. Six respondents commented on the fee requirements of this section. Four supported the proposed rule as written, as being consistent with the management of special uses on National Forest System lands. One respondent stated that imposition of a fee could be considered an unconstitutional taking of a right, if the landowner could not afford the fee. The requirement for payment of fees for the use of National Forest System lands is well established in law, executive policy, and in the regulations of the Secretary of Agriculture. Congress has indicated in the Federal Land Policy and Management Act that it is the policy of the United States that it receive fair market value of the uses of the public lands and their resources unless otherwise provided by law. In the absence of any authority to not charge an appropriate fee, the final rule retains this section as consistent with statutory authority and the intent of Congress.

Another respondent expressed the view that it would be inappropriate and illegal to charge for rights-of-way established pursuant to Revised Statute 2477 (43 U.S.C. 932). This is correct. Rights-of-way established under Revised Statute 2477 are an outstanding right and, as such, are not subject to these regulations. This concern is addressed by addition of language to § 251.10(b) which clearly states that rules do not apply to outstanding access rights.

Paragraph (d) of this section proposed that the landowner may be required to provide a reciprocal grant of access across the landowner's property where such a right is deemed necessary or desirable by the authorized officer. Eighteen respondents addressed this requirement. Six supported the proposed rule as an appropriate provision to help ensure that the public's access needs to the National Forests are attained. Twelve respondents raised a variety of concerns and objections, ranging from the nature of the reciprocal right-of-way instruments, to allegations that this section exceeded statutory authority. Others stated that it would be unreasonable to require a reciprocal grant when access is granted to the mineral estate owner, if the surface and subsurface estates are separately owned. Concern was expressed also that landowners would be forced to forego the acquisition of access to avoid being required to grant reciprocal rights-of-way that would diminish the value of their land or reduce their control of their lands. Several respondents expressed a concern that the Government would require the conveyance of a right-of-way by the landowner that was more valuable than the right being granted by the Government.

The requirement for a reciprocal right-of-way is currently included in 36 CFR 251.63 and is restated here to avoid any question of its applicability to grants for construction or use of non-Federal access facilities as well as to use of existing forest development roads. Authority for this condition to be imposed is within the broad authority of the Secretary of Agriculture as provided by the Acts of June 1, 1897; Title V, FLPMA; and Section 1323(a) of ANILCA. The Attorney General reviewed the legality of requiring reciprocal rights in his opinion dated February 1, 1962. He concluded that the Secretary has the discretionary authority to require persons other than actual settlers residing within the National Forests to grant reciprocal rights to the United States for the privilege of using existing roads or receiving a permit to construct roads across the National Forests. Such a requirement is considered to be a good business practice by most landowners and is widely practiced between private landowners or corporations with intermingled ownerships.

When requiring the grant of a right-of-way, the Agency cannot require owners of a partial estate to convey rights they do not possess. For example, where an owner of a mineral estate seeks access, and a reciprocal right-of-way is needed by the United States, the Agency must decide whether to issue the authorization without obtaining a reciprocal right-of-way at that time, or obtain a reciprocal right-of-way as to the partial estate, and obtain the

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remaining rights under other acquisition procedures.

While the grant of an easement across private land encumbers the management of that land to a certain extent, the grant of an easement across Federal land also affects the management of that land. It is not reasonable for a landowner to expect a ready grant of access across Federal land while refusing to grant access to the Federal land across the private land. The Government does have other tools available to it to acquire access over private land. However, the Department believes it is not a wise use of public funds to force the government to incur costs to condemn a right-of-way, while granting access to the party forcing the Government to incur the cost of condemning access.

Where reciprocity is required, landowner access is provided by easement and the Agency would obtain its access by easement also, consistent with standing operating guidelines. The fair market value of each easement will be determined by standard appraisal practices. If the value of the right-of-way obtained by the Government exceeds the value of the right-of-way granted, the difference in value would be paid to the landowner by the Forest Service. If the value of the right-of-way across the Government land exceeds the value of the right-of-way across the private land, an appropriate adjustment will be made in the fee charged for the special-use authorization. Waiver of all or part of the fee payment for the rights-of-way granted by the Government in consideration for grant of reciprocal rights-of-way is provided for under 36 CFR 251.57(b)(5). In response to these concerns, the rule has been revised at § 251.114(c) to clarify that compensation will be received by the landowner for any rights-of-way granted.

One respondent opposed paragraph (d) on grounds that section 1323(a) places an obligation on the Agency to provide access, and therefore conditioning the access right on provision of public benefits through reciprocity is an unnecessary requirement for the exercise of the landowner's statutory access rights, and therefore is unlawful. The Department has reviewed the concern and concluded for the reasons previously stated that the statute does not grant an absolute right of access and that a provision for reciprocity is well within the authority of the Secretary of Agriculture under the authorities cited.

Those respondents objecting to paragraph (d) were concerned that authorized officers may arbitrarily impose reciprocity without consideration of other alternatives and without regard to the effects of such rights-of-way on private lands. In reaching a decision to require a reciprocal right-of-way, the Forest Service is obligated, as it is in any other right-of-way acquisition, to support its decision through analysis of alternatives, and to consider with the landowner the location, standards, and similar pertinent matters to reduce and mitigate the effects of the right-of-way on non-Federal lands and their management as is reasonably and legally possible.

For the reasons stated above, the requirement for reciprocal right-of-way is continued in the final rulemaking, with modification to assure that any exchange considers the value of the rights-of-way being exchanged.

Paragraph (e) of the proposed rule made it possible for the authorized officer to require the landowner to construct new roads or reconstruct existing roads to the minimum standard required by local public road authorities for public roads. It also provided that the authorized officer could require the landowner to arrange for the road to be part of the public road system or form a local improvement district to assume the responsibility for the operation and maintenance of the road.

One respondent agreed with this provision. Twelve respondents expressed a general concern that the provision placed an undue, perhaps punishing, burden on landowners in the form of costs when public access standards are higher than those reasonable and appropriate for the individual landowner's access needs.

Most comments also advocated the principle that those benefiting from road access should pay the costs, rather than impose such costs on landowners. One respondent pointed out that landowners have no authority to require public road agencies to accept a road.

The comments received indicate the proposed rulemaking did not explain the factual situation adequately. In many situations throughout the National Forest System, a developer acquires permission to build or improve a road through National Forest land to serve a subdivision. The developer then sells off the lots, leaves the area, and allows the authorization to expire without making any provision for the continuing maintenance needs of the private property owners in the subdivision. As the use of non-Federal lands expands, becoming intensive in many cases, the landowners typically look to a government entity for their maintenance and reconstruction needs. States and counties are reluctant to add such roads to the public road system, since these roads often serve comparatively few people, who are often not residents of the county, and since the county's road funds can be better spent in areas that serve more people for the same costs. Increasingly, pressure is exerted on the Forest Service to assume the responsibilities of public road agencies for individuals, yet the Forest Service is not a public road agency and has no authority or financing to function as a public road agency. The purpose of this section is to provide assurance that the burden of accommodating the needs of non-National Forest traffic does not fall to the U.S. Government by default, but remains with the State and local public road authorities.

It should be noted that paragraph (e) is a limited discretionary provision applicable to private use of National Forest System roads, which access non-Federal roads, and exceed safe capacity or will cause damage to the National Forest roadway. Thus, the rule cannot be used to require non-Federal landowners to assume the cost of higher standards required by road traffic arising from the public use of National Forest lands. Also it should be noted that where Foreat-user or Forest management traffic is, or becomes, significant and the appropriate public road agency has refused to assume jurisdiction, the Forest Service can, in appropriate circumstances, assume jurisdiction.

In the final rule paragraph (e), designated as paragraph (d), has been revised by removing the reference to "public" traffic from the first phrase, making it clear that these requirements would occur only in response to the traffic arising from the use of the non-Federal land. Also, the phrase permitting the Forest Service to require the landowner to perform such reconstruction as necessary has been revised to read "as necessary to bring the road to a safe and adequate standard." The sentence requiring a landowner to arrange for a road to be made a part of a local public road system has also been revised to be consistent with the above change. Paragraph (d) of the final rule requires a landowner to provide for the operation and maintenance of a road, which could be done by arranging for the road to be made a part of a local public road system or by formation of a local road improvement district.

Paragraph (f) of proposed § 251.114 required landowners using existing forest development roads for access to their land to perform such reconstruction as is needed to accommodate such traffic in a safe

manner. It also required the landowner to enter a cooperative maintenance agreement with the Government when the increased traffic required reconstruction of the road if the appropriate public road agency would not assume responsibility for the maintenance of the road.

Existing forest development system roads, constructed and maintained to a standard that is adequate to meet the needs of the Forest Service for National Forest management and for Forest-user traffic, often are relied upon by landowners for access to private land. As these privately owned lands have been developed and subdivided, the traffic generated by the private use has increased to the point that it is causing more impact on the roads than the National Forest traffic.

One respondent urged that all users involved in use of Forest development roads cooperatively maintain them. In response, paragraph (f) of the proposed rule, redesignated as paragraph (c) in the final rule, has been modified to make it clear that other landowners using the road for access may also be required to participate in the reconstruction and maintenance of the road when needed to accommodate traffic generated by the developments on their land.

Paragraph (g) of proposed § 251.114 established requirements that an access applicant must satisfy before a special-use authorization would be issued. Under the proposed rule, an applicant would be required to demonstrate that alternate access was not already available to the landowner, that the proposed route minimized impacts on resources, and that the location and method of access was compatible with the management of areas protected by Federal statute.

Many respondents commented on this paragraph. In general, the comments either supported the proposed rule provisions directed at protecting National Forest System lands and resources and mitigating access impacts, or expressed concerns over paragraphs (g)(1) and (g)(4) regarding availability of alternative access opportunities and rights.

Six respondents disagreed with the paragraph requiring the landowner to demonstrate the lack of any existing rights or routes of access available by deed or under State or common law. They asserted that section 1323(a) guarantees adequate access to landowners; therefore, the burden of demonstrating that adequate access currently exists is a Forest Service responsibility and burden, not the landowners.

Section 1323(a) requires the Secretary, subject to such terms and conditions as may be prescribed, to provide adequate access to non-Federal lands. The Agency needs to know all the access opportunities that exist for a property in order to determine if access must be granted across National Forest land. The law does not require the Secretary to provide access if the land already has adequate access. Providing the factual information needed for the analysis is the responsibility of the applicant. The Agency has no authority to assume the responsibilities of, or expend Federal funds on behalf of, private interests. Thus, the gathering of information regarding access rights or routes available to a landowner by deed, or under State or common law, is a responsibility of the applicant, and this paragraph, redesignated as (f)(1), is retained in the final rule. However, the Agency will cooperate with landowners through information sharing and guidance as appropriate.

Five respondents addressed the requirement that the route be so located as to minimize adverse impacts on soils, fish, wildlife, and scenic, cultural, and other values of the Federal land. They were generally supportive of the requirement, but expressed concern that this provision not be used to make a route so expensive as to in effect deny access. The cost of mitigation measures is considered by the Forest Service in the analysis of alternate routes or modes of access. However, there is no requirement that the selected route or method of access be the most economical route or method of access. If a landowner believes that requirements established as the result of the environmental impact analysis and subsequently required by the authorized officer are unreasonable, the findings and the decision are subject to both administrative appeal and to review by the courts.

One respondent suggested that threatened and endangered species be added to the list of items to be considered. This suggestion has been adopted and paragraph (f)(2) of the final rule now includes threatened and endangered species in the listing.

Three respondents felt that the requirement in paragraph (g)(3), that the location and method of access be consistent with the management of any area protected by Federal statute, conflicts with the access assurance of section 1323(a) of ANILCA, and subordinates section 1323(a) to other statutes. While ANILCA does direct the grant of access, it also gives the Secretary the authority to require reasonable terms and conditions, including conformity to management plans for the area. In the final rule this paragraph is redesignated as (f)(3) and the words "as consistent as reasonably possible with the management of congressionally designated areas" have been added to recognize the limits resulting from ANILCA. A sentence has also been added that requires that Forest Land and Resource Management Plans be amended if the access grant would be inconsistent with the plan.

One respondent pointed out that all lands within the National Forest System are protected by Federal statute; therefore, paragraph (g)(3) was relatively meaningless as written. The final rule has been modified to clarify that the need for consistency is with National Forest System land management plans and in congressionally designated areas, which is a term defined in this rulemaking.

Paragraph (g)(4) of the proposed rule required that, where there are existing access routes across adjacent non-Federal land or when the best route of access is across adjacent non-Federal land, the applicant must demonstrate that all legal recourse has been exhausted before access will be granted across National Forest System lands.

Eight respondents objected to this requirement. Principally, the objections were to the requirement for exhausting all legal recourse in efforts to secure non-Federal access. The point was made that this provision could be interpreted to require landowners to endure the costs and delays of futile litigation, even if there were no chance of succeeding, to demonstrate that adjacent non-Federal routes are not available. These respondents felt strongly that the rule should not require litigation if the Agency can determine from the documents presented that there is little reason to believe that the effort will be successful. The Department agrees. The final rule modifies the requirement in paragraph (f)(4) by adding the phrase the landowner has demonstrated that legal recourse to obtain reasonable access "has little chance of success."

Paragraph (h) of proposed § 251.114 provided guidelines to the authorizing officer on the granting of access authorizations in units of the National Wilderness Preservation System administered by the Forest Service. This paragraph generated very detailed responses, both supporting and objecting to the language. Providing access through wilderness areas brings out strongly held views. Comments received are described in detail, followed by the Department's response.

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Proposed paragraph (h)(l) of this section required the authorized officer to consider access by air, trail, or over water as adequate access if such mode of travel had been used traditionally for access to similar situated properties in wilderness areas. Eleven respondents objected in general to this paragraph for the same reasons that were expressed about § 251.114(b)(1). They expressed concern that this requirement did not consider that land uses evolve over a period of time and that limiting the mode of access to that used historically was an improper action. The Department agrees. One other respondent mentioned that sometimes a change in access mode from that traditionally used could result in lessening the impact on the Wilderness. We agree with this concept and have incorporated it in the final rule.

Proposed paragraph (h)(2) of this section provided that generally an increase in motorized use above that in use at the time the Federal land became part of the National Wilderness System would not be authorized, unless such use would not increase the impact on the wilderness. Eleven respondents indicated their support for this concept, while seven respondents objected to this paragraph. In general, the objections were directed to those lands that had not been accessed or developed prior to the designation of the Federal land as Wilderness. Under this direction, land without motorized access might be denied motorized access regardless of the reasonable use of the non-Federal land. We agree with this conclusion and have removed this provision from the final rule.

Paragraph (h)(3) of the proposed rule required the authorized officer to identify and authorize only that increased level of access that would result in the least permanent impact on the primitive character of the Federal land. Three respondents indicated agreement with this paragraph. One comment expressed confusion over the meaning of the phrase "least permanent" which has been clarified in the final rule.

Proposed paragraph (h)(4) directed the authorizing officer to give preference to authorizing the use of animals or other nonmotorized modes of transportation when such mode of travel is commensurate with the proposed use of the private land. One respondent felt that this paragraph might conflict with the previous paragraphs in § 251.114(h), but did not disagree with it.

Proposed paragraph (h)(5) directed the authorizing officer to include the exchange of the private land as one of the alternatives to be considered in the analysis of an access application. Two respondents indicated their support for using land exchange as an alternative to granting access authorizations. Two respondents indicated their concern that an exchange would be coerced by withholding access and that a denial of access would also be used to devalue the private property. The acceptance of any exchange offer would be voluntary on the part of the landowner and, if accepted, would be in lieu of exercising the right of access to the property. If an exchange alternative is agreed upon, the property would be valued as having access.

One respondent recommended that all land exchange costs in wilderness be paid by the Agency. This option is available now to the Forest Service in negotiating exchanges. A draft rulemaking regarding this option was published August 18, 1989 (54 FR 34368) as the result of the Federal Land Exchange Facilitation Act of 1988 (43 U.S.C. 1716).

While this Department is firmly committed to preserving the wilderness character of these designated areas and recognize that the several Acts establishing Wilderness areas contain specific direction concerning management of these designated areas, we are equally cognizant of the fact that we cannot, under ANILCA, impose substantially more stringent requirements on access through wilderness than access through other National Forest System lands. Therefore, we have carefully reexamined this entire paragraph to ensure that the rule reflects this principle.

As a result, proposed paragraph (h), designated as (g) in the final rule, has been substantially revised, but the essential direction of the proposed rule is maintained. Statutory designation of wilderness does impose additional considerations that the authorizing officer must take into account when acting on an application for access through wilderness. A concern was raised as to whether these considerations should be more stringent than the criteria which apply to access through nonwilderness areas. The Department believes that the proper context for criteria, terms, and conditions governing access through wilderness areas should be an extension of those governing general access. Thus, in the final rule, the redesignated paragraph (g) has been revised to require the authorizing officer to consider 3 additional factors.

Paragraph (g)(1) requires consideration of those means of access which have been or are being customarily used with respect to similarly situated land. Traditional modes of access, including air, trail or over water, through wilderness should be considered in determining the modes of access but should not be the exclusive criteria. The phrase "used for similar purposes" has been added to the provision to tie the mode of access to the type of use, rather than the history of the property being accessed.

Paragraph (g)(2) retains the direction in paragraph (h)(3) of the proposed rule requiring consideration of routes and modes of travel which would cause the least lasting impact on the wilderness, but this paragraph has been modified to respond to comments to clarify the meaning of the phrase "least permanent impact" and to emphasize that any decision on routes and modes of travel must provide for the reasonable use of the non-Federal land. This provision also incorporates the concept found in paragraph (h)(4) of the proposed rule, requiring consideration of nonmotorized modes of transportation.

Paragraph (g)(3) retains the direction found in paragraph (h)(5) of the proposed rule requiring examination of land exchanges in order to modify or eliminate the need to use wilderness areas for access. However, this provision has been broadened by substituting the term "land acquisition" for "land exchange" to recognize acquisition by purchase and donation as provided in section 5 of the Wilderness Act (16 U.S.C. 1134).

Section 293.12 Access to Surrounded State and Private Lands. The proposed rule also included corollary proposed amendments to 36 CFR 293.12. The proposed rule provided direction that owners of land completely surrounded by National Forest Wilderness shall be given access as provided in subpart D of part 251.

Many respondents supported this amendment. However, two respondents argued that section 1323(a) of ANILCA replaced the provisions of the Wilderness Act and that a more liberal interpretation of the access provisions of the Wilderness Act was necessary. Since section 1323(a) did not specifically repeal or modify the Wilderness Act, the two laws must be read together in the determination of the intent of Congress. There is no evidence to support the view that Congress intended landowners within Wilderness to be treated differently from other landowners. Therefore, the requirement that access to non-Federal lands within Wilderness be governed by the 36 CFR part 251, subpart D rules is adopted without change.

One respondent suggested that the title of this section should be revised to read "Wilderness-Non-Federal Areas." The wording is left unchanged in the final rule as "Access to surrounded State and private lands" because this is identical to the language used in the Wilderness Act.

Regulatory and Environmental Impact

This rule has been reviewed under USDA procedures and Executive Order 12291 and it has been determined that this rule is not a major rule. Little or no effect on the economy will result from this regulation.

This action also will not have a significant economic impact on a substantial number of small entities. Furthermore, it does not result directly in additional procedures or paperwork not already required by law. Special-use application and authorization procedures applicable to this rule are already cleared for the uses of this rule under 36 CFR part 251, subpart B, and have been assigned OMB Control No. 0596-0082. The specification under § 251.112(b) that the landowner disclose historic access information in the application implements the requirement for additional information under § 251.54(e)(5) and therefore does not constitute a new information requirement. In the final rule, a new paragraph (c) has been added to § 251.12 to provide notice that the information requirements of new subpart D are already cleared under subpart B.

The proposed rule sets forth administrative procedures that the Forest Service will follow in authorizing and administering use of National Forest lands. Based on both experience and environmental analysis, the rule in and of itself will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4; 7 CFR 1b.3(a)(1)). The Forest Service will conduct site specific environmental analysis of applications for access on a case-by-case basis.

This rule has been reviewed for its effects on private property rights in accordance with Executive Order 12630 concerning the just compensation clause of the fifth amendment and has been found not to have significant takings implications. These rules apply principally to the use of Federal land, not private land. Existing access rights across National Forest lands are not affected.

Section 1323(a) of ANILCA and other earlier laws did not create any new property rights, only a mechanism to obtain access. The law requires that owners of non-federally owned land be granted access to such lands, provided the owner complies with rules and regulations applicable to ingress or egress to or from the National Forest System. This rule provides those terms and conditions for the occupancy and use of National Forest land, not private land. Therefore, the rules are not a taking of private rights and do not have significant taking implications.

List of Subjects

36 CFR Part 251

Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

36 CFR Part 293

National forests, Wilderness areas.

Therefore, for the reasons set forth in the preamble, title 36, chapter II, parts 251 and 293 of the Code of Federal Regulations are amended as follows:

PART 251—LAND USES

1. The authority citation for part 251 is revised to read as follows:

Authority: 16 U.S.C. 472, 551, 1134, 3170, 3210; 30 U.S.C. 185; and 43 U.S.C. 1740, unless otherwise noted.

2. Add a new subpart D—Access to Non-Federal Lands to read as follows:

SUBPART D—ACCESS TO NON-FEDERAL LANDS

Sec.
251.110 Scope and application.
251.111 Definitions.
251.112 Application requirements.
251.113 Instrument of authorization.
251.114 Criteria, terms, and conditions.

Subpart D—Access to Non-Federal Lands

§ 251.110 Scope and application.

(a) The regulations in this subpart set forth the procedures by which landowners may apply for access across National Forest System lands and the terms and conditions that govern any special use or other authorization that is issued by the Forest Service to permit such access.

(b) These regulations apply to access across all National Forest System lands, including Congressionally designated areas, and supplement the regulations in subpart B of this part, and in parts 212 and 293 of this chapter. The regulations of this Subpart do not affect rights-of-way established under authority of R.S. 2477 (43 U.S.C. 932); rights-of-way transferred to States under 23 U.S.C. 317; access rights outstanding in third parties at the time the United States acquired the land; or the rights reserved in conveyances to the United States and in other easements granted by an authorized officer of the Forest Service. Except for the aforementioned rights-of-way, currently valid special-use authorizations will become subject to the rules of this subpart upon expiration, termination, reversion, modification, or reauthorization.

(c) Subject to the terms and conditions contained in this part and in parts 212 and 293 of this chapter, as appropriate, landowners shall be authorized such access as the authorized officer deems to be adequate to secure them the reasonable use and enjoyment of their land.

(d) In those cases where a landowner's ingress or egress across National Forest System lands would require surface disturbance or would require the use of Government-owned roads, trails, or transportation facilities not authorized for general public use, the landowner must apply for and receive a special-use or road-use authorization documenting the occupancy and use authorized on National Forest System lands or facilities and identifying the landowner's rights, privileges, responsibilities, and obligations.

(e) Where ingress and egress will require the use of existing Government-owned roads, trails, or other transportation facilities which are open and available for general public use, use by the landowner shall be in accordance with the provisions of part 212 of this chapter.

(f) The rules of this subpart do not apply to access within conservation system units in Alaska which are subject to title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101), except for access to inholdings authorized by section 1110(b) of that Act.

(g) Where there is existing access or a right of access to a property over non-National Forest land or over public roads that is adequate or that can be made adequate, there is no obligation to grant additional access through National Forest System lands.

§ 251.111 Definitions.

In addition to the definitions in subpart B of this part, the following terms apply to this subpart:

Access means the ability of landowners to have ingress and egress to their lands. It does not include rights-of-way for power lines or other utilities.

Adequate access means a route and method of access to non-Federal land

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that provides for reasonable use and enjoyment of the non-Federal land consistent with similarly situated non-Federal land and that minimizes damage or disturbance to National Forest System lands and resources.

Congressionally designated area means lands which are within the boundaries of a component of the National Wilderness Preservation System, National Wild and Scenic River System, National Trails System, and also National Monuments, Recreation, and Scenic Areas within the National Forest System, and similar areas designated by Federal statute.

Landowner(s) means the owner(s) of non-Federal land or interests in land within the boundaries of the National Forest System.

§ 251.112 Application requirements.

(a) A landowner shall apply for access across National Forest System lands in accordance with the application requirements of § 251.54 of this part. Such application shall specifically include a statement of the intended mode of access to, and uses of, the non-Federal land for which the special-use authorization is requested.

(b) The application shall disclose the historic access to the landowner's property and any rights of access which may exist over non-federally owned land and shall provide reasons why these means of access do not provide adequate access to the landowners property.

(c) The information required to apply for access across National Forest lands under this subpart is approved for use under Subpart B of this part and assigned OMB Control No. 0596-0062.

§ 251.113 Instrument of authorization.

To grant authority to construct and/or use facilities and structures on National Forest System lands for access to non-Federal lands, the authorized officer shall issue a special-use authorization in conformance with the provisions of subpart B of this part or a road-use permit. In cases where Road Rights-of-way Construction And Use Agreements are in effect, the authorized officer may grant an easement in accordance with the provisions of part 212 of this chapter.

§ 251.114 Criteria, terms and conditions.

(a) In issuing a special-use authorization for access to non-Federal lands, the authorized officer shall authorize only those access facilities or modes of access that are needed for the reasonable use and enjoyment of the land and that minimize the impacts on the Federal resources. The authorizing officer shall determine what constitutes reasonable use and enjoyment of the lands based on contemporaneous uses made of similarly situated lands in the area and any other relevant criteria.

(b) Landowners must pay an appropriate fee for the authorized use of National Forest System lands in accordance with § 251.57 of this part.

(c) A landowner may be required to provide a reciprocal grant of access to the United States across the landowner's property where such reciprocal right is deemed by the authorized officer to be necessary for the management of adjacent Federal land. In such case, the landowner shall receive the fair market value of the rights-of-way granted to the United States. If the value of the rights-of-way obtained by the Government exceeds the value of the rights-of-way granted, the difference in value will be paid to the landowner. If the value of the rights-of-way across Government land exceeds the value of the rights-of-way across the private land, an appropriate adjustment will be made in the fee charged for the special-use authorization as provided in § 251.57(b)(5) of this part.

(d) For access across National Forest System lands that will have significant non-Forest user traffic, a landowner may be required to construct new roads or reconstruct existing roads to bring the roads to a safe and adequate standard. A landowner also may be required to provide for the operation and maintenance of the road. This may be done by arranging for such road to be made part of the local public road system, or formation of a local improvement district to assume the responsibilities for the operation and maintenance of the road as either a private road or as a public road, as determined to be appropriate by the authorizing officer.

(e) When access is tributary to or dependent on forest development roads, and traffic over these roads arising from the use of landowner's lands exceeds their safe capacity or will cause damage to the roadway, the landowner(s) may be required to obtain a road-use permit and to perform such reconstruction as necessary to bring the road to a safe and adequate standard to accommodate such traffic in addition to the Government's traffic. In such case, the landowner(s) also shall enter into a cooperative maintenance arrangement with the Forest Service to ensure that the landowner's commensurate maintenance responsibilities are met or shall make arrangements to have the jurisdiction and maintenance responsibility for the road assumed by the appropriate public road authority.

(f) In addition to ensuring that applicable terms and conditions of paragraphs (a) through (e) of this section are met, the authorizing officer, prior to issuing any access authorization, must also ensure that:

(1) The landowner has demonstrated a lack of any existing rights or routes of access available by deed or under State or common law;

(2) The route is so located and constructed as to minimize adverse impacts on soils, fish and wildlife, scenic, cultural, threatened and endangered species, and other values of the Federal land;

(3) The location and method of access is as consistent as reasonably possible with the management of any congressionally designated area and is consistent with Forest Land and Resource Management Plans or the plans are amended to accommodate the access grant, and;

(4) When access routes exist across the adjacent non-Federal lands or the best route as determined by the authorizing officer is across non-Federal lands, the applicant landowner has demonstrated that all legal recourse to obtain reasonable access across adjacent non-Federal lands has been exhausted or has little chance of success.

(g) In addition to the other requirements of this section, the following factors shall be considered in authorizing access to non-federally owned lands over National Forest System lands which are components of the National Wilderness Preservation System:

(1) The use of means of ingress and egress which have been or are being customarily used with respect to similarly situated non-Federal land used for similar purposes;

(2) The combination of routes and modes of travel, including nonmotorized modes, which will cause the least lasting impact on the wilderness but, at the same time, will permit the reasonable use of the non-federally owned land;

(3) The examination of a voluntary acquisition of land or interests in land by exchange, purchase, or donation to modify or eliminate the need to use wilderness areas for access purposes.

PART 293—WILDERNESS—PRIMITIVE AREAS

3. The authority citation for part 293 is revised to read as follows:

Authority: 16 U.S.C. 551, 1131–1136 and 92 Stat. 1648.

4. Revise 293.12 to read as follows:

§ 293.12 Access to surrounded State and private lands.

States or persons, and their successors in interest, who own land completely surrounded by National Forest Wilderness shall be given access as provided in subpart D of part 251 of this chapter.

Dated: June 6, 1991.

Richard T. Crowder,

Acting Secretary.

[FR Doc. 91-13909 Filed 6-13-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

RIN: 0970-AA47

Aid to Families With Dependent Children; Adult Assistance Programs; Exclusion of Indian Trust Funds and Alaska Native Claims Settlement Act Distributions

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Final rules.

SUMMARY: These final rules update the statutory exclusions contained in regulations for the Aid to Families with Dependent Children (AFDC) program and the adult assistance programs in Guam, Puerto Rico and the Virgin Islands, by adding the income and resources exclusions provided under section 4 of Public Law 97-458, section 2 of Public Law 98-64 and section 15 of Public Law 100-241. Section 4 of Public Law 97-458, enacted January 12, 1983, provides that Indian judgment funds that are held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress are excluded from income and resources. Section 2 of Public Law 98-64, enacted August 2, 1983, provides that all funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to members of that tribe are excluded from income and resources. Section 15 of Public Law 100-241, enacted February 3, 1988, provides that the following distributions from a Native Corporation formed pursuant to the Alaska Native Claims Settlement Act will be excluded from income and resources: (1) Cash to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; (2) stock; (3) a partnership interest; (4) land or an interest in land; and (5) an interest in a settlement trust.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Diann Dawson, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401-9275.

SUPPLEMENTARY INFORMATION:

Discussion of Regulatory Provisions and Responses to Comments

On May 4, 1989, we published proposed rules in the Federal Register relating to the Exclusion of Indian Trust Funds and Alaska Native Claims Settlement Act Distributions (54 FR 19197). We received comments from eight interested parties regarding the proposed rules. The respondents include the Senate Select Committee on Indian Affairs, a State Governor, two State IV-A agencies and four Alaska Native Corporations. Following is a discussion of the regulatory provisions, the comments and our responses, and the rationale for any changes from the proposed rules. This discussion is divided into two parts. The first part addresses the implementation of Public Law 97-458 on the exclusion of Indian judgment funds and Public Law 98-64 on the exclusion of other trust funds. The second part addresses the implementation of Public Law 100-241 on the exclusion of Alaska Native Claims Settlement Act distributions.

Implementation of Public Law 97-458 and Public Law 98-64 (§§ 233.20(a)(4)(ii)(n) and (o) of the Final Regulations)

Section 4 of Public Law 97-458 amended section 7 of Public Law 93-134 and provides that certain Indian judgment funds that are held in trust by the Secretary of the Interior or are distributed on a per capita basis pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress, and purchases made with such funds, are excluded from income and resources under Social Security Act programs. Indian judgment funds include interest and investment income accrued while the funds are held in trust.

Section 2 of Public Law 98-64 removes the requirement that trust funds must derive from judgments granted to Indian tribes as a result of successful claims against the United States in order to be subject to the exclusion provisions in section 7 of Public Law 93-134, as amended by section 4 of Public Law 97-458. Section 2 of Public Law 98-64 provides for the exclusion of funds which are held in trust by the Secretary of the Interior for an Indian tribe and distributed on a per capita basis to members of that tribe, and purchases made with such funds. Trust funds include interest and investment income accrued while the funds are held in trust.

Under these rules, the exclusions are extended only to initial purchases made with judgment funds under Public Law 97-458 and other trust funds under Public Law 98-64. These exclusions do not apply to subsequent purchases made with funds derived for the sale or conversion of the initial purchases. For example, if an AFDC family receives a cash distribution from the Secretary of Interior under Public Law 97-458, and uses it to buy $1,000 worth of commodities, both the cash distribution itself (while the family holds it) and the commodities purchased with the distribution would be excluded from income and resources for AFDC purposes. However, should the family sell the commodities at some future time, then the proceeds so received and their subsequent use result from a voluntary commercial transaction (i.e., a sale of goods) rather than from a distribution by the Secretary of the Interior of funds held in trust. It is only these latter distributions that the Congress sought to protect under Public Law 97-458. A similar analysis applies to trust fund distributions made under Public Law 98-64. Section 233.20 is amended by revising paragraph (a)(4)(ii)(e) and by adding two new paragraphs (a)(4)(ii) (n) and (o) to incorporate the provisions of section 4 of Public Law 97-458 and section 2 of Public Law 98-64.

Discussion of Comments

Comment: Two commenters requested that we amend the regulations to include language regarding the treatment of excluded funds which are commingled with non-excluded funds.

Response: We do not plan to regulate in this area. In our view, that is a matter best left to State discretion. Section 233.20(a)(4)(ii) of the existing regulations provides that funds from specific sources will be disregarded as income and resources, as required by various statutes. The regulations leave to State discretion what rules should apply in identifying disregarded resources after they are received. However, regardless of what a State chooses to do, it must disregard (and only disregard) trust fund distributions that are required by law to be excluded.

Comment: Three commenters expressed concern about accounting problems that may occur if disregarded

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trust funds are commingled with other funds to purchase assets. The commenters asked whether there is any Federal law that prohibits a member of an Indian tribe from using distributed trust funds together with other funds to purchase a tangible asset. If not, how much of the asset's equity value is disregarded?

Response: Federal law does not address the use of distributed trust funds and other funds to purchase assets and we do not plan to regulate in this area. Therefore, the determination of how much of such an asset's equity value is disregarded is left to the States.

Comment: One commenter asked whether the exclusions in Public Law 97–458 and Public Law 98–64 continue to apply if trust funds or initial purchases made with trust funds are inherited, transferred or sold.

Response: These exclusions may not be applied after trust funds or initial purchases made with distributed trust funds are inherited or transferred. Section 4 of Public Law 97–458 limits the exclusions to "such household or member"—i.e., the entity to which the distribution was made. The same limitation governs distributions under section 2 of Public Law 98–64. When Congress has wanted to extend an exclusion further, it has specifically done so. For example, in section 15 of Public Law 100–241, Congress excluded distributions from being taken into account for "a household, an individual Native, or a descendent".

We have amended § 233.20(a)(4)(ii) (*n*) and (*o*) of the final rules to include the categories of persons who are eligible for the trust funds exclusions. (We have also amended §233.20(a)(4)(ii)(*k*) of the final rules to include the categories of persons who are eligible for the Alaska Native Claims Settlement Act exclusions.)

In addition, the exclusions do not apply if initial purchases are sold. As stated in the preamble to the proposed rules (54 FR 19197), the proceeds of the sale of initial purchases would be counted. The basis is that the sale of initial purchases results from a voluntary transaction, i.e., a sale of goods, rather than from the distribution of trust funds by the Secretary of the Interior. No comments on this interpretation were recevied.

Comment: One commenter pointed out that the preamble to the proposed regulations specifies that interest and investment income accrued while funds are held in trust is exempt. For accuracy, the regulations should include this exclusion.

Response: We agree, and § 233.20(a)(4)(ii) (*n*) and (*o*) of the final regulations have been amended accordingly.

Implementation of Public Law 100–241 § 233.20(a)(4)(ii)(k) of the Final Regulations

Section 15 of Public Law 100–241 amended the Alaska Native Claims Settlement Act (ANCSA) by adding a new section 29(c) which provides that the following types of distributions received from a Native Corporation shall be excluded from income and resources: (1) Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; (2) stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); (3) a partnership interest; (4) land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and (5) an interest in a settlement trust.

Under these final rules, the new income and resources exclusions mandated by section 29(c) replace the current exclusion of tax-exempt ANCSA payments in § 233.20(a)(4)(ii)(*k*). With respect to the exclusion of cash payments, the phrase "per annum" is interpreted to mean each year. Therefore, up to $2,000 of cash ANCSA distributions that an individual receives each year will be excluded from being considered to be either the income or resources of that individual.

Discussion of Comments

Comment: One commenter suggested that we amend the regulations to interpret the phrase "per annum" to mean any continuous twelve-month period, instead of each calendar year. The commenter believes it is inequitable to count $1,000 of a $2,000 cash payment received in December because of $1,000 payment received in November was excluded, when we would exclude both payments if they were received in December of one year and January of the following year.

Response: We have reconsidered the interpretation set forth in the proposed rules, and have decided not to include a specific yearly period in the final rules for excluding cash ANCSA distributions. Therefore, each State will have the flexibility to establish a fixed 12-month period for all individuals, or a varied 12-month period determined individually for each recipient.

Comment: Seven commenters objected to the proposed interpretation that would exclude from resources only a total of $2,000 in cash ANCSA distributions regardless of the year in which an individual received the payments. The commenters believe the statute indicates that cash distributions up to $2,000 are to be excluded each year, are to be excluded indefinitely, and do not affect the exclusion of cash distributions made in subsequent years.

Response: We have reconsidered the proposed rules and have decided to provide the suggested exclusion in the final rules. Thus, § 233.20(a)(ii)(*k*)(*1*) of the final rules provides that cash distributions (including cash dividends on stock from a Native Corporation) that are received by an individual are never considered as income or resources to the extent that such cash does not, in the aggregate, exceed $2,000 in a year. Cash which, in the aggregate, is in excess of $2,000 in a year is not subject to the income and resources disregards in paragraph (a)(4)(ii)(*k*)(*1*). In re-examining our proposed policy, we were particularly impressed by congressional action in recent years to enact legislation to exclude various types of payments from income and resources in needs-based programs without any limit on the amount that can be accumulated.

Regulatory Procedures

Executive Order 12291

These regulations do not meet any of the three criteria which require a regulatory impact analysis under Executive Order 12291. Specifically, the regulations will not have an annual effect on the economy of more than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Nationally, we have determined that the Federal share of the cost of additional assistance payments under the AFDC and adult assistance programs resulting from the trust funds exclusions required by Public Law 97–458 and Public Law 98–64 would be $896,900 per year. The Federal share of the cost of additional payments resulting from the Alaska Native Claims Settlement Act exclusions required by Public Law 100–241 would be $1,678,108 per year. Therefore, the estimated annual Federal expenditures attributable to these payments would be $2,575,008. These costs are the direct result of the legislation and not the discretionary latitude of the Secretary.

The regulations will also have a cost impact on Medicaid and other Federal programs which consider the receipt or amount of AFDC/adult assistance as an eligibility factor.

Regulatory Flexibility Act

We certify that these regulations will not have a significant impact on a substantial number of small entities because they primarily affect State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, The Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These rules do not require any information collection activities and, therefore, no approvals are necessary under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payment-Maintenance Assistance)

List of Subjects in 45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: July 31, 1990.

Jo Anne B. Barnhart,

Assistant Secretary for Family Support.

Approved: February 8, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 233 is revised to read as follows:

Authority: Secs. 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note), and sec. 6 of Pub. L. 94–114, 89 Stat. 579; Part XXIII of Pub. L. 97–35, 95 Stat. 843; Pub. L. 97–248, 96 Stat. 324; Pub. L. 99–603, 100 Stat. 3359; and sec. 221 of Pub. L. 98–181, as amended by sec. 102 of Pub. L. 98–479 (42 U.S.C. 602 note); sec. 4 of Pub. L. 97–458, 96 Stat. 2[illegible]; sec. 2 of Pub. L. 98–64, 97 Stat. 365; and sec. 15 of Pub. L. 100–241, 101 Stat. 1812; and sec. 202 of Pub. L. 100–485, 102 Stat. 2377.

2. Section 233.20 is amended by revising paragraphs (a)(4)(ii)(*e*) and (a)(4)(ii)(*k*), and by adding two new paragraphs (a)(4)(ii)(*n*) and (a)(4)(ii)(*o*) to read as follows:

§ 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.*

* * *

(4) *Disregard of income in OAA, AFDC, AB, APTD, or AABD.* * * *

(ii) * * *

(*e*) Any funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92–254 or Pub. L. 94–540;

* * * * *

(*k*) Pursuant to section 15 of Public Law 100–241, any of the following distributions made to a household, an individual Native, or a descendant of a Native by a Native Corporation established pursuant to the Alaska Native Claims Settlement Act (ANCSA) (Pub. L. 92–203, as amended):

(*1*) Cash distributions (including cash dividends on stock from a Native Corporation) received by an individual are never counted as income or resources to the extent that such cash does not, in the aggregate, exceed $2,000 in a year. Cash which, in the aggregate, is in excess of $2,000 in a year is not subject to the income and resources disregards in this paragraph (a)(4)(ii)(*k*)(*1*);

(*2*) Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

(*3*) A partnership interest;

(*4*) Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

(*5*) An interest in a settlement trust.

* * * * *

(*n*) Pursuant to section 7 of Public Law 93–134, as amended by section 4 of Public Law 97–458, Indian judgment funds that are held in trust by the Secretary of the Interior (including interest and investment income accrued while such funds are so held in trust), or distributed per capita to a household or member of an Indian tribe pursuant to a plan prepared by the Secretary of the interior and not disapproved by a joint resolution of the Congress, and initial purchases made with such funds. This disregard does not apply to proceeds from the sale of initial purchases, subsequent purchases made with funds derived from the sale or conversion of the initial purchases, or to funds or initial purchases which are inherited or transferred.

(*o*) Pursuant to section 2 of Public Law 98–64, all funds held in trust by the Secretary of the Interior for an Indian tribe (including interest and investment income accrued while such funds are so held in trust) and distributed per capita to a household or member of an Indian tribe, and initial purchases made with such funds. This disregard does not apply to proceeds from the sale of initial purchases, subsequent purchases made with funds derived from the sale or conversion of initial purchases, or to funds or initial purchases which are inherited or transferred.

* * * * *

[FR Doc. 91–14187 Filed 6–13–91; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket 80–286; FCC 91–141]

Common Carrier Services; Allocation of Costs Between the State and Interstate Jurisdictions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amended § 36.621 of its rules to adopt the changes recommended last December by the 80–286 Federal-State Joint Board. This section specifies the procedures used by the National Exchange Carrier Association to calculate study area unseparated loop costs for the purpose of determining the level of the Universal Service Fund. The rule amendment substitutes gross investment for net investment as the basis for allocating Operating Taxes and Corporate Operations Expenses between the loop and nonloop operations of local exchange carriers.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Charles Needy, Accounting and Audits Division, Common Carrier Bureau, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CC Docket No. 80–286, FCC 91–141, adopted April 25, 1991, and released May 28, 1991.

The full text of all Commission orders are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this order may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1114 21st Sreet NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

Section 36.621 of the Commission's rules prescribes the procedures that the National Exchange Carrier Association (NECA) uses to calculate unseparated loop costs, in individual study areas of local exchange carriers, for the purpose of determining the level of the Universal Service Fund. To ensure that loop-

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related overhead costs and taxes are properly included in this calculation, the rules require NECA to include a portion of unseparated Corporate Operations Expenses and Operating Taxes. The rules specify that NECA is to allocate these overhead costs and taxes between loop and nonloop operations based on the loop/nonloop apportionment of net investment.

Since March 4, 1988, however, NECA had based this allocation, pursuant to a waiver of the rules, on gross investment rather than net investment. To determine whether this change should be made permanent, the Commission released a Notice of Proposed Rulemaking on November 22, 1988, proposing to amend these rules 53 FR 49575, December 8, 1988, inviting comment and referring the matter to the Docket 80-286 Joint Board for a recommendations. Specifically, the Commission proposed a bifurcated approach under which the allocation of Corporate Operations Expenses would be based on gross investment but that of Operating Taxes would be based on net investment.

On November 15, 1990, the Joint Board adopted recommendations regarding these allocation procedures. It recommended that the Commission amend the rules to prescribe the use of gross investment as the basis of allocation for both Corporate Operations Expenses and Operating Taxes, as NECA had been doing under waiver. The Joint Board noted that all but one commenting party favored this approach. The Joint Board determined that the allocation of Corporate Operations Expenses better reflects cost causation when based on gross investment rather than net investment. It also determined that the substitution of net investment for gross investment as the basis of allocation for taxes would have only a minimal effect on the overall amount of USF support. It therefore concluded that any marginal improvement in precision that might result from using the bifurcated approach proposed by the Commission would be too small to warrant the added complexity of such an approach. In addition, it recommended several minor language changes to clarify these rules. On April 25, 1991, this Commission concurred with the Joint Board's conclusions and adopted its recommended rule amendments.

Ordering Clauses

9. Accordingly, *it is ordered*, That the recommendations of the Federal-State Joint Board, *are adopted*.

10. *It is further ordered*, That the amendments to part 36 of the Commission's rules set forth below are adopted July 15, 1991. These actions are taken pursuant to sections 1, 4 (i) and (j), 205, 221(c), 403, and 410 of the Communications Act, as amended, 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 403 and 410.

List of Subjects in 47 CFR Part 36

Communications common carriers, Jurisdictional separations procedures, Telephone, Uniform system of accounts.

Rule Changes

Part 36 of title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 36 continues to read:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 403 and 410.

2. The heading of subpart F is revised to read as follows:

Subpart F—Universal Service Fund

3. Section 36.601 is amended by revising paragraph (a) to read as follows:

§ 36.601 General.

(a) The Universal Service Fund is derived from an expense adjustment that shall be computed in accordance with this subpart F. This adjustment shall be added to interstate expenses and deducted from state expenses after expenses and taxes have been apportioned pursuant to subpart D of this part.

* * * * *

4. Section 36.621 is amended by revising the section heading and paragraphs (a) and (a)(4) to read as follows:

§ 36.621 Study area total unseparated loop cost.

(a) For the purpose of calculating the expense adjustment, the study area total unseparated loop cost equals the sum of the following:

* * * * *

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in § 36.611(a)(5) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in § 36.611(a)(1), to the unseparated gross telecommunications plant investment, as reported in § 36.611(a)(6).

5. The section heading of § 36.622 is revised to read as follows:

§ 36.622 National and study area average unseparated loop costs.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-14177 Filed 6-13-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-5; RM-7587]

Radio Broadcasting Services; Richwood, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Robco Communications, allots Channel 265A to Richwood, Louisiana. See 56 FR 04783, February 6, 1991. Channel 265A can be allotted to Richwood, Louisiana, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 265A are North Latitude 32-26-24 and West Longitude 92-04-40. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1991. The window period for filing applications will open on July 26, 1991, and close on August 25, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-5, adopted May 28, 1991, and released June 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 265A, Richwood.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14234 Filed 6-13-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-6; RM-7590]

Radio Broadcasting Services; Oxford, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 229A for Channel 296A at Oxford, Mississippi, and modifies the license for Station WKLJ-FM to specify operation on the new Class A channel. See 56 FR 4783, February 6, 1991. The coordinates for Channel 229A are 34-21-32 and 89-38-04. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-6, adopted May 28, 1991, and released June 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 296A and adding Channel 229A at Oxford.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14235 Filed 6-13-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-551; RM-7385]

Radio Broadcasting Services; South Bend, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Blue Denim Music, Inc., allots Channel 289C3 to South Bend, Washington, as the community's first local FM transmission service. See 55 FR 48871, November 23, 1990. Channel 289C3 can be allotted to South Bend in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 289C3 at South Bend are North Latitude 46-39-48 and West Longitude 123-48-12. Canadian concurrence has been obtained since South Bend is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1991. The window period for filing applications will open on July 26, 1991, and close on August 25, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-551, adopted May 28, 1991, and released June 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 289C3, South Bend.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14236 Filed 6-13-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-612; RM-7550, RM-7685]

Radio Broadcasting Services; Fox Farm, Wyoming and Gering, NB

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gering Community Broadcasters, allots Channel 280C to Gering, Nebraska, as the community's first local FM transmission service. The proposal of Farm Broadcasting for the allotment of Channel 280C1 at Fox Farm, Wyoming, as the community's first local FM service is denied. See 55 FR 52165, December 20, 1990. Channel 280C can be allotted to Gering without the imposition of a site restriction. The coordinates for Channel 280C at Gering are North Latitude 41-49-42 and West Longitude 103-39-36. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1991. The window period for filing applications will open on July 26, 1991, and close on August 25, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-612, adopted May 28, 1991, and released June 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downturn Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73–202(b), the Table of FM Allotments under Nebraska, is amended by adding Channel 200C, Gering.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14237 Filed 6–13–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–375, FCC 91–128]

FM Broadcast Services; Class C3 and Class A FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Through this decision, the Commission responds to petitions for reconsideration and clarification of the Second Report and Order (Second Report) in this proceeding (54 FR 35335, August 25, 1989). Specifically, the Commission: (1) Clarifies that 47 CFR 73.213 and 73.215 represent two separate approaches to obtaining a power increase, and declines to address the manner of securing consent, provided for in § 73.213 of the Commission's rules; (2) revises 47 CFR 73.213 to require a showing of non-availability of non-short-spaced locations only for those existing grandfathered short-spaced Class A stations seeking relocation to another short-spaced location; and (3) corrects several problems with respect to the Class A power increase rules. The actions are taken to provide additional opportunities for improving the facilities of existing Class A FM broadcast stations.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, Policy and Rules Division, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order (MO&O) in MM Docket No. 88–375, adopted April 15, 1991, and released May 30, 1991.

The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C., and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452–1422, 1919 M Street, NW., Room 246, Washington, D.C. 20554.

Synopsis of Memorandum Opinion and Order

1. This action responds to petitions for reconsideration, partial reconsideration, and/or clarification of the rule amendments contained in the Second Report, filed by the National Association of Broadcasters (NAB), United Class A Broadcasters Coalition (Coalition), and the engineering firm of du Treil, Lundin & Rackley, Inc. (DLR). In general, the Coalition and DLR suggest that some of the new rules unnecessarily handicap licensees of Class A stations from obtaining improved coverage and should be amended. On the other hand, NAB maintains that the new rules are necessary to prevent degradation of the FM service.

2. This MO&O thus make several adjustments and clarifications to the rules adopted in the Second Report. First, it affirms that §§ 73.213 and 73.215 represent two separate approaches to obtaining a power increase. Applications filed pursuant to § 73.215 do not require the consent of other licensees because full protection will be afforded to all stations' service contours. Thus, the Coalition misinterprets the consent requirement if it believes that the requirement applies to short-spaced Class A stations for which a power increase is sought pursuant to § 73.215. The responsibility for ensuring that proper protection is afforded by applicants filing pursuant to § 73.215 rests with the Commission, not any other party.

3. Section 73.213(c)(2), on the other hand, states that "Each application to operate a Class A station with an ERP and HAAT such that the reference distance would exceed 24 kilometers must contain an exhibit *demonstrating the consent* (emphasis the Commission's) of the licensee of each co-channel, first, second or third adjacent channel station (for which the requirements of § 73.207 are not met) to a grant of that application." The rule does not address the manner of securing consent because that process is merely incidental. Consent cannot be procured without adequate notification. As a practical matter, the Agency's experience indicates that the "exhibit demonstrating consent" is provided by all § 73.213(c)(2) applicants and consists either of a letter indicating specific consent, or an agreement between two licensees seeking a mutual power increase. The Commission emphasizes that "consent" is not and may not be the equivalent of "negotiated acceptance of interference." Rather, it is an acknowledgement of the proposed modification and an indication that it is not objectionable. Consent also serves the practical purpose of greatly reducing the technical showings and arguments that would otherwise be requried. Also, the Agency emphasizes that a non-response on the part of a short-spaced licensee to a request for consent to a grant of a § 73.213(c)(2) application will not be interpreted as consent.

4. Next, § 73.213(c)(2) of the Rules states that "applications that specify a transmitter site which is short-spaced to an FM station other than another Class A station which is seeking a mutual increase in facilities may be granted only if no alternative fully-spaced site or less short-spaced site is available. Licensees of Class A stations seeking mutual increases in facilities need not show that a fully-spaced or less short-spaced site is available." The Coaltion contends there is no basis for requiring Class A stations short-spaced to stations of other classes and seeking to increase power at existing sites to first show that no fully spaced or less short-spaced sites is available. Such showings, suggest the Coalition, should only be required when an applicant seeks a waiver to install a full-facility transmitter at a new short-spaced site. The Commission agrees with the Coalition's contention, and finds that, because power increases sought pursuant to § 73.213(c)(2) require the consent of all potentially affected licensees, the current requirement for a showing of non-alternative site availability appears unduly restrictive in the case of stations for which relocation is not practicable. Such a showing should, however, be required in the case of a § 73.213(c)(2) application involving both an increase in facilities and station relocation. The rules are amended to reflect this modified requirement.

5. Finally, the Commission has identified several problems with respect to the Class A power increase rules. First, the question has arisen as to how § 73.213(c)(2) should be applied in the case where two Class A licensees are short-spaced with respect to each other, where they agree to mutual power increases, but where one licensee is not prepared to effectuate the increase in consonance with the other licensee. The rule is silent with respect to a staggered or deferred power increase. The Commission now recognizes that financial limitations or other factors may preclude a simultaneous increase in the power of two short-spaced Class A stations, at least during a particular period of time. This can result in a significant problem. The Commission believes that there is an equitable solution to this dilemma, and accordingly adopts the following policy in such cases. Because most short-spacing cases do not involve minimal short-spacing (i.e., minimal spacing based on the former mutual maximum facilities of 3 kW @ 100 meters HAAT) some unilateral increase in power will generally be possible which will not lead to future conflicts or loss of service.

6. The new policy can be explained most clearly with an example. Let us presume that the short-spacing between two Class A stations is such that a mutual power increase to 4.0 kW and a HAAT of 100 meters would be possible with no contour overlap or disruption of existing service. The Commission will permit such a unilateral increase in power with the consent of the non-upgrading, short-spaced Class A licensee. This will permit a prompt enhancement of service of the station initially upgraded. Sometime later, circumstances may permit the upgrade of the other station, which can then be upgraded to a power of 4.0 kW and a HAAT of 100 meters. At such a point in time, the two short-spaced licensees could effect a new agreement to mutually upgrade to 6 kW, if both are able to do so. (This example is not intended to preclude the possibility of an initial upgrade agreement outlining the scenario described. In other words, both licensees could initially agree on an ultimate upgrade to 6 kW, with a unilateral upgrade to 4.0 kW in the short term.) In this way, the upgrade potential of both stations would be preserved and no interference would be caused to established service. The Agency emphasizes that while it will not deny a unilateral power increase to 6 kW on the part of a Class A station short-spaced to another Class A station, where the consent of the non-upgrading licensee is given, the consenting licensee should be fully aware of the consequences of such consent. This being the case, the Commission believes that most unilateral power increases on the part of one Class A station short-spaced to another will follow the procedure we have just described.

7. Next, there are stations that were first authorized after November 16, 1984, to use a transmitter site that does not meet the spacing distances formerly required for 3 kW Class A stations. Up until now, these stations have been permitted to increase power up to 3 kW at a HAAT of 100 meters, or equivalent power for a greater HAAT, at their present site. In addition to, or in conjunction with, the first option, they may change to a new site which maintains or increases the distance between the stations. They also may apply for a modification pursuant to the contour protection provisions of § 73.215. Finally, they may change site to increase the distance between the stations so that they meet the former 3 kW spacing requirements, or the existing 6 kW spacing requirements, in which case the options for those situations would be available.

8. The Commission wishes to clarify the status of Class A stations short-spaced after November 16, 1984. Section 73.213(c) implies that only those authorized Class A stations which became short-spaced as a result of the increased separation distances adopted in this rule making may be modified or relocated in accordance with that rule section. However, because all such facility increases are contingent upon the consent of affected cochannel and adjacent channel licensees, and because the Commission has allowed the grandfathered short-spaced stations authorized prior to November 16, 1984, the opportunity to increase power to 6 kW, it is eminently fair and equitable to allow up to 6 kW ERP for the remaining Class A stations that were short-spaced prior to the adoption of the *Second Report*. Therefore, the Agency is amending § 73.213(c) accordingly.

9. The question has also been posed as to whether Class A station licensees wishing to increase power in accordance with § 73.213 or § 73.215 should be able to maintain their existing coverage in short-spaced directions. DLR believes that a licensee seeking a power increase for a station that has existing overlap with another FM station, will have to reduce existing coverage in those directions where the prohibited overlap occurs. DLR suggests that such licensees would be penalized if they were required to reduce facilities to less than the equivalent of 3 kW and 100 meters in any direction as part of an overall power increase. The provisions in § 73.213 are intended to maximally protect the service of other short-spaced stations. Nevertheless, the Agency sees no reason why licensees seeking to enhance their service should forfeit service already established in directions where some overlap exists. Therefore, the Commission will permit facility enhancements sought pursuant to § 73.213 that retain current coverage in directions where overlap exists, provided no new predicted interference is created to the current service of any other short-spaced co-channel and adjacent channel licensees.

10. Another clarification involves § 73.207(b)(3), which states that under the Mexico-United States FM Broadcasting Agreement, Class A stations operating with more than 3 kW ERP and 100 meters HAAT are treated as Class B stations. The correct antenna height in accordance with that Agreement should be 91 meters HAAT. Section 73.207 is editorially amended to reflect the correct figure.

11. Lastly, § 73.207(b)(2), regarding the spacings to be used for U.S. stations relative to Canadian allotments and assignments, states in part that "* * * U.S. Class A assignments operating with more than 3 kW ERP and 100 meters antenna HAAT are considered to be Class B1." Similar language is found in § 73.207(b)(3) regarding spacings to Mexican allotments and assignments. The Commission notes that some applicants requesting facilities in excess of 3 kW ERP at 100 meters HAAT for new Class A stations located within 320 kilometers of the Canadian or Mexican borders have had their applications returned as unacceptable for filing. The Commission takes this opportunity to explain certain rules and the differences between applications for new facilities and those seeking to improve existing authorized facilities.

12. As explained in § 73.1650, FM authorizations are subject to compliance with Bi-lateral Agreements that the U.S. has with Canada and Mexico. These agreements define, among other things, classes of stations by power and height limitations and specify minimum distance separation requirements. For convenient reference, those separation requirements have been incorporated in § 73.307 as Tables B and C. Because some domestic classes are not defined in these agreements or may have different limitations, §§ 73.207(b) (2) and (3) explain what subatitutions must be made *in order to apply the tables correctly*.

13. The two Bi-lateral Agreements each contain a table of allotments which associates classes of stations, as defined in the agreement, with specific channels and communities. As a consequence, allotments within 320 kilometers of the Canadian and Mexican borders are listed twice—once in our domestic table (§ 73.202) and once in the appropriate agreement.

14. A difficulty arises when a particular allotment is shown as Class A both in the domestic table and in either agreement. Domestically, the Class A limits are 6 kW at 100 m, but in the

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Canadian and Mexican agreements they are 3 kW at 100 m and 3 kW at 91 m respectively. Before the Commission authorizes Class A facilities in a border zone which specifies values that exceed the 3 kW at 100 m or 3 kW at 91 m limitation, the Agency must first obtain the concurrence of Canada or Mexico to modify the appropriate bi-lateral table (but not the domestic table), so as to change the allotment to Class B1 (Canada) or Class B (Mexico). Of course, the allotment must meet the B1 or B distance separations with respect to foreign allotments and assignments.

15. In the case of a vacant Class A allotment in a border zone, an interested party may request the FCC to obtain Canadian or Mexican concurrence to upgrade the allotment to B1 or B in the appropriate bi-lateral table. It will remain a Class A allotment in the domestic table and no applications exceeding 3 kW at 100 m (or 3 kW at 91 m) will be accepted for that allotment until international coordination is completed. In the case of an existing Class A authorization in a border zone, the licensee may simultaneously file an application which specifies facilities in excess of 3 kW at 100 m (or 3 kW at 91 m), and a request for the Commission to obtain international consent to a modification of the bi-lateral table. The application will not be processed until the international coordination is resolved.

16. Applications for a vacant Class A allotment which specifies facilities in excess of 3 kW at 100 m within the Canadian border zone or 3 kW at 91 m within the Mexican border zone are not acceptable for filing unless the table of allotments in the applicable agreement has already been changed to a higher class. Further, applications for vacant allotments which do not conform to a bi-lateral table but which are accompanied by requests for negotiations to amend the bi-lateral table also are not acceptable for filing.

17. In the interest of fairness to competing applicants and other affected parties, and in order to expedite service to the public, the Commission's "hard look" processing standards adopted in the Report and Order in MM Docket No. 84-750, 50 FR 19936 (May 13, 1985), specify that applications must be acceptable for filing at the close of the amendment as of right period. A request that the Commission seek international clearance for an application not filed in accordance with the applicable agreement is, in essence, a request for waiver of the Agency's "hard look" processing requirements. In the case of multiple applicants for an allotment, such waiver would be unfair to the other applicants who fully complied with the acceptability criteria. Additionally, even for single applicants for new stations, there is no guarantee that negotiations would be successful and, even if successful, the undue delay involved in obtaining clearance and, thus, implementing new service to the community could be substantial. Requests for negotiations on behalf of existing stations, however, do not trigger similar detrimental public interest consequences and will therefore be held on file pending the outcome of such negotiations. The Commission notes that once an applicant for a new station receives a construction permit, an application for a power increase accompanied by a request for negotiations may be filed.

Final Regulatory Flexibility Analysis Statement

18. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have a positive impact on a substantial number of small entities because it will somewhat reduce the showing required by applicants for short-spaced Class A FM stations.

19. Accordingly, it is ordered that the petitions for Reconsideration and/or Clarification are granted as specified above and are denied in all other respects. It is further ordered that, pursuant to authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, and effective July 15, 1991, part 73 of the Commission's rules is amended as set forth below.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Amendatory Text

47 CFR part 73 is amended as follows:

20. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

21. 47 CFR 73.207 is amended by revising the introductory text of paragraph (b)(3) to read as follows:

§ 73.207 Minimum distance separation between stations.

* * * * *

(b) * * *

(3) Under the Mexico-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Mexican allotments and assignments by not less than the distances given in Table C, which follows. When applying Table C, U.S. Class C2, C3 and B1 allotments and assignments are considered to be Class B; U.S. Class C1 allotments and assignments are considered to be Class C; also, U.S. Class A assignments operating with more than 3 kW ERP and 91 meters antenna height above average terrain (or equivalent lower ERP and higher antenna HAAT based on Annex IV of the Agreement) are considered to be Class B.

* * * * *

22. 47 CFR 73.213 is amended by revising paragraphs (c), introductory text, and (c)(2) to read as follows:

§ 73.213 Grandfathered short-spaced stations.

* * * * *

(c) Short spacings involving at least one Class A allotment or authorization. Stations that became short spaced on or after November 16, 1964 (including stations that do not meet the minimum distance separation requirements of paragraph (c)(1) of this section and that propose to maintain or increase their existing distance separations) may be modified or relocated in accordance with paragraph (c)(1) or (c)(2) of this section, except that this provision does not apply to stations that became short spaced by grant of applications filed after October 1, 1989, or filed pursuant to § 73.215. If the reference coordinates of an allotment are short spaced to an authorized facility or another allotment (as a result of the revision of § 73.207 in the Second Report and Order in MM Docket No. 88-375), an application for the allotment may be authorized, and subsequently modified after grant, in accordance with paragraph (c)(1) or (c)(2) of this section only with respect to such short spacing. No other stations will be authorized pursuant to these paragraphs.

* * * * *

(2) Applications for authorization of Class A facilities greater than 3,000 watts ERP and 100 meters HAAT. Each application to operate a Class A station with an ERP and HAAT such that the reference distance would exceed 24 kilometers must contain an exhibit demonstrating the consent of the licensee of each co-channel, first, second or third adjacent channel station (for which the requirements of § 73.207 are not met) to a grant of that application. Each such application must specify a transmitter site that meets the applicable IF-related channel distance separation requirements of § 73.207. Applications that specify a new transmitter site which is short-spaced to an FM station other than another Class A station which is seeking a mutual increase in facilities may be granted only if no alternative fully-spaced site or less short-spaced site is available. Licensees of Class A stations seeking mutual increases in facilities need not show that a fully spaced site or less short-spaced site is available. Applications submitted pursuant to the provisions of this paragraph may be granted only if such action is consistent with the public interest.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-14233 Filed 6-13-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-06, Notice 11]

RIN: 2127-AC43

Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Buses, and Multipurpose Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This notice extends the quasi-static test requirements of Federal Motor Vehicle Safety Standard No. 214 to trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less. These performance requirements, which currently apply only to passenger cars, mitigate occupant injuries in side impacts. Under this part of the standard, each side door is required to resist crush forces that are applied by a piston pressing a steel cylinder against the door's outside surface in a laboratory test. This rule is part of the NHTSA program to improve side impact protection for vehicle occupants.

DATES: The amendments made by this final rule to the Code of Federal Regulations are effective September 1, 1993. Petitions for reconsideration of this final rule must be filed by July 15, 1991.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number of this notice and be submitted to Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. It is requested that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:

Background

NHTSA's standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214. Since the standard became effective on January 1, 1973, it has specified performance requirements for each passenger car side door. The standard, through its provisions concerning side door strength, seeks to mitigate occupant injuries in side impacts by reducing the extent to which the side structure of a car is pushed into the passenger compartment during a side impact. The side door strength provisions of the standard require each door to resist crush forces that are applied by a piston pressing a steel cylinder against the door's outside surface in a laboratory test. The load is applied by means of a piston pressing a vertical steel cylinder against the middle of the door. The bottom of the cylinder is five inches above the lowest point of the door; the top of the cylinder extends above the bottom edge of the window opening by at least 0.5 inches. Car manufacturers have generally chosen to meet these performance requirements of the standard by reinforcing the side doors with metal beams.

NHTSA's analysis of crash data has shown that the strengthening of passenger car side doors with the beams is effective, but primarily in single car side impacts. The agency's November 1982 study, "An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard No. 214," (DOT HS 806-314) estimated that 460 lives have been saved and 9,500 fewer hospitalizations have occurred per year as a result of the standard. The study also found that while single vehicle side impact occupant fatalities were reduced by 14 percent, the standard had little effect on reducing fatalities in multi-car side impact collisions.

During the past several years, NHTSA has been involved in a number of efforts to upgrade Standard No. 214, both in developing new dynamic procedures and requirements for passenger cars and in extending applicability of the long-established quasi-static passenger car requirements to trucks, buses and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less (light trucks, vans and MPV's, or "LTV's").

For passenger cars, on October 30, 1990, NHTSA published in the **Federal Register** (55 FR 45722) a final rule adding dynamic test procedures and performance requirements to Standard No. 214. The final rule requires that a passenger car must provide protection in a full-scale crash test in which the car (known as the "target" car) is struck in the side by a moving deformable barrier simulating another vehicle. Instrumented test dummies are positioned in the target car to measure the potential for injuries to an occupant's thorax and pelvis.

Also, on August 19, 1988, the agency published in the **Federal Register** (53 FR 31712) an advance notice of proposed rulemaking (ANPRM) concerning requirements for passenger cars intended to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and in other crashes where the protection provided by the side of the vehicle is a relevant factor. The ANPRM also sought comments on whether additional requirements should be considered to address side impacts with poles and trees.

NHTSA's efforts to extend side impact requirements to LTV's largely parallel its efforts with respect to passenger cars. On August 19, 1988, the agency published in the **Federal Register** (53 FR 31716) an ANPRM regarding possible requirements for LTV's in each of the areas where requirements have been established, or are under consideration, for passenger cars. The ANPRM addressed: (1) Extension to LTV's of Standard No. 214's existing static procedures and performance requirements, i.e., measuring crush strength performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door, (2) developing dynamic test procedures and performance requirements for LTV's, similar to those proposed in the January 1988 NPRM for passenger cars, and (3) developing requirements for LTV's intended to reduce the risk of head and neck injuries and ejections, similar to those addressed in the August 1988 ANPRM for passenger cars.

Of the various potential side impact requirements for LTV's that were addressed in the ANPRM, NHTSA is the most advanced with respect to the extension of Standard No. 214's existing side door strength requirements to these

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vehicles. The agency decided to go forward with rulemaking on that issue separately, since waiting until the agency is ready to address all of the potential requirements together would result in unnecessary delays and loss of safety benefits. Therefore, after considering comments on the ANPRM, NHTSA published a notice of proposed rulemaking (NPRM) in the Federal Register of December 22, 1989 (54 FR 52826) to extend the quasi-static test requirements for side door strength applicable for passenger cars to LTV's.

Summary of the Proposal

NHTSA proposed extending Standard No. 214's quasi-static test requirements to trucks, buses and MPV's with a GVWR of 10,000 pounds or less, effective September 1, 1992. NHTSA requested comment on whether a more limited extension would be appropriate, in light of the alleged potential impacts on final-stage manufacturers of multi-stage vehicles. In the proposal, NHTSA stated that it believed that manufacturers would comply with the requirements by adding metal beams to the side doors of these vehicles, similar to those currently added to passenger cars.

NHTSA recognized that a significant difference between passenger cars and many LTV's that LTV's is may have side doors that are not likely to have vehicle occupants sitting near them. Therefore, the agency proposed to exclude certain doors from the standard. The agency proposed to exclude: (1) Any side door located so that no portion of an adjacent outboard designated seating position, with the seat adjusted to any position to which it can be adjusted, falls within the transverse, horizontal projection of the door's opening, and (2) any side door located adjacent to hardware for installation of an outboard seating position so that no portion of a seat recommended by the manufacturer for installation with that hardware, would when so installed, and adjusted as in (1), fall within the three dimensional area described in (1). (The term "outboard designated seating position" is defined in 49 CFR 571.3.)

NHTSA requested comments on a few issues relating to the proposed criteria for the exclusion of these doors. One issue was whether there should be an exclusion from the standard of rear side van doors if a small portion of the front of that side door is adjacent to the rear of the front seat. Another issue was whether rear van doors adjacent to aisleways should be excluded from coverage even though the seating position on the other side of the aisleways might not be "outboard designated positions," because those aisle seats could be less than 12 inches from the side of the vehicle. NHTSA also requested comments on whether any other doors, such as detachable doors, should be excluded from the standard's coverage.

Brief Summary of Comments

NHTSA received comments from 21 parties. The majority of commenters supported extension of the side-door strength provisions of the standard to LTV's. Among those favoring the proposed extension were all insurance groups, consumer groups, and medical groups which commented. In addition, some motor vehicle manufacturers and associations of such manufacturers supported the proposal. Several manufacturers provided no position on the overall proposal, while commenting on specific aspects of the proposal. Others stated conditional support for the proposal with comments on specific aspects of it. One manufacturer did not support the proposal, while another suggested that action be delayed until action is taken on the potential dynamic side impact requirements for LTV's. A more detailed summary of comments and the NHTSA response to those comments is presented in later portions of this notice.

Summary of the Final Rule

After considering the comments and other available information, NHTSA has decided to extend the side door strength requirements of Standard No. 214 to LTV's. The final rule extends these requirements to LTV's with a GWVR of 10,000 pounds or less, except for walk-in vans. The requirements become applicable to the covered LTV's on September 1, 1993. The final rule establishes the same test procedure for LTV's as was proposed (i.e., the side door strength procedure that has applied to passenger cars since the standard became effective). As discussed more fully later in this notice, the rule excludes certain side doors from the side strength requirements of the standard. Below, NHTSA discusses in greater detail the contents of the final rule and the reasons for its adoption.

Safety Need

As stated in the proposal, the number of LTV occupant fatalities increased during the 1980's, primarily due to the greatly increasing sales of these vehicles and the use of these vehicles for passenger transportation. From 1985 to 1989, annual LTV fatalities increased from 6,738 to 8,578. LTV occupant non-fatal injuries have also been increasing. For example, between 1985 and 1989, the annual number of such injuries increased from 563,000 to 763,000. Sales of LTV's increased from approximately 4.5 million vehicles in 1985 to 4.9 million vehicles in 1988. With record-breaking sales years in 1985, 1986, 1987 and 1988, and projected sales of over 5.0 million vehicles per year into the future, NHTSA believes that these trends of increasing fatalities and injuries will continue.

Side impacts are a significant cause of LTV occupant fatalities, accounting for about 19 percent of all LTV occupant fatalities. Between 1985 and 1988, total LTV fatalities in side impacts increased from 1,247 to 1,625 annually, and estimated AIS 3–5 injuries increased from 4,890 to 5,940. LTV fatalities in single-vehicle side impact crashes increased from 548 to 717 annually between those years, and estimated AIS 3–5 injuries increased from 1,960 to 2,380. (The abbreviation "AIS" refers to Abbreviated Injury Scale, which is used to rank injuries by level of severity. An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal. AIS 3–5 injuries are those which are serious-to-critical.)

NHTSA recognized that, as significant as side impacts are in causing LTV occupant fatalities, side impacts are an even greater source of passenger car occupant fatalities, accounting for 32 percent of such fatalities. NHTSA stated in the proposal that the agency was concerned about the side impact problem for both passenger cars and LTV's and is addressing the problem in rulemaking for all of these vehicles. NHTSA further stated that even though the side impact problem may be greater for passenger cars than for LTV's, this does not negate the seriousness of the problem for LTV's or the desirability of taking action to address the problem.

NHTSA stated in the proposal that extension of the side door strength requirements to LTV's would likely result in significant safety benefits by reducing the extent to which the side structure of the LTV is pushed into the passenger compartment in a side-impact collision. NHTSA anticipated that manufacturers would comply with the proposed requirements by installing a longitudinal beam in each side door.

NHTSA received a number of comments concerning the safety need for the proposed requirement. Chrysler Corporation (Chrysler), while stating that it could meet the proposed requirements, asserted that compliance with them would do little except add weight and cost to a vehicle. Chrysler further asserted that LTV's perform better than passenger cars in side impact accidents, even without side door beams. Ford Motor Company (Ford) and the Motor Vehicle Manufacturers Association (MVMA) also asserted that LTV's without side door beams can offer at least equivalent side crush resistance as passenger cars with side door beams. The Insurance Institute for Highway Safety (IIHS) questioned whether door beams in LTV's have any significant effect in either vehicle-to-vehicle or vehicle-to-fixed-object impact. However, IIHS agreed that the requirements would provide better door latch integrity by strengthening the door latch supporting structure. IIHS stated that this would reduce ejection during rollover. Nissan Research & Development, Inc. (Nissan) asserted that side door beams would be less effective in MPV's than in passenger cars. J.E. Tomassoni stated that a side door beam would be beneficial in side impact crashes.

After reviewing comments, NHTSA concludes that there is a safety need for extending the side door strength requirements to LTV's. NHTSA acknowledges that the problem of side impacts with fixed objects may be greater for passenger cars than for LTV's. However, this does not obviate the seriousness of the problem for LTV's or the desirability of taking action to address the problem. NHTSA concludes that changes made in LTV's (i.e., the installation of side door beams) in response to the requirements will reduce fatalities and injuries in single-vehicle crashes involving many fixed objects. The principal benefit of side door beams is their ability to transfer crash forces into the strong pillar structures of the vehicle. This force transfer results in reduced door intrusion since, with the beam, the door structure will no longer be required to absorb all the crash energy. This concept is applicable to both passenger car and LTV doors. Thus, NHTSA concludes that the installation of beams in LTV's will result in a substantial reduction in door intrusion, thereby reducing the risk of occupant injury. More specifically, NHTSA concludes that side door beams will be effective in LTV's in reducing fatalities in single vehicle side impacts with tall, unyielding, fixed objects (e.g., a pole or tree) as they are in passenger cars. This is because the crash behavior of passenger cars and LTV's is very similar in this type of impact. NHTSA concludes that side door beams will reduce fatalities and injuries in side impacts by minimizing side door intrusion into the occupant compartment of the vehicle and reducing the impact velocity of contact between a door and a vehicle occupant. In addition, NHTSA concludes that side door beams will significantly improve the integrity of door latches by strengthening the door latch supporting structure and thus reduce side door ejections.

Practicability

NHTSA stated in the proposal that it expected manufacturers to comply with the proposed side door strength requirements by reinforcing the side doors with metal beams, a practice manufacturers have followed with passenger cars for a number of years. Ford commented that it has designed most of its LTV models without the space in the doors that would be needed for side impact door beams. Ford asserted that it would be costly and economically wasteful to package door beams as a running change to existing products. NHTSA has analyzed the information submitted by Ford. NHTSA concludes that it is possible for Ford and other manufacturers to meet the requirements by the September 1, 1993 effective date of the requirements of this final rule. NHTSA discusses the cost and leadtime issues raised by Ford in more detail in later portions of this notice.

Test Procedure

NHTSA proposed to specify the same test procedure for LTV's as that specified for passenger cars. Ford suggested that the test procedure be changed to present better an actual side collision with a tall, narrow, fixed object. Specifically, Ford suggested that the bottom edge of the loading cylinder be extended downward to within 25–50 mm above the ground. Ford asserted that this approach would be less design restrictive than the existing test procedure since it would give vehicle manufacturers the choice using door beams, strengthening the vehicle sill, or combining both design concepts. MVMA made the same suggestions as Ford. IIHS found merit in Ford's suggested test procedure. However, IIHS pointed out that the Ford procedure did not address the problem of the door opening during impact. IIHS asserted that this problem could be overcome by specifying that the door latch remain engaged and that both the door latch and the hinges remain attached to their mountings during the side door strength test. Range Rover of North America, Inc. (Range Rover) also asserted that the proposed test procedure is not representative of actual crash conditions. Range Rover suggested a "whole vehicle" intrusion test procedure that would have the test device extend above and below the highest and lowest parts of the vehicle in the vicinity of the test area.

NHTSA has evaluated the alternative test procedure suggested by Ford and MVMA (referred to hereafter as the "Ford procedure"). NHTSA believes that commenters have misconstrued the purpose of the side door strength test procedure. The purpose of test is to ensure that door stiffness is sufficient to preclude excessive intrusion in the occupant compartment in moderately severe crashes, not to replicate certain actual side impacts. The Ford procedure would have a loading device engage both the door and the sill. This, the Ford procedure would assess the composite crush strength of the still and the door combined. The Ford test method would not ensure adequate side door strength as long as the sill structure is the primary load path in the test. This could result in less occupant protestion since door strength in important in side impact collisions with fixed objects. In 1984 and 1985, NHTSA conducted four 45-degree-rigid-pole-side-impact tests. The test results show that the maximum compartment intrusion usually occurs at middle-door height, where a side door beam would provide protection.

In addition, NHTSA is not convinced that the Ford test procedure is representative of many side impact collisions with fixed objects. Vehicles are often rolling when they hit fixed objects. When vehicles are rolling, a fixed object may not engage the sill, as in the Ford test procedure, before excessive door intrusion occurs. NHTSA believes that during off-road sideways sliding, a vehicle's wheels often dig into the ground or are "tripped" on an object and the vehicle tilts in the direction of the slide. This results in the initial impact of the vehicle being close to the occupant's chest height, where a side door beam should provide protection. Rollover crashes are a frequent crash mode for LTV's, accounting for 46 percent of LTV occupant fatalities in 1988, compared to 24 percent for passenger cars. Since rollovers are a large component of the LTV safety problem, NHTSA believes that it is reasonable to conclude that many of the LTV rollovers involve the LTV in a rolled or tilted configuration as it strikes a fixed object in the door region.

Further, NHTSA is concerned that an LTV could "pass" the Ford test procedure even if it had very thin doors with practically no energy absorption capability. NHTSA recognizes that there is an option of proposing the Ford test procedures, but specifying higher force levels if the sill is engaged. However, NHTSA does not believe that this

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approach would measure a side door's resistance to crush any better than the current procedure. Further, the Ford approach would require much additional research and would delay this rulemaking. NHTSA does not believe that such delay is appropriate in view of the safety benefits that NHTSA expects to result from the adoption of this final rule.

Another disadvantage of the Ford test procedure is that it does not adequately address the integrity of the door latch system. A door latch could disengage or separate from its mounting during the test and still "pass" under the Ford procedure because the sill structure could provide needed strength to meet the requirements. NHTSA acknowledges that additional door latch integrity requirements could be added to the Ford procedure, as suggested by IIHS. However, this also would require much additional research and would delay this rulemaking. NHTSA does not believe that such delay is appropriate in view of the safety benefits that NHTSA expects to result from the adoption of this final rule.

The test procedure suggested by Range Rover would test the crush of the side door, the sill, and the roof and is similar to the procedure suggested by Ford. NHTSA believes that its evaluation above of the Ford suggestion also applies to the Range Rover suggestion. As with the Ford procedure, the Range Rover test would not specifically address door intrusion, the principal benefit of the current test procedure for side door strength.

J. E. Tomassoni recommended that Standard No. 214 be modified to assure that the side structure will resist a significant force level to a distance of 18 inches. The standard currently allows the peak force to be reached at any distance up to 18 inches during the quasi-static test procedure. NHTSA is not amending the standard as recommended by Mr. Tomassoni. NHTSA believes that such an amendment would be beyond the scope of the proposed rule. In addition, NHTSA is not convinced that such a change in the standard is necessary. If the peak force is reached before 18 inches, this value will be sufficient to ensure the energy absorption level of the side door in this simulated crash environment is sufficient for providing occupant protection.

GM stated that careful study is needed to determine if a quasi-static crush test of side door strength and a dynamic crash test are both warranted for LTV's. NHTSA will undertake further research and will analyze the need for dynamic test requirements further before proposing any dynamic crash test for LTV's.

Ford asked whether double opening side cargo doors should be considered as two separate doors or treated as a system. This would affect where the longitudinal location of the loading cylinder is positioned for the side door strength test. NHTSA concludes that such doors should be treated as a system and tested simultaneously. NHTSA believes that the mid-point is the weakest region of double-opening doors. NHTSA believes that the test should determine the crush characteristics of the weakest region of the door, where the greatest intrusion is likely to occur. As discussed above, the purpose of the side door beam is to transmit loads to the pillar structures of the vehicle. These structures are at the ends of the door and generally have door hinges on one pillar and a door lock and latch on the other pillar. The door beam transmits crash forces through these hinges and the lock and latch mechanism into the pillars. Such a force-transmitting design will have its greatest deflection when the loads are applied at the mid-point. Such a test condition will ensure that, if a door has adequate strength and associated low intrusion at the mid-point, the strength will be at least as great at other locations. NHTSA intends to propose an amendment to section S.4 of Standard No. 214 in the near future to deal with the test procedure for double-opening doors. NHTSA also intends to propose an amendment to that section of the standard to clarify how a vehicle door without a window should be tested.

J. E. Tomassoni stated that section S3.2 of Standard No. 214 contains a typographical error (i.e., it refers to "the requirements of S3.2.1 through S3.2.2" rather than to "the requirements of S3.2.1 through S3.2.3). NHTSA agrees with Mr. Tomassoni and has corrected that error in this final rule.

Vehicle Population

NHTSA proposed to extend the side door strength requirements of Standard No. 214 to all LTV's with a GVWR of 10,000 pounds or less. In the proposal, NHTSA stated that the agency may consider extending the requirements on a more limited basis in the final rule.

NHTSA received a number of comments on the proposed vehicle population. General Motors Corporation (GM), Ford, and Chrysler suggested that the requirements be extended only to LTV's with a GVWR of 8,500 pounds or less and an unloaded vehicle weight (UVW) of 5,500 pounds or less. GM stated that in many of the vehicles with a GVWR between 8,500 and 10,000 pounds, occupants sit relatively high and would not benefit from a side door beam. Ford and Chrysler stated that their suggested weight limits would be consistent with those in Standard No. 208 for manual seat belts. The commenters also asserted that the lower weight limits would reduce the burden imposed on final-stage manufacturers and alterers. The National Truck Equipment Association (NTEA) opposed the extension of the side door strength requirements to commercial or vocational vehicles manufactured in two or more stages and outfitted with cargo carrying or work-related equipment. NTEA stated that if NHTSA decides to cover such multi-stage vehicles, limiting the extension of the requirements to vehicles with a GVWR of 8,500 pounds or less and an UVW of 5,500 pounds or less would be of significant assistance to the truck body and equipment industry since it would exclude many multi-stage vehicles. NTEA further stated that they would prefer limiting the extension of the requirements to vehicles with a GVWR of 6,000 pounds or less and a UVW of 5,000 pounds or less. NTEA asserted that the vehicles in this latter weight category are the ones most likely to be used for passenger transportation and for which passenger car saftey standards would be most appropriate. The Recreation Vehicle Industry Association (RVIA) requested that NHTSA exclude motor homes, van conversions, and vans from the side door strength requirements. RVIA asserted that such vehicles are larger and much stronger structurally than passenger cars. If NHTSA decides not to exclude such vehicles, RVIA requested that the requirements only apply to vehicles with a GVWR of more than 6,000 pounds.

Grumman Olson requested that walk-in vans be excluded from the extension of the side door strength requirements. Grumman Olson asserted that the basic design of the walk-in van protects occupants during side impacts. According to Grumman Olson, there is typically only one seating position in a walk-in van. The driver's shoulder is typically eight to 18 inches away from the side of the vehicle, thus providing crush space in the event of a side impact. Grumman Olson also stated that walk-in vans have sliding doors as side doors. Grumman Olson asserted that addition of a door beam to such a sliding door would not be sufficient for compliance with the side door strength test. The commenter further asserted that additional weight and/or structure would have to be added for compliance. According to Grumman Olson, such an increase in structure would decrease driver visibility and result in increase accidents at intersections. The commenter also stated that the increased weight would increase the effort required to operate the door and thus increase driver fatigue. The commenter further stated that the size of the lower guard would have to increased to meet the side door strength requirements. Grumman Olson contended that this would result in a tripping hazard since the door guide is at the outside edge of the step. Mercedes-Benz of North America, Inc. (Mercedes-Benz) suggested that NHTSA target the side door strength requirements of Standard No. 214 to those vehicles that would "truly benefit in single-vehicle accidents from the addition of side door beams."

After considering the comments and other information, the agency has decided to extend the side door strength requirements to LTV's with a GVWR of 10,000 pounds or less, except for walk-in vans. As discussed above, NHTSA has concluded that there is a safety need to extend the side door strength requirements of Standard No. 214 to LTV's. NHTSA has further concluded that the requirements would also serve a safety need in LTV's with a GVWR between 8,500 and 10,000 pounds. While commenters asserted that vehicle occupants typically sit higher in such vehicles, NHTSA has concluded that this does not lessen the safety need for side door strength requirements. In side impacts with poles and trees, the objects struck are typically taller than the LTV and its occupants. Research conducted by NHTSA indicates that the weight of a vehicle does not have a strong effect on the risk of injury to vehicle occupants in side crashes. Thus, LTV's between 8,500 pounds and 10,000 pounds GVWR do not offer greater crash protection in side impacts than LTV's less than 8,500 pounds GVWR. Further, the test procedure adopted by this final rule would specify a peak crush resistance of 12,000 pounds for all vehicles. Thus, there is no additional burden established for vehicles over 8,500 pounds GVWR. As discussed more fully in a later portion of this notice, NHTSA has also concluded that issues concerning the certification of compliance with the side door strength requirements of Standard No. 214 for multi-stage vehicles can be resolved for vehicles less than 10,000 pounds GVWR. Further, GM suggested an alternative of excluding walk-in vans from coverage if the GVWR cut-off was set at 10,000 pounds. NHTSA has adopted that alternative in this final rule.

NHTSA is excluding walk-in vans because the agency has concluded that it is impracticable for such vehicles to meet the side door strength requirements because of their special design features. As pointed out by Grumman Olson, a simple addition of a side door beam would not be sufficient to comply with the side door strength requirements. Rather, manufacturers would have to add additional weight and structure and completely change the side of the vehicle. NHTSA agrees with Grumman Olson that this increased weight and structure could have other safety implications.

NHTSA has decided to include motor homes, vans, and van conversions in the final rule. NHTSA does not agree with RVIA that there is a lesser safety need for covering such vehicles. That commenter stated that occupants of these vehicles are seated well above the most likely points of initial side impact in a vehicle that is larger, much stronger structurally, and provides more protection against side impacts than a passenger car. As discussed above, however, in side impacts with poles and trees, the objects struck are typically taller than the LTV and its occupants, and research conducted by the agency indicates that the weight of a vehicle does not have a strong effect on the risk of injury to vehicle occupants in side crashes. Thus, there are no indications of any lesser safety need for side impact protection in these vehicles. These vehicles are driven on the same roads and at the same times as other LTV's, and are thus subject to the same safety risks as other LTV's. NHTSA is not aware of any special characteristic of these vehicles that would reduce such risks. Moreover, neither RVIA nor any other commenter identified any characteristic in the design of these vehicles that would make it harder to meet the side door strength requirements than in other type of LTV's, nor is NHTSA aware of any such characteristic. Further, the cost of installing side door beams in these vehicles will not exceed the cost of installing them in other LTV's. After examining these factors, there is no apparent basis for excluding these vehicles from the side door strength requirements.

As mentioned above, NTEA suggested excluding certain vehicles produced in two or more stages from the side door strength requirements of Standard No. 214. NTEA asserted that NHTSA has not demonstrated that there is a safety need to extend the requirements to such vehicles. In the Final Regulatory Impact Analysis, NHTSA has analyzed the potential safety benefits of this final rule. However, NHTSA disagrees with the premise that the agency must quantify the magnitude of the safety problem and the safety benefits gained through adoption or extension of a safety standard for every conceivable subclass of a particular type of vehicle. NTEA apparently believes that NHTSA must demonstrate through analysis of crash data that there is a safety need to protect occupants of every conceivable subclass of light truck (e.g., tow trucks, ambulances, bread delivery vehicles, public utility vehicles, snow plows, dump trucks, etc.). A similar argument was also made by RVIA. Crash data broken down by such discrete subclasses of LTV's are not available. Even if such detailed data were available, the data cells would likely be too small to draw statistically valid conclusions.

However, the National Traffic and Motor Vehicle Safety Act does not require this degree of specificity. Section 103(f)(3) of the Safety Act requires that a safety standard be "appropriate for the particular types of motor vehicle * * * for which it is prescribed." In 49 CFR 571.3, NHTSA has defined the types of motor vehicles and, for this rulemaking, the relevant vehicle types include trucks, multi-purpose passenger vehicles (MPV's), and buses with a GVWR of 10,000 pounds or less. NTEA's assertion that vehicles manufactured in more than one stage constitute a separate type of vehicle is not substantiated and runs counter to the Safety Act's legislative history. The Senate Report states that differences in safety standards "would be based on the type of vehicle rather than its place of origin or any special circumstances of its manufacture." S. Rep. No. 1301 (89th Cong., 2d Sess.) at 6.

In its comments, NTEA did not explain how its members' vehicles either offer improved side door strength or why the occupants of such vehicles do not require such protection. NTEA provided no data or even anecdotal information to support its position that the extension of the side door strength requirements of Standard No. 214 to vehicles manufactured by its members is not necessary. Since these vehicles are driven on the same roads and at the same times as other LTV's, they are subject to the same safety risks as other LTV's, absent some special vehicle characteristic that would reduce such risks. Indeed, the risk to occupants of many vehicles produced by NTEA members may even exceed that to occupants of other LTV's. For example, occupants of vehicles used for emergency or rescue purposes (e.g.,

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ambulances and tow trucks) may be at greater risk than occupants of other LTV's.

NTEA has argued in other rulemakings involving extensions of safety standards to LTV's that because vehicles manufactured by its members are not intended to transport passengers and because they are driven by professionals, there is less safety need to apply safety standards to such vehicles. First, many LTV's manufactured by NTEA's members typically have passengers. Examples of such vehicles include ambulances (where an injured or ill person and a medical technician are typical passengers), tow trucks (where the disabled vehicle's driver is a typical passenger), and utility vehicles (which often have a two-person crew). Second, even if a light truck does not typically have passengers, NHTSA is still concerned about the risk to the driver. Indeed, 70 percent of all fatalities in light truck crashes are drivers. Finally, NTEA does not show that LTV's manufactured by its members are somehow safer because their drivers are "professionals." NTEA submitted no information about any special training or licensing requirements for operators of such LTV's and NHTSA is not aware of any such requirements.

Further, there is a legal issue concerning whether NHTSA is able to exclude vehicles produced in two or more stages from Standard No. 214. The court stated in *Chrysler Corp.* v. *Dept. of Transportation* that any differences between standards for different classes of vehicles are to "be based on type of vehicle rather than its place of origin or any special circumstances of its manufacturer." 472 F.2d 659, 679 (6th Cir. 1972). Thus, under this decision, NHTSA may not exclude vehicles from Standard No. 214 simply because they are manufactured in two or more stages. NHTSA acknowledges that a recent decision in *National Truck Equipment Association* v. *NHTSA*, 919 F.2d 1148 (6th Cir. 1990), seems to indicate that NHTSA does have authority to exclude commercial vehicles manufactured in two or more stages from coverage under a safety standard. However, even if authority can be found in the statute for such an approach, NHTSA does not believe that the approach would be appropriate here. NHTSA believes that the occupants of LTV's manufactured in two or more stages should be provided the same protection in side impacts as occupants of other LTV's. As discussed above, NHTSA does not believe that LTV's manufactured in two or more stages have any characteristics which provide better occupant protection in side impact collisions than other LTV's and NTEA did not offer any information to support such a conclusion. Later in this preamble, NHTSA discusses ways that final-stage manufacturers and alterers may comply with Standard No. 214.

Exclusion of Certain Side Doors

In the NPRM, NHTSA proposed to exclude certain side doors from coverage under the standard since the agency tentatively concluded that adding side beams to such doors would likely have little or no safety benefit. Specifically, NHTSA proposed to exclude: (1) Any side door located so that no portion of an adjacent outboard designated seating position, with the seat adjusted to any position to which it can be adjusted, falls within the transverse, horizontal projection of the door's opening, and (2) any side door located adjacent to hardware for installation of an outboard seating position so that no portion of a seat recommended by the manufacturer for installation with that hardware, would when so installed, and adjusted as in (1), fall within the three dimensional area described in (1).

In the NPRM, NHTSA also requested comment on whether the agency should exclude rear side van doors where a small portion of the front of that side door is adjacent to the rear of the front seat. NHTSA further requested comment on whether rear side doors adjacent to the aisleways in some vans should be excluded from coverage even if the seating positions on the other side of the aisleways might not be "outboard seating positions" as defined in 49 CFR 571.3 because those aisle seats could be less than 12 inches from the side of the vehicle. Finally, NHTSA requested comment on whether any other doors, such as detachable doors, should be excluded from coverage.

NHTSA received a number of comments on these issues. Motor Voters urged NHTSA to consider covering doors with no seating position nearby. According to Motor Voters, this would reduce the likelihood of ejection through those doors of unrestrained passengers seated in other positions or riding unseated in the rear of vans and minivans. The American Medical Association (AMA) opposed an exclusion for LTV doors that are not next to an outboard seat. AMA was concerned that any exclusion would encourage manufacturers to design LTV's to circumvent the side door strength requirements. RVIA supported the proposed exclusion of side doors that are not located adjacent to an outboard designated seating position. RVIA stated that this proposed exclusion would not adversely affect safety and would provide relief by reducing the number of doors that van converters (and motor home manufacturers if motor homes were covered in the final rule) would be required to test for compliance.

Chrysler supported the exclusions proposed by NHTSA in the NPRM. In addition, Chrysler supported an exclusion for doors in vans with seats on the aisle that are less than 12 inches from the side of the vehicle and, therefore, are outboard designated seating positions. Chrysler asserted that, because of the separation afforded by the aisleway, these doors will not have occupants sitting immediately adjacent to them and that adding side door beams would be of little benefit. Chrysler further supported an exclusion for side van doors where a small portion of the front of the door is adjacent to the rearmost part of a front outboard seating position. Chrysler suggested that the door be excluded unless the seat at its rearmost adjusted position extended into the projected door opening to the extent that the H-point was adjacent to the door or door opening. According to Chrysler, this suggested exclusion would apply even if a seat were not installed as original equipment, but could be installed at a later date using hardware available at that outboard seating position. Finally, Chrysler supported an exclusion for detachable doors. Chrysler pointed out that its Jeep Wrangler sport utility vehicle has light-weight, detachable doors. Chrysler asserted that the purchaser of a vehicle with light-weight, detachable doors would perceive that the doors do not meet side door crush performance requirements, just as the owner of a convertible is aware that the vehicle will not meet roof crush requirements. Nissan Research & Development, Inc. (Nissan) stated that an exclusion from the side door strength requirements is justified for doors where the only seat adjacent to the door is located an extended distance from the door (i.e., when a door is next to an aisle). Nissan asserted that there is a low possibility of injury from door intrusion to the seat's occupant in such a case. However, Nissan stated that studies of the relationship between the degree of door intrusion and injuries sustained were necessary to determine the appropriate distance between the inner surface of the door and the seat necessary to qualify for an exclusion. Nissan also stated that the criteria in NHTSA's proposed regulatory text concerning the exclusion for certain

doors was unclear. Nissan recommended that the final rule exclude doors if, when adjacent outboard seats are adjusted anywhere within their forward-most or rearward-most range and with the seatbacks and seat lifters adjusted to the manufacturer's nominal design riding position, no portion of the torso of an SAE J826b test mannequin that is positioned in a seat is within the door opening projection.

NHTSA also received one comment supporting an extension of the strength requirements to structures that were not covered in the proposal. J. E. Tomassoni suggested that Standard No. 214 be modified to establish strength requirements for all side structures that are located adjacent to seats, not just doors.

After considering comments and other information, NHTSA has decided to exclude the following types of side doors from coverage under the final rule:

(1) Any side door located so that no point on a ten-inch horizontal longitudinal line passing through and bisected by the H-point of a mannequin placed in any seat, with the seat adjusted to any position and the seat back adjusted as specified in section S6.4, falls within the transverse, horizontal projection of the door's opening.

(2) Any side door located so that no point on a ten-inch horizontal longitudinal line passing through and bisected by the H-point of a mannequin placed in any seat recommended by the manufacturer for installation in a location for which seat anchorage hardware is provided, with the seat adjusted to any position and the seat back adjusted as specified in section S6.4, falls within the transverse, horizontal projection of the door's opening.

(3) Any side door located so that a portion of a seat, with the seat adjusted to any position and the seat back adjusted as specified in section S6.4, falls within the transverse, horizontal protection of the door's opening, but a longitudinal vertical plane tangent to the outboard side of the seat cushion is more than 10 inches from the innermost point on the inside surface of the door at a height between the H-point and shoulder reference point (as shown in figure 1 of the Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front edge of the cushion with the seat adjusted to its forwardmost position and the rear edge of the cushion with the seat adjusted to its rearmost position.

(4) Any side door that is designed to be easily attached to or removed (e.g., using simple hand tools such as pliers and/or a screw driver) from a motor vehicle manufactured for operation without doors.

The first two exclusions are for doors that are unlikely to have vehicle occupants sitting near them. As discussed in the preamble to the NPRM, NHTSA believes that there is little safety benefit from having a side door beam for doors that are unlikely to have vehicle occupants sitting near them. While commenters asserted that covering doors with no seating positions nearby would reduce the likelihood of ejection through those doors of unrestrained passengers seated in other positions or riding unseated, NHTSA has concluded that the potential safety benefit would be insignificant and would not be justified in view of the cost of installing door beams in those doors. The principal benefit of side door beams is the reduction in passenger compartment intrusion. This reduces the risk of injury for occupants seated near the door. Little safety benefit would be gained by requiring side beams in door with no passengers seated near them.

After considering public comments, NHTSA has altered the scope of the first two exclusions to exclude a door from coverage even if a small portion of the front of that side door is adjacent to the rear of the front seat. NHTSA has concluded that, in a side impact with a fixed object, a door beam in the rear side door would provide little protection to a vehicle occupant sitting in the front seat. The occupant of such a seat is unlikely to be exposed to door intrusion in a such side impact.

The third exclusion is for doors with an adjacent designated seating position more than ten inches from the inside surface of the vehicle. NHTSA has added this exclusion after considering public comments that doors should be excluded from coverage if the adjacent seats are on the other side of an aisleway of at least ten inches. NHTSA is excluding such side doors because NHTSA has concluded that vehicle occupants seated in such locations would benefit only minimally from the reduction in intrusion into the passenger compartment resulting from side door beams in a typical side impact with a fixed object. Based on available data, NHTSA has concluded that the intrusion into the occupant compartment is generally about four to six inches less than the exterior crush. Therefore, in a crash of moderate severity with an exterior crush of 12 to 16 inches, the intrusion into the occupant compartment would be about 7 to 11 inches.

NHTSA is excluding side doors designed to be easily attached to or removed from motor vehicles manufactured for operation without doors because such doors have design features which make compliance with the side door strength requirements technologically and/or economically impracticable. As pointed out in the preamble to the NPRM, such doors may be made of plastic fabrics and metal wire frames and would not be able to meet the side door strength requirements. NHTSA has concluded that these doors cannot be redesigned to meet the requirements without completely changing the side of the vehicle.

Further, NHTSA does not believe that vehicle manufacturers will produce a new type of vehicle simply to avoid the side door strength requirements as suggested by one commenter. Although such doors have been excluded from coverage under Standard No. 206, *Door Locks and Door Retention Components*, NHTSA does not believe that manufacturers have produced vehicles with those doors simply to qualify for that exclusion.

NHTSA did not adopt the suggestion of J. E. Tomassoni to test all side structures adjacent to seats. First, NHTSA believes that such an amendment to the standard would be outside the scope of the proposed rule. Second, NHTSA does not have data to justify such a requirement for non-door structures. In fact, NHTSA believes that the non-door regions generally have higher crush strength characteristics than the door regions because of the surrounding supporting structure.

Safety Benefits of the Rule

As indicated above, in November 1982, NHTSA published an evaluation of the side door strength requirements for passenger cars. The report concluded that single vehicle side impact occupant fatalities were reduced by 14 percent. For side impacts with tall fixed objects and guard rails, the fatality reduction of side door beams was 23 percent. The report concluded that the standard did little to reduce fatalities in multi-car side impact collisions.

In the NPRM, NHTSA attributed the benefits of the side door strength requirements to the following facts: (1) The added side door beam helps to make a pole, tree, guardrail or other fixed object slide by the occupant's position, thus reducing intrusion into the passenger compartment, and (2) the strengthened striker/latch area of the door helps reduce ejections.

In the NPRM, NHTSA noted that two injury mechanisms are likely to occur in a typical side impact with a fixed object. First, the occupant strikes the door. This

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occurs before door intrusion reaches its maximum and added padding is beneficial to reducing the potential for injury then. Second, the intruding object (or the side structure of the vehicle when pushed inward by the fixed object) may strike the occupant. A side door beam reduces the possibility of this second injury mechanism from occurring.

NHTSA, in the NPRM and the Preliminary Regulatory Impact Analysis (PRIA), estimated that adding side door beams to LTV's would result in about 110 fewer fatalities and 950 fewer AIS 3-5 injuries each year. In calculating benefits, the NHTSA assumed in the NPRM and the PRIA that the effectiveness of side beams for LTV's involved in side-impact crashes would be the same as side beams for passenger cars. NHTSA made this assumption because: (1) Many LTV's are exposed to the same traffic environment as cars, (2) side door beams are most effective in reducing occupant injuries in single-vehicle crashes, where the mass and height of a vehicle have little effect (unless the vehicle is involved in a rollover), and (3) the doors currently used on LTV's are similar to the doors used on passenger cars prior to the establishment of side door strength requirements for passenger cars. Since LTV's were not yet equipped with side door beams, NHTSA was unable to evaluate their effectiveness more thoroughly. Since light truck occupants generally sit higher than passenger car occupants, NHTSA presumed that they are less vulnerable in multi-vehicle collisions involving passenger cars. In side impacts with poles and trees, however, the objects struck are typically taller than either a passenger car or LTV. Therefore, the height differences between cars and LTV's would not affect the utility of side door beams in side impacts with poles and trees.

NHTSA also stated that installing side beams in LTV's could help reduce ejections in rollover or other non-side-impact crash modes. However, the agency did not attempt to quantify the potential benefits in those areas.

NHTSA received a number of comments concerning the projected benefits. As discussed above, a number of commenters asserted that side door beams would be less effective in LTV's than in passenger cars. Therefore, some commenters (e.g., Ford) asserted that NHTSA had overestimated potential safety benefits in the NPRM and PRIA. Ford asserted that the effectiveness of side door beams in single vehicle accidents was a function of accident type and that LTV's have a different distribution of accident types than passenger cars. Ford suggested a different methodology for estimating benefits based on this different distribution of accident types. In addition, some commenters further asserted that side door beams may have an adverse effect in vehicle-to-vehicle side impact collisions. Ford asserted that the "benefits" of side door beams may even be negative.

As discussed above, NHTSA has concluded that side door beams will reduce fatalities and injuries in side impacts by minimizing side door intrusion into the occupant compartment of the vehicle and reducing the impact velocity of contact between an intruding door and a vehicle occupant.

After considering the comments, NHTSA has analyzed further the estimates of benefits from the extension of the side door strength requirements to LTV's. NHTSA agrees with Ford that there is a difference in accident types between passenger cars and LTV's. NHTSA has estimated benefits for this final rule using a methodology similar to the one suggested by Ford for this aspect of the analysis.

NHTSA estimates that this final rule will avoid 59 to 83 fatalities and 914 to 1,223 non-fatal hospitalizations in single vehicle crashes. In multi-vehicle crashes, NHTSA estimates that this final rule will avoid 672 to 685 non-fatal hospitalizations. These estimates do not include potential benefits from possible reduced ejections in rollover or other non-side-impact crashes. NHTSA cannot quantify such potential benefits at this time. A more detailed analysis of benefits appears in the Final Regulatory Impact Analysis (FRIA).

NHTSA does not accept the assertion that side door beams have an adverse effect in vehicle-to-vehicle side impact collisions. Simulation studies have shown that the contact velocity of the occupant in a vehicle-to-vehicle side impact is reduced by a side door beam. Since contact velocity is related to injury potential, it is unlikely that side door beams could have an adverse effect in vehicle-to-vehicle side impact collisions.

Costs of the Rule

In the NPRM and the Preliminary Regulatory Impact Analysis (PRIA), NHTSA estimated that the cost of adding a side door beam to comply with the proposed side door strength requirements would average between $16.15 and $28.18 per LTV. Including the lifetime fuel costs of carrying the extra weight of the side door beams, NHTSA estimated that the cost per vehicle would average between $36.93 and $51.35. In the NPRM and the PRIA, NHTSA stated that another possible cost relates to secondary weight (i.e., weight increases in other parts of the vehicle which might be made to compensate for the additional weight of side door beams). In the NPRM and the PRIA, NHTSA illustrated the potential impact of secondary weight by assuming that 0.7 pounds of secondary weight is added for each pound of primary weight (i.e., the weight of the side door beams). With these assumptions, NHTSA estimated that the total cost per vehicle would average between $60.99 to $76.13. NHTSA also estimated that the cost of conducting a compliance test for the side door strength requirements would be about $1,600.

NHTSA received comments on the estimated costs of the proposed rule. RVIA asserted that each side door strength test performed by an independent test facility would cost $6,290. According to RVIA, this figure does not include the cost of replacing or repairing doors destroyed or damaged by the test nor other costs for design, engineering, manufacturing, or administrative support. As stated in the FRIA, compliance costs for the side door strength test for passenger cars were about $2,000 per test in 1988. NHTSA expects that the costs will be similar for LTV's. Thus, NHTSA believes that the costs generally should not be as high as asserted by RVIA. Further, even if the RVIA figure is correct, NHTSA believes that the testing costs will be negligible for almost all LTV's on a per vehicle basis.

Ford asserted that it would have difficulty meeting the requirements for one of its LTV models without making major design changes, which would be very costly. Ford estimated potential design and tooling costs in a confidential submission to NHTSA. However, since submission of its initial comment, Ford has developed and demonstrated to NHTSA a relatively simple way of meeting the side door requirements for the LTV model in question, without major design changes. Therefore, Ford's initial estimate of costs is no longer valid.

After considering the comments on the estimated costs of the proposed rule, NHTSA estimates that the cost of adding side door beams to comply with the final rule will average between $14.31 and $24.31 per covered LTV. NHTSA further estimates that the lifetime fuel costs of carrying the extra weight of the side door beams will average between $16.66 and $17.97. Thus, NHTSA estimates that the cost per vehicle will average between $30.97 and $42.28. NHTSA also performed a sensitivity analysis to illustrate the potential impact of secondary weight, assuming that 0.7 pounds of secondary weight is added for each pound of primary weight (i.e., the weight of the side door beams). With these assumptions, NHTSA estimated that the total cost per vehicle would average between $50.51 and $63.34. The above estimates all exclude the cost of adding side door beams to the rear side doors of vans since many of these doors are not covered by the requirements of this final rule. A more detailed analysis of the costs of the final rule appears in the FRIA.

Compliance by Multi-Stage Manufacturers

In the proposal, NHTSA addressed the issue of LTV's that are manufactured in more than one stage or altered after they are certified by the original manufacturer. There are a number of final-stage manufacturers, many of which are small businesses, involved in installing truck bodies and/or work-related equipment on chassis. There are also a number of alterers involved in modifying the structure of new vehicles. Under NHTSA's regulations, a final-stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards and alterers must certify that the altered vehicle continues to comply with all applicable safety standards. Throughout the rest of this preamble, the term "final-stage manufacturer" is used to refer to both final-stage manufacturers and alterers.

In the proposal, NHTSA stated that the compliance test for side door strength is a destructive, whole system test, which could be difficult and/or expensive for many final-stage manufacturers to conduct, especially if they conducted such testing on many different types of vehicles. However, NHTSA stated that the vast majority of final-stage manufacturers would have available means to certify compliance that would not require testing. NHTSA's regulations require the manufacturers of truck or van chassis used by final-stage manufacturers to provide information on what limitations must be observed for the completed vehicle to comply with safety standards. The final-stage manufacturer can base its certification on the fact that it stayed within the limits set by the incomplete vehicle manufacturer. NHTSA stated in the proposal that, since the truck or van chassis purchased by final-stage manufacturers generally have side doors and the final-stage manufacturers generally do not change the side doors or structure supporting the side doors, certification with the proposed requirements could generally be based on staying within the incomplete vehicle manufacturer's limits. NHTSA also stated that if a final-stage manufacturer added a rear side door and did not wish to certify compliance for that door, it could avoid such certification by not installing a seat (or hardware for a seat) adjacent to the door.

NHTSA also stated in that proposal that some final-stage manufacturers, including some manufacturers of motor homes, build their own vehicle body structures, which include side doors. NHTSA further stated that these manufacturers are generally larger than most final-stage manufacturers and have greater engineering and testing expertise. The agency stated that it did not believe that the proposed requirements would be unduly burdensome to these manufacturers.

NHTSA tentatively concluded that the proposed requirements would not result in any significant burdens to final-stage manufacturers. However, the agency requested comments on the issue. NHTSA stated that, depending on the comments, the agency may consider options such as limiting application of the standard to vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, and/or excluding certain vehicles such as motor homes.

NHTSA received a number of comments on these issues. GM was concerned about coverage of "chopped" or "cut-away" chassis-cab incomplete vehicle models. GM stated that cut-away chassis-cab models are structurally very different from standard pickups or vans. According to GM, the open-rear design of these vehicles, which allows conversion into motor homes and various commercial trucks, lacks rear structure which may be needed to meet the side door strength requirements of the standard. RVIA was concerned about the impact of the proposed requirements on van converters.

The National Truck Equipment Association (NTEA) opposed the extension of the side door strength requirements to commercial or vocational trucks produced in two or more stages and which are designed to carry cargo or work-related equipment. NTEA acknowledged that extension of the side door strength requirements to LTV's should not pose a significant problem for many of the vehicles produced in the truck body and equipment industry. NTEA agreed with NHTSA that many final-stage manufacturers should be able to pass through the incomplete vehicle manufacturer's compliance certification for the requirements. NTEA further agreed with NHTSA that most, if not all, modifications performed by final-stage manufacturers should not affect compliance with the requirements. However, NTEA raised two possible areas of concern. First, for incomplete chassis-cabs, there will be no incomplete vehicle manufacturer's certification to pass-through. Second, since the requirements do not currently apply to LTV's, companies in the truck body and equipment industry do not know what limitations incomplete vehicle manufacturers will place on completed chassis-cabs to allow final-stage manufacturers to pass through the compliance certification for the side door strength requirements of Standard No. 214.

After considering these comments and other information, NHTSA has concluded that these requirements do not pose an unreasonable burden for final-stage manufacturers. NHTSA below outlines ways that final-stage manufacturers may certify compliance.

First, the final-stage manufacturer could stay within the limits set by the incomplete vehicle manufacturer. NHTSA's certification regulations require that the manufacturers of truck chassis used by final-stage manufacturers provide information regarding the limitations on the center of gravity, weight, and other attributes that must be observed in completing the vehicle so as not to affect the vehicle's compliance with the safety standards. Incomplete vehicle manufacturers which produce chassis-cabs must certify that their vehicles comply with applicable safety standards. Incomplete vehicle manufacturers which produce other vehicles that are not chassis-cabs (e.g., cutaway chassis or stripped chassis) are not required under NHTSA regulations to certify that their incomplete vehicles comply with safety standards. However, such manufacturers must provide subsequent stage manufacturers with an "incomplete vehicle document" that describes the limits within which the vehicle can be modified and still remain in compliance with safety standards. When the final-stage manufacturer observes the limits set by the incomplete vehicle manufacturer, it simply states that fact on the certification label. Under those circumstances, its certification of the vehicle's compliance with the safety standards is based on staying within the limits set by the incomplete vehicle manufacturer. Thus, if the final-stage manufacturer observes all of the limits specified by the incomplete vehicle

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manufacturer, the final-stage manufacturer does not have to conduct any testing or analysis to support its certification that the vehicle complies with the safety standards.

NHTSA believes that final-stage manufacturers will be able to pass through the certification for a large percentage of multi-stage vehicles. NTEA agreed with this point in its comments. The side doors and structure supporting the side doors on multi-stage vehicles are generally not changed by final-stage manufacturers. New side doors are rarely fabricated for multi-stage vehicles, except walk-in vans and motor homes. As discussed above, walk-in vans are excluded from the side door strength requirements. Final-stage manufacturers which build their own vehicle body structures, including some manufacturers of motor homes, are generally larger than most final-stage manufacturers and have greater engineering and testing expertise. NHTSA believes that any manufacturer which has the resources and expertise to build its own vehicle body structures can easily add side door beams to the doors of its vehicles and conduct or sponsor any testing needed for certification. If a final-stage manufacturer added a rear side door and did not wish to certify compliance for the vehicle, it could avoid this by not installing a seat (or hardware for a seat) within ten inches of the door.

NHTSA believes that van converters will also be able to rely on prior certification of compliance with Standard No. 214. NHTSA believes that the front side doors of vans will be produced in compliance with the side door strength requirements because seats will be near the front side doors. NHTSA acknowledges that the rear side doors of some vans are not required to meet the side door strength requirements because the van has an aisle of ten or more inches between the seat and the door. In such a case, the van converter could rely on the prior certification if it limited installation of seats to areas at least ten inches from the door. In addition, van producers may respond to the market demand for vans with more possible seating positions and produce vehicles with rear side doors that meet the side door strength requirements.

NHTSA acknowledges that final-stage manufacturers of some vehicles (e.g., incomplete chassis cabs and cut-away chassis without structure for the side doors) may not be able to certify compliance with the standard by staying within the limits set by incomplete vehicle manufacturers. However, NHTSA does not believe that this will create significant difficulties. NHTSA believes that the final-stage manufacturer, with advice and direction from the incomplete vehicle manufacturer, can add sufficient structure to certify such a vehicle. Further, NHTSA does not believe that each final-stage manufacturer would have to conduct its own testing of such vehicles. If testing is necessary, final-stage manufacturers could sponsor testing by a company with testing expertise. In addition, it may not be necessary to test each vehicle type. In appropriate situations, a final-stage manufacturer may be able to conduct or sponsor engineering analysis and/or computer simulations sufficient to enable it to certify, with due care, that a completed vehicle complied with applicable safety standards, including the side door strength requirements of Standard No. 214.

NHTSA also notes that NTEA did not assert that certification would be difficult or impossible for any of its members, only that there could be some difficulties. Without any data to support the request by NTEA for exclusions of vehicles produced by its members, NHTSA is reluctant to exclude those vehicles from the safety standard.

Leadtime

NHTSA stated in the proposal that manufacturers could comply with the proposed requirements by adding side door beams to the side doors of LTV's, similar to those used in passenger cars. Since manufacturers have considerable experience in meeting Standard No. 214's requirements for passenger cars, NHTSA proposed allowing a leadtime of two years for manufacturers to design, tool, and test the necessary modifications. Specifically, NHTSA proposed an effective date of September 1, 1992 for the proposed requirements.

The agency received a number of comments on the leadtime issue. Chrysler, Nissan, and Volkswagen of America, Inc. supported the proposed leadtime. GM suggested a phase-in starting September 1, 1993. Under the suggested phase-in, 25 percent of each manufacturer's vehicles would be required to meet the requirements the first year, 40 percent the year beginning September 1, 1994, and all vehicles would be required to meet the requirements by September 1, 1995. MVMA and Ford also supported a phase-in starting September 1, 1993. These commenters stated that a phase-in would allow manufacturers to make orderly engineering changes as part of their new product development program and to make the best use of resources. Ford asserted that earlier implementation of the rule without a phase-in provision would place undue hardship and cost on vehicle manufacturers. NTEA stated that, if NHTSA extended the side door strength requirements to LTV's which are produced in two or more stages, multi-stage manufacturers should be granted at least six months additional leadtime than that provided to manufacturers of incomplete vehicles. NTEA asserted that a final-stage manufacturer does not know what limitations may be placed on a chassis by an incomplete vehicle manufacturer for pass-through certification and what modifications may be necessary to meet the safety standard until the new chassis is introduced and the incomplete vehicle manufacturer's guidelines for completing the vehicle are published. NTEA pointed out that its members have no current experience in this area.

After considering these comments and other information, NHTSA has decided to make the new requirements effective on September 1, 1993. NHTSA has concluded that manufacturers need this time period to equip all LTV's with side door beams as standard equipment after the necessary design, tooling, and testing. In addition, final-stage manufacturers need this much time to decide how to certify compliance with the requirements. Therefore, for good cause shown, NHTSA finds that it is in the public interest to have an effective date later than one year after promulgation of this rule.

NHTSA does not believe that additional leadtime or a phase-in is necessary. Door beam technology has been used with passenger cars since 1973. Further, a few LTV's are currently manufactured with side door beams. While Ford initially asserted that the installation of side door beams in one of its models would require major design changes, Ford has since developed a beam design which can be installed in the door of the specific model without a major design change.

Chrysler and Mercedes suggested that NHTSA delay extension of the quasi-static test of side door strength until the dynamic side impact test for LTV's is developed. NHTSA has decided to adopt the quasi-static test of side door strength now, rather than wait for the dynamic test to be developed. NHTSA believes that the benefits of the side door beam, which NHTSA expects manufacturers to use to comply with the side-door strength requirements, will avoid many fatalities and serious injuries. Thus, NHTSA does not believe that it is appropriate to delay the implementation of the quasi-static performance requirement until the dynamic requirements are developed. In addition, NHTSA anticipates that the quasi-static and dynamic performance requirements for LTV's will be complementary, as they are for passenger cars.

Regulatory Impacts

A. Executive Order 12291

NHTSA has examined the impact of this rulemaking action and determined that it is major within the meaning of Executive Order 12291, and significant with the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a Final Regulatory Impact Analysis describing the economic and other effects of this rulemaking action. The analysis is available in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

This final rule will result in increased structure (i.e., side door beams) being added to the interior of side doors of LTV's. Doors are generally manufactured by the major motor vehicle manufacturers, which are not small businesses. In some instances, the production of LTV doors could be contracted out to other metal stamping and fabrication businesses. In such a case, the metal stamping or fabrication business, which may be a small business, would have the additional task of having to add an additional part to the door.

Other small businesses that might be affected include final-stage manufacturers and alterers. However, as discussed above, NHTSA anticipates that the impact will not be significant. Truck or van chassis purchased by final-stage manufacturers generally have side doors, which are not changed by the final-stage manufacturer. Therefore, certification with the side door strength requirements can easily be based on the original manufacturer's certification. If a final-stage manufacturer added a rear side door and did not wish to certify compliance for that door, it could avoid this by not installing a seat (or hardware for a seat) adjacent to the door.

A small number of final-stage manufacturers build their own vehicle body structures, which include side doors. These manufacturers, including some manufacturers of motor homes, are generally larger than most final-stage manufacturers and have greater engineering and testing expertise. The agency does not believe that the requirements will have a significant impact on these manufacturers. Also, walk-in vans, where new side doors are often fabricated, are excluded from the side door strength requirements.

NHTSA acknowledges that the final rule may limit the flexibility of van conversion companies, many of which are small businesses. If a van is not equipped with a side door beam for the rear side door, the van conversion company would have two choices. It could either choose not to install a seat (or the hardware for a seat) within ten inches of the door or choose to install a side-door beam and certify the van as complying with Standard No. 214. NHTSA recognizes that the cost of installing a side door beam and certifying the vehicles as complying with the standard may discourage van converters from using some current seat configurations in van conversions. However, NHTSA believes that there is an important safety benefit in not having a seating position adjacent to a door that does not meet the side door strength requirements of Standard No. 214. In addition, NHTSA believes that van manufacturers may respond to a market demand for popular seat configurations by installing a side door beam for the rear side door, thus giving van converters more flexibility. NHTSA believes that van manufacturers have a strong incentive to provide such vans.

Small organizations and governmental units should not be significantly affected. The potential cost impacts associated with this action should only slightly affect the purchase of new motor vehicles.

C. Environmental Effects

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The addition of side door beams to LTV's would result in increased material usage by manufacturers. There could also be increased material usage associated with possible secondary weight. NHTSA estimates that the approximately 60,000 tons of steel a year would be needed for side door beams in LTV's. The added vehicle weight associated with this final rule could reduce measured fuel economy by about 0.10 miles per gallon. Such a reduction in fuel economy would result in a slight increase in gasoline consumption. After considering the potential impacts of this final rule, NHTSA has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Impact on Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the requirements of this final rule do not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.214 [Amended]

2. S2 is revised to read as follows:

S2. Applicability. This standard applies to passenger cars. Effective September 1, 1993, sections S3(a), S3(e), S3.1 through S3.2.3, and S4 of the standard apply to multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less, except for walk-in vans.

3. A new section 2.1 is added as follows:

S2.1 Definitions. Walk-in van means a van in which a person can enter the occupant compartment in an upright position.

4. S3 is revised to read as follows:

S3. Requirements. (a) Except as provided in section S3(e), each vehicle shall be able to meet the requirements of either, at the manufacturer's option, S3.1 or S3.2, when any of its side doors that can be used for occupant egress is tested according to S4.

(b) When tested under the conditions of S6, each passenger car manufactured on or after September 1, 1996 shall meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the car is struck on either side by a moving deformable barrier. Part 572, subpart F test dummies are placed in the front and rear outboard seating positions on the struck side of the car. However, the rear seat requirements do not apply to passenger cars with a wheelbase greater than 130 inches, or to passenger cars which have rear seating areas that are so small that the part 572, subpart F dummies cannot be accommodated according to the positioning procedure specified in S7.

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(c) Except as provided in paragraph (d) of this section, from September 1, 1993 to August 31, 1996, a specified percentage of each manufacturer's yearly passenger car production, as set forth in S8, shall, when tested under the conditions of S6, meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the car is struck on either side by a moving deformable barrier. Part 572, subpart F test dummies are placed in the front and rear outboard seating positions on the struck side of the car. However, the rear seat requirements do not apply to passenger cars with a wheelbase greater than 130 inches, or to passenger cars which have rear seating areas that are so small that the part 572, subpart F dummies cannot be accommodated according to the positioning procedure specified in S7.

(d) A manufacturer may, at its option, comply with the requirements of this paragraph instead of paragraph (c) of this section. When tested under the conditions of S6, each passenger car manufactured from September 1, 1994 to August 31, 1996 shall meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the car is struck on either side by a moving deformable barrier. Part 572, subpart F test dummies are placed in the front and rear outboard seating positions on the struck side of the car. However, the rear seat requirements do not apply to passenger cars with a wheelbase greater than 130 inches, or to passenger cars which have rear seating areas that are so small that the Part 572, Subpart F dummies cannot be accommodated according to the positioning procedure specified in S7.

(e) A vehicle need not meet the requirements of sections S3.1 or S3.2 for—

(1) Any side door located so that no point on a ten-inch horizontal longitudinal line passing through and bisected by the H-point of a manikin placed in any seat, with the seat adjusted to any position and the seat back adjusted as specified in Section S6.4, falls within the transverse, horizontal projection of the door's opening.

(2) Any side door located so that no point on a ten-inch horizontal longitudinal line passing through and bisected by the H-point of a manikin placed in any seat recommended by the manufacturer for installation in a location for which seat anchorage hardware is provided, with the seat adjusted to any position and the seat back adjusted as specified in section S6.4, falls within the transverse, horizontal projection of the door's opening.

(3) Any side door located so that a portion of a seat, with the seat adjusted to any position and the seat back adjusted as specified in section S6.4, falls within the transverse, horizontal protection of the door's opening, but a longitudinal vertical plane tangent to the outboard side of the seat cushion is more than 10 inches from the innermost point on the inside surface of the door at a height between the H-point and shoulder reference point (as shown in figure 1 of the Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front edge of the cushion with the seat adjusted to its forwardmost position and the rear edge of the cushion with the seat adjusted to its rearmost position.

(4) Any side door that is designed to be easily attached to or removed (e.g., using simple hand tools such as pliers and/or a screw driver) from a motor vehicle manufactured for operation without doors.

5. S3.2 is revised to read as follows:

S3.2 With seats installed in the vehicle, and located in any horizontal or vertical position to which they can be adjusted and at any seat back angle to which they can be adjusted, each vehicle must be able to meet the requirements of S3.2.1 through S3.2.3.

* * * * *

Issued on June 10, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-14182 Filed 6-13-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB39

Endangered and Threatened Wildlife and Plants; Final Rule to Amend Special Rule Allowing Regulated Taking of the Utah Prairie Dog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) hereby amends the special regulation that allowed a maximum of 5,000 nuisance Utah prairie dogs (*Cynomys parvidens*) to be taken annually in two valleys in Utah under permits issued by the Utah Division of Wildlife Resources. The amendment expands the area of take to include all private land within the species' range and raises the maximum allowable take to 6,000 animals annually. In addition, the rule's quarterly reporting requirement will be replaced by greater reliance on the State's annual section 6 report on the Utah prairie dog and a requirement to make the State's records on permitted take available to the Service on request. All other provisions of the special regulation not relating to these amendments will remain unchanged.

EFFECTIVE DATE: June 14, 1991.

ADDRESSES: The complete file for this rule will be available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Utah State Office, 2078 Administration Building, 1745 West 1700 South, Lake City, Utah 84104-5110.

FOR FURTHER INFORMATION CONTACT: W. Robert Benton at the above address (801/524-4430 or FTS 588-4430).

SUPPLEMENTARY INFORMATION:

Background

The Utah prairie dog (*Cynomys parvidens*) was listed as an endangered species on June 4, 1973 (38 FR 14678), pursuant to the Endangered Species Conservation Act of 1969. On November 5, 1979, the Utah Division of Wildlife Resources (Division) petitioned the U.S. Fish and Wildlife Service (Service) to remove the Utah prairie dog from the List of Endangered and Threatened Wildlife. The Service found that this petition contained substantial data and the species was reclassified from endangered to threatened on May 29, 1984 (49 FR 22330). A special regulation that allowed the regulated take of up to 5,000 animals annually was issued also.

The Utah prairie dog is a burrowing rodent in the squirrel family (Sciuridae) that occurs only in southwestern Utah. It is a member of the white-tailed prairie dog group which once inhabited vast areas of the western Great Plains. The Utah prairie dog is the most restricted of the three members of this group. Its total numbers were estimated to be about 95,000 in the 1920's (Collier and Spillett 1973), declining to a 1976 spring count of 2,160 adult animals (Coffeen 1988). This decline was caused by human-related habitat alteration and by poisoning, which resulted from the belief that prairie dogs compete with domestic livestock for forage. At present, the Utah prairie dog is still threatened over much of its range by loss of habitat. In addition, the damage caused by local concentrations of prairie dogs has provoked farmers in some areas to kill them illegally to protect crops and cropland.

Despite the above problems, overall numbers increased during the period 1976–1989. The 1989 spring count of 7,377 was more than triple the 1976 low of 2,160 (Coffeen 1989); though the summer population (which is the source of the nuisance animal problem) was estimated to increase to approximately 33,700 animals in 1989.

Due to budget and personnel constraints, the 1990 spring count censused colonies on public lands only; these colonies accounted for one-third of the total population in 1989. In 1990, Utah prairie dog numbers on public lands declined 61 percent from 1989 levels (Coffeen 1990). Three of the largest prairie dog colonies on public land had increased to unusually high population levels in 1989, achieving densities that place them at greater risk for disease outbreaks. It is likely that these colonies crashed due to disease. Though serious, the 1990 decline in Utah prairie dog colonies on public lands should not be considered cause for alarm. The species' high rate of reproduction and its susceptibility to diseases such as plague can cause populations to fluctuate considerably from year to year. A number of large colonies that were showing very low populations are expected to start to increase in the next 2 years as the disease cycle declines (Coffeen 1990).

There are no census data or reasonable bases for estimating Utah prairie dog numbers on private lands in 1990. Since the 1990 census data are incomplete, this rulemaking will rely on prior years' census data in discussing population numbers and trends. The spring count was conducted in 1991, and the Division has assured the Service that the full complement of spring counts will be reinstated, henceforth (Timothy Provan, Director, *in litt.*, 1991).

It is important to note that the spring census does not tally the entire adult population; it counts only observed adult animals that have successfully survived the winter. Recent spring counts have been conducted using a dog to "tease" prairie dogs from their burrows. Based on a quick field comparison between census results using the current "canine tease" method and optical methods used previously, it is believed that between 70 to 90 percent of the actual adult population is counted in the spring census using the canine tease (Coffeen 1986; 1987; 1989; pers. comm., 1991). Assuming 80 percent of the population was counted in the 1989 spring census, then the actual 1989 adult spring population would be over 9,200 animals.

The nuisance prairie dog problem results from the species' high rate of reproduction. Wright-Smith (1978) found that litter size varied from 1 to 6 pups per litter, with a mean of 3.9; Pizzimenti and Collier (1975) reported that captive female Utah prairie dogs give birth to an average of 4.8 young in April. Wright-Smith (1978) found that there were twice as many adult females as males at her Utah prairie dog study sites. Elmore *et al.* (1976) noted that each territory contained approximately one adult male and three adult females. Use of the lower sex ratio and litter size estimates will provide a conservative estimate of the population increase following spring breeding. Therefore, assuming that two-thirds of the adult population is female and that each female produces an average litter of 4 young, then the total population increased by a factor of 3.7 to approximately 33,700 animals in 1989 following spring breeding.

In the summer, there is a population explosion of Utah prairie dogs above ground as the young of the year emerge from burrows and disperse, creating serious conflict between the Utah prairie dog and human agricultural interests. The major crop on private land is alfalfa, which is a preferred food of the prairie dog. Colony expansion is greatest when alfalfa or other cool season, palatable forage is available. Crop losses are extensive where large prairie dog colonies and complexes have developed. Prairie dog mounds damage haying equipment and the burrows drain irrigated fields. It was estimated in 1984 that the large summer populations of these prairie dogs cost local ranchers $1.5 million annually in crop losses and damage to equipment (Ivan Matheson, former Utah State Senator, pers. comm., 1984).

The Division believes that ranchers in the area will not tolerate such losses (Michael Coffeen, Regional Nongame Manager, Utah Division of Wildlife Resources, pers. comm., 1988). As prairie dog populations expand into previously unoccupied areas that include agricultural fields, some fields have become so densely populated that they are ruined for agricultural use. In addition, extremely high population levels also increase the probability of epizootics, which could devastate major Utah prairie dog colonies. It is believed that the extremely high population numbers at the large Minersville #3 colony made it susceptible to plague (especially because disease-carrying predators could move freely in and out of this site), causing the recent crash of this colony.

In an effort to mitigate overpopulation problems on private land and to establish new colonies on public land, the Division implemented a transplant program which has transplanted over 15,200 prairie dogs to public lands since 1972 (Coffeen 1990). About 49 percent of all Utah prairie dog colonies occurred on private land in 1989, down from a high of 87 percent in 1961 (Coffeen 1989). While the transplant program has proven to be successful, particularly after transplantation techniques were refined, this labor-intensive program never has been able to keep pace with the growing prairie dog populations on private land.

Because the transplant program could not handle the overpopulation problem, a controlled take program was needed. Adult prairie dogs cease surface activity in late August and September, but young animals continue surface activity and feeding until as late as December at lower elevations. These juveniles, which are the source of the nuisance animal problem, experience high natural mortality over the fall and winter. This high overwinter mortality is typical for small rodents with high reproductive rates.

Given the high natural mortality of Utah prairie dogs in the fall and winter, it appeared that allowing controlled take of nuisance animals between June 1 and December 31 would address farmers' needs to control nuisance animals without interfering with conservation efforts. In essence, farmers would be allowed to take animals that probably would have perished anyway.

In addition, controlled take was seen to provide positive benefits, on a population level, to the Utah prairie dog. The large number of juvenile Utah prairie dogs added each summer strains the carrying capacity of available habitat in a few areas. Cultivated fields provide artificially high levels of food, promoting unnaturally high population levels and densities. Higher population densities increase prairie dog-to-prairie dog contact, which increases the probability of disease transmission. With high population densities, and as colonies spread and tend to become continuous, there is a greater danger from the outbreak of disease such as sylvatic plague (*Pasteurella pestis*). Such populations can be completely eliminated by epizootics (Collier and Spillett 1972). By keeping population booms to more moderate levels, the control program could stabilize prairie dog populations on private land, enabling a slow steady growth in numbers instead of the boom and bust cycles associated with outbreaks of disease.

So, as part of the reclassification from endangered to threatened in 1984, the problem of nuisance animals was

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addressed by developing a special rule to allow the take of Utah prairie dogs in Cedar and Parowan Valleys, Iron County, Utah, under a permit system developed by the Division. These valleys were the only ones in which overpopulation and nuisance animal problems were reported at the time. The maximum number of Utah priarie dogs that could be taken annually was limited to 5,000 animals, which was less than the expected overwinter mortality, and take was confined to the period between June 1 to December 31.

The field activities of the control program are exclusively administered by Division personnel. Under the control program, an applicant for a permit is required to sign an application form stating that he/she understands the provisions of the Utah Prairie Dog Proclamation. Division personnel then conduct a visual census of the applicant's problem area and issue a control permit only for the number of Utah prairie dogs actually causing damage. Permits allow controlled shooting and trapping. Taking cannot include the use of chemical toxicants, because no such materials are registered for control of the species. At the end of the 30-day permit period, the permittee is required to return a report form indicating the number of animals taken, the method of take, and the method of disposal (Jacquart and Coffeen 1987).

Under the current special rule, the State is required to report take to the Service's Regional Office in Denver, Colorado, every 90 days, specifically: Name and address of each person holding an active permit; reason for issuance of each permit; number, location, and method of take of all Utah prairie dogs taken during the reporting period; and any other information requested by the Service. If the Service were to receive substantial information that these takings were having an effect inconsistent with the conservation of the Utah prairies dog in the area of take, the Service could immediately prohibit or restrict such taking, as appropriate, for the conservation of the population. Such prohibitions or restrictions have not yet proved to be necessary, as explained below.

An analysis of the spring census population data for the two valleys in the control program reveals a general growth trend for the period 1985–1989.

Note: Spring censuses were not performed in this area in 1990.

These data demonstrate that Utah prairie dog population levels in the area of controlled take increased 88 percent during the first 4 years (1985–1989) of controlled take (Coffeen 1989). In the first year of the control program (1985), the spring count was 2,113 animals. Later that year, 426 prairie dogs were taken legally (Coffeen 1990). The following year (1986), the spring count was 3,012 animals, or an increase of 43 percent. Later, in 1986, 1,247 animals were reported taken by permit holders. The next year's (1987) spring count was 2,220 animals, or a dcrease of 26 percent. In 1987, only 370 animals were taken. The spring count increased 65 percent to 3,660 animals in 1988. In 1988, 528 animals were taken, and the next year's spring count showed an increase of 8 percent to 3,960 animals in 1989. In 1989, 838 animals were taken, and in 1990, 1,267 animals were reported taken on private lands in the area of regulated take.

The control program has successfully addressed the Utah prairie dog overpopulation problem in Cedar and Parowan Valleys. It allowed more stable growth of prairie dog colonies on private land, possibly reducing the chance of plague outbreaks. It provided private landowners a means to alleviate localized problems with nuisance Utah prairie dogs on their land in a manner that does not undermine conservation efforts. The control program also improved cooperation between farmers and conservation agencies and reduced the incentive for landowners to kill prairie dogs illegally. The incidence of illegal take of Utah prairie dogs dropped singificantly in the control area in 1984–1989, based on State law enforcement records (Michael Coffeen, pers. comm., 1989).

However, the general increase in prairie dog numbers resulted in an expansion of colonies into formerly uninhabited areas. For example, spring counts in the Panguitch area, Garfield County, Utah, went from 444 prairie dogs in 1984 to 905 prairie dogs in 1989, an increase of 104 percent in 4 years (Coffeen 1989). The story was similar for the Loa area, Wayne County, Utah. The spring count in that area increased 77 percent, from 60 animals in 1984 to 106 animals in 1989. Now private landowners outside of the Cedar and Parowan Valleys are requesting permits to take Utah prairie dogs on their land.

The nuisance animal problem outside the original area of controlled take has become acute and is indicative of overpopulation pressures that must be addressed. Failure to address this problem could result in devastating disease outbreaks and/or widespread illegal poisoning by frustrated farmers. Combined, these threats could decimate populations on private land and reverse the progress made since 1976.

Therefore, the Service has amended the special rule to include all private land throughout the range of the Utah prairie dog. In addition, the maximum number of prairie dogs allowed to be taken has been raised to 6,000 animals to accommodate the increase in the control area. To put this into perspective, the amendment to the special rule will allow a 20 percent increase in the maximum number of animals allowed to be legally taken, after the population on private land increased 61 percent from 1985–1989.

Finally, the rule will eliminate the quarterly reporting requirement. Instead, the Service will: (a) Rely on the State's annual reports to monitor the degree of take; and (b) have access to the State of Utah's detailed records on permitted take if take seems excessive or population declines occur. In addition, the Service and the Division will continue to coordinate informally.

Annual reports on the number of permits issued, number of animals allowed to be taken, and number of animals actually taken by permittees have been submitted to the Service since 1985 by the State of Utah under its Grant Agreement with the Service under Section 6 of the Endangered Species Act. These data also are reported by the State's representative to the Ad Hoc Utah Prairie Dog Recovery Team, on which the Service participates, at the Team's annual meeting.

Under its control program, the State maintains the following information on permittees: Name and address of permittee; permit number; numbers of Utah prairie dogs allowed to be taken and actually taken; and location, method of take, and method of disposal of all Utah prairie dogs taken. A summary on permitted take is prepared each year by the State.

The Service considers the annual reports, supplemented with Service access to the State's detailed records on take, to be preferable to the quarterly reports for formal monitoring purposes because: (a) Quarterly report preparation cannot be justified when population surveys are conducted only once a year, i.e., frequent formal reports on permitted take will not improve Sevice oversight of the State's control program if the program's possible impacts on prairie dog populations are known only by the spring of the following year; and (b) the quarterly reports include details on take that are not immediately useful (e.g., name and address of each person holding an active permit, reason for issuance of each permit, and location and method of take for all prairie dogs taken). It will suffice if the State maintains this information in its files and makes it available to the Service in the event a population decline calls into question the level of take permitted by the control program. Overall, amending the reporting requirement will not reduce the Service's oversight capability.

State and Service biologists with responsibility for monitoring the status of the Utah prairie dog maintain regular informal contact. At least twice a month during the time the species is above ground, these biologists discuss censusing, controlled take, transplantation, and other topics relevant to species status. Therefore, any unusual event (e.g., an increase in the number of permits requested) or possible change in species' status (e.g., a population decline detected during the spring count) would be brought to the Service's attention in a timely manner.

This amendment is considered necessary and advisable for the conservation of the Utah prairie dog. The nuisance prairie dog problems that have arisen on private lands not included in the original control program indicate overpopulation pressures. If allowed to proceed unchecked, Utah prairie dog colonies on private lands would achieve unnaturally high densities that provide greater opportunities for the transmission of disease. If colonies have spread so as to become nearly continuous, disease could spread throughout major portions of the species' range, causing devastating declines. By allowing additional private landowners to remove biologically expendable nuisance animals under controlled conditions, the rule change will stabilize populations of prairie dogs on all occupied private land so that carrying capacity is not exceeded, and decrease the vulnerability of the species to outbreaks of sylvatic plague. The rule change also will reduce the incidence of illegal killing and decrease landowner opposition to species recovery. Finally, this amendment is expected to improve future cooperation between wildlife management agencies and private landowners in managing for the Utah prairie dog.

Summary of Comments and Recommendations

In the February 21, 1990, proposed rule, all interested parties were requested to submit comments or suggestions so that any final action resulting from the proposal would be based on the most current information available. Approximately 120 State and Federal agencies, county governments, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following Utah newspapers: *Standard-Examiner*, Ogden, on February 24, 1990; the *Daily Herald*, Provo, on February 26, 1990; the *Salt Lake Tribune* and *Deseret News*, Salt Lake City, on February 27, 1990; the *Daily Spectrum*, St. George, on February 27, 1990; *The Richfield Reaper*, Richfield, on February 28, 1990; and the *Garfield County News*, Panguitch, and *Beaver County News*, Milford, on March 1, 1990. Comments received are discussed below.

Twelve comment letters were received, including one from a Federal agency, one from a State agency, five from county governments or associations, two from private organizations, and three from individuals. Nine respondents supported the amendment and one opposed it. The following major issues emerged:

Issue 1—Take limit: Eight respondents recommended that the maximum number of Utah prairie dogs that could be taken each year should be increased. Their rationale was that if the take area was increased to encompass the species' entire range (private lands only), then an increase in the take limit was justifiable. The Service agrees, and has increased the maximum level of allowable take from 5,000 to 6,000 animals per year. This is a 20 percent increase, and is conservative considering the population on private lands has increased 61 percent from 1985 to 1989. The Service will retain the authority to prohibit or restrict take if there is substantive evidence it is having an effect inconsistent with the conservation of the Utah prairie dog.

One respondent suggested that nuisance prairie dogs should be harvested as necessary. The Service does not agree with this, since uncontolled take of nuisance Utah prairie dogs could jeopardize the species' survival and recovery.

One respondent opposed the current maximum level of take. To this person, it appeared that nearly all of the population could be removed if the take ceiling of 5,000 was reached, referring to the preliminary 1989 spring count of 6,400 animals as the basis for this conclusion. The Service wishes to clarify that this is not an accurate comparison. The time period for controlled take commences in the summer, after the adult animals counted in the spring have had litters. The species' population increases by a factor of 3.7 in the spring, assuming there are two adult females per adult male and that each female has a litter of four. Nearly all of this population increase would be lost from natural mortality over the fall and winter. By the following spring, the number of surviving prairie dogs would not be much different from the previous year's spring count. Even if an excessive number of animals were to be taken in any year, the Service could prohibit or restrict take the following year to compensate.

In addition, as explained earlier, uncontrolled population growth could lead to precipitous declines in Utah priarie dog colonies on private land. It is an epidemiological principle that the greater the population density of prairie dogs, the greater opportunity there is for tranmission of disease (pers. comm., Dr. Allan Barnes, Chief, Plague Section, Center for Infectious Diseases, 1990). There is evidence from Utah prairie dog colonies on public land to support this connection. For example, the largest Utah prairie dog colony on public land (Minersville #3) increased from a spring count of 68 animals in 1985 to 627 animals in 1989 (Coffeen 1989). In 1990, the population plummeted to 10 animals, with disease being the most likely cause. A similar population crash occurred a decade ago, in the Parker Top-Pollywog Lake colony, which achieved its highest spring count of 324 animals in 1979, and dropped down to 14 animals in 1980.

The original special rule, published in the **Federal Register** in 1984, clearly explained that regulated taking relieved population pressures that were potentially detrimental to the species as well as economically damaging to farmers. The 1990 proposal to amend the special rule did not provide as much background explanation, which may have led to the concern expressed by this respondent as to whether the amendment was in the best interest of the species. To clarify this point, the Service has added additional text to the "Background" section of the rulemaking to make clear the positive effect that regulated take can have in relieving overpopulation pressures that cause the nuisance animal problem and that can lead to devastating disease outbreaks.

Issue 2—Area of take: One respondent opposed increasing the area of take. As explained above, regulated take in areas of overpopulation can have a prophylactic effect by decreasing the possibility of disease outbreaks. In addition, the Service believes that if the area of controlled take is not increased, then uncontrolled illegal take of Utah prairie dogs will increase as farmers outside the original control area attempt to protect their private property from the damage caused by nuisance prairie

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dogs. In fact, an increase in illegal take was reported by the Division in 1990 outside the original control area as the nuisance animal problem expanded outward.

Issue 3—Period of take: Two respondents recommended that the period of take begin several months earlier (i.e., February 15 or March 1) so that animals could be taken before crops mature. Setting earlier dates for control would increase the number of adult breeding animals taken. Through this would be a more effective control strategy from the farmers' standpoint, it could be extremely detrimental to species recovery. The Service believes that the current time period for control strikes a balance between reducing conflicts and conserving the species.

Issue 4—Method of control: Three respondents supported transplantation as a method for addressing the nuisance Utah prairie dog problem. Two respondents recommended that transplanted prairie dogs be placed on public lands, and one respondent recommended both sexes be transplanted. Transplantation is being done already. The Division has transplanted over 15,200 prairie dogs from private to public lands since 1972, with priority given to nuisance prairie dogs. However, due to budget limitations, the transplant program has not been able to keep pace with growing prairie dog numbers. The Division has been transplanting both sexes: males are introduced to transplant areas first to establish new colonies, with females introduced later on. When sufficient numbers of Utah prairie dogs are established on public lands, the species will be considered for removal from the List of Threatened and Endangered Wildlife.

The Division commented on the methods of take allowed. Regulations promulgated by the State of Utah do not allow drowning because it is considered an inhumane form of wildlife control. Trapping and shooting are the only legal means to take Utah prairie dogs under State regulation. The "Background" section of this rulemaking was changed to reflect this, but since the special rule does not specify allowable methods of take, no change to the special rule is necessary.

One private landowner suggested that an adopt-a-pet program be developed, similar to the Bureau of Land Management program for wild horses. The Service feels that such a program would not be in the species' best interest. If a Utah prairie dog was live-trapped, it would be better to transplant it to public lands than place it in captivity as a pet.

Issue 5—Reporting frequency: One respondent opposed the elimination of the quarterly reporting system, suggesting that reliance on a yearly report would not provide timely information on population status that would allow mid-year corrections to the control program to avoid detriment to the species. The rationale for the change in reporting frequency was discussed under "Background." The State already reports on the number of permits issued, the number of animals allowed to be taken, and the number of animals taken in its annual Section 6 reports to the Service. In addition, the Service does not rely solely on the annual report to be kept apprised of the species' status. The Service and the Division have a close working relationship. Any major changes, problems, or concerns with Utah prairie dog management, including an unusual demand for take permits, would be brought to the Service's attention promptly. In many respects, the annual report summarizes information that already has been communicated to the Service during the year. Hence, the change to an annual report is unlikely to compromise Service oversight of species' management by the Division.

Issue 6—Reimbursement for damages to private property: Three respondents suggested that private landowners should be compensated for damages resulting from nuisance Utah prairie dogs. The Service feels that this is not necessary. This regulatory amendment will allow private landowners to legally take nuisance animals before significant damage occurs.

Effective Date

Because of the need to provide immediate relief to farmers whose property is being damaged by nuisance Utah prairie dogs, the Service finds good cause to make this final rulemaking effective upon publication in the **Federal Register** in accordance with 5 U.S.C. 553(d)(3).

Environmental Analysis

Comments received during the public comment period were used to develop the final rule and provide further input for environmental impact analysis. Section 7 consultation was conducted on the rule and concluded that the amendment was not likely to jeopardize the continued existence of the species. A final environmental assessment evaluating the impacts of the rule also was completed and a Finding of No Significant Impact was made. These documents are available and may be obtained by contacting the State Supervisor (see **ADDRESSES** above).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that this amendment to the Utah prairie dog special rule will not constitute a major action under Executive Order 12291 and certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule contains no information collection or record keeping requirements, as defined under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

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Author

The primary author of this rule is W. Robert Benton, Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** above). Assistance was provided by Nancy Chu, U.S. Fish and Wildlife Service, Denver Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.40 by revising paragraph (g) to read as follows:

§ 17.40 Special Rules—Mammals.

* * * * *

(g) **Utah prairie dog (*Cynomys parvidens*).** (1) Except as noted in paragraph (g)(2) of this section, all prohibitions of 50 CFR 17.31 (a) and (b), and exemptions of 50 CFR 17.32 shall apply to the Utah prairie dog.

(2) A Utah prairie dog may be taken on private land throughout its range under a permit issued by the Utah Division of Wildlife Resources, in accordance with the laws of the State of Utah, provided that such taking does not exceed 6,000 animals annually and that such taking is confined to the period from June 1 to December 31. Records on permitted take maintained by the State shall be made available to the U.S. Fish and Wildlife Service on request.

(3) If the Service receives substantive evidence that takings pursuant to paragraph (g)(2) of this section are having an effect that is inconsistent with the conservation of the Utah prairie dog, the Service may immediately prohibit or restrict such taking as appropriate for the conservation of the species.

* * * * *

Dated: May 17, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-14179 Filed 6-13-91; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 18

RIN 1018-AB48

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is issuing a final rulemaking that will allow for the next 5 years the incidental, but not intentional, take of small numbers of walruses and polar bears during open water exploration for oil and gas in the Chukchi Sea adjacent to the coast of Alaska.

Under provisions of the Marine Mammal Protection Act of 1972, as amended (Act), the taking of these marine mammals may be allowed only if the Director of the Service finds, based on the best scientific evidence available, that the total of such taking for the 5 year period will have a negligible impact on the species and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives. If these findings are made, the Service is required to establish specific regulations for the activity that set forth: (1) Permissible methods of taking; (2) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

This rulemaking does not authorize the actual activities associated with exploration, but rather allows a take of walruses and polar bears incidental to exploration. The Department of the Interior's Minerals Management Service (MMS) is responsible for permitting activities associated with oil and gas exploration.

DATES: This rule will be effective for 5 years beginning June 14, 1991, except that § 18.118(a)(2) will become effective November 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mimi Hogan or Jon Nickles, Marine Mammals Management, Fish and Wildlife Service, 4230 University Drive, suite 310, Anchorage, AK 99508, 907-561-1239.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the Act gives the Secretary of the Interior (Secretary) authority to allow, on request by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographical region, the incidental, but not intentional, taking of small numbers of marine mammals. Permission may be granted for a period of 5 years or less.

The taking of marine mammals may be allowed only if the Service finds, based on the best scientific evidence available, that the taking will have a negligible impact on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses. Also, regulations must be published that include permissible methods of taking and other means to ensure the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. These regulations must include requirements for monitoring and reporting. After final regulations are established, Letters of Authorization (LOA) may be issued to individual applicants to conduct activities pursuant to the regulations.

As a result of 1988 amendments to the Act, the Service on September 29, 1988, published a final rule (54 FR 40338) amending 50 CFR 18.27 (i.e., Regulations governing small takes of marine mammals incidental to specified activities) that included, among other things, a revised definiton of "negligible impact" and a new definition for "unmitigable adverse impact." Negligible impact is now defined as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." 50 CFR 18.27(c). "Unmitigable adverse impact means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met." *Id.*

A Proposed Rule that would allow an incidental take of marine mammals was published by the Service on February 25, 1991, (56 FR 7845), with a comment period that ended April 11, 1991. Public meetings were held in Anchorage, Alaska, on March 4, 1991; Barrow, Alaska, on March 12, 1991; Wainwright, Alaska, on March 13, 1991; Point Lay, Alaska, on March 14, 1991; and Point Hope, Alaska, on March 19, 1991.

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Approximately 85 persons attended the public meetings and 16 entities, including conservation groups, Federal, State and local government agencies, private industry, Native organizations and other interested parties commented on the proposed rule. These comments are summarized along with responses in the discussions below. The Service prepared an Environmental Assessment on this action and found that there would be no significant impact on populations of walruses and polar bears, and there would be no unmitigable adverse impacts on the availability of these species for subsistence by Alaska Natives. A Finding of No Significant Impact (FONSI) has been made on the Environmental Assessment which accompanies the document. A copy of the Environmental Assessment and FONSI are available on request from the persons listed above in the section entitled, "FOR FURTHER INFORMATION CONTACT."

Summary of Request

On March 30, 1990, the Service received a request from Shell Western E & P Inc. (SWEPI) seeking promulgation of regulations to allow the incidental take of small numbers of Pacific walrus (*Odobenus rosmarus divergens*) and polar bear (*Ursus maritimus*) during oil and gas exploratory activities in Alaska State waters and on the Outer Continental Shelf (OCS) during the open water season in the Chukchi Sea adjacent to the coast of Alaska over the next 5 years. The open water season is defined as that period when sea ice does not cover the Chukchi Sea. Sea ice begins forming over the northern portion of the Chukchi Sea by late September or early October. By early November, the southern extent of the sea ice has usually covered the Chukchi Sea and entered the Bering Sea (Webster 1981, 1982 in LaBelle et al. 1983). The open water season, which is assumed for purposes of analysis to be represented by a 90-day drilling or operating period (USDI 1990), usually occurs between June 15 and October 15. Although it is referred to as an open water season, broken pack ice exists within the open water zone. This ice is moving, floating ice which is dynamic due to wind and currents. The presence of floating ice requires ice management activities during the open water season.

SWEPI's request includes taking by incidental and unintentional harassment of marine mammals during pre-lease and post-lease exploration for oil and gas resources in Alaska State waters and on the OCS. The Act defines "take" as harass, hunt, capture or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Implementing regulations in 50 CFR part 18 further define take as "* * * to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal * * *" (50 CFR 18.3). The petition does not request promulgation of regulations for incidental taking from development or production activities. Activities likely to be conducted include geological and geophysical surveys, drilling of Continental Offshore Stratigraphic Test Wells, and exploratory drilling for oil and gas together with associated support activities. Potential sources for incidental taking would include noise, unpermitted discharge (oil spill), and physical obstruction.

SWEPI estimates that the number of encounters with walrus in a given year will probably not exceed 200. For the purposes of this petition, SWEPI suggests that 20 or less lethal takes of walruses could occur during the 5 year period of the regulations. SWEPI estimates that no more than 10–15 polar bears will be taken by incidental disturbance resulting from their operations during the 5 year term of the regulations. No polar bear fatalities are anticipated.

Excluded from the geographic and seasonal scope of the application is the area within the Chukchi Sea spring lead system when it is identifiably intact as a marine mammal migratory corridor (SWEPI Petition 1990). The lead system in the Chukchi Sea is located in the shear zone between the shorefast ice and offshore pack ice. Leads (linear open water areas) and polynyas (nonlinear open water areas) are formed when wind and currents direct the pack ice offshore. The Chukchi Polynya is a recurring polynya and associated lead system that appears in March and April, originating south of Point Hope. This polynya often provides the only open water habitat available in early spring before any major deterioration of the pack ice occurs. The petition states that SWEPI, at this time, does not intend to conduct any exploratory drilling or seismic operations within the spring lead system during the excluded period.

Summary of Final Rule

The Final Rule authorizes an incidental take of walruses and polar bears in the Chukchi Sea from 1991–1996 by individuals who are conducting pre-lease and post-lease oil and gas exploratory activities. Incidental take regulations will be in effect during the open water season which will be defined as that period from June 15 to November 30. Incidental taking is not allowed when walrus are concentrated in the spring lead system. Each year the Service will determine when the spring migration of walrus is no longer dependent on the spring lead system and will notify the exploration companies and the Native communities when it has made this determination. Depending on the variability of ice conditions, the start-up date may be after June 15.

The Final Rule includes requirements for monitoring and reporting, and measures to effect the least practicable adverse impact on these species and their habitat and on the availability of these species for subsistence uses. All activities must be conducted in a manner that minimizes adverse effects on the species and their habitat.

Individuals who wish authorization for incidental take must apply separately for an LOA for each activity at least 90 days before the activity is to begin. The Final Rule requires those who request an LOA to submit a plan to monitor the effects on walruses and polar bears of the exploratory activities. The plan and the person or persons designated to observe and record the effects of exploration activities must be approved by the Service. Also, the applicants must submit a plan of cooperation with Alaska Natives that identifies what measures have been, and will be, taken to minimize any adverse impacts on the availability of marine mammals for subsistence uses. Each request will be evaluated on the specific activity and the specific location, and each authorization will identify allowable methods or conditions that are specific to that activity and location. A report on all exploration and monitoring activities must be submitted to the Service within 90 days after the completed activity. Notice of issuance of LOAs will be published in the **Federal Register**. As prescribed in 50 CFR 18.27(f), any substantive modifications of LOAs will be subject to public review unless the Service determines that an emergency exists which requires immediate action.

Note: The Service will defer until November 1, 1991, the requirement that an application for an LOA be filed at least 90 days before an activity is to begin. This portion of the Final Rule is being deferred because publication is expected to coincide with the beginning of the 1991 open-water exploration season.

To obtain authorization for an incidental take of walruses or polar bears each company conducting an exploratory activity in the Chukchi Sea must apply for an LOA for each geophysical survey or seismic activity and each drilling operation. The granting

of each LOA will be based on a determination that the total level of taking by all applicants in any one year is consistent with the estimated level used to make a finding of negligible impact and a finding of no unmitigable adverse impacts. The estimated level of activity is based on projections prepared by the MMS in environmental impact statements for lease sales 109 and 126 (USDI 1987, 1990b). If the level of activity is more than anticipated, such as more support vessels or aircraft, more drilling units, or more miles of geophysical surveys, the Service would reevaluate its findings to determine if they continue to be appropriate. The individual LOAs will include monitoring and reporting requirements that are specific to each activity, and any measures that are necessary for mitigating impacts to subsistence activities.

Description of Activity

The estimated level of activity was taken from environmental impact statements issued by the MMS in connection with OCS lease sales in the Chukchi Sea. In addition, SWEPI has supplied information on the kinds and the level of activities they expect to occur over the next five years. The Service has used this estimated level of activity as a basis for its findings. If requests for LOAs exceed the highest estimated level of activity, the Service would reevaluate its findings to determine if they continue to be appropriate before further LOAs are issued.

Activities that are covered in the request are geophysical surveys, exploratory drilling, and support activities. Geophysical surveys are divided into two classes: Deep seismic and shallow hazard. Both kinds of surveys use a "reflective" method to acquire data. Both include an energy source that generates a seismic signal, hydrophones that receive the signal, and electronic equipment on board a seismic vessel that amplifies and records the signal. Energy sources used in deep seismic surveys release bursts of compressed air or water. Sound sources in shallow hazard surveys operate at lower energy levels and generate less acoustic pressure than deep seismic surveys.

The four principal forms of exploratory drilling structures currently in use or under development for Arctic exploration are artificial islands, bottom-founded structures, drillships, and semi-submersible vessels.

The exploratory activities discussed in the petition are currently being conducted in Arctic waters. Seismic surveys have been conducted in the Chukchi Sea since the mid-1980s. Exploratory drilling has been conducted in the Chukchi Sea since 1989.

Marine seismic surveys operate only during the open-water season which is variable. In the southern Chukchi Sea, open water may occur between July and mid-November and in the northern Chukchi Sea, open water may occur between August and October. Seldom does the open-water period exceed 90 days. The scope of the petition is limited to "open-water" seismic surveys and does not include any on-ice survey activity near spring lead systems. Seismic surveys and exploratory drilling will continue for at least the next seven to ten years. They will occur on tracts already leased and those offered in future lease sales.

Over the next five years, pre-lease survey activity (deep seismic) will occur in unleased portions of the Chukchi Sea. Pre-lease surveys will likely be concentrated in the proposed sale areas during the open-water season. The MMS estimated the extent of shallow-hazard seismic surveys for Chukchi Lease Sale 109 at 7,979 trackline kilometers over the life of the lease period for Sale 109 (USDI 1987). An additional 8,783 trackline kilometers of 3–D and deep penetration seismic data have been estimated to occur after the initial exploratory drilling in the Lease Sale 109 area (USDI 1987). The estimate for shallow-hazard surveys for Chukchi Sea Lease Sale 126 was 7,055 trackline kilometers for the base case with an additional 10,329 trackline kilometers of 3–D and deep penetration surveys (USDI 1990b). Although the trackline kilometer estimates for Lease Sales 109 and 126 are not entirely independent, the amount of overlap is difficult to calculate. The estimated total of shallow-hazard surveys for the Chukchi Sea for the life of the leases is 15,034 trackline kilometers and that of 3–D and deep penetration is 19,112 trackline kilometers.

Before drilling can begin, lessees must file an Outer Continental Shelf Plan of Exploration and Environmental Report with the MMS as well as an Application for Permit to Drill. The MMS must approve the Plan of Exploration before exploration activities may begin. The Plan of Exploration is also reviewed by the State of Alaska for consistency with the Alaska Coastal Management Program under the provisions of the Coastal Zone Management Act.

In the Chukchi Sea, 350 blocks were leased as a result of OCS Lease Sale 109. To date, three exploratory wells have been completed and another one started. The Final Environmental Impact Statement for Lease Sale 109 estimates that 29 exploratory and 40 delineation wells will be drilled under the high-case assumption from 1991 through 1996, the period the incidental take regulations would be in effect. The mean case assumes 16 exploratory and 23 delineation wells over the same period. As few as two or as many as seven drilling units could be working in any given year in the Chukchi Sea. These estimates include both floating and bottom-founded drilling units. Sale 126, the next oil and gas lease sale for the Chukchi Sea OCS planning area, is scheduled for August 1991. The Draft Environmental Impact Statement for this lease sale estimates that under the high case 25 exploratory and 12 delineation wells will be drilled from 1992 through 1996 (USDI 1990b). The mean case assumes 23 exploratory and 11 delineation wells during the same period. The cumulative case for the arctic region, including lease sales from the Beaufort Sea, Chukchi Sea, and Hope Basin Planning Areas, assumes a total of 68 exploratory and delineation wells will be drilled in State and Federal waters in the Beaufort and Chukchi Seas.

An appropriate drilling unit will be selected by the lessees when an application for Permit to Drill is filed with the MMS or the State of Alaska. Although the level of support activities is speculative, supplies during the drilling season will be transported to the drill ships by helicopters and supply vessels. Bottom-founded units will be resupplied from barges. During 1991 through 1996, an estimated 24 drilling support barge trips will be made to Chukchi Sea drilling units associated with Sale 109. A proportionately similar number of barge trips would be expected during 1992 through 1996 for units drilling on tracts leased in Sale 126. It is estimated that one helicopter trip per drilling unit per day will be flown in support of exploratory drilling. One icebreaker and two ice-strengthened support/supply boats are estimated as needed to support each drilling unit, and supply boat trips are estimated at one per drilling unit per week. Depending on ice conditions, two or more icebreaking vessels may be required to perform ice management tasks for the floating units.

Biological Information

The geographic area covered by the request is the continental shelf of the Arctic Ocean adjacent to western Alaska. This area includes the waters and seabed of the Chukchi Sea, which encompasses all waters north of the

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Bering Strait that are east of the U.S.-Russia Convention Line of 1867, west of a north-south line at Point Barrow, and within 200 miles to the north of Point Barrow. This delineation of the Chukchi Sea includes the western blocks of the Beaufort Sea Planning Area.

Walrus

The Pacific walrus subspecies winters in the Bering Sea and includes about 80 percent of the world walrus population. In the summer, walruses segregate by sex and age as females with calves and juveniles of both sexes migrate into the Chukchi Sea. Many of the adult males remain in the Bering Sea where they form large groups on terrestrial haulouts in Bristol Bay and the Gulf of Anadyr (Fay 1981).

Population estimates derived from joint U.S.-Soviet aerial surveys conducted in 1975, 1980, and 1985, indicated that the population had increased to near or above historic levels and may now be decreasing (Sease and Chapman 1988). Gilbert (1989) estimated the Bering and Chukchi seas walrus population to be 232,510 in 1985. Joint aerial surveys were conducted most recently in the fall of 1990, but the data have not been analyzed. Due to an unusually extensive pack ice retreat that altered the normal distribution of walruses, the data may not be comparable to previous surveys (D. Seagars, pers. commun.). Population estimates must be regarded with caution because of the time interval between censuses, the large variance around the estimates, and an unknown relationship between the number of animals counted on the ice and the number of animals uncounted in the water (Chapman et al. 1977, Gilbert 1989). Because of these factors, substantial changes in the Pacific walrus population could occur without detection.

A decrease in fecundity and calf survival and an increase in the age of sexual maturity for females was detected around 1980, indicating that the population had reached carrying capacity. Concurrently, the combined Soviet-U.S. catches doubled between 1970 and 1980. This combination has the potential to produce a dramatic population decline (Fay et al. 1989).

Available data indicates mating occurs in the Being Sea during the winter and young are born, usually on the ice (Burns 1970), between mid-April and mid-June during the northward migration from the Bering Sea to the Chukchi Sea (Fay 1982). Their migration usually begins in late March or early April and can either occur by swimming or by riding on the ice as it retreats northward. Calving areas in the Chukchi Sea extend from the Bering Strait to 70° N latitude (Fay et al. 1984b). Newborn calves are tended closely. Cows brood neonates to aid in their thermoregulation (Fay and Ray 1968), and carry them on their back or under their arm while in the water (Gehnrich 1984). Females with newborn young join together to form large "nursery herds" (Burns 1970). Summer distribution of females and young walruses is closely tied to movements of the pack ice relative to feeding areas. Walruses spend one-third of their time hauled out, usually on ice (Fay and Ray 1968).

Walruses feed mostly on benthic invertebrates and are thought to be limited to depths of about 100 m (Fay and Burns 1988). Stomach samples from animals summering in the Chukchi Sea found polychaetes, moon snails, crustaceans, tunicates, and anthozoans to make up greater proportions of the contents than did bivalves, which are normally most important. Most of the stomachs contained large amounts of sediments, and a high proportion of the sample contained seal flesh. Ingestion of seal flesh is thought to be unusual in the Bering Sea (Lowry and Fay 1984) but may be more common in the Chukchi Sea, where benthic invertebrate prey species appear to be smaller and less abundant (Fay et al. 1984a).

The juxtaposition of ice over appropriate depths for feeding is especially important for females and young walruses that may not be capable of deep diving or of long term exposure in the water. Walruses resting on the ice will be transported to other feeding areas, which helps to prevent overexploitation of their prey resource. On the Chukchi summering grounds most walruses are found within 20 km from the southern ice edge unless the edge retreats off the continental shelf. In those years, the terrestrial haulouts at Wrangel Island and Cape Lisburne and the surrounding waters become important resting and feeding areas (Fay et al. 1984b).

Terrestrial haulouts used traditionally in the eastern Chukchi Sea occurred at Cape Thompson, Cape Lisburne and Icy Cape (Fay 1957). More recently, only the Cape Lisburne site is used (Frost et al. 1983). Numerous haulouts are still in use in the western Chukchi Sea including Wrangel and Herald islands, which are important hauling grounds in September, especially in years when the pack ice retreats far to the north (Fay 1982).

Polar bears occasionally prey on walrus calves, and killer whales (*Orcinus orca*) take all age classes; however, the most important source of mortality is man (Fay 1982). Walrus hunting by Native peoples has occurred for thousands of years. Exploitation of walrus by Europeans has occurred in varying degrees since first contact. Currently, walrus are harvested by Alaskan Natives in coastal villages and by Soviet subsistence (shore-based) and commercial (ship-based) hunters (Sease and Chapman 1988). The Service monitors the Alaska Native harvest (Seagars et al. 1989) and the Soviets record their harvest. The Soviets are currently harvesting under a 4,000 animal per year quota (F. Fay, pers. commun.). There is no quota for the Alaskan Native harvest, but the catch has declined since 1985 from about 4,000 to about 2,000 in 1988 (Seagars et al. 1989). The number of walruses killed but not retrieved has been difficult to estimate by both groups, but it is estimated to be about 40 percent of the total catch (Sease and Chapman 1988).

Polar Bear

Polar bears occur only in the Northern Hemisphere, where the distribution is circumpolar, and they live in close association with polar ice. Their Alaskan distribution extends from Bering Strait to the U.S.-Canada border, usually within 300 km of the coast (Frame 1989, Amstrup, unpubl.). The world population estimate of polar bears ranges from 10,000–20,000 individuals (Larsen 1972), with possibly as many as 5,000 bears in Alaskan territory (Amstrup et al. 1986).

Currently, six distinct populations are believed to occur in the polar basin (DeMaster and Stirling 1981). Two populations adjacent to Alaska are identified as Wrangel Island-western Alaska and northern Alaska-northwestern Canada. A line extending offshore from Point Lay separates northern and western stocks. Recent telemetry information reveals a degree of exchange exists between the northern and western Alaska stocks. Denning females captured in the Beaufort Sea are now known also to have denned on Wrangel Island (Amstrup, pers. comm.). Similarly, one bear captured during the spring in western Alaska has denned in the Beaufort Sea area the following year (Garner, FWS unpubl.). For management purposes the northern and western stocks are considered discrete.

Polar bears of the Chukchi Sea are subject to the movements and coverage of the pack ice, which covers an average distance of 1400 km between the winter maximum and summer minimum (LaBelle et al. 1983) every year. The most extensive north-south movements of polar bears occur with the ice in spring and fall. Summer movements tend to be less dramatic due to the reduction

of ice habitat. Summer distribution is somewhat dependent upon the location of the ice front, however, polar bears are accomplished swimmers and are often seen on floes separated from the main pack ice. Therefore, bears can appear at any time in what can be called "open water." In some years, the ice front does not retreat north of Point Barrow. The summer ice pack can be quite disjunct and segments can be blown great distances carrying polar bears with them.

Females without dependent young (young-of-the-year or yearlings) breed in the spring and enter maternity dens, that they dig in the snow, by late November (Harington 1964). An average of two cubs are born in December, and the family group emerges in late March or early April. Only pregnant females den for an extended period in the winter, and it is now known that they den both on land and on the pack ice (Lentfer and Hensel 1980, Amstrup 1986). Females probably do not reproduce before their fourth year, and in Alaska the average age was reported to be 6.4 years, with a range of 4–8 years. The average reproductive interval is 3–4 years (Lentfer and Hensel 1980) and reproductive senescence probably occurs before age 20 (Ramsay and Stirling 1988). Following these conditions a female can produce a maximum of 10 cubs in her lifetime.

Greater than 90 percent of a polar bear's diet is ringed seals (*Phoca hispida*) (Stirling and Smith 1975). Bearded seals (*Erignathus barbatus*) and walrus calves are hunted occasionally. Polar bears opportunistically scavenge marine mammal carcasses and there are reports of polar bears killing beluga whales (*Delphinapterus leucas*) trapped in the ice. Polar bears are also known to eat nonfood items including styrofoam, plastic, pieces of car batteries (Lunn and Stirling 1985), anti-freeze, hydraulic, and lubricating fluids (Russell 1975, Amstrup et al. 1989, Derocher and Stirling 1990).

Polar bears hunt seals along leads and other areas of open water, or by waiting at a breathing hole, or breaking through the roof of a seal's lair. Lairs are excavated in snow drifts on top of the ice. Bears also stalk seals in the spring when they haul out on the ice in warm weather. The relationship between ice type and bear distribution is as yet unknown, but it is suspected to be related to seal availability.

Both fur and blubber are important to polar bears for insulation in air and water (Oritsland 1969). Cubs-of-the-year must accumulate a sufficient layer of blubber in order to maintain their body temperature when immersed in water. It is unknown to what extent young cubs can withstand exposure in water before they are threatened by hypothermia (Blix and Lentfer 1979). Polar bears groom their fur to maintain its insulative value.

Polar bears have no natural predators, and they do not appear to be prone to death by diseases or parasites. Cannibalism by adult males on cubs and occasionally on females (presumably that were too aggressive in defending cubs) is known to occur (Amstrup, pers. comm.). The most significant source of mortality is man. Before the Marine Mammal Protection Act was passed in 1972, polar bears were taken by sport hunters and residents. Between 1925 and 1972 the mean reported kill was 186 bears per year. Seventy-five percent of these were males, as cubs and females with cubs were protected. Since 1972, only Alaska Natives have been allowed to hunt polar bears for their subsistence uses or for handicraft and clothing items for sale. The Native hunt occurs without restrictions on sex, age, or number. Although the average annual harvest has declined since 1972, the percentage of females and cubs appears to have increased (Amstrup et al. 1986). From 1980–1985, the total annual harvest averaged 135 bears; 72 percent from the Chukchi Sea and 28 percent from the Beaufort Sea (Schliebe 1986).

Effects of Exploration on Marine Mammals and on Subsistence Uses

Walrus

Oil and gas exploration activities in the Chukchi Sea may affect walruses in a number of ways. Air and vessel traffic can cause herds to stampede resulting in injuries and cow-calf separations, both of which may be fatal. Noise from air traffic, seismic surveys, ice breakers, supply ships, and drilling may displace walrus herds. The quantity and quality of walrus prey may be affected by contamination of the benthos from disposal of drilling muds and cuttings, from operational petroleum spills, and possibly from a blowout. Drilling discharges would be very localized and the projected frequency and volumes of oil spills precludes more than a very low overall effect (USDI 1990). The low probability of a blowout is discussed elsewhere.

Physical Obstruction, Sight, Smell, and Noise Disturbances

Quantitative research on the sensitivity of walruses to noise has been limited because no audiograms (a test to determine the range of frequencies and minimum hearing threshold) have been done on walruses, as they have for some other pinnipeds (Malme et al. 1989). Studies have assumed that a walrus' hearing was within the 13 Hz and 1200 Hz range produced by their own vocalizations (Ray and Watkins 1975, Miller 1985).

Fay et al. (1984) observed that walruses fled an approaching ship at distances ten-fold greater from upwind approaches than from downwind approaches, indicating that odor appeared to be the primary stimulus for a flight response. They found also that males tended to be more tolerant of disturbances than females and individuals were more tolerant than groups. Females with calves tended to be least tolerant. Walruses in the water were more tolerant than those hauled out, however, those hauled out on ice were more tolerant than those hauled out on land. Other factors, such as weather and length of time hauled out appeared to contribute to the response.

Response to aircraft disturbance varies with aircraft type, altitude, distance, flight pattern, and age-sex class of the animals (Burns and Harbo 1977, Fay et al. 1984, Johnson et al. 1989). In general, walruses responded when aircraft were flying below 400 meters altitude within 1–1.3 kilometers from them (Brooks 1954, Salter 1979, Fay et al. 1984).

Walruses using the Chukchi Sea in the spring and summer are predominantly adult females with dependent young and young animals of both sexes. These walruses migrate through the Bering Strait into the Chukchi Sea using the Chukchi Polynya (a recurring, nonlinear open water area) and lead system. In the early spring, females and calves may become concentrated in the limited amount of open water between the Bering Straits and Point Hope (Fay 1982) making them especially vulnerable to disturbances caused by air and vessel traffic. In the spring lead system, vessels may cause physical obstructions preventing the free movement of walruses. Females with calves are most sensitive to foreign sights, smells, and sounds and they exhibit avoidance responses at much greater distances than do other walruses. Calves are born during the northward migration and although calves can swim at birth they may be limited in the amount of time they can spend in the water. While on the ice, calves need to be brooded by their mothers to stay warm. If walruses must spend more time in the water to avoid vessel-related disturbances, they may become physiologically stressed by the increase in energy required to stay warm. Stampedes caused by air or vessel traffic are more likely to cause

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calf mortality by trampling when the calves are very young, but less likely to cause separation because females keep close track of calves until they are 2–3 months old (Fay et al. 1984b).

On the summering grounds, in typical ice years, the walruses remain near the pack ice edge using the ice as a resting platform and the sea floor beneath the ice for feeding. Specific feeding areas are not known, but walrus distribution indicates that the entire eastern Chukchi Sea may be important. Air and vessel traffic during this later period can also cause walrus herds to stampede off the ice, which may result in injuries to calves from trampling, although the calves are older and less vulnerable to being crushed. Cow-calf separations become more likely as the calf becomes older because it becomes the calf's responsibility to maintain the bond (Fay et al. 1984b). Although some impacts to individuals may occur, we do not believe proposed air and vessel traffic will reduce numbers enough to affect the population. This conclusion is based on the assumption that air and vessel traffic will be limited within the spring lead system during the walrus migration.

A stationary drilling rig probably does not act as a physical obstruction to walruses in an open water situation. However, young walruses may be attracted to a drillship. One incident occurred in the 1989 drilling season where a lone walrus calf surfaced in the center hole of the drillship's hull (the moon pool) and came in contact with hydraulic fluid that had been released by a broken line. The walrus calf was removed from the moon pool with a cargo net, released into the Chukchi Sea, and was not seen again.

Limited data from monitoring studies of the 1989 drilling season indicated walruses may become accustomed to drilling noise from a stationary location. Noise produced by icebreaking activity near the drill site appeared to be more disturbing, and walruses responded by moving away from the ships into the pack ice (Brueggeman et al. 1990). Underwater noise produced by ship's propellers (cavitation) is second in intensity only to noise generated for seismic exploration. Ice management requires that ships accelerate, reverse direction, and turn rapidly—activities which maximize propeller cavitation and the resulting noise levels. The reason walruses moved away from the noise source into the pack ice is unknown.

Seismic surveys create more noise than general vessel and icebreaker traffic but since these surveys are conducted only in open water, they are likely to disturb fewer walruses than icebreaking activities.

Contaminants

Walruses root along the sea floor for bivalve mollusks and other benthic invertebrates. Drilling muds and cuttings contain varying amounts of contaminants depending upon the muds used and the geology of the drilling location. The limited volume and dispersal of drilling discharges would have a very low effect on lower-trophic-level organism populations because of the very localized nature of the impact; only those organisms in proximity to the discharge point would be affected (EPA in USDI 1990).

The Environmental Protection Agency (EPA) regulates offshore drilling discharges through the issuance of National Pollutant Discharge Elimination System (NPDES) permits. The EPA establishes toxicity limits for effluent discharges offshore and prohibits the discharge of those effluent streams that exceed the established limits. The NPDES permits issued by EPA for arctic operations have special discharge limitations based on water depth and environmentally-sensitive areas, monitoring, testing and reporting requirements, and special seasonal requirements and restrictions based on open-water and varying ice conditions.

Information is available on the effects of drilling muds and cuttings in arctic waters. A report title, "Drilling Discharges in the Marine Environment" was compiled by the National Research Council's Marine Board (1983) to assess the fates and effects of drilling fluids in the marine environment. The document discusses the fates and effects issue in depth and presents a comprehensive list of references used by the panel in compiling the report. A recent book, entitled Drilling Wastes (Engelhardt et al. 1989) includes a report on the localized, temporary accumulation of drilling muds discharged from man-made islands in the Canadian Beaufort Sea and a report on the lowered bioavailability of the metals in drilling mud barite. In a December 28, 1990 **Federal Register** (FR) notice (56 FR 10864), the EPA proposed new source-performance standards for the offshore oil and gas industry, partly because much new information has been collected regarding waste characterization, industrial practices, and environmental effects, and other associated areas. The EPA has placed restrictions on the amount of mercury and cadmium in barite, a major constituent of drilling muds that reduces the availability of these contaminants to the benthic communities and feeders.

Up to eight exploratory wells could be drilled in any given year in the Chukchi Sea, as projected in the MMS Environmental Impact Statements for Chukchi Sea oil and gas lease sales 109 and 126 (USDI 1987, 1990b). The MMS also estimates the maximum amount drilling muds and cuttings that would be released from exploration drilling in a given year. The EPA (1990) estimated that discharges from exploratory drilling would not exceed applicable water-quality criteria outside of a 100-meter radius (or 0.03 square kilometer) around each discharge site in the Chukchi Sea exploration area. The MMS estimate that the drilling of all exploration, delineation and production wells will temporarily affect less than 1% of the benthic prey available to walruses in the sale area.

Even though the calculated probability of a blowout resulting in an oil spill is very low for exploration, a blowout has the potential to affect walruses. Oil spills have been shown to cause mortality to some benthic invertebrates especially in the immediate vicinity of the spill. Sublethal effects of oil on benthic invertebrates include lowered feeding, growth, and reproductive rates (Percy and Mullin 1975). Bioaccumulation of hydrocarbons could also be fatal to invertebrates.

There is evidence that the Pacific walrus population has reached carrying capacity and may currently be food-limited (Fay et al. 1989). Reductions in food availability or quality could result in a decrease in the number of walruses that can be supported in the Chukchi Sea.

No specific research has been conducted on the direct effects of oil on walruses, but effects can be extrapolated from studies done on other pinnipeds. Crude oil caused eye irritation, kidney lesions, and liver damage to six ringed seals, while it caused death within 71 minutes for three others (Smith and Geraci 1975, Geraci and Smith 1977). The variation in effects of crude oil is thought to be related to the condition of the animal. Animals nutritionally or otherwise stressed would be more vulnerable (Smith and Geraci 1975).

The disturbance of a large cleanup effort may have more of an impact on walruses than the oil. It is unclear whether walruses would become oiled by continued use of the terrestrial sites or if walruses would avoid the oiled beaches and abandon those haulouts. There is evidence from Soviet reports that chronic disturbance, such as cleanup activity on the terrestrial haulouts, may result in their permanent abandonment (Fay et al. 1984b).

Subsistence

The possibility that oil exploration activity may disrupt distribution patterns, or reduce the availability of walruses from traditional hunting areas are the primary concerns of Native residents (USDI 1983) of the affected coastal villages (Wales, Shishmaref, Kivalina, Point Hope, Point Lay, Wainwright, Barrow) and inland villages (Atqusuk, Kiana, Noatak).

The "open water" season for oil exploration activities coincides with the walrus hunting season for the villages of Barrow, Wainwright, Point Lay, and Point Hope. In 1988, hunters from Wainwright harvested 54 of 58 walruses in July and August (USDI 1989b). Point Hope, the southernmost of these four villages, typically hunts among the ice floes in June and early July (USDI 1984). After the ice is gone, Point Hope hunters take walruses at terrestrial haulouts around Cape Lisburne.

Except for a 50 mile stretch northwest of Cape Lisburne, the entire coast of the Chukchi Sea from Cape Thompson to Barrow is used for walrus hunting. Barrow hunters hunt in the area extending 25 miles to the north, 50 miles to south, and 30 miles offshore. Wainwright hunts along 125 miles of the coast, as far offshore as 40 miles, overlapping with the area used by Barrow. Point Lay hunts from Icy Cape to within 60 miles of Cape Lisburne, and up to 30 miles offshore (USDI 1989). Point Hope hunts a smaller area centered around the village, and they hunt within 10 miles of shore (USDI 1988, 1989).

Three lease prospects (Bagel, Eclair, and Kolache) are located within or adjacent to Point Lay's walrus hunting area. Two others (Bearclaw and Napoleon) are less than 10 miles away. Residents of Point Lay regard oil exploration to be of greater risk than benefit to their village (USDI 1989).

The effects on subsistence-harvest patterns that may occur as a result of oil and gas exploratory activities carried on in the Chukchi Sea would be minor. Hunting success for walrus varies considerably from year to year depending upon the ice and weather conditions. Walrus could be affected by noise and traffic disturbance from aircraft and support activities that results in only short-term, localized effects. Since most walrus hunting activities occur within a wide area of open water, boat and air traffic interruptions typically may cause boat crews to hunt longer or take extra trips but may not reduce the overall harvests of walrus. It is thought that exploration activities will not limit the availability of walruses for subsistence uses and that any impacts from exploration activities can be sufficiently mitigated by other measures to increase the availability to allow subsistence needs to be met.

Polar Bear

Oil and gas exploration activities in the Chukchi Sea may affect polar bears in a number of ways. Drillships and icebreakers may be physical obstructions to polar bear movements, although these impacts are of short term and localized effect. Noise, sights and smells produced by exploration activities may repel or attract bears, either disrupting their natural behavior or endangering them by threatening the safety of oil workers. Although the probability of operational oil spills or a blowout is low, they might result in bear deaths either as a direct result of oiling or as an indirect result of impacts to their prey.

Physical Obstruction, Sight, Smell, and Noise Disturbances

Little research has been conducted on the effects of noise on polar bears. It is known that denning females are sensitive to noise disturbance and may abandon dens, risking the lives of their cubs by early departures from the den (Amstrup 1985). Polar bears are curious and tend to investigate novel sights, smells, and possibly noises (Stirling 1988). This behavior brings them into the vicinity of industrial sites in the arctic. Underwater noises produced by exploration are probably not an important disturbance because bears spend most of their time on the ice or at the surface of the water. Polar bears are known to run from the noise and sight of icebreakers and aircraft, especially helicopters. The effects of fleeing from aircraft may be minimal if the event is short and the animal is otherwise unstressed. On a warm spring or summer day, a short run may be enough to overheat a well insulated polar bear. Likewise, fleeing from a working icebreaker may have minimal effects for a healthy animal on a cool day. A female with cubs-of-the-year may be quite stressed if disturbed for very long.

If a drillship is surrounded by ice it is more likely that curious bears will approach. Any on-ice activities required by exploration create the opportunity for bear-man interactions. In relatively ice free waters polar bears are less likely to approach drill sites. However, at the Belcher site, in the Beaufort Sea, during a period of little ice, a large floe threatened the drill rig. After the floe was hit by an icebreaker, workers noticed a female with a cub-of-the-year and a lone adult swimming nearby. The cub was clutching the female, a typical behavior of young cubs in the water (Amstrup 1989). The fate of this trio is unknown. It is likely that the adults survived by hauling out on another floe. Cubs are vulnerable to exposure in water until they develop a substantial blubber layer.

Drillships and ice breakers may act as physical obstructions in the spring during the start-up period for exploration if they pass through a restricted lead system, such as the Chukchi Polynya. Polynyas are important habitat for marine mammals, which makes them important hunting areas for polar bears (Stirling and Cleator 1981). Ship traffic in these ice conditions may intercept or alter movements of bears. A similar situation may occur in the fall when the pack ice begins to expand.

Contaminants

Polar bears are known to eat many toxic nonfood items including styrofoam, plastic, parts of car batteries (Lunn and Stirling 1985), anti-freeze (Amstrup et al. 1989), hydraulic, and lubricating fluids (Russell 1975, Derocher and Stirling 1990). In most instances the effects of foraging on such items is unknown, but in one case a bear died from eating ethylene glycol (main ingredient of anti-freeze) colored with rhodamine B. This combination is used for marking runway center lines on snow and ice, however, ethylene glycol is widely used for anti-freeze in vehicles. Why bears eat toxic items is unknown, however, an increase in the availability of these items due to exploration activity could translate into an increase in bear mortality.

The discharge of drilling muds and cuttings probably does not affect the feeding of pelagic ringed seals and therefore probably does not have any direct or indirect effects on polar bears.

The direct effects of oil on polar bears will occur as a result of ingesting oil while grooming or while feeding on oiled prey and beach cast carcasses. Bears will ingest petroleum products in amounts that can be fatal (Oritsland et al. 1981, Engelhardt 1981, and Hurst and Oritsland 1982 *in* Griffiths et al. 1987). The fur of oiled bears loses its insulative properties and may result in death by hypothermia (Scholander et al. 1950, Oritsland 1970 *in* Griffiths et al. 1987).

Polar bears may also be affected by indirect effects of spilled oil on ringed seals. Effects of oil on invertebrates may reduce the productivity of the area for

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ringed seals and consequently alter polar bear distribution.

Polar bears are not likely to avoid oil spills intentionally, although they may learn to avoid oil if they experience discomfort from contact with it (Hansen 1985). A blowout or other major spill may impact polar bears at the population level. Although the overall density in the Chukchi Sea may be low, wide ranging movements of polar bears over the duration of a spill have the potential to result in more than small numbers of bears encountering the spill (Marine Mammal Commission 1990). The effects of an oil spill may be greater than negligible depending on a number of variables, such as time of year, volume of oil discharged, duration of the spill, and the number of bears contacting the oil. The Service acknowledges that there is a low probability of oil spills occurring and contacting polar bears or their habitats, but the effects if a spill occurred could be significant. The probability of an oil spill must be balanced with the potential severity of harm to the species or stock when determining negligible impact. Even if the potential effects of a spill may be significant, if the probability of occurrence is low a finding of negligible impact may be appropriate.

The legislative history of the 1986 Amendments to the Act endorsed the use of a balancing approach to weigh the likelihood of occurrence against the severity of the potential impact: "The degree of certainty of occurrence required in these judgements should be inversely proportional to the resultant harm to the overall population." (132 Cong. Rec. S16305 (Oct. 15, 1986)). In this case the Service has determined that a finding of negligible impact is appropriate.

Subsistence

The possibilities that oil exploration activity may reduce the availability of polar bears, or disrupt distribution patterns from traditional hunting areas are the primary concerns of Native residents (USDI 1983) of the affected coastal villages (Wales, Shishmaref, Kivalina, Point Hope, Point Lay, Wainwright, and Barrow) and inland villages (Atqusuk, Kiana, and Noatak).

Depending upon ice conditions, the subsistence harvest of polar bears can occur year round in the northern Chukchi Sea villages, with peaks in spring and fall (Schliebe 1988). Direct conflicts are less likely to occur between polar bear hunters and exploration activities than between walrus hunters and exploration activities. Polar bear hunting areas are typically much smaller than those for walruses, with hunters remaining within a few miles of shore (USDI 1989a, USDI 1984).

Little information is available for predicting the effects of offshore exploration on subsistence hunting in the Chukchi Sea. Hunting success varies considerably from year to year because of variable ice and weather conditions. Because the polar bear is hunted almost entirely during that part of the year in which ice is prevalent, it is unlikely that exploration-only activities would have a big effect on the harvest of that species because drilling activities associated with exploration would occur entirely within the open-water season. Therefore, it is assumed that the effect on the polar bear would be very low. It is believed that exploration activities will not limit the availability of polar bears for subsistence uses and that any impacts can be mitigated by other measures to increase the availability of polar bears to allow subsistence needs to be met.

Conclusions

Based on the previous discussion, the Service makes the following findings regarding the proposed action.

Impact on Species

The Service finds that, based on the best scientific information available, the effects of currently planned and projected exploration in the Chukchi Sea will not adversely affect polar bears and walruses through effects on their annual rates of recruitment or survival if certain conditions are met. To date, there has been no oil spilled as a result of a blowout during exploratory drilling on the U.S. OCS. The probability of a blowout during exploratory drilling on the U.S. OCS is extremely remote and the probability of a major oil spill occurring from such a blowout is even more remote. The National Marine Fisheries Service (NMFS) recently published final regulations authorizing incidental takes of small numbers of various species of whales and seals. In the preamble of the proposed rules associated with those final regulations, the NMFS addressed the probability of the occurrence of an oil spill from exploratory operations. Upon review, they concluded that the possibility of a spill was so small that there was "no need to consider the possible impacts of a spill, not that the impacts would be negligible if in fact a spill did occur." (54 FR 40703 (October 3, 1989).) The Service concurs that since the probability of an oil spill is low during the exploration phase, an overall conclusion that the proposed exploration activity will have a negligible impact on the species can be reached.

Last year approximately 500 additional exploration wells were drilled on the U.S. OCS and only one suffered a blowout, and that was of natural gas. No oil was spilled (MMS unpubl.). Additionally, there has not been a single blowout in any of the 75 wells drilled to date in the Alaska OCS.

Liability for illegal discharges of toxic materials into the environment is described in the Clean Water Act. In the event of a catastrophic spill the Service would reassess the impact to the population and reconsider the appropriateness of authorizations for taking through section 101(a)(5) of the Act.

The finding of "negligible impact" would apply only to exploration in the Chukchi Sea, and would not apply to the development and production phases of oil and gas activity. The following conditions are proposed to eliminate interference with normal breeding, feeding, and migration patterns to ensure that the effects remain negligible.

First, no taking of walruses or polar bears would be allowed in the Chukchi Sea before June 15. Each year the Service would determine when the spring migration of walrus is no longer confined to the spring lead system. This would limit interference from exploration activities while marine mammals are concentrated in the spring lead system. It is important to consider transit to and from exploration sites as part of exploration activity, especially when icebreaking, support and drill rig vessels enter the Chukchi Sea for the purpose of exploration before the shipping lanes are open to general traffic.

Second, each activity would require a monitoring plan approved by the Service. The purpose of the plan would be to monitor the effects of the activity on polar bears and walruses in the exploration area. The monitoring plan is due to the Service when the applicant applies for a LOA, at least 90 days before the activity is scheduled to begin.

Third, findings for this exemption were based on the total level of activity estimated by the industry and the MMS in its environmental impact statements. If the level of activity, including the number of miles for seismic surveys, the number of drilling units, and the number of support vessels and aircraft flights associated with exploration, is more than the level estimated by the industry and the MMS, the Service would have to reevaluate its findings to determine if they continue to be appropriate based on the higher level of activity.

Impact on Subsistence

Exploratory activities may occasionally place physical barriers between marine mammals and subsistence hunters (i.e. survey vessels and barges traveling to and from exploration sites or even the drillship itself). In addition, there are increased noise levels from aircraft, vessels, and seismic surveys. Marine mammals may avoid certain noise sources and certain structures such as drillships. If two conditions are met, however, the Service proposes to find that these activities over the next five years are not likely to reduce the availability of the walruses and polar bears to a level insufficient to meet subsistence needs.

Since there have been no offshore exploration activities conducted near subsistence hunting areas in the Chukchi Sea, evidence is insufficient to show that such activity has directly displaced walruses and polar bears from traditional hunting areas.

The conclusion that the activities would not have an "unmitigable adverse impact" applies only to exploration, and does not apply to the development and production phases of oil and gas activity in the Chukchi Sea. The results of the monitoring during the exploration stage would affect regulations for subsequent stages.

The first condition concerns deferment of exploration activity during the spring migration through opening leads. This ban on the incidental taking of walruses and polar bears is intended to ensure that the leads have deteriorated and that there is ample open water to allow walruses free movement to avoid support traffic. Exploration activities will be confined to the open water season which will not exceed the period June 15 to November 30. Each year, the Service will determine when the spring migration of walrus is no longer dependent on the spring lead system in the Chukchi Sea. In some years this date may be later than June 15. This should allow the villages to participate in subsistence hunts for polar bears without interference and to minimize impacts to walruses during migration. When SWEPI plans to explore in those prospects near Point Lay further stipulations may be necessary to ensure that exploration activities do not reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs.

To avert or lessen any potential impacts on subsistence, the Service believes it necessary for the exploration companies to continue cooperative efforts with villages that conduct subsistence hunts for walruses and polar bears in areas that might be influenced by the industry's activities. This would include, but is not limited to, the villages of Point Hope, Wainwright, Barrow, and Point Lay, with special attention to Point Lay where offshore hunting areas overlap with two prospect areas.

Therefore, the second condition would require applicants requesting a LOA to contact the subsistence communities and the Eskimo Walrus Commission to discuss potential conflicts and resolutions. Each applicant would submit a plan of cooperation to the Service that states how the operator would work with affected Native communities and what would be done to avoid interference with subsistence hunting of walruses and polar bears. This plan is due to the Service when an applicant applies for a LOA, at least 90 days before the activity is scheduled to begin. The Service would review this plan to ensure any potential adverse effects on the availability of the animals are minimized.

If there were evidence in the future that exploration activities are reducing the availability of marine mammals for subsistence, the Service would reevaluate its findings regarding permissible limits of harassment and the measures required to ensure continued subsistence hunting opportunities.

Monitoring

A plan for monitoring the effects of exploration on polar bears and walruses, that has been reviewed and approved by the Service, would be required of all applicants requesting a Letter of Authorization. A monitoring plan must be submitted each year when an applicant applies for a Letter of Authorization. As the requirements for monitoring are likely to vary depending on the activity and the location, applicants are strongly urged to develop plans in cooperation with the Service. In addition, the Service recognizes that other opportunities will occur outside of the Letter of Authorization process for the Service and possibly the applicant to cooperatively conduct research that may resolve other deficiencies in knowledge of walrus and polar bear populations and habitat requirements. Such studies would be related to the need to determine negligible impact decisions for exploratory activities.

The purpose of monitoring programs is to determine short-term and long-term direct, indirect and cumulative effects of authorized oil and gas exploration on polar bears and walruses in the Chukchi Sea. Plans must identify the methods that will be used to determine and assess the effect on the movements, behavior, and habitat use of polar bears and walruses in response to exploration activity, including travel to and from drill sites.

Monitoring programs may be required to answer some basic biological questions as a necessary step toward understanding the relationships between the proposed activity and the species' survival, productivity and habitat requirements. The Service believes it is the responsibility of the applicant to provide the required information and to demonstrate negligible impact since the applicant is requesting authority to take marine mammals and is the beneficiary of such authority. The basic elements of the monitoring programs would be to determine and report when, where, how and how many marine mammals, by species, age/size and sex are taken in the course of authorized exploration activities so as to verify the nature and level of take. Methods and techniques to detect possible longer-term changes and trends in abundance, distribution and productivity of populations of affected species should be developed. The responsibility for developing these methods is not necessarily that of the applicant.

The operator has a responsibility for monitoring necessary to verify that authorized activities have negligible effects. The MMS is responsible for identifying adverse effects of OCS exploration and development in offshore water beyond state jurisdiction. The Service is responsible, under the Act, for assessing that incidental taking will have a negligible impact on walrus and polar bear populations and will not have an unmitigable adverse impact on the availability of these species for subsistence uses.

There are numerous objectives that should be addressed through monitoring programs. Results of monitoring programs would be summarized and reviewed each year. Objectives for each year would be reassessed based on the results.

Monitoring methods which might be used include, but are not limited to, aerial surveys, shipboard observations, acoustic studies, and monitoring radio-tagged walruses and polar bears in the vicinity of the drill sites.

At its discretion, the Service may place an observer on board drillships, icebreakers, support ships, and aircraft to monitor the impact of exploration activities on walruses and polar bears and to observe other activities authorized by a scientific research permit or Letter of Authorization.

The Service will coordinate monitoring plans for walruses and polar

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bears so that information is gathered in a consistent manner. The Service also will coordinate with other agencies that require monitoring programs (National Marine Fisheries Service, State of Alaska) to avoid duplication of effort and data at the same exploration site, in the same season.

Monitoring programs will be reviewed annually and monitoring plans may be modified from year to year. The Service will encourage peer review of the monitoring plan design as well as interpretation of results.

Development and participation in a cooperative research program is not a requirement for obtaining a LOA. The Service, however, encourages research of polar bears and walruses such as that funded by the National Fish and Wildlife Foundation. Lessees and the Service shall meet annually to discuss monitoring goals and results. This type of program could create opportunities to collect valuable information that would provide additional insight into the relationship between oil and gas activities and the basic biological requirements of the two species of concern.

Discussion of Comments on the Proposed Rule

Negligible Impacts

Comment: The Service cannot make a finding of negligible impact because there is not enough scientific information to determine whether a proposed level of taking would be to the disadvantage of the species involved. One commenter stated that the Service must have sufficient data to ensure that the effects from the proposed activities will not cause populations of the affected species to diminish below their Optimum Sustainable Population (OSP).

Response: The Service uses the regulatory standard of "the best scientific evidence available" to determine the impacts of activities on walruses and polar bears. Because energy exploration is a relatively recent occurrence in the Arctic region, there is limited information on the effects of energy related activities on these species. Based on available information on walrus and polar bear distribution, movements and habitat needs, the Service considered the proposed activities and determined that exploration will not have more than a negligible impact on these species (refer to the preamble in the Proposed Rule—56 FR 7854 (February 25, 1991), and the Environmental Assessment on the Final Rule to Authorize the Incidental Take of Small Numbers of Walruses and Polar Bears During Open Water Oil and Gas Exploration in the Chukchi Sea). No new information was submitted, or has come to light, since publication of the Proposed Rule and the Service believes that that determination is still valid.

Monitoring is necessary to verify the findings made by the Service and, to that end, the monitoring and reporting requirements will help the Service assess the effects of exploration activities on an annual basis. If new evidence or data indicate that the impact of exploration on these species is more than negligible, the Service will reassess its findings. LOAs for incidental take will be issued on a yearly basis and the Service has the authority to add, reduce or withdraw conditions to the authorization, or completely withdraw the authorization depending on the results of the evaluation.

Under the Service's regulatory definition, a finding of negligible impact would require that the impact resulting from the specified activity cannot reasonably be expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. An OSP determination is not required to make a negligible impact finding. Section 101(a)(5)(C)(ii) of the Act clearly exempts the issuance of specific regulations from compliance with the formal rulemaking requirements of section 103 of the Act. The Congressional intent behind section 101(a)(5) was to alleviate conflicts, where the impacts are negligible, between activities (other than commercial fishing) that involve the incidental taking of marine mammals and the strict moratorium against taking. Even if walrus and polar bear populations were in decline, the test is whether the take allowed is "reasonably likely" to affect the population as a whole. Given the extremely small numbers of individuals likely to be taken, and the fact that the great majority of any takes may be no more than disturbance of an individual, such activity will not "reasonably likely" affect the population as a whole.

One commenter thought that because the scientific data indicate that the polar bear population is "stable" that the Service cannot issue incidental take regulations unless it is sure that incidental takes will not cause additional losses, particularly to females of reproductive age, because that would certainly have more than a negligible impact on the polar bear population. The Service wishes to point out that healthy marine mammal populations that have reached an equilibrium level usually experience fluctuations in population numbers within some normal range due to a variety of environmental and biological factors. Such fluctuations do not pose a risk to the stocks remaining within stable population limits. The Service believes that minimal impacts on a healthy stock caused by incidental taking can still be considered negligible if such taking does not cause the population to fluctuate beyond normal limits. Slight impacts on the stock resulting from incidental take do not qualify as "adverse effects" on annual rates of recruitment or survival if the population stock is maintained at essentially the same level. The petitioner, SWEPI, examined the distribution data for polar bears and determined that the dispersed nature of the population, as well as its tendency to be associated with heavy ice concentrations, lowers the likelihood that there will be many interactions between exploration operations and polar bears during "open water" activities. They predicted that it is unlikely that more than 10–5 polar bears will be taken by incidental disturbance as the result of exploratory operations in the Chukchi Sea during the 5 year period in which the regulations requested are in place. The petitioner does not anticipate any polar bear deaths and is not seeking authorization for polar bear mortalities. The petition contains no discussion of the possible necessity of shooting polar bears in order to protect human workers because the petitioner does not believe that any of SWEPI's operations will create a situation that could lead to human interaction with polar bears. Should an operator anticipate interactions, the Service recommends that a polar bear interaction plan be developed as a contingency for situations when workers may be on ice for brief periods. The Service has examined the available scientific evidence and concurs that the likelihood of incidental take of polar bears during the "open water" season is low and that the great majority of any takes may be no more than the minor disturbance of an individual; therefore, the effect of exploration activities on the population supports the determination of negligible impact.

Comment: The Service has failed to perform a true negligible impact analysis, which includes an evaluation of all impacts, including those which are indirect, direct and cumulative. The Service failed to perform a meaningful habitat impacts assessment prior to rendering its negligible impact finding and issuing the regulations.

Response: The Service disagrees with this assessment. The regulations and accompanying Environmental Assessment covered the full range of species' biological factors, including an assessment of indirect effects on habitat, behavioral patterns, breeding and feeding, subsistence harvest and management considerations. These factors largely determine rates of recruitment and survival. Although the 1986 Amendments to the Act deleted the reference to "habitat" from the determination of negligible impact, the stated reason for this change confirms that the effects on habitat remain important in the assessment of negligible impact:

> A minor impact upon a small segment of habitat might be found to be more than negligible under the prior standard, even if it has no impact upon the overall population utilizing the habitat. But it is also the case that populations could be affected adversely by actions that damage rookeries, mating grounds, feeding areas and areas of similar significance. The Secretary shall take those impacts into accounts [sic] when making a "negligible impact" determination under section 105(A)(5)(i) [sic]. Because these factors are to be taken into account, in making such a determination, subparagraph (a)(2)(A) of this section deletes the phrase "and its habitat" from subparagraph 5(A)(i) [sic] of the MMPA. 132 Cong. Rec. S16305 (Oct. 15, 1986).

The Service is well aware of its responsibilities to consider these factors when determining negligible impact, and impacts on habitat were part of the consideration in making the finding of negligible impact on the walrus and polar bear populations.

Oil Spills

Comment: Several commenters were concerned about the probability of an oil spill as a result of a blowout when an exploratory well is drilled. The predictions made by the MMS regarding the probabilities of a blowout were questioned. Commenters were concerned that the oil industry has not demonstrated it is capable of containing or cleaning up an oil spill in an environment such as offshore Alaska.

Response: The Service stands by its assessment that the probability of an oil spill from a blowout justifies a finding of negligible impact. The legislative history of the 1986 Amendments to the Act endorsed the use of a balancing approach to weigh the likelihood of occurrence against the severity of the potential impact:

> The degree of certainty of occurrence required in these judgments should be inversely proportional to the resultant harm to the overall population. 132 Cong. Rec. S16305 (Oct. 15, 1986).

The Service has applied this balancing test to the present petition. Since there has never been an oil spill resulting from a blowout at an exploratory well drilled on the U.S. Outer Continental Shelf (OCS), it is difficult to generate not only a statistical basis for predicting when and if such an event will occur, but what the consequences of such an event would be. While blowouts have occurred, they have been few in number and resulted in discharge of only water or gas.

The MMS requires companies operating anywhere in the Arctic region to satisfy operation requirements such as a Critical Operations and Curtailment Plan which describes how the operator will safely and promptly secure the well, disconnect from the wellhead, and move offsite if there are unfavorable operating conditions, and they must monitor ice, meteorological and oceanographic conditions. This plan must be approved by the MMS before the company will be given a permit to drill. Blowout prevention equipment must be installed and tested on each well. All personnel are required to complete a MMS-approved well control training program. The MMS inspects all exploratory operations in the Arctic region to ensure compliance with all regulations, orders, stipulations and conditions of approval of exploration plans and to see that no unnecessary risks are being taken by operators that would jeopardize the safety of the well or personnel, or increase the potential for blowouts or oil spills. The Service reviews and comments on contingency plans.

Comment: Several commenters asked that the regulations include the results of studies done in response to the Exxon Valdez oil spill in Prince William Sound.

Response: Reports with results from the actual studies are not yet available because of pending litigation. A summary of the studies has been released. However, it is only a description of the work that is being done and does not contain results. If new information becomes available from any source indicating that the effects may not be negligible, the Service will reevaluate its findings.

Definition of Take

Comment: Several commenters expressed confusion over the term "take." Some assumed a take always implies an injury or death. One commented that there was disagreement as to the level of disturbance which constitutes a take and that minor behavioral disturbances are not considered a take within the meaning of the Act.

Response: The term "take" as defined in 50 CFR 18.3 means to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal. It is true that proof of "take" need not involve a showing of death or physical injury. However, minor disturbances of marine mammals, expecially those that may occur in the absence of any negligence or intentional action by a person carrying out an otherwise lawful activity, may not constitute a "take."

Number of Animals Taken

Comment: The Service failed to find that only "small numbers" of walruses and polar bears would be taken as is independently required by section 101(a)(5)(A) of the Act. This commenter said that it is the Service's duty to estimate actual numbers of each species that may be taken and explain why its estimate is "small" within the context of a species' population.

Response: The regulations implementing the 1986 amendments to section 101(a)(5)(A) of the Act define "small numbers" to mean "a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock." (50 CFR 18.27(c)). The Service declines to prescribe actual numbers for taking levels. Such numerical limits do not take into account the effect of the type of taking such as harassment versus mortality. Congress recognized the imprecision of the term "small numbers," but "was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits." H.R. Rep. No. 228, 97th Cong. 1st Sess. 20 (1981).

According to implementing regulations found in 50 CFR 18.27(d), in order for the Service to consider allowing the taking of small numbers of marine mammals incidental to a specified activity, a written request shall include among other requirements, an estimate of the species and numbers of marine mammals likely to be taken by age, sex and reproductive conditions, and the type of taking and the number of times such taking is likely to occur. These regulations place on the applicant the burden to estimate the number and type of taking. The Service's responsibility is to evaluate the impacts resulting from the specified activity. If

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the Service makes certain findings, specific regulations will be issued that, among other things, establish permissible methods of taking and other means of effecting the least practicable adverse impact on the species.

In their petition, SWEPI estimated that the number of encounters with walruses in a given year will probably not exceed 200. Although no lethal takes are anticipated, the petitioner states that 20 or less lethal takes of walruses could occur during the 5 year term of the regulations. They predict that no more than 10–15 polar bears will be taken by incidental disturbance and no polar bear fatalities are anticipated. Lethal take of polar bears was not anticipated in the petition.

The Service presented the above estimates in the Environmental Assessment but did not include them in the proposed regulations. The estimates for incidental take have been included in the preamble to the Final Rule in order to present the magnitude of the take on which the Service is basing its finding of no negligible impact to walrus and polar bear populations.

In 1989 and 1990, SWEPI implemented a monitoring program in the Chukchi Sea to determine the effects of exploratory oil drilling operations on walruses and polar bears. Less than 1 percent of the Pacific walrus population passed near an active prospect during the 1990 monitoring program compared to approximately 2.5 percent during the 1989 program. Of the 24,889 walruses observed from aerial and vessel surveys in 1990, approximately 2 percent were encountered within 18.5 kilometers (km) of active prospects. In addition to walruses, 25 polar bears were observed in 1990 and 18 bears were observed in 1989 (Brueggeman et al. 1991). The Service has examined this evidence and determined that it supports the decision that exploratory activities in the Chukchi Sea will result in the taking of "small numbers" of walruses and polar bears and the total taking will have a negligible impact on those populations. Continued monitoring programs will help the Service assess this decision on an annual basis.

Another commenter asked what would happen if SWEPI went beyond their estimation of takes for walruses. If this situation occurred, the Service would reevaluate its finding of negligible impact. The implementing regulations in 50 CFR 18.27 provide authority to withdraw or suspend LOAs if the Service determines the regulations prescribed are not being substantially complied with; or the taking allowed is having, or may have, more than a negligible impact on the species or stock, or an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

Impact on Species

Comment: One commenter was concerned that the number of helicopter flights would cause excessive walrus calf mortality. They thought the Service should impose operating restrictions, such as no more than two helicopter trips per week if the ice edge was between the prospect and the land. Another commenter noted that all of the cases of walrus stampede behavior resulting in direct fatalities have taken place while walruses were hauled out on shore, not ice.

Response: While it is true that all known cases of walrus stampede behavior resulting in direct fatalities due to trampling have taken place while walruses were hauled out on shore, it is not true that stampedes on ice do not cause fatalities. Dependent calves left on the ice after a stampede or separated from their mothers in the confusion may be abandoned and die. Fay et al. (1984) documented approximately 300 groups of walruses on the ice that reacted to the approach of a ship and went into the water. In three of those groups a calf was left behind and was not retrieved. In one instance a calf was captured by a bear when the group went into the water.

Guidelines for eliminating or minimizing harassment due to helicopter and boat traffic are included by the MMS in their Information to Lessees (ITL) clause (e) for Chukchi Sea Lease Sale 109. The LOAs will carry protective stipulations similar to ITL (e) guidelines. The Service believes that these protective stipulations will negate the need to limit to two the number of helicopter trips per week as was suggested by the commenter.

Comment: One commenter felt that since regulations were being developed for the open water season that polar bears would not be affected by noise nor would it be likely that a significant number of polar bears would be affected if a spill were to occur.

Response: The open water season does not preclude the presence of ice or the presence of polar bears. Bears are good swimmers and have been seen far from ice or land. Spilled oil that comes in contact with ice could remain through the winter and contaminate bears and their prey. Noise is probably a factor in attracting curious bears to sites of human activity. This attraction can prove detrimental to bears when human-bear interactions occur.

Comment: One commenter believed the proposed action would violate the intent of the 1976 International Agreement on the Conservation of Polar Bears.

Response: This Final Rule is authorized by section 101(a)(5) of the Act. While the Service is not aware of any conflict between the 1976 Agreement and this Final Rule, it should be noted that the 1976 Agreement is not self-executing, and Congress has not implemented the 1976 Agreement under section 101(a) of the Act. Therefore, even if a conflict existed, such would not be an impediment to the issuance of this Final Rule. Nevertheless, the Service, as the resource agency responsible for polar bears, intends to ensure that polar bear habitat remains healthy and intact. The Service will guide and evaluate monitoring programs that will report the effects of activity on polar bears. The analysis of these monitoring reports may result in the modification of regulations or the conditions of operation, as necessary, to assure that the activity is having no more than a negligible effect upon polar bear rates of recruitment and survival. The Service may suspend or withdraw authorization for incidental take if monitoring programs indicate that the taking is having a greater than negligible effect on the population.

Comment: One commenter was concerned that seasonal restrictions did not protect the walrus nursery herds congregated at the ice edge throughout the summer months. Furthermore, they recommended that the operator be required to shut down if ice encroaches within 15 miles of a prospect and the operator should be required to move to an ice-free prospect until the edge retreats.

Response: The spring lead restriction was designed to protect the nursery herds during the spring migration when the calves are very young and cow-calf pair movements might be restricted by ice cover. Once the ice has opened up, the walrus are much less restricted in their movements. Localized icebreaker activity within the summer range of walruses during the open water season should not affect their ability to move away from the disturbance. Evidence cited by Brueggeman et al. (1990) showed that walruses moved deeper into the pack ice to avoid icebreaking activity. This does not displace them to a habitat they do not normally use in the summer. On the Chukchi summering grounds most walruses are found within 20 km of the southern ice edge (Fay et al. 1984b). The Service finds this recommendation unduly restrictive; if information in the future shows that such a condition is warranted, the Service will reconsider it.

Comment: Several commenters were concerned about the impact of drilling muds. One commenter stated that disposal of toxic drilling wastes poses a grave threat to arctic benthic communities and consequently to walrus. Based on the deficiency of information on the behavior, impacts and persistence of drilling wastes in arctic marine waters, and perfunctory understanding of important walrus habitats, they thought the Service's dismissal of this issue was completely unwarranted. Another commenter wanted to see industry remove drilling mud, cuttings, and other toxic elements that will be discharged. They were concerned about reduction in prey from contaminants and heavy metal accumulation in walrus. The Marine Mammal Commission (MMC) expressed concern that toxic substances in drilling muds and oil released into the environment in certain areas could contaminate the benthic fauna eaten by walrus, be accumulated in walrus, and pose a health hazard to Alaska Natives who eat walrus. The MMC recommended an assessment of the levels and trends of potentially hazardous contaminants in benthic fauna and walrus taken by Alaska Natives for subsistence purposes.

Response: The Environmental Protection Agency (EPA) regulates offshore drilling discharges through the issuance of National Pollutant Discharge Elimination System (NPDES) permits. The EPA establishes toxicity limits for effluent discharges offshore and prohibits the discharge of those effluent streams that exceed the established limits. The NPDES permits issued by EPA for arctic operations have special discharge limitations based on water depth and environmentally sensitive areas, monitoring, testing and reporting requirements, and special seasonal requirements and restrictions based on open-water and varying ice conditions.

Information is available on the effects of drilling muds and cuttings in arctic waters. A report titled, "Drilling Discharges in the Marine Environment," was compiled by the National Research Council's Marine Board (1983) to assess the fates and effects of drilling fluids in the marine environment. The document discusses the fates and effects issue in depth, and presents a comprehensive list of references used by the panel in compiling the report. A recent book, entitled Drilling Wastes (Engelhardt et al. 1989), includes a report on the localized, temporary accumulation of drilling muds discharged from man-made islands in the Canadian Beaufort Sea and a report on the lowered bioavailability of the metals in drilling mud barite. The EPA proposed new source-performance standards for the offshore oil and gas industry (56 FR 10664), partly because much new information has been collected regarding waste characterization, industrial practices, and environmental effects, and other associated areas.

As described in the draft Environmental Assessment for the proposed rule on incidental take, the disposal of wastes may affect the benthic communities. The Environmental Assessment concludes that this effect will be negligible, because discharges will occur only in very localized areas for temporary periods. Effects would be primarily from burial in the immediate vicinity of the drilling location. There also could be negligible effects to benthic feeders, such as walruses, from the bioaccumulation of contaminants (heavy metals) in the discharged muds and cuttings. The EPA has placed restrictions on the amount of mercury and cadmium in barite, a major constituent of drilling muds, that reduces the availability of these contaminants to the benthic communities and feeders.

Up to seven exploratory wells could be drilled in any given year in the Chukchi Sea, as projected in the MMS Environmental Impact Statements for Chukchi Sea Oil and Gas Lease Sales 109 and 126 (USDI 1987, 1990b). These documents present estimates on the maximum amount of drilling muds and cuttings that would be released from exploration drilling in a given year. The EPA (1990) estimated that discharges from exploratory drilling would not exceed applicable water-quality criteria outside of a 100-meter radius (or 0.03 square kilometers) around each discharge site in the Chukchi Sea exploration area. The MMS estimates that the drilling of all exploration, delineation and production wells will temporarily affect less than 1 percent of the benthic prey available to walruses in the sale area. This information confirms the Service's finding that the impacts from disposal of drilling muds and cuttings are negligible.

Impact on Subsistence Uses

Comment: The Service's finding that the proposed oil and gas exploration activities will not have an unmitigable adverse effect on subsistence uses is not supported by the record. Banning the takings during the spring migration does not provide support for the "no unmitigable adverse impact" finding. The submittal of a Plan of Cooperation does not ensure that adverse impacts will be mitigated. Finally, the lack of specific information concerning the impact of the proposed oil and gas exploratory activities upon subsistence uses precludes this finding.

Response: To determine that an unmitigable adverse impact on subsistence uses exists, two elements must be present. First, the impact resulting from the specified activity must be likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (1) causing the marine mammals to abandon or avoid hunting areas, (2) directly displacing subsistence users, or (3) placing physical barriers between the marine mammals and subsistence hunters. Second, it must be an impact that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. This standard of determining impact does not require the elimination of adverse impacts, only mitigation sufficient to meet subsistence requirements. The 1900 amendments to the Act require that the specific regulations governing an activity include measures to ensure the least practicable adverse impact on the availability of marine mammals for subsistence uses. To that end the regulations require companies that are conducting the specified activity to prepare a plan of cooperation when submitting their request for a LOA.

The plan of cooperation states how the operator will work with affected Native communities and what will be done to avoid interference with subsistence hunting. The intent of the plan is to encourage those conducting the specified activity and the affected subsistence users to meet and develop mutually agreeable conditions which satisfy the needs of the activity and the requirements of subsistence users. This means that the Alaska Native communities will be brought into the planning process as early as possible. The Service will review the plan to determine if it is sufficient to avoid interference with the availability of walruses and polar bears for subsistence uses or to ensure that any adverse effects are properly mitigated. The plan must be approved before a LOA is issued; clarifying language to this effect has been added to this Final Rule in § 18.116, "Measures to ensure availability of species for subsistence." Added to this section is the provision that states: "The plan must be approved by the Service's Alaska Regional Director."

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The prohibition for incidental take during the period in which walruses are migrating through the spring lead was developed to protect the nursery herds during the spring migration when the calves are very young and cow-calf pair movements might be restricted by ice cover. Protecting walruses during the time they are especially vulnerable to disturbance will help ensure that they will continue to be available to those subsistence users in Chukchi Sea communities. This condition received widespread support from Native organizations, the State of Alaska and from the public at community meetings. Many comments were received requesting that the provision that would allow taking prior to June 15 be deleted in order to protect subsistence. The State summed up the general tone of the comments by stating "(h)owever, in some places the notice indicates that taking may begin prior to June 15 if the FWS has concluded that the lead system is not identifiably intact. The way this is presented is confusing and confounds the assessment of probable impacts, especially for subsistence. For example, in a year with very light ice cover and an early breakup the lead might be determined to be no longer intact on June 1. If exploratory activities began on that date, impacts on subsistence at villages such as Point Hope could be major and perhaps unmitigable. The provision that would allow taking prior to June 15 should be deleted." The Service agrees and the rule has been changed to reflect this. Further discussion regarding effective dates is found in the response to comments on seasonal dates.

Specifying the number of animals avoiding or abandoning an area that would constitute an adverse impact is difficult. If appropriate and feasible, such standards will be established during the development of a LOA when the Service has received information on specific location and activity from the operator, as well as heard the concerns of the subsistence users. Since the standards would vary depending on the type of exploration activity and precise geographic location, they are not appropriate to these regulations.

Speculative Impacts

Comment: Varying comments were received regarding the issue of how speculative impacts should be treated in determining negligible impact. One commenter argued that speculative or conjectural effects should not be considered in evaluating impacts and that they should be eliminated. However, other commenters concerned about the limited data on the population dynamics of polar bears and walruses, thought that the Service should be cautious and consider all speculative impacts as well as information on other marine mammal species that might apply to walruses and polar bears.

Response: The Service concurs that caution should be employed when presenting those impacts that might be speculative or conjectural. However, a balancing test must be used:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determinations will be made based on the best available scientific information. 53 FR at 8474; accord, 132 Cong. Rec. S16305 (Oct. 15, 1986).

The Service recognizes the problems that exist between development interests and wildlife resource interests when analysis of negligible impacts includes impacts that might be speculative in nature. To resolve this difficult situation, the legislative history of the Act's 1986 Amendments endorsed the use of a balancing approach to weigh the likelihood of occurrence against the severity of the potential impact:

> The degree of certainty of occurrence required in these judgments should be inversely proportional to the resultant harm to the overall population. 132 Cong. Rec. S16305 (Oct. 15, 1986).

In applying this balancing test, the Service will continue to look at all possible impacts, both documented and speculative.

Level of Activity

Comment: The estimated level of activity, such as how many drill sites, the amount of support vessels, and the number of trackline miles covered during seismic exploration was taken from environmental impact statements issued by the MMS in connection with OCS lease sales in the Chukchi Sea. In their response to the Proposed Rule, the petitioners stated that the estimated levels of activity were too high for drilling activity, but too low for seismic activity. They stated that the Proposed Rule suggests that "as many as seven" wells might be drilled in any given year and that this is a misleading picture of the actual anticipated level of activity. At present, they stated that there are only four floating drilling units available for use in arctic conditions. Each of these units generally requires at least two ice-breakers during operations. Further, it is not likely that any more than two floating drilling units will operate simultaneously during any drilling season in the foreseeable future. Absent extremely unlikely developments, the petitioner predicts that it is virtually impossible for more than the four extant units to operate at any given time and at present, there are only two mobile, bottom-founded units available. The petitioner commented that while it may be theoretically possible for as many as six rigs of all types to operate during the same period, it is unlikely.

Conversely, the petitioners believe the estimates for seismic exploration were probably too low since they do not account for "3–D" surveys conducted in connection with exploratory drilling. The concern that seismic estimates were too low also was echoed by two other commenters.

Response: The statement in the Description of Activity from the Proposed Rule says that "(a)s few as two or as many as seven drilling units could be working in any given year in the Chukchi Sea." Seven drilling units are under the high-case assumption found in the MMS's Final Environmental Impact Statement for Lease Sale 109. The Service agrees that this number is high and unlikely to occur within the next five years. Only three floating drilling units currently are certified for U.S. operations, and no additional units are expected to become available during the next five years. However, in determining impact, the Service must evaluate the "total taking" expected from the specified activity in a specific geographic area. The applicant's anticipated taking from its own activities is only one part of the story; the total takings expected from all persons conducting the activities to be covered by the regulations must be determined. (54 FR 40342, September 29, 1989). To best assess the issue of total taking, the Service looked at the high-case estimates provided for in Lease Sale 109. The Service agrees that it is unlikely that seven drilling units would be working in the Chukchi Sea in one year but two to seven units is a reasonable range to use to meet the Service's responsibility for examining total taking. Therefore, the Service will continue to use those levels estimated in the proposed rulemaking as the basis for its findings.

The Service has revised the discussion of the estimated level of

seismic surveys that will be conducted in the Chukchi Sea. The proposed rule presented the estimates for the shallow-hazard surveys but did not include the estimates for 3–D or deep penetration seismic surveys that occur after an exploratory well is drilled. The MMS estimated the extent of shallow-hazard seismic surveys for Chukchi Sea Lease Sale 109 at 7,979 trackline kilometers over the life of the lease. An additional 8,783 trackline kilometers of 3–D and deep penetration seismic data have been estimated to occur after the initial exploratory drilling in the Lease Sale 109 area (USDI 1987). The estimate for shallow-hazard surveys for Chukchi Sea Lease Sale 126 was 7,055 trackline kilometers for the base case with an additional 10,329 trackline kilometers of 3–D and deep penetration surveys (USDI 1990b). Although the trackline kilometer estimates for Lease Sales 109 and 126 are not entirely independent, the amount of overlap is difficult to calculate; therefore, for the purpose of this rule the Service will consider the estimates independent and thus additive. The estimated total of shallow-hazard surveys for the Chukchi Sea for the life of the leases is 15,034 trackline kilometers and that of 3–D and deep penetration is 19,112 trackline kilometers. The Environmental Assessment has been revised to reflect these changes. The Service has reexamined this new information and concluded that the "additive" impacts resulting from the additional activity will have a negligible effect on walruses and polar bears because seismic activity requires open water conditions that would normally preclude the presence of these species. Therefore, although there are additional trackline estimates, the Service believes that the impacts to walrus and polar bear populations resulting from the additional activity will continue to meet the negligible impact standard as defined in 50 CFR 18.27(c). However, as new information is developed through monitoring, reporting or research of the activities, the regulations may be modified, in whole or part, after notice and opportunity for public review.

Effective Dates

Comment: Many comments were received regarding the time period in which incidental take will be authorized. Most of the commenters were in support of the spring lead restriction and did not want to see any authorization before at least June 15. One commenter thought the proposed rule unnecessarily restricts the time period during which incidental take will be allowed, particularly the end date of October 15, even with extensions. They argued that restricting incidental take authorization after October 15 will not reduce effects on subsistence activities or availability of resources. Another commenter wanted to know why the fall migration did not deserve as much protection as the spring migration.

Response: Under section 101(a)(5) of the Act, the Service can allow the taking of small numbers of marine mammals incidental to a specified activity (other than commercial fishing) within a specified geographical area. For the Service to consider allowing an incidental taking, a written request for specific regulations must be submitted to the Service containing detailed information on the activity as a whole and impacts of the total potential take. The Service evaluates the impacts resulting from the activities. In this case the applicant, SWEPI, petitioned the Service for specific regulations during oil and gas exploration during the open water season in the Chukchi Sea. By implementing regulations to the Act, the Service is directed to determine if the taking will have a negligible impact on marine mammal populations and will not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses. The Service's analysis is bound by the request; in other words, the Service cannot assess impacts for exploration year round nor could it establish regulations for the Beaufort Sea because that is outside the range of the petitioner's request. The Service must respond to the scope of the petition for promulgation of regulations as it is presented.

Therefore, it is necessary to define when the open water season exists so that impacts can be analyzed for that time period and so that operators know during what time period authorization for incidental take will be issued. There is general agreement that the open water season is that period when sea ice does not cover the Chukchi Sea. The open water season, which is assumed to be represented by a 90-day drilling or operating period, (USDI 1990) usually occurs between June 15 and October 15. However, the end date can vary considerably from year to year.

It is not the Service's intent to be restrictive, without justification to resource or subsistence values. The Service agrees, after examining the existing information, that restricting incidental take permits after October 15 will not reduce effects on subsistence activities or availability of resources. However, the Service has a responsibility to prohibit authorizations outside the time period for which they have examined the scientific information and made a decision regarding negligible impact. The impact of activities to polar bears past November has not been examined or determined. Operations planned or conducted past the "open-water season" would be beyond the scope of this rule-making. Any taking, other than that specifically allowed by regulation, is a violation of the Act and subject to possible enforcement action. For this reason, it is to all parties' interest to define as fairly as possible when incidental take authorizations are to be in effect.

The Service has made the following decisions regarding the effective dates of the regulations. The regulations are effective for exploration activities during the open-water season which will be defined as that period from June 15 to November 30. Under the *optimal* melt-back conditions, a significant area of ice-free water (20 percent or more) can appear in the Chukchi Sea starting as early as the third week in June and persisting as late as the third week in November (Stringer and Groves 1985). Each year the Service will determine when the spring migration of walrus is no longer dependent on the spring lead system in the Chukchi Sea, and will notify the exploration companies and the Native communities when it has made this determination. In some years this date may be after June 15. For those years when ice conditions warrant continuing exploration activities past mid-October, closer cooperation will be required between the operator and the Service regarding the ice conditions, and walrus and polar bear encounters.

Each year the Service will use satellite photos of the spring lead system, consultations with the village of Point Hope, and aerial reconnaissance to determine when LOAs will become effective. Prior to the effective date, any activity within the spring lead system remains subject to the taking prohibitions of the Act. The Service did not determine that the fall migration of walruses required the same degree of protection as the spring migration. The fall migration of walruses occurs under different ice conditions. By October, in most years, new ice formation causes rapid southward advances of the pack ice. Walruses begin their migration southward at this time as well, however, they migrate mainly ahead of the ice. Therefore, their fall movements are not restricted by lead systems within the ice in that way that they are in the spring. In addition, the calves are older and have a layer of blubber for insulation

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and so are capable of remaining in the water for much longer durations.

Comment: One commenter thought that it would be less than equitable if vessel traffic associated with oil and gas exploration were restricted during a period when other vessel traffic was allowed to operate in an unrestricted manner. If the Service is concerned that oil and gas exploratory activities may be staged utilizing ice-breaker led barge trains through the Chukchi Sea during a period when active ice breaking activity is required, the final rule should narrow its conditions to so state.

Response: It is not the Service's intent to undertake vessel traffic regulation. However, the Service must evaluate all impacts from the specified activity, whether they involve threats from vessel traffic, oil spills, sludge, drilling noise or other impacts. The "total taking" anticipated from the specified activity must pass the negligible impact test. 50 CFR 18.27(d)(3). Impacts from "contemporaneous" activities must also be considered (54 FR 40342, September 29, 1989). Therefore, although the Service does not regulate vessel traffic, navigation connected with oil and gas activities may, in certain instances, need to be restricted or conditioned in order to reach the negligible impact finding. In such a case, it would be the petitioners for the incidental take regulations who agree to such conditions in order to receive the incidental take authorization under section 101(a)(5) of the Act. The Service would not be directly regulating navigation, but would instead be regulating the taking of marine mammals by enforcing terms and conditions necessary to keep those takings at a negligible level. In this case, the spring lead restriction was designed to protect walruses and subsistence activities. The Service is concerned that oil and gas exploration in the Chukchi Sea will increase vessel traffic in the spring lead system when ice conditions may restrict walruses' ability to avoid the vessels. The Service declines to narrow the conditions and believes our position is clearly stated in the Final Rule. The Service has defined the time of year and conditions under which incidental takes will be allowed and reiterates there that prior to the effective date, any activity within the spring lead system will be subject to the taking prohibitions of the Act.

Monitoring and Reporting

Comment: Many comments were received regarding the monitoring and reporting requirement. One commenter stated that the objectives found in the Environmental Assessment went far beyond what might be legally or realistically expected of holders of LOAs. This commenter thought that a number of objectives involved research into the basic biology of the species and that much of this work is unrelated to the mandate that an applicant monitor the effects of exploration activities on walruses and polar bears. Another commenter stated that the legal required focus of monitoring is observable effects of the activities on walruses and/or polar bears while the activities are being conducted. He further stated that how "FWS will use such observational data to assess long-term or cumulative effects is an issue separate and apart from the basic monitoring requirement." However, he also commented that basic biological research should be encouraged or required only when it is essential to assess the effects of specific activities covered by a LOA. Another commenter reasoned that because the Service concluded that exploration activities will not have a more than negligible effect, then there is not a need for extensive monitoring of "long-term effects" or "regional and population levels."this commenter thought that the objectives should focus on whether there is a change in distribution of walruses and polar bears which is attributable to oil and gas exploration and to document the number of interactions between walruses and polar bears and oil and gas activities.

The MMC thought that it was not clear whether monitoring programs will be adequate to accurately determine the levels or manner of take, or the estimated levels of authorized activities. Without this they questioned whether the Service would have sufficient information to confirm that the authorized activities are having no more than a negligible impact. They recommended that any site-specific monitoring be accompanied by long-term monitoring programs to verify predicted effects and to detect any unforeseen effects of exploration on the distribution, abundance and productivity of marine mammals. The MMC also recommended that before issuing LOAs, the Service consult with the Alaska Department of Fish and Game and its own scientists to assess the adequacy of the existing database and programs to monitor the status of walrus and polar bear populations and, as necessary, design and implement additional programs to verify the predicted effects and detect any unforeseen effects of oil and gas exploratory activities on the distribution, abundance and productivity of those populations and their availability for subsistence use. An additional recommendation was to revise the proposed rule to reflect the distinction between the goals, objectives and primary tasks of site-specific and long-term population monitoring programs, and that the Service develop and provide to applicants specific guidelines for the design and implementation of monitoring programs.

The State also commented on the need for guidelines. They pointed out that it is important for monitoring programs to be properly designed and conducted. They recommended that applicants for LOAs be provided guidelines for monitoring program design, such as those the State has provided to SWEPI or those recently produced by the National Marine Fisheries Service. The North Slope Borough also suggested adopting these guidelines, especially the one criterion that states there is a need for monitoring disturbance and behavior before, during and after exposure to an activity to allow for comparing a control versus an impact area.

A few commenters felt that the proposed rule did not sufficiently detail the monitoring and reporting requirements and that it was not sufficient to say that applicants meet these requirements during the LOA process. Several people, particularly at the public meetings, urged the Service to ensure quality control in the monitoring design and proper peer review of the design and conclusions of the study. The MMC suggested that the Service and/or the applicants consider convening a "Quality Review Board" to provide review and recommendations for improving monitoring plan design, interpretation of results, and identification of data gaps and additional information needs. One commenter pointed out a need for synthesizing monitoring studies. Another recommendation was to require the monitoring plans to include a summary of the major results of previous monitoring and then establish new objectives. Another commenter disagreed with the statement in the rule that "(t)he Service also would coordinate with other agencies that require monitoring programs . . . to avoid duplication of data * * *".

Response: One of the primary purposes for the adoption of the Act was protecting and encouraging the growth of marine mammal populations to the greatest extent feasible commensurate with sound policies of resource management. Experience with the Act in the ensuing years served to identify certain problems associated with its implementation that warranted attention. It was determined that a number of improvements were needed and these issues were considered by the Congress during reauthorization of the Act in 1981. The resulting reauthorization and amendment of the Act left intact its basic protective philosophy and provisions while clarifying certain definitions and provisions and modifying others to facilitate management efforts by Federal and State agencies. A significant addition was section 101(a)(5) which was established to govern other non-fishing-related types of incidental taking of marine mammals such as those associated with OCS exploration and development. The Secretary of the Interior is directed, among other things, to prescribe regulations pertaining to the monitoring and reporting of such taking. The inference of the requirement is that monitoring and reporting is required to help enable the Secretary to make the decision that the total taking during the specified time period will have a negligible impact on the species or stock. There is evidence that reducing the impacts of incidental take was also the intent of the monitoring and reporting requirement. In the House Report on a section by section analysis of the 1981 Amendments, Congress pointed out:

> Further, the Committee expects that persons operating under the authority of section 101(a)(5) shall engage in appropriate research designed to reduce the incidental taking of marine mammals pursuant to the specific activity concerned. H.R. Rep. No. 228, 97th Cong., 1st Sess. 20 (1981).

The Service believes it is the responsibility of the applicant to provide the required information and to demonstrate negligible impact since the applicant is requesting authority to take marine mammals and is the beneficiary of such authority.

In §§ 18.27(d) (vii) and (viii) (that deal with suggested means of mitigating and monitoring impacts) of the implementing regulations for section 101(a)(5) of the Act, the Service further spells out what information an applicant should expect to provide in an application for specific regulations. Sections 18.27(d) (vii) and (viii) require the applicant to provide:

> Suggested means of accomplishing the necessary monitoring and reporting which will result in increased knowledge of the species through an analysis of the level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity; and (viii) Suggested means of learning of, encouraging, and coordinating research opportunities, plans and activities relating to reducing such incidental taking from such specified activities, and evaluating its effects. 50 CFR 18.27(d).

These implementing regulations were developed to reflect the intent of Congress when it amended the Act with section 101(a)(5). The Service believes that the objectives for monitoring presented in the Environmental Assessment and the Proposed Rule are within the guidance presented in the administrative record described above.

Because of the apparent confusion regarding the monitoring requirement, the Service will attempt to clarify the issue. A plan for monitoring the effects of exploration on walruses and polar bears will be required of all applicants requesting a LOA. The requirements for monitoring are likely to vary depending on the activity and the location. For example, a monitoring program that might be required of an operator planning exploratory activity from a drillship with accompanying ice-management and resupply activity will be different than the requirements of an operator planning a seismic data collection program. Activities that are not in areas known for the presence of walruses or polar bears will require far less extensive monitoring plans. For this reason it is not appropriate to put specific monitoring guidelines in the regulations. Applicants are strongly urged to develop plans in cooperation with the Service as early as possible.

The reason monitoring plans are stipulated in the Act is to ensure that the scientific basis for the "negligible impact" finding for species and the "no unmitigable adverse impact on the availability of such species for subsistence uses" finding can be verified as the activities proceed. To that effect the primary objective of monitoring is to determine the accuracy of the Service's earlier findings on the direct, indirect and cumulative effects of offshore oil and gas exploration activities on the survival and productivity of these species.

The basic elements of the monitoring programs will be to determine and report when, where, how and how many marine mammals, by species, age/size and sex are taken in the course of authorized exploration activities so as to verify the nature and level of take. Longer-term population monitoring programs must be developed to detect possible changes and trends in abundance, distribution and productivity of populations of affected species to confirm that the effects of the observed take continue to be negligible. Programs which are developed to address some basic biological questions necessary for understanding the relationships between exploratory activity and the species' needs are not necessarily the responsibility of the applicant.

The operator has a responsibility through monitoring to verify that authorized activities have negligible effects. The Department of the Interior's MMS is responsible for identifying adverse effects of OCS exploration and development in offshore water beyond State jurisdiction. The Service is responsible, under the Act, for assessing that incidental taking will have a negligible impact on walrus and polar bear populations and will not have an unmitigable adverse impact on the availability of the species for subsistence uses. The Outer Continental Shelf Lands Act, as amended, authorizes MMS to conduct environmental monitoring studies, including post-leasing studies, "in order to establish information needed for assessment and management of environmental impacts on the human, marine, and coastal environments of the Outer Continental Shelf and the coastal areas which may be affected * * *" and "in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes." (43 U.S.C. 1346 (a)(1), (b)). The Service declines at this point to define specifically what information gathering should be assigned to which entity, believing instead that flexibility within the bounds of the law is in the interest of all parties.

Monitoring methods which may be used include, but are not limited to, aerial surveys, shipboard observations, acoustic studies and monitoring radio-tagged walruses and polar bears in the vicinity of the drill sites.

Monitoring programs will be reviewed annually and monitoring plans may be modified from year to year. The Service strongly concurs with those commenters who suggested that peer review would enhance monitoring plan designs as well as interpretation of results. The Service will make every effort to see that peer review is built into the LOA process.

As a result of comments, the Service has included in reporting stipulations in § 18.117(f) the provision that the Holder of a LOA and the Service shall meet and discuss the report each year. It was also added that the report must include a summary of the results from previous

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monitoring studies conducted by the LOA Holder. This will help ensure synthesis of data from year to year.

Regarding the comment on duplication of data, the commenter was correct in saying that there is nothing wrong with a study being duplicated. However, the Sevice was referring to the possible unnecessary duplication of effort and data at the same exploration site, in the same season. For example, the National Marine Fisheries Service might require aerial surveys of whales and seals and the Service might require aerial surveys for walruses and polar bears. The Service would facilitate coordinating these surveys so that a separate plane is not needed for each monitoring program. Where more than one operator might be operating in adjacent survey areas, the Service would attempt to ensure that these operators were not duplicating efforts and providing the same data. The wording in the Environmental Assessment has been changed to more clearly state this intent.

Comment: Several persons commented on the language regarding observers in § 18.117 of the proposed rule. One commenter pointed out that proposed § 18.117(b) requires that "a qualified individual" be designated to observe the possible effects of the activity on walruses and polar bears, while proposed § 18.117(c) states that "(a) biologist approved by the * * * (Regional) Director should observe the behavior of these marine mammals to determine if they are being affected." This commenter thought that it might appear that only a biologist will qualify as an observer and that such a requirement is too rigid and unnecessary. Another commenter wanted to see only Service biologists involved in monitoring. Another stated that short-term anecdotal observations by industry observers does not constitute adequate standards for a monitoring program.

Response: The Service wishes to retain flexibility on the determination of who constitutes a qualified observer. The Service agrees that in some situations or locations the observer might not need to be a biologist. The Service reserves the right to determine who is qualified to conduct the required monitoring program and has revised § 18.117(b) and § 18.117(c) to eliminate redundancy and to be consistent in the language requiring a qualified observer approved by the Service.

Comment: One commenter thought that a required polar bear awareness and interaction plan, found in § 18.117(d) is not appropriate for these regulations because the specified activity is confined to "open water" exploration while the required plan would be for on-ice activities. Another commenter thought this section should be expanded to include more than on-ice activities in which a polar bear could gain access to the working surface. They pointed out that although it appears that most of the exploration will probably occur from drillships, the potential still exists to use artificial islands or other bottom founded structures that can be accessed by bears.

Response: As it is explained in other places in this document, the open water season does not preclude the presence of ice or the presence of polar bears. The purpose of the plans is to insure that lease operators identify and take steps as appropriate to avoid or minimize encounters with bears and to respond in ways which will minimize possible adverse impacts on both bears and people in the event that encounters do occur. This requirement serves to protect both polar bears and humans. It does not present an undue burden on the operator because if there is not a possibility of bear-human encounters there is not a necessity for preparing an interaction plan. The MMC convened a workshop in January 1989 to address concerns about the effects of increasing human activity in the Arctic region on polar bears and their habitat. The requirement under discussion is a result of recommendations that came out of this workshop. In addition, the MMC, in comments to the Proposed Rule, recommended that the Service require operators to record and report all sightings of, and interactions with, polar bears that occur at or near exploratory drilling sites, geophysical survey sites, or at the location of other support activities. The Service intends to require such conditions in the monitoring programs which are part of the LOA process.

The Service has changed the wording of § 18.117(d) in this Final Rule to clarify its intent and to reflect the concern of the commenters. This section now reads, "If the applicant plans any activities that may occur on drifting ice present during the open water season or will be drilling from a structure on which a polar bear could gain access to the working surface, the operator must develop a polar bear safety program and interaction plan."

Letters of Authorization

Comment: Several commenters took exception to the wording in § 18.118(a) of the proposed regulations which read, in part, that "(e)ach person or entity conducting an exploratory activity in the geographical area described in § 18.111 must apply for a Letter of Authorization for each geophysical survey and each drilling operation." Commenters thought that the mandatory nature of the wording was incorrect and that the person or entity must make the decision about whether to seek a LOA. In addition, one commenter thought the language could be construed to require a LOA as a precondition to conducting exploratory activities—a requirement which goes beyond the Service's authority under the Act.

Response: The Service agrees that the Act does not require an operator to have a permit before drilling but prohibits the operator from "taking" marine mammals without a LOA and provides sanctions if unpermitted takings occur. There is no requirement that an operator obtain incidental take authority if a take is unlikely. However, if any marine mammals are taken incidental to operations, the operator is potentially liable for violations of the Act. Congress intended the phrase "incidental, but not intentional" to mean accidental taking. Furthermore, the words "not intentional" should not be read to mean that persons who know there is some possibility of taking marine mammals incidental to other specified activities are precluded from proceeding under the authority of section 101(a)(5). H.R. Rep. No. 228, 97th Cong., 1st Sess. 20 (1981). The rule does not authorize oil exploration activities but authorizes the taking of marine mammals incidental to such activities. The Service revised the language of § 18.118(a) to reflect the distinction that an operator has the discretion to determine whether there is a likelihood of incidental take and therefore a need for a LOA. The language is revised to read: "(T)o obtain authorization for an incidental take of walruses or polar bears pursuant to these obligations, each person or entity conducting an exploratory activity in the geographical area described in § 18.111 must apply for a Letter of Authorization for each geophysical survey and each drilling operation."

Comment: One commenter suggested that the regulations should provide for additional modifications of LOAs as an alternative to withdrawal or suspension. In particular, it was suggested that the language in § 18.115 be changed to read, "Depending on the results of the evaluation, the Service could add, reduce, or eliminate conditions to the authorization or withdraw or suspend it."

Response: The Service concurs and has made the suggested changes to § 18.115.

Comment: One commenter stated that the rule should require applicants to record and report the nature and level of activities actually undertaken. They went on to say that this requirement should be a function of monitoring plans.

Response: Applicants are required when applying for a LOA to include a description of the activity including the method to be used, the dates and duration of the activity, the specific location of the activity and the estimated area that will actually be affected by the exploratory activity. This requirement is found in § 18.118(b)(3). It may be determined that a description of the activity is also appropriate in the monitoring plans.

Comments: One commenter pointed out that directions in § 18.118(a) of the Proposed Rule instructing applicants to send requests for LOAs to the Alaska Regional Director are inconsistent with the directions in 50 CFR 18.27(f) that require submittal of LOA requests to the Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Response: The Service agrees that this creates confusion for the applicant and the agency. In order to clarify this point, the Service will modify 50 CFR 18.27(f) to read, in part, that "Requests for Letters of Authorization shall be submitted to the Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, unless otherwise directed in the specific regulations."

Geographical Boundaries

Comment: As defined by the Proposed Rule, the specified activity of "oil and gas exploration activities" is much too broad and the geographical area of the Chukchi Sea is too large.

Response: It was the intent of Congress that both the specified activity and the specified region be narrowly identified so that the anticipated effects would be substantially similar. The Service believes the boundaries of the Chukchi Sea, as defined in these regulations, include similar characteristics both biological and otherwise, that make it an appropriate identification. Oil and gas exploration activities have been specifically defined in the rule and the LOA process requires detailed descriptions of activities and locations. Since individual operators must request a seperate LOA that includes a requirement for a specific monitoring plan and a specific plan for cooperation with Native communities, the Service will have the opportunity to review and analyze each activity on its own merit in a more limited geographical area.

Permissible Taking

Comment: One commenter thought that the definition of "permissible taking" should not include unpermitted discharges of oil, physical obstruction or shooting.

Response: The Service disagrees with the first point made by this commenter that take from oil spills should not be allowed. The Service does not mean to convey the idea that it condones taking of walruses and polar bears by oil spills. However, it must be recognized that the Service, in evaluating a request for incidental take regulations under section 101(a)(5) of the Act, must examine the total taking that may result incidental to the specified activity. 50 CFR 18.27(d)(3). If that level of total taking will have a negligible impact on the marine mammal species or stock (and if such taking will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses), then the specified activity is eligible for the incidental take exception of section 101(a)(5) so long as the conditions promulgated by the Service are followed. The Service's role under section 101(a)(5) is not to redefine the specified activity; rather, it is to evaluate the total taking anticipated from that activity to determine whether it meets the negligible impact test. If that test is passed, the activity is eligible for the exception to the taking moratorium and prohibition under the Act for all incidental take. See 16 U.S.C. 1371(a), 1372(a). On the other hand, if the total taking represents more than a negligible impact to an affected marine mammal species or stock, then incidental take regulations can not be issued and the prohibitions of the Act remain in place. However, neither the Act nor its implementing regulations specifically preclude takes of marine mammals as a result of oil spills, and for the Service to attempt to preclude such takes from the definition of "permissible takings" would go beyond our current legal authorities.

In the preamble of the Proposed Rule, the Service considered the issues of blowouts and major oil spills. It was found that, to date, there had been no oil spilled as a result of a blowout during exploratory drilling on the OCS. The Service initially determined that the probability of a blowout during exploratory drilling on the OCS was extremely remote and the probability of a major oil spill occurring from such a blowout was even more remote. (See response to comments on oil spills.) However, as stated in the proposed rule and reiterated here, "in the event of a catastrophic spill, the Service would reassess the impact to the population and reconsider the appropriateness of authorizations for taking through section 101(a)(5) of the Act." (56 FR 7652 (February 25, 1991).) A catastrophic oil spill would not be eligible for treatment under the "small take" provisions of section 101(a)(5) of the Act if the impact of the spill had a significant effect on rates of recruitment and survival. Only insignificant impacts on population levels and trends can be treated as negligible. If incidental take authorization is exceeded, the activity must be reevaluated. If the activity continued during such a reevaluation, then any resultant taking would be subject to penalties under the Act.

This commenter does not agree that the definition of permissible take should include physical obstruction. They stated further that if the activities will, in fact, be conducted only during the open water season there is no need to include takings from ice management activities within the definition of permissible take. Incidental take regulations will be in effect during the open water season and this should serve to minimize the possibility that takes might occur as a result of physical obstruction or ice management activites However, this does not guarantee that such takes will not occur. Although it is referred to as an open water season, broken pack ice exists within the open water zone. This ice is moving, floating ice which is dynamic due to wind and currents. The presence of floating ice requires ice management activities during the open water season and the Service believes that takes from these activities cannot be precluded from incidental take authorizations.

As regards the issue of shooting in the definition of "permissible taking," such takings are not anticipated incidental to the specified activity and they are not included in either the Proposed or this Final Rule.

Comment: One commenter wrote that, "The regulations fail to set forth permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species, on the availability of the affected species for subsistence uses and requirements pertaining to the monitoring and reporting of takings." They further stated that, "The regulations set forth only permissible methods of taking, but fail to include prohibition [sic]; means of effecting the least practicable adverse impact on affected species; their availability for subsistence uses; and monitoring and reporting requirements."

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Response: The Service disagrees with both statements. Section 18.113 in the Proposed Rule considered permissible methods that would be permitted during exploration, while § 18.114 addressed prohibitions. These sections are included in the final rule; additionally, a new condition has been added to § 18.114 of the final rule that prohibits intentional lethal takes of polar bears.

Criminal Liability

Comment: One commenter argued against any interpretation of section 101(a)(5) of the Act that would exempt persons from the criminal provisions of the Act. They cited the following language from the Proposed Rule as reason for their concern:

> This proposed rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize take of walruses and polar bears by oil and gas exploration companies and thereby exempt them from civil and criminal liability. 56 FR 7064, February 25, 1991.

Response: The statement cited by the commenter applies to potential takings implications that are analyzed under Executive Order 12630 of March 15, 1988. This Executive order is entitled "Governmental Actions and Interference With Constitutionally Protected Property Rights," and is commonly referred to as the "Takings Executive Order." The Fifth Amendment of the U.S. Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides an orderly process for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have a confiscatory impact on constitutionally protected property rights, have also reaffirmed that, under certain circumstances, governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

The purpose of Executive Order 12630 is to assist Federal agencies in undertaking reviews to evaluate the effect of their administrative, regulatory and legislative actions on constitutionally protected property rights. In this regard, the Service has determined that its regulatory action will not result in taking away any operator's oil and gas lease(s). In fact, a contrary argument can be made that this action, as provided for in section 101(a)(5) of the Act, actually enhances oil and gas operators' ability to avail themselves of the property rights that convey with oil and gas lease purchases.

As regards the commenter's argument that section 101(a)(5) of the Act does not grant the Service authority to exempt persons from the criminal provisions of the Act, the Service disagrees. Section 101(a)(5) of the Act states that the Secretary shall allow incidental, but not intentional, taking of marine mammals by citizens while engaging in a specific activity if certain determinations are made and actions taken. Section 101(a)(5) does not contain specific language exempting petitioners from civil and criminal liabilities under the Act. However, sections 101(a) and 102(a) of the Act clearly provide that incidental takings that result from activities that are conducted consistent with the requirements of section 101(a)(5) are exempt from the taking moratorium and prohibitions of the Act. This is not an unlimited exemption; the operators must: (1) Carry out their stated intentions and plans (as outlined in their applications for specific regulations and LOAs), and (2) comply with provisions of applicable regulations and LOAs issued by the Service. Thus, any takings of marine mammals that occurred during activities that were being conducted in compliance with provisions established to govern such activities would not subject operators to civil or criminal penalties under the Act. This does not mean that holders of LOAs will be absolved of civil or criminal liability under the Act for takes that result because they did not abide by their stated commitments and provisions of regulations and LOAs. In fact, the regulations are clear that any takings of marine mammals resulting from an operator's failure to abide by the terms and conditions of the incidental take regulations and the LOAs may subject the operator to penalties under the Act. See 50 CFR 18.27(f)(7). Additionally, and as provided for in the Act, the Service could reassess impacts to marine mammal populations and subsistence needs, and reconsider the appropriateness of authorizations for taking through section 101(a)(5) of the Act.

Environmental Assessment or Environmental Impact Statement

Comment: The Service should prepare an Environmental Impact Statement (EIS) rather than an Environmental Assessment (EA) before it issues a final rule.

Response: The Service found through preparation of an EA that the action will not significantly affect the quality of the human environment, thus making a "Finding Of No Significant Impact—FONSI." If an EA results in a FONSI, no additional documents are required by the National Environmental Policy Act (NEPA). In addition to being a NEPA document, the EA served to document the Service's analysis of whether the proposed activity has only a negligible impact on a species or stock and does not have an unmitigable adverse impact on subsistence users.

One commenter appeared to confuse the potential impacts upon the human environment from oil and gas exploration with the action proposed by the Service, i.e. allowing incidental taking during oil and gas exploration. Oil and gas exploration may have a significant effect upon the human environment and the MMS prepared EISs for the Chukchi Sea oil and gas lease sales (USDI 1987, 1990b). The Service stands by its decision that the regulation does not significantly affect the quality of the human environment and, therefore, the preparation of an EIS is not required.

Comment: The Service should consider the alternative of issuing the regulations for only a trial basis, e.g., for two years instead of five.

Response: The suggestion that the Service consider issuing incidental take regulations for a shorter period (than the maximum period of five consecutive years provided for in the Act) is based on the assumption that the lack of information justifies issuing the regulations for only a trial basis. The mechanisms are already in place to withdraw incidental take authority should the impacts demand such action. Congress has already addressed the possibility of unanticipated adverse impacts:

> The Secretary shall withdraw or suspend for a time certain (either on an individual or class basis as appropriate) the permission to take marine mammals under Subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds * * * that the taking * * * is having, or may have, more than a negligible impact on the species or stock * * *" 16 U.S.C. 1371(a)(5)(B)

In addition, the Service's implementing regulations clarify that incidental take authority can be revoked through the LOA process regardless of the period covered by the regulation authorizing such take. 50 CFR 18.27(f).

Comment Periods

Comment: Under the Proposed Rule the determination that the taking will be conducted so as to minimize the impacts will not be made until consideration of a specific request and issuance of a LOA. However, there is no prior public review of a specific taking request and no opportunity to comment on whether the method of taking will in fact minimize any adverse impacts of the taking. The Final Rule should be revised to provide for an opportunity to review and comment on specific proposed survey and exploratory activities before issuance of a LOA.

Response: The Act does not require a public comment opportunity for applications for LOAs. Rather, the Service has stated its intention (in 50 CFR 18.27(f)(1)) to process LOAs within 30 days of receipt of the application. The Service will notify interested parties, such as affected coastal communities, the State of Alaska, the Eskimo Walrus Commission and the Marine Mammal Commission, regarding receipt of requests for LOAs. In addition, the Service will make every effort to see that monitoring plans and subsequent reports be made available for peer review as requested by several commenters. Notice of issuance of LOAs will be published in the **Federal Register.**

Effective Date of Rule

In accordance with 5 U.S.C. 553(d)(1), the Service has determined that this rule should be made effective on June 14, 1991. This Final Rule is considered to be a substantive rule, the provisions of which relieve a restriction on oil and gas exploration in the Chukchi Sea by authorizing incidental takes of polar bears and walruses under provisions of the Act. Any delay in the effective date beyond June 14, 1991 which would likely prevent the timely issuance of LOAs before the start of the open water season in the Chukchi Sea, could subject operators to penalties as provided in the Act if they were to conduct activities that resulted in incidental takes of polar bears or walruses.

Required Determinations

The Service prepared an Environmental Assessment (EA) for this Final Rule and concluded in a Finding of No Significant Impact (FONSI) that there would be no significant impact on the human environment as a result of the action. A copy of the EA and FONSI may be obtained from the individual identified above in the section entitled, **"FOR FURTHER INFORMATION CONTACT."**

Through preparation of a Determination of Effects of Rule, the Department of the Interior has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The regulations are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries or government agencies; or (3) significant adverse effect on competition, employment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It has also been determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors, conducting exploration activities in Alaska, have been identified as the only likely applicants under the proposed regulations. These potential applicants have not been identified as small businesses. The Determination of Effects on this rule is available from the individuals identified above in the section entitled, **"FOR FURTHER INFORMATION CONTACT."**

This final rule is not expected to have a potential takings implication under Executive Order 12630 because it authorizes take of walruses and polar bears by oil and gas exploration companies and thereby exempts them from civil and criminal liability.

The collections of information contained in this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070.

A complete list of the references cited in the preamble of this rule is available from the individuals identified above in the section entitled, **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Imports, Indians, Marine mammals, Transportation.

For the reasons set forth in the preamble, part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations is amended as follows:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows: 16 U.S.C. 1361 *et seq.*

§ 18.27 [Amended]

2. Subpart C—General Exceptions, § 18.27(f)(1) is amended by inserting at the end of the second sentence immediately after "* * * 20240" the phrase ", unless otherwise directed in the specific regulations."

3. Subpart I is added as follows:

Subpart I—Taking of Marine Mammals Incidental to Oil and Gas Exploration Activities in Alaska

§ 18.111 Specified activity and specified geographical region.
§ 18.112 Effective dates.
§ 18.113 Permissible methods.
§ 18.114 Prohibitions.
§ 18.115 Level of activity.
§ 18.116 Measures to ensure availability of species for subsistence.
§ 18.117 Requirements for monitoring and reporting.
§ 18.118 Letters of Authorization.
§ 18.119 Information collection requirements.

Subpart I—Taking of Marine Mammals Incidental to Oil and Gas Exploration Activities in Alaska

§ 18.11 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental, but not intentional, taking of walruses and polar bears by U.S. citizens (as defined in § 18.27(c)) engaged in oil and gas exploration in the Chukchi Sea off the coast of Alaska. For purposes of this rule the Chukchi Sea is defined by a north-south line at Barrow and includes all marine waters west of Barrow, east of the US/USSR date line and north of the Bering Strait. The geographical region includes Alaska state waters and Outer Continental Shelf waters that have been leased for exploration or that are being considered for leasing. The activities include geophysical surveys and exploratory drilling and support operations, such as ice-breakers, support vessels and aircraft.

§ 18.112 Effective dates.

Regulations in this subpart are effective for a 5-year period from June 14, 1991 through June 14, 1996 for exploration activities during the open-water season which will be defined as that period from June 15 to November 30. Section 18.118(a)(2) will be effective from November 1, 1991, through June 14, 1996. These regulations do not authorize the taking of walruses or polar bears during the period in which the spring lead system is identifiably intact as a marine mammal migratory corridor. Each year the Service will determine when the spring migration of walrus is no longer dependent on the spring lead system in the Chukchi Sea, and will notify the exploration companies and the Native communities when it has made this determination. In some years this date may be after June 15. For those years when ice conditions warrant continuing exploration activities past October 15, coordination will be required by the operator with the

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Service regarding the ice conditions and walrus and polar bear encounters. Letters of Authorization must be renewed annually.

§ 18.113 Permissible methods.

(a) The incidental, but not intentional, taking of walruses and polar bears by U.S. citizens holding a Letter of Authorization is permitted using the following methods for exploration:

(1) Geophysical surveys including shallow hazard and acoustic surveys; and

(2) Exploratory drilling including ice-breakers, support vessels and aircraft.

(b) The methods and activities identified in § 18.113(a) must be conducted in a manner that minimizes to the greatest extent possible any adverse impacts on walruses and polar bears, their habitat, and on the availability of these marine mammals for subsistence uses.

(c) The Service will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographical location. Each Letter of Authorization will identify allowable conditions or methods that are specific to that activity and location.

§ 18.114 Prohibitions.

(a) The incidental take of walruses and polar bears is not authorized during the period in which walrus are migrating through the spring lead at a given location. The lead system in the Chukchi Sea is located in the shear zone between the shorefast ice and offshore pack ice. (See § 18.112.)

(b) Any take that fails to comply with the terms and conditions of these specific regulations or of the Letters of Authorization is prohibited.

(c) No intentional lethal take of polar bears or walruses is authorized.

§ 18.115 Level of activity.

When Letters of Authorization are requested each year, the Service will determine whether the level of activity identified in the requests exceeds that considered by the Service in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for subsistence. If the level of activity is higher, the Service will re-evaluate its findings to determine if those findings continue to be appropriate based on the higher level of activity. Depending on the results of the evaluation, the Service could add, reduce, or eliminate conditions to the authorization or withdraw or suspend it.

§ 18.116 Measures to ensure availability of species for subsistence.

When applying for a Letter of Authorization, the applicant must submit a plan of cooperation that identifies what measures have been, and will be, taken to minimize any adverse effects on the availability of walruses and polar bears for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. The plan must be approved by the Service's Alaska Regional Director. The applicant must contact affected subsistence communities to discuss potential conflicts with the siting, timing, and methods of proposed operations. The applicant must make reasonable efforts to assure that exploration activities do not interfere with any subsistence hunt and/or that any adverse effects on the availability of walruses and polar bears are properly mitigated.

§ 18.117 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the Service and other designated Federal, State, or local agencies having legal authority, to monitor the impacts of oil and gas exploration on walruses and polar bears.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe and record the effects of exploration activities on walruses and polar bears. The observer must be approved by the Service's Alaska Regional Director.

(c) When applying for a Letter of Authorization, the applicant must include a plan to monitor the effects of the activity on walruses and polar bears and on their availability for subsistence use. This plan, which must be approved by the Service's Alaska Regional Director, should identify what survey techniques will be used to determine the movement and activity of walruses and polar bears near the exploratory sites including migration and other habitat uses, such as feeding. A qualified observer should observe the behavior of these marine mammals to determine if they are being affected. The requirements for monitoring plans will vary depending on the activity, the location, and the time.

(d) If the applicant plans any activities that may occur on drifting ice present during the open water season or will be drilling from a structure on which a polar bear could gain access to the working surface, the operator must develop a polar bear safety program and interaction plan.

(e) At its discretion, the Service may place an observer on board drillships, aircraft, icebreakers or other support vessels to monitor the impact of exploration activities on walruses and polar bears.

(f) The Holder of a Letter of Authorization must submit a report to the Service's Alaska Regional Director within 90 days of the completion of any exploratory activities. The Holder and the Service shall meet and discuss the report each year. This report must include the following information.

(1) Dates and types of activity.

(2) Dates and locations of any activities related to monitoring the effects of exploration on walruses and polar bears;

(3) Results of the monitoring activities including an estimate of the actual level of take;

(4) Results of behavioral, feeding, or population studies; and,

(5) An annual synthesis of results and a summary of past reports.

§ 18.118 Letters of Authorization.

(a)(1) To obtain authorization for an incidental take of walruses or polar bears pursuant to these regulations, each person or entity conducting an exploratory activity in the geographical area described in § 18.111 must apply for a Letter of Authorization for each geophysical survey and each drilling operation.

(2) The application must be submitted to the Service's Alaska Regional Director at least 90 days before the activity is scheduled to begin.

(b) When an application for a Letter of Authorization is submitted, it must include the following:

(1) A plan to monitor the behavior and the effects of the activity on walruses and polar bears;

(2) A cooperation plan which describes the measures taken to mitigate any potential conflicts between the proposed activity and subsistence hunting; and,

(3) A description of the activity including the method to be used, the dates and duration of the activity, the specific location of the activity and the estimated area that will actually be affected by the exploratory activity.

(c) In addition to the provisions of § 18.27(f), any withdrawals or suspensions, either on an individual or class basis, of the Letters of Authorization will be made only after notice and opportuntiy for public comment.

(d) The requirement for notice and public review in § 18.118(c) will not apply if the Service determines that an emergency exists which poses a significant risk to the well-being of the species or stocks of walruses or polar bears.

§ 18.119 Information collection requirements.

The collections of information contained in this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. It is necessary to collect the information in order to describe the proposed activity and estimate the cumulative impacts of potential takings by all persons conducting the activity. The information will be used to evaluate the application and determine whether to issue specific regulations and, subsequently, Letters of Authorization. Response is required to obtain a benefit.

For the first year of the 5 year period covered by this final rule, the public burden associated with this requirement is estimated at 574 hours including 334 hours to complete the application for specific regulations, 40 hours to complete five applications for Letters of Authorization, 160 hours to comply with recordkeeping requirements associated with five Letters of Authorization, and 40 hours to complete required annual reports. From the second through the fifth years, the public burden is annually reduced to 240 hours because an application for specific regulations is not required. Direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 224 ARLSQ, 1849 C Street NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, DC 20503.

Dated: June 6, 1991.

Suzanne Mayer,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–14165 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184–1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the remaining share of the total allowable catch amount (TAC) for sablefish allocated to hook-and-line gear in the West Yakutat District of the Eastern Regulatory Area (WYK) of the Gulf of Alaska for the 1991 fishing year is needed as a bycatch amount to support directed fisheries in that area for remaining groundfish species. The Secretary of Commerce is prohibiting further directed fishing for sablefish by vessels using hook-and-line gear in the WYK. This action is necessary to prevent the hook-and-line share of sablefish in that area from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving sablefish stocks.

DATES: Effective from 12 noon, Alaska local time (A.l.t.), on June 10, 1991, through December 31, 1991. Comments are invited for 15 days following the effective date of this notice.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska (GOA) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Section 672.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) for all groundfish species in the GOA management area. The TACs for target species and the "other species" category are specified annually within the OY range and are apportioned among the regulatory areas and districts.

The 1991 TAC specified for sablefish in the WYK District is 4,050 mt (56 FR 8723; March 1, 1991). The portion of that TAC assigned to hook-and-line gear is 3,850 mt.

Under §§ 672.20(c)(2) and 672.24(c)(3)(i), if the Regional Director determines that the share of the sablefish TAC assigned to any type of gear in any regulatory area or district is likely to be reached, the Regional Director may establish a directed fishing allowance. In establishing a directed fishing allowance, the Regional Director shall consider the amount of sablefish that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for sablefish in the specified regulatory area or district by that gear type.

The Regional Director has determined that the remaining hook-and-line gear share of sablefish in the WYK District of the Eastern Regulatory Area, 195 mt, will be necessary as bycatch to support remaining groundfish fisheries in that district. With this action the Regional Director is establishing a directed fishing allowance of 3,655 mt for the WYK and is prohibiting directed fishing for sablefish taken with hook-and-line gear in the WYAK District of the Eastern Regulatory Area, effective 12 noon, A.l.t., June 10, 1991. After the closure, in accordance with § 672.20(g)(2), amounts of sablefish retained on board hook-and-line vessels in the WYK District of the Eastern Regulatory Area at any time during a trip must be less than 4 percent of the total amount of all other fish species retained at the same time by the vessel during the same trip.

Classification

This action is taken under §§ 672.20 and 672.24 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent excessive harvest of sablefish by hook-and-line gear that will occur if amounts of the sablefish TACs that are allocated to hook-and-line gear are exceeded and retention of sablefish is prohibited. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay its effective date. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 10, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-14125 Filed 6-10-91; 4:28 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 56, No. 115

Friday, June 14, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration
14 CFR Part 39

[Docket No. 91-CE-20-AD]

Airworthiness Directives; Fairchild Aircraft (Formerly Swearingen Aviation Corporation) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Fairchild SA226 and SA227 series airplanes. The proposed action would require a one-time modification of the engine power lever flight idle detent arms and cover assembly. It has been reported that significant wear has caused improper operation of the engine power control levers on the affected airplanes. The actions specified in this AD are intended to prevent improper operation of the power lever flight idle detent arms, which could result in loss of control of the airplane.

DATES: Comments must be received on or before August 9, 1991.

ADDRESSES: Fairchild Aircraft Service Bulletin (SB) Numbers 226-76-008 and 227-76-002, both issued January 15, 1991, revised May 9, 1991, that are discussed in this AD may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-20-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Ms. Alma Ramirez-Hodge, Aerospace Engineer, Fort Worth Airplane Certification Office, DOT, FAA, Fort Worth, Texas 76193-0150; Telephone (817) 624-5147.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-20-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Recently, a Fairchild Model SA226-T(B) airplane experienced a loss of control during initial climb after takeoff. A witness reported that as the airplane climbed to an altitude of 50 to 100 feet, it yawed slightly to the right and then rolled rapidly to the right. The airplane continued past the inverted position, then descended and struck the ground, left wingtip first. The crew of the airplane was involved in a training flight that was to emphasize engine-out procedures.

The subsequent investigation by the National Transportation Safety Board (NTSB) revealed significant wear on each power lever reverse gate detent arm. The wear was located on the portion of the arm that contacts the flight idle stop, which is designed to prevent inadvertent travel of the power lever into the beta and reverse ranges. The NTSB believes that the rapid right roll that led to the in-flight loss of control was precipitated by the inadvertent movement of the power lever into the beta range as the instructor retarded the power lever to the flight idle detent to simulate a right engine failure.

FAA service difficulty records indicate several reports of worn power lever flight idle detent arms over the last five years. Service records also show that a significant number of detent arms on the affected airplanes have been replaced because of excessive wear.

The manufacturer, Fairchild Aircraft, has developed design modifications for the flight idle detent arms that will help prevent excessive wear. These improved parts are designed to prevent an inadvertent movement of the power lever into the beta range as the lever is retarded to the flight idle detent stop. Fairchild SB Numbers 226-76-008 and 227-76-002, both issued January 15, 1991, revised May 9, 1991, contain the instructions for accomplishing this modification.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent improper operation of the power lever flight idle detent arms. Since the condition described is likely to exist or develop in other Fairchild SA226 and SA227 series airplane of the same type design, the proposed AD would require a one-time modification of the power lever detent arms and cover assembly in accordance with the instructions in Fairchild SB No. 226-76-008 and Fairchild SB No. 227-76-002, whichever is applicable.

It is estimated that 770 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1.5 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $214 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $228,305.

The regulations proposed herein would not have substantial direct effects

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on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Fairchild (formerly Swearingten Aviation Corporation): Docket No. 91–CE–20–AD.

Applicability: The following Model airplanes and serial numbers, certificated in any category:

Model	Serial numbers
SA226–T	T201 through T275, and T277 through T291.
SA226–T(B)	T(B)276, and T(B)292 through T(B)417.
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC419.
SA227–TT	TT421 through TT541.
SA227–AT	AT423 through AT695.
SA227–AC	AC406, AC415, AC416, and AC420 through AC777.
SA227–BC	BC762, BC764, BC766, and BC777.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent improper operation of the power lever flight idle detent arms, accomplish the following:

(a) Modify the power lever detent arms and cover assembly in accordance with the instructions in Fairchild Service Bulletin 226–76–008 or 227–76–002, both issued January 15, 1991, revised May 9, 1991, as applicable.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, DOT, FAA, Fort Worth, Texas 76193–0150. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 4, 1991.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–14173 Filed 6–13–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–98–AD]

Airworthiness Directives; Short Brothers, PLC, Model SD3–30 and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Short Brothers, PLC, Model SD3–30 and SD3–60 series airplanes, which would require locking the left and right low pressure (LP) levers in the open position using securing wires, and revising the Airplane Flight Manual (AFM). This proposal is prompted by reports that the LP lever, instead of the crossfeed lever, had been shut. This condition, if not corrected, could result in inadvertent engine shutdown.

DATES: Comments must be received no later than August 5, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–98–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Woodford Boyce, Standardization Branch, ANM–113; telephone (206) 227–2137. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–98–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Short Brothers Model SD3–30 and SD3–60 series airplanes. There has been a recent report of a pilot inadvertently shutting off the low pressure (LP) lever on a Model SD3–60 series airplane, instead of moving the fuel crossfeed lever. This resulted in inadvertent shutdown of one engine during flight. Since the fuel crossfeed levers and LP levers are installed similarly on both the Model SD3–30 and Model SD3–60 series airplanes, the potential exists on both models for inadvertent operation of the LP levers. This condition, if not corrected, could result in inadvertent engine shutdown.

Short Brothers has issued Shorts Service Bulletins SD330–28–35 and SD360–28–20, both dated February 22, 1991, which describe procedures to lock the left and right LP levers in the open position using securing wires. The service bulletins refer to certain revisions to the Airplane Flight Manual (AFM) related to procedures for engine and propeller emergencies. The United Kingdom CAA has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require locking the left and right LP levers in the open position using securing wires in accordance with the service bulletins previously described, and revising the FAA-approved AFM in accordance with the revisions referred to above.

It is estimated that 120 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket No. 91–NM–98–AD.

Applicability: All Model SD3–30 and SD3–60 series airplanes, certificated in any category.

Compliance: Required within 120 days after the effective date of this AD, unless previously accomplished.

To prevent inadvertent engine shutdown, accomplish the following:

(a) Lock the left and right low pressure (LP) levers in the open position using securing wires, in accordance with Shorts Service Bulletins SD330–28–35 (for Model SD3–30 series airplanes) or SD360–28–20 (for Model SD3–60 series airplanes), both dated February 22, 1991.

(b) Following accomplishment of the modification required by paragraph (a) of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting the following amendments, as applicable:

(1) For Model SD3–30 series airplanes:

SBH3.3 Amendment p/16
SBH3.6 Amendment p/12

(2) For Model SD3–60 series airplanes:

SB4.3 Amendment p/19
SB4.6 Amendment p/12
SB4.8 Amendment p/14

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on June 5, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–14172 Filed 6–13–91; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 399

[Docket No. 47581, Amdt. 92]

Unfair Competition by Commonly Owned Carriers in Alaska

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation proposes to amend part 399 of its regulations to state that it will be the Department's policy to regard it as an unfair method of competition under section 411 of the Federal Aviation Act for an individual or entity to own multiple air carriers that engage in direct competition in the same city pair market within the State of Alaska with the effect that the multiple carriers, taken together, receive a greater proportion of the mail tendered for transport by the United States Postal Service, under its present regulations, than the proportion received by any individual carrier serving the same market.

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DATES: Comments must be received on or before August 13, 1991.

ADDRESSES: Comments should be directed to the Documentary Services Division, Docket 47581, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., room 4107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket No. 47581. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date will be considered by the Assistant Secretary for Policy and International Affairs before taking action on any further rulemaking. Also, this proposal may be changed in light of comments received. All comments submitted will be available for examination in docket 47581. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

Section 411 of the Federal Aviation Act of 1958, as amended (72 Stat. 769, 49 U.S.C. 1381) ("the Act"), empowers the Department to investigate allegations of unfair methods of competition by air carriers in providing or selling air transportation.

The Department recently has received correspondence from two Alaskan air carriers that hold certificates of public convenience and necessity under section 401 of the Act in which they brought to our attention certain operations being conducted by two commonly owned certificated air carriers which allegedly enable them to gain an unfair advantage over their competition. The two related carriers were reported to be serving the same Alaskan markets with the result that, together, they receive a disproportionate share of the mail which the U.S. Postal Service (USPS) tenders for transport equitably to all eligible certificated carriers serving the market. The parent of the two related carriers also owns a third carrier whose certificate authority, and thus its ability to operate, has not yet been made effective by the Department. The third carrier has published a prospective schedule of service in direct competition with the two related carriers.

In the 1970's, the USPS created a new mail classification, non-priority bypass mail, to facilitate bulk shipments from the hubs of Anchorage and Fairbanks to the Alaskan bush villages. The term "bypass mail" is defined in the U.S. Postal Service Manual as "bulk parcel post, which is so prepared as not to require handling in a USPS facility," (as distinguished from routine letter and package mail which must be processed through the postal facilities). The frequency of bypass mail shipments ranges between several times weekly for larger villages to a few times a month for smaller points.

In 1986, an amendment was added to section 5402 of the U.S. Postal Service statute (39 U.S.C. 5402) which provides that, for transporting non-priority bypass mail to any point served by more than one carrier in the State of Alaska, the Postal Service shall require an air carrier to hold a certificate of public convenience and necessity under section 401 of the Act. In addition, the statute requires that in order for a carrier to be selected to provide such bypass mail transport, it must have provided scheduled service in Alaska for at least 12 months preceding selection, must operate at least three scheduled flights per week to the point specified, and must adhere to its schedule to the best of its ability.

The USPS assigns bypass shipments to each eligible carrier in a market on an "equitable tender" basis, which results in each carrier receiving approximately an equal share of the bypass mail in each market served. Within each class of carrier service (mainline or interline bush), the size of the carrier's operation, the number of flights provided in the market (beyond the minimum three per week), the type of aircraft used, or its cargo or passenger capacity are not determining factors in allocating bypass mail shipments.

For the typically small certificated carriers serving the Alaskan interior, mail transport, particularly bypass mail, is a principal source of revenue. USPS statistics show that bypass mail constitutes about 70–75 percent of all intra-Alaska mail. According to the USPS Annual Report of Intra-Alaska Mail Service, the six certificated bush carriers operating out of Fairbanks, for example, received $3.8 million in FY 1989 and $5.4 million in FY 1990 from the carriage of mail. As calculated from carrier reports filed with the Department, these totals represent 31 percent and 39 percent, respectively, of their annual income in those years. Therefore, the bush carriers competing for these shipments are particularly alert for activities by competitors which will circumvent the objectives of the equitable tender system presently in use by the USPS.

The Department investigated the situation described by the complainants. Flight schedules published for the two operating related carriers showed that, as of the end of January 1991, each provided one round-robin flight [1] on weekdays between Fairbanks and the same six villages, one carrier operating the route in the morning and the other in the afternoon. Both carriers also provide service to another common point, one carrier serving five days per week, the other three days per week. The third nonoperating carrier proposes to offer five flights per week to a point already served by the other two.

The three companies, which are based in Fairbanks, are commonly owned by a holding company.[2] One of the two operating carriers as well as the non-operating company are single-pilot operations, which are not required by the Federal Aviation Administration to maintain all of the technical management positions or meet certain other operational requirements imposed upon larger carriers. Often, because of non-availability of the pilot, the operating single-pilot carrier has cancelled flights and used the services of a sister company or another carrier to complete its flight obligations. Moreover, although each has its own printed ticket and waybill forms, the carriers have combined their operations to a great extent. For example, they not only share certain officers and directors, but they also utilize the same administrative and maintenance facilities, aircraft, and personnel.

[1] Round-robin service consists of a multiple-stage flight to several points with a return to the point of origin.

[2] For purposes of this policy statement, "commonly owned" air carriers are those that are solely owned by the same stockholders or holding company or whose stockholders own more than 10 percent of the stock of another air carrier.

We do not know what motivated the parent company to establish two or three separate certificated carriers which directly compete against one another; however, it is clear that such duplicate scheduling results in the two (and perhaps soon the three) commonly owned carriers together receiving double (or triple) the share of the bypass mail tendered for transport in each market. For example, if there were five carriers serving a market, each would receive an equitable share (approximately 20 percent) of the bypass mail, with the three related carriers being eligible for about 60 percent of it.

We do not intend to preclude an air carrier from acquiring an interest in another carrier or from forming cooperative operating agreements. However, we do believe it to be an unfair method of competition under section 411 of the Act for an individual or entity to create or acquire multiple certificated air carriers which compete directly in an Alaskan city pair market so that the carrier "family" receives an inordinate share of the mail revenues at the expense of other carriers competing in the same market.[3] For purposes of this policy statement, we deem city pair markets to include points served directly or indirectly, as terminal points or intermediate points.

Economic Impacts

This proposed policy statement has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets, but would enhance competition among Alaskan air carriers. The proposed action would result in no change in reporting burden for air carriers. No regulatory evaluation is required because adoption of the policy statement would result in minimal economic costs. The proposed rule is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it does not involve important Departmental policies.

The Department has considered the implications of this proposed action under the requirements of Executive Order 12612, Federalism, and has determined that the preparation of a Federalism Assessment is not warranted. The policy statement would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibility among the various levels of government.

The entities that would be affected by the proposed rule are air carriers certificated under section 401 of the Act that provide air transportation of U.S. mail in the State of Alaska. Nearly all of the 38 Alaskan certificated carriers are small businesses operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less).

In its aviation economic regulations, the Department categorizes air carriers operating small aircraft in strictly domestic service as small entities. To date, we are aware of only three small commonly owned Alaskan certificated carriers (only two of which are currently conducting operations) that would be affected by this policy statement and thus possibly suffer some economic loss if this rule were adopted. The ability of these and other entities to engage in air carrier operations would be otherwise unaffected by the proposed amendment. Therefore, in accordance with the Regulatory Flexibility Act, Public Law 96-354, we certify that this rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

We have reviewed the proposed policy statement with regard to its compliance with the provisions of section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). No additions or changes to collections of information are being made which would warrant a review by the Office of Management and Budget and the previously assigned control numbers would still be applicable.

List of Subjects in 14 CFR Part 399

Airline regulation, Mail transportation operations, Unfair competition.

Proposed Rule

For the reasons set out in the preamble, title 14, chapter II, part 399 of the Code of Federal Regulations is proposed to be amended as follows:

PART 399—[AMENDED]

1. The authority citation for part 399 continues to read as follows:

Authority: 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502, and 1504, unless otherwise noted.

A new § 399.89 is added to read as follows:

§ 399.89 Unfair competition by commonly owned carriers within the State of Alaska.

(a) It is the policy of the Department of Transportation to regard it as an unfair method of competition under section 411 of the Federal Aviation Act for an individual or entity to own multiple air carriers that engage in direct competition in the same city pair market within the State of Alaska with the effect that the multiple carriers, taken together, receive a greater proportion of the mail tendered for transport by the United States Postal Service, under its present regulations, than the proportion received by any individual carrier serving the same market.

(b) For the purpose of this statement:

(1) *Commonly owned* shall mean air carriers that are solely owned by the same stockholders or holding company or whose stockholders own more than 10% of the stock of another air carrier.

(2) *City pair market* shall mean any two points served, either directly or indirectly, as terminal points or intermediate points.

Issued in Washington, DC, on June 7, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-14146 Filed 6-13-91; 8:45 am]

BILLING CODE 4910-62-M

[3] We are also concerned that, absent the proposed policy, air carrier owners in Alaska will have an incentive to create multiple carrier operations, which would place an unnecessary strain on the limited Department resources devoted to ensuring air carrier fitness. In this regard, the complexity of these applications increases with situations that involve shared personnel, facilities, and equipment. Furthermore, the added number of carriers increases the recordkeeping burden on the Postal Service.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

Records and Reports of Listed Chemicals and Certain Machines

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA is amending its regulations implementing the Chemical Diversion and Trafficking Act of 1988 (CDTA) to include the additional chemicals set forth in the Crime Control Act of 1990. This notice also proposes to set thresholds for these chemicals. The

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inclusion of these chemicals into the CDTA requires any handler of listed chemicals to comply with the requirements specified in 21 CFR parts 1310 and 1313. The DEA also proposes to amend the threshold on two existing listed chemicals.

DATES: Written comments and objections must be received on or before July 15, 1991.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC, 20537 Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The Crime Control Act of 1990 (Pub. L. 101–647) amends the list of chemicals which are subject to the requirements of the Chemical Diversion and Trafficking Act of 1988 (CDTA). Although these chemicals became subject to the requirements of the CDTA and the regulations upon the signing of the Crime Control Act of 1990 on November 27, 1990, this rule is being issued as a proposed rule rather than a final rule to allow for comment on the thresholds set forth for each of the new listed chemicals and the new thresholds proposed for two existing listed chemicals.

The Crime Control Act of 1990 adds twelve chemicals to the list of precursor chemicals, one of which was previously listed as an essential chemical and another, D-lysergic acid is a controlled substance in Schedule III of the Controlled Substances Act. The new list under 21 CFR 1310.02(a) shows some of the chemicals with an additional name in parenthesis. These names reflect the conventional spelling for the chemicals. The parenthetical name is the one listed with the thresholds in 21 CFR 1310.04(f).

In addition to the new listed chemicals, it is proposed that the threshold for two other listed chemicals be amended. The threshold for hydriodic acid is proposed to be consistent with its reclassification as a precursor chemical rather than an essential chemical. The threshold on 3,4-methylenedioxyphenyl-2-propanone is being lowered based upon information that quantities below the threshold level are being purchased to evade the requirements of the CDTA.

The Administrator of the Drug Enforcement Administration hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed action has been submitted for review to the Office of Management and Budget, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. et seq.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug Enforcement Administration, Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1310 is proposed to be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is amended by adding paragraphs (a)(13) through (a)(24) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(a) * * *

(13) Methylamine and its salts

(14) Ethylamine and its salts

(15) D-lysergic acid, its salts, optical isomers, and salts of optical isomers

(16) Propionic anhydride

(17) Isosafrole (Isosafrole)

(18) Safrole

(19) Piperonal

(20) N-Methylepherdine, its salts, optical isomers, and salts of optical isomers (N-Methylephedrine)

(21) N-Ethylephedrine, its salts, optical isomers, and salts of optical isomers

(22) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers

(23) N-Ethylpseudoephedrine, its salts, optical isomers, and salts of optical isomers

(24) Hydriotic acid (Hydriodic Acid)

* * * * *

3. Section 1310.02 is amended by removing paragraph (b)(5) and redesignating paragraphs (b)(6) through (b)(8) as paragraphs (b)(5) through (b)(7).

§ 1310.04 [Amended]

4. Section 1310.04 is amended by revising paragraph (f)(1)(xii) and adding paragraphs (f)(1)(xiii) through (f)(1)(xxiv) to read as follows:

* * * * *

(f) * * *

(1) Listed Precursor Chemicals

Chemical	Threshold by base weight
* * *	* *
(xii) 3,4-Methylenedioxyphenyl-2-propanone.	4 kilograms.
(xiii) Methylamine and its salts	1 kilogram.
(xiv) Ethylamine and its salts	1 kilogram.
(xv) D-lysergic acid, its salts, optical isomers, and salts of optical isomers.	10 grams.
(xvi) Propionic anhydride	1 gram.
(xvii) Isosafrole	4 kilograms.
(xviii) Safrole	4 kilograms.
(xix) Piperonal	4 kilograms.
(xx) N-Methylephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(xxi) N-Ethylephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(xxii) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(xxiii) N-Ethylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(xxiv) Hydriodic acid (57%)	1.7 kilograms (or 1 liter by volume).

5. Section 1310.04 is amended by removing paragraph (f)(2)(i)(E) and redesignating paragraphs (f)(2)(i)(F) through (f)(2)(i)(H) as paragraphs (f)(2)(i)(E) through (f)(2)(i)(G).

6. Section 1310.04 is amended by removing paragraph (f)(2)(ii)(E) and redesignating paragraphs (f)(2)(ii)(F) through (f)(2)(ii)(H) as paragraphs (f)(2)(ii)(E) through (f)(2)(ii)(G).

Dated: March 21, 1991.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 91–14135 Filed 6–13–91; 8:45 am]

BILLING CODE 4410–09–M

21 CFR Part 1313

Importation and Exportation of Precursors and Essential Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend its regulations concerning the granting of regular supplier and regular customer status under the provisions of the Chemical Diversion and Trafficking Act of 1988 (CDTA) to simultaneously grant regular supplier or regular customer status for three of the listed essential chemicals (acetone, 2-Butanone (MEK), and toluene) when regular supplier or regular customer status has been established for one of these essential chemicals. This amendment would reduce the regulatory requirement on the chemical industry without reducing the effectiveness of the CDTA.

DATES: Written comments and objections must be received on or before August 13, 1991.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: Since the publication of the final rule promulgating the regulations for the CDTA (54 FR 31657, August 1, 1989), it has been noted that many of the regular customers and regular suppliers submitted to DEA for review handle three of the solvents listed as essential chemicals (acetone, 2-Butanone (MEK), and toluene) on a regular basis. In considering the illicit uses of these three solvents, it has been determined that they are frequently interchanged for each other. Therefore, DEA's review of foreign customers and suppliers would address concerns which apply to all three essential chemicals.

Consideration was given to allowing the establishment of regular customer or regular supplier status for one essential chemical to apply to all essential chemicals. This was rejected because not all essential chemicals are used interchangeably in either the licit or illicit market. The stated business needs for one essential chemical which is reviewed in consideration of regular customer or regular supplier status may be incompatible with future orders for another essential chemical. Such new orders of other essential chemicals may warrant additional scrutiny.

In view of the above, DEA proposes to amend § 1313.15, Waiver of 15-day Advance Notice for Chemical Importers, by redesignating paragraph (d) as paragraph (e) and inserting a new paragraph (d) providing regular supplier status for three of the listed essential chemicals, specifically acetone, 2-Butanone (MEK), and toluene, when regular supplier status has been established for one of the three chemicals. DEA also proposes to amend Section 1313.24, Waiver of 15-day Advance Notice for Chemical Exporters, by redesignating paragraph (d) as paragraph (e) and inserting a new paragraph (d) providing regular customer status for three of the listed essential chemicals, specifically acetone, 2-Butanone (MEK), and toluene, when regular customer status has been established for one of the three chemicals.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed rule has been submitted for review to the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rule has no implications which would warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1313

Drug enforcement administration, Drug traffic control, Exports, Imports, Reporting requirements.

For reasons set out above, it is proposed that 21 CFR part 1313 be amended as follows:

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(B) and 971.

2. Section 1313.15 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) which reads as follows:

§ 1313.15 Waiver of 15-day advance notice for chemical importers.

* * * * *

(d) Unless the Administration notifies the chemical importer to the contrary, the qualification of a regular supplier of any one of these three essential chemicals, acetone, 2-Butanone (MEK), or toluene, qualifies that supplier as a regular supplier of all three of these chemicals.

* * * * *

3. Section 1313.24 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) which reads as follows:

§ 1313.24 Waiver of 15-day advance notice for chemical exporters.

* * * * *

(d) Unless the Administration notifies the chemical exporter to the contrary, the qualification of a regular customer for any one of these three essential chemicals, acetone, 2-Butanone (MEK), or toluene, qualifies that customer as a regular customer for all three of these chemicals.

* * * * *

Dated: March 21, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–14136 Filed 6–13–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to revegetation success guidelines. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Kansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t., July 15, 1991. If requested, a public hearing on the proposed amendment will be held on July 10, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t., on July 1, 1991.

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ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, room 500, Kansas City, MO 64105, Telephone: (816) 374–6405.

Kansas Department of Health and Environment, Surface Mining Section, 1501 S. Joplin (Shirk Hall, 4th Floor), P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231–8615.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office, (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program, can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning the Kansas program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Proposed Amendment

By letter dated June 3, 1991, (Administrative Record No. KS–505), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment in response to exceptions placed on the approval of the revegetation guidance document "Kansas Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success" in the **Federal Register** dated February 19, 1991, (53 FR 6559) (Administrative Record No. KS–502).

Kansas is proposing revisions to this guidance document regarding the methods for the determination of revegetation success prior to Phase III bond release, as required in the Federal regulations at 30 CFR 816/817.116(a)(1).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., c.d.t., July 15, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested, as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepared adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 7, 1991.

Raymond L. Lowrie,

Assistant Director Western Support Center.

[FR Doc. 91–14167 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF EDUCATION

34 CFR Part 318

RIN 1820–AA95

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations for the Training Personnel for the Education of Individuals with Disabilities program authority as reauthorized in the Education of the Handicapped Act Amendments of 1990. The proposed regulations would conform existing regulations to statutory provisions enacted in the 1990 Amendments, and would also include minor clarifications to certain existing regulations.

DATES: Comments must be received on or before July 15, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Max Mueller, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–2651.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Max Mueller, 202–732–1554.

SUPPLEMENTARY INFORMATION: The 1990 Amendments change the name of the Office of Special Education personnel preparation program (Part D of the Act) from Training Personnel for the Education of Individuals with Handicaps to Training personnel for the Education of Individuals with Disabilities. The name of the law itself is now Individuals with Disabilities Education Act (IDEA). These regulations, Grants for Personnel Training (34 CFR part 318), implement

sections 631(a) and (b) of the Act. Other aspects of Part D are regulated under 34 CFR parts 316, 318, and 320.

The major purpose of the new regulations is to incorporate new program authorities mandated or authorized by the 1990 Amendments. Major issues include:

Minority Issues

The 1990 Amendments require substantially increased attention to the interaction of special education and education of minority groups. The 1990 Amendments specifically include requirements relating to programs for minority infants, toddlers, children, and youth with disabilities, recruitment and training of minority personnel to serve infants, toddlers, children, and youth with disabilities, and the need to increase involvement of minority institutions in programs supported under the Act. This has led to proposed changes in application requirements, grantee requirements, and priorities.

Reporting Requirements

The 1990 Amendments place considerable emphasis on increasing the dissemination of information derived from supported projects. Specific requirements have been added dealing with the preparation of project reports and the channels appropriate for dissemination.

Target Populations

The 1990 Amendments modified the career categories eligible for funding and amended the special projects authority to reflect important trends and priorities for serving children with disabilities.

Training Content

The Secretary is now authorized under IDEA to require (as appropriate or where relevant) attention to content of training programs focused on training techniques, procedures, and practically designed to demonstrate the delivery of services in an array of regular, special education, and community settings; coordination or collaboration among personnel serving infants, toddlers, children, and youth with disabilities; and interdisciplinary preparation of trainees. The Secretary is proposing that these elements are generally appropriate and relevant to projects funded under this program. Proposed regulations elaborate upon the category of coordination or collaboration.

For the most part the foregoing changes are taken directly from the legislation, and are only minimally subject to revision based on public comment. However, comments directed to the possible need for additional explanation or elaboration of requirements are appropriate.

Other changes are proposed that go beyond the specific requirements or authorizations of the 1990 Amendments:

Priorities

Proposed changes in priorities are based on review of 1991 annual priorities. The publication of these priorities does not preclude the Secretary from publishing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Organization

A number of minor changes in organization and language have been made to clarify the existing regulations and to conform the regulations more closely to the legislation.

Selection Criteria

The current application selection criteria with minor modifications based specifically on the Act are included as a part of this NPRM. However, a subsequent NPRM will be developed to make revisions in the selection criteria to promote greater commonality in criteria across other discretionary programs authorized under Parts C through G of the Act. Nevertheless, comments on these selection criteria are appropriate as advanced public input on that effort.

Definitions

The proposed regulations do not contain definitions for the following terms because these terms have yet to be defined in accordance with the 1990 Amendments. When these terms have been defined in other CFR parts, they will be added to part 318 by a final technical rule.

(1) Definitions To Be in 34 CFR Part 300

Children with disabilities.
Hearing impairments, including deafness.
Deaf-blindness.
Mental retardation.
Multiple disabilities.
Orthopedic impairments.
Other health impairments.
Serious emotional disturbance.
Specific learning disabilities.
Speech impairments.
Visual impairments, including blindness.
Traumatic brain injury.
Autism.
Parent.
Related services.
Special education.
Vocational education.
Transition services.

(2) Definition To Be in 34 CFR Part 301

Preschool.

(3) Definitions To Be in 34 CFR Part 303

Early intervention services.
Multidisciplinary.

(4) Definition To Be in 34 CFR Part 315

Children and youth with severe disabilities.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small nonprofit agencies receiving Federal funds under this program. However, the regulations would not have a significant economic impact on these organizations because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 318.20, 318.22, 318.23, and 318.34 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

These regulations affect private nonprofit entities and institutions of higher education, which are the types of entities eligible to receive awards under this program. The Department needs and uses the information to evaluate the applications and select the entities that will receive awards.

Annual public reporting and recordkeeping burden for this collection of information is expected to average 40 hours per response for 1,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

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completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3072, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 318

Education, Education of individuals with disabilities, Education—training, Grant programs—education, Student aid, and Teachers.

Dated: April 4, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.029—Training Personnel for the Education of Individuals with Disabilities)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 318 to read as follows:

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS FOR PERSONNEL TRAINING

Subpart A—General

Secs.

318.1 What is the purpose of this program?
318.2 Who is eligible for an award?
318.3 What regulations apply to this program?
318.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

318.10 What activities may the Secretary fund?
318.11 What priorities may the Secretary establish?

Subpart C—How Does the Secretary Make an Award?

318.20 What are the requirements for applicants?
318.21 How does the Secretary evaluate an application?
318.22 What selection criteria does the Secretary use to evaluate applications other than applications for special projects?
318.23 What selection criteria does the Secretary use to evaluate applications for special projects?

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Authority: 20 U.S.C. 1431, 1434, and 1435, unless otherwise noted.

Subpart A—General

§ 318.1 What is the Purpose of this program?

This program serves to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities through support of training programs for—

(a) Special education, related services, early intervention;

(b) Leadership, and

(c) Special projects.

(Authority: 20 U.S.C. 1431)

§ 318.2 Who is eligible for an award?

(a) The following are eligible for assistance under this part:

(1) Institutions of higher education and appropriate nonprofit agencies are eligible under § 318.1 (a) and (b).

(2) Institutions of higher education, State agencies, and other appropriate nonprofit agencies are eligible under § 318.1(c).

(b) In order to receive a grant under § 318.1(a) or (b), an institution or agency must demonstrate that it meets State and professionally recognized standards for the training of personnel, as evidenced by appropriate State and professional accreditation, unless the grant is for the purpose of assisting the applicant agency or institution to meet those standards.

(Authority: 20 U.S.C. 1431)

§ 318.3 What regulations apply to this Program?

The following regulations apply to assistance under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 318.

§ 318.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant.
Application.
Award.
Department.
EDGAR.
Fiscal year.
Grant period.
Local educational agency.
Nonprofit.
Preschool.
Private.
Project.
Public.
Secretary.
State.
State educational agency.

(b) *Definitions specific to 34 CFR part 318.* The following terms used in this part are defined as follows:

Act means the Individuals with Disabilities Education Act (IDEA).

Infants and toddlers with disabilities:

(1) The term means children from birth through age two who need early intervention services because they—

(i) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Language or speech development.

(D) Psychosocial development.

(E) Self-help skills; or

(ii) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(2) The term also include children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1400, 1431 (a) and (b), 1472)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 318.10 What activities may the Secretary fund?

(a) Projects supported under this program may provide training for degree, nondegree, certified, and noncertified personnel at associate degree through post-doctoral levels of preparation.

(b) The Secretary supports three types of projects under this program—

(1) Development of new programs to establish expanded capacity for quality preservice training;

(2) Improvement of existing programs designed to increase the capacity and quality of preservice training; and

(3) Special projects.

(c) The Secretary supports training programs in the following areas:

(1) Preservice training of personnel for careers in special education, related services, and early intervention, including careers in—

(i) Special education teaching, including speech-language pathology, audiology, adapted physical education, and instructional and assistive technology;

(ii) Related services for children with disabilities in educational and other settings; and

(iii) Early intervention and preschool services.

(2) Leadership training including—

(i) Supervision and administration at the advanced graduate, doctoral and post-doctoral levels;

(ii) Research at the doctoral and post-doctoral levels; and

(iii) Personnel preparation at the doctoral and post-doctoral levels.

(3) Special projects designed to include—

(i) Development, evaluation, and distribution of innovative approaches, curricula, and materials for personnel development; and

(ii) Other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(Authority: 20 U.S.C. 1431)

§ 318.11 What priorities may the Secretary establish?

The Secretary may select annually one or more priority areas for funding, including:

(a) *Preparation of personnel for careers in special education.* This priority supports preservice preparation of personnel for careers in special education, or supervisors of those personnel. Preservice training includes additional training for currently employed teachers seeking additional degrees, certifications, or endorsements. Training at the baccalaureate, masters, or specialist level is appropriate. Under this priority personnel includes special education teachers, speech-language pathologists, audiologists, adapted physical education teachers, vocational educators, and instructive and assistive technology specialists. Training of administrators and supervisors at the baccalaureate and masters level is also appropriate under this priority.

(b) *Preparation of related services personnel.* (1) This priority supports preservice preparation of individuals to provide developmental, corrective, and other supportive services that assist children and youth with disabilities to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, school social workers, health service providers, physical therapists (PT), occupational therapists (OT), school psychologists, counselors including rehabilitation counselors, interpreters, orientation and mobility specialists, respite care providers, art therapists, volunteers, physicians, and other related services personnel. Projects to train personnel identified as special education personnel in the regulations in this part are not appropriate, even if those personnel may be considered related services personnel in other settings.

(2) This program is not designed for general training. Projects must include inducements and preparation to increase the probability that graduates will direct their efforts toward supportive services to special education. For example, a project in occupational therapy might support a special component on pediatric or juvenile psychiatric OT, support those students whose career goal is OT in the schools, or provide for practica and internships in school settings.

(c) *Training early intervention and preschool personnel.* This priority supports projects that are designed to provide preservice preparation of personnel who serve infants, toddlers, and preschool children with disabilities, and their families. Personnel may be prepared to provide short-term services or long-term services that extend into a child's school program. The proposed training program must have a clear and limited focus on the special needs of children within the age range from birth to five, and must include consideration of family involvement in early intervention and preschool services. Training programs under this priority must have a significant interdisciplinary focus.

(d) *Preparation of leadership personnel.* This priority supports projects that are designed to provide preservice advanced graduate, doctoral, and post-doctoral preparation in administration and supervision; or doctoral and post-doctoral level training in research or personnel preparation.

(e) *Special projects.* (1) This priority supports projects that include development, evaluation, and distribution of innovative approaches to personnel preparation; development of curriculum materials to prepare personnel to educate or provide early intervention services; and other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(2) Appropriate areas of interest include—

(i) Preservice training programs to prepare regular educators to work with children and youth with disabilities and their families;

(ii) Training teachers to work in community and school settings with

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children and youth with disabilities and their families;

(iii) Inservice and preservice training of teachers to work with infants, toddlers, children, and youth with disabilities and their families;

(iv) Inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families;

(v) Preservice and inservice training of special education and related services personnel in instructive and assistive technology to benefit infants, toddlers, children, and youth with disabilities; and

(vi) Recruitment and retention of special education, related services, and early intervention personnel.

(3) Both inservice and preservice training must include a component that addresses the coordination among all service providers, including regular educators.

(f) *Utilizing innovative recruitment and retention strategies.* This priority supports projects to develop emerging and creative sources of supply of personnel with degrees and certification in appropriate disciplines, and innovative strategies related to recruitment and retention of personnel.

(g) *Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities.* This priority supports projects designed specifically to train personnel who are working with less than full certification or outside their field of specialization, to assist them in becoming fully qualified. Student incentives; extension, summer, and evening programs; internships; alternative certification plans; and other innovative practices are appropriate under this priority.

(h) *Training personnel to serve low incidence disabilities.* This priority supports projects to train teachers of children with serious emotional disturbance; visual impairments, including blindness; hearing impairments, including deafness; orthopedic impairments; other health impairments; and severe and multiple disabilities.

(i) *Training personnel to work in rural areas.* This priority supports projects to train personnel to serve infants, toddlers, children, and youth with disabilities in rural areas. Projects, including curricula, procedures, practica, and innovative use of technology, must be designed to provide training to assist personnel to work with parents, teachers, and administrators in these special environments. Special strategies must be designed to recruit personnel from rural areas who will most likely return to those areas.

(j) *Training personnel to provide transition assistance from school to adult roles.* This priority supports projects for preparation of personnel who assist youth with disabilities in their transition from school to adult roles. Personnel may be prepared to provide short-term transition services, long-term structured employment services, or instruction in community and school settings with secondary school students.

(k) *Preparation of paraprofessionals.* This priority supports projects for the preparation of paraprofessionals. This includes programs to train teacher aides, job coaches, interpreters, therapy assistants, and other personnel who provide support to professional staff in delivery of services to infants, toddlers, children, and youth with disabilities.

(l) *Improving services for minorities.* This priority supports projects to prepare personnel to serve infants, toddlers, children, and youth with disabilities who, because of minority status, require that personnel obtain professional competencies in addition to those needed to teach other children with similar disabilities. Projects funded under this priority must focus on specific minority populations, determine the additional competencies that are needed by professionals serving those populations, and develop those competencies.

(m) *Training minority personnel.* This priority supports projects to recruit and prepare minority individuals and individuals with disabilities for careers in special education, related services, and early intervention, including leadership personnel.

(n) *Minority institutions.* This priority supports grants to Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent. Grants may provide training in any of the areas covered in other priorities, and must be designed to increase the capabilities of the institution in appropriate training areas.

(Authority: 20 U.S.C. 1431)

Subpart C—How Does the Secretary Make an Award?

§ 318.20 What are the requirements for applicants?

(a) An applicant shall demonstrate that the proposed project is consistent with the needs for personnel, including personnel to provide special education services to children with limited English proficiency, identified by the comprehensive system of personnel development of the State or States typically employing program graduates.

(b) An applicant under this program shall address—

(1) Training techniques and procedures designed to foster collaboration among special teachers, regular teachers, administrators, related service personnel, early intervention personnel, and parents;

(2) Training techniques, procedures, and practica designed to demonstrate the delivery of services in an array of regular, special education, and community settings; and

(3) Interdisciplinary preparation of trainees.

(c) An applicant shall demonstrate how it will address, in whole or in part, the needs of infants, toddlers, children, and youth with disabilities from minority backgrounds.

(d) An applicant shall present a detailed description of strategies for recruitment and training of members of minority groups and persons with disabilities.

(Authority: 20 U.S.C. 1410 and 1431)

§ 318.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 318.22 and 318.23.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431)

§ 318.22 What selection criteria does the Secretary use to evaluate applications other than applications for special projects?

The Secretary uses the following criteria to evaluate all applications other than applications for special projects.

(a) *Impact on critical present and projected need.* (30 points) The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical present and projected State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children, and youth with disabilities. The Secretary considers—

(1) The significance of the personne. needs to be addressed to the provision of special education, related services, and early intervention. Significance of need identified by the applicant may be shown by—

(i) Evidence of critical shortages of personnel to serve infants, toddlers, children, and youth with disabilities, including those with limited English proficiency, in targeted specialty or geographic areas, as demonstrated by data from the State Comprehensive System of Personnel Development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with disabilities; or other indicators of need that the applicant demonstrates are relevant, reliable, and accurate; or

(ii) Evidence showing significant need for improvement in the quality of personnel providing special education, related services and early intervention services, as shown by comparisons of actual and needed skills of personnel in targeted specialty or geographic areas; and

(2) The impact the proposed project will have on the targeted need. Evidence that the project results will have an impact on the targeted needs may include—

(i) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(ii) For ongoing programs, the extent to which the applicant's projections are supported by the number of previous program graduates that have entered the field for which they received training, and the professional contributions of those graduates; and

(iii) For new programs, the extent to which program features address the projected needs, the applicant's plan for helping graduates locate appropriate employment in the area of need, and the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(b) *Capacity of the institution.* (25 points) The Secretary reviews each application to determine the capacity of the institution or agency to train qualified personnel, including consideration of—

(1) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, publications, and other professional contributions;

(2) The amount of time each key person plans to commit to the project;

(3) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(4) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(5) The quality of the practicum training settings, including evidence that they are sufficiently available; apply state-of-the-art services and model teaching practices, materials, and technology; provide adequate supervision to trainees; offer opportunities for trainees to teach; and foster interaction between students with disabilities and their nondisabled peers;

(6) The capacity of the applicant to recruit well-qualified students;

(7) The experience and capacity of the applicant to assist local public schools and early intervention service agencies in providing training to these personnel, including the development of model practicum sites; and

(8) The extent to which the applicant cooperates with the State educational agency, the State designated lead agency under Part H of the Act, other institutions of higher education, and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs.

(c) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(6) The extent to which substantive content and organization of the program—

(i) Are appropriate for the students' attainment of professional knowledge and competencies deemed necessary for the provision of quality educational and early intervention services for infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of methods, procedures, techniques, technology, and instructional media or materials that are relevant to the preparation of personnel who serve infants, toddlers, children, and youth with disabilities; and

(7) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired; and

(3) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant presents appropriate plans for the institutionalization of Federally supported activities into basic program operations.

§ 318.23 What selection criteria does the Secretary use to evaluate applications for special projects?

The Secretary uses the following criteria to evaluate special projects applications:

(a) *Anticipated project results.* (20 points) The Secretary reviews each application to determine the extent to which the project will meet present and projected needs under Parts B and H of the Act in special education, related services, or early intervention services personnel development.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential for replication and effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the program—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and

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instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1431)

Subpart D—What Conditions Must a Grantee Meet?

§ 318.30 What are the priorities for award of student fellowships and traineeships?

A grantee shall give priority consideration in the selection of qualified recipients of fellowships and traineeships to individuals from disadvantaged backgrounds, including minorities and individuals with disabilities who are underrepresented in the teaching profession or in the specializations in which they are being trained.

(Authority: 20 U.S.C 1431)

§ 318.31 Is student financial assistance limited?

The sum of the assistance provided to a student under this part and any other assistance provided the student may not exceed the student's cost of attendance. Cost of attendance is defined as—

(a) Tuition and fees normally assessed a student carrying the same academic workload, as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students to the same course of study;

(b) An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

(c) An allowance, as determined by the institution, for room and board costs incurred by the student that—

(1) Will be not less than $1,500 for students without dependents residing at home with parents;

(2) Will be the standard amount that the institution normally assesses its residents for room and board for students without dependents residing in institutionally owned or operated housing; and

(3) Will be based for all other students on the expenses reasonably incurred for room and board outside the institution, except that the amount may not be less than $2,500;

(d) For less than half-time students (as determined by the institution), tuition and fees and an allowance for books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (g) of this section);

(e) For a student engaged in a program of study by correspondence, only tuition and fees; and, if required, books and supplies, travel, and room and board costs incurred specially in fulfilling a required period of residential training;

(f) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with the study as determined by the institution;

(g) For a student with one or more dependents, an allowance, as determined by the institution, based on the expenses reasonably incurred for dependent care based on the number and age of the dependents;

(h) For a student with a disability, an allowance, as determined by the institution, for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(i) For a student receiving all or part of his or her instruction by means of telecommunications technology, no distinction may be made with respect to the mode of instruction in determining costs, but this paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1087)

§ 318.32 What are the student financial assistance criteria?

Direct financial assistance may only be paid to a student in a preservice program, and only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains satisfactory progress in a course of study as defined in 34 CFR 668.7; and

(c) The student is a citizen or national of the United States.

(Authority: 20 U.S.C. 1087)

§ 318.33 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other students during the grant period.

(Authority: 20 U.S.C. 1087)

§ 318.34 What are the reporting requirements under this program?

The Secretary may require recipients to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of all procedures, findings, and information. The recipient shall deliver products, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the technical assistance to parents program assisted under Parts C and D of the Act; as well as to the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, the Child and Adolescent Service Systems Program under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and any other entities that the Secretary determines to be appropriate.

(Authority: 20 U.S.C. 1410)

[FR Doc. 91-14185 Filed 6-13-91; 8:45 am]
BILLING CODE 4000-01-M

34 CFR Part 328

RIN 1820-AA91

Program for Children and Youth With Serious Emotional Disturbance

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to establish regulations for a new program authority enacted in the Education of the Handicapped Act Amendments of 1990. The proposed regulations would provide information about the kinds of projects supported under this program; and provide the application requirements and selection criteria for reviewing applications.

DATES: Comments must be received on or before July 29, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, 300 "C" Streets, SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Telephone: (202) 732-1099. (TDD: (202) 732-6153.)

SUPPLEMENTARY INFORMATION: The Program for Children and Youth with Serious Emotional Disturbance provides assistance for projects designed to improve special education and related services to children and youth with serious emotional disturbance (SED). Types of projects that may be supported under this program include, but are not limited to: Research, development, and demonstration projects.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies, institutions of higher education, and other entities receiving Federal funds under this program. However, the regulations would not have a significant economic impact on these entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 328.21, 328.22, and 328.30 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Information collection requirements in §§ 328.21 and 328.22 must be met by applicants seeking support to conduct activities authorized under section 626 of the Individuals with Disabilities Education Act. This information will be used to determine grant eligibility, acceptability of proposals, and awards. Information collection requirements in § 328.30 must be met by grantees to meet minimal requirements for project accountability. The information consists of descriptions of program procedures, findings, and relevant information.

These regulations affect institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies, which are the types of entities eligible to receive awards under this program. The Department needs and uses the information to evaluate the applications and select the entities that will receive awards.

Annual public reporting and recordkeeping burden for this collection of information is expected to average 40 hours per response for 30 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3524, Switzer Building, 300 "C" Street SW., Washington, DC, between the

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hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 328

Education, Education of Children and Youth with Disabilities, Education—research, Grants program—education, Local educational agency, Reporting and recordkeeping requirements, School, State educational agencies.

(Catalog of Federal Domestic Assistance Number: 84.237—Program for Children and Youth with Serious Emotional Disturbance)

Dated: April 9, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 328 to read as follows:

PART 328—PROGRAM FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE.

Subpart A—General

Sec.

328.1 What is the Program for Children and Youth with Serious Emotional Disturbance?
328.2 Who is eligible for an award?
328.3 What priorities may the Secretary fund under this program?
328.4 What priorities may the Secretary establish?
328.5 What regulations apply?
328.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

328.20 How does the Secretary evaluate an application?
328.21 What selection criteria does the Secretary use for applications for research projects?
328.22 What selection criteria does the Secretary use for applications for development or demonstration projects?
328.23 When may the Secretary propose new selection criteria?

Subpart D—What Conditions Must Be Met after an Award?

328.30 What special conditions apply to projects assisted under this program?

Authority: 20 U.S.C. 1426, unless otherwise noted.

Subpart A—General

§ 328.1 What is the Program for Children and Youth with Serious Emotional Disturbance?

Under this program, the Secretary may support—

(a) Projects, including research projects, for the purpose of improving special education and related services to children and youth with serious emotional disturbance; and

(b) Demonstration projects to provide services for children and youth with serious emotional disturbance. Funds for projects under this paragraph may also be used—

(1) To facilitate interagency and private sector resource pooling to improve services for children and youth with serious emotional disturbance; and

(2) To provide information and training for those involved with, or who could be involved with, children and youth with serious emotional disturbance.

(Authority: 20 U.S.C. 1426 (a), (b))

§ 328.2 Who is eligible for an award?

(a) To carry out the purpose in § 328.1(a), the Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies.

(b) *Demonstration service projects.* To carry out the purposes in § 328.1(b), the Secretary may make grants to local educational agencies in collaboration with mental health entities.

(Authority: 20 U.S.C. 1426 (a), (b))

§ 328.3 What priorities may the Secretary fund under this program?

(a) Under § 328.2(a), the Secretary may support projects that include, but are not limited to—

(1) Studies regarding the present state of special education and related services to children and youth with serious emotional disturbance and their families, including information and data to enable assessments of the status of those services over time;

(2) Developing methodologies and curricula designed to improve special education and related services for these children and youth;

(3) Developing and demonstrating strategies and approaches to reduce the use of out-of-community residential programs and to encourage the increased use of school district-based programs, which may include day treatment programs, after-school programs, and summer programs;

(4) Developing the knowledge, skills and strategies for effective collaboration among special education, regular education, related services, and other professionals and agencies; or

(5) Developing and demonstrating innovative approaches to assist and to prevent children with emotional and behavioral problems from developing serious emotional disturbances that require the provision of special education and related services.

(b) Under § 328.2(b), the Secretary may support demonstration projects that include, but are not limited to—

(1) Increasing the availability, access, and quality of community services for children and youth with serious emotional disturbance and their families;

(2) Improving working relationships among education, school, and community mental health and other relevant personnel, families of those children and youth, and their advocates;

(3) Targeting resources to school settings, such as providing access to school or community mental health professionals or both and other community resources for students with serious emotional disturbance who are in community school settings; and

(4) Taking into account the needs of minority children and youth in all phases of project activity.

(Authority: 20 U.S.C. 1426(a), (b))

§ 328.4 What Priorities may the Secretary establish?

(a) Each year the Secretary may select as a priority one or more of the types of activities listed in § 328.3.

(b) The Secretary announces these priorities in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1426(a))

(c) In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105, the Secretary may also propose new priorities for assistance under this program through publication of a notice in the **Federal Register**.

(Authority: 20 U.S.C. 1426(a), and 20 U.S.C. 3474)

§ 328.5 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chap. 1 and the Education Department Acquisition Regulation (EDAR) in 48 CFR Chap. 34.

(c) The regulations in this part 328.

(Authority: 20 U.S.C. 1426)

§ 328.6 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1: 1

Application.
EDGAR.
Grant.
Local educational agency (LEA).
Project.
Public.
Secretary.
State.
State educational agency (SEA).

(b) *Other definitions.* The following definitions also apply to this Part:

Act means the Individuals with Disabilities Education Act, as amended.

Free appropriate public education is defined in 34 CFR 300.4.

(Authority: 20 U.S.C. 1426)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 328.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 328.21, 328.22, and 328.23.

(b) The Secretary awards up to 100 points under these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1426)

§ 328.21 What selection criteria does the Secretary use for applications for research projects?

(a) The Secretary uses the following criteria to evaluate an application for a research project:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(3) The Secretary reviews each application to determine the quality of the evaluation plan for the project, and considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

Cross Reference: 34 CFR 75.590, *Evaluation by the grantee.*

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(e) *Importance.* (15 points)

The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation of, or compensation for, the problem or issue that relates to the early intervention with or special education of infants, toddlers, children, and youth with disabilities.

(f) *Impact.* (15 points) The Secretary reviews each application to determine the probable impact of the proposed research products on infants, toddlers, children, and youth with disabilities, or personnel responsible for their education.

(g) *Organizational capability.* (5 points) The Secretary considers—

(1) The applicant's experience in special education; and,

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that the findings can be used effectively.

(h) *Technical soundness.* (35 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) The instrumentation; and

(4) The data analysis procedures.

(Authority: 20 U.S.C. 1426)

§ 328.22 What selection criteria does the Secretary use for applications for development or demonstration projects?

The Secretary uses the following criteria to evaluate an application for a development or demonstration project:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

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(2) The Secretary looks for—
(i) High quality in the design of the project;
(ii) An effective plan of management that insures proper and efficient administration of the project;
(iii) A clear description of how the objectives of the project relate to the purpose of the program;
(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and
(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.
(b) *Quality of key personnel.* (10 points)
(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.
(2) The Secretary considers—
(i) The qualifications of the project director (if one is to be used);
(ii) The qualifications of each of the other key personnel to be used in the project;
(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and
(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.
(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.
(c) *Budget and cost effectiveness.* (5 points)
(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.
(2) The Secretary considers the extent to which—
(i) The budget for the project is adequate to support the project activities; and
(ii) Costs are reasonable in relation to the objectives of the project.
(d) *Evaluation Plan.* (10 points)
(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross Reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.
(e) *Adequacy of resources.* (5 points)
(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.
(2) The Secretary considers the extent to which—
(i) The facilities that the applicant plans to use are adequate; and
(ii) The equipment and supplies that the applicant plans to use are adequate.
(f) *Importance.* (10 points) The Secretary reviews each application to determine—
(1) The extent to which the service delivery problem addressed by the proposed project is of concern to others in the Nation; and,
(2) The importance of the project in addressing the problem or issue.
(g) *Innovativeness.* (15 points)
(1) The Secretary reviews each application to determine the innovativeness of the proposed project.
(2) The Secretary looks for a conceptual framework that—
(i) Is founded on previous theory and research; and
(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.
(h) *Organizational capability.* (10 points) The Secretary considers—
(1) The applicant's experience in special education or early intervention services; and
(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.
(i) *Technical soundness.* (25 points) The Secretary reviews each application to determine the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—
(1) The population to be served;
(2) The model planning process;
(3) Recordkeeping systems;
(4) Coordination with other service providers;
(5) The identification and assessment of students;
(6) Interventions to be used, including proposed curricula;
(7) Individualized educational program planning; and
(8) Parent and family participation.

(Authority: 20 U.S.C. 1426)

§ 328.23 When may the Secretary propose new selection criteria?

(a) The Secretary may propose new selection criteria for applications for projects if the applications cannot be appropriately evaluated using the selection criteria in either § 328.21 or § 328.22.
(b) The Secretary may announce the new selection criteria in a notice published in the **Federal Register.**

(Authority: 20 U.S.C. 1426)

Subpart D—What Conditions Must be Met After an Award?

§ 328.30 What special conditions apply to projects assisted under this program?

(a) Each project assisted under this program must—
(1) Apply existing research outcomes from multidisciplinary fields; and
(2) In complying with 34 CFR 75.590 (Evaluation by the grantee), use a grant evaluation plan that is outcome-oriented and that focuses on the benefits to individual children and youth.
(b) A grantee, if appropriate, must prepare reports describing procedures, findings, and other relevant information in a form that will maximize the dissemination and use of these procedures, findings, and information.
(c) The Secretary requires delivery of those reports, as appropriate, to—
(1) The regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Programs (TAPP) assisted under Parts C and D of the Act;
(2) The National Diffusion Network;
(3) The ERIC Clearinghouse on the Handicapped and Gifted;
(4) The Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health;
(5) Appropriate parent and professional organizations;
(6) Organizations representing individuals with disabilities; and
(7) Such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C 1426(c))

[FR Doc. 91-14186 File 6-13-91; 8:45 am]
BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 156 and 170

[OPP-300164D; FRL-3783-2]

Worker Protection Standards for Agricultural Pesticides; Notification of the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of transmittal of final rule to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a regulation on worker protection standards for agricultural pesticides (40 CFR parts 150 and 170). This action is required by section 25(a)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Breslin, Chief, Occupational Safety Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1009, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-7666.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(B) of FIFRA provides that the Administrator of EPA shall provide the Secretary of Agriculture with a copy of any regulation at least 30 days prior to signing it for publication in the **Federal Register.** The Administrator and the Secretary may, by agreement, modify or waive this time requirement, and they have done so with respect to the worker protection final rule. Accordingly, if the Secretary comments in writing regarding the regulation within 45 days after receiving it, the Administrator shall issue for publication in the **Federal Register,** with the regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 45 days after receiving the regulation, the Administrator may sign the regulation for publication in the **Federal Register** any time thereafter.
(Sec. 25., Pub. L. 92-516, 86 Stat. 973, as amended (7 U.S.C. 136 et seq.))

Dated: June 11, 1991.

Douglas D. Campt,
Director, Office of Pesticide Programs.

[FR Doc. 91-14345 Filed 6-13-91; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 170

[OPP-300164E; FRL-3783-3]

Worker Protection Standards for Agricultural Pesticides; Notification of the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of transmittal of proposed rule to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a proposed regulation on worker protection standards for agricultural pesticides (40 CFR part 170). This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Breslin, Chief, Occupational Safety Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1009, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-7666.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator of EPA shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register.** The Administrator and the Secretary may, by agreement, modify or waive this time requirement, and they have done so with respect to this proposed rule. Accordingly, if the Secretary comments in writing regarding the proposed regulation within 45 days after receiving it, the Administrator shall issue for publication in the **Federal Register,** with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 45 days after receiving the proposed regulation, the Administrator may sign the regulation for publication in the **Federal Register** any time thereafter.
(Sec. 25., Pub. L. 92-516, 86 Stat. 973, as amended (7 U.S.C. 136 et seq.))

Dated: June 11, 1991.

Douglas D. Campt,
Director, Office of Pesticide Programs.

[FR Doc. 91-14344 Filed 6-13-91; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 560 and 572

[Docket No. 91-20]

Exemption of Certain Marine Terminal Services Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On May 15, 1991, the Federal Maritime Commission published a notice of proposed rulemaking (56 FR 22384) which proposes to amend 46 CFR parts 515, 560 and 572 to conditionally exempt, pursuant to section 35 of the Shipping Act, 1916, and section 16 of the Shipping Act of 1984, certain marine terminal services arrangements from certain agreement filing requirements of the Shipping Act, 1916, the Shipping Act of 1984 and the Commission's implementing regulations thereunder, and to conditionally discontinue the Commission's tariff filing requirements for such matters. The notice of proposed rulemaking directed that parties filing reply comments serve a copy of those replies on all other commenters. The Commission omitted the requirement that initial comments be served on all other commenters, in order to facilitate the filing of reply comments. This correction adds the requirement that all parties filing initial comments serve a copy of their comments on all other commenters, so that replies may be made. The Secretary of the Commission will provide a service list for this purpose shortly after completion of the initial round of comments.

DATES: Comments on or before July 15, 1991. Replies on or before August 13, 1991.

ADDRESSES: Send an original and fifteen copies of comments and replies to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Deputy Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5796.

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91-14124 Filed 6-13-91; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Little Mariana Fruit Bat, Mariana Fruit Bat, Guam Broadbill, Mariana Crow, Guam Micronesian Kingfisher, and Guam Bridled White-Eye

AGENCY: Fish and Wildlife Service, Interior.

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ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to designate critical habitat for six endangered forest species on Guam, the little Mariana fruit bat (*Pteropus tokudae*), Mariana fruit bat (*Pteropus mariannus mariannus*), Guam broadbill (*Myiagra freycineti*), Mariana crow (*Corvus kubaryi*), Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*), and Guam bridled white-eye (*Zosterops conspicillatus conspicillatus*). These species were listed as endangered on August 27, 1984. Critical habitat was not designated at the time of the listing because it was not deemed prudent. Federal actions that may affect the areas designated as critical habitat would be subject to consultation with the Service, pursuant to section 7(a)(2) of the Act. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by August 13, 1991. Public hearing requests must be received by July 29, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, PO Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Engbring, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

In the final rule published August 27, 1984, in the **Federal Register** (49 FR 33881), the Service determined endangerd status for seven birds—Guam broadbill, Mariana crow, Mariana gallinule (moorhen), Micronesian kingfisher, Guam rail, Vanikoro swiftlet, and bridled white-eye—and two mammals—the little Mariana fruit bat and Guams population of Mariana fruit bat. These species are found in the Mariana Islands in the western Pacific in the Territory of Guam and the Commonwealth of the Northern Mariana Islands, both under the jurisdiction of the United States. For further information on the listing of these species, see the 1984 **Federal Register**.

Six of these seven endangered species (all but the rail) are forest species, and their primary habitat is native forest. These six species were at one time distributed in forest throughout Guam. By the time they were listed in 1984, their ranges had been severely reduced. Since then they have continued to decline in the wild. Their primary habitat is undisturbed native forest, but they are relatively adaptable and are able to reside in a variety of forest types, including forests with mixed native and introduced vegetation, mature forests, coconut forests, strand forests, and second growth forests.

The Mariana crow is endemic to Guam and Rota. The population on Rota has been relatively stable and, based on a 1982 survey, was believed to number about 1,300 individuals (Engbring et al. 1986). On Guam, the population has declined and is now believed to number fewer than 100 individuals (USFWS 1987b). Moreover, there has been little or no successful reproduction. Compared to other forest birds of Guam and Rota, the crow requires relatively large tracts of forest that do not have high levels of human activity. More forest is necessary to maintain a genetically viable population of this species than for other forest birds on Guam.

The Marina fruit bat is found on all the major islands in the Marianas. Only the Guam population is listed as endangered, although population on Saipan, Tinian, and Aguijan are listed as category 1 candidate species, and the populations on Rota and the islands north of Saipan are listed as category 2 candidate species (54 FR 554). On Guam the bat was historically found thoroughout native forests. By the 1980's it had been reduced to a population of about 500 and was restricted to forest on the northern tip of the island (USFWS 1987a), although there are occasional reports of bats from southern Guam around Fena Reservoir. Illegal hunting is believed to be one of the major causes for the decline, but predation by the brown tree snake may also be an important limiting factor (Wiles 1987). Various species of Pacific fruit bats generally use a variety of forest types including agricultural forest in close proximity to residential areas. On Guam, however, it has not been possible to provide adequate protection from poaching, and residential areas have been excluded from use by the bat probably because of this illegal hunting. Forested areas protected from human intrusion are necessary for recovery of the bat on Guam, and designation of critical habitat would help to protect these areas.

The Micronesian kingfisher, a subspecies endemic to Guam, was at one time found throughout most forests (Jenkins 1983). Up to 3,000 might have survived when the species was listed in 1984, but the kingfisher declined rapidly and it may be extinct in the wild today. However, a captive population has been established and is maintained at several mainland zoos including the Bronx, Philadelphia, and National Zoos. Once the brown tree snake is controlled or eradicated, progeny produced by this captive flock will be reintroduced to Guam. Adequate forest is essential for reintroducing the kingfisher. Designation of critical habitat would assure that suitable forest habitat remains for recovery of the kingfisher.

Three of the six forest species, all endemic to Guam, have not been observed in the wild for several years and may be extinct: The little Mariana fruit bat, Guam broadbill, and bridled white-eye. There have been no records of the little Mariana fruit bat since 1968. In 1983 the Guam broadbill was restricted to a small area at the north end of the island and the population was estimated at under 100 individuals. Since then, the broadbill has virtually disappeared from the island. Two sightings of individuals were made in 1984, one in March in Northwest Field and one in August adjacent to the Navy golf course in Barrigada (USFWS 1987b). A single broadbill was possibly heard in the Naval Communications area in 1988 (U.S. Navy 1989). Fewer than 50 bridled white-eyes were thought to survive in 1983. The last individual was observed in June 1983 (Beck 1984). If any of these three species still survive, they would require native forest similar to that needed by other forest species on Guam.

This proposed rule focuses on Guam populations of the six forest species that were listed in 1984 (all except the Mariana gallinule, Vanikoro swiftlet, and Guam rail). All six of the forest species have declined in numbers and distribution, and some may be extinct. The main cause of the decline at the time of listing was not certainly known, but probable causes included avian disease, predation by introduced animals, habitat loss, and, for the two species of fruit bats, hunting. It has become increasingly clear that for the endangered birds, predation by the introduced brown tree snake (*Boiga irregularis*) is the primary cause of the decline (Savidge 1987). For fruit bats, hunting is still considered to be a serious threat, although the snake may be preying upon bats as well (Wiles 1987). Two recovery plans have been prepared for the six species, a Guam and Rota forest bird recovery plan (USFWS 1987a) and a fruit bat recovery plan (USFWS 1987b).

Description of Petitions

Two similar petitions requesting that critical habitat be designated for seven endangered species on Guam have been received by the Service. The seven species are the Mariana fruit bat, little Mariana crow, Guam Micronesian Kingfisher, Guam broadbill, Guam bridled white-eye, and Guam rail. The first petition, dated August 17, 1987, was from the Governor of Guam. Subsequently, on March 16, 1988, the Governor of Guam requested that his petition be considered under the emergency rule process. The Governor's request for designation of critical habitat was further supported by Resolution 339 of the Guam legislature dated May 19, 1988.

The second petition, dated December 31, 1987, was submitted jointly by the National Audubon Society and the Marianas Audubon Society and was forwarded to the Service under Sierra Club Legal Defense Fund letterhead. The petition requested designation of critical habitat on an emergency and permanent basis for the seven species. Both petitions requested that those areas delineated as essential habitat in the two recovery plans be designated as critical habitat for these species.

This proposed rule constitues the finding for these two petitions. The Service has determined that the designation of critical habitat for the Mariana fruit bat, little Mariana fruit bat, Mariana crow, Guam Micronesian kingfisher, Guam broadbill, and Guam bridled white-eye, is warranted. However, the Service has determined that the designation of critical habitat for the Guam rail is not prudent and therefore not warranted. The Guam rail is now believed to be extinct in the wild, but a captive flock has been established for eventual reintroduction to the wild. The rail has different habitat requirements than the other six species, and although it uses various types of forest habitat, it is more accurately described as an "edge" species (Jenkins 1979). Such areas are relatively common on Guam and under no threat. The occurrence of prime rail habitat is often dependent on the disturbance or clearing of forests by humans, and the location of such habitat commonly changes over time. These areas generally do not require special protection or management. There would be little or no benefit to the rail in designating critical habitat in these areas, and such action is not deemed prudent at this time.

Essential habitat described in the forest bird recovery plan is a strip of land on northern Guam extending north from Puntan Dos Amantes Park on the west coast, continuing around Ritidian Point, east to Pati Point, and finally extending south to Campanaya Point. Habitat in central and southern Guam is not specifically described in the forest recovery plan. Rather, the recovery plan states that essential habitat consisting of former historical range in central and southern Guam needs to be delineated, protected, and managed. No essential habitat is described for the Mariana crow on Rota. The recovery plan for the Guam fruit bats delineates essential habitat in both northern and southern Guam. In northern Guam, the essential habitat is the same as that described for forest birds. In southern Guam critical habitat includes the Naval Magazine, the Naval Reservation, the Bolanos Conservation Reserve, and a small strip of land above the 800-foot contour on the west side of the Naval Magazine and Reservation.

Emergency Rulemaking

The Service has determined that designation of critical habitat via the emergency rule process is not necessary. The requests for designation of critical habitat via the emergency rule process were triggered by the Navy's proposal to clear up to 1,800 acres (7.28 square km) of forest and construct a radar project in Northwest Field on Andersen Air Force Base. The proposed construction site for the project is within the areas identified as essential habitat for the recovery of the six endangered species. According to the petitioners, the Navy project could destroy and/or adversely modify up to 1,800 acres. This work was originally to have been done without the completion of an environmental impact statement. The Navy has now indicated that the project will remove considerably less than 1,800 acres, has decided to prepare a full environmental impact statement, and has entered into consultation with the Service pursuant to section 7(a)(2) of the Act.

Critical Habitat

The Service has evaluated the petitions and other information relative to this issue and concurs that designation of critical habitat for the forest species is warranted. The populations and ranges of these endangered species have decreased rapidly within the past 25 years and parts of former historical range are no longer occupied by them. Parts of these historical ranges are considered to be essential for recovery. A question has been raised as to the scope of Federal agency obligations under section 7(a)(2) of the Act if no listed species occurs on a proposed project site. Designation of these areas as critical habitat would insure that Federal agency actions would not destroy or adversely modify this critical habitat intended for use in future reintroduction programs.

Urbanization and development of private property on Guam continues rapidly. Land prices increased dramatically in the 1980's, due largely to Japanese investment. Tourism and human population continue to increase rapidly. Along with this are associated human-caused disturbances to the forest environment. Forest habitat is being directly destroyed for roads, houses, buildings, and other structures. Also, the increased traffic and human activity adversely modify forest habitat by causing increased disturbance to forest species.

Recovery plans for the endangered forest birds incorporate captive propagation programs for species such as the kingfisher. Captive propagation programs would produce progeny for eventual reintroduction into the wild when the brown tree snake has been controlled or eliminated. Essential forested areas must be protected and managed if they are to retain their value as future reintroduction sites.

There has been speculation over the possible relocation of Navy and Air Force facilities now in the Philippines to the Mariana Islands. Should it be necessary to move the bases to Guam, it would be of benefit to be aware of Federal lands that have been designated as critical habitat to promote recovery of Guam's endangered species. It should result in early consultation and enhance resolution of conflicting use issues.

Critical habitat, as defined by section 3(5) of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the

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maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. In the case of the six species addressed in this proposed rule, critical habitat was not designated when the species were listed in 1984 because it was not deemed prudent and there would have been no net benefit to the species. The only Federal activity known to have a potential adverse effect on any of the species was the clearing of land by the U.S. Air Force in a portion of the Guam rail's habitat on Andersen Air Force Base. Other Federal agencies contemplating actions with potential adverse effects to endangered species could be informed by means other than a critical habitat determination. Such potential advese effects could be resolved through the consultation process as required by section 7(a)(2) of the Act. For these reasons discussed above, the Service now considers the designation of critical habitat on Guam to be prudent.

Section 4(a)(3)(B) of the Act allows for revision of critical habitat designation as appropriate. With the accelerated loss of forest habitat on Guam, the Service concurs that a proposed designation of critical habitat is appropriate for six of the seven endangered species covered by the petitions: The Mariana crow, Micronesian kingfisher, Mariana fruit bat, little Mariana fruit bat, Guam broadbill, and Guam bridled white-eye. The areas for which the Service proposes critical habitat designation are those identified as "high priority essential habitat" and "essential habitat" in the two recovery plans for these species. The total acreage of the proposed areas is approximately 16,893 acres (6,837 ha) in northern Guam and 7,669 acres (3,104 ha) in southern Guam. About 83% of the land within the proposed critical habitat of the six forest species on Guam is in Federal ownership and is under the jurisdiction of either the U.S. Navy or the U.S. Air Force. Approximately 14.5% is owned by the Government of Guam, while the remaining 3.5% is in private ownership.

Through the 1970's and early 1980's about 50,000 acres (20,235 ha) of suitable forest habitat was estimated to remain on Guam (Guam Division of Forestry and Soil Resources 1983). This is considered to be enough habitat to support recovered populations of the endangered forest species. This habitat was about equally divided between northern and southern Guam; based on 1975 aerial photography, about 25,000 acres remained on northern Guam (Engbring and Ramsey 1984). Much of the habitat was occupied by one or more of these species during the 1970's (Jenkins 1983), but population size and distribution were diminishing rapidly as a result of predation by the brown tree snake.

Extensive tracts of forest (more than a thousand acres) that are removed from intensive human disturbances are now becoming increasingly rare on Guam due to the cumulative effects of development. Furthermore, the pace of development has recently accelerated. Two large forested parcels remain, the forest at the northern end of the island (described as "essential habitat" and "high priority essential habitat" by the petitioners) and the forest in south-central Guam in and adjacent to the Naval Magazine. These two areas are essential to the conservation and recovery of endangered forest species on Guam. The Mariana crow, in particular, requires large, relatively isolated tracts of forest. The Service's Recovery Plan for the Native Forest Birds of Guam specifies essential habitat for the broadbill, white-eye, kingfisher, and crow. The Recovery Plan for the Marianas Fruit Bat and Little Marianas Fruit Bat specifies essential habitat for both bat species.

The area to be proposed as critical habitat includes forest and associated land and airspace in Guam and is precisely delineated as follows:

1. *Northern Guam.* (1) Those portions north and seaward of (a) a line from the westernmost tip of Amantes Point east to Wettengel Junction on Marine Drive; (b) Highway 3 from Wettengel Junction north to Potts Junctions; (c) Highway 9 from Potts Junction east to Salisbury Junction; and (d) the Andersen Air Force Base boundary from Salisbury Junction east to the coast. (2) All contiguous, coastal Government of Guam property from Anao Point to Campanaya Point including the Anao Conservation Reserve, lot numbers 7102, 7103, 7147, and the Lujuna portion of Lot Number A (the Asdonlucas portion of Lot Number A is excluded) (lot numbers from Government of Guam Land Registration Survey Plats). (3) The single private property inholding at Janum Point.

2. *Southern Guam.* Those portions including: (a) Naval Magazine; (b) Naval Reservation (Fena Valley Watershed); (c) the area above the 800-foot contour west of and abutting the Naval Magazine and the Naval Reservation; (d) the area abutting and between the Naval Magazine and Naval Reservation along the Maagas River, bounded on the east by a line beginning at the easternmost point of the Naval Magazine along the Maagas River and running southwest to the easternmost tip of the Naval Reservation south of the Tinechong River; and (e) the entire Bolanos Conservation Reserve, which is comprised of lot numbers 507, 508, and 509 (lot numbers from Government of Guam Land Registration Survey Plats).

The major constituent element is native and non-native forest, which is defined herein as those vegetation types in which the upper canopy is equal to or greater than 6 feet (2 m) high and is dominated by woody plant species. A number of roads, open fields, houses, runways, buildings, and other man-made structures are found within the boundaries outlined; however, only forested portions are being considered for proposed critical habitat designation.

The proposed areas referred to above include areas within the geographical area occupied by the species at the time they were listed as well as specific areas outside the geographical area occupied by the species at the time they were listed which are essential to the conservation of the species. In considering a designation of critical habitat, the Service focuses on the primary constituent elements (i.e., the physical and biological features of the area that are essential to the conservation of the species) in defining critical habitat. In addition, the Service is required to list the known primary constitutent elements together with the description of any critical habitat that is designated (50 CFR 424.12(b)). In the case of the six Guam forest species, the proposed areas include the physical and biological features essential to the conservation of the species and require special management and protection. Physically, they consist of relatively continguous tracts of a variety of forest types, including mature limestone forest, mixed woodlands, second growth strands, coastal stand forests, coconut forest, and ravine forests; these are all habitat types which are favored by the six endangered forest species. When isolated from excessive human disturbance, such forests biologically fulfill the stringent requirement of the Mariana crow and Mariana fruit bat in providing relatively large, contiguous tracts of forest with a minimum of human disturbance.

The area in southern Guam proposed for critical habitat has not recently supported forest birds, although a few Mariana fruit bats may still survive there. The ravine forests of this area were formerly used by all six species. They contain the physical and biological features essential for the recovery and conservation of these species. Because the Guam broadbill, bridled white-eye, and probably the little Mariana fruit bat historically occupied this habitat, any animals still extant would be expected to thrive in this area once the effects of the brown tree snake are eliminated.

Designation of these areas as critical habitat would not only prevent jeopardy to the continued survival of those species which are currently restricted to a small fraction of their former historical range, but would provide habitat for reintroduction programs once the brown tree snake is controlled or eliminated. Species that may be reintroduced at some point in the future include the Micronesian kingfisher and possibly the Mariana crow and Mariana fruit bat. The key management consideration common to all of the the species is the elimination of the exotic brown tree snake, which was a major factor in the population declines of these species. Conservation and recovery of the Mariana fruit bat amd the Mariana crow, which are still known to be present in the wild, would be substantially enhanced through protection and management of portions of their former historical range in southern Guam.

Section 4(b)(8) of the act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such a designation. Actions that could adversely affect critical habitat for these species include the removal, destruction, or fragmentation of forest habitat and an increase in human-associated or human-induced disturbances. Specific actions that could adversely affect critical habitat include the clearing of forest for military construction project; the clearing of forest for private resorts, houses, or golf courses; military training exercises; and increased recreational activities within or adjacent to critical habitat. Destruction or alteration of forest on Guam could result in the extirpation of endangered forest species and/or preclude opportunities for recovery. Fragmentation of forest habitat with roads, buildings, or clearings could result in habitat patches too small to provide suitable nesting and foraging sites for such species as the Mariana crow. Increases in recreational activities, military training exercises, or other types of human activity could cause nest abandonment (for birds) or roost abandonment (for fruit bats), ultimately leading to decreased rates of reproduction and the loss of suitable habitat.

A variety of Federal agencies have jurisdiction and responsibilities within the areas proposed for designation as critical habitat for the six endangered forest species. In accordance with the provisions of the Act, section 7 consultations are required in cases where a Federal action may affect any of the six endangered Guam species, or section 7 conferences are required in case where a Federal action is likely to destroy or adversely modify their proposed critical habitat. Known project proposals within proposed critical habitat that could require (or have required) consultations or conferences for any of the reasons mentioned above include: Installation of "relocatable over-the-horizon-radars" (Navy); military training exercises (DOD); construction of resorts, golf courses, and other recreational facilities where Federal permits are required (Navy, Air Force, and Corps of Engineers); clearing of forest vegetation for roads, warehouses, and other military construction projects (DOD); increase or changes in recreational use of Federal properties (Navy, Air Force); the release or exchange of excess Federal property (Navy, Air Force). Although these projects have the potential for adverse effects on forest habitat, section 7 consultations almost invariably result in modification rather than curtailment of such projects, pursuant to the development of reasonable and prudent alternatives.

Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat. The Service is making this proposal to designated critical habitat on the basis of the best scientific information available and with additional relevant information that has been submitted from various sources. The Service solicited comments on the economic impacts of critical habitat designation from the Guam Bureau of Planning, the U.S. Navy, the U.S. Air Force, and Guam Urunao Resort Corporation. Telephone conversations and individual contacts have been made with local government officials, Federal and Guam agency personnel, and private business officials. The Service held a formal information meeting on Guam in June 1989. Information gathered has been incorporated into an economic analysis of the impacts of designating critical habitat.

Activities in the proposed critical habitat areas include military training exercises; hunting, hiking, camping, and related outdoor recreational activities; the collection of fruits, medicinal plants, and other traditional forest products; security checks by the military; and minor agricultural endeavors. Much of the forest is valuable as watershed that recharges reservoirs and the freshwater lens. There is no mining, ranching, timber harvest, or farming on Federal properties being considered for critical habitat designation on Guam. Several military construction projects, one major private resort, and the exchange or release of certain excess Federal properties have been proposed at various sites within the proposed critical habitat boundaries.

Several Federal and Government of Guam (GovGuam) agencies have jurisdiction over the activities within or near the proposed critical habitat areas. The Navy and the Air Force have expressed concern that the designation of critical habitat would affect currently proposed or future projects and asked to have various project areas removed from the critical habitat boundaries. GovGuam has expressed concern over the potential release of excess Federal property. Economic impacts attributable to critical habitat considerations for these projects are expected to be minimal. The Service has prepared an economic analysis of the areas being proposed for critical habitat in this rule. Details pertaining to specific proposals and activities are summarized below.

Private lands within proposed critical habitat are mostly forested and used for recreation, traditional collection of forest products, and the limited cultivation of crops. Most activities occurring on private lands do not require Federal approval and would not be affected by the designation of critical habitat. One major resort has been proposed by the Guam Urunao Resort Corporation, which has leased the right to develop private (Artero) property. Both the Mariana Crow and the Mariana fruit bat occur in this area and may be affected by the project. This project would require several Federal and GovGuam permits, including section 7 consultation under the Endangered Species Act, regardless of whether or not critical habitat is designated. The designation of critical habitat in and of itself is not expected to have any significant impact on the project. One other parcel or private property, the Castro property, is "landlocked" by military lands. This area harbors the Mariana Crow and the Mariana fruit bat, and projects in the area may affect these species. Landowners have requested an improved access easement, but no major projects have been proposed for this area. Federal permits are currently required to access this

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property; the designation of critical habitat is not expected to have any significant impact above and beyond current permit requirements.

Actions for which foreseeable economic effects are likely to occur as a result of critical habitat designation are those of the U.S. Navy. The Navy proposes to build three "relocatable over-the-horizon" radar installations within the proposed critical habitat on Guam. If it becomes necessary to construct these facilities at an alternative site outside of critical habitat as a result of critical habitat designation, the cost could total approximately $100 million per site. One of the three projects does not now appear to be viable and is no longer being pursued by the military. If the other two facilities are built, it appears that various types of mitigation would be possible that would not force relocation to an alternate site. Total economic impact would be significantly lessened if this were the case.

A Federal action which might be affected by a critical habitat designation is the potential release of excess Federal property to GovGuam. Property identified as releasable in the past includes several areas that are partly or entirely within the proposed critical habitat boundaries. Whether any or all of the land is eventually released to GovGuam is speculative. The DOD may no longer consider certain Federal properties previously identified as excess to be releasable for a number of reasons, including: The possibility of relocating military facilities from the Philippines to Guam; the possible need for certain parcels on which to build radar sites; the potential relocation of the Naval Air Station to Andersen AFB; the tremendous increase in cost and general unavailability of land on Guam as a result of Japanese investment; and, the fact that various restrictions have been placed on Federal lands as a result of the listing of endangered forest species in 1984. The designation of critical habitat on Guam could "tie up" areas that the military had formerly considered suitable for development. The DOD might thus be less inclined to designate property as excess, under the expectation that the land will eventually be needed for military purposes.

If critical habitat is designated, there could be, via the section 7 process, conditions or restrictions placed on any land transfer. However, the release of most military lands on Guam would even now require consultation with the Service under section 7 of the Endangered Species Act, regardless of whether or not critical habitat is designated. Even the transfer of properties such as the Harmon Annex or South Finnegayan, now at the extreme southern portion of the range of the Mariana Crow and Mariana fruit bat, may affect these listed species. Mechanisms to preserve and protect forested areas on these tracts would probably be a condition of any such consultation. There would be no economic impact on the identification of and/or transfer of excess Federal land to GovGuam per se.

A still hypothetical project that could be affected by the designation of critical habitat is relocation of the Naval Air Station to Andersen AFB. The Naval Air Station currently shares runways with the Guam International Airport. Naval maintenance hangars, administrative buildings, and housing are all located on site. As the tourist industry has built up and the need for private airport facilities has increased, GovGuam has been seeking ways to expand the International Airport. A recent proposal has been to relocate the Naval Air Station to Andersen AFB, thus freeing Naval property at the airport for commercial development. The feasibility of such a move is being studied by the U.S. General Accounting Office. At least four potential sites have been identified on Andersen AFB for such a move. Three of these sites are entirely or largely within developed boundaries at Andersen, and critical habitat would have little or no economic effect on them.

The relocation of U.S. Navy and Air Force bases from the Philippines to Guam is a possibility that has been discussed in recent years, but the reality of any such move is conjectural. If either of the two large military facilities in the Philippines, Subic Bay or Clark AFB, are closed or moved, Guam would be a logical relocation site. Critical habitat could have an impact on such a move, but any attempt to place economic values on this scenario is premature.

The Navy is currently developing Natural Resource Management Plans for all of its installations on Guam. These plans will focus on the conservation of natural resources, including endangered species. Expanded hunting and fishing programs may be authorized in the future. A number of activities occur on Air Force land within the proposed critical habitat boundaries, including hunting, fishing, military training exercises, camping, picnicking, explosive ordnance disposal, and others. Most of these activities have been conducted for many years, and the designation of critical habitat would not be expected to significantly alter ongoing activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state, and private agencies and by various groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. Such actions have been initiated by the Service following the listing of the six Guam species in 1984. The protection measures provided to listed species by Federal agencies are summarized below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Several Federal agencies have jurisdiction and responsibilities within endangered forest species habitat, and section 7 consultations have been and will be required in a number of cases. Project proposals that could require or have undergone consultation are summarized under the Critical Habitat section above.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Current or planned activities in the subject area and their possible impacts on this species;

(3) Current or planned activities in the subject area and the projected economic costs associated with these activities.

The final decision on this proposed regulation on designating critical habitat for the six endangered forest species on Guam will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

Requests for a public hearing on this proposal must be recieved within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Pacific Islands Administrator (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references sited herein is available upon request from the Service's Honolulu Field Office (see **ADDRESSES** above).

Author

The primary author of this proposed rule is John Engbring, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541-2749 or FTS 551-2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the "Critical habitat" entry for six different species, including "Bat, little Mariana fruit," and "Bat, Mariana fruit," under MAMMALS, to read "17.95(a);" and "Broadbill, Guam," "Crow, Mariana," "Kingfisher, Guam Micronesian," and "White-eye, bridled," under BIRDS, to read "17.95(b)."

3. It is proposed to amend § 17.95(a) by adding critical habitat of the little Mariana fruit bat and Mariana fruit bat, in the same alphabetical order as the species occur in § 17.95(h); and it is proposed to amend § 17.95(b) by adding critical habitat of the Guam broadbill, Mariana crow, Guam Micronesian kingfisher, and bridled white-eye, in the same alphabetical order as the species occur in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(b) * * *

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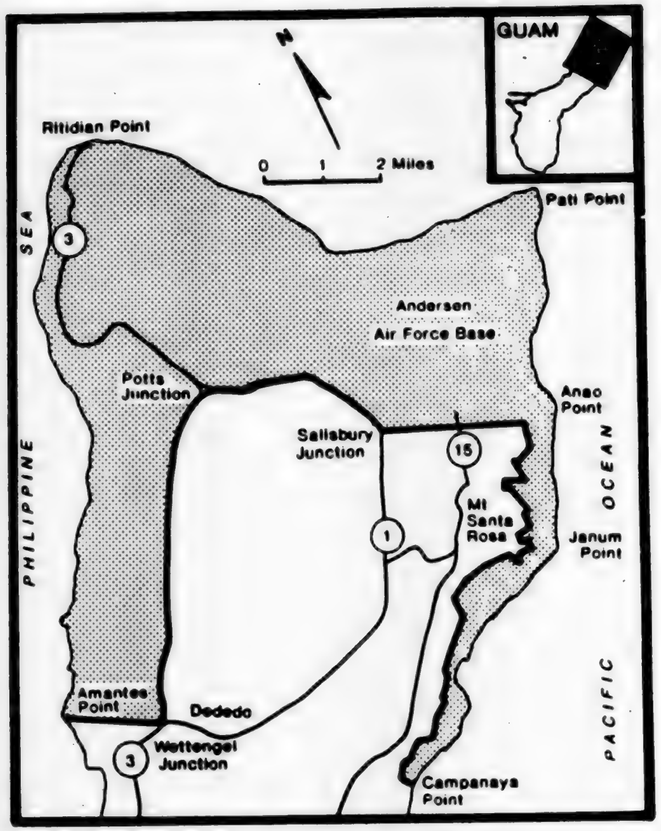
Little Mariana Fruit Bat *(Pteropus tokudae)*, **Mariana Fruit Bat** *(Pteropus mariannus mariannus)*, **Guam Broadbill** *(Myiagra freycineti)*, **Mariana Crow** *(Corvus kubaryi)*, **Guam Micronesian Kingfisher** *(Halcyon cinnamomina cinnamomina)*, **and Bridled White-Eye** *(Zosterops conspicillatus conspicillatus)*.

Guam: associated land and airspace of vegetation types with an upper canopy equal to or greater than 6 feet (2 m) high, dominated by woody plant species, and within the following boundaries:

1. *Northern Guam.*

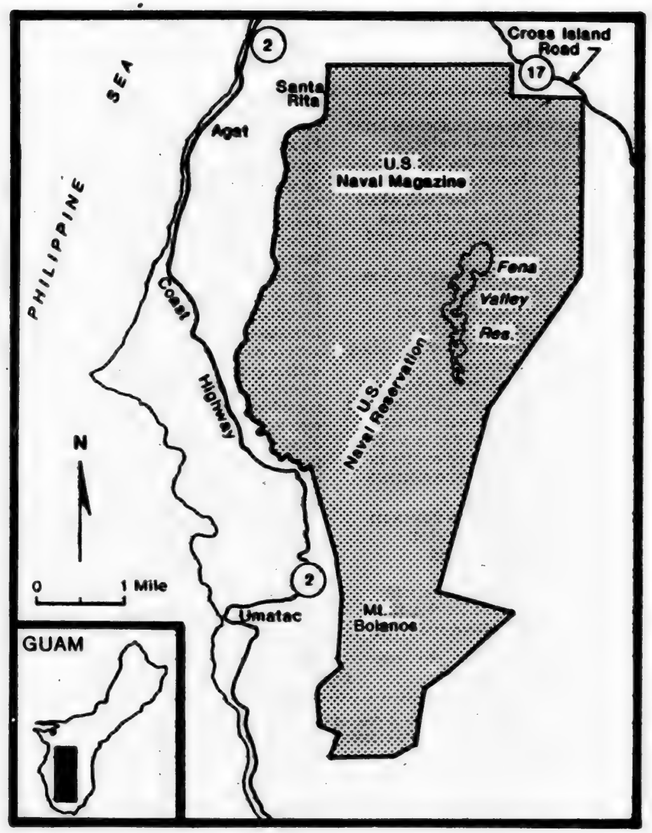
(1) Those portions north and seaward of (a) a line from the westernmost tip of Amantes Point east to Wettengel Junction on Marine Drive; (b) Highway 3 from Wettengel Junction north to Potts Junction; (c) Highway 9 from Potts Junction east to Salisbury Junction; and (d) the Andersen Air Force Base boundary from Salisbury Junction east to the coast. (2) All contiguous, coastal Government of Guam property from Anao Point to Companaya Point including the Anao Conservation Reserve, lot numbers 7102, 7103, 7147 and the Lujuna portion of Lot Number A (the Asdonhucas portion of Lot Number A is excluded) (lot numbers from Government of Guam Land Registration Survey Plats). (3) The single private property inholding at Janum Point.

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2. *Southern Guam.*

Those portions including: (a) Naval Magazine; (b) Naval Reservation (Fena Valley Watershed); (c) the area above the 800-foot contour west of and abutting the Naval Magazine and the Naval Reservation; (d) the area abutting and between the Naval Magazine and Naval Reservation along the Maagas River, bounded on the east by a line beginning at the easternmost point of the Naval Magazine along the Maagas River and running southwest to the easternmost tip of the Naval Reservation south of the Tinechong River; and (e) the entire Bolanos Conservation Reserve, which is comprised of lot numbers 507, 508, and 509 (lot numbers from Government of Guam Land Registration Survey Plats).



Dated: May 16, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-14160 Filed 6-13-91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 115
Friday, June 14, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 91-079]

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: A copy of the application referenced in this notice, with any confidential business information deleted, is available for public inspection in Room 1141, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of this document by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91-129-01	Holden's Foundation Seeds, Incorporated	05-09-91	Corn plants genetically engineered to express a phosphinothricin acetyl-transferase (PAT) gene to confer tolerance to the herbicide glufosinate.	Iowa.

Done in Washington, DC, this 11th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-14186 Filed 6-13-91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Amendment to the Land and Resource Management Plan for the Medicine Bow National Forest and Thunder Basin National Grassland; Campbell, Converse, Crook, Niobrara, and Weston Counties, Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Medicine Bow National Forest and Thunder Basin National Grassland is initiating actions to prepare an Environmental Impact Statement and Record of Decision for an amendment to the Land and Resource Management Plan. This Environmental Impact statement will assess alternative actions to be taken for oil and gas development on the Thunder Basin National Grassland, 572,224 acres. The Record of Decision will make two decisions. The availability for leasing decision, required by Forest Service regulation, title 36 CFR 228.102(d) and the site specific leasing decision, required by Forest Service regulation, title 36 CFR 228.102(e) to lease or not lease and the conditions of the lease for the lands made available by the first decision. Implementation of the leasing decision will authorize the Bureau of Land Management to offer the lands to be leased at public auction. The initial review of the scope of this amendment indicates that appendix D, Standard and Special Stipulations for Mineral Leasing will be updated. Whether or not this will constitute a significant amendment per 36 CFR part 219 will be determined in the EIS.

DATES: Comments concerning the scope of the analysis should be received in writing by August 15, 1991.

ADDRESSES: Send written comments to Gerald G. Heath, Forest Supervisor, Medicine Bow National Forest and Thunder Basin National Grassland, 605 Skyline Drive, Laramie, Wyoming 82070.

FOR FURTHER INFORMATION CONTACT: Terry B. Dilts, Oil and Gas Team Leader, (307) 745-8971.

SUPPLEMENTARY INFORMATION: The Land and Resource Management Plan for the Medicine Bow National Forest and Thunder Basin National Grassland was approved November 20, 1985. April 20, 1990 the new Forest Service regulations (36 CFR parts 228 and 261) to accomplish the purposes of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 went into effect. A review of the Forest Plan for compliance with the new regulations was made and concluded that adequate analysis for a leasing decision for specific lands required by 36 CFR 228.102(e) had not been completed. Oil and gas leasing on the Medicine Bow National Forest and Thunder Basin National Grassland has been suspended. The completion of a leasing amendment to the Forest Plan and an Environmental Impact Statement is necessary prior to future oil and gas leasing actions on the Forest.

Formal public involvement efforts will be initiated in June, 1991, with a request for written comments given through the news media and by letter to Federal, state, and local agencies, adjacent landowners, and other individuals or organizations who may be interested in or affected by the decision.

A Draft Environmental Impact Statement and Proposed Amendment are scheduled to be completed by January 1991. The final Environmental Impact Statement and Amendment are scheduled for completion by August 1992.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage because of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel,* 803 F.2d 1016, 1022 (9th Cir.1986) and *Wisconsin Heritages, Inc. v. Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Those having comments now are invited to submit them to Gerald G. Heath, Forest Supervisor, Medicine Bow National Forest and Thunder Basin National Grassland.

Dated: June 3, 1991.

Gerald G. Heath,

Forest Supervisor.

[FR Doc. 91-14154 Filed 6-13-91; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Oneida County Critical Area Treatment RC&D Measure Oneida County, ID

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho 83705, telephone (208) 334-1601.

NOTICE. Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Oneida County Critical Area Treatment RC&D Measure, Oneida County, Idaho.

The Environmental Assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

Oneida County Critical Area Treatment RC&D Measure will stabilize a road that washes out during heavy spring runoffs and summer storms. The measure will prevent sediment and gravel from depositing on fields adjacent to the road. Planned treatments to stabilize the road include rock riprap and road paving.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be revised by contacting Mr. Paul Calverley. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publications in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: June 6, 1991.

Rodney M. Alt

Acting State Conservationist

[FR Doc. 91-14155 Filed 6-13-91; 8:45 am]

BILLING CODE 3410-16

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on June 27, 1991, at the Hilton Inn West, 401 South Meridian, Oklahoma City, Oklahoma 73108. The Committee will discuss civil rights issues and plan future projects in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Dr. Earl Mitchell or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

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Dated at Washington, DC, June 10, 1991.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 91-14189 Filed 6-13-91; 8:45 am]
BILLING CODE 4510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-307-803]

Notice of Initiation of Antidumping Duty Investigation: Gray Portland Cement and Clinker From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: David C. Smith, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3798.

Initiation

The Petition

On May 21, 1991, the Ad Hoc Committee of Florida Producers of Gray Portland Cement (the Ad Hoc Committee) filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of the United States industry producing gray portland cement and clinker. In accordance with 19 CFR 353.12, the petitioner alleges that imports of gray portland cement and clinker from Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a regional U.S. industry (Florida).

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 353.2(k), and because it has filed the petition on behalf of the regional U.S. industry producing gray portland cement and clinker. If any interested party, as described in 19 CFR 353.2(k)(3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

The petitioner's estimate of United States Price (USP) is based on the findings of a market research consultant, for Type I gray portland cement, sold at FOB, port of export prices for July 1990. Type I cement is a general use cement as defined by the American Society of Testing Materials (ASTM). The Ad Hoc Committee was unable to determine the extent of applicable deductions for inland freight and loading/unloading charges, if any, and therefore has not reduced USP for any such charges. The petitioner reduced USP for brokerage charges based on an interview with a Venezuelan customs broker who reported that FOB, port of export prices are inclusive of brokerage fees averaging two percent.

The Ad Hoc Committee's estimate of Foreign Market Value (FMV) is also based on the findings of a market research consultant. The market research consultant reported home market price quotations for "Portland I" cement, the home market product it considers to be most similar to the Type I cement exported to the United States, both in terms of characteristics and uses.

The petitioner obtained ex-factory price quotations for Portland I cement for July 1990 and converted those prices to United States currency using rates published by the International Monetary Fund. The Ad Hoc Committee reduced FMV by 15 percent to account for discounts generally given to large customers.

Based on a comparison of USP and a discounted FMV, the Ad Hoc Committee has alleged a dumping margin of 31 percent.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on gray portland cement and clinker from Venezuela and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of gray portland cement and clinker from Venezuela are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The products covered by this investigation are gray portland cement and clinker. Gray portland cement and clinker are currently classified under subheadings 2523.29 and 2523.10 of the *Harmonized Tariff Schedule* (HTS). Gray portland cement has also been entered under HTS subheading 2523.90 as "other hydraulic cements." Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Oil well cement is also included within the scope of this investigation; microfine cement is not included within the scope of this investigation. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by ITC

The ITC will determine by July 5, 1991, whether there is a reasonable indication that imports of gray portland cement and clinker from Venezuela are materially injuring, or threaten material injury to, a regional U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before October 28, 1991, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 10, 1991.
Marjorie A. Chorlins,
Acting Assistant Secretary for Import Administration.
[FR Doc. 91-14217 Filed 6-13-91; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[C-201-003]

Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Reviews.

SUMMARY: On March 7, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the countervailing duty order on ceramic tile from Mexico. We have now completed these reviews and determine the total bounty or grant during the period January 1, 1988 through December 31, 1988 to be zero or *de minimis* for 11 firms and 1.14 percent *ad valorem* for all other firms. In addition, we determine the total bounty or grant during the period January 1, 1989 through December 31, 1989 to be 0.40 percent *ad valorem* for all firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 9677) the preliminary results of its administrative reviews of the countervailing duty order on ceramic tile from Mexico (47 FR 20012; May 10, 1982). The Department has now completed these administrative reviews in accrodance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by these reviews are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the 1988 review period, such merchandise was classifiable under item numbers 532.2400 and 532.2700 of the Tariff Schedules of the United States Annotated (TSUSA). During the 1989 review period, this merchandise was classifiable under item numbers 6907.10.0000, 6907.90.0000, 6908.10.0000 and 6908.90.0000 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and 11 programs: (1) FOMEX; (2) FOGAIN; (3) CEPROFI; (4) Article 15 loans; (5) State tax incentives; (6) NDP preferential discounts; (7) Bancomext loans; (8) Delay of payments on loans; (9) Delay of payments to PEMEX of fuel charges; (10) Import duty reductions and exemptions; and (11) FONEI.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. On April 8, 1991, we received written comments from two respondents, Ceramica Regiomontana, S.A., and Industrias Intercontinental, S.A.

Comment 1: The respondents contend that the Department does not have the legal authority to impose countervailing duties on ceramic tile from Mexico and must revoke the countervailing duty order. Effective April 23, 1985, the date of the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties" (the Understanding), the United States Trade Representative designated Mexico a "country under the Agreement" as defined in section 701 of the Tariff Act. Since Mexico is now a "country under the Agreement," section 303 of the Tariff Act is no longer applicable to any merchandise from Mexico. The United States Trade Representative did not exclude existing countervailing duty orders from the application for "country under the Agreement" status. Therefore, section 701 entitles Mexico to a determination by the International Trade Commission (ITC) that imports of the subject merchandise are materially injuring or threatening material injury to a United States industry producing a like product. Pursuant to section 701, the Department cannot impose countervailing duties on any merchandise from Mexico without an affirmative ITC injury determination. Since there has been no affirmative injury determination with respect to ceramic tile from Mexico, the Department cannot impose countervailing duties and should revoke the order effective April 23, 1985.

Resondents further contend that the Department's failure to revoke this order is inconsistent with past practice. In two previous countervailing duty administrative reviews, Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129; October 6, 1982) and Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order (50 FR 19561; May 9, 1985), where an outstanding countervailing duty order was issued pursuant to section 303(a)(1) without benefit of an ITC injury determination, the Department determined that it did not have the authority to impose countervailing duties when events subsequent to the issuance of the order required an affirmative ITC injury determination prior to imposition of countervailing duties.

Merchandise subject to an outstanding countervailing duty order, issued pursuant to section 303(a)(1) without benefit of an ITC injury determination, is entitled to an injury test when there is a change in the status of the merchandise or the country. Since the ITC has indicated that it does not have the legal authority to conduct an injury investigation concerning merchandise already subject to a countervailing duty order, the Department has in the past concluded that it could not impose countervailing duties and revoked, or preliminarily determined to revoke, the order effective the date the affirmative injury determination became a requirement.

Department's Position: We fully addressed this issue in the previous administrative review of this countervailing duty order. See Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review (55 FR 50744; December 10, 1990). The respondents have provided neither new evidence nor new arguments that convince us to reconsider our position on this issue.

Comment 2: The respondents contend that, for the 1988 review period, the Department incorrectly calculated the country-wide countervailing duty rate applicable to non-*de minimis* companies by excluding companies with zero or *de minimis* aggregate benefits from its calculations. In *IPSCO, Inc.* and *IPSCO Steel* v. *United States*, 899 F.2d 1192 (Fed. Cir. 1990) (*IPSCO*), the Court of Appeals for the Federal Circuit (CAFC) ruled that the countervailing duty should not exceed the weighted-average benefit received by all companies that produce or export the subject merchandise, including those companies that receive little or no subsidy. While it is appropriate for the Department to exclude companies with zero or *de minimis* aggregate benefits from the assessment of countervailing duties, these companies must be included in any calculation of the weighted-average subsidy applicable to the remaining non-*de minimis* companies, and the assessment rate found in the preliminary results of the 1988 review period should be recalculated accordingly.

Department's Position: We disagree. In calculating the benefits received during both review periods, we followed

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the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 53325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the benefits of all companies to determine the overall subsidy benefitting exports of the subject merchandise to the United States; we did not ignore zero or *de minimis* rates, consistent with the CAFC holding in *IPSCO*. The weighted-average country-wide rate for the 1988 review period was 0.40 percent *ad valorem* or *de minimis*. Therefore, the Department will not assess countervailing duties for this period and will waive the collection of cash deposits of estimated countervailing duties.

Because the country-wide rate for the 1988 review period was above *de minimis*, we proceeded to the next step in our analysis and examined the *ad valorem* rates that we had calculated to determine whether individual company rates differed significantly from the weighted-average country-wide rate. There were 11 companies with zero or *de minimis* benefits, by definition significantly different from the country-wide rate, and they must be treated separately for assessment purposes. Ceramica Regiomontana's and Industrias Intercontinental's rates were not significantly different and, consistent with our regulations and established Department practice, their company rates were included in our calculations to establish the "all other" rate for the 1988 review period. See, *e.g.*, Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review (55 FR 39748; December 10, 1990); Certain Cotton Yarn Products from Brazil; Final Results of Countervailing Duty Administrative Review (55 FR 3440; February 1, 1990).

Contrary to respondent's contention, *IPSCO* does not preclude the establishment of an "all other" rate for Ceramica Regiomontana and Industrias Intercontinental for the purposes of the 1988 review. In *IPSCO*, the CAFC was only addressing the first step in this process, the measurement of the overall subsidy and the establishment a country-wide rate. In that particular case, the CAFC found that the Department had erroneously excluded nine companies with zero or *de minimis* benefits from its calculation of the country-wide rate. Because the country-wide rate when properly calculated proved to be *de minimis*, the CAFC did not have to reach the second step whereby the Department ascertains whether any company's individual benefit differs significantly from the country-wide rate. Consistent with these procedures, our calculations for the 1988 review period resulted in a country-wide benefit that was *de minimis*, and we concluded our analysis at this point.

Finally, to the extent that the language respondents quote from *IPSCO* is applicable here, our calculation of a 1.14 percent "all other" rate does not conflict with the CAFC's holding that any countervailing duty should not exceed the weighted-average benefit received by all companies that produce or export the subject merchandise to the United States. Because the non-*de minimis* companies, including Ceramica Regiomontana and Industrias Intercontinental, are being assessed countervailing duties at a rate directly attributable to the benefits received on their exports, and 11 companies are not being assessed countervailing duties, the Customs Service will collect a lesser amount of countervailing duties than it would have if we had applied a country-wide rate to the exports of all companies. To apply the lower country-wide rate to Ceramica Regiomontana's and Industrias Intercontinental's exports while waiving assessment on the 11 zero or *de minimis* companies' exports, as the respondents argue, would result in a gross undercollection of countervailing duties.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant during the period January 1, 1988 through December 31, 1988 to be zero or *de minimis* for 11 firms and 1.14 percent *ad valorem* for all other firms. In addition, we determine the total bounty or grant during the period January 1, 1989 through December 31, 1989 to be 0.40 percent *ad valorem* for all firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

The following 11 firms received zero or *de minimis* benefits during the 1988 review period:

(1) Azulejos Decorativos Carillo
(2) Azulejos Orion
(3) Ceramica Santa Julia
(4) Eduardo S. Garcia de la Pena
(5) Internacional de Ceramica
(6) Jesus Garza Arocha
(7) Ladrillera Monterrey
(8) Pisos Coloniales de Mexico, S.A.
(9) Pisos de Barro
(10) Reynold Martinez Chapa
(11) Teofilo Coverrubias Villareal

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 11 firms listed above and to assess countervailing duties of 1.14 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms exported on or after January 1, 1988 and on or before December 31, 1988. In addition, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from all firms exported on or after January 1, 1989 and on or before December 31, 1989.

Further, as provided by section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 7, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14218 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-804]

Notice of Initiation of Countervailing Duty Investigation: Gray Portland Cement and Clinker From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Graham or Ross Cotjanle, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4105 or 377-3534.

Initiation

The Petition

On May 21, 1991, the Ad Hoc Committee of Florida Producers of Gray Portland Cement filed with the Department of Commerce (the Department) a countervailing duty petition on behalf of the United States industry producing gray portland cement and clinker ("cement"). In accordance with 19 CFR 355.12, the petitioner alleges that manufacturers, producers or exporters of cement in Venezuela receive bounties or grants within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a regional U.S. industry (Florida).

In past countervailing duty investigations, Venezuela was considered to be a "country under the Agreement" within the meaning of section 701(b)(3) of the Act. As such, Title VII of the Act applied in those investigations, and the U.S. International Trade Commission (ITC) was required to determine whether imports of the subject merchandise from Venezuela materially injured, or threatened material injury to, a U.S. industry.

On August 31, 1990, Venezuela became a contracting party to the General Agreement on Tariffs and Trade (GATT). Since qualification as a "country under the Agreement" under section 701(b)(3) requires that the GATT not apply between the United States and the country from which the subject merchandise is imported, Venezuela is no longer eligible for treatment as a "country under the Agreement" within the meaning of section 701(b)(3). However, because Venezuela is a GATT contracting party and the merchandise included within the scope of this investigation is nondutiable, the petitioner is nonetheless required to allege that, and the ITC is required to determine whether, pursuant to section 303(a)(2), imports of such merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 355.2(i), and because it has filed the petition on behalf of the U.S. industry producing cement. If any interested party, as described in 19 CFR 355.2(i) (3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

Allegations of Bounties or Grants

Petitioner lists a number of practices by the Government of Venezuela which allegedly confer bounties or grants on manufacturers, producers or exporters of a cement. We are initiating an investigation of the following programs.

A. *Fund for Financing Exports ("FINEXPO") Programs*
- *Export Bond Program*
- *Short-term Financing*
- *Preferential Export Financing*

B. *Preferential Tax Incentives*

C. *Financing Company of Venezuela ("FIVCA") Loans*

Initiation of Investigation

Under 19 CFR 355.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the bases on which a countervailing duty may be imposed under section 303 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cement from Venezuela and find that it meets the requirements of 19 CFR 355.13(a). Therefore, we are initiating a countervailing duty investigation to determine whether Venezuelan manufacturers, producers or exporters of cement receive bounties or grants.

In accordance with 19 CFR 355.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of the publication of this notice.

The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Scope of Investigation

The products covered by this investigation are gray portland cement and clinker. Gray portland cement and clinker are currently classified under subheadings 2523.29 and 2523.10 of the Harmonized Tariff Schedule (HTS). Gray portland cement has also been entered under subheading 2523.90 as "other hydraulic cements." Gray portland cement is a hydraulic cement and the primary component of concrete. Cement clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Oil well cement is also included within the scope of this investigation; microfine cement is not included within the scope of this investigation. Although the HTS subheadings are prodived for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by ITC

The ITC will determine by July 5, 1991, whether there is a reasonable indication that imports of cement from Venezuela are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before August 14, 1991, unless the investigation is terminated pursuant to 19 CFR 355.17 or the preliminary determination is extended pursuant to 19 CFR 355.15.

This notice is published pursuant to section 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: June 10, 1991.

Marjorie A Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-14219 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council, its Shallow-Water Reef Fish Fishery Management Plan (FMP) Committee, and the Council's Administrative Committee will hold separate public meetings. The meetings will be held on June 25-28, 1991, at the Colegio de Ingenieros y Agrimensores de Puerto Rico, Antolin Nin and Skerret Streets, Roosevelt, Hato Rey, Puerto Rico. Fishermen and other interested persons are invited to attend. The public will be allowed to submit oral or written statements regarding the agenda items.

The Council's Administrative Committee will meet on June 26, from 10 a.m., until approximately 5 p.m., to discuss Council operations matters.

The Reef Fish Fishery Management Plan Committee will meet on June 26, from 9:30 a.m. until 5 p.m., to discuss results of the public hearings concerning the Shallow-Water Reef Fish Fishery Regulatory Amendment. There will be simultaneous interpretation services (English-Spanish) at this meeting and the Council following meeting.

The Council will begin its 73rd regular public meeting on June 27, from 9 a.m., until 5 p.m., and continue the meeting on June 28, from 9 a.m. until 12 noon, to discuss the Shallow-Water Reef Fish FMP and the Coral FMP, among other topics.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco Popular Building, (formerly the Banco de Ponce Building), suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone: (809) 766-5926.

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Dated: June 7, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-14149 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will hold a public meeting on June 24-28, 1991, at the Anchorage Hilton Hotel, in Anchorage, AK. The meeting will begin on June 24 at 8 a.m., and run through June 28.

The Council will consider the following agenda items: (1) Reports by the Alaska Department of Fish and Game, by the National Marine Fisheries Service (NMFS), and by the U.S. Coast Guard and a report on international fisheries ; (2) Review and approve for Secretarial Review an analysis on inshore/offshore allocations; (3) Review and approve for Secretarial Review an analysis of individual fishing quota options for the sablefish fisheries; (4) Review and approve for public review an analysis of individual fishing quota options for the halibut fishery; (5) Report from NMFS on procedures and requirements necessary to develop a moratorium on entry into all fisheries under the Council's jurisdiction, except salmon, and to develop individual fishing quota systems for those fisheries. A general moratorium on entry to all groundfish fisheries off Alaska will also be examined; (6) Review and approve a user-fee system for submission to the Secretary of Commerce; (7) Development of a bycatch amendment for the groundfish fisheries off Alaska, and a joint statement of concern over salmon bycatch; (8) Approve amendments to the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fishery management plans for Secretarial review; (9) Review marine mammal amendments and Steller sea lion recovery plan; (10) review recent court decision on Anti-Reflagging Act of 1987; (11) Review of herring by catch management and effectiveness of special closed areas; (12) Consider industry request to increase total allowable catch for deepwater flatfish in the central Gulf of Alaska to 35,000 mt.; (13) Initial consideration of any proposed changes in groundfish seasons and recordkeeping/reporting requirements for 1992; (14) Pollock apportionment to midwater trawls in the Bering Sea/Aleutian Islands; and (15) Schedule for analyzing quarterly cod allocations in the Bering Sea/Aleutian Islands.

The Council's Bycatch Committee will meet on Sunday, June 23, at 8 a.m., at the location stated above. The Council's Advisory Panel and the Scientific and Statistical Committee will also begin its meetings on Sunday, June 23, at 10:30 a.m., at the location above. Other committee and workgroup meetings may be held on short notice during the meeting week. All meetings are open to the public, except a Council executive session which is tentatively scheduled for June 26.

FOR MORE INFORMATION CONTACT: Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: June 10, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-14150 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a public meeting of its Groundfish Management Team (GMT), on June 18-21, 1991, at the Metro Center, 2000 SW. First Avenue, room 440, Portland, OR. The GMT will begin its meeting on June 18 at 1 p.m., and will adjourn on June 21 by 12 noon.

The GMT will discuss the status of the proposed license limitation program, a change in California state set net regulations, preliminary stock assessments for four groundfish species, status reports and catch projections for several groundfish species, and management proposals for the 1992 fishing year. The GMT will prepare recommendations to the Council on these and other issues pertaining to management of the West Coast groundfish fisheries.

FOR MORE INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: June 7, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-14151 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will hold public meetings on June 24-28, 1991, at the Holiday Inn Oceanfront; 1617 N. First Street, Jacksonville Beach, FL., telephone number: (904) 249-9071.

The Council is scheduled to review comments from the wreckfish limited entry public hearings and from the National Marine Fisheries Service, Southeast Region, before deciding on which options for limited entry will be included in Amendment #5 to the Snapper-Grouper Fishery Management Plan.

The Snapper-Grouper Committee will discuss extending the emergency prohibition on longline gear in the wreckfish fishery another 90 days, review a snapper-grouper stock assessment and reports on spawning seasons and the survivability of released fish.

The Shrimp Committee will continue developing a management plan for white shrimp. Additional proposed regulations for the plan will be discussed, such as closing Federal waters to shrimping at the request of states when state waters are closed and prohibiting royal red and rock shrimp fishing when the white shrimp fishery is closed. Public hearings for the plan will be held before the end of the year. A detailed agenda will be available to the public on or about June 12.

FOR MORE INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: June 7, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-14152 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

June 11, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50750, published on December 10, 1990). Also see 55 FR 48268, published on November 20, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 11, 1991.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on June 18, 1991, you are directed to amend further the directive dated November 14, 1990 to increase the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Categories not subject to a group	
218	10,191,853 square meters.
219	2,063,764 square meters.
300/301	3,487,572 kilograms.
333	79,112 dozen.
369-H [2]	4,259,866 kilograms.
410	1,819,042 square meters of which not more than 1,539,040 square meters shall be in Category 410-A [3] and not more than 1,539,040 square meters shall be in Category 410-B [4].
433	22,584 dozen.
434	12,873 dozen.
435	23,846 dozen.
436	14,712 dozen.
438	25,747 dozen.
440	38,782 dozen of which not more than 21,018 dozen shall be in Category 440-M [5].
442	40,986 dozen.
444	196,855 numbers.
447	76,522 dozen.
448	21,511 dozen.
607	2,780,611 kilograms.
614	10,251,253 square meters.
615	21,074,095 square meters.
617	14,910,914 square meters.
659-C [6]	361,860 kilograms.
659-P [7]	1,836,580 kilograms.
833	23,409 dozen.
840	425,237 dozen.
846	155,792 dozen.
Group II 330, 332, 348, 363, 364, 369-O [8], 431, 432, 439, 459, 630, 632, 643, 644, 655, 664 and 659-O [9], as a group.	115,052,342 square meters equivalent.
Group IV 632, 634, 636, 638, 639, 643, 644, 650-652, 659 and 858, as a group.	25,695,195 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 369-H: Only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[3] Category 410-A: Only HTS numbers 5111.11.3080, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.90.9000, 5112.11.1010, 5112.12.1010, 5112.13.1010, 5112.14.1010, 5112.15.1010, 5112.21.1010, 5112.22.1010, 5112.23.1010, 5112.24.1010, 5112.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[4] Category 410-B: Only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9060, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[5] Category 440-M: Only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6205.90.4020 and 6211.31.0000.

[6] Category 659-C: Only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659-P: Only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[8] Category 359-C: All HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359-C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0048, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359-V).

[9] Category 659-C: All HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5080, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659-V); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659-S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-14188 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-DR-F

COMMISSION OF FINE ARTS

Change of Meeting Date

The Commission of Fine Arts, next meeting is changed from Thursday, 20 June 1991 at 10 a.m. to *Wednesday, 26 June 1991* at 10 a.m. in the Commission's offices in the Pension Building, Suite 312.

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Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202–504–2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 7 June 1991.

Charles H. Atherton,

Secretary.

[FR Doc. 91–14131 Filed 6–13–91; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On January 18, April 19 and 26, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 50576, 16075 and 19352) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Surgical Pack, Gown & Towel,
6532–01–015–3286.

Services

Janitorial/Custodial, Naval Training Center Complex, Orlando, Florida.

Janitorial/Custodial, Federal Building and U.S. Courthouse, 1800 Fifth Avenue, North, Birmingham, Alabama.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 91–14213 Filed 6–13–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be provided by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 15, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverely Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing the blind or other severely handicapped. It is proposed to add the following services to the Procurement List:

Ground Maintenance, Department of Energy, Western Area Power Administration, Bismarck District Office, Bismarck, North Dakota.

Janitorial/Custodial, BLM Fairbanks Offices and Fire Operations Building, Fort Wainwright & University Avenue, Fairbanks, Alaska.

Janitorial/Custodinal, U.S. Post Office and Courthouse, Dubuque, Iowa.

Janitorial/Custodial, U.S. Army Reserve Centers, #1—9 Chisolm Street, #2—1050 Remound Road, Charleston, South Carolina

Janitorial/Custodial, Federal Building, 7th & Lafayette Streets, Moundsville, West Virginia.

Janitorial/Custodial, Social Security Administration, 16th & Chapeline Streets, Wheeling, West Virginia.

G. John Heyer,

General Counsel.

[FR Doc. 91–14214 Filed 6–13–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee Task Force on Soviet Military

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee Task Force on Soviet Military will meet in closed session on 28 June 1991 from 0900 until 1600 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board Task Force on Soviet Military is to study developments in the Soviet Union that affect the Soviet Military and make recommendations on policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: June 10, 1991

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14145 Filed 6–13–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Review of the Biological Defense Research Program

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Review of the Biological Defense Research Program will meet in closed session on July 22-23, 1991 at Ft. Detrick, Maryland.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will analyze both foreign capabilities and our own defensive program.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c) (1) (1988), and that accordingly this meeting will be closed to the public.

Dated: June 10, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14141 Filed 6–13–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Joint Precision Interdiction (JPI)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Joint Precision Interdiction (JPI) will meet in closed session on June 27–28, 1991 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review acquisition strategies needed for an optimum family of surveillance, reconnaissance, and target acquisition systems, C3I systems and weapon systems required to perform the JPI mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly this meeting will be closed to the public.

Dated: June 10, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14142 Filed 6–13–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Weapon Development and Production Technology; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Weapon Development and Production Technology will meet in open session on 11 and 12 July 1991 at Fort McNair, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive briefings on manufacturing processes related to improving weapon development strategies.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Kimzey at (703) 695–7580.

Dated: June 10, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[ER Doc. 91–14143 Filed 6–13–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Privacy Act of 1974; Amend a Record System

AGENCY: Department of the Navy, DoD.

ACTION: Amend a Record System.

SUMMARY: The Department of the Navy proposes to amend one existing system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed action will be effective on July 15, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Mrs. Gwendolyn Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000. Telephone (703) 694–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the Federal Register as follows:

51 FR 12908 Apr. 16, 1986
51 FR 18086 May 16, 1986 (DON Compilation changes follow)
51 FR 19864 Jun. 3, 1986
51 FR 30377 Aug. 26, 1986
51 FR 30393 Aug. 26, 1986
51 FR 45031 Dec. 23, 1986
52 FR 2147 Jan. 20, 1987
52 FR 2149 Jan. 20, 1987
52 FR 8500 Mar. 18, 1987
52 FR 15530 Apr. 29, 1987
52 FR 22671 Jun. 15, 1987
52 FR 45846 Dec. 2, 1987
53 FR 17240 May 16, 1988
53 FR 21512 Jun. 8, 1988
53 FR 25363 Jul. 6, 1988
53 FR 39499 Oct. 7, 1988
53 FR 41224 Oct. 20, 1988
54 FR 8322 Feb. 28, 1989
54 FR 14378 Apr. 11, 1989
54 FR 32682 Aug. 9, 1989
54 FR 40160 Sep. 29, 1989
54 FR 41495 Oct. 10, 1989
54 FR 43453 Oct. 25, 1989
54 FR 45781 Oct. 31, 1989
54 FR 46131 Nov. 21, 1989
54 FR 51784 Dec. 18, 1989
54 FR 52976 Dec. 26, 1989
55 FR 21910 May 30, 1990 (Navy Mailing Addresses)
55 FR 37930 Sep. 14, 1990
55 FR 42758 Oct. 23, 1990
55 FR 47508 Nov. 14, 1990
55 FR 48678 Nov. 21, 1990
55 FR 53167 Dec. 27, 1990
56 FR 424 Jan. 4, 1991
56 FR 12721 Mar. 27, 1991

The amendment is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific change to the system of records is set forth below followed by the system of records notice published in its entirety, as amended.

Dated: June 10, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N12950–5

System name:

Navy Civilian Personnel Data System (NCPDS), (54 FR 45787, October 31, 1989).

Changes:

* * * * *

Categories of records in the system:

In line 37, after the word "(EPMIS)" add ", the Complaints Action Tracking System,".

* * * * *

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SYSTEM NAME:

Navy Civilian Personnel Data System (NCPDS).

SYSTEM LOCATION:

Office of Civilian Personnel Management (OCPM) and its field offices; operating civilian personnel offices and Navy commands and management offices; and the Navy Regional Data Automation Center (NARDAC) and its designated contractors. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems notices. Included in this notice are those records duplicated for retrievability at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Navy civilian employees paid from appropriated and non-appropriated funds and foreign national direct and indirect hire employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is comprised of automated and non-automated records describing and identifying the employee (e.g., name, Social Security Number, sex, birth date, minority designator, citizenship, physical handicap code); the position occupied and the employee's qualifications; salary and salary basis or other compensation and allowances; employee's status in relation to the position occupied and the organization to which assigned; tickler dates for impending changes in status; education and training records; previous military status; functional code; previous employment record; performance appraisal and other data needed for screening and selection of an employee; referral records; professional licenses and publications; and reason for position change or other action affecting the employee and case files pertaining the EEO, MSPB, labor and employee relations, and incentive awards. The records are those found in the NCPDS subsystems: The Navy Automated Civilian Manpower Information System (NACMIS), the Training Information Management System (TIMS), the Personnel Automated Data System (PADS), the Computerized Employee Management Program Administration and Research (CEMPAR), Office of Civilian Personnel Management Customer Support Centers, the Executive Personnel Management Information System (EPMIS), the Complaints Action Tracking System (CATS), and the NCPDS base level and Headquarters systems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 4116; Executive Order 9397; 5 U.S.C. 2951; Executive Order 10450; 42 U.S.C. 2000e, 5 U.S.C. 3135, 5 U.S.C. 4301, et. seq., 5 U.S.C. 4501 et. seq., 5 U.S.C. 4705 and subparts D, E, F, and G of title 5 U.S.C. and 29 CFR part 1613 et. seq.

PURPOSE(S):

To manage and administer the Department's civilian personnel and civilian manpower planning programs and in the design, development, maintenance and operation of the automated system of records. Designated contractors of the Department of the Navy and Defense in the performance of their duties with respect to equipment and system design, development test, operation and maintenance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office.

To the Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of Executive Branch agencies. To officals and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties related to the screening and selection of candidates for vacant positions. To representatives of the United States Department of Labor on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice training programs or on other such matters under the jurisidction of the Labor Department.

To representatives of the Department of Veterans Affairs on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice and on-the-job training program.

To contractors or their employees for the purpose of automated processing of data from employee personnel actions and training documents, or data collection forms and other documents. To a duly appointed hearing examiner or arbitrator in connection with an employee's grievance. To an appointed Administrative Judge for the purpose of conducting a hearing in connection with an employee's formal Equal Employment Opportunity (EEO) complaint.

To officials and employees of schools and other institutions engaged to provide training.

To labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

To representatives of the Federal Labor Relations Authority.

To representatives of the Merit Systems Protection Board.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tape, disc, drum and punched cards and computer printouts. Manual records are stored in paper file folders.

RETRIEVABILITY:

Information is retrieved by Social Security Number or other similar substitute if there is no Social Security Number, position number, name, or by specific employee characteristics such as date of birth, grade, occupation, employing organization, tickler dates, academic specialty level.

SAFEGUARDS:

The computer facility and terminal are accessible only to authorized persons that have been properly screened, cleared and trained. Manual and automated records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Input documents are destroyed after data are converted to magnetic medium. Information is stored in magnetic medium within the ADP system. Information recorded via magnetic medium will be retained permanently. For TIMS and the apprentice programs the computer magnetic tapes are permanent. Manual records are maintained on a fiscal year basis and are retained for varying periods from one to five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203-1998 and the commanding officers at the employee's activity.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203-1998 or to the civilian personnel officer under his/her congnizance. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

The request should contain the individual's full name, Social Security Number and name of employing activity. Requesters may visit the civilian personnel office at the naval activity covered by the system to obtain information. In such case, proof of identity will consist of full name, Social Security Number and a third positive identification such as a driver's license, Navy building pass or identification badge, birth certificate, Medicare card, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203-1998 or to the civilian personnel officer under his/her cognizance. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

The request should contain the individual's full name, Social Security Number and name of employing activity. Requesters may visit the civilian personnel office at the naval activity covered by the system to obtain information. In such case, proof of identity will consist of full name, Social Security Number and a third positive identification such as a driver's license, Navy building pass or identification badge, birth certificate, Medicare card, etc.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Categories of sources of records in this system are: the civilian personnel office of the employing activity; the payroll office; OCPM headquarters; the security office of the employing activity; line managers, other designated officials and supervisors; the employee and persons named by the employee as references.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91-14144 Filed 6-13-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

(CFDA NO: 84.103)

Training Program for Special Programs Staff and Leadership Personnel; Inviting Applications for Fiscal Year 1991

Purpose: Provides funding through a cooperative agreement to an institution of higher education, or other public or private nonprofit institution or organization for the conduct of a workshop for the Special Programs for Students from Disadvantaged Backgrounds (Student Support Services, Upward Bound, Talent Search, Educational Opportunity Centers, Ronald E. McNair Post-Baccalaureate Achievement, and the Training Program for Special Programs Staff and Leadership Personnel programs) that reviews and reinforces administrative and management practices essential to effective program operations.

Deadline for Transmittal of Applications: July 30, 1991.

Application Availability: June 18, 1991.

Available Funds: $400,000.

Estimated Range of Award: $400,000.

Estimated Average Size of Award: $400,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: 15 months.

Applicable Regulations: (a) The Training Program for Special Programs Staff and Leadership Personnel Regulations, 34 CFR part 642, and (b) the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

Funding Priorities: Under 34 CFR 75.105(c)(3) of the Education Department General Administrative Regulations (EDGAR) and 34 CFR 642.34 of the program regulations, the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition only applications that meet these absolute priorities:

(1) Strategies for preparing students for doctoral studies; and

(2) Reporting student and project performance.

For Applications of Information Contact: May J. Weaver, U.S. Department of Education, 400 Maryland Avenue, SW., room 3060, ROB #3, Washington, DC 20202-5249. Telephone: (202) 708-4804. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1070d, 1070d-1d.

Dated: June 7, 1991.

Michael Farrell,

Acting Assistance Secretary for Postsecondary Education.

[FR Doc. 91-14212 Filed 6-13-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain Notification for Proposed Removal Action at the Feed Materials Production Center, Fernald, OH

AGENCY: Department of Energy.

ACTION: Notice of Floodplain involvement and opportunity to comment.

SUMMARY: The U.S. Department of Energy (DOE) proposes a removal action to manage the radioactively contaminated groundwater in an area south of the Feed Materials Production Center (FMPC) located near Fernald, Ohio. The removal action is required under a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) sections 120 and 106(a) Consent Agreement between DOE and the U.S. Environmental Protection Agency (EPA). The fundamental objective of the removal action is to protect public health by limiting access to and use of groundwater with uranium concentrations exceeding the DOE-derived concentration limit for uranium in drinking water. The proposed action would involve the installation of groundwater pumping wells and a transfer pump station, at grade, in the 100-year floodplain. In addition, an underground discharge line would be installed, leading north from the pump station to the FMPC, and from there eastward to an outfall in the Great Miami River. The line running north

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would be about 9,000 feet long, of which 730 feet would be in the 100-year floodplain. The outfall line would be approximately 4,400 feet long, most of which would be in the 100-year floodplain. Also, an underground pipeline would be installed to two industries located in the 100-year floodplain. Approximately 3,300 feet of this pipeline would be in the 100-year floodplain. The proposed action would be carried out with the concurrence of the U.S. EPA and the Ohio EPA. The action would be performed in such a manner as to avoid or minimize impacts to the 100-year floodplain. Preliminary calculations indicate that only about 8 acres out of a total of 1,600 acres in the 100-year floodplain from Mile 19 to Mile 24 of the Great Miami River would be affected. As a result, there would be a minimal change in the downstream elevation. In accordance with DOE regulations 10 CFR part 1022, DOE would prepare a floodplain assessment to be included in the Engineering Evaluation/Cost Analysis-Environmental Assessment, which would be available for public inspection in the Administrative Record and will be distributed in accordance with 40 CFR 1506.6(b). Maps and further information are available from DOE at the address shown below.

DATES: Comments must be received by DOE at the following address July 1, 1991.

ADDRESSES:

Mail comments to: Mr. Jack C. Craig, DOE, Fernald Site Office, FMPC Remedial Action Project Director, P.O. Box 398705, Cincinnati, Ohio 45239-8705.

Fax comments to: (513) 738-6650.

Issued in Washington, DC, this 7th day of June, 1991.

Leo P. Duffy,

Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 91-14347 Filed 6-12-91; 2:25 pm]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. FE C&E 91-14; Certification Notice—82]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a baseload powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has a filed self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Cabot Power Corporation, Boston, MA	05-30-91	Combine Cycle	235	Everett, MA.

Amendments to the FUA on May 21, 1987 (Public Law 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on June 10, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-14324 Filed 6-13-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of May 3 Through May 10, 1991

During the Week of May 3 through May 10, 1991, the appeals and applications for exception of other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

(Week of May 3 through May 10, 1991)

Date	Name and location of applicant	Case No.	Type of submission
May 7, 1991	ERA/Dana Energy, Houston, TX	LRZ-0015	Interlocutory order. If granted: The Proposed Remedial Order issued to Dana Energy would be modified regarding interest on overcharges.
Do	Gulf/D.J. Adams, Washington, DC	RR300-37	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 10, 1988 Decision and Order (Case No. RF300-7164) issued to D.J. Adams would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Beaver Fuel Oil & Heating, Washington, DC	RR300-47	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 15, 1989 Decision and Order (Case No. RF300-455) issued to Beaver Fuel Oil & Heating would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Bookens Fuel Service, Inc., Washington, DC	RR300-31	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 9, 1989 Decision and Order (Case No. RF300-458) issued to Bookens Fuel Service, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Budney Fuel Oil Company, Washington, DC	RR300-38	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 15, 1989 Decision and Order (Case No. RF300-456) issued to Budney Fuel Oil Co. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Carpenter & Smith, Inc., Washington, DC	RR300-40	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 17, 1989 Decision and Order (Case No. RF300-885) issued to Carpenter & Smith Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/De Sonss Oil & Service Corporation, Washington, DC.	RR300-48	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-4168) issued to De Sonss Oil & Service Corporation would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Dowling Fuel Company, Washington, DC	RR300-32	Request for modification/rescission in the Gulf refund proceeding. If granted: The May 5, 1989 Decision and Order (Case No. RF300-8024) issued to Dowling Fuel Co. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Dunkirk Aviation Sales & Service, Inc., Washington, DC.	RR300-45	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-640) issued to Dunkirk Aviation Sales & Service, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Fingles Fuel Corporation, Washington, DC	RR300-29	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 6, 1988 Decision and Order (Case No. RF300-3350) issued to Fingles Fuel Corporation would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Fitch Oil Company, Inc., Washington, DC	RR300-26	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 15, 1989 Decision and Order (Case No. RF300-4981) issued to Fitch Oil Co., Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Benjamin A. Franklin Gulf, Washington, DC	RR300-49	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-639) issued to Benjamin A. Franklin Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/A Giordano & Sons, Inc., Washington, DC	RR300-33	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 12, 1988 Decision and Order (Case No. RF300-2677) issued to A. Giordano & Sons Inc. Corporation would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Harvey Russell & Sons, Inc., Washington, DC	RR300-43	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-4168) issued to Harvey Russell & Sons, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Joy Oil Company, Washington, DC	RR300-27	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 17, 1989 Decision and Order (Case No. RF300-890) issued to Joy Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Liberty Fuel Oil Company, Washington, DC	RR300-28	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 31, 1989 Decision and Order (Case No. RF300-7167) issued to Liberty Fuel Oil Co. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 3 through May 10, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Do	Gulf/Joe. A. Majka & Sons, Inc., Washington, DC	RR300-23	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 7, 1988 Decision and Order (Case No. RF300-5010) issued to Joe. A. Majka & Sons would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Miller & Shenk, Inc., Washington, DC	RR300-46	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-4167) issued to Miller & Shenk, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Charles F. Ober & Sons, Inc., Washington, DC	RR300-35	Request for modification/rescission in the Gulf refund proceeding. If granted: The October 30, 1989 Decision and Order (Case No. RF300-6350) issued to Charles F. Ober & Sons, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Obergfell Fuel, Inc., Washington, DC	RR300-36	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 15, 1991 Decision and Order (Case No. RF300-458) issued to Obergfell Fuel, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Reid's Heating Service, Washington, DC	RR300-42	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-4165) issued to Reid's Heating Service would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Stem Brothers, Inc., Washington, DC	RR300-39	Request for modification/rescission in the Gulf refund proceeding. If granted: The May 10, 1989 Decision and Order (Case No. RF300-3739) issued to Stem Brothers, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Van Varick & Sons, Inc., Washington, DC	RR300-30	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 4, 1988 Decision and Order (Case No. RF300-6908) issued to Van Varick & Sons, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Walter E. Schwab Company, Washington, DC	RR300-50	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-638) issued to Walter E. Schwab Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Warren Handley, Washington, DC	RR300-24	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 9, 1988 Decision and Order (Case No. RF300-5185) issued to Warren Handley would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Woolley Fuel Company, Washington, DC	RR300-25	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-4162) issued to Woolley Fuel Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Fred D. Wilkoff Company, Washington, DC	RR300-34	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 17, 1989 Decision and Order (Case No. RF300-689) issued to Fred D. Wilkoff Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Williams Oil Company, Inc., Washington, DC	RR300-44	Request for modification/rescission in the Gulf refund proceeding. If granted: The May 5, 1989 Decision and Order (Case No. RF300-8021) issued to Williams Oil Company, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 8, 1991	Gulf/Northern Illinois Gas Company, Washington, DC	RR272-72	Request for modification/rescission in the Crude oil refund proceeding. If granted: The April 8, 1989 Decision and Order (Case No. RF272-19930) issued to Northern Illinois Gas Company would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
May 9, 1991	Kirkpatrick & Lockhart, Washington, DC	LFA-0118	Appeal of an information request denial. If granted: Kirkpatrick & Lockhart would receive access to copies of records pertaining to license agreements & royalties, fees, payments, and the criteria for setting the royalties, fees or payments in connection with a specified patent.
Apr. 10, 1991	Gulf/Stephen H. Sack, Washington, DC	RR300-22	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 17, 1991 Decision and Order (Case No. RF300-6092) issued to Stephen H. Sack would be modified regarding his application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of May 3 to May 10, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/07/91	Henderson Implement & Oil Co.	RF326-268
5/07/91	Spruce Oil Corporation.	RF326-269
5/07/91	Wilma Claudine Jenkins.	RF335-1
5/07/91	Harlderoad Oil Company.	RF304-12283
5/08/91	Vick Oil Company	RF326-270
5/08/91	Chicago Transit Authority.	RC272-116
5/08/91	BN Transport, Inc.	RF304-12284
5/08/91	Santa Fe Trail Trans. Co.	RF304-12285
5/08/91	Pacific Intermountain Express.	RF304-12286
5/08/91	Hill & Hill Truck Lines, Inc.	RF304-12287
5/09/91	Cabot Corporation.	RF304-12288
5/09/91	Farmex Oil Grain Co-Op.	RA272-41
5/10/91	Gulf States Paper Corporation.	RA272-40

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 3 to May 10, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/10/91	Ada Oil Co.	RF326-271
5/10/91	Coral Petro. Inc. Crdtr Trust.	RF332-8
5/03/91 thru 5/10/91.	Gulf Oil Refund Applications Received.	RF300-16657 thru RF300-16719
5/03/91 thru 5/10/91.	Texaco Refund Applications Received.	RF321-15015 thru RF321-15110
5/03/91 thru 5/10/91.	Crude Oil Applications Received.	RF272-89312 thru RF272-89323

[FR Doc. 91-14225 Filed 6-13-91; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of May 10 Through May 17, 1991

During the Week of May 10 through May 17, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 110 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 10 through May 17, 1991]

Date	Name and location of applicant	Case no.	Type of submission
May 13, 1991	Linda Loiacano, Metairie, LA	LFA-0121	Appeal of an information request denial. If granted: The April 24, 1991 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded and Linda Loiacano would receive access to DOE information.
Do	Texaco/Turbyfill Texaco, Hardin, KY	RR321-63	Request for modification/rescission in the Texaco refund proceeding. If granted: The August 23, 1990 Decision and Order (Case Nos. RF321-1863, RF321-3208 and RF321-5773) issued to Turbyfill Texaco would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.
Do	James L. Schwab, Spokane, WA	LFA-0120	Appeal of an information request denial. If granted: The May 2, 1991 Freedom of Information Request Denial issued by the Nevada Operations Office would be rescinded, and James L. Schwab would receive access to DOE information.
Do	James L. Schwab, Spokane, WA	LFA-0119	Appeal of an information request denial. If granted: The May 1, 1991 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and James L. Schwab would receive access to all information pertaining to an investigation which was not previously made available to him.
May 14, 1991	East River Corporation, Milford Mgt. Corp., Parkchester Mgt. Corp., Woods Mgt. Co., Washington, DC.	RR272-73, RR272-74, RR272-75, RR272-76	Request for modification/rescission in the Crude Oil refund proceeding. If granted: The February 27, March 27, April 10, and March 7, 1991 Decisions and Orders (Case Nos. RF272-45581, RF272-8337, RF272-64604 and RF272-10184) issued to East River Corporation, Milford Mgt. Corp., Parkchester Mgt. Corp., and Woods Mgt. Co. would be modified regarding the firms' Applications for Refund submitted in the Crude Oil refund proceeding.
May 15, 1991	Energy Research Corporation, Danbury, CT	LFA-0122	Appeal of an information request denial. If granted: The April 8, 1991 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded, and Energy Research Corporation would receive access to DOE information.
Do	Gulf/Buddy's Fuel Oil Service, Washington, DC	RR300-65	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 10, 1988 Decision and Order (Case No. RF300-2671) issued to Buddy's Fuel Oil Service would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Burch Oil Company; Inc., Washington, DC	RR300-51	Request for modification/rescission in the Gulf refund proceeding. If granted: The June 23, 1989 Decision and Order (Case No. RF300-5415) issued to Burch Oil Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 10 through May 17, 1991]

Date	Name and location of applicant	Case no.	Type of submission
Do	Gulf/C.R. Queenberry, Inc., Washington, DC	RR300-56	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 27, 1991 Decision and Order (Case No. RF300-5216) issued to C.R. Queenberry, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Carolina Fuel Oil Company, Washington, DC	RR300-59	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 9, 1988 Decision and Order (Case No. RF300-5193) issued to Carolina Fuel Oil Company would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Charlottesville Oil Company, Inc., Washington, DC.	RR300-54	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 28, 1990 Decision and Order (Case No. RF300-9366) issued to Charlottesville Oil Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Davidson Ice & Fuel Company, Inc., Washington, DC.	RR300-60	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 6, 1989 Decision and Order (Case No. RF300-3571) issued to Davidson Ice & Fuel Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Franco Distributors, Inc., Washington, DC	RR300-63	Request for modification/rescission in the Gulf refund proceeding. If granted: The May 12, 1989 Decision and Order (Case No. RF300-827) issued to Franco Distributors, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/J. Ray Hunter, Inc., Washington, DC	RR300-58	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 28, 1989 Decision and Order (Case No. RF300-7877) issued to J. Ray Hunter, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Kelleher Corporation, Washington, DC	RR300-55	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 9, 1988 Decision and Order (Case No. RF300-5192) issued to Kelleher Corporation would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/S.H. Tevis & Son, Inc., Washington, DC	RR300-52	Request for modification/rescission in the Gulf refund proceeding. If granted: The October 18, 1989 Decision and Order (Case No. RR300-5254) issued to S.H. Tevis & Son, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Sherrill Ice & Fuel Company, Washington, DC	RR300-62	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 7, 1988 Decision and Order (Case No. RF300-4987) issued to Sherrill Ice & Fuel Company would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Rainbow Oil Company, Inc., Washington, DC	RR300-66	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 26, 1989 Decision and Order (Case No. RF300-5221) issued to Rainbow Oil Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Steffey & Findlay, Inc., Washington, DC	RR300-53	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 15, 1989 Decision and Order (Case No. RF300-452) issued to Steffey & Findlay, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Thomlinson & McWhite, Inc., Washington, DC	RR300-64	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 7, 1988 Decision and Order (Case No. RF300-5014) issued to Thomlinson & McWhite, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Vails & Way Company, Gulf/Don Gantt Oil Company, Gulf/Etheridge Oil Company, Gulf/Walker Oil Company, Gulf/Coy Jackson, Jr., Inc., Washington, DC.	RR300-67, RR300-68, RR300-69, RR300-70, RR300-71	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 7, 1990 Decision and Order (Case Nos. RF300-9373, RF300-9374, RF300-9375, RF300-9376, RF300-9378) issued to Vails & Way Company, Don Gantt Oil Co., Etheridge Oil Co., Walker Oil Co., and Coy Jackson, Jr., Inc. would be modified regarding the firms' Applications for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Wellman Oil Company, Inc., Washington, DC	RR300-61	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 13, 1989 Decision and Order (Case No. RF300-5220) issued to Wellman Oil Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Woodford Oil Company, Washington, DC	RR300-57	Request for modification/rescission in the Gulf refund proceeding. If granted: The August 11, 1989 Decision and Order (Case No. RF300-5481) issued to Woodford Oil Company would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of May 10 to May 17, 1991]

Date received	Name of firm	Case No.
5/13/91	Orange & Rockland Util.	RF336-2
5/13/91	M.I. Hoffman & M. Buller.	RF335-2
5/13/91	Pioneer Oil Company.	RF337-1
5/13/91	Lone Star Producing Company.	RF326-272
5/13/91	Globe Mfg. Company.	RF336-1
5/14/91	Cora Mitchell	RF335-3
5/14/91	Bill Gilmore	RF335-4
5/14/91	Rock Creek Industries.	RF326-273
5/10/91 thru 5/17/91	Gulf Oil Refund Applications Received.	RF300-16720 RF300-16766
5/10/91 thru 5/17/91	Texaco Refund Applications Received.	RF321-15111 RF321-15306
5/10/91 thru 5/17/91	Crude Oil Applications Received.	RF272-89324 RF272-89342
5/16/91	Georgia Power Co.	RF336-3
5/16/91	Erie Oil	RF333-8
5/16/91	Stewart P. Wilson Inc.	RF333-9
5/17/91	Providence Rd. Shell.	RF315-10146

[FR Doc. 91-14226 Filed 6-13-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 1 Through April 5, 1991

During the week of April 1 through April 5, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Firearms Training Systems, Inc., 4/2/91, LFA-0105

Firearms Training Systems, Inc., filed an Appeal from a denial by the Inspector General of a Freedom of Information Request. The appellant sought records of a pending investigation into a complaint that had been made by the appellant alleging improper use of its proprietary information. In his determination, the Inspector General found that the requested information fell within the scope of Exemption 7(a), which exempts from mandatory disclosure documents whose release could interfere with enforcement proceedings. The DOE rejected the appellant's contention that because it wants the investigation to proceed, release of the documents to it would not compromise the investigation. The DOE noted that the identity of a requester is irrelevant to whether documents must be released pursuant to the FOIA, and consequently, if the Inspector General released the requested documents to the appellant, it would then have to release the same material to any other requester. The DOE also noted that release of investigatory files to a complainant could, under some circumstances, allow the complainant to interfere with the investigation in a manner that would favor its position. However, the DOE found that the Inspector General's determination was deficient, because it did not give either a specific list or a general description of the withheld documents. Accordingly, the Appeal was granted in part and the matter was remanded to the Inspector General for a new determination that adequately describes the withheld documents and gives specific reasons why their release could interfere with the investigation.

Remedial Order

Mutual Petroleum Marketing Co., et al., 4/4/91, KRO-0340

Mutual Petroleum Marketing Co., Inc. (MPM), Mutual Petroleum Marketing Co. of California, Inc. (MPM-California), Mutual Petroleum Marketing Co. of Texas, Inc. (MPM-Texas), and Louisiana Bayou Oil Corporation (Bayou) filed Statements of Objections to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to them on September 8, 1986. In the PRO, the ERA alleged that during the period July 1974 through December 1980 these firms committed separate violations of one or more of the following regulations: 10 CFR 212.93 (the Subpart F Permissible Average Markup or PAM regulation); 10 CFR 212.183 (the Subpart L PAM regulation); 10 CFR 212.186 (the layering regulation); and 10 CFR 210.62(c) and 205.202 (the normal business practices rule and anti-circumvention regulation). As an initial matter, the DOE accepted the ERA's requests to amend the PRO to eliminate the Subpart L PAM violations with respect to MPM and to substantially reduce MPM's alleged Subpart F PAM violation. The DOE next determined that the ERA had misapplied 10 CFR 212.111 in determining MPM's lawful selling price. Accordingly, the DOE dismissed the findings of price violations with respect to MPM. In considering the other respondents' objections, the DOE rejected several challenges to the procedural and substantive validity of the Subpart L PAM and layering regulations on the grounds that no new arguments had been presented that would cause it to reconsider determinations in previous cases. The DOE found that the ERA had not erred in treating MPM, MPM-California, and Bayou as separate firms for purposes of applying the price rule; that the ERA is not estopped from asserting a Class C resellers violation against MPM-California and Bayou, and that MPM-California had failed to establish any factual errors in the PRO's calculations. Accordingly, the DOE found that the PAM violations against MPM-California and Bayou should be upheld. The DOE also rejected MPM-Texas' argument that its crude oil trading activities did not constitute purchases and sales of crude oil for purposes of the DOE reseller regulations. In addition, the DOE found that PRO's interpretation of the layering rule was correct and that MPM-Texas, the respondents, had presented no evidence to refute the ERA's prima facie showing that it had provided no traditional and historical reseller services to its customers. The DOE concluded that the PRO's findings of layering with respect to MPM-Texas should be upheld and, therefore, it would not be efficient to determine the applicability of the normal business practices and anti-circumvention rules to the firm. Finally, the DOE modified the PRO to ensure that any monies collected would be distributed under the procedures of 10 CFR part 205, subpart V. The amount of the overcharges sustained in the Decision and Order totals $30,772,845.27.

Refund Applications

Anheuser-Busch Companies, Inc., 4/4/91, RF272-592, RD272-592

The DOE issued a Decision and Order concerning an Application for Refund submitted by Anheuser-Busch Companies, Inc. (Anheuser-Busch). The firm requested a refund based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981, pursuant to the provisions of 10 CFR part 205, subpart V (subpart V). A consortium of 28 states and two territories filed a "Statement of Objections" and "Motion for Discovery" with respect to the applicant's claim. The DOE determined that Anheuser-Busch's rights to a subpart V crude oil refund had been waived because two of its affiliates had executed a waiver and release and had received refunds from either the Rail and Water Transporters Escrow or the Surface Transporters Escrow. Thus, the affiliates and Anheuser-Busch are precluded from

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seeking a subpart V crude oil refund. Therefore, the Application for Refund was denied and the States' Objections and Motion for Discovery were dismissed.

Dobbs Houses, Inc., 4/5/91, RF272–77497

The Department of Energy issued a Decision and Order granting a refund from the crude oil overcharge funds to Dobbs Houses, Inc., (Dobbs) based upon its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Dobbs was acquired by The Greyhound Corporation (Greyhound), a bus company that executed the Surface Transporters Escrow Settlement Claim Form and Waiver, in November 1987. Because Dobbs was acquired after August 7, 1986 (the Surface Transporters Escrow Account Payment Date), the DOE determined that Dobbs' right to a crude oil refund had not been waived and that the firm was eligible to receive a refund of $1,745.

Exxon Corporation/Karas Speedy Car Wash, Inc., 4/2/91, RF307–10178

The DOE issued a Decision and Order rescinding two refunds that were granted to Donald Kuhn *sub nom.* Karas Speedy Car Wash, (Case No. RF307–514) and Karas Car Wash, Inc. (Case No. RF307–515). After the two refunds were granted, the DOE discovered that Mr. Kuhn did not own the retail outlet in question during the period of time for which he sought a refund. For this reason and because Mr. Kuhn was unable to show that he was otherwise entitled to a refund for a period of time during which he did not own the outlet, the refunds previously granted to him were rescinded.

Henry G. Meigs, Inc., 4/5/91, RF272–70440

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Henry G. Meigs, Inc., (Meigs) for a portion of its purchases of liquid asphalt, No. 6 fuel oil, and No. 2 fuel oil during the crude oil price control period. The DOE held that the portion of Meigs' purchases that were resold were ineligible as a basis for a refund, because Meigs had not submitted a detailed showing of injury for these purchases. However, the refined petroleum products that Meigs used in a non-petroleum-related business distinct from its reseller operations (cement production) were considered eligible for a refund under the end-use presumption of injury. Accordingly, Meigs received a refund of $63,312.

Jack B. Kelley, Inc., 4/5/91, RF272–75162

The DOE issued a Decision and Order denying an Application for Refund filed by Jack B. Kelley, Inc. (Kelley), in the Subpart V crude oil special refund proceeding. The DOE's denial was based on the fact that Kelley had applied for and had been granted a refund from the Surface Transporters Escrow and had, thereby, waived its right to a refund in the crude oil proceeding.

State of South Dakota, 4/1/91, RF272–19457

The DOE issued a Decision and Order concerning an Application for Refund that the State of South Dakota (South Dakota) filed in the crude oil fund being disbursed by the DOE under 10 CFR part 205, subpart V. The DOE determined that the refund claim was meritorious and granted a refund of $141,104. Philip P. Kalodner (Kalodner), counsel for Utilities, Transporters, and Manufacturers, filed Comments and Conditional Objections to South Dakota's Application for Refund. The DOE determined that Kalodner's Comments and Objection was insufficient to rebut the presumption of end-user injury. South Dakota will be eligible for additional refunds as additional crude oil overcharge funds become available.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

A.P. Green Refractories Co.	RF272-10456	04/05/91
A.P. Green Refractories Co.	RD272-10456	04/01/91
Agway, Inc./Universe Oil *et al.*	RF324-0005	04/01/91
Atlantic Richfield Co./Bill's Arco *et al.*	RF304-10800	04/01/91
Atlantic Richfield Co./Bob Tinsley Arco *et al.*	RF304-8407	04/01/91
Atlantic Richfield Co./Thomas O. Ash *et al.*	RF304-3357	04/03/91
Atlantic Richfield Co./Waller's Arco *et al.*	RF304-11309	04/01/91
Atlantic Richfield Company/Major Oils.	RF304-11	04/03/91
Evangelical Free Church of America.	RF272-89117	04/05/91
Roman Catholic Archbiship of Boston.	RF272-88398	
Exxon Corporation/Red Carpet Car Wash.	RF307-10136	04/04/91
Fruehauf Corp	RF272-23164	04/01/91
Fruehauf Corp	RD272-23164	
Gangloff & Downham Trucking Co., Inc.	RF272-75795	04/03/91
Gateway Foods of Twin Ports, Inc.	RF272-64205	04/04/91
Gulf Oil Corp./McGuire's Gulf Service.	RF300-16323	04/05/91
Gulf Oil Corp./J. Howard Craver.	RF300-11530	04/03/91
Gulf Oil Corp./Miller Gulf *et al.*	RF300-7983	04/03/91
Gulf Oil Corp./Rabet Enterprises *et al.*	RF300-11159	04/04/91
Hawthorn Mellody, Inc.	RF272-28349	04/05/91
Hawthorn Mellody, Inc.	RD272-28349	
QO Chemicals, Inc.	RF272-64360	04/04/91
QO Chemicals, Inc.	RD272-64360	
Great Lakes Chemicalcorporation.	RF272-64360	
Great Lakes Chemicalcorporation.	RD272-64360	
Republic Industries Liquidating Trust.	RF272-64964	04/04/91
Republic Industries Liquidating Trust.	RD272-64964	
Shell Oil Co./Payne Tire Co., *et al.*	RF315-10019	04/05/91
Tesoro Petroleum Corp./City of Bryan *et al.*	RF325-8	04/01/91
Texaco Inc./Matherly Oil Co. *et al.*	RF321-2255	04/03/91
Texaco Inc./Morrison Oil Co., Inc.	RF321-5614	04/05/91
Morrison Oil Co., Inc.	RF321-5615	
Morrison Oil Co., Inc.	RF321-5616	
Morrison Oil Co., Inc.	RF321-5617	
Morrison Oil Co., Inc.	RF321-5618	
Morrison Oil Co., Inc.	RF321-5648	
Texaco Inc./Ronald P. Jenkins.	RF321-14688	04/05/91

Dismissals

The following submissions were dismissed:

Name	Case No.
29–45 Tenants Corp	RF272-52865
BN Transport, Inc	RF321-12541
Brookfield Bus Tours, Inc	RF307-10164
Burrell's Fuel	RF300-14821
Crestwood Gulf	RF300-14266
Gold Beach School Dist	RF272-80752
Illinois-California Express	RF321-13239
Inwood Gardens, Inc	RF272-52848
J.F. Cleckley & Co	RD272-75221
Lily Truck Leasing Corp	RF272-70489
McLaughlin and Schultz, Inc	RD272-75223
Panola Co	RF272-75892
Queens Garden, Co	RF272-68264
Simpson Timber Co	RF272-58053
Vi-Jon Laboratories, Inc	RF272-10858

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. The are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: June 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91–14227 Filed 6–13–91; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decision and Order; Week of May 20 through May 24, 1991

During the week of May 20 through May 24, 1991, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full test of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: June 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals

Ray Marchand Oil Co., Inc., Lowell, MA, LEE–0024, Reporting Requirements

Ray Marchand Oil Co., Inc. (Marchand), filed an Application for Exception from the requirement to prepare and file DOE Form EIA–782B. The exception request, if granted, would relieve Marchand of that obligation. On May 21, 1991, the Department of Energy issued a Proposed Decision and Order which tentatively concluded that the exception request be denied.

[FR Doc. 14228 Filed 6–13–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3965–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 27, 1991 Through May 31, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D–AFS–J02021–ND Rating EC2, Northern Little Missouri National Grassland Oil and Gas Leasing, Custer National Forest, Dunn, McKenzie, Golden Valley, and Billings Counties, MT.

Summary: EPA recommends the inclusion of a detailed discussion of the site-specific drilling program, offset well production, aquifers, and water resources habitat aquatic life in the final EIS. The draft EIS lacks the baseline data necessary to conduct a thorough analysis of proposed oil and gas leasing. EPA supports the Forest Service approach to protect and use designations for sensitive resources and encourages expanding such designations to include areas where water and air quality may be adversely impacted by oil and gas leasing.

ERP No. D–AFS–J61083–CO Rating EC2, Conundrum Marble Quarry Reopening, Implementation, Maroon Bells-Snowmass Wilderness Area, Section 404 Permit, Pitkin County, CO.

Summary: EPA is concerned about potential project impacts to wetlands, air and water quality. The final EIS should provide information regarding impacts to wetlands to permit a determination of project compliance with the Clean Water Act Section 404(b)(1) guidelines. EPA suggests that the final EIS should also discuss the purpose and need for the project as well as reasonable alternatives.

ERP No. D–AFS–J65178–MT Rating LO, St. Joseph Timber Sale and Road Management, Implementation, Bitterroot National Forest, Stevensville Ranger District, Ravalli and Missoula Counties, MT.

Summary: EPA has no objection to the Bitterroot National Forest's preferred alternative, Alternative C.

ERP No. D–AFS–J67011–CO Rating EC2, Divide Creek Unit Coal-Bed Methane Project, Continued Development, Leasing, Section 404 Permit, White River National Forest, Garfield and Mesa Counties, CO.

Summary: EPA is concerned about the project's potential to impact wetlands and water quality. The final EIS should consider alternative facility siting, design, and construction to minimize potential impacts.

ERP No. D–USN–L11013–00 Rating EO2, US West Coast Homeporting Program for Fast Combat Support Ships (AOE–6 Class), Implementation, Long Beach Naval Station, North Island Naval Air Station and San Diego Naval Station, CA and Puget Sound Naval Shipyard, Bremerton, WA.

Summary: EPA has reviewed this document and is concerned about infiltration, Tributylin contamination, in-water construction of a new mooring buoy and the rebuilding of existing platform "G". EPA has rated the alternative for homeporting at the Naval Shipyard Puget Sound, Bremerton, Washington as Category EC–2, Environmental Concerns—Insufficient Information. EPA has also rated the alternatives for homeporting at the California sites as Category EO–2, Environmental Objections—Insufficient Information.

Final EISs

ERP No. F–AFS–J82012–MT, Lolo National Forest, Noxious Weed Management Plan, Implementation, Missoula, Mineral, Sanders, Granite, Powell, Lewis and Clark, Flathead, Ravalli and Lake Counties, MT.

Summary: EPA has no objections to the Lolo National Forest's preferred alternative, Alternative C.

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ERP No. F-AFS-L65140-ID, Horizon Forest Resource Area, Timber Sale and Road Construction, Implementation, Idaho Panhandle National Forests, Fernan Ranger District, Kootenai County, ID.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

Dated: June 11, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-14232 Filed 6-13-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3965-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 383-5075. Availability of Environmental Impact Statements Filed June 03, 1991 Through June 07, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910185, Draft EIS, EPA, New Source Performance Standards and Emission Guidelines for Controlling Air Emissions from Municipal Solid Waste Landfills, Due: July 29, 1991, Contact: Alice A. Chow (919) 541-5628.

EIS No. 910186, Final EIS, IBR, CA, Shasta Lake Outflow Temperature Control, Upper Sacramento River, Keswick Dam to Red Bluff Diversion Dam, Funding, Shasta County, CA, Due: July 15, 1991, Contact: Ms. Colette Diede (916) 978-4956.

EIS No. 910187, Final EIS, AFS, CA, Lake Red Bluff Recreation Development, Implementation, Mendocino National Forest, Sacramento River, Tehama County, CA, Due: July 15, 1991, Contact: Arthur Quintana (916) 826-5196.

EIS No. 910188, Draft EIS, AFS, OR, Bergan Fire Salvage Timber Sale and other Fire Recovery Projects, Silver Creek Wild and Scenic River Designation, Implementation, Snow Mountain Ranger District, Ochoco National Forest, Harney County, OR, Due: July 29, 1991, Contact: Jim Keniston (503) 573-7292.

EIS No. 910189, Final Supplement, COE, WA, Washington Aquatic Plan Management Program Geographic and Treatment Related Program, Implementation, New and Updated Information, Lewis and Pend Oreille Counties, WA, Due: July 15, 1991, Contact: Dr. David Rice (206) 764-3625.

EIS No. 910190, Final EIS, BLM, WA, MT, ND, OR, ID, WY, SD, NV, UT, AZ, CO, NM, OK, Thirteen Western States, Vegetation Treatment on Bureau of Land Management Lands, Implementation, AZ, CO, ID, MT, NV, NM, ND, OK, OR, SD, UT, WA, and WY, Due: July 15, 1991, Contact: Jim Melton (307) 261-5101.

EIS No. 910191, Draft EIS, AFS, MT, Spring Creek Timber Sales and Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, Musselshell Ranger District, Little Belt Mountains, Meagher and Harlowton, MT, Due: July 29, 1991, Contact: David Wanderaas (406) 632-4391.

EIS No. 910192, Draft EIS, USA, MD, VA, MA, Cameron Station Comprehensive Base Closure and Realignment of Fort Belvoir, Fort Myer and Fort McNair, Implementation, Fairfax and Arlington Counties, VA and Washington, DC, Due: July 29, 1991, Contact: Keith Harris (301) 982-4698.

EIS No. 910193, Second Final EIS, (AFS, WY, Threemile Area Timber Sale and Road Construction, Implementation, Medicine Bow National Forest Land and Resource Management Plan, Medicine Bow National Forest, Carbon County, WY, Due: July 15, 1991, Contact: Joy Trowbridge (307) 745-8971.

Dated: June 11, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-14231 Filed 6-13-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3965-1]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as the amended by Superfund Amendments and Reauthorization Act (CERCLA), notice is hereby given that a proposed administrative cost recovery settlement concerning the Roe Lane Tank site in Kansas City, Kansas was issued by the Agency on May 22, 1991. The settlement resolves an EPA claim under section 107 of CERCLA against the City of Kansas City, Kansas. The settlement requires the settling party to pay $36,454.41 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center and the Regional Hearing Clerk's Office, both at 726 Minnesota Avenue, Kansas City, Kansas 66101.

DATES: Comments must be submitted on or before 30 days from the date of publication of this Notice.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the Superfund Records Center, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551-4038. A copy of the proposed settlement may be obtained from Venessa Cobbs, Regional Hearing Clerk, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913)-551-7630. Comments should reference the Roe Lane Tank site, Kansas City, Kansas and EPA Docket No. VII-91-F-0014 and should be forwarded to Venessa Cobbs at the above-referenced address.

FOR FURTHER INFORMATION CONTACT: Joseph E. Sheehy, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551-7643.

Dated: May 23, 1991.

David A. Wagoner,

Director, Waste Management Division.

[FR Doc. 91-14204 Filed 6-13-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 7, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Kathy Conley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0458.

Title: Policies and Rules Concerning Operator Service Providers (CC Docket No. 90-313)—Phase II.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting and other: Reports are to be filed 6, 9, 15 and 21 months after 12/21/90.

Estimated Annual Burden: 1,200 responses, 10 hours average burden per respondent, 12,000 hours total annual burden.

Needs and Uses: Operator service providers are required to file reports to the FCC on rates, complaints and cost information. The information will be used by the Commission for monitoring purposes and to prepare reports to Congress as required by the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-14176 Filed 6-13-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC of Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements of comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-009857-004.

Title: Florida-Caribbean Cruise Association.

Parties:

Carnival Curise Line
Chandris, Inc.
Commodore Cruise Line
Costa Crusie Lines, N.V.
Cunard/NAC
Dolphin Cruise Line
Kloster Cruise limited
Premier Cruise Line
Princess Cruises
Royal Caribbean Cruises, Ltd.

Synopsis: The proposed amendement would expand the geographic scope to include all North American ports and ports in Central America and South America. It would also make other nonsubstantive changes.

Agreement No.: 203-011838-010.

Title: Southeastern Caribbean Discussion Agreement.

Parties:

United States Atlantic and Gulf/Southeastern Caribbean Conference
"Independent Carrier Parties"
Seaboard Marine, Ltd.
Tecmarine Line, Inc.
Berauth Lines
North American Caribbean Line Ltd.
Blue Caribe Line.

Synopsis: The proposed amendment would add West Indies Shipping Corporation as an Independent Carrier Party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 232-011335.

Title: TMM/ACS Space Charter and Sailing Agreement.

Parties:

Transportation Maritima Mexicana S.A. de C.V.
Star Shipping A/S.

Synopsis: The proposed Agreement would permit the parties to charter space on each other's vessels, coordinate sailings, utilize common terminals, jointly negotiate terminal and stevedoring arrangements and interchange equipment in the trade between U.S. Atlantic and Gulf ports and U.S. points via such ports and Northern European ports and points via such ports. The aprties have requested a shortened review period.

Dated: June 10, 1991.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary

[FR Doc. 14122 Filed 6-13-91; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004070-004.

Title: San Francisco Port Commission/Stevedoring Services of America Terminal Agreement.

Parties:

San Francisco Port Commission
Stevedoring Services of America (SSA).

Synopsis: The Agreement, filed June 3, 1991, amends the basic agreement to: (1) increase the service area at Pier 94 & 96; (2) provide rent credits for certain improvements; and (3) clarify that the Agreement cannot be extended beyond October 31, 1992.

Dated: June 10, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14123 Filed 6-13-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 123]

National Institute for Occupational Safety and Health; Grants for Education Programs in Occupational Safety and Health

Introduction

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the availability of funds in Fiscal Year 1992 for training grants in occupational safety and health. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section Where to obtain additional information.)

Authority

This program is authorized under section 21(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)(1)). Regulations applicable to this program are in 42 CFR part 86, "Grants

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for Education Programs in Occupational Safety and Health."

Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, or U.S. Territory is eligible to apply for a training grant.

Availability of Funds and Recipient Activities

Funds in the total amount of $11,072,000 will be available in Fiscal Year 1992.

Approximately $10,225,000 of the total funds available will be utilized as follows:

1. To award approximately 5 non-competing continuation and 9 competing Educational Resource Center (ERC) training grants totaling approximately $8,200,000 and ranging from approximately $400,000 to $800,000 with the average award being approximately $600,000 (for specific activities refer to **Federal Register** Announcement, 51 FR 32963, September 17, 1986).

2. To award approximately 24 non-competing continuation and 6 competing long-term training project grants totaling $2,000,000 and ranging from approximately $10,000 to $500,000, with the average award being $50,000, to support academic programs in the fields of industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety (for specific activities refer to **Federal Register** Announcement, 52 FR 3172, February 2, 1987); and

3. To conduct the peer review and evaluations of all new, competing continuation, and supplemental applications received.

Awards will be made for a 1- to 5-year project period with an annual budget period. Funding estimates may vary and are subject to change. Non-competing continuation awards within the approved project periods will be made on the basis of satisfactory progress and the availability of funds.

In addition, approximately $600,000 of the total funds available will be awarded to ERCs to support the development and presentation of continuing education and short courses for professionals engaged in the management of hazardous substances. These funds were provided to NIOSH through an Interagency Agreement with the National Institute for Environmental Health Sciences as authorized by section 209(b) of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (100 Stat. 1706–1710). The hazardous substance training funds are being used to supplement previous hazardous substance continuing education grant support provided to the ERC's in FY 1984 and 1985 under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 for the ERC continuing education program (for specific activities refer to the **Federal Register** Announcement, 51 FR 32963, September 17, 1986). Program support is available for faculty and staff salaries, and other costs to provide occupational safety and health training to practicing professionals in State and local health and environmental agencies and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. The policies regarding project periods also apply to these activities.

Approximately $247,000 of the total funds available will be awarded to ERCs to support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety (for specific activities refer to **Federal Register** Announcement, 51 FR 32963, September 17, 1986). Program support is available for faculty and staff salaries, trainee costs, and other costs to educate professionals in agricultural safety and health.

Purpose

The objective of this grant program is to award funds to eligible institutions or agencies to assist in providing an adequate supply of qualified professional and para-professional occupational safety and health personnel to carry out the purposes of the Act.

Review and Evaluation Criteria

In reviewing ERC grant applications, consideration will be given to:

1. Needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination, and special industrial or community training needs that may be peculiar to the region.

2. Plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

3. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve Characteristics of an Educational Resource Center (**Federal Register** Announcement, 51 FR 32963, September 17, 1986).

4. The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educationa' process.

5. Academic training including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed methods for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. The competence, experience and training of the Center Director, the Deputy Center Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to Center goals.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

11. Evidence of a plan describing the research and research training the Center proposes. This shall include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

In reviewing long-term training project grant applications, consideration will be given to:

1. The need for training in the program area outlined by the application. This should include documentation of ability and a plan for student recruitment, projected enrollment, job opportunities, regional/national need both in quality and quantity, and similar programs, if any within the geographic area.

2. The potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. The competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee (if established): Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need.

Funding Allocation Criteria

For Educational Resource Center grants, the following criteria will be considered in determining funding allocations.

1. Academic core programs

a. Budget to support programs primarily for personnel and other personnel-related costs. Advanced (doctoral and post-doctoral) and specialty (master's) programs will be considered.

b. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, national/regional manpower needs, unique program contribution, interdisciplinary interaction, and technical merit.

c. Budget to support students based on the program level and the number of students supported.

2. Center administration

Budget to support Center administration to assure coordination and promotion of academic programs.

3. Continuing education/outreach program

Budget to support outreach and continuing education activities to prepare, distribute, and conduct short courses, seminars, and workshops.

4. Research training programs

Budget to support research training programs to establish a research base within the core disciplines and for the training of researchers in occupational safety and health.

5. Hazardous substance training programs

Budget to support the development and presentation of continuing education courses for professionals engaged in the management of hazardous substances.

6. Agricultural safety and health academic programs

Budget to support the development and presentation of specialized academic programs and continuing education courses in agricultural safety and health.

For Long-Term Training Project grants, the following factors will be considered in determining funding allocations.

1. Academic core programs

a. Budget to support programs primarily for personnel and other personnel-related costs. Advanced (doctoral and post-doctoral), specialty (master's), and baccalaureate/associate programs will be considered.

b. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, national/regional manpower needs, unique program contribution, interdisciplinary interaction, and technical merit.

c. Budget to support students based on the program level and the number of students supported.

Catalog of Federal Domestic Assistance Number (CFDA)

This program is described in the Catalog of Federal Domestic Assistance Program No. 93.263, Occupational Safety and Health Training Grants.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Application Submission and Deadline

Applications should be clearly identified as an application for an Occupational Safety and Health Long-Term Training Project Grant or ERC Training Grant. The submission schedule is as follows:

New, Competing Continuation and Supplemental Receipt Date: July 1, 1991.

An original and two copies of new, competing continuation and supplemental applications (Form CDC 2.145A ERC or TPC) should be submitted to: Henry S. Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, room 300, Atlanta, GA 30305.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on/or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or b. above are considered late

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applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Non-Competing Continuation Receipt Date: November 15, 1991 An original and two copies of non-competing continuation applications (Form CDC 2.145B ERC or TPG) should be submitted to: Henry S. Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE, room 300, Atlanta, GA 30305.

Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address and phone number, and will need to refer to Announcement Number 123. You will receive a complete program description, information on application procedures, and an application package containing address and phone numbers for the contact personnel. Lisa Tamaroff will provide the business management technical assistance.

Programmatic technical assistance may be obtained from John T. Talty, Chief, Educational Resource Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: June 10, 1991.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 91-14175 Filed 6-13-91; 8:45 am]

BILLING CODE 4160-19-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of the package, call the FSA, Report Clearance Officer 202-401-5604.)

Quarterly Report of Expenditures and Estimates—OCSE-131—0970-0014—This information and data is needed to compute quarterly grant awards to estimate incentive payments to States, for required recordkeeping, prepare appropriation requests and to prepare an annual report to Congress. *Respondents:* State and local governments; *Number of Respondents:* 54; *Frequency of Response:* Quarterly; *Estimated Average Burden per Response:* 3.5; *Estimated Annual Burden:* 1,134 hours. *OMB Desk Officer:* Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: June 10, 1991.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems

[FR Doc. 91-14140 Filed 6-13-91; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 91C-0189]

Sola/Barnes-Hind; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sola/Barnes-Hind, has filed a petition proposing that the color additive regulations be amended to provide for the safe use of 1,4-bis(2-methacryloxyethylamino)-9,10-anthraquinone to color contact lenses prepared with glyceryl methacrylate/methyl methacrylate/ethylene glycol dimethacrylate copolymer and N,N-dimethyl acrylamide/methyl methacrylate/ethylene glycol dimethacrylate copolymer.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food and Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetc Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 0C0226), has been filed by Sola/Barnes-Hind, 810 Kifer Rd., Sunnyvale, CA 94086-5200, proposing that 21 CFR part 73 of the color additive regulations be amended to provide for the safe use of 1,4-bis(2-methacryloxyethylamino)-9,10-anthraquinone to color contact lenses prepared with glyceryl methacrylate/methyl methacrylate/ethylene glycol dimethacrylate copolymer and N,N-dimethyl acrylamide/methyl methacrylate/ethylene glycol dimethacrylate copolymer

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 7, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-14238 Filed 6-13-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Oncologic Drugs Advisory Committee

Date, time, and place. July 1 and 2, 1991, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, July 1, 1991, 9 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; open committee discussion, July 2, 1991, 8:30 a.m. to 5 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 21, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 1, 1991, the committee will discuss: (1) New drug application (NDA) NDA 20-119, VeeM-26 (tenoposide, Bristol-Myers Squibb), for multiple indications for childhood acute lymphocytic leukemia; (2) supplemental NDA 19-880, Paraplatin (carboplatin, Bristol-Myers Squibb), for first line combination chemotherapy stages III and IV ovarian cancer; and (3) NDA 20-141, Isovorin (l-leucovorin, Lederle Labs), for rescue after high dose methotrexate for osteosarcoma, patients with impaired methotrexate elimination, and inadvertent methotrexate overdose. On July 2, 1991, the committee will discuss: (1) NDA 20-122, Oncopent (pentostatin, Parke-Davis), for alpha interferon refractory hairy cell leukemia; and (2) the NSABP tamoxifen breast cancer prevention protocol.

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. July 24 and 25, 1991, 9 a.m., Holiday Inn Crowne Plaza, Regency Rm., 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 24, 1991, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, July 25, 1991, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; John L. Gueriguian, Center for Drug Evaluation and Research (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3490, fax 301-443-9282.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 28, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 24, 1991, the committee will discuss the osteoporosis indication of injectable salmon calcitonin (Calcimar, Rhone-Poulenc Rorer) in light of recently acquired efficacy data. On July 25, 1991, the committee will discuss safety and efficacy for NDA 20-060, acarbose (Glucobay), submitted by Miles, Inc.

Gastrointestinal Drugs Advisory Committee

Date, time, and place. July 25 and 26, 1991, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 25, 1991, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, July 26, 1991, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD-180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419-259-6211, or the Advisors and Consultants Staff, 301-443-4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Interested persons may present data, inforamtion, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 10, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requried to make their comments.

Open committee discussion. On July 25, 1991, the committee will discuss NDA 17-939, Tagamet (cimetidine), continuous intravenous injection for prevention of stress ulcer and a draft guidelines for the study of Crohn's disease. On July 26, 1991, the committee will discuss the use of bismuth subsalicylate (Pepto-Bismol) as a Category I over-the-counter (OTC) antidiarrheal.

The committee discussion and conclusions regarding the use of bismuth subsalicylate may be considered by the agency in its preparation of a final monograph for OTC antidiarrheal drug products. This monograph is being developed as part of the OTC drug review. The advance notice of proposed rulemaking for OTC antidiarrheal drug products was published in the **Federal Register** of April 30, 1986 (51 FR 16138). Bismuth subsalicylate has not been proposed as an active ingredient for inclusion in this monograph.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the commitee's work.

Public hearings are subject to FDA's guidelines (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either

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orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-14371 Filed 6-12-91; 2:18 p.m.]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Infant Mortality Advisory Council; Establishment

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. appendix 2), the Secretary, Department of Health and Human Services announces the establishment of the following advisory committee.

Designation: Advisory Committee on Infant Mortality

Purpose: Advises the Secretary on Department programs related to infant mortality, including implementation of the Healthy Start Initiative and other recommendations of the Domestic Policy Council, and infant mortality objectives from Healthy People: 2000: National Health Promotion and Disease Prevention Objectives.

Structure: The Committee consists of the Assistant Secretary for Health, the Assistant Secretary for Children and Families, the Administrator, Health Care Financing Administration and the Assistant Secretary for Food and Consumer Services, USDA, as ex-officio members, and 21 members, including the chair, selected by the Secretary. Members shall be representatives of both the public and private sectors. Members from the private sector will represent corporations and foundations, the media, the clergy, health and other professional organizations. Members from the public sector will include elected officials, and health and human services administrators from State and local levels including representatives of minority, rural and urban interests.

Authority for this Committee will terminate in two years unless the Secretary, HHS, formally determines that continuance is in the public interest.

Dated: June 11, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-14239 Filed 6-13-91; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on May 17, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package.)

1. Compliance With Pass-Along—0960-0240—The authority granted by the final rule F-20-416.2099 allows the Social Security Administration (SSA) to request cost-of-living adjustment pass-along information from those States which administer their own supplementary payments programs. Without this authority, SSA would be unable to determine that those States have complied with the requirement to meet certain supplementary expenditures. Compliance failure could result in a state losing Federal financial participation in the title XIX, Medicaid program. The affected public consists of States which administer their own supplementary payments program.

Number of Respondents: 26
Frequency of Response: 15(4) [2]/11(1) [1]
Average Burden Per Response: 1 hour
Estimated Annual Burden: 71 hours

2. Employment Relationship Questionnaire—0960-0040—The information collected on the form SSA-7160 is used by the Social Security Administration to determine the status of certain employees in various occupational fields. The affected public is comprised of employers of individuals applying for Social Security benefits whose employee status is in doubt.

Number of Respondents: 47,500
Frequency of Response: 1
Average Burden Per Response: 25 minutes
Estimated Annual Burden: 19,792 hours

3. Statement Regarding Contributions—0960-0020—The information collected on the form SSA-783 is used by the Social Security Administration to make determination of one-half support which is an eligibility factor for certain claimants. The affected public is comprised of claimants who need to prove one-half support by the wage earner or other persons having knowledge of the situation.

Number of Respondents: 30,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 7,500 hours

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 10, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-14183 Filed 6-13-91; 8:45 am]

BILLING CODE 4190-11-M

[1] 15 States report four times annually

[2] 11 States report once annually

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-30]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 14, 1991.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Bob Swieconek, Army Corps of Engineers, Civilian Facilities, rm. 5138, 20 Massachusetts Ave. NW., Washington, DC 20314-1000; (202) 272-1750; Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave. NW., rm. 4133, Washington, DC 20314-1000; (202) 272-0520; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (202) 325-0474. (These are not toll-free numbers).

Dated: June 7, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. TU-43
Millers Ferry Lock and Dam
Route 1, Box 102
Camden Co: Wilcox, AL 36726-
Landholding Agency: COE
Property Number 319011549
Status: Unutilized
Comment: 1000 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-22
Selden Lock and Dam
Route 1
Sawyerville Co: Hale, AL 36776-
Landholding Agency: COE
Property Number 319011551
Status: Unutilized
Comment: 1060 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-21
Selden Lock and Dam
Route 1
Sawyerville Co: Hale, AL 36776-
Landholding Agency: COE
Property Number 319011552
Status: Unutilized
Comment: 12080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-23
Selden Lock and Dam
Route 1
Sawyerville Co: Hale, AL 36776-
Landholding Agency: COE
Property Number 319011553
Status: Unutilized
Comment: 1060 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-24
Selden Lock and Dam
Route 1
Sawyerville Co: Hale, AL 36776-
Landholding Agency: COE
Property Number 319011554
Status: Unutilized

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Comment: 1050 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU–15
Coffeeville Lock and Dam
Star Route Box 77
Blandon Springs Co: Choctaw, AL 36619–
Landholding Agency: COE
Property Number 319011556
Status: Unutilized
Comment: 1547 sq. ft.; 1 story frame residence; most recent use—lock tender's dwelling.

California

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles, CA 91706–

Landholding Agency: COE
Property Number 319011298
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Colorado

John Martin Reservoir
Project Office
Star Route
Hasty Co: Bent, CO 81044–
Landholding Agency: COE
Property Number 319010014
Status: Underutilized
Comment: 1380 sq. ft.; one floor brick; most recent use—residence-office.

Florida

Bldg. CN7
Ortona Lock reservation, Okeechobee Waterway
Ortona Co: Glades, FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number 319010012
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. CN8
Ortona Lock reservation, Okeechobee Waterway
Ortona Co: Glades, FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number 319010013
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. CN–19
Moore Haven Lock
Okeechobee Waterway
Moore Haven Co: Glades, FL 3471–
Location: 1 mile east of highway 27
Landholding Agency: COE
Property Number 319011668
Status: Unutilized
Comment: 1281 sq. ft.; 1 story frame residence; secured area with alternate access.

Georgia

Lot 5
Lake Forrest Subdivision
Woodframe House
Hartwell Co: Hartwell, GA
Landholding Agency: COE
Property Number 319110026
Status: Excess
Comment: 896 sq. ft.; 2-story wood frame residence; off-site removal only.

Idaho

Bldg.
Albeni Falls Dam
U.S. Highway 2, Priest River
Bonner Co: Bonner, ID 83856–
Location: 3½ miles west of Priest River.
Landholding Agency: COE
Property Number: 319110028
Status: Unutilized
Comment: 2989 sq. ft.; 3 story log construction with wood frame; offsite removal only; needs rehab.

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010003
Status: Unutilized
Comment: 900 sq. ft.; floor wood frame; most recent use—residence.

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame.

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Indiana

Dwelling #2
Cagles Mill Lake
Poland Co: Putnam, IN 47868–
Location: 5 miles west of Polano on SR 42
Landholding Agency: COE
Property Number: 319011686
Status: Unutilized
Comment: 872 sq. ft.; 1 story wood frame residence; fair condition.

Kentucky

Green River Locks & Dam #3
Rochester Co: Butler, KY 42273–
Location: SR 70 west from Morgantown, KY, approximately 7 miles to site.
Landholding Agency: COE
Property Number: 319010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; Potential utilities; needs major rehab.

Kentucky River Locks & Dam #1
Carrolton Co: Carroll, KY 41008—
Location: I–71 to Carrolton exit, east on SR227 to Highway 320, left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319010041
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame; subject to periodic flooding; needs rehab.

Kentucky River Lock and Dam #3
Pleasureville Co: Henry, KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficienccies.

Kentucky River Lock and Dam 3
Pleasureville, Co: Henry, KY 40057–
Location: SR 421 north from Frankfort, KY to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010061
Status: Unutilized
Comment: 1080 sq. ft.; 2 story wood frame; needs rehab.

Michigan

Former C. G. Lightkeeper Sta.
Little Rapids Channel Project
St. Marys River
Sault Ste Marie Co: Chippewa, MI 49783–
Location: 3 miles east of downtown Sault Ste. Marie.
Landholding Agency: COE
Property Number: 319011573
Status: Excess
Comment: 1411 sq. ft.; 2 story; wood frame on .62 acres; needs rehab; secured area with alternate access.

Minnesota

Orwell Dam Reservior
RFD #4, Box 100
Fergus Falls Co: Ottertail, MN 56537–
Location: Off highway 210, 12 miles from Fergus Falls.
Landholding Agency: COE
Property Number: 319011039
Status: Unutilized
Comment: 1040 sq. ft.; frame house; possible asbestos; potential utilities.

Former Yardmaster's Dwelling Duluth Vessel Yard
900 Minnesota Avenue
Duluth Co: St. Louis, MN 55802–
Landholding Agency: COE
Property Number: 319011042
Status: Unutilized
Comment: 1566 sq. ft.; 2 story wood frame residence; potential utilities; minor rehab.

Montana

Entry Building
Fort Peck Project
Fort Peck Co: Valley, MT 59223–
Location: Highway 24 about 1.6 mile from project headquarters.
Landholding Agency: COE
Property Number: 319011539
Status: Excess
Comment: 225 sq. ft.; 1 story wood frame; needs rehab; off-site removal.

New Jersey

Qtrs. 0301
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110001
Status: Unutilized
Base closure
Comment: 1036 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0302
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110002
Status: Unutilized
Base closure
Comment: 1200 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0303
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110003
Status: Unutilized
Base closure
Comment: 1036 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0304
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110004
Status: Unutilized
Base closure
Comment: 1200 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0305
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110005
Status: Unutilized
Base closure
Comment: 1036 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0306
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110006
Status: Unutilized
Base closure
Comment: 1036 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0307
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110007
Status: Unutilized
Base closure
Comment: 1200 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0308
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110008
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0309
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110009
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0310
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110010
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0311
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110011
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0312
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110012
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0313
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110013
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0314
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110014
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0315
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110015
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0316
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110016
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0317
Clementon Family Housing
Erial-Williamstown Road

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Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110017
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.
Qtrs. 0318
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110018
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.
Qtrs. 0319
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110019
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.
Qtrs. 0320
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110020
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.
Qtrs. 0322
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110021
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.
Qtrs. 0324
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110022
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.
Qtrs. 0326
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110023
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.
Qtrs. 0328
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110024
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

New Mexico

Bldg. 3W
Conchas Lake Project
(See County) Co: San Miguel, NM 88416–
Landholding Agency: COE
Property Number: 319011507
Status: Underutilized
Comment: 1000 sq. ft.; 1 story adobe residence; intermittently occupied.
Bldg. 2E
Conchas Lake Project Office
(See County) Co: San Miguel, NM 88416–
Landholding Agency: COE
Property Number: 319011538
Status: Underutilized
Comment: 1000 sq. ft.; 1 story adobe residence.

Pennsylvania

Conemaugh River Lake
Road #1, Box 702
Saltsburg Co: Indiana, PA 15681–
Landholding Agency: COE
Property Number: 319010019
Status: Unutilized
Comment: 2642 sq. ft.; one unit of brick/frame duplex; most recent use—residence.
Curwensville Lake
Curwensville Co: Clearfield, PA 16833–
Location: Curwensville Lake Administration Area off Route 453.
Landholding Agency: COE
Property Number: 319030001
Status: Excess
Comment: 1500 sq. ft.; 1 story wood frame; most recent use—residential; off-site use only.
Foster Joseph Sayres Dam
Damtenders Residence
Beach Creek Co: Centre, PA 16822–
Location: Administrative Area of dam off Route 150
Landholding Agency: COE
Property Number: 319030002
Status: Excess
Comment: 1282 sq. ft.; 1 story brick/concrete frame; most recent use—residential; off-site use only.

South Carolina

Bldg. 1
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick, SC 29821–
Location: ½ mile east of Resource Manager's Office.
Landholding Agency: COE
Property Number: 319011544
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.
Bldg. 2
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick, SC 29821–
Location: ½ mile east of Resource Manager's Office.
Landholding Agency: COE
Property Number: 319011545
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.
Bldg. 3
J.S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick, SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011546
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.
Bldg. 4
J.S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick, SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011547
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.
Bldg. 5
J.S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick, SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011548
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Texas

Bldg. 6–B
Brazos River Floodgates
Freeport Co: Brazoria, TX 77541–
Location: 5 miles south of Freeport.
Landholding Agency: COE
Property Number: 319110030
Status: Unutilized
Comment: 1100 sq. ft.; 2 story wood frame; needs major rehab; possible asbestos; off-site use only.
Bldg. 6–C
Colorado River Locks
109 Colorado River Locks
Matagorda Co: Matagorda, TX 77547–
Landholding Agency: COE
Property Number: 319110031
Status: Unutilized
Comment: 1100 sq. ft.; 1 story wood frame; needs rehab; off-site use only.

Virginia

Tract HH 3331–E
John H. Kerr Reservoir
Woodframe House
South Boston Co: Halifax, VA
Landholding Agency: COE
Property Number: 319110027
Status: Excess
Comment: 1040 sq. ft.; 1 story wood frame residence; off-site removal only.

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie, WI 54911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.
Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie, WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.
Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown, WI 54115–
Landholding Agency: COE
Property Number: 319011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.
Former Lockmaster's Dwelling
Kaukauna 1st Locks
301 Canal Street
Kaukauna Co: Outagamie, WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.
Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie, WI 54911–
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.
Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie, WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.
Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown, WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.
Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie, WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Land (by State)

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.5 acres.
Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres.
Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres.
Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres.
Parcel 05
DeGray Lake
Section 18
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 187.30 acres.
Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres.
Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring, AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres.
Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres.
Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring, AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres.
Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring, AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres.
Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring, AR 71923–9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres.
Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike, AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized
Comment: 48 acres.

California

Isabella Lake
Box 997
Corps of Engineer Road
Lake Isabella Co: Kern, CA 93240–0997
Landholding Agency: COE
Property Number: 319011014
Status: Unutilized
Comment: 63 acres; steep and brush covered; no utilities.
Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino, CA 95482–9404
Landholding Agency: COE
Property Number: 319011015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.
New Hogan Lake
2713 Hogan Dam Road
Valley Springs Co: Calaveras, CA 95252–9128
Landholding Agency: COE
Property Number: 319011017
Status: Unutilized
Comment: 3.08 acres; potential utilities; brush covered.

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler, KS
Landholding Agency: COE
Property Number: 319010084
Status: Unutilized
Comment: 61 acres; most recent use—recreation.
Parcel #1
Fall River Lake
Section 26

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(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010065
Status: Unutilized
Comment: 155 acres; most recent use—recreation and leased cottage sites.

Parcel #2
Fall River Lake
Section 25 and 26
(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010066
Status: Excess
Comment: 38.62 acres; most recent use—recreation.

Parcel #3
Fall River Lake
Section 26
(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010067
Status: Excess
Comment: 22.44 acres; most recent use—recreation.

Parcel #4
Fall River Lake
Section 25
(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010068
Status: Excess
Comment: 46.04 acres; most recent use—recreation.

Parcel #5
Fall River Lake
Section 25
(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010069
Status: Excess
Comment: 37.31 acres; most recent use—recreation.

Parcel #1
Fall River Lake
Section 3
(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010070
Status: Excess
Comment: 133.51 acres; most recent use—recreation.

Kentucky

Blackburn Access Site
Smithland Locks and Dam
Morganfield Co: Union, KY 42437–
Location: From Morganfield, KY take SR 56 north to unmarked road, 500 yards south of Shawneetown bridge over the Ohio River. Site is east of bridge.
Landholding Agency: COE
Property Number: 319010020
Status: Unutilized
Comment: 8 acres; subject to periodic flooding; current use—leased for recreational use.

Givens Creek Access Site
Smithland Locks and Dam
Smithland Co: Livingston, KY 42081–
Location: From Marion KY., take SR 60 west for 10 miles to SR 133, north on 133 about 12 miles to site.
Landholding Agency: COE
Property Number: 319010021
Status: Unutilized
Comment: 6 acres; subject to periodic flooding; current use—leased for recreational use.

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.87 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: 2¼ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 31901002
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 4¼ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract QQ–4300
Wolf Creek Dam and Lake Cumberland
KY. Hwy 100
Burkesville Co: Cumberland, KY 42717–
Location: 9 miles west of Burkesville.
Landholding Agency: COE
Property Number: 319010037
Status: Excess
Comment: 600 acres; steeply sloped upland and ridgetop; no utilities.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1908
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 26.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: 5 miles southwest of Kuttawa.
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon, KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.56 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg, KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg, KY 42212–
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Markland Locks & Dam
Part of Big Sugar Recreation Site
Warsaw Co: Gallatin, KY 41095–
Location: South side of US highway 42 approximately 5 miles east of Warsaw, KY.
Landholding Agency: COE
Property Number: 319010063
Status: Unutilized
Comment: .88 acres; subject to periodic flooding; potential utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 31901622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tracts 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42038–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.70 acres; wooded; subject to utility easements.

Tracts 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tracts 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tracts 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo, LA 71105–
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservior
Haughton Co: Caddo, LA 71037–0707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 319011010

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Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worester, MA 01540-0155
Location: Portion of tracts B-200, B-248, B-251, B-204, B-247, B-200 and B-256
Landholding Agency: COE
Property Number: 319010016
Status: Excess
Comment: 1.45 acres.

Conant Brook Dam
Flood Control Dam
Wales Road
Monson Co: Hampden, MA 01057-
Location: Portion of Tract 211
Landholding Agency: COE
Property Number: 319010017
Status: Excess
Comment: 5.27 acres.

Hodges Village
Dam Flood Control Project
Old Howarth Road
Oxford Co: Worcester, MA 01540-0500
Location: Portion of Tract A-108. See Project Manager at Hodges Village Dam, Oxford, MA (508) 987-2500.
Landholding Agency: COE
Property Number: 319011006
Status: Excess
Comment: 6.02 acres; 3 acres paved road, subject to utility easement.

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56443-
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011036
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins, MN 55760-
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co: Hubbard, MN 56661-
Location: 1 mile from city of Federal Dam, MN.
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Missouri

Parcel A
Wappapello Lake
Section 28
Wayne Co: Wayne, MO
Landholding Agency: COE
Property Number: 319010065
Status: Excess
Comment: 53 acres; steep; timbered.

Parcel B
Wappapello Lake
Section 7
Wayne Co: Wayne, MO
Landholding Agency: COE
Property Number: 319010086
Status: Excess
Comment: 35 acres; most recent use—wild life management.

Parcel C
Wappapello Lake
Section 14, 22 and 23
Wayne Co: Wayne, MO
Landholding Agency: COE
Property Number: 319010087
Status: Excess
Comment: 294 acres; most recent use—wild life management.

Parcel E
Wappapello Lake
Section 23
Wayne Co: Wayne, MO
Location: NW 1/4, NE 1/4, Section 23 and Survey 813, T28N, 5th PM.
Landholding Agency: COE
Property Number: 319010094
Status: Excess
Comment: 46 acres; most recent use—Wild life management.

Parcel D
Wappapello Lake
Section 3
Wayne Co: Wayne, MO
Landholding Agency: COE
Property Number 319010095
Status: Excess
Comment: 38 acres; most recent use—wild life management.

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355-
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha, MS 38901-0903
Landholding Agency: COE
Property Number : 319011019
Status: Underutilized
Comment: 100 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha, MS 38901-0903
Landholding Agency: COE
Property Number : 319011020
Status: Underutilized
Comment: 30 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha, MS 38901-0903
Landholding Agency: COE
Property Number : 319011021
Status: Underutilized
Comment: 23 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N, R8E
Grenada Co: Calhoun, MS 38901-0903
Landholding Agency: COE
Property Number : 319011022
Status: Underutilized
Comment: 490 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 T23N, R5E
Grenada Co: Calhoun, MS 38901-0903
Landholding Agency: COE
Property Number : 319011023
Status: Underutilized
Comment: 60 acres; no utilities, most recent used—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4 T23N, R5E
Grenada Co: Yalobusha, MS 38901-0903
Landholding Agency: COE
Property Number : 319011024
Status: Underutilized
Comment: 120 acres; no utilities, most recent used—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Section 2 and 3. T23N, R5E
Grenada Co: Yalobusha, MS 38901-0903
Landholding Agency: COE
Property Number : 319011025
Status: Underutilized
Comment: 60 acres; no utilities, most recent used—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R8E
Grenada Co: Yalobusha, MS 38901-0903
Landholding Agency: COE
Property Number : 319011026
Status: Underutilized
Comment: 20 acres; no utilities, most recent used—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R8E
Grenada Co: Yalobusha, MS 38903-0903
Landholding Agency: COE
Property Number : 319011027
Status: Underutilized
Comment: 80 acres; no utilities, most recent used—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun, MS 38901-0903
Landholding Agency: COE
Property Number : 319011028
Status: Underutilized
Comment: 30 acres; no utilities, most recent used—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha, MS 38390-10903
Landholding Agency: COE
Property Number: 319011029

Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha, MS 38903-0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha, MS 38901-0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha, MS 38901-0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha, MS 38901-0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada, MS 28901-0903
Landholding Agency: COE
Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada, MS 28902-0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada, MS 38901-0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

New York

Kinzua Dam and Allegheny Res.
Box 963, State Line Run
West Bank Co: Cattaraugus, NY
Landholding Agency: COE
Property Number: 319011566
Status: Underutilized
Comment: 237 acres; a portion in a floodway; most recent use—recreation/hunting.

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal Co: Monro, OH 43931-0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank.

Oklahoma

Parcel No. 100
Lake Texoma
Section 25, T7S, R5E
Enos Co: Marshall, OK
Location: 1 mile northeast of Enos
Landholding Agency: COE
Property Number: 319010440
Status: Unutilized
Comment: 11.77 acres; most recent use—recreation.

Parcel No. 1
Hugo Lake
Section 24
(See County) Co: Choctaw, OK
Landholding Agency: COE
Property Number: 319010639
Status: Unutilized
Comment: 33.56 acres; potential utilities; most recent use—military training exercises.

Parcel No. 2
Hugo Lake
Section 8
(See County) Co: Choctaw, OK
Landholding Agency: COE
Property Number: 319010640
Status: Unutilized
Comment: 15 acres; potential utilities; undeveloped.

Parcel No. 3
Hugo Lake
Section 14
(See County) Co: Choctaw, OK
Landholding Agency: COE
Property Number: 319010641
Status: Unutilized
Comment: 5.50 acres; potential utilities; portion subject to flowage easement.

Parcel No. 7
Kaw Lake
Section 27
(See County) Co: Kay, OK
Landholding Agency: COE
Property Number: 319010642
Status: Excess
Comment: 21 acres; potential utilities; most recent use—recreation.

Parcel No. 3
Sardis Lake
Section 21
(See County) Co: Latimer, OK
Landholding Agency: COE
Property Number: 319010643
Status: Excess
Comment: 2.5 acres; potential utilities; most recent use—wildlife management.

Parcel No. 4
Sardis Lake
Section 21
(See County) Co: Latimer, OK
Landholding Agency: COE
Property Number: 319010644
Status: Excess
Comment: 4.5 acres; potential utilities; most recent use—wildlife management.

Parcel No. 7
Fort Gibson Lake
Section 6
(See County) Co: Cherokee, OK 74434
Landholding Agency: COE
Property Number: 319010669
Status: Unutilized
Comment: 16.31 acres; potential utilities; most recent use—recreational and development.

Parcel No. 14
Fort Gibson Lake
Section 20
(See County) Co: Cherokee, OK 74434
Landholding Agency: COE
Property Number: 319010670
Status: Unutilized
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational.

Parcel No. 15
Fort Gibson Lake
Section 22
(See County) Co: Cherokee, OK 74434
Landholding Agency: COE
Property Number: 319010671
Status: Unutilized
Comment: 7.51 acres; potential utilities; most recent use—recreational.

Parcel No. 28
Fort Gibson Lake
Section 35
(See County) Co: Mayes, OK 74434
Landholding Agency: COE
Property Number: 319010677
Status: Unutilized
Comment: 38.59 acres; potential utilities; and intensive; most recent use—recreational.

Parcel No. 75
Fort Gibson Lake
Section 16
(See County) Co: Mayes, OK 74434
Landholding Agency: COE
Property Number: 319010687
Status: Excess
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational.

Parcel No. 86
Fort Gibson Lake
Section 7
(See County) Co: Wagoner, OK 74434
Landholding Agency: COE
Property Number: 319010699
Status: Unutilized
Comment: 14 acres; potential utilities; subject to grazing lease; most recent use—recreational.

Parcel No. 89
Fort Gibson Lake
Section 7
(See County) Co: Wagoner, OK 74434
Landholding Agency: COE
Property Number: 319010900
Status: Excess
Comment: 16 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.

Parcel 95
Fort Gibson Lake

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Section 33
(See County) Co: Wagoner, OK 74434
Landholding Agency: COE
Property Number: 31901908
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—recreational.

Pine Creek Lake
Section 27
(See County) Co: McCurtain, OK
Landholding Agency: COE
Property Number: 319010823
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Parcel No. 43
Fort Gibson Lake
Section 11
(See County) Co: Mayes, OK 74434
Landholding Agency: COE
Property Number: 319011371
Status: Underutilized
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.

Parcel No. 49
Fort Gibson Lake
Section 15
(See County) Co: Mayes, OK 74434
Landholding Agency: COE
Property Number: 319011377
Status: Excess
Comment: 20.94 acres; potential utilities; portion subject to grazing lease and flowage easements.

Parcel No. 61
Fort Gibson Lake
Section 13
(See County) Co: Mayes, OK 74434
Landholding Agency: COE
Property Number: 319011389
Status: Excess
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation.

Parcel No. 99
Fort Gibson Lake
Section 21
(See County) Co: Wagoner, OK 74434
Landholding Agency: COE
Property Number: 319011400
Status: Excess
Comment: 5 acres; small creek on land; most recent use—recreation.

Parcel No. 102
Fort Gibson Lake
Section 33
(See County) Co: Wagoner, OK 74434
Landholding Agency: COE
Property Number: 319011403
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use—recreation.

Parcel No. 105
Fort Gibson Lake
Section 14, 22 and 23
(See County) Co: Wagoner, OK 74434
Landholding Agency: COE
Property Number: 319011406
Status: Underutilized
Comment: 375 acres; portion is environmentally protected; most recent use—recreation.

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner Co: Morrow, OR 77836—
Location: Located up hill from the left abutment of the dam structure.
Landholding Agency: COE
Property Number: 319011887
Status: Unutilized
Comment: 2.25 acres; unimproved land; secured area with alternate access.

Pennsylvania

Tract B–202 (Portion of)
Stillwater Reservoir
Forest City Co: Susquehanna, PA 18421—
Location: On the Lackawanna River, 4 miles north of Forest City.
Landholding Agency: COE
Property Number: 319010009
Status: Unutilized
Comment: 70 acres; property divided by a creek; access to majority of the land is difficult.

Mahoning Creek Lake
New Bethlehem Co: Armstrong, PA 16342–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010016
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer, PA 16150—
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001
Status: Excess
Comment: 34.43 acres; subject to flowage easement; existing property encroachments.

Loyalhanne Lake
RD 2
Saltsburg Co: Westmoreland, PA
Location: Fronts on state route 185.
Landholding Agency: COE
Property Number: 319011002
Status: Underutilized
Comment: 15 acres; radio communication antenna located on portion of land; most recent use—park and recreation.

Tracts L24, L26, and L27
Crooked Creek Lake
(See County) Co: Armstrong, PA 09061–
Location: Left bank—56 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 9.84 acres; potential for utilities.

East Branch Clarion River Lake
Wilcox Co: Elk, PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 319011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground.

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart, TN 37058–
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart, TN 37058–
Location: 3 ½ miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.88 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson, TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 28.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford, TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford, TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford, TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson, TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 319010933
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford, TN 37130–
Location: East of Lamar Road
Landholding Agency: COE

Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford, TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7205
Barkley Lake
Dover Co: Stewart, TN 37058–
Location: 2½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 6813, 6814
Barkley Lake
Cumberland Co: Stewart, TN 37050—
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 319010937
Status: Excess
Comment: 98 acres; subject to existing easements.

Tract 6911
Barkley Lake
Cumberland City Co: Montgomery, TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham, TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tract 11523, 11524
Barkley Lake
Ashland City Co: Cheatham, TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart, TN 37026–
Location: 4½ miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham, TN 37015–
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 319010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery, TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.8 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart, TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart, TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Texas

Part of Tract A–10
(See County) Co: Tarrant, TX
Location: Off FM 2499 at north end of dam embankment
Landholding Agency: COE
Property Number: 31901390
Status: Excess
Comment: 0.29 acres; most recent use—parking lot.

Part of Tract 340
Joe Pool Lake
(See County) Co: Dallas, TX
Landholding Agency: COE
Property Number: 319010400
Status: Unutilized
Comment: 1 acre; future use—recreation.

Parcel #222
Lake Texoma
(See County) Co: Grayson, TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Tract J–057
Whitney Lake
Bosque Co: Bosque, TX
Location: Via Avenue B within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110029
Status: Unutilized
Comment: .18 acres; potential utilities; encroachments on large portion of property.

Tract J–096
Whitney Lake
Bosque Co: Boeque, TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110032
Status: Unutilized
Comment: 5.4 acres; potential utilities.

Summary of Suitable / Available Properties

Total number of Properties = 222

SUITABLE / UNAVAILABLE PROPERTIES

Buildings (by State)

California

Lake Sonoma
3333 Skaggs Springs Road
Geyserville Co: Sonoma, CA 95441–9644
Landholding Agency: COE
Property Number: 319011016
Status: Unutilized
Comment: 2438 sq. ft.; 1 story wood frame; needs rehab; rural area.

Indiana

Cecil M. Harden Lake Project
Rockville Co: Parke, IN 47872–9726
Location: SR36 west from Indianapolis for approximately 50 miles to SR50, then south on 59 for approximately 5 miles, left on unnumbered road for about 2 miles to site.
Landholding Agency: COE
Property Number: 319011043
Status: Unutilized
Comment: 1219 sq. ft.; brick frame residence.

Cagles Mill Lake
Cagles Mill Lake Dam
Poland Co: Putnam, IN 47868–
Location: Midway between Indianapolis and Terre Haute, 5 miles west of Poland on SR42.
Landholding Agency: COE
Property Number: 319011046
Status: Unutilized
Comment: 1066 sq. ft.; wood frame residence; minor rehab.

Kentucky

Bldg. 1
Kentucky River Lock and Dam
Carrolton Co: Carroll, KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011626
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Kentucky River Lock and Dam
Carrolton Co: Carroll, KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Washington

Naval Station Puget Sound

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7500 Sand Point Way, NE
Seattle Co: King, WA 98115–
Landholding Agency: Navy
Property Number: 779120002
Status: Excess
Base closure
Comment: 144 sq. ft. ammunition bunker, most recent use-storage, secured area with alternate access.

Land (by State)

Georgia

E.O. Tract A
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011516
Status: Unutilized
Comment: 17 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract B
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011517
Status: Unutilized
Comment: 88 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract D
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: Northwest of Forest Lake Estates on Dozier Branch.
Landholding Agency: COE
Property Number: 319011518
Status: Unutilized
Comment: 7 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract E
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: Approximately 1½ miles east of GA 104 and Keg Creek Road intersection.
Landholding Agency: COE
Property Number: 319011520
Status: Unutilized
Comment: 12 acres; potential utilities; most recent use—forest and wildlife management.

E.O. Tract F
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: Approximately 2 miles east of GA 104 and Keg Creek Road intersection.
Landholding Agency: COE
Property Number: 319011519
Status: Unutilized
Comment: 29 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract G
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011521
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract H
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011522
Status: Unutilized
Comment: 7 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract I
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011523
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

Kansas

Paradise Point
Public Use Area (Perry Lake)
Perry Co: Jefferson, KS 66073–
Location: Upper-east reaches of the Perry Lake project, approximately 8½ miles west of Oskaloosa, 8½ miles southeast of Valley Falls.
Landholding Agency: COE
Property Number: 319011540
Status: Underutilized
Comment: 479 acres; portion in floodway/reservoir flood control area; remote location.

Grasshopper Point
Public Use Area (Perry Lake)
Perry Co: Jefferson, KS 66073–
Location: Along the west shore of Perry Lake, 5 miles east (gravel road) from Meridan, 5 miles south from Ozawkie.
Landholding Agency: COE
Property Number: 319011541
Status: Underutilized
Comment: 174 acres; portion in floodway/reservoir flood control area; remote location.

Sunset Ridge
Public Use Area (Perry Lake)
Perry Co: Jefferson, KS 66073–
Location: Upper-west reaches of the Perry Lake project, approximately 6 miles south from Valley Falls.
Landholding Agency: COE
Property Number: 319011542
Status: Underutilized
Comment: 279 acres; portion in floodway/reservoir flood control area; remote location.

Dragoon Access Area
Pomona Lake
Vassar Co: Osage, KS 66543–
Location: Upper reaches of north shore of the Pomona Lake, approximately 10.5 miles north and east of Lundon.
Landholding Agency: COE
Property Number: 319011543
Status: Underutilized
Comment: 110 acres; portion in floodway/reservoir flood control area.

South Carolina

E.O. Tract J
J. Strom Thurmond Dam and Reservoir (See County) Co: McCormick, SC
Location: 4 miles southwest of Plum Branch SC on road to Clarks Mill Marina.
Landholding Agency: COE
Property Number: 319011514
Status: Unutilized
Comment: 57 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract C
J. Strom Thurmond Dam and Reservoir (See County) Co: McCormick, SC
Location: Approximately 1 mile north of US 221 and SC 28 intersection.
Landholding Agency: COE
Property Number: 319011515
Status: Unutilized
Comment: 70 acres; potential utilities; most recent use—forest and wildlife reserve.

West Virginia

Morgantown Lock and Dam
Box 3 RD # 2
Morgantown Co: Monongahela, WV 26505–
Landholding Agency: COE
Property Number: 319011532
Status: Unutilized
Comment: 13.94 acres; potential utilities.

Summary of Suitable/Unavailable Properties

Total number of Properties = 21.

UNSUITABLE PROPERTIES

Buildings (By State)

Illinois

Smithland Locks & Dam Project
Old Lock and Dam Number 51
Golconda Co: Pope, IL 62938–
Landholding Agency: COE
Property Number: 319110025
Status: Unutilized
Reason: Other
Comment: Steel water tank

Kentucky

Tract 111—Building
Martins Fork Lake
Smith Co: Harlan, KY 40867–
Location: 13 miles southeast of Harlan on Highway 987.
Landholding Agency: COE
Property Number: 319010062
Status: Unutilized
Reason: Other
Comment: Floodway

Latrine
Kentucky River Lock and Dam Number 3
Highway 561
Pleasureville Co: Henry, KY 40057–
Landholding Agency: COE
Property Number: 319040009
Status: Unutilized
Reason: Other
Comment: Detached Latrine

New Mexico

Cochiti Lake Project Office
Pena Blanca Co: Pena Blanca, NM 87041–
Location: 30 miles from Santa Fe. 45 miles from Albequerque.
Landholding Agency: COE
Property Number: 319011505
Status: Underutilized
Reason: Other
Comment: Secured Area

New York

Bldg. 8
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120013
Status: Excess
Base closure
Reason: Other
Comment: Electrical Substation GSA Number: 2-N-NY-797

Bldg. 7
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120014
Status: Excess
Base closure
Reason: Other
Comment: Electrical Substation GSA Number: 2-N-NY-797

Bldg. R450
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120038
Status: Excess
Base closure
Reason: Other
Comment: Electrical Substation GSA Number: 2-N-NY-797

Hospital Area Steam Tunnel
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120045
Status: Excess
Base closure
Reason: Other
Comment: Structurally unsound.
GSA Number: 2-N-NY-797

North Street Steam Tunnel
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120046
Status: Excess
Base closure
Reason: Other
Comment: Structurally unsound.
GSA Number: 2-N-NY-797

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project.
Defeated Creek Recreation Area
Carthage Co: Smith, TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway

Track 2618 (Portion)
Cordell Hull Lake and Dam Project.
Roaring River Recreation Area
Gainesboro Co: Jackson, TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011563
Status: Underutilized
Reason: Floodway

Texas

Bldg. 18
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110033
Status: Unutilized
Reason: Secured Area

Bldg. 19
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110034
Status: Unutilized
Reason: Secured Area

Bldg. 20
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110035
Status: Unutilized
Reason: Secured Area

Bldg. 21
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110036
Status: Unutilized
Reason: Secured Area

Bldg. 22
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110037
Status: Unutilized
Reason: Secured Area

Land (By State)

Colorado

Beaver Creek Well Site
Approx. 1½ miles east of Brush
Brush Co: Morgan, CO 80723–
Landholding Agency: GSA
Property Number: 549120064
Status: Excess
Reason: Floodway
GSA Number: 7-B-CO-804

Kentucky

Track 4626
Barkley Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg, KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 319010050
Status: Underutilized
Reason: Floodway

Track AA-2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski, KY 42519–
Landholding Agency: COE
Property Number: 319010038
Status: Underutilized
Reason: Floodway

Track AA-2726
Wolf Creek Dam and Lake Cumberland
KY HWY. 80 to Route 709
Burnside Co: Pulaski, KY 42519–
Landholding Agency: COE
Property Number: 319010039
Status: Underutilized
Reason: Floodway

Tract 1355
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon, KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 319010043
Status: Excess
Reason: Floodway

Red River Lake Project
Stanton Co: Powell, KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 319011684
Status: Unutilized
Reason: Floodway

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing, MN 56442–
Location: 3 miles from city of Cross Lake between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011037
Status: Excess
Reason: Other
Comment: Highway right of way

Missouri

Stockton Public Use Area
Stockton Lake
Stockton Co: Cedar, MO 65785–0632
Location: Adjacent to and east of Stockton, MO.
Landholding Agency: COE
Property Number: 319011471
Status: Underutilized
Reason: Floodway

Smith's Fork Park
Smithville Lake
Smitville Co: Clay, MO 64089–
Location: Within Smithville Lake water resource project downstream from dam, adjoins Smithville.
Landholding Agency: COE
Property Number: 319011473
Status: Underutilized
Reason: Floodway

Old Mill Area
Stockton Lake
Stockton Co: Cedar, MO 65785–0632
Location: Below Stockton Lake Dam on right bank of Outlet Channel/SAC River. Approximately 2 miles from Stockton.
Landholding Agency: COE
Property Number: 319011477
Status: Underutilized
Reason: Floodway

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada, MS 38901–0903
Landholding Agency: COE
Property Number: 319011016
Status: Underutilized

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Reason: Within airport runway clear zone

North Carolina

Land
Atlantic Intercoastal Waterway
(See County) Co: Corrituck, NC
Location: Near old Coinjack Bridge.
Landholding Agency: COE
Property Number: 319011537
Status: Unutilized
Reasons: Floodway

Ohio

Ohio River
New Cumberland Lock and Dam
Glasgow Co: Beaver, OH
Landholding Agency: COE
Property Number: 319011560
Status: Unutilized
Reason: Floodway

Ohio River
Pike Island Lock and Dam
RD #1, Box 33
Tiltonsville Co: Jefferson, OH
Landholding Agency: COE
Property Number: 319011561
Status: Underutilized
Reason: Floodway

Pike Island Locks and Dam
Ohio River
RD 1, Box 33
Steubenville Co: Jefferson, OH 43952-
Landholding Agency: COE
Property Number: 319030012
Status: Underutilized
Reason: Floodway

Pennsylvania

Conemaugh River Lake
RD #1, Box 702
Blairsville Co: Indiana, PA 15681-
Location: West side of Route 217
Landholding Agency: COE
Property Number: 319011557
Status: Underutilized
Reason: Floodway

Loyalhanna Lake
RD #2
Latrobe Co: Westmoreland, PA
Landholding Agency: COE
Property Number: 319011559
Status: Unutilized
Reason: Floodway

Loyalhanna Lake
RD #2
Saltsbury Co: Westmoreland, PA
Landholding Agency: COE
Property Number: 319011562
Status: Underutilized
Reason: Floodway

Loyalhanna Lake
RD #2
Saltsbury Co: Westmoreland, PA
Landholding Agency: COE
Property Number: 319011563
Status: Unutilized
Reason: Floodway

Lock and Dam #7
Monongahela River
Greensboro Co: Greene, PA
Location: Left hand side of entrance roadway to project.
Landholding Agency: COE
Property Number: 319011564
Status: Unutilized
Reason: Floodway

Portion of Tract 408C
Cowanesque Lake Project
Nelson Cemetary
Nelson Co: Tioga, PA 16946-
Landholding Agency: COE
Property Number: 319011620
Status: Excess
Reason: Other Comment: Cemetery

East Branch Clarion River Lake
Wilcox Co: Elk, PA
Location: Outflow Access Area—below dam
Landholding Agency: COE
Property Number: 319030013
Status: Underutilized
Reason: Floodway

Tennessee

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart, TN 37058-
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 319011478
Status: Underutilized
Reason: Floodway

Tracts 3102, 3105, and 3108
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Bainesboro Co: Jackson, TN 38562-
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011479
Status: Excess
Reason: Floodway

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay, TN 38551-
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011480
Status: Unutilized
Reason: Floodway

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay, TN 38551-
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011481
Status: Unutilized
Reason: Floodway

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN, 37030-
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011482
Status: Underutilized
Reason: Floodway

Tract 930
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith, TN, 38564-
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011483
Status: Underutilized
Reason: Floodway

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38562-
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 319011484
Status: Underutilized
Reason: Floodway

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38551-
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011485
Status: Underutilized
Reason: Floodway

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38562-
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011486
Status: Unutilized
Reason: Floodway

Tract 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38551-
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011487
Status: Unutilized
Reason: Floodway

Tract 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38562-
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011488
Status: Underutilized
Reason: Within airport runway clear zone, Floodway

Tract 710C and 712C
Sullivan Island
Cordell Hull Lake and Dom Project
Carthage Co: Smith, TN 37030-
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011489
Status: Unutilized
Reason: Floodway

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38562-
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011490
Status: Unutilized
Reason: Floodway

Tract 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson, TN 38562-
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 319011491
Status: Unutilized
Reason: Floodway

Tract 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith, TN 37030-
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011492
Status: Unutilized
Reason: Floodway

Tract 317
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson, TN 37214-
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway

Tract 811
West Fork Launching Area
Smyrna Co: Rutherford, TN 37167-
Location: Florence road near Enon Springs Road
Landholding Agency: COE
Property Number: 319011494
Status: Underutilized
Reason: Floodway

Tract 1704
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford, TN 37167-
Location: Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford, TN 37167-
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway

Tracts 345, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson, TN 37214-
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 319011497
Status: Underutilized
Reason: Floodway

Tracts 207, 209 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith, TN 37030-
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway

Tracts 2919 and 2829
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson, TN 38562-
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson, TN 38564-
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson, TN 38562-
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway

Tract 104 et. al.
Cordell Hull Lake and Dam: Project
Horshoe Bend Launching Area
Carthage Co: Smith, TN 37030-
Location: Highway 70 N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway

Texas

Tracts 104, 105-1, 105-2 & 118
Joe Pool Lake
(See County) Co: Dallas, TX
Landholding Agency: COE
Property Number: 319010397
Status: Underutilized
Reason: Floodway

Part of Tract 201-3
Joe Pool Lake
(See County) Co: Dallas, TX
Landholding Agency: COE
Property Number: 319010396
Status: Underutilized
Reason: Floodway

Part of Tract 323
Joe Pool Lake
(See County) Co: Dallas TX
Landholding Agency: COE
Property Number: 319010399
Status: Underutilized
Reason: Floodway

Tract 703-5
Granger Lake
Route 1, Box 172
Granger Co: Williamson, TX 76530-9801
Landholding Agency: COE
Property Number: 319010401
Status: Unutilized
Reason: Floodway

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson, TX 76530-9801
Landholding Agency: COE
Property Number: 319010402
Status: Unutilized
Reason: Floodway

Tract 1237
Lake Waco
(See County) Co: McLennan, TX
Landholding Agency: COE
Property Number: 319011006
Status: Excess
Reason: Floodway

Parcel 2, Portion of Tract A97
Belton Lake
Belton Co: Bell, TX 76513-
Location: Adjacent to lot 7, block 1 of Woodland Point Subdivision.
Landholding Agency: COE
Property Number: 319011691
Status: Excess
Reason: Other
Comment: No access.

West Virginia

Ohio River
Pike Island Locks and Dam
Buffalo Creek
Wellsburg Co: Brooke, WV
Landholding Agency: COE
Property Number: 319011529
Status: Unutilized
Reason: Floodway

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia, WV 26505-
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway

London Lock and Dam
Route 60 East
Rural Co: Kanawha, WV 25126-
Location: 20 miles east of Charleston, W. Virginia.
Landholding Agency: COE
Property Number: 319011690
Status: Unutilized
Reason: Other
Comment: .09 acres; very narrow strip of land located too close to busy highway.

Summary of Unsuitable Properties

Total number of Properties =73

[FR Doc. 91-1402 Filed 6-13-91; 8:45 am]

BILLING CODE 4301-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-020-4212-13: GP1-240]

Advisory Council Tour and Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, Burns Advisory Council Meeting and Tour.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976, that a tour and meeting of the Burns District Advisory Council will be held on July 11 and 12, at the Burns District Office located on Highway 20, three miles south of Hines, Oregon. The tour will begin at 8 a.m. on Thursday, July 11; the meeting will begin at 9 a.m. on Friday, July, 12.

The tour will include stops at various locations in the District that relate to the general topic of interrelationships between management of public and private lands in the Harney County area.

The agenda for the meeting will include: Updates on the Three Rivers Resource Management Plan, a status

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report on the District's Fiscal Year 91 planned work, a briefing on drought conditions and a discussion of the interrelationships between management of public and private lands with emphasis on the findings of the previous day's field tour.

DATES: The tour will begin at 8 a.m. and adjourn by approximately 6 p.m. Pacific Standard Time on Thursday, July 11 and the meeting will begin at 9 a.m and conclude by 4 p.m. on July 12.

FOR FURTHER INFORMATION CONTACT: Michael T. Green, District Manager, Bureau of Land Management, HC 74–12533 Highway 20 West, Hines, OR 97738, (Telephone 503 573–5241).

SUPPLEMENTARY INFORMATION: The tour will be open to the general public. However, interested persons will need to provide their own transportation and meals. Road conditions will require vehicles with high clearance. Individuals wishing to attend should contact the District Manager at the above address.

The meeting will also be open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written statements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management at the listed address by July 8, 1991.

Dated: June 3, 1991.

Michael T. Green,

District Manager.

[FR Doc. 91–14157 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–33–M

[NV–030–91–4830–10–24–1 A]

Carson City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Carson City District Advisory Council.

DATES: July 18, 1991.

ADDRESSES: 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

SUMMARY: The Council will meet at 9 a.m. The agenda will include the following:

1. Minutes from the last meeting.
2. Current Item Update.
   a. Truckee Meadows Project
   b. Military—Nevada Report
   c. Marietta Wild Burro Range Dedication
   d. Wild Horse and Burro Program
3. Overview of the Carson City/BLM Partnership and Virginia City Comstock Historic District.
4. At 10:00 a.m., comments from the public will be heard.
5. Tour of projects (planned and completed) involved in the Carson City/BLM Partnership. Transportation will be provided for Advisory Council members. Non-members must provide their own transportation.
6. Tour of the Virginia City Comstock Historic District.

FOR FURTHER INFORMATION CONTACT: Chuck Pope, BLM Public Affairs Officer, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706–0638. (Phone: (702) 885–6000).

Dated: June 7, 1991.

James W. Elliott,

District Manager Carson City District.

[FR Doc. 91–14158 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–HC–M

Medford District Advisory Council; Meeting Notice

Notice is hereby given in accordance with Public law 99–463 that a field trip of the Bureau of Land Management's Medford District Advisory Council will be held July 11, 1991.

The field trip will depart at 8 a.m. from the Bureau of Land Management office at 3040 Biddle Road, Medford, Oregon. Purpose of the field trip is to enable the Advisory Council to become more familiar with the District's Resource Management Plan efforts, in order to assist in preparing a preferred alternative.

Persons interested in joining the Council on its field trip may do so, but must provide their own transportation.

FOR FURTHER INFORMATION CONTACT: Kurt Austermann, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504; Telephone 503–770–2424.

Summary minutes of any action taken by the Council will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: June 5, 1991.

David A. Jones,

District Manager.

[FR Doc. 91–14159 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–33–M

[WO–150–00–4830–11]

National Public Lands Advisory Council—Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet Friday, July 19, 1991, at the The Red Lion Hotel, 255 South West Temple, Salt Lake City, Utah 84101. Phone #801–328–2000. Meeting hours will be 8 a.m. to 5 p.m. on Friday, July 19th.

The proposed agenda for the meeting is: Opening remarks by National Public Lands Advisory Council Chairman Dr. James E. Bowns; Dean Stepanek, Deputy Director, BLM; and BLM Utah State Director, Jim Parker.

The Council presently has four (4) ongoing task force groups. These groups advise and counsel the BLM regarding the agency's programs on: Hazardous materials management; recreation; mining; and, the proposal for the BLM to have a "foundation" similar to the Fish & Wildlife Service and Forest Service's foundations. The Council will summarize the status of each of the task force groups.

The BLM will provide briefings to the Council on its wilderness recommendations and wilderness water rights. There will also be a briefing on the future direction of BLM's hazardous materials program. On Thursday, July 18, 1991, the Council will take a field trip outside the Salt Lake City area touring various hazardous waste management sites.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council beginning at 2 p.m. on Friday, July 19th. Speakers should address specific national public lands issues and are encouraged to submit a copy of their written statements prior to oral delivery. Please send written comments by July 12th to the BLM's Salt Lake City office at the address listed below. Depending on the number of people who wish to address the Council it may be necessary to limit the length of oral presentations.

DATES: Friday, July 19, 1991—The National Public Lands Advisory Council Meeting.

ADDRESSES: Copies of Public Statements should be mailed by July 12 to: Mr. Jerry Meredith, Bureau of Land Management, P. O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Nan Morrison, Washington, DC Office, BLM, telephone (202) 208–5101.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, BLM,

regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

Date Signed: June 10, 1991.

Cy Jamison,

Director.

[FR Doc. 91–14184 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–84–M

[G–040–G1–0483–4213–14; OK MM 82796]

Tulsa District Office; Proposed Direct Sale

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of Realty Action.

SUMMARY: The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at not less than the appraised fair market value:

Indian Meridian, Oklahoma

T. 14 N., R. 1 E.,
Sec. 28, lots 20, 21, and 22.
Containing a total of 2.37 acres in Oklahoma County.

The land will not be offered for sale until at least 60 days after publication of this notice in the Federal Register. The fair market value of the parcels has been determined to be $300.00 ($100.00 per lot).

Publication of this notice will segregate the above-described land from all appropriation, under the public land laws including the mining laws, but not from sale under the above-cited statute, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the Federal Register, whichever occurs first.

The subject lands are part of the remaining public land holdings in Oklahoma scattered throughout the state. The lands are being offered for sale since the Bureau of Land Management (BLM) can not economically or feasibly manage the subject lands. No other federal agency or department was interested in managing these lands. The sale is consistent with the Bureau planning for the lands involved and has been discussed with governmental units and local officials. Direct sale procedures are appropriate because of the parcels' small size and the best use is to merge them with an adjoining ownership of an existing business. Use of direct sale procedures will avoid an inappropriate land ownership pattern. The sale is consistent with the Planning Analysis and Decision Document for Central Oklahoma Land Disposal and the public interest would be served by offering these lands for sale.

The parcels are being offered to the Town of Luther, Oklahoma, using the direct sale procedures authorized under title 43 CFR 2711.3–3.

The terms, conditions, and reservations applicable to the sale are as follows:

1. The grantees will be required to submit a deposit of either cash, certified check, cashier's check, bank draft, money order, or any combination thereof for not less than 20 percent of the appraised value. The remainder of the full appraised price must be submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and the forfeiture of the deposit.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document, is available for review at this BLM office.

3. Title will be issued by a patent subject to all prior valid existing rights and reservations of record.

4. Title will be issued by a patent with restrictions under Executive Order 11988 (42 CFR 26951 May 25, 1977), for the protection and management of, floodplain on the above-described lands.

DATES: On or before July 29, 1991, interested parties may submit comments to the District Manager, BLM, Tulsa District Office, 9522N E. 47th Place, Tulsa, Oklahoma 74145. Any adverse comments will be reviewed by the District Manager, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Jacqueline Gratton, (405) 794–9634.

Dated: June 7, 1991.

Joe Incardine,

Acting District Manager.

[FR Doc. 91–14183 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–FB–M

National Park Service

Availability of Plan of Operations and Environmental Assessment; Murphy Oil USA, Inc., Big Thicket National Preserve, TX

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from Murphy Oil USA, Inc., a Plan of Operations for continuing operation of four existing gas wells: Rafferty No. 1, Rafferty No. 1N, Rafferty No. 7, and M.J. Cunningham No. 5, located within the jack Gore Baygall/Neches Bottom Unit of Big Thicket National Preserve, Hardin County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment, for a period of 30 days from the publication date of this notice, in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, room 211, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Dated: June 10, 1991.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 91–14216 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation: Inland Container Corporation I, 4030 Vincennes Road, Indianapolis, Indiana 46268–0837.

2. Directly or indirectly wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

A. Anderson Box Company, Inc.—Indiana
B. El Morro Corrugated Box Corporation—Delaware
C. El Morro Corrugated Box Corporation—Puerto Rico
D. Inland Paper Company, Inc.—Indiana
E. Inland Real Estate Investments, Inc.—Indiana

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F. Inland-Rome Inc.—Delaware
G. Inland-Orange Inc.—Delaware
H. Sabine River & Northern Railroad Company—Texas
I. Inland Container Corporation—Delaware
J. Crockett Container Corporation—California
K. King Container Company—California
L. Pakway Container Corporation—Indiana

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-14201 Filed 6-13-91; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 34)]

Intrastate Rail Rate Authority—Washington

AGENCY: Interstate Commerce Commission.

ACTION: The Commission assumes jurisdiction over intrastate rail rates, classifications, rules, and practices.

SUMMARY: By letters filed May 14 and 22, 1991, the State of Washington, through its Utilities and Transportation Commission, notified this Commission that it would not seek recertification to regulate rail rates, classifications, rules, and practices pursuant to 49 U.S.C. 11501(b), and asked the Commission to assume jurisdiction over these intrastate matters. The Commission grants the request and assumes jurisdiction over rail rates, classifications, rules, and practices in the State of Washington.

EFFECTIVE DATE: Effective June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: June 7, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-14199 Filed 6-13-91; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31886]

Georgia Great Southern Division of the South Carolina Central Railroad Company, Inc., Central of Georgia Railway Company, and Georgia Northern Railway Company—Joint Relocation Project and Trackage Rights Exemptions

On May 29, 1991, Georgia Great Southern Division of the South Carolina Central Railroad Company, Inc. (GGS), and Central of Georgia Railway Company and Georgia Northern Railway Company, affiliates of Norfolk Southern Railway Company (jointly referred to as NS), filed a notice of exemption under 49 CFR 1180.2(d) (5) and (7). The notice involves two transactions: (1) A joint project for the relocation of a GGS line of railroad, consisting of (a) GGS's acquisition of overhead (bridge) trackage rights on a 3,585-foot NS line (between valuation stations 1814+59 and 1850+44) at Albany, GA, (b) GGS's abandonment of (i) a 3,585-foot section of line paralleling the NS line between valuation stations 1814+59 and 1850.44, and (ii) a nearby 520-foot section of line, (c) GGS's construction of a new connector track between the GGS and NS lines in the Albany rail yard; and (2) a separate, additional grant of trackage rights that is not part of the joint project, but that will allow GGS to use other NS tracks in the Albany rail yard to interchange traffic and to move between the joint trackage and GGS's mainline at the relocated connection. Together, the joint project and trackage rights will enable GGS to improve its operations in the Albany rail yard, eliminate three rail crossings, and replace double-track street crossings with single-track crossings.

The joint relocation project falls under the class exemption at 49 CFR 1180.2(d)(5). The Commission will assume jurisdiction over the abandonment and construction components of a relocation project only where the proposal involves a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, *Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN*, 4 I.C.C.2d 95 (1987). The separate trackage rights transaction falls under the class exemption at 49 CFR 1180.2(d)(7).

As a condition to the use of this exemption, any employees affected by the separate grant of trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.— Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc.—Lease and *Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on James M. McLaren, Georgia Great Southern Division of the South Carolina Central Railroad, Inc., P.O. Box 62, Dawson, GA 31742-0062, and F. Blair Wimbush, Central of Georgia Railway Company and Georgia Northern Railway Company, Three Commercial Place, Norfolk, VA 23510-2191.

Dated: June 10, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-14200 Filed 6-13-91; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-335 (Sub-No. 5X)]

KCT Railway Corporation—Abandonment Exemption—Between Lamar and Wiley, CO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by KCT Railway Corporation of a 10.36-mile line of railroad between Lamar and Wiley, Colorado, subject to environmental and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 14, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c) (2) must be filed by June 24, 1991, petitions to stay must be filed by July 1, 1991, and petitions for reconsideration must be filed by July 9, 1991. Requests for a public use condition must be filed by June 24, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-335 (Sub-No. 5X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representative: Stephen W. McVearry, 1350 New York Avenue, NW, suite 800, Washington, DC 20005-4797.

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for the hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: June 7, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-14198 Filed 6-13-91; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreements

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9622(d)(2), notice is hereby given that a Consent Decree was lodged with the United States District Court for the Eastern District of Tennessee on May 24, 1991. This action was brought pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The parties to this Consent Decree are Southern Foundry Supply, Inc., SMC Corporation, and the City of Chattanooga. These parties agree to design and implement a remedy selected by the Environmental Protection Agency for cleanup of the Amnicola Dump Site in Chattanooga, Tennessee. These parties have also agreed to reimburse the United States for costs it incurs in overseeing the implementation of the remedy, as well as costs it incurs in performing activities relating to remedial design/remedial action and community relations.

The Department of Justice will receive comments relating to the proposed Settlement Agreement for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Southern Foundry Supply, Inc., et al.*, D.J. Ref. 90-11-3-864.

The proposed Settlement Agreements may be examined at the office of hte United States Attorney, 9th and Georiga Avenue, 359 Federal Building, Chattanooga, Tennessee 37402. A copy of the proposed Settlement Agreements may also be examined at the Environmental Enforcement Section, Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Settlement Agreements may be obtained in person or by mail from the Environmental Enforcement Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. Any request for a copy of the proposed Settlement Agreements should be accompanied by a check in the account of $92.50 for copying costs ($0.25 per page) payable to "Aspen Systems Corporation."

Richard B. Stewart,
Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91-14130 Filed 6-13-91; 8:45 am]
BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Automotive Emissions Cooperative Research Venture

Notice is hereby given that, on May 17, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Automotive Emissions Cooperative Research Venture (known as the Auto/Oil Air Quality Improvement Research Program) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the Auto/Oil Air Quality Improvement Research Program. The written notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional parties have become associate members of the Auto/Oil Air Quality Improvement Research Program: Ethyl Corporation, of 330 South Fourth Street, P.O. Box 2189, Richmond, Virginia 23217 and Elf France, Tour Elf, 36 Etage, DRDI, Cedex 45-92078 Paris LaDefense, France.

No other changes have been made in either the membership or planned activities of the Auto/Oil Air Quality Improvement Research Program.

On October 19, 1989, the Auto/Oil Air Quality Improvement Research Program filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 29, 1989, 54 FR 49122. A notice of additional members to the Auto/Oil Air Quality Improvement Research Program was published on August 8, 1990, 55 FR 32321.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 91-14128 Filed 6-13-91; 8:45 am]
BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc./PCN America, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and PCN America, Inc. ("PCN America") on March 25, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under sspecified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to this agreement and the general areas of planned activity are given below.

The current parties are the following:

Cable Television Laboratories, Inc., 1050 Walnut Street, suite 500, Boulder, Colorado 80302.

PCN America, Inc., 153 East 53rd Street, suite 2500, New York, NY 10022.

The area of planned activity is cooperation in the development of interface concepts between personal communications networks and cable system networks, including the exchange of information relating to the functions and architecture of personal communications networks, and cooperation in the conduct of radio frequency tests in connection with

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experimental personal communications network licenses issued by the FCC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-14129 Filed 6-13-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Controlled Substances; Proposed Revised 1991 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 1991 aggregate production quotas.

SUMMARY: This notice proposes revised 1991 aggregate production quotas for controlled substances in Schedule II of the Controlled Substances Act. Since the establishment of the 1991 aggregate production quotas on January 31, 1991 (56 FR 3842), DEA has reviewed data submitted by the registered manufacturers concerning 1990 dispositions and year-end inventories and has determined that revisions of some of the previously established quotas are necessary.

DATES: Comments or objections should be received on or before 30 days from date of publication.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of title 28 of the Code of Federal Regulations. On January 31, 1991, a notice of the 1991 established aggregate production quotas was published in the **Federal Register** (56 FR 3842). The notice stipulated that the Administrator of the DEA would adjust the quotas in early 1991 as provided for in title 21, Code of Federal Regulations, 1303.13(c). These aggregate production quotas represent those amounts of controlled substances that may be produced in the United States in 1991 and do not include amounts which may be imported for use in industrial processes.

Based on a review of 1990 year-end inventories, 1990 disposition data submitted by quota applicants, estimates of the medical needs of the United States submitted to the DEA by the Food and Drug Administraiton, and the other information available to DEA, the Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of title 28 of the Code of Federal Regulations, hereby proposes the following changes in the 1991 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base.

Schedule II	Previously established 1991 aggregate production quota	Proposed revised 1991 aggregate production quota
Alfentanil	5,300	7,300
Amobarbital	395,000	158,000
Amphetamine	98,000	168,000
Cocaine	863,000	857,000
Codeine (for sale)	56,907,000	52,800,000
Codeine (for conversion)	6,055,000	7,313,000
Desoxyephedrine	1,280,000	1,184,000
Levodesoxyephedrine	1,284,000	1,184,000
Methamphetamine	5,000	0
Dextropropoxyphene	85,267,000	93,675,000
Dihydrocodeine	241,000	484,000
Diphenoxylate	707,008	728,000
Hydrocodone	3,671,000	4,562,000
Hydromorphone	223,000	234,000
Levorphanol	10,300	6,700
Meperidine	10,452,000	8,930,000
Methadone	1,875,000	2,672,000
Methadone Intermediate (4-cyano-2-dimethylamino-4,4-diphenylbutane)		
Methylphenidate	1,979,000	2,055,000
Mixed Alkaloids of Opium	5,000	0
Morphine (for sale)	4,008,000	7,872,000
Morphine (for conversion)	67,228,000	64,367,000
Opium (tincture, extracts, etc. expressed in terms of USP powdered opium)		
Oxycodone (for sale)	2,854,000	3,102,000
Oxycodone (for conversion)	6,300	7,200
Oxymorphone	2,500	2,900
Pentobarbital	13,432,000	16,424,000
Secobarbital	782,000	858,000

In determining the proposed revised 1991 aggregate production quota for morphine (for sale), the major portion of this increase is due to export requirements. This increased need was not anticipated when establishing the previously finalized aggregate production quota for morphine (for sale).

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparations of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedule I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: May 6, 1991.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 91-14137 Filed 6-13-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 90-2]

Robert Krebsbach, M.D., Denial of Applications

On December 1, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Robert Krebsbach, M.D. (Respondent), P.O. Box 2717, 5507 E. 32nd Place, Tulsa, Oklahoma 74135, an Order to Show Cause proposing to deny his applications for DEA Certificates of Registration, executed on January 27, 1989, for registration in the State of Kansas and on October 10, 1989, for registration in the State of Oklahoma, as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Krebsbach's proposed registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Respondent, acting *pro se*, submitted a written request for a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Subsequently, Government counsel filed a motion for summary disposition on November 9, 1990, based on Respondent's lack of state authority to handle controlled substances in the State of Oklahoma as well as the suspension of his medical license in that state. On November 26, 1990, counsel for Respondent filed a response to the Government's motion, acknowledging Respondent's lack of authorization to handle controlled substances and to practice medicine in the State of Oklahoma. Judge Bittner considered the motion for summary disposition, and on December 3, 1990, issued her opinion and recommended ruling in this matter. No hearing was held, since no factual issues were involved. Neither side filed exceptions to the recommended ruling of the administrative law judge. On January 9, 1991, Judge Bittner transmitted the record to the Administrator.

Thereafter, on February 15, 1991, counsel for the Government filed a second motion for summary disposition based on Respondent's lack of authorization to practice medicine or handle controlled substances in the State of Kansas. In support of that motion, counsel for the Government filed a copy of a letter from the Executive Director of the State of Kansas Board of Healing Arts, advising that Respondent's license was in "cancelled status" effective August 1, 1990. On February 9, 1991, the administrative law judge requested that the Administrator withhold issuance of a final order regarding the Oklahoma application, pending completion of the proceedings before her on the Kansas application, and also issued an order providing Respondent until March 12, 1991, to file a response to the Government's second motion for summary disposition. No such response has been submitted. On March 29, 1991, the administrative law judge issued a supplemental opinion and recommended decision. No exceptions were filed and the matter was transmitted to the Administrator on May 6, 1991.

The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based on the following findings of fact and conclusions of law.

The administrative law judge found that, by order dated November 1, 1990, the Oklahoma State Board of Medical Licensure and Supervision suspended Respondent's license to practice medicine. Therefore, Respondent is without authority to practice medicine or handle controlled substances in Oklahoma. Further, since August 1, 1990, Respondent has not been authorized to practice medicine or handle controlled substances in the State of Kansas.

State authorization to handle controlled substances is a prerequisite to registration of a practitioner under the Federal Controlled Substances Act. 21 U.S.C. 823(f). DEA has consistently held that when an applicant is without authority to handle controlled substances under the laws of the State in which he practices, or proposes to practice, DEA is without authority to issue a Federal registration. See, Emerson Emory, M.D., Docket No. 85-46, 51 FR 9543 (1986); Michael Alva Marshall, M.D., Docket No. 85-16, 51 FR 8046 (1986); Dennis Howard Harris, M.D., Docket No. 84-19, 49 FR 30930 (1984).

In such cases, a motion for summary disposition is properly entertained and must be granted. It is settled law that when no fact question is involved, or when the facts are agreed, a plenary adversary administrative proceeding is not obligatory, even though a pertinent statute prescribes a hearing. In such situations, the rationale is that Congress does not intend administrative agencies to perform a meaningless task. *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

The administrative law judge concluded that there is no lawful basis for DEA to grant a registration to Respondent since he has no state license to dispense controlled substances or to practice medicine. Therefore, the administrative law judge recommended that the applications for registration executed by Respondent should be denied.

The Administrator has examined the entire record and adopts the recommended findings and conclusions of the administrative law judge. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the applications for registration as a practitioner submitted by Robert Leo Krebsbach, M.D., be, and they hereby are, denied. This order is effective June 14, 1991.

Dated: June 6, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-14138 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-09-M

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions hake been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade adjustment Assistance, at the address show below, not later than June 24, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 24, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 3rd day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Dated received	Date of petition	Petition No.	Articles produced
Alcan Rolled Prod. Co. (wkrs)	Terre Haute, IN	06/03/91	05/28/91	25,889	Aluminum.
American Olean Tile Co (wkrs)	Lansdale, PA	06/03/91	05/23/91	25,890	Glazed ceramic wall tile.
Aries Handbag Inc, & Bagmaster (LGPH)	New York, NY	06/03/91	05/27/91	25,891	Handbags.
C.J. Langenfelder (OEIU)	Morrisville, PA	06/03/91	05/03/91	25,892	Unloading, screening and hauling iron.
Dowell Schlumberger (Wkrs)	Houston, TX	06/03/91	05/23/91	25,893	Stimulation of oil and gas wells.
Eastern Gear Corp (Co)	Paterson, NJ	06/03/91	05/22/91	25,894	Precision gears, shafts, and parts.
Evenflo Juvenile Furniture Co (Co)	Stevens Point, WI	06/03/91	05/09/91	25,895	Infant furniture.
GenCorp Automotive (Wkrs)	Cuba, MO	06/03/91	05/21/91	25,896	Extruded rubber window sealing systems.
Golden Capital Dist., Inc. (IUE)	E Hanover, NJ	06/03/91	05/23/91	25,897	Wholesale distributor.
Heckett (division of Hasco Corp) (OEIU)	Morrisville, PA	06/03/91	05/03/91	25,898	Process slag, scrap metal and ingots.
Kelbler-Thompson (OEIU)	Morrisville, PA	06/03/91	05/03/91	25,899	Digging slag pits.
Kent Taylor Inc, ASEA Brown Boveri(Wkrs)	Rochester, NY	06/03/91	05/08/91	25,900	Printed circuit boards.
Louis A. Grant, Inc. (OEIU)	Pittsburgh, PA	06/03/91	05/03/91	25,901	Digging out slag pits.
Mendecino Dress (ILGW)	Long Island City, NY	06/03/91	05/23/91	25,902	Ladies' dresses.
Port International (OEIU)	Morrisville, PA	06/03/91	05/03/91	25,903	Waste water and waste oil.
Sara Lee Knitting, Pannill (Wkrs)	Floyd, VA	06/03/91	05/23/91	25,904	Sweat pants and shirts.
Simpson Timber/McCleary Door Plant (Wkrs)	McCleary, WA	06/03/91	05/22/91	25,905	Style and rail doors.
SonicStar International Ltd. (Wkrs)	Jamestown, NY	06/03/91	05/22/91	25,906	Ultrasonic cleaning systems.
Sterling Drug, Inc (Wkrs)	Trenton, NJ	06/03/91	05/08/91	25,907	Aspirin.
Tom Henry Chevrolet (Wkrs)	Bakerstown, PA	06/03/91	05/24/91	25,908	Chevrolet GEO Dealership.
Warner Waste Management (OEIU)	Morrisville, PA	06/03/91	05/03/91	25,909	Slag.

[FR Doc. 91-14193 Filed 6-13-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,421]

Fisher-Price, Inc.; Brownsville, TX; Negative Determination Regarding Application for Reconsideration

By an application dated May 16, 1991, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 23, 1991 and published in the **Federal Register** on May 10, 1991 (56 FR 21690).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers provide services related to the production of toys manufactured by a foreign facility of its parent company. The reconsideration, however, was requested for workers in the Cutting Department whose production was transferred to Mexico. Workers in the Cutting Department cut material parts for soft toys being manufactured in Mexico which were subsequently imported as finished products.

The materials cut by the Cutting Department are components to soft toys which are produced in Mexico and later imported. The issue of components (cut material parts) was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d (DC circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of soft toys cannot be considered in determining import injury to workers producing cut material parts for soft toys. Therefore, in determining import injury to the Brownsville workers, the Department must consider imports of cut material parts.

The Department's denial for workers providing services related to the production of toys was addressed in the Department's initial denial notice. That notice stated that the Brownsville workers were laid off because of a corporate reorganization. The reorganization terminated Brownsville's previous administrative and support functions for the Matamoros plant to the warehousing of supplies and the receiving of finished articles from its Matamoros plant. This would not provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 5th day of June 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-14196 Filed 6-13-91; 8:45 am]

BILLING CODE 4510-30-M

The Lee Company, Kansas City, MS; The Lee Company, Kansas City, KS; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at The Lee Company, Kansas City, Missouri and Kansas City, Kansas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,555; The Lee Company, Kansas City, Missouri (June 5, 1991)

TA-W-25,555 A-B; The Lee Company, Kansas City, Kansas (June 5, 1991)

Signed at Washington, DC this 7th day of June, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-14197 Filed 6-13-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,554]

Affirmative Determination Regarding Application for Reconsideration; Irvin Automotive/Takata, Incorp. Dandridge, TN

By a letter dated May 24, 1991, the Amalgamated Clothing Workers Union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Negative Determination was issued on May 13, 1991 and will soon be published in the **Federal Register.**

The union claims that the subject firm transferred production in 1990 to its plant in Mexico. Also, the remaining production at Dandridge is scheduled to be transferred to Mexico by July 1991.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 5th day of June 1991.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-14194 Filed 6-13-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,363, TA-W-25,364]

Gloray Knitting Mills, Inc., Gloray Knitting Mills Retail Outlet, Robesonia, PA, Affirmative Determination Regarding Application for Reconsideration

By a letter dated May 7, 1991, a company official requested administrative reconsideration of the Department of Labor's Notices of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for former workers of Gloray Knitting Mills, Inc., Robesonia, Pennsylvania and the Gloray Knitting Mills Retail Outlet, Robesonia, Pennsylvania. The Negative Determinations were issued on April 9, 1991 and were published in the **Federal Register** on May 21, 1991 (56 FR 23302).

The company official claims that the Department's survey was inadequate since its major customer, which recently obtained a worker group certification, was not included in the survey.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 7th day of June 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-14195 Filed 6-13-91; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application Number D-8361]

Proposed Revocation of Prohibited Transaction Exemption (PTE) 81-82 Involving Guaranteed Contract Separate Accounts

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed revocation of existing class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of the proposed revocation of PTE 81-82. PTE 81-82 contains a final exemption for certain transactions involving separate accounts maintained by life insurance companies in connection with contracts under which the life insurance company either: (1) Guarantees repayment of amounts deposited with it by an employee pension benefit plan, together with accrued interest, on a fixed date, or (2) guarantees payment of a fixed annuity.

DATES: Written comments must be received by the Department on or before July 15, 1991.

EFFECTIVE DATE: It is proposed to make the revocation effective 30 days after publication of the final notice revoking PTE 81-82.

ADDRESSES: All written comments (preferably at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: D-8361. The comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200

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Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kay Madsen of the Office of Exemptions Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, [202] 523-8971 (this is not a toll-free number) or Diane Pedulla of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, [202] 523-9597 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of the proposed revocation of PTE 81-82.[1] On September 18, 1991, the Department published PTE 81-82 [46 FR 46443], a class exemption from the prohibited transaction restrictions of sections 406(a) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code [the Code], by reason of section 4975(c)(1) (A) through (D) of the Code.[2] The exemption provides relief for transactions between a party in interest and a separate account maintained by life insurance companies in connection with contracts under which the life insurance company either: (1) Guarantees repayment of amounts deposited with it by an employee benefit pension plan, together with accrued interest, on a fixed date, or (2) guarantees payment of a fixed annuity. For a more complete discussion of the relief provided by PTE 81-82, interested persons are referred to the exemption itself as published in the **Federal Register** and cited above.[3]

Background

The relief provided by PTE 81-82 was requested in an application filed by Aetna Life Insurance Company, the Equitable Life Assurance Society of the United States and The Prudential Insurance Company of America. The applicants for the exemption, together with two other insurance companies and the American Council of Life Insurance (collectively, the Companies) urged the Department prior to the granting of PTE 81-82 to issue an opinion that assets held in a "guaranteed investment contract separate account" of the kind described in the proposed exemption [4] are not plan assets because such separate accounts differ in many respects from conventional separate accounts. According to the Companies, the guaranteed investment contracts that were described in the application have three essential characteristics: (1) The insurance company guarantees that on the date or dates set forth in the contract, the company will repay to the contract-holder the amount deposited under the contract plus accrued interest; (2) interest is accrued and credited under the contract at a fixed rate set forth in the contract; and (3) the guarantee of repayment of principal and the stated interest are fixed, and do not vary with the investment performance of any assets held by the insurance company.

In the preamble to PTE 81-82, the Department concluded that it would be more appropriate to resolve the question of whether assets held by an insurance company in a guaranteed investment contract separate account are "plan assets" in the context of the Department's then-pending proposed regulation dealing with the definition of that term.[5] Accordingly, the Department declined at that time to issue the opinion requested by the Companies.

On November 13, 1986, the Department published a final regulation, section 29 CFR 2510.3-101, clarifying the definition of "plan assets" for the purpose of title I of ERISA. Regulation section 29 CFR 2510.3-101(h) provides, in part, that when a plan acquires or holds an interest in a separate account of an insurance company, its assets include its investment and an undivided interest in each of the underlying assets of the separate account, unless the separate account is maintained solely in connection with fixed contractual obligations of the insurance company under which the amounts payable, or credited, to the plan and to any participant or beneficiary of the plan (including an annuitant) are not affected in any manner by the investment performance of the separate account.

In view of the exception set forth in the final "plan assets" regulation for insurance company separate accounts that are maintained solely in connection with certain guaranteed obligations of an insurance company, the Department has made a tentative determination to prospectively revoke PTE 81-82.

In accordance with the Department's exemption procedures, the applicants were given advance notice of the proposed revocation and the reasons therefor, and were provided the opportunity to comment on the revocation. No comments were received from the applicants regarding the proposed revocation.

Written Comments

All persons are invited to submit written comments on the proposed revocation of PTE 81-82 to the address and within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the matter. Comments received will be available for public inspection at the address set forth above.

Proposed Revocation of Existing Exemption

On the basis of the material referred to in this document, the Department is considering revoking PTE 81-82, effective 30 days after final notice of the revocation is published in the **Federal Register**.

Signed at Washington, DC, this 7th day of June, 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91-14223 Filed 6-13-91; 8:45 am]

BILLING CODE 4510-29-M

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[1] ERISA Procedure 75-1 [40 FR 18471, April 28, 1975] provides that the Department may at any time revoke or limit any exemption. In addition, regulation section 29 CFR 2570.50 [55 FR 32836, August 10, 1990] provides that the Department may take steps to revoke or modify an exemption if, after the exemption takes effect, changes in circumstances, including changes in law or policy, occur which call into question the Department's original conclusions concerning the exemption.

[2] Section 102 of Reorganization Plan No. 4 of 1978 [43 FR 47713, October 17, 1978], generally transferred the Secretary of the Treasury's exemptive authority under section 4975(c)(2) of the Code to the Secretary of Labor.

In the discussion of the proposed revocation, references to specific sections of the Act also should be read to refer to the corresponding provisions of section 4975 of the Code.

[3] The Department notes that, if a final determination is made to revoke PTE 81-82, it also intends to withdraw from consideraton the Proposed Class Exemption for Guaranteed Contract Separate Accounts; Fiduciary Transactions [D-2874, 48 FR 46448] that was published simultaneously with PTE 81-82. The proposed class exemption supplements PTE 81-82 by providing relief from the prohibitions of section 406(6) of ERISA for transactions involving the assets of guaranteed contract separate accounts.

[4] See 45 FR 51303, August 1, 1980.

[5] 46 FR at 46445.

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

National Commission on Acquired Immune Deficiency Syndrome; Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Working Group on Religious Communities.

DATE AND TIME: Thursday, July 18, 1991, 9 a.m. to 5 p.m.

PLACE: Omni Shoreham Hotel 2500, Calvert Street, NW., Washington, DC.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., Suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: A Working Group of the Commission will hold a meeting to identify the current issues and concerns of religious communities responding to the HIV/AIDS epidemic, and to discuss the interface between the religious communities' response and the federal government's response to the HIV/AIDS epidemic.

Interpreting services are available for deaf people. Please call our TDD number (202) 254-3816 to request services no later than July 11, 1991.

Dated: June 10, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91-14121 Filed 6-13-91; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

National Commission on Acquired Immune Deficiency Syndrome; Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting.

DATE AND TIME: Sunday, June 23, 1991, 2 p.m. to 6 p.m. Monday, June 24, 1991, 8 a.m. to 4 p.m.

PLACE: Airlie House, Airlie, Virginia.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: A Working Group of Commissioners will meet to discuss plans for the Commission's third year of activities.

Dated: June 11, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91-14215 Filed 6-13-91; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before July 15, 1991.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension.

Title: NEH Performance Reporting Requirements.

Form Number: Not applicable.

Frequency of Collection: Either quarterly, semi-annually, or annually, and within 90 days of the grant ending date.

Respondents: All NEH grantees.

Use: Program evaluation.

Estimated Number of Respondents: 1,250.

Frequency of Response: Twice.

Estimated Hours for Respondents to Provide Information: 2 hours per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 6,250 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 91-14208 Filed 6-13-91; 8:45 am]

BILLING CODE 7536-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on July 2, 1991 from 9:30 a.m.-4 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

For further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: June 10, 1991.

Robbie McEwen,

Acting Advisory Committee Management Officer Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-14126 Filed 6-13-91; 8:45 am]

BILLING CODE 7537-01-M

VOL 56 ISS 115 JE 14 1991 UMI

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act. (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Special Projects/ Challenge III Section) to the National Council on the Arts will be held on July 1, 1991 from 9 a.m.–6:45 p.m. and July 2 from 9 a.m.–4 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 2 from 2 p.m.–4 p.m. The topics will be policy and guidelines recommendations.

The remaining portions of this meeting on July 1 from 9 a.m.–6:45 p.m. and July 2 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants.

In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 10, 1991.

Robbie McEwen,

Acting Advisory Committee Management Officer Council and Panel Operations National Endowment for the Arts

[FR Doc. 91–14127 Filed 6–13–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Material Research; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Material Research.

Dates/Times/Locations: July 1, 1991 7pm–9pm / July 2, 1991 8am–5pm, University of Maryland, Dept. of Physics & Astronomy, College Park, MD 20742.

July 8, 1991 7pm–9pm / July 9, 1991 8am–5pm, Pennsylvania State University, Department of Physics, University Park, PA 16802.

July 10, 1991 7pm–9pm / July 11, 1991 8am–5pm, Case Western Reserve University, Dept. of Material Science & Engineering, Cleveland, Ohio 44106.

July 15, 1991 7pm–9pm / July 16, 1991 8am–5pm, California Institute of Technology, Dept. of Engineering & Applied Science, Pasadena, CA 91125

July 16, 1991 7pm–9pm / July 17, 1991 8am–5pm, California Institute of Technology, Dept. of Engineering & Applied Science, Pasadena, CA 91125.

July 22, 1991 7pm–9pm / July 23, 1991 8am–5pm, Lehigh University, Dept. of Mechanical Engineering, Bethlehem, PA 18015.

Type of Meeting: Closed.

Agenda: To provide advice and recommendations concerning support for Materials Research Groups.

Contact Person: Dr. John C. Hurt, Program Director, Materials Research Groups, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9791.

Dated: June 10, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–14134 Filed 6–13–91; 8:45 am]

BILLING CODE 7555–01–M

Division of Ocean Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Ocean Science Review Panel.

Date and Time: July 1–2, 1991.

Place: State Plaza Hotel, 2117 E. Street NW., Washington, DC 20037, Ambassador Room.

Type of Meeting: Closed.

Contact Person: Dr. David Epp, Assoc. Program Director, Marine Geology & Geophysics, room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7837.

Purpose of Meeting: To provide advice and recommendations concerning support for research in oceanography.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Dated: June 10, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–14133 Filed 6–13–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. Title of the information collection: 10 CFR 21, "Reporting of Defects and Noncompliance," and 10 CFR 50.55(e), "Reporting of Defects in Design and Construction."

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: NRC licensees and directors or responsible officers of non-licensees that supply components to licensed facilities or activities.

6. An extimate of the number of responses: Part 21—Reduction of 100 reports annually; § 50.55(e)—Reduction of 50 reports annually.

7. An estimate of the total number of hours needed to complete the requirements or request: Part 21—Reduction of 7393 hours per year; § 50.55(e)—Reduction of 1103 hours per year.

8. The average burden per response is: Part 21—95 hours; § 50.55(e)—95 hours.

9. An indication of whether section 3504(h), Public Law 96–511 applies: Applicable.

10. Abstract: Proposed amendments to 10 CFR part 21 and § 50.55(e) rules will clarify the criteria and procedures for reporting of safety defects by licensees and nonlicensees. The proposed revised criteria and procedures to the existing rules would (1) reduce duplicate evaluation and reporting, (2) establish uniform time limits for evaluation, transfer of information, and reporting, (3) more clearly and uniformly define the defects to be reported, (4) establish a uniform content for reporting; and (5) clarify records retention requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW Lower Level, Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150–0011 and 3150–0035), NEOB–3019, Office of Management and Budget, Washingotn, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 5th day of June, 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior, Official for Information Resources Management.

[FR Doc. 91–14220 Filed 6–13–91; 8:45 am]

BILLING CODE 7590–01–M

Washington Public Power Supply System Nuclear Project No. 1; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Constructon Permit No. CPPR–134 issued to Washington Public Power Supply System (applicant or WPPSS) for Nuclear Project No. 1 (WNP–1). The facility is located on the applicant's site on the Department of Energy's Hanford Reservation in Benton County, Washington, approximately eight miles north of Richland, Washington.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPPR–134 to June 1, 2001. The proposed action is in response to the applicant's request of April 18, 1991 as supplemented on May 22, 1991.

The Need for the Proposed Action

The proposed action is needed because the construction of the facility is not yet fully completed and the licensee wants to maintain the facility as a potential electrical power resource.

Environmental Impact of the Proposed Action

Since the proposed action involves extending the construction permit, there is no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction. The impact of construction was evaluated in the Final Environmental Statement for WNP–1 and 4 (NUREG–75/012, dated March 1975).

Based on the foregoing, the NRC staff concludes that the proposed extension of the construction permit would have no significant environmental impact.

Alternatives Considered

A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the potential benefit of power production. This option would not eliminate the environmental impacts of construction already incurred. If construction were halted and not completed, site redress activities would restore some small areas to their natural state. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of the use of a facility that is nearly completed. Therefore, this alternative is rejected.

Another alternative is to take no action on the request for extension. The construction permit would not be deemed to have expired until the application has been finally processed (10 CFR 2.109). In effect the construction permit could be in effect as long as no action was taken on a timely application for an extension. To take no action on the applicant's request would not be responsive; therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources other than those evaluated in the FES prepared as part of the NRC staff's review of the construction permit application, NUREG–75/012, March 1975.

Agencies and Persons Consulted

The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension of April 18, 1991 as supplemented on May 22, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local Public Document Room, Richland Public Library, 955 Northgate Street, Richland, Washington, 99352.

Dated at Rockville, Maryland, this 6th day of June 1991.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–14221 Filed 6–13–91; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 30-12319-CivP, E.A. 88-222; ASLBP No. 90-613-03-CivP]

Atomic Safety and Licensing Board; Tulsa Gamma Ray, Inc., (Material License No. 35-17178-01)

June 10, 1991.

Memorandum and Order (Prehearing Conference and Evidentiary Hearing)

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. A. Dixon Callihan, Dr. Jerry R. Kline.

1. For purposes of expediting the hearing, the Licensing Board, immediately prior to the evidentiary hearing on June 25, 1991, will conduct a prehearing conference to review the procedures to be followed during the hearing. At such conference, the Board will consider, *inter alia*, such matters as (1) further simplification, clarification and specification of issues (as appropriate), (2) the obtaining of stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof, (3) determination of the schedule to be followed during the evidentiary hearing, including the order of witnesses, and (4) such other matters as may aid in the orderly disposition of the proceeding. See 10 CFR 2.752.

The prehearing conference will commence at 9:30 a.m. on June 25, 1991, in room 411 (Grand Jury Room), U.S. Courthouse , 333 West 4th Street, Tulsa, Oklahoma 74103. The evidentiary hearing will commence immediately following the prehearing conference, at the same location.

2. Parties are reminded that, if they wish to rely on documentary evidence (exhibits), they bring sufficient copies of each exhibit to present to each of the Board members, representative(s) of the opposing party, and three copies for the court reporter.

It is so ordered.

Bethesda, Maryland, June 10, 1991.

For the Atomic Safety and Licencing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 91-14222 Filed 6-13-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29284]

Administrative Dispute Resolution Act and Negotiated Rulemaking Act; Statement of Compliance

June 10, 1991.

James R. Doty, the Commission's General Counsel, has released the following statement concerning the Commission's compliance with the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act:

On November 15, 1990, President Bush signed Public Law 101-552, the Administrative Dispute Resolution ("ADR") Act. Companion legislation, Public Law 101-648, the Negotiated Rulemaking ("Reg-Neg") Act, was signed by the President on November 29, 1990. The two Acts authorize the use of arbitration, mediation, and other consensual methods of dispute resolution by federal agencies, while not actually mandating the employment of either ADR [1] or reg-neg.[2] The Acts do mandate, however, an evaluation by all federal agencies of potential areas for ADR leading to the adoption of an appropriate agency policy, and compliance with certain rules if ADR or reg-neg is used by the agency.

The ADR Act requires federal agencies to: (1) Designate an ADR Specialist; (2) review agency activities and adopt policies regarding the potential use of ADR techniques; (3) provide ADR training for employees involved in developing and implementing the ADR policies; and (4) review agency contracts, grants, and other assistance programs to determine whether they should authorize and encourage ADR. The Reg-Neg Act authorizes agencies to use reg-neg procedures if the head of the agency determines that the use of such procedures is in the public interest. Although, unlike the ADR Act, the Reg-Neg Act does not require the adoption of a policy, the Reg-Neg Act contemplates an evaluation by agencies of the utility of such procedures.

On behalf of the Commission, I am authorized to issue a statement regarding the Commission's compliance with these Acts. Although the ADR Act prescribes no deadline for the adoption of an ADR policy and the Reg-Neg Act does not require the adoption of a policy, the Commission considers the adoption of appropriate ADR and reg-neg policies to be a priority item. Therefore, the Commission has moved forward with a program for evaluating its activities and developing appropriate policies.

On March 18, 1991, Chairman Breeden designated the General Counsel as the Commission's "ADR Specialist." In addition, the Commission has authorized me to head the evaluation of reg-neg. Accordingly, I have created an internal ADR & Reg-Neg Task Force with representatives from the various offices within the Commission to examine all aspects of Commission activities in order to determine where ADR or reg-neg procedures may be appropriate. The staff has been receiving assistance from the Administrative Conference of the United States in constructing a program for developing the Commission's ADR policy and in receiving appropriate training. It is contemplated that the Commission will publish a release in the near future soliciting comments regarding the utility of ADR and reg-neg techniques in Commission activities. Until the Commission adopts appropriate policies, it does not intend to consider employing ADR or reg-neg on a case-by-case basis.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14130 Filed 6-13-91; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8386]

Issuer Delisting; Application To Withdraw From Listing and Registration (NYCOR, Inc., Common Stock, $1.00 Par Value)

June 10, 1991.

NYCOR, Inc. ("Company") has filed an application with the securities and exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw its Common Stock from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company currently has authorized and outstanding four classes of capital stock, the Common Stock; Class A Stock, Par Value $1.00 per share; Class B Stock, Par Value $1.00 per share; and $1.70 Convertible Exchangeable Preferred Stock, Par Value $1.00 per share ("Preferred Stock").

The Common Stock is listed on the Exchange and also trades in the National Association of Securities Dealers Automated Quotations/ National Market System ("NASDAQ/NMS"). The Class A Stock and the Preferred Stock trade in the NASDAQ-NMS. There is no established public trading market for the Class B Stock, as there are restrictions on its transfer.

The Class A Stock was created and issued effective January 2, 1991. The Company has been advised by the Exchange that the Class A Stock is not eligible for listing because it does not have voting rights. The Class A Stock is currently the Company's largest class of stock and it is presently anticipated by the Company that future issuance of common equity would be in shares of Class A Stock.

Since the Common STock, Class A Stock and Preferred Stock all trade in the NASDAQ/NMS and the Class A Stock may not be admitted to listing on the Exchange, the Company believes that its stockholders will best be served if the Company withdraws the Common Stock from listing on the Exchange in order that all of the Company's publicly-traded shares are traded principally in one market, the NASDAQ/NMS.

Any interested person may, on or before July 1, 1991, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Phlx and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-14202 Filed 6-13-91; 8:45 am]

BILLING CODE 8010-01-M

[1] Alternative means of dispute resolution are procedures, often involving a neutral third party, that are used in lieu of adjudication to resolve issues in controversy, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, arbitration, or any combination of these.

[2] Negotiated rulemaking, or "reg-neg," is a procedure by which an agency invites the parties that will be affected by a rule to join the agency in forming an ad hoc committee to develop a consensus draft of the rule.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.963-1; Fuel Tank Access Covers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular 25.963-1 and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to fuel tank access covers. Guidance information is provided in that AC for showing compliance with the impact and fire resistance requirements of § 25.963(e). This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before October 14, 1991.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM-110, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 227-2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they desire. Commenters should identify AC 25.963-1 and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

Fuel tank access covers have failed in service due to impact with high speed objects such as failed tire tread material and engine debris following engine failures. Failure of an access cover on a wing fuel tank may result in the loss of hazardous quantities of fuel which could subsequently ignite. Section 25.963(e) of the Federal Aviation Regulations (FAR) was, therefore, adopted (Amendment 25-69; 54 FR 40352; September 28, 1989) to require new standards for such covers. Section 121.316 was also adopted concurrently to require each turbine-powered transport category airplane operated in air carrier or commercial operations after October 30, 1991, to meet the new standards of § 25.963(e).

The contents of proposed AC 25.963-1 are considered by the FAA in determining compliance of the fuel tank access covers with § 25.963(e) of the FAR.

Issued in Renton, Washington, on May 31, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 91-14171 Filed 6-13-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses; Residential Moves

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the changes in the alternative moving expense and dislocation allowance schedule for persons displaced from dwellings in the States of California, Delaware, Florida, Georgia, Maine, Maryland, Michigan, Nevada, Oklahoma, and Rhode Island as provided for by section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 42 U.S.C. 4601-4655, implemented at 49 CFR 24.302. The Uniform Act applies to all programs or projects that are undertaken by Federal agencies or with Federal financial assistance and which cause the displacement of any person.

EFFECTIVE DATE: The provisions of this notice are effective July 15, 1991, or on such earlier date as an agency elects to begin operating under this schedule.

FOR FURTHER INFORMATION CONTACT: Barbara J. Satorius, Policy Development Branch, Office of Right-of-Way (202) 366-2043; or Reid Alsop, Office of the Chief Counsel (202) 366-1371, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Uniform Act established a program to assist persons forced to move as a result of Federal or federally assisted projects. The FHWA is the lead agency for implementing the provisions of the Uniform Act, and, pursuant to the Uniform Act has issued governmentwide implementing regulations at 49 CFR part 24.

The following 17 Federal departments and agencies have, by cross reference adopted the governmentwide regulations. (The governmentwide regulations also apply to other agencies

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within DOT that are covered by the Uniform Act.)

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Environmental Protection Agency
Federal Emergency Management Agency
General Services Administration
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Veterans Affairs
National Aeronautics and Space Administration
Pennsylvania Avenue Development Corporation
Tennessee Valley Authority

Section 202(b) of the Uniform Act provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a single moving expense and dislocation allowance schedule established by the head of the lead agency, as an alternative to being paid for moving and related expenses that are actually incurred. The governmentwide regulations at 49 CFR 24.302 provide that the FHWA will develop, approve, maintain and update this schedule as appropriate.

The purpose of this notice is to update the current schedule which was published as notice on March 2, 1989 (54 FR 8951), by the FHWA for use in payment determinations by all Federal, State, and local governments, and persons affected by the Uniform Act. Persons that move as result of programs or projects undetaken or funded by those departments or agencies listed above are covered by the schedule.

This update increases the schedule amounts in the States of California, Delaware, Florida, Georgia, Maine, Maryland, Michigan Nevada, Oklahoma, and Rhode Island. The schedule is developed from data provided by State highway agencies, and combines the moving expense and the dislocation allowance within the schedule's payment amounts. The following exceptions and limitations contained in the March 2, 1989, notice continue to apply to this schdule:

1. The expense and dislocation allowance to a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.00.

2. An occupant will be paid on an actual cost basis for moving his or her mobile home from the displacement site. In addition, a reasonable payment to the occupant for packing and securing personal property for the move may be paid at the agency's discretion.

3. The expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons shall be limited to $50.00.

4. An occupant who moves from a mobile home may be paid for the removal of personal property from the mobile home in accordance with the moving and dislocation allowance payment schedule.

The schedule continues to be based on the "number of rooms of furniture" owned by a displaced individual or family. In the interest of fairness and accuracy, and to encourage the use of the schedule (and thereby simplify the computation and payment of moving expenses) an agency should increase the room count for purposes of applying the schedule if the amount of possessions in a single room or space actually constitute more than the normal contents of one room of furniture or other personal property. For example, a basement may count as two rooms if there is the equivalent of two rooms worth of possessions located in the basement. In addition, an agency may elect to pay for items stored outside of the dwelling unit by adding the appropriate number of rooms.

Authority: 42 U.S.C. 4622(b) and 4633(b); 49 CFR 1.48 and 24.302.

Issued on: June 6, 1991.

T.D. Larson,
Administrator.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT, RESIDENTIAL MOVING EXPENSE AND DISLOCATION ALLOWANCE PAYMENT SCHEDULE

State	Occupant owns furniture (1) and (2)									Occupant does not own furniture (3)	
	Number of rooms of furniture								Each add. room	First room	Each add. room
	1	2	3	4	5	6	7	8			
Alabama	250	350	450	550	625	700	775	850	75	200	25
Alaska	350	500	650	800	925	1050	1175	1300	100	225	35
American Samoa	250	350	450	550	625	700	775	850	75	200	25
Arizona	250	400	550	650	750	850	950	1050	100	225	35
Arkansas	250	350	450	550	625	700	775	850	75	200	25
California	450	600	750	900	1050	1200	1450	1600	150	300	50
Colorado	250	400	550	650	750	850	950	1050	100	225	35
Connecticut	250	400	550	650	750	850	950	1050	100	225	35
Delaware	250	400	550	650	750	850	950	1050	100	225	35
DC	350	450	550	650	750	850	950	1050	100	225	35
Florida	325	450	575	700	800	900	1000	1100	125	250	35
Georgia	450	650	800	1000	1200	1350	1500	1600	75	200	25
Guam	250	350	450	550	625	700	775	850	100	225	35
Hawaii	250	400	550	650	750	850	950	1050	75	200	25
Idaho	250	350	450	550	625	700	775	850	100	225	35
Illinois	350	400	550	650	750	850	950	1050	100	225	35
Indiana	250	400	550	650	750	850	950	1050	100	225	35
Iowa	250	350	450	550	625	700	775	850	75	200	25
Kansas	250	350	450	550	625	700	775	850	75	200	25
Kentucky	250	400	550	650	750	850	950	1050	100	225	35
Louisiana	250	350	450	550	625	700	775	850	75	200	25
Maine	350	400	550	650	725	800	875	950	75	200	25
Maryland	350	500	650	800	925	1050	1175	1300	100	225	35
Massachusetts	250	400	550	650	750	850	950	1050	100	225	35
Michigan	375	450	600	700	825	925	1050	1150	100	225	35
Minnesota	250	400	550	650	750	850	950	1050	100	225	35
Mississippi	250	350	450	550	625	700	775	850	75	200	25
Missouri	250	350	450	550	625	700	775	850	75	200	25
Montana	250	350	450	550	625	700	775	850	75	200	25
Nebraska	250	350	450	550	625	700	775	850	75	200	25
Nevada	300	450	600	750	900	1050	1200	1350	150	250	50
New Hampshire	250	350	450	550	625	700	775	850	75	200	25
New Jersey	250	400	550	650	750	850	950	1050	100	225	35
New Mexico	250	400	550	650	750	850	950	1050	100	225	35
New York	250	400	550	650	750	850	950	1050	100	225	35
North Carolina	250	350	450	550	625	700	775	850	75	200	25
North Dakota	250	350	450	550	625	700	775	850	75	200	25
No. Mariana Is	350	350	450	550	625	700	775	850	75	200	25
Ohio	250	400	550	650	750	850	950	1050	100	225	35
Oklahoma	250	500	650	800	925	1050	1175	1300	100	250	35
Oregon	250	400	550	650	750	850	950	1050	100	225	35
Pennsylvania	250	400	550	650	750	850	950	1050	100	225	35
Puerto Rico	250	350	450	550	625	700	775	850	75	200	25
Rhode Island	400	500	600	700	800	900	1000	1100	100	300	25
South Carolina	250	350	450	550	625	700	775	850	75	200	25
South Dakota	250	350	450	550	625	700	775	850	75	200	25
Tennessee	250	350	450	550	625	700	775	850	75	200	25
Texas	250	350	450	550	625	700	775	850	75	200	25
Utah	250	350	450	550	625	700	775	850	75	200	25
Vermont	250	350	450	550	625	700	775	850	75	200	25
Virgin Islands	250	350	450	550	625	700	775	850	75	200	25
Virginia	250	400	550	650	750	850	950	1050	100	225	35
Washington	250	400	550	650	750	850	950	1050	100	225	35
West Virginia	250	400	550	650	750	850	950	1050	100	225	35
Wisconsin	250	400	550	650	750	850	950	1050	100	225	35
Wyoming	250	350	450	550	625	700	775	850	75	200	25

Exceptions: See supplementary information.
(1) Person whose residential move is performed by agency, $50.
(2) Move of a mobile home from site, actual cost; reasonable amount may be added for packing and securing personal property for the move at agency discretion.
(3) Occupant of dormitory, $50.

[FR Doc. 91-14148 Filed 6-13-91; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 10, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for reveiw and clearance under the Paperwork Reduction Act of 1980 Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0892.

Form Number: 8300.

Type of Review: Revision.

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.

Description: Anyone in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash or foreign currency in one or related transactions must report it to the IRS and provide a statement to the payor. Any transaction which must be reported under title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300.

Respondents: Farms, Businesses or other-profit, Federal agencies or employees, Small businesses or organizations.

Estimated Number of Respondents: 8,300.

Estimated Burden Hours Per Response/Recordkeeping: 19 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 9,483 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Department Reports Management Officer.

[FR Doc. 91-14181 Filed 6-13-91; 8:45 am]
BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Congress-Bundestag Youth Exchange Program

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The Bureau of Educational and Cultural Affairs, U.S. Information Agency, announces a competition for exchange organizations to administer the Congress-Bundestag Youth Exchange Program (CBYX). Organizations that are successful in this competition will be awarded grants in FY 1993 to administer the exchange for

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academic year 1993–94 and will also be eligible for grants in FY 1994, 1995 and 1996. Approximately 9 grants will be awarded for all components of the program. Final determination of grant amounts is subject to the availability of funding and will be based on final budget submissions to be negotiated following preliminary selection decisions.

DATES: Deadline for proposals: Must be received at the U.S. Information Agency by 5 p.m. EDT on August 16, 1991. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked prior to August 16, 1991 but received at a later date. It is the responsibility of each grant applicant to ensure that their proposal is received by the above deadline. Selection decisions will be made by December 31, and will be coordinated with the Government of Germany, which is simultaneously selecting the German counterpart organizations that will administer the program in Germany. Final budgets, based on guidance to be provided by the Agency, will be required from the selected organizations by July 31, 1992. Duration: The duration of the initial grants will be from November 1, 1992 to July 31, 1994. No grant funds may be expended until the grant agreement is signed.

ADDRESSES: The original and twelve copies of the completed application should be submitted to the following office: U.S. Information Agency, Office of the Executive Director, Bureau of Educational and Cultural Affairs (E/X), Room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Mr. Robert Persiko, Youth Programs Division (E/VY), room 357, 301 4th Street SW., Washington, DC 20547; telephone 202–619–6299 for detailed application guidance.

SUPPLEMENTARY INFORMATION: The Congress-Bundestag Youth Exchange Program (CBYX), known in Germany as the Parlamentarisches Patenschafts-Programm (PPP), is an official exchange program of the governments of the United States and the Federal Republic of Germany. It provides a full scholarship for an academic year experience of living and studying in the host country. Part of the exchange involves students aged 16–18 preparing for university, vocational or professional careers, who live with host families, attend high school ("Gymnasium" in Germany), and participate in community life. Another component is dedicated to young professionals aged 18–22 who study at community colleges or universities and receive training. Additional components involve young farmers and vocational school graduates (described in more detail below). Each government provides funding through grant awards for the costs of recruiting, selecting, orienting, and debriefing of its nationals and their international airfare; and most hosting costs (specified below) for the duration of the foreign nationals' stay. Participants themselves pay domestic travel to the port of departure and provide their own funds for their daily needs. Grant proposals may include a provision for partially or fully covering this cost for financially needy participants. The USIA health and accident insurance plan is used exclusively for all German participants, and its cost is covered by USIA; the German Government provides insurance for Americans while in Germany. American organizations that deem it necessary to carry liability insurance on the German participants are responsible for providing for this coverage at their own expense.

The actual number of participants selected each year is dependent on the amount of funding made available by the U.S. Congress and the German Bundestag. A final determination of exchange numbers for each academic year is made in the preceding December when representatives of both governments hold annual bilateral discussions. Participants are chosen according to procedures and criteria established by each government. In Germany, a student applies to the organization assigned to his/her Bundestag district; final selection is made by the Bundestag member. In the U.S. students for the high school program are selected in a national competition, which will be administered by one organization working on behalf of and in cooperation with the others (see Category B below). Each U.S. organization in categories C, D and E (below) of the program recruits and selects its participants. Placements are made and supervision is handled by the affiliated organizations in Germany, operating under grants from the German Government.

Grant awards will be made in the following categories:

A. High school component—Approximately 300 U.S. and 300 German students will participate annually. The American organization is responsible for: Final processing of the students, pre-departure orientation, travel arrangements, debriefing and follow-up for the U.S. students; arrival orientation for the German students, their placement in schools, selection and orientation of host families, domestic U.S. travel arrangements, supervision and counseling, arrangements for a 3-day visit to Washington, DC, and re-entry training. The Washington program, which is designed to introduce the participants to the federal government, may be subcontracted by the grantee. Grantees handle all administrative and logistical matters, including in-country travel, and coordinate with USIA on the administration of its health and accident insurance plan. Any language training for Americans will be the responsibility of the German partner organization and covered by German Government funds. German students are expected to have sufficient English so as to make language instruction unnecessary. Organizations may include other program elements in their proposals, but should bear in mind that funding is limited.

Organizations may bid on one or more lots of 30 US/30 German students. A maximum of 5 U.S. organizations will be selected for grants in this category.

B. Administration of the recruitment and selection process for the high school component—One organization will be selected to administer a grant to coordinate this process on behalf of and in cooperation with the other grantee organizations. It will be responsible for preparing and distributing informational material, student selection criteria and applications to a wide audience including all public and private secondary schools, the media, and key networks such as the American Association of Teachers of German (the annual total is estimated at 40,000 pieces of mail).

Innovative methods for publicizing the program are welcome, within funding limitations. The organization will screen all written applications and identify a group of semifinalists that reflects population distribution by state. It will assemble and coordinate state selection committees to interview semifinalists in cooperation with the other organizations selected to participate in the program in order to generate a roster of finalists. It will handle the notification of these finalists and work with the other organizations in processing them. The grantee will also set up and maintain a master list of all high school student participants and prepare a list of the Congressmen from whose districts the students are selected. The grantee will also prepare a similar list of German participants and the Congressional districts in which they are hosted. Finally, it will work with the other grantees in the preparation of general briefing materials for use by all CBYX participants, which are updated biannually. The grant will not exceed $180,000.

C. Young professionals component—One organization will be awarded a grant to administer this component. The U.S. organization will be responsible for: The recruitment and selection of approximately 50 young U.S. men and women aged 18–24, who will study and participate in an internship in a field related to their career interest during the exchange year; their pre-departure orientation (approximately 3 days); international travel arrangements; and close coordination with its German partner to monitor the progress of the U.S. participants and resolve problems. The grantee will also be responsible for arranging and monitoring all activities relating to approximately 75 German young professionals aged 18–22 during their stay in the U.S. It will: Conduct a 3-day arrival orientation; arrange their placement in colleges and practicums (internships); recruit, screen, and orient host families; make arrangements for the group's visit to Washington for a 3-day cultural and educational program; provide supervision and counseling of the participants as needed; handle all administrative and logistical matters including in-country travel; and coordinate with USIA the administration of its health and accident insurance plan. Any language training for Americans will be the responsibility of the German partner organization. Organizations may include other program elements in their proposals, bearing in mind that funding is limited.

Each German participant will be placed in a two or four-year college for a full-time study, a minimum of 12 credit hours, for one semester. The grantee may need to arrange for English classes for those participants whose English is inadequate. To save costs, the organization is encouraged to seek tuition waivers and cost-sharing with cooperating colleges. Each participant will have a full-time practicum or internship in his/her professional field for the second half of the program year. Each practicum should be based on a prospectus of the specific skills and functions that will be mastered, and it should include a structured learning component that enables the participant to gain a perspective on the overall operation of the firm.

In the past, a subsidy has been paid to host families, but in the interest of reducing costs the organization may consider recruiting host families who will provide lodging and food gratis. A stipend for some meals, incidentals and reasonable local transportation expenses may be included in the budget, but the stipend should be substantially reduced or eliminated during the second half of the program when the firms or agencies hosting the practicums provide an allowance for living expenses. The current stipend is $225 per month.

D. Vocational School Graduates Component—One grant will be awarded to an organization to administer the program component designed for 20 U.S. vocational school graduates. The organization is responsible for recruiting and selecting 20 men and women aged 18–20 who will complete vocational school studies prior to departure for Germany. The grantee is encouraged to work with vocational educational offices at the state level in addition to administrators of secondary schools with vocational educational divisions in the selection process. The grantee also conducts a pre-departure orientation and, at the conclusion of the program, a debriefing. The grantee will work with its partner in Germany, which is responsible for the following (funded by the German Government): Arrival orientation, up to 2 months of language training, family and school placement, arrangements for a practicum in the participants' fields, counseling and support, excursions, and administration, including insurance.

E. Agricultural Component—One grant will be awarded to an organization to administer a small component for agricultural youth. The grantee will work in Germany with its partner. 12–14 Germans and 12–14 Americans will be chosen annually for a program that combines academic study and practical experience on a farm. At least half of the Germans will be aged 18–22 and will spend one semester full-time at a community college; the second semester is for training. Host farms should design a structured plan to enable the participant to learn about and practice a wide range of skills and tasks on the operation and function of the farm. The other half will attend high school for a full year. The organization: Identifies appropriate community colleges and arranges for the German participants' admission, preferably securing tuition waivers or breaks; recruits, screens, selects and orients host families; conducts an orientation for the participants upon arrival; arranges a mid-year cultural activity appropriate to the group's interests; handles all in-country (U.S.) travel and logistical arrangements; and provides supervision and counseling services. The outbound Americans will be high school upperclassmen or graduates, who will receive some schooling in Germany and receive training on their host family farms. The grantee organization: Participates in the recruitment and selection of American students in conjunction with the organization chosen to coordinate the high school selection process; screens and provides pre-departure orientation to these participants; arranges their international travel; monitors their progress in conjunction with its German partner and engages in program evaluation upon their return to the U.S. and follow-up activities.

Application Procedures

Interested organizations should write or call the Youth Programs Division (address provided above) to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals and the preliminary budget, including specific information on the contents of a complete application. To be eligible for consideration in this competition, an organization must:

1. Be legally incorporated and have a legally incorporated affiliate in Germany;

2. Have a not-for-profit status, as determined by the Internal Revenue Service; the German affiliate must also be not-for-profit ("gemeinnutzige");

3. Be financially solvent, have a demonstrated tract record of responsible fiscal management and be able to meet the accounting and reporting requirements for Agency grants;

4. Have four years' experience in conducting long-term exchange programs (of at least 9 months duration) between the United States and Germany; and

5. Have well-established national volunteer and host family networks to carry out various aspects of the program; regional representatives must be situated in such a way to handle expeditiously any problems that arise regarding host family accommodations, schooling and language problems, or difficulties concerning internships.

Any organization competing for Category A (the high school portion of the program) must be designated by USIA as a Teenager Exchange Visitor Program Sponsor.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Eligible proposals will be forwarded to panels of USIA officers for advisory review in conformity with the criteria set forth

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herein and in the guidelines for preparing proposals prior to funding decisions be delegated officials. All proposals will also be reviewed by the Agency's Office of the general Counsel as well as other Agency offices. The Associate Director for Educational and Cultural Affairs identifies and approves potential grant recipients. Final technical authority for grant awards resides with the Agency Contracting Officer.

Completed applications will be reviewed according to the following criteria:

a. Quality of the program plan and adherence of the proposed activity to the goals and objectives described above;

b. Feasibility of the program plan and institutional capacity of the organization to conduct the program and to manage an increase in its exchange activities in such a way that existing programs are not jeopardized;

c. Track record—the Agency will consider in its review all records on the past performance of organizations;

d. Potential—for organizations that have not received Agency grants for this program, the potential to achieve program goals as demonstrated in the proposal, will be considered;

e. Multiplier effect/impact—the impact of the grant-funded activity on the wider community and on the development of continuing institutional ties;

f. Value to U.S.—German relations—the assessment of USIA offices and USIS Germany of the potential impact and significance of the applicant's involvement in the CBYX; and

g. Cost effectiveness—greatest return on each grant dollar and degree of cost-sharing exhibited.

Notification

All applicants will be notified of the results of the review process on or about December 31, 1991. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: May 31, 1991.

Warren J. Obluck,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-14229 Filed 6-13-91; 8:45 am]

BILLING CODE 8230-01-M

Rights of People With Disabilities

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Contingent on availability of funds, The Bureau of Educational and Cultural Affairs, U.S. Information Agency, announces its intention to award one grant not to exceed $130,000 to a private not-for-profit organization to conduct a program for 15 young foreign leaders and professionals aged 20–35 from government agencies and private organizations dedicated to assisting people with disabilities. The project is being sponsored in conjunction with the celebration of the 200th anniversary of the Bill of Rights and focuses on the impact of the Americans with Disabilities Act of 1990. The participants will be nominated by USIS missions worldwide and selected by USIA.

DATES: Deadline for proposals: Must be received at the U.S. Information Agency by 5 p.m. EDT on July 15, 1991. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked prior to July 15, 1991 but received at a later date. It is the responsibility of each grant applicant to ensure that their proposal is received by the above deadline. Duration: The duration of the grant will be six months. The earliest date on which grant-funded activities may begin is September 1. No funds may be expended until the grant agreement is signed.

ADDRESSES: The original and twelve copies of the completed application should be submitted to the following office: U.S. Information Agency, Mr. Thomas Leydon, Office of the Executive Director (E/X), room 336, 301 4th Street SW., Washington, DC 20547. (Attn: Rights of People with Disabilities.)

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Ms. Bettye Stennis at the Youth Programs Division (E/VY), Office of International Visitors, room 357, 301 4th Street SW., Washington, DC 20547; telephone 202–619–6299.

SUPPLEMENTARY INFORMATION: Programs are authorized under Public Law 87–256, the Mutual Educational and Cultural Exchange Act of 1961, whose purpose is "to increase mutual understanding between the people of the United States and the people of other countries." Programs under the authority of the Bureau must be balanced and representative of the diversity of American political, social, and cultural life. Projects must conform to all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

The project is designed to generate a dialogue between foreign and American young leaders and professionals who are involved with public policy promoting and defending the rights of people with disabilities. Some of the participants selected may themselves have a disability.

The project should serve to demonstrate the vibrancy of the Bill of Rights 200 years after its enactment. The program should run for 28 days and should begin in Washington with an orientation, an overview of the issues and an examination of the federal government approach to these issues. Special emphasis will be accorded to the impact of the Americans with Disabilities Act, designed to provide equal opportunities for people with disabilities. A national itinerary should include visits to a state capital and to two to three communities for a look at state and local regulation, citizen advocacy, and private and public efforts in such areas as providing access for individuals with disabilities to services and resources. Other possible program activities include: state and national parks where nature trails have been made accessible to people using wheel-chairs and those who are visually impaired municipalities where public transportation has been made accessible; training and employement programs. Videos, books and other resource materials may be provided to the participants to take back to their countries for educational purposes. The program should also provide opportunities for the participants to experience the diversity of American society and culture. Homestays and home hospitality are encouraged where possible.

The grantee organization will be responsible for: development of a detailed itinerary and program, including an orientation; travel arrangements; disbursement of per diem and allowances for the participants and escort/interpreters; and final evaluation. It is expected that the USIA grant will cover most of the costs of the project, but cost-sharing by the grantee is encouraged.

The English-speaking ability of the participants should be sufficient to make interpretation unnecessary. USIA will assign two contract escorts to work with the grantee organization and accompany the group throughout the project.

Budget

The budget should be submitted in a 3 column format showing how the costs will be distributed for each line item; i.e.,

Category	USIA	Grantee (incl. in-kind)	Total

USIA will cover international airfare for the participants separately.

Therefore, organizations need not include international travel in their budgets. Assume arrival at and departure from Dulles International Airport, Washington, DC.

Per diem—the allowance for lodging, meals and incidentals—is limited to $120 a day. Less than this amount should be budgeted in those cases where homestays are provided.

The proposal budget should also include:

—Education and cultural allowance at a maximum of $150 per participant.
—Book allowance at a maximum of $50 per participant.
—Return travel allowance of $70 each.
—Domestic travel—USIA estimates the following: Air transportation @ $1,200 per participant and Ground transportation @ $300 per participant

The budget should include per diem @ $120/day and domestic travel for two escorts for 30 days, including one day before the participants arrive and one day after their departure. Salary for the escorts will be provided separately by USIA.

Application Procedures

To be eligible for consideration organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the theme of the project.

Organizations with four years or less experience in international exchange will not be eligible to compete for this grant. Experience in programming exchange visitors is desirable.

Interested organizations should write or call the Youth Programs Division (address provided above) to request application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific information on the contents of a complete application.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Incomplete proposals may be judged ineligible. Eligible proposals will be forwarded to a panel of USIA officers for advisory review in conformity with the criteria set forth herein and in the guidelines for preparing proposals prior to funding decisions by delegated officials. Proposals recommended for funding will also be reviewed by the Agency's Office of General Counsel and Contracts office as well as other Agency offices. Final technical authority for grant awards resides with the Agency Contracting Officer.

Completed applications will be reviewed according to the following criteria:

a. Quality of the program plan and adherence of the proposed activity to the objectives set forth in this RFP;

b. Feasibility of the program plan and institutional capacity of the organization to conduct the program;

c. Track record—the past performance of prior grantees;

d. Potential—for organizations that have not received Agency grants, the potential to achieve program goals, as demonstrated in the proposal.

e. Multiplier effect/impact—the impact of the exchange activity as an educational and cultural experience for these young leaders/professionals in assisting people with disabilities in their own countries.

f. Cost effectiveness—greatest return on each grant dollar and degree of cost-sharing exhibited.

g. Bilateral/multilateral value—the assessment of USIA's geographic area desk of the potential impact and significance of the proposed program on international relations.

Notification

All applicants will be notified of the results of the review process on or about August 31. Funded proposals will be subject to periodic reporting and evaluation requirements.

Warren J. Obluck,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-14230 Filed 6-13-91; 8:45 am]

BILLING CODE 8230-01-M

VOL 56 ISS 115 JE 14 1991 UMI

Sunshine Act Meetings

Federal Register
Vol. 56, No. 115
Friday, June 14, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS
June 12, 1991.

PLACE: Radisson Hotel, 1550 Court Place, Denver, Colorado.
TIME AND DATE: 9:00 a.m.–1:00 p.m., Friday, June 21, 1991.
STATUS: Open to the public.
MATTER TO BE CONSIDERED:

Agenda

I. Approval of the Agenda
II. Approval of Minutes of May Meeting
III. Announcements
IV. SAC Appointment for Nebraska and Interim Appointments for Kansas and Massachusetts.
V. Staff Director's Report
VI. Future Agenda Items

CONTACT PERSON FOR MORE INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Emma Monroig,
Solicitor, (202) 376–8375.
[FR Doc. 91–14385 Filed 6–12–91; 4:02 pm]
BILLING CODE 6335–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION
Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m. on Tuesday, June 11, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure certain insured banks.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,700
First American Bank for Savings Boston, Massachusetts
Case No. 47,706
First Texas Savings Association Dallas, Texas

Administrative enforcement proceedings.

Memorandum and resolution regarding the organization of bridge banks.

Matters relating to the Corporation's corporate activities.

Matter relating to a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 12, 1991.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 91–14285 Filed 6–12–91; 8:45 am]
BILLING CODE 6714–8–M

INTERSTATE COMMERCE COMMISSION
Amended Notice of Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 18, 1991.
PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.
STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted. This notice amends the subject matter to be discussed in No. 40473, which appeared in our notice of June 11, 1991 at 56 FR 26851.
MATTERS TO BE DISCUSSED:

Finance Docket No. 30000 (Sub-No. 16), *St. Louis Southwestern Railway Company—Trackage Rights Over Missouri Pacific Railroad Company—Kansas City to St. Louis.*

Ex Parte No. 470 (Sub-No. 1), *In the Matter of William Sheridan.*

Ex Parte No. MC–178 (Sub-No. 5), *Petition for Investigatory Rulemaking: Insurance Surcharges.*

No. 40473, *Armored Car Delivery and Pickup of Interstate Shipments in Delaware—Petition for Declaratory Order,* and a related matter concerning the insurance requirements imposed on interstate motor carriers by the State of Georgia.

Ex Parte No. MC–96 (Sub-No. 7), *Property Broker Practices.*

CONTACT PERSON FOR MORE INFORMATION:
A. Dennis Watson, Office of External Affairs, Telephone: (202) 275–7252, TDD: (202) 275–1721

Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 91–14348 Filed 6–12–91; 2:15 pm]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE
UNITED STATES PAROLE COMMISSION
Record of Vote of Meeting Closure
(Public Law 94–409)
(5 U.S.C. Sec. 552b)

I, Carol Pavilack Getty, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock a.m. on Friday May 31, 1991 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815. The meeting ended at or about 10:30 a.m. The purpose of the meeting was to decide approximately 12 appeals from National Commissioners' decisions pursuant to 28 C.F.R. Sec. 2.27. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting of certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Carol Pavilack Getty, Jasper Clay, Jr., Vincent Fechtel, Jr., and Victor M.F. Reyes.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: June 11, 1991.
Carol Pavilack Getty,
Chairman, U.S. Parole Commission.
[FR Doc. 91–14353 Filed 6–12–91; 2:16 pm]
BILLING CODE 4410–01–M

U.S. RAILROAD RETIREMENT BOARD
Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 20, 1991, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) On-site Representative at Travelers.
(2) Training: Discussion of RRB Policy, Budget Priorities.
(3) Backlog Review Task Force Report: Briefing, and Discussion.
(4) Investment Committee.
(5) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
(6) Regulations—Part 203, Employees Under the Act.
(7) Regulations—Parts 209, 211 and 345, Railroad Employers Reports and Responsibilities; Creditable Railroad Compensation; Employers' Contributions and Contribution Reports.
(8) Regulations—Part 229, Social Security Overall Minimum.
(9) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.
(10) Regulations under the RUIA—Proposed Rule, Part 335, Sickness Benefits.
(11) Regulations—Part 345, Employers' Contributions and Contribution Reports.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: June 11, 1991.
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 91–14354 Filed 6–12–91; 2:17 pm]
BILLING CODE 7905–01–M

VOL 56 ISS 115 JE 14 1991 UMI

Corrections

Federal Register
Vol. 56, No. 115
Friday, June 14, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 910374-1074]

RIN 0648-AD97

Pelagic Fisheries of the Western Pacific Region

Correction

In proposed rule document 91-7761 beginning on page 13611 in the issue of Wednesday, April 3, 1991, make the following corrections:

1. On page 13611, in the heading, the subject matter should read as set forth above.

§ 685.2 [Corrected]

2. On page 13614, in the second column, in § 685.2, in the definition for *Longline gear*, in the third line, "exceed" should read "exceeds".

§ 685.9 [Corrected]

3. On page 13615, in the third column, in § 685.9(b)(2)(xii), "Appropriate" should be "Approximate".

4. On page 13616, in the first column, in § 685.9(k), in the second line, "vessel" was misspelled.

§ 685.12 [Corrected]

5. On the same page, in the second column, in § 685.12(b)(2), in the first line, "After" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91G-0030]

Uncle Ben's, Inc.; Filing of Petition for Affirmation of GRAS Status

Correction

In notice document 91-4792 appearing on page 8781 in the issue of Friday, March 1, 1991, in the second column, under **DATES**, "April 30, 1990" should read "April 30, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89A-0005]

Response to a Request for an Advisory Opinion Concerning the Definition of "Manufactured" with Regard to Device Labeling Requirements; Availability

Correction

In notice document 91-11737 beginning on page 22873 in the issue of Friday, May 17, 1991, make the following corrections:

1.On page 22873:

a. In the second column, in the **SUMMARY**, in the first line, insert "and" after "Food"; and in the third line, "requests" should read "request".

b. In the same column, under **ADDRESSES**, in the ninth line, "self-addressed" was misspelled.

c. In the third column, under **SUPPLEMENTARY INFORMATION:**

(1) In the first paragraph, in the second line from the bottom, "Regulations" was misspellled;

(2) In the third undesignated paragraph, "requires" was misspelled; and

(3) In the fifth paragraph, in the tenth line from the bottom, "achieve" was misspelled.

2. On page 22874, in the first column, in the second paragraph, in the third line, "Advisory Opinions" should read "*Advisory Opinions*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

Correction

In notice document 91-11797 beginning on page 22874 in the issue of Friday, May 10, 1991, make the following corrections:

1. On page 22874, in the first column, in the fifth line from the bottom, insert "Devices" after "Medical".

2.On the same page, in the third column:

a. In the third full paragraph, in the third line, "XomaZyme" was misspelled; and in the fifth line, "steroid" was misspelled.

b. In the sixth paragraph, in the sixth line, "deliberations" was misspelled.

3. On page 22875, in the second column, the first full paragraph should be run in after the fifth line from the top.

4. On the same page, in the same column, in the third paragraph, in the second line "231 CFR" should read "21 CFR".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The Prescription Drug Marketing Act of 1987; Meetings

Correction

In notice document 91-11798 appearing on page 22876 in the issue of Friday, May 17, 1991, make the following corrections:

1. On page 22876, in the first column, in the **SUMMARY**, in the third line, "Market" should read "Marketing".

2. On the same page, in the second column, under **SUPPLEMENTARY INFORMATION**, in the seventh line, "meeting" should read "meetings".

BILLING CODE 1505-01-D

INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

National Security Information Standard Forms

Correction

In rule document 91-1538 beginning on page 2644 in the issue of January 23, 1991, make the following corrections:

1. On page 2664, in the 1st column, in the **SUMMARY**, in the 19th line, "Office" should read "Official".

2. On the same page, in the third column, in the first paragraph, in the second and fifth lines, "SF313" should read "SF 312".

§ 2003.20 [Corrected]

3. On page 2645, in the 3d column, in § 2003.20(j), in the 18th line "contractor" should read "contractors".

4. On the same page, in the same column, the Director's last name should read "Garfinkel".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-288-AD; Amendment 39-6996]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes and Model MD-88 Airplanes

Correction

In rule document 91-11274 beginning on page 21924 in the issue of Monday, May 13, 1991, make the following correction:

On page 21925, in the first column, in § 39.13, in paragraph B., in the third line "covered" should read "corrected".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 91-46]

RIN 1515-AA80

Cargo Release Notification to Certain Vessel and Air Carriers and Bonded Facilities That Are Not Part of the Automated Manifest System

Correction

In rule document 91-11463 beginning on page 22328 in the issue of Wednesday, May 15, 1991, make the following correction:

On page 22330, in § 4.38(a), in the third column, in the eighth line, "mainfest" should read "manifest".

BILLING CODE 1505-01-D

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Part II

Securities and Exchange Commission

17 CFR Parts 200 et al.

Age of Financial Statements of Foreign Private Issuers; Cross-Border Rights Offers; and International Tender and Exchange Offers; Proposed Rules

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, 240

[33-6895; 34-29273; File No. S7-16-91; International Series Release No. 283]

RIN 3235-AD96

Amendments to Rule and Form Requirements Which Govern Age of Financial Statements of Foreign Private Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment proposed amendments to Regulation S-X Rule 3-19, Securities Exchange Act Rule 15d-2 and Forms F-2 and F-3 which relate to the age of financial statements of foreign private issuers that register securities for sale under the Securities Act of 1933. The proposed amendments would generally revise the requirements which govern the age of financial statements in registration statements to conform such ctions of a substantial majority of foreign issuers. Such conformity is intended to reduce the impediments to foreign issuers making securities offerings in the United States.

DATES: Comments should be received on or before July 15, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-16-91. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Teresa Iannaconi, Office of the Chief Accountant, Division of Corporation Finance at (202) 272-2553; Richard M. Kosnik, Office of International Corporation Finance, Division of Corporation Finance at (202) 272-3246; George H. Diacont, Office of the Chief Accountant at (202) 272-2130.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to Rules 3-19(b) [1], 3-19(c) [2] and 3-19(f) [3] of Regulation S-X [4], Rule 15d-2 [5] under the Securities Exchange Act of 1934 ("Exchange Act") [6] and Forms F-2 [7] and F-3 [8] under the Securities Act of 1933 ("Securities Act").[9]

I. Proposed Amendments of Rules Applicable to Age of Financial Statements and Updating Requirements

The Commission is proposing rule amendments to facilitate registration of securities by foreign private issuers. The proposed rule amendments relate to the age of financial statements included in registration statements filed with the Commission and to financial statement updating requirements.

Registration statements that are filed with the Commission by foreign private issuers are subject to requirements in Regulation S-X that govern the form and content of the financial statements. Rule 3-19 of Regulation S-X sets forth the requirements with respect to the age of financial statements of foreign private issuers included in filings. Rules 3-19 (b) and (c) taken together currently require that on the effective date of a Securities Act registration statement—

(1) Financial statements in the filing must be as of a date within six months of the effective date, and

(2) The audited year end financial statements are required to be included in the filing if the effective date falls more than five months after the registrant's fiscal year end.

Although the Commission's rules do not impose any interim periodic reporting requirement on foreign issuers, the effect of these provisions is that foreign private issuers must provide interim financial information more frequently than semi-annually to conduct continuous offerings without interruption and to avoid delays in commencing a registered offering in some circumstances.

The periodic reporting requirements of many foreign jurisdictions do not require quarterly reporting. In recognition of foreign reporting requirements, the Commission's interim reporting requirements for foreign private issuers under the Exchange Act are limited to requiring information on Form 6-K only to the extent it is otherwise provided to shareholders, exchanges or others. Even where annual and interim reporting is required, the time period beyond which updating is required is longer than that allowed in the U.S. in many cases. For example, United Kingdom companies are required to publish audited year end financial statements within 6 months following year end and unaudited semi-annual financial statements within 4 months following the end of the semi-annual period. Based on its home country requirements, a U.K. company with a calendar year end would not have financial statements meeting the requirements of Rule 3-19 from January 1 to October 31 each year. Thus, the period in which an offering could not go effective or during which continuous offerings would be suspended, the so-called "black-out" period, may encompass ten months of the year. The alternative for a foreign issuer is to prepare reports more frequently than required in the issuer's home jurisdiction.

To enable foreign issuers to make offerings in the U.S. and to facilitate their continuous offerings without imposing the U.S. quarterly reporting scheme upon such issuers, it is proposed to amend Rules 3-19 (b) and (c) to establish a scheme in which there will be no "black out periods" as long as the foreign issuer can provide audited fiscal year financial statements within six months following the end of the fiscal year and unaudited interim financial statements within four months following the end of the semi-annual interim period. Under this scheme a registration statement of a calendar year company could go effective as late as June 29, xxx1 with reconciled unaudited financial statements only as recent as June 30, xxx0.

The proposed amendments would extend the Securities Act and Exchange Act registration statement updating requirement for annual audited financial statements of foreign private issuers by one month and would extend the updating requirement for interim unaudited financial statements by four months. In addition, the maximum age of financial statements permitted to be used in a Securities Act filing would be extended from six months to one year. The semi-annual updating proposal corresponds to the interim reporting requirement in EEC Directive 82/121/EEC. It also corresponds to or extends beyond the interim reporting due date of all major countries which have an interim reporting requirement. The annual updating proposal corresponds to or extends beyond the annual reporting deadline of a substantial majority of the major industrial countries, with the exception of Germany which permits annual audited financial statements to be filed up to nine months following the end of the fiscal year. Other countries have flexible

[1] 17 CFR 210.3-19(b).
[2] 17 CFR 210.3-19(c)
[3] 17 CFR 210.3-19(f).
[4] 17 CFR 210.
[5] 17 CFR 240.15d-2.
[6] 15 U.S.C. 78a *et seq.*
[7] 17 CFR 239.32.
[8] 17 CFR 239.33.
[9] 15 U.S.C. 77a *et seq.*

filing requirements which are linked to delivery of information prior to the annual shareholders' meeting which may be more than six months following the end of the fiscal year.

The Commission requests commenters to address whether the proposed one month and four month extensions of the present annual and semi-annual updating requirements for foreign private issuers should be longer or shorter in view of the diversity of updating requirements in foreign countries and the EEC directive. Commenters should address the impact on issuers whose home country requirements do not correspond to the proposed reporting scheme. Commenters are requested to provide information concerning the extent to which the proposal or any alternative addresses both formal requirements and practice with respect to typical updating in foreign countries and by foreign issuers. Commenters are also requested to address whether the proposed updating scheme would provide financial information on a sufficiently current basis to adequately serve investors' decision making needs.

II. Proposed Amendment to Requirement To Reconcile Financial Information Otherwise Provided

Rule 3-19(f) requires interim financial information that is made available to shareholders, exchanges or others on a more frequent basis than that required by Rules 3-19 (b) and (c) to be included in any registration statement filed with the Commission. The rule requires this additional information to be reconciled to U.S. generally accepted accounting principles (GAAP). The proposed amendments would provide that such additional information need not be reconciled to U.S. GAAP if adequate narrative disclosures are provided. Specifically, if a registration statement includes interim financial information which is more current than the latest reconciled annual or semi-annual financial statements, the later financial information need not be reconciled to U.S. GAAP provided that any material variation in accounting which was not previously disclosed and quantified in the reconciliation for an annual or semi-annual period is described and the quantified effects of the material variation are disclosed. This should overcome one disincentive to more frequent reporting of interim financial information.

For example, a foreign private issuer's previously reconciled accounting differences may include amortization of goodwill, pension benefit accruals or revenue recognition timing differences. Interim information filed pursuant to this rule may report an unusual event such as a material transaction which has been accounted for as a sale under the issuer's home country accounting principles but would be accounted for as a financing under U.S. GAAP. Since the annual and semi-annual financial statements disclose the quantified reconciliation of all other items, a report for a later interim period in which the unusual transaction is reported would disclose the fact and quantified effects of the difference between the foreign and U.S. accounting principles applied to this transaction only.

It is requested that commenters address whether the proposed disclosure in place of the current quantified reconciliation is adequate to inform investors of significant differences between U.S. and the issuer's home country accounting principles. Commenters should also indicate whether the proposed modification would encourage foreign issuers to provide more current periodic financial information.

III. Other Proposals Relating to Financial Statement Updating

Other amendments are proposed to:

(1) Clarify language in Forms F-2 and F-3 to indicate that it is permissible to incorporate interim financial statements which may be filed on Form 6-K (which is not deemed filed otherwise); and

(2) Amend Rule 15d-2 to require foreign private issuers to file special year end financial statement reports (subsequent to the effectiveness of a registration statement that did not contain the audited financial statements for the most recent year end) by the later of 90 days following the effective date or six months following the registrant's fiscal year end. This would amend the current rule to recognize that foreign issuers are allowed up to six months following the end of the fiscal year within which to file their annual report including audited year end financial statements.

IV. Cost-Benefit Analysis

The Commission is not aware of any costs that will result from the proposed amendments to rules and forms relating to the age of financial statements of foreign private issuers, but as foreign issuers will be able to avoid expenses associated with more frequent financial statement updating and reconciliation, benefits are expected to result for such issuers. U.S. issuers are unaffected by these proposed amendments.

V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S. C. 605(b)), the Chairman of the Commission has certified that the proposed amendments, if adopted, will not have a significant impact on a substantial number of small entities. Members of the public who wish to obtain a copy of the Regulatory Flexibility Certification should contact Teresa Iannaconi, (202) 272-2553, Office of the Chief Accountant, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Parts 210, 239 and 240.

Accounting, Reporting and recordkeeping requirements, Securities

VI. Text of Rule and Form Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S. C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78l, 78m, 78n, 78o, 78w(a), 79e(a), 79e(b), 80a-8, 80a-20, 80a-29, 80a-30, 80a-37, unless otherwise noted.

2. The authority citation following § 210.3-19 is removed.

3. By amending § 210.3-19 by revising paragraphs (b), (c) and (f) to read as follows:

§ 210.3-19 Special provisions as to financial statements for foreign private issuers.

* * * * *

(b) If the filing, other than an annual report on Form 20-F, is made within six full months after the end of the registrant's fiscal year and if the audited balance sheet for the most recent fiscal year is not available, the audited balance sheets in the filing may be as of the end of the two preceding fiscal years; *Provided,* That on the effective date the filing shall include a balance sheet, which may be unaudited, as of an interim date at least as current as the end of the registrant's most recently

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completed semi-annual period (except as permitted in paragraph (e) of this section); *And provided further,* That if the effective date falls six months or more subsequent to the end of the most recent fiscal year, the filing shall include an audited balance sheet for the most recent fiscal year.

(c) If the filing is made later than ten full months after the end of the most recent fiscal year, the filing shall also include a balance sheet, which may be unaudited, as of an interim date at least as current as the end of the registrant's most recently completed semi-annual interim period (except as permitted in paragraph (e) of this section) preceding the effective date.

* * * * *

(f) Notwithstanding the above provisions of this rule, if a foreign private issuer prepares and discloses to its shareholders or otherwise makes public, pursuant to applicable foreign laws or regulations or stock exchange requirements or otherwise, interim financial information relating to revenues and income that is more current than the financial statements required by this rule, such information shall be included in the filing and shall be accompanied by:

(1) A description of material variations in the accounting principles, practices and methods used in preparing the financial statements from the principles, practices and methods accepted in the United States; and

(2) Quantification of any material variations that are not quantified with respect to their occurrence in the annual or semi-annual financial statements included in the filing.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The authority citation for part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

5. By amending Form F–2 (§ 239. 32) by revising paragraph (b)(2) of Item 11 to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

Note: The text of Form F–2 is not and the amendment will not be included in the Code of Federal Regulations.

Form F–2.—Registration Statement Under the Securities Act of 1933

* * * * *

Item 11. Material Changes

* * * * *

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), interim financial statements necessary to comply with that rule shall be presented either in the prospectus, an amended Form 20–F or in a Form 6–K which has been incorporated by reference into the prospectus.

* * * * *

6. By amending Form F–3 (§ 239.33) by revising paragraph (b)(2) of Item 11 to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 for securities of certain foreign private issuers offered pursuant to certain types of transactions.

Note: The text of Form F–3 is not and the amendment will not be included in the Code of Federal Regulations.

Form F–3.—Registration Statement Under the Securities Act of 1933

* * * * *

Item 11. Material Changes

* * * * *

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), interim financial statements necessary to comply with that rule shall be presented either in the prospectus, an amended Form 20–F or incorporated by reference into the prospectus from a Form 6–K in which case the prospectus shall disclose that the Form 20–F has been so amended or that the interim information has been provided in a Form 6–K which has been incorporated by reference.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

8. By amending § 240.15d–2 to add the following language at the end of paragraph (a) to read as follows:

§ 240.15d–2. Special financial report.

(a) * * * If the registrant is a foreign private issuer as defined in Rule 405 (17 CFR 230.405 of this Chapter), then the special financial report shall be filed on the appropriate form for annual reports of the registrant and shall be filed by the later of 90 days after the date on which the registration statement became effective, or within six months following the end of the registrant's latest full fiscal year.

* * * * *

Dated: June 5, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–13758 Filed 6–13–91; 8:45 a.m.]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 230, 239 and 240

[Release Nos. 33–6896; 34–29274; International Series Release No. 284; File No. S7–17–91]

RIN 3235–AD44

Cross-Border Rights Offers; Amendments to Form F–3

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules and forms.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment a new rule and registration form under the Securities Act of 1933 (the "Securities Act") to facilitate rights offerings by foreign private issuers to their existing U.S. shareholders, many of whom currently are excluded from or cashed out of these offerings. A small issue exemptive rule is being proposed under section 3(b) of the Securities Act covering up to $5 million of equity securities offered or sold in the United States in an eligible rights offering. The new registration form would permit registration of rights offerings of any size under the Securities Act on the basis of home country disclosure and procedures. The proposed rule and form would not be available to investment companies registered, or required to be registered, under the Investment Company Act of 1940.

Also being proposed today are amendments to Securities Act registration Form F–3 to permit foreign private issuers that file periodic reports under the Securities Exchange Act of 1934 (the "Exchange Act") to register rights offerings and offerings in connection with dividend or interest reinvestment plans, conversion of convertible securities or exercise of warrants on that Form, even if these issuers do not have a three-year reporting history under the Exchange Act or have a minimum public float of $300 million. Finally, the Commission is proposing for comment exemptions from

the operation of Rules 10b–6, 10b–7 and 10b–8 under the Exchange Act pursuant to exemptive powers under Rule 10b–6 to facilitate rights offerings made in reliance on the proposed rule or registered on the proposed registration form.

DATES: Comments should be received on or before September 9, 1991.

ADDRESSES: Comment letters should reference File No. S7–17–91. They should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Commission will make all comments available for public inspection and copying at its Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Victoria C. Choy or C. David Messman, Office of International Corporate Finance, Division of Corporation Finance, at (202) 272–3246; Nancy J. Sanow or Elliot R. Levine, Office of Trading Practices, Division of Market Regulation, at (202) 272–2848, with respect to issues regarding Rules 10b–6, 10b–7 and 10b–8 under the Exchange Act; and Angela C. Goelzer, Division of Investment Management, at (202) 272–2751, regarding Investment Company Act issues; Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment Rule 801 and Form F–11 under the Securities Act.[1] Also being proposed are amendments to Rules 174,[2] 464 [3] and 473 [4] and Forms F–2 [5] and F–3 under the Securities Act.[6] In addition, the Commission is proposing new Rules 441 and 466 under the Securities Act and new Rule 12h–5 under the Exchange Act. Finally, the Commission is proposing exemptions from the operation of Rules 10b–6,[7] 10b–7 [8] and 10b–8 [9] under the Exchange Act [10] pursuant to exemptive powers under Rule 10b–6, in connection with rights offerings made in reliance on proposed Rule 801 or registered on proposed Form F–11.

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I. Executive Summary

Over the last decade, U.S. investors have significantly increased their investments in the securities of foreign issuers through registered public offerings and private placements in the United States, as well as through purchases in overseas markets. During the last five years, U.S. investors bought on a gross basis approximately $500 billion of foreign equity securities and approximately $1.2 trillion of foreign debt securities.[11] In 1990, U.S. persons invested, net of sales during that period, $30.8 billion in foreign securities, up from $19.1 billion in 1989.[12] Currently, approximately 425 foreign issuers, representing 30 countries, have their securities traded on the New York Stock Exchange ("NYSE"), the American Stock Exchange ("AMEX"), or the National Association of Securities Dealers Automated Quotation ("NASDAQ") System. In addition to these foreign issuers, substantially all of which are reporting companies under the Exchange Act, approximately 1,100 additional foreign private issuers with securities trading in the over-the-counter market, representing some 25 different countries, rely on the information supplying exemption from Exchange Act reporting provided by Rule 12g3–2(b) under the Exchange Act.[13]

Unlike their U.S. counterparts, foreign issuers frequently engage in rights offerings, in large part due to legally mandated preemptive rights. U.S. investors, particularly those holding over-the-counter securities, are often excluded from or cashed out of [14] these rights offerings because of foreign issuers' reluctance to comply with the disclosure requirements and accounting rules applicable to Securities Act registration statements, or to incur the obligation to file periodic reports under the Exchange Act required of those who conduct public offerings in the United States. There have even been instances where foreign issuers which are already reporting companies under the Exchange Act have excluded their U.S. shareholders from rights offerings, purportedly because of concerns with U.S. processing time at both the federal and state levels.

The exclusion or cashing out of U.S. investors not only denies these investors a potentially valuable investment opportunity, but may also subject them to substantial dilution. Depositary banks for American Depositary Receipts ("ADRs") estimate that in 1990 alone, U.S. investors that own foreign securities in the form of ADRs were excluded from more than 25 rights offerings and cashed out of approximately 60 such transactions.

To facilitate the extension of rights offerings to U.S. investors and to encourage foreign authorities to prohibit discriminatory treatment of U.S. investors, the Commission is proposing a small issue exemption under section 3(b) of the Securities Act [15] for specified equity rights offerings not exceeding $5 million in the United States, and a new registration form that would allow the use of home country disclosure documents in the case of larger equity rights offerings.

In addition, the Commission is proposing to amend Form F–3 to extend the availability of that Form for registration of rights offerings and other specified transactions to all reporting foreign private issuers, even those that do not meet the current registrant requirements under Form F–3 of a minimum three-year reporting history

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[1] 15 U.S.C. 77a *et seq.*
[2] 17 CFR 230.174.
[3] 17 CFR 230.464.
[4] 17 CFR 230.473.
[5] 17 CFR 239.32.
[6] 17 CFR 239.33.
[7] 17 CFR 240.10b–6.
[8] 17 CFR 240.10b–7.
[9] 17 CFR 240.10b–8.
[10] 15 U.S.C. 78a *et seq.*

[11] U.S. Treasury Bulletin (various issues).
[12] Wall Street Journal, April 4, 1991, at C–1 and C–23.
[13] 17 CFR 240.12g3–2(b). For the most recent list of foreign private issuers supplying current information to the Commission pursuant to Rule 12g3–2(b), see Exchange Act Release No. 28980 (Feb. 15, 1991) (56 FR 7424).

[14] Where there is a trading market for the rights in the issuer's home country, the issuer may cash out its U.S. shareholders by causing the rights that would otherwise be distributed to them to be sold in the open market on their behalf. U.S. investors that are cashed out generally do not receive the full benefit of the offering, however, as they are usually responsible for selling expenses and other transaction costs, including underwriters' commissions. Exchange rate fluctuations may also affect net proceeds.
[15] 15 U.S.C. 77c(b).

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under the Exchange Act and a minimum $300 million public float.

The proposals made today are based on the fundamental premise that the interests of those U.S. investors that have already made an investment in a foreign issuer, frequently on the bases solely of disclosure required by foreign law, would be better served by facilitating the extension of rights offerings of additional securities to them than by insisting on U.S. disclosure. The Commission requests comment on whether the benefits to U.S. investors that derive from participating in offerings otherwise closed to them would outweigh the risks that may result from having to make investment decisions on the basis of disclosure documents and procedures used in foreign jurisdictions. The Commission also solicits comment on whether it would be preferable to continue to provide case-by-case relief based on specific assessments of the need to accommodate foreign laws and procedures in specific situations. Commenters are requested to provide the Commission with empirical data regarding the exclusion or cashing out of U.S. shareholders in foreign issuer rights offers.

II. Background

A. Rights Offers by Foreign Private Issuers

Although not common in the United States,[16] rights offerings are frequently used by issuers in many foreign jurisdictions [17] to raise working capital or to finance extraordinary corporate transactions, including acquisitions.[18]

The United Kingdom [19] and many European countries, including France,[20] Germany,[21] Italy,[22] and the Netherlands,[23] have preemptive rights statutes. In addition, the European Economic Community ("EEC") has promulgated a Directive requiring public companies issuing shares for cash, subject to certain limited exceptions, to offer the shares on a preemptive basis to existing shareholders on a pro rata basis.[24]

In jurisdictions with preemptive rights statutes, a rights offer may be the only means of issuing additional equity securities of a class that is outstanding. To protect existing securityholders against dilution, these statutes generally prohibit issuers from issuing additional securities unless existing holders of securities of that class have been given a pro rata preemptive or preferential right to subscribe for them. Moreover, even though some statutes permit securityholders to waive their preemptive rights by vote, thereby allowing the issuer to offer securities directly to the public,[25] waiver of preemptive rights in jurisdictions where rights offers are customary is usually limited.[26]

In addition to a purely statutory basis for preemptive rights, listing requirements of certain foreign stock exchanges located in jurisdictions with preemptive rights statutes also mandate that issuers grant such rights to securityholders under certain circumstances.[27] Even where there is no preemptive rights statute, some foreign stock exchanges require preemptive rights clauses in listing agreements.[28]

Finally, although transactions may be structured around the application of statutory or exchange-required preemptive rights, market practice and business custom sometimes force issuers to issue securities by means of rights offers.[29] Moreover, as rights offers can be beneficial to existing securityholders,[30] some issuers may grant such rights voluntarily in order to promote good relations with existing securityholders.[31]

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[16] In recent years, relatively few U.S. companies have registered securities for rights offerings. See J. Nagdeman, "Vanishing Rights—Offerings to Shareholders Grow Few and Far Between," Barron's, May 2, 1977, at 11. Although there is a common law basis for preemptive rights in the United States (see, e.g., *Stokes* v. *Continental Trust Co.*, 186 N.Y. 285, 78 N.E. 1090 (1906)), all states and the District of Columbia have now adopted statutes that limit or authorize corporations to deny or limit common law preemptive rights. Thirty states and the District of Columbia have enacted statutes which either expressly grant or implicitly recognize preemptive rights but allow corporations to deny or limit such rights in their articles of incorporation. The other twenty states have enacted statutes which deny preemptive rights except to the extent, if any, that such rights are provided in the articles of incorporation. Model Business Corporation Act Annotated, § 6.30 (3d Edition, 1990 Supplement).

[17] Rights offers are particularly common in the United Kingdom and in Europe, where many countries have some form of preemptive right statutes. The notable exception is Switzerland. Rights offers are also common in British Commonwealth countries such as Australia and South Africa.

[18] For instance, WPP Group P.L.C. a U.K. corporation, financed its 1989 acquisition of The Ogilvy Group, Inc. through a rights offering of convertible preferred shares to the holders of its ordinary shares, in addition to a public offering of warrants to purchase ordinary shares, and bank loans. WPP's prior acquisition of J. Walter Thompson was also financed through a rights offering. For a description of the use of rights offerings by British companies to raise capital to finance acquisitions of companies, see David W. Helentok and George Spera, "Role of British Purchasers in Corporate Acquisitions," New York Law Journal, Oct. 7, 1987, at 31.

[19] The Companies Act 1985 ("Companies Act 1985"), sections 89(1), 90(b).

[20] Law No. 73-1196 of 27 December 1973, section 178.

[21] Aktiengesetz (Stock Corporation Act), section 221(4).

[22] Italian Civil Code, Article 2441(1).

[23] Civil Code of the Netherlands, Book 2, Article 96a. Statutory preemptive rights in the Netherlands are operative only where the articles of association of the issuer are silent on the question of shareholder preemptive rights.

[24] Second Company Law Directive of 1976, Article 29 (published January 31, 1977). The EEC Directive also sets forth certain procedures regarding notifying shareholders of a rights offer, exercise periods for rights offers and disapplication of preemptive rights. EEC member countries are required to enact legislation and/or regulations in order to give effect to EEC Directives.

[25] See, e.g., The Companies Act 1985, section 95 (United Kingdom); Aktiengesetz, sections 56, 71 (Germany); Law No. 85-1321 of 14 December 1985, section 186 (France).

[26] Section 95 of the Companies Act 1985 permits limited disapplication upon approval by at least 75 percent of the shareholders. Waivers of preemptive rights by U.K. shareholders are generally subject to various limitations.

[27] The rules of the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited (the "ISE") and of U.K. securities self-regulatory organizations require that securities to be sold to the public must first be offered to a company's existing shareholders in satisfaction of their statutory preemptive rights. See Admission of Securities to Listing, section 1, Ch. 1, ¶ 15.

[28] The listing requirements of the Australian Stock Exchange, for example, require that an issuer not make an offering of its securities that would increase the amount of outstanding securities by more than 10% unless such offering is either (1) limited to existing securityholders, or (2) made to the public after being approved by a majority of existing securityholders. See Australian Stock Exchange Listing Requirements § 3E.

[29] In 1987, for example, several large U.K. issuers made offerings to the public by either securing the waiver of preemptive rights by shareholders or by avoiding application of preemptive rights by offering debt with conversion rights. These attempts have mobilized institutional holders to take action to protect preemptive rights. The investment committees of the Association of British Insurers and the National Association of Pension Funds, two associations which represent most of the U.K.'s institutional shareholders, for instance, have issued guidelines favoring rights offers as a method of raising equity capital. Publicly traded U.K. companies, therefore, may have difficulties obtaining shareholder approval of proposals not in compliance with such guidelines. See Wall Street Journal, Apr. 17, 1987, at 20.

[30] At the very least, participating securityholders have the opportunity to protect themselves against ownership dilution when the issuer proposes to issue additional securities of the same class as that held by them. When the issuer offers a new class of securities for sale, a rights offer affords participating securityholders the opportunity to increase their investment in the issuer, often at a price that represents a discount from the anticipated market value. See n. 34 *infra* and accompanying text.

[31] Unlisted Australian companies, for instance, often engage in rights offerings although they are not required to do so. See n. 28 *supra*.

B. Structure of Rights Offers

In a rights offer, an issuer offers to sell securities to its existing securityholders for cash through the exercise of subscription or preferential rights granted to them, usually in proportion to the amount of the issuer's securities of the class being offered held by them on the record date for the offering. Upon the expiration of a specified exercise period,[32] the unexercised rights lapse and the unsubscribed for securities are either taken up by underwriters and offered to the public, if the issue is being underwritten, or, in the case of a clawback issue,[33] sold to institutional or other investors with whom the issuer has initially placed the securities.

As an inducement to the offerees, the exercise price of the distributed rights typically is set at a discount from the current market price for the securities or, where there is no public market at the time of the rights offer, at the estimated price at which the underlying securities are expected to trade.[34] Traditionally, rights offers have been limited to the offer and sale of securities of the same class as that held by the recipients of the rights being distributed.[35] Some recent offers, however, have involved newly created classes of securities.[36]

Conventional rights offers often are underwritten on a standby basis,[37] with the underwriters agreeing to take up the securities in the event the rights are not fully subscribed. Under these arrangements, the issuer typically distributes provisional allotment letters or similar instruments evidencing the issuance of the underlying securities in "nil-paid" form to existing securityholders. When the issuer receives the full subscription price accompanied by executed allotment letters, the securities become fully paid and nonassessable. Unlike a conventional rights offering, in a rights offering structured as "clawback" issue, the issuer places the securities it proposes to offer with underwriters or institutional investors on a firm commitment basis, subject to the prior right of existing securityholders to apply for them on a pro rata basis. Since the clawback arrangement does not require mailing provisional allotment letters or other evidence of issuance of rights to securityholders, it is particularly suited to markets where bearer securities are common and where it is customary for issuers to communicate with securityholders via notices published in newspapers.[38]

When the rights distributed are by their terms transferable, a trading market for the rights generally develops during the exercise or subscription period, and securityholders who do not wish to exercise their rights may sell them to third parties.[39] The issuer may also cause rights to be sold on behalf of security holders who are not permitted to participate, thereby cashing out such holders. Proceeds from the sale of rights may represent a profit, if the discount at which the rights had been issued is sufficient to offset brokers' fees and other selling expenses.[40] However, where rights are issued in "nonrenounceable" or nontransferable form, or if the offering is structured as a clawback issue, which does not involve the distribution of securities in nil-paid form, the non-subscribing securityholders will realize no economic benefit from the offering, since the rights distributed to them cannot be traded or sold.

III. The Proposed Exemption and Securities Act Registration Form

A. Common Eligibility Requirements

1. General

As described in greater detail below, the proposed small issue exemption, new Rule 801, and the proposed registration form, Form F-11, would be made available to the same class of foreign private issuers and the same class of offerings, with one exception. Because of the statutory limitation on the Commission's authority under Section 3(b) of the Securities Act, the amount of equity securities that may be offered or sold in the United States in any offering made in reliance on proposed Rule 801 may not exceed $5 million in the aggregate.

2. Eligibility of Issuers

Proposed Rule 801 and Form F-11 would be available only for primary offers and sales of securities of eligible foreign issuers made pursuant to specified rights offerings, and not for the resale of such securities. Any foreign private issuer [41] filing reports with the Commission pursuant to sections 13(a) or 15(d) of the Exchange Act [42] which is current with respect to such filing obligations at the time of the offering would be eligible to rely on the

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[32] In the United Kingdom, for instance, the Companies Act 1985 requires that the subscription period be not less than 21 days. See Companies Act 1985, section 90(6). Under German law, rights offers must be kept open for at least two weeks (see Aktiengesetz, section 186), although it is common for the subscription period to run for at least fifteen calendar days, and sometimes for as long as four to six weeks. The Civil Code of the Netherlands requires that rights offers be kept open for a minimum of 14 days after public announcement of the offering. In practice, however, rights offers are usually kept open for a minimum of two to three weeks after public announcement. See also n. 39, *infra*.

[33] See n. 38 and accompanying text, *infra*.

[34] In the United Kingdom, the exercise prices of subscription rights frequently represent a twelve to fifteen percent discount from market prices of the underlying securities, but the discount may be substantially higher in large offerings. In Japan, where rights issues have not been common but appear to have regained some popularity recently, rights have been offered to existing securityholders at deep discounts to the market price of the underlying securities.

[35] Statutory preemptive rights typically are granted to holders of equity securities only, including preferred shares in some cases. For instance, under section 89(1) of the Companies Act 1985 (United Kingdom), preemptive rights apply to all "relevant shares", defined in section 94(5) of that statute to include not only ordinary shares but all shares that carry an unlimited right to participate in income or capital of the issuer, such as preference shares. However, issuers have often extended rights offerings to holders of securities that are exercisable or convertible into, or exchangeable for, equity securities. In the United Kingdom, for example, even though warrants and interests in convertible loan stock are not relevant shares for purposes of the Companies Act 1985, holders of these securities frequently have extracted a contractual obligation from the issuer to include them in rights offers. By contrast, in the Netherlands, statutory preemptive rights apply to issuances of equity securities as well as equity-related securities, including options, warrants and convertible debt.

[36] See n. 18 *supra*.

[37] Rights offers issued at a deep discount often are not underwritten since the deep discount tends to ensure that the rights will be taken up by existing securityholders.

[38] The clawback arrangement is favored in Germany but it is not common in the United Kingdom.

[39] In conventional rights offers in the United Kingdom, subscription rights represented by provisional allotment letters distributed to shareholders are usually transferable during the subscription period, which typically ends two business days prior to the closing and settlement date for the rights exercise. In the Netherlands, rights issued by companies listed on the Amsterdam Stock Exchange usually are traded on that Exchange during the subscription period, with closing and settlement of the rights exercise occurring ten days after the subscription period has expired. In Germany, where the securities to be sold pursuant to rights offers typically are initially placed with banks (which act as underwriters for the issue), subject to the clawback rights of existing shareholders, the shareholders may be granted an additional four to six week grace period, after the official subscription period has expired, to subscribe for the securities. During the period from the expiration of the subscription period to closing, rights that are not taken up by shareholders may be sold by underwriters or other intermediaries, and the net proceeds will be remitted to the shareholders to whom the sold rights were allocated.

[40] Selling expenses, including commissions to underwriters, brokers' fees and stamps or transfer taxes, are generally borne by the securityholders and will be deducted from the proceeds to be paid to them.

[41] "Foreign private issuer" is defined in Rule 3b-4 under the Exchange Act (17 CFR 240.3b-4) and Rule 405 under the Securities Act (17 CFR 230.405).

[42] 15 U.S.C. 78m, 78o(d).

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proposed Rule or register securities on the proposed Form. A foreign private issuer exempt from the requirements of section 12(g) under the Exchange Act pursuant to Rule 12g3–2(b) would also be eligible to rely on the proposed exemption or use the proposed Form if it has a class of equity securities listed or quoted on at least one designated offshore securities market,[43] is in compliance with the listing requirements applicable to such securities and, in addition, either (a) has maintained such listing or quotation continuously for 36 months immediately prior to the commencement date of the offering, or (b) has a public float in the listed securities of not less than $75 million.[44] As described below, issuers registered, or required to be registered, under the Investment Company Act of 1940 ("Investment Company Act")[45] may not participate in the proposed system.

Issuer eligibility would be determined as of the commencement date of the offering. In this regard, a rights offer made in reliance on proposed Rule 801 would be deemed to have commenced upon the date the securities are first offered to securityholders that are U.S. holders and, in the case of registration on proposed Form F–11, upon filing of the registration statement with the Commission. For purposes of satisfying the proposed eligibility criteria, a nonreporting foreign issuer may establish an exemption under Rule 12g3–2(b) at the same time as it commences the offering in the United States or, in the case of registration on proposed Form F–11, as it files the registration statement with the Commission.

Proposed Rule 801 and Form F–11 incorporate the definition of "designated offshore securities market" from Regulation S. Nineteen offshore exchanges and non-exchange securities markets are currently designated as such markets under Regulation S, which also provides that the Commission may designate additional markets that have some or all of the attributes listed in Regulation S. Factors to be considered include, among other things, the market's operating history, whether it is subject to oversight by a foreign government or self-regulatory body, whether oversight standards are set by law and whether there are price quotation and clearing systems.[46] Comment is sought regarding whether it is appropriate that issuer eligibility of the proposed system be based on listing on a Regulation S designated offshore securities market. For instance, should issuers whose equity securities trade in non-exchange securities markets be excluded? Should access to the proposed system be confined to issuers whose securities are traded on exchanges located in countries that have written memoranda of understanding or other agreements ("MOUs") with the Commission that provide the Commission with mechanisms for obtaining information regarding such offerings from appropriate authorities in those countries?[47]

Requiring that the issuer be either reporting under the Exchange Act or exempt pursuant to Rule 12g3–2(b) at the time the offering commences in the United States assures that information about the issuer would be publicly available to investors in this country, including at a minimum information the issuer makes public or otherwise makes available to its shareholders in its home country. The additional three-year listing history or $75 million public float eligibility requirement in the case of issuers relying on the exemption under Rule 12g3–2(b) are intended to protect against use of the proposed system by start-up companies or insubstantial issuers to raise large amounts of capital in the United States without complying with the normal registration requirements of the Securities Act.

The Commission previously has proposed a similar three-year listing history eligibility requirement for Canadian issuers who wish to participate in rights offerings under the multijurisdictional disclosure system with Canada (the "Canadian MJDS").[48] Canadian MJDS was approved by the Commission on May 30, 1991. The three-year listing requirement for use of Form F–7 as approved would be changed from the reproposal to a combined one-year listing with a designated Canadian exchange and three-year reporting history with Canadian securities regulators requirement.[49] Recognizing that many substantial issuers may not have the requisite listing or operating history to qualify, however, a public float test is being proposed today as an alternative. Comment is requested regarding whether it is appropriate to provide for a size-of-issuer test as an alternative to requiring a three-year listing history on a designated market for determining the eligibility of nonreporting issuers. Should the alternative test be based on the issuer's public float as proposed, or on its net assets or net worth? What would be the appropriate level of the requirement? Should the proposed minimum of $75 million be reduced, for instance, to $10 million, or be raised to as much as $100 million?

Proposed Rule 801 and Form F–11 would permit any foreign private issuer formed as a result of a merger, a spinoff, an arrangement or other reorganization requiring the approval of shareholders to tack on the listing history of its predecessors for purpose of satisfying the three-year listing history requirement, if it is unable to satisfy the listing history requirement on its own. Comment is requested regarding whether it is appropriate to permit the inclusion of the listing histories of predecessors in determining the eligibility of nonreporting issuers, and whether a three-year reporting requirement, as opposed to a listing requirement, would be more appropriate, given the regulatory purpose of the system being proposed today.

[43] As defined in Rule 902 of Regulation S under the Securities Act [17 CFR 230.902(a)]. Although the Johannesburg Stock Exchange is a designated offshore securities market, new investments in securities of certain South African issuers may be prohibited by the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99–440) (October 2, 1986) (22 U.S.C. 5001).

[44] See proposed Rule 801(c)(7) and General Instruction B.(2) to proposed Form F–11.

[45] 15 U.S.C. 80a *et seq.*

[46] 17 CFR 230.902(a). The Commission has delegated the authority to designate additional markets as designated offshore securities markets to the Director of the Division of Corporation Finance. Since the adoption of Regulation S, the Director has designated the Helsinki Stock Exchange (*see* Letter re Shearson Lehman Hutton Inc. (July 7, 1989)) and the Mexican Stock Exchange (see Letter re Comision Nacional de Valores (Feb. 15, 1991)) as additional designated offshore securities markets for purposes of Regulation S. The staff of the Commission has also issued an interpretive letter clarifying that trades executed on the Stock Exchange Automated Quotation (SEAQ) international system, a part of the ISE, a designated offshore securities market, would be deemed trades executed on a designated offshore securities market. (See Letter re First Boston Corporation (June 14, 1990).)

[47] The Commission has entered into MOUs with foreign governments or securities authorities in Brazil, Canada, France, Japan, Mexico, the Netherlands and the United Kingdom. The Commission has entered into more limited statements of intent of mutual cooperation with Hungary and Italy. Approximately one-half of the current designated offshore securities markets are located in countries the authorities of which have signed comprehensive MOUs with the Commission. The designated offshore securities markets located in countries without such agreements are the Australian Stock Exchange Limited, the Bourse de Bruxelles, the Eurobond market, the Frankfurt Stock Exchange, the Stock Exchange of Hong Kong Limited, the Johannesburg Stock Exchange, the Bourse de Luxembourg, the Stockholm Stock Exchange, the Zurich Stock Exchange and the Helsinki Stock Exchange.

[48] See Securities Act Release No. 6879 (Nov. 3, 1990) (55 FR 46288) ("Canadian MJDS Reproposing Release"), at 46295.

[49] The Commission authorized the publication of the adopting release of Canadian MJDS on May 30, 1990.

3. Eligibility of Securities Being Offered

Only equity securities of the same class as that held by the offerees in the United States may be offered or sold in reliance on the proposed Rule or pursuant to registration on the proposed Form.[50] The Commission requests comment on whether the proposed system should be made available to offerings of securities of any class of an eligible issuer, including, for instance, debt securities, convertible securities or new classes of equity securities. If so, should the proposed system nevertheless be limited to offerings of securities that are, when sold, listed or quoted on a designated offshore securities market upon completion of the offering?

As proposed, Rule 801 and Form F–11 would not be available for securities issued by an investment company that is registered, or required to be registered, under the Investment Company Act.[51] A foreign issuer that is able to make a public offering of its securities in the United States in reliance on Rule 6c–9 under the Investment Company Act or pursuant to an individual exemptive order under that Act would not be disqualified from using proposed Rule 801 or proposed Form F–11 to make a rights offering in the United States.[52] These issuers are authorized to publicly offer their own securities in the United States without registering under the Investment Company Act, and a rights offering in reliance on proposed Rule 801 or registered on proposed Form F–11 would not present any Investment Company Act concerns. Comment is requested as to whether this approach regarding investment companies is appropriate.

4. Eligibility of Transaction

The system being proposed today is available to rights offerings of equity securities[53] made on a pro rata basis[54] to existing U.S. holders of securities of the same class, including holders of ADRs evidencing such securities.[55] The Commission requests comment as to whether the scope of proposed Rule 801 and Form F–11 should be extended to cover securities offerings in connection with dividend or interest reinvestment plans or offerings of script dividends.[56]

Proposed Rule 801 and Form F–11 would require that the terms and conditions of the offer extended to securityholders that are U.S. holders be not less favorable than the terms and conditions of the offer extended to any other offeree. U.S. holders, for purposes of the proposed system, are persons for whom U.S. addresses appear on the records of the issuer or its agents, including depositaries for sponsored and unsponsored ADR facilities and transfer agents.[57] The Commission recognizes that offering procedures may have to differ from jurisdiction to jurisdiction to accommodate local customs or regulations. Procedural variations in foreign jurisdictions would not render an offering ineligible so long as such practice would not result in material adverse treatment of U.S. holders.

Proposed Rule 801 and Form F–11 would be available only for all cash transactions and would additionally require that the rights granted to U.S. holders not be transferable except in accordance with Regulation S.[58] The system being proposed today is intended to encourage foreign issuers to extend the opportunity to purchase additional securities to be issued in rights offerings to those U.S. persons who already have made the decision to invest in the company based on information available to them. It is not intended to permit foreign issuers to extend such offerings to new investors in the United States. Accordingly, neither the proposed exemption nor the new registration form would be available to transactions that permit the transfer of rights distributed to U.S. holders, other than pursuant to Regulation S. Transfer of the rights outside the United States in accordance with Regulation S would not disqualify the offering, however, nor is it necessary to impose restrictions on transferability of the equity securities that may be purchased upon exercise of rights. Comment is requested regarding whether the securities purchasable upon exercise of rights granted to U.S. holders should be restricted securities for purposes of Rule 144 under the Securities Act.[59]

B. The Proposed Exemption

The exemption contemplated under proposed Rule 801 is non-exclusive.[60] An issuer making an offering in reliance on the proposed rule may also claim any other available exemption under the Securities Act.

Proposed Rule 801 relates only to the application of section 5 of the Securities Act and has no effect on the anti-fraud, civil liability or other provisions of the federal securities laws or provisions of state law relating to the offer and sale of securities.[61] The exemption is not available to any transaction or chain of transactions that, although in technical compliance with the proposed rule, is part of a plan or scheme to evade the registration obligations of the Securities Act.[62] In such cases, registration under the Securities Act would be required.

Proposed Rule 801 is available for the offer and sale in the United States of foreign equity securities in rights offerings so long as the aggregate offering price of such securities does not exceed $5 million. The proposed Rule

[50] Proposed Rule 801(a) and General Instruction A to proposed Form F–11.

[51] Section 7(d) of the Investment Company Act prohibits a foreign issuer that is an investment company as defined in the Investment Company Act from using jurisdictional means to publicly offer its securities for sale in the United States unless the company receives an exemptive order permitting it to register under the Investment Company Act. A rights offering by a foreign investment company to U.S. investors may constitute a public offering within the meaning of section 7(d).

[52] Rule 6c–9, adopted by the Commission in 1987 (see Investment Company Act Release No. 16093), permits foreign banks and their finance subsidiaries to publicly offer and sell their debt securities and non-voting preferred stock in the United States without registering under the Investment Company Act or obtaining an individual exemptive order. The Commission also has issued a number of individual exemptive orders allowing public offerings in the United States of securities not covered by Rule 6c–9, e.g., equity securities issued by foreign banks and their finance subsidiaries, offerings by foreign insurance companies and their finance subsidiaries, and offerings by foreign bank and insurance holding companies, among others. In August 1990, the Commission proposed amendments to Rule 6c–9 that would expand the rule to include: (1) Equity securities of foreign banks and their finance subsidiaries, (2) all securities of foreign insurance companies and their finance subsidiaries, (3) all securities of foreign bank and insurance holding companies, and (4) all securities of Canadian trust and loan companies. See Investment Company Act Release No. 17682 (Aug. 17, 1990) (55 FR 34569).

[53] See Proposed Rule 801(c)(4) and General Instruction A to proposed Form F–11.

[54] The proposal requires that the rights extended to U.S. holders, as compared with rights extended to other holders of securities of the class being offered, be in proportion to the amount of such securities held by each of them on the record date set for the rights offer (assuming in the case of ADR holders that such holders held the underlying securities directly).

[55] Proposed Rule 801(a) and General Instruction A to proposed Form F–11.

[56] See Rule 405 (17 CFR 230.405) for a definition of a dividend or interest reinvestment plan for purposes of Regulation C under the Securities Act (17 CFR 230.400–494). Offerings of script dividends, common in certain jurisdictions such as the United Kingdom, involve offering shareholders the opportunity to receive additional shares or other securities of the issuer in lieu of receiving cash in connection with a declared dividend payment.

[57] Proposed Rule 801(c)(9) and General Instruction D to proposed Form F–11.

[58] 17 CFR 230.901–904.

[59] 17 CFR 230.144.

[60] See Preliminary Note 5 to proposed Rule 801.

[61] See Preliminary Notes 1, 3 and 4 to proposed Rule 801.

[62] See Preliminary Note 2 to proposed Rule 801.

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defines "aggregate offering price" of securities to mean the total gross sales price to be received by the issuer for issuance of the securities upon exercise of the related rights, assuming that all such rights were exercised. For purposes of calculating the $5 million, only the securities issuable upon exercise of rights granted to U.S. holders in a specific rights offering being made in reliance on proposed Rule 801 would be considered. Separate rights offerings by the same issuer would be subject to separate $5 million ceilings.

Proposed Rule 801 would not mandate that specific information, including offering circulars, if any, be sent to U.S. holders, except that where any document, notice or other information had been provided to offerees residing in the issuer's home jurisdiction (defined as the issuer's country of incorporation or organization or, if different, the jurisdiction of the primary market for the issuer's equity securities that are listed on a designated offshore securities market), copies of such document, notice or other information must be provided to offerees that are U.S. holders at the same time as, or as soon as practicable after, such document, notice or other information is provided to home jurisdiction offerees. If in lieu of delivering documents to offerees in the home jurisdiction, information regarding the offering is being published or advertised in a home jurisdiction publication, then the issuer may satisfy this information dissemination requirement by publishing an advertisement of the offering in an English language publication of general circulation in the United States,[65] or by delivering written copies of the publication or advertisement to offerees that are U.S. holders. In addition, if any such document, notice or other information delivered or disseminated to home jurisdiction offerees, including any offering circular or advertisement, is not in English, then a translation or a summary in English shall be provided to U.S. holders. Comment is sought regarding the appropriateness of permitting issuers to satisfy the information dissemination requirement by publication in U.S. newspapers.

C. Registration on Proposed Form F–11

Form F–11, like Form F–7 under the Canadian MJDS, would permit an eligible foreign private issuer to register equity securities being offered or sold in the United States in connection with specified rights offerings, using documents prepared according to the disclosure requirements of the issuer's home jurisdiction regulatory scheme.[66]

Proposed Form F–11 is essentially a "wrap-around" form to be used for the registration in the United States of securities to be issued in rights offerings. The proposed Form itself provides for, among other things, disclosure of the issuer's name and address and that of its agent for service in the United States, and includes the foreign circular and a list of the exhibits filed with the Commission, including documents that have been incorporated by reference into the prospectus or offering circular. The proposed Form also requires that the issuer add to the prospectus or offering circular distributed to U.S. holders, to the extent applicable, certain legends advising them that the investment may have tax consequences in the foreign jurisdiction, that U.S. holders may have to pursue legal remedies in a foreign jurisdiction, and that financial statements included in the U.S. registration statement have been prepared in accordance with foreign generally accepted accounting principles, were audited in accordance with foreign auditing standards and that auditor independence was governed by foreign requirements.

The proposal distinguishes between the documents required to be delivered or disseminated to U.S. holders and the documents required to be included in the proposed Form F–11 being filed with the Commission to register the securities. The issuer would provide U.S. holders with the same information (appropriately legended as specified) as that delivered or disseminated abroad in the issuer's home jurisdiction, except that if the materials delivered or disseminated to home jurisdiction offerees are not in English, then U.S. holders must be provided with English translations or summaries of such information.

In accordance with section 5(b) of the Securities Act, the foreign issuer is required to deliver a prospectus to U.S. holders.[68] For purposes of section 5(b), the prospectus for a rights offering registered on proposed Form F–11 would consist of the entire disclosure document or documents used to offer the rights and underlying securities to offerees in the home jurisdiction, including stock exchanges, require the issuer to deliver to offerees in its home jurisdiction. The Commission understands that every securities market currently named as a designated offshore securities market under Regulation S and/or the jurisdiction in which each such market is located imposes a prospectus delivery requirement for equity offerings. Comment is requested regarding whether this is the case and whether market practice in any such jurisdiction or market would make satisfaction of the U.S. prospectus delivery requirement difficult or impractical.

Information that is permitted in the issuer's home jurisdiction to be incorporated by reference in the prospectus would not be required to be distributed to U.S. holders, unless delivery is otherwise required by the issuer's home jurisdiction, but information so incorporated into the prospectus that forms part of the U.S. registration statement must be filed as exhibits to the registration statement on proposed Form F–11. Any document already filed with the Commission under the Exchange Act, or furnished to the Commission pursuant to Rule 12g3–2(b), may be incorporated by reference into proposed Form F–11 and, accordingly, need not be physically filed as separate exhibits to the Form.[69] Incorporated information would become part of the registration statement and would be deemed filed for liability purposes.[67]

In the United States, if any portion of a report or an opinion of an expert, including any auditor or engineer, or counsel is quoted or summarized in a registration statement filed under the Securities Act, or if an expert is named in the registration statement as having prepared or certified a report or a valuation, the written consent of the expert or counsel, expressly consenting to such quotation or summarization or to being so named, must be filed as an exhibit to the registration statement. Form F–11, as proposed today, would not require the filing of such consents of experts or counsel, except in the rare

[65] Proposed Rule 801 would adopt the definition of the phrase "publication with a general circulation in the United States" contained in Rule 902(k) of Regulation S. See Rule 801(c)(8).

[66] Like Form F–7 as approved by the Commission, securities that could have been purchased by U.S. holders pursuant to rights granted to them but were not purchased by these holders are deemed not to be registered on proposed Form F–11. The rights themselves generally are not required to be registered under the Securities Act. *Cf.* Securities Act Release No. 629 (July 28, 1936) (11 FR 10957), but they may be concurrently registered on proposed Form F–11 by the issuer.

[68] 15 U.S.C. 77e(b).

[69] Rule 24 of the Commission's Rules of Practice (17 CFR 201.24) is being amended in connection with the Canadian MJDS to permit the incorporation by reference of materials submitted to the Commission, including materials submitted under Rule 12g3–2(b), in addition to materials previously filed with the Commission.

[67] See n. 72, *infra*.

instance where the expert's or counsel's materials were prepared or certified solely for use in the registration statement on proposed Form F–11 or the prospectus being delivered to the U.S. holders.[66] The Commission requests comment on whether it is appropriate to excuse experts and counsel from having to consent to the use of their names or to the quotation or summary of their reports or opinions in registration statements filed under cover of proposed Form F–11. Comment is also requested on whether requiring the filing of a consent by experts in connection with proposed Form F–11 registration would be impracticable or involve undue hardship on the person filing the registration statement within the meaning of section 7 of the Securities Act. In this regard, commenters should focus on whether the consent requirement is common practice among foreign registration and listing schemes such that a consent would be obtainable in connection with a Form F–11 filing.

Under the proposal, the properly completed registration statement on proposed Form F–11 would become effective upon filing and would not be subject to prior review by the Commission's staff.[69] Automatic effectiveness of the registration statement is intended to give the issuer maximum flexibility to coordinate the timing of the U.S. portion of the offering with the time schedule of the offshore portion of the offering.

All documents filed with the Commission would be subject to the civil liability and general antifraud provisions of the U.S. securities laws applicable to a registration statement filed under the Securities Act. [70] In addition, such documents would be in the Commission's public files and, therefore, would be subject to public inspection.

As proposed, Form F–11 incorporates in its entirety the disclosure requirements under applicable laws of the issuer's home jurisdiction, as construed under the laws of that jurisdiction. Other than requiring the inclusion of specified legends, the provision of English translations or summaries and the filing of certain exhibits, no disclosure requirements would be defined by U.S. rules and regulations. Like Form F–7 approved under Canadian MJDS, proposed Form F–11 provides that the provisions of Regulation C shall not apply to rights offers registered on the proposed Form, unless specifically referred to in the proposed Form. Proposed Form F–11 would specifically preserve the application of Rules 408 and 415, and address incorporation by reference, English language requirements, and other matters covered by Regulation C.[71] In addition, Regulation C is itself being amended to address effective date, delaying amendments and consent requirements with respect to Form F–11 filings. Comment is requested whether, unlike Canadian MJDS which relied upon Canadian registration procedures and concepts, additional provisions of Regulation C should apply to rights offers registered on Form F–11, which is not based upon specific foreign regulatory schemes. Accordingly, financial statements may be prepared in accordance with foreign generally accepted accounting principles and be audited under the auditing standards of the foreign jurisdiction, by auditors subject to foreign auditor independence requirements.

Commenters to Canadian MJDS and several recent Commission releases have expressed the concern that registration statements based on foreign disclosure requirements may expose registrants to liabilities even if foreign disclosure requirements and standards have been adhered to, simply because certain types of information typically included in U.S. disclosure documents are permitted by foreign rules and regulations to be omitted from foreign disclosure documents. The Commission stated in the Canadian MJDS Reproposing Release that in adopting Canadian MJDS, the Commission would be adopting as its own requirements the disclosure requirements of the applicable Canadian regulatory scheme with respect to the registration statements filed on Canadian MJDS forms. [72] The same principles would apply to the rules and forms proposed today regarding offering materials disseminated to U.S. holders or filed with the Commission on proposed Form F–11. Accordingly, good faith compliance with the disclosure requirements of the applicable foreign jurisdiction, as construed by the foreign authorities, would constitute compliance with the applicable U.S. federal securities disclosure requirements, even if such compliance were to result in the omission of information which might otherwise have been required as a line item to be included in registration statements filed by U.S. issuers on the Commission's other registration forms.

The Commission requests comment on the appropriateness of this total incorporation of and reliance on foreign disclosure requirements and standards, and solicits comment as to whether the Commission should impose any minimum disclosure standards.

D. Exchange Act Reporting

As a result of new Rule 12h–5 being proposed under the Exchange Act today,[73] foreign issuers who do not otherwise have a reporting obligation under the Exchange Act will not, solely as a result of having filed a registration statement on proposed Form F–11 that has been declared effective, acquire such a reporting obligation. These issuers, accordingly, would be able to retain their exempted status under Rule 12g3–2(b) following a filing on proposed Form F–11.[74] Proposed Rule 12h–5 is based on the premise that incurring a continuous reporting obligation under the Exchange Act operates as a disincentive to foreign issuers not otherwise subject to such reporting obligations, discouraging them from extending rights offers to U.S. investors.

Comment is requested regarding the advisability of exempting such issuers from Exchange Act reporting obligations that arise under section 15(d) of the Exchange Act.

[66] See section 7 of the Securities Act (15 U.S.C. 77g) and proposed Rule 441 under the Securities Act. In most cases the report, certification or opinion of an expert or counsel that is named, quoted or summarized in the U.S. registration statement would have been prepared in connection with the offshore portion of the offering, or incorporated from reports or opinions that have been prepared in the ordinary course of business or for foreign periodic reports or prior foreign registration statements. In such cases, filing of consents of experts or counsel would not be required.

[69] See proposed Rule 456 and proposed amendments to Rule 484 under the Securities Act (17 CFR 230.456 and 230.484).

[70] For instance, sections 11 and 12(2) of the Securities Act (15 U.S.C. 77k and 77l(2)); sections 10(b) and 18(c)(1) of the Exchange Act (15 U.S.C. 78j(b) and 78o(c)(1) and Rules 10b–5 and 15c1–2 (17 CFR 240.10b–5 and 240.15c1–2).

[71] See Rule 400 under Regulation C (17 CFR 230.400), providing that the provisions of that regulation shall not control where the provisions of a form address the same subject matter.

[72] See Canadian MJDS Reproposing Release, *supra* at 46801.

[73] Proposed Rule 12h–5 (17 CFR 240.12h–5) would exempt issuers from the duty under section 15(d) of the Exchange Act (15 U.S.C. § 78o(d)) to file periodic reports under the Exchange Act with respect to securities being registered on proposed Form F–11.

[74] Although Rule 12g3–2(d)(1) (17 CFR 249.12g3–2(d)(1)) precludes an issuer which has or has had, during the previous 18 months, a section 15(d) reporting obligation from relying on the exemption under Rule 12g3–2(b), issuers that file registration statements on proposed Form F–11 would not, by operation of proposed Rule 12h–5, incur any section 15(d) reporting obligation solely as a result of having filed a registration statement on proposed Form F–11 that has been declared effective.

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E. State Securities Regulations

Issuers selling securities in the United States must comply with the securities (or "blue sky") laws of the states, which generally require registration with state authorities of offerings made to state residents. The securities laws of many states, however, contain a provision, patterned after Section 402(b)(11) of the Uniform Securities Act, [75] exempting from registration security offerings to existing securityholders of the issuer if no commission or other remuneration, other than a standby commission (*i.e.*, a payment to an underwriter for its commitment to purchase securities not purchased by the security holders) is paid or given directly or indirectly for soliciting any security holder in the state. [76] Some states permit the payment of commissions other than standby commissions on the condition that state securities regulators receive advance notification of the offering, specifying the terms of the offer. [77] Compensation paid in the offshore portion of a rights offering would not necessarily disqualify the offer from reliance on the exemption, however. Thus, there are likely to be rights offerings registered on proposed Form F-11 that would be exempt in these states.

There may be additional exemptions available to a particular rights offer. For example, in many states, offerings of securities listed on the NYSE or AMEX or traded on the NASDAQ National Market System are exempt from registration.

Many states have adopted uniform practice guidelines and procedures proposed by the North American Securities Administrators Association ("NASAA"). [78] In April 1989, NASAA adopted a statement on Internationalization of the Securities Markets, urging its members to "encourage legitimate capital raising activities across national borders," subject to "minimum rules to ensure investor protection." NASAA has been reviewing the proposed exemption and registration form to determine what actions, if any, are necessary and appropriate for the states to adopt and implement to accommodate these offerings.

IV. Amendments to Form F-3; Relationship of Proposed Form F-11 and Other Registration Forms

A. Amendments to Form F-3

Securities Act registration Form F-3, which permits full incorporation by reference to Exchange Act reports, is available for registration of securities offered in connection with certain rights offerings, dividend or interest reinvestment plans, conversion of convertible securities and exercise of warrants. To be eligible to use Form F-3, a foreign private issuer, among other things, must have been subject to the requirements of Section 12 or 15(d) of the Exchange Act and have filed all information required to be filed under that Act for at least 36 months immediately prior to filing on Form F-3. [79] In addition, such issuer must also meet a $300 million public float test, unless the securities being registered are non-convertible investment grade securities. [80]

The Commission is proposing today to amend Form F-3 to eliminate the 36-month reporting history requirement and the $300 million public float requirement for transactions described in paragraph b.4. of Transaction Requirements under General Instruction I.B. to Form F-3. [81]

In addition, General Instructions III to Form F-3 is proposed to be amended to provide for immediate effectiveness of registration statements filed on Form F-3 relating to these transactions. [82]

Concurrently with proposing amendments to Form F-3, the Commission is proposing technical amendments to Form F-2 to delete paragraph E of General Instruction I to Form F-2, [83] which exempts registrants seeking to register securities being offered in connection with rights offerings, dividend or interest reinvestment plans, conversions of convertible securities and exercise of warrants, from the 36-month Exchange Act reporting history requirement usually applicable to Form F-2 registrants.

B. Relationship With Other Registration Forms

Proposed Form F-11 is based on Form F-7, the registration form for rights offerings under the Canadian MJDS. Like Form F-7, proposed Form F-11 may only be used for registering securities offered or sold in all-cash rights offers that prohibit the transfer of the rights in the United States. While Form F-7, unlike proposed Form F-11, may be used to register offerings of securities of any class and the two Forms impose different issuer eligibility conditions, [84]

[75] Section 402(b)(11) of the Uniform Securities Act provides an exemption from registration and sales and advertising literature filing requirements for "any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, non-transferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (A) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (B) the issuer first files a notice specifying the terms of the offer and the [Administrator] does not by order disallow the exemption within the next five full business days."

[76] Forty-three states have some type of exemption for offers and sales to existing securityholders. The District of Columbia has no securities registration requirements.

[77] The exact form of exemptions for offers and sales to existing securityholders differ considerably among the states. One state permits the payment of other than standby commissions to broker-dealers which are registered or exempt from registration under that state's laws. Twenty-five states permit the payment of other than standby commissions if a notice is filed and the exemption is not disallowed. One state permits the payment of other than standby commissions if affirmatively approved by the state. Ten states prohibit completely the payment of other than standby commissions but do not require a notice filing. Six states prohibit completely the payment of other than standby commissions and require the filing of a notice.

[78] NASAA is an association comprised of all state and provincial securities regulators in the United States and Canada.

[79] See General Instruction I.A.2. to Form F-3.

[80] See General Instruction I.A.4. to Form F-3. To meet the requisite public float test, the aggregate market value worldwide of the voting stock of the issuer held by non-affiliates must be the equivalent of $300 million or more. See also Instructions to General Instruction I.A.4. to Form F-3.

[81] Transactions described in paragraph 4 of the Transaction Requirements to Form F-3 include transactions in which the only securities to be registered are those being offered (a) upon the exercise of outstanding rights granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach; (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer. The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to paragraph 4 of the Transaction Requirements of Form F-3, however. See General Instruction I.B.4. to Form F-3.

[82] See General Instruction III to Form F-3. In addition to the changes being proposed today, the Commission is proposing today in a companion release published elsewhere in this issue to amend Rule 3-19 under Regulation S-X relating to the maximum age of financial statements to be included in registration statements filed on Form F-3. As a result of the amendments to Rule 3-19, if such amendments are adopted, foreign issuers that do not prepare interim financial statements on a quarterly basis would no longer be precluded from filing registration statements on Form F-3 during certain "black out" periods.

[83] See General Instruction I.E. to Form F-2.

[84] For instance, Form F-7 requires issuers to have maintained a three-year reporting history with Canadian securities regulators as well as a one-year listing history with The Montreal Stock Exchange, The Toronto Stock Exchange or the Senior Board of The Vancouver Stock Exchange, all of which are designated offshore securities markets under Regulation S. By contrast, proposed Form F-11 would allow all foreign private issuers that are Exchange Act reporting issuers at the time of filing to register equity securities on that form regardless of their foreign reporting and listing histories. In addition, with respect to nonreporting issuers, proposed Form F-11 would permit those that have either a three-year listing history with a designated offshore securities market or, if they do not have three-year listing history, a $75 million minimum public float to qualify.

Canadian issuers that meet the eligibility requirements and other conditions for both forms will have the option of registering rights offerings of equity securities on either form. It is anticipated that upon adoption of proposed Form F-11, it may be merged and consolidated with Form F-7 as approved under the Canadian MJDS.

In addition, foreign issuers, including Canadian issuers, that are reporting issuers under the Exchange Act may be eligible to register securities to be issued in connection with rights offers on Form F-3, as proposed to be amended hereby. [85] Foreign issuers that meet the eligibility conditions for registration on both Form F-11 and the amended Form F-3, therefore, would have the option of registering on either form.

V. Exemptions Under Rules 10b-6, 10b-7, and 10b-8 Under the Exchange Act

Rule 10b-6 under the Exchange Act generally prohibits persons participating in a distribution of securities ("distribution participants") and their "affiliated purchasers" [86] from, directly or indirectly, bidding for or purchasing the security being distributed, any security of the same class and series, or any right to purchase such security ("related securities") during the distribution. [87] Rule 10b-7 regulates stabilization transactions in connection with an offering of securities. Rule 10b-8 governs distributions that are made through rights offerings.

These anti-manipulation rules have played an important role in protecting U.S. markets from potentially manipulative conduct during a distribution. Specifically, Rule 10b-6 is designed to protect the market for the security in distribution as an independent pricing mechanism, free from any influence on the security's price that may result from bids or purchases of the distribution security or related securities by distribution participants or other persons having a financial or other stake in the success of the distribution. Rule 10b-6 is designed to facilitate distributions through rights by permitting distribution participants to bid for and purchase the rights, but limits the prices at which bids and purchases of rights, and offers and sales of the underlying security, may be made.

Foreign practices and methods of distributing securities, including distributions through rights offerings, often differ from those utilized in the United States. The growing internationalization of the securities markets has highlighted differences between U.S. and foreign provisions governing market activity during offerings of securities. The Commission has taken a number of steps to permit non-U.S. distribution participants to continue certain customary market activities in foreign jurisdictions, subject to conditions designed to protect against manipulative effects in the U.S. market. [88]

Flexible application of the above anti-manipulation rules appears to be necessary and appropriate to encourage foreign issuers to permit U.S. shareholders to participate fully in rights offerings made pursuant to proposed Rule 801 or Form F-11. At the same time, the importance of maintaining the integrity of the U.S. markets requires that any exemptions should be limited to circumstances where the characteristics of the offering indicate that the manipulation concerns expressed in Rules 10b-6, 10b-7, and 10b-8 are sufficiently attenuated. The proposed exemptions described below would have no effect on the continued application of the general antifraud and anti-manipulation provisions of the securities laws. [89]

It is likely that many of the rights offerings using proposed Rule 801 or Form F-11 will not be "distributions" as defined in Rule 10b-6, [90] and the persons participating in such offerings will not be affected by the rule or the need to consider whether the proposed exemptions are available. Nevertheless, the Commission believes that it is appropriate to exercise its exemptive authority under Rules 10b-6(h), 10b-7(e), and 10b-8(f) to propose a complete exemption for rights offerings pursuant to proposed Rule 801 on the presumption that such offerings of foreign securities are unlikely to raise significant manipulative concerns.

In the context of distributions through rights pursuant to proposed Form F-11, the Commission is proposing to issue an order that would exempt distribution participants from Rules 10b-6, 10b-7, and 10b-8, subject to the following conditions: (1) The issuer of the foreign securities in distribution has voting stock with an aggregate market value of at least $150 million held worldwide by persons that are not affiliates of the issuer; (2) in required proposed Form F-11 legends, [91] the registrant discloses, where such is the case, the possibility of, or the intent to make, bids or purchases outside the United States as permitted by the applicable laws and regulations of the governing foreign jurisdictions; (3) the registrant discloses in the United States information regarding such purchases to the extent such disclosure is made in a foreign jurisdiction; (4) any bids or purchases of the security by distribution participants are made on a "designated offshore securities market," as defined in Rule 902 under the Securities Act; [92] (5) no bids or purchases of the rights or the underlying securities are effected in the United States; and (6) at the time that the rights offering commences, the exercise price of the rights represents a discount of at least ten percent from the then current market price of the securities underlying the rights. A distribution participant would also be permitted to purchase rights to offset a short position in the security established in connection with the distribution. [93]

The Commission seeks commenters' views on the proposed exemptions. Specifically, should the issuer qualification of $150 million in voting securities be changed to equity with a "public float" [94] of $150 million; $75 million? With regard to the qualifying markets for bids and purchases, would it be more appropriate to limit the availability of the exemptions to purchases on "specified foreign securities markets," as defined in proposed Rule 3b-10 under the Exchange Act, [95] or markets located in countries with which the Commission has an MOU or other comparable information sharing agreement? [96]

[85] See Section IV.A., *supra*.

[86] The term "affiliated purchaser" is defined in Rule 10b-6(c)(6).

[87] The term "distribution" is defined in Rule 10b-6(c)(3) as an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. This definition is designed to apply the prohibitions of the rule to those situations where there would be an incentive to manipulate the security's price in order to facilitate the distribution. See n. 89, *infra*.

[88] See, e.g., Letter re The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited (Sept. 29, 1987); and Securities Act Release No. 6840 (July 24, 1989) [54 FR 32230], proposing Canadian MJDS.

[89] See n. 61 *supra*, and accompanying text.

[90] See n. 87, *supra*. In determining whether a distribution is present, only the portion of the securities offered in the U.S. would be considered. However, for purposes of Rule 10b-6, the offeror would have to take into account all securities concurrently offered by the offeror in the United States, including securities offered pursuant to exemptions from Securities Act registration.

[91] See part I, item 2 of Form F-11.

[92] See 17 CFR 230.902(a).

[93] See, *e.g.*, Rule 10b-8(d), which permits purchases of rights, subject to certain conditions, to cover sales of the underlying security by the distributor. Moreover, the Commission would consider requests for exemptive relief on a case-by-case basis for transactions that do not satisfy the criteria of the proposed exemptions.

[94] See Instruction 4 to proposed Form F-11.

[95] See Exchange Act Release No. 28733 (January 3, 1991) [56 FR 820].

[96] See n. 47 *supra* and accompanying text.

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Should this alternative limitation depend on the percentage of the offeror's securities held in the U.S.? The Commission believes that where the exercise price of the rights has been set at a significant bona fide discount from the market price for the underlying shares, distribution participants are less likely to have an incentive to effect transactions that could artificially raise the price of the underlying shares and thereby facilitate the distribution through securityholders' exercise of the rights.[97] The Commission requests comment on this view, and whether the ten percent discount level is appropriate in light of current rights offering practices. Should the discount level be higher or lower (*e.g.*, five percent, eight percent, 15 percent)? Should the level of any required discount be tied to the characteristics of the primary market for the offeror's securities or the percentage of the issuer's securities held in the U.S. (*e.g.*, 10 percent, 25 percent)? Finally, comment is requested concerning the role played by issuers and their affiliated purchasers in foreign rights offerings and whether it is appropriate to extend the proposed exemptions to them.[98]

VI. Request for Comments

Any interested person wishing to submit written comments on proposed Rule 801 and Form F–11, the proposed amendments to Form F–3, exemptive relief from Rules 10b–6, 10b–7 or 10b–8 or the treatment of rights offers by foreign private issuers in general, is requested to do so. Comment is also solicited regarding whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comment on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.

VII. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with proposed Rule 801 and Form F–11, and with the proposed amendments to Form F–3, the Commission requests commenters to provide views and data as to the costs and benefits associated with cross-border rights offers by foreign private issuers under current law as compared to such costs and benefits under the proposed Rule and Form, and proposed amendments to Form F–3. The Commission is not aware of any additional costs that would result from adoption of the proposed Rule and Form, as any eligible foreign private issuer would be able to avoid entirely expenses associated with the preparation and filing of a registration statement with the Commission in cases where the U.S. portion of the offering meets the requirements of Rule 801 and, in other cases, avoid some of the expenses resulting from having to prepare and file substantially different disclosure documents in the United States and in the issuer's home jurisdiction. Proposed amendments to Form F–3 would make that Form available for registration of rights offerings and other specified transactions to a broader class of foreign issuers. It is expected that foreign private issuers would thus be more willing to include the U.S. holders of their securities in rights offers and that U.S. investors in foreign securities will, as a group, benefit from the adoption of the proposed rule and Form, and proposed amendments to Form F–3. U.S. issuers would be unaffected by such changes.

VIII. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act,[99] the Chairman of the Commission has certified that adoption of the proposed rules and Forms, and proposed revisions to existing Rules and Forms, will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, is attached to this release as appendix B.

IX. Statutory Basis and Text of Proposed Rule and Form

The new rules and Forms and revisions to existing rules and Forms are being proposed pursuant to sections 3, 7, 8, 10 and 19 of the Securities Act,[100] and sections 12 and 23 of the Exchange Act.[101]

List of Subjects in 17 CFR Parts 230, 239 and 240

Reporting and recordkeeping requirements, securities.

X. Text of Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 79t, and 80a–37, as amended, unless otherwise noted.

2. By revising paragraph (a) of § 230.174 to read as follows:

§ 230.174 Delivery of prospectus by dealers; exemptions under section 4(3) of the Act.

* * * * *

(a) No prospectus need be delivered if the registration statement is on Forms F–6 or F–11 (§ § 239.36 or 42 of this chapter).

* * * * *

3. By adding § 230.441 to read as follows:

§ 230.441 Exemption from the requirement to provide consents for registration statements on Form F–11.

The written consent of an expert pursuant to section 7 of the Act shall not be required with respect to a registration statement on Form F–11 (17 CFR 239.43 of this chapter), except with respect to a certification, report or valuation prepared solely in connection with such registration statement.

4. By revising § 230.464 to read as follows:

§ 230.464 Effective date of post-effective amendments to registration statements filed on Form S–8 and Form F–11, and on certain Forms S–3, S–4, F–3, and F–4.

Provided. That, at the time of filing of each post-effective amendment with the Commission, the issuer continues to meet the requirements of filing on Form S–8 (§ 239.16b of this chapter) or Form F–11 (§ 239.43 of this chapter); or on Form S–3 (§ 239.13 of this chapter) for a registration statement relating to a dividend or interest reinvestment plan; or on Form F–3 (§ 239.33 of this chapter) for a registration statement relating to a transaction meeting the requirements specified in paragraph 4 of General Instruction I.B. of that Form; or in the case of a registration statement on Form S–4 (§ 239.25 of this chapter) that there is continued compliance with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) that there is continued compliance with General Instruction F of that Form:

(a) The post-effective amendment shall become effective upon filing with the Commission; and

(b) With respect to securities sold on or after the filing date pursuant to a prospectus which forms a part of a Form S–8 or Form F–11 registration statement; or a Form S–3 registration statement relating to a dividend or interest reinvestment plan; or a Form F–3 registration statement relating to a transaction meeting the requirements specified in paragraph 4 of General Instruction I.B. of that Form; or a Form S–4 registration statement complying with General Instruction G of that Form or a Form F–4 registration statement complying with General Instruction F of that Form and which has been amended to include or incorporate new full year financial statements or to comply with the provisions of section 10(a)(3) of the Act, the effective date of the registration statement shall be deemed to be the filing date of the post-effective amendment.

5. By adding new § 230.468 to read as follows:

§ 230.468 Effectiveness of registration statements made on Form F–11 and on certain Forms F–3.

A registration statement on Form F–11 (§ 239.43 of this chapter) or on Form F–3 (§ 239.33 of this chapter) relating to offerings described in paragraph 4 of General Instruction I.B. of that Form shall become effective upon filing with the Commission.

6. By revising paragraph (d) of § 230.473 to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form F–11 or Form S–8 (§ 239.16b or § 239.43 of this chapter); on Form S–3 (§ 239.13 of this chapter) relating to a dividend or interest reinvestment plan; on Form F–3 (§ 239.33 of this chapter) relating to a transaction meeting the requirements specified in paragraph 4 of General Instruction I.B. of that Form; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form.

7. By adding new § 230.801 to read as follows:

§ 230.801 Exemption for limited offers and sales of securities by a foreign private issuer to its security holders.

Preliminary Notes

1. Section 230.801 relates solely to the application of section 5 of the Securities Act of 1933 (the "Act") (15 U.S.C. 77e) and not to the applicability of the antifraud, civil liability or other provisions of the federal securities laws.

2. In view of the objectives of § 230.801 and the policies underlying the Act, § 230.801 is not available with respect to any transaction or series of transactions that, although in technical compliance with this rule, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

3. Nothing in this § 230.801 obviates the need for any issuer or any other person to comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78 *et seq.*) or other provisions of the federal securities laws whenever such requirements are applicable.

4. Nothing in this § 230.801 obviates the need to comply with any applicable state law relating to the offer and sale of securities.

5. Attempted compliance with § 230.801 does not act as an exclusive election; a person making an offer or sale of securities in reliance on § 230.801 may also claim the availability of any other applicable exemption from the registration requirements of the Act.

6. Section 230.801 provides an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves. Securities of foreign private issuers, whether or not acquired in a transaction made in reliance on § 230.801, may be resold in the United States only if they are registered under the Act or an exemption from registration is available.

7. The provisions of this § 230.801 shall not apply to offers and sales of securities issued by investment companies registered or required to be registered under the Investment Company Act of 1940 (the "Investment Company Act") (15 U.S.C. 80a–1 *et seq.*).

8. Offers and sales made outside the United States will not affect, or be affected by, contemporaneous rights offer made in compliance with § 230.801 and will not be included in calculating the aggregate offering price of securities offered and sold in compliance with this § 230.801. A transaction made in compliance with this § 230.801 will not be integrated with registered domestic offerings or domestic offerings that satisfy the requirements for an exemption from registration under the Act, including an exemption under other rules adopted pursuant to section 3(b) of the Act, even if undertaken contemporaneously. No adjustment to the aggregate offering price shall be made for other offerings by an issuer made in reliance upon an exemption under other rules adopted pursuant to section 3(b) of the Act.

(a) *Exemption.* Offers and sales of equity securities issuable upon the exercise of rights to purchase or subscribe for such securities granted by the issuer to the existing holders of securities of such class (including depositary receipts that evidence such securities) in proportion to the number of such securities held by them as of the record date for the rights offer (assuming, in the case of securities that evidence such securities, that such holders owned the underlying securities directly) shall be exempt from the provisions of section 5 of the Act by virtue of section 3(b) of the Act, provided that the conditions specified in paragraph (b) of this section are satisfied.

(b) *Conditions to be met*— (1) *Eligibility of issuer.* (i) As of the commencement date of the subject offering, the issuer:

(A) Shall be a foreign private issuer; and

(B) Shall either:

(*1*) Be a Reporting Issuer; or

(*2*) Be exempt from the requirements of section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b) thereunder, have at least one class of its equity securities listed or quoted on one or more designated offshore securities markets and be currently in compliance with the obligations arising from such listing or quotation, and either:

(*i*) Have maintained such listing or quotation for the consecutive 36-month period immediately preceding the commencement date of the offering to be made in reliance on this § 230.801; or

(*ii*) Have a public float of not less than $75 million.

(ii) If the issuer is a successor issuer existing after a merger, a spinoff, an arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the issuer shall be deemed to meet the 36-month listing requirement of paragraph (b)(1)(i)(C)(*2*)(*i*) of this section if:

(A) The time the successor issuer has been listed or quoted on one of such designated offshore securities markets, when added separately to the time each predecessor had been so listed or quoted at the time of the business combination, in each case equals at least 36 calendar months, *Provided, however,* That any predecessor need not be considered for the purposes of the listing history calculation if the listing

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[97] See Letter re Attwoods PLC (June 26, 1990) ("Attwoods Letter") (exemptions from Rules 10b–6, 10b–7 and 10b–8 to permit an underwriter that was a market maker on the ISE to engage in market making during a cross-border rights offering of Attwoods ordinary shares. The rights exercise price was set at a discount of 18 percent from the market price of the ordinary shares as of commencement of the rights offering. Other important considerations in the Attwoods Letter were: the existence of a comprehensive monitoring and surveillance program at the ISE, and U.K. provisions that prohibit fraudulent and manipulative activity; and the Memorandum of Understanding ("MOU") between the Commission and the U.K. Department of Trade and Industry). See also Letter re Securities Industry Association (Apr. 23, 1991) ("SIA Letter") (application of Rules 10b–6, 10b–7, and 10b–8 to Rights Offerings and Rule 144A Transactions Involving Foreign Securities).

[98] Limiting the exemptions to persons other than the issuer and its affiliates would be consistent with prior Commission actions. See *e.g.*, SIA Letter.

[99] 5 U.S.C. 605(b).

[100] 15 U.S.C. 77, 77g, 77h, 77j and 77s.

[101] 15 U.S.C. 78 and 78w.

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histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor issuer as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor issuer in each case satisfies such 36-month listing requirement; and

(B) The successor issuer has had a class of its equity securities listed or quoted on at least one of such designated offshore securities markets since the business combination and currently is in compliance with the obligations arising from such listing.

(2) *Eligibility of securities.* The securities to be offered or sold in reliance on this § 230.801 shall be equity securities of the same class as that held by U.S. holders.

(3) *Manner of Rights Offering.* (i) Any offer or sale of securities in reliance on this § 230.801 shall be:

(A) For cash only;

(B) Offered and sold upon the exercise of rights granted to offerees that are U.S. holders upon terms and conditions that are not less favorable than those extended to any other holder of securities of the class being offered; and

(C) Made pursuant to the exercise of rights to purchase or subscribe for such securities that:

(*1*) Were granted by the issuer to the existing holders of securities of the same class (including depositary receipts that evidence such securities) in proportion to the number of such securities held by them as of the record date for the rights offer (assuming, in the case of holders of securities that evidence such securities, that such holders owned the underlying securities directly); and

(*2*) When issued to offerees that are U.S. holders, are by their terms not transferable except in accordance with Regulation S (§§ 230.901–904 of this chapter).

(ii) All offerees that are U.S. holders shall be provided with the same notices, documents or other information as that provided to the offerees in the home jurisdiction of the issuer at the same time that, or as soon as practicable after, such notices, documents or other information are made available to the home jurisdiction offerees. If in lieu of delivering notices, documents, or other information to offerees in the home jurisdiction, information regarding the offering is being published or advertised in a home jurisdiction publication, then the issuer may at its option publish substantially equivalent information in the English language in a publication of general circulation in the United States or deliver a written copy of the home jurisdiction publication or advertisement to each offeree that is a U.S. holder at the same time that, or as soon as practicable after, the information becomes publicly available in the home jurisdiction of the issuer. If such notice, document or other information is furnished to the home jurisdiction offerees in a language other than English, then an English translation or summary of such notice, document, or other information shall be furnished to offerees that are U.S. holders.

(4) *Aggregate offering price.* The aggregate offering price of securities subject to outstanding offers made to offerees that are U.S. holders in connection with each rights offering made in reliance on this § 230.801 shall not exceed $5,000,000.

(c) *Definitions.* As used in this § 230.801, the following terms shall have the meaning indicated:

(1) *Aggregate offering price* means the total gross sales price to be received by the issuer for issuance of its securities upon exercise of the related rights. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the commencement date of the offering.

(2) The *commencement date* of a rights offer made in reliance on this § 230.801 is the date the securities are first offered to offerees that are U.S. holders.

(3) *Designated offshore securities market* has the meaning specified in Rule 902(a) of Regulation S under the Act (§ 230.902(a) of this chapter).

(4) *Equity security* has the meaning specified in Rule 405 of Regulation D (§ 230.405 of this chapter) but does not include:

(i) Any security convertible, with or without consideration, into an equity security, or carrying any warrant or right to subscribe to or purchase an equity security;

(ii) Any such warrant or right; or

(iii) Any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

(5) *Foreign private issuer* has the meaning specified in Rule 405 of Regulation C (§ 230.405 of this chapter).

(6) *Home jurisdiction.* With respect to any offer or sale of securities made in reliance on this § 230.801, the "home jurisdiction" means the country of the issuer's organization or incorporation, unless the primary market for the issuer's equity securities is in some other country, in which case such country of the primary market for the listed securities shall be deemed the "home jurisdiction." The "primary market" of a class of securities is the single securities market with the largest aggregate trading volume for that class of securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation or organization.

(7) *Public float* means the market value of the issuer's equity securities listed or quoted on a designated offshore securities market and held by nonaffiliates of the issuer. *Market value* shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the primary market for such shares as of a date within 60 days prior to the commencement. If there is no market for such shares the book value of such shares computed as of the latest practicable date prior to the commencement date shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such shares shall be used. An "affiliate" of an issuer shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the issuer. The determination of affiliates shall be made as of the end of the issuer's most recently completed fiscal year.

(8) *Publication with a general circulation in the United States.* (i) "Publication with a general circulation in the United States" means any publication that:

(A) Is printed primarily for distribution in the United States; or

(B) Has had, during the preceding twelve months, an average circulation in the United States of 15,000 or more copies per issue.

(ii) Notwithstanding paragraph (c)(8)(i) of this section, only the U.S. edition of any publication printing a separate U.S. edition will be deemed a publication with a general circulation in the United States if:

(A) Such publication, without consideration of its U.S. edition, would not meet the requirements of paragraph (c)(8)(i) (A) or (B) of this section; and

(B) The U.S. edition itself meets the requirements of paragraph (c)(8)(i) of this section.

(9) *Reporting Issuer* means an issuer other than an investment company

registered or required to be registered under the Investment Company Act that:

(i) Has a class of securities registered pursuant to section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or 78*l*(g)) or is required to file reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 78*o*(d)); and

(ii) Has filed all the materials required to be filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) for a period of at least 12 months immediately preceding the commencement date of the offering being made in reliance upon this § 230.801 (or for such shorter period that the issuer was required to file such material).

(10) *U.S. holder.* With respect to any offer or sale of securities made in reliance on this § 230.801, a "U.S. holder" means any person whose address appears on the records of the issuer or any voting trustee, depositary, share transfer agent or any person acting on behalf of the issuer for such securities, as being located in the United States.

(11) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The authority citation for part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

§ 239.32 [Amended]

9. By amending § 239.32 by removing paragraph (e) and redesignating paragraphs (f) and (g) as paragraphs (e) and (f).

10. By amending Form F–2 (17 CFR 239.32) by removing paragraph E. of General Instructions I and redesignating paragraphs F. and G. as paragraphs E. and F.

Note: Form F–2 is not codified in the Code of Federal Regulations.

11. By amending § 239.33 by revising paragraphs (a)(2) and (a)(4) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(2) The registrant:

(i) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14, or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and

(ii) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) (§ 240.12b–25(b)) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule, except that the provisions of this paragraph do not apply if the only securities being registered are to be offered in a transaction of the type described in (b)(4) of the Transaction Requirements.

* * * * *

(4) The aggregate market value worldwide of the voting stock held by non-affiliates of the registrant is the equivalent of $300 million or more, except that the provisions of this paragraph do not apply if the only securities being registered are to be offered in a transaction of the type described in (b)(2) or (b)(4) of the Transaction Requirements.

* * * * *

§ 239.33 [Amended]

12. By amending Form F–3 (17 CFR 239.33) by revising General Instructions I.A.2. and I.A.4. to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

I. * * *

A. * * *

2. The registrant:

(a) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14, or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and

(b) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) (§ 240.12b–25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule, except that the provisions of this paragraph do not apply if the only securities being registered are to be offered in a transaction of the type described in B.4. of the Transaction Requirements.

* * * * *

4. The aggregate market value worldwide of the voting stock held by non-affiliates of the registrant is the equivalent of $300 million or more, except that the provisions of this paragraph do not apply if the only securities being registered are to be offered in a transaction of the type described in B.2. or B.4. of the Transaction Requirements.

* * * * *

§ 239.33 [Amended]

13. By amending Form F–3 (17 CFR 239.33) by revising the heading and the first three sentences of General Instruction III to read as follows:

Form F–3

* * * * *

General Instructions

* * * * *

III. Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions of Warrants: Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment

Original registration statements on this Form F–3 solely with respect to securities offered pursuant to transactions of the type described in B.4. of the Transaction Requirements shall become effective automatically upon filing (Rule 456, § 230.456 of this chapter) pursuant to the provisions of section 8(a) of the Act.* * *

* * * * *

14. By adding § 239.43 (Form F–11) to read as follows:

§ 239.43 Form F–11, registration of securities offered by certain foreign private issuers to existing security holders pursuant to rights offerings.

(a) Form F–11 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of equity securities offered or sold for cash upon the exercise of rights to purchase or subscribe for such securities granted by the Registrant to the existing holders of securities of such class (including depositary receipts that evidence such securities) in proportion to the number of such securities held by them as of the record date for the rights offer (assuming, in the case of securities that evidence such securities, that such holders owned the underlying securities directly).

Instruction

For purposes of this Form, the term *equity security* has the meaning specified in Rule 405 of Regulation C (§ 230.405 of this chapter) but does not include: (1) Any security convertible, with or without consideration, into an equity security, or carrying any

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warrant or right to subscribe to or purchase an equity security; (2) any such warrant or right; or (3) any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

(b) Form F–11 is available to any Registrant that is a foreign private issuer and that either:

(1) Is a Reporting Issuer, or

(2) Is exempt from the requirements of section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") pursuant to Rule 12g3–2(b) thereunder, has a class of its equity securities listed or quoted on a designated offshore securities market and currently is in compliance with the obligations arising from such listing or quotation and either:

(i) Has maintained such listing or quotation for the consecutive 36-month period immediately preceding the commencement date of the offering being registered on this Form; or

(ii) Has a public float of not less than $75 million.

Instructions

1. For purposes of this Form, *foreign private issuer* shall be construed in accordance with Rule 405 of Regulation C (§ 230.405 of this chapter).

2. For purposes of this Form, *Reporting Issuer* means an issuer other than an investment company registered or required to be registered under the Investment Company Act of 1940 (the "Investment Company Act") that: (i) Has a class of securities registered pursuant to section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or 78*l*(g)) or is required to file reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 78*o*(d)); and (ii) has filed all the materials required to be filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) for a period of at least 12 months immediately preceding the commencement date of the offering being registered on this Form (or for such shorter period that the issuer was required to file such material).

3. For purposes of this Form, the term *designated offshore securities market* shall be construed in accordance with Rule 902(a) of Regulation S under the Securities Act.

4. For purposes of this Form, *public float* shall be the market value of the registrant's equity securities listed or quoted on a designated offshore securities market and held by nonaffiliates of the issuer. "Market value" shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for such shares, the book value of such shares computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such shares is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such shares shall be used. An *affiliate* of an issuer shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the issuer. The determination of affiliates shall be made as of the end of the issuer's most recently completed fiscal year.

5. For purposes of this Form, the *commencement date* of a rights offer is the date the registration statement is filed with the Commission.

(c) If the Registrant is a successor Registrant existing after a merger, a spinoff, an arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the registrant shall be deemed to meet the 36-month listing requirement of paragraph (b)(2)(i) of this § 239.43 if:

(1) The time the successor Registrant has been listed or quoted on one of such designated offshore securities markets, when added separately to the time each predecessor had been so listed or quoted at the time of the business combination, in each case equals at least 36 calendar months, *Provided, however,* That any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor Registrant in each case satisfies such 36-month listing requirement; and

(2) The successor Registrant has had a class of its equity securities listed or quoted on at least one of such designated offshore securities markets since the business combination and currently is in compliance with the obligations arising from such listing.

(d) The rights in connection with the transaction granted to offerees that are U.S. holders shall be granted upon terms and conditions not less favorable than those extended to any other holder of the same class of securities. That the securities offered or sold upon exercise of rights to securityholders that are U.S. holders may not be registered on this Form if such rights are transferable other than in accordance with Regulation S under the Securities Act.

Instruction

For purposes of this Form, the term *U.S. holder* shall mean any person whose address appears on the records of the registrant or any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the Registrant for such securities, as being located in the United States. *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(e) This Form may not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

(f) The Commission has granted exemptions from Rules 10b–6, 10b–7, and 10b–8 for certain rights offerings made in reliance on Form F–11 that constitute distributions in the United States. See Exchange Act Release No.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

15. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78q, 79t, 80a–29, 80a–37, unless otherwise noted.

16. By adding § 240.12h–5 to read as follows:

§ 240.12h–5 Exemption from duty to file reports under section 15(d).

An issuer shall be exempt from the duty under section 15(d) of the Act to file reports required by section 13(a) of the Act with respect to securities registered under the Securities Act of 1933 on Form F–11 (17 CFR 230.43).

Dated: June 5, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Proposed Form F–11 under the Securities Act of 1933

Note: Form F–11 does not appear in the Code of Federal Regulations.

OMB APPROVAL

OMB Number:
Expires: Approval Pending
Estimated average burden hours per response 2.0

U.S. Securities and Exchange Commission
Washington, DC 20549

Form F–11

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Jurisdiction of incorporation or organization of Registrant)

(Jurisdiction of primary market of securities being registered)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. [ ]

Calculation of Registration Fee*

Title of each class of securities to be registered	Amount to be to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

* See General Instruction II.F. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

General Instructions

I. Eligibility Requirements for Use of Form F–11

A. Form F–11 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of equity securities offered or sold for cash upon the exercise of rights to purchase or subscribe for such securities granted by the Registrant to the existing holders of securities of such class (including depositary receipts that evidence such securities) in proportion to the number of such securities held by them as of the record date for the rights offer (assuming, in the case of securities that evidence such securities, that such holders owned the underlying securities directly).

Instruction

For purposes of this Form, the term "equity security" has the meaning specified in Rule 405 of Regulation C (§ 230.405 of this chapter) but does not include: (1) any security convertible, with or without consideration, into an equity security, or carrying any warrant or right to subscribe to or purchase an equity security; (2) any such warrant or right; or (3) any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

B. Form F–11 is available to any Registrant that is a foreign private issuer and that either:

(1) is a Reporting Issuer, or

(2) is exempt from the requirements of Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") pursuant to Rule 12g3–2(b) thereunder, has a class of its equity securities listed or quoted on a designated offshore securities market and currently is in compliance with the obligations arising from such listing or quotation and either: (i) has maintained such listing or quotation for the consecutive 36-month period immediately preceding the commencement date of the offering being registered on this Form; or (ii) has a public float of not less than $75 million.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 of Regulation C (§ 230.405 of this chapter).

2. For purposes of this Form, "Reporting Issuer" means an issuer other than an investment company registered or required to be registered under the Investment Company Act of 1940 (the "Investment Company Act") that: (i) has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act [15 U.S.C. § 78*l*(b) or § 78*l*(g)] or is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78*o*(d)]; and (ii) has filed all the materials required to be filed pursuant to Section 13(a) or 15(d) of the Exchange Act [15 U.S.C. § 78m(a) or § 78*o*(d)] for a period of at least 12 months immediately preceding the commencement date of the offering being registered on this Form (or for such shorter period that the issuer was required to file such material).

3. For purposes of this Form, the term "designated offshore securities market" shall be construed in accordance with Rule 902(a) of Regulation S under the Securities Act.

4. For purposes of this Form, "public float" shall be the market value of the Registrant's equity securities listed or quoted on a designated offshore securities market and held by nonaffiliates of the issuer. "Market value" shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for such shares, the book value of such shares computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such shares is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such shares shall be used. An "affiliate" of an issuer shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the issuer. The determination of affiliates shall be made as of the end of the issuer's most recently completed fiscal year.

5. For purposes of this Form, the "commencement date" of a rights offer is the date the registration statement is filed with the Commission.

C. If the Registrant is a successor Registrant existing after a merger, a spinoff, an arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the Registrant shall be deemed to meet the 36-month listing requirement of I.B.(2)(i) above if: (1) the time the successor Registrant has been listed or quoted on one of such designated offshore securities markets, when added separately to the time each predecessor had been so listed or quoted at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of the predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor Registrant in each case satisfies such 36-month listing requirement; and (2) the successor Registrant has had a class of its equity securities listed or quoted on at least one of such designated offshore securities markets since the business combination and is currently in compliance with the obligations arising from such listing.

D. The rights in connection with the transaction granted to offerees that are U.S. holders shall be granted upon terms and conditions not less favorable than those extended to any other holder of the same class of securities. The securities offered or sold upon exercise of rights granted to offerees that are U.S. holders may not be registered on this Form if such rights are transferable other than in accordance with Regulation S under the Securities Act.

Instruction

For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the

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Registrant, any voting trustee, any depositary share transfer agent or any person acting on behalf of the Registrant for such securities as being located in the United States. "United States" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

E. This Form may not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act.

II. Application of General Rules and Regulations

A. The Rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in this Form or unless any such Rule refers specifically to this Form. Instead, the rules and regulations applicable in the home jurisdiction regarding form and method of preparation of disclosure documents shall apply to filings on this Form. Securities Act rules and regulations other than Regulation C apply to filings on this Form unless specifically excluded in this Form.

Instruction

For purposes of this Form, the term "home jurisdiction" shall mean the jurisdiction of the issuer's organization or incorporation, unless the primary market for the securities being registered is some other country, in which case such country where the primary market for the securities being registered is located shall be deemed to be the "home jurisdiction." The "primary market" is the single securities market with the largest aggregate trading volume for the class of the issuer's securities with regard to which the rights are being offered in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Rule 415 under the Securities Act, which permits the registration of certain securities to be offered on a delayed or continuous basis, shall apply to filings on this Form. Attention is directed to Section 10(a)(3) of the Securities Act which provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense. With regard to any such prospectus used more than nine months after the effective date of the registration statement, Rule 427 under the Securities Act, which permits the omission from the prospectus of information previously required to be contained in the prospectus insofar as later information covering the same subjects is contained therein, shall apply to filings on this Form.

D. Five copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

E. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

F. At the time of filing this registration statement, the Registrant shall pay to the Commission, in accordance with Rule 111 under the Securities Act, a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

The registration fee is to be calculated at the price at which the rights may be exercised if known at the time of filing the registration statement, or, if not known, at the market value of outstanding securities of the same class included in the registration statement. If the fee is to be calculated upon the basis of the price at which the rights may be exercised and they are exercisable over a period of time at progressively higher prices, the fee shall be calculated on the basis of the highest price at which they may be exercised.

Instruction

The market value of the Registrant's outstanding securities shall be the average of the high and low prices reported or the average of the bid and asked price of such securities, in the principal market for such securities as of a date within 30 days prior to the date of filing.

G. If any part of the prospectus is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or any amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

H. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

I. A registration statement on this Form and any amendments thereto shall become effective upon filing in accordance with Rule 466. As provided in Rule 473(d), delaying amendments are not permitted in connection with any registration statement on this Form, and any attempt to interpose a delaying amendment of any kind will be ineffective.

J. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

K. Any change to the name or address of a Registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the relevant registration statement.

III. Compliance With Exchange Act and Auditor Independence & Reporting Requirements

A. Pursuant to Rule 12h–5 under the Exchange Act, a Registrant shall be exempt from reporting obligations under Section 15(d) of the Exchange Act if such reporting obligations would have arisen solely from registration of securities on this Form. The Registrant's attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of Sections 12(b) and 12(g) of the Exchange Act and Rules 10b–8, 10b–7 and 10b–6 under the Exchange Act. *See* Exchange Act Release No.

B. The Commission's rules on auditor independence, as codified in Section 600 of the Codification of Financial Reporting Policies, shall not apply to auditor reports on all financial statements that are included in this registration statement under the Securities Act filed by the issuer on Form F–12.

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents used to offer the rights and underlying securities to offerees in the home jurisdiction of the Registrant including, where applicable, the rules of any stock exchange in such jurisdiction upon which the Registrant has any class of securities listed or has applied for such listing. Such disclosure document(s)

shall include all information used to make such offers, without regard to whether such information has previously been provided to shareholders. Except as noted hereinafter, such offering circular or prospectus shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other securities regulatory authority in such jurisdiction.

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into home jurisdiction disclosure documents and not required to be delivered to securityholders pursuant to the laws of such jurisdiction.

Notwithstanding the foregoing, the prospectus used in the United States need not contain any disclosure applicable solely to offerees or purchasers outside the United States that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any non-U.S. legends; (ii) any discussion of tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any underwriters not acting as underwriters in the United States or a description of the non-U.S. plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable non-U.S. securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

This offering is made by a foreign issuer that is permitted to prepare this prospectus in accordance with the disclosure requirements of its home jurisdiction. Prospective investors should be aware that such requirements are different from those of the United States. Financial statements included or incorporated herein, if any, have been prepared in accordance with foreign generally accepted accounting principles, and are subject to foreign auditing and auditor independence standards, and thus may not be comparable to financial statements of United States companies.

Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the Registrant's jurisdiction of incorporation. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein.

The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3–2(b) under the Exchange Act. Any such incorporation by reference shall be done in accordance with Rule 24 of the Commission's Rules of Practice.

Item 4. List of Documents Filed With the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement and all documents incorporated by reference into the registration statement.

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Any reports or information that, in accordance with the requirements of the home jurisdiction of the Registrant, must be made publicly available in connection with the transaction.

(2) Copies of any documents incorporated by reference into the registration statement and any publicly available documents filed with any home jurisdiction regulatory authority concurrently with the prospectus.

(3) If any name is signed to the registration statement or amendment pursuant to a power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the Registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–11 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of_____, Country of_____, on_____.

Registrant _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

(Date) _____

Instructions

A. The registration statement shall be signed by the Registrant, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

Appendix B—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission (the "Commission"), hereby certify pursuant to 5 U.S.C. 605(b) that: Proposed Form F–11 under the Securities Act of 1933 (the "Securities Act"); proposed Rules 441, 466 and 801, proposed changes to Rules 174, 404 and 473, and proposed changes to Forms F–2 and F–3 under the Securities Act; and proposed Rule 12h–5 under the Securities Exchange Act of 1934 (the "Exchange Act"), if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

The proposed rules and form and proposed changes to existing rules noted above are intended primarily to facilitate cross-border rights offerings of equity securities by eligible foreign private issuers to their existing U.S. shareholders. The resulting reduction in the expense, time and effort of making such offerings will benefit foreign entities that issue securities, rather than U.S. entities. In connection with the cross-border rights offering proposal, the Commission also is proposing revisions to Form F–2 and Form F–3 to extend the availability of Form F–3 to a broader class of reporting foreign issuers for registration of rights offerings and certain other specified transactions under the Securities Act. Such revisions also would benefit foreign entities registering securities and reporting with the Commission, rather than U.S. entities.

An expected result of adoption of the proposed rules and form and proposed changes to existing rules is that offerings by foreign companies would be made in the

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United States in situations where hitherto investors in the United States would have been excluded due to the time and expense of compliance with the regulatory requirements of more than one jurisdiction. The resulting increase in exempt and registered rights offerings in the United States by foreign issuers can be expected to increase ease of investment for small U.S. entities acting as investors. Small U.S. entities are not more likely than large U.S. entities, however, to be affected by the greater ease of investment in offerings of foreign issuers. These effects, in any case, are not expected to be significant for a substantial number of small entities in the United States. Since U.S. holdings in foreign securities are relatively small, the likelihood of such increased offerings in the U.S. significantly affecting a substantial number of small U.S. entities is minimized.

The proposed new rules and form and the proposed amendments to rules and forms are summarized in the attached memorandum.[1] That their primary effect is on foreign entities is apparent from such document.

Dated: June 4, 1991.

Richard C. Breeden,

Chairman.

[1] Note: The above-referenced memorandum is not included in this release.

[FR Doc. 91-13750 Filed 6-13-91; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Parts 200, 230, 239, 240, and 260

[Release No. 33-6897, 34-29275; 39-2266; International Series—285; File No. S7-18-91]

RIN 3235-AD87

International Tender and Exchange Offers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules, forms, and order.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment proposed tender offer exemptive rules and registration procedures under the Securities Act of 1933,[1] the Securities Exchange Act of 1934,[2] and the Trust Indenture Act of 1939,[3] intended to facilitate the inclusion of United States investors in tender offers and exchange offers for a foreign target company's securities. The proposals would permit offers to be made to United States investors in compliance with foreign law and regulation, where the holdings by United States investors of the securities sought in the bid do not exceed a specified ceiling.

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 77aaa *et seq.*

The release also proposes for comment procedures to be made available for tender offers and exchange offers for United Kingdom companies to allow for compliance with both the Williams Act [4] and the City Code on Takeovers and Mergers ("City Code").[5]

And finally, the Commission is announcing proposed technical amendments to its general organization rule which delegates authority to the Directors of the Divisions of Corporation Finance and Market Regulation.[6] The amendments would permit the Directors to exempt tender offers from certain provisions of the Williams Act requirements.

DATES: Comments should be received on or before September 9, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-18-91. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: John C. Maguire, Office of Tender Offers, Division of Corporation Finance, at (202) 272-3097; For questions on Rules 10b-6, 10b-7, 10b-13 and Rule 13e-4 under the Exchange Act contact George E. Scargle, Office of Legal Policy and Trading Practices, Division of Market Regulation, at (202) 272-2848, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment:

(1) Proposed Form F-12 under the Securities Act of 1933;

(2) Proposed Form 13E4H, and Form 14D1C under the Securities Exchange Act;

(3) Proposed Rules 440, 469, and 802, and proposed changes to Rules 174, 464, 473 under the Securities Act;

(4) Proposed Rule 12h-4, and proposed changes to Rules 12g3-2(b), 13e-4 and 14d-1 under the Securities Exchange Act;

(5) Proposed changes to Rules 30-1 and 30-3 under the Commission's rules of practice; and

(6) Proposed Rule 4d-10 under the Trust Indenture Act of 1939.

[4] The Williams Act, enacted in 1968 and amended in 1970, added sections 13(d), 13(e), 14(d), 14(e) and 14(f) to the Securities Exchange Act. Act of July 29, 1968, Pub. L. No. 90-439, 82 Stat. 454; Act of Dec. 22, 1970, Pub. L. No. 91-567, 1, 2, 84 Stat. 1497 (codified at 15 U.S.C. 78m(d)-(e) and 78n(d)-(f) (1970)).

[5] The City Code on Take-overs and Mergers (1990) 2 Fin. Serv. Rep. (CCH Ltd).

[6] 17 CFR 200.30-1 and 200.30-3.

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I. Executive Summary

A. Background

On June 6, 1990, the Commission issued a concept release [7] addressing the conduct of tender and exchange offers in the context of the growing internationalization of the world's securities markets. The Concept Release was issued in recognition of the general practice of foreign bidders and issuers to seek to exclude U.S. investors from a multinational offer, where U.S. investors comprise a small portion of a foreign target company's security holdings, based upon a determination that the cost of compliance with U.S. securities laws and regulations outweighs the benefit of U.S. security holder participation. In the case of exchange offers, foreign issuers often are unwilling to register securities with the

[7] Concept Release on Multinational Tender and Exchange Offers, Securities Exchange Act Release No. 28003 (June 6, 1990) (55 FR 23731) (hereinafter "Concept Release").

Commission under the Securities Act of 1933 ("Securities Act") [8] and incur a continuous reporting obligation under the Securities Exchange Act of 1934 ("Exchange Act").[9] When excluded from participation in a tender or exchange offer, U.S. holders are denied the opportunity to receive a significant premium for their shares or participate in what may be an attractive investment opportunity.

Securities markets around the world have become increasingly global as U.S. investors have increased their holdings in foreign securities and foreign issuers have expanded their use of the U.S. capital markets. Currently, approximately 425 foreign issuers, representing 30 countries, have securities traded on an exchange in the United States or on NASDAQ and approximately 1,100 issuers, representing 25 foreign countries,[10] furnish information to the Commission pursuant to Rule 12g3-2(b).[11] In addition, U.S. investors purchased an estimated $130.9 billion in foreign equities in 1990, up from $10.4 billion in 1980.[12]

The evolution of an increasingly international marketplace has resulted in tender and exchange offers being made across national boundaries to holders resident in several countries.[13] This trend also has been accelerated by the prospect of a unified European market in 1992, where a significant number of cross border acquisitions have occurred in recent years.[14] A significant amount of this activity has been centered in the United Kingdom; over 35% of all cross border purchases in 1990 by European Community companies emanated from the United Kingdom.[15] In the United Kingdom itself, 239 takeovers were commenced in 1990 for U.K. companies subject to the City Code on Take-overs and Mergers ("City Code").[16] Although data on the percentage of target company shares held by U.S. investors generally is not available,[17] these acquisitions routinely have excluded shareholders resident in the United States where their holdings were not necessary for the success of the offering.[18]

In light of the increasing U.S. ownership of foreign securities and the likelihood of significant acquisition activity with respect to securities of foreign issuers in the future through mergers, tender offers, and exchange offers, the practice of excluding U.S. holders is expected to have an increasingly significant effect both in terms of the number of U.S. investors affected and the potential number of transactions involved. Despite their exclusion, U.S. investors are directly affected by these transactions, since they generally will be forced to sell into the market, incurring significant transaction costs not associated with the tender or exchange offer, or relegated to minority shareholder status with significantly less liquidity and subject to the possibility of being cashed out in a subsequent "freeze-out" merger.

The Commission's Concept Release posed the fundamental question of whether U.S. investors' interests would be better served by insisting upon compliance with U.S. regulations for all offers extended into this country, resulting in the continued exclusion of U.S. security holders from tender and exchange offers, or facilitating the participation of U.S. investors on equal terms with foreign security holders, with the protections afforded by the target company's regulatory scheme and U.S. antifraud provisions. Commenters overwhelmingly endorsed the view that U.S. investors would be better served by their inclusion in the offer, even where they have to rely on a foreign regulatory scheme.[19]

B. Summary of Proposals

The rules proposed today would permit tender offers for a foreign issuer's securities, whether subject to section 12 of the Exchange Act [20] or subject only to section 14(e) [21] and Regulation 14E of the Exchange Act,[22] to proceed in the U.S. on the basis of the applicable regulation of the target company's home jurisdiction,[23] where a small percentage of the shares sought are held of record by United States holders. Under the new procedures, offers eligible for the proposed exemptions would not be subject to the disclosure, filing, dissemination and minimum offering period requirements, proration and withdrawal rights, and other requirements of Rule 13e-4 and Regulations 14D or Regulation 14E,[24] other than Rule 14e-3 insider trading prohibitions.

The conditions for reliance on the proposed rules would be (1) that 10 percent or less of the class of securities sought in the tender offer are held by U.S. holders other than U.S. holders of more than 10 percent of the subject class; [25] (2) in the case of a class of securities otherwise subject to Rule 13e-4 or Regulation 14D, that an English language translation of the offering materials, be submitted to, not filed with, the Commission; (3) that U.S. securityholders are permitted to participate in the offer on terms not less favorable than those offered any other holders of the same class of securities sought in the offer; and (4) that

[8] 15 U.S.C. 77a *et seq.*

[9] 15 U.S.C. 78a *et seq.*

[10] See Securities Exchange Act Release No. 28869 (February 15, 1991) (56 FR 7424).

[11] 17 CFR 240.12g3-2(b).

[12] *U.S. Treasury Bulletin* (various issues).

[13] For instance, in FY 1990, 33 tender offers, worth approximately $16 billion, were commenced by foreign bidders in this country alone for equity securities of issuers registered with the Commission under the Exchange Act.

[14] For example, 667 transactions involving European companies, representing US $61.1 billion, were completed in 1990. This represents an increase of 109% ($29.1 billion and 717 transactions) over 1989 (source: IDD Information Services).

[15] Kellaway, "EC Commission pledges freer regime on corporate takeovers," The Financial Times, Nov. 24, 1988, at 1; and Kellaway, "Brussels faces uphill struggle to remove takeover barriers," The Financial Times, Nov. 27, 1989, at 7, citing as source: Acquisitions Monthly.

[16] Peter Lee, Director General, The Panel on Take-overs and Mergers. In comparison, only 96 tender offers were commenced by U.S. and foreign bidders for U.S. registered companies.

[17] See letter of comment from The Panel on Take-overs and Mergers (October 1, 1990), Commission File No. S7-10-90.

[18] See Plessey Co. plc v. General Electric Co., 628 F. Supp. 477 (D. Del. 1986); Hiram Walker Resources Ltd. v. Gulf Canada, C.A. No. 86-0780 (D.D.C. March 25, 1986); Consolidated Gold Fields plc v. Minorco, S.A., 871 F.2d 252 (2d Cir.), cert. denied, 110 S. Ct. 29 (1989); see also Letter regarding Hoylake Investments Ltd., a Bermuda company, for B.A.T. Industries plc., a British company, from SEC Chairman David S. Ruder to Congressman Harold Rogers, Sept. 8, 1988, Cong. Rec. (Sept. 7, 1989), S.10839; and Take-over Panel Decision 89/20 dated 15 September 1989, appeal dismissed, 29 September 1989.

[19] The Commission received 31 letters of comment on the Concept Release, including 10 letters from foreign governments or foreign self-regulatory organizations, and four letters from foreign companies or organizations or foreign law firms. Those letters and a summary of the comments are available for public inspection and copying in File No. S7-10-90 at the Commission's Public Reference Room in Washington, DC.

[20] 15 U.S.C. 78l.

[21] 15 U.S.C. 78n(e).

[22] 17 CFR 240.14e.

[23] Home jurisdiction for the purposes of the rules and forms proposed today is generally defined as the place of incorporation, organization or chartering of the foreign target company. Proposed Rule 802(a)(4) (17 CFR 230.802(a)(4)).

[24] 17 CFR 240.13e-4, 240.14d-1 through 240.14d-10 and 240.14e-1 through 240.14e-3.

[25] In a companion release (hereinafter "Foreign Disclosure Release"), the Commission is proposing amendments to its disclosure system to require foreign issuers to disclose the percentage of each class of securities held of record by U.S. residents in certain documents filed or submitted to the Commission. These amendments are intended to facilitate the ability of third-parties or issuers, contemplating a tender or exchange offer, to ascertain whether compliance with the Williams Act will be required. As part of the revision, the Commission is proposing new forms to facilitate processing of materials furnished to the Commission pursuant to Rule 12g3-2(b), which will require the yearly disclosure of the percentage of each class of securities held by U.S. residents.

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dissemination of the tender offer, if required by the home jurisdiction, is provided to U.S. securityholders on a comparable basis as provided to securityholders in the foreign target company's home jurisdiction. The procedures would be equally applicable to Regulation 14D and Regulation 14E offers, except those offers that would otherwise be subject solely to section 14(e) and Regulation 14E, in which case no disclosure document would be submitted to the Commission, since a filing in such offers is not currently required.

With respect to the registration of exchange offers for a foreign issuer's securities under the Securities Act, the Commission is proposing two procedures. The first, proposed Rule 802, an exemptive rule under section 3(b) of the Securities Act,[25] would permit an exchange offer to proceed in the United States without registration so long as the aggregate dollar value of the securities offered for exchange in the United States is $5 million or less. Debt securities issued pursuant to this exemption would be exempt from the requirements of the Trust Indenture Act of 1939 ("Trust Indenture Act").[27] And second, registration under the Securities Act on the basis of the disclosure documents prepared in accordance with the registration requirements of the foreign target company's home jurisdiction would be provided under cover of proposed Form F-12.[28] Proposed Form F-12 would be available if five percent or less of the foreign target's securities prior to the exchange offer were held by U.S. holders other than by U.S. holders of more than 10 percent of the subject class and certain other conditions with respect to the offeror were met. These conditions include the requirement that an offeror (whether a third-party bidder or issuer) is a foreign private issuer, has made an initial submission pursuant to Rule 12g3-2(b) of the Exchange Act on or before the filing of the Form F-12, has a class of equity securities listed or traded on a "designated offshore securities market" [29] for the 36 months immediately preceding the offering, and is currently in compliance with the applicable listing and reporting requirements of the designated offshore securities market at the time of the exchange offer, or alternatively, has a 36 month operating history and a public float of $75 million. Proposed Form F-12 also would be available for the registration of securities to be issued in a merger, arrangement or other similar business combination.

The rules, forms and order proposed today would permit single-jurisdiction regulation with respect to both the tender offer and registration requirements, so that multijurisdictional cash tender offers, exchange offers and business combinations may be made more efficiently and at less expense. The regulatory authorities of the target company's jurisdiction would be responsible for establishing the applicable disclosure standards for any of the above offers. As a general rule, the Commission would not expect the documents submitted or filed with the Commission to be reviewed by the staff; such review, if any, would be left to the foreign target company's jurisdiction.

With respect to continuous disclosure requirements under the Exchange Act, any obligation arising under section 15(d) of the Exchange Act [30] as a result of the registration of securities on proposed Form F-12 would be suspended. Moreover, the registration of securities on proposed Form F-12 would not disqualify a foreign private issuer from maintaining its exemption under Rule 12g3-2(b) from the registration requirements of section 12(g) of the Exchange Act following the exchange offer.[31] However, an offeror desiring to use Form F-12 would be required to make an initial submission, pursuant to Rule 12g3-2(b) of the Exchange Act, on or before the offeror files the Form F-12 [32] if the offeror has not previously filed or furnished information to the Commission.[33]

The Commission is currently working with the North American Securities Administrators Association, Inc. ("NASAA") to determine whether existing state blue sky exemptions would accommodate the rules proposed today, or whether a new exemption under the Uniform Securities Act, necessitating adoption by the states, would be required. The usefulness of proposed Rule 802, as well as the proposed registration procedures, depends in large degree on a parallel exemption being implemented by the states, and acceptance of filings on Form F-12 in satisfaction of state registration requirements.

As proposed, the tender offer exemptive rules, Rule 802 and Form F-12 would not be available for the securities issued by an investment company that is registered or required to be registered under the Investment Company Act of 1940.[34]

The Commission also is proposing to formalize the accommodations arrived at with the United Kingdom's Panel on Take-overs and Mergers to permit tender offers for securities of a U.K. chartered company that is a foreign private issuer to be conducted pursuant to the requirements of both the Williams Act and the City Code. The proposed exemptive order would allow these offers to be conducted simultaneously in the United States and the United Kingdom without the need for case-by-case relief from certain provisions of the Williams Act as currently has been the practice. The offering circular would be prepared according to the requirements of the City Code and would be filed with the Commission and incorporated by reference to satisfy the requirements of Schedules 14D-1 and 14D-9,[35] thus allowing bidders for a United Kingdom company, subject to the City Code, to conduct the tender offer in the United States in accordance with the Commission's tender offer rules on the basis of the U.K. offering document. However, no provision beyond that provided for all foreign exchange offers is being proposed at this time for the registration of exchange offers for U.K. chartered companies.

Finally, the Commission is proposing a technical amendment to its general organization rule which delegates to the Directors of the Divisions of Corporation Finance and Market Regulation the authority to exempt tender offers from complying with certain provisions of the Williams Act. The Commission has previously delegated to these Directors the authority to grant relief from the all-holders requirement and the best price provision pursuant to Rule 14d-10(e) and Rule 13e-4(h)(7).[36] In addition, the Director of the Division of Market Regulation has the broad authority under Rule 13e-4(g)(7) to grant exemptions for certain issuer tender offers, either unconditionally, or on specified terms and conditions, as not constituting a fraudulent, deceptive or manipulative act or practice, which

[25] 15 U.S.C. 77c(b). See also Section III.A. and proposed rule 802 [17 CFR 230.802].

[27] Proposed rule 4d-10 of the Trust Indenture Act [17 CFR 260.4d-10].

[28] 17 CFR 239.44.

[29] See rule 902(a)(1) of Regulation S under the Securities Act [17 CFR 230.902(a)(1)].

[30] 15 U.S.C. 78o(d).

[31] 15 U.S.C. 78l(g).

[32] 17 CFR 230.12g3-2(b).

[33] A foreign private issuer that previously furnished documents to the Commission pursuant to Rule 12g3-2(b) would be required to be current in its submissions as required by Rules 12g3-2(b)(iii) and (iv) [17 CFR 240.12g3-2(b)(iii) and (iv)] in order to use any of the proposed rules or forms.

[34] 15 U.S.C 80a-1 *et seq.*

[35] 17 CFR 240.14d-100 and 240.14d-102.

[36] 17 CFR 240.14d-9(e) (Division of Corporation Finance) and 240.13e-4(h)(7) (Division of Market Regulation).

authority has not been delegated to the Division of Corporation Finance. The action taken today is consistent with existing procedure and will facilitate the timely disposition of requests for exemptions from these provisions prior to the commencement of a tender offer.

II. Tender Offers

A. Tender Offer Regulation

As outlined above, third-party and issuer tender offers for a foreign private issuer [37] whose securities are held almost entirely outside the United States would be made in the United States in compliance with the tender offer regulation of the foreign target company's home jurisdiction. Such predominately foreign tender offers would be permitted to be made in the United States on the basis of the procedural requirements and documentation mandated by the foreign target's home jurisdiction. The steps taken today are intended to encourage bidders and issuers to extend such offers to all target company shareholders, including U.S. securityholders.[38]

The controlling regulations would be those of the foreign target company's home jurisdiction, as the likely jurisdiction with the center of gravity of the bid including the place of significant shareholdings, and the jurisdiction whose regulatory scheme will more likely than not apply. Home jurisdiction is defined in the proposals to mean the jurisdiction of incorporation, organization or chartering of the foreign target company.[39] For example, if a company incorporated in France made an offer for all outstanding ordinary shares of a company chartered in the United Kingdom, with a small percentage of the U.K. company's shares held in the United States, the offering documents generally would be those prescribed by the City Code, both with respect to the tender offer procedures and disclosure, and with respect to the prospectus requirements in a registered exchange offer, as discussed below.[40]

However, more than a single country, as well as states or provinces within a country, may assert jurisdiction over an offer, depending on the location of investors and/or the principal trading market, as well as the target's business operations and executive management.[41] In those instances where more than one jurisdiction asserts authority over an offer, because of significant securityholdings within that country or as a result of business activities or assets within that country, the equal treatment provisions of the proposed exemptions and form requirements would mandate that U.S. securityholders receive the benefits of any additional protections or disclosures made available to non-U.S. securityholders. If the bidder or issuer does not wish to extend those additional protections or disclosures to securityholders outside the jurisdiction mandating the additional protections or disclosures, and thus extends the offer on different terms and conditions to holders in different jurisdictions, the bidder or issuer would have to seek relief from the equal treatment requirements and the Commission would determine on a case-by-case basis which set of procedures should apply to U.S. holders in order for the transaction to proceed in the United States.[42] The Commission requests comment on the appropriateness of relying on the foreign target company's home jurisdiction to regulate not only the tender offer procedures and disclosures, but also the prospectus requirements in a registered exchange offer.

Pursuant to amendments to Rule 14d-1 and Rule 13e-4 [43] proposed today, a third-party or issuer tender offer for a class of securities of a foreign target company would be exempt from the procedural and disclosure requirements of the Williams Act if (1) U.S. holders, other than U.S. holders of more than 10 percent of the subject class, hold 10 percent or less of the class of securities sought in the tender offer; (2) except in the case of offers that would otherwise only be subject to section 14(e) of the Exchange Act, an English language translation of the offering materials, either published in the United States or delivered to U.S. investors in accordance with foreign regulatory requirements is submitted to (not filed with) the Commission; (3) U.S. holders are permitted to participate in the offer on terms not less favorable than those offered any other holder of the same class of securities; and (4) dissemination of the tender offer, if required by the home jurisdiction, is provided to U.S. securityholders on a comparable basis as provided to securityholders in the foreign target company's home jurisdiction.

Under the proposal, the nationality of the bidder would not determine the availability of the rules with respect to the Williams Act requirements. Both U.S. and foreign bidders for a foreign target company would be eligible for the new procedures with regard to cash tender and exchange offers (including the proposed Rule 802 exemption from registration).[44] Although U.S. companies could not avoid the applicability of the Williams Act by excluding U.S. securityholders from a tender offer for a foreign target company, the potential regulatory inequality that could result if U.S. companies were required to comply with multiple regulatory schemes appears to outweigh the need to impose additional costs on United States bidders, particularly in instances of competing foreign and U.S. offers. The Commission requests comment on the appropriateness of permitting U.S. bidders to extend offers for foreign securities to U.S. investors in compliance with a foreign regulatory scheme.

Under the new procedures, offers eligible for the proposed exemptions would not be subject to the disclosure, filing, dissemination and minimum offering period requirements, proration and withdrawal rights, and other requirements of Rule 13e-4 and Regulation 14D or Regulation 14E,[45] other than Rule 14e-3 insider trading prohibitions. The procedures would be equally applicable to Regulation 14D and Regulation 14E offers, except that in offers that would otherwise be subject solely to section 14(e) and Regulation 14E, no disclosure document would be required to be submitted to the

[37] "Foreign Private Issuer" is defined in Rule 3b-4(c) under the Exchange Act and Rule 405 under the Securities Act [17 CFR 240.3b-4(c) and 230.405]. The terms foreign target company or foreign private issuer are used interchangeably throughout the release.

[38] With respect to rights offerings, which may be used by a bidder to raise funds to make an acquisition, the Commission is proposing, concurrently with this Release, rules that would facilitate the extension of rights offerings into the United States if certain tests were met. Cross-Border Rights Offers (hereinafter "Rights Offering Release").

[39] Proposed Rule 802(a)(4) [17 CFR 230.802(a)(4)].

[40] See *infra* Section III.C.

[41] Like the United States, Canada, Japan, and France regulate bids for foreign companies on the basis of domestic market interest or holdings. Most other jurisdictions only apply their takeover codes to offers for domestic companies, although some jurisdictions reserve the right to apply their regulation to offers for foreign chartered companies if the transaction is predominately domestic. See, *e.g.*, City Code Introduction 4 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), A-7 at 140,243.

[42] One significant factor that the Commission will consider in determining which jurisdiction's regulatory scheme should control is where the majority of securityholders are located.

[43] Proposed Rule 14d-1(c) (tender offers); proposed Rule 14e-1(c) (target company's response); and proposed Rule 13e-4(h) (issuer tender offers).

[44] This approach would not, however, govern the availability of proposed Form F-12. See Section III.C.2.

[45] 17 CFR 240.13e-4, 240.14d-1 through 240.14d-10 and 240.14e-1 through 240.14e-3.

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Commission, since a filing in such offers is not currently required.

1. United States Ownership Ceiling

The proposal incorporates a 10 percent ceiling for U.S. ownership in light of a number of factors including, but not limited to, the stated purpose of encouraging foreign bidders to extend multinational tender offers to U.S. investors, the degree of U.S. interest warranting the full application of the protections of the federal securities laws, and a balancing of the benefits and costs of any proposed rules. The Commission requests comment on the ceiling to be used under the proposed rules and whether the percentage should be increased (*e.g.*, to 15 or 20 percent) or decreased (*e.g.*, to 7.5, 5 or 3 percent)? Comment is requested whether the ceiling on ownership in the United States should instead be subject to a limit on the dollar amount of securities to be purchased, or on the number of beneficial or record holders in the United States. Furthermore, the Commission requests comment on whether there should be two categories of bids, one with a higher ceiling (*e.g.*, 15 or 20 percent) for those offers that, either voluntarily or pursuant to the regulatory schemes of a foreign jurisdiction provide for prescribed disclosure, minimum offering periods, prorationing, and equal treatment of securityholders, and with whom the Commission has a comprehensive Memorandum of Understanding ("MOU") or other agreement providing for the exchange of information, including information relating to tender offers. Should there be a lower ceiling (*e.g.*, 7.5, 5 or 3 percent) for partial offers? Also, comment is requested whether there is a need to accommodate those transactions where the ability to avoid jurisdiction would be unlikely because U.S. securityholdings are necessary to the success of a transaction, and the offeror is subject to the all holders requirement of Rule 14d–10 under the Exchange Act.[46]

The Commission proposes to calculate the 10 percent ceiling by reference to securities held of record by U.S. holders, other than U.S. holders of more than 10 percent of the subject class of the issuer.[47] Comment is requested, however, on the appropriateness of excluding U.S. holdings of more than 10 percent from the calculation. In measuring the percentage of the class of securities held by U.S. holders, securities convertible into or exchangeable for securities of such class would not be included in the calculation under the proposal. Comment is requested as to the appropriateness of excluding these types of securities. American Depositary Receipts ("ADRs") exchangeable or convertible for such securities, however, would be included. Common stock or ordinary shares represented by ADRs would be included in both the numerator and the denominator in calculating the percentage of outstanding securities of the target class held in the United States, treating ADRs and ordinary shares as a single class held both in the United States and the foreign jurisdiction, as is currently the case.

The calculation of the percentage of the class of securities held by U.S. holders would be determined as of the foreign target company's latest fiscal year end. The Commission is concurrently proposing revisions to Regulation S–K,[48] Form 20–F [49] and Rule 12g3–2(b) [50] to require foreign private issuers using the above forms or rules to disclose on an annual basis the extent to which their equity securities are held by U.S. holders.[51] Therefore, a bidder seeking to acquire securities of a foreign target company that files or furnishes information to the Commission under one of the above rules or forms would be permitted to rely on the foreign target company's latest fiscal year end report, either on Form 10–K, Form 20–F, or proposed Form 12–FA,[52] or on the foreign target company's most recent filing under the Securities Act or initial submission on proposed Form 12–F [53] in determining the amount of securities held by U.S. securityholders. In addition, a third-party bidder or issuer, instituting a subsequent competing offer, will be permitted to use the same information as to U.S. securityholdings as the initial bidder or issuer in order to calculate the percentage of U.S. record ownership. In this manner, an offer commenced during the pendency of a competing offer being conducted pursuant to the proposed rules, would be permitted to take advantage of the rules, regardless of an interim filing of an annual report disclosing greater than 10 percent holdings in the United States.[54] However, the Commission requests comment on whether a more current time frame, such as the quarterly basis adopted in the multijurisdictional disclosure system with Canada,[55] should be used, taking note of the fact that most foreign companies are only subject to semi-annual reporting and may not have access to a current shareholder list on a quarterly basis.[56] Comment also is requested on whether bidders should be permitted to use the proposed rules even though disclosure with the Commission reflects greater than 10 percent U.S. ownership, if a bidder has a reasonable basis for believing that U.S. security holdings are below the ten percent threshold after excluding U.S. holders of more than 10 percent of the subject class.

Where the foreign target company is neither a reporting company under the Exchange Act nor has submitted reports pursuant to the exemption provided under Rule 12g3–2(b), the bidder or issuer may presume that the U.S. ownership does not exceed the ceiling amount, unless it has knowledge to the contrary. Comment is sought on the appropriateness of the proposed safe harbor.

2. Equal Treatment of U.S. Holders

To take advantage of the proposed rules, the offeror must extend its offer to all U.S. securityholders of the class of securities subject to the tender offer (including ADRs),[57] and U.S. securityholders must be permitted to participate in the tender offer on terms not less favorable than those offered any other holder of the same class of securities sought in the offer. If the bidder chooses to offer securityholders in a foreign jurisdiction one form of consideration and securityholders in another jurisdiction a different form of consideration, or an option to choose between alternative forms of consideration, U.S. holders must be provided an opportunity to choose from among each form of consideration offered. Appropriate adjustments would be permitted with respect to ADRs

[46] 17 CFR 240.14d–10.

[47] See generally, Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canada, Securities Exchange Act Release No. 28091 (October 22, 1990) (55 FR 46288, 46289) (hereinafter "MJDS Reproposal").

[48] 17 CFR 229.10 et seq.

[49] 17 CFR 249.220f.

[50] 17 CFR 240.12g3–2(b).

[51] See Foreign Disclosure Release, *supra* fn 25.

[52] Proposed Form 13–FA (17 CFR 249.213–FA).

[53] 17 CFR 249.213–F.

[54] Under the multijurisdictional disclosure system with Canada ("MJDS") approved by the Commission on May 30, 1991, the calculation of U.S. record holders will be made as of the subject company's last fiscal quarter or, if the quarter ended within the last 60 days, as of the subject company's preceding quarter.

[55] *Id.*

[56] Those countries requiring semi-annual reporting include Australia, France, Germany, Italy, Japan, Luxembourg, Netherlands, Spain, and the United Kingdom.

[57] Proposed Rules 14d–1(c)(1) and 13e–4(h)(1) (17 CFR 240.14d–1(c)(1) and 240.13e–4(h)(1)).

representing a multiple or fraction of ordinary shares or other common stock that is the subject of the offer. Comment is sought on whether additional measures are necessary to ensure equal treatment of persons holding through ADR facilities rather than holding the ordinary or common shares directly. For example, should specific measures be adopted by the Commission to ensure that persons holding through an ADR facility receive offering materials and are provided the same opportunity and ability to participate in the offer as a person holding the ordinary or common stock?

An exception to the equal treatment requirement is being proposed to permit offerors conducting an exchange offer to offer securityholders in a particular state only cash, where after a good faith effort to register or qualify the offer, the sale of the securities is prohibited in that state under blue sky law provisions, so long as the cash consideration has previously been offered securityholders in any other jurisdiction. If cash is not being offered elsewhere, securityholders in that state may be excluded. Moreover, an offeror would not be required to extend an alternative consideration to securityholders in any other state. Should the good faith effort to register or qualify an offer an appropriate standard: Or should such an effort be required only with respect to those states that permit an offeror to register or qualify an offer by filing Form F–12? In addition, if the exchange offer in the United States were exempt from registration under the Securities Act pursuant to proposed Rule 802, the offeror would be permitted to offer cash only consideration to target company securityholders residing in any state that does not provide for a corresponding exemption so long as the cash consideration has previously been offered securityholders in any other jurisdiction. Again, if cash is not being offered to any holder, securityholders in that state may be excluded. Comment is requested whether the Commission should require that an offeror conducting an exchange offer at a minimum offer securityholders cash consideration for their securities rather than excluding completely securityholders in a particular state.

It is quite common in the United Kingdom for a bidder in a cash tender offer to extend a "loan note" option to the target company's securityholders, allowing target securityholders to receive a short-term note, which may be redeemed in whole or in part for cash at par on any interest date in the future, in lieu of receiving cash at the conclusion of the offer.[58] The loan note alternative permits a U.K. securityholder to receive, at the securityholder's option, the cash consideration over a delayed period, usually five years, thereby deferring any capital gain that may be applicable to the transaction until such time as the securityholder either redeems the notes or the company redeems the notes at expiration. The proposed rules would not require that a loan note alternative, or any other comparable tax deferral arrangement that may be permitted by another foreign country, be extended to U.S. securityholders. The Commission requests comment on whether, despite the fact that U.S. holders would not be entitled to receive the tax benefit associated with the loan note alternative or other comparable tax deferral arrangements, U.S. holders should be given the opportunity to receive the same consideration as residents of any other country, which in these instances would necessitate the filing of a registration statement in the United States, absent an exemption. Comment also is sought on whether there are circumstances or arrangements other than blue sky law registration and tax deferral arrangements that should be accorded an exception from the equal treatment requirement.

3. Dissemination and Disclosure

The rules provide that dissemination of the offer shall be in accordance with the requirements of the foreign target company's home jurisdiction, with two exceptions. First, any offering circular/document disseminated in the United States shall be in English. Second, where dissemination is required or permitted by publication, such publication shall also be in a United States newspaper of general circulation.[59]

As noted, the disclosure provided to U.S. securityholders generally would be governed by the requirements of the foreign target company's home jurisdiction. An offering circular disseminated or sent to U.S. securityholders nevertheless would be required to contain informational legends on the outside front cover page of the offering circular, or in any published notice, explaining that the offer is being conducted pursuant to the laws of the jurisdiction of the foreign target company and that certain rights of U.S. securityholders may be affected.[60]

Except in the case of registered exchange offers, offering materials would be required to be submitted to the Commission for notice purposes only under the cover of proposed Form 14D1C, for third-party offers, or proposed Form 13E4H, for issuer tender offers, unless the offer would otherwise only be subject to Regulation 14E, which does not impose a filing obligation. The materials submitted would not be deemed filed with the Commission and an offeror would not be subject to liability under Section 18 of the Exchange Act.[61]

A number of commenters responding to the Concept Release expressed concern that antifraud provisions of the Exchange Act would continue to apply to these transactions. However, the antifraud rules relating to insider trading, and other kinds of fraudulent and manipulative conduct,[62] would be the only substantive antifraud provisions applicable to these types of transactions. These provisions should not serve to inhibit an offeror from including U.S. securityholders in the tender offer. Even if the offering circular were not disseminated in the United States, a foreign bidder generally would be liable for fraud, not only in the foreign target company's home jurisdiction,[63] but in the United States as well, given the foreseeable effect of the fraud in the United States.

In the case of tender offers that would have a "going private" effect, the issuer and any affiliated bidder would be

[58] "Loan notes" generally are unsecured short-term debt obligations, which are guaranteed as to principal and interest by a bank and permit the holder to require all or any part of the principal amount of the loan notes to be repaid at par together with any accrued interest on any interest payment date. Under U.K. tax laws, a securityholder who does not own more than five percent of the outstanding shares of the target company will not be treated as having made a disposition thereby incurring a capital gains tax to the extent the securityholder receives loan notes. A U.S. securityholder, on the other hand, would be treated as having made a disposition under the Internal Revenue Code, since the securityholder would not be accorded special treatment under the installment sales method of income recognition. I.R.C. 453(k)(2)(A).

[59] See Rule 14d–4(b) (17 CFR 240.14d–4(b)) (guidance as to what constitutes adequate publication). In addition, the mailing of a copy of any advertisement that has been published in a foreign newspaper in compliance with foreign law, translated into English, to securityholders of record in the U.S. of the foreign target company would be considered adequate dissemination.

[60] See proposed Form 14D1C, Form 13E4H (17 CFR 240.14d–100 and 240.13e–102) and proposed Rule 802(d) (17 CFR 230.802(d)).

[61] 15 U.S.C. 78r.

[62] Section 14(e), section 10(b) of the Exchange Act (15 U.S.C. 78n(e) and 78j(b)), and Rules 14e–3 and 10b–5 thereunder (17 CFR 240.14e–3, 240.10b–5). Rules 14e–1, 14e–2 and 10b–13 (17 CFR 240.14e–1, 240.14e–2 and 240.10b–13) would not apply to these transactions.

[63] See letter of comment City of London Law Society (Sept. 28, 1990). The Law Society suggests that Rule 10b–5 "does not appear to apply a higher standard of liability than the UK regulatory system."

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required to comply with Rule 13e–3 of the Exchange Act, if applicable.[64] Rule 13e–3 requires enhanced disclosure in going-private transactions engaged in by the issuer or an affiliate [65] and is designed to assist securityholders by providing them with information from the most knowledgeable sources regarding the terms of the transaction in relation to the business and prospects of the issuer.

The cash tender offer by Aktiebolaget Volvo ("Volvo"), a Swedish company with shares traded on NASDAQ, for Pharmacia Aktiebolag ("Pharmacia"), another Swedish company controlled by Volvo, illustrates the issues that may arise in applying Rule 13e–3 to tender offers involving foreign participants.[66] At the commencement of the offer, approximately 7.9 percent of the class of Pharmacia's securities sought in the offer were held in the United States, either directly or through American Depositary Receipts. Compliance by Volvo with Rule 13e–3 was necessary due to Volvo's affiliation with Pharmacia.[67] However, the disclosure required pursuant to Schedule 13E–3 reflected the substantially different obligations of affiliates under Swedish law; the Commission was advised that an affiliated transaction would not be subject to challenge under Swedish law solely on the basis of lack of fairness. Therefore, the Schedule 13E–3 disclosure regarding the Volvo board of director's consideration of the fairness of the transaction focused mainly on how the Volvo directors arrived at their determination to purchase the interests of the unaffiliated shareholders at the offering price.

No exception from the obligation to comply with Rule 13e–3 is being proposed; instead, the Commission will seek to accommodate significant problems created by going-private transactions on a case-by-case basis.[68] Comment, however, is solicited regarding whether the proposed exemptive rules should be expanded to encompass those provisions. Commenters should address the type of protections afforded unaffiliated shareholders in foreign countries in "going-private" or similar types of transactions that present conflicts of interests by an issuer or affiliate; whether these transactions in foreign countries are subject to the same or similar procedural and disclosure requirements that are currently provided by Rule 13e–3 and Schedule 13E–3; and, alternatively, what protections should apply if foreign countries have not developed the same or similar procedural and disclosure requirements applicable to these transactions?

III. Exchange Offers

A. Overview

As noted by the Commission in the Concept Release, and by many of the commenters who responded, exchange offers pose a much more difficult problem from a regulatory perspective than cash tender offers, since an exchange transaction involves the offer and sale of securities in the United States, thereby establishing a continuing presence of the offering person in the United States capital markets. On the other hand, the need for regulatory accommodations may be more acute with respect to exchange offers, since foreign bidders find the prospect of having to comply with the U.S. registration requirements and its attendant reporting obligation to be a particularly strong disincentive to extending an offer to U.S. investors.[69] Additionally, both the necessary preparation of a registration statement and the potential for Commission review create greater time pressure than in a cash tender offer and are more likely to be inconsistent with the foreign tender offer scheme. For first-time foreign issuers registering with the Commission, the amount of time and cost involved in complying with the Commission requirements, especially the reconciliation of financial statements to U.S. generally accepted accounting principles ("GAAP") is considerable, and foreign issuers often view such costs as disproportionate in comparison to the significance of the U.S. securityholders' interest in the transaction.[70]

The rules proposed today would implement a two-tier system to facilitate exchange offers for foreign securities made to U.S. securityholders. The rules and exemptions proposed would provide: (1) A registration exemption, proposed rule 802, pursuant to section 3(b) of the Securities Act, for the foreign issuer's securities offered in exchange for the foreign target company's securities, provided that the aggregate dollar amount of the securities being offered in the United States does not exceed $5 million; [71] or (2) registration on the basis of home country disclosure documents on proposed Form F–12, [72] if five percent or less of the foreign target company's securities prior to the exchange are held by U.S. residents and certain other eligibility standards with respect to the offeror are met. If neither of these alternatives are available to the bidder or issuer involved in the exchange offer, registration of the securities on another Commission form, such as Form S–4 or Form F–4, [73] or qualification for an exemption, such as section 3(a)(9) or section 4(2), [74] would be required.

Rule 802 and Form F–12, as proposed today, would not be available for any securities issued by an investment company that is registered, or is required to register, under the Investment Company Act of 1940. [75] However, the proposed rules would be available for the securities of a foreign issuer that is able to make a public offer of its securities in the United States in reliance on rule 6c–9 under that Act or

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[64] Section 13(e) of the Exchange Act (15 U.S.C. 78m(e)) and Rule 13e–3 (17 CFR 240.13e–3). A Rule 13e–3 transaction is any transaction or series of transactions which has either a reasonable likelihood or purpose of causing directly or indirectly a class of equity securities of an issuer which is subject to section 12(g) or section 15(d) of the Exchange Act to be held of record by fewer than 300 persons, or causing a class of equity securities of the issuer to be no longer listed on an exchange or authorized to be quoted in an inter-dealer quotation system.

[65] An affiliate of an issuer is a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such issuer. See Rule 13e–3(a)(1) (17 CFR 240.13e–3(a)(1)).

[66] In the Matter of Aktiebolaget Volvo and Procordia Aktiebolag, Securities Exchange Act Release No. 27071 (February 2, 1990).

[67] Pharmacia was not required to comply with Rule 13e–3, since it did not negotiate, approve, recommend or otherwise engage in the tender offer for its shares. See Securities Exchange Act Release No. 17719, Question 5 [April 13, 1981], 3 Fed. Sec. L. Rep. (CCH) ¶17,345–38, *et seq.*

[68] In addition, bidders using the proposed rules and forms would not be relieved of their obligation to file a Schedule 13D that may arise should their beneficial ownership of a foreign target's equity securities registered with the Commission under section 12 of the Exchange Act, exceed five percent.

[69] Multijurisdictional Disclosure, Securities Exchange Act Release No. 27055 (July 24, 1990) (54 FR 32226) (hereinafter the "MJDS Original Proposal").

[70] See letters of comment, British Merchant Banking and Securities Houses Association (Sept. 20, 1990); City of London Law Society (Sept. 20, 1990); International Stock Exchange (Sept. 13, 1990); and Linklaters & Paines (Sept. 17, 1990).

[71] Proposed Rule 802(c)(1) (17 CFR 230.802(c)(1)).

[72] Proposed Form F–12 (17 CFR 239.44).

[73] 17 CFR 239.25 and 239.34.

[74] 15 U.S.C. 77c(a)(9) and 77d(2).

[75] 15 U.S.C. 80a–1 *et seq.* Section 7(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–7(d)) prohibits a foreign investment company from using the jurisdictional means to publicly offer its securities for sale in the United States unless the company receives an exemptive order permitting it to register under the Investment Company Act. Nothing in the proposed Rule 802 or proposed Form F–12 obviates a foreign investment company's obligation to apply for an exemptive order from the Commission under section 7(d) permitting it to register under the Investment Company Act if it makes a public offer of its securities in the United States.

an individual exemptive order.[76] These issuers may publicly offer securities of which they are the issuer in the United States without registering under the Investment Company Act, and reliance on the rules proposed today should not present any Investment Company Act concerns. Comment is requested by the Commission as to whether this approach regarding investment companies is appropriate. Comment is requested by the Commission as to the appropriateness of this restriction and whether closed-end funds should be eligible to use the proposed rule and form. Any comments regarding the appropriateness of this restriction should include empirical data regarding exchange offers for foreign issuers by U.S. or foreign companies that are registered or required to be registered under the Investment Company Act.

B. Proposed Rule 802

The proposed exemption would be available to any offeror (whether a third-party bidder or issuer) regardless of whether the offeror is a U.S. company or a foreign private issuer. Furthermore, the proposed rule would not limit the type of securities that may be offered in the transaction. To encourage the extension of exchange offers to U.S. shareholders, which normally would not be extended due to the minimal dollar amount involved, no offeror or security eligibility standards are required for proposed Rule 802. Comment is requested on the necessity for offeror eligibility requirements, e.g., based on size, exchange listing or availability of information on a periodic basis. The Commission also seeks comment on whether issuer exchange offers should be treated less restrictively, on the basis that securityholders have made a pre-existing investment decision with respect to the issuer. In addition, comment is requested on the appropriateness of extending proposed Rule 802 to U.S. offerors; would it be preferable simply to provide for registration using the full extent of incorporation by reference permitted by Form S–3,[77] with automatic effectiveness of the registration statement? Furthermore, comment is sought on whether any limitations should be placed on the type of security that may be offered under proposed Rule 802.

Securities issued in a proposed Rule 802 exchange offer or business combination would be unrestricted securities. Comment is requested on whether any resale restrictions should be imposed on the securities issued in the exchange offer or business combination pursuant to proposed Rule 802.

The proposed exemption from registration requires that U.S. securityholders be permitted to participate in the exchange offer on terms not less favorable than those offered any other holder of the same class of securities sought in the offer, except in those instances where a state's blue sky law does not provide for a comparable exemption, thereby requiring registration or qualification. In such cases, the offeror would be permitted to offer cash consideration, if such consideration is being offered to securityholders in any other jurisdiction as an alternative. If a cash alternative has not been offered elsewhere, the offeror may exclude securityholders resident in that state.[78] In addition, an offeror would not be required to extend an alternative consideration to securityholders in any other state.

Proposed Rule 802 defines "aggregate dollar amount" of the securities being offered to mean the total consideration the offeror proposes to issue upon exchange for securities held by U.S. holders, for a single class of securities, assuming that all securities of the class held in the United States are exchanged.[79] The value of securities being offered shall be based on the market value of the securities to be acquired by the offeror from U.S. holders in the exchange offer, calculated in accordance with Rule 457 under the Securities Act.[80] For purposes of calculating the aggregate dollar value, only the securities to be offered to U.S. securityholders in connection with the exchange offer need be included in the calculation. An exchange offer for another class of securities of the same target or of another company would be deemed a different offering, subject to its own $5 million ceiling. Comment is requested on the usefulness of the proposed exemption. Specifically, is the $5 million ceiling necessitated by section 3(b) of the Securities Act so low as to neutralize the exemption's usefulness by enough offerors to warrant the rulemaking effort on both the federal and state levels?

While the proposed exemptive rule would not require the filing, submission or furnishing of any offering materials to the Commission pursuant to the Securities Act, disclosure concerning the exchange offer will be submitted to the Commission under the tender offer provisions on proposed Form 14D1C or Form 13E4H if the security that is sought in the exchange offer is registered pursuant to section 12 of the Exchange Act. Moreover, in the case of reporting companies, information concerning the exchange offer is likely to be included in the company's periodic reports. Should a foreign offeror be required to make a submission under Rule 12g3–2(b) of the Exchange Act simultaneously with the commencement of the exchange offer? In the case of exchange offers subject only to Section 14(e) of the Exchange Act, where no requirement to submit information has been proposed, comment is requested whether a notice, similar to that required under Regulation D, should be required.[81]

As previously noted, the disclosure provided to U.S. securityholders would be governed by the requirements of the foreign target company's home country. However, any offering circular or notice disseminated or sent to U.S. securityholders, would be required to contain, to the extent applicable, informational legends on the outside front cover page of the offering circular, or in any published notice, explaining that the offer is being conducted pursuant to the laws of the jurisdiction of the foreign target company and that certain rights of U.S. securityholders may be affected.[82]

Under state blue sky laws, securities offered in exchange for securities held by the residents of a particular state, either must be registered under that state's filing and review procedures, or qualify for an exemption from the registration process. Currently, state blue sky laws generally will exempt securities that qualify for certain self-

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[76] Rule 6c–9 (17 CFR 270.6c–9), adopted by the Commission in 1967, permits foreign banks and their finance subsidiaries to publicly offer and sell their debt securities and non-voting preferred stock in the United States without registering under the Investment Company Act or obtaining an individual exemptive order. The Commission has also issued a number of individual exemptive orders allowing public offerings in the United States of securities not covered by Rule 6c–9, e.g., equity securities issued by foreign banks and their finance subsidiaries, offerings by foreign insurance companies and their finance subsidiaries, and offerings by foreign bank and foreign insurance holding companies, among others. In August, 1990, the Commission proposed amendments to Rule 6c–9 that would expand the rule to include: (1) Equity securities issued by foreign banks and their finance subsidiaries, (2) all securities issued by foreign insurance companies and their finance subsidiaries, (3) all securities issued by foreign banks and foreign insurance holding companies, and (4) all securities issued by Canadian trust and loan companies. See Investment Company Act Release No. 17662 (Aug. 17, 1990) (55 FR 34560).

[77] 17 CFR 239.13.

[78] Rules 14d–1(c)(1)(i) and 13e–4(h)(1)(i) (17 CFR 240.14d–1(c (1)(i) and 240.13e–4(h)(1)(i)).

[79] Proposed Rule 802(a)(6) (17 CFR 230.802(a)(6)).

[80] 17 CFR 230.457.

[81] 17 CFR 239.500.

[82] Proposed Rule 802(d) (17 CFR 230.802(d)).

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executing registration exemptions, such as an exemption for securities listed on a U.S. exchange [84] or NASDAQ/NMS designation.[84] The Commission has undertaken discussions with NASAA, to explore whether the applicable registration provisions of the various state blue sky laws would exempt an offer subject to proposed Rule 802 to shareholders resident in that state. The utility of the proposed approach will depend significantly on the states' efforts to provide comparable exemptions for such offerings.

C. Registration of Exchange Offers on the Basis of Foreign Disclosure Documents

Proposed Form F–12 would permit eligible offerors to register securities in the United States using documents prepared according to the disclosure and/or listing requirements of the foreign target company's home jurisdiction. An offeror that is not incorporated in the same jurisdiction as the foreign target company may nevertheless use its home country disclosure documents for purposes of proposed Form F–12, if the foreign target company's home jurisdiction permits the offeror to use such disclosure documents. As presently structured, proposed Form F–12 would only be available to foreign private issuers that are currently reporting companies or are furnishing information pursuant to Rule 12g3–2(b) or have made an initial submission pursuant to that rule on or before the filing of Form F–12.[85] An exchange offer may be registered on proposed Form F–12 so long as five percent or less of the outstanding class of securities sought in the exchange offer are held of record in the United States other than by U.S. holders of more than 10 percent of the subject class. To be eligible for Form F–12, U.S. securityholders must be permitted to participate in the exchange offer on terms not less favorable than those offered any other holders of the same class of securities sought in the offer. In addition, the proposed rules would permit the exchange of debt or equity securities to be registered on proposed Form F–12.[86]

Paralleling MJDS, the proposals have incorporated a listing and reporting history criteria for offerors to minimize the potential for abuse by insubstantial or start-up companies. The listing requirement also would have the benefit in many jurisdictions of insuring the continued availability of issuer information in the market place.

1. Ownership of Target Securities

The limitation on the use of proposed Form F–12 to register exchange offers involving a foreign target company to transactions where five percent or less of the target class is held by U.S. persons, rather than the 10 percent ceiling proposed with respect to the Williams Act exemptions, is based upon the more significant disclosure and investor protection questions presented in an exchange offer, and the proposed unlimited reliance on the foreign regulatory scheme. As proposed, Form F–12 would be available regardless of the foreign regulatory requirements applicable to these transactions. If the Commission took a more narrow approach, it would significantly curtail the efficacy of the proposal in facilitating the inclusion of U.S. securityholders in foreign exchange offers. Comment is requested whether the Commission should raise the ceiling for U.S. holdings (*e.g.*, 10–15%) for exchange offers made by bidders incorporated in, and listed on exchanges, in those jurisdictions with which the Commission has a comprehensive MOU or other agreement providing for the sharing of information, and where there are regulatory provisions governing exchange offers, i.e., British Columbia, France, Japan, Ontario, Quebec, and the United Kingdom. Comment also is sought on whether the calculation of the five percent level should be based on the subject company's securities held in the United States prior to the exchange offer or should be similar to that provided for business combinations which is based upon the amount of the offerors securities that will be held by U.S. holders upon the completion of the business combination.

Under the proposal, the calculation of the percentage of U.S. record ownership of the foreign target company would be determined on the same basis as under the tender offer proposals.

2. Offeror Qualifications

An offeror that seeks to register an exchange offer or business combination on proposed Form F–12 must have had a class of equity securities listed or quoted on a "designated offshore securities market" [87] for the 36 months immediately preceding the offering, and the offeror must be in compliance with the continuous reporting requirements of such market or supervisory authorities at the time of the exchange offer. The proposed rule provides an alternative to the 36 month listing history for newly listed companies with at least a 36 month operating history, and a public float of at least $75 million.[88] The Commission requests comment on the offeror eligibility criteria. Should there be a size test for all offerors? And, should a reporting history be required for all companies intending to use the proposed form?

The list of designated offshore securities markets currently includes 19 offshore exchanges and off exchange markets. The Commission understands that these exchanges and markets either impose a periodic disclosure obligation on companies whose securities are traded on the market or exchange, or such obligations are imposed by law because of listing or trading on the exchange or market. Rule 902(a) of Regulation S provides that the Commission may designate additional markets that have some or all of the attributes listed in Rule 902(a)(2),[89] including, among others, whether the market has an established operating history; is subject to oversight by a "foreign securities authority," as that term is defined in section 3(a)(50) of the Exchange Act;[90] and whether sufficient trading volume exists to indicate liquidity. Comment is requested whether, as future markets are designated under Rule 902(a)(2), only companies whose equity securities are listed on those markets that mandate disclosure and continuous reporting of information should be eligible to use proposed Form F–12.

Proposed Form F–12 would be available for registration for any class of securities provided the offeror has a class of equity securities listed or quoted on a designated offshore securities market. Comment is requested whether the form should be limited to that class of securities that is listed or quoted on the designated offshore securities market. Also, comment is requested regarding the appropriateness of using "designated offshore securities market" rather than incorporating the definition of "specified foreign securities market" recently proposed by the Commission in Rule 3b–10(f).[91] In addition, comment is sought with respect to whether the 36 month listing and reporting requirement should be changed to only a requirement for a 36 month reporting history with any securities commission or equivalent regulatory authority.

Proposed Form F–12 also would permit any foreign private issuer formed as a result of a merger, a business combination, a spinoff or a reorganization to tack on the listing history of its predecessors in satisfying the three-year listing requirement for use of the form, if it is unable on its own to satisfy the listing or reporting requirement imposed by the form.[92] Each significant predecessor, taken together with the surviving company, would be required to meet the listing and reporting requirements.[93]

3. Mechanics of Registering on Form F–12

Simultaneously with the earlier of public filing of the offering circular/prospectus with the home jurisdiction regulating the exchange offer or disseminating the offering materials to target securityholders, the offeror would file those documents, under cover of proposed Form F–12, with the Commission. Proposed Form F–12 is essentially a "wrap-around" form to be used for the registration of securities issued in an exchange offer. The form itself provides for, among other things, disclosure of the registrant's name and address, and that of its agent for service in the United States, and includes the foreign prospectus or offering circular, and a list of the exhibits filed with the Commission, including documents that may have been incorporated by reference from filings made in the foreign jurisdiction into the offering circular/prospectus. The proposed form also requires that the registrant add to the offering circular/prospectus that is distributed to U.S. holders, to the extent applicable, certain informational legends advising target securityholders that the investment may have tax consequences in the foreign jurisdiction, that U.S. securityholders may have to pursue legal remedies in a foreign jurisdiction, and that financial statements included in proposed Form F–12 have been prepared in accordance with foreign accounting standards and foreign auditing and auditor independence standards.[94]

Like Forms F–8 and F–80 under the MJDS, Form F–12 provides that the provisions of Regulation C of the Securities Act[95] shall not apply to exchange offers registered on the proposed Form, unless specifically referred to in the proposed Form. Proposed Form F–12 would specifically preserve the application of Rule 408 and addresses shelf offerings, incorporation by reference, English language requirements, and other matters covered by Regulation C.[96] In addition, Regulation C is itself being amended to address effective date, delaying amendments, and consent requirements with respect to Form F–12 filings. Comment is requested whether, unlike the MJDS which relies upon Canadian registration procedures and concepts, additional provisions of Regulation C should apply to exchange offers registered on proposed Form F–12, which is not based upon any comprehensive review of specific foreign regulatory schemes.

The proposal distinguishes between the documents required to be disseminated to target securityholders in the exchange offer and the documents to be filed with the Commission in order to register the securities. Offerors would be required to provide target securityholders resident in the United States with the same information (appropriately legended as specified) delivered abroad in the foreign target company's home jurisdiction, except that if the offering circular/prospectus delivered in the home jurisdiction is in a language other than English, an English translation of the offering circular/prospectus must be delivered to U.S. securityholders. Unlike the proposal governing cash tender offers, which does not require a document to be delivered to securityholders if not required by foreign law, the offering circular/prospectus would be required to be delivered to securityholders in accordance with section 5(b) of the Securities Act.[97] Rule 174 would, however, be amended to eliminate the requirement for aftermarket prospectus delivery.[98] Commenters are requested to address whether amendments to Rule 15c2–8 also would be appropriate in this respect.[99]

For purposes of section 5(b) of the Securities Act, the prospectus would consist of the entire disclosure document or documents used to make the exchange offer or business combination. The Commission understands that each of the designated offshore securities markets and/or jurisdictions in which they are located, currently impose a prospectus delivery requirement for registered offerings. Comment is requested whether the regulatory schemes and listing standards of the designated offshore markets, as well as market practice,

[84] Forty-eight U.S. jurisdictions have the exchange-listing exemption for New York Stock Exchange and American Stock Exchange listed securities. Use of the exemption is self-executing in forty-six of these jurisdictions with the other two requiring a filing in order to claim the exemption.

[84] Forty states currently have the equivalent exemption for NASDAQ/NMS designated securities.

[85] Foreign private issuer is defined in Rule 3b–4(c) of the Exchange Act (17 CFR 240.3b–4(c)) as any foreign issuer, unless it has more than 50 percent of the outstanding voting securities held of record either directly or through voting trust certificates or depositary receipts by residents of the United States, and either the majority of the executive officers or directors are United States citizens or residents, or more than 50 percent of the assets of the issuer are located in the United States, or the business of the issuer is administered principally in the United States. See also 17 CFR 230.405.

[86] See infra Section III.E. regarding the Trust Indenture Act of 1939.

[87] See Rule 902(a) of Regulation S (17 CFR 230.902(a)). The Commission notes that the Johannesburg Stock Exchange has been included as a designated offshore securities market under Rule 902(a). However, exchange offers involving securities traded on this exchange may be precluded from using proposed Rule 802 and proposed Form F–12 if they would be considered in violation of the sanctions currently imposed on South Africa by the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99–440).

[88] The market value of the "public float" is the market value of all outstanding equity securities owned by nonaffiliates. Foreign private issuers would include non-voting common stock in the calculation of public float.

[89] 17 CFR 230.902(a)(2).

[90] 15 U.S.C. 78(a)(50).

[91] "Specified foreign securities market" would include the International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd., the Montreal Exchange, the Bourse de Paris, the Tokyo Stock Exchange and the Toronto Stock Exchange. See Definitions Principally Relating to International Transactions, Securities Act Release No. 6861 (January 9, 1991) (56 FR 820) (proposing Rule 3b–10(f) (17 CFR 230.3b–10(f))).

[92] Proposed Form F–11 under the Rights Offering Release and Form F–8 under the MJDS also permit successor issuers to tack on listing histories of their predecessors for purposes of satisfying the three-year listing requirement. See Rights Offering Release, *supra* fn 38; MJDS, *supra* fn 54.

[93] For example, if A had been reporting for four years in Ireland, and B had been reporting for two years in the U.K., and A and B in a business combination formed C, which has been reporting for one year in Ireland, C would be deemed to meet the three-year reporting history requirement. The one year of reporting by C when added to the reporting history of A or B in each case would be three years or more. If, however, either A or B had been reporting for less than two years, C would not be deemed to satisfy the three year reporting history test, if A and B were both considered significant participants.

[94] See proposed Form F–12, Part I, Item 2.

[95] 17 CFR 230.400 to 230.494, inclusive.

[96] See Rule 400 under Regulation C (17 CFR 230.400), providing that the regulation shall not control where the provisions of a form address the same subject matter.

[97] 15 U.S.C. 77e(b).

[98] Proposed Rule 174(a) under the Securities Act (17 CFR 230.174(a)).

[99] Rule 15c2–8 (17 CFR 240.15c2–8) provides that it shall constitute a deceptive act or practice for a broker or dealer to participate in a distribution unless the broker or dealer complies with certain delivery prospectus requirements set forth in the rule. Rule 15c2–8(b), however, exempts a broker or dealer from the prospectus delivery requirement if the issuer is exempt from the requirement to file reports pursuant to section 12(h) of the Exchange Act, as provided in proposed Rule 12h–4, with respect to Form F–12 offerings. Nothing in the rules proposed today, except proposed Rule 12h–4, would relieve a broker or dealer from their obligations under Rule 15c2–8.

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does in fact require that a prospectus be delivered to each securityholder.

Information that is permitted in the home jurisdiction to be incorporated by reference in the prospectus would not be required to be distributed to target shareholders resident in the United States, unless so required by the regulating home jurisdiction, but would be deemed part of the prospectus,[99] and would be required to be filed as an exhibit to proposed Form F-12.[100] Any document already furnished to the Commission under Rule 12g3-2(b) may be incorporated by reference into proposed Form F-12 without having to be filed as an exhibit to the form. Incorporated information would be part of the registration statement and would be deemed filed for liability purposes.

The form proposed today would be accompanied by Form F-X, which includes not only a consent to service of process and appointment of a U.S. person as agent for process, but also a consent to service of an administrative subpoena and an undertaking to assist the Commission with an administrative investigation.[101] Form F-X further requires that the Commission be advised of any change to the name or address of an agent for service of process.

Under the proposal, the properly completed registration statement on proposed Form F-12 would become effective upon filing. Automatic effectiveness of the registration statement would permit the U.S. offer to proceed on the same time schedule as the offshore offer. Moreover, the registration statement generally would not be subject to prior review by the Commission staff. Therefore, exchange offers or business combinations registered on proposed Form F-12 would commence in the United States simultaneously with the dissemination, if any, or commencement of the offer in the foreign target company's home jurisdiction.[102] Notwithstanding the above relating to the effectiveness of a registration statement on proposed Form F-12, the proposed rules would not permit a registration statement relating to the issuance of debt securities to become effective until the provisions of the Trust Indenture Act of 1939 ("Trust Indenture Act") have been complied with,[103] or an exemption from the provisions of the Trust Indenture Act has been granted pursuant to section 304(d) of the Trust Indenture Act.[104]

In the United States, if any report or opinion of an expert or counsel is quoted or summarized in a registration statement or prospectus filed under the Securities Act, or if an expert is named in the registration statement as having prepared or certified a report or valuation, the written consent of the expert or counsel must be filed as an exhibit expressly consenting to the inclusion of the expert's or counsel's material in the registration statement. Form F-12, as proposed today, would not require experts, including auditors or counsel, to consent to the use of their material so long as it was not prepared or certified directly or for the sole purpose of the proposed Form F-12 registration statement or prospectus provided to U.S. securityholders, but was prepared for example for an offshore offer, for foreign periodic reporting requirements, or for a prior foreign registration statement.[105] The Commission is seeking comment on whether requiring the filing of a consent by experts in connection with offerings on Form F-12 would be impracticable or involve undue hardship on the person filing the registration statement within the meaning of section 7 of the Securities Act. In this regard, commenters should focus on whether the consent requirement is common among foreign registration and listing schemes such that a consent would be obtainable in connection with a Form F-12 filing, and whether it is appropriate to exempt experts or counsel from having to consent to the use of their report or opinion in these types of transactions.

All documents filed with the Commission would be subject to the civil liability and general antifraud provisions of the U.S. securities law applicable to a registration statement filed under the Securities Act.[106] Moreover, such documents would be in the Commission's public files, and therefore subject to public inspection.

As proposed, Form F-12 entirely incorporates the disclosure requirements under applicable foreign law, as defined and construed under the law of the foreign jurisdiction. Other than the specified legends and the English language requirement, no disclosure requirement is being defined by U.S. rule or regulation. Financial statements may be prepared under the standards of the foreign jurisdiction, and may be prepared in accordance with foreign accounting principles by auditors subject to foreign auditing and independence standards.

Commenters on both the Commission's Multijurisdictional Disclosure Release [107] and the Concept Release expressed concern that an offering circular/prospectus prepared in accordance with MJDS forms and requirements could be considered misleading solely because information that is required by the Commission's existing forms is not included based on applicable foreign disclosure rules. As stated in the MJDS, however, the Commission, in adopting the multijurisdictional disclosure system with Canada, adopted as its own requirements the disclosure requirements of the foreign regulatory scheme.[108] The same principles would apply under the rules and forms proposed today with respect to offering materials disseminated in this country, including documents filed with or submitted to the Commission on proposed Form F-12, Form 14D1C and Form 13E4H. A foreign private issuer that complies in good faith with applicable foreign disclosure law, even if such compliance results in the omission of information which might otherwise have been required as a line item as required by United States disclosure law, will constitute compliance with applicable U.S. disclosure law. The Commission requests comment on the applications of this total incorporation of foreign disclosure and solicits comment as to any minimum disclosure requirements that should be imposed.

4. Business Combinations

The Commission also is extending proposed Form F-12 to encompass the registration of securities in connection with statutory amalgamations, mergers, arrangements and other extraordinary reorganizations that require the vote of one or more of the acquired companies ("business combinations"). Registration on proposed Form F-12 of these transactions would be permitted if each significant participant [110] is a foreign private issuer, is currently furnishing information pursuant to Rule 12g3-2(b) or has made an initial submission pursuant to the rule on or before the filing of Form F-12, [111] has a security listed on a designated offshore securities market [112] for at least 36 months or meets the alternative operating experience and public float test, and five percent or less of the class of securities being registered would be held of record by U.S. residents other than U.S. holders of more than 10 percent of the subject class, as measured upon the completion of the business combination. The information provided to the foreign regulatory authority in satisfaction of the proxy and other disclosure requirements, as well as any information circular or any other disclosure documents required to be delivered by companies participating in a business combination to their securityholders, would be filed with the Commission under cover of proposed Form F-12 in satisfaction of the Securities Act registration requirements and delivered to securityholders in the United States in accordance with section 5(b) of the Securities Act.

As noted, each significant participant in a business combination must meet the offeror qualifications standard established for exchange offers. As in the case of exchange offers, the listing and reporting history of any participant that itself was the result of a business combination may be combined with each of its predecessor companies. The listing or operating history of any non-qualifying predecessor company could be disregarded if other qualifying predecessor companies whose assets and gross revenues, respectively, would contribute at least 60 percent of the combined entity's assets and gross revenues from the continuing operations.

Comment is requested whether the applicable foreign regulatory schemes or listing requirements exempt business combinations from the prospectus requirements in light of the disclosure that may be provided in an information circular required by applicable proxy solicitation rules. Comment is sought whether the regulatory scheme and the listing or reporting requirements of the designated offshore securities markets are sufficiently comparable so that specific disclosure of certain information as a precondition to the use of proposed Form F-12 for business combinations need not be required?

D. Continuous Reporting Requirement

Issuers that make a registered offering of securities in the United States are subject to continuous reporting requirements under the Exchange Act. section 15(d) of the Exchange Act [113] requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act to file periodic reports thereafter. This requirement is applicable for the fiscal year during which the registration statement became effective and any subsequent fiscal year in which securities of the class registered are held of record by 500 or more persons at the beginning of such fiscal year.[114] A foreign private issuer that registers an offering in the United States on proposed Form F-12, would be required by section 15(d) of the Exchange Act, absent an exemption, to file Commission continuous reporting disclosure documents (Forms 20-F and 6-K) to satisfy its Exchange Act reporting obligation. Pursuant to section 12(h) of the Exchange Act,[115] proposed Rule 12h-4 [116] would exempt foreign private issuers, with no existing reporting obligation, from any section 15(d) reporting obligation arising from the use of proposed Form F-12. A foreign private issuer that does incur a section 12(g) obligation as a result of having more than 500 securityholders resident in the U.S. after an exchange offer registered on proposed Form F-12 may nevertheless maintain an exemption from registration by continuing to furnish information pursuant to Rule 12g3-2(b); under proposed amendments to Rule 12g3-2(b), registration of securities on proposed Form F-12 would not disqualify a registrant from claiming the exemption, even if the foreign target was a reporting company.[117] Comment is requested as to whether an offeror registering securities on proposed Form F-12 should be required to file periodic reports under section 15(d), where it has over a specified number of securityholders (*e.g.*, 300, 500 or 1000), but be permitted to meet this obligation by filing with the Commission the same documents as it would furnish under Rule 12g3-2(b), so long as the offeror is not listed on a national securities exchange or quoted through an "automated inter-dealer system." Foreign private issuers having a class of securities listed on an exchange or quoted through an "automated inter-dealer system" in the U.S. would be entitled to use proposed Form F-12 but generally would file Commission-mandated continuous disclosure documents such as Form 20-F and 6-K reports.[118]

E. Trust Indenture Act Requirements

As previously noted, there presently are no restrictions on the type of securities that a third-party or issuer may offer in exchange for the securities of a foreign target company in reliance on proposed Rule 802 or proposed Form F-12. Consequently, the proposal would permit debt securities to be offered in an exchange offer for the foreign target company's equity or debt securities. The issuance of debt securities requires compliance with the provisions of the Trust Indenture Act [119] unless such debt securities are exempt, or are issued in transactions which are exempt, from the provisions of the Trust Indenture Act, pursuant to section 304 of the Trust Indenture Act.[120]

As part of the proposals today, pursuant to section 304(d) of the Trust Indenture Act [121] the Commission is proposing to adopt a new rule under the Trust Indenture Act to exempt any debt security issued pursuant to proposed Rule 802 under the Securities Act, whether or not issued pursuant to an indenture, from having to comply with

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[99] Such documents or exhibits, filed or incorporated by reference into the offering circular/prospectus, would be part of the registration statement, and subject to liability under sections 11 and 12(2) of the Securities Act (15 U.S.C. 77k and 77*(2)*) *for any misleading statements included therein.*

[100] In addition, if any exhibit or other paper or document filed with the Commission as part of a registration statement is in a foreign language, it must be accompanied by a substantive summary, version or translation in English. *See* Rule 403(c) of Regulation C (17 CFR 230.403(c)).

[101] Form F-X was approved as part of the MJDS.

[102] See proposed Rule 466 under the Securities Act (17 CFR 230.466).

[103] Proposed Rule 402(b) under the Securities Act (17 CFR 230.402(b)).

[104] 15 U.S.C. 77ddd(d).

[105] Section 7 of the Securities Act (15 U.S.C. 77g); proposed Rule 648 to the Securities Act (17 CFR 230.648). In most cases, since a report or opinion of an expert or counsel would be prepared in connection with an offshore offering, or has been prepared in the ordinary course of business, consents of experts would not be required.

[106] Sections 11 and 12(2) and 17(a) of the Securities Act (15 U.S.C. 77k, 77l(2) and 77q(a)); Sections 10(b) and 18(c)(1) of the Exchange Act (15 U.S.C. 78j(b) and 78o(c)(1)) and Rules 10b-5 and 15c1-2 (17 CFR 240.10b-5 and 240.15c1-2) thereunder.

[107] MJDS Original Proposal, *supra*, fn 69.

[108] See MJDS *supra*, fn 54.

[110] A significant participant is any foreign private issuer who contributes more than 20 percent of the assets and gross revenues from continuing operations as measured on a pro forma combination of the participating companies most recently completed fiscal year.

[111] An initial submission or existing submission would be required for each company involved in the business combination.

[112] Rule 902(a)(1) of Regulation S (17 CFR 230.902(a)(1)).

[113] 15 U.S.C. 78o(d).

[114] 15 U.S.C. 78o(d).

[115] 15 U.S.C. 78*l*.

[116] Proposed Rule 12h-4 (17 CFR 240.12h-4).

[117] Proposed Rule 12g3-2(d)(1) (17 CFR 240.12g3-2(d)(1)).

[118] The treatment of issuers who have a reporting obligation arising from listing their securities on a national securities exchange (Section 12(b) of the Exchange Act (15 U.S.C. 78*l*(b))) or having them quoted on NASDAQ will remain unchanged from that which is presently required.

[119] 15 U.S.C. 77aaa–77bbbb.

[120] 15 U.S.C. 77ddd.

[121] 15 U.S.C. 77ddd(d). Section 304(d) provides that the Commission may, by rule or order, exempt conditionally or unconditionally any indenture from one or more provisions of the Trust Indenture Act. Such exemptive authority may be exercised by the Commission "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended" by the Trust Indenture Act.

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the provisions of the Trust Indenture Act. [123]

It appears to the Commission that an unconditional exemption from the requirements of the Trust Indenture Act for any debt security issued pursuant to proposed rule 802 under the Securities Act would encourage inclusion of United States investors in tender offers and exchange offers for a foreign target company's securities. In keeping with its articulated goal of expanding opportunities for United States investors to participate in such offers, the Commission is of the view that its enforcement of the statutory requirement that debt securities be issued pursuant to an indenture qualified under the Trust Indenture Act would constitute a significant impairment to the ability of United States investors to participate in these offerings.

So long as the offeror is in compliance with proposed Rule 802, the exchange of debt securities would not be integrated with any other offerings, and thus would not affect the availability of an exemption from the Trust Indenture Act with respect to the issuance of other debt securities. The Commission requests comment on the appropriateness of exempting all transactions subject to proposed rule 802 from the provisions of the Trust Indenture Act. Comment also is requested on whether this exemption should be conditioned on the debt securities being issued pursuant to an indenture or other agreement specifying the rights of the parties, but that such indentures or agreements would not be required to be qualified under the Trust Indenture Act.

If a third-party bidder or issuer fails to qualify for an express exemption under proposed rule 4d–10 or some other provision of section 304 of the Trust Indenture Act, it may apply under section 304(d) of the Trust Indenture Act for an order from the Commission for exemption from one or more provisions of the Trust Indenture Act. In addition, in the absence of an exemption, if the bidder or issuer proposes to appoint a non-U.S. person to act as sole trustee under an indenture, an application may be filed under section 310(a)(1) of the Trust Indenture Act for permission to use a foreign person as the sole trustee. Applications for exemption under section 304(d) or section 310(a)(1) would be made pursuant to such rules and regulations as adopted by the Commission.

[123] Proposed Rule 4d–10 of the Trust Indenture Act (17 CFR 260.4d–10).

F. Exchange Act Provisions Affecting the Activities of Certain Participants in Tender and Exchange Offers

A number of foreign jurisdictions permit participants in tender offers and exchange offers to engage in certain activities that would be prohibited in the U.S. by Rules 10b–6, [124] 10b–7 [125] and 10b–13. [126] In connection with the adoption of the MJDS with Canada, the Commission adopted exemptions with respect to such rules for tender or exchange offers relying on the MJDS. G5126 The exemptions which, under certain conditions, permit securities to be purchased in Canada otherwise than pursuant to the terms of the offer, recognize that Canadian procedures applicable to tender and exchange offers afforded a large measure of the protections provided by Rules 10b–6 and 10b–13. Also, in the Concept Release the Commission requested whether it would be necessary or appropriate to grant exemptions from Rules 10b–6 and 10b–13 for offshore tender and exchange offers. Commenters generally stated that relief from Rules 10b–6 and 10b–13 would be appropriate for tender or exchange offers that are essentially foreign in character, especially if any such exemptions recognized the laws, rules and practices of the foreign jurisdiction governing the offer.

Rule 10b–6 has played an important role in protecting U.S. markets from potentially manipulative conduct during a distribution. [127] The rule is designed to protect the market for the security in distribution as an independent pricing mechanism, free from any influence on the price of the security that may result from bids or purchases of the distribution security or related securities by distribution participants or other persons having a financial or other stake in the success of the distribution.

Many foreign jurisdictions do not have anti-manipulation provisions similar to Rule 10b–6. In fact, foreign jurisdictions may have rules or procedures that conflict in various respects with that rule. [128] Flexible application of Rules 10b–6, 10b–7, and 10b–13 appear to be necessary and appropriate to encourage foreign offerors to permit U.S. securityholders to participate fully in tender offers and exchange offers for foreign securities. At the same time, the importance of maintaining the integrity of the U.S. markets requires that any exemption should be limited to circumstances where the characteristics of the offering indicate that the concerns expressed in Rules 10b–6, 10b–7, and 10b–13 are sufficiently attenuated. Neither of the proposed exemptions discussed below would have any effect on the continuing application of the general antifraud and antimanipulation provisions of the federal securities laws. [129]

Many of the exchange offers utilizing Rule 802 or Form F–12 will not be "distributions" as defined in Rule 10b–6, [130] and the persons participating in such offers will not be affected by the rule or the need to consider whether the proposed exemptions are available. Nevertheless, the Commission believes it is appropriate to exercise its authority under Rules 10b–6(h), 10b–7(o), and 10b–13(d) to propose a complete exemption for exchange offers pursuant to proposed Rule 802 on the presumption that such exchange offers for foreign securities are unlikely to raise significant manipulative concerns.

[124] Rule 10b–6 (17 CFR 240.10b–6), generally prohibits a person participating in certain offerings ("distributions") from, directly or indirectly, bidding for or purchasing, or inducing other persons to bid for or purchase, the securities in distribution, or any security of the same class and series, or any right to purchase such security ("related securities"), until the distribution has been completed. An exchange offer may involve a "distribution" as that term is defined in Rule 10b–6(c)(5). See *infra* fn 127. Moreover, Rule 10b–6 applies to both the securities offered and the securities sought in an exchange offer, but not to tender offers for cash.

[125] Rule 10b–7 (17 CFR 240.10b–7), prohibits a person from, directly or indirectly, stabilizing the price of a security to facilitate an offering of any security, unless such stabilization is effected in accordance with the rule's provisions.

[126] Rule 10b–13 (17 CFR 240.10b–13), prohibits a person who is making a cash tender offer or exchange offer from, directly or indirectly, purchasing or making any arrangement to purchase such security (or any other security which is immediately convertible into or exchangeable for such security) otherwise than pursuant to such offer, from the time of public announcement of the offer until its expiration, including any extensions thereof.

[128] MJDS, *supra* fn 54. See also Original MJDS Proposal, *supra* fn 60 at 32243–32244 and MJDS Reproposal *supra* fn 47 at 46296.

[127] The term "distribution" is defined in paragraph (c)(5) of Rule 10b–6 as an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. This definition is designed to apply the prohibitions of the rule to those situations where there would be an incentive to manipulate the security's price in order to facilitate the distribution.

[128] See Letter regarding International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd (September 20, 1967), (1967–1968) Fed. Sec. L. Rep. (CCH) ¶ 78,712.

[129] See *supra* fn 62.

[130] In determining whether a distribution is present, only the portion of the securities offered in the United States would be considered. However, for purposes of Rule 10b–6, the offeror would have to take into account all securities concurrently offered by the issuer in the United States, including securities offered pursuant to exemptions from registration under the Securities Act.

The Commission also proposes to exempt from Rules 10b–6 and 10b–7 exchange offers made on Form F–12, subject to the following conditions: (1) The issuer of the foreign securities in distribution has voting stock with an aggregate market value of at least $150 million held worldwide by persons that are not affiliates of the issuer; (2) in required proposed Form F–12 legends, [131] the registrant discloses, where such is the case, the possibility of, or the intent to make, bids or purchases outside the United States as permitted by the applicable laws and regulations of the governing foreign jurisdictions; (3) the registrant discloses in the United States information regarding such purchases to the extent such disclosure is made in a foreign jurisdiction; (4) any bids or purchases of the security by distribution participants are made on a "designated offshore securities market," as defined in Rule 902 under the Securities Act; [132] and (5) no bids or purchases of the offered securities are effected in the United States.

The Commission seeks commenters' views on the proposed exemptions. Specifically, should the issuer qualification of $150 million in voting securities be changed to equity with a "public float" [133] of $150 million; $75 million? With regard to the qualifying markets for such purchases, would it be more appropriate to limit the availability of the exemptions to purchases on "specified foreign securities markets," as defined in proposed Rule 3b–10 under the Exchange Act, [134] or markets located in countries with which the Commission has an MOU or other comparable information sharing agreement? [135] Finally, comment is requested concerning the role played by issuers and their affiliated purchasers in foreign exchange offers and whether it is appropriate to extend the proposed exemptions to them. [136]

Rule 10b–13 principally is intended to prevent the offeror from providing greater or different consideration to certain shareholders by purchasing their shares outside the offer, to the detriment of other shareholders who are limited to the terms of the offer. A number of foreign jurisdictions do not prohibit the offeror from purchasing or arranging to purchase the subject security during the offer, although some jurisdictions require the bidder to provide consideration to tendering shareholders that is equivalent to the higher of the offer price and the highest price paid to any person whose securities were purchased outside of the offer. [137]

Affording U.S. securityholders the opportunity to participate in cash tender offers and exchange offers that are primarily foreign in character appears to outweigh the benefits that would be derived from applying Rule 10b–13 to such offers. Accordingly, the Commission is proposing an exemption that would permit a bidder relying on proposed Rules 802, 14d–1(c) or13e–4(h) to conduct a cash tender offer or exchange offer [138] in the United States without complying with Rule 10b–13, subject to the following conditions: (1) Any purchases or arrangements to purchase the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), otherwise than pursuant to the tender or exchange offer are not made in the United States; (2) where such is the case, disclosure of the possibility of such purchases, or the intent to make such purchases, in accordance with the applicable laws and regulations of foreign jurisdictions, is included in any information legend required by Form 14D1C or Form 13E4H; and (3) the offeror discloses such purchases in the United States to the extent such disclosure is made in a foreign jurisdiction. The Commission solicits commenters' views on the proposed exemptions from Rules 10b–6, 10b–7, and 10b–13. [139]

[131] See Part I, Item 2. to proposed Form F–12.

[132] 17 CFR 230.902(e).

[133] See Instruction 4 to proposed Form F–12.

[134] See Securities Exchange Act Release No. 28736 (January 3, 1991) (56 FR 820).

[135] See *supra* Section II.A.1.

[136] Limiting the exemption to persons other than the issuer and its affiliates would be consistent with prior Commission actions. *See, e.g.*, Letter regarding Application of Rules 10b–6, 10b–7, and 10b–8 to Rights Offerings and Rule 144A Transactions Involving Foreign Securities (April 25, 1991).

[137] See City Code Rules 6.1 and 6.2 (1990) 2 Fin. Serv. Rep. (CCH Ltd.) E–10 at p. 140,402. *See also, e.g.*, Ontario Securities Act sections 93(3) and 93(6) and Ontario Securities Commission Policy Statement 9.3.

Persons whose shares are purchased in the market before payment is made in the offer, however, receive a consideration different from that received by tendering shareholders, even though they receive the same per share price. See Brief of the Securities and Exchange Commission, Amicus Curiae, *Texaco Inc.* v. *Pennzoil Inc.* (Supreme Court of Texas, July 22, 1987).

[138] An exchange offer conducted pursuant to proposed Rule13e–4(h) or proposed Rule 14d–1(c) (17 CFR 240.13e–4(h) and 240.14d–1(c)] may also be subject to Rule 10b–6, but would have the benefit of the proposed exemptions discussed above for offers made under Rule 802 or Form F–12.

[139] The Commission would continue to consider requests for individual exemptions in the context of tender and exchange offers that would not be covered by the proposed exemptions.

IV. United Kingdom Exemptive Order

Over the past two years, the Commission and the Panel on Takeovers and Mergers (the "Panel") [140] have worked together to facilitate on a case-by-case basis takeover bids for U.K. chartered companies with U.S. securityholders in order to promote the equal treatment of all securityholders. This approach was undertaken by the Commission and the Panel in the Ford Motor Company Ltd. cash offer for Jaguar plc, [141] and most recently in the exchange offer by Manpower Inc. for the ordinary shares of Manpower plc. [142] The experience of these offers, [143] and a review by the Commission and the Panel have highlighted six principal points of potential conflicts between the City Code and the Williams Act: (1) The availability of withdrawal rights and the prompt purchase of tendered shares; (2) the equal treatment of all securityholders; (3) the timing of public announcements; (4) the use of guaranteed deliveries of target securities in U.S. tender offers; (5) the adequacy of the U.K. disclosure documents; and (6)

[140] Tender offers in the United Kingdom are regulated by the Panel, which is a non-statutory body sponsored by the Bank of England and the institutions using the International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd. ("ISE"). Both the ISE and the Panel's requirements are set forth in the City Code on Take-Overs and Mergers (the "City Code") (1990) 2 Fin. Serv. Rep. (CCH Ltd.), which states general principles for the regulation of takeovers conducted in the United Kingdom and the Republic of Ireland. The City Code is intended to be interpreted flexibly and is viewed as a codification of good standards of commercial behavior. The City Code applies to public and certain private companies, while the ISE disclosure requirements apply only to listed companies.

[141] Securities Exchange Act Release No. 27425 (Nov. 7, 1989).

[142] Letter Regarding Manpower plc and Manpower Inc. (February 15, 1991) ("Manpower"). The Manpower transaction included an exchange offer by a newly formed U.S. company for all the shares of a company chartered in the United Kingdom in order to change the domicile of the parent company. Approximately 75 percent of Manpower plc's ordinary shares were held in the United States and most of its executive offices and operations were in the United States, thus disqualifying the target from the status of a foreign private issuer. In the transaction, a single offer was extended to both U.S. and U.K. holders. While relief was granted from the withdrawal rights requirements following the offer going wholly unconditional, withdrawal rights were otherwise afforded in accordance with U.S. requirements, both with respect to U.S. and U.K. holders.

[143] See also In the Matter of Aktiebolaget Volvo and Procordia Aktiebolag, *supra* fn 69 (exchange and cash offers of Aktiebolaget Volvo, a Swedish company with shares traded on NASDAQ, and Procordia Aktiebolag, a company controlled by the Swedish government, for all shares of another Swedish company, Pharmacia Aktiebolag, a Swedish company reporting in the U.S. and affiliated with Volvo).

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purchases outside the tender offer during the pendency of the offer. The Commission is proposing to formalize the accommodations arrived at in these six areas in order to facilitate concurrent jurisdiction of tender offers subject to both the City Code and the Williams Act.

In order to codify these accommodations as well as to alleviate the necessity of individual Commission orders, the Commission is considering the entry of an exemptive order that would permit third-party exchange and cash tender offers for U.K. target companies, that are subject to the City Code, to take advantage of certain limited exemptions from the requirements of the Williams Act. The proposed exemptive order would allow tender or exchange offers to proceed simultaneously in the United Kingdom and the United States on the same terms and in accordance with both the Williams Act and the City Code.[144]

The exemptive order would extend to tender offers for the securities of U.K. companies that meet the definition of foreign private issuer. [145] Comment is requested whether this test is appropriate, since it could encompass U.K. companies where a majority of the securities are held in the United States, but the other disqualifying factors in the definition of foreign private issuer contained in Rule 3b–4 of the Exchange Act are not present. Should the scope of the order instead be based upon a specified maximum level of U.S. ownership such as 40, 50, or 60 percent?

A. Withdrawal Rights and the Prompt Purchase of Tendered Shares

As highlighted by the Commission's previous exemptive orders, Williams Act requirements regarding withdrawal rights conflict with the City Code. Specifically, the Williams Act and Commission rules require that withdrawal rights be maintained throughout the entire length of a tender offer,[146] whereas withdrawal rights are generally made available under the City Code only after the expiration of 21 days following the first closing date of the initial offer, if the tender offer has not by such date become or been declared unconditional as to acceptances.[147]

The extension of withdrawal rights in the U.S. throughout the offer has the effect of preventing the bidder from purchasing shares until the expiration of the offer, regardless of the reasons for an extension.[148] The City Code, however, requires that an offer remain open for at least 14 days after going unconditional as to acceptances and that shares be immediately purchased once the offer goes wholly unconditional.[149] These requirements would thus create a conflict with the U.S. requirement that withdrawal rights be extended, and therefore the previously tendered shares could not be purchased, absent an exemption, so long as the offer remained open.

To alleviate the conflicts erected by the diverging regulatory schemes, the proposed order contemplates that bidders will proceed simultaneously in the United States and the United Kingdom, complying with the rules and regulations of the Williams Act, including the applicability of withdrawal rights, with respect to U.S. holders, and complying with the City Code with respect to U.K. holders. In order to coordinate the different parts of the offer, however, and to ensure that all holders are paid at the same time, the offer would be permitted to remain open both in the U.S. and U.K. after the offer is declared wholly unconditional in accordance with U.K. tender offer practice, without extension of withdrawal rights, provided that (1) all U.S. minimum time periods had been satisfied, including U.S. mandated extensions, and all conditions to the offer had been satisfied or waived,[150] (2) all previously tendered securities would be accepted [151] and promptly paid for; [152] and (3) all securities tendered thereafter are immediately accepted and promptly paid for by the bidder.

B. All Holders

The proposed order also would provide limited exemptive relief under the all-holders provisions of Rule 14d–10 and Rule 13e–4(f)(8) under the Exchange Act.[153] Pursuant to this relief, a bidder may divide the offer into two separate offers, as done in the *Ford/Jaguar* transaction, excluding U.S. holders from the U.K. portion and limiting the U.S. offer to U.S. persons. In the alternative, a bidder could conduct one offer open to all holders, but affording different withdrawal rights to U.S. and U.K. holders prior to going wholly unconditional.

C. Public Announcements

An additional regulatory conflict involves the City Code requirement that a bidder promptly make a brief public announcement of a possible offer under a number of circumstances, including where the target becomes subject to rumor or speculation following an approach by the bidder.[154] Under Rule 2.5 of the City Code, however, if the bidder has formed a firm intention to make an offer, it must make a detailed announcement of the terms of the offer. The bidder is then required to mail an offer document within 28 calendar days of such an announcement.[155] Rule 14d–2(b) under the Williams Act, on the other hand, requires that the requisite disclosure documents be published, sent or given to securityholder within five business days of the announcement of the material terms of the offer.[156] A conflict would be created, though, since the brief announcement could, and the Rule 2.5 announcement in all likelihood would, trigger the requirements of Rule 14d–2(b).

The proposed order would permit bidders for a U.K. chartered foreign private issuer to delay filing a Schedule 14D–1 [157] with the Commission and disseminating the tender offer materials until the disclosure document is mailed or disseminated in the United Kingdom, so long as a public announcement is made in the United Kingdom and in the United States containing the information required by Rule 2.5(b) of the City Code within five business days of any announcement triggering Rule 14d–2(b).[158] In the case of registered exchange offerings, the announcement made in the United Kingdom would not constitute "gun jumping" [159] so long as the announcement contains no more information than is required by the Panel, and includes a statement that a registration statement regarding the securities is not yet effective, and securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective.[160]

D. Guaranteed Deliveries

The Williams Act permits a bidder to allow securityholders to tender their securities without the physical or book entry delivery of the securities, but with a guarantee of delivery of the tendered securities within a specified period of time. The Williams Act does not mandate the use of guaranteed delivery in a tender offer; rather, it is up to the bidder as to whether the procedure will be made available to securityholders. In the Ford/Jaguar transaction, at the request of the Panel, only holders of ADRs, and not U.S. residents who held the ordinary shares of Jaguar, were given the option of tendering pursuant to the guaranteed delivery procedure. After the initial offering period in Ford/Jaguar and after acceptance for payment under the simultaneous U.S. and U.K. tender offers, all holders of U.S. securities received the option of tendering pursuant to the guaranteed delivery procedures. This difference in treatment during the initial offering period and prior to the acceptance for payment of the tendered securities, occurred due to the Panel's concern with double counting of securities.[161] The concern expressed by the Panel is based on the Panel's goal of requiring bidders to be as certain as possible that the offer not go wholly unconditional unless the bidder has secured legal control of the subject company.[162] The Panel has advised the Commission that in the ordinary course it does not expect tender offers made in reliance on the order to permit the use of guaranteed delivery procedures. Since an offer would remain open a minimum of 14 days following announcement that the offer has gone unconditional as to acceptances, institutions and other persons holding ordinary shares and ADRs in a fiduciary capacity should have adequate time to tender by physical or book entry delivery. Comment is requested whether the absence of guaranteed delivery procedures would cause undue hardship to U.S. securityholders, or disruption in the U.S. markets for the subject security.

E. Disclosure Documents

The Commission's staff has reviewed U.K. disclosure documents disseminated in connection with cash tender offers in the U.K. and has found that the disclosure documents used in the U.K. are substantially comparable so as to permit the acceptance of the disclosure documents in connection with a tender offer involving U.K. subject companies if extended to U.S. residents. In a sample of tender offers by U.K. and non-U.K. bidders for U.K. chartered companies subject to the City Code, the disclosure contained therein was substantially similar to that contained in U.S. offers and would generally meet the requirements of Schedules 14D–1 and 14D–9.[163] The proposed order would therefore specify that offering materials prepared in accordance with the requirements of the City Code would satisfy the requirements of Schedules 14D–1 and 14D–9. Such offering materials would be filed as an exhibit to, and incorporated by reference into, the Schedules 14D–1 and 14D–9, thereby eliminating the necessity of preparing two sets of offering materials. Comment is requested as to whether there are disclosure provisions that are not substantially comparable and consequently should be specifically addressed under the order.

F. Purchases Outside the Offer

Rule 10b–13 under the Exchange Act,[164] prohibits a person who is making a tender or exchange offer from purchasing or arranging to purchase, directly or indirectly, the securities that are the subject of a tender or exchange offer, or any security that is immediately convertible into or exchangeable for such security, otherwise than pursuant to the offer. The rule's prohibitions apply from the time of public announcement of the offer until such time as the offeror is required, pursuant to the terms of the offer, either to accept or reject the tendered securities.[165]

In contrast, the City Code does not prohibit purchases otherwise than pursuant to the terms of a tender or exchange offer by persons covered by Rule 10b–13 during the period between announcement of the offer and its termination. However, the City Code contains "best price" and other provisions that operate to provide protections similar to Rule 10b–13. General Principle No. 1 of the City Code requires that all shareholders of the same class be treated "similarly" by an offeror.[166] Additionally, City Code Rule 6.2(a) requires the offeror and persons "acting in concert" with the offeror, including U.K market maker affiliates of dealer-managers conducting concurrent U.S. and U.K tender offers,[167] who

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[144] Section 14(d)(8) (15 U.S.C. 78n(d)(8)) permits the Commission by rule or order to exempt from the provisions of section 14(d) transactions that are "not comprehended within the purposes of this subsection." In addition, the Commission is empowered to alter the requirements of specific provisions of the Williams Act by rule or order, such as withdrawal rights under section 14(d)(5) of the Exchange Act (15 U.S.C. 78n(d)(6)).

[145] *See supra* fn 88.

[146] *See* Section 14(d)(5) (15 U.S.C. 78n(d)(5)); Rule 14d–7 and Rule 13e–4(f)(2) (17 CFR 240.14d–7 and 240.13e–4(f)(2)).

[147] City Code Rule 34 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), M–13 at 140,981. Unconditional as to acceptances is normally achieved on receiving a sufficient number of tendered securities, when combined with securities already owned or to be purchased, constitute more than 50 percent of the aggregate number of outstanding shares. See City Code Rule 10 [1990] 2 Fin. Serv. Rep. (CCH Ltd.), C–1 at 140,561.

The City Code, though, would not preclude a bidder from voluntarily providing additional withdrawal rights.

[148] Rule 14d–7(a) and Rule 13e–4(f)(2) (17 CFR 240.14d–7(a) and 240.13e–4(f)(2)).

[149] City Code Rule 31.4 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), M–2 at 140,802.

[150] Bidders taking advantage of these procedures normally would include in the United States offer the same conditions to the offer as those contained in the United Kingdom offer, including the minimum condition, in order to eliminate any question of the bidder's entitlement to delay closing the U.S. offer during any extension of the U.K. offer.

[151] Subject to meeting valid tender offer regulations, including proration requirements in a partial offer.

[152] 17 CFR 240.14e–1(c). The Commission generally has looked to the clearance and payment practices of the target's home country in this respect. See *Pryor* v. *United States Steel Corp.*, 591 F.Supp. 942 (S.D.N.Y. 1984); and Securities Exchange Act Release No. 16384 (Nov. 29, 1979) (44 FR 70362).

[153] 17 CFR 240.14d–10 and 240.13e–4(f)(8).

[154] City Code Rules 2.2 and 2.5 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), D–3 at 140,302 and D–5 at 140,321–322.

[155] City Code Rule 30.1 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), M–6 at 140,922.

[156] 17 CFR 240.14d–2(b). The rule deems the offer to have commenced upon the public announcement of the identity of the bidder and target, the number of shares sought and the price or range of prices to be paid, unless the Schedule 14D–1 is filed and tender offer materials are disseminated within five business days or the bidder otherwise announces an intent not to proceed with the offer.

[157] 17 CFR 240.14d–100.

[158] Rule 10b–13 (17 CFR 240.10b–13) would continue to apply from the initial public announcement of the offer in the United States and the United Kingdom.

[159] Section 5(c) of the Securities Act (15 U.S.C. 77e(c)) makes it unlawful for any person directly or indirectly to make use of any means or instruments of interstate commerce or of the mails to offer to sell a security unless a registration statement has been filed with the Commission as to such security.

[160] See generally Rule 134(b)(1) (17 CFR 230.134(b)(1)).

[161] The concern also reflected the City Code requirement that an offer be withdrawn unless within 60 days of posting, the offer becomes "unconditional as to acceptances."

[162] *Id.*, City Code Rule 10 at 562, 561.

[163] 17 CFR 240.14d–100 and 240.14d–101.

[164] 17 CFR 240.10b–13.

[165] See fn 128 and accompanying text. Rule 10b–13 supports the Exchange Act's "best price" provisions. See, e.g., section 14(d)(7) of the Exchange Act (15 U.S.C. 78n(d)(7)), and Rules 14d–10(a)(2), 14e–1(b), and 13e–4(f)(8)(ii) (17 CFR 240.14d–10(a)(2), 240.14e–1(b), and 240.13e–4(f)(8)(ii)).

[166] City Code General Principle No. 1 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), B–1 at 140,281.

[167] Under the "acting in concert" presumptions set forth in the definitions section of the City Code, purchases by a market maker controlled by, controlling, or under common control with a dealer-manager or any other adviser to the bidder will be attributable to the bidder. City Code Definitions (1990) 2 Fin. Serv. Rep. (CCH Ltd.), C–1 at 140,253. City Code Rule 8 requires market makers controlled by, controlling, or under common control with the dealer-manager or any other adviser to the offeror to report each transaction in "relevant securities" (which includes securities that are the subject of an exchange offer for purposes of Rule 10b–13) to the Panel and the ISE by noon on the day following the transactions, unless the market maker has been recognized by the Panel as an "exempt market maker." City Code Rule 8 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), E–16 at 140,434. This disclosure is designed to provide a significant deterrent to manipulation and thus to provide protection to tendering securityholders.

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purchase securities outside the offer and above the offer price, to increase immediately the offer price to the highest price paid for shares purchased outside the offer.[168] Moreover, the City Code requires any purchases by an offeror and certain other persons to be disclosed on a next-day basis.[169]

Strictly construed, where the dual offer structure is employed, Rule 10b–13 would prevent the acquisition of shares in the concurrent U.K. offer during the pendency of the U.S. offer.[170] As discussed above, Rule 10b–13 conflicts with City Code provisions that permit an offeror and certain other persons to purchase target securities during the offer. Moreover, Rule 10b–13 may interfere with purchases of target securities pursuant to the compulsory acquisition rules (clean-up merger rules) of the U.K.,[171] since the Rule 10b–13 period generally applies from the time of the public announcement of the offer until the expiration of the offer period, including any extensions thereof.[172] Finally, Rule 10b–13 may interfere with the normal U.K. practice of permitting a market maker affiliate of the dealer-manager to continue to act as a market maker with respect to the subject securities.[173]

Accordingly, the Commission is requesting comment on its proposal to exempt offerors (and dealer-managers) from Rule 10b–13 to permit tender and exchange offers for foreign private issuers listed for trading on the ISE and subject to the City Code to proceed in the United States in accordance with the rules of the City Code. The proposed exemption would be conditioned on: (1) Disclosure in documents filed in the U.S. in connection with the offer, where such is the case, of the possibility of, or the intention to make, such purchases during the offer; (2) all such purchases being made outside the United States; and (3) an undertaking by the offeror to disclose in the United States information regarding any such purchases to the extent such disclosure is made pursuant to the City Code.

V. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with proposed Rule 802 and Form F–12, and proposed amendments to Rules 13e–4, 14d–1 and 14e–2, the Commission requests commenters to provide views and data as to the costs and benefits associated with multijurisdictional tender and exchange offers and the registration system proposed in order to facilitate the inclusion of U.S. securityholders in such offers. The Commission requests that foreign regulators, foreign issuers, their counsel and auditors provide views and data as to the costs and benefits associated with multijurisdictional tender and exchange offers under current law as compared to the costs and benefits under the proposed system. The Commission is not aware of any additional costs that would result from the proposed rules and forms whose use would be entirely optional. In addition, because eligible issuers taking advantage of the rules and forms would avoid expenses associated with the preparation of more than one document, benefits are expected to result for such issuers.

VI. Regulatory Flexibility Certification

A Regulatory Flexibility Certification relating to proposed Rule 802, Form F–12, under the Securities Act of 1933, Form 13E4H and Form 14D1C under the Securities Exchange Act of 1934, and Rule 304 of the Trust Indenture Act of 1939, has been prepared in accordance with 5 U.S.C. 606(b).

A copy of the Regulatory Flexibility Certification is attached as appendix B or a copy may be obtained by contacting John C. Maguire, Esq., in the Office of Tender Offers, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

VII. Request for Comments

Any interested persons wishing to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals are requested to do so. In addition to the specific inquiries made throughout this release, the Commission solicits comments on the usefulness of the proposals to foreign issuers, foreign issuers who are reporting companies with the Commission, registrants and the marketplace at large. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[174] The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–18–91. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

VIII. Statutory Basis of Rule, Form Proposals and Rule and Form Changes

These revisions are being proposed pursuant to sections 3(b), 7, 8, 10 and 19 of the Securities Act,[175] sections 12, 13, 14, and 23 of the Exchange Act,[176] and section 304 of the Trust Indenture Act.[177]

List of Subjects in 17 CFR Parts 200, 230, 239, 240, and 260

Authority delegations, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

[168] City Code Rule 8.2(a) (1980) 2 Fin. Serv. Rep. (CCH Ltd.), E–10 at 140,402. See also *supra* fn 165.

[169] City Code Rule 8 (1980) 2 Fin. Serv. Rep. (CCH Ltd.), E–10 at 140,402. The City Code recognizes a special category of market makers called "exempt market makers" whose activities would not trigger the "best price" provisions of the City Code.

[170] See, e.g., *supra* fn 141, where the Commission granted, among other things, Ford Motor Company Limited's request for an exemption from Rule 10b–13 to permit it to conduct a U.K. tender offer in accordance with the City Code during the pendency of its concurrent tender offers for Jaguar plc in the United States and the United Kingdom.

[171] Sections 428–430F of the U.K. Companies Act of 1985.

[172] See, e.g., Manpower *supra* fn 142. An accommodation was made between conflicting U.K and U.S. tender offer requirements to permit Manpower, among other things, to purchase ordinary shares and ADSs pursuant to the U.K. compulsory acquisition rules. As noted, the Manpower transaction was unusual in that the offeror was not a foreign private issuer within the meaning of Rule 3b–4 under the Exchange Act (17 CFR 240.3b–4). The availability of the proposed exemptive order would be limited to foreign private issuers.

[173] Rule 10b–13 has been interpreted to apply to the dealer-manager of a tender offer because the dealer-manager acts as the agent of the bidder to facilitate the bidder's objectives. The dealer-manager is thus prohibited from, directly or indirectly, purchasing or making any arrangement to purchase the security subject to the tender offer during the pendency of the offer. Purchases of a market maker affiliate of the dealer-manager are indirect purchases by the dealer-manager. See, e.g., Letter regarding S.G. Warburg Securities (November 9, 1989), (1989) Fed. Sec. L. Rep. (CCH) ¶79,411 at 77,159.

[174] 15 U.S.C. 78w(a)(2).

[175] 15 U.S.C. 77c, 77g, 77h, 77j and 77s.

[176] 15 U.S.C. 78l, 78m, 78n, and 78w.

[177] 15 U.S.C. 77ddd.

IX. Text of Rules, Form Proposals and Rule and Form Changes

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, Subpart A continues to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 200.30–1 to add paragraph (f)(15) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(f) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

* * * * *

(15) To grant exemptions from all or certain tender offer provisions of the Exchange Act (sections 14(d)(1) through 14(d)(7) (15 U.S.C. 78n(1)–(7)), Regulation 14D (§§ 240.14d–1 through 240.14d–10 of this chapter) and Schedules 14D–1, 14D–9, and Form 14D1C (§§ 240.14d–100, 240.14d–101, 240.14d–104 of this chapter) thereunder, and Rule 14e–1 of Regulation 14E (§ 240.14e–1 of this chapter)) pursuant to sections 14(d)(5) and 14(d)(8)(C) (15 U.S.C. 78n(d)(5) and 78(d)(8)(C)).

* * * * *

3. By revising paragraph (a)(36) of § 200.30–3 to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

* * * * *

(36) To grant exemptions from Rule 13e–4 (§ 240.13e–4 of this chapter) pursuant to Rule 13e–4(i)(7) (§ 240.13e–4(i)(7) of this chapter).

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

4. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w, 79t, and 80a–37, as amended, unless otherwise noted.

5. By revising paragraph (a) of § 230.174 to read as follows:

§ 230.174 Delivery of prospectus by dealers; exemptions under Section 4(3) of the Act.

* * * * *

(a) No prospectus need be delivered if the registration statement is on Form F–6 or F–12 (§ 239.36 or 44 of this chapter).

* * * * *

6. By adding § 230.440 to read as follows:

§ 230.440 Exemption from the requirement to provide consents for registration statements on Form F–12.

The written consent of an expert pursuant to section 7 of the Act shall not be required with respect to a registration statement on Form F–12 (§ 239.44 of this chapter), except with respect to a certification, report or valuation prepared solely in connection with such registration statement.

7. By revising § 230.464 to read as follows:

§ 230.464 Effective date of post-effective amendments to registration statements filed on Form S–8 and Form F–12, and on certain Forms S–3, S–4, F–3, and F–4.

Providing. That, at the time of filing of each post-effective amendment with the Commission, the issuer continues to meet the requirements of filing on Form S–8 (§ 239.16b of this chapter) or Form F–12 (§ 239.44 of this chapter); or on Form S–3 (§ 239.13 of this chapter) for a registration statement relating to a dividend or interest reinvestment plan; or on Form F–3 (§ 239.33 of this chapter) for a registration statement relating to a transaction meeting the requirements specified in paragraph 4 of General Instruction I.B. of that Form; or in the case of a registration statement on Form S–4 (§ 239.25 of this chapter) that there is continued compliance with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) that there is continued compliance with General Instruction F of that Form:

(a) The post-effective amendment shall become effective upon filing with the Commission; and

(b) With respect to securities sold on or after the filing date pursuant to a prospectus which forms a part of a Form S–8 or Form F–12 registration statement; or a Form S–3 registration statement relating to a dividend or interest reinvestment plan; or a Form F–3 registration statement relating to a transaction meeting the requirements specified in paragraph 4 of General Instruction I.B. of that Form; or a Form S–4 registration statement complying with General Instruction F of that Form and which has been amended to include or incorporate new full year financial statements or to comply with the provisions of section 10(a)(3) of the Act, the effective date of the registration statement shall be deemed to be the filing date of the post-effective amendment.

8. By adding § 230.469 to read as follows:

§ 230.469 Effectiveness of registration statements made on Form F–12.

(a) A registration statement on Form F–12 (§ 239.44 of this chapter) relating to securities offered in connection with an exchange offer or a business combination, shall become effective upon the filing of the Form F–12 with the Commission by the registrant.

(b) Notwithstanding the provisions of paragraph (a) of this section, a registration statement or post-effective amendment relating to an issue of debt securities shall not become effective until the provisions of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) have been complied with or an exemption from the provisions of that Act has been granted pursuant to section 304(d) (15 U.S.C. 77ddd(d)) under that Act.

9. By revising paragraph (d) of § 230.473 to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form S–8 or Form F–12 (§ 239.16b or 44 of this chapter); on Forms S–3, F–2, F–3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form.

10. By adding § 230.802 to read as follows:

§ 230.802 Exemption for limited offerings, not exceeding $5,000,000, in connection with an exchange offer or business combination.

Preliminary Notes

1. The following § 230.802 relates solely to the application of section 5 of the Securities Act of 1933 (the "Act") (15 U.S.C. 77e) and not to the applicability of the antifraud, civil liability or other provisions of the federal securities laws.

2. In view of the objectives of this § 230.802 and the policies underlying the Act, § 230.802 is not available with respect to any transaction or series of transactions that, although in technical compliance with this rule, is part of a plan or scheme to evade the

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registration provisions of the Act. In such cases, registration under the Act is required.

3. Nothing in this § 230.802 obviates the need for any issuer or any other person to comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*) or other provisions of the federal securities laws, whenever such requirements are applicable.

4. Nothing in this § 230.802 obviates the need to comply with any applicable state law relating to the offer and sale of securities.

5. Attempted compliance with § 230.802 does not act as an exclusive election; a person making an offer or sale of securities or engaging in a business combination in reliance on § 230.802 may also claim the availability of any other applicable exemption from the registration requirements of the Act.

6. Section 230.802 provides an exemption only for the transaction in which the securities are exchanged by the issuer, not for the securities themselves. Securities of foreign private issuers, whether or not acquired in a transaction made in reliance on § 230.802, may be resold in the United States only if they are registered under the Act or an exemption from registration is available.

7. The provisions of this rule shall not apply to exchange offers or business combinations by an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*)

8. Offers and sales made outside the United States, will not affect a contemporaneous exchange offer made in compliance with this § 230.802 and will not be included in calculating the aggregate dollar amount of securities to be exchanged for securities held by U.S. holders in compliance with this § 230.802. A transaction made in compliance with § 230.802 will not be integrated with registered domestic offerings or domestic offerings that satisfy the requirements for an exemption from registration under the Act, including an exemption under other rules adopted pursuant to section 3(b) of the Act, even if undertaken contemporaneously. No adjustment to the aggregate offering amount shall be made for other offerings by an offeror made in reliance upon an exemption under other rules adopted pursuant to section 3(b) of the Act.

(a) *Definitions.* As used in Rule 802, the following terms shall have the meaning indicated.

(1) *Foreign private issuer* shall have the same meaning as set forth in Rule 405 of Regulation C (§ 230.405 of this chapter).

(2) *Foreign target company* as applied in § 230.802 shall mean any foreign private issuer whose securities are the subject of a tender or exchange offer ("subject securities").

(3) The term *U.S. holder*, as applied to security holders, shall mean any person whose address appears on the records of the issuer of the subject securities, of any voting trustee, depositary, share transfer agent, or any person acting on behalf of the issuer of the subject securities, as being located in the United States.

(4) *Home jurisdiction.* With respect to an exchange offer of securities made in reliance on § 230.802, the *home jurisdiction* shall mean the country of the foreign target company's organization, incorporation or chartering.

(5) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(6) *Business combination* is defined as a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of one or more of the participating companies.

(7) For purposes of § 230.802 *aggregate dollar amount* means the total dollar amount the offeror proposes to issue upon exchange for those securities of a single class held by U.S. holders, assuming that all the subject securities held in the United States are exchanged. The dollar amount of the securities being offered shall be calculated based upon the market value of the securities held by U.S. holders to be received by the registrant or cancelled in the exchange offer or business combination as established by the price of the securities of the same class, as determined in accordance with paragraph (c) of Rule 457 of the Act (17 CFR 230.457 of this chapter). If any securities being offered are valued in a foreign currency, the aggregate amount shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date the exchange offer is first published, sent or given to security holders.

(b) *Exemption.* Any exchange offer for a class of securities of a foreign private issuer, or any exchange of securities for the securities of a foreign private issuer in connection with any business combination, that satisfies the conditions of paragraphs (c), (d) and (e) of this § 230.802 shall be exempt from the registration provisions of section 5 of the Act (15 U.S.C. 77e) under section 3(b) of the Act (15 U.S.C. 77c(b)).

(c) *Conditions to be met—(1) Limitation on aggregate dollar amount.* As of the commencement of the exchange offer or business combination, the aggregate dollar amount of securities being offered pursuant to the tender offer or business combination shall not exceed $5,000,000.

(2) *Manner of the exchange offer.* Any exchange offer or business combination made in reliance on this § 230.802 must permit U.S. holders to participate in the offer on terms not less favorable than those offered any other holder of the same class of securities that is the subject of the offer; *provided, however,* if the offer and sale of securities constituting the consideration offered in an exchange offer is required to be registered or qualified in a particular U.S. state or jurisdiction, and the offeror does not so register or qualify the offering, the offeror shall offer security holders in such state a cash alternative, if cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the offeror need not extend the offer to security holders in any state requiring registration or qualification.

(d) *Statements required in all offering circulars for securities of foreign issuers.* To the extent applicable, there shall be set forth on the outside cover page of any offering document(s) the following legends in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

THIS EXCHANGE OFFER IS MADE FOR THE SECURITIES OF A FOREIGN PRIVATE ISSUER AND WHILE THE OFFER IS SUBJECT TO DISCLOSURE REQUIREMENTS OF THE COUNTRY IN WHICH THE SUBJECT COMPANY IS ORGANIZED, INVESTORS SHOULD BE AWARE THAT THESE REQUIREMENTS ARE DIFFERENT FROM THOSE OF THE UNITED STATES. FINANCIAL STATEMENTS INCLUDED HEREIN, IF ANY, HAVE BEEN PREPARED IN ACCORDANCE WITH FOREIGN ACCOUNTING STANDARDS, AND ARE SUBJECT TO FOREIGN AUDITING AND AUDITOR INDEPENDENCE STANDARDS, AND THUS MAY NOT BE COMPARABLE TO FINANCIAL STATEMENTS OF UNITED STATES COMPANIES.

THE ENFORCEMENT BY INVESTORS OF CIVIL LIABILITIES UNDER THE FEDERAL SECURITIES LAWS MAY BE AFFECTED ADVERSELY BY THE FACT THAT THE SUBJECT COMPANY IS LOCATED IN A FOREIGN COUNTRY, AND THAT SOME OR ALL OF ITS OFFICERS AND DIRECTORS ARE RESIDENTS OF A FOREIGN COUNTRY.

INVESTORS ALSO SHOULD BE AWARE THAT THE BIDDER OR ITS AFFILIATES, DIRECTLY OR INDIRECTLY, MAY BID FOR OR MAKE PURCHASES OF THE SUBJECT COMPANY'S SECURITIES THAT ARE THE SUBJECT OF THE EXCHANGE OFFER OR OF THE SUBJECT COMPANY'S RELATED SECURITIES, OR OF THE BIDDER'S SECURITIES TO BE DISTRIBUTED OR OF THE BIDDER'S RELATED SECURITIES, DURING THE PERIOD OF THE EXCHANGE OFFER, AS PERMITTED BY THE HOME JURISDICTION'S LAWS, REGULATIONS OR POLICIES.

(e) *Dissemination of information.* All offerees that are U.S. holders shall be provided with the same notices, documents or other information as that provided to the offerees in the home jurisdiction of the issuer at the same time that, or as soon as practicable after, such notices, documents or other information are made available to home jurisdiction offerees. If in lieu of delivering notices, documents, or other information to offerees in the home jurisdiction, information regarding the offering is being published or advertised in a home jurisdiction publication, then the issuer may at its option publish substantially equivalent information in the English language in a publication of general circulation in the United States or deliver a written copy of the home jurisdiction publication or advertisement to each offeree that is a U.S. holder at the same time that, or as soon as practicable after, the information becomes publicly available in the home jurisdiction of the issuer. If such notice document, or other information is furnished to the home jurisdiction offerees in a language other than English, then an English translation or summary of such notice, document, or other information shall be furnished to the offerees that are U.S. holders.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

11. The authority citation for part 239 is revised to read:

Authority: 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

12. By adding § 239.44 to read as follows:

Note: See appendix of this release for text of proposed Forms. The Forms do not appear in the Code of Federal Regulations.

§ 239.44 Form F–12, for registration under the Securities Act of 1933 of securities of certain foreign private issuers to be issued in exchange tender offers or business combinations.

(a) Eligibility Requirements for Use of Form F–12.—(1) *General.* Form F–12 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of one or more of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash, provided the conditions specified in paragraphs (b)–(f) of this section are met.

(2) Form F–12 shall not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(b) *Eligibility Requirements for Exchange Offers on Form F–12.* In the case of an exchange offer, Form F–12 is available if:

(1) The Registrant is a foreign private issuer;

(2) The Registrant is a Reporting Issuer, or has furnished on or before the date of filing of this Form F–12 an initial submission of information required by Rule 12g3–2(b) of the Securities Exchange Act of 1934 ("Exchange Act") (§ 240.12g3–2(b));

(3) Five percent or less of the class of securities that is the subject of the exchange offer are held by U.S. holders other than U.S. holders of more than 10 percent of the subject class; and

(4) The Registrant has a class of equity securities listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S (§ 230.902(a)(1) of this chapter) for the 36 months immediately preceding the filing of the registration statement on this Form, and is currently in compliance with the obligations arising from such listing; or such equity security is listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S and has a 36 month operating history and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing.

(5) If the Registrant is a successor Registrant surviving after a business combination, it shall be deemed to meet the eligibility requirements of the Form if the successor Registrant has had a class of equity securities listed on a designated offshore securities market as defined in Rule 902(a)(1) of Regulation S, for a period of time that, when added separately to the time each predecessor company had been so listed at the time of the business combination, equals at least 36 months and is currently in compliance with the obligations arising from such listing; or the successor Registrant has had a class of equity securities listed on a designated offshore securities market since the business combination and has an operating history that when added separately to that of each predecessor company equals 36 months or more, and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing; *provided, however,* that the listing or operating history of any predecessor company need not be combined with that of the successor Registrant for purposes of satisfying such 36 month listing and operating requirements if other predecessor companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on a pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing and operating history of the successor Registrant, each meet such listing or reporting requirements.

(c) *Eligibility Requirements for Business Combinations on Form F–12.* In the case of a business combination, Form F–12 is available if:

(1) Each company participating in the business combination, including the Registrant, is a foreign private issuer;

(2) The Registrant has made on or before the filing of this Form an initial submission of information required by Rule 12g3–2(b) of the Exchange Act;

(3) Five percent or less of the class of securities that is offered in the exchange offer by the Registrant is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, as measured upon the completion of the business combination; and

(4) Each company participating in the business combination other than the Registrant has a class of its equity securities listed on a designated offshore securities market for the 36 months immediately preceding the filing of this Form and is currently in compliance with the obligations arising from such listing; or if one or more participating companies has not been listed on a designated offshore securities market for 36 months immediately prior to the offer, the Registrant may nevertheless use Form F–12 if such participating company or companies has a class of equity securities currently listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S and has a three year operating history and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing; *provided, however,* that a participating company shall not be required to meet such listing or reporting requirements if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the Registrant, as measured based on a pro forma combination of such participating companies' most recently completed fiscal years, when combined with the

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listing and operating history of the successor Registrant, each meet such listing or reporting requirements.

(d) *Equal treatment of security holders.* Form F-12 shall only be available with respect to exchange offers and business combinations in which U.S. holders participate on terms not less favorable than those offered any other holder of the same class of securities that is the subject of the exchange offer or business combination. If the offer and sale of securities constituting the consideration offered in an exchange offer is prohibited by the appropriate authority of a state after a good faith effort by the offeror to register or qualify the offer and sale of such securities in such state or jurisdiction, the offeror shall offer security holders in such state a cash alternative, if such cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the offeror need not extend the offer to security holders in any state requiring registration or qualification.

(e) *Incorporation by reference.* Information may be incorporated by reference into the Form F-12 that is permitted to be incorporated by the home jurisdiction or by the regulatory authority on whose designated offshore securities market the class of equity securities of the offeror is listed. In addition, information contained in a filing with the Commission or information that has been furnished to the Commission pursuant to Rule 12g3-2(b) of the Exchange Act may be incorporated by reference to the Form F-12 and will in such case be deemed a part of such registration statement. Information incorporated by reference that has not already been filed or furnished to the Commission must be included in the Form F-12 as an exhibit.

(f) *Consent to service of process.* Registrants shall file a Form F-X (§ 239.41 of this chapter) with the Commission together with this Form.

Instructions for Form F-12

1. For purposes of this Form, *foreign private issuer* shall have the same meaning as set forth in Rule 405 (§ 230.405) under the Securities Act.

2. For purposes of this Form, *Reporting Issuer* means an issuer other than an investment company registered or required to be registered under the Investment Company Act of 1940 that: (i) has a class of securities registered pursuant to section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or 78*l*(g)) or is required to file reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 78o(d)); and (ii) has filed all the materials required to be filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for a period of at least 12 months immediately preceding the commencement date of the offering being registered on this Form (or such shorter period that the issuer was required to file such material).

3. For purposes of satisfying the 36 month listing and reporting requirement of this Form, *equity securities* shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the term *designated offshore securities market* shall have the same meaning as Rule 902(a)(1) of Regulation S under the Securities Act.

5. For purposes of this Form, the *public float of specified securities* shall mean only such securities held by persons other than U.S. holders of more than 10 percent of the issuer. The market value of the Registrant's outstanding equity securities shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

6. For purposes of this Form, the term *U.S. holder* shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, depositary, share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities, as being located in the United States. With respect to any exchange offer eligible to proceed in accordance with Rule 14d-1(c) or 13e-4(h) under the Exchange Act, U.S. holders, other than U.S. holders of more than 10 percent of the subject class, will be presumed to hold of record, as calculated in accordance with these instructions, five percent or less of the class of securities that are the subject of the exchange offer, if the foreign target company does not have an obligation to file reports with the Commission pursuant to section 13(a) or 15(d) of the Securities Act and has not furnished documents to the Commission pursuant to the exemption provided by Rule 12g3-2(b), unless the offeror has actual knowledge at the commencement of the exchange offer that the level of ownership of the class of securities that are the subject of the exchange offer by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, exceeds five percent.

7. If this Form is filed during the pendency of an ongoing third-party or issuer tender or exchange offer for securities of the class subject to the offer that was commenced on Schedule 13E-4, Schedule 14D-1, Form 13E4H, Form 14D1C and/or Form F-8M, the date for calculation of U.S. record ownership for purposes of this Form shall be the same as that date used by the initial offeror.

8. For purposes of this Form, the outstanding class of securities that is the subject of the exchange offer or business combination shall include American Depositary Receipts exchangeable or convertible for such securities, but shall not otherwise include any securities that may be converted into or are exchangeable for the subject securities.

9. For purposes of this Form, the calculation of securities held by U.S. holders shall be made as of the end of the subject company's last fiscal year or, if such fiscal year terminated within 180 days of the filing date, as of the end of the subject company's preceding fiscal year.

10. For purposes of this Form, the term *home jurisdiction* is defined as the jurisdiction of the foreign target company's incorporation, organization or chartering.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

13. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a-29, 80a-37, unless otherwise noted.

14. By revising paragraphs (d)(1) and (d)(2) of § 240.12g3-2 to read as follows:

§ 240.12g3-2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(d) * * *

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F-12);

(2) Securities of a foreign private issuer issued in a transaction (other than a transaction registered on Form F-12) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act; and

* * * * *

15. By adding § 240.12h-4 to read as follows:

§ 240.12h-4 Exemption from duty to file reports under section 15(d).

An issuer shall be exempt from the duty under section 15(d) of the Act to file reports required by section 13(a) of the Act with respect to securities registered under the Securities Act of 1933 on Form F-12 under the Securities Act of 1933.

16. By amending § 240.13e-4 to redesignate paragraph (h) as (i) and to add new paragraph (h) to read as follows:

§ 240.13e-4 Tender offers by issuers.

* * * * *

(h) Any issuer tender offer, including any exchange offer, by a foreign private issuer, shall be exempt from the requirements imposed by Rule 13e-4 (§ 240.13e-4) and Schedule 13E-4 (§ 240.13e-101) thereunder, if 10 percent or less of the outstanding class of securities that is the subject of the tender offer is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, *provided that:*

(1) U.S. holders must participate in the offer on terms not less favorable than those offered any other holder of the same class of securities that is the subject of the offer; unless:

(i) The offer and sale of securities constituting the consideration offered in the issuer tender offer is prohibited by the appropriate authority of a state after a good faith effort by the issuer to register or qualify the offer and sale of such securities in such state or jurisdiction, in which case the issuer shall offer security holders in such state a cash alternative if such cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the issuer need not extend the offer to security holders in any state requiring registration or qualification.

(ii) In the case of an issuer exchange offer exempt from registration under § 230.802 of the Securities Act, if the offer and sale of securities constituting the consideration offered is required to be registered or qualified and the issuer does not register or qualify the exchange offer, the issuer shall offer security holders in such state a cash alternative, if such consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the issuer need not extend the offer to security holders in any state requiring registration or qualification.

(iii) In the case of a cash tender offer, an issuer will not be required to extend an alternative non-cash consideration that has been offered security holders in the subject company's home jurisdiction, so long as the purpose of such alternative consideration is the deferral of income taxes.

(2) The entire disclosure document, registration statement and/or prospectus required to be furnished to holders of the class of securities to be acquired shall be furnished to the Commission on Form 13E4H (§ 240.13e-102) and disseminated to U.S. holders in accordance with the issuer's home jurisdiction's laws, regulations or policies, including any amendment or supplement; *provided, however,* that if dissemination solely by publication is permitted by the issuer's home jurisdiction, the tender offer shall be published in the United States in a manner reasonably calculated to inform U.S. holders of the offer: *Provided, further,* that publication in all U.S. editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication. If such document, notice, summary publication, advertisement or other information is furnished to the home jurisdiction security holders in a language other than English, then an English translation of such document, notice or other information shall be furnished to U.S. holders.

(3) For purposes of this paragraph (h):

(i) The calculation of the securities held by U.S. holders shall be determined by reference to the issuer's latest fiscal year end report filed or submitted to the Commission or, if such fiscal year end terminated within 180 days of the filing date, as of the end of the issuer's preceding fiscal year.

(ii) An issuer or affiliate may conclusively presume that the securities held by U.S. holders, other than by U.S. holders of more than 10 percent of the subject class, does not exceed 10 percent of the outstanding securities if the issuer has not filed any reports pursuant to sections 13(a) or 15(d) of this Act nor furnished documents pursuant to the exemption provided by Rule 12g3-2(b) of this Act to the Commission, unless the issuer or affiliate otherwise knows at the commencement of the offer that the percentage of securities held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, exceeds the prescribed level.

(iii) For purposes of identifying the class of securities that is the subject of the offer, the class shall include American Depositary Shares exchangeable or convertible for such securities, but shall not otherwise include any securities that may be converted into or are exchangeable for the subject securities.

(iv) The term *home jurisdiction* shall mean the jurisdiction of the issuer's incorporation, organization or chartering.

(v) If a Form 13E4H is submitted during the pendency of an ongoing tender or exchange offer for securities of the class subject to this offer that was commenced on Schedules 13E-4, 14D-1, Forms 13E4H, 14D1C and/or Form F-12, the date for calculation of the securities held by U.S. holders for purposes of this Form shall be the same as that date used by the initial offeror.

(vi) For purposes of this section, *U.S. holder* shall mean any person whose address appears on the records of the issuer of the subject securities, of any voting trustee, depositary, share transfer agent, or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

(4) This paragraph (h) shall not be used by an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*)

17. By adding § 240.13e-102 to read as follows:

§ 240.13e-102 Form 13E4H, Tender offer submission pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e-4 thereunder.

OMB APPROVAL

OMB Number: xxxx-xxxx
Expires: Approval Pending
Estimated average burden hours per response 1.0

U.S. Securities and Exchange Commission, Washington, DC 20549

Form 13E4H

Issuer Tender Offer Submission Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934

(Amendment No._____)

(Exact name of Issuer as specified in its charter)

(Translation of Issuer's Name into English (if applicable))

(Jurisdiction of Issuer's Incorporation or Organization)

(Name(s) of Person(s) Submitting Form)

(Title of Class of Securities)

(CUSIP Number of Class of Securities) (if applicable)

(Name, address (including zip code) and telephone number (including area code) of person authorized to receive notices and communications on behalf of the person(s) filing statement)

(Date tender offer first published, sent or given to security holders)

General Instructions

I. Eligibility Requirements for Use of Form 13E4H

A. This Form shall be used for furnishing information pursuant to paragraph (h) of Rule 13e-4 under the Securities Exchange Act of 1934 ("Exchange Act"). Form 13E4H may be used by any issuer or affiliate if: (1) the issuer

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or affiliate is a foreign private issuer; (2) the issuer is making a tender or exchange offer for the issuer's own securities; and (3) 10 percent or less of the outstanding class of such issuer's securities that is the subject of the tender offer or exchange offer is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class.

B. Any issuer or affiliate using this Form must permit security holders residing in the United States to participate on terms not less favorable than those offered any other holder of the class of securities that is the subject of the tender offer. See Rule 13e–4(h) under the Exchange Act.

C. The information and documents furnished on this Form are not to be deemed "filed" with the Commission or otherwise subject to the liabilities of Section 18 of the Exchange Act.

D. If this Form is filed during the pendency of an ongoing tender or exchange offer for securities of the class subject to this offer that was commenced on Schedules 13E–4, 14D–1, Forms 13E4H, 14D1C and/or Form F–12, the date for calculation of the securities held by U.S. holders for purposes of this Form shall be the same as that date used by the initial offeror.

II. Instructions for Submitting Form

A. Five copies of this Form and any amendment thereto (see Part I, Item 1.(b)), including all exhibits and any other paper or document filed as part of the Form, shall be furnished to the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

B. The original and at least one copy of this Form and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. The entire disclosure document, registration statement and/or prospectus required to be furnished to holders of the class of securities to be acquired shall be furnished to the Commission on this Form and disseminated to security holders of the issuer residing in the United States in accordance with the issuer's home jurisdiction's laws, regulations or policies, including any amendment or supplement; *provided, however,* that if dissemination solely by publication is permitted by the issuer's home jurisdiction, the tender offer shall be published in the United States in a manner reasonably calculated to inform U.S. holders of the offer: *provided, further,* that publication in all U.S. editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication. If such document, notice, summary publication, advertisement or other information is furnished to the home jurisdiction security holders in a language other than English, then an English translation of such document, notice or other information shall be furnished to U.S. holders. A substantive summary, version or translation in English must be furnished of all exhibits.

D. The manually signed original of the Form or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

E. The issuer's attention is directed to Rules 10b–6 and 10b–7 under the Exchange Act in the case of an exchange offer, and to Rule 10b–13 under the Exchange Act for any exchange or cash tender offer. [See Securities Exchange Act Release No. 34–xxxxx containing exemptions from Rules 10b–6, 10b–7 and 10b–13.]

PART I—INFORMATION TO BE SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Documents

(a) This Form shall be accompanied, if applicable, by the entire disclosure document or documents required to be delivered to holders of securities to be acquired by the issuer in the proposed transaction pursuant to the laws, regulations or policies of the home jurisdiction in which the issuer is incorporated, organized or chartered, and any other foreign, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer. The Form must include any documents incorporated by reference into such disclosure document(s) and not distributed to offeree's pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a language other than English, it shall be accompanied by a translation in English.

(b) Any amendment made by the issuer to a home jurisdiction document or documents shall be furnished to the Commission under cover of this Form, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the issuer registered pursuant to Section 12 of the Exchange Act have been or are to be offered or cancelled in the transaction, absent an exemption: (i) Securities shall be registered on the Commission's Form F–12, if permitted, and (ii) such securities shall be registered on other Commission prescribed forms, and (iii) the home jurisdiction offering document and the Commission prescribed form shall be included in Form 13E4H as an exhibit.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside cover page of any offering document(s) used pursuant to Rule 13e–4(h) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

THIS TENDER OFFER IS MADE BY A FOREIGN PRIVATE ISSUER FOR ITS OWN SECURITIES, AND WHILE THE OFFER IS SUBJECT TO DISCLOSURE REQUIREMENTS OF THE COUNTRY IN WHICH THE ISSUER IS INCORPORATED OR ORGANIZED, INVESTORS SHOULD BE AWARE THAT THESE REQUIREMENTS ARE DIFFERENT FROM THOSE OF THE UNITED STATES. FINANCIAL STATEMENTS INCLUDED HEREIN, IF ANY, HAVE BEEN PREPARED IN ACCORDANCE WITH FOREIGN ACCOUNTING STANDARDS, AND ARE SUBJECT TO FOREIGN AUDITING AND AUDITOR INDEPENDENCE STANDARDS, AND THUS MAY NOT BE COMPARABLE TO FINANCIAL STATEMENTS OF UNITED STATES COMPANIES.

THE ENFORCEMENT BY INVESTORS OF CIVIL LIABILITIES UNDER THE FEDERAL SECURITIES LAWS MAY BE AFFECTED ADVERSELY BY THE FACT THAT THE ISSUER IS LOCATED IN A FOREIGN COUNTRY, AND THAT SOME OR ALL OF ITS OFFICERS AND DIRECTORS ARE RESIDENTS OF A FOREIGN COUNTRY.

INVESTORS SHOULD BE AWARE THAT THE ISSUER OR ITS AFFILIATES, DIRECTLY OR INDIRECTLY, MAY BID FOR OR MAKE PURCHASES OF THE SECURITIES OF THE ISSUER SUBJECT TO THE OFFER, OR OF ITS RELATED SECURITIES, DURING THE PERIOD OF THE ISSUER TENDER OFFER, AS PERMITTED BY APPLICABLE FOREIGN LAWS OR PROVINCIAL LAWS OR REGULATIONS.

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be furnished as part of the Form, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of the home jurisdiction. Exhibits shall be lettered or numbered appropriately for convenient reference.

(1) Furnish to the Commission any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the issuer in connection with the transaction, but need not be disseminated to shareholders.

(2) Furnish to the Commission copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to the Form pursuant to a power of attorney, manually signed copies of any such power of attorney shall be furnished to the Commission. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

PART III—SIGNATURES

A. The Form shall be signed by each person on whose behalf the Form is being furnished or its authorized representative. If the Form is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the company), evidence of the representative's authority shall be furnished with the Form.

B. The name of each person who signs the Form shall be typed or printed beneath his signature.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and Title) _____

(Date) _____

18. By amending § 240.14d–1 to redesignate paragraph (c) (proposed at 55 FR 46321, Nov. 2, 1990) as (d) and to add a new paragraph (c) and Notes thereto to read as follows:

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(c) Any tender offer, including any exchange offer, for the securities of a foreign private issuer shall be exempt from the requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act, Regulation 14D and Schedules 14D–1 and 14D–9 thereunder, and Rule 14e–1 of Regulation 14E under the Act, if 10 percent or less of the outstanding class of securities that is the subject of the tender offer is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, *provided that:*

(1) U.S. holders must participate in the offer on terms not less favorable than those offered any other holder of the same class of securities that is the subject of the tender offer; unless

(i) The offer and sale of securities constituting the consideration offered in the tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state or jurisdiction, in which case the bidder shall offer security holders in such state a cash alternative. If such cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the bidder need not extend the offer to security holders in any state requiring registration or qualification.

(ii) In the case of an exchange offer exempt from registration under Rule 802 of the Securities Act, if the offer and sale of securities constituting the consideration offered in the tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state or jurisdiction, in which case the bidder shall offer security holders in such state a cash alternative, if such cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the bidder need not extend the offer to security holders in any state requiring registration or qualification.

(iii) In the case of a cash offer a bidder will not be required to extend an alternative non-cash consideration that has been offered security holders in the home jurisdiction, so long as the purpose of such alternative consideration is the deferral of income taxes.

(2) The entire disclosure document, registration statement and/or prospectus required to be furnished to holders of the outstanding class of securities to be acquired, in the case of a class of equity securities registered under section 12 of the Exchange Act, shall be furnished to the Commission on Form 14D1C (§ 240.14d–104) and disseminated to U.S. holders in accordance with the subject company's home jurisdiction's laws, regulations and policies, including any amendment or supplement; *provided, however,* that if dissemination solely by publication is permitted by the issuer's home jurisdiction, the tender offer shall be published in the United States in a manner reasonably calculated to inform U.S. holders of the offer: *provided, further,* that publication in all U.S. editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication. If such document, notice, summary publication, advertisement or other information is furnished to the home jurisdiction security holders in a language other than English, then an English translation of such document, notice or other information shall be furnished to the U.S. holders.

(3) For purposes of this paragraph (c):

(i) The calculation of the securities held by U.S. holders shall be determined by reference to the subject company's latest fiscal year end report filed or submitted to the Commission or, if such fiscal year end terminated within 180 days of the filing date, as of the end of the subject company's preceding fiscal year.

(ii) A bidder may conclusively presume that the securities held by U.S. holders, other than by U.S. holders of more than 10 percent of the subject class, does not exceed 10 percent of the outstanding securities if the subject company has not filed any reports pursuant to section 12(a) or 15(d) of this Act nor furnished documents pursuant to the exemption provided by Rule 12g3–2(b) (§ 240.12g3–2[b]) of this Act to the Commission, unless the bidder otherwise knows at the commencement of the offer that the percentage of securities held by U.S. holders, other than by U.S. holders of more than 10 percent of the subject class, exceeds the prescribed level.

(iii) For purposes of identifying the outstanding class of securities that is the subject of the offer, the class shall include American Depositary Shares exchangeable or convertible for such securities, but shall not otherwise include any securities that may be converted into or are exchangeable for the subject securities.

(iv) The term *home jurisdiction* shall mean the jurisdiction of the subject company's incorporation, organization or chartering.

(v) If a Form 14D1C is submitted during the pendency of an ongoing tender or exchange offer for securities of the class subject to this offer that was commenced on Schedules 13E–4, 14D–1, Forms 13E4H, 14D1C and/or Form F–12, the date for calculation of the securities held by U.S. holders for purposes of this Form shall be the same as that date used by the initial offeror.

(vi) For purposes of this section, "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, of any voting trustee, depositary, share transfer agent, or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

(4) This paragraph (c) shall not be used by an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

19. By adding § 240.14d–104 to read as follows:

§ 240.14d–104 Form 14D1C. Tender offer statement pursuant to section 14(d) of the Securities Exchange Act and § 240.14d–1(c) thereunder.

OMB APPROVAL

OMB Number: xxxx–xxxx

Expires: Approval Pending

Estimated average burden hours per response 2.0

U.S. Securities and Exchange Commission, Washington, DC 20549

Form 14D1C

Tender Offer Form Pursuant to Rule 14d–1(C) Under the Securities Exchange Act of 1934

(Amendment No. _____)

(Name of Subject Company [Issuer])

(Translation of Subject Company's [Issuer's] name into English (if applicable))

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

(Name of Person(s) Furnishing Form)

(Title of Class of Securities)

(CUSIP Number of Class of Securities [if applicable])

(Name, address (including zip code) and telephone number (including area code) of person(s) authorized to receive notices and communications on behalf of subject company)

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(Date tender offer first published, sent or given to security holders)

General Instructions

I. Eligibility Requirements for Use of Form 14D1C

A. This Form shall be used for furnishing information pursuant to Rule 14d–1(c) under the Securities Exchange Act of 1934 ("Exchange Act"). Form 14D1C may be used by any person making a tender offer or exchange offer (the "bidder") for securities of any foreign private issuer, where 10 percent or less of the class of the securities sought in the tender offer or exchange offer is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class.

B. Form 14D1C also may be used by the subject company to respond to a tender offer or exchange offer if required to by the home jurisdiction's laws, regulations or policies.

C. Any bidder using this Form must permit security holders residing in the United States to participate on terms no less favorable than those offered any other holder of the class of securities that is the subject of the tender offer. See Rule 14d–1(c)(1) under the Exchange Act.

D. The information and documents furnished on this Form are not to be deemed "filed" with the Commission or otherwise subject to the liabilities of Section 18 of the Exchange Act.

E. If this Form is filed during the pendency of an ongoing third-party or issuer tender offer or exchange offer for securities of the class subject to this offer that was commenced on Schedules 13E–4, 14D–1, Forms 13E4H, 14D1C and/or Form F–12, the date for calculation of the securities held by U.S. holders for purposes of this Form shall be the same as that date used by the initial offeror.

F. This Form shall not be used to comply with the reporting requirements of Section 13(d) of the Exchange Act. Bidders using this Form are reminded of their obligation to file or update a Schedule 13D where required by Section 13(d)(1) of the Exchange Act and the Commission's rules and regulations thereunder.

II. Instructions for Submitting Form

A. Five copies of this Form and any amendment thereto (see Part I, Item 1.(b)), including all exhibits and any other paper or document furnished as part of the Form, shall be furnished to the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

B. The original and at least one copy of this Form and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. The entire disclosure document, registration statement and/or prospectus required to be furnished to holders of the outstanding class of securities to be acquired, shall be furnished to the Commission on Form 14D1C and disseminated to security holders of the subject company residing in the United States in accordance with the subject company's home jurisdiction's laws, regulations and policies, including any amendment or supplement; *provided, however,* that if dissemination solely by publication is permitted by the issuer's home jurisdiction, the tender offer shall be published in the United States in a manner reasonably calculated to inform U.S. holders of the offer; *provided, further,* that publication in all U.S. editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication. If such document, notice, summary publication, advertisement or other information is furnished to the home jurisdiction security holders in a language other than English, then an English translation of such document, notice or other information shall be furnished to the U.S. holders. A person supplying information under cover of this Form shall furnish whatever information the bidder is required to furnish to the Commission pursuant to the rules and regulations of the subject company. A substantive summary, version or translation in English must be furnished of all exhibits.

D. The manually signed original of the Form or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

E. The issuer's attention is directed to Rules 10b–6 and 10b–7 under the Exchange Act in the case of an exchange offer, and to Rule 10b–13 under the Exchange Act for any exchange or cash tender offer. (See Securities Exchange Act Release No. 34–xxxxx containing exemptions from Rules 10b–6, 10b–7 and 10b–13.)

PART I—INFORMATION SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Documents

(a) This Form shall be accompanied, if applicable, by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the bidder pursuant to the home jurisdiction's laws, regulations or policies governing the conduct of the tender offer. It shall include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

(b) Any amendment made by the bidder to a home jurisdiction document or documents shall be furnished to the Commission under the cover of this Form, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the bidder have been or are to be offered in the transaction, such securities shall be registered, absent an exemption, on forms promulgated by the Commission under the Securities Act of 1933 ("Securities Act") including, where available, the Commission's Form F–12 providing for inclusion in that registration statement of the home of jurisdiction prospectus.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside cover page of any offering document(s) used pursuant to Rule 14d–1(c) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

THIS TENDER OFFER IS MADE FOR THE SECURITIES OF A FOREIGN PRIVATE ISSUER AND WHILE THE OFFER IS SUBJECT TO DISCLOSURE REQUIREMENTS OF THE COUNTRY IN WHICH THE SUBJECT COMPANY IS INCORPORATED, ORGANIZED OR CHARTERED, INVESTORS SHOULD BE AWARE THAT THESE REQUIREMENTS ARE DIFFERENT FROM THOSE OF THE UNITED STATES. FINANCIAL STATEMENTS INCLUDED HEREIN, IF ANY, HAVE BEEN PREPARED IN ACCORDANCE WITH FOREIGN ACCOUNTING STANDARDS, AND ARE SUBJECT TO FOREIGN AUDITING AND AUDITOR INDEPENDENCE STANDARDS, AND THUS MAY NOT BE COMPARABLE TO FINANCIAL STATEMENTS OF UNITED STATES COMPANIES.

THE ENFORCEMENT BY INVESTORS OF CIVIL LIABILITIES UNDER THE FEDERAL SECURITIES LAWS MAY BE AFFECTED ADVERSELY BY THE FACT THAT THE SUBJECT COMPANY IS LOCATED IN A FOREIGN COUNTRY, AND THAT SOME OR ALL OF ITS OFFICERS AND DIRECTORS ARE RESIDENTS OF A FOREIGN COUNTRY.

INVESTORS SHOULD BE AWARE THAT THE BIDDER OR ITS AFFILIATES, DIRECTLY OR INDIRECTLY, MAY BID FOR OR MAKE PURCHASES OF THE ISSUER'S SECURITIES SUBJECT TO THE OFFER, OR OF THE ISSUER'S RELATED SECURITIES, DURING THE PERIOD OF THE TENDER OFFER, AS PERMITTED BY THE HOME JURISDICTION'S LAWS OR REGULATIONS.

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be furnished as part of the Form, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of the home jurisdiction. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Furnish to the Commission any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the bidder in connection with the transaction but need not be disseminated to shareholders.

(2) Furnish copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to this Form pursuant to a power of attorney, manually signed copies of any such power of attorney shall be furnished to the Commission.

PART III—SIGNATURES

A. The Form shall be signed by each person on whose behalf the Form is furnished or its authorized representative. If the Form is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the company), evidence of the representative's authority shall be furnished with the Form.

B. The name and any title of each person who signs the Form shall be typed or printed beneath his signature.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____
(Name and Title) _____
(Date) _____

* * * * *

20. By adding new paragraph (c)(1) to § 240.14e–2 to read as follows:

§ 240.14e–2 Position of subject company with respect to a tender offer.

* * * * *

(c) * * *

(1) Any issuer, a class of securities of which is the subject of a tender offer furnished to the Commission on Form 14D1C and conducted in reliance upon and in conformity with Rule 14d–1(c) under the Act, and any director or officer of such issuer where so required by the laws, regulations and policies of the home jurisdiction, in lieu of the statements called for by paragraph (a) of this section and Rule 14d–9 under the Act, shall furnish to the Commission on Form 14D1C the entire disclosure document(s) required to be furnished to holders of securities of the subject company by the laws, regulations and policies of the home jurisdiction and/or any of its provinces or territories governing the conduct of the tender offer, and shall disseminate such document(s) in accordance with such laws, regulations and policies.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

21. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss.

22. By adding § 260.4d–10 to read as follows:

§ 260.4d–10 Exemption for Securities issued pursuant to Rule 802 of the Securities Act.

Any debt security, whether or not issued under an indenture, shall be exempt from the operation of the Act if issued pursuant to Rule 802 of the Securities Act (§ 230.802).

Dated: June 5, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Proposed Form Under the Securities Act of 1933

Form F–12

Note: These Forms are not contained in the Code of Federal Regulations.

OMB Approval

OMB Number: xxxx–xxxx
Expires: Approval Pending
Estimated average burden hours per response..... 2.0
U.S. Securities and Exchange Commission, Washington, DC 20549

Form F–12

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Country or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public.

This registration statement and any post-effective amendment thereto shall become effective in accordance with Rules 464 and 466.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf procedures, check the following box. [ ]

Check if appropriate:

[ ] An application for exemption under Section 304(d) of the Trust Indenture Act of 1939 from Section 310 of that Act has been submitted to the Commission.

[ ] There are existing security holders under the indenture to which such application relates.

Calculation of Registration Fee *

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

* See General Instruction II.G. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

General Instructions

I. Eligibility Requirements for Use of Form F–12

A. General

1. Form F–12 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

2. This Form shall not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

B. Eligibility Requirements for Exchange Offers

1. In the case of an exchange offer, Form F–12 is available if:

(a) the Registrant is a foreign private issuer;

(b) the Registrant is a Reporting Issuer, or has furnished on or before the filing of this Form F–12 an initial submission of information required by Rule 12g3–2(b) of the Securities Exchange Act of 1934 ("Exchange Act");

(c) five percent or less of the class of securities that is the subject of the exchange offer is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class; and

(d) the Registrant has a class of equity securities listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S for the 36 months immediately preceding the filing of the registration statement on this Form, and is currently in compliance with the obligations arising from such listing; or such equity

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security is listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S and has a 36 month operating history and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing.

2. U.S. holders must participate in an exchange offer, registered on Form F-12, on terms not less favorable than those offered any other holder of the same class of securities that is the subject of the exchange offer. If the offer and sale of securities constituting the consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the offeror to register or qualify the offer and sale of such securities in such state, the offeror shall offer security holders in such state a cash alternative, if such cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered, the offeror need not extend the offer to security holders in any state requiring registration or qualification.

3. If the Registrant is a successor Registrant surviving after a business combination, it shall be deemed to meet the eligibility requirements of the Form if the successor Registrant has had a class of equity securities listed on a designated offshore securities market as defined in Rule 902(a)(1) of Regulation S, for a period of time that, when added separately to the time each significant predecessor company had been so listed at the time of the business combination, equals at least 36 months and is currently in compliance with the obligations arising from such listing; or the successor registrant has had a class of equity securities listed on a designated offshore securities market since the business combination and has an operating history that when added separately to that of each significant predecessor company equals 36 months or more, and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing; *provided, however,* that the listing or operating history of any predecessor company need not be combined with that of the successor Registrant for purposes of satisfying such 36 month listing and operating requirements if other predecessor companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on a pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing and operating history of the successor Registrant, each meet such listing or reporting requirements.

C. Eligibility Requirements for Business Combinations

1. In the case of a business combination, Form F-12 is available if:

(a) each company participating in the business combination, including the Registrant, is a foreign private issuer;

(b) the Registrant is a Reporting issuer, or has furnished on or before the filing of this Form an initial submission of information required by Rule 12g3-2(b) of the Exchange Act;

(c) five percent or less of the class of securities that is being offered in the exchange offer by the Registrant is held by U.S. holders, other than by U.S. holders of more than 10 percent of the subject class, as measured upon completion of the business combination;

(d) each company participating in the business combination other than the successor Registrant has a class of its equity securities listed on a designated offshore securities market for the 36 months immediately preceding the filing of this Form and is currently in compliance with the obligations arising from such listing; or if one or more participating companies has not been listed on a designated offshore securities market for 36 months immediately prior to the offer, the Registrant may nevertheless use Form F-12 if such participating company or companies has a class of equity securities currently listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S and has a three year operating history and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing; *provided, however,* that any participating company shall not be required to meet such listing or reporting history requirements if other participating companies whose assets and gross income, respectively, would contribute at least 80 percent of the total assets and gross income from continuing operations of the Registrant, as measured based on a pro forma combination of the participating companies' most recently completed fiscal years, each meet such listing or reporting requirements.

2. U.S. holders must participate in a business combination, registered on Form F-12, on terms not less favorable than those offered any other holder of the same class of securities that is the subject of the exchange offer or business combination. If the offer and sale of securities constituting the consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder or issuer to register or qualify the offer and sale of such securities in such state, the Registrant shall offer security holders in such state a cash alternative, if such cash consideration has been offered in any other jurisdiction.

Instructions for Form F-12

1. For purposes of this form, "foreign private issuer" shall have the same meaning as set forth in Rule 405 of Regulation C under the Securities Act.

2. For purposes of this Form, "Reporting Issuer" means an issuer other than an investment company registered or required to be registered under the Investment Company Act of 1940 that: (i) has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act [15 U.S.C. § 78*l*(b) or § 78*l*(g)] or is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and (ii) has filed all the materials required to be filed pursuant to Section 13(a) or 15(d) of the Exchange Act [15 U.S.C. § 78m(a) or 78o(d)] for a period of at least 12 months immediately preceding the commencement date of the offering being registered on this Form (or such shorter period that the issuer was required to file such material).

3. For purposes of satisfying the 36 month listing and reporting requirement of this Form, "equity securities" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the term "designated offshore securities market" shall have the same meaning as Rule 902(a)(1) of Regulation S under the Securities Act.

5. For purposes of this Form, the public float of specified securities shall mean only such securities held by persons other than U.S. holders of more than 10 percent of the issuer. The market value of the Registrant's outstanding equity securities shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

6. For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, depositary, share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities, as being located in the United States. With respect to any exchange offer eligible to proceed in accordance with Rule 14d-1(c) or 13e-4(h) under the Exchange Act, U.S. holders, other than U.S. holders of more than 10 percent of the subject class, will be presumed to hold of record, as calculated in accordance with these instructions, five percent or less of the class of securities that are the subject of the exchange offer, if the foreign target company does not have an obligation to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Securities Act and has not furnished documents to the Commission pursuant to the exemption provided by Rule 12g3-2(b), unless the offeror has actual knowledge at the commencement of the exchange offer that the level of ownership of the class of securities that are the subject of the exchange offer by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, exceeds five percent.

7. If this Form is filed during the pendency of an ongoing tender or exchange offer for securities of the class subject to the offer that was commenced on Schedule 13E-4, Schedule 14D-1, Form 13E4H, Form 14D1C and/or Form F-12, the date for calculation of the securities held by U.S. holders for purposes of this Form shall be the same as that date used by the initial offeree.

8. For purposes of this Form, the outstanding class of securities that is the subject of the exchange offer or business combination shall include American Depositary Shares exchangeable or convertible for such securities, but shall not otherwise include any securities that may be converted into or are exchangeable for the subject securities.

9. For purposes of this Form, the calculation of securities held by U.S. holders shall be made as of the end of the subject company's last fiscal year or, if such fiscal year terminated within 180 days of the filing date, as of the end of the subject company's preceding fiscal year.

10. For purposes of this Form, the term "home jurisdiction" is defined as the jurisdiction of the foreign target company's incorporation, organization or chartering.

II. Application of General Rules and Regulations

A. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form, or unless any such rule refers specifically to this Form. Instead, the rules and regulations applicable in the foreign target company's home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. Securities Act rules and regulations, other than Regulation C, shall apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Five copies of the complete registration statement and any post-effective amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, shall also be filed. No exhibits are required to accompany such additional copies.

D. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

E. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

F. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act, a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

G. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the registrant or cancelled in the exchange offer from United States holders as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of the Registrant's outstanding securities shall be the average of the bid and asked prices of such stock, in the principal market for such securities as of a date within 30 days prior to the date of filing.

H. In the case of a business combination, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the equity securities of the predecessor companies held by United States holders being offered the Registrant's securities, as established by the price of the predecessors' securities of the same class determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities of the predecessor companies, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States holders in connection with the business combination, the amount thereof shall be added to the value of the securities as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the business combination, the amount thereof shall be deducted from the value of the securities as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of a predecessor's outstanding securities shall be the average of the bid and asked prices of such securities, in the principal market for such securities as of a date within 60 days prior to the date of filing.

I. If any part of the offering circular/prospectus filed as part of the registration statement or amendment is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or an amendment, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

J. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

K. Any change to the name or address of a Registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the relevant registration statement.

L. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with the home jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to Instruction II.L. of Form F-12; File No. 33-[insert number of the registration statement]."

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III. Compliance with Exchange Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 12h-4 under the Exchange Act, a Registrant shall be exempt from reporting obligations under Section 15(d) of the Exchange Act if such reporting obligation would have arisen solely from registration of securities on this Form. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of Sections 12(b) and 12(g) of the Exchange Act and Rules 10b-6, 10b-7 and 10b-13 under the Exchange Act. [See Securities Exchange Act Release No. 34-xxxxx containing exemptions from Rules 10b-6, 10b-7 and 10b-13.]

B. The Commission's rules on auditor independence, as codified in Section 602 of the Codification of Financial Reporting Policies, shall not apply to auditor reports on all financial statements that are included in a registration statement under the Securities Act filed by the issuer on Form F-12.

C. Pursuant to Rule 13e-4(h) under the Exchange Act, the provisions of Rule 13e-4 are not applicable, and pursuant to Rule 14d-1(c) under the Exchange Act, the provisions of Sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14D-1 thereunder, and Rule 14e-1 under Regulation 14E, may not be applicable to a transaction involving offerings of securities that may be registered on this Form in connection with exchange offers or business combinations. Such transaction, however, is not exempt from the antifraud provisions of Sections 10(b), 12(a) or 14(e) of the Exchange Act or Rules 10b-5, 13e-4(b)(1) or 14e-3 thereunder.

PART I—INFORMATION REQUIRED TO BE DELIVERED TO OFFEREE'S OR PURCHASERS

Item 1. Home Jurisdiction Document

In the case of an exchange offer, the prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the registrant pursuant to the laws of the home jurisdiction in which the foreign target company is incorporated, organized or chartered as well as, where applicable, the rules of any designated offshore securities market in such jurisdiction upon which the registrant has any class of equity securities listed. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such foreign target company's home jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

In the case of a business combination, the prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities whose votes are being solicited in connection with the proposed business combination pursuant to the laws of the jurisdiction governing such solicitation including, where applicable, the rules of any designated offshore securities markets upon which the equity securities of the participating companies are listed. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of the foreign target company's home jurisdiction governing such solicitation as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into the home jurisdiction disclosure document and not required to be delivered to offerees or purchasers (in the case of an exchange offer) or security holders being solicited (in the case of a business combination) pursuant to the laws of such jurisdiction.

Notwithstanding the foregoing, the prospectus used in the United States need not contain any disclosure applicable solely to offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any "red herring" legend; (ii) any discussion of tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any underwriters not acting as underwriters in the United States or a description of the plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees or purchasers statutory rights under applicable securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

THIS EXCHANGE OFFER IS MADE FOR THE SECURITIES OF A FOREIGN COMPANY AND WHILE THE OFFER IS SUBJECT TO DISCLOSURE REQUIREMENTS OF THE COUNTRY IN WHICH THE SUBJECT COMPANY IS ORGANIZED, INVESTORS SHOULD BE AWARE THAT THESE REQUIREMENTS ARE DIFFERENT FROM THOSE OF THE UNITED STATES. FINANCIAL STATEMENTS INCLUDED HEREIN, IF ANY, HAVE BEEN PREPARED IN ACCORDANCE WITH FOREIGN ACCOUNTING STANDARDS, AND ARE SUBJECT TO FOREIGN AUDITING AND AUDITOR INDEPENDENCE STANDARDS, AND THUS MAY NOT BE COMPARABLE TO FINANCIAL STATEMENTS OF UNITED STATES COMPANIES.

THE ENFORCEMENT BY INVESTORS OF CIVIL LIABILITIES UNDER THE FEDERAL SECURITIES LAWS MAY BE AFFECTED ADVERSELY BY THE FACT THAT THE SUBJECT COMPANY IS LOCATED IN A FOREIGN COUNTRY, AND THAT SOME OR ALL OF ITS OFFICERS AND DIRECTORS ARE RESIDENTS OF A FOREIGN COUNTRY.

INVESTORS ALSO SHOULD BE AWARE THAT THE REGISTRANT OR ITS AFFILIATES, DIRECTLY OR INDIRECTLY, MAY BID FOR OR MAKE PURCHASES OF THE SUBJECT COMPANY'S SECURITIES THAT ARE THE SUBJECT OF THE EXCHANGE OFFER OR OF THE SUBJECT COMPANY'S RELATED SECURITIES, OR OF THE REGISTRANT'S SECURITIES TO BE DISTRIBUTED OR OF THE REGISTRANT'S RELATED SECURITIES, DURING THE PERIOD OF THE EXCHANGE OFFER, AS PERMITTED BY THE HOME JURISDICTION'S LAWS REGULATIONS OR POLICIES.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. List of Documents Filed With the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement and all documents incorporated by reference.

PART II—INFORMATION NOT REQUIRED TO BE DELIVERED TO OFFEREE'S OR PURCHASERS

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Any reports or information that, in accordance with the requirements of the home jurisdiction of the subject issuer or, in the case of a business combination, in accordance with the requirements of the home jurisdiction of the companies involved in the transaction other than the registrant, must be made publicly available by the Registrant in connection with the transaction.

(2) A copy of any agreement relating to the proposed acquisition or business combination, as applicable.

(3) Copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(4) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person may be required. See Rules 436-440 of the Exchange Act.

However, this Form may not require experts, including auditors or counsel, to consent to the use of their material so long as it was not prepared directly for this registration statement or prospectus provided to security holders resident in the United States. See Rule 448 of the Exchange Act.

(5) If any name is signed to the registration statement pursuant to power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

(6) If applicable, a copy of any indenture relating to the registered securities and, if such indenture is to be qualified under the Trust Indenture Act of 1939 ("Trust Indenture Act"), a cross-reference sheet to the location in the indenture of Sections 310-318(a) of the Trust Indenture Act and a table of contents and, if any such indenture is to be qualified under the Trust Indenture Act, the statement of eligibility of the trustee on Form T-1 and, if applicable, for individual trustee(s) on Form T-2.

PART III—CONSENT TO SERVICE OF PROCESS AND SIGNATURES

1. Consent to Service of Process

(a) At the time of filing Form F-12, the Registrant shall furnish to the Commission on Form F-X a written consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the Registrant or to which the Registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered on Form F-12 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

(b) At the time of filing Form F-12, any trustee for which an exemption pursuant to Rule 4d-1 under the Trust Indenture Act is being applied by virtue of filing this Form shall furnish to the Commission on Form F-X a written consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in connection with which the trustee acts as trustee pursuant to an exemption under Rule 4d-1 under the Trust Indenture Act and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

2. Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F-12 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____ State (Province or Territory) of _____, on _____, 19____.

Registrant _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

(Date) _____

Instructions

A. The registration statement shall be signed by the Registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed and which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a Registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the sole Registrant.

D. By signing this Form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F-12 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

Attachment B—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that: proposed Form F-12 under the Securities Act of 1933 (the "Securities Act"); proposed Forms 13E4H and Form 14D1C under the Securities Exchange Act of 1934 (the "Exchange Act"); proposed Rules 460, 469 and 802, and proposed changes to Rule 473 under the Securities Act; proposed Rule 12h-4, and proposed changes to Rules 12g3-2(b), 13e-4, 14d-1 under the Exchange Act; proposed changes to Rules 30-1 and 30-3 under the Commission's Rules of Practice; and proposed Rule 4d-10 under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

The proposed rules, forms and proposed rule amendments are intended primarily to facilitate tender and exchange offers for securities of foreign issuers held by U.S. residents. The resulting reduction in the expense, time and effort of making such offerings will benefit U.S. securityholders, who are normally excluded from such offerings, and foreign entities that wish to extend these offers to U.S. securityholders.

Since the proposals are intended to facilitate international tender and exchange offers by minimizing the existing regulatory disincentives for extending these offers into the United States, the likelihood of such increased offerings in the United States significantly affecting a substantial number of small U.S. entities is expected to be minimal.

The proposed new rules, forms and proposed rule amendments are summarized in the attached memorandum.* That their primary affect is on foreign entities is apparent from such document.

Dated: June 5, 1991.

Richard C. Breeden,

Chairman.

[FR Doc. 91-13780 Filed 6-13-91; 8:45 am]

BILLING CODE 8010-01-M

* The memorandum is not reproduced in this release.

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17 CFR Parts 229, 240 and 249

[Release Nos. 33-6896; 34-29277; File No. S7-19-91; International Series Release No. 396]

RIN 3235-AD72

Proposed Amendments to Regulation S-K, Form 20-F, Proposed Form 40-F and Rule 12g3-2; Proposed New Forms for Furnishing Materials Pursuant to Rule 12g3-2(b)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules and forms; proposed forms.

SUMMARY: The Securities and Exchange Commission (the "Commission") today is publishing for comment (a) proposed revisions to existing and proposed rules and forms which would require foreign private issuers to disclose the extent to which their equity securities are held by U.S. holders, and (b) proposed covering forms for furnishing information pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934. These proposals are part of the Commission's proposals relating to cross-border tender and exchange offers and would facilitate access to U.S. holder information and materials submitted under Rule 12g3-2(b).

DATES: Comments should be received on or before September 9, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-19-91. All comments received will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Paul M. Dudek at (202) 272-3240, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Proposed Amendments to Form 20-F, Proposed Form 40-F, Rule 12g3-2 and Regulation S-K to Require Disclosure of U.S. Holder Information

As part of the Commission's proposals relating to cross-border tender and exchange offers,[1] the Commission is proposing amendments to Item 5 of Form 20-F,[2] General Instruction B to proposed Form 40-F,[3] Rule 12g3-2 [4] under the Securities Exchange Act of 1934 (the "Exchange Act") and Item 201 of Regulation S-K [5] which would require a foreign private issuer to disclose, in certain filings and submissions with the Commission, the number of U.S. holders of its equity securities and the percentage of its outstanding equity securities held by U.S. holders. The disclosure of U.S. holder information would permit current and prospective investors in equity securities of foreign private issuers and potential third party bidders for such securities to determine from publicly available documents whether tender and exchange offers relating to such securities could proceed under proposed cross-border tender and exchange offer regulations.

The proposed amendments to Form 20-F, proposed Form 40-F and Regulation S-K would identify the records to be checked to determine the number of U.S. holders. As is currently the case for initial submissions under Rule 12g3-2(b), the proposed amendments to Rule 12g3-2(b) would require an issuer to furnish the specified U.S. holder information only to the extent such information is known or can be obtained without unreasonable effort or expense. Comment is requested regarding whether U.S. holder information should be required to be provided in the manner proposed or in an alternative manner, whether other information would be more useful, and whether disclosure of that information under Rule 12g3-2(b) should be mandatory.

II. Proposed Forms for Rule 12g3-2(b) Submissions

The Commission is proposing to require that all submissions under Rule 12g3-2(b) be made under cover of one of two proposed new forms: Proposed Form 12-F for initial submissions under Rule 12g3-2(b), and proposed Form 12-FA for all other submissions under the rule. The proposed forms would implement a format in which the U.S. holder information furnished by foreign issuers would be easily identifiable and obtainable by investors and other third parties. Adoption of the forms should also result in more efficient processing of all submissions and faster and easier public access to the information furnished.[6] Notwithstanding the use of a form, submissions under Rule 12g3-2(b) would continue not to be deemed "filed" with the Commission or otherwise subject to section 18 of the Exchange Act.[7]

Comment is solicited regarding whether either initial submissions or subsequent submissions under Rule 12g3-2(b) should be required to be under the cover of a form, and what other information, if any, should be required to be provided on such forms. The Commission is proposing to make use of the forms mandatory for materials submitted after 90 days following adoption. Foreign issuers would be encouraged, however, to use the forms as soon as practicable following adoption.

III. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed amendments to Form 20-F, proposed Form 40-F, Rule 12g3-2 and Regulation S-K and the proposed forms under Rule 12g3-2(b), the Commission requests commenters to provide views and data as to the costs to issuers associated with compliance with such rules and forms as they presently exist as compared to such estimated costs under the proposed changes. The Commission also requests commenters to provide views regarding the costs and benefits of the proposed amendments and forms to investors and other third parties.

The proposed Forms 12-F and 12-FA are covering sheets which contain no substantive requirements (other than the provision of certain identifying information and certain information relating to the extent to which equity securities of the subject issuer are held by U.S. residents). Such forms may be easily produced and reproduced by issuers and others furnishing information. The proposed amendments to Rule 12g3-2 would require only that the issuer's file number and the U.S. holder information be furnished in addition to information already required.

The Commission does not expect that any significant additional costs would result from the proposals.

---

[1] See Securities Act Release No. 6807 (June 5, 1991).

[2] 17 CFR 249.220f.

[3] Proposed 17 CFR 249.240f, Securities Act Release No. 6879 (Oct. 22, 1990) [55 FR 45606].

[4] 17 CFR 240.12g3-2.

[5] 17 CFR 229.201, Market price of and dividends on the registrant's common equity and related stockholder matters.

[6] In recent years, the number of issuers claiming the Rule 12g3-2(b) exemption has increased markedly. From adoption in 1967 through the end of 1980, file numbers were assigned to 443 issuers. By contrast, 585 file numbers were assigned in the aggregate during 1989 and 1990 alone. Over 1,050 issuers are currently furnishing material to the Commission in order to maintain their exemptions under Rule 12g3-2(b).

[7] 15 U.S.C. 78r. See Rule 12g3-2(b)(4) [17 CFR 240.12g3-2(b)(4)].

IV. Request for Comments

Any interested persons wishing to submit written comments on the proposed amendments and forms are requested to do so.

V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that adoption of the proposed forms and proposed revisions to existing and proposed rules and forms will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, is attached to this release as Appendix B.

VI. Statutory Basis for Proposals

Regulation S-K, Form 20-F and proposed Form 40-F are being proposed to be amended by the Commission pursuant to sections 7, 10 and 19 of the Securities Act of 1933 [8] and sections 12(b), 12(g), 13, 14, 15(d) and 23(a) of the Exchange Act.[9] Forms 12-F and 12-FA are being proposed by the Commission and Rule 12g3-2 is proposed to be amended by the Commission pursuant to Sections 12(g), 12(h) [10] and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

VII. Text of Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

2. By adding Instruction 6 to § 229.201 as follows:

[8] 15 U.S.C. 77g, 77j and 77s.

[9] 15 U.S.C. 78*l*(b), 78*l*(g), 78m, 78n, 78o(d) and 78w(a).

[10] 15 U.S.C. 78*l*(h).

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

* * * * *

Instructions to Item 201.

* * * * *

6. If the registrant is a foreign private issuer, for each class of equity securities of the issuer (whether or not registered or to be registered), state the approximate number, as of the most recent practicable date, of persons holding such securities (either directly or through voting trust certificates or depositary receipts) which are U.S. holders, and the percentage of all the outstanding securities of such class which as of such date was so held by U.S. holders. The term *U.S. holder* shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the issuer as being located in the United States.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 is amended by adding the following citation:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78*l*, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a-29, 80a-37, unless otherwise noted.

* * * * *

Section 240.12g3-2 is also issued under 15 U.S.C. 77f, 77g, 77h, 77s(a).

4. By revising paragraphs (b)(1)(iii) and the second sentence and last sentence of paragraph (b)(4), and adding a new third sentence to paragraph (b)(4) of § 240.12g3-2 to read as follows:

§ 240.12g3-2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(b) * * *

(1) * * *

(iii) Shall furnish to the Commission, during each subsequent fiscal year:

(A) Whatever information is made public as described in paragraph (b)(1)(i)(A), (B) or (C) of this section promptly after such information is made or required to be made public as described therein, and

(B) Upon the submission pursuant to paragraph (b)(1)(iii)(A) of this section of materials which include the annual report (or other document) of such issuer which includes the audited financial statements of such issuer covering the prior fiscal year of such issuer, or within four months after the end of each fiscal year of the issuer if no such annual report (or other document) is required to be submitted pursuant to such paragraph, the following information to the extent known or which can be obtained without unreasonable effort or expense: the number of holders of each class of equity securities resident in the United States, and the amount and percentage of each class of outstanding equity securities held by residents of the United States.

* * * * *

(4) * * * Such information and documents shall not be deemed to be "filed" with the Commission or otherwise subject to the liabilities of section 18 of the Act. Such information and documents shall be furnished under cover of Form 12-F (§ 249.212f of this chapter) in the case of an initial submission under paragraph (b)(1) of this section and under cover of Form 12-FA (§ 249.212fa of this chapter) in the case of all other submissions under paragraph (b)(1) of this section. * * * When a Commission file number is assigned to an issuer furnishing information under paragraph (b)(1) of this section, that file number shall appear on each form under cover of which any subsequent information relating to that issuer is furnished.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249 continues to read in part as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

6. By adding §§ 249.212f and 249.212fa to read as follows:

Note: See appendix of this release for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 249.212f Form 12-F, for initial submissions of information pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

Form 12-F shall be used for initial submissions of information pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

§ 249.212fa Form 12-FA, for submissions of information pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934 other than in connection with an initial submission.

Form 12-FA shall be used for submissions of information pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934 other than in connection with an initial submission.

7. By revising the paragraph under Item 5 of Part I, and adding Instruction 3 to Item 5 of Part I, of Form 20-F (17 CFR 249.220f) to read as follows:

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Note: Form 20–F does not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Part I

* * * * *

Item 5. Nature of Trading Market

As to each class of securities registered or to be registered, indicate briefly the nature and extent of the principal non-United States trading market for such securities, and also the nature of the trading market in the United States. State the high and low sales prices for the securities in both such markets for each full quarterly period within the two most recent fiscal years. For each class of the registrant's equity securities (whether or not registered or to be registered), state the approximate number, as of the most recent practicable date, of persons holding such securities (either directly or through voting trust certificates or depositary receipts) which are U.S. holders, and the percentage of all the outstanding securities of such class which as of such date was so held by U.S. holders.

Instructions

* * * * *

3. The term *U.S. holder* shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the issuer as being located in the United States.

* * * * *

8. By amending proposed Form 40–F (17 CFR 249.240f) to add paragraph 6 under B of the General Instructions to read as follows:

Note: Form 40–F does not appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on this Form

* * * * *

(6) State the approximate number, as of the most recent practicable date, of persons holding securities of the Registrant (either directly or through voting trust certificates or depositary receipts) which are U.S. holders, and the percentage of all the outstanding securities of such class which as of such date was so held by U.S. holders. The term *U.S. holder* shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the issuer as being located in the United States.

* * * * *

Dated: June 6, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Proposed Forms 12–F and 12–FA Under the Securities Exchange Act of 1934

Note: These forms do not appear in the Code of Federal Regulations.

OMB Approval

OMB Number:

Expires: Approval Pending

Estimated average burden hours per response.....

Securities and Exchange Commission,
Washington, DC 20549

Form 12–F

Initial Submission of Information Pursuant to Rule 12g3–2(b) Under the Securities Exchange Act of 1934

(Exact name of Issuer as specified in its charter)

(Translation of Issuer's name into English)

(Jurisdiction of issuer's incorporation or organization)

(Address and telephone number of Issuer's principal executive offices)

(Exact name of person furnishing information if other than Issuer)

(Address and telephone number of principal offices of person furnishing information if other than Issuer)

To the extent such information is known or can be obtained without unreasonable effort or expense, furnish the following information: (i) The number of holders of each class of equity securities resident in the United States; (ii) the amount of each class of outstanding equity securities held by such residents; (iii) the percentage of each class of outstanding equity securities held by such residents; (iv) the title of class(es) of securities as to which such information relates; and (v) the date as of which such information is provided.

(i) Number of holders resident in the United States	(ii) Amount held by such residents	(iii) Percentage held by such residents	(iv) Title of, class of securities	(v) Date of information

General Instructions

A. This Form shall be used by persons furnishing information pursuant to paragraphs (i), (ii) and (v) of Rule 12g3–2(b) under the Securities Exchange Act of 1934 in order to establish the exemption provided by Rule 12g3–2(b).

B. A person supplying information under cover of this Form shall furnish whatever information the issuer of the securities is required to furnish to the Commission pursuant to paragraphs (i), (ii) and (v) of Rule 12g3–2(b). Only one complete copy of any information or document need be furnished. Press releases and all other communications or materials distributed directly to holders of the subject securities shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared English translations, versions or summaries of them. If no English translations, versions or summaries have been prepared, a brief description in English of any such documents shall be furnished.

C. The information and documents furnished on this Form are not to be deemed "filed" with the Commission or otherwise subject to the liabilities of section 18 of the Securities Exchange Act of 1934.

D. This Form and the accompanying information shall be delivered to the Filing Desk at the Commission's office in Washington, D.C.

Signature

The undersigned submits these materials in order to establish the exemption pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934 in respect to the above named issuer.

Signature *

Date:

OMB Approval

OMB Number:

Expires: Approval Pending

Estimated average burden hours per response.....

* Print the name of the signing individual under his signature.

Securities and Exchange Commission,
Washington, DC 20549

Form 12–FA

Submission of Information Pursuant to Rule 12g3–2(b) Under the Securities Exchange Act of 1934, Other Than in Connection With an Initial Submission

82–_____

(Issuer's file number)

Check Appropriate Box(es)

[ ] Annual Report (or other document) containing audited financial statements.

[ ] Proxy statement or other material distributed to security holders in connection with a meeting of security holders.

[ ] Other Information.

(Exact name of Issuer as specified in its charter)

(Translation of Issuer's name into English)

If an annual report (or other document) containing audited financial statements for the issuer's most recently ended fiscal year is furnished with this Form, then to the extent such information is known or can be obtained without unreasonable effort or expense, furnish the following information (see Instruction D below): (i) The number of holders of each class of equity securities resident in the United States; (ii) the amount of each class of outstanding equity securities held by such residents; (iii) the percentage of each class of outstanding equity securities held by such residents; (iv) the title of class(es) of securities as to which such information relates; and (v) the date as of which such information is provided.

(i) Number of holders resident in the United States	(ii) Amount held by such residents	(iii) Percentage held by such residents	(iv) Title of, class of securities	(v) Date of information

General Instructions

A. This Form shall be used for furnishing information pursuant to paragraphs (iii) and (iv) of Rule 12g3–2(b) under the Securities Exchange Act of 1934.

B. A person supplying information under cover of this Form shall furnish whatever information the issuer of the securities exempt under Rule 12g3–2(b) is required to furnish to the Commission pursuant to paragraphs (iii) and (iv) of Rule 12g3–2(b). Only one complete copy of any information or document need be furnished. Press releases and all other communications or materials distributed directly to security holders of each class of securities to which the exemption relates shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared English translations, versions or summaries of them. If no English translations, versions or summaries have been prepared, a brief description in English of any such documents shall be furnished.

C. The information and documents furnished on this Form are not to be deemed "filed" with the Commission or otherwise subject to the liabilities of Section 18 of the Securities Exchange Act of 1934.

D. If a foreign private issuer is not required under Rule 12g3–2(b)(1)(iii) to furnish to the Commission an annual report (or other document) containing audited financial statements of the issuer, such issuer is required to provide the information requested above with respect to the extent to which its securities are held by U.S. residents within four months after the end of each fiscal year of such issuer.

E. This Form and the accompanying information shall be delivered to the Filing Desk at the Commission's offices in Washington, DC.

Appendix B—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that: proposed Form 12–F and Form 12–FA under the Securities Exchange Act of 1934 (the "Exchange Act"); proposed changes to Form 20–F and proposed Form 40–F under the Exchange Act; and proposed changes to Rule 12g3–2(b) under the Exchange Act and to Item 201 of Regulation S–K, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

The proposed forms and proposed changes to existing and proposed forms and existing rules discussed below are intended primarily to implement proposals (the "Cross-Border Tender and Exchange Offer Proposal") to facilitate cross-border tender and exchange offers relating to securities of foreign issuers held by U.S. investors. These proposals are a companion to the Cross-Border Tender and Exchange Offer Proposal. The resulting reduction in the expense, time and effort of making such tender and exchange offers will benefit U.S. securityholders, who are normally excluded from such offerings, and foreign entities that wish to extend these offers to U.S. securityholders. Since the proposals are intended to facilitate cross-border tender and exchange offers by minimizing the existing regulatory disincentives for extending these offers into the United States, the likelihood of such increased offerings in the United States significantly affecting a substantial number of small U.S. entities is expected to be minimal.

In connection with this proposal, the Securities and Exchange Commission (the "Commission") also is proposing revisions to existing rules and new forms to provide that submissions under Rule 12g3–2(b) shall be under cover of one of two proposed forms. These revisions and forms would affect foreign entities submitting materials to the Commission under Rule 12g3–2(b) rather than U.S. entities. An expected result of adoption of the proposed forms and proposed changes to existing rules and forms is that foreign companies will disclose on at least an annual basis the number of U.S. holders of their equity securities and the percentage of holders of their equity securities who are U.S. holders. The resulting increase in information can be expected to increase the ease with which small U.S. entities acting as investors can obtain U.S. holder information and assess the potential of tender and exchange offers being made under the Cross-Border Tender and Exchange Offer Proposal. Since U.S. holdings of foreign equity securities are relatively small, however, the likelihood of such increased information significantly affecting a substantial number of small U.S. entities is minimized.

The proposed forms and the proposed amendments to an existing form, a proposed form and existing rules are summarized below. That their primary effect is on foreign entities is apparent from such summary. Thus, the Division of Corporation Finance recommends that a certification be signed stating that these proposed rules and form and proposed amendments will not have a significant economic impact on a substantial number of small U.S. entities.

The proposed forms and the proposed amendments to an existing form, a proposed form and existing rules are summarized in the attached memorandum.* That their primary effect is on foreign entities is apparent from such document.

Dated: June 6, 1991.

Richard C. Breeden,

Chairman.

[FR Doc. 91–13869 Filed 6–13–91; 8:45 am]

BILLING CODE 8010–01–M

* **Note:** The above-referenced memorandum is not included in this release.

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Part III

Environmental Protection Agency

Coastal Nonpoint Source Pollution Management Measures Guidance; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3962-7]

Coastal Nonpoint Source Pollution Management Measures Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and request for comment.

SUMMARY: Pursuant to section 6217(g)(3)(A) of the Coastal Zone Act Reauthorization Amendments of 1990, EPA has developed, and requests public comment on, proposed guidance specifying management measures for the control of nonpoint sources that cause coastal water pollution. This guidance includes measures to control nonpoint source pollution from the following sources: Agriculture, silviculture, urban (including construction activities), hydromodification, and marinas. EPA has prepared the guidance in consultation with State and Federal agencies.

The purpose of this guidance is to provide a basis for the development of state coastal nonpoint pollution control programs by states with approved coastal zone management programs as required by section 6217(a). In addition to other requirements, section 6217(b) requires that these programs provide for the implementation, at a minimum, of management measures in conformity with the section 6217(g) guidance. The new coastal nonpoint pollution control programs will be implemented through existing state coastal zone management programs, administered by NOAA, and existing state nonpoint source control management programs, administered by EPA. EPA and NOAA are currently preparing to publish joint program development and approval guidance for section 6217 in draft form in August 1991. State coastal nonpoint pollution control programs must be submitted to EPA and NOAA for approval within 30 months after EPA issues section final 6217(g) guidance in May 1992.

EPA will consider comments on this proposed guidance and will issue final guidance in May 1992.

DATES: Written comments should be addressed the person listed directly below by October 15, 1991.

ADDRESSES: Comments should be sent to Steve Dressing, Assessment and Watershed Protection Division (WH-553), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Copies of the complete draft may be obtained by August 2, 1991.These documents are also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, room 2404 (rear), 401 M St. SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services. Copies of these documents are also available for review in the EPA Regional Office libraries.

FOR FURTHER INFORMATION CONTACT: Dov Weitman or Steve Dressing at (202) 382-7065.

SUPPLEMENTARY INFORMATION:

I. Background

A. Requirement for Coastal Nonpoint Pollution Control Programs

Congress enacted section 6217 of the Coastal Zone Reauthorization Amendments of 1990 in November 1990. This section requires all states with a federally approved coastal zone management program to develop, and submit to EPA and NOAA for approval, a Coastal Nonpoint Pollution Control Program. The statutory purpose of the program "shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities".

Under section 6217, State coastal nonpoint pollution control programs must contain a number of provisions in order to be approvable by EPA and NOAA. First, all State programs must provide for implementation of management measures "in conformity with" guidance developed by EPA in consultation with NOAA, the Fish and Wildlife Service, and other Federal agencies as required by section 6217(g). Congress required that proposed guidance be issued within six months after the statute was enacted (May 1991) and final guidance within eighteen months of enactment (May 1992).

In addition to providing for implementation of management measures in conformity with the 6217(g) guidance, section 6217 requires State programs to:

1. Identify land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of (a) coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, or (b) coastal waters that are threatened by reasonably foreseeable increases in pollution loadings form new or expanding sources;

2. Identify critical coastal areas adjacent to coastal waters identified under the preceding paragraph;

3. Implement additional management measures applicable to land uses and areas identified under paragraphs (1) and (2) above that are necessary to achieve and maintain applicable water quality standards and protect designated uses:

4. Provide technical assistance to local governments and the public to implement management measures;

5. Provide opportunities for public participation in all aspects of the program;

6. Establish mechanisms to improve coordination among State and local agencies and officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety; and

7. Propose to modify State coastal zone boundaries as necessary to implement NOAA recommendations under section 6217(e). (Section 6217(e) requires NOAA, in consultation with EPA, to evaluate the landward coastal zone boundary of each coastal State to determine whether it extends inland sufficiently to control land and water uses that have a significant impact on coastal waters of the state and to recommend boundary modifications as necessary.)

In addition to the provisions of section 6217, the Coastal Zone Act Reauthorization Amendments of 1990 amends section 306 of the Coastal Zone Management Act to require that, before approving a coastal zone management program submitted by a coastal State, NOAA shall find that: "* * * the management program contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the State required by section 6217 * * *".

Within 30 months after EPA's issuance of management measures guidance in May, 1992, States are required to submit to NOAA and EPA their coastal nonpoint pollution control programs for review. EPA and NOAA are currently in the process of drafting program development and approval guidance in order to assist States in developing and implementing the coastal nonpoint pollution control programs. EPA and NOAA plan to issue draft program approval guidance in August 1991 and final guidance in May 1992.

B. Management Measures Guidance

Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 requires EPA to publish (and periodically revise thereafter), in consultation with NOAA, the Fish and Wildlife Service, and other Federal agencies, "guidance for specifying management measures for sources of nonpoint pollution in coastal waters." "Management measures" are defined as:

> Economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

The management measures guidance is to include, at a minimum, six elements set forth in section 6217(g)(2):

"(A) A description of a range of methods, measures, or practices, including structural or nonstructural controls and operation and maintenance procedures, that constitute each measure;

"(B) A description of the categories and subcategories of activities and locations for which each measure may be suitable;

"(C) An identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;

"(D) Quantitative estimates of the pollution reduction effects and costs of the measures;

"(E) A description of the factors which should be taken into account in adapting the measures to specific sites or locations; and

"(F) Any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality."

II. Scope of the Proposed Guidance—Categories of Nonprofit Sources Addressed

According to the legislative history (floor statement of Representative Gerry Studds, house sponsor of section 6217, as part of debate on Omnibus Reconciliation Bill, October 26, 1990), Congress is expecting that EPA, "* * * in developing its guidance, will concentrate on the large nonpoint sources that are widely recognized as major contributors of water pollution." Hence, EPA, in consultation with NOAA, the Fish and Wildlife Service, USDA, and a number of other federal agencies, has decided to focus on the major categories of nonpoint sources that impair or threaten coastal waters nationally as identified in State water quality reports required under section 305(b) of the Clean Water Act and State nonpoint source assessments required by section 319(a). The five major categories of nonpoint sources and subcategories for which management measures are specified are:

(1) *Agricultural runoff*: Erosion and Sediment control, confined animal production facilities, nutrient management, pesticide management, grazing management, and irrigation water management;

(2) *Urban runoff*: Pre-development and post-development controls in urban areas including erosion and sediment control on construction sites, highways, airports and septic systems;

(3) *Silvicultural runoff*: Forest road management, timber harvest planning and site preparation, and revegetation of disturbed areas;

(4) Hydromodification, dams and levees, and shoreline erosion control; and

(5) Marinas and recreational boating.

EPA has also included management measures that apply to multiple categories of nonpoint sources. These measures include protection of wetlands and riparian areas, and vegetative filter strips.

III. Approach Used to Develop Guidance

A. Process Used to Develop Proposed Guidance

EPA adopted a work group approach to develop the proposed guidance in order to address the broad requirements of the guidance and to draw upon technical expertise outside the agency. EPA convened workgroups for each of the five major pollutant source group categories. Each of these groups held several meetings to develop the guidance. Work group members included representatives of EPA; NOAA; U.S. Department of Agriculture (Soil Conservation Service, Extension Service, and Forest Service); the U.S. Fish and Wildlife Service; and several other Federal agencies. Representatives of a number of State water quality and coastal zone management agencies also participated actively in these work groups.

B. Technical Approach Used to Develop Proposed Guidance

In developing this guidance on management measures, we have been guided by the knowledge that nonpoint source pollutants are transported via multiple environmental pathways, principally runoff, infiltration, and atmospheric deposition. Therefore, the management measures place high priority on preventing or reducing nonpoint source pollution at the source. Recognizing that it is not possible to rely solely on pollution prevention, we have also incorporated in the guidance management measures to intercept pollutants which leave the source either for treatment and release or for the purpose of permanently keeping them from reaching water resources.

In addition, this guidance adopts the approach, routinely used and recommended by nonpoint source technical experts, of specifying management measures in terms of management systems as opposed to focusing on individual practices. This approach is analogous to the use of treatment "trains", or series of treatment steps, in most point source wastewater treatment systems. This approach is reflected in the guidance in two ways: (1) The management measures are usually presented as systems, and (2) for those sources that generate pollutants from a number of somewhat separable activities or unit areas, the guidance includes management measures for each activity or area.

The management measures specified in the proposed guidance generally have the following characteristics:

- The measures reflect the greatest degree of pollutant reduction economically achievable. EPA has specified management measures in terms of particular systems of practices that are known to be highly effective and that can serve as a benchmark for the development of other approaches that provide equivalent or better pollutant reduction.
- The measures focus first on pollution prevention activities such as minimizing the application of nutrients and pesticides and minimizing soil erosion. These types of measures are often the most cost effective. The measures then specify pollution delivery reduction measures which intercept pollutants leaving the source by capturing the runoff or infiltrate.
- Whenever appropriate, the measures include consideration of nonpoint pollution of both ground water and surface water because of their interactions in the hydrologic cycle. In coastal areas, management practices that may contribute to ground-water contamination are of special concern because of the role ground water plays in recharging coastal waters. EPA plans to more closely examine the relationship between ground and surface water contamination in coastal areas during the coming year and address the

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resulting information as appropriate in the guidance.

Due to the very tight timeframe provided by Congress to EPA to publish the proposed guidance, the proposed guidance contains only those limited data and information on pollutant reduction effects and costs of the management measures that were immediately available. EPA specifically solicits relevant data from the public. EPA will consider these and additional information regarding costs and pollutant reduction effects prior to publishing the final guidance.

The proposed guidance invites commenters to identify measures that they believe are or are not economically achievable and to suggest alternative methodologies that they believe would be useful in determining economic achievability. Finally, EPA has separately prepared a preliminary assessment of the benefit of implementing the management measures.

IV. Implementation of Proposed Management Measures

As described above in section I of this notice, States must develop Coastal Nonpoint Pollution Control Programs which "provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g) to protect coastal waters generally. * * *". States will implement the new programs through amendments to their existing State nonpoint source programs under section 319 of the Clean Water Act and their Coastal Zone Management programs.

EPA and NOAA are currently drafting State program approval guidance to assist States in developing their coastal programs. Issues to be addressed in this guidance include the following:

- Section 6217(b) requires State coastal nonpoint pollution control programs to be "in conformity with" the management measures specified by EPA in EPA's management measures guidance. The program guidance under development will define the degree of flexibility States will have in adopting management practices appropriate to their circumstances while remaining "in conformity with" the management measures specified by EPA.
- The program guidance will define the kinds of land uses and critical coastal areas that States must identify, and the additional management measures which States must implement, in order to comply with section 6217(b)'s requirement for a higher level of protection for particular coastal waters than that afforded generally by the management measures guidance.
- The guidance will provide States direction on whether the management measures will apply to applicable sources within all coastal watersheds or should instead be targeted to high priority sources, activities, or waters.
- The program guidance will provide direction to States on how best to integrate their nonpoint source programs under section 319 of the Clean Water Act with their coastal zone management programs, as well as with other EPA programs such as those developed under the Clean Water Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Safe Drinking Water Act, and with programs administered by other Federal agencies.

EPA and NOAA hope to issue draft guidance by August 1991, and will solicit public comment at that time.

V. Request for Comments

EPA is soliciting comments on the proposed guidance on management measures to control coastal nonpoint pollution. The Agency is soliciting additional information and supporting data on the measures specified in this guidance and on additional measures that may be as effective or more effective in controlling nonpoint source pollution. The following information is sought by EPA in preparing the final guidance:

1. Information on the activities and locations for which each measure may be suitable and information on factors which should be taken into account in adapting the measures to specific sites or locations;
2. Information on the pollutants that may or may not be controlled by the measures;
3. Data regarding the pollution reduction effects of the measures;
4. Data regarding the costs and cost-effectiveness of each measure;
5. Appropriate monitoring techniques for each resource category;
6. Monetary data on benefits of each measure; and
7. Information on opportunities for point/nonpoint source trading, including information on possible cost advantages of this approach in specific watersheds.

EPA also welcomes comments on the general approach used in the proposed guidance, including the level of detail used to describe management measures. EPA requests that commenters focus their comments upon the technical soundness of the proposed management measures guidance and reserve implementation-related considerations until the forthcoming state program approval guidance is published for public comment.

LaJuana S. Wilcher,

Assistant Administrator for Water.

[FR Doc. 91-13534 Filed 6-13-91; 8:45 am]

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federal register

Friday
June 14, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

Implementation of Section 235(r) of the National Housing Act; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-91-1547; FR-2739-F-01]

Implementation of Section 235(r) of the National Housing Act

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 235(r) of the National Housing Act as amended by section 125 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235) which was signed by the President on December 15, 1989 (Reform Act). Section 235(r), as amended, authorizes the Secretary to insure a mortgage, the proceeds of which are used to refinance a mortgage insured under section 235. Section 235(r)(7) provides that section 235(r) shall be implemented by the Secretary by a notice published in the **Federal Register**. However, since the implementation of section 235(r) requires amendments to the current regulations, HUD is implementing the program through a final rule by adding a new 24 CFR 235.4, "Refinancing under 235(r) of the National Housing Act" to subpart A of part 235. Appendix A to part 235, published with this final rule, contains the special requirements that must be met for eligibility of a mortgage to be insured under section 235(r), as well as identifying the provisions of 24 CFR part 235, subparts A, B, and G, that are applicable to Section 235(r) mortgages. The Appendix also contains the provisions which, together with the applicable sections of 24 CFR part 235, subpart C, constitute the new assistance payments contract for the mortgage insured under section 235(r). In addition, the direct endorsement program, whereby mortgagees approved for that program may process and underwrite mortgage loans, is extended in appendix A to part 235 to mortgages to be insured under section 235(r). Delegations of authority to execute specific documents on HUD's behalf in conjunction with mortgages to be insured under section 235(r) are also contained in appendix A to part 235.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Robert E. Falkenstein, Jr., Office of Insured Single Family Housing, Department of Housing and Urban Development, room 9270, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708-2720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and have been assigned OMB Control Number 2502-0456.

Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the documents making up the collection of information. Information on the estimated public reporting burden is provided elsewhere in this document.

Background

Section 235 was added to the National Housing Act (Act) in 1968 (12 U.S.C. 1715z) and authorizes the Secretary to insure mortgages for the purpose of acquisition of housing by lower income families. In addition to insuring the mortgages, the Secretary was also authorized to enter into a contract with the mortgagee to make a portion of the mortgage payments on behalf of the mortgagor. The assistance payments are based on the lesser of:

(1) The difference between 20 percent (or 28 percent for contracts with an original term of ten years or less) of the homeowner's adjusted monthly income and the required monthly payments under the mortgage for principal, interest, taxes, insurance and mortgage insurance premium; and

(2) The difference between the required monthly payment under the mortgage for principal, interest and mortgage insurance premium and the monthly payment for principal and interest as if the mortgage bore a lower rate of interest, depending upon the date on which the mortgage was approved by the Secretary for insurance.

Many of the mortgages insured under section 235, which are still outstanding, were made during the high interest rate years of 1980, 1981 and 1982. The interest rates on those mortgages are between 11 and 17.5 percent. If those mortgages could be refinanced at the current lower interest rates, HUD may be able to save substantially in dollar outlays in assistance payments. However, until the enactment of section 235(r), mortgagors had very little incentive to agree to refinance their loans. The only incentive was the potential savings to them on the mortgage held by HUD to secure a repayment of the assistance payments received (recapture mortgage) when they dispose of the property to an ineligible purchaser. Under a refinancing mortgage at a lower interest rate, the mortgagor would receive less assistance on its behalf from HUD and, therefore, possibly owe HUD less at the time of disposition of the property. The amount of assistance to be repaid by the mortgagors is the lesser of the amount of assistance actually received, or 50 percent of the net appreciation in the property. Therefore, if the property does not appreciate in value, the mortgagors would not have to make any repayment. When this potential savings is measured against the costs (origination fees, discount and closing costs), trouble, and time to refinance, such savings would be a very limited inducement to mortgagors to undertake the refinancing.

In addition, mortgagees would not be interested in making the loans unless they are paid a discount. The mortgagors on mortgages insured under section 235 are low-income persons, who generally would not be able to afford closing costs, origination fees or discounts necessary to refinance. To a limited extent, closing costs, origination fees, and discounts could have been included in the mortgage amount in a refinancing under section 203 or 235, but the mortgagor may not have agreed to the inclusion of these costs since his debt would have been increased.

In the appropriations Act for the Departments of Veterans Affairs and Housing and Urban Development for the fiscal year ending September 30, 1990 (Pub. L. 101-144) signed by the President on November 9, 1989, a new subsection (r) was added to section 235 of the Act entitled Refinancing. The new subsection required the Secretary to periodically review each assistance payments contract to determine whether a refinancing was warranted. There were some defects in this legislation and, before it was implemented, subsection (r) was amended by the Reform Act.

Section 235(r) as Amended by the Reform Act

Section 235(r) authorizes the Secretary to insure a mortgage, the proceeds of which are used to refinance a mortgage insured under section 235, and contains the eligibility requirements for such refinancing mortgage. It further provides for assistance payments in connection with mortgages insured under section

235(r). In addition, the Secretary is authorized, and, to the extent provided in appropriation Acts, may pay to the mortgagor (1) an amount as an incentive to the mortgagor to refinance a mortgage insured under section 235 and (2) an amount for costs incurred in connection with the refinancing, including but not limited to discounts, loan origination fees, and closing costs. To the extent that these amounts are not paid by the Secretary, the interest rate of the refinancing mortgage may be increased over the rate otherwise allowed by the Secretary to compensate the mortgagee for its payments to, or on behalf of, the mortgagor of these amounts. Since appropriation Acts have not provided any funds for the Secretary to make the payments specified in (1) and (2) above, the interest rate for the section 235(r) mortgages will be set initially at an amount to compensate the mortgagees for making these payments. After the period of the loan required to repay the mortgagee for making these payments, which period cannot exceed 60 months, then the interest rate will decrease to the market rate. The 235(r) market rate is determined by using the current coupon rate (i.e. the maximum VA 30-year fixed rate less ½ percent) on Government National Mortgage Association Mortgage-Backed Securities (GNMA's MBS) scheduled for 60 day delivery shown on the Telerate Systems' Mortgage Service page 7105, or successor, at the market's closing on the date of application plus an additional one-half of one percent (½%). In the event that the price discount on the current coupon exceeds 2 points, the market rate will be the next higher GNMA coupon rate (not exceeding par), as shown on page 7105 of the Telerate Service, plus an additional one-half of one percent (½%). The market rate will remain in effect for the remainder of the mortgage term.

Direct Endorsement

It has been administratively determined that mortgages to be insured under section 235(r) should be eligible for processing and underwriting by mortgagees who are approved for the direct endorsement program under 24 CFR 200.164. However, under 24 CFR 200.163(a)(1) mortgages insured under section 235 are not presently eligible for processing under the direct endorsement program. Therefore, appendix 235, implementing the provisions of subsection (r), also contains authority for mortgages to be insured under this subsection to be processed through the direct endorsement program. There are certain requirements in the direct endorsement program which are not applicable to the properties securing mortgages under section 235(r), e.g., those requirements involving new construction. appendix 235 specifies which of the regulations under Direct Endorsement, 24 CFR 200.163-164a, apply to a mortgage insured under Section 235(r), and the certifications that the mortgagee and mortgagee's underwriter must make with respect to a 235(r) mortgage.

Further, appendix 235 contains authority for the direct endorsement mortgagees to sign, for and on behalf of HUD, the "Application for Homeownership Assistance under section 235 of the National Housing Act" (HUD-93100), approving the amount of assistance payment which HUD will make on behalf of the mortgagor under the 235(r) mortgage, if any. The direct endorsement mortgagee shall also have the authority to sign, for and on behalf of HUD, together with the mortgagor, an agreement subordinating the recapture mortgage, held by HUD for the purpose of securing repayment by the mortgagors of assistance payments made on their behalf, to the section 235(r) mortgage. This agreement shall also modify the recapture mortgage to include a reference to the new note being executed by the mortgagor to reflect assistance payments to be made in connection with the mortgage to be insured under section 235(r).

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. If the rule impacts on small entities at all, such impact will be positive as the notice is implementing another HUD-insured mortgage program.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. The rule involves the refinancing of mortgages insured under section 235 by mortgages to be insured under section 235(r). The purpose of the refinancing is to lower the interest rate on the mortgages so that the assistance payments being made by the Department will be reduced, thus saving the Department large cash outlays. The effect on families would be beneficial in that they would have a potential savings with respect to repayment of assistance payments to the Department and would also receive an incentive payment to refinance.

Information Collection Requirements

The collection of information requirements for this program were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, and were approved by OMB as Control No. 2502-0456. In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each of the collections of information in this rule.

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Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Form HUD-92900, Application for HUD/VA Insured Mortgage.			(1)	(1)		
Form HUD-92900-WS, Work Sheet			(2)	(2)		
Form HUD-93100, Application for Home ownership Assistance Under Section 235 of the National Housing Act.			(3)	(3)		
Form HUD-92004-G, Request for Verification of Employment.			(1)	(1)		
Mortgagors' Written Request to the Old Section 235 Servicing Mortgagee (Mortgagee Letter).	203.317 as incorporated by 235.201	36,000	1	36,000	.09	3040
Appendix 8 (HUD Handbook 4330.1 Rev. 2), Mortgagee Notice to Mortgagor. (In response to prepayment inquiry request for payoff or tender of prepayment in full).	203.317 as incorporated by 235.201	36,000	1	36,000	.08	3040
Preliminary or Final Payoff Statement (Mortgagee Letter).	203.317 as incorporated by 235.201	36,000	1	36,000	.03	1140
Appendix 44 (HUD Handbook 4330.1, Rev. 2) Notice to Mortgagors.	235.12	22,000	1	22,000	.02	440
Attachment 5 (Mortgagee Letter), Acknowledgment of Mortgagors.	235.345	22,000	1	22,000	.02	440
Attachments 7-A thru 7-D (Mortgagee Letter), Modification and Subordination Documents for Secretary-held Recapture Mortgages or Deeds of Trust.	235.12	20,000	1	20,000	.05	1000
Appendix 58 (HUD Handbook 4330.1, Rev. 2) Note	235.12	20,000	1	20,000	.02	400
Attachment 7-E (Mortgagee Letter), Mortgagee's Case Certification to a HUD Processed Case.	235.12	1,500	1	1,500	.02	30
Form HUD-50100, Mortgage Insurance Certificate (MIC).			(4)	(4)		
Attachments 10-A thru 10-D (Mortgagee Letter), Credit Lists.	235.317 incorporated by 235.201	9,000	4 1	4 9,900	4 .02	4 180
Form HUD-1, Settlement Statement			(5)	(5)		
Form HUD-27050-A, Termination of Mortgage Insurance.			(5)	(5)		
Form HUD-93114, Notice of Termination of 235 Assistance Payments.			(7)	(7)		
Form HUD-93102, Application (Bill) for 235 Assistance Payments.			(8)	(8)		
Form HUD-300, Monthly Summary of Assistance Payments.			(8)	(8)		
Attachment 6 (Mortgagee Letter), Mortgagee's Certification of the Date of Disbursement of the 235(r) Mortgage Proceeds.	235.345	22,000	1	22,000	.02	440
Total burden						10,150

[1] Approved under OMB 2505-0056.
[2] Approved under OMB 2505-0059.
[3] Approved under OMB 2535-0100.
[4] Voluntary on the part of the originating Mortgagee.
[5] Approved under OMB 2502-0265.
[6] Approved under OMB 2502-0414.
[7] Approved under OMB 2502-0094.
[8] Approved under OMB 2502-0081.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Grant programs: housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements, Homeownership.

Accordingly, the Department amends 24 CFR part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new § 235.4 is added to subpart A, to read as follows:

§ 235.4 Refinancing under section 235(r) of the National Housing Act.

Subparts A, B, C and G of part 235 apply to a refinancing mortgage insured under section 235(r) of the National Housing Act, except as these subparts are modified and supplemented by Appendix A to part 235. (Appendix A to part 235 appears at the end of this part.)

3. A new Appendix A to part 235 is added to read as follows:

Appendix A to Part 235—Refinancing Section 235(r)

This Appendix contains the requirements for insuring mortgages under section 235(r) of the Act. Mortgages to be insured under section 235(r) will be eligible for direct endorsement processing as well as regular HUD processing. The following requirements, contract rights and obligations apply to a mortgage to be insured under section 235(r) of the Act.

Part I Direct Endorsement

A. Programs Included Under the Direct Endorsement Programs

The regulations implementing the direct endorsement program are contained in 24 CFR 200.163 through 200.164a. 24 CFR 200.163(a)(1) specifies the single family programs which are eligible for processing under the direct endorsement program. Section 235(r) is hereby made an eligible program for direct endorsement processing.

B. Provisions of 24 CFR 200.163 Through 200.164a Which Do Not Apply to Mortgages Insured Under Section 235(r)

The properties, which are to be security for the section 235(r) mortgages, are (1) currently security for mortgages insured under section 235, and (2) are existing with no requirement for appraisals. In addition, the eligibility requirements for the mortgagors and the mortgages differ from the other programs under the Direct Endorsement program.

There are several provisions of 24 CFR 200.163 which do not apply to mortgages insured under section 235(r). The paragraphs of 24 CFR 200.163 which are not applicable to mortgages insured under section 235(r) are as follows:

Paragraph 3 of subsection (b), *Appraisal*
Paragraph 4 of subsection (b), *Mortgagor's income*
Paragraphs (i), (iv), (vi) (viii) through (x) of subsection (b)(5), *Submission for Endorsement*
Paragraphs (A) through (I) of subsection (b)(5)(xi), *Submission for Endorsement*
Paragraphs (1) through (11) of subsection (c), *Underwriter Certification*
Paragraphs (1) through (4) of subsection (d), *HUD/FHA Pre-Endorsement Review*

C. Special Requirements for Section 235(r)

In lieu of the following paragraphs which are eliminated by section B, above, the following provisions are applicable for mortgages insured under section 235(r):

(1) Paragraph (A) Through (I) of Subsection (b)(5)(xi) (Submission for Endorsement)

In lieu of the certifications required of the mortgagees by paragraphs A through I of 24 CFR 200.163(b)(5)(xi), the mortgagee shall give the following certifications:

(a) That the mortgage term does not exceed the unexpired term of the insured mortgage being refinanced.

(b) That the mortgage shall be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease which has at least ten years to run from the maturity of the mortgage.

(c) That the stated mortgage amount does not exceed the lesser of (i) the outstanding principal balance due on the mortgage being refinanced as shown on the amortization schedule without taking into account prepayments and delinquencies and (ii) the actual unpaid principal balance due on the mortgage being refinanced.

(d) That the mortgage satisfies the requirements of 24 CFR 235.22 (a), (b), (c) and (f).

(e) That the recapture second mortgage, if applicable, has been subordinated to the mortgage being submitted for insurance and that the recapture mortgage is a second lien; provided that in the case where there is a loan made, held or insured by a Federal, State or local governmental agency which was approved by the Secretary as a second lien and which has been subordinated to the mortgage being submitted for insurance, the recapture mortgage may be a third lien.

(f) That the interest rates on the mortgage meet the requirements contained in part II, B. (4) of this notice, and that the initial interest rate is at least one percent (1%) higher than the interest rate on the remaining term of the mortgage.

(g) That the period for repayment of the refinancing cost by the mortgagor shall not extend beyond that necessary for the mortgagee to recover the eligible refinancing costs, but in no event shall it exceed a period of 60 months from the date of the first monthly payment of principal and interest due under the mortgage to be insured.

(h) That the mortgagor has not received payment, nor have payments been made on his behalf, as described in part II, B. (4) for a five year period from the date of the first monthly payment to principal and interest which was due on the mortgage to be refinanced.

(2) Paragraphs (1) Through (11) of Subsection (c) (Underwriter Certification)

In lieu of the certifications required by the Underwriter under 24 CFR 200.163(c), the underwriter shall give the following certifications:

(a) That, in the event the mortgagor's portion of the monthly principal and interest payments on the mortgage submitted for insurance, increases by more that $50.00 over the mortgagor's payments on the mortgage being refinanced, (i) a mortgage credit analysis has been performed, (ii) the mortgagor's income is and will be adequate to meet his portion of the periodic payments required by the mortgage submitted for insurance in accordance with part II, B. (6)(b) herein, and (iii) the mortgagor has a general credit standing satisfactory to the Secretary as required by 24 CFR 203.34 incorporated by referenced by 24 CFR 235.1.

(b) That the mortgagor is eligible for, and receiving, assistance payments with respect to the mortgage being refinanced and that the last recertification of the mortgagor was within the preceding twelve months prior to the application for the 235(r) mortgage.

(c) That the mortgagor is eligible to continue to receive assistance in connection with the 235(r) mortgage.

(d) That the monthly payments of principal and interest at the 235(r) interest rate on the mortgage submitted for insurance are less than the monthly payments of principal and interest on the mortgage being refinanced.

(e) That the property which is security for the mortgage is occupied by the mortgagor.

(f) That the computation of the amount of assistance payments which the Secretary will pay on behalf of the mortgagor was computed in accordance with the formula contained in part IV, B. of this notice.

(g) That the mortgagors agreed to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income in accordance with 24 CFR 235.350.

(3) Paragraphs (1) Through (4) of Subsection (d) (HUD/FHA Pre-Endorsement Review)

In lieu of the review and determinations to be made of loan documents by HUD as provided in 24 CFR 200.163(d), upon submission by an approved mortgagee of the documents required by 24 CFR 200.163 (b) and (c), as modified by this notice, HUD/FHA will review the loan documents to determine:

(a) That the mortgage is executed on a form which meets the requirements of the Secretary.

(b) That the mortgage maturity meets the requirements of part II, B. (3) of this notice.

(c) That the stated mortgage amount does not exceed the maximum dollar limitation under part II, B. (2) hereunder.

(d) That the mortgage interest rates meet the requirements of part II, B. (4) of this notice.

(4) References to 24 CFR 200.163 (b) and (c)

For the purposes of section 235(r) mortgages, all references in 24 CFR 200.163 to paragraphs (b) and (c) shall mean (b) and (c), as modified by this appendix.

D. Authority To Sign

A direct endorsement mortgagee processing and underwriting a Section 235(r) mortgage shall have the authority to sign, for and on behalf of the Secretary, in accordance with procedures established by the Secretary, without further specific approval, the following documents:

(1) Approval of Amount of Assistance Payments

The Form HUD 93100, "Application for Homeownership Assistance under section 235 of the National Housing Act," which evidences a review of the information obtained from the mortgagor on the application, a determination of eligibility or ineligibility for assistance payments, and the amount of the assistance payments to which the mortgagor is entitled.

(2) Subordination and Modification Agreement

An agreement, which subordinates a recapture second mortgage or deed of trust (recapture mortgage) held by HUD in accordance with 24 CFR 235.12, to the lien of the mortgage being submitted for insurance so that the recapture mortgage will remain a second lien. If the recapture mortgage is a third lien following a second lien made, held or insured by a Federal, State or local governmental agency, and approved by the Secretary, the direct endorsement mortgagee may sign an agreement subordinating the recapture mortgage to third lien place. The agreement shall also contain a modification of the recapture mortgage to include a new note to be signed by the mortgagor securing repayment of the assistance to be paid under the mortgage to be insured under section 235(r).

Part II Eligibility Requirements of Mortgages

In accordance with the authority contained in section 235(r) of the Act, the Secretary may insure, under subpart A of part 235, any mortgage given to refinance an existing mortgage which is insured under section 235 of the National Housing Act. Except as provided in this part II, all of the provisions of subpart A shall apply to the insurance of a mortgage under section 235(r).

A. Applicable Sections of 24 CFR Part 235, Subpart A

The provisions of 24 CFR part 235, subpart A which apply to a mortgage insured under section 235(r) are the following:

Sec.
235.1 Cross-reference
235.3 Waiver
235.5 Definitions used in this subpart

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Sec.
235.12 Recapture of assistance payments
235.22(a)–(c) and (f) Mortgage provisions
235.33 Mortgage lien
235.40 Late charge

B. Special Requirements

The refinancing mortgage must meet the following special requirements:

(1) First Lien

It must be a first lien on real estate held in fee simple, or on a leasehold under a lease (1) for not less than 99 years which is renewable, or (2) has a period of not less than ten years to run beyond the maturity date of the mortgage.

(2) Mortgage Amount

It must be in an amount not exceeding the lesser of (i) the outstanding principal balance due on the mortgage being refinanced as shown on the amortization schedule, not taking into account prepayments and delinquencies, and (ii) the actual unpaid balance due on the mortgage being refinanced.

(3) Maturity Date

It must have a maturity not to exceed the remaining term of the section 235 mortgage being refinanced. In the event that the remaining term is measured in years and months, the term for the refinancing mortgage shall be rounded down to the next whole year.

(4) Interest Rates

(a) *235(r) Interest Rate.* The 235(r) interest rate is determined by using the current coupon rate (i.e. the maximum VA 30-year fixed rate less ½ percent) on Government National Mortgage Association Mortgage-Backed Securities (GNMA's MBS) scheduled for 60 day delivery shown on the Telerate Systems' Mortgage Service page 7105, or successor, at the market's closing on the date of application plus an additional one-half of one percent (½%). In the event that the price discount on the current coupon exceeds 3 points, the market rate will be the next higher GNMA coupon rate (not exceeding par), as shown on page 7105 of the Telerate Service, plus an additional one-half of one percent (½%).

(b) *Initial interest rate.* (i) From the date of the execution of the mortgage note until the date set forth in the mortgage note, it shall bear an additional increment of interest so that the total interest for that period is the same as the interest rate shown on the mortgage being refinanced, in order for the mortgagee to recover its payment to, or on behalf of, the mortgagor of the refinancing costs described below:

(A) An amount, as approved by the Secretary, as an incentive to the mortgagor to refinance a mortgage insured under section 235;

(B) An amount, as approved by the Secretary, for costs incurred in connection with the refinancing, including but not limited to discounts, loan origination fees, and closing costs;

(C) Current interest and delinquent interest not to exceed two months, on the mortgage being refinanced;

(D) Prepaid interest on the mortgage to be insured but not to exceed a period of ten (10) days; and

(E) Any excess of the actual outstanding principal balance not including current or delinquent interest over and above the scheduled unpaid principal, not taking into account any prepayments or delinquencies, as shown on the amortization schedule for the mortgage being refinanced.

(ii) The initial interest rate must be at least one percent (1%) higher than the 235(r) interest rate which is described in subparagraph (a).

(5) Eligible Mortgagee

It shall have been made to, and held by, a mortgagee approved by the Secretary.

(6) Eligible Mortgagor

(a) It must be executed by a mortgagor who is eligible for, and receiving, assistance payments with respect to the mortgage being refinanced.

(b) If the mortgage submitted for insurance requires an increase in the mortgagor's portion of the periodic payments due under the mortgage by more than $50.00 over the amount the mortgagor was paying on the mortgage being refinanced, then a mortgage credit analysis must be performed on the mortgagor who must establish that his income is or will be adequate to meet his portion of the periodic payment due under the new mortgage. Only that part of the mortgagor's income which can be expected to continue for approximately the first five years of the mortgage term will be considered effective income for the purpose of determining the adequacy of the mortgagor's income.

(c) Cooperative members, who are receiving assistance payments, which in all cases are based on the cooperative member's proportionate share of the obligation under the project mortgage, are not eligible for section 235(r) mortgages.

(d) If the property is subject to a recapture mortgage securing the payment to the Secretary of assistance payments made on behalf of the mortgagor, the mortgagor must agree to modify and subordinate such mortgage to the mortgage to be insured under section 235(r) in accordance with instructions of the Secretary.

(e) The mortgagor has not received payments for the costs of refinancing, nor have such payments been made on his behalf, as described in Part II, B. (4), for a period fo 60 months from the date of the first payment of principal and interest on the mortgage to be refinanced; provided, however, that if the mortgagor pays its own cost to refinance, then this prohibition will not apply.

(f) The mortgagor must be an occupant of the property securing the mortgage.

(7) Monthly Payments

It must have monthly principal and interest payments at the 235(r) interest rate which are less than the monthly payments of principal and interest on the mortgage being refinanced.

(8) Refinancing costs

The refinancing costs may include those costs specified in paragraph (4)(b)(i). The period during which the mortgagor is to repay at the initial interest rate the refinancing costs paid by the mortgagee shall not extend beyond that necessary for recovery of eligible costs, but in no event shall it exceed 60 months from the date of the first monthly payment of principal and interest on the mortgage to be insured.

Part III. Contract Rights and Obligations

The provisions of subpart B of title 24 of part 235 shall be applicable to mortgages insured in accordance with section 235(r) of the Act.

Part IV. Assistance Payments Contract

A. Contract for Assistance Payments

Title 24, part 235, subpart C shall constitute the contract between the mortgagee and the Secretary for assistance payments in connection with a mortgage insured under section 235(r) of the Act, as modified by this appendix. The assistance payments contract for the mortgage being refinanced shall be terminated on the day before the disbursement of the proceeds of the mortgage to be insured and no further assistance payments shall be made under such contract. The sections of subpart C which apply in connection with a mortgage insured under section 235(r) are the following:

Sec. 235.301 Definitions
Sec. 235.340 Time of Payments
Sec. 235.350 Mortgagor's Required Recertification
Sec. 235.355 Mortgagor's Optional Recertification
Sec. 235.360 Adjustment in assistance payments
Sec. 235.361 Recovery of assistance payments
Sec. 235.365 Mortgagee records
Sec. 235.370 Effect of assignment of mortgage with an assistance payment contract
Sec. 235.375 Termination, suspension or reinstatement of the assistance payments contract
Sec. 235.499 Effect of amendments

The sections cited above and the following additional provisions constitute the assistance payments contract for a mortgage insured under section 235(r).

B. Assistance Payments and Handling Charges

(1) The assistance payments on behalf of the mortgagor shall be the lesser of the following:

(a) The difference between 20 percent (or 28 percent in the case of contracts entered into for a ten year term (ten year contracts)) pursuant to the authority under section 235(c)(1) of the Act, as amended by the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. No. 98–181) of the homeowner's adjusted monthly income and the required monthly payment under the mortgage for principal, interest, taxes, insurance, and mortgage insurance premium.

(b) The difference between the required monthly payment under the mortgage for principal, interest, and mortgage insurance premium and the monthly payment which would be required for principal and interest if the mortgage bore the lower interest rate established by the Secretary and in effect at the time of the closing of the mortgage being refinanced and which is referred to as the "floor rate."

(2) The floor rates are determined by the date of the closing of the mortgage being refinanced.

As an example, the following chart contains floor rates. However, mortgagees must check the HUD Form 93100 for the mortgage being refinanced to obtain the floor rate for that mortgage, which rate is to be used to compute the formula contained in paragraph (1)(b).

Date of closing	Note rate (%)	Interest rate to compute second element of paragraph (1)(b) (%)
8/9/66–1/4/76	N/A	1
1/5/76–3/6/78	N/A	5
3/7/78–3/8/81	N/A	4
On or after 3/9/81	13.50 or below	4
	13.75–14.00	4¾
	14.25–14.50	5¼
	15.00	6
	15.50	6¾
	16	7¼
	16.50	8
	17.50	8

(3) In addition to the assistance payments referred to in paragraph (1), the mortgagee shall be entitled to the monthly payment of an amount the Secretary deems sufficient to reimburse the mortgagee for its expense in handling the mortgage.

(4) Special assessments levied by a governmental body are to be included under the term "taxes" as part of the monthly payment. However, ground rents, assessments of a homeowners' association or condominium association, and special assessments levied by persons or private organizations are not to be included.

C. Execution of Assistance Payment Contract

The issuance of a mortgage insurance certificate pursuant to section 235.1 et seq. shall also constitute the execution of the assistance payments contract with respect to the mortgage being insured.

D. Eligibility for Assistance Payments

(1) In order to be eligible for assistance payments, a homeowner shall:

(a) Be a mortgagor on a mortgage insured, or to be insured, under section 235(r);

(b) Shall have been entitled to and receiving assistance payments under the mortgage being refinanced; and

(c) According to the formulae contained under subparagraph (B) under this part, shall continue to be eligible for such payments under the 235(r) mortgage.

(2) The mortgagee, holding the mortgage being refinanced, must certify that the mortgagor is eligible for, and receiving, assistance payments under the mortgage being refinanced and that the last recertification by the mortgagor was within the preceding twelve months prior to the application for the section 235(r) mortgage. If the last recertification was not within that period, then the mortgagee will have to obtain a current recertification from the mortgagor for the purpose of determining whether the mortgagor remains eligible to continue receiving assistance payments under the mortgage being refinanced.

(3) In addition, the mortgagee originating the 235(r) mortgage must obtain a new certification from the mortgagor for eligibility for assistance payments under the 235(r) mortgage. For purposes of determining eligibility under the 235(r) mortgage, the mortgagor must certify as to occupancy, employment, family composition and income on a form prescribed by the Secretary.

(4) The mortgagor shall agree to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income in accordance with 24 CFR 235.350.

(5) Homeowners, who are cooperative members and have been receiving assistance payments under section 235, are not eligible for assistance payments in connection with section 235(r) since they are not eligible for a mortgage insured under that section.

E. Term of Assistance Payment Contract in Connection With Mortgages Insured Under Section 235(r) of the Act

(1) Existing Contracts With Original Terms in Excess of Ten Years

In cases where the existing contracts has an original term in excess of ten years, the term of the new assistance payment contract in connection with section 235(r) shall commence on the date of disbursement of the mortgage proceeds as certified by the mortgagee, and shall continue until the contract is terminated pursuant to 24 CFR 235.375.

(2) Existing Ten Year Contracts

(a) In cases of ten year contracts, the term of the new assistance payments contract in connection with section 235(r) shall commence on the date of the disbursement of the mortgage proceeds as certified by the mortgagee, and shall continue for the unexpired term of the ten year contract, or until such earlier time as the contract is otherwise terminated pursuant to 24 CFR 235.375. The mortgagor will acknowledge receipt of a notice containing the expiration date of the new assistance payment contract.

(b) If the Secretary determines that the mortgagor is unable, by reason of the new contract having reached its maturity to resume full payments due under the mortgage insured under section 235(r) of the Act, the Secretary will, to the extent of funds available pursuant to section 235(c)(3) of the Act, contract to make, and make, continued assistance payments on behalf of the mortgagor for such period as the Secretary determines to be appropriate.

F. Recapture of Assistance Payments

The mortgagor shall execute an agreement subordinating the recapture mortgage, if any, to the section 235(r) mortgage. The mortgagor shall also execute a new note for recapture of assistance payments, and amend the recapture mortgage to include in the principal balance, assistance payments made in connection with the mortgage insured under section 235(r).

Part V. Servicing Responsibilities

The provisions of subpart G of 24 CFR part 235 shall be applicable to mortgages insured under section 235(r).

Dated: June 10, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Part V

Environmental Protection Agency

40 CFR 51, 52, and 60
Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 60

[FRL-3963-8]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: The applicability of the new source requirements of title I of the Clean Air Act (CAA) to physical or operational changes at electric utility generating units is an issue of considerable interest at this time because of the recent passage of the 1990 Clean Air Act Amendments (CAAA). Many utilities will be undertaking major pollution control projects at their units in the next few years. In enacting title IV, Congress did not suspend any title I requirements for this work. However, the massive industry-wide undertakings of pollution control projects warrants a clarification of the new source review requirements of title I. In particular, New Source Review (NSR) provisions should not inadvertently bias a utility towards or against any means of complying with the acid rain provisions. The EPA believes the amendments proposed today and the clarification of its current policy under its present NSR regulations provide adequate assurances that utilities can undertake title IV pollution control projects without uncertainty as to the applicability of the various title I new source requirements. At the same time, the applicability of existing new source regulations to modifications has been the source of two recent federal appellate decisions, *Wisconsin Electric Power Co.* v. *Reilly. (WEPCO)*, 893 F.2d 901 (7th Cir. 1990), and *Puerto Rican Cement Co.* v. *EPA*, 889 F.2d 292 (1st Cir. 1989). As a result, EPA is today proposing clarifying amendments to these regulations and confirming its policies regarding of some these provisions as they apply to utility projects pending adoption of the proposed amendments.

The EPA today proposes to adopt a broad NSR exclusion for utility pollution control projects and, until these proposed regulations are adopted in final form, to adhere to its policy that new source regulations already generally exclude coverage of pollution control projects undertaken at electric utility units. Similarly, EPA today proposes to adopt an "actual to future actual" methodology for determining whether all other nonroutine physical or operational changes at utilities (other than the replacement of a unit or addition of a new unit) are subject to new source review under either prevention of significant deterioration (PSD) or nonattainment provisions and to maintain in the interim that this methodology is applied where the unit has "begun normal operations." For those utility projects which undergo PSD new source review, today's notice proposes a presumption that for EPA-issued permits, "low-NOx burners" can satisfy the best available control technology (BACT) requirements.

In addition, EPA also proposes to modify its regulations implementing the modification provisions of the title I new source performance standards (NSPS) program to provide that a utility may use for its pre-change baseline the highest hourly emissions rate achievable at any time during the 5 years prior to the physical or operational change. The EPA also proposes to modify its regulations to reflect changes made by Congress in the 1990 Amendments to the applicability of new source requirements to clean coal technology (CCT) and repowering projects, and to "very clean" units.

DATES: *Comments.* Comments on the revisions proposed today must be received on or before August 19, 1991.

Public Hearing. A public hearing is scheduled for 10 a.m., July 19, 1991. The hearing may be canceled if no speakers have requested time to present their comments 15 days prior to the scheduled hearing date. Written comments in lieu of testimony are encouraged. For information about the hearing contact JoAnn Allman at (919) 541–5591.

ADDRESSES: Supporting information used in developing this proposed rule is contained in docket A–90–06. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., weekdays at EPA's Air Docket (LE–131), room M–1500, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

The public hearing will be held at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Chebryll Edwards, New Source Review Section (MD–15), Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, (919) 541–2343.

SUPPLEMENTARY INFORMATION:

I. Introduction

The EPA today proposes to amend its regulations implementing the various title I new source requirements governing physical or operational changes at electric utility generating units. Specifically, these proposed changes are being issued to clarify the coverage of the NSPS, PSD and nonattainment preconstruction review requirements of title I of the Clean Air Act to projects undertaken at electric utility steam generating units. [1]

The EPA proposes to amend the definition of "major modification" in 40 CFR parts 51 and 52 to set forth the conditions under which the addition, replacement or use at existing electric utility generating units of any system or device whose primary function is the reduction of air pollutants (including the switching to a less polluting fuel where the primary purpose of the switch is the reduction of air pollutants) will or will not subject the source to preconstruction review. Specifically, EPA proposes in PSD and nonattainment areas to adopt a regulatory exclusion explicating its authority under the statutory definition of "modification" and confirming EPA's current practice that pollution control projects which "do not render the unit less environmentally beneficial" are not "physical or operational changes," and hence, are not "modifications" for the purposes of parts C and D of title I and are not "major modifications" for the purposes of EPA's regulations implementing those provisions. The EPA is today also proposing to amend its PSD and nonattainment new source review regulations (40 CFR parts 51 and 52) [2] as they apply to utilities to (1) clarify the NSR baseline for determining whether a proposed physical or operational change will subject a utility to the preconstruction review requirements of these provisions; (2) set forth an actual to future actual methodology for determining whether a physical or operational change is subject to NSR; (3) provide further clarification of the existing regulatory requirement that only those increases in emissions that actually result from the physical

[1] The proposed regulations define electric utility steam generating units as any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW of electrical output to any utility power distribution system for sale, See, *e.g.*, proposed 40 CFR 51.165(xx).

[2] For the purposes of this notice, references to "new source review" (or "NSR") refer to the preconstruction review requirements of both part C (PSD) and part D (nonattainment) of the Clean Air Act, unless otherwise indicated.

change or change in the method of operation can be considered in determining whether the proposed change subjects the utility to NSR requirements; and (4) implement sections 409 and 415 of title IV of the Clean Air Act Amendments of 1990 which create special NSPS treatment for certain repowering projects and limited NSR exemptions for temporary and permanent CCT projects, and for certain "very clean" units. Finally, EPA is also proposing to amend its NSPS regulations (40 CFR part 60) to allow a utility to use as its pre-change baseline its highest hourly emissions rate achievable during the 5 years prior to the proposed physical or operational change. To the extent the proposed amendments implement existing EPA policies, EPA will continue to administer its regulations in a manner consistent with these policies pending adoption of the regulations proposed today. Portions of the preamble of today's proposal set forth EPA's present policies under its current regulations, and may be relied on as such pending final action on today's proposal.

Today's proposal addressing pollution control projects and other non-routine physical and operational changes at electric utility units is timely for several reasons. First, the 1990 Clean Air Act amendments establish, in title IV, a new control scheme for addressing the acid rain problem which focuses exclusively and immediately on utility power plants. Title IV will force most electric utility steam generating units to undertake pollution control projects and provides full flexibility to achieve compliance without a bias towards or against any particular pollution control method. Second, the Agency believes its extensive experience with other non-routine physical and operational changes at such units and the unique characteristics of the electric utility industry (e.g., the general similarity of equipment within the category and the extent of publicly available information) support a revision to the new source review applicability criteria for this source category. Further, while Congress did not make significant changes in the NSR and NSPS statutory language in 1990, the conference committee provided the following guidance to EPA in its Joint Explanatory Statement:

> "[T]he deletion of most provisions relating to the WEPCO decision is not intended to affect or prejudice in any way the issues or resolution of the WEPCO matter. At the same time, the conferees urge a quick resolution of the WEPCO matter by EPA as appropriate."

Conference Comm., Joint Explanatory Statement of the Committee of the Conference to Accompany S. 1630, Rep. 101–952, 101st Cong., 2nd Sess. (1990) pp. 344–45. In passing title IV, Congress did not suspend any requirements of title I. However title I and title IV are clearly intended to work in concert, not conflict, and today's ruling is intended to ensure that harmony.

II. Background

A. The New Source Performance Standards, Prevention of Significant Deterioration and Nonattainment Programs of Title I

Title I of the Clean Air Act has three programs specifically designed to ensure that no new air pollution—whether from new sources or from modifications to existing sources—can be emitted unless the source complies with new source requirements.

The 1970 Clean Air Act required EPA to promulgate technology-based new source performance standards applicable to the construction or modification of stationary sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Clean Air Act ("CAA") Section 111(b)(1)(A), 42 U.S.C. 7411(b)(1)(A). The NSPS provisions were "designed to prevent new air pollution problems" by regulating newly-constructed sources and changes occurring at existing sources that result in emissions increases. See *National Asphalt Pavement Assoc.* v. *Train*, 539 F.2d 775, 783 (DC Cir. 1976); see also H.R. Rep. No. 1146, 91st Cong., 2d Sess. 3, reprinted in 1970 U.S. Code Cong. & Admin. News 5356, 5358. Congress defined the term "modification" as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." See CAA 111(a)(4), 42 U.S.C. 7411(a)(4).

In 1977, Congress adopted additional amendments to the Clean Air Act. These changes included preconstruction permitting requirements for major new and modified sources under two programs, prevention of significant deterioration (PSD) and nonattainment new source review (respectively, parts C and D of the Clean Air Act). Congress intended these programs to apply generally where industrial changes might increase pollution in an area. *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 400 (DC Cir. 1979). Congress incorporated in parts C and D the same definition of the term "modification" set forth in the NSPS provisions. See CAA 111(a)(4), 169(2)(C), and 171(4).

The NSR program for PSD (CAA 160–169) applies in attainment areas, i.e., those areas which have attained the national ambient air quality standards (NAAQS). To receive a PSD permit, a prospective major new source or major modification must (among other things) show that (1) it will not cause or contribute to a violation of the available air quality "increment" (designed to prevent ambient air quality from deteriorating by more than certain specified levels), (2) it will not cause or contribute to a violation of a NAAQS, and (3) it will use the "best available control technology (BACT)," which must be at least as stringent as any applicable NSPS or hazardous pollutant standard under section 112 of the Act.

Part D of the 1977 Amendments applies to nonattainment areas, i.e., those areas which have not met the NAAQS under section 109. To receive a permit in such areas, major new and modified sources must (among other things) (1) obtain emissions offsets, thereby assuring that reasonable progress toward attainment of the NAAQS will occur, and (2) comply with the "lowest achievable emission rate (LAER)." See CAA 171–173. [3]

B. The Two-Step Test for Modifications

The modification provisions of the NSPS and NSR programs are based on the broad NSPS definition of "modification" in section 111(a)(4) of the Act. That section contemplates a two-step test for determining whether activities at an existing facility constitute a modification subject to new source requirements. In the first step, which is largely the same for NSPS and NSR, the reviewing authority determines whether a physical or operational change will occur. [4] If so, the reviewing authority proceeds in the second step to determine whether the physical or operational change will result in an emissions increase over baseline levels. In this second step, the applicable rules branch apart, reflecting the fundamental distinctions between the technology-based provisions of NSPS and the air quality-based provisions of NSR.

Briefly, the NSPS program examines maximum hourly emissions rates, expressed in kilograms per hour. [5]

[3] The 1970 Clean Air Act also included a provision applicable to construction or modification of any stationary source. This provision is presently set forth in section 110(a)(2)(C). Today's notice does not propose to change the scope of the regulations implementing this provision. See 40 CFR 51.160–164.

[4] This is further described in section III.H below.

[5] An hourly emissions rate may be determined by a stack test or calculated from the product of the

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Emissions increases for NSPS purposes are determined by changes in the hourly emissions rates at maximum physical capacity. On the other hand, the NSR regulations examine total emissions to the atmosphere. For applicability determination purposes, emissions increases under NSR are determined by changes in annual emissions as expressed in tons per year (tpy).[6]

C. Step One: Physical or Operational Change

The EPA has always recognized that the definition of physical or operational change in section 111(a)(4) could, standing alone, encompass the most mundane activities at an industrial facility (even the repair or replacement of a single leaky pipe, or a change in the way that pipe is utilized). However, EPA has always recognized that Congress obviously did not intend to make every activity at a source subject to new source requirements.

As a result, EPA has defined "modification" in the NSPS and NSR regulations to include common-sense exclusions from the "physical or operational change" component of the definition. For example, both sets of regulations contain similar exclusions for routine maintenance, repair, and replacement; for increases in the hours of operation or in the production rate; and for certain types of fuel switches. See *e.g.*, 40 CFR 52.21(b)(2)(iii) and 60.14(e). In addition, with respect to pollution control equipment, the NSPS regulations contain an exclusion for:

> The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emissions control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

40 CFR 60.14(e)(5). As will be discussed, in recent individual applicability determinations EPA has excluded pollution control projects from NSR following a similar "environmentally beneficial" test.

[6] Instantaneous emissions rate, i.e., the amount of pollution emitted by a source, after control, per unit of fuel combusted or material processed (such as pounds of sulfur dioxide emitted per ton of coal burned) times the production rate (such as tons of coal burned per hour). See 40 CFR 60.14.

[6] Annual emissions may be calculated as the product of the hourly emissions rate times the utilization rate, expressed as hours of operation per year, or as the product of an emissions factor (e.g., from *Compilation of Air Pollutant Emission Factors*, AP-42, 4th Ed. and subsequent supplements) in units of mass emitted per unit of process throughput times the annual throughput. See 40 CFR 52.21(b)(21).

D. Step Two: Emissions Increases for NSPS Applicability

The EPA's NSPS regulations define the term "modification" as any "physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies." See 40 CFR 60.2 and 60.14. Under current NSPS regulations, emissions increases, for applicability purposes, are calculated by comparing the hourly emission rate, at maximum physical capacity, before and after the physical or operational change. That is, to determine whether a change to an existing facility will increase the emissions rate, the existing NSPS regulations authorize the use of an "emissions factor analysis," or a materials balance, continuous monitoring, or manual emissions test to evaluate emissions before and after the change. 40 CFR 60.14(b)(2).

Absent the exclusions from modifications specified at 40 CFR 60.14(e), any increase in emissions to the atmosphere over the previous emissions rate will subject the unit to NSPS. See, 40 CFR 60.14 (a) and (b). In addition, under the "reconstruction rules," physical or operational changes which would cost 50 percent or more of the total cost of a comparable new facility may be classified as reconstructions (see 40 CFR 60.15) and are subject to NSPS as a new source, even if there is no emissions increase.

E. Step Two: Emissions Increases Under NSR Requirements 1. Existing Regulations

The EPA's regulations implementing the PSD and nonattainment programs require preconstruction review for sources undertaking a "major modification," *i.e.*, a physical change or change in the method of operations "that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 CFR 52.21(b)(2)(i), 52.24(f)(5).[7] A "net emissions increase" is defined as the increase in "actual emissions" from the particular physical or operational change together with any other "contemporaneous" increases or decreases in actual emissions. 40 CFR 52.21(b)(3)(i).[8]

Applicability of the Act's new source review provisions must be determined in advance of construction and is pollutant specific. In cases involving existing sources, this requires a pollutant-by-pollutant projection of the emissions increases, if any, that will result from the physical or operational change. Specifically, to determine whether a proposed physical or operational change will result in an emissions increase, the source must first determine a baseline level of actual emissions. The regulations define actual emissions on a particular date as "the average rate, in tons per year, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and which is representative of normal source operation." 40 CFR 52.21(b)(21)(ii) The Administrator "shall" allow use of a different time period "upon a determination that it is more representative of normal source operation." *Id.* The EPA has typically used the 2 years immediately preceding the physical or operational change to establish the baseline. See 45 FR 52676, 52705, 52718 (1980). However, it can allow the use of an earlier 2-year period that is more representative of normal source operations. For example, in *WEPCO*, EPA found the fourth and fifth years prior to the modification more representative of WEPCO's normal operations.

Because the applicability determination must be made in advance of construction, EPA's NSR regulations provide that when an emissions unit "has not begun normal operations," actual emissions equal the "potential to emit of the unit." 40 CFR 52.21(b)(21)(iv). This approach is referred to as the actual to potential methodology. This regulatory provision may be overcome —and new source review will not apply—if the source owner agrees, in a federally enforceable instrument—not to increase its actual emissions above baseline levels. *See e.g.*, 40 CFR 52.21(b)(4).

[7] The current PSD program is set forth in two sets of regulations. One of the regulations cited (40 CFR 52.21) is part of the federal PSD permit program which applies as part of a Federal implementation plan for States that have not submitted a PSD program meeting the regulatory requirements of 40 CFR 51.166 (standards for PSD provisions in State implementation plans). In most States where the federal requirements apply, EPA has delegated the authority to implement the PSD program back to the State. Roughly two-thirds of the States are implementing their own PSD program pursuant to an EPA-approved state implementation plan. Sections 52.21 and 51.166 have identical modification provisions.

EPA's regulations for nonattainment areas are set forth at 40 CFR 51.165, 51.24 and in part 51, appendix S. These sections contain applicability provisions regarding modification that are largely identical to those in the PSD provisions.

[8] Roughly speaking, "contemporaneous" emissions increases or decreases are those which have occurred between the date five years preceding the proposed physical or operational change and the date that the increase from the change occurs. 40 CFR 52.21(b)(3)(ii). Once a modification is determined to be major, the PSD requirements apply only to those specific pollutants for which there would be a significant net emissions increase. E.g., 40 CFR 52.21(j)(2) (best available control technology); 40 CFR 52.21(m)(1)(b) (air quality analysis).

2. The WEPCO and Puerto Rican Cement Decisions

As noted above, to calculate whether a physical or operational change "increases" emissions, EPA regulations require it to find an increase in actual emissions. 40 CFR 52.21(b)(3)(i)(a). Where the emissions unit has not "begun normal operations," EPA regulations recognize that future actual emissions are difficult to predict and employ future "potential" emissions as a proxy. 40 CFR 52.21(b)(21)(iv). The linchpin under the current regulations for predicting future emissions after a modification is thus whether the unit has "begun normal operations."

Two recent federal appellate court decisions have addressed EPA's interpretation of the phrase "begun normal operations." These decisions, *Puerto Rican Cement Co., Inc.* v. *U.S. EPA*, 889 F.2d 292 (1st Cir. 1989) and *Wisconsin Elec. Power Co.* v. *Reilly*, 893 F.2d 901 (7th Cir. 1990) ("*WEPCO*"), occasion a reexamination of EPA's interpretation of the phrase, and of the usefulness of the regulatory language itself. The meaning of the phrase is highly fact-dependent, and these decisions have created uncertainty regarding its application; thus, as described later in this notice, EPA today proposes to change its regulations for electric utility steam generating units to employ a more useful criterion.

Both cases involved physical changes to existing emissions units, but changes of differing extent, nature and result. In *Puerto Rican Cement*, the owner of a cement plant [9] with several kilns sought to convert one "wet" kiln into a "dry" kiln, and to combine that kiln with another kiln. 889 F.2d at 293. The court observed that the total production capacity of the renovated single kiln would exceed the combined production capacity of the previous two separate kilns by "about 35%." *Id.* It noted that the renovated single kiln would employ a different "cement-making process" than the original kiln from which it was "converted," *id.* And it said that the new kiln would be "more efficient (and) may lead the firm to decide to increase the level . of production," *id.* at 297 (emphasis in original). In reviewing EPA's interpretation of "begun normal operations," the court applied a highly deferential standard of review, since an agency's interpretation of its own regulatory language is typically given " 'controlling weight unless it is plainly erroneous or inconsistent with the regulation.' " 889 F.2d at 297, quoting *Udall* v. *Tallman*, 380 U.S. 1, 16–17 (1965) (citation omitted). The court concluded that on the facts of the case, EPA's interpretation that "normal operations" had not begun was not "arbitrary or irrational," *id.* at 298, and hence EPA's application of the actual-to-potential test to predict future emissions was permissible.

In *WEPCO*, 893 F.2d 901, the Seventh Circuit was faced with a different kind of modification. There renovations were proposed for several older (35 to 50 year old) coal-fired electric utility boilers. The physical changes involved repair and replacement of turbine-generators, steam drums and other major components. The EPA contended, as it had in *Puerto Rican Cement*, that these changes went beyond "normal operations" and thus warranted use of future potential emissions as the test for an emissions increase over past actual emissions. Here the court disagreed with EPA's interpretation that "normal operations" had not begun. The court coined the phrase "like-kind replacement" to describe the type of renovation occurring at the WEPCo plant. *Id.* at 917. The court described a "like-kind replacement" as one that "does not 'change or alter' the design or nature of the facility. Rather, it merely allows the facility to operate again as it had before the specific equipment deteriorated." *Id.* at 906. In determining whether such a "like-kind replacement" had "begun normal operations," *id.* at 917, the court considered whether a "realistic assessment of (the) impact (of the change) on ambient air quality levels is possible." *Id.* at 917 (quoting *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 379 (DC Cir. 1979)). The court said that where the renovations were "like-kind replacements," EPA could not reasonably interpret its regulations to say that such a unit was so different that it has not "begun normal operations." Thus, it concluded that the "actual-to-potential" test could not be applied, under EPA's regulations, to units simply undergoing "like-kind replacements." [10]

Neither of these decisions specified the threshold for when a unit has "begun normal operations." Based on these decisions, under its current regulations, EPA must consider the facts of each case and apply the actual-to-potential test only where the change is sufficiently significant to support a finding that "normal operations" have not "begun." At least for changes that are "like kind replacements," "normal operations" have begun, and the actual-to-potential test is impermissible.

Because the "begun normal operations" criterion is highly fact-dependent and its application is inherently case-by-case, it may be an uncertain indicator of what emissions test will be applied in a given instance. However, EPA's extensive experience with electric utilities, and the generally similar nature of operations within this source category, provide EPA an adequate basis on which to predict future actual emissions from such units in most cases. Consequently, as explained below, EPA is today proposing to revise its regulations to apply the actual-to-actual test on all physical or operational changes at electric utility steam generating units save those that are an addition of a new unit or constitute a replacement of an existing unit. Pending final adoption of this new rule, EPA will continue to apply an actual-to-actual test to units that undertake "like-kind replacements" and other units which are found to have "begun normal operations."

[9] *Puerto Rican Cement* involved a cement plant, not an electric utility, but the court's legal analysis of the phrase "begun normal operations" in the current regulations is relevant to all facilities.

[10] On remand, EPA employed an actual-to-future actual test, comparing WEPCo's representative actual emissions for the baseline period to estimated future actual emissions based on all the available facts in the record.

F. The Clean Air Act Amendments of 1990

1. New Source Review and the Acid Rain Provisions

The Clean Air Act Amendments of 1990, Public Law No. 101–549, 104 Stat. 2399 (Nov. 15, 1990), made numerous changes in the nonattainment provisions of the Clean Air Act and added a new title to address the problem of acid rain. The amendments attack nonattainment problems with a broad array of new requirements all designed to bring all areas of the country into attainment with the national ambient air quality standards for all pollutants. These requirements include traffic reduction strategies, use of alternative clean fuels, increased offset requirements for stationary sources, and changes in the threshold size of stationary sources subject to new source review. A principal theme of the legislation is the establishment of categories of nonattainment areas based on the severity of the pollution problem. The more severe the area, the more controls Congress required be imposed.

The Amendments also establish, in title IV, a new control scheme for addressing the acid rain problem. The

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exclusive focus of this program is on utility power plant emissions of sulfur dioxide and nitrogen oxides. The 1990 Amendments require sulfur dioxide emissions from utilities to be reduced by approximately 10 million tons annually in two phases—the first to take effect in 1995, the second in 2000. A total of 111 specific plants are targeted in Phase I, and will be required to reduce their SO_2 emissions to specified emissions limits. In Phase II, these plants, and almost all others, are subject to even lower SO_2 emissions limits. This reduction program is to be implemented through a new market-based system under which emissions allowances reflecting the required reduction in current emissions are allocated to existing utility plants. Plant owners, who are required to hold allowances equal to their actual emissions, are then free to trade these allowances. Thus, the emissions of individual units may vary from the initial allocation of allowances, but aggregate emissions are always held to the program's overall target level. This program will provide powerful incentives to sources to undertake pollution control projects.

Because of these requirements, many of the plants subject to Phase I controls must make compliance decisions within the next year in order to assure that the complicated control equipment that may be necessary to meet Phase I standards is in place by the 1995 deadline. In enacting title IV, Congress did not suspend any title I requirements for this work. However, the massive industry-wide undertakings of pollution control projects warrants a clarification of the new source review requirements of title I. In particular, New Source Review (NSR) provisions should not inadvertently bias a utility towards or against any means of complying with the acid rain provisions. The EPA believes the amendments proposed today and the clarification of its current policy under its present NSR regulations provide adequate assurances that utilities can undertake title IV pollution control projects without uncertainty as to the applicability of the various title I new source requirements.

2. Repowering and CCT Projects

In title IV of the 1990 Amendments, which creates the acid rain program, Congress made changes in the applicability of new source requirements to changes involving repowering and Clean Coal Technology (CCT) projects.

Section 409 grants an extension of the acid rain controls deadline to sources that seek to comply with the acid rain reductions by repowering a unit with qualifying clean coal technology. Section 402(12) defines repowering as:

> (The) replacement of an existing coal-fired boiler with one of the following clean coal technologies: Atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of the date of enactment of the Clean Air Act Amendments of 1990. Notwithstanding the provisions of section 409(a), for the purpose of this title, the term "repowering" shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

See CAA 402(12) and 409(a).

Congress provided that repowering projects that qualify for a Phase II compliance extension would also be exempt from NSPS requirements, so long as the repowering "does not increase actual hourly emissions for any pollutant regulated under the Act." See CAA 409(d). An operator can qualify for the 3-year extension of the Phase II emissions limitation by demonstrating (by December 31, 1997) to the permitting authority that one or more units will be repowered with a qualifying clean coal technology to meet the title IV restrictions. The operator must provide, no later than January 1, 2000, additional documentation of the repowering project including a preliminary design and engineering effort for the project and a binding contract for the majority of the equipment needed, as well as any additional information the reviewing authority requires.

Today's proposal also implements an exemption from new source requirements for CCT demonstration projects created by Congress in section 415 of title IV of the 1990 Amendments. In these provisions, CCT is defined as any technology not in widespread use on the date of enactment that achieves significant reductions in SO_2 or nitrogen oxides (NO_x) emissions associated with burning coal in the generation of electricity, process steam, or industrial products. See CAA 415(a). A CCT "demonstration project" is a project funded under DOE's CCT program or a similar project funded by EPA.[11]

[11] Section 415(h)(1) defines a CCT project as a project "using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency."

Repowering projects that are awarded funding from the Department of Energy (DOE) as permanent CCT demonstration projects (or similar projects funded by EPA) are exempt from NSPS and PSD requirements so long as potential emissions (see 40 CFR 52.21(b)(4)) from the unit do not increase as a result of the project. CAA § 415(h)(3). These funded projects may still be required to comply with the nonattainment NSR provisions of title I of the Act, unless they are excluded as pollution control projects.

The installation, operation, cessation, or removal of a temporary CCT demonstration project that is operated for 5 years or less is exempt from NSPS and both PSD and nonattainment new source requirements. See CAA 415(h)(2). However, the facility still must comply with the applicable SIP and other requirements necessary to attain and maintain the NAAQS.

Finally, in section 415(c), Congress provided an exemption from NSPS and PSD for the reactivation of "very clean units" otherwise in compliance with the Act that had been shut down for at least the 2 years prior to enactment of the 1990 Amendments and that, prior to the shutdown, had been equipped with pollution controls with a removal efficiency of at least 85 percent for sulfur dioxide and 90 percent for particulates, and had been equipped with low-NO_x burners.

III. Discussion

A. Pollution Control Projects

1. Proposed Regulatory Changes for Pollution Control Projects

The EPA proposes to amend its PSD and nonattainment regulations as they pertain to utility pollution control projects by exercising its authority under the statutory definition of "modification" and confirming the Agency's current policy that such projects are not subject to NSR unless they render the unit less environmentally beneficial. Generally, pollution control projects at existing stationary sources are not major modifications subject to new source review requirements for the simple reason that they do not result in an increase in actual emissions. In addition, EPA has always recognized that Congress did not intend that every activity at an existing facility be considered a physical or operational change for purposes of the new source review.[12]

The EPA is today proposing to adopt revisions to its PSD and nonattainment regulations for the addition, replacement or use at an existing electric utility steam generating unit of any system or device whose primary function is the reduction of air pollutants (including the switching to a less-polluting fuel where the primary purpose of the switch is the reduction of air pollutants). Under today's proposal, a utility pollution control project will not be treated as a physical or operational change unless the project renders the unit less environmentally beneficial.

As indicated above, the key to this addition to the list of exclusions from the term physical or operational change is EPA's judgment that Congress did not intend that pollution control projects be considered the type of activity that should trigger NSR. The EPA is today issuing regulatory language to explicate and formalize its statutory authority to exclude pollution control projects under the NSR provisions. In 1977, when Congress enacted the NSR provisions of the Act, it provided that the term "modification" in NSR shall have the same meaning as the term "modification" under NSPS. See Sections 169(2)(c), 171(4). At the time, regulations promulgated under the NSPS provisions defining "modification," provided that the term "modification" does not include:

> The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emissions control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

40 CFR 60.14(e)(5). In 1978, EPA noted that "in adding section 169(2)(c) to the Act, Congress indicated that it intended to conform the meaning of 'modification' to 'usage in other parts of the Act.' 123 Congr. Rec. H11955, 11957 (Nov. 1, 1977)." 43 FR 26398 (June 19, 1978). Thus, just as EPA had the statutory authority to exclude pollution control projects by regulation from NSPS, the statutory authority exists for EPA to explicate by regulation an exclusion for pollution control projects from parts C and D of title I.

As discussed in greater detail in a subsequent section, this exclusion under NSR reflects the existing regulatory exclusion for pollution control activities under NSPS regulations, and several recent case-specific nonapplicability determinations under the new source review programs. The NSPS regulatory exclusion contains the proviso that the replacement of a pollution control system or device cannot be less "environmentally beneficial" to qualify for the exclusion. See, 40 CFR 60.15(e)(5). With respect to new source review, today's proposal adopts a similar regulatory exclusion for pollution control projects in the PSD and nonattainment context. The major difference in the proposed NSR exclusion is that it would apply the "not less environmentally beneficial" test to the addition and use, as well as the replacement, of a pollution control system or device. This change reflects the distinct air quality component of the PSD and nonattainment programs. By focusing on whether a pollution control project is a physical or operational change within the meaning of the new source review regulations, today's ruling avoids the need to undertake a quantitative emissions increase calculation in every case, as would be necessary if such projects were deemed to be physical or operational changes. The EPA expects that most, if not all, pollution control projects will reduce net actual emissions. Nevertheless, the Administrator's authority to consider individual pollution control projects provides an adequate opportunity to determine that a pollution control project would somehow result in an adverse environmental impact and thus conclude that the project renders the unit less environmentally beneficial, and is therefore a physical or operational change that may be subject to NSR.

For the purposes of this proposal, a pollution control project refers to a project undertaken at a utility unit for purposes of reducing emissions from such unit. These changes are limited to the installation of conventional or innovative emissions control equipment, including, but not limited to, installation of conventional and advanced flue gas desulfurization, sorbent injection for SO_2 and NOx controls, electrostatic precipitators, and projects undertaken to accommodate switching to a less polluting fuel, including natural gas or coal re-burning, co-firing of natural gas and other fuels for the purpose of controlling SO_2 and NOx emissions.

Likewise, any activity that is necessary to accommodate switching to a less polluting fuel is considered to be part of the pollution control project. In some instances, this may involve changes to the pollution generating equipment (*e.g.*, boiler), but only if the changes are necessary to maintain the normal operating capability of the unit at the time of the project, where the capability would otherwise be impaired as a result of the fuel switch. For example, an electric utility steam generating unit that switches from a higher sulfur bituminous coal to a low-sulfur subbituminous coal may need to make certain changes to the boiler in order to avoid derating the unit.

Changes that are intended primarily to restore original capacity or to improve the operational efficiency of the facility are not considered to be part of a pollution control project for purposes of this proposal. Such changes are addressed elsewhere in this proposal. Also, the source still must comply with all applicable SIP limits and requirements, permit conditions and applicable NAAQS or PSD increment limits.

As proposed, this pollution control project exclusion will not extend to source categories other than electric utility steam generating units. The EPA has so limited this provision because, in contrast with a general lack of experience with other industries, EPA has extensive experience in addressing new source applicability issues regarding pollution control projects in the utility industry. That experience has led EPA to conclude that pollution control projects in the utility industry are generally environmentally beneficial.

2. Additional Modeling Requirements

A proposed pollution control project or physical or operational change cannot result in an emissions increase that will cause or contribute to a violation of a national ambient air quality standard, PSD increment, or visibility limitation. See CAA sections 110(a)(2)(c), 165, 169A(b), 173. The pollution control projects exclusion does not authorize any significant net increase in emissions that would have this proscribed impact. It is possible that a pollution control project, while not causing any increase in maximum hourly emissions, will cause a significant net increase in actual emissions, which in turn could cause or contribute to the violation of a National Ambient Air Quality Standards (NAAQS), increment or visibility limitation. For this reason, under today's proposal, the reviewing authority may require a source to perform an air quality impact analysis (modeling) whenever (1) it has reason to believe that a proposed change will result in a significant net increase in actual emissions of any criteria pollutant ove.

[12] For instance, EPA has specifically recognized that routine maintenance, repair and replacement, and changes in hours of operation or in the production rate are not considered a physical change or change in the method of operation. See 40 CFR 52.21(b)(2)(iii), 52.24(f)(5)(iii), 51.166(a)(1)(v)(C)(1), 51.166(b)(2)(iii), and 60.14(e)(7).

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levels used for that source in the most recent air quality impact analysis and (2) it has reason to believe that such an increase would cause or contribute to a violation of a NAAQS, increment or visibility limitation. If this modeling indicates that this increase in emissions will cause or contribute to a violation of any ambient standard, PSD increment or visibility limitation, the pollution control exclusion does not apply.

3. The EPA's Existing Policy Regarding Pollution Control Projects

As noted above, generally pollution control projects at existing stationary sources are not major modifications subject to new source review because they do not usually result in an increase in actual emissions, and EPA believes that, in general, pollution control projects were not intended by Congress to be considered physical or operational changes for purposes of NSR.

The EPA currently applies its PSD regulations in harmony with its NSPS regulations, which exclude most pollution control projects. See 40 CFR 60.14(e)(5). In 1977, Congress incorporated the NSPS definition of modification into the PSD and nonattainment statutes. CAA sections 111(a)(4), 169(a)(c), 171(4). In addition, the legislative history reflects that, as a general matter, Congress intended to conform the meaning of "modification" for PSD purposes to the usage under the NSPS program. See 123 Cong. Rec. H11957 (November 1, 1977). The EPA reiterated this view in 1978. See 43 FR 26390, June 19, 1978. Subsequently, EPA interpreted its NSR regulations to incorporate the NSPS pollution control project exclusion.[13] The EPA later voiced concern about incorporating the precise NSPS pollution control language in the NSR context absent explication through notice-and-comment rulemaking largely because of the ambient air quality component of NSR that is absent from the NSPS program.[14] In recent years however, EPA has consistently excluded pollution control projects from NSR provided that the proposed project would be environmentally beneficial, taking into account ambient air quality.[15] In light of the title IV requirements and other provisions of the Clean Air Act Amendments of 1990, EPA confirms that it will continue to consider the overall environmental consequences of pollution control projects for NSR applicability on an interim basis pending final action on the proposed regulatory exclusion for pollution control projects. By its nature, a determination of whether or not a project renders a unit less environmentally beneficial involves case-by-case assessment of its net emissions and overall impact on the environment. In making such assessments, EPA must consider the overall emissions before and after the project, as well as any other relevant environmental factors. As a result, no single factor can be identified in advance for purposes of making this determination.

B. Representative Actual Annual Emissions

As described above, EPA proposes to revise its methodology for calculating emissions increases at electric utility steam generating sources. The EPA proposes to compare actual emissions before and after changes for all physical or operational changes at an existing electric utility steam generating unit other than the addition of a new unit or the replacement of an existing unit. Under today's action, EPA proposes to consider a unit to be replaced if it would constitute a reconstructed unit within the meaning of 40 CFR 60.15. Since there is no relevant operating history for wholly new units and replaced units, it is not possible to reasonably project post-change utilization for these units, and hence, their future level of "representative annual actual emissions." For other changes, past operating history, and other relevant information, provides a basis for reasonable projections.

As proposed today, the "representative actual annual emissions" methodology requires the utility to compare its baseline emissions with its future actual emissions to determine if the proposed change will increase actual emissions. The EPA's existing regulations define baseline emissions as "the average rate, in tons per year, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and which is representative of normal source operation." See e.g., 40 CFR 52.21. The Administrator "shall" allow use of a different time period "upon a determination that it is more representative of normal source operation." *Id.* Although not required by the regulations, EPA has historically used the 2 years immediately preceding the proposed change to establish the baseline. (See 45 FR 52676, 52705, 52718 (1980).) However, in some cases it has allowed the use of earlier periods. For example, in *WEPCO*, EPA found the fourth and fifth years prior to the modification more representative of WEPCO's normal operations since the source's capacity was reduced due to physical problems. The EPA proposes today to retain this regulatory language, but to adopt a new presumption regarding its implementation.

Under today's action, the Administrator will presume that any 2 consecutive years within the 5 years prior to the proposed change is representative of normal source operations for a utility. This presumption is consistent with the 5-year period for "contemporaneous" emissions increases and decreases in 40 CFR 52.21(b)(3)(i)(b).[16] Source owners or operators desiring to use other than a 2-year period or a baseline period prior to the last 5 years may seek the Administrator's specific determination that such period is more representative of normal operations.[17]

The future actual projection is the product of: (1) The hourly emissions rate, which is based on the unit's physical and operational capabilities following the change and federally-enforceable operational restrictions that would affect the hourly emissions rate following this change; and (2) projected capacity utilization, which is based on (a) the unit's historical annual utilization, and (b) all available information regarding the unit's likely post-change capacity utilization.[18] The projection of post-change capacity utilization for applicability purposes should be based on a projection of utilization for a period after the physical or operational change. Specifically, EPA today proposes to allow sources to base the projection of utilization on the 2 years after the change, or a different consecutive 2-year period within the 10 years after the change, where the Administrator determines that such period is more representative of normal source operations.

C. The Causation Requirement

The NSR regulatory provisions require that the physical or operational change "result in" an increase in actual emissions in order to consider that change to be a modification. See e.g. 40 CFR 52.21(2)(i). In other words, NSR will not apply unless EPA finds that there is a causal link between the proposed change and any post-change increase in emissions. The EPA today proposes to amend its rules to clarify this provision in the context of modifications at electric utility steam generating units.

Under these proposed regulations, any emissions increase attributable to a physical or operational change, such as a physical or operational change that significantly alters the efficiency of the plant, (see, *Puerto Rican Cement*, 889 F.2d at 297–8), must continue to be included in the post-change emissions calculation. Today's proposal makes clear that where increased operations are in response to independent factors, such as system-wide demand growth, which would have occurred and affected the unit's operations even in the absence of the physical or operational change, such increases do not result from the change and shall be excluded from the projection of future actual emissions. Thus, in assessing whether the proposed change will result in an increase in actual emissions, utilities need not include in their projection of post-change utilization that portion of the increased rate of utilization, if any, due to factors unrelated to the physical or operational change, such as an increase in projected capacity utilization due to the rate of electricity demand growth for the utility system (of which that source is a member) as a whole.

Under this proposal, during a representative baseline period (see *supra*), the plant must have been able to accommodate the projected demand growth physically and legally even absent the particular change. Increased operations (and resultant increases in actual emissions) that could not physically and legally be accommodated but for the proposed physical or operational change should be considered to result from the change.

D. Repowering

As previously mentioned, title IV of the 1990 Amendments grants special treatment to utilities that seek to comply with mandated acid rain reductions by repowering a unit with qualifying clean coal technology. 1990 Amendments sections 402(12), 409(a). Specifically, repowering projects that qualify for a Phase II compliance extension will also be exempt from NSPS requirements, so long as the repowering "does not increase actual hourly emissions for any pollutant regulated under the Act." Section 409(d). The EPA interprets the requirement that the repowering not lead to an increase in "actual hourly emissions" as an expression of Congressional intent that will respect to repowering projects, EPA should use the same general approach to determining applicability as it has for other physical or operational changes, discussed above. Accordingly, EPA today proposes rules that provide that a repowering project which results in an increase over baseline in a unit's post-modification hourly emissions will not be eligible for this limited NSPS exemption.

The proposed NSPS exemption applies to repowering of existing units at existing sources, so long as the project qualifies for the Phase II extension and satisfies the "actual hourly emissions" increase test. Because of this provision, the reconstruction limitations specified in 40 CFR 60.15 are not applicable to qualifying repowering projects. However, no special treatment can be afforded to a new unit which is located at a different site than the existing unit it replaces. See CAA section 409(d).

Pursuant to section 409(e), EPA will provide expedited NSR processing for repowering projects and will encourage State permitting authorities to do the same.

E. Clean Coal Technology Demonstration Projects

Today's notice also proposes rules implementing the new CCT exemption created by the 1990 Amendments. For the purposes of this proposal, temporary CCT demonstration projects are defined as those CCT demonstration projects lasting 5 years or less. Title IV gives these projects an exemption from NSPS, PSD and nonattainment requirements. *Id.*, section 415(b)(2). However, the facility would still be subject to any applicable SIP and must comply with any other requirements necessary to attain and maintain NAAQS. This ruling proposes to implement this provision and clarifies that EPA considers the 5-year period as starting on the date of startup (as defined in 40 CFR 60.2). A temporary demonstration project may be converted to a permanent status at any time, provided it meets all the requirements that apply to a permanent CCT project criteria at the time of conversion.

Further, EPA proposes that at the end of a temporary project, the facility must be returned to pre-demonstration conditions and hourly emission rates (or lower). The return of the facility to its pre-demonstration physical and operational condition would not result in the loss of the actual emissions margin between pre-demonstration actual emissions rate and SIP allowable emissions rates for that facility. Rather, the facility would be treated as if the temporary demonstration project had never occurred.[19]

This proposal does not extend to emissions increases that are unrelated to the conduct of temporary demonstration projects. The EPA considers emissions increases (above the predemonstration levels) that are attributable to physical or operational changes, other than those necessary to restore that unit to its pre-demonstration condition, to be beyond the scope of the Congressional exemption.

Today's action also proposes to implement an exemption from NSPS and PSD requirements for repowering projects which are awarded funding from the DOE as permanent CCT demonstration projects (or similar projects funded by EPA) so long as potential emissions (see § 52.21(b)(4)) from the unit do not increase as a result of the project. Section 415(b)(3). However, repowering projects that qualify as pollution control projects will be treated as other pollution control projects for the purposes of the nonattainment provisions of title I of the Act.

Finally, today's proposal would implement the statutory exemptions in section 415(c). In that section, Congress provided an exemption from NSPS and PSD for the reactivation of "very clean units" otherwise in compliance with the Act that had been shut down for at least

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[13] Memorandum from Edward Reich, Director, Stationary Source Compliance Division and William F. Pedersen, Acting Associate General Counsel, Air, Noise, and Radiation Division to Allyn M. Davis, Region IV (April 21, 1983).

[14] See, Memorandum from Gerald A. Emison, Director, OAQPS, to Regional Division Directors (July 7, 1988).

[15] See, Letter, William G. Rosenberg, Assistant Administrator, EPA, to Andrew Aitkan, Vice President, New England Power Service Co., March 28, 1991; Letter, Rosenberg to Patrick M. McCarter, Senior Vice President, Public Service Co. of Colorado, July 23, 1990; Letters, David Kee, Director, Air and Radiation Division, EPA Region V, to Timothy J. Method, Assistant Commissioner, Indiana Dept. of Environmental Management, January 30, 1990 and March 8, 1990.

[16] This presumption does not apply to past modifications at an emissions unit for the purpose of determining contemporaneous emission changes at a source and cannot be used to extend the five year period specified in that provision. See 40 CFR 52.21(b)(3)(i)(b).

[17] The level of baseline emissions selected must be consistent with current assumptions regarding the source's emissions that are used under the state implementation plans (SIP) for planning or permitting purposes. Thus, the source may not select a level of baseline emissions higher than that used by the permitting authority in issuing a PSD or other construction permit to a source in the area, if such higher level would result in a NAAQS or increment violation, or violate a visibility limitation.

[18] In projecting future utilization and emissions factors, the permitting authority may consider the company's historical operational data, its own representations, filings with Federal, State or local regulatory authorities, and compliance plans developed under title IV of the 1990 Amendments.

[19] This would be the case even if there were small differences in the post-demonstration physical and operational conditions due to a technical inability to restore the unit to its precise pre-demonstration condition, or due to normal variability in the coal used. Thus, EPA would not seek to apply NSPS or NSR because of a post-demonstration emissions increase attributable solely to an increase in the hours of operation or production rate of the unit (subject to the NSPS limitation that the production rate increase must be accomplished without a capital expenditure).

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the 2 years prior to enactment of the 1990 Amendments and that, prior to the shutdown, had been equipped with pollution controls with a removal efficiency of at least 85 percent for sulfur dioxide and 90 percent for particulates, and had been equipped with low-NOx burners. This exemption appears to have been narrowly tailored and is not expected to have widespread applicability.

Because these proposed rules merely implement straightforward statutory exemptions that were immediately effective upon passage of the 1990 Amendments, EPA intends, as a matter of statutory interpretation, to follow the policies set forth in today's proposal pending final action.

F. Calculation of NSPS Baseline

As discussed in section II of this notice, "any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies" is a modification for NSPS applicability purposes. See 40 CFR 60.14(a). The NSPS regulations implementing this general definition focus on increases in hourly emissions, expressed in kilograms of pollutant discharged per hour. To determine if an increase in hourly emissions has occurred at a unit, a pre-change baseline must be established. Under current regulations, the emissions rate before and after a physical or operational change is evaluated at each unit by comparing the current hourly potential emissions at maximum operating capacity to hourly emissions at maximum capacity after the change. In this calculation, the reviewing authority disregards the unit's maximum design capacity.[20] The original design capacity of a unit, to the extent it differs from actual maximum capacity at the time that the baseline is established due to physical deterioration of the facility, is immaterial to this calculation.

Today EPA is proposing that, for an existing electric utility steam generating unit, the pre-change baseline for NSPS applicability purposes shall be calculated using the highest hourly emissions rate achievable at any time during the 5 years prior to the change. This proposal retains the key concept in existing regulations that the baseline be determined during a period that is roughly contemporaneous with the proposed change at the affected facility. The EPA believes that this proposed revision, while modest, is still necessary to avoid the current regulation's undue emphasis on the physical condition of the affected facility immediately prior to the change. Today's more flexible provision enables units to establish a baseline that is representative of its physical and operational capacity in recent years, while still precluding the use of a baseline tied to original design capacity, which as noted above may bear no relationship to the facility's capacity in recent years.

Without this revision, the NSPS regulations may unduly burden utilities undertaking physical or operational changes in conjunction with the acid rain program. For instance, if a unit has broken down and is in need of repairs, the utility's baseline will be artificially low. The proposed change will allow utilities to demonstrate that an earlier, higher capacity was more representative of the unit's maximum hourly emissions rate.

G. Utility BACT Presumption for NOx

In today's notice, EPA proposes to adopt a presumption that, in the case of PSD permits issued by EPA under 40 CFR 52.21, best available control technology (BACT) for emissions of nitrogen oxides from existing coal-fired electric utility steam generating units undergoing a modification is the technology required under section 407 of the Clean Air Act. In general, this will call for the use of combustion modification and/or low-NOx burners or similar, cost-effective technologies by those utilities required to obtain PSD permits for NOx emissions following final action on today's proposal.

In brief, section 407 requires most utility units subject to phase I and phase II to meet NOx emission limitations on the same date as the phase I or phase II SO_2 emission limitations become effective. The Administrator must establish annual emission limitations (based on rates listed in the section) for tangentially-fired boilers and dry bottom wall-fired boilers within 18 months of enactment. These limitations must be achievable with low-NOx burner technology. CAA section 407(b)(1). The Administrator must promulgate annual emission limitations for all other boilers by January 1, 1997, based on a "best system of continuous emission reduction * * * which is comparable to the cost of" low-NOx burners. By the same date, the Administrator may make the rates for boiler types identified in section 407(b)(1) more stringent if more effective low-NOx burner technology is available. CAA section 407(b)(2).

Low-NOx burners are commercially available and can be retrofitted on many boiler types, providing a high degree of emissions reduction at relatively low costs. Depending on boiler type, low-NOx burners can reduce emissions of NOx by approximately 20 to 60 percent. Again depending on boiler type and other factors, the cost of replacing conventional burners with these controls is in the range of $8.00 to $16.00 per kilowatt.

Other NOx control technologies are being developed for retrofitted use on at least some coal-fired electric utility units, and thus can provide a much greater degree of emissions reductions. These include selective noncatalytic reduction (SNCR or "thermal de-NOx") and selective catalytic reduction (SCR). (In addition, DOE has funded two new technologies under its CCT demonstration program which are designed for the simultaneous removal of SO_2, NOx and particulate matter that may become commercially "available" in the future.)[21] However, SNR and SNCR are not in use in this country as retrofit technologies for coal-fired boilers, and the DOE sponsored projects have not yet been demonstrated. Current estimates of control costs for these technologies are much higher than for low-NOx burners, especially when considered in the context of retrofitting existing units.

The EPA has in the past issued guidance documents effectively creating presumptions that certain technologies constituted BACT for certain source categories. See Memorandum, Operation Guidance on Control Technology for New and Modified Municipal Waste Combustors, from Gerald A. Emison, Director, Office of Air Quality Planning and Standards, EPA, June 26, 1987, p. 5. The EPA believes it is appropriate to propose to do so here as well in the case of low-NOx burners for modified coal-fired utility boilers in light of the strong congressional policy judgment favoring use of that technology for acid rain control reflected in section 407.

Section 169(3) of the Act, 42 U.S.C. 7479(3) defines BACT as:

> An emissions limitation based on the maximum degree of reduction of each pollutant subject to regulation under the Clean Air Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by an applicable standard established pursuant to section 7411 or 7412 of this title. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to enactment of the Clean Air Act Amendments of 1990.

The BACT provision reflects congressional intent both to grant permitting authorities broad discretion to weigh the statutory factors as they see fit in reaching a final substantive determination on BACT and to create a procedural methodology that would provide a mechanism for stimulating the widespread use of effective pollution control technologies.[22]

The EPA believes that today's proposed presumption is consistent with BACT requirements because it does not purport to relieve the permitting authority of the obligation to weigh the statutory factors in reaching BACT determinations. Rather, it reflects an exercise of policy judgment by EPA where it is the permitting authority that in most cases a BACT analysis of currently demonstrated technologies for retrofitting existing utility boilers would lead to the selection of low NOx burners and/or combustion modifications identified in section 407(b)(1).

Although EPA has authority under the present regulations to create this presumption regarding BACT for NOx, EPA is soliciting comment prior to adopting such a presumption in order to obtain the views of the public on the policy conclusions discussed above.

This proposed presumption would not apply in States with PSD programs that have been incorporated into state implementation plans under regulations promulgated at 40 CFR 51.166. However, such States are encouraged to adopt this presumption as a matter of state policy.

H. Applicability Determinations

In most instances, source owners or operators are able to readily ascertain whether new source review requirements apply to them. Consequently, in administering these requirements, EPA does not require sources to obtain a formal applicability determination before proceeding with construction. In keeping with that practice, EPA will not require utilities to seek applicability determinations under either the revised regulations proposed today or the interpretations of existing regulations contained in this preamble. Utilities in most cases can readily ascertain how this notice will affect them. The EPA anticipates, however, that questions will arise regarding certain aspects of this proposal. Because some instances involve discrete judgments, utilities may wish to obtain determinations of applicability. The EPA will provide such determinations upon request. Such requests should be submitted together with appropriate documentation to the appropriate permitting authority.

IV. Administrative Requirements

A. Docket

A docket has been established for this action under section 307(d)(1)(I) and (N) of the Clean Air Act, 42 U.S.C. 7607(d)(1)(I) and (N). The docket is an organized and complete file of all information considered in the development of this ruling. The docket is intended to allow the public to identify and locate documents related to this ruling. The docket number for this ruling is A-90-06.

B. Paperwork Reduction Act

No additional public reporting burden will result from this ruling. All information collection requirements of the Federal NSR and NSPS regulations have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., and have been assigned OMB control numbers 2060-0003 for NSR, and 2060-0023, 2060-0026 and 2060-0072 for NSPS. The effect of this rule would be a reduction in paperwork related to complying with NSR and NSPS requirements, since this ruling provides additional clarification as to physical and operation changes that may be excluded from these requirements.

C. OMB Review

Under Executive Order 12291 (E.O. 12291), EPA must judge whether a rule is "major" and therefore subject to the requirement of a regulatory impact analysis (RIA). This ruling is a major rule. However, EPA has not prepared an RIA because it will not result in any significant adverse environmental effects and will reduce the economic costs of meeting the requirements of the CAA. This ruling was submitted to the OMB for review as required by E.O. 12291. Any written comments from OMB to EPA and any EPA response to those comments are included in Docket A-90-06.

D. Effective Date

Section 4(d) of the Administrative Procedures Act (APA), 5 U.S.C. 553(d), requires a 30-day waiting period before making a substantive rule effective. Since the regulatory revisions being proposed today are considered substantive, they are subject to the notice-and-comment requirements of the APA and will become effective only after public comments have been received and considered, and final action has been taken. The portions of this notice that merely confirm EPA policy are effective immediately.

E. Regulatory Flexibility Act

This action is not subject to the certification provisions of section 605(b) of the Regulatory Flexibility Act (RFA) because this rule will result in a reduction of administrative costs and no increase in control costs, therefore having no significant impact on industry.

List of Subjects

40 CFR Part 51

Administrative procedure and practices, Intergovernmental relations, Air pollution control, NSR, Clean Coal Technology projects, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide, Hydrocarbons, Lead.

40 CFR Part 52

Air pollution control, NSR, Clean Coal Technology projects, Repowering, Sulfur oxides, Particulate matter, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead.

40 CFR Part 60

Air pollution control, NSPS, Clean Coal Technology projects, Repowering, Sulfur oxides, Particulate matter, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead.

Dated: June 4, 1991.

F. Henry Habicht,

Acting Administrator.

For the reasons set forth in the preamble, parts 51, 52 and 60 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

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[20] See 39 FR 36,966 col. 1 (proposed rule). In *WEPCO*, the utility contended that baseline capacity for the purpose of determining whether an increase in emission rate occurs for purposes of an NSPS modification is the original design capacity of the facility. However, the court rejected WEPCO's argument that original design capacity or past "representative" capacity, no longer achievable at the plant, had to be used for the baseline emissions rate.

[21] One technology—low NOx/SOx burner Retrofit—is designed specifically for cyclone boilers which cannot be retrofit with low NOx burners while the other—the Advanced Slagging Combustor—is applicable to a number of boiler types.

[22] See S. Rep. No. 95-317, 95th Cong., 1st. Sess. 31 (1977); Statement of Senator Muskie, 123 Cong. Rec. 26171 (June 8, 1977).

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PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7408(a)(1), 7410, 7601, 7470–7479, 7491, 7501–7508, 7601 and 7602, as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101–549, 104 Stat. 2399 (Nov. 15, 1990); 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted.

2. Section 51.165 is amended by revising paragraph (a)(1)(xii)(D) and by adding paragraphs (a)(1)(v)(C)(*9*), (a)(1)(v)(C)(*10*), (a)(1)(xii)(E), (a)(1)(xx) (a)(1)(xxi), (a)(1)(xxii), (a)(1)(xxiii), (a)(1)(xxiv), (a)(1)(xxv), and (a)(1)(xxvi) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(v) * * *

(C) A physical change or a change in the method of operation shall not include:

* * * * *

(*9*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the reviewing authority determines that such addition, replacement, or use renders the unit less environmentally beneficial, and except:

(*i*) When the reviewing authority has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I, if any, and

(*ii*) The reviewing authority determines that the increase will cause or contribute to a violation of any ambient standard, PSD increment, or visibility limitation.

(*9*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*i*) The State implementation plan for the State in which the project is located, and

(*ii*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(*10*) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(xii) * * *

(D) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (a)(1)(xii)(*F*) of this section) that has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

(E) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit.

* * * * *

(xx) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(xxi) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the permitting authority determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the permitting authority shall:

(A) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(B) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(xxii) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(xxiii) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 5, 1990.

(xxiv) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(xxv) *Reactivation of very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(A) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(B) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(C) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(D) Is otherwise in compliance with the requirements of the Clean Air Act.

(xxvi) *Pollution control project* means any physical change or change in the method of operation, at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such changes are limited to:

(A) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(B) A physical change, or change in the method of operation, to accommodate switching to a fuel which is less polluting than the fuel in use prior to the change including, but not limited to natural gas or coal re-burning, co-firing of natural gas and other fuels for the purpose of controlling emissions;

(C) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(D) A permanent clean coal technology demonstration project that constitutes a repowering project.

* * * * *

3. Section 51.166 is amended by revising paragraph (b)(21)(iv) and by adding paragraphs (b)(2)(iii)(*h*), (b)(2)(iii)(*i*), (b)(2)(iii)(*j*), (b)(2)(iii)(*k*), (b)(2)(iii)(*l*), (b)(21)(v), (b)(30), (b)(31), (b)(32), (b)(33), (b)(34), (b)(35), (b)(36), and (b)(37) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

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(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the reviewing authority determines that such addition, replacement, or use renders the unit less environmentally beneficial and except:

(*1*) When the reviewing authority has reason to believe pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*2*) The reviewing authority determines that the increase will cause or contribute to a violation of any ambient standard, PSD increment, or visibility limitation.

(*i*) Any physical change or change in the method of operation at an existing electric utility generating unit (other than the addition of a new unit or the replacement of an existing unit) that would not result in a significant net increase in representative actual annual emissions of a regulated pollutant at the unit.

(*j*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*1*) The State implementation plan for the State in which the project is located; and

(*2*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(*k*) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(*l*) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(21) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (b)(21)(v) of this section) that has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change.

* * * * *

(30) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(31) *Pollution control project* means any physical change or change in the method of operation at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such changes are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) A physical change, or change in the method of operation, to accommodate switching to a fuel which is less polluting than the fuel in use prior to the change, including but not limited to natural gas or coal re-burning, co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency, or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

(32) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the reviewing authority determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the reviewing authority shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

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(33) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(34) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(35) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the nations ambient air quality standards during and after the project is terminated.

(36)(i) *Repowering* means replacement of an existing coal-fired boiler with one of the following clean coal technologies: Atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The reviewing authority shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under 409 of the Clean Air Act.

(37) *Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 is amended to read as follows:

Authority: 42 U.S.C. 7401–7642 as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101–549, 104 Stat. 2399 (Nov. 15, 1990), unless otherwise noted.

2. Section 52.21 is amended by revising paragraph (b)(21)(iv) and by adding paragraphs (b)(2)(iii)(*h*), (b)(2)(iii)(*i*) (b)(2)(iii)(*j*), (b)(2)(iii)(*k*), (b)(21)(v), (b)(31), (b)(32) (b)(33), (b)(34), (b)(35), (b)(36), (b)(37), and (b)(38) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

* * * * * *

(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Administrator determines that such addition, replacement, or use renders the unit less environmentally beneficial, and except:

(*1*) When the Administrator has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*2*) The Administrator determines that the increase will cause or contribute to a violation of any ambient standard, PSD increment, or visibility limitation.

(*i*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*1*) The State implementation plan for the State in which the project is located, and

(*2*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(*j*) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(*k*) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(21) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (v) of this subsection) that has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit.

* * * * *

(31) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(32) *Pollution control project* means any physical change or change in the method of operation, at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such changes are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) A physical change, or change in the method of operation, to accommodate switching to a fuel which is less polluting than the fuel in use prior to the change including, but not limited to natural gas or coal reburning, co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

(33) *Representative actual annual emissions* mean the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the Administrator determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Administrator shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(34) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emission of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(35) *Clean coal technology demonstration project* means a project using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(36) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(37)(i) *Repowering* means replacement of an existing coal-fired boiler with one of the following clean coal technologies: Atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The Administrator shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(38) *Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority; emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

* * * * *

3. Section 52.24 is amended by revising paragraph (f)(13)(iv) and by adding paragraphs (f)(5)(iii)(*h*), (f)(5)(iii)(*i*), (f)(5)(iii)(*j*), (f)(13)(v), (f)(19), (f)(20), (f)(21), (f)(22), (f)(23), (f)(24), and (f)(25) to read as follows:

§ 52.24 Statutory restriction on new sources.

* * * * *

(f) * * *

(5) * * *

(iii) * * *

* * * * * *

(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Administrator determines that such addition, replacement, or use renders the unit less environmentally beneficial, and except:

(*1*) When the Administrator has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*2*) The Administrator determines that the increase will cause or contribute to a violation of any ambient standard, PSD increment, or visibility limitation.

(*i*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

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(1) The State implementation plan for the State in which the project is located, and

(2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(j) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(13) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (f)(13)(v) of this section) that has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit.

* * * * *

(19) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(20) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit (or a different consecutive two-year period within 10 years after that change, where the Administrator determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Administrator shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(21) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(22) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(23) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(24) *Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

(25) *Pollution control project* means any physical change or change in the method of operation, at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such changes are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) A physical change, or change in the method of operation, to accommodate switching to a fuel which is less polluting than the fuel in use prior to the change including, but not limited to natural gas or coal reburning, co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

* * * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101-549, 104 Stat. 2399 (Nov. 15, 1990; 402, 408, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted.

2. Section 60.2 is proposed to be amended by adding the following definitions in alphabetical order:

§ 60.2 Definitions.

* * * * *

Clean coal technology demonstration project means a project using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstrations of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency.

* * * * *

Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

* * * * *

Repowering means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

Reactivation of a very clean coal-fired electric utility steam generating unit means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carrier in the permitting authority's emissions inventory at the time of enactment;

(2) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

* * * * *

3. Section 60.14 is amended by adding paragraphs (h), (i), (j), (k) and (l) to read as follows:

§ 60.14 Modification.

* * * * *

(h) No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the five years prior to the change.

(i) Repowering projects that are awarded funding from the Department of Energy as permanent clean coal technology demonstration projects (or similar projects funded by EPA) are exempt from the requirements of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the five years prior to the change.

(j)(1) Repowering projects that qualify for an extension under section 409(b) of the Clean Air Act are exempt from the requirements of this section, provided that such change does not increase the actual hourly emissions of any pollutant regulated under this section above the actual hourly emissions achievable at that unit during the five years prior to the change.

(2) This exemption shall not apply to any new unit that:

(i) Is designated as a replacement for an existing unit;

(ii) Qualifies under section 409(b) of the Clean Air Act for an extension of an emission limitation compliance date under section 405 of the Clean Air Act; and

(iii) Is located at a different site than the existing unit.

(k) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project is exempt from the requirements of this section. A "temporary clean coal control technology demonstration project", for the purposes of this section is a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(l) The reactivation of a very clean coal-fired electric utility steam generating unit is exempt from the requirements of this section.

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Friday
June 14, 1991

Part VI

Department of Education

Innovation in Education Program (Academies for School Leaders and Academies for Teachers); Inviting Applications for New Awards for Fiscal Year 1991; Notice

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DEPARTMENT OF EDUCATION

Fund for Innovation in Education: Innovation in Education Program (Academies for School Leaders and Academies for Teachers) Notice inviting applications for new awards for fiscal year 1991

[CFDA No.: 84.215N and 84.215P–84.215U]

Purpose of Program: To provide grants for projects that show promise of identifying and disseminating innovative educational approaches at the preschool, elementary, and secondary levels.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations and institutions or consortia of those entities.

Deadline for Transmittal of Applications: 7–31–91.

Deadline for Intergovernmental Review: 9–28–91.

Applications Available: 6–24–91.

Available Funds: $7,000,000.

Estimated Range of Awards: $250,000–$500,000.

Estimated Number of Awards: 21.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12–18 months.

Budget Period: 12–18 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Supplementary Information: On May 6, 1991, the Secretary published a notice of proposed priorities for Academies for School Leaders and Academies for Teachers in the **Federal Register** (56 FR 21058). The public comment period for the notice of proposed priorities ended on June 5, 1991.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priorities to allow sufficient time to conduct the competition and issue awards prior to the end of the fiscal year (September 30, 1991).

Thirty-five parties, almost all of whom were supportive of the priorities, commented on the notice. The Secretary anticipates making only one change in response to these comments: clarifying that the Academies for School Leaders (Priority 1) must serve current school leaders as well as those desiring to become school leaders.

This notice contains the priorities as the Secretary expects to issue them in the notice of final priorities. Applicants should prepare their applications on the basis of these priorities. If the Secretary makes any substantive changes to these priorities before issuing the notice of final priority, applicants will be given an opportunity to revise their applications.

The Secretary solicits separate applications for each of the absolute priorities. The Secretary anticipates that approximately three awards will be made for each absolute priority.

Priorities

Absolute Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary sets funds aside separately for each of the following priorities, and funds under this competition only applications that meet one of these priorities.

Absolute Priority 1—Academies for School Leaders (CFDA 84.215N)

Projects to operate training academies for public and private school leaders. Each academy must serve a State or a multi-State region, and the Governors of the States to be served must be consulted in the design and operation of the academy's program. Only one academy in a State or region will be funded. The activities carried out by an academy must include:

- Construction of a model curriculum for the development of school leaders that focuses on instructional leadership, school-based management, and the design and execution of school improvement strategies and accountability mechanisms;
- Identification of candidates to be trained as new school leaders, including minorities and persons with disabilities, using a carefully designed search process;
- Identification of schools with principal and other school leader vacancies and negotiation with schools and school districts to: match the trainee-candidates with districts or schools that will sponsor and support the candidates; and identify and support exceptional, experienced principals and other school leaders to serve as mentors to the trainee-candidates;
- Operation of school leadership programs during the school year or during the summer that provide intensive training and development both for persons desiring and demonstrating outstanding promise to become school leaders, and for current school leaders seeking enhanced and up-to-date knowledge needed to perform their jobs effectively;
- Monitoring and facilitating an internship, as appropriate, for each of the new school leaders who are graduates of the intensive development programs under the guidance and supervision of an experienced school leader; and
- Providing periodic follow-on development activities for the trainees.

Invitational Priorities

Within Absolute Priority 1, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1

Projects that would match funds provided under this priority with funds from non-Federal sources.

Invitational Priority 2

Projects that would combine the resources of different schools within an institution of higher education, such as the schools of arts and sciences, business or management, and education, or that would provide a similar multidisciplinary approach.

Absolute Priorities 2–7—(Academies for Teachers)

English Academies for Teachers (CFDA 84.215P).

Mathematics Academies for Teachers (CFDA 84.215Q).

Science Academies for Teachers (CFDA 84.215R).

History Academies for Teachers (CFDA 84.215S).

Geography Academies for Teachers (CFDA 84.215T).

Academies for Teachers in the Five Core Disciplines (CFDA 84.215U).

Projects to operate training academies for teachers in each of the five core academic disciplines—English; mathematics; science; history; and geography—and projects to operate single academies that deliver training to teachers in all five disciplines. Each academy must serve a State or a multi-State region, and the Governors of the States to be served must be consulted in the design and operation of the academy's program. Only one academy will be funded in a State or region to deliver training in a given discipline. The activities carried out by an academy must include:

- Development of a model curriculum for the training of teachers that focuses on renewal and enhancement of teachers' knowledge of the core academic discipline or disciplines addressed by the academy; teaching skills and strategies needed to impart academic subject matter to students including students from diverse backgrounds and students with disabilities; the use of educational technologies in teaching the core discipline; and the training that teachers need to become master teachers and to participate in curriculum development;
- Recruitment of teachers within the State or region to participate in the program of the academy, with an effort made to recruit minority teachers, teachers with disabilities, and other teachers who have potential for leadership; and
- Operation of programs during the school year or during the summer that provide intensive training using the model curriculum developed by the academy.

Invitational Priority

Within Absolute Priorities 2–7, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that would match funds provided under this priority with funds from non-Federal sources.

Selection Criteria: Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

For Applications or Information Contact: Shirley Steele, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: 202–219–1496. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3151.

Dated: June 11, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–14246 Filed 6–13–91; 8:45 am]

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Part VII

Department of Education

Fund for Innovation in Education Program; Applications for New Awards for Fiscal Year 1991; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.215E]

Fund for Innovation in Education: Innovation in Education Program; Notice inviting applications for new awards for fiscal year 1991.

Purpose of Program: To provide grants for projects that show promise of identifying and disseminating innovative educational approaches at the preschool, elementary, and secondary levels.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations and institutions or consortia of those entities.

Deadline for Transmittal of Applications: 7–31–91.

Deadline for Intergovernmental Review: 9–28–91.

Applications Available: 6–24–91.

Estimated Available Funds: $3,500,000.

Estimated Range of Awards: $250,000–$500,000.

Estimated Number of Awards: 10–12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Budget Period: 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Invitational Priorities: The Secretary is particularly interested in applications for projects that demonstrate effective strategies for—

(a) Improving the performance and employment opportunities of underachieving students. Of special interest are school-based projects designed to help students reach high standards of performance in five core subjects: English, mathematics, science, history, and geography;

(b) Improving and expanding instruction in foreign languages at the elementary and secondary levels. Of special interest are projects to expand instruction in the language of Arabic, Chinese, Japanese, Korean, and Russian at both the elementary and secondary levels; or

(c) Restructuring elementary and secondary schools. Of special interest are projects at the school level designed to achieve comprehensive reform through improvements in areas such as school leadership, organization, decisionmaking, teaching, and curriculum, and the use of technology in the school.

However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Selection Criteria: Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

Supplementary Information: Although the Secretary has chosen to use the EDGAR selection criteria and invitational priorities for this competition, he may establish specific regulations or absolute priorities for other grant competitions.

For Applications or Information Contact: Shirley Steele, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: 202–219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3151.

Dated: June 11, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–14191 Filed 6–14–91; 8:45 am]

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Friday
June 14, 1991

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 91

Proposed Alteration of the Houston Terminal Airport Control Area and Revocation of the William P. Hobby Airport, Airport Radar Service Area; Proposed Rule

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DEPARTMENT OF TRANSPORTION

Federal Aviation Administration

14 CFR Parts 71 and 91

[Airspace Docket No. 90-AWA-12]

RIN 2120-AD04

Proposed Alteration of the Houston Terminal Control Area and Revocation of the Houston William P. Hobby Airport, Airport Radar Service Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Houston, TX, Terminal Control Area (TCA) by expanding the lateral limits. This proposal would establish TCA airspace at the William P. Hobby Airport and would revoke the current Airport Radar Service Area (ARSA) to accommodate the proposed configuration for the Houston TCA. The existing Houston TCA would be modified to encompass two major airports: Houston Intercontinental and William P. Hobby. The alteration to the Houston TCA would consist of airspace within a 30-mile radius of the Houston Intercontinental Airport and within a 20-mile radius of the William P. Hobby Airport. The airspace would extend from the surface or higher to and including 10,000 feet above mean sea level (MSL). Establishment of TCA airspace at the William P. Hobby Airport would impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, an operable very high frequency omnidirectional radio range (VOR) or tactical air navigational aid (TACAN) receiver, and restrictions on student pilot operations. This action is intended to increase the capability of the air traffic control (ATC) system to separate aircraft in the terminal airspace around the Houston Intercontinental and William P. Hobby Airports. The objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users.

DATES: Comments must be received on or before August 12, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Docket No 90-AWA-12; Notice No., 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Obstruction Evaluation Branch (AIP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 90-AWA-12; Notice No. ." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Amendment 91-78 to part 91 of the Federal Aviation Regulations (FAR) which enabled the establishment of TCAs (35 FR 7782).

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of the Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule did not affect the requirement to use a transponder for operation in a TCA.

On June 21, 1988, the FAA published a final rule which required Mode C equipment when operating within 30 miles of any designated TCA-primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Established a single-class TCA; (b) required the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminated the helicopter exception from the minimum navigational equipment requirement.

On May 25, 1990, the FAA published a proposal to suspend, until December 30, 1993, certain provisions of the regulation which require the installation and use of automatic altitude reporting (Mode C) transponders (55 FR 21722; notice no. 90-16). This proposal would provide access to specified outlying airports within 30 miles of a TCA primary airport (Mode C veil) for aircraft without a Mode C transponder. The FAA believes that the operation of an aircraft without a Mode C transponder can be safely accommodated provided that the operation is conducted in areas not currently within ATC radar coverage and not predominantly used by aircraft

required to install and use traffic alert and collision avoidance system (TCAS) equipment.

In the preamble to notice no. 90-16, the FAA stated that a list of airports and specified altitudes below which aircraft operations would be excluded from the Mode C transponder requirement would accompany any NPRM regarding future TCAs. Although the FAA has not yet published a final determination regarding notice no. 90-16, the FAA is listing the airports for the revised Houston TCA Mode C veil in this NPRM to allow full consideration of the impact of the proposed TCA and the Mode C veil. Should the revised Houston TCA be adopted, the effective date of the proposed suspension will be coincident with the effective date of the final rule for the revised Houston TCA.

Aircraft operations without Mode C transponders were proposed to be permitted within a 1.5-nautical-mile (NM) radius of a designated airport from the surface up to a specified altitude. Additionally, aircraft operations without a Mode C transponder would be permitted along the most direct route between that designated airport and the boundary of the Mode C veil, at and below the specified altitude. The routing must be consistent with established traffic patterns, noise abatement procedures, and safety.

Aircraft operations at, to, or from the listed airports would be suspended from the Mode C transponder requirement until December 30, 1993. This time period will accommodate the scheduled upgrading of the present ATC radar system in the vicinity of the Houston Intercontinental and Hobby Airports, and an evaluation period to determine the extent of radar coverage within the Houston TCA Mode C veil as a result of radar system enhancements. Based on the results of this evaluation, the period that the Mode C transponder requirement would be suspended for operations at certain airports may be extended on a site-by-site basis by a notice published in the Federal Register.

Operations of aircraft without Mode C transponders at airports not listed by this rule would continue to be safely accommodated in accordance with existing provisions for individual ATC authorizations.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCAs provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 29 TCAs. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

Pre-NPRM Public Input

Airspace Meetings

The FAA held pre-NPRM airspace meetings on July 20 and 21, 1988, to allow the public and airspace users an opportunity to participate in developing the design for the modified Houston TCA. In attendance were private and student pilots, flight instructors, owners/managers of general aviation airports, as well as representatives from the Texas Aeronautics Commission (TAC), the Air Line Pilots Association (ALPA), the Aircraft Owners and Pilots Association (AOPA), and the Air Transport Association (ATA). During the July 21 meeting, the representatives from AOPA, ATA, and ALPA made statements concerning the configuration of the modified Houston TCA. The participants in the pre-NPRM meetings expressed the following concerns about the proposed alteration to the Houston TCA:

1. A major concern was the establishment of a VFR east/west flyway between Houston Intercontinental Airport and the William P. Hobby Airport. The proposed configuration provides for the establishment of a VFR east/west flyway, 3.5 miles wide, between the airports.

2. Another major concern was the lateral and vertical limits for the proposed TCA around William P. Hobby Airport. Some users requested that the TCA be limited to no more than 20 miles south of William P. Hobby Airport and the ceiling no higher than 10,000 feet MSL. The proposed modification takes into account both requests for the lateral and vertical limits. the FAA recognizes that much of the airspace south of William P. Hobby Airport is over water or adjacent to the Gulf of Mexico and does not generate the volume of traffic to justify a TCA environment.

3. Some users suggested that identifiable landmarks should be used to define the TCA boundary, where feasible. The FAA supports this suggestion and has altered the proposed TCA boundaries along interstate 10 to the east, and along State highway 59 to the west of the Houston Intercontinental and the William P. Hobby Airports.

Houston Ad Hoc Airspace Committee

The Houston Ad Hoc Airspace Committee was created at the time of the July 21 pre-NPRM meeting. The committee consisted of airspace users, fixed-based operators, and other concerned citizens. An FAA representative from the Southwest Region was available to provide the technical support and advice on local air traffic control procedures. The ad hoc committee submitted the following written comments on altering the Houston TCA to the FAA:

1. The committee recommended that the lateral limits of the TCA around Houston Intercontinental Airport remain at the current 20-nautical-mile (NM) limit. The FAA did not propose to adopt this recommendation because of the escalating volume of traffic in the terminal environment, particularly in the airspace north of the airport. Establishing the TCA lateral limits at a 30-NM radius of the airport is necessary to contain air carriers and large turbojets in the controlled TCA environment while sequencing and radar vectoring aircraft for spacing.

2. The committee suggested that the TCA around William P. Hobby Airport be modified to coincide with the lateral limits of the existing ARSA, i.e., a 5-mile radius surface area and 10-mile radius shelf. The FAA offers an alternative to the proposed TCA modification around William P. Hobby Airport: Lateral limits within an 8-NM radius, including the surface area, an 8- to 15-NM radius with a floor of 2,000 feet MSL, and a 15- to 20-NM radius with a floor of 4,000 feet MSL. This configuration would exclude several airports from the surface area, thus allowing for operations to/from airports in an uncontrolled environment.

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3. The committee proposed to raise the floor of the TCA south of William P. Hobby Airport between the Hobby (HUB) VOR/DME 145° radial and the HUB 205° radial between the 8- to 10-NM DME arc to 2,000 feet MSL, then between the 10- to 20-NM DME arc to 4,000 feet MSL. This action would accommodate a popular flight training area south of William P. Hobby Airport. The FAA supports this proposal with the following changes: Limits between the HUB 156° radial and the HUB 211° radial, a floor of 2,000 feet MSL between the 8- to 10-NM DME arc, and a floor of 3,000 feet MSL between the 10- to 15-NM DME arc. The floor in the 15-to 20-NM DME area is proposed at 4,000 feet MSL.

Written Comments

In response to the pre-NPRM proposal, 44 written comments were received from individual airspace users and several organizations. The written comments are summarized below.

A fixed base operator with a flight school located on William P. Hobby Airport voiced concern that implementing a TCA recommendations for the TCA design separately. In addition, comments were received from the Spaceland Parachute Center recommending 12–15 mile lateral limits and 7,500 feet MSL ceiling with an exclusion for the Houston Gulf Airport.

The ATA was a participant on the ad hoc committee; however, the association submitted a separate recommendation to the FAA emphasizing its support for a TCA design in accordance with FAA Handbook 7400.2, Procedures for Handling Airspace Matters, which prescribes a 12,500 feet MSL vertical limit and a 30-mile radius outer limit.

ATA's concerns centered on ensuring that all standard instrument approach procedures would be contained within the TCA boundaries encompassing William P. Hobby Airport. ATA emphasized that it would only support a generic TCA design of 12,500 feet MSL and a 30-mile radius.

ALPA acknowledged the need to accommodate the flight schools at William P. Hobby and La Porte Airports. ALPA stated that it vigorously opposed a VFR corridor along Interstate 10. However, the organization will support the concept of a controlled VFR transition route, and requiring pilots to squawk a special code, monitor a discrete frequency, and transition in level flight with aircraft lights illuminated. The ALPA agreed with the ATA on the generic design for the altered Houston TCA.

In addition, one comment suggested that the FAA cancel its endeavor to implement any changes to the current airspace and "leave well enough alone" with a TCA at Houston Intercontinental and an ARSA at William P. Hobby Airport.

Comments received from Cliff Hyde Flying Service, La Porte Airport, supported the concept of TCAs around high traffic airports, expressed concern for the availability of student pilot training areas, and requested assistance to prevent traffic operating to/from Ellington Field from penetrating the La Porte traffic pattern.

The majority of the airspace users support the proposed modification to the Houston TCA. This design accommodates traffic at the La Porte Municipal Airport, allowing unrestricted operation by excluding the airport from the TCA surface area. While the ad hoc committee requested a ceiling of 8,000 feet MSL, the FAA has proposed a 10,000 feet MSL ceiling for the Houston TCA. The FAA has determined, by an evaluation of air traffic procedures and traffic flow, that air carrier and large turbojet aircraft can be contained within the TCA airspace at 10,000 feet MSL, but that a ceiling of 8,000 feet MSL is not adequate for this proposal.

The Proposal

The FAA is considering an amendment to part 71 of the FAR (14 CFR part 71) to alter the TCA at Houston, TX. The proposed modification would establish additional TCA airspace and would revoke the ARSA at William P. Hobby Airport. In 1988, the total number of enplaned passengers at William P. Hobby Airport was 3,647,079, which qualified the airport as a candidate for a TCA. Consequently, the FAA has determined that the establishment of TCA airspace at William P. Hobby Airport is in the interest of flight safety and would result in a greater degree of protection for the greatest number of people during flight in the terminal area. William P. Hobby Airport is currently being served by an ARSA, which would be rescinded with the proposed modification of the Houston TCA. The existing Houston TCA lateral limits would be altered concurrent with the establishment of the proposed configuration for Houston TCA. The proposed modification to the Houston TCA is depicted on the attached chart.

Section 91.131 of the FAR (14 CFR part 91) defines TCAs and prescribes operating rules for aircraft in airspace designated as a TCA. Section 91.131 provides, in part, that before entering the TCA, any pilot arriving at any airport within the TCA or flying through the TCA must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA; (3) hold at least a private pilot certificate; and (4) meet the requirements of § 61.95 of the FAR (14 CFR part 61) if the aircraft is operated by a student pilot.

Any person operating an aircraft arriving at any airport within a TCA or flying through a TCA must have the aircraft equipped with: An operable VOR or TACAN receiver; an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and the applicable operating transponder and automatic altitude-reporting equipment specified in paragraph (a) of § 91.215 of the FAR, except as provided in paragraph (d) of that section. Unless otherwise authorized by ATC, all large, turbine engine-powered aircraft operating to or from a TCA-primary airport must be operated above the designated floors of the TCA. The pilot of any aircraft departing from an airport located within a TCA is required to receive a clearance from ATC before takeoff.

All pilots operating within a TCA are required to comply with all ATC clearances and instructions. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCAs may be found in §§ 71.12 and 71.401 of the FAR (14 CFR part 71); and §§ 91.1 and 91.131 of the FAR (14 CFR part 91).

The standard configuration of a TCA consists of three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles, respectively. The vertical limits of the TCA are 12,500 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration proposed in this notice is the result of an extensive staff study conducted by FAA authorities after obtaining public input from informal airspace meetings, written comments, the Houston Ad Hoc

Airspace Committee, and coordinating with the FAA regional office.

A unique feature of the proposal is that the proposed TCA for the Houston area is one TCA which would encompass two primary airports instead of one primary airport. The FAA has determined that the proposed alteration of airspace for the Houston area TCA would be consistent with TCA objectives. The proposed configuration considers the existing terminal area flight operations and terrain as follows:

1. That airspace extending upward from the surface to and including 10,000 feet MSL within a 10-mile radius of the Humble (IAH) VORTAC, excluding that airspace south of an east/west line from the IAH 141° radial 10 DME to the IAH 216° radial 10 DME and within an 8-mile radius of the Hobby VOR/DME (HUB), excluding that airspace north of an east/west line from HUB 331° radial 8 DME to the HUB 031° radial 8 DME. The Hobby inner circle would be reduced from the HUB 156° radial to the HUB 211° radial.

This airspace is necessary to contain large turbojet aircraft within the confines of the TCA while operating to and from the primary airports and allow for ingress/egress to secondary airports without affecting the primary airports. The reduction in the inner circle is necessary to accommodate multi-engine aircraft flight training activity. This airspace configuration would provide a VFR east/west flyway, 3.5 miles wide between Houston Intercontinental and William P. Hobby Airports.

2. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL between 10 DME and 15 DME of the IAH VORTAC, excluding that airspace south of the IAH VORTAC on the east side where the 15-mile arc joins the 15-mile arc north of the HUB VOR/DME and on the west side that airspace south of where the 15-mile arc of the IAH VORTAC crosses State highway 59 and northwest of the HUB VOR/DME where the 15-mile arc crosses State highway 59. Included is that airspace between the HUB 156° radial and the HUB 211° radial between 6 and 10 miles DME from the HUB VOR/DME.

This area is necessary to allow sufficient airspace for uncontrolled operations, specifically aircraft landing at and departing from nonprimary airports within the lateral limits. In addition, the airspace between the HUB 156° radial and the HUB 211° radial would allow for flight training activity.

3. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL between 15 DME and 20 DME of the IAH VORTAC, excluding that airspace south of where the 20-mile arc crosses interstate 10 to the east of IAH VORTAC and State highway 59 southwest of IAH VORTAC. Also, including that airspace between the HUB 156° radial and the HUB 211° radial between 10 and 15 miles DME from the HUB VOR/DME.

This airspace is necessary to provide sufficient room for sequencing and vectoring arriving and departing aircraft. In addition, the configuration takes into consideration the airspace for aircraft on downwind and on parallel approaches to Houston Intercontinental Airport. The airspace between the HUB 156° radial and the HUB 211° radial is necessary to accommodate multi-engine flight training activity.

4. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL between 20 DME and 30 DME of the IAH VORTAC, excluding that airspace south of Interstate 10 east of IAH VORTAC and State highway 59 southwest of IAH VORTAC. That airspace between 15 DME and 20 DME from the HUB VOR/DME excluding that airspace north of interstate 10 east of Hobby and State highway 59 southwest of Hobby.

This area is necessary to contain aircraft in a controlled environment and allows for adequate airspace for nonparticipating aircraft conducting VFR operations.

The preceding summary of the proposed alteration of the TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at the Houston Intercontinental Airport and the William P. Hobby Airport. ATC would provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is required for aircraft operations within that airspace. Modifying this TCA would greatly enhance the safety of flight within the congested airspace overlying the Houston metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Sections 71.401 and 71.501 of the FAR were republished in FAA Handbook 7400.6G, Compilation of Regulations, dated September 4, 1990.

Suspension of Certain Aircraft Operations From the Mode C Transponder Requirement

On December 5, 1990, the FAA published Special Federal Aviation Regulation (SFAR) No. 62 which suspends, until December 30, 1993, certain provisions of the regulation which require the installation and use of automatic altitude-reporting (Mode C) transponders (55 FR 50302). SFAR No. 62 provides access to specified outlying airports within 30 miles of a TCA-primary airport (Mode C veil) for aircraft without Mode C transponders. The FAA believes that the operation of an aircraft without a Mode C transponder can be safely accommodated provided that the operation is conducted in areas not currently within ATC radar coverage and not used predominantly by aircraft required to install and use traffic alert and collision avoidance systems (TCAS) equipment.

SFAR) No. 62 identified 17 airports (within the current Houston Intercontinental TCA Mode C veil) at which operations by aircraft not equipped with Mode C transponders can be conducted at and below 1,200 feet above ground level (AGL): (1) Within a 2-nautical-mile radius of a listed airport; and (2) along a direct route between that airport and the outer boundary of the Mode C veil. Those 17 airports are:

1. Ainsworth Airport, Cleveland, TX (0T6)
2. Biggin Hill Airport, Hockley, TX (TX49)
3. Cleveland Municipal Airport, Cleveland, TX (6R3)
4. Fay Ranch Airport, Cedar Lane, TX (0T2)
5. Freeman Property Airport, Katy, TX (81T)
6. Gum Island Airport, TX (3T6)
7. Harbican Airport, Airpark, Katy, TX (9XS9)
8. Harold Freeman Farm Airport, Katy, TX (8XS1)
9. Hoffpauir Airport, Katy, TX (59T)
10. Horn-Katy Hawk International Airport, Katy, TX (57T)
11. Houston-Hull Airport, Houston, TX (SGR)
12. Houston-Southwest Airport, Houston, TX (AXH)
13. King Air Airport, Katy, TX (55T)
14. Lake Bay Gall Airport, Cleveland, TX (0T5)
15. Lake Bonanza Airport, Montgomery, TX (33TA)
16. R W J Airpark Airport, Baytown, TX (54TX)
17. Westheimer Air Park Airport, Houston, TX (5TA4)

The proposed designation of William P. Hobby Airport as a TCA-primary airport would extend the Houston TCA Mode C veil to include the airspace areas within a 30-nautical-mile radius of Hobby Airport. The FAA has determined that 13 airports would be added to the list of airports for the Houston TCA Mode C veil as a result of the proposed designation of Hobby Airport as a primary airport. The list of the 13 additional airports for the revised Houston TCA Mode C veil primarily comprises those airports located approximately 25 to 30 miles from Hobby Airport and not located within the current Houston Intercontinental TCA Mode C veil. The 13 airports to be added to SFAR No. 62 for the proposed

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Houston Intercontinental and Hobby TCA Mode C veil are:

(1) Austrie Ranch Airport, Texas City, TX (T89)
(2) Bailes Airport, Angleton, TX (7R9)
(3) Covey Trails Airport, Pelahatchie, TX (8MS)
(4) Creasy Airport, Santa Fe, TX (8TA8)
(5) Custom Aire Service Airport, Angleton, TX (81D)
(6) Flying C Ranch Airport, Needville, TX (XS25)
(7) Garrett Ranch Airport, Danbury, TX (77XS)
(8) H & S Airfield Airport, Damon, TX (XS21)
(9) HHI Hitchcock Heliport, Hitchcock, TX (8TA5)
(10) Johnnie Volk Field Airport, Hitchcock, TX (37R)
(11) Lane Airpark Airport, Rosenberg, TX(T34)
(12) Meyer Field Airport, Rosharon TX (TA33)
(13) Prairie Aire Field Airport, Damon, TX (4TA0)

Two airports identified on the list of 17 airports for the current Houston Intercontinental TCA Mode C veil, Houston-Southwest (AXH), Houston, TX, and Houston-Hull Airport (SGR), Houston, TX, are proposed to be deleted from the list of airports at which operations in noncompliance with the Mode C transponder equipment requirement are permitted. Houston-Southwest Airport is located approximately 13 nautical miles from William P. Hobby Airport. Houston-Hull Airport is located approximately 19 nautical miles from William P. Hobby Airport. Due to the proximity of these airports to William P. Hobby Airport, operations in the vicinity of the Houston-Southwest Airport and Houston-Hull Airport, or along the most direct routing between those airports and the outer boundary of the revised Houston TCA Model C veil, would underlie an area within which controlled traffic to and from a TCA-primary airport may be operating. Therefore, operations in the vicinity of Houston-Southwest and Houston-Hull Airports would no longer meet the criteria for exclusion from the Mode C transponder equipment requirement.

If Houston-Southwest and Houston-Hull Airports were not deleted from the list, aircraft not equipped with a Mode C transponder could operate along unspecified routes between each airport and the outer boundary of the revised Houston TCA Mode C veil. The FAA believes this situation could result in the display of radar targets without associated altitude information on ATC radar scopes, thus adversely affecting the safety benefits associated with the Mode C transponder equipment requirement.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA which provides more detailed information on estimates of the potential economic consequences of this proposal. This summary and the evaluation quantify, to the extent practicable, estimated costs of the proposal to the private sector, consumers, and Federal, State, and local governments, and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this proposal is not major as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he or she should consult the regulatory evaluation contained in the docket.

Costs

The FAA estimates the total cost of implementing the proposed rule to be $1.1 million (discounted, 15 years) in 1989 dollars. This estimate represents costs to the FAA for additional personnel and revision of aeronautical charts. GA aircraft operators are not expected to incur any costs as a result of the proposal. These costs are discussed below.

For the FAA, the proposed rule would impose costs for two additional controllers at Houston TRACON. The discounted cost of the two controllers would be $1,050,000 at 10 percent over 15 years. No additional equipment requirements are anticipated as a result of the proposal.

For GA aircraft operators, the proposal would impose no monetary costs for avionics equipment. Costs incurred by aircraft operators without Mode C transponders have already been accounted for by the Mode C rule. The potentially affected GA aircraft operators are assumed to already have the other types of avionics equipment (such as operable two-way radio and VOR) required for entering a TCA. The only aircraft without Mode C transponders would be nonelectrical and antique types. Costs to these types of aircraft operators have already been accounted for by the Mode C rule.

The FAA does not believe balloonists, parachutists, ultra-light and sailplane owners, or fixed-base operators would be significantly affected by the proposal. Letters of agreement and airspace cutouts are expected to be executed, where advisable, to provide a minimum effect on these operators.

Another cost component of the proposal would be the revision of aeronautical charts to reflect the change of the airspace around the Houston Intercontinental Airport (IAH) and the William P. Hobby Airport (HOU). The change would be incorporated during the routine updating and printing of the charts so that all costs associated with printing aeronautical charts are assumed to be a normal cost of doing business. However, the charts would need to be changed to depict the revised airspace configuration in the Houston TCA. This would require changes to the plates used to print the charts which would depict the modified Houston TCA. These charts include the Sectional, Terminal Area, En Route Low Altitude, En Route Area, and VFR Flyway Charts. The National Oceanic Service, the agency responsible for the publication and distribution of aeronautical charts, estimates the total one-time discounted costs (10 percent, 1 year) of these maps to be $55,000.

Benefits

The proposal is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Enhanced safety would take the form of reduced aviation fatalities and property damage as a result of a lowered likelihood of midair collisions due to increased positive control in the airspace to be established as the Houston TCA. Other benefits would be expected to accrue in the form of improved operational efficiency of FAA air traffic controllers.

Since deregulation of the airline industry in 1978, passenger enplanements have greatly increased. This has led to large increases in aircraft operations, particularly for part 121 (Large Transport Category) aircraft. As a result of this traffic density, the risk of potential midair collisions has also increased. Since 1978, the FAA has implemented additional regulatory initiatives aimed primarily at mitigating this potential safety problem. These initiatives have included modification of selected TCAs and the conversion of Terminal Radar Service Areas (TRSAs) into ARSAs. Most recently, the FAA has implemented rules expanding Mode C requirements and mandating TCAS on certain aircraft. All of these regulatory actions are aimed at enhancing aviation safety by lowering the likelihood of midair collisions. As a continuation of this effort to enhance aviation safety, the FAA announced in 1987 the proposed conversion of nine ARSAs into TCAs. The proposed establishment of TCA airspace at Houston-Hobby represents one of these TCA initiatives.

The proposed rule is expected to increase benefits in terms of enhanced safety. This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (CNMAC) incidents in lieu of actual midair collisions. Since midair collisions involving part 135 aircraft and especially part 121 aircraft are rare, the use of CNMACs will serve to illustrate the potential improvements in aviation safety of implementing the proposal. The regression analysis used in this evaluation focused on CNMACs and aircraft operations in 23 TCAs and a random sample of 23 of the 79 ARSAs that existed in 1986 (based on CNMAC data for 1986 and 1987). The results of this analysis indicate that TCAs have approximately 68 percent fewer CNMACs annually, on average, than ARSAs. This lower CNMAC rate suggests more efficient separation of aircraft in congested areas.

As the result of these findings, if the ARSA at HOU remained intact and the Mode C and TCAS rules were not in effect, the HOU Terminal Area would be expected to experience an average of 1.8 CNMACs annually or 25 CNMACs over the next 15 years. However, if the ARSA becomes a TCA, this figure is expected to reduce to an average of 0.5 CNMACs annually or 8 CNMACs over the next 15 years. Thus, over the next 15 years, the proposal could result in the reduction of 17 (25–8) CNMACs.

It is important to note that most of these potential CNMACs would not occur as predicted because the Mode C and TCAS rules are in effect and HOU already lies within the current Houston TCA Mode C veil. Subsequently, the safety benefits of the proposal and the Mode C and TCAS rules are inseparable and cannot be estimated independently from each other. The Mode C and TCAS rules are expected to generate total potential safety benefits of $2,129 million (discounted, 15 years).

Another potential benefit of the proposal would be improved operational efficiency of air traffic controllers. Under the proposal, the Mode C transponder requirement would ease controller workload per controlled aircraft because of the reduction in radio communications. It also would make potential traffic conflicts more readily apparent to the controller. Because of improved operational efficiency, the impact of controller workload would be somewhat offset by the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA. There would be other types of benefits made possible by the additional ATC personnel in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. Therefore, the potential benefits of improved operational efficiency, which are difficult to quantify in monetary terms in this evaluation, would also be attributed to this proposed rule.

The proposed modification would alter the current Houston TCA in two ways. First, the proposal would convert the ARSA at HOU into TCA airspace. The benefits associated with converting the ARSA were discussed above. Second, the proposal would expand the TCA airspace currently around IAH by raising the ceiling over IAH from 7,000 feet MSL to 10,000 feet MSL and by extending the outer boundary to 30 nautical miles. This proposed expansion of TCA airspace around IAH would yield potential benefits in the way of a lowered likelihood of CNMACs and efficiency gains for ATC, especially in light of the increasing number of aircraft operations and passenger enplanements at IAH. However, because a TCA is already established around IAH, the FAA contends that the proposed expansion of TCA airspace around IAH would not reduce CNMACs to the extent the conversion of the ARSA at HOU would.

Comparison of Benefits and Costs

The total cost to implement the proposed Houston TCA is estimated to be $1.1 million (discounted, 15 years). The potential safety benefits of the rule would be the lowered likelihood of midair collisions from the proposed conversion of the present Houston ARSA to a TCA. The precise number of midair collisions avoided and their respective monetary values cannot be estimated independent of the Mode C and TCAS rules. However, the FAA contends that even if the Mode C and TCAS rules were not in effect, the estimated cost of the proposed TCA, relative to the reduction in the likelihood of midair collisions and the improved operational efficiency of ATC, makes the proposal cost-beneficial. In addition, even when the potential cost of the proposed TCA is added to the costs of other TCAs and ARSAs (only those established since phase I of Mode C) plus the costs of the Mode C and TCAS rules, the total collective costs, $314.8 million, are still less than the total collective benefits, $2,129 million.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." As stated in the Cost section of this evaluation, the proposal would have no monetary impact on the aviation public and, therefore, it would have no cost impact on small entities. Thus, a regulatory flexibility analysis is not required.

International Trade Impact Assessment

The proposed rule would only affect U.S. terminal airspace operating procedures at and in the vicinity of the Houston TCA. The proposed rule would not impose a competitive trade advantage or disadvantage on foreign firms in the sale of aviation products or services in the United States. In addition, domestic firms would not incur a competitive trade advantage or disadvantage in the sale of United States aviation products or services in foreign countries.

Federalism Implications

This proposed regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

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Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not major under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Parts 71 and 91

Aircraft, Airport radar service areas, Air traffic control, Automatic altitude reporting equipment, Aviation safety, Mode C veil, Terminal control areas, Transponder.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend parts 71 and 91 of the Federal Aviation Regulations (14 CFR parts 71 and 91) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.401(b) [Amended]

2. § 71.401(b) is amended by revising the Houston, TX, description to read as follows:

Houston, TX [Revised]

Primary Airports

Houston Intercontinental Airport (lat. 29°58'49"N., long. 95°20'22"W.)
William P. Hobby Airport (lat. 29°38'43"N., long. 95°16'43"W.)
Humble VORTAC (IAH) (lat. 29°57'24"N., long 95°20'44"W.)
Hobby VOR/DME (HUB) (lat. 29°39'00"N., long. 95°16'44"W.).

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at lat. 29°49'24"N., long. 95°13'49"W.; to lat. 29°49'30"N., long. 95°27'49"W., thence clockwise along the Humble VORTAC(IAH) 10-mile DME arc to the point of beginning; and that airspace bounded by a line beginning at lat. 29°45'36"N., long. 95°21'57"W.; to lat. 29°45'45"N., long. 95°11'46"W.; thence clockwise along the Hobby VOR/DME (HUB) 8-mile DME arc to lat. 29°31'40"N., long. 95°13'00"W.; to lat. 29°33'30"N., long. 95°13'56"W. (HUB 156°T(150°M)); thence clockwise along the HUB VOR/DME 6-mile arc to lat. 29°33'51"N., long. 95°20'16"W.; to lat. 29°32'07"N., long. 95°21'27"W. (HUB 211°T(205°M)), thence clockwise along the HUB VOR/DME 8-mile arc to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the HUB VOR/DME 15-mile arc (lat. 29°39'09"N., long. 95°33'51"W.), thence counterclockwise along the HUB VOR/DME 15-mile arc to the intersection of HUB VOR/DME 15-mile arc and the IAH VORTAC 15-mile arc, thence counterclockwise along the IAH VORTAC 15-mile arc to the intersection of the IAH VORTAC 15-mile arc and Westheimer Road (lat. 29°44'06"N., long. 95°28'46"W.), thence southwest to and along State Highway 59 to the point of beginning excluding Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the IAH VORTAC 20-mile DME arc (lat. 29°40'21"N., long. 95°32'34"W.), thence clockwise along the IAH VORTAC 20-mile DME arc to the intersection of the IAH VORTAC 20-mile DME arc and Interstate 10 (lat. 29°46'00"N., long. 95°00'37"W.), west on Interstate 10 to the HUB VOR/DME 15-mile arc (lat. 29°47'37"N., long. 95°02'36"W.), thence counterclockwise along the HUB VOR/DME 15-mile arc to the IAH VORTAC 15-mile DME arc (lat. 29°50'23"N., long. 95°05'28"W.), thence counterclockwise along the IAH VORTAC 15-mile DME arc to the intersection of the IAH VORTAC 15-mile DME arc and Westheimer Road (lat. 29°44'06"N., long. 95°28'46"W.), thence southwest to and along State Highway 59 to the point of beginning; and that airspace bounded by a line beginning at lat. 29°25'16"N., long. 95°09'44"W.; to lat. 29°29'50"N., long. 95°12'04"W., thence clockwise along the HUB VOR/DME 10-mile arc to lat. 29°30'24"N., long. 95°22'38"W.; to lat. 29°26'06"N., long. 95°25'34"W., thence counterclockwise along the HUB VOR/DME 15-mile arc to the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the IAH VORTAC 30-mile DME arc (lat. 29°33'34"N., long. 95°41'20"W.), thence clockwise along the IAH VORTAC 30-mile DME arc to Interstate 10 (lat. 29°46'55"N., long. 94°47'35"W.), west along Interstate 10 to the HUB VOR/DME 20-mile arc (lat. 29°48'40"N., long. 94°56'52"W.), thence clockwise along the HUB VOR/DME 20-mile arc to State Highway 59 (lat. 29°34'36"N., long. 95°36'57"W.), thence southwest on State Highway 59 to the point of beginning excluding Areas A, B, and C.

§ 71.501 [Amended]

3. § 71.501 is amended by removing the Houston William P. Hobby, TX, description.

Houston William P. Hobby, TX
[Removed]

PART 91—GENERAL OPERATING AND FLIGHT RULES

4. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; Pub. L. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

5. SFAR No. 62—Suspension of Certain Aircraft Operations from the Transponder with Automatic Pressure Altitude Reporting Capability Requirement [Amended].

SFAR No. 62, Sec. 2., paragraph (10) would be revised as follows:

(10) Airports within a 30-nautical-mile radius of the Houston Intercontinental Airport and the William P. Hobby Airport.

Airport name	Arpt ID	Alt. (AGL)
Ainsworth Airport, Cleveland, TX.	0T6	1,200
Ausinia Ranch Airport, Texas City, TX.	TS50	1,200
Bailes Airport, Angleton, TX	7R9	1,200
Biggin Hill Airport, Hockley, TX	TX49	1,200
Cleveland Municipal Airport, Cleveland, TX.	6R3	1,200
Covey Trails Airport, Fulshear, TX.	80XS	1,200
Cressy Airport, Santa Fe, TX	5TA5	1,200
Custom Aire Service Airport, Angleton, TX.	81D	1,200
Fay Ranch Airport, Cedar Lane, TX.	0T2	1,200
Flying C Ranch Airport, Needville, TX.	XS25	1,200
Freeman Property Airport, Katy, TX.	61T	1,200
Garrett Ranch Airport, Danbury, TX.	77XS	1,200
Gum Island Airport, Dayton, TX	3T6	1,200
H&S Airfield Airport, Damon, TX.	XS21	1,200

Airport name	Arpt ID	Alt. (AGL)
Harbican Airpark Airport, Katy, TX.	9XS9	1,200
Harold Freeman Farm Airport, Katy, TX.	8XS1	1,200
HHI Hitchcock Heliport, Hitchcock, TX.	6TA5	1,200
Hoffpauir Airport, Katy, TX	58T	1,200
Horn-Katy Hawk International Airport, Katy, TX.	57T	1,200
Johnnie Volk Field Airport, Hitchcock, TX.	37R	1,200
King Air Airport, Katy, TX	55T	1,200
Lake Bay Gas Airport, Cleveland, TX.	0T5	1,200
Lake Bonanza Airport, Montgomery, TX.	83TA	1,200
Lane Airpark Airport, Rosenberg, TX.	T54	1,200
Meyer Field Airport, Rosharon, TX.	TA33	1,200
Prairie Aire Field Airport, Damon, TX.	4TA0	1,200
R W J Airpark Airport, Baytown, TX.	54TX	1,200
Westheimer Air Park Airport, Houston, TX.	5TA4	1,200

Issued in Washington, DC, on June 7, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

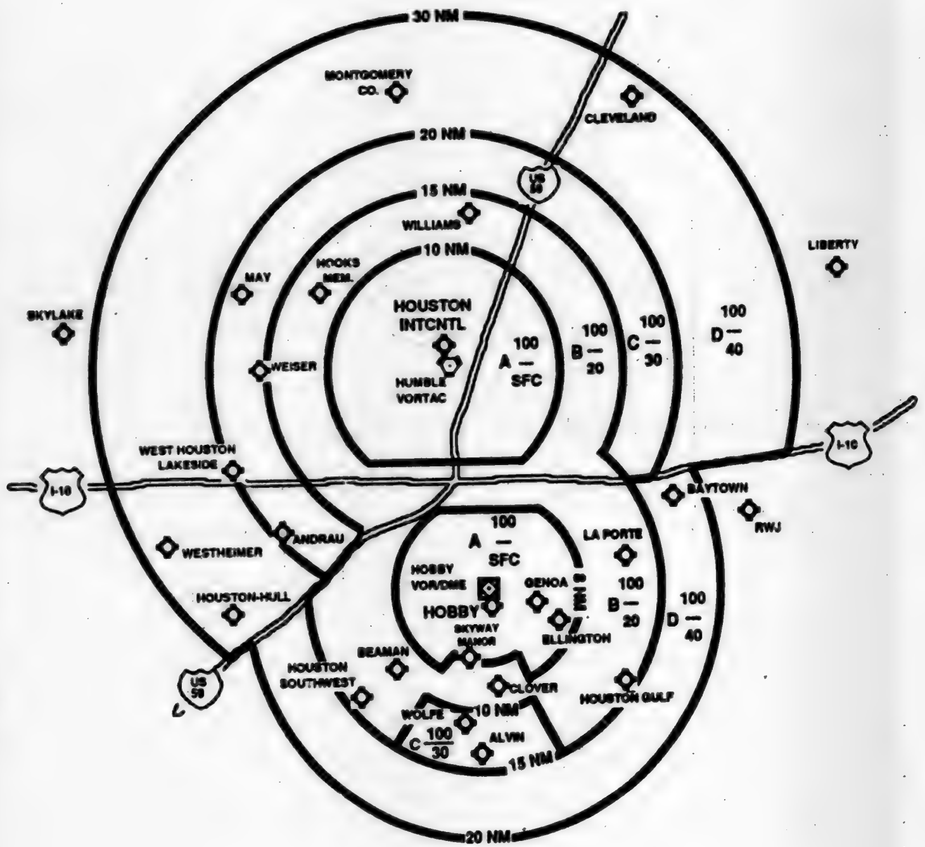
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HOUSTON, TEXAS
TERMINAL CONTROL AREA
HOUSTON INTERCONTINENTAL AIRPORT
FIELD ELEVATION- 98 FEET

HOBBY AIRPORT
FIELD ELEVATION - 47 FEET

(Not to be used for navigation)



Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
(ATP - 220)

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federal register

Friday
June 14, 1991

Part IX

Department of Education

Educational Research Grant Program: Dissemination of Educational Research; Applications for New Awards; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.117L]

Educational Research Grant Program: Dissemination of Educational Research; Applications for New Awards for Fiscal Year (FY) 1991.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program, the regulations for the Educational Research Grant Program (ERGP), and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a cooperative agreement under this competition.

Purpose of Program: The Educational Research Grant Program (ERGP) supports scientific inquiry designed to advance educational theory and practice.

Eligible Applicants: The following are eligible for awards under the Educational Research Grant Programs: (a) Institutions of higher education; (b) Public and private organizations, institutions, and agencies; and (c) Individuals.

Supplementary Information: In 1990 the President and the Governors of the United States agreed upon the following six National Education Goals:

Goal 1—Readiness for School—By the year 2000, all children in America will start school ready to learn.

Goal 2—High School Completion—By the year 2000, the high school graduation rate will increase to at least 90 percent.

Goal 3—Student Achievement and Citizenship—By the year 2000, American students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

Goal 4—Science and Mathematics—By the year 2000, U.S. students will be first in the world in science and mathematics achievement.

Goal 5—Adult Literacy and Lifelong Learning—By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Goal 6—Safe, Disciplined, and Drug-Free Schools—By the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning.

What we have learned from research and effective practice about ways to achieve the National Education Goals can be made available to teachers, parents, and the general public in clear and useful ways without sacrificing accuracy or validity. Making this information available to the more than 2.5 million teachers, to the more than 110,000 principals, to the more than 92,000 school board members, and to the parents of more than 45 million school-aged children is a key first step in moving the country toward achieving the National Education Goals.

Deadline for Transmittal of Applications: August 9, 1991.

Available Funds: $2,000,000.

Estimated Range of Awards: $400,000—$1,000,000.

Estimated Number of Awards: 2 to 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), part 86 (Drug-Free Schools and Campuses); and (b) The regulations for this program in 34 CFR part 700.

Eligible Activity: Under 34 CFR 700.3(a) and (b), the Secretary restricts applications under this competition to those proposing the following activity: Dissemination of educational research. Only applications proposing to conduct this activity will be considered under this competition.

Invitational Priority: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in supporting projects that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

The Secretary particularly invites applications for projects that would develop innovative, high-quality videotapes and supplementary materials, including users' guides, that disseminate information about strategies that will move the country toward achieving each of the National Education Goals.

The Secretary encourages the development of videotapes that are directed toward teachers, parents, and the general public. The content of the videotapes and supplementary materials must be based upon appropriate research findings and effective practices.

The Secretary is particularly interested in projects that include mechanisms for review to ensure that the information provided in the products and supplementary materials is useful to the intended audiences and based on valid research and effective practice. This quality control and review process should permit evaluation of the product by the Department at a number of stages in the development and production process.

In addition to supporting the production of videotapes and supplementary materials, the Secretary anticipates supporting grantee dissemination of some of the videotapes funded under this competition. The Secretary intends to disseminate some videotapes directly. Therefore, the Secretary is particularly interested in projects that include innovative dissemination plans.

Special Concerns Related to the Production of Audio-Visual Materials: The production of audio-visual materials under a cooperative agreement raises certain issues related to copyright, rights and releases from talent and other contributors, commercialization, and close-captioning. The Secretary retains complete discretion to establish the terms and conditions of the cooperative agreement in these areas, but provides for the guidance of applicants the following discussion of how the Secretary intends to handle these issues.

Copyright: The Department is concerned that materials produced under the cooperative agreement receive the widest possible distribution. The Department foresees permitting two copyright options calculated to promote broad distribution of the materials by the grantee directly or by others at the discretion of the Department.

To facilitate a broad distribution of materials produced under the cooperative agreement, the Department foresees permitting the grantee to copyright the materials and assigning, by acceptance of funding under the cooperative agreement, copyright to the Department for a term of ten years in all copyrightable materials produced by the grantee under the cooperative agreement. Such assignment to the Department, inasmuch as it would be based upon the grantee's acceptance of the terms and conditions of the cooperative agreement, would be automatic and would require no further documentation by the grantee.

Alternatively, the Department foresees permitting the grantee to copyright the materials and provide to the Department (by no later than the end of the project period) a license for a term of ten years in all copyrightable material produced under the cooperative agreement. The license would be coterminous in every respect with the grantee's copyright sufficient to permit the Department, among other things, to distribute, reproduce, exhibit, or otherwise use, and allow others to so use, the materials produced under the cooperative agreement in furtherance of the dissemination objectives of this competition. The Department expects that materials developed under the cooperative agreement would be first produced under the agreement. If the materials contain other copyrighted materials, the Department expects that the grantee would secure releases, licenses or permission to permit non-infringing use of such materials by the Government or others at any time in the future, and provide the Department with evidence of those releases by no later than the end of the project period.

Under either alternative described above, the grantee could claim initial copyright in materials produced under the cooperative agreement.

Rights and Releases: The Department is also concerned about obtaining from the grantee, as necessary, such releases from talent and other contributors to the materials developed under the cooperative agreement as shall be necessary to permit authorized and non-infringing worldwide performance and exhibition rights without payment of further compensation to any party. It is anticipated that the grantee would provide satisfactory evidence of such rights and releases to the Department by no later than the end of the cooperative agreement period.

These rights and releases should at a minimum include releases from all persons recognizably photographed, recorded or otherwise depicted in audio-visual materials produced in the cooperative agreement, including, if necessary, releases from parents or guardians of minor children; worldwide music and exhibition rights; and the right to translate performers' dialogue into foreign languages and other means of communication.

Commercialization: The Department is further concerned that audio-visual materials produced under the cooperative agreement refrain from commercialization through the implied or actual endorsement of products or services that are photographed or otherwise portrayed in such a way as to be identifiable by the viewer.

Close-captioning: The Department expects that videotapes produced under this competition be close-captioned for the hearing impaired.

Selection Criteria: (a)(1) In evaluating applications for new cooperative agreements under this competition, the Secretary uses the selection criteria in 34 CFR 700.22, which are listed in paragraph (b) of this section.

(2) The program regulations in 34 CFR 700.20(b)(2) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 25 points distributed in accordance with 34 CFR 700.20(b)(4).

(3) For this competition the Secretary distributes the 25 points as follows:

(i) Significance (34 CFR 700.22(f)). Ten points are added to this criterion for a total of 25 points.

(ii) Commitment and capacity (34 CFR 700.22(h)). Fifteen points are added to this criterion for a total of 15 points.

(4) The maximum score for each criterion is indicated in parentheses.

(b)(1) *Plan of operation* (10 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(ii) The quality of the applicant's plans to use its resources and personnel to achieve each objective of the project; and

(iii) The extent to which the applicant will equitably address the educational needs of students and educators in both public and private educational institutions.

(2) *Quality of key personnel* (20 points).

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the principal investigator;

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(2)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(2)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(3) *Budget and cost-effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives, design, and potential significance of the project.

(4) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(6) *Significance* (25 points).

(i) The Secretary reviews each application to determine the significance of the proposed project.

(ii) The Secretary determines the project's potential to make a significant contribution to American education, as measured by factors such as—

(A) Importance of the proposed project from the standpoint of basic knowledge or of problems in American education;

(B) The likely magnitude of the addition that will be made to knowledge or educational practices if the project is successful, including the extent to which the proposed outcomes can be broadly applied;

(C) The extent to which the project involves creative or innovative approaches that complement or are alternatives to existing approaches to the project's problem area; and

(D) The extent to which the project is designed to yield products and outcomes that can be disseminated and utilized in other settings, such as information, materials, processes, or techniques.

(7) *Technical soundness* (15 points).

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(ii) The Secretary reviews each application to determine the technical soundness of the proposed activities.

(iii) The Secretary determines—

(A) The adequacy of the project's design, methodology, instrumentation, and data analysis plan, as applicable;

(B) The extent to which the application exhibits a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activity; and

(C) The extent to which, where appropriate, the perspectives of a variety of disciplines are used.

(8) *Applicant's commitment and capacity* (15 points). The Secretary determines the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.117–L), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.117–L), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For further information contact: Dr. Robert Stonehill, U.S. Department of Education, 555 New Jersey Avenue, NW., room 610 Capitol Place, Washington, DC 20208–5646. Telephone: 202–219–2089. FAX: 202–219–1817. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 703–9360) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e.

Dated: June 12, 1991.

Bruno V. Manno,

Acting Assistant Secretary, Educational Research and Improvement.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED | Applicant Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

3. DATE RECEIVED BY STATE | State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier

5. APPLICANT INFORMATION

Legal Name | Organizational Unit

Address (give city, county, state, and zip code) | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 1 7L
TITLE: Educational Research Grant Program: Dissemination of Educational Research

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative | b. Title | c. Telephone number

d. Signature of Authorized Representative | e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

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INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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Part III—Application Narrative

A. *Application Instructions for new awards:*

1. Information on who is eligible to apply for a cooperative grant award can be found in section 700.2 of the Final Regulations for the program.

2. In order to be considered for funding you must submit an *original* and two copies (and *in order to expedite the review and award process, it is strongly suggested that you voluntarily submit three additional copies*).

B. *Instructions for proposal narrative:*

1. Research Priorities

Applicants are invited to address the priority published in the **Federal Register** Notice Inviting Applications contained in this application package.

2. Proposal Narrative

a. Applicants must provide a proposal narrative not to exceed 80–100 double spaced typed pages (normal sized type, no smaller than 10 point pica). The narrative must address each of the following criteria contained in 34 CFR 700.22:

(1) Plan of operation
(2) Quality of key personnel
(3) Budget and cost-effectiveness
(4) Evaluation plan
(5) Adequacy of resources
(6) Significance
(7) Technical soundness

Under the discussion of technical soundness, applicants should describe in detail and justify the procedures that will be used to carry out the proposed work.

b. Applicants are encouraged to provide a summary of the program project (not to exceed 500 words).

3. Budget Information

Applicants must provide a detailed budget for each project and activity to support the request in the budget information form (SF 424A). The cost categories for the detailed budget for each project must be consistent with the cost categories in the summary budget information form. (Instructions are included.)

Provide (at line 21 and attached sheets) a breakdown detailing individual units or activities and amount for each "object class category." For example, for "personnel," show salaries and wages for each staff member by position or name; for "contractual," show consultants, sub-contractual services, materials.

4. Technical Assistance

Any questions regarding a competition should be addressed to the contact person named in the notice inviting applications contained in this package.

5. Reporting Requirements

Each applicant should consider reporting requirements in developing the plan of operation. Performance of financial reports are required at the completion of each project period. Additional guidance will be given prior to the time that the cooperative agreement is awarded.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 27 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850–0651, Washington, DC 20503.

(Information collection approved under OMB control number 1850–0651. Expiration date: November 30, 1993.)

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	**DATE SUBMITTED**

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

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Part X

The President

Proclamation 6305—Pediatric AIDS Awareness Week, 1991

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Presidential Documents

Title 3—

The President

Proclamation 6305 of June 12, 1991

Pediatric AIDS Awareness Week, 1991

By the President of the United States of America

A Proclamation

Acquired Immune Deficiency Syndrome (AIDS) is always tragic, but especially so among children. According to the U.S. Department of Health and Human Services, 2,800 cases of pediatric AIDS have been reported in this country since 1982. That figure is expected to rise to between 6,000 and 20,000 in the next few years. AIDS is already the ninth leading cause of death among children between the ages of one and four, and it is expected that, during the 1990s, the disease will become an even more significant cause of death among children.

Women who are infected with the human immuno-deficiency (HIV) virus can transmit the virus to their infants during pregnancy or at birth. Currently, about 84 percent of the AIDS cases in children result from perinatal transmission. The outlook for HIV-infected babies is grim. Almost half of these children develop AIDS in their first year, and nearly 70 percent develop AIDS by the end of their second year. The median survival time from diagnosis is 38 months, and it is only 6 months for babies who are diagnosed with AIDS in their first year of life. Moreover, a disproportionate number of HIV-infected mothers are black or Hispanic, poor, or residents of the inner city; many of them will not survive to care for their babies.

As part of their overall fight against AIDS, researchers at the National Institutes of Health are studying ways to prevent transmission of the HIV virus from mother to infant. They are also investigating ways to diagnose the infection in babies at the earliest possible moment. The Federal Government and many private organizations throughout the United States are also working diligently to educate the public about AIDS and to discourage the behaviors that can put parents and their children at risk.

To enhance public awareness of pediatric AIDS, the Congress, by House Joint Resolution 91, has designated the week of June 10 through June 16, 1991, as "Pediatric AIDS Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate the week of June 10 through June 16, 1991, as Pediatric AIDS Awareness Week. I call upon health organizations, the communications media, and the people of the United States to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-14433
Filed 6-13-91; 10:57 am]
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Reader Aids

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CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

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H.R. 831/Pub. L. 102–53

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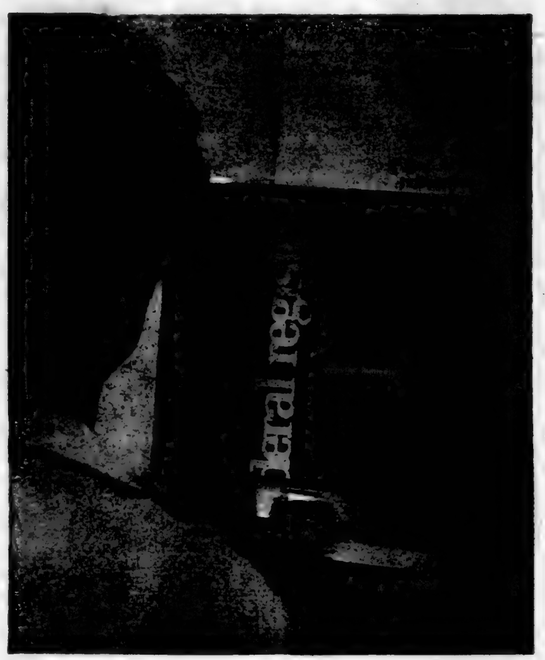
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-274-AD; Amdt. 39-7042; AD 91-13-11]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires the installation of protective sleeves on wire breakouts and oxygen lines in the upper deck left sidewall. This condition, if not corrected, could result in chafing of wires, which could arc and possibly burn through an adjacent oxygen line; this could create a fire hazard should the oxygen line be pressurized. This action adds additional airplanes to the applicability of the rule. This amendment is prompted by a report that several additional airplanes may be affected by the same unsafe condition that prompted the existing AD.

EFFECTIVE DATE: July 22, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2672. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-21-07, Amendment 39-6343 (54 FR 40635, October 3, 1989), applicable to certain Boeing Model 747 series airplanes, to require the installation of protective sleeves on wire breakouts and oxygen lines in the upper deck left sidewall, was published in the Federal Register on January 28, 1991 (56 FR 3052).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two comments were received. Both commenters supported the amendment.

One of the commenters noted that the amendment will affect two U.S.-registered airplanes. The preamble to the Notice indicated that no additional U.S.-registered airplanes would be affected. The FAA concurs and has revised the economic analysis paragraph, below, to reflect this.

The economic analysis paragraph has also been revised to increase the specified hourly rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

Paragraph C. of the final rule has been revised to specify current procedure for submitting requests for approval of alternative methods of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 127 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 5 airplanes of U.S. registry, including the additional 2 airplanes addressed in this action, will be affected by this AD. It is estimated that approximately 6 manhours per airplane will be needed to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,650; the total cost impact of this action, relative to the 2 U.S.-registered airplanes added to the applicability of the rule, is estimated to be $660.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1422; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6343 and by adding the following new airworthiness directive:

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91-13-11. Boeing: Amendment 39-7042. Docket No. 90-NM-274-AD. Supersedes AD 89-21-07.

Applicability: Model 767 series airplanes, listed in Boeing Service Bulletin 747-35-2059, Revision 2, dated March 22, 1990, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent chafing of wire bundles, subsequent arcing and burn-through of adjacent oxygen lines, and a resulting potential fire hazard, accomplish the following:

A. For airplanes listed in Boeing Service Bulletin 747-35-2059, dated August 17, 1989: Within 60 days after October 16, 1989 (the effective date of Amendment 39-6343, AD 89-21-07), install protective sleeves on wire breakouts and oxygen lines in the upper deck left sidewall in accordance with Boeing Service Bulletin 747-35-2059, dated August 11, 1989; Revision 1, dated November 22, 1989; or Revision 2, dated March 22, 1990.

B. For airplanes listed in Boeing Service Bulletin 747-35-2059, Revision 2, dated March 22, 1990, that are not subject to paragraph A. of this AD: Within 60 days after the effective date of this amendment, install protective sleeves on wire breakouts and oxygen lines in the upper deck left sidewall in accordance with Boeing Service Bulletin 747-35-2059, Revision 2, dated March 22, 1990.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6343, AD 89-21-07.

This amendment (39-7042, AD 91-13-11) becomes effective July 22, 1991.

Issued in Renton, Washington, on June 5, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14302 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-32-AD; Amdt. 39-7039; AD 91-13-08]

Airworthiness Directives; Israel Aircraft Industries (IAI) Models 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Israel Aircraft Industries (IAI) Models 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, which requires the removal of a towing instruction placard and the installation of a new placard. This amendment is prompted by a report of a nose gear-up landing due to landing gear actuating system damage that jammed the nose gear in the retracted position. This condition, if not corrected, could result in the inability to extend the nose landing gear for landing.

EFFECTIVE DATE: July 22, 1991.

ADDRESSES: The applicable service information may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Israel Aircraft Industries (IAI) Models 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, which requires the removal of a towing instruction placard and the installation of a new placard, was published in the Federal Register on March 14, 1991 (56 FR 10840).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $80 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest required the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 316 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 manhour per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The estimated cost for required placards is $7 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,902.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this acting (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-13-08. Israel Aircraft Industries (IAI): Amendment 39-7039. Docket No. 91-NM-32-AD.

Applicability: Models 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, certificated in any category.

Compliance: Required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent the inability to extend the nose landing gear for landing, accomplish the following:

A. Remove the existing towing instruction placard and install a new placard in accordance with the applicable service bulletin, as follows:

Airplane models	Service bulletin
1121, 1121A, 1121B.	1121-11-015, dated November 28, 1990.
1123	1123-11-031, dated November 26, 1990.
1124 and 1124A	1124-11-103, dated November 26, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7039, AD 91-13-08) becomes effective July 22, 1991.

Issued in Renton, Washington, on June 4, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14301 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26585; Amdt. No. 1454]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these

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SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC, on June 7, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective July 25, 1991

Fort Payne, AL—Isbell Field, NDB-A, Orig.
Huntsville, AR—Huntsville-Madison County Regional, VOR/DME RWY 12, Orig.
San Francisco, CA—San Francisco Intl, ILS RWY 28L, Amdt. 19
Gunnison, CO—Gunnison County, LOC RWY 6, Amdt. 1, Cancelled
Gunnison, CO—Gunnison County, ILS RWY 6, Amdt. 3
Atlanta, GA—DeKalb-Peachtree, RADAR-1, Amdt. 2
Augusta, GA—Daniel Field, RADAR-1, Amdt. 5
Cartersville, GA—Cartersville, NDB RWY 19, Amdt. 2
Valdosta, GA—Valdosta Regional, ILS RWY 35, Amdt. 5
Valdosta, GA—Valdosta Regional, RADAR-1, Orig.
Idaho Falls, ID—Fanning Field, ILS RWY 20, Amdt. 9
Elkhart, IN—Elkhart Muni, SDF RWY 27R, Amdt. 6, Cancelled
Flemingsburg, KY—Fleming-Mason, VOR/DME-A, Amdt. 4
Okolona, MS—Okolona Muni-Richard Stoval Field, VOR/DME RWY 18, Amdt. 5
Picayune, MS—Picayune Pearl River County, VOR-A, Amdt. 11
Las Vegas, NV—MC Carran Intl, VOR RWY 25L/R, Orig.
Las Vegas, NV—MC Carran Intl, ILS RWY 25R, Amdt. 15
Binghamton, NY—Edwin A. Link Field/Broome County, ILS RWY 34, Orig, Cancelled
Binghamton, NY—Edwin A. Link Field/Broome County, ILS RWY 16, Amdt. 5
Binghamton, NY—Edwin A. Link Field/Broome County, ILS RWY 34, Orig.
Mocksville, NC—Twin Lakes, NDB RWY 9, Amdt. 5
Beaufort, SC—Beaufort County, RADAR-1, Amdt. 2
Chester, SC—Chester Muni, VOR/DME-A, Amdt. 1
Dillon, SC—Dillon County, VOR/DME RWY 7, Amdt. 5
Dillon, SC—Dillon County, NDB RWY 7 Amdt. 5
Plano, TX—Dallas North, VOR-A, Amdt. 1, Cancelled
Renton, WA—Renton Muni, NDB RWY 15, Amdt. 2

Effective June 4, 1991

MC Gregor, TX—MC Gregor Muni, VOR RWY 17, Amdt. 6
San Marcos, TX—San Marcos Muni, VOR/DME-A Amdt. 4
San Marcos, TX—San Marcos Muni, NDB RWY 12 Amdt. 3
San Marcos, TX—San Marcos Muni, ILS RWY 12 Amdt. 4

Effective June 3, 1991

Lakeland, FL—Lakeland Regional, VOR RWY 27, Amdt. 5
Sarasota (Bradenton), FL—Sarasota-Bradenton, VOR RWY 32, Amdt. 8
Hyannis, MA—Barnstable Muni-Boardman/Polando Field, ILS RWY 15, Amdt. 1

Effective May 31, 1991

Chico, CA—Chico Muni, VOR/DME RWY 13L, Amdt. 6
Chico, CA—Chico Muni, VOR RWY 31R, Amdt. 8
Chico, CA—Chico Muni, NDV RWY 13L, Amdt. 4
Chico, CA—Chico Muni, ILS RWY 13L, Amdt. 7
Orland, CA—Haigh Field, VOR-A, Amdt. 5

Effective May 30, 1991

Elkhart, IN—Elkhart Muni, VOR RWY 9, Amdt. 5
Elkhart, IN—Elkhart Muni, VOR RWY 27, Amdt. 12

Effective May 23, 1991

Little Rock, AR—Adams Field, NDB RWY 4L, Amdt. 17
Little Rock, AR—Adams Field, NDB RWY 22R, Amdt. 5
Little Rock, AR—Adams Field, ILS RWY 4L, Amdt. 23
Little Rock, AR—Adams Field, ILS RWY 22R, Amdt. 7
Little Rock, AR—Adams Field, RADAR-1, Amdt. 14
Little Rock, AR—Adams Field, RNAV RWY 22R, Amdt. 9
Little Rock, AR—Adams Field, RNAV RWY 36, Amdt. 9

[FR Doc. 91-14303 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-91-1466; FR-2713-F-02]

RIN 2502-AE94

Mutual Mortgage Insurance and Rehabilitation Loans—Waiver of Seven Unit Rule for Certain Rehabilitation Loans

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule removes the "seven-unit" requirement of 24 CFR 203.42, in certain circumstances. Generally, under § 203.42 a property cannot be insured under the Single Family Mortgage Insurance program if a mortgagor has a financial interest in more than seven other units in projects, subdivisions or other rental properties close in proximity. This amendment exempts mortgagors of single-family properties insured under the section 203(k) rehabilitation loan program in

circumstances where State or local governments have targeted a specific area or neighborhood for redevelopment and have committed "substantial" efforts to this end. The purpose of this rule is to encourage and facilitate rehabilitation activity in the targeted areas.

EFFECTIVE DATE: July 17, 1991.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director Single Family Development Office of Single Family Housing, Development of Housing and Urban Development, room 9272, 451 Seventh Street, SW. Washington, DC 20410-0500, (202) 708-2700. Hearing- or speech-impaired individuals may call the Office of Housing's TDD number (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2502-0453.

Background

In enacting the National Housing Act (the Act), Congress provided the Department with the authority to insure, and make commitments to insure, rehabilitation loans made by financial institutions. In section 203(k) of the Act (12 U.S.C. 1709(k)), Congress defined "rehabilitation loans" as those made for the purpose of rehabilitating existing one- to four-family structures used primarily for residential purposes. The Department promulgated 24 CFR 203.50, which made rehabilitation loans eligible for insurance under the Single Family Mortgage Insurance program.

To prevent misuse of this program by leaders who may want to circumvent the requirements of the Multifamily Mortgage Insurance program, and to preclude insurance of a concentration of rental units for one investor, § 203.42 was promulgated. Section 203.42 had the effect of severely limiting the use of the section 203(k) insurance program because it limited mortgage insurance coverage to no more than seven units per mortgagor in a particular geographic area. (This limitation is commonly referred to as the "seven unit rule.") Since its inception ten years ago, only 7,000 mortgages have been insured under section 203(k).

The seven unit rule, as applied to rehabilitation loans, can limit expansion of affordable housing and home ownership opportunities. This runs counter to the Department's objective of increasing such opportunities. For this reason, the Department determined that changes were required to the rule. Several lenders and developers agreed that a successful rehabilitation program must include all, or nearly all, the vacant and deteriorated properties in a neighborhood. Since such an approach may include developers who have an interest in more than seven units, little is gained by applying the limitation of § 203.42 to rehabilitation loans.

Proposed Rule

On March 4, 1991 (56 FR 8941), the Department published, for public comment, a proposed rule that would permit increased use of section 203(k). The Department proposed to achieve this objective by expressingly exempting rehabilitation loans from the seven unit rule, provided that the loans are to be used for the rehabilitation of property located in a specific area or neighborhood targeted by a State or local government for redevelopment, in accordance with a specific program that involves substantial public or private commitments in support of the neighborhood redevelopment. Accordingly, the Department proposed to amend 24 CFR 203.42 to require a State or local government to submit a plan to the Department describing the program of neighborhood redevelopment, before the Department exempts a section 203(k) rehabilitation loan from the seven unit rule. The Department also proposed to revise and update the language of § 203.42.

By the end of the comment period on May 3, 1991, the Department had not received any comments on the March 4, 1991 proposed rule. The Department is adopting the proposed amendments to 24 CFR 203.42 without change.

Other Matters

Impact on Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is limited to exempting certain rehabilitation loans from the multifamily mortgage insurance program requirements. Any entity, regardless of size, may benefit from this exemption.

Regulatory Agenda

This rule was listed as sequence number 1292 in the Department's Semiannual Agenda published on April 22, 1991 (56 FR 17360, 17386) under Executive Order 12291 and the Regulatory Flexibility Act.

Environmental Review

At the time of publication of the proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without change. Accordingly, the initial Finding of No Significant Impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have Federalism implications and, thus, are not subject to review under the Order. This rule is limited to exempting certain rehabilitation loans from the multifamily mortgage insurance program requirements. No programmatic or policy changes result from promulgation of this rule which would affect existing relationships between Federal, State or local governments.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. No significant change in existing HUD policies or

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programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

(The Catalog of Federal Domestic Assistance Program Number is 14.108, Rehabilitation Mortgage Insurance)

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians: lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR part 203 is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for part 203 continues to read as follows:

Authority: Secs. 203, 211 of the National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.42 is revised to read as follows:

§ 203.42 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor shall not be eligible for insurance if the property is a part of, or adjacent or contiguous to, a project, subdivision or group of similar rental properties in which the mortgagor has a financial interest in eight or more dwelling units.

(b) Paragraph (a) of this section shall not apply where:

(1) A mortgage qualifies as a rehabilitation loan under § 203.50 of this part;

(2) The mortgage is to be used for the rehabilitation of property located in a specific area or neighborhood that has been targeted by a State or local government for redevelopment, in accordance with a specific program that involves substantial public or private commitments in support of neighborhood improvement or redevelopment; and

(3) The State or local government has approved, and has submitted to the Commissioner a plan describing the program of neighborhood redevelopment and revitalization, including the geographic area targeted for redevelopment, and the nature and proportion of public or private commitments that have been made in support of the redevelopment program.

(c) No two-, three-, or four-family dwelling, and no single-family dwelling, if it is part of a group of five or more single-family dwellings held by the same mortgagor, or any part or unit thereof, shall be rented or offered for rent for transient or hotel purposes, as defined in § 203.16, so long as the dwelling is subject to any insured mortgage.

Dated: June 10, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91-14326 Filed 6-14-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-91-41]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule—Revocation.

SUMMARY: This amendment revokes the regulations for the Dodge Island drawbridges, mile 1089.4, because a high-level fixed bridge has been completed for vehicular use at this same location. Notice and public procedures have been omitted for this action due to the alternative access available.

EFFECTIVE DATES: This rule becomes effective on June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Brodie Rich, (305) 536-4103.

Drafting Information: The drafters of this rule are Mr. Brodie E. Rich, project officer, and Lt. Genelle Tanos, project attorney.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are no longer needed to accommodate the needs of vehicular traffic. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary.

Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.261 [Amended]

2. In § 117.261 paragraph (pp) is removed and reserved.

Dated: May 29, 1991.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 91-14190 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6862

[NV-930-01-4214-10; Nev-061742]

Public Land Order No. 6849, Correction; Mineral Withdrawal of a Portion of the Sheldon National Wildlife Refuge, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct three errors in the land description in Public Land Order No. 6849.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-785-6526.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The legal description in Public Land Order No. 6849, 56 FR 16279-16280, April 22, 1991, is hereby corrected as follows:

1. Page 16279, first column, line 18 from the bottom, "R. 23 E.," should read "R. 23½ E.,".

2. Page 16279, first column, line 13 from the bottom, "R. 23 E.," should read "R. 23½ E.,".

3. Page 16279, second column, line 19 from the bottom, "ENW¼," should read "E½NW¼,".

Dated: June 6, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-14312 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Land Management

43 CFR Public Land Order 6863

[CO-932-4214-10; COC-28566]

Withdrawal and Jurisdictional Transfer of Public Land for the Leadville Fish Hatchery; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 79.74 acres of public land from surface entry and mining for 40 years and transfers administrative jurisdiction to the Fish and Wildlife Service for use in conjunction with the Leadville Fish Hatchery. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Doris Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws (30 U.S.C. ch. 2), and is transferred to the Fish and Wildlife Service for management as a part of the Leadville Fish Hatchery:

Sixth Principal Meridian

T. 9 S., R. 81 W.,
Sec. 36, lots 17, 18, 21, 22, and 24.

The area described contains approximately 79.74 acres of public land in Lake County.

2. Effective on date of publication of this order, the above-described land will be subject to the provisions of the National Wildlife Refuge System Administrative Act, 16 U.S.C. 668dd, as part of the Leadville Fish Hatchery.

3. This withdrawal will expire 40 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Mangement Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: June 5, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-14315 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-JB-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-437; RM-7284]

Radio Broadcasting Services; Marion and Orrville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 248A from Marion to Orrville, Alabama, substitutes Channel 247A for Channel 248A at Orrville, and modifies the construction permit of Marion Radio, Inc. for Station WJAM-FM, as requested, to specify operation on Channel 247A, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. The allotment of Channel 247A to Orrville will provide the community with its first local aural transmission service without depriving Marion of local aural service. See 55 FR 41705, October 15, 1990. Coordinates used for Channel 247A at Orrville are 32-18-00 and 87-09-30. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-437, adopted May 31, 1991, and released June 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 248A at Marion and adding Channel 247A, Orrville.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14305 Filed 6-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-597; RM-7118 and RM-7321]

Radio Broadcasting Services; Wiggins and D'Iberville, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 250C2 for Channel 250A at Wiggins, Mississippi, and modifies the construction permit for Station WOTC, Channel 250A, to specify operation on the higher class channel in response to a petition filed by John F. White. See 55 FR 326, January 4, 1990. The coordinates for Channel 250C2 at Wiggins are 30-40-23 and 89-09-48. John F. White filed a counterproposal (RM-7321) (Public Notice given March 19, 1990, Report No. 1811) requesting the reallotment of Channel 250C2 from Wiggins to D'Iberville, Mississippi. A Request for Supplemental Information has been issued affording petitioner an opportunity to submit information with regard to this proposal.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, MM Docket No. 89-597, adopted May 30, 1991, and released June 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased

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from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 250A and adding Channel 250C2 at Wiggins.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14366 Filed 6–14–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–571; RM–7532]

Radio Broadcasting Services; Benton, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Stonewood Communications Corporation, allots Channel 226A to Benton, Tennessee. See 54 FR 52423, December 21, 1989. Channel 226A can be allotted to Benton, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13 kilometers (8.1 miles) south to avoid a short-spacing to Station WWZZ(FM), Channel 226A, Karns, Tennessee. The coordinates for Channel 226A at Benton are North Latitude 35–04–00 and West Longitude 84–43–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 29, 1991. The window period for filing applications will open on July 30, 1991, and close on August 29, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–571, adopted May 31, 1991, and released June 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Channel 226A, Benton.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14367 Filed 6–14–91; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 56, No. 116
Monday, June 17, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Minimum 60 Day Written Notice Period for Reduction in Force Actions

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to issue regulations that will require agencies to give employees at least 60 days written notice prior to a reduction in force when 50 or more employees are to receive separation notices in the same competitive area. The 60-day requirement would not apply in situations caused by an immediate shortage of funds or other unforeseeable circumstances, or when fewer than 50 employees are being separated. An agency may meet the 60-day reduction in force notice requirement either by issuing a general notice which is followed by a specific notice, or by issuing a 60-day specific notice. At present, agencies are required to give employees at least 30 days advance written notice prior to a reduction in force action.

The new regulations will also permit agencies to issue reduction in force notices to employees more than 90 days prior to the reduction in force by simply notifying OPM. Under the present regulations, agencies may not issue reduction in force notices to employees more than 90 days prior to a reduction in force action without the prior approval of OPM.

Finally, the new regulations clarify that agencies must provide specific placement and unemployment insurance information to employees who have received specific notices of separation by reduction in force. The new regulations add a requirement that when 50 or more employees receive notices of separation by reduction in force at a worksite, the agency must, at the same time it issues notices to employees, also notify (1) the employees' bargaining unit representative if the employee is covered by a collective bargaining agreement, (2) the appropriate State dislocated worker unit, as designated under title III of the Job Training Partnership Act, and (3) the chief elected official of the local governmental jurisdiction(s) where the separations will take place.

DATES: Written comments will be considered if received no later than August 16, 1991.

ADDRESSES: Send or deliver written comments to: Associate Director, Career Entry Group, room 6F08, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Edward P. McHugh or Thomas A. Glennon (202) 606–0960.

SUPPLEMENTARY INFORMATION: 5 CFR 351.801(a) presently provides that an agency is required to give an employee at least 30 days written notice of a reduction in force action. The agency may either (1) issue a general reduction in force notice at least 30 days before the reduction in force effective date and follow it with a specific notice at least 10 days before the reduction in force effective date, or (2) issue a specific notice at least 30 days before the reduction in force effective date. 5 CFR 351.801(b) of these proposed regulations changes the minimum 30 day reduction in force notice requirement to 60 days when 50 or more employees in the same competitive area receive separation notices. However, in situations caused by an immediate shortage of funds or other unforeseeable circumstances, the proposed regulations specify that the agency may continue to provide a minimum of 30 days notice.

5 CFR 351.801(b) presently provides that an agency may not issue either a general or specific reduction in force notice more than 90 days prior to the date of the reduction in force action unless OPM approves the longer notice period. Proposed new 5 CFR 351.801(d) provides that the agency must simply notify OPM if it uses a reduction in force notice period of more than 90 days.

5 CFR 351.804 is revised by adding new paragraphs (a) and (b). Paragraph (a) clarifies that agencies must provide information on the Reemployment Priority List and OPM's Displaced Employee Program to each employee who has received a specific notice of separation by reduction in force. Paragraph (a) also notes that agencies should advise these same employees on how to apply for unemployment insurance benefits through their appropriate State government office. Paragraph (b) includes a new requirement that, when an agency issues reduction in force separation notices to 50 or more employees in a competitive area, the agency must, at the same time it issues reduction in force notices to the employees, notify (1) the bargaining unit representative(s) of the affected employees, (2) the State dislocated worker unit, as designated or created under title III of the Job Training Partnership Act, and (3) the chief elected official of the unit of local government(s) within which the separations will take place.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in 5 CFR Part 351

Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

2. Section 351.801 is revised to read as follows:

§ 351.801 Notice period.

(a) Except as provided in paragraph (b) of this section, each competing employee selected for release from a competitive level under this part is entitled to a written notice at least 30 full days before the effective date of release.

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(b) Each competing employee selected for release from a competitive level under this part is entitled to a written notice at least 60 full days before the effective date of release if 50 or more employees in a competitive area receive separation notices. When a reduction in force is caused by an immediate shortage of funds or other unforeseeable circumstances, each competing employee covered by this paragraph is entitled to a written notice at least 30 full days before the effective date of release.

(c) Under paragraphs (a) or (b) of this section, when a general notice is supplemented by a specific notice, an agency may not release an employee from his or her competitive level until at least 10 days after the employee's receipt of the specific notice.

(d) A notice shall not be issued more than 90 days before release unless the agency has notified OPM.

(e) The notice period begins the day after the employee receives the notice.

3. Section 351.804 is revised to read as follows:

§ 351.804. Notification of eligibility for reemployment and other placement assistance.

(a) An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration under subparts B (Reemployment Priority List) and C (Displaced Employee Program) of part 330 of this chapter. The same employee must also be given appropriate information concerning how to apply for unemployment insurance through his or her appropriate State program. This information should be included in or with the specific reduction in force notice. Otherwise, a separate supplemental notice covering this information must be given to the employee.

(b) When more than 50 employees in a competitive area receive separation notices under this part, at the same time that the agency issues specific notices of separation, the agency must also provide notification of this action to:

(1) The representative(s) of the affected employees at the time of the notice, as defined in their applicable collective bargaining agreement;

(2) The State dislocated worker unit, as designated or created under title III of the Job Training Partnership Act; and

(3) The chief elected official of local government(s) within which these separations will occur.

[FR Doc. 91-14282 Filed 6-14-91; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 201, 202, 204, 291, and 302

[Docket No. 47582, Notice No. 91-10]

Procedures and Evidence Rules for Air Carrier Authority Applications

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to revise parts 201, 202, 204, 291, and 302 to consolidate and make more consistent the fitness data requirements and filing procedures for all carriers (certificated, all-cargo, and commuter). This will update requirements to reflect our existing needs as they have evolved over the past few years, provide better guidance for carriers, expedite the processing of fitness applications, and make administrative changes to update organizational references.

DATES: Comments must be received on or before August 16, 1991.

ADDRESSES: Comments should be directed to the Documentary Services Division, Docket 47582, Office of the Secretary, Department of Transportation, 400 Seventh Street SW., room 4107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-9721.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the Documentary Services Division at the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket No. 47582. The postcard will be date/time stamped and returned to the commenter. All communications on or before the specified closing date will be considered by the Assistant Secretary for Policy and International Affairs before taking action on any further rulemaking. Also, this proposal may be changed in light of comments received. All comments submitted will be available for examination in Docket 47582. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

Introduction

Section 401 of the Federal Aviation Act of 1958, as amended, requires that air carriers be found "fit, willing, and able" before being awarded a certificate of public convenience and necessity. Similarly, sections 418 and 419 impose fitness requirements on all-cargo air carriers and commuter air carriers, respectively. Section 401(r) provides that the fitness requirements of the Act are continuing requirements.

The Civil Aeronautics Board (CAB) was originally assigned the responsibility for determining and monitoring air carrier fitness. This responsibility was transferred to the Department of Transportation on January 1, 1985, following the sunset of the CAB.

The fitness data requirements are currently contained in parts 291 Subpart B-All Cargo Air Service Certificates for domestic all-cargo carriers and Part 204-Data to Support Fitness Determinations for certificated carriers and commuter carriers.

The procedural requirements pertaining to fitness applications are contained in parts 201, 202, and 302. Part 302 Subpart Q-Expedited Procedures for Processing Licensing Cases contains the Department's procedural rules applicable to proceedings on applications for section 401 certificates. Similarly, Part 201-Applications for Certificates of Public Convenience and Necessity contains additional procedural rules. Part 202-Certificates Authorizing Scheduled Route Service: Terms, Conditions, and Limitations states that carriers holding certificates of air carrier authority shall comply with certain terms, conditions, and limitations.

The Proposed Changes

We find several areas where we believe amendments to parts 201, 202, 204, 291, and 302 are advisable. In general, we propose to amend the rules to consolidate the fitness data requirements for all types of authority—passenger and domestic all-cargo certificate and commuter—into one area (part 204) and to make the requirements more uniform for the various types of operations. Simultaneously, we are consolidating the procedural requirements (parts 291, 202, and 302) to remove duplication in different rules and to make them more consistent. In addition, as an administrative matter, we propose to substitute applicable references to the Department for the obsolete CAB references.

Fitness Data Filing Requirements

The primary purpose of revamping part 204 is to make the fitness filing requirements for applicants more uniform and to place them all in one section of our rules. A detailed explanation of the specific changes follows.

Proposed § 204.3

We are proposing to consolidate in a new § 204.3-Applicants for new certificate or commuter air carrier authority the evidentiary requirements to be addressed by applicants for any type of authority for which a fitness determination is required. The new § 204.3 list of evidentiary requirements would replace the four lists contained in § 204.5 (new certificated carriers), § 204.6 (commuter carriers providing essential air service), § 204.7 (nonessential air service commuter carriers), and § 291.11 (domestic all-cargo certificated carriers). The proposed § 204.3 would be based upon § 204.5, with a small number of additions and deletions.

We propose to add a new paragraph (d) to new § 204.3 requiring applicants that are corporations to submit a statement from the agency of their state government that maintains corporation registrations attesting to the corporation's standing with the state. It has been our experience that applicants claiming corporate status occasionally lack such status. For example, in one recent case, we learned that an applicant had lost its corporate status because of its failure to pay taxes due to the state. Such a failure raises concerns not only about the applicant's financial viability and its disposition to comply with the applicable laws and regulations, but also about what entity will actually operate the service and be responsible for liabilities it may incur.

Paragraphs (e)(3) and (f)(2) of § 204.5 (new paragraphs (f)(3) and (g)(2) of § 204.3) would be amended to require information on the total number of shares of an applicant's stock that are issued and outstanding.

When an individual or organization that holds a substantial interest in an applicant is not the beneficial owner of the stock, new paragraph (g)(2) would require a statement of the citizenship of the beneficial owner for whose account the stock is held. Occasionally, an applicant has stated that a significant amount of its stock is held by, or registered in the name of, a securities or brokerage firm. Having information about the ultimate owner(s) would enable the Department to determine with greater certainty whether an applicant is owned and controlled by U.S. citizens.

Sections 204.5(e)(5) and (f)(4) are being amended (new § § 205.3(f)(5) and (g)(4)) to require the key personnel of and holders of a substantial interest in an applicant to disclose any past ownership, directorship or officership positions held with any aviation-related entities. This information is required by the Department in investigating whether an applicant's owners or managers were involved in any compliance matters in a previous aviation relationship.

Paragraphs (i) and (j) of § 204.5 (new paragraphs (j) and (k) of § 204.3) would be revised to require applicant to furnish financial statements that are current to within three months of the date of application, unless the Department determines that, because of unusual circumstances in a particular case, such a requirement would be unreasonable. Applicants subject to 10K and 10Q reporting requirements of the Securities and Exchange Commission would be required to file recent 10Q reports to meet this requirement. The current rule requires applicants to file financial statements or SEC reports only for the last three years, calendar or fiscal; however, in the ensuing months, a company's financial situation could have changed dramatically, making it impossible for us to accurately assess its present financial fitness.

Section 204.5(m) is duplicative of a similar statement in § 204.1 and is being removed.

Paragraphs § 204.5 (o), (p), and (q) presently require an applicant to describe, respectively, all formal complaints lodged within the past five years against it, any relevant corporations, key personnel or owners regarding compliance with the Act or related orders, rules or requirements; all orders issued in the past ten years finding it, any relevant corporations, key personnel or owners guilty of violations of the Act or related orders, rules or requirements; and all actions taken in the past ten years by the FAA under certain specified sections of the Federal Aviation Regulations against it, any relevant corporations, key personnel or owners.

We propose to replace these paragraphs with new § 204.3(o). Under the revised section, applicants would be required to furnish a description of the current status of all pending investigations and enforcement actions undertaken, or formal complaints filed, by the Department, including the FAA, involving the applicant or any relevant corporation, any personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation, regarding compliance with the Act or orders, rules, regulations, or requirements issued pursuant to the Act, and any corrective actions taken.

This revision would make a significant reduction in the evidentiary requirements placed on applicants. The proposed new rule would eliminate the necessity for applicants to search or inquire into the records of a number of persons and business entities as far back as ten years and report all matters regarding compliance with the Act and related regulations. When the current regulations were promulgated in 1980, the Department did not have computerized carrier compliance records available to it. When this capability was added, we found that the material on closed enforcement cases filed by applicants with previous operating histories was often duplicative of the data we had at hand. Therefore, to improve our ability to make a current and complete assessment of an applicant's compliance disposition without burdening it with the necessity of filing duplicative material, we propose to limit the evidentiary requirements in this area to information on the current status of open investigations and formal complaints. However, consideration will be given to the total number and the nature of such actions—both those reported by the applicant and those recorded in the Department's files—and the time period over which they occurred in determining whether additional information will be required from an applicant.

We also propose to add a new paragraph (q) which would require applicants to submit a description of any aircraft accidents or incidents (as defined in the National Transportation Safety Board (NTSB) Regulations (49 CFR 830.2)) experienced by the applicant, its personnel, or any relevant corporation, which occurred either (1) during the year preceding the date of application, or (2) at any time in the past and which remain under investigation by the FAA, the NTSB, or by the company itself. In addition, applicants would be required to describe the status of any pending investigations or enforcement actions against it, its

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employees, or relevant corporations as a result of any accident or incident, as well as actions taken to prevent their recurrence. Historical accident and incident data from both FAA and NTSB records are available to us, thus obviating a need for such information from applicants for earlier events. However, in the case of those few applicants that have a history of accidents or incidents that warrants additional investigation, we may need to require the submission of additional information.

Sections 204.5(s) and 204.6(a)(19), which require statements from state agencies concerning consumer complaints, would be deleted since we have found that information received in response to these rules has had no material decisional value.

Section 204.5(t)(3) (new § 204.3(t)(2)) would also be amended to require all applicants to furnish, in addition to a forecast income statement, an itemization of all pre-operating and start-up costs associated with initiation of the proposed service. Such an itemization should include, at a minimum, those costs related to obtaining government approvals, establishing stations, introductory advertising, aircraft and equipment deposits, office and hangar space deposits or rentals, insurance, training, and salaries earned prior to start-up. These submissions would ensure that an applicant has factored into its funding estimates these often overlooked cost categories and that the cost estimates are reasonable for the proposed operations. The existing § 204.5(t)(3) is limited only to those carriers not currently operating commercial flights. We propose to remove this limitation so that all applicants must submit this information.

New § 204.3(t)(2) would also require forecast income statements to show the data broken down by quarter for the first year of operations. This information would enable us to examine the reasonableness and completeness of the applicant's expense estimates in light of the type and scope of air service proposed, and to ensure that the company has arranged for sufficient financial resources to carry it through the normally difficult early months of new operations.

Finally, we propose adding a new paragraph (v) to § 204.3 which would require all applicants to provide an express certification that the information contained in their application is truthful and accurate. The certification would state:

Pursuant to title 18 United States Code Section 1001, I [the individual signing the application], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. 1001 shall be fined not more than $10,000 or imprisoned not more than five years, or both.

The rule would state that this certification must also be included in all subsequent written submissions filed by the applicant in connection with its application.

It should also be noted that the Department itself may undertake enforcement action against any person who asserts a false material fact or omits from the submission a required material fact, under the Program Fraud and Civil Penalties Act of 1986 (Pub.L. 99-509, 31 U.S.C. 3801-3812). The proposed certification would also encourage applicants to give more careful attention to statements made in their submissions, and perhaps reduce spurious filings.

As noted earlier, applicants for domestic all-cargo certificates under section 418 would be made subject to the fitness requirements of § 204.3. The domestic all-cargo carriers represent a small segment of all carriers holding authority from the Department. Presently, only four carriers hold section 418 certificates as their sole type of authority, and over the past three years, the Department has received only two applications for section 418 authority, one of which was subsequently withdrawn. We have reviewed the existing fitness data requirements for domestic all-cargo applicants contained in § 291.11. The majority of the requirements were the same as those in the existing part 204 requirements for passenger certificate authority. We propose to eliminate the requirements for information on the total number of employees (§ 291.11(b)(2)), description of ground facilities (§ 291.11(b)(6)), cash flow statements (§§ 291.11(b)(7)(iii) and (c)(2)), and payment of cargo losses or damage claims (§ 291.11(c)(4)). These elements are not required in the existing part 204 and we do not believe that they are necessary for every fitness evaluation. Of course, we may find it necessary to require such information on a case-by-case basis when it is pertinent to a specific fitness evaluation.

Two elements currently contained in § 291.11 for section 418 domestic all-cargo carriers would be incorporated in part 204. First, a brief chronological narrative of the applicant's history, currently required under § 291.11(b)(3), would now be required under § 204.3(r). Appropriate subjects to be included would be the applicant's predecessors, owners, date of formation, and the types of service performed.

Second, § 291.11(c)(5), which requires an applicant to provide the status of its application for any additional FAA authority needed to conduct its proposed operations, and to identify the FAA office and person responsible for processing the application, would be revised and incorporated into current § 204.5(u), which concerns any federal, state or foreign authority held by the applicant. (Section 204.5(u) would be redesignated § 204.3(s)). Since we routinely inquire of the appropriate FAA officials regarding applicants' need for and the status of any additional FAA authority, there is no need for the applicant to furnish such information. Therefore, the rule would be changed to require an applicant merely to identify the local FAA office and personnel responsible for processing the application.

As also noted earlier, commuter carriers would be covered by the data requirements of the new § 204.3. Applicants for commuter carrier authority currently must provide the evidence listed in § 204.7, which duplicates all of the requirements of § 204.5 except for the ownership and control information contained in §§ 204.5 (e)(5), (f), and (g), and the estimated cost and traffic data relative to the applicant's proposed service contained in § 204.5(t). Yet, these issues are as relevant to commuter carriers as they are to certificated carriers.

When part 204 was promulgated in 1980, commuter air carriers were, for the most part, small organizations which as a group did not constitute a significant segment of the airline industry. Many commuter airlines today are large organizations which annually transport many thousands of passengers throughout complex market networks, often in code-sharing relationships with major certificated carriers. In 1989, for example, commuter airlines enplaned 16 million passengers in scheduled service, which was 80 percent of the 20 million enplaned over the same period by medium regional certificated air carriers operating scheduled passenger service.[1]

[1] Computed from statistics compiled in U.S. Department of Transportation, Research and Special Programs Administration, Air Carrier

Continued

Also in 1989, the commuter air carrier segment surpassed the medium regional certificated carrier segment 2.89 billion to 2.24 billion in revenue passenger miles flown.[2]

The Department requires information on those who own and control a prospective commuter air carrier for the same reasons it requires such information for certificate applicants—to allow us to ascertain their citizenship, compliance history and financial ability to support the carrier's operations. Similarly, it is not a less important task of the Department to protect the consumers of commuter air service from unacceptable and preventable risks resulting from inadequate financing than it is to protect the customers of certificated carriers. Thus, we must have access to the cost and traffic forecasts of commuter applicants in order to assure that they have an adequate knowledge and understanding of the costs of providing the air transportation proposed.

Proposed § 204.4

The additional evidentiary requirements peculiar to carriers proposing to provide Essential Air Service (EAS), which are now included among the requirements of § 204.6, would be contained in a new § 204.4-Carriers proposing to provide essential air transportation.

Presently, § 204.6 divides carriers proposing to provide EAS into three categories, covered by §§ 204.6 (a), (b) and (c). Since all commuter carriers serving eligible points have now had their fitness determined, paragraph (a) is no longer needed and is being removed. The rule would now have two categories of carriers, those proposing to conduct unsubsidized EAS and those applying to provide subsidized EAS. Both types of applicants would be required to file the evidence presented in new § 204.3.

In addition, as evidence that they are capable of providing air service reliably, carriers applying to provide unsubsidized EAS would continue to be required to submit the data elements currently listed in §§ 204.6(a) (13), (14), (20), (21), (b)(3)(iii), (iv), and (4). We are also adding a requirement that such applicants submit a pro-forma income statement covering the first year of such operations to demonstrate their ability to maintain the service from an economic standpoint.

Carriers proposing to provide subsidized EAS would be required to file the same information required of applicants to provide unsubsidized EAS plus the necessary costing information currently contained in § 204.5(c) to establish the carrier's subsidy requirement. Applicants for subsidized EAS are already providing this information.

Finally, in order to minimize the filing burden on applicants, the introductory paragraph of new § 204.4 continues to advise applicants that, before submitting their evidence, they may contact the Department's staff to ascertain what information is already available to the Department and thus need not be resubmitted.

Proposed §§ 204.5 and 204.6

Section 401(r) of the Act states that all carriers subject to the initial fitness requirement (that is, carriers holding section 401 certificates, section 419 commuter carriers, and section 418 domestic all-cargo carriers) are also subject to the continuing fitness requirement. In practice, we have been monitoring changes in commuter carrier operations and all-cargo operations for some time, and have been undertaking reexamination of such carriers' fitness when appropriate. We are now proposing to amend our rules to reflect these practices. To accomplish this, we propose to redesignate § 204.5 as Certificated and commuter air carriers undergoing or proposing to undergo a substantial change in operations, ownership or management and § 204.6 as Certificated and commuter carriers proposing a change in operations, ownership, or management which is not substantial.

We are also proposing to clarify and give more examples of what constitutes a reportable substantial change based on our experience over the past few years in monitoring carrier fitness.

We note that, initially, carriers need only notify us of impending substantial changes. They may proceed to implement these changes pending our review. After reviewing these circumstances, the Department would then inform the carrier what additional information, if any, must be filed in support of its continuing fitness.

Currently, the term "substantial change" is defined in terms involving operations. In Department orders, we have held that substantial changes in ownership and management and changes from small to large aircraft operations require filings under the section.[3]

Reportable changes fall into three categories: substantial changes in ownership, substantial changes in management, and substantial changes in operations.

A substantial change in ownership would be defined as the acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation.[4] The source of the 10 percent figure is the CAB's traditional holding that ownership of such an amount of voting stock represents at least the potential for significant influence on a carrier's operations. Before it expired on December 31, 1966, section 408(f) of the Act required in the context of merger approvals that any person beneficially owning 10 percent or more of the outstanding voting stock of an air carrier "shall be presumed to be in control of such air carrier unless the Board finds otherwise." Since parties in control of a carrier affect its compliance disposition, we need to be advised of changes in control to determine if further review of this fitness element is necessary.

The Department also has a statutory responsibility to ensure that companies holding air carrier authority from the Department are U.S. citizens. Section 101(16) of the Act contains the definition of U.S. citizenship:

(16) "Citizen of the United States" means (a) an individual who is a citizen of the United States or one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or

Industry Scheduled Service Traffic Statistics Quarterly, Fourth Quarter and Twelve Months Ended December 1989 and 1988. Center for Transportation Information, Cambridge, MA. Medium regional certificated carriers are those holding section 401 authority that earn less than $10 million in annual operating revenue or that operate small aircraft (60 seats or less or 18,000 pounds maximum payload or less). In this respect, small certificated carriers' operations are comparable to those of commuter air carriers.

[2] *Id.*

[3] See, for example, Orders 83-6-88 (Midway (Southwest) Airways Co. Fitness Investigation), 85-2-4 (Continuing Fitness Investigation of Golden West Airlines), 85-6-18 (Application of Trans World Airlines for Continuing Fitness Review), 89-9-60 (Fitness Determination of Air Cape, Inc.), 89-2-46 (Trans Continental Airlines, Inc., Fitness Determination), and 89-8-7 (Application of Mid Pacific Air Corporation).

[4] In complementary revisions, we are also proposing to change the definition of "substantial interest" currently in § 204.2(n) (new § 204.2(o)) to mean "beneficial control of 10 percent or more of the outstanding voting stock." Also, the requirement currently in § 204.5(e)(5) requiring identification of 5 percent or more of any voting stock held by an applicant's key personnel in any other aviation-related entity would be changed to 10 percent or more in new § 204.3(f)(5).

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controlled by persons who are citizens of the United States or of one of its possessions.

The Department and the CAB before it have also interpreted section 101(16) to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Our examination of a carrier's management, which is one of the three major categories of our fitness review, focuses on their qualifications and compliance record, but we must also make a determination that the composition of the management team enables the carrier to continue to meet the definition of U.S. citizenship. Since any significant change in this group of individuals has the potential for affecting the fitness or citizenship of the carrier, we propose that a carrier report to the Department a change in its president, chief executive officer or chief operating officer, and/or a change in at least half of its other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period.

New reportable substantial operational changes would include (1) a petition for protection from creditors under the federal bankruptcy laws or a filing of a plan of reorganization under Chapter 11 of the federal bankruptcy laws, or (2) for a carrier holding a section 401 or a section 418 certificate, a change from operations with small aircraft (those designed to hold 60 seats or less) to, or the addition of, operations with large aircraft.[8] Our initial fitness evaluation is based on the scope of operations proposed and the financial position of the company at the time the application is filed. Any of the circumstances listed above could materially affect the basis for our initial fitness determination. Thus, we would want to be notified of any change of these types so that we could assess whether a fitness reevaluation is warranted.

Information supporting continuing fitness. Once the Department has received a description of the change being proposed by an air carrier, it would determine what, if any, additional information is required in order to establish that the proposed change would not adversely affect the continuing fitness of the carrier. In cases where the carrier's fitness does not appear to be at issue or where the Department already has information sufficient to resolve the issue, the Department would advise the carrier that no additional information is required at that time. In situations where a proposed change appears to effect one or more areas of the carrier's fitness, the Department would instruct it to supply updated fitness information. Thus, a carrier would be relieved of the obligation to file automatically all of the evidence required by the rule to support its continuing fitness.

We are proposing to supplement the data elements (as currently listed in § 204.4) to be addressed when a carrier has undergone a substantial change. We reiterate that a carrier should notify us of the substantial change and, after reviewing the nature of the change, we would notify the carrier which information elements it should file. Furthermore, if the data satisfying any of those information requests have not changed or have been submitted in conjunction with another matter before the Department, the carrier may so indicate, with a reference to the date and place of any filings.

These added data elements are: (1) information on all persons having a substantial interest in the carrier, including name, address, citizenship, number of shares of applicant's voting stock held and percentage of the total issued and outstanding, citizenship and principal business of any person for whose account such interest is held, and interest in any other aviation-related entity; (2) a statement of citizenship for any new holders of a substantial interest who are non-US. citizens; (3) for carriers with corporate forms of organization, a statement from the carrier's state government affirming that the carrier is in good corporate standing with the state; (4) a list of the carrier's subsidiaries, the principal business of each and its relationship to the applicant; [9] (5) a list of the carrier's shares of stock in or control of any aviation-related entity; (6) a list of each action and outstanding judgment for more than $5,000; (7) the number of actions and outstanding judgments of less than $5,000; (8) a description of any aircraft accidents or incidents that occurred during the past year or that are currently under investigation; (9) a forecast income statement and itemization of pre-operating and start-up costs; (10) current financial statements, including footnotes; and (11) a description of its aircraft fleet and plans for acquisition of additional fleet.

Our case work over the past few years has highlighted the importance of obtaining updates of this information in assessing the continuing fitness of carriers. As a result, we find it advisable to put carriers on notice by our rules of the types of information they may be required to submit when undergoing a substantial change in operations.

Proposed § 204.6

We are also proposing to redesignate § 204.5—Certificated carriers proposing a change in operations which is not substantial as § 204.6 and to amend that section to cover commuter and domestic all-cargo carriers as well as certificated carriers under its provisions.

Proposed § 204.7 Pertaining to Dormancy

The dormancy provisions currently governing certificated passenger and commuter carriers and contained in § 204.8 would be redesignated as § 204.7. We are also proposing several administrative changes. First, consistent with our overall approach of making part 204 applicable to all air carriers, we would make domestic all-cargo carriers subject to the dormancy provisions of the new § 204.7 and eliminate the similar, existing dormancy provision that governs domestic all-cargo carriers (§ 291.15). Second, we propose to delete the language currently in § 204.8 which distinguishes between dormant carriers which had been found fit before the effective date of the amended rule (December 8, 1988), as this provision is now moot since more than one year has passed since the amendment was made effective. All dormant carriers, including carriers certificated under sections 401 or 418 and commuter carriers, would be referred to the evidentiary requirements of new § 204.3.

Finally, in order to resolve confusion expressed by some carriers, we are removing the term "automatically" at the end of § 204.6(a). The revocation for dormancy occurs only after the dormant carrier has been given two separate notifications that its authority will be revoked at the end of the one-year dormancy period if it does not commence or resume Operations by that time. Moreover, carriers are also notified that any such revocation will be without prejudice, and they may reapply for authority at any time. A dormant carrier may also request an exemption from the dormancy provisions for good cause.

[8] Commuter air carriers by definition (section 416(b)(4) of the Act, as modified by CAB Rule ER-1183, May 17, 1979) may conduct scheduled passenger operations only with aircraft of 60 seats or less. Therefore, if a commuter air carrier desired to engage in large aircraft operations, it would have to file an application for a certificate and disclose the details of its proposed change in operations.

[9] The classification "subsidiaries" is also being added to the types of entities defined as "relevant corporations" in new § 204.2(m). Information on a carrier's subsidiaries is necessary because of their potential for draining a carrier's funds and affecting its compliance disposition.

Proposed Changes in Procedural Rules

Part 201 contains the procedures to be followed by persons in preparing and filing applications for certificates of public convenience and necessity. We propose to apply these procedural requirements to all fitness applications filed under Part 204 rather than just to section 401 certificate applications. We also propose as an organizational matter to incorporate the existing portion of part 202 dealing with certificate terms, conditions, and limitations into part 201. We propose to retitle part 201 to read: Part 201—Air Carrier Authority under Title IV of the Federal Aviation Act, and to divide it into two subparts as follows: Subpart A—Application Procedures, and Subpart B-Certificate Terms. Conditions, and Limitations.

We propose to amend § 201.4—General provisions concerning contents to eliminate information pertaining to the applicant's fitness since that subject is covered in part 204. Thus, as amended, § 201.4 would address the form of the application, statements pertaining to the scope of the authority, and any additional information that the applicant wishes to submit.

Section 201.5—Operations other than between fixed points is to be removed because it is no longer applicable. Section 201.6 is being redesignated as § 201.5.

Under new Subpart B—Certificate Terms, Conditions, and Limitations, the first section would be new § 201.6—Applicability (currently § 202.1). We would revise this section to make it applicable to all certificate authority, including charter, scheduled and domestic all-cargo.

Current § 202.2—Failure to comply would be redesignated § 201.7—General certificate conditions and incorporate several certificate conditions currently contained in § 291.13, which pertains to domestic all-cargo carriers. Section 201.7(a) would contain the material currently in § 202.2. Section 201.7(b) dealing with reporting requirements is substantively similar to § 291.13(e), as proposed § 201.7(c) is similar to § 291.13(f). These paragraphs are applicable to all certificate authority, whereas the proposed § 201.7(d) would incorporate provisions of §§ 291.13 (c) and (d), which are applicable only to domestic all-cargo service. New § 201.7(e) would contain the provision currently in § 202.12—Filing requirements for adherence to Montreal Agreement. Section 202.11—Nonstop authorization is no longer necessary since certificates for domestic authority no longer contain routes and the points authorized in foreign scheduled air service and any applicable restrictions are contained in the certificates.

Therefore, with the relocation of the subject matter of §§ 202.1 and 202.2 to part 201 and the removal of §§ 202.11, part 202 is obviated, and we propose to remove it.

All-Cargo Carriers

Presently, the evidentiary filing requirements and the procedural rules applicable to filings for section 418 domestic all-cargo authority are contained in subpart S of part 291. We are now proposing to bring section 418 applications under the evidentiary regulations of part 204 and the procedural rules of newly titled Part 201—Air Carrier Authority under Title IV of the Federal Aviation Act, which refers applicants to the requirements set forth in Part 302—Rules of Practice in Proceedings. The latter two parts contain the procedures to be followed in processing applications for all other types of authority requiring initial fitness determinations. Thus, domestic all-cargo certificate applications would follow the same procedures as other certificate applications.

Under current part 291 rules, once the Department has determined that an application for all-cargo authority is complete, it prepares a summary of the application for publication in the **Federal Register**. Anyone wishing to file comments on the fitness of the applicant must do so within 15 days of publication. The applicant has 14 days to respond after receiving any such comments. Part 302 procedures govern in the case of opposed applications.

The proposed revision would substitute the "expedited" subpart Q, part 302 procedures for the part 291 rules. In most initial certificate application cases under subpart Q, once the application is deemed to be complete, the Department analyzes the available fitness evidence and issues an order to show cause containing its tentative findings with regard to the applicant's fitness. A summary of this order is then published in the **Federal Register**. Any person wishing to object to the findings must do so with 15 days; the applicant has 10 days to respond to any objections received. The use of show-cause procedures thus enables interested parties to have the benefit of a detailed presentation in the show-cause order of the applicant's qualifications and service proposal as well as the Department's analysis of the evidence submitted.

We also propose to remove § 291.13—Certificate conditions. All of these conditions are now covered or would be included under different provisions. Paragraph (a) of § 291.13 is found in section 101(16) of the Act and in § 291.22; paragraphs (b), (c), (d) and (f) are covered in § 201.7; paragraph (e) is found in § 291.50; and paragraph (g) is covered by section 401(h) of the Act.

Finally, since section 418 domestic all-cargo carriers would now be subject to the notification and fitness reexamination provisions of part 204, we would remove the requirement for notification of changes by these carriers currently in § 291.14.

Executive Order 12291, Federalism Assessment, Regulatory Flexibility Act Analysis and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a preliminary regulatory impact analysis is not required. The proposed regulation amendments are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because they do not involve important Departmental policies. The projected economic and regulatory impact of these amendments may be found in the Regulatory Evaluation contained in the public docket. A copy of that evaluation may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

The Department has considered the implications of this proposed action under the requirements of Executive Order 12612, Federalism, and has determined that the preparation of a Federalism Assessment is not warranted. The regulations herein would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibility among the various levels of government.

For purposes of its aviation economic regulations, Departmental policy categorizes air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in

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strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. I certify that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities. The ability of such entities to engage in air carrier operations essentially would be unaffected by the proposed regulation amendments.

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under *DOT No.:* 3492; *OMB No.:* 2106-0023; *Administration:* Department of Transportation, Office of the Secretary; *Title:* Procedures and Evidence Rules for Air Carrier Authority Applications; *Proposed Use of Information:* To determine whether carriers are "fit" to engage in their proposed air transportation operations; *Frequency:* On occasion; *Burden Estimate:* 8,046 hours; *Respondents:* U.S. air carriers; *Forms(s):* None; *Average Burden Hours per Respondent:* 39 hours and 46 minutes. For further information contact: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340.

List of Subjects

14 CFR Parts 201, 202 and 204

Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 291

Administrative practice and procedure, air carriers, Reporting and recordkeeping requirements.

14 CFR Part 302

Administrative practice and procedure, air carriers.

Proposed Rule

For the reasons set out in the preamble, title 14, chapter II of the Code of Federal Regulations is proposed to be revised as follows:

1. Part 201 is revised to read as follows:

PART 201—AIR CARRIER AUTHORITY UNDER TITLE IV OF THE FEDERAL AVIATION ACT

Subpart A—Application Procedures

Sec.
201.1 Formal requirements.
201.2 Amendments.
201.3 Incorporation by reference.
201.4 General provisions concerning contents.
201.5 Advertising and sales by applicants.

Subpart B—Certificate Terms, Conditions, and Limitations

201.6 Applicability.
201.7 General certificate conditions.

Authority: 49 U.S.C. 1324, 1371, 1372, 1373, 1377, 1381, 1388, 1389.

Subpart A—Application Procedures

§ 201.1 Formal requirements.

(a) Applications for certificates of public convenience and necessity under section 401 of the Federal Aviation Act and for domestic all-cargo air service certificates under section 418 of the Act, or amendments thereof, shall meet the requirements set forth in part 302 of this chapter as to general requirements, execution, number of copies, service, and formal specifications of papers.

(b) Any person desiring to provide air transportation as a commuter air carrier must comply with the registration provisions of part 298 of this chapter and submit data to support a fitness determination in accordance with part 204 of this chapter. An executed original plus two (2) true copies of the registration form and fitness data shall be filed with the Chief, Air Carrier Fitness Division.

(Secs. 416(b), 72 Stat. 771; 49 U.S.C. 1386; sec. 9(b), 80 Stat. 342; 5 U.S.C. 1002)

§ 201.2 Amendments.

If, after receipt of any application, the Department asks the applicant to supply additional information, such information shall be furnished in the form of a supplement to the original application.

§ 201.3 Incorporation by reference.

Incorporation by reference shall be avoided. However, where two or more applications are filed by a single carrier, lengthy exhibits or other documents attached to one may be incorporated in the others by reference if that procedure will substantially reduce the cost to the applicant.

§ 201.4 General provisions concerning contents.

(a) All pages of an application shall be consecutively numbered, and the application shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits shall be deemed to constitute a part of the application to which they are attached.

(b) All amendments to applications shall be consecutively numbered and shall comply with the requirements of this part.

(c) Requests for authority to engage in interstate and overseas air transportation shall not be included in the same application with requests for authority to engage in foreign air transportation. Similarly, requests for authority to engage in scheduled air transportation under section 401 shall not be included in the same application with requests for authority to engage in charter air transportation under section 401 or with requests for authority to engage in domestic all-cargo air transportation under section 418.

(d) Each application shall specify the type or types of service (passengers, property or mail) to be rendered and whether such services are to be rendered on scheduled or charter operations.

(e) Each application for foreign scheduled Air transportation shall include an adequate identification of each route for which a certificate is desired, including the terminal and intermediate points to be included in the certificate for which application is made.

(f) Each application shall give full and adequate information with respect to each of the relevant filing requirements set forth in part 204 of this chapter. In addition, the application may contain such other information and data as the applicant shall deem necessary or appropriate in order to acquaint the Department fully with the particular circumstances of its case; however, the statements contained in an application shall be restricted to significant and relevant facts.

§ 201.5 Advertising and sales by applicants.

(a) An applicant for new or amended certificate or commuter air carrier authority shall not:

(1) Advertise, list schedules, or accept reservations for the air transportation covered by its application until the application has been approved by the Department; or

(2) Accept payment or issue tickets for the air transportation covered by its application until the authority or amended authority has become effective or the Department issues a notice authorizing sales.

(b) An applicant for new or amended certificate or commuter air carrier authority may not advertise or publish schedule listings for the air transportation covered by its application after the application has been approved by the Department (but before all DOT/FAA authority becomes effective) unless such advertising or schedule listings prominently state:

"This service is subject to receipt of government operating authority."

Subpart B—Certificate Terms Conditions, and Limitations

§ 201.6 Applicability.

Unless the certificate or the order authorizing its issuance shall otherwise provide, such terms, conditions and limitations as are set forth in this part, and as may from time to time be prescribed by the Department, shall apply to the exercise of the privileges granted by each certificate issued under section 401 or section 418 of the Act.

§ 201.7 General certificate conditions.

(a) It shall be a condition upon the holding of a certificate that any intentional failure by the holder to comply with any provision of title IV of the Act or any order, rule, or regulation issued thereunder or any term, condition, or limitation of such certificate shall be a failure to comply with the terms, conditions, and limitations of the certificate within the meaning of section 401(g) of the Act even though the failure to comply occured outside the territorial limits of the United States, except to the extent that such failure shall be necessitated by an obligation, duty, or liability imposed by a foreign country.

(b) Failure to file the reports required by parts 241, 291, or 298 of this chapter shall be sufficient grounds to revoke a certificate.

(c) The authority to transport U.S. mail under a certificate is permissive, unless the Department, by order or rule, directs a carrier or class of carriers to transport mail on demand of the U.S. Postal Service; such certificate confers no right to receive subsidy, for the carriage of mail or otherwise.

(d) An all-cargo air service certificate shall confer no right to carry passengers, other than cargo attendants accompanying a shipment, or to engage in any air transportation outside the geographical scope of domestic cargo transportation. Such certificate shall not, however, restrict the right of the holder to provide scheduled, charter, contract, or other transportation of cargo, by air, within that geographical scope.

(e) It shall be a condition upon the holding of a certificate that the holder have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523), and a tariff (for those carriers otherwise generally required to file tariffs) that includes its terms, and that the holder comply with all other requirements of part 203. OST Form 4523 may be obtained from the Office of Aviation Analysis, Regulatory Analysis Division.

PART 202—[REMOVED]

2. Part 202 is removed.

3. Part 204 is revised to read as follows:

PART 204—DATA TO SUPPORT FITNESS DETERMINATIONS

Subpart A—General Provisions

Sec.
204.1 Purpose.
204.2 Definitions.

Subpart B—Filing Requirements

204.3 Applicants for new certificate or commuter air carrier authority.
204.4 Carriers proposing to provide essential air transportation.
204.5 Certificated and commuter air carriers undergoing or proposing to undergo a substantial change in operations, ownership, or management.
204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.
204.7 Revocation for dormancy.

Authority: 49 U.S.C. 1324, 1371, 1377, 1389.

Subpart A—General Provisions

§ 204.1 Purpose.

This part sets forth the fitness data that must be submitted by applicants for certificate authority, by applicants for authority to provide service as a commuter air carrier to an eligible point, by carriers proposing to provide essential air transportation, and by certificated air carriers and commuter air carriers proposing a substantial change in operations, ownership, or management. This part also contains the procedures and filing requirements applicable to carriers that hold dormant authority.

§ 204.2 Definitions.

As used in this part:

(a) *Act* means the Federal Aviation Act of 1958, as amended.

(b) *All-cargo air carrier or section 418 carrier* means an air carrier holding an all-cargo air service certificate issued under section 418 of the Act to provide domestic cargo transportation. *All-cargo air service* means domestic cargo transportation performed by any air carrier holding a certificate issued under section 418 of the Act.

(c) *Certificate authority* means authority to provide air transportation granted by the Department of Transportation or Civil Aeronautics Board in the form of a certificate of public convenience and necessity under section 401 of the Act or a certificate to perform all-cargo air service under section 418 of the Act. *Certificated carriers* are those that hold certificate authority.

(d) *Citizen of the United States* means:

(1) An individual who is a citizen of the United States or one of its possessions, or

(2) A partnership of which each member is such an individual, or

(3) A corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds of the board of directors and other managing officers are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(e) *Commuter air carrier* means an air carrier holding or seeking authority under part 298 of this chapter that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(f) *Domestic cargo transportation* means the carriage by aircraft in interstate or overseas air transportation of property or mail, or both.

(g) *Eligible point* is one that was on a certificated carrier's authorized route as of October 24, 1978 (Type A point), or was deleted from a certificate between July 1, 1968, and October 24, 1978, and has been designated as "eligible" (Type B point).

(h) *Essential air transportation* is that transportation which the Department has found to be essential under section 419 of the Act.

(i) *FAA* means the Federal Aviation Administration, U.S. Department of Transportation.

(j) *Fit* means fit, willing and able to perform the air transportation in question properly and to conform to the provisions of the Act and the rules, regulations and requirements issued under the Act.

(k) *Key personnel* include the directors, president, all vice presidents, the directors or supervisors of operations, maintenance, and finance, and the chief pilot of the applicant or air carrier, as well as any part-time or full-time advisors or consultants to the management of the applicant or air carrier.

(l) *Normalized operations* are those which are relatively free of start-up costs and temporary barriers to full-

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scale operations posed by the carrier's limited experience.

(m) *Relevant corporations* are the applicant or air carrier, any subsidiary thereof, any predecessor thereof (*i.e.*, any air carrier in which any directors, principal officers or persons having a substantial interest have or once had a substantial interest), and any company (including a sole proprietorship or partnership) which has a significant financial or managerial influence on the applicant or air carrier. The latter includes:

(1) Any company (including a sole proprietorship or partnership) holding more than 50 percent of the outstanding voting stock of the applicant or air carrier; and

(2) Any company (including a sole proprietorship or partnership) holding between 20 percent and 50 percent of the outstanding voting stock of the applicant or air carrier and which has significant influence over the applicant or air carrier as indicated by 25 percent representation on the board of directors, participation in policy-making processes, substantial inter-company transactions, or managerial personnel with common responsibilities in both companies.

(n) *Substantial change in operations, ownership, or management* includes, but is not limited to, the following events:

(1) Changes in operations from charter to scheduled service, cargo to passenger service, short-haul to long-haul service, or (for a certificated air carrier) small-aircraft to large-aircraft operations;

(2) A petition for protection from creditors under the federal bankruptcy laws or a filing of a plan of reorganization under Chapter 11 of the federal bankruptcy laws;

(3) The acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation; and

(4) A change in the president, chief executive officer or chief operating officer, and/or a change in at least half of the other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period.

(o) *Substantial interest* means beneficial control of 10 percent or more of the outstanding voting stock.

Subpart B—Filing Requirements

§ 204.3 Applicants for new certificate or commuter air carrier authority.

An applicant for a type of certificate authority it does not currently hold or for commuter air carrier authority shall file the data set forth in this section. However, if the applicant has previously formally filed any of the required data with the Department or with another Federal agency and they are available to the Department, and those data continue to reflect the current state of the carrier's fitness, the applicant may instead identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the applicant may contact the Department's staff to ascertain what data required by this section are already available to the Department and need not be included in the filing.

Note: If the applicant intends to use as evidence data it has previously filed pursuant to part 241 reporting requirements and those data contain errors, the applicant must first file corrected reports in accordance with § 241.22(g).

The Department may require a carrier to provide additional data if necessary to reach an informed judgment about its fitness.

(a) The name, address, and telephone number of the applicant.

(b) The form of the applicant's organization.

(c) The State law(s) under which the applicant is organized.

(d) If the applicant is a corporation, a statement provided by the Office of the Secretary of State, or other agent of the State in which the applicant is incorporated, certifying that the applicant corporation is in good standing.

(e) A sworn affidavit stating that the applicant is a citizen of the United States.

(f) The identity of the key personnel who would be employed by the applicant, including:

(1) Their names and addresses;

(2) The experience, expertise, and responsibilities of each;

(3) The number of shares of the applicant's voting stock held by each and the percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(4) The citizenship of each; and

(5) A description of the officerships, directorships, shares of stock (if 10 percent or more of total voting stock outstanding), and other interests each holds or has held in any air carrier, foreign air carrier, common carrier, person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any air carrier, common carrier or person substantially engaged in the business of aeronautics.

(g) A list of all persons having a substantial interest in the applicant. Such list shall include:

(1) Each person's name, address and citizenship;

(2) The number of shares of the applicant's voting stock held by each such person and the corresponding percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(3) If any two or more persons holding a substantial interest in the applicant are related by blood or marriage, such relationship(s) shall be included in the list; and

(4) If any person or subsidiary of a person having a substantial interest in the applicant is or has ever been

(i) an air carrier, a foreign air carrier, a common carrier, or

(ii) substantially engaged in the business of aeronautics, or

(iii) an officer or director of any such entity, or

(iv) a holder of 10 percent or more of total outstanding voting stock of any such entity, the list shall describe such relationship(s).

(h) A list of the applicant's subsidiaries, if any, including a description of each subsidiary's principal business and relationship to the applicant.

(i) A list of the applicant's shares of stock in, or control of, any air carrier, foreign air carrier, common carrier, or person substantially engaged in the business of aeronautics.

(j) To the extent any relevant corporation has been engaged in any business prior to the filing of the application, each applicant shall provide:

(1) Copies of the 10K Annual Reports filed in the past 3 years by any relevant corporation required to file such reports with the Securities and Exchange Commission, and

(2) Copies of recently filed 10Q Quarterly Reports, as necessary, in order to show the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application.

(k) If 10K Reports are not filed with the Securities and Exchange Commission, the following, for the 3 most recent calendar or fiscal years, reflecting the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application:

(1) The Balance Sheet of each relevant corporation;

(2) The Income Statement of each relevant corporation;

(3) All footnotes applicable to the financial statements, including:

(i) A statement as to whether the documents were prepared in accordance with Generally Accepted Accounting Principles, and

(ii) A description of the significant accounting policies of each relevant corporation, such as for depreciation, amortization of intangibles, overhauls, unearned revenues, and cost capitalization;

(4) A statement of significant events occurring subsequent to the most recent Balance Sheet date for each relevant corporation; and

(5) A statement identifying the person who has prepared the financial statements, his or her accounting qualifications, and any affiliation he or she has with the applicant;

(l) A list of all actions and outstanding judgments for more than $5,000 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, including the amount of each judgment, the party to whom it is payable, and how long it has been outstanding.

(m) The number of actions and outstanding judgments of less than $5,000 against each relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, and the total amount owed by each on such judgments.

(n) A description of the applicant's fleet of aircraft, including:

(1) The number of each type of aircraft owned, leased and to be purchased or leased;

(2) Applicant's plans, including financing plans, for the purchase or lease of additional aircraft; and

(3) A sworn affidavit stating that each aircraft owned or leased has been certified by the FAA and currently complies with all FAA safety standards.

(o) A description of the current status of all pending investigations, enforcement actions, and formal complaints filed by the Department, including the FAA, involving the applicant or any relevant corporation, any personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation, regarding compliance with the Act or orders, rules, regulations, or requirements issued pursuant to the Act, and any corrective actions taken. (If an applicant has a compliance history that warrants it, additional information may be required.)

(p) A description of all charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation, brought against any relevant corporation or person having a substantial interest in any relevant corporation, or member of the key personnel employed (or to be employed) by any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.

(q) A description of any aircraft accidents or incidents (as defined in the National Transportation Safety Board Regulations, 49 CFR 830.2) experienced by the applicant, its personnel, or any relevant corporation, which occurred either during the year preceding the date of application or at any time in the past and which remain under investigation by the FAA, the NTSB, or by the company itself, including:

(1) The date of the occurrence;

(2) The type of flight;

(3) The number of passengers and crew on board and an enumeration of any injuries or fatalities;

(4) A description of any damage to the aircraft;

(5) The FAA and NTSB file numbers and the status of the investigations, including any enforcement actions initiated against the carrier or any of its personnel; and

(6) Positive actions taken to prevent recurrence. (If an applicant's history of accidents or incidents warrants it, additional information may be required.)

(r) A brief narrative history of the applicant.

(s) A description of all Federal, State and foreign authority under which the applicant has conducted or is conducting transportation operations, and the identity of the local FAA office and personnel responsible for processing an application for any additional FAA authority needed to conduct the proposed operations.

(t) A description of the service to be operated if the application is granted, including:

(1) A forecast Balance Sheet for the first normal year ending after the initially proposed operations have been incorporated, along with the assumptions underlying the accounts and amounts shown; and

(2) A forecast Income Statement, broken down by quarters, for the first year ending after the initially proposed operations are normalized, and an itemization of all pre-operating and startup costs associated with the initiation of the proposed service. Such Income Statement shall include estimated revenue block hours (or airborne hours, for charter operators), number of passengers and number of tons of mail and cargo to be carried, transport revenues and an estimate of the traffic which would be generated in each market receiving the proposed service. Such statements shall also include a statement as to whether the statements were prepared on the accrual or cash basis, an explanation of how the estimated costs and revenues were developed, a description of the manner in which costs and revenues are allocated, how the underlying traffic forecasts were made, and what load factor has been assumed for the average and peak month. Pre-operating and start-up costs should include, but are not limited to, the following: Obtaining necessary government approval; establishing stations; introductory advertising; aircraft, equipment and space facility deposits and rent; training; and salaries earned prior to start-up.

(u) A signed counterpart of Agreement 18900 (OST Form 4523) as required by part 203 of this chapter.

(v) The following certification, which shall accompany the application and all subsequent written submissions filed by the applicant in connection with its application:

Pursuant to title 18 United States Code 1001, I [the individual signing the application], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. 1001 shall be fined not more than $10,000 or imprisoned not more than five years, or both.

§ 204.4 Carriers proposing to provide essential air transportation.

Applicants proposing to provide essential air transportation have been divided into two categories, and are subject to differing data submission requirements as set forth in paragraphs (a) and (b) of this section. However, if a carrier has previously filed any of the required data with the Department or other Federal agency and they are available to the Department, and these data continue to reflect the current state of the carrier's fitness, the carrier may instead identify the data and provide a citation for the date and place of filing. All carriers may contact the Department to ascertain what information is already

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available to the Department and thus may not need to be resubmitted.

(a) Carriers who propose to begin or expand non-subsidized essential air service when the incumbent leaves the market must file the following information:

(1) All of the information required under § 204.3 of this part.

(2) A description of the back-up aircraft available to the applicant, including:

(i) The number of each type of such aircraft;

(ii) The conditions under which such aircraft will be available to the carrier;

(iii) The carrier's plans for financing the acquisition or lease of such additional aircraft; and

(iv) A sworn affidavit stating that all such aircraft have been certified by the FAA and currently comply with all FAA safety standards.

(3) A description of the fuel available to perform the proposed essential air services and the carrier's contracts with fuel suppliers.

(4) The carrier's systemwide on-time and completion record for the preceding year and, if applicable, in the subject market(s).

(5) A list of the markets the carrier serves and the number of weekly round trips it provides in each.

(6) A description of the average number of block hours each type of aircraft is currently flown per day.

(7) An estimate of the impact the proposed essential air service would have on the carrier's utilization of its aircraft fleet.

(8) A detailed schedule of the service to be provided, including times of arrivals and departures, the aircraft to be used for each flight, and the fares to be charged.

(9) A pro-forma income statement for the proposed operation for the first annual period.

(b) Carriers filing proposals to provide subsidized service in response to an order inviting proposals shall file:

(1) All of the information required under § 204.3 of this part.

(2) All of the information required under paragraph (a) of this section.

(3) A forecast Income Statement covering the operations conducted in essential air service for the first year following the initiation of the proposed essential services. Such statement shall include:

(i) Subsidy needed;

(ii) Estimated block hours and revenue miles by type of aircraft;

(iii) Total projected revenue including volumes of passengers and freight by essential air service market and the associated fares and rates;

(iv) An explanation of the derivation of estimates of operating expenses; and

(v) A description of the manner in which costs and revenues are allocated.

(4) A traffic forecast including a load factor analysis on all segments between the small community and the hub; and an estimate of the number of seats available to and from the eligible point each day.

§ 204.6 Certificated and commuter air carriers undergoing or proposing to undergo a substantial change in operations, ownership, or management.

(a) A certificated or commuter air carrier proposing a substantial change in operations, ownership or management shall file the data set forth in § 204.3. These data must be submitted in cases where:

(1) The proposed change requires new or amended authority, and

(2) Although the carrier's existing certificate or commuter authority is adequate for the performance of its planned services, the change substantially alters the factors upon which its latest fitness finding is based. Information which a carrier has previously formally filed with the Department, or with another Federal agency where they are available to the Department, which continues to reflect the current state of the carrier's fitness may be omitted. The carrier instead should identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the carrier may contact the Department (Air Carrier Fitness Division) to ascertain what data required by this section, if any, are already available to the Department or are not applicable to the substantial change in question and need not be included in the filing.

(b) Information filings pursuant to this section made to support an application for new or amended certificate authority shall be filed with the application and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Information filed in support of a certificated or commuter air carrier's continuing fitness to operate under its existing authority in light of substantial changes in its operations, ownership or management shall be addressed to the Chief, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

§ 204.8 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.

Carriers proposing to make a change which would not substantially affect their operations, management, or ownership, such as certificated carriers applying for additional authority which would not substantially change their operations, will be presumed to be fit and need not file any information relating to their fitness at time of the change. However, if the Department concludes, from its own analysis or based on information submitted by third parties, that such change may bring the carrier's fitness into question, the Department may require the applicant carrier to file additional information.

§ 204.7 Revocation for dormancy.

(a) An air carrier that has not commenced any type of air transportation operations for which it was found fit, willing, and able within one year of the date of that finding, or an air carrier that, for any period of one year after the date of such a finding, has not provided any type of air transportation for which that kind of finding is required, is deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked.

(b) An air carrier found fit which commences operations within one year after being found fit but then ceases operations, shall not resume operations without first filing all of the data required by § 204.3 at least 45 days before it intends to provide any such air transportation. Such filings shall be addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in fitness data previously formally filed with the Department, the carrier shall file a statement to that effect signed by one of its officers. The carrier may contact the Department (Air Carrier Fitness Division) to ascertain which data are already available to the Department and need not be refiled. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department decides that the carrier continues to be fit, willing, and able to perform such air transportation. During the pendency of the Department's consideration of a data submission under this paragraph, the expiration period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, the date of that decision or finding shall be the date considered in applying paragraph (a) of this section.

(c) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, the date of such letter.

(d) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

PART 291—DOMESTIC CARGO TRANSPORTATION

4. The authority citation for part 291 continues to read as follows:

Authority: Secs. 101, 102, 204, 401, 407, 406, 416, 418, Pub. L. 85–726, as amended, 72 Stat. 740, 743, 766, 767; 49 U.S.C. 1301, 1302, 1324, 1371, 1377, 1378, 1386, 1388.

5. Subpart B of part 291 would be revised to read as follows:

Subpart B—All-Cargo Air Service Certificates

Sec.
291.10 Applications.

Subpart B—All-Cargo Air Service Certificates

§ 291.10 Applications.

Applications for all-cargo air service certificates shall comply with the provisions of part 201 and subpart Q of part 302 of this chapter with regard to filing procedures, and with the provisions of part 204 of this chapter with regard to evidentiary requirements.

6. Subparts C, D, E, and F would be amended as follows:

§§ 291.20, 291.23, 291.24, 291.34, 291.50 [Amended]

(a) In §§ 291.20, 291.23(b), 291.24, 291.34, and 291.50, remove the word "Board" and add, in its place, the word "Department".

291.42 [Amended]

(b) In § 291.42(a)(2), remove the words "Office of the Comptroller, Information Management Division, B–46a, Civil Aeronautics Board, Washington, DC 20428" and add, in their place, the words "Data Administration Division, DAI–20, room 4125, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001".

PART 302—[AMENDED]

7. The authority citation for part 302 continues to read as follows:

Authority: Secs. 101, 203, 204, 401, 402, 403, 404, 406, 412, 416, 901, 1001, 1002, 1005, Pub. L. 85–726, as amended, 72 Stat. 737, 742, 743, 754, 757, 758, 760, 765, 770, 783, 788, 794, 49 U.S.C. 1301, 1323, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; E.O. 11514, Pub. L. 91–90 (42 U.S.C. 4321); 84 Stat. 772, 39 U.S.C. 5402, unless otherwise noted; 49 U.S.C. Subtitle I; Administrative Procedure Act (5 U.S.C. 551 et seq.).

8. In § 302.1701 of subpart Q, paragraph (d) would be added to read as follows:

§ 302.1701 Applicability.

* * * * *

(d) Applications for all-cargo air service certificates, and renewals, alterations, amendments, modifications, suspensions, and transfers of such certificates under section 418 of the Act.

Issued in Washington, DC, on June 7, 1991.

Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–14147 Filed 6–14–91; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–939–86]

RIN 1545–AJ70

Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking; Correction.

SUMMARY: This document contains corrections to proposed income tax regulations relating to the definition and computation of the insurance income of a controlled foreign corporation.

FOR FURTHER INFORMATION CONTACT: David R. Cooper at 202–566–6645 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains corrections to proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 953, 954, 964, 1248, and 6046 of the Internal Revenue Code of 1986.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on April 17, 1991, of the proposed rulemaking, which was the subject of FR Doc. 91–8694, is corrected as follows:

Paragraph 1. On page 15540, third line down from the top of the second column, the language "26 CFR Parts 1 and 602" should be corrected to read "26 CFR Part 1".

§ 1.953–3 [Corrected]

Par. 2. On page 15552, in the third column, in § 1.953–3, line 10 of paragraph (a), the language "recharacterized premiums even though" is corrected to read "recharacterized as non RPII premiums even though".

§ 1.953–4 [Corrected]

Par. 3. On page 15555, in the third column, in § 1.953–4, line 8 of *Example 1* of paragraph (a)(2)(ii), the language "under § 1.953–5(c)(3)(iii)(A), is appropriated" is corrected to read "under § 1.953–5(c)(3)(iii)(A), is apportioned".

§ 1.953–5 [Corrected]

Par. 4. On page 15557, in the second column, in § 1.953–5, in the first line of paragraph (b)(2)(ii)(B)(*3*), the word "decrease" is corrected to read "increase".

§ 1.953–6 [Corrected]

Par. 5. On page 15562, in the second column, § 1.953–6, the eleventh line of paragraph (g)(1)(i), the language "to income that is not insurance under" is corrected to read "to income that is not insurance income under".

Par. 6. On page 15563, in the third column, in § 1.953–6, in paragraph (h)(4) *Example 3* (i), a new line containing the language "*Pro rata amount*" is added immediately following the line "Lesser of:".

Par. 7. On page 15563, in the third column, in § 1.953–6, in the eighth line of the flush material following paragraph (h)(4) *Example 3* (iii), the language "pro rata income of $875) and subpart F" is corrected to read "pro rata amount of $875) and subpart F".

Par. 8. On page 15563, in the third column, in § 1.953–6, in the tenth line of paragraph (h)(5)(i), the language "which the foreign corporation, computed" is corrected to read "which the foreign corporation was a controlled foreign corporation, computed".

Par. 9. On page 15564, in the first column, § 1.953–6, in lines fourteen through sixteen of the *Example* in paragraph (h)(6)(ii), the language "$1,000

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is related person insurance income of which $1,000 is related person insurance income. X also had earings and profits for the" is corrected to read "$1,000 is related person insurance income. X also had earnings and profits for the".

Par. 18. On page 15564, in the second column, in § 1.953–6, the word "or" should be added as a new line immediately following the fourth line of the *Example* (ii) in paragraph (h)(6)(ii).

§ 1.953–7 [Corrected]

Par. 11. On page 15565, in the first column, in § 1.953–7, the twentieth line of *Example 1* of paragraph (a)(2), the language "(25% × 80%). The insurance income" is corrected to read "(25% × 60%). The insurance income".

Par. 12. On page 15565, in the first column, in § 1.953–7, the section heading immediately following *Example 2* which reads "(2) *Election to treat income as effectively connected*—" is corrected to read "(c) *Election to treat income as effectively connected*—".

§ 1.6046–1 [Corrected]

Par. 13. On page 15570, in the first column, in § 1.6046–1, the sixth line of paragraph (a)(2)(*a*) which reads "on January 1, 1963, if on that date he".

PART 602—[Corrected]

Par. 14. On page 15570, in the second column, the heading "**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**" and instructional paragraphs 9 and 10 are removed.

Par. 15. On page 15570, in the second column, at the end of the document, the following name and title of the official signing the document should have appeared as follows:

"**Fred T. Goldberg, Jr.,**
Commissioner of Internal Revenue".

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–14168 Filed 6–14–91; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Regulatory Reform Review III and Incidental Coal Extraction Exemption

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; reopening; correction.

SUMMARY: OSM is correcting an error on the proposed rule reopening and extending the comment period on a proposed amendment to the Virginia permanent program which was published on May 23, 1991 (56 FR 23664–23666). The correction will revise the subject of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION: The following correction is made to Virginia Regulatory Program amendment reopening which was published on Thursday, May 23, 1991 (56 FR 23664–23666): on page 23664, the subject of the proposed rule is changed from Virginia Regulatory Program; Coal Surface Mining Reclamation Fund to Virginia Regulatory Program; Regulatory Reform Review III and Incidental Coal Extraction Exemption.

Dated: June 6, 1991.

Carl C. Close,
Assistant Director, Eastern Support Center.

[FR Doc. 91–14248 Filed 6–14–91; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–91–43]

Drawbridge Operating Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This proposed amendment would revoke the regulations for the Sunrise Boulevard (SR 838) drawbridge, mile 1062.6, at Fort Lauderdale because the low-level drawbridge that warranted the existing special regulations has been replaced by a higher and wider bascule bridge providing improved highway traffic flow and less drawbridge openings required by vessels. This proposal is being made to ease the burden on navigation since special operating restrictions are no longer needed to accommodate the needs of vehicular traffic.

DATES: Comments must be received on or before August 1, 1991.

ADDRESSES: Comments regarding this proposed change should be mailed to Commander (oan), Seventh Coast Guard District, 909 Southeast 1st Avenue, Miami, FL 33131–3050. Any comments received will be available for inspection and copying at Brickell Plaza Federal Building, room 406, 909 Southeast 1st Avenue, Miami, FL. Documents and comments concerning this regulation may be inspected Monday through Friday between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested parties submitting written views, comments, data, or arguments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Brodie Rich, project officer, and Lt. Genelle Tanos, project attorney.

Discussion of Proposed Regulations

The Sunrise Boulevard drawbridge presently opens on the quarter-hour and three quarter hour from 7:15 a.m. to 6:15 p.m. from November 15 through May 15. This amendment revokes the regulations that are no longer needed since the new drawbridge opened for service on August 13, 1990. The new high-level drawbridge replacement was permitted by the Coast Guard with the understanding that the existing special operating regulations would be revoked once the new bridge was completed.

Economic Assessment and Certification

This action is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. This action will not have a significant economic impact on a substantial number of small entities. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, the Coast Guard proposes to amend part 117 to title 33, Code of Federal Regulations, the read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.261 [Amended]

2. In § 117.261 paragraph (gg) is removed and reserved.

Dated: May 30, 1991.

Robert E. Kramek,
Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 91–14182 Filed 6–14–91; 8:45 am]
BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 205

RIN: 0970–AA82

Aid to Families with Dependent Children and Adult Public Assistance; Revised Quality Control System

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish a revised quality control system for the Aid to Families with Dependent Children (AFDC) and the Adult assistance programs beginning in fiscal year 1991. Under the new system, (1) Disallowances in AFDC matching funds (Federal financial participation) would be imposed on those States whose assistance payment error rates are above the national average; (2) both overpayments and underpayments made to AFDC recipients would be taken into account; (3) there would be incentives for States to improve their overpayment recoveries and their child support collections; (4) there would be a Departmental Quality Control Review Panel to provide a review of differences between State and Federal AFDC review findings; (5) the Departmental Appeals Board would review all other quality control disallowance issues in dispute between the States and Federal government; and (6) some of the policies and procedures contained in sections 2 and 3 of the Department's Quality Control (QC) Manual would be incorporated.

DATES: Interested persons and agencies are invited to submit written comments concerning these regulations no later than August 16, 1991.

ADDRESSES: Comments should be submitted in writing to the Assistant Secretary for Family Support, Attention: Mr. Sean Hurley, Director, Division of Quality Control, Office of Family Assistance, room 559a, 370 L'Enfant Promenade, SW., Washington, DC 20447, or delivered to the Office of Family Assistance between 8:00 a.m. and 4:30 p.m. during regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Hurley, Office of Family Assistance, Division of Quality Control, room 559a, 370 L'Enfant Promenade, SW., Washington, DC 20447 telephone (202) 401–9296.

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking (NPRM) would provide rules governing the revised Quality Control (QC) System for the Aid to Families with Dependent Children (AFDC) program established by section 406 of the Social Security Act, as added by section 8004 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. No. 101–239), as well as revised program rules governing quality control for the Adult assistance programs. The QC system is the major management tool for measuring the accuracy of payments and the level of Federal funding under the AFDC and Adult assistance programs, and for obtaining the data needed to analyze and improve performance in paying benefits. These two objectives are accomplished by a continuous review of statistically valid and reliable State samples of AFDC and Adult assistance cases and Federal samples of AFDC assistance cases. To the extent that Medicaid eligibility is based on AFDC eligibility, these regulations also affect the Medicaid program.

Under the current AFDC regulations, all States are subject to a reduction of Federal financial participation (FFP) for incorrect payments that exceed the national error rate tolerance of 3 percent (4 percent for Guam, Puerto Rico, and the Virgin Islands) based on the QC sample data during an annual review period of October 1 through September 30. If a State fails to meet the prescribed error rate tolerance, it is subject to a loss in FFP unless it can demonstrate it made a good faith effort to comply.

Following the legislative mandate in section 406(h) of the Social Security Act, we have consulted with representatives of the National Governors' Association, the American Public Welfare Association and the States in developing the regulations in the following areas: Sampling methodology; sample size and selection procedures; time frames for sample completion and reporting of QC data; resolution of differences between State and Federal review findings; notification of error rates; and disallowances.

We have also included in the proposed regulations certain basic procedures currently contained in the QC Manual which were previously incorporated only by reference in the regulations. (The QC Manual is intended to contain operating instructions and procedures implementing the Federal policy set forth in the regulations. Thus, for example, the policy of requiring minimum verification and documentation standards for each element of eligibility and payment amount is included in the proposed regulations at § 205.42(c)(2). However, implementing specific verification and documentation requirements are set forth in the QC Manual.)

Further, we have also included in the proposed regulations, the existing regulatory requirements for the review of: (1) AFDC negative case actions in the States and in Guam, Puerto Rico, and the Virgin Islands, and (2) active cases and negative case actions of the Adult assistance programs in Guam, Puerto Rico, and the Virgin Islands, under titles I, X, XIV, and XVI (AABD) of the Social Security Act. While section 406 does not require a change in the policies governing negative case actions and the Adult assistance programs, we are changing these policies, where appropriate, to be consistent with the AFDC active case requirements. However, section 406 requires the Department to conduct a study of the AFDC negative case action system and make recommendations to Congress on the future design and use of the negative case action QC system by October 1, 1992.

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The Adult assistance programs exist only in Guam, Puerto Rico, and the Virgin Islands. The Department's authority for requiring a QC system in these programs derives from the requirement that Federal matching funds be provided for proper assistance payments (sections 3, 1603, 1403, and 1603 of the Social Security Act) and from the authority in section 1102 of the Act to issue rules for proper and efficient administration. However, for the purpose of uniformity and consistency, we are proposing to apply, except as indicated, the same sampling and review requirements contained in §§ 205.40, 205.41, and 205.42 (a) through (f) to both the AFDC and the Adult assistance programs. Sections 205.42 (g), (h), (i) and 205.43 do not apply to the Adult assistance programs since the Federal rereview and the calculation of the regressed error rates for these programs are not utilized.

We are proposing to revise §§ 205.40, 205.42 and 205.43, add § 205.41, and remove and reserve § 205.44.

Major Provisions of the Statute

The Omnibus Budget Reconciliation Act of 1989 (OBRA 1989), which became law on December 19, 1989, provides for a revised QC system for AFDC beginning in fiscal year 1991. While Congress made changes from the current to the revised QC system in the error rate tolerance and method for calculating disallowances, the basic design and features of the system remain unchanged. The major provisions of the legislation include:

1. Waiver of all pending or potential QC disallowances for fiscal years 1981 through 1990, estimated at $2.4 billion;
2. Establishment of a new error rate tolerance set at the national average error rate each year, or at 4 percent, whichever is higher;
3. Exclusion of certain types of errors in computing a State's payment error rate;
4. Calculation of disallowances based on a sliding scale which reflect the degree to which a State's error rate exceeds the national average;
5. Adjustment of disallowances based on good performance in achieving other program goals (i.e., low underpayment rate relative to the national underpaymentrate, child support collections and overpayment recoveries); and
6. Establishment of a Departmental QC Review Panel to review differences between State and Federal QC findings.

Discussion of the Proposed Regulations

The discussion of the proposed rules is divided into four parts. The first addresses sampling issues; the second discusses all issues involving the QC review; the third describes the error rate and disallowance calculations and notification procedures; and the fourth discusses data management.

Sampling Issues

Sampling Plan Requirements and Submittal Dates

The proposed regulations at § 205.41(d) specify the content of the State QC sampling plan. However, except as noted below under "Sampling methodology," this does not represent a change in sample plan requirements from those applicable to the current QC system as set forth in the QC Manual, section 2 (Sampling and Statistical Methods), which is applicable to both the AFDC and Adult assistance programs. The plan must be in effect for the entire annual sample period and must include the population to be sampled, a description of the lists from which the sample is selected, the sample size, the sample selection procedure, the option to drop or complete cases for which a review was completed within the last six months, and the procedure to correct for oversampling or undersampling.

The proposed regulations at § 205.41(c) would require States to submit a reliability waiver statement (for active AFDC only), by the first day of the annual sample period. This is a change from 60 calendar days prior to the selection of the October sample, as set forth in the QC Manual.

We have also incorporated in these proposed rules submittal dates for universe estimates, sample intervals, monthly lists of selected sample cases, computer-generated random start numbers and seed numbers, and reserve pool cases (if applicable). The proposed rules would require the universe estimates and sample intervals to be submitted within 30 calendar days prior to the selection of the October sample and the remaining information to be submitted within 10 calendar days of the sample selection date specified in the State's approved sampling plan. Although these time frames do not represent a change to current procedure as set forth in the QC Manual, we have explicitly incorporated these requirements in the regulations as required by section 406(h) of the Social Security Act.

Sample Selection

In order to ensure (1) that all cases, including cases added to the rolls during the review month are subject to sampling, and (2) that all payments, including adjustments to sample cases, are included in the QC review, we had considered changing our policy to require that sample selection would be made after the end of the review month. Under current policy, States are required to select their review month samples from lists of active cases with payments authorized prior to sample selection and paid by the end of the review month. States are permitted to use regular first-of-the-month payroll listings as the frame for selection of sample cases, extend that frame at the end of the review month, and continue sampling all the cases added to the AFDC rolls during the review month that were not on the regular payroll listing. In recent years, however, an increasing number of cases have received payments and payment adjustments during the review month but after the sample has been selected. These added cases and payment adjustments are not being included in the QC review process.

Although more than half of the States are either sampling at the end of, or after, the sample month, we are not making any change to the current policy at this time for two reasons. First, some States integrate their AFDC samples with the Food Stamp and/or Medicaid QC samples which permit sampling at the beginning of the sample month, and second, we are proposing in § 205.42(e) to reduce the sample disposition and data submission time frames which are measured from the end of the sample month. However, we plan to continue studying this policy to ensure the validity of the sample and invite comments on this issue to assist us in formulating policy.

Sample size

As requested by the State representatives, the NPRM at § 205.41(d)(3) retains the current active AFDC and Adult assistance sample sizes specified in QC Manual, sections 2 and 3, with an option for States to reduce their standard sample size. States may not reduce their standard sample sizes below the minimum sizes specified in the QC Manual. The regulations would also retain the requirement that a State provide the Department with a reliability waiver statement as an addendum to its sampling plan, if the State elects the option to reduce its sample for completed AFDC active case reviews below the standard size. When a State opts for a reduced AFDC active sample, the reliability waiver statement ensures that the risk of reduced precision in the error rate estimate will be shared by the State and Federal government.

The negative case action sample size requirements are the same for both the AFDC and the Adult assistance programs. Before October 1990, larger AFDC negative case action samples were required for Guam, Puerto Rico, and the Virgin Islands in order to have adequate data to make six-month incentive payment determinations under section 403(j) of the Social Security Act. Since section 406(b) repealed section 403(j), effective October 1, 1990, we have reduced the AFDC negative case action sample requirements for Guam, Puerto Rico, and the Virgin Islands. However, the proposed regulations retain the current negative case action sample requirements in the Adult assistance programs for Guam, Puerto Rico, and the Virgin Islands.

We believe these sample sizes are sufficient to provide both valid and reliable estimates of States' error rates and adequate information for States to identify problem areas for corrective action purposes. For purposes of uniformity and consistency, the sample sizes are included in the proposed regulations for AFDC and the Adult assistance programs, although the statute requires the Department to regulate in this area only for the AFDC program.

Sampling Methodology

Under § 205.41(d)(4) of the proposed regulations, States would select their samples using the systematic random sampling method. This has always been the preferred method for selection of the State samples. The method conforms to principles of probability sampling, is easily implemented, and can easily be duplicated to provide Federal oversight with an audit trail. Currently, 46 States are using this method. States may continue to stratify their samples in accordance with procedures specified in the QC Manual, section 2, and may continue to integrate their AFDC active case samples with Food Stamps and Medicaid QC samples.

QC Review Issues

Treatment of State Plan Provisions

The QC review is conducted against the substantive conditions of eligibility and amount of assistance payment provisions as reflected in State operating policies that are consistent with the State plan. The State plan is a statement of the conditions to which a State commits itself in the operation of its program. Since 1982, for AFDC, States have utilized the State plan preprint, entitled "Streamlined State Plan For Title IV–A of the Social Security Act: Financial Assistance *Aid to Families with Dependent Children*", as the vehicle for submitting State plans and State plan amendments. For the Adult assistance programs, Guam, Puerto Rico, and the Virgin Islands use non-streamlined operational "State" plans. To receive Federal matching funds, each State agrees to administer its AFDC program "in accordance with title IV–A of the Act" and "all other applicable Federal laws and regulations * * *". Under current regulations at § 205.40, if an approved State plan provision, or a pending plan amendment submitted to but not acted upon by the Department, is determined to be inconsistent with Federal law or regulations, the QC review is conducted against the provision in the existing State plan until a revised plan amendment is submitted or the pending plan amendment is finally disapproved. Under these circumstances, a State could avoid QC errors by simply not submitting a plan amendment that adheres to the statute or regulations.

Section 402(c)(2)(A) addresses this problem. It generally provides that, if an approved State plan provision is determined to be inconsistent with Federal law or regulation, and the State has been notified of the inconsistency, the QC review will be governed by the provision of Federal law or regulation. We recognize that a State will need some lead time after notification of a plan inconsistency to submit an amendment to the State plan and revise its operating procedures. We are, therefore, proposing in § 205.42(b)(1)(i) to provide States with a period of 60 calendar days after receipt of notification of the inconsistency to submit an amendment to the State plan removing the inconsistency. Unless an amendment has been submitted, sample cases selected for the review month after the 60-day period will be reviewed against applicable Federal law and regulations. We believe that this time period is consistent with the intent of the notification process in the statute. If an amendment is submitted timely, we will review against its provisions until disapproval by the Department becomes final. Once disapproval by the Department becomes final, we will begin reviewing against applicable provisions of Federal law and regulations with sample cases selected for the review month immediately following the date that disapproval becomes final. The review will continue on this basis until the State has received approval of a plan amendment. We believe it is reasonable to conduct the review against the provisions of applicable Federal law and regulations, once a State plan amendment designed to remove an inconsistency has been submitted and disapproved. Otherwise, it is possible that a series of unapprovable plan amendments may be submitted, thus effectively forestalling implementation of the applicable Federal law and regulations.

Section 402(c)(2)(A) is silent on the appropriate treatment of a pending plan amendment which is inconsistent with Federal law or regulations. If a State implements a plan amendment submitted to but not acted upon by the Department, the QC review will continue to be conducted against the pending plan amendment until final disapproval by the Department. Once the plan amendment is finally disapproved, sample cases selected for the review month immediately following the date that disapproval becomes final will be reviewed against the existing approved plan, if the plan is consistent with Federal law and regulations. Where the approved plan is inconsistent with Federal law and regulations, we will begin reviewing against Federal law and regulations until the date of approval of a revised plan amendment. Since a State would have had advance notice of the inconsistency during the disapproval process, we believe that additional notification would not be necessary.

Section 402(c)(2)(B)(ii) requires the Secretary to grant a State a reasonable time period to make the State plan consistent with Federal law and regulations if it is necessary for the State to enact a new law. As indicated in the proposed regulations at § 205.42(b)(1)(iii), if a new law needs to be enacted, the State shall immediately, after receipt of notification of the inconsistency between the State plan and Federal law and regulations, advise the Department. We are not proposing a specific time period for requiring the State to enact new laws and amend its State plan. Since we anticipate these would be unique in nature and infrequent in occurrence, time frames for their resolution should be addressed on a case-by-case basis by the Department.

We believe these time frames afford the States a reasonable time period to change identified inconsistencies in their State plans and, thus, conforms to the intent of Congress that the QC reviews be conducted against the substantive conditions of eligibility and amount of payment.

Treatment of Court Orders

Section 402(c)(2)(B)(ii) provides that, for error rate determination purposes, the QC review will be conducted in

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accordance with the applicable court orders. Therefore, a QC sample case paid in compliance with a court order issued by a Federal, State or local court will be considered correctly paid if all other eligibility and payment conditions not affected by the court order are met. The proposed QC regulation reflects this review criterion at § 205.42(b)(2).

Current regulations at § 205.10(b)(3) provide that Federal matching is available for "Payments of assistance within the scope of the Federally aided public assistance programs made in accordance with a court order." Since the QC system is the legislatively prescribed vehicle for assessing disallowances of assistance payments under the AFDC program, Federal matching is available for all payments to AFDC assistance units subject to QC sampling, made in accordance with a court order without regard to the "scope" of program limitation noted above.

We are not, however, proposing to amend § 205.10(b)(3). The regulations at § 205.10(b)(3) continue to be applicable since court order matching specifications still apply to AFDC assistance units not included in the QC sample universe (e.g., emergency assistance and presumptive eligibility).

While QC will review to the conditions of all court orders under the proposed regulations, it continues to be important for States to defend against any legal challenge to Federal AFDC law, regulation or policy. In order to assist the States in meeting these legal challenges, it is essential that the Department is immediately advised when law suits that challenge substantive Federal AFDC eligibility and payment rules are filed against the State, or its political subdivisions. This is especially true when the law suit affects payments of assistance units subject to QC sampling.

Treatment of Changes in Federal Law

Section 408(c)(3)(A) provides for excluding QC payment errors resulting solely from a State's failure to properly implement changes in Federal statute within six months after the effective date of the changes or the issuance of final regulations, where such regulations are necessary to construe or apply the Federal statutory changes, whichever is later. This means, for example, that if statutory changes are effective as of October 1 of a given year and that necessary final (or interim final) regulations are issued on January 1 of the following year, a State will have until July 1 of that year to implement such changes before any payment error resulting solely from such changes will be counted in the computation of a State error rate. The QC review will be conducted in accordance with permissible State practice after the end of the six-month period, i.e., July 1 in our example. We plan to notify the States when the six-month procedures will apply. Although payment errors will not be counted in the error rate computation during the six-month period, we plan to collect this information for management purposes. Proposed regulations are set forth at § 205.42(d)(2)(i).

Detrimental Reliance

Sections 408(c)(3) (B) and (C) provide for excluding from consideration as an erroneous payment, a payment that is in error solely by reason of "the State's reliance upon and correct use of erroneous information provided by the Secretary about matters of fact" and a payment that is in error solely by reason of "the State's reliance upon and correct use of written statements of Federal policy provided to the State by the Secretary." The proposed regulations at § 205.42(d)(2)(ii), therefore, specify that an assistance payment made by a State shall not be considered an erroneous payment if the payment is in error solely because of the State's reliance upon and correct use of incorrect factual information or incorrect written policy statements provided by the Department.

"Reliance upon and correct use of incorrect factual information" in the proposed rules means that the State depended on the written factual information to make payment decisions, had reasonable expectation that the information was timely and accurate, and followed procedures for access and use of the information. State exemption from a payment error as a result of incorrect factual information will be made on a case-by-case basis. For example, the Department supplies States with Social Security benefit information via the Beneficiary and Earnings Data Exchange system (BENDEX). In order to get appropriate information from BENDEX, it is necessary for a State to provide specific information about potential beneficiaries. Failure to do so can result in incorrect information being supplied to the State. In this instance, the State would have failed to follow procedures for access to BENDEX data. The resulting error would not be excluded from the error rate.

"Incorrect written statements of Federal policy by Department officials" in the proposed rules means written policy from a Federal official in the Department responsible for dissemination of such policy in the AFDC program (i.e., from the Assistant Secretary for Family Support, a FSA Regional Administrator, or the Director of the Office of Family Assistance). This provision applies to situations where the State's eligibility and payment policy correctly reflects the policy directive provided by the Department official, but the directive is subsequently determined to be incorrect. A change in circumstances (i.e., a change that may affect the eligibility and payment amount of the assistance unit) would occur on the date that the Assistant Secretary for Family Support, a FSA Regional Administrator, or the Director of the Office of Family Assistance notifies the State of the correct policy or, if applicable, the effective date. Payment errors will be cited beginning with the second month following the month of notification or, if applicable, with the effective date pursuant to § 205.42(d)(1) as a change in circumstances.

Declaration of State of Emergency or Disaster

Section 408(c)(3)(D) provides that an assistance payment issued by a State shall not be considered an erroneous payment if the payment is in error solely because of the occurrence of an event in the State that results in a declaration of a state of emergency or major disaster by the President or the Governor of the State. The state of emergency or major disaster must be declared pursuant to Federal or State statute and the event must directly affect the State's ability to make correct payments. The proposed regulations would add this as one of the types of payment errors which will not be counted in the determination of a State's error rate.

We have specified in the proposed regulations at § 205.42(d)(2)(iii) that the State must provide adequate documentation of the event and its impact on the State's eligibility and payment determination process for consideration by the Department. Request for error exclusion under this provision must be submitted in writing to the Department as soon as possible after a state of emergency or disaster is declared. The request must include: A copy of the declaration; a detailed explanation of the circumstances; identification of the affected jurisdictions; the reason(s) why the State's ability to make correct payments has been or will be impaired; the length of time required to overcome the effects of the emergency or disaster; and the actions the State is taking to minimize the magnitude and duration of the negative effect. The Department will consider the appropriateness of each request and notify the State accordingly. The State will be required to continue to cite errors in accordance with permissible State practice until a decision on its request has been made. If the request is appropriate, errors due solely to the effects of the emergency or disaster will be excluded in the determination of the State's error rate beginning with the date of the emergency or disaster.

Monthly Reporting

Section 408(c)(3)(E) excludes, for QC purposes, errors which result from "the failure of a family to submit monthly reports to the State pursuant to section 402(a)(14), if the failure did not affect the amount of the payment." Under section 402(a)(14), as amended by section 5081 of the Omnibus Budget Reconciliation Act of 1990, failure to submit a monthly report where required under a State plan option, results in an assistance unit becoming ineligible for assistance payments. We interpret "did not affect the amount of the payment" to exclude the ineligibility of the assistance unit which results from a failure to submit the monthly report where required by the State. Otherwise, the failure to submit a monthly report would always affect the amount of payment, since it is a condition of eligibility, and section 408(c)(3)(E) would have no effect. Based on this interpretation, we will no longer cite as an error failure to file a monthly report where required. However, information that should have been reported on the monthly report will continue to be evaluated for its effect on the accuracy of the payment and errors will be cited as appropriate.

Payments Considered Erroneous

Section 408(c)(4) identifies two types of payment error which occur solely as the result of the failure on the part of AFDC recipients to meet statutory conditions of eligibility and which count in the computation of a State's error rate. These conditions are the failure to assign child support rights without good cause and the failure to apply for or provide a Social Security number for each member of the assistance unit.

It has been suggested by State representatives that since only errors for failure to meet these two requirements are expressly identified in the statute, errors for other statutory eligibility conditions should also not count as part of the QC error rate. We disagree. Since section 408 does not address other factors of eligibility, including such factors as income and resource limits, we believe Congress intended that adherence to all other statutory eligibility factors would continue under the revised QC system. We believe that these two requirements were included in section 408 to affirm the congressional view of their importance. Moreover, section 408 did not repeal basic statutory requirements of the AFDC program, but clarified how QC must review certain eligibility factors for the purpose of calculating the error rate.

All statutory conditions of eligibility are important, serve program objectives and must be met for an individual to be eligible for assistance. The continued QC review of assignment of child support rights and enumeration requirements emphasize payment accuracy, effective management objectives, and provide information to improve verification capability to reduce the need for assistance by identifying means for support other than AFDC assistance.

Since section 406(c)(4)(B) specifies that the enumeration requirement is met if an application for a Social Security number is made within 30 days after the date of application, we have included this requirement in the proposed regulations at § 205.42(d)(2)(v). Payments made during the 30-day period to recipients who have not met the enumeration requirement will be considered as correct payments provided all other factors of eligibility are met.

Treatment of Fair Hearing Decisions

We have incorporated in these proposed regulations at § 205.42(d)(2)(vi) the current QC policy regarding the impact of fair hearing decisions on QC payment errors. A change to a QC identified payment error as a result of a fair hearing decision is permitted, provided the State had defended the adverse action during the hearing process, and the decision was based only on the facts of the case at the time of the QC review. In addition to the above criteria, we are proposing to establish a time limit of eleven months, after the end of the annual sample period to which the error rates would apply, for States to submit requests for such changes, e.g., September 1, 1992 for fiscal year 1991 error rates. We believe that this addition to the criteria is both necessary and reasonable given the clear congressional concern about the timely release of the error rates, and the prompt notification to States of potential disallowances.

In the proposed regulations at § 205.42(d), we have established one year after the end of the annual sample period, or within 30 calendar days of the last decision of the QC Review Panel, whichever is later, as the target date for the release of the error rates. Since the national average error rate achieved in a year constitutes the error rate tolerance level that will be used to measure State performance for the same year, it is essential that once the State error rates are released, no further error rate adjustments be considered. The 30-day period between the submittal deadline for requests for changes due to fair hearing decisions and the expected error rate release date is necessary in order for the Department to evaluate the circumstances of the request and make any necessary adjustment in the error rates. Such requests will not be considered after that time. Since these will not be difference cases, we can give States this much time and still issue final error rates 12 months after the end of the fiscal year. Should a State be subject to a disallowance, the State is afforded the opportunity to challenge the disallowance before the Departmental Appeals Board.

Sample Disposition and Data Submission Time Frames

Current regulations at § 205.40(b)(2)(ii) require States to dispose of and report findings on 99 percent, or all but five cases of the active and negative cases selected each month within 75 days after the end of the sample month; 95 percent, or all but five cases of the cases selected each month within 95 days of the end of the sample month; and 100 percent of the active and negative case samples within 120 days of the sample month. After consultation with State representatives, who recommended a single monthly 120 day deadline with no interim deadlines, we are proposing in § 205.42(e) the following changes to the disposition and reporting time frames: 75 percent of the active and negative cases selected each month within 75 days of the end of the sample month and 100 percent within 95 days after the end of the sample month. We intend to use similar disposition time frames for the Federal subsample as those imposed on the States.

We are proposing in § 205.42(f)(1) to waive the "75 percent in 75 days" disposition standard where the Department has approved an alternate sample disposition plan based on permanent or recurring events in the State at certain times of the year. In § 205.42(e)(1)(iii), unless the Department has approved a temporary alternate sample disposition plan for a particular annual sample period because of an unforeseen event in that year (as indicated in § 205.42(f)(2)), we propose that States immediately submit a report on cases that remain pending 95 days after the end of the sample month explaining why each case was not disposed of and the date by which it will

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be. The Department may grant an extension to the sample disposition time frame for individual cases that exceed the 95-day deadline if sufficient justification for each overdue case is provided. However, at § 205.42(h)(2), in the event of a significant failure on the part of a State to dispose of the required number of monthly AFDC sample cases within the proposed time frames, or time frames approved under a temporary alternate disposition plan, the Department may initiate action to establish the State's error rate.

The 95-day disposition deadline for all cases selected each month is necessary to ensure that the proposed time frames for establishing and issuing the State error rates are met. Tracking data for fiscal year 1988 on State dispositions indicate that 43 States met the existing "95 percent in 95 days" disposition standard. We believe that the proposed 95-day deadline standard, while somewhat more rigorous, is reasonable, particularly in light of the availability of alternate disposition plans. We also believe the proposed changes in the milestone and deadline dates provide flexibility for timely processing of sample cases while ensuring an even flow of work at both the State and Federal level.

The proposed standard to dispose of 100 percent of the sample selected each month within 95 days after the end of the sample month is the same standard that exists in the Food Stamp QC program. While the Food Stamp QC program requires 90 percent of the sample to be disposed of in 75 days, we are proposing a rate of only 75 percent in 75 days. This difference in interim standards is based on State concerns about the need for any interim standard and the fact that many States do not meet the existing AFDC 75-day standard.

The provision for an alternate sample disposition plan exists under current regulations at § 205.40(b)(3). The extension to the time frames for individual cases where an alternate disposition plan has not been submitted or approved is new.

Failure To Complete Sample

Pursuant to section 408(b)(1)(B), if a State fails to provide the Department with information necessary to determine the State's AFDC error rate, the Department, directly or through contractual or other arrangements as determined appropriate, shall establish the error rate for the State on the basis of the best data reasonably available to the Department and in accordance with the statistical methods that would apply if the reviews were conducted by the State.

We interpret section 408(b)(1)(B) to mean that the State must complete a proper sample, that the results of this sample must be reported timely, and that payment and eligibility records must be provided promptly upon request for the Federal rereview. By "proper sample", we mean that the State has completed a sample in accordance with federally prescribed instructions as set forth in QC Manual, section 2. Thus, if a State does not follow the federally prescribed instructions, or if the State does not select the sample in accordance with its approved sampling plan, the sample will be considered invalid, unreliable, or both. Similarly, if a State does not complete the federally prescribed minimum number of reviews and submit the review data in a timely manner, the available sample findings will be considered to be unreliable. State records must be timely supplied for the Federal rereview to enable the Department to meet the proposed time frames for establishing and issuing the State error rates.

We have interpreted the statutory language that the Department shall use the best data "reasonably" available as authorizing the Department to determine the method(s) to be used to establish the State's error rate. Thus, the actual method used will depend on the particular circumstances involved. Some of the circumstances we will consider include the timing and extent of a State's non-cooperation, and the time and resources available to the Department. For example, from the beginning of the annual sample period a State completed a valid but less reliable sample because the sample contained fewer than the prescribed number of AFDC active case reviews. We may combine this State sample with the Federal subsample of this State sample and add an additional Federal sample (de novo review) to determine the State's error rate. However, if we have reason to question the State's findings, we may conduct an audit directly or through a contractual agreement with a third party.

Similarly, if we have reason to question the validity of the reviews being conducted by the State because the State does not conduct its reviews and verification in accordance with federally prescribed procedures or improperly excludes cases from its sample, and the State fails to timely take the remedial action that is indicated, it may become necessary for us to complete these reviews.

In any case in which it is necessary for the Department to determine a State AFDC error rate because the State failed either to complete the prescribed number of case reviews or to cooperate by providing in a timely manner the required valid and reliable information which is necessary to compute its error rate, the proposed regulations provide that the full costs incurred by the Department in making the determination shall be passed on to the State by reducing the amount of administrative costs that would otherwise be payable to the State.

We interpret section 408(b)(1)(B)(ii) to require that the full costs incurred by the Department shall be passed on to the State. These costs are separate from any reductions in FFP for erroneous assistance payments that may be required because a State's error rate is in excess of the national standard. The recoupment of costs will be accomplished by reducing the amount that would otherwise be payable to the State for administrative expenses, generally no later than the second quarter following the quarter in which the costs of compiling the data for determining the State's error rate are available.

The costs assessed to a State will include such items as contract costs, Federal salaries and overtime if appropriate, and travel, as well as any other expenditures incurred by the Department in completing a proper sample. Proposed regulations are set forth at § 205.42(h).

Differences Between State and Federal Review Findings

Section 408(b)(3), in describing the process for resolving differences between State and Federal AFDC review findings, indicates that a "difference case" is a case in which the Department finds the case erroneously paid, and the State review determined it correctly paid. We believe that a somewhat broader concept is appropriate in order to address other types of inconsistencies between Federal and State findings, e.g., in situations where the State finds a case incorrectly paid and the Federal review finds the case correctly paid.

In the proposed regulations at § 205.42(i), we define a difference case as a disagreement between State and Federal review findings that may affect the State's official payment error rate. This definition incorporates our current operational definition in QC Manual, section 3. Specifically, a difference case would be a Federal rereview case where there is a disagreement between (1) a State review and Federal rereview finding of a correct payment, overpayment, or a payment to an ineligible case, or (2) a State finding of a correct payment, overpayment, underpayment, or a payment to an ineligible case and a Federal finding that the sample case should be dropped from the QC review.

Quality Control Review Panel

Under current procedures, there is a two-step administrative appeal process for resolving differences between State and Federal active AFDC review findings within the FSA regional office. Section 408(b)(4) requires the establishment of a Quality Control Review Panel (Panel) to review differences cases. After consultation with State representatives, we have decided to retain one appeal level within FSA, the appeal to the FSA Regional Administrator (RA), to ensure the accuracy of the Federal difference decision before involving the Panel. We have also decided to retain the existing 28-day time frame for States to request a review by the RA. In the proposed regulations, at § 205.42(i)(2), we have defined the 28 calendar days in terms of the receipt date of the difference notification and the postmarked date of the appeal letter. This is consistent with the request by the State representatives for a change in how the time frame should be measured.

Given the congressional desire for timely release of error rates, we are proposing that States have 28 calendar days from the receipt of the RA's decision to sustain a difference case to submit an appeal of the difference to the Panel. (We plan to send difference notifications and RAs' appeal decisions via telefax or certified mail to ensure uniform measurement of a State's receipt date.) The appeal request will include all supporting documentation. The proposed regulations do not limit the kinds of documentation a State may submit to substantiate its position. However, the appeal can only be based on issues that were raised in the initial appeal to the RA. In addition, the State will be required to send an informational copy of its appeal request to the RA concurrent with the submittal of the request to the Panel.

We are proposing a target 60-day time period be established for the Panel to render a decision after receipt of a State's appeal request. The 60 days is viewed as a goal since a complex issue requiring supplemental information from the State, or the RA, could delay the decision. Sections 408(b)(5) (C) and (D) provide that the decisions of the Panel in difference cases shall constitute those of the Secretary and that such decisions are not appealable. We interpret this to mean that the Secretary may delegate these decisions to the Panel unless he chooses to review individual difference cases. If a State appeals a disallowance for an error rate in excess of the national standard to the Departmental Appeals Board, the decision of the Panel, or of the Secretary, in difference cases will not be reviewable by the Board.

We believe that the two-level appeal process and the specified time periods for submittal and consideration of an appeal request provides for extensive and appropriate review of the merits of each difference case.

Error Rate and Disallowance Calculations

Error Rate Calculation

The conference report, in describing the purpose and basis for the revised AFDC QC system, states "[t]he conferees assume that the Secretary will use the same statistical methods to estimate errors as have been used under the current quality control system" (Congressional Record, H 9591, November 21, 1989). Therefore, the current methodology for determining a State's payment error rate (i.e., the point estimate from the regression estimator and the double sampling procedure described in QC Manual, section 2) is unchanged by the proposed regulation.

To conform to standard statistical practice, we are proposing to modify the weighting procedure used in determining the national overpayment and underpayment rates. Currently, the national overpayment (or underpayment) rate is the sum, over all States, of the product of each State's regressed overpayment (or underpayment) rate and the ratio of the State's total amount of assistance payments to the total amount of assistance payments of all States in the fiscal year. In the new method, the national overpayment (or underpayment) rate would be the ratio of the sum, over all States, of the product of each State's average monthly caseload and regressed average monthly erroneous assistance payment (or average monthly assistance payment that should have been but was erroneously not made) per case, to the sum, over all States, of the product of each State's average monthly caseload and average monthly payment per case for the fiscal year.

As long as sample sizes are sufficiently large, the current weighting procedure is a valid estimation procedure to use for computing the national payment error rates. However, since more States are electing to reduce their samples to their minimum required size, we are proposing to change this procedure. The new method is less subject to bias associated with smaller sample sizes than our current method and comports with the error rate definitions in the proposed regulations at § 205.43(b)(3) and (5).

The current weighting procedure for computing the payment error rate for States that use disproportionate stratified sampling are the same as the weighting procedure for computing the national overpayment and underpayment rates, except the procedure applied to each State is applied to each stratum. We also propose to use the new weighting procedure for such States.

Error Rate Notification

The current regulation does not specify a time frame for notifying a State of its error rate for a fiscal year. Under the proposed regulations at § 205.43(d), the Department's target for notifying each State of its overpayment and underpayment rates and the national overpayment and underpayment rates will be one year after the end of the annual sample period to which the error rates apply. While we would expect to release the error rates as close to the one-year target date as possible, we are not establishing a fixed date in the regulations for the following reasons: (1) Final national error rates can not be calculated until all sample cases are completed and all differences are resolved; (2) if a State failed to complete a valid and reliable sample, we would need to establish the error rate for the State on the basis of the best data reasonably available and the calculation and release of error rates would likely be delayed; (3) the same would be true if an unforeseen event occurred and we approved an alternate dispostiion plan which provided for the completion of the State sample beyond the prescribed time frames; (4) a delay in the timely adjudication of appeals by the Panel due to the complexity of appeal issues could also delay the release of the error rates.

Calculation of Disallowances

Under current regulations at § 205.44(f), if a State's payment error rate exceeds the 3 percent national standard (4 percent for Guam, Puerto Rico, and the Virgin Islands) the disallowance is computed as the product of the difference between the State's payment error rate and the national standard times the Federal share of the total amount of assistance paid under

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the State plan. However, OBRA 1989 eliminates all past QC disallowances and changes the method of determining such disallowances for the future. In section 408(m)(1), the national standard is set as the national overpayment rate for the fiscal year or four percent, whichever is higher. If a State's overpayment rate exceeds the national standard for a fiscal year, FFP would be reduced.

Several adjustments are made before the amount of disallowance is determined. If the State's underpayment rate is less than the national underpayment rate for the fiscal year, the State's overpayment rate would be reduced by the amount by which the national underpayment rate exceeds the State's underpayment rate. Section 408(d)(3) provides that at the request of the State, the underpayment reduction may be applied to either of the two following fiscal years instead of to the year to which the reduction would otherwise apply. We interpret this to mean that a State may use the underpayment reduction earned in a fiscal year one time only, either in the year in which it is earned or in one of the following two years. Only one underpayment reduction would be applied to any given year.

We believe Congress provided States flexibility in the application of the underpayment adjustment in recognition that, in any given year, a significant number of States would be below the national standard. In order to encourage States to maintain low underpayment rates, even in a year when their payment error rates were below the national standard, the statute allows for the adjustment to be applied in one of the three years. The one time and non-cumulative application of the underpayment adjustment, as specified in the proposed regulations at § 205.43(a)(1)(i), is consistent with the adjustments to the disallowance for overpayment recoveries and child support collections, as provided in sections 408 (f)(2) and (f)(3) of the Social Security Act. For example, overpayment recoveries collected in a single year are used to offset the disallowances for that year.

We are proposing to provide those States whose unadjusted overpayment rates exceeds the national standard, 30 calendar days from the date of receipt of notification of their error rates to advise us of their decision, where applicable, on the application of the underpayment adjustment. If the State does not notify us in writing within this time period, we will use the adjustment that would otherwise apply for the fiscal year.

A State's basic disallowance for a fiscal year is the product of (1) the Federal share of the total amount of assistance paid under the State plan, (2) the difference between the State's adjusted payment error rate and the national standard, and (3) the ratio of the difference between the State's adjusted error rate and the national standard to the national standard. A State's basic disallowance for a fiscal year shall be reduced by its overpayment recoveries and by its improvement in its child support collection rate. The amount of reduction for overpayment recoveries is the product of the Federal share of payments recovered in the fiscal year and the proportion of the State's adjusted payment error rate in excess of the national standard.

The proposed regulations follow the detail defined by the statute on how the child support collection rate will be used to reduce the basic disallowance for the State. If a State's child support collection rate is greater than the national child support collection rate for the fiscal year, or is greater than the average of the State's child support collection rate for the three preceding fiscal years, the State's basic disallowance is further reduced. The amount of reduction will be the larger of the proportions by which the State's collection rate exceeds the national collection rate or exceeds the State's average collection rate for the preceding three years. (The smaller collection rate will produce the larger proportion and, thus, a larger disallowance reduction.) We will use the information on Forms FSA–231 and OCSE–156 and 156 to make the adjustments for the Federal share of overpayments recovered and child support collection rates respectively. AFDC arrears only cases will be included in the calculation of the child support collection rates. See § 205.43(e)(5) of the proposed regulations for a detailed example of the disallowance calculation.

Disallowance Notification

The current regulations do not specify a time frame for notification to States that are disallowance liable. Under the proposed regulations at § 205.43(f), the Department's target for notifying States with overpayment rates above the national standard of their disallowance will be within 60 calendar days after the release of the error rates for the fiscal year. As indicated earlier, the 60 days include 30 days for States to decide on the application of the underpayment adjustment to their overpayment rate, where applicable. We view these time frames as consistent with the congressional intent to expeditiously determine error rates and collect the Federal share of erroneous assistance payments above the national standard.

Data Management

The QC system, as a management information system, provides ongoing data on the frequency, magnitude and source of error to guide States in payment accuracy improvement initiatives. Previously, States were not only required to provide the Department with the results of the individual QC case reviews via a computer, but also with a detailed annual corrective action plan. The plan was required to contain the State's identification and analysis of error concentration, a determination of the causes of errors, specific proposed corrective actions, including implementation steps, and an analysis of the impact on the error rate of previously implemented corrective actions.

We are proposing to eliminate this annual reporting requirement. This proposed action should not be viewed as an indication of diminished interest by the Department in the corrective action process nor in the States' responsibility to take appropriate action to reduce the incidence of incorrect payments. States continue to be required, under the proposed rules at § 205.40(d)(4), to analyze the QC data and take necessary corrective action. At current error rate levels, over one billion dollars in State and Federal assistance payment funds are misspent each year. Continued and renewed corrective action efforts are necessary to reduce the level of these erroneous payments, even for States with error rates below the national standard. While we no longer will require States to document these efforts on an ongoing basis via submittal of an annual corrective action plan, we expect States to carry out these activities and furnish data on corrective action activities upon request. We will continue to assess and monitor State error rate performance and provide the States with detailed national error rate and characteristic data for comparative purposes.

Regulatory Procedures

Executive Order 12291

These regulations do not meet any of the criteria for a major regulation. Further, although Federal matching may be reduced, the reduction results from legislation and not from the terms of these regulations. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations impose no new reporting or recordkeeping requirements pursuant to the Paperwork Reduction Act of 1980 (Pub.L. No. 96–511).

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have significant economic impact on a substantial number of small entities because the rules involve minor changes in State agency procedures. These regulations revise the existing Federal quality control system as it applies to the States' use of Federal funds in administering the AFDC program. A regulatory flexibility analysis is not required because the Federal government will only be recouping monies that were incorrectly paid by the States.

(Catalog of Federal Domestic Assistance Programs 13.760, Assistance Payments Maintenance Assistance)

List of Subparts in 45 CFR Part 205

Computer technology, Family Assistance Office, Grant programs-social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

Dated: October 23, 1990.

Jo Anne B. Barnhart,

Assistant Secretary for Family Support.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for part 205 is revised to read as follows:

Authority: Secs. 402, 403, 406, 1102, and 1108(a), Social Security Act (42 U.S.C. 602, 603, 606, 1302, and 1308(a)); sec. 9101, Pub.L. 99–509, 100 Stat. 1972; sec. 202, Pub.L. 100–485, 102 Stat. 2377; sec. 8006, Pub.L. 101–239, 103 Stat. 2454.

2. Sections 205.40, 205.42 and 205.43 are revised; § 205.41 is added; and § 205.44 is removed and reserved.

§ 205.40 Quality control system.

(a) *Scope.* Sections 205.40 through 205.43 set forth requirements—

(1) For a quality control (QC) system for the Aid to Families With Dependent Children (AFDC) program (and for the Adult assistance programs in Guam, Puerto Rico, and the Virgin Islands) designed to reduce incorrect expenditures by identifying the nature, magnitude and causes of all errors and to improve the accuracy of payments to recipients of the AFDC and Adult assistance programs;

(2) For obtaining data on the correctness of negative case actions and reducing the incidence of incorrect denials for and terminations of assistance;

(3) For determining the amount of any disallowance required to be repaid to the Department due to excess erroneous assistance payments made by the State under the AFDC program.

(b) *Definitions.* For purposes of §§ 205.40 through 205.43:

(1) *Assistance unit,* or *case,* means all individuals whose needs, income, and resources are considered in determining eligibility for, and the amount of, a payment for which Federal financial participation is claimed under this chapter.

(2) *Department* means the U.S. Department of Health and Human Services.

(3) *Disallowance* means the amount of reduction in Federal financial participation.

(4) *Disposed of case* means that a decision was made on the eligibility and payment status of a case under review, or that the case was dropped or listed in error.

(5) *Erroneous payments* means the sum of overpayments made to eligible assistance units and payments to ineligible assistance units.

(6) *Fiscal year,* or *annual sample period,* means the 12-month period, October 1 through September 30.

(7) *Negative case action* means an action to deny an application for assistance or to otherwise dispose of that application without a determination of eligibility (for instance, because the application was withdrawn or abandoned), or to terminate assistance.

(8) *Overpayment* means a financial assistance payment received by or for an assistance unit for the review month, which exceeds by at least $5.00 the amount for which that unit was eligible under permissible State practice in effect on the first day of the review month.

(9) *Payment* means a single payment or multiple payments received for a specific calendar or fiscal month.

(10) *Payment to ineligibles* means a financial assistance payment received by or for an assistance unit for the review month, when that assistance unit was not eligible for any part of the payment under permissible State practice in effect on the first day of the review month, even though the State agency had not made a finding of ineligibility under § 206.10(a)(5) of this chapter.

(11) *Permissible State practice* means written rules and policies relating to eligibility and payment that are in accordance with the State plan provisions or proposed plan amendments submitted to but not acted upon by the Department. Where the plan provision does not conform to Federal regulations or law, permissible State practice means the Federal regulations or law, except as noted in § 205.42(b)(1).

(12) *Quality Control Manual* means the "AFDC Quality Control Manual" that is issued by the Family Support Administration of the Department of Health and Human Services.

(13) *Review month,* or *sample month,* means the specific calendar or fiscal month for which the assistance payment under review is received.

(14) *Secretary* means the Secretary of Health and Human Services.

(15) *State* means the several States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands and American Samoa.

(16) *Underpayment* means a financial assistance payment received by or for an assistance unit for the review month which is at least $5.00 less than the amount for which that assistance unit was eligible under permissible State practice in effect on the first day of the review month.

(c) *State plan requirements.* A State plan under title IV–A, and in Guam, Puerto Rico, and the Virgin Islands under titles I, X, XIV or XVI (AABD), shall provide a continuing QC system for assuring that assistance is furnished in accordance with permissible State practice as defined in paragraph (b) of this section.

(d) *Basic elements of the quality control system*—(1) *General requirements.* The State shall operate the QC system in accordance with §§ 205.40 through 205.43, other applicable regulations of this chapter, and the implementing procedures in the QC Manual.

(2) *Sampling requirements.* The State shall carry out sampling in accordance with the requirements specified in § 205.41, and with the implementing procedures in the QC Manual, section 2.

(3) *Review requirements.* The State shall conduct QC reviews in accordance with the requirements specified in § 205.42, and with the implementing procedures in the QC Manual, section 3.

(4) *Data management requirements.* The State shall provide the resources and methods necessary to analyze the findings of the system and shall take appropriate corrective action on the causes of improperly authorized or denied assistance. The State shall

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provide access to and/or furnish the Department information or data on this activity upon request.

§ 205.41 Sampling plan and procedures.

(a) *Purpose.* This section provides the sampling plan, sample size requirements, and procedures for the AFDC and Adult assistance programs.

(b) *Definitions.* In addition to the definitions in § 205.40(b), the following definitions apply to this section.

(1) *Completed active case review* means a case that has been subject to QC review and a finding of correctly paid, overpaid, underpaid or ineligible has been made.

(2) *Completed negative case action review* means a negative case action that has been subject to QC review and a finding that the action to deny or to terminate assistance is correct or incorrect has been made.

(c) *Plan approval and submittal dates.* The State shall submit to the Department for approval a QC sampling plan (or revisions to a current plan), that meets the requirements of this section at least 60 calendar days before the beginning of the annual sample period in which it is to be implemented. The State is not required to resubmit the plan if it is unchanged from a previous sample period. Universe estimates (i.e., average monthly caseload and total number of negative case actions) and sample intervals for the annual period are required 30 calendar days prior to the selection of the October sample. The reliability waiver statements for AFDC active cases, as described below in paragraph (d)(3)(ii) of this section, are required by the first day of the annual sample period. The monthly list of selected sample cases, computer-generated random start and seed numbers, and reserve pool cases (if applicable) are to be submitted within 10 calendar days of the date of sample selection specified in the State sampling plan.

(d) *Plan requirements.* The State shall have an approved sampling plan in effect for the full annual sample period that includes the following:

(1) *Population to be sampled;*

(2) *List(s) from which the sample is selected,* describing the following characteristics:

(i) Sources;

(ii) Components;

(iii) Accuracy and completeness of the list(s) in relation to the population of interest. The list of active cases shall be an unduplicated list of all assistance units for which either a full or partial payment was made for the review month by the end of that month. The list of negative case actions shall be a list of all unduplicated completed actions taken by the State to deny or terminate financial assistance for the review month, except for those assistance units that are on the active case list for the same review month;

(iv) Form and structure of the list (e.g., all or part is automated; supplemental lists are added; code definitions are used);

(v) Frequency of updating the list or its sources;

(vi) Estimated proportion of cases for which a review may not be completed; and

(vii) Methods of deleting listed-in-error cases from the list.

(3) *Sample size* (the number to be completed). The AFDC and the Adult assistance sample sizes for the annual sample period shall be determined in accordance with the requirements in this section. The active case samples shall be based on the estimated average monthly caseload for the annual sample period. The negative case action samples shall be based on the estimated total number of negative case actions for the annual sample period.

(i) *AFDC active cases—standard sample size.* The required standard sample sizes for AFDC completed active case reviews for specified estimated average monthly caseloads shall be as follows:

Average monthly caseload (N)	Completed annual sample size (n)
60,000 and over	2,400
10,000–59,999	[1]
Under 10,000	300

n=300+0.042 (N−10,000)

[1] Use equation below.

(ii) *AFDC active cases—minimum sample size.* A State may choose to reduce its sample size for AFDC completed active case reviews below the standard size only before the beginning of the annual sample period. For each annual period where the State chooses to reduce its standard sample size, the State shall provide the Department with a statement (see Appendix to this section) as an addendum to the sampling plan, accepting the reliability of the payment error rate and waiving the right to challenge the resulting AFDC (and Medicaid) error rates based on the reduced sample size. The required minimum sample sizes for AFDC completed active case reviews for specified estimated average monthly caseloads shall be as follows:

Average monthly caseload (N)	Completed annual sample size (n)
60,000 and over	1,800
10,000–59,999	[1]
Under 10,000	300

n=300+0.018 (N−10,000)

[1] Use equation below

(iii) *AFDC negative case action sample size.* The required negative case action sample sizes for AFDC completed negative case action reviews for specified estimated total number of negative case actions shall be as follows:

Total number of negative case actions (N)	Completed annual sample size (n)
180,000 and over	800
14,000 to 179,999	Use equation below
700 to 13,999	175
Under 700	100 or ½ (N), whichever is less.

n=175+0.00376 (N−14,000)

(iv) *Adult active cases—standard sample size.* The standard annual sample sizes required for completed active Adult assistance case reviews shall be as follows:

Guam and the Virgin Islands.....150
Puerto Rico.....use formula below
300+0.02628 (N−10,000)
where N is the estimated average monthly caseload.

(v) *Adult active cases—minimum sample size.* The minimum annual sample sizes required for completed active Adult assistance case reviews shall be as follows:

Guam and the Virgin Islands.....75
Puerto Rico.....use formula below
300+0.01125 (N−10,000)
where N is the estimated average monthly caseload.

(vi) *Adult negative case action sample size.* The required annual sample size for completed Adult assistance negative case action reviews shall be the same as specified for AFDC negative case action cases in paragraph (d)(3)(iii) of this section.

(4) *Sample selection procedure.* The procedure for sample selection shall conform to principles of probability sampling. Approximately one-twelfth of the annual sample shall be selected each month. A separate sample shall be selected for active cases and negative case actions. The active case sample shall be selected from a list of all active cases with payments authorized prior to sample selection and paid by the end of the month for which it is reviewed. The negative case action sample shall be selected from a list of all negative actions taken to deny or terminate assistance with effective dates in the review month, except for those cases that were reinstated with a full or partial payment during that month. Systematic random sampling shall be used in making the selection.

(5) *Option to drop or complete certain cases.* The State shall specify in its sampling plan whether it chooses to drop or complete a sample case for which less than six months have elapsed since it was last selected and reviewed, regardless of annual sample period.

(6) *Procedure to correct for over- or undersampling.* States shall evaluate their caseload estimates during the annual sample period to ensure that the required number of case reviews is completed. A change in the caseload estimate may require an adjustment to the sample size. Undersampling shall be corrected during the annual sampling period. Oversampling may be corrected at the State's option and, if exercised, shall be coordinated with the Federal regional office. When correcting for over- or undersampling, the State shall follow the procedures described in QC Manual, section 2.

(e) *Review of State sampling procedures.* In order for the Department to carry out its responsibilities under § 201.10 of this chapter, the State shall fully document and make available for review by the Department all sampling procedures, including construction and content of the universe and sample lists.

Appendix—State Reliability Waiver Statement

I (We), _____
State Official Name(s)
the _____
Position(s)
certify that I/we have the authority to enter into binding agreements on behalf of the (State) AFDC and Medicaid programs. Pursuant to 45 CFR 205.41(d)(3)(ii), I/we, acting in my/our official capacity(ies), elect on behalf of the State to exercise the option to reduce the standard AFDC–QC active sample size of _____ completed case reviews to _____ completed case reviews based on an estimated average monthly caseload of _____ for the annual sample period, October 1, 19____ through September 30, 19____. If the reduced sample size specified herein does not meet the required sample size as determined by the actual average monthly caseload for this annual sample period pursuant to the formula specified in QC Manual, section 2, the State agrees to increase this reduced sample size to the required minimum. In so doing, I/we recognize that by electing this option the AFDC and Medicaid payment error rates based on this reduced sample size may have less precision than the error rates produced by the standard sample size. Because of this possible effect, the State waives the right to challenge the precision of the resulting AFDC error rate based on the reduced sample size. The State also waives the right to challenge the precision of the Medicaid error rate based on this reduced AFDC sample size.

Signature _____
Title _____
Date _____
Signature _____
Title _____
Date _____

§ 205.42 Case review and management requirements.

(a) *Purpose.* Except for §§ 205.42(g), (h) and (i) which apply only to AFDC, this section establishes the rules and procedures for the conduct of QC case reviews, completion of QC sample cases and the determination of whether an error exists in a sample case in the AFDC and Adult assistance programs.

(b) *Review basis.* The review shall be conducted against permissible State practice, except as follows:

(1) (i) Where an approved State plan is inconsistent with Federal law or regulations, the review shall be conducted against the approved State plan until either an amendment to remove the inconsistency is submitted or 60 calendar days have elapsed since the State has been notified of the inconsistency, whichever occurs earlier. If the plan amendment is submitted timely, the review shall be conducted against the submitted plan amendment. If the plan amendment is not approved by the Department or is not submitted timely, sample cases selected for the review month immediately following the date that disapproval becomes final or the 60-day period, whichever occurs earlier, shall be reviewed against applicable Federal law and regulations until the State has a revised approved plan.

(ii) Where a State implements a pending plan amendment which is subsequently disapproved by the Department, the review shall be conducted against the pending plan amendment until disapproval becomes final. Sample cases selected for the review month immediately following the date that disapproval becomes final shall be reviewed against the approved plan if the plan is consistent with Federal law and regulations. If the approved plan is inconsistent with Federal law and regulations, the review shall be conducted against applicable Federal law and regulations until the State has a revised approved plan amendment.

(iii) If it is necessary for the State to enact a law in order to remove the inconsistency, the State shall immediately notify the Department. The Department shall establish a reasonable period of time, on a case-by-case basis, for the State to enact the law and amend its State plan. The review shall continue to be conducted against the State's original plan during this time period.

(2) Where the State makes payment in compliance with a court order, the review shall be conducted against the provisions of the court order.

(c) *Case review requirements.* (1) The State shall review all cases selected in the active and negative case samples as prescribed in § 205.41, and reach a review finding as required on each case.

(2) The review shall include: The examination and analysis of the case record; the conduct of a field investigation with a face-to-face interview in all cases in the active case sample and, as necessary, in the negative case action sample; the verification and documentation of all required review elements through contacts with appropriate collateral sources of information; the securing of specified primary or secondary evidence; the determination of the correctness of the eligibility and payment decisions; and, where required, the transmission of the coded findings to a designated host computer.

(3) The State shall use the forms and schedules set forth in the QC Manual and otherwise prescribed by the Department to document all review findings.

(d) *Special provisions applicable to error determination.* The following provisions modify what constitutes a payment error under permissible State practice.

(1) *Changes in circumstances.* For purposes of this paragraph, a change in circumstances means a change occurring after the date of authorization of the initial payment which may affect the assistance unit's eligibility and/or payment amount. Multiple changes in circumstances shall be individually evaluated to assess their impact on the final payment error determination. A change in policy or a hearing decision shall be considered a change in circumstances.

(i) A change in circumstances shall not be counted as a payment error if the change occurred in the review month or the month immediately preceding the review month or, if the review month's

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payment continues unadjusted because a hearing was requested.

(ii) A change in circumstances shall be counted as a payment error if the change was incorrectly reflected in the review month's payment or, if the change occurred in or before the second prior month to the review month and was not reflected in the review month's payment.

(2) *Other types of payment error not to be counted.* The following types of payment error shall not be counted as errors.

(i) Payment errors which result solely from failure on the part of the State to properly implement changes in Federal law for a period of six months after the effective date of the legislation or implementing regulations, whichever is later;

(ii) Payment errors which result solely from a State's reliance on, and correct use of, incorrect written factual information provided by the Department about matters of fact or from incorrect written statements of Federal policy by Department officials;

(iii) Payment errors which result from a declaration by the President or the State Governor, pursuant to Federal or State statute, of a state of emergency or major disaster and which directly affect the State's ability to make correct payments, if adequate documentation of the event and its impact are provided. The information shall include: a copy of the declaration; a detailed explanation of the circumstances; identification of the affected jurisdictions; the reason(s) why the State's ability to make correct payments has been or will be impaired; the length of time required to overcome the effects of the emergency or disaster; and the actions the State is taking to minimize the magnitude and duration of the negative effect;

(iv) Payment errors which result solely from failure of the assistance unit to submit a monthly report;

(v) Payment errors which result when a recipient does not have a social security number, but has filed an application for a number within 30 calendar days after the date of application for assistance; and

(vi) Payment errors which are inconsistent with fair hearing decisions under § 205.10 when the hearing decision meets the following criteria:

(A) The decision is based only on the facts of the case at the time of the QC review;

(B) The State defended the adverse action during the hearing process; and

(C) The request for adjustment is made within eleven months after the end of the annual sample period to which the adjustment would apply.

(e) *Sample disposition and data submission time frames.* (1) The State shall input review findings for disposed of active and negative sample cases into the computer terminal provided by the Federal government and transmit the edited data to a designated host computer. For States that cannot transmit the data due to lack of equipment or telecommunication linkage, the State shall submit the review findings in a format specified by the Department. The State shall dispose of and submit review findings in accordance with the following time frames:

(i) Seventy-five percent of the cases selected in both the active and negative case samples each month, within 75 calendar days after the end of each sample month;

(ii) One hundred percent of the cases selected in both the active and negative case samples each month, within 95 calendar days after the end of each sample month;

(iii) For each monthly sample case that remains pending after 95 days, unless an alternate disposition plan has been approved under paragraph (f)(2) of this section, the State shall immediately submit a report on why the case has not been disposed of and the date of expected disposition. If the Department finds there is insufficient justification for the delay, the Department may initiate action to establish the State's error rate under the procedures specified in paragraph (h) of this section.

(2) The State shall submit the review findings for disposed of sample cases promptly (i.e., at least on a monthly basis).

(f) *Alternate disposition plan.* (1) The State may submit an alternate disposition plan for the Department's approval if the State is unable to meet the requirements of paragraph (e)(1)(i) of this section, either as a result of circumstances of a permanent or recurring nature, or as a result of the occurrence of an unforeseen event during the annual sample period. Until the Department approves the alternate disposition plan, the State shall continue to comply with the requirements in paragraph (e)(1)(i) of this section. The alternate disposition plan may be approved when—

(i) The State's sample population is dispersed over such great distances that conducting the number of field interviews needed to meet the requirements of paragraph (e)(1)(i) of this section is cost prohibitive; or the State's usual weather conditions or geography make significant numbers of the sample population inaccessible or difficult to contact during certain times of the year, making it a hardship for the State to comply with the requirements of paragraph (e)(1)(i) of this section.

(ii) The State's request contains evidence and data to justify the need for an alternate disposition plan, including a description of the State's population dispersal or inaccessibility, and the reason(s) why the State cannot comply with the requirements in paragraph (e)(1)(i) of this section.

(iii) The request contains detail on the State's proposed disposition schedule for sample cases, including the annual sample period(s) to be covered, the revised disposition dates and percentages, and the revised schedule for the transmission of the edited review findings of the sample cases; and

(iv) The request is submitted at least 60 calendar days before the beginning of the first annual sample period covered by the alternate disposition plan.

(2) The Department may approve a temporary alternate disposition plan for a particular annual sample period based on unforeseen events and allow the State to submit the edited review findings of its sample cases at later dates than those specified in paragraph (e)(1) of this section, when—

(i) Unforeseen events occur (e.g., floods, earthquakes, computer breakdowns, snow-storms and labor disputes) which temporarily prevent the State from meeting the requirements in paragraph (e) of this section; and

(ii) The State's request contains a description of the circumstances of the unforeseen event, the period to be covered by the alternate disposition plan, the revised disposition dates and percentages, and the revised schedule for the transmission of the edited review findings of the sample cases.

(g) *Data requirements for Federal re-review of State sample cases.* As part of the Federal monitoring of State QC programs, the Department conducts a re-review of a subsample of each State's AFDC active case sample.

(1) The State shall provide the original case record and State QC file for each subsample case, by mail or delivery service, within 10 calendar days of the request to the State for such information.

(2) The information provided shall include records relating to public assistance, recipients and third parties, including information available under § 205.55 of this chapter.

(3) The Department may grant exceptions to these requirements in unusual circumstances.

(h) *Effects of failure to complete the sample.* This paragraph provides the procedures that the Department shall follow if a State fails to complete a valid and reliable AFDC active case sample in accordance with prescribed QC procedures and deadlines which include obtaining and using information available under § 205.55.

(1) The Department shall notify the State of its failure to complete its sample and provide the State the opportunity to negotiate a solution for the completion of the sample.

(2) Pursuant to section 408(b)(1)(B)(i) of the Social Security Act, when a State is unable to negotiate a solution or fails to carry out a negotiated solution, the Department shall, directly or through contractural or other such arrangement as appropriate, conduct the review and establish the fiscal year error rate for the State on the basis of the best data reasonably available to the Department, in accordance with statistical methods that would apply if the reviews were completed by the State.

(3) Notwithstanding any other provision of this chapter, total payments to a State under section 403(a)(3)(D) for the proper and efficient administration of the State plan shall be reduced by the costs incurred by the Federal government to complete the State's sample pursuant to section 408(b)(1)(B)(ii).

(i) *Difference resolution process.* A "difference" is a disagreement between State and Federal review findings that affect the State's official AFDC payment error rate (i.e., a disparity between a State review and Federal rereview finding pertaining to a correct payment, overpayment, or a payment to an ineligible case), or a State finding of a correct payment, overpayment, underpayment, or a payment to an ineligible case versus a finding that the sample case should be dropped from the QC review. The process for resolving the difference shall be as follows:

(1) The State shall be notified in writing of the disagreement and afforded an opportunity to request a review of the difference by the Regional Administrator, Family Support Administration.

(2) The State shall respond to the difference notification within 28 calendar days of receipt of such notification agreeing, or indicating reasons for disagreeing, with the Federal finding. Responses postmarked by the 28th calendar day after the date of the receipt of the difference letter shall be deemed to have met the time frame. If the deadline is a Saturday, Sunday, legal holiday, or an office closing, the deadline shall be extended to the next business day. If the State fails to respond within the 28-day time frame, the Federal finding shall be the final decision of the Department.

(3) The Regional Administrator shall respond to the State within 21 calendar days of receipt of the reconsideration request. The response shall either be a decision on the State's request, or an indication that the decision will be delayed pending further review of applicable laws, regulations, or policies.

(4) If the State disagrees with the Regional Administrator's decision, it may seek review with the Quality Control Review Panel. The appeal request shall be postmarked by the 28th calendar day after the receipt of the Regional Administrator's decision, or the Regional Administrator's decision shall be the final decision of the Department. If the deadline is a Saturday, Sunday, legal holiday, or an office closing, the deadline shall be extended to the next business day. The State shall forward an informational copy of its appeal request to the Department's regional office concurrent with submittal of its request to the Review Panel. The State may submit to the Panel any documentation appropriate to substantiate its position as part of its appeal request. However, the appeal to the Panel can only be based on issue(s) raised during the initial appeal to the Regional Administrator.

(5) The Quality Control Review Panel shall evaluate all of the pertinent evidence submitted and shall notify the State of its decision (with a target date of 60 calendar days following the receipt of the State's appeal request). Unless the Secretary chooses to review individual difference cases, decisions of the Panel shall be made on the record and shall constitute the findings of the Secretary for establishing a State's payment error rate for the fiscal year.

§ 205.43 Determination of payment error rates and disallowances of federal financial participation for erroneous payments.

(a) *Purpose.* This section sets forth the rules and procedures for calculating State AFDC error rates and for disallowing Federal financial participation (FFP) to the States with erroneous payments in excess of the national standard for a fiscal year.

(b) *Definitions.* In addition to the definitions in §§ 205.40(b) and 205.41(b), the following definitions apply to this section.

(1) *Child support collection rate* means the ratio of—

(i) The sum of the number of AFDC cases reported by the State IV–D agency for each quarter in the fiscal year for which an assignment was made under section 402(a)(26) of the Social Security Act and a collection was made, to

(ii) The sum of the number of AFDC cases with such assignments reported by the State IV–D agency for each quarter in the fiscal year.

(2) *National child support collection rate* for a fiscal year means the ratio of the sum of the number of cases (including AFDC arrears only cases) described in paragraph (b)(1)(i) of this section reported by all States for quarters in the fiscal year, to the sum of the number of cases described in paragraph (b)(1)(ii) of this section reported by all States for quarters in the fiscal year.

(3) *National overpayment rate* means the ratio of the total amount of erroneous assistance payments made by all States to the total amount of assistance paid by all States for the fiscal year. (This is equivalent to the ratio of the average monthly erroneous assistance payment per case to the average monthly assistance payment per case for all States.) The rate shall be computed as the ratio of the sum, over all States, of the product of each State's average monthly caseload and regressed average monthly erroneous assistance payment per case, to the sum, over all States, of the product of each State's average monthly caseload and average monthly assistance payment per case for the fiscal year.

(4) *National standard* means the national overpayment rate for the fiscal year or four percent, whichever is larger.

(5) *National underpayment rate* means the ratio of the total amount of assistance that should have been but was erroneously not paid for the fiscal year, to the total amount of assistance paid by all States. (This is equivalent to the ratio of the average monthly amount of assistance payment per case that should have been but was erroneously not made to the average monthly assistance payment per case for all States.) The rate shall be computed as the ratio of the sum, over all States, of the product of each State's average monthly caseload and regressed average monthly amount of assistance payment per case that should have been but was erroneously not made, to the sum, over all States, of the product of each State's average monthly caseload and average monthly assistance payment per case for the fiscal year.

(6) *Overpayment rate* means the ratio of the total amount of erroneous assistance payments made by a State for the fiscal year, to the total amount of assistance payments made. (This is equivalent to the ratio of the average monthly erroneous assistance payment

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per case to the average monthly assistance payment per case in a State for the fiscal year). The rate shall be computed as the ratio of the State's regressed average monthly erroneous assistance payment per case to the State's average monthly assistance payment per case for the fiscal year. (For States that use disproportionate stratified sampling, the procedure shall be the same as the procedure in paragraph (b)(3) of this section, except "stratum" shall be substituted for "State".)

(7) *Underpayment rate* means the ratio of the total amount of assistance payments that should have been but was erroneously not made by a State for the fiscal year, to the total amount of assistance payment made. (This is equivalent to the ratio of the average monthly assistance payment per case that should have been but was erroneously not made by a State to the State's average monthly assistance payment per case for the fiscal year.) The rate shall be computed as the ratio of the regressed average monthly assistance payment per case that should have been but was erroneously not made by a State to the State's average monthly assistance payment per case for the fiscal year. (For State's that use disproportionate stratified sampling, the procedure shall be the same as the procedure in paragraph (b)(5) of this section, except "stratum" shall be substituted for "State".)

(c) *General.* All error rates for a State shall be based on a double sampling methodology which includes a statistically valid State sample of cases selected each month during the fiscal year, followed by a statistically valid Federal subsample of cases selected from the State completed samples. The State error rate shall be the point estimate of the regression estimator as set forth in the QC Manual.

(d) *Error rate notification.* The target date for the Department of notify each State of its overpayment and underpayment rates and the national overpayment and underpayment rates shall be one year after the end of the annual sample period or within 30 calendar days of the resolution by the Quality Control Review Panel of all differences, pursuant to § 205.42(i)(5), whichever is later.

(e) *Determination of disallowances in Federal matching funds.* If a State's overpayment rate for a fiscal year exceeds the national standard, Federal matching funds to the State shall be reduced. The procedure for determining the disallowance for a fiscal year shall be as follows:

(1) *State adjusted overpayment rate.* A State with an underpayment rate below the national underpayment rate in a fiscal year shall have its overpayment rate reduced by the amount by which the national underpayment rate exceeds the State's underpayment rate.

(i) A State shall use the underpayment reduction earned in a fiscal year one time only, either in the year in which it was earned, or in one of the following two years. Only one underpayment reduction shall be applied in any one year. A reduction earned in one year shall not be used to reduce an overpayment rate of a prior year.

Example: The State was disallowance liable in 1992 and 1993 and had earned reductions for low underpayments in 1991, 1992 and 1993. The State can apply either the 1991 or 1992 reduction to the 1992 overpayment rate. If the 1991 reduction is applied to the 1992 error rate, the State can then apply either the 1992 or 1993 reduction to the 1993 error rate. If in 1992, the State applied the 1992 reduction, then either the 1991 or the 1993 reduction can be applied to the 1993 error rate. If in 1993, however, the State applied the 1993 reduction, then the 1991 reduction can no longer be used since it was not used in the year it was earned or one of the following two years.

(ii) At the request of a State, the Department shall apply the reduction, described in paragraph (e)(1)(i) of this section in determining the State's overpayment rate for either of the two following years instead of in determining the State's error rate for the fiscal year to which the reduction would otherwise apply. The request shall be made in writing within 30 calendar days from the date of receipt of notification described in paragraph (d) of this section.

(2) *Basic disallowance amount.* If a State's overpayment rate for a fiscal year, adjusted as described in paragraph (e)(1) of this section, exceeds the national standard for the fiscal year, the amount of the basic disallowance shall be the product of—

(i) The Federal share of the State's total AFDC payments for the fiscal year;

(ii) The difference between the State's adjusted overpayment rate and the national standard for the fiscal year; and

(iii) The ratio of the amount obtained in paragraph (e)(2)(ii) of this section, to the national standard.

(3) *Reduction of the basic disallowance amount for overpayment recoveries.* A State's basic disallowance amount for a fiscal year shall be reduced to reflect AFDC overpayment recoveries by the State. The amount of the reduction shall be the product of—

(i) The Federal share of payments recovered in the fiscal year; and

(ii) The ratio of the amount obtained in paragraph (e)(2)(ii) of this section, to the State's adjusted overpayment rate.

(4) *Reduction for improvement in child support collections.* If a State's child support collection rate is greater than the national child support collection rate for the fiscal year, or is greater than the average of the State's child support collection rates for the three preceding fiscal years, the State's disallowance amount shall be further reduced. The amount of the reduction shall be the product of—

(i) The amount of the basic disallowance calculated in paragraph (e)(2) of this section minus the amount of the reduction calculated in paragraph (e)(3) of this section, and

(ii) The larger of—

(A) The ratio of the difference between the State and the national child support collection rate, to the national child support collection rate for the fiscal year; or

(B) The ratio of the difference between the State's child support collection rate for the fiscal year and the State's average child support collection rate for the preceding three fiscal years, to the State's average child support collection rate for the preceding three fiscal years.

(5) *Final disallowance amount.* The amount of disallowance imposed on the State by the Secretary shall be the amount of the disallowance calculated in paragraph (e)(2) of this section minus the sum of the amounts of reductions calculated in paragraphs (e)(3) and (e)(4) of this section.

Example: All references are to paragraph (e) of this section.

Fiscal year	State	National
Overpayment rate	8.0%	6.0%
Underpayment rate	2.8%	3.0%
Federal share of—		
Total AFDC payments	$5,000,000	(*)
Total AFDC overpayment recoveries	5,000	(*)
AFDC child support collection rate	16.0%	12.0%
Average AFDC child support collection rate for preceding 3 years	14.0%	(*)

Calculation:
1. State adjusted overpayment rate, paragraph—
   (e)(1) = 8.0 − (3.0 − 2.8) = 7.8%
2. Basic disallowance amount, paragraph—
   (e)(2)(i) = $5,000,000
   (e)(2)(ii) = 7.8 − 6.0 = 1.8%
   (e)(2)(iii) = 1.8/6.0 = 0.30
   Amount = $5,000,000 × 1.8% × 0.30 = $27,000
3. Reduction for overpayment recoveries, paragraph—
   (e)(3)(i) = $5,000
   (e)(3)(ii) = 1.8/7.8 = 0.231
   Amount = $5,000 × 0.231 = $1,155
4. Reduction for improvement in child support collections, paragraph—
   (e)(4)(i) = $27,000 − $1,155 = $25,845
   (e)(4)(ii)(A) = (16.0 − 12.0)/12.0 = 0.333
   (e)(4)(ii)(B) = (16.0 − 14.0)/14.0 = 0.143
   Since 0.333 is larger than 0.143, then the—
   Amount = $25,845 × 0.333 = $8,606
5. Final disallowance, paragraph—
   (e)(5) = $27,000 − ($1,155 + $8,606) = $17,239

(f) *Disallowance notification and payment schedule.* The Department shall notify the States with overpayment rates above the national standard of their imposed disallowances (with a target date of 60 calendar days after the release of the error rates for the fiscal year).

(1) A State subject to a disallowance shall pay the amount of its disallowance within 45 calendar days of the date of the notification, or negotiate an agreement with the Department to repay the disallowance with interest in calendar quarterly installments over a period not to exceed 30 months beginning not later than the first calendar quarter after the date of the receipt of the notification.

(2) If a State fails to pay the amount of the imposed disallowance as specified in paragraph (f)(1) of this section, the Department shall reduce the Federal matching funds otherwise payable to the State under the Social Security Act by amounts sufficient to recover the amount of disallowance with interest.

(3) Interest on the unpaid amount of the State's disallowance shall accrue at the overpayment rate established under section 6621(a)(1) of the Internal Revenue Code of 1986 beginning 45 calendar days after the date the State receives notice of the disallowance. If a subsequent appeal by the State is decided in the State's favor, the Department shall repay to the State all payments made with interest from the date payment is received at the same accrued rate applicable to unpaid disallowances.

(g) *Administrative review of disallowances.* A State may appeal the imposition of the disallowance to the Departmental Appeals Board in writing within 60 calendar days after the receipt of the notification described in paragraph (f). The Board shall consider the State's appeal in accordance with 45 CFR part 16.

(1) The Board shall not review, but shall incorporate by reference in its disallowance determination, the decisions on difference cases made by the Quality Control Review Panel or the Secretary.

(2) If the Board does not decide an appeal within 90 calendar days after the date on the State's notice of appeal, interest on the unpaid disallowance amount shall be suspended beginning with the 90th calendar days and ending on the date of the Board's final decision, except to the extent of that the Board finds that the State caused or requested the delay.

(h) *Judicial review of disallowances.* A State may appeal a decision by the Departmental Appeals Board, including a decision incorporated by the Board on a difference case, to the Federal district court within 90 calendar days after the date of the decision by the Board. Court review shall be on the record established in the Departmental Appeals Board review and shall be in accordance with the standards of review prescribed by title 5, U.S.C., section 706(2), subparagraphs (A) through (E).

§ 205.44 [Reserved]

[FR Doc. 91-14343 Filed 6-14-91; 8:45 am]

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Office of Child Support Enforcement

45 CFR Part 304

RIN 0970-AA86

Child Support Enforcement Program; Prohibition of Federal Funding for Costs of Guardians Ad Litem

AGENCY: Office of Child Support Enforcement (OCSE)/HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Federal regulations to prohibit Federal funding under the Child Support Enforcement (IV–D) program for costs of guardians ad litem appointed to represent minors in IV–D actions. This change would made clear in regulation OCSE policy that costs of guardians ad litem are general State costs and are, therefore, not eligible for Federal financial participation (FFP).

DATES: Consideration will be given to comments received by August 16, 1991.

ADDRESSES: Send comments to Director, Office of Child Support Enforcement, Family Support Administration, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447. Attention: Director, Policy and Planning Division, Mail Stop: OCSE/PPD. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. on the 4th floor of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Cohen at (202) 401–5366.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation contains no information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Statutory Authority

This regulation is proposed under the authority granted to the Secretary by section 1102 of the Social Security Act (the Act). Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Background

The Child Support Enforcement Program was established under Title IV–D of the Act for the purpose of establishing paternity and obtaining and enforcing the support obligations owed by absent parents. Each State must have in effect an approved State IV–D plan which complies with the Federal standards incorporated in the Act and in OCSE regulations. Federal funding at the applicable matching rate is available for services and activities made pursuant to an approved Title IV–D State plan which are determined by the Secretary to be necessary expenditures.

Federal regulations at § 304.10 provide that as a condition for FFP, the provisions of 45 CFR part 74 which establish uniform administrative requirements and cost principles shall apply to all grants made to States under the IV–D program. Guidance for determining which services and activities meet the necessary expenditure test is provided by the Office of Management and Budget's (OMB) Circular A–87, "Cost Principles for State and Local Governments". Section C.1.a. made applicable here by 45 CFR 74–.171, provides that allowable costs must "(b)e necessary and reasonable for proper and efficient administration of the grant programs, be allowable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall

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responsibilities of State [or] local * * * governments."

If the context of the IV–D program, expenditures are considered general State expenses if they are incurred as a result of general State requirements which are neither dependent on nor confined to the IV–D program. Therefore, any costs which result from services and activities which were not instituted solely for IV–D child support enforcement purposes would not be reimbursed. In the past, requests for reimbursement of costs for legislative expenditures, certain judicial costs, and costs for incarceration of delinquent obligors were denied because these costs are general State expenses.

Recently, States have requested FFP for costs of guardians ad litem to represent minors in IV–D litigation. For the most part, these States have general State laws which require that guardians ad litem must be appointed in any actions brought against a minor, including a minor defendant (e.g., putative father). The generally understood purpose of a guardian ad litem is to provide legal counsel. Black's Law Dictionary defines a guardian ad litem as a person "appointed by the court to prosecute or defend, in behalf of an infant or incompetent, a suit to which he is a party, and such guardian is considered an officer of the court to represent the interests of the infant or incompetent in the litigation." Although we agree that there may be a necessary duty to be performed by a guardian ad litem in the general sense, the primary issue to consider in the context of IV–D funding is whether the costs of guardians ad litem are appropriately the responsibility of the IV–D program or a general State expense required to carry out the overall responsibilities of State and local governments. As discussed in more detail below, we do not believe that the costs of guardians ad litem are necessary and reasonable costs associated with the proper and efficient administration of the Title IV–D program. This regulation proposes to add these costs to the list of expenditures for which FFP is not available.

Regulatory Provisions

Examples of circumstances in which a court may appoint a guardian ad litem include actions in which a child sues his parent, such as for injuries sustained due to the parent's negligent operations of a motor vehicle; or cases involving sterilization of a mentally retarded minor on a parent's petition. If a parent or general guardian is unavailable or is in conflict with the child, the court may appoint, in accordance with common law practice, someone to represent the interests of the infant in the grievance or cause of action. For example, in child custody disputes between parents, most States, either by statute or case law, afford the court discretion to appoint a guardian ad litem to represent the children, who, although not named parties, may have a substantial stake in the outcome of the case.

Other common examples of when courts typically appoint guardians ad litem are when a minor child has an interest in an insurance policy, an inheritance, a workers' compensation claim, or the ownership of a bank account. Additionally, courts have appointed guardians ad litem to protect the interests of children called as witnesses in their parents' divorce action.

In nearly every State, child abuse and neglect that a guardian ad litem be appointed for the child in all civil judicial proceedings arising from a report of abuse or neglect. Hence, juvenile and family courts, before whom these issues are adjudicated, routinely appoint guardian ad litem to represent the minor children involved.

These examples illustrate that the use of guardian ad litem is not restricted to IV–D purposes. In fact, States customarily engage guardians ad litem on a routine basis in a variety of contexts where the interests of children may be affected by the actions taken or results accomplished. These are general state expenses which arise from a basic recognition that the child's interests in many actions may differ from those of its parents or the State. As a result, laws provide that children are entitled to legal counsel when a vital interest of theirs is being litigated. Therefore, the costs of guardians ad litem would be incurred in the absence of the IV–D program. We believe these costs are a generally responsibility of State or local governments.

Accordingly, we propose to amend 45 CFR 304.23 by adding a new paragraph (k) which would prohibit Federal funding for costs of guardians ad litem appointed to represent minors in IV–D actions.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this proposed rule does not constitute a "major" rule for the following reasons:

(1) The annual effect on the economy would be less than $100 million;

(2) This rule would not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and

(3) This rule would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Although this proposed rule prohibits Federal funding for certain costs, we expect the additional costs to States to be less than $100 million.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments which are not considered small entities under the Act.

List of Subjects in 45 CFR Part 304

Child support, grant programs/social programs.

(Catalog of Federal Domestic Assistance Programs No. 93.023, Child Support Enforcement Program)

Dated: March 13, 1991.

Jo Anne B. Barnhart,

Director, Office of Child Support Enforcement.

Dated: May 10, 1991.

Louis W. Sullivan,

Secretary.

PART 304—[AMENDED]

For the reasons discussed above, we propose to amend 45 CFR part 304 as follows:

1. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1306a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

2. 45 CFR 304.23 is amended by republishing the introductory text and by adding a new paragraph (k) to read as follows:

§ 304.23 Expenditures for which Federal financial participation is not available.

Federal financial participation at the applicable matching rate is not available for:

* * * * * *

(k) The costs of guardians ad litem appointed to represent minors in IV–D actions.

[FR Doc. 91–14304 Filed 6–14–91; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–532; RM–7010]

Radio Broadcasting Services; Brawley and El Centro, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document dismisses a petition filed on behalf of Brawley Broadcasting Company, license of Station KWST(FM), Brawley, California, based upon the lack of an expression of interest in pursuing the proposal by the petitioner. See 54 FR 50003, December 4, 1989. With this action, the proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–532, adopted May 31, 1991, and released June 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14308 Filed 6–14–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–597, RM–7116 and RM–7321]

Radio Broadcasting Services; Wiggins and D'Iberville, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document is a Request for Supplemental Information from John F. White ("petitioner"), permittee of Station WOTC, Channel 250C2, Wiggins, Mississippi, on his proposal to change the community of license for Channel 250C2 from Wiggins to D'Iberville, Mississippi, and modify his construction permit accordingly. See 55 FR 320, January 4, 1990. Petitioner is requested to provide information to show whether D'Iberville is deserving of a first local service or whether it should be credited with all of the aural services licensed to the Biloxi-Gulfport, Mississippi Urbanized Area. No additional counterproposals may be submitted since an opportunity for filing counterproposals has been provided.

DATES: Comments must be filed on or before August 5, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Lisa C. Wilson, Fisher, Wayland, Cooper & Leader, 1255—23rd Street NW., suite 800, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Request for Supplemental Information, MM Docket No. 89–597, adopted May 30, 1991, and released June 12, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14309 Filed 6–14–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–152; RM–7085, RM–7092, RM–7225, RM–7362, RM–7437 and RM–7714]

Radio Broadcasting Services; Pontotoc, Winona, Coffeeville, and Rienzi, MS, and Bolivar, Middleton, Selmer, and Ramer, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document is issued in response to six separately filed, conflicting petitions for FM allotments and channel substitutions in Mississippi and Tennessee. See Supplemental Information, *infra*.

DATES: Comments must be filed on or before August 5, 1991, and reply comments on or before August 20, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Rod Callahan, President, Tupelo Communications, Inc., 20 Emerson Street, Crafton, Pittsburgh, Pennsylvania 15205

Billy J. Crabb, Middleton Broadcasters, 27 Edgemont, Tupelo, Mississippi 38801

Coffeeville Broadcasters, Ltd., 1210 South 12th Street, Gadsden, Alabama 35901

M. Scott Johnson, Catherine M. Grofer, Gardner, Carton & Douglas, 1001 Pennsylvania Avenue NW., suite 750–N, Washington, DC 20004 (Counsel for Slatton-Quick Co., Inc.). John A. Borsari, Borsari & Kump, 900 Seventeenth Street NW., suite 900, Washington, DC 20036 (Counsel for State Line Broadcasting).

Jack W. Ivy, Rt. 1, Box 419, Belmont, Mississippi 38827.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–152, adopted May 30, 1991, and released June 12, 1991. The full text of this Commission decision is available

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for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

Tupelo Communications, Inc., licensee of Station WSEL(FM), has requested the substitution of Channel 244C1 for Channel 244A at Pontotoc, Mississippi, and modification of the license for Station WSEL(FM) to specify Channel 244C1. There is a site restriction 17.7 kilometers northeast of the community at coordinates 34-23-00 and 88-53-40. To accommodate Channel 244C1 at Pontotoc, we shall propose the substitution of Channel 264A for 244A at Bolivar, Tennessee, Station WMOD, at coordinates 35-15-00 and 88-53-28, and the substitution of Channel 230A for 244A at Winona, Mississippi, Station WONA(FM) at coordinates 33-29-34 and 89-45-17. Middleton Broadcasters has proposed the allotment of Channel 264C3 to Middleton, Tennessee, as that community's first local service. There is a site restriction 6.3 kilometers northeast, at coordinates 35-06-37 and 88-50-43. Slatton Quick Company, Inc., requests the substitution of Channel 264A for 288A at Selmer, Tennessee, and modification of the license for Station WXOQ to specify Channel 264A at coordinates 35-13-11 and 88-40-23. State Line Broadcasting proposes the allotment of Channel 264C3 to Ramer, Tennessee, as that community's first FM broadcast service. There is a site restriction 2.2 kilometers northwest, at coordinates 35-05-00 and 88-38-24. Coffeeville Broadcasters, LTD., proposes the allotment of Channel 236A to Coffeeville, Mississippi, as that community's first local service. The coordinates for Channel 236A are 33-58-36 and 89-40-30. Jack W. Ivy proposes the allotment of Channel 267A to Rienzi, Mississippi, as that community's first local service. The coordinates for Channel 267A are 34-46-00 and 88-51-42. In accordance with § 1.420(g) of the Commission's Rules, we will not accept expressions of interest or require the petitioners to state the availability of alternate channels for the Pontotoc substitution.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14370 Filed 6-14-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 56, No. 116
Monday, June 17, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-076]

Availability of Environmental Assessment and Finding of No Significant Impact for Field Testing of a New Recombinant Derived Live Pseudorabies Virus Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service concerning its authorization given to SyntroVet, Inc., to conduct limited field trials of a veterinary biological product, for a new recombinant derived live pseudorabies vaccine. The assessment indicates that the field testing of the live recombinant derived pseudorabies vaccine will not have a significant impact on the environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

DATES: June 17, 1991.

ADDRESSES: Copies of the environmental assessment and findings of no significant impact are available for public inspection at Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and finding of no significant impact relative to its authorization to conduct limited field trials of a new recombinant derived live pseudorabies vaccine under the Virus-Serum-Toxin Act (VSTA) (21 U.S.C. 151 *et seq.*) produced by SyntroVet, Inc.

Under the VSTA, before a veterinary biological product can be licensed, it must be shown to be pure, safe, potent, and efficacious. Field testing is necessary in order to satisfy vaccine safety requirements as a prerequisite to licensing of the live virus vaccine under the VSTA. In the course of reviewing the testing protocol for the recombinant derived pseudorabies vaccine, APHIS assessed the impact on the environment of authorizing the manufacturer to conduct field testing of the product in six States as set forth in the environmental assessment.

The environmental assessment and finding of no significant impact provides the public with documentation of APHIS' review and analysis of environmental effects which may be associated with the gathering of information in these limited field trials.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. The new SyntroVet pseudorabies vaccine is attenuated. Genetic engineering procedures were used to produce four gene deletions in the genome of the Iowa strain. One deletion destroyed the viral thymidine kinase (TK) gene, the function of which is required for viral replication in host nervous system tissue and pathogenic effects. In addition, the second deletion removed portions of the internal and terminal repeat regions, also producing an attenuating effect. These deletions reduced toxicity of the virus in comparison with the wild type virus.

Animals vaccinated with the new SyntroVet pseudorabies vaccine can be differentiated serologically from animals infected with wild type virus. Two additional deletions in the new vaccine destroyed genes coding for viral glycoprotein X (gpX or gpG) and glycoprotein 1 (gp1 or gpE). Destruction of these genes eliminated the potential for host antibody production to these two glycoproteins in vaccinated animals. Antibodies reactive to these proteins, however, were detected after challenge with wild type virus in both previously vaccinated and control animals. This provides a serological method for differentiation between vaccinated and infected hosts, a capability which will facilitate epidemiological studies.

2. The new SyntroVet pseudorabies vaccine is both safe and efficacious. The vaccine virus was shown to be avirulent in pigs and other susceptible species and yet fully capable of eliciting protective immunity against challenge with wild type pseudorabies vaccine in swine vaccinated at three days of age.

3. The new SyntroVet pseudorabies virus is stable. Reversion to virulence was not observed in backcross studies during three sequential passages of the new SyntroVet pseudorabies virus isolated from the respiratory tract of susceptible infected piglets. In addition, backpassages of virus was successful only when virus was expanded in cell culture, but not when actual respiratory secretions were used as inoculum.

4. The new SyntroVet pseudorabies vaccine is non-pathogenic to man. This conclusion is based on the fact that wild type parent virus is not pathogenic to man. Since the genome of the new SyntroVet pseudorabies virus in deficient (four gene deletions) in comparison with wild type virus, it is reasonable to conclude that the new SyntroVet pseudorabies virus is also nonpathogenic to man.

5. The new SyntroVet pseudorabies virus is not oncogenic. It is genetically deficient in comparison to the parental wild type virus, which is widely distributed in nature and contains no known oncogene or cancer-causing substance.

6. The new SyntroVet pseudorabies vaccine is derived from the same parental strain closely related to a licensed pseudorabies vaccine construct which has been safely used since 1987. Ten million doses of this vaccine have been distributed, and to date, no adverse findings have been reported.

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Based on the foregoing, APHIS has determined that the field testing of the new recombinant derived live pseudorabies vaccine would have no significant impact on the human environment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council for Environmental Quality for implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part lb); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 12th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–14336 Filed 6–14–91; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Supplement to Final Environmental Impact Statement Siuslaw National Forest Land and Resource Management Plan for Oregon Dunes National Recreation Area, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare a Supplement to the 1990 Final Environmental Impact Statement (EIS) for the Siuslaw National Forest Land and Resource Management Plan (The Plan). THe EIS Supplement will consider a range of alternatives for managing the Oregon Dunes National Recreation Area (ODNRA), a part of the Siuslaw National Forest. Current management direction for the ODNRA is contained in a ODNRA plan issued in May of 1979 which was incorporated unchanged into The Plan. Any change in management direction for the ODNRA will result in amending The Plan. The Record of Decision for The Plan specifies that the ODNRA management direction revision is to be completed by March 1993.

Alternatives considered will include a no-action alternative which would continue current management direction. Other alternatives will consider differing levels and mixes of management activities and programs. They will be based on issues identified in preliminary scoping with interested publics, agency employees, and other federal, state and local entities. The ODNRA is located on the central Oregon coast between the communities of Florence and Coos Bay/North Bend within Lane, Douglas, and Coos counties.

The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope and implementation of this proposal must be received by July 17, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Ranotta McNair, Area Ranger, Oregon Dunes National Recreation Area, Reedsport OR.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this Supplement should be directed to Mike Harvey, Project Leader, Oregon Dunes National Recreation Area, 855 Highway Avenue, Reedsport, OR 97467; phone (503) 271–3611.

SUPPLEMENTARY INFORMATION: Congress established the Oregon Dunes National Recreation Area on March 23, 1972 to provide for:

the public outdoor recreation use and enjoyment of certain ocean shorelines and dunes, forested areas, fresh water lakes, and recreational facilities in the State of Oregon by present and future generations and the conservation of scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters . . .

The ODNRA is comprised of 32,185 acres, of which approximately 26,000 acres are within the National Forest lands system; the remaining acres are a mix of state, county and private lands. The ODNRA includes 36 miles of ocean beach, with about 14,000 acres of non-vegetated sand. The ODNRA hosts approximately two million visitors each year and accommodates a wide variety of outdoor recreation activities. It features unique sand dunes ecosystems as well as a wide variety of other ecosystem types within the relatively small land base. Water resources include 32 freshwater lakes, two major rivers (Siuslaw and Umpqua) and three smaller streams (Siltcoos, Tahkenitch, and Tenmile). Facilities include 14 fee campgrounds, 21 day use or staging areas, approximately 25 miles of trails and the ODNRA headquarters in Reedsport.

Public participation will be especially important in the planning process. The Forest Service will be seeking information, comments, and assistance from Federal, state, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the EIS Supplement. The participation will start with scoping which includes:

1. Identifying potential issues;
2. Identifying issues to be analyzed in depth;
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process;
4. Identifying project information needs;
5. Exploring additional alternatives;
6. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions); and
7. Determining potential cooperating agencies and task assignments.

The public will be asked to assist in review of alternatives and environmental consequences in the draft Supplement to the EIS. Public comments on the draft Supplement will be used to develop the final Supplement.

The draft Supplement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review July 1992. Copies of the draft Supplement will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment.

EPA will publish a notice of availability of the draft Supplement in the **Federal Register**. The comment period on the draft Supplement will be 90 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the ODNRA participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft Supplement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft Supplement. Comments may also address the adequacy of the draft Supplement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1508.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft Supplement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environment objections that could be raised at the draft Supplement stage but that are not raised until after completion of the final Supplement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final Supplement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comment on the draft Supplement should be as specific as possible.

The final Supplement is scheduled to be completed March 1993. In the final Supplement, The Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft Supplement and applicable laws, regulations, and policies considered in making the decision regarding this proposal. John F. Butruille, Regional Forester, Pacific Northwest Region, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR 217).

Dated: June 7, 1991.

Charles F. Krebs,

Acting Regional Forester.

[FR Doc. 91–14297 Filed 6–14–91; 8:45 am]

BILLING CODE 3410–11–M

Time and Date: Thursday, June 20, 1991, 9 a.m.–9:30 p.m.; Friday, June 21, 1991, 9 a.m.–1:00 p.m.

Status: Open to the public.

MATTER TO BE CONSIDERED: Briefing Forum on Economic and Employment Opportunities for Minorities and Women at the New Denver Airport.

Time and Date: Thursday, June 20, 1991, 9 a.m.–9:30 p.m.; Friday June, 21, 1991, 1 p.m.–4:45 p.m.

CONTACT PERSON FOR MORE INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Emma Monroig,

Solicitor.

[FR Doc. 91–14388 Filed 6–14–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Antarctic Marine Living Resources Conservation and Management Measures.

Form Number: NOAA Forms 88–211, 88–211A, 88–211B, and 88–211–C; OMB–0648–0194.

Type of Request: REquest for revision of a currently approved collection.

Burden: 4 respondents; 48 reporting hours; average hours per response—12 hours.

Needs and Uses: The requirements are pursuant to Antarctic Marine Living Resources Act (1984) regulating harvesting in and importing from the Antarctic. Forms/Logbooks will be used to collect information from an anticipated four respondents for the conservation/management of resources and to meet treaty obligations of the Convention on the Conservation of Antarctic Marine Living Resources.

Affected Public: Individuals, business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 11, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–14290 Filed 6–14–91; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Travel and Tourism Administration (USTTA).

Title: Industry Survey.

Form Number: Agency-none; OMB.

Type of Request: New.

Burden: 2500 respondents; 834 burden hours. Average minutes per response is 20.

Needs and Uses: This survey is being conducted to have the travel and tourism industry evaluate the programs and services provided by USTTA. Results will allow USTTA to determine the value of programs/services and where improvements can be made. OMB will receive input on how the industry feels USTTA should be funded.

Affected Public: The travel and tourism industry.

Frequency: One time only.

Respondent's Obligations: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 12, 1991.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 91–14360 Filed 6–14–91; 8:45 am]

BILLING CODE 3510–CW–M

COMMISSION ON CIVIL RIGHTS

Economic and Employment Opportunities for Minorities and Women at the New Denver Airport, CO.; Briefing Forum

June 12, 1991.

AGENCY: Commission on Civil Rights.

Place: Radisson Hotel, 1550 Court Place, Denver, Colorado.

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International Trade Administration

[A-570-814]

Initiation of Antidumping Duty Investigation: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: David C. Smith, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3798.

Initiation

The Petition

On May 22, 1991, U.S. Fittings Group, an ad hoc trade association, filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of the United States industry producing certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings). In accordance with 19 CFR 353.12, the petitioner alleges that imports of butt-weld pipe fittings from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States as less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry. U.S. Fittings Group supplemented its petition on June 7, 1991.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 353.2(k), and because it has filed the petition on behalf of the U.S. industry producing butt-weld pipe fittings. If any interested party, as described in 19 CFR 353.2(k) (3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on November 1990 price quotations for butt-weld pipe fittings produced in the PRC, which were obtained from a representative of a trading company. The prices petitioner obtained were quoted CIF West Coast of the United States. Petitioner reduced USP for ocean freight, marine insurance, and brokerage based on the difference between customs value and CIF value, as reported in the Department's IM-145 statistics for 1990.

Petitioner, alleging that the PRC is a nonmarket economy (NME) country within the meaning of section 773(c) of the Act, based foreign market value (FMV) on three methodologies. Method (1) bases FMV on the factors of production of one of the petitioning firms and values those factors in Thailand and, where surrogate information was not reasonably available for overhead and packing, in the United States. Method (2) employs the factors of production of one of the petitioning firms and values those factors in India and, where surrogate information was not reasonably available for overhead and packing, in the United States. Petitioner also included the statutory minimums of ten percent for general expenses and eight percent for profit in methods (1) and (2). Method (3) bases FMV on Thai export prices to the United States.

The Department has not accepted methods (1) and (3) contained in the petition as the basis for FMV because in recent cases India has been found to be more comparable to the PRC than Thailand, pursuant to section 773(c)(1)(B). We have accepted methods (2) for purposes of this initiation. Based on this method, petitioner alleges dumping margins ranging from 30.8 to 182.9 percent.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on butt-weld pipe fittings from the PRC and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of butt-weld pipe fittings from the PRC are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Pursuant to section 771(18) of the Act and based on prior investigations, the PRC is an NME. Parties will have the opportunity to comment on this issue and whether foreign market value should be based on prices or costs in the NME in the course of this investigation. The Department further presumes, based on the extent of central control in an NME, that a single antidumping duty margin is appropriate for all exporters. Only if NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific margins. (See, Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) for a discussion of the information the Department considers in this regard).

In accordance with section 773(c), FMV in NME cases is based on NME producers' factors of production (valued in a market economy country). Absent evidence that the PRC government has selected which factories produce for the United States, for purposes of the investigation we intend to base FMV only on those factories in the PRC which produce butt-weld pipe fittings for export to the United States.

Scope of Investigation

The products covered by this investigation are carbon steel butt-weld pipe fittings, having an inside diameter of less than 360 millimeters (14 inches), imported in either finished or unfinished form. Unfinished butt-weld pipe fittings that are not machined, not tooled and not otherwise processed after forging are not inlcuded in the scope of this investigation. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by ITC

The ITC will determine by July 8, 1991, whether there is a reasonable indication that imports of butt-weld pipe fittings from the PRC are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before October 29, 1991, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 11, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-14356 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-802]

Industrial Belts and Components and Parts From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Italy. The review covers one manufacturer and exporter of this merchandise to the United States, and the period February 1, 1989 through May 31, 1990. As a result of the review, the Department has preliminarily determined that a dumping margin exists.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Megan Pilaroscia or Jeffrey Laxague, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 25313) the antidumping duty order on industrial belts from Italy. On June 29, 1990, the petitioner requested that we conduct an administrative review of the February 1, 1989 through May 31, 1990 period. We published a notice of initiation of the antidumping administrative review on July 26, 1990 (55 FR 30480). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act") (19 U.S.C. 1675).

Scope of the Review

Imports covered by the review are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Italy. The covered merchandise consists of V-belts and synchronous industrial belts used for power transmission. These include V-belts and synchronous belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loops) belts, or in belting in lengths or links.

This review excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the period of review, the merchandise was classifiable under Harmonized Tariff System ("HTS") subheadings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00. The HTS subheadings are provided for convenience and Customs purposes. The written description remain dispositive.

The review covers the shipments of one manufacturer and exporter of industrial belts from Italy to the United States and the first review period, beginning on February 1, 1989 and ending on May 31, 1990.

United States Price

In calculating the United States price, the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. United States price was based on the packed f.o.b., c.i.f., or ex works price to unrelated purchasers in, or for exportation to, the United States.

We made adjustments of ESP sales for ocean freight, foreign inland and marine insurance, U.S. and foreign inland freight, U.S. and foreign brokerage and handling charges, U.S. import duties, cash discounts, commissions, repacking in the United States, warranties, credit expenses, inventory carrying expenses, and indirect selling expenses. No adjustments were made to purchase price sales.

Foreign Market Value

In calculating foreign market value, the Department used home market price as defined in section 773 of the Tariff Act since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed c.i.f. or f.o.b. price to unrelated purchasers in the home market. We made adjustments, where appropriated, for inland freight and insurance, rebates, cash discounts, technical service expenses, inspection, quality control and testing expenses, credit expenses, and other direct selling expenses, differences in cost attributable to differences in physical characteristics of the merchandise, and difference in packing. We made further adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. commissions or indirect selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists:

Period of review	Margin (percent)
2/1/89-5/31/90	80.47

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individuals differences between United States price and foreign market

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value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) (19 U.S.C. 1675 (a)(1)) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required. The cash deposit rate for all other exporters/producers shall be 80.47 percent for shipments of industrial belts covered by this review. This deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Commerce regulations (19 CFR 353.22(c)(5).

Dated: June 11, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration

[FR Doc. 91-14358 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-807]

Postponement of Final Antidumping Duty Determinations: Oscillating Fans and Ceiling Fans From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Steven Lim, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at (202) 377-4087.

POSTPONEMENT: On June 3 and June 4, 1991, respectively, Durable Electrical Metal Factory Ltd./Parawind Ltd./Paragon Industries (Durable), a respondent in the oscillating fans investigation accounting for a significant proportion of exports of the subject merchandise, and CEC Electrical Manufacturing (International) Co., Ltd./CEC Industries (Shenzhen) Ltd./CEC (USA) Texas Group, Inc. (CEC), and Wing Tat Electric Manufacturing Co., Ltd./Chime Miles Co., Ltd. (Wing Tat), respondents in the ceiling fans investigation accounting for a significant proportion of exports of the subject merchandise, requested that the Department postpone the final determinations in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). Accordingly, we are postponing the date of the final determinations until not later than October 18, 1991.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than September 9, 1991, and rebuttal briefs no later than September 16, 1991. In accordance with 19 CFR 353.38(b), we will hold public hearings, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the oscillating fans and ceiling fans hearings will be held on September 19, 1991, at 9 a.m. and 1:30 p.m., respectively, at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearings 48 hours before the scheduled time.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: June 11, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14360 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-867]

Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 5, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on portable electric typewriters from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Canon, Inc., and the period May 1, 1987 through April 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results. No comments were received.

The final margin for Canon, Inc., is 88.65 percent.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Prosser or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 14060) the preliminary results of its administrative review of the antidumping duty order on portable electric typewriters (PETs) from Japan (45 FR 30618, May 9, 1980). We have now completed this administrative review, in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of non-automatic PETs from Japan that do not incorporate a calculating mechanism. The merchandise is currently classified under Harmonized Tariff System (HTS) item numbers 8469.21.00 and 8469.29.00. During the review period, this merchandise was classifiable under Tariff Schedules of the United States Annotated (TSUSA) item number 676.0510 and, in some cases, under TSUSA item number 676.0540. HTS and TSUSA numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of Japanese PETs to the United States, Canon, Inc. (Canon), and the period May 1, 1987 through April 30, 1988.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. No comments were received.

Final Results of the Review

Canon declined to respond to the Department's questionnaire for the May 1, 1987–April 30, 1988, period. In a letter to the Department, Canon acknowledged that, as a result, the Department could use the best information otherwise available (BIA) for Canon for this period. We have used as BIA the highest rate for a responding firm for this period. (See Portable Electric Typewriters from Japan, Final Results of Antidumping Duty Administrative Review (56 FR 14072, April 5, 1991).) We have determined the final margin to be:

Manufacturer	Period of review	Margin (percent)
Canon	05/01/87-04/30/88	88.65

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin will be required for Canon, Inc. For any shipments of this merchandise manufactured or exported by any of the remaining known manufacturers/exporters not covered in this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms. For any future entries of this merchandise from a new exporter, whose first shipments occurred after April 30, 1988, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of estimated antidumping duties of 88.65 percent shall be required. These deposit requirements are effective for all shipments of portable electric typewriters (including automatic portable electric typewriters and portable electric typewriters with calculating mechanisms) entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review and notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14359 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-807]

Initiation of Antidumping Duty Investigation: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Michelle A. Frederick, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0656.

Initiation

The Petition

On May 22, 1991, U.S. Fittings Group, an ad hoc trade association filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of the United States industry producing certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings). In accordance with 19 CFR 353.12, the petitioner alleges that imports of butt-weld pipe fittings from Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry. U.S. Fittings Group supplemented its petition on June 7, 1991.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 353.2(k), and because it has filed the petition on behalf of the U.S. industry producing butt-weld pipe fittings. If any interested party, as described in 19 CFR 353.2(k) (3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

Petitioner based United States Price (USP) on price quotations supplied in an affidavit by one of the U.S. producers. The affidavit states prices at which a Thai producer sold the subject merchandise for export to the United States in September, November, and December 1990. These prices are CIF, duty paid, and include importer's mark-up. Petitioner reduced USP for ocean freight, marine insurance, and brokerage based on the percentage difference between customs value and CIF value, as reported in the Department's IM-145 statistics for 1990. Petitioner has no information on the amount of the importer's mark-up and thus made no downward adjustment to USP. Petitioner also reduced USP for customs duties in accordance with section 772(d)(2)(A) of the Act.

Petitioner states that it had no reasonable means of obtaining home market or third country prices. Therefore, petitioner based foreign market value (FMV) on constructed value (CV), in accordance with section 773(e) of the Act. Petitioner's estimate of FMV is based on one of the petitioning firm's costs of manufacture, adjusted to reflect Thai costs for seamless steel pipe, electricity, labor, and fringe benefits. Petitioner valued overhead and packing on actual U.S. costs, as these were the only costs reasonably available to it. Furthermore, petitioner added the statutory minimums of ten percent for general expenses and eight percent for profit.

Petitioner alleges dumping margins ranging from zero to 52.6 percent.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on butt-weld pipe fittings from Thailand and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of butt-weld pipe fittings from Thailand are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The products covered by this investigation are carbon steel butt-weld pipe fittings, having an inside diameter of less than 360 millimeters (14 inches), imported in either finished or unfinished form. Unfinished butt-weld pipe fittings that are not machined, not tooled and not otherwise processed after forging are not included in the scope of this investigation. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

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Preliminary Determination by ITC

The ITC will determine by July 8, 1991, whether there is a reasonable indication that imports of butt-weld pipe fittings from Thailand are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before October 28, 1991, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 11, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-14267 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review: Certain Large Diameter Pipe

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments: Certain Large Diameter Pipe.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 11,200 net tons of certain large diameter pipe for the third quarter of 1991 under Paragraph 8 of the U.S.-Japan steel arrangement.

SHORT SUPPLY REVIEW NUMBER: 53.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(E) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and section 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR § 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain large diameter pipe ("LDP"). On June 10, 1991, the Secretary received an adequate petition from Enron Corporation ("Enron") requesting a short-supply allowance under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products for 11,200 net tons of American Petroleum Institute grade X-70 submerged arc welded steel pipe, 30 inches in diameter, and with a wall thickness of 0.30 inch. This pipe is for the construction of the Transwestern Pipeline Expansion and must be imported during the third quarter of 1991. Enron is requesting a short-supply allowance for this material because domestic manufacturers of LDP are unable to meet Enron's needs for this pipe during the requested period, and its potential foreign supplier has no regular export licenses available during this period.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: 1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; 2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or 3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exists with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than July 10, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than June 24, 1991 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after June 24, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply number.

FOR FURTHER INFORMATION CONTACT: Mark B. Brecht of Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-1166 or (202) 377-0159.

Dated: June 12, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-14429 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-DS-M

Technology Administration

National Medal of Technology Nomination; Deadline Extension

AGENCY: Office of Technology Commercialization; Technology Administration, Commerce.

ACTION: Notice of extended deadline.

SUMMARY: This notice announces an extended deadline to accommodate nominations of individuals and/or companies for the National Medal of Technology. Nominations closed September 30, 1991 but will now be extended until October 30, 1991.

FOR FURTHER INFORMATION OR NOMINATION PACKAGES, CONTACT: Dr. Paul Braden, Manager, National Medal of Technology Nomination Evaluation Committee, U.S. Department of Commerce, 14th and Constitution Avenue NW., Herbert C. Hoover Building, Room 4418, Washington, DC 20230 (202) 377-5572.

SUPPLEMENTAL INFORMATION: A nominee for the National Medal of Technology must be a U.S. Citizen; consist of up to four U.S. citizens who share an award jointly; or be a U.S.-owned company, defined as a partnership or corporation which carries out a commercial or industrial enterprise, and which is substantially owned by citizens of the U.S.

Nominations are solicited in two separate areas—contributions to the promotion of technology or contributions to the promotion of technological manpower. Selections for the promotion of technology will be focussed on:

- Technology transfer from public organizations;
- Promotion of advanced manufacturing technology;
- Companies best embodying technology management principles; and
- General product and process innovations.

Selections for the promotion of technological manpower will be for strengthening a technologically competent workforce through:

- Alleviation of technical workforce shortages; and
- Motivation and improved performance of the existing workforce.

Dated: June 10, 1991.

Deborah L. Wince-Smith,

Assistant Secretary for Technology Policy.

[FR Doc. 91-14361 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-18-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission

ACTION: Announcement of Public Deliberation Meetings of the Defense Base Closure and Realignment Commission.

SUMMARY: Additional open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC and other locations in accordance with the following dates and times, and at specific meeting locations as shown, or to be determined and published subsequently in the Federal Register: Washington, DC: Monday, June 17, 9:30 a.m., room 334, Cannon House Office Building, First Street and Independence Ave., to receive congressional testimony and have public hearings on bases/installations newly added to the base closure and realignment list as follows: Staten Island Naval Station, Corps of Engineers, Fort Totten, Fort Hamilton, Fort Pickett, Fort A.P. Hill, Fort Buchanan, Indiantown Gap, Fort McCoy and MacDill Air Force Base; Monday, June 17, 1:30 p.m., Marines Recruit Training Depot, San Diego, CA, to receive testimony on the proposed realignment or closure of the Naval Training Center, San Diego, Marine Training Depot, San Diego, Long Beach Naval Shipyard, and Naval Station Treasure Island; Tuesday, June 18, 2:30 p.m., City Auditorium, San Angelo, Texas, to receive testimony on the proposed closure or realignment of Goodfellow Air Force Base; Thursday, June 20, 1 p.m., Plattsburgh Air Force Base, N.Y., to receive testimony on the proposed closure or realignment of Plattsburgh Air Force Base; Friday, June 21, 3 p.m., Temple Theater, 8th Street and 24th Ave., Meridian, MS, to receive testimony on the proposed closure or realignment of Naval Air Station, Meridian; Friday, June 21, 9 a.m., Naval Air Station, Kingsville, to receive testimony on the proposed closure or realignment of Naval Air Station, Kingsville, Friday, Saturday and Sunday, June 28, 29 and 30, 9:30 a.m., Washington, DC, specific location to be determined, to conduct deliberations on base closures and realignments.

Less than 15 days notice is being given in some instances due to the inclusion on June 7 of additional installations and/or organizations for possible closure and realignment and the decision to hold public hearings on these additions prior to the statutorily mandated deadline.

FOR FURTHER INFORMATION: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: June 13, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14436 Filed 6-13-91; 1:52 pm]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Forms EIA-1, 3, 4, 5, 6, 7A, and 20 (Coal Program Package)

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed extension of the EIA-1, 3, 4, 5, 6, 7A, and 20 (Coal Program Package) and solicitation of comments concerning proposed changes to the Coal Survey Forms.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 44 U.S.C. 3501 et seq.), conducts a pre-survey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revisions and a three year extension of approval for its coal forms. These forms include: EIA-1, "Weekly Coal Monitoring Report—General Industries and Blast Furnaces;" EIA-3, "Quarterly Coal Consumption Report—Manufacturing Plant;" EIA-4 "Weekly Coal Monitoring Report—Coke Plants;" EIA-5, "Coke Plant Report—Quarterly;" EIA-6, "Coal Distribution Report;" EIA-7A, "Coal Production Report;" and EIA-20, "Weekly Telephone Survey of Coal Burning Utilities.".

DATES: Written comments must be submitted within 30 days of the publication of the notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to John G. Colligan, Energy Information Administration, EI-521, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (telephone number: 202-254-5465.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORMS AND INSTRUCTIONS: Requests for additional information or copies of the forms and instructions should be directed to John G. Colligan at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93-275) and the Department of Energy Organization Act (Pub. L. No. 95-91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs. To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass each significant coal supply,

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distribution and consumption activity in the United States.

II. Current Actions

EIA proposes an extension with changes to its existing collections. These changes will have little impact on respondent burden, better reflect current industry operations and respond to congressional, Federal and public data users' requirements. The proposed changes are summarized below:

1. EIA–3

a. Previous quarter's ending coal stockpile balance for verification will be pre-printed.

b. A question regarding the plant's capability to generate one megawatt or more of electricity to allow for the identification and removal of duplicate data occurring on the Forms EIA–3 and EIA–867, and to provide updates to the frame for the EIA–867, "Annual Nonutility Power Producer Report" will be added.

2. EIA–5

a. Previous quarter's ending coal stockpile balance for verification will be pre-printed.

b. A question regarding the plant's capability to generate one megawatt or more of electricity to allow for the identification and removal of duplicate data occurring on the Forms EIA–5 and EIA–867, and to provide updates to the frame for the EIA–867 will be added.

c. Questions on quantities of coal and coke purchased/transferred, and the amount of breeze used in the carbonization process will be added. This information is needed to clarify the reporting of coke production and coal consumption for coke production.

3. EIA–6

a. Change the coal usage category from Electric Utilities to Electric Generation, to include nonutility coal-fired power producers. The new data will more accurately reflect the amount of coal used in the United States to produce electricity.

4. EIA–7A

a. Section IV (Coal Quality) to ask for the Btu, ash, sulfur, and moisture content of the coal reported in section II.C Production Quantity and Value was added. The responder is given the option to complete Section IV directly on the form, or submit a copy of a proximate analysis report for a representative coal sample. The purpose of collecting these data is to obtain basic coal quality information needed in supply analyses and modeling in support of the National Energy Strategy, Clean Air Act, and related policy and legislative programs.

b. Section III Productivity delete Part A. Employment and Part C. Coal Preparation. The following data elements will no longer be collected:

Part A

- Total Direct Labor Hours;
- Total Number of Production Days Worked;
- Average Number of Employees per Shift;
- Average Number of Shifts per day;
- Average Length of Production Shift;

Part B

- Percentage of coal prepared from underground mines;
- Percentage of coal prepared from surface mines;
- Total direct hours worked at preparation plant.

Employment and direct labor hours will be published using data collected by the Mine Safety and Health Administration under the "Quarterly Mine Employment and Coal Production Report", Form 7000–2.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension and revisions. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form or forms your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden (hours per response) for each of the following forms is shown below:

EIA–1=*1.0* hrs.; EIA–3=*0.5* hrs.; EIA–4=*1.0* hrs.;
EIA–5=*1.0* hrs.; EIA–6=*1.5* hrs.; EIA–7A=*1.21* hrs.; and EIA–20=*1.0* hrs.

How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form(s)?

E. What is the estimated cost of completing these form(s), including the direct and indirect costs associated with the data collections? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, please specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purpose would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Coal Program Package.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form(s); they also will become a matter of public record.

Statutory Authorities: Sections 5(a), 5(b), 13(b), and 52 of Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. §§ 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC June 11, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–14352 Filed 6–14–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER91–390–000, et al.]

Idaho Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 7, 1991.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER91–390–000]

Take notice that on May 22, 1991, Idaho Power Company (Idaho) tendered for filing an amendment to its original filing dated April 19, 1991.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Oklahoma

[Docket No. ER91–477–000]

Take notice that on June 4, 1991, Public Service Company of Oklahoma (PSO) tendered for filing amendments to its Facilities Agreement and its Transmission Service Agreement with Western Farmers Electric Cooperative (WFEC), providing for changes in the various points at which PSO provides service to WFEC under the two Agreements.

PSO requests an effective date of June 27, 1966 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon WFEC and the Oklahoma Corporation Commission.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corporation

[Docket No. ER91–472–000]

Take notice that on June 3, 1991, Wisconsin Public Service Corporation (WPSC) tendered for filing an extension of its Limited Term Capacity Agreement with Manitowoc Public Utilities (MPU), City of Manitowoc, Manitowoc County, Wisconsin. WPSC and MPU have also agreed to amend the agreement to reduce the capacity MPU will purchase and to vary the demand charge under the contract.

WPSC requests that the Commission waive its advance filing requirements to allow the extension to take effect on June 1, 1991.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. ER91–220–000]

Take notice that on June 3, 1991, Northern Indiana Public Service Company (Northern Indiana) tendered for filing an amendment to its original filing as initial rate schedules, Service Schedule L and Service Schedule M and tendered for filing as an amendment to its Rate Schedules, the Ninth Supplemental Agreement to the Interconnection Agreement with the Wabash Valley Power Association, Inc. (Wabash Valley).

Service Schedule L—Provides for the supply of Intermediate-term Capacity and Energy Northern Indiana to Wabash Valley; Service Schedule M—provides for the Unit Peaking Capacity and Energy Northern Indiana to Wabash Valley.

The proposed effective date of the service under Service Schedule L is January 1, 1990, the date from and after which Wabash Valley requested service thereunder. The proposed effective date of service under Service Schedule M is January 1, 1992.

Northern Indiana's filing requests waiver of Commission requirements as may be required to permit the proposed rate schedule filings to become effective pursuant to a mutual agreement of the two parties. Wabash Valley concurs in Northern Indiana's requests.

Copies of this filing have been served upon Wabash Valley and the Indiana Utility Regulatory Commission.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Company

[Docket No. ER91–475–000]

Take notice that on June 3, 1991 Montaup Electric Company (Montaup or Company) filed its Conservation and Load Management Annual Report required under the provisions of its Conservation and Load Management (CLM) Adjuster Mechanism as authorized under the terms of a Settlement Agreement approved by the Commission on January 23, 1991 in FERC Docket No. ER90–247.

The Conservation and Load Management Annual Report provides detailed information concerning: The operation of the C&LM adjuster mechanism during fiscal-year 1 (May 1, 1990 through April 30, 1991); describes the procedures Montaup implemented to ensure interested parties had an opportunity to work with the Company in the development of its C&LM programs through a cooperative process; presents detailed information on the current and proposed C&LM program offerings; proposes a C&LM Surcharge resulting from the reconciliation of the first twelve-month period under the C&LM adjuster mechanism and associated monthly billing amounts; and, presents a proposed C&LM Revenue Requirement for the second twelve-month period under the C&LM adjuster mechanism and associated monthly billing amounts.

During the first twelve-month period under the C&LM adjuster mechanism, Montaup provided C&LM service to the Blackstone Valley Electric Company and the Eastern Edison Company. Starting with the second twelve-month period, Montaup will also provide C&LM service to the Newport Electric Corporation.

Based upon the information contained in the Company's filing, the C&LM Revenue Requirement is projected to increase from its current level of $8,986,000 to $13,678,500. The allocation formula contained within the C&LM tariff provisions apportions the C&LM revenue requirement as follows: Blackstone Valley Electric Company $4,069,176; Eastern Edison Company $8,049,530; Newport Electric Corporation $1,759,794. The reconciliation of the first twelve-month period under the C&LM adjuster mechanism produces a revenue deficiency, including interest, of $1,813,336 and results in the following proposed surcharge amounts: Blackstone Valley Electric Company $592,017; Eastern Edison Company $1,221,319. Montaup proposes that the above amounts be approved for billings effective for the period May 1, 1991 through April 30, 1992.

The filing has been served on the state and Attorney General in Massachusetts and Rhode Island, on Montaup's M-Rate customers and the Conservation Law Foundation of New England, Inc.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Exxon Chemical Company and Exxon Company, U.S.A.

[Docket No. QF89–41–001]

On May 30, 1991, Exxon Chemical Company at P.O. Box 100, Baytown, Texas 77522–0100, and Exxon Company, U.S.A., at P.O. Box 3950, Baytown, Texas 77522–3950 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Baytown, Texas and will include twelve gas turbine generators, and four steam turbine generators and supplementary fired heat recovery boilers. Thermal energy recovered from the facility will be utilized in Exxon's Olefins Plant and Exxon's refienery.

The original certification was issued on April 19, 1989 (47 FERC 62,047). The instant recertification is requested due to transfer of ownership and leaseback of the facility.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

7. Kanawha Valley Power Company

[Docket NO. ER91–306–000]

Take notice that Kanawha Valley Power Company, on June 5, 1991, submitted for filing supplemental data supporting the return on common equity requested in its March 8, 1991, filing in this docket.

Kanawha states that a copy of the filing has been provided to the Public Service Commission of West Virginia, the Virginia State Corporate Commission and Appalachian Power Company.

Comment date: June 21, 1991, in accordance with Standard Paragraph E end of this notice.

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E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14280 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-480-001, CP90-1375-000]

Pacific and Altamont Gas Transmission Companies; Availability of an Errata to the Final Environmental Impact Statement for the PGT/PG&E Expansion—Altamont Natural Gas Pipeline Projects

June 7, 1991.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has made available an errata to the final environmental impact statement (FEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets, which was issued on May 24, 1991.

The errata contains two letters of comment on the draft environmental impact statement, and the staff's responses, which should have been published as part of the FEIS. One comment letter, from Mr. Tom Bell, was inadvertently excluded from the "Groups and Individuals" portion of the Comments/Responses Volume. The other letter, from the U.S. Environmental Protection Agency, was partially published and responded to in the "Federal Agencies" portion of the Comments/Responses Volume. This letter is being republished in its entirety.

The errata to the FEIS is available for public inspection in the FERC's Division of Public Information, room 3104, 941 North Capitol Street, NE., Washington, DC 20426. Copies have been mailed to all agencies, groups and individuals who received the FEIS.

Copies of the errata are also available from Mr. Mark C. Kalpin, PGT/PG&E Expansion Project Manager, or Mr. Laurence J. Sauter, Jr., Altamont Project Manager. Messrs. Kalpin and Sauter can be reached either at (202) 208-0916 or (202) 208-0205.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14277 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2162-000, et al.]

Colorado Interstate Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP91-2162-000]

June 6, 1991.

Take notice that on June 3, 1991, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, CO, 80944, filed in Docket No. CP91-2162-000, a request pursuant to §§ 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act, to abandon a 150-foot portion of a 4-inch pipeline used to effectuate the sale and delivery of natural gas to several customers, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, CIG states that the 150-foot portion of the 4-inch line along with an existing parallel line is used for the delivery of gas to the Public Service Company of Colorado (PSCO), the City of Fort Morgan, Colorado (Fort Morgan), and Western Sugar Company (Western Sugar) in Morgan County, Colorado. PSCO, Fort Morgan and Western Sugar have consented to the proposed abandonment, as each will continue to receive service from the parrell line.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP91-2165-000]

June 6, 1991.

Take Notice that on June 3, 1991, Northern Natural Gas Company, Division of Enron Corp., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP91-2165-000 a request pursuant to § 157.205 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate one new delivery point as a jurisdictional sales facility to accommodate natural gas deliveries to Interstate Power Company (Interstate Power), under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is said that the sales through this delivery point would be under Northern's CD-1, SS-1, and PS-1 rate schedules to Interstate Power for resale to a community in the vicinity of Conger, Minnesota. It is further said that Interstate Power has requested installation of the delivery point due to the expansion of its delivery system into new areas.

Northern states that the proposed deliveries to Interstate Power at Conger would be served from the total firm entitlements currently assigned to the community of Albert Lea, Minnesota. Northern states further that Interstate Power has not requested that any firm entitlements be assigned to Conger.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP91-2155-000]

June 7, 1991.

Take notice that on May 31, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-2155-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service provided by Trunkline for Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that it was authorized by Commission orders issued in Docket Nos. CP77-92 and CP77-417, as amended, to transport natural gas purchased by Northern from producers in the West Cameron area, offshore Louisiana, to various interconnections with United Gas Pile Line Company in St. Mary and LaSalle Parishes, Louisiana. Trunkline asserts that it also has the right to purchase up to 20 percent of the gas transported. Trunkline provides the transportation service pursuant to transportation and sales agreements dated October 27, 1976, as amended, and September 23, 1976, as amended which are on file with the Commission as Trunkline's Rate Schedules T-15 and T-17, respectively.

Trunkline further states that in accordance with the termination provisions of the two agreements,

Northern has requested by letter dated January 10, 1991, that Rate Schedule T-15 be terminated effective January 10, 1992, and by letter dated February 7, 1991, that Rate Schedule T-17 be terminated effective February 7, 1992.

Comment date: June 28, 1991, in accordance with Standard Paragraph F at the end of the notice.

4. Colorado Interstate Gas Company; Tennessee Gas Pipeline Company

[Docket No.'s CP91-2163-000; CP91-2166-000]

June 7, 1991.

Take notice that on June 3, 1991, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252 (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86-589, *et al.* and Docket No. CP87-115-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2163-000 (6-3-91)	K N Gas Marketing, Inc. (Marketer).	75,000 50,000 [1] 18,250,000	TX, OK, KS, CO, WY	CO	4-1-91, TI-1, Interruptible.	ST91-8566-000, 4-7-91
CP91-2166-000 (6-3-91)	Endevco Oil & Gas Company (Marketer).	50,000 50,000 18,250,000	NY, MS	NY, PA	4-26-91, IT, Interruptible.	ST91-8620-000, 5-2-91

[1] CIG's quantities are in Mcf.

5. Tennessee Gas Pipeline Company

[Docket No. CP91-2137-000]

June 7, 1991.

Take notice that on May 31, 1991, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-2137-000 an application with the Commission, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon its interruptible natural gas transportation service for Texas Eastern Transmission Corporation (Texas Eastern), all as more fully set forth in the application which is open to public inspection.

Tennessee states that it provides Texas Eastern, *inter alia.*, a daily interruptible transportation service of up to 7,500 Mcf of natural gas under Tennessee's FERC Rate Schedule T-99, as authorized in Docket No. CP79-477, 10 FERC ¶61,068 (1989). Texas Eastern notified Tennessee on December 13, 1988, that it wished to terminate their transportation agreement, since the five-year primary term of the agreement had already expired. Tennessee also states that it has not delivered any natural gas under Rate Schedule T-99 to Texas Eastern since sometime prior to the December 13, 1988, termination letter. Tennessee, however, does not request a retroactive effective date for its proposed abandonment of interruptible transportation service for Texas Eastern. No facilities are proposed to be abandoned.

Comment date: June 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

6. Paiute Pipeline Company

[Docket No. CP91-2103-000]

June 7, 1991.

Take notice that on May 23, 1991, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP91-2103-000, an application pursuant to sections 7(b) and 7(c) of the Commission's Regulations, for a certificate of public convenience and necessity authorizing the construction and operation of certain pressure, regulating, and measurement facilities along Paiute's northern Nevada jurisdictional transmission system and to abandon certain facilities, all as more fully set forth in the request, which is on file with the Commission.

Paiute contends that this proposal would enhance the design of certain segments of it's system to avoid operational difficulties experienced during the 1990-91 heating season and to meet existing design day high priority requirements of Paiute's customers for natural gas. Paiute asserts that it has recently conducted an evaluation of the daily design capacity of it's northern Nevada transmission system and has determined that due to high priority customer load growth and the deterioration of some facilities, the design of facilities at four city gate locations on its system should be upgraded. Paiute alleges that upgrading the four city gate sales taps is required to insure delivery of existing contract volumes in the upcoming 1991-92 winter heating season.

Specifically Paiute proposes to rebuild measuring and regulating equipment facilities at four existing city gate locations on its interstate pipeline transmission as described below:

(1) Paiute's would upgrade by rebuilding it's South Tahoe Lateral measuring and regulating tap equipment serving CP National, near Tahoe Village, Nevada;

(2) Replace Paiute's existing Reno lateral regulating equipment at Paiute's Reno City Gate Nos. 2 and 3 serving Sierra Pacific Power, located in Washoe County, Nevada;

(3) On its Elko lateral, Paiute proposes to relocate its Elko city gate delivery point to Southwest Gas Corporation (Southwest) in Elko County, Nevada from its existing location to the location of the primary pressure regulating station approximately 3½ miles upstream on the lateral. Paiute proposes to install new upgraded mesurement equipment at the new location and rebuild and upgrade the regulating equipment at the primary regulating station.

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(4) In conjunction with relocating the Elko city gate delivery point, Paiute proposes to abandon by sale to Southwest, at the net book value, 3.40 miles of 6-inch pipeline between the present Elko city gate delivery point and the proposed new delivery point at the location of the primary pressure regulating station and the present Elko city gate. The pipeline to be abandoned is located between milepost 137.20 and milepost 140.60 on the Elko lateral.

Paiute contends that the abandonment by sale to Southwest would not result in any reduction of service to Southwest or its customers. Paiute alleges that the proposed rebuilding and upgrading of the measurement and regulating facilities at the delivery point, would enhance Paiute's ability to deliver gas through the delivery point to Southwest.

The total cost of the proposed construction activities is estimated by Paiute to be $437,870. Paiute contends that the proposed construction activities would be financed through treasury funds. The abandonment by sale to Southwest would be at a selling price of approximately $67,000 which is the net book value of the facilities.

Paiute requests expeditious approval of the proposal in order to ensure that the necessary facilities can be constructed and placed into operation to meet design day requirements for the upcoming winter heating season.

Comment date: June 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

7. Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Tennessee Gas Pipeline Company

[Docket No.'s CP91-2188-000, CP91-2190-000, CP91-2191-000]

June 7, 1991.

Take notice that on June 5, 1991, Applicants filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[1]

[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; the service initiation date; and related ST docket number of the 120-day transaction under § 284.223 of the Commission's Regulations, has been provided by Applicants, as summarized in appendix A. Applicants' addresses and transportation blanket certificates are shown in appendix B.

Texas Eastern Transmission Corporation (Texas Eastern) also states that it would construct and operate, pursuant to its blanket certificate issued in Docket No. CP82-535-000 (21 FERC ¶ 62,199), a metering facility on its 24-inch mainline in Butler County, Ohio, in order to deliver natural gas to the City of Hamilton, Ohio. Texas Eastern also states that the City of Hamilton would construct nonjurisdictional facilities consisting of 8,700 feet of 6-inch gas main distribution to connect to the proposed delivery point.

Comment Date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No.	Shipper name (type)	Peak day, average day, annual Dth	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2188-000	City of Hamilton, Ohio (Local Distributor).	Firm: 20,000 20,000 7,300,000 Interruptible: 15,000 15,000 5,475,000	AL, AR, IL, IN, KY, LA, OLA, MS, MO, MI, NY, OH, PA, TN, TX, WV.	OH	5-16-91, IT-1, Interruptible, June 2, 1991 FT-1, Firm.	
CP91-2190-000	Consolidated Fuel Corporation (Marketer).	150,000 50,000 3,650,000	MS	GA, MD, NJ, NC, PA, SC, WV.	6-5-90, IT, Interruptible.	ST91-5648, 4-30-91.
CP91-2191-000	Meridian Marketing and Transmission (Marketer).	500 500 182,500	MY	PA	4-18-91, IT, Interruptible.	ST91-5746, 5-1-91.

[1] Offshore Louisiana is shown as OLA.

Appendix B

Applicants' addresses	Blanket docket
Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252	CP87-115-000.
Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252-2521	CP88-136-000, as amended.
Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251	CP88-328-000.

8. Natural Gas Pipeline Company of America

Docket No.'s [CP91-2177-000,[1] CP91-2178-000, CP91-2179-000, CP91-2180-000, CP91-2181-000, CP91-2182-000, CP91-2183-000]

Take notice that on June 4, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's regulations has been provided by Natural and is included in the attached appendix.

Natural also states that it would provide the service for each shipper under an executed transportation agreement, and that Natural would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No.	Shipper name	Peak day,[1] avg. annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[2] dockets
CP91-2177-000	Midcon Marketing Corp	30,000 30,000 10,950,000	LA, TX	LA, TX	4-1-91, FTS	ST91-8748-000
CP91-2178-000	V.H.C. Gas Systems, L.P.	23,000 23,000 8,395,000	LA	LA	4-1-91, FTS	ST91-8743-000
CP91-2179-000	V.H.C. Gas Systems, L.P.	23,000 23,000 8,395,000	LA, TX	LA, TX	4-1-91, FTS	ST91-8745-000
CP91-2180-000	Williams Gas Marketing Company.	50,000 30,000 10,950,000	AR, MO, CO, NE, IA, NM, IL, OK, KS, TX, LA, Off TX, Off LA.	OK, NM, LA, IL, CO, KS, TX, Off TX, Off LA.	4-1-91, ITS	ST91-8662-000
CP91-2181-000	Total Minatome Corp	25,000 15,000 5,475,000	Off LA	Off LA	4-1-91, ITS	ST91-8741-000
CP91-2182-000	Conoco, Inc	5,000 2,500 912,000	AR, MO, CO, NE, IA, NM, IL, OK, KS, TX, LA, Off TX, Off LA.	OK, IL, LA, NM, KS, CO, TX, Off TX, Off LA.	4-1-91, ITS	ST91-8666-000
CP91-2183-000	MidCon Marketing Corp	50,000 30,000 10,950,000	AR, MO, CO, NE, IA, NM, IL, OK, KS, TX, LA, Off TX, Off LA.	OK, IL, LA, NM, KS, CO, TX, Off TX, Off LA.	4-1-91, ITS	ST91-8664-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

9. Ozark Gas Transmission System

[Docket No. CP91-2187-000]

June 7, 1991.

Take notice that on June 4, 1991, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Dallas, Texas 75201, filed a request with the Commission in Docket No. CP91-2187-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add delivery point facilities near Searcy, White County, Arkansas, under its blanket certificate issued in Docket No. CP85-134-000, pursuant to section 7 of the NGA, all as more fully set forth in the application which is open to public inspection.

Ozark proposes to construct and operate additional delivery point facilities at the eastern terminus of its pipeline near Searcy, White County, Arkansas, in order to facilitate its natural gas deliveries to Columbia Gas Transmission Corporation (Columbia) and Tennessee Gas Pipeline Company (Tennessee) via new facilities to be built by Arkla Energy Resources. Ozark states that it would replace existing pipe with 500 feet of 24-inch pipe and install additional metering equipment at an estimated cost of $500,000. Ozark does not propose any volumetric changes in its service for Columbia and Tennessee, as authorized in Opinion Nos. 125 and 125-A, 16 FERC ¶61,099 and 17 FERC ¶61,024, respectively. Ozark also states that its tariff does allow such changes in delivery facilities.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

10. Western Gas Interstate Company

[Docket Nos. CP91-2126-000, CP91-2127-000, CP91-2128-000, CP91-2129-000 (Not Consolidated)]

June 7, 1991.

Take notice that on May 30, 1991, Western Gas Interstate Company (Western), 9130 Jollyville Road, suite 150, Austin, Texas 78759-7273, filed applications in Docket Nos. CP91-2126-000, CP91-2127-000, CP91-2128-000 and CP91-2129-000, pursuant to section 3 of the Natural Gas Act and § 153.1 through 153.8 of the Commission's Regulations, and Executive Order Nos. 10485 and 12038 and §§ 153.10 through 153.12 of the Commission's Regulations. The applications seek authorization to construct, operate and maintain facilities located near El Paso, Texas for the exportation of gas to Juarez, Mexico, all as more fully set forth in the applications on file with the Commission and which are open for public inspection.

Western, a wholly-owned subsidiary of Southern Union Company, seeks approval to operate, maintain and connect certain gas transmission facilities which connect to three separate export points located in the City of El Paso, Texas, described by Western as:

(1) Del Norte #1—Measuring Station near Ascarate Park;
(2) Del Norte #2—Measuring Station near Delta Street; and
(3) Del Norte #3—Measuring Station near Stanton Street and Santa Fe.

Western says that these facilities were previously subject to a Presidential Permit issued by the Federal Power Commission in 1969 in Docket No. CP69-236. Western also says that it intends to modify these measurement and regulating stations near the international boundary. Western says that the facilities are essential in order to deliver the gas to the United States/Mexico border.

Western says that a review of a previously issued Presidential Permit for the same facilities was limited to a certain expired transaction, and does not encompass the transactions described in these current applications. Western says that new section 3 authorizations and a new Presidential Permit must be issued authorizing the operation of the facilities in order for Western says that new section 3 authorizations and a new Presidential Permit must be issued authorizing the operation of the facilities in order for Western to render exportation services for CMEX Energy, Inc. (CMEX) and Texas International Gas & Oil Company (Texas International).

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Western, in Docket No. CP91-2128-000 (section 2) and Docket No. CP91-2128-000 (Presidential Permit), says that it has contracted with CMEX to transport up to 30,000 MMBtu per day of natural gas on a firm basis and up to 30,000 MMbtu per day on an interruptible basis for delivery to facilities owned by Gas Natural de Juarez S.A. and Juarez Gas Co. S.A. de C.V. (Juarez Facilities). Western will receive gas from El Paso Natural Gas Company (EPNGC) on behalf of CMEX for redelivery by Western at the international border to the Juarez Facilities. Western says that the gas delivered by Western will be purchased from CMEX by P.M.I. Commercial International S.A. de C.V., (PMI) a wholly owned subsidiary of Petroleos Mexicanos (PEMEX), for initial use in an electric generating plant. Western says that the export/transportation services for CMEX will be pursuant to two Service Agreements, dated May 7, 1991, which are filed as Exhibit D to Docket No. CP91-2128-000.

Western, in Docket No. CP91-2129-000 (section 3) and Docket No. CP91-2127-000 (Presidential Permit), says that it has entered into an agreement with Texas International providing for transportation of up to 30,000 Mcf per day of natural gas on an interruptible basis for delivery to the Juarez Facilities. Western would receive gas from EPNGC on behalf of Texas International for redelivery by Western at the international border to the Juarez Facilities. Western's understanding is the gas delivered by it will be purchased from Texas International by PMI. Western says that the export/transportation services for Texas International will be pursuant to a Precedent Agreement, dated October 27, 1989, which is filed as Exhibit D to Docket No. CP91-2129-000.

Western has requested that expedited action be taken on its applications so that service can begin by July 1, 1991, because the use of natural gas in the electric generation plant, in place of the use of No. 6 fuel oil, will aid in reducing atmospheric pollution, which may affect the quality of the air on both sides of the border.

Comment date: June 28, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Northern Natural Gas Company

[Docket No. CP91-2364-000]

June 7, 1991.

Take notice that on June 3, 1991, Northern Natural Gas Company (Northern Natural), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-2184-000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act for authorization to install and operate a new delivery point and appurtenant facilities as jurisdictional sales and transport facilities to accommodate jurisdictional natural gas deliveries to Great Plains Natural Gas Company (Great Plains), under the certificate issued in Docket No. CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Specifically, Northern requests authority to construct and operate a new delivery point for Great Plains to accommodate jurisdictional natural gas sales and transportation under Northern's CD-1, SS-1, FT-1 and IT-1 rate schedules for redelivery to Minnesota Corn Processors and the Marshall Minnesota Industrial Park. Nothern states that Great Plains has requested installation of the delivery point to accommodate a load growth due to a large industrial user expanding their facilities. Northern also indicates that Great Plains will receive approximately 1.5 Bcf annually through the proposed delivery point, and that the volumes proposed to be delivered to Great Plains for Minnesota Corn Processors and the Marshall Minnesota Industrial Park will initially be interruptible transportation volumes.

Comment date: June 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

12. Panhandle Eastern Pipe Line Company

[Docket No. CP91-2167-000]

June 7, 1991.

Take notice that on June 3, 1991, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77001, filed in Docket No. CP91-2167-000 an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon a gas exchange agreement between Panhandle El Paso Natural Gas Company (El Paso) and K N Energy, Inc. (K N), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon a gas exchange agreement dated June 17, 1974, as amended, with El Paso and K N. It is stated that the exchange service was authorized by the Commission in Docket Nos. CP75-314 (Panhandle), CP75-1 (El Paso), and CP75-27 (K N). It is indicated that the exchange is performed under Panhandle's Rate Schedule E-4, El Paso's Rate Schedule X-94, and K N's Rate Schedule X-2. Panhandle states that El Paso and K N provided notice to Panhandle by letters dated January 4, 1991, and December 7, 1990, respectively, of their desire to terminate the exchange agreement. Panhandle further indicates that upon approval of the abandonment proposed herein, it would make the appropriate corresponding changes to its FERC Gas Tariff, Original Volume No. 2, to reflect the abandonment of Rate Schedule E-4.

Panhandle states that K N has requested permission and approval for the abandonment of this exchange service in Docket No. CP91-1732-000, filed April 8, 1991. It is also stated that El Paso has or will soon file to abandon this exchange service.

Comment date: June 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14279 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-1-001]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 11, 1991.

Take notice that on June 6, 1991, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Substitute Twenty Sixth Revised Sheet No. 4

The tariff sheet is proposed to become effective July 1, 1991. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers and to substitute corrected information to its quarterly PGA filing originally tendered on May 31, 1991.

Alabama-Tennessee has also requested a limited waiver on a continuing basis of § 154.22 of the Commission's Regulations with regard to the filing of its quarterly PGA. Alabama-Tennessee proposes that it be permitted to file revisions to its quarterly PGA filing three days after the filing of the revised quarterly PGA of its upstream gas supplier, Tennessee Gas Pipeline Company ("Tennessee"), and that its filing become effective on less than thirty days' notice, on the same effective date as that of Tennessee's revised PGA.

Alabama-Tennessee has requested any necessary waivers of the Commission's regulations in order to permit the tariff sheets to become effective as proposed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14254 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-161-000, RP89-172-000, CP91-687-000 and CP90-2275-000]

ANR Pipeline Co., Rescheduled Informal Settlement Conference

June 7, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on June 24, 1991, at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, continuing through June 25, for the purpose of exploring the possible settlement of the above-referenced dockets. The informal settlement conference scheduled for June 11 and 12, 1991, has been cancelled.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Michael D. Cotleur at (202) 208-1076 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14271 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-170-000]

Gas Research Institute; Annual Application

June 10, 1991.

Take notice that on June 3, 1991, Gas Research Institute (GRI) filed an application requesting advance approval of its 1992-1996 Five-Year Research and Development (R&D) Plan, 1992 R&D Program, and the funding of its R&D activities for 1992, pursuant to the Natural Gas Act and the Commission's Regulations, particularly 18 CFR 154.38(d)(5) (1990).

In its application, GRI proposes to increase its contract obligations (debt) from $202 million in 1991 to $213 million in 1992, and cash outlays (debt retirement) from $195 million in 1991 to $200 million in 1992. GRI's application seeks to collect $187,383,000 through jurisdictional rates and charges during the 12 months ending December 31, 1992. This $187.4 million, along with a draw-down of GRI's cash balance during 1992, from $28.4 million to $16.1 million, will provide the necessary cash to fund the 1992 R&D program.

GRI's proposed unit cost of its 1992 R&D Program is 1.46 cents per Dth (i.e., 1.51 cents per Mcf). This Annual R&D Funding Unit is proposed to be applied to the services included in GRI's Program Funding Services in 1991, which include jurisdictional, direct sale and intrastate volumes of GRI's members, estimated tototal 12,813,160 MDth.

In addition, GRI requests approval of funding for two "Class 3" end use R&D projects—Natural Gas Vehicles and Emissions Controls (Class 3 projects are those that would create a new use for natural gas in markets currently served predominantly by alternative fuels). A decision of the U.S. Court of Appeals for the District of Columbia Circuit, issued on April 19, 1991, *Process Gas Consumers Group* v. *FERC*, Case No. 89-1739 ("*PGC*"), vacated and remanded the portion of previous Commission orders that approved the funding of these projects, finding that the Commission's analysis was unreasonable and inconsistent with the standards established in *Process Gas Consumers Group* v. *FERC*, 866 F 2d 470 (D.C. Cir. 1989). GRI provides additional rationale and statistics purporting to support the net benefits of these projects to existing ratepayers.

GRI also suggests that new government initiatives for clean air and an expanded role for natural gas should lead the Commission to reassess its policy on a stabilized GRI program. GRI claims that an expansion of the gas

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industry R&D program may be required and requests new funding guidelines from the Commission.

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document on July 31, 1991. Comments on the Staff Report and GRI's application by all parties, except GRI, must be filed with the Commission on or before August 16, 1991. GRI's reply comments must be filed on or before August 30, 1991.

Any person desiring to be heard or to protest GRI's application, except for GRI members and state regulatory commissions, who are automatically permitted to participate in the instant proceedings as intervenors, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's rules and regulations. All such motions or protests should be filed on or before June 28, 1991. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14263 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-9-4-000]

Granite State Gas Transmission, Inc.; Changes in Rates

June 10, 1991.

Take notice that on June 5, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway Westborough, Massachusetts 01581-5039, filed First Revised Second Substitute Sixth Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on July 1, 1991.

According to Granite State, the filing comprises its regular quarterly purchased gas cost adjustment based on projected gas costs and sales for the third quarter of 1991.

Granite State further states that the revised rates are applicable to its wholesale sales to its affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc.

Granite State states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make and protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14275 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-13-007]

Michigan Consolidated Gas Co.; Refund Report

June 7, 1991.

Take notice that Michigan Consolidated Gas Company (MichCon), on May 30, 1991, tendered for filing with the Federal Energy Regulatory Commission its annual refund report filed in compliance with the Stipulation and Agreement in Docket No. RP84-13, which was approved by the Commission's order dated January 11, 1985.

MichCon states that the report consists of a summary page and nine supporting schedules which set forth the amounts refunded, by customer, including interest calculated as required under § 154.67(c) of the Commission's regulations. MichCon states that refunds were made on May 30, 1991.

MichCon states that copies of the refund report are being sent to each of ISD's custsomers and to the Michigan Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14272 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-2-011]

Northern Natural Gas. Co., Division of Enron Corp.; Sale of Natural Gas

June 7, 1991.

Take notice that on May 9, 1991, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket No. CP88-2-000 issued March 11, 1988 (42 FERC 61,303).

(1) Name of Buyer: Enron Industrial Gas Company.

(2) Location of Buyer: Houston, Texas.

(3) Affiliation between Northern and Buyer: Enron Industrial Gas Company is a subsidiary of Enron Corporation; Northern Natural Gas Company is a subsidiary of Enron Corporation.

(4) Term of Sale: May 15, 1991, through April 30 1992, and month to month thereafter.

(5) Estimated Total and Maximum Daily Quantities: Daily Quantity : 300,000 MMBtu. *Estimated Total:* 9 Bcf per month.

(6) Maximum sales rate: $2.34 per MMBtu. *Minimum sales rate:* $1.20 per MMBtu. *Rate to be charged during billing period:* (A) Field area—$1.20-$1.45; (B) Market area—$1.45-$1.95.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14276 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-252-013]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

June 10, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on June 5, 1991 tendered for filing the revised tariff sheets listed on appendix A attached to the filing.

Panhandle states that on December 4, 1990, as clarified by the Commission's May 21, 1991 Order in the above-referenced proceedings, the Federal Energy Regulatory Commission (Commission) issued an order modifying and approving the partial uncontested Stipulation and Agreement and approving tariff sheets authorizing Panhandle to perform modified services for its Rate Schedule SG Customers and authorizing a transporation Rate Schedule SCT and a sales Rate Schedule SSS.

Panhandle further states that the revised tariff sheets are being submitted to comply with Ordering Paragraph (C) of the December 4, 1990 Order and the Commission's May 21, 1991 Order on rehearing.

Panhandle states that it is proposing a July 1, 1991 effective date for the revised tariff sheets.

Panhandle states that copies of its filing have been served on all jurisidictional sales customers, state commissions, and shippers. Copies also have been provided to the parties to the settelement referenced above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such protests should be filed on or before June 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14278 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-36-003]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

June 10, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on June 7, 1991 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, six (6) copies of the following tariff sheets:

Fourth Revised Sheet No. 32-AM
First Revised Sheet No. 32-AQA
Third Revised Sheet No. 32-BQ
First Revised Sheet No. 32-BU.A

Panhandle states that these revised tariff sheets are being filed to comply with the Commission's Order on Order Nos. 497 and 497-A Compliance Filings dated May 23, 1991 in Docket No. MT88-36-000, 001 and 002, *inter alia.*

The proposed effective date of the tariff sheets listed above is June 7, 1991.

Panhandle states that copies of its filing were served on Panhandle's jurisdictional sales and transportation customers, state commissions and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14267 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01

[Docket No. MT88-3-004]

Questar Pipeline Co.; Tariff Filing

June 10, 1991.

Take notice that Questar Pipeline Company, on June 7, 1991 tendered for filing and acceptance First Revised Sheet No. 63 and Original Sheet No. 63A to Original Volume No. 1-A of its FERC Gas Tariff.

Questar states that this filing is made pursuant to 18 CFR 154.63(a)(1) and in compliance with the Commission's May 23, 1991, order in Docket No. MT88-3-000, 001, 002 and 003.

Questar requests an effective date of July 7, 1991, for the proposed tariff sheets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14269 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-173-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

June 10, 1991.

Take notice that on June 5, 1991, South Georgia Natural Gas Company ("South Georgia") tendered for filing the following tariff sheets to its FERC Gas Tariff. First Revised Volume No. 1, to be effective July 5, 1991:

Third Revised Sheet No. 16K
Third Revised Sheet No. 16N
Second Revised Sheet No. 16O
Second Revised Sheet No. 16CC.01
Second Revised Sheet No. 16DD
First Revised Sheet No. 16FF
First Revised Sheet No. 34H
Second Revised Sheet No. 34Q
Second Revised Sheet No. 34R
Fourth Revised Sheet No. 34U
Second Revised Sheet No. 34Y
First Revised Sheet No. 34Z
First Revised Sheet No. 42A
Second Revised Sheet No. 42C
First Revised Sheet No. 42J
Second Revised Sheet No. 42K
First Revised Sheet No. 42M
Second Revised Sheet No. 42O
First Revised Sheet No. 42V
Second Revised Sheet No. 42W

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South Georgia states that the purpose of this filing is to make certain revisions to its transportation tariff (1) to delete all references to take-or-pay crediting as required by the Commission's Order No. 500–K issued in Docket Nos. RM87–34–065, *et al.* on April 4, 1991, (2) to revise the "on behalf of" certification for section 311 transportation services, (3) to require a prepayment to be submitted with requests for firm transportation service, and (4) to make certain other changes for operational and administrative efficiencies. Accordingly, South Georgia has submitted the revised tariff sheets listed above and has requested that the Commission make these sheets effective July 5, 1991.

South Georgia states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 17, 1991. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14284 Filed 6–14–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–171–000]

Southern Natural Gas Co.; Proposed Refund Plan

June 11, 1991.

Take notice that on May 30, 1991, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, in Docket No. RP91–171–000, requested the Commission to approve a proposed refund plan. Southern filed the plan as a result of a March 29, 1991 Order of the Office of the Chief Accountant (Docket No. FA89–48–000) which directed Southern to analyze its Account No. 253, Other Deferred Credits, and to file a refund plan since most of the refunds have been in Southern's Account No. 253 since 1983 awaiting Commission action.

Southern proposes to flow through to its customers refunds of $2,805,395 in principal and interest from Southern's Account No. 253 by crediting its Account No. 191, Deferred Purchased Gas Cost. Southern states that it deferred flow through of the majority of these refunds awaiting a decision from the Commission regarding their proper accounting.

Additionally, Southern requests authorization to make direct refunds to two customers (Florida Gas Transmission Company and South Georgia Natural Gas Company) of $185,675 in principal and interest from its Account No. 253.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989). All such protests should be filed on or before July 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14253 Filed 6–14–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–172–000]

Southern Natural Gas Co., Proposed Changes to FERC Gas Tariff

June 10, 1991

Take notice that on June 5, 1991, Southern Natural Gas Company ("Southern") tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective July 5, 1991.

Fifth Revised Sheet No. 30O
Third Revised Sheet No. 30W
First Revised Sheet No. 30W.1
Third Revised Sheet No. 30Z
First Revised Sheet No. 30Z.02
First Revised Sheet No. 30Z.09
First Revised Sheet No. 30Z.16
First Revised Sheet No. 30Z.19
First Revised Sheet No. 30Z.22
First Revised Sheet No. 30Z.24
Fifth Revised Sheet No. 31
First Revised Sheet No. 45R.01
Fourth Revised Sheet No. 45R.20
Fifth Revised Sheet No. 45R.23
Fourth Revised Sheet No. 45R.24
Third Revised Sheet No. 45R.27
Second Revised Sheet No. 45R.28
Third Revised Sheet No. 53I.40
Third Revised Sheet No. 53I.56

Southern states that the purpose of this filing is to take certain revisions primarily to its transportation tariff (1) to delete all references to take-or-pay crediting as required by the Commission's Order No. 500–K issued in Docket Nos. RM87–34–065, *et al.* on April 4, 1991, (2) to revised the "on behalf of" certification for section 311 transportation services, (3) to require a prepayment to be submitted with requests for firm transportation service, and (4) to make certain other changes for operational and administrative efficiencies. Accordingly, Southern has submitted the revised tariff sheets listed above and has requested that the Commission make these sheets effective July 5, 1991.

Southern states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 17, 1991. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing due on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14363 Filed 6–14–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–9–003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 10, 1991.

Take notice that on June 7, 1991, Texas Eastern Transmission Corporation (Texas Eastern) in compliance with the Commission's order issued May 23, 1991, in Docket Nos. MT88–9–000, 001 and 002, (May 23 Order) herewith submits for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fourth Revised Sheet No. 305A
Third Revised Sheet No. 330A
Sixth Revised Sheet No. 502
Sixth Revised Sheet No. 505
Seventh Revised Sheet No. 520

Texas Eastern states that it is filing the above listed tariff sheets in compliance with Ordering Paragraph (B)(5) of the May 23 Order, which requires Texas Eastern to file revised tariff sheets containing the names and titles of operating personnel shared with Pan National Gas Sales, Inc., (Pan National) if any. Separately, Texas Eastern intends to seek rehearing of the referenced order as well as the companion order issued concurrently in Texas Eastern's Docket No. MG88–26–000, *et al.*, to the extent, among other things, that such orders hold Pan National to be a "marketing affiliate" of Texas Eastern when Texas Eastern does not conduct any "transportation transactions" with Pan National. Other than telephone equipment and mainframe computer system, Texas Eastern does not share any facilities or operating personnel with any of its marketing affiliates.

Texas Eastern states that ordering Paragraph (B)(15) of the May 23 Order requires Texas Eastern to include in its transportation request form the item required by § 250.16(b)(2)(xi) of the Commission's regulations. This item requires the shipper to list on its request form the state of the ultimate end user of the gas. Texas Eastern already has incorporated this requirement into the transportation request forms filed by Texas Eastern on October 31, 1990, which revised tariff sheets were approved to be effective December 1, 1990, by Commission order issued November 30, 1990 in Docket No. RP90–119–004.

Texas Eastern states that this filing is submitted without prejudice to Texas Eastern's rights on rehearing or in any judicial review proceeding or its position in this proceeding.

The proposed effective date of the tariff sheets listed above is June 7, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, all parties in Docket Nos. MT88–9–000, 001, 002, MG88–26–000, *et al.*, and all Rate Schedule IT–1 shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14278 Filed 6–14–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–109–002]

Transwestern Pipeline Co.; Compliance Filing

June 7, 1991

Take notice that Transwestern Pipeline Company (Transwestern) on May 30, 1991 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective July 1, 1991

65th Revised Sheet No. 5
9th Revised Sheet No. 38
5th Revised Sheet No. 40
6th Revised Sheet No. 73
73rd Revised Sheet No. 74
9th Revised Sheet No. 75
3rd Revised Sheet No. 75A
11th Revised Sheet No. 76
5th Revised Sheet No. 76A
6th Revised Sheet No. 76B
6th Revised Sheet No. 76C
3rd Revised Sheet No. 76D
2nd Revised Sheet No. 76E
1st Revised Sheet Nos. 83–86A
9th Revised Sheet No. 133

Transwestern states that the above-referenced tariff sheets are being filed by Transwestern to comply with the April 30, 1991, Commission "Order Accepting and Suspending Alternate Tariff Sheets Subject to Conditions, Rejecting Primary Tariff Sheets, Amending Certificate Retroactively, Granting Abandonment, Denying Rehearing and Consolidating Proceedings" (Order). Transwestern notes that the filing also accepts the condition imposed by the Commission relating to the IS–1 sales program.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.63 of its regulations, so as to permit the above listed tariff sheets to become effective July 1, 1991.

Transwestern asserts that copies of the filing were served on all parties entitled to service under rule 2010 of the Commission's rules of practice and procedures.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14273 Filed 6–14–91; 8:45 am]

BILLING CODE 6717–01–M

Trunkline Gas Company; Proposed Changes in FERC Gas Tariff

[Docket No. MT88–22–004]

June 10, 1991.

Take notice that Trunkline Gas Company (Trunkline) on June 7, 1991 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, six (6) copies of the following tariff sheets:

First Revised Sheet No. 9–CC.1
First Revised Sheet No. 9–DG.2

Trunkline states that these revised tariff sheets are being filed to comply with the Commission's Order on Order Nos. 497 and 497–A Compliance Filings dated May 23, 1991 in Docket Nos. MT88–22–000, 001, 002 and 003, *inter alia.*

The proposed effective date of the tariff sheets listed above is June 7, 1991.

Trunkline states that copies of its filings were served on Trunkline's jurisdictional sales and transportation customers, state commissions and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14268 Filed 6–14–91; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. MT90-07-001]

Trunkline LNG Co.; Proposed Changes in FERC Gas Tariff

June 10, 1991.

Take notice that Trunkline LNG Company (TLC) on June 7, 1991 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, six (6) copies of the following tariff sheets:

First Revised Sheet No. 79.1
First Revised Sheet No. 79.2

TLC states that these revised tariff sheets are being filed to comply with the Commission's Order on Order Nos. 497 and 497-A Compliance Filings dated May 23, 1991 in Docket Nos. MT90-07-000, *inter alia*.

The proposed effective date of the tariff sheets listed above is June 7, 1991.

TLC states that copies of its filing were served on TLC's jurisdictional customers, and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14270 Filed 6-14-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-225-002]

Valero Interstate Transmission Co.; Refund Report

June 7, 1991.

Take notice that Valero Interstate Transmission Company (Vitco), on May 31, 1991, tendered for filing with the Federal Energy Regulatory Commission its refund report setting forth the computations of refunds including interest made to each customer.

Vitco states that it has calculated the refund applicable to each customer for the period October 1, 1989 through April 30, 1991 based on the rates charged during this period and the rates approved by the Commission letter order dated May 2, 1991.

Vitco states that a copy of the filing has been served upon the parties in the above captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14274 Filed 6-14-91; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51764; FRL 3931-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 34 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 91-261, February 25, 1991.
P 91-269, February 26, 1991.
P 91-779, July 10, 1991.
P 91-829, 91-830, July 20, 1991.
P 91-835, July 22, 1991.
P 91-847, 91-848, 91-849, July 31, 1991.
P 91-850, August 3, 1991.
P 91-851, 91-852, 91-853, 91-854, 91-855, 91-856, 91-857, 91-858, 91-859, 91-860, 91-861, 91-862, August 4, 1991.
P 91-863, 91-864, 91-865, 91-866, 91-867, 91-868, 91-869, 91-870, 91-871, 91-872, 91-873, 91-874, August 5, 1991.

Written comments by:

P 91-261, January 28, 1991.
P 91-269, January 27, 1991.
P 91-779, June 10, 1991.
P 91-829, 91-830, June 20, 1991.
P 91-835, June 22, 1991.
P 91-847, 91-848, 91-849, July 1, 1991.
P 91-850, July 4, 1991.
P 91-851, 91-852, 91-853, 91-854, 91-855, 91-856, 91-857, 91-858, 91-859, 91-860, 91-861, 91-862, July 5, 1991.
P 91-863, 91-864, 91-865, 91-866, 91-867, 91-868, 91-869, 91-870, 91-871, 91-872, 91-873, 91-874, July 6, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-51764)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm. L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 91-261

Manufacturer. Confidential.
Chemical. (G) Amine functional acrylic salt.
Use/Production. (G) Coating. Prod. range: Confidential.

P 91-269

Manufacturer. Confidential.
Chemical. (G) Phosphonic acid ester of aromatic epoxy.
Use/Production. (G) Despersively used coating, pretreatment solution. Prod. range: 10,000-24,000 kg/yr.

P 91-779

Manufacturer. King Industries, Inc.
Chemical. (G) Aromatic acid phosphate compound with amine.

Use/Production. (G) Coatings additive. Prod. range: Confidential kg/yr.

P 91-829

Importer. Hoechst Celanese Corporation.
Chemical. (G) Diazo naphthoquinone sulfonic ester.
Use/Import. (G) Photoactive agent for photoresist formulation. Import range: Confidential.

P 91-830

Importer. Hoechst Celanese Corporation.
Chemical. (G) Diazo naphthoquinone sulfonic ester.
Use/Import. (G) Photoactive agent for photoresist formulation. Import range: Confidential.

P 91-835

Importer. Confidential.
Chemical. (G) Metal arsenate.
Use/Import. (G) Commercial wood preservative ingredient. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 300 mg/kg species (rat).

P 91-847

Manufacturer. Rheox, Inc.
Chemical. (G) Polyamide resin.
Use/Production. (S) Additive for solvent-based paints. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: negative species (guinea pig).

P 91-848

Manufacturer. Confidential.
Chemical. (G) Organic salt.
Use/Production. (G) Polymer intermediate. Prod. range: Confidential.

P 91-849

Importer. Powdertech Corporation.
Chemical. (G) Alkyd resin polymer.
Use/Import. (G) Open, nondispersive. Import range: 1,500-2,000 kg/yr.

P 91-850

Manufacturer. Confidential.
Chemical. (G) Siloxane-modified polyurethane polymer.
Use/Production. (S) Thickener for coatings. Prod. range: Confidential.

P 91-851

Importer. Confidential.
Chemical. (G) Phenoplastic sulfonic acid salt.
Use/Import. (S) Drying aid. Import range: Confidential.

P 91-852

Importer. Conf dential.
Chemical. (G) Polymer of methyl methacrylate with mixed alkyl methacrylates.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 91-853

Manufacturer. Confidential.
Chemical. (G) Ethanammonium, *N,N,N*-trimethyl-2(methyl-1-oxo-2-propyl)oxo)-chloride polymer with 2-propenamide and *N,N,N*-trimethyl-2-(C1-oxo-2-propenyloxy)ethanammonium chloride.
Use/Production. (G) Polymer utilized to separate means of flocculation solid particules from liquid slurry. Prod. range: Confidential.

P 91-854

Importer. Confidential.
Chemical. (G) Alkyl amine derivative.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-855

Importer. Confidential.
Chemical. (G) Alkyl amine derivative.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-856

Importer. Confidential.
Chemical. (G) Alkyl amine derivative.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-857

Importer. Confidential.
Chemical. (G) Alkyl amine derivative.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-858

Importer. Confidential.
Chemical. (G) Alkyl amine derivative.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-859

Importer. Confidential.
Chemical. (G) Alkyl amine derivative.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-860

Importer. Confidential.
Chemical. (G) Alkyl amine derivative.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-861

Importer. Confidential.
Chemical. (G) Alkyl amine derivative.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-862

Manufacturer. Ashland Chemical, Inc.
Chemical. (G) Capped polyurea.
Use/Production. (S) Ingredient used in an adhesive. Prod. range: Confidential.

P 91-863

Manufacturer. Dow Chemical Company.
Chemical. (G) Linear polyurethane macromer.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-864

Manufacturer. Dow Chemical Company.
Chemical. (G) Linear polyurethane macromer.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-865

Manufacturer. Dow Chemical Company.
Chemical. (G) Linear polyurethane macromer.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-866

Manufacturer. Dow Chemical Company.
Chemical. (G) Polyurethane copolymer polyol.
Use/Production. (S) Raw material to manufacture flexible polyurethane foam. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-867

Manufacturer. Dow Chemical Company.
Chemical. (G) Polyurethane copolymer polyol.
Use/Production. (S) Raw material to manufacture flexible polyurethane foam. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-868

Manufacturer. Dow Chemical Company.

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Chemical. (G) Polyurethane copolymer polyol.

Use/Production. (S) Raw material to manufacture flexible polyurethane foam. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-869

Manufacturer. Dow Chemical Company.

Chemical. (G) Butylene oxide/ethylene oxide copolymer.

Use/Production. (S) Surfactant for cleaners. Prod. range: Confidential.

P 91-870

Manufacturer. Dow Chemical Company.

Chemical. (G) Butylene oxide/ethylene oxide copolymer.

Use/Production. (S) Surfactant for cleaners. Prod. range: Confidential.

P 91-871

Manufacturer. Dow Chemical Company.

Chemical. (G) Butylene oxide/ethylene oxide copolymer.

Use/Production. (S) Surfactant for cleaners. Prod. range: Confidential.

P 91-872

Manufacturer. Dow Chemical Company.

Chemical. (G) Butylene oxide/ethylene oxide copolymer.

Use/Production. (S) Surfactant for cleaners. Prod. range: Confidential.

P 91-873

Manufacturer. Dow Chemical Company.

Chemical. (G) Butylene oxide/ethylene oxide copolymer.

Use/Production. (S) Surfactant for cleaners. Prod. range: Confidential.

P 91-874

Manufacturer. Confidential.

Chemical. (G) Polyolefin amino ester.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Dated: June 11, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-14340 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3963-9]

Public Water Supply Supervision Program Revision for Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Florida is revising its approved State Public Water Supply Supervision Primacy Program. Florida has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the correspanding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted July 17, 1991 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made July 17, 1991, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV.

[FR Doc. 91-14104 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3964-2]

Public Water Supply Supervision Program Revision for Georgia

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Georgia is revising its approved State Public Water Supply Supervision Primacy Program. Georgia has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to conditionally approve these State program revisions, in accordance with the conditions set forth in the May 9, 1991 letter from the U.S. EPA to the State of Georgia. This letter states that the State commits to amend the Georgia Rules at the first available opportunity by amending its proposed definition 391-3-5-.02 (ii) and by amending 391-3-5-.32 (Public Notification) to include a more specific reference to 40 CFR 141.32. The May 9, 1991 letter also states that the State commits to correct two typographical errors as soon as possible, as follows. First, the words "and after" should be inserted between "on" and "June 29, 1993" in GA 391-3-5-.20 (SWTR-MCL for Turbidity). The intent of the Georgia Rule is to maintain the current MCL for turbidity until June 28, 1993. This correction will serve to clarify the State's intent to enforce the federal date. Second, the words "Until June 28, 1993" should replace the words "On or before June 28, 1993" in GA 391-3-5-.18 (3). Once this correction has been made, the intent of this regulation should be clear.

All interested parties may request a public hearing. A request for a public hearing must be submitted July 17, 1991 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made (July 17, 1991), a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Georgia Department of Natural Resources, Floyd Towers East, Suite 1066, 205 Butler Street SE., Atlanta, Georgia 30334.

Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator EPA, Region IV.

[FR Doc. 91-14105 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3964-1]

Public Water Supply Supervision Program Revision for North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of North Carolina is revising its approved State Public Water Supply Supervision Primacy Program. North Carolina has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted (July 17, 1991) to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made (July 17, 1991), a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

North Carolina Division of Environmental Health, Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687.

Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV

[FR Doc. 91-14107 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

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hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Georgia Department of Natural Resources, Floyd Towers East, Suite 1066, 205 Butler Street SE., Atlanta, Georgia 30334.

Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator EPA, Region IV.

[FR Doc. 91-14105 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3964-1]

Public Water Supply Supervision Program Revision for North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of North Carolina is revising its approved State Public Water Supply Supervision Primacy Program. North Carolina has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted (July 17, 1991) to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made (July 17, 1991), a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

North Carolina Division of Environmental Health, Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687.

Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV

[FR Doc. 91-14107 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3964-3]

Public Water Supply Supervision Program Revision for South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved State Public Water Supply Supervision Primacy Program. South Carolina has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted (July 17, 1991) to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made (July 17, 1991), a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices.

South Carolina Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

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FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV

[FR Doc. 91-14106 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3964-6]

Public Water Supply Supervision Program Revision for Tennessee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved State Public Water Supply Supervision Primacy Program. Tennessee has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted July 17, 1991 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made July 17, 1991, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register.**

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Tennessee Department of Health and Environment, T.E.R.R.A. Building, 150 Ninth Avenue North, Nashville, Tennessee 37219-5404.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations).

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV

[FR Doc. 91-14108 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Public Law 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Tuesday, July 2, 1991, from 9:30 a.m. to 12 noon. The meeting will be held at Eximbank in room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Financial and Budget Status Report, Congressional Report, Arrangement/Tied Aid Credit Report, Competitiveness Report, Project Finance, Subcommittee Status Reports: (Emerging Trade Finance—Small Business-Banking), Next Steps, and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P Harris, room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8871, not later than June 28, 1991. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 27, 1991, the Office of the Secretary, room 935, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3913.

FURTHER INFORMATION: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8871.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 91-14245 Filed 6-14-91; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL ELECTION COMMISSION

Clearinghouse Advisory Panel; Renewal of Charter

SUMMARY: The National Clearinghouse on Election Administration announces the renewal of the charter for the Clearinghouse Advisory Panel.

The purpose of the Panel is to provide advice and consultation to the Clearinghouse with respect to its research programs on election administration.

FOR FURTHER INFORMATION CONTACT: Janet McKee, National Clearinghouse on Election Administration, Washington, DC 20463.

Dated: June 12, 1991.

Penelope Bonsall,

Director, National Clearinghouse on Election Administration.

[FR Doc. 91-14318 Filed 6-14-91; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-009848-025.

Title: U.S. Gulf Ports/Brazil Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro

Companhia Maritima Nacional

American Transport Lines, Inc.

Synopsis: The proposed amendment would delete provisions of the Agreement which conflict with the Commission's rules concerning the notice and waiting period required prior to the effectiveness of agreement modifications.

Dated: June 11, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14284 Filed 6-14-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

1st Brookfield, Inc. Employee Stock Ownership Plan and Trust Agreement, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act [12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 5, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. 1st Brookfield, Inc. Employee Stock Ownership Plan and Trust Agreement, Brookfield, Illinois; to become a bank holding company by acquiring 30 percent of the voting shares of 1st Brookfield, Inc., Brookfield, Illinois, and thereby indirectly acquire First National Bank of Brookfield, Brookfield, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Commercial Corporation, Little Rock, Arkansas; to acquire at least 80 percent of the voting shares of Farmers and Merchant Bank, Rogers, Arkansas.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Flower Mound Bancshares, Inc., Flower Mound, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Security Bank, Flower Mound, Texas.

2. HMS Holdings, Inc., San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Castle Hills National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14287 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

Banc One Corporation; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to engage through its subsidiary, Banc One Capital Corporation, Columbus, Ohio, in underwriting and dealing, to a limited extent, in all types of debt securities, including, without limitation, sovereign debt securities, corporate debt, debt securities convertible into equity securities, and securities issued by a trust or other vehicle secured by or representing interests in debt obligations; and all types of equity securities, including, without limitation, common stock, preferred stock, American Depositary Receipts, and direct and indirect ownership interest in corporations and other entities. *Banc One Corporation,* 76 Federal Reserve Bulletin 756 (1990); *J.P. Morgan & Co. Inc.,* 75 Federal Reserve Bulletin 192 (1989). *See Modifications to Section 20 Orders,* 75 Federal Reserve Bulletin 751 (1989).

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14288 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

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Bankers Trust New York Corporation; Application to Engage De Novo in Providing Investment Advice on Futures Contracts and Options on Futures Contracts on Stock and Bond Indexes

Bankers Trust New York Corporation, New York, New York ("Bankers Trust"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly owned subsidiary, BT Asset Management, Inc., New York, New York ("Company"), to engage *de novo* in the provision of investment advice as a commodity trading advisor ("CTA") with respect to the purchase and sale of financial futures contracts and options on such futures contracts on certain broad-based stock and bond index products traded on major commodity exchanges. This activity would be conducted on a worldwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Bankers Trust believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved the provision of investment advice as a futures commission merchant or CTA with respect to all of the specified stock and bond index futures contracts and options thereon in Bankers Trust's application. *See, e.g., The Sanwa Bank, Limited*, 77 Federal Reserve Bulletin 64 (1991); *Chemical Banking Corporation*, 76 Federal Reserve Bulletin 660 (1990); *The Hongkong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990); *The Long-Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988). Bankers Trust proposes that Company comply with the conditions set forth in § 225.25(b)(19) of Regulation Y previously considered by the Board in approving this activity.

Bankers Trust takes the position that the proposed activity will benefit the public. Bankers Trust believes that it will promote competition and provided added convenience to customers of Company. Moreover, Bankers Trust believes that the provision of investment advisory services relating to financial futures contracts on stock and bond indexes and options thereon through Company will not give rise to any substantial risks of conflicts of interest, unsound banking practices or other subtle hazards given the framework of laws and regulations within which Company will conduct its activities.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 12, 1991. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors of the Federal Reserve Board or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14291 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

Robert C. Cudd, III; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Robert C. Cudd, III, Monroe, Louisiana; to acquire an additional 1.78 percent of the voting shares of Central Corporation, Monroe, Louisiana, for a total of 11.78 percent, and thereby indirectly acquire Central Bank, Monroe, Louisiana.

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14288 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

First Union Corporation; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to engage *de novo* through its subsidiary, First Union Securities, Inc., Charlotte, North Carolina, in buying and selling all types of securities on the order of investors as a "riskless principal" subject to certain limitations and restrictions as stipulated in *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) and *J.P. Morgan & Co., Incorporated*, 76 Federal Reserve Bulletin 26 (1990), and § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14289 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

Synovus Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

CORRECTION

This notice corrects a previous **Federal Register** notice (FR Doc. 91-11145) published at page 21680 of the issue for Friday, May 10, 1991.

Under the Federal Reserve Bank of Atlanta, the entry for Synovus Financial Corporation is amended to read as follows:

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Synvous Financial Corporation, Columbus, Georgia, and TB&C Bancshares, Inc., Columbus, Georgia; to acquire 100 percent of the voting shares of Athens Federal Savings Bank, Athens, Georgia. Athens Federal Savings Bank is currently a federally-chartered stock savings bank, and, immediately prior to acquisition by Synovus Financial Corporation, will convert from a federally-chartered stock savings bank into a state-chartered commercial bank and trust company to be called Athens First Bank and Trust Company.

Athens Federal Savings Bank engages in the sale of title insurance through a wholly-owned subsidiary, Athena Service Corporation. Contemporaneously with the conversion of Athens Federal Savings Bank into Athens First Bank and Trust Company, ownership of Athena Service Corporation will pass from Athens Federal Savings Bank to Athens First Bank and Trust Company. Upon consummation of this transaction, threfore, Synovus Financial Corporation also proposes to engage indirectly in the sale of title insurance through Athena Service Corporation.

Comments on this application must be received by July 1, 1991.

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14290 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of the Administrator (AKC), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0228, Nondiscrimination in Federal Financial Assistance Program. This information is needed to ensure that recipients of Federal financial assistance distribute Federal surplus property in a nondiscriminatory manner.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW, Washington, DC 20405.

Annual Reporting Burden: *Respondents:* 228; *annual responses:* 1.0; *average hours per response:* 16.0000; *burden hours:* 3648.

FOR FURTHER INFORMATION CONTACT: Thomas E. Henderson, (202) 501-1633.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F St. NW, Washington, DC 20405, by telephoning (202) 501-0666, or by faxing your request to (202) 501-2727.

Dated: June 5, 1991.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91-14317 Filed 6-14-91; 8:45 am]

BILLING CODE 6820-BR-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement Number 126]

Surveillance of Hazardous Substance Emergency Events

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces that cooperative agreement applications will be accepted to conduct surveillance of hazardous substance emergency events. The Public Health Services (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Surveillance and Data Systems and Environmental Health. (For ordering a copy of Healthy People 2000, see Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized in sections 104(i) (9) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604 (i) (9) and (15)).

Eligible Applicants

Eligible applicants are the official public health departments of the states and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Marina Islands, and American Samoa and federally-recognized Indian Tribes.

Availability of Funds

Approximately $450,000 is available in Fiscal Year 1991 to fund up to 9 awards (approximately 5 non-competing continuations totaling $250,000 and 2 to 4 new competing awards totaling $200,000). Awards are expected to be approximately $50,000 per award for the first year. It is anticipated that awards will be for a 12-month budget period with a proposed project period of 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The primary purpose of this cooperative agreement is to develop, implement, and maintain a state-based surveillance system for hazardous substance emergency events. This surveillance system will allow the state health department to better understand

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the public health impact of hazardous substance emergencies by developing, implementing, and evaluating a state-based surveillance system.

The objectives of the surveillance system are to 1) describe the distribution of hazardous substance emergencies within individual states as well as nationally, 2) describe the type and cause of morbidity and mortality experienced by employees, first responders, and the general public as a result of selected hazardous substance emergencies, 3) analyze and describe risk factors associated with the morbidity and mortality, and 4) develop and propose strategies to reduce subsequent morbidity and mortality when comparable events occur in the future.

Program Requirements

All hazardous substance emergency event surveillance (HSEES) will be performed in accordance with the methodology provided in the HSEES protocol. The protocol was developed to meet the objectives outlined under PURPOSE. A copy of the protocol will be provided in the application kit. The following criteria define an emergency event:

A. An uncontrolled or illegal release or threatened release of a hazardous substance as defined by Sections 101(14) and 104(i)(18), 42 U.S.C. 9601(14) and 9604(i)(18); and include:

1. The 200 substances identified by ATSDR to be the most hazardous substances found at Superfund sites, as published in the Federal Register on October 20, 1988 (53 FR 41280), and

2. all insecticides, pesticides, and herbicides, not limited to those listed in ATSDR's announcement (e.g., parathion, dieldrin/aldrin, heptachlor), and

3. chlorine, hydrochloric acid, sodium hydroxide, nitric acid, phosphoric acid, acrylic acid, hydrofluoric acid; and

B. The amount of product released, or that might be released, needs (or would need) to be removed, cleaned up, or neutralized according to Federal, state, or local law.

Note: Events meeting Criteria A and B include releases and threatened releases of specified chemicals, i.e., if it is thought that a tanker will explode containing phosphoric acid and the area is evacuated and no explosion occurs, the event should be included.

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and ATSDR will be responsible for conducting activities under B. below. The surveillance process will generally consist of the following activities:

A. Recipient Activities

1. Develop a mechanism for state health department notification of events in a timely fashion. This should include developing formal or informal agreements with all agencies within the states that are notified of hazardous substance emergencies. These agencies may include, but are not limited to, state police and fire departments, environmental agencies, and various offices of emergency government. These agreements should allow the participating state health departments to be notified of hazardous substance emergencies meeting the ATSDR case definition at the time, or shortly after, the event occurs.

2. Investigate the emergency event by gathering and analyzing the information gathered from various sources. Sources may include but are not limited to those agencies mentioned in Number 1. and other relevant Federal, state, local, and private agencies in keeping with the surveillance protocol.

3. Establish and maintain an appropriate and a timely schedule of gathering, entering, and transferring information to ATSDR in keeping with the HSEES Protocol.

B. ATSDR Activities

1. Collaborate with recipients in acquiring appropriate information for performance of HSEES; assist recipient in evaluating completeness and quality of relevant information.

2. Provide prototype information gathering instrument.

3. Assist recipients in establishing and maintaining appropriate and timely schedules for the HSEES surveillance process.

4. Assist recipients in assuring appropriate training for maintaining the surveillance system.

5. Analyze environmental and/or biological results for specific situations in which ATSDR has unique capabilities.

6. Evaluate the overall performance of recipient's adherence to the surveillance protocol.

Evaluation Criteria

A. Review Procedures

Applications will be reviewed and evaluated according to the following criteria:

1. Scientific and technical merit review criteria for states new to HSEES.

a. Appropriateness and Knowledge of Surveillance System (25 percent)—The extent to which the applicant demonstrates a need for such a surveillance system within their state. Additionally, the applicant should demonstrate an understanding of the needs, limitations, and experience with surveillance systems as a means of assessing the impact of hazardous substances on public health.

b. Proposed Methodology (25 percent)—The extent to which the applicant demonstrates experience in, or an ability to develop, implement, and evaluate surveillance systems in accordance with the HSEES Protocol.

c. Capability and Coordination Efforts (20 percent)—The extent to which the applicant demonstrates the ability to develop, maintain, or expand a formal or an informal working relationship with agencies outside of the state health departments that receive notifications of hazardous substance emergencies. This is necessary to assure that state health departments are notified of all hazardous substance emergencies.

d. Quality of Information Collection (20 percent)—The extent to which the applicant describes experience in collaborative projects where it was responsible for collecting information in a consistent format. Examples can include surveillance projects, surveys, and prospective or retrospective hypothesis testing studies. Of critical importance to the success of the surveillance project is the timely submission of information for analysis. The applicant must demonstrate experience in, or the proposed ability to collect, enter, and transfer information on a scheduled basis.

e. Program Personnel (10 percent)—The extent to which the proposed program staff are qualified and appropriate, and the time allocated for them to accomplish program activities is adequate. With limited funds available, the applicant must demonstrate that an infrastructure exists within the health department that will allow for full participation in the surveillance system with partial ATSDR financial support. such in-kind support can include existing support staff, technical staff (e.g., epidemiologists, data management staff, environmental health scientists, emergency response personnel), and computer hardware.

f. Program Budget (Not scored)—The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

2. Scientific and technical merit review criteria for states with existing HSEES.

a. Appropriateness and knowledge of surveillance system (25 percent)—The extent to which the applicant demonstrates experience in collecting emergency event surveillance information within the state. This should include, but is not limited to, an assessment of the extent of hazardous substance emergencies and/or the morbidity and mortality associated with these events. Additionally, the applicant should demonstrate an understanding of the needs, limitations, and experience with surveillance systems as a means of assessing the impact of hazardous substances on public health.

b. Proposed methodology (25 percent)—The extent to which the applicant demonstrates experience in HSEES. This should include the development, implementation, and evaluation of an HSEES system in accordance with the surveillance protocol.

c. Capability and coordination efforts (20 percent)—The extent to which the applicant demonstrates the ability to develop, maintain, or expand a formal or an informal working relationship with agencies outside of the state health departments that receive notifications of hazardous substance emergencies. This is necessary to assure that state health departments are notified of all hazardous substance emergencies.

d. Quality of information collection (20 percent)—The extent to which the applicant describes experience in HSEES systems for which the organization was responsible for collecting information in a consistent format. Of critical importance to the success of the surveillance project is the timely submission of data for analysis. The applicant must demonstrate experience in collecting, entering, and transferring information on a scheduled basis.

e. Program personnel (10 percent)—The extent to which the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate. With limited funds available, the applicant must demonstrate that an infrastructure exists within the health department that will allow for full participation in the surveillance system with partial ATSDR financial support. Such in-kind support can include existing support staff, technical staff (e.g., epidemiologists, data management staff, environmental health scientists, emergency response personnel), and computer hardware.

f. Program budget (not scored)—The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

B. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Funding Priorities

Renewal applicants and new HSEES applicants must demonstrate the abilities described earlier in this announcement, and established project shall neither be preferentially rewarded or penalized for previous ATSDR collaboration. Priority will be given for the following:

A. Geographic representation of the entire United States;

B. Representation from both agricultural and industrial states.

Other Requirements

Paperwork Reduction Act

Projects that involve collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs including their names, addresses, and telephone numbers is included in the application kit. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

The following states and territories have elected not to participate in the "Intergovernmental Review of Federal Programs": Alaska, Idaho, Kansas, Minnesota, Nebraska, Virginia, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161, Health Programs for Agency for Toxic Substances and Disease Registry.

Application Submission Deadline

The original and two copies of the application (Form PHS 5161–1) should be submitted to Henry S. Cassell, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, on or before July 26, 1991. By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.

A. *Deadline*

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late Applications*

Applications that do not meet the criteria in 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

If you are interested in obtaining additional information on application procedures, copies of application forms.

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and other material, please contact the following CDC/ATSDR personnel.

Business Management Technical Assistance: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305; telephone: (404) 842-6630 or FTS 236-6630.

Programmatic Technical Assistance: Dr. Wendy Kaye, Chief, Epidemiology and Surveillance Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E-31, Atlanta, Georgia 30333; telephone: (404) 639-0555 or FTS 236-0555.

Please refer to announcement number 128 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: June 10, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-14285 Filed 6-14-91; 8:45 am]

BILLING CODE 4160-70-M

[Announcement Number 132]

Areas Closed or Restricted to the Public Because of Toxic Substance Contamination

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds in Fiscal Year 1991 for a cooperative agreement with the National Governors' Association (NGA) to maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination; to establish and maintain an inventory of state-based literature, research, and studies on the health effects of toxic substances; and to assist NGA in developing additional projects in response to emerging environmental health issues that facilitate state information exchange and policy development. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 104(i)(1) (B) and (C), 104(i)(14), and 104(i)(15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, (42 U.S.C. 9604(i)(1) (B) and (C), (14), and (15)). Section 104(i)(14) states, in part, " * * * "the administrator of ATSDR shall assemble, develop as necessary, and distribute to the states, and upon request to medical colleges, physicians, and other health professionals, appropriate educational material (including short courses) on the medical surveillance, screening and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances * * *."

Section 104(i)(15) states: The activities of the Administrator of ATSDR described in this subsection * * * "shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with the states (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities."

Eligible Applicant

Assistance will be provided only to the National Governors' Association (NGA). No other applications are solicited or will be accepted. The National Governors' Association is a unique institution for collecting and maintaining the information mandated under the Sections of CERCLA cited above, because of its special relationship with the states, commonwealths, and territories of the United States. NGA has developed, with ATSDR, the methodology and protocol for the data collection and maintenance, as well as convening a Task Force of senior state environmental health, natural resource, and policy officials to assist in the development, progress, and final presentation of the data. In addition, this Task Force provides assistance and guidance to NGA and ATSDR, as needed, on emerging environmental health issues that facilitate state information exchange and policy development.

Availability of Funds

Approximately $150,000 will be available in Fiscal Year 1991. It is expected that the award will begin on or about July 1, 1991, for a 12-month budget period within a 5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds. The funding estimate outlined above may vary and is subject to change.

Purpose

The cooperative agreement purposes are: (1) To assist the National Governors' Association (NGA) in updating the data contained in the biennially prepared document "Restrictions Imposed on Contaminated Sites: A Status of State Actions"; (2) to assist in cataloging various state efforts being used to avoid public exposure to hazardous sites and analyzing their site-specific responses; and (3) to develop a descriptive directory of state agencies and officials that have authority to close or restrict areas to public use because of toxic contamination. NGA will undertake additional projects in response to emerging state environmental health issues. These projects may include an analysis of how public health agencies can most effectively address public concerns about environmental health hazards. This information will assist state Governors in managing their hazardous substance cleanup programs.

Program Requirements

In conducting the activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and ATSDR will be responsible for conducting activities under B. below.

A. NGA Activities

1. In cooperation with ATSDR and the individual states and territories, develop the methodology and protocol to update the data contained in the biennially prepared document "Restrictions Imposed on Contaminated Sites: A Status of State Actions."

2. Gather information about state authorities and activities for closing and restricting areas to the public.

3. Analyze the collected information and comment on trends found in the data.

4. Prepare and publish a biennial listing of sites closed or restricted because of toxic contamination.

5. Conduct workshops and publish memoranda and reports, as needed, in response to emerging environmental health issues.

B. ATSDR Activities

1. Assist in updating the information contained in the biennially prepared document "Restrictions Imposed on Contaminated Sites: A Status of State Actions."

2. Participate in defining the scope and implementing the project and the preparation and publication of the study results.

3. Provide NGA with the Office of Management and Budget (OMB) Approval Number (0923-0001, "Update Survey of Areas Closed or Otherwise Restricted Because of Toxic Contamination," Expiration Date 11/93) for collecting the data for the listing of sites closed or restricted because of toxic contamination.

4. Assist NGA in developing additional projects in response to emerging environmental health issues that facilitate state information exchange and policy development.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. The applicant's understanding of the need or problem to be addressed and the purpose of this cooperative agreement. (15 points)

2. The ability to provide the staff, knowledge, financial and other resources required to perform the applicant's responsibilities in this project, and describe the approach to be used in carrying out responsibilities. (15 points)

3. The extent to which the applicant understands the objectives of the project; the steps to be taken in planning and implementing this project, and the respective responsibilities of the applicant, ATSDR and any other entities for carrying out those steps. (15 points)

4. The proposed schedule for accomplishing each of the activities to be carried out in this project, and a method for evaluating the accomplishment, are clearly defined. (15 points)

5. The qualifications and appropriateness of proposed program staff, and time allocated for them to accomplish program activities; the support staff available for the performance of this project; and the facilities, space and equipment available for performance of this project. (15 points)

6. The proposed plan for administering this project, and the name, qualifications, time allocations of the individual whom the applicant proposes to make responsible for its administration. (15 points)

7. The detailed budget which should indicate (1) anticipated costs for personnel, travel, communications and postage, equipment, and supplies and (2) the sources of funds to meet those needs will be reviewed for its reasonableness in relation to the proposed program. (10 points)

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR 100).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.161, Health Programs for Toxic Substances and Disease Registry.

Application Submission and Deadline

The original and two copies of the application Form PHS 5161-1 shall be submitted to Henry S. Cassell, III, Grants Management Officer, CDC Procurement and Grants Office, 255 East Paces Ferry Road NE., room 300, Atlanta, Georgia 30305, on or before June 19, 1991. By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please reference ANNOUNCEMENT NUMBER 132, AREAS CLOSED OR RESTRICTED TO THE PUBLIC BECAUSE OF TOXIC SUBSTANCE CONTAMINATION, and contact the following:

Business Management Technical Assistance: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Mailstop E-14, Atlanta, Georgia 30305, or by calling (404) 842-6630 or FTS 236-6630.

Programmatic Technical Assistance: Jim Carpenter, MA, Division of Health Education, Agency for Toxic Substances and Disease Registry, (404) 236-0736 or FTS 236-0736.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: June 10, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-14294 Filed 6-14-91; 8:45 am]

BILLING CODE 4160-70-M

Alcohol, Drug Abuse, and Mental Health Administration

Partial Suspension Lifted; Laboratory Again Meets Minimum Standards to Engage in Confirmatory Drug Testing for Amphetamines

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services routinely publishes in the Federal Register a list of standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. The following laboratory's certification to engage in urine drug testing for Federal Agencies was partially suspended on January 14, 1991 (53 FR 2183, January 22, 1991) and was fully reinstated effective June 12, 1991: Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614; Telephone: 312-880-6900.

FOR FURTHER INFORMATION CONTACT: Mona W. Brown, Press Officer, National Institute on Drug Abuse, room 10-A-46, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone: 301-443-6245.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91-14486 Filed 6-14-91; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

[Program Announcement Number 912]

Grants for Injury Prevention and Control Research; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC) announces that applications are being accepted for Injury Prevention and Control Research Grants. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. (For ordering a copy of Healthy People 2000, see the

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section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301 and 391 of the Public Health Service Act (42 U.S.C. 241 and 280b). Program regulations are set forth in title 42 of the Code of Federal Regulations, part 52.

Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus State and local health departments and other State and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including small, minority and/or women-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Availability of Funds

Approximately $3.5 million may be available in Fiscal Year 1992 to fund approximately 14 to 20 grants for periods of up to three years. The amount of funding actually available may vary and is subject to change. it is expected that the average new award will be $150,000, the range being $60,000 to $225,000 (including both direct and indirect costs). Research grant supplements will generally be no more than $50,000 (including both direct and indirect costs). Beginning award dates for each submission deadline are shown in the "Receipt and Review Schedule" section of this announcement. Continuation awards within the project period will be made on the basis of satisfactory progress, including the achievement of workplan milestones, and the availability of federal funds.

Purpose

The purposes of this program are:

A. To support injury prevention and control research on priority issues as delineated in Injury in America, Injury Prevention: Meeting the Challenge, Cost of Injury, and Healthy People 2000. (To receive information on these reports call (404) 332–4561 listed in the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

B. To encourage professionals from a wide spectrum of disciplines, such as engineering, medicine, health care, public health, criminal justice, behavioral and social sciences, and others, to undertake research to prevent and control injuries.

C. To rigorously evaluate current and new intervention methods and strategies for the prevention and control of injuries.

Program Requirements

The following are applicant requirements:

A. A director who has specific authority and responsibility to carry out the project.

B. Demonstrated experience in successfully conducting, evaluating, and publishing injury-related research.

C. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

D. An explanation of how research findings will lead to the development of injury control interventions within 3–5 years of project start-up. Furthermore, how the research findings might be disseminated and implemented through organizations (such as public health agencies) or systems, both public and private.

Grant funds will not be made available to support the provision of direct care services. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies may be supported which evaluate the effect of pre-hospital, hospital, and rehabilitative care and independent living systems on injury outcomes and costs.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Interests

The focus of grants should reflect the broad-based need to control injury morbidity, mortality, disability, and costs. Special consideration may be given to applications requesting one or two years of funding. One-year pilot projects are encouraged.

The three phases of injury prevention and control are defined as prevention, acute care, and rehabilitation. The disciplines of biomechanics and epidemiology may be of importance in addressing each of these phases.

In prevention, there is specific interest in research which evaluates the effectiveness of interventions in preventing injuries of reducing their impact. This research might evaluate one or more different approaches to implementing a specific intervention strategy (e.g. increasing the use of bicycle helmets among children) and compare the effectiveness of several different countermeasures (e.g. environmental, educational, and legal) applied simultaneously in a particular setting. Interventions chosen for evaluation should have a significant potential for reduction in injury morbidity, mortality, disability, or cost. The development, application and evaluation of promising, innovative interventions applicable to intentional injury, (e.g. the prevention of youth violence in minority communities and youth suicide) is also of interest. Special consideration will be given to grants which target populations at high risk for injury and injury consequences, including children, minorities, the elderly, rural residents, and farm families.

In acute care, there is programmatic interest in identifying optimal methods of diagnosing and treating patients who have sustained major trauma, including central nervous system injuries, burns, and multiple organ system injuries. Research needs encompass the full spectrum of acute care of the trauma patient, from triage decisions in the pre-hospital setting to management of postoperative complications such as multiple organ failure syndrome. There is also special interest in the design and evaluation of trauma registries, and regional trauma care systems.

In rehabilitation, there is programmatic interest in research directed towards minimizing the secondary complications of injury including pressure sores, contractures, muscular atrophy, skeletal deformity and other definable conditions. Likewise, research is needed to evaluate the effectiveness of rehabilitation methods and practices, identifying those which minimize long-term adverse effects and those which lead to optimal functional recovery. Finally, there is interest in the evaluation of integrated systems for rehabilitation and in applying findings from such studies to the development of regional and/or statewide systems of rehabilitation.

In biomechanics, there is special programmatic interest in brain and spinal cord injury, and outcomes from multiple trauma. This interest includes the biomechanical evaluation of intervention concepts and strategies; development of models to elucidate injury physiology and pharmacologic, surgical and other interventions; defining human tolerance limits for Injury among children, women, the chronically ill and older persons; improvements in injury assessment technology; and understanding impact injury mechanisms and quantifying injury-related biomechanical responses for critical areas of the human body. Consideration will also be given to the biomechanics of thoracic and abdominal viscera, joints, and musculature.

In epidemiology, there is programmatic interest in analytic research that identifies mechanisms, causes, or risks of injury which might lead to new or more effective interventions. Also of interest is epidemiologic research having as its focus the development of improved methods and the evaluation and improvement of injury surveillance systems. Research is needed that more accurately defines the cost of injury and the cost effectiveness of interventions.

Evaluation Criteria

Applications will be evaluated by a dual review process. Awards will be made based on priority score ranking by Injury Research Grants Review Committee (IRGRC), merit and program review by senior Federal staff, and the availability of funds.

A. The first review will be a peer review to be conducted on all applications. Factors to be considered will include:

1. The degree to which the applicant possesses requirements described under the section PROGRAM REQUIREMENTS.

2. The overall match between the applicant's proposed theme and research objectives, and the program priorities as described in Injury In America, Injury Prevention: Meeting the Challenge, Cost of Injury, and Healthy People 2000.

3. The merit, significance, and originality, from a scientific or a technical standpoint, of the goals of the proposed research, including the adequacy of the theoretical and conceptual framework for the research.

4. Evidence of familiarity with relevant research literature.

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plan.

6. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives.

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

9. The reasonableness of the proposed budget to the proposed research and demonstration program.

10. Adequacy of existing and proposed facilities and resources.

11. For competitive renewal applications, the progress made during the prior project period. Annual work-in-progress workshops will be utilized to help assess completed project period work.

B. The second review will be conducted by senior Federal staff. The factors to be considered will include:

1. The results of the peer review.

2. The signficance of the proposed activities in relation to the objectives stated in Injury In America, Injury Prevention: Meeting the Challenge, Cost of Injury, and Healthy People 2000.

3. National needs and geographic balance.

4. Overall distribution among:

- The three phases of injury control: prevention, acute care, and rehabilitation;
- The major disciplines of injury control: biomechanics and epidemiology;
- Traffic and motor vehicle injury research and other research;
- Intentional and unintentional injury;
- Populations addressed (for example, minorities, the elderly, children, urban, rural, etc); and

5. Budgetary considerations (e.g., preference may be given to applicants who submit proposals requesting funding for research projects of one to two year's duration).

C. Continued Funding. Continuation awards made after FY 1992, but within the project period, will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress has been demonstrated at the annual work-in-progress workshops;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

D. Supplementary Funding. Competing Supplemental grant awards may be made when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labelled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number is 93.136.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than two months prior to the planned submission deadline, (e.g., August 1 for October 1 submission). The letter should identify the announcement number being responded to, indicate the intended submission deadline, name the principal investigator, and specify the injury control phase addressed by the proposed project (e.g., prevention, acute care, or rehabilitation). The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 and adhere to the Errata Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. States and local government may use PHS–5161–1, however, PHS–398 is preferred. If the applicant is using PHS–398, submit an original and six copies, if the applicant is using PHS–5161–1, submit an original and two copies on or before one of the receipt deadlines mentioned in section (D) below to: Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, Georgia 30305.

C. Deadlines

Applications shall be considered as meeting a deadline if they are received at the above address on or before the deadline date. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly

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dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

D. Receipt and Review Schedule

This is a continuous announcement, consequently, the receipt date will be on-going until further notice. The proposed timetable for receiving applications and awarding grants is as follows:

Receipt of new/revised/supplementary/competitive renewal applications	Initial review	Secondary review	Earliest award date
Oct. 1, 1991.	Jan./Feb...	Apr./May..	June 1, 1992.

Future dates for this announcement submission are as follows:

Receipt of new/revised/supplementary/competitive renewal applications	Initial review	Secondary review	Earliest award date
Oct. 1.....	Jan./Feb.	Apr./May..	June 1.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address and phone number, and will need to refer to Announcement Number 912. You will receive a complete program description, information on application procedures, and an application package containing addresses and phone numbers for the contact personnel. Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Mailstop E–14, Atlanta, GA 30305 will provide the business management technical assistance, and programmatic technical assistance will be provided by Ted Jones, Project Officer, Division of Injury Control, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road NE., Mailstop F–36, Atlanta, GA 30333.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC. 20402–9325 (Telephone (202) 783–3238).

Dated: June 10, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control

[FR Doc. 91–14292 Filed 6–14–91; 8:45 am]

BILLING CODE 4160–18–M

[Program Announcement Number 913]

Grants for Injury Control Research Centers and Injury Control Research Program Project Grants; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC) announces that grant applications are being accepted for Injury Control Research Centers (ICRCs) and Injury Control Research Program Project Grants (RPPGs). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under sections 301 and 391 of the Public Health Service Act (42 U.S.C. 241 and 280b). Program regulations are set forth in title 42 of the Code of Federal Regulations, part 52.

Eligible Applicant

Eligible applicants include all nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, State and local health departments and small, minority and/or women-owned businesses are eligible for these grants. Current holders of CDC injury prevention research center grants and injury control research program project grants are eligible to apply.

Availability of Funds

Approximately $2.2 million may be available in Fiscal Year 1992 to fund approximately two to four center awards and/or research program project awards for up to five years. The amount of funding actually available may vary and is subject to change. Beginning award dates for each submission are shown in the receipt and review section of this announcement. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. New center grant awards will not exceed $500,000 per year (including both direct and indirect costs), new research program project awards will not exceed $350,000 per year (including both direct and indirect costs) and supplemental funding awards will not exceed $225,000 per year (including both direct and indirect costs).

Purpose

The purposes of this program are:

A. To support injury prevention and control research on priority issues as delineated in: Healthy People 2000, Injury in America, Injury Prevention: Meeting the Challenge, and Cost of Injury, a Report to the Congress; (To receive information on these reports call (404) 332–4561 listed in the section entitled **WHERE TO OBTAIN ADDITIONAL INFORMATION**);

B. To integrate the disciplines of engineering, medicine, health care, public health, criminal justice, behavioral and social sciences, and others, in order to prevent and control injuries more effectively;

C. To identify and rigorously evaluate current and new interventions for the prevention and control of injuries;

D. To support ICRCs which will develop an in-depth approach to injury control research and training;

E. To bring the knowledge and expertise of ICRCs to bear on the development of effective public-and private-sector programs for injury prevention and control;

F. To help make available the expertise of academic institutions for the evaluation and improvement of injury prevention, surveillance, and control programs instituted and carried out by Federal, State or local government and private-sector organizations;

G. To support RPPGs which will focus several interdisciplinary research projects on a particular phase of injury, a cause of injury, or a population segment affected by injury.

Program Requirments

A. Essential Requirements for ICRCs

1. New applicants should initially show expertise in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) and provide specific, time-framed plans to support research in all three phases by the second or third year of the applicant's project period.

2. New applicants should describe ongoing injury-related research projects or control activities currently supported by other sources of funding.

3. New applicants should provide a director who has specific authority and responsibility to carry out the project. The director should report to an appropriate institution official, e.g. dean of a school or vice president of a university.

4. New applicants should demonstrate experience in successfully conducting, evaluating, and publishing injury-related research and/or designing, implementing, and evaluating injury control programs.

5. New applicants should have effective and well-defined working relationships with outside agencies and other entities which will ensure implementation of the proposed activities.

6. New applicants should provide evidence of involvement of specialists or expertise is medicine, health care, engineering, epidemiology, behavioral and social sciences, and public health, with a specific, time-framed plan of expansion to include biomechanics and health policy and management. These will be considered the core disciplines and fields for ICRCs.

7. New applicants should have an established curricula and graduate training programs in disciplines relevant to injury control (for example, epidemiology, biomechanics, safety engineering, traffic safety behavioral sciences, and economics).

8. New applicants should have mechanisms for disseminating the injury control research findings, translating them into interventions, and evaluating their effectiveness.

9. New applicants should have an established relationship, demonstrated by letters of agreement, with injury prevention and control programs or injury surveillance programs being carried out in the state in which the ICRC is located. Cooperation with governmental programs is required; cooperation with private-sector programs is encouraged. Special emphasis should also be given to establishing cooperative relationships with any adjacent states having CDC-funded injury control capacity-building, incentive, or surveillance grants and other state and local health departments who may not currently have CDC support for injury activities.

B. Essential Requirements for RPPGs

1. New applicants should show expertise in the phases or disciplines of injury control which the research program addresses. RPPG applicants should also provide specific time-framed objectives for their research, covering all years of the proposed project.

2. The director must have specific authority and responsibility to carry out the project and must report to an appropriate level university official, e.g. dean of a school or department chairperson.

3. The investigators must have demonstrated experience in successfully conducting, evaluating, and publishing injury-related research, and/or designing, implementing, and evaluating injury control programs.

4. The applicant must describe effective and will-defined working relationships with outside agencies and other entities which can ensure implementation of proposed activities.

5. The applicant must specify mechanisms for linking the injury control research findings with public health (i.e. state and local health departments) and other intervention efforts to facilitate rapid translation, dessemination, and application of research findings.

6. Applicants should clearly describe and be able to demonstrate how several proposed multiple research projects interrelate and complement each other. Outcome objectives of the research should be stated such that accomplishments clearly reflect elements of each individual project within the RPPG.

7. The applicant must specify how each individual project and the program as a whole will be evaluated.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated October 1, 1990, as amended), as necessary to meet the requirements of the program and strengthen the overall application. In general, consortia agreements would be carried out with entities located in the same state, and adjacent state, or the same regional grouping of states.

Evaluation Criteria

Applications will be evaluated by a dual review process. The first review will be a peer evaluation of the scientific and technical merit of the application. The second review will be conducted by senior Federal staff, who will consider the results of the first review together with program need and relevance. Awards will be made based on merit and priority score ranking by the Injury Research Grants Review Committee (IRGRC), program review by senior Federal staff, and the availability of funds.

A. Review by the Injury Research Grants Review Committee (IRGRC)

Peer review of ICRC grant applications will be conducted by the IRGRC, which may recommend approval as an ICRC, approval as an RPPG or disapproval based on the intent of the application. Site visits may be a part of this process.

Factors to be considered by IRGRC include:

1. The degree to which the applicant possesses the requirement described in the section PROGRAM REQUIREMENTS.

2. The overall match between the applicant's research and, where applicable, training objectives and those listed in national program priorities as referenced in the Background section of this announcement.

3. The scientific and technical merit of the overall application.

4. The adequacy of the methods for coordinating the overall program and its component parts.

5. The extent to which the evaluation plan will allow for the quantitative measurement of progress toward the achievement of stated objectives.

6. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

7. The degree of commitment measured in terms of injury control personnel, facilities, and activities supported by other funding sources and the likelihood that this commitment will be sustained or expanded in future years.

8. The degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of this commitment and cooperation. Specific letters of support or understanding from appropriate governmental bodies must be provided with the application.

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9. The reasonableness of the proposed budget for the proposed program.

10. Progress thus far made, if the applicant is submitting a competitive renewal application. Special consideration may be given to existing ICRCs who have documented success against the workplan developed during the previous project periods, who are recompeting and where the applicant ICRC or RPPG has an appropriate organizational, and reporting relationship within the applicant institution.

11. Plans to become self-sustaining.

B. Review by Senior Federal Staff

Further review will be conducted by Senior Federal staff. Factors to be considered will be:

1. The results of the peer review.

2. The significance of the proposed activities as they relate to the achievement of national objectives.

3. National needs and geographic balance. Because no ICRCs were funded during fiscal year 1989 and 1990 in Federal regions II, V, VI, VII, approved ICRC or RPPG proposals from states in these regions may be accorded special consideration.

4. Overall distribution of the thematic focus of competing applications, the overall balance of the program in addressing the three phases of injury control (prevention, acute care and rehabilitation), the control of injury among populations who are at increased risk, including minority groups, the elderly and children; the major causes of intentional and unintentional injury; and major disciplines of injury control (such as biomechanics and epidemiology).

5. Budgetary considerations.

6. Plans to become self-sustaining.

C. Applications for Supplemental Funding

Competing Supplemental grant awards may be made when funds are available, to support research work or activities not previously approved by the IRGRC. Supplementary funding may be sought for either injury research grants, or Injury Control Research Center (ICRC) grants and Research Program projects (RPPG) grants. Applications should be clearly labelled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

D. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments of the current budget period show that the applicant's objectives as prescribed if the yearly workplans are being met;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan;

5. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds; and

6. Progress has been made in developing cooperative and collaborative relationships with injury surveillance and control programs implemented by state and local governments and private sector organizations.

E.O. 12371 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Inter-Governmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number is 93.136.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although it is not a prerequisite to apply, potential applicants are encouraged to submit a nonbinding letter of intent to apply to the Grants Management Officer (whose address is given in this section Item B). It should be postmarked no later than two months prior to the submission deadline (December 1, 1991 for February 1, 1992 submission deadline). The letter should identify the announcement number being responded to, indicate the submission deadline which will be met, indicate whether the application is for an ICRC or an RPPG, name the principal investigator, and specify the injury control theme of the proposed center or program (e.g. acute care, biomechanics, epidemiology, prevention, intentional injury or rehabilitation). The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

B. Applications

Applicants from academic institutions and the private sector should use Form PHS-398 and adhere to the ERRATA Instruction Sheet for PHS-398 contained in the Grant Application Kit. State and local government applicants may use PHS-5161-1, however PHS 398 is preferred. The narrative section for *each* project within an ICRC or an RPPG should not exceed 20 typewritten pages. Refer to section 1, page 12, of PHS-398 instruction for description of specifications for font type and size. Applications not adhering to these specifications may be returned to applicant. Applicants using form PHS-398 should submit an original and six copies and applicants using form PHS-5161-1 should submit an original and two copies of the application to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E-14, Atlanta, Georgia 30305.

C. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the peer review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria in C1. or C2. above are considered late applications and will be returned to the applicant.

D. Receipt and Review Schedule

This is a continuous announcement consequently, these receipt dates will be ongoing until further notice. The proposed timetables for receiving applications and awarding grants is as follows:

Receipt of new/revised/supplementary/competitive renewal applications	Initial review	Secondary review	Earliest award date
Feb. 1, 1992.	May	July	Dec. 1, 1992

Future receipt dates are as follows:

Receipt of new/revised/supplementary/competitive renewal applications	Initial review	Secondary review	Earliest award date
February 1	May	July	December.

Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address and phone number, and will need to refer to Announcement Number 913, You will receive a complete program description, information on application procedures, and an application package containing addresses and phone numbers for the contact personnel. Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mailstop E-14, Atlanta, GA 30305 will provide the business management technical assistance, and programmatic technical assistance will be provided by Howard Hill, Project Officer, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road NE., Mailstop F-36, Atlanta, GA 30333.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: June 10, 1991.

Robert L. Foster,

Acting Director Office of Program Support Centers for Disease Control

[FR Doc. 91-14293 Filed 6-14-91; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Availability of Funds for the National Health Service Corps; Loan Repayment Program and Grants for State Loan Repayment Programs

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $48.8 million will be available in Fiscal Year (FY) 1991 for: (1) Awards for educational loan repayment under the National Health Service Corps (NHSC) Loan Repayment Program (Section 338B of the Public Health Service (PHS) Act); (2) grants to States to operate loan repayment programs (section 338I of the PHS Act); and (3) awards under the NHSC Scholarship Program (section 338A of the PHS Act).

The HRSA, through this notice, invites health professionals to apply for participation in the NHSC Loan Repayment Program and invites States to apply for grants to operate State Loan Repayment Programs. The HRSA estimates that approximately 300 Loan Repayment awards totaling $20 million may be made to primary care physicians, dentists, or nurse midwives, physician assistants, and nurse practitioners who are certified or eligible to sit for the certifying examination in their profession. Up to 25 grants averaging $140,000 each and totaling approximately $3.5 million may be awarded to States for State Loan Repayment Programs for one year budget periods and up to three year project periods.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. These programs will contribute to the Healthy People 2000 objectives by improving access to primary health care services through coordinated systems of care for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-01) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202-783-3238).

Part A of this notice contains specific information concerning the NHSC Loan Repayment Program, and Part B contains specific information concerning grants for State Loan Repayment Programs.

Part A—NHSC Loan Repayment Program

DATES: To receive consideration for funding, health professionals must submit their applications by September 1, 1991. To assure early processing of the application and approval for site matching, individuals are encouraged to submit applications well ahead of the September 1 deadline.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline and received in time for submission to the reviewing program official. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Applications received after the announced closing date will not be considered for funding.

ADDRESSES: Application material may be obtained by calling or writing, and completed applications should be returned to, Director, Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, HRSA, room 7-23, 5600 Fishers Lane, Rockville, Maryland 20857, (301-443-1650). The application has been approved under Office of Management and Budget (OMB) Number 0915-0127.

FOR FURTHER INFORMATION CONTACT: For further program information and assistance, please contact Mr. Clark Gordon, Branch Chief, NHSC Loan Repayment Program, at the above address and phone number.

SUPPLEMENTARY INFORMATION: Section 338B of the Public Health Service Act (42 U.S.C. 2541-1) authorizes the Secretary to establish the NHSC Loan Repayment Program, to help in assuring, with respect to the provision of primary health services, an adequate supply of trained primary care health professionals for the NHSC. The NHSC is used by the Secretary to provide primary health services in designated health professional shortage areas (HPSAs). Primary health services are services regarding family medicine, internal medicine, pediatrics, obstetrics and gynecology, dentistry, or mental health, that are provided by physicians or other health professionals.

Under the NHSC Loan Repayment Program, the Secretary will repay graduate and undergraduate educational loans incurred by health professionals. For the first two years at an approved site in a designated HPSA, the Secretary will repay up to $25,000 per year of the educational loans of such individual. For subsequent years of service the Secretary will repay up to $35,000 per year. The Secretary will provide tax liability payments in an amount equal to 39 percent of the total loan repayments made during that tax year to reimburse the Program participants for increased tax liability resulting from loan repayments received under this Program. The increase in the amount of

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the tax liability payment made will apply only to contracts entered into after November 16, 1990. In addition to these amounts, NHSC Loan Repayment Program participants will receive a salary from a private nonprofit or public entity or, in some cases, the Federal Government during the term of their service.

The Secretary will identify annually those HPSA sites which will be available for service repayment under the NHSC Loan Repayment Program.

The Secretary will select applicants for consideration for participation in the NHSC Loan Repayment Program according to the following selection criteria:

(1) The extent to which an individual's training in a health profession or specialty is determined by the Secretary to be needed by the NHSC in providing primary care health services. From time to time, the Secretary will publish a notice detailing the professions and specialties most needed by the NHSC. Current professional and specialty priorities are outlined at the end of Part A of this notice.

(2) The extent to which an individual is determined by the Secretary to be committed to serve in a HPSA.

(3) The extent of an individual's demonstrated interest in providing primary health services.

(4) The immediacy of an individual's availability for service. Individuals who have a degree, have completed all necessary postgraduate training in their professions and specialties (i.e., in the case of physicians, are certified or eligible to sit for the certifying examinations of a specialty board), have a current and unrestricted valid license to practice their profession in a State, and are immediately available to serve, will receive highest consideration.

(5) The academic standing, prior professional experience in a HPSA, board certification, residency achievements, peer recommendations, and other criteria related to professional competence or conduct will also be considered.

(6) The length of the individual's proposed service obligation, with greatest consideration being given to persons who agree to serve for longer periods of time.

Among applicants, priority will be given to those applicants:

- Whose health profession or specialty is most needed by the NHSC;
- Who have and whose spouses, if any, have characteristics that increase the probability of their continuing to serve in a HPSA upon completion of their service obligations;
- Subject to the preceding paragraph, who are from disadvantaged backgrounds.

Eligible Applicants

To be eligible to participate in the NHSC Loan Repayment Program, an individual must: (a)(1) Have a degree and, if applicable, completed an approved graduate training program in allopathic or osteopathic medicine, dentistry, or other health profession, or be certified as a nurse midwife, nurse practitioner, or physician assistant, and have a current and valid license to practice such health profession in a State; (2) be enrolled in an approved graduate training program in allopathic or osteopathic medicine, dentistry, or other health profession; or (3) be enrolled as a full-time student at an accredited school in a State and in the final year of a course of study or program leading to a degree in allopathic or osteopathic medicine, dentistry, or other health profession; (b) be eligible for appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or be eligible for selection for civilian service in the NHSC; and (c) submit an application for a contract to participate in the NHSC Loan Repayment Program which describes the repayment of educational loans in return for the individual serving for an obligated period.

Any individual who previously incurred an obligation for health professional services to the Federal Government, a State Government, or other entity is ineligible to participate in the NHSC Loan Repayment Program unless such obligation will be completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is ineligible to participate in the NHSC Loan Repayment Program. No loan repayments will be made for any professional practice performed prior to the effective date of the NHSC Loan Repayment Program contract.

Professions and Specialties Needed by the NHSC

At this time, the Secretary has determined that priority will be given to physicians who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, osteopathic general practice, obstetrics/gynecology, internal medicine, and pediatrics. In addition, priority will be given to nurse midwives, physician assistants, and nurse practitioners who are certified or eligible to sit for the certifying examination in their profession.

Other Award Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since Executive Order 12372 does not cover payments to individuals.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.162.

Part B—Grants for State Loan Repayment Programs

DATES: Completed applications, to receive consideration, must be delivered by 5 p.m. on July 15, 1991, to the address below or postmarked by July 15, 1991, and delivered in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier. Private metered postmarks will not be acceptable as proof of timely mailing. Applications not submitted on time will be returned.

ADDRESSES: Application materials may be obtained by calling or writing, and completed applications should be returned to: Grants Management Branch, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, 12100 Parklawn Drive, Rockville, Maryland 20857, (301) 443-5902.

Application for these grants will be made on Form PHS-5161 with revised facesheet DHHS Form 424, as approved by the OMB under control number 0937-0189. Specific instructions for completing the application form for this program will be sent to any State requesting an application package.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, please contact Ms. Cheryl A. LaPointe, National Health Service Corps, Bureau of Health Care Delivery and Assistance, HRSA, 5600 Fishers Lane, room 7A-39, Rockville, MD 20857, (301) 443-1470.

SUPPLEMENTARY INFORMATION: Section 338I of the PHS Act (42 U.S.C. 254q-1) authorizes the Secretary, acting through the Administrator of the HRSA, to make grants to States for the purpose of assisting the States in operating programs as described in this notice for the repayment of educational loans of health professionals in return for their practice in HPSAs to increase the availability of primary health services in HPSAs.

State Loan Repayment Programs eligible for funding under this announcement must meet the following requirements:

(1) Be administered directly by a State agency.

(2) Pay all or part of the qualifying educational loans (including principal, interest and related educational loan expenses) of health professionals agreeing to provide service in HPSAs. "Qualifying loans" are government and commercial loans for actual costs paid for tuition, reasonable educational expenses, and reasonable living expenses relating to the graduate or undergraduate education of a health professional.

(3) Make assignment of participating health professionals only to public and nonprofit private entities located in and providing primary health services in HPSAs; and

(4) Have participant contracts which provide remedies for any breach of contract by participating health professionals.

Contracts provided by a State are not to be on terms that are more favorable to health professionals than the most favorable terms the Secretary is authorized to provide for contracts under the Federal NHSC Loan Repayment Program under section 338B of the PHS Act, including terms regarding:

(a) The annual amount of payments provided on behalf of the professionals regarding educational loans; and

(b) The availability of remedies for any breach of the contracts by the health professionals involved.

States are required to develop contracts that reflect a minimum of two years of obligated service. The annual amount of payments under a contract shall not exceed the maximum amount of $35,000 authorized in section 338B(g)(2)(A) unless (1) this excess amount is paid solely from non-Federal contributions, and (2) the health professional involved will satisfy the requirement of obligated service solely through the provision of primary health services in a high need HPSA authorized to receive the assignment of an NHSC Scholarship Program recipient.

No loan repayments may be made for any professional practice performed prior to the effective date of the health professional's State Loan Repayment Program contract, and no credit may be given for any practice done while the provider is in a professional school or graduate training program.

Applications must identify the State entity and key personnel who would administer the grant and describe the qualifications and experience of that entity and its personnel concerning the State's health service delivery system and health professional needs.

States seeking support under this notice for the cost of State Loan Repayment Programs must provide adequate assurances that:

(1) The State will make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $1 of Federal funds provided in the grant. In determining the amount of non-Federal contributions in cash that a State has to provide, other Federal funds may not be used.

(2) The State will assign health professionals participating in the program only to public and nonprofit private entities located in and providing health services in HPSAs.

(3) The grant funds will not be expended to conduct activities for which Federal funds are awarded for State Primary Care Cooperative Agreements, State Primary Care Associations, and State Offices of Rural Health.

(4) Grant funds will be expended only for loan repayments to health professionals who have entered into contracts with States.

Future Support

The Secretary must determine that the State has complied with each of the agreements of the grant in order for funding to continue. Before making a grant for a subsequent year of State Loan Repayment Program support, the Secretary will, in the case of a State with 1 or more initial breaches by health professionals of the repayment contracts, reduce the amount of a grant to the State for the fiscal year involved by an amount equal to the sum of the expenditures of Federal funds made regarding the State Loan Repayment Programs contracts involved including interest on the amount of such expenditures, determined on the basis of the maximum legal rate prevailing for loans made during the time amounts were paid under the contract, as determined by the Treasurer of the United States. The Secretary may waive the reduction in the subsequent grant award if the Secretary determines that a health professional's breach was attributable solely to the professional having a serious illness.

Evaluation Criteria

The following criteria will be used to evaluate State applications to determine which States are to be supported under this notice: (a) The need of the State for health professionals consistent with the health professions and specialties identified in this notice; (b) the number and type of providers the State proposes to support through this program; (c) the appropriateness of the proposed placement of State Loan Repayment recipients (e.g., extent to which State Loan Repayment Programs propose to place individuals in HPSAs with the greatest shortages); (d) the adequacy of the qualifications and the administrative managerial ability and experience of the State staff to administer and carry out the proposed project; (e) the suitability of the applicant's approach and the degree to which the applicant's plan is coordinated with Federal, State and other programs for meeting the State's health professional needs and resources, including mechanisms for evaluation of the program's activities; (f) the source and plans for the use of the State match (including the degree to which the State's matching funds are used for loan repayment rather than the administrative costs and the degree to which the State match exceeds the minimum requirements or has increased over time and the amount of the match relative to the needs and resources of the State); and (g) the extent to which special consideration will be extended to medically underserved areas with large minority populations.

Professions and Specialties Needed

To be supported under this program, the State Loan Repayment Program must establish State priorities for the selection of health professionals, consistent with the NHSC Loan Repayment Program. At this time, the Secretary has determined that under the NHSC Loan Repayment Program priority will be given to physicians who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, osteopathic general practice, obstetrics/gynecology, internal medicine, and pediatrics. In addition, priority will be given to nurse midwives, nurse practitioners, and physician assistants who are certified or eligible to sit for the certifying examination in their profession.

Other Award Information

This program is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs as implemented by 45 CFR part 100. Executive Order 12372 allows States and territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and

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will provide a single point of contact (SPOC) in the States for that review.

Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

The OMB Catalog of Federal Domestic Assistance number for this program is 93.1165.

Dated: May 14, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-14298 Filed 6-14-91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3281]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 11, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Single Family Mortgage Insurance on the Allegany Reservation of the Seneca Indians.
Office: Housing.
Description of the Need for the Information and its Proposed Use: This rule implements section 203(g) of the National Housing Act. The information is necessary to assure that borrowers fully realize their risks, and to document that remedies, other than assignment and foreclosure, have been exhausted.
Form Number: None.
Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of Response	×	Hours per response	=	Burden hours
Assignment request	10		5		.55		27.5

Total Estimated Burden Hours: 27.5.
Status: Extension.
Contact: Joseph Bates, HUD, (202) 708-1672, Wendy Swire, OMB, (202) 395-6880.

Dated: June 11, 1991.

[FR Doc. 91-14333 Filed 6-14-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3277]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 8, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Competitive Bidding for section 202 Direct Loan Program for Elderly or Handicapped.
Office: Housing.
Description of the Need for the Information and its Proposed Use: Under section 202 of the Housing Act of 1959, competitive bidding on construction contracts is now mandatory except in certain specified instances. The procedures are similar to private competitive biddings rather than Government procurement as project owners are private entities. This information is needed to implement cost savings procedures for this direct loan program.
Form Number: HUD-92328, HUD-92442-A-EH, HUD-92450-EH, HUD-92452, EH, HUD-2554, HUD-2530 and HUD-92443.
Respondents: Businesses or Other For-Profit.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	200		1		40		8,000

Total Estimated Burden Hours: 8,000.
Status: Reinstatement.
Contact: Howard D. Mayfield, HUD, (202) 708-0835, Wendy Swire, OMB, (202) 395-6880.

Dated: May 8, 1991.

[FR Doc. 91-14329 Filed 6-14-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3278]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 10, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Application for HUD/FHA Insured Mortgage, FR-2456.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: Form HUD-92900-A and the related documents will determine the eligibility of the borrower and the proposed request for HUD/FHA insured mortgage. The form will be used by the mortgagee to obtain insurance.
Form: HUD-92900-A, 92561, 92544, 92900-WS and 59100.
Respondents: Individuals or Households, Businesses or Other For-Profit.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,000,000		1		.210		215,625

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Total Estimated Burden Hours: 6,000.
Status: Revision.
Contact: Roxanne Zimmerman, HUD (202) 708–2700, Bud Carter, HUD (202) 708–2700, Wendy Swire, OMB, (202) 395–6880.

Dated: May 10, 1991.

[FR Doc. 91–14330 Filed 6–14–91; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–91–3279]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 5, 1991.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Title I Claim for Loss.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: Lenders in the Title I Insurance Program execute and submit this form to receive insurance benefits for claims filed on defaulted Title I property improvements and manufactured home loans. The information provided on this form is analyzed in determining the claim amount to be disbursed to the lender.
Form Number: HUD–637.
Respondents: Business or Other For-Profit.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–637	4,000		3.0		.5		6,000

Total Estimated Burden Hours: 6,000.
Status: Reinstatement.
Contact: Kenneth Knoll, HUD, (202) 708–0060, Wendy Swire, OMB, (202) 395–6880.

Dated: June 5, 1991.

Proposal: 24 CFR part 570 Proposed Amendments to the section 108 Loan Guarantee Program.
Office: Community Planning and Development.
Description of the Need for the Information and Its Proposed Use: This proposed rule would implement certain changes made to the section 108 Loan Guarantee Program by section 910 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990). The information collected pursuant to the proposed rule would be used in reviewing applications from units of general local government and in evaluating compliance with statutory and administrative requirements applicable to the use of the guaranteed loan funds.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application/Final Statement	50		1		39		1,950
Citizen Participation Plan	50		1		40		2,000
Relocation, Displacement Acquisition	50		1		5		250
Equal Employment Opportunity, HUD/EEO–4	50		1		1.25		63
Minority Business Enterprise	50		1		3.40		170

Total Estimated Burden Hours: 4,433.
Status: New.
Contact: Paul D. Webster, HUD, (202) 708–1871, Wendy Swire, OMB, (202) 395–6880.

Dated: June 5, 1991.

Proposal: Program Utilization for use in the Section 8 Rental Certificate and Rental Voucher Programs.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: Form HUD–52663 provides data to HUD to monitor the use of Certificates of Family participation, the number of families

under a HAP contract and rental voucher contract, and the degree of success experienced by program participants in locating and leasing suitable rental housing.
Form Number: HUD–52663.
Respondents: State or Local Governments.
Frequency of Submission: Monthly, Quarterly and Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–52663	2,500		29.98		.25		18,740

Total Estimated Burden Hours: 18,740.
Status: Revision.
Contact: Gwen Carter, HUD, (202) 708–3887, Wendy Swire, OMB, (202) 395–6880.

Dated: June 5, 1991.

[FR Doc. 91–14331 Filed 6–14–91; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. 91–3280]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total nubmers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 10, 1991.

John T. Murphy,
Director Information Policy and Management Division.

Proposal: Public Housing—Contracting with Resident-Owned Businesses FR–2856.
Office: Public and Indian Housing.
Description of The Need for the Information and Its Proposed Use: Eligible resident-owned businesses must submit application information to Public Housing Agencies (PHAs) to be approved for noncompetitive contracting for work to be performed on public housing sites with an alternative to HUD's otherwise-required competitive procurement procedures.
Form Number: None.
Respondents: Individuals or Households, State or Local Governments, Non-Profit Institutions and Small Business or Organizations.
Frequency of Submission: One-Time.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	House per response	=	Burden hours
Rule 963.10	500		1		16		8,000
Rule 963.12 (a)	500		2		2		2,000

Total Estimated Burden Hours: 10,000.
Status: New.
Contact: Paul Fletcher, HUD, (202) 708–4214, Landry Williams, HUD, (202) 708–4214, Wendy Swire, OMB, (202) 395–6880.

Dated: June 10, 1991.

[FR Doc. 91–14332 Filed 6–14–91; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–921–01–4120–16;G–921–G1–210]

Establishment of Eastern Oklahoma Federal Coal Area Under Category 5

AGENCY: Bureau of Land Management, Interior.

ACTION: Notices and requests for information.

SUMMARY: This announcement gives notice that: (1) The lands within the nine (9) Oklahoma Counties of Atoka, Coal, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Pittsburg, and Sequoyah have been designated by the New Mexico State Office of the Bureau of Land Management as a Federal Coal

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"Area", and that the State Director has, by his Decision, determined that said "Area" is now "Qualified" as eligible for "Category 5" royalty rate reductions in order to establish fair and competitive royalties, (2) the New Mexico State Office of the Bureau of Land Management, Minerals Division, is now accepting applications, or written notices of pending applications, for royalty reductions under "Category 5" for Federal Coal leased within the "Area", (3) the New Mexico State Office of the Bureau of Land Management is requesting that both private and Oklahoma coal industry sources apply data regarding the terms and royalties contained in private leases, (4) the New Mexico State Office of the Bureau of Land Management is calling for input from all sources regarding what the royalty rates for Federal Coal—mined by both surface and underground methods—should be, and (5) the approval date for BLM Manual 3485—Reports, Royalties, and Records, which contains the guidelines for "Category 5" Federal Coal royalty reductions, was December 17, 1990; therefore, all reduced royalties resulting from applications, or written notices of pending applications, received prior to the close of business on September 30, 1991, shall have an effective date for the reduced royalties retroactive to December 17, 1990.

DATES: Comments and/or information must be submitted, or postmarked, on or before July 17, 1991.

ADDRESSES: Comments and/or information may be mailed to the Bureau of Land Management, New Mexico State Office, Minerals Division (Mail Stop 924), P.O. Box 1449, Santa Fe, New Mexico 87504–1449.

FOR FURTHER INFORMATION CONTACT: Mr. Darwyn F. Pogue, Minerals Appraiser, Branch of Appraisals and Evaluations, Minerals Division, New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Mail Stop 924, Santa Fe, New Mexico 87504–1449, Comm. Phone (505) 988–6186.

(1) Notice of the Decision by the BLM NM State Director of the Qualification for a Designated "Area" of Oklahoma Federal Coal for "Category 5" Royalty Rate Reductions, (2) Notice of Acceptance of Applications of Royalty Reduction Requests for "Category 5" Oklahoma Federal Coal, (3) Request for Data Input from Public and Industry Sources Regarding Private Coal Lease Terms and Royalties, (4) Request for Suggestions and Recommendations for Federal Coal Lease Royalties (Surface and Underground) within the Oklahoma "Area", and (5) Notice that the effective date of all approved "Category 5" royalty reductions resulting from applications, or written notices of pending applications, received no later than the close of business on September 30, 1991, shall have an effective date for the approved reduced royalty of December 17, 1990, the date of the approval of BLM Manual 3485—Reports, Royalties, and Records.

SUPPLEMENTARY INFORMATION: According to data contained in the latest Annual Report to the Governor of Oklahoma by the Oklahoma Mining Commission, Department of Mines, the nine (9) Oklahoma Counties of Atoka, Coal, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Pittsburg, and Sequoyah contain approximately 80% of the known and identified coal resources of Oklahoma, as determined by the latest study of the Oklahoma Geological Survey. These same nine (9) counties also contain 100% of the known Federally owned and economically recoverable coal resources in Oklahoma. The Federally owned coal resources are "acquired minerals" contained within coal deposits that were purchased from the Choctaw and Chickasaw Native American Tribes in the late 1940's. Therefore, the New Mexico Bureau of Land Management State Director has concluded that the aforementioned nine (9) counties shall be designated as a Federal Coal Area, hereinafter referred to as the "Area", for the purposes of minerals management under the guidelines set forth in Bureau of Land Management (BLM) Manual 3485—Reports, Royalties, and Records, and in 43 CFR Part 3485.2, Royalties (Coal). BLM Manual 3485 sets forth five (5) Categories by which the holder and/or operator of a Federal Coal Lease may apply for a royalty that is less than the base royalty stated in the lease. Categories 1 through 4 refer to royalty reductions based mainly upon mining and financial criteria, or combinations thereof, that are specific to the mining operation requesting relief. Category 5, however, refers to royalty reductions granted within a designated State or Area that the BLM has concluded to have met all of the following criteria:

1. The Federal Government is not market dominant.

2. Federal royalty rates are above the current market royalty rates for non-Federal coal in the Area.

3. Federal coal would be bypassed or remain undeveloped due to royalty rate differentials.

4. The above conditions exist throughout the Area.

5. A royalty rate reduction under this Category is not likely to result in undue competitive advantages over neighboring areas.

As a result of a "Qualification Study" completed recently by the Minerals Division of the New Mexico BLM, the State Director has determined that the Area under discussion has successfully met all five (5) of the above criteria. Therefore, the State Director has issued his decision that said Area is now "Qualified" for the royalty reductions allowed under Category 5. This will allow operators and/or holders of Federal Coal leases within the Area the opportunity to obtain fair and competitive royalty rates.

Since the Area is now Qualified, the Mineral Division of the New Mexico BLM will now accept applications for royalty reduction requests under Category 5 for existing coal leases within the Area. Written notices of pending applications will also be accepted. All applications and notices of pending applications shall be directed to the New Mexico BLM Minerals Division in accordance with the guidelines set forth in BLM Manual 3485, and all required supporting documentation, etc., must be included. Any one anticipating that they will be making a royalty reduction request under Category 5 is urged to carefully read the 3485 Manual and request guidance from the Staff of the New Mexico BLM Minerals Division if there are any doubts or questions.

Now that there is an Area in Oklahoma that is Qualified for Category 5 royalty rate reductions, the New Mexico BLM Minerals' staff must now determine the proper minimum royalty rates for Federal Coal in the Area. Therefore, both the general public and those within the Oklahoma coal industry are now requested to come forth and provide information regarding the terms, conditions, and royalties that are contained in coal leases negotiated in the private coal leasing market in Oklahoma. All information received will be held as strictly confidential by the staff, and, upon request, will be returned to the provider without being copied or revealed to unauthorized persons. Actual copies of coal leases and/or contracts of surface owner agreements (in "split-estate" situations) will be the most helpful; however, any information will be welcomed. Although the information received will not be copied, etc., it will be cataloged as to terms, conditions, and royalties in such a manner as not to reveal any specific cases between specific parties. If information is available that will indicate that there are different parameters associated with single seam coal deposits than with multiple (two or more) seam coal deposits, such information will be greatly appreciated. If there is information that indicates that there are different terms, conditions, and royalties associated with coal minable by underground methods that are different from those associated with surface minable coal, this information will also be greatly appreciated.

If there are any data within the Area coal market that would tend to indicate what royalty rate, or rates, would be the most appropriate minimum rates to be assigned to Federal Coal, the New Mexico BLM is now calling for this to be made available. Again, data that indicates a difference, or lack of, between underground and surface minable coal, and single seam and multiple seam coal deposits will be welcomed.

Due to the delay in the processing of the necessary data for the preparation of the Qualification Statement, any, and all, applications, or written notices of pending applications, that are received, or post marked, prior to the close of business on September 30, 1991, that result in a royalty rate reduction shall carry the approved new royalty as if it were granted effective as of December 17, 1990, the date of approval of BLM Manual 3485, will the associated adjustments to royalties paid, if any, to be made by the Minerals Management Service.

There shall be a cut off date for when the above requested information will be considered as part of the Royalty Reduction Study of 30 days from the date of publication of this notice in the Federal Register.

All Oklahoma coal operators that are listed in the latest report of the Oklahoma Mining Commission, Department of Mines, have been mailed a copy of the above notice.

Dated: May 31, 1991.

Gil Lockwood,

Deputy State Director, Minerals Division.

[FR Doc. 91–14156 Filed 6–14–91; 8:45 am]

BILLING CODE 4310–FB–M

[UT–060–01–4410–14]

Moab District Advisory Council Meeting

June 11,1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Moab District Advisory Council meeting.

SUMMARY: The Moab District Advisory Council will meet Tuesday and Wednesday, July 16 and 17, 1991. The business meeting will be held in the Conference Room of the BLM Moab District Office, 82 E. Dogwood, Moab, Utah beginning on the 16th at 10 a.m. and adjourning at 4:30 p.m., followed by a field trip on the 17th.

The agenda for the July 16 business meeting will be an orientation by program leaders and Area Managers for the newly appointed Council members, and election officers. The orientation will highlight the major program issues in the divisions of Planning and Environmental Coordination, Lands and Renewable Resources, and Minerals, and in the four Resource Areas. Also on the agenda are new business, opportunity for public comment, finalization of resolutions, and adjournment.

The July 17 field trip will depart from the Moab District Office at 8 a.m and will include a visit to areas near Moab proposed for oil and gas exploration and related issues concerning recreation, wildlife, environmental concerns, and nearness to State and National Parks. The public is welcome to tour with the group and to attend the business meeting, however, they would need to supply their own transportation and food.

All Advisory Council meetings are open to the public. Persons wishing to make a comment to the Council must notify the BLM by July 12. Depending on the number of people desiring to make a statement, a per-person time limit may be established so that all may be heard. For further information, contact: Mary Plumb, Public Affairs Officer, P.O. Box 970, Moab, Utah 84532. Phone (801) 259–6111.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 91–14391 Filed 6–14–91; 8:45 am]

BILLING CODE 4310–DQ–M

Recreation Management Restrictions, Campbell Tract Anchorage, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Use Restriction on Public Lands.

SUMMARY: Notice is hereby given that effective July 15, 1991, animals brought into the Campbell Tract in Anchorage, Alaska must be leashed. Animals may be secured to a fixed object or under the control of a person or physically restricted. Legal descriptions and maps of the 730 acres of public land are available from the Anchorage District Office, Anchorage, Alaska.

EFFECTIVE DATES: The leash policy is effective July 15, 1991 and remains in effect indefinitely.

FOR FURTHER INFORMATION CONTACT: Jake Schlapfer, Outdoor Recreation Specialist, Anchorage District Office, 6881 Abbott Loop, Anchorage, Alaska 99507 (907) 267–1232.

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 91–14296 Filed 6–14–91; 8:45 am]

BILLING CODE 4310–JA–M

[ID–942–01–4730–12]

Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., June 4, 1991.

The plat representing the dependent resurvey of portions of the subdivisional lines and boundaries of Homestead Entry Survey No. 447, T. 24 N., R. 3 E., Boise Meridian, Idaho, Group No. 800, was accepted, June 3, 1991.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service, Region 1, Nez Perce National Forest.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: June 4, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 91–14310 Filed 6–14–91; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–01–4730–12]

Filing of Plats of Survey; Idaho

The official filing of the following described plat has been stayed, pending potential administrative review of an official decision issued May 31, 1991, on protests filed against the dependent resurvey represented by this plat.

The plat representing the dependent resurvey of portions of the east

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boundary, subdivisional lines, the subdivisions of sections 12 and 13, and original meanders of the left bank of the Clearwater River in section 12; the survey of the subdivision of sections 12 and 13, the informative traverse and survey of the meanders of a portion of the present left bank of the Clearwater River in section 13, and metes-and-bounds surveys in sections 12 and 13, T. 33 N., R. 3 E., Boise Meridian, Idaho, Group No. 782, was accepted on May 31, 1991.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: June 4, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-14311 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Charles McKay, Nashville, TN (PRT 756848).

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of Michael Weinand, Longwood, Bedford, South Africa, for enhancement of propagation of the herd.

Applicant: Columbus Zoo, Powell, OH (PRT 756873).

The applicant requests a permit to import one wild-born female Asian elephant (*Elephas maximus*) from the Chipperfield Organization, Warminster, Wiltshire, England, for public display, education, and breeding purposes.

Applicant: USFWS, Regional Director, region 4, Atlanta, GA (PRT 667819).

The applicant requests amendment to their current permit to include take of no common name (*Schoepfia arenaria*), Schweinitz's sunflower (*Helianthus schweinitzii*), leafy prairie-clover (*Dalea foliosa*), silver rice rat (*Oryzomys palustris natator*), and Cumberland pigtoe (*Pleurobema gibberum*) for the purpose of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

Applicant: Gibbon & Gallinaceous Bird Center, Santa Clarita, CA (PRT 758783).

The applicant requests a permit to import three males and one female dark-handed gibbons (*Hylobates agilis unko*) from Wellington Zoological Garden, New Zealand, for captive breeding and scientific research. One male was removed from the wild, Malaysian peninsula, in 1975, the other two males and one female were captive-born.

Applicant: William Seagar, U.S. Army Chemical Research, Development & Engineering Center, Aberdeen Proving Ground, MD (PRT 675790).

The applicant requests renewal of their permit to take (capture for blood sampling, radio tagging, banding/marking, and salvage) American peregrine falcons (*Falco peregrinus anatum*) and Arctic peregrine falcons (*F. p. tundrius*) throughout the conterminous United States for the purpose of scientific research and enhancement of propagation and survival of these species.

Applicant: Robert L. Gelles, Fairfax Station, VA (PRT 758465).

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by H.v.Z. Kock, Verborgenfontein Game Ranch, Merriman, South Africa, for enhancement of propagation of the species.

Applicant: U.S. Fish and Wildlife Service, National Ecology Research Center, Fort Collins, CO (PRT 720136).

The applicant requests renewal of their permit to take (harass, anesthetize, capture, weight, measure, photograph, examine, radio-tag, and monitor) black-footed ferrets (*Mustela nigripes*) and salvage dead black-footed ferrets and parts thereof, for purposes of scientific research and enhancement of propagation and survival. Applicant has also requested amendment to release captive ferrets into the wild for the reintroduction program and may recapture released ferrets. Activities may be conducted in the following States: CO, KS, MT, NE, NM, ND, OK, WY, SD, TX, UT, & AZ.

Applicant: The Peregrine Fund, Inc., Boise, ID (PRT 756778).

The applicant requests a permit to import one wild-caught female Harpy eagle (*Harpia harpyja*) from The Propagation Center for Panamanian Endangered Species, Panama, for captive propagation purposes.

Applicant: The Peregrine Fund, Inc., Boise, ID (PRT 756017).

The applicant requests a permit to export up to 20 captive-hatched Mauritius kestrels (*Falco punctatus*) to Mauritius Wildlife Appeal Fund, Port Louis, Mauritius, for release purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone (703/358–2104); FAX (703/358–2281).

Dated: June 11, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-14281 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 25, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 2, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Mobile County

Convent and Academy of the Visitation (Historic Roman Catholic Properties in Mobile MPS), 2300 Springhill Ave., Mobile, 91000844

Convent of Mercy (Historic Roman Catholic Properties in Mobile MPS), 753 St. Francis St., Mobile, 91000845

Saint Francis Xavier Roman Catholic Church (Historic Roman Catholic Properties in Mobile MPS), 2034 St. Stephens Rd., Mobile, 91000842

Saint Joseph's Roman Catholic Church (Historic Roman Catholic Properties in Mobile MPS), 808 Springhill Ave., Mobile, 91000841

Saint Matthew's Catholic Church (Historic Roman Catholic Properties in Mobile MPS), 1200 S. Marine St., Mobile, 91000840

Saint Vincent de Paul (Historic Roman Catholic Properties in Mobile MPS), 351 S. Lawrence St., Mobile, 91000839

Stone Street Cemetery, (Historic Roman Catholic Properties in Mobile MPS), 1700 Martin Luther King, Jr., Blvd., Mobile, 91000843

NEBRASKA

Cheyenne County

Sidney Carnegie Library (Carnegie Libraries in Nebraska MPS), 740 Illinois St., Sidney, 91000838

Douglas County

Steiner Rowhouse No. 1, 638–642 S. 19th St., Omaha, 91000836

Steiner Rowhouse No. 2, 1906–1910 Jones St., Omaha, 91000837

Saunders County

O.K. Market, 542 N. Linden Ave., Wahoo, 91000835

VIRGINIA

Buckingham County

Seven Islands Archeological and Historic District, Address Restricted, Arvonia vicinity, 91000832

Chesterfield County

Dinwiddie County Pullman Car, Hallsboro Yard, NE of jct. of VA 606 and VA 671, Midlothian vicinity, 91000834

Greensville County

Batte, Alexander Watson, House, S side VA 612, 1500 ft. W of jct. with VA 651, Jarratt vicinity, 91000831

Montgomery County

Kentland Farm Historic and Archeological District (Montgomery County MPS), At end of VA 623 along New R., Blacksburg vicinity, 91000833

Smyth County

Chilhowie Methodist Episcopal Church, 501 Old Stage Rd., Chilhowie, 91000830

Roanoke Independent City

Henry, Patrick, Hotel, 617 Jefferson St. S., Roanoke (Independent City), 91000829

[FR Doc. 91-14355 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31092]

American European Express, Inc.—Operation Exemption—Between Chicago, IL, and New York, NY; Exemption

American European Express, Inc. (AEE), filed a notice of exemption to operate as a Class III rail carrier of passengers over approximately 1,020 miles of track between Chicago, IL, and New York, NY, via Indianapolis, IN, White Sulphur Springs, WV, Washington, DC, Baltimore, MD, Wilmington, DE, and Philadelphia, PA.

Between Chicago and Washington, under an agreement between AEE and CSX Transportation, Inc. (CSX), AEE's passenger cars are to be pulled by engines operated by CSX over tracks it owns or is authorized to operate. Between Washington and New York, under an agreement between CSX and the National Railroad Passenger Corporation (Amtrak), AEE's cars are to be pulled attached to regularly scheduled Amtrak passenger trains. The transaction already has been consummated. AEE had previously operated as an adjunct of Amtrak. It has now expanded into operating its own trains, between certain points, not in conjunction with Amtrak or any other rail carrier.

Any comments must be filed with the Commission and served on: Robert E. Stigger, Portes, Sharp, Herbst & Fox, Ltd., 333 West Wacker Drive, suite 500, Chicago, IL 60606.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: June 11, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14349 Filed 6-14-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31283 (Sub-No. 1)]

Norfolk Southern Railway Company—Trackage Rights Exemption—Norfolk and Western Railway Company; Exemption

Norfolk and Western Railway Company (NW) has agreed to grant unrestricted trackage rights to its wholly owned subsidiary, Norfolk Southern Railway Company (NS), formerly known as Southern Railway Company, over a 63-mile line of railroad between milepost H–63, at Front Royal, VA, and milepost H–0, at Hagerstown, MD. NW is a class I railroad controlled through stock ownership by Norfolk Southern Corporation (NSC), a non-carrier holding company. NS and its rail carrier subsidiaries operate a rail system extending throughout the Southeast and Midwest.

NW had previously granted NS overhead trackage rights on this line. See Finance Docket No. 31283, Southern Railway Company—Trackage Rights Exemption—Norfolk and Western Railway Company (not printed), served June 16, 1988, and published in the **Federal Register** (53 FR 24155) on June 27, 1988. The purpose of this exemption is to remove any restriction on the trackage rights granted to NS. The trackage rights became effective April 23, 1991.

This notice is filed under 49 CFR 1180.2(d) (3) and (7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Nancy S. Fleischman, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: June 10, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14350 Filed 6-14-91; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 31875] [1]

Consolidated Rail Corp.—Merger—Monongahela Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application filed May 17, 1991, by Consolidated Rail Corporation and Monongahela Railway Company (MGA) (collectively applicants). The application is filed under 49 U.S.C. 11343, *et seq.*, for MGA to merge into Conrail. The application also seeks approval: (1) In (Sub-No. 1) to assume MGA's position as lessee of the Waynesburg Southern Railway (WSRR) properties; and (2) in (Sub-No. 2) to assume MGA's position as lessee of a certain CSX Transportation rail line. The Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than July 17, 1991, and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by August 1, 1991. The Commission will issue a service list shortly thereafter. Parties must serve comments on all parties of record within 10 days of the Commission's issuance of a service list. The parties must also file a certificate of service with the Commission, indicating that all designated individuals and organizations on the service list in this proceeding have been properly served. Applicants' reply is due August 26, 1991.

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31875, Interstate Commerce Commission, Washington, DC 20423. In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and applicants' representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, room 8201, 400 Seventh Street, SW, Washington, DC 20590.

Attorney General of the United States, United States Department of Justice, 10th & Constitution Avenue, NW, Washington, DC 20530.

Constance L. Abrams, Anne E. Treadway, Consolidated Rail Corporation, 1138 Six Penn Center, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Conrail and MGA filed an application on May 17, 1991, for MGA to merge into Conrail. The application in Finance Docket No. 31875 is filed under 49 U.S.C. 11343, *et seq.*. The application also seeks approval: (1) In Sub-No. 1 to assume MGA's position as lessee of the Waynesburg Southern Railway properties; and (2) in Sub-No. 2 to assume MGA's position as lessee of a certain CSX Transportation (CSXT) rail line. Applicants state that this is a minor transaction under 49 CFR 1180.2(c) and our decision in Finance Docket No. 31630, Consolidated Rail Corporation—Control—Monongahela Railway Company (not printed), served August 16, 1990 (*MGA Control*).

Conrail is a Class I rail carrier and MGA is a Class II rail carrier (revenues were $43.5 million in 1990). Conrail holds all of MGA's stock. Conrail obtained Commission authority to control MGA's stock in *MGA Control* where the Commission approved the acquisition of Pittsburgh & Lake Erie's (P&LE) and CSXT's MGA stock. As a result of transactions approved in that case, Conrail now holds 100 percent of the capital stock of MGA and is the sole guarantor of the WSRR bonds.

MGA operates 162 route miles in West Virginia and southwestern Pennsylvania and handles almost exclusively coal traffic. MGA consists of two branches that meet at Brownsville, PA. The West Division runs west from Brownsville across the Monongahela River to West Brownsville and then generally southwest, terminating 55 miles from Brownsville at Blackville, WV. Part of this division is Conrail-owned. The first 13.5 miles, from Brownsville to Besco, PA, is owned by Conrail but MGA operates on trackage rights under a 1927 agreement. (The agreement will terminate by virtue of merger.) The next 15.1 miles of track, from Besco to Waynesburg, are owned by MGA. The last 27 miles were formerly owned by the WSRR and are leased to MGA until 1998. The WSRR's assets were conveyed to Conrail in the Final System Plan. I United States Railway Association, Final System Plan 228 and n. 13 (1975).

The West Division also connects with the "Manor Spur," constructed and owned by Consol Pennsylvania Coal Company (CPCC) to reach its Bailey Mine. The MGA operates the Manor Spur under a contract with CPCC.

The other MGA branch, the East Division, runs from Brownsville, south along the Monongahela River, and terminates at Fairview (also called Loveridge), a length of 79 miles. CSXT owns the first 5.2 miles of a branch line from Catawba Junction to Grant Town on which MGA holds a 99 year lease. The segment from Grant Town to Loveridge is owned by MGA.

CSXT connects with MGA near the south end of the East Division at Rivesville, WV; Pittsburgh & Lake Erie (P&LE) connects with MGA at Brownsville Junction, PA, on the north end of the East Division; and Conrail connects with MGA on the north end of the West Division at West Brownsville, PA.

In the Sub-No. 1 proceeding, Conrail seeks to assume MGA's position as lessee under a lease between MGA and WSRR. The Waynesburg Southern Branch was the only line of the WSRR, a wholly-owned corporate subsidiary of Penn Central Company (PC). To finance construction, WSRR issued $20 million, 7¼ percent First Mortgage Bonds, due September 1, 1993. The bonds were guaranteed by the then-owners (PC, P&LE, and the Baltimore & Ohio Railroad [B&O]), and the WSRR line was leased to the MGA for a 30 year term to August 31, 1998.[2]

In the Sub-No. 2 proceeding, Conrail seeks to assume MGA's position as lessee for a 5.2 mile line from CSXT (formerly B&O). In 1927, MGA leased a new rail line from B&O between Catawba Junction and Grant Town, where a new mine was opened. The lease term is 99 years, with an MGA option to extend the lease for an indefinite number of 99 year terms.

Applicants contend that the proposed transaction will not substantially reduce competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. According to applicants, they expect to gain significant operating efficiencies by merging. They anticipate they will accomplish these efficiencies by: (1) Removing the current MGA-Conrail interchange at West Brownsville on traffic to/from Conrail and moving the crew change point to Waynesburg to maximize the road train mileage; (2) consolidating maintenance-of-way and

[1] This proceeding also embraces Finance Docket No. 31875 (Sub-No. 1), Consolidated Rail Corporation—Lease Assumption—Waynesburg Southern Railway Properties (Sub-No. 1); and Finance Docket No. 31875 (Sub-No. 2), Consolidated Rail Corporation—Lease Assumption—CSX Transportation Rail Line (Sub-No. 2).

[2] Conrail is now the sole guarantor of the WSRR as a result of the approval in the MGA Control case.

clerical functions; (3) centralizing the train and crew dispatching functions; (4) modernizing the MGA's maintenance-of-way equipment; and (5) constructing or rehabilitating certain lines to improve capacity and speed operations.

Applicants allege that a merger will not lessen competition. Since MGA is almost exclusively a coal-hauling railroad with over 80 percent of its traffic interchanged to Conrail, applicants state that MGA and Conrail do not compete for traffic. Applicants submit that the remaining traffic is interchanged to P&LE and CSXT, which will continue to possess the same contractual interchange rights as they negotiated in their stock purchase agreements. Conrail's stock purchase agreement with P&LE provided that P&LE would continue to enjoy interchange rights with MGA on a nondiscriminatory basis. Applicants state that P&LE is protected since this provision was made a part of the MGA Control decision.

Applicants contend that CSXT is protected since, under Conrail's stock purchase agreement with CSXT, Conrail agreed to maintain its contract revenue needs at certain specified levels for eight years. After that, new levels will be established "which shall not preclude CSXT from competing, to the extent it otherwise could, in the markets for MGA coal * * *."

Applicants contend that the same competitive analysis found in MGA Control should apply here because there will be no net reduction in competition—the mines served by one carrier (MGA) will continue to be served by one carrier (Conrail). Applicants also state that no adverse consequences will befall MGA's connections, P&LE, or CSXT or their connections (such as Bessemer and Lake Erie) because those carriers will be protected to the same degree as when Conrail was acquiring control of MGA.

Applicants allege that merger will allow better customer service because customers can deal with one carrier, not two, and the customers can realize the benefits from cost reductions resulting from a more efficient system. Applicants contend that a merger will allow Conrail to compete with its coal-hauling competitors, Norfolk Southern Railway and CSXT.

Applicants state that about 50 positions (basic and seasonal) would be eliminated. If merger approval is granted, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), *aff'd sub nom. New York Dock Ry.* v. *U.S.*, 609 F.2d 83 (2d Cir. 1979).

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposal involves a Class I (Conrail) and a Class II (MGA) rail carrier. The proposal has no regional or national significance and will not result in a major market extension. As noted, *supra*, MGA interchanges more than 80 percent of its traffic with Conrail and the other connecting carriers are protected by commercial agreements. *See also MGA Control* decision served April 25, 1990. Accordingly, we find the proposal to be a minor transaction under 49 CFR 1180.2(c). Since the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative for service;

(c) The commenting party's position; *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application in Finance Docket No. 31875 and Finance Docket No. 31875 (Sub-Nos. 1 and 2) is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on June 17, 1991.

Decided: June 11, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-14410 Filed 6-14-91; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Judgment in Action to Enjoin Violations of the Clean Air Act; Hussmann Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that in *United States* v. *Hussmann Corp.*, (E.D. Mo.), Civil Action No. 90-1174C(1) an Order and a Consent Decree was lodged with the United States District Court for the Eastern District of Missouri on April 10, 1991. The Order provides for interim compliance measures, an environmental audit, penalties, and a procedure for either a revision of the Missouri State Implementation Plan or a plant process change. The Consent Decree requires Hussmann Corp. to comply with the federally enforceable site specific Missouri State Implementation Plan ("SIP") for its Bridgeton facility.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Order and/or the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Hussmann Corporation*, D.O.J. Ref. No. 90-5-2-1-1255.

The proposed Consent Decree and the Order may be examined at the Offices of the United States Attorney, Eastern District of Missouri, 1114 Market Street, St. Louis, Missouri; at the Region VII Office of the Environmental Protection

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Agency ("EPA"), 726 Minnesota Avenue, Kansas City, Kansas; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004. A copy of the proposed Consent Decree and the Order may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy of the Decree and Order, please enclose a check for copying costs in the amount of $12.25 payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-14313 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to CERCLA in United States v. Iowa Electric Light & Power Co.

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9622(i) ("CERCLA"), and Departmental policy at 28 CFR 50.7, notice is hereby given that on May 24, 1991, a proposed Consent Decree in *United States* v. *Iowa Electric Light & Power Company*, Civil Action No. 4-91-80313 was lodged with the United States District Court for the Southern District of Iowa, Central Division.

The complaint in this action was filed on May 24, 1991, against Iowa Electric Light & Power Company under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, seeking injunctive relief and reimbursement of costs incurred by the United States in responding to the release or threat of release of hazardous substances from the Site, which consists of a Fairfield Coal Gasification Plant in Fairfield, Iowa. The proposed Consent Decree requires Iowa Electric Light & Power to finance and perform certain remedial action, maintenance and monitoring activities at the Site.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Iowa Electric Light & Power Company*, Department of Justice #90-11-2-631.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Iowa, Central Division, 115 U.S. Courthouse, East First and Walnut Streets, Des Moines, Iowa 50309, and the United States Environmental Protection Agency, region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree can be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. When requesting a copy, please refer to *United States* v. *Iowa Electric Light & Power Company*, DOJ #90-11-2-631, and enclose a check in the amount of $17.50 ($.25/page) payable to "Treasurer of the United States."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-14307 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 4, 1991, a proposed Consent Decree in *United States* v. *Peirce, et. al.*, No. 83-CV-1623, was lodged with the United States District Court for the Northern District of New York. The complaint in this action was filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, to recover costs incurred by the Environmental Protection Agency ("EPA") in taking response actions at the York Oil Superfund Site located in Moira, Franklin County, New York ("Site").

The proposed Consent Decree embodies an agreement by defendant Aluminum Company of America ("Alcoa") to design and implement a phase I remedy selected by EPA for the cleanup of a hazardous waste lagoon area located on the Site. The cost of this remedial work is expected to be approximately $7 million. In addition, Alcoa has agreed to perform the subsequent operation and maintenance for this remedial work, which is estimated to cost approximately $500,000. Alcoa has also agreed to reimburse EPA for 30% of its periodic review and oversight costs up to a total of $175,000.

The Decree is a mixed funding decree, as it also contains an agreement by the EPA Hazardous Substances Superfund to contribute the lesser of $3,370,000 or 46% of the reasonable and necessary costs of the remedial work.

The Consent Decree also includes an agreement by certain federal facilities which contributed waste to the Site, the Department of the Army and the Department of the Air Force, to pay $1,875,000 into the York Oil Trust Fund, to be applied toward the cost of this cleanup.

With respect to the recovery of past costs, the Consent Decree requires Alcoa to reimburse EPA for $795,000 of the costs already incurred by EPA. The federal facilities have agreed to reimburse EPA in the amount of $636,846.98 for EPA's past costs. Thus, the settlors will reimburse EPA for $1,431,846.98, or approximately 50%, of EPA's approximately $2.9 million in past costs for the phase I work at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Peirce, et. al.*, D.O.J. Ref. 90-5-2-1-585.

The proposed Consent Decree may be examined at the region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278, at the office of the United States Attorney, Federal Building and Courthouse, 15 Henry Street, Binghamton, New York 19301, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $47.75 (25 cents per page reproduction cost) for the Consent Decree and all attachments or in the amount of $18.50 for the Consent Decree without attachments.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-14306 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Savage Enterprises et al.

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on May 30, 1991, a proposed consent decree in *United States* v. *Savage Enterprises, Inc. et al.*, Civil Action No. C89-1283Z, was lodged with the United States District Court for the Western District of Washington. The complaint, as amended, alleged violations by defendants Savage Enterprises, Inc., James Savage, and James Walsh of section 112 of the Clean Air Act, 42 U.S.C. 7412, and various work practice standards in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos, at 40 CFR part 61, subpart M. The complaint sought injunctive relief and civil penalties for past violations. The proposed consent decree settles the case with respect to Savage Enterprises, Inc. and James Savage by imposing a total civil penalty of $5,000 as well as certain injunctive relief. The case against defendant James Walsh is still ongoing since Mr. Walsh has declined to enter into the proposed consent decree.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Savage Enterprises, Inc. et al.*, Department of Justice reference number 90-5-2-1-1306.

The proposed consent decree may be examined at the office of the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101 and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington DC 20004, (202) 347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $2.25 (25 cents per page reproduction costs) payable to "Consent Decree Library." When requesting a copy, please refer to *United States* v. *Savage Enterprises, Inc.*, Depatment of Justice 90-5-2-1-1306.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-14314 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 7, 1991, a proposed consent decree in *United States* v. *City of San Jose, California, and A.J. Raisch Paving Co.*, Civil Action No. C91-20337-JW, was lodged with the United States District Court for the Northern District of California. The Complaint filed by the United States alleges that the defendants arranged for the transportation or disposal of hazardous substances in the construction of a ring levee located in Alviso, California (the facility); that there have been releases of hazardous substances into the environment from the facility, which releases have caused the United States to incur response costs; and that there is or may be an imminent and substantial endangerment to the public health, welfare, or the environment because of the actual or threatened releases. The complaint seeks injunctive relief to require the defendants to abate and remedy the imminent and substantial endangerment and the effects of the actual or threatened releases from the facility. The complaint further seeks the reimbursement of past costs which were incurred by the United States in responding to the actual or threatened releases. The consent decree requires the defendants to implement fully the remedy selected by the Environmental Protection Agency as set forth in the Agency's Record of Decision, as amended, and to pay the United States $736,023.00 in reimbursement for past costs.

In addition, the complaint states a cause of action against the City of San Jose under Sections 301, 309, and 404 of the Clean Water Act, 33 U.S.C. 1301, 1309, and 1344, for constructing the ring levee in wetlands without a permit. The consent decree requires the City to perform work to restore wetlands and to mitigate for their temporal loss.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States* v. *City of San Jose and A.J. Raisch Paving Co.*, D.J. Ref. 90-11-2-353.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, and at the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $40.50 for the decree plus its attachments (25 cents per page reproduction costs) payable to Aspen Systems Corporation. When requesting a copy, please refer to *United States* v. *City of San Jose and A.J. Raisch Paving Co.*, D.J. Ref. 90-11-2-353.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-14316 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 USC 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1989 and ending September 30, 1990.

Name and Title

Robert E. Allen—Associate General Council, Advice

Harold J. Datz—Chief Counsel to Board Member

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Joseph E. Duffie—Associate General Counsel, Operations Management
Yvonne T. Dixon—Assistant General Counsel, Office of the General Counsel
Frederick Froelicher—Chief Counsel to Board Member
D. Randall Frye—Acting Deputy General Counsel
John E. Higgins—Solicitor
Susan Hollis—Chief Counsel to Board Member
Gloria J. Joseph—Director of Administration
Barry J. Kearney—Deputy Associate General Counsel, Advice
Joseph E. Moore—Deputy Executive Secretary
S.F. Timothy Mullen—Deputy Director of Administration
Anne G. Purcell—Chief Counsel to Board Member
Mary M. Shanklin—Director, Office of Appeals
W. Garrett Stack—Deputy Associate General Counsel, Operations Management
Elinor H. Stillman—Chief Counsel to the Chairman
Berton B. Subrin—Director, Office of Representation Appeals
John C. Truesdale—Executive Secretary
Melvin J. Welles—Chief Administrative Law Judge

Dated: Washington, DC June 11, 1991. By Direction of the Board.

John C. Truesdale,
Executive Secretary.

[FR Doc. 91-14250 Filed 6-14-91; 8:45 am]
BILLING CODE 7400-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Applications of Advanced Technologies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Applications of Advanced Technologies, Education and Human Resources.

Date and Time: June 28 and 29, 1991, from 6 p.m. to 9 p.m. on Friday and from 8:30 a.m. to 4 p.m. on Saturday.

Place: State Plaza Hotel, 2117 E Street, NW., Ambassador Room Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Andrew R. Molnar, Program Director, Applications for Advanced Technologies, room 635, Washington, DC 20550, Phone (202) 357-7064.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Dated: June 11, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91-14283 Filed 6-14-91; 8:45 am]
BILLING CODE 7555-01

NUCLEAR REGULATORY COMMISSION

Application for License to Export a Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export a utilization facility as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of appl., date received, application no.	Description	Value	End use	Country of destination
Mitsui & Co., Inc., 05/29/91, 05/30/91, XR159.	8 Reactor Control Rods	$198,000	For installation in Fukushima I, Unit No. 2 nuclear power reactor.	Japan.

Dated this 7th day of June 1991, at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,
Assistant Director for Exports, Security, and Safety Cooperation International Programs Office of Governmental and Public Affairs.

[FR Doc. 91-14337 Filed 6-14-91; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standard 412, Cost Accounting Standard for Composition and Measurement of Pension Cost

ACTION: Notice.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comments concerning a Staff Discussion Paper on the topic of accounting for unfunded pension costs.

DATES: Requests for copies of the Staff Discussion Paper should be received by August 16, 1991.

ADDRESSES: Requests for a copy of the staff discussion paper or comments upon its contents should be addressed to Mr. Robert Lynch, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. Attn: CASB Docket No. 91-02.

FOR FURTHER INFORMATION CONTACT: Robert Lynch, Project Director, Cost Accounting Standards Board (telephone: 202-395-3254).

SUPPLEMENTARY INFORMATION: The Office of Federal Procurement Policy, Cost Accounting Standards Board, is releasing a Staff Discussion Paper of a proposed revision to Cost Accounting Standard 412 with respect to the measurement and assignment of the costs of unfunded pension plans to Government contracts. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standard, consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard. The purpose of the Staff Discussion Paper is to solicit public views with respect to the Board's consideration of the topic of accounting for unfunded pension plans. The Staff Discussion Paper has not been formally approved by the Board. It reflects research accomplished to date by the staff in the respective subject areas.

Dated: May 28, 1991.

Allan V. Burman,
Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 91-13004 Filed 6-14-91; 8:45 am]
BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18186; 811-3419]

National Cash Reserves, Inc.; Application for Deregistration

June 7, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: National Cash Reserves, Inc. ("NCR").

RELEVANT 1940 ACT SECTIONS: Section 8(f) and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks and order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 28, 1991 and amended on May 22, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders as hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 1, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who which to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Lisa Hurley, National Securities & Research Corporation, Two Pickwick Plaza, Greenwich, CT 06830.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. NCR is a diversified open-end management company incorporated under the laws of Maryland. On March 16, 1982, NCR registered under the Act. On this same date, NCR filed a registration statement registering an indefinite number of shares. The registration statement became effective on April 27, 1982, and the initial public offering commenced immediately thereafter.

2. On September 13, 1990 the Board of Director of NCR approved an Agreement and Plan of Reorganization (the "Plan") under which all of the assets and liabilities of NCR would be transferred to the Prime Cash Series Portfolio (the "Portfolio") of the Cash Trust Series, a registered investment company (File No. 811-5843).

3. On January 18, 1991 NCR held a special meeting of shareholders (the "Special Meeting") to vote on the Plan. A majority of NCR's shareholders approved the Plan. Proxy materials relating to the Plan were mailed to shareholders on or about December 12, 1990 and filed with the SEC on or about December 17, 1990.

4. Pursuant to the Plan, on January 25, 1991, (the "Closing Date") NCR transferred to the Portfolio all of its assets. In return the Portfolio assumed all of the obligations and liabilities of NRC and delivered to NCR a number of full and fractional shares of beneficial interest of the Portfolio having an aggregate net asset value equal to the aggregate net asset value of the assets of NCR. NCR distributed the Portfolio shares received by it to its shareholders pro rata in complete liquidation of NCR.

5. As of December 6, 1990 (the record date for determined of shareholders entitled to vote at the Special Meeting), NCR had 43,361,600 shares outstanding, with an aggregate net asset value of $43,361,600 and a per share net asset value of $1.00.

6. Federated Advisers, the investment adviser for the Portfolio, assumed all the costs of the reorganization.

7. At the time of filing of the application, NCR had not shareholders, assets or liabilities. All of NRC's required N-SAR filings have been made. NCR its not a party to any litigation or administrative proceedings. NCR is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-14251 Filed 6-14-91; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35-25329]

Filings Under the Public Utility Holding Company Act of 1935

June 7, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 1, 1991, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing,

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if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70-7767)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090-0010, a registered holding company, its service company subsidiary, Northeast Utilities Service Company ("NUSCO"), 107 Selden Street, Berlin, Connecticut 06037-0218, and its electric public-utility subsidiaries, Yankee Atomic Electric Company ("YAEC"), 580 Main Street, Bolton, Massachusetts 01740, and Connecticut Light & Power Company, 107 Selden Street, Berlin, Connecticut 06037-0218 (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b) and 13(f) of the Act and rules 45, 86 through 91, and 93 through 95 thereunder.

Northeast proposes to form and capitalize North Atlantic Energy Service Corporation ("NAESCO"), as a new, wholly owned electric utility company and service company subsidiary that will assume operating responsibility for the Seabrook Nuclear Power Plant ("Seabrook") on behalf of Seabrook's joint owners ("Joint Owners"), including CLAP.[1] NAESCO proposes to issue and sell, and Northeast proposes to acquire, up to 1,000 shares of NAESCO's authorized but unissued common stock, $1.00 par value per share, for an aggregated purchase price of $10,000.

NAESCO, acting as agent of the Joint Owners, will assume from PSNH its rights and obligations under various contracts entered into on behalf of the Joint Owners with respect to the management, operation and maintenance of Seabrook. NAESCO will provide such services to the Joint Owners under a Managing Agent Operating Agreement ("Managing Agent Agreement"), a Disbursing Agent Agreement ("Disbursing Agreement") and a presently existing Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units ("Owners Agreement"). The principal terms of the Managing Agent Agreement and the Disbursing Agreement and certain proposed modifications to the present Owners Agreement are contained in a July 10, 1990 agreement ("July Agreement") among NUSCO, acting on behalf of NAESCO, and certain other Joint Owners, including CLAP and PSNH. The July Agreement grants NAESCO the authority to assume responsibility for operating Unit 1 and for supervising the disposition of Unit 2, once all necessary regulatory approvals are obtained, regardless of whether Northeast acquires PSNH.

Under the Disbursing Agreement, NAESCO will assume the duties performed by YAEC as disbursing agent for Seabrook, including maintaining an escrow account(s) for funds paid by the Joint Owners to NAESCO for its Seabrook expenses.

The July Agreement and the Managing Agent Agreement also give NAESCO the authority to appoint or retain a service company or agent with which it is affiliated to perform certain of its responsibilities under the Managing Agent Agreement and Owners Agreement, subject to the approval of at least three nonaffiliated Joint Owners with an aggregate ownership interest in Seabrook of at least sixty percent. NAESCO intends to enter into service contracts with: (1) NUSCO for certain administrative, general and technical services; (2) YAEC for engineering and technical functions it now provides under an existing contract with PSNH; and (3) PSNH, if and to the extent requested by NAESCO, for an initial term of up to two years, with certain limited services including accounting, computer, transmission and maintenance services, all such services to be performed at cost by NUSCO, YAEC and PSNH. Under the YAEC service contract, the Joint Owners, including CLAP, will be required to enter into certain indemnification agreements under the YAEC service contract.

The Applicants request authority to consummate the proposed transactions within one year from the date of the Commission's order approving such transactions.

The Columbia Gas System, Inc. (70-7854)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and Columbia Gas Development Corporation ("Development"), 777 South Post Oak Lane, suite 181, Houston, Texas 77057, Columbia Natural Resources, Inc. ("Resources"), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, Columbia Gas Development of Canada, Ltd. ("Columbia Canada"), 1600 Standard Life Building, 639 Fifth Avenue SW., Calgary, Alberta, Canada T2P 0M9 (collectively, "Production Subsidiaries"), each a wholly-owned nonutility subsidiary company of Columbia, have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 50(a)(5) thereunder.

Columbia proposes to create a new subsidiary holding company ("Newco") through a tax-free exchange ("Exchange") of: (1) All the common stock of the Production Subsidiaries, then $10 par value per share,[2] owned by Columbia for up to 50 million shares of Newco common stock, $5 par value per share; and (2) installment promissory notes evidencing all the debt of Development and Resources owed to Columbia as of the date of the Exchange for up to $500 million of Newco installment promissory notes ("Notes"). The Notes will be unsecured, will be dated on the issuance date, will carry a thirty-year term, and will have similar provisions as the notes authorized to be issued by the Production Subsidiaries to Columbia by order dated on December 18, 1989 (HCAR No. 25001) (the "December 1989 Order"). The interest rate on the Notes will approximate the effective cost of money to Columbia with respect to its most recent issuance of long-term debt (currently 9.92%).

Columbia proposes to finance Newco through an initial public offering ("IPO") of approximately 25%, but in no event more than 11 million additional shares of Newco common stock outstanding after the IPO. The approximately $200 million in proceeds anticipated from the IPO will be used by Newco to finance the business of the Production Subsidiaries. Columbia requests that Newco's sale of up to 11 million additional shares of common stock to the public be excepted from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5) thereunder.

The Production Subsidiaries were granted authority by the December 1989 Order to issue common stock and debt aggregating $248,275,000 in proceeds prior to December 31, 1991. Columbia proposes that Newco be authorized to acquire all the common stock and notes issued by the Production Subsidiaries to Columbia as of the date of the Exchange and, to the extent authorization under the December 1989 Order remains unused, after the date of the Exchange but prior to December 31, 1991.

Additionally, to the extent that the IPO proceeds are insufficient to fund the needs of the Production Subsidiaries, Columbia proposes to provide additional funds to Newco to fund the post-Exchange needs of the Production Subsidiaries through December 31, 1991, in an amount not to exceed the current debt authorized to be issued by the Production Subsidiaries to Columbia by the December 1989 Order. Such borrowings will be evidenced by the issuance of notes by Newco to Columbia.

The Production Subsidiaries are currently authorized to issue notes prior to December 31, 1991 which, if issued, will bring total notes issued to approximately $344 million. The authorization for Newco to issue up to $500 million of debt in exchange for the Production Subsidiaries' debt assumes that the Production Subsidiaries will apply for, and be granted, further authorization to issue additional debt prior to June 30, 1993 in excess of the approximately $344 million currently authorized. The debt to be issued by Newco in exchange for Production Subsidiary debt will not exceed the outstanding debt of the Production Subsidiaries, as previously authorized or to be authorized by the Commission.

Columbia will derive funds necessary to purchase Newco common stock and notes through the issuance of medium-term notes, debentures and commercial paper, and through short-term borrowings or subordinated borrowings under various credit agreements, as previously authorized by the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14252 Filed 6-14-91; 8:45 am]

BILLING CODE 8010-01-M

[1] Seabrook, a two unit nuclear facility ("Unit 1" and "Unit 2"), is operated by Public Service Company of New Hampshire ("PSNH"), a 35.6% Joint Owner of Seabrook. Northeast was authorized, in relevant part, to acquire PSNH, including its Seabrook interest. (HCAR Nos. 23821 and 25573 (Dec. 21, 1990 and Mar. 15, 1991, respectively). NAESCO will assume operating responsibility for Seabrook from PSNH but will not own Seabrook or be entitled to its capacity or energy. NAESCO's only associate company customers will be North Atlantic Energy Corporation, a to-be-formed electric utility subsidiary of Northeast that will own PSNH's Seabrook interest, and CLAP, an approximately 4% owner of Seabrook.

[2] Columbia states that, prior to the reorganization, it intends to recapitalize the Production Subsidiaries by reducing the par value of their authorized common stock from $25 to $10 per share.

DEPARTMENT OF STATE

[Public Notice 1413]

Shipping Coordinating Committee, Subcommittee on Safety of Navigation; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, July 3, 1991, in room 8334 at Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, DC.

The purpose of the meeting is to prepare for the 37th session of the Subcommittee on Safety of Navigation of the International Maritime Organization (IMO) which is scheduled for September 23–27, 1991, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Decisions of other IMO bodies.
—Routing of ships.
—Review of rules 23, 25, 26, and annex IV of the 1972 Collision Regulations.
—Navigational aids and related equipment:
1. World-wide navigation system.
2. Electronic chart display systems.
3. Guidelines on the use of transponders on ships for safety purposes.
4. Optimal methods of automatic radar plotting aids (ARPA) and radar display presentation.
5. International Telecommunications Union (ITU) matters, including International Radio Consultative Committee (CCIR) Study Group 8.
—Matters relating to fishing vessels:
1. Amendments to chapter X of the 1977 Torremolinos International Convention.
2. Fishing vessel watchkeeping requirements.
3. Marking of fishing gear.
—International Code of Signals.
—Officer of the navigational watch acting as the sole lookout in periods of darkness.
—Review of World Meteorological Organization (WMO) handbooks on navigation in areas of sea-ice.
—Revision of chapters 8 and 13 of the Code of Safety for Dynamically Supported Craft.
—Guidelines on the recruitment, qualifications, and training of vessel traffic service (VTS) operators.
—Review of resolution A.578(14).
—Bridge procedures.
—Work program.
—Election of Chairman and Vice-Chairman for 1992.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G-NSR-3), room 1416, 2100 Second Street SW., Washington, DC 20593-0001 or by calling (202) 267-0416.

Dated: June 6, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91-14309 Filed 6-14-91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1414]

Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open public meeting at 9:30 a.m. on Wednesday, July 24, 1991, in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to report on the results of the 94th Session of the International Maritime Organization (IMO) Legal Committee conducted March 18–22, 1991, as well as to solicit public comment for the upcoming 95th Session scheduled to be held from September 30 until October 4, 1991.

The principal focus of the SHC public meeting will be to discuss the ongoing Legal Committee deliberations concerning the question of liability and compensation related to the maritime carriage of hazardous and noxious substances (HNS).

The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information or to submit views concerning any of the topics to be addressed at the SHC meeting, contact either Captain Jonathan Collom or Lieutenant Mark J. Yost, U.S. Coast Guard (G-LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267-1527, telefax (202) 267-4163.

Dated: June 7, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91-14308 Filed 6-14-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on July 31, 1991, at 9 a.m.

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ADDRESSES: The meeting will be held in room 8 ABC, 8th floor, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Meg Mack, Office of Flight Standards Service (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Carrier Operations Subcommittee to be held on July 31, 1991, at the FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591. The agenda for this meeting will include progress reports from the Noise Abatement Takeoff Profile Working Group, Fuel Requirements Working Group, Wet Leasing Working Group, and Autopilot Engagement Requirements Working Group. Each Working Group Chair will report on the organization and composition of the working group, proposed scope, products, milestones, and progress thus far.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on June 10, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-14304 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-13-M

Training and Qualifications Subcommittee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Training and Qualifications Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on June 27, 1991, at 9 a.m.

ADDRESSES: The meeting will be held in the MacCracken Room, 10th Floor, 800 Independence SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Etta Schelm, Office of Flight Standards Service (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Training and Qualifications Subcommittee to be held on June 27, 1991, at the FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591. The agenda for this meeting will include progress reports from the Pilot Training Working Group, Air Carrier Working Group, General Aviation Working Group, Ab Initio Working Group, and Cabin Safety and Operations Working Group.

Attendance is open to the interested public but may be limited to the space available. The Public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on June 4, 1991.

David R. Harrington,

Executive Director, Training and Qualifications Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-14305 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 116
Monday, June 17, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Office of the Inspector General Oversight Committee

TIME AND DATE: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on June 24, 1991. The meeting will commence at 12:00 p.m.

PLACE: The Marriott Suites Hotel, 801 North St. Asaph Street, The Conference Room, Alexandria, VA 22314, (703) 836-4700.

STATUS OF MEETING: Open [A portion of the meeting may be closed, subject to a vote by a majority of the Board of Directors, to discuss personnel-related and personal matters as authorized by the relevant portions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (2) and (6)], and the corresponding regulations of the Legal Services Corporation [45 C.F.R. Sections 1622.5 (a) and (e)]. A portion of the meeting may be closed to preserve the applicants' personal privacy and to discuss strictly internal personnel rules and practices. Specifically, the Committee will consider responses to questions posed to selected applicants being considered for the position of Inspector General of the Legal Services Corporation.]

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of June 3, 1991 Meeting.
3. Consideration of Responses to Questionnaires Submitted by Applicants for the Position of Inspector General of the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863-1839.

Date issued: June 13, 1991.

Patricia D. Batie,

Corporate Secretary.

AGDAOIG.82491/

[FR Doc. 91-14478 Filed 6-13-91; 1:50 p.m.]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Audit and Appropriations Committee will be held on June 25, 1991. The meeting will commence at 9:30 a.m.

PLACE: The Marriott Suites Hotel, 801 North St. Asaph Street, Salon III, Alexandria, VA 22314, (703) 836-4700.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of March 24, 1991.
3. Status Report on Selection of Independent Auditor to Conduct Corporation's Fiscal Year (FY) 1991 Annual Audit.
4. Consideration of Mid-Year Budget Modifications.
5. Review of Budget and Expenses through April 1991.
6. Consideration of FY 1993 Program Funding Levels.
7. Status Report on Management's Assessment of Corporation Space Needs

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863-1839.

Date Issued: June 13, 1991.

Patricia D. Batie,

Corporate Secretary.

AGDA82591/

[FR Doc. 91-14479 Filed 6-13-91; 1:50 p.m.]

BILLING CODE 7050-01-M

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Corrections

Federal Register
Vol. 56, No. 116
Monday, June 17, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 901246-1100]
RIN 0648-AC86

Northeast Multispecies Fishery

Correction

In rule document 91-12804 beginning on page 24724 in the issue of Friday, May 31, 1991, make the following corrections:

1. On page 24725, in the second column, in the sixth paragraph, in the third line, "inconsistent" should read "consistent".

2. On page 24726, in the third column, in the second full paragraph, in the third line, "the" should read "The".

§ 651.21 [Corrected]

3. On page 24728, in the third column, in § 651.21(b)(1)(ii), in the sixth line, "close" should read "closure".

§ 651.27 [Corrected]

4. On page 24749, in the second column, in § 651.27(a)(2), in the third line, "form" should read "from".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Technical Information Service

Government-owned Inventions; Availability for Licensing

Correction

In notice document 91-8867 beginning on page 15333, in the issue of Tuesday, April 16, 1991 make the following corrections:

1. On the same page, in the third column, in the first paragraph, in the fourth line, after "United States" insert the following "Government and is available for licensing in the United States".

2. On the same page, in the same column, remove the entire fourth paragraph, beginning with "Licensing is available for licensing to * * *".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement—Library Programs; Invitation To Apply for New Awards for Fiscal Year 1992

Correction

In notice document 91-13909 beginning on page 27156 in the issue of Wednesday, June 12, 1991, make the following corrections:

1. On the cover preceding page 27156, the subject matter should read as follows:

Office of Educational Research and Improvement—Library Programs; Invitation To Apply for New Awards; Notice

2. On page 27156, in the third column, the FR Doc. line should read as follows:

[FR Doc. 91-13909 Filed 6-11-91; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-435-000, et al.]

D C Tie Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 91-12059 beginning on page 23558, in the issue of Wednesday, May 22, 1991, make the following correction:

On page 23559, in the first column, the Docket No. for **PacifiCorp Electric Operations** should read "ER91-329-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-156-000]

Northern Natural Gas Co.; Temporary Waiver of Tariff Provision

Correction

In notice document 91-12853 appearing on page 24801, in the issue of Friday, May 31, 1991, in the first column, the docket number heading should read as shown above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10818-000]

Greenbrier Electro-motive, Inc.; Availability of Environmental Assessment

Correction

In notice document 91-12060 appearing on page 23562, in the issue of Wednesday, May 22, 1991, the Project No. should read as shown above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 86N-0027]

Additional Standards for Viral Vaccines; Poliovirus Vaccine Live Oral

Correction

In rule document 91-10029 beginning on page 21418 in the issue of Wednesday, May 8, 1991, make the following corrections:

1. On page 21421, in the first column, in the eighth line from the bottom, "extension" should read "extensive".

2. On same page, in the third column, in sixth line, "§ 630.1198(d)" should read "§ 630.19(d)".

3. On page 21427, in the first column, in the seventh line from the bottom, "monoalen" should read "monovalent".

4. On page 21430, in the third column, in the seventh line from the bottom, after "neurovirulence" insert "and identity".

5. On page 21431, in first column, in the tenth line, "pods" should read "pools".

6. On same page, in the same column, in paragraph 33, in the fifth line, "manufacture" should read "manufacturer".

§ 630.12 [Corrected]

7. On page 21433, in the second column, in § 630.12(a)(3), in the second line "for" should read "from".

§ 630.18 [Corrected]

8. On page 21436, in the third column, in § 630.18(a)(3), in the eighth line from the bottom, "14 days" should read "14-day test".

§ 630.18 [Corrected]

9. On page 21437, in the first column, in § 630.18(a)(5), in the sixth line from the bottom, "14 years" should read "14 days".

BILLING CODE 1505-01-D

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Pulp and Paper Facility Proposed by Mead Corporation on the Tennessee River

Correction

In notice document 91-11114 beginning on page 21704, in the issue of Friday, May 10, 1991 make the following corrections:

On page 21705, in the 1st column, in the 3d full paragraph, in the 10th line, and in the 5th paragraph, in the 3d, 11th, 14th, and 16th lines "USAGE" should read "USACE".

BILLING CODE 1505-01-D

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federal register

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Part II

Uniform Rules of Practice; Notice of Proposed Rulemaking

Department of the Treasury
Office of the Comptroller of the Currency
Office of Thrift Supervision
Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 91-4]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R-0733]

RIN 7100-AB23

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064-AA64

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 508, 509, 512, and 513

[Docket No. 91-333]

RIN 1550-AA35

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

[Docket No. 91-06-C]

Uniform Rules of Practice and Procedure

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires that the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Board of Governors"), Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), and National Credit Union Administration ("NCUA") develop a set of uniform rules and procedures for administrative hearings ("Uniform Rules"). Section 916 further requires that the agencies promulgate provisions for summary judgment rulings where there are no disputes as to the material facts of a case.

This proposal is intended to make uniform those rules that pertain to the types of formal enforcement actions common to at least four of the listed agencies. In addition to these Uniform Rules, each agency proposes complementary "Local Rules" to address some or all of the following: formal enforcement actions not addressed in the Uniform Rules, informal actions which are not subject to the Administrative Procedure Act ("APA"), and procedures to supplement or facilitate the processing of administrative enforcement actions within each agency.

DATES: Comments on this joint proposed rule must be received by July 17, 1991.

ADDRESSES: Comments should be directed to:

OCC: Communications Division, 250 E Street SW., Washington, DC 20219, attention: Docket No. 91-4. Comments will be available for public inspection and photocopying at the same location.

Board of Governors: Mr. William Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551, attention: Docket No. R-0733 or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FDIC: Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F-402, 1776 F Street NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F-402 between 8:30 a.m. and 5 p.m. on business days. [FAX number (202) 898-3838]

OTS: Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, attention: Docket No. 91-333. Comments will be available for inspection at 1735 I Street NW. 9th floor.

NCUA: Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street NW., Washington, DC 20456. Comments will be available for inspection at the same location.

FOR FURTHER INFORMATION CONTACT:

OOC: Barrett Aldemeyer, Senior Attorney, or Lee Walzer, Attorney, Legislative and Regulatory Analysis Division (202/874-5090), or Daniel Stipano, Assistant Director, Enforcement and Compliance Division (202/874-4800).

Board of Governors: Douglas Jordan, Senior Attorney, Legal Division (202/452-3787), or Ann Marie Kohlligian, Senior Counsel, Division of Banking Supervision and Regulation (202/452-3528). For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

FDIC: Nancy Alper, Counsel, Compliance and Enforcement Section (202/898-3720) or Andrea Winkler, Counsel, Compliance and Enforcement Section (202/898-3764).

OTS: Dawn Causey, Attorney, Division of Enforcement (202/906-7157).

NCUA: Steven Widerman or Mary Rupp, Attorneys, Office of General Counsel (202/682-9630).

SUPPLEMENTARY INFORMATION:

A. Background

Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183 (1989), requires that the OCC, Board of Governors, FDIC, OTS, and NCUA develop a set of uniform rules and procedures for administrative hearings. In addition, FIRREA requires the agencies to promulgate provisions for summary judgment rulings where there are no disputes as to the material facts of a case.

By including this provision in FIRREA, Congress intended that the listed agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987 recommendation that "(g)iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings." 1 CFR 305.87-12.

B. Uniform Rules

As set forth below, there shall be at least two subparts to each listed agency's new rules of practice and procedure. The first subpart, designated "Uniform Rules," will set forth the uniform rules of practice and procedure for those formal enforcement actions which are required by statute to be determined on the record after an opportunity for an agency hearing and which are common to at least four of the agencies. Those enforcement actions include cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(b)) and section 206(e) of the Federal Credit Union Act ("FCUA") (12 U.S.C. 1786(e)); removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e)) and section 206(g) of the FCUA (12 U.S.C. 1786(g)); change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)); proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78o-5); the assessment of civil money penalties, pursuant to various statutes, as cited in the Uniform Rules, for (1) violations of law or regulation; (2) violation of any final order or temporary order issued pursuant to section 8 of the FDIA (12 U.S.C. 1818(b)), or sections 202 and 206 of the FCUA (12 U.S.C. 1782 and 1786); (3) violation of any conditions imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by a regulated institution; (4) violations of any written agreement between such a regulated institution and such agency; (5) violations related to the failure to submit and publish accurate and complete regulatory reports; and (6) certain unsafe and unsound practices and breaches of fiduciary duty. The Uniform Rules will also apply to any other formal adjudications not specifically set forth in the Uniform Rules that are required by statute to be determined on the record after an opportunity for an agency hearing and are common to at least four of the five agencies.

C. Local Rules

The remainder of the proposed rules, designated "Local Rules," will be divided into five sections, one for each of the agencies. In these sections each agency will set forth its own rules to address some or all of the following topics: formal enforcement actions common to fewer than four of the five agencies, informal actions which are not subject to the APA, and procedures to supplement or facilitate the processing of administrative enforcement actions within each agency. The Local Rules will address the following proceedings:

OCC Proceedings. Removal, suspension, and prohibition proceedings under section 8(g) of the FDIA (12 U.S.C. 1818(g)); exemption hearings under sections 12 (h) and (i) of the Exchange Act (15 U.S.C. 78l (h) and (i)); disciplinary proceedings under sections 15B(c)(5), 15C(c)(2)(A), 17A(c)(3), and 17A(c)(4)(C) of the Exchange Act (15 U.S.C. 78o-4(c)(5), 78o-5(c)(2)(A), 78q-1(c)(3)(A), and 78q-1(c)(4)(C)); civil money penalty proceedings under section 21B of the Exchange Act (15 U.S.C. 78u-2) in proceedings under sections 15B, 15C, and 17A of the Exchange Act (15 U.S.C. 78o-4, 78o-5, and 78q-1); cease-and-desist proceedings under sections 12(i) and 21C of the Exchange Act (15 U.S.C. 78l(i) and 78u-3); and proceedings for the review of agency disapprovals in change-in-control proceedings under section 7(j) of the FDIA (12 U.S.C. 1817(j)).

Board of Governors Proceedings. Suspension of a member bank from use of Federal Reserve credit facilities under section 4 of the Federal Reserve Act ("FRA") (12 U.S.C. 301); termination of a bank's membership in the Federal Reserve System under section 9 of the FRA (12 U.S.C. 327); issuance of a cease and desist order under section 11 of the Clayton Act (15 U.S.C. 21); formal adjudication of bank merger applications under section 18(c) of the FDIA (12 U.S.C. 1828(c)); issuance of a divestiture order under section 5(e) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(e)); disciplinary proceedings under section 15B(c)(5) of the Exchange Act (15 U.S.C. 78o-4); procedures relating to the imposition of civil money penalties under specified statutes; procedures relating to the suspension, removal or prohibition of institution-affiliated parties under section 8(g) of the FDIA (12 U.S.C. 1818(g)); procedures for issuance and enforcement of capital directives under the International Lending Supervision Act of 1983; procedures for censure, suspension or debarment of practitioners before the Board of Governors; and procedures for actions under the Equal Access to Justice Act (5 U.S.C. 504).

FDIC Proceedings. Change in Bank Control proceedings under section 7(j) of the FDIA (12 U.S.C. 1817(j)); involuntary termination of insurance proceedings under section 8(a) of the FDIA (12 U.S.C. 1818(a)); proceedings relating to cease-and-desist orders under section 8(b) of the FDIA (12 U.S.C. 1818(b)); proceedings relating to the assessment of civil money penalties pursuant to sections 7(a), 8(i) and 18(j) of the FDIA (12 U.S.C. 1817(a), 1818(i) and 1828(j)); proceedings regarding sanctions against municipal securities dealers or persons associated with them and clearing agencies or transfer agents under section 15(b)(4), 17, or 17A of the Exchange Act (15 U.S.C. 78o, 78q and 78q-1); exemption hearings under section 12(h) of the Exchange Act (12 U.S.C. 78l(h)); investigations pursuant to section 10(c) of the FDIA (12 U.S.C. 1820(c)); proceedings relating to change in senior executive officers or directors under section 32 of the FDIA (12 U.S.C. 1831i); proceedings relating to unauthorized participation by convicted individuals under section 19 of the FDIA (12 U.S.C. 1829); proceedings relating to the assessment of liability against commonly-controlled depository institutions under section 5(e) of the FDIA (12 U.S.C. 1815(e)); proceedings relating to the recovery of fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. 504.

OTS Proceedings. The OTS Local Rules augment the Uniform Rules by expanding the scope of the Uniform Rules to apply to particular savings and loan holding company and securities proceedings, adding deposition discovery, clarifying the time and method for filing motions before the Director, and civil money penalties. OTS's non-APA proceedings are not contained in its part 509. The non-APA proceedings may be found at part 508 (removals, suspensions, and prohibitions where a crime is charged or proven), part 512 (investigations), and part 513 (disciplinary proceedings).

NCUA Proceedings. The new subpart A replaces the existing subparts A [Rules of Practice and Procedure], C [Cease-and- desist Actions], D [Assessment of Civil Penalties] and E [Removal, Prohibition and Suspension Actions]. A new subpart B is reserved for local rules of practice and procedure, unique to the NCUA, which may be developed in the future. The existing subparts B, F, G, H, I, J, K and L remain unchanged in substance. To conform to the elimination of existing subparts C, D and E, however, these remaining subparts are redesignated subparts C, D, E, F, G, H, I and J, respectively, and the sections of each are renumbered sequentially. The new subparts B through J shall be known as the NCUA's Local Rules.

The Uniform Rules, as set forth in the subpart A, supplement the Local Rules and procedures set forth individually in new subparts C, E, F and G. (New subparts D, H, I and J concern proceedings which either are informal or non-adjudicative, and to which the Uniform Rules do not apply.) However, each of subparts C, E, F and G provides that its own provisions shall control in the event of an inconsistency with those of subpart A.

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D. Section-by-Section Summary and Discussion of Uniform Rules

Section _____.1 Scope.

As a result of the statutory mandate contained in Section 916 of FIRREA, the Agencies are proposing a set of administrative hearing procedures that cover those proceedings that at least four of the five Agencies share in common and that require a formal hearing before an administrative law judge. These common proceedings include cease-and-desist actions, removal and prohibition actions and the assessment of civil money penalties. In addition, four of the five agencies share regulatory authority over the adjudication of change-in-control applications (12 U.S.C. 1817(j)(4)) and hearings to impose sanctions on government securities brokers and dealers (15 U.S.C. 78o–5). Proceedings such as the termination of insurance are common only to the FDIC and the NCUA, and as a consequence, are not included in this proposal. Procedures for such non-common proceedings may be found in the Local Rules of the particular Agency.

Section _____.2 Rules of construction.

This section makes clear that the use of any term in the Uniform Rules includes either its singular or plural form, as appropriate, and that the use of the masculine, feminine or neuter gender shall, if appropriate, be read to encompass all three. Because the Uniform Rules allow for non-attorney representation under certain circumstances, the Rules of Construction indicate that the term "counsel" includes non-attorney representatives. Finally, this section explicitly states that, unless otherwise indicated, any action required to be taken by a party to a proceeding may be taken by the party's counsel.

Section _____.3 Definitions.

This section sets forth definitions of the terms that will be common to the procedures used by the OCC, Board of Governors, FDIC, OTS, and NCUA. Definitions which do not pertain to procedures regarding formal enforcement actions common to at least four of these agencies, but which pertain instead to a particular agency's actions or procedures which are not covered by these Uniform Rules, are contained in that agency's Local Rules. The definitions contained in this section apply to the use of any such term in the Uniform and Local Rules, unless otherwise explicitly stated to the contrary.

An "administrative law judge" is defined in paragraph (a) as the one who presides at an administrative hearing, and who has the powers enumerated in the APA. The term "Office of Financial Institution Adjudication (OFIA)" means the executive body charged with overseeing the administration of administrative enforcement proceedings. These definitions reflect the mandate of FIRREA that the agencies establish a common pool of administrative law judges for their enforcement proceedings. OFIA is the executive body established to oversee the administration of such proceedings.

The definition of "adjudicatory proceeding" in paragraph (b) indicates that the rules apply only to formal administrative proceedings subject to the APA which result in a final order, and do not include rulemaking procedures.

"Final order" is defined in paragraph (g) to mean an order issued by an Agency with or without the consent of the affected institution or institution-affiliated party, that has become final. The finality of such an order is not affected by the pendency of any petition for reconsideration or review.

The definition of "Agency" in paragraph (c) sets forth the institutions over which the OCC, Board of Governors, FDIC, OTS, and NCUA have supervisory authority. The definition of "Agency Head" indicates the body or the individual that is the decision maker within each Agency.

The term "institution" includes any organization subject to the jurisdiction of the five agencies—banks, bank and savings association holding companies, nonbank subsidiaries of holding companies, Federal credit unions, insured state credit unions, savings associations, Edge Act companies, and branches and agencies of foreign banks.

The term "decisional employee" denotes those members of the Agency's or administrative law judge's staff who have not engaged in an investigative or prosecutorial role in an adjudicatory proceeding, and who may play a role in the proceeding's decisionmaking process. "Enforcement Counsel" are defined as individuals who file a notice of appearance as counsel on behalf of the Agency in an adjudicatory proceeding.

The term "person" is intended to be construed broadly, and encompasses an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (h). A "party" includes the Agency and any person named in the notice which commences a proceeding. "Institution-affiliated party" incorporates the definition of that term found in both the FDIA and the FCUA. A "respondent" is a party other than the Agency.

The term "violation", defined in paragraph (n), means any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

Section _____.4 Authority of Agency Head.

This section makes clear that the Agency Head may, at any time during a proceeding, perform, direct the performance of, or waive performance of, any act which may be done or ordered by the administrative law judge.

Section _____.5 Authority of administrative law judge.

This section enumerates powers granted to the administrative law judge subsequent to appointment. The list is not exhaustive. The administrative law judge is permitted to take any other action necessary and appropriate to discharge the duties of a presiding officer. All powers granted by this provision are intended to further the Agency's goal of an expeditious, fair, and impartial hearing process.

Section _____.6 Appearance and practice in adjudicatory proceedings.

This section sets forth the criteria for persons acting in a representative capacity for parties in an adjudicatory proceeding. A notice of appearance is required to be filed by an individual representing any party, including an individual representing the Agency, simultaneously with or before the submission of papers or other act of representation on behalf of a party. Any counsel filing a notice of appearance is deemed to represent that he or she agrees and is authorized to accept service on behalf of the represented party.

Section _____.7 Good faith certification.

This section requires that all filings or submissions be signed by at least one counsel of record or the party, if appearing on his or her own behalf. This section provides that, by signing a filing or submission, the counsel or party certifies and attests that the document has been read by the signer and, to the best of his or her knowledge, is well grounded in fact and is supported by existing law or a good faith argument for the extension or modification of the existing law. In addition, the certification attests that the filing or submission is not for purposes of unnecessary delay or any improper purpose. If the document is not signed, an opportunity to sign will be granted; however, if after such opportunity the document is still not signed, the administrative law judge is required to strike it from the record of the proceeding. Oral motions or arguments are also subject to the good faith certification: the act of making the oral motion or argument constitutes the required certification.

Section _____.8 Conflicts of interest.

In general, conflicts of interest in representing parties to adjudicatory proceedings are prohibited by the Uniform Rules. The administrative law judge is empowered to take corrective steps to eliminate such conflicts. If counsel represents more than one party to a proceeding, counsel is required to file at the time he or she files his or her notice of appearance a certification that: (1) The potential for possible conflicts of interest has been fully discussed with each such party; (2) the parties are aware of no existing or anticipated material conflict between their interests individually; and, (3) the parties individually waive any right to assert the conflicts of interest during the proceeding. This outlined approach follows the Model Code of Conduct for attorneys and the District of Columbia Ethics Rule.

Section _____.9 Ex parte communications.

This section adopts the rules and procedures set forth in the APA regarding ex parte communications. See 5 U.S.C. 551(14) and 557(d). Generally, any communications without notice to all other parties between parties or interested persons and those involved in the decisionmaking process is prohibited. This includes communications from a party, counsel for the party, or an interested person to the administrative law judge, the Agency Head, or a decisional employee assisting the administrative law judge or Agency Head. Similarly, administrative law judges, Agency Heads and their decisional employees are prohibited from making ex parte communications to a party, counsel for a party, or an interested person. Communications regarding the status of the proceeding are expressly excluded from the definition of ex parte communications.

If an ex parte communication does occur, the document itself, or if oral, a memorandum of the substance of the communication, must be placed in the record. All other parties to the proceeding may have the opportunity to respond to the prohibited communication, and such response may include a recommendation for sanctions. The administrative law judge or the Agency Head may determine whether sanctions are appropriate.

Section _____.10 Filing papers.

This section addresses the time and manner of filing by incorporating a "mailbox rule" to determine when a document is deemed filed, and applying it to all common methods of transmitting documents.

The provision for transmission by electronic media authorizes filing by facsimile, computer modem, or other electronic media, but only where such method is authorized by the recipient of the filing, *i.e.*, the Agency Head or administrative law judge, as the case may be. It is recognized that such filings will be the exception rather than the rule, will seldom be appropriate for filings longer than a few pages, and can only be used where appropriate facilities are available. Nevertheless, it is contemplated that electronic filings will be useful in certain circumstances, such as where rapid rulings on motions and responses are necessary. The recipient of the filing, *i.e.*, the Agency Head or the administrative law judge, is accorded the discretion to determine when such circumstances exist. A concurrent filing of a paper copy is required to ensure that the requirements as to form, such as an original signature, are observed in electronic filings just as they must be in other filings.

Section _____.11 Service of papers.

Where the person served has not made an appearance in the proceeding, the proposed Uniform Rules require that reasonable measures be taken to convey actual notice. The requirements regarding service upon a party that has made an appearance in a proceeding closely resembles the provision regarding filing. Service by electronic media is subject to mutual agreement among the parties; consequently, electronic service is not effective upon a party that has not consented to electronic service.

Section _____.12 Construction of time limits.

The general rule on construction of time limits provides common rules for computing time limits, taking into account the effect of weekends and holidays. The rules as to when papers are deemed filed or served incorporate a "mailbox rule" applicable to mail and commercial delivery services. The effective time for filing or service by electronic medium is to be specified by the person authorizing or agreeing to that means of filing or service. With regard to time limits for responsive pleadings, the rules incorporate a three-day extension for mail service, similar to the Federal Rules of Civil Procedure, and a one-day extension for overnight delivery, as contained in some agencies' existing rules. A one-day extension for service by electronic medium is proposed because experience shows that delays in actual receipt by the person served are peculiar to such media (*e.g.*, transmission after office hours, unattended facsimile machines, etc.)

Section _____.13 Change of time limits.

Except as otherwise provided by law, the time limits prescribed by the Uniform Rules may be extended by the administrative law judge for good cause, prior to certification of the case to the Agency Head, and by the Agency Head after such certification. Motions for extension of time are subject to the rules generally applicable to motions.

Section _____.14 Witness fees and expenses.

The provisions for witness fees and expenses implement the provisions of 12 U.S.C. 1818(n) and 12 U.S.C. 1786(p) that provide that fees and expenses for witnesses subpoenaed pursuant to these Uniform Rules shall be the same as for witnesses in United States district courts.

Section _____.15 Opportunity for informal settlement.

This section makes explicit that informal settlement proposals by respondents must be made only through Enforcement Counsel and that settlement discussions may not be used to delay proceedings.

Section _____.16 Agency's right to conduct examination.

This section states that nothing contained in the Uniform Rules shall be construed to limit the right of the Agency to conduct examinations or visitations of any institution or institution-affiliated party, or the right of the Agency to conduct any form of investigation authorized by law.

Section _____.17 Collateral attacks on adjudicatory proceedings.

This section precludes the use of collateral attacks to circumvent or delay the administrative process and reflects

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the anti-injunction provisions of 12 U.S.C. 1818(i) and 12 U.S.C. 1786(k)(1).

Section _____.18 Commencement of proceeding and contents of notice.

This section contains the requirements relating to the initiation of adjudicatory proceedings, including the required content of a notice or order initiating a hearing.

Section _____.19 Answer.

This section sets forth the time period in which to file an answer and the requirements of the answer. Failure to file a timely answer is deemed to be a waiver of the right to appear and a consent to the entry of an order granting the relief sought by the Agency in the notice. This section makes explicit that, in case of default, the administrative law judge, without any further proceedings, shall file with the Agency Head a recommended decision containing the relief sought in the notice.

Section _____.20 Amended pleadings.

This section provides that the administrative law judge shall freely allow the parties to amend the notice or answer at any stage of the proceeding. Amendments to the notice and answer are not required when issues not raised by the notice or answer are tried at the hearing by express or implied consent of the parties.

Section _____.21 Failure to appear.

A party's failure to appear at a hearing personally or by an authorized representative is deemed a waiver of the right to appear and a consent to the relief sought in the notice. When a party fails to appear, the administrative law judge shall file with the Agency Head a recommended decision containing the findings and the relief sought in the notice, without further proceedings or notice to the respondent.

Section _____.22 Consolidation and severance of actions.

This section allows the consolidation of actions if the proceedings arise out of the same transaction, occurrence or series of transactions or if the proceedings involve at least one common respondent or a material common question of law or fact. Proceedings are not to be consolidated if to do so would unreasonably delay the proceeding or cause significant injustice.

Severance, on the other hand, may be granted by the administrative law judge only if the judge determines that undue prejudice or injustice would result from a consolidated proceeding and if such prejudice or injustice would outweigh the interests of judicial economy and speed in the adjudication of actions. This is a higher standard than is required for the consolidation of actions.

Section _____.23 Motions.

This section generally requires that all motions must be in writing, must state with particularity the relief sought, and must include a proposed order. The Uniform Rules permit supplementary materials such as briefs, written memoranda or other relevant material or documents to be filed in support of a motion. In addition, a party may make oral motions in the course of an adjudicatory proceeding, including any scheduling or prehearing conference, unless the administrative law judge requires that the motion be made in writing. Motions are to be submitted to the administrative law judge prior to the filing of the recommended decision; thereafter, motions are to be filed with the Agency Head.

Unless the administrative law judge or the Agency Head establishes another time period, a party will have ten days after service of a written motion to respond in writing to such motion. A party's failure to respond to a motion shall waive that party's right to oppose such motion and constitute consent to the entry of an order substantially in the form of the order accompanying the motion.

Frivolous or repetitive motions are not permitted and may be cause for sanctions.

Section _____.24 Scope of document discovery.

This section provides for, and sets forth procedures governing, document discovery. Deposition discovery is discussed in the Local Rules.

All discovery, including all responses to discovery requests, must be completed at least 20 days before the scheduled hearing date, unless the Local Rules provide otherwise. Parties may seek all relevant material, including those matters that are reasonably calculated to lead to the discovery of admissible evidence. The Uniform Rules provide, however, that all applicable privileges may be asserted in response to a discovery request.

Section _____.25 Request for document discovery from parties.

The Uniform Rules are modeled on the Federal Rules of Civil Procedure discovery practice in that all document discovery among parties is initiated by requests from the parties, and, except for the resolution of disputes, without the involvement of the administrative law judge. There is no continuing obligation to update responses if the response was complete when made, unless the party subsequently learns that the response was materially incorrect when made or, through intervening events, is no longer correct and a failure to amend the response would be a knowing concealment.

This section provides that, when a discovery request seeks documents covered by applicable privileges, the party asserting the privilege must file a document index of such material. This section also contains procedures governing discovery disputes. In general, such disputes are resolved through motion practice before the administrative law judge. If the administrative law judge issues a subpoena compelling production and a party fails to comply with it, a subpoenaing party, to the extent authorized by law, may seek enforcement of such subpoena in any appropriate United States district court.

Section _____.26 Document subpoenas to nonparties.

Parties may seek document discovery from nonparties through subpoenas issued by the administrative law judge upon the application of a party. Motions to quash or modify document subpoenas are governed by the same rules that apply to document requests by parties set forth in § _____.25(d).

Section _____.27 Deposition of witness unavailable for hearing.

In general, those material witnesses unavailable for hearing may have their testimony taken by deposition upon application to the administrative law judge for a deposition subpoena. The application must state that the witness is unavailable due to age, illness, infirmity or other reason and that the petitioning party was not the cause of the witness's unavailability. The witness and any party may object to the issuance of the subpoena within ten days of service of the subpoena. Unless quashed or modified by the administrative law judge, the subpoena may be enforced in United States district court.

Section _____.28 Interlocutory review.

This section provides for a review by the Agency Head of an administrative law judge's ruling prior to the time when the record is certified to the Agency Head. Review will be granted only on the basis of the specific grounds enumerated in this provision.

A request for interlocutory review must be filed with the administrative law judge within ten days of his or her ruling, and any party may file a response to such a request. The administrative law judge shall refer to the Agency Head for disposition all such requests for interlocutory review together with any responses.

The filing or granting of a request for interlocutory review does not stay the proceedings, unless the administrative law judge or the Agency Head so orders.

Section _____.29 Summary disposition.

Section _____.30 Partial summary disposition.

Any party to a proceeding may file a motion for summary disposition of a proceeding or for a partial summary disposition of a portion of a proceeding if: (1) There is no genuine issue as to any material fact; and (2) the moving party is entitled to a favorable decision as a matter of law. The motion must be accompanied by a statement of the uncontested material facts, a brief, and any documentary evidence in support of the motion. Within 20 days of service of a motion for summary or partial summary disposition, any other party may file his or her opposition to such motion. Parties opposing the motion for summary or partial summary disposition must file with their response a statement of material facts as to which a genuine dispute exists, a brief, and any documentary evidence in support of the opposition.

If the administrative law judge determines that summary disposition is warranted, a recommended decision to that effect is required to be submitted to the Agency Head. If only a portion of the proceeding warrants summary disposition, the administrative law judge will accordingly limit the issues for hearing to the remaining claims, while the issues which warranted summary disposition will be addressed in the administrative law judge's recommended decision filed at the conclusion of the hearing. Thus, the recommended decision of the administrative law judge will set forth both the issues determined by partial summary disposition and those determined after a hearing. This procedure avoids the piecemeal submission of recommended decisions to the Agency Head while encouraging judicial economy by limiting the hearing to those issues as to which there is a genuine controversy.

Section _____.31 Scheduling and prehearing conferences.

A scheduling conference is mandatory under the Uniform Rules. The conference must be held within 30 days of service of the notice or order commencing the proceeding. The purpose of the scheduling conference is to establish the course and conduct of the proceeding. Issues to be discussed at the scheduling conference include the identification of potential witnesses, the time for and the manner of discovery, and the exchange of any prehearing materials including proposed witness lists, statements of issues, stipulations, exhibits and any other documents determined to be appropriate.

Additional prehearing conferences may be held at the discretion of the administrative law judge or at the request of any party. These conferences would occur after the scheduling conference and would address issues such as: simplification and clarification of issues; stipulations, admissions of fact and the contents, authenticity or admissibility of evidence; matters requiring official notice; limitation of the number of witnesses; summary disposition of issues; resolution of discovery issues; amendments to pleadings; and other matters.

The presence of a court reporter at the scheduling conference or at any prehearing conference is within the discretion of the administrative law judge. Within a reasonable time following the conclusion of the scheduling or prehearing conference, the administrative law judge is required to serve on each party an order setting forth any procedural determinations and agreements made at the conference.

Section _____.32 Prehearing submissions.

No later than 14 days prior to the start of the hearing, each party is required to serve on every other party the following documents: A prehearing statement; a final list of witnesses to be called to testify that includes a description of the expected testimony of each witness; and a list of prehearing exhibits along with a copy of each such exhibit and stipulations of fact, if any. The failure of a party to comply with this provision will preclude that party from presenting its witnesses or exhibits at the hearing, except for good cause shown.

Section _____.33 Public hearings.

The proposed provision that hearings will be public rather than private unless otherwise determined by the Agency implements a statutory requirement established by the "Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990" ("Fraud Prosecution Act"), Title XXV of the Crime Control Act of 1990, Public Law 101-647, 104 Stat. 4789. Within 20 days of service of the notice, any respondent may file with the Agency Head a request for a private hearing, and any party may file a response to such a request. Failure to file such a request or response will preclude the raising of further objections on the issue of whether the hearing is public or private. The proposed section also implements a provision of the Fraud Prosecution Act by specifying that the Agency through its Enforcement Counsel may file under seal any document or any portion thereof, and that the administrative law judge will take all actions necessary to protect the confidentiality of such documents.

Section _____.34 Hearing subpoenas.

A party may obtain a hearing subpoena at any time after the commencement of a proceeding, including during a hearing, so long as the testimony sought is relevant and reasonable. Once the administrative law judge has issued a subpoena pursuant to this section, only the subpoenaed person may move to quash or limit it. If a person fails to comply with a hearing subpoena, the subpoenaing party may, to the extent authorized by law, seek enforcement of the subpoena in any appropriate United States district court.

Section _____.35 Conduct of hearings.

This section provides general rules for the conduct of hearings, the admissibility of stipulations, and the order in which the parties are to present their cases.

Section _____.36 Evidence.

This section states that evidence that is relevant, material, reliable, and not unduly repetitive shall be admissible to the fullest extent authorized by the APA and other applicable law. Evidence which is admissible under the Federal Rules of Evidence is admissible in a formal proceeding governed by the Uniform Rules; however, evidence need not meet the standards of the Federal Rules to be admissible, as long as it is relevant, material, reliable and not unduly repetitive.

Official notice may be taken of any material fact which may be judicially noticed by a United States district court or which appears in the official public records of any Federal or state government agency. Unless there is a genuine material issue raised about the veracity and legibility of a document, duplicates may be used to the same extent as originals.

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Subject to the general standards for admissibility, any document prepared by the appropriate Agency or state regulatory agency is admissible with or without a sponsoring witness. Such documents include a report of supervisory activity, examination, inspection or visitation. In the event that a witness is unavailable to testify in a hearing, a party may offer into evidence that witness's prior deposition testimony if all parties to the proceeding had notice and an opportunity to attend such deposition. Such deposition testimony is subject to the same standard of admissibility as other evidence.

Objections to the admissibility of evidence must be timely made. All rulings on objections shall appear on the record. A failure to object to the admission of evidence shall constitute a waiver of the objection.

Section ____.37 Proposed findings and conclusions.

Section ____.38 Recommended decision and filing of record.

Section ____.39 Exceptions to recommended decision.

Section ____.40 Review by Agency Head.

Section ____.41 Stays pending judicial review.

These sections reflect no significant departures from the existing regulations of the Agencies.

Proposed findings and conclusions and any supporting briefs are to be submitted within 30 days after the transcript has been filed with the administrative law judge. Reply briefs are to be filed within 15 days thereafter.

Within 45 days of the time for filing reply briefs, the administrative law judge is to file with the Agency Head the record of the proceeding, including the recommended decision, findings of fact, conclusions of law, and proposed order.

The administrative law judge is also required to serve upon each party the recommended decision, findings, conclusions and proposed order. Any exceptions to the administrative law judge's recommendations are to be filed within 30 days after service of those recommendations.

The Agency Head will render its final decision within 90 days after it has notified the parties that the case has been submitted for final decision or after oral argument is held, whichever is later, unless the Agency Head remands the case to the administrative law judge for further proceedings.

E. Subpart-by-Subpart Summary and Discussion of Local Rules

1. OCC Local Rules

The Uniform Rules of administrative procedure in subpart A generally replace the procedures governing formal adjudications in 12 CFR part 19, subparts A–J. The OCC's Local Rules replace the procedures in subparts K–O of part 19 concerning certain formal and informal adjudications, practice before the OCC, and formal investigations. The text of subparts C, D, E, J, and K corresponds to the text of subparts K, M, L, N, and O, respectively, in the current part 19. In the event of inconsistency with the provisions of subpart A, the Local Rules will govern. The Local Rules also provide additional rules applicable to formal adjudications, discovery depositions, and other document filing with the OCC.

Subpart B—Filings With the Comptroller

This is a new provision which incorporates the procedures found in § 19.11. All materials to be filed with or referred to the Comptroller or the administrative law judge under part 19 are to be filed with the Hearing Clerk. This does not include requests for document discovery or responses to such requests because these documents are not required to be filed with the administrative law judge or the Comptroller. However, motions to limit discovery or to compel production would be filed with the Hearing Clerk because these documents are to be filed with the administrative law judge.

Subpart C—Removals, Suspensions, and Prohibitions When a Crime is Charged or a Conviction is Obtained

This subpart applies to informal hearings afforded an institution-affiliated party who has been suspended or removed from office or prohibited from further participation in bank affairs by the Comptroller. The text of this subpart corresponds to the text of the existing subpart K, which has been incorporated into this subpart with the following changes:

a. The decisional authority of the presiding officer in § 19.113 has been revised to indicate that the officer shall issue a "recommended" decision instead of an "initial" decision. The proceedings in this subpart are informal in nature and not by statute subject to the Uniform Rules or the APA; however, in this instance, the OCC's informal procedures have been set up to parallel the Uniform Rules, which require the presiding officer to issue a recommended decision.

b. The term "OCC's interested division" is replaced with "OCC's Enforcement and Compliance Division".

c. Appropriate references to the Uniform Rules are incorporated into this subpart.

Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

This subpart applies to informal hearings that may be held by the Comptroller, pursuant to the authority of the Securities Exchange Act of 1934, to grant certain exemptions from the securities laws. The text of this subpart corresponds to the text of the existing subpart M, which has been incorporated into this subpart with only minor changes. As in the preceding subpart, these include the revision of the authority of the presiding officer to issue a "recommended" decision and the incorporation of appropriate references to the Uniform Rules.

Subpart E—Disciplinary Proceedings Involving the Federal Securities Laws

This subpart governs formal adjudications pursuant to the authority of the Exchange Act to take disciplinary actions against banks acting as, associated with, or seeking to become associated with a municipal securities dealer, a government securities broker or dealer, or a transfer agent.

The text of this subpart corresponds to the text of the existing subpart L, which has been incorporated into this subpart with only minor changes. The proceedings shall be instituted on a public basis. Pursuant to § 19.33 of subpart A, a request for a private hearing may be filed within 20 days of service of the notice of assessment. Except as provided in this subpart, the Uniform Rules in subpart A will apply to these proceedings.

Subpart F—Civil Money Penalty Authority under the Securities Laws

This subpart governs formal adjudications pursuant to the authority of section 21B of the Exchange Act (15 U.S.C. 78u–2), as added by section 202 of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Pub. L. 101–429). These provisions provide for the issuance of civil money penalties against banks acting as, associated with, or seeking to become associated with a municipal securities dealer, a government securities broker or dealer, or a transfer agent.

The provisions of subpart A are applicable to these proceedings. The proceedings shall be instituted on a public basis. Pursuant to § 19.33 of subpart A, a request for a private hearing may be filed within 20 days of service of the notice of assessment.

Subpart G—Cease-and-Desist Authority Under the Securities Laws

This subpart governs informal adjudications pursuant to the authority of section 21C of the Exchange Act (15 U.S.C. 78u–3), as added by section 203 of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Pub. L. 101–429). These provisions provide for the issuance of cease-and-desist proceedings against a bank for violation of certain provisions of the Exchange Act.

These proceedings are not "required by statute to be determined on the record after opportunity for an agency hearing," and thus are not "formal" adjudications subject to the APA. See 5 U.S.C. 554(a). The OCC has determined, however, that these proceedings should be conducted in a manner comparable to a formal adjudication to afford affected parties with the full procedures of the APA.

The Senate report accompanying the legislation appears to contemplate that the procedures governing these proceedings would be similar to the procedures for a formal adjudication. The report calls for a hearing before an administrative law judge and compares these proceedings to the formal cease-and-desist proceedings under the banking laws (12 U.S.C. 1818(b)):

> Before the SEC may issue a permanent order, the SEC must provide a respondent with notice and opportunity for a hearing. A hearing before an administrative law judge must be set to commence no earlier than thirty days and no later than sixty days after issuance of the notice, unless the respondent consented to an earlier or later date. A respondent has the right to appeal an adverse decision by an administrative law judge to the full SEC, which considers the evidence *de novo*, the same right that respondents currently have in other SEC administrative proceedings. If the SEC affirms on appeal, the entry of a permanent cease-and-desist order may be appealed to a U.S. court of appeals in the same way as any other SEC order entered under the securities laws. This procedure is similar to that provided under the Federal Deposit Insurance Act with respect to FDIC cease-and-desist proceedings.

S. Rpt. No. 101–337, 101st Cong., 2d Sess. 19 (1990). See also H.R. Rep. No. 101–616, 101st Cong., 2d Sess. 24–25 (1990).

This subpart provides, therefore, that the provisions for formal adjudications in subpart A are applicable to these proceedings. The proceedings shall be commenced on a public basis. Pursuant to § 19.33 of subpart A, a request for a private hearing may be filed within 20 days of service of the notice of charges.

Subpart H—Change in Bank Control

This subpart governs formal adjudications under section 7(j) of the FDIA (12 U.S.C. 1817(j)) concerning the review of a determination by the Comptroller disapproving an application to acquire control of a national bank.

Upon the issuance of the OCC's written disapproval of a change-in-control application, the applicant may file a written request for a hearing within ten days after service of the notice of disapproval. To preserve the applicant's right to a hearing, an answer must also be filed within 20 days of the date of the notice, specifically denying those portions of the notice which are disputed. Failure to file a timely request for hearing or answer shall constitute a waiver of the opportunity for a hearing. In such a case, the notice of disapproval shall constitute a final and unappealable order.

As provided in § 19.16(a)(2) of subpart A, change-in-control proceedings shall commence with the issuance of an order by the Comptroller. This hearing order shall set forth the OCC's jurisdictional authority over the proceeding and shall address the applicant's request for hearing. Except as provided in this subpart, the Uniform Rules in subpart A will apply to these proceedings.

Subpart I—Discovery Depositions and Subpoenas

Discovery Depositions. This subpart provides that a party may take the deposition of an expert or of another person, including another party, who has direct knowledge of matters that are non-privileged, relevant, and material to the proceeding and where there is a need for the deposition. While permitting the depositions of experts and persons having direct knowledge of the matters at issue in a proceeding, this provision is not intended to allow unlimited deposition discovery or the taking of senior Agency officials' depositions, unless those individuals have direct knowledge about the facts of the case. Rather, it is intended to permit limited deposition discovery of experts and persons having direct knowledge of the facts who may be called on to testify at the administrative hearing.

Prior to taking a deposition, a party must give notice in writing to every other party to the proceeding. All discovery depositions must be completed within ten days of the scheduled hearing date, except with the permission of the administrative law judge for good cause shown.

During a deposition, each party shall have the right to examine the witness with respect to all non-privileged, relevant, and material matters. Failure to object to questions or exhibits shall not be deemed a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented.

At any time after a party receives notice of a deposition, that party may file a motion for a protective order prohibiting, terminating, or limiting the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition: is unreasonable, oppressive, excessive in scope, or unduly burdensome; involves privileged, irrelevant, or immaterial matters; involves unwarranted attempts to pry into a party's preparation for trial; or is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the witness.

Deposition Subpoenas. This subpart also provides that at the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The party requesting the subpoena is responsible for serving it on the person named therein, or on that person's counsel. The person named in the subpoena may file a motion to quash or modify the subpoena within the time for compliance set forth in the subpoena, but in no case later than ten days after the date of service. If the subpoena is served within 15 days of the hearing, the person named in the subpoena must file a motion to quash or modify the subpoena within five days after the date of service.

Subpart J—Formal Investigations

This subpart and the conflict of interest provision of the Uniform Rules (§ 19.8 of subpart A) shall apply to formal investigations initiated by order of the Comptroller or the Comptroller's delegate, pursuant to the authority of the banking laws and the Exchange Act. The text of this subpart corresponds to the text of the existing subpart N, which has been incorporated into this subpart with minor modifications to reference the Uniform Rules.

Subpart K—Parties and Representational Practice Before the OCC: Standards of Conduct

This subpart sets forth rules relating to parties and representational practice before the OCC, including the imposition of disciplinary sanctions against individuals who appear before the OCC in a representational capacity in an adjudicatory proceeding under this part

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or in other matters relating to a client's rights, privileges, or liabilities. The text of this subpart corresponds to the text of the existing subpart Q, which has been incorporated into this subpart with minor modifications to reference the Uniform Rules and to clarify the scope of the proceedings.

Subpart L—Equal Access to Justice Act

This subpart references the regulations governing Equal Access to Justice claims with respect to OCC formal adjudicatory proceedings.

2. Board of Governors Local Rules

In addition to the amendments to part 263 effected by the Uniform Rules, the Board of Governors (or "Board" in the Local Rules) proposes to make complementary amendments to part 263 which supplement the Uniform Rules (proposed subpart B), readopt portions of the current part 263 (proposed subparts C, D and E) and add new procedures to the Board's rules of practice (proposed subparts F and G).

Subpart B—Board of Governors Local Rules Supplementing the Uniform Rules

This subpart B adopts the Uniform Rules for all formal adjudications conducted by the Board, including the use of the Office of Financial Institution Adjudication in all formal proceedings. Proposed subpart B also supplements the Uniform Rules by providing for issues specific to the Board, such as definitions and addresses for filing papers and documents with the Board.

This subpart also includes amendments to the Board's rules for discovery by deposition in formal adjudicatory proceedings. In brief, the Board proposes that a party may depose an individual with knowledge of facts material and relevant to the underlying proceeding, who, in most cases, would be a prospective witness in a hearing. A party seeking to take a deposition must apply to the administrative law judge for the issuance of a subpoena, and any party may oppose such a request. Should a subpoena be issued, the person named in the subpoena may seek to have the subpoena quashed or modified. Any party or the deponent may also seek a protective order to guard against abusive or burdensome depositions. The Board believes that the judicious use of depositions of prospective witnesses will enhance the discovery process and will lead to the satisfactory settlement of actions before commencement of the hearing. The administrative law judge has the plenary authority to control the conduct of administrative proceedings, including discovery, and it is expected that such authority will be exercised to ensure that discovery depositions are used properly and not for harassment or delay.

Subpart C—Procedures for Assessment of Civil Money Penalties

This proposed subpart adopts certain provisions of existing subpart B relating to the opportunity for informal proceedings and the relevant considerations in assessing fines. This subpart also provides that the Board, in any final order of assessment, may set the penalty at an amount that differs from that established in a notice of assessment.

Subpart D—Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony is Charged or Proven

Except for minor changes noted below, this subpart, which governs suspension and removals under section 8(g) of the FDIA (12 U.S.C. 1818(g)), is readopted from the current part 263. Proposed subpart D has been modified by replacing the term "bank official" with the term "institution-affiliated party."

Subpart E—Procedures for Issuance and Enforcement of Directives to Maintain Adequate Capital

Proposed subpart E implements the capital directive provisions of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*). Subpart E is readopted from the current Part 263, except that it eliminates the now-moot requirement found in current § 263.38(e) and amends the references to the now-applicable Capital Adequacy Guidelines of the Board of Governors.

Subpart F—Practice Before the Board

This subpart contains provisions for the discipline of practitioners before the Board supplementing the proceeding-specific sanctions contained in subpart A. This subpart represents a significant expansion of the Board's existing rules regarding practice before the Board now set forth in § 263.3(b). The proposed rule defines practice broadly to include not only the representation of parties in administrative enforcement proceedings, but the representation of parties in the Board's application and licensing process.

The proposed rule authorizes the Board to censure, suspend or debar an individual from practice before the Board under specified circumstances. For example, the Board could take disciplinary actions against a practitioner if such person engaged in conduct set forth in § 263.94, refused to comply with the procedures set forth in part 263, or willfully or knowingly deceived or misled any client. The kind of conduct set forth in § 263.94 that could give rise to a disciplinary proceeding include willful violations of Federal banking laws, knowingly giving false or misleading information to the Board or any member of the Board's staff, disbarment or suspension from practice as an attorney or accountant by the appropriate authority based on a criminal conviction, or suspension or debarment of practice before the other agencies, or the Securities and Exchange Commission.

Under proposed § 263.95, the Board, at its option, may act upon information that could form the basis of a disciplinary proceeding. The Board may, without any further proceeding, censure the individual involved in the misconduct. The Board may, after giving the individual notice and an opportunity to respond, initiate a formal proceeding, which, in most cases, will be private. Under proposed § 263.96, an individual charged with misconduct may choose to forgo his or her right to a hearing and voluntarily agree to a suspension or debarment.

Proposed § 263.96 sets forth the effect of the various types of disciplinary orders that the Board may issue. A person who has been debarred cannot practice before the Board unless the individual is otherwise permitted by the Board. Suspension orders are effective for a defined term, during which the suspended person cannot practice before the Board. A censure order will not bar an individual from practice before the Board, although such practice must conform to any conditions imposed by the Board. The Board will grant a petition for reinstatement from any debarred person only when the Board finds that the petitioner will act in accordance with the appropriate standards of conduct and that reinstatement is not contrary to the public interest. Section 263.99 provides that a request for reinstatement will be limited to written submissions unless the Board orders an informal hearing.

These proposed rules, while new to the Board, resemble rules that have been adopted in varying forms by the other banking agencies and by other Federal agencies. The Board contemplates applying these disciplinary sanctions only in egregious cases of misconduct in practice before the Board, and after the practitioner has had an opportunity for a formal hearing.

Subpart C—Rules Regarding Claims Under the Equal Access to Justice Act

This subpart implements the provisions of the Equal Access to Justice Act, 5 U.S.C. 504. The proposed regulation establishes eligibility standards for an award, the required contents of an application for an award, including the required statement of net worth, standards for the reasonableness of claimed fees, and procedures for adjudicating an application for an award.

3. FDIC Local Rules

Subpart B—General Rules of Procedure

Section 308.100, "Definitions", defines the term "Board of Directors" and "designee" of the Board of Directors ("Board"). The term "designee of the Board of Directors" means officers or officials of the FDIC who have been delegated authority to act on behalf of the Board under section 303 of the FDIC's regulations, or by separate resolution of the Board. The term "Executive Secretary", pertaining to the Executive Secretary of the FDIC, is defined to include his or her designee. The definitions of these terms apply to their use in subpart A of part 308, which incorporates the Uniform Rules, and subparts B through P of part 308.

Section 308.101, "Scope of Local Rules," makes clear that the rules contained in subpart A, "Uniform Rules", and subpart B, "General Rules of Procedure", of part 308 do not apply to subparts D through P of part 308 unless specifically provided. Subpart C, "Rules of Practice Before the FDIC and Standards of Conduct" shall apply to any proceeding initiated by the FDIC under part 308.

Section 308.102, "Authority of Board of Directors and Executive Secretary", makes explicit that the Board may perform, direct the performance of, or waive the performance of any act which could be done or ordered by the Executive Secretary. This is in addition to the power to do such with regard to any act that could be performed by the administrative law judge. The rule provides that the Executive Secretary shall have the ability to act in place of the administrative law judge but may not hear a case on the merits or make a recommended decision.

Section 308.103, "Appointment of administrative law judge", contains the procedures by which the appointment of an administrative law judge will be accomplished. It provides that all hearings within the scope of part 308 shall be held before an administrative law judge of OFIA unless the Board directs otherwise, or unless the Local Rules specifically provide to the contrary. The Executive Secretary shall immediately upon the issuance of a Notice, refer a proceeding to OFIA for the appointment of the administrative law judge. OFIA shall then advise the parties when a judge has been appointed. This differs from current practice insofar as an administrative law judge is not now appointed until after a respondent requests a hearing. It also reflects the establishment of OFIA as the appointing body rather than the Executive Secretary.

Sections 308.104 and 308.105 address housekeeping matters concerning maintenance of the record and the filing of papers. Section 308.104, "Filing with the Board of Directors", makes clear that any papers required to be filed with the Board should be filed with the Executive Secretary at the stated address. Such filings include the record in the case which is to be filed with the Executive Secretary following the issuance of a recommended decision; the recommended decision filed by the administrative law judge after a motion for summary disposition; referrals by the administrative law judge to the Board for interlocutory review; motions filed by the parties after the record has been certified to the Board; exceptions and requests for oral argument; and any other papers required to be filed with the Board under part 308. This reflects the approach stated in § 308.105 that the Executive Secretary will be the official custodian of the record in a case, except when the administrative law judge has jurisdiction over the case.

Section 308.105, "Custodian of the record", makes clear that the Executive Secretary is the official custodian of the record at all times during which the administrative law judge does not have jurisdiction in the case.

Section 308.106, "Written testimony in lieu of oral hearing", preserves current practice at the FDIC, which authorizes hearings in which most, or all, of the direct testimony is presented in written form. Absent objection by a party, the administrative law judge may order that the parties present their cases in chief and rebuttal in the form of exhibits and written statements sworn to by the witness offering the evidence. Any such order shall also allow any party to call adverse witnesses or parties to testify orally, and shall provide for a right to cross examination. Written testimony on direct, exhibits, and rebuttal are to be simultaneously submitted by the parties. The failure of any party to submit written testimony pursuant to such an order is deemed to be a waiver of that party's right to present evidence, except the testimony of a previously identified hostile witness or adverse party. A party's failure to present rebuttal evidence in written form, if not so specifically ordered, is not waived by that party's failure to file written testimony. Late filings may be allowed and accepted only for good cause shown.

Section 308.107, "Document discovery", provides that unless expressly provided in specific subparts, discovery may be had only through the production of documents, and no other form of discovery shall be allowed. Questioning of persons providing documents pursuant to a subpoena shall be limited to the identification of such documents and a reasonable examination as to whether such person conducted an adequate search for and produced all subpoenaed documents. This is the current practice of the FDIC.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

Section 308.106, "Sanctions," is included in revised subpart C to make clear that administrative law judges and the Board of Directors have authority to effectively deal with the significant problem of parties and their counsel failing to comply with the requirements of part 308 and/or with orders. Under § 308.106(a), sanctions may be imposed when any counsel or party has acted in a manner contrary to any applicable statute, regulation, or order, and the party's or counsel's conduct is contemptuous or has materially injured or prejudiced some other party.

Sanctions imposed in accordance with § 308.106(b) may include one or more of the following: (1) Issuing an order against the party; (2) striking any testimony, rejecting any documentary evidence offered, or striking papers filed by the party; (3) precluding the party from contesting specific issues; (4) precluding the party from challenging certain evidence offered by another party; (5) refusing a late filing or conditioning acceptance of a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by the other party as a result of the offending party's improper action or inaction.

Under § 308.106(c), dismissal of an action as a sanction for the failure to hold a hearing within the time period specified in part 308 or based upon the failure of an administrative law judge to render a recommended decision within the time period specified in Part 308 may only be granted if the delay is solely the result of the conduct of the FDIC enforcement counsel, that conduct is unexcused, the moving respondent took

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all reasonable steps to oppose and prevent the delay, the respondent has been materially prejudiced or injured, and no lesser or different sanction is adequate.

Paragraph (d) of § 308.106 sets out the general procedure for the imposition of sanctions. The administrative law judge may impose sanctions on his or her own motion or at the request of any party. Prior to their imposition, all sanctions, except the refusal to accept late papers, require notice to the parties and opportunity for counsel or the party against whom sanctions would be imposed to be heard. The form that the opportunity to be heard shall take is largely left to the discretion of the administrative law judge. For example, the opportunity to be heard may be limited to an oral response immediately after the violative action or inaction is noted by the administrative law judge. Requests for, and the imposition of, sanctions are to be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge, i.e., in accordance with § 308.28 of the Uniform Rules.

Section 308.109, "Suspension and Disbarment," authorizes summary suspension from practice in a particular FDIC matter based upon contemptuous conduct in that matter. Section 308.109 of the proposed regulations provides for mandatory and automatic suspension and disbarment of attorneys under certain circumstances and gives the Board of Directors discretion to suspend and disbar under other circumstances.

Under § 308.109(a), the Board of Directors has the power to suspend or revoke an attorney's privilege of practicing before the FDIC based not only on a finding by the Board of Directors that the attorney engaged in contemptuous conduct before the agency, but also upon a finding that the attorney does not possess the requisite qualifications to represent others, is seriously lacking in integrity or has engaged in material unethical or improper professional conduct, or has engaged in or aided another in engaging in a material and knowing violation of the FDIA. The Board may suspend or revoke the privilege to practice before the FDIC on these grounds only after notice of and opportunity for a hearing.

Once suspended or disbarred from practice before the FDIC by the Board pursuant to § 308.109(a), a counsel may not make an application for reinstatement for at least three years, and thereafter may make a new request for reinstatement no sooner than one year after the counsel's most recent reinstatement application. A counsel may be reinstated by the Board for good cause shown.

Under § 308.109(b) a party's counsel is automatically suspended or disbarred if he or she is suspended or disbarred by any court of the United States or by the OCC, the Board of Governors, the OTS, the Securities and Exchange Commission, or the Commodity Futures Trading Commission. A person who has within the past ten years been convicted of a felony, or of a misdemeanor involving moral turpitude, is also automatically suspended from practicing before the FDIC.

Reinstatement after a suspension or disbarment under § 308.109(b) may be made by the Executive Secretary if all grounds for suspension are subsequently removed by a reversal of the conviction or termination of the underlying suspension or disbarment. An application for reinstatement under § 308.109(b) on any other grounds may be filed at any time not less than one year after the applicant's most recent application. Until the Board has reinstated the applicant for good cause shown, the suspension shall continue.

An applicant for reinstatement under either the discretionary or mandatory suspension and disbarment provisions may, in the Board's sole discretion, be afforded a hearing. Hearings conducted pursuant to this section shall be handled in the same manner as other hearings under this subpart C, except that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination shall bear the burden of going forward with the application and with proof, and provided that the Board of Directors may limit any such hearings to written submissions.

Finally, § 308.109(d) of the proposed regulations provides that any counsel found in contempt by the administrative law judge may be summarily suspended from participation in that proceeding.

Preamble to Subparts D–P

Subparts D–P contain rules and procedures that govern specific types of formal and informal proceedings conducted by the FDIC. Generally, revisions made to these subparts are either clarifying in nature or were made to conform the subparts to, or avoid overlaps with, the Uniform Rules.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

Subpart D governs proceedings in connection with the disapproval of a proposed acquisition of control of an insured nonmember bank. Various changes made to subpart D were made to make this subpart consistent with the Uniform Rules. A new section, § 308.114, was added to this subpart on procedures relating to disapproval of acquisition of control. That section provides that the person proposing to acquire control of an insured depository institution shall bear the ultimate burden of persuasion and that the FDIC has the burden of going forward with a *prima facie* case. This accords with section 556(d) of the APA (5 U.S.C. 556(d)), which states "Except as otherwise provided by statute, the proponent of the rule or order has the burden of proof." Courts have interpreted this section as imposing the burden of proof in licensing or applications cases upon the applicant. *See Savage* v. *Commodities Futures Trading Commission*, 548 F.2d 102 (7th Cir. 1977). The FDIC has adopted this position in *In the Matter of Peder D. Sletteland*, 2 P–H FDIC Enf. Dec. & Ord. ¶ 5152, at p. A–1518.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Assessments of Civil Penalties for Willful Violations of the Change in Bank Control Act

Subpart E governs proceedings relating to assessments of civil penalties for willful violations of the Change in Bank Control Act. This subpart has been revised in order to comply with the changes to these provisions made by FIRREA and to make this subpart consistent with the Uniform Rules.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

Subpart F governs proceedings for the involuntary termination of insured status. This type of action is to be conducted according to the Uniform Rules. Similar to the preceding subparts, this subpart has been changed to make the provisions conform with the changes to the FDIA made by FIRREA. This includes changing the time frames to correspond with those of FIRREA, substituting the term, "insured depository institution," for that of "insured bank" and describing the notification to primary regulator and the notice of intent to terminate insured status.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

Subpart G governs proceedings relating to cease-and-desist orders. The changes in subpart G were made for purposes of clarity and to make changes to the provisions as mandated by the amendments to the FDIA made by FIRREA.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders and of Certain Federal Statutes

Subpart H governs proceedings relating to assessment and collections of civil money penalties for the violation of cease-and-desist orders and of certain Federal statutes. Several sections of old subpart H have been deleted as being redundant with provisions of the Uniform Rules and other provisions, including those concerning call report penalties, have been added to reflect the changes made by FIRREA.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

Subpart I governs procedures for the imposition of sanctions upon municipal securities dealers or persons associated with them and clearing agencies or transfer agents. There have been minor modifications made in this subpart in order to make the provisions herein consistent with the Uniform Rules.

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

Subpart J governs exemption proceedings under section 12(h) of the Exchange Act. Like subpart J, there have been minor structural changes in order to make these provisions consistent with the Uniform Rules.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

Subpart K governs procedures applicable to investigations pursuant to section 10(c) of the FDIA. The provisions are designed to spell out the scope of the FDIC's authority under 10(c) of the FDIA to conduct investigations of both open and failed insured banks, institutions making applications to become insured banks, and any other types of investigations. The provisions make specific certain of the procedures to be used during such investigations.

Section 308.144, "Scope," indicates that the FDIC's investigatory power under section 10(c) of the FDIA extends to both open and failed insured banks.

Section 308.145, "Order to conduct investigation," has been modified to state that persons authorized to issue orders of investigation are set forth in part 303. The order of investigation indicates the purpose of the investigation and that the persons who authorized the investigation terminate it upon completion.

Section 308.146, "Powers of Person Conducting Investigation," spells out the Board's authority to summarily suspend for contemptuous conduct any counsel representing a witness during the investigation. This section also has made explicit that the person conducting the investigation may obtain assistance from others both within and outside the FDIC.

Section 308.148, "Rights of Witnesses," spells out that a witness is to be furnished with a copy of the order of investigation if the witness so requests.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the FDIA

Subpart L governs proceedings for the disapproval of candidates for senior executive officer and director. Modifications in this subpart include re-designating the appeal procedures in §§ 308.153 and 308.154 and labeling them "request for review," as well as making these provisions consistent with the Uniform Rules. Under § 308.155, an applicant is given an opportunity for an oral hearing. The hearing is conceived as an informal proceeding where a presiding officer determines whether to allow the presentation of witnesses. No discovery is permitted; however, an applicant may introduce relevant and material documents on the record. Like the provisions on change-in-control proceedings in subpart D, the ultimate burden of persuasion in § 308.155(b) is imposed upon the candidate for director or senior executive officer for the same rationale, and the FDIC has the burden of going forward with its *prima facie* case.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

Subpart M governs proceedings for applications under section 19 of the FDIA. This subpart has been revised in order to comply with the changes to section 19 made by FIRREA and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, and to make this subpart consistent with the Uniform Rules. Section 308.158(b) of subpart M permits the filing of a section 19 application at any time more than one year after the issuance of a decision denying an application filed pursuant to section 19. Under § 308.160, an applicant is given an opportunity for an oral hearing. The hearing is conceived as an informal proceeding where a presiding officer determines whether to allow the presentation of witness. No discovery is permitted; however, an applicant may introduce relevant and material documents on the record. Like the provisions for the change-in-control proceedings and the procedures for section 32 of the FDIA, the burden of proof in § 308.160(b) has been shifted to the applicant, and the FDIC has the burden of going forward with its *prima facie* case.

Subpart N—Rules and Procedures Applicable to Proceeding Relating to Suspension, Removal, and Prohibition Where a Felony is Charged

Subpart N governs proceedings for suspension, removal, and prohibition pursuant to section 8(g) of the FDIA where a felony is charged. The changes in subpart N were made for purposes of clarity and to make changes to the provisions as mandated by the amendments to the FDIA made by FIRREA. Consistent with other proceedings in which a presiding officer makes recommended decisions to the Board of Directors, there is no discovery in proceedings conducted under this subpart.

Subpart O—Liability of Commonly-Controlled Depository Institutions

Subpart O is a new subpart of part 308 and governs proceedings pertaining to section 5(e) of the FDIA. The procedures set forth herein reflect those that have been used by the FDIC under current part 308 since the passage of section 5(e) of the FDIA.

Section 308.165, "Scope", states that, in addition to the procedures set forth in this subpart, the procedures in subpart B shall apply to proceedings in connection with the assessment of cross guaranty liability against commonly-controlled institutions. Section 308.166, "Grounds for assessment of liability", restates the statutory requirements for the assessment of liability.

Section 308.167, "Notice of Assessment of Liability", sets forth the matters that must be contained in the Notice of Assessment of Liability, including the basis for the FDIC's jurisdiction; a statement of the FDIC's good faith estimate of the amount of loss that it has incurred or anticipates incurring; a statement of the method used to calculate such loss; a proposed order directing the payment by the liable institution of the amount of loss and the schedule under which the payment will be due; and, in cases in which more than

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one liable institution is involved, each institution's share of the liability. Furthermore, the Notice must advise the liable institution(s) that an answer and a request for a hearing must be filed within 20 days of the service of the Notice, and that failure to timely file both an answer and request a hearing will render the Notice of Assessment a final and unappealable order. Finally, the Notice must state that, if a hearing is requested, such hearing will be held 120 days after service of the Notice in the judicial district where the liable institution is located; or in cases involving more than one liable institution, the hearing will be held in the judicial district in which at least one of the institutions is found.

Section 308.100, "Effective date of and payment under an order to pay", makes clear that the payment of the assessed amount shall be due on or before the 21st day after service of the Notice of Assessment in accordance with the terms and schedule set forth therein. Where any Order to Pay has become final and unappealable by reason of default under § 308.19(d)—which provides that failure to both file an answer and request a hearing within the time limits provided by this subpart shall render the Notice of Assessment final and unappealable—payment shall automatically be deemed to have become due and payable upon service of the Order to Pay, or as otherwise stated therein. All payments collected under section 5(e) of the FDIA are to be paid to the FDIC.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

Subpart P governs proceedings relating to the recovery of attorney fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. 504. The revisions to this subpart are minor and are made to make this subpart conform to the Uniform Rules.

Regulatory Factors

Part 308 was selected for review under FDIC's Regulation Review Program (see 50 FR 14247, April 22, 1985). This revised part 308 is a result of the review conducted.

4. OTS Local Rules

In addition to the uniform hearing rules proposed today, OTS proposes additional procedures and rules of practice for OTS adjudicatory proceedings. These include applying the uniform rules to OTS-specific proceedings (§ 509.100), allowing the use of depositions in discovery (§ 509.102), providing further clarification for the assessment and collection of civil money penalties (§ 509.103) and providing further procedural guidance (§ 509.104). OTS is also proposing several conforming amendments to modify cross references and to delete nonexistent terms.

Section 509.100 Scope

The three types of proceedings added by this provision are currently covered by part 509; however, they are not proceedings common to four of the five agencies and did not qualify for inclusion in the uniform rules. Accordingly, they are listed in the OTS scope.

Section 509.101 Appointment of OFIA.

Currently, OTS does not employ its own administrative law judges and must borrow such judges from other federal agencies pursuant to the requirements of the Office of Personnel Management. Section 916 of FIRREA also requires the five federal regulatory agencies to jointly create a pool of administrative law judges. Creation of the Office of Financial Institution Adjudication implements this portion of FIRREA. As the time frame for creation of OFIA is the same as for the promulgation of the Uniform Rules, modification of OTS procedures to reflect OFIA is appropriate.

Section 509.102 Deposition Discovery.

OTS proposes to change its procedures to permit the use of depositions in discovery in certain situations. This section provides that a party may take the deposition of an expert or another person, including another party, who has direct knowledge of matters that are non-privileged, relevant and material to the proceeding. The scope of the questioning is limited to those matters that the witness has factual, direct and personal knowledge. Depositions of experts are limited to those experts who will testify at the hearing.

These standards for depositions are intentionally narrower than those provided in Rule 26 of the Federal Rules of Civil Procedure. The use of depositions in discovery pursuant to this section is not intended to reach persons whose testimony may lead to discoverable information or material. In this manner the proposed rule is significantly more restrictive than the Federal Rules of Civil Procedure.

In addition, this limitation is intended to discourage attempts to depose Agency personnel who have no direct, factual knowledge of a proceeding. This means that those Agency employees who have not participated directly or personally in the examination process or direct supervision of savings associations would not qualify under the scope limitation unless they are substantially and materially involved. This means that the senior management officials of the Agency, including, but not limited to, the Director, the Chief Counsel, the Deputy Director for Washington Operations, the Deputy Director for Regional Operations, and Regional and District Directors of OTS or persons in equivalent or similar positions are not considered relevant or material witnesses for deposition discovery purposes. By limiting deposition discovery in this manner, OTS believes that it will serve the interests of justice without unduly handicapping its ability to conduct the business of the agency.

The procedures for deposition discovery require a party, prior to taking a deposition, to give notice in writing to the deponent and to every other party to the proceeding. All discovery depositions must be completed within ten days of the scheduled hearing date, except with the permission of the administrative law judge for good cause shown.

During a deposition, each party shall have the right to examine the witness with respect to all non-privileged, relevant, and material matters for which the witness has factual, direct and personal knowledge. Failure to object to questions or exhibits shall not be deemed a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented.

At any time after a party receives notice of a deposition, that party may file a motion for a protective order prohibiting, terminating, or limiting the scope of manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition: is unreasonable, oppressive, excessive in scope, or unduly burdensome; involves privileged, investigatory, trial preparation, irrelevant or immaterial matters; or is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the witness.

The section also provides that at the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The party requesting the subpoena is responsible for serving it on the person named therein, or on that person's counsel. The person named in the subpoena or a party may file a motion to quash or modify the subpoena within the time for compliance set forth in the subpoena, but in no case later than ten days after the date of service. If the subpoena is served within 25 days of the scheduled date of the hearing, the motion to quash or modify the subpoena must be filed within five days after the date of service. Enforcement of the subpoena is the same as provided in subpart A at § 509.27(d).

Section 509.103 Civil Money Penalties

The proposed provision updates existing provisions in subpart B of 509 and affirmatively states the long held OTS position as to the remedial nature of civil money penalties.

Section 509.104 Additional Procedures

This proposed section adds further clarification or guidance to the uniform rules. Paragraph (a) provides for the filing of replies to written exceptions to an administrative law judge recommended decision. It is OTS's experience that replies to exceptions assist in the final determination; however, they should not be used to further prolong the proceeding. Accordingly, a 10 day period to file replies is provided.

Paragraph (b) emphasizes that all motions are to be filed with the administrative law judge; however, upon certification of the proceeding to the Agency Head, motions are filed with OTS during a limited ten-day time period. This limited period of time for filing motions coincides with the time for filing replies to written exceptions. Failure to file within this ten day time period will provide a basis for denying the motion.

Relatedly, paragraph (c) states expressly what has been an implied power of the administrative law judge to deny dispositive motions including motions to dismiss for lack of jurisdiction. Because most often such motions may be dismissed readily for lack of merit, clarifying the administrative law judge's authority in this area will prevent such motions from delaying proceedings.

Paragraph (d) proposes to set a time by which OTS will notify the parties of the submission of the proceeding for final determination. This will clarify when the 90 day period for final determination begins.

Paragraph (e) proposes to clarify the ability of the Director to extend the time for final determination in accord with *Saratoga Savings & Loan Ass'n* v. *Fed. Home Loan Bank Board*, 879 F.2d 689 (9th Cir. 1989). The Director may extend the time provided by signing the order for such extension. Notification of the extension is to be made after the order has been signed, but the notification of the extension is not required to be within the 90 day period.

Paragraph (f) clarifies existing practices at OTS to allow designated individuals or offices to receive adjudicatory filings. The proposed provision grants OTS greater flexibility to reflect its current structure and to meet changing personnel demands rather than limiting the provision to one particular office.

Paragraph (g) also clarifies the powers of the administrative law judge concerning the presence of electronic media at public hearings. It reserves for the Agency Head of OTS the decision whether to allow the presence of electronic media; however, the administrative law judge maintains the authority to conduct the hearing and set general guidelines over the time, place and manner for attendance at hearings as set forth in § 509.5(10).

The remaining proposed amendments are technical amendments to conform cross-referenced sections and to delete obsolete terms.

5. NCUA Local Rules

Subpart A sets forth Uniform Rules of practice and procedure required by FIRREA to be implemented by the five Agencies. The Uniform Rules comprehensively govern the conduct of administrative hearings required by the APA to be held on the record. The Uniform Rules replace the NCUA's own rules of practice and procedure contained in the existing subpart A.

In addition, the Uniform Rules govern the conduct of administrative hearings addressing actions by the NCUA to issue a cease-and-desist order, to assess civil penalties, and to prohibit, remove or suspend credit union officials. Because the Uniform Rules incorporate the functions of the existing subparts C, D and E pertaining to these types of actions, the new subpart A replaces these existing subparts.

Finally, the provisions of the Uniform Rules supplement the rules and procedures prescribed in the new subparts C, E, and I, which provide for formal adjudications, except when the new subpart A is inconsistent with those rules and procedures.

Subpart B—Local Rules of Practice and Procedure

This subpart is reserved for "Local Rules of Practice and Procedure" which the NCUA may develop in the future to apply to proceedings unique to the NCUA. Such Local Rules would augment the Uniform Rules prescribed in subpart A.

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

This subpart redesignates and renumbers existing subpart B governing proceedings to terminate the insured status of a credit union. Such proceedings are formal adjudications. The text of existing subpart B is imported without revision, except that its scope now incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of subpart C.

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

This subpart redesignates and renumbers existing subpart F, governing proceedings to suspend or prohibit from participation in the affairs of a credit union any institution-affiliated party which is charged with a felony. Such proceedings are not formal adjudications. The text of existing subpart F is imported substantially without revision. Cross-references in existing § 747.602 to certain rules of practice in existing subpart A have, due to the elimination of that subpart, been replaced in new § 747.302 with the text of the former rules. Likewise, cross-references in existing § 747.507 to § 747.602 ["Remainder of the Board of Directors"] of existing subpart E have, due to the elimination of that subpart, been replaced in new § 747.302 with the text of former § 747.507. The text of these and other provisions of new subpart D (§§ 747.302, 747.306, and 747.307) contain technical revisions to clarify and reflect that proceedings under this subpart are not formal adjudications conducted by an administrative law judge, but rather, are limited, informal proceedings conducted by a Presiding Officer designated by the Board. New subpart D does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to informal adjudications.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

This subpart redesignates and renumbers existing subpart G governing proceedings to suspend or revoke a solvent credit union's charter and to place a solvent credit union into involuntary liquidation under Title I of the FCUA. See 12 U.S.C. 1766(b)(1). Such proceedings are formal adjudications.

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The text of existing subpart G is imported without revision, except that the scope of new subpart E incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of new subpart E. New subpart E also contains technical revisions to clarify and reflect that a hearing requested under this subpart is referred by the Board to OFIA and conducted by an administrative law judge.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility

This subpart redesignates existing subpart H, which is reserved for rules and procedures governing proceedings to terminate a credit union's membership in the NCUA's Central Liquidity Facility.

Subpart G—Rules and Procedures Applicable to Recovery of Attorneys Fees and other Expenses Under the Equal Access to Justice Act in Board Adjudications

This subpart redesignates and renumbers existing subpart I governing claims proceedings under the Equal Access to Justice Act. Such proceedings are formal adjudications. The text of existing subpart I is imported without revision except for the following revisions to its scope and to the eligibility and application requirements for an award. First, new § 747.601 incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of new subpart G. Second, paragraph (b) of existing § 747.601 has been eliminated as moot, as there is no adjudication currently pending before the NCUA which was begun prior to September 30, 1984. Third, in new § 747.602(a), the maximum net worth of an individual applicant for an award has been increased to $2 million, and the maximum net worth of an applicant who is a sole proprietor of an unincorporated business or which is a partnership, corporation, association, or public or private organization, has been increased to $7 million. These increases in maximum net worth are mandated by amendments to the Equal Access to Justice Act. Finally, in new § 747.606(c), the statement that the application and documentation requirements of subpart G are exempt from the Paperwork Reduction Act has been eliminated as superfluous. The exemption clearly applies, however, because a decade of experience with the Equal Access to Justice Act has shown that fewer than ten persons or entities in a 12-month period will be subject to the application and documentation requirements of subpart G. See 5 CFR 1320.7(c) and 1320.7(e).

Subpart H—Local Rules and Procedures Applicable to Investigations

This subpart redesignates and renumbers existing subpart J governing both formal and informal investigations conducted by the NCUA. Such investigations are not adjudicative proceedings. The text of existing subpart H is imported without revision. New subpart H does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

This subpart redesignates and renumbers existing subpart K governing formal investigations conducted by the NCUA. Such investigations are not adjudicative proceedings. The text of existing subpart K is imported without revision. New subpart I does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or Committee Members Pursuant to Section 212 of the Act

This subpart redesignates and renumbers existing subpart L governing notice to the NCUA of a change in senior executive officers, directors or committee members of a credit union. The notice procedure is not a formal adjudication. The text of existing subpart L is imported without revision. New subpart J does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

F. Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC, Board of Governors, FDIC, OTS, and NCUA, hereby independently certify that this notice of proposed uniform rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This rule implements section 916 of FIRREA which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings. The purpose of this revised regulation is to secure a just and orderly determination of administrative proceedings. Because the Agencies already have in place rules of practice and procedure, this rule should not result in an additional burden for regulated institutions. Furthermore, the rule imposes only minor burdens on all institutions, regardless of size and should not, therefore, cause a significant economic impact on a substantial number of small entities.

G. OCC and OTS Executive Order 12291 Statement

The OCC and the OTS have independently determined that this notice of proposed uniform rule does not constitute a "major rule" within the meaning of Executive Order 12291 and Treasury Department Guidelines. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this notice of proposed common rule, if adopted as a final rule: (1) Would not have an annual effect on the economy of $100 million or more, (2) would not result in a major increase in the cost of financial institution operations or governmental supervision, and (3) would not have a significant adverse effect on competition (foreign and domestic), employment, investment, productivity or innovation, within the meaning of the executive order.

This rule implements section 916 of FIRREA which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings. Because the Agencies already have in place rules of practice and procedure, these rules should not result in an additional burden for regulated institutions or in additional governmental supervision. These rules setting forth uniform standards of administrative procedure would not have a significant impact on competition or impose other significant economic burdens.

H. NCUA Executive Order 12612 Statement

This proposed rule, like the current part 747 it is replacing, will apply to all federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, however, that the proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Further, the proposed rule will not preempt provisions of state law or regulations.

I. Text of Proposed Uniform Rules (All Agencies)

The text of the proposed Uniform Rules appears below. Additionally, each Agency is adopting Local Rules to supplement the Uniform Rules.

Subpart A—Uniform Rules of Practice and Procedure

Sec.

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_____.2 Rules of construction.
_____.3 Definitions.
_____.4 Authority of Agency Head.
_____.5 Authority of the administrative law judge.
_____.6 Appearance and practice in adjudicatory proceedings.
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_____.18 Commencement of proceeding and contents of notice.
_____.19 Answer.
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_____.36 Evidence.
_____.37 Proposed findings and conclusions.
_____.38 Recommended decision and filing of record.
_____.39 Exceptions to recommended decision.
_____.40 Review by Agency Head.
_____.41 Stays pending judicial review.

Subpart A—Uniform Rules of Practice and Procedure

§ _____.1 Scope.

This subpart prescribes rules of practice and procedure applicable to adjudicatory proceedings as to which hearings on the record are provided for by the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(b)) and section 206(e) of the Federal Credit Union Act ("FCUA") (12 U.S.C. 1786(e));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 2828(e)), and section 206(g) of the FCUA (12 U.S.C. 1786(g));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Federal Deposit Insurance Corporation ("FDIC"), the Board of Governors of the Federal Reserve System ("Board of Governors"), the Office of the Comptroller of the Currency ("OCC") or the Office of Thrift Supervision ("OTS") should issue an order to approve or disapprove a person's proposed acquisition of an institution and/or institution holding company;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78o-5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the FDIC, the Board of Governors, the OCC or the OTS is the appropriate Agency.

(e) Assessment of civil money penalties:

(1) *By the FDIC* against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Agency for any violation of:

(i) Sections 22(h) and 23 of the Federal Reserve Act ("FRA"), or any regulation issued thereunder, and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1828(j);

(ii) Section 106(b) of the Bank Holding Company Act Amendments of 1970 ("BHCA Amendments of 1970"), and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1972(2)(F);

(iii) Any provision of the Change in Bank Control Act of 1978, as amended (the "CBCA"), or any regulation or order issued thereunder, and certain unsafe or unsound practices, or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(iv) Section 7(a)(1) of the FDIA, pursuant to 12 U.S.C. 1817(a)(1);

(v) Any provision of the International Lending Supervision Act of 1983 ("ILSA"), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(vi) Any provision of the International Banking Act of 1978 ("IBA"), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(vii) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2);

(viii) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (12 U.S.C. 3349), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 3349; and

(ix) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the FDIC, the terms of any condition imposed in writing by the FDIC in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

(2) *By the Board of Governors* against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Agency for any violation of:

(i) Any provision of the Bank Holding Company Act of 1956, as amended ("BHCA"), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 1847(b) and (d);

(ii) Sections 19, 22 and 23 of the FRA, or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

(iii) Section 9 of the FRA pursuant to 12 U.S.C. 324;

(iv) Section 106(b) of the BHCA Amendments of 1970 and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1972(2)(F);

(v) Any provision of the CBCA, or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(vi) Any provision of ILSA, or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(vii) Any provision of the IBA, or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(viii) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2;

(ix) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 3349; and

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(x) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the Board of Governors, the terms of any condition imposed in writing by the Board of Governors in connection with the grant of an application or request, and certain unsafe or unsound practices or breaches of fiduciary duty or law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

(3) *By the NCUA* against institutions and institution-affiliated parties for which it is the appropriate Agency for any violation of:

(i) Section 202 of the FCUA, pursuant to 12 U.S.C. 1782(a);

(ii) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 3349; and

(iii) The terms of any final or temporary order issued under section 206 of the FCUA or any written agreement executed by the NCUA, any condition imposed in writing by the NCUA in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein, pursuant to 12 U.S.C. 1786(k);

(4) *By the OCC* against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Agency for any violation of:

(i) Any provision of law referenced in 12 U.S.C. 93, or any regulation issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 93;

(ii) Sections 22 and 23 of the FRA, or any regulation issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

(iii) Section 106(b) of the BHCA Amendments of 1970, pursuant to 12 U.S.C. 1972(2)(f);

(iv) Any provision of the CBCA, or any regulation or order issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(v) Any provision of ILSA, or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3906;

(vi) Any provision of the IBA, or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(vii) Section 5211 of the Revised Statutes (12 U.S.C. 161), pursuant to 12 U.S.C. 164;

(viii) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2);

(ix) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 3349; and

(x) The terms of any final or temporary order issued under section 8 of the FDIA or any written agreement executed by the OCC, the terms of any condition imposed in writing by the OCC in connection with the grant of an application or request, certain unsafe or unsound practices, breaches of fiduciary duty, or any law or regulation not otherwise provided herein, pursuant to 12 U.S.C. 1818(i)(2); and

(5) *By the OTS* against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Agency for any violation of:

(i) Section 5 of the Home Owners' Loan Act ("HOLA") or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464 (d), (s) and (v);

(ii) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d);

(iii) Section 10 of the HOLA, pursuant to 12 U.S.C. 1467a(i) and (r);

(iv) Any provisions of the CBCA any regulation or order issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(v) Sections 22(h) and 23 of the FRA, or any regulation issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1468;

(vi) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2);

(vii) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 3349; and

(viii) The terms of any final or temporary order issued or enforceable pursuant to section 8 of the FDIA or of any written agreement executed by the OTS, the terms of any conditions imposed in writing by the OTS in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2).

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in each Agency's Local Rules.

§ ____.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ ____.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Agency* means:

(1) The FDIC in the case of a State nonmember bank (except a District bank), or a foreign bank having an insured branch;

(2) The Board of Governors in the case of any State member insured bank (except a District bank), any branch or agency of a foreign bank with respect to any provision of the FRA (12 U.S.C. 221 *et seq.*), which is made applicable under the IBA (12 U.S.C 3101 *et seq.*), any foreign bank which does not operate as an insured branch, any agency or commercial lending company other than a Federal agency, supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the IBA (12 U.S.C. 3105(b)(1)), including such proceedings under the Depository Institutions Supervisory Act, and any bank holding company and any subsidiary of a bank holding company (other than a bank) as those terms are defined by the BHCA (12 U.S.C. 1841 *et seq.*);

(3) The NCUA in the case of any Federal credit union as defined in section 101(1) of the FCUA (12 U.S.C. 1752(1)), and any insured credit union (as defined in section 101(7) of the FCUA (12 U.S.C. 1752(7));

(4) The OCC in the case of any national banking association, any District bank, or any Federal branch or agency of a foreign bank;

(5) The OTS in the case of any savings association or any savings and loan holding company, any subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company, any service corporation of a savings association, and any subsidiary of such service corporation, whether wholly or partly owned.

(d) *Agency Head* means:

(1) In the case of the FDIC, the Board of Directors of the FDIC, or its designee;

(2) In the case of the Board of Governors, the Board of Governors of the Federal Reserve System or its designee;

(3) In the case of the NCUA, the National Credit Union Administration Board, or its designee;

(4) In the case of the OCC, the Comptroller of the Currency or his or her designee; and

(5) In the case of the OTS, the Director of OTS or his or her designee.

(e) *Decisional employee* means any member of the Agency's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Agency or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(f) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the Agency in an adjudicatory proceeding.

(g) *Final order* means an order issued by the Agency with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(h) *Institution* includes:

(1) Any bank as that term is defined in section 3(a) of the FDIA (12 U.S.C. 1813(a));

(2) Any bank holding company or any subsidiary (other than a bank) of a bank holding company as those terms are defined in the BHCA (12 U.S.C. 1841 *et seq*);

(3) Any Federal credit union as that term is defined in section 101(1) of the FCUA (12 U.S.C. 1752(1));

(4) Any insured state credit union as that term is defined in section 101(7) of the FCUA (12 U.S.C 1752(7));

(5) Any savings association as that term is defined in section 3(b) of the FDIA (12 U.S.C. 1813(b)), any savings and loan holding company or any subsidiary thereof (other than a bank) as those terms are defined in section 10(a) of the HOLA (12 U.S.C. 1467(a));

(6) Any organization operating under section 25 of the FRA (12 U.S.C. 601 *et seq.*);

(7) Any foreign bank or company to which section 8 of the IBA (12 U.S.C. 3106), applies or any subsidiary (other than a bank) thereof; and

(8) Any Federal agency as that term is defined in section 1(b) of the IBA (12 U.S.C. 3101(5)).

(i) *Institution-affiliated party* means:

(1) Any institution-affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)); and

(2) Any institution-affiliated party as that term is defined in section 206(r) of the FCUA (12 U.S.C. 1786(r)).

(j) *Local Rules* means those rules which are promulgated by an Agency in the subparts of this part excluding subpart A and which may contain some or all of the following:

(1) Procedures for formal enforcement actions that fewer than four of the five Agencies may have the authority to issue;

(2) Procedures for informal proceedings which are not required to be conducted in accordance with the Administrative Procedure Act ("APA");

(3) Procedures which supplement the Uniform Rules in subpart A of this part; and

(4) Internal procedures for processing administrative enforcement actions and sanctions particular to each Agency.

(k) *Office of Financial Institution Adjudication* ("OFIA") means the executive body charged with overseeing the administration of administrative enforcement proceedings for the Agencies.

(l) *Party* means the Agency and any person named as a party in any notice.

(m) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (h) of this section.

(n) *Respondent* means any party other than the Agency.

(o) *Uniform Rules* means those rules in subpart A of this part that pertain to the types of formal administrative enforcement actions common to at least four of the five Agencies.

(p) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ ____.4 Authority of Agency Head.

The Agency Head may, at any time during the pendency of a proceeding perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ ____.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of Chapter 5 of Title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or pre-hearing conferences as set forth in § ____.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Agency Head shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Agency Head a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ ____.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before an Agency or an administrative law judge*—(1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the Agency if such attorney is not currently suspended or debarred from practice before the Agency.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a

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member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the Agency.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the Agency, shall file a notice of appearance with the OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ _____.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: The counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ _____.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § _____.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ _____.9 Ex parte Communications.

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, the Agency Head or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Agency Head until the date that the Agency Head issues its final decision pursuant to § _____.40(c), no party, interested person or counsel therefor shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding to the Agency Head, the administrative law judge, or a decisional employee. The Agency Head, administrative law judge, or decisional employee shall not knowingly make or cause to be made to a party, or any interested person or counsel therefor, an ex parte communication relevant to the merits of a proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, the Agency Head or other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Agency Head or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ _____.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ _____.25 and .26 shall

be filed with the OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the Agency Head or the administrative law judge, filing may be accomplished by: (1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Agency Head or the administrative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section as to form.

(c) *Formal requirements as to papers filed*—(1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ x 11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § _____.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Agency and of the filing party, the title and docket number of the proceeding, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Agency Head, or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ _____.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § _____.10(c) as to form.

(c) *By the Agency Head or the administrative law judge.* (1) All papers required to be served by the Agency Head or the administrative law judge upon a party who has appeared in the proceeding through a counsel of record, shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding through counsel, the Agency Head or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ _____.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Agency Head or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period;

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the Agency Head or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

§ _____.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by these uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the Agency Head pursuant to § _____.38, the Agency Head may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party or on the Agency Head's or the administrative law judge's own motion after notice and opportunity to respond is afforded all nonmoving parties.

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§ _____.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the Agency is the party requesting the subpoena. The Agency shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the Agency.

§ _____.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any Agency representative other than Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ _____.16 Agency's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the Agency to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the Agency to conduct or continue any form of investigation authorized by law.

§ _____.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ _____.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1) (i) Except for change-in-control proceedings under section 7(j)(4) of the FDIA, 12 U.S.C. 1817(j)(4), a proceeding governed by this subpart is commenced by issuance of a notice by the Agency Head.

(ii) The notice must be served by the Agency Head upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(iii) The notice must be filed with the OFIA.

(2) Change-in control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) commence with the issuance of an order by the Agency Head.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the Agency's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the Agency is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) The answer and/or request for a hearing shall be filed with OFIA.

§ _____.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, the administrative law judge, upon motion of the Enforcement Counsel and, without further proceedings or notice to the respondent, shall file with the Agency Head a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Agency Head based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ _____.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Agency Head or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended and will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ _____.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the Agency Head a recommended decision containing the findings and the relief sought in the notice.

§ _____.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ _____.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, but upon the filing of the recommended decision, motions must be filed with the Agency Head.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Agency Head, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ _____.29 and _____.30.

§ _____.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by the Local Rules of each Agency.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing, except as provided in the Local Rules. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ _____.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for copying, unless the parties agree otherwise, at the current per-page copying rate imposed by each agency's rules implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § _____.23 to revoke or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § _____.23 are waived.

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(2) The party who served the request that is the subject of a motion to revoke or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § _____.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to revoke or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ _____.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § _____.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § _____.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ _____.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with or procures a failure to comply with, a subpoena issued under this section.

§ _____.28 Interlocutory review.

(a) *General rule.* The Agency Head may review a ruling of the administrative law judge prior to the certification of the record to the Agency Head only in accordance with the procedures set forth in this section and § _____.23.

(b) *Scope of review.* The Agency Head may exercise interlocutory review of a ruling of the administrative law judge if the Agency Head finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § _____.23. Any party may file a response to a request for interlocutory review in accordance with § _____.23(d). Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the Agency Head for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Agency Head under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the Agency Head.

§ _____.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the Agency Head issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the Agency Head. If the administrative law judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

§ _____.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be

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addressed in the recommended decision filed at the conclusion of the hearing.

§ _____.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at its expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ _____.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulation of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ _____.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Agency, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the Agency Head a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § _____.23. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ _____.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, such applications may be made orally on the record before the administrative law judge. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with these rules.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § _____.39(c).

§ _____.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) *Stipulations.* Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ _____.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the APA and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or Agency Head shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by the appropriate Agency or state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the Agency Head.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing, and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ _____.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ _____.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § _____.37(b), the administrative law judge shall file with and certify to the Agency Head for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended

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findings of fact, recommended conclusions of law and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions and proposed order.

§ ____.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § ____.38, a party may file with the Agency Head written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception may be considered by the Agency Head if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions or replies must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ ____.40 Review by Agency Head.

(a) *Notice of submission to Agency Head.* When the Agency Head determines that the record in the proceeding is complete, the Agency Head shall serve notice upon the parties that the proceeding has been submitted to the Agency Head for final decision.

(b) *Oral argument before the Agency Head.* Upon the initiative of the Agency Head or on the written request of any party filed with the Agency Head within the time for filing exceptions, the Agency Head may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Agency Head's final decision. Oral argument before the Agency Head must be on the record.

(c) *Agency final decision.* (1) Decisional employees may advise and assist the Agency Head in the consideration and disposition of the case. The final decision of the Agency Head will be based upon review of the entire record of the proceeding, except that the Agency Head may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Agency Head shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Agency Head orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Agency Head shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Agency Head or required by statute, upon any appropriate state or Federal supervisory authority.

§ ____.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Agency may not, unless specifically ordered by the Agency Head or a reviewing court, operate as a stay of any order issued by the Agency Head. The Agency Head may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of that order.

Adoption of Proposed Uniform Rules

The Agency-specific proposals of the Uniform Rules, which appear at the end of the common preamble, appear below. Further, each Agency is proposing Local Rules to supplement the Uniform Rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Ex parte communications, Hearing procedure, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the common preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations, is proposed to be amended as set forth below:

PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is revised to read as follows:

Authority: 12 U.S.C. 1817, 1818, 1820 (secs. 7(j), 8 and 10 of the FDIA; 15 U.S.C. 78/ (h) and (i), 78o–4(c), 78o–5, 78q–1, 78u, 78u–2, 78u–3, 78w (secs. 12 (h) and (i), 15B(c), 15C, 17A, 21, 21B, 21C and 23 of the Securities Exchange Act of 1934); 5 U.S.C. 504, 554–557; 12 U.S.C. 504 and 505 (secs. 29 and 19(/) of the Federal Reserve Act); 12 U.S.C. 93(b) and 164 (secs. 5239 and 5213, respectively, of the Revised Statutes); 12 U.S.C. 1972 (sec. 106(b) of the Bank Holding Company Act Amendments of 1970); 12 U.S.C. 3102, 3108(a) (secs. 4 and 22(a) of he International Banking Act of 1978); 12 U.S.C. 3909 (sec. 910 of the International Lending Supervision Act of 1983); 31 U.S.C. 330.

2. Subpart A is revised to read as set forth at the end of the common preamble.

Subpart A—Uniform Rules of Practice and Procedure

Sec.
19.1 Scope.
19.2 Rules of construction.
19.3 Definitions.
19.4 Authority of Agency Head.
19.5 Authority of the administrative law judge.
19.6 Appearance and practice in adjudicatory proceedings.
19.7 Good faith certification.
19.8 Conflicts of interest.
19.9 Ex parte communications.
19.10 Filing of papers.
19.11 Service of papers.
19.12 Construction of time limits.
19.13 Change of time limits.
19.14 Witness fees and expenses.
19.15 Opportunity for informal settlement.
19.16 Agency's right to conduct examination.
19.17 Collateral attacks on adjudicatory proceeding.
19.18 Commencement of proceeding and contents of notice.
19.19 Answer.

Sec.
19.20 Amended pleadings.
19.21 Failure to appear.
19.22 Consolidation and severance of actions.
19.23 Motions.
19.24 Scope of document discovery.
19.25 Request for document discovery from parties.
19.26 Document subpoenas to nonparties.
19.27 Deposition of witness unavailable for hearing.
19.28 Interlocutory review.
19.29 Summary disposition.
19.30 Partial summary disposition.
19.31 Scheduling and prehearing conferences.
19.32 Prehearing submissions.
19.33 Public hearings.
19.34 Hearing subpoenas.
19.35 Conduct of hearings.
19.36 Evidence.
19.37 Proposed findings and conclusions.
19.38 Recommended decision and filing of record.
19.39 Exceptions to recommended decision.
19.40 Review by Agency Head.
19.41 Stays pending judicial review.

3. Subparts B through L are revised to read as follows:

Subpart B—Procedural Rules for OCC Adjudications

Sec.
19.100 Scope.
19.101 Delegation to the Office of Financial Institution Adjudication.

Subpart C—Removals, Suspensions, and Prohibitions When a Crime is Charged or a Conviction is Obtained

19.110 Scope.
19.111 Suspension or removal.
19.112 Informal hearing.
19.113 Recommended and final decisions.

Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

19.120 Scope.
19.121 Application for exemption.
19.122 Newspaper notice.
19.123 Informal hearing.
19.124 Decision of the Comptroller.

Subpart E—Disciplinary Proceedings Involving the Federal Securities Laws

19.130 Scope.
19.131 Notice of charges and answer.
19.132 Disciplinary orders.

Subpart F—Civil Money Penalty Authority Under the Securities Laws

19.140 Scope.

Subpart G—Cease-and-Desist Authority Under the Securities Laws

19.150 Scope.

Subpart H—Change in Bank Control

19.160 Scope.
19.161 Hearing request and answer.
19.162 Hearing order.

Subpart I—Discovery Depositions and Subpoenas

19.170 Discovery depositions.
19.171 Deposition subpoenas.

Subpart J—Formal Investigations

19.180 Scope.
19.181 Confidentiality of formal investigations.
19.182 Order to conduct a formal investigation.
19.183 Rights of witnesses.
19.184 Service of subpoena and payment of witness fees.

Subpart K—Parties and Representational Practice Before the OCC; Standards of Conduct

19.190 Scope.
19.191 Sanctions relating to conduct in an adjudicatory proceeding.
19.192 Censure, suspension or debarment.
19.193 Definitions.
19.194 Eligibility to practice.
19.195 Incompetence.
19.196 Disreputable conduct.
19.197 Initiation of disciplinary proceeding.
19.198 Conferences.
19.199 Proceedings under this subpart.
19.200 Effect of suspension, debarment or censure.
19.201 Petition for reinstatement.

Subpart L—Equal Access to Justice Act

19.210 Scope.

Subpart B—Procedural Rules for OCC Adjudications

19.100 Scope.

All materials required to be filed with or referred to the Comptroller or the administrative law judge in any proceedings under this part must be filed with the Hearing Clerk, Office of the Comptroller of the Currency, Washington, DC 20219. Filings to be made with the Hearing Clerk include the notice and answer; motions and responses to motions; briefs; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition; referrals by the administrative law judge of motions for interlocutory review; exceptions and requests for oral argument; and any other papers required to be filed with the Comptroller or the administrative law judge under this part.

§ 19.101 Delegation to the Office of Financial Institution Adjudication.

Unless otherwise ordered by the Comptroller, administrative adjudications subject to subpart A of this part shall be conducted by an administrative law judge of the Office of Financial Institution Adjudication (OFIA).

Subpart C—Removals, Suspensions, and Prohibitions When a Crime is Charged or a Conviction is Obtained

§ 19.110 Scope.

This subpart applies to informal hearings afforded to any institution-affiliated party who has been suspended or removed from office or prohibited from further participation in bank affairs by a notice or order issued by the Comptroller.

§ 19.111 Suspension or removal.

The Comptroller may serve a notice of suspension or order of removal or prohibition on an institution-affiliated party. A copy of such notice or order will be served on the bank, whereupon the institution-affiliated party involved must immediately cease service to the bank or participation in the affairs of the bank. The notice or order will indicate the basis for suspension, removal or prohibition and will inform the institution-affiliated party of the right to request in writing, to be received by the OCC within 30 days from the date that the institution-affiliated party was served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of the bank does not, or is not likely to, pose a threat to the interest of the bank's depositors or threaten to impair public confidence in the bank. The written request must be sent by certified mail to, or served personally with a signed receipt on, the District Administrator in the OCC district in which the bank in question is located, or to the Deputy Comptroller for Multinational Banking, Washington, DC, if the bank is supervised by the Multinational Banking Department. The request must state specifically the relief desired and the grounds on which that relief is based.

§ 19.112 Informal hearing.

(a) *Issuance of hearing order.* After receipt of a request for hearing, the District Administrator or the Deputy Comptroller for Multinational Banking, whichever is appropriate, shall notify the petitioner requesting the hearing and the OCC's Enforcement and Compliance Division of the date, time and place fixed for the hearing. The hearing will be scheduled to be held not later than 30 days from the date when a request for hearing is received, unless the time is extended at the written request of the petitioner. The District Administrator or the Deputy Comptroller for Multinational Banking, whichever is appropriate, shall extend the hearing

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date only for a specific period of time and shall take appropriate action to ensure that the hearing is not unduly delayed.

(b) *Appointment of presiding officer.* The Comptroller or the Comptroller's delegate shall appoint one or more OCC employees to preside over the hearing. The presiding official(s) shall not have been involved in the proceeding, a factually related proceeding or the underlying enforcement action in a prosecutorial or investigative role. The OCC's Enforcement and Compliance Division shall appoint an attorney to represent the OCC at the hearing.

(c) *Waiver of oral hearing.* The petitioner may elect to have the matter determined by the presiding officer solely on the basis of written submissions. The petitioner must present the submissions to the presiding officer not later than ten days prior to the hearing, or within such shorter time period as the presiding officer permits, along with a signed document waiving the statutory right to appear and make oral argument.

(d) *Hearing procedures*—(1) *Conduct of hearing.* Hearings under this subpart are not subject to the provisions of subpart A of this part or the adjudicative provisions of the APA (5 U.S.C. 554–557).

(2) *Powers of the presiding officer.* The presiding officer shall determine all procedural issues that are governed by this subpart may permit or limit the number of witnesses and impose time limitations as he or she deems reasonable. The informal hearing will not be governed by the formal rules of evidence. All oral presentations, when permitted, and documents deemed by the presiding officer to be relevant and material to the proceeding and not unduly repetitious will be considered. The presiding officer may ask questions of any person participating in the hearing, and may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(3) *Presentation.* (i) The petitioner may appear personally or through counsel at the hearing to present relevant written materials and oral argument. Copies of affidavits, memoranda or other written material to be presented at the hearing must be provided to the presiding officer and to the other parties in the oral argument not later than ten days prior to the hearing, or within such shorter time period as permitted by the presiding officer.

(ii) If the petitioner or the appointed OCC attorney desires to present oral testimony or witnesses at the hearing, they must file a written request with the presiding officer not later than ten days prior to the hearing, or within a shorter time period as permitted by the presiding officer. The names of proposed witnesses should be included, along with the general nature of the expected testimony, and the reasons why oral testimony is necessary. The presiding officer generally will not admit oral testimony or witnesses unless a specific and compelling need is demonstrated. Witnesses, if admitted, shall be sworn.

(iii) In deciding on any suspension, the presiding officer shall not consider the ultimate question of the guilt or innocence of the individual with respect to the criminal charges which are outstanding. In deciding on any removal, the presiding officer shall not consider challenges to or efforts to impeach the validity of the conviction. The presiding officer may consider facts in either situation, however, which show the nature of the events on which the indictment or conviction was based.

(4) *Record.* A verbatim transcript of the proceedings may be taken if the petitioner requests a transcript and agrees to pay all expenses, or if the presiding officer determines that the nature of the case warrants a transcript. The presiding officer may order the record to be kept open for a reasonable period following the hearing, not to exceed five business days, to permit the petitioner or the appointed OCC attorney to submit additional documents for the record. Thereafter, no further submissions may be accepted except for good cause shown.

§ 19.113 Recommended and final decisions.

(a) The presiding officer shall issue a recommended decision to the Comptroller and shall serve promptly a copy of the decision on the parties to the proceeding. The decision shall include a summary of the facts and arguments of the parties. Within ten days of service, parties may submit to the Comptroller comments on the presiding officer's recommended decision.

(b) Within 60 days following the hearing or receipt of the petitioner's written submission, the Comptroller shall notify the petitioner by registered mail as to whether the suspension or removal from office, and prohibition from participation in any manner in the affairs of the bank, will be affirmed, terminated or modified. The Comptroller's decision must include a statement of reasons supporting the decision. The Comptroller's decision is a final and unappealable order.

(c) A finding of not guilty or other disposition of the charge on which a notice of suspension was based does not preclude the Comptroller from thereafter instituting removal proceedings pursuant to section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) and subpart A of this part.

(d) A removal or prohibition by order remains in effect until terminated by the Comptroller. A suspension or prohibition by notice remains in effect until the criminal charge is disposed of or until terminated by the Comptroller.

(e) A suspended or removed individual may petition the Comptroller to reconsider the decision any time after the expiration of a 12-month period from the date of the decision, but no petition for reconsideration may be made within 12 months of a previous petition. The petition must state specifically the relief sought and the grounds therefor, and may be accompanied by a supporting memorandum and any other documentation the petitioner wishes to have considered. No hearing need be granted on the petition for reconsideration.

Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

§ 19.120 Scope.

The rules in this subpart apply to informal hearings that may be held by the Comptroller to determine whether, pursuant to authority in sections 12 (h) and (i) of the Exchange Act (15 U.S.C. 78*l* (h) and (i)), to exempt in whole or in part an issuer or a class of issuers from the provisions of section 12(g), or from section 13 or 14 of the Exchange Act (15 U.S.C. 78*l*(g), 78m or 78n), or whether to exempt from section 16 of the Exchange Act (15 U.S.C. 78p) any officer, director, or beneficial owner of securities of an issuer. The only issuers covered by this subpart are banks whose securities are registered pursuant to section 12(g) of the Exchange Act (15 U.S.C. 78*l*(g)). The Comptroller may deny an application for exemption without a hearing.

§ 19.121 Application for exemption.

An issuer or an individual (officer, director or shareholder) may submit a written application for an exemption order to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219. The application must specify the type of exemption sought and the reasons therefor, including an explanation of why an exemption would not be inconsistent with the public interest or the protection of investors. The Securities and Corporate Practices Division shall inform the applicant in writing whether a hearing will be held to consider the matter.

§ 19.122 Newspaper notice.

Upon being informed that an application will be considered at a hearing, the applicant shall publish a notice one time in a newspaper of general circulation in the community where the issuer's main office is located. The notice must state: The name and title of any individual applicants; the type of exemption sought; the fact that a hearing will be held; and a statement that interested persons may submit to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, within 30 days from the date of the newspaper notice, written comments concerning the application and a written request for an opportunity to be heard. The applicant shall promptly furnish a copy of the notice to the Securities and Corporate Practices Division, and to bank shareholders.

§ 19.123 Informal hearing.

(a) *Conduct of proceeding.* The adjudicative provisions of the APA (5 U.S.C. 554–557), formal rules of evidence and subpart A of this part do not apply to hearings conducted under this subpart.

(b) *Notice of hearing.* Following the comment period, the Comptroller shall send a notice which fixes a date, time and place for hearing to each applicant and to any person who has requested an opportunity to be heard.

(c) *Presiding officer.* The Comptroller shall designate a presiding officer to conduct the hearing. The presiding officer shall determine all procedural questions not governed by this subpart, and may limit the number of witnesses and impose time and presentation limitations as are deemed reasonable. At the conclusion of the informal hearing, the presiding officer shall issue a recommended decision to the Comptroller as to whether the exemption should issue. The decision shall include a summary of the facts and arguments of the parties.

(d) *Attendance.* The applicant and any person who has requested an opportunity to be heard may attend the hearing, with or without counsel. The hearing shall be open to the public. In addition, the applicant and any other hearing participant may introduce oral testimony through such witnesses as the presiding officer shall permit.

(e) *Order of presentation.* (1) The applicant may present an opening statement of a length decided by the presiding officer. Then each of the hearing participants, or one among them selected with the approval of the presiding officer, may present an opening statement. The opening statement should summarize concisely what the applicant and each participant intends to show.

(2) The applicant shall have an opportunity to make an oral presentation of facts and materials or submit written materials for the record. One or more of the hearing participants may make an oral presentation or a written submission.

(3) After the above presentations, the applicant, followed by one or more of the hearing participants, may make concise summary statements reviewing their position.

(f) *Witnesses.* The obtaining and use of witnesses is the responsibility of the parties afforded the hearing. All witnesses shall be present on their own volition, but any person appearing as a witness may be questioned by each applicant, any hearing participant, and the presiding officer. Witnesses shall be sworn unless otherwise directed by the presiding officer.

(g) *Evidence.* The presiding officer may exclude data or materials deemed to be improper or irrelevant. Formal rules of evidence do not apply. Documentary material must be of a size consistent with ease of handling and filing. The presiding officer may determine the number of copies that must be furnished for purposes of the hearing.

(h) *Transcript.* A transcript of each proceeding will be arranged by the OCC, with all expenses, including the furnishing of a copy to the presiding officer, being borne by the applicant.

§ 19.124 Decision of the Comptroller.

Following the conclusion of the hearing and the submission of the record and the presiding officer's recommended decision to the Comptroller for decision, the Comptroller or the Comptroller's delegate shall notify the applicant and all persons who have so requested in writing of the final disposition of the application. Exemptions granted must be in the form of an order which specifies the type of exemption granted and its terms and conditions.

Subpart E—Disciplinary Proceedings Involving the Federal Securities Laws

§ 19.130 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in sections 15B(c)(5), 15C(c)(2)(A), 17A(c)(3), and 17A(c)(4)(C) of the Exchange Act (15 U.S.C. 78o-4(c)(5), 78o-5(c)(2)(A), 78q-1(c)(3)(A), and 78q-1(c)(4)(C)), to take disciplinary action against the following:

(1) A bank which is a municipal securities dealer, or any person associated or seeking to become associated with such a municipal securities dealer;

(2) A bank which is a government securities broker or dealer, or any person associated with such government securities broker or dealer; or

(3) A bank which is a transfer agent, or any person associated or seeking to become associated with such transfer agent.

(b) In addition to the issuance of disciplinary orders after opportunity for hearing, the Comptroller or the Comptroller's delegate may issue and serve any notices and temporary or permanent cease-and-desist orders and take any actions that are authorized by section 8 of the FDIA (12 U.S.C. 1818), sections 15B(c)(5), 15C(c)(2)(B), and 17A(d)(2) of the Exchange Act, and other subparts of this part against the following:

(1) The parties listed in paragraph (a) of this section; and

(2) A bank which is a clearing agency.

(c) Nothing in this part impairs the powers conferred on the Comptroller by other provisions of law.

§ 19.131 Notice of charges and answer.

(a) Proceedings are commenced when the Comptroller serves a notice of charges on a bank or associated person. The notice must indicate the type of disciplinary action being contemplated and the grounds therefor, and fix a date, time and place for hearing. The hearing must be set for a date at least 30 days after service of the notice. A party served with a notice of charges may file an answer as prescribed in § 19.19. Any party who fails to appear at a hearing personally or by a duly authorized representative shall be deemed to have consented to the issuance of a disciplinary order.

(b) All proceedings under this subpart must be commenced, and the notice of charges must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(b), a request for a private hearing may be filed within 20 days of service of the notice.

§ 19.132 Disciplinary orders.

(a) In the event of consent, or if on the record filed by the presiding officer, the Comptroller finds that any act or omission or violation specified in the notice of charges has been established,

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the Comptroller or the Comptroller's delegate may serve on the bank or persons concerned a disciplinary order, as provided in the Exchange Act. The order may:

(1) Censure, limit the activities, functions or operations, or suspend or revoke the registration of a bank which is a municipal securities dealer;

(2) Censure, suspend or bar any person associated or seeking to become associated with a municipal securities dealer;

(3) Censure, limit the activities, functions or operations, or suspend or bar a bank which is a government securities broker or dealer;

(4) Censure, limit the activities, functions or operations, or suspend or bar any person associated with a government securities broker or dealer;

(5) Deny registration to, limit the activities functions, or operations or suspend or revoke the registration of a bank which is a transfer agent; or

(6) Censure or limit the activities or functions, or suspend or bar, any person associated or seeking to become associated with a transfer agent.

(b) A disciplinary order is effective when served on the party or parties involved and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

Subpart F—Civil Money Penalty Authority Under the Securities Laws

§ 19.140 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in section 21B of the Exchange Act (15 U.S.C. 78u–2), in proceedings commenced pursuant to sections 15B, 15C, and 17A of the Exchange Act (15 U.S.C. 78o–4, 78o–5, or 78q–1) for which the OCC is the appropriate regulatory agency under section 3(a)(34) of the Exchange Act (15 U.S.C. 78c(a)(34)), the Comptroller may impose a civil money penalty against the following:

(1) A bank which is a municipal securities dealer, or any person associated or seeking to become associated with such a municipal securities dealer;

(2) A bank which is a government securities broker or dealer, or any person associated with such government securities broker or dealer; or

(3) A bank which is a transfer agent, or any person associated or seeking to become associated with such transfer agent.

(b) All proceedings under this subpart must be commenced, and the notice of assessment must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(b), a request for a private hearing may be filed within 20 days of service of the notice.

Subpart G—Cease-and-Desist Authority Under the Securities Laws

§ 19.150 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in sections 12(i) and 21C of the Exchange Act (15 U.S.C. 78*l*(i) and 78u–3), the Comptroller may initiate cease-and-desist proceedings against a national bank for violations of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act or regulations or rules issued thereunder (15 U.S.C. 78*l*, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p).

(b) All proceedings under this subpart must be commenced, and the notice of charges must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(b), a request for a private hearing may be filed within 20 days of service of the notice.

Subpart H—Change in Bank Control

§ 19.160 Scope.

(a) Section 7(j) of the FDIA (12 U.S.C. 1817(j)) provides that no person may acquire control of an insured depository institution unless the appropriate Federal bank regulatory agency has been given prior written notice of the proposed acquisition. If, after investigating and soliciting comment on the proposed acquisition, the agency decides that the acquisition should be disapproved, the agency shall notify the acquiring party in writing within three days of the decision. The party can then request an agency hearing on the proposed acquisition. The OCC's procedures for reviewing notices of proposed acquisitions in change-in-control proceedings are set forth at 12 CFR 5.50.

(b) Unless otherwise provided in this subpart, the rules in subpart A of this part set forth the procedures applicable to requests for OCC hearings.

§ 19.161 Hearing request and answer.

(a) *Hearing request.* (1) The OCC's written disapproval of a proposed acquisition of control of a national bank, must—

(i) Contain a statement of the basis for the disapproval; and

(ii) Indicate that—

(A) A hearing may be requested by filing a written request with the Comptroller within ten days after service of the notice of disapproval; and

(B) If a hearing is requested, that an answer to the notice of disapproval must be filed within 20 days after service of the notice of disapproval.

(b) *Answer.* An answer to the notice of disapproval must specifically deny those portions of the notice of disapproval which are disputed. Those portions of the notice which are not specifically denied are deemed admitted by the applicant. Any hearing under this subpart shall be limited to those parts of the notice that are specifically denied.

(c) *Waiver of hearing.* Failure to request a hearing pursuant to this section or to file an answer constitutes a waiver of the opportunity for a hearing, and the notice of disapproval constitutes a final and unappealable order.

§ 19.162 Hearing order.

Upon receipt of a request for hearing and an answer pursuant to § 19.161, the Comptroller or the Comptroller's designee shall issue an order setting forth the legal authority for the OCC's jurisdiction over the proceeding and shall address the request for hearing.

Subpart I—Discovery Depositions and Subpoenas

§ 19.170 Discovery depositions.

(a) *General rule.* A party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant, and material to the proceeding, and where there is need for the deposition. The deposition of experts shall be limited to those experts who are expected to testify at the hearing.

(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition, and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness shall be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant, and material matters of which the witness has factual, direct, and personal knowledge. Objections to questions or exhibits shall be in short form, stating the grounds for the objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The court reporter shall transcribe or otherwise record the witness's testimony, as agreed among the parties.

(e) *Protective orders.* At any time after notice of a deposition has been given, a party may file a motion for the issuance of a protective order. Such protective order may prohibit, terminate, or limit the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition:

(1) Is unreasonable, oppressive, excessive in scope, or unduly burdensome;

(2) Involves privileged, irrelevant, or immaterial matters;

(3) Involves unwarranted attempts to pry into a party's preparation for trial; or

(4) Is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the witness.

(f) *Fees.* Deposition witnesses, including expert witnesses, shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States in proceedings in which the United States is a party. Expenses in accordance with this paragraph shall be paid by the party seeking to take the deposition.

§ 19.171 Deposition subpoenas.

(a) *Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(b) *Service.* The party requesting the subpoena shall serve it on the person named therein, or on that person's counsel, by personal service, certified mail, or overnight delivery service. The party serving the subpoena shall file proof of service with the administrative law judge.

(c) *Motion to quash.* A person named in a subpoena may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party which requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(d) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of § 19.27(d).

Subpart J—Formal Investigations

§ 19.180 Scope.

This subpart and § 19.8 apply to formal investigations initiated by order of the Comptroller or the Comptroller's delegate and pertain to the exercise of powers specified in 12 U.S.C. 481, 1818(n) and 1820(c), and section 21 of the Exchange Act (15 U.S.C. 78u). This subpart does not restrict or in any way affect the authority of the Comptroller to conduct examinations into the affairs or ownership of banks and their affiliates.

§ 19.181 Confidentiality of formal investigations.

Information or documents obtained in the course of a formal investigation are confidential and may be disclosed only in accordance with the provisions of part 4 of this chapter.

§ 19.182 Order to conduct a formal investigation.

A formal investigation begins with the issuance of an order signed by the Comptroller or the Comptroller's delegate. The order must designate the person or persons who will conduct the investigation. Such persons are authorized, among other things, to issue subpoenas duces tecum, to administer oaths, and receive affirmations as to any matter under investigation by the Comptroller. Upon application and for good cause shown, the Comptroller may limit, modify, or withdraw the order at any stage of the proceedings.

§ 19.183 Rights of witnesses.

(a) Any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation shall, on request, be shown the order initiating the investigation.

(b) Any person who, in a formal investigation, is compelled to appear and testify, or who appears and testifies by request or permission of the Comptroller, may be accompanied, represented, and advised by counsel. The right to be accompanied, represented, and advised by counsel means the right of a person testifying to have an attorney present at all times while testifying and to have the attorney—

(1) Advise the person before, during and after the conclusion of testimony;

(2) Question the person briefly at the conclusion of testimony to clarify any of the answers given; and

(3) Make summary notes during the testimony solely for the use of the person.

(c) Any person who has given or will give testimony and counsel representing the person may be excluded from the proceedings during the taking of testimony of any other witness.

(d) Any person who is compelled to give testimony is entitled to inspect any transcript that has been made of the testimony but may not obtain a copy if the Comptroller's representatives conducting the proceedings have cause to believe that the contents should not be disclosed pending completion of the investigation.

(e) Any designated representative conducting an investigative proceeding shall report to the Comptroller any instances where a person has been guilty of dilatory, obstructionist or insubordinate conduct during the course of the proceeding or any other instance involving a violation of this part. The Comptroller may take such action as the circumstances warrant, including exclusion of the offending individual or individuals from participation in the proceedings.

§ 19.184 Service of subpoena and payment of witness fees.

A subpoena may be served on the person named therein, or such person's attorney, by personal service or certified mail. A witness who is subpoenaed will be paid the same expenses in the same manner as witnesses in the district courts of the United States. The expenses need not be tendered at the time a subpoena is served.

Subpart K—Parties and Representational Practice Before the OCC; Standards of Conduct

§ 19.190 Scope.

This subpart contains rules relating to parties and representational practice before the OCC. These rules include the imposition of sanctions by the administrative law judge, any other presiding officer, or the Comptroller against parties or their counsel in an adjudicatory proceeding under this part. They also cover other disciplinary sanctions—censure, suspension or debarment—against individuals who appear before the OCC in a representational capacity either in an adjudicatory proceeding under this part or in any other matters connected with

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presentations to the OCC relating to a client's rights, privileges, or liabilities. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of the OCC are not subject to disciplinary proceedings under this subpart.

§ 19.191 Sanctions relating to conduct in an adjudicatory proceeding.

(a) *General rule.* Appropriate sanctions may be imposed when any party or person representing a party in an adjudicatory proceeding under this part has failed to comply with an applicable statute, regulation, or order, and that failure to comply:

(1) Constitutes contemptuous conduct;

(2) Materially injures or prejudices another party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Unduly delays the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following:

(1) Issuing an order against the party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just; and

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) Upon the motion of any party, or on his or her own motion, the administrative law judge or other presiding officer may impose sanctions in accordance with this section. The administrative law judge or other presiding officer shall submit to the Comptroller for final ruling any sanction entering a final order that determines the case on the merits.

(2) No sanction authorized by this section, other than refusal to accept late filings, shall be imposed without prior notice to all parties and an opportunity for any party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form as the administrative law judge or other presiding officer directs. The administrative law judge or other presiding officer may limit the opportunity to be heard to an opportunity of a party or a party's representative to respond orally immediately after the act or inaction covered by this section is noted by the administrative law judge or other presiding officer.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, are subject to interlocutory review pursuant to § 19.25 in the same manner as any other ruling.

(d) *Section not exclusive.* Nothing in this section shall be read as precluding the administrative law judge or other presiding officer or the Comptroller from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 19.192 Censure, suspension or debarment.

The Comptroller may censure an individual or suspend or debar such individual from practice before the OCC if he or she is incompetent in representing a client's rights or interest in a significant matter before the OCC; or engages, or has engaged, in disreputable conduct; or refuses to comply with the rules and regulations in this part; or with intent to defraud in any manner, willfully and knowingly deceives, misleads, or threatens any client or prospective client. The suspension or debarment of an individual may be initiated only upon a finding by the Comptroller that the basis for the disciplinary action is sufficiently egregious.

§ 19.193 Definitions.

As used in §§ 19.190 through 19.201, the following terms shall have the meaning given in this section unless the context otherwise requires:

(a)(1) *Practice before the OCC* includes any matters connected with presentations to the OCC or any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the OCC. Such matters include, but are not limited to, representation of a client in an adjudicatory proceeding under this part; the preparation of any statement, opinion or other paper or document by an attorney, accountant, or other licensed professional which is filed with, or submitted to, the OCC, on behalf of another person in, or in connection with, any application, notification, report or document; the representation of a person at conferences, hearings and meetings; and the transaction of other business before the OCC on behalf of another person.

(2) *Practice before the OCC* does not include work prepared for a bank solely at its request for use in the ordinary course of its business.

(b) *Attorney* means any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, of the United States or the District of Columbia.

(c) *Accountant* means any individual who is duly qualified to practice as a certified public accountant or a public accountant in any state, possession, territory, commonwealth of the United States, or the District of Columbia.

§ 19.194 Eligibility to practice.

(a) *Attorneys.* Any attorney who is qualified to practice as an attorney and is not currently under suspension or debarment pursuant to this subpart may practice before the OCC.

(b) *Accountants.* Any accountant who is qualified to practice as a certified public accountant or public accountant and is not currently under suspension or debarment by the OCC may practice before the OCC.

§ 19.195 Incompetence.

Incompetence in the representation of a client's rights and interests in a significant matter before the OCC is grounds for suspension or debarment. The term "incompetence" encompasses conduct that reflects a lack of the knowledge, judgment and skill that a professional would ordinarily and reasonably be expected to exercise in adequately representing the rights and interests of a client. Such conduct includes, but is not limited to:

(a) Handling a matter which the individual knows or should know that he or she is not competent to handle, without associating with a professional who is competent to handle such matter.

(b) Handling a matter without adequate preparation under the circumstances.

(c) Neglect in a matter entrusted to him or her.

§ 19.196 Disreputable conduct.

Disreputable conduct for which an individual may be censured, debarred or suspended from practice before the OCC includes, but is not limited to:

(a) Willfully violating or willfully aiding and abetting the violation of any provision of the Federal banking or applicable securities laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust.

(b) Knowingly giving false or misleading information, or participating in any way in the giving of false information to the OCC or any officer or employee thereof, or to any tribunal authorized to pass upon matters administered by the OCC in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications for enrollment, affidavits, declarations, or any other document or written or oral statement.

(c) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the OCC by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(d) Disbarment or suspension from practice as an attorney, or debarment or suspension from practice as a certified public accountant or public accountant, by any duly constituted authority of any state, possession, or commonwealth of the United States, or the District of Columbia for the conviction of a felony or misdemeanor involving moral turpitude in matters relating to the supervisory responsibilities of the OCC, where the conviction has not been reversed on appeal.

(e) Knowingly aiding or abetting another individual to practice before the OCC during that individual's period of suspension, debarment, or ineligibility.

(f) Contemptuous conduct in connection with practice before the OCC, and knowingly making false accusations and statements, or circulating or publishing malicious or libelous matter.

(g) Suspension or debarment from practice before the Board of Governors, the FDIC, the OTS, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal agency based on matters relating to the supervisory responsibilities of the OCC.

(h) Willful violation of any of the regulations contained in this part.

§ 19.197 Initiation of disciplinary proceeding.

(a) *Receipt of information.* An individual, including any employee of the OCC, who has reason to believe that an individual practicing before the OCC in a representative capacity has engaged in any conduct that would serve as a basis for censure, suspension or debarment under § 19.192, may make a report thereof and forward it to the OCC or to such person as may be delegated responsibility for such matters by the Comptroller.

(b) *Censure without formal proceeding.* Upon receipt of information regarding an individual's qualification to practice before the OCC, the Comptroller or the Comptroller's delegate may, after giving the individual notice and opportunity to respond, censure such individual.

(c) *Institution of formal disciplinary proceeding.* When the Comptroller or the Comptroller's delegate has reason to believe that any individual who practices before the OCC in a representative capacity has engaged in conduct that would serve as a basis for censure, suspension or debarment under § 19.192, the Comptroller or the Comptroller's delegate may, after giving the individual notice and opportunity to respond, institute a formal disciplinary proceeding against such individual. The proceeding will be conducted pursuant to § 19.199 and initiated by a complaint which names the individual as a respondent and is signed by the Comptroller or the Comptroller's delegate. Except in cases of willfulness, or when time, the nature of the proceeding, or the public interest do not permit, a proceeding under this section may not be commenced until the respondent has been informed, in writing, of the facts or conduct which warrant institution of a proceeding and the respondent has been accorded the opportunity to comply with all lawful requirements or take whatever action may be necessary to remedy the conduct that is the basis for the commencement of the proceeding.

§ 19.198 Conferences.

(a) *General.* The Comptroller or the Comptroller's delegate may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, debarment or suspension, regardless of whether a proceeding for debarment or suspension has been commenced. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(b) *Resignation or voluntary suspension.* In order to avoid the institution of, or a decision in, a debarment or suspension proceeding, a person who practices before the OCC may consent to suspension from practice. At the discretion of the Comptroller or the Comptroller's delegate, the individual may be suspended or debarred in accordance with the consent offered.

§ 19.199 Proceedings under this subpart.

Any hearing held under this subpart are held before a presiding officer who is an administrative law judge pursuant to procedures set forth in subpart A of this part. The Comptroller or the Comptroller's delegate shall appoint a person to represent the OCC in the hearing. Any person having prior involvement in the matter which is the basis for the suspension or debarment proceeding is disqualified from representing the OCC in the hearing. The hearing will be closed to the public unless the Comptroller on his or her own initiative, or on the request of a party, otherwise directs. The presiding officer shall issue a recommended decision to the Comptroller who shall issue the final decision and order. The Comptroller may censure, debar or suspend an individual, or take such other disciplinary action as the Comptroller deems appropriate.

§ 19.200 Effect of suspension, debarment or censure.

(a) *Debarment.* If the final order against the respondent is for debarment, the individual may not practice before the OCC unless otherwise permitted to do so by the Comptroller.

(b) *Suspension.* If the final order against the respondent is for suspension, the individual may not practice before the OCC during the period of suspension.

(c) *Censure.* If the final order against the respondent is for censure, the individual may be permitted to practice before the OCC, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the OCC's files.

(d) *Notice of debarment or suspension.* Upon the issuance of a final order for suspension or debarment, the Comptroller or the Comptroller's delegate shall give notice of the order to appropriate officers and employees of the OCC and to interested departments and agencies of the Federal Government. The Comptroller or the Comptroller's delegate shall also give notice to the appropriate authorities of the state in which any debarred or suspended individual is or was licensed to practice.

§ 19.201 Petition for reinstatement.

At the expiration of the period of time designated in the order of debarment, the Comptroller may entertain a petition for reinstatement from any person debarred from practice before the OCC. The Comptroller may grant

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reinstatement only if satisfied that the petitioner is likely to act in accordance with the regulations in this part, and that granting reinstatement would not be contrary to the public interest. Any request for reinstatement shall be limited to written submissions unless the Comptroller, in his or her discretion, affords the petitioner a hearing.

Subpart L—Equal Access to Justice Act

§ 19.210 Scope.

The Equal Access to Justice Act regulations applicable to formal OCC adjudicatory proceedings under this part are set forth at 31 CFR part 6.

4. Subparts M through O are removed.

Dated: June 5, 1991.

Robert B. Serino,

Deputy Chief Counsel (Policy).

FEDERAL RESERVE SYSTEM

12 CFR Part 263

List of Subjects in 12 CFR Part 263

Administrative practice and procedure; Banks, banking; Equal access to justice; Federal Reserve System; Hearing and appeal procedures; Penalties.

Authority and Issuance

For the reasons set out in the common preamble, part 263 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 is revised to read as follows:

Authority: Sections 9, 11(i), 19 and 29 of the Federal Reserve Act (12 U.S.C. 324, 248, 504, and 505); sections 5(b), 8(b) and 8(d) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b), 1847(b) and 1847(d)); section 106(b)(2)(F) of the Bank Holding Company Act Amendments of 1970, as amended (12 U.S.C. 1972(2)(F)); sections 7(j), 8 and 18(c) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1817(j), 1818 and 2828(c)); section 13 of the International Banking Act of 1978 (12 U.S.C. 3108); sections 15B(c)(5), 15C(c)(2), and 21B of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o–4, 78o–5, and 78u–2); section 11 of the Clayton Act, as amended (15 U.S.C. 21); section 203(c) of the Equal Access to Justice Act, as amended (5 U.S.C. 504); and sections 908 and 910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3907 and 3909).

2. Subpart A is revised to read as set forth at the end of the common preamble.

Subpart A—Uniform Rules of Practice and Procedure

Sec.
263.1 Scope.
263.2 Rules of construction.
263.3 Definitions.
263.4 Authority of Agency Head.
263.5 Authority of the administrative law judge.
263.6 Appearance and practice in adjudicatory proceedings.
263.7 Good faith certification.
263.8 Conflicts of interest.
263.9 Ex parte communications.
263.10 Filing of papers.
263.11 Service of papers.
263.12 Construction of time limits.
263.13 Change of time limits.
263.14 Witness fees and expenses.
263.15 Opportunity for informal settlement.
263.16 Agency's right to conduct examination.
263.17 Collateral attacks on adjudicatory proceeding.
263.18 Commencement of proceeding and contents of notice.
263.19 Answer.
263.20 Amended pleadings.
263.21 Failure to appear.
263.22 Consolidation and severance of actions.
263.23 Motions.
263.24 Scope of document discovery.
263.25 Request for document discovery from parties.
263.26 Document subpoenas to nonparties.
263.27 Deposition of witness unavailable for hearing.
263.28 Interlocutory review.
263.29 Summary disposition.
263.30 Partial summary disposition.
263.31 Scheduling and prehearing conferences.
263.32 Prehearing submissions.
263.33 Public hearings.
263.34 Hearing subpoenas.
263.35 Conduct of hearings.
263.36 Evidence.
263.37 Proposed findings and conclusions.
263.38 Recommended decision and filing of record.
263.39 Exceptions to recommended decision.
263.40 Review by Agency Head.
263.41 Stays pending judicial review.

3. Subparts B through D are revised and new subparts E through G are added to read as follows:

Subpart B—Board of Governors Local Rules Supplementing the Uniform Rules

263.50 Purpose and scope.
263.51 Definitions.
263.52 Address for filing.
263.53 Discovery depositions.
263.54 Delegation to the Office of Financial Institution Adjudication.

Subpart C—Procedures for Assessment of Civil Money Penalties

263.60 Scope.
263.61 Opportunity for informal proceeding.
263.62 Relevant considerations for assessment of civil penalty.
263.63 Assessment order.
263.64 Payment of civil penalty

Subpart D—Rules and Procedures Applicable to Suspension of Removal of an Institution-Affiliated Party Where a Felony Is Charged or Proven

263.70 Purpose and scope.
263.71 Notice of order of suspension, removal, or prohibition.
263.72 Request for informal hearing.
263.73 Order for informal hearing.
263.74 Decision of the Board.

Subpart E—Procedures for Issuance and Enforcement of Directives To Maintain Adequate Capital

263.80 Purpose and scope.
263.81 Definitions.
263.82 Establishment of minimum capital levels.
263.83 Issuance of capital directives.
263.84 Enforcement of directive.
263.85 Establishment of increased capital level for specific institutions.

Subpart F—Practice Before the Board

263.90 Scope.
263.91 Censure, suspension or debarment.
263.92 Definitions.
263.93 Eligibility to practice.
263.94 Conduct warranting sanctions.
263.95 Initiation of disciplinary proceeding.
263.96 Conferences.
263.97 Proceedings under this subpart.
263.98 Effect of suspension, debarment or censure.
263.99 Petition for reinstatement.

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

263.100 Authority and scope.
263.101 Standards for awards.
263.102 Prevailing party.
263.103 Eligibility of applicants.
263.104 Application for awards.
263.105 Statement of net worth.
263.106 Measure of awards.
263.107 Statement of fees and expenses.
263.108 Responses to application.
263.109 Further proceedings.
263.110 Recommended decision.
263.111 Action by the Board.

Subpart B—Board of Governors Local Rules Supplementing the Uniform Rules

§ 263.50 Purpose and scope.

(a) This subpart prescribes the rules of practice and procedure governing formal adjudications set forth in § 263.50(b) of this subpart, and supplements the rules of practice and procedure contained in subpart A of this part.

(b) The rules and procedures of this subpart and subpart A of this part shall apply to the formal adjudications set forth in § 263.1 of subpart A and to the following adjudications:

(1) Suspension of a member bank from use of credit facilities of the Federal Reserve System under section 4 of the FRA (12 U.S.C. 301);

(2) Termination of a bank's membership in the Federal Reserve System under section 9 of the FRA (12 U.S.C. 327);

(3) Issuance of a cease-and-desist order under section 11 of the Clayton Act (15 U.S.C. 21);

(4) Formal adjudications on bank merger applications under section 18(c) of the FDIA (12 U.S.C. 1828(c));

(5) Issuance of a divestiture order under section 5(e) of the BHCA (12 U.S.C. 1844(e));

(6) Imposition of sanctions upon any municipal securities dealer for which the Board is the appropriate regulatory agency, or upon any person associated or seeking to become associated with such a municipal securities dealer, under section 15B(c)(5) of the Exchange Act (15 U.S.C. 78o–4); and

(7) Proceedings where the Board otherwise orders that a formal hearing be held.

§ 263.51 Definitions.

As used in subparts B through G of this part:

(a) *Board* means the Board of Governors of the Federal Reserve System;

(b) *Secretary* means the Secretary of the Board of Governors of the Federal Reserve System.

§ 263.52 Address for filing.

All papers to be filed with the Board shall be filed with the Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551.

§ 263.53 Discovery depositions.

(a) *In general.* In addition to the discovery permitted in subpart A of this part, limited discovery by means of depositions shall be allowed for certain individuals with knowledge of facts material to the proceeding that are not protected from discovery by any applicable privilege. In the ordinary case, accordingly, depositions will not be taken of individuals other than those identified as hearing witnesses or experts. All discovery depositions must be completed within the time set forth in § 263.24(d).

(b) *Application.* A party who desires to take a deposition of any other party's proposed witnesses or any expert, shall apply to the administrative law judge for the issuance of a discovery subpoena or subpoena duces tecum. The application shall state: The name and address of the proposed deponent, the subject matter of the testimony expected from the deponent and its relevancy to the proceeding, and the address of the place and the time, no sooner than ten days after the service of the subpoena, for the taking of the deposition. Any such application shall be treated as a motion subject to the rules governing motions practice set forth in § 263.23.

(c) *Issuance of subpoena.* The administrative law judge shall issue the requested deposition subpoena or subpoena duces tecum upon a finding that the application satisfies the requirements of this section and § 263.24. If the administrative law judge determines that the taking of the deposition or its proposed location is, in whole or in part, unnecessary, unreasonable, oppressive, excessive in scope or unduly burdensome, he or she may deny the application or may grant it upon such conditions as justice may require. The party obtaining the deposition subpoena or subpoena duces tecum shall be responsible for serving it on the deponent and all parties to the proceeding in accordance with § 263.11.

(d) *Motion to quash or modify.* A person named in a deposition subpoena or subpoena duces tecum may file a motion to quash or modify the subpoena, including the issuance of a protective order, within at least ten days after service of the subpoena, but in all cases at least five days prior to the commencement of the scheduled deposition. A statement of the reasons for granting the motion must accompany it and a copy of the motion and the statement must be served on party which requested the subpoena. Only the party requesting the subpoena may file a response to a motion to quash or modify, and such response shall be filed within five days of service of the motion.

(e) *Enforcement of a deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures set forth in § 263.27(d).

(f) *Conduct of the deposition.* The deponent shall be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant and material matters. Objections to questions or evidence shall be in the short form, stating the ground for the objection. Failure to object to questions or evidence shall not be deemed a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The discovery deposition shall be transcribed or otherwise recorded as agreed among the parties.

(g) *Protective orders.* At any time during the taking of a discovery deposition, on the motion of any party or of the deponent, the administrative law judge may terminate or limit the scope and manner of the deposition upon a finding of sufficient ground. Grounds for terminating or limiting the taking of a discovery deposition include a finding that the discovery deposition is being conducted in bad faith or in such a manner as to:

(1) Unreasonably annoy, embarrass, or oppress the deponent;

(2) Unreasonably probe into privilege, irrelevant or immaterial matters; or

(3) Unreasonably attempt to pry into a party's preparation for trial.

§ 263.54 Delegation to the Office of Financial Institution Adjudication.

Unless otherwise ordered by the Board, administrative adjudications subject to subpart A of this part shall be conducted by an administrative law judge of the OFIA.

Subpart C—Procedures for Assessment of Civil Money Penalties

§ 263.60 Scope.

The Uniform Rules set forth in subpart A of this part shall govern the procedures for assessment of civil money penalties, except as otherwise provided in this subpart.

§ 263.61 Opportunity for informal proceeding.

In the sole discretion of the Board's General Counsel, the General Counsel may, prior to the issuance by the Board of a notice of assessment of civil penalty, advise the affected person that the issuance of a notice of assessment of civil penalty is being considered and the reasons and authority for the proposed assessment. The General Counsel may provide the person an opportunity to present written materials or request a conference with members of the Board's staff to show that the penalty should not be assessed or, if assessed, should be reduced in amount.

§ 263.62 Relevant considerations for assessment of civil penalty.

In determining the amount of the penalty to be assessed, the Board shall take into account the appropriateness of the penalty with respect to the financial resources and good faith of the person charged, the gravity of the misconduct, the history of previous misconduct, the economic benefit derived by the person from the misconduct, and such other matters as justice may require.

§ 263.63 Assessment order.

(a) In the event of consent to an assessment by the person concerned, or if, upon the record made at an administrative hearing, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue a final order of assessment of civil penalty. In its final

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order, the Board may modify the amount of the penalty specified in the notice of assessment.

(b) An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§ 263.64 Payment of civil penalty.

(a) The date designated in the notice of assessment for payment of the civil penalty will normally be 60 days from the issuance of the notice. If, however, the Board finds in a specific case that the purposes of the authorizing statute would be better served if the 60-day period is changed, the Board may shorten or lengthen the period or make the civil penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of civil penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil penalty should be paid or collected.

(b) Checks in payment of civil penalties should be made payable to the "Board of Governors of the Federal Reserve System." Upon collection, the Board shall forward the amount of the penalty to the Treasury of the United States.

Subpart D— Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony Is Charged or Proven

§ 263.70 Purpose and scope.

The rules and procedures set forth in this subpart apply to informal hearings afforded to any institution-affiliated party for whom the Board is the appropriate regulatory agency, who has been suspended from office or prohibited from further participation in any manner in the conduct of the institution's affairs by a notice or order issued by the Board upon the grounds set forth in section 8(g) of the FDIA (12 U.S.C. 1818(g)).

§ 263.71 Notice or order of suspension, removal, or prohibition.

(a) *Grounds.* The Board may suspend an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an institution's affairs when the person is charged in any information, indictment, or complaint authorized by a United States attorney with the commission of, or participation in, a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law. The Board may remove an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an institution's affairs when the person is convicted of such an offense and the conviction is not subject to further direct appellate review. The Board may suspend or remove an institution-affiliated party or prohibit an institution-affiliated party from participation in an institution's affairs in these circumstances if the Board finds that continued service to the financial institution or participation in its affairs by the institution-affiliated party may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the financial institution.

(b) *Contents.* The Board commences a suspension, removal, or prohibition action under this subpart with the issuance, and service upon a institution-affiliated party, of a notice of suspension from office, or order of removal from office, or notice or order of prohibition from participation in the financial institution's affairs. Such a notice or order shall indicate the basis for the suspension, removal, or prohibition and shall inform the institution-affiliated party of the right to request in writing, within 30 days of service of the notice or order, an opportunity to show at an informal hearing that continued service to, or participation in the conduct of the affairs of, the financial institution does not and is not likely to pose a threat to the interests of the financial institution's depositors or threaten to impair public confidence in the financial institution. Failure to file a timely request for an informal hearing shall be deemed to be a waiver of the right to request such a hearing. A notice of suspension or prohibition shall remain in effect until the criminal charge upon which the notice is based is finally disposed of or until the notice is terminated by the Board.

(c) *Service.* The notice or order shall be served upon the financial institution concerned, whereupon the institution-affiliated party shall immediately cease service to the financial institution or further participation in any manner in the conduct of the affairs of the financial institution. A notice or order of suspension, removal, or prohibition may be served by any of the means authorized for service under § 263.11(c)(2) of subpart A.

§ 263.72 Request for informal hearing.

An institution-affiliated party who is suspended or removed from office or prohibited from participation in the institution's affairs may request an informal hearing within 30 days of service of the notice or order. The request shall be filed in writing with the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall state with particularity the relief desired and the grounds therefor and shall include, when available, supporting evidence in the form of affidavits. If the institution-affiliated party desires to present oral testimony or witnesses at the hearing, the institution-affiliated party must include a request to do so with the request for informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony.

§ 263.73 Order for informal hearing.

(a) *Issuance of hearing order.* Upon receipt of a timely request for an informal hearing, the Secretary shall promptly issue an order directing an informal hearing to commence within 30 days of the receipt of the request. At the request of the institution-affiliated party, the Secretary may order the hearing to commence at a time more than 30 days after the receipt of the request for hearing. The hearing shall be held in Washington, DC, or at such other place as may be designated by the Secretary, before presiding officers designated by the Secretary to conduct the hearing. The presiding officers normally will include representatives from the Board's Legal Division and the Division of Banking Supervision and Regulation and from the appropriate Federal Reserve Bank.

(b) *Waiver of oral hearing.* A institution-affiliated party may waive in writing his or her right to an oral hearing and instead elect to have the matter determined by the Board solely on the basis of written submissions.

(c) *Hearing procedures.* (1) The institution-affiliated party may appear at the hearing personally, through counsel, or personally with counsel. The institution-affiliated party shall have the right to introduce relevant written materials and to present an oral argument. The institution-affiliated party may introduce oral testimony and present witnesses only if expressly authorized by the Board or the Secretary. Except as provided in § 263.11, the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554–557) and of subpart A of this part shall not apply to the informal hearing ordered under this subpart unless the Board orders that subpart A of this part applies.

(2) The informal hearing shall be recorded and a transcript shall be furnished to the institution-affiliated party upon request and after the payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officers. The presiding officers may ask questions of any witness.

(3) The presiding officers may order the record to be kept open for a reasonable period following the hearing (normally five business days), during which time additional submissions to the record may be made. Thereafter, the record shall be closed.

(d) *Authority of presiding officers.* In the course of or in connection with any proceeding under this subpart, the Board or the presiding officers are authorized to administer oaths and affirmations, to take or cause to be taken depositions, to issue, quash or modify subpoenas and subpoenas duces tecum, and, for the enforcement thereof, to apply to an appropriate United States district court. All action relating to depositions and subpoenas shall be in accordance with the rules provided in §§ 263.34 and 263.53.

(e) *Recommendation of presiding officers.* The presiding officers shall make a recommendation to the Board concerning the notice or order of suspension, removal, or prohibition within 20 calendar days following the close of the record on the hearing.

§ 263.74 Decision of the Board.

(a) Within 60 days following the close of the record on the hearing, or receipt of written submissions where a hearing has been waived, the Board shall notify the institution-affiliated party whether the notice of suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. The notification shall contain a statement of the basis for any adverse decision by the Board. In the case of a decision favorable to the institution-affiliated party, the Board shall take prompt action to rescind or otherwise modify the order of suspension, removal or prohibition.

(b) In deciding the question of suspension, removal, or prohibition under this subpart, the Board shall not rule on the question of the guilt or innocence of the individual with respect to the crime with which the individual has been charged.

Subpart E—Procedures for Issuance and Enforcement of Directives To Maintain Adequate Capital

§ 263.80 Purpose and scope.

This subpart establishes procedures under which the Board may issue a directive or take other action to require a state member bank or a bank holding company to achieve and maintain adequate capital.

§ 263.81 Definitions.

(a) *Bank holding company* means any company that controls a bank as defined in section 2 of the BHCA, 12 U.S.C. 1841, and in the Board's Regulation Y (12 CFR 225.2(b)) or any direct or indirect subsidiary thereof other than a bank subsidiary as defined in section 2(c) of the BHCA, 12 U.S.C. 1841(c), and in the Board's Regulation Y (12 CFR 225.2(a)).

(b) *Capital Adequacy Guidelines* means those guidelines for bank holding companies and state member banks contained in appendix A and D to the Board's Regulation Y (12 CFR part 225), and in appendix A to the Board's Regulation H (12 CFR part 208), or any succeeding capital guidelines promulgated by the Board.

(c) *Directive* means a final order issued by the Board pursuant to ILSA (12 U.S.C. 3907(b)(2)) requiring a state member bank or bank holding company to increase capital to or maintain capital at the minimum level set forth in the Board's Capital Adequacy Guidelines or as otherwise established under procedures described in § 263.85 of this subpart.

(d) *State member bank* means any state-chartered bank that is a member of the Federal Reserve System.

§ 263.82 Establishment of minimum capital levels.

The Board has established minimum capital levels for state member banks and bank holding companies in its Capital Adequacy Guidelines. The Board may set higher capital levels as necessary and appropriate for a particular state member bank or bank holding company based upon its financial condition, managerial resources, prospects, or similar factors, pursuant to the procedures set forth in § 263.85 of this subpart.

§ 263.83 Issuance of capital directives.

(a) *Notice of intent to issue directive.* Except as provided in § 263.85 of this subpart, if a state member bank or bank holding company is operating with less than the minimum level of capital established in the Board's Capital Adequacy Guidelines, the Board may issue and serve upon such state member bank or bank holding company written notice of the Board's intent to issue a directive to require the bank or bank holding company to achieve and maintain adequate capital within a specified time period.

(b) *Contents of notice.* The notice of intent to issue a directive shall include:

(1) The required minimum level of capital to be achieved or maintained by the institution;

(2) Its current level of capital;

(3) The proposed increase in capital needed to meet the minimum requirements;

(4) The proposed date or schedule for meeting these minimum requirements;

(5) When deemed appropriate, specific details of a proposed plan for meeting the minimum capital requirements; and

(6) The date for a written response by the bank or bank holding company to the proposed directive, which shall be at least 14 days from the date of issuance of the notice unless the Board determines a shorter period is necessary because of the financial condition of the bank or bank holding company.

(c) *Response to notice.* The bank or bank holding company may file a written response to the notice within the time period set by the Board. The response may include:

(1) An explanation why a directive should not be issued;

(2) Any proposed modification of the terms of the directive;

(3) Any relevant information, mitigating circumstances, documentation or other evidence in support of the institution's position regarding the proposed directive; and

(4) The institution's plan for attaining the required level of capital.

(d) *Failure to file response.* Failure by the bank or bank holding company to file a written response to the notice of intent to issue a directive within the specified time period shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of such directive.

(e) *Board consideration of response.* After considering the response of the bank or bank holding company, the Board may:

(1) Issue the directive as originally proposed or in modified form;

(2) Determine not to issue a directive and so notify the bank or bank holding company; or

(3) Seek additional information or clarification of the response by the bank or bank holding company.

(f) *Contents of directive.* Any directive issued by the Board may order the bank or bank holding company to:

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(1) Achieve or maintain the minimum capital requirement established pursuant to the Board's Capital Adequacy Guidelines or the procedures in § 263.85 of this subpart by a certain date;

(2) Adhere to a previously submitted plan or submit for approval and adhere to a plan for achieving the minimum capital requirement by a certain date;

(3) Take other specific action as the Board directs to achieve the minimum capital levels, including requiring a reduction of assets or asset growth or restriction on the payment of dividends; or

(4) Take any combination of the above actions.

(g) *Request for reconsideration of directive.* Any state member bank or bank holding company, upon a change in circumstances, may request the Board to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the required minimum capital level. The directive and plan continue in effect while such request is pending before the Board.

§ 263.84 Enforcement of directive.

(a) *Judicial and administrative remedies.* (1) Whenever a bank or bank holding company fails to follow a directive issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the appropriate United States district court, pursuant to section 908 (b)(2)(B)(ii) of ILSA (12 U.S.C. 3907(b)(2)(B)(ii)) and to section 8(i) of the FDIA (12 U.S.C. 1818(i)), in the same manner and to the same extent as if the directive were a final cease-and-desist-order.

(2) The Board, pursuant to section 910(d) of ILSA (12 U.S.C. 3909(d)), may also assess civil money penalties for violation of the directive against any bank or bank holding company and any institution-affiliated party of the bank or bank holding company, in the same manner and to the same extent as if the directive were a final cease-and-desist order.

(b) *Other enforcement actions.* A directive may be issued separately, in conjunction with, or in addition to any other enforcement actions available to the Board, including issuance of cease-and-desist orders, the approval or denial of applications or notices, or any other actions authorized by law.

(c) *Consideration in application proceedings.* In acting upon any application or notice submitted to the Board pursuant to any statute administered by the Board, the Board may consider the progress of a state member bank or bank holding company or any subsidiary thereof in adhering to any directive or capital adequacy plan required by the Board pursuant to this subpart, or by any other appropriate banking supervisory agency pursuant to ILSA. The Board shall consider whether approval or a notice of intent not to disapprove would divert earnings, diminish capital, or otherwise impede the bank or bank holding company in achieving its required minimum capital level or complying with its capital adequacy plan.

§ 263.85 Establishment of increased capital level for specific institutions.

(a) *Establishment of capital levels for specific institutions.* The Board may establish a capital level higher than the minimum specified in the Board's Capital Adequacy Guidelines for a specific bank or bank holding company pursuant to:

(1) A written agreement or memorandum of understanding between the Board or the appropriate Federal Reserve Bank and the bank or bank holding company;

(2) A temporary or final cease-and-desist order issued pursuant to section 8(b) or (c) of the FDIA (12 U.S.C. 1818(b) or (c));

(3) A condition for approval of an application or issuance of a notice of intent not to disapprove a proposal;

(4) Or other similar means; or

(5) The procedures set forth in paragraph (b) of this section.

(b) *Procedure to establish higher capital requirement*—(1) *Notice.* When the Board determines that capital levels above those in the Board's Capital Adequacy Guidelines may be necessary and appropriate for a particular bank or bank holding company under the circumstances, the Board shall give the bank or bank holding company notice of the proposed higher capital requirement and shall permit the bank or bank holding company an opportunity to comment upon the proposed capital level, whether it should be required and, if so, under what time schedule. The notice shall contain the Board's reasons for proposing a higher level of capital.

(2) *Response.* The bank or bank holding company shall be allowed at least 14 days to respond, unless the Board determines that a shorter period is necessary because of the financial condition of the bank or bank holding company. Failure by the bank or bank holding company to file a written response to the notice within the time set by the Board shall constitute a waiver of the opportunity to respond and shall constitute consent to issuance of a directive containing the required minimum capital level.

(3) *Board decision.* After considering the response of the institution, the Board may issue a written directive to the bank or bank holding company setting an appropriate capital level and the date on which this capital level will become effective. The Board may require the bank or bank holding company to submit and adhere to a plan for achieving such higher capital level as the Board may set.

(4) *Enforcement of higher capital level.* The Board may enforce the capital level established pursuant to the procedures described in this section and any plan submitted to achieve that capital level through the procedures set forth in § 263.84 of this subpart.

Subpart F—Practice Before the Board

§ 263.90 Scope.

This subpart prescribes rules relating to general practice before the Board on one's own behalf or in a representational capacity, including the circumstances under which disciplinary sanctions—censure, suspension, or debarment—may be imposed upon persons appearing in a representational capacity, including attorneys and accountants, but not including employees of the Board. These disciplinary sanctions, which continue in effect beyond the duration of a specific proceeding, supplement the provisions of § 263.6(b) of subpart A, which address control of a specific proceeding.

§ 263.91 Censure, suspension or debarment.

The Board may censure an individual or suspend or debar such individual from practice before the Board if he or she engages, or has engaged, in conduct warranting sanctions as set forth in § 263.94; refuses to comply with the rules and regulations in this part; or with intent to defraud in any manner, willfully and knowingly deceives, misleads, or threatens any client or prospective client. The suspension or debarment of an individual shall be initiated only upon a finding by the Board that the conduct that forms the basis for the disciplinary action is egregious.

§ 263.92 Definitions.

As used in this subpart, the following terms shall have the meaning given in this section unless the context otherwise requires.

(a)(1) *Practice before the Board* includes any matters connected with

presentations to the Board or to any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the Board. Such matters include, but are not limited to, the preparation of any statement, opinion or other paper or document by an attorney, accountant, or other licensed professional which is filed with, or submitted to, the Board, on behalf of another person in, or in connection with, any application, notification, report or document; the representation of a person at conferences, hearings and meetings; and the transaction of other business before the Board on behalf of another person.

(2) *Practice before the Board* does not include work prepared for an institution solely at its request for use in the ordinary course of its business.

(b) *Attorney* means any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia.

(c) *Accountant* means any individual who is duly qualified to practice as a certified public accountant or a public accountant in any state, possession, territory, commonwealth, or the District of Columbia.

§ 263.93 Eligibility to practice.

(a) *Attorneys.* Any attorney who is qualified to practice as an attorney and is not currently under suspension or debarment pursuant to this subpart may practice before the Board.

(b) *Accountants.* Any accountant who is qualified to practice as a certified public accountant or public accountant and is not currently under suspension or debarment by the Board may practice before the Board.

§ 263.94 Conduct warranting sanctions.

Conduct for which an individual may be censured, debarred or suspended from practice before the Board includes, but is not limited to:

(a) Willfully violating or willfully aiding and abetting the violation of any provision of the Federal banking laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust;

(b) Knowingly giving false or misleading information, or participating in any way in the giving of false information to the Board or to any Board officer or employee, or to any tribunal authorized to pass upon matters administered by the Board in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications, affidavits, declarations, or any other document or written or oral statement;

(c) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Board by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value;

(d) Disbarment or suspension from practice as an attorney, or debarment or suspension from practice as a certified public accountant or public accountant, by any duly constituted authority of any state, possession, commonwealth, or the District of Columbia for the conviction of a felony or misdemeanor involving personal dishonesty or breach of trust in matters relating to the supervisory responsibilities of the Board, where the conviction has not been reversed on appeal;

(e) Knowingly aiding or abetting another individual to practice before the Board during that individual's period of suspension, debarment, or ineligibility;

(f) Contemptuous conduct in connection with practice before the Board, and knowingly making false accusations and statements, or circulating or publishing malicious or libelous matter;

(g) Suspension or debarment from practice before the OCC, the FDIC, the OTS, the Securities and Exchange Commission, the NCUA, or any other Federal agency based on matters relating to the supervisory responsibilities of the Board;

(h) Willful or knowing violation of any of the regulations contained in this part.

§ 263.95 Initiation of disciplinary proceeding.

(a) *Receipt of information.* An individual, including any employee of the Board, who has reason to believe that an individual practicing before the Board in a representative capacity has engaged in any conduct that would serve as a basis for censure, suspension or debarment under § 263.94, may make a report thereof and forward it to the Board.

(b) *Censure without formal proceeding.* Upon receipt of information regarding an individual's qualification to practice before the Board, the Board may, after giving the individual notice and opportunity to respond, censure such individual.

(c) *Institution of formal disciplinary proceeding.* When the Board has reason to believe that any individual who practices before the Board in a representative capacity has engaged in conduct that would serve as a basis for censure, suspension or debarment under § 263.94 the Board may, after giving the individual notice and opportunity to respond, institute a formal disciplinary proceeding against such individual. The proceeding shall be conducted pursuant to § 263.97 and shall be initiated by a complaint issued by the Board that names the individual as a respondent. Except in cases when time, the nature of the proceeding, or the public interest do not permit, a proceeding under this section shall not be instituted until the respondent has been informed, in writing, of the facts or conduct which warrant institution of a proceeding and the respondent has been accorded the opportunity to comply with all lawful requirements or take whatever action may be necessary to remedy the conduct that is the basis for the initiation of the proceeding.

§ 263.96 Conferences.

(a) *General.* The Board's staff may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, debarment or suspension, regardless of whether a proceeding for debarment or suspension has been instituted. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(b) *Resignation or voluntary suspension.* In order to avoid the institution of, or a decision in, a debarment or suspension proceeding, a person who practices before the Board may consent to suspension from practice. At the discretion of the Board, the individual may be suspended or debarred in accordance with the consent offered.

§ 263.97 Proceedings under this subpart.

Except as otherwise provided in this subpart, any hearing held under this subpart shall be held before an administrative law judge of the OFIA pursuant to procedures set forth in subpart A of this part. The Board shall appoint a person to represent the Board in the hearing. Any person having prior involvement in the matter which is the basis for the suspension or debarment proceeding shall be disqualified from representing the Board in the hearing. The hearing shall be closed to the public unless the Board, sua sponte or on the request of a party, otherwise directs. The administrative law judge shall refer a recommended decision to the Board, which shall issue the final decision and order. In its final decision and order, the

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Board may censure, debar or suspend an individual, or take such other disciplinary action as the Board deems appropriate.

§ 263.98 Effect of suspension, debarment or censure.

(a) *Debarment.* If the final order against the respondent is for debarment, the individual will not thereafter be permitted to practice before the Board unless otherwise permitted to do so by the Board pursuant to § 263.99 of this subpart.

(b) *Suspension.* If the final order against the respondent is for suspension, the individual will not thereafter be permitted to practice before the Board during the period of suspension.

(c) *Censure.* If the final order against the respondent is for censure, the individual may be permitted to practice before the Board, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the Board's files.

(d) *Notice of debarment or suspension.* Upon the issuance of a final order for suspension or debarment, the Board shall give notice of the order to appropriate officers and employees of the Board, to interested departments and agencies of the Federal Government, and to the appropriate authorities of the State in which any debarred or suspended individual is or was licensed to practice.

§ 263.99 Petition for reinstatement.

The Board may entertain a petition for reinstatement from any person debarred from practice before the Board. The Board shall grant reinstatement only if the Board finds that the petitioner is likely to act in accordance with the regulations in this part, and that granting reinstatement would not be contrary to the public interest. Any request for reinstatement shall be limited to written submissions unless the Board, in its discretion, affords the petitioner an informal hearing.

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

§ 263.100 Authority and scope.

This subpart implements the provisions of the Equal Access to Justice Act (5 U.S.C. 504) as they apply to formal adversary adjudications before the Board. The types of proceedings covered by this subpart are listed in §§ 263.1 and 263.50.

§ 263.101 Standards for awards.

A respondent in a covered proceeding that prevails on the merits of that proceeding against the Board, and that is eligible under this subpart as defined in § 263.103, may receive an award for fees and expenses incurred in the proceeding unless the position of the Board during the proceeding was substantially justified or special circumstances make an award unjust. The position of the Board includes, in addition to the position taken by the Board in the adversary proceeding, the action or failure to act by the Board upon which the adversary proceeding was based. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings.

§ 263.102 Prevailing party.

Only an eligible applicant that prevailed on the merits of an adversary proceeding may qualify for an award under this subpart.

§ 263.103 Eligibility of applicants.

(a) *General rule.* To be eligible for an award under this subpart, an applicant must have been named as a party to the adjudicatory proceeding and show that it meets all other conditions of eligibility set forth below.

(b) *Types of eligible applicant.* An applicant is eligible for an award only if it meets at least one of the following descriptions:

(1) An individual with a net worth of not more than $2 million at the time the adversary adjudication was initiated;

(2) Any owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed $7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees at the time the adversary proceeding was initiated; or

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141|(a)) with not more than 500 employees at the time the adversary proceeding was initiated.

(c) *Factors to be considered.* In determining the eligibility of an applicant:

(1) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevailed are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(3) The net worth of a financial institution shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the financial institution's financial report to its supervisory agency for the last reporting date before the initiation of the adversary proceeding. A bank holding company's net worth will be considered on a consolidated basis even if the bank holding company is not required to file its regulatory reports to the Board on a consolidated basis.

(4) The employees of an applicant include all those persons who were regularly providing services for remuneration for the applicant, under its direction and control, on the date the adversary proceeding was initiated. Part-time employees are counted on a proportional basis.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. As used in this subpart, "affiliates" are: Individuals, corporations, and entities that directly or indirectly or acting through one or more entities control at least 25% of the voting shares of the applicant, and corporations and entities of which the applicant directly or indirectly owns or controls at least 25% of the voting shares. The Board may determine, in light of the actual relationship among the affiliated entities, that aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart and decline to aggregate the net worth and employees of such affiliate; alternatively, the Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

§ 263.104 Application for awards.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Board whenever the applicant has prevailed in the proceeding within 30 days after service of the final order of the Board disposing of the proceeding.

(b) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of the way in which the applicant believes that the position of the Board in the proceeding was not substantially justified;

(3) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(4) A description of any affiliated individuals or entities, as defined in § 263.103(c)(5), or a statement that none exist;

(5) A declaration that the applicant, together with any affiliates, had a net worth not more than the maximum set forth in § 263.103(b) as of the date the proceeding was initiated, supported by a net worth statement conforming to the requirements of § 263.105;

(6) A statement of the amount of fees and expenses for which an award is sought conforming to § 263.107; and

(7) Any other matters that the applicant wishes the Board to consider in determining whether and in what amount an award should be made.

(c) *Verification.* The application shall be signed by the applicant or an authorized officer of or attorney for the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

(d) *Service.* The application and related documents shall be served on all parties to the adversary proceeding in accordance with § 263.11, except that statements of net worth shall be served only on counsel for the Board.

(e) *Presiding officer.* Upon receipt of an application, the Board shall, if feasible, refer the matter to the administrative law judge who heard the underlying adversary proceeding.

§ 263.105 Statement of net worth.

(a) *General rule.* A statement of net worth shall be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant, as specified in § 263.103(c)(5). In all cases, the administrative law judge or the Board may call for additional information needed to establish the applicant's net worth as of the initiation of the proceeding.

(b) *Contents.* (1) Except as otherwise provided herein, the statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the adversary adjudication. Unaudited financial statements are acceptable for individual applicants as long as the statement provides a reliable basis for evaluation, unless the administrative law judge or the Board otherwise requires. Financial statements or reports filed with or reported to a Federal or State agency, prepared before the initiation of the adversary proceeding for other purposes, and accurate as of a date not more than three months prior to the initiation of the proceeding, shall be acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the administrative law judge or the Board otherwise requires.

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 263.103(c)(5). The net worth of a bank holding company shall be considered on a consolidated basis. Assets and liabilities of individuals shall include those beneficially owned.

(3) If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. Net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(c) *Statement confidential.* Unless otherwise ordered by the Board or required by law, the statement of net worth shall be for the confidential use of the Board, counsel for the Board, and the administrative law judge.

§ 263.106 Measure of awards.

(a) *General rule.* Awards shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, provided that no award under this subpart for the fee of an attorney or agent shall exceed $75 per hour. No award to compensate an expert witness shall exceed the highest rate at which the Board pays expert witnesses. An award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(b) *Determination of reasonableness of fees.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, subject to the limits set forth above, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services.

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) *Awards for studies.* The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary solely for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

§ 263.107 Statement of fees and expenses.

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 263.108 Responses to application.

(a) *By counsel for the Board.* (1) Within 20 days after service of an

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application, counsel for the Board may file an answer to the application.

(2) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Board's position. If the answer is based on any alleged facts not already in the record of the proceeding, the answer shall include either supporting affidavits or a request for further proceedings under § 263.109, or both.

(b) *Reply to answer.* The applicant may file a reply only if the Board has addressed in its answer any of the following issues: that the position of the agency was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. Any reply authorized by this section shall be filed within 15 days of service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 263.109, or both.

(c) *Additional responses.* Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

§ 263.109 Further proceedings.

(a) *General rule.* The determination of a recommended award shall be made by the administrative law judge on the basis of the written record of the adversary adjudication, including any supporting affidavits submitted in connection with the application, unless, on the motion of either the applicant or Board counsel, or sua sponte, the administrative law judge or the Board orders further proceedings to amplify the record such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* The administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

§ 263.110 Recommended decision.

The administrative law judge shall file with the Board a recommended decision on the fee application not later than 30 days after the submission of all pleadings and evidentiary material concerning the application. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and, if applicable, an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings as to whether the Board's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application upon the filing of the recommended decision and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

§ 263.111 Action by the Board.

(a) *Exceptions to recommended decision.* Within 20 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the Board may file written exceptions thereto. A supporting brief may also be filed.

(b) *Decision by the Board.* The Board shall render its decision within 90 days after it has notified the parties that the matter has been received for decision. The Board shall serve copies of the decision and order of the Board upon the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

Dated: June 5, 1991.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, Banking, *Ex parte* communication, Hearing procedure, Penalties, State nonmember banks.

Authority and Issuance

For the reasons set forth in the common preamble, part 308 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

Authority: 12 U.S.C. 1813(e), 1817 (a) and (j), 1818, 1820, 1828(j), 1829, 1831i (secs. 5(a), 7(a), 7(j), 8, 10, 18(j), 19, and 32 of the FDIA); 15 U.S.C. 78l(h), 78m, 78n(a), 78n(c), 78n(d), 78n(f), 78o, 78o–4(c)(5), 78p, 78q, 78q–1, 78s (secs. 12(h), 13, 14(a), 14(c), 14(d), 14(f), 15(b)(4), 15B(c)(5), 16, 17, 17A, 19 of the Securities Exchange Act of 1934); 5 U.S.C. 504 (Equal Access to Justice Act); 5 U.S.C. 554–557 (secs. of the Administrative Procedure Act).

2. Subpart A is revised to read as set forth at the end of the common preamble.

Subpart A—Uniform Rules of Practice and Procedure

Sec.
- 308.1 Scope.
- 308.2 Rules of construction.
- 308.3 Definitions.
- 308.4 Authority of Agency Head.
- 308.5 Authority of the administrative law judge.
- 308.6 Appearance and practice in adjudicatory proceedings.
- 308.7 Good faith certification.
- 308.8 Conflicts of interest.
- 308.9 Ex parte communications.
- 308.10 Filing of papers.
- 308.11 Service of papers.
- 308.12 Construction of time limits.
- 308.13 Change of time limits.
- 308.14 Witness fees and expenses.
- 308.15 Opportunity for informal settlement.
- 308.16 Agency's right to conduct examination.
- 308.17 Collateral attacks on adjudicatory proceeding.
- 308.18 Commencement of proceeding and contents of notice.
- 308.19 Answer.
- 308.20 Amended pleadings.
- 308.21 Failure to appear.
- 308.22 Consolidation and severance of actions.
- 308.23 Motions.
- 308.24 Scope of document discovery.
- 308.25 Request for document discovery from parties.
- 308.26 Document subpoenas to nonparties.
- 308.27 Deposition of witness unavailable for hearing.
- 308.28 Interlocutory review.
- 308.29 Summary disposition.
- 308.30 Partial summary disposition.
- 308.31 Scheduling and prehearing conferences.
- 308.32 Prehearing submissions.
- 308.33 Public hearings.
- 308.34 Hearing subpoenas.
- 308.35 Conduct of hearings.
- 308.36 Evidence.
- 308.37 Proposed findings and conclusions.
- 308.38 Recommended decision and filing of record.
- 308.39 Exceptions to recommended decision.
- 308.40 Review by Agency Head.
- 308.41 Stays pending judicial review.

3. Subparts B through N and subpart P are revised and subpart O is added to read as follows:

Subpart B—General Rules of Procedure

Sec.
- 308.100 Definitions.
- 308.101 Scope of Local Rules.
- 308.102 Authority of Board of Directors and Executive Secretary.
- 308.103 Appointment of administrative law judge.
- 308.104 Filings with the Board of Directors.
- 308.105 Custodian of the record.
- 308.106 Written testimony in lieu of oral hearing.
- 308.107 Document discovery.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

- 308.108 Sanctions.
- 308.109 Suspension and disbarment.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

- 308.110 Scope.
- 308.111 Grounds for disapproval.
- 308.112 Notice of disapproval.
- 308.113 Answer to notice of disapproval.
- 308.114 Burden of proof.

Subpart E—Rules and Procedures Applicable to Proceedings Relating To Assessment of Civil Penalties for Willful Violations of the Change in Bank Control Act

- 308.115 Scope.
- 308.116 Assessment of penalties.
- 308.117 Effective date of, and payment under, an order to pay.
- 308.118 Collection of penalties.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

- 308.119 Scope.
- 308.120 Grounds for termination of insurance.
- 308.121 Notification to primary regulator.
- 308.122 Notice of intent to terminate.
- 308.123 Notice to depositors.
- 308.124 Involuntary termination of insured status for failure to receive deposits.
- 308.125 Temporary suspension of deposit insurance.
- 308.126 Special supervisory associations.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

- 308.127 Scope.
- 308.128 Grounds for cease-and-desist orders.
- 308.129 Notice to state supervisory authority.
- 308.130 Effective date of order and service on bank.
- 308.131 Temporary cease-and-desist order.

Subpart H—Rules and Procedures Applicable To Proceedings Relating To Assessment and Collection of Civil Money Penalties for Violation of Cease-and-Desist Orders and of Certain Federal Statutes, Including Call Report Penalties

Sec.
- 308.132 Assessment of penalties.
- 308.133 Effective date of, and payment under, an order to pay.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

- 308.134 Scope.
- 308.135 Grounds for imposition of sanctions.
- 308.136 Notice to and consultation with the Securities and Exchange Commission.
- 308.137 Effective date of order imposing sanctions.

Subpart J—Rules and Procedures Relating To Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

- 308.138 Scope.
- 308.139 Application for exemption.
- 308.140 Newspaper notice.
- 308.141 Notice of hearing.
- 308.142 Hearing.
- 308.143 Decision of Board of Directors.

Subpart K—Procedures Applicable To Investigations Pursuant to Section 10(c) of the Act

- 308.144 Scope.
- 308.145 Conduct of investigation.
- 308.146 Powers of person conducting investigation.
- 308.147 Investigations confidential.
- 308.148 Rights of witnesses.
- 308.149 Service of subpoena.
- 308.150 Transcripts.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the Act

- 308.151 Scope.
- 308.152 Grounds for disapproval of notice.
- 308.153 Procedures where notice of disapproval issues pursuant to § 303.14 of this chapter.
- 308.154 Decision on review.
- 308.155 Hearing.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

- 308.156 Scope.
- 308.157 Relevant considerations.
- 308.158 Filing papers and effective date.
- 308.159 Denial of applications.
- 308.160 Hearings.

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

- 308.161 Scope.
- 308.162 Relevant considerations.
- 308.163 Notice of suspension, and orders of removal or prohibition.
- 308.164 Hearings.

Subpart O—Liability of Commonly Controlled Depository Institutions

Sec.
- 308.165 Scope.
- 308.166 Grounds for assessment of liability.
- 308.167 Notice of assessment of liability.
- 308.168 Effective date of and payment under an order to pay.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

- 308.169 Scope.
- 308.170 Filing, content, and service of documents.
- 308.171 Responses to application.
- 308.172 Eligibility of applicants.
- 308.173 Prevailing party.
- 308.174 Standards for awards.
- 308.175 Measure of awards.
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- 308.177 Statement of net worth.
- 308.178 Statement of fees and expenses.
- 308.179 Settlement negotiations.
- 308.180 Further proceedings.
- 308.181 Recommended decision.
- 308.182 Board of Directors action.
- 308.183 Payment of awards.

Subpart B—General Rules of Procedure

§ 308.100 Definitions.

For purposes of this part 308, including the Uniform Rules, unless explicitly stated to the contrary:

(a) *Board of Directors* or the *designee* of the Board of Directors means the Board of Directors of the FDIC or the officers or officials of the FDIC acting pursuant to authority delegated by the Board of Directors as provided in 12 CFR part 303 or by specific resolution of the Board of Directors; and

(b) *Executive Secretary* means the Executive Secretary of the FDIC or his or her designee.

§ 308.101 Scope of local rules.

(a) Subparts B and C of the Local Rules prescribe rules of practice and procedure to be followed in the administrative enforcement proceedings initiated by the FDIC as set forth in § 308.01 of the Uniform Rules.

(b) Except as otherwise specifically provided, the Uniform Rules and subpart B of the Local Rules shall not apply to subparts D through P of the Local Rules.

(c) Subpart C of the Local Rules shall apply to any administrative proceeding initiated by the FDIC.

§ 308.102 Authority of Board of Directors and Executive Secretary.

(a) *The Board of Directors.* (1) The Board of Directors may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the Executive Secretary.

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(2) Nothing contained in Part 306 shall be construed to limit the power of the Board of Directors granted by applicable statutes or regulations.

(b) *The Executive Secretary.* When no administrative law judge has jurisdiction over a proceeding, the Executive Secretary may act in place of, and with the same authority as, an administrative law judge, except that the Executive Secretary may not hear a case on the merits or make a recommended decision on the merits to the Board of Directors.

§ 308.103 Appointment of administrative law judge.

(a) *Appointment.* Unless otherwise directed by the Board of Directors or as otherwise provided in the Local Rules, a hearing within the scope of this Part 306 shall be held before an administrative law judge of the Office of Financial Institution Adjudication ("OFIA").

(b) *Procedures.* (1) The Executive Secretary shall promptly after issuance of the Notice refer the matter to the OFIA which shall secure the appointment of an administrative law judge to hear the proceeding.

(2) OFIA shall advise the parties, in writing, that an administrative law judge has been appointed.

§ 308.104 Filings with the Board of Directors.

(a) *General Rule.* All materials required to be filed with or referred to the Board of Directors in any proceedings under this Part 306 shall be filed with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

(b) *Scope.* Filings to be made with the Executive Secretary include the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition; referrals by the administrative law judge of motions for interlocutory review; motions and responses to motions filed by the parties after the record has been certified to the Board of Directors; exceptions and requests for oral argument; and any other papers required to be filed with the Board of Directors under this part 306.

§ 308.105 Custodian of the record.

The Executive Secretary is the official custodian of the record when no administrative law judge has jurisdiction over the proceeding. As the official custodian, the Executive Secretary shall maintain the official record of all papers filed in each proceeding.

§ 308.106 Written testimony in lieu of oral hearing.

(a) *General rule.* (1) At any time more than fifteen days before the hearing is to commence, on the motion of any party or on his or her own motion, the administrative law judge may order that the parties present part or all of their case-in-chief and, if ordered, their rebuttal, in the form of exhibits and written statements sworn to by the witness offering such statements as evidence, provided that if any party objects, the administrative law judge shall not require such a format if that format would violate the objecting party's right under the Administrative Procedure Act, or other applicable law, or would otherwise unfairly prejudice that party.

(2) Any such order shall provide that each party shall, upon request, have the same right of oral cross-examination (or redirect examination) as would exist had the witness testified orally rather than through a written statement. Such order shall also provide that any party has a right to call any hostile witness or adverse party to testify orally.

(b) *Scheduling of submission of written testimony.* (1) If written direct testimony and exhibits are ordered under paragraph (a) of this section, the administrative law judge shall require that it be filed within the time period for commencement of the hearing, and the hearing shall be deemed to have commenced on the day such testimony is due.

(2) Absent good cause shown, written rebuttal, if any shall be submitted and the oral portion of the hearing begun within 30 days of the date set for filing written direct testimony.

(3) The administrative law judge shall direct, unless good cause requires otherwise, that—

(i) all parties shall simultaneously file any exhibits and written direct testimony required under paragraph (b)(1) of this section; and

(ii) all parties shall simultaneously file any exhibits and written rebuttal required under paragraph (b)(2) of this section.

(c) *Failure to comply with order to file written testimony.* (1) The failure of any party to comply with an order to file written testimony or exhibits at the time and in the manner required under this section shall be deemed a waiver of that party's right to present any evidence, except testimony of a previously identified adverse party or hostile witness. Failure to file written testimony or exhibits is, however, not a waiver of that party's right of cross-examination or a waiver of the right to present rebuttal evidence that was not required to be submitted in written form.

(2) Late filings of papers under this section may be allowed and accepted only upon good cause shown.

§ 308.107 Document discovery.

(a) Parties to proceedings set forth at § 308.01 of the Uniform Rules and in the Local Rules may obtain discovery only through the production of documents. No other form of discovery shall be allowed.

(b) Any questioning at a deposition of a person producing documents pursuant to a document subpoena shall be strictly limited to the identification of documents produced by that person and a reasonable examination to determine whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

§ 308.108 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed when any counsel or party has acted, or failed to act, in a manner required by applicable statute, regulations, or order, and that act or failure to act:

(1) Constitutes contemptuous conduct;

(2) Has in a material way injured or prejudiced some other party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has unduly delayed the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following:

(1) Issuing an order against the party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just; and

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Limits on dismissal as a sanction.* No recommendation of dismissal shall be made by the administrative law judge or granted by the Board of Directors based on the failure to hold a hearing within the time period called for in this Part 306, or on the failure of an administrative law judge to render a recommended decision within the time period called for in this Part 306, absent a finding:

(1) That the delay resulted solely or principally from the conduct of the FDIC enforcement counsel;

(2) That the conduct of the FDIC enforcement counsel is unexcused;

(3) That the moving respondent took all reasonable steps to oppose and prevent the subject delay;

(4) That the moving respondent has been materially prejudiced or injured; and

(5) That no lesser or different sanction is adequate.

(d) *Procedure for imposition of sanctions.* (1) The administrative law judge, upon the request of any party, or on his or her own motion, may impose sanctions in accordance with this section, provided that the administrative law judge may only recommend to the Board of Directors the sanction of entering a final order determining the case on the merits.

(2) No sanction, other than refusing to accept late papers, authorized by this section shall be imposed without prior notice to all parties and an opportunity for any counsel or party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form, as the administrative law judge directs. The opportunity to be heard may be limited to an opportunity to respond orally immediately after the act or inaction covered by this section is noted by the administrative law judge.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, shall be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge.

(4) *Section not exclusive.* Nothing in this section shall be read as precluding the administrative law judge or the Board of Directors from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 308.109 Suspension and disbarment.

(a) *Discretionary suspension and disbarment.* (1) The Board of Directors may suspend or revoke the privilege of any counsel to appear or practice before the FDIC if, after notice of and opportunity for hearing in the matter, that counsel is found by the Board of Directors:

(i) Not to possess the requisite qualifications to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have engaged in, or aided and abetted, a material and knowing violation of the Act; or

(iv) To have engaged in contemptuous conduct before the FDIC.

Suspension or revocation on the grounds set forth in paragraphs (a)(1) (ii), (iii), and (iv) of this section shall only be ordered upon a further finding that the counsel's conduct or character was sufficiently egregious as to justify suspension or revocation.

(2) Unless otherwise ordered by the Board of Directors, an application for reinstatement by a person suspended or disbarred under paragraph (a)(1) of this section may be made in writing at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. The suspension or disbarment shall continue until the applicant has been reinstated by the Board of Directors for good cause shown or until, in the case of a suspension, the suspension period has expired. An applicant for reinstatement under this provision may, in the Board of Directors's sole discretion, be afforded a hearing.

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any state, territory, district, commonwealth, or possession; or any person who has been and remains suspended or barred from practice before the OCC, Board of Governors, the OTS, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or any person who has been convicted of a felony, or of a misdemeanor involving moral turpitude, within the last ten years, shall be suspended automatically from appearing or practicing before the FDIC. A disbarment, suspension, or conviction within the meaning of this paragraph (b) shall be deemed to have occurred when the disbarring, suspending, or convicting agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken, and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(2) Any person appearing or practicing before the FDIC who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall promptly file with the Executive Secretary a copy thereof, together with any related opinion or statement of the agency or tribunal involved. Failure to file any such paper shall not impair the operation of any other provision of this section.

(3) A suspension or disbarment under paragraph (b)(1) of this section from practice before the FDIC shall continue until the applicant has been reinstated by the Board of Directors for good cause shown, provided that any person suspended or disbarred under paragraph (b)(1) of this section shall be automatically reinstated by the Executive Secretary, upon appropriate application, if all the grounds for suspension or disbarment under paragraph (b)(1) are subsequently removed by a reversal of the conviction (or the passage of time since the conviction) or termination of the underlying suspension or disbarment. An application for reinstatement on any other grounds by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time not less than one year after the applicant's most recent application. An applicant for reinstatement under this provision may, in the Board of Directors' sole discretion, be afforded a hearing.

(c) *Hearing under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under the Uniform Rules, provided that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application and with proof, and that the Board of Directors may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment by the FDIC be limited to written submissions.

(d) *Summary suspension for contemptuous conduct.* A finding by the administrative law judge of contemptuous conduct during the course of any proceeding shall be grounds for summary suspension by the administrative law judge of a counsel or other representative from any further participation in that proceeding for the duration of that proceeding.

(e) *Practice defined.* Unless the Board of Directors orders otherwise, for the purposes of this section, practicing before the FDIC includes, but is not limited to, transacting any business with the FDIC as counsel or agent for any

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other person and the preparation of any statement, opinion, or other paper by a counsel, which statement, opinion, or paper is filed with the FDIC in any registration statement, notification, application, report, or other document, with the consent of such counsel.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

§ 308.110 Scope.

Except as specifically indicated in this subpart, the rules and procedures in this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings in connection with the disapproval by the Board of Directors or its designee of a proposed acquisition of control of an insured nonmember bank.

§ 308.111 Grounds for disapproval.

The following are grounds for disapproval of a proposed acquisition of control of an insured nonmember bank:

(a) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the banking business in any part of the United States;

(b) The effect of the proposed acquisition of control in any section of the United States may be to substantially lessen competition or to tend to create a monopoly or would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) The financial condition of any acquiring person might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(d) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit such person to control the bank;

(e) Any acquiring person neglects, fails, or refuses to furnish to the FDIC all the information required by the FDIC; or

(f) The FDIC determines that the proposed acquisition would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.

§ 308.112 Notice of disapproval.

(a) *General rule.* (1) Within three days of the decision by the Board of Directors or its designee to disapprove a proposed acquisition of control of an insured nonmember bank, a written notice of disapproval shall be mailed by first class mail to, or otherwise served upon, the party seeking acquire control.

(2) The notice of disapproval shall:

(i) Contain a statement of the basis for the disapproval; and

(ii) Indicate that a hearing may be requested by filing a written request with the Executive Secretary within ten days after service of the notice of disapproval; and if a hearing is requested, that an answer to the notice of disapproval, as required by § 308.113, must be filed within 20 days after service of the notice of disapproval.

(b) *Waiver of hearing.* Failure to request a hearing pursuant to this section shall constitute a waiver of the opportunity for a hearing and the notice of disapproval shall constitute a final and unappealable order.

(c) Section 308.18(b) of the Uniform Rules shall not apply to the content of the Notice of Disapproval.

§ 308.113 Answer to notice of disapproval.

(a) *Contents.* (1) An answer to the notice of disapproval of a proposed acquisition of control shall be filed within 20 days after service of the notice of disapproval and shall specifically deny those portions of the notice of disapproval which are disputed. Those portions of the notice of disapproval which are not specifically denied are deemed admitted by the applicant.

(2) Any hearing under this subpart shall be limited to those parts of the notice of disapproval that are specifically denied.

(b) *Failure to answer.* Failure of a party to file a timely answer pursuant to this section shall be deemed a waiver of the party's right to appear at a hearing and contest the disapproval and the notice of disapproval shall constitute a final and unappealable order.

§ 308.114 Burden of proof.

The ultimate burden of proof shall be upon the person proposing to acquire a depository institution. The burden of going forward with a *prima facie* case shall be upon the FDIC.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Assessment of Civil Penalties for Willful Violations of the Change in Bank Control Act

§ 308.115 Scope.

The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings to assess civil penalties against any person for willful violation of the Change in Bank Control Act of 1978, or any regulation or order issued pursuant thereto, in connection with the affairs of an insured nonmember bank.

§ 308.116 Assessment of penalties.

(a) *In general.* The civil money penalty shall be assessed upon the service of a Notice of Assessment which shall become final and unappealable unless the respondent both requests a hearing pursuant to § 308.19(a); and files an answer pursuant to the provisions of § 308.19 of the Uniform Rules.

(b) *Amount.* (1) Any person who violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto, shall forfeit and pay a civil money penalty of not more than $5,000 for each day the violation continues.

(2) Any person who violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto; or recklessly engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or breaches any fiduciary duty; which violation, practice or breach is part of a pattern of misconduct; or causes or is likely to cause more than a minimal loss to such institution; or results in pecuniary gain or other benefit to such person, shall forfeit and pay a civil money penalty of not more than $25,000 for each day such violation, practice or breach continues.

(3) Any person who knowingly violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto; or engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or breaches any fiduciary duty; and knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation, practice or breach, shall forfeit and pay a civil money penalty not to exceed:

(i) In the case of a person other than a depository institution—$1,000,000 per day for each day the violation, practice or breach continues; or

(ii) In the case of a depository institution—an amount not exceed the lesser of $1,000,000 or one percent of the total assets of such institution for each day the violation, practice or breach continues.

(c) *Mitigating factors.* In assessing the amount of the penalty, the Board of Directors or its designee shall consider the gravity of the violation, the history of previous violations, respondent's financial resources, good faith, and any other matters as justice may require.

(d) *Failure to answer.* Failure of a party to file a timely answer pursuant to this section shall be deemed a waiver of the party's right to appear at a hearing and contest the allegations in the notice.

§ 308.117 Effective date of, and payment under, an order to pay.

If the respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable 60 days after an order to pay, issued after the hearing or upon default, is served upon the respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

§ 308.118 Collection of penalties.

The FDIC may collect any civil penalty assessed pursuant to this subpart by agreement with the respondent, or the FDIC may bring an action against the respondent to recover the penalty amount in the appropriate United States district court. All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

§ 308.119 Scope.

(a) *Involuntary termination of insurance pursuant to section 8(a) of the FDIA.* The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings in connection with the involuntary termination of the insured status of an insured bank depository institution or an insured branch of a foreign bank pursuant to section 8(a) of the FDIA (12 U.S.C. 2628(a)), except that the Uniform Rules and subpart B of the Local Rules shall not apply to the temporary suspension of insurance pursuant to section 8(a)(8) of the FDIA (12 U.S.C. 1818(a)(8)).

(b) *Involuntary termination of insurance pursuant to section 8(p) of the Act.* The rules and procedures in § 308.124 of this subpart F shall apply to proceedings in connection with the involuntary termination of the insured status of an insured depository institution or an insured branch of a foreign bank pursuant to section 8(p) of the FDIA (12 U.S.C. 1818(p)). The Uniform Rules shall not apply to proceedings under section 8(p) of the FDIA.

§ 308.120 Grounds for termination of insurance.

(a) *General rule.* The following are grounds for involuntary termination of insurance pursuant to section 8(a) of the FDIA:

(1) An insured depository institution or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such depository institution;

(2) An insured depository institution is in an unsafe or unsound condition such that it should not continue operations as an insured depository institution; or

(3) An insured depository institution or its directors or trustees have violated an applicable law, rule, regulation, order, condition imposed in writing by the FDIC in connection with the granting of any application or other request by the insured depository institution or have violated any written agreement entered into between the insured depository institution and the FDIC.

(b) *Extraterritorial acts of foreign banks.* An act or practice committed outside the United States by a foreign bank or its directors or trustees which would otherwise be a ground for termination of insured status under this section shall be a ground for termination if the Board of Directors finds:

(1) The act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any state, territory, or possession of the United States or the District of Columbia that, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act or practice committed outside the United States, if proven, would adversely affect the insurance risk of the FDIC.

(c) *Failure of foreign bank to secure removal of personnel.* The failure of a foreign bank to comply with any order of removal or prohibition issued by the Board of Directors or the failure of any person associated with a foreign bank to appear promptly as a party to a proceeding pursuant to section 8(e) of the FDIA (12 U.S.C. 1818(e)), shall be a ground for termination of insurance of deposits in any branch of the bank.

§ 308.121 Notification to primary regulator.

(a) *Service of notification.* (1) Upon a determination by the Board of Directors or its designee pursuant to § 308.120 of an unsafe or unsound practice or condition or of a violation, a notification shall be served upon the appropriate Federal banking agency of the insured depository institution, or the State banking supervisor if the FDIC is the appropriate Federal banking agency. The notification shall be served not less than 30 days before the Notice of Intent to Terminate Insured Status required by section 8(a)(2)(B) of the FDIA (12 U.S.C. 1818(a)(2)(B)), and § 308.122, except that this period for notification may be reduced or eliminated with the agreement of the appropriate Federal banking agency.

(2) "Appropriate Federal banking agency" shall have the meaning given that term in section 3(q) of the FDIA (12 U.S.C. 283(q)), and shall be the OCC in the case of a national bank, a District bank or an insured Federal branch of a foreign bank; the FDIC in the case of an insured nonmember bank, including an insured State branch of a foreign bank; the Board of Governors in the case of a state member bank; or the OTS in the case of an insured Federal savings association.

(3) In the case of a state nonmember bank, insured Federal branch of a foreign bank, or state member bank, in addition to service of the notification upon the appropriate Federal banking agency, a copy of the notification shall be sent to the appropriate State banking supervisor.

(4) In instances in which a Temporary Order Suspending Insurance is issued pursuant to section 8(a)(8) of the FDIA (12 U.S.C. 1818(a)(8)), the notification may be served concurrently with such order.

(b) *Contents of notification.* The notification shall contain the FDIC's determination, and the facts and circumstances upon which such determination is based, for the purpose of securing correction of such practice, condition, or violation.

§ 308.122 Notice of intent to terminate.

(a) *Notice.* (1) If, after serving the notification under § 308.121, the Board of Directors determines that any unsafe or unsound practices, condition, or violation, specified in the notification,

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requires the termination of the insured status of the insured depository institution, the Board of Directors or its designee, if it determines to proceed further, shall cause to be served upon the insured depository institution a notice of its intention to terminate insured status not less than 30 days after service of the notification, unless a shorter time period has been agreed upon by the appropriate Federal banking agency.

(2) The Board of Directors or its designee shall cause a copy of the notice to be sent to the appropriate Federal banking agency and to the appropriate State banking supervisor, if any.

§ 308.123 Notice to depositors.

If the Board of Directors enters an order terminating the insured status of an insured depository institution or branch, the insured depository institution shall, on the day that order becomes final, or on such other day as that order prescribes, mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the insured depository institution or branch. The insured depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)_____

1. The status of the _____, as an (insured depository institution) (insured branch) under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the _____ day of _____, 19_____.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (depository institution) (branch) on the _____ day of _____, 19_____, will continue to be insured, as provided by Federal Deposit Insurance Act, for *2 years* after the close of business on the _____ day of _____, 19_____.

Provided, however, that any withdrawals after the close of business on the _____ day of _____, 19_____, will reduce the insurance coverage by the amount of such withdrawals.

_____

(Name of depository institution or branch)

_____

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.124 Involuntary termination of insured status for failure to receive deposits.

(a) *Notice to show cause.* When the Board of Directors or its designee has evidence that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds, the Board of Directors or its designee shall give written notice of this evidence to the depository institution and shall direct the depository institution to show cause why its insured status should not be terminated under the provisions of section 8(p) of the FDIA. The insured depository institution shall have 30 days after receipt of the notice, or such longer period as is prescribed in the notice, to submit affidavits, other written proof, and any legal arguments that it is engaged in the business of receiving deposits other than trust funds.

(b) *Notice of termination date.* If, upon consideration of the affidavits, other written proof, and legal arguments, the Board of Directors determines that the depository institution is not engaged in the business of receiving deposits, other than trust funds, the finding shall be conclusive and the Board of Directors shall notify the depository institution that its insured status will terminate at the expiration of the first full semiannual assessment period following issuance of that notification.

(c) *Notification to depositors of termination of insured status.* Within the time specified by the Board of Directors and prior to the date of termination of its insured status, the depository institution shall mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the depository institution. The depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)_____

The status of the _____, as an (insured depository institution) (insured branch) under the Federal Deposit Insurance Act, will terminate on the _____ day of _____, 19_____, and its deposits will thereupon cease to be insured.

_____

(Name of depository institution or branch)

_____

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.125 Temporary suspension of deposit insurance.

(a) If, while an action is pending under section 8(a)(2) of the FDIA, the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a special supervisory association to which § 308.126 of this subpart applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Board of Directors may issue a Temporary Order Suspending Deposit Insurance, pending completion of the proceedings under section 8(a)(2) of the FDIA.

(b) The temporary order shall be served upon the insured institution and a copy sent to the appropriate Federal banking agency and to the appropriate State banking supervisor.

(c) The temporary order shall become effective ten days from the date of service upon the insured depository institution. Unless set aside, limited, or suspended in proceedings under section 8(a)(8)(D) of the FDIA, the temporary order shall remain effective and enforceable until an order terminating the insured status of the institution is entered by the Board of Directors and becomes final, or the Board of Directors dismisses the proceedings.

(d) Notification to depositors of suspension of insured status. Within the time specified by the Board of Directors and prior to the suspension of insured status, the depository institution shall mail a notification of suspension of insured status to each depositor at the depositor's last address of record on the books of the depository institution. The depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)_____

The status of the _____, as an (insured depository institution) (insured branch) under the provisions of the Federal Deposit Insurance Act, will be suspended as of the close of business on the _____ day of _____, 19_____, pending the completion of administrative proceedings under section 8(a) of the Federal Deposit Insurance Act.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (depository institution) (branch) on the _____ day of _____, 19_____, will continue to be insured for _____ after the close of business on the _____ day of _____, 19_____. Provided, however, that any withdrawals after the close of business on the _____ day of _____, 19_____, will reduce the insurance coverage by the amount of such withdrawals.

_____

(Name of depository institution or branch)

_____

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.126 Special supervisory associations.

If the Board of Directors finds that a savings association is a special supervisory association under the provisions of section 8(a)(8)(B) of the FDIA for purposes of temporary suspension of insured status, the Board of Directors shall serve upon the association its findings with regard to the determination that the capital of the association, as computed using applicable accounting standards, has suffered a material decline; that such association or its directors or officers, is engaging in an unsafe or unsound practice in conducting the business of the association; that such association is in an unsafe or unsound condition to continue operating as an insured association; or that such association or its directors or officers, has violated any law, rule, regulation, order, condition imposed in writing by any Federal banking agency, or any written agreement, or that the association failed to enter into a capital improvement plan acceptable to the Corporation prior to January, 1990.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

§ 308.127 Scope.

(a) *Cease-and-desist proceedings under section 8 of the Act.* The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings to order an insured nonmember bank or an institution-affiliated party to cease and desist from practices and violations described in section 8(b) of the FDIA, 12 U.S.C. 1818(b); provided that the provisions of the Uniform Rules and subpart B of the Local Rules shall not apply to the issuance of temporary cease-and-desist orders pursuant to section 8(c) of the FDIA.

(b) *Proceedings under the Securities Exchange Act of 1934.* (1) The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors to order a municipal securities dealer to cease and desist from any violation of law or regulation specified in section 15B(c)(5) of the Exchange Act, as amended (15 U.S.C. 78o-4(c)(5)) where the municipal securities dealer is an insured nonmember bank or a subsidiary thereof.

(2) The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors to order a clearing agency or transfer agent to cease and desist from failure to comply with the applicable provisions of section 17, 17A and 19 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q, 78q-1, 78s), and the applicable rules and regulations thereunder, where the clearing agency or transfer agent is an insured nonmember bank or a subsidiary thereof.

§ 308.128 Grounds for cease-and-desist orders.

(a) *General rule.* The Board of Directors or its designee may issue and have served upon any insured nonmember bank or an institution-affiliated party a Notice, as set forth in § 308.18 of the Uniform Rules for practices and violations as described in § 308.127.

(b) *Extraterritorial acts of foreign banks.* An act, violation or practice committed outside the United States by a foreign bank or an institution-affiliated party that would otherwise be a ground for issuing a cease-and-desist order under paragraph (a) of this section or a temporary cease-and-desist order under § 308.131 of this subpart, shall be a ground for an order if the Board of Directors or its designee finds that:

(1) The act, violation or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act, violation or practice committed within any state, territory, or possession of the United States or the District of Columbia which act, violation or practice, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act, violation or practice, if proven, would adversely affect the insurance risk of the FDIC.

§ 308.129 Notice to state supervisory authority.

The Board of Directors or its designee shall give the appropriate state supervisory authority notification of its intent to institute a proceeding pursuant to subpart G of this part, and the grounds thereof. Any proceedings shall be conducted according to subpart G of this part, unless, within the time period specified in such notification, the state supervisory authority has effected satisfactory corrective action. No insured institution or other party who is the subject of any notice or order issued by the FDIC under this section shall have standing to raise the requirements of this subpart as grounds for attacking the validity of any such notice or order.

§ 308.130 Effective date of order and service on bank.

(a) *Effective date.* A cease-and-desist order issued by the Board of Directors after a hearing, and a cease-and-desist order issued based upon a default, shall become effective at the expiration of 30 days after the service of the order upon the bank or its official. A cease-and-desist order issued upon consent shall become effective at the time specified therein. All cease-and-desist orders shall remain effective and enforceable, except to the extent they are stayed, modified, terminated, or set aside by the Board of Directors or its designee or by a reviewing court.

(b) *Service on banks.* In cases where the bank is not the respondent, the cease-and-desist order shall also be served upon the bank.

§ 308.131 Temporary cease-and-desist order.

(a) *Issuance.* (1) When the Board of Directors or its designee determines that the violation, or the unsafe or unsound practice, as specified in the notice, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the bank, or is likely to weaken the condition of the bank or otherwise prejudice the interests of its depositors prior to the completion of the proceedings under section 8(b) of the FDIA and § 308.128 of this subpart, the

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Board of Directors or its designee may issue a temporary order requiring the bank or an institution-affiliated party to immediately cease and desist from any such violation, practice or to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of the proceedings under section 8(b) of the FDIA.

(2) When the Board of Directors or its designee issues a Notice of charges pursuant to 12 U.S.C. 1818(b)(1) which specifies on the basis of particular facts and circumstances that a bank's books and records are so incomplete or inaccurate that the FDIC is unable, through the normal supervisory process, to determine the financial condition of the bank or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of the bank, then the Board of Directors or its designee may issue a temporary order requiring:

(i) The cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) Affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under section 8(b) of the FDIA.

(3) The temporary order shall be served upon the bank or the institution-affiliated party named therein and shall also be served upon the bank in the case where the temporary order applies only to an institution-affiliated party.

(b) *Effective date.* A temporary order shall become effective when served upon the bank or the institution affiliated party. Unless the temporary order is set aside, limited, or suspended by a court in proceedings authorized under section 8(c)(2) of the FDIA, the temporary order shall remain effective and enforceable pending completion of administrative proceedings pursuant to section 8(b) of the FDIA and entry of an order which has become final, or with respect to paragraph (a)(2) of this section the FDIC determines by examination or otherwise that the bank's books and records are accurate and reflect the financial condition of the bank.

(c) *Uniform Rules do not apply.* The Uniform Rules and subpart B of the Local Rules shall not apply to the issuance of temporary orders under this section.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Money Penalties for Violation of Cease-and-Desist Orders and of Certain Federal Statutes, Including Call Report Penalties

§ 308.132 Assessment of penalties.

(a) *Scope.* The rules and procedures of this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings to assess and collect civil money penalties, including civil money penalties for violation of section 7(a) of the FDIA (12 U.S.C. 1817(a)).

(b) *Relevant considerations.* In determining the amount of the civil penalty to be assessed, the Board of Directors or its designee shall consider the financial resources and good faith of the bank or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Amount.* (1) The Board of Directors or its designee may assess civil money penalties pursuant to section 8(i) of the FDIA (12 U.S.C. 1818(i)), and § 308.01(e)(1) of the Uniform Rules.

(2) The Board of Directors or its designee may assess civil penalties pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)) as follows:

(i) *Late filing—Tier One Penalties.* In cases in which a bank fails to make or publish its Report of Condition and Income ("Call Report") within the appropriate time periods, the Board of Directors or its designee may assess a civil money penalty of not more than $2,000 per day where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the bank inadvertently transmitted a Call Report which is minimally late.

(A) *First offense.* Generally, in such cases, the amount assessed shall be $300 per day for each of the first 15 days for which the failure continues, and $800 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than $25,000,000 in assets, the amount assessed shall be the greater of $100 per day or 1/1000th of the bank's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and $200 or 1/500th of the bank's total assets, 1/5 of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Second offense.* Where the bank has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current failure shall generally be $300 per day for each of the first 15 days for which the failure continues, and $1000 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than $25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the bank's total assets.

(C) *Mitigating factors.* The amounts set forth in paragraph (c)(2)(i)(A) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

(D) *Lengthy or repeated violations.* The amounts set forth in paragraph (c)(2)(i) of this section will be assessed on a case-by-case basis where the amount of time of the bank's delinquency is lengthy or the bank has been delinquent repeatedly in making or publishing its Call Reports.

(E) *Waiver.* Absent extraordinary circumstances outside the control of the bank, penalties assessed for late filing shall not be waived.

(ii) *Late filing—Tier Two penalties.* Where a bank fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than $20,000 per day for each day the failure continues.

(iii) *False or misleading reports or information*—(A) *Tier One penalties.* In cases in which a bank submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than $2,000 per day for each day the information is not corrected, where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the bank inadvertently transmits a Call Report or information which is false or misleading.

(B) *Tier Two penalties.* Where a bank submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than $20,000 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where a bank knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of $1,000,000 or 1 percent of the bank's total assets per day for each day the information is not corrected.

(D) *Mitigating factors.* The amounts set forth in paragraph (c)(2) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

§ 308.133 Effective date of, and payment under, an order to pay.

(a) *Effective date.* (1) Unless otherwise provided in the Notice, except in situations covered by paragraph (a)(2) of this section, civil penalties assessed pursuant to this subpart are due and payable 60 days after the Notice is served upon the respondent.

(2) If the respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable 60 days after an order to pay, issued after the hearing or upon default, is served upon the respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

(b) *Payment.* All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

§ 308.134 Scope.

The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors or its designee:

(a) To censure, limit the activities of, suspend, or revoke the registration of, any municipal securities dealer for which the FDIC is the appropriate regulatory agency;

(b) To censure, suspend, or bar from being associated with such a municipal securities dealer, any person associated with such a municipal securities dealer; and

(c) To deny registration, to censure limit the activities of, suspend, or revoke the registration of, any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency. This subpart and the Uniform Rules shall not apply to proceedings to postpone or suspend registration of a transfer agent or clearing agency pending final determination of denial or revocation of registration.

§ 308.135 Grounds for imposition of sanctions.

(a) *Action under section 15(b)(4) of the Exchange Act.* The Board of Directors or its designee may issue and have served upon any municipal securities dealer for which the FDIC is the appropriate regulatory agency, or any person associated or seeking to become associated with a municipal securities dealer for which the FDIC is the appropriate regulatory agency, a written notice of its intention to censure, limit the activities or functions or operations of, suspend, or revoke the registration of, such municipal securities dealer, or to censure, suspend, or bar the person from being associated with the municipal securities dealer, when the Board of Directors or its designee determines:

(1) That such municipal securities dealer or such person—

(i) has committed any prohibited act or omitted any required act specified in subparagraph (A), (D), or (E) of section 15(b)(4) of the Exchange Act, as amended (15 U.S.C. 78o);

(ii) has been convicted of any offense specified in section 15(b)(4)(B) of the Exchange Act within ten years of commencement of proceedings under this subpart; or

(iii) is enjoined from any act, conduct, or practice specified in section 15(b)(4)(c) of the Exchange Act; and

(2) That it is in the public interest to impose any of the sanctions set forth in paragraph (a) of this section.

(b) *Action under sections 17 and 17A of the Exchange Act.* The Board of Directors or its designee may issue, and have served upon any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency, a written Notice of its intention to deny registration to, censure, place limitations on the activities or function or operations of, suspend, or revoke the registration of, the transfer agent or clearing agency, when the Board of Directors or its designee determines:

(1) That the transfer agent or clearing agency has willfully violated, or is unable to comply with, any applicable provision of section 17 or 17A of the Exchange Act, as amended, or any applicable rule or regulation issued pursuant thereto; and

(2) That it is in the public interest to impose any of the sanctions set forth in paragraph (b) of this section.

§ 308.136 Notice to and consultation with the Securities and Exchange Commission.

Before initiating any proceedings under § 308.135, the FDIC shall:

(a) Notify the Securities and Exchange Commission of the identity of the municipal securities dealer or associated person against whom proceedings are to be initiated, and the nature of and basis for the proposed action; and (b) Consult with the Commission concerning the effect of the proposed action on the protection of investors and the possibility of coordinating the action with any proceeding by the Commission against the municipal securities dealer or associated person.

§ 308.137 Effective date of order imposing sanctions.

An order issued by the Board of Directors after a hearing or an order issued upon default shall become effective at the expiration of 30 days after the service of the order, except that an order of censure, denial, or revocation of registration is effective when served. An order issued upon consent shall become effective at the time specified therein. All orders shall remain effective and enforceable except to the extent they are stayed, modified, terminated, or set aside by the Board of Directors, its designee, or a reviewing court, provided that orders of suspension shall continue in effect no longer than 12 months.

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

§ 308.138 Scope.

The rules and procedures of this subpart J shall apply to proceedings by the Board of Directors or its designee to exempt, in whole or in part, an issuer of securities from the provisions of sections 12(g), 13, 14(a), 14(c), 14(d), or 14(f) of the Exchange Act, as amended (15 U.S.C. 781, 78m, 78n (a), (c), (d) or (f)), or to exempt an officer of a director or beneficial owner of securities of such an issuer from the provisions of section 16 of the Exchange Act (15 U.S.C. 78p).

§ 308.139 Application for exemption.

Any interested person may file a written application for an exemption under this subpart with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. The application shall specify the exemption sought and the reason therefor, and shall include a statement indicating why the exemption would be consistent with the public interest or the protection of investors.

§ 308.140 Newspaper notice.

(a) *General rule.* If the Board of Directors or its designee, in its sole discretion, decides to further consider

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an application for exemption, there shall be served upon the applicant instructions to publish one notification in a newspaper of general circulation in the community where the main office of the issuer is located. The applicant shall furnish proof of such publication to the Executive Secretary or such other person as may be directed in the instructions.

(b) *Contents.* The notification shall contain the name and address of the issuer and the name and title of the applicant, the exemption sought, a statement that a hearing will be held, and a statement that within 30 days of publication of the newspaper notice, interested persons may submit to the FDIC written comments on the application for exemption and a written request for an opportunity to be heard. The address of the FDIC must appear in the notice.

§ 308.141 Notice of hearing.

Within ten days after expiration of the period for receipt of comments pursuant to § 308.140, the Executive Secretary shall serve upon the applicant and any person who has requested an opportunity to be heard written notification indicating the place and time of the hearing. The hearing shall be held not later than 30 days after service of the notification of hearing. The notification shall contain the name and address of the presiding officer designated by the Executive Secretary and a statement of the matters to be considered.

§ 308.142 Hearing.

(a) *Proceedings are informal.* Formal rules of evidence, the adjudicative procedures of the APA (5 U.S.C. 554–557), the Uniform Rules and § 308.108 of subpart B of the Local Rules shall not apply to hearings under this subpart.

(b) *Hearing procedure.* (1) Parties to the hearing may appear personally or through counsel and shall have the right to introduce relevant and material documents and to make an oral statement.

(2) There shall be no discovery in proceeding under this subpart].

(3) The presiding officer shall have discretion to permit presentation of witnesses within specified time limits, provided that a list of witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness and each party may cross-examine any witness presented by an opposing party.

(4) The proceedings shall be on the record and the transcript shall be promptly submitted to the Board of Directors. The presiding officer shall make recommendations to the Board of Directors, unless the Board of Directors, in its sole discretion, directs otherwise.

§ 308.143 Decision of Board of Directors.

Following submission of the hearing transcript to the Board of Directors, the Board of Directors may grant the exemption where it determines, by reason of the number of public investors, the amount of trading interest in the securities, the nature and extent of the issuer's activities, the issuer's income or assets, or otherwise, that the exemption is consistent with the public interest or the protection of investors. Any exemption shall be set forth in an order specifying the terms of the exemption, the person to whom it is granted, and the period for which it is granted. A copy of the order shall be served upon each party to the proceeding.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the Act

§ 308.144 Scope.

The procedures of this subpart shall be followed when an investigation is instituted and conducted in connection with any open or failed insured depository institution, any institutions making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, pursuant to section 10(c) of the FDIA (12 U.S.C. section 1820(c)). The Uniform Rules and subpart B of the Local Rules shall not apply to investigations under this subpart.

§ 308.145 Conduct of investigation.

An investigation conducted pursuant to section 10(c) of the FDIA shall be initiated only upon issuance of an order by the Board of Directors; or by the General Counsel, the Director of the Division of Supervision, the Director of the Division of Liquidation, or their respective designees as set forth at § 303.9 of this chapter. The order shall indicate the purpose of the investigation and designate FDIC's representative(s) to direct the conduct of the investigation. Upon application and for good cause shown, the persons who issue the order of investigation may limit, quash, modify, or withdraw it. Upon the conclusion of the investigation, an order of termination of the investigation shall be issued by the persons issuing the order of investigation.

§ 308.146 Powers of person conducting investigation.

The person designated to conduct a section 10(c) investigation shall have the power, among other things, to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and subpoenas duces tecum and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the main office of the bank, institution, or affiliate is located or in which the witness resides or conducts business. The person conducting the investigation may obtain the assistance of counsel or others from both within and outside the FDIC. The persons who issue the order of investigation may limit, quash, or modify any subpoena or subpoena duces tecum, upon application and for good cause shown. The person conducting an investigation may report to the Board of Directors any instance where any attorney has been guilty of contemptuous conduct. The Board of Directors, upon motion of the person conducting the investigation, or on its own motion, may make a finding of contempt and may then summarily suspend, without a hearing, any attorney representing a witness from further participation in the investigation.

§ 308.147 Investigations confidential.

Investigations conducted pursuant to section 10(c) shall be confidential. Information and documents obtained by the FDIC in the course of such investigations shall not be disclosed, except as provided in part 309 of this chapter and as otherwise required by law.

§ 308.148 Rights of witnesses.

In an investigation pursuant to section 10(c):

(a) Any person compelled or requested to furnish testimony, documentary evidence, or other information, shall upon request be shown and provided with a copy of the order initiating the proceeding;

(b) Any person compelled or requested to provide testimony as a witness or to furnish documentary evidence may be represented by a counsel who meets the requirements of § 308.06 of the Uniform Rules. That counsel may be present and may:

(1) Advise the witness before, during, and after such testimony;

(2) Briefly question the witness at the conclusion of such testimony for clarification purposes; and

(3) Make summary notes during such testimony solely for the use and benefit of the witness;

(c) All persons testifying shall be sequestered. Such persons and their counsel shall not be present during the testimony of any other person, unless permitted in the discretion of the person conducting the investigation;

(d) In cases of a perceived or actual conflict of interest arising out of an attorney's or law firm's representation of multiple witnesses, the person conducting the investigation may require the attorney to comply with the provisions of § 308.06 of the Uniform Rules; and

(e) Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

§ 308.149 Service of subpoena.

Service of a subpoena shall be accomplished in accordance with § 308.11 of the Uniform Rules.

§ 308.150 Transcripts.

(a) *General rule.* Transcripts of testimony, if any, in an investigation pursuant to section 10(c) shall be recorded by an official reporter, or by any other person or means designated by the person conducting the investigation. A witness may, solely for the use and benefit of the witness, obtain a copy of the transcript of his or her testimony at the conclusion of the investigation or, at the discretion of the person conducting the investigation, at an earlier time, provided the transcript is available. The witness requesting a copy of his or her testimony shall bear the cost thereof.

(b) *Subscription by witness.* The transcript of testimony shall be subscribed by the witness, unless the person conducting the investigation and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the transcript of the testimony is not subscribed by the witness, the official reporter taking the testimony shall certify that the transcript is a true and complete transcript of the testimony.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the FDIA

§ 308.151 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a state nonmember bank pursuant to section 32 of the FDIA (12 U.S.C. 1831i) for the consent of the FDIC to add to or replace an individual on the board of directors, or to employ any individual as a senior executive officer, or change the responsibilities of any individual to a position of senior executive officer where the bank:

(a) Has been chartered and operating as an insured nonmember bank for less than two years or the insured state branch has been licensed and operating as an insured branch for less than two years;

(b) Has undergone a change in control within the preceding two years; or

(c) Is not in compliance with the minimum capital requirement applicable to it or is otherwise in a troubled condition as determined by the FDIC on the basis of such institution's most recent report of condition or report of examination or inspection.

§ 308.152 Grounds for disapproval of notice.

The Board of Directors or its designee may issue a notice of disapproval with respect to a notice submitted by a state nonmember bank pursuant to section 32 of the FDIA (12 U.S.C. 1831i) where:

(a) The competence, experience, character, or integrity of the individual with respect to whom such notice submitted indicates that it would not be in the best interests of the depositors of the state nonmember bank to permit the individual to be employed by or associated with such bank; or

(b) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicated that it would not be in the best interests of the public to permit the individual to be employed by, or associated with, the state nonmember bank.

§ 308.153 Procedures where notice of disapproval issues pursuant to § 303.14 of this chapter.

(a) The Notice of Disapproval shall be served upon the insured state nonmember bank and the candidate for director or senior executive officer. The Notice of Disapproval shall:

(1) Summarize or cite the relevant considerations specified in § 308.152;

(2) Inform the individual and the bank that a request for review of the disapproval may be filed within fifteen days of receipt of the Notice of Disapproval; and

(3) Specify that additional information, if any, must be contained in the request for review.

(b) The request for review must be filed at the appropriate regional office.

(c) The request for review must be in writing and should:

(1) Specify the reasons why the FDIC should reconsider its disapproval; and

(2) Set forth relevant, substantive and material documents, if any, that for good cause were not previously set forth in the notice required to be filed pursuant to section 32 of the FDIA.

§ 308.154 Decision on review.

(a) Within 30 days of receipt of the request for review, the Board of Director or its designee, shall notify the bank and/or the individual filing the reconsideration (hereafter "petitioner") of the FDIC's decision on review.

(b) If the decision is to grant the review and approve the notice, the bank and the individual involved shall be so notified.

(c) A denial of the request for review pursuant to section 32 of the FDIA shall:

(1) Inform the petitioner that a written request for a hearing, stating the relief desired and the grounds therefor, may be filed with the Executive Secretary within 15 days after the receipt of the denial; and

(2) Summarize or cite the relevant considerations specified in § 308.152.

(d) If a decision is not rendered within 30 days, the petitioner may file a request for a hearing within fifteen days from the date of expiration.

§ 308.155 Hearing.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 30 days after receipt of a request for a hearing filed pursuant to § 308.154. Upon request of the petitioner or the FDIC, the presiding officer or the Executive Secretary may order a later hearing date.

(b) Burden of proof. The ultimate burden of proof shall be upon the candidate for director or senior executive officer. The burden of going forward with a prima facie case shall be upon the FDIC.

(c) *Hearing procedure.* (1) The hearing shall be held in Washington, D.C. or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform Rules and §§ 308.100 through 308.102, and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The petitioner may appear at the hearing and shall have the right to introduce relevant and material documents and make an oral presentation. Members of the FDIC enforcement staff may attend the hearing and participate as a representative of the FDIC enforcement staff.

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(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the petitioner afforded the hearing.

(6) In the course of or in connection with any hearing under paragraph (c) of this section the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors or its designee, where possible, within fifteen days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Executive Secretary's certification shall close the record.

(d) *Written submissions in lieu of hearing.* The petitioner may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect.

(f) *Decision by Board of Directors or its designee.* Within 45 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected individual whether the denial of the notice will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the petitioner. The Board of Directors or its designee shall promptly rescind or modify the denial where the decision is favorable to the petitioner.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

§ 308.155 Scope.

The rules and procedures set forth in this subpart shall apply to an application filed pursuant to section 19 of the FDIA (12 U.S.C. 1829) by an insured depository institution and a person, who has been convicted of any criminal offense involving dishonesty or a breach of trust or who has agreed to enter into a pretrial diversion or similar program in connection with the prosecution of such offense, to seek the prior written consent of the FDIC to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution.

§ 308.157 Relevant considerations.

(a) In proceedings under § 308.156 on an application to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution, the following shall be considered:

(1) Whether the conviction is for a criminal offense involving dishonesty or breach of trust;

(2) Whether participation directly or indirectly by the person in any manner in the conduct of the affairs of the insured depository institution constitutes a threat to the safety or soundness of the insured depository institution or the interests of its depositors, or threatens to impair public confidence in the insured depository institution;

(3) Evidence of the applicant's rehabilitation;

(4) The position to be held by the applicant;

(5) The amount of influence and control the applicant will be able to exercise over the affairs and operations of the insured depository institution;

(6) The ability of the management at the insured depository institution to supervise and control the activities of the applicant;

(7) The level of ownership which the applicant will have at the insured depository institution;

(8) Applicable fidelity bond coverage for the applicant; and

(9) Additional factors in the specific case that appear relevant.

(b) The question of whether a person, who was convicted of a crime or who agreed to enter a pretrial diversion or similar program, was guilty of that crime shall not be at issue in a proceeding under this subpart.

§ 308.158 Filing papers and effective date.

(a) *Filing with the regional office.* Applications pursuant to section 19 shall be filed in the appropriate regional office.

(b) *Effective date.* An application pursuant to section 19 may be made in writing at any time more than one year after the issuance of a decision denying an application pursuant to section 19. The removal and/or prohibition pursuant to section 19 shall continue until the applicant has been reinstated by the Board of Directors or its designee for good cause shown.

§ 308.159 Denial of applications.

A denial of an application pursuant to section 19 shall:

(a) Inform the applicant that a written request for a hearing, stating the relief desired and the grounds therefor and any supporting evidence, may be filed with the Executive Secretary within 60 days after the denial; and

(b) Summarize or cite the relevant considerations specified in § 308.157 of this subpart.

§ 308.160 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 60 days after receipt of a request for hearing on an application filed pursuant to § 308.159. Upon the request of the applicant or FDIC enforcement counsel, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Burden of proof.* The ultimate burden of proof shall be upon the person proposing to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution. The burden of going forward with *prima facie* case shall be upon the FDIC.

(c) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform Rules and §§ 308.100 through 308.102 and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under this subsection, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors, where possible, within 20 days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Executive Secretary's certification shall close the record.

(d) *Written submissions in lieu of hearing.* The applicant or the bank may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the person shall remain barred under section 19.

(f) *Decision by Board of Directors or its designee.* Within 60 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected person whether the person shall remain barred under section 19. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant.

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony is Charged

§ 308.161 Scope.

The rules and procedures set forth in this subpart shall apply to the following proceedings:

(a) To suspend an institution-affiliated party of an insured state nonmember bank, or to prohibit such party from further participation in the conduct of the affairs of the bank, where the individual is charged in any state, Federal, or territorial information or indictment, or complaint, with the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or Federal law; or

(b) To remove from office or to prohibit an institution-affiliated party from further participation in the conduct of the affairs of the bank, except with the consent of the Board of Directors or its designee, if continued service or participation by such party poses a threat to the interests of the bank's depositors or threatens to impair public confidence in the depository institution, where a judgment of conviction or an agreement to enter a pre-trial diversion or other similar program is entered against such party, not subject to further appellate review, has been entered against the individual for the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or Federal law.

§ 308.162 Relevant considerations.

(a)(1) In proceedings under § 308.161 (a) and (b) for a suspension, removal or prohibition order, the following shall be considered:

(i) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust; and

(ii) Whether continued service or participation by the institution-affiliated party may pose a threat to the interest of the bank's depositors, or threatens to impair public confidence in the bank.

(2) Additional factors in the specific case that appear relevant to its decision to continue in effect, rescind, terminate, or modify a suspension, removal or prohibition order may be considered.

(b) The question of whether an institution-affiliated party charged with a crime is guilty of the crime charged shall not be tried or considered in a proceeding under this subpart.

§ 308.163 Notice of suspension and orders of removal or prohibition.

(a) *Notice of suspension or prohibition.* (1) The Board of Directors or its designee may suspend or prohibit from further participation in the conduct of the affairs of the bank an institution-affiliated party by written notice of suspension or prohibition upon a determination by the Board of Directors or its designee that the grounds for such suspension or prohibition exist. The written notice of suspension or prohibition shall be served upon the institution-affiliated party and the bank.

(2) The written notice of suspension shall:

(i) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefore, and any supporting evidence, may be filed with the

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Executive Secretary within 30 days after receipt of the written notice; and

(ii) Summarize or cite to the relevant considerations specified in § 308.162 of this subpart.

(3) The suspension or prohibition shall be effective immediately upon service on the institution-affiliated party, and shall remain in effect until final disposition of the information, indictment, complaint, or until it is terminated by the Board of Directors or its designee under the provisions of § 308.164 or otherwise.

(b) *Order of removal or prohibition.* (1) The Board of Directors or its designee may issue an order removing or prohibiting from further participation in the conduct of the affairs of the bank an institution-affiliated party, when:

(i) A final judgment of conviction not subject to further appellate review is entered against the individual for a crime referred to in § 308.161(b); and

(ii) The Board of Directors or its designee determines that continued service or participation of the institution-affiliated party may threaten the interests of the bank's depositors or may threaten to impair public confidence in the bank.

(2) The order shall be served upon the institution-affiliated party and the bank.

(3) The order shall:

(i) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within 30 days after receipt of the order; and

(ii) Summarize or cite the relevant considerations specified in § 308.162 of this subpart.

(4) The order shall be effective immediately upon service on the institution-affiliated party, and shall remain in effect until it is terminated by the Board of Directors or its designee under the provisions of § 308.164 or otherwise.

§ 308.164 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 30 days after receipt of a request for hearing on an application filed pursuant to § 308.163. Upon the request of the applicant, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.08 through 308.12, 308.18, and 308.21 of the Uniform Rules and §§ 308.100 through 308.102 and 308.104 through 308.108 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a representative of the FDIC enforcement staff.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under paragraph (b) of this section, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors, where possible, within ten days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors. The Executive Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The applicant or the bank may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect pursuant to § 308.163.

(e) *Decision by Board of Directors or its designee.* Within 60 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected individual whether the order of removal or prohibition will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant. The Board of Directors or its designee shall promptly rescind or modify an order of removal or prohibition where the decision is favorable to the applicant.

Subpart O—Liability of Commonly Controlled Depository Institutions

§ 308.165 Scope.

The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings in connection with the assessment of cross-guaranty liability against commonly controlled depository institutions.

§ 308.166 Grounds for assessment of liability.

Any insured depository institution shall be liable for any loss incurred or reasonably anticipated to be incurred by the corporation, subsequent to August 9, 1989, in connection with the default of a commonly controlled insured depository institution, or any loss incurred or reasonably anticipated to be incurred in connection with any assistance provided by the Corporation to any commonly controlled depository institution in danger of default.

§ 308.167 Notice of assessment of liability.

(a) The amount of liability shall be assessed upon service of a Notice of Assessment of Liability upon the liable depository institution, within two years of the date the Corporation incurred the loss.

(b) *Contents of Notice.* (1) The Notice of Assessment of Liability shall set forth:

(i) The basis for the FDIC's jurisdiction over the proceeding;

(ii) A statement of the Corporation's good faith estimate of the amount of loss it has incurred or anticipates incurring;

(iii) A statement of the method by which the estimated loss was calculated;

(iv) A proposed order directing payment by the liable institution of the FDIC's estimated amount of loss, and the schedule under which the payment will be due;

(v) In cases involving more than one liable institution, the estimated amount of each institution's share of the liability.

(2) The Notice of Assessment of Liability shall advise the liable institution(s):

(i) That an answer must be filed within 20 days after service of the Notice;

(ii) That, if a hearing is requested, a request for a hearing must be filed within 20 days after service of the Notice;

(iii) That if a hearing is requested, such hearing will be held within the judicial district in which the liable institution is found, or, in cases involving more than one liable institution, within a judicial district in which at least one liable institution is found;

(iv) That, unless the administrative law judge sets a different date, the hearing will commence 120 days after service of the Notice of Assessment of Liability;

(v) That failure to file both an answer and request a hearing shall render the Notice of Assessment a final and unappealable order.

§ 308.168 Effective date of and payment under an order to pay.

(a) Unless otherwise provided in the Notice of Assessment of Liability, payment of the assessment shall be due on or before the 21st day after service of the Assessment of Liability, under the terms of the schedule for payment set forth therein.

(b) All payments collected shall be paid to the Corporation.

(c) Failure to both file an answer and request a hearing as prescribed herein shall render the order to pay final and unappealable.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and other Expenses

§ 308.169 Scope.

This subpart, and the Equal Access to Justice Act (5 U.S.C. 504), which it implements, apply to adversary adjudications before the FDIC. The types of adjudication covered by this subpart are those listed in § 308.01 of the Uniform Rules. The Uniform Rules and subpart B of the Local Rules apply to any proceedings to recover fees and expenses under this subpart.

§ 308.170 Filing, content, and service of documents.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Executive Secretary whenever the applicant has prevailed in the proceeding or in a discrete significant substantive portion of the proceeding within 30 days after service of the final order of the Board of Directors in disposition of the proceeding.

(b) *Content.* The application and related documents shall conform to the requirements of § 308.10 of the Uniform Rules.

(c) *Service.* The application and related documents shall be served on all parties to the adversary adjudication in accordance with § 308.11 of the Uniform Rules, except that statements of net worth shall be served only on counsel for the FDIC.

(d) Upon receipt of an application, the Executive Secretary shall refer the matter to the administrative law judge who heard the underlying adversary proceeding, provided that if the original administrative law judge is unavailable, or the Executive Secretary determines, in his or her sole discretion, that there is cause to refer the matter to a different administrative law judge, the matter shall be referred to a different administrative law judge.

§ 308.171 Responses to application.

(a) *By FDIC.* (1) Within 20 days after service of an application, counsel for the FDIC may file with the Executive Secretary and serve on all parties an answer to the application. Unless counsel for the FDIC requests and is granted an extension of time for filing or files a statement of intent to negotiate under § 308.179 of this subpart, failure to file an answer within the 20-day period will be treated as a consent to the award requested.

(2) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the FDIC's position. If the answer is based on any alleged facts not already in the record of the proceeding, the answer shall include either supporting affidavits or a request for further proceedings under § 308.180.

(b) *Reply to answer.* The applicant may file a reply if the FDIC has addressed in its answer any of the following issues: that the position of the FDIC was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 308.180.

(c) *By other parties.* Any party to the adversary adjudication, other than the applicant and the FDIC, may file comments on an application within 20 days after service of the application. If the applicant is entitled to file a reply to the FDIC's answer under paragraph (b) of this section, another party may file comments on the answer within 15 days after service of the answer. A commenting party may not participate in any further proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit additional exploration of matters raised in the comments.

(d) *Additional response.* Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

§ 308.172 Eligibility of applicants.

(a) *General rule.* To be eligible for an award under this subpart, an applicant must have been named or admitted as a party to the proceeding. In addition, the applicant must show that it meets all other conditions of eligibility set out in paragraph (b) of this section.

(b) *Types of eligible applicant.* The types of eligible applicant are:

(1) An individual with a net worth of not more than $2,000,000 at the time the adversary adjudication was initiated; or

(2) Any owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed $7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated.

(c) *Factors to be considered.* In determining the types of eligible applicants:

(1) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevails are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for

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the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(3) The net worth of a bank shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the adversary adjudication.

(4) The employees of an applicant include all those persons who were regularly providing services for remuneration for the applicant, under its direction and control, on the date the adversary adjudication was initiated. Part-time employees are included as though they were full-time employees.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. The aggregated net worth shall be adjusted if necessary to avoid counting the net worth of any entity twice. As used in this subpart, "affiliates" are individuals, corporations, and entities that directly or indirectly or acting through one or more entities control a majority of the voting shares of the applicant; and corporations and entities of which the applicant directly or indirectly owns or controls a majority of the voting shares. The Board of Directors may, however, on the recommendation of the administrative law judge, or otherwise, determine that such aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart in light of the actual relationship between the affiliated entities. In such a case the net worth and employees of the relevant affiliate or affiliates will not be aggregated with those of the applicant. In addition, the Board of Directors may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(6) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 308.173 Prevailing party.

(a) *General rule.* An eligible applicant who, following an adversary adjudication has gained victory on the merits in the proceeding is a "prevailing party". An eligible applicant may be a "prevailing party" if a settlement of the proceeding was effected on terms favorable to it or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

(b) *Segregation of costs.* When a proceeding has presented a number of discrete substantive issues, an applicant may have prevailed even though all the issues were not resolved in its favor. If such an applicant is deemed to have prevailed, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under § 308.175 if proration were not performed, whether separate or prorated treatment is appropriate, and the appropriate proration percentage, shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 308.174 Standards for awards.

A prevailing applicant may receive an award for fees and expenses unless the position of the FDIC during the proceeding was substantially justified or special circumstances make the award unjust. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings. Awards for fees and expenses incurred before the date on which the adversary adjudication was initiated are allowable if their incurrence was necessary to prepare for the proceeding.

§ 308.175 Measure of awards.

(a) *General rule.* Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate, provided that no award under this subpart for the fee of an attorney or agent may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FDIC pays expert witnesses. An award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(b) *Determination of reasonableness of fees.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) *Awards for studies.* The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

§ 308.176 Application for awards.

(a) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of each issue with regard to which the applicant believes that the position of the FDIC in the proceeding was not substantially justified;

(3) A statement of the amount of fees and expenses for which an award is sought;

(4) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(5) A description of any affiliated individuals or entities, as defined in § 308.172(c)(5), or a statement that none exist;

(6) A declaration that the applicant, together with any affiliates, had a net worth not more than the ceiling established for it by § 308.172(b) as of the date the proceeding was initiated; and

(7) Any other matters that the applicant wishes the FDIC to consider in determining whether and in what amount an award should be made.

(b) *Verification.* The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

§ 308.177 Statement of net worth.

(a) *General rule.* A statement of net worth must be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant.

(b) *Contents.* (1) The statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the adversary adjudication. Unaudited financial statements are acceptable unless the administrative law judge or the Board of Directors otherwise requires. Financial statements or reports to a Federal or State agency, prepared before the initiation of the adversary adjudication for other purposes, and accurate as of a date not more than three months prior to the initiation of the proceeding, are acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the administrative law judge or the Board of Directors otherwise requires.

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 308.172(c)(2). Assets and liabilities of individuals shall include those beneficially owned within the meaning of the FDIC's rules and regulations.

(3) If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. In all cases the administrative law judge or the Board of Directors may call for additional information needed to establish the applicant's net worth as of the initiation of the proceeding. Except as adjusted by additional information that was called for under the preceding sentence, net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(c) *Statement confidential.* Unless otherwise ordered by the Board of Directors or required by law, the statement of net worth shall be for the confidential use of counsel for the FDIC, the Board of Directors, and the administrative law judge.

§ 308.178 Statement of fees and expenses.

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board of Directors may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 308.179 Settlement negotiations.

If counsel for the FDIC and the applicant believe that the issues in a fee application can be settled, they may jointly file with the Executive Secretary a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer under § 308.171 for an additional 20 days, and further extensions may be granted by the administrative law judge upon the joint request of counsel for the FDIC and the applicant.

§ 308.180 Further proceedings.

(a) *General rule.* Ordinarily, the determination of a recommended award will be made by the administrative law judge on the basis of the written record. However, on request of either the applicant or the FDIC, or on his or her own initiative, the administrative law judge may order further proceedings such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application and will be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* Ordinarily, the administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

§ 308.181 Recommended decision.

The administrative law judge shall file with the Executive Secretary a recommended decision on the fee application not later than 90 days after the filing of the application or 30 days after the conclusion of the hearing, whichever is later. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings on whether the FDIC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

§ 308.182 Board of Directors action.

(a) *Exceptions to recommended decision.* Within 20 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the FDIC may file with the Executive Secretary written exceptions thereto. A supporting brief may also be filed.

(b) *Decision of Board of Directors.* The Board of Directors shall render its decision within 60 days after the matter is submitted to it by the Executive Secretary. The Executive Secretary shall furnish copies of the decision and order of the Board of Directors to the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 308.183 Payment of awards.

An applicant seeking payment of an award made by the Board of Directors shall submit to the executive Secretary a

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statement that the applicant will not seek judicial review of the decision and order or that the time for seeking further review has passed and no further review has been sought. The FDIC will pay the amount awarded within 30 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Dated: June 5, 1991.

Hoyle L. Robinson,

Executive Secretary.

DEPARTMENT OF TREASURY

Office of Thrift Supervision

12 CFR Parts 508, 509, 512 AND 513

List of Subjects

12 CFR Part 508

Administrative practice and procedure, Crime, Savings associations.

12 CFR Part 509

Administrative practice and procedure, Penalties..

12 CFR Part 512

Administrative practice and procedure, Investigations.

12 CFR Part 513

Accountants, Administrative practice and procedure, Lawyers.

Authority and Issuance

For the reasons set forth in the common preamble, Parts 508, 509, 512, and 513 of subchapter A of chapter V of title 12 of the Code of Federal Regulations are amended as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

1. The authority citation for part 509 continues to read as follows:

Authority: Sec. 556, 80 Stat. 386, as amended (5 U.S.C. 556); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467); sec. 10, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467a); sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 781).

2. Subpart A is revised to read as set forth at the end of the common preamble.

Subpart A—Uniform Rules of Practice and Procedure

Sec.
509.1 Scope.
509.2 Rules of construction.
509.3 Definitions.
509.4 Authority of Agency Head.
509.5 Authority of the administrative law judge.
509.6 Appearance and practice in adjudicatory proceedings.
509.7 Good faith certification.
509.8 Conflicts of interest.
509.9 Ex parte communications.
509.10 Filing of papers.
509.11 Service of papers.
509.12 Construction of time limits.
509.13 Change of time limits.
509.14 Witness fees and expenses.
509.15 Opportunity for informal settlement.
509.16 Agency's right to conduct examination.
509.17 Collateral attacks on adjudicatory proceeding.
509.18 Commencement of proceeding and contents of notice.
509.19 Answer.
509.20 Amended pleadings.
509.21 Failure to appear.
509.22 Consolidation and severance of actions.
509.23 Motions.
509.24 Scope of document discovery.
509.25 Request for document discovery from parties.
509.26 Document subpoenas to nonparties.
509.27 Deposition of witness unavailable for hearing.
509.28 Interlocutory review.
509.29 Summary disposition.
509.30 Partial summary disposition.
509.31 Scheduling and prehearing conferences.
509.32 Prehearing submissions.
509.33 Public hearings.
509.34 Hearing subpoenas.
509.35 Conduct of hearings.
509.36 Evidence.
509.37 Proposed findings and conclusions.
509.38 Recommended decision and filing of record.
509.39 Exceptions to recommended decision.
509.40 Review by Agency Head.
509.41 Stays pending judicial review.

3. Subpart B is revised to read as follows:

Subpart B—Local Rules

509.100 Scope.
509.101 Appointment of Office of Financial Institution Adjudication.
509.102 Discovery.
509.103 Civil money penalties.
509.104 Additional procedures.

§ 509.100 Scope.

The rules and procedures in this subpart B shall apply to those proceedings covered by subpart A of this part. In addition, subpart A of this part and this subpart shall apply to adjudicatory proceedings for which hearings on the record are provided for by the following statutory provisions:

(a) Proceedings under section 10(a)(2)(D) of the HOLA (12 U.S.C. 1467a(a)(2)(D)) to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of a savings association or any other company;

(b) Proceedings under section 10(g)(5)(A) of the HOLA (12 U.S.C. 1467a(g)(5)(A)) to determine whether to terminate certain activities by savings and loan holding companies or to terminate ownership or control of a non-insured savings and loan holding company subsidiary; and

(c) Proceedings under section 15(c)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78o(c)(4)) ("Exchange Act") to determine whether any association or person subject to the jurisdiction of the Agency pursuant to section 12(i) of the Exchange Act (15 U.S.C. 78*l*(i)) has failed to comply with the provisions of sections 12, 13, 14(a), 14(c), 14(d) or 14(f) of the Exchange Act.

§ 509.101 Appointment of Office of Financial Institution Adjudication.

Unless otherwise directed by the Agency, all hearings under subpart A of this part and this subpart shall be conducted by administrative law judges under the direction of the Office of Financial Institution Adjudication.

§ 509.102 Discovery.

(a) *In general.* A party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant and material to the proceeding. The deposition of experts shall be limited to those experts who are expected to testify at the hearing.

(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness must be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant and material matters of which the witness has factual, direct and personal knowledge. Objections to questions or exhibits shall be in short form, stating the grounds for objection. Failure to object to questions or exhibits

is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The court reporter shall transcribe or otherwise record the witness's testimony, as agreed among the parties.

(e) *Protective orders.* At any time after notice of a deposition has been given, a party may file a motion for the issuance of a protective order. Such protective order may prohibit, terminate, or limit the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition:

(1) Is unreasonable, oppressive, excessive in scope, or unduly burdensome;

(2) Involves privileged, investigative, trial preparation, irrelevant or immaterial matters; or

(3) Is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent.

(f) *Fees.* Deposition witnesses, including expert witnesses, shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States in proceedings in which the United States Government is a party. Expenses in accordance with this paragraph shall be paid by the party seeking to take the deposition.

(g) *Deposition subpoenas*—(1) *Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(2) *Service.* The party requesting the subpoena shall serve it on the person named therein, or on that person's counsel, by personal service, certified mail, or overnight delivery service. The party serving the subpoena shall file proof of service with the administrative law judge.

(3) *Motion to quash.* A person named in the subpoena or a party may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party that requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(4) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of § 509.27(d).

§ 509.103 Civil money penalties.

(a) *In general.* Notwithstanding the use of the term "penalty," civil money penalties assessed pursuant to subpart A of this part or this subpart B are remedial and not punitive in nature.

(b) *Assessment.* In the event of consent, or if upon the record developed at the hearing the Agency finds that any of the grounds specified in the notice issued pursuant to § 509.18 have been established, the Agency may serve an order of assessment of civil money penalty upon the party concerned. The assessment order shall be effective immediately upon service or upon such other date as may be specified therein and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by the Agency or by a reviewing court.

(c) *Payment.* (1) Civil penalties assessed pursuant to subpart A of this part and this subpart B are payable and to be collected within 60 days after the issuance of the notice of assessment, unless the Agency fixes a different time for payment where it determines that the purpose of the civil money penalty would be better served thereby; however, if a party has made a timely request for a hearing to challenge the assessment of the penalty, the party may not be required to pay such penalty until the Agency has issued a final order of assessment following the hearing. In such instances, the penalty shall be paid within 60 days of service of such order unless the Agency fixes a different time for payment. Notwithstanding the foregoing, the Agency may seek to attach the party's assets to secure payment of the potential civil money penalty or other obligation in advance of the hearing in accordance with section 8(i)(4) of the FDIA (12 U.S.C. 1818(i)(4)).

(2) Checks in payment of civil penalties shall be made payable to the Treasurer of the United States and sent to the Controller's Division of the Agency. Upon receipt, the Office shall forward the check to the Treasury of the United States.

(d) *Relevant considerations.* In determining the amount of the penalty to be assessed in any proceeding under subpart A or this subpart, the Agency shall consider the financial strength and good faith of the party against whom the penalty is assessed, the gravity of the violation, any previous violations, and such other matters as justice may require.

§ 509.104 Additional procedures.

(a) *Replies to exceptions.* Replies to written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order pursuant to § 509.39 shall be filed within 10 days of the date such written exceptions were required to be filed.

(b) *Motions.* All motions shall be filed with the administrative law judge; provided however, once the administrative law judge has certified the record to the Agency pursuant § 509.39, all motions must be filed with the Agency within the 10 day period allowed for the filing of replies to exceptions. Responses to such motions timely filed before the Agency Head, other than motions for oral argument before the Agency Head, shall be allowed pursuant to the procedures at § 509.23(d). No response is required for the Agency Head to make a determination on a motion for oral argument.

(c) *Authority of administrative law judge.* In addition to the powers listed in § 509.5, the administrative law judge shall have the authority to deny any dispositive motion and shall follow the procedures set forth for motions for summary disposition at § 509.29 and partial summary disposition at § 509.30 in making determinations on such motions.

(d) *Notification of submission of proceeding to Agency Head.* Upon the expiration of the time for filing any exceptions, any replies to such exceptions or any motions and any ruling thereon, and after receipt of certified record, the Agency shall notify the parties within ten days of the submission of the proceeding to the Agency Head for final determination.

(e) *Extensions of time for final determination.* The Director may, *sua sponte*, extend the time for final determination by signing an order of extension of time within the 90 day time period and notifying the parties of such extension thereafter.

(f) *Service upon the Agency.* Service of any document upon the Agency shall be made by filing with the individuals and/or offices designated by the Agency in its Notice issued pursuant to § 509.46(d) or the notification in paragraph (d) of this section or such other means reasonably suited to provide notice of the person and/or office designated to receive filings.

(g) *Presence of electronic media.* Notwithstanding the authority of the administrative law judge to set the time, place and manner of hearings, including the presence of the media and general public, the decision as to the presence of

electronic media shall be reserved to the Agency Head. Any petition to permit electronic media shall be filed with the Agency Head no later than thirty days in advance of the hearing. The Agency Head may decide to grant or deny the petition without soliciting the views of the parties. If the petition is granted, the Agency Head shall promptly serve the administrative law judge and all parties with the determination.

PART 508—[AMENDED]

4. The authority citation for part 508 continues to read as follows:

Authority: Sec. 8, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 2, 84 Stat. 879, as amended (12 U.S.C. 1818).

§ 508.7 [Amended]

5. Section 508.7(a) is amended by adding "508.5" in place of "508.4".

§ 508.13 [Amended]

6. Section 508.13(b) is amended by adding "508.26" in place of "508.27(b)".

§ 508.14 [Amended]

7. Section 508.14 is amended by revising "508.9, 508.10, 508.11, 508.12, and" to read "508.10, 508.11, and 508.12".

PART 512—[AMENDED]

8. The authority citation for part 512 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467); sec. 10, as added by sec. 308, 103 Stat. 318 (12 U.S.C. 1467a); sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 781).

§ 512.7 [Amended]

9. Section 512.7(b) is amended by adding "Chief Counsel or his designee" in place of "Director or any Deputy Director of Enforcement" and "Director or the Deputy Director", each place they appear.

PART 513—[AMENDED]

10. The authority citation for part 513 continues to read as follows:

Authority: Sec. 3, as added by sec. 302, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 12, sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); 48 Stat. 892, as amended (15 U.S.C. 781).

§ 513.1 [Amended]

11. Section 513.1 is amended in the last sentence by adding "509.6(a)(1)" in place of "509.5(a)(2)".

§ 513.6 [Amended]

12. Section 513.6(b) is amended by adding "508.5" and "508.7" in place of "509a.3" and "509a.7", respectively.

Dated: June 6, 1991.

Timothy Ryan,

Director.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Equal Access to Justice, Hearing procedures, Investigations, Lawyers, Penalties.

Authority and Issuance

For the reasons set forth in the common preamble, part 747 of chapter VII of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

1. The authority citation for part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1768, 12 U.S.C. 1784, 12 U.S.C. 1787.

2. Subpart A is revised to read as set forth at the end of the common preamble.

Subpart A—Uniform Rules of Practice and Procedure

Sec.

747.1 Scope.
747.2 Rules of construction.
747.3 Definitions.
747.4 Authority of Agency Head.
747.5 Authority of the administrative law judge.
747.6 Appearance and practice in adjudicatory proceedings.
747.7 Good faith certification.
747.8 Conflicts of interest.
747.9 Ex parte communications.
747.10 Filing of papers.
747.11 Service of papers.
747.12 Construction of time limits.
747.13 Change of time limits.
747.14 Witness fees and expenses.
747.15 Opportunity for informal settlement.
747.16 Agency's right to conduct examinations.
747.17 Collateral attacks on adjudicatory proceeding.
747.18 Commencement of proceeding and contents of notice.
747.19 Answer.
747.20 Amended pleadings.
747.21 Failure to appear.
747.22 Consolidation and severance of actions.
747.23 Motions.
747.24 Scope of document discovery.
747.25 Request for document discovery from parties.
747.26 Document subpoenas to nonparties.
747.27 Deposition of witness unavailable for hearing.
747.28 Interlocutory review.
747.29 Summary disposition.
747.30 Partial summary disposition.
747.31 Scheduling and prehearing conferences.
747.32 Prehearing submissions.
747.33 Public hearings.
747.34 Hearing subpoenas.
747.35 Conduct of hearings.
747.36 Evidence.
747.37 Proposed findings and conclusions.
747.38 Recommended decision and filing of record.
747.39 Exceptions to recommended decision.
747.40 Review by Agency Head.
747.41 Stays pending judicial review.

3. Section 747.01 (Scope) is redesignated as § 747.0 and revised to read as follows:

§ 747.0 Scope of part 747.

(a) This part describes the various formal and informal adjudicative actions and non-adjudicative proceedings available to the National Credit Union Administration Board ("NCUA Board"), the grounds for those actions and proceedings, and the procedures used in formal and informal hearings related to each available action. As mandated by section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, this part incorporates uniform rules of practice and procedure governing formal adjudications generally, as well as proceedings involving cease-and-desist actions, assessment of civil money penalties, and removal, prohibition and suspension actions. In addition, the Uniform Rules are incorporated in other subparts of this part which provide for formal adjudications. The administrative actions and proceedings described herein, as well as the grounds and hearing procedures for each, are controlled by sections 120(b) (except where the Federal credit union is closed due to insolvency), 202(a)(3), 206, and 304(c)(3) of the FCUA. Should any provision of this part be inconsistent with these or any other provisions of the FCUA, as amended, the FCUA shall control. Judicial enforcement of any action or order described in this part, as well as judicial review thereof, shall be as prescribed under the FCUA (12 U.S.C. 1751 *et seq.*) and the Administrative Procedure Act (5 U.S.C. 500 *et seq.*).

(b) As used in this part, the term insured credit union means any Federal credit union or any state chartered credit union insured under subchapter II of the FCUA unless the context indicates otherwise.

4. Subparts B through G, I, and J are revised and subpart H is amended by revising the subpart heading and adding §§ 747.701 through 747.703 to read as follows:

Subpart B—Local Rules of Practice and Procedure [Reserved]

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

747.201 Scope.
747.202 Grounds for termination of insurance.
747.203 Notice of charges.
747.204 Notice of intention to terminate insured status.
747.205 Order terminating insured status.
747.206 Consent to termination of insured status.
747.207 Notice of termination of insured status.
747.208 Duties after termination.

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

747.301 Scope.
747.302 Rules of practice; remainder of board of directors.
747.303 Notice of suspension or prohibition.
747.304 Removal or permanent prohibition.
747.305 Effectiveness of suspension or removal until completion of hearing.
747.306 Notice of opportunity for hearing.
747.307 Hearing.
747.308 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.
747.309 Decision of the NCUA Board.
747.310 Reconsideration by the NCUA Board.
747.311 Relevant considerations.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

747.401 Scope.
747.402 Grounds for suspension or revocation of charter and for involuntary liquidation.
747.403 Notice of intent to suspend or revoke charter; notice of suspension.
747.404 Notice of hearing.
747.405 Issuance of order.
747.406 Cancellation of charter.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]

Subpart G—Local Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access To Justice Act in NCUA Board Adjudications

747.601 Purpose and scope.
747.602 Eligibility of applicants.
747.603 Prevailing party.
747.604 Standards for award.
747.605 Allowable fees and expenses.
747.606 Contents of application.
747.607 Statement of net worth.
747.608 Documentation of fees and expenses.
747.609 Filing and service of applications.
747.610 Answer to application.
747.611 Comments by other parties.
747.612 Settlement.
747.613 Further proceedings.
747.614 Recommended decision.
747.615 Decision of the NCUA Board.
747.616 Payment of award.

Subpart H—Local Rules and Procedures Applicable to Investigations

747.701 Applicability.
747.702 Information obtained in investigations.
747.703 Authority to conduct investigations.

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

747.801 Applicability.
747.802 Non-public formal investigative proceedings.
747.803 Subpoenas.
747.804 Oath; false statements.
747.805 Self-incrimination; immunity.
747.806 Transcripts.
747.807 Rights of witnesses.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or Committee Members Pursuant to Section 212 of the FCUA

747.901 Scope.
747.902 Grounds for disapproval of notice.
747.903 Procedures where notice of disapproval issued; reconsideration.
747.904 Appeal.
747.905 Judicial review.

Subpart B—Local Rules of Practice and Procedure [Reserved]

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

§ 747.201 Scope.

Under the authority of section 206(b) of the FCUA, the NCUA Board may terminate the insured status of an insured credit union upon the grounds set forth therein and enumerated in § 747.202. The procedure for terminating the insured status of an insured credit union as therein prescribed will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and subpart A of this part. To the extent any rule or procedure of subpart A of this part is inconsistent with a rule or procedure prescribed in this subpart C, subpart C shall control.

§ 747.202 Grounds for termination of insurance.

The NCUA Board may institute proceedings to terminate the insured status of an insured credit union whenever it determines that an insured credit union—

(1) is engaging or has engaged in unsafe or unsound practices in conducting its business;

(2) is in unsafe or unsound condition to continue as an insured credit union; or

(3) is violating or has violated any applicable law, rule, regulation, order, written condition imposed by the NCUA Board in response to any application or request of the credit union, or any written agreement entered into with the NCUA Board.

§ 747.203 Notice of charges.

(a) Whenever the NCUA Board determines that grounds for termination of insured status exists, it will, for the purpose of securing correction of errant or illegal conditions, serve a notice of charges upon the concerned credit union. This notice will contain a statement describing the unsafe or unsound practices, condition or the relevant violations.

(b) In the case of an insured State-chartered credit union, the NCUA Board shall send a copy of the Notice of Charges to the appropriate State authority, if any, having supervision over the credit union.

§ 747.204 Notice of intention to terminate insured status.

Unless correction of the practices, condition, or violations set forth in the Notice of Charges is made within 120 days after service of such statement, or within a shorter period of not less than 20 days after such service as the NCUA Board may require in any case where it determines that the insurance risk with respect to such credit union could be unduly jeopardized by further delay or as the appropriate State supervisory authority shall require in the case of an insured State-chartered credit union, the Board, if it determines to proceed further, shall give to the credit union not less than 30 days' written notice of its intent to terminate the status of the credit union as an insured credit union. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practices or conditions or violations on which a hearing will be held. Such hearing shall commence not earlier than 30 days nor later than 60 days after the date of service of such notice upon the credit union, unless an

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earlier or later date is set by the NCUA Board at the request of the credit union.

§ 747.205 Order terminating insured status.

If, upon the record of the hearing held pursuant to § 747.204, the NCUA Board finds that any unsafe or unsound practice or condition or violation specified in the notice has been established and has not been corrected within the time prescribed under § 747.204, the NCUA Board may issue and serve upon the credit union an order terminating its status as an insured credit union on a date subsequent to the date of such finding and subsequent to the expiration of the time specified in the Notice.

§ 747.206 Consent to termination of insured status.

Unless the credit union appears at the hearing designated in the notice of hearing by a duly authorized representative, it will be deemed to have consented to the termination of its status as an insured credit union. In the event the credit union fails to so appear at such hearing, the administrative law judge shall forthwith report the matter to the NCUA Board and the NCUA Board may thereupon issue an order terminating the credit union's insured status.

§ 747.207 Notice of termination of insured status.

Prior to the effective date of the termination of the insured status of an insured credit union under section 206(b) of the FCUA and at such time as the Board shall specify, the credit union shall mail to each member at his or her last address of record on the books of the credit union, and publish in not less than two issues of a local newspaper of general circulation, notices of the termination of its insured status, and the credit union shall furnish the NCUA Board with proof of publication of such notice. The notice shall be as follows:

Notice

[Date]

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act, will terminate as of the close of business on the ____ day of _____;

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration;

3. Accounts in the credit union on the ____ day of _____, ____ up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after the close of business on the ____ day of _____, _____; Provided, however, that any withdrawals after the close of business on the day of _____, _____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)

(Address)

§ 747.208 Duties after termination.

(a) After the termination of the insured status of any credit union under section 206(b) of the FCUA, insurance of its member accounts to the extent they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the NCUA Board.

(b) The credit union shall continue to pay premiums to the NCUA Board during such period and the Board shall have the right to examine the credit union from time to time during the period. The credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union during the one year period. If the credit union is closed for liquidation within this period, the Board shall have the same powers and rights with respect to such credit union as in the case of an insured credit union.

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

§ 747.301 Scope.

The rules and procedures set forth in this subpart are applicable to informal proceedings conducted by the NCUA Board, or a Presiding Officer designated by the Board, pursuant to section 206(i) of the FCUA to suspend, remove, and/or prohibit from office or from further participation any institution-affiliated party of an insured credit union when such a party is charged in, or convicted as a result of, or enters a pretrial diversion or other similar program as a result of, any state, Federal or territorial information or indictment or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law. Subpart A of this part does not apply to proceedings under this subpart.

§ 747.302 Rules of practice; remainder of board of directors.

Except as otherwise specifically provided in this subpart, the following provisions shall apply to proceedings conducted under this subpart:

(a)(1) *Power of attorney and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia may represent others before the NCUA Board or Presiding Officer designated by the NCUA Board upon filing with the NCUA Board a written declaration that he or she is currently qualified as provided by this paragraph, and is authorized to represent the particular party on whose behalf he acts. Any other person desiring to appear before or transact business with the NCUA Board in a representative capacity may be required to file with the NCUA Board a power of attorney showing his or her authority to act in such capacity, and he or she may be required to show to the satisfaction of the NCUA Board that he or she has the requisite qualifications. Attorneys and representatives of parties to proceedings shall file a written notice of appearance with the NCUA Board or with the Presiding Officer designated by the NCUA Board.

(2) *Summary suspension.* Contemptuous conduct by any person at an argument before the NCUA Board or at the hearing before a Presiding Officer shall be grounds for exclusion therefrom and suspension for the duration of the argument or hearing.

(b)(1) *Notice of hearing.* Whenever a hearing within the scope of this subpart is ordered by the NCUA Board, a notice of hearing shall be given by the NCUA Board to the party afforded the hearing and to any appropriate state supervisory authority. The notice shall state the time, place, and nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held, and shall contain a statement of the matters of fact or law constituting the grounds for the hearing. It shall be delivered by personal service, by registered or certified mail to the last known address, or by other appropriate means, not later than 30 nor earlier than 60 days before the hearing.

(2) *Party.* The term "party" means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party; but a person or agency may be admitted for a limited purpose.

(c)(1) *Computation of time.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday or legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor such legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the time within which the act is to be performed is ten days or less in which event Saturdays, Sundays, and legal holidays shall not be included.

(2) *Service by mail.* Whenever any party has the right or is required to do some act or take some proceeding, within a period of time prescribed in this subpart, after the service upon him of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the U.S. mail.

(d) *Nonpublication of submissions.* Unless and until otherwise ordered by the NCUA Board, the notice of hearing, the transcript, written materials submitted during the hearing, the Presiding Officer's recommendation to the NCUA Board and any other papers filed in connection with a hearing under this subpart, shall not be made public, and shall be for the confidential use only of the NCUA Board, the Presiding Officer, the parties and appropriate authorities.

(e) *Remainder of board of directors.* (1) If at any time, because of the suspension of one or more directors pursuant to this subpart, there shall be on the board of directors of an insured credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum on the board of directors.

(2) In the event all of the directors of an insured credit union are suspended pursuant to this subpart, the NCUA Board shall appoint persons to serve temporarily as directors in their place pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office.

(3) Directors appointed temporarily by the NCUA Board pursuant to paragraph (e)(2) of this section, shall, within 30 days following their appointment, call a special meeting for the election of new directors, unless during such 30-day period—

(i) the regular annual meeting is convened; or

(ii) the suspensions giving rise to the appointment of temporary directors are terminated.

§ 747.303 Notice of suspension or prohibition.

Whenever an institution-affiliated party of an insured credit union is charged in any state, Federal or territorial information or indictment or complaint with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law, the NCUA Board may, if continued service or participation by the concerned party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such party, suspend him or her from office, or prohibit him or her from further participation in any manner in the affairs of the credit union, or both. A copy of the notice of suspension or prohibition shall also be served upon the credit union. This suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of, or until such suspension or prohibition is terminated by the NCUA Board.

§ 747.304 Removal or permanent prohibition.

In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against the institution-affiliated party, and at such time as the judgment, if any, is not subject to further appellate review, the NCUA Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon the individual an order removing him or her from office or prohibiting him or her from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the NCUA Board. A copy of such order will also be served upon such credit union. A finding of not guilty or other disposition of the charge will not preclude the NCUA Board from thereafter instituting proceedings, pursuant to the provisions of section 206(g) of the FCUA and subpart A of this part, to remove such director, committee member, officer, or other person from office or to prohibit his or her further participation in the affairs of the credit union.

§ 747.305 Effectiveness of suspension or removal until completion of hearing.

Any notice of suspension or prohibition issued under § 747.303 and any order of removal or prohibition issued under § 747.304 will be effective upon service on the concerned party and will remain effective and outstanding until the completion of any hearing or appeal authorized under section 206(i) of the FCUA and this subpart, unless such notice of suspension or order of removal is terminated by the NCUA Board.

§ 747.306 Notice of opportunity for hearing.

(a) Any notice of suspension or prohibition issued pursuant to § 747.303, and any order of removal or prohibition issued pursuant to § 747.404, shall be accompanied by a further notice to the concerned individual that he or she may, within 30 days of service of such notice, request in writing an informal hearing at which he or she may present evidence and argument that his or her continued service to or participation in the conduct of the affairs of the credit union does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair confidence in the credit union. Any notice of the opportunity for such a hearing shall be accompanied by a description of the hearing procedure and the criteria to be considered.

(b) A request for a hearing filed pursuant to paragraph (a) of this section shall state with particularity the relief desired, the grounds therefor, and shall include, when available, supporting evidence. The request and supporting evidance shall be filed in writing with the Secretary of the Board, National Credit Union Administration, Washington, DC 20456.

§ 747.307 Hearing.

(a) Upon receipt of a request for a hearing which complies with § 747.306, the NCUA Board will order an informal hearing to commence within the following 30 days in Washington, DC, or at such other place as the NCUA Board designates, before a Presiding Officer designated by the NCUA Board to conduct the hearing. At the request of the concerned party, the NCUA Board may order the hearing to commence at a time more than 30 days after the receipt of the request for such hearing.

(b) The notice of hearing shall be served by the NCUA Board upon the party or parties afforded the hearing and shall set forth the time and place of the hearing and the name and address of the Presiding Officer.

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(c) The subject individual may appear at the hearing personally, through counsel, or personally with counsel. The individual shall have the right to introduce relevant and material written materials (or, at the discretion of the NCUA Board, oral testimony), and to present an oral argument before the Presiding Officer. A member of the enforcement staff of the Office of General Counsel of the NCUA may attend the hearing and may participate as a party. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554–557), nor Subpart A of this part shall apply to the hearing. The proceedings shall be recorded and a transcript furnished to the individual upon request and after the payment of the cost thereof. The NCUA Board shall have the discretion to permit the presentation of witnesses, within specified time limits, so long as a list of such witnesses is furnished to the Presiding Officer at least ten days prior to the hearing. Witnesses shall not be sworn, unless specifically requested by either party or directed by the Presiding Officer. The Presiding Officer may examine any witness and each party shall have the opportunity to cross-examine any witness presented by an opposing party. Upon the request of either the subject individual or the representative of the Office of General Counsel, the record shall remain open for a period of five business days following the hearing, during which time the parties may make any additional submissions to the record. Thereafter, the record shall be closed.

(d) In the course of or in connection with any proceeding under this subpart, the NCUA Board and the Presiding Officer will have the power to administer oaths and affirmations, to take or cause depositions to be taken, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. If the NCUA Board permits the presentation of witnesses, the NCUA Board or the Presiding Officer may require the attendance of witnesses from any place in any state or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Witnesses subpoenaed shall be paid the same fees and mileage as are paid witnesses in the District Courts of the United States. The NCUA Board or the Presiding Officer may require the production of documents from any place in any such state, territory, or other place.

(e) The Presiding Officer will make his or her recommendations to the Board, where possible, within ten business days following the close of the record.

§ 747.306 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.

(a) The subject individual may, in writing, waive an oral hearing and instead elect to have the matter determined by the NCUA Board on the basis of written submissions alone.

(b) Should any concerned party fail to request in writing an oral hearing or consideration based on written submissions alone within 30 days of service of the notice described in § 747.308, he or she will be deemed to have consented to the NCUA Board's action.

(c) Unless the concerned party appears at the hearing personally or by duly appointed representative, he or she will be deemed to have consented to the NCUA Board's action.

§ 747.309 Decision of the NCUA Board.

(a) Within 60 days following the hearing, or receipt of the subject individual's written submissions where hearing has been waived pursuant to § 747.308, the NCUA Board shall notify the institution-affiliated party whether the suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the decision of the NCUA Board, if that decision is adverse to the respondent party. In the case of a decision favorable to the respondent on the subject of a prior order of removal or prohibition, the NCUA Board shall take prompt action to rescind or otherwise modify the order of removal or prohibition.

§ 747.310 Reconsideration by the NCUA Board.

(a) The subject individual shall have ten business days following receipt of the decision of the NCUA Board in which to petition the NCUA Board for initial reconsideration.

(b) The subject individual also shall be entitled to petition the NCUA Board for reconsideration of its decision any time after the expiration of a 12-month period from the date of the NCUA Board's decision, but no petition for reconsideration may be made within 12 months of a previous petition.

(c) Any petition shall state with particularity the basis for reconsideration, the relief sought, and any exceptions the individual has to the NCUA Board's findings. An individual's petition may be accompanied by a memorandum of points and authorities in support of his or her petition and any supporting documentation the individual may wish to have considered.

(d) No hearing need be granted on such petition for reconsideration. Promptly following receipt of the petition, the Board shall render its decision.

§ 747.311 Relevant considerations.

In deciding the question of suspension, prohibition, or removal under this subpart, the NCUA Board will consider the following:

(a) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust;

(b) Whether the continued presence of the subject individual in his or her position may pose a threat to the interests of the credit union's members because of the nature and extent of the individual's participation in the affairs of the insured credit union and/or the nature of the offense with the commission of or participation in which the individual has been charged;

(c) Whether there is cause to believe that there may be an erosion of public confidence in the integrity, safety, or soundness of a particular credit union (either generally or in the particular locality in which the credit union is situated) if the subject individual is permitted to remain in his or her position in an insured credit union;

(d) Whether the individual is covered by the credit union's fidelity bond and, if so, whether the bond is likely to be revoked, or whether coverage under the bond will be affected adversely as a result of the information, indictment, complaint, judgment of conviction or entry into a pretrial diversion or other similar program; and

(e) The NCUA Board may consider any other factors which, in the specific case, appear relevant to the decision to continue in effect, rescind, terminate, or modify a suspension, prohibition, or removal order, except that it shall not consider the ultimate question of the guilt or innocence of the subject individual with regard to the crime with which he or she has been charged.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

§ 747.401 Scope.

The rules and procedures set forth in this subpart and Subpart A of this part are applicable to proceedings by the NCUA Board pursuant to section 120(b)(1) of the FCUA to suspend or revoke the charter of a solvent Federal credit union, and to place a solvent Federal credit union into involuntary liquidation. To the extent a rule or procedure set forth in Subpart A of this part is inconsistent with a rule or procedure set forth in this subpart E, subpart E shall control.

§ 747.402 Grounds for suspension or revocation of charter and for involuntary liquidation.

(a) *Grounds in general.* The NCUA Board may suspend or revoke the charter of any Federal credit union, and place such credit union into involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the credit union has violated any provision of its charter or bylaws or of the FCUA or regulations issued thereunder.

(b) *Immediate suspension.* In any case where the Board determines that the grounds set forth in paragraph (a) of this section exist and that immediate action is necessary in order to prevent further dissipation of credit union assets or earnings, or further weakening of the credit union's condition, or to otherwise protect the interest of the credit union's insured members or the National Credit Union Share Insurance Fund, it may order without prior notice the immediate suspension of the charter of such credit union, and if the circumstances so warrant, may take possession of all books, records, assets, and property of every description of such credit union.

§ 747.403 Notice of intent to suspend or revoke charter; notice of suspension.

(a) Upon its determination that one or more of the grounds listed in § 747.402(a) exists, or that because of conditions described in § 747.402(b) immediate suspension of charter is necessary, the NCUA Board shall cause to be served upon that credit union a notice of intent to suspend or revoke charter and of intent to place into involuntary liquidation, or a notice of suspension. Such notice shall contain a statement of the facts which constitute the grounds for the action, a recitation of the options available to the credit union under paragraph (b) of this section, and an explanation of the results that will occur if the credit union fails to exercise said options.

(b) Not later than 40 days after the receipt of the notice provided for in paragraph (a) of this section, the Federal credit union may file with the NCUA Board a statement in writing setting forth the grounds and reasons why its charter should not be suspended or revoked and why it should not be placed into involuntary liquidation; or in lieu of a written statement, request an oral hearing which shall be conducted in accordance with the procedures set forth in this subpart. This statement or request shall be accompanied by a certified copy of a resolution of the board of directors of the Federal credit union concerned authorizing such statement or request, such certification to be made by the president and secretary of the board of directors.

(c) If the Federal credit union concerned does not exercise either alternative available in paragraph (b) of this section within the time required, it shall be deemed to have admitted the facts alleged in the notice and shall be deemed to have consented to the relief sought.

§ 747.404 Notice of hearing.

(a) Upon receipt of a request for hearing which complies with § 747.403(b), the NCUA Board shall transmit the request to the Office of Financial Institution Adjudication ("OFIA"). Such hearing shall commence no earlier than 30 days nor later than 60 days after the date the OFIA receives the request for a hearing, unless an earlier or later date is requested by the Federal credit union concerned and is granted by the NCUA Board in its discretion.

(b) Except as provided in § 747.405(b), the procedures of the Administrative Procedure Act (5 U.S.C. 554–557) and subpart A of this part will apply to the hearing.

(c) Unless the Federal credit union shall appear at such hearing by a duly authorized representative it shall be deemed to have consented to the suspension or revocation of its charter and to the placing of said credit union into involuntary liquidation.

§ 747.405 Issuance of order.

(a) In the event of such consent as referred to in §§ 747.403(c) or 747.404(c), or if upon the record made at any such hearing as referred to in § 747.403(b), the NCUA Board finds that the charter of the Federal credit union concerned should be suspended or revoked and the credit union closed and placed into involuntary liquidation, it shall cause to be served on such credit union an order directing the suspension or revocation of its charter and directing that it be closed and placed into involuntary liquidation. Such order shall contain a statement of the findings upon which the order is based. Additionally, the NCUA Board shall appoint a liquidating agent or agents.

(b) The NCUA Board shall render its decision and cause such order to be served not later than 45 days after receipt of consent, or written submissions as the case may be, or in the case of a formal hearing after service or the notice of submission referred to in § 747.405(a).

(c) Upon the receipt of a copy of the order which provides that the Federal credit union concerned be placed into involuntary liquidation, the officers and directors of that Federal credit union shall immediately deliver to the agent for the liquidating agent possession and control of all books, records, assets, and property of every description of the Federal credit union, and the agent for the liquidating agent shall proceed to convert said assets to cash, collect all debts due to said Federal credit union and to wind up its affairs in accordance with the provisions of the FCUA.

§ 747.406 Cancellation of charter.

Upon the completion of the liquidation and certification by the agent for the liquidating agent that the distribution of the assets of the Federal credit union has been completed, the NCUA Board shall cancel the charter of the Federal credit union concerned.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]

Subpart G—Local Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access to Justice Act in NCUA Board Adjudications

§ 747.601 Purpose and scope.

This subpart contains the regulations of the NCUA implementing the Equal Access to Justice Act (5 U.S.C. 504), as amended ("EAJA"). The EAJA provides for the award of attorneys fees and other expenses to eligible individuals and entities who are parties to proceedings conducted under this part. An eligible party may receive an award when it prevails over NCUA in a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the NCUA was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for fee awards, explain how to apply for awards and the procedures and standards that NCUA will use to make them. To the extent a rule or procedure set forth in subpart A of this part is inconsistent with a rule or

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procedure set forth in this subpart G, subpart G will control.

§ 747.602 Eligibility of applicants.

(a) To be eligible for an award of attorneys fees and expenses, an applicant must be a prevailing party in the proceeding for which it seeks an award and must be:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests and not more than 500 employees at the time the proceeding was commenced (an applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests);

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; or

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

(b) For the purpose of determining eligibility, the net worth of an applicant and the number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(c) The applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(d) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control; part-time employees shall be included on a proportional basis.

(e) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the NCUA Board determines that such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, the NCUA Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(f) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be in eligible is not itself eligible for an award.

§ 747.603 Prevailing party.

An eligible applicant may be a "prevailing party" if the applicant wins an action after a full hearing or trial on the merits, if a settlement of the proceeding was effected on terms favorable to it, or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

§ 747.604 Standards for award.

(a) A prevailing party may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, by or against NCUA unless the position of NCUA during the proceeding was substantially justified. The burden of proving that an award should not be made is on counsel for NCUA. To avoid an award, counsel for NCUA must show that its position was reasonable in law and in fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(c) Where an applicant has prevailed on one or more discrete substantive issues in a proceeding, even though all the issues were not resolved in its favor, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under this section if proration were not performed.

(d) Whether separate or prorated treatment under the preceding paragraph, including the applicable proration percentage, is appropriate shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 747.605 Allowable fees and expenses.

(a) Except as provided by § 747.604(b), awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate.

(b) No award under this subpart for the fee of an attorney or agent may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which NCUA is permitted to pay expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the NCUA Board shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, report, test, project, or similar matter prepared on behalf of the party may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 747.606 Contents of application.

(a) A prevailing eligible party, as defined in §§ 747.602, 747.603, and 747.604, seeking an award under this section, must file an application for an award of fees and expenses with the Secretary of the NCUA Board. The application shall include the following information:

(1) The identity of the applicant and the proceeding for which an award is sought;

(2) A showing that the applicant has prevailed and an identification of the issues in the proceeding on which the applicant believes that the position of NCUA was not substantially justified;

(3) A statement, with supporting documentation, that the applicant is an eligible party, as defined by § 747.602. If the applicant is an individual, he or she must state that his or her net worth does not exceed $2 million. If the applicant is not an individual, it shall state the number of its employees and that its net worth does not exceed $7 million as of the date the proceeding was initiated. However, an applicant may omit a statement of net worth if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a));

(4) A Statement of the amount of fees and expenses for which an award is sought; and

(5) Any other matters that the applicant believes may assist or wishes the NCUA Board to consider in determining whether and in what amount an award should be made.

(b) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(c) The application and documentation requirements of this subpart are required by law as a prerequisite to obtaining a benefit under the Equal Access to Justice Act and this subpart.

§ 747.607 Statement of net worth.

(a) Each applicant (other than a qualified tax exempt organization or cooperative association) must provide a detailed statement showing the net worth of the applicant and any affiliates, as defined in § 747.602(a), when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant is an eligible party. The administrative law judge or the NCUA Board may require additional information from the applicant to determine eligibility. Unless otherwise ordered by the Board or required by law, the statement shall be kept confidential and used by the NCUA Board only in making its determination of an award.

(b) If the applicant or any of its affiliates is a Federal credit union, the portion of the statement of net worth which relates to the Federal credit union shall consist of a copy of the Federal credit union's last Statement of Financial Condition filed before the initiation of the underlying proceeding.

(c) All statements of net worth shall describe any transfers of assets from or obligations incurred by the applicant or any affiliate, occurring in the six-month period prior to the date on which the proceeding was initiated, which reduced the net worth of the applicant and its affiliates below the applicable net-worth ceiling. If there were none, the applicant shall so state.

§ 747.608 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge or the NCUA Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 747.609 Filing and service of applications.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision on which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) As used in this subpart, final disposition means the issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal.

(d) Any application for an award of fees and expenses shall be filed with the Secretary of the Board, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456. Any application for an award and any other pleading or document related to an application, shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 747.607(a) for statements of net worth.

§ 747.610 Answer to application.

(a) Within 30 days after service of an application, counsel for NCUA may file an answer to the application. Unless counsel for NCUA requests and is granted an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period will be treated as a consent to the award requested.

(b) If counsel for NCUA and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the NCUA Board upon the joint request of counsel for NCUA and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, counsel shall include with the answer a request for further proceedings under § 747.613.

(d)(1) The applicant may file a reply if counsel for NCUA has addressed in his or her answer any of the following issues:

(i) That the position of NCUA in the proceeding was substantially justified;

(ii) That the applicant unduly protracted the proceedings; or

(iii) That special circumstances make an award unjust.

(2) The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply a request for further proceedings under § 747.613.

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§ 747.611 Comments by other parties.

Any party to a proceeding other than the applicant and counsel for NCUA may file comments on an application within 30 days after service of the application or on an answer within 15 days after service of the answer. A commenting party may not participate further in proceedings on the application unless the administrative law judge or the NCUA Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 747.612 Settlement.

The applicant and counsel for NCUA may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with NCUA's standard settlement procedure. If a prevailing party and counsel for NCUA agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 747.613 Further proceedings.

(a) After the expiration of the time allowed for the filing of all documents necessary for the determination of a recommended fee award, the NCUA Board shall transmit the entire record to the administrative law judge who presided at the underlying proceeding. Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for NCUA, or on its own initiative, the administrative law judge or the NCUA Board may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the administrative law judge or the NCUA Board order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 747.614 Recommended decision.

The administrative law judge shall file a recommended decision on the application with the NCUA Board within 60 days after completion of the proceedings on the application. The recommended decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The recommended decision shall also include, if at issue, findings on whether NCUA's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the recommended decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made. The administrative law judge shall file with and certify to the NCUA Board the record of the proceeding on the fee application, the recommended decision and proposed order. Promptly upon such filing, the NCUA Board shall serve upon each party to the proceeding a copy of the administrative law judge's recommended decision, findings, conclusions and proposed order. The provisions of this section and § 747.613 shall not apply, however, in any case where the hearing was held before the NCUA Board.

§ 747.615 Decision of the NCUA Board.

Within 15 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for NCUA may file with the NCUA Board written exceptions thereto. A supporting brief may also be filed. The NCUA Board shall render its decision within 60 days after the matter is submitted to it. The NCUA Board shall furnish copies of its decision and order to the parties. Judicial review of the NCUA Board's final decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 747.616 Payment of award.

An applicant seeking payment of an award granted by the NCUA Board shall submit to the NCUA's Office of the Controller a copy of the NCUA Board's Final Decision and Order granting the award, accompanied by a statement that it will not seek review of the decision and order in the United States court. All submissions shall be addressed to the Office of the Controller, National Credit Union Administration, 1776 G Street N.W., Washington, D.C. 20456. The NCUA will pay the amount awarded within 60 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Subpart H—Local Rules and Procedures Applicable to Investigations

§ 747.701 Applicability.

The rules in this subpart apply only to informal and formal investigations conducted by the NCUA Board itself or its delegates. They do not apply to adjudicative or rulemaking proceedings or to routine, periodic or special examinations conducted by the NCUA Board's staff.

§ 747.702 Information obtained in investigations.

Information and documents obtained by the Board in the course of any investigation, unless made a matter of public record by the NCUA Board, shall be deemed non-public, but the NCUA Board approves the practice whereby the General Counsel may engage in, and may authorize any person acting on his or her behalf or at his or her direction to engage in, discussions with representatives of domestic or foreign governmental authorities, self-regulatory organizations, and with receivers, trustees, masters and special counsels or special agents appointed by and subject to the supervision of the courts of the United States, concerning information obtained in individual investigations, including investigations conducted pursuant to any order entered by the NCUA Board or its General Counsel pursuant to delegated authority.

§ 747.703 Authority to conduct investigations.

(a) The General Counsel and persons acting on his or her behalf and at his or her direction may conduct such investigations into the affairs of any insured credit union or institution-affiliated parties as deemed appropriate to determine whether such credit union or party has violated, is violating or is about to violate any provision of the NCUA, the NCUA Board's regulations or other relevant statutes or regulations that may bear on a party's fitness to participate in the affairs of a credit union. The General Counsel and persons acting on his or her behalf may investigate whether any party is unfit to participate in the affairs of a credit union, whether formal enforcement proceedings are warranted, or such other matters as the General Counsel or his or her designee, in his or her discretion, shall deem appropriate. Such investigations may be conducted either informally or formally.

(b) Formal investigations involve the exercise of the NCUA Board's subpoena power and are referred to here as formal investigative proceedings. In formal investigative proceedings, the General Counsel and those to whom he or she delegates authority to act on his or her behalf and at his or her direction have augmented investigatory powers and need not rely on the powers available to them in informal investigations, and they may gather evidence through the issuance of subpoenas compelling the production of documents or testimony as well. In informal investigations evidence may be gathered ordinarily through the use of investigatory procedures or credit union examinations and through voluntary statements and submissions.

(c) The NCUA Board has delegated authority to the General Counsel, or designee thereof, to institute formal investigative proceedings by the entry of an order indicating the purpose of the investigation and the designation of persons to conduct that investigation on his or her behalf and at his or her direction. This delegation also extends to the NCUA Board's role as liquidator and conservator of insured credit unions. The power to issue a subpoena may not be delegated outside the agency. The General Counsel may amend such order as he deems appropriate.

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

§ 747.801 Applicability.

The rules in this subpart are applicable to a witness who is sworn in a formal investigative proceeding. Formal investigative proceedings may be held before the NCUA Board, before one or more of its members, or before any officer designated by the NCUA Board or its General Counsel, as described in subpart H of this part, and with or without the assistance of such other counsel as the NCUA Board deems appropriate, for the purpose of taking testimony of witnesses, conducting an investigation and receiving other evidence. The term "officer conducting the investigation" shall mean any of the foregoing.

§ 747.802 Non-public formal investigative proceedings.

Unless otherwise ordered by the NCUA Board, all formal investigative proceedings shall be non-public.

§ 747.803 Subpoenas.

(a) *Issuance.* In the course of a formal investigative proceeding the officer conducting the investigation may issue a subpoena directing the party named therein to appear before the officer conducting the investigation at a specified time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation.

(b) *Service.* Service of subpoenas shall be effected in the following manner:

(1) Service upon a natural party. Delivery of a copy of a subpoena to a natural person may be effected by—

(i) Handing it to the person;

(ii) Leaving it at his or her office with the person in charge thereof or, if there is no one in charge, by leaving it at a conspicuous place there;

(iii) Leaving it at his or her dwelling place or usual place of abode with some person of suitable age and discretion who is found there; or

(iv) Mailing it by registered or certified mail to him at his or her last known address. In the event that personal service as described in this paragraph is impracticable, any other method whereby actual notice is given to the respondent may be employed.

(2) Service upon other persons. When the person to be served is not a natural person, delivery of a copy of the subpoena may be effected by—

(i) Handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of such person;

(ii) Mailing it by registered or certified mail to any such representative at his or her last known address; or

(iii) Any other method whereby actual notice is given to any such representative.

(c) *Witness fees and mileage.* Witnesses appearing pursuant to subpoena shall be paid the same fees and mileage that are paid to witnesses in the United States district courts. Any such fees and mileage payments need be paid only upon submission of a properly completed application for reimbursement and in no event need they be paid sooner than 30 days after the appearance of the witness pursuant to subpoena.

(d) *Enforcement.* Whenever it appears to the General Counsel that any person upon whom a subpoena was properly served pursuant to these Rules is refusing to fully comply with the terms of that subpoena, then the General Counsel, in his or her discretion, may apply to the courts of the United States for enforcement of such subpoena.

§ 747.804 Oath; false statements.

At the discretion of the officer conducting the investigation, testimony of a witness may be taken under oath and administered by the officer. Any person making false statements under oath during the course of a formal investigative proceeding is subject to the criminal penalties for perjury in 18 U.S.C. 1621. Any person who knowingly and willfully makes false and fraudulent statements, whether under oath or otherwise, or who falsifies, conceals or covers up any material fact, or submits any false, fictitious or fraudulent information in connection with such a proceeding, is subject to the criminal penalties set forth in 18 U.S.C. 1001.

§ 747.805 Self-incrimination; immunity.

(a) *Self-incrimination.* Except as provided below, a witness testifying or otherwise giving information in a formal investigative proceeding may refuse to answer questions on the basis of his or her right against self-incrimination granted by the Fifth Amendment of the Constitution of the United States.

(b) *Immunity.* (1) No officer conducting any formal investigative proceeding (or any other informal investigation or examination) shall have the power to grant or promise any party any immunity from criminal prosecution under the laws of the United States or of any other jurisdiction.

(2) If the NCUA Board believes that the testimony or other information sought to be obtained from any party may be necessary to the public interest and that party has refused or is likely to refuse to testify or provide other information on the basis of his or her privilege against self-incrimination, the NCUA Board, with the approval of the Attorney General, may issue an order requiring the party to give testimony or provide other information that he or she has previously refused to provide on the basis of self-incrimination.

(3) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a formal investigative proceeding, and the officer conducting the investigation communicates to that person an order of the NCUA Board requiring him or her to testify or provide other information, the witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

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§ 747.806 Transcripts.

Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A party who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his or her documentary evidence or a transcript of his or her testimony on payment of the appropriate fees: *Provided, however,* That in a nonpublic formal investigative proceeding the NCUA Board may for good cause deny such request or the NCUA Board may place reasonable limitations upon the use of the documentary evidence and transcript. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness's own testimony.

§ 747.807 Rights of witnesses.

(a) In the event that a formal investigative proceeding is conducted pursuant to a specific order entered by the NCUA Board or by its General Counsel, then any party who is compelled or requested to provide documentary evidence or testimony as part of such proceeding shall, upon request, be shown a copy of the NCUA Board's or its delegate's order. Copies of such orders shall not be provided for their retention to such persons requesting same except in the sole discretion of the General Counsel or his designee.

(b) Any party compelled to appear, or who appears by request or permission of the officer conducting the investigation, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel who is a member of the bar of the highest court of any state; *Provided however,* That all witnesses in such proceeding shall be sequestered, and unless permitted in the discretion of the officer conducting the investigation, no witness or the counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding.

(c)(1) The right of a witness to be accompanied, represented and advised by counsel shall mean the right to have an attorney present during any formal investigative proceeding and to have the attorney—

(i) Advise such person before, during and after such testimony;

(ii) Question such person briefly at the conclusion of his testimony to clarify any answers such person has given; and

(iii) Make summary notes during such testimony solely for the use of such person.

(2) From time to time, in the discretion of the officer, it shall be necessary for persons other than the witness and his or her counsel to attend non-public investigative proceedings. For example, the officer may deem it appropriate that outside counsel to the NCUA Board attend and advise him or her concerning the proceeding including the examination of a particular witness. In these circumstances, outside counsel would not be an officer as that term is used. In other circumstances, it may be appropriate that a technical expert (such as an accountant) accompany the witness and his or her counsel in order to assist counsel in understanding technical issues. These latter circumstances should be rare, are left to the discretion of the officer conducting the investigation, and shall not in any event be allowed to serve as a ruse to coordinate testimony between witnesses, to oversee or supervise the testimony of any witness, or otherwise defeat the beneficial effects of the witness sequestration rule.

(d) The officer conducting the investigation may report to the NCUA Board any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of a formal investigative proceeding or any other instance of violations of these rules. The NCUA Board will thereupon take such further action as the circumstance may warrant including barring the offending person from further participation in the particular formal investigative proceeding or even from further practice before the Board.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or committee Members Pursuant to Section 212 of the FCUA

§ 747.901 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a credit union pursuant to section 212 of the FCUA (12 U.S.C. 1791) and § 701.14 of this chapter, for the consent of the NCUA to add to or replace an individual on the board of directors or supervisory or credit committee, or to employ any individual as a senior executive office or change the responsibilities of any individual to a position of senior executive officer where the credit union either has been chartered less than 2 years; or is in "troubled condition," as defined in § 701.14 of this chapter. Subpart A of this part shall not apply to any proceeding under this subpart.

§ 747.902 Grounds for disapproval of notice.

The NCUA Board or its designee may issue a notice of disapproval with respect to a notice submitted by a credit union pursuant to section 212 of the FCUA and § 701.14 of this chapter, where the competence, experience character or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interest of the members of the credit union or the public to permit the individual to be employed by or associated with, such credit union.

§ 747.903 Procedures where notice of disapproval issued; reconsideration.

(a) The notice of disapproval shall be served upon the federally insured credit union and the candidate for director, committee member or senior executive officer. The notice of disapproval shall:

(1) Summarize or cite the relevant consideration specified in § 747.902;

(2) Inform the individual and the credit union that, within 15 days of receipt of the notice of disapproval, they can request reconsideration by the Regional Director of the initial determination, or can appeal the determination directly to the NCUA Board;

(3) Specify what additional information, if any, must be constant in the reconsideration.

(b) The request for reconsideration by the Regional Director must be filed at the appropriate Regional Office.

(c) The Regional Director shall act on a request for reconsideration within 30 days of its receipt.

§ 747.904 Appeal.

(a) *Time for filing.* Within 15 days after issuance of a Notice of Disapproval or a determination on a request for reconsideration by the Regional Director, the individual or credit union (henceforth petitioner) may appeal by filing with the NCUA Board a written request for appeal.

(b) *Contents of request.* Any appeal must be in writing and include:

(1) The reasons why NCUA should review its disapproval; and

(2) Relevant, substantive and material documents that for good cause were not previously set forth in the notice required to be filed pursuant to section 212 of the FCUA and § 701.14 of this chapter.

(c) *Procedures for review of request.* Within 30 days of the NCUA Board's receipt of an appeal, the NCUA Board may request in writing that the petitioner submit additional facts and records to support the appeal. The petitioner shall have 15 days from the date of issuance of such written request to provide such additional information. Failure by the petitioner to provide additional information may, as determined solely by the NCUA Board or its designee, result in denial of the petitioner's appeal.

(d) *Determination on appeal by NCUA Board or its designee.* (1) Within 90 days from the date of the receipt of an appeal by the NCUA Board or its designee or of its receipt of additional information requested under paragraph (c) of this section, the NCUA Board or its designee shall notify the petitioner whether the disapproval will be continued, terminated, or otherwise modified. The NCUA Board or its designee shall promptly rescind or modify the notice of disapproval where the decision is favorable to the petitioner.

(2) The determination by the NCUA Board on the appeal shall be provided to the petitioner in writing, stating the basis for any decision of the NCUA Board or its designee that is adverse to the petitioner, and shall constitute a final order of the NCUA Board.

(3) Failure by the NCUA Board to issue a determination on the petitioner's appeal within the 90-day period prescribed under paragraph (d) (1) of this section shall be deemed a denial of the appeal for purpose of § 747.905.

§ 747.905 Judicial review.

(a) Failure to file an appeal within the applicable time periods, either to the initial determination or to the decision a request for reconsideration, shall constitute a failure by the petitioner to exhaust available administrative remedies and, due to such failure, any objections to the initial determination or request for reconsideration shall be deemed to be waived and such determination shall be deemed to have been accepted by, and shall be binding upon, the petitioner.

(b) For purposes of seeking judicial review of actions taken pursuant to this section, suit may be filed in the United States District Court for the district where the requester resides, where the credit union's principal place of business is located, or in the District of Columbia.

Subparts K and L [Removed]

5. Subparts K and L are removed.

Dated: June 5, 1991.

Becky Baker,

Secretary of the National Credit Union Administration Board.

[FR Doc. 91-13881 Filed 6-14-91; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 108
Flight and Cabin Crew Notification Guidelines; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 25456; Amendment No. 108-9]

RIN 2120-AD92

Flight and Cabin Crew Notification Guidelines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations and implements a statutory requirement for the notification of flight and cabin crewmembers of threats to the security of their flight. The Aviation Security Improvement Act of 1990 amended title III of the Federal Aviation Act of 1958 and directed the Administrator of the FAA to implement guidelines for such notification. This amendment is needed to clarify an air carrier's responsibility to disseminate threat information to inflight security coordinators and establishes new requirements to disseminate this information to flight and cabin crewmembers. Air carriers are also required to provide any evaluation of the threat information and countermeasures to be applied. This action is intended to enhance civil aviation security.

EFFECTIVE DATE: July 17, 1991.

FOR FURTHER INFORMATION CONTACT: Frederick P. Falcone, Office of Civil Aviation Security Policy and Plans, Policy and Standards Division (ACP-110), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-7296.

SUPPLEMENTARY INFORMATION:

Background and Discussion of the Rule

The Federal Aviation Administration (FAA) undertook this rulemaking to comply with a legislative mandate imposed by the Aviation Security Improvement Act of 1990 (the Act), Public Law 101-604, which was signed into law on November 16, 1990. Section 109 of the Act amended title III of the Federal Aviation Act of 1958 (49 U.S.C. app. 1341-1358) and directed the Administrator of the FAA to develop guidelines for ensuring notification of the flight and cabin crews of an air carrier flight of threats to the security of such flight in appropriate cases.

On January 28, 1991, the FAA issued a notice of proposed rulemaking (NPRM) (56 FR 4322; February 4, 1991) to amend § 108.19 of the Federal Aviation Regulations, 14 CFR 108.19, to provide such guidelines. Under the proposed rule, upon receipt of a specific and credible threat to the security of a flight, a certificate holder would be required immediately to notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any countermeasures to be applied. In addition, the certificate holder would be required to ensure that the in-flight security coordinator (which is the pilot in command under 14 CFR 108.10) notifies the flight and cabin crews of the same threat information.

The current system for evaluating and responding to threats to civil aviation is founded on the principle that it is best for intelligence experts to filter threat information before providing it to aviation personnel directly responsible for dealing with those threats. The air carrier's security experts, generally in consultation with the FAA and other government entities, evaluate threat information against specific FAA-established criteria to determine "specificity" and "credibility." (The terms "specific" and "credible" are not interdependent and are commonly applied by intelligence experts to threat information involving a well defined target and which has been authenticated.)

Excluding those threats which are judged to be groundless or not requiring the application of specific countermeasures is a practical approach, given the hundreds of bogus threats received annually. Eliminating bogus threats is also critical to ensure that real threats are perceived as serious, not diluted in impact by a multiplicity of false alarms. This limited distribution of threat information helps ensure that genuine threats are handled as thoroughly and expeditiously as possible. In the FAA's view, it is not appropriate to provide notification to flight and cabin crews unless the threat information has been judged by security professionals to be specific and credible.

Interested persons were invited to participate in the rulemaking by submitting written comments.

Discussion of Comments

The FAA received seven comments from entities representing regional airlines, major air carriers, pilots, and flight attendants. One comment was received from a member of the general public. No comments were received from Congress or other government agencies. The commenters who express some criticism of FAA's proposed rule address policy choices the FAA described in its NPRM, while not contradicting the factual bases for the FAA's choices. None of the commenters address the Regulatory Evaluation Summary, which concerns the economic consequences of the proposed rule as published in the NPRM.

One commenter has no criticism of the proposed rule and urges that it be adopted as a final rule.

Another commenter supports the essence of the proposed rule, but with one change. This commenter, the Air Transport Association, proposes that the pilot in command decide on a case by case basis whether the crew should be notified of threat information. The FAA does not accept this suggestion. As noted in the preamble of the NPRM, the proposed rule was intended to "eliminate any discretion on this issue, and require the carrier to ensure that the in-flight security coordinator provides the flight and cabin crew with threat information along with any evaluation and the countermeasures to be applied." (56FR 4324) Adoption of this commenter's suggestion would be contrary to the interests of other crewmembers in receiving timely and accurate threat notification and runs counter to the spirit of the Act. Two commenters representing cabin crew members specifically endorse the FAA's policy choice on this issue.

A third supporting commenter urges adoption of the proposed regulatory language without change, and suggests the FAA consider appropriate amendments to the Air Carrier Standard Security Program (ACSSP), which was referenced in the NPRM. The FAA is currently evaluating the need to amend the ACSSP and may do so in connection with implementation of the final rule.

Three commenters accept the limitation in the proposed rule to credible threat information, but suggest that all credible information, even if non-specific, should be communicated to crewmembers. One of the commenters requests clarification of the FAA's definition of "specific." As explained in the NPRM, "specific" in this context refers to threat information that involves a well defined target or targets. A well defined target may include a single flight or series of flights spanning a particular period of time or geographic location. Specific threat information includes positive details describing an individual, airplane, aviation operation, or facility which suggests a particular knowledge of the intended target or targets not widely held by the general public.

If the scope of crew notification is not limited to threat information involving a well defined target, carriers would find it impossible to determine which threat information should be presented to the crew of a given flight. It would not be appropriate for carriers to relay all known, credible threat information to the crews of all flights, regardless of whether the threat information applied to that particular flight. Doing so would run the risk of inundating crews with a large quantity of irrelevant material, while obscuring the truly useful information.

This conclusion is supported by the legislation, which requires notification of the "crews of an air carrier flight of threats to the security of such flight in appropriate cases" (emphasis added). Congress did not direct the Administrator to develop guidelines for crew notification of threats to the security of *all* or *any* flights, and such notification would not be appropriate. However, carriers may provide notification to flight and cabin crews of any non-specific threats beyond the scope of this rule, if they deem it appropriate.

One commenter suggests that the FAA substitute the term "relevant" for "specific" in the language of the rule. As explained above, "specific" in this context includes information which is relevant to a single flight or series of flights. The term "specific" is preferable because it is a term of art used by security professionals.

One commenter recommends that, when practicable, a cabin crew briefing with the in-flight security coordinator should be held prior to boarding the aircraft of a flight affected by a security threat. This commenter observes that most carriers already follow this procedure and flight attendants have found briefings to be an appropriate opportunity to discuss their concerns. The FAA agrees that such briefings are an appropriate procedure for notification of threat information, and that they should be held when practicable.

Two commenters suggest that crews should be notified of all threat information, whether bogus or credible. The FAA explained in detail in the NPRM why it is inappropriate to notify crews of threat information that has not been determined to be credible. As noted in the preamble, the Report of the President's Commission on Aviation Security and Terrorism supported limiting notification to credible threats. Six commenters, all of whom represent entities directly affected by the proposed rule, either affirmatively endorse or take no exception to this conclusion.

One of these commenters expresses the opinion that security information is comparable to weather or mechanical information, and proposes that all such information should be made available to the pilot to assist him or her in dealing with various eventualities. While the FAA is sensitive to this commenter's concerns, the agency does not agree with this suggestion. The FAA recognizes that a wide diversity of skills and complex training are needed in order to serve as a pilot in command in today's environment. A pilot's training and experience equip him or her to interpret and use a wide variety of information, including weather and mechanical data, in making crucial decisions.

The interpretation of intelligence-based security information, however, has not historically been within the purview of the pilot in command. Instead, responsibility for filtering and interpreting this information has rested with airline and government intelligence and security professionals. The FAA believes it is essential that threat information be filtered and assessed by those professionals if it is to be useful to the pilot in command and crew.

As explained in the preamble to the NPRM, the FAA agrees with the Report of the President's Commission that "the professionals who analyze threat information—the intelligence and law enforcement communities" should retain authority to determine the credibility of threat information (56 FR 4324). This commenter suggests that crews should be trained to perform this evaluation. The FAA believes this suggestion is not practical and would lead to an unproductive duplication of resources.

The rule as proposed will make the most effective use of both professional security and crew resources. This measure will help ensure that crews are thoroughly informed, so that they can focus their attention on possible security problems and perform their security-related functions with a heightened level of care and awareness.

One commenter criticizes the short period allowed for comment. This comment was considered although it was received after the closing date. The FAA issued the NPRM in response to a Congressional mandate to establish crewmember notification guidelines not later than 180 days after the enactment of the Aviation Security Improvement Act. The 30 day comment period reflects the time available to promulgate this expedited rulemaking.

After careful consideration of the comments and available data, the FAA has determined that air safety and the public interest require adoption of the rule as proposed.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this final rule. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This determination is normally made on the basis of a regulatory evaluation. In this case, however, the Congress has already determined that this rule is in the public interest; that is, its collective public benefits outweigh its costs to the public, because Congress has required the rule to be promulgated (The Aviation Security Improvement Act of 1990: Pub. L. 101-604). Nevertheless, the FAA has prepared this conventional regulatory evaluation of the rule. The purpose of this evaluation is not to justify this rulemaking action (which has already been done through Congressional action), but to estimate potential costs and benefits (either qualitatively or quantitatively) to promote a better understanding of the impact of the rule. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order, therefore a full regulatory analysis, including the identification and evaluation of cost-reducing alternatives to the rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the

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full regulatory evaluation contained in the docket.

Costs

The rule is expected to impose a negligible incremental cost of compliance on U.S. air carriers. In addition, the rule is not expected to impose any monetary costs on the flying public. This assessment is based on the rationales contained in the following paragraphs.

The FAA expects the costs of the rule to be negligible based on two assumptions. First, the rule is assumed not to substantially increase the costs associated with the current flow of specific and credible security threat information between air carrier management and ground and in-flight security coordinators. This is because air carriers are already providing most of the security information required by the rule to ground and in-flight security coordinators on a routine basis.

The second assumption is that air carriers will not incur additional costs beyond current industry practice, as the result of ensuring that in-flight security coordinators notify flight and cabin crewmembers of *all* specific and credible security threats. This is also true of the requirement that air carriers provide any evaluation of the threat information and countermeasures to be applied. Disclosure of this information to flight and cabin crewmembers will impose only a negligible cost of compliance on air carrier operators because they already compile specific and credible security threat information on a routine basis.

Although the FAA contends that the rule will impose a negligible cost of compliance for the notification process, it recognizes that the potential for significant costs does exist in some cases. The reason for this assessment is that in-flight security coordinators (pilots in command) have the authority to request additional countermeasures if they consider them to be justified. The magnitude of this potential cost impact will depend on the extent to which flight and cabin crews expand the field of information available to security experts, who could then decide to take additional countermeasures based upon all security information available. These measures could include delaying scheduled flights from departing or requesting airborne flights to land for the purpose of conducting additional security checks or applying countermeasures.

The average time required to conduct a security check for narrow and wide-body aircraft on the ground ranges between 3 and 5 hours. If an aircraft is airborne and forced to land for a security check, there would be an additional cost for landing fees and delay time. Another cost factor (qualitative) associated with this potential situation could be the inconvenience imposed on passengers in the form of delays. According to one air carrier, the cost of an aircraft delay as the result of conducting additional security countermeasures could be as high as $200,000 to over $1 million (in 1990 dollars) per security check. The reader is cautioned that this range should not be considered precise and incorporates a number of general assumptions. Some of the assumptions include: The delayed aircraft is the only one connected to departures from other areas, additional flight crews may be needed due to time and duty limitations, lawsuits may be filed by some passengers, costs may be incurred for another slot at the gate, plus a multitude of other factors.

Over the past 10 years, on average, air carriers have received between 650 and 750 security threats annually. An estimated 600 to 700 of these threats were anonymous that were not determined to be specific and credible. None of these anonymous threats resulted in an explosion or the discovery of a bomb. During the same period, on an annual basis 30, out of 50 credible aircraft security threats were specific. To date, there is no evidence of an explosion or discovery of a bomb relating to a specific and credible security threat.

Benefits

The final rule will generate benefits by ensuring that the current high level of aviation safety remains intact. Under the rule, air carriers will be required to provide all credible and specific security threats, as well as any evaluation thereof and countermeasures to be applied, to the ground and in-flight security coordinators. In turn, the in-flight security coordinator will notify the flight and cabin crewmembers. The flight and cabin crewmembers will benefit directly from the rule. As the "eyes and ears" of an air carrier, flight and cabin crewmembers are trained to be alert to possible security threats and to apply security procedures when a threat is suspected. The rule will better enable flight and cabin crewmembers to conduct their security responsibilities by enhancing their alertness to indications that a threat may be actually carried out. The enhanced awareness of the flight and cabin crews will subsequently benefit the in-flight security coordinator by enhancing the information he or she has as the pilot in command. The rule will benefit the traveling public by reducing the possibility that security threats to a U.S. air carrier not disclosed to flight and cabin crewmembers will result in casualty losses (namely, aviation fatalities and property damage).

Conclusions

The rule will impose only negligible incremental costs on air carriers and could result in benefits to the aviation community and flying public in the form of ensuring that the current high level of aviation safety remains intact. Therefore, the FAA concludes that the rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that could be potentially affected by the implementation of this rule are scheduled air carrier operators for hire that own but do not necessarily operate nine or fewer aircraft. A significant economic impact for these small entities will be an annualized cost that exceeds $105,000 (in 1990 dollars). Since the incremental cost of compliance is expected to be negligible (less than $105,000 annually for each air carrier operator), the FAA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule is expected to impose only negligible costs on U.S. air carrier operators. This action will not result in a competitive disadvantage to U.S. carriers engaged in international flight operations.

Federalism Implications

The rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, it is certified that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "For Further Information Contact."

List of Subjects in 14 CFR Part 108

Airplane operator security, Aviation safety, Air transportation, Air carriers, Airlines, Security measures, Transportation, Weapons.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends part 108 of the Federal Aviation Regulations (14 CFR part 108) as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 is revised to read as follows:

Authority: 49 U.S.C. App. 1354, 1356, 1357, 1421, 1424, and 1511; 49 U.S.C. 106(g); Sec. 101 *et seq.*, Pub. L. 101-604, 104 Stat. 3066.

2. Section 108.19 is amended by redesignating paragraphs (a) and (b) as (b) and (c) respectively; by adding a new paragraph (a); and by revising the section heading to read as follows:

§ 108.19 Security Threats and Procedures.

(a) Upon receipt of a specific and credible threat to the security of a flight, the certificate holder shall—

(1) Immediately notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any countermeasures to be applied; and

(2) Ensure that the in-flight security coordinator notifies the flight and cabin crewmembers of the threat, any evaluation thereof, and any countermeasures to be applied.

* * * * * *

Issued in Washington, DC, on June 11, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-14321 Filed 6-12-91; 2:46 pm]

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Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 107, 173, 178, and 180
Requirements for Cargo Tanks; Final Rule; Corrections and Revisions

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 173, 178, and 180

[Docket No. HM-183, 183A; Amdt. Nos. 107-20, 173-212, 178-99, 180-2]

RIN 2137-AA42

Requirements for Cargo Tanks; Corrections

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; corrections and revisions.

SUMMARY: This amendment makes corrections and clarifying revisions to certain requirements pertaining to cargo tank motor vehicles in the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180). These requirements were adopted in a final rule issued under Docket Nos. HM-183/183A (June 12, 1989, 54 FR 24962; May 22, 1990, 55 FR 21035; September 7, 1990, 55 FR 37028). The changes contained in this amendment will impose no new requirements on persons subject to the HMR.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT:

Charles Hochman, telephone (202) 366–4545, Office of Hazardous Materials Technology, or Hattie Mitchell, telephone (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001;

or

Richard Singer, telephone (202) 366–2994, Office of Motor Carriers, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: This document corrects typographical errors, omissions, and discrepancies to requirements in the HMR pertaining to cargo tank motor vehicles. Additionally, in response to inquiries received by RSPA concerning the clarity of particular requirements, changes are made which should reduce uncertainties. These changes impose no new requirements on persons subject to the HMR.

Because the amendments adopted herein clarify and correct certain provisions in the HMR, relieve certain restrictions in those regulations, and impose no new regulatory burden on any person, notice and public procedure are unnecessary. For these same reasons, these amendments are being made effective without the usual 30-day delay following publication.

The following is a section-by-section review of the amendments.

Section 107.504

The second sentence of § 172.504(c) implies that only those persons registered under the provisions of § 172.502(f) are eligible to renew their registrations. This error is corrected by changing "§ 172.502(f)" to "§ 172.502".

Section 173.33

RSPA has received several requests for clarification of the requirements contained in § 173.33(a)(2). The intent of this section is to prevent the transportation of two or more materials in the same cargo tank motor vehicle which, if mixed, would cause a vehicle fire, tank rupture or the release of acutely toxic vapors. An example of materials which would be prohibited are nitric acid and fuel oil. It was not intended to prevent the shipment of materials which if mixed would produce a moderate exothermic reaction that would not start a fire, rupture the tank or release acutely toxic vapors.

For hazardous materials offered for transportation in a cargo tank motor vehicle supplied by the motor carrier, § 173.22(a)(2) was revised in the September 7, 1990 amendment to clarify that shippers' responsibilities extend to the requirements in part 173 but not to the continuing requalification requirements contained in part 180. Section 173.33(a)(3) contains a requirement that, when the prescribed periodic retest or reinspection under subpart E of part 180 is past due, a specification cargo tank motor vehicle may not be filled and offered for transportation until the retest or reinspection has been successfully completed. Hazardous materials are often loaded at bulk loading facilities in cargo tank motor vehicles supplied by the motor carrier without the offeror in attendance. In these instances, verification of a carrier's compliance with part 180 is not possible. To alleviate this discrepancy, paragraph (a)(3) is revised to reflect that this requirement does not apply to an offeror in situations where the cargo tank is supplied by the motor carrier.

Paragraphs (c)(4) and (d)(1) contain criteria for the continued use of certain cargo tanks manufactured prior to December 31, 1990. Included are cargo tanks marked with a design pressure rather than a Maximum Allowable Working Pressure (MAWP), and cargo tanks fitted with non-reclosing pressure relief devices. The December 31, 1990 date should have been adjusted to coincide with the last date on which a cargo tank may be marked or certified to the MC specifications in effect on December 30, 1990. Accordingly in paragraphs (c)(4) and (d)(1), the date "December 31, 1990" is revised to read "August 31, 1993". In paragraph (c)(2), the December 31, 1990 date for requiring a cargo tank to be marked or remarked with an MAWP or design pressure in accordance with § 180.405(k) remains unchanged.

Many hazardous material liquids transported in cargo tanks are required to be completely blanketed with an inert gas, (e.g., see §§ 173.190 and 173.247a). To clarify the intent of the requirements of paragraph (d)(2), the wording "in its gaseous state" is revised to read "with a gas pad".

Formerly, § 173.33 contained various provisions pertaining to commodities, cargo tank design, qualification, maintenance and use of cargo tanks. Under HM-183/183A, these provisions were placed elsewhere in parts 173, 178 and 180, as appropriate. It has been brought to RSPA's attention that several provisions placed in the MC 331 specification, i.e. in §§ 178.337-1(e), 178.337-9 (b) and (d), and 178.337-15, also apply to existing MC 330 cargo tanks, and that Parts 173 and 180 contain no references to apply those requirements to MC 330 cargo tanks. RSPA plans to address reinstating these provisions for MC 330 cargo tanks in a rulemaking proposal in the near future.

Sections 173.245–17.374

In § 173.245, authorization for the use of DOT 406 cargo tanks was inadvertently omitted in the introductory text to paragraph (a)(29). This omission is corrected.

Also in the September amendment, §§ 172.101 and 173.154 were amended by increasing the concentration cut-off point for ammonium nitrate solution from "containing not less than 15% water" to "containing 35% or less water". RSPA stated in the preamble discussion that the entry for "Ammonium nitrate solution" was being revised to reflect that ammonium nitrate solutions with "35% or less water" do not meet the definition of an oxidizer. This statement should have read that such solutions with "over 35% water" do not meet the definition of an oxidizer. Also, in Docket HM-181 (December 21, 1990; 55 FR 52584), § 172.101 Hazardous Materials Table, special provision B5 to the entry "Ammonium nitrate, liquid (hot concentrated solution)" refers to "ammonium nitrate solutions with 35 percent or more water". This special provision should have referred to solutions containing "35% or less water" which are regulated as oxidizers and will be corrected under HM-181.

Section 178.337-3

Paragraph (c), containing definitions of the terms "S_1" and "S_2", is reorganized for clarity and consistency in numbering of subparagraphs. No substantive change is made. Similar changes are made to these terms in §§ 178.338 and 178.345-9.

Section 178.337-6

Paragraph (a) requires cargo tanks manufactured after August 31, 1990, to have a manhole or, for certain cargo tanks, an inspection opening. The August 31, 1990 date should have been extended to coincide with the last date for which a cargo tank may be marked or certified to the MC 331 specification in effect on December 30, 1990. Accordingly, the date "August 31, 1990" is corrected to read "August 31, 1993".

Section 178.338-3

Paragraph (c), containing definitions of the terms "S_1" and "S_2", is reorganized for clarity and consistency in numbering of subparagraphs. No substantive change is made.

Section 178.345-2

RSPA has received information to the effect that American Society for Testing and Materials (ASTM) A 607 steel has been used successfully for many years under § 178.340-3 for manufacture of cargo tanks, and that ASTM A 607 steel has chemical and physical properties similar to ASTM A 572 steel authorized under § 178.345-2. Therefore, RSPA is revising paragraph (a)(1) to permit the continued use of ASTM A 607 steel for DOT specification cargo tank motor vehicles.

Section 178.345-3

It was RSPA's intention, in paragraph (a)(1), to provide alternative methods for determining the maximum design stress to be used in calculating stresses as provided by paragraph (c); namely, either the maximum allowable stress value prescribed in Section VIII of the American Society of Mechanical Engineers (ASME) Code, or 25 percent of the actual tensile strength as determined by physical property tests of the material used. The factor of safety is the same regardless of which method is employed. Accordingly, the words "the lesser of" are removed and the words "at design conditions" are added for clarity.

Paragraph (c), containing definitions of the terms "S_1" and "S_2" is reorganized for clarity and consistency in numbering of subparagraphs. No substantive change is made. Also, the number "0.7" is corrected to read "0.75". This was a printing error.

In paragraph (g)(2), lightweight attachments are required to be constructed of materials of lesser strength than the cargo tank wall materials. This paragraph is revised to clarify that these attachments also may be made of the same material of construction as the tank head or shell to which they are welded.

Section 178.345-7

Several cargo tank manufacturers understood the wording "where discontinuity in the alignment of longitudinal shell sheets exceeds the greater of 10 degrees or eight inches," in paragraph (a)(2), to refer to the alignment of longitudinal welded seams in cargo tank shell sheets. The intent of this paragraph was to address the angularity between adjacent conical shell sections, as in double conical tanks, or between conical and cylindrical sections, as at transition structures between forward and rear shells having different cross-sectional dimensions. The numerical value of 10 degrees indicates that the "discontinuity" measured is equivalent to the "half-apex angle" as defined in Mandatory Appendix 1, 1-4 of the ASMC Code, section VIII, Division 1. The description of the angle between adjacent shell sections is revised in this amendment for clarity. In addition, the Truck Trailer Manufacturers Association (TTMA) suggested that "discontinuity in the alignment" between shell sections of "up to 30 degrees" be allowed, citing Mandatory Appendix 1, 1-5, titled "Rules for Conical Reducer Sections and Conical Heads under Internal Pressure," of the ASME Code, section VIII, Division 1. This section of the ASME Code provides analytical rules for the design of such joints with half-apex angles even greater than 30 degrees. However, RSPA believes there is no need to specifically reference this section. With the exception of those parts of the ASME Code which are specifically identified as not applying to individual specifications, all parts of the Code apply.

The limitations on welding contained in paragraph (c) do not apply to welded portions of circumferential reinforcement located external to the tank. Therefore, paragraph (c) is revised for clarity. In paragraph (d), the word "it" is replaced with the word "reinforcement" to clarify that the circumferential reinforcement would be continuous, but the ring stiffener need not be continuous.

Section 178.345-8

RSPA believes the second sentence in paragraph (d)(3) pertaining to design stress levels is unnecessary in view of the design requirements prescribed in the first sentence. Therefore, the second sentence is removed and minor editorial changes are made to the last sentence.

Section 178.345-9

Paragraph (a) requires each loading or unloading pump mounted on a cargo tank motor vehicle that may pressurize the cargo tank to have an automatic means to prevent internal pressure from exceeding the MAWP of the tank and tank mounted equipment. Upon further consideration, RSPA believes that references to the loading or unloading pump and its mounted location are not necessary and that the limitation on internal pressure during loading or unloading operations is inconsistent with the test pressures prescribed by §§ 178.346, 178.347 and 178.348. These inconsistencies are corrected by providing that during loading and unloading the pressure within a cargo tank may not exceed test pressure.

Section 178.345-10

The dynamic surge requirements for the pressure relief system, contained in paragraph (b)(3), are rearranged to clarify the prescribed requirements and their applicable implementation dates.

Section 178.345-11

In the September amendment, we stated in the preamble discussion to § 178.345-11 (55 FR 37089) that a new paragraph (a)(4)(i) [which should have read paragraph "(b)(3)(i)"] was being added to clarify that the requirement for thermal actuation of self-closing stop-valves applies only to self-closing systems. In addition, we stated that a requirement in paragraph (b) concerning a tank outlet which is not a loading/unloading outlet was being broadened to permit the outlet to be equipped with a stop-valve or other leak-tight closure. Through an oversight, neither of these changes was included in the September amendment. These oversights are corrected in this amendment. In addition, based on several requests for clarification of this section, this section is reorganized for clarity.

Section 178.346-1, 178.437-1, 178.345-1

In a letter to RSPA, the Truck Trailer Manufacturers Association (TTMA) requested an exception from paragraph

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UW-13(b)(2) and the dimensional requirements in Figure UW-13.1 of the ASME Code because the tooling equipment used by many manufacturers to form heads lacks the capability of providing a flange on the head of dimensions appropriate to meet this requirement. We were unaware that changes in manufacturing equipment would be required to meet this requirement and have no data to suggest that the use of current equipment for forming heads is unsafe. Therefore, we are granting an exception from paragraph UW-13(b)(2) and the dimensional requirements in Figure UW-13.1 to authorize continued use of existing manufacturing equipment.

Section 180.2

A minor editorial change is made in paragraph (b)(2).

Section 180.405

Paragraph (b) contains an authorization for the manufacture of MC 306, MC 307, and MC 312 cargo tanks to the applicable specification in effect on December 30, 1990, until August 31, 1993. Through an oversight, MC 330 and MC 331 cargo tanks were not included but are added under this amendment. A minor editorial revision is made in paragraph (C)(1).

Paragraph (c)(2)(vii) provides that pressure relief devices and outlets on an MC 330 cargo tank may be modified to that specified in § 178.337 for the MC 331 specification. It has been brought to RSPA's attention that the previous requirements in § 173.33(h) and (k) required that outlet and valves on MC 330 cargo tanks used to transport certain compressed gases be retrofitted to meet the MC 331 specification. The provisions previously contained in § 173.33(h) are now found in §§ 173.315 (h) and (o), 178.337-8(a), 178.337-9(b) and 178.337-11, as appropriate. The subject requirements in part 178 also apply to MC 330 cargo tanks in certain compressed gas service, as provided by §§ 173.315(n) and (o)(3). The provisions previously contained in § 173.33(k) are included in § 173.315(n). Therefore, RSPA has revised paragraph 180.405(c)(2)(vii) to include a reference to § 173.315 to alert persons to those requirements.

Requirements in paragraphs (g) (1) and (2) pertaining to the leak-tightness of manhole closures on specification cargo tanks are rearranged for clarity. In addition, provisions are added to clarify that there is no requirement to retest and certify manhole assemblies on MC 310, MC 311 and MC 312 cargo tanks with a test pressure of 38 psig or greater, or on MC 304 and MC 307 cargo tanks. The first sentence in paragraph (g)(3), applying to owners of five or more DOT specification cargo tanks requiring retrofit or certification of the manhole closure, is corrected by revising the year "1990" to read "1991".

The liquid surge requirements for a reclosing pressure relief valve that is replaced on an MC specification cargo tank and the applicable implementation dates for leak-tightness conditions, as prescribed in paragrpah (h), are revised for clarity.

Section 180.407

In paragraph (g)(1)(iv), the year "1990" is corrected to read "1991". Sections 1278.346-10(d)(3), 178.347-10(d)(2) and 178.348-10(d)(2) allow tank pressure, during loading or unloading, to reach test pressure at 1.5 times the MAWP; however, § 180.407(a)(2) does not allow for pressure increase during loading and unloading. For consistency with the specification requirements, paragraph (a)(2) is revised to allow a cargo tank to reach a pressure greater than its design pressure or MAWP during loading or unloading.

In the table in paragraph (c), insulated MC 330 and MC 331 cargo tanks are required to be given an internal visual inspection at least once every five years. However, paragraph (d)(1) provides that if insulation precludes making an external visual inspection, the cargo tank must be given an internal visual inspection annually. RSPA intent was to require insulated MC 330 and MC 331 cargo tanks to be visually inspected at least once every five years, not annually. This error is corrected in this amendment.

At various places in paragraph (f)(1) and (f)(2), the wording "leak" or "leaks" is used erroneously in referring to the presence of a "hole" through the lining. The wording has been revised to read "hole" or "holes". In addition, paragraph (f)(1) is revised for closer alignment with the Rubber Manufacturers Association Technical Bulletin 13, on which the lining inspection requirements are based. No substantive change is made.

The table in paragraph (g)(iv) is revised to show both metric measures and U.S. standard unit equivalents.

Paragraph (h)(1) provides for MC 330 and MC 331 cargo tanks to be leak-tested at normal operating pressure and to prevent the tanks from being operated at higher pressures. The National Propane Gas Association (NPGA) has notified RSPA that the normal opeating pressure for cargo tanks in liquefied petroleum gas service changes substantially with the ambient temperature. NPGA stated that a cargo tank would have to be leak-tested only on the warmest day of the year in order to ensure that it was not operated at pressures exceeding the test pressure. RSPA's intention was to permit a cargo tank which is normally operated at pressure levels substantially below its MAWP to be leak-tested at a lower pressure, provided it is a high-pressure cargo tank used in dedicated service. Therefore, paragraph (h)(1) is revised to permit owners to conduct this test at any ambient temperature, but at the maximum operating pressure experienced year round. Revised paragraph (h)(1) also allows MC 330 and MC 331 cargo tanks in liquefied petroleum gas service to be leak-tested at no less than 60 psig, and the paragraph has been rearranged for clarity.

Section 180.413

Paragraphs (d)(1) (i) and (ii) are revised to clarify that an MC 306, MC 307 and MC 312 cargo tank may be stretched and rebarrelled to the same specification until "August 31, 1991", to coincide with the last date for which these cargo tanks may be marked or certified to the MC specifications in effect on December 30, 1990.

Based on several telephone calls received by RSPA, there appears to be some confusion about the recertification of a cargo tank by a Design Certifying Engineer then certain types of work are performed. Section 180.413(d)(3) requires that the design of a rebarrelled or stretched cargo tank must be certified by a design Certifying Engineer. Such certification also applies to any design types changes to the undercarriage of a cargo tank, which affects the cargo tank's structural integrity, even though no welding is performed on the cargo tank wall. Paragraph (d)(3) is revised for clarity.

In the September amendment, the amendatory language to § 180.413 should have stated that paragraph (d)(2)(v) was being revised and not paragraph (d)(1)(v). This applicable regulatory text is correctly designated as paragraph (d)(2)(v) in the October 1, 1990 edition of the CFR. Therefore, no corrective action is required.

Section 180.415

This section is rearranged for clarity. No substantive change has been made.

Administrative Notices

Executive Order 12291 and Administrative Notices

RSPA has determined that based on the corrections contained herein this rulemaking (1) is not a "major rule" under terms of Executive Order 12291; (2) will not affect non-for-profit enterprises or small governmental jurisdictions; (3) contains no policies that have Federalism implications as defined in Executive Order 12612; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). However, the final rule issued under Docket HM-183/183A (June 12, 1989, 54 FR 24982; May 22, 1990, 55 FR 21035; September 7, 1990, 55 FR 37028) is a significant rule under DOT implementing procedures (44 FR 11034). The original regulatory evaluation and regulatory flexibility analysis prepared for the final rule were not modified because the amendments herein do not impose additional requirements and are not substantive changes to the final rule. These documents are available for review in the docket.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I, subchapters B and C of the Code of Federal Regulations, are amended as set forth below.

The following amendments apply to parts 107, 173, 178, and 180 in effect as of the date of publication of this final rule:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 U.S.C. 1802, 1806, 1808-1811; 49 CFR 1.45 and 1.53; Pub. L. 89-670 (49 App. U.S.C. 1653(d), 1655).

§ 107.504 [Amended]

2. In § 107.504, the last sentence in paragraph (c) is amended by revising the reference "§107.502(f)" to read "§ 107.502".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

4. In § 173.33, paragraph (a)(3) is revised to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

(a) * * *

(3) No person may fill and offer for transportation a specification cargo tank motor vehicle for which the prescribed periodic retest or reinspection under subpart E of part 180 of this subchapter is past due until the retest or inspection has been successfully completed. This requirement does not apply to a cargo tank supplied by a motor carrier who is other than the person offering the hazardous material for transportation (see § 177.824 of this subchapter), or to any cargo tank filled prior to the retest or inspection due date.

* * * * *

§ 173.33 [Amended]

4a. In addition, in § 173.33, the following changes are made:

a. In paragraph (c)(4), the wording "manufactured prior to December 31, 1990" is revised to read "marked or certified before August 31, 1993".

b. In paragraph (d)(1), in the second sentence, the wording "constructed before December 31, 1990" is revised to read "marked or certified before August 31, 1993".

c. In paragraph (d)(2), in the first sentence, the wording "in its gaseous state" is revised to read "with a gas pad".

§ 173.245 [Amended]

5. In § 173.245, the introductory text to paragraph (a)(29) is amended by adding "DOT 406," immediately after "MC 312,".

§§ 173.369, 173.373, 173.374 [Amended]

6. The following sections are amended by removing the wording ", and Specification MC 330 and MC 331 are equipped with internal self-closing stop-valves meeting the requirements of § 178.337-11 of this subchapter".

§ 173.369(a)(14)(iii)
§ 173.373(a)(6)(iv)
§ 173.374(a)(4)(v)

PART 178—SHIPPING CONTAINER SPECIFICATIONS

7. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1, unless noted.

8. In § 178.337-3, paragraph (c) is revised to read as follows:

§ 178.337-3 Structural integrity.

* * * * *

(c) Stresses resulting from static and dynamic loadings, or a combination thereof, are not uniform throughout the cargo tank motor vehicle. The following is a simplified procedure for calculating the effective stress in the cargo tank resulting from static and dynamic loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5\,(S_x + S_c) \pm (0.25(S_x - S_c) + S_s^2)^{.5}$$

Where:

(1) S = effective stress at any given point under the most severe combination of static and dynamic loadings that can occur at the same time, in psi.

(2) S_c = circumferential stress generated by internal and external pressure when applicable, in psi.

(3) S_x = the net longitudinal stress generated by the following loading conditions, in psi.:

(i) The longitudinal tensile stress generated by internal pressure;

(ii) The tensile or compressive stress generated by the axial load resulting from a decelerative force equal to twice the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(iii) The tensile or compressive stress generated by the bending moment resulting from a decelerative force equal to twice the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(iv) The tensile or compressive stress generated by the axial load resulting from an accelerative force equal to the static weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(v) The tensile or compressive stress generated by the bending moment resulting from an accelerative force equal to the static weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle; and

(vi) The tensile or compressive stress generated by a bending moment produced by a vertical force equal to three times the static weight of the fully loaded vehicle.

(4) S_s = The following shear stresses that apply, in psi.:

(i) The shear stress generated by a vertical force equal to three times the static weight of the tank and contents;

(ii) The lateral shear stress generated by a lateral accelerative force which will produce an overturn but not less than 0.75 times the static weight of the fully loaded vehicle, applied at the road surface; and

(iii) The torsional shear stress generated by a lateral accelerative force which will

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produce an overturn but not less than 0.75 times the static weight of the fully loaded vehicle, applied at the road surface.

* * * * *

§ 178.337 [Amended]

9. In § 178.337–6, the first sentence in paragraph (a) is amended by removing the wording "manufactured after August 31, 1990" and adding in its place "marked or certified after August 31, 1993".

10. In § 178.338–3, paragraph (c) is revised to read as follows:

§ 178.338–3 Structural integrity.

* * * * *

(c) Stresses resulting from static and dynamic loadings, or a combination thereof, are not uniform throughout the cargo tank motor vehicle. The following is a simplified procedure for calculating the effective stress in the tank resulting from static and dynamic loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$S = 0.5\,(S_v + S_L) \pm (0.25(S_v - S_L) + S_s^2)^{0.5}$

Where:

(1) S = effective stress at any given point under the most severe combination of static and dynamic loadings that can occur at the same time, in psi.

(2) S_v = circumferential stress generated by internal and external pressure when applicable, in psi.

(3) S_L = the net longitudinal stress, in psi, generated by the following loading conditions:

(i) The longitudinal tensile stress generated by internal pressure;

(ii) The tensile or compressive stress generated by the axial load resulting from a decelerative force applied independently to each suspension assembly at the road surface using applicable static loadings specified in § 178.338–13 (b) and (c);

(iii) The tensile or compressive stress generated by the bending moment resulting from a decelerative force applied independently to each suspension assembly at the road surface using applicable static loadings specified in § 178.338–13 (b) and (c);

(iv) The tensile or compressive stress generated by the axial load resulting from an accelerative force applied to the horizontal pivot of the fifth wheel supporting the vehicle using applicable static loadings specified in § 178.338–13 (b) and (c);

(v) The tensile or compressive stress generated by the bending moment resulting from an accelerative force applied to the horizontal pivot of the fifth wheel supporting the vehicle using applicable static loadings specified in § 178.338–13 (b) and (c); and

(vi) The tensile or compressive stress generated by a bending moment produced by a vertical force using applicable static loadings specified in § 178.338–13 (b) and (c).

(4) S_s = The following shear stresses that apply, in psi.: The vectorial sum of the applicable shear stresses in the plane under consideration, including direct shear generated by the static vertical loading; direct lateral and torsional shear generated by a lateral accelerative force applied at the road surface, using applicable static loads specified in § 178.338–13 (b) and (c).

* * * * *

§ 178.345–2 [Amended]

11. In § 178.345–2, paragraph (a)(1) is amended by adding "ASTM A 607" immediately after "ASTM A 572" and before "ASTM A 656".

12. In § 178.345–3, paragraph (a)(1) is amended by removing the wording "the lesser of" and by adding "at design conditions" at the end of the sentence, and paragraph (c) and the first sentence of paragraph (g)(2) are revised to read as follows:

§ 178.345–3 Structural integrity.

* * * * *

(c) Stresses resulting from static or dynamic loadings, or a combination thereof, are not uniform throughout the cargo tank motor vehicle. The following is a simplified procedure for calculating the effective stress in the tank shell and heads resulting from static and dynamic loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$S = 0.5(S_v + S_L) \pm (0.25(S_v - S_L)^2 + S_s^2)^{0.5}$

Where:

(1) S = effective stress at any given point under the most severe combination of static and dynamic loadings that can occur at the same time, in psi.

(2) S_v = circumferential stress generated by internal and external pressure, when applicable, in psi.

(3) S_L = the net longitudinal stress generated by the following loading conditions, in psi.:

(i) The longitudinal stresses resulting from the MAWP and from the lowest pressure at which the cargo tank may operate, in combination with the bending stress generated by the weight of the lading, the weight of the cargo tank and other structures and equipment supported by the cargo tank wall;

(ii) The tensile or compressive stress generated by the axial load resulting from a longitudinal decelerative force equal to 0.75 times the vertical reaction at each suspension assembly, applied at the road surface. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank motor vehicle;

(iii) The tensile or compressive stress generated by the bending moment resulting from a longitudinal decelerative force equal to 0.75 times the vertical reaction at each suspension assembly, applied at the road surface. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank motor vehicle;

(iv) The tensile or compressive stress generated by the axial load resulting from a longitudinal accelerative force equal to 0.75 times the static weight of the fully loaded cargo tank, applied at the horizontal pivot of the upper coupler (fifth wheel) or turntable supporting the cargo tank motor vehicle;

(v) The tensile or compressive stress generated by the bending moment resulting from a longitudinal accelerative force equal to 0.75 times the static weight of the fully loaded cargo tank applied to the horizontal pivot of the upper coupler (fifth wheel) or turntable supporting the cargo tank motor vehicle; and

(vi) The tensile or compressive stress generated by the bending moment resulting from a vertically up accelerative force equal to 0.7 times the vertical reaction, applied at each suspension assembly. The vertical reaction must be calculated based on the static weight of the lading, the weight of the cargo tank and other structures and equipment supported by the cargo tank wall.

(4) S_s = The following shear stresses that apply, in psi.:

(i) The vertical shear stress generated by a vertical force equal to 1.7 times the vertical reaction, applied at each suspension assembly. The vertical reaction must be calculated based on the static weight of the lading, the weight of the cargo tank and other structures and equipment supported by the cargo tank wall;

(ii) The lateral shear stress generated by a lateral accelerative force equal to 0.4 times the vertical reaction, applied laterally at the road surface. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank motor vehicle; and

(iii) The torsional shear stress generated by a lateral accelerative force equal to 0.4 times the vertical reaction, applied laterally at the road surface. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank motor vehicle.

* * * * *

(g) * * *

(2) A lightweight attachment to the cargo tank wall, such as a conduit clip, brakeline clip, skirting structure, lamp mounting bracket, or placard holder, must be of a construction having lesser strength than the cargo tank wall materials and may not be more than 72 percent of the thickness of the material to which it is attached. * * *

* * * * *

13. In § 178.345–7, the last sentence in paragraph (c) is amended by adding the wording "unless reinforced external to the tank" to the end of the sentence; paragraph (d) introductory text is amended by removing the words "it must" and adding, in their place, the words "reinforcement must"; and paragraph (a)(2) is revised to read as follows:

§ 178.345–7 Circumferential reinforcements.

(a) * * *

(2) Where circumferential joints are made between conical shell sections, or between conical and cylindrical shell sections, and the angle between adjacent sections is less than 160 degrees, circumferential reinforcement must be located within one inch of the shell joint, unless otherwise reinforced with structural members capable of maintaining shell stress levels authorized in § 178.345–3. When the joint is formed by the large ends of adjacent conical shell sections, or by the large end of a conical shell and a cylindrical shell section, this angle is measured inside the shell; when the joint is formed by the small end of a conical shell section and a cylindrical shell section, it is measured outside the shell.

* * * * *

§ 178.345–8 [Amended]

14. In § 178.345–8, paragraph (d)(3) is amended by removing the second sentence and revising the third sentence to read as follows: "Such impact must be considered as being uniformly applied in a horizontal plane at an angle of 30 degrees or less to the longitudinal axis of the vehicle."

15. In § 178.345–9, paragraph (a) is revised to read as follows:

§ 178.345–9 Pumps, piping, hoses and connections.

(a) Suitable means must be provided during loading or unloading operations to ensure that pressure within a cargo tank does not exceed test pressure.

* * * * *

16. In § 178.345–10, paragraph (b)(3) is revised to read as follows:

§ 178.345–10 Pressure relief.

* * * * *

(b) * * *

(3) Each pressure relief system must be designed to withstand dynamic pressure surges in excess of the design set pressure as specified in paragraphs (b)(3) (i) and (ii) of this section. Set pressure is a function of MAWP as set forth in paragraph (d) of this section.

(i) After August 31, 1992, each pressure-actuated relief system must be able to withstand dynamic pressure surge reaching 30 psig above the design set pressure and sustained above the set pressure for at least 60 milliseconds with a total volume of liquid released not exceeding one gallon before the relief system recloses to a leak-tight condition. This capacity must be demonstrated by testing. An acceptable test procedure is outlined in TTMA RP No. 81—"Performance of Spring-Loaded Pressure Relief Valves on MC 306, MC 307, and MC 312 Tanks," May 24, 1989 edition.

(ii) After August 31, 1995, each pressure relief system must be able to withstand a dynamic pressure surge reaching 30 psig above the design set pressure and sustained above the set pressure for at least 60 milliseconds with no loss of lading. This requirement must be met regardless of vehicle orientation.

* * * * *

17. Section 178.345–11 is revised to read as follows:

§ 178.345–11 Tank outlets.

(a) *General.* As used in this section, "loading/unloading outlet" means any opening in the cargo tank wall used exclusively for loading or unloading of lading, as distinguished from outlets such as manhole covers, vents, vapor recovery devices, and similar closures. Tank outlets, closures and associated piping must be protected in accordance with § 178.345–8.

(b) Each tank loading/unloading outlet must be equipped with an internal self-closing stop-valve, or alternatively, with an external stop-valve located as close as practicable to the tank wall. Each tank loading/unloading outlet must be in accordance with the following provisions:

(1) Each loading/unloading outlet must be fitted with a self-closing system capable of closing all such outlets in an emergency within 30 seconds of actuation. During normal operations the outlets may be closed manually. The self-closing system must be designed according to the following:

(i) Each self-closing system must include a remotely actuated means of closure located more than 10 feet from the loading/unloading outlet where vehicle length allows, or on the end of the cargo tank farthest away from the loading/unloading outlet. The actuating mechanism must be corrosion-resistant and effective in all types of environment and weather.

(ii) If the actuating system is accidentally damaged or sheared off during transportation, each loading/unloading outlet must remain securely closed and capable of retaining lading.

(iii) When required by part 173 of this subchapter for materials which are flammable, pyrophoric, oxidizing, or Poison B liquids, the remote means of closure must be capable of thermal activation. The means by which the self-closing system is thermally activated must be located as close as practicable to the primary loading/unloading connection and must actuate the system at a temperature not over 250° F. In addition, outlets on these cargo tanks must be capable of being remotely closed manually or mechanically.

(2) Outlets used only for loading which discharge lading above the maximum liquid level of the cargo tank need not be equipped with a self-closing system.

(c) Any loading/unloading outlet extending beyond an internal self-closing stop-valve, or beyond the innermost external stop-valve which is part of the self-closing system, must be fitted with another stop-valve at the end of such connection.

(d) Each tank outlet that is not a loading/unloading outlet must be equipped with a stop-valve or other leak-tight closure located as close as practicable to the tank outlet. Any connection extending beyond this closure must be fitted with another stop-valve or other leak-tight closure at the end of such connection.

§ 178.346–1 [Amended]

18. In § 178.346–1(d)(6), the end of the sentence is amended by removing the wording "and UW–13.1(f)" and adding, in its place, the wording "UW–13(b)(2), UW–13.1(f) and the dimensional requirements found in Figure UW–13.1".

19. In § 178.347–1(d)(6), the end of the sentence is amended by removing the wording "and UW–13.1(f)" and adding, in its place, the wording "UW–13(b)(2), UW–13.1(f), and the dimensional requirements found in Figure UW–13.1".

§ 178.348–1 [Amended]

20. Section 178.348–1(e)(2)(viii) is amended by removing the wording "and UW–13.1(f)" and adding, in its place, the wording "UW–13(b)(2), UW–13.1(f), and the dimensional requirements found in Figure UW–13.1".

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

21. The authority citation for part 180 continues to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR Part 1.

22. In § 180.2, paragraph (b)(2) is revised to read as follows:

§ 180.2 Applicability.

* * * * *

(b) * * *

(2) Reintroduces into commerce a packaging that bears markings indicating compliance with this part.

§ 180.405 [Amended]

23. In § 180.405, the following changes are made:

a. The first sentence in paragraph (g)(3) is amended by revising the year "1990" to read "1991".

b. In paragraph (h), the introductory text is amended by removing the letters "DOT" appearing in the second

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sentence and revising the last sentence, to read as follows: "The following requirements apply:".

c. Paragraph (h)(1) is amended by removing the last sentence, which reads "This requirement applies to DOT 406, DOT 407 and DOT 412 cargo tank motor vehicles and to all DOT MC-specification cargo tanks except MC 330, MC 331 and MC 338; and".

24. In addition in § 180.405, the last sentence in paragraph (b), paragraphs (c)(1) introductory text, (c)(2)(vii), (g)(1), (g)(2), and the first sentence in paragraph (h)(2) are revised to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(b) * * * However, no cargo tank may be marked or certified after August 31, 1993, to the applicable MC 306, MC 307, MC 312, MC 331 or MC 338 specification in effect on December 30, 1990.

(c) * * * (1) A cargo tank made to a specification listed in Column 1 may be used when authorized in this part, provided the cargo tank was marked or certified before the date listed in Column 2:

* * * * *

(2) * * *

(vii) A Specification MC 330 cargo tank, to conform with a Specification MC 331 cargo tank, except as specifically required by § 173.315 of this subchapter (see §§ 178.337–8 and 178.337–9 of this subchapter).

(g) * * * (1) MC 306, MC 307, and MC 312 cargo tanks marked or certified after December 30, 1990, and DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles must be equipped with manhole assemblies conforming with § 178.345–5 of this subchapter.

(2) On or before August 31, 1995, each owner of a cargo tank marked or certified before December 31, 1990, authorized for the transportation of a hazardous material, must have the cargo tank equipped with manhole assemblies conforming with § 178.345–5, except for the dimensional requirements in § 178.345–5(a), the hydrostatic testing requirements in § 178.354–5(b), and the marking requirements in § 178.345–5(e) of this subchapter. A manhole assembly meeting one of the following provisions is considered to be in compliance with this paragraph:

(i) Manhole assemblies on MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, MC 310, MC 311 and MC 312 cargo tanks which are marked or certified in writing as conforming to § 178.345–5 of this subchapter or TTMA RP No. 61, or are tested and certified in accordance with TTMA TB No. 107.

(ii) Manhole assemblies on MC 304 and MC 307 cargo tanks.

(iii) Manhole assemblies on MC 310, MC 311, and MC 312 cargo tanks with a test pressure of 30 psig or greater.

* * * * *

(h) * * *

(2) After August 31, 1995, replacements for any reclosing pressure relief valve must withstand pressure surges with no loss of lading regardless of vehicle orientation. * * *

* * * * *

§ 180.407 [Amended]

25. In 180.407, paragraph (a)(2) is amended by adding the phrase "or during loading or unloading" immediately after the word "test"; the first sentence in paragraph (g)(1)(v) is amended by revising the year "1990" to read "1991"; the first sentence in paragraph (d)(1) introductory text, and paragraphs (f)(1), (f)(2), the heading of paragraph (g), the table in paragraph (g)(1)(iv), and paragraph (h)(1) are revised; and introductory text is added to paragraph (g) to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(d) * * * (1) Where insulation precludes external visual inspection, the cargo tank, other than an MC 330 or MC 331 cargo tank, must be given a visual internal inspection in accordance with § 180.407(e). * * *

* * * * *

(f) * * *

(1) Rubber (elastomeric) lining must be tested for holes as follows:

(i) Equipment must consist of:

(A) A high frequency spark tester capable of producing sufficient voltage to ensure proper calibration;

(B) A probe with an "L" shaped 2.4 mm (0.09 inch) diameter wire with up to a 30.5 cm (12-inch) bottom leg (end bent to a 12.7 mm (0.5 inch) radius), or equally sensitive probe; and

(C) A steel calibration coupon 30.5 cm × 30.5 cm (12 inches × 12 inches) covered with the same material and thickness as that to be tested. The material on the coupon shall have a test hole to the metal substrate made by puncturing the material with a 22 guage hypodermic needle or comparable piercing tool.

(ii) The probe must be passed over the surface of the calibration coupon in a constant uninterrupted manner until the hole is found. The hole is detected by the white or light blue spark formed. (A sound lining causes a dark blue or purple spark.) The voltage must be adjusted to the lowest setting that will produce a minimum 12.7 mm (0.5 inch) spark measured from the top of the lining to the probe. To assure that the setting on the probe has not changed, the spark tester must be calibrated periodically using the test calibration coupon, and the same power source, probe, and cable length.

(iii) After calibration, the probe must be passed over the lining in an uninterrupted stroke.

(iv) Holes that are found must be repaired using equipment and procedures prescribed by the lining manufacturer or lining installer.

(2) Linings made of other than rubber (elastomeric material) must be tested using equipment and procedures prescribed by the lining manufacturer or lining installer.

* * * * *

(g) *Pressure test.* All components of the cargo tank wall, as defined in § 178.320(a) of this subchapter, must be pressure tested as prescribed by this paragraph.

(1) * * *

(iv) * * *

Specification	Test pressure
MC 300, 301, 302, 303, 305, 306.	20.7 kPa (3 psig) or design pressure, whichever is greater.
MC 304, 307	276.8 kPa (40 psig) or 1.5 times the design pressure, whichever is greater.
MC 310, 311, 312.	20.7 kPa (3 psig) or 1.5 times the design pressure, whichever is greater.
MC 330, 331	1.5 times either the MAWP or the re-rated pressure, whichever is applicable.
MC 338	1.25 times either the MAWP or the re-rated pressure, whichever is applicable.
DOT 406	34.5 kPa (5 psig) or 1.5 times the MAWP, whichever is greater.
DOT 407	275.8 kPa (40 psig) or 1.5 times the MAWP, whichever is greater.
DOT 412	1.5 times the MAWP.

* * * * *

(h) * * * (1) Each cargo tank must be tested for leaks in accordance with § 180.407(c). The leakage test must include product piping with all valves and accessories in place and operative, except that any venting devices set to discharge at less than the leakage test pressure must be removed or rendered inoperative during the test. Test pressure must be maintained at least 5 minutes. Suitable safeguards must be provided to protect personnel should a failure occur. MC 330 and MC 331 cargo tanks may be leak tested with the hazardous materials contained in the tank during the test. Leakage test pressure must be not less than 80 percent of the tank design pressure or MAWP, whichever is marked on the certification or specification plate, except as follows:

(i) A cargo tank with an MAWP of 690 kPa (100 psig) or more may be leak tested at its maximum normal operating pressure provided it is in dedicated service or services; or

(ii) An MC 330 or MC 331 cargo tank in dedicated liquified petroleum gas service may be leak tested at not less than 414 kPa (60 psig).

* * * * *

§ 180.413 [Amended]

26. In § 180.413, the third sentence in paragraph (c) is amended by removing the word "hydrostatically" appearing after the word "be" and before the word "pressure"; paragraph (d)(2)(iii) is amended by revising the word "regulations" to read "Regulations", and paragraphs (d)(1)(i) through (iii), and (d)(3) are revised to read as follows:

§ 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

* * * * *

(d) * * *

(1) * * *

(i) For Specification MC 300, MC 301, MC 302, MC 303, MC 305 and MC 306 cargo tanks in accordance with Specifications MC 306 or DOT 406 until August 31, 1993, and after this date, to Specification DOT 406.

(ii) For Specification MC 304 and MC 307 cargo tanks in accordance with Specification MC 307 or DOT 407 until August 31, 1993, and after this date, to Specification DOT 407.

(iii) For Specification MC 310, MC 311, and MC 312 cargo tanks in accordance with Specification MC 312 or DOT 412 until August 31, 1993, and after this date, to Specification DOT 412.

* * * * *

(3) If the stretching or rebarrelling changes the original approved design, the rebarrelled or stretched cargo tank must be recertified by Design Certifying Engineer. Recertification of a cargo tank also applies if a change to the undercarriage (stretching) affects the structural integrity of the cargo tank, even though no welding is performed on the cargo tank wall. The person performing the stretching or rebarrelling and a Registered Inspector must certify that the stretched or rebarrelled cargo tank has been constructed and tested in accordance with the applicable specification by issuing a supplemental manufacturer's certificate. The registration number of the Registered Inspector and, if applicable, the Design Certifying Engineer must be entered on the certificate.

26a. Section 180.415 is revised to read as follows:

§ 180.415 Test and inspection markings.

(a) Each cargo tank successfully completing the test and inspection requirements contained in § 180.407 must be marked as specified in this section.

(b) Each cargo tank must be durably and legibly marked, in English, with the test date (month and year) followed by the type of test or inspection. The marking must be in letter and numbers at least 32 mm (1.25 inches) high, on the tank shell near the specification plate, or anywhere on the front head. The type of test or inspection may be abbreviated as follows: V for external visual inspection and test; I for internal visual inspection: P for pressure retest: L for lining test, K for leakage test; and T for thickness test. For example, the marking "10–85 P, V, L" would indicate that in October 1985 the cargo tank received and passed the prescribed pressure retest, external visual inspection and test, and the lining inspection.

(c) For a cargo tank motor vehicle composed of multiple cargo tanks constructed to the same specification, which are tested and inspected at the same time, one set of test and inspection markings may be used to satisfy the requirements of this section. For a cargo tank motor vehicle composed of multiple cargo tanks constructed to different specifications, which are tested and inspected at different intervals, the test and inspection markings must appear in the order of the cargo tank's corresponding location, from front to rear.

27. In § 180.417(a)(2), in the first sentence and at the beginning of the second sentence, the wording "motor vehicle" is added immediately after the wording "cargo tank".

Issued in Washington DC, on June 4, 1991, under the authority delegated in 49 CFR Part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 91–13585 Filed 6–17–91; 8:45 am]

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Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1991.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of June 1, 1991, of 27 rescission proposals and ten deferrals contained in four special messages for FY 1991. These messages were transmitted to Congress on October 4, 1990, January 9, 1991, February 28, 1991, and April 16, 1991.

Rescissions (Table A and Attachment A)

As of June 1, 1991, there are no funds being withheld related to rescission proposals. However, a rescission proposal for $2.4 million is pending before the Congress.

Deferrals (Table B and Attachment B)

As of June 1, 1991, $4,784.4 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1991.

Information From Special Messages

The special messages containing information on rescissions and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

55 FR 41436, Thursday, October 11, 1990,
56 FR 1704, Wednesday, January 16, 1991,
56 FR 10082, Friday, March 8, 1991,
56 FR 18644, Tuesday, April 23, 1991.

Richard Darman,
Director.

TABLE A—STATUS OF FY 1991 RESCISSIONS

	Amounts (in millions of dollars)
Rescissions proposed by the President	4,312.9
Rejected by the Congress	4,308.9
Funding never withheld	0
Pending before the Congress	2.4

TABLE B—STATUS OF FY 1991 DEFERRALS

	Amounts (in millions of dollars)
Deferrals proposed by the President	9,342.6
Routine Executive releases through June 1, 1991 (OMB/Agency releases of $4,556.9 million, partly offset by cumulative positive adjustment of $0.7 million.)	-4,556.2
Overturned by the Congress	0
Currently before the Congress	4,784.4

Attachments.

ATTACHMENT A—STATUS OF FY 1991 RESCISSIONS

[Amounts in thousands of dollars]

As of June 1, 1991, agency/bureau/account	Rescission No.	Amount: Previously considered by Congress	Amount: Currently before Congress	Date of message	Amount rescinded	Amount made available	Date made available	Congressional action
Department of Agriculture								
Soil Conservation Service:								
Watershed and flood prevention operations.	R91-1	10,000		02-26-91		10,000	05-07-91	
Department of Defense								
Procurement:								
Procurement of weapons and tracked combat vehicles, Army.	R91-2	86,000		02-26-91		86,000	05-13-91	
Procurement of ammunition, Army	R91-3	13,000		02-26-91		13,000	05-13-91	
Aircraft procurement, Navy	R91-4	1,093,500		02-26-91		1,093,500	05-13-91	
Weapons procurement, Navy	R91-5	2,600		02-26-91		2,600	05-13-91	
Shipbuilding and conversion, Navy	R91-6	405,000		02-26-91		405,000	05-13-91	
Other procurement, Navy	R91-7	10,000		02-26-91		10,000	05-13-91	
Procurement, Marine Corps	R91-8	2,000		02-26-91		2,000	05-13-91	
Aircraft procurement, Air Force	R91-9	14,200		02-26-91		14,200	05-13-91	
Missile procurement, Air Force	R91-10	74,700		02-26-91		74,700	05-13-91	
Other procurement, Air Force	R91-11	254,200		02-26-91		254,200	05-13-91	
Procurement, Defense Agencies	R91-12	65,303		02-26-91		65,303	05-13-91	
National guard and reserve equipment	R91-13	289,900		02-26-91		289,900	05-13-91	
Research, Development, Test, and Evaluation:								
Research, development, test, and evaluation, Army.	R91-14	60,800		02-26-91		60,800	05-13-91	
Research, development, test, and evaluation, Navy.	R91-15	834,500		02-26-91		834,500	05-13-91	
Research, development, test, and evaluation, Air Force.	R91-16	134,100		02-26-91		134,100	05-13-91	
Research, development, test, and evaluation, Defense Agencies.	R91-17	29,300		02-26-91		29,300	05-13-91	
Military Construction:								
Military construction, Navy	R91-18	48,962		02-26-91		48,962	05-13-91	
Military construction, Air Force	R91-19	91,800		02-26-91		91,800	05-13-91	

ATTACHMENT A—STATUS OF FY 1991 RESCISSIONS—Continued

[Amounts in thousands of dollars]

As of June 1, 1991, agency/bureau/account	Rescission No.	Amount: Previously considered by Congress	Amount: Currently before Congress	Date of message	Amount rescinded	Amount made available	Date made available	Congressional action
Department of Health and Human Services								
Family Support Administration interim assistance to States for legalization.	R91-27	2,400		04-16-91		2,400	05-13-91	
Department of Housing and Urban Development								
Housing Programs:								
Annual contributions for assisted housing	R91-20	500,000		02-26-91		500,000	04-09-91	
Congregate services program	R91-21	9,500		02-26-91		9,500	04-09-91	
Nehemiah housing opportunity fund	R91-22	39,112		02-26-91		39,112	04-09-91	
Community Planning and Development:								
Urban development action grants	R91-23	13,518		02-26-91		13,518	04-09-91	
Rental rehabilitation grants	R91-24	70,000		02-26-91		70,000	04-09-91	
Urban homesteading	R91-25	13,397		02-26-91		13,397	04-09-91	
Rehabilitation loan fund	R91-26	144,459		02-26-91		144,459	04-09-91	
Total, Rescissions Proposed		4,309,851	2,400			4,312,251		

ATTACHMENT B—STATUS OF FY 1991 DEFERRALS—AS OF JUNE 1, 1991

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts Transmitted: Original request	Amounts Transmitted: Subsequent change (+)	Date of message	Releases (–): Cumulative OMB/agency	Releases (–): Congressionally required	Congressional action	Cumulative adjustments (+)	Amount deferred as of 6–1–91
Funds Appropriated to the President									
International Security Assistance:									
Economic support fund	D91-1	149,319		10-04-90					
	D91-1A		1,943,510	01-09-91					
	D91-1B		830	02-26-91	1,314,856				778,803
Foreign military financing	D91-8	4,820,649		01-09-91	3,210,773				1,609,876
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	D91-6A		44,507	01-09-91	26,098			665	31,603
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Facilities and equipment (Airport and airway trust fund).	D91-7	538,659		10-04-90					
	D91-7A		1,086,473	01-09-91					1,607,132
Total, deferrals		6,049,754	3,292,892		4,556,904			665	4,784,407

[FR Doc. 91-14407 Filed 6-14-91; 8:45 am]

BILLING CODE 3110-01-M

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federal register

Monday
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Part VI

The President

Proclamation 6306—Baltic Freedom Day, 1991 and 1992

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Presidential Documents

Title 3—

The President

Proclamation 6366 of June 13, 1991

Baltic Freedom Day, 1991 and 1992

By the President of the United States of America

A Proclamation

During the past year, the long struggle of the Baltic peoples to recover their freedom has been marked by both triumph and tragedy: triumph in their bold calls for liberty and independence; tragedy in the bloody events of January 1991.

The United States and, indeed, all freedom-loving nations have long denounced the infamous Molotov-Ribbentrop pact that led to the forcible incorporation of the independent Baltic States into the Soviet Union. The peoples of both the West and the Baltic States have continued to believe that the freedom of Lithuania, Latvia, and Estonia must and can be restored. Recent events suggest that our hopes have not been misplaced.

In peaceful, democratic referendums, the peoples of Estonia, Latvia, and Lithuania have asserted overwhelmingly their desire for freedom. Toward that aim, they have sought to enter into meaningful negotiations with Moscow about their status. Despite the tragic events of January 1991, which resulted in the deaths of at least 21 Lithuanians and Latvians and many more injured, a dialogue between the Baltic governments and the Soviet Union has begun. We hope that it will bear fruit, and we urge the Soviet Union to move forward with the talks.

However, the United States remains deeply concerned over the continued application of intimidation and force by Soviet authorities. Such actions are incompatible with the process of peaceful change through fair and constructive negotiations.

The United States has never and will never recognize the forcible annexation of the Baltic States by the Soviet Union. I reiterated this policy during my recent meeting with Lithuanian President Landsbergis, Estonian Prime Minister Savisaar, and Latvian Prime Minister Godmanis. This was my sixth meeting with the Baltic leadership during the past 12 months. The Administration will remain in close contact with the Baltic leadership in the months ahead.

As we commemorate "Baltic Freedom Day," we reaffirm our support for the right of the Baltic peoples to live in peace and freedom.

The Congress, by Public Law 102–17, has designated June 14, 1991, and June 14, 1992, as "Baltic Freedom Day" and has authorized and requested the President to issue a proclamation in observance of this event.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the days of June 14, 1991, and June 14, 1992, as Baltic Freedom Day. I call upon the people of the United States to observe these days with appropriate ceremonies and activities to reaffirm their commitment to human rights and to freedom and democracy for all oppressed peoples.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-14565
Filed 6-14-91; 10:26 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of June 13 on signing Baltic Freedom Day, see the *Weekly Compilation of Presidential Documents* (vol. 27, no. 24).

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the U.S. Department of Agriculture (USDA) to reflect the creation of the position of Assistant Secretary for Natural Resources and Environment, and the abolition of the position of Assistant Secretary for Special Services.

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447-6035.

SUPPLEMENTARY INFORMATION: The act making further continuing appropriations for fiscal year 1988, Public Law No. 100-202, removed funding for the Office of the Assistant Secretary for Natural Resources and Environment and provided funding for a new Office of Assistant Secretary for Special Services. As a result of that action, in 53 FR 18253, May 23, 1988, the delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Natural Resources and Environment were removed and delegations of authority to the Assistant Secretary for Special Services were made. In that **Federal Register** document, the Secretary made delegations of authority directly to the Chiefs of the Forest Service and the Soil Conservation Service. In the fiscal year 1989 appropriations act for Rural Development, Agriculture, and Related Agencies, Public Law No. 100-460, the Congress funded the positions of Assistant to the Secretary for Special Services, and Assistant to the Secretary for Natural Resources and Environment. While USDA established the positions in question and delegated authority to the officials occupying those positions, it never published revised delegations of authority in the **Federal Register** to reflect the new positions. In the fiscal year 1990 appropriations act for Rural Development, Agriculture, and Related Agencies, Public Law No. 101-161, the Congress removed funding for the positions of Assistant to the Secretary for Special Services, and Assistant to the Secretary for Natural Resources and Environment, and funded the position of Assistant Secretary for Natural Resources and Environment. Accordingly, this document makes delegations of authority to the Assistant Secretary for Natural Resources and Environment. It further makes delegations of authority from the Assistant Secretary to the Chiefs of the Forest Service and the Soil Conservation Service. The delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Special Services and to the Chiefs of the Forest Service and the Soil Conservation Service are removed.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by Public Law No. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.19 is revised and § 2.20 is added to read as follows:

§ 2.19 Delegations of authority to the Assistant Secretary for Natural Resources and Environment.

The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Natural Resources and Environment:

(a) *Related to environmental quality.* (1) Administer the implementation of the National Environmental Policy Act for the United States Department of Agriculture (USDA).

(2) Provide representation for USDA on the National Response Team on hazardous spills pursuant to Public Law 92-500 (33 U.S.C. 1151 note), and section 4 of Executive Order 11735.

(3) Represent USDA in contacts with the United States Environmental Protection Agency, the Council on Environmental Quality, and other organizations or agencies on matters related to assigned responsibilities.

(4) Formulate and promulgate USDA policy relating to environmental activity and natural resources.

(5) Provide staff support for the Secretary in the review of environmental impact statements.

(6) Provide leadership in USDA for general land use activities including implementation of Executive Order 11988, Flood Plain Management, and 11990, Protection of Wetlands.

(b) *Related to forestry.* (1) Provide national leadership in forestry. (As used here and elsewhere in this section, the term "forestry" encompasses renewable and nonrenewable resources of forests, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative

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values such as economic strength and social well-being.)

(2) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, including the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632).

(3) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(4) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(5) For the purposes of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559 b–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on national forest lands;

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(6) Authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(7) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125 (a)–(c), 138, 202 (a)–(b), 203, 204 (a)–(h), 205 (a)–(d), 211, 317, 402(a)).

(8) Exercise the administrative appeal functions of the Secretary of Agriculture in review of decisions of the Chief of the Forest Service pursuant to 36 CFR part 217 and 36 CFR part 251, subpart C.

(9) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: Renewable resource management research, renewable resource environmental research; renewable resource protection research; renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(10) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(11) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(12) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 1643–1645).

(13) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (16 U.S.C. 3710a–3710c).

(14) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

(15) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(16) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas (16 U.S.C. 2102–2111).

(17) Provide assistance to States in forest resources planning (16 U.S.C. 2107).

(18) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(19) Administer rural fire protection and control programs (16 U.S.C. 2106).

(20) Provide technical assistance on forestry technology or the implementation of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(21) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(22) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(23) Under such general program criteria and procedures as may be established by the Soil Conservation Service:

(i) Administer the forestry aspects of the programs listed in paragraphs (b)(23)(i) (A), (B), and (C) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands.

(A) The cooperative river basin surveys and investigations program (16 U.S.C. 1006).

(B) The eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act (33 U.S.C. 701b–1).

(C) The small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009).

(ii) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(24) Provide assistance to the Agricultural Stabilization and Conservation Service in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–q).

(25) Jointly administer the Forestry Incentives Program with the Agricultural Stabilization and Conservation Service, in consultation with State Foresters (16 U.S.C. 2103).

(26) Provide assistance to the Farmers Home Administration in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(27) Coordinate mapping work of USDA including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by USDA agencies;

(iii) Preparing and submitting required USDA reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of Interior, and other departments and establishments;

(v) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(28) Administer the radio frequency licensing work of USDA, including:

(i) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(29) Represent USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(30) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under the Act and submitted to the Secretary of Commerce, consistent with section 306 (a) and (c).

(31) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 Note) for USDA.

(32) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(33) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(34) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(35) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278).

(36) Jointly administer gypsy moth eradication activities with the Assistant Secretary for Marketing and Inspection Services, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(37) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 et seq.).

(c) Related to soil conservation activities.

(1) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(i) Quality in the natural resource base for sustained use;

(ii) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(iii) Quality in the standard of living based on community improvement and adequate income.

(2) Provide national leadership in and evaluate and coordinate land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201 et seq.), except as otherwise delegated to the Assistant Secretary for Science and Education in § 2.30(a)(75) of this part.

(3) Administer the basic program of soil and water conservation under Public Law No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590 a–f, i–/, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(i) Technical assistance to land users in carrying out locally adapted soil and water conservation programs primarily through the conservation districts in the 50 States, Puerto Rico, and Virgin Islands, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(A) Comprehensive planning assistance in nonmetropolitan districts;

(B) Assistance in the field of income-producing recreation on rural non-Federal lands;

(C) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not

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available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(D) Assistance in developing programs relating to natural beauty; and

(E) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*1*) To the Agricultural Stabilization and Conservation Service in the development and technical servicing of certain programs, such as the rural environmental assistance program, water bank program, Appalachian regional development program and other such similar conservation programs;

(*2*) To the Farmers Home Administration in connection with their loan and land disposition programs.

(ii) Soil Surveys, including:

(A) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(B) Conducting soil surveys for resource planning and development; and

(C) Performing the cartographic services essential to carrying out the functions of the Soil Conservation Service, including furnishing photographs, mosaics, and maps.

(iii) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. 4 of 1940 (5 U.S.C. App.);

(iv) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Soil Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(v) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(4) Administer the watershed protection and flood prevention programs, including:

(i) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1;

(ii) The emergency flood control work under 33 U.S.C. 701b–1;

(iii) The cooperative river basin surveys and investigations programs under 16 U.S.C. 1006;

(iv) The pilot watershed projects under 16 U.S.C. 590 a–f, and Public Law 156, 83rd Congress;

(v) The watershed protection and flood prevention program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Under Secretary for Small Community and Rural Development;

(vi) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(vii) The Emergency Conservation Program under 16 U.S.C. 2201.

(5) Administer the Great Plains conservation program under 16 U.S.C. 590p(b).

(6) Administer the Resource Conservation and Development Program under 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Under Secretary for Small Community and Rural Development.

(7) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(8) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 et seq.).

(9) Administer rural water quality cost-sharing program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 et seq.).

(10) Monitor actions and progress of USDA in complying with Executive Order Nos. 11988 and 11990 regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(11) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(12) Perform the following functions in connection with the administration of the Colorado River Basin Salinity Control Act:

(i) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(ii) Conduct salinity control studies of irrigated salt source areas;

(iii) Provide technical assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(iv) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(v) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(vi) Coordinate salt source planning and monitoring and evaluation activities with USDA and with the Bureau of Reclamation, other Federal agencies and representatives of the seven basin states participating in the Colorado River Basin Salinity Control Program (43 U.S.C. 1592(c)).

(13) Provide technical assistance on soil and water conservation technology for the implementation and administration of the conservation reserve program authorized in sections 1231–1244 of the Food Security Act of 1985 (16 U.S.C. 3831–3844), and carry out responsibilities for conservation of highly erodible lands and wetlands pursuant to sections 1211–1233 of the Food Security Act of 1985 (16 U.S.C. 3821–3823).

(14) Approve and transmit to the Congress comprehensive river basin reports.

(15) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(d) Related to committee management. Establish and reestablish regional, state, and local advisory committees for activities under his authority. This authority may not be redelegated.

(e) Related to defense. Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.) and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. 2251 App. et seq.) relating to agricultural land and water, forests and forest products, rural fire defense, and forestry research.

(f) Related to surface mining control and reclamation. Administer responsibilities and functions assigned to the Secretary of Agriculture under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

(g) Related to environmental response.

(1) Exercise the functions delegated to the Secretary by Executive Order No. 12580 to act as Federal trustee for natural resources in accordance with section 107(f)(2)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607(f)(2)(A) and section 311(f)(5) of the Federal Water Pollution Control Act, 33 U.S.C. 1321.

(2) With respect to land and facilities under his authority, to exercise the functions delegated to the Secretary by Executive Order No. 12580 under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and other remedial action in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access; compliance orders; compliance with Federal health and safety standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) Section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action;

(x) Section 116(a) of the act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Section 117 (a) and (c) of the act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to selecting cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to entering into settlement agreements.

§ 2.20 Reservations of authority.

The following authorities are reserved to the Secretary of Agriculture:

(a)–(b) Reserved.

(c) *Related to soil conservation activities.*

Designation of new project areas in which the resoyrce conservation and development program assistance will be provided.

3. The heading for subpart D is revised to read as follows:

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

4. Sections 2.42 through 2.45 are removed.

5. Subpart G is revised to read as follows:

Subpart G—Delegations of Authority by the Assistant Secretary for National Resources and Environment

Sec.

2.59 Deputy Assistant Secretary for Natural Resources and Environment.

2.60 Chief, Forest Service

2.61 Reserved.

2.62 Chief, Soil Conservation Service.

Subpart G—Delegations of Authority by the Assistant Secretary for Natural Resources and Environment

§ 2.59 Deputy Assistant Secretary for Natural Resources and Environment.

Pursuant to § 2.19 of this part and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Natural Resources and Environment to the Deputy Assistant Secretary for Natural Resources and Environment, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Natural Resources and Environment.

§ 2.60 Chief, Forest Service.

(a) *Delegations.* Pursuant to § 2.19 (a), (b), (e), (f) and (g)(2), the following delegations of authority are made by the Assistant Secretary for Natural Resources and Environment to the Chief of the Forest Service:

(1) Provide national leadership in forestry. (As used here and elsewhere in this section, the term "forestry" encompasses renewable and nonrenewable resources of forests, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well being.

(2) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, except that the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended, and special forest receipts acts, as follows: (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 State. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) is limited to acquisitions of less than $250,000 in value.

(3) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(4) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(5) For the purposes of the National Forests System Drug Control Act of 1986 (16 U.S.C. 559–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 481) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on national forest lands.

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or

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employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(6) Cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(7) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125 (a)–(c), 136, 202 (a)–(b), 203, 204 (a)–(h), 205 (a)–(d), 211, 317, 401(a)).

(8) Administer provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272, 1305) as they relate to management of the National Forest System.

(9) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: Renewable resource management research; renewable resource-environmental research; renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(10) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(11) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(12) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427f(a), 1624; 16 U.S.C. 1642–1645).

(13) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(14) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

(15) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(16) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas (16 U.S.C. 2102–2111).

(17) Provide assistance to States in forest resources planning (16 U.S.C. 2107).

(18) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(19) Administer rural fire protection and control program (16 U.S.C. 2106).

(20) Provide technical assistance on forestry technology or the implementation of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1961 note).

(21) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(22) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(23) Under such general program criteria and procedures as may be established by the Soil Conservation Service:

(i) Administer the forestry aspects of the programs listed in paragraphs (a)(23)(i)(A), (B), and (C) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands.

(A) The cooperative river basin surveys and investigations program (16 U.S.C. 1008).

(B) The eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act (33 U.S.C. 701b–1).

(C) The small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009).

(ii) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(24) Provide assistance to the Agricultural Stabilization and Conservation Service in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–q).

(25) Jointly administer the Forestry Incentives Program with the Agricultural Stabilization and Conservation Service, in consultation with State Foresters (16 U.S.C. 2103).

(26) Provide assistance to the Farmers Home Administration in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(27) Coordinate mapping work of USDA including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by USDA agencies;

(iii) Preparing and submitting required USDA reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of the Interior, and other departments and establishments;

(v) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(28) Administer the radio frequency licensing work of USDA, including:

(i) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(29) Represent USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(30) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under the Act and submitted to the Secretary of Commerce, consistent with section 306 (a) and (c).

(31) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 Note) for USDA.

(32) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(33) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(34) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(35) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), relating to forests and forest products, rural fire defense, and forestry research.

(36) Represent USDA on the National Response Team on hazardous spills pursuant to Public Law 92–500 (33 U.S.C. 1151 note) and section 4 of Executive Order 1735.

(37) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278), except for making recommendations to the President regarding additions to the National Wild and Scenic Rivers System.

(38) Issue proposed rules relating to the authorities delegated in this section, issue final rules and regulations as provided in 36 CFR 251.70, and issue technical amendments and corrections to final rules issued by the Assistant Secretary for Natural Resources and Environment pursuant to § 2.60(b)(1).

(39) Jointly administer gypsy moth eradication activities with the Animal and Plant Health Inspection Service, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(40) With respect to land and facilities under his authority, to exercise the functions delegated to the Secretary by Executive Order 12580 under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and other remedial action in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access; compliance orders; compliance with Federal health and safety standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) Section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Section 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to selecting cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to entering into settlement agreements.

(41) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 et seq.).

(b) *Reservations.* The following authorities are reserved to the Assistant Secretary for Natural Resources and Environment:

(1) The authority to issue final rules and regulations relating to the administration of Forest Service programs, except as provided in 36 CFR 251.70 and § 2.60(a)(38) of this part.

(2) As deemed necessary for administrative purposes, the authority to divide into and designate as national forests any lands of more than 3,000 acres acquired under or subject to the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521).

(3) The authority to make recommendations to the Administrator of General Services regarding transfer to other Federal, State, or Territorial agencies lands acquired under the Bankhead-Jones Farm Tenant Act, together with recommendations on the

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conditions of use and administration of such lands, pursuant to the provisions of section 32(c) of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(c), and Executive Order 11609).

(4) Making recommendations to the President for establishing new units or adding to existing units of the National Wild and Scenic Rivers System (16 U.S.C. 1271–1278); National Scenic Trails System (16 U.S.C. 1241–1249) and the National Wilderness Preservation System (16 U.S.C. 1131–1136).

(5) Signing of declarations of taking and requests for condemnation of property as authorized by law to carry out the mission of the Forest Service (40 U.S.C. 257).

(6) Approval of acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts, as follows: (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) of $250,000 or more in value for national forest purposes.

§ 2.61 [Reserved]

§ 2.62 Chief, Soil Conservation Service.

(a) *Delegations.* Pursuant to § 2.19 (a), (c), (e), (f) and (g)(2), the following delegations of authority are made by the Assistant Secretary for Natural Resources and Environment to the Chief of the Soil Conservation Service:

(1) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(i) Quality in the natural resource base for sustained use;

(ii) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(iii) Quality in the standard of living based on community improvement and adequate income.

(2) Participate in evaluation and coordination land use policy and in providing national leadership in implementing the Farmland Protection Policy Act (7 U.S.C. 4201 et seq.) except as otherwise delegated to the Administrator, Extension Service in § 2.108(a)(22) and the Director, National Agricultural Library in § 2.109(a)(15) of this part.

(3) Administer the basic program of soil and water conservation under Public Law No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590 a–f, 1–7, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(i) Technical assistance to land users in carrying out locally adapted soil and water conservation programs primarily through the conservation districts in the 50 States, Puerto Rico, and Virgin Islands, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(A) Comprehensive planning assistance in nonmetroplitan districts;

(B) Assistance in the field of income-producing recreation on rural non-Federal lands;

(C) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(D) Assistance in developing programs relating to natural beauty; and

(E) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*1*) To the Agricultural Stabilization and Conservation Service in the development and technical servicing of certain programs, such as the rural environmental assistance program, water bank program, Appalachian regional development program and other such similar conservation programs;

(*2*) To the Farmers Home Administration in connection with their loan and land disposition programs.

(ii) Soil Surveys, including:

(A) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(B) Conducting soil surveys for resource planning and development; and

(C) Performing the cartographic services essential to carrying out the functions of the Soil Conservation Service, including furnishing photographs, mosaics, and maps.

(iii) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. 4 of 1940 (5 U.S.C. App.);

(iv) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Soil Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(v) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(4) Administer the watershed protection and flood prevention programs, including:

(i) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1, except for responsibilities assigned to the Forest Service;

(ii) The emergency flood control work under 33 U.S.C. 701b–1, except for responsibilities assigned to the Forest Service;

(iii) The cooperative river basin surveys and investigations programs under 16 U.S.C. 1006, except for responsibilities assigned to the Forest Service;

(iv) The pilot watershed projects under 16 U.S.C. 590 a–f, and Public Law No. 156, 83rd Congress, except for responsibilities assigned to the Forest Service;

(v) The watershed protection and flood prevention program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Farmers Home Administration and the Forest Service;

(vi) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(vii) The Emergency Conservation Program under 16 U.S.C. 2201.

(5) Administer the Great Plains conservation program under 16 U.S.C. 590p(b).

(6) Administer the Resource Conservation and Development Program under 16 U.S.C. 590 a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Farmers Home Administration.

(7) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(8) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 et seq.), except for responsibilities assigned to other USDA agencies.

(9) Administer rural water quality cost-sharing programs and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 et seq.).

(10) Monitor actions and progress of USDA in complying with Executive Order Nos. 11988 and 11990 regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(11) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(12) Perform the following functions in connection with the administration of the Colorado River Basin Salinity Control Act:

(i) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(ii) Conduct salinity control studies of irrigated salt source areas;

(iii) Provide technical assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(iv) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(v) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(vi) Coordinate salt source planning and monitoring and evaluation activities with USDA and with the Bureau of Reclamation, other Federal agencies and representatives of the seven basin states participating in the Colorado River Basin Salinity Control Program (43 U.S.C. 1593(c)).

(13) Provide technical assistance on soil and water conservation technology for the implementation and administration of the conservation reserve program authorized in sections 1231–1244 of the Food Security Act of 1985 (16 U.S.C. 3831–3844), and carry out responsibilities for conservation of highly erodible lands and wetlands pursuant to sections 1211–1233 of the Food Security Act of 1985 (16 U.S.C. 3821–3823).

(14) Approve and transmit to the Congress comprehensive river basin reports.

(15) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(16) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), relating to agricultural lands and water.

(17) Administer the Abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), except for responsibilities assigned to the Forest Service.

(18) With respect to land and facilities under his authority, to exercise the functions delegated to the Secretary by Executive Order No. 12580 under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and other remedial action in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access; compliance orders; compliance with Federal health and safety standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) Section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Section 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to selecting cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to entering into settlement agreements.

(b) *Reservations of authority.*

The following authorities are reserved to the Assistant Secretary for Natural Resources and Environment:

(1) Executing cooperative agreements and memoranda of understanding for multi-agency cooperation with conservation districts and other districts organized for soil and water conservation within States, territories, possessions, and American Indian Nations.

(2) Approving additions to authorized Resource Conservation and Development Projects that designate new project areas in which resource conservation and development program assistance will be provided, and withdrawing authorization for assistance, pursuant to 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; 16 U.S.C. 3451–3461.

(3) Giving final approval to and transmitting to the Congress watershed work plans that require congressional approval.

For subparts C and D.

Dated: June 6, 1991.

Richard T. Crowder,

Acting Secretary of Agriculture.

For Subpart G.

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Dated: May 29, 1991.

James R. Moseley,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 91-14074 Filed 6-17-91; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 52

[FV-91-330]

RIN 0581-AA19

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products Regulations Governing Inspection and Certification

AGENCY: Agricultural Marketing, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products by increasing the fees charged for the inspection of processed fruits and vegetables and certain other products. The revision will adjust the fees to recover the costs of performing inspection services, as authorized by the Agricultural Marketing Act of 1946.

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Raymondo O'Neal, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 0709, South Building, Washington, DC 20090-6456, telephone (202) 447-5021.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601).

The final rule reflects fee increases needed to recover the costs of services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946. Furthermore, the inspection, grading and certification program for processed fruits and vegetables and related products is voluntary.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of processed food products including processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This final rule will amend the schedule for fees and charges for services rendered to the processed fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Since the last fee change December 11, 1989 (54 FR 50731), program operating costs have increased. The major contributing factors have been two salary increases for Federal employees—a 3.5-percent pay increase effective January 1, 1990, and a 4.1-percent pay increase effective January 1, 1991.

Employee salary and fringe benefits are major program costs that account for approximately 65 percent of the total operating budget. In addition, the following increases occurred in program operating expenses: (1) A 13.3-percent increase in the cost of support services during FY-90; (2) a projected inflationary cost increase of 4.0 percent for fiscal year 1991. The Agency has determined that due to the aforementioned increases in program operating costs, these programs will incur over a $1,750,000 loss in fiscal year 1991. Therefore, it is found that good cause exists for making this final rule effective upon publication in the **Federal Register.**

A notice of proposed rulemaking was published in the **Federal Register** (56 FR 11113-11114) on March 15, 1991, with a thirty day comment period. The comment period closed on April 15, 1991. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Agricultural Marketing Service. No comments were received regarding this proposed rule. However, miscellaneous non-substantive changes are made herein for clarity.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The program will incur over a $1,750,000 loss in fiscal year 1991 alone; (2) this action should be made effective upon publication in the **Federal Register** so that fees will reflect the costs of services rendered as soon as possible and; (3) interested persons were afforded a thirty day comment period and no comments were received.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, reporting and recordkeeping requirements, Vegetables.

Accordingly, for the reasons set forth in the preamble, the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.42, 52.50, 52.51), are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

2. Section 52.42 is revised to read as follows:

§ 52.42 Schedule of fees.

Unless otherwise provided in a written agreement between the applicant and the Administrator, the fee for any inspection service performed under the regulations in this part, shall be at the rate of $34.50 per hour plus an additional one-half the hourly rate per hour for all scheduled overtime hours. When work is performed on a holiday, an additional hour shall be charged at the regular hourly rate for each hour worked.

3. Section 52.50 is revised to read as follows:

§ 52.50 Travel and other expenses.

Charges may be made to cover the cost of travel time incurred in connection with the performance of any inspection service, including appeal inspections, at the rate of $34.50 per hour. This includes time spent waiting for transportation as well as time spent traveling, but not to exceed eight hours of travel time for any one person for any one day: And provided further, that if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

4. Section 52.51 is amended by revising paragraphs (c) introductory text, (c)(1), (c)(2), (c)(5), (d) introductory text, (d)(1), and (d)(5) to read as follows:

§ 52.51 Charges for inspection services on a contract basis.

* * * * *

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant monthly for all hours worked with a minimum of 40 hours per week for each inspector assigned to perform the inspection services in accordance with the following schedule:

(1) For personnel assigned on a year-round basis: Each inspector—$29.00 per hour.

(2) For personnel assigned on less than a year-round basis: Each inspector—$34.50 per hour. In-plant sampler—$14.00 per hour.

* * * * *

(5) *Overtime.* All overtime hours will be charged at the regular rates specified in paragraphs (c)(1) and (2) of this section, plus one-half the hourly rate, per hour.

(d) Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis will be billed to the applicant monthly for all hours with a minimum of 40 hours for each inspector assigned to perform the inspection services in accordance with the following schedule: [1]

(1) Each inspector—$35.50 per hour.[1]

* * * * *

(5) *Overtime.* All overtime hours will be charged at the regular rates specified in paragraphs (d)(1) and (2) of this section, plus one-half the hourly rate, per hour.

* * * * *

Dated: June 12, 1991.

Daniel D. Haley,

Administrator.

[FR Doc. 91-14458 Filed 6-17-91; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Shuttle; Authority of Space Shuttle Commander

ACTION: Final rule.

[1] Except a minimum of 8 hours per day will be billed in lieu of a minimum of 40 hours a week.

SUMMARY: NASA is amending 14 CFR part 1214 by revising the part title and subpart 1214.7, "The Authority of the Space Shuttle Commander." This revision changes all references to "Space Transportation System (STS)" to read "Space Shuttle" and it also includes a minor word change in paragraph 1214.702(c). This rule sets forth the authority of the Space Shuttle Commander.

EFFECTIVE DATE: June 18, 1991.

ADDRESSES: Office of Space Flight, Code M, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Joseph M. Bosa, Jr., 202-453-2582.

SUPPLEMENTARY INFORMATION: On August 22, 1979, NASA published its final rule, 14 CFR part 1214 subpart 7, in the **Federal Register** on March 7, 1980 (45 FR 14845). This rule sets forth the authority of the Space Shuttle Commander who is ultimately responsible for maintaining order and discipline and for the safety of all personnel aboard a Space Shuttle flight, as well as for the safety of the Space Shuttle itself, Space Shuttle elements and payloads. Under this rule, the Commander's authority applies to all persons aboard the Space Shuttle, including those persons engaged in extravehicular activity (EVA), and includes the right to use any reasonable and necessary means, including physical force, to ensure that such responsibility is fulfilled.

Since this action is administrative in nature and involves Agency policy management procedures, no public comment period is required.

The National Aeronautics and Space Administration has determined, that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1214

Reimbursement, Payload specialist, Space flight participant, Memento, Personnel reliability, Authority of Commander, Space Shuttle, Astronaut candidate recruitment/selection, Duty-free entry of space articles, Small self-contained payload.

PART 1214—SPACE SHUTTLE

For reasons set forth in the Preamble, 14 CFR part 1214 subpart 7 is amended as follows:

1. The authority citation for subpart 1214.7 continues to read as follows:

Authority: Pub. L. 85-568, 72 Stat. 426 (42 U.S.C. 2473 and 2475; 18 U.S.C. 799); Art. VIII, TIAS 6347 (18 U.S.C. 2410).

2. The title heading for subpart 1214.7 is revised to read as follows:

Subpart 1214.7—The Authority of the Space Shuttle Commander

3. Section 1214.700 is revised to read as follows:

§ 1214.700 Scope.

This subpart establishes the authority of the Space Shuttle commander to enforce order and discipline during all flight phases of a Shuttle flight to take whatever action in his/her judgment is necessary for the protection, safety, and well-being of all personnel and on-board equipment, including the Space Shuttle elements and payloads. During the final launch countdown, following crew ingress, the Space Shuttle commander has the authority to enforce order and discipline among all on-board personnel. During emergency situations prior to liftoff the Space Shuttle commander has the authority to take whatever action in his/her judgment is necessary for the protection or security, safety, and well-being of all personnel on board.

4. Section 1214.701 is amended by revising paragraphs (a), (c), and (f) to read as follows:

§ 1214.701 Definitions.

(a) *Space Shuttle Elements* consists of the Orbiter, an External Tank, two Solid Rocket Boosters, Spacelab, Upper Stage Boosters (Solid Spinning Upper Stage and Interim Upper Stages) and others as specified in NASA Management Instruction 8040.9.

* * * * *

(c) A *flight* is the period from launch to landing of a Space Shuttle—a single round trip. (In the case of a forced landing the Space Shuttle commander's authority continues until a competent authority takes over the responsibility for the Orbiter and for the persons and property aboard.)

* * * * *

(f) *Personnel on board* refers to those astronauts or other persons actually in the Orbiter or Spacelab during any flight phase of a Space Shuttle flight (including any persons who may have transferred from another vehicle) and including any persons performing extravehicular activity associated with the mission.

5. Section 1214.702 is amended by revising the section title and paragraphs (a), (c), and (d) to read as follows:

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§ 1214.702 Authority and responsibility of the Space Shuttle commander.

(a) During all flight phases of a Space Shuttle flight, the Space Shuttle commander shall have the absolute authority to take whatever action is in his/her discretion necessary to

(1) Enhance order and discipline,

(2) Provide for the safety and well being of all personnel on board, and

(3) Provide for the protection of the Space Shuttle elements and any payload carried or serviced by the Space Shuttle. The commander shall have authority throughout the flight to use any reasonable and necessary means, including the use of physical force, to achieve this end.

* * * * *

(c) The authority of the commander extends to all Space Shuttle elements, payloads, and activities originating with or defined to be a part of the Space Shuttle mission.

(d) The commander may, when he/she deems such action to be necessary for the safety of the Space Shuttle elements and personnel on board, subject any of the personnel on board to such restraint as the circumstances require until such time as delivery of such individual or individuals to the proper authorities is possible.

6. Section 1214.703 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 1214.703 Chain of command.

(a) The *Commander* is a career NASA astronaut who has been designated to serve as commander on a particular flight, and who shall have the authority described in § 1214.702 of this part. Under normal flight conditions (other than emergencies or when otherwise designated) the Space Shuttle commander is responsible to the Flight Director, Johnson Space Center, Houston, TX.

* * * * *

(c) Before each flight, the other flight crew members (Mission Specialists) will be designated by the Director of Flight Operations, Johnson Space Center, Houston, TX, in the order in which they will assume the authority of the commander under this Subpart in the event that the commander and pilot are both not able to carry out their duties.

(d) The determinations, if any, that a crew member in the chain of command is not able to carry out his or her command duties and is, therefore, to be relieved of command, and that another crew member in the chain of command is to succeed to the authority of the commander, will be made by the Director of the Johnson Space Center.

7. Section 1214.704 is amended by revising paragraph (a) to read as follows:

§ 1214.704 Violations.

(a) All personnel on board a Space Shuttle flight are subject to the authority of the commander and shall conform to his/her orders and direction as authorized by this subpart.

* * * * *

Dated: June 5, 1991.

Richard H. Truly,

Administrator.

[FR Doc. 91-14319 Filed 6-17-91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-91-1515; FR-2936-C-02]

RIN 2502-AF17

Single Family FHA Mortgage Insurance Premiums; Interim Rule; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule; correction.

SUMMARY: On May 30, 1991 the Department published an interim rule in the **Federal Register** (56 FR 24622) establishing new premium requirements for FHA single family mortgage insurance. The effective date of this final rule was given as July 1, 1991. Through inadvertence, relevant portions of the actual text of the regulation referred to the new MIP premium requirements taking effect after July 1, 1991 rather than on or after July 1, 1991. The purpose of this document is to correct these errors in the regulatory text.

DATES: Effective date: July 1, 1991. Comment due date: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, Director, Office of Insured Single Family Housing, room 9266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 708-3046, TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department published an interim rule in the **Federal Register** on May 30, 1991 entitled, "Single Family Mortgage Insurance Premiums" (56 FR 24622). Under the heading, "Effective Date," the rule sets forth a date of July 1, 1991. However, in various relevant portions of the actual text of the rule, the new MIP requirements are referred to as taking effect after July 1, 1991. The correct description of the effective date in the text should be on or after July 1, 1991.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians: Lands, Loan programs: Housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, in FR Doc. 91-12707, published in the **Federal Register** on May 30, 1991, at 56 FR 24622, 24 CFR part 203 is amended by correcting § 203.259a(b), the undesignated center heading preceding § 203.284, the heading to § 203.284 and § 203.284(b)(1) to read as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Development of Housing and Urban Development Act 42 U.S.C. 3535(d)). Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

§ 203.259a [Corrected]

2. On page 24624, in the third column, § 203.259a(b) is corrected to read as follows:

* * * * *

(b) The Commissioner shall charge an up-front MIP pursuant to § 203.284 for mortgages that are executed on or after July 1, 1991, that are obligations of the Mutual Mortgage Insurance Fund.

* * * * *

§ 203.284 [Corrected]

3. On page 24625, in the first column, the undesignated center heading preceding § 203.284 and the heading to § 203.284 are corrected to read as follows:

Calculation of Mortgage Insurance Premium on or After July 1, 1991

§ 203.284 Calculation of up-front MIP on or after July 1, 1991.

4. On page 24625, in the second column, § 203.284(b)(1) is corrected to read as follows:

* * * * *

(b) * * *

(1) *1991 and 1991*—For mortgages executed during fiscal years 1991 and 1992 but on or after July 1, 1991, the Commissioner shall establish and collect the following premiums:

* * * * *

Dated: June 12, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91-14406 filed 6-17-91; 8:45 am]

BILLING CODE 4210-67-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Chapter I

Reserving of Subchapter

AGENCY: Office of the Secretary, DoD.

ACTION: Final Rule.

SUMMARY: On April 11, 1991 (56 FR 14643) the Department of Defense removed parts 1 through 39. This document removes the title of 32 CFR chapter I, subchapter A and reserves the subchapter for future use.

EFFECTIVE DATE: April 11, 1991.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Pentagon, Washington, DC 20301-1155.

SUPPLEMENTARY INFORMATION:

Accordingly, under the authority of 10 U.S.C. 133, 32 CFR chapter I is amended by removing and reserving the title of chapter I, subchapter A.

SUBCHAPTER A—[RESERVED]

Dated: June 12, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 91-14367 Filed 6-17-91; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 169a

Commercial Activities Program Procedures

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense is amending this part to correct the codification and administrative errors previously contained in section 169a.17.

EFFECTIVE DATE: June 18, 1991.

ADDRESSES: L.M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Pentagon, Washington, DC 20301-1155.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 169a

Armed forces; Government procurement.

Accordingly, 32 CFR part 169a is amended as follows:

PART 169A—COMMERCIAL ACTIVITIES PROGRAM PROCEDURES

1. The authority citation for part 169a continues to read as follows:

Authority: 5 U.S.C. 301 and Pub. L. 93-400.

§ 169a.17 [Amended]

2. Section 169a.17 is amended by redesignating paragraph "(h)(i)" as "(h)(1)" and "(h)(1)" as "(h)(i)" and by redesignating the second designated paragraph "(h) through (i)" as "(i) through (k)" respectively.

Dated: June 12, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14368 Filed 6-17-91; 8:45 am]

BILLING CODE 3810-01-M

INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

National Security Information—Standard Forms; Correction

AGENCY: Information Security Oversight Office (ISOO).

ACTION: Final rule; correction.

SUMMARY: ISOO is correcting errors in the Supplementary Information and subpart B portions of 32 CFR part 2003.20 which appeared in the **Federal Register** on January 23, 1991 (56 FR 2644).

EFFECTIVE DATE: January 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John B. Gemma at (202) 634-6145.

SUPPLEMENTARY INFORMATION: Correction. In rule document 91-1536 appearing on pages 2644 and 2645, in the issue of Wednesday, January 23, 1991, make the following corrections: Page 2644, in the third column, paragraph 3, line 7 change "has" to "have." Page 2645, in the first column, line 19, after 2003.20, insert: "Classified Information Nondisclosure Agreement: SF 312;".

Dated: June 13, 1991.

Steven Garfinkel,

Director.

[FR Doc. 91-14460 Filed 6-17-91; 8:45 am]

BILLING CODE 3920-AF-M

VOL 56 ISS 117 JE 18 1991 UMI

Proposed Rules

Federal Register
Vol. 56, No. 117
Tuesday, June 18, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR 1427

Upland Cotton Marketing Certificate Provisions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Agriculture, Conservation and Trade Act of 1990 ("the 1990 Act") amended the Agricultural Act of 1949 ("the 1949 Act") to provide that, during the period beginning August 1, 1991, and ending July 31, 1996, the Commodity Credit Corporation ("CCC") shall, under certain specified price conditions, make payments in the form of marketing certificates ("certificates") to first handlers and to domestic users or exporters of upland cotton. This proposed rule would amend 7 CFR part 1427 to implement these provisions.

DATES: Comments must be received on or before July 1, 1991, in order to be assured of consideration.

ADDRESSES: Submit comments to: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, room 3741–S. P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, room 3756–S, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "nonmajor". It has been determined that these program provisions will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, State or local governments or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Title	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052

It has been determined that the Regulatory Flexibility Act is not applicable since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significnt impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This provision is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 CFR 29115 (June 24, 1983).

Information collection requirements contained in this regulation (7 CFR part 1427) will be submitted to the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35.

Comments are requested with respect to this proposed rule, and such comments shall be considered in developing the final rule. These program provisions must be implemented by August 1, 1991. Accordingly, the public comment period ends on July 1, 1991. This will allow CCC time to consider the coments received before the final determinations are made.

Background

The 1990 Act amended the 1949 Act to provide that, if during the period beginning August 1, 1991, and ending July 31, 1996, CCC determines that the prevailing world market price for upland cotton, adjusted to United States quality and location ("adjusted world price") is less than the current loan repayment rate for a crop of upland cotton and that the cotton loan program and the loan deficiency payment program have failed to make domestically produced upland cotton competitive on the world market, then CCC shall make payments, in the form of comodity certificates to eligible first handlers of upland cotton who have entered into an Upland Cotton First Handler Agreement with CCC to participate in the first handler program. These provisions are similar to provisions which were authorized by the Food Security Act of 1985 (the 1985 Act) applicable for the period August 1, 1986 through July 31, 1991, except in the 1985 Act the authority to issue certificates was limited to certificates which were exchangeable only for extra long staple and upland cotton.

The 1990 Act also amended the 1949 Act by adding new provisions to provide that, if during the period beginning August 1, 1991, and ending July 31, 1996, CCC determined that, for any consecutive 4-week period, the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch ("M 1 3/32 inch") cotton, delivered C.I.F. (cost insurance and freight) northern Europe ("U.S. Northern Europe price") exceeds the Friday through Thursday average price quitation for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, delivered C.I.F. northern Europe ("Northern Europe price"), by more than 1.25 cents per pound each week, then CCC shall make payments, in the form of commodity certificates, to eligible domestic users and exporters of upland cotton on documented sales made in the week following such 4-week period.

This proposed rule would amend 7 CFR part 1427 to set forth the terms and conditions of the upland cotton first handler marketing certificate program and the the upland cotton user marketing certificate program. This proposed rule is published separate from other proposed amendments to 7 CFR part 1427 because these amendments focus upon the implementation of the marketing certificate programs whereas the other proposed amendments focus on the cotton loan program. Accordingly, the following provisions are proposed:

A. Implementation of the Upland Cotton First Handler Marketing Certificate Program.

Under this proposed rule, the upland cotton first handler marketing certificate program would be implemented in a manner similar to the first handler certificate program that was implemented for the 1986 crop of upland cotton pursuant to the authority of the 1985 Act, except that certificates made available under this program would be exchangeable for any commodity made available by CCC, whereas, certificates under the 1986 program were exchangeable only for upland cotton and extra long staple cotton.

B. Implementation of the Upland Cotton User Marketing Certificate Program.

Proposed major provisions of the upland cotton user marketing certificate program are:

1. Eligible cotton would be domestically produced upland cotton baled lint, including Below Grade cotton, which is purchased by an eligible domestic user or sold for export by an eligible exporter under a written contract entered into on or after August 1, 1991 and before July 31, 1996, during a Friday through Thursday period in which a payment rate is in effect and which is delivered to the eligible domestic user or exported by the eligible exporter by not later than September 30, 1996, exclusive of new crop cotton for which a written contract was entered into prior to the week in which a Northern Europe forward price for that crop of cotton was available for four consecutive weeks.

2. An eligible domestic user would be anyone, including a producer or approved cooperative marketing association, regularly engaged in purchasing eligible cotton for processing such cotton in the United States, who has entered into an agreement with CCC to participate in the program.

3. An eligible exporter would be anyone, including a producer or an approved cooperative marketing association, regularly engaged in selling eligible cotton for exportation from the United States for processing such cotton outside the United States, who has entered into an agreement with CCC to participate in the program.

4. The payment rate would be based on the amount that the U.S. Northern Europe price exceeds the Northern Europe price by more than 1.25 cents per pound during the fourth week of a consecutive four week period in which the U.S. Northern Europe price exceeded the Northern Europe price each week by more than 1.25 cents per pound. During the period when both current shipment prices and forward shipment prices are available, two payment rates would be determined, one based on the Northern Europe current prices and one based on the Northern Europe forward prices.

5. The payment would be made on documented sales and exports made during the week following the consecutive four week period.

6. The date of the written contract for purchase of the cotton by the domestic user or for sale of the cotton for export by the exporter would be used as the date for determining the payment rate.

7. The weight for payment would be based, for domestic users, on the net weight on which settlement for payment was based and, for exporters, on the original warehouse weight, the ginned weight if the cotton was not placed in a warehouse, or on reweights if the exporter pays the cost of having the bales reweighed.

8. Payment would be made after the cotton is received by the domestic user or after a bill of lading is issued for cotton that is being exported.

9. Payments would be made in the form of commodity certificates which would be exchangeable for any commodity made by CCC.

10. Eligible domestic users and exporters would have to enter into an Upland Cotton Domestic User/Exporter Agreement with CCC in order to participate in the program.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs (agriculture), Price support programs, Warehouses, Marketing certificate programs.

Accordingly, 7 CFR part 1427 is proposed to be amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. The subpart heading and text for §§ 1427.50 through 1427.55 are revised and §§ 1427.56 through 1427.58 are added to the subpart as set forth below.

3. Subpart—Upland Cotton Marketing Certificate Program Regulations §§ 1427.100 through 1427.108) is added as follows:

1427.56 Commodity certificates.
1427.57 Payment rate.
1427.58 Payment.

Subpart—Upland Cotton User Marketing Certificate Program Regulations

1427.100 Applicability.

1427.101 Administration.
1427.102 Definitions.
1427.103 Eligible and ineligible upland cotton.
1427.104 Eligible domestic users and exporters.
1427.105 Upland Cotton Domestic User/Exporter Agreement.
1427.106 Commodity certificates.
1427.107 Payment rate.
1427.108 Payment.

* * * * *

Subpart—Upland Cotton First User Marketing Certificate Program Regulations

§ 1427.50 Applicability.

(a) The regulations of this subpart are applicable during the period beginning August 1, 1991, and ending July 31, 1996. These regulations set forth the terms and conditions under which the Commodity Credit Corporation ("CCC") shall make payments, in the form of commodity certificates, to eligible first handlers of upland cotton who have entered into an Upland Cotton First Handler Agreemernt with CCC to participate in the first handler marketing certificate program, in accordance with section 103B(a)(5)(B) of the Agricultural Act of 1949, as amended.

* * * * *

Subpart—Upland Cotton First Handler Marketing Certificate Program Regulations

Sec.
1427.50 Applicability.
1427.51 Administration.
1427.52 Definitions.
1427.53 Eligible upland cotton.
1427.54 Eligible first handlers.
1427.55 Upland cotton first handler agreement.

(b) If, during the period beginning August 1, 1991, and ending July 31, 1996, CCC determines that the adjusted world price for upland cotton determined in accordance with § 1427.25 is less than the loan repayment rate for a crop of upland cotton determined in accordance with § 1427.19(c) and that the cotton loan program implemented in accordance with § 1427.8 and that the loan deficiency payment program implemented in accordance with § 1427.23, have failed to make domestically produced upland cotton competitive on the world market, then CCC shall make payments in accordance with the provisions of this subpart to eligible first handlers of upland cotton.

(c) Additional terms and conditions are set forth in the Upland Cotton First Handler Agreement which must be executed by the first handler in order to receive such payments.

(d) Forms which are used in administering the first handler

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marketing certificate program shall be prescribed by CCC.

§ 1427.51 Administration.

(a) The first handler marketing certificate program shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, or Administrator, ASCS, or a designee, and shall be carried out in the field by ASCS's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waiver any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO shall preclude the Executive Vice President, CCC, or a designee, or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, or the Administrator, ASCS, or a designee, may authorize KCCO or KCMO to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the first handler marketing certificate program.

(e) A representative of CCC may execute first handler marketing certificate payment applications, Upland Cotton First Handler Agreements and related documented only under the terms and conditions determined and announced by CCC.

(f) Certificate payment applications, Upland Cotton First Handler Agreements and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1427.52 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in § 1427.3 of this part and part 1413 of this chapter shall also be applicable.

Baled lint means cotton which has passed through the ginning process and has been baled.

Loose means samples removed from bales of upland cotton for classification purposes which have been rebaled.

Reprocessed gin motes means cotton waste material primarily resulting from the lint cleaning operation during the ginning process that have had a substantial volume of the non-lint content removed and which have been baled.

§ 1427.53 Eligible upland cotton.

(a) For the purposes of this subpart, eligible upland cotton is domestically produced 1991 or subsequent crop upland cotton which meets the requirements of paragraphs (b) and (c) of this section.

(b) Eligible upland cotton must be either—

(1) Baled lint which is not pledged as collateral for a price support loan;

(2) Baled lint which has been pledged as collateral for a price support loan but which has been redeemed with cash;

(3) Baled lint which has been classified by USDA's Agricultural Marketing Service as Below Grade;

(4) Loose; or

(5) Reprocessed gin motes.

(c) Eligible upland cotton must not be:

(1) Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(2) Cotton which was obtained with a commodity certificate in accordance with the provisions of Part 1470 of this chapter; or

(3) Domestically produced cotton which has been exported or which has been exported and reimported.

§ 1427.54 Eligible first handlers.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible first handlers:

(1) A person regularly engaged in buying or selling eligible upland cotton who has entered into an agreement with CCC to participate in the first handler marketing certificate program;

(2) A producer of upland cotton who sells directly to domestic textile mills or for export or who tenders upland cotton on a New York Futures Exchange number 2 contract and who has entered into an agreement with CCC to participate in the first handler marketing certificate program; and

(3) A cooperative marketing association, approved in accordance with part 1425 of this chapter, that acquires the upland cotton production of its members and that has entered into an agreement with CCC to participate in the first handler marketing certificate program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the Upland Cotton First Handler Agreement and instructions issued by CCC.

§ 1427.55 Upland cotton first handler agreement.

(a) Payments in accordance with this subpart shall be made available to eligible first handlers who have entered into an Upland Cotton First Handler Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the Upland Cotton First Handler Agreement and instructions issued by CCC.

(b) Upland Cotton First Handler Agreements may be obtained from Cotton Branch, CRD, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205. In order to participate in the program authorized by this subpart, first handlers must execute the Upland Cotton First Handler Agreement and forward an original and two copies to KCCO.

§ 1427.56 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter.

§ 1427.57 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for upland cotton determined in accordance with § 1427.25 and the loan repayment rate determined in accordance with § 1427.10 and the Upland Cotton First Handler Agreement. A coarse count adjustment shall be applied in accordance with § 1427.25(f) and the Upland Cotton First Handler Agreement. Payment rates for eligible cotton other than upland cotton baled lint shall be based on a percentage of the basic rate for baled lint, exclusive of coarse count adjustment, as specified in the Upland Cotton First Handler Agreement.

§ 1427.58 Payment.

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.57, by

(2) The net weight (gross weight minus the weight of bagging and ties), determined as specified in the Upland Cotton First Handler Agreement, of eligible upland cotton that is purchased by an eligible first handler for either domestic consumption or export during a period in which a payment rate is established.

(b) Eligible upland cotton will be considered to be purchased by the first handler on the date title to the cotton passes to the first handler, as determined by CCC.

(c) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, as required by the provisions of the Upland Cotton First Handler Agreement and instructions issued by CCC.

Subpart—Upland Cotton User Marketing Certificate Program Regulations

§ 1427.100 Applicability.

(a) The regulations of this subpart are applicable during the period beginning August 1, 1991 and ending July 31, 1996. These regulations set forth the terms and conditions under which the Commodity Credit Corporation ("CCC") shall make payments, in the form of commodity certificates ("certificates") to eligible domestic users and exporters of upland cotton who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC to participate in the upland cotton user marketing certificate program in accordance with section 103B(a)(5)(B) of the Agricultural Act of 1949, as amended.

(b) If, during the period beginning August 1, 1991, and ending July 31, 1996, CCC determines that, for any consecutive 4-week period, the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch ("M 1–3/32 inch") cotton, delivered C.I.F. (cost, insurance and freight) northern Europe ("U.S. Northern Europe price") exceeds the Friday through Thursday average price quotation for the five lowest-priced growths, as quoted for M 1–3/32 inch cotton, delivered C.I.F. northern Europe ("Northern Europe price") by more than 1.25 cents per pound, then CCC shall make payments in accordance with the provisions of this subpart to eligible domestic users and exporters of upland cotton.

(c) Additional terms and conditions are set forth in the Upland Cotton Domestic User/Exporter Agreement which must be executed by the domestic user or exporter in order to receive such payments.

(d) Forms which are used in administering the upland cotton user marketing certificate program shall be prescribed by CCC.

§ 1427.101 Administration.

(a) The upland cotton user marketing certificate program shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, or Administrator, ASCS or a designee, and shall be carried out in the field by ASCS's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO shall preclude the Executive Vice President, CCC, or a designee, or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, or the Administrator, ASCS, or a designee, may authorize KCCO or KCMO to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the upland cotton user marketing certificate program.

(e) A representative of CCC may execute upland cotton user marketing certificate payment applications, Upland Cotton Domestic User/Exporter Agreements and related documents only under the terms and conditions determined and announced by CCC.

(f) Certificate payment applications, Upland Cotton Domestic User/Exporter Agreements and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1427.102 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in sections 1427.3 and 1427.52 of this part and part 1413 of this chapter shall also be applicable.

Current shipment price means, during the period in which two daily price quotations are available for the growths quoted for Middling one and three thirty-seconds inch cotton ("M 1–3/32"), C.I.F. (cost, insurance and freight) northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Forward shipment price means, during the period in which two daily price quotations are available for the growths quoted for M 1–3/32 inch cotton, C.I.F. northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

New crop cotton means upland cotton planted during the calendar year that includes the August 1 that begins the next marketing year.

Northern Europe current price means the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1–3/32 inch cotton, C.I.F. northern Europe.

Northern Europe forward price means the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

Northern Europe price means, during the period when only one daily price quotation is available for the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

Old crop cotton means upland cotton planted during or prior to the calendar year that includes the August 1 that begins the current marketing year, but planted no earlier than January 1, 1991.

U.S. Northern Europe current price means the average for the preceding Friday through Thursday of the current shipment prices for the lowest-priced United States growth as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

U.S. Northern Europe forward price means the average for the preceding Friday through Thursday of the forward shipment prices for the lowest-priced United States growth as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

U.S. Northern Europe price means, during the period when only one daily price quotation is available for the United States growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, the average for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

§ 1427.103 Eligible and ineligible upland cotton.

(a) For the purposes of this subpart, eligible upland cotton is domestically produced upland cotton baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade, which is purchased by an eligible domestic user or sold for

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export by an eligible exporter under a written contract entered into on or after August 1 1991 and on or before July 31, 1996, during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect and which is delivered to the eligible domestic user or exported by the eligible exporter by not later than September 30, 1996.

(b) For the purposes of this subpart, ineligible upland cotton is:

(1) Cotton for which a written contract for purchase or sale was entered into prior to the week in which a Northern Europe forward price for new crop cotton was available for four consecutive weeks;

(2) Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(3) Loose;

(4) Reprocessed gin motes; and

(5) Imported cotton.

§ 1427.104 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons, including producers or cooperative marketing associations approved in accordance with part 1425 of this chapter, shall be considered to be eligible domestic users and exporters of upland cotton:

(1) A person regularly engaged in purchasing eligible upland cotton for processing such cotton in the United States ("domestic user"), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program; or

(2) A person regularly engaged in selling eligible upland cotton for exportation from the United States for processing such cotton outside the United States ("exporter"), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

§ 1427.105 Upland Cotton Domestic User/Exporter Agreement.

(a) Payments in accordance with this subpart shall be made available to eligible domestic users and exporters who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

(b) Upland Cotton Domestic User/Exporter Agreements may be obtained from Cotton Branch, CRD, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205. In order to participate in the program authorized in this subpart, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward an original and two copies to KCCO.

§ 1427.106 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter.

§ 1427.107 Payment rate.

(a) For contracts for upland cotton purchased by domestic mills or sold for export by exporters entered into on or after August 1, 1991, and on or before July 31, 1996, the payment rate for the purposes of calculating payments made available in accordance with this subpart shall be determined by CCC as follows:

(1) During the period when only the Northern Europe price is available:

(i) For contracts for purchase or sale of upland cotton entered into between August 1 of the calendar year in which the crop was planted and the day prior to the day on which the Northern Europe current price and the Northern Europe forward price first become available which specify delivery of old crop cotton by not later than September 30 of the year following the year in which the crop was planted, the payment rate shall be the difference in the fourth week between the U.S. Northern Europe price minus 1.25 cents per pound, and the Northern Europe price. If the upland cotton contracted for purchase or sale which was actually delivered was new crop cotton, the payment rate shall be zero.

(ii) For contracts for purchase or sale of upland cotton that specify delivery of new crop cotton, the payment rate shall be zero.

(2) During a period when both the Northern Europe current price and the Northern Europe forward price are available and the Northern Europe current price and the Northern Europe forward price have been available for four consecutive weeks:

(i) For contracts for purchase or sale of upland cotton which specify delivery of old crop cotton by not later than September 30 of the year following the year in which the crop was planted, the payment rate shall be the difference in the fourth week between the U.S. Northern Europe current price minus 1.25 cents per pound, and the Northern Europe current price.

(ii) For contracts for purchase or sale of upland cotton which specify delivery of old crop cotton after September 30 of the year following the year in which the crop was planted, the payment rate shall be the difference in the fourth week between the U.S. Northern Europe forward price minus 1.25 cents per pound, and the Northern Europe forward price.

(iii) For contracts for purchase or sale of upland cotton which specify delivery of new crop cotton, the payment rate shall be the difference in the fourth week between the U.S. Northern Europe forward price minus 1.25 cents per pound, and the Northern Europe forward price.

(iv) If the upland cotton contracted for purchase or sale in accordance with paragraphs (a)(2)(i) through (a)(2)(iii) which was actually delivered was not produced in the same crop year as specified in the contract, the payment rate for such cotton shall be:

(A) For contracts entered into in accordance with paragraph (a)(2)(i), the lesser of the payment rate established in paragraph (a)(2)(i), or the difference in the fourth week of the comparable period between the U.S. Northern Europe forward price minus 1.25 cents per pound, and the Northern Europe forward price.

(B) For contracts entered into in accordance with paragraph (a)(2)(ii), the lesser of the payment rate established in paragraph (a)(2)(ii), or the difference in the fourth week of the comparable period between the U.S. Northern Europe current price minus 1.25 cents per pound, and the Northern Europe current price.

(C) For contracts entered into in accordance with paragraph (a)(2)(iii), the lesser of the payment rate established in paragraph (a)(2)(iii), or the difference in the fourth week of the comparable period between the U.S. Northern Europe current price minus 1.25 cents per pound, and the Northern Europe current price.

(b) Notwithstanding the provisions in paragraph (a), whenever a 4-week period contains a combination of Northern Europe prices only for one to three weeks and Northern Europe current prices and Northern Europe forward prices only for one to three weeks such as occurs in the spring when the Northern Europe price is succeeded by the Northern Europe current price and the Northern Europe forward price ("spring transition period"), and at the start of a new marketing year when the Northern Europe current price and the Northern Europe forward price are succeeded by the Northern Europe price ("marketing year transition"):

(1) In the case of the spring transition period, the Northern Europe current price and the U.S. Northern Europe current price in combination with the Northern Europe price and the U.S. Northern Europe price shall be taken into consideration during such 4-week periods to determine whether a payment is triggered. The Northern Europe current price and the U.S. Northern Europe current price in the fourth week shall be used to establish the payment rate.

(2) In the case of the marketing year transition period, the Northern Europe forward price and the U.S. Northern Europe forward price in combination with the Northern Europe price and the U.S. Northern Europe price shall be taken into consideration during such 4-week periods to determine whether a payment is triggered. The Northern Europe price and the U.S. Northern Europe price in the fourth week shall be used to establish the payment rate.

(c) Notwithstanding the requirements of this section, with respect to contracts for purchase or sale that specify delivery of the cotton by not later than September 30 of the applicable year, the domestic user or exporter has until October 31 of such year to complete the delivery to the domestic user or to export the cotton. If the delivery or exportation is not completed by October 31, the cotton will be ineligible for payment.

(d) For the purposes of this subpart—

(1) With respect to the determination of the U.S. Northern Europe price, the U.S. Northern Europe current price, the U.S. Northern Europe forward price, the Northern Europe price, the Northern Europe current price and the Northern Europe forward price—

(i) If daily quotes are not available for one or more days of the 5-day period, the available quotes during the period will be used.

(ii) If no daily quotes are available for the entire 5-day period for either or both the U.S. Northern Europe price and the Northern Europe price during the period when only one daily price quotation is available for each growth quoted for M 1 3/32 inch cotton, delivered C.I.F. northern Europe; or the U.S. Northern Europe current price and the Northern Europe current price; or the U.S. Northern Europe forward price and the Northern Europe forward price, that week will not be taken into consideration, in which case no payment rate shall be established.

(2) With respect to the determination of the U.S. Northern Europe price, U.S. Northern Europe current price, and the U.S. Northern Europe forward price, if a quote for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 1 3/32 inch cotton, delivered C.I.F. northern Europe, is not available for each or any day of the 5-day period, the available quote will be used.

§ 1427.108 Payment.

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.107, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined in accordance with paragraph (b) of this section, of eligible upland cotton that is purchased by an eligible domestic user or sold by an eligible exporter for exportation from the United States during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be determined based upon:

(1) For domestic users, the weight on which settlement for payment was based ("landed mill weight");

(2) For exporters, the original warehouse weight or the ginned weight if the cotton was no placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible upland cotton will be considered purchased by the domestic user or sold by the exporter on the date the contract for purchase or sale is confirmed in writing.

(d) Payments in accordance with this subpart shall be available upon application for payment and submission of supporting documentation, including proof of receipt of the eligible cotton by the domestic user or proof of export by the exporter, as required by the provisions of the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

Signed at Washington, DC on June 13, 1991.

Keith D. Bjerke,

Executive Vice President Commodity Credit Corporation.

[FR Doc. 91-14485 Filed 6-13-91; 2:36 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0870-89]

RIN 1545-AO24

Earnings Stripping (Section 163(j))

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to section 163(j) of the Internal Revenue Code, regarding "earnings stripping." This action is necessary because of changes to the applicable tax law made by the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, 103 Stat. 2106.

DATES: Written comments must be received by August 19, 1991. Requests to speak at a public hearing (with outlines of oral comments) scheduled for September 25, 1991, must be received by September 4, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines of comments to be presented, to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attention: CC:CORP:T:R (INTL-0870-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation generally, phone Jack Feldman, at (202) 566-6645, or Jeffrey Vinnik, at (202) 566-6442; concerning § 1.163(j)-6, phone Elizabeth Karzon, at (202) 566-6442 (not toll-free calls), or write to the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attention: CC:CORP:T:R (INTL-0870-89), Washington, DC 20044. Concerning the hearing, phone Felicia Daniels, Regulations Unit, at (202) 566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, attn: Desk Officer for the

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Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.163(j)–5(d). This information is required by the Internal Revenue Service to verify elections made by the taxpayer. The likely respondents are businesses or for profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on information is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 1,196 hours.

The estimated annual burden per respondent varies from 20 minutes to 40 minutes, depending on individual circumstances, with an estimated average of .52 hours.

Estimated number of respondents: 2,300.

Estimated annual frequency of responses: 1.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 163(j) of the Internal Revenue Code.

Explanation of Provisions

Section 163(j) was added to the Internal Revenue Code of 1986 by the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, 103 Stat. 2106, to prevent erosion of the U.S. base by means of excessive deductions for interest paid by a taxable corporation to a tax exempt (or partially tax exempt) related person. The payment of excessive deductible interest that is tax exempt (or partially tax exempt) in the hands of a related person is referred to as "earnings stripping." These proposed regulations implement section 163(j) as follows.

Section 1.163(j)–1

Section 1.163(j)–1(a) provides the primary operative rule that no deduction shall be allowed for interest expense paid or accrued directly or indirectly by a corporation to a related person if no tax is imposed with respect to such interest. The disallowance rules do not apply if the payor corporation is either an S corporation or a foreign corporation (except as provided under § 1.163(j)–6, relating to foreign corporations with effectively connected income). Paragraph (a)(2) provides that the amount of disallowed interest expense (the year's disallowed interest expense) is limited to the lesser of exempt related person interest expense (defined in paragraph (a) of § 1.163(j)–2) or excess interest expense (defined in paragraph (b) of § 1.163(j)–2). Paragraph (a)(3) provides that interest expense disallowed in a taxable year is carried forward to succeeding taxable years as disallowed interest expense carryforwards.

Paragraph (b) provides that, in addition to the limitation on disallowance provided under paragraph (a)(2), a deduction for exempt related person interest expense shall not be disallowed for any taxable year in which the debt-equity ratio of the payor corporation is less than or equal to 1.5 to 1 determined on the last day of that year. Although section 163(j)(2)(A)(ii) grants the Service the authority to determine the debt-equity ratio more frequently than annually, a more frequent determination was not adopted because many taxpayers might have difficulty in obtaining the required information prior to the close of their taxable years. However, to prevent possible manipulation of a strictly annual determination of the debt equity ratio, paragraphs (b)(4) and (c)(5) of § 1.163(j)–3 provide anti-avoidance rules.

Paragraph (c) provides that disallowed interest expense carryforward is allowable in the carryforward year only to the extent of any excess limitation for that year as defined in § 1.163(j)–2(c). In determining whether a deduction is allowed in a carryforward year for disallowed interest expense carryforward, the payor corporation's debt-equity ratio in such year is not relevant.

Paragraph (d) provides rules for the carryforward of excess limitation. Excess limitation is carried forward to each of the three succeeding taxable years and reduces (and is also reduced by) excess interest expense in a carryforward year without regard to whether the payor corporation has exempt related person interest expense or whether the payor corporation satisfies the debt-equity ratio safe harbor test in a carryforward year. Pre-effective date notional excess limitation may be carried forward to post-effective date taxable years in certain cases, as provided under § 1.163(j)–10(c).

Paragraph (e) provides that the disallowance of interest under section 163(j) does not affect the payor corporation's determination of earnings and profits.

Paragraph (f) provides a general anti abuse rule to prevent the avoidance of section 163(j) and these regulations.

Section 1.163(j)–2

Section 1.163(j)–2 provides definitions. Paragraph (a) defines "exempt related person interest expense" as interest paid or accrued by a corporation described in § 1.163(j)–1 to a related person (as defined in paragraph (g)) if no tax is imposed on such interest under the rules of § 1.163(j)–4. Paragraph (b) defines "excess interest expense" as the excess of the payor corporation's net interest expense over 50 percent of its adjusted taxable income plus the amount of any excess limitation carryforward. Paragraph (c) defines "excess limitation" as the excess of 50 percent of a corporation's adjusted taxable income over its net interest expense. Paragraph (d) defines "net interest expense" as the excess of a corporation's interest expense over its interest income for the taxable year. Net interest expense is computed without regard to any disallowed interest expense carryforward.

Paragraph (e) provides rules for the determination of interest income and expense, including rules dealing with the treatment of bond premium and market discount and rules for determining the interest income and expense of a corporate partner in a partnership. Under these rules, a corporate partner is treated as the payor of its share of the partnership's interest expense. The Internal Revenue Service plans to publish rules which treat interest equivalents as interest for purposes of section 163(j) and solicits comments regarding the scope and operation of such rules. These rules will generally be prospective with respect to transactions entered into in the ordinary course of business. However, in the case of transactions entered into with a purpose of avoiding section 163(j), the rules regarding interest equivalents may be retroactive.

Paragraph (e) also contains an anti-avoidance rule providing that certain substitute payments under section 1058 will be treated as interest expense.

Paragraph (f) defines adjusted taxable income as taxable income computed without regard to carryforwards and disallowances under section 163(j) and with certain adjustments. Some of these adjustments are stipulated in section 163(j); others have been added pursuant to regulatory authority granted by section 163(j)(6)(A)(ii). In general, the purpose of these adjustments is to modify taxable income to more closely reflect the cash flow of the corporation. Thus, for example, paragraph (f) provides for an addback of interest excluded from gross income under section 103, since such amounts increase cash available to the payor corporation. Similarly, cash expended with respect to amounts which are permanently disallowed as deductions under sections 265 and 279 are subtracted under paragraph (f) in computing adjusted taxable income, since such expenditures have reduced the amount of available cash to service loans. Paragraph (f)(4) provides special rules dealing with the effect of an adjusted taxable loss on other computations required by these regulations.

Except as provided in § 1.163(j)–6, only the adjustments prescribed in paragraph (f) shall be made in determining adjusted taxable income. The Service, however, solicits comments on whether particular adjustments should either be added to, or deleted from, paragraph (f). Such comments should address, among other issues, the administrative burden of the proposed rules and any suggested revisions.

Under paragraph (g)(1), a related person is defined as a person related to the taxpayer within the meaning of section 267(b) or 707(b)(1). For this purpose, the attribution rules of section 267(c) apply. In determining whether persons are related, the substance of ownership, rather than its form, controls. Under paragraph (g)(3), the date for testing relatedness is the date upon which an item of interest expense accrues. Thus, changes in the relationship between the payor corporation and the payee after the accrual date are irrelevant. The daily accrual rule of section 1272(a) applies, regardless of the taxpayer's method of accounting. Paragraph (g)(4) provides special rules for certain partnerships regarding relatedness.

Section 1.163(j)–3

Section 1.163(j)–3 provides rules for the computation of the debt-equity ratio. Debt is determined under paragraph (b)(1) in accordance with generally applicable tax principles. Thus, in general, a contingent liability for financial accounting purposes that has not accrued for tax purposes will not be treated as a liability for purposes of section 163(j). Paragraph (b)(1) also has special rules for discount obligations consistent with section 163(j)(2)(C)(ii). Paragraph (b)(2)(i) provides a limited exclusion from debt for certain short term liabilities, and paragraph (b)(2)(ii) provides a similar exclusion for commercial financing liabilities.

Paragraph (b)(3) provides that liabilities incurred by a partnership are treated as incurred by each partner in accordance with the rules of section 752. Paragraph (b)(4) provides an anti-rollover rule to prevent abuse by a corporation of the year-end determination of the debt-equity ratio.

Equity is defined under paragraph (c)(1) as the sum of money and the adjusted basis of assets (determined according to generally applicable tax principles) reduced, but not below zero, by the corporation's debt. Paragraph (c)(2) provides for adjustments to be made to the basis of stock in certain nonincludible corporations based on the principles of section 864(e)(4). Under paragraph (c)(3), assets are reduced by the amount of short term liabilities excluded from debt under paragraph (b)(2). Paragraph (c)(4) provides that in determining the assets of a corporation that owns an interest in a partnership, the partner shall treat the adjusted basis of its partnership interest as an asset. Paragraph (c)(5) provides a general anti-avoidance rule, plus an anti-stuffing rule to prevent possible abuse by a corporation of the year-end determination of debt-equity ratio.

Paragraph (d) provides that the spot rate on the last day of the taxable year is used to translate the debt and equity of a qualified business unit with a non-dollar functional currency.

Comments are solicited with respect to determining the debt and assets of financial institutions and insurance companies, including the effect of reserves on such determinations.

Section 1.163(j)–4

Section 1.163(j)–4 provides rules addressing whether interest paid or accrued is subject to U.S. tax. Paragraph (a) states the general rule that interest paid or accrued by a corporation is not subject to tax for purposes of section 163(j) if no U.S. tax is imposed under subtitle A of the Internal Revenue Code or if U.S. tax is reduced under a treaty. Paragraph (b) provides that income subject to U.S. tax at a reduced rate under a treaty will be treated in part as interest subject to tax and in part as tax-exempt interest.

Paragraph (c) provides that the determination as to whether interest is subject to U.S. tax is made on the date the interest is received or accrued by the payee, whichever is relevant for purposes of taxing the payee.

Paragraph (d) provides rules under which certain interest paid to special entities, including controlled foreign corporations ("CFCs"), passive foreign investment companies ("PFICs"), foreign personal holding companies, and DISCs, is treated as subject to U.S. tax. See H.R. Rep. No. 247, 101st Cong., 1st Sess. 1240, 1244 (1989) (hereafter, "House Report"). Paragraph (d)(1) generally provides that interest paid or accrued to a CFC is treated as subject to U.S. tax to the extent that such interest is included in the CFC's net foreign personal holding company income under § 1.954–1T(c) and results in an inclusion in the gross income of a U.S. shareholder under section 951(a)(1)(A)(i). A similar rule is provided for foreign personal holding companies in paragraph (d)(3). Interest paid or accrued to a PFIC that is not a CFC, with respect to which a QEF election has been made by a U.S. shareholder, is treated as subject to U.S. tax to the extent that such interest is included in the QEF's ordinary earnings and results in an inclusion in such shareholder's income under section 1293(a)(1)(A). Producer's loan interest that is treated as a deemed distribution to a DISC's shareholder under section 995(b)(1)(A) also is treated as subject to U.S. tax.

Section 1.163(j)–5

Section 1.163(j)–5 implements the directive of section 163(j)(6)(C) that all members of the same affiliated group be treated as one taxpayer. In order to implement this directive, the basic rules of these regulations have been modified as necessary to carry out the purposes of section 163(j). See section 163(j)(7) (A) and (B).

Section 1.163(j)–5(b) applies the rules of section 163(j) (other than the debt-equity ratio computations discussed below) to consolidated groups. For this purpose, all of the members of the consolidated group make the computations required by section 163(j) and these regulations on a consolidated basis. If a corporation ceases to be a member of the consolidated group, any disallowed interest expense carryforward of the group is apportioned to the member based on the ratio of the member's exempt related person interest expense to the group's exempt related person interest expense. However, corporations ceasing to be members of the group generally may not carry forward any portion of the group's excess limitation carryforward to separate return years.

Section 1.163(j)–5(c) provides comparable rules applicable to other affiliated groups. For this purpose, section 1.163(j)–5(a)(3) expands the definition of affiliated groups under section 1504(a) by applying the attribution rules of section 318 to determine stock ownership. Thus, an affiliated group under these rules may

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include a consolidated group, and the consolidated group is treated as a single member of the affiliated group for purposes of making computations for the affiliated group. Section 1.163(j)–5(c) requires each group member to take into account the relevant items of income, expense, and carryover of all group members. If members of an affiliated group have different taxable years, then the computations required by section 163(j) are separately determined for each member on an affiliated group basis by aggregating the relevant items for all group members whose taxable years end with or within the taxable year of the member making the computations.

Section 1.163(j)–5(c)(2) provides a four step process for making the affiliated group computations and for allocating amounts among group members. The four step process is necessary because the group members do not all join in filing the same return.

Section 1.163(j)–5(d) generally provides that for purposes of applying the debt-equity ratio safe harbor test described in § 1.163(j)–1(b), the debt-equity ratio of a corporation that is a member of an affiliated group (whether or not a consolidated group) is determined by aggregating the separately determined debt and assets of the members (adjusted as described in paragraphs (d)(2) and (d)(3)). Debt and assets arising from certain interaffiliate transactions are disregarded.

Section 163(j)–5(e) provides special rules that address distortions in the debt-equity ratio that may arise in a qualified stock purchase, as defined in section 338(d)(3), if no election is made to step up the basis of the assets of the target corporation and its affiliates. (This distortion may arise because the affiliated group rules of section 163(j) look through to the underlying assets of an acquired corporation rather than its stock basis.) If the purchasing corporation so elects, the special rules of § 1.163(j)–5(e) look to the adjusted basis of the target's stock (adjusted for liabilities) and amortize these amounts (the "special basis") over a fixed period. At the end of any taxable year, a taxpayer may elect out of the fixed stock write-off method and use the adjusted basis of the assets of the target corporation in determining the group's debt-equity ratio.

The Service recognizes the complexity of the affiliated group rules in § 1.163(j)–5 and solicits comments on how these rules might be improved, simplified or clarified, whether in the context of consolidated groups or otherwise. Comments are also solicited as to whether, under what circumstances, and to what extent it might be appropriate to extend the fixed stock write-off method to nontaxable acquisitions of stock or assets. Finally, the Service is considering whether and how to impose a conformity requirement under paragraph (e) of this section that would prevent a group from selectively applying the fixed stock write-off method only when the purchase price of a target company exceeds the target's basis in its assets. The Service solicits comments on the appropriateness of such a rule, and on how such a rule might be implemented.

Section 1.163(j)–6

This section limits the carryover of certain tax attributes by corporations which join consolidated groups or affiliated groups (as defined in § 1.163(j)–5(a)), as well as with respect to transactions described in section 381(a).

Paragraph (a) limits the use of disallowed interest expense carried forward from non-affiliation years by corporations joining a group or that transfer or distribute their assets in a transaction described in section 381(a). The only restriction under these regulations on the use of such disallowed interest expense is with respect to the use of non-affiliation year excess limitation carryforward to absorb the disallowed interest expense. The same limitation applies with respect to corporations joining groups, whether the groups are consolidated groups or affiliated groups. See §§ 1.163(j)–5(b) (relating to consolidated groups) and (c) (relating to other affiliated groups). Where there is a section 382 ownership change, the disallowed interest expense carryforward may be limited by the section 382 limitation. In addition, the deductibility of a corporation's disallowed interest expense carried forward to a taxable year after it joins a consolidated group may be limited by the separate return limitation year rules under § 1.1502–15.

Paragraph (b)(1) limits the use of excess limitation carried forward from non-affiliation years by corporations joining a group. The limitation is similar to the limitation on the carryover of net operating losses under the "SRLY" rules of § 1.1502–21(c) (i.e., generally such carryforward may be used by the corporation to the extent that it would have been available for use had no affiliation occurred). If a consolidated group acquires another group, whether or not consolidated, the amount of the acquired group's excess limitation carryforward (if any) from non-affiliation years that may be used by the consolidated group is determined by treating the former members of the acquired group as a single member of the acquiring group. Computations with respect to the acquired group are made under § 1.163(j)–5(c), and the results of these computations are taken into account by the group under § 1.163(j)–5(b).

Paragraph (b)(2) provides that a corporation's excess limitation carryforward from a non-affiliation year is reduced to zero immediately after a transfer or distribution of its assets in a transaction described in section 381(a) (other than a transaction described in section 368(a)(1)(F)). Paragraph (b)(3) provides an anti-abuse rule. Paragraphs (c) and (d) provide definitions and anti-duplication rules.

The Service recognizes the complexity of the affiliated group rules and solicits comments on how these rules might be improved, simplified or clarified, whether in the context of consolidated groups or otherwise.

Section 1.163(j)–7

This section addresses the interaction of section 163(j) and certain other Code provisions. Paragraph (a) provides that interest expense is not considered paid or accrued for purposes of section 163(j) until such interest would be deductible but for such section.

Paragraph (b) addresses other Code provisions which permanently disallow interest, which defer the deductibility of interest, or which limit the deductibility of certain deductions including interest, specifically the "at risk" rules under section 465 and the passive activity loss rules under section 469. In each of these cases, section 163(j) is applied after the application of such provisions. Thus, section 163(j) will not apply to interest expense which is permanently disallowed as a deduction under provisions such as sections 265 and 279. Where the deductibility of interest expense is deferred as under sections 163(e)(3) and 267(a)(3), section 163(j) will not apply until a deduction for such interest expense is otherwise allowable. Similarly, sections 465 and 469 are applied before section 163(j) to disallow interest expense. Once section 163(j) is applied, section 469 is not reapplied.

Paragraph (b)(4) addresses the interaction of section 163(j) and Code provisions relating to the capitalization of certain interest expense. Under this paragraph, the capitalization rules are applied before section 163(j). For all purposes under section 163(j), capitalized interest is not treated as interest expense. It is anticipated that regulations to be issued under section 263A(f) will provide: (1) That exempt related person interest expense which is attributable to traced debt will be capitalized; and (2) with respect to interest expense that is not attributable to traced debt, interest expense that is not exempt related person interest expense will be capitalized before interest expense that is exempt related person interest expense.

The Service proposes to adopt these rules for capitalized interest, notwithstanding the legislative history of section 163(j) (see House Report at 1244), because it believes that other approaches would require substantial additional complexity. The Service will revisit this decision if it believes that the proposed rule gives rise to significant tax avoidance.

Paragraph (b)(5) provides that section 246A is applied before section 163(j). Any reduction in the dividends received deduction under section 246A reduces interest expense taken into account under section 163(j).

Section 1.163(j)–8

This section concerns the application of section 163(j) to foreign corporations that have incomes gain, or loss that is effectively connected, or deemed effectively connected, with the conduct of a U.S. trade or business. A foreign corporation is permitted to allocate a portion of its worldwide interest expense to the effectively connected income of its U.S. trade or business. This section disallows the exempt related person interest expense of a foreign corporation based on the same principles that apply to disallow a domestic corporation's exempt related person interest expense. To determine if interest allocated to the effectively connected income of the U.S. trade or business is paid to an exempt related person, the rules of section 884(f) apply. Thus, interest paid by the U.S. trade or business (within the meaning of section 884(f)(1)(A)) is treated as paid directly to the recipient of the interest, and will be treated as paid to a related person if the recipient is related to the foreign corporation. Excess interest (within the meaning of section 884(f)(1)(B)) is treated as paid by a wholly owned domestic subsidiary of the foreign corporation to the foreign corporation, and hence is treated as paid to a related person. Additional rules provide that this section does not affect the computation of a foreign corporation's effectively connected earnings and profits or U.S. net equity for purposes of section 884.

Section 1.163(j)–9

The Service expects to publish regulations addressing guarantees in the near future. The rules with respect to guarantees will be prospective. Nonetheless, in cases presenting fact patterns similar to that described in *Plantation Patterns, Inc.* v. *Commissioner*, 462 F.2d 712 (5th Cir.), *cert. denied*, 409 U.S. 1076 (1972), the Service will continue to seek to characterize purported guaranteed debt as equity. The Service's position on back-to-back loans is set forth in revenue rulings including Rev. Rul. 84–152, 1984–2 C.B. 381, Rev. Rul. 84–153, 1984–2 C.B. 383, and Rev. Rul. 87–89, 1989–2 C.B. 195.

Comments are solicited on rules regarding guarantees and back-to-back loans.

Section 1.163(j)–10

In general, section 163(j) provides for disallowance of interest paid or accrued in taxable years beginning after July 10, 1989. However, interest that would otherwise be disallowed under the general rule will not be disallowed if paid with respect to a fixed-term obligation outstanding on July 10, 1989 (a grandfathered obligation). An obligation will cease to be treated as grandfathered if its term is extended, or if it is revised in a transaction that results in the obligee being deemed to have made an exchange of debt instruments under section 1001 of the Code. Under an anti-avoidance rule, a grandfathered obligation also will cease to be so treated if it is acquired by a person related to the obligor as part of a transaction that otherwise would circumvent the purposes of the effective date rules.

A limited grandfathering also exists under section 163(j) for interest paid with respect to obligations issued pursuant to a written contract binding on July 10, 1989. A contract will be treated as binding for this purpose only if it was enforceable by an unrelated third party on July 10, 1989, and at all times thereafter until the obligation is issued.

A very limited transition rule exists with respect to demand obligations outstanding on July 10, 1989. Interest paid or accrued prior to September 1, 1989, with respect to such demand loans shall not be disallowed by section 163(j) even though it was paid or accrued in a taxable year beginning after July 10, 1989.

A final effective date rule concerns the computation of excess limitation carryforward with respect to the first three taxable years to which section 163(j) applies. In computing a taxpayer's disallowed interest expense under section 163(j), the taxpayer may take into account amounts that would have been excess limitation carryforward had the statute been in effect with respect to interest paid or accrued in taxable years beginning after July 10, 1989.

General Comments

The Service solicits comments on whether, and to what extent, the rules of section 163(j) and these regulations comport with the arm's length standards for "thin capitalization." In particular, the Service invites comments on the proper application of the arm's length standard to related party debt; on the use of a cash-flow versus a debt-equity standard; and on the problems of tax administration in this area. See H.R. Conf. Rep. No. 386, 101st Cong., 1st Sess. 568–570 (1989).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on September 25, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal authors of these regulations are Jack Feldman and Jeffrey Vinnik. However, the principal author of § 1.163(j)–8 is Elizabeth Karzon. Messrs. Feldman and Vinnik and Ms. Karzon are of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury

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Department participated in developing the regulations.

List of Subjects in 26 CFR 1.161–1 through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

Proposed amendments to the regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX REGULATIONS; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PARAGRAPH 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

PAR. 2. Sections 1.163(j)–0 through 1.163(j)–10 are added as follows:

§ 1.163(j)–0 Table of contents.

This section contains a listing of the major headings of §§ 1.163(j)–1 through 1.163(j)–10.

§ 1.163(j)–1 Limitation on deduction for certain interest paid or accrued by a corporation to related persons.

(a) In general.
(1) Deduction for exempt related person interest expense disallowed.
(2) Limitation on disallowance of deduction.
(3) Disallowed interest expense carryforward.
(b) Debt-equity ratio safe harbor test.
(c) Treatment of disallowed interest expense carryforward.
(1) In general.
(2) Effect of debt-equity safe harbor.
(d) Carryforward of excess limitation.
(e) Effect on earnings and profits.
(f) Anti-avoidance rule.
(g) Examples.
(h) Cross-references.

§ 1.163(j)–2 Definitions.

(a) Exempt related person interest expense.
(b) Excess interest expense.
(c) Excess limitation.
(d) Net interest expense.
(e) Interest income and expense.
(1) In general.
(2) Treatment of bond premium and market discount.
(3) Interest equivalents. [Reserved]
(4) Interest income of partnerships.
(5) Interest expense of partnerships.
(6) Certain substitute payments.
(f) Adjusted taxable income.
(1) In general.
(2) Additions.
(3) Subtractions.
(4) Effect of adjusted taxable loss.
(g) Related persons.
(1) In general.
(2) Anti-abuse rule.
(3) When related person status is tested.
(4) Special rule for certain partnerships.
(5) Examples.

§ 1.163(j)–3 Computation of debt-equity ratio.

(a) In general.
(b) Debt.
(1) In general.
(2) Exclusions.
(3) Liabilities of a partnership.
(4) Anti-rollover rule.
(c) Equity.
(1) In general.
(2) Treatment of stock of certain nonincludible corporations.
(3) Reduction in assets for excluded liabilities.
(4) Partnership interests owned by a corporation.
(5) Anti-avoidance rule.
(d) Determining the debt and equity of a non-dollar functional currency QBU.

§ 1.163(j)–4 Interest not subject to tax.

(a) In general.
(b) Partially exempt interest.
(c) Date for determining whether interest is subject to U.S. tax.
(d) Certain interest paid to special entities.
(1) Controlled foreign corporations.
(2) Passive foreign investment companies.
(3) Foreign personal holding companies.
(4) Producer's loan interest paid to a DISC.

§ 1.163(j)–5 Affiliated group rules.

(a) Certain related corporations treated as one taxpayer.
(1) Scope.
(2) Affiliated corporations.
(3) Certain unaffiliated corporations.
(4) Tie-breaker rules.
(b) Operative rules for consolidated groups.
(1) In general.
(2) Items determined on a consolidated basis.
(3) Exempt related person interest expense.
(4) Deferred intercompany gain.
(5) Carryforwards to current taxable year.
(6) Members leaving the group.
(7) Examples.
(c) Operative rules for other groups.
(1) In general.
(2) Determination and allocation of group items.
(3) Examples.
(d) Debt-equity ratio of related corporations treated as one taxpayer.
(1) In general.
(2) Adjustments to group members' debt.
(3) Adjustments to group members' assets.
(e) Election to use fixed stock write-off method for certain stock acquisitions.
(1) In general.
(2) Post-acquisition adjustments to special basis.
(3) Election out of fixed stock write-off method.
(4) Method for making elections.
(5) Definitions.
(6) Inclusion of target debt notwithstanding use of fixed stock write-off method.

§ 1.163(j)–6 Limitation on carryforward of tax attributes.

(a) Disallowed interest expense carryforward.
(1) Affiliated groups.
(2) Section 381(a) transactions.
(3) Section 382 and SRLY.
(c) Example.
(b) Excess limitation carryforward.
(1) Affiliated groups.
(2) Section 381(a) transactions.
(3) Anti-avoidance rules.
(c) Affiliation and non-affiliation years.
(1) In general.
(2) Predecessors and successors.
(3) Formation of affiliated groups.
(d) Anti-duplication rule.

§ 1.163(j)–7 Relationship to other provisions affecting the deductibility of interest.

(a) Paid or accrued.
(b) Coordination of section 163(j) and certain other provisions.
(1) Disallowed interest provisions.
(2) Deferred interest provisions.
(3) At risk rules and passive activity loss provisions.
(4) Capitalized interest expense.
(5) Reductions under section 246A.
(c) Examples.

§ 1.163(j)–8 Application of section 163(j) to certain foreign corporations.

(a) Scope.
(b) Disallowed interest expense.
(c) Definitions.
(1) In general.
(2) Net interest expense.
(3) Adjusted taxable income.
(4) Excess interest expense.
(5) Excess limitation.
(d) Determination of interest paid to a related person.
(e) Debt-equity ratio.
(f) Exemple.
(g) Coordination with branch profits tax.
(1) Effect on effectively connected earnings and profits.
(2) Effect on U.S. net equity.
(3) Example.

§ 1.163(j)–9 Guarantees and back-to-back loans. [Reserved]

§ 1.163(j)–10 Effective dates.

(a) In general.
(b) Exceptions.
(1) Interest paid on certain fixed-term obligations outstanding on July 10, 1989.
(2) Demand loans.
(c) Carryforward of excess limitation from pre-effective date taxable years to post-effective date taxable years.
(d) Examples.

§ 1.163(j)–1 Limitation on deduction for certain interest paid or accrued by a corporation to related persons.

(a) *In general*—(1) *Deduction for exempt related person interest expense disallowed.* Except as provided in this section, no deduction shall be allowed for exempt related person interest expense (as defined in § 1.163(j)–2(a)) paid or accrued during the taxable year directly or indirectly by—

(i) A domestic corporation (other than an S corporation as defined in section 1361), or

(ii) Under the special rules described in § 1.163(j)–8, a foreign corporation with income, gain, or loss that is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(2) *Limitation on disallowance of deduction.* The amount of exempt related person interest expense disallowed as a deduction in any taxable year (described hereafter as the year's "disallowed interest expense") shall not exceed the payor corporation's excess interest expense (as defined in § 1.163(j)–2(b)) for that year.

(3) *Disallowed interest expense carryforward.* Disallowed interest expense shall be carried forward to the succeeding taxable year (hereafter, a "disallowed interest expense carryforward"). A deduction for disallowed interest expense carryforward may be allowed as provided in paragraph (c) of this section.

(b) *Debt-equity ratio safe harbor test.* No deduction shall be disallowed under paragraph (a) of this section for exempt related person interest expense paid or accrued in any taxable year in which the payor corporation's debt-equity ratio (determined as provided in § 1.163(j)–3) is less than or equal to 1.5 to 1 on the last day of the taxable year.

(c) *Treatment of disallowed interest expense carryforward*— (1) *In general.* A deduction for disallowed interest expense carryforward is allowed in a carryforward year if and to the extent that there is excess limitation (as defined in § 1.163(j)–2(c)) for such year. Any disallowed interest expense carryforward not so deductible shall be carried forward to the succeeding taxable year.

(2) *Effect of debt-equity safe harbor.* The debt-equity ratio in a carryforward year is not relevant in determining whether disallowed interest expense carryforward is deductible in such year. Rather, disallowed interest expense carryforward is deductible only to the extent of the excess limitation for such year.

(d) *Carryforward of excess limitation.* If a corporation has excess limitation (as defined in § 1.163(j)–2(c)) for any taxable year, the amount of such excess limitation, reduced by disallowed interest expense carryforward to that year, shall be carried forward to each of the three succeeding taxable years. In each of those years, such carryforward shall reduce, and be reduced by, the amount, if any, of the corporation's excess interest expense for such year computed without regard to the carryforward. The excess limitation carryforward shall reduce, and be reduced by, excess interest expense in a carryforward year without regard to whether the corporation pays or accrues any exempt related person interest expense in that year, or whether the corporation satisfies the debt-equity ratio safe harbor test described in paragraph (b) of this section for that year. If a corporation has carryforwards from more than one taxable year, such carryforwards shall reduce, and be reduced by, excess interest expense in the order in which they arose. For purposes of all the reductions described in this paragraph, excess limitation, excess limitation carryforward, and excess interest expense shall not be reduced below zero. For rules regarding the effect of an adjusted taxable loss with respect to excess limitation carryforward, see § 1.163(j)–2(f)(4)(ii).

(e) *Effect on earnings and profits.* The disallowance and carryforward of a deduction for interest expense under this section shall not affect whether or when such interest expense reduces earnings and profits of the payor corporation.

(f) *Anti-avoidance rule.* Arrangements, including the use of partnerships or trusts, entered into with a principal purpose of avoiding the rules of section 163(j) and these regulations shall be disregarded or recharacterized to the extent necessary to carry out the purposes of section 163(j).

(g) *Examples.* The following examples illustrate the rules of this section.

Example 1 (i) A, a domestic corporation, is a wholly owned subsidiary of F, a foreign corporation. During its taxable year ending December 31, 1990, A has adjusted taxable income of $100, which includes $20 of interest income, and $80 of interest expense, of which $60 is paid or accrued to F. The balance of the interest expense is paid to unrelated persons. Interest paid to F by A is not subject to U.S. tax due to a tax treaty. A does not satisfy the debt-equity ratio safe harbor test in 1990, and has no excess limitation carried forward to that year.

(ii) A's excess interest expense for 1990 is $20, which is the difference between its net interest expense and 50 percent of its adjusted taxable income ($70 − $50 = $20). Since for 1990, the amount of A's exempt related person interest expense ($60) is greater than its excess interest expense ($20), a deduction for $20 of A's exempt related person interest expense is disallowed under paragraph (a) of this section. A's 1990 disallowed interest expense is carried forward to A's succeeding taxable year.

Example 2 (i) The facts are the same as in paragraph (i) of Example 1. In 1991, A has $120 of adjusted taxable income, net interest expense of $50, and $20 of disallowed interest expense carried forward from 1990. All of A's interest expense for 1991 is paid to unrelated persons. A does not satisfy the debt-equity ratio safe harbor test in 1991.

(ii) A has excess limitation (as defined in § 1.163(j)–2 (c)) of $10 ($60 (50% of adjusted taxable income) − $50 (net interest expense)) in 1991. In 1991, A may deduct the interest expense paid or accrued in that year to unrelated persons, plus $10 of disallowed interest expense carryforward from 1990. The balance of A's disallowed interest expense carryforward from 1990 ($10) is carried forward to A's 1992 taxable year.

Example 3 (i) The facts are the same as in paragraph (i) of Example 2. In 1992, A satisfies the debt-equity ratio safe harbor test, has adjusted taxable income of $210, and net interest expense of $100. All A's interest expense for 1992 is paid or accrued to F.

(ii) In 1992, A has excess limitation of $5 ($105 (50% of adjusted taxable income) − $100 (net interest expense)). Applying the principles of paragraph (c) of this section, A's $10 of disallowed interest expense carryforward from 1991 (see Example 2, paragraph (ii)) is allowed in 1992 only to the extent of the $5 of excess limitation for that year. The remaining $5 of disallowed interest expense carried forward from 1991 is carried forward to A's 1993 taxable year.

Example 4(i) The facts are the same as in paragraph (i) of Example 3. In 1993, A satisfies the debt-equity ratio safe harbor test, has adjusted taxable income of $100, and has net interest expense of $75, all of which is paid or accrued to F.

(ii) A's excess interest expense for 1993 is $25 ($75 (A's net interest expense)—$50 (50% of its adjusted taxable income)). Applying the principles of paragraphs (a) and (b) of this section, section 163(j) does not disallow a deduction in 1993 for any of A's excess interest expense that is exempt related person interest expense. Under paragraph (c) of this section, A's $5 of disallowed interest expense carryforward from 1992 (see Example 3, paragraph (ii)) is not deductible in 1993, and is carried forward to A's 1994 taxable year.

(h) *Cross-references.* For rules regarding affiliated groups for purposes of section 163(j), see § 1.163(j)–5. For rules limiting the deductibility of disallowed interest expense carryforward and restricting the use of excess limitation carried forward to taxable years after the occurrence of certain corporate transactions, see § 1.163(j)–6.

§ 1.163(j)–2 Definitions.

(a) *Exempt related person interest expense.* The term "exempt related person interest expense" means interest expense that is (or is treated as) paid or accrued by a corporation described in § 1.163(j)–1 (a) to a related person (within the meaning of paragraph (g) of this section) if no tax is imposed with respect to such interest under rules provided in § 1.163(j)–4.

(b) *Excess interest expense.* The term "excess interest expense" means the excess, if any, of a corporation's net interest expense (as defined in paragraph (d) of this section) over the sum of 50 percent of its adjusted taxable income (as defined in paragraph (f) of

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this section) plus any excess limitation carried forward to the taxable year (under the rules of § 1.163(j)–1(d)). See paragraph (f)(4)(ii) of this section for rules regarding the effect of an adjusted taxable loss on the computation of excess interest expense.

(c) *Excess limitation.* The term "excess limitation" means the excess, if any, of 50 percent of a corporation's adjusted taxable income (as defined in paragraph (f) of this section) over its net interest expense (as defined in paragraph (d) of this section). (d) *Net interest expense.* The term "net interest expense" means the excess, if any, of the amount of interest expense paid or accrued (directly or indirectly) by a corporation during the taxable year over the amount of interest includible (directly or indirectly) in its gross income for such year.

(d) *Net interest expense.* The term "net interest expense means the excess, if any, of the amount of interest expense paid or accrued (directly or indirectly) by a corporation during the taxable year over the amount of interest includible (directly or indirectly) in its gross income for such year.

(e) *Interest income and expense*—(1) *In general.* Interest income shall generally be determined under section 61 and shall include original issue discount as provided in sections 1272 through 1275 (adjusted, under section 1272(a)(7), for any acquisition premium paid by a subsequent holder), acquisition discount as provided in sections 1281 through 1283, and amounts that are treated as original issue discount under section 1286 (pertaining to stripped bonds). Interest expense shall generally be determined under section 163(a) and shall include original issue discount as provided in section 163(e). Interest expense for a taxable year does not take into account any disallowed interest expense carried forward to that year under the rules of § 1.163(j)–1. Interest income or expense with respect to a debt instrument denominated in a nonfunctional currency (or the payments of which are determined with reference to a nonfunctional currency) shall be determined in accordance with section 988 and the regulations thereunder. For rules regarding the relationship of section 163(j) to other Code provisions under which a deduction for interest expense may be disallowed or deferred, see § 1.163(j)–7.

(2) *Treatment of bond premium and market discount*—(i) *Bond Premium.* In the case of any bond with respect to which an election made under section 171(c) is in effect, amortizable bond premium (as defined in section 171(b)) shall reduce interest income. Bond premium included in income by the issuer under the principles of § 1.61–12 (or the successor provision thereof) shall reduce interest expense.

(ii) *Market discount.* Gain treated as ordinary income on the disposition of a market discount bond under section 1276(a) shall be treated as interest income.

(3) *Interest equivalents.* [Reserved]

(4) *Interest income of partnerships.* Interest paid or accrued to a partnership shall be treated under section 163(j) and these regulations (other than paragraph (g) of this section) as paid or accrued to the partners of the partnership in proportion to each partner's distributive share (as defined in section 704) of the partnership's interest income for the taxable year.

(5) *Interest expense of partnerships.* Interest expense paid or accrued by a partnership and the tax exempt interest expense of a partnership (within the meaning of § 1.163(j)–4) shall be treated for all purposes under section 163(j) and these regulations as paid or accrued by the partners of the partnership in proportion to each partner's distributive share (as defined in section 704) of the partnership's interest expense and tax exempt interest expense, respectively, for the taxable year. Thus, a corporation which is a partner in a partnership shall be treated as paying or accruing its share of the partnership's interest expense, and is treated as the payor of such interest expense.

(6) *Certain substitute payments*—(i) *In general.* If pursuant to an agreement meeting the requirements of section 1058 (b), there is a transfer of securities (as defined in section 1236(c)) between related persons (within the meaning of paragraph (g) of this section), payments described in section 1058(b)(2) with respect to such transferred securities ("substitute payments") shall be treated as interest expense for purposes of section 163(j) and these regulations.

(ii) *Effective date.* This paragraph (e)(6) shall be effective with respect to substitute payments paid or accrued after July 18, 1991.

(f) *Adjusted taxable income*—(1) *In general.* The term "adjusted taxable income" means a corporation's taxable income for the taxable year, computed without regard to any carryforwards or disallowances under section 163(j), and determined with the modifications described in paragraphs (f)(2) and (f)(3) of this section. A corporation's adjusted taxable income may be a negative amount (*i.e.* an adjusted taxable loss). See paragraph (f)(4) of this section for rules regarding the effect of an adjusted taxable loss.

(2) *Additions.* The following amounts shall be added to a corporation's taxable income to determine its adjusted taxable income:

(i) The net interest expense (as defined in paragraph (d) of this section) for the taxable year;

(ii) The net operating loss deduction under section 172;

(iii) Deductions for depreciation under sections 167 and 168;

(iv) Deductions for the amortization of intangibles and other amortized expenditures (*e.g.*, start-up expenditures under section 195 and organizational expenditures under section 248);

(v) Deductions for depletion under section 611;

(vi) Carryovers of excess charitable contributions (within the meaning of section 170 (d)(2)), to the extent allowable as a deduction in the taxable year;

(vii) The increase, if any, between the end of the preceding year and the end of the current year in accounts payable (other than interest payable) that are included in the computation of taxable income;

(viii) The decrease, if any, between the end of the preceding taxable year and the end of the current taxable year in accounts receivable (other than interest receivable) that are included in the computation of taxable income;

(ix) Interest which is excluded from gross income under section 103;

(x) The dividends received deduction as provided under section 243 [other than deductions under section 243 (a)(3)];

(xi) The increase, if any, in the LIFO recapture amount (as defined in section 312(n)(4)(B)) between the end of the preceding taxable year and the end of the current taxable year; and

(xii) Any deduction in the taxable year for capital loss carrybacks or carryovers.

(3) *Subtractions.* The following amounts shall be subtracted from taxable income to determine adjusted taxable income:

(i) With respect to the sale or disposition of property (including a sale or disposition of property by a partnership), any depreciation, amortization, or depletion deductions which were allowed or allowable for the taxpayer's taxable years beginning after July 10, 1989, with respect to such property;

(ii) With respect to the sale or disposition of stock of a member of a consolidated group that includes the selling corporation, an amount equal to the investment adjustments (as defined under §§ 1.1502–32 and 1.1502–32T) with respect to such stock that are attributable to deductions described in paragraph (f)(3)(i) of this section;

(iii) With respect to the sale or other disposition of an interest in a partnership, an amount equal to the taxpayer's distributive share of deductions described in paragraph (f)(3)(i) of this section with respect to property held by the partnership at the time of such sale or other disposition;

(iv) The decrease, if any, between the end of the preceding taxable year and the end of the current taxable year in accounts payable (other than interest payable) which are included in the computation of the corporation's taxable income;

(v) The increase, if any, between the end of the preceding taxable year and the end of the current taxable year in accounts receivable (other than interest receivable) which are included in the computation of the corporation's taxable income;

(vi) Amounts that would be deductible but for section 265 (regarding expenses and interest relating to tax-exempt income) or 279 (regarding interest on indebtedness incurred by a corporation to acquire stock or assets of another corporation);

(vii) The amount of any charitable contribution (as defined in section 170(c)) made during the taxable year that exceeds the amount deductible in that year by reason of section 170(b)(2);

(viii) The decrease, if any, in the LIFO recapture amount (as defined in section 312 (n)(4)(B)) between the end of the preceding taxable year and the end of the current taxable year; and

(ix) The amount of any net capital loss (as defined in section 1222(10)) for the taxable year.

(4) *Effect of adjusted taxable loss*—(i) *In general.* If a payor corporation has an adjusted taxable loss for the taxable year, then its adjusted taxable income shall be treated as zero.

(ii) *Effect on excess limitation carryforward.* The amount of an adjusted taxable loss reduces excess limitation carryforward for the purpose of determining whether there is excess interest expense for a taxable year.

(iii) *Adjusted taxable loss not carried forward.* An adjusted taxable loss in one taxable year shall not affect the determination of a corporation's adjusted taxable income for any other taxable year.

(g) *Related persons*—(1) *In general.* The term "related person" means any person who is related to the taxpayer within the meaning of sections 267(b) or 707(b)(1). For this purpose, the constructive ownership and attribution rules of section 267(c) shall apply.

(2) *Anti-abuse rule.* In determining whether persons are related, the substance, rather than the form, of ownership is controlling. Thus, for example, the principles of § 1.957–1 (b)(2) shall apply to determine whether an arrangement to shift formal voting power or formal ownership of shares away from any person for the purpose of avoiding the application of section 163 (j) shall be given effect.

(3) *When related person status is tested.* Whether a person is related to a payor corporation under section 163(j) is determined with respect to an item of interest expense when such interest expense accrues. For this purpose (notwithstanding the rules in § 1.163(j)–7), interest expense (including amounts treated as interest under this section) shall be treated as accruing daily under principles similar to section 1272(a). Also for this purpose, interest described in paragraph (e)(5) of this section shall be treated as accrued by a partner as it is accrued, under the principles of the preceding sentence, by the partnership. Changes in the relationship between the payor corporation and the payee after an item of interest expense accrues shall not be taken into account.

(4) *Special rule for certain partnerships*—(i) *Less than 10 percent of partnership held by tax exempt persons.* Any interest expense paid or accrued to a partnership directly or indirectly by a payor corporation that (without regard to this paragraph (g)(4)) is related to the partnership within the meaning of this paragraph (g) shall not be treated as paid or accrued to a related person if less than 10 percent of the capital and profits interests in such partnership are held by persons with respect to whom no tax is imposed on such interest by subtitle A of the Internal Revenue Code under rules provided in § 1.163(j)–4. However, the preceding sentence shall not apply to treat as interest paid to an unrelated person any interest that (under rules described in this section) is includible in the gross income of a partner in such a partnership who is itself a related person with respect to the payor of such interest.

(ii) *Reduction of tax by treaty.* If a treaty between the United States and a foreign country reduces the rate of tax imposed by subtitle A of the Code on a partner's distributive share of any interest paid or accrued to a partnership, such partner's interest in the partnership shall, for purposes of § 1.163(j)–2(g)(4)(i), be treated as held in part by a taxable person and in part by a tax exempt person in accordance with the rules described in § 1.163(j)–4(b).

(5) *Examples.* The principles of this paragraph (g) are illustrated by the following examples.

Example 1. (i) Fifty-one percent of the total combined voting power and value of domestic corporation A is owned by a domestic tax-exempt corporation, D1; the remainder is owned by foreign corporation F1. F1 is organized under the laws of country Z. Under a U.S. tax treaty with country Z, interest paid by A to F1 is exempt from U.S. tax under the rules of § 1.163 (j)–4.

(ii) Under these facts, D1 is related to A under section 267(b)(3) (because D1 and A are members of the same controlled group of corporations, as defined in section 267(f)), and interest payments made by A to D1 are exempt related person interest expense, a deduction for which may be disallowed under section 163(j). F1 is not related to A within the meaning of sections 267(b) or 707(b)(1). Deductions for interest paid by A to F1 are not subject to disallowance under section 163(j).

Example 2. (i) The facts are the same as in paragraph (i) of Example 1, except that D1 and F1 each own 50 percent of the vote and value of X's stock.

(ii) Unless the substance of D1's and F1's ownership differs from its form, so that paragraph (g)(2) of this section (regarding abusive ownership structures) applies, none of the interest paid by A to D1 or F1 is subject to disallowance under section 163(j).

Example 3. (i) A, a domestic corporation whose taxable year is the calendar year, is a wholly owned subsidiary of F, a foreign corporation. A is a partner, with a one-third share in the capital and profits interests, of P, a domestic partnership whose taxable year is the calendar year. During its taxable year ending December 31, 1990, and taking into account its interest in P, A has adjusted taxable income of $126.67. A's directly incurred interest income and expense for the taxable year are $20 and $90. Of the $90 of interest expense, $60 is paid or accrued to F.

(ii) P's interest income and interest expense for the taxable year of the partnership ending December 31, 1990, are $20 and $50, respectively. A's share of these amounts (determined under rules described in § 1.163(j)–2) are $6.67 and $16.67, respectively. Of P's $50 interest expense for the taxable year, $20 is paid or accrued to F, and the balance is paid or accrued to persons unrelated to A or to any of the other partners of P.

(iii) Interest paid or treated as paid to F by A is not subject to U.S. tax due to a tax treaty. Taking into account A's investment in the partnership (under rules described in § 1.163 (j)–3), A does not satisfy the debt-equity ratio safe harbor test in 1990.

(iv) Under § 1.163(j)–1(a) and paragraphs (e) (4) and (5) of this section, in its taxable year ending December 31, 1990, A is required to take into account the interest income and interest expense it directly incurs, plus its share of P's interest income and interest expense. Thus, A's interest income for 1990 is $26.67, and its interest expense is $106.67. A's excess interest expense for 1990 is $16.67, which is the difference between its net interest expense ($106.67 (interest expense) −$26.67 (interest income) = $80) and 50 percent of its adjusted taxable income (($126.67 x 50% = $63.33).

(v) For 1990, under the rule described in paragraph (e)(5) of this section, the amount of A's exempt related person interest expense is $66.67 ($60 + $6.67 = $66.67). Since that amount is greater than its excess interest expense ($16.67), section 163 (j) disallows a

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deduction for $16.87 of A's interest expense for the taxable year. That disallowed interest expense is carried forward to A's 1991 taxable year.

Example 4. (i) X, a domestic corporation, is wholly owned by Y, a partnership. A treaty between the United States and foreign country U reduces the rate of tax on interest paid to residents of country U from 30 percent (the applicable rate for related person interest under sections 871 and 881 in the absence of a treaty) to 15 percent. Nineteen percent of the capital and profits interests of partnership Y are held by Z, a country U corporation entitled to claim the reduced (treaty) rate of tax on interest income; the balance is held by unrelated persons not exempt from U.S. tax on their distributive shares of interest paid by the corporation to the partnership.

(ii) Under paragraph (g)(4) of this section, less than ten percent (19 percent divided by two (30/15)) of Y's capital and profits interests are treated as held by persons who are tax exempt. Accordingly, all interest paid to partnership Y by corporation X is treated as paid to an unrelated person.

§ 1.163(j)–3 Computation of debt-equity ratio.

(a) *In general.* For purposes of section 163(j), the term "debt-equity ratio" means the ratio that the debt of the corporation bears to the equity of the corporation. For rules defining debt and equity, see paragraphs (b) and (c) of this section. For rules regarding the computation of the debt and equity of an affiliated group or a foreign corporation, see §§ 1.163(j)–5 or 1.163(j)–8, respectively.

(b) *Debt*—(1) *In general.* The debt of a corporation means its liabilities determined according to generally applicable tax principles. Thus, the amount taken into account on the issue date with respect to a debt instrument which is not issued at a discount or a premium shall be the issue price. The amount taken into account with respect to any debt with original issue discount shall be its issue price plus the portion of the original issue discount previously accrued as determined under the rules of section 1272 (determined without regard to section 1272(a)(7) or (b)(4)). In addition, with respect to the issuer, unamortized bond premium shall be treated as debt.

(2) *Exclusions.* Short-term liabilities as defined in paragraph (b)(2)(i) of this section and commercial financing liabilities as defined in paragraph (b)(2)(ii) of this section shall be excluded from characterization as debt.

(i) *Short-term liabilities.* The term "short-term liabilities" means accrued operating expenses, accrued taxes payable, and any account payable for the first 90 days of its existence provided that no interest is accrued with respect to any portion of such 90 day period.

(ii) *Commercial financing liabilities.* The term "commercial financing liabilities" means any liability if it—

(A) Is incurred by the obligor under a commercial financing agreement (such as an automobile "floorplan" agreement) to buy an item of inventory;

(B) Is secured by the item;

(C) Is due on or before sale of the item; and

(D) If entered into between related parties, has terms that are comparable to the terms of such financing agreements between unrelated parties in the same (or a similar) industry.

(3) *Liabilities of a partnership.* In determining the debt of a corporation that owns an interest in a partnership (directly or indirectly through one or more pass-through entities), liabilities of the partnership shall be treated as liabilities incurred directly by each partner in the same manner and proportions that the liabilities of the partnership are treated as shared by its partners under section 752.

(4) *Anti-rollover rule.* Decreases in a corporation's aggregate debt during the last 90 days of its taxable year shall be disregarded to the extent that the corporation's aggregate debt is increased during the first 90 days of the succeeding taxable year.

(c) *Equity*—(1) *In general.* Equity means the sum of money and the adjusted basis of all other assets of the corporation reduced (but not below zero) by the taxpayer's debt (as defined in paragraph (b) of this section). Whether an item constitutes an asset shall be determined according to generally applicable tax principles.

(2) *Treatment of stock of certain nonincludible corporations.* Under the general rule of paragraph (c)(1) of this section, assets include the adjusted basis of stock of any corporation which is not an includible corporation (as defined under section 1504(b)). The adjusted basis of stock held in a corporation which is not an includible corporation shall be further adjusted under principles similar to those in section 864(e)(4) if the taxpayer (or the members of an affiliated group of which the taxpayer is a member) owns stock in the corporation satisfying the requirements of section 864(e)(4)(B)(ii). *Cf.* § 1.861–12T(c)(2).

(3) *Reduction in assets for excluded liabilities.* The amount of a taxpayer's equity under paragraph (c) (1) and (2) of this section shall be reduced (but not below zero) by an amount equal to the amount of liabilities excluded under paragraph (b)(2) of this section.

(4) *Partnership interests owned by a corporation.* In determining the assets of a corporation that owns an interest in a partnership, the corporation shall treat as an asset the adjusted basis of its partnership interest.

(5) *Anti-avoidance rules*—(i) *In general.* An asset of the taxpayer shall be disregarded in computing the taxpayer's debt-equity ratio if the principal purpose for acquiring the asset was to reduce the taxpayer's debt-equity ratio.

(ii) *Anti-stuffing rule.* In determining a corporation's equity, any transfer of assets made by a related person to the corporation during the last 90 days of its taxable year shall be disregarded to the extent that there is a transfer of the same or similar assets by the corporation to a related person during the first 90 days of the corporation's succeeding taxable year. However, this rule shall not apply to the extent that there is full consideration for a transfer in money or property (as that term is defined in section 317(a)).

(d) *Determining the debt and equity of a non-dollar functional currency QBU.* In determining the dollar value of liabilities and assets on the books of a qualified business unit that has a functional currency other than the dollar, such liabilities and assets shall be translated at the spot rate on the last day of the taxable year.

§ 1.163(j)–4 Interest not subject to tax.

(a) *In general.* Interest paid or accrued by a corporation under the rules of § 1.163(j)–1 is not subject to tax for purposes of section 163(j) if no U.S. tax is imposed with respect to such interest under subtitle A of the Internal Revenue Code (determined without regard to net operating losses or net operating loss carryovers), taking into account any applicable treaty obligation of the United States. For this purpose, whether interest paid or accrued to a partnership is subject to tax is determined at the partner level.

(b) *Partially exempt interest.* Interest that is subject to a reduced rate of tax under any treaty obligation of the United States applicable to the recipient shall be treated as in part subject to the statutory tax rate under sections 871 or 881 and in part not subject to tax, based on the proportion that the rate of tax under the treaty bears to the statutory tax rate. Thus, for purposes of section 163(j), if the statutory tax rate is 30 percent, and pursuant to a treaty U.S. tax is instead limited to a rate of 10 percent, two-thirds of such interest shall be considered interest not subject to tax.

(c) *Date for determining whether interest is subject to U.S. tax.* The determination of whether interest is subject to U.S. tax is made on the date the interest is received or accrued by the payee, whichever is relevant under normally applicable U.S. tax principles for purposes of determining the tax, if any, on the payee.

(d) *Certain interest paid to special entities*—(1) *Controlled foreign corporations*—(i) *In general.* Interest that is paid or accrued to a foreign corporation described in section 957(a) (a "controlled foreign corporation") and that is not otherwise subject to tax under paragraph (a) of this section shall be deemed subject to tax to the extent that such interest is included in the foreign corporation's net foreign personal holding company income under § 1.954–1T(c) and results in an inclusion in the gross income of a United States shareholder under section 951(a)(1)(A)(i) (or would have been included in a United States shareholder's gross income but for an election under § 1.954–1T(d)).

(ii) *Effect of section 952(c)(1)(A) (earnings and profits) limitation.* For purposes of paragraph (d)(1) of this section, if a controlled foreign corporation's subpart F income for the taxable year is limited under section 952(c)(1)(A), each category of subpart F income described in section 952(a), and, within each such category, each component thereof, shall be treated as reduced ratably.

(iii) *Net foreign personal holding company income.* To determine whether an item of interest income is included in a controlled foreign corporation's net foreign personal holding company income for the taxable year, the expenses allocable to such interest shall be deemed to bear the same ratio to the total expenses allocable to the controlled foreign corporation's net foreign personal holding company income (determined pursuant to § 1.954–1T(c)) as the amount of such interest bears to the controlled foreign corporation's gross foreign personal holding company income (determined under § 1.954–1T(a)(2)(i)).

(iv) *Related person interest.* If related person interest is allocated to the item of interest under the provisions of § 1.904–5(c)(2) and paragraph (d)(1)(iii) of this section, and if the United States shareholder receiving such related person interest is subject to United States tax, then, for purposes of paragraph (d)(1)(i) of this section, such allocable related person interest shall be deemed to be net foreign personal holding company income that results in an inclusion under section 951(a)(1)(A)(i).

(v) *Section 78 amount.* Any foreign taxes that are allocable to an item of interest income satisfying the requirements of paragraph (d)(1)(i) of this section and that are included in a United States shareholder's income under section 78 (or would have been included, but for an election under § 1.954–1T(d)) shall, for purposes of paragraph (d)(1)(i) of this section, be deemed to be net foreign personal holding company income that results in an inclusion under section 951(a)(1)(A)(i).

(2) *Passive foreign investment companies*—(i) *In general.* Interest that is not otherwise subject to tax under paragraph (a) of this section, and that is paid or accrued to a passive foreign investment company (as defined in section 1296) that is not a controlled foreign corporation, and which a U.S. person has elected under section 1295 to treat as a qualified electing fund ("QEF"), shall be treated as subject to tax to the extent that such interest is included in the QEF's ordinary earnings (as defined in section 1293(e)(1)) and results in an inclusion in income of such U.S. person under section 1293(a)(1)(A).

(ii) *Ordinary earnings.* In determining whether an item of interest income is included in the ordinary earnings of a passive foreign investment company, the item shall be reduced by deductions allocable and apportionable to that item under §§ 1.861–8 through 1.861–14T.

(iii) *Section 78 amount.* Any foreign taxes that are allocable to an item of interest income satisfying the requirements of paragraph (d)(2)(i) of this section and that are included in a U.S. person's income under section 78 pursuant to section 1293(f) shall, for purposes of paragraph (d)(2)(i) of this section, be deemed to be ordinary earnings that are included in the income of a U.S. person under section 1293(a)(1)(A).

(3) *Foreign personal holding companies*—(i) *In general.* Interest that is not otherwise subject to tax under paragraph (a) of this section, and that is paid or accrued to a foreign personal holding company (as defined in section 552) that is neither a passive foreign investment company nor a controlled foreign corporation, shall be treated as subject to tax to the extent that such interest is included in the company's undistributed foreign personal holding company income (as defined in section 556) and results in an inclusion in income of a U.S. person under section 551(a).

(ii) *Undistributed foreign personal company income.* In determining whether an item of interest income is included in the undistributed foreign personal holding company income of a foreign personal holding company, the item shall be reduced by deductions allocable and apportionable to that item under §§ 1.861–8 through 1.861–14T.

(iii) *Effect of distributions.* Any amount that would be treated as subject to tax by virtue of this paragraph (d)(3) but for a dividends paid deduction under section 561 shall be treated subject to tax.

(4) *Producer's loan interest paid to a DISC.* Interest paid or accrued with respect to a DISC (as defined in section 992) that is treated as interest with respect to a producer's loan (as defined in section 993(d)) is treated as subject to U.S. tax if such interest is taxed to the shareholders of the DISC under section 995(b)(1)(A).

§ 1.163(j)–5 Affiliated group rules.

(a) *Certain related corporations treated as one taxpayer*—(1) *Scope.* This section applies section 163(j) to certain related corporations which are (or are treated as) members of an affiliated group and which under section 163(j)(6)(C) and (7) are treated as a single taxpayer. Paragraphs (a)(2) and (a)(3) of this section describe the corporations that are subject to such treatment. (For purposes of section 163(j) and these regulations, the rules in regulations under section 1502 apply, but unless the context otherwise requires, the term "member" means a corporation that is, or is treated as, a member of an affiliated group under this paragraph (a), and the term "group" refers collectively to the member and the other corporations that are so treated.) Paragraph (a)(4) of this section provides rules that treat a corporation as a member of a single affiliated group if the rules of this paragraph (a) would otherwise cause it to be treated as a member of more than one affiliated group. Paragraph (b) of this section provides rules regarding the computation of items of income, expense, and carryovers under section 163(j) for an affiliated group of corporations if all of the members of such group join in the filing of a single consolidated return for the taxable year under section 1501. Paragraph (c) of this section provides rules for corporations that are not members of consolidated groups which are subject to the rules of § 1.163(j)–5(b). Paragraph (d) of this section provides rules regarding the computation of the debt-equity ratio for purposes of applying the debt-equity

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ratio safe harbor test described in § 1.163(j)–2(b). Paragraph (e) of this section provides rules regarding the treatment of, and an election pertaining to, assets of certain acquired corporations.

(2) *Affiliated corporations.* To the extent provided in this section, all the members of an affiliated group (as defined in section 1504(a)) of which a corporation is a member on the last day of its taxable year shall be treated as one taxpayer for purposes of section 163(j) and this section, without regard to whether such affiliated group files a consolidated return pursuant to section 1501.

(3) *Certain unaffiliated corporations*—(i) *In general.* If at least 80 percent of the total voting power and total value of the stock of an includible corporation (as defined in section 1504(b)) is owned, directly or indirectly, by another includible corporation, the first corporation shall be treated as a member of an affiliated group that includes the other corporation and its affiliates. The attribution rules of section 318 shall apply for purposes of determining indirect stock ownership under this paragraph (a)(3).

(ii) *Example.* The principles of this paragraph (a)(3) are illustrated by the following example.

Example. X and Y are wholly owned domestic subsidiaries of F, a foreign corporation. X and Y are not members of an affiliated group under section 1504(a) because F is not itself an includible corporation under section 1504(b)(3). However, under paragraph (a)(3) of this section, X and Y are treated as members of an affiliated group, since, under section 318(a)(2)(C), X is treated as owning indirectly 100 percent of Y, and Y is treated as owning indirectly 100 percent of X.

(4) *Tie-breaker rules.* If the rules of this paragraph (a) would treat a corporation as a member of more than one affiliated group, then the principles of section 1563(b)(4) and the regulations thereunder shall determine the group of which such corporation shall be treated as a member.

(b) *Operative rules for consolidated groups*—(1) *In general.* If all of the members of the affiliated group are members of a single consolidated group for the taxable year, the computations required by section 163(j) and these regulations (other than the computation of the group's debt-equity ratio under paragraph (d) of this section) shall be made in accordance with the rules of this paragraph (b). See paragraph (c) of this section for rules applicable to affiliated groups not described in the preceding sentence.

(2) *Items determined on a consolidated basis.* The computations required by section 163(j) and these regulations shall be determined for the group on a consolidated basis. For example, the group's taxable income shall be the consolidated taxable income determined under § 1.1502–11 (without regard to any carrybacks or disallowances under section 163(j)), and the group's net interest expense shall be the excess, if any, of the group's aggregate interest expense over the group's aggregate interest income (as provided in §§ 1.163(j)–2 (d) and (e)). Similarly, the group's excess interest expense shall be determined by reference to the group's net interest expense, adjusted taxable income, and excess limitation carryforward (as determined under paragraph (b)(5) of this section). Except as provided in paragraphs (b) (5) and (6) of this section, disallowed interest expense carryforwards and excess limitation carryforwards shall also be determined on a consolidated basis.

(3) *Exempt related person interest expense.* In determining the group's exempt related person interest expense, interest expense shall be treated as paid or accrued to a related person (within the meaning of § 1.163(j)–2(g)) if it would be so treated if paid or accrued to the same payee by any member of the group.

(4) *Deferred intercompany gain.* For purposes of determining the adjusted taxable income of the group, the following special rules shall apply—

(i) Any gain on a deferred intercompany transaction (including any gain described in § 1.1502–14T(a)) that is restored in accordance with the rules under §§ 1.1502–13(d) or 1.1502–13T(f) shall be subtracted from the group's consolidated taxable income.

(ii) If property is disposed of under § 1.1502–13 (e)(2) or (f) or § 1.1502–13T(m), any amount subtracted from the group's consolidated taxable income in a previous taxable year with respect to such property under paragraph (b)(4)(i) of this section shall be added to the group's consolidated taxable income.

(iii) *Example.* The principles of this paragraph (b)(4) are illustrated by the following example.

Example (i) On January 1, 1991, X, a member of an affiliated group which files a consolidated return for the calendar year, purchases property for $200 from an unrelated person. X depreciates the property over a 5-year period. On January 1, 1993, when X's basis in the property is $0, X sells the property to Y, another member of the group, for $600, which is the property's fair market value at such time. The sale is a deferred intercompany transaction under § 1.1502–13, and X's gain of $360 is deferred under § 1.1502–13(c). In the hands of Y the property is once again depreciable over a 5-year period. The group claims a depreciation deduction with respect to the property of $60 in 1993, which results in the restoration of $40 of X's deferred gain under § 1.1502–13T(a) for such year.

(ii) As provided in paragraph (b)(4)(i) of this section, the group's taxable income for 1993 is reduced by $60, the amount of restored gain under § 1.1502–13T(a) with respect to the transferred property. In addition, as provided in § 1.163(j)–2(b)(2)(iii) and paragraph (b)(2) of this section, the group's taxable income for 1993 is increased by $40, the amount of the group's depreciation deduction with respect to the transferred property for such year.

(iii) On January 1, 1997, Y sells the property for $200 to an unrelated person and recognizes gain of $80. The sale results in restoration of $160 of gain under § 1.1502–13T(m) with respect to the earlier transfer of property from X to Y. Thus, Y's sale results in the group's 1997 consolidated taxable income increasing by $120 prior to any adjustment under section 163(j). Under § 1.163(j)–2(b)(2)(ii), the consolidated taxable income is reduced by $240 to reflect previous depreciation deductions with respect to such property. In addition, as provided in paragraph (b)(4)(ii) of this section, the consolidated taxable income is increased by $40, the amount subtracted from the group's 1993 consolidated taxable income by virtue of the restoration of $40 of deferred gain in that year.

(5) *Carryforwards to current taxable year.* The group's disallowed interest expense carryforward or excess limitation carryforwards to the current taxable year shall be the relevant carryforwards from the group's prior taxable years, plus any disallowed interest expense carryforward or excess limitation carryforwards from separate return years permitted to be used by the group under the rules of § 1.163(j)–6.

(6) *Members leaving the group*—(i) *Disallowed interest expense carryforward.* A member leaving the group shall carry forward to its separate return years a portion of the group disallowed interest expense carryforward determined as of the end of the last consolidated return year during which the corporation was a member of the group. Such portion shall equal the amount of the group's disallowed interest expense carryforward multiplied by a fraction, the numerator of which is the aggregate amount of exempt related person interest expense paid or accrued by such member during the period when it was a member of the group, and the denominator of which is the aggregate amount of exempt related person interest expense paid or accrued by all members of the group. If a member has pre-affiliation disallowed interest expense carryforward upon entering the group, the amount of such member's disallowed interest expense carryforward shall be treated as exempt related person interest expense of both the member and the group. Further, the group's disallowed interest expense carryforward shall be reduced by the amount allocated to the member. If the member leaves the group during the consolidated return year, rules similar to the rules of § 1.1502–21(b)(2) shall apply.

(ii) *Excess limitation carryforward.* A member leaving the group shall not carry forward to its separate return years any portion of the group's excess limitation carryforward, and the group's excess limitation carryforward shall not be reduced by virtue of such member's departure from the group. However, if all the members of a consolidated group become members of another consolidated group, the acquired group's excess limitation carryforward shall become excess limitation carryforward of the corporation that was the common parent of the acquired group. For purposes of determining the extent to which this excess limitation carryforward becomes excess limitation carryforward of the acquiring group under paragraph (b)(5) of this section, see § 1.163(j)–6 (b).

(7) *Examples.* The following examples illustrate the principles of this paragraph (b).

Example 1 (i) X, Y, and Z are domestic corporations that are members of a newly formed consolidated group described in paragraph (b) of this section. X owns 100 percent of the stock of Y, and Y owns 80 percent of the stock of Z. F1, a foreign corporation, owns 60 percent of the stock of X. Any interest paid or accrued by X, Y, or Z to F1 is exempt under section 163(j) because it is exempt from U.S. withholding tax under a treaty with F1's country of residence. Such interest (including interest paid by Z) is also paid or accrued to a related person within the meaning of § 1.163(j)–2 (g) and paragraph (b) (3) of this section.

(ii) For 1991, the group's first taxable year, X, Y, and Z have the following relevant items of income and expense—

Company	Interest income	Interest expense	Exempt related person interest expense
X	$800	$500	$50
Y	200	900	600
Z		200	150
Total	800	1,600	800

(iii) Under § 1.1502–11, the group's consolidated taxable income for 1991 is $150. Adjustments to consolidated taxable income total $50, resulting in consolidated adjusted taxable income of $200. The group's net interest expense for 1991 is $800 ($1,600–$800), and its excess interest expense is $300 ($800–($1,000/2)). The group's exempt related person interest expense for 1991 is $750. The group's disallowed interest expense for 1991 is the lesser of its excess interest expense or its exempt related person interest, or $300. This $300 is a group disallowed interest expense carryforward to the group's 1992 taxable year.

Example 2.—(i) The facts are the same as in Example 1. In the group's 1992 taxable year, the members have the following relevant items of income and expense—

Company	Interest income	Interest expense	Exempt related person interest expense
X	$800	$500	$50
Y	200	900	600
Z		200	150
Total	800	1,600	800

(ii) Under § 1.1502–11, the group's consolidated taxable income for 1992 is $1,100. Adjustments to consolidated taxable income total $200, resulting in consolidated adjusted taxable income of $1,300. The group's net interest expense for 1992 is $800 ($1,600–$800), its excess interest expense is $0 ($800–($2,100/2)), and it has excess limitation for the year of $250 ($2,100/2–$800). The group is permitted to deduct all of its current exempt related person interest expense ($800), plus an amount of its disallowed interest expense carryforward from 1991 equal to its 1992 excess limitation, or $250. This leaves a disallowed interest expense carryforward to the group's 1993 taxable year of $50.

Example 3. The facts are the same as in Example 2, except that Z leaves the group on December 31, 1992. Under the rules of paragraph (b)(6)(i) of this section, Z's disallowed interest expense carryforward to its 1993 separate return year is equal to the group's remaining carryforward at the end of 1992 ($50), multiplied by a fraction, the numerator of which is $300 (the total amount of exempt related person interest expense paid or accrued by Z while it was a member of the group) and the denominator of which is $1,550 (the total amount of exempt related person interest expense paid or accrued by all members of the group). Thus, Z's carryforward to its 1993 separate return year is $9.68. The XY group's carryforward to its consolidated 1993 taxable year is reduced by that amount, and is therefore $40.32.

(c) *Operative rules for other groups*—(1) *In general*—(i) *Group members' computation years.* This paragraph (c) provides rules for the application of section 163(j) and these regulations to corporations that are members of a group not governed by paragraph (b) of this section. Under this paragraph (c), a corporation that is a group member is required to take into account the items of income, expense, and carryovers that are pertinent under section 163(j) for all group members whose taxable years end with or within the taxable year of the member with respect to which computations are required (hereafter, a "computation year").

(ii) *Treatment of consolidated subgroup.* If some of the members of a group subject to this paragraph (c) join in filing a consolidated return under section 1501 for a taxable year ("consolidated subgroup"), such consolidated subgroup shall be treated as a single member of the group for purposes of applying this paragraph (c). The consolidated subgroup's items of income, expense and carryover that are pertinent under section 163(j) and these regulations shall be determined on a consolidated group basis, as if the consolidated subgroup were described in paragraph (b) of this section.

(2) *Determination and allocation of group items.* The computations required to be made under this paragraph (c) shall be made as follows—

(i) *Step 1—Certain items determined separately.* The exempt related person interest expense, interest income, interest expense, taxable income, and adjustments to taxable income required by § 1.163(j)–2 (f), other than the adjustment for net interest expense described in § 1.163(j)–2(f)(2)(i), shall be determined separately for each member of the group.

(ii) *Step 2—Computation of certain group items*—(A) *Net interest expense.* The separately determined amounts of interest income and interest expense for each member shall be aggregated and then netted to determine the group's net interest expense.

(B) *Adjusted taxable income.* To determine the group's adjusted taxable income, the separately determined taxable income of each member and adjustments thereto (other than net interest expense) shall be aggregated, and the amount of the group's net interest expense (as determined under paragraph (c)(2)(ii)(A) of this section) shall be added to such amount.

(C) *Exempt related person interest expense.* To determine the amount of the group's exempt related person interest expense, the separately determined amounts of exempt related person interest expense for each member shall be aggregated. In making this determination, interest expense shall be treated as paid or accrued to a related person (within the meaning of § 1.163 (j)–2(g)) if it would be so treated if paid or accrued to the same payee by any member of the group.

(D) *Excess limitation carryforward.* To determine the amount of the group's excess limitation carryforward from each of the three prior computation years, the amount of each member's

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excess limitation carryforward from each of such prior years shall be aggregated.

(E) *Disallowed interest expense carryforward.* To determine the amount of the group's disallowed interest expense carryforward, the amounts of disallowed interest expense carryforward of each member shall be aggregated.

(iii) *Step 3—Determination of the group's interest deduction—(A) Excess interest expense of the group.* The group's excess interest expense for the computation year shall be determined by reference to its net interest expense, adjusted taxable income, and excess limitation carryforward (as determined in Step 2). The ordering rule of § 1.163(j)-1(d) shall apply in determining which, if any, of the group's excess limitation carryforwards from prior years are absorbed in this computation.

(B) *Disallowed interest expense of the group.* The group's disallowed interest expense for the computation year shall be determined by reference to its exempt related person interest expense and excess interest expense as determined in Step 2 and Step 3, respectively. Disallowed interest expense of the group arising in the computation year shall be allocated to each member based on the following ratio:

$$\frac{\text{Exempt related person interest expense of the member for the computation year}}{\text{Exempt related person interest expense of the group for the computation year.}}$$

(C) *Excess limitation and deduction of disallowed interest expense carryforward—(1) Excess limitation.* The group's excess limitation for the computation year shall be determined by reference to its net interest expense and adjusted taxable income (as determined in *Step 2*).

(2) *Deduction of disallowed interest expense carryforward.* The amount of the group's disallowed interest expense carried forward to the current computation year (as determined in *Step 2*) that is deductible therein under § 1.163(j)-1(c) shall be determined by reference to the excess limitation of the group. The deduction for such carryforward shall be allocated to each member of the group based on the following ratio:

$$\frac{\text{Disallowed interest expense carryforward of the member from the preceding computation year}}{\text{Disallowed interest expense carryforward of the group from the preceding computation year}}$$

(D) *Excess limitation carryforward.* The excess limitation carryforward of the group, if any, from each of the two prior computation years that is not absorbed in the current computation year (as provided in Step 3) shall be allocated, by year, to each member of the group (succeeding computation years) based on the following ratio:

$$\frac{\text{Excess limitation carryforward of the member from the specific prior computation year}}{\text{Excess limitation carryforward of the group from the same prior computation year}}$$

(The group's excess limitation carryforward from the third prior computation year expires after the current computation year and therefore cannot be carried forward to the next year. See § 1.163 (j)-1 (d).)

(E) *Allocation of remaining excess limitation of the group for the computation year—(1) In general.* Excess limitation of the group for the computation year remaining after the deduction of disallowed interest expense carryforward in such year is allocated to each member of the group based on the following ratio:

$$\frac{\text{Separate excess limitation for each member of the group for the computation year}}{\text{Total of the separate excess limitations of each member of the group for the computation year}}$$

(2) Separate excess limitation. The separate excess limitation of each member shall be computed as if the member was not a member of an affiliated group for the computation year. The separate excess limitation of each member shall be determined under the rules of § 1.163 (j)-2 (c) and before reduction for the amount of any disallowed interest expense carried forward to that year by such member. For purposes of these computations, a member that has net interest income for the computation year has net interest expense of zero, and a member that has excess interest expense for the computation year has separate excess limitation of zero.

(F) *Members leaving a group.* A member leaving a group shall carry forward to succeeding taxable years any excess limitation or disallowed interest expense allocated to it under this paragraph (c). For rules limiting the use of such carryforwards when such member becomes a member of another affiliated group, or has transferred its assets in a transaction to which section 381 (a) applies, see § 1.163 (j)-5.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. A, B, and C are calendar-year domestic corporations that are members of an affiliated group. Table 1 depicts amounts determined in Step 1 for these corporations for their taxable years ending December 31, 1991. Under rules described in paragraph (d) of this section, this group does not satisfy the debt-equity ratio safe harbor test for 1991. Assume, for purposes of this example, that there are no excess limitation carryforwards and no disallowed interest expense carryforwards to the 1991 taxable year for any member of the group.

TABLE 1

	Interest income	Interest expense	Taxable income before applying § 163 (j)	Adjustments to taxable income (not including net interest expense)	Exempt related person interest expense
A	$600.00	$500.00	$50.00	$25.00	.....
B	200.00	900.00	200.00	75.00	$600.00
C	—	200.00	50.00	—	150.00
Total	800.00	1,600.00	300.00	100.00	750.00

(a) *Step 2 determinations.* The group's Step 2 determinations are as follows:

(1) *Net interest expense.* The separately determined interest income and interest expense of A, B, and C are aggregated. Thus, the net interest expense of the group is $800 ($1,600−$800).

(2) *Adjusted taxable income.* The separately determined taxable income and the separately determined adjustments (other than net interest expense) of A, B, and C are aggregated and added to the group's net interest expense to determine the group's adjusted taxable income of $1,200 ($300+$100+$800=$1,200).

(3) *Exempt related person interest expense.* The separately determined amounts of exempt related person interest expense of A, B, and C are aggregated to determine the group's exempt related person interest expense of $750 ($600+$150).

(b) *Step 3 determinations.* The group's Step 3 determinations are as follows:

(1) *Excess interest expense.* The group's excess interest expense is equal to its net interest expense less one-half of its adjusted taxable income (each as determined in Step 2) ($800−(½×$1,200)=$200).

(2) *Disallowed interest expense.* The group's disallowed interest is $200, which is the lesser of its exempt related person interest expense (as determined in Step 2 ($750)) or its excess interest expense (as determined in this Step 3 ($200)).

(3) *Disallowed interest expense allocations.* Disallowed interest expense for the computation year shall be allocated among A, B, and C under Step 3 based on the ratio of each member's exempt related person interest expense to the group's exempt related person interest expense. Since A has no exempt related person interest expense, no disallowed interest expense is allocated to it. Disallowed interest expense of $160 is allocated to B [($600/$750)×$200]. Disallowed interest expense of $40 is allocated to C [($150/$750)×$200]. Thus, B and C have $160 and $40, respectively, of disallowed interest expense which shall be carried forward to their next succeeding taxable years under Step 4.

Example 2. The facts are the same as in Example 1, and thus B and C have $160 and $40, respectively, of disallowed interest expense carried forward to the computation year ending December 31, 1992. Table 2 depicts the separately determined items as determined in Step 1 for the taxable years of A, B, and C ending December 31, 1992. Under rules described in paragraph (d) of this section, this group does not satisfy the debt-equity ratio safe harbor test for 1992.

TABLE 2

	Interest income	Interest expense	Taxable income before applying § 163 (j)	Adjustments to taxable income (not including net interest expense)	Exempt related person interest expense
A	$200.00	$800.00	$400.00	$50.00	$300.00
B	100.00	500.00	600.00	100.00	300.00
C	300.00	200.00	500.00	50.00	100.00
Total	600.00	1,500.00	1,500.00	200.00	700.00

(a) *Step 2 determinations.* For the 1992 computation year, the Step 2 determinations of A, B, and C are as follows:

(1) *Net interest expense.* The separately determined interest income and interest expense of A, B, and C are aggregated to determine the group's net interest expense of $900 ($1,500−$600).

(2) *Adjusted taxable income.* The separately determined taxable income and adjustments to taxable income (other than net interest expense) of A, B, and C are aggregated and added to the group's net interest expense to yield the group's adjusted taxable income of $2,600 ($1,500+$200+$900=$2,600).

(3) *Exempt related person interest expense.* Each member's separately determined amounts of exempt related person interest expense are aggregated to determine the group's exempt related person interest expense of $700 ($300+$300+$100).

(b) *Step 3 determinations.* The group has excess limitation of $400 in 1992 ((⅓×$2,600) (adjusted taxable income)−$900 (net interest expense)). All $200 of the group's disallowed interest expense carried forward to 1992 is deductible by B and C (in accordance with the allocation described in Step 3) and reduces the group's excess limitation arising in 1992 to $200 ($400−$200).

(c) Under Step 4, A, B, and C must allocate the $200 of remaining excess limitation among themselves based on the ratio that each member's separate excess limitation bears to the sum of the members' separate excess limitations.

(1) *Computation of each member's separate excess limitation.* The separate excess limitation for each member shall be determined separately, as if each member was not a member of an affiliated group. Accordingly, the separate excess limitations of A, B, and C are determined as follows. A has separate excess interest expense of $75 ($600−(⅓×$1,050)). B has a separate excess limitation of $150 (⅓×$1,100)−$400). C has separate excess limitation of $275 (⅓×$500).

(2) *Allocation of group excess limitation.* Since A has separate excess interest expense rather than separate excess limitation, no excess limitation is allocated to A. The group's excess limitation of $200 is allocated between B and C as follows. B is allocated $70.59 ($200×($150/$425)) and C is allocated $129.41 ($200×($275/$425)). Thus, B and C will carry forward $70.59 and $129.41 of excess limitation, respectively, to their succeeding taxable years.

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Example 3. A, B, and C are domestic corporations that are members of the same affiliated group under the rules of paragraph (a) of this section. Table 3 depicts their Step 1 determinations for A's taxable year ending September 30, 1990, B's taxable year ending December 31, 1990, and C's taxable year ending January 31, 1991. Assume, for the taxable years illustrated in Table 3, that there is no pre-effective date excess limitation carryforward, that (under the rules described in paragraph (d) of this section) the group does not satisfy the debt-equity ratio safe harbor test the group does not satisfy the debt-equity ratio safe harbor test described in § 1.163 (j)-1 (b), and that all interest expense paid by A, B, and C is exempt related person interest expense.

TABLE 3

	Interest income	Interest expense	Taxable income before applying § 163 (j)	Adjustments to taxable income (not including net interest expense)	Exempt related person interest expense
A	$100.00	$500.00	$150.00	$50.00	$500.00
B	200.00	600.00	350.00	50.00	600.00
C		800.00	300.00	100.00	600.00
Total	300.00	1,700.00	500.00	200.00	1,700.00

(a) *A's determinations.* With respect to A's computation year ending September 30, 1990, only A is treated as a member of the affiliated group (since for B and C these are pre-effective date years). Therefore, A's disallowed interest expense is $100, which is the lesser of its excess interest expense of $100 ($400−(½×$800)) or its exempt related person interest expense ($500). A's disallowed interest expense of $100, is carried forward to A's next computation year.

(b) *B's Step 2 determinations.* For purposes of computing B's disallowed interest expense for its taxable year ending December 31, 1990, only A and B are treated as affiliated group members (since for C this is a pre-effective date year). B's Step 2 determinations are as follows:

(1) *Net interest expense.* The separately determined interest income and interest expense of A and B are aggregated to determine their net interest expense of $800 ([500+$600]−[$100+$200]).

(2) *Adjusted taxable income.* The separately determined taxable income of A and B ($150+$350) and the separately determined adjustments to their taxable income (other than net interest expense) ($50+$50) are aggregated and added to their net interest expense (as provided in Step 2) ($800) to yield the adjusted taxable income of A and B of $1,400 ($500+$100+$800).

(3) *Exempt related person interest expense.* The separately determined amounts of exempt related person interest expense of A and B are aggregated to determine their exempt related person interest expense of $1,000 ($500+$600).

(c) *B's Step 3 determinations.* B's Step 3 determinations are as follows:

(1) *Excess interest expense.* The excess interest expense of A and B is $100, which is equal to their net interest expense less one-half of their adjusted taxable income, each as determined in Step 2 ($800−(½×$1,400)).

(2) *Disallowed interest expense.* The disallowed interest expense of A and B is $100, which is the lesser of the exempt related person interest expense of A and B (as determined in Step 2 ($1,100)) or their excess interest expense (as determined in Step 3 ($100)).

(3) *Disallowed interest expense allocations.* Disallowed interest expense for the computation year is allocated to B under Step 3 based on the ratio of B's separate exempt related person interest expense ($600) to the sum of A and B's exempt related person interest expense ($1,100). Thus, the amount of disallowed interest expense allocated to B with respect to its computation year ending December 31, 1990, is $54.55 (($600/$1,100)×$100), which is carried forward to B's next computation year under Step 4. Because this is B's computation year, no allocation of disallowed interest expense for the computation year is made to A.

(d) *C's Step 2 determinations.* To compute its disallowed interest for its computation year ending January 31, 1991, C's Step 2 determinations are as follows:

(1) *Net interest expense.* The separately determined interest income and interest expense of A, B, and C are aggregated. Thus, the net interest expense of A, B, and C is $1,400 ($1,700−$300).

(2) *Adjusted taxable income.* The separately determined taxable incomes of A, B, and C ($150+$350+300) and the separately determined adjustments (other than net interest expense) of A, B, and C ($50+$50+$100) are aggregated and combined with the net interest expense of A, B, and C ($1,400, as determined in Step 2) to yield the adjusted taxable income of A, B, and C of $2,400 ($800+$200+$1,400).

(3) *Exempt related person interest expense.* The separately determined amounts of exempt related person interest expense of A, B, and C are aggregated to determine their exempt related person interest expense of $1,700 ($500+$600+$600).

(e) *C's Step 3 determination.* C's Step 3 determinations for its computation year ending January 31, 1991 are as follows:

(1) *Excess interest expense.* The excess interest expense of A, B, and C is equal to $300, which is the net interest expense of A, B, and C less one-half of their adjusted taxable incomes, each as determined in Step 2 ($1,400−(½×$2,400)).

(2) *Disallowed interest expense.* The disallowed interest expense of A, B, and C is $200, which is the lesser of the sum of the exempt related person interest expense of A, B, and C as determined in Step 2 ($1,700) or their excess interest expense as determined in this Step 3 ($200).

(3) *Disallowed interest expense allocations.* For C's computation year ending January 31, 1991, C is allocated disallowed interest expense under Step 3 based on the ratio that its exempt related person interest expense ($600) bears to the sum of the exempt related person interest expense of A, B, and C ($500+$600+$600=$1,700). The amount of disallowed interest expense allocated to C with respect to that computation year is $70.59 (($600/$1,700)×$200), which is carried forward to C's next computation year under Step 4. Because this is C's computation year, no allocation of disallowed interest expense for the computation year is made to A or B.

(d) *Debt-equity ratio of related corporations treated as one taxpayer—*(1) *In general.* In the case of an affiliated group subject to the rules of paragraphs (b) or (c) of this section, the debt-equity ratio safe harbor test described in § 1.163(j)-1(b) shall be applied on a group basis. In the case of a consolidated group subject to paragraph (b) of this section, the debt-equity ratio of the group shall be determined by aggregating the separately determined debt and assets (adjusted as described in paragraphs (d)(2) and (3) of this section) of each member of the group as of the last day of the consolidated return year. In the case of an affiliated group subject to the rules of paragraph (c) of this section, the debt-equity ratio of the group shall be determined, with respect to any member's computation year, by aggregating the separately determined debt and assets (adjusted as described in paragraphs (d)(2) and (3) of this section) of each member of the group as of the last day of its taxable year that is included in the computing member's computation year. For rules regarding the special treatment of, and an election pertaining to, assets of certain acquired corporations, see paragraph (e) of this section.

(2) *Adjustments to group members' debt.* A member's debt shall be reduced by the amount of its liabilities to another member, and by the amount of any other liability which, if included, would result in duplication of amounts in the group's aggregate debt.

(3) *Adjustments to group members' assets.* The assets of a member of a group shall be adjusted as follows—

(i) Any amount which represents direct or indirect stock ownership if any member of the affiliated group shall be eliminated from total assets of the affiliated group;

(ii) A note or other evidence of indebtedness between members of an affiliated group shall be eliminated as an asset;

(iii) With respect to transactions between members of an affiliated group in which gain or loss is deferred under §§ 1.1502–13, 1.1502–13T, 1.1502–14, or 1.1502–14T, the adjusted basis of any asset involved in such transaction shall be decreased to the extent of deferred intercompany gain, if any, that has not been taken into account; and

(iv) There shall be eliminated from the assets of the affiliated group any other amount which, if included, would result in duplication of the assets of the affiliated group.

(e) *Election to use fixed stock write-off method for certain stock acquisitions—*(1) *In general.* Notwithstanding paragraph (d)(3) of this section, in the case of a qualified stock purchase, an election may be made, in the manner described in paragraph (e)(4) of this section, to determine the group's assets in accordance with the following rules—

(i) The stock of the target corporation and target affiliates (other than stock that is described in paragraph (d)(1)(ii) of this section) shall be treated as an asset of the purchasing corporation. The basis of such stock shall be determined under section 1012, and shall be increased by the amount of the liabilities of the target corporation and target affiliates as of the close of the acquisition date. Solely for purposes of this section, these amounts (together, the "special basis") shall be amortized ratably, on a monthly basis, over the applicable fixed stock write-off period (as described in paragraph (e)(5)(vi) of this section), beginning with the first day of the month in which the acquisition date occurs.

(ii) All assets of the target corporation, target affiliates, and any other members of the affiliated group, the stock of which is owned directly or indirectly by the target or a target affiliate, shall be disregarded.

(iii) Adjustments shall be made to the special basis of the stock of the target corporation and target affiliates solely as provided in paragraphs (e)(1)(i) and (e)(2) of this section. Thus, for example, the special basis shall not be adjusted under the rules of § 1.1502–32.

(2) *Post-acquisition adjustments to special basis.* The following adjustments shall be made to the special basis of the target corporation and target affiliates—

(i) The special basis of the stock of the target corporation and target affiliates shall be increased under the rules of section 358 for any property contributed to such corporations following the acquisition date;

(ii) The special basis of the stock of the target corporation and target affiliates shall be reduced by the fair market value of any property distributed by such corporations. Solely for purposes of the preceding sentence, any transfer of assets by the target corporation, by any target affiliate, or by any corporation that would be a target affiliate but for the fact that it is not an includible corporation, to any member of the affiliated group other than such corporations, shall be deemed to be a distribution that reduces special basis, but only if such transfer qualifies for nonrecognition under any provision of the Code or is an interaffiliate loan; and

(iii) Where an adjustment is made pursuant to paragraphs (e)(2) (i) or (ii) of this section, the special basis shall be adjusted as of the last day of the month which includes the date of the transaction (or the last day of the shareholder's taxable year, whichever comes first), and the adjusted amount shall be amortized over the remaining amortization period.

(3) *Election out of fixed stock write-off method.* a taxpayer may elect out of the fixed stock write-off method for any year during the amortization period and use the adjusted tax basis of the assets of the target corporation and its target affiliates to determine its debt-equity ratio for that year and all future years.

(4) *Method for making elections—*(i) *Election to use method.* An election to use the fixed stock write-off method is made by attaching a statement to the return of the purchasing corporation (including a consolidated return, where appropriate) for the taxable year in which the election is to become effective. The election must be signed by an authorized official of, and is effective for, each member of the purchasing corporation's affiliated group.

(ii) *Election to cease to use method.* An election to cease to use the fixed stock write-off method is made by attaching a statement to the return of the purchasing corporation (including a consolidated return, where appropriate) for the taxable year in which the election is to become effective. The election must be signed by an authorized official of, and is effective for, each member of the purchasing corporation's affiliated group.

(5) *Definitions—*(i) *Qualified stock purchase.* For purposes of this paragraph (e), the term "qualified stock purchase" means a qualified stock purchase (as defined under section 338(d)(3)) with respect to which no election has been made under section 338(g), but only if the purchase is made by a corporation which is an includible corporation (as defined in section 1504(b)).

(ii) *Target corporation.* For purposes of this paragraph (e), the term "target corporation" shall mean a target corporation as defined under section 338(d)(2), but only if such corporation is includible within the purchasing corporation's affiliated group for purposes of this section.

(iii) *Target affiliate.* For purposes of this paragraph (e), the term "target affiliate" shall mean a target affiliate as defined under section 338(h)(6), but only if such corporation is includible within the purchasing corporation's affiliated group for purposes of this section.

(iv) *Purchasing corporation.* For purposes of this paragraph (e), the term "purchasing corporation" shall mean a purchasing corporation as defined under section 338(d)(1).

(v) *Acquisition date.* For purposes of this paragraph (e), the term "acquisition date" shall mean the acquisition date as defined under section 338(h)(2).

(vi) *Fixed stock write-off period—*(A) *In general.* Except as provided in paragraph (e)(5)(vi)(B) of this section, the applicable "fixed stock write-off period" means 96 months.

(B) *Acquired corporations owning long-lived assets.* If more than fifty percent, by value, of the assets of the target corporation and any target affiliates on the acquisition date are described in this paragraph (e)(5)(vi)(B), then the applicable "fixed stock write-off period means 180 months. An asset is described in this paragraph (e)(5)(vi)(B) if—

(*1*) It is inventory or a non-wasting tangible or intangible asset (*e.g.*, land or goodwill);

(*2*) In the case of a depreciable asset, it has a recovery period in excess of 25 years;

(*3*) In the case of a depletable asset, it has a recovery period for purposes of cost depletion in excess of 25 years;

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(*4*) In the case of an amortizable asset, it has an amortization period in excess of 25 years.

Determinations for purposes of this paragraph (e)(5)(vi)(B) shall be made as if the asset were sold on the acquisition date, and cash, cash items, and marketable securities shall be disregarded for all purposes. A purchasing corporation is only entitled to the benefit of the paragraph (e)(5)(vi)(B) if it demonstrates that it satisfies the requirements of this paragraph in a statement attached to its return accompanying its election to use the fixed stock write-off method. Such statement must provide all necessary information, including all appropriate computations.

(6) *Inclusion of target debt notwithstanding use of fixed stock write-off method.* Debt of the affiliated group includes the liabilities of a target corporation and any target affiliates notwithstanding that the assets of such corporations are determined using the fixed stock write-off method.

§ 1.163(j)–6 Limitation on carryforward of tax attributes.

(a) *Disallowed interest expense carryforward*—(1) *Affiliated groups.* If a corporation becomes a member of an affiliated group, the amount of any disallowed interest expense carryforward from a non-affiliation year that may be deducted by the members of an affiliated group under § 1.163(j)–5 (b) or (c) may not exceed the amount, if any, of the current year's excess limitation of the affiliated group (determined under §§ 1.163(j)–2(c) and 1.163(j)–5 (b) or (c)).

(2) *Section 381(a) transactions.* The amount of any disallowed interest expense carryforward from a non-affiliation year of a transferor or distributor corporation that may be deducted by the transferee or distributee corporation (or the consolidated group of which it is a member) following a transaction described in section 381 (a) may not exceed the amount, if any, of the current year's excess limitation (determined under § 1.163(j)–2(c)).

(3) *Section 382 and SRLY.* For the application of additional limitations governing disallowed interest expense carryovers, see section 382(h) (relating to built-in deductions of loss corporations) and the regulations thereunder (including § 1.1502–91, relating to section 382(h) rule for built-in deductions of consolidated groups) and § 1.1502–15 (relating to separate return limitation year rules for built-in deductions of consolidated groups)).

(4) *Example.* The provisions of this paragraph (a) are illustrated by the following example.

Example. In 1992, Z, a non-affiliated corporation, becomes a member of a consolidated group. There is no section 382 ownership change. Under § 1.163(j)–1, Z has $3,000 of disallowed interest expense carryforward from separate return limitation years. Under § 1.163(j)–5(b), the consolidated group (including Z) has excess limitation of $2,000 for 1992 (computed without regard to any disallowed interest expense carryforward). In addition, the consolidated group has excess limitation carryforward of $1,000 from 1991. Under paragraph (a)(1) of this section, only $2,000 (the amount of the consolidated group's excess limitation for 1992) of Z's separate return limitation year disallowed interest expense carryforward is deductible in 1992. The remaining $1,000 of Z's disallowed interest expense carryforward is carried forward to subsequent years and remains subject to the limitations described in paragraph (a) of this section.

(b) *Excess limitation carryforward*—(1) *Affiliated groups*—(i) *General rule.* If a corporation becomes a member of an affiliated group, the amount of any excess limitation carryforward from a non-affiliation year that may be used by members of the group under § 1.163(j)–5 (b) or (c) may not exceed the excess, if any, of the corporation's separately computed net interest expense over 50 percent of the corporation's separately computed adjusted taxable income.

(ii) *Special rule for acquired groups.* If all the members of a group, whether or not consolidated, become members of a consolidated group, the amount of the acquired group's excess limitation carryforward (if any) from non-affiliation years that may be used by the consolidated group may not exceed the acquired group's excess interest expense (if any) for the taxable year. For this purpose, the acquired group's excess interest expense for any taxable year equals the excess interest expense of the former members of the acquired group for the taxable year computed as if they were members of a separate affiliated group making computations under § 1.163(j)–5(c).

(2) *Section 381(a) transactions.* If a corporation transfers or distributes its assets to another corporation in a transaction described in section 381(a) (other than a transaction described in section 368(a)(1)(F)), the excess limitation carryforward, if any, of the transferor or distributor from a non-affiliation year is reduced to zero immediately after the transaction.

(3) *Anti-avoidance rules.* Solely for purposes of paragraph (b)(1) of this section, in determining the net interest expense of a member or a group, interest expense paid or accrued with respect to loans incurred or assumed by such member in connection with or after becoming a member of the group are disregarded unless the loan proceeds are actually utilized by the member in its pre-affiliation business. For example, if a loan is incurred by one member of the affiliated group with excess limitation carryforward from non-affiliation years, but the proceeds of the loan are actually utilized by another member of the group, the interest expense with respect to the loan is disregarded for purposes of applying paragraph (b)(1) of this section. In addition, interest on a loan used for the acquisition of the stock of a corporation which is incurred by the acquired corporation may be disregarded for purposes of paragraph (b)(1) of this section if the facts indicate that one of the purposes for the acquired corporation's incurring the loan was to avoid the limitation of such paragraph.

(c) *Affiliation and non-affiliation years*—(1) *In general.* For purposes of this section, the taxable year of a member of an affiliated group (as defined in § 1.163(j)–5(a)) is an "affiliation year" with respect to another member if the members were members of an affiliated group (whether or not the same affiliated group as the current affiliated group) with each other on the last day of the taxable year. A "non-affiliated year" is any taxable year that is not an affiliation year.

(2) *Predecessors and successors.* For purposes of this section, any reference to a corporation or member or the years of a corporation or member includes, as the context may require, a reference to a successor or predecessor (as defined in § 1.1502–1(f)(4)) or to the years of a successor or predecessor.

(3) *Formation of affiliated groups.* For purposes of determining whether a corporation has become a member of another corporation's affiliated group solely by reason of § 1.163(j)–5(a), corporations (or affiliated groups) with greater value are deemed to acquire corporations (or affiliated groups) with lesser value and the principles of § 1.1502–75(d)(3) (governing "reverse acquisitions") shall apply.

(d) *Anti-duplication rule.* The same item of income, expense, or carryforward may not be taken into account more than once if inconsistent with the principles of section 163(j) or these regulations.

§ 1.163(j)–7 Relationship to other provisions affecting the deductibility of interest.

(a) *Paid or accrued.* For purposes of section 163(j), interest expense is not considered "paid or accrued" until such interest would be deductible but for such section.

(b) *Coordination of section 163(j) and certain other provisions*—(1) *Disallowed interest provisions.* Except as provided under § 1.163(j)–2(f)(3)(vi), interest expense which is permanently disallowed as a deduction (*e.g.* under sections 265 or 279) is not taken into account under section 163(j).

(2) *Deferred interest provisions.* Provisions which defer the deductibility of interest (such as sections 163(e)(3) and 267(a)(3)) apply before the application of section 163(j).

(3) *At risk rules and passive activity loss provisions.* Sections 465 and 469 shall be applied before applying section 163(j). There shall be no recomputation of deductions under section 469.

(4) *Capitalized interest expenses.* Provisions that require the capitalization of interest shall be applied before section 163(j). Capitalized interest is not treated as interest for any purpose under section 163(j). See regulations under section 263A(f) for ordering rules that determine whether exempt related person interest expense is capitalized under section 263A(f).

(5) *Reductions under section 246A.* Section 246A shall be applied before section 163(j). Any reduction in the dividends received deduction under section 246A shall reduce interest expense taken into account under section 163(j).

(c) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1 (i) In 1990, Z, a domestic corporation that does not satisfy the debt-equity ratio safe harbor test, has $30,000 of interest expense, all of which is paid to related persons, and no interest income. Of Z's interest expense, $10,000 is permanently disallowed under section 265. The remaining $20,000 of interest expense is exempt from tax under the rules of § 1.163(j)–4. Z's adjusted taxable income for the year is $42,000.

(ii) Under paragraph (b)(1) of this section, the $10,000 interest expense that is permanently disallowed is not taken into consideration for purposes of section 163(j). Therefore, in 1990, none of Z's $20,000 interest expense is disallowed under section 163(j) since that amount is less than 50 percent of Z's 1990 adjusted taxable income ($21,000).

Example 2 (i) In 1990, Q, a domestic corporation that does not satisfy the debt-equity ratio safe harbor test, has $80,000 of adjusted taxable income and $60,000 of interest expense, of which $50,000 is exempt related person interest expense. Q has no interest income. Of Q's exempt related person interest expense, $20,000 is not currently deductible under section 267(a)(2). Assume that the $20,000 expense will be allowed as a deduction under section 267(a)(2) in 1991.

(ii) Under paragraph (b)(2) of this section, section 267(a)(2) is applied before section 163(j). Thus, in computing Q's excess interest expense for 1990, the $20,000 is not taken into account. Accordingly, in 1990, Q has no excess interest expense, since its net interest expense of $40,000 ($60,000−$20,000) is equal to 50 percent of its adjusted taxable income for the taxable year. The $20,000 of interest expense not allowed as a deduction in 1990 under section 267(a)(2) is taken into account under section 163(j) in 1991, the year in which it is allowed as a deduction under section 267(a)(2).

Example 3 (i) for 1990, H, a closely held domestic corporation that does not satisfy the debt-equity ratio safe harbor test, has $2,000 of rental income and $3,000 of deductions consisting of $1,500 of interest expense, all of which is exempt related person interest expense, $600 of rental expense, and $900 of depreciation expense. Under the passive activity loss provisions of section 469, only $2,000 of H's total expenses are allowable as deductions. These consist of $1,000 ($2,000/$3,000×$1,500) of interest expense, $400 (2,000/$3,000×$600) of rental expense, and $600 of depreciation expense ($2,000/$3,000×$900). No deduction is allowed in 1990 for H's passive activity loss of $1,000, which consists of $500 of interest expense, $200 of rental expense, and $300 of depreciation expense.

(ii) Under paragraph (b)(3) of this section, section 469 is first applied to determine the amount of interest expense allowable as a deduction ($1,000), after which the rules of section 163(j) are applied. Under section 163(j), H's $1,000 of interest expense is allowable to the extent of 50 percent of its adjusted taxable income ($1,600, determined by adding to H's taxable income (zero) its allowable deductions for interest expense ($1,000) and depreciation deductions ($600). Since H's interest expense of $1,000 (determined after applying section 469) exceeds 50 percent of its adjusted taxable income for 1990 ($800), H's excess interest expense of $200 is disallowed under section 163(j). There is no recomputation of deductions under section 469.

§ 1.163 (j)–8 Application of section 163 (j) to certain foreign corporations.

(a) *Scope.* A foreign corporation that has income, gain or loss that is effectively connected (or is treated as effectively connected) with the conduct of a trade or business in the United States for the taxable year will be subject to the rules of this section for the taxable year, provided that it has a debt-equity ratio that exceeds 1.5 to 1 on the last day of the taxable year, computed using the definitions of debt and equity under paragraph (e) of this section.

(b) *Disallowed interest expense.* In computing its effectively connected taxable income for a taxable year, a foreign corporation described in paragraph (a) of this section will not be allowed to deduct interest expense allocated to its effectively connected income that it has paid, or is deemed to have paid, to a related person (as determined under paragraph (d) of this section) if no tax is imposed with respect to such interest as determined under § 1.163(j)–4. The amount of interest expense disallowed under this paragraph (b), however, shall not exceed the corporation's excess interest expense (as defined in paragraph (c)(2) of this section). Any interest expense that is disallowed under this section may be carried forward to a subsequent taxable year of the foreign corporation and allowed in such year to the extent provided in §§ 1.163 (j)–1(c) and 1.163(j)–6 (a)(2) and (3). See § 1.163(j)–7 for rules relating to the coordination of this section with other provisions of the Code affecting the deductibility of interest.

(c) *Definitions*—(1) *In general.* The terms "net interest expense", "adjusted taxable income", "excess interest expense", and "excess limitation" shall have the same meanings as provided elsewhere in these regulations under section 163(j), with the following additions and modifications. All other terms used in this section shall have the same meanings as provided elsewhere in these regulations under section 163(j).

(2) *Net interest expense.* The net interest expense of a foreign corporation means the excess, if any, of interest expense that is allocated to the effectively connected income of the foreign corporation for the taxable year and that is taken into account under section 163(j) as provided in § 1.163(j)–7, over the amount of interest includible in its effectively connected gross income for the taxable year.

(3) *Adjust taxable income.* The adjusted taxable income of a foreign corporation is its effectively connected taxable income that is not exempt from tax by reason of a U.S. income tax treaty, modified by the additions, and subtractions provided in § 1.163(j)–2(f) that are attributable to such effectively connected income.

(4) *Excess interest expense.* The excess interest expense of a foreign corporation is the excess of its net interest expense determined under paragraph (c)(2) of this section over the sum of 50 percent of its adjusted taxable income determined under paragraph (c)(3) of this section plus any excess limitation carryforward determined under §§ 1.163 (j)–1 (d) and 1.163 (j)–6 (b) (2).

(5) *Excess limitation.* The excess limitation of a foreign corporation means the excess, if any, of 50 percent

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of the adjusted taxable income of the foreign corporation (determined under paragraph (c)(9) of this section), over its net interest expense (determined under paragraph (c)(2) of this section). For rules regarding the carryforward of any excess limitation of a foreign corporation, see §§ 1.163(j)–2(d) and 1.63(j)–2(b)(2).

(d) *Determination of interest paid to a related person.* For purposes of this section, the amount of interest that is paid, or deemed paid, by a foreign corporation to a related person, as defined in § 1.163(j)–2(g), shall equal the sum of the amount of interest paid by a U.S. trade or business of the foreign corporation under section 884(f)(1)(A) to a person that is related to the foreign corporation and the amount of interest described in section 884(f)(1)(B) ("excess interest" within the meaning of § 1.884–4T(a)).

(e) *Debt-equity ratio.* For purposes of computing the debt-equity ratio of a foreign corporation subject to the rules of this section, the debt of the foreign corporation shall equal the amount of its worldwide liabilities for purposes of Step 2 of § 1.882–5, adjusted in accordance with the rules in § 1.163(j)–3(b) without regard to § 1.163(j)–(b)(3). The equity of the foreign corporation shall equal the amount of its worldwide assets for purposes of Step 2 of § 1.882–5, adjusted in accordance with the rules in § 1.163(j)–3(c) without regard to § 1.163(j)–3(c)(4), less its worldwide liabilities as determined in the preceding sentence.

(f) *Example.* The rules of paragraphs (b) through (e) of this section may be illustrated with the following example.

Example. FC, a country X corporation, is engaged in the active conduct of a trade or business in the United States. FP, a country X corporation, owns all the stock of FC. The debt-equity ratio of FC under paragraph (e) of this section is 2:1. FC has $700 of adjusted taxable income under paragraph (c)(9) of this section, and net interest expense of $600 ($600 of interest expense allocated under § 1.882–5 over $0 of effectively connected interest income) under paragraph (c)(2) of this section. Under § 1.884–4T, $500 of FC's allocated interest expense is treated as interest paid by the U.S. trade or business of FC to FP, and $100 of FC's allocated interest expense is treated as if it were paid by a wholly owned domestic corporation to FC. FC and FP are both qualified residents of country X. Under the treaty, the rate of tax on the $500 of interest paid to FP and on FC's $100 of excess interest is reduced from 30 percent to 10 percent. Thus, of the $600 of interest paid or deemed paid by FC to related persons, two-thirds of the interest is treated as tax-exempt, or $400. The excess interest expense of FC is the excess of FC's net interest expense ($600) over 50 percent of FC's adjusted taxable income ($300) or $250. Thus, $250 of the $600 of interest paid by FC to tax-exempt related persons will be disallowed in computing FC's effectively connected taxable income for the taxable year but may be carried over by FC to a subsequent taxable year.

(g) *Coordination with branch profits tax.*—(1) *Effect on effectively connected earnings and profits.* The disallowance and carryforward of interest expense under this section shall not affect when such interest expense reduces the effectively connected earnings and profits of a foreign corporation, as defined in § 1.884–1T(f).

(2) *Effect on U.S. net equity.* The disallowance and carryforward of interest expense under this section shall not affect the computation of the U.S. net equity of a foreign corporation, as defined in § 1.884–1T (c).

(3) *Example.* The principles of this § 1.163(j)–9(g) are illustrated by the following example.

Example. Assume foreign corporation FC uses money that is treated as a U.S. asset under § 1.884–1T(d)(3) in order to pay interest described in paragraph (d) of this section, and that under this section a deduction for such interest expense is disallowed. Assuming that FC's U.S. assets otherwise remain constant during the year, the U.S. assets of FC will have decreased by the amount of money used to pay the interest expense, and the U.S. net equity of FC will be computed accordingly.

§ 1.163 (j)–9 Guarantees and back-to-back loans. [Reserved]

§ 1.163 (j)–10 Effective dates.

(a) *In general.* Section 163 (j) generally applies to interest paid or accrued directly or indirectly by the payor corporation in its taxable years beginning after July 10, 1989.

(b) *Exceptions.*—(1) *Interest paid on certain fixed-term obligations outstanding on July 10, 1989.*—(i) *In general.* Interest paid or accrued with respect to a fixed-term debt obligation outstanding on July 10, 1989, shall not be treated as disallowed interest expense, even though such interest is paid or accrued in a taxable year of the payor corporation beginning after July 10, 1989. Such interest expense is, however, taken into account under section 163(j) for all other purposes (e.g. determining whether other interest expense paid or accrued during the taxable year is treated as excess interest expense).

(ii) *Certain obligations issued pursuant to written contracts binding on July 10, 1989.*—(A) *In general.* Interest paid or accrued with respect to a fixed-term obligation that is issued after July 10, 1989, pursuant to a written contract binding on that date and at all times thereafter until the issuance of the obligation, shall be treated in the same manner as interest paid or accrued with respect to a fixed-term debt obligation outstanding on July 10, 1989.

(B) *Whether a contract is binding.* In determining whether a contract is a binding contract, the following rules apply:

(*1*) A written contract between related persons (as defined in § 1.163(j)–2(g)) shall only be treated as binding on a particular date if it was enforceable on that date (whether on the basis of reliance or otherwise) by an unrelated third party.

(*2*) A written contract duly executed by authorized individuals on or before July 10, 1989, will not be considered non-binding solely because it is subject to a condition outside the control of the parties; insubstantial contract terms remain to be negotiated by the parties; or it is subject to approval by the board of directors of a corporate party where, prior to July 11, 1989, the board had authorized or been apprised of the status of negotiations and formal board approval occurred reasonably promptly following extension of the written contract without further change to the agreement (except for insubstantial contract terms).

(iii) *Modification of certain fixed-term obligations outstanding on July 10, 1989.*—(A) *In general.* If an obligation described in paragraphs (b)(1)(i) or (b)(1)(ii) of this section is modified after July 10, 1989, it shall be treated thereafter as a new obligation for purposes of section 163 (j).

(B) *Modification defined.*—(*1*) *In general.* Except as provided in this paragraph (b)(1)(iii)(B), an obligation described in paragraphs (b)(1)(i) or (b)(1)(ii) of this section shall be treated as modified for purposes of paragraph (b)(1)(iii)(A) of this section if it is revised (whether by renegotiation, assumption, reissuance, or otherwise) in a manner that would give rise to a deemed exchange of debt instruments by the obligee under section 1001. In any case, an obligation shall not be treated as modified under this paragraph (b)(1)(iii)(A) solely because a new obligor is substituted for the original obligor to reflect the terms of a reorganization described in section 368(a) or incident to a liquidation described in section 332(a).

(*2*) *Extension of maturity date.* An obligation shall be treated as modified if its maturity date is extended even if such extension would not give rise to a deemed exchange of debt instruments under section 1001.

(*3*) *Anti-abuse rule.* If a fixed-term debt obligation outstanding on July 10, 1989, or an obligation described in paragraph (b)(1)(ii)(A) of this section, is acquired by a person related to the obligor (within the meaning of § 1.163(j)–2(g)) from an obligee that is not so related, and the obligor (or any member of its affiliated group) issues new debt that has the effect of replacing the acquired debt (whether or not such issuance is to the original obligee), the acquired obligation shall be treated as modified for purposes of paragraph (b)(1)(iii) of this section.

(*2*) *Demand loans.* Interest paid or accrued prior to September 1, 1989, on a demand loan (or other obligation with no fixed term) outstanding on July 10, 1989, shall not be treated as disallowed by section 163(j) even though it is paid or accrued in a taxable year beginning after the latter date. Such interest expense is, however, taken into account under section 163(j) for all other purposes.

(c) *Carryforward of excess limitation from pre-effective date taxable years to post-effective date taxable years.* In computing a corporation's excess limitation carryforwards for its first, second, and third taxable years beginning after July 10, 1989, a corporation shall take into account amounts that would have been treated as excess limitation carryforwards to those years as if section 163(j) had been in effect throughout the corporation's taxable years beginning after July 10, 1986. For this purpose, such corporation shall be treated as having had zero excess limitation or disallowed interest expense carried forward to its first taxable year beginning after July 10, 1986.

(d) *Examples.* The following examples illustrate the operation of this section.

Example 1 (i) S is a calendar year domestic corporation. In each of 1987, 1988, 1989, and 1990, S's adjusted taxable income is $100. In 1987, 1988, 1989, and 1990, S's net interest expense is $40, $54, $55, and $50, respectively. All of S's interest expense for these years is exempt related person interest expense incurred with respect to demand loans. S does not satisfy the debt-equity ratio safe harbor test in 1990.

(ii) Pursuant to § 1.163 (j)–2 (c) and this section, S has excess limitation of $10 in 1987 which (subject to the limitations described in § 1.163 (j)–1 (d)) can be carried forward to its next three succeeding taxable years. In 1988, S's excess limitation carryforward from 1987 is reduced by $4 (its excess interest expense ($54) over 50 percent of its adjusted taxable income ($50)).

(iii) In 1989, $5 of S's $6 excess limitation carryforward from 1988 is applied against, and reduced by, S's $5 excess interest expense.

(iv) In 1990, the $1 balance of S's excess limitation carryforward from 1987 expires without tax benefit to S.

Example 2 (i) The facts are the same as in Example 1, except as follows: In 1988, S's net interest expense is $58. S's net interest expense is $55 in 1989, $50 in 1990, and $55 in 1991. S does not satisfy the debt-equity ratio safe harbor test in 1991.

(ii) In 1988, S has excess limitation carried forward from 1987 of $10, none of which is used or expires in 1988, and has excess limitation of $1 for 1988. In 1989, $5 of S's excess limitation carryforward from 1987 reduces to zero the amount of S's excess interest expense in that year. Thus, in 1990, S has total available excess limitation carryforward of $6, of which $5 is from 1987 and $1 from 1988. All $5 of S's remaining excess limitation carryforward from 1987 expires without tax benefit to S in 1990. In 1991, the $1 of excess limitation carryforward from 1988 reduces S's disallowed interest expense to $4.

Example 3 (i) D is a calendar-year domestic corporation. In 1987 and 1988, D's adjusted taxable income is $120 and its net interest expense is $80. In 1989, D's adjusted taxable income is $100 and its net interest expense is $30. In 1990, D has negative adjusted taxable income (i.e. an adjusted taxable loss) of $100 and $50 of net interest expense. In each year, all of D's net interest expense is exempt related person interest expense incurred with respect to demand loans.

(ii) D has neither excess limitation nor excess interest expense from 1987 and 1988. In 1989, D has $20 ($50–$30) of excess limitation which (subject to the limitations described in § 1.163 (j)–1 (d)) can be carried forward to its next three succeeding taxable years. In 1990, D's first taxable year in which its interest expense may be disallowed as a deduction under section 163 (j), the $20 of excess limitation D carried forward from 1989 is reduced (but not below zero) by its $100 adjusted taxable loss for that year under § 1.163 (j)–2 (f) (4). Therefore, none of D's excess limitation carryforward from 1989 can be applied to reduce D's $50 excess interest expense in 1990.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 91–14243 Filed 6–12–91; 11:25 am]
BILLING CODE 4830–01–M

26 CFR Part 1

[INTL–0070–89]

RIN 1545–AO24

Earnings Stripping (Section 163(j)); Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to section 163(j) of the Internal Revenue Code, regarding "earnings strippings."

DATES: The public hearing will be held on Wednesday, September 25, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, September 4, 1991.

ADDRESSES: The public hearing will be held in the Cash Room, Department of the Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R, (INTL–0070–89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9226 or 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 163(j) of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the Federal Register.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, September 4, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Department of the Treasury Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–14244 Filed 6–12–91; 11:25 am]
BILLING CODE 4830–01–M

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26 CFR Part 301

[GL-721-88]

RIN 1545-AM71

Statute of Limitations on Collection After Assessment and Collection After Commencement of Judicial Proceedings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulatory amendments regarding the statute of limitations on collection after assessment and collection after the commencement of judicial proceedings. The existing regulations provide that a proceeding in court to collect an assessable tax may be begun, or a levy for the collection of an assessable tax may be made, within six years after the timely assessment of such tax. The Omnibus Budget Reconciliation Act of 1990 amended the Internal Revenue Code by extending the statute of limitations on collection after assessment from six to ten years. The existing regulations also provide that the period during which a tax liability may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer. The Technical and Miscellaneous Revenue Act of 1988 amended the Internal Revenue Code to provide that if a timely proceeding in court for the collection of a tax is commenced, the period during which the tax may be collected by levy shall be extended until the liability or a judgment arising out of the liability is satisfied or becomes unenforceable. The proposed regulations amend the existing regulations to conform them to the present law.

DATES: Written comments and requests for a public hearing must be received by August 2, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604 Ben Franklin Station, Attn: CC:CORP:T:R (GL-721-88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202-535-9062 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6502 of the Internal Revenue Code. The regulations reflect the amendment of section 6502 by section 11317 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. No. 101-239), by section 1015(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647), and by section 7811(k)(2) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. No. 101-239).

Explanation of Provisions

Section 11317 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. No. 101-508, 104 Stat. 1388) amended section 6502(a) of the Internal Revenue Code by extending the statute of limitations on collection after assessment from six years to ten years. The proposed regulation would conform the existing regulations to section 6502(a) in its present form.

Section 1015(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100-647, 102 Stat. 3573) amended section 6502 of the Internal Revenue Code to provide that if a timely proceeding in court for the collection of a tax is commenced, the period during which the tax may be collected by levy shall be extended until the tax liability or a judgment against the taxpayer arising from the liability is satisfied or becomes "unforceable." The word "enforceable" appeared in the statute through a clerical error. The error was corrected by section 7811(k)(2) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. No. 101-239, 103 Stat. 2412), which changed the word "enforceable" to "unenforceable." The existing regulations under section 6502(a) of the Internal Revenue Code provide that the period for collection by levy after an assessment shall not be extended or curtailed by reason of a judgment against a taxpayer. This is now an incorrect statement of the law, in view of the TAMRA amendment. The proposed regulations would conform the existing regulations to section 6502(a) in its present form.

Effective dates

The proposed amendment concerning the statute of limitations on collection after assessment would be effective for taxes assessed after November 5, 1990, and for taxes assessed on or before November 5, 1990, if the period prescribed in section 6502 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by the Omnibus Budget Reconciliation Act of 1990) for the collection of such taxes has not expired as of November 5, 1990. The proposed amendment concerning collection after commencement of judicial proceedings would be effective for levies issued after November 10, 1988.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the Federal Register.

Drafting Information

The principal authors of these proposed regulations are Kevin B. Connelly and Anne P. Rosselot, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Attorney, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is proposed to be amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. § 301.6502-1 is amended by removing the words "6 years" and adding the words "10 years" in their place.

2. Paragraph (a)(2)(i) is amended by removing the words "6-year period of limitation" and adding "10-year period of limitation" in their place.

3. Paragraph (a)(3) is revised to read as set forth below.

4. Paragraph (c) is added to read as set forth below.

§ 301.6502-2 Collection after assessment.

(a) * * *

(3) If a proceeding in court for the collection of a tax is begun within the period provided in paragraph (a)(1) of this section (or within any extended period as provided in paragraph (a)(2) of this section), the period during which the tax may be collected by levy is extended until the liability for the tax or for a judgment against the taxpayer arising from the liability is satisfied or becomes unenforceable.

* * * * *

(c) **Effective dates.** (1) Paragraph (a)(1) of this section shall apply to—

(i) Taxes assessed after November 5, 1990; and

(ii) Taxes assessed on or before November 5, 1990, if the period prescribed in section 6502 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by the Omnibus Budget Reconciliation Act of 1990) for the collection of such taxes has not expired as of such date.

(2) Paragraph (a)(3) of this section shall apply to levies issued after November 10, 1988.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-14184 Filed 6-17-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB34

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Information To Be Made Available to the Public

AGENCY: Minerals Management Service, Interior

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Minerals Management Service's (MMS) regulations governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS) include provisions for release of data and information to the public. The MMS believes that the rules need modification and clarification to ensure that the items of data and information submitted on Forms MMS-1866, Request for Reservoir Maximum Efficient Rate (MER); MMS-1867, Request for Well Maximum Production Rate (MPR); MMS-1868, Well Potential Test Report; MMS-1869, Quarterly Oil Well Test Report; and MMS-1870, Semiannual Gas Well Test Report, that are made available for public inspection are clearly identified in the regulations. This notice revises the previously published amendment to clarify which data and information submitted in association with MMS's permitting of drilling and production operations in the OCS will be available to the public.

DATES: Comments must be received or hand delivered by July 18, 1991.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070; Attention: John V. Mirabella.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Acting Chief, Engineering and Standards Branch, telephone (703) 787-1600.

SUPPLEMENTARY INFORMATION: The rules at 30 CFR part 250 governing offshore oil and gas and sulphur operations, which were published in the Federal Register on April 1, 1988, included provisions in § 250.18 governing the release of data and information to the public. Section 250.18 specifies periods of time when certain geological and geophysical data and information will be protected from disclosure to the public. Section 250.18(d) identifies specific items of data and information on Forms MMS-330, MMS-331, and MMS-331C which are to be protected from disclosure for specified time periods. The release of data and information on other MMS reporting forms is not mentioned in 30 CFR part 250. This apparent inconsistency makes it necessary to determine whether data and information submitted on Forms MMS-1866, MMS-1867, MMS-1868, MMS-1869, or MMS-1870 should be available for public inspection when the same data or information is protected from disclosure under § 250.18 when submitted on Forms MMS-330, MMS-331, or MMS-331C.

Under OCS Order No. 12, Public Inspection of Records, which was rescinded by a Federal Register Notice published April 1, 1988 (53 FR 10888), lessees were advised regarding the specific data and information that would be protected from disclosure for specified time periods. The provisions of § 250.18 are not as inclusive as OCS Order No. 12.

Under revised part 250, the Gulf of Mexico OCS Region issued further guidance in the form of a Notice to Lessees and Operators (NTL). The NTL 88-03 was issued on June 29, 1988, and provided an interpretation on the data and information to be made available to the public. To provide additional specificity in the regulations, MMS published a notice of proposed rulemaking on August 4, 1989, in the Federal Register (54 FR 32316). The proposed rule would have amended § 250.18 to identify those items of data and information submitted on MMS reporting Forms MMS-1866 and MMS-1868 that would be subject to protection from disclosure and the timetables for release of the protected data and information. The proposed rule also provided that all data and information submitted on Forms MMS-1867, MMS-1869, and MMS-1870 would be available for public inspection upon receipt.

Following the public comment period, the comments received were reviewed, further analysis conducted within MMS, and a decision was made to propose a revised rule that more closely follows the framework of OCS Order No. 12.

This proposed rule modifies the previously published proposal to provide that, with the exception of summary of the porous zones, all information on Forms MMS-330, MMS-331, and MMS-331C will be released when the well goes on production. Data and information on Forms MMS-1867, MMS-1868, MMS-1869, and MMS-1870, which are not submitted until after the well is on production, will be released upon receipt of the forms. Although MMS-1866 is submitted after the well is on production, most of the data on the form is used to estimate the reserves and will not be available for public inspection without the consent of the lessee for the same periods as those provided for in paragraph (b) of this section. The MMS believes that returning to the basic approach of releasing certain information when a well goes on production will provide a balance between the commercial interests of the lessees to protect data and information from disclosure and the interests of the public to have access to data and information concerning public lands.

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Specific comments received in response to the proposed rule are discussed below.

Comment: Two commenters recommended that proprietary information received with the MPR not be released along with the MPR.

Response: Narrative information and other supporting information submitted with the MPR is released in accordance with paragraphs (a) and (b) of § 250.18 and is not affected by this rule change.

Comment: Two commenters recommended that items specified in paragraphs (d)(6)(iii) through (vii) and (ix) of § 250.18 should be released since similar information has already been released on other forms.

Response: The rule has been revised to release all information except the summary of porous zones and the reserve data when a well goes on production. This will resolve any problems of inconsistency between protection of data and information on various reporting forms.

Comment: Several commenters recommended that information be protected if similar information is available through other sources.

Response: When data and information are protected from release, it is done to maintain the commercial value of the data and information for the lessee. The fact that similar information is released on a different form is not sufficient reason to protect data and information from release.

Comment: One commenter expressed the view that information on Form MMS–1866 be treated as interpreted information and protected for 10 years rather than analyzed information which is protected for 2 years.

Response: Information on forms frequently does not fit into a clear category of either analyzed or interpreted. In deciding when information should be released, MMS has attempted to balance the protection of the lessee's commercial rights associated with the information and the public's right of access to data and information concerning public lands. In this particular case, as discussed earlier, most of the data and information submitted on Form MMS–1866 will be protected for 2 years or as otherwise provided for in paragraph (b) of this section.

Due to the changes from the August 14, 1989, proposed rule, MMS has decided to publish a new proposed rule and provide a new comment period to allow additional comments to be submitted. Comments may be submitted by the date indicated above in the **DATES** section of this preamble.

In an effort to reduce the burden associated with information collection, MMS continuously reviews forms on which information is developed. In response to this review, MMS has developed revisions to several MMS forms. These revisions have been described in **Federal Register** Notices published August 9, 1990 (55 FR 32484–32502), and August 13, 1990 (55 FR 32973). When new forms are adopted, information will be protected from being released based on the type of information. Accordingly, although this proposed rule pertains to item numbers on existing forms, information will be protected on new forms based on requirements as modified by rule changes resulting from this notice.

Author: This document was prepared by John V. Mirabella, Engineering and Technology Division, MMS.

Executive Order (E.O) 12291

The Department of the Interior (DOI) has determined that this rule will not have any effect on the economy and is not a major rule.

Regulatory Flexibility Act

The DOI has determined that this rule will not have a significant effect on a substantial number of small entities. In general, the entities that engage in offshore activities are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities.

Paperwork Reduction Act

This rule does not affect any information collection which requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment

The DOI has determined that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to Equal Opportunity 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: April 26, 1991.

Barry A. Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR part 250 is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority for part 250 continues to read as follows:

Authority: Sec. 204 Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.18 is amended by revising the introductory text of paragraph (d) and by adding new paragraphs (d)(4), (d)(5), (d)(6), (d)(7), and (d)(8) to read as follows:

§ 250.18 Data and information to be made available to the public.

* * * * *

(d) Data and information identified in paragraphs (d)(1) through (d)(4) of this section shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier, except that the summary of porous zones shall not be released when the well goes on production unless the period of time specified in paragraph (b) has expired. Paragraphs (d)(5) through (d)(8) of this section identify forms on which all data and information are available for public inspection.

* * * * *

(4) On Form MMS–1866, Request for Reservoir Maximum Efficient Rate (MER), in the "Basic Data Required" section, items 1 through 31.

(5) On Form MMS–1867, Request for Maximum Production Rate, all items of data and information are available for public inspection.

(6) On Form MMS–1868, Well Potential Test Report, all items of data and information are available for public inspection.

(7) On Form MMS–1869, Quarterly Oil Well Test Report, all items of data and information are available for public inspection.

(8) On Form MMS–1870, Semiannual Gas Well Test Report, all items data and information are available for public inspection.

* * * * *

[FR Doc. 91–14081 Filed 6–17–91; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 218 and 229

[Docket No. LI–7; Notice 3]

RIN 2130–AA83

Event Recorders

AGENCY: Federal Railroad Administration (FRA), (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to improve the safety of railroad operations and to enhance the quality of information available for post accident investigations by requiring event recorders on passenger trains and on heavy, fast freight trains.

DATES: (1) *Written comments:* Written comments must be received by September 20, 1991.

(2) *Public hearing:* A public hearing will be held at 10 a.m. on August 22, 1991. Persons desiring to make an oral statement at the hearing should notify the Docket Clerk before August 19, 1991.

ADDRESSES: (1) *Written comments:* Address comments to the Docket Clerk, Office of Chief Counsel, RCC–30, Federal Railroad Administration, Department of Transportation, 400 Seventh Street, SW., room 8209, Washington, DC 20590. Comments should identify the docket and notice number and five copies should be submitted. Persons wishing to receive confirmation of the receipt of their comments should include a self-addressed stamped postcard. The Dockets Section is located in room 8209 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except holidays.

(2) *Public hearing:* A public hearing will be held at room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Persons making statements at the hearing should provide five copies of their remarks at the hearing.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, Deputy Associate Administrator for Safety, RRS–2, room 8320A, Federal Railroad Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0897), or Thomas A. Phemister, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telphone 202–366–0635).

SUPPLEMENTARY INFORMATION:

Statutory background

Sections 10 and 21 of the Rail Safety Improvement Act of 1988 (RSIA), Public Law 100–342, 102 Stat. 624 (June 22, 1988), provide as follows:

Sec. 10. Event Recorders.

Section 202 of the Federal Railroad Safety Act of 1970 is amended by adding at the end the following new subsection:

"(m)(1)(A) The Secretary shall, within 18 months after the date of the enactment of the Rail Safety Improvement Act of 1988, issue such rules, regulations, standards, and orders as may be necessary to enhance safety by requiring that trains be equipped with event recorders within 1 year after such rules, regulations, orders, and standards are issued.

(B) If the Secretary finds that it is impracticable to equip trains as required under subparagraph (A) within the time limit under such subparagraph, the Secretary may extend the deadline for compliance with such requirement, but in no event shall such deadline be exended past 18 months after such rules, regulations, orders, and standards are issued.

"(2) For the purpose of this subsection, the term 'event recorders' means devices that—

"(A) record train speed, hot box detection, throttle position, brake application, brake operations, and any other function the Secretary considers necessary to record to assist in monitoring the safety of train operation, such as time and signal indication; and

"(B) are designed to resist tampering."

(Sec. 21. Tampering With Safety Devices.

Section 202 of the Federal Railroad Safety Act of 1970 is amended by adding at the end the following new subsection:

"(o)(1) The Secretary shall, * * *, issue such rules, regulations, orders, and standards as may be necessary to prohibit the willful tampering with, or disabling of, specified railroad safety or operational monitoring devices.

"(2)(A) * * *.

"(B) * * *.

(Subparagraphs (A) and (B) establish penalties for "railroad companies" and "individuals" who tamper with or disable safety or operational monitoring devices.)"

Proceedings to Date

On November 28, 1988, FRA published an advance notice of proposed rulemaking (ANPRM) in this docket. 53 FR 47557. The ANPRM summarized the state of FRA's knowledge about event recorders, called for written comments, and announced a public hearing to gather further information.

The substantive comments submitted by interested parties, the testimony given, and the exhibits received at the January 1989 hearing were helpful to the agency. A brief summary shows:

- That the producers of event recorders are fully capable of developing a unit that will detect and record virtually any parameter mandated by FRA;
- That the installed cost of an 8–10 event recorder ranges from $4,000 to $7,000;
- That the major railroads are ordering event recorders on most of their new locomotives;
- That the line haul railroads have between 40 and 75 percent of their road locomotives equipped with some kind of event recorder;
- That event recorders have proven useful in many major and minor accident investigations and that they have utility in monitoring engineer performance as well;
- That recorders, other than those gathering data on paper tapes, do not require daily maintenance and can be adequately maintained on the standard 92–day interval; and
- That the state of the art in event recorders is rapidly developing, both in terms of the capabilities of the equipment and in terms of its economic efficiency and that FRA should craft any event recorder requirement so that future innovations are not discouraged.

The railroad industry, especially the short line segment of it, believes that mandatory black box installations cannot be cost justified; rail labor believes that recorders are a good idea, as long as they are accurate; and the National Transportation Safety Board favors the installation of their devices. FRA is well aware of the costs of event recorders, and of the other requirements mandated by DOT, but FRA has been charged by the Congress to require that trains be equipped with event recorders if doing so will enhance safety.

On February 3, 1989, in a related proceeding, FRA published a final rule in Docket RSOR–10 (54 FR 5485). Published primarily in implementation of section 21 of the RSIA, FRA addressed tampering with "safety devices" and "operational monitoring" devices, including event recorders. In that rule, FRA prohibited tampering with event recorders and granted limited authority to deactivate such devices as were currently installed.

Background

According to the 1989 edition of Railroad Facts, a compendium of railroad industry statistics published by

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the Association of American Railroads (AAR), Washington, DC, there were approximately 20,000 locomotive units in service on the major freight railroads and Amtrak at the close of 1988. The vast majority of these were in freight or passenger road service. About two-thirds of the fleet has been added since 1970 and just under one-fourth of locomotives are eight years old or less.

Every major railroad uses event recorders of some type. Of the road locomotives in the national fleet, over 17,000 are owned and operated by ten major railroads and Amtrak. More than 9,000 of these are now equipped with a recorder retaining eight or more events and over 3,500 carry recorders for two or three events. This total of 12,500 locomotives is a significant increase from the nearly 7,500 locomotives determined to be equipped at the time FRA published the ANPRM in this proceeding in November 1988; more than 70 percent of the road locomotives on the nation's major railroads are now equipped with some form of event recorder.

Public attention focused on locomotive safety devices following the January 4, 1987, Amtrak/Conrail accident at Chase, Maryland. Several entities interested in the investigation of that accident mentioned the help that event recorders could have been in analyzing the events leading up to the fatal collision.

What an Event Recorder Does

It seems safe to say that the public perception of the role and capabilities of an event recorder is largely based on the use made of such devices in the air transport industry. In the investigation of an air disaster, it is often the flight data recorder that, together with the cockpit voice recorder, provides either the key clues about what happened leading up to the crash or the most reliable verification of a disaster hypothesis based on observations made of the debris. The importance of a flight data recorder stems from the complex, three dimensional environment in which airplanes move, the typical disintegration of the aircraft when it hits the ground, and the fact that the plane may fall to earth a considerable distance, both vertically and horizontally, from the actual "place" where the catastrophic event took place.

By contrast, railroads operate in two dimensions and, except in rare cases, investigators usually have significantly more wreckage at the actual site of the accident from which they can glean the clues that lead to a determination of cause. None of the locomotive event recorders in common use on America's railroads records as much data as the black boxes in a transport airplane and FRA has not found any railroad equipping its locomotives with anything like the cockpit voice recorders found in large passenger airplanes.

Section 10 of the RSIA defines an event recorder as a device that records "train speed, hot box detection, throttle position, brake application, brake operations," and other functions the Secretary considers necessary to assist in monitoring the safety of train operations, "such as time and signal indications."

The newer recorders in common use by the railroad industry, those on the more than 9,000 road locomotives already equipped with a device that records at least eight events, accumulate the following information:

1. Time;
2. Speed;
3. Traction motor amperage;
4. Distance traveled;
5. Throttle position;
6. Dynamic brakes;
7. Locomotive individual brake; and
8. Train brake pipe pressure reduction.

A typical locomotive-mounted device records (on magnetic tape or in digital form in a computer "memory") the last 48 hours of locomotive events. The information is stored on three data channels, with a fourth dedicated to tracking elapsed time.

The timing channel carries a constant, analog signal of 6.25 Hertz used as a time reference, especially when the data are played back. This channel is used in the generation of time, speed, and distance.

A second channel records wheel revolutions. When calibrated for drive wheel diameter, this channel, working with the time signal, is used to generate unit speed and distance travelled.

A third channel records traction motor current, thus measuring the amount of "work" the motor is performing. Among other derivatives of this data is the determination of presence and force of the dynamic brake.

The fourth channel records what has been called a "digital word." Such a word, with eight bits of information, is used to retain information on throttle position, automatic brake pipe pressure, application of the locomotive (the "independent") brake, and such parameters as direction of travel. Each condition is sampled, placed into correct order within the eight-bit digital word, and recorded. When and if the data are retrieved, a playback unit reads and decodes the proper sequence and displays the data on a readout medium such as a strip chart. Because the "digital word" recorder collects and stores "samples" of conditions, a condition change may be noted after the time in which it actually happens. This lag may be as much as 15 seconds.

Skilled technicians can use recorder data to recreate, typically, a history of the last 48 hours of a locomotive's operation. While airplane black boxes usually retain only the final minutes of a trip, locomotives need to record over a longer interval. Unless damaged, for instance, the power consist on a train is often used to remove from the scene any cars still on the tracks, clearing them for the rerailing and cleanup crews. A 48-hour "tape loop" is common, both to provide a picture of the entire trip leading to the accident and to allow the locomotives pulling a train involved in an accident to play a clean-up role without "erasing" essential data by recording over it.

Experts in accident reconstruction use all available data to determine the cause of an accident and are almost always successful. Sometimes, the initial determination is relatively easy: If the cars are tipped off the track and lying in consist order along the outside of a curve, overspeed is a safe initial assumption. Cause is also readily determined from visible evidence in cases such as a broken wheel on the first car derailed, a rail turned under the second locomotive, or marks of a derailed wheel down the ties until that car meets a switch or a grade crossing.

Other accidents are more difficult to analyze, and even seemingly simple accidents may very occasionally have contributing causes that elude investigators. FRA believes it has generally been successful in determining the cause of an accident, whether or not event recorder data are available. Of the nearly 300 accidents (of all types, including grade crossing accidents and employee fatalities) directly investigated by the agency each year, all but 3 to 6 percent are closed with known cause. Because of the nature of the railroad environment, it is usually possible to interview the crew and learn from them what was happening immediately before the accident. With recorder data, the accuracy of their statements can be verified, but even without event recorder data, the stated actions of the crew can often be programmed into train simulators and the train "run" to test the accuracy of the crew's testimony.

Event recorder data increases both the quality and the quantity of information available to the investigator, an especially important factor in analyzing complex post-accident scenes. When the death of the head-end crew means that eyewitness testimony is not available, or when the combined effects of high speed, heavy tonnage, or fire make it extremely difficult to read the physical evidence, the event recorder may provide or lead to vital intelligence otherwise destroyed. Even so, it would be wishful thinking to believe that, as more and more trains are equipped with event recorders, it will significantly change the already very low percentage of "undetermined" accidents. As an example, in 1989, FRA investigated 225 train and grade crossing accidents. In almost half the cases (44 percent) agency records show that the investigators had recorder data available to them. FRA determined the cause in all but three of the 225 accidents; of that three, two of the trains did not have event recorders and one did.

While they cannot guarantee discovery of the cause of an accident, event recorder data have demonstrated their utility. On May 12, 1989, a Southern Pacific train ran away on a hill outside San Bernardino, California, and derailed at a curve near the botton of the hill. Portions of the train and its cargo landed in a residential area, resulting in four fatalities, two serious injuries, and seventeen minor ones. An early suspected cause was poor train handling by the crew, but after rigorous analysis of all the data, including that available from the event recorders, the National Transportation Safety Board absolved the crew from blame. Instead, the crucial factors included a failure to accurately report the total weight of the trains, a failure to tell the crew about the condition of the dynamic brakes available to them, and an unclear operating rule about brake applications with heavy trailing tonnage on grades. FRA understands that Southern Pacific has made operational changes to its train handling procedures, including a change in its air brake rules, as a result of the information learned in this accident investigation. At San Bernardino, it was immediatley obvious that the train left the tracks because it was going too fast, but the data provided by the on-board event recorder also allowed investigators to look more closely at and for the cause of the overspeed. Once this was known, a "lessons learned" approach led to operational corrections aimed at enhancing the quality of information available to the engineer and improving the decision making capabilities of this key position.

FRA's mission, to enhance the safety of railroad operations overall, cannot be centered on an exhaustive look at each railroad accident. FRA must deal with the railroad industry as a whole and use a total program of investigation, incentives, research, and enforcement to foster the safest system possible. Certainly, valuable insight is possible from the detailed examination of a single accident—as is proven by the San Bernardino example and by the detailed examinations the National Transportation Safety Board performs on a handful of rail accidents each year—and the expanded availability of event recorder data will allow FRA to reap the benefits of both wide- and narrow-based accident analysis.

The Presence of Event Recorders in the Railroad Industry

As noted, major freight railroads in the United States already have more than 70 percent of their road locomotives equipped with an event recorder of some type; because most trains are powered by more than one locomotive, it is well within probability that up to 90 percent of the major freight railroads' trains are equipped with event recorders. Essentially all of the National Railroad Passenger Corporation's (Amtrak's) locomotives are equipped and, while FRA's information is incomplete, at least some commuter railroads have event recorder equipped locomotives. FRA cannot make a precise estimate of the percentage of "equipped" commuter equipment based on the information now available to this agency, nor can it be certain that the recording devices on all "equipped" power or control units meet RSIA standards. Commuter railroads and railroads operating commuter service are urged to supply this information in response to this notice.

Only a very few of the switching and terminal railroads and smaller line-haul companies have equipped their locomotives with event recorders, but these power units are most often used in low speed operations for which speed indicators are not required.

So far as FRA has been able to determine, virtually all new road locomotives purchased by major United States railroads are factory equipped with an event recorder capable of gathering and retaining information on the parameters established by the RSIA, with one exception: "Hot box" (over heated journal) detection. The reasons this "event" is not captured by any locomotive-mounted recorder in common current use are simple: First, the railroads have determined that hot box readings should be recorded at central locations and, for reasons developed below, FRA agrees with this practice. Second, the over-heated journal is something that happens outside the locomotive. Signals from hot box detectors are now routed to other locations on a railroad; bringing that signal "on board" could be done, but recording data on the locomotive that is now recorded elsewhere would be duplicative and would serve no apparent safety purpose. Third, FRA believes that the present methods of hot box detection and recording is more complete; it is also more secure in that there is virtually no chance that the data would be destroyed, altered, or tampered with in an accident.

Some railroads notify the crew of a train passing a hot box detector of both negative and positive readings, but the common procedure is either to call the crew with orders to stop and inspect a suspected hot box or to have a wayside indicator convey the same message. In either event, the fact of the detection of a suspected over-heated journal and of the notification to the crew is recorded and available for examination by FRA and railroad officials. FRA's review of the railroad industry's practices regarding hot box detection, reporting, and recording have convinced the agency that no additional requirements are necessary. There would be no safety purpose served by requiring the recording of hot box detection by a device mounted on a locomotive.

Cost and Utility Considerations

Since approximately 9,000 of the nearly 20,000 locomotives operated by the freight railroads and Amtrak are now equipped with an eight (8) event recorder, the $7,000 installed cost (a composite of costs mentioned in testimony at the ANPRM hearing in this matter) of this recorder means that the railroad industry would have to pay about $77,000,000 to equip the remainder of the fleet. The annual cost of maintenance and supply would be approximately $3,300,000 for these additional recorders. The situation with the commuter railroads, as noted earlier, is more complex due to the variety of equipment operated and the lack of precise information about the extent to which it is equipped with event recorders that meet RSIA standards. FRA's estimate is that the additional cost to have event recorders on this equipment could exceed $7,000,000. Maintenance expenses would add additional, continuing costs.

Because the smaller freight railroads are not now equipped with recorders as a general rule, the cost impact of a rule requiring event recorders on each locomotive would be borne disproportionately by this segment of

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the industry. However, section 10 of the RSIA does not require each locomotive to be equipped; the statutory requirement is that, where necessary to enhance safety, trains shall be equipped.

Unlike good brakes, sound track, and qualified engineers, event recorders only indirectly prevent accidents. Their primary safety benefit lies in their use as a tool to diagnose train handling accidents, to continue building a knowledge base of accident causation and, through sampling actual train movements, to evaluate changes in methods of train operation. Event recorders also provide a way to sample the train-handling ability of an engineer in a real-world environment rather than in a locomotive simulator. Another regulatory proceeding, Docket No. RSOR-9, Qualifications for Locomotive Engineers, will deal more directly with the possibilities of and the opportunities for using electronic devices rather than human supervisors to monitor the performance of locomotive engineers.

The Need for Event Recorders

FRA has determined that event recorders are necessary in the railroad environment. Whether they are used to aid accident analysis, to record locomotive engineers, or to monitor equipment performance, event recorders provide data that is free from bias, free from the inconsistent powers of human observation, and free from the possible taint of self-interest. The data extracted from recorders can be played over and over as part of the analysis process without losing its consistency.

Event recorders provide FRA with a growing pool of verifiable factual information about how trains are operated and what happens when they become part of an accident.

Even the presence of event recorder data will not ensure the discovery of the cause of every accident nor eliminate all sources of controversy about causation, but as shown in the Southern Pacific's San Bernardino derailment, event recorder data can help direct the attention of an accident investigator to possible causes not at first suspected.

FRA has heard some interested parties say that event recorders cannot prevent accidents, they can only give information about the accident that just happened. However, the mere presence of a recorder may make train crews operate more closely to the desired parameters and adhere more strictly to the railroad's book of rules. More important, by reducing the potential for bias from accident investigations, the data from event recorders can help pinpoint operational changes that may prevent the next accident.

It is axiomatic that complex accidents are the hardest to analyze and the most likely to challenge the investigator. FRA believes that event recorders will prove most advantageous as an aid in investigating "complex" accidents, that is, accidents with the greatest potential to destroy evidence or to hamper evidence gathering. In FRA's experience, the faster a train goes, and the heavier it is, the higher the in-train dynamic forces and the more likely it is to leave a confused, complex post-accident scene.

Recognizing this, FRA proposes to require that, within 12 months of the publication of a final rule in this docket, freight trains moving at speeds of more than 30 miles per hour and with a consist of 50 or more cars, or longer than 4,000 feet, whichever is less, be powered by at least one locomotive equipped with an in-service event recorder. Section 10 of the RSIA permits an extension of this deadline upon a finding that it is impracticable to equip trains within a year; FRA welcomes comments on the proposed deadline.

There is precedent for adopting a low speed "floor" for railroad safety regulations. Federal rules now exempt locomotives that operate at 20 miles per hour or less from a mandatory speed indicator requirement (49 CFR 229.117). Twenty miles per hour is just under the maximum speed for Class two track and FRA's experience is that Class two track does not produce the kinds of complex post-accident environments that call the full capabilities of event recorders into play. This is at least partially the result of the laws of physics: The energy of a moving object, that is, the energy that must be dissipated in a train accident, varies with the square of speed. Thus, the energy of even a single rail car at 20 miles per hour is more than doubled at 30.

Speed is one parameter that can lead to a complex post-accident environment, the size of the train is another. In the railroad industry, there are two common expressions to describe "big" trains: Train length and trailing tonnage. Of the two, train length is far easier to calculate because, most of the time, it requires only a count of the cars (and an allowance for a long string of unusually long care such an multi-platform intermodel flat cars). An accurate measure of trailing tonnage means either passing the whole train across a scale or adding the known weights of all cars in the train. This may seen no more difficult that counting the cars, but so many cars move subject to a weight agreement that calculating trailing tonnage yields an estimate at best. With the lessons of the San Bernardino accident still fresh, FRA could not condone estimated trailing tonnages.

FRA realizes that 50 coal hoppers are certainly much shorter that 50 intermodal flat cars, especially if many of the latter are multi-platform cars. Thus, while "faster than 30 miles per hour and longer than 50 cars (30/50)" might be a convenient, shorthand way of thinking about the requirement under consideration, the regulation proposed in this notice would set a standard of 50 cars or 4,000 feet, whichever is less. This agency believes that such a standard will strike a fair balance between short, heavy cars and long, light ones, at least in terms of their potential to create the kind of complex accident scene for which Federal investigators see the event recorder as most advantageous.

FRA also proposes to require that, within 12 months of the publication of a final rule in this docket, all passenger trains be powerful by at least one locomotive equipped with an in-service event recorder, regardless of operating speed or train length. As with freight trains, FRA realizes that section 10 of the RSIA permits an extension of this deadline upon a finding that it is impracticable to equip trains within a year; FRA welcomes comments on the proposed deadline.

While FRA recognizes a special duty of care owed to railroad passengers, this agency is also aware that passenger trains have significant operational and equipment differences from freight trains and that these differences may allow what would otherwise seem different treatment to be accorded passenger and freight operations while maintaining equivalent, high levels of safety. In general:

- Passenger trains have faster acting brakes than freight trains, (with less draft gear slack their brake control valves can be designed to produce faster application);
- Passenger trains have a graduated release feature and a higher brake pipe pressure; with a brake pipe that is typically shorter than a freight train's, they also have less pressure gradient;
- Passenger trains have more even brake application throughout the train because there is only a little variation between the empty and loaded weight of passenger cars and because there is significantly less variation in density throughout the train;
- Passenger trains have an anti-skid feature that allows more controlled stops under adverse traction conditions;
- Passenger equipment in general, and commuter equipment in particular, is not interchanged away from its owner, thus allowing inspection and maintenance forces to become more familiar with each piece of equipment and more directly responsible for its safe and efficient operation; and
- Commuter operations are characterized by tight control over trains through automatic train control, centralized dispatching, short blocks, tight schedules, cab signals, and short trains; these factors allow fairly precise isolation of accident causes.

FRA believes that event recorders are necessary to enhance safety on big, fast freight trains and on passenger trains; in addition, FRA believes that it is appropriate for railroad safety for all railroad locomotives equipped with speed indicators to also, eventually, be equipped with event recorders. In this notice, FRA is proposing that railroad locomotives ordered new or rebuilt after 24 months from the publication of a final rule in this docket, if they are equipped with a speed indicator, be equipped with an event recorder.

For these purposes, FRA will adopt the same definition for "rebuilt" as in the glazing standards: A loocomotive shall be considered "rebuilt" if it has undergone an overhaul that has been identified by the railroad as a capital expense under Interstate Commerce Commission accounting standards.

In that the vast majority of new and rebuilt locomotives are being equipped with event recorders now, this requirement will impose virtually no additional burden on the industry; because the event recorder will, essentially, have paid for itself by the time today's new locomotives are purchased by small railroads, FRA anticipates no measurable cost penalty at the timer of that transaction, either.

FRA proposes to exempt locomotives from an event recorder requirement if they are also exempt from the speed indicator requirement at 49 CFR 229.117. FRA believes it would serve no useful safety purpose to require the recording of speed (or other operating functions) on a locomotive that was not required to have a device to indicate its speed to the engineer.

FRA has not proposed an immediate requirement to install event recorders on new and rebuilt locomotives in recognition of the long lead times typical in the acquisition of large machinery.

FRA's proposal covers only the minimum data to be recorded and maintained and does not mean in any way to limit the initiative of any railroad or any developer of event recorders to purchase, or to develop, a device with greater capabilities than are proposed here. To the same effect, this proposed rule does not touch on the issue of how data shall be captured, how it shall be stored, or how it shall be retrieved. Railroads and suppliers are encouraged to continue to make the advances in the state of the art that have characterized the recent past.

The recorders to be required by this proposal must be capable of collecting and retaining, for a 48-hour time span (that is, the most recent 48-hour period of locomotive operation) data on train speed, throttle position, brake applications and operations (including dynamic brake application and operation), time, distance, and direction of motion. This proposal includes a requirement that event recorder data be preserved for Federal investigators if an equipped locomotive is involved in an accident required to be reported under part 225.

In addition to requiring that passenger trains, and freight trains of 50 or more cars operating at speeds in excess of 30 miles per hour, be equipped with event recorders, this proposal mandates that event recorders be serviced at the quarterly inspection interval and that they be in full functional operation before the quarterly inspection is deemed to have been completed.

FRA is also proposing that, except under very limited circumstances, individuals who deliberately disable event recorders be subject to civil penalties and disqualification from safety-sensitive functions.

FRA believes that railroads may have valid reasons for turning off event recorders or for temporarily removing from service those already installed. Accordingly, it is proposed that a qualified person may temporarily remove an event recorder from service by disconnecting its power, by removing the recording medium, or by physically removing the unit from the locomotive. The reason for taking the recorder out of service must be noted on a tag attached to the device (or left in its place) and the recorder may not stay out of service beyond the next quarterly inspection. Compliance with these requirements will protect the qualified individual from allegations of tampering or deliberate disabling.

This proposal also includes a requirement that, if a train powered by a locomotive equipped with an event recorder is involved in a reportable accident, the railroad must, to the extent possible, preserve the data recorded by the device for analysis by Federal investigators.

FRA has assumed throughout the proceeding thus far that the event recorder would be installed in, and operate on electrical power from, a locomotive. If any interested party believes this is an incorrect assumption or believes that this proposal needs to be modified to accommodate railroad vehicles other than locomotives as the location of an event recorder, FRA specifically solicits such comments. In this same vein, FRA is prepared to accommodate commuter "push/pull" operations where the operating railroad has elected to place the recorder in the control car and would welcome suggested regulatory language on this point.

FRA is particularly interested in receiving comments about the kinds of events that should be recorded, for instance, on electric MU equipment used in commuting service. One major commuter authority has suggested that the parameters should be:

(1) Time;
(2) Speed;
(3) Power mode of train;
(4) Brake mode of train;
(5) Cab signal aspect; and
(6) ATC cut-out.

FRA solicits comments on this suggestion and on the cost of implementing it for MU electric commuter operations rather than the parameters now proposed.

FRA realizes that "passenger trains" includes more than Amtrak and certain commuter operations. As only some of the potential examples, while steam operations are excluded from part 229, this agency is aware that some excursion trains are powered by diesel or electric locomotives of no less historical importance than a restored steam locomotive and that steam excursions often include a current-vintage diesel locomotive as a "helper." Circus trains, together with what are commonly known as "Director's" or "Shipper's Specials" are, most likely, passenger trains, as are trains with guard cars, and with camp cars. Wreck trains, where mechanical, track, and signal forces ride to a derailment to assist in rerailing and cleanup efforts also fall under the description of passenger trains.

On the surface, FRA does not see an easy, logical reason to exclude the examples described above from the passenger train category; however, FRA is very interested in the thoughts of those most affected by inclusion or by exclusion. In the area of commuter rail operations, FRA would appreciate comments exploring the possibility that a speed and length "floor," as proposed for freight operations, will place event recorders where they will have a significantly favorable impact on railroad safety.

Finally, FRA recognizes that there may be railroad operations where event

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recorders are neither necessary nor desired. In developing a final rule in this proceeding, FRA invites comments about any such operations. FRA requests that anyone furnishing information on this topic do so with as much specificity as possible, including, where applicable, such facts as accident rates/records, unique operational characteristics, and the inadaptability of particular equipment to event recorders. While the agency believes it is premature now to establish the criteria for successfully seeking a waiver of any event recorder regulation which may emerge from this proceeding, FRA is always willing to consider such petitions from affected parties.

Relation to Other Rulemaking Proceedings

In its final rule proscribing tampering with safety devices, published February 3, 1989 (54 FR 5485), FRA required installed event recorders to be operative unless the locomotive was being hauled dead-in-tow or unless the event recorder became inoperative enroute, in which case FRA imposed a notification requirement similar to that used for certain signal-related equipment that controls or restricts train operations. The AAR filed a Petition for Reconsideration in that Docket. Some of what is being proposed in this NPRM responds to that petition.

FRA agrees that it serves no safety purpose to create a situation in which a locomotive without an installed event recorder could be used in a power consist while a locomotive with an inoperative event recorder could not. FRA notes that section 10 of the RSIA seeks to have event recorders, not on locomotives, but on those trains where the equipment is necessary to enhance safety.

FRA also agrees with the AAR that restricting the operations of locomotives with inoperative event recorders may discourage their installation. As noted above, event recorders must be in operating order at the time the locomotive is cleared from the quarterly inspection, but these devices, like any mechanical or electronic device, are subject to random failures and FRA sees no safety benefit in severely restricting the operation of a locomotive costing upwards of a million dollars because of the failure of a fifty dollar part in a black box. This proposal would, of course, impose some restriction on the use of a locomotive without an operating event recorder: It could not be the only power unit on a freight train hauling 50 or more cars faster than 30 miles per hour, nor could it be the only power unit on a passenger train.

Based on FRA's further analysis and on the arguments advanced in the AAR's Petition for Reconsideration, FRA believes that, while event recorders come under the general category of safety devices by some meanings of that term and, while they may positively encourage crews to obey, they are not the kind of active safety devices that have an immediate effect on train operation. Event recorders do not function in the same way or for the same purpose as does equipment used to assure that the locomotive operator is alert, or that the engineer is not physically incapacitated, or that the person at the controls is aware of and complying with the indications of a signal or other operational control system.

Accordingly, FRA proposes to remove references to event recorders from subpart D of part 218 and to include all regulations relating to event recorders in the Railroad Locomotive Safety Standards in part 229.

The use of event recorders in the monitoring of locomotive engineer performance is covered in Docket No. RSOR-9.

Qualifications for Locomotive Engineers

Analysis by Section

Section 229.5

This section would be amended by adding a definition of "event recorder" as a tamper resistant device to record data on train speed, direction of motion, time, distance, throttle position, and brake applications and operations over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed.

Section 229.25. This section would be amended by adding a requirement that event recorders be maintained according to standards set by the manufacturer, the supplier, or the owner of the unit. A written copy of the maintenance instructions would have to be maintained at the location where the work is being done.

Section 229.135

This new section of the regulations would contain the bulk of FRA's event recorder requirements. Subsection (a) would require that passenger trains, and freight trains operated at speeds of more than 30 miles per hour and with a consist of more than 50 cars or more than 4,000 feet in length, whichever is less, be powered by at least one locomotive equipped with an in-service event recorder.

Subsection (b) would require that new and rebuilt locomotives placed in service after 24 months following the publication of a final rule in this proceeding be equipped with an event recorder.

Subsection (c) would exempt locomotives that operate at 20 miles an hour or less from the requirement to have an event recorder.

Subsection (d) would define "rebuilt" as an overhaul identified by the railroad as a capital expense under Interstate Commerce Commission accounting standards.

Subsection (e) would provide that individuals who willfully disable event recorders would be subject to civil penalties and disqualification proceedings. Subsection (f) would allow a railroad to take an event recorder out of service in one of three enumerated ways and would require that the reason for removing it from service be recorded on a tag attached to the unit or left in place of the unit. Event recorders would not remain out of service beyond the next quarterly inspection and maintenance of the locomotive on which they are installed.

Subsection (g) would provide for the security, and subsequent use by Federal investigators, of data from the recorders of locomotives involved in accidents. Subsection (h) would establish part 229 as the exclusive part dealing with locomotive event recorders.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies

This proposal has been evaluated in accordance with existing policies and procedures, and is considered to be nonmajor under Executive Order 12291 but significant under DOT policies and procedures (44 FR 11034, February 26, 1979).

In an effort to design a regulatory approach that would achieve the maximum benefits at the minimum cost to the industry, FRA developed five regulatory options:

(1) Taking no action;

(2) Requiring the installation of event recorders on all locomotives;

(3) Requiring the installation of event recorders on all new and rebuilt locomotives;

(4) Requiring event recorders on Amtrak inter-city passenger trains as well as all high-speed, heavy, tonnage freight trains; and

(5) Requiring event recorders on all passenger trains, high-speed and heavy tonnage freight trains, and all new and rebuilt locomotives.

FRA's analysis shows that, while the fourth option is the most economically efficient, the fifth option is both economically reasonable and fully responsive to the public interest as expressed by Congress in the RSIA. It will result in event recorders first being present when and where they do the most good, and at the same time direct that, over the period of the industry's normal purchase/rebuild cycle, virtually all locomotives will be equipped, thus increasing, for example, the potential that at least one unit's event recorder data will survive even a major, head-on collision. The chosen option avoids a massive, immediate, and costly retrofit program, the burden of which would fall disproportionately on small and medium sized railroads, and it will improve FRA's ability to accurately identify the causes of accidents involving complex scenarios involving emergency train handling and train dynamics.

A full analysis of economic impact, including the impact on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), of the rule proposed here and of the other options considered by FRA has been made and is included in the docket file of this proceeding.

Regulatory Flexibility Act

These regulations will not have any measurable impact on small entities. FRA therefore certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA will submit these information collection requirements to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The proposed sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Proposed Section	Brief Description	Estimated Avg. Time
229.25	Maintaining manufacturer's, supplier's, or owner's instructions for event recorder inspection, maintenance, and testing	15 min.
229.135(f)	Tagging reason for removing event recorder from service	1 min.
229.135(g)	Record of "security" of event recorder data	15 min.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to FRA and to Mr. Wayne Brough, Regulatory Policy Branch (OMB No. 2130-New), Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20530.

Environmental Impact

This rule will not have any identifiable environmental impact.

Federalism Implications

This rule should not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

The Proposed Rule

In consideration of the foregoing, FRA is proposing to amend parts 218 and 229, title 49, Code of Federal Regulations as follows

PART 218

§ 218.5 [Amended]

1. By amending § 218.51(b)(3) by removing the reference to "event recorder" so that it will read as follows:

* * * * *

(b) * * *

(3) Under the provisions of § 229.9 of this chapter, provided that when a locomotive is being operated under the provision of § 229.9(b) a designated officer has been notified of the defective alerter or deadman pedal at the first available point of communication.

§ 218.53 [Amended]

2. By amending § 218.53(c) by removing the phrase: "or to record data concerning the operation of that locomotive or the train it is powering."

§ 218.61 [Amended]

3. By removing § 218.61(c) in its entirety.

Appendix B to Part 218 [Amended]

4. By amending appendix B to part 218 by removing all references to event recorders and to devices which record data such as train speed and air brake operations.

PART 229—[AMENDED]

1. The authority citation for part 229 is revised to read as follows:

Authority: 45 U.S.C. 22–34, as amended; 45 U.S.C. 431, 437, 438, as amended, 49 App U.S.C. 1655(e), as amended; Pub. L. 100-342; and 49 CFR 1.49 (c), (g), and (m).

§ 229.4 [Amended]

2. By amending § 229.4 (information collection requirements) as required.

§ 229.5 [Amended]

3. By amending § 229.5 to redesignate paragraphs (g) through (m) as paragraphs (h) through (n) and add a new paragraph (g) as follows:

* * * * *

(g) *Event Recorder* means a device that monitors and records data on train speed, direction of motion, time, distance, throttle position, and brake applications and operations (including dynamic brake applications and operations) over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed and is designed to resist tampering.

* * * * *

§ 229.25 [Amended]

4. By amending § 229.25 by adding a new paragraph (e) as follows:

* * * * *

(e) The event recorder, if installed, shall be inspected, maintained, and tested in accordance with the instructions of the manufacturer, supplier, or owner thereof. A written copy of the instructions in use shall be kept at the point where the work is performed.

5. By adding a new § 229.135 as follows:

§ 229.135 Event recorders

(a) Effective (12 months after the publication of a final rule in this docket) passenger trains, and freight trains

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operated at speeds of 30 miles an hour or more and with a consist of more than 50 cars or more than 4,000 feet long, whichever is less, must be powered by at least one locomotive equipped with an in-service event recorder.

(b) Except as provided in paragraph (c) of this section, new or rebuilt locomotives placed in service after (24 months after the publication of a final rule in this docket) shall be equipped with event recorders.

(c) Event recorders are not required on locomotives that operate exclusively at a speed of 20 miles per hour or below.

(d) For purposes of this part, a locomotive shall be considered "rebuilt" if it has undergone an overhaul that has been identified by the railroad as a capital expense under Interstate Commerce Commission accounting standards.

(e) Except as provided in paragraph (f) of this section, any individual who willfully disables an event recorder or tampers with or alters the data recorded by such a device is subject to a civil penalty as provided in appendix B of this part and to disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties under the procedures in 49 CFR part 209.

(f) An event recorder may be removed from service by disconnecting its power source, by physically removing it from the locomotive on which it is installed, or by removing its recording medium, only upon the authorization of a qualified person who shall record the reasons for removing the device from service and the period during which the device will remain out of service on a tag to be applied to the device or to the place from which the device was removed, as appropriate. The tag described in § 229.9(a)(3) or other suitable tag may be used for this purpose. An event recorder may not remain out of service beyond the completion of the next periodic inspection as set forth in §§ 229.23 and 229.25 of this subpart.

(g) If any locomotive equipped with an event recorder is involved in an accident that is required to be reported under part 225, the railroad using the locomotive shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the date recorded by the device, either by safeguarding the locomotive until FRA or the National Transportation Safety Board (Board) removes the recording medium or the recorder or by removing the recording medium or the recorder from the locomotive and providing secure storage for it, for analysis by FRA or by the Board. This preservation requirement shall expire 60 days after the date of the accident unless FRA or the Board notifies the railroad in writing that the data are desired for analysis. Upon receipt of this written notification, the railroad may either deliver the data to the requesting Federal agency or retain it pending written notification from the same agency that the data are no longer necessary for analysis.

(h) Notwithstanding any other requirements in this Chapter, inspection, maintenance, and testing of event recorders is limited as set forth in § 229.23(e) of this subpart. Other than a locomotive due for periodic inspection under §§ 229.23 and 229.25 of this subpart, a locomotive with an inoperative event recorder is not deemed to be in improper condition or unsafe to operate or a non-complying locomotive under §§ 229.7 and 229.9 of this subpart.

Issued in Washington, DC., on June 11, 1991.

Gilbert E. Carmichael,
Administrator, Federal Railroad Administration.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018AB56

Endangered and Threatened Wildlife and Plants; Threatened Status Proposed for Sedum integrifolium ssp. leedyi (Leedy's roseroot)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Sedum integrifolium* ssp. *leedyi* (Leedy's roseroot) as a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This rare inhabitant of algific talus cliffs occurs in only 6 locations (4 sites in Minnesota and two sites in New York). This species is threatened by the rarity of its fragile and unique habitat. This proposed rule, if made final, will extend Federal protection provided by the Act to *Sedum integrifolium* ssp. *leedyi*. Critical habitat is not proposed for this plant. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by August 19, 1991. Public hearing requests must be received by August 2, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to Division of Endangered Species, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Endangered Species, (See ADDRESS section), at 612/725-3276 or FTS 725-3276.

SUPPLEMENTARY INFORMATION:

Background

Leedy's roseroot, *Sedum integrifolium* ssp. *leedyi* (Rosendahl et Moore) Clausen, was discovered by John L. Leedy in 1936 growing high on a limestone cliff along the Root River, in Olmsted County, Minnesota (Clausen 1975). Leedy's roseroot is an isolated subspecies of a common, western United States species. The range of the western subspecies and Leedy's roseroot do not overlap and they appear to have been isolated for a long time (approximately 10,000 years). Leedy's roseroot is more robust than most other *Sedum* sp. and it is characterized by tall floral stems. Its leaves are glaucious, oblong, and blue-green averaging 30mm long with irregularity dentate to entire margins. The plant is dioecious and the flowers are small arranged in cormybose cymes. The petals are usually dark red with varying shades of yellowish white at the base. Some populations from Minnesota have petals that are dark red to the base and others have petals with greenish white bases. Some plants in New York have petals with yellow or greenish yellow at the base. The subspecies has a thick, scaly rhizome that is usually conspicuous in the crevices of rock cliffs where it grows (Rosendahl and Moore 1947; Coffin and Pfannmuller 1988).

Leedy's roseroot grows on moderate cliffs in Minnesota (limestone cliffs with bands of bentonite) and on limestone and shale cliffs in New York. The plant is limited to those areas on the cliffs where ground water seeps through the cracks in the rock. As a result, the local environment remains cool and wet throughout the summer; a condition probably similar to the climate of the last ice age. Leedy's roseroot is believed to be a remnant of the Pleistocene flora and it may have once ranged across most of the continent before the last period of glaciation (Coffin and Pfannmuller 1988).

Leedy's roseroot was added to the Plant Notice of Review in 1980 as a Category 2 species. At present, it is known to occur in only six sites, five of these sites are viable. Four locations occur in Minnesota and two in New York. The Minnesota population is robust; each site contains 1000 to 3000 individuals and occupies over 100 yards of cliff face. The four Minnesota locations include Dear Creek and Boar Creek (in Fillmore County), Simpson Cliff and the Whitewater Wildlife Management Area (in Olmsted County) (Ostlie, *in litt.*, 1988, Coffin and Pfannmuller 1988, Reinsnider, pers. comm.). The New York population occurs on the western edge of Seneca Lake, with approximately 10,000 individuals in an area 1 mile long (Rosendahl and Moore 1947). A single robust individual plant occurs at Watkins Glen; but, it is thought to have been introduced (Clausen 1975).

Because of its unique habitat, the subspecies is often associated with other globally rare and endangered species. For example, several species of rare landsnails are often found in conjunction with Leedy's roseroot including *Novisuccinea* ssp. *A* and *N.* ssp., *Hendersonia occulta*, and *Vertigo hubrichti*. In addition, several rare plants occur at these sites including *Adoxa moschatellina*, *Chrysosplenium iowense*, *Draba arabisans*, *Arabis laevigata* (smooth rock cress), *Poa wolfii* (Wolf's spear grass) (Ostlie *in litt.*, 1988).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Sedum integrifolium* ssp. *leedyi* (Leedy's roseroot) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range

In Minnesota, ground water contamination and change are the greatest threat to this subspecies. Contamination of the ground water is likely through filling or dumping in sink holes adjacent to the cliffs. Sink holes are highly vulnerable because they provide direct access to the ground water and are the main source of seepage on the cliffs. One of the largest sink holes behind Simpson Cliff in Minnesota has already been used for dumping.

In New York, the Glenora Cliff site is threatened by residential development along Seneca Lake. The uplands adjacent to the cliff are primarily wooded and the homes are being built away from the cliff edge along Glenora Road. However, many homeowners have built stairs down to the lake shore and some have cleared vegetation from the cliff to enhance their view of the lake. In some areas, trees have been cut and dumped over the cliff edge onto to the areas where the roseroot grows. These changes can directly impact the plants, as well as affect the microhabitats of the area causing inadvertent damage to the population.

Agricultural pesticides in adjacent upland farmland (cropland in Minnesota and vineyards in New York) directly affect the quality of the ground water. Road building and quarrying within the karst formations of the Minnesota region pose additional threats. This type of disruption would affect the subsurface water flow in the area and change the ground water seepage at the cliff face. Since the plants require this seepage, any change could impact them. Residential development around Seneca Lake in New York could also affect ground water quality and flow.

Erosion of the cliffs is another major threat. The slopes are unstable, and in places, overlying vegetation sloughs off leaving behind bare talus and soil. Natural erosion and rock slides often result in the loss of individual plants. In 1990, runoff from heavy rains dislodged many individual plants from the cliff face at Deer Creek in Minnesota. Uncontrolled cropland runoff has cut gullies into at least one of the sites in Minnesota. Grazing is a direct threat at one Minnesota site, especially where the cliff gives way to a more gentle slope. The talus slope below the Deer Creek moderate cliff in Minnesota was extensively damaged by grazing in 1988. The grazing completely extirpated another rare plant population, *Chrysosplenium iowense*, from the site. Logging in the hardwood forests above some of the sites will cause problems with erosion in the future (Coffin and Pfannmuller 1988, Ostlie 1988).

B. Overutilization for commercial, recreational, scientific, or educational purposes

Commercial trade in this species is not known to occur. It seems unlikely that commercial trade will develop because the species is difficult to propagate or cultivate.

C. Disease or predation

None that is known to affect this taxon.

D. The inadequacy of existing regulatory mechanisms

Sedum integrifolium ssp. *leedyi* is legally protected in New York where it is listed as endangered. State law prohibits removal or destruction of the plant without permission of the landowner. The largest population at Seneca Lake in New York is privately owned. A one acre parcel of land containing Leedy's roseroot along 200 feet of Seneca Lake is legally protected by the Finger Lakes Land Trust with a conservation easement through The Nature Conservancy. The subspecies is listed as endangered in the State of Minnesota where the state endangered species act prohibits the taking, transport, or sale of any endangered or threatened plant or animal (or parts thereof). However, the Minnesota law has numerous exceptions that weaken its coverage in agricultural areas. Three of the four areas in Minnesota with Leedy's roseroot are in agricultural areas and are owned privately, the fourth site is owned and protected by the State of Minnesota (plans are needed for the specific protection of Leedy's roseroot at this site). Two of the privately owned sites have been registered in the Minnesota Registry of Natural Areas with The Nature Conservancy; but, the registry does not confer legally binding protection. The Federal Endangered Species Act offers possibilities for additional protection of this taxon through section 6 cooperation between the States and the Service, and through section 7 (interagency cooperation) requirements.

E. Other natural or manmade factors affecting its continued existence

In addition to the dangers of development, ground water contamination, erosion, and grazing, the subspecies is highly vulnerable because the areas where it is located are isolated, disjunct, few in number, and for the most part, they are privately owned and vulnerable. It is unlikely that more populations will be found in Minnesota because extensive surveys of approximately 400 algific slopes have been undertaken during the last ten years with only one new location for Leedy's roseroot in that time.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the

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preferred action is to list *Sedum integrifolium* spp. *leedyi* as threatened.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. This determination is based on the premise that such a designation would not be beneficial to the species (50 CFR 424.12). The limited number of populations and individuals of Leedy's roseroot make this plant particularly vulnerable to taking, an activity difficit to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce. Even though this species has not proven to be easily cultivated, collectors might be attracted to the locale of known populations by the publication of maps and other specific location information. The cliffs and slopes where these populations are located are unstable and trespass could increase erosion at the sites. No benefit from critical habitat designation has been identified that outweighs the threat of trespass and collection. The principal landowners have been notified of the location and importance of protecting this species habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. The Service finds that designation of critical habitat is not presently prudent for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Fedeal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.71, and 17.72, for threatened species set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22203 (703/358-2093).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to the critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species; and

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Clausen, R. T. 1975. *Sedum* of North American north of the Mexican Plateau. Cornell University Press, Ithaca.

Coffin, B. and ', Pfannmuller (Ed.s.). 1988. Minnesota's endangered flora and fauna. University of Minnesota Press, Minneapolis, MN. 474 pp.

Ostile W 1988. Simpson Maderitic Cliffs: Preserve Design. Report for The Nature Conservancy, Minnesota Field Office.

1988. Bear Creek Maderitic Cliff: Preserve Design. Report for The Nature Conservancy, Minnestoa Field Office.

1988. Deer Creek Maderitic Cliff: Preserve Design. Report for The Nature Conservancy, Minnestoa Field Office.

Rosendahl, C. O., and J. W. Moore. 1947. A new variety of *Sedum rosea* from southeastern Minnesota and additional notes on the flora of the region. Rhodora 49: 197-202.

Author

The primary author of this proposed rule is Jan L. Eldridge, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and recordkeeping Requirements and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543, 16 U.S.C. 1531-1543, 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Crassulaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific Name	Common Name					
Crassulaceae	Orpine Family					
Sedum integrifolium ssp. *leedyi*	Leedy's roseroot	U.S.A. (MN, NY)	T		N/A	N/A

(Proposal: *Sedum integrifolium* ssp. *leedyi* (Rosend. and Moore) Clausen, Leedy's roseroot—Threatened)

Dated: June 11, 1991.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-14476 Filed 6-17-91; 8:45 am]

BILLING CODE 4310-55-M

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Notices

Federal Register
Vol. 56, No. 117
Tuesday, June 18, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Public Availability of Minutes on the Closed Meeting Activities of Advisory Committee

Pursuant to the provisions of the Department of Agriculture's Committee Management regulations, an advisory committee of the Department which, through administrative error, held an unannounced meeting has prepared minutes on the activity of that meeting. Copies of the minutes have been filed at the following location: Federal Advisory Committee Desk, Federal Documents Section, Exchange and Gift Division, Library of Congress, Washington, DC 20540.

The name of the subject committee is listed below: Human Nutrition Board of Scientific Counselors.

Done at Washington, DC, this 4th day of June 1991.

Loretta A. Owens,

Committee Management Officer.

[FR Doc. 91-14456 Filed 6-17-91; 8:45 am]

BILLING CODE 3410-03-M

American Cyanamid Co.; Intent to Grant an Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to American Cyanamid Company, Wayne, New Jersey, on U.S. Patent Application Serial No. 07/609,848, "Compositions and Methods for Biocontrol Using Fluorescent Brighteners," filed November 7, 1990.

DATES: Comments must be received on or before August 19, 1991

ADDRESSES: Send comments to: USDA-ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 401-A, BARC-W, Beltsville, Maryland 20705-2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344-2786, (FTS) 344-2786.

SUPPLEMENTARY INFORMATION: The USDA-ARS intends to grant to American Cyanamid Company an exclusive license to practice the aforementioned invention. Notice of Availability was given in the Federal Register on January 31, 1991. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as American Cyanamid Company has submitted a complete and sufficient application for a license and is collaborating with the Agricultural Research Service under the terms of a Cooperative Research and Development Agreement providing for further development of the invention.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7 and will conform to the intent of 15 U.S.C. 3710a. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

William H. Tallent,

Assistant Administrator.

[FR Doc. 91-14457 Filed 6-17-91; 8:45 am]

BILLING CODE 3410-03-M

Forest Service

Kitty Stover Timber Sale, Beaverhead National Forest, Beaverhead County, MT

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an Environmental Impact Statement (original notice of intent was published 3/6/90 55 FR 7923).

Due to other work projects delaying the analysis, the DEIS for the Kitty Stover Timber Sale is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by February 15, 1992 instead of the June 1, 1990 date published in the original Notice of Intent. Accordingly, the FEIS is re-scheduled for completion by July 1, 1992. All other information provided in 55 FR 7923 is still accurate. Additional comments on the project should be received by September 1, 1991 to receive timely consideration in preparation of the Draft EIS.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry Hicks, District Ranger, Dillon Ranger District, Beaverhead National Forest, 610 North Montana 59725, telephone (406) 683-3900.

Dated: June 3, 1991.

Ronald Prichard,

Forest Supervisor, Beaverhead National Forest.

[FR Doc. 91-14437 Filed 6-17-91; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Alabama Electric Cooperative

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to hold scoping meetings and prepare an Environmental Assessment and/or Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR part 1794) may prepare an Environmental Assessment or an Environmental Impact Statement (EIS) for its Federal action related to a proposal by Alabama Electric Cooperative of Andalusia, Alabama, to repower its existing McWilliams Plant. REA may provide financing assistance to Alabama Electric Cooperative for project construction cost.

Notice is also given of a public scoping meeting to be held in conjunction with the review of the possible environmental consequences and the determination of potentially significant environmental issues associated with the REA Federal action related to the proposed project.

FOR FURTHER INFORMATION CONTACT: The primary point of contact for this project is Mr. Alex M. Cockey, Jr., Director, Southeast Area—Electric, Rural Electrification Administration, room number 0270, South Agriculture Building, 14th and Independence Avenue, SW. Washington, DC 20250-1500, telephone number (202) 382-8436. For information on specific aspects of Alabama Electric Cooperative's proposal contact Mr. Mike Noel, Alabama Electric Cooperative, P.O. Box 550, Andalusia, Alabama 36420, telephone (205) 222-2571.

SUPPLEMENTARY INFORMATION: Alabama Electric Cooperative tentatively proposes to repower its McWilliams Plant by adding a 100 MW gas-fired combustion turbine to its existing 43 MW capacity.

Alternatives to be considered by REA and Alabama Electric Cooperative include: (a) No action, (b) purchase power from other utilities or independent power producers, (c) other technologies for electric generation, (d) conservation, (e) interruptible loads, and (f) load management.

A public scoping meeting related to REA's environmental review of the project will be held at the Headquarters of Alabama Electric Cooperative, Highway 29 North, Andalusia, Alabama, on Tuesday, July 30, 1991.

Comments regarding the proposed project may be submitted orally or in writing at the scoping meeting or in writing within 30 days after the July 30 meeting to REA at the address provided in this notice.

Government agencies, other organizations, and the public are invited to participate in the planning and analysis of the proposed project. Issues to be discussed at the public scoping meeting may include, but are not limited to, determination of the project scope, the nature and extent of reasonable alternatives, identification of environmental issues and the scope of those issues, and other reviews or studies that REA or other Federal, State of Alabama, or local agencies may conduct.

To be presented at the meeting will be an alternative evaluation and site selection study prepared by Alabama Electric Cooperative. The alternative evaluation and site selection study are available for public review at REA or Alabama Electric Cooperative at the address provided herein. They can also be reviewed at the Andalusia Public Library, South Three Notch Street, Andalusia, Alabama 36420, telephone 222-6612.

From information provided in the alternative evaluation, the siting study, input from interested local, State of Alabama and Federal agencies and the public, Alabama Electric Cooperative will prepare an Environmental Analysis to be submitted to REA for review. If significant effects are not evident based on a review of the Environmental Analysis and other relevant information, REA will prepare an Environmental Assessment to determine if the preparation of an EIS is warranted.

Should REA determine that the preparation of an EIS is not warranted, it will prepare a Finding of No Significant Impact (FONSI). The FONSI will be made available for public review and comment for 30 days. REA will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental procedures as prescribed by CEQ and REA environmental policies and procedures as applicable.

Dated: June 10, 1991.

John H. Arnesen,

Assistant Administrator-Electric.

[FR Doc. 91-14471 Filed 6-17-91; 8:45 am]

BILLING CODE 3410-15-M

COMMISSION ON CIVIL RIGHTS

Michigan Advisory Committee of Public Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will be held from 6 p.m. until 9 p.m. on Wednesday, July 10, 1991, at the OMNI Hotel, 333 E. Jefferson, Detroit, MI 48226. The purpose of the meeting is to discuss current issues, orient members, and plan future activities.

Persons desiring additional information should contact Committee Chairperson Dennis Gibson at (313) 864-9394 or Constance Davis, Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353-8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 11, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-14382 Filed 6-17-91; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee Public Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will be held from 8:30 a.m. until 5 p.m. on Wednesday, July 11, 1991, at the OMNI Hotel, 333 E. Jefferson, Detroit, MI 48226. The purpose of the meeting is to conduct a community forum on the rise of hate crimes in Michigan.

Persons desiring additional information should contact Committee Chairperson Dennis Gibson at (313) 864-9394 or Constance Davis, Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353-8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 11, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-14383 Filed 6-17-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administration reviews.

SUMMARY: The Department of Commerce has received requests to

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conduct an administrative review of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Commerce Regulations, we are initiating these administrative reviews.

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests in accordance with § 353.22(a)(1), of the Department's regulations, for an administrative review of various antidumping and countervailing duty orders and findings with May anniversary dates.

Initiation of Reviews

In accordance with § 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings with May anniversary dates. We intend to issue the final results of these reviews not later than May 31, 1992.

Antidumping duty proceedings	Periods to be reviewed
Brazil:	
Frozen Concentrated Orange Juice; A-351-605—Cargill Citrus Limitada, Montecitrus Trading S.A., Coopercitrus Industrial, Frutesp S.A., Citrosuco Paulista, Frutropic, Bascitrus, Branco, Citrovale	5/1/90-4/30/91
The People's Republic of China:	
Certain Iron Construction Castings; A-570-502—China National Metals and Minerals Import and Export Corp. including the Beijing, Guangdong, Liaoning (Dalian), Jilin, and Anhui Branches, China National Machinery and Equipment Import and Export Corporation (CMEC) China National Light Industrial Products Import and Export Corp.	5/1/90-4/30/91
India:	
Circular Welded Carbon Steel Pipes and Tubes; A-533-502—Tata Iron and Steel Co., Ltd.	5/1/90-4/30/91
Japan:	
Portable Electric Typewriters; A-588-067—Matsushita Brother, Nakajima, Canon, Silver	5/1/90-4/30/91
Taiwan:	
Circular Welded Carbon Steel Pipes and Tubes; A-583-606—Kao Hsing Chang, Yieh Hsing, FEMCO, AsiaMax, Vulcan, Yieh Loong, Kalamein Plywood	5/1/90-4/30/91
Countervailing Duty Proceedings	
Brazil:	
Certain Heavy Iron Construction; Castings; C-351-504	1/1/90-12/31/90
Mexico:	
Ceramic Tile; C-201-003	1/1/90-12/31/90
Singapore:	
Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof; C-559-802	1/1/90-12/31/90
Sweden:	
Viscose Rayon Staple Fiber; C-401-056	1/1/90-12/31/90
Thailand:	
Ball Bearings and Parts Thereof; C-542-802	1/1/90-12/30/90

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) and § 355.4(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989) and § 355.22(c) (1989).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Dated: June 11, 1991.

[FR Doc. 91-14475 Filed 6-17-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-301-602]

Initiation of Administrative Review and Request for Revocation in Part of the Antidumping Duty Order on Certain Fresh Cut Flowers From Colombia

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation of administrative review and request for revocation in part of the antidumping duty order on certain fresh cut flowers from Colombia.

SUMMARY: The Department of Commerce has received requests to conduct an administrative review of the antidumping duty order on fresh cut flowers from Colombia. Requests for revocation from the antidumping order were also received from specific exporters/growers. In accordance with the Commerce Regulations, we are initiating this administrative review for the period March 1, 1990 through February 28, 1991. We are initiating this review for those named exporters/growers for whom a request for review was received and who shipped subject merchandise to the United States during the period March 1, 1990 through February 28, 1991. The Department is also noting those exporters/growers who have requested revocation from the antidumping duty order.

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests in accordance with §§ 353.22 (a)(1), (a)(2), (a)(3), of the Department's regulations, for an administrative review of the antidumping duty order on fresh cut flowers from Colombia. The Department has also received requests for revocation from the exporters/growers noted.

Initiation of Review

In accordance with §§ 353.22(c) of the Department's regulations, we are initiating an administrative review on fresh cut flowers from Colombia. The Department is not initiating an administrative review of any Colombian exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under § 353.22(a). We intend to issue the final results of this review no later than March 31, 1992.

We received requests for review on the following specifically named exporters/growers who shipped subject merchandise during the period:

Abaco Tulipanex de Colombia
Agricola Arenales Ltda.
Agricola Benilda Ltda.
Agricola Bojaca Ltda.
Agricola Cardenal S.A.
Agricola De La Fontana Y Cia
Agricola De Los Alisos Ltda.
Agricola El Cactus S.A.
Agricola El Jardin
Agricola El Morrino Ltda.
Agricola El Redil Ltda.
Agricola El Retiro Ltda.
Agricola Cascari
Agricola Cascatay S.A.
Agricola La Corsaria Ltda.
Agricola Las Cuadras Ltda.
Agricola Los Abrolos
Agricola Los Gaques Ltda.
Agricola Malqui Ltda.
Agricola Papagayo Ltda.

Agro Exotic Ltda.
Agrodex
Agroindustria Del Riofrio Ltda.
Agromonte Ltda.
Agropecuria Cuernavaca Ltda.
Agrosuba
Alstroflores Ltda.
Becerra Castellanos y Cia. Ltda.
Cienfuegos Ltda.
Claveles Colombianos Ltda.
Claveles De Los Alpes Ltda.
Conflores Ltda.
Colflores Ltda.
Crop S.A.
Cultivos Buenavista Ltda.
Cultivos Del Caribe
Cultivos Medellin Ltda.
Cultivos Miramonte S.A.
Cultivos Tahami Ltda.
Daflor Ltda.
Del Tropico Ltda.
Degaflores
Dianticola Colombiana Ltda.
Expertaciones Bochica S.A.
Fantasia Flores Ltda.
Flora Bellisima Ltda.
Floral Ltda.
Florabex Ltda.
Floramerica S.A.
Florandia Herrera Camacho y Cia.
Flores Aposentos Ltda.
Flores Aquila Ltda.
Flores Alborada S.A.
Flores Alfaya Ltda.
Flores Altamira S.A.
Flores Arco Iris Ltda.
Flores Aurora Ltda.
Flores Camino Real
Flores Cigarral Ltda.
Flores Colombianas Ltda.
Flores Colon Ltda.
Flores Condor De Colombia Ltda.
Flores De Cajibio Ltda.
Flores De Exportacion S.A.
Flores De Funza S.A.
Flores De Hucaritama
Flores De Hunza Ltda.
Flores De La Comuna
Flores De La Maria
Flores De La Montana
Flores De La Pradera Ltda.
Flores De La Sabana y Cia S.A.
Flores De La Vega Ltda.
Flores De Las Mercedes
Flores De Los Amigos Ltda.
Flores De Los Andes Ltda.
Flores De Los Arrayanes Ltda.
Flores De Nemecon Ltda.
Flores De Pueblo Viejo Ltda.
Flores De Serrezuela Ltda.
Flores De Sube Ltda.
Flores De Suesca Ltda.
Flores Del Bosque Ltda.
Flores Del Campo Ltda.
Flores Del Cauca S.A.
Flores Del Gallinero Ltda.
Flores Del Lago Ltda.
Flores Del Monte Ltda.
Flores Del Potrero Ltda.
Flores Del Rio S.A.
Flores Depina Ltda.
Flores Dos Hectareas Ltda.
Flores El Arenal Ltda.
Flores El Lobo Ltda.
Flores El Puente Ltda.
Flores El Rosal Ltda.
Flores El Trentino Ltda.
Flores El Zorro Ltda.
Flores Estrella Ltda.
Flores Cicro Ltda.
Flores Guaicata Ltda.
Flores Hana Ichi De Colombia Ltda.
Flores Horizonte Ltda.
Flores Juanambu Ltda.
Flores Jancalico Ltda.
Flores La Cabanuela
Flores La Conchita De German-Ribon y Cia.
Flores La Conjera Ltda.
Flores La Estancia Ltda.
Flores La Frangancia S.A.
Flores La Union Gomez Arango
Flores La Valvanera
Flores Las Caicas
Flores Las Palmas Ltda.
Flores Marandua Ltda.
Flores Monserrate Ltda.
Flores Mountgar Ltda.
Flores Petaluma Ltda.
Flores Sagaro
Flores Santa Fe Ltda.
Flores Santa Rosa Ltda.
Flores Tairona Ltda.
Flores Tiba S.A.
Flores Tibati Ltda.
Flores Tokai Hiso
Flores Tocarinde Ltda.
Flores Tomine
Flores Tropicales Ltda.
Flores Urimaco
Floricola La Guitana S.A.
Floricola La Ramada Ltda.
Florlinda
Groex S.A.
Hacienda Curubital Ltda.
Happy Candy Ltda.
Horticultura De La Sabana S.A.
Industrial Agricola Ltda.
Ingro Ltda.
Innovacion Andina
Inpar
Interflora Ltda.
Inverflores Ltda.
Inverpalmas
Inversiones Calypso S.A.
Inversiones Cubivan Ltda.
Inversiones Istra Ltda.
Inversiones La Serena Ltda.
Inversiones Miraflores Ltda.
Inversiones Oro Verde S.A.
Inversiones Penas Blancas Ltda.
Inversiones Santa Rita Ltda.
Inversiones Santa Rosa Ltda.
Inversiones Targa Ltda.
Inversiones Targa S.A.
Iturrama S.A.
Jaramillo Y Daza Ltda.
Jardines Bacata Ltda.
Jardines Carolina
Jardines De Chia Ltda.
Jardines De Colombia Ltda.
Jardines De Los Andes S.A.
Jardines Del Muna
Jardines Fredonia Ltda.
Las Amalias S.A.
Linda Colombiana Ltda.
Los Geranios Ltda.
Manjui Ltda.
Mercedes Ltda.
M.G. Consultores Ltda.
Mini Spray S.A.
Monteverde
Plantaciones Delta Ltda.
Plantas Ornamentales De Colombia
Pompones Ltda.
Productos el Cartucho
Queens Flowers De Colombia Ltda.
Rosas De Exportacion Ltda. (Rosex)
Rosas Sabanilla Ltda.
Rosas Y Flores Ltda.
Santa Helena S.A.
Santana Flowers
Shasta Flowers Y Cia Ltda.
Splended Flowers Ltda.
Sun Flowers Ltda.
Sunset Farms
Toto FLowers Ltda.
Tuchany S.A.
Uniflor Ltda.
Velez De Monchaux e Hijos

We have received requests for revocation from the antidumping duty order for the following exporters/growers:

Agrodex Group:
- Agricola El Retiro
- Agricola Los Gaques
- Agrodex
- Degaflores
- Flores Camino Real
- Flores Colon
- Flores De La Comuna
- Flores De La Maria
- Flores De Las Mercedes
- Flores De Los Amigos
- Flores De Los Arrayanes
- Flores De Pueblo Viejo
- Flores Del Gallinero
- Flores Del Potrero
- Flores Dos Hectareas
- Flores El Lobo
- Flores El Puente
- Flores El Trentino
- Flores Juanambu
- Flores La Conejera
- Flores Tibati
- Florlinda
- Inverflores
- Inverpalmas
- Inversiones Santa Rosa

Clavecol Group:
- Claveles Colombianos
- Fantasia Flowers
- Splendid Flowers
- Sun FLowers

Exportaciones Bochica/Floral Ltda.

Floramerica Group:
- Cultivos Del Caribe
- Floramerica
- Flores Las Palmas
- Jardines De Colombia

Flores Colombianas Group:
- Agrosuba
- Flores Colombianas
- Jardines De Los Andes
- Productos El Cartucho

Flores Condor De Colombia Ltda.

Flores De Serrezuela S.A.

Flores El Zorro

Las Amalias/Pompones

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) of the Department's regulations.

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This initiation and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 353.25(c) (1990).

Dated: June 11, 1991.

Joseph A. Spetrini,

Deputy Assistance Secretary for Complaince.

[FR Doc. 91-14473 Filed 6-17-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-804]

Antidumping Duty Order: Sparklers rom the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2613.

Scope of Order

The products covered by this order are sparklers from the People's Republic of China (PRC). Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classified under Harmonized Tariff Schedule (HTS) subheading 3604.10.00. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

SUPPLEMENTARY INFORMATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on April 26, 1991, the Department made its final determination that sparklers from the PRC are being sold at less than fair value (56 FR 20588, May 6, 1991). On June 10, 1991, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of sparklers from the PRC. These antidumping duties will be assessed on all unliquidated entries of sparklers from the PRC entered, or withdrawn from warehouse, for consumption on or after December 17, 1990, the date of publication of the Department's preliminary determination in the **Federal Register** (55 FR 51743). On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Margin percentage
Guangxi Native Produce Import & Export Corporation, Beihai Fireworks and Firecrackers Branch	1.64
Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation	93.54
Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company	65.78
All others	75.88

This notice constitutes an antidumping duty order with respect to sparklers from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 12, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-14474 Filed 6-17-91; 8:45 am]

BILLING CODE 3510-DS-M

[Application No. 90-2A007]

Export Trade Certificate Of Review

ACTION: Notice of issuance of an Amended Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the United States Surimi Commission (USSC). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs (OETCA) is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in an appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 90-00007 was issued to the United States Surimi Commission on August 22, 1990 (55 FR 35445, August 30, 1990). USSC previously amended its Certificate on December 12, 1990 (55 FR 53031, December 26, 1990).

USSC's Export Trade Certificate of Review has been amended to:

1. Add the following two companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2 (1)): Pacific Orion Seafoods, Inc., Seattle, WA (controlling entities: Bellingham Trawlers, Inc., Seattle, WA (40%); Westcod, Inc., Seattle, WA (40%); and Pacific Orion Seafoods, Inc., Seattle, WA. (20%)) and Golden Alaska Seafoods Inc., Seattle, WA (controlling entities: Nichiro Pacific, Ltd., Seattle, WA (70%) and Union Bay Industries, Inc., Seattle, WA (30%)) .

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 12, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-14422 Filed 6-17-91; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

June 13, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 20, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as recent consultations held between the Governments of the United States and the Dominican Republic have not resulted in a mutually satisfactory solution on Category 448, the United States Government has decided to control imports in this category for the twelve-month period beginning on March 28, 1991 and extending through March 27, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50750, published on December 10, 1990). Also see 56 FR 15334, published on April 16, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 13, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 20, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in the Dominican Republic and exported during the period beginning on March 28, 1991 and extending through March 27, 1992, in excess of 45,000 dozen [1].

Textile products in Category 448 which have been exported to the United States prior to March 28, 1991 shall not be subject to the limit established in this directive.

Textile products in Category 448 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided as data become available.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-14423 Filed 6-17-91; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations with the Government of Pakistan

June 13, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: June 20, 1991.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6498. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 29, 1991, under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 30, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan, the United States Government requested consultations with the Government of Pakistan with respect to Categories 239 (cotton and man-made fiber infantswear) and 617 (man-made fiber twill and sateen fabric).

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Categories 239 and 617, the Government of the United States has decided to control imports during the prorated period which began on May 29, 1991 and extends through August 28, 1991.

Summary market statements concerning Categories 239 and 617 follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 239 and 617, under the agreement with the Government of Pakistan, or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption

[1] The limit has not been adjusted to account for any imports exported after March 27, 1991.

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contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 239 and 617. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Pakistan

Category 239—Cotton and Man-Made Fiber Infantswear

May 1991

Import Situation and Conclusion

U.S. imports of cotton and man-made fiber infantswear, Category 239, from Pakistan reached 750,416 kilograms for the year ending March 1991, almost four times the 202,234 kilograms imported during the same period a year earlier. During the first quarter of 1991, imports of Category 239 from Pakistan reached 246,182 kilograms, almost double the 126,828 kilograms imported during the first quarter of 1990.

The sharp and substantial increase in Category 239 imports from Pakistan is causing a real risk of disruption in the U.S. market for cotton and man-made fiber infantswear.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber infantswear, Category 239, fell to 16,603 thousand kilograms in 1990 from 18,231 thousand kilograms in 1989, a decline of 8 percent. The domestic manufacturers' share of the cotton and man-made fiber infantswear market fell from 46 percent in 1989 to 39 percent in 1990, a decline of 7 percentage points.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber infantswear, Category 239, increased 23 percent from 21,225 thousand kilograms in 1989 to 26,044 thousand kilograms in 1990. During the first three months of 1991 imports increased three percent over the level imported during the same period a year earlier. The ratio of imports to domestic production reached 156 percent in 1990, up 40 percentage points from 116 percent in 1989.

Duty-Paid Value and U.S. Producers' Price

Ninety-five percent of the Category 239 imports from Pakistan for the year ending March 1991 entered under HTSUSA number 6209.20.5040—cotton diapers. These diapers entered the U.S. at landed duty-paid values below the U.S. producers' prices for comparable diapers.

Market Statement—Pakistan

Category 617—Man-Made Fiber and Sateen Fabric

May 1991

Import Situation and Conclusion

U.S. imports of man-made fiber twill and sateen fabric, Category 617, from Pakistan reached 7,677,904 square meters during the year ending March 1991, almost four and half times the 1,736,226 square meters imported a year earlier. In the first three months of 1991, Pakistan shipped 2,321,935 square meters, nearly double their January—March 1990 level. Pakistan is the second largest supplier of Category 617, accounting for 24 percent of total imports for the year ending March 1991. In the year ending March 1990, Pakistan accounted for seven percent of total Category 617 imports.

The sharp and substantial increase of Category 617 imports from Pakistan is causing a real risk of disruption in the U.S. market for man-made fiber twill and sateen fabrics.

Import Penetration and Market Share

U.S. production of man-made fiber twill and sateen fabric dropped to 366,725,000 square meters in 1990, 19 percent below the 1989 production level and 27 percent below the 1988 level. In comparison, U.S. imports of man-made fiber twill and sateen fabrics declined to 23,597,355 square meters in 1989, then surged to 28,513,496 square meters in 1990, 21 percent above the 1989 level. Category 617 imports continue to surge, increasing 61 percent in the first three months of 1991 over the January—March 1990 level.

The U.S. producers' share of the man-made fiber twill and sateen fabric market was 93 percent in 1990, two percentage points below their 1989 share. The ratio of imports to domestic production increased from five percent in 1989 to eight percent in 1990.

Duty-Paid Value and U.S. Producers' Price

Approximately 83 percent of Category 617 imports from Pakistan during the year ending March 1991 entered under HTSUSA number 5513.12.000—3-thread or 4-thread polyester staple twill, weighing less than 170 grams per square meter. These fabrics entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable twill fabrics.

Committee for the Implementation of Textile Agreements

June 13, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 20, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the period beginning on May 29, 1991 and extending through August 28, 1991, in excess of the following restraint limits:

Category	Ninety-day restraint limit [1]
239	260,161 kilograms.
617	2,533,121 square meters.

[1] The limits have not been adjusted to account for any imports exported after May 28, 1991.

Textile products in Categories 239 and 617 which have been exported to the United States prior to May 29, 1991 shall not be subject to the limits established in this directive.

Textile products in Categories 239 and 617 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-14424 Filed 6-17-91; 8:45 am]
BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronic) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday and Wednesday, 30–31 July 1991.

ADDRESSES: The meeting will be held at Naval Ocean Systems Center, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities, or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: June 13, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14434 Filed 6-17-91; 8:45 am]
BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 1 August 1991.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky F. Terry, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The microwave device area includes such programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. This review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: June 13, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14435 Filed 6-17-91; 8:45 am]
BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 8–19 July 1991 from 8 a.m. to 5 p.m. at the Naval Ocean Systems Center (NOSC) in San Diego, California.

The purpose of this meeting is to finalize the study and prepare briefings for the Air Force Chief of Staff containing observations, findings, and conclusions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 703-697-4648.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 91-14413 Filed 6-17-91; 8:45am]
BILLING CODE 3910-01-M

Department of the Army

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Army, DOD.

ACTION: Amend Privacy Act record systems.

SUMMARY: The Department of the Army proposes to amend eight record systems in its inventory of record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on July 18, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Contact Ms. Alma Lopez, Office of Systems Management Branch (ASOP-MP), Ft. Huachuca, AZ 85613-5000.

SUPPLEMENTARY INFORMATION: The Department of the Army record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23576, Jun. 30, 1986
51 FR 30900, Aug. 29, 1986
51 FR 40479, Nov. 7, 1986
51 FR 44361, Dec. 9, 1986
52 FR 11847, Apr. 13, 1987
52 FR 18796, May 19, 1987
52 FR 25905, Jul. 9, 1987
52 FR 32329, Aug. 27, 1987
52 FR 43932, Nov. 17, 1987
53 FR 12971, Apr. 20, 1988
53 FR 16575, May 10, 1988
53 FR 21509, Jun. 8, 1988
53 FR 28247, Jul. 27, 1988
53 FR 28249, Jul. 27, 1988
53 FR 28430, Jul. 28, 1988
53 FR 34576, Sep. 7, 1988
53 FR 49586, Dec. 8, 1988
53 FR 51580, Dec. 22, 1988
54 FR 10034, Mar. 9, 1989
54 FR 11790, Mar. 22, 1989
54 FR 14835, Apr. 13, 1989
54 FR 46985, Nov. 8, 1989
54 FR 50288, Dec. 5, 1989
55 FR 13935, Apr. 13, 1990
55 FR 21897, May 30, 1990 (Army Address Directory)
55 FR 41743, Oct.15, 1990
55 FR 46707, Nov. 6, 1990
55 FR 46708, Nov. 6, 1990

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55 FR 46871, Nov. 21, 1990 (Army System ID Changes)
55 FR 46878, Nov. 21, 1990
56 FR 7016, Feb. 21, 1991
56 FR 16088, Apr. 17, 1991
56 FR 21134, May 7, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the record systems are set forth below followed by the record system notices published in their entirety, as amended.

Dated: June 11, 1991.

L.M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0001SAIS

System name:

Carpool Information/Registration System (55 FR 22110, May 5, 1990).

Changes:

* * * * *

System manager(s) and address:

Delete entry and replace with "Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the command, installation, or activity where they participated in a carpool. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individuals should provide full name, current address, and sufficient information to permit locating the record."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the command, installation, or activity where they participated in a carpool. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individuals should provide full name, current address, and telephone number."

* * * * *

A0001SAIS

SYSTEM NAME:

Carpool Information/Registration System.

SYSTEM LOCATION:

Decentralized to Army installations/activity levels. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel participating in carpool programs who voluntarily provide information for release.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual, Social Security Number, home address and telephone, office address and telephone, map coordinates of home or nearby reference points, working hours, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and Executive Order 9397.

PURPOSE(S):

To assign and administer allocated carpool parking assignments; establish priority of assignments, assist members and applicants in contacting one another and provide printout of individuals in system to other participants who desire to arrange a carpool.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Reference cards, computer cards, disk or tape, and file folders.

RETRIEVABILITY:

By name, Social Security Number, grid coordinate reference, and working hours.

SAFEGUARDS:

Accessible only to authorized personnel and those providing identification and purpose for which information is requested; may be accessed by persons seeking members who have provided consent for release of information.

RETENTION AND DISPOSAL:

Retained only on active participants; destroyed upon request/reassignment.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the command, installation, or activity where they participated in a carpool. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individuals should provide full name, current address, and sufficient information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the command, installation, or activity level. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices. For verification purposes, individuals should provide full name, current address, and sufficie information to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0025-55SAIS

System name:

Request for Information Files, (50 FR 22115, May 29, 1985).

Changes:

* * * * *

System manager(s) and address:

Delete entry and replace with "Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

For verification purposes, individual should provide enough information to permit locating the record."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

For verification purposes, individual should provide enough information to permit locating the record.

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification, such as a valid driver's license, and furnishing verbal information that can be verified."

* * * * *

A0025-55SAIS

SYSTEM NAME:

Request for Information Files

SYSTEM LOCATION:

Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requests to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to Executive Order 12356. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who requests an Army record under the Freedom of Information Act, or requests mandatory review of a classified document pursuant to Executive Order 12356.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, related papers, correspondence between office of receipt and records custodians, Army staff offices and other government agencies; retained copies of classified or other exempt materials; and other selective documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552; Freedom of Information Act, as amended by Public Law 93-502; and Executive Order 12356.

PURPOSE(S):

To control administrative processing of requests for information either pursuant to the Freedom of Information Act or to Executive Order 12356, including appeals from denials.

ROUTINE USES OF RECORDS, MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfilm.

RETRIEVABILITY:

By requester's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly trained and have official need therefor.

RETENTION AND DISPOSAL:

Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 5 years; and if appealed, records are retained 4 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107

For verification purposes, individual should provide enough information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

For verification purposes, individual should provide enough information to permit locating the record.

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification, such as a valid driver's license, and furnishing verbal information that can be verified.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The majority of records in this system are not exempted. Copies of documents residing in the office of an Initial Denial Authority having a law enforcement mission which fall within (j)(2) are exempt from the following provisions of title 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

Copies of documents maintained by other Initial Denial Authorities not having a law enforcement mission which fall within 5 U.S.C. 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

A0380-380SAIS

System name:

Access to Computer Areas, Systems Electronically, and/or Data Control Records, (50 FR 22114, May 29, 1985).

Changes:

* * * * *

System manager(s) and address:

Delete entry and replace with "Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD,

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Department of the Army, Washington, DC 20310-2107."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Army Information Processing Installation Operations Center. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Army Information Processing Installation Operations Center. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature."

* * * * *

A0380-380SAIS

SYSTEM NAME:

Access to Computer Areas, Systems Electronically, and/or Data Control Records.

SYSTEM LOCATION:

Information Processing and/or Communications Activities Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel assigned to the Army Information Processing and/or Communications installation; contractor personnel; authorized customers/users.

CATEGORIES OF RECORDS IN THE SYSTEM:

Operator's/user's name, Social Security Number, organization, telephone number, and office symbol; security clearance; level of access; subject interest code; user identification code; data files retained by users; assigned password; magnetic tape reel identification; abstracts of computer programs and names and phone numbers of contributors; and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and Executive Order 9397.

PURPOSE(S):

To administer passwords and identification numbers for operators/users of data in automated media; to identify data processing and communication customers authorized access to or disclosure from data residing in information processing and/or communication activities; and to determine propriety of individual access into the physical data residing in automated media.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; punch cards; and magnetic tapes/discs.

RETRIEVABILITY:

Name, subject, user identification code, news item number, user password, application program key word/author.

SAFEGUARDS:

All information is maintained in secured areas accessible only to designated individuals having official need therefor in the performance of official duties. Either Army Information Processing Installation security guards or remote location operators check access against system reports.

RETENTION AND DISPOSAL:

Individual data remains on file while a user of computer facility; destroyed on person's reassignment or termination.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Army Information Processing Installation Operations Center. Official mailing addresses as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Army Information Processing Installation Operations Center. Official mailing addresses as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR Part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

System managers, computer facility managers, automated interfaces for user codes on file at Army sites.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0340-21SAIS

System name:

Privacy Case Files, (50 FR 22115, May 29, 1985).

Changes:

* * * * *

System location:

After the first sentence add "Official mailing addresses are published as an appendix to the Army's compilation of system notices."

* * * * *

Categories of records in the system:

Delete entry and replace with "Documents accumulated in notifying requesters of the existence of records on them, providing or denying access to or amendment of records, acting on appeals or denials to provide access or amend records, and providing or developing information for use in litigation; Department of the Army Privacy Review Board minutes and actions; coordination actions, copies of the requested amended or unamended records; statements of disagreement; and other related documents."

* * * * *

System manager(s) and address:

Delete entry and substitute "Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the office that processed the initial inquiry, access request, or amendment request. Individual may obtain assistance from the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification, such as a valid driver's license, and furnishing verbal information that can be verified from the individual's case file."

Contesting record procedures:

Add at the end "or may be obtained from the system manager."

* * * * *

A0340-21SAIS

SYSTEM NAME:

Privacy Case Files.

SYSTEM LOCATION:

These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving Privacy Act requests. Official mailing addresses are published as an appendix to the Army's compilation of system notices.

Records also exist in offices of Access and Amendment Refusal Authorities when an individual's request to access and/or amend his/her record is denied. Upon appeal of that denial, record is maintained by the Department of the Army Privacy Review Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information concerning themselves which is in the custody of the Department of the Army or who request access to or amendment of such records in accordance with the Privacy Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents notifying requesters of the existence of records on them, providing or denying access to or amendment of records, acting on appeals or denials to provide access or amend records, and providing or developing information for use in litigation; Department of the Army Privacy Review Board minutes and actions; copies of the requested and amended or unamended records; statements of disagreement; and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012; and 5 U.S.C. 552a, the Privacy Act of 1974, as amended.

PURPOSE(S):

To process and coordinate individual requests for access and amendment of personal records; to process appeals on denials of requests for access or amendment to personal records by the data subject against agency rulings; and to ensure timely response to requesters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfilm.

RETRIEVABILITY:

By name of requester on whom the records pertain.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Approved requests, denials that were not appealed, denials fully overruled by appellate authorities and appeals adjudicated fully in favor of requestor are destroyed after 4 years. Appeals denied in full or in part are destroyed after 10 years, provided legal proceedings are completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the office that processed the initial inquiry, access request, or amendment request. Individual may obtain assistance from the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record. Personal visits may be made to the office maintaining the records upon presentation of acceptable identification, such as a valid driver's license, and furnishing verbal information that can be verified from the individual's case file.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or

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may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other Federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The majority of records in this system are not exempted. Copies of documents residing in the office of an Access and Amendment Refusal Authority having a law enforcement mission which fall within (j)(2) are exempted from the following provisions of Title 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

Copies of documents maintained by the Department of the Army Privacy Review Board and by those Access and Amendment Refusal Authorities not having a law enforcement mission which fall within 5 U.S.C. 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

A0360SAIS

System name:

Mailing List for Army Newspapers/ Periodicals/Catalogs, (50 FR 22134, May 29, 1985).

Changes:

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System location:

Delete last sentence and replace with "Official mailing addresses are published as an appendix to the Army's compilation of system notices."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the editor of the publication, registrar of the school, or the Army or National Guard Public Affairs Office publishing the periodical. Official mailing addresses are published as an appendix to the Army's compilation of system of records notices.

For verification purposes, individual should provide full name and current address to permit locating the record."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the editor of the publication, registrar of the school, or the Army or National Guard Public Affairs Office publishing the periodical. Official mailing addresses are published as an appendix to the Army's compilation of system of records notices.

For verification purposes, individual should provide full name and current address to permit locating the record."

Contesting record procedures:

Add at the end "or may be obtained from the system manager."

* * * * *

A0360SAIS

SYSTEM NAME:

Mailing List for Army Newspapers/ Periodicals/Catalogs.

SYSTEM LOCATIONS:

Headquarters, Department of the Army staff and field operating agencies, major commands, field installations and activities, Army service schools/ colleges, Army National Guard Bureau Headquarters and field activities. Official mailing addresses are published as an appendix to the Army's compilation of system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Name and current mailing address of recipients of Army and/or National Guard magazines, newspapers, professional and trade publications, journals, catalogs, admissions policies and procedures, digests, and newsletters. Recipients may be current or former Army and/or National Guard personnel, staff and faculty or graduate/ resident/correspondence student of Service Schools, military reservists, Reserve Officers Training Corps cadets, civilian academicians, professional or other personnel who have requested inclusion on mailing lists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mailing lists containing names and addresses of recipients of various periodicals published by the Army/or the National Guard which have public relations value. Types of periodicals include but are not limited to journals, catalogs, admissions policies and procedures published by military schools and colleges, medical facilities, and training institutions; and Army newspapers or digests containing official or quasi-official but non-directive data of either a technical or administrative nature.

Other personnel data may be included such as Alumni Association Member number, professional society or trade organization of which a member and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 32 U.S.C. 110.

PURPOSE(S):

To produce mailing lists for distribution of Army periodicals, newspapers and various journals, catalogs, digests and newsletters; and to perform statistical analyses and surveys of reader interest and opinion.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic tape disc, cards, printouts, and addressograph plates.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are accessed and maintained only by authorized personnel who have need therefor.

RETENTION AND DISPOSAL:

Retained until no longer needed, normally until individual requests deletion, after which record is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Heads of Department of Army staff and field operating agencies, major commands, commanders of installations/activities, Army service schools/colleges and National Guard activities that publish periodicals, command newspapers, catalogs or other special-interest recurring publications.

Official mailing addresses are published as an appendix to the Army's compilation of system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this records system should address inquiries to either the editor of the publication, registrar of the school, or the Army or National Guard Public Affairs Office publishing the periodical. Official mailing addresses are published as an appendix to the Army's compilation of system notices.

For verification purposes, individual should provide full name and current address to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address inquiries to either the editor of the publication, registrar of the school, or the Army or National Guard Public Affairs Office publishing the periodical. Official mailing addresses are published as an appendix to the Army's compilation of system notices.

For verification purposes, individual should provide full name and current address to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; records of the Army or National Guard organization publishing the document.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0735SAIS–SF

System name:

Library Borrowers'/Users' Profile Files, (52 FR 16805, May 19, 1987).

Changes:

* * * * *

System location:

Add at the end "Official mailing addresses of installations and activities are published as an appendix to the Army's compilation of record systems notices."

* * * * *

Storage:

Delete entry and replace with "Card files, magnetic tapes, compact discs, and computer printouts".

* * * * *

System manager(s) and address:

Delete entry and replace with "Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107"

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the specific installation library that provided services. Official mailing addresses published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, period in which a user has or had an account, and any other information that would assist in locating applicable records."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the specific installation library that provided services. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, period in which a user has or had an account, and any other information that would assist in locating applicable records".

Record contesting procedures:

Add at the end "or may be obtained from the system manager."

* * * * *

A0735SAIS–SF

SYSTEM NAME:

Library Borrowers'/Users' Profile Files.

SYSTEM LOCATION:

Libraries on Army installations and activities. Official mailing addresses of installations and activities are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authorized users of Army library facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security Number, and telephone number of the user.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 9397.

PURPOSE(S):

To identify individuals authorized to borrow library materials; to ensure that all library property is returned and individual's account is cleared, and to provide librarian useful information for selecting, ordering, and meeting user requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files, magnetic tapes, compact discs, and computer printouts.

RETRIEVABILITY:

By user's surname, Social Security Number, and/or residence.

SAFEGUARDS:

Information is maintained in areas accessible only to authorized persons who have official need therefor. Libraries are secured during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed to obtain and/or control library materials.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the specific installation library that provided services. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, period in which a user has or had an account, and any other information that would assist in locating applicable records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the specific installation library that provided services. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, period in which a user has or had an account, and any other information that would assist in locating applicable records.

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CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0360SAPA

System name:

Media Contact Files.

Changes:

* * * * *

System location:

Add "New York, NY;" after "Los Angeles, CA;" and delete "Kansas City, MO;"; add at the end "Official mailing addresses may be obtained from the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system".

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

For verification purposes, individual should provide full name, and current address and telephone number".

Record access procedures:

Delete entry and substitute "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

For verification purposes, individual should provide full name, and current address and telephone number"

Contesting record procedures:

Add at the end "or may be obtained from the system manager."

* * * * *

A0360SAPA

SYSTEM NAME:

Media Contact Files.

System location:

Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500 and their field operating agencies at Los Angeles, CA; New York, NY; and Washington, DC; public affairs office of Army Staff agencies, major commands, installations, and activities. Official mailing addresses may be obtained from the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Journalists, authors, editors, columnists, researchers, and news media representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, biographical data, public media affiliation, and correspondence between the Army and the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C 3012.

PURPOSE(S):

To maintain contact with public media representatives on issues of common interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards and papers in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessed only by individuals having need in the performance of official duties.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed for current operations.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

For verification purposes, individual should provide full name, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

For verification purposes, individual should provide full name, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR Part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, newspapers, libraries, Army and Department of Defense records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0380–5SAPA

System name:

Biography Files, (50 FR 22145, May 29, 1985).

Changes:

* * * * *

System location:

Delete "and their field operating agencies at Los Angeles, CA; Washington, DC; and Kansas City, MO;" and add at the end "Official mailing addresses may be obtained from the Official mailing addresses may be obtained from the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500."

* * * * *

Retention and disposal:

Delete entry and substitute "Records are destroyed 2 years after retirement, transfer, separation, or death of the person concerned."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Public Affairs Office in the organization to which the individual is or was assigned or employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, current address and telephone number, and signature".

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in the record system should address written inquiries to the Public Affairs Office in the organization to which the individual is or was assigned or employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, current address and telephone number, and signature".

Contesting record procedures:

Add at the end "or may be obtained from the system manager."

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A0360–5SAPA

SYSTEM NAME:

Biography Files.

SYSTEM LOCATION:

Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500; public affairs offices of Army staff agencies, field operating agencies, major commands, installations, and activities. Official mailing addresses may be obtained from the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Leading Department of the Army military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical material including photographs, newspaper clippings, speeches, and related documents. Name, position/rank/grade, summary of service, and outstanding achievements may also be included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and Executive Order 9397.

PURPOSE(S):

To respond to queries from the press and Army agencies/commands relating to individuals concerned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated officials having need therefor in the performance of their assigned duties. Storage areas are locked during non-duty hours.

RETENTION AN DISPOSAL:

Records are destroyed 2 years after retirement, transfer, separation, or death of the person concerned.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Public Affairs Office in the organization to which the individual is or was assigned or employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in the record system should address written inquiries to the Public Affairs Office in the organization to which the individual is or was assigned or employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; clippings from published media; published biographical data from Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–14389 Filed 6–17–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Mapping Agency

Membership; Defense Mapping Agency Performance Review Board

AGENCY: Defense Mapping Agency (DMA) Department of Defense (DoD).

ACTION: Notice of membership of the Defense Mapping Agency Performance Review Board (DMA PRB).

SUMMARY: This notice announces the appointment of the members of the DMA PRB. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Board provides fair and impartial performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DMA.

EFFECTIVE DATE: 20 August 1991.

FOR FURTHER INFORMATION CONTACT: B.R. Webster, Defense Mapping Agency, Civilian Personnel Division, 8613 Lee Highway, Fairfax, VA 22031–2137, telephone (703) 285–9522.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following is a standing register of executives appointed to the DMA PRB; specific PRB panels will be constituted from this standing register. Executives listed will serve a one-year renewable term, effective 20 August 1991.

Ancell, A. Clay

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Deputy Director for Programs, Production and Operations, DMA Aerospace Center
Barrowman, Douglas R.
Deputy Director for Plans and Requirements, Headquarters, DMA
Berg, Richard A.
Chief, Scientific Data Department, DMA Hydrographic/Topographic Center
Brown, William J.
Deputy Director for Programs, Production and Operations, DMA Hydrographic/Topographic Center
Coghlan, Thomas K.
Chief, Mapping and Charting Department, DMA Hydrographic/Topographic Center
Daugherty, Kenneth L.
Director, DMA Systems Center/ Deputy Director for Research and Engineering, Headquarters, DMA
Diendorf, Curtis L.
Deputy Director for Human Resources, Headquarters, DMA
Gilliam, Penman R.
Deputy Director, Management and Technology, Headquarters, DMA
Gustin, Russell T.
Chief, Digital Products Department, DMA, Reston Center
Hall, Charles D.
Technical Director, Hydrographic/ Topographic Center, DMA
Hall, Robert H.
Deputy Director for Programs, Production and Operations, DMA Reston Center
Hennig, Thomas A.
Deputy Director for Programs and Operations, DMA Systems Center/Assistant Deputy Director for RDT&E, Plans and Programs, Headquarters, DMA
Hogan, William N.
Deputy Director for Programs, Production and Operations, Headquarters, DMA
Jackson, Mikel F.
Chief, Digital Products Department Hydrographic/Topographic Center, DMA
Knopfel, Lawrence
Technical Director/Deputy Director, DMA Combat Support Center
Krygiel, Annette J.
Deputy Director for Modernization Development, DMA Systems Center
Labovitz, Mendocel Z.
Deputy Director for Acquisition, Installations and Logistics, Headquarters, DMA
Mendez, John M.
Deputy Director for Transition Management, Headquarters, DMA
Muncy, Larry M.
Chief, Scientific Data Department, DMA Aerospace Center
Peeler, Paul L., Jr.
Technical Director, DMA Reston Center
Phillips, Earl W.
Assistant Deputy Director for Production, Headquarters, DMA
Pratt, Joseph
Brigadier General, USA, Deputy Director, DMA
Robinson, Bill E.
Director, Technical Services Center
Skidmore, James R.
Technical Director, DMA Aerospace Center
Smith, Kathleen M.
Chief, Digital Products Department, DMA Aerospace Center
Smith, Lon M.
Deputy/Technical Director, DMA Systems Center/Assistant Deputy Director for Research & Engineering, Headquarters, DMA
Smith, Robert N.
Chief, Data Services Department, DMA Reston Center
Smith, William D.
Chief, Resource Management Division (Deputy Comptroller), Headquarters, DMA
Vaughn, John R.
Comptroller, Headquarters, DMA
Ward, Curtis B.
Assistant Deputy Director for Resources Headquarters, DMA

Dated: June 12, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14489 Filed 6-17-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Case No. F-027]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnace Test Procedures to Amana Refrigeration, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-027) granting Amana Refrigeration, Inc. (Amana), a waiver for its model GUD condensing gas furnace from existing Department of Energy (DOE) test procedures regarding blower time delay for determining the model's energy efficiency.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Amana has been granted a waiver for its model GUD condensing gas furnace, permitting the company to use an alternate test method in determining the Annual Fuel Utilization Efficiency (AFUE).

Issued in Washington, DC, May 29, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Decision and Order

In the matter of: Amana Refrigeration, Inc. (Case No. F-027).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, requires DOE to prescribe standardize test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 28, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Amana filed a "Petition for Waiver" dated May 15, 1990, in accordance with § 430.27 of 10 CFR part 430. DOE published in the Federal Register on January 9, 1991, Amana's petition and solicited comments, data and information respecting the petition. 56 FR 853. Amana also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on January 2, 1991. 56 FR 853, January 9, 1991.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver". DOE consulted with Federal Trade Commission (FTC), concerning the Amana petition. The FTC did not have any objections to the issuance of a waiver to Amana.

Assertions and Determinations

Amana's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Amana requests the allowance to test using a 30-second blower time delay when testing its GUD series condensing gas furnaces. Amena states that since the 30-second delay is indicative of how this model actually operates and since such a delay results in an improvement in efficiency of approximately 1.7 percent, the waiver should be granted.

Under specific circumstances, the DOE test procedures contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Amana indicates that it is unable to take advantage of any of these exceptions for the GUD series condensing gas furnaces.

Since the blower controls incorporated on the Amana furnace are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Amana GUD condensing gas furnace. Accordingly, with regard to testing the GUD condensing gas furnace, today's Decision and Order exempts Amana from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is therefore, ordered that: (1) The "Petition for Waiver" filed by the Amana Refrigeration, Inc., (Case No. F-027) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4) and (5).

(2) Not withstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, the Amana Refrigeration, Inc. shall be permitted to test its GUD condensing gas furnace on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and eplaced with the following paragraph:

3.0 *Test procedure.* Testing and measurements shall be as specified in section 9 of ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 *Gas- and oil-fueled central furnaces.* The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103-82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) come on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 in. of water gauge of the manufacturer's recommended on-period draft.

(iii) With the exception of the modification set forth above, Amana Refrigeration, Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GUD condensing gas furnace manufactured by Amana Refrigeration, Inc.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective May 29, 1991, this Waiver supersedes the Interim Waiver Granted Amana Refrigeration, Inc. on January 2, 1991. 56 FR 853, January 9, 1991, (Case No. F-027).

Issued in Washington, DC, May 29, 1991.

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 91-14463 Filed 6-17-91; 8:45 am]

BILLING CODE 6450-01-M

[Case No. F-031]

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures from Inter-City Products Corporation

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Inter-City Products Corporation (Inter-City) from the existing Department of Energy (DOE) test procedures for furnaces blower time delay for the company's PGAA gas furnace.

Today's notice also publishes a "Petition for Waiver" from Inter-City. Inter-City's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Inter-City seeks to test using a blower delay time of 30 seconds for its PGAA gas furnace instead of the specified 1.5 minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATE: DOE will accept comments, data, and information not later than July 18, 1991.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-031, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National

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Appliance Energy Conservation Amendments of 1988 (NAECA) 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 28, 1990, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject to the waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On February 18, 1991, Inter-City filed an Application for an Interim Waiver regarding blower time delay. Inter-City's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Inter-City requests the allowance to test using a 30-second blower time delay when testing its PGAA gas furnace. Inter-City states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 9.6 percent. Since current DOE test procedures do not address this variable blower time delay, Inter-City asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19228, May 4, 1989, and 55 FR 41580, October 12, 1990; DMO Industries, 55 FR 4004, February 8, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182; April 9, 1990; Amana Refrigeration Inc., 56 FR 853, January 9, 1991; and Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Inter-City an Interim Waiver for its PGAA series of gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Inter-City Products Corporation was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, May 29, 1991.

J. Michael Davis, P.E.,

Assistant Secretary for Conservation and Renewable Energy.

Assistant Secretary, Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue SW., Washington, District of Columbia 20585.

Gentlemen: Please consider this Petition for Waiver and Application for Interim Waiver pursuant to Title 10 CFR 430.27.

Waiver is requested from the test procedures covering gas furnaces found at appendix N to subpart B of 10 CFR Part 430. The current Heat-Up Test procedure requires a 1.5 minute time delay between burner and blower startup. Inter-City Products is requesting to use 30 seconds instead of 1.5 minutes for Series "PGAA" Packaged Gas Furnaces.

These models will employ an electronic blower time control that starts the blower in approximately 30 seconds. Our testing indicates an increase of .6 percent in AFUE using the 30 second time delay.

Inter-City Products Corporation seeks an interim waiver because it is likely that our waiver will be granted. Similar waivers have been granted to other manufacturers in the past.

A copy of this Petition for Waiver and Application for Interim Waiver will be sent to other manufacturers of similar type products.

Respectfully yours,

William E. Dalton,

Vice President, Engineering.

Mr. William E. Dalton,

Vice President, Engineering, Inter-City Products Corporation, 1136 Heil-Quaker Boulevard, Lavergne, TN 37086–1985.

Dear Mr. Dalton: This is in response to your February 18, 1991, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the Inter-City Products Corporation (Inter-City) PGAA gas furnace.

Previous waivers for timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19228, May 4, 1989, and 55 FR 41580, October 12, 1990; DMO Industries, 55 FR 4004, February 8, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Amana Refrigeration Inc., 56 FR 853, January 9, 1991; and Armstrong Air Conditioning Inc., 56 FR 10553, March 13, 1991.

Inter-City's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Inter-City will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Inter-City's Application for an Interim Waiver from the DOE test procedures for its PGAA gas furnace regarding blower time delay is granted.

Inter-City shall be permitted to test its line of PGAA gas furnace on the basis of the test procedures specified in 10 CFR part 430, subpart B, Appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (1.), unless, (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t.), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within +/-0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This interim waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 91-14464 Filed 6-17-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE; FRL-3966-4]

Anticipated Pesticide Residues in Food; Availability of Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Document "Anticipated Pesticide Residues in Food" is available to the public. This report contains a pesticide food residue data base. Hardcopy and microfiche copies of the report can be purchased through the National Technical Information Service (NTIS). Electronic searches of the data base may also be purchased. Ordering information is provided.

DOCUMENT DESCRIPTION: "Anticipated Pesticide Residues in Food" is comprised of our volumes. Volume one describes the sources of data contained in the report, the format of the computerized data base and the recommendations of the report. Volumes two through four list the data records included in the data base.

ORDERING INFORMATION: Volume 1 has been assigned the NTIS number PB91–154591. Volumes two through four have been assigned the NTIS number PB91–154609. The NTIS number for all four volumes is PB91–154583. Use this information when ordering. The price for volume one is $17.00 ($8.00 for microfiche). The price for volumes two through four is $68.00 ($29.50 for microfiche). Orders may be placed by telephone to the NTIS order desk and charged against a deposit account of American Express, VISA, Mastercard, or sent by mail with a check, money order, or account number.

ADDRESSES: National Technical Information Services, attn: Order Desk, 5285 Port Royal Rd., Springfield, VA 22161 (703–487–4650).

DATA BASE SEARCHES: For information on procedures for having electronic data base searches carried out, contact Dynamac Corporation (301–417–6126).

FOR FURTHER INFORMATION CONTACT: Joseph C. Reinert, Waste and Chemicals Policy Division (PM–220), Office of Policy, Planning and Evaluation, EPA, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 34 Waterside Mall, EPA, (202–382–7557).

Dated: June 7, 1991.

Daniel Fiorino,

Associate Director, Office of Policy Analysis.

[FR Doc. 91-14449 Filed 6-17-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–44571; FRL 3929–3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 4-nonylphenol, branched (CAS No. 84852–15–3), submitted pursuant to a consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for 4 nonylphenol, branched were submitted by the Chemical Manufacturers Association's Alkylphenol and Ethoxylates Panel pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on May 20, 1991. The submissions describe the chronic toxicity of nonylphenol to the Mysid, *Mysidopsis bahia*, and the early life stage toxicity of nonylphenol to the fathead minnow, *Pimephales promelas*. Environmental effects testing is required by this test rule. This chemical is used: (1) As an intermediate in the production of nonionic ethoxylated surfactants, (2) as a reactive intermediate in lube additives formaldehyde resins, polymeric stabilizers and epoxy resins, and (3) in the manufacture of phosphate antioxidant, oil additives, synthetic lubricants and corrosion inhibitors.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d)receipt of data notice (docket number OPTS–44571). This recordincludes copies of all studies reported in this notice. The recordis available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 7, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91-14450 Filed 6-17-91; 8:45 am]

BILLING CODE 6560-50-F

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[OPTS-59269B; FRL 3931-2]

Certain Chemical; Approval of Modification to Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of a modification of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing application as TME-91-1. The test marketing conditions are described below.

EFFECTIVE DATES: June 11, 1991.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 382-2440.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modification of the test marketing period for TME-91-1. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application and modification request, and for the modified time period specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T-91-1

Notice of Approval of Original Application: December 21, 1991 (55 FR 52317).

Modified Test Marketing Period: 6 month extension from the original 9 months.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to human health or the environment.

Dated: June 11, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc.91-14451; Filed 6-17-91 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Anti-Arson Program

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of solicitation for award of cooperative agreement.

Notice of Solicitation is hereby given that the Federal Emergency Management Agency, under the Fire Prevention and Control Act of 1974, will issue a Request for Assistance (RFA) No. EMW-91-S-3648 on or about June 1, 1991, regarding the design and implementation of an anti-arson strategy program. This program is limited to Community-Based Organizations (CBO). This notice informs the public of the availability of $280,000.00 appropriated for this program by the Federal Emergency Management Agency.

The purpose of this assistance is to focus on nationwide efforts to reduce the number of arson related fires that occur every year throughout this country.

Some broad objectives of this program are:

- To encourage neighborhood involvement in reducing arson fires through new and innovative broad spectrum programs.
- To expand the neighborhood involvement to a community-wide participation in fighting arson.
- To make information available to other neighborhoods and communities regarding successful programs.
- To increase the cooperation between neighborhood residents, community groups and public service organizations such as fire, police, building and code departments.
- To build a comprehensive community anti-arson program.

Organizations wishing to apply for this program must meet certain eligibility requirements:

a. The applicant must be a true community-based organization. Among the criteria to be used to determine whether the applicant is a true CBO are the following:

1. An organization that is made up of community representatives and is lcoated in a neighborhood within the community.

2. An organization that is designed to serve members of a neighborhood in dealing with problems on a voluntary basis.

3. A non-profit organization capable to leveraging private sector funding.

4. Must be a community-based organization that is indigenous to the neighborhood.

5. An organization must have been in existence for at least one year prior to the issuance of this RFA.

The following evaluation factors (numerically weighed to ensure consisent and balanced scoring) are for consideration by the Anti-Arson Evaluation Panel:

a. The relationship between the proposed program approach and objectives of FEMA/USFA CBO Programs (Factor weight: 10)

b. The experience of the organization relating to previous projects in fire/arson prevention (Factor weight: 10)

c. The amount of involvement demonstrated with public sector agencies such as fire, police, building codes, housing, etc. (Factor weight: 15)

d. The identification of significant problems and issues that impact on the arson problem in their neighborhood (Factor weight: 5)

e. The indication of previous projects in the neighborhood and how residents benefited from those projects in the past (Factor weight: 5)

f. Evidence of previous CBO involvement in Anti-Arson Activities and that these activities have continued and some indication of project personnel experience in community problem solving and development (Factor weight: 15)

g. Identification, availability and ability to obain resources, other that federal funding, necessary to implement and maintain the project (Factor weight: 20)

h. The commitment of the officers, directors and staff as indicated through regular attendance at organizational meetings, and meetings with public and private officials (Factor weight: 10)

i. The reasonableness, practicality and completeness of the organization's plan for implementing and managing the proposed project (Factor weight: 10)

Application for assistance must be requested in writing and addressed as follows: Federal Emergency Management Agency, Office of Acquisition Management, 500 C Street, SW., room 731, Washington, DC 20472, attn: Rhonda Hudson, Contract Specialist. Request for Assistance No. EMW-91-S-3648. Please include a self-addressed mailing label with the request.

Cooperative Agreements are anticipated to be awarded as a result of this request for assistance. It is anticipated that a minimum of five (5) and a maximum of twenty-five (25) assistance awards will be made. The minimum anticipated funding level of this program is $5,000.00 based on the criteria that will be outlined in he solicitation package.

Kenneth J. Brazelais,

Director, Office of Acquisition Management.

[FR Doc. 91-14439 Filed 6-17-91; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No: 202-010776-059.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.,
Kawasaki Kisen Kaisha, Ltd.,
A.P. Moller-Maersk Line,
Mitsui O.S.K. Lines, Ltd.,
Neptune Orient Lines, Ltd.,
Nippon Liner Systems, Ltd.,
Nippon Yusen Kaisha Line,
Sea-Land Service, Inc.

Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1705), has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 202-010776-059 required by the Act. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Dated: June 12, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14378 Filed 6-17-91; 8:45 am]

BILLING CODE 6730-01-M

The Board of Trustees of the Galveston Wharves/Dunavant Enterprises, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200529.

Title: The Board of Trustees of The Galveston Wharves/Dunavant Enterprises, Inc. Terminal Agreement.

Parties:

The Board of Trustees of The Galveston Wharves (Galveston),
Dunavant Enterprises, Inc. (DE).

Synopsis: The Agreement, filed June 10, 1991, provides for DE to pay Galveston the tariff wharfage rate on the first 50,000 bales of cotton shipped through the Port of Galveston in 1991 and then $0.35 per bale thereafter. The term of the Agreement expires December 31, 1991.

Dated: June 12, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14379 Filed 6-17-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Area Bancshares Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 8, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Area Bancshares Corporation, Owensboro, Kentucky; to acquire First Federal Savings and Loan Association of Bowling Green, Bowling Green, Kentucky, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y. This activity will be conducted in Bowling Green and Franklin, Kentucky.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Brooke Holdings, Inc., Jewell, Kansas; to acquire MidAmerica Insurance Agency, Phillipsburg, Kansas, and thereby engage in the sale of general insurance (excluding life insurance and annuities) pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y. Comments on this application must be received by July 2, 1991.

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Board of Governors of the Federal Reserve System, June 12, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14414 Filed 6-17-91; 8:45 am]

BILLING CODE 6210-01-F

Chambers Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Chambers Bancshares, Inc., Danville, Arkansas; to engage *de novo* in providing real estate appraisal services pursuant to § 225.25(b)(13) of the Board's Regulation Y. This activity will be conducted in the State of Arkansas.

Board of Governors of the Federal Reserve System, June 12, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14415 Filed 6-17-91; 8:45 am]

BILLING CODE 6210-01-F

Eastern Illinois Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 8, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Eastern Illinois Bancorp, Inc., Casey, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Casey National Bank, Casey, Illinois.

2. FS BancShares, Inc., Markeson, Wisconsin; to merge with Fox Lake Bankshares, Inc., Fox Lake Wisconsin, and thereby indirectly acquire State Bank of Fox Lake, Fox Lake, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Hansen Freeborn, Inc., Freeborn, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Freeborn, Freeborn, Minnesota.

Board of Governors of the Federal Reserve System, June 12, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14416 Filed 6-17-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0177]

Seiwa Technological Laboratories, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Seiwa Technological Laboratories, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4-isopropyltropolone as a preservative for fresh fruits and vegetables

FOR FUTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Seiwa Technological Laboratories, Ltd., suite 340-650, West 41st Ave., Vancouver, B.C. Canada V5Z 2M9, has filed a petition (FAP 9A4156) proposing that the food additive regulations be amended to provide for the safe use of 4-isopropyltropolone as a preservative for fresh fruits and vegetables.

The potential environmental impact of this action is being reviewed. If the agency finds that an enviionmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 7, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-14432 Filed 6-17-91; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselor's Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92-463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselor's Technical Reports Review Subcommittee on July 9 and 10, 1991, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 9 a.m. both days and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies and short-term toxicity studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on July 9 and 10 are draft Technical Reports of long-term studies on nine chemicals, listed alphabetically, along with supporting information in Table 1. All studies were done using Fischer 344 rats and B6C3F1 mice. The order of review is given in the far right column of the table.

Also scheduled to be peer reviewed are draft Technical Reports of toxicity studies on four chemicals, listed alphabetically, along with supporting information in Table 2. Order of presentation is given in the far right column of the table.

Additionally, if time permits, following the Technical Report reviews, there will be three scientific presentations. They are: (1) Variability in Tumor Rates Among Control F344 Rats in NTP Studies; (2) Mononuclear Cell Leukemia in the F344 Rat—Research Approaches; and (3) Evaluation of the Usefulness of Interim Sacrifices in NTP Studies.

Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone or by mail no later than July 2, 1991, and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members and staff and make available at the meeting for attendees. Oral presentations should supplement and not just repeat the written statement. Presentations should be limited to no more than seven minutes.

The program would welcome receiving toxicology and carcinogenesis information from completed, ongoing or planned studies by others, as well as current production data, human exposure information, and use patterns on any of the studies listed in this announcement. Please contact the staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, RTP, North Carolina 27709 (telephone 919/541/3971, FTS 629-3971) will furnish final agenda, a roster of Subcommittee members, and other program information prior to the meeting. Summary minutes subsequent to the meeting will be available upon request.

Dated: June 12, 1991.

David G. Hoel,

Acting Director, National Toxicology Program.

TABLE I.—SUMMARY DATA FOR LONG TERM NTP TOXICOLOGY AND CARCINOGENESIS TECHNICAL REPORTS SCHEDULED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON JULY 9-10, 1991

Chemical CAS No.	Staff scientist/technical report No.	Primary uses	Route/exposure levels	Study laboratory	Review order
Gamma-butyrolactone 96-48-0	Dr. S. Eustis 919-541-3231 TR-406 07/09/91E	Intermediate in the synthesis of polyvinylpyrrolidone, dl-methionine, piperidine, phenylbutyric acid, and thiobutyric acids. Solvent for resins. Constituent of paint removers, textilbe aids. Drilling oil.	Oral, Gavage (corn oil): MR: 0,112,225, FR: 0,225, 450, M: 0, 262, 522 MG/KG/50/ per group.	Southern Research Institute.	3
C.I. Pigment Red 3 2425-85-6	Dr. K. Abdo 919-541-7819 TR-407 07/09/91E	Used in manufacture of paints, inks, plastics, rubber.	Oral in feed (feed): R: 0, 6000,12500, 25000; M: 0, 12500, 25000, 50000 PPM (60 per group).	Southern Research Institute.	5
4,4'-diamino-2,2'-stilbenedisulfonic acid. 81-11-8	Dr. J. Heiley 919-541-0294 TR-412 07/09/91E	Chemical intermediate for dyes and fluorescent brightners.	Oral in feed: R: 0, 125000, 25000, M: 0, 6250, 12500 PPM/60 per group.	International Research & Development Corp.	6
Ethylene glycol 107-21-1	Dr. M. McDonald 919-541-4132 TR-413 07/09/91E	Antifreeze in cooling and heating systems. Extraction solvent. Cleaning agency. Chemical intermediate for polyesters, urethanes, and alkyd resins, vehicle for pharmaceutical preparations, food extracts, flavorings, skin lotions (HSDB 1990).	Oral in feed (feed): MN: 0, .625,1.25, 2.5%, FM: 0,1.25, 2.5,5.0%/ 50 per group.	Southern Research Institute.	2
HC yellow 4 59820-43-8	Dr. K. Abdo 919-541-7819 TR-419 07/09/91E	In semi-permanent hair dye formulations (HSDB 1990).	Oral in feed (feed): MR: 0,0.25,0.5%, FR&M: 0,0.5,1.0%/70 per group.	T.S.I. Mason Research Institute.	4
Mercuric chloride 7487-94-7	Dr. G. Boorman 919-541-3440 TR-408 07/09/91E	Preserving wood, embalming. Browning and etching steel and iron. Reagent. Chemical intermediate. Insecticide. Fungicide. Mordant for furs. Veterinary disinfectant and antiseptic. (TDB).	Oral, Gavage: R: 0, 2.5,5, M: 0,5,10 MG/ KG/60 per group.	International Research & Develop Corp..	9

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TABLE 1.—SUMMARY DATA FOR LONG TERM NTP TOXICOLOGY AND CARCINOGENESIS TECHNICAL REPORTS SCHEDULED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON JULY 9–10, 1991—Continued

Chemical CAS No.	Staff scientist/technical report No.	Primary uses	Route/exposure levels	Study laboratory	Review order
P-nitrophenol 100-02-7	Dr. C. Shackelford 919-541-1451 TR-417 07/09/91E	Intermediate for insecticides. Azo and sulfur dyes. Leather preservatives, fungicide (HSDB 1990).	Skin paint (acetone) 0,40,80,175 MG/KG/ 50 per group.	Hazelton Labs, Rockville, Gov't Services,Inc.	7
Polysorbate 80 (glycol) 9005-65-6	Dr. M. Jokinen/Dr. R. Irwin. 919-541-3233/919-541-3340. TR-415 07/09/91E	Emulsifier and dispersing agent for internal medicinal products. Defoamer in foods. Neutralizer for quaternary ammonium compounds. (TDB).	Oral in feed (feed): 0,2.5,5.0%/20 per group.	Southern Research Institute.	8
1,2,3-trichloropropane 96-18-4	Dr. R. Irwin 919-541-3340 TR-384 07/09/91E	Paint and varnish remover. Solvent. Degreasing agent. Intermediate for polysulfide liquid polymers. (TDB).	Oral, Gavage (corn oil): R: 0,3,10,30, M: 0,6,20,60 MG/KG.	T.S.I. Mason Research Institute.	1

TABLE 2.—SUMMARY DATA FOR SHORT TERM NTP TOXICITY STUDY TECHNICAL REPORTS SCHEDULED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON JULY 9–10, 1991

Chemical CAS No.	Staff scientist/toxicity report No.	Primary uses	Route/exposure levels	Study laboratory	Review order
Black newsprint ink EMTDP-75	Dr. J. Mahler 919-541-0770 TOX-17 07/09/91E	Used in newsprint inks.	Skin paint (mineral oil): R&M:Untreated controls & neat application with USP mineral oil, printing ink mineral oil, letter press ink, & offset ink.	Battelle Columbus Laboratory.	12
Formic acid 64-18-6	Dr. M. Thompson 919-541-0551 TOX-19 07/09/91E	Fumigant, dyeing of textiles and paper, prep. of wire stripping compds., mfr. of insecticides, animal feed additive, solvent for perfumes, natural component of foods, human tissues.	Inhalation: R & M 0, 8, 16, 32, 64, 128 PPM/ 10/group.	Battelle Northwest Laboratory.	10
Glyphosate 1071-83-6	Dr. P. Chae 919-541-7561 Dr. J. Mahler 919-541-0770 TOX-16 07/09/91E	Agricultural chemical	Oral in feed (NIH-07): R&M:0, 3125, 6250, 12500, 25000, 50000PPM/10 per group. Male rats: Vehicle, vehicle + glyphosate 50000 PPM, glyphosate 50000 PPM + propranolol (1.2 MG/KG/day) isoproterenol pump (1 MG/KG/day: positive control), isoproterenol + propranolol pump (1, 1.2 MG/KG/day: blocking control) for 14 DA.	Southern Research Institute. NIEHS	11
2-Hydroxy-4-methoxybenzophenone 131-57-7	Dr. J. French 919-541-2569 TOX-21 07/09/91E	Sunscreen agent. Photostabilizer for synthetic resins. (TDB)	Oral in feed (feed): R&M:0, 3125, 6250, 12500, 25000, 50000 PPM. Skin paint (acetone) R:0,12.5, 25, 50, 100, 200; M:0, 22.75, 45.5, 91, 182, 364 MG/KG.	T.S.I. Mason Research Institute. T.S.I. Mason Research Institute.	13

[FR Doc. 91-14384 Filed 6-17-91; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-050-4212-08]

Royal Gorge Management Framework Plan, Chaffee Co., CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning amendment to the Royal Gorge Management Framework Plan, Colorado.

SUMMARY: The following described land, found in Chaffee County, Colorado, shall be evaluated under the criteria of section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1701, 1713) for its suitability for sale under that section and the mineral estate under section 209 of the same act.

New Mexico Principal Meridian, Colorado

T.51N., R.6E., section 21, N½NE¼, SE¼NE¼ containing approximately 120 acres, 6 miles north of Salida, Colorado on US Highway 285.

The County of Chaffee wishes to purchase the land to serve "important public objectives, * * * which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, * * * which would be served by maintaining such tract in Federal ownership." This parcel was not specifically identified for disposal in the Royal Gorge Management Framework Plan.

DATES: Interested parties may submit comments and concerns until July 19, 1991.

ADDRESSES: District Manager, Bureau of Land Management, P.O. Box 2200, Canon City, CO 81215–2200.

FOR FURTHER INFORMATION CONTACT: David Hallock, Bureau of Land Management, 3170 East Main St., Canon City, Colorado at (719) 275–0631.

Roger Underwood,
Assistant District Manager.

[FR Doc. 91-14377 Filed 6-17-91; 8:45 am]
BILLING CODE 4310-JB-M

[CO-050-4212-14-COC-51088]

Realty Action, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, COC–51088, proposed sale of public land and simultaneous conveyance of mineral interests, Conejos County, Colorado.

SUMMARY: The following land has been found suitable for modified competitive sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713):

New Mexico Principal Meridian, Colorado

T.32N., R.6E.
Sec. 13, Lot 2:
Containing 5.72 acres.

The parcel of land is separated from other public land by a county road. The parcel is difficult and uneconomic to manage in federal ownership, and disposal is in conformance with land use planning. The sale will be modified competitive format, with three designated bidders: Candido Sandoval, Gallegos Ranches, and Paul Clark. The land will not be sold for less than the appraised fair market value of $550.00; in addition, the successful bidder will be responsible for survey costs of $500.00.

DATES: Comments will be accepted for 45 days from this publication. Sale date will be not less than 60 days after publication.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, P.O. Box 2200, Canon City, Colorado 81215–2200.

FOR FURTHER INFORMATION CONTACT: Bill Miller, Realty specialist, BLM San Luis Resource Area, Alamosa, Colorado (719–589–4975).

SUPPLEMENTARY INFORMATION: Publication of this notice segregates the described land from the public land laws, including the mining laws, for two years from publication, or until patent issues. Any patent issued will be subject to valid existing rights, a reservation to the United States for Ditches and Canals under the Act of August 30, 1890 (26 Stat. 391) and necessary rights-of-way for the unsuccessful bidders. Designated bidders will be provided detailed sale procedures including oral bidding procedures, payment requirements, bidder qualifications, time and place of sale and patent reservations.

Roger Underwood,
Acting District Manager.

[FR Doc. 91-14376 Filed 6-17-91; 8:45 am]
BILLING CODE 4310-JB-M

[WO-340-4333-11]

Wild and Scenic Rivers

AGENCY: Bureau of Land Management (BLM), Department of the Interior (DOI).

ACTION: Notice of availability, Draft Manual Section, Wild and Scenic Rivers—Policy and Program Direction For Identification, Evaluation, and Management.

SUMMARY: The BLM hereby gives notice to making available a proposed Draft Manual concerning policy and program direction for the identification, evaluation, and management of Wild and Scenic Rivers under the stewardship of the BLM.

DATES. Effective with publication of this notice.

ADDRESSES: Send requests for copies to Director (340), room 3360, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary G. Marsh, Recreation and Cultural Resources Branch, (202) 208–3353.

SUPPLEMENTARY INFORMATION: This Draft Manual Section makes use of existing authorities and regulations, and proposes policy, program direction, and procedural guidelines for fulfilling requirements of the Wild and Scenic Rivers Act. When finalized, it will provide the BLM line manager and program staff professional with specific policies for evaluating rivers within the BLM's resource management planning process.

In addition, it will set forth requirements for the identification, evaluation, reporting, and management of potential and existing wild, scenic, and/or recreational rivers in the National Wild and Scenic River System under the BLM's administration. This Draft Manual Section was developed as a direct result of field requests and experience, in furtherance of BLM's multiple-use mission, and in order to consolidate program guidance into one document. The Draft Manual supplements other BLM Manual Sections and guidance, e.g., BLM Manual Section 1623—Supplemental Program Guidance, and the U.S. Department of the Interior—U.S. Department of Agriculture (USDI–USDA) Final Revised Guidelines for Eligibility, Classification, and Management of River Areas (47 FR 39454).

Dated: June 3, 1991.

Cy Jamison,
Director.

[FR Doc. 91-14364 Filed 6-17-91; 8:45 am]
BILLING CODE 4310-84-M

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National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: July 18, 1991 at 2 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Public Safety Building, 10 East Church Street, room P–205, Bethlehem, PA 18018.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P–208, Bethlehem, PA 18018, (215) 861–9345.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100–692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA 19106, attention: Deirde Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

James W. Coleman, Jr.,
Regional Director, Mid-Atlantic Region.

[FR Doc. 91–14462 Filed 6–17–91; 8:45 am]
BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 1, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 3, 1991.

Carol D. Shull,
Chief of Registration, National Register.

MICHIGAN

Shiawassee County

Martin Road Bridge, Martin Rd. across the Shiawassee R., Caledonia Township, Corunna vicinity, 91000676

Tuscola County

Hotel Montague, 100 S. State St., Caro., 91000675

NEW YORK

Madison County

Bittersweet [Cazenovia MRA], 4448 E. Lake Rd., Cazenovia vicinity, 91000872
Cedar Cove [Cazenovia MRA], W side of E. Lake Rd., Cazenovia vicinity, 91000876
Hillcrest [Cazenovia MRA1], Ridge Rd. S of Hoffman, Cazenovia, 91000868
Lehigh Valley Railroad Depot [Cazenovia MRA], William St., Cazenovia, 91000874
Longshore House [Cazenovia MRA], W. Lake Rd., Cazenovia vicinity, 91000873
Notleymere [Cazenovia MRA], 4641 E. Lake Rd., Cazenovia vicinity, 91000866
Old Trees [Cazenovia MRA], W side of Rippleton Rd., Cazenovia vicinity, 91000865
Ormonde [Cazenovia MRA], Between E. Lake Rd. and Ormonde Dr., Cazenovia vicinity, 91000865
The Hickories [Cazenovia MRA], 47 Forman St., Cazenovia, 91000870
Upenough [Cazenovia MRA], Rippleton St., Cazenovia vicinity, 91000871.

[FR Doc. 91–14483 Filed 6–17–91; 8:45 am]
BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 8, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 3, 1991.

Carol D. Shull,
Chief of Registration, National Register.

MARYLAND

Somerset County

Smith, William S., House, S. side of Oriole Rd. E of jct. with Crab Island Rd., Oriole, 91000891

MINNESOTA

Pine County

Kettle River Sandstone Company Quarry, N of MN 123 on W bank of Kettle R., Sandstone Twp., Sandstone, 91000877

MISSISSIPPI

Lauderdale County

Wechsler School, 1415 30th Ave., Meridian, 91000880

Lawrence County

Monticello Consolidated School, 125 E. Broad St., Monticello, 91000879

Madison County

Kirkpatrick Dental Office, 220 E. Center St., Canton, 91000878

MISSOURI

Greene County

Gillios Theater, 325 Park Central E., Springfield, 91000887

MONTANA

Fergus County

N-Bar Ranch, 15 mi. SW of Grass Range, Grass Range vicinity, 91000881

NEW JERSEY

Essex County

Evergreen Cemetery, 1137 N. Broad St., Hillside, 91000882

Monmouth County

Seabright Lawn Tennis and Cricket Club, Jct. of Rumson Rd. and Tennis Court Ln., Rumson, 91000883

Morris County

Hartley Farms, Jct. of Spring Valley and Blue Mill Rds., Harding Twp., Morristown vicinity, 91000888

NEW YORK

Livingston County

St. John's Episcopal Church, Jct. of State and Stanley Sts., Mount Morris, 91000892

TEXAS

Blanco County

Blanco Historic District, Roughly bounded by Fifth St., Live Oak St., Town Cr. and rear property lines W of Main St., Blanco, 91000890

Harris County

Peden, D. D., House, 2 Longfellow Ln., Houston, 91000889

VIRGINIA

Albemarle County

Arrowhead, E side US 29, 1.5 mi. NE of jct. with VA 688, Charlottesville vicinity, 91000885
Wavertree Hall Farm, S side VA 692, 3500 ft. W of jct. with VA 637, Batesville vicinity, 91000886

Augusta County

Sugar Loaf Farm, W of jct. of VA 695 and VA 710, Staunton vicinity, 91000884

[FR Doc. 91–14484 Filed 6–19–91; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703)–875–1573, MS/AS/ISS, room 1209B, SA–14, Washington, DC 20523–1415.

Date Submitted: June 10, 1991.
Submitting Agency: Agency for International Development.
OMB Number: 0412–0510.
Type of Submission: Revision.
Title: Information Collection Requirements Contained in A.I.D.'s Handbook 13, Grants and Cooperative Agreements.
Purpose: Section 635(b) of the Foreign Assistance Act (FAA) authorizes A.I.D. to make grants and cooperative agreements with any corporation or body of persons, whether within or without the United States, and international organizations in furtherance of the purposes and within the limitations of the FAA. A.I.D. is required to ensure the recipients are responsible and that they prudently manage public funds. These information collection and recordkeeping requirements are necessary for A.I.D. to review and monitor recipient's responsibility and compliances with U.S. Government requirements concerning use of funds.
Annual Reporting Burden
Respondents: 400; *annual responses:* 2.75; *average hours per response:* 36; *burden hours:* 39,600.
Reviewer: Marshall Mills (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: June 10, 1991.

Elizabeth Baltimore,
Communications and Program Management Division.

[FR Doc. 91–14436 Filed 6–17–91; 8:45 am]
BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 499]

Railroad Revenue Adequacy; 1989 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Revision of 1989 Railroad Revenue Adequacy Determinations.

SUMMARY: On November 16, 1990, the Commission served a final decision in this proceeding (7 I.C.C.2d 158 (1990)). On January 30, 1991, the Association of American Railroads filed a Motion for Reconsideration seeking to eliminate the allocation of non-rail deferred taxes from the computation of net railway operating income. The motion for reconsideration is granted and the Commission's 1989 calculations of return on investments are revised. This revision does not change, however, the ultimate determinations of revenue adequacy or inadequacy for the involved railroads.

EFFECTIVE DATE: This decision shall be effective on June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489 (TDD for the hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: By decision served November 16, 1990, published at 7 I.C.C.2d 158 (1990), the Commission issued its revenue adequacy findings for the nation's Class I railroads for the year 1989. In that decision the Commission departed from its existing standards for calculating railroad revenue adequacy by disallowing the non-rail portion of deferred taxes as an expense in arriving at net railway operating income ("NROI"). This represented a change from prior procedures, but one that the Commission believed to be a minor technical matter. On January 30, 1991, the Association of American Railroads ("AAR") filed a motion for reconsideration arguing that this change was improper.

Upon consideration of the AAR's petition, we conclude that our decision to adjust the NROI to account for non-rail deferred taxes was improper. We therefore are eliminating this calculation. This will result in changed returns on net investment for four railroads for the year 1989. It will not impact on the findings of revenue adequacy or inadequacy for any of the railroads.

Because the instant action merely acknowledges the invalidity of our prior change and returns to the status quo existing prior to the change, a rulemaking proceeding is unnecessary.

Additional information is contained in a concurrent decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: June 7, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91–14412 Filed 6–17–91; 8:45 am]
BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub 1099X)],

Consolidated Rail Corp.—Abandonment Exemption—in Washington, DC; Exemption

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon a 1.37-mile line between the point of connection in Conrail's Jersey Yard, milepost 0.0, and the end of the line at Buzzard Point, milepost 1.37, in Washington, DC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line [or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The

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appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 18, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 28, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by July 8, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John J. Paylor, 1138 Six Penn Center Plaza, Philadelphia, PA 19103.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 21, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 3, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14351 Filed 6-17-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Office of Justice Programs; Bureau of Justice Assistance

Structured Sentencing Discretionary Grant Announcement

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Justice.

ACTION: Notice of a structured sentencing grant.

SUMMARY: The Bureau of Justice Assistance (BJA) in cooperation with the United States Sentencing Commission (USSC) announces an initiative to assist states in developing and implementing structured sentencing policies and practices that facilitate consistent and appropriate punishment of convicted offenders.

This initiative will be supported under the Edward Byrne Memorial State and Local Law Enforcement Discretionary Grant Program, authorized by the Anti-Drug Abuse Act of 1988. The initiative was described on pages 117 to 119 of the fiscal year 1991 BJA Discretionary Program Application Kit. The purpose of this initiative is to develop and disseminate information on a prototype structured sentencing program. The prototype will be based on state and USSC experience in the development, implementation and monitoring of sentencing guidelines.

BJA invites public and private organizations to submit competitive applications to develop and disseminate a prototypical structured sentencing program. Private or profit organizations must waive their fee in order to be eligible. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such.

Up to $200,000 will be made available through a cooperative agreement for a 15 month period to support a two stage program: (1) Assessment and (2) Prototype (model) development.

DATES: The deadline for receipt of applications is 5 p.m. EDT, Monday, August 19, 1991.

ADDRESSES: All proposals must be mailed or sent to Corrections Branch, Discretionary Grants Program Division, BJA, room 600, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Xenos at the above address. Telephone, (202) 514–5943.

SUPPLEMENTARY INFORMATION:

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III. Program Strategy.
IV. Award Amount.
V. Eligibility Requirements.
VI. Application Requirements.
VII. Procedures and Criteria for Selection.
VIII. Deadline for Receipt of Applications.
IX. Civil Rights Compliance.

I. Introduction

The Structured Sentencing Program is guided by the priorities set by the National Drug Control Strategy. These priorities call for Federal funding to states for planning, developing and implementing alternative sentencing programs for nonviolent drug offenders, including house arrest and boot camps, and which encourage the states to adopt alternative sentencing statutes, for nonviolent offenders.

The program will be designed to promote the use of appropriate sanctions for convicted offenders, and utilize Federal and state expertise for the benefit of state and local governments. A prototype for developing and implementing sentencing policies and practices in conjunction with the implementation of intermediate sanctions and other innovative sentencing options will be developed and disseminated. This program will draw directly upon the expertise of the USSC, which has promulgated Federal sentencing guidelines following an extensive research and development process. The USSC continues to monitor guidelines implementation in the Federal system.

To initiate this collaborative effort, BJA and USSC conducted a workshop with selected states to identify: (1) Issues that states must address by formulating and implementing structured sentencing; (2) state training and technical assistance needs; and (3) alternative approaches for delivering training and technical assistance. Priority needs identified by the states included: (1) Access to information regarding the ways in which states have authorized and organized programs and developed goals pertaining to sentencing guidelines; (2) access to the actual sentencing guidelines and other documents; (3) a means to communicate and interact regularly with other states; (4) quantified, comparable sentencing data that will allow for intra-state tracking and inter-state comparison; and (5) methodologies and technologies for the collection and analysis of sentencing data to facilitate program management and evaluation. The proceedings from this meeting will be made available to the recipient of this award to guide the assessment stage.

II. Program Goals and Objectives

Goals

- To develop a sentencing guideline program.
- To disseminate information about structured sentencing programs.

Objectives

- To identify promising and effective structured sentencing programs.
- To develop a prototypical structured sentencing program, based on Federal and state experiences and guidelines.
- To establish clearinghouse services to support state development and implementation of structured sentencing programs.

III. Program Strategy

This program will be conducted in two states: (1) Assessment; and (2) Prototype Development and Dissemination. The strategy will include clearinghouse services (to be implemented under a separate effort) and a national conference.

State I—Assessment

The first stage of the program consists of the identification and assessment of existing state-structured sentencing programs. The Federal sentencing guidelines developed by the USSC will be reviewed to provide a framework for the program identification and assessment process as well as for prototype development.

The products to be completed during this stage are:

- A plan specifying the method by which the assessment will be conducted;
- A draft and final report which includes:
  - —Criteria for identifying promising structured sentencing programs;
  - —Recommendations for refining the goals and objectives of the program; and
  - —Descriptions of Structured Sentencing Programs.
- Recommendations for the development of a prototype structured sentencing program; and
- A dissemination strategy to inform the field about the development of the program, the products and results of each program stage, including the establishment of clearinghouse services.

Stage II—Development of Prototype

Based on the results of the Assessment Stage, a prototype(s) Structured Sentencing Program and a program operations manual for developing, implementing, monitoring and evaluating a Structured Sentencing Program will be prepared. A national conference will be the central component of the dissemination strategy for this stage. The purpose of the conference will be to present the structured sentencing prototype and to identify state training and technical assistance needs related to implementation of the Structured Sentencing Program.

The products to be completed in this stage are:

- A plan for prototype design and for program operation manual development;
- A draft and final program operation manual; and,
- A dissemination strategy to inform the field about the development of the program and the products and results of this stage.

IV. Award Amount

Up to $200,000 has been allocated for the award. One cooperative agreement will be awarded competitively, with a project period of 15 months to support stages I and II.

V. Eligibility Requirements

Applications are invited from public and private organizations. Private for-profit organizations must waive their fee in order to be eligible. Applicant organizations may submit joint proposals with other eligible organizations. One organization must be designated in the application as the applicant and any co-applicants must be designated as such.

Applicants and co-applicants must demonstrate that they have: (1) Prior experience in the design, conduct and implementation of developmental programs; and (2) demonstrated knowledge of issues associated with structured sentencing and intermediate sanctions.

The applicants must also demonstrate that they have the management and financial capability to implement effectively a project of this size and scope.

VI. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation (section VI) and in part IV, Program Narrative of the application (SF–424).

Applications from more than one organization must set forth the relationships among the parties. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants.

In the event of a co-applicant submission, one co-applicant must be designated as the payee. This applicant will receive and disburse project funds and be responsible for the supervision and the coordination of the activities of the other co-applicant(s). Under this arrangement, each organization must agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate its acceptance of the conditions of joint and several responsibility with the other co-applicant(s).

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000.

The following information must be included in the application:

A. Organizational Capability—Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of the eligibility criteria specified in Section V above. Applicants must demonstrate the way in which their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative.

Applicants must demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Programs, Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

B. Program Goals and Objectives—A succinct statement of your

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understanding of the goals and objectives of the program should be included. The application should also include a literature review, a problem statement and a discussion of the potential contribution of this program to the criminal justice field.

C. Program Strategy—Applicants should describe the proposed approach for achieving the goals and objectives as they relate to the activities and products of the program. A detailed discussion of how both stages of the program would be accomplished should be included.

D. Program Implementation Plan—Applicants should prepare a plan that outlines the major activities involved in implementing the program. Applicants should describe how they will allocate available resources to implement the program and how the program will be managed.

The plan also must include an annotated organizational chart describing the roles and responsibilities of key organizational and functional components and must list the key personnel responsible for managing and implementing the program.

E. Time-Task Plan—Applicants must develop a time-task plan for the project period including clearly identified major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the products identified in section III.

F. Products—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience and usefulness to the field of each product.

G. Program Budget—Applicants must provide a budget with a detailed justification for all costs, including the basis for computation of these costs. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet weighted criteria. Applications will be evaluated by a peer review panel.

The selection criteria and their point values (weights) are as follows:

A. Organizational Capability (25 points)

1. The extent and quality of organizational experience in the design and development of sentencing policies, procedures and practices.

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursement and accounting of Federal funds.

B. Soundness of the Proposed Strategy (30 Points)

Appropriateness and technical adequacy of the approach to each stage of the program for meeting the goals and objectives of the program and potential utility of proposed products.

C. Qualifications of Project Staff (20 Points)

The qualifications of staff designated to manage and implement the program including staff to be hired through contracts. (10 points)

D. Clarity and Appropriateness of the Program Implementation Plan (15 Points)

Adequacy and appropriateness of the program activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (10 Points)

The relationship of the proposed costs to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The result of the peer review rating process will be a relative aggregate ranking of applications in the form of "Summary of Ratings." Peer review recommendation, in conjunction with the results of internal review, will assist the BJA Director in considering applications and in the selection of an application for funding. The BJA Director will make the final award decision.

VIII. Notification of Applications

Applicants must submit the original signed application and three copies to BJA. The necessary application forms (Standard Form 424) will be provided upon request. Applications must be received by mail or hand delivered to BJA by 5 p.m. EDT on Monday, August 19, 1991. Those applications sent by mail should be addressed to: BJA, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the BJA, room 1044, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m. except Saturdays, Sundays or Federal holidays.

BJA will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter whether or not their submission will be recommended for funding.

IX. Civil Rights Compliance and other Requirements

A. All recipients of BJA assistance, including any contractors, must comply with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d); section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; title IX of the Education Amendments of 1972, 20 U.S.C. 1681; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101–6107; and Department of Justice Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or state court or Federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient must forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to BJA upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in benefits of, or denied or prohibited from obtaining employment in connection with, any program or activity funded in whole or in part with funds made available under this program because of their race, color, national origin, sex, religion, or handicap. If the recipient of Federal funds contracts with any other person or group, the contractor shall submit compliance reports to the primary recipient.

D. Applicants must submit the original application with a certification that the organization has not been debarred (Form 4662/2). Additionally, applicants must also provide, with the application, a Certification Regarding Drug-Free Workplace Requirements, (Form 4061/3), which meets the requirements of the Drug-Free Workplace Act of 1988 (102 Stat. 4308, 41 U.S.C. 707), which will be supplied with the application information package. The applicant must also submit a completed and signed standard form LLL ("Disclosure of Lobbying Activities" Report) which will be supplied with an application information package.

Gerald P. Regier,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 91–14481 Filed 6–17–91; 8:45 am]

BILLING CODE 4410–18–M

National Institute of Justice; Study of Police Use of Excessive Force

AGENCY: Office of Justice Programs, National Institute of Justice.

ACTION: Notice of funding for a National Institute of Justice study of Police Use of Excessive Force.

SUMMARY: The National Institute of Justice (NIJ) is publishing this Notice of the availability of funding for a study of Police Use of Excessive Force.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue NW., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Charles B. DeWitt, Director, National Institute of Justice, 633 Indiana Avenue NW., Washington, DC 20531. To obtain copies of the solicitation, call the National Criminal Justice Reference Service, 1–800–851–3420 (in Metropolitan Washington, 301–251–5500), Box 6000, Rockville, MD 20850.

DEADLINE: The deadline for receipt of proposals is July 26, 1991.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Anti-Drug Abuse Act of 1988, 42 U.S.C. 3721–23.

Background

Attorney General Dick Thornburgh has directed elements of the Department of Justice to examine police use of excessive force, calling upon the Federal Bureau of Investigation, the Civil Rights Division, the Community Relations Service, and the National Institute of Justice. The Attorney General specifically requested that NIJ conduct a comprehensive study that will examine "the correlation, if any, between the incidence of police brutality and the presence or absence of department training programs and internal procedures to deter police brutality." Up to $400,000 is available for this project.

This project includes elements related to leadership, discretion, training, policymaking, and accountability as they influence the use of excessive force. The National Institute of Justice will fund a study that focuses on two central areas: (1) an overview of the nature and extent of the problem of excessive force, and (2) an examination of what is being done in training, local departmental policies, and internal control mechanisms to control the use of excessive force.

Charles B. DeWitt, Director,

National Institute of Justice.

[FR Doc. 91–14380 Filed 6–17–91; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review. As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC. 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
Optional Use Payroll Form Under the Davis-Bacon Act
1215–0149; WH–347
Average 92 weeks per year
Individuals or households; State or local governments; businesses or other for profit; Federal agencies or employees; small businesses or organizations
95,572 respondents; 8,300,000 total hours; 56 min. per response; 1 form

Report is used by contractors to certify payrolls in accordance with requirements of Copeland and Davis-Bacon Acts, attesting that proper wage rates and fringe benefits were paid; reviewed by contracting agencies to verify that rates are legal and that employees are properly classified.

Signed at Washington, DC this 13th day of June, 1991.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 91–14454 Filed 6–17–91; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

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Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process:

The Employment and Training Administration has established a voice-mail service for the H–1A nurse attestation process. Call Telephone Number: 202–535–0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H–1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H–1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H–1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H–1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H–1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process:

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1121(m). The regulations implementing the nursing attestation program are at 29 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Divison of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 7th day of June, 1991.

Robert A. Schaufl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[05/01/91 to 05/31/91]

CEO-name/facility name/address	St.	Approval date
Mr. John O. Rohde, The Cooper Green Hospital, 1515 6th Ave. South, Birmingham, AL 35233, 205–934–0243	AL	05/10/91
Mr. Terry Andrea, East Alabama Med. Ctr., 2000 Pepperell Parkway, Opelika, AL 36802, 205–749–3411	AL	05/30/91
Mr. Kenneth K. Hahn, Cigna Hospital of Los Angeles, 1711 West Temple Street, Los Angeles, CA 90026, 213–484–3504	CA	05/01/91
Mr. James Tally, Scottish Rite Children's Med., 1101 Johnson Ferry Road, N.E., Atlanta, GA 30068, 404–255–5252	CA	05/06/91
Mr. Edwin C. Hiroto, Keiro Nursing Home, 2221 Lincoln Park, Los Angeles, CA 90031, 213–225–1393	CA	05/02/91
Mr. Edwin C. Hiroto, Minami Keiro Nursing Home, 3919 N. Mission Road, Los Angeles, CA 90031, 213–225–1353	CA	05/03/91
Mr. Bruce Bennett, Community Convalescent Center, 4070 Jurupa Avenue, Riverside, CA 92506, 714–682–2522	CA	05/03/91
Mr. Kaldeep Brar, STAT Medical Services, Inc., 6439 Sunset Boulevard, Suite 1207, Hollywood, CA 90028, 213–465–1134	CA	05/03/91
Ms. Veronica Lau, Pacific Alliance Med. Ctr., 531 W. College St., Los Angeles, CA 90012, 213–680–6139	CA	05/03/91
Mr. James C. Haidenreich, Southern Calif. Permanente Me, Kaiser Foundation Hospitals, Baldwin, CA 90706, 213–920–4321	CA	05/03/91
Mr. K.E. Blake, Beverly Hospital, 309 W. Beverly Blvd., Montebello, CA 90640, 213–728–1222	CA	05/03/91
Mr. David Bigelow, Goleta Valley Community Hospital, 351 South Patterson Avenue, Santa Barbara, CA 93111, 805–967–3411	CA	05/09/91
Mr. James C. Lester, Little Company of Mary Hospital, 4101 Torrance Blvd., Torrance, CA 90503, 213–540–7676	CA	05/09/91
Mr. Lonnie Barker, University Convalescent Hospital, 2122 Santa Cruz Avenue, Menlo Park, CA 94025, 415–854–4020	CA	05/15/91
Ms. Lorraine Zipkroll, Lucile Salter Packard Childrens Hospital at Stanford, Palo Alto, CA 94304, 415–327–4800	CA	05/15/91
Mr. Daniel Benn, El Cajon Valley Convalescent, 510 E. Washington, El Cajon, CA 92020, 619–440–1211	CA	05/15/91
Mr. John T. Evans, Antelope Valley Hosp. Med. Ct., 1600 West Avenue J, Lancaster, CA 93534, 805–948–5080	CA	05/16/91
Mr. Irmka Schosbel, Hillhaven Convalescent Hosp., 1609 Trousdale Drive, Burlingame, CA 94010, 415–697–1865	CA	05/23/91
Ms. Betty Gillespie Pollock, VNA Continuing Care, Inc., 3025 Gateway Place, Suite 238, San Jose, CA 95110, 408–452–8295	CA	05/24/91
Mr. David Banks, Beverly Manor Convalescent Home, Beverly Enterprises, Los Angeles, CA 90026, 213–666–1544	CA	05/30/91
Mr. David Banks, Community Convalescent Hospital, Beverly Enterprises, Lynwood, CA 90262, 213–537–2300	CA	05/30/91
Mr. David Banks, Broadway Convalescent Hospital, Beverly Enterprises, San Gabriel, CA, 91776, 818–285–2185	CA	05/30/91
Mr. Sean O'Neal, Delano Regional Med. Ctr., 1401 Garces Highway, Delano, CA 93216, 805–725–4800	CA	05/30/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[05/01/91 to 05/31/91]

CEO-name/facility name/address	St.	Approval date
Mr. Ralph N. Tiedal, Roas Care Convs. Hosp., 370 Noble Court, Morgan Hill, CA 95037, 408–779–7346	CA	05/30/91
Mr. Jacob Friedman, Longwood Manor Convalescent, 4853 W. Washington Blvd., Los Angeles, CA 90016, 213–935–1157	CA	05/30/91
Mr. Sam Downing, Salinas Valley Memorial Hospital, 450 East Romie Lane, Salinas, CA 93901, 408–757–4333	CA	05/30/91
Mr. David Banks, Montrose Convalescent Hospital, Beverly Enterprises, Montrose, CA 91020 818–249–3925	CA	05/30/91
Mr. David Banks, Beverly Manor Westminster, Beverly Enterprises, Westminster, CA 92683, 714–892–6686	CA	05/30/91
Mr. David Banks, Beverly Manor Convalescent Hospital, Beverly Enterprises, Burbank, CA 91506, 818–843–2330	CA	05/30/91
Mr. David Banks, Beverly La Cumbre Convalescent, Beverly Enterprises, Santa Barbara, CA 93110 805–687–0551	CA	05/30/91
Mr. David Banks, Sherman Oaks Convalescent Hospital, Beverly Enterprises, Sherman Oaks, CA 91403 818–986–7242	CA	05/30/91
Sister John Berchmans, Poor Sisters of Naz. of San D, dba Nazareth House, San Diego, CA 92106, 619–583–0480	CA	05/30/91
Mr. Robert C. Bills, Valley Presbyterian Hospital, 15107 Vanowen Street, Van Nuys, CA 91409, 818–782–6600	CA	05/30/91
Mr. David Banks, Beverly Manor Convalescent Hospital, Beverly Enterprises, Santa Barbara, CA 93105, 805–682–7451	CA	05/30/91
Mr. Thomas G. Hennessy, Bay Harbor Hospital, 1437 W. Lomita Blvd., Harbor City, CA 90710, 213–325–1221	CA	05/30/91
Mr. Richard McCarthy, Orthopaedic Hospital, 2400 S. Flower Street, Los Angeles, CA 90017, 213–742–1114	CA	05/30/91
Mr. Lance Anastasio, Winter Haven Hospital, 200 Avenue F., N.E., Winter Haven, FL 33881 813–297–1818	FL	05/09/91
Mr. Arlen J. Reynolds, AMI/Palm Beach Gardens Med. C, 3360 Burns Road, Palm Beach Gardens, FL 33410, 407–694–7140	FL	05/15/91
Mr. Terry R. Upton, HCA Marion Community Hospital, 1431 S.W. First Avenue, Ocala, FL 32671, 904–732–2700	FL	05/16/91
Mr. Everett Benjamin, Sunrise Rehabilitation Hospital, Brevard Health Corporation D/B/A, Fort Lauderdale, FL 33351, 305–749–0300	FL	05/16/91
Mr. Peter Marmerstein, Peninsula Medical Center, 264 South Atlantic Avenue, Ormond Beach, FL 32176, 904–672–416111	FL	05/23/91
Mr. Ray Musselman, Fishermen's Hospital, 3301 Overseas Hwy., Marathon, FL 33042, 304–743–5533	FL	05/23/91
Mr. Joe D. Pinion, Highlands Regional Med. Ctr., P.O. Drawer 2068, Sebring, FL 33871, 813–385–6101	FL	05/23/91
Mr. Eugene C. Fleming, HCA North Florida Reg'l Med., P.O. Box NFR, Gainesville, FL 32602, 904–333–4114	FL	05/30/91
Ms. Judi Buxo, Harbour's Edge, 401 East Linton Boulevard, Delray Beach, FL 33483, 407-272-7979	FL	05/30/91
Mr. Daniel O. Wagster, Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., Honolulu, HI 96819, 808-834-9520	HI	05/10/91
Ms. Frances Hallonquist, Pali Momi Medical Center, 98-1079 Moanalua Rd., Aiea, HI 96701, 808-486-6000	HI	05/30/91
Mr. Jeff S. Berns, Norridge Nursing Centre, 7001 West Cullom Avenue, Norridge, IL 60634, 708-457-0700	IL	05/03/91
Mr. Howard D. Geller, Garden View Home, 6450 N. Ridge, Chicago, IL 60626, 312-743-8700	IL	05/09/91
Mr. Bradley Alter, Danville Care Center, Ltd., 1701 N. Bowman, Danville, IL 61832, 217-443-2955	IL	05/09/91
Mr. Tali Tzur, Royal Terrace Healthcare Ctr., 803 Royal Drive, McHenry, IL 60050, 815-344-2800	IL	05/10/91
Mr. Tali Tzur, Maple Hill Nursing Ctr., LTD, Box 2306 R. F. D., Long Grove, IL 60047, 708-438-8275	IL	05/10/91
Mr. Peter Friedell, Jackson Park Hospital, 7531 South Stoney Island, Chicago, IL 60649, 312-947-7500	IL	05/15/91
Mr. Arthur Kohrman, La Rabida Children's Hosp. & Research, Chicago, IL 60649, 312-363-6700	IL	05/16/91
Mr. Sidney Glenner, Elston Nursing Home, 4340 N. Keystone, Chicago, IL 60641, 312-545-8700	IL	05/30/91
Mr. Fely Balebagno, Lake Cook Terrace Nursing Ctr, 222 Dennis Drive, Northbrook, IL 60062, 708-564-0505	IL	05/30/91
Mr. Larry Steusser, Kimberly Nurse Travelers, 8400 W. 110th Street, Overland Park, KS 66210, 913-661-0293	KS	05/02/91
Mr. Allen Tuten, Lincoln General Hosp., P.O. Drawer 1368, Ruston, LA 71273, 318-255-5780	LA	05/10/91
Mr. Frank A. Riddick, Alton Ochsner Med. Foundation, 1516 Jefferson Highway, New Orleans, LA 70121, 504-838-3504	LA	05/16/91
Mr. Barth Weinberg, Touro Infirmary, 1401 Foucher Street, New Orleans, LA 70115, 504-897-8900	LA	05/30/91
Ms. Elaine Ullian, Faulkner Hospital, 1153 Centre Street, Boston, MA 02130, 617-522-5800	MA	05/16/91
Ms. Leah Rama, Ramaseun Nursing Service, Inc., 8091 Dequindre St. Ste. 909, Madison Heights, MI 48071, 313-546-1751	MI	05/01/91
Mr. Frank P. Iacobell, Hutzel Hospital, 4707 St. Antoine, Detroit, MI 48201, 313-745-7015	MI	05/23/91
Mr. Daniel B. McLaughlin, Hennegin County Med. Ctr., 701 Park Ave. South, Minneapolis MN 55303, 612-347-2277	MN	05/15/91
Glenn Terry, Brian Ctr. Nursing Care/State, 520 Valley Street, Statesville, NC 28677, 704-873-0517	NC	05/03/91
Mr. Terrance G. Broseseu, Medcenter One Inc., 300 N. 7th St., Bismarck, ND 58501, 701-224-6000	ND	05/23/91
Mr. Howard A. Sukoff, Edison Estates Rehab. & Conv., 465 Plainfield Ave., Edison, NJ 08817, 201–985–1500	NJ	05/01/91
Mr. Cark Underland, Voorhees Pediatric Facility, 1304 Laurel Oak Road, Voorhees, NJ 08043, 609–346–3300	NJ	05/03/91
Mr. Marion Penner, Claremont Care Center,1515 Hulse Road, Pt. Pleasant, NJ 08742, 908–295–9300	NJ	05/09/91
Mr. John P. Ferguson, Hackensack Medical Center, 30 Prospect Ave., 07601, 07601, 201–441–2180	NJ	05/09/91
Mr. George Cannata, Dover Christian Nursing Home, 65 N. Sussex Street, Dover, NJ 07801, 201–361–5200	NJ	05/10/91
Ms. Mary Jane Eicke, Hill Top Care Center, Hook Mountain Rd., Pine Brook, NJ 07058, 201–227–1330	NJ	05/15/91
Mr. Arnold Putterman, Morristown Rehab. Ctr., Inc., 66 Morris St., Morristown, NJ 07960, 201–539–3000	NJ	05/23/91
Mr. Morris Wiesel, Cedar Oaks Care Center, 1311 Durham Avenue, South Plainfield, NJ 07080, 908–287–9555	NJ	05/23/91
Ms. Shirley Lawler, Professional Nurse Recruitmen, 211 Main Avenue, Passaic, NJ 07055, 201–779–1479	NJ	05/23/91
Ms. Nancy Tofani, Stone Arch Nursing Home d/b/a, Stone Arch Health Care Center, Pittstown, NJ 08867, 908–735–6600	NJ	05/24/91
Mr. William J. Monagle, Somerset Medical Center, 110 Rehill Avenue, Somerville, NJ 08876, 908–685–2200	NJ	05/29/91
Mr. Geoffrey S. Perselay, B.S. Pollak Hospital of Hudson, 100 Clifton Place, Jersey City, NJ 07304, 201–915–1035	NJ	05/30/91
Mr. Samuel Paneth, Newark Extended Care Facility, 65 Jay Street, Newark, NJ 07103, 201–483–6600	NJ	05/30/91
Mr. Stephen Lazovitz, Lakewood of Voorhees Associate, 1302 Laurel Oak Road, Voorhees, NJ 08043, 609–346–1200	NJ	05/30/91
Mr. Leon N. Cohen, LaGuardia Hospital, 102–01 66th Rd., Forest Hills, NY 11375, 718–830–4278	NJ	05/09/91
Mr. Gary Horan, Our Lady of Mercy Med. Ctr., 600 East 233rd Street, Bronx, NY 10466, 212–920–9000	NJ	05/15/91
Mr. John S.T. Gallagher, North Shore University Hosp., 300 Community Drive, Manhasset, NY 11030, 516–562–0100	NJ	05/15/91
Mr. Gary Horan, Our Lady of Mercy Med. Ctr., Pelham Bay Div., Bronx, NY 10461, 212–430–6000	NJ	05/15/91
Mr. Joseph L. Stile, The Mount Vernon Hosp., 12 North Seventh Ave., Mount Vernon, NY 10550, 914–664–9000	NJ	05/23/91
Mr. George Miller, Center for Nursing and Rehabilitation, Brooklyn, NY 11238, 718–636–1000	NJ	05/23/91
Mr. William Watt, St. Joseph's Hospital Health, 301 Prospect Avenue, Syracuse, NY 13203, 315–448–5836	NJ	05/23/91
Mr. James Cameron, Kateri Residence, 150 Riverside Drive, New York, NY 10024, 212–769–0744	NJ	05/24/91
Mr. Alexander Hartman, Wayne Nursing Home, 3530 Wyne Avenue, Bronx, NY 10467, 212–655–1700	NY	05/30/91
Mr. Alexander Hartman, East Haven Nursing Home, 2323 Eastchester Road, Bronx, NY 10462, 212–655–1700	NY	05/30/91
Mr. Alexander Hartman, Mosholu Parkway Nursing Home, 3356 Perry Avenue, Bronx, NY 10467, 212–655–1700	NY	05/30/91
Mr. Alan Weinstock, Creedmore Pyschiatric Center, 80–45 Winchester Blvd., Queens Village, NY 11427, 718–464–7500	NY	05/30/91
Mr. Melvin J. Spencer, Deaconess Hospital, 5501 North Portland, Oklahoma City, OK 73112, 405–946–5581	OK	05/10/91
Ms. A. Susen Bernini, Albert Einstein Med. Ctr., York and Tabor Roads, Philadelphia, PA 19141, 215–456–7050	PA	05/09/91
Ms. Patricia Shehorn, Presbyterian University Hospital, DeSoto at O'Hara Sts., Pittsburgh, PA 15213, 412–647–3294	PA	05/30/91
Mr. Douglas A. Clark, Latrobe Area Hospital, Inc., West Second Avenue, Latrobe, PA 15650, 412–537–1023	PA	05/30/91
Ms. Patricia Shehorn, Montefiore University Hospital 3459 Fifth Ave., Pittsburgh, PA 15213, 412–647–3294	PA	05/30/91
Mr. William D. Poteet, III, Methodist Hospital, Lubbock, 3615 19th Street, Lubbock, TX 79410, 806–792–1011	TX	05/01/91
Mr. Louis Bramer, Montgomery County Hosp. Dist., Medical Center Hospital, Conroe, TX 77304, 409–539–7485	TX	05/02/91
Mr. Boone Powell, Jr., Baylor University Med. Ctr., 3500 Gaston Ave., Dallas, TX 75246, 214–820–2525	TX	05/03/91

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DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[05/01/91 to 05/31/91]

CEO-name/facility name/address	St.	Approval date
Mr. James Schuessler, All Saints Health Care, Inc., 1400 Eighth Avenue, Ft. Worth, TX 76104, 817-926-2544	TX	05/09/91
Mr. Glen Marshall, Doctors Hospital LTD, 1964, 5815 Airline Dr., Houston, TX 77076, 713-695-6041	TX	05/10/91
Mr. Michael O'Keefe, Irving Healthcare System, 1901 N. MacArthur Blvd., Irving, TX 75061, 214-579-8100	TX	05/15/91
Mr. Robert M. Bryant, Memorial City Med. Ctr. Hosp., 920 Frostwood, Houston, TX 77024, 713-932-3470	TX	05/15/91
Mr. Edward M. Cunningham, Scenic Mountain Medical Center, 1601 W. 11th Place, Big Spring, TX 79720, 915-263-1211	TX	05/15/91
Ms. Velinda Stevens, Brownwood Regional Hospital, P.O. Box 760, Brownwood, TX 76804, 915-646-8541	TX	05/16/91
Mr. Earl Whitsey, Alice Physicians and Surgeons Hospital, Alice, TX 78332, 512-664-4376	TX	05/16/91
Total Attestations		109

[FP Doc. 91-14452 Filed 6-17-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. DK & D Coal Company

[Docket No. M-91-48-C]

DK & D Coal Company, 715 Mahonoy Street, Trevorton, Pennsylvania 17881 has filed a petition to modify the application of 30 CFR 75.1400 to its No. 1 Slope Mine (I.D. No. 36-08220) located in Northumberland County, Pennsylvania. The petitioner proposes to use a slope conveyance without safety catches to transport persons.

2. Twentymile Coal Company

[Docket No. M-91-49-C]

Twentymile Coal Company, 600 Grant Street, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.1002 to its Foidel Creek Mine (I.D. No. 05-03636) located in Routt County, Colorado. The petitioner proposes to use 2400-volt cables and equipment to power permissible longwall mining equipment.

3. Peabody Coal Company

[Docket No. M-91-50-C]

Peabody Coal Company, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.305 to its Montcoal No. 7 Mine (I.D. No. 46-01495) located in Raleigh County, West Virginia. The petitioner proposes to evaluate the ventilation on both sides of a hazardous area in the return aircourse from the longwall face in lieu of traveling.

4. Donaldson Creek Mining Company, Inc.

[Docket No. M-91-51-C]

Donaldson Creek Mining Company, Inc., P.O. Box 502, Dawson Springs, Kentucky 42408 has filed a petition to modify the application of 30 CFR 75.1710-1(a) to its Donaldson Creek Underground No. 1 Mine (I.D. No. 15-13514) located in Hopkins County, Kentucky. The petitioner requests a modification to operate self-propelled electric face equipment without cabs or canopies.

5. Sahara Coal Company, Inc.

[Docket No. M-91-52-C]

The Sahara Coal Company, Inc., P.O. Box 330, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.1105 to its Mine No. 21 (I.D. No. 11-00784) located in Saline County, Illinois. The petitioner proposes to enclose the electrical equipment in a monitored fire proof structure in lieu of ventilating the equipment to the return.

6. Consolidation Coal Company

[Docket No. M-91-53-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.901 to its Rend Lake Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. The petitioner proposes to use a low- and medium-voltage circuit from a portable diesel-driven alternator and transformer to feed underground electrical equipment.

7. Americold Corporation

[Docket No. M-91-54-M]

Americold Corporation, P.O. Box 2926, Kansas City, Kansas 66110-2926 has filed a petition to modify the application of 30 CFR 57.4761 to its Inland Quarries Mine (I.D. No. 14-00156) located in Wyandotte County, Kansas. The petitioner proposes to install a 3-hour rated roll-up fire door at the underground shop.

8. Tenneco Minerals Company

[Docket No. M-91-55-M]

Tenneco Minerals Company, P.O. Box 1167, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 to its Tenneco Soda Ash Project (I.D. No. 48-01295) located in Sweetwater County, Wyoming. The petitioner proposes to use nonpermissible tools in or beyond the last open crosscut.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 18, 1991. Copies of these petition are available for inspection at that address.

Dated: June 12, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-14453 Filed 6-17-91; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Michigan State Standards; Approval

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Approval of Michigan State Standards.

SUMMARY: This notice approves Michigan's occupational safety standards for Fixed Fire Equipment. These State-initiated standards constitute Amendment 2, adopted March 1, 1984, to the Michigan General Industry Safety Standards, part 9, adopted August 17, 1974, and approved by OSHA on December 3, 1976 (41 FR 53076). Where a State standard adopted pursuant to an OSHA-approved State plan, differs significantly from a comparable Federal standard or is a State-initiated standard, section 18(c)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) requires that the State Standard must be "at least as effective" as the corresponding Federal standard in providing safe and healthful employment and places of employment. (The different state standard encompasses topic material covered by seven OSHA standards (29 CFR 1910.156 through 1910.164).) In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and must not impose any undue burden on interstate commerce.

On November 5, 1990, OSHA published a Federal Register notice (55 FR 46589) requesting public comment on both the "at least as effective" criterion as well as the product clause test of section 18(c)(2) of the Act. This notice invited interested persons to submit by December 5, 1990, written comments and views regarding the Michigan standards and whether they should be approved by the Assistant Secretary. In response to this notice, OSHA did not receive any comments

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N3647, 200 Constitution Avenue NW., Washington, DC 20210, Telephone 523-8148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for the adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR Part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22, and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the Federal Register (29 CFR 1953.23(a)); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1)). Independent State standards must be submitted for OSHA's review and approval. Newly adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On October 3, 1973, notice was published in the Federal Register (38 FR 27388) of the approval of the Michigan Plan and the adoption of subpart T to part 1952 containing the decision. The Michigan State Plan provides for the adoption of State safety standards in the following manner. In the Michigan Department of Labor, action on a new standard or an amendment to an existing standard is initiated by either the General Industry Safety Standards Commission or the Construction Safety Standards Commission, as is appropriate, in response to a Federal standards change or to the need for a State-initiated standards change recognized after research and consultation with persons knowledgeable in the field for which the standard is being considered. The Michigan Plan provides for the adoption of a standard as an enforceable State standard after due public notice and hearing and administrative review, in accordance with the Michigan Administrative Procedures Act and the Michigan Occupational Safety and Health Act (Act No. 154 of the Public Acts of 1974, as amended).

Michigan has submitted a State-initiated Plan change, which incorporated the subject standards as part of its occupational safety and health Plan. By letter of March 15, 1988, Amendment 2 of the Michigan General Industry Safety Standards, part 9, Fixed Equipment, was submitted by Douglas R. Earle, Director, Bureau of Safety and Regulation, Michigan Department of Labor, to Frank K. Strasheim, then Regional Administrator, OSHA Region V. The standards has been subjected to normal public hearing and review within the State of Michigan, were finalized on February 15, 1984, and became effective on March 1, 1984.

Public Participation

A Federal Register notice requesting public comment on both the "at least as effective" criterion as well as the "product clause test" of section 18(c)(2) of the Act was published on November 5, 1990 [55 FR 46590]. This notice invited interested persons to submit by December 5, 1990, written comments and views regarding Michigan's standard for Fixed Fire Equipment and whether it should be approved by the Assistant Secretary. In addition, comments were specifically sought on whether the standard is applicable to products which are distributed or used in interstate commerce, is required by compelling local conditions, and unduly burdens interstate commerce. In response to the November 5, 1990 Federal Register notice, OSHA received no comments.

Decision:

Having reviewed the State submission and having received no objections to the approval of the standard, OSHA has determined that:

(1) The Michigan standard for Fixed Fire Equipment is at least as effective as the Federal standard.

(2) The record on this standard includes no evidence, developed by or submitted to OSHA, that the standard amendment is not in compliance with the "product clause test" of section 18(c)(2) of the Act. OSHA therefore approves the Michigan standard for fixed fire equipment.

Location of Supplement for Inspection and Copying

A copy of the Michigan Standard applicable to Fixed Fire Equipment, along with approved State provisions for adoption of standards, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, 230 South Dearborn, room 3244, Chicago, Illinois 60604; Office of the Director, Bureau of Safety and Regulation, Michigan Department of Labor, 7150 Harris Drive, Lansing, Michigan 48909; and Office of the Director, Directorate of Federal-State Operation, 200 Constitution Avenue NW., room N3700, Washington, DC 20210.

Authority: Sections 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable; 29 CFR 1953.4.

Signed this tenth day of June 1991, in Washington, DC.

Gerard Scannell,

Assistant Secretary.

[FR Doc. 91-14372 Filed 6-17-91; 8:45 am]

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Pension and Welfare Benefits Administration

[Application No. D-8477, et al.]

Proposed Exemptions; AAXI Co., Incorporated Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

AAXICO, Incorporated Profit Sharing Plan (the Plan) Located in Mt. Clemens, Michigan

[Application No. D-8477]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(e) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 20, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale of right, title and interest in a loan (the Note) made by the Plan to an unrelated third party to Mr. James L. Van Camp, a party-in-interest with respect to the Plan, provided that the Plan receives $66,500 in cash for the Note which is equal to the amount of the loan principal plus accrued interest.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by AAXICO, Incorporated. As of July 31, 1990, the Plan had approximately 90 participants. The value of the Plan's assets, as of June 30, 1990, was $311,460. James L. Van Camp is trustee of the Plan, a 73-percent shareholder, and the Chairman of the Board of Directors of AAXCIO, Incorporated.

2. On January 15, 1988, the Plan extended a demand loan in the amount of $65,000 at a 12-percent annual interest rate to an individual (the Debtor). Mr. Van Camp (the Trustee) represents that the Debtor is not a party in interest with respect to the Plan. The terms of the Note include a security interest in all of the Debtor's assets. The Debtor has not made the required payments. The Trustee has declared the entire outstanding principal amount and accrued interest immediately due and payable, and has made repeated demands for payments in full. The Trustee states that the collateral supporting the Note is not adequate to satisfy payment of the Note.

3. The Trustee wishes to prevent any possible loss to the Plan, and he has proposed to purchase the Note from the Plan. He has represented that he will not benefit in any way from this transaction.[1]

The proposed purchase will prevent the Plan from initiating a default proceeding and from incurring expenses associated in bringing a default proceeding. The Trustee will pay the Plan the full amount of principal plus accrued interest less any amount the Plan should collect from the Debtor. The payment to the Plan will be in cash.

4. Arthur Anderson & Co., as an independent third party, has reviewed the Note and has stated that since the Note was issued, the Debtor has made insufficient payments of principal and interest, and the overall financial position of the Debtor is not of a quality that would support a high level of credit worthiness. Arthur Anderson & Co. represents that it can not justify a purchase price of $66,500 given the history of the payment and overall credit worthiness of the Debtor. Further, Arthur Anderson & Co. represents that the Note would yield a value less than the proposed purchase price of $66,500 (which reflects the outstanding principal amount of the Note plus accrued interest.)

5. In summary, the Trustee represents that the proposed transaction satisfies the criteria of section 408(a): (a) The sale will be a one-time transaction for cash; (b) the sale will prevent the Plan from incurring expenses caused by the Debtor's failure to repay the Note; and (c) the Plan will receive a price in excess of the value that Arthur Anderson represents the Note would yield.

[1] The Department is expressing no opinion as to whether the decision made by the Trustee to make the loan violated any provision of part 4 of title I of the Act.

FOR FURTHER INFORMATION CONTACT: Allison K. Padams of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Phoenix Mutual Life Insurance Company (Phoenix Mutual) Located in Hartford, Connecticut

[Exemption Application No. D-8511]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) on September 28, 1990, of four parcels of real property (the Properties) by the pooled Real Estate Separate Account (RESA) to the general account of Phoenix Mutual (the General Account); provided that the terms and conditions of the Sale were at least as favorable to RESA as those obtainable in an arm's-length transaction with an unrelated party.

EFFECTIVE DATE: This exemption, if granted, will be effective September 28, 1990.

Summary of Facts and Representations

1. Phoenix Mutual is a mutual life insurance company organized under the laws of the state of Connecticut and subject to supervision and examination by the insurance commissioner of that state. As of December 31, 1989, Phoenix Mutual had total assets of approximately $8.2 billion. Phoenix Mutual provides funding, asset management and other services for numerous pension and profit-sharing plans subject to title I of ERISA. As of December 31, 1989, more than $1.1 billion in institutional client assets were held in pooled and advisory accounts maintained by Phoenix Mutual.

At the end of 1989, Phoenix Mutual managed approximately $2.2 billion in real estate assets. Phoenix Mutual held in its general account on behalf of policyholders nearly $293.7 million in equity investments in real property and nearly $1.4 billion in mortgage loans. Phoenix Mutual also held more than $356 million in real estate investments on behalf of RESA.

2. RESA is an open-end, pooled real estate separate account. RESA was established on September 1, 1980, to provide an investment vehicle through which pension plans could make debt and equity investments in real estate. Approximately 215 plans which are subject to title I of ERISA and nine governmental plans participate in RESA. As of December 31, 1989, RESA held 48 real estate investments, including investments in 24 office buildings or office/industrial complexes, 16 apartment buildings or complexes, and 6 retail centers.

The applicant represents that the investment objective of RESA is to make equity and debt investments in properties that provide an attractive cash return and the maximum appreciation in value that may be prudently achieved. Investment opportunities are identified initially through Phoenix Mutual's correspondence system with seventeen unaffiliated mortgage bankers. Phoenix Mutual's real estate analysts select those investment opportunities which appear to meet Phoenix Mutual's investment criteria for presentation to its production department for further market research. Investment opportunities that are determined to be appropriate after the production department's review may be allocated to RESA if they meet RESA's investment objectives and are consistent with the diversification strategy applicable to the portfolio. Following allocation to a specific account, investment opportunities are presented to the Policy Committee for final approval.

Contractholder requests for withdrawal from RESA may be honored as of the first quarterly valuation date which falls on a date at least 90 days from the date of the request. Amounts that may be withdrawn may be limited by the cash available in RESA.

3. The Properties consist of four parcels of commercial real estate described herein in subparagraph (a) through (d). The Properties are "phased development" properties. With respect to each of the Properties, RESA and the General Account each hold investments in different phases of the same development projects.[2]

[2] In this regard, the applicant represents that the respective interests of RESA and the General Account in the different phases of the same development projects relate to entirely separate parcels of property. The Department notes that the applicant has not requested, and the Department is not proposing, any relief with regard to any possible prohibited transactions which may have occurred as a result of RESA and the General Account each holding investments in different phases of the same development projects.

(a) *Northridge Center I*

Northridge Center is a three-phase commercial office development located in Atlanta, Georgia. Phase I (Northridge Center I) of the development is a four-story office building of approximately 64,500 square feet situated on a 3.46 acre tract.

RESA acquired a fee simple interest in Northridge Center I on December 31, 1985, for an initial cost of $4,359,351. As of the date of the Sale, the total cost basis of RESA's interest in Northridge Center I was $5,875,153.

Phase II of Northridge Center is owned by Northridge Center Partners II, a joint venture in which Phoenix Founders, Inc. (Phoenix Founders), a wholly-owned subsidiary of Phoenix Mutual, holds a 90% interest. Douglas R. White, the developer of Northridge Center, holds the remaining 10% interest. Phase III of Northridge Center is owned in its entirety by Phoenix Founders.

(b) *1501-07 Johnson Square Office Park (Johnson Square I)*

Johnson Square is a three-phase commercial office development located in Marietta, Georgia. Phase I of the project is a 2.3 acre site, which is zoned for office and institutional use. Improvements to Phase I were completed in 1984 and consist of four two-story office buildings with net rentable areas of 30,397 square feet.

RESA purchased the underlying land for Phase I of Johnson Square for $191,000 from Marchman Sons Investments (Marchman) on October 28, 1982. Subsequent to its acquisition RESA entered into a 50-year ground lease with Marchman for a fixed rent of $19,100 per year plus 60 percent of net cash flow. RESA provided permanent financing in the amount of $1,545,000, which was secured by Marchman's leasehold interest. In 1985, RESA purchased the leasehold interest in Phase I. As of the date of the Sale, the total cash of RESA's interest in Johnson Square I was $2,112,691.

On December 14, 1984, Phoenix Founders purchased a 10.32 acre parcel from Marchman to complete Phases II and III of the Johnson Square project. Phoenix Founders also obtained an equity interest in the first building constructed in Phase II.

(c) *Turfway Ridge I Office Building (Turfway I)*

Turfway I is the first phase of Turfway Ridge Office Park under a development plan which calls for four office buildings on a building site located in Florence, Kentucky. Turfway I consists of a five-story office building

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with a rentable area of 109,552 square feet on an 8.03 acre parcel.

On December 29, 1988, RESA purchased the underlying land of Turfway I for $1,085,000 from Turfway Ridge I Partners. Concurrent with its purchase of the land, RESA entered into a 55-year ground lease with Turfway Ridge I Partners for approximately $104,000 per year plus 50% of net cash flow. RESA also funded a $9,905,000 loan secured by the leasehold interest and improvements on the property (which are owned in fee simple by Turfway Ridge I Partners).

On March 14, 1990, the General Account purchased the underlying land of Phase II of the Turfway development from Turfway Ridge II Partners and concurrently made a leasehold loan to Turfway Ridge II Partners.

(d) *Remington Station-Phase I*

Remington Station is a three-phase partment complex development located in Westerville, Ohio. Phase I of Remington Station is a 100-unit, 12 building complex situated on a 13.115 acre parcel. The construction of Phase I was completed in 1988.

On March 9, 1989, RESA purchased the land underlying Phase I for $600,000 from Paul Isaacs (Mr. Isaacs), the developer. RESA concurrently entered into a 55-year ground lease with Mr. Isaacs fro approximately $54,000 per year, plus 50 percent of net cash flow. RESA also provided a leasehold mortgage of $4,670,000 to Mr. Isaacs. Mr. Isaacs retained a fee simple interest in the improvements, which serve as additional security for the leasehold mortgage.

The General Account acquired similar interests in Phases II and III of Remington Station From Mr. Isaacs on March 30, 1990. Phases II and III comprise 244 apartments and townhomes on approximately 22.5 acres which are adjacent to Phase I. Phases I, II and III share certain tenant recreational facilities.

4. The applicant represents that, consistent with a downturn in the real estate markets in a number of areas in the country, very few new contributions were coming into RESA prior to the Sale. The applicant further represents that several plan contractholders had submitted withdrawal requests. Cash availability was thus, unusually low, making it difficult for RESA to retire its short-term debt incurred in connection with some of its recent acquistions. The low cash availability was also prolonging the waiting period for RESA contractholders with outstanding withdrawal requests to have their interests redeemed.

5. Prior to the Sale, the applicant concluded that selling the properties would enhance RESA's performance by providing cash to retire its outstanding debt and enable RESA to satisfy withdrawal requests at an earlier date. The applicant represents that the selection of properties to sell at a price favorable to RESA was hampered by the relative lack of buyers in the current real estate market. Since the General Account owned interests in the remaining phases of the Properties, the applicant concluded that it was the most logical purchaser of the Properties.

6. On September 28, 1990, RESA's entire interests in the properties were transferred to the General Account, in accordance with the terms and conditions negotiated between Arthur Andersen & Co. (Arthur Andersen), acting as independent fiduciary on behalf of RESA (as discussed below in paragraphs 7 & 8), and Phoenix Mutual. Phoenix Mutual paid a total of $25,240,000 in cash to RESA for its interest in the Properties, broken down as follows:

	Sales price	RESA's cost
Northridge Center I	$5,900,000	$5,675,153
Johnson Square	2,670,000	2,112,691
Turfway Ridge I	11,230,000	11,000,000
Remington Station	5,440,000	5,270,000

The applicant represents that RESA paid no fees or commissions with respect to the Sale.

7. Phoenix Mutual appointed Arthur Andersen to act as independent fiduciary and independent appraiser on behalf of RESA in connection with the Sale. Arthur Andersen has acknowledged that it is a fiduciary with respect to the plans participating in RESA in connection with the Sale. Arthur Andersen in one of the largest accounting and consulting firms in the United States and has extensive experience in real estate transactions. Arthur Andersen receives less than one percent of its gross income from Phoenix Mutual and its affiliates.

8. The responsibilities of Arthur Andersen with respect to the Sale were set forth in a letter agreement (the Agreement) dated August 30, 1990. Under the Agreement, Arthur Andersen assumed responsibility as independent fiduciary on behalf of RESA to negotiate and review the terms and conditions of the Sale, and to determine whether the Sale of each of the Properties would be in the collective interests of the plans participating in RESA and that RESA would receive no less than fair market value for each Property as of the date of the Sale. Arthur Andersen was also authorized under the Agreement to determine not to go forward with the transfer of one or more of the Properties in the event it concluded that the transfers would not be in the collective interests of the plans participating in RESA.

9. As noted above in paragraph 7, Arthur Andersen was also retained by Phoenix Mutual to prepare MAI appraisals of RESA's interest in the Properties. Arthur Andersen prepared such appraisals (the Appraisals) dated July 26, 1990, and supplemented on October 26, 1990, arriving at the following valuations:

(a) Northridge I. Using the sales comparison and the income capitalization approach, the fee simple appraisal of Northridge I was valued at $5,300,000 plus an abutter's premium of $275,000.

(b) Johnson Square I. Using the cost approach, the sales comparison approach and the income capitalization approach, the fee simple interest appraisal of Johnson Square was valued at $2,200,000. The abutters' premium was valued at $100,000.

(c) Turfway Ridge I. Using the cost approach, the sales comparison approach and the income approach, the fee simple interest appraisal of Turfway Ridge I was valued at $10,400,000. The abutter's premium was valued at $307,000, and the land lease premium at $518,000.

(d) Remington Station. Using the cost approach, the sales comparison approach and the income approach, the fee simple appraisal of Remington Station was valued at $4,550,000 with an abutter's premium valued at $150,000. A land lease premium was also valued at $740,000.

10. In addition to reviewing the appraisals of the Properties, Arthur Andersen also conducted the following activities as independent fiduciary:

(a) Reviewed RESA's plan of operation, including its investment fee arrangement with Phoenix Mutual, line of credit agreements, a standard RESA contract, the current withdrawal request listing and other appropriate documents;

(b) Reviewed financial and operating reports and the budgets for each Property;

(c) Evaluated the cash flow projections for each Property;

(d) Reviewed the current rent rolls and summaries, the stability of leases, occupancy rate and tenant turnover, schedule of lease expirations, future lease commitments and the schedule of planned improvements and repairs;

(e) Examined applicable mortgage notes, leasehold agreements and management contracts for each Property;

(f) Inspected the Properties, viewed the neighborhood surrounding each Property and similar competing properties;

(g) Discussed the proposed transactions, RESA's investment objectives and other matters with RESA officers, property managers/leasing agents and other informed persons;

(h) Considered the current marketability of the Properties;

(i) Evaluated market conditions and trends in the respective local markets; and

(j) Conducted a subsequent events review for activity after the July appraisal dates to assure that the proposed sales price equaled or exceeded the value of RESA's interest in each of the Properties as of September 28, 1990.

11. Based on the independent appraisals and analysis described above, Arthur Andersen concluded that it was in the collective best interest of RESA to sell the Properties to the General Account. Arthur Andersen further concluded that the Sale should take place on September 28, 1990, consistent with RESA's investment objectives and liquidity goals, and that the final sales price for each Property exceeded RESA's total basis in the Property and equaled or exceeded the fair market value of RESA's interest in each Property.

12. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act have been satisfied because:

(a) The Sale was a one-time cash transaction;

(b) The Sale liquidated a portion of RESA's portfolio, allowing it to satisfy outstanding withdrawal requests and retire a portion of its short-term debt;

(c) RESA paid no fees or commissions with respect to the Sale;

(d) The terms of the Sale, including the sales price for the Properties, was negotiated by Arthur Andersen acting as independent fiduciary on behalf of RESA; and

(e) Arthur Andersen, based on its evaluation of the independent appraisals, concluded that the Sale was in the best interest of RESA contract-holders and that the sales price equaled or exceeded RESA's total basis and the fair market value of RESA's interest in each Property.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

State Auto Insurance Companies Employees Retirement Plan (the Plan) Located in Columbus, Ohio

[Application No. D-8559]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan by the Plan of $10 million to the State Automobile Mutual Insurance Company (the Employer), the sponsor of the Plan and as such a party in interest with respect to the Plan, provided that the terms of the transaction are at least as favorable to the Plan as an arm's-length transaction with a unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which, as of December 31, 1989, had 1,456 participants and total assets of $65,667,347. The trustees of the Plan (the Trustees) are Theodore R. Magley, Kathleen Vaughn, Terrence Bowshier, Winford Logan, and Mary Lowe, all of whom are officers or employes of the Employer. The applicant states that the decision-makers for the investment of the Plan's assets are the Trustees as well as Urlin G. Harris, Jr., Senior Vice President-Treasurer and Chief Financial Officer of the Employer, and James Duemey, Assistant Vice President and Invetment Officer of the Employer.

The Trustees have appointed the Huntington Trust Company, N.A., of Columbus, Ohio, to act as a special trustee on behalf of the Plan (the Special Trustee) for all matters concerning the proposed transaction. The Special Trustee is unrelated to the Employer and its affiliates, and has acknowledged its duties, responsibilities, and liabilities in action as a fiduciary under the Act for the Plan. The Special Trustee represents that it is a qualified, independent fiduciary for the Plan. In this regard, the Special Trustee states that it is an experienced fiduciary which manages investments for employee benefit trust accounts subject to the Act and currently acts as a trustee for approximately 1500 employee benefit plans. The Special Trustee is a wholly-owned subsidiary of the Huntington National Bank (the Huntington Bank). As of December 31, 1990, the Special Trustee had total assets of approximately $12 billion.

2. The Employer is an Ohio mutual insurance company which issues property and casualty insurance policies in seventeen states. The Employer's home office is located at 518 East Broad Street, Columbus, Ohio. The Employer has recently completed building a 146,848 square foot addition to its home office complex (the Addition). The Employer paid the total costs for construction of the Addition from its own funds, without any construction loans. However, as a source of permanent mortgage financing for the Addition, the Employer proposes to borrow $10 million from the Plan (the Loan). The applicant states that the Loan would constitute less than 20% of the total value of the Plan's assets, as of December 31, 1989. As security for the Loan, the Employer will deliver to the Plan a first mortgage interest on its home office building, including the Addition (together, the Property), at the time the Loan is made.

3. The Loan will have a term of 10 years with a fixed interest rate, which will be the greater of either 11% per annum or a rate which is no less than 200 basis points over the rate offered by the Huntington Bank on comparable mortgage loans in central Ohio as of the date of closing. The interest rate on the Loan will be adjusted by the Special Trustee after five years. The adjusted interest rate will be the greater of either the initial interest rate on the Loan or a rate which is no less than 200 basis points over the rate offered by the Huntington Bank on comparable mortgage loans at the time. The Loan will require regular quarterly payments of principal and interest based on a ten year amortization schedule.

4. The applicant represents that at the time of delivery to the Plan of the first mortgage interest on the Property, there will be no other liens or encumbrances on the Property. The applicant states that a title insurance policy for the Property will be furnished in favor of the Plan, as lender and mortgagee.

In addition, the Plan's first mortgage will be recorded with the appropriate county officials to perfect the Plan's lien. The Property will be insured against loss by fire, casualty or any other hazard, at the expense of the Employer, with the Plan designated as loss payee.

5. The Property was appraised on September 14, 1990 by Mr. Thomas P. Kohr, M.A.I., S.R.E.A., of Kohr, Royer and Griffin, Inc., an independent, qualified real estate appraiser in Columbus, Ohio (the Appraisal). The

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Appraisal states that the Property had a fair market value of approximately $25 million, as of August 3, 1990. The Appraisal's valuation of the Property utilized the income value approach, with an analysis of current office rental rates within the central business district of Columbus, Ohio, and the market value approach, with an analysis of recent sales of similar office buildings in the central business district of Columbus, Ohio. The applicant represents that the Appraisal will be updated prior to the proposed transaction.

6. The Special Trustee, as the Plan's independent fiduciary, has reviewed the terms of the Loan and all the documents and relevant information in connection with the Loan, including the Appraisal. The Special Trustee represents that the terms of the Loan would be at least as favorable to the Plan as an arm's-length transaction with a unrelated party and that the Huntington Bank would consider making the same loan on these terms as a commercial lender. In this regard, the Special Trustee notes that the terms of the Loan do not provide the Plan with any pre-paid interest or "points" at the beginning of the transaction as compensation for making the Loan. However, the Special Trustee states that the 11% minimum interest rate on the Loan coupled with the rate escalator provision will more than compensate for the lack of "points" being charged on the Loan. The Special Trustee states that the Loan will offer the Plan an above "market" rate of return that is very attractive relative to other similar investment opportunities.

The Special Trustee believes that the Loan will be well secured by the Plan's first mortgage interest in the Property in the event of default. The Special trustee notes that the Property is located in the center of the central business district of Columbus, Ohio, an area that has experienced consistent growth in development in the past ten years. The Special Trustee will evaluate the information provided to update the Appraisal to confirm that the fair market value of the Property remains approximately $25 million as of the date of the transaction.

The Special Trustee has conducted an independent evaluation of the financial stability of the Employer. The Special Trustee concludes that the Employer is well capitalized and has sufficient cash flow to cover its expenses, including the proposed payments on the Loan. The Special Trustee notes that the Employer received an A+ rating from the AM Best Insurance Report in 1990 with respect to its consolidated financial position and operating performance.

The Special Trustee has reviewed the Plan's current investment portfolio and considered the diversification of the Plan's assets as well as the liquidity needs of the Plan. Based on this analysis, the Special Trustee represents that the Loan would be a prudent and proper investment for the Plan that would be in the best interests of the Plan and its participants and beneficiaries.

The Special Trustee represents that it will monitor the Loan and will take any appropriate action that becomes necessary to protect the interests of the Plan and its participants and beneficiaries, including a foreclosure on the Property in the event of default. The appraised value of the Property currently represents approximately 250% of the amount of the Loan. The Special Trustee states that it will ensure that the value of the Property will remain at least 150% of the outstanding principal on the Loan throughout the duration of the Loan. The Special Trustee states further that additional property will be used to secure the Loan if such property becomes necessary to maintain the appropriate ratio between the value of the collateral and the amount due on the Loan.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Loan will be secured by a first mortgage interest on the Property, which has an appraised market value that is 250% of the amount of the Loan; (b) the Plan will receive at least a fair market rate of return on the Loan which is commensurate with the prevailing rate for similar loans offered in the area; (c) the Special Trustee, as the independent fiduciary for the Plan, believes that the Loan would be in the best interests of the Plan and its participants and beneficiaries; (d) the Special Trustee will monitor the Loan on behalf of the Plan and will take any appropriate action necessary to safeguard the interests of the Plan; and (e) the amount of the Loan will represent less than 20% of the total assets of the Plan.

For Further Information Contact: Mr. E.F. Williams of the Department at (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of June, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-14435 Filed 6-17-91; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 91-33; Exemption Application No. D-8332, et al.]

Grant of Individual Exemptions; Austin Industries, Inc. Retirement Plan for Hourly Employees, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** for the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based on the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Austin Industries, Inc., Retirement Plan for Hourly Employees (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 91-33; Exemption Application No. D-8332]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed purchase by the Plan of shares of common stock (the Stock) of Austin Industries, Inc. (Austin) from Austin's treasury, provided that the Plan pays no more than the lesser of $7.50 per share or the fair market value of the Stock on the date of the acquisition; (2) the Plan's holding of the Stock; and (3) the acquisition and holding by the Plan of an irrevocable put option (the Put Option) which permits the Plan to sell the Stock to Austin at a price which is the higher of the Plan's acquisition price of the Stock or the appraised fair market value of the Stock at the time of the exercise of the Put Option.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1991 at 56 FR 14545.

Written Comments: The Department received two written comments with respect to the proposed exemption. One was submitted by a retired employee of Austin who is receiving benefits under the Plan. He requested that the proposed exemption not be granted and that the Plan's assets be maintained exclusively in cash.

C&S Sovran Trust Company (C&S; formerly known as the Citizens and Southern Trust Company (Georgia), N.A.), the Plan's independent fiduciary, responded to this comment. C&S stated that the investment portfolio of the Plan will continue to be adequately diversified as the holding of the Stock will constitute 10% or less of the total portfolio after the purchase. In addition, the Put Option will protect the Plan's participants from any possible depreciation in the Stock. C&S commented that the suggestion that Plan assets be held exclusively in cash would not be prudent because the Plan would forego the opportunity for significant appreciation and earnings on its assets. C&S continues to conclude that the purchase by the Plan of Austin Stock is in the best interest of the Plan and its participants and beneficiaries.

The second written comment to the proposed exemption was submitted by the applicant. The applicant pointed out that in the proposed exemption, the third transaction would have exempted the sale of the Stock by the Plan to Austin under the Put Option, which permitted the Plan to sell the Stock at a price which was the higher of $7.50 per share or the appraised fair market value of the Stock at the time of the exercise of the Put Option. The applicant commented that it had represented that the Put Option will permit the Plan to sell the Stock to Austin at a price which is the greater of the Plan's acquisition price of the Stock or the Stock's current appraised fair market value. Since the Plan might pay less than $7.50 per share at its acquisition price (see transaction 1, above), the Put Option sale price should be modified to correctly reflect the applicant's representation.

The Department has considered the entire record, including the comments submitted and C&S's response to the retiree's comment, and has determined to modify the proposed exemption in accordance with the comment submitted by the applicant.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

PJH Investment Company Profit Sharing Plan (the Plan) Located in St. Louis, Missouri

[Prohibited Transaction Exemption 91-34; Exemption Application No. D-8428]

Exemption

The sanctions resulting from the application of section 4975 of the Code by reason of section 4975(1)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of undeveloped real property to PJH Investment Company (the Partnership), a disqualified person with respect to the Plan, provided that the Plan receives no less than the fair market value of the Property at the time of the transaction.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1991 at 56 FR 14547.

For Further Information Contact: Allison Padams of the Department at telephone (202) 523-8971.

[1] Because the three participants of the Plan are the partners of the Partnership and the Partnership has no employees, there is no jurisdiction under title I of the Act pursuant to 29 CFR 2510.3-3(b) and 2510.3-3(c)(2). However, the Plan is under the jurisdiction of Title II of the Act pursuant to section 4975 of the Code.

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Individual Retirement Account of Harold L. Campbell (the IRA) Located in La Jolla, California

[Prohibited Transaction Exemption 91-35; Exemption Application No. D-8462]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of 48,600 shares of First National Corporation, by the IRA to Mr. Harold Campbell for a price not less than the fair market value of the common stock of First National Corporation as determined by its market price on the date of the sale.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 18, 1991 at 56 FR 14549.

For Further Information Contact: Allison Padams of the Department of Labor, telephone (202) 523-8971. (This is not a toll-free number.)

Utica Cutlery Company Pension Plan for Bargaining Unit Employees (the BU Plan) and Utica Cutlery Company Pension Plan for Non-Bargaining Unit Employees (the NBU Plan; Together, the Plans) Located in Utica, New York

[Prohibited Transaction Exemption 91-36; Exemption Application Nos. D-8466 and D-8467]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed lending of $30,000 (the Loan) by the NBU Plan to the BU Plan, and the immediate repayment of the Loan by the BU Plan to the NBU Plan, provided that both Plans remain in the same financial position after the consummation of the transactions as they were in prior to their engaging in the transactions.

For a more complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1991 at 56 FR 14547.

Notice to Interested Persons: The applicant represents that it was unable to comply with the notice to interested persons requirements within the time frame stated in its application. However, the applicant has represented that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by May 7, 1991. Interested persons were informed that they had until June 6, 1991 to comment or request a hearing with respect to the proposed exemption. No comments or hearing requests were received by the Department.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of June 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91-14427 Filed 6-17-91; 8:45 am]

BILLING CODE 4510-29-M

[2] Because the IRA meets the conditions described in 29 CFR 2510.3-3(d), there is no jurisdiction under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-55]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S. F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by July 18, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D.A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0010), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer (703) 271-5542.

Reports

Title: Patent License Report.
OMB Number: 2700-0010.
Type of Request: Extension.
Frequency of Report: Annually.
Type of Respondent: Businesses or other for profit, small businesses or organizations.
Number of Respondents: 600.
Hours per Response: 0.5.
Annual Responses: 600.
Annual Burden Hours: 300.

Abstract-Need/Uses: NASA grants patent licenses to businesses for the commercial use of NASA-owned inventions. Each licensee is required to report its progress annually in commercializing our inventions and the amount of royalties due to NASA.

Dated: June 12, 1991.
D.A. Gerstner,
Director, IRM Policy Division.
[FR Doc. 91-14429 Filed 6-17-91; 8:45 am]
BILLING CODE 7510-01-M

[Notice 91-56]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection request to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by July 18, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D.A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0039), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer (703) 271-5542.

Reports

Title: Application for Patent License.
OMB Number: 2700-0039.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Individuals or households, businesses or other for profit, small businesses or organizations.
Number of Respondents: 25.
Responses per Respondent: 1.
Hours per Response: 8.
Annual Responses: 25.
Annual Burden Hours: 150.

Abstract-Need/Uses: Pursuant to 35 U.S.C. 209, applicants for patent license must submit specific information in support of their request for a patent license. The information submitted is used to determine whether the license should be granted.

Dated: June 12, 1991.
D.A. Gerstner,
Director, IRM Policy Division.
[FR Doc. 91-14430 Filed 6-17-91; 8:45 am]
BILLING CODE 7510-01-M

[Notice 91-57]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by July 18, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D.A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0044), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer (703) 271-5542.

Reports

Title: Space Transportation System; Duty Free Entry of Space Articles.
OMB Number: 2700-0044.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Individuals or households, state or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.
Number of Respondents: 10.
Responses per Respondent: 1.
Hours per Response: 2.
Annual Responses: 10.
Annual Burden Hours: 20.

Abstract-Need/Uses: Public Law 97-446 authorized duty-free entry of space materials into the U.S. if NASA certifies that the statutory requirements are met. Information from applicants requesting duty-free entry is necessary to determine whether NASA should certify and if the statutory requirements are met.

Dated: June 12, 1991.
D.A. Gerstner,
Director, IRM Policy Division.
[FR Doc. 91-14421 Filed 6-17-91; 8:45 am]
BILLING CODE 7510-01-M

[Notice 91-53]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATES: July 9, 1991, 8:30 a.m. to 5:30 p.m.; and July 10, 1991, 8:30 a.m. to 12:15 p.m.

ADDRESSES: Holiday Inn-Capitol, Clark Room, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2126).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Life Sciences Subcommittee provides advice to the Life Sciences Division concerning all of its programs in the space life sciences. The Subcommittee will meet to discuss the status of OSSA, the life sciences presentation to SSAAC, and the status report on Biomedical Monitoring and

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Countermeasures & Centrifuge Project. The Subcommittee is chaired by Dr. Francis J. Haddy and is composed of 24 members. The meeting will be closed on Tuesday, July 9, 1991, from 8:45 a.m. to 10:45 a.m. to allow for a discussion on qualifications of individuals being considered for membership to the Subcommittee. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b (c)(6),, it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Subcommittee).

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

Agenda

Tuesday, July 9

8:30 a.m.—Introduction and Chairman's Remarks.
8:45 a.m.—Closed Session.
10:45 a.m.—Life Sciences Status.
11:45 a.m.—Report on Other Advisory Committees.
1:15 p.m.—Office of Space Science and Applications Status.
2:15 p.m.—Review of Life Sciences and Issues for SSAAC Workshop.
3:45 p.m.—Review of Short Version of "A Rationale for the Life Sciences."
4:30 p.m.—Gravitational Biology Initiative.
5:30 p.m.—Adjourn.

Wednesday, July 10

8:30 a.m.—NASA Specialized Centers of Research and Training Themes for 1992.
10:15 a.m.—Status Report on Biomedical Monitoring and Countermeasures & Centrifuge Project.
11:15 a.m.—Subcommittee Discussion on Strategy and Actions.
12:15 p.m.—Adjourn.

Dated: June 12, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-14417 Filed 6-17-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice 91-54]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Advanced Life Support Technology.

DATES: July 8, 1991, 9 a.m. to 5 p.m.; and July 9, 1991, 9 a.m. to 5 p.m.

ADDRESSES: Lockheed Engineering and Sciences Company, suite 600, Maryland Avenue SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Evanich, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2857.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Advanced Life Support Technology, chaired by Mr. Adrain P. O'Neal, is composed of eight members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

TYPE OF MEETING: Open.

Agenda

July 8, 1991

9 a.m.—Review Team Discussions-Deliberations.
5 p.m.—Adjourn

July 9, 1991

9 a.m.—Review Team Discussions-Deliberations.
5 p.m.—Adjourn

Dated: June 12, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-14416 Filed 6-17-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreements for the Administration of a Director Fellows Project and a Stage Designer Fellows Project

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of two Cooperative Agreements, one for the administration of a Stage Designer Fellows program, the other for the Administration of a Director Fellows program. The recipients of these Cooperative Agreements will be responsible for all aspects of the programs including the solicitation of applications, disbursement of funds to awardees, and the development and coordination of appropriate assignments for the Stage Designers or Directors. Eligibility to apply for the Cooperative Agreements is limited to nonprofit organizations and individuals. Those interested in receiving the Solicitation packages should reference Program Solicitation PS 91-11 and 91-12 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitations PS 91-11 and 91-12 are scheduled for release approximately July 10, 1991 with proposals due August 12, 1991.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 91-14374 Filed 6-17-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public. Interested persons are invited to submit comments by July 19, 1991. Comments may be submitted to:

(1) *NSF Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone, (202) 357-7335. and to:

(2) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, Paperwork Reduction Project. OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Assessment of the Undergraduate Faculty Enhancement Program.

Affected Public: Individuals.

Responses/Burden Hours: 500 respondents at one/half hour and 93 respondents at one and one/half hours for a total of 390 hours.

Abstract: The NSF Undergraduate Faculty Enhancement Program makes grants to colleges and professional societies to conduct short courses/workshops for faculty members in science, mathematics, and engineering to assist undergraduate faculty to learn new ideas and techniques in their fields to improve their undergraduate teaching. This is an assessment of that program.

Dated: June 13, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-14465 Filed 6-17-91; 8:45 am]

BILLING CODE 7555-01-M

1991 Undergraduate Course and Curriculum Development Program; Addendum

This notice is to publish an addendum to a previous Federal Register notice (FR vol 56, No. 91, Friday, May 10, 1991, pp 21692-21697).

The following citation should have been included in the Selected Bibliography section of the 1991 Undergraduate Course and Curriculum Development Program Announcement (NSF 91-50): Report on the National Science Foundation Undergraduate Curriculum Development Workshop in Materials. Division of Materials Research, Directorate for Mathematical and Physical Sciences—(Washington, DC): National Science Foundation, 1989. NSF Publication No. 90-60.

Dated: June 13, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-14466 Filed 6-17-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The Nuclear Regulatory Commission (NRC) has announced the following appointments to NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives:

New Appointees:

Guy A. Arlotto, Deputy Director, Office of Nuclear Material Safety and Safeguards.
Harold R. Denton, Director, Office of Governmental and Public Affairs.
James Lieberman, Director, Office of Enforcement.
James G. Partlow, Associate Director for Projects, Office of Nuclear Reactor Regulation.

In addition to the above new appointments, the following members are continuing on the PRB:

Frank J. Congel, Director, Division of Radiation Protection and Emergency Preparedness, Office of Nuclear Reactor Regulation.
James A. Fitzgerald, Assistant General Counsel for Adjudications and Opinions, Office of the General Counsel.
Edward L. Jordan, Director, Office for Analysis and Evaluation of Operational Data.
Patricia G. Norry, Director, Office of Administration.
Carl J. Paperiello, Deputy Regional Administrator, Region III.
Dennis K. Rathbun, Director, Congressional Affairs, Office of Governmental and Public Affairs.
Themis P. Speis, Deputy Director for Research, Office of Nuclear Regulatory Research.
William B. Kerr, Director, Office of Small and Disadvantaged Business Utilization and Civil Rights, continues to serve as an ex officio non-voting member.

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

New Appointee:

William C. Parler, General Counsel.

In addition to the above new appointment, the following individuals will continue to serve on the PRB Panel:

James H. Sniezek, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, Office of the Executive Director for Operations.
Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations.

Members of the NRC Recertification PRB and Recertification PRB Panel will be selected from the individuals listed below. The NRC Recertification PRB and Recertification PRB Panel are responsible for recommending to appointing authorities whether Senior Executives should be recertified, conditionally recertified or not recertified.

Eric S. Beckjord, Director, Office of Nuclear Regulatory Research.
Robert M. Bernero, Director, Office of Nuclear Material Safety and Safeguards.
Paul E. Bird, Director, Office of Personnel.
Harold R. Denton, Director, Office of Governmental and Public Affairs.
Stewart D. Ebneter, Regional Administrator, Region II.
Edward L. Jordan, Director, Office for Analysis and Evaluation of Operational Data.
John B. Martin, Regional Administrator, Region V.
Thomas E. Murley, Director, Office of Nuclear Reactor Regulation.
Patricia G. Norry, Director, Office of Administration.
William C. Parler, General Counsel.
James H. Sniezek, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, Office of the Executive Director for Operations.
Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations.

All appointments are made pursuant to section 4314 of chapter 43 of title 5 of the United States Code.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: James M. Taylor, Chairman, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301) 492-1700.

Dated at Rockville, MD, this 10th day of June 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Chairman, Executive Resources Board.

[FR Doc. 91-14469 Filed 6-17-91; 8:45 am]

BILLING CODE 7590-01-M

VOL 56 ISS 117 1991 JE 18 UMI

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

June 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Ann Taylor Stores Corp.
Common Stock, $0.0068 Par Value (File No. 7-6892)
BankAmerica Corp.
$9%% Cum. Pfd. Stock Series F, No Par Value (File No. 7-6893)
Bancorp Hawaii, Inc.
Common Stock, $2.00 Par Value (File No. 7-6894)
Base Plc
American Depository Shares (1 Ordinary Share 25 p) (File No. 7-6895)
Blackstone Advantage Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-6896)
Blackstone 1998 Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-6897)
Brown-Forman Corp.
Class A Common Stock, $0.15 Par Value (File No. 7-6898)
Carlisle Plastics, Inc.
Class A Common Stock, $0.01 Par Value (File No. 7-6899)
Coeur d'Alene Mines Corp.
Common Stock, $1.00 Par Value (File No. 7-6900)
Caldor Corp.
Common Stock, $0.01 Par Value (File No. 7-6901)
Critical Care America, Inc.
Common Stock, $0.10 Par Value (File No. 7-6902)
Duracell International, Inc.
Common Stock, $0.01 Par Value (File No. 7-6903)
Europe Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-6904)
Fingerhut Companies, Inc.
Common Stock, $0.01 Par Value (File No. 7-6905)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-14404 Filed 6-17-91; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 12, 1991.

The above named national securities exchange has filed applications witht the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

The Vigoro Corporation
Common Stock, $.01 Par Value (File No. 7-6887)
Benton Oil & Gas Co.
Common Stock, $.01 Par Value (File No. 7-6888)
Total Canada Oil & Gas Ltd.
Common Stock, No Par Value (File No. 7-6889)
Universal Health Services, Inc.
Class B Common Stock, $.01 Par Value (File No. 7-6890)
Value City Department Stores, Inc.
Common Stock, No Par Value (File No. 7-6891)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-14405 Filed 6-17-91; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

American-Israeli Paper Mills
American Depositary Receipts (File No. 7-6906)
Austria Fund
Common Stock, $.01 Par Value (File No. 7-6907)
Avalon Corporation
American Depositary Receipts (File No. 7-6908)
B&H Maritime Carrier
American Depositary Receipts (File No. 7-6909)
B&H Ocean Carriers
American Depositary Receipts (File No. 7-6910)
Bainster, Inc.
American Depositary Receipts (File No. 7-6911)
Banco Bilbao Vizcaya S.A.
American Depositary Receipts (File No. 7-6912)
Barclays Bank PFD A
American Depositary Receipts (File No. 7-6913)
Barclays Bank PFD B
American Depositary Receipts (File No. 7-6914)
Barclays Bank PFD C
American Depositary Receipts (File No. 7-6915)
Barclays Bank PLC (adr)
American Depositary Receipts (File No. 7-6916)
BCE, Inc.
American Depositary Receipts (File No. 7-6917)
Benneton Group, SPA
American Depositary Receipts (File No. 7-6918)
Bet Public, Ltd.
American Depositary Receipts (File No. 7-6919)
Bond Int'l Gold, Inc.
American Depositary Receipts (File No. 7-6920)
Bow Valley Industries
American Depositary Receipts (File No. 7-6921)
Broken Hill Proprietary
American Depositary Receipts (File No. 7-6922)
Canadian Occidental Petroleum
American Depositary Receipts (File No. 7-6923)
Carmel Container Systems, Ltd.
American Depositary Receipts (File No. 7-6924)
Chieftan International, Inc.
American Depositary Receipts (File No. 7-6925)
Chile Fund
Common Stock, $.01 Par Value (File No. 7-6926)
Clemente Global Growth Fund
Common Stock, $.01 Par Value (File No. 7-6927)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-14406 Filed 6-17-91; 8:45 am]
BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee; Meeting

June 10, 1991.

ACTION: Notice of meeting and determination of closing of meeting.

SUMMARY: The meeting of the Investment Policy Advisory Committee (INPAC) to be held Tuesday, June 18, 1991 in Washington, DC, from 10 a.m. to 12 p.m., will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

ADDRESSES: 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mollie Van Heuven, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,
United States Trade Representative.

[FR Doc. 91-14469 Filed 6-17-91; 8:45 am]
BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Artisan Liens on Aircraft; Recordability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice of legal opinion is issued by the Assistant Chief Counsel for the Aeronautical Center to provide legal advice to the Aircraft Registration Branch, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, also identified as the FAA Aircraft Registry. Since December 17, 1981, the Assistant Chief Counsel for the Aeronautical Center has issued opinions in the **Federal Register** of those states from which artisan liens will be accepted for recordation by the FAA Aircraft Registry. This opinion is to advise interested parties of the addition of the State of Arizona to that list.

ADDRESSES: Copies of prior opinions on the recordability of artisan liens from states which have statutes authorizing their recording may be obtained from: Assistant Chief Counsel for the Aeronautical Center, AAC-7, P.O. Box 25082, Oklahoma City, OK 73125-4904.

FOR FURTHER INFORMATION CONTACT: R. Bruce Carter, Office of Assistant Chief Counsel, address above, or by calling (405) 680-3296; (FTS 747-3296).

SUPPLEMENTARY INFORMATION: In the December 17, 1981, **Federal Register** Vol. 46, No. 242, page 61528, the Federal Aviation Administration, Mike Monroney Aeronautical Center, published its legal opinion on the recordability of artisan liens, with the identification of those states from which artisan liens would be accepted. In the April 23, 1984, **Federal Register**, Vol. 49, No. 79, page 17112, we advised that Florida, Nevada, and New Jersey had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 10, 1986, **Federal Register**, Vol. 51, No. 111, page 21046, we advised that Minnesota and New Mexico had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 23, 1988, **Federal Register**, Vol. 53, No. 121, page 23716, we advised that Missouri had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from that state. In the September 19, 1989, **Federal Register**, Vol. 54, No. 180, page 38584, we advised that Texas was identified as a state from which artisan liens will be accepted.

In the October 17, 1989, **Federal Register**, Vol. 54, No. 242, page 51965, we advised that North Dakota was identified as a state from which artisan liens will be accepted.

In the August 8, 1990, **Federal Register**, Vol. 55, No. 151 page 31938, we advised that Michigan and Tennessee were identified as states from which artisan liens will be accepted.

The purpose of this opinion is to advise interested parties that in addition to those states identified previously, Arizona is identified as a state from which artisan liens will be accepted.

The complete list of states from which artisan liens on aircraft will be accepted as of this date are:

Alaska
Arizona
Arkansas
Florida
Georgia
Illinois
Indiana
Kansas
Kentucky
Maine
Michigan
Minnesota
Missouri
Nebraska
Nevada
New Jersey
New Mexico
North Dakota
Oklahoma
Oregon
South Carolina
South Dakota
Tennessee
Texas
Virgin Islands
Washington
Wyoming

Issued in Oklahoma City, on June 2, 1991.

Joseph R. Standell,
Assistant Chief Counsel for the Aeronautical Center

[FR Doc. 91-14428 Filed 6-17-91; 8:45 am]
BILLING CODE 4910-13-M

VOL 56 ISS 117 JE 18 1991 UMI

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

June 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Ann Taylor Stores Corp.
Common Stock, $0.0068 Par Value (File No. 7-6892)
BankAmerica Corp.
$9⅝% Cum. Pfd. Stock Series F, No Par Value (File No. 7-6893)
Bancorp Hawaii, Inc.
Common Stock, $2.00 Par Value (File No. 7-6894)
Bass Plc
American Depository Shares (1 Ordinary Share 25 p) (File No. 7-6895)
Blackstone Advantage Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-6896)
Blackstone 1998 Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-6897)
Brown-Forman Corp.
Class A Common Stock, $0.15 Par Value (File No. 7-6898)
Carlisle Plastics, Inc.
Class A Common Stock, $0.01 Par Value (File No. 7-6899)
Coeur d'Alene Mines Corp.
Common Stock, $1.00 Par Value (File No. 7-6900)
Caldor Corp.
Common Stock, $0.01 Par Value (File No. 7-6901)
Critical Care America, Inc.
Common Stock, $0.10 Par Value (File No. 7-6902)
Duracell International, Inc.
Common Stock, $0.01 Par Value (File No. 7-6903)
Europe Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-6904)
Fingerhut Companies, Inc.
Common Stock, $0.01 Par Value (File No. 7-6905)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-14404 Filed 6-17-91; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 12, 1991.

The above named national securities exchange has filed applications witht the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

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Common Stock, $.01 Par Value (File No. 7-6887)
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Common Stock, $.01 Par Value (File No. 7-6888)
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Common Stock, No Par Value (File No. 7-6889)
Universal Health Services, Inc.
Class B Common Stock, $.01 Par Value (File No. 7-6890)
Value City Department Stores, Inc.
Common Stock, No Par Value (File No. 7-6891)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-14405 Filed 6-17-91; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

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American Depositary Receipts (File No. 7-6906)
Austria Fund
Common Stock, $.01 Par Value (File No. 7-6907)
Avalon Corporation
American Depositary Receipts (File No. 7-6908)
B&H Maritime Carries
American Depositary Receipts (File No. 7-6909)
B&H Ocean Carriers
American Depositary Receipts (File No. 7-6910)
Bainster, Inc.
American Depositary Receipts (File No. 7-6911)
Banco Bilbao Vizcaya S.A.
American Depositary Receipts (File No. 7-6912)
Barclays Bank PFD A
American Depositary Receipts (File No. 7-6913)
Barclays Bank PFD B
American Depositary Receipts (File No. 7-6914)
Barclays Bank PFD C
American Depositary Receipts (File No. 7-6915)
Barclays Bank PLC (adr)
American Depositary Receipts (File No. 7-6916)
BCE, Inc.
American Depositary Receipts (File No. 7-6917)
Benneton Group, SPA
American Depositary Receipts (File No. 7-6918)
Bet Public, Ltd.
American Depositary Receipts (File No. 7-6919)
Bond Int'l Gold, Inc.
American Depositary Receipts (File No. 7-6920)
Bow Valley Industries
American Depositary Receipts (File No. 7-6921)
Broken Hill Proprietary
American Depositary Receipts (File No. 7-6922)
Canadian Occidental Petroleum
American Depositary Receipts (File No. 7-6923)
Carmel Container Systems, Ltd.
American Depositary Receipts (File No. 7-6924)
Chieftan International, Inc.
American Depositary Receipts (File No. 7-6925)
Chile Fund
Common Stock, $.01 Par Value (File No. 7-6926)
Clemente Global Growth Fund
Common Stock, $.01 Par Value (File No. 7-6927)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-14406 Filed 6-17-91; 8:45 am]
BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee; Meeting

June 10, 1991.

ACTION: Notice of meeting and determination of closing of meeting.

SUMMARY: The meeting of the Investment Policy Advisory Committee (INPAC) to be held Tuesday, June 18, 1991 in Washington, DC, from 10 a.m. to 12 p.m., will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

ADDRESSES: 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mollie Van Heuven, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,
United States Trade Representative.

[FR Doc. 91-14469 Filed 6-17-91; 8:45 am]
BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Artisan Liens on Aircraft; Recordability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice of legal opinion is issued by the Assistant Chief Counsel for the Aeronautical Center to provide legal advice to the Aircraft Registration Branch, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, also identified as the FAA Aircraft Registry. Since December 17, 1981, the Assistant Chief Counsel for the Aeronautical Center has issued opinions in the **Federal Register** of those states from which artisan liens will be accepted for recordation by the FAA Aircraft Registry. This opinion is to advise interested parties of the addition of the State of Arizona to that list.

ADDRESSES: Copies of prior opinions on the recordability of artisan liens from states which have statutes authorizing their recording may be obtained from: Assistant Chief Counsel for the Aeronautical Center, AAC-7, P.O. Box 25082, Oklahoma City, OK 73125-4904.

FOR FURTHER INFORMATION CONTACT: R. Bruce Carter, Office of Assistant Chief Counsel, address above, or by calling (405) 680-3296; (FTS 747-3296).

SUPPLEMENTARY INFORMATION: In the December 17, 1981, **Federal Register** Vol. 46, No. 242, page 61528, the Federal Aviation Administration, Mike Monroney Aeronautical Center, published its legal opinion on the recordability of artisan liens, with the identification of those states from which artisan liens would be accepted. In the April 23, 1984, **Federal Register**, Vol. 49, No. 79, page 17112, we advised that Florida, Nevada, and New Jersey had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 10, 1986, **Federal Register**, Vol. 51, No. 111, page 21046, we advised that Minnesota and New Mexico had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 23, 1988, **Federal Register**, Vol. 53, No. 121, page 23716, we advised that Missouri had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from that state. In the September 19, 1989, **Federal Register**, Vol. 54, No. 180, page 38584, we advised that Texas was identified as a state from which artisan liens will be accepted.

In the October 17, 1989, **Federal Register**, Vol. 54, No. 242, page 51965, we advised that North Dakota was identified as a state from which artisan liens will be accepted.

In the August 6, 1990, **Federal Register**, Vol. 55, No. 151 page 31938, we advised that Michigan and Tennessee were identified as states from which artisan liens will be accepted.

The purpose of this opinion is to advise interested parties that in addition to those states identified previously, Arizona is identified as a state from which artisan liens will be accepted.

The complete list of states from which artisan liens on aircraft will be accepted as of this date are:

Alaska
Arizona
Arkansas
Florida
Georgia
Illinois
Indiana
Kansas
Kentucky
Maine
Michigan
Minnesota
Missouri
Nebraska
Nevada
New Jersey
New Mexico
North Dakota
Oklahoma
Oregon
South Caroline
South Dakota
Tennessee
Texas
Virgin Islands
Washington
Wyoming

Issued in Oklahoma City, on June 2, 1991.

Joseph R. Standell,
Assistant Chief Counsel for the Aeronautical Center.

[FR Doc. 91-14428 Filed 6-17-91; 8:45 am]
BILLING CODE 4910-13-M

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[Summary Notice No. PE-91-23]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 8, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 10, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 28552
Petitioner: United Parcel Service
Sections of the FAR Affected: 14 CFR part 121, appendix H, phase III, item 1
Description of Relief Sought: To allow petitioner to substitute alternate criteria to qualify three simulators to Phase III subject to certain conditions and limitations.

Docket No.: 28554
Petitioner: Bannock Regional Medical Center
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow petitioner's pilots to reverse the copilot seat from facing astern to facing forward.

Docket No.: 26557
Petitioner: United States Ultralight Association, Inc.
Sections of the FAR Affected: 14 CFR 103.1
Description of Relief Sought: To allow operation of powered ultralight vehicles up to 360 pounds empty weight, with a maximum fuel capacity of 10 gallons, a maximum power-off stall speed of 32 knots, and a maximum airspeed at full power in full flight of 72 knots.

Docket No.: 28560
Petitioner: Stanley Air Taxi, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow properly trained pilots employed by petitioner to perform the task of converting the cabins of certain aircraft from passenger to cargo configurations, and the reverse.

Dispositions of Petitions

Docket No: 23921
Petitioner: FlightSafety International
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H
Description of Relief Sought/ Disposition: To allow petitioner to use FAA-approved simulators to meet certain training and testing requirements.
Grant, May 31, 1991, Exemption No. 5317

Docket No: 25091
Petitioner: Allied-Signal Aerospace, Garrett Engine Division
Sections of the FAR Affected: 14 CFR 21.325(b)(1) and (b)(3)
Description of Relief Sought/ Disposition: To extend Exemption No. 4830A, which allows class I, II, and III products that are assembled and tested by Rolls-Royce Limited in East Kilbridge, Scotland, to be eligible for issuance of export airworthiness approvals.
Grant, May 31, 1991, Exemption No. 4836B

Docket No: 25173
Petitioner: Airlift International, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To allow the original equipment manufacturers and foreign repair stations certificated by the civil air authorities of their respective countries to perform maintenance, preventive maintenance, and alterations outside the United States on engines, components, and spare parts of petitioner's F-27/FH-227 aircraft.
Grant, June 4, 1991, Exemption No. 4798B

Docket No: 25405
Petitioner: Peninsula Airways, Inc.
Sections of the FAR Affected: 14 CFR 43.3(e) and (g)
Description of Relief Sought/ Disposition: To extend Exemption No. 4049, as amended, which allows petitioner's pilots to remove and/or replace aircraft cabin seats and seat belts.
Grant, May 30, 1991, Exemption No. 4949B

Docket No: 25863
Petitioner: Department of Defense
Sections of the FAR Affected: 14 CFR 91.117(a) and (b), 91.127(c), 91.159(a), and 91.209(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 5100, which allows petitioner to conduct air operations in support of drug law enforcement and drug traffic interdiction, subject to conditions and limitations.
Grant, October 19, 1990 Exemption No. 5106B

Docket No: 25974
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 91.203 and 47.49
Description of Relief Sought/ Disposition: To allow temporary operation of certain registered airline aircraft without the registration and airworthiness certificates on board.
Grant, June 4, 1991, Exemption No. 5318

Petitions for Reconsideration

Docket No: 23583
Petitioner: University of North Dakota
Sections of the FAR Affected: 14 CFR part 141, appendix D
Description of Relief Sought/ Disposition: Reconsideration of Denial of Exemption No. 5295 to allow students enrolled in certain curricula to be credited more than 50 hours of pilot-in-command time while accompanied by persons who are pilots assigned by the school to specific flight crew duties.

Docket No: 26105
Petitioner: Sundstrand Corporation
Sections of the FAR Affected: 14 CFR 91.319(a)(1), (c) and (e)
Description of Relief Sought/ Disposition: Reconsideration of Denial of Exemption No. 5291 to allow petitioner to carry on its experimental aircraft company personnel and occasionally some company equipment for company business purposes.

[FR Doc. 91-14425 Filed 6-17-91; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 172; Meeting

Future Air-Ground Communications in the VHF Aeronautical Data Band (188-131 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the meeting of Special Committee 172 to be held July 10-11, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) Review and approve terms of reference, RTCA Paper No. 54-91/SC172-1; (3) Background briefings; (4) Develop initial work program and plan for accomplishment; (5) Assignment of tasks; (6) Other business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 7, 1991.

Clyde Miller,

Designated Officer.

[FR Doc. 91-14429 Filed 6-17-91; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

In February 1991, Robert I. Elms, P.E., petitioned the National Highway Traffic Safety Administration to open a defect investigation to determine whether 1983 Coachmen President motorhomes contain the following alleged safety-related defects: (1) *Overloading*—Actual operating weight of the vehicle unavoidably exceeds the Gross Vehicle Weight Rating (GVMR) assigned by the chassis manufacturer; (2) *Crankshaft Pulley*—The crankshaft pulley detached from the crankshaft of the 7.4 liter Chevrolet engine, resulting in a loss of power steering and power brakes; (3) *Suspension Air Bags*—A suspension air bag suddenly deflated while traveling at 60 mph, resulting in unexpected vehicle swaying; (4) *Exhaust Manifold Leaks*—An exhaust manifold gasket failed four times on the 7.4 liter Chevrolet engine, resulting in an exhaust gas leakage; (5) *Cruise Control*—The cruise control system turned itself off and on again intermittently, almost causing an accident on two occasions due to sudden vehicle deceleration; (6) *Rear Brake Calipers*—A rear brake caliper seized and damaged the brake rotor, causing the motorhome to swerve to the right without warning; (7) *Sidewall Attachment*—The bottom of the motorhome sidewall was not properly attached to the floor or chassis, resulting in gasoline fumes penetrating into the passenger compartment and also making it possible for an occupant to be thrown out of the vehicle if the driver had to suddenly swerve; (8) *Roof*—The roof partially delaminated and leaked, causing a risk of water damage and structural collapse; and (9) *Sidewall Construction*—The laminated sidewall construction results in inadequate sidewall strength, which may not be sufficient to protect an occupant from being thrown out of the vehicle during an accident.

A total of 462 1983 President motorhomes were built by Coachmen Industries, Incorporated (Coachmen), which manufactured the vehicles by adding the motorhome body to a GMC "P" Series chassis manufactured by General Motors Corporation (GM). A total of 852 1983 GMC "P" Series Motorhome chassis were sold by GM, 536 of which had the same weight rating and engine as the subject Coachmen motorhome.

A search of the agency's consumer complaint file produced not other relevant complaints, except for theone concerning exhaust manifold leakage (Item 4). Moreover, Coachmen and GM stated that they have no records of complaints in the subject vehicles similar to those made by the petitioner. Additionally, no relevant accidents for injuries involving these motorhomes have been reported. Because 49 CFR part 576 requires that manufacturers retain complaints and warranty records for only 5 years and the subject 1983 model year motorhomes were sold almost 8 years ago, some early complaints may have been discarded.

With respect to the alleged overloading problem (Item 1): Coachmen did not change the GVWR of 14,500 pounds, which was established by GM. Based on information provided by Coachmen, the subject motorhomes are not overloaded and have adequate load capacity for seven people, corresponding to the number of sleeping accommodations that are provided, and for a reasonable amount of luggage. The motorhome would only be overloaded if each of the 11 seats equipped with seat belts were to be occupied, and additional luggage and/or supplies were present. The petitioner alleges that his motorhome is overloaded with only the driver aboard if both fuel tanks and the water tanks are full. If this is true, it may be because additional equipment has been added to the vehicle. Owners who weigh their vehicle before leaving on a trip, as instructed by the owner's manual, should be able to use the motorhome for its intended purpose without overloading. Owners can reduce weight by traveling with less water and not filling the auxiliary fuel tank, if necessary. The braking system is rated for 1,500 pounds above the GVWR and no evidence of any overloading related safety problems was found.

With respect to the alleged crankshaft pulley problem (Item 2): The engine and pulley system in the GMC chassis was not changed by Coachmen. If the crankshaft pulley on the 7.4 liter engine detaches, the power steering reverts to manual steering immediately and the power brakes normally revert to manual brakes after three or four brake applications. A noise would also be heard and at least one warning light on the dash would illuminate. Drivers of small cars can normally cope with such failures, but drivers with limited strength could have difficulty steering a large, heavy motorhome without power assist. However, no evidence was found

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that such failures have occurred at an abnormal rate. The warranty rate for pulley replacement due to any reason was only 0.5 percent. Also, the entire engine had been replaced in the petitioner's vehicle under warranty prior to the failure, indicating that the pulley that detached had not been installed at the factory, but by a mechanic who might have made an error.

With respect to suspension air bags (Item 3): The front suspension of the subject GMC chassis has an air bag on each side which supplements the steel coil spring. The suspension was not modified by Coachmen. If the air bag fails, the vehicle will dip and lean slightly, but not to the extend that the wheel is prevented from rotating or that it interferes with steering or braking. However, the driver may have to make a steering correction. An airbag failure could startle some drivers, but it is reasonable to assume that drivers would be able to cope with this situation, since drivers frequently make steering corrections in response to wind, road irregularities, or traffic.

The failure in the petitioner's vehicle occurred after it had accumulated approximately 50,000 miles during 6 years of use. Less than 1.0 percent of air bags were replaced under warranty by GM. These facts indicate that failures of the airbag are not occurring at an abnormally high rate.

With respect to engine exhaust manifold leaks (Item 4): A sufficient number of such failures occurred in 1981 through 1988 model year 7.4 liter engines to prompt GM to redesign the exhaust manifold and issue a service bulletin in 1987, which was not limited to Coachmen vehicles. A Preliminary Evaluation, PE88-036, had been conducted by NHTSA, but that investigation was closed on the basis that no safety-related defect trend was found. In most cases, the loud noise which resulted from exhaust manifold leakage resulted in owners having repairs made before any safety-related incident occurred. The petition does not provide a basis to change the conclusion reached during the previously completed investigation.

With respect to cruise control malfunction (Item 5): The cruise control system was manufactured by the Dana Company and installed by Coachmen. The petitioner claims that accidents nearly occurred due to the unexpected vehicle deceleration which occurred when the unit turned itself off on several occasions, but the unit did not cause unwanted engine power or acceleration. The resulting sudden deceleration would be less severe than if the brake was applied lightly or if the engine stalled. Also, the loss of power would be of a short duration, because the driver can restore power simply by depressing the accelerator pedal. Drivers of other vehicles do not normally follow so closely or are so inattentive that they would run into the rear of a vehicle merely because it coasts for a few seconds. The petitioner's theory that the use of electrically non-conductive body materials was causing the problem cannot be substantiated, as Coachmen installs separate ground wires for each electrical item.

With respect to rear disc brake calipers (Item 6): The braking system on the GMC chassis was not modified by Coachmen. Uneven braking results if the disc brake caliper piston becomes stuck or if the caliper cannot slide on the slider pins. Such problems are not uncommon on many makes of vehicles after several years of use, and most vehicles eventually require some type of braking system maintenance work. Warranty data provided by GM indicate that the applicable warranty rate was substantially less than 1 percent, and the consumer complaint record does not indicate any abnormality.

With respect to sidewall attachment, sidewall construction, and roof construction (Items 7, 8, and 9): The only Federal Motor Vehicle Safety Standard (FMVSS) currently in effect that applies to motorhome sidewall or roof construction is FMVSS No. 302—Flammability of Interior Materials. Coachmen stated that their motorhome meets the requirements of FMVSS No. 302, and no evidence to the contrary was obtained from any source. No evidence was obtained to support the petitioner's speculation that someone could be thrown through the wall as a result of vehicle swerving or an accident, or that the roof could collapse or detach. Coachmen utilized construction methods which are common throughout the motorhome industry.

In consideration of the available information, there appears to be no reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to any of the petitioner's allegations would be issued at the conclusion of a new investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 11, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91-14602 Filed 6-17-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Computer Matching Programs

AGENCY: Internal Revenue Service; Treasury Department.

ACTION: Notice.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Public Law 100-503, October 18, 1988, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of Internal Revenue Service's computer matching programs. In accordance with various provisions of section 6103 of the Internal Revenue Code (IRC) of 1986, the computer matching programs provide Federal, State, and local agencies with tax information from IRS records to assist them in administering the programs and activities described hereafter. The purpose of these programs is to prevent or reduce fraud and abuse in certain government programs and facilitate the settlement of government claims while protecting the privacy interest of the subjects of the match.

EFFECTIVE DATE: July 18, 1991.

ADDRESSES: Inquiries may be mailed to Director, Office of Disclosure, Internal Revenue Service, P.O. Box 388, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Eric Banks, Tax Law Specialist, FOI/Privacy Section, Internal Revenue Service, (202) 566-3350.

SUPPLEMENTARY INFORMATION: The nature, purposes, and authorities for IRS computer matching programs are as follows:

Matches Conducted Pursuant to IRC 6103(l)(3)

Upon written request, the Service may disclose to the head of a Federal agency, which makes, guarantees, or insures certain Federal loans, whether an applicant for such a loan has a tax delinquent account.

The disclosure of a Tax Delinquent Account Status Indicator under IRC 6103(l)(3) is made only for the purpose of, and to the extent necessary in, determining the creditworthiness of the applicant for the loan in question. The information provided is extracted monthly from the Internal Revenue Service Individual Master File (Treas./IRS System 24.030 (IMF)) located at the Internal Revenue Service, Martinsburg Computing Center (MCC), in Martinsburg, West Virginia. The IMF contains tax accounts of individuals.

There are currently no (l)(3) matching agreements in effect.

Matches Conducted Pursuant to IRC 6103(l)(7)

The Service is required, upon written request, to disclose current information from returns with respect to unearned income to any Federal, State, or local agency administering certain federally approved programs to provide:

(a) Aid to Families with Dependent Children;

(b) medical assistance;

(c) Supplemental Security Income benefits;

(d) social security benefits;

(e) unemployment compensation;

(f) Food Stamps;

(g) State administered supplementary payments; or

(h) veterans' benefits.

Information is disclosed by the Service only for the purpose of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under the aforementioned programs.

The return information is extracted on a monthly basis from the Internal Revenue Service Wage and Information Returns Processing File (Treas./IRS System 22.061 (IRP)) for the latest processing year. This file contains information returns filed by payers of income such as interest and dividends reported on Forms 1099-INT and 1099-DIV.

Federal agencies participating in (1)(7) matches, and the Privacy Act systems of records involved, are the Social Security Administration (Supplemental Security Record (SSR), HHS/SSA/OSR 90-60-0103); the Health Care Financing Administration (Income and Eligibility Verification for Medicaid Eligibility Quality Control Reviews System. HHS/HCFA/MB 09-07-2006); and the Department of Veterans Affairs (Compensation, Pension, Education and Rehabilitation Records, 58 VA 21/22; and Loan Guaranty Home, Condominium, and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records, 55VA26). Other agencies expected to participate in (1)(7) matches are:

AL Department of Human Resources Medicaid Agency.
AK Department of Health/Social Services.
AZ Department of Economic Security.
AR Department of Human Services.
CA Department of Social Services.
CA Department of Health Services.
CO Department of Social Services.
CT Department of Income Maintenance.
DE Department of Health/Social Services.
DC Department of Human Services.
FL Department of Health/Rehabilitation Services.
GA Department of Human Services.
GU Department of Public Health/Social Services.
HI Department of Social Services/Housing.
ID Department of Health/Welfare.
IL Department of Public Aid.
IN Department of Public Welfare.
IA Department of Human Services.
KS Department of Social/Rehabilitation Services.
KY Department of Social Insurance.
LA Department of Social Services.
ME Department of Human Services.
MD Department of Human Resources.
MA Department of Public Assistance.
MI Department of Social Services.
MN Department of Human Services.
MS Department of Human Services.
MS Division of Medicaid.
MO Department of Social Services.
MT Department of Social/Rehabilitation Services.
NE Department of Social Services.
NV State Welfare Division.
NH Division of Human Services.
NJ Department of Human Services.
NM Department of Human Services.
NY Department of Social Services.
NC Department of Human Resources.
ND Department of Human Services.
OH Department of Human Services.
OK Department of Human Services.
OR Department of Human Services.
PA Department of Public Welfare.
PR Department of Social Services.
PR Department of Health.
RI Department of Human Services.
SC Department of Social Services.
SD Department of Social Services.
TN Department of Human Services.
TX Department of Human Services.
UT Department of Social Services.
VT Agency for Human Services.
VI Department of Social Welfare.
VI Department of Health.
VA Department of Social Services.
WA Department of Social/Health Services.
WV Department of Human Services.
WI Department of Health/Social Services.
WY Department of Health/Social Services.

Matches conducted pursuant to IRC 6103(l)(12)

The Service shall, upon written request from the Commissioner of Social Security (SSA), disclose to SSA available filing status and taxpayer identity information from the IMF (Treas./IRS System 24.030) relating to whether any medicare beneficiary identified by SSA was a married individual for any specified year after 1986, and, if so, the name of the spouse of such individual and such spouse's taxpayer identity number (TIN), but only for purposes of, and to the extent necessary in, determining the extent to which any medicare beneficiary is covered under any group health plan. This section provides further for the redisclosure of certain taxpayer identity information by SSA to Health Care Financing Administration (HCFA) upon the written request of the Administrator of HCFA. With respect to the information redisclosed by the Commissioner of SSA, the Administrator of HCFA may further disclose said information to certain qualified employers and group health plans.

The IRS information provided is extracted monthly from the IMF (Treas./IRS System 24.030).

The Federal agencies participating in (1)(12) computer matches, and the Privacy Act systems of records involved, are the Social Security Administration (Master Beneficiary Record (HHS/SSA/OSR 09-60-0090); Master Files of Social Security Number Holders (HHS/SSA/OSR 09-60-0058); and the Earnings Recording and Self-Employment System (HHS/SSA/OSR 09-60-0059)) and the Health Care Financing Administration (Carrier Medicare Claims Records (DHHS/HCFA/BPO 09-70-0501) and Intermediary Claims Records (DHHS/HCFA/BPO 09-70-0503)).

Matches conducted pursuant to IRC 6103(m)(2)

The Service may, upon written request, disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of title 31 of the United States Code. This section also provides for the redisclosure of a taxpayer's mailing address to a consumer reporting agency, but only to allow for the preparation of a commercial credit report on the taxpayer for use by the requesting Federal agency in accordance with the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982.

The IRS information provided is extracted monthly from the IMF (Treas./IRS System 24.030).

Federal agencies participating in (m)(2) matches and the Privacy Act systems of records involved, are:

Army & Air Force Exchange Service (Dishonored Check File (AAFESO 702.23) and Individual Accounts Receivable File (AAFESO 702.34)).

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Army Community and Family Support Center (Nonappropriated Fund Account (A0314.09DACA)).
Army Finance & Accounting Center (Debt Collection System/FINCP–FF (AO 319.01 DACA)).
Equal Employment Opportunity Commission (Claim Collection Record (EEOC–10)).
Health Resources & Services Administration (Loan Repayment/ Debt Management Records System (HHS/HRSA/OA 09–15–0045)).
Health Care Financing Administration (Non-Provider Overpayment Recovery File (HHS/HCFA/BPO 09–70–0504)).
Housing & Urban Development (Accounting Records (HUD/DEPT–2)).
Marine Corps Finance Center (Debt Management and Collection System (N 07430–1)).
National Institutes of Health (IRS Address Request System (116841)).
Navy Finance Center (Debt Management and Collection System (N 07430–1)).
Navy Resale & Services Support Office (Bad Check and Indebtedness List (N 04066–1)).
Railroad Retirement Board (Railroad Unemployment and Sickness Insurance Benefit System (RRB–21); Railroad Retirement Survivor and Pensioner Benefit System (RRB–22); and Uncollectible Benefit Overpayment Accounts (RRB–42)).
Social Security Administration (Supplemental Security Record (HHS/ SSA/OSR 09–60–0103)).
U.S. Coast Guard (Military Pay and Personnel System (DOT/CG 623)).
U.S. Department of Education (Guaranteed Student Loan Program Pre-Claims Assistance System (ED 18–40–0031); Financial Management Information System (18–40–0033); Payroll, Attendance and Leave Records (18–11–0008); National Defense Student Loan File System (18–10–0025); Guaranteed Student Loan Paid Claim Files System (18–40–0028)).
U.S. Department of Health & Human Services (Administrative Claims System (HHS/OS/OGC 09–90–0062)).
U.S. Department of State (Records of the Inspector General and Automated Individual Cross-reference System (STATE 53)).
U.S. Department of Veterans Affairs (Compensation, Pension, Education and Rehabilitation Records (58 VA 21/22) and Loan Guarantee Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records (55VA26)).

Matches conducted pursuant to IRC 6103(m)(4)

Upon written request from the Secretary of Education, the Service may disclose the mailing address of any taxpayer who has defaulted on certain loans extended under the Higher Education Act or Migration and Refugee Assistance Act for purposes of locating such taxpayer to collect the loan. This section further provides for the redisclosure by the Secretary of Education of a taxpayer's mailing address to any lender, or any State or nonprofit guarantee agency, participating under the Higher Education Act, or any educational institution with which the Secretary of Education has an agreement under that Act.

Redisclosure is made by the Secretary of Education for use only by officers, employees, or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such loan programs for purposes of collecting such loans.

The IRS information provided is extracted monthly from the IMF (Treas./ IRS System 24.030).

Under IRC 6103(m)(4), the U.S. Department of Education matches the Guaranteed Student Loan Program Pre-Claims Assistance System (ED 18–40–0031) with the IMF.

Matches conducted under IRC 6103(m)(5)

Upon written request from the Secretary of Health and Human Services (HHS), the Service may disclose the mailing address of any taxpayer who has defaulted on certain loans extended under the Public Health Service Act for purposes of locating such taxpayer to collect the loan. This section also provides for the redisclosure by the Secretary of HHS of a taxpayer's mailing address to any school with which the Secretary has an agreement under the Public Health Service Act, or any eligible lender participating under such Act.

Redisclosure is made by the Secretary of HHS for use only by officers, employees, or agents of such school or eligible lender whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under the Public Health Service Act for the purposes of collecting such loans.

The IRS information provided is extracted monthly from the IMF (Treas./ IRS System 24.030).

Under IRC 6103(m)(5), the Department of Health and Human Services matches the Public Health Service and National Health Service Corps Provider Records System (HHS/HRSA/BHCDA 09–15–0037) with the IMF.

Approval of the IRS computer matching programs was granted by the Treasury Data Integrity Board on June 7, 1989.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved:

David M. Nummy,
Acting Assistant Secretary of the Treasury (Management).

[FR Doc. 91–14381 Filed 6–17–91; 8:45 am]
BILLING CODE 4830–01

Office of Thrift Supervision

Far West Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Far West Federal Savings Bank, Portland, Oregon, on June 7, 1991.

Dated: June 12, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–14392 Filed 6–17–91; 8:45 am]
BILLING CODE 6720–01–M

American Savings Association, F.A. Mt. Carmel, Illinois; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2)of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for American Savings Association, F.A., Mt. Carmel, Illinois ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–14393 Filed 6–17–91; 8:45 am]
BILLING CODE 6720–01–M

Broken Arrow Savings Association, F.A.; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d) (2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Broken Arrow Savings Association, F.A., Broken Arrow, Oklahoma ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–14394 Filed 6–17–91; 8:45 am]
BILLING CODE 6720–01–M

Citizens Homestead Federal Savings Association et al.; Replacement of Conservator with a Receiver

Notice is hereby given that, on June 7, 1991 pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator with the Resolution Trust Corporation as sole Receiver for each of the following savings associations:

Name	Location	Docket No.
1. Citizens Homestead Federal Savings Association.	New Orleans, LA	8601
2. First Federal Savings and Loan Association of Wichita Falls.	Wichita Falls, TX	8791
3. First Federal Savings, FSA.	New Braunfels, TX	8830
4. Surety Federal Savings Association.	El Paso, TX	8661

Dated: June 12, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–14395 Filed 6–17–91; 8:45 am]
BILLING CODE 6720–01–M

Far West Federal Bank, S.B.; Replacement of Conservator with Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as sole conservator with the Resolution Trust Corporation as sole Receiver for Far West Federal Bank, S.B., Portland, Oregon [OTS No. 3091], on June 7, 1991.

Dated: June 12, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–14396 Filed 6–17–91; 8:45 am]
BILLING CODE 6720–01–M

First Federal Savings Association of Tuscola; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings Association of Tuscola, Tuscola, Illinois OTS No. 8910 ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–14397 Filed 6–17–91; 8:45 am]
BILLING CODE 6720–01–M

Investors Federal Savings Bank; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Investors Federal Savings Bank, Deerfield Beach, Florida ("Association"), with the Resolution Trust Corporation a sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–14398 Filed 6–17–91; 8:45 am]
BILLING CODE 6720–01–M

Investors Savings Bank, F.S.B. Nashville, TN; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Investors Savings Bank, F.S.B., Nashville, Tennessee ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–14399 Filed 6–17–91; 8:45 am]
BILLING CODE 6720–01–M

Liberty Federal Savings Bank; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Liberty Federal Savings Bank, Montebello, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–14400 Filed 6–17–91; 8:45 am]
BILLING CODE 6720–01–M

North Jersey Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for North Jersey Federal Savings Association, Passaic, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7 1991.

Dated: June 12, 1991.

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By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-14401 Filed 6-17-91; 8:45 am]
BILLING CODE 6720-01-M

Rancho Bernardo Federal Savings Bank, San Diego, CA; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Rancho Bernardo Federal Savings Bank, San Diego, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision:
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-14402 Filed 6-17-91; 8:45 am]
BILLING CODE 6720-01-M

Remington Federal Savings Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Remington Federal Savings Association, Elgin, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 30, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision:
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-14403 Filed 6-17-91; 8:45 am]
BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 117
Tuesday, June 18, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, June 21, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1992 Federal Reserve Bank budget objective.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 14, 1991.
William W. Wiles,
Secretary of the Board
[FR Doc. 91-14579 Filed 6-14-91; 1:14 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND PLACE: Approximately 10:30 a.m., Friday, June 21, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 14, 1991.
William W. Wiles,
Secretary of the Board.
[FR Doc. 91-14580 Filed 7-7-7?; 1:14 pm]
BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, June 18, 1991.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Joint Presentation by the American Association of Advertising Agencies, the Association of National Advertisers, and the American Advertising Federalion on the topic of Self-regulation.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Jansen, Office of Public Affairs: (202) 326-2178; Recorded Message: (202) 326-2711.

Donald S. Clark,
Secretary.
[FR Doc. 91-14651 Filed 6-15-91; 3:17 pm]
BILLING CODE 6750-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE-91-18

TIME AND DATE: Tuesday, July 2, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Inv. 303-TA-21 and 731-TA-519 (Preliminary) (Gray portland cement and cement clinker from Venezeula)—briefing and vote.
6. Inv. 731-TA-520-521 (Preliminary) (Carbon steel butt-weld pipe fittings from the People's Republic of China and Thailand)—briefing and vote.
7. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: June 11, 1991.
Kenneth R. Mason,
Secretary.
[FR Doc. 91-14626 Filed 6-14-91; 1:18 pm]
BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 17, 24, July 1, and 8, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of June 17

Wednesday, June 19

1:30 p.m.
Briefing on Shutdown Risk Status (Public Meeting)

Thursday, June 20

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Policy Statement on Economic Performance Incentive Regulation (Tentative)
b. Revision of 10 CFR Part 55 to Require Compliance with Fitness-for-Duty Programs and of the Commission's Enforcement Policy (Tentative)
c. 100 Percent Fee Recovery—Final License and Annual Fee Rule (Tentative)

Week of June 24—Tentative

Friday, June 28

8:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 1—Tentative

Wednesday, July 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 8—Tentative

Thursday, July 11

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION:

By a vote of 4-0 on June 11, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rule that "Discussion of Management-Organization and Internal Personnel Matters" (Closed—Ex. 2 and 6), be held on June 11, and on less than one week's notice to the public.

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By a vote of 4–0 on June 12, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation on Joint Motion to Stay or Vacate License Issuance by Petitioners in Shoreham Proceeding; and Final Amendments to 10 CFR Parts 2 and 35 on Quality Management Program and Reportable Events" (Public Meeting), be held on June 12, and on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: June 13, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–14629 Filed 6–14–91; 1:17 pm]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:36 p.m. on Tuesday, June 11, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of failed thrift institutions, and (2) the sale of assets.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., and concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, DC.

Dated: June 13, 1991.

RESOLUTION TRUST CORPORATION.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91–14545 Filed 6–13–91; 3:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following open meeting during the week of June 17, 1991.

An open meeting will be held on Thursday, June 20, 1991, at 10:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Thursday, June 20, 1991, at 10:00 a.m., will be:

The Commission will hear oral arguments on appeals by Swartwood, Hesse, Inc., a registered broker-dealer, T. Marshall Swartwood, the firm's president, and Richard E. Moyer, a senior vice-president, from an administrative law judge's initial decision. For further information, please contact Richard E. Conser at (202) 272–3981.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Edward Pittman at (202) 272–2400.

Dated: June 13, 1991.

Jonathan G. Katz,

Secretary.

By:

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14625 Filed 6–14–91; 1:15 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 56, No. 117
Tuesday, June 18, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN-91-006]

Revisions of User Fees for Cotton Classification, Testing and Standards

Correction

In proposed rule document 91-10082 beginning on page 19815 in the issue of Tuesday, April 30, 1991, make the following corrections:

1. On page 19815, in the second column, under **Fees for Classification Under the Cotton Statistics and Estimates Act of 1927**, in the fifth line from the bottom, "5" should read "15".

2. On page 19817, in the second column, in the table, the Current and Proposed Fee entries fifth from the bottom should read respectively "28.2" and "6.00".

3. On the same page, in the third column, in the table, the fourth Current and Proposed Fee entries should respectively remain blank and read "6.00".

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 910235-1035]

RIN No. 0693-AA89

Proposed Family of Federal Information Processing Standards on Modems for Data Communications Use on Telephone-Type Circuits

Correction

In notice document 91-9025 beginning on page 15583, in the issue of Wednesday, April 17, 1991 make the following corrections:

On pages 15584, 15585, and 15586, in the first column; on pages 15587, 15588, and 15589, in the third column; and on page 15591 in the second column in paragraph 12, in the fifth line "October 17, 1991," should read "_____ (six (6) months after date of publication of final document in the **Federal Register**)".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 3

[Docket No. 910246-1046]

RIN 0651-AA43

Changes in Patent and Trademark Assignment Practice

Correction

In proposed rule document 91-10641 beginning on page 21641 in the issue of Friday, May 10, 1991, make the following corrections:

1. On page 21642:

a. In the second column, in the last line at the bottom of the page, "or" should read "of".

b. In the third column, in the first paragraph, in the eighth line, insert a comma after "paper".

c. In the same column, in the second paragraph, in the second line from the bottom, "return" should read "returned".

2. On page 21644, in the 1st column, in the 2d paragraph, in the 16th line from the bottom, "office" should read "Office".

§ 1.12 [Corrected]

3. On page 21645, in the first column, in § 1.12(d), in the sixth line, "real" should read "reel".

§ 3.73 [Corrected]

4. On page 21647, in the 3rd column, in § 3.73(b), in the 13th line, insert a period after "Office".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army

Availability; Pueblo Depot Activity, CO

Correction

In notice document 91-12798 appearing on page 24792 in the issue of Friday, May 31, 1991, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 206, 207, and 314

[Docket Nos.88P-0380 and 89P-0163]

Imprinting of Oral Solid Dosage Form Drug Products

Correction

In proposed rule document 91-11481 beginning on page 22370 in the issue of Wednesday, May 15, 1991, make the following corrections:

On page 22371, in the third column, under *E. Submission of the NDMA Petition*, in the fifth line from the end of the paragraph, "FDS" should read "FDA"; and in the fourth line from the end, insert "OTC" after "dosage".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 701

[T.D.8349]

RIN 1545-AP21

Financing of Presidential Election Campaigns

Correction

In rule document 91-11206 beginning on page 21596, in the issue of Friday, May 10, 1991, make the following correction:

§ 701.9006-1 [Corrected]

On page 21599, in the first column, the number in the section heading, "§ 701.906-1" should read "§ 701.9006-1".

BILLING CODE 1505-01-D

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federal register

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Part II

Federal Policy for the Protection of Human Subjects; Notices and Rules

Office of Science and Technology Policy
Department of Agriculture
Department of Energy
National Aeronautics and Space Administration
Department of Commerce
Consumer Product Safety Commission
International Development Cooperation Agency
Agency for International Development
Department of Housing and Urban Development
Department of Justice
Department of Defense
Department of Education
Department of Veterans Affairs
Environmental Protection Agency
Department of Health and Human Services
Office of the Secretary
Food and Drug Administration
National Science Foundation
Department of Transportation

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OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Federal Policy for the Protection of Human Subjects

AGENCY: Office of Science and Technology Policy, Executive Office of the President.

ACTION: Notice of Federal Policy for Protection of Human Subjects.

SUMMARY: The Office of Science and Technology Policy has accepted the Final Federal Policy for the Protection of Human Subjects in the form of the common rule promulgated in this issue of the **Federal Register**. The common rule was developed by the Interagency Human Subjects Coordinating Committee of the Federal Coordinating Council for Science, Engineering and Technology, in response to public comment on the notice of proposed policy for Department and Agency Implementation published in the **Federal Register** on November 10, 1988 (53 FR 45660).

Note that the Central Intelligence Agency is required by Executive Order 12333 to conform to the guidelines issued by the Department of Health and Human Services (HHS).

ADDRESSES: Requests for additional information should be addressed to Dr. Joan P. Porter, Interagency Human Subjects Coordinating Committee, Building 31, room 5B59, Bethesda, Maryland 20892. Telephone: (301) 496–7005.

D. Allan Bromley,

Director, Office of Science and Technology Policy, Executive Office of the President.

[FR Doc. 91–14257 Filed 6–17–91; 8:45 am]

BILLING CODE 3170–01–M

DEPARTMENT OF AGRICULTURE

7 CFR Part 1c

DEPARTMENT OF ENERGY

10 CFR Part 745

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1230

DEPARTMENT OF COMMERCE

15 CFR Part 27

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1028

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 225

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 60

DEPARTMENT OF JUSTICE

28 CFR Part 46

DEPARTMENT OF DEFENSE

32 CFR Part 219

DEPARTMENT OF EDUCATION

34 CFR Part 97

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 16

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 26

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

NATIONAL SCIENCE FOUNDATION

45 CFR Part 690

DEPARTMENT OF TRANSPORTATION

49 CFR Part 11

Federal Policy for the Protection of Human Subjects

AGENCIES: United States Department of Agriculture; Department of Energy; National Aeronautics and Space Administration; Department of Commerce; Consumer Product Safety Commission; International Development Cooperation Agency, Agency for International Development; Department of Housing and Urban Development; Department of Justice; Department of Defense; Department of Education; Department of Veterans Affairs; Environmental Protection Agency; Department of Health and Human Services; National Science Foundation; Department of Transportation.

ACTION: Final rule.

SUMMARY: This document sets forth a common Federal Policy for the Protection of Human Subjects (Model Policy) accepted by the Office of Science and Technology Policy and promulgated in regulation by each of the listed Departments and Agencies. A Proposed Federal Policy for the Protection of Human Subjects published November 10, 1988 (53 FR 45661) has been revised in response to public comments. The Policy as revised is now set forth as a common final rule. For related documents, see other sections of this **Federal Register** part.

EFFECTIVE DATE: These regulations shall become effective on August 19, 1991. The Department of Education regulations (34 CFR part 97) take effect either August 19, 1991, or later if Congress takes certain adjournments. If you want to know the effective date of the Department of Education regulations in 34 CFR part 97, call or write Mr. Edward Glassman, Office of Planning, Budget and Evaluation, U.S. Department of Education, room 3127, 400 Maryland Avenue SW., Washington, DC 20202–4132. A document announcing the effective date of the Department of Education regulations will be published in the **Federal Register**. Institutions currently conducting or supporting research in accord with Multiple Project Assurances of Compliance (MPAs) approved by and on file in the Office for Protection from Research Risks (OPRR) in the Department of Health and Human Services may continue to do so in accord with the terms and conditions of their MPAs. See Supplementary Information for further details.

FOR FURTHER INFORMATION CONTACT: Dr. Joan P. Porter, (301) 496–7005. Office for Protection from Research Risks, National Institutes of Health, Building 31, room 5B59, Bethesda, MD 20892.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Requirements: Sections _____.103(a); _____.103(b); _____.103(b)(4)(i); _____.103(b)(4)(iii); _____.103(b)(5); _____.103(f); _____.109(d); _____.113; _____.115(a); _____.116; and _____.117 contain information collection requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. HHS has submitted the request for approval to OMB on behalf of all Departments and Agencies governed by this final rule and has published elsewhere in this issue of the **Federal Register** a request for OMB expedited review and approval of the information collection requirements. OMB has assigned OMB control number 9999–0020; however, the information collection requirements will not become effective until OMB has approved them. Unless a notice is published to the contrary, the public may assume that OMB has approved the information collection requirements during the 60-day period before the final rule becomes effective.

For further information regarding OMB approval of the information collection, contact Ms. Shannah Koss-McCallum, OMB, (202) 395–7316.

Compliance Dates: Institutions that hold MPAs are permitted and encouraged to apply all provisions of this final rule as soon as it is feasible to do so. They are urged not to wait for the negotiation and approval of a revised MPA to begin to function in accord with this rule. The OPRR, acting on behalf of the Secretary, Department of Health and Human Services (HHS), will continue to renegotiate and approve MPAs in the normal periodic cycle of renewal.

Institutions that are not operating under an MPA approved by OPRR will be required to negotiate an Assurance of Compliance with the supporting Department or Agency, prior to initiating research involving human subjects.

Institutions with MPAs approved by and on file with HHS will be allowed a "grace period" of sixty days after the

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submission date for an application seeking HHS support, to provide certification of Institutional Review Board (IRB) review and approval. Exceptions may occur for reasons of Congressional mandate or special program or review requirements. In such cases, institutions will be advised that certification must be sent at an earlier time.

Background

This notice sets forth as a common rule requirements for the protection of human subjects involved in research conducted or funded by the following Federal Departments and Agencies: United States Department of Agriculture; Department of Energy; National Aeronautics and Space Administration; Department of Commerce; Consumer Product Safety Commission; International Development Cooperation Agency, Agency for International Development; Department of Housing and Urban Development; Department of Justice; Department of Defense; Department of Education; Department of Veterans Affairs; Environmental Protection Agency; National Science Foundation; Department of Health and Human Services and the Department of Transportation. Each of these Departments and Agencies have adopted the common rule as regulations to be codified as listed above.

The Food and Drug Administration (FDA) Final Rule to modify current regulations to conform to the Federal Policy are presented elsewhere in this issue of the **Federal Register**. Existing FDA regulations governing the protection of human subjects share a common core with the Federal Policy and implement the fundamental principles embodied in that policy. The agency is committed to being as consistent with the final Federal Policy as it can be, given the unique requirements of the Federal Food, Drug, and Cosmetic Act under which FDA operates; and the fact that FDA is a regulatory agency that rarely supports or conducts research under its regulations.

Adoption of the common Policy by Federal Departments and Agencies in regulatory form will implement a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research which was established on November 9, 1978, by Public Law 95–622. One of the charges to the President's Commission was to report biennially to the President, the Congress, and appropriate Federal Departments and Agencies on the protection of human subjects of biomedical and behavioral research. In carrying out that charge, the President's Commission was directed to conduct a review of the adequacy and uniformity (1) of the rules, policies, guidelines, and regulations of all Federal Departments and Agencies regarding the protection of human subjects of biomedical or behavioral research which such Departments and Agencies conduct or support, and (2) of the implementation of such rules, policies, guidelines, and regulations by such Departments and Agencies, such review to include appropriate recommendations for legislation and administrative action.

In December 1981 the President's Commission issued its First Biennial Report on the Adequacy and Uniformity of Federal Rules and Policies, and their Implementation, for the Protection of Human Subjects in Biomedical and Behavioral Research, Protecting Human Subjects.

In accord with Public Law 95–622, each Federal Department or Agency which receives recommendations from the President's Commission with respect to its rules, policies, guidelines or regulations, must publish the recommendations in the **Federal Register** and provide an opportunity for interested persons to submit written data, views and arguments with respect to adoption of the recommendations. On March 29, 1982 (47 FR 13282–13305), the Secretary, HHS, published the recommendation on behalf of all affected Departments and Agencies.

In May 1982 the Chairman of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET) appointed an *Ad Hoc* Committee for the Protection of Human Research Subjects under the auspices of the FCCSET. The Committee, chaired by Dr. Edward N. Brandt, Jr., Assistant Secretary for Health, Health and Human Services (HHS), was composed of representatives and ex-officio members of the affected Departments and Agencies. In consultation with the Office of Science and Technology Policy (OSTP) and the Office of Management and Budget, the *Ad Hoc* Committee, after considering all public comments, developed responses to the recommendations of the President's Commission. After further review and refinement, OSTP responded on behalf of all the affected Department and Agency Heads to the recommendations of the President's Commission, including the recommendation that:

> The President should, through appropriate action, require that all federal departments and agencies adopt as a common core the regulations governing research with human subjects issued by the Department of Health and Human Services (codified at 45 CFR Part 46), as periodically amended or revised, while permitting additions needed by any department or agency that are not inconsistent with these core provisions.

The *Ad Hoc* Committee agreed that uniformity is desirable among Departments and Agencies to eliminate unnecessary regulation and to promote increased understanding and ease of compliance by institutions that conduct federally supported or regulated research involving human subjects. Therefore, the *Ad Hoc* Committee developed a Model Federal Policy, which applies to research involving human subjects conducted, supported or regulated by Federal Departments and Agencies. In accordance with the Commission's recommendation, the Model Federal Policy is based on subpart A of the regulations of HHS for the protection of human research subjects (45 CFR part 46). The Proposed Model federal Policy developed by the *Ad Hoc* Committee was modified by OSTP to enhance uniformity of implementation among the affected Federal Departments and Agencies and to provide consistency with other related policies. The revised Model Federal Policy was concurred in by all affected Federal Departments and Agencies in March 1985.

An Interagency Human Subjects Coordinating Committee was chartered in October 1983 under the auspices of FCCSET to provide continued interagency cooperation in human subject research once the *Ad Hoc* Committee had completed its assignment. It is chaired by the Director of the Office for Protection from Research Risks, HHS, and composed of representatives of all Federal Departments and Agencies that conduct, support or regulate research involving human subjects. The Committee is advisory to Department and Agency Heads and, among other responsibilities, will evaluate the implementation of the Federal Policy and recommend modification as necessary.

On June 3, 1986, OSTP published for public comment in the **Federal Register** (51 FR 20204) a Proposed Model Federal Policy for Protection of Human Subjects and Response to the First Biennial Report of the President's Commission. Over 200 written comments were received concerning the publication. The Interagency Human Subjects Coordinating Committee considered these comments in the revision of a common Federal Policy proposed as a common rule on November 10, 1988, for

adoption by each of the Departments and Agencies listed. Response to the more than 60 public comments, discussion of revisions made to that publication and the final common rule follow.

Summary of Public Comments Received in Response to the November 10, 1988, **Federal Register** publication (53 FR 45661) of the Notice of Proposed Common Rulemaking, Federal Policy for the Protection of Human Subjects for 16 Federal Departments and Agencies.

In response to the November 10, 1988, publication, 66 commentators responded within the comment period, which was extended to February 8, 1989. The source of comments included institutional offices of sponsored research, departmental deans and chairs and other staff of academic institutions, institutional review board members and staff, principal investigators, and drug company representatives. Although there were 66 separate commentators, several responses were prepared by organizations each representing a consortium of institutions which had been polled concerning the notice of proposed common rulemaking. For example, the Council on Governmental Relations, the Association of American Medical Colleges, Public Responsibility for Medicine and Research, Association of American Universities, the American Medical Association and the Consortium of Social Science Associations offered comment on behalf of their member institutions.

In general, commentators endorsed the efforts of the Office of Science and Technology Policy and the Federal Departments and Agencies to develop a Common Rule for the protection of human subjects.

The majority of the comments dealt with three points in the proposed common rule, as follows:

Section _____.103(b)(5) concerns those procedures set forth in Assurances of Compliance for research conducted or supported by a federal Department or Agency. As proposed, this section required that an Assurance should include:

> Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head (i) any unanticipated problems or scientific misconduct involving risks to human subjects or others (ii) any instance of serious or continuous noncompliance with this policy or the requirements of determinations of the IRB and (iii) any suspension or termination of IRB approval.

Some commentators indicated that they believed the proposed policy would inappropriately require IRBs to notify Department and Agency heads of scientific misconduct involving risks to human subjects and others and that the scientific fraud and misconduct regulations [September 19, 1988, Responsibilities of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science (53 FR 36344)] create duplicate and potentially conflicting requirements. Several suggested that the proposed rules on misconduct should leave undisturbed other existing regulatory schemes such as human subjects regulations of the Department of Health and Human Services at 45 CFR part 46. Other commentators indicated that the IRB should not have a "police" role and that its members are potentially legally liable if they did or did not report certain misconduct activities. Concern was also noted about additional responsibility and work placed on the IRB.

Several commentators requested clarification of § _____.103(b)(5)(i) in the terms "misconduct" and "unanticipated" problems. Respondents suggested that scientific misconduct implies falsification of data, plagiarism, abuse of confidentiality, dishonesty in presenting publications, legal violations and a range of other activities which should be addressed in a separate policy involving broader institutional considerations than those appropriate for an IRB. In addition, some respondents suggested that actual "harm" rather than "possible risk" to human subjects be reported to Departments and Agencies.

Concerning § _____.103(b)(5)(iii) two commentators suggested that IRBs would be reluctant to suspend IRB-approved research for administrative infractions (such as tardiness of response to an IRB) if such suspension must be reported to an Agency. One commentator requested that revisions be made so that only suspensions or terminations for serious or continuing noncompliance with the policy or determination of the IRB need be reported to the Department or Agency head. In that way, IRBs would use suspension or termination as a administrative tool and continue to keep Departments and Agencies informed of serious problems.

One specific set of comments addressed all aspects of this section by suggesting deletion of reporting requirements to Department and Agency Heads altogether. Rather, reports to IRBs and institutional officials would be required concerning unanticipated problems involving risks to human subjects which are substantial; proven scientific fraud; instances of substantial or continuing noncompliance with the policy or the requirements or determination of the IRB; or any suspension or termination which is more more than minor or temporary.

Response

In view of the comments and the policy concerning fraud and misconduct that is now under deliberation, the Interagency Human Subjects Coordinating Committee revised § _____.103(b)(5) as follows:

> Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB and (ii) any suspension or termination of IRB approval.

The President's Commission recommended in its 1981 *First Biennial Report* that institutional assurances should specify how "misconduct" should be reported and investigated (pp. 77–82, Recommendations 7 and 8). Since the time of the publication of the 1981 report, however, the issue of identification and reporting of misconduct has been deliberated in many other contexts and has included consideration of more than "misconduct involving risks to human subjects." In August 1989 the Department of Health and Human Services published a final rule announcing responsibilities of awardee and applicant institutions for dealing with and reporting possible misconduct in science [53 CFR 32446]. The Committee agrees that in the current context the inclusion of the term "misconduct" in the Federal Policy is confusing and misleading because other policy development efforts giving specific meaning to scientific misconduct are ongoing. Therefore, the term is deleted from this document.

The revised language is closer to that of the original provision in the Department of Health and Human Services regulations. The Interagency Committee wishes to clarify that it was never the intention of the Policy to require IRBs to report directly to Department and Agency Heads. Assurances of Compliance are negotiated between Departments or Agencies and awardee institutions. Assurances allow institutions to specify how reporting to Department and Agency Heads will take place. Reporting is the responsibility of the institutional official identified in each Assurance.

Further, the Committee wishes to clarify that "unanticipated problems" in this context includes serious and unexpected reactions to biologicals,

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drugs, or medical devices. Institutions have flexibility to establish channels of reporting to meet reporting requirements of Departments and Agencies. In addition, the Committee believes it is important that suspension or termination, for whatever reason, be reported to the Department and Agency Heads.

The Sixty Day "Grace" Period

Comment

The section of the proposed Policy and Final Rule eliciting the most comments was 103(f) regarding submission of certification. That section is as follows:

> Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under §§ _____.101 (b) or (i). An institution with an approved assurance shall certify research covered by the assurance and by § _____.103 of this policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by § _____.103 of the policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

Most of the commentators (50) addressed the need for a grace period between the time of submission of an application for support to a Department and Agency and submission of certification by the IRB of review and approval of the proposal. A 60-day grace period was allowed in the previous Department of Health and Human Services Regulations for the Protection of Human Subjects. Under this provision, institutions with Multiple Project Assurances on file with HHS had sixty days to complete IRB review and approval and to notify HHS. This period of time roughly corresponded to the time between receipt of the application and initial scientific merit review. The groups evaluating the application for scientific merit need certification of the fact that an appropriate IRB has determined that human subject protections are adequate.

The commentators cited many reasons why a grace period is important for orderly institutional review and for protection of human subjects. Many of the comments on this section requested that the grace period be reinstated in the regulations. In brief, respondents noted that if the grace period is not allowed, investigators would be required to submit proposals to IRBs about two months earlier than at present. IRBs would be convened into emergency sessions or required to meet more frequently. Pressure to grant approval would increase.

Some commentators noted that institutions that have no Multiple Project Assurance on file with HHS are given 30 days to review and certify upon HHS request. If Multiple Project Assurance holders have no grace period, they may be at a disadvantage in time permitted for preparation and institutional review of their applications as compared to the time permitted institutions without a Multiple Project Assurance. Also, data for competitive renewals is often added just before submission to HHS so that the most current progress under the original award can be reported. If a grace period is not offered, applications may not contain information vital for appropriate peer review.

Another concern raised was that some researchers are required to modify their proposals several times before submission. The current 60-day period allows the IRB to review the final submission carefully.

One commentator indicated that the proposed provision was acceptable to the institution.

Response

Many Federal Departments and Agencies do not have application review schedules that correspond to those of HHS. A 60 day grace period is without relevance to their review systems. At the time of publication of the proposed common rule, the Interagency Committee noted that HHS intended to retain a "grace period" for institutions that have Multiple Project Assurances and announce the period through advisories that are routinely received by institutions. HHS has carefully considered the public comments and will ordinarily retain the 60-day grace period in its administrative procedures. In some programs, such as AIDS-related research, HHS has modified the receipt and review schedules in accordance with a Congressional mandate.

The Departments and Agencies, other than HHS, adopting the common rule are aware of the concerns of the institutions and will provide as much flexibility to IRBs as possible in the orderly processing of applications for support. To require a 60-day grace period or any standard grace period for all Departments and Agencies would require far-reaching changes in the review and processing systems of these organizations. Institutions will be advised of Department and Agency procedures through routine publications. Consequently, the language in the final rule remains unchanged.

Composition of the IRB

Comments

Section _____.107 of the Policy deals with composition of the IRB. Several points made by commentators are as follows:

In § _____.107(a) there is the requirement that if an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects. The HHS regulations at 45 CFR part 46 promulgated in 1981 utilized a different standard, i.e., "if an IRB regularly reviews research that involves a vulnerable category of subjects, including but not limited to subjects covered by other subparts of [45 CFR part 46], the IRB shall include one or more individuals who are primarily concerned with the welfare of these subjects." The commentator indicated that his institution would retain previous standards, because advocates for special populations have been of great benefit in the IRB's decision-making process.

Another commentator wrote that in her institution, full committee review is required when a vulnerable population is involved; all committee members are advocates for subjects whether or not they themselves are involved in a vulnerable population. Adding new members would make the committee too large to be workable, she wrote.

The majority of the comments on this section were directed to the departure proposed by the Department of Education at 34 CFR part 97.107(a). The proposed departure was based on a concern for protection of mentally disabled persons and handicapped children. The departure would have provided that, for research conducted or supported by the Department of Education," when an IRB reviews research that deals with handicapped children or mentally disabled persons, the IRB shall include at least one person primarily concerned with the welfare of the research subject." The remainder of the departure reiterated the common rule's provision which required institutions to consider representation on the IRB of persons who are knowledgeable about and experienced in working with certain vulnerable subjects if the IRB regularly reviews research involving those vulnerable subjects. Twenty-one institutions commented on this proposed departure. The majority of these comments were opposed to the proposed departure.

Some commentators, while supporting the proposed language in § _____.107, stated their belief that the departure was not necessary because the policy in § _____.107 already addresses representation of the special concerns of vulnerable subjects on the IRB. Thus, the rights of handicapped children and mentally disabled persons should be represented on any IRB that regularly reviews proposals involving those individuals, and there is no constructive advantage to emphasizing these two categories of subjects. Such an emphasis was seen as a precedent with the potential for discrimination against other categories of vulnerable subjects. When special expertise is required, IRBs already have the option and the obligation to seek informed consultants, respondents noted. One commentator stated, however, "If in future staffing of our IRB, someone with expertise in this area is available and willing to serve, we would be happy to encourage such participation."

Some commentators objected to the lack of consistency among Federal Departments and Agencies and cited the Department of Education's proposed departure as being inconsistent with the purpose of the common rule.

One commentator suggested that only when the IRB regularly reviews research that deals with handicapped children or mentally disabled persons should the IRB include at least one person primarily concerned with the welfare of the research subjects. Otherwise, consultation should take place when appropriate. Another suggestion was that handicapped children and mentally disabled persons be added to the list of examples of vulnerable subjects for which an IRB that regularly reviews research might want to consider inclusion of one or more members who are knowledgeable about and experienced in working with these subjects.

Response

The Department of Education has considered these comments carefully and has decided to withdraw the departure to the common rule and to adopt the common rule as promulgated in this document. The Secretary, however, continues to believe that there is a special need to protect handicapped children and mentally disabled persons. Thus, the Secretary strongly urges institutions to included at least one person who is primarily concerned with the welfare of the research subjects whenever the research involved handicapped children or mentally disabled persons. While the Secretary agrees to the common rule provision regarding IRB representation as a general matter, the Secretary has decided to address the concerns underlined by the proposed departure on a programmatic basis under the Department of Education's programs of the National Institute on Disability and Rehabilitation Research (34 CFR parts 350 and 356). Accordingly, the Secretary amends the program regulations for these programs in a document published in another section of this **Federal Register** part.

In light of the concern of the Department of Education that these groups were not clearly identified as vulnerable populations, "handicapped" has been added to the illustrative list in § _____.107.

Comments on Other Sections

Section _____.101 explains the application of the Policy. Section _____.101(b) describes categories of research that are exempt from the Policy.

Comment

Several commentators indicated that the language and intent of this section was helpful. One commentator indicated that he believes the section was written primarily for medical and health research and should not apply to involvement of human subjects for general business interviews or surveys. The commentators recommended the exemption of information gathering related to business. Further comment suggested that all minimal risk research be exempt from the regulations.

Response

The Committee believes that the exemptions are sufficiently clear so that all types of research, not just biomedical or health research, may be reviewed using the specified criteria. In addition, the Committee has indicated that the exemptions of § _____.101(b) of the Policy provides for the exemption of certain research including much of the research used by business (e.g., survey research) in which there is little or no risk.

Section _____.101(b)(2)

Comment

Section _____.101(b)(2) is an exemption for research involving the use of educational tests, survey procedures or observation of public behavior. To paraphrase, this type of research is exempt unless information is recorded in a manner such that subjects can be identified and disclosure of the responses outside the research could place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. Three commentators expressed concern that the additional subparts B, C, and D of the HHS regulations for the protection of human subjects are not part of the Federal policy. They noted that institutions with assurances with HHS will be required to apply provisions of those subparts in research they support or conduct, while other Federally-supported research would not be subject to the subpart requirements.

Others commenting on § _____.101(b)(2) indicated that research that could involve sensitive data could place the subjects at risk, even if information is not recorded in such a manner that human subjects can be identified and should not be exempt from provisions of the Policy. One respondent noted that one IRB reviews this type of research even if an exemption is permitted by the regulations. Another indicated that this section will exclude from normally exempt educational, survey, interview or observational research any instances wherein disclosure of subjects responses could be damaging to the subject's reputation. Because reputation is a subjective term that is difficult to define operationally, the commentator suggested that the wording be changed to limit exceptions to specific risks of "professional and sociological damage."

Response

The Interagency Committee may at a later date wish to consider incorporation or provisions of the other subparts of the HHS regulations into federal policy. However, such considerations should not delay publication of basic protections for all human subjects. At this time, institutions sponsoring research under HHS-approved assurances will adhere to provisions of all the subparts of 45 CFR part 46. A footnote has been added to § _____.101(b) indicating that

Institutions with HHS-approved assurances on file will abide by provisions of 45 CFR 46 subparts A–D. Some of the other

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Departments and Agencies have incorporated all provisions of 45 CFR 46.101(b) into their policies and procedures as well. However, the exemptions at 45 CFR 46.101(b) do not apply to research involving prisoners, fetuses, pregnant women, or human in vitro fertilization, subparts B and C. The exemption at 45 CFR 46.101(b)(2) for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observation of public behavior when the investigator(s) do not participate in the activities being observed.

A Notice to amend subpart D, 45 CFR 46.401(a)(2)(b) to renumber exemptions to permitted and not permitted to conform the subpart D reference to the renumbered exemptions in the Common Rule is published elsewhere in this issue of the Federal Register.

Under this footnote, for research involving children, institutions that have multiple project assurances on file with OPRR will not be able to use all provisions in the exemption in § _____.101(b)(2). However, the educational tests basis for the exemption contained in § _____.101(b)(2) will still be available to institutions conducting research involving children. In developing the common rule, a number of HHS exemptions were consolidated, including the HHS educational tests exemption. The educational tests exemption has been available for use under subpart D of the HHS regulations, Additional Protections Involving Children. Thus, the footnote to the common rule continues the provision that existed under the previous regulations.

Some institutions do not choose to permit exemptions even if they are permitted by the policy. This is their prerogative, and assurances of compliance incorporate provisions for utilizing exemptions.

Section _____.101(b)(3)

Comment

Section _____.101(b)(3) described an exemption for research involving the use of educational tests, survey procedures, interview procedures, or observation of public behavior that is not exempt under the exemption in § _____.101(b)(2) if human subjects are elected or appointed public officials or candidates for public office or if Federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter. Two commentators recommended deletion of this exemption because confidentiality considerations are not the only purpose of IRB review. Other human subjects protections issues might need to be considered in research that is not exempt by the criteria described in § _____.101(b)(2). Furthermore, the commentators explained that IRBs and institutions will not know that Federal statutes afford these protections, and inconsistency and confusion is likely.

Response

At present the only statutes that meet the criteria in § _____.101(b)(3)(ii) of which the Committee is aware are those for research conducted or supported by the Department of Justice under 42 U.S.C. 3789g, and certain research conducted or supported by the National Center for Education Statistics of the Department of Education under 20 U.S.C. 1221e–1. The Department of Justice's Office of Justice Programs (OJP) has several constituent offices that conduct research that would fall under § _____.101(b)(3). The law governing OJP research activities, 42 U.S.C. 3789g(a), provides that

> Except as provided by Federal law other than this chapter, no officer or employee of the Federal Government, and no recipient of assistance under the provisions of this chapter shall use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this chapter. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

The law governing research conducted by the National Center for Education Statistics under 20 U.S.C. 1221e–1 provides that data collected by the National Center for Education Statistics may not be used for any purpose other than the statistical purpose for which the data were collected and establishes further protections regarding that data, including a provision that they

> shall be immune from legal process, and shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding. 20 U.S.C. 1221e–1(d)(4)(B).

It is the responsibility of a Federal Department or Agency to assist the institutions proposing to conduct a research project which it supports in determining if the research is subject to the provisions of the Federal statutes meeting the criteria in § _____.101(b)(3)(ii).

Section _____.101(h)

Comment

Section _____.101(h) discusses research that takes place in foreign countries covered by the policy. One respondent endorsed this section. Another found the provision somewhat ambiguous and suggested that it be made clear that a researcher may either comply with the policy provision or may substitute the foreign procedure in lieu of the policy only following a determination by the Department or Agency Head that the foreign procedures are at least equivalent to those required in the policy. Another comment reflected that it may be difficult at the time of submitting a research proposal to a supporting Department or Agency to know if a foreign country's guidelines provide protections which are at least equivalent to the policy; the Interagency Committee or Department or Agency Heads should publish regulations or advisories indicating which are considered "equivalent."

Response

The Interagency Committee concurs that evaluation of other country's protection requirements in comparison with the policy will be an important Committee initiative and it will consider publication of notices that reflect the decisions of Department and Agency Heads.

Also in § _____.101(h), reference to Helsinki as amended in 1983 is now changed to Helsinki as amended in 1989.

Section _____.102 Definitions

Comment

Section _____.102 includes the definition section in the Federal Policy. In this section, one commentator asked for a definition of "principal investigator," since that individual bears responsibility for human subject protection. Another commentator suggested adding a definition of "scientific fraud."

Another suggestion was to take into account First Amendment concerns involving freedom of speech in situations where social scientists interview foreign and domestic government and private individuals to obtain information. Another commentator suggested that the definition of human subject in § _____.102(f) should make clear that with, respect to interview research, a distinction should be made between information provided by a person which relates to past or present events or the actions of others, as opposed to the attitudes or actions of the interviewees themselves; only in the latter case should the interviewee constitute a human subject. Also, another letter explained that in some cultures, ancestral research would not come under the definition of "human subject" because individuals were deceased. However, this type of research might be distressing to living family members.

Section _____.102(b) includes the definition of "institution." One commentator proposed that the definition of "private entity" should also be included.

Section _____.102(h) includes the definition of "IRB approval." Three commentators suggested that the term "at the institution" was not appropriate in the definition of approval as "* * * determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements." Much of the research of an institution is off-site and thus seemed to be in technical violation under the proposed language.

Response

The Interagency Committee agrees that the principal investigator is a key person for protection of human subjects and bears a broad responsibility for implementation of the requirements. The term "investigator" is used in the policy, but not "principal investigator" and no definition is provided because the responsibility for protecting human subjects is shared by the entire research team. No definition of scientific fraud has been included, and the term has been deleted from § _____.103(b)(5), as described previously.

The Committee believes that the comment on § _____.102(f), definition of "human subject," about interview content is addressed through application of exemption criteria in § _____.101(b)(2) as well as in the precise wording of the definition itself.

In response to the comments about the phrase "at the institution" in the definition of IRB approval in § _____.102(h), the Interagency Committee responds that there are instances in which the IRB has approval authority where the research is not conducted at the institutional site. The policy at § _____.114, Cooperative Research, is an important cross-reference.

Establishment and approval of other off-site IRBs may be required in some circumstances in which another institution is involved in research. The Department or Agency Heads reserve the authority to approve cooperative arrangements. The phrase "at the institution" in the definition of IRB approval should be interpreted to mean field sites and other off-site facilities over which an institution has jurisdiction.

Section _____.103 Assurances

Comment

Section _____.103 explains how compliance is assured under this Policy in research conducted or supported by a federal Department or Agency. Most of the comments on this section concerned reporting and misconduct issues in § _____.103(b)(5) or the "grace period" or timing of certification in § _____.103(f), discussed previously. Several other comments are as follows: Three respondents asked for clarification of the rationale for reporting requirements in § _____.103(a). This section requires that when the existence of an HHS-approved assurance is accepted in lieu of requiring submission of a new assurance, reports required by the Policy are to be made to the Department and Agency Heads. Reports (with the exception of certification) are also to be made to OPRR.

Another comment was prompted by review of § _____.103(b)(1) which requires inclusion in the assurance of principles governing the institution in protection of human subjects, such as a statement of ethical principles or existing codes. The commentator suggested that a statement as to the purpose of having regulations which create an IRB structure should be explicitly included in the regulations.

A comment concerning § _____.103(f) requests clarification on what type of certification documentation will be acceptable.

Response

In consideration of these comments, the Interagency Committee offers the following information. In § _____.103(a) the only reports required to be made to both the head of the Department or Agency supporting the research and the OPRR when the HHS assurance is utilized are those required under § _____.103(b)(5). The head of the Department or Agency supporting a research project must have information concerning conduct of that research including instances of unanticipated problems or serious or continuing noncompliance with the Policy or the requirements or determinations of the IRB and any suspension or termination of IRB approval. OPRR requires this information to ensure that human subjects protections under the Policy and under the HHS-approved Assurance are being properly implemented and that institutions have fulfilled their requirements in an appropriate and timely manner.

With regard to the comment concerning certification requirements in § _____.103(f), standardized language for the certification will be developed. Certification now used by HHS has been suggested as a basis for development of the language.

Section _____.107 IRB Membership

Comment

Most of the commentators on § _____.107 address the proposed departure on IRB membership for the Department of Education that has been discussed above [§ _____.107(a)]. Other comments received were as follows: Reference is made in the Policy in several places to vulnerable subject populations. One commentator indicated that all subject populations are vulnerable and that the term "exceptionally vulnerable" would be better phraseology for those instances for which additional safeguards are urged or required.

Section _____.107(b) requires that every reasonable nondiscriminatory effort be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes. One respondent indicated that the HHS standard in the regulations published in 1981 requiring that no IRB shall be constituted entirely of men or entirely of women should be retained. A further requirement of § _____.107(b) is that no IRB may consist entirely of members of one profession. Another respondent suggested that the word "discipline" be substituted for "profession."

Response

The Committee did not believe that the suggested language changes would significantly improve the understanding or implementation of the sections. It expects that institutions will use good judgment and diligence in selecting persons as IRB members who can fulfill the requirements of § _____.107 (a) and (b) so that persons of both genders and persons with varying backgrounds will promote responsible review of the research activities. In approving Assurances, the Federal Departments and Agencies that conduct, support or regulate research will review IRB

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composition to ensure that the membership is appropriate for the research, and may request that membership be supplemented if complete and adequate review of the research does not appear possible.

As regards the gender consideration in IRB composition the Committee notes that in seeking diverse membership on the IRB, the institution must consider both men and women who can contribute to the role of the IRB.

Section _____.110 Expedited Review Procedures

Comment

This section sets forth expedited review procedures for certain kinds of research involving no more than minimal risk and for minor changes in approved research. Section _____.110(b) indicates that an IRB may use the expedited review procedure under certain specified circumstances with the approval of Department or Agency heads. Four respondents noted that confusion may result in institutions if Departments or Agencies have different requirements. Furthermore, it may be burdensome to IRBs and institutions to seek Department and Agency approval for use of expedited review. One respondent recommended that the phrase "with the approval of department or agency heads" in § _____.110(b) be deleted because it will result in bureaucratic delays in approval to use the authority. Furthermore, the authority to restrict use of expedited review is found in § _____.110(d) whereby the Department or Agency head may restrict, suspend, terminate or choose not to authorize the use of the expedited review procedure.

Response

The Committee agreed that the phrase in § _____.110(b) "with the approval of department or agency heads," should be deleted because § _____.110(d) accomplished the intention of the Committee. As an example of Department and Agency use of this authority, note that HHS does not permit expedited review for institutions that do not hold Multiple Project Assurances of Compliance. Note also that some institutions which have authority to use expedited procedures choose to use full IRB review instead.

Note that parentheses have been added to the word "reviewer(s)" in § _____.110(b)(1) to clarify that one or more reviewers may carry out the expedited review procedures in accordance with § _____.110(b).

Section _____.111 Criteria for IRB Approval of Research

Comment

Three commentators requested deletion of the term "economically or educationally disadvantaged" in the examples of those who are vulnerable subjects because of lack of clarity of the term, difficulty in determining if some subjects were in this category and possible exclusion from beneficial research protocols of those deemed to be included in this category.

Response

The Committee believes that the criteria for participation and the potential vulnerability of some research subjects are still a very important consideration for IRBs. In exercising their responsibilities, IRBs are charged with evaluating the benefits and the burdens of the research so that unjust social patterns do not appear in the overall distribution of the burdens and benefits of research. The 1979 Belmont Report outlining ethical principles and guidelines for the protection of human subjects of research written by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research makes special note that some populations are burdened in many ways by their social circumstances and environments.

* * * when research is proposed that involves risks and does not include a therapeutic component, other less burdened classes of persons should be called on first to accept these risks of research, except where research is directly related to the specific conditions of the class involved.

* * * certain groups, such as racial minorities, the economically disadvantaged, the very sick, and the institutionalized may continually be sought as research subjects, owing to their ready availability in settings where research is conducted. Given their dependent status and their frequently compromised capacity for free consent, they should be protected against the danger of being involved in research solely for administrative convenience, or because they are easy to manipulate as a result of their illness or socioeconomic condition.

The Committee expects that in its review of equitable treatment and review of benefits and burdens, the educationally or economically disadvantaged will not be excluded from potentially beneficial research to individuals or to those persons as a class.

Section _____.113 Suspension or Termination of IRB Approval of Research

Comment

One comment was offered suggesting that institutions, not IRBs, should report to Department and Agency Heads. Another response recommended that OPRR be designated as the central coordinating office to which such notification should be sent. Designation of OPRR as the single reporting channel would ensure prompt requisite reporting to the Government, the commentator noted.

Response

This section does not require that the IRB report to the Department or Agency head. The responsibility for reporting is specified in the institution's assurance.

OPRR will receive reports if institutions have an assurance on file with the HHS which covers the research in question and will be notified in accordance with §_____.103(b)(3). OPRR cannot act as a central information office for other Departments and Agencies in receiving reports of this nature because of insufficient resources and regulatory jurisdictional considerations.

Section _____.114 Cooperative Research

Comment

Confusion may result for institutions if Departments and Agencies have differing requirements.

Response

The Committee will attempt to advise Departments and Agencies so that procedural requirements will be consistent.

Section _____.115 IRB Records

Comment

Modified language for this section was suggested to assure that confidentiality will be maintained to the greatest extent possible.

Response

The Committee agreed that confidentiality considerations are most important for IRB records. While it rejected the detailed language suggested by the commentator, it acknowledged the importance of maintaining confidentiality. It believes that the proposed language is adequate.

Section _____.116 General Requirements for Informed Consent; and

Section _____.117 Documentation of Informed Consent

Comment

One respondent wrote that the differences between §_____.116 (c) and (d) and §_____.117(c) were confusing.

Response

Section _____.116(c) specifies that an IRB may approve a consent procedure which alters some or all of the required elements of informed consent or waives the requirement to obtain informed consent in research or demonstration projects which are subject to approval of state and local authorities and which meet certain other requirements. Section _____.116(d) specifies that an IRB may, under limited circumstances [other than those of §_____.116(c)] approve a consent procedure which alters some or all of the elements of informed consent or waive the requirements to obtain informed consent for certain types of research. Section _____.117(c) specifies conditions under which an IRB may waive the requirement for the investigator to obtain a signed consent document for some or all subjects in the research.

Section _____.123 Early Termination of Research

Comment

Two commentators expressed concern the establishment of this section implies that a "blacklist" composed of individuals and institutions that, in the judgment of Department and Agency Heads, have failed to discharge properly their responsibilities for the protection of human subjects. Serious breaches of confidentiality and due process could be implied. The inclusion of the parenthetical phrase "(whether or not the research was subject to federal regulations)" was also of concern because it implies that information gathering may lead to violations of confidentiality.

Response

The Committee is aware of concerns about the need for confidentiality and due process considerations. The Committee notes that other federal regulations deal with the suspension and termination of funding. These regulations provide the requisite due process. Sources of information and criteria to be used by Department and Agency Heads for making decisions are addressed with more specificity in those regulations. The federal government does maintain information that is pertinent to the exercise of the discretionary authority to award funding. Appropriate confidentiality protections apply to that information.

Section _____.124 Conditions

Comment

A suggestion was made that additional considerations of the Department or Agency head noted in this section should be limited to those required by statute.

Response

The Committee, in its ongoing deliberations, will attempt to maintain consistency and minimize burdens to institutions.

Department and Agency—Specific Comments

Department of Education

The 34 CFR 97.107(a) departure on composition of the IRB was discussed earlier in this preamble.

The Department of Education proposed to amend §_____.101(b)(3), To what does this policy apply, by revising paragraph (b)(3)(ii) to exempt educational tests and surveys, interviews, or certain observations from coverage of the regulations if the research is conducted under a program subject to the protections of the General Education Provisions Act (GEPA). This departure would have expanded upon an exception contained in the common rule that exempted research conducted under a statute that requires that the confidentiality of the personally identifiable information be maintained, without exception, throughout the research and thereafter.

Much of the research that would have been covered by the GEPA exception is conducted by the National Center for Education Statistics (NCES). Since publication of the NPRM for the common rule, the Department has developed procedures implementing new authority under GEPA that establish absolute confidentiality for individuals who are the subjects of the NCES research which is subject to the confidentiality requirements of section 406(d)(4) of GEPA. Thus, NCES research covered by the GEPA confidentiality requirements now falls within the exception in the common rule that excludes from coverage of the regulations research under a statute that provides for absolute confidentiality [§_____.101(b)(3)(ii)] and an expanded exception for that research is unnecessary.

The Secretary has decided to withdraw the GEPA departure as being inconsistent with the Department's overall objective of ensuring that research conducted or sponsored by the Department contain the greatest possible protections consistent with the common rule. Research of the Department other than that conducted under the NCES statute will be covered by the common rule.

Comment

Four comments were received regarding the exception from the common rule requirements for programs covered by GEPA. Three of the commentators were concerned that the proposed departure removed safeguards or did not provide additional safeguards for the protection of research subjects, while possibly increasing administrative burden on IRBs. One of these three commentators was concerned that the proposed departure might prohibit certain research procedures as applied to educational practices or programs. One commentator indicated that the proposed departure would not pose any problems.

Response

The departure to §_____.101(b)(3)(ii) was based on statutes applicable to the Department that provide protection for subjects of the Department's education-related tests and surveys, interview procedures, and observation of public behavior. The protections are found in the GEPA at section 400A (control of paperwork) (20 U.S.C. 1221–3); section 406(d)(4) (confidentiality of National Center for Education Statistics data) (20 U.S.C. 1221e–1); section 438 (Family Educational Rights and Privacy Act) (20 U.S.C. 1232g); and section 439 (Protection of Pupil Rights Amendment) (20 U.S.C. 1232h). The departure was not intended to create additional burdens for IRBs but to eliminate the need for IRB approval of research in those cases where the research was subject to the GEPA. The Secretary has withdrawn the proposed departure because it is inconsistent with ensuring the greatest protection under the programs administered by the Department.

Because the departure is being withdrawn, there is no need to explain how the proposed departure would have affected research practices.

Department of Veterans Affairs (VA)

Concern was expressed that § _____.111(a)(4) and § _____.116 of

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the Federal Policy would supersede the Veterans Administration Department of Medicine and Surgery (VA DM&S) Circular 10–86–50 which allows next of kin to grant consent for incompetent relatives under specific conditions.

The VA responded, however, that Federal Policy mandates informed consent by the subject, or the subject's "legally authorized representative." "Legally authorized representative" is defined to include "individual(s) * * * authorized under applicable law * * * to consent on behalf of a prospective subject * * *." Thus, the proposed consent does not preclude next of kin consent so long as such consent is "authorized under applicable law."

38 U.S.C. 4131, and VA policies promulgated thereunder, do authorize next of kin consent. Accordingly, the Common Federal Policy and current VA policies are consistent.

Department of Justice

The Department of Justice intends to retain special protections for prison populations in research it supports or conducts in accordance with 28 CFR parts 22 and 512.

Department of Defense

Comment

One response requested clarification of how the Federal Policy will extend to DOD research. Numerous questions concerning applicability to military and non-military personnel, voluntary versus mandated participation situations, identifiable data and the broad range of DOD-sponsored research were posed. The respondent indicated that formulating guidelines for informed consent is particularly important in the military context.

Response

Questions raised regarding application of the proposed regulations to DOD-supported research are reasonable and appropriate but are regarded as agency specific. DOD plans to address these particular issues through revision of DOD Directive 32–16.2, Protection of Human Subjects in DOD-supported Research.

The text of the common rule is adopted by the following Department and Agencies as set forth below:

Text of the Common Rule

The text of the Common Rule as adopted by the Department and Agencies in this document appears below:

____CFR Part ____—Protection of Human Subjects

Sec.

____.101 To what does this policy apply?
____.102 Definitions.
____.103 Assuring compliance with this policy—research conducted or supported by any federal department or agency.
____.104—____.106 [Reserved]
____.107 IRB membership.
____.108 IRB functions and operations.
____.109 IRB review of research.
____.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
____.111 Criteria for IRB approval of research.
____.112 Review by institution.
____.113 Suspension or termination of IRB approval of research.
____.114 Cooperative research.
____.115 IRB records.
____.116 General requirements for informed consent.
____.117 Documentation of informed consent.
____.118 Applications and proposals lacking definite plans for involvement of human subjects.
____.119 Research undertaken without the intention of involving human subjects.
____.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a federal department or agency.
____.121 [Reserved]
____.122 Use of federal funds.
____.123 Early termination of research support; evaluation of applications and proposals.
____.124 Conditions.

§ ____.101 To what does this policy apply?

(a) Except as provided in paragraph (b) of this section, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the federal government outside the United States.

(1) Research that is conducted or supported by a federal department or agency, whether or not it is regulated as defined in § ____.102(e), must comply with all sections of this policy.

(2) Research that is neither conducted nor supported by a federal department or agency but is subject to regulation as defined in § ____.102(e) must be reviewed and approved, in compliance with § ____.101, § ____.102, and § ____.107 through § ____.117 of this policy, by an institutional review board (IRB) that operates in accordance with the pertinent requirements of this policy.

(b) Unless otherwise required by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

(i) Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (b)(2) of this section, if:

(i) The human subjects are elected or appointed public officials or candidates for public office; or (ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research, involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department of agency heads, and which are designed to study, evaluate, or otherwise examine:

(i) Public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (i) if wholesome foods without additives are consumed or (ii) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy.

(d) Department or agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the department or agency but not otherwise covered by this policy, comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations which provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations which may otherwise be applicable and which provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the World Medical Assembly Declaration (Declaration of Helsinki amended 1989) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the **Federal Register** or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this policy. Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Protection from Research Risks, Department of Health and Human Services (HHS), and shall also publish them in the **Federal Register** or in such other manner as provided in department or agency procedures.[1]

§ ____.102 Definitions.

(a) *Department or agency head* means the head of any federal department or agency and any other officer or employee of any department or agency to whom authority has been delegated.

(b) *Institution* means any public or private entity or agency (including federal, state, and other agencies).

(c) *Legally authorized representative* means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

(d) *Research* means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

(e) *Research subject to regulation*, and similar terms are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and Drug Administration). It does not include research activities which are incidentally regulated by a federal department or agency solely as part of the department's or agency's broader responsibility to regulate certain types of activities whether research or non-research in nature (for example, Wage and Hour requirements administered by the Department of Labor).

(f) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains

(1) data through intervention or interaction with the individual, or

(2) identifiable private information.

Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

(g) *IRB* means an institutional review board established in accord with and for the purposes expressed in this policy.

(h) *IRB approval* means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(i) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of

[1] Institutions with HHS-approved assurances on file will abide by provisions of title 45 CFR part 46 subparts A–D. Some of the other Departments and Agencies have incorporated all provisions of title 45 CFR part 46 into their policies and procedures as well. However, the exemptions at 45 CFR part 46.101(b) do not apply to research involving prisoners, fetuses, pregnant women, or human in vitro fertilization, subparts B and C. The exemption at 45 CFR part 46.101(b)(2), for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed.

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routine physical or psychological examinations or tests.

(j) *Certification* means the official notification by the institution to the supporting department or agency, in accordance with the requirements of this policy, that a research project or activity involving human subjects has been reviewed and approved by an IRB in accordance with an approved assurance.

§ ___.103 Assuring compliance with this policy—research conducted or supported by any federal department or agency.

(a) Each institution engaged in research which is covered by this policy and which is conducted or supported by a federal department or agency shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements set forth in this policy. In lieu of requiring submission of an assurance, individual department or agency heads shall accept the existence of a current assurance, appropriate for the research in question, on file with the Office for Protection from Research Risks, HHS, and approved for federalwide use by that office. When the existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by this policy to be made to department and agency heads shall also be made to the Office for Protection from Research Risks, HHS.

(b) Departments and agencies will conduct or support research covered by this policy only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB provided for in the assurance, and will be subject to continuing review by the IRB. Assurances applicable to federally supported or conducted research shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of whether the research is subject to federal regulation. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-supported or regulated research and need not be applicable to any research exempted or waived under § ___.101 (b) or (i).

(2) Designation of one or more IRBs established in accordance with the requirements of this policy, and for which provisions are made for meeting space and sufficient staff to support the IRB's review and recordkeeping duties.

(3) A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the department or agency head, unless in accord with § ___.103(a) of this policy, the existence of an HHS-approved assurance is accepted. In this case, change in IRB membership shall be reported to the Office for Protection from Research Risks, HHS.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and (iii) for ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject.

(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB and (ii) any suspension or termination of IRB approval.

(c) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(d) The department or agency head will evaluate all assurances submitted in accordance with this policy through such officers and employees of the department or agency and such experts or consultants engaged for this purpose as the department or agency head determines to be appropriate. The department or agency head's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institution's research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the department or agency head may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The department or agency head may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under § ___.101 (b) or (i). An institution with an approved assurance shall certify that each application or proposal for research covered by the assurance and by § ___.03 of this Policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by § ___.103 of the Policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution. (Approved by the Office of Management and Budget under Control Number 9999-0020.)

§ ___.104 [Reserved]

§ ___.105 [Reserved]

§ ___.106 [Reserved]

§ ___.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly

conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

§ ___.108 IRB functions and operations.

In order to fulfill the requirements of this policy each IRB shall:

(a) Follow written procedures in the same detail as described in § ___.103(b)(4) and, to the extent required by, § ___.103(b)(5).

(b) Except when an expedited review procedure is used (see § ___.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

§ ___.109 IRB review of research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this policy.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with § ___.116. The IRB may require that information, in addition to that specifically mentioned in § ___.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with § ___.117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

(Approved by the Office of Management and Budget under Control Number 9999-0020.)

§ ___.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary, HHS, has established, and published as a Notice in the **Federal Register**, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate after consultation with other departments and agencies, through periodic republication by the Secretary, HHS, in the **Federal Register**. A copy of the list is available from the Office for Protection from Research Risks, National Institutes of Health, HHS, Bethesda, Maryland 20892.

(b) An IRB may use the expedited review procedure to review either or both of the following:

(1) Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk.

(2) Minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in § ___.108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

(d) The department or agency head may restrict, suspend, terminate, or choose not to authorize an institution's or IRB's use of the expedited review procedure.

§ ___.111 Criteria for IRB approval of research.

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the

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possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by § ____.116.

(5) Informed consent will be appropriately documented, in accordance with, and to the extent required by § ____.117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

§ ____.112 Review by institution.

Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

§ ____.113 Suspension or termination of IRB approval of research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.

(Approved by the Office of Management and Budget under Control Number 9999–0020.)

§ ____.114 Cooperative research.

Cooperative research projects are those projects covered by this policy which involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy. With the approval of the department or agency head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified IRB, or make similar arrangements for avoiding duplication of effort.

§ ____.115 IRB records.

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described in § ____.103(b)(3).

(6) Written procedures for the IRB in the same detail as described in § ____.103(b)(4) and § ____.103(b)(5).

(7) Statements of significant new findings provided to subjects, as required by § ____.116(b)(5).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency at reasonable times and in a reasonable manner. (Approved by the Office of Management and Budget under Control Number 9999–0020.)

§ ____.116 General requirements for informed consent.

Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

(a) Basic elements of informed consent. Except as provided in paragraph (c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

(3) Any additional costs to the subject that may result from participation in the research;

(4)The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and

(6) The approximate number of subjects involved in the study.

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine: (i) Public benefit of service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and

(2) The research could not practicably be carried out without the waiver or alteration.

(d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(1) The research involves no more than minimal risk to the subjects;

(2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;

(3) The research could not practicably be carried out without the waiver or alteration; and

(4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

(e) The informed consent requirements in this policy are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law. (Approved by the Office of Management and Budget under Control Number 9999–0020.)

§ ____.117 Documentation of informed consent.

(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

(b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by § ____.116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A short form written consent document stating that the elements of informed consent required by § ____.116 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the short form.

(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

(1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

(2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research. (Approved by the Office of Management and Budget under Control Number 9999–0020.)

§ ____.118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to departments or agencies with the knowledge that subjects may be involved within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution's responsibility; research training grants in which the activities involving subjects remain to be selected; and projects in which human subject's involvement will depend upon completion of instruments, prior animal studies, or purification of compounds. These applications need not be reviewed by an IRB before an award may be made. However, except for research exempted or waived under § ____.101 (b) or (i), no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy, and certification submitted, by the institution, to the department or agency.

§ ____.119 Research undertaken without the intention of involving human subjects.

In the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted, by the institution, to the department or agency.

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and final approval given to the proposed change by the department or agency.

§ ___.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a federal department or agency.

The department or agency head will evaluate all applications and proposals involving human subjects submitted to the department or agency through such officers and employees of the department or agency and such experts and consultants as the department or agency head determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained.

(b) On the basis of this evaluation, the department or agency head may approve or disapprove the application or proposal, or enter into negotiations to develop an approvable one.

§ ___.121 [Reserved]

§ ___.122 Use of federal funds.

Federal funds administered by a department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.

§ ___.123 Early termination of research support; evaluation of applications and proposals.

(a) The department or agency head may require that department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.

(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragarph (a) of this section and whether the applicant or the person or persons who would direct or has have directed the scientific and technical aspects of an activity has have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

§ ___.124 Conditions.

With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

DEPARTMENT OF AGRICULTURE

7 CFR Part 1c

RIN 0516-AA00

List of Subjects in 7 CFR Part 1c

Human subjects, Research, Reporting and record keeping requirements. Title 7 of the Code of Federal Regulations is amended by adding part 1c as set forth at the end of this document.

PART 1c PROTECTION OF HUMAN SUBJECTS

Sec.

1c.101 To what does this policy apply?
1c.102 Definitions.
1c.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
1c.104 [Reserved]
1c.105 [Reserved]
1c.106 [Reserved]
1c.107 IRB Membership.
1c.108 IRB functions and operations.
1c.109 IRB review of research.
1c.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
1c.111 Criteria for IRB approval of research.
1c.112 Review by institution.
1c.113 Suspension or termination of IRB approval of research.
1c.114 Cooperative research.
1c.115 IRB records.
1c.116 General requirements for informed consent.
1c.117 Documentation of informed consent.
1c.118 Applications and proposals lacking definite plans for involvement of human subjects.
1c.119 Research undertaken without the intention of involving human subjects.
1c.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
1c.121 [Reserved]
1c.122 Use of Federal funds.
1c.123 Early termination of research support: Evaluation of applications and proposals.
1c.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: December 13, 1990.

Charles E. Hess,

Assistant Secretary, Science & Education.

DEPARTMENT OF ENERGY

10 CFR Part 745

RIN 1901-AA13

List of Subjects in 10 CFR Part 745

Human subjects, Research, reporting, and Record-keeping requirements. Title 10 of the Code of Federal Regulations is amended by revising part 745 as set forth at the end of this document.

PART 745 PROTECTION OF HUMAN SUBJECTS

Sec.

745.101 To what does this policy apply?
745.102 Definitions.
745.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
745.104 [Reserved]
745.105 [Reserved]
745.106 [Reserved]
745.107 IRB Membership.
745.108 IRB functions and operations.
745.109 IRB review of research.
745.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
745.111 Criteria for IRB approval of research.
745.112 Review by institution.
745.113 Suspension or termination of IRB approval of research.
745.114 Cooperating research.
745.115 IRB records.
745.116 General requirements for informed consent.
745.117 Documentation of informed consent.
745.118 Applications and proposals lacking definite plans for involvement of human subjects.
745.119 Research undertaken without the intention of involving human subjects.
745.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
745.121 [Reserved]
745.122 Use of Federal funds.
745.123 Early termination of research support: Evaluation of applications and proposals.
745.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 7254; 42 U.S.C. 300v–1(b).

Dated: December 21, 1990.

James D. Watkins,

Secretary of Energy.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1230

RIN 2700-AA76

List of Subjects in 14 CFR Part 1230

Human subjects, Research, Reporting and Record-keeping requirements. Title 14 of the Code of Federal Regulations is amended by adding part 1230 as set forth at the end of this document.

PART 1230 PROTECTION OF HUMAN SUBJECTS

Sec.

1230.101 To what does this policy apply?
1230.102 Definitions.
1230.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
1230.104 [Reserved]
1230.105 [Reserved]
1230.106 [Reserved]
1230.107 IRB Membership.
1230.108 IRB functions and operations.
1230.109 IRB review of research.
1230.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
1230.111 Criteria for IRB approval of research.
1230.112 Review by institution.
1230.113 Suspension or termination of IRB approval of research.
1230.114 Cooperative research.
1230.115 IRB records.
1230.116 General requirements for informed consent.
1230.117 Documentation of informed consent.
1230.118 Applications and proposals lacking definite plans for involvement of human subjects.
1230.119 Research undertaken without the intention of involving human subjects.
1230.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
1230.121 [Reserved]
1230.122 Use of Federal funds.
1230.123 Early termination of research support: Evaluation of applications and proposals.
1230.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: January 21, 1991.

Richard H. Truly

Administrator.

DEPARTMENT OF COMMERCE

15 CFR Part 27

RIN 0690-AA17

List of Subjects in 15 CFR Part 27

Human subjects, Research, Reporting and recordkeeping requirements. Title 15 of the Code of Federal Regulations is amended by adding part 27 as set forth at the end of this document.

PART 27 PROTECTION OF HUMAN SUBJECTS

Sec.

27.101 To what does this policy apply?
27.102 Definitions.
27.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
27.104 [Reserved]
27.105 [Reserved]
27.106 [Reserved]
27.107 IRB Membership.
27.108 IRB functions and operations.
27.109 IRB review of research.
27.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
27.111 Criteria for IRB approval of research.
27.112 Review by institution.
27.113 Suspension or termination of IRB approval of research.
27.114 Cooperative research.
27.115 IRB records.
27.116 General requirements for informed consent.
27.117 Documentation of informed consent.
27.118 Applications and proposals lacking definite plans for involvement of human subjects.
27.119 Research undertaken without the intention of involving human subjects.
27.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
27.121 [Reserved]
27.122 Use of Federal funds.
27.123 Early termination of research support: Evaluation of applications and proposals.
27.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: December 21, 1990.

Robert Mosbacher,

Secretary of Commerce.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1028

RIN 3041-AA95

List of Subjects in 16 CFR Part 1028

Human subjects, Research, Reporting and recordkeeping requirements. Title 16 of the Code of Federal Regulations is amended by revising part 1028 as set forth at the end of this document.

PART 1028 PROTECTION OF HUMAN SUBJECTS

Sec.

1028.101 To what does this policy apply?
1028.102 Definitions.
1028.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
1028.104 [Reserved]
1028.105 [Reserved]
1028.106 [Reserved]
1028.107 IRB Membership.
1028.108 IRB functions and operations.
1028.109 IRB review of research.
1028.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
1028.111 Criteria for IRB approval of research.
1028.112 Review by institution.
1028.113 Suspension or termination of IRB approval of research.
1028.114 Cooperative research.
1028.115 IRB records.
1028.116 General requirements for informed consent.
1028.117 Documentation of informed consent.
1028.118 Applications and proposals lacking definite plans for involvement of human subjects.
1028.119 Research undertaken without the intention of involving human subjects.
1028.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
1028.121 [Reserved]
1028.122 Use of Federal funds.
1028.123 Early termination of research support: Evaluation of applications and proposals.
1028.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

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Dated: January 11, 1991.

Sheldon D. Butts,

Acting Secretary.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY, AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 225

RIN 0412-AA17

List of Subjects in 22 CFR Part 225

Human subjects, Research, Reporting and record-keeping requirements. Title 22 of the Code of Federal Regulations is amended by adding part 225 at set forth at the end of this document.

PART 225 PROTECTION OF HUMAN SUBJECTS

Sec.

225.101 To what does this policy apply?
225.102 Definitions.
225.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
225.104 [Reserved]
225.105 [Reserved]
225.106 [Reserved]
225.107 IRB Membership.
225.108 IRB functions and operations.
225.109 IRB review of research.
225.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
225.111 Criteria for IRB approval of research.
225.112 Review by institution.
225.113 Suspension or termination of IRB approval of research.
225.114 Cooperative research.
225.115 IRB records.
225.116 General requirements for informed consent.
225.117 Documentation of informed consent.
225.118 Applications and proposals lacking definite plans for involvement of human subjects.
225.119 Research undertaken without the intention of involving human subjects.
225.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
225.121 [Reserved]
225.122 Use of Federal funds.
225.123 Early termination of research support: Evaluation of applications and proposals.
225.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: December 13, 1990.

Richard E. Bissell,

Assistant Administrator for Science and Technology.

Department of Housing and Urban Development

24 CFR Part 60

RIN 2501-AA15

List of Subjects in 24 CFR Part 60

Human subjects, Research, Reporting and record-keeping requirements. Title 24 of the Code of Federal Regulations is amended by adding part 60 as set forth at the end of this document.

PART 60 PROTECTION OF HUMAN SUBJECTS

Sec.

60.101 To what does this policy apply?
60.102 Definitions.
60.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
60.104 [Reserved]
60.105 [Reserved]
60.106 [Reserved]
60.107 IRB Membership.
60.108 IRB functions and operations.
60.109 IRB review of research.
60.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
60.111 Criteria for IRB approval of research.
60.112 Review by institution.
60.113 Suspension or termination of IRB approval of research.
60.114 Cooperative research.
60.115 IRB records.
60.116 General requirements for informed consent.
60.117 Documentation of informed consent.
60.118 Applications and proposals lacking definite plans for involvement of human subjects.
60.119 Research undertaken without the intention of involving human subjects.
60.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
60.121 [Reserved]
60.122 Use of Federal funds.
60.123 Early termination of research support: Evaluation of applications and proposals.
60.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: January 16, 1991.

Jack Kemp,

Secretary, U.S. Department of Housing and Urban Development.

DEPARTMENT OF JUSTICE

28 CFR Part 46

RIN 1105-AA13

List of Subjects in 28 CFR Part 46

Human subjects, Research, Reporting and record-keeping requirements.

Title 28 of the Code of Federal Regulations is amended by adding part 46 as set forth at the end of this document.

PART 46—PROTECTION OF HUMAN SUBJECTS

Sec.

46.101 To what does this policy apply?
46.102 Definitions.
46.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
46.104 [Reserved]
46.105 [Reserved]
46.106 [Reserved]
46.107 IRB Membership.
46.108 IRB functions and operations.
46.109 IRB review of research.
46.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
46.111 Criteria for IRB approval of research.
46.112 Review by institution.
46.113 Suspension or termination of IRB approval of research.
46.114 Cooperative research.
46.115 IRB records.
46.116 General requirements for informed consent.
46.117 Documentation of informed consent.
46.118 Applications and proposals lacking definite plans for involvement of human subjects.
46.119 Research undertaken without the intention of involving human subjects.
46.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
46.121 [Reserved]
46.122 Use of Federal funds.
46.123 Early termination of research support: Evaluation of applications and proposals.
46.124 Conditions.

Authority: 5 U.S.C. 301; 28 U.S.C. 509–510; 42 U.S.C. 300v–1(b).

Dated: December 24, 1990.

Dick Thornburgh,

Attorney General.

DEPARTMENT OF DEFENSE

32 CFR Part 219

RIN 0790-AC80

List of Subjects in 32 CFR Part 219

Human subjects, Research, Reporting and record-keeping requirements.

Title 32 of the Code of Federal Regulations is amended by revising part 219 as set forth at the end of this document.

PART 219—PROTECTION OF HUMAN SUBJECTS

Sec.

219.101 To what does this policy apply?
219.102 Definitions.
219.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
219.104 [Reserved]
219.105 [Reserved]
219.106 [Reserved]
219.107 IRB Membership.
219.108 IRB functions and operations.
219.109 IRB review of research.
219.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
219.111 Criteria for IRB approval of research
219.112 Review by institution.
219.113 Suspension or termination of IRB approval of research.
219.114 Cooperative research.
219.115 IRB records.
219.116 General requirements for informed consent.
219.117 Documentation of informed consent.
219.118 Applications and proposals lacking definite plans for involvement of human subjects.
219.119 Research undertaken without the intention of involving human subjects.
219.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
219.121 [Reserved]
219.122 Use of Federal funds.
219.123 Early termination of research support: Evaluation of applications and proposals.
219.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v-1(b).–

Dated: January 9, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEPARTMENT OF EDUCATION

34 CFR Part 97

RIN 1875-AA07

List of Subjects in 34 CFR Part 97

Human subjects, Research, Reporting and record-keeping requirements.

Title 34 of the Code of Federal Regulations is amended by adding part 97 as set forth at the end of this document.

PART 97—PROTECTION OF HUMAN SUBJECTS

Sec.

97.101 To what does this policy apply?
97.102 Definitions.
97.103 Assuring compliance with this policy-research conducted or supported by any Federal Department or Agency.
97.104 [Reserved]
97.105 [Reserved]
97.106 [Reserved]
97.107 IRB Membership.
97.108 IRB functions and operations.
97.109 IRB review of research.
97.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
97.111 Criteria for IRB approval of research.
97.112 Review by institution.
97.113 Suspension or termination of IRB approval of research.
97.114 Cooperative research.
97.115 IRB records.
97.116 General requirements for informed consent.
97.117 Documentation of informed consent.
97.118 Applications and proposals lacking definite plans for involvement of human subjects.
97.119 Research undertaken without the intention of involving human subjects.
97.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
97.121 [Reserved]
97.122 Use of Federal funds.
97.123 Early termination of research support: Evaluation of applications and proposals.
97.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: June 6, 1991.

Lamar Alexander,

U.S. Secretary of Education.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 16

RIN 2900-AE29

List of Subjects in 38 CFR Part 16

Human subjects, Research, Reporting and record-keeping requirements.

Title 38 of the Code of Federal Regulations is amended by adding part 16 as set forth at the end of this document

PART 16—PROTECTION OF HUMAN SUBJECTS

Sec.

16.101 To what does this policy apply?
16.102 Definitions.
16.103 Assuring compliance with this policy-research conducted or supported by any Federal Department or Agency.
16.104 [Reserved]
16.105 [Reserved]
16.106 [Reserved]
16.107 IRB Membership.
16.108 IRB functions and operations.
16.109 IRB review of research.
16.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
16.111 Criteria for IRB approval of research.
16.112 Review by institution.
16.113 Suspension or termination of IRB approval of research.
16.114 Cooperative research.
16.115 IRB records.
16.116 General requirements for informed consent.
16.117 Documentation of informed consent.
16.118 Applications and proposals lacking definite plans for involvement of human subjects.
16.119 Research undertaken without the intention of involving human subjects.
16.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
16.121 [Reserved]
16.122 Use of Federal funds.
16.123 Early termination of research support: Evaluation of applications and proposals.
16.124 Conditions.

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Authority: 5 U.S.C. 301; 38 U.S.C. 210(c)(1), 4131, 4134; 42 U.S.C. 300v–1(b).

Dated: February 19, 1991.

Edward J. Derwinski

Secretary of Veterans Affairs.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 26

RIN 2060–AA04

List of Subjects in 40 CFR Part 26

Human subjects, Research, Reporting and record-keeping requirements.

Title 40 of the Code of Federal Regulations is amended by adding part 26 as set forth at the end of this document.

PART 26—PROTECTION OF HUMAN SUBJECTS

Sec.

26.101 To what does this policy apply?
26.102 Definitions.
26.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
26.104 [Reserved]
26.105 [Reserved]
26.106 [Reserved]
26.107 IRB Membership.
26.108 IRB functions and operations.
26.109 IRB review of research.
26.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
26.111 Criteria for IRB approval of research.
26.112 Review by institution.
26.113 Suspension or termination of IRB approval of research.
26.114 Cooperative research.
26.115 IRB records.
26.116 General requirements for informed consent.
26.117 Documentation of informed consent.
26.118 Applications and proposals lacking definite plans for involvement of human subjects.
26.119 Research undertaken without the intention of involving human subjects.
26.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
26.121 [Reserved]
26.122 Use of Federal funds.
26.123 Early termination of research support: Evaluation of applications and proposals.
26.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v-1(b).

Dated: January 28, 1991.

William K. Reilly,

Administrator.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

RIN 0991–AA71

List of Subjects in 45 CFR Part 46

Human subjects, Research, Reporting and record-keeping requirements.

Title 45 of the Code of Federal Regulations part 46 is amended, as follows:

1. An authority citation for subpart A is added to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 289, 42 U.S.C. 300v-1(b).

2. Subpart A is revised to read as set forth at the end of this document.

PART 46—PROTECTION OF HUMAN SUBJECTS

Subpart A—Basic HHS Policy for Protection of Human Research Subjects

Sec.

46.101 To what does this policy apply?
46.102 Definitions.
46.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
46.104 [Reserved]
46.105 [Reserved]
46.106 [Reserved]
46.107 IRB Membership.
46.108 IRB functions and operations.
46.109 IRB review of research.
46.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
46.111 Criteria for IRB approval of research.
46.112 Review by institution.
46.113 Suspension or termination of IRB approval of research.
46.114 Cooperative research.
46.115 IRB records.
46.116 General requirements for informed consent.
46.117 Documentation of informed consent.
46.118 Applications and proposals lacking definite plans for involvement of human subjects.
46.119 Research undertaken without the intention of involving human subjects.
46.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
46.121 [Reserved]
46.122 Use of Federal funds.
46.123 Early termination of research support: Evaluation of applications and proposals.
46.124 Conditions.

Dated: March 29, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

NATIONAL SCIENCE FOUNDATION

45 CFR Part 690

RIN 3145–AA18

List of Subjects in 45 CFR Part 690

Human subjects, Research, Reporting and record-keeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding part 690 as set forth at the end of this document.

PART 690—PROTECTION OF HUMAN SUBJECTS

Sec.

690.101 To what does this policy apply?
690.102 Definitions.
690.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
690.104 [Reserved]
690.105 [Reserved]
690.106 [Reserved]
690.107 IRB Membership.
690.108 IRB functions and operations.
690.109 IRB review of research.
690.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
690.111 Criteria for IRB approval of research.
690.112 Review by institution.
690.113 Suspension or termination of IRB approval of research.
690.114 Cooperative research.
690.115 IRB records.
690.116 General requirements for informed consent.
690.117 Documentation of informed consent.
690.118 Applications and proposals lacking definite plans for involvement of human subjects.
690.119 Research undertaken without the intention of involving human subjects.
690.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
690.121 [Reserved]
690.122 Use of Federal funds.
690.123 Early termination of research support: Evaluation of applications and proposals.
690.124 Conditions.

Dated: December 17, 1990.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Frederick M. Bernthal,

Acting Director.

DEPARTMENT OF TRANSPORTATION

49 CFR Part 11

RIN 2105–AB74

List of Subjects in 49 CFR Part 11

Human subjects, Research, Reporting and record-keeping requirements.

Title 49 of the Code of Federal Regulations is amended by adding part 11 as set forth at the need of this document.

PART 11—PROTECTION OF HUMAN SUBJECTS

Sec.

11.101 To what does this policy apply?
11.102 Definitions.
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11.104 [Reserved]
11.105 [Reserved]
11.106 [Reserved]
11.107 IRB Membership.
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11.109 IRB review of research.
11.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
11.111 Criteria for IRB approval of research.
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11.121 [Reserved]
11.122 Use of Federal funds.
11.123 Early termination of research support: Evaluation of applications and proposals.
11.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: February 4, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91–14258 Filed 6–17–91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following request has been submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Expedited review by OMB has been requested as described below.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of submission)

Federal Policy for the Protection of Human Subjects—New—This submission is for approval of the information requirements associated with the common rule for the protection of human subjects of research conducted, supported or regulated by the following Federal departments and agencies: Department of Agriculture, Department of Energy, National Aeronautics and Space Administration, Department of Commerce, Consumer Product Safety Commission, Agency for International Development, Department of Housing and Urban Development, Department of Justice, Department of Defense, Department of Education, Department of Veterans' Affairs, Environmental Protection Agency, Department of Transportation, Central Intelligence Agency, and Department of Health and Human Services.

Adoption of the common Federal policy by these departments and agencies will implement a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. The Office of Science and Technology Policy established an Interagency Human Subjects Coordinating Committee under the Federal Coordinating Council for Science Engineering and Technology. This group prepared a proposed Model Federal Policy for the Protection of Human Subjects that was published as a proposed policy in 1988 and again as a proposed common rule on November 10, 1988. After revision of the proposed common rule in response to public comments, the final common rule is being published elsewhere in this issue of the Federal Register. The common rule is based on Department of Health and Human Services (DHHS) regulations (45 CFR part 46, subpart A), the basic HHS Policy for the Protection of Human Subjects.

Respondents: Individuals or households, State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

The total number of respondents affected by these information requirements is estimated at 3,831. The total annual response burden for these requirements including all Federal departments and agencies subject to the common rule, is estimated at 187,408 hours divided as follows: 22,982 hours for recordkeeping requirements and 164,426 hours for reporting and disclosure requirements.

Additional Information:

DHHS has submitted this request for approval to OMB on behalf of all Departments and Agencies governed by this final rule. It is critical to receive OMB review and approval for the information requirements so that the common rule for the Protection of Human Subjects may be effective 60 days after publication. Federal Departments and Agencies have ongoing research programs to which the common rule will apply, and they are seeking the most expeditious time frame in which to begin protection of human subject policies and procedures. In addition, institutions supported or regulated by the involved Departments and Agencies have requested implementation of the final rule as soon as possible to lessen burden of compliance with numerous, sometimes inconsistent, procedures for the protection of human subjects required by the various Federal Departments and Agencies.

OMB has been requested to review and approve the information requirements in the common rule on an expedited basis no later than August 2, 1991. In keeping with the requirements for expedited review, we are publishing this announcement in the same issue as the proposed final rule. The information requirements are separately identified in the preamble to the rule, printed elsewhere in this issue. There are no separate forms or instructions for which approval is being sought.

OMB Desk Officer: Shannah Koss-McCallum.

Because of the time frame in which OMB has been asked to act on this request, any comments and recommendations for the proposed information collection should be provided directly to the OMB Desk Officer designated above by telephone at (202) 395–7316 or by express mail at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: May 31, 1991.

Sandra K. Mahkorn,

1Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91–14259 Filed 6–17–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50 and 56

[Docket No. 87N-0032]

RIN 0905-AC52

Protection of Human Subjects; Informed Consent; Standards for Institutional Review Boards for Clinical Investigations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on institutional review boards (IRB's) and on informed consent to conform them to the "Federal Policy for the Protection of Human Research Subjects" (Federal Policy) published elsewhere in this issue of the Federal Register. Existing FDA regulations governing the protection of human subjects share a common core with the Federal Policy and implement the fundamental principles embodied in that policy.

EFFECTIVE DATE: August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Richard M. Klein, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is charged by statute with ensuring the protection of the rights, safety, and welfare of human subjects who participate in clinical investigations involving articles subject to section 505(i), 507(d), or 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i), 357(d), or 360j(g)), as well as clinical investigations that support applications for research or marketing permits for products regulated by FDA, including food and color additives, drugs for human use, medical devices for human use, biological products for human use, and electronic products.

In the Federal Register of January 27, 1981, FDA adopted regulations governing informed consent of human subjects (21 CFR part 50; 46 FR 8942) and regulations establishing standards for the composition, operation, and responsibilities of IRB's that review clinical investigations involving human subjects (21 CFR part 56; 46 FR 8958). At the same time, the Department of Health and Human Services (HHS) adopted regulations on the protection of human research subjects (45 CFR part 46; 46 FR 8366). The FDA and HHS regulations share a common framework.

In December 1981, the President's Commission for the study of Ethical Problems in Medicine and Biomedical and Behavioral Research (the commission) issued its "First Biennial Report on the Adequacy and Uniformity of Federal Rules and Policies, and their Implementation, for the Protection of Human Subjects in Biomedical and Behavioral Research, Protecting Human Subjects." The commission recommended that all Federal departments and agencies adopt the HHS regulations (45 CFR part 46).

In May 1982, the President's Science Advisor, Office of Science and Technology Policy (OSTP), appointed an ad hoc Committee for the Protection of Human Research Subjects (the committee), under the auspices of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET), to respond to the recommendations of the commission. The committee, composed of representatives and ex officio members from departments and agencies that conduct, support, or regulate research involving human subjects, developed responses to the commission in consultation with OSTP and the Office of Management and Budget (OMB).

The committee agreed that uniformity of Federal regulations on human subject protection is desirable to eliminate unnecessary regulations and to promote increased understanding by institutions that conduct federally-supported or regulated research. The committee developed a model policy which OSTP later modified and, with the concurrence of all affected Federal departments and agencies, published as a proposal in the Federal Register of June 3, 1986 (51 FR 20204). More than 200 comments were submitted in response to the proposal. Published elsewhere in this issue of the Federal Register is the final rule on the Federal Policy.

FDA concurs in that final rule. In the Federal Register of November 10, 1988 (53 FR 45678), the agency proposed to amend its regulations in 21 CFR parts 50 and 56 to conform them to the Federal Policy to the extent permitted by the act. The agency is committed to being as consistent with the final Federal Policy as it can be, given the unique requirements of the act and the fact that FDA is a regulatory agency that rarely supports or conducts research under its regulations. However, as explained in the proposed rule, FDA must diverge from §§ ____.101(b) and ____.116(d) of the Federal Policy.

FDA received 22 comments on the proposed rule from sponsors of regulated research, institutional review board members and staff, academic institutions, medical societies, and lawyers. Several comments were prepared by organizations, each representing a consortia of institutions that had been polled concerning the proposed rule.

A. General Comments

1. The majority of comments supported the agency's efforts to conform to the Federal Policy.

2. The majority of comments received concerned the proposal to amend § 56.108(b) to require that IRB's follow written guidelines for ensuring the reporting of scientific misconduct and of unanticipated problems to the IRB, institutional officials, and FDA. Two comments noted that this provision would make the IRB the institutional body that investigates alleged fraud severely damaging the IRB/investigator relationship and possibly diminishing the effectiveness of the IRB in protecting human subjects. Several comments noted that the proposed additional reporting requirements would duplicate investigator and sponsor reporting requirements and would be difficult for the IRB to enforce. One comment said that this section may adversely affect the IRB/institution relationship and asked how FDA intended to ensure that reporting occurred. One comment interpreted the provision as applicable to animal studies and wondered whether IRB's would be responsible for contacting sponsors. One comment expressed concern that the workload of the IRB would increase and adversely affect the recruitment of new members. One comment sought to exclude Adverse Drug Reaction reports. One comment argued that the reporting requirement was unauthorized by law.

Two comments from sponsors requested that sponsor notification be added under proposed § 56.108(b), noting that an investigator engaged in misconduct is unlikely to report that misconduct to the IRB, and that the sponsor is the entity that frequently detects misconduct through its extensive monitoring practices. In addition, these comments requested clarification of the office in FDA to which scientific misconduct should be reported. Several comments requested that FDA define or clarify "scientific misconduct" and "unanticipated problems."

Since the proposed model policy was published, the Public Health Service published a final rule concerning fraud and misconduct in science (54 FR 32446,

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August 8, 1988). Because that rule directs institutions to establish provisions for the investigation of alleged scientific fraud and misconduct, the mention of "scientific misconduct" has been deleted, as unnecessary, from the model policy. Because FDA only proposed to require that IRB's report scientific misconduct to be consistent with the model policy, it has deleted this requirement from its final rule. This action should allay many of the concerns expressed in the comments.

Moreover, FDA believes that the comments misconstrued the intent of § 56.108(b). This section requires simply that an IRB have procedures by which it checks to ensure in reviewing each study presented, that provision has been made in the study to notify the IRB, appropriate institutional officials, and FDA in the specified circumstances. Section 56.108(b) does not require that the IRB itself provide the notification to either the institution or to FDA, unless such reporting would not otherwise occur. Although FDA's regulations include reporting requirements for certain types of investigational articles (see, e.g., 21 CFR parts 312 (investigational drugs) and 812 (investigational devices)), there are no such provisions for other articles that may be the subject of an investigation (e.g. food additives). Because all regulated research to be conducted at an institution will come before the IRB, FDA finds that the IRB is the appropriate entity to charge with the responsibility for ensuring that reporting of the specified problems to the IRB, the institution, and the agency will occur.

3. One comment urged FDA to move toward the adoption of an assurance system as established for the other agencies within HHS to guarantee compliance with regulations for the protection of human subjects.

FDA continues to believe that it would be inappropriate for it to adopt this mechanism. As stated in the final rule in the **Federal Register** of January 27, 1981 (46 FR 8959, comment 2), the benefits of assurance from IRB's that are subject to FDA jurisdiction, but not otherwise to HHS jurisdiction, do not justify the increased administrative burdens that would result from an assurance system. FDA relies on its Bioresearch Monitoring Program, along with its educational efforts, to assure compliance with these regulations.

4. One comment expressed concern over FDA's proposed divergences from sections 101(h) and 116(d) of the Federal Policy. The comment contended that it is sometimes impossible to obtain informed consent, as defined by FDA's regulations, in foreign clinical trials.

As stated in the proposed rule (53 FR 45679), FDA does not have the authority to accept the procedures followed in a foreign country in lieu of informed consent as required by the act for studies that are conducted under a research permit that it grants. The comment did not provide any information that would compel a different conclusion.

B. Comments on Definitions

5. One comment suggested that the word "discomfort" used in proposed §§ 50.3(i) and 56.102(i) is difficult to define and is subjective.

FDA believes that the meaning of "discomfort" is sufficiently clear. FDA interprets this term to have its ordinary meaning; that is, to mean the extent to which a subject may be made uncomfortable by the article that is the subject of the research.

6. One comment asserted that proposed § 56.102(m), the definition of "IRB approval," suggests an intent to change the procedural requirements of IRB approval.

FDA proposed to add this definition to make the regulations conform to the Federal Policy and to clarify the meaning of the phrase "IRB approval" under this rule. The addition of this definition is not intended to effect a substantive change in part 56. In the preamble to its August 8, 1978 proposal of the IRB regulation (43 FR 35186 at 35197), FDA presented a thorough discussion of its authority to require IRB review.

7. One comment stated that the reference to "other institutional and Federal requirements" in proposed § 56.102(m) goes beyond FDA's ability to determine other institutional requirements and may be counterproductive where there is conflict between the institutional requirements and FDA or HHS requirements. The suggestion is made to delete "and other institutional * * * requirements."

This definition is intended to make clear that IRB approval is to be based on a determination that the proposed research is acceptable under any applicable institutional requirements, applicable law, and standards of professional conduct and practice. If there are conflicts between the institutional requirements and Federal law, those conflicts obviously must be resolved in favor of the Federal law. However, institutional requirements often address matters not addressed by Federal law. Therefore, FDA finds it appropriate to mention both institutional and Federal requirements in this definition.

8. One comment suggested substituting "clinical investigation" for the word "research" in § 56.102(m).

FDA rejects the suggestion. FDA has defined "clinical investigation" in § 56.102(c) to be synonymous with "research" (46 FR 8976). Because FDA desires to conform to the Federal Policy and in the absence of a compelling argument to diverge from it, FDA is using the word used in the Federal Policy.

9. Several comments suggested deleting "at an institution" from § 56.102(m), contending that this phrase may confuse the original intent of the meaning of IRB approval. Another comment noted that much research today is conducted outside the institutional setting.

FDA rejects the comments. In 1981, when FDA adopted the IRB regulations, FDA intentionally defined "institution" broadly to include "any public or private entity or agency" (§ 56.102(f); 46 FR 8963, comment 27). Thus, § 56.102(m) is consistent with the original intent of the IRB regulations.

10. One comment suggested revising § 56.102(m) to read "IRB approval means * * * that the research has been reviewed for undue risk to the subject and may be conducted * * *."

FDA rejects the suggestion. The suggested change does not adequately describe the role of the IRB. The IRB's review of studies and informed consent documents includes numerous considerations in addition to whether the study presents undue risks to the human subjects involved.

C. Comments on Exemptions From IRB Requirements

11. One comment requested that no exemptions from IRB requirements be granted for those populations already identified as vulnerable.

FDA did not propose that studies involving vulnerable populations be exempt from IRB review. The only exemptions from the IRB review requirements were established in the 1981 final rule (46 FR 8942; 21 CFR 56.104). The use of an investigational article is exempt from IRB review if the investigation started before July 27, 1981, before the requirement of IRB review was in effect, or if it involves an emergency use of the test article, in which case there is not time for IRB review before the article is used. The agency found that in these circumstances, the considerations that support granting an exemption outweigh those that would support denying it (46 FR 8965, comment 48). The comment did not provide any basis for reconsidering

or revising this judgment. The agency points out that the latter considerations (emergency use), which is the only basis on which a new study would be exempt, applies only to particular uses of an article and would not provide the basis for an exemption for the use of an article in a particular population. Therefore, FDA finds that this comment provides no basis for modifying its regulations.

12. One comment suggested that FDA completely exempt "minimal risk" studies from IRB review.

FDA rejects the comment. The determination of minimal risk can be made only by members of the IRB, not the investigator or the sponsor. The burden of an expedited review of a protocol to determine if it presents minimal risk is not so great as to justify the requested exemption.

D. Comments on IRB Membership

13. Three comments suggested that FDA define in § 56.107 the specific members to be included on an IRB. Several comments suggested that FDA define, in new § 56.107(c), "non-scientific" and "scientific." Two comments suggested that the IRB include "one member who has an understanding of the medical risks involved." Another comment suggested that § 56.107(c) be clarified to include a statement requiring that at least one member of the IRB have an understanding of the scientific method.

FDA rejects these comments. FDA has chosen not to prescribe professional membership requirements for IRB members. The regulations allow for flexibility in the makeup of the IRB (see 46 FR 8968, comment 55). They require, however, that there be at least one member whose concerns are in nonscience areas and one member who has the professional competency to review the proposed research, such as a physician. FDA interprets "competency" in this context to include the ability to understand the scientific method. The agency believes that the membership requirements that it has adopted are adequate to ensure that an IRB will be able to fully consider the issues presented by a study.

14. One comment suggested that the proposed change in § 56.107(a), allowing IRB's that regularly review studies that involve vulnerable categories of subjects to consider including as a member an individual knowledgeable about, and experienced in, working with vulnerable populations, will afford less human subject protection than the current regulation.

The current regulation states that an IRB that regularly reviews research involving vulnerable populations should include as members individuals who are primarily concerned with the welfare of vulnerable subjects. Revised § 56.107(a) lists categories of subjects who are considered vulnerable and requires that the institution, or other authority, consider including individuals knowledgeable and experienced in working with these types of subjects as voting members on the IRB. This revision is not intended to lessen in any way the protections for vulnerable populations under FDA's regulations. As explained in the proposal (53 FR 45679), FDA is making this change only to conform to the language of the Federal Policy.

FDA on its own initiative is adding parenthesis to the word "reviewers" in § 56.110(b)(1) to permit a continuance of existing IRB review procedures.

E. Comments on IRB Functions and Operations

15. Several comments sought clarification of new § 56.108(b)(1) with regard to the definition and interpretation of "any unanticipated problems involving risks to human subjects and others" and the level of risk to be reported.

FDA interprets this phrase to mean an unexpected adverse experience that is not listed in the labeling for the test article. Such experience includes an event that may be symptomatically and pathophysiologically related to an event listed in the labeling but that differs from the event because of greater specificity or severity. The word "others" has previously been defined as persons who are participating in clinical trials under the same or similar protocols or who may be affected by products or procedures developed in those trials (see 53 FR 45661, 45665; November 10, 1988).

F. Comments on Expedited Review Procedures

16. One comment read the parenthetical change in § 56.110(b), "of one year or less," as affecting a change from the current regulations.

FDA disagrees with the comment. Under current regulations, the IRB may approve a study that will continue beyond 1 year, such as a longitudinal followup study. The IRB is obligated, however, under § 56.109(e) (21 CFR 56.109(e)), to conduct continuing review of the research at intervals appropriate to the degree of risk that it presents but not less than once a year.

17. One comment stated that expedited review procedures should never be used in research that involves vulnerable populations.

FDA disagrees with the comment. Expedited review procedures may only be used to review research that involves minimal risk as defined in § 56.102(i) or to review minor changes in previously approved research (§ 56.110(b)). The determination that such conditions apply must be made by the chairperson of the IRB, or by one or more experienced members of the IRB designated by the chairperson. Thus, research involving vulnerable populations will not be subject to expedited review unless a member of the IRB has affirmatively determined that the subjects will not be exposed to any greater risk of harm than they encounter in daily life or during routine physical or psychological examinations or tests, or that a change in research that has been reviewed by the whole IRB is minor. Obviously, in making these determinations, the IRB member must consider the nature of the subject population. Moreover, if expedited review is undertaken, the reviewer may exercise all the authority of the IRB, including the authority under § 56.111(a)(3) to ensure that any special problems of vulnerable populations have been addressed. Thus, FDA believes that vulnerable populations will not be involved in research that has been subject to expedited review procedures without full consideration of whether such research should be subject to expedited review at all and, if so, of their interests. Therefore, FDA does not agree with the comment.

G. Comments on Criteria for IRB Approval of Research

18. One comment suggested deleting "* * * economically or educationally disadvantaged persons * * *" from new § 56.111(a)(3), stating that it would be impossible for the IRB or the clinical investigator to make that determination.

FDA disagrees with the comment. As stated in § 56.111(b), FDA expects the IRB to make sure that adequate protections are included in those clinical investigations in which vulnerable subjects will be participating. There is no requirement for the IRB to make a determination that individual subjects are disadvantaged. However, the IRB is required to determine whether it is likely that vulnerable individuals will be involved in the study, and, if so, whether adequate safeguards have been included to protect the study subjects or whether additional safeguards are necessary.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or

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cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Economic and Regulatory Assessments

FDA has examined the economic consequences of the final amendments to its regulations pertaining to IRB's and to informed consent in accordance with the criteria in section 1(b) of Executive Order 12291 and found that these amendments would not be a major rule under the Executive Order. The agency also has considered the effect that the final rule would have on small entities including small businesses in accordance with the Regulatory Flexibility Act (Pub. L. 96-354). The agency certifies that there will not be a significant economic impact on a substantial number of small entities. FDA explained the basis for these conclusions in the proposal (53 FR 45681). The agency did not receive any comments that suggest contrary conclusions. This final rule contains information collections subject to the Paperwork Reduction Act of 1980. These information collections have been approved under OMB control number 0910-0130.

List of Subjects in

21 CFR Part 50

Prisoners, Reporting and recordkeeping requirements, Research, Safety.

21 CFR Part 56

Reporting and Recordkeeping requirements, Research, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, 21 CFR parts 50 and 56 are amended as follows:

PART 50—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for 21 CFR part 50 continues to read as follows:

Authority: Secs. 201, 406, 408, 409, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 371, 376, 381); secs. 215, 301, 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b-263n).

2. Section 50.3 is amended by revising paragraph (l) to read as follows:

§ 50.3 Definitions.

* * * * *

(l) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

* * * * *

PART 56—INSTITUTIONAL REVIEW BOARDS

3. The authority citation for 21 CFR part 56 continues to read as follows:

Authority: Secs. 201, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 371, 376, 381); secs. 215, 301, 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b-263n).

4. Section 56.102 is amended by revising paragraph (i) and by adding new paragraph (m) to read as follows:

§ 56.102 Definitions.

* * * * *

(i) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

* * * * *

(m) *IRB approval* means the determination of the IRB that the clinical investigation has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and Federal requirements.

5. Section 56.104 is amended by adding new paragraph (d) to read as follows:

§ 56.104 Exemptions from IRB requirement.

* * * * *

(d) Taste and food quality evaluations and consumer acceptance studies, if wholesome foods without additives are consumed or if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural, chemical, or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

6. Section 56.107 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 56.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, cultural backgrounds, and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review the specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards or professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable catgory of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about the experienced in working with those subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the instituton's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in the scientific area and at least one member whose primary concerns are in nonscientific areas.

* * * * *

7. Section 56.108 is amended by revising paragraph (a), by removing paragraph (c), by redesignating paragraph (b) as paragraph (c), by adding a new paragraph (b), and by adding a parenthetical statement to the end of the section to read as follows:

§ 56.108 IRB functions and operations.

(a) Follow written procedures: (1) For conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (2) for determining which projects require review more often than annually and which projects need verification from sources other than the investigator that no material changes have occurred since previous IRB review; (3) for ensuring prompt reporting to the IRB of changes in research activity; and (4) for ensuring that changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except where necessary to eliminate apparent immediate hazards to the human subjects.

(b) Follow written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the Food and Drug Administration of: (1) Any unanticipated problems involving risks to human subjects or others; (2) any instance of serious or continuing noncompliance with these regulations or the requirements or determinations of the IRB; or (3) any suspension or termination of IRB approval.

* * * * *

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0130)

8. Section 56.110 is amended by revising paragraph (b) to read as follows:

§ 56.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

* * * * *

(b) An IRB may use the expedited review procedure to review either or both of the following: (1) Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk, (2) minor changes in previously approved research during the period (of 1 year or less) for which approval is authorized. Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the IRB chairperson from among the members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited review procedure set forth in § 56.108(c).

* * * * *

9. Section 56.111 is amended by revising paragraphs (a)(3) and (b) to read as follows:

§ 56.111 Criteria for IRB approval of research.

(a) * * *

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, handicapped, or mentally disabled persons, or economically or educationally disadvantaged persons.

* * * * *

(b) When some or all of the subjects, such as children, prisoners, pregnant women, handicapped, or mentally disabled persons, or economically or educationally disadvantaged persons, are likely to be vulnerable to coercion or undue influence additional safeguards have been included in the study to protect the rights and welfare of these subjects.

10. Section 56.115 is amended by revising paragraph (a)(6) and by adding a parenthetical statement to the end of the section to read as follows:

§ 56.115 IRB records.

(a) * * *

(6) Written procedures for the IRB as required by § 56.108 (a) and (b).

* * * * *

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0130)

Dated: March 29, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 91-14200 Filed 6-17-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF EDUCATION

34 CFR Parts 350 and 356

Protection Of Human Subjects—Disability and Rehabilitation Research: General Provisions, Disability and Rehabilitation Research: Research Fellowships

AGENCY: Department of Education.

ACTION: Interim final regulations with an opportunity to comment.

SUMMARY: The Secretary amends program regulations for the National Institute on Disability and Rehabilitation Research to add certain protections for handicapped children and mentally disabled persons who are the subjects of research conducted or sponsored by those programs. Specifically, the program regulations would require that when an institutional review board (IRB) reviews research involving these research subjects, the IRB must include at least one person who is primarily concerned with the welfare of the research subjects. The regulations are necessary as the result of the Department of Education's (Department) withdrawal of a departure from the common regulations for the protection of human research subjects.

DATES: Comments must be received on or before August 2, 1991. These regulations take effect either August 19, 1991, or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

ADDRESSES: All comments concerning these interim final regulations should be addressed to Mr. Edward Glassman; Office of Planning, Budget and Evaluation; U.S. Department of Education, Federal Building #6, room 3127, 400 Maryland Avenue SW., Washington, DC 20202-4132.

FOR FURTHER INFORMATION CONTACT: Edward B. Glassman, Telephone: (202) 401-3132. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (In the Washington DC area, 202 708-9300) between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: The Office of Science and Technology Policy, Executive Office of the President (OSTP), published a "Proposed Model Policy for the Protection of Human Subjects" in the **Federal Register** on June 3, 1986 (51 FR 20204). OSTP adopted a final policy for the protection of human research subjects on November 10, 1988 (53 FR 45660). The Final Policy adopted by OSTP was included in proposed common regulations published in the **Federal Register** on November 10, 1988 (53 CFR 45661) by sixteen departments and agencies in the Executive Branch of the Federal Government, including the Department of Education. The final common regulations are published in another section of this **Federal Register** part.

The notice of proposed rulemaking (NPRM) for the common regulations specifically asked for comments addressing what effect promulgation of the Model Policy would have on each of the agencies involved in the proposed rulemaking. The Secretary proposed a departure from the common regulations that would require representation on an Institutional Review Board (IRB) of at least one person primarily concerned with the welfare of the research subjects whenever the research involves handicapped children or mentally disabled persons. As discussed below,

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the Secretary has decided to withdraw this across-the-board departure in favor of program-specific regulations under those programs of the Department that are likely to support covered research that involves these research subjects.

Composition of the IRB

Comment

The Department proposed a departure to § ____.107(a) of the common regulations that would have required that, for all programs of the Department, "when an IRB reviews research that deals with handicapped children or mentally disabled persons, the IRB shall include at least one person primarily concerned with the welfare of the research subjects." The remainder of the departure reiterated the common rule's provision, which required institutions to consider representation on the IRB of persons who are knowledgeable about and experienced in working with certain vulnerable subjects if the IRB regularly reviews research involving those vulnerable subjects. Twenty-one institutions focused on this proposed departure in their comments. The majority of these comments were opposed to the proposed departure.

Some commenters, while supporting the proposed general language in § ____.107, stated their belief that the departure was not necessary because the policy in § ____.107 already addresses representation of the special concerns of vulnerable subjects on the IRB. Thus, the rights of handicapped children and mentally disabled persons should be represented on any IRB that regularly reviews proposals involving those individuals and there is nothing to be gained by emphasizing these two categories of subjects. Such an emphasis was seen as a precedent with the potential for discrimination against other categories of vulnerable subjects. When special expertise is required, IRBs already have the option, and, they believed, the obligation to seek informed consultants. However, one commenter stated "If in future staffing of our IRB, someone with expertise in this area is available and willing to serve, we would be happy to encourage such participation."

One commenter suggested that only when an IRB regularly reviews research that deals with handicapped children or mentally disabled persons should the IRB include at least one person primarily concerned with the welfare of the research subjects. Otherwise, consultation should take place when appropriate. Another suggestion was that handicapped children be added to the list of examples of vulnerable subjects for which an IRB that regularly reviews research might want to consider inclusion of one or more members who are knowledgeable about and experienced in working with these subjects.

Some commenters objected to the lack of consistency among Federal agencies and cited the Department of Education's proposed departure as inconsistent with the purpose of the common rule. One commenter indicated that the departure would not pose any problem.

Response

The language of the proposed departure was rooted in the Secretary's concern that the welfare of research subjects who are handicapped children or mentally disabled persons be adequately protected because of the diminished capacity of such persons to protect their own interests and their corresponding greater potential for harm. It should be noted that, while the common rule does, in general, protect the interests of vulnerable populations, it does not specifically command representation of their interests in all cases. For example, the common rule only requires that when an IRB regularly reviews research involving vulnerable subjects, consideration should be given to including on the IRB a researcher experienced in working with such subjects. Thus, the Department believes it is appropriate to offer special protection for handicapped children and mentally disabled persons, and the protection proposed in the departure would have satisfied that need.

The comments also appear to misunderstand the intent of the Department's proposed departure. Some commenters believed that the departure would require that an IRB include a permanent member to represent the special populations covered by the departure. Others appeared to believe that the departure would apply to all research of the institution that involved the special populations covered by the departure. The proposed departure would have produced neither of these results. Instead, the proposed departure would have required the addition of one member on an *ad hoc* basis only when the research is sponsored or funded by the Department of Education and purposefully requires the inclusion of handicapped children or mentally disabled persons.

As explained above, the Secretary believes that there is a special need to protect handicapped children and mentally disabled persons. However, given the broad policy objective of providing consistent treatment through common regulations, the Secretary has decided that the IRB special representation requirements contained in the proposed departure are not necessary for most of the programs of the Department, because most programs of the Department do not support research likely to involve those persons. Thus, the Secretary has decided to withdraw the departure. However, the Secretary believes that the concerns addressed by the proposed departure have a particular urgency in those programs of the Department that support a significant amount of research involving handicapped children and mentally disabled persons. Therefore, the Secretary is amending the regulations for the programs of the National Institute on Disability and Rehabilitation Research (34 CFR parts 350 and 356) to ensure that the protections that would have been afforded under the departure are implemented in those specific programs.

Although the Secretary has decided to publish this regulation in final form, due to the strong public interest created by the proposed departure, and because a number of commenters appeared to misunderstand the effect of the proposed rule, the Secretary has also decided to offer the public an additional opportunity to comment on the final rule. The address to which commenters should send their comments and the date by which those comments must be received is stated at the beginning of this preamble.

Changes

In the notice of proposed rulemaking, the proposed departure was stated as follows: "When an IRB reviews research that deals with handicapped children or mentally disabled persons, the IRB must include at least one person primarily concerned with the welfare of the research subjects." The Secretary has decided to change this language in the program-specific regulations adopted in this document to make clear that the regulation specifically protects handicapped children and mentally disabled persons when those persons are purposefully included in a research protocol, rather than incidentally. Therefore, the language has been changed to state: "When an IRB reviews research that purposefully requires inclusion of handicapped children or mentally disabled persons in the research sample, the IRB must include at least one person primarily concerned with the welfare of the research subjects."

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established under the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these interim final regulations will not have a significant economic impact on a substantial number of small entities.

The small entities that are affected by these interim final regulations are small institutions receiving research grants or contracts under the programs of the National Institute on Disability and Rehabilitation Research. However, the regulations do not have a significant economic impact on these entities because the regulations do not impose excessive regulatory burdens. These regulations impose minimal requirements that are necessary to ensure the proper treatment of handicapped children and mentally disabled persons under the programs of the National Institute on Disability and Rehabilitation Research.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these interim final regulations. Comments are specifically invited on whether other research programs of the Department should have added protections for handicapped children and mentally disabled persons.

All comments submitted in response to these regulations will be available for public inspection, during and after the comment period, in room 3127, 400 Maryland Avenue, SW., Washington, DC between the hours of 9 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducng regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these interim final regulations.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 350

Education, Education of the handicapped, Educational research, Grant programs—education.

34 CFR Part 356

Education, Education research, Fellowships.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: June 6, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by amending parts 350 and 356 as follows:

PART 350—DISABILITY AND REHABILITATION RESEARCH: GENERAL PROVISIONS

3. The authority citation for part 350 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

4. Section 350.3 is amended by revising paragraph (d) and the authority citation at the end of the section to read as follows:

§ 350.3 What regulations apply to these programs?

* * * * *

(d)(1) The regulations in 34 CFR part 97, PROTECTION OF HUMAN SUBJECTS, except § 97.107(a).

(2) Each Institutional Review Board (IRB) established under part 97 must have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB must be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds, and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB must be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB must therefore include persons knowledgeable in these areas. When an IRB reviews research that purposefully requires inclusion of handicapped children or mentally disabled persons as research subjects, the IRB must include at least one person primarily concerned with the welfare of these research subjects. If an IRB regularly reviews another vulnerable category of subjects, such an non-handicapped children, prisoners, pregnant women, or handicapped adults, consideration must also be given to the inclusion of one or more individuals who are knowledgeable about the experience in working with these subjects.

(Authority: 20 U.S.C. 761a, 762, 42 U.S.C. 300v-1(b))

PART 356—DISABILITY AND REHABILITATION RESEARCH: RESEARCH FELLOWSHIPS

1. The authority citation for part 356 continues to read as follows:

Authority: 29 U.S.C. 761a(d), unless otherwise noted.

2. Section 356.3 is amended by revising paragraph (c) and the authority citation at the end of the section to read as follows:

§ 356.3 What regulations apply to this program?

* * * * *

(c)(1) The regulations in 34 CFR part 97, PROTECTION OF HUMAN SUBJECTS, except § 97.107(a).

(2) Each Institutional Review Board (IRB) established under part 97 must have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB must be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds, and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB must be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB must therefore include persons knowledgeable in these areas. When an IRB reviews research that purposefully requires inclusion of handicapped children or mentally disabled persons as research subjects, the IRB must include at least one person primarily concerned with the welfare of these research subjects. If an IRB regularly reviews another vulnerable category of subjects, such as non-handicapped children,

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prisoners, pregnant women, or handicapped adults, consideration must also be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(Authority: 29 U.S.C. 761a(d), 42 U.S.C. 300v-1(b))

[FR Doc. 91-14261 Filed 6-17-91; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

Federal Policy for the Protection of Human Subjects: Additional Protections for Children Involved as Subjects in Research

AGENCY: Department of Health and Human Services.

ACTION: Technical amendment.

SUMMARY: This technical amendment is to correct a reference in 45 CFR part 46 subpart D (Additional Protection for Children Involved as Subjects in Research) to subpart A of that part of the Federal Register.

In the revision to subpart A, published elsewhere in this issue, the numbering of exemptions in 45 CFR part 46.101(b) changes.

The reference to those exemptions in subpart D 45 CFR part 46.401(b) is now amended accordingly.

EFFECTIVE DATE: This regulation shall become effective on August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Joan P. Porter, staff Director, Interagency Human Subjects Coordinating Committee, building 31, room 5B59, Bethesda, Maryland 20892 Telephone (301) 496-7005.

List of Subjects in 45 CFR Part 46

Human subjects, Research, Reporting and record-keeping requirements, Infants and children.

PART 46—PROTECTION OF HUMAN SUBJECTS

1. The authority for part 46 is revised to read:

Authority: 5 U.S.C. 30; Sec. 474(a), 88 Stat. 352 [42 U.S.C. 289*-3(a)].

2. In subpart D—Additional Protections for Children Involved as Subjects in Research, § 46.401, paragraph (b) is revised to read as follows:

§ 46.401 To what do these regulations apply?

* * * * *

(b) Exemptions at § 46.101(b)(1) and (b)(3) through (b)(6) are applicable to this subpart. The exemption at § 46.101(b)(2) regarding educational tests is also applicable to this subpart. However, the exemption at § 46.101(b)(2) for research involving survey or interview procedures or observations of public behavior does not apply to research covered by this subpart, except for research involving observation of public behavior when the investigator(s) do not participate in the activities being observed.

* * * * *

Dated: March 29, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 91-14282 Filed 6-17-91; 8:45 am]
BILLING CODE 4140-01-M

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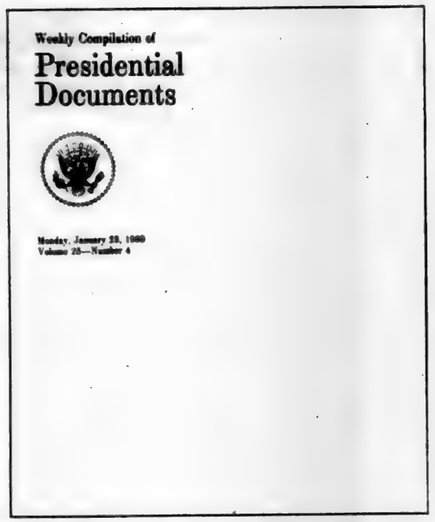
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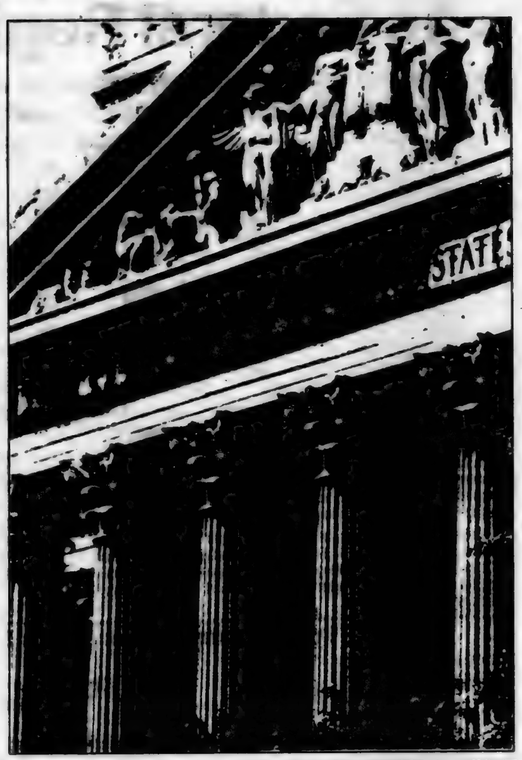
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Federal Register
Vol. 56, No. 118
Wednesday, June 19, 1991

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This action corrects two provisions which were erroneously stated in the final rule published on May 2, 1991 (56 FR 20101). Generally, that final rule amended the manner in which producers may participate in the Commodity Credit Corporation (CCC) price support programs for wheat, feed grains, rice, oilseeds (including soybeans), and farm-stored peanuts and the terms and conditions of CCC price support programs for wheat, feed grains, rice, oilseeds, and farm-stored peanuts, and specified the CCC price support loan eligibility quality requirements for the 1991 and subsequent year's crops.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Steve P. Gill, Agricultural Marketing Specialist, Commodity Operations Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013. Telephone (202) 447-6500.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined to be "non-major" because these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program, as found in the catalogue or Federal Domestic Assistance, to which this final rule applies is Commodity Loans and Purchases, 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the wheat, feed grain, rice, oilseed, and farm-stored peanuts CCC price support programs that these programs will have no significant impact on the quality of the human environment.

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Public reporting burden for the information collections contained in this final rule with respect price support programs for wheat, feed grain, rice, oilseeds, and farm-stored peanuts is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection has previously been cleared by the Office of Management and Budget, assigned number 0560-0087.

Background

A final rule was published in the Federal Register on May 2, 1991, at 56 FR 20101 which amended regulations found at 7 CFR part 1421 with respect to the price support program for wheat, feed grain, rice, oilseeds, and farm-stored peanuts which is conducted by CCC. In amending the provisions which govern the CCC price support program, CCC erroneously stated 20/64 instead of 14/64 in setting forth the sieve size requirement for sunflower seed used for a purpose other than to extract oil and omitted the word "not" in stating how the adjusted world price (AWP) for canola will be determined. Also, the sieve size requirement is being revised for clarity. Accordingly, this final rule amends 7 CFR part 1421 to provide that (1) sunflower seed used for a purpose other than to extract oil must pass over a 14/64" round hole screen and (2) if major f.o.b. export market price quotations for canola are not available for one or more days in the 30-day period ending the Friday prior to announcement, the available quotations during the period will be used.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Correction to Final Rule

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f-1, 1445b-3a, 1445o-3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. Section 1421.18 is amended by revising paragraph (b)(15)(ii)(A) to read as follows:

§ 1421.18 Warehouse-stored loans.

* * * * *

(b) * * *

(15) * * *

(ii) * * *

(A) The sunflower seed must pass over a 14/64" round hole screen.

* * * * *

3. Section 1421.25 is amended by revising the second sentence of paragraph (c)(5)(i) to read as follows:

§ 1421.25 Market price repayments.

* * * * *

(c) * * *

(5) * * *

(i) * * * If price quotations are not available for one or more days in the 30-day period ending the Friday prior to announcement, the available quotations during the period will be used. * * *

* * * * *

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Signed at Washington, DC, on June 13, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-14614 Filed 6-18-91; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 1435

Sugar Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth the regulations necessary for the collection of the nonrefundable marketing assessment imposed on sugar processed from domestically grown sugar beets and sugarcane as required by amendments made by the Omnibus Budget Reconciliation Act of 1990 (the "Reconciliation Act") to the Agricultural Act of 1949 (the "1949 Act").

DATES: Effective date: June 19, 1991.

Comments must be received on or before July 19, 1991 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments should be mailed or delivered to Bruce R. Weber, Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, room 3741, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may also be inspected at room 3741 beween 9 a.m. and 4:30 pm., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Matt Smargiasso, Financial Management Division, Agricultural Stabilization and Conservation Service; telephone: (202) 382-0011.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major". It has been determined that the provisions of this interim rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

The Executive Vice President, Commodity Credit Corporation (CCC) certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required under the provisions of the Regulatory Flexibility Act.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, an Environmental Assessment and an Environmental Impact Statement are not necessary for this interim rule.

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loan Purchases; 10.051.

This interim rule requires an information collection form CCC-80, see Attachment 1, which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). ASCS has requested OMB to approve the information collection under expedited review before this rule is final. The public reporting burden for these collections of information is estimated to vary from 60 to 120 minutes per response, with an average of 90 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The program covered by this interim rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The provisions of this rule are effective upon publication in the **Federal Register** since the Reconciliation Act requires the imposition of assessments on the 1991 crops of raw cane sugar and beet sugar which will soon be processed. However, comments are requested and will be taken into consideration in developing the final rule.

Statutory Background

Section 1105 of the Reconciliation Act amended section 206 of the 1949 Act to provide that for the 1991 through 1995 crops of sugarcane and sugar beets, the first processor shall remit to CCC a nonrefundable marketing assessment in an amount equal to .18 cents per pound of raw cane sugar and .193 cents per pound of beet sugar, respectively. As amended, section 206 of the 1949 Act provides for the imposition of penalties if any person fails to: Collect or remit such funds; or comply with the record keeping requirements which are necessary to ensure that such collections or remittances are made. Generally, the interim rule provides as follows:

1. *Area of coverage.* The marketing assessments apply to all first processors of domestically grown sugar beets and sugarcane operating in the 50 United States, the several territories, the District of Columbia, and Puerto Rico.

2. *Marketing Assessment Payable.* The marketing assessment shall be payable on beet sugar and raw cane sugar or an alternative sugar product processed from domestically grown 1991–1995 crops of sugar beets and sugarcane. "Domestically grown" refers to sugar beets and sugarcane grown in the areas identified in the previous paragraph.

3. *Time for Remittance.* Remittances will be due by the end of the month following the month in which the sugar beets or sugarcane were processed after June 30, 1991 until July 1, 1996.

List of Subjects in 7 CFR Part 1435

Loan programs/agriculture, Price support programs, Reporting and recordkeeping requirements, Sugar.

PART 1435— SUGAR

1. The authority citation for 7 CFR part 1435 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 144bg; 15 U.S.C. 714b and 714c.

2. Subpart—Regulations Governing the Protection of Sugar Producers (§§ 1435.200–1435.206) is revised to read as follows:

Subpart—Assessments

Sec.

1435.200 General statement.
1435.201 Definitions.
1435.202 Amount of the marketing assessment.
1435.203 Remittance.
1435.204 Penalty.
1435.205 Maintenance and inspection of records.
1435.206 Refunds.

Subpart—Assessments

§ 1435.200 General statement.

(a) This subpart sets forth the terms and conditions for the payment to the Commodity Credit Corporation of marketing assessments for the 1991 through 1995 crops of sugar beets and sugarcane.

(b) The marketing assessment applies to:

(1) All raw cane sugar or alternative sugar products processed from domestically produced sugarcane during the 1991 through 1995 crop years; and

(2) All beet sugar or alternative products processed from domestically produced sugar beets during the 1991 through 1995 crop years.

(c) All first processors of sugar beets and sugarcane are responsible to remit the marketing assessment. The marketing assessment shall be due and payable to the Commodity Credit Corporation by the last day of the calendar month following the month in which the sugarcane and sugar beets were processed.

§ 1435.201 Definitions.

Alternative products means sweeteners derived from sugar beets and sugarcane that CCC determines may be computed to a beet sugar or raw cane sugar equivalent for purposes of determming an assessment due CCC. Examples include, but are not limited to, liquid sucrose and cane syrup. Alternative products will be converted by weight, in accordance with the formula set forth in this part which is used to administer the CCC sugar price support loan program, in order to determine the assessment due CCC.

Beet sugar means a product derived from processing sugar beets.

First Processor means a person who commercially processes sugar beets and sugarcane into beet sugar, raw cane sugar, alternative products such as, but not limited to, liquid sucrose, cane syrup, molasses, or other products used as sweeteners.

Intermediate products means a compound such as a sucrose syrup that can be stored until being further processed into sugar or until used in its alternative form. The assessment is payable after the intermediate product is converted to beet sugar, raw cane sugar, or used in its alternative form, rather than when the intermediate product is processed.

Raw cane sugar means a product derived from processing sugarcane

§ 1435.202 Amount of the marketing assessment.

(a) First processors shall prepare a form CCC-80 each month that shows the quantity of:

(1) Beet sugar processed;

(2) Raw cane sugar processed;

(3) Alternative products processed;

(4) And intermediate products processed during the previous calendar month.

(b) The amount of the beet sugar marketing assessment to be remitted shall be the sum determined by multiplying the number of pounds, or in the case of alternative products equivalent pounds, of beet sugar processed from domestically produced sugar beets in a calendar month by .193 cents per pound. The amount of such pounds shall be specified on form CCC-80.

(c) The amount of the marketing assessment on raw cane sugar to be remitted to CCC shall be the sum determined by multiplying the number of pounds of raw cane sugar, or in the case of alternative products equivalent pounds, processed from domestically grown sugarcane in a calendar month by .18 cents per pound. The amount of such pounds shall be specified on form CCC-80.

§ 1435.203 Remittance.

Marketing assessments shall be remitted on a monthly basis and shall be due and payable to the CCC by the last day of the month following the month in which the sugar beets or sugarcane were processed. Remittances not received by the last day of the calendar month following the month the sugar beets or sugarcane were processed will be considered late and the processor shall be assessed a penalty in accordance with § 1435.204. Sugar processors shall send the remittance as specified by CCC.

§ 1435.204 Penalty.

A penalty equal to 100 percent of the price support loan rate shall be assessed on all assessment amounts a processor fails to remit to CCC. A penalty equal to 100 percent of the price support loan rate shall be assessed on any deficiencies in assessments payable to CCC, as determined by CCC, due to the processor failing to maintain adequate documentation to support the payment of the marketing assessment. In addition to the penalty, interest on unpaid assessments or deficiencies in assessments paid shall be collected from the date the marketing assessment was due CCC at the rate specified in part 1403 of this chapter beginning on the first day of the month after the payment is due in accordance with § 1435.203 and such interest shall continue to accrue until such amount is paid. Interest shall be charged for amounts that are not received by the required date; however if the payment is received within 30 days, no penalty shall apply.

§ 1435.205 Maintenance and inspection of records.

Representatives of CCC shall have the right to have access to the premises of the processor in order to inspect, examine, and make copies of the books, records, accounts, and other data as are deemed necessary by CCC or CCC's agents to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than three years from the date the remittance is made to CCC.

§ 1435.206 Refunds.

Marketing assessments are nonrefundable. However, upon presentation of acceptable evidence to the Controller, CCC, as determined by CCC, adjustments in an assessment may be made by CCC to reflect the actual processing of raw cane sugar or beet sugar by the processor.

Note: The following Attachment 1 will not appear in the Code of Federal Regulations.

Signed at Washington, DC June 13, 1991 by:

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

BILLING CODE 3410-05-M

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Attachment 1

Form Approved - OMB No. 0560-XXXX

CCC-80 (PROPOSAL 1) — U.S. DEPARTMENT OF AGRICULTURE, Commodity Credit Corporation

SUGAR PROCESSOR REPORT OF MONTHLY PRODUCTION TO DETERMINE ASSESSMENT DUE COMMODITY CREDIT CORPORATION (CCC)

1. PRODUCTION PERIOD — A. MONTH — B. YEAR

NOTE: The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a). This report is authorized by 7 CFR Part 1435, this information is necessary for the collection of the nonrefundable marketing assessment imposed on sugar processed from domestically grown sugar beets and sugarcane as required by amendments made by the Omnibus Budget Reconciliation Act of 1990 (the "Reconciliation Act") to the Agricultural Act of 1949. Furnishing the data is required; however, without it a penalty equal to 100 percent of the loan rate shall be assessed on any deficiencies in assessments payable to CCC, as determined by CCC, due to the processor failing to maintain adequate documentation to support the payment of the marketing assessment. This information may be furnished to any agency responsible for enforcing the provisions of the Act. Public reporting burden for this collection of information is estimated to average 65 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250, and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-XXXX), Washington, D.C. 20503. RETURN THIS COMPLETED FORM TO YOUR

2. NAME AND ADDRESS OF PROCESSOR — TELEPHONE NO. (Area code)

RETURN TO:

SECTION A - ASSESSMENT OF BEET AND RAW SUGAR

	RAW CANE SUGAR	RAW BEET SUGAR
3. Pounds of Raw Sugar or Beet Sugar	Lbs.	Lbs.
4. Pounds of Alternative Product *(Please specify)*		
		Lbs.
5. Total Pounds Assessed *(Item 3 + Item 4)*		Lbs.
6. Pounds of Intermediate Product		Lbs.
7. Assessment Due CCC	$	

8. USE THIS SPACE FOR CALCULATIONS

DRAFT COPY

SECTION B - CERTIFICATION

I hereby certify that the above information is true and correct to the best of my knowledge and belief.

SIGNATURE OF RESPONSIBLE OFFICIAL — TITLE — DATE

NOTE: Definitions of raw cane sugar, beet sugar, alternative product, and intermediate product are found in 7 CFR Part 1435.

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or handicap.

PROCESSOR'S COPY

[FR Doc. 91-14470 Filed 6-18-91; 8:45 am]

BILLING CODE 3410-05-C

7 CFR Part 1494

Export Bonus Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments; suspension of subpart D.

SUMMARY: The Commodity Credit Corporation (CCC) is suspending the regulations at title 7, chapter XIV, part 1494, subpart D, Dairy Export Incentive Program Operations, which were published in the **Federal Register** on June 7, 1991 (56 FR 26323–26325). This suspension of subpart D will allow CCC time to re-qualify exporters for program participation before it implements the new program operations regulations.

EFFECTIVE DATE: Subpart D, published at 56 FR 26323–26325, dated June 7, 1991, is suspended until July 3, 1991.

FOR FURTHER INFORMATION CONTACT: William Hawkins at (202) 245–1635.

SUPPLEMENTARY INFORMATION: On June 7, 1991, CCC published an interim rule with request for comments in the **Federal Register**. This interim rule established in the form of regulations the criteria considered in evaluating and approving proposals for country and commodity initiatives under the Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP). The criteria for the EEP and the DEIP are found in subparts A and C, respectively, of 7 CFR Part 1494. This interim rule also established program operations regulations for the DEIP in subpart D. Program operations regulations for the EEP were already codified at subpart B.

The effective date for the interim rule was shown as the date of publication, June 7, 1991. This will remain the effective date for subparts A and C. However, CCC must re-qualify exporters for program participation before the program operations provisions in subpart D are implemented. In addition, subpart D is based upon subpart B, which was published in the **Federal Register** as a final rule on June 3, 1991 (56 FR 25005) but which will not become effective until July 3, 1991.

For the reasons stated above, title 7, chapter XIV, part 1494, subpart D, published at 56 FR 26323–26325, dated June 7, 1991, is suspended until July 3, 1991.

Signed this 13th day of June, 1991 at Washington, DC.

F. Paul Dickerson,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 91-14615 Filed 6-18-91; 8:45 am]

BILLING CODE 3410-10-M

Farmers Home Administration

7 CFR Parts 1930, 1948, 1951, and 1965

Processing Multiple Family Housing Payments

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to reflect changes in the internal processing of collections for Multiple Family Housing loans. Prior to this change, project payments were converted to a paper based form and mailed to a central point for data conversion. This caused a delay of 4 to 15 days before the payment was processed to the account, often causing current accounts to appear delinquent on reports and in statements mailed to borrowers. The intended effect is to allow payments to be credited to the account overnight, thus assuring accurate reporting and statements.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Jeanine Johnson, Senior Loan Specialist, Farmers Home Administration, U.S. Department of Agriculture, room 5328, South Agriculture Building, Washington, DC 20250, Telephone (202) 382–9729.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and, since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves internal agency management and publication for comment is unnecessary.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

For reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this activity is related to the following programs that are subject to intergovernmental consultations with State and local officials:

10.405—Farm Labor Housing Loan and Grants
10.411—Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.415—Rural Rental Housing Loans
10.427—Rural Rental Assistance Payment (Rental Assistance)

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1948

Business and industry, Coal, Community development, Community facilities, Energy, Grant programs—Housing and community development, Housing, Nuclear energy, Planning, Rural areas, and Transportation.

7 CFR Part 1951

Accounting, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages, Collection of loan payments and depositing payment through the Concentration Banking System (CBS), Financial Institutions.

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income housing—Rental, Mortgages.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for part 1930 is amended to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit E is amended by removing VII D and revising paragraphs X.A.2.a.(3), X.A.2.b and X.B.1. to read as follows:

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Exhibit E of Subpart C—Rental Assistance Program

X. * * *
A. * * *
2. * * *
a. * * *
(3) Enter the payment data via field office terminals as required in Exhibit A to subpart K of part 1951 (available in any FmHA office).
b. The District Director should verify the accuracy of the borrower's servicing address shown on the Finance Office (FO) record. When the address shown is incorrect, corrections must be made on Automated Multi-Housing Accounting System (AMAS) Screen M5A "Record Borrower/Project Data" via a field computer terminal.
B. * * *
1. As part of the servicing plan, the District Director may agree to releasing a portion of the monthly RA for project operations.
* * * * *

3. Exhibit E is further amended in the introductory text of paragraph XIV A by revising the first sentence and removing the second sentence and by revising paragraphs XV.A.1.b., XV.A.1.c. and XV.A.1.d. to read as follows:

XIV. * * *
A. When a project's obligated funds are fully disbursed under any given RA agreement number, RA will be automatically terminated by the Finance Office and no further RA requests will process against that RA agreement number. * * *
* * * * *
XV. * * *
A. * * *
1. * * *
b. The District Director will notify the borrower in writing.
c. With a suspend code on the project record, entered by the State Director through the AMAS M5A screen, the Finance Office will suspend all RA payments to the affected project.
d. The State Director may reinstate the RA to the same borrower in the same project, by removing the suspend code from the M5A screen through a field office terminal.
* * * * *

4. Exhibit H is amended by revising the introductory text of paragraph IX. and paragraph IX. A. 2. to read as follows:

Exhibit H of Subpart C—Interest Credits on Insured RRH and RCH Loans

IX. *Loan Payments:* With each payment made, the borrower will complete Form FmHA 1944–29. The FmHA representative will process the payment as required in subparts B and K of part 1951 of this chapter.
A. * * *
2. When a payment is made for any month that involves a rental surcharge, Form FmHA 1944–29 will be completed with the amount of the surcharge being inserted in the spaces provided. This form will be completed and the amount reported as a charge on the project account regardless of whether the surcharge is actually collected by the borrower.
* * * * *

PART 1948—RURAL DEVELOPMENT

5. The authority citation for part 1948 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Section 601—Energy Impacted Area Development Assistance Program

6. Section 1948.90 is amended by revising the last sentence of paragraph (b)(4) to read as follows:

§ 1948.90 Land transfers.

* * * * *
(b) * * *
(4) * * * Funds will be transmitted to the Finance Office in accordance with FmHA Instruction 1951–B, § 1951.58(k), available in FmHA offices.
* * * * *

PART 1951—SERVICING AND COLLECTIONS

7. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Collections

8. Section 1951.55 is revised to read as follows:

§ 1951.55 Receiving and processing collections.

FmHA offices receive borrower payments either through the mail or in person in the form of checks, money orders, and cash. Payments are recorded on the appropriate accounting forms which are Form FmHA 451–2, Form FmHA 1944–9, Form FmHA 1951–55, or a payment coupon. Forms FmHA 451–2 and FmHA 1944–9 are used to transmit accounting information to the Finance Office. Form FmHA 1951–55 is used to assemble payment information which the District Offices use to transmit MFH account information through field office terminals. In addition, the FmHA office records payments on a management system card, a servicing card, or a payment tracking form, as appropriate.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

9. Section 1951.501 is amended by adding a new paragraph (d) to read as follows:

§ 1951.501 General.

* * * * *
(d) All MFH loan payments will be processed using Exhibit A of this subpart (available in any FmHA office).

10. Section 1951.506 is amended by revising paragraphs (a)(6) and (c) to read as follows:

§ 1951.506 Processing payments.

(a) * * *
(6) The District Director will certify that data on current tenant certifications held in the District Office supports claims on Form FmHA 1944–29. The District Director will transmit payments as directed in Exhibit A of this subpart (available in any FmHA office).
* * * * *
(c) *Uncollectible payment.* Uncollectible payments will be handled under subpart B of this part. The payment effective date for the replacement payment will be the date the replacement payment is received in the District Office, not the date of the original payment.

11. Section 1951.507 is amended by revising paragraph (e) to read as follows:

§ 1951.507 Maintaining borrower accounts.

* * * * *
(e) *Maintaining records of accounts in District Offices.* Records of accounts will be maintained in the District Office. Form FmHA 1905–6, "Management System Card—Multifamily Housing," or other system authorized by FmHA regulations will be maintained for each project. For projects on PASS, the Management System Card will be flagged with an orange signal between Position "5" and "RRH". Exhibit A–1 of this subpart (available in any FmHA office) should be used to track payments.

12. Section 1951.512 is revised to read as follows:

§ 1951.512 Changes in the application of loan payments.

District Office employees with State Director authorization according to § 1930.143 of subpart C to part 1039 of this chapter are authorized to approve reapplication of loan payments between accounts when payments have been applied in error. All authorization for reapplication of payments must conform to the policies expressed in this subpart. No change may be made if the loan is paid in full, the cancelled note or notes have been returned to the borrower, and the security instruments have been satisfied. The District Director will process the changes as prescribed in Exhibit A of this subpart (available in any FmHA office).

13. Section 1951.550 is revised to read as follows:

§ 1951.550 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0106. Public reporting burden for this collection of information is estimated to be 15 minutes per response, with an average of 15 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0106), Washington, DC 20503.

PART 1965—REAL PROPERTY

14. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

15. Section 1965.65 is amended by revising paragraph (f)(14)(i) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *
(f) * * *
(14) * * *
(i) *Identification.* Payments received on the date of transfer will be remitted as Regular payments on Form FmHA 1951–55 "Collection Log." The payments will be credited to the transferor's borrower and project number when the payment should be credited prior to the transfer. The payments will be credited to the transferee's borrower and project number when the payment should be credited after the transfer.
* * * * *

16. Section 1965.100 is revised to read as follows:

§ 1965.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0100. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 4.25 hours per response, with an average of .60 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0100), Washington, DC 20503.
* * * * *

Dated: March 12, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–14612 Filed 6–18–91; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS Number: 1409–91]

RIN 1115–AB76

Adjustment of Status; Certain H–1 Nonimmigrant Nurses

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 162(f) of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, November 29, 1990. The interim rule establishes procedures for the adjustment of status to that of lawful permanent resident for certain alien nurses, their spouses and children.

DATES: This interim rule is effective June 19, 1991. Written comments must be submitted on or before July 19, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1409–91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Rita A. Boie, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street NW., room 7223, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: The Immigration Nursing Relief Act of 1989, Public Law 101–238 (INRA), was enacted in response to the critical shortage of nurses in the United States. In addition to requiring medical facilities to develop, recruit and retain United States nurses, INRA allows certain alien nurses who were in the United States as of September 1, 1989, to adjust immigration status to that of lawful permanent residents, without regard to the numerical limitations generally applicable to preference immigrants.

Eligible aliens must have been in the United States as H–1 nonimmigrant registered nurses as of September 1, 1989, and employed as registered nurses in the United States for three or more years before filing for adjustment of status or must be the spouses or children of eligible nurses. All eligible aliens must apply for adjustment of status on or before March 15, 1995.

The original language of the INRA did not waive other provisions of the Immigration and Nationality Act (the Act) for either nurses or their family members. A significant number of potential INRA beneficiaries were subsequently found to be ineligible to become lawful permanent residents because they could not meet general statutory requirements for adjustment of status. Most were ineligible because they fell within the provisions of section 245(c) of the Act. Section 245(c) of the Act prohibits the adjustment of status of preference immigrants who have been employed without authorization, are not in lawful nonimmigrant status at the time the application for adjustment is filed, or have failed to continuously maintain lawful nonimmigrant status in the past.

The Service's original interim regulations relating to the adjustment of status provisions of the INRA were published at 55 FR 10395 and became effective March 16, 1990. The Service received numerous comments regarding the provisions of the original regulations. The Service received approximately 400 letters from concerned individuals and organizations. In addition, petitions were received containing the signatures of over 1,300 persons.

Almost all commenters urged the Service to extend the benefits of the INRA to family members residing abroad. Many also expressed concern about the provisions restricting the benefits of the INRA adjustment of status provisions to applicants who had

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continually maintained lawful nonimmigrant status and who had not engaged in unauthorized employment in the United States. Several pointed out that, because of the extreme shortage of nurses and confusion regarding Service employment regulations, nurses were routinely encouraged to "moonlight" for health care facilities other than the petitioning hospital or clinic. Therefore, many otherwise eligible nurses would not be able to adjust status because of unauthorized employment. A few commenters requested clarification of specific portions of the regulations.

The IMMACT 90 amendments have significantly altered the provisions of the INRA. The Service is, however, limited by the terms of the amended INRA and cannot simply extend this benefit to applicants for immigrant visas. Other issues raised by many of the commenters are addressed by this rule.

Because of the volume of comments concerning the original interim regulation and the significant changes that must be made in order to implement the IMMACT 90 amendments, the Service is reissuing the INRA regulations in interim form and is again requesting public comment. Portions of the original INRA regulations not effected by IMMACT 90 are retained in this rule.

Section 162(f) of IMMACT 90 retroactively amends the INRA to allow additional alien nurses and accompanying family members to benefit from the adjustment of status provisions of the INRA. The IMMACT 90 amendments temporarily suspend portions of section 245(c) of the Act for INRA beneficiaries who apply for adjustment of status before the end of the transition period. The transition period will continue until October 17, 1991.

The IMMACT 90 amendments direct the Service to consider aliens who apply for adjustment of status under INRA before the end of the transition period, as meeting the Act's section 245(c) requirements of being in lawful nonimmigrant status and having continuously maintained lawful nonimmigrant status. The amendments also allow the Service to grant lawful permanent resident status to INRA adjustment applicants who were employed without authorization before November 29, 1990. These provisions apply to alien nurses and to their accompanying spouses and children.

The Service intends to further extend this consideration to employment taking place between November 29, 1990 and the end of the transition period. Taking this approach is necessary and appropriate, since it ensures the broadest implementation of the intent of Congress to provide for the adjustment of status of eligible nurses and their accompanying spouses and children.

The bars in section 245(c) of the Act will be reinstated after the transition period ends. An application filed after the end of the transition period will be denied if the alien engaged in unauthorized employment after November 29, 1990. The application will also be denied if the alien failed to maintain status (except through no fault of his or her own) after the end of the transition period.

The IMMACT 90 amendments are retroactive. An INRA beneficiary may file a motion to reopen an application for adjustment of status which had been denied prior to November 29, 1990, so that the application may be considered under the amended law.

The original regulation amended the list of technical violations of nonimmigrant status which will not cause an alien to be ineligible for adjustment of status. This provision, which added technical violations of nonimmigrant status committed by nurses who subsequently were reinstated to H–1 status in accordance with Public Law 101–658 (November 15, 1988) to the list, is retained in this rule.

Provisions of the original rule concerning eligibility, application period and the application have been reorganized and reworded in order to clarify the requirements for obtaining the adjustment of status benefits of the INRA.

The original rule also amended 8 CFR 245.1(f)(1) and 245.2(a)(5) to implement the INRA requirement that adjustment be accomplished under section 245 of the Act without the restrictions of sections 201 and 202 of the Act. These provisions are retained in the current rule.

This rule also makes organizational, grammatical and stylistic changes to 8 CFR part 245.

Compliance with 5 U.S.C. 553(d) as to notice of proposed rulemaking and delayed effective date are impracticable and unnecessary as the changes have been mandated by the passage of Public Law 101–649, (IMMACT 90) which retroactively amends Public Law 101–238 (INRA). Early implementation will allow alien nurses and their spouses and children to immediately obtain the additional benefits available to applicants for adjustment of status under the INRA.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirement contained in this regulation has been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 245 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 1257; 8 CFR part 2.

2. In § 245.1, paragraphs (b) introductory text, (b)(4), (c)(1), (c)(2)(iv), (d)(3), (f)(1) are revised to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) *Ineligible aliens.* The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act:

* * * * *

(4) Any alien who, on or after January 1, 1977, was employed in the United States without authorization prior to filing an application for adjustment of status. This restriction shall not apply to an alien who is:

(i) An immediate relative as defined in section 201(b) of the Act;

(ii) A special immigrant as defined in section 101(a)(27)(H) of the Act;

(iii) Eligible for the benefits of Public Law 101–238 (the Immigration Nursing Relief Act of 1989) and files an application for adjustment of status on or before October 17; or

(iv) Eligible for the benefits of Public Law 101–238 (the Immigration Nursing Relief Act of 1989), and has not entered into or continued in unauthorized employment on or after November 29, 1990.

* * * * *

(c) * * *

(1) *Lawful Immigration Status.* For purposes of section 245(c)(2) of the Act, the term "lawful immigration status" will only describe the immigration status of an individual who is:

(i) In lawful permanent resident status;

(ii) An alien admitted to the United States in nonimmigrant status as defined in section 101(a)(15) of the Act, whose initial period of admission has not expired or whose nonimmigrant status has been extended in accordance with part 214 of this chapter;

(iii) In refugee status under section 207 of the Act, such status not having been revoked;

(iv) In asylee status under section 208 of the Act, such status not having been revoked;

(v) In parole status which has not expired, been revoked or terminated; or

(vi) Eligible for the benefits of Public Law 101–238 (the Immigration Nursing Relief Act of 1989) and files an application for adjustment of status on or before October 17, 1991.

(2) * * *

(iv) A technical violation resulting from the Service's application of the maximum five/six year period of stay for certain H–1 nurses only if the applicant was subsequently reinstated to H–1 status in accordance with the terms of Public Law 101–658 (Immigration Amendments of 1988).

* * * * *

(d) * * *

(3) Adjustment of certain nurses who were in H–1 nonimmigrant status on September 1, 1989 (Pub. L. 101–238)—

(i) *Eligibility.* An alien is eligible to apply for adjustment of status without regard to the numerical limitations of sections 201 and 202 of the Act if:

(A) The applicant was in the United States in the status of a nonimmigrant under section 101(a)(15)(H)(i) of the Act to perform services as a registered nurse as of September 1, 1989,

(B) The applicant has been employed in the United States as a registered nurse for an aggregate of three years prior to the date of application for adjustment of status,

(C) The applicant's continued employment as a registered nurse meets the standards established for certification described in section 212(a)(14) of the Act prior to June 1, 1991 or section 212(a)(5)(i) on or after June 1, 1991,

(D) The applicant is the beneficiary of a valid, unexpired visa petition filed in accordance with this chapter according him or her preference status under the provisions of the Immigration and Nationality Act, and

(E) The applicant properly files an application for adjustment of status under the provisions of section 245 of the Act.

(ii) *Application period.* To benefit from the provisions of Public Law 101–238 (the Immigration Nursing Relief Act of 1989), an alien must properly file an application for adjustment of status under section 245 of the Act on or before March 15, 1995.

(iii) *Application.* An applicant for the benefits of Public Law 101–238 must file an application for adjustment of status on Form I–485, accompanied by the fee and supporting documents described in § 245.2 of this part. Beneficiaries of Public Law 101–238 must also submit:

(A) A visa petition or evidence that the applicant is currently the beneficiary of a valid unexpired visa petition, filed in compliance with this chapter, which accords the applicant preference status under the provisions of the Immigration and Nationality Act,

(B) A request for a determination by the district director that the alien is qualified for and will engage in the occupation of registered nurse, as currently listed on Schedule A (20 CFR part 656),

(C) Evidence, in the form of letters from employers stating the beginning and ending dates of employment as a registered nurse, showing that the applicant has been employed in the United States as a registered nurse in the United States for an aggregate of three years prior to the date the application for adjustment of status is filed,

(D) Evidence that the applicant was licensed as a registered nurse during periods of qualifying employment, and

(E) Evidence which establishes that the applicant was in the United States in H–1 nonimmigrant status for the purpose of performing services as a registered nurse on September 1, 1989.

(iv) *Effect of section 245(c)(2).* An applicant for the benefits of the adjustment of status provisions of Public Law 101–238 must establish eligibility for adjustment of status under all provisions of section 245 unless those provisions have specifically been waived.

(A) *Application for adjustment of status filed on or before October 17, 1991.* An applicant who qualifies for the benefits of Public Law 101–238, who properly files an application for adjustment of status on or before October 17, 1991, may be granted adjustment of status even though the alien has engaged or is engaging in unauthorized employment. For purposes of adjustment of status, the applicant will be considered to have continuously maintained a lawful nonimmigrant status throughout his or her stay in the United States as a nonimmigrant and to be in lawful nonimmigrant status at the time the application is filed.

(B) *Application for adjustment of status filed after October 17, 1991.* An alien who files an application for adjustment of status after October 17, 1991, will be subject to the provisions of section 245(c) of the Act. The application for adjustment of status will be denied if the applicant was employed without authorization after November 29, 1990. The application will be denied if the alien failed to continuously maintain a lawful nonimmigrant status (other than through no fault of his or her own for technical reasons) or if the alien was not in lawful nonimmigrant status at the time the application was filed.

(C) *Motions to reopen.* The Immigration Act of 1990 (Public Law 101–649) which became law on November 29, 1990, retroactively amended the Immigration Nursing Relief Act of 1989 (Public Law 101–238). An alien whose application for adjustment of status under the provisions of the Immigration Nursing Relief Act of 1989 was denied before November 29, 1990, because of unauthorized employment, failure to continuously maintain a lawful nonimmigrant status or not being in lawful immigration status at the time of filing, may file a motion to reopen the adjusmtment application. The motion to reopen must be made in accordance with the provisions of 8 CFR 103.5. The service will reopen the application for adjustment of staus and enter a new decision based upon the provisions of the Immigration Nursing Relief Act, as amended by the Immigration Act of 1990.

(v) *Description of qualifying employment.* Qualifying employment as a registered nurse may have taken place at any time before the alien files the application for adjustment of status. It may have occurred before, on or after the enactment of Public Law 101–238. All qualifying employment must have occurred in the United States. The qualifying employment as a registered nurse may have occurred while the alien was in any immigration status, provided that the alien was in H–1 nonimmigrant status for the purpose of performing services as a registered nurse on September 1, 1989. The employment need not have been continuous, provided the applicant can establish that he or she engaged in qualifying

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employment for a total of three or more years. Qualifying employment may include periods when the applicant possessed a provisional or temporary license to perform services as a registered nurse. Qualifying employment may not include periods when the applicant was not licensed to perform duties as a registered nurse.

(vi) *Effect of enactment on spouse or child.*

(A) *Spouse or child accompanying principal alien.* The accompanying spouse or child of an applicant for adjustment of status who benefits from Public Law 101–238, may also apply for adjustment of status. All benefits and limitations of this section, including those resulting from the implementation of the adjustment of status provisions of section 162(f) of Public Law 101–649, apply equally to the principal applicant and his or her accompanying spouse or child.

(B) *Spouse or child residing outside the United States or ineligible for adjustment of status.* A spouse or child who is ineligible to apply for adjustment of status as an accompanying spouse or child is not immediately eligible for issuance of an immigrant visa under the provisions of Public Law 101–238. However, the spouse or child may be eligible for visa issuance under other provisions of the Act.

(*1*) *Existing relationship.* A spouse or child acquired by the principal alien prior to the approval of the principal's adjustment of status application may be accorded the derivative priority date and preference category of the principal alien. The spouse or child may use the priority date and category when it becomes current, in accordance with existing limitations outlined in sections 201 and 202 of the Act. The priority date is not considered immediately available for these family members under Public Law 101–238.

(*2*) *Relationship entered into after adjustment of status is approved.* An alien who acquires lawful permanent residence under the provisions of Public Law 101–238 may file a petition under section 204 of the Act for an alien spouse, unmarried son or unmarried daughter in accordance with existing laws and regulations. The priority date is not considered immediately available for these family members under Public Law 101–238.

* * * * *

(f) * * *

(1) *Availability of immigrant visas under section 245.* An alien is not eligible for the benefits of section 245 of the Act unless an immigrant visa is immediately available to him or her at the time the application is filed. If the applicant is a preference or nonpreference alien, the current Department of State Visa Office Bulletin on Availability of Immigrant Visa Numbers will be consulted to determine whether an immigrant visa is immediately available. An immigrant visa is considered immediately available if the applicant's preference or nonpreference priority date is no later than the date shown in the Bulletin, or the Bulletin shows that number for visa applicants in his or her category are current. An immigrant visa is also considered immediately available if the applicant establishes eligibility for the benefits of Public Law 101–238. Information about the immediate availability of an immigrant visa may be obtained at any service office.

* * * * *

3. In § 245.2, paragraph (a)(5)(ii) is amended by revising the second sentence to read as follows:

§ 245.2 Application.

(a) * * *

(5) * * *

(ii) *Under section 245.* * * * An application for adjustment of status as a preference or nonpreference alien shall not be approved until an immigrant visa number has been allocated by the Department of State, except when the applicant has established eligibility for the benefits of Public Law 101–238. * * *

* * * * *

Dated: March 18, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–14430 Filed 6–18–91; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–48–AD; Amendment 39–7024; AD 91–12–13]

Airworthiness Directives; Dornier 228 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Dornier 228 series airplanes. This action requires the replacement of certain horizontal stabilizer electric trim system relays and the modification of the connections to these relays. Optional electrical installations on these airplanes can cause higher specific switching cycles and higher peak currents and reduces the life of the relays and the reliability of the system. A failed relay could result in an uncommanded trim motion and possible loss of control of the airplane. The actions specified by this AD are intended to prevent electrical reliability reduction and assure proper functioning of the electric trim system.

DATES: Effective July 19, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 19, 1991.

ADDRESSES: Dornier 228 Service Bulletin (SB) No. SB–228–160, dated December 18, 1989, and Dornier 228 SB No. SB–228–164, Revision 1, dated August 28, 1990, that are discussed in this AD may be obtained from Dorier Luftfahrt GmbH, Product Support, P.O. Box 3, D–8031 Wessling, Federal Republic of Germany; Telephone (49.8153)–300; Facsimile (49.8153)–30.29.85. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. R. Stoer, Brussels Aircraft Certification Office, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone (322)–513.38.30; or Mr. Herman Belderok, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932, ext. 2710; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would be applicable to certain Dornier 228 series airplanes was published in the Federal Register on November 9, 1990 (55 FR 47070). The proposed AD would have required replacement of the horizontal stabilizer electric system relays 4CC, 5CC, 8CC, and 9CC with improved relays and modification of the relay connections on certain Dornier 228 series airplanes in accordance with Dornier Service Bulletin No. SB–228–164, Revision 1, dated August 28, 1990.

Interested persons were then afforded the opportunity to participate in the making of this amendment. Three commenters responded. All three commented favorably upon the AD, but stated that the failures are not limited to only those airplanes equipped with optional installations of autopilot and/or elevator electric trim coupling systems. All three recommended that airplanes that are not equipped with these optional installations be modified in accordance with the instructions in Dornier SB No. SB–228–160, dated December 18, 1989. The FAA concurred with these comments and determined that the chances of relay failure and uncommanded trim motion are reduced if the affected airplanes that are not equipped with these optional installations are modified in accordance with the instructions in Dornier SB No. SB–228–160.

The proposal was rewritten accordingly. Since the applicability then went beyond the scope of the original proposal, a supplementary notice of proposed rulemaking was published in the Federal Register on March 8, 1991 (56 FR 9909).

Interested persons were again afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The economic analysis paragraph that is discussed below, has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 43 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,017 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $55,550.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91–12–13 DORNIER: Amendment 39–7024; Docket No. 90–CE–48–AD.

Applicability: Model Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 airplanes (serial numbers (S/N) 7065 through 7167, S/N 8002 through 8161, and 8163 through 8190), certificated in any category.

Compliance: Required within the next 600 hours time-in-service after the effective date of this AD, unless already accomplished.

To retain the reliability of the horizontal stabilizer electric trim system, accomplish the following:

(a) Replace relays 4CC, 5CC, 8CC, and 9CC with improved relays and modify the electrical connections of these relays in accordance with the following:

(1) For airplanes that utilize the autopilot and/or trim coupling option, perform the replacements and modification in accordance with the instructions in Dornier Service Bulletin No. SB–228–164, Revision 1, dated August 28, 1990.

(2) For airplanes that do not utilize the autopilot and the trim coupling option, perform the replacements and modification in accordance with the instructions in Dornier Service Bulletin No. SB–228–160, dated December 18, 1989.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) The replacements and modifications required by this AD shall be done in accordance with Dornier 228 Service Bulletin (SB) No. SB–228–160, dated December 18, 1989, and Dornier 228 SB No. SB–228–160, dated December 18, 1989, and Dornier 228 SB No. SB–228–164, Revision 1, dated August 28, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Dornier Luftfahrt GmbH, Product Support, P.O. Box 3, D–8031 Wessling, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective on July 19, 1991.

Issued in Kansas City, Missouri, on May 22, 1991.

Herman C. Belderok,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–14616 Filed 6–18–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 91–ASO–10]

Revision of Control Zone and Transition Area, Fort Myers, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Fort Myers, FL Control Zone and Transition Area. On May 30, 1991 the Fort Myers VORTAC was relocated to the Southwest Florida Regional Airport and re-named the Lee County VORTAC. The existing control zone and transition area had arrival area extensions predicated on the Fort Myers VORTAC. This action eliminates the arrival area extensions northeast, southwest and northwest of the Page Field Airport. The transition area is increased from an 8.5-mile to an 11.5-mile radius of Southwest Florida Regional Airport. Additionally, a minor correction is made in the latitude/longitude coordinate position of the Page Field Airport.

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EFFECTIVE DATE: 0901 u.t.c. September 19, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On April 11, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Fort Myers, FL Control Zone and Transition Area (56 FR 14668). This action was prompted by the pending relocation and re-naming of the Fort Myers VORTAC which was scheduled for May 30, 1991. The VORTAC would be relocated to Southwest Florida Regional Airport and re-named the Lee County VORTAC. This proposed action would eliminate several arrival area extensions at Page Field Airport predicated on the Fort Myers VORTAC and increase the transition area from an 8.5-mile to an 11.5-mile radius of Southwest Florida Regional Airport. Additionally, a minor correction would be made in the latitude/longitude coordinate position of Page Field Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Fort Myers, FL Control Zone and Transition Area. Effective May 30, 1991 the Fort Myers VORTAC was relocated from Page Field Airport to Southwest Florida Regional Airport and re-named the Lee County VORTAC. This action will eliminate several arrival area extensions in vicinity of Page Field Airport which were predicated on the Fort Myers VORTAC. Also, the transition area is increased from an 8.5-mile to an 11.5-mile radius of Southwest Florida Regional Airport. Additionally, a minor correction is made in the latitude/longitude coordinate position of Page Field Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Myers, FL [Revised]

Within a 5-mile radius of Page Field (lat. 26°35'11" N., long. 81°51'49" W.), excluding that portion that coincides with Fort Myers Southwest Florida Regional Airport Control Zone.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Fort Myers, FL [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Page Field Airport (lat. 26°35'11" N., long. 81°51'49" W.); within an 11.5-mile radius of Southwest Florida Regional Airport (lat. 26°32'10" N., long. 81°45'18" W.).

Issued in East Point, Georgia, on June 6, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–14562 Filed 6–18–91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91–ASO–11]

Revision of Control Zone, Fort Myers Southwest Florida Regional Airport, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Fort Myers Southwest Florida Regional Airport, FL Control Zone. The Fort Myers VORTAC has been relocated from Page Field to Southwest Florida Regional Airport and renamed the Lee County VORTAC. This action would add an arrival area extension to provide controlled airspace for a new standard instrument approach procedure (SIAP) based on the relocated facility. Additionally, since continuous weather reporting service is available for the airport and the control zone is operated full time, the option to establish the operating hours via Notice To Airmen (NOTAM) is removed from the control zone description.

EFFECTIVE DATE: 0901 u.t.c., September 19, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On April 11, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Fort Myers Southwest Florida Regional Airport, FL Control Zone (56 FR 14669). The proposed action would add an arrival area extension in order to provide necessary controlled airspace protection for a new SIAP predicated on the Lee County VORTAC. Additionally, it would eliminate the existing option to operate the control zone part time by NOTAM since continuous weather reporting service is now available. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Fort Myers Southwest Florida Regional Airport, FL Control Zone. A new SIAP has been developed based on the newly established Lee County VORTAC and this action will add an arrival area extension to provide controlled airspace protection for instrument flight rules (IFR) aircraft executing the approach procedure. Additionally, since full time weather reporting service is now available, the option to operate the control zone part time via NOTAM is removed from the control zone description.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation of part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Myers Southwest Florida Regional Airport, FL [Revised]

Within a 5-mile radius of Southwest Florida Regional Airport (lat. 26°32'10" N., long. 81°45'18" W.); within 3 miles each side of the Lee County VORTAC 251° radial extending from the 5-mile radius zone to 8.5 miles west of the VORTAC; excluding that portion which lies 3.5 miles north of and parallel to the extended centerline of Runway 6/24.

Issued in East Point, Georgia, on June 6, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–14561 Filed 6–18–91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91–ASO–13]

Revision of Transition Area, Punta Gorda, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Punta Gorda, FL Transition Area. This action adds an arrival area extension south of the Charlotte County Airport. This additional controlled airspace is needed to provide protection of instrument flight rules (IFR) aircraft executing a new standard instrument approach procedure (SIAP) to Runway 3 based on the Punta Gorda VOR. Additionally, a minor correction is made in the latitude/longitude coordinate position of the Charlotte County Airport.

EFFECTIVE DATE: 0901 u.t.c., September 19, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On April 26, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Punta Gorda, FL Transition Area (56 FR 19331). This action proposed to add an arrival area extension south of the Charlotte County Airport to provide additional controlled airspace protection of IFR aircraft executing a new SIAP to Runway 3 based on the Punta Gorda VOR. Also, a minor change would be made in the latitude/longitude coordinate position of the Charlotte County Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Punta Gorda, FL Transition Area. An arrival area extension is added to provide additional controlled airspace protection for IFR aircraft executing a new VOR SIAP to Runway 3 at the Charlotte County Airport. Also, a minor correction is made in the latitude/longitude coordinate position of the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Punta Gorda, FL [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Charlotte County Airport (lat. 26°55'02" N., long. 81°59'29" W.); within 3 miles each side of the Punta Gorda VOR (lat. 26°54'59" N., long. 81°59'28" W.) 030° and 199° radials, extending from the 6.5-mile radius

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area to 8.3 miles northeast and south of the VOR.

Issued in East Point, Georgia, on June 6, 1991.

Walter E. Dooley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-14580 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ASO-6]

Revision of Control Zone, Daytona Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Daytona Beach, FL Control Zone. Presently, the Ormond Beach Municipal Airport is within the Daytona Beach Control Zone. Aircraft operations within the zone are governed by weather conditions as reported at the Daytona Beach Regional Airport. This has created some difficulty since weather conditions may vary considerably between the two airports. This action eliminates that portion of the control zone which surrounds the Ormond Beach Municipal Airport, including the arrival area extension west of the airport. This action raises the floor of controlled airspace from the surface to 700 feet above the surface in vicinity of the Ormond Beach Municipal Airport. Additionally, a minor correction is made in the latitude/longitude coordinates of the Daytona Beach Regional Airport.

EFFECTIVE DATE: 0901 u.t.c., September 19, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On April 11, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Daytona Beach, FL Control Zone (56 FR 14670). This proposed action would eliminate that portion of the control zone which surrounds the Ormond Beach Municipal Airport including the arrival area extension west of the airport. Aircraft operations within the control zone are governed by weather observations taken at the Daytona Beach Regional Airport. Since weather conditions may vary between the two airports, it was proposed that the portion of the zone in vicinity of the Ormond Beach Municipal Airport be eliminated. If approved, the proposed action would raise the floor of controlled airspace from the surface to 700 feet above the surface in vicinity of the Ormond Beach Municipal Airport. Additionally, a minor correction would be made in the latitude/longitude coordinates of Daytona Beach Regional Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Daytona Beach, FL Control Zone. This action will eliminate that portion of the control zone in vicinity of the Ormond Beach Municipal Airport, including the arrival area extension west of the airport. Effectively, the floor of controlled airspace in vicinity of the Ormond Beach Municipal Airport will be raised from the surface to 700 feet above the surface. Additionally, a minor correction is made in the latitude/longitude coordinate position of the Daytona Beach Regional Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Daytona Beach, FL [Revised]

Within a 5-mile radius of Daytona Beach Regional Airport (lat. 29°10'51" N., long. 81°03'22" W.).

Issued in East Point, Georgia, on June 6, 1991.

Walter E. Dooley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-14564 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ASO-8]

Revision of Transition Area, Yazoo City, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Yazoo City, MS Transition Area. The existing transition area is centered on the Barrier Field Airport which was closed concurrent with opening the new Yazoo County Airport. The new airport is located 2.9 miles west of the old Barrier Field Airport. A new standard instrument approach procedure (SIAP) has been developed to serve Runway 35 at the Yazoo County Airport. This action centers the transition area on the new airport in order to provide controlled airspace for protection of instrument flight rules (IFR) aeronautical operations. Additionally, the operating status of the Yazoo County Airport will be changed from visual flight rules (VFR) to IFR concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 u.t.c., September 19, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On April 11, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Yazoo City, MS Transition Area (56 FR 14671). The existing transition area is centered on the Barrier Field Airport which was closed concurrent with opening the new Yazoo County Airport. A new SIAP has been developed to serve the Yazoo County Airport. The proposed action would center the transition on the new airport which is located 2.9 miles west of the closed Barrier Field Airport. The purpose of this proposed action was to provide additional controlled airspace for protection of IFR aeronautical operations. Also, it was proposed that the operating status of the Yazoo County Airport be changed from VFR to IFR concurrent with publication of the standard instrument approach procedure. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Yazoo City, MS Transition Area. This action will center the transition area on the new Yazoo County Airport instead of the Barrier Field Airport which has been closed. A SIAP has been developed to serve Runway 35 at the new airport. This action will lower the base of controlled airspace from 1200 feet to 700 feet above the surface in vicinity of the Yazoo County Airport in order to provide additional controlled airspace for protection of IFR aeronautical operations. Additionally, the operating status of the Yazoo County Airport will be changed from VFR to IFR concurrent with publication of the Runway 35 SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Yazoo City, MS [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Yazoo County Airport (lat. 32°52'59"N., long. 90°27'49"W.).

Issued in East Point, Georgia, on June 7, 1991.

Doo Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-14563 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ANM-3]

Establishment of Transition Areas; Kemmerer, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes transition areas to provide a controlled airspace environment for the new non-directional radio beacon (NBD) approach to runway 34 at the Kemmerer Municipal Airport, Kemmerer, Wyoming. The transition areas will segregate aircraft operating in visual flight rules (VFR) conditions from those operating under instrument flight rules (IFR). The areas will be depicted on aeronautical charts to provide references for pilots.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 910-ANM-3, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

History

On April 8, 1991, the FAA proposed to amend part 71 of the Federal Aviation regulations (14 CFR part 71) to establish controlled airspace for a new NDB approach to the Kemmerer Municipal Airport (56 FR 14223). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the rule is adopted as proposed. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations provides controlled airspace transition areas for instrument flight rules procedures for the new NDB approach to runway 34 at the Kemmerer Municipal Airport. The intent is to segregate aircraft operating in visual flight rules conditions from those operating under instrument flight rules. The areas will be depicted on appropriate aeronautical charts so that pilots may circumnavigate the areas or comply with instrument flight rules procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71, of the Federal

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Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(1), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kemmerer, Wyoming [New]

That airspace extending upward from 700 feet above the surface within 9.2-mile radius of the Kemmerer Municipal Airport (Lat. 41°49'30"N, Long. 110°33'30"W), and within 3.5 miles each side of the 179° bearing from the Kemmerer NDB (Lat. 41°49'21"N, Long. 110°33'15"W), extending from the 9.2-mile radius area to 11.5 miles south of the NDB; and that airspace extending upward from 1,200 feet above the surface between Lat. 41°48'30"N, Long. 110°02'30"W; to 41°29'00"N, Long. 110°30'30"W; to Lat. 41°48'30"N, Long. 110°43'00"W; to the point of beginning excluding that airspace within the Fort Bridger, Wyoming, Transition Area.

Issued in Seattle, Washington, on June 10, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91-14566 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1215

RIN 2700-AA29

Tracking and Data Relay Satellite System (TDRSS)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1215, subpart 1215.1, "Use and Reimbursement Policy for Non-U.S. Government Users." This subpart updates the policy governing the Tracking and Data Relay Satellite System (TDRSS) services provided to non-U.S. Government users and the reimbursement for rendering such services. This rule establishes an equitable basis for use of and reimbursement for TDRSS and service by non-U.S. Government users. The tracking, telemetry, and command services provided by the TDRSS represent a significant growth in the capability of presently available services provided via the ground tracking station network.

EFFECTIVE DATE: June 19, 1991.

ADDRESSES: Office of Space Operations, Code OX, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Eugene Ferrick, 202-453-2030.

SUPPLEMENTARY INFORMATION: The TDRSS space segment consists of two satellites in geostationary orbit, with one or more additional satellites in geostationary orbit to be operated as required. The ground segment consists of a single ground terminal and the necessary operational control and interface devices and interconnecting communications circuit services located at White Sands, New Mexico.

NASA published its final rule in the Federal Register on March 9, 1983, 48 FR 9845. This amendment corrects the organizational setting and reflects new user responsibility for obtaining frequency authorizations in § 1215.107 and in appendix C. Additionally, appendix A has been updated to reflect CY 1992 reimbursement rates for use of TDRSS service. Since these changes are internal and administrative in nature and do not affect existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1215

Satellites, Tracking and Data Relay Satellite System, Communications equipment, Government contract.

For reasons set out in the Preamble, 14 CFR part 1215, subpart 1215.1 is amended as follows:

PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

1. The authority citation for 14 CFR part 1215 continues to read as follows:

Authority: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

2. Section 1215.100 is revised to read as follows:

§ 1215.100 General.

The TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to mobile terrestrial users such as aircraft or balloons. It is the objective of NASA to operate as efficiently as possible with the TDRSS. This is to the mutual benefit of all users. Such user consideration will permit NASA and non-NASA service to be delivered without compromising the mission objectives of any individual user. To encourage users toward achieving efficient TDRSS usage, this reimbursement policy has been established to purposely influence users to operate with TDRSS in the most efficient and orderly manner possible. Additionally, the reimbursement policy is designed to comply with the Bureau of the Budget Circular A-25 on User Charges, dated September 23, 1959, which requires that a reasonable charge should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which a special benefit is derived.

3. Section 1215.101 is revised to read as follows:

§ 1215.101 Scope.

This Subpart sets forth the policy governing TDRSS services provided to non-U.S. government users and the reimbursement for rendering such services. It excludes TDRSS services provided as standard or optional services to Space Transportation Syst :m (STS) users under existing policy for Shuttle and Spacelab (14 CFR subparts 1214.1, 1214.2, and 1214.8); i.e., user command and telemetry support, which utilizes and is a part of the Shuttle or Spacelab communications system, is a Shuttle/Spacelab service. Cooperative missions are also not under the purview of this Subpart. The arrangements for TDRSS services for cooperative missions will be covered in a Memorandum of Understanding (MOU), as a consequence of negotiations between NASA and the other concerned party. Any MOU which includes provision for any TDRSS service will require signatory concurrence by the Associate Administrator for Space Operations prior to dedicating Office of Space Operations resources for support of a cooperative mission.

4. Section 1215.104 is revised to read as follows:

§ 1215.104 Apportionment and assignment of services.

No user may apportion, assign, or otherwise convey to any third party its TDRSS service. Each user may obtain service only through contractual

agreement with the Associate Administrator for Space Operations.

5. Section 1215.105 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1215.105 Delivery of user data.

* * * * *

(b) User data handling requirements beyond the NGT interface will be provided as a standard service to the user, to the extent that the requirements do not exceed NASA's planned standard communications system. Any additional data transport or handling requirements exceeding NASA's capability will be dealt with as a mission-unique service.

* * * * *

(d) NASA will provide TDRSS services on a "reasonable efforts" basis and, accordingly, will not be liable for damages of any kind to the user or third parties for any reason, including but not limited to failure to provide contracted-for services. The price for TDRSS services does not include a contingency or premium for any potential damages. The user will assume any risk of damages or obtain insurance to protect against any risk.

6. Section 1215.107 is revised to read as follows:

§ 1215.107 User data security and frequency authorizations.

(a) User data security is not provided by the TDRSS. Responsibility for data security resides solely with the user. Users desiring data safeguards shall provide and operate, external to the TDRSS, the necessary equipment or systems to accomplish data security. Any such user provisions must be compatible with data flow through TDRSS and not interfere with other users.

(b) All radio frequency authorizations associated with operations pursuant to this directive are the responsibility of the user. If appropriate, authority(ies) must be obtained from the Federal Communications Commission (FCC) for operations consistent with U.S. footnote 303 of the National Table of Frequency Allocations, FCC Rules and Regulations at 47 CFR 2.106.

7. Section 1215.108 is amended by revising paragraph (a) to read as follows:

§ 1215.108 Defining user service requirements.

* * * * *

(a) Initial requests for TDRSS service from non-U.S. Government users should be addressed to NASA Headquarters, Code OX, Space Network Division, Washington, DC 20546. Upon review and preliminary acceptance of the service requirements by NASA Headquarters, the appropriate areas of GSFC will be assigned to the project to produce the detailed requirements, plans and documentation necessary for support of the mission. Changes to user requirements shall be made as far in advance as possible and shall be submitted in writing to both NASA Headquarters, Code OX, Space Network Division, and GSFC, Code 501, Greenbelt, MD 20771.

* * * * *

8. Section 1215.109 is amended by revising paragraphs (b)(2)(i) and (b)(6) introductory text to read as follows:

§ 1215.109 Scheduling user service.

* * * * *

(b) * * *

(2) * * *

(i) Launch, reentry, landing of the STS Shuttle, or other NASA launches.

* * * * *

(6) Disruptive updates are scheduled updates which, by virtue of priorities, cause previously scheduled user services to be rescheduled or deleted or are requested by the user less than 45 minutes prior to the scheduled support period.

* * * * *

9. Section 1215.111 is revised to read as follows:

§ 1215.111 User postponement of service.

The user may postpone the initiation of contracted service (e.g., user launch date) by delivery of written notification to NASA Headquarters, Code OX. Any delay in the contracted start of service date may affect the quantity of service to be provided due to commitments to other support requirements. Therefore, the validity of previous estimates of predicted support availability may no longer be applicable.

10. Section 1215.113 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1215.113 User charges.

(a) The user shall reimburse NASA the sum of the charges for standard and mission-unique services. Charges will be based on the service rates applicable for the calendar year.

* * * * *

(c) The user shall reimburse NASA for the costs of any mission unique services provided by NASA.

* * * * *

11. Section 1215.114 is amended by revising paragraph (b) to read as follows:

§ 1215.114 Service rates.

* * * * *

(b) Rates for TDRSS services will be set by the Associate Administrator for Space Operations each October for the following year, January through December. Rate variations will reflect changes in operating costs, loading formulas and escalation.

* * * * *

12. Appendix A is revised to read as follows:

Appendix A to Part 1215—Estimated Service Rates in 1992 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)

TDRSS user service rates for services rendered in CY-92 based on current projections in 1992 dollars are as follows:

Single Access Service—Forward command, return telemetry, or tracking, or any combination of these, the base rate is $168.00 per minute for non-U.S. Government users.

Multiple Access Forward Service—Base rate is $42.00 per minute for non-U.S. Government users.

Multiple Access Return Service—Base rate is $13.00 per minute for non-U.S. Government users.

13. Appendix C is revised to read as follows:

Appendix C To Part 1215—Typical User Activity Timeline

Time (approximate)	Activity
Project conceptualization (At least 3 years before launch; Ref. § 1215.108(a)).	Request NASA Headquarters perform study to determine availability of TDRSS. If accepted as a user, begin contractual negotiation by submission of $25,000 non-refundable charge, and place into mission model.
3 years before launch (Ref. § 1215.108(c))	Submit general user requirements to permit preliminary planning. Begin payment for pre-mission activities (Ref. § 1215.115(b)(5)).
18 months before launch (earlier if interfacing is expected)	Provide detailed requirements for technical definition and development of operational documents and ICD's. (Ref. § 1215.108(e)). If appropriate, initiate action with the Federal Communications Commission for license to communicate with TDRSS at least 18 months prior to launch (Ref. § 1215.107(b)).

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Time (approximate)	Activity
3 weeks prior to a scheduled support period (SSP). 2 weeks prior to an SSP.	Submit scheduling request to GSFC covering a weekly period. Receive schedule from GSFC based on principles of priority (Ref. § 1215.109(b)(2)). Acknowledgement to GSFC required.
Up to 12 hours prior to an SSP.	Can cancel an SSP without charge (Ref. § 1215.113(a)(1)).
Up to 45 minutes prior to an SPP.	Can schedule an SSP if a time slot is available without impacting another user.
Between SSP minus 45 minutes and the SSP.	Schedule requests will be charged at the disruptive update rate (Ref. § 1215.109(b)(5)).
Real-Time	Emergency service requests will be responded to per the priority system (Ref. § 1215.109(b)(3)) and assessed the emergency service rate.

Dated: June 7, 1991.

Richard H. Truly,

Administrator.

[FR Doc. 91-14320 Filed 6-18-91; 8:45 am]

BILLING CODE 7510-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1211

Final Rule: Requirements for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Improvement Act of 1990 provides that, as of January 1, 1991, "each automatic residential garage door opener manufactured on or after that date for sale in the United States shall conform to the entrapment protection requirements of the * * * Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, as revised May 4, 1988." Congress stated that these requirements are to be considered a consumer product safety rule issued by the Commission under section 9 of the Consumer Product Safety Act. In this final rule, the Commission is codifying the provisions of the UL 325 standard that specify entrapment protection requirements and an additional statutory labeling requirement. As discussed in this notice, Congress also provided for revision of the entrapment protection requirements when U.S. develops additional entrapment protection provisions or, in the absence of UL activity, the Commission develops additional requirements. Additionally, Congress required that, effective July 1, 1991, manufacturers of automatic residential garage door openers must, in consultation with the CPSC, notify the public of the potential for entrapment and advise the public to test their openers.

EFFECTIVE DATE: June 19, 1991. The substance of the requirements mandated by Congress apply to automatic residential garage door openers manufactured on or after January 1, 1991 for sale in the United States, the effective date prescribed by Congress.

FOR FURTHER INFORMATION CONTACT: George Sushinsky, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6494.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Consumer Product Safety Improvement Act of 1990

On November 16, 1990, the President signed into law the Consumer Product Safety Improvement Act of 1990 (the "Act"). This Act reauthorized the Consumer Product Safety Commission ("CPSC") for a period of two years and specified certain products for the Commission to regulate.

Entrapment Protection Requirements

Section 203 of the Act stated that the entrapment protection requirements of the Underwriters Laboratories, Inc. ("UL") Standards for Safety—UL 325, third edition, as revised May 4, 1988, "shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act." Consumer Product Safety Improvement Act of 1990, Public Law No. 101-608, Section 203(a), (b), 104 Stat. 3110. Congress provided that automatic residential garage door openers [1] manufactured on or after January 1, 1991 must conform to the UL 325 entrapment protection requirements. *Id.* Section 203(b)(1). This standard requires that an automatic garage door opener shall reverse within two seconds of contacting a two inch (50.8-mm) test object whose top inch is resilient. In addition, the standard requires that the door reopen if the bottom limit switch is not activated within thirty seconds after the control is pressed to start the closing cycle.

Congress recognized that industry is currently working with UL to develop a revised voluntary standard that would include additional entrapment protection. See H.R. Rep. No. 914, 101st Cong., 2d Sess. 20 (1990). Thus, Congress provided that additional entrapment protection requirements issued by UL in the future will also become effective as mandatory safety standards. Accordingly, section 203 provides a requirement that all residential automatic garage door openers manufactured on and after January 1, 1993 for sale in the United States must conform to any additional entrapment protection requirements of UL 325 to become effective on or before January 1, 1993. *Id.* Section 203(b)(2)(A).

If, by June 1, 1992, UL has not issued a revision to the May 4, 1988 edition of UL 325 requiring an additional entrapment protection feature or device in addition to that set forth in the May 4, 1988 standard, Congress required that the Commission must begin a rulemaking proceeding, to be completed by October 31, 1992, requiring an additional such feature or device on all automatic residential garage door openers manufactured after January 1, 1993, for sale in the United States. *Id.* Section 203(b)(2)(B).

If UL issues a revision to the May 4, 1988 standard after the Commission has started its rulemaking proceeding, the Commission must terminate its proceeding and incorporate the UL revision into the consumer product safety rule, unless the UL revision does not carry out the purpose of the Congressionally mandated entrapment protection requirements. *Id.* If UL proposes further revisions to UL 325, UL must notify the Commission and the proposed revision shall be incorporated in the consumer product safety rule (unless the Commission notifies UL within 30 days that the revision does not carry out the purposes of the Congressionally mandated requirements). *Id.* Section 203(c).

Labeling Requirements

Congress also mandated certain labeling requirements to go into effect on January 1, 1991. A manufacturer selling or offering for sale in the United States an automatic residential garage door opener on or after that date must

[1] Congress used the term "garage door opener"; however, the UL standard uses the term "garage door operator." This notice uses the terms interchangeably.

"clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of subsection (b) [UL 325 entrapment protection provisions]." *Id.* Section 203(d). These labeling requirements are satisfied by display of the UL logo or listing mark, and compliance with the date marking requirements of UL 325 on the container and the system. *Id.*

Notification Requirements

Congressionally mandated notification requirements will become effective July 1, 1991. As of that date, all manufacturers of automatic residential garage door openers must, in consultation with the Commission, "notify the public of the potential for entrapment by garage doors equipped with automatic garage door openers and advise the public to test their openers for the entrapment protection feature or device required by [the UL 325 entrapment protection provisions]." *Id.* Section 203(e).

Preemption

Congress specifically addressed the issue of preemption of other State or local requirements pertaining to automatic residential garage door openers. Subsection (f) of the Act provides that, with respect to the Congressionally-required entrapment protection provisions, "only those provisions of laws of States or political subdivisions which relate to the labeling of automatic residential garage door openers and those provisions which do not provide at least the equivalent degree of protection from the risk of injury associated with automatic residential garage door openers as the consumer product safety rule provides shall be subject to (the preemption provisions of section 26(a) of the CPSA, 15 U.S.C. 2075)." *Id.* section 203(f). Thus, state law provisions governing, for example, repair and servicing requirements, would not be preempted. See H.R. Rep. No. 914, 101st Cong., 2d Sess. 20 (1990).

Implementing Regulations

Congress provided that, should the Commission issue any regulations to implement the requirements of section 203 of the Act, the provisions of section 553 of title 5 (the Administrative Procedure Act) shall apply. Sections 7 and 9 of the CPSA will not apply to the issuance of such regulations. Consumer Product Safety Improvement Act, Section 203(g). Congress also required that "[a]ny additional or revised requirement issued by the Commission shall provide an adequate degree of protection to the public." *Id.*

2. The Consumer Product Safety Act

Section 203(a) provides that the entrapment protection provisions of UL 325 shall be deemed to be a consumer product safety rule issued under section 9 of the CPSA. Section 9 of the CPSA specifies the rulemaking procedure by which the Commission issues consumer product safety standards. 15 U.S.C. 2056. Because Congress mandated the UL provisions as a rule issued by the Commission, the regulatory procedures of section 9 do not apply. Thus, the Commission is issuing this codification of the entrapment protection provisions of UL 325 as a final rule. If, at a later date, the Commission decides to issue additional rules implementing these requirements or amending them, only the notice and comment procedure of the Administrative Procedure Act ("APA"), 5 U.S.C. 553, not the procedure provided in section 9 of the CPSA, would apply. See Consumer Product Safety Improvement Act, Section 203(g).

B. The Regulation

This notice sets forth the entrapment protection provisions of UL 325 which Congress mandated as a standard of the Commission. The provisions recounted here are only excerpts from the UL standard for safety—UL 325—for door, drapery, gate, louver, and window operators and systems. This UL standard contains many provisions not stated in this notice because Congress only mandated issuance of the entrapment protection provisions as a Commission regulation. Thus, those provisions of the UL standard that relate to entrapment protection are codified as a Commission regulation. A brief summary of the provisions follows.

Section 1211.1 provides that the standard applies to all residential garage door operators manufactured on or after January 1, 1991 for sale in the United States.

Section 1211.2 supplies the following definition of "residential garage door operator": A vehicular door operator which is (1) intended for use in a home or associated garage; (2) is rated 600 volts or less; and (3) is intended to be employed in ordinary locations in accordance with the current National Electrical Code, NFPA 70. This definition incorporates the definition of residential garage door operator contained in UL325. The Commission finds that this definition accurately reflects Congressional intent. The Commission interprets this definition to exclude garage door operators in apartment building garages, which buildings UL 325 apparently considers to be commercial.

Section 1211.3 provides an explanation of the units of measurement referred to in the standard.

Section 1211.4 sets out the requirements for protection against entrapment. Subsection (a) provides the general requirement that an automatically-reset protective device, if used, must not result in a risk of injury to persons. Subsection (b) explains in detail the testing requirements to protect against entrapment. The standard requires that an automatic garage door must not remain in contact with a two inch (50.8-mm) test object, whose top is capable of being compressed, for longer than two seconds. The operator must be tested for fifty open-and-close cycles of operation with the operator connected to the type of garage door with which it is intended to be used or, if the operator is intended to be used with more than one type of garage door, with the type of garage door specified in the standard.

Section 1211.4 further states that a residential garage door operator must not allow the door to remain in contact with an obstructing object if the lower limiting device is not activated within 30 seconds or less once the close has begun. To determine compliance with this requirement, an operator must be subjected to ten open-and-close cycles of operation while it is connected to the appropriate garage door. The testing cycles do not have to be consecutive.

This section further provides that a means to manually detach the door operator from the door must be provided, must be colored red, and must be easily distinguishable from the rest of the operator. Additional requirements for the means of manual detachment are specified in subsection (b)(12).

Section 1211.5 requires that an instruction manual must accompany a residential garage door operator and specifies the instructions that must appear in the manual. This section also requires a trial installation using the instruction manual.

Section 1211.6 requires permanent marking of the garage door operator. The marking must consist of (1) the manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified (this identification may be in a traceable code if the garage door operator is identified by the brand or trademark of a private labeler); (2) the catalog number of the equivalent; (3) the voltage, frequency, and input in amperes or watts; and (4) the date or other dating period of manufacture not exceeding any three consecutive months

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(the date may be abbreviated or in an established or otherwise accepted code). If the manufacturer produces or assembles the operator at more than one factory, the marking must identify the particular factory.

Section 1211.6 further requires that residential garage door operators be provided with a separate cautionary label to be mounted near the actuating switch which specifies the means to detach the operator from the door and contains the word "CAUTION" and the following (or comparable) statement: "To reduce the risk of injury to person, operate door only when fully visible, properly adjusted, and free of obstructions. Do not permit children to play in the area of door. See instruction manual."

Section 1211.6 further requires an additional cautionary label that instructs one to detach the door from the operator if the door becomes obstructed and that shows the method to detach the operator. Finally, section 1211.6 provides that the carton and instruction manual for an operator must be marked with the word "WARNING" and a statement indicating that the operator should only be used with the appropriate door.

Section 1211.7 restates the labeling requirement established by Congress which requires a manufacturer to identify, on the container of a residential garage door opener and on the system itself, the month or week and the year the system was manufactured and that it conforms with the requirements of § 1211.4. Congress provided that UL marking would satisfy this statutory labeling requirement.

C. Product Certification and Recordkeeping

Section 14(a) of the CPSA requires that every manufacturer of a product that is subject to a consumer product safety standard and is distributed in commerce must issue a certificate which specifies any applicable consumer product safety standards and certifies that the product conforms to the applicable standards. 15 U.S.C. 2063(a)(1). This certificate must accompany the product or be furnished to any distributor or retailer to whom the product is delivered. The certificate must be based on a test of each product or on a reasonable testing program. The certificate must state the name of the manufacturer or private labeler issuing the certificate and must include the date and place of manufacture. *Id.* These certification requirements apply to garage door operators covered by this consumer product safety rule.

Section 16(b) of the CPSA authorizes the Commission to issue a rule specifying reasonable requirements for the records that a manufacturer, private labeler, or distributor of a consumer product must maintain and/or provide to the Commission in order for the Commission to determine compliance with rules issued under the CPSA. 15 U.S.C. 2065(b).

The Commission may, in the future, issue rules under sections 14(a) and 16(b) of the CPSA specifying certification and record-keeping requirements applicable to automatic residential garage door operators. Such rules would improve the Commission staff's ability to identify violative products. If the Commission does decide to issue certification and record-keeping rules it would initiate a separate rulemaking proceeding commencing with a notice of proposed rulemaking and an opportunity for public comment.

D. Effective Date

As explained above, Congress provided that the entrapment protection requirements of UL 325 would become effective as a Commission rule and that residential garage door operators manufactured on or after January 1, 1991 must conform to these requirements. Thus, the substance of these requirements became effective on that date. This codification, however, contains some editorial changes to put the requirements into regulatory language. Therefore, the codification will become effective upon publication. Because Congress has mandated the substance of the rule and the effective date for the substantive requirements, the Commission finds that a delayed effective date for the codification is unnecessary and that there is good cause, in accordance with 5 U.S.C. 553(d)(3), for making the codification effective upon publication.

List of Subjects in 16 CFR Part 1211

Consumer protection, Labeling, Packaging and containers.

For the reasons set forth in the preamble, the Consumer Product Safety Commission is amending title 16, chapter II, by adding part 1211 to read as follows:

PART 1211—SAFETY STANDARD FOR AUTOMATIC RESIDENTIAL GARAGE DOOR OPERATORS

Sec.

1211.1 Effective date.
1211.2 Definition.
1211.3 Units of measurement.
1211.4 Protection against risk of injury from entrapment.
1211.5 Instruction manual.
1211.6 UL marking requirement.
1211.7 Statutory labeling requirement.

Authority: Sec. 203, Pub. L. 101-608, 104 Stat. 3110.

§ 1211.1 Effective date.

This standard applies to all residential garage door operators manufactured on or after January 1, 1991 for sale in the United States.

§ 1211.2 Definition.

As used in this part 1211: *Residential garage door operator* means a vehicular door operator which is

(a) intended for use in a home or associated garage;

(b) is rated 600 volts or less; and

(c) is intended to be employed in ordinary locations in accordance with the current National Electrical Code, NFPA 70.

§ 1211.3 Units of measurement.

If a value for measurement as given in these requirements is followed by an equivalent value in other units, in parentheses, the second value may be only approximate. The first stated value is the requirement.

§ 1211.4 Protection against risk of injury from entrapment.

(a) *General requirements.* (1) If an automatically-reset protective device is employed, automatic restarting of a motor shall not result in a risk of injury to persons.

(2) A residential garage door operator is considered to comply with the requirement in paragraph 1211.4(a)(1) if some means is provided to prevent the motor from restarting when the protector closes.

(b) *Entrapment.* (1) Except for the first 1 foot (0.30 m) of travel as measured over the path of the moving door operating member, a downward moving residential garage door shall not remain in contact with an obstructing object as specified in paragraph 1211.4(b)(2) for more than 2 seconds.

(2) The object used for the obstruction is to be 2 inches (50.8 mm) high, resilient in the first inch, and capable of being compressed to 1 inch (25.4 mm) under 100 pounds (445 N) of force. For the tests, the object is to be placed on the garage floor and at various heights under the leading edge of the door and located in line with the driving point of the operator.

(3) An operator is to be tested for 50 open-and-close cycles of operation while the operator is connected to the type of residential garage door with which it is intended to be used or with the doors specified in paragraph 1211.4(b)(4). The force adjustment on the operator is to be at the maximum setting or at the setting that represents the most severe operating condition. Any accessories that are intended for use with the door are to be attached and the test is to be repeated.

(4) If the operator is intended to be used with more than one type of door, the operator is to be tested on a sectional door with a curved track and on a one-piece door with jamb hardware and no track. If the operator is not intended for use on either or both of these types of doors, a one-piece door with track hardware or a one-piece door with pivot hardware, as appropriate, may be used for the tests. See the marking requirements at § 1211.6(d) of this part.

(5) Compliance with the requirement in paragraph 1211.4(b)(1) may be accomplished by reversal of the rotation of the motor, by spring loading, or by other means.

(6) A residential garage door operator marketed separately from the door that it is intended to control shall have the means to comply with the requirement in paragraph 1211.4(b)(1) inherent in the operator.

(7) A residential garage door operator shall not allow the door to remain in contact with an obstructing object if the lower limiting device is not actuated in 30 seconds or less following the initiation of the close cycle. If the door is stopped manually during its descent, the 30 seconds may be measured from the resumption of the close cycle.

(8) Switches or relays used for the purpose mentioned in paragraph 1211.4(b)(7) shall be tested for 100,000 cycles of operation and shall be connected in such a manner that malfunction of the switch or relay will result in the operator being inoperative with respect to downward movement of the door.

(9) If another means, such as a solid-state device, is used for the purpose mentioned in paragraph 1211.4(b)(7) it shall be as reliable as the switch or relay mentioned in paragraph 1211.4(b)(8).

(10) To determine whether an operator complies with the requirement in paragraph 1211.4(b)(7) an operator is to be subjected to 10 open-and-close cycles of operation while connected to the door or doors specified in paragraphs 1211.4(b) (3) and (4). The cycles need not be consecutive; that is, there may be any number of motor cooling-off periods during the test. The means provided to comply with the requirement in paragraph 1211.4(b)(1) is to be inoperative or defeated during the test. An obstructing object is to be provided so that the door cannot activate a lower limiting device.

(11) During the closing cycle, the system providing compliance with paragraphs 1211.4(b) (1) and (7) shall function regardless of a short anywhere in the circuit that initiates the close cycle.

(12) A means to manually detach the door operator from the door shall be provided. The means shall be colored red and shall be easily distinguishable from the rest of the operator. It shall be capable of being adjusted to a height of 6 feet (1.8 m) above the garage floor when the operator is installed as specified in § 1211.5 (b) and (c) of this part. The means shall be constructed so that a hand can firmly grip it and detach the operator by applying a maximum of 50 pounds (220 N) of force to the means with the door obstructed in the down position. The obstructing object, as described in paragraph 1211.4(b)(2) is to be located in several different positions. If a twisting motion is involved to detach the door operator from the door, the detachment shall require a torque of not more than 10 pound-inches (1.1N m). A marking with instructions for detaching the operator shall be provided as required by § 1211.6 (b) through (c) of this part.

(13) A push of a control button or buttons that initiate movement of a door shall stop and may reverse the door on the down cycle. On the up cycle, a push of a button or buttons shall stop the door but not reverse it.

§ 1211.5 Instruction manual.

(a) A residential garage door operator shall be provided with an instruction manual. The instruction manual shall give complete instructions for the safe and correct installation, operation, and servicing of the operator. To determine whether the installation instructions in the instruction manual comply with this requirement, at paragraphs 1211.5 (b) and (e), a trial installation is to be made using the instruction manual.

(b) Instructions that clearly detail installation and adjustment procedures required to effect proper operation of the safety means provided shall be provided with each door operator.

(c) The installation instructions shall recommend that a door operator be installed 7 feet (2.1 m) or more above the floor and that the detach means be installed at a height of 6 feet (1.8 m) above the floor.

(d) If installation heights in addition to those specified in paragraph 1211.5(c) are recommended, such as for restricted height installations, they shall be evaluated during the trial installation test. See § 1211.4(b)(1) of this part.

(e) A residential garage door or door operator shall be provided with complete and specific instructions for the correct adjustment of the control mechanism and the need for periodic checking and, if needed, adjustment of the control mechanism so as to maintain satisfactory operation of the door. The instructions shall be in a form that can be mounted adjacent to the door installation and directions for the installer shall indicate the need for mounting these directions.

§ 1211.6 UL marking requirement.

(a) Unless specifically excepted, marking required in this standard shall be permanent. Ink-printed and stenciled markings, decalcomanis labels, and pressure sensitive labels are among the types of marking that are considered acceptable if they are acceptably applied and are of good quality.

(b) Except as provided below, a garage door operator shall be plainly marked, at a location where the marking will be readily visible—after installation, in the case of a permanently connected appliance—with:

(1) the manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified—hereinafter referred to as the manufacturer's name;

(2) the catalog number or the equivalent;

(3) the voltage, frequency, and input in amperes or watts; and

(4) the date or other dating period of manufacture not exceeding any three consecutive months.

(c) The ampere rating shall be included unless the full-load power factor is 80 percent or more, or, for a cord-connected operator, unless the rating is 50 watts or less. The number of phases shall be indicated if an operator is for use on a polyphase circuit. The date code repetition cycle shall not be less than 20 years.

(d) Exception No. 1: The manufacturer's identification may be in a traceable code if the operator is identified by the brand or trademark owned by a private labeler.

(e) Exception No. 2: The date of manufacture may be abbreviated or in an established or otherwise accepted code.

(f) If a manufacturer produces or assembles operators at more than one factory, each finished operator shall have a distinctive marking, which may be in code, to identify it as the product of a particular factory.

(g) A residential garage door operator shall be provided with a separate cautionary label or tag for permanent installation near the wall-mountable

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electrical actuating switch. The instruction manual shall direct that the label be mounted near the switch. The label shall specify the means to detach the operator from the door and shall also contain the word "CAUTION" and the following statement or the equivalent in clearly legible form: "To reduce the risk of injury to person, operate door only when fully visible, properly adjusted, and free of obstructions. Do not permit children to play in the area of door. See instruction manual."

(h) A residential garage door operator shall be provided with a separate cautionary label attached to or adjacent at all times to the means provided to detach the operator from the garage door. This label shall be marked with the following statement or the equivalent: "If the door becomes obstructed, detach door from operator as follows." The method to detach the operator shall be shown on the label.

(i) The carton and the instruction manual for an operator shall be marked with the word "WARNING" and the following or the equivalent: "To reduce the risk of injury to persons—Use this operator only with (a) _____ door(s)."

§ 1211.7 Statutory labeling requirement.

(a) A manufacturer selling or offering for sale in the United States an automatic residential garage door operator manufactured on or after January 1, 1991, shall clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of § 1211.4 of this part.

(b) The display of the UL logo or listing mark, and compliance with the date marking requirements of UL–325, on both the container and the system, shall satisfy the requirements of this subsection.

Dated: June 12, 1991.

Sadye E. Dunn,

Secretary.

Consumer Product Safety Commission.

[FR Doc. 91–14489 Filed 6–18–91; 8:45 am]

BILLING CODE 6355–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Disclosure of Past Performance by Commodity Pool Operators and Commodity Trading Advisors

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) has adopted amendments to its rules relating to disclosure of past performance by commodity pool operators (CPOs) and commodity trading advisors (CTAs) to permit presentation of past performance, including the rate of return, by means other than that currently set forth in such rules where the Commission has approved such alternative means. These amendments are intended to assist CPOs and CTAs in presenting their past performance in a way that is not misleading and lessen the necessity for individual inquiries concerning specific methods of presenting past performance.

EFFECTIVE DATE: The amendments to rule 4.21(a)(4), rule 4.21(a)(4)(ii)(F), rule 4.21(a)(5) and rule 4.31(a)(3) are effective June 19,1991.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Chief Counsel, or Paul Bjarnason, Chief Accountant, Division of Trading and Markets, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

While the Commission has determined that these rule amendments will not affect the existing paperwork burden previously approved by the Office of Management and Budget, the public reporting burden for the collection of information which includes Commission Rules 4.21 and 4.31 and all other rules pertaining to the operations and activities of CPOs and CTAs and to monthly reporting by futures commission merchants (3038–0005) is estimated to average 30.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Office, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038–0005), Washington, DC 20503.

II. Rule Amendments

A. Background

Commission Rules 4.21 and 4.31 [1] set forth the requirements for disclosure by CPOs to prospective pool participants and by CTAs to prospective clients, respectively. Among other things, a CPO must disclose in a Disclosure Document furnished to prospective pool participants the actual performance record of the CPO and of each of its principals [2] with respect to the particular pool described in the Document as well as any other pool operated by the CPO and by each of its principals within the preceding three years, and the actual performance record for the preceding three years of all accounts other than the pool described in the Document directed [3] by the pool's CTA and by each of the CTA's principals. Rule 4.21(a) (4) and (5). Similarly, a CTA must disclose to its prospective clients in a Disclosure Document the actual performance record for the preceding three years of all accounts directed by the CTA and by each of its principals. Commission Rule 4.31(a)(3).

The Commission requires that actual past performance be displayed in the Disclosure Document in a table showing at least quarterly for the prescribed time period [4] certain information, current as of a date not more than three months preceding the date of the Document.[5] One of the required disclosures is the rate of return (ROR) for the period. The formula for ROR is set forth in rule 4.21(a)(4)(ii)(F) with respect to past performance disclosure by a CPO for the pool described in the Document and other pools operated by the CPO and its principals in the preceding three years. That formula is incorporated by reference in rule 4.21(a)(5)(ii) with respect to disclosure by the CPO of the past performance of the pool's CTA and the CTA's principals and in rule 4.31(a)(3)(ii) with respect to disclosure by a CTA concerning its past performance and that of its principals.

The Commission recognizes, however, that due to the increasing numbers and varied operations of CPOs and CTAs,[6] there may be instances where calculation of ROR under the current rules could be misleading and an alternative method of ROR calculation would not be misleading and would provide meaningful disclosure to prospective pool participants and clients.[7] Distortions in ROR computed under the Commission's current rules could result, for example, where additions and/or withdrawals are substantial and occur early in the reporting period. The Commission raised these and other past performance disclosure issues in an interpretative statement and request for comments issued simultaneously with a companion release of the Securities and Exchange Commission regarding CPO disclosure requirements. 54 FR 5597, at 5599–5600 (February 6, 1989). Certain of the comments received in response to that release suggested alternative ROR computation methods.

Upon review of such comments and its own reconsideration of the matter, on February 27, 1991 the Commission published for comment in the **Federal Register** certain proposed amendments to its past performance rules.[8] The Commission received one comment letter on these proposals, which was from a trade association which represents CPOs and CTAs. Subject to the one exception discussed below (concerning the proposed delegation of authority to the Director of the Division of Trading and Markets), this letter supported the proposed amendments. Accordingly, based on its evaluation of the comments received and subject to the exception discussed below, the Commission has adopted the proposed amendments in the form in which they were proposed.

B. The Amendments

The Commission has determined to adopt as proposed an amendment to rule 4.21(a)(4)(ii)(F) that would permit computation of ROR pursuant to alternative methods "otherwise approved by the Commission" rather than pursuant to the current methed. As the Commission noted in its proposal, this amendment will also affect the ROR disclosure under rules 4.21(a)(5)(ii) and 4.31(a)(3)(ii), which incorporate by reference the provisions of rule 4.21(a)(4)(ii)(F).[9] Any alternative method approved by the Commission could be used, provided it does not result in the presentation of past performance in a misleading manner, even if the current method specified in the rules would also be acceptable. Use of any of the acceptable methods is subject to the overriding requirement that all material information be disclosed to existing or prospective pool participants, or existing or prospective clients, even if such information is not otherwise specifically required by the Commission's disclosure rules; thus presentations that are misleading, even if otherwise presented in accordance with Commission rules, are prohibited.[10]

The Commission has also determined to adopt as proposed amendments to the introductory text to rules 4.21(a)(4), 4.21(a)(5) and 4.31(a)(3) that would permit an alternative presentation as approved by the Commission with respect to other aspects of past performance disclosure as set forth in subsections (A) through (E) of rule 4.21(a)(4)(ii).[11]

As noted above, the Commission also proposed to amend its delegation of authority with respect to the rules governing CPOs and CTAs to permit the Director of the Division of Trading and Markets (the "Division") or the Director's designee to perform all functions reserved to the Commission under rules 4.21 and 4.31. In making this proposal the Commission noted that although the Division had previously provided relief in appropriate cases with respect to alternative methods of computation of ROR and other elements of past performance disclosure by CPOs and CTAs, such relief had necessarily been provided on a case-by-case basis. Thus the delegation of authority to the Division with respect to CPO and CTA disclosure requirements was intended to permit the Division to issue advisories and interpretations of general application from time to time as appropriate, thereby enhancing flexibility and obviating the need to apply for case-by-case relief. In light of the negative comment received on this subject, the availability of Commission procedures to address matters of general applicability, and its own reconsideration of the proposal, the Commission has concluded not to adopt this part of the proposal.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. In this connection, the Commission previously has determined that registered commodity pool operators should not be considered small entities for purposes of the RFA.[12] With respect to community trading advisors, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some should be considered to be small entities and, if so, that it would analyze the economic impact on them of any rule.[13] Because the rule amendments adopted herein amend the Commission's rules that currently are applicable to the above-mentioned registrants such that no additional burdens are imposed, the Commission believes that these amendments would not have a significant economic impact on the above-noted entities. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman of the Commmission certifies that these final rules will not have a significant number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted rules 4.21 and 4.31 and their associated information collection requirements to the Office of Management and Budget as part of information collection number 3038–0005. While these rules amendments have no burden, the group of rules of which they are a part has the following burden:

Average Burden Hours per Response	30.6
Number of Respondents	3,060
Frequency of Response	40

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[1] 17 CFR 4.21 and 4.31 (1991). Commission rules referred to herein are found at 17 CFR ch. I (1991).

[2] For purposes of the part 4 rules, the term "principal" is defined in Commission Rule 4.10(e).

[3] For purposes of the part 4 rules, the term "directed" is defined in Commission Rule 4.10(f).

[4] Such time period may be as long as three years depending upon the trading history of the pool, the CPO, the CTA and the principals involved.

[5] Net performance for the period represents the change in the net asset value net of additions, withdrawals and redemptions. Commission Rule 4.21(a)(4)(ii)(D).

[6] As of April 30, 1991, there were 1,287 registered CPOs and 2,545 registered CTAs (some entities may be registered in both capacities).

[7] In this regard, rule 4.21(h) and rule 4.31(g), respectively, provide that compliance by a CPO or CTA with specified disclosure rules does not relieve the registrant—

from any obligation under the (Commodity Exchange) Act or the regulations thereunder, including the obligation to disclose all material information even if the information is not specifically required by this section.

[8] 56 FR 8101.

[9] The Commission issued a companion Advisory with its proposal which set forth several methods of calculating ROR in addition to the method specified in rule 4.21(a)(4)(ii)(F). 56 FR 8109 (February 27, 1991).

[10] *See* Section 4o of the Commodity Exchange Act, 7 U.S.C. 6o (1988); 54 FR 5597, 5600 (1989); and *supra* n. 7.

[11] As noted above, these specific requirements are incorporated by reference in rules 4.21(a)(5)(ii) and 4.31(a)(3)(ii).

[12] 47 FR 18618, 18619–20 (April 30, 1982).

[13] 47 FR 18618, 18620 (April 30, 1982).

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Persons wishing to comment on this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503 (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581 (202) 254-9735.

List of Subjects in 17 CFR Part 4

Commodity Futures, Commodity Pool Operators, Commodity Trading Advisors, Consumer protection, Disclosure.

Authority delegations (government agencies).

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2, 4b, 4c, 4l, 4m, 4n, 4o, 8a and 19 thereof, 7 U.S.C. 2, 4a(j), 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23, the Commission hereby amends part 4 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: Secs. 2(a)(1), 4b, 4c, 4l, 4m, 4n, 4o, 8a and 19 of the Commodity Exchange Act, 7 U.S.C. 2, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23; 5 U.S.C. 552 and 552b.

2. Section 4.21 is amended by revising paragraphs (a)(4) introductory text, (a)(4)(ii)(F) and (a)(5) introductory text to read as follows:

§ 4.21 Disclosure to prospective pool participants.

(a) * * *

(4) The actual performance record of the commodity pool operator and of each of its principals as specified below or by a method otherwise approved by the Commission; *Provided, however,* That nothing in this paragraph (a)(4) shall be construed to prohibit a commodity pool operator from disclosing additional information on such performance record so long as the pool operator complies with each of the specified requirements of this paragraph (a)(4), and such additional information is not misleading.

* * * * *

(ii) * * *

(F) The rate of return for the period, which shall be calculated by dividing the net performance by the beginning net asset value or by a method otherwise approved by the Commission; and

* * * * *

(5) The actual performance record of the pool's commodity trading advisor and of each of its principals as specified below or by a method otherwise approved by the Commission; *Provided, however,* That nothing in this paragraph (a)(5) shall be construed to prohibit a commodity pool operator from disclosing additional information on such performance record so long as the pool operator complies with each of the specified requirements of this paragraph (a)(5) and such additional information is not misleading.

* * * * *

3. Section 4.31 is amended by revising paragraph (a)(3) introductory text to read as follows:

§ 4.31 Disclosure to prospective clients.

(a) * * *

(3) The actual performance record of the commodity trading advisor and of each of its principals as specified below or which is calculated pursuant to a method otherwise approved by the Commission; *Provided, however,* That nothing in this paragraph (a)(3) shall be construed to prohibit a commodity trading advisor from disclosing additional information on such performance record so long as the trading advisor complies with each of the specified requirements of this paragraph (a)(3) and such additional information is not misleading.

* * * * *

Issued in Washington, DC on June 13, 1991, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-14570 Filed 6-18-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8353]

RIN 1545-AO09

Information With Respect to Certain Foreign-Owned Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to information that must be reported and records that must be maintained under section 6038A of the Internal Revenue Code. These regulations are necessary to provide appropriate guidance for affected reporting corporations and related parties. The regulations affect any reporting corporation (that is, certain domestic corporations and foreign corporations) as well as certain related parties of the reporting corporation.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after July 10, 1989, except as follows:

§ 1.6038A-1 (a), (b), (e) (2), (g) through (n).	December 10, 1990
§ 1.6038A-3	March 20, 1990
§ 1.6038A-6	November 5, 1990
§ 1.6038A-7	December 10, 1990

FOR FURTHER INFORMATION CONTACT: Carol P. Tello or Grace Perez-Navarro of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R) (202-377-0483 (Ms. Tello), 202-287-4851 (Ms. Perez-Navarro), not toll-free calls).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)) under control number 1545-1191. The estimated average annual reporting burden per respondent is 14 hours and 19 minutes. This time estimate is included in the burden of Form 5472. The estimated average annual recordkeeping burden per recordkeeper is 10 hours.

These estimates are an approximation of the average time expected to be necessary for record maintenance and collection of information. They are based upon such information as is available to the Internal Revenue Service. Individual respondents and recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On December 10, 1990, the Internal Revenue Service published in the **Federal Register** proposed regulations (55 FR 50706) to the Income Tax Regulations (26 CFR part 1) under section 6038A of the Internal Revenue Code. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comments on its impact on small business. Over sixty written comments were received from the public. A public hearing was held on February 22, 1991.

Explanation of Changes

General Requirements and Definitions

A number of significant changes were made to this section in response to suggestions from commentators. Most importantly, the de minimis rules now include a small corporation exception based upon the amount of gross receipts for the taxable year. This addition is in response to commentators who were concerned that a small business would not be able to meet the de minimis exception because of the requirement that the aggregate gross payments made to or received from a foreign related party be less than ten percent of the U.S. gross income of the corporation. The new small corporation exception permits corporations with less than $10,000,000 in gross receipts to be exempt from the record maintenance and authorization requirements of section 6038A.

The safe harbor for other corporations with related party transactions of de minimis value was modified to increase the amount of aggregate gross payments to $5,000,000.

Finally, the aggregation rules clarify that for purposes of the gross payments test, gross payments made to foreign related parties are added to gross payments received from foreign related parties.

In response to a number of comments, two exceptions to the definition of a reporting corporation have been provided. Where a foreign corporation doing business in the United States (i) is entitled to the benefits of the business profits article of a bilateral income tax treaty; and (ii) does not have, and is not deemed to have, a permanent establishment in the United States, the corporation is exempt from section 6038A. Additionally, a foreign corporation whose gross income is exempt from U.S. taxation under section 883 is not a reporting corporation, provided that the corporation timely and fully complies with the reporting requirements set forth in Rev. Proc. 91-12, 1991-6 I.R.B. 12, necessary to claim the exemption under section 883. If, however, upon audit, the corporation is determined to have a permanent establishment or to have gross income not exempt from U.S. taxation under section 883, section 6038A will apply.

The final regulations also clarify that the definition of a reporting corporation under § 1.6038A-1(c) applies for taxable years beginning before July 11, 1989.

Banks and other financial institutions, previously exempt from the filing requirement under section 6038A, were concerned about the effective date of provisions requiring them to file Form 5472. In response to these concerns, the information filing requirement under § 1.6038A-2 for such institutions will be effective for taxable years beginning after December 10, 1990.

A number of commentators identified the need to clarify whether the section 38 attribution rules or the section 267(c) attribution rules are to be used in applying section 267(b). The final regulations provide that the relationships enumerated in section 267(b) will be determined under the rules of section 318, except to the extent that section 267(c) creates more inclusive attribution rules.

In response to numerous comments, two examples were added to § 1.6038A-1 to illustrate the operation of the related party rules. Many commentators were concerned about the difficulty of securing the cooperation of entities in which the 25-percent foreign shareholder of the reporting corporation owns only a minority interest. The examples contrast a situation in which such a shareholder has control (within the meaning of section 482) of the minority-owned subsidiary with a situation in which it does not. The minority-owned subsidiary is a foreign related party only in the first situation.

The final regulations also incorporate a number of other changes to § 1.6038A-1. In response to concerns of some commentators, a principal operating company as well as a holding company may be authorized to act as an agent under § 1.6038A-5 for a foreign related party. The definition of a 25-percent foreign shareholder has been expanded to include persons that hold the stock of a reporting corporation either directly or indirectly; all direct and indirect 25-percent foreign shareholders must be identified on Form 5472. Also, the rule in the proposed regulations exempting controlled commercial entities as defined by section 882(a)(2)(B) from §§ 1.6038A-3 and 1.6038-5 has been deleted.

A rule permitting the reopening of an examination if the statute of limitations period for that taxable year has not expired has been added. Also added is a rule barring the reopening of a taxable year under section 6038A for examination purposes if the taxable year is open under section 6511 only for purposes of the carryback of net operating losses or net capital losses.

Finally, certain definitions contained in the text of section 6038A are effective for taxable years beginning after July 10, 1989.

Requirement of Information Return

A new exception from the filing requirement for foreign sales corporations was added to the final regulations in response to commentators who observed that under proposed § 1.6038A-2, a foreign sales corporation would be required to file Form 5472 because it is not required to file Form 5471. Under the final regulations, a foreign sales corporation that files Form 1120-FSC for a taxable year is exempt from the Form 5472 filing requirement.

Some commentators expressed concern about the potential difficulty in establishing the fair market value for transactions in which no monetary or nonmonetary consideration is paid. The final regulations are unchanged from the proposed regulations in this respect because the reasonable estimate rules contained in § 1.6038A-2(b)(6) address this problem.

Other commentators were concerned that the new category of "other amounts paid" in § 1.6038A-2(b)(3)(x) required to be reported on Form 5472 is too broad and would include such items as dividends and capital contributions. This paragraph has been clarified in the final regulations. The phrase "other amounts paid" includes only amounts that would be taken into account for the determination and computation of the taxable income of the reporting corporation.

Several commentators requested that the term "total assets," required to be provided by a reporting corporation on Form 5472, be defined. The final regulations provide that for U.S. reporting corporations the term total assets means all the assets of the reporting corporation. The regulations under section 6038C will clarify the meaning of total assets for foreign corporations engaged in a U.S. trade or business.

The final regulations adopt the suggestion of many commentators that disclosure under section 1060A be required only if the inventory costs of imported goods are greater than the costs taken into account in computing the value of the goods for customs purposes.

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Finally, the final regulations clarify that if a reporting corporation is exempt from filing Form 5472 because a Form 5471 has been filed that provides duplicate information, the reporting corporation is also exempt from the record maintenane requirements of § 1.6038A–3 and the authorization of agent requirement of § 1.6038A–5. Such a reporting corporation, however, remains subject to the general record maintenance requirements of section 6001.

Record Maintenance

Most of the concerns of commentators focused on the record maintenance requirements of § 1.6038A–3. The majority of commentators stated that the requirements will impose significant burdens on affected foreign corporations. The safe harbor, in particular, was singled out for criticism. Additionally, the material profit and loss statement requirement was criticized as too complex. Many commentators requested that the term "relevant" be delineated or defined.

To be useful, the record maintenance rules must provide guidance for a wide variety of foreign persons located throughout the world, subject to varying record maintenance and record retention standards, who may have little or no familiarity with U.S. accounting and tax standards and tax administrative practices. The general guidance provided by section 6001 and the regulations thereunder do not provide the type of specific, detailed guidance that these persons may need. Additionally, section 6038A will be used by the Service to enforce all Code sections that affect the tax treatment of transactions between the reporting corporation and its foreign related parties; it is not limited to issues arising under section 482 or any other Code section.

For these reasons, an all-inclusive safe harbor is provided, with the instruction that an individual taxpayer or foreign person is required to maintain only those records that are relevant to its particular industry or business and to the U.S tax treatment of its transactions with foreign related parties. The final regulations clarify and expand upon these points.

The safe harbor also serves another function, that of limiting the number of potential profit and loss statements that a reporting corporation might otherwise be required to produce. Without a materiality standard, any product or service sold or provided within the United States, irrespective of its relative economic importance to the reporting corporation, might be the subject of a profit and loss statement.

In response to numerous comments concerning the complexity of the material profit and loss statements, the ten percent identifiable assets and the ten percent operating profit or loss tests have been eliminated from the definition of significant industry segments. For the high profit test, the rate of return on assets has been increased from 10 percent to 15 percent, the rate of return for an industry segment is compared to the group's worldwide operations, and the dollar threshold for U.S.-connected products has been raised to $100,000,000. The paragraph has been restructured to reflect the simpler tests to be applied.

Many commentators were concerned that constructing an accurate material profit and loss statement will be difficult. However, the profit and loss statement is not being used to determine precise U.S. tax liability of a reporting corporation. The tests for determining the material profit and loss statement are intended to identify in broad terms the relative importance of a particular product or product line (or service). For this purpose, any reasonable allocation methods and formats are acceptable.

Other commentators requested that the regulations state whether fair market value or basis of assets should be used for the rate of return on assets test under the high profit test. The final regulations permit any reasonable method to be used as long as that method is applied consistently. Also, the final regulations provide that current year data is to be used for the test.

To satisfy concerns about the meaning of the relevance standard, four new examples illustrate cases in which the record maintenance requirements are not applicable to the reporting corporation's foreign related parties.

In response to suggestions that section 6038A requires more burdensome recordkeeping than section 6001, a description of the record maintenance requirements under section 6001 (as stated by regulations under section 6001 and by official Service publications) has been added. This additional guidance reflects the equivalence of the requirements under the two sections.

Specifically, some commentators criticized the requirement of creating basic accounting records and material profit and loss statements if not otherwise maintained under the safe harbor as more burdensome than the requirements under section 6001. The final regulations in § 1.6038A–3(a) reflect the rule under § 1.6001–1(d) that permits a District Director to require specific records to be created upon notice to the taxpayer. The final regulations also reflect that in appropriate cases the relevant cost data required to construct a profit and loss statement is also necessary to establish the amount of gross income, deductions, credits or other matters required to be shown on an income tax return.

One commentator suggested that the regulations should apply the recordkeeping requirement only to reportable transactions. This suggestion has not been adopted because under the statute the recordkeeping requirement applies to all records that may be relevant to the tax treatment of transactions between a reporting corporation and any foreign related party.

Most commentators requested that the final regulations provide more guidance and more detail concerning the agreements that may be executed with District Directors or the Assistant Commissioner (International). The final regulations clarify that the agreement is to be executed with the District Director or the Assistant Commissioner (International) who has audit jurisdiction over the reporting corporation. The final regulations further provide that the agreement may include provisions relating to the authorization of agent requirement, the record maintenance requirement, and production and translation time periods that vary the rules contained in the final regulations.

The final regulations also clarify that a reporting corporation that enters into an agreement with a District Director or the Assistant Commissioner (International) generally will be required only to maintain those records specified under the safe harbor that permit an adequate audit of the income tax return of the reporting corporation and that, in most instances, the records required to be maintained under such an agreement would be less than what is required under the safe harbor. Further guidance with respect to District Director agreements will be issued in a revenue procedure.

One commentator suggested an independent review procedure that was endorsed by a number of other commentators. The proposal was not adopted because the regulations provide for individually negotiated agreements with District Directors.

In response to numerous concerns that the annual election to maintain records outside the United States was too burdensome, the final regulations provide that records may be maintained outside the United States if non-U.S. maintenance requirements to produce

documents are satisfied. These requirements are identical to the requirements imposed under the annual election contained in the proposed regulations; however, an agreement to meet those requirements is no longer required on Form 5472.

Finally, a clarification suggested by some commentators was adopted that limits the documents required under the category of financial and other documents filed with foreign governments within the safe harbor to the documents relevant to transactions between the reporting corporation and its foreign related parties.

Rules describing how the record maintenance requirements are to be applied to banks and other financial institutions will be coordinated with future regulations under section 6038C. The final regulations under section 6038A reserve these issues.

All records maintained by a foreign related party that are provided to the Service are tax return information, required to be kept confidential under section 6103.

Monetary Penalty

Commentators requested that the regulations describe facts or circumstances that might justify the granting of the reasonable cause exception to the imposition of the monetary penalty. Also requested was a definition of the term "small corporation" for purposes of the reasonable cause exception.

A new paragraph, "facts and circumstances taken into account," describes facts and circumstances that might justify the application of the reasonable cause exception. Specifically, if a reporting corporation could be related to a foreign person only within the meaning of section 482 and has a reasonable belief that the foreign person is not so related, reasonable cause exists if, in fact, the foreign person is related within the meaning of section 482. Also, a small corporation is defined as a corporation whose gross receipts for the taxable year are $20,000,000 or less.

Other commentators requested that review procedures be adopted for the denial of the reasonable cause exception. Review procedures are contained in Internal Revenue Manual supplements under section 6038A.

The suggestion that the application of the penalty provisions be phased in has not been adopted because the statute contains a clear effective date.

Authorization of Agent

Most commentators were concerned that the annual authorization of agent requirement would be too burdensome. The final regulations delete the annual authorization of agent requirement and provide that such authorization must be provided within 30 days of a request by the Service, rather than requiring the authorization to be filed with Form 5472.

The final regulations adopt the proposal that a single, consolidated authorization by a foreign parent for itself and on behalf of its group members be permitted. In the event that such a consolidated authorization is not legally enforceable, the noncompliance penalty adjustment under § 1.6038A–7 will apply.

The final regulations clarify that an authorization of agent executed by a foreign related party is to be disregarded in determining whether a trade or business exists for purposes of the Code or whether a permanent establishment under an income tax treaty exists for that foreign related party.

One commentator requested a rule that a subpoena or summons could not be directly issued to, or enforced against, a nonresident alien. See rule 30 of the Federal Rules of Civil Procedure. The legislative history states that the authorization of an agent by a foreign related party is limited to requests by the Service to examine records or produce testimony related to reportable transactions. The Internal Revenue Manual supplement will require that before a request for individual testimony of an employee of a foreign related party is made, every attempt to obtain the information from a U.S. person must be made. Additionally, national office review is required before a summons for individual testimony of an employee of a foreign related party may be issued.

Failure to Furnish Information

The most significant comment with respect to § 1.6038A–6 was the request to require that an applicable treaty exchange of information or Tax Information Exchange Agreement (TIEA) provision be used prior to issuing a section 6038A summons. The final regulations provide that generally a treaty exchange of information or TIEA provision will be used prior to section 6038A procedures where the information sought may be obtained on a timely and efficient basis. The absence or pendency of a treaty or TIEA request may not be asserted as grounds for refusing to comply with a summons or as a defense against the assertion of the noncompliance penalty adjustment under § 1.6038A–7.

The regulations provide that information is available on a timely and efficient basis if it can be obtained from a foreign government within 180 days. The Service's recent experience with the types of treaty requests most likely to be made under section 6038A indicates that the United States generally responds to such requests within 180 days. A new paragraph is added to clarify that the statute of limitations is suspended for the pendency of a court determination (including appeals therein) for the taxable year to which the summons that is the subject of the proceeding relates. This rule reflects the legislative history.

A suggestion that an exception be provided when the reporting corporation has acted in good faith to secure the compliance of the foreign related party was not adopted, because it is contrary to the legislative history.

The IRS Manual will instruct agents generally to use normal administrative requests and summons procedures to obtain relevant records and testimony directly from the reporting corporation. Only where these initial procedures are ineffective will the Service resort to the summons power under the agency authorization to obtain records and testimony of foreign related parties.

Also not adopted was a suggestion that an appeal to the District Director be permitted if it is determined that there has not been substantial compliance. Section 6038A(e)(4)(B) provides for review of such a determination by the federal district court having jurisdiction over the reporting corporation.

Finally, a commentator suggested that a rule be added that requires the issuance of an information document request prior to the issuance of a section 6038A summons. Such a procedure will be described in the Internal Revenue Manual.

Noncompliance Penalty

Some commentators were concerned that § 1.6038A–7 provides too much discretion to the Service. Various remedies were proposed. The legislative history is clear, however, that exercise of the sole discretion to establish allowable amounts of deductions and the cost of goods sold in the event of noncompliance is subject to only limited judicial review. The amounts established by the Service cannot be overturned by a court on the basis that the amount diverges from actual costs or other amounts incurred, or on the basis that they do not clearly reflect income. Furthermore, the fact that the amounts can be proven to be clearly erroneous by reference to materials or information that were not within the knowledge or possession of the Service should not be sufficient alone to cause a court to

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redetermine allowable amounts of deductions and the cost of goods sold.

Drafting Information

The principal authors of these regulations are Carol P. Tello and Grace Perez-Navarro of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR 1.6031–1 through 1.6060–2

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Sections 1.6038A–1 through 1.6038A–7 also issued under 26 U.S.C. 6038A. * * *

Par. 2. Section 1.6038A–1 is removed.

Par. 3. New §§ 1.6038A–0 through 1.6038A–7 are added to read as follows:

§ 1.6038A–0 Table of contents.

This section lists the captions that appear in the regulations under section 6038A.

§ 1.6038A–1 **General requirements and definitions**

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(l) Required information.
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(m) Examples.
(n) Effective dates.
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(4) Section 1.6038A–4.
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§ 1.6038A–1 General requirements and definitions.

(a) *Purpose and scope.* This section and §§ 1.6038A–2 through 1.6038A–7 provide rules for certain foreign-owned U.S. corporations and foreign corporations engaged in trade or business within the United States (reporting corporations) relating to information that must be furnished, records that must be maintained, and the authorization of the reporting corporation to act as agent for related foreign persons for purposes of sections 7602, 7603, and 7604 that must be executed. Section 6038A(a) and this section require that a reporting corporation furnish certain information annually and maintain certain records relating to transactions between the reporting corporation and certain related parties. This section also provides definitions of terms used in section 6038A. Section 1.6038A–2 provides guidance concerning the information to be submitted and the filing of the required return. Section 1.6038A–3 provides guidance concerning the maintenance of records. Section 1.6038A–4 provides guidance concerning the application of the monetary penalty for the failure either to furnish information or to maintain records. Section 1.6038A–5 provides guidance concerning the authorization of an agent for purposes of sections 7602, 7603, and 7604. Section 1.6038A–6 provides guidance concerning the failure to furnish information requested by a summons. Finally, § 1.6038A–7 provides guidance concerning the application of the noncompliance penalty for failure by the related party to authorize an agent or by the reporting corporation to substantially comply with a summons.

(b) *In general.* A reporting corporation must furnish the information described in § 1.6038A–2 by filing an annual information return (Form 5472 or any successor), and must maintain records as described in § 1.6038A–3.

(c) *Reporting corporation*—(1) *In general.* For purposes of section 6038A, a reporting corporation is either a domestic corporation that is 25-percent foreign-owned as defined in paragraph (c)(2) of this section, or a foreign corporation that is 25-percent foreign-owned and engaged in trade or business within the United States. After November 4, 1990, a foreign corporation engaged in a trade or business within the United States at any time during a taxable year is a reporting corporation. See section 6038C.

(2) *25-percent foreign-owned.* A corporation is 25-percent foreign-owned if it has at least one direct or indirect 25-percent foreign shareholder at any time during the taxable year.

(3) *25-percent foreign shareholder*—(i) *In general.* A foreign person is a 25-percent foreign shareholder of a corporation if the person owns at least 25 percent of—

(A) The total voting power of all classes of stock of the corporation entitled to vote, or

(B) The total value of all classes of stock of the corporation.

(ii) *Total voting power and value.* In determining whether one foreign person owns 25 percent of the total voting power of all classes of stock of a corporation entitled to vote or 25 percent of the total value of all classes of stock of a corporation, consideration will be given to all the facts and circumstances of each case, under principles similar to § 1.957–1(b)(2) (consideration of arrangements to shift formal voting power away from a foreign person).

(iii) *Direct 25-percent foreign shareholder.* A foreign person is a direct 25-percent foreign shareholder if it owns directly at least 25 percent of the stock of the reporting corporation, either by vote or by value.

(iv) *Indirect 25-percent foreign shareholder.* A foreign person is an indirect 25-percent foreign shareholder if it owns indirectly (or under the attribution rules of section 318 is considered to own indirectly) at least 25 percent of the stock of the reporting corporation, either by vote or by value.

(4) *Application to prior open years.* For taxable years beginning before July 11, 1989, the definition of a reporting corporation under this paragraph applies in determining whether a foreign-owned corporation is a reporting corporation.

(5) *Exceptions*—(i) *Treaty country residents having no permanent establishment.* A foreign corporation that has no permanent establishment in the United States under an applicable income tax convention is not a reporting corporation for purposes of section 6038A and this section. Accordingly, such a foreign corporation is not subject to §§ 1.6038A–2, 1.6038A–3, and 1.6038A–5. It must timely and fully provide the required notice to the Commissioner under section 6114. See section 6114 and the regulations thereunder for the notice that such a corporation must file and the applicable penalties for failure to file such notice.

(ii) *Qualified exempt shipping income.* A foreign corporation whose gross income is exempt from U.S. taxation under section 883 is not a reporting corporation provided that it timely and fully complies with the reporting requirements required to claim such exemption. In the event that such a corporation does not timely and fully comply with the reporting requirements under sections 887 and 883, it will be a reporting corporation subject to section 6038A, including the application of the monetary penalty for failure to file required information.

(iii) *Status as foreign related party.* Nothing in this paragraph affects the determination of whether a person is a foreign related party as defined in paragraph (g) of this section.

(d) *Related party.* The term "related party" means—

(1) Any direct or indirect 25-percent foreign shareholder of the reporting corporation,

(2) Any person who is related within the meaning of sections 267(b) or 707(b)(1) to the reporting corporation or

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to a 25-percent foreign shareholder of the reporting corporation, or

(3) Any other person who is related to the reporting corporation within the meaning of section 482 and the regulations thereunder. However, the term "related party" does not include any corporation filing a consolidated federal income tax return with the reporting corporation.

(e) *Attribution rules*—(1) *Attribution under section 318.* For purposes of determining whether a corporation is 25-percent foreign-owned and whether a person is a related party under section 6038A, the constructive ownership rules of section 318 shall apply, and the attribution rules of section 267(c) also shall apply to the extent they attribute ownership to persons to whom section 318 does not attribute ownership. However, "10 percent" shall be substituted for "50 percent" in section 318(a)(2)(C), and section 318(a)(3) (A), (B), and (C) shall not be applied so as to consider a U.S. person as owning stock that is owned by a person who is not a U.S. person. Additionally, section 318(a)(3)(C) and § 1.318–1(b) shall not be applied so as to consider a U.S. corporation as being a reporting corporation if, but for the application of such sections, the U.S. corporation would not be 25-percent foreign owned.

(2) *Attribution of transactions with related parties engaged in by a partnership.* The transactions in which a domestic or foreign partnership engages shall be attributed to any reporting corporation whose interest in the capital or profits of the partnership, either directly or indirectly, combined with the interests of all related parties of the reporting corporation partner, equals 25 percent or more of the total partnership interests. Attribution of such transactions shall be made only to the extent of the partnership interest held by that reporting corporation partner. See sections 875 and 702(a) and the regulations thereunder. (Attribution shall not be made however, of transactions directly between the partnership and a reporting corporation.) Accordingly, a reporting corporation partner that is deemed to engage in transactions with related parties under this rule is subject to the information reporting requirements of § 1.6038A–2, to the record maintenance requirements of § 1.6038A–3, to the monetary penalty under § 1.6038A–4, to the requirement of authorization of agent under § 1.6038A–5, to the rules of § 1.6038A–6 relating to the requirement to produce records, and to the noncompliance penalty adjustment under § 1.6038A–7.

(f) *Foreign person.* For purposes of section 6038A, a foreign person is—

(1) Any individual who is not a citizen or resident of the United States, but not including any individual for whom an election under section 6013 (g) or (h) (relating to an election to file a joint return) is in effect;

(2) Any individual who is a citizen of any possession of the United States and who is not otherwise a citizen or resident of the United States;

(3) Any partnership, association, company, or corporation that is not created or organized in the United States or under the law of the United States or any State thereof;

(4) Any foreign trust or foreign estate, as defined in section 7701(a)(31); or

(5) Any foreign government (or agency or instrumentality thereof). To the extent that a foreign government is engaged in the conduct of commercial activity as defined under section 892 and the regulations thereunder, it will be treated as a foreign person under section 6038A and this section only for purposes of the information reporting requirements of § 1.6038A–2. A foreign government will not be treated as a foreign related party for purposes of §§ 1.6038A–3 and 1.6038A–5.

For purposes of section 6038A, a possession of the United States shall be considered to be a foreign country.

(g) *Foreign related party.* A foreign related party is a foreign person as defined under paragraph (f) of this section that is also a related party as defined under paragraph (d) of this section.

(h) *Small corporation exception.* A reporting corporation that has less than $10,000,000 in U.S. gross receipts for a taxable year is not subject to §§ 1.6038A–3 and 1.6038A–5 for that taxable year. Such a corporation, however, remains subject to the information reporting requirements of § 1.6038A–2 and the general record maintenance requirements of section 6001. For purposes of this paragraph, U.S. gross receipts includes all amounts received or accrued to the extent that such amounts are taken into account for the determination and computation of the gross income of the corporation. For purposes of this test, the U.S. gross receipts of all related reporting corporations shall be aggregated.

(i) *Safe harbor for reporting corporations with related party transactions of de minimis value*—(1) *In general.* A reporting corporation is not subject to §§ 1.6038A–3 and 1.6038A–5 for any taxable year in which the aggregate value of all gross payments it makes to and receives from foreign related parties with respect to related party transactions (including monetary consideration, nonmonetary consideration, and the value of transactions involving less than full consideration), is not more than $5,000,000 and is less than 10 percent of its U.S. gross income. Such a corporation, however, remains subject to the information reporting requirements of § 1.6038A–2 and the general record maintenance requirements of section 6001. For purposes of this paragraph, U.S. gross income means the gross income reportable by the reporting corporation (or the aggregate gross income reportable by all related reporting corporations) for U.S. income tax purposes. Gross payments made to or received from foreign related parties cannot be netted; rather, the gross payments made to and received from foreign related parties are to be aggregated. Thus, for example, if a reporting corporation receives $4,700,000 of gross payments from a related party and makes $500,000 of gross payments to the same related party, it has aggregate gross payments of $5,200,000, and, therefore, does not qualify for the safe harbor under this paragraph.

(2) *Aggregate value of gross payments made or received.* The aggregate value of gross payments made to (or received from) a foreign related party with respect to foreign related party transactions is determined by totaling the dollar amounts of foreign related party transactions as described in § 1.6038A–2(b) (3) and (4) on all Forms 5472 filed by the reporting corporation or related reporting corporations.

(j) *Related reporting corporations.* A reporting corporation is related to another reporting corporation if it is related to that other reporting corporation under the principles described in paragraphs (d) and (e) of this section.

(k) *Consolidated return groups*—(1) *Required information.* If a reporting corporation is a member of an affiliated group for which a U.S. consolidated income tax return is filed, the return requirement of § 1.6038A–2 may be satisfied by filing a consolidated Form 5472. The common parent, as identified on Form 851, must attach a schedule to the consolidated Form 5472 stating which members of the U.S. affiliated group are reporting corporations under section 6038A, and which of those are joining in the consolidated Form 5472. The schedule must provide the name, address, and taxpayer identification number of each member whose transactions are included on the consolidated Form 5472. A member is not required to join in filing a consolidated Form 5472 merely because other members of the group choose to file one or more Forms 5472 on a consolidated basis.

(2) *Maintenance of records and authorization of agent.* Either the common parent or the principal operating company of an affiliated group filing a consolidated income tax return may be authorized under § 1.6038A–5 to act as the agent for foreign related persons engaged in transactions with members of the group solely for purposes of section 7602, 7603, and 7604 under section 6038A(e)(1) and § 1.6038A–5. Each member of the group, however, must maintain the records required under section 6038A (a) and § 1.6038A–3 relating to its related party transactions.

(3) *Monetary penalties.* The common parent (or principal operating company) and all reporting corporations that join in the filing of a consolidated Form 5472 are liable jointly and severally for penalties for failure to file Form 5472 and for failure to mantain records under section 6038A(d) and § 1.6038A–4(e). See § 1.1502–77(a) regarding the scope of agency of the common parent corporation.

(l) *District Director.* For purposes of the regulations under section 6038A, the term "District Director" means any District Director, or the Assistant Commissioner (International) when performing duties similar to those of a District Director with respect to any person over which the Assistant Commissioner (International) has appropriate jurisdiction.

(m) *Examples.* The following examples illustrate the rules of this section.

Example 1. P, a U.S. partnership that is engaged in a U.S. trade or business, is 75 percent owned by FC1, a foreign corporation that, in turn, is wholly owned by another foreign corporation, FC2. The remaining 25 percent of P is owned by Corp, a domestic corporation, that is wholly owned by FC3. P engages in transactions solely with FC2 and FC3. These transactions are attributed to FC1 and Corp. Under section 875, FC1 is considered as being engaged in a U.S. trade or business. For purposes of section 6038A and this section, FC1 and Corp are reporting corporations and must report their pro rata shares of the value of the transactions with FC2 and FC3. Thus, Corp must report 25 percent of P's transactions with FC3 and FC1 must report 75 percent of P's transactions with FC2.

Example 2. FC2 and FC3 are both foreign corporations that are wholly owned by FC1, also a foreign corporation. FC2 engages in a trade or business in the United States through a branch. The branch engages in related party transactions with FC1. FC2 is a reporting corporation. FC3 is a foreign related party. FC1 is a direct 25-percent foreign shareholder of both FC2 and FC3. Neither FC1 nor FC3 is a reporting corporation.

Example 3. FC1 owns 25 percent of total voting power in each of FC2 and FC3. FC2 and FC3 each own 20 percent of the total voting power of Corp, a domestic corporation. The remaining stock of Corp is owned by an unrelated domestic corporation. Neither FC2 nor FC3 is engaged in a U.S. trade or business. Under section 318(a)(2)(C) and paragraph (e) of this section, FC1 constructively owns its proportionate share of the stock of Corp owned directly by FC2 and FC3. Thus, FC1 is treated as constructively owning five percent of Corp through each of FC2 and FC3 or a total of 10 percent of the Corp stock. Consequently, Corp is not a reporting corporation because no 25 percent shareholder exists.

Example 4. FP owns 100 percent of FC1 which, in turn, owns 100 percent of FC2. FC2 owns 100 percent of FC3 which owns 100 percent of RC. FP, FC1, and FC2 are indirect 25-percent foreign shareholders of RC, and FC3 is a direct 25-percent foreign shareholder.

Example 5. FP owns 100 percent of USS, a U.S. corporation, and 25 percent of FS, a foreign corporation. The remaining 75 percent of FS is publicly owned by numerous small shareholders. Sales transactions occur between USS and FS. Applying the rules of this section, USS is a reporting corporation. It is determined that USS and FS are each controlled by FP under section 482 and the regulations thereunder. Therefore, FS is related to USS within the meaning of section 482 and is a related party to USS. Accordingly, the sales transactions between USS and FS are subject to section 6038A.

Example 6. The facts are the same as in *Example 5*, except that the remaining 75 percent of FS is owned by one shareholder that is unrelated to the FP group and it is determined that FS is not controlled by FP for purposes of section 482. Under these facts, FS is not a related party of either FP or USS. Accordingly, section 6038A does not apply to the sales transactions between FS and USS.

Example 7. P, a U.S. multinational, is a holding company that wholly owns X, a U.S. operating company, which in turn wholly owns FS, a controlled foreign corporation. Applying the rule of section 318(a)(3)(C), FS is deemed to own the stock of X that is actually held by P. However, under the rules of paragraph (e) of this section, X will not be a reporting corporation by reason of section 318.

(n) *Effective dates*—(1) *Section 1.6038A–1.* Paragraphs (c) (relating to the definition of a reporting corporation), (d) (relating to the definition of a related party), (e)(1) (relating to the application of section 318), and (f) (relating to the definition of a foreign person) of this section are effective for taxable Years beginning after July 10, 1989. The remaining paragraphs of this section are effective December 10, 1990, without regard to when the taxable year began.

(2) *Section 1.6038A–2.* Section 1.6038A–2 (relating to the requirement to file Form 5472) is generally effective for taxable years beginning after July 10, 1989. However, § 1.6038A–2 as it applies to reporting corporations whose sole trade or business in the United States is a banking, financing, or similar business as defined in § 1.864–4(c)(5)(i) is effective for taxable years beginning after December 10, 1990.

(3) *Section 1.6038A–3.* Section 1.6038A–3 (relating to the record maintenance requirement) is generally effective December 10, 1990. However, records described in § 1.6038A–3 in existence on or after March 20, 1990, must be maintained, without regard to when the taxable year to which the records relate began.

(4) *Section 1.6038A–4.* Section 1.6038A–4 (relating to the monetary penalty) is generally effective for taxable years beginning after July 10, 1989, for the failure to file Form 5472. For the failure to maintain records or the failure to produce documents under § 1.6038A–4(f)(2), the section is effective December 10, 1990, without regard to when the taxable year to which the records relate began.

(5) *Section 1.6038A–5.* Section 1.6038A–5 (relating to the authorization of agent requirement) is effective December 10, 1990, without regard to when the taxable year to which the records relate began.

(6) *Section 1.6038A–6.* Section 1.6038A–6 (relating to the failure to furnish information under a summons) is effective November 6, 1990, without regard to when the taxable year to which the summons relates began.

(7) *Section 1.6038A–7.* Section 1.6038A–7 (relating to the noncompliance penalty adjustment) is effective December 10, 1990, without regard to when the taxable year began.

§ 1.6038A–2 Requirement of return.

(a) *Form 5472 required*—(1) *In general.* Each reporting corporation as defined in § 1.6038A–1(c) (or members of an affiliated group filing together as described in § 1.6038A–1(k)) shall make a separate annual information return on Form 5472 with respect to each related party as defined in § 1.6038A–1(d) with which the reporting corporation (or any group member joining in a consolidated Form 5472) has had any reportable transaction during the taxable year. The information required by section 6038A and this section must be furnished even though it may not affect the amount of any tax due under the Code.

(2) *Reportable transaction.* A reportable transaction is any transaction

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of the types listed in paragraphs (b) (3) and (4) of this section. However, if neither party to the transaction is a United States person as defined in section 7701(a)(30) and the transaction—

(i) Will not generate in any taxable year gross income from sources within the United States or income effectively connected, or treated as effectively connected, with the conduct of a trade or business within the United States, and

(ii) Will not generate in any taxable year any expense, loss, or other deduction that is allocable or apportionable to such income, the transaction is not a reportable transaction.

(b) *Contents of return*—(1) *Reporting corporation.* Form 5472 must provide the following information in the manner the form prescribes with respect to each reporting corporation:

(i) Its name, address (including mailing code), and U.S. taxpayer identification number; each country in which the reporting corporation files an income tax return as a resident under the tax laws of that country; its country or countries of organization, and incorporation; its total assets for U.S. reporting corporation; the places where it conducts its business; and its principal business activity.

(ii) The name, address, and U.S. taxpayer identification number, if applicable, of all its direct and indirect 25-percent foreign shareholders (for an indirect 25-percent foreign shareholder, explain the attribution of ownership); each country in which each 25-percent foreign shareholder files an income tax return as a resident under the tax laws of that country; the places where each 25-percent shareholder conducts its business; and the country or countries of organization, citizenship, and incorporation of each 25-percent foreign shareholder.

(iii) The number of Forms 5472 filed for the taxable year and the aggregate value in U.S. dollars of gross payments as defined in § 1.6038A–1(h)(2) made with respect to all foreign related party transactions reported on all Forms 5472.

(2) *Related party.* The reporting corporation must provide information on Form 5472, set forth in the manner the form prescribes, about each related party, whether foreign or domestic, with which the reporting corporation had a transaction of the types described in paragraphs (b) (3) and (4) of this section during its taxable year, including the following information:

(i) The name, U.S. taxpayer identification number, if applicable, and address of the related party.

(ii) The nature of the related party's business and the principal place or places where it conducts its business.

(iii) Each country in which the related party files an income tax return as a resident under the tax laws of that country.

(iv) The relationship of the reporting corporation to the related party.

(3) *Foreign related party transactions for which only monetary consideration is paid or received by the reporting corporation.* If the related party is a foreign person, the reporting corporation must set forth on Form 5472 the dollar amounts of all reportable transactions for which monetary consideration (including U.S. and foreign currency) was the sole consideration paid or received during the taxable year of the reporting corporation. The total amount of such transactions, as well as the separate amounts for each type of transaction described below, must be reported on Form 5472, in the manner the form prescribes. Where actual amounts are not determinable, a reasonable estimate (as described in paragraph (b)(6) of this section) is permitted. The types of transactions described in this paragraph are:

(i) Sales and purchases of stock in trade (inventory);

(ii) Sales and purchases of tangible property other than stock in trade;

(iii) Rents and royalties paid and received (other than amounts reported under paragraph (b)(3)(iv) of this section);

(iv) Sales, purchases, and amounts paid and received as consideration for the use of all intangible property, including (but not limited to) copyrights, designs, formulas, inventions, models, patents, processes, trademarks, and other similar intangible property rights;

(v) Consideration paid and received for technical, managerial, engineering, construction, scientific, or other services;

(vi) Commissions paid and received;

(vii) Amounts loaned and borrowed (except open accounts resulting from sales and purchases reported under other items listed in this paragraph (b)(3) that arise and are collected in full in the ordinary course of business);

(viii) Interest paid and received;

(ix) Premiums paid and received for insurance and reinsurance; and

(x) Other amounts paid or received not specifically identified in this paragraph (b)(3) to the extent that such amounts are taken into account for the determination and computation of the taxable income of the reporting corporation.

Amounts required to be reported under paragraph (b)(3)(vii) of this section shall be reported as monthly averages or outstanding balances at the beginning and end of the taxable year, as the form shall prescribe.

(4) *Foreign related party transactions involving nonmonetary consideration or less than full consideration.* If the related party is a foreign person, the reporting corporation must provide on Form 5472 a description of any reportable transaction, or group of reportable transactions, listed in paragraph (b)(3) of this section, for which any part of the consideration paid or received was not monetary consideration, or for which less than full consideration was paid or received. A description required under paragraph (b)(4) of this section shall include sufficient information from which to determine the nature and approximate monetary value of the transaction or group of transactions, and shall include:

(i) A description of all property (including monetary consideration), rights, or obligations transferred from the reporting corporation to the foreign related party and from the foreign related party to the reporting corporation;

(ii) A description of all services performed by the reporting corporation for the foreign related party and by the foreign related party for the reporting corporation; and

(iii) A reasonable estimate of the fair market value of all properties and services exchanged, if possible, or some other reasonable indicator of value.

If, for any transaction, the entire consideration received includes both tangible and intangible property and the consideration paid is solely monetary consideration, the transaction should be reported under paragraph (b)(3) of this section if the intangible property was related and incidental to the transfer of the tangible property (for example, a right to warranty services.)

(5) *Additional information.* In addition to the information required under paragraphs (b) (3) and (4) of this section, a reporting corporation must provide on Form 5472, in the manner the form prescribes, the following information:

(i) If the reporting corporation imports goods from a foreign related party, whether the costs taken into account in computing the basis or inventory cost of such goods are greater than the costs taken into account in computing the valuation of the goods for customs purposes, adjusted pursuant to section 1059A and the regulations thereunder, and if so, the reasons for the difference.

(ii) If the costs taken into account in computing the basis or inventory cost of such goods are greater than the costs taken into account in computing the valuation of the goods for customs purposes, whether the documents supporting the reporting corporation's treatment of the items set forth in paragraph (b)(5)(i) of this section are in existence and available in the United States at the time Form 5472 is filed.

(6) *Reasonable estimate*—(i) *Estimate within 25 percent of actual amount.* Any amount reported under this section is considered to be a reasonable estimate if it is at least 75 percent and not more than 125 percent of the actual amount.

(ii) *Other estimates.* If any amount reported under this paragraph (b) of this section fails to meet the reasonable estimate test of paragraph (b)(6)(i) of this section, the reporting corporation nevertheless may show that such amount is a reasonable estimate by making an affirmative showing of relevant facts and circumstances in a written statement containing a declaration that it is made under the penalties of perjury. The District Director shall determine whether the amount reported was a reasonable estimate.

(7) *Small amounts.* If any actual amount required under this section does not exceed $50,000, the amount may be reported as "$50,000 or less."

(8) *Accrued payments and receipts.* For purposes of this section, in the case of an accrual basis taxpayer, the terms "paid" and "received" shall include accrued payments and receipts, respectively.

(c) *Method of reporting.* All statements required on or with the Form 5472 under this section and § 1.6038A–5 shall be in the English language. All amounts required to be reported under paragraph (b) of this section shall be expressed in United States currency, with a statement of the exchange rates used.

(d) *Time and place for filing returns.* A Form 5472 required under this section shall be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return. A duplicate Form 5472 (including any attachments and schedules) shall be filed at the same time with the Internal Revenue Service Center, Philadelphia, PA 19255.

(e) *Untimely filed return.* If the reporting corporation's income tax return is untimely filed, Form 5472 (with a duplicate to Philadelphia) nonetheless shall be timely filed at the service center where the return is due. When the income tax return is ultimately filed, a copy of Form 5472 must be attached.

(f) *Exceptions—(1) No reportable transactions.* A reporting corporation is not required to file Form 5472 if it has no transactions of the types listed in paragraphs (b) (3) and (4) of this section during the taxable year with any related party.

(2) *Transactions solely with a domestic reporting corporation.* If all of a foreign reporting corporation's reportable transactions are with one or more related domestic reporting corporations that are not members of the same affiliated group, the foreign reporting corporation shall furnish on Form 5472 only the information required under paragraphs (b) (1) and (2) of this section, if the domestic reporting corporations provide the information required under paragraphs (b) (3) through (5) of this section. Such a foreign reporting corporation nonetheless is subject to the record maintenance requirements of § 1.6038A–3 and the requirements of §§ 1.6038A–5 and 1.6038A–6. The name, address, and taxpayer identification number of each domestic reporting corporation that provided such information must be indicated on Form 5472 in the space provided for the information under paragraphs (b) (1) and (2) of this section.

(3) *Transactions with a corporation subject to reporting under section 6038.* A reporting corporation is not required to make a return of information on Form 5472 with respect to a related foreign corporation for a taxable year for which a U.S. person that controls the foreign related corporation makes a return of information on Form 5471 that is required under section 6038 and this section, if that return contains information required under § 1.6038–2(f)(11) with respect to the reportable transactions between the reporting corporation and the related corporation for that taxable year. Such a reporting corporation also is not subject to §§ 1.6038A–3 and 1.6038A–5. It remains subject to the general record maintenance requirements of section 6001.

(4) *Transactions with a foreign sales corporation.* A reporting corporation is not required to make a return of information on Form 5472 with respect to a related corporation that qualifies as a foreign sales corporation for a taxable year for which the foreign sales corporation files Form 1120–FSC.

(g) *Filing Form 5472 when transactions with related parties engaged in by a partnership are attributed to a reporting corporation.* If transactions engaged in by a partnership are attributed under § 1.6038A–1(e)(2) to a reporting corporation, the reporting corporation need report on Form 5472 only the percentage of the value of the transaction or transactions equal to the percentage of its partnership interest. Thus, for example, if a partnership buys $1000 of widgets from the foreign parent of a reporting corporation whose partnership interest in the partnership equals 50 percent of the partnership interests (and the remaining 50 percent is held by unrelated parties), the reporting corporation must report $500 of purchases from a foreign related party on Form 5472.

(h) *Effective dates for certain reporting corporations.* For effective dates for this section, see § 1.6038A–1(n).

§ 1.6038A–3 Record maintenance.

(a) *General maintenance requirements*—(1) Section 6001 and section 6038A. A reporting corporation must keep the permanent books of account or records as required by section 6001 that are sufficient to establish the correctness of the federal income tax return of the corporation, including information, documents, or records ("records") to the extent they may be relevant to determine the correct U.S. tax treatment of transactions with related parties. Under section 6001, the District Director may require any person to make such returns, render such statements, or keep such specific records as will enable the District Director to determine whether or not that person is liable for any of the taxes to which the regulations under part I have application. See section 6001 and the regulations thereunder. Such records must be permanent, accurate, and complete, and must clearly establish income, deductions, and credits. Additionally, in appropriate cases, such records include sufficient relevant cost data from which a profit and loss statement may be prepared for products or services transferred between a reporting corporation and its foreign related parties. This requirement includes records of the reporting corporation itself, as well as to records of any foreign related party that may be relevant to determine the correct U.S. tax treatment of transactions between the reporting corporation and foreign related parties. The relevance of such records with respect to related party transactions shall be determined upon the basis of all the facts and circumstances. Section 6038A and this section provide detailed guidance regarding the required maintenance of records with respect to such transactions and specify penalties for noncompliance. Banks and other financial institutions shall follow the

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specific record maintenance rules described in paragraph (b) of this section.

(2) *Safe harbor.* A safe harbor for record maintenance is provided under paragraph (c) of this section, which sets forth detailed guidance concerning the types of records to be maintained with respect to related party transactions. The safe harbor consists of an all-inclusive list of record types that could be relevant to different taxpayers under a variety of facts and circumstances. It does not constitute a checklist of records that every reporting corporation must maintain or that generally should be requested by the Service. A specific reporting corporation is required to maintain, and the Service will request, only those records enumerated in the safe harbor (including material profit and loss statements) that may be relevant to its business or industry and to the correct U.S. tax treatment of its transactions with its foreign related parties. Accordingly, not every item listed in the safe harbor must be maintained by every reporting corporation. A corporation that maintains or causes another person to maintain the records listed in paragraph (c)(2) of this section that may be relevant to its foreign related party transactions and to its business or industry will be deemed to have met the record maintenance requirements of section 6038A.

(3) *Examples.* The following examples illustrate the rules of this paragraph.

Example 1. RC, a U.S. reporting corporation, is owned by two shareholders, F and P. F is a foreign corporation that owns 30 percent of the stock of RC. P is a domestic corporation that owns the remaining 70 percent. RC purchases tangible property from F; however, the only potential audit issue with respect to these transactions is their treatment under section 482. It is determined that F does not in fact control RC and the two corporations do not constitute a group of "controlled taxpayers" for purposes of section 482 and the regulations thereunder. There are no other reportable transactions between RC and F. Under § 1.6038A–1(g), F is a foreign related party with respect to RC. Accordingly, RC is required to report its purchases of property from F under the reporting requirements of § 1.6038A–2. Nevertheless, because section 482 is not applicable to the transactions between RC and F, the records created by F with respect to its sales to RC are not relevant for purposes of determining the correct tax treatment of these transactions. RC is required to maintain its own records of these transactions under the requirements of section 6001, but the transactions are not subject to the record maintenance requirements of this section. If, however, on audit it is determined that F does control RC, all records relevant to determining the arm's length consideration for the tangible property under section 482 will be subject to these requirements.

Example 2. FP, a foreign person, owns 30 percent of the stock of RC, a reporting corporation. The remaining 70 percent of RC stock is held by persons that are not 25-percent foreign shareholders. It is determined that FP is related to RC within the meaning of section 482 and the regulations thereunder. The only transactions between FP and RC are FP's capital contributions, dividends paid from RC to FP, and loans from FP to RC. Under section 6001, RC is required to maintain all documentation necessary to establish the U.S. tax treatment of the capital contributions, dividends, and loans. RC is not required to maintain records in other categories listed in paragraph (c)(3) of this section because they are not relevant to the transactions between FP and RC. Records of FP not related to these transactions are not subject to the record maintenance requirements under section 6038A(a) and this section.

Example 3. G, a foreign multinational group, creates Sub, a wholly-owned U.S. subsidiary, in order to purchase tangible property from unrelated parties in the United States and resell such property to G. The property purchased by Sub is either used in G's business or resold to other unrelated parties by G. Sub's sole function is to act as a buyer for G and these purchases are the only transactions that G has with any U.S. affiliates. Under all the facts and circumstances of this case, it is determined that an analysis of the group's worldwide profit attributable to the property it purchases from Sub is not relevant for purposes of determining the tax treatment of the sales from Sub to G. Therefore, the records with respect to the profitability of G are not subject to the maintenance requirements of this section. However, all records related to the appropriate method under section 482 for determining an arm's-length consideration for the property sold by Sub to G are subject to the record maintenance requirements of this section.

Example 4. S, a U.S. reporting corporation, is the purchasing agent for its multinational parent group. It arranges for the purchase and export of miscellaneous tangible property to X, Y, and Z, each of which is a foreign related party. The miscellaneous tangible property is purchased from unrelated third parties for resale to X, Y, and Z. These resales of miscellaneous tangible property constitute the sole transactions between S and X, Y, and Z. The purchasing agent activity of S is not an integral part of the business activity of S or of any beneficiary of the purchasing agent services provided by S as defined in § 1.482–2(b)(7). Under § 1.482–2(b)(7), the arm's-length charge is deemed to be equal to the costs or deductions incurred with respect to the provision of the purchasing agent services. S is required to maintain records to permit verification upon audit of such costs or deductions. The records of X, Y, and Z are not relevant to the costs or deductions incurred by S with respect to its purchasing agent activities. Therefore, under section 6038A and this section, only the records maintained by S that permit verification of the costs and deductions of the purchasing agent services are relevant. Accordingly, solely with respect to these transactions, records of X, Y, and Z need not be maintained under section 6038A or this section. If, however, upon audit, it is determined that S is not merely engaging in services not integral to its business as defined in § 1.482–2(b)(7), the record maintenance requirements under section 6038A(a) and this section will be applicable to the records of S, X, Y and Z to the extent that such records are relevant for determining the correct tax treatment of transactions engaged in by X, Y, or Z with S. If S has other transactions with X, S must maintain or cause to be maintained records that may be relevant with respect to those transactions.

(b) *Other maintenance requirements*—(1) *Indirectly related records.* This section applies to records that are directly or indirectly related to transactions between the reporting corporation and any foreign related parties. An example of records that are indirectly related to such transactions is records possessed by a foreign subsidiary of a foreign related party that document the raw material or component costs of a product that is manufactured or assembled by the subsidiary and sold as a finished product by the foreign related party to the reporting corporation.

(2) *Foreign related party or third-party maintenance.* If records that are required to be maintained under this section are in the control of a foreign related party, the records may be obtained or compiled (if not already in the possession of the foreign related party or already compiled) under the direction of the reporting corporation and then maintained by the reporting corporation, the foreign related party, or a third party. Thus, for example, a foreign related party may either itself maintain such records outside the United States or permit a third party to maintain such records outside the United States, provided that the conditions described in paragraph (f) of this section are met. Upon a request for such records by the Service, a foreign related party or third party may make arrangements with the District Director to furnish the records directly, rather than through the reporting corporation.

(3) *Translation of records.* When records are provided to the Service under a request for production, any portion of such records must be translated into the English language within 30 days of a request for translation of that portion by the District Director. To the extent that any requested documents are identical to documents that have already been translated, an explanation of how such documents are identical instead may be provided. An extension of this time period may be requested under paragraph (f)(4) of this section. Appropriate extensions will be liberally granted for translation requests where circumstances warrant. If a good faith effort is made to translate accurately the requested documents within the specified time period, the reporting corporation will not be subject to the penalties in §§ 1.6038A–4 and 1.6038A–7.

(4) *Exception for foreign governments.* A foreign government is not subject to the obligation to maintain records under this section.

(c) *Specific records to be maintained for safe harbor*—(1) *In general.* A reporting corporation that maintains or causes another person to maintain the records specified in this paragraph (c) that are relevant to its business or industry and to the correct U.S. tax treatment of its transactions with its foreign related parties will deemed to have met the record maintenance requirements of this section. This paragraph provides general descriptions of the categories of records to be maintained; the particular title or label applied by a reporting corporation or related party does not control. Functional equivalents of the specified documents are acceptable. Record maintenance in accordance with this safe harbor, however, requires only the maintenance of types of documents described in paragraph (c)(2) of this section that are directly or indirectly related to transactions between the reporting corporation and any foreign related party. Additionally, to the extent the reporting corporation establishes that records in a particular category are not applicable to the industry or business of the reporting corporation and any foreign related party, maintenance of such records is not required under this paragraph. Record maintenance in accordance with this paragraph (c) generally does not require the original creation of records that are ordinarily not created by the reporting corporation or its related parties. (If, however, a document that is actually created is described in this paragraph (c), it is to be maintained even if the document is not of the type ordinarily created by the reporting corporation or its related parties.) There are two exceptions to the rule. First, basic accounting records that are sufficient to document the U.S. tax effects of transactions between related parties must be created and retained, if they do not otherwise exist. Second, records sufficient to produce material profit and loss statements as described in paragraphs (c)(2) (ii) and (3) of this section that are relevant for determining the U.S. tax treatment of transactions between the reporting corporation and foreign related parties must be created if such records are not ordinarily maintained. All internal records storage and retrieval systems used for each taxable year must be retained.

(2) *Descriptions of categories of documents to be maintained.* The following records must be maintained in order to satisfy this paragraph (c) to the extent they may be relevant to determine the correct U.S. tax treatment of transactions between the reporting corporation and any foreign related party.

(i) *Original entry books and transaction records.* This category includes books and records of original entry or their functional equivalents, however designated or labelled, that are relevant to transactions between any foreign related party and the reporting corporation. Examples include, but are not limited to, general ledgers, sales journals, purchase order books, cash receipts books, cash disbursement books, canceled checks and bank statements, workpapers, sales contracts, and purchase invoices. Descriptive material to explicate entries in the foregoing types of records, such as a chart of accounts or an accounting policy manual, is included in this category.

(ii) *Profit and loss statements.* This category includes records from which the reporting corporation can compile and supply, within a reasonable time, material profit and loss statements of the reporting corporation and all related parties as defined in § 1.6038A–1 (d) (the "related party group") that reflect profit or loss of the related party group attributable to U.S.-connected products or services as defined in paragraph (c)(7)(i) of this section. The determination of whether a profit and loss statement is material is made under the rules provided in paragraph (c)(3) of this section. The material profit and loss statements described in this paragraph (c)(2)(ii) must reflect the consolidated revenue and expenses of all members of the related party group. Thus, records in this category include the documentation of the cost of raw materials used by a related party to manufacture finished goods that are then sold by another related party to the reporting corporation. The records should be kept under U.S. generally accepted accounting principles if they are ordinarily maintained in such manner; if not, an explanation of the material differences between the accounting principles used and U.S. generally accepted accounting principles must be made available. The statements need not reflect tracing of the actual costs borne by the group with respect to its U.S.-connected products or services; rather, any reasonable method may be used to allocate the group's worldwide costs to the revenues generated by the sales of those products or services. An explanation of the methods used to allocate specific items to a particular profit and loss statement must be made available. The explanation of material differences between accounting principles and the explanation of allocation methods must be sufficient to permit a comparison of the profitability of the group to that of the reporting corporation attributable to the provision of U.S.-connected products or services.

(iii) *Pricing documents.* This category includes all documents relevant to establishing the appropriate price or rate for transactions between the reporting corporation and any foreign related party. Examples include, but are not limited to, documents related to transactions involving the same or similar products or services entered into by the reporting corporation or a foreign related party with related and unrelated parties; shipping and export documents; commission agreements; documents relating to production or assembly facilities; third-party and intercompany purchase invoices; manuals, specifications, and similar documents relating to or describing the performance of functions conducted at particular locations; intercompany correspondence discussing any instructions or assistance relating to such transactions provided to the reporting corporations by the related foreign person (or vice versa); intercompany and intracompany correspondence concerning the price or the negotiation of the price used in such transactions; documents related to the value and ownership of intangibles used or developed by the reporting corporation or the foreign related party; documents related to cost of goods sold and other expenses; and documents related to direct and indirect selling, and general and administrative expenses (for example, relating to advertising, sales promotions, or warranties).

(iv) *Foreign country and third party filings.* This category includes financial and other documents relevant to transactions between a reporting corporation and any foreign related party filed with or prepared for any foreign government entity, any independent commission, or any financial institution.

(v) *Ownership and capital structure records.* This category includes records

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or charts showing the relationship between the reporting corporation and the foreign related party; the location, ownership, and status (for example, joint venture, partnership, branch, or division) of all entities and offices directly or indirectly involved in the transactions between the reporting corporation and any foreign related party; a worldwide organization chart; records showing the management structure of all foreign affiliates; and loan documents, agreements, and other documents relating to any transfer of the stock of the reporting corporation that results in the change of the status of a foreign person as a foreign related party.

(vi) *Records of loans, services, and other non-sales transactions.* This category includes relevant documents relating to loans (including all deposits by one foreign related party or reporting corporation with an unrelated party and a subsequent loan by that unrelated party to a foreign related party or reporting corporation that is in substance a direct loan between a reporting corporation and a foreign related party); guarantees of a foreign related party of debts of the reporting corporation, and vice versa; hedging arrangements or other risk shifting or currency risk shifting arrangements involving the reporting corporation and any foreign related party; security agreements between the reporting corporation and any foreign related party; research and development expense allocations between any foreign related party and the reporting corporation; service transactions between any foreign related party and the reporting corporation, including, for example, a description of the allocation of charges for management services, time or travel records, or allocation studies; import and export transactions between a reporting corporation and any foreign related party; the registration of patents and copyrights with respect to transactions between the reporting corporation and any foreign related party; and documents regarding lawsuits in foreign countries that relate to such transactions between a reporting corporation and any foreign related party (for example, product liability suits for U.S. products).

(3) *Material profit and loss statements.* For purposes of paragraph (c)(2)(ii) of this section, the determination of whether a profit and loss statement is material will be made according to the following rules. An agreement between the reporting corporation and the District Director as described in paragraph (e) of this section may identify material profit and loss statements of the related party group and describe the items to be included in any profit and loss statements for which records are to be maintained to satisfy the requirements of paragraph (c)(2)(ii) of this section. In the absence of such an agreement, a profit and loss statement will be material if it meets any of the following tests: the existing records test described in paragraph (c)(4) of this section, the significant industry segment test described in paragraph (c)(5) of this section, or the high profit test described in paragraph (c)(6) of this section.

(4) *Existing records test.* A profit and loss statement is material under the existing records test described in this paragraph (c)(4) if any member of the related party group creates or compiles such statement in the course of its business operations and the statement reflects the profit or loss of the related party group attributable to the provision of U.S.-connected products or services (regardless of whether the profit and loss attributable to U.S.-connected products or services is shown separately or included within the calculation of aggregate figures on the statement). For example, a profit and loss statement is described in this paragraph if it was produced for internal accounting or management purposes, or for disclosure to shareholders, financial institutions, government agencies, or any other persons. Such existing statements and the records from which they were complied (to the extent such records relate to profit and loss attributable to U.S.-connected products or services) are subject to the record maintenance requirements described in paragraph (c)(2)(ii) of this section.

(5) *Significant industry segment test*—(i) *In general.* A profit and loss statement is material under the significant industry segment test described in this paragraph (c)(5) if—

(A) The statement reflects the profit or loss of the related party group attributable to the group's provision of U.S.-connected products or services within a single industry segment (as defined in paragraph (c)(7)(ii) of this section);

(B) The worldwide gross revenue attributable to such industry segment is 10 percent or more of the worldwide gross revenue attributable to the group's combined industry segments; and

(C) The amount of gross revenue earned by the group from the provision of U.S.-connected products or services within such industry segment is $25 million or more in the taxable year.

(ii) *Form of the statements.* Profit and loss statements compiled for the group's provision of U.S.-connected products or services in each significant industry segment must reflect revenues and expenses attributable to the operations in such segment by all members of the related party group. Statements may show each related party's revenues and expenses separately, or may be prepared in a consolidated format. Any reasonable method may be used to allocate the group's worldwide costs within the industry segment to the U.S.-connected products or services within that segment. An explanation of the methods used to prepare consolidated statements and to allocate specific items to a particular profit and loss statement must be made available, and the records from which the consolidations and allocations were prepared must be maintained.

(iii) *Special rule for component sales.* Where the U.S.-connected products or services consist of components that are incorporated into other products or services before sale to customers, the portion of the total gross revenue derived from sales of the finished products or services attributable to the components may be determined on the basis of relative costs of production. Thus, where relevant for determining whether the $25 million threshold in paragraph (c)(5)(i)(C) of this section has been met, the amount of gross revenue derived by the related party group from the provision of the finished products or services may be reduced by multiplying it by a fraction, the numerator of which is the costs of production of the related party group attributable to the component products or services that constitute U.S.-connected products or services and the denominator of which is the costs of production of the related party group attributable to the finished products in which such components are incorporated.

(iv) *Level of specificity required.* In applying the significant industry segment test of this paragraph (c)(5), groups of related products and services must be chosen to provide a reasonable level of specificity that results in the greatest number of separate significant industry segments in comparison to other possible classifications. This determination must be made on the basis of the particular facts presented by the operations of the related party group. The following rules, however, provide general guidelines for making such classifications. First, the related party group's operations that involve the provision of U.S.-connected products should be grouped into product lines. The rules of this paragraph (c)(5) should then be applied to determine if any such product line would, standing alone, constitute a significant industry segment when compared to the related party group's operations as a whole. Any significant industry segments determined at the level of product lines should be further segregated, and tested for significant industry segments, at the level of separate products. Finally, any significant industry segments determined at the level of separate products should be segregated, and tested for significant industry segments, at the level of separate models. Similar principles should be applied in classifying and testing types of services. A profit and loss statement reflecting the related party group's provision of any product or service (or group of products or services as classified under these rules) that constitutes a significant industry segment will be considered material for purposes of this paragraph (c)(5). For definitions of the terms "product", "related products or services", "model", and "product line", see paragraph (c)(7) of this section.

(v) *Examples.* The rules for determining reasonable levels of specificity for significant industry segments may be illustrated by the following examples.

Example 1. A related party group is engaged in the manufacture and worldwide sales of automobiles and aftermarket parts. The group's operations within the categories of "automobiles" and "aftermarket parts", are each sufficient to constitute significant industry segments for the group under the rules of this paragraph (c)(5). No narrower classification of aftermarket parts results in any significant industry segments. Automobiles produced by the group are generally classified for marketing purposes by trade names; aggregating groups of automobiles by these trade names results in three significant industry segments, those for trade names A, B, and C. Finally, two car models sold under the trade name A ("A1" and "A2") and one car model sold under the trade name B ("B3"), produce sufficient revenue to constitute significant industry segments. Such classifications into trade names and car models are generally used in the related party group's industry; moreover, different types of classifications would produce fewer significant industry segments. Accordingly, a reasonable level of specificity for this related party group's industry segments would be eight categories of products consisting of "automobiles", "aftermarket parts", "A", "B", "C", "A1", "A2", and "B3".

Example 2. A related party group is engaged in manufacturing electronic goods that are distributed at retail in the United States by the reporting corporation. The group sells three types of products in the United States: televisions, radios, and video cassette recorders (VCRs). Each of these three broad product areas constitutes a significant industry segment for the group as a whole. VCRs can be further segregated by price into high-end and low-end models, and the provision of each constitutes a significant industry segment for the group. Revenues from only one VCR model, model number VCRX-10, are sufficiently large to make the provision of that model a significant industry segment. With respect to televisions, the group normally accounts for these products by size. Using this classification, portable televisions, medium-sized televisions, and consoles each constitute significant industry segments. Narrower classifications by television model numbers result in no additional significant industry segments. Finally, a single radio product line, those sold under the trade name R, produces sufficient revenue to constitute a significant industry segment, but no other radio models or product groups are large enough to constitute a significant industry segment. In each case, these classifications conform to normal business practices in the industry and result in the greatest possible number of significant industry segments for this related party group. Accordingly, a reasonable level of specificity for this related party group's industry segments would include the ten categories consisting of "VCRs", "high-end VCRs", "low-end VCRs", "model number VCRX-10", "televisions", "portable televisions", "medium-sized televisions", "console televisions", "radios", and "radio trade name R".

(6) *High profit test*—(i) *In general.* A profit and loss statement is material under the high profit test described in this paragraph (c)(6) if—

(A) The statement reflects the profit or loss of the related party group attributable to the group's provision of U.S.-connected products or services within a single industry segment (as defined in paragraph (c)(7)(ii) of this section);

(B) The amount of gross revenue earned by the group from the provision of U.S.-connected products or services within such industry segment is $100 million or more in the taxable year; and

(C) The return on assets test described in paragraph (c)(6)(ii) of this section is satisfied with respect to the products and services attributable to such segment.

Accordingly, a significant industry segment (as determined under paragraph (c)(5) of this section) must be divided into any narrower industry segments that meet the high profit test of this paragraph (c)(6), even if such narrower segments would not, standing alone, meet the significant industry segment test of paragraph (c)(5) of this section.

(ii) *Return on assets test.* An industry segment meets the return on assets test if the rate of return on assets earned by the related party group on its worldwide operations within this industry segment exceeds 15 percent, and is at least 200 percent of the return on assets earned by the group in all industry segments combined. For purposes of this paragraph, the rate of return on assets earned by an industry segment is determined by dividing that segment's operating profit (as defined in paragraph (c)(7)(v) of this section) by its identifiable assets (as defined in paragraph (c)(7)(iv) of this section).

(iii) *Additional rules.* The rules in paragraphs (c)(5)(ii) through (iv) of this section describing the application of the significant industry segment test shall apply in a similar manner for purposes of the high profit test.

(7) *Definitions.* The following definitions apply for purposes of paragraphs (c)(2)(ii), (c)(5), and (c)(6) of this section.

(i) *U.S. connected products or services.* The term "U.S.-connected products or services" means products or services that are imported to or exported from the United States by transfers between the reporting corporation and any of its foreign related parties.

(ii) *Industry segment.* An industry segment is a segment of the related party group's combined operations that is engaged in providing a product or service or a group of related products or services (as defined in paragraph (c)(7)(vii) of this section) primarily to customers that are not members of the related party group.

(iii) *Gross revenue of an industry segment.* Gross revenue of an industry segment includes receipts (prior to reduction for cost of goods sold) both from sales to customers outside of the related party group and from sales or transfers to other industry segments within the related party group (but does not include sales or transfers between members of the related party group within the same industry segment). Interest from sources outside the related party group and interest earned on trade receivables between industry segments is included in gross revenue if the asset on which the interest is earned is included among the industry segment's identifiable assets, but interest earned on advances or loans to other industry segments is not included.

(iv) *Identifiable assets of an industry segment.* The identifiable assets of an industry segment are those tangible and intangible assets of the related party group that are used by the industry segment, including assets that are used exclusively by that industry segment and an allocated portion of assets used jointly by two or more industry segments. The value of an identifiable asset may be determined using any

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reasonable method (such as book value or fair market value) applied consistently. Any allocation of assets among industry segments must be made on a reasonable basis, and a description of such basis must be provided. Assets of an industry segment that transfers products or services to another industry segment shall not be allocated to the receiving segment. Assets that represent part of the related party group's investment in an industry segment, such as goodwill, shall be included in the industry segment's identifiable assets. Assets maintained for general corporate purposes (that is, those not used in the operations of any industry segment) shall not be allocated to industry segments.

(v) *Operating profit of an industry segment.* The operating profit of an industry segment is its gross revenue (as defined in paragraph (c)(7)(iii) of this section) minus all operating expenses. None of the following shall be added or deducted in computing the operating profit of an industry segment: revenue earned at the corporate level and not derived from the operations of any industry segment; general corporate expenses; interest expense; domestic and foreign income taxes; and other extraordinary items not reflecting the ongoing business operations of the industry segment.

(vi) *Product.* The term "product" means an item of property (or combination of component parts) that is the result of a production process, is primarily sold to unrelated parties (or incorporated by the related party group into other products sold to unrelated parties), and performs a specific function.

(vii) *Related products or services.* The term "related products or services" means groupings of products and types of services that reflect reasonable accounting, marketing, or other business practices within the industries in which the related party group operates.

(viii) *Model.* The term "model" means a classification of products that incorporate particular components, options, styles, and any other unique features resulting in product differentiation. Examples of models are electronic products that are sold or accounted for under a single model number and automobiles sold under a single model name.

(ix) *Product line.* The term "product line" means a group of products that are aggregated into a single classification for accounting, marketing, or other business purposes. Examples of product lines are groups of products that perform similar functions; products that are marketed under the same trade names, brand names, or trademarks; and products that are related economically (that is, having similar rates of profitability, similar degrees of risk, and similar opportunities for growth).

(6) *Example.* The application of the rules for determining material profit and loss statements under paragraphs (c)(4) through (7) of this section is illustrated by the following example.

Example. (i) *Facts.* A multinational enterprise manufactures 50 different agricultural and chemical products that are sold through Subl, its wholly owned U.S. subsidiary, and other subsidiaries located in foreign countries. The parent company of the enterprise, P, is a foreign corporation. The corporations participating in the enterprise form a related party group, and Subl is a reporting corporation for purposes of section 6038A. Under the facts and circumstances of this case, an analysis of the group's worldwide profit attributable to its products sold in the U.S. is relevant for determining an arm's length consideration under section 482 for the transfers of goods between Subl and its foreign affiliates.

(ii) *Existing records test.* For management purposes, the group prepares profit and loss statements that are segmented by sales in different geographic markets. One of these statements shows the combined worldwide profitability of the group. Another statement shows the profitability of the group attributable to its North American sales. Both of these profit and loss statements reflect aggregate figures that include sales to unrelated parties of products that have been transferred from P and other group members to Subl (that is, the group's "U.S.-connected products"). The two statements meet the existing records test described in paragraph (c)(4) of this section.

(iii) *Significant industry segments.* The group's worldwide gross revenue in all industry segments is $2 billion. An analysis of the group's 50 products demonstrates that they are reasonably grouped into eight industry segments (each of which earns roughly $250 million in worldwide gross revenue). Segments 1 through 6 relate to agricultural products and Segments 7 and 8 relate to other chemical products. More specific categories would result in groupings that generate less than 10 percent of the group's worldwide gross revenue (that is, less than $200 million each); these narrower categories would thus fail the gross revenue percentage test of paragraph (c)(5)(i)(B) of this section. The gross revenue in each of the eight segments from the sale to unrelated parties of U.S.-connected products is as follows: $180 million for Segment 1; $30 million for Segment 2; and less than $25 million for each of Segments 3 through 8. Under the $25 million threshold test of paragraph (c)(5)(i)(C) of this section, the group's significant industry segments are thus limited to Segments 1 and 2. In addition, the combined operations of the group related to agricultural products (encompassing Segments 1 through 6 on an aggregated basis), constitute a single significant industry segment.

(iv) *High profit test.* One highly profitable product line within Segment 1, HPPL, accounts for $120 million gross revenue from Sub1's domestic sales of U.S.-connected products (and thus exceeds the $100 million gross revenue threshold in paragraph (c)(6)(i)(B) of this section). The return on the identifiable assets attributable to the HPPL product line is 85 percent, which is more than 15 percent and more than twice the return on assets earned by the group from its worldwide operations in its combined industry segments. The group's industry segment for HPPL thus meets the high profit test described in paragraph (c)(6) of this section.

(v) *Material Profit and Loss Statements.* The group's material profit and loss statements consist of statements for combined worldwide sales and North American sales (under the existing records test); Segment 1, Segment 2, and aggregated Segments 1–6 (under the significant industry segment test); and HPPL (under the high profit test). Under paragraph (c) of this section, Subl is required to retain the combined worldwide sales and North American sales profit and loss statements and to maintain sufficient records so that it can compile and supply upon request statements of the group's profitability from sales of its U.S.-connected products within Segment 1, Segment 2, aggregated Segments 1–6, and HPPL. These records need not be in the possession of Subl and may be kept under the control of and produced by P or any third party. The statements for Segment 1, Segment 2, aggregated Segments 1–6, and HPPL do not require tracing of actual costs to the U.S.-connected products; rather, these statements may be prepared by using any reasonable method to allocate a portion of the industry segment's overall operating costs to the sales of U.S.-connected products within that segment.

(d) *Liability for certain partnership record maintenance.* A reporting corporation to which transactions engaged in by a partnership are attributed under § 1.6038A–1 (e)(2) is subject to the record maintenance requirements of this section to the extent of the transactions so attributed.

(e) *Agreements with the District Director*—(1) *In general.* The District Director who has audit jurisdiction over the reporting corporation may negotiate and enter into an agreement with a reporting corporation that establishes the records the reporting corporation must maintain or cause another to maintain, how the records must be maintained, the period of retention for the records, and by whom the records must be maintained in order to satisfy the reporting corporation's obligations under this section.

(2) *Content of agreement*—(i) *In general.* The agreement may include provisions relating to the authorization of agent requirement, the record maintenance requirement, and the production and translation time periods that vary the rules contained in these regulations under section 6038A. The District Director will generally require a reporting corporation to maintain only those records specified under the safe harbor provisions of paragraph (c) of this section that permit an adequate audit of the income tax return of the reporting corporation and to provide such authorizations of agent that permit adequate access to such records. In most instances, required record maintenance for a particular reporting corporation under a negotiated agreement will be less than the broad range of records described under the safe harbor provisions. Additionally, a provision specifying the effective date and the expiration date of the agreement that may vary the effective date of the regulations may be included.

(ii) *Significant industry segment test.* A District Director may determine which industry segment profit and loss statements are material for purposes of requiring the maintenance of records (under either paragraph (a)(1) of this section or the safe harbor described in paragraph (a)(2) of this section). The industry segments that the District Director determines are material need not be the industry segments that meet the significant industry segment test under paragraph (c)(5) of this section or the high profit test under paragraph (c)(6) of this section. For this purpose, a reporting corporation will be required to maintain only those records from which profit and loss statements for the related party group may be constructed with respect to industry segments identified by the District Director. To the extent that existing profit and loss statements are similar in scope and level of detail to statements for industry segments that would otherwise be described under the tests of paragraphs (c)(5) and (6) of this section, the District Director shall accept the existing statements instead of the statements that would otherwise be required under paragraphs (c)(5) and (6) of this section.

(iii) *Example.* The following example illustrates the rules of paragraph (e)(2)(ii) of this section.

Example. The District Director determines that RC, a reporting corporation that is a manufacturer of related chemical products, has two industry segments, Segment 1 and Segment 2. While both industry segments meet the significant industry segment test of paragraph 3(c)(5) of this section, Segment 1 has a relatively low volume of sales to foreign related parties. Additionally, Segment 1 consists of products that produce only a small profit margin because the product is generic and other companies also sell the product. The District Director enters into an agreement with RC that requires only records from which a profit and loss statement for the related party group can be constructed for Segment 2. Therefore, RC is not required to maintain records for Segment 1 from which a profit and loss statement for the related party group can be constructed. The other record maintenance requirements under this section apply, however.

(3) *Circumstances of agreement.* The District Director generally will enter into an agreement under this paragraph (e) upon request by the reporting corporation when the District Director believes that the District has or can obtain sufficient knowledge of the business or industry of the reporting corporation to limit the record maintenance requirement to particular documents.

(4) *Agreement as part of APA process.* An agreement with a reporting corporation under this paragraph (e) may be entered into as a part of the Advance Pricing Agreement (APA) process at any time during the APA process, insofar as the agreement relates to the subject matter of the APA.

(f) *U.S. maintenance*—(1) *General rule.* Records that must be maintained under this section must be maintained within the United States, unless the conditions described in paragraph (f)(2) of this section are met.

(2) *Non-U.S. maintenance requirements.* A reporting corporation may maintain outside the United States records not ordinarily maintained in the United States but required to be maintained in the United States under this section. However, the reporting corporation must either:

(i) Deliver to the Service the original documents (or duplicates) requested within 60 days of the request by the Service for such records and provide translations of such documents within 30 days of a request for translations of specific documents; or

(ii) Move the original documents (or duplicates) requested to the United States within 60 days of the request of the Service for such records; provide the Service with an index to the requested records, the name and address of a custodian located within the United States having control over the records, and the address where the records are located within 60 days of the Service's request for the records; and continue to maintain the records within the United States throughout the period of retention described in paragraph (g) of this section. For summons procedures with respect to records that have been moved to the United States, see sections 6038A(e), 7602, 7603, and 7604.

With respect to any material profit and loss statements required to be created (either under paragraph (c) of this section or under an agreement with the District Director), unless otherwise specified, "120 days" shall be substituted for "60 days" in this paragraph (f)(2), and labels and text with respect to such statements must be in the English language.

(3) *Prior taxable years.* The non-U.S. maintenance requirements described in paragraph (f)(2) of this section apply to records located outside the United States that were in existence on or after March 20, 1990, without regard to the taxable year to which such records relate.

(4) *Scheduled production for high volume or other reasons.* Upon a written request, for good cause shown, the District Director may grant an extension of the time for the production or translation of the requested documents. Such requests should be made within 30 days of the request for records by the Service. If an extension is needed because of the volume of records requested or the amount of translation requested, the District Director may allow production or translation to be scheduled over a period of time so that not all records need be produced or translated at the same time.

(5) *Required U.S. maintenance.* The District Director (with the concurrence of the Assistant Commissioner (International)), may require, for cause, the maintenance within the United States of any records specified in paragraph (f)(1) of this section. Such a requirement will be imposed only if there exists a clear pattern of failure to maintain or timely produce the required records. The assessment of a monetary penalty under section 6038A(d) and § 1.6038A–4 for failure to maintain records is not necessarily sufficient to require the maintenance of records within the United States.

(g) *Period of retention.* Records required to be maintained by section 6038A(a) and this section shall be kept as long as they may be relevant or material to determining the correct tax treatment of any transaction between the reporting corporation and a related party, but in no case less than the applicable statute of limitations on assessment and collection with respect to the taxable year in which the transaction or item to which the records relate affects the U.S. tax liability of the reporting corporation. *See* section 6001 and the regulations thereunder.

(h) *Application of record maintenance rules to banks and other financial institutions.* [Reserved].

(i) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

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§ 1.6038A–4 Monetary penalty.

(a) *Imposition of monetary penalty*—(1) *In general.* If a reporting corporation fails to furnish the information described in § 1.6038A–2 within the time and manner prescribed in § 1.6038A–2 (d) and (e), fails to maintain or cause another to maintain records as required by § 1.6038A–3, or (in the case of records maintained outside the United States) fails to meet the non-U.S. record maintenance requirements within the applicable time prescribed in § 1.6038A–3(f), a penalty of $10,000 shall be assessed for each taxable year with respect to which such failure occurs. Such a penalty may be imposed by the District Director or the Director of the Internal Revenue Service Center where the Form 5472 is filed. The filing of a substantially incomplete Form 5472 constitutes a failure to file Form 5472. Where, however, the information described in § 1.6038A–2 (b)(3) through (5) is not required to be reported, a Form 5472 filed without such information is not a substantially incomplete Form 5472.

(2) *Liability for certain partnership transactions.* A reporting corporation to which transactions engaged in by a partnership are attributed under § 1.6038A–1(e)(2) is subject to the rules of this section to the extent failures occur with respect to the partnership transactions so attributed.

(3) *Calculation of monetary penalty.* If a reporting corporation fails to maintain records as required by § 1.6038A–3 of transactions with multiple related parties, the monetary penalty may be assessed for each failure to maintain records with respect to each related party. The monetary penalty, however, shall be imposed on a reporting corporation only once for a taxable year with respect to each related party for a failure to furnish the information required on Form 5472, for a failure to maintain or cause another to maintain records, or for a failure to comply with the non-U.S. maintenance requirements described in § 1.6038A–3(f). An additional penalty for another failure may be imposed, however, under the rules of paragraph (d)(2) of this section. Thus, unless such failures continue after notification as described in paragraph (d) of this section, the maximum penalty under this paragraph with respect to each related party for all such failures in a taxable year is $10,000. The members of a group of corporations filing a consolidated return are jointly and severally liable for any monetary penalty that may be imposed under this section.

(b) *Reasonable cause*—(1) *In general.* Certain failures may be excused for reasonable cause, including not timely filing Form 5472, not maintaining or causing another to maintain records as required by § 1.6038A–3, and not complying with the non-U.S. maintenance requirements described in § 1.6038A–3(f). If an affirmative showing is made that the taxpayer acted in good faith and there is reasonable cause for a failure that results in the assessment of the monetary penalty, the period during which reasonable cause exists shall be treated as beginning on the day reasonable cause is established and ending not earlier than the last day on which reasonable cause existed for any such failure. Additionally, the beginning of the 90-day period after mailing of a notice by the District Director or the Director of an Internal Revenue Service Center of a failure described in paragraph (d) of this section shall be treated as not earlier than the last day on which reasonable cause existed.

(2) *Affirmative showing required*—(i) *In general.* To show that reasonable cause exists for purposes of paragraph (b)(1) of this section, the reporting corporation must make an affirmative showing of all the facts alleged as reasonable cause for the failure in a written statement containing a declaration that it is made under penalties of perjury. The statement must be filed with the District Director (in the case of failure to maintain or furnish requested information permitted to be maintained outside the United States within the time required under § 1.6038A–3(f) or a failure to file Form 5472) or the Director of the Internal Revenue Service Center where the Form 5472 is required to be filed (in the case of failure to file Form 5472). The District Director or the Director of the Internal Revenue Service Center where the Form 5472 is required to be filed, as appropriate, shall determine whether the failure was due to reasonable cause, and if so, the period of time for which reasonable cause existed. If a return has been filed as required by § 1.6038A–2 or records have been maintained as required by § 1.6038A–3, except for an omission of, or error with respect to, some of the information required or a record to be maintained, the omission or error shall not constitute a failure for purposes of section 6038A(d) if the reporting corporation that filed the return establishes to the satisfaction of the District Director or the Director of the Internal Revenue Service Center that it has substantially complied with the filing of Form 5472 or the requirement to maintain records.

(ii) *Small corporations.* The District Director shall apply the reasonable cause exception liberally in the case of a small corporation that had no knowledge of the requirements imposed by section 6038A; has limited presence in and contact with the United States; and promptly and fully complies with all requests by the District Director to file Form 5472, and to furnish books, records, or other materials relevant to the reportable transaction. A small corporation is a corporation whose gross receipts for a taxable year are $20,000,000 or less.

(iii) *Facts and circumstances taken into account.* The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of the experience and knowledge of the taxpayer. Isolated computational or transcriptional errors generally are not inconsistent with reasonable cause and good faith. Reliance upon an information return or on the advice of a professional (such as an attorney or accountant) does not necessarily demonstrate reasonable cause and good faith. Similarly, reasonable cause and good faith is not necessarily indicated by reliance on facts that, unknown to the taxpayer, are incorrect. Reliance on an information return, professional advice or other facts, however, constitutes reasonable cause and good faith if, under all the circumstances, the reliance was reasonable. A taxpayer, for example, may have reasonable cause for not filing a Form 5472 or for not maintaining records under section 6038A if the taxpayer has a reasonable belief that it is not owned by a 25-percent foreign shareholder. A reasonable belief means that the taxpayer does not know or has no reason to know that it is owned by a 25-percent foreign shareholder. For example, a reporting corporation would not know or have reason to know that it is owned by a 25-percent foreign shareholder if its belief that it is not so owned is consistent with other information reported or otherwise furnished to or known by the reporting corporation. A taxpayer may have reasonable cause for not treating a foreign corporation as a related party for purposes of section 6038A where the foreign corporation is a related party solely by reason of § 1.6038A–1(d)(3) (under the principles of section 482), and the taxpayer had a reasonable belief that its relationship with the foreign corporation did not meet the standards for related parties under section 482.

(c) *Failure to maintain records or to cause another to maintain records.* A failure to maintain records or to cause another to maintain records is determined by the District Director upon the basis of the reporting corporation's overall compliance (including compliance with the non-U.S. maintenance requirements under § 1.6038A–3(f)(2)) with the record maintenance requirements. It is not an item-by-item determination. Thus, for example, a failure to maintain a single or small number of items may not constitute a failure for purposes of section 6038A(d), unless the item or items are essential to the correct determination of transactions between the reporting corporation and any foreign related parties. The District Director shall notify the reporting corporation in writing of any determination that it has failed to comply with the record maintenance requirement.

(d) *Increase in penalty where failure continues after notification*—(1) *In general.* If any failure described in this section continues for more than 90 days after the day on which the District Director or the Director of the Internal Revenue Service Center where the Form 5472 is required to be filed mails notice of the failure to the reporting corporation, the reporting corporation shall pay a penalty (in addition to the penalty described in paragraph (a) of this section) of $10,000 with respect to each related party for which a failure occurs for each 30-day period during which the failure continues after the expiration of the 90-day period. Any uncompleted fraction of a 30-day period shall count as a 30-day period for purposes of this paragraph (d).

(2) *Additional penalty for another failure.* An additional penalty for a taxable year may be imposed, however, if at a time subsequent to the time of the imposition of the monetary penalty described in paragraph (a) of this section, a second failure is determined and the second failure continues after notification under paragraph (d)(1) of this section. Thus, if a taxpayer fails to file Form 5472 and is assessed a monetary penalty and later, upon audit, is determined to have failed to maintain records, an additional penalty for the failure to maintain records may be assessed under the rules of this paragraph if the failure to maintain records continues after notification under this paragraph.

(3) *Cessation of accrual.* The monetary penalty will cease to accrue if the reporting corporation either files Form 5472 (in the case of a failure to file Form 5472), furnishes information to substantially complete Form 5472, or demonstrates compliance with respect to the maintenance of records (in the case of a failure to maintain records) for the taxable year in which the examination occurs and subsequent years to the satisfaction of the District Director. The monetary penalty also will cease to accrue if requested information, documents, or records, kept outside the United States under the requirements of § 1.6038A–3(f) and not produced within the time specified are produced or moved to the United States under the rules of paragraph (f)(2)(ii) of this section.

(4) *Continued failures.* If a failure under this section relating to a taxable year beginning before July 11, 1989 occurs, and if the failure continues following 90 days after the notice of failure under this paragraph is sent, the amount of the additional penalty to be assessed under this paragraph is $10,000 for each 30-day period beginning after November 5, 1990, during which the failure continues. There is no limitation on the amount of the monetary penalty that may be assessed after November 5, 1990.

(e) *Other penalties.* For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203 and 7206 of the Code. For the penalty relating to an underpayment of tax, see section 6662.

(f) *Examples.* The following examples illustrate the rules of this section.

Example 1—Failure to file Form 5472. Corp X, a U.S. reporting corporation, engages in related party transactions with FC. Corp X does not timely file a Form 5472 or maintain records relating to the transactions with FC for Year 1 or subsequent years. The Service Center with which Corp X files its income tax return imposes a $10,000 penalty for each of Years 1, 2, and 3 under section 6038A (d) and this section for failure to provide information as required on Form 5472 and mails a notice of failure to provide inrormation. Corp X does not file Form 5472. Ninety days following the mailing of the notice of failure to Corp X an additional penaly of $10,000 is imposed. On the 135th day following the mailing of the notice of failure, Corp X files Form 5472 for Years 1, 2, and 3. The total penalty owed by Corp X for Year 1 is $30,000. ($10,000 for not timely filing Form 5472, $10,000 for the first 30-day period following the expiration of the 90-day period, and $10,000 for the fraction of the second 30-day period). The penalty for Years 2 and 3 for the failure to file Form 5472 is also $30,000 for each year, calculated in the same manner as for Year 1. The total penalty for failure to file Form 5472 for Years 1, 2, and 3 is $90,000.

Example 2—Failure to maintain records. Assume the same facts as in *Example 1.* In Year 5, Corp X is audited for Years 1 through 3. Corp X has not been maintaining records relating to the transactions with FC. The District Director issues a notice of failure to maintain records. Corp X has already been subject to the monetary penalty of $10,000 for each of Years 1, 2, and 3 for failure to file Form 5472 and, therefore, a monetary penalty under paragraph (a) of this section for failure to maintain records is not assessed. However, an additional penalty is assessed after the 90th day following the mailing of the notice of failure to maintain records. Corp X develops a record maintenance system as required by section 6038A and § 1.6038A–3. On the 180th day following the mailing of the notice of failure to maintain records, Corp X demonstrates to the satisfaction of the District Director that the newly developed record maintenance system will comply with the requirements of § 1.6038A–3 and the increase in the monetary penalty after notification ceases to accrue. The additional penalty for failure to maintain records is $30,000. An additional penalty of $30,000 per year is assessed for each of years 2 and 3 for the failure to maintain records for a total of $90,000.

(g) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

§ 1.6038A–5 Authorization of agent.

(a) *Failure to authorize.* The rules of § 1.6038A–7 shall apply to any transaction between a foreign related party and a reporting corporation (including any transaction engaged in by a partnership that is attributed to the reporting corporation under § 1.6038A–1(e)(2)), unless the foreign related party authorizes (in the manner described in paragraph (b) of this section) the reporting corporation to act as its limited agent solely for purposes of sections 7602, 7603, and 7604 with respect to any request by the Service to examine records or produce testimony that may be relevant to the tax treatment of such a transaction or with respect to any summons by the Service for such records or testimony. The fact that a reporting corporation is authorized to act as an agent for a foreign related party is to be disregarded for purposes of determining whether the foreign related party either has a trade or business in the United States for purposes of the Code or a permanent establishment or fixed base in the United States for purposes of an income tax treaty.

(b) *Authorization by related party*—(1) *In general.* Upon request by the Service, a foreign related party shall authorize as its agent (solely for purposes of sections 7602, 7603, and 7604) the reporting corporation with which it engages in transactions. The authorization must be signed by the foreign related party or an officer of the

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foreign related party possessing the authority to authorize an agent for purposes of Rule 4 of the Federal Rules of Civil Procedure. The reporting corporation will accept this appointment by providing a statement to that effect, signed by an officer of the reporting corporation possessing the authority to accept such an appointment. The agency shall be effective at all times. For taxable years beginning after July 10, 1989, the authorization and acceptance must be provided to the Service within 30 days of a request by the Service to the reporting corporation for such an authorization. The authorization must contain a heading and statement as set forth below. A foreign government is not subject to the authorization of agent requirement.

AUTHORIZATION OF AGENT

"[Name of foreign related party] hereby expressly authorizes [name of reporting corporation] to act as its agent solely for purposes of sections 7602, 7603, and 7604 of the Internal Revenue Code with respect to any request to examine records or produce testimony that may be relevant to the U.S. income tax treatment of any transaction between [name of the above-named foreign related party] and [name of reporting corporation] or with respect to any summons for such records or testimony.

Signature of or for [name of foreign related party]

(Title)

(Date)

(If signed by a corporate officer, partner, or fiduciary on behalf of foreign related party: I certify that I have the authority to execute this authorization of agent to act on behalf of [name of foreign related party]).

Type or print your name below if signing for a foreign related party that is not an individual.

[Name of reporting corporation] accepts this appointment to act as agent for [name of foreign related party] for the above purpose.

Signature for [Name of Reporting Corporation]

(Title)

(Date)

I certify that I have the authority to accept this appointment to act as agent on behalf of [name of foreign related party] and agree to accept service of process for the above purposes.

Type or print your name below.

(2) *Authorization for prior years.* A foreign related party shall authorize a reporting corporation to act as its agent with respect to taxable years for which a Form 5472 is required to be filed prior to the date on which the final regulations under section 6038A are published by providing the above executed authorization of agent within 30 days of a request by the Service for such an authorization.

(c) *Foreign affiliated groups*—(1) *In general.* A foreign corporation that has effective legal authority to make the authorization of agent under paragraph (b) of this section on behalf of any group of foreign related parties may execute such an authorization for any members of the group. A single authorization may be made on a consolidated basis. In such a case, the common parent must attach a schedule to the authorization of agent stating which members of the group would otherwise be required to separately authorize the reporting corporation as agent. The schedule must provide the name, address, relationship to the reporting corporation, and U.S. taxpayer identification number, if applicable, of each member.

(2) *Application of noncompliance penalty adjustment.* In circumstances where a consolidated authorization of agent has been executed, if the agency authorization for any member of the group is not legally effective for purposes of sections 7602, 7603, and 7604, the noncompliance penalty adjustment under section 6038A(e) and § 1.6038A–7 shall apply.

(d) *Legal effect of authorization of agent.* The legal consequences of a foreign related party authorizing a reporting corporation to act as its agent for purposes of sections 7602, 7603, and 7604 of the Code are as follows.

(1) *Agent for purposes of commencing judicial proceedings.* A reporting corporation that is authorized by a foreign related party to act as its agent for purposes of sections 7602, 7603, and 7604 (including service of process) is also the agent of the foreign related party for purposes of—

(i) The filing of a petition to quash under section 6038A(e)(4)(A) or a petition to review an Internal Revenue Service determination of noncompliance under section 6038A(e)(4)(B), and

(ii) The commencement of a judicial proceeding to enforce a summons under section 7604, whether commenced in conjunction with a petition to quash under section 6038A(e)(4)(A) or commenced as a separate proceeding in the federal district court for the district in which the person to whom the summons is issued resides or is found.

(2) *Foreign related party found where reporting corporation found.* For any purposes relating to sections 7602, 7603, or 7604 (including service of process), a foreign related party that authorizes a reporting corporation to act on its behalf under section 6038A(e)(1) and this section may be found anywhere where the reporting corporation has residence or is found.

(e) *Successors in interest.* A successor in interest to a related party must execute the authorization of agent as described in paragraph (b) of this section.

(f) *Deemed compliance*—(1) *In general.* In exceptional circumstances, the District Director may treat a reporting corporation as authorized to act as agent for a related party for purposes of sections 7602, 7603, and 7604 in the absence of an actual agency appointment by the foreign related party, in circumstances where the actual absence of an appointment is reasonable. Factors to be considered include—

(i) If neither the reporting corporation nor the other party to the transaction knew or had reason to know that the two parties were related at the time of the transaction, and

(ii) The extent to which the taxpayer establishes to the satisfaction of the District Director that all transactions between the reporting corporation and the related party were on arm's length terms and did not involve the participation of any known related party.

(2) *Reason to know.* Whether the reporting corporation or other party had reason to know that the two parties were related at the time of the transaction will be determined by all the facts and circumstances.

(3) *Effect of deemed compliance.* If a reporting corporation is deemed under this paragraph (f) to have been authorized to act as an agent for a foreign related party for purposes of sections 7602, 7603, and 7604, such deemed compliance is applicable only for that particular transaction and other reportable transactions entered into prior to the time when the reporting corporation knew or had reason to know that the related party, in fact, was related. The noncompliance rule of § 1.6038A–7 shall apply to any transaction subsequent to that time with the same related party, unless the related party actually authorizes the reporting corporation to act as its agent under paragraph (a) of this section. In addition, the record maintenance requirements of § 1.6038A–3 will apply to all subsequent transactions and, with respect to prior transactions, will apply to relevant records in existence at the time the relationship was discovered.

(g) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

§ 1.6038A–6 Failure to furnish information.

(a) *In general.* The rules of § 1.6038A–7 may be applied with respect to a transaction between a foreign related party and the reporting corporation (including any transaction engaged in by a partnership that is attributed to the reporting corporation under § 1.6038A–1(e)(2)) if a summons is issued to the reporting corporation to produce any records or testimony, either directly or as agent for such related party, to determine the correct treatment under Title 1 of the Code of such a transaction between the reporting corporation and the related party; and if—

(1)(i) The summons is not quashed in a proceeding, if any, begun under section 6038A(e)(4) and is not determined to be invalid in a proceeding, if any, begun under section 7604 to enforce such summons; and

(ii) The reporting corporation does not substantially and timely comply with the summons, and the District Director has sent by certified or registered mail a notice under section 6038A(e)(2)(C) to the reporting corporation that it has not so complied; or

(2) The reporting corporation fails to maintain or to cause another to maintain records as required by § 1.6038A–3, and by reason of that failure, the summons is quashed in a proceeding under section 6038A(e)(4) or in a proceeding begun under section 7604 to enforce the summons, or the reporting corporation is not able to provide the records requested in the summons.

(b) *Coordination with treaties.* Where records of a related party are obtainable on a timely and efficient basis under information exchange procedures provided under a tax treaty or tax information exchange agreement (TIEA), the Service generally will make use of such procedures before issuing a summons. The absence or pendency of a treaty or TIEA request may not be asserted as grounds for refusing to comply with a summons or as a defense against the assertion of the noncompliance penalty adjustment under § 1.6038A–7. For purposes of this paragraph, information is available on a timely and efficient basis if it can be obtained within 180 days of the request.

(c) *Enforcement proceeding not required.* The District Director is not required to begin an enforcement proceeding to enforce the summons in order to apply the rules of § 1.6038A–7.

(d) *De minimis failure.* Where a reporting corporation's failure to comply with the requirement to furnish information under this section is *de minimis*, the District Director, in the exercise of discretion, may choose not to apply the noncompliance penalty. Thus, for example, in cases where a particular document or group of documents is not furnished upon request or summons, the District Director (in the District Director's sole discretion), may choose not to apply the noncompliance penalty if the District Director deems the document or documents not to have significant or sufficient value in the determination of the correctness of the tax treatment of the related party transaction.

(e) *Suspension of statute of limitations.* If the reporting corporation brings an action under section 6038A(e)(4)(A) (proceeding to quash) or (e)(4)(B) (review of secretarial determination of noncompliance), the running of any period of limitation under section 6501 (relating to assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) for the taxable year or years to which the summons that is the subject of such proceeding relates shall be suspended for the period during which such proceeding, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such proceeding.

(f) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

§ 1.6038A–7 Noncompliance.

(a) *In general.* In the case of any failure described in § 1.6038A–5 or § 1.6038A–6, the rules of this § 1.6038A–7 apply to the reporting corporation. In such a case—

(1) The amount of the deduction allowed under subtitle A for any amount paid or incurred by the reporting corporation to the related party in connection with such transaction, and

(2) The cost to the reporting corporation of any property acquired in such transaction from the related party or transferred by such corporation in such transaction to the related party, may be determined by the District Director.

(b) *Determination of the amount.* The amount of the deduction or the cost to the reporting corporation shall be the amount determined by the District Director (in the District Director's sole discretion) from the District Director's own knowledge or from such information as the District Director may choose to obtain through testimony or otherwise. The District Director shall consider any information or materials that have been submitted by the reporting corporation or a foreign related party. The District Director, however, may disregard any information, documents, or records submitted by the reporting corporation or the related party if (in the District Director's sole discretion) the District Director deems that they are insufficiently probative of the relevant facts.

(c) *Separate application.* If the noncompliance penalty of this section applies with respect to transactions with a related party of the reporting corporation, it will not be applied with respect to any other related parties of the reporting corporation solely upon the basis of that failure. Thus, for example, if a reporting corporation engages in transactions with related party A and related party B, and the reporting corporation does not respond to a summons for records related to the transactions between the reporting corporation and related party A, the noncompliance penalty imposed as a result of such failure will not apply to the transactions between the reporting corporation and related party B. If a separate summons is issued for records relating to the transactions between the reporting corporation and related party B and the reporting corporation does not produce such records, the noncompliance penalty may be applied to those transactions.

(d) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Par. 5. The table of OMB Control Numbers in § 602.101(c) is amended by removing the entry for § 1.6038A–1 and adding the following entries to read as follows:

"§ 1.6038A–2	1545–1191"
"§ 1.6038A–3	1545–1191"

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–14459 Filed 6–14–91; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1949

Office of Training and Education: Tuition Fees

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule revises the regulation governing the payment of tuition by private sector students attending training provided by the Occupational Safety and Health Administration (OSHA) Training Institute by adding categories of private sector students who are exempt from the payment of tuition. The revision sets forth the conditions under which OSHA may waive tuition fees for private sector students.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: James Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION: On August 10, 1984, OSHA published part 1949 of title 29, Code of Federal Regulations, entitled "Office of Training and Education, Occupational Safety and Health Administration." This part provides regulations for the charging of tuition to private sector students in training courses offered by the OSHA Training Institute.

Since the rule was published, it has become the practice for the OSHA Training Institute to waive tuition for certain private sector students in the overall interest of furthering the aims of the occupational safety and health program. The purpose of this document is to specify these exemptions in the regulations.

Exemptions will be made for the following classes of students.

(a) Associate members of Field Federal Safety and Health Councils. These private sector individuals assist Federal managers and employees in the planning and implementation of occupational safety and health programs at Federal worksites. Their services are voluntary and unpaid. They are selected in accordance with 29 CFR 1960.88, which governs the membership of Field Federal Safety and Health Councils. They attend courses offered by the OSHA Training Institute at the request of, and for the benefit of, Federal Agencies. Since these individuals are attending the training in the capacity of unpaid volunteers, tuition will be waived in recognition of the benefit of their services to the Federal government.

(b) Students who are representatives of a foreign government. The OSHA Training Institute accepts students from foreign countries. The majority of these students attend courses as a result of cooperative efforts between the United States Government and the government of the student's country. In the interest of extending appropriate courtesy to such foreign governments, tuition will be waived for foreign students who are representatives of their governments.

(c) Private sector students attending courses which are required by OSHA for these individuals to maintain their status as certified outreach trainers. In 1972, OSHA instituted a train-the-trainer program whereby private sector individuals could attend courses for either construction or general industry and become certified by OSHA to teach 10- and 30-hour construction or general industry safety and health courses to managers and employees. The training performed by these trainers is a vital part of OSHA's program for training managers and employees in the recognition and avoidance of hazards in the workplace. In 1987, OSHA restricted this certification by requiring all certified outreach instructors to take a refresher course once every three years to maintain certification. Because these certified outreach instructors contribute to OSHA's program of safety and health education, tuition will be waived for refresher courses required for maintaining certification.

In addition to these specific waivers, the Director of the OSHA Training Institute will be given authority to grant additional waivers. Requests for these waivers must be written. For a waiver, the persons who will not pay tuition must be employed by a nonprofit organization and the waiver of tuition must be for reasons which benefit the occupational safety and health program. This provision is intended to enable OSHA to waive tuition for unforseen circumstances not covered in this regulation.

Because this rule is a statement of agency policy within the meaning of 5 U.S.C. 553(b)(A), OSHA had determined that it is unnecessary to publish it as a proposal.

List of Subjects in 29 CFR Part 1949

Intergovernmental relations, grant programs, occupational safety and health.

Authority

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued pursuant to section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) and 31 U.S.C. 9701 (a) and (b).

Signed at Washington, DC, this thirteenth day of June, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

Part 1949 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 1949—OFFICE OF TRAINING AND EDUCATION, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

1. The authority citation for part 1949 continues to read as follows:

Authority: Secs. 8, 20, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 670); 31 U.S.C. 9701; Secretary of Labor's Order No. 9–83 (48 FR 35736).

2. Section 1949.1 is revised to read as follows:

§ 1949.1 Policy regarding tuition fees.

(a) The OSHA Training Institute shall charge tuition fees for all private sector students attending Institute courses.

(b) The following private sector students shall be exempt from the payment of tuition fees.

(1) Associate members of Field Federal Safety and Health Councils.

(2) Students who are representatives of foreign governments.

(3) Students attending courses which are required by OSHA for the student to maintain an existing designation of OSHA certified outreach trainer.

(c) Additional exemptions may be made by the Director of the OSHA Training Institute on a case by case basis if it is determined that the students exempted are employed by a nonprofit organization and the granting of an exemption from tuition would be in the best interest of the occupational safety and health program. Individuals or organizations wishing to be considered for this exemption shall make application to the Director of the OSHA Training Institute in writing stating the reasons for an exemption from payment of tuition.

[FR Doc. 91–14590 Filed 6–18–91; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 636

Motor Vehicle Traffic Supervision (Specific Installations)

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This part establishes motor vehicle supervision regulations specific to Fort Stewart/Hunter Army Airfield, Georgia as required by the Commanding General, Fort Stewart and implemented by the Fort Stewart Office of the Provost Marshal and Office of the Staff Judge Advocate. This regulation is applicable to all personnel serving, visiting, traveling through, desiring access to, or employed on the Fort Stewart/Hunter Army Airfield installations and all other individuals subject to motor vehicle registration and driver records requirements in 32 CFR 634. The requirements of this 32 CFR part 636 are supplement to and support 32 CFR part 634, Motor Vehicle Traffic Supervision (AR 190–5). This final rule affects all personnel resident upon, employed upon or who are in transit through the military reservation consisting of Fort Stewart/Hunter Army Airfield. Military violators may be subject to administrative action, or may be prosecuted under the Uniform Code of Military Justice. Civilian violators may be subject to administrative action, or may be prosecuted under title 18, U.S.C.; or title 40, Official Code of Georgia Annotated.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Captain Stark, the Administrative Law Branch, Office of the Staff Judge Advocate, 24th Infantry Division (Mechanized) and Fort Stewart, ATTN: AFZP–PM, Fort Stewart, Georgia 31314–5000, (912) 767–2953/2954 or AUTOVON 870–2955/2953.

SUPPLEMENTARY INFORMATION: This regulation is punitive in nature and is in addition to the regulations in 32 CFR part 634. Military violators of its provisions may be subject to administrative action, or may be prosecuted under the Uniform Code of Military Justice. Civilian violators may be subject to administrative action, or may be prosecuted under title 18, U.S.C.; or title 40, Official Code of Georgia Annotated.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 636

Alcohol and alcoholic beverages, Drug Traffic control, Federal buildings and facilities, Motor vehicle safety, Traffic regulations.

Accordingly, 32 CFR part 636 is added to read as follows:

PART 636—MOTOR VEHICLE TRAFFIC SUPERVISION (SPECIFIC INSTALLATIONS)

Sec.

636.0 Scope of this part.

Subpart A—Fort Stewart, Georgia

636.1 Responsibilities.
636.2 Program objectives.
636.3 Suspension or revocation of driving privileges.
636.4 Administrative due process for suspensions and revocations.
636.5 Army administrative actions against intoxicated drivers.
636.6 Remedial driver training program.
636.7 Extensions of suspensions and revocations.
636.8 Registration policy.
636.9 Registration requirement.
636.10 Hunter Army Airfield vehicle registration.
636.11 Installation traffic codes.
636.12 Traffic accident investigation.
636.13 Traffic accident investigation reports.
636.14 Parking.
636.15 Traffic violation reports.
636.16 Detection, apprehension, and testing of intoxicated drivers.
636.17 Compliance with State laws.
636.18 Driving records.
636.19 Point system application.
636.20 Point system procedures.
636.21 Obedience to official traffic control devices.
636.22 Speed regulations.
636.23 Turning movements.
636.24 Driving on right side of roadway; use of roadway.
636.25 Right-of-way.
636.26 Pedestrian's rights and duties.
636.27 Regulations for bicycles.
636.28 Special rules for motorcycles/mopeds.
636.29 Go-carts, minibikes, and All Terrain Vehicles (ATV's).
636.30 Stopping, standing and parking.
636.31 Abandoned vehicles.
636.32 Miscellaneous instructions.
636.33 Vehicle safety inspection criteria.
636.34 Restraint systems.
636.35 Headphones and earphones.
636.36 Alcoholic beverages.
636.37 Use of "Denver boot" device.
636.38 Impounding privately owned vehicles (POVs).

Appendix A to Part 636—References
Appendices B and C to Part 636 [Reserved]
Appendix D to Part 636—Glossary

Authority: 10 U.S.C. 30112(g); 5 U.S.C. 2951; Pub. L. 89–564; 80–670; 91–605; and 93–87.

§ 636.0 Scope of this part.

This part contains regulations which are in addition to the motor vehicle supervision regulations contained in 32 CFR part 634. Each subpart in this part contains additional regulations specific to the named installation.

Subpart A—Fort Stewart, Georgia

§ 636.1 Responsibilities.

In addition to the responsibilities described in § 634.4 of this subchapter, Unit Commanders will:

(a) Monitor and control parking of military and privately owned vehicles within the unit's area, to include motor pools and assigned training areas.

(b) Establish a program in accordance with 24th Infantry Division (Mechanized) and Fort Stewart Regulation 755–2 to identify abandoned privately owned vehicles in the unit's area and coordinate with the Military Police for impoundment.

(c) In coordination with the Military Police, identify problem drivers in the unit and take appropriate action to improve their driving habits.

(d) Ensure that the contents of this part are explained to all newly assigned personnel, including personnel on temporary duty with their unit for 10 days or more.

(e) Identify unit member's vehicles which have obvious safety defects (see § 636.33) and take appropriate action to have the defect corrected. Commanders who cause a vehicle to be removed from the installation without the consent of the owner could be found liable for subsequent damage done to the vehicle provided that the damage was the result of negligence on the part of the government personnel.

(f) Identify those individuals required to attend the Defensive Driving Course (DDC) or Motorcycle Defensive Driving Course (MDDC) and ensure their attendance at the course.

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§ 636.2 Program objectives.

In addition to the requirements of § 634.5 of this subchapter:

(a) The entry of motor vehicles on the Fort Stewart/Hunter Army Airfield reservation is permitted by the Commanding General under the conditions prescribed by this part. Upon entering the military reservation, the driver subjects himself and his vehicle to reasonable search. The authority to search vehicles on post is subject to the provisions of AR 190–22 and AR 210–10. This part is not applicable to vehicle safety inspections and spot checks conducted primarily for purposes of safety.

(b) The Military Police may:

(1) Inspect any vehicle operated on the reservation for mechanical condition.

(2) Impound, exclude, or remove from the reservation any vehicle used as an instrument in a crime, suspected of being stolen, abandoned, inoperable, unregistered, or being operated by a person under the influence of intoxicants or drugs. No vehicle will be impounded unless the impoundment meets the requirements of AR 190–5, paragraph 6–2 (32 CFR 634.50) and § 636.38 of this subpart. In the event a vehicle is impounded as an instrument of crime (particularly in the transport of illegal drugs or weapons), coordination will be made with the appropriate civilian law enforcement agencies.

(3) Subsequent to a lawful apprehension, seize for administrative forfeiture proceedings all conveyances which are used, or are intended to be used to transport, sell or receive, process or conceal illegal drugs or drug paraphernalia, or in any way facilitate the foregoing. A conveyance is defined as any mobile object capable of transporting objects or people (e.g., automobile, truck, motorcycle, boat, airplane, etc.).

(c) The Commander or other persons designated authority by the Commander may suspend or revoke the installation driving privileges of any person as authorized by part 634 of this subchapter and this section.

(d) Unit commanders may request temporary suspension of an assigned member's installation driving privilege for cause (e.g., continued minor driving infractions, numerous parking violations, etc.). Such requests will be submitted in writing to the Commander, 24th Infantry Division (Mechanized) and Fort Stewart, ATTN: AFZP–PM, Fort Stewart, Georgia 31314–5000. Reasons for such requests will be explained. Unit commanders retain the authority to suspend a soldier's military vehicle driving privileges in accordance with AR 385–55.

§ 636.3 Suspension or revocation of driving privileges.

In addition to the requirements of § 634.10 of this subchapter:

(a) Administrative suspension or revocation of installation driving privileges applies to the operation of a motor vehicle on Fort Stewart/Hunter Army Airfield.

(b) Installation driving privileges will be suspended for up to 6 months for drivers who accumulate 12 traffic points within 12 consecutive months, or 18 traffic points within 24 consecutive months.

(c) The Garrison Commander and Deputy Garrison Commander are designated as suspension/revocation authorities for:

(1) Suspension of driving privileges should the evidence indicate that a charge of driving under the influence is warranted or;

(2) The suspension/revocation for accumulation of 12 traffic points within 12 months or 18 points within 24 consecutive months.

§ 636.4 Administrative due process for suspensions and revocations.

In addition to the requirements of § 634.11(a) of this subchapter:

(a) The Provost Marshal or his designee will provide the written notice of pending action and offer of an administrative hearing using AFZP Form Letter 316, Suspension of Installation Driving Privileges.

(b) The Garrison Commander and Deputy Garrison Commander are designated as reviewing authorities to conduct administrative hearings.

(c) Individuals who desire an administrative hearing to review a decision to impose immediate suspension, or to appeal the decision of the administrative hearing officer, will adhere to the following procedures. A request for an administrative hearing will be forwarded through their supervisory chain of command. Requests from family members or non-employee civilians can be forwarded to the Provost Marshal's Administrative Section at Fort Stewart or Hunter Army Airfield and can either be delivered or post marked within ten days of notification of the suspension action.

(d) Individuals who were initially charged with driving under the influence (DUI) based in part on a blood alcohol content (BAC) test which has not subsequently been invalidated and who are found not guilty of DUI may request a hearing to determine if their driving privileges should be restored. Such requests shall be forwarded through their chain of command to arrive at the Provost Marshal's Office (AFZP–PMA for Fort Stewart or AFZP–PM–H for Hunter Army Airfield) not later than ten working days after the date of court action.

§ 636.5 Army administrative actions against intoxicated drivers.

For this installation, in violation of State law referenced in § 634.12(a)(3) of this subchapter, means a blood alcohol content of 0.10 percent or higher as set forth in Official Code of Georgia Annotated 40–6–392(b)(3).

§ 636.6 Remedial driver training program.

For this installation remedial driving training program referenced in § 634.12(b) of this subchapter is operated by the Installation Safety Office. Driving privileges may be withheld beyond expiration of the sanction to complete remedial driving or alcohol and drug rehabilitation programs in accordance with AR 190–5, paragraphs 2–12c and d, and 5–4f (32 CFR 634.17(c) and (d) and 634.17(f)).

§ 636.7 Extensions of suspensions and revocations.

In addition to the requirements in § 634.17(a) of this subchapter, for each subsequent violation of the suspension period, an additional five years will be added to the suspension period for this installation (see Table 634.46 in § 634.46 of this subchapter).

§ 636.8 Registration policy.

In addition to the requirements of § 634.19(a) of this subchapter, motor vehicles which are owned and/or operated by a person who resides, performs duty, is employed on, or "frequently uses" the facilities of Hunter Army Airfield will be registered in accordance with the requirements of § 634.20 of this subchapter. Frequent users include but are not limited to family members, retirees, and civilians whose normal route of travel between home and work takes them through the installation.

§ 636.9 Registration requirement.

In addition to the requirements of § 634.20 of this subchapter:

(a) The Military Police will cite violators on DD Form 1408 (Warning Citation) for observed safety defects. On a periodic basis, Military Police will conduct vehicle safety inspection operations using the criteria in § 636.33.

(b) An individual possessing a valid USAREUR privately owned vehicle (POV) license may operate a motor vehicle in the State of Georgia for a period not to exceed 30 days. After the 30 day period the individual must obtain a valid license from the State of Georgia or another state to operate a motor vehicle in the State of Georgia.

(c) An individual returning a vehicle to Continental United States (CONUS) has 30 days from date of entry or 10 days after reporting for military duty to register that vehicle in the State of Georgia or another state. A temporary pass will be issued until this requirement has been met.

(d) *Liability and no-fault insurance requirements.* (1) All personnel operating vehicles on Fort Stewart/Hunter Army Airfield will obtain and maintain, at least, the minimum amount of liability and no-fault insurance required by the State of Georgia. The amounts are as follows:

(i) Liability:

(A) $15,000.00 per person per accident for bodily injury.

(B) $30,000.00 per incident for bodily injury.

(C) $10,000.00 per accident for property damage.

(ii) No-Fault—$5,000.00.

(2) Proof of this insurance will be required at the time of registration.

(e) Vehicle safety inspections are not required in the State of Georgia, however, vehicles operated on Fort Stewart/Hunter Army Airfield must be in safe operating condition and be able to pass spot vehicle safety equipment checks conducted by the Military Police. Safety criteria is set forth in § 636.33 of this subpart.

§ 636.10 Hunter Army Airfield vehicle registration.

Personnel assigned or employed at Hunter Army Airfield are required to register their privately owned vehicles within five days after arrival to the installation. Requirements for registration are listed in AR 190–5 and this part.

(a) Temporary passes may be issued to personnel not assigned to the installation but requiring temporary access to the installation. These include personnel employed by construction and material handling vehicles requiring on post access. Personnel requesting temporary passes must meet the same requirements as do personnel requiring decals.

(1) Temporary passes will not exceed 45 days. Renewal of temporary passes is prohibited except upon approval of the Installation Commander or his/her designee.

(2) Temporary passes will be conspicuously placed on the left side of the vehicle dashboard between the dashboard and the front windshield. Nothing will be placed so as to obscure the view of the temporary pass from the exterior of the vehicle. The pass will remain in this position during the entire time the vehicle is on the installation. Failure to conspicuously display the temporary pass could result in the vehicle being removed from the installation.

(3) Temporary passes will remain with the vehicle for which they were issued and not be transferred to other vehicles.

(4) Each person driving a vehicle on the installation must individually meet the drivers license requirement of the installation as well as sign the temporary pass.

(5) Temporary passes will be returned to the Vehicle Registration section when they have expired or area no longer needed.

(b) Decals are to be issued to all military and civilian employees of Hunter Army Airfield, military retirees, and contractors/vendors doing extended business on the installations. Requirements outlined in AR 190–5 (32 CFR part 634) and this part must be met before decals are issued.

(c) Personnel requiring permanent decals, who do not meet the requirements outlined in AR 190–5 (32 CFR part 634) and this part, will be issued temporary passes not to exceed 45 days. Registration requirements will be met as soon as possible after issuance of the temporary pass. A decal may then be issued.

(d) DOD decals (DD Form 2220) will be utilized for vehicle registration. Additional installation name and expiration month and year decals will be utilized with sizes and coloration as prescribed in AR 190–5 (32 CFR part 634).

(e) Decals will be permanently affixed to the vehicles for which they are registered in one of two places:

(1) Exterior, front windshield lower left corner.

(2) Front, left bumper of the vehicle, conspicuously displayed. Decals will not be affixed to the front spoilers or any other area which obscures the viewing of the decal.

(3) Installation decals will be placed directly beneath and centered on the DOD decal. Expiration decals will be placed on each side and level with the DOD decal with the month on the left and the year on the right.

(4) Decals will not be affixed to any other portion of the vehicle other than listed in § 636.10(e) (1) through (3).

§ 636.11 Installation traffic codes

In addition to the requirements in § 634.25(d) of this subchapter, on-post violations offenders will be cited under the appropriate Georgia Traffic Code as assimilated by 18 U.S.C. 13 (for civilians) and Art 134c, Uniform Code of Military Justice (UCMJ) (for military). If no Georgia Code is appropriate for a specific offense, civilians will be cited under 40 U.S.C. 318a and military personnel will be cited under Art 92, UCMJ. The Fort Stewart/Hunter Army Airfield installation traffic code conforms to the State of Georgia Traffic Law.

§ 636.12 Traffic accident investigation.

In addition to the requirements in § 634.28 of this subchapter, Military Police at Fort Stewart/Hunter Army Airfield installation will investigate reportable motor vehicle accidents involving government owned or privately owned vehicles.

§ 636.13 Traffic accident investigation reports.

In addition to the requirements in § 634.29 of this subchapter:

(a) Military Police at Fort Stewart/Hunter Army Airfield installations will record traffic accident investigations on DA Form 3946 (Military Police Traffic Accident Report) and DA Form 3975 (Military Police Report).

(b) All privately owned motor vehicle accidents on Fort Stewart or Hunter Army Airfield will be immediately reported to the Military Police for investigation. Unless an emergency situation exists, vehicle(s) involved in an accident will only be moved on order of the Military Police.

§ 636.14 Parking.

In addition to the requirements in § 634.31 of this subchapter:

(a) Military Police will enforce parking in handicapped and Commanding General reserved parking spaces at Fort Stewart/Hunter Army Airfield soldier service facilities and assess points in accordance with Table 634.46 in § 634.46 of this subchapter and Table 636.19 in § 636.19. Vehicles may be towed for such violations as parking in handicapped parking spaces and parking on a yellow curb among others.

(b) Reserved parking spaces in areas under the control of units or staff sections may be designated by the commander or staff section chief who is also responsible to control the use of these spaces.

(c) Parking spaces for tactical vehicles at the Main Exchange/Commissary area will be designated at the end of rows, farthest from the facilities. Only those vehicles properly authorized by unit commanders will be parked at the Main Exchange/Commissary area.

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§ 636.15 Traffic violation reports.

In addition to the requirements in § 634.32 of this subchapter:

(a) The Provost Marshal in coordination with the Staff Judge Advocate will determine what traffic offenses will be referred to the U.S. Magistrate Court by means of DD Form 1805.

(b) Of the four available actions on the back of the DD Form 1408, supervisors of civilian employees may take one of the following two actions.

(c) No action taken: A finding of not guilty. There must be an explanation of the reason for no action taken.

(d) Administration: A finding of guilty. This includes, but is not limited to, such actions as a written warning, letter of reprimand, or suspension. Supervisors should coordinate with CPO, MER branch before taking adverse action.

(e) Reports of Commander's action taken will be forwarded to the Provost Marshal Office through the appropriate major subordinate commander.

§ 636.16 Detection, apprehension, and testing of intoxicated drivers.

In addition to the requirements in § 634.36 of this subchapter, the standard field sobriety test used by the Military Police may include the following tests:

(a) Horizontal gaze nystagmus.

(b) Walk and turn.

(c) One leg stand.

§ 636.17 Compliance with State laws.

In addition to the requirements of § 634.42 of this subchapter, the Provost Marshal will conduct necessary coordination with civil enforcement agencies to ensure receipt of information and assistance as required. The Directorate of Logistics will secure any necessary permits for military movement on public roads and highways.

§ 636.18 Driving records.

In addition to the requirements in § 634.44 of this subchapter, the Provost Marshal Office will maintain driver records.

§ 636.19 Point system application.

TABLE 636.19

Violation: Parking in a handicap zone
Points assessed: 3
Violation: Parking against a yellow curb
Points assessed: 3
Violation: Parking within 10 feet of a fire hydrant
Points assessed: 3
Violation: Impeding the flow of traffic
Points assessed: 3
Violation: Other parking violations
Points assessed: 2

§ 636.20 Point system procedures.

In addition to the requirements of § 634.47 of this subchapter:

(a) Reports of parking violations recorded on DD Form 1408 or DD Form 1805 will serve as a basis for determining point assessment.

(b) The instructions in paragraph (a) of this section also apply to the receipt of a DD Form 1408 (Armed Forces Traffic Ticket) for a parking violation.

§ 636.21 Obedience to official traffic control devices.

(a) All drivers will obey the instructions of official signs, unless directed to do otherwise by the Military Police.

(b) Official traffic control devices, such as traffic cones or barricades, are presumed to have been placed by proper authority.

§ 636.22 Speed regulations.

(a) Georgia state speed limits apply unless otherwise specified by this part.

(b) Drivers will operate their vehicles at a reasonable and prudent speed based on traffic and road conditions, regardless of posted speed limits.

(c) The speed limit on the installation is 30 miles per hour unless otherwise posted or if it falls within one of the special speed limit situations (see paragraph (d) of this section).

(d) The following special speed limits apply:

(1) When passing troop formations, 10 miles per hour.

(2) The authorized speed limit in the school zones is 15 miles per hour when any of the following conditions are present:

(i) A school crossing attendant is present.

(ii) Children are present in the area.

(iii) The flashing, yellow, caution lights are in operation.

(3) Fort Stewart housing areas, 20 miles per hour. Hunter Army Airfield housing areas, 15 miles per hour.

(4) Tactical vehicle drivers will obey posted speed limits; however, drivers will not exceed 40 miles per hour on paved roads and 25 miles per hour on unpaved roads and tank trails. Commercial Utility Cargo Vehicles (CUCV's) are tactical vehicles and will obey the following off-road driving speeds:

Day Driving:
Trails, 10 MPH
Cross Country, 8 MPH
Night Driving:
Trails, 5 MPH (with headlights)
Cross Country, 5 MPH
Night Driving:
Trails, 4 MPH (Black-out Drive)
Cross Country, 2.5 MPH

(5) Parking lots, 10 miles per hour.

(6) The authorized maximum speed limit for rough terrain forklifts when operated on hard surface roads will not exceed 15 miles per hour. These vehicles will also bear the Triangular Symbol to alert trailing vehicles as required by the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.145).

§ 636.23 Turning movements.

(a) U-turns are prohibited on all streets in the cantonment area.

(b) Right-turns will be made from a position as close to the right edge or right curb of the roadway as possible.

(c) Left-turns will be made from a position as close to the center line as possible or from a left turn lane, if available.

(d) All turns will be signaled continuously beginning not less than 100 feet prior to the turn.

§ 636.24 Driving on right side of roadway; use of roadway.

(a) All drivers will use the right side of roadways, except:

(1) When passing a vehicle proceeding in the same direction.

(2) When an obstruction is blocking all or part of the right lane of the roadway.

(3) When driving on a one-way street.

(b) Drivers proceeding in opposite directions will pass to the right, each using one-half of the roadway.

(c) Drivers passing another vehicle traveling in the same direction will exercise the utmost caution and safety and will abide by all applicable traffic laws.

(d) Drivers of vehicles being passed will give way to the right and not increase their vehicle's speed.

(e) Drivers will allow a sufficient distance between their vehicle and the vehicle in front to allow a safe stop under all conditions.

§ 636.25 Right-of-way.

(a) When two vehicles enter an intersection from different highways at the same time, the driver of the vehicle on the left will yield right-of-way. When entering an intersection without traffic control devices from a highway which terminates at the intersection, that driver will yield right-of-way.

(b) Drivers turning left within an intersection will yield right-of-way to vehicles approaching from the opposite direction.

(c) Drivers approaching a stop sign will stop at the marked stop line, if present, or before entering the crosswalk, if present, or at a point nearest the intersecting roadway where the driver will yield the right-of-way, if required.

(d) Drivers approaching yield signs will slow down to a speed not exceeding 10 miles per hour and yield the right-of-way to any approaching vehicles, coming to a stop if necessary.

(e) Drivers entering or crossing a roadway from any place other than another roadway will yield the right-of-way to vehicles on the roadway.

(f) Upon the immediate approach of an authorized emergency vehicle identified as such, all drivers will yield the right-of-way to the emergency vehicle.

§ 636.26 Pedestrian's rights and duties.

(a) Pedestrians will obey all traffic control devices and regulations, unless directed to do otherwise by the Military Police.

(b) When traffic-control signals are not in place or not in operation, the driver of a vehicle will yield the right of way, by slowing down or stopping, when a pedestrian is in a crosswalk on the same side of the road as the driver's vehicle, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(c) Pedestrians will not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close to the crosswalk that it is impractical for the driver to stop.

(d) Pedestrians crossing a roadway, at a point other than a crosswalk, will yield the right-of-way.

(e) Pedestrians will not cross any intersection diagonally unless clearly authorized to do so.

(f) Every driver will exercise due care to avoid colliding with any pedestrian upon any roadway and will exercise proper precaution upon observing any child or any obviously confused, incapacitated, or intoxicated person.

(g) A person who is under the influence of intoxicating liquor or any drug to a degree which renders himself a hazard will not walk upon any roadway.

(h) Pedestrians will use sidewalks, where provided, rather than walking upon the roadway. When sidewalks are not provided, pedestrians will walk the shoulder of the roadway as far from the edge of the roadway as possible. When neither sidewalks nor a shoulder are available, pedestrians will walk on the extreme edge of the roadway, facing traffic, and will yield to all oncoming traffic.

(i) Individuals will not stand in or beside the roadway to solicit rides (hitch-hike).

(j) Individuals will not stand in or beside the roadway to solicit business, employment, or contributions from the occupant of any vehicle.

(k) Pedestrians will yield to all authorized emergency vehicles using an audible signal and/or a visual signal.

(l) The wearing of headphones or earphones by pedestrians or joggers while walking or jogging on roadways or on the shoulders of roadways is prohibited.

§ 636.27 Regulations for bicycles.

(a) Parents will not knowingly allow their children to violate any of the provisions of this section.

(b) Traffic laws and regulations in this part apply to persons riding bicycles. Bicycle riders are granted all the rights and are subject to all duties of motorized vehicle operators, except those which logically do not apply.

(c) Bicycles will be parked against the curb or in a rack, provided for that purpose, and will be secured.

(d) Bicycle riders will not attach the bicycle or themselves to any motorized vehicle operating upon the roadway.

(e) Bicycles will be ridden upon the roadway in single-file.

(f) Bicycles operated between dusk and dawn will utilize a headlight visible for a minimum of 300 feet and a rear reflector or red light visible for 300 feet to the rear.

(g) Bicycles will not be ridden without an operable brake system.

(h) Bicycles will not be ridden if the pedal, in its lowermost position, is more than 12 inches above the ground.

(i) If a bicycle/pedestrian path or sidewalk is present, bicyclists will use the patch or sidewalk instead of the roadway.

(j) Certain roadways have been designated and marked as being off-limits to bicyclists. Bicyclists will use an alternate roadway or a bicycle path rather than those roadways.

§ 636.28 Special rules for motorcycles/mopeds.

(a) Traffic laws and regulations in this part apply to persons riding motorcycles/mopeds. Motorcyle/moped operators are granted all the rights and are subject to all duties of motor vehicle operators, except those which logically do not apply.

(b) Motorcycles/moped operators will ride only while seated facing forward with one leg on either side of the vehicle on the permanent and regular seat of the vehicle. Passengers will not be carried unless the vehicle is designed to carry a passenger. Passengers will only be carried in a manner which neither interferes with the operation of the vehicle nor obstructs the operator's view. Operators will keep both hands on the vehicle's handlebars.

(c) Motorcycle/moped operators are entitled to the use of a full lane of traffic. Motorcycle/moped operators will not pass another vehicle using the same lane as the overtaken vehicle. Motorcycles/mopeds will not be operated between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Motorcycles/moped headlights and tail lights will be illuminated at anytime the vehicle is being operated.

(e) Motorcycle/moped operators will not attach their vehicle or themselves to any other motorized vehicle operating upon the roadway.

(f) Footrests will be provided for passengers. Motorcycles/mopeds will not be operated with handlebars more than 15 inches above the seat which the operator occupies. No back rest attached to the motorcycle/moped will have a sharp point at its apex.

(g) All motorcycle/moped operators/passengers will comply with the following safety requirements:

(1) Wear the following protective equipment:

(i) Properly fastened (under the chin) DOT approved helmet.

(ii) Eye protection (clear goggles or a face shield attached to the helmet).

(iii) Full-fingered gloves.

(iv) Long trousers.

(v) Long-sleeved shirt or jacket (with sleeves rolled down).

(vi) Leather boots or over-the-ankle shoes.

(vii) High-visibility garments (bright color for day and retro-reflective for night).

(2) Motorcycle/moped headlights will be turned on at all times.

(3) Motorcycle/moped must have two rear-view mirrors (one mirror on each side of the handlebars).

(4) Use of headphones or earphones while driving is prohibited.

(h) Military personnel, civilian employees, and family member drivers of a privately or government-owned motorcycle/moped (two or three wheeled motor driven vehicles) are required to attend and complete an approved Motorcycle Defense Driving Course (MDDC) prior to operation of the motorcycle/moped on the installation. Upon completion of the course, personnel will be provided with a MDDC card. Personnel are authorized to operate their motorcycle/moped on the installation for the purpose of attending

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the motorcycle safety course. Attendance may be verified by contacting the Installation Safety Office.

§ 636.29 Go-carts, minibikes, and all terrain vehicles (ATV's).

(a) Operators of "go-carts," "minibikes," and ATV's 16 years of age or older, must comply with applicable Georgia State Law and Fort Stewart traffic laws and regulations contained in this part.

(b) "Go-carts," "minibikes," and ATV's operated on installation roadways are required to meet the requirements of this part and the Georgia Traffic Code.

(c) Off-road vehicles will only be operated in areas specified by the DPCA. The DPCA will specify conditions for off-road operation.

(d) "Go-carts," "minibikes," and ATV's will only be operated during daylight hours and will not be operated during periods of inclement weather or reduced visibility.

(e) Operators and passengers of "go-carts," "minibikes," and ATV's must wear approved protective helmets, eye protection, and footwear (open-toed footwear is prohibited).

(f) Soldiers or sponsors of persons operating "go-carts," "minibikes," and ATV's are responsible for the safe operation of the vehicle.

§ 636.30 Stopping, standing and parking.

(a) Drivers will not stop, park, or leave standing their vehicle, whether attended or unattended, upon the roadway when it is possible to stop, park or leave their vehicle off the roadway. In any case, parking or standing the vehicle upon the roadway will only be done in an emergency.

(b) Vehicles, not clearly identified as operated by a handicapped individual, will not be parked in a handicapped parking space.

(c) Whenever Military Police find a vehicle parked or stopped in violation of this section, they may immediately move, or cause to be moved, the vehicle off the roadway. At the direction of the Provost Marshall, or his designee, vehicles parked in restricted or reserved parking spaces, may be moved.

(d) The Military Police may remove or cause to be removed, to a safe place, any unattended vehicle illegally left standing upon any highway or bridge or within 10 feet of any railroad track on the installation.

(e) As a crime prevention measure, the Military Police may pick up keys left in vehicles, secure the vehicle in place, and post a notice directing the owner to proceed to the MP station to claim his/her keys. The program will be adequately publicised and will only be invoked after a conscientious attempt to locate the owner.

(f) No driver will stop, stand, or park a vehicle:

(1) On the roadway side of any vehicle stopped or parked at the edge of a curb or a street.

(2) On a sidewalk.

(3) Within an intersection.

(4) On a crosswalk.

(5) Alongside or opposite any street excavation or obstruction when traffic would be obstructed.

(6) Upon a bridge or other elevated structure.

(7) On any railroad tracks or within 10 feet of any rail road track.

(8) On any controlled-access highway.

(9) Where prohibited by official signs.

(10) Alongside any roadway in any manner which obstructs traffic.

(g) No driver will stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(1) In front of a public or private driveway.

(2) Within 10 feet of a fire hydrant.

(3) Within 20 feet of a crosswalk at an intersection.

(4) Within 20 feet upon the approach to any flashing signal, a stop sign, yield sign, or traffic control signal located at the side of a roadway.

(5) Within 20 feet of a driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance (when properly sign posted).

(6) At any place where official signs prohibit standing.

(7) Adjacent to any curb painted yellow or identified, by signs, as a "No Parking" area.

(8) Along a roadway against the flow of traffic.

(9) Within 20 feet of any building in what would reasonably be considered a "fire-lane" unless specified as a parking space.

(10) Parallel parking along the curb is authorized in housing areas unless otherwise posted.

(11) Parking is prohibited upon lawns or grassed (seeded) areas, unless specifically authorized by the Provost Marshal. This prohibition is not intended, however, to extend to those locations designated as bivouac sites, range areas, etc.

(12) No dual-wheeled or tandem-wheeled recreational vehicles and trailers will be stored at government quarters. All other recreational vehicles, to include campers, trailers, boats, pop-up campers, and camper shells may be parked in the driveway area or under the carport of individual quarters. To prevent injury to children playing on and around trailers, one tire on each side of the trailer will be chocked in front and back. Trailer tongues, without installed supports, will either be left on the ground or supported in such a manner as to preclude the support tipping over and allowing the trailer tongue to fall. If the vehicle creates a safety hazard or is an eyesore, personnel are encouraged to use the storage facilities available at the Outdoor Recreation Center, Holbrook Pond, Fort Stewart, or at the Private Vehicle Storage area at Hunter Army Airfield. House trailers are not authorized to be parked in the quarters area. Campers, camper trailers, and tents will not be approved for occupancy in the quarters area. Parking of recreational vehicles on the street will be limited to 24 hours for owners to load and unload the vehicle at the owner's quarters.

(h) No driver will use a parking lot, sidewalk, fire lane, or vacant property to drive on in order to avoid a traffic control device or alter the traffic flow plan unless authorized to do so by the Military Police or a traffic control device.

§ 636.31 Abandoned vehicles.

(a) Any MP or DOD police officer who finds or has knowledge of a motor vehicle which has been left unattended or abandoned on a street, road, highway, parking lot, or any other real property of the installation for a period of at least 72 hours may be authorized by the Provost Marshal or his designee to cause said motor vehicle to be moved to an impoundment lot for storage.

(b) Any MP or DOD police officer who, under the provisions of this section, causes any motor vehicle to be moved to an impoundment lot or other temporary place of safety is acting with proper authority and within the scope of that officer's employment, except that any wanton or intentional damage done to any motor vehicle by any MP or DOD police officer should not be within the scope of either that officer's authority or employment.

(c) Unit commanders, with knowledge of an abandoned vehicle in their unit area, should attempt to identify the owner and have them remove the vehicle. When owners cannot be identified or are no longer assigned to this command, unit commanders will notify the MP's to initiate impoundment procedures.

(d) Civilian vehicles left abandoned on the reservation will be towed to an impoundment lot for further disposition.

(e) Personnel experiencing motor vehicle trouble may authorize the MP desk to obtain the assistance of a civilian wrecker, but in doing so, the government assumes no liability of payment for such services or possible resulting damage.

§ 636.32 Miscellaneous instructions.

(a) All unattended motor vehicles will have the engine stopped and the ignition locked.

(b) Vehicles will not be operated when so loaded with passengers and/or goods that the driver's view is blocked or control over the driving mechanism is interfered with.

(c) Drivers, other than on official business, will not follow any emergency vehicle, operating under emergency conditions, closer than 500 feet or park closer than 500 feet to any emergency vehicle stopped for an emergency.

(d) No vehicle will be driven over a fire hose unless directed to do so by a fire official, or the Military Police.

(e) Ground guides will be posted, during backing, at the left rear of any ¾ ton or larger vehicle.

(f) All vehicles carrying a load will have the load secured and/or covered to prevent the load from blowing or bouncing off the vehicle.

(g) A red flag or red light, visible for at least 100 feet from the rear will be attached to any load protruding beyond the rear of any vehicle.

(h) Troop marches, physical training runs, etc., will not be conducted in a manner that will interfere with motor vehicle traffic on the Fort Stewart/Hunter Army Airfield reservation.

(1) Units participating in parades and related practices, road marches, etc., will not conduct such marches upon any hard surface road or traffic way unless coordination has been made with the Provost Marshal Office.

(2) Physical training runs, exercises, or tests will not be conducted upon any hard surface road or traffic way unless such is specifically allowed in 24th Infantry Division (Mechanized) and Fort Stewart Regulation 350–1.

(i) Congested housing areas on the installation require special precaution on the part of drivers and persons living in those areas.

(1) Parents can assist drivers in this regard by reminding their children that housing area streets are extremely dangerous and that playing in the street is prohibited.

(2) Bus stops are sites particularly prone to large numbers of children playing immediately adjacent to or actually in the roadway while awaiting arrival of the school bus.

(3) Complaints received by the MP desk, concerning children playing in the streets, must be investigated in the interest of safety. Repeated violations could result in further action by the chain of command.

(j) Vehicles and/or trailers will not be towed with a chain or rope (vehicles may be towed by another privately owned vehicle by use of a rigid tow bar).

(k) At entrances to Fort Stewart/Hunter Army Airfield where a gate guard is positioned, drivers are required to obey his/her instructions. During hours of darkness, headlights will be switched to parking lights upon approach to the gate.

(l) Motorists will drive with headlights illuminated at any time from a half hour after sunset to a half hour before sunrise and at any time when it is raining in the driving zone and at any other time when there is not sufficient visibility to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead.

(m) Motor vehicles will not be operated if visibility to the front, rear, or side is rendered unsafe and improper from fogged or iced-over windows.

(n) Aircraft runways, taxiways, and aprons at Hunter Army Airfield and Wright Army Airfield and "OFF-LIMITS" to all privately owned vehicles.

(o) Extensive repairs to automobiles will not be undertaken in housing areas, parking lots, or other similar areas. Repairs extending over a 24 hour period will be considered extensive.

(p) Tactical vehicles will not be driven in housing areas. Post police or vehicles on similar details may drive in the housing areas as required.

(q) Active duty personnel residing on post are encouraged to have their privately owned bicycles, "go-carts," and "minibikes" registered with the Provost Marshal's Office (Registration Branch) in conjunction with the Installation Crime Prevention Program.

(r) All personnel operating a vehicle on Fort Stewart/Hunter Army Airfield will have proof of insurance for the vehicle, in the vehicle at all times.

§ 636.33 Vehicle safety inspection criteria.

(a) The vehicle safety inspection criteria listed in this paragraph (a) are general in nature; specific evaluation techniques for these criteria are contained in Georgia Traffic Law.

(1) Headlights—every vehicle, except motorcycles, will have at least two headlights, one on each side of the front of the vehicle, capable of illuminating 500 feet to the front. Motorcycles will have one headlight.

(2) Tail Lamps—every vehicle will have at least one red, self-illuminating lamp, on the rear of the vehicle, visible from 500 feet to the rear.

(3) Registration Plate Lamp—every vehicle will have a lamp designed to illuminate the registration plate with white light making the plate legible from a distance of 50 feet.

(4) Rear Reflectors—every vehicle, except motorcycles, will have two red reflectors on the rear. Motorcycles will have one red reflector.

(5) Stop Lamp—every vehicle will have at least one red or yellow stop lamp on the rear which will be actuated upon application of the foot brake.

(6) Turn Signals—every vehicle will be equipped with electrical or mechanical turn signals capable of indicating any intention to turn either to the right or to the left, and visible from the front and rear. This requirement does not apply to any motorcycle or motor-driven cycle manufactured prior to 1 January 1972.

(7) Brakes—every vehicle will be equipped with brakes adequate to control the movement of and to stop and hold such vehicle.

(8) Horn—every vehicle will be equipped with an operable horn, capable of emitting sound audible for at least 200 feet.

(9) Muffler—every vehicle will have a muffler in good working order and in constant operation.

(10) Mirror—every vehicle, from which the driver's view is obstructed, will be equipped with a mirror reflecting a view of the highway for a distance of at least 200 feet to the rear.

(11) Windows—the view through vehicle windows will not be obstructed by any sign, poster, or other nontransparent material. Windshields and rear windows will not have starburst or spider webbing effect greater than 3 inches by 3 inches. No opaque or solid material including, but not limited to cardboard, plastic, or taped glass will be employed in lieu of glass.

(12) Windshield Wipers—every vehicle, except motorcycles, will be equipped with operable windshield wipers.

(13) Tires—every vehicle will be equipped with serviceable rubber tires which will have a tread depth of at least two thirty-seconds of an inch.

(14) Suspension Systems—no vehicle will have its rear end elevated above the vehicle manufacturer's designated height (49 CFR 570.8).

(b) The criteria listed in paragraph (a) of this section are not necessarily an inclusive list. A vehicle may be deemed unsafe to operate when any part of the

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vehicle is defective and renders the vehicle dangerous to others.

§ 636.34 Restraint systems.

(a) Restraint systems (seat belts) will be worn by all operators and passengers of U.S. Government vehicles on or off the installations.

(b) Restraint systems will be worn by all civilian personnel (family members, guests, and visitors) driving or riding in a private owned vehicle on the Fort Stewart/Hunter Army Airfield installations.

(c) Restraint systems will be worn by all soldiers and Reserve Component members on active Federal service driving or riding in a private owned vehicle whether on or off the installations.

(d) Infant/child restraint devices (car seats) are required in private owned vehicles for children 4 years old or under and not exceeding 45 pounds in weight.

(e) Restraint systems are required only in cars manufactured after model year 1966.

(f) The operator of a vehicle is responsible for ensuring the use of seat belts, shoulder restraints, and child restraining systems when applicable and may be cited for failure to comply (40 U.S.C. 318a).

(g) Passengers (over the age of 16) are responsible for ensuring that their seat belts/shoulder restraints are used when applicable and may be cited for failure to comply (40 U.S.C. 318a).

§ 636.35 Headphones and earphones.

The wearing of headphones or earphones is prohibited while driving a U.S. Government vehicle, POV, motorcycle, or other self-propelled two-wheel, three-wheel, or four-wheel vehicle powered by a motorcycle type engine. This does not negate the requirement for wearing hearing protection when conditions or good judgment dictate use of such protection.

§ 636.36 Alcoholic beverages.

(a) Consuming alcoholic beverages as an operator or passenger in or on U.S. Government or privately owned vehicles is prohibited.

(b) Consuming alcoholic beverages on any roadway, parking lot, or where otherwise posted is prohibited.

(c) Having open containers of alcoholic beverages in vehicles or areas not designated for the consumption of alcohol is prohibited.

§ 636.37 Use of "Denver Boot" device.

The "Denver Boot" device will be used by Military Police as an additional technique to assist in the enforcement of parking violations when other reasonably effective but less restrictive means of enforcement (such as warnings, ticketing, reprimands, suspensions, or revocations of on-post driving privileges) have failed, or immobilization of the private owned vehicle is necessary for safety.

(a) The use of booting devices will be limited to application by the Military Police under the following conditions:

(1) Immobilization of unsafe, uninspected, or unregistered vehicles.

(2) Immobilization of vehicles involved in criminal activity.

(3) For repeat offenders of the parking violations outlined in this supplement. Three or more parking violations within 6 months constitutes grounds to boot the vehicle.

(4) At the discretion of the Provost Marshal or his designee, on a case-by-case basis.

(b) Booted vehicle will be marked, for driver notification, by placing an orange in color notice on the vehicle windshield. The notice will contain information on why the vehicle was booted and instructions on how to have the booting device properly removed by the Military Police (see figure 636.37).

FIGURE 636.37. DRIVER BOOTING DEVICE NOTICE

1. Your vehicle is illegally parked and has been secured in place by the Military Police with a vehicle restraining device. Do not move this vehicle until the restraining device is properly removed by the Military Police.
2. Any movement, or attempted movement, of this vehicle could result in damage to the device and the vehicle. You will be responsible for any such damage to the vehicle and/or the restraining device.
3. Any removal, or attempted removal, of the device could result in you being charged with a criminal offense.
4. To have this device properly removed by the Military Police, contact the following:

Mon–Fri, 7: a.m.–5: p.m., Bldg 292, Phone 767–2848/8659

Non-Duty Hours, Bldg 285, Phone 767–2822

NOTICE

§ 636.38 Impounding privately owned vehicles (POVs).

This section provides the standards and procedures for towing, inventorying, searching, impounding, and disposing of private owned vehicles.

(a) *Implied consent to vehicle impoundment.* Any person granted the privilege of operating a motor vehicle on the Fort Stewart/Hunter Army Airfield installations shall be deemed to have given his or her consent for the removal and temporary impoundment of the privately owned vehicle when it is parked illegally for unreasonable periods, interfering with operations, creating a safety hazard, disabled by accident, left unattended in a restricted or controlled area, or abandoned. Such vehicles will be towed by a contracted civilian wrecker service and placed in that service's storage lot. Such persons further agree to reimburse the civilian wrecker service for the cost of towing and storage should their vehicle be removed or impounded.

(b) *Standards of impoundment.* (1) Privately owned vehicles will not be impounded unless they clearly interfere with ongoing operations or movement of traffic, threaten public safety or convenience, are involved in criminal activity, contain evidence of criminal activity, or are stolen or abandoned.

(2) The impoundment of a privately owned vehicle is inappropriate when reasonable alternatives to impoundment exist.

(i) An attempt will be made to locate the owner of the privately owned vehicle and have the vehicle removed.

(ii) The vehicle may be moved a short distance to a legal parking area and temporarily secured until the owner is located.

(iii) Another responsible person may be allowed to drive or tow the privately owned vehicle with permission from the owner, operator, or person empowered to control the vehicle. In this case, the owner, operator, or person empowered to control the vehicle will be informed that the Military Police are not responsible for safeguarding the privately owned vehicle.

(3) Impounding of privately owned vehicle is justified when any of the following conditions exist:

(i) The privately owned vehicle is illegally parked—

(A) On a street or bridge, or is double parking and interferes with the orderly flow of traffic.

(B) On a sidewalk, within an intersection, or a cross-walk, on a railroad track, in a fire lane, or is blocking a driveway, so that the vehicle interferes with the operations or creates a safety hazard to other roadway users or the general public. An example would be a vehicle parked within 15 feet of a fire hydrant or blocking a properly marked driveway of a fire station or aircraft-alert crew facility.

(C) When blocking an emergency exit door of any public place (installation theater, club, dining facility, hospital, or other facility).

(D) In a "tow-away" zone that is so marked with proper signs.

(ii) The privately owned vehicle interferes with—

(A) Street cleaning operations and attempts to contact the owner have been unsuccessful.

(B) Emergency operations during a natural disaster or fire or must be removed from the disaster area during cleanup operations.

(iii) The privately owned vehicle has been used in a crime or contains evidence of criminal activity.

(iv) The owner or person in charge has been apprehended and is unable or unwilling to arrange for custody or removal.

(v) The privately owned vehicle is mechanically defective and is a menace to others using the public roadways.

(vi) The privately owned vehicle is disabled by a traffic incident and the operator is either unavailable or physically incapable of having the vehicle towed to a place of safety for storage or safekeeping.

(vii) Military Police reasonably believe the vehicle is abandoned.

(c) *Towing and storage.* (1) Impounded privately owned vehicles will be towed and stored by a contracted wrecker service.

(2) An approved impoundment area belonging to the contracted worker service will be used for the storage of impounded vehicles. This area will assure adequate accountability and security of towed vehicles. One set of keys to the enclosed area will be maintained by the Military Police.

(3) Temporary impoundment and towing of privately owned vehicles for violations of this supplement or involvement in criminal activities will be accomplished under the direct supervision of the Military Police.

(d) *Procedure for impoundment.* (1) Unattended privately owned vehicles.

(i) DD Form 2504 (Abandoned Vehicle Notice) will be conspicuously placed on privately owned vehicles considered unattended. This action will be documented by an entry in the Military Police desk journal.

(ii) The owner will be allowed three days from the date the privately owned vehicle is tagged to remove the vehicle before impoundment action is initiated. If the vehicle has not been removed after three days, it will be removed by a contracted civilian wrecker service. A DD Form 2505 (Abandoned Vehicle Removal Authorization) will be completed and issued to the contractor by the Military Police.

(iii) After the vehicle has been removed, the Military Police will complete DD Form 2506 (Vehicle Impoundment Report) as a record of the actions taken.

(A) An inventory listing personal property will be done to protect the owner, Military Police, the Contractor, and the Commander.

(B) The contents of a closed container such as a suitcase inside the vehicle need not be inventoried. Such articles should be opened only if necessary to identify the owner of the vehicle or if the container might contain explosives or otherwise present a danger to the public. Merely listing the container and sealing it with security tape will suffice.

(C) Personal property will be placed in the Military Police found property room for safe keeping.

(iv) DD Form 2507 (Notice of Vehicle Impoundment) will be forwarded by certified mail to the address of the last known owner of the vehicle to advise the owner of the impoundment action, and request information concerning the owner's intentions pertaining to the disposition of the vehicle.

(2) *Stolen privately owned vehicles or vehicles involved in criminal activity.*

(i) When the privately owned vehicle is to be held for evidentiary purposes, the vehicle will remain in the custody of the Military Police or CID until law enforcement purposes are served.

(ii) Recovered stolen privately owned vehicles will be released to the registered owner, unless held for evidentiary purposes, or to the law enforcement agency reporting the vehicle stolen.

(iii) A privately owned vehicle held on request of other authorities will be retained in the custody of the Military Police or CID until the vehicle can be released to such authorities.

(e) *Search incident to impoundment based on criminal activity.* Search of a privately owned vehicle in conjunction with impoundment based on criminal activity will likely occur in one of the following general situations:

(1) The owner or operator is not present. This situation could arise during traffic and crime-related impoundments and abandoned vehicle seizures. A property search related to an investigation of criminal activity should not be conducted without search authority unless the item to be seized is in plain view or is readily discernible on the outside as evidence of criminal activity. When in doubt, proper search authority should be sought, during duty hours, through the Chief, Criminal Law Branch of the Office of Staff Judge Advocate and after duty hours from the Duty Judge Advocate, before searching.

(2) The owner or operator is present. This situation can occur during either a traffic or criminal incident, or if the operator is apprehended for a crime or serious traffic violation and sufficient probable cause exists to seize the vehicle. This situation could also arise during cases of intoxicated driving or traffic accidents in which the operator is present but incapacitated or otherwise unable to make adequate arrangements to safeguard the vehicle. If danger exists to the Military Police or public or if there is risk of loss or destruction of evidence, an investigative type search of the vehicle may be conducted without search authority.

(f) *Disposition of vehicles after impoundment.* (1) If a privately owned vehicle is impounded for evidentiary purposes, the vehicle can be held for as long as the evidentiary or law enforcement purpose exists. The vehicle must then be returned to the owner without delay unless directed otherwise by competent authority.

(2) If the vehicle is unclaimed after 45 days from the date notification was mailed to the last known owner or the owner released the vehicle by properly completing DD Form 2505, the vehicle will be disposed of by one of the following procedures:

(i) Release to the lienholder, if known.

(ii) Processed as abandoned property in accordance with DOD 4160.21–M.

Appendix A to Part 636—References

Publications and forms referenced in this part may be viewed at the Office of the Provost Marshall on any major Army installation or may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

In addition to the related publications listed in appendix A to part 634 of this subchapter, the following publications provide a source of additional information:

FS Reg 190–7, Emergency Vehicle Operation
FS Reg 350–1, Active Component Training
FS Reg 385–14, Post Range Regulation
FS Reg 755–2, Lost, Abandoned, or Unclaimed Privately Owned Personal Property

In addition to the prescribed forms used in appendix A to part 634 of this subchapter, the following forms should be used:

AFZP Form Letter 316, Suspension of Driving Privileges
DA Form 3946, Military Police Traffic Accident Report
DA Form 3975, Military Police Report
DD Form 1920, Alcohol Influence Report
DD Form 2220, DOD Registered Vehicle
DD Form 2504, Abandoned Vehicle Notice
DD Form 2505, Abandoned Vehicle Removal Authorization
DD Form 2506, Vehicle Impoundment Report
DD Form 2507, Notice of Vehicle Impoundment

Other References

8 U.S.C. 13.
40 U.S.C. 318a.
Memorandum of Understanding, Subject: Seizure of Assets for Administrative Forfeiture in Drug Related Cases.

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Appendices B and C to part 636—[Reserved]

Appendix D to part 636—Glossary

In addition to the terms listed in appendix D to part 634 of this subchapter, the following terms apply:

ATV—All Terrain Vehicles
CID—Criminal Investigation Division
CUCV—Commercial Utility Cargo Vehicle
DDC—Defensive Driving Course
DOD—Department of Defense
DPCA—Directorate of Personnel and Community Activities
DUI—Driving Under the Influence
DDC—Motorcycle Defensive Driving Course
MP—Military Police
NLT—not later than
USAREUR—United States Army—Europe

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-14060 Filed 6-18-91; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI3-1-5075; FRL-3966-2]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is disapproving a site-specific revision to the Michigan State Implementation Plan (SIP) for ozone for the James River-KVP Plant in Kalamazoo County. The revision concerns volatile organic compounds (VOC) emissions from surface coating lines and would constitute an emissions trade (bubble) for the printing and coating lines, based upon multiple day "time averaging" of emissions and the extension of compliance dates. USEPA is disapproving this revision because it does not meet USEPA's policy requirements on bubbles, compliance date extensions, and extended averaging times.

EFFECTIVE DATE: This final rulemaking becomes effective on July 19, 1991.

ADDRESSES: Copies of the SIP revision request and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Charles H. Hatten, at (312) 886-6031, before visiting the Region V office.) U.S. Environmental Protection Agency, Region V, Air Toxics and Radiation Branch (5AT-26), 230 South Dearborn Street, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Charles H. Hatten, Air Toxics and Radiation Branch (5AT-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On January 27, 1984, the Michigan Department of Natural Resources (MDNR) submitted Consent Order Number 21-1983 for James River-KVP as a revision to its SIP. This revision concerns operations located at the James River-KVP Plant in Kalamazoo County, a "rural" county which has been designated as a nonattainment area for ozone. Michigan submitted additional information for James River-KVP on May 3, 1984, and May 25, 1984. On July 23, 1984, the State of Michigan submitted an "Alteration" to Consent Order No. 21-1983. Further information was submitted by the State on February 22, 1985.

The James River-KVP Plant has three types of emission sources to Michigan VOC regulations: A 55 parchment machine, a solvent coater, and a gravure graphic arts line consisting of six rotogravure presses. The parchment machines and solvent coater are regulated within the Michigan SIP by Rule 336.1610. The rotogravure printing and coating operations are regulated within the Michigan SIP by Rule 336.1624. The SIP revision seeks a bubble with multiple day "time averaging" and an extension of compliance dates for the James River-KVP emission sources.

Proposed Rulemaking Action

On May 10, 1989, USEPA proposed to disapprove the site-specific revision to the Michigan SIP for the James River-KVP Plant.[1] Comments on this notice of proposed rulemaking were received from counsel representing James River-KVP. However, the comments submitted by the commentor were not intended to refute the bases for USEPA's proposed disapproval. Instead, the commentor speculated on potential modifications to the proposed SIP revision which would address USEPA's objections. Because these comments do not deal with the underlying bases for USEPA's proposed disapproval of the current SIP revision, USEPA does not believe that these comments are relevant to the rulemaking currently before the Agency and is not responding to them in this rulemaking.[2]

Final Rulemaking Action

USEPA disapproves this requested SIP revision for the following reasons (as detailed in the May 10, 1989, **Federal Register** notice):

(1) The revision does not meet the requirements of the 1986 Emissions Trading Policy Statement (ETPS).

(2) The State did not demonstrate that the application of reasonably available control technology at James River-KVP is infeasible on a daily basis or that daily emissions cannot be determined.

(3) The State did not provide a demonstration that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area.

(4) The Consent Order does not satisfy USEPA's compliance date extension policy.

Today's action makes final the action proposed at May 10, 1989 (54 FR 21053). As noted elsewhere in this notice, USEPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from a Table One to a Table Two action under the processing procedures established at 54 FR 2214. On January 6, 1989, the Office of Management and Budget waived Table Two SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years.

Nothing is this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally-approved SIP conformance with the provisions of the 1990 Amendments enacted on November 15, 1990, in addition to the 1977 Amendments of the Clean Air Act. The Agency has determined that this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 19, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not effect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: June 10, 1991.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 91-14497 Filed 6-18-91; 8:45 am]

BILLING CODE 6560-50-M

[1] For a discussion of the history of the variance, the current Michigan SIP requirements, the emission limits contained in Consent Order 21-1983 (as altered), USEPA's current bubble policy, USEPA's extended averaging time criteria, USEPA's compliance date extension criteria, and USEPA's evaluation of the James River-KVP revision, please refer to the May 10, 1989 (54 FR 20153), **Federal Register** and to Technical Support Documents (TSD) dated April 20, 1984, December 17, 1986, and March 17, 1987.

[2] James River-KVP has the option of submitting a new SIP revision to the State of Michigan, which it then may submit to USEPA as a revision to the Michigan SIP. However, USEPA can only act today on the proposed SIP that has been submitted by the MDNR.

40 CFR Part 180

[PP 0E3845 /R1110; FRL-3962-4]

RIN 2070-AB78

Pesticide Tolerance for Ethyl 3-Methyl-4-(Methylthio)Phenyl(1-Methylethyl) Phosphoramidate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the nematicide ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate (also referred to in this document as fenamiphos) in or on the raw agricultural commodity bok choy. The regulation to establish a maximum permissible level for residues of the nematicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective June 19, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 0E3845/R1110], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 21, 1991 (56 FR 7003), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 0E3845 to EPA on behalf of the Agricultural Experiment Station of California.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose to establish tolerances for the residues of the nematicide fenamiphos (ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate) in or on the raw agricultural commodity bok choy at 0.5 part per million (ppm). The petitioner proposed that this use be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the other grounds for the objections. If a hearing is granted, the objection must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the request would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 28, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.349(c), by adding and alphabetically inserting the raw agricultural commodity bok choy, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

* * * * * * *

(c) * * *

Commodity	Parts per million
* * * * *	
Bok choy	0.5
* * * * *	

[FR Doc. 91-14099 Filed 6-18-91; 8:45 am]

BILLING CODE 6560-50-F

VOL 56 ISS 118 JE 19 1991 UMI

40 CFR Part 271

[FRL-3964-9]

Ohio: Final Authorization of State; Hazardous Waste Management Program: Response to Comments and Corrections

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule: Response to comments and corrections.

SUMMARY: This notice addresses two comments received in response to the April 8, 1991, **Federal Register** (56 FR 14203) regarding Ohio's provisions for the listing of K090 and K091 as hazardous waste found in Ohio Administrative Code 3745-51-32. Additionally, today's notice includes two provisions of Ohio's hazardous waste management program which were inadvertently left out of the April 8, 1991, **Federal Register**. Finally, today's notice corrects the table of authorities previously published in the **Federal Register** dated April 8, 1991, regarding final authorization of revisions to Ohio's hazardous waste management program.

DATES: Final authorization for Ohio's program revisions shall be effective August 19, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this Immediate Final Rule. Public comments on the two omitted provisions will be accepted until the close of business, July 19, 1991.

ADDRESSES: These provisions were made available to the public for review during the public comment period for the original application and are still available at the organizations at the U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Regulatory Development Section, 5HR-JCK-13, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Kroncke, (312) 353-4716 [FTS8-353-4716].

SUPPLEMENTARY INFORMATION:

I. Response to Comments

Two commenters suggested that Ohio should not be authorized for the Non-HSWA rule—Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification, 53 FR 35412, September 13, 1988. Both commenters cite *American Mining Congress* v. *U.S. EPA*, (AMC) 907 F2d 1179 (D.C. Cir. 1990) as authority to withhold authorizing Ohio for this rule. The commenters correctly point out that in AMC, the court remanded the Agency's decision for "fuller explanation of its decision to list K084, K086, and, in some respects, K090 and K091" at 907 F.2d 1191. However, this court order in no way removed these wastes from regulation as hazardous wastes under 40 CFR 261. Therefore, the State may apply for and receive authorization for its analog to 40 CFR 261.

Furthermore, the State programs are allowed to be "more stringent and broader in scope" than the Federal program as provided in 40 CFR 271.1(i) (1) and (2). Thus, even if these wastes are excluded from the Federal listing of hazardous waste, Ohio may still apply for authorization of a hazardous waste management program which lists these wastes as hazardous.

II. Additions

Two provisions of Ohio's hazardous waste management program were inadvertently left out of the April 8, 1991, **Federal Register**. These two provisions are listed here and can be found on the amended table of authorities printed below. On [insert date 60 days after publication] (unless EPA publishes a prior FR action withdrawing this immediate final rule), Ohio will be authorized to carry out, in lieu of the Federal program, these provisions of the State's program which are analogous to the following provisions of the Federal program (in addition to the provisions listed in the April 8, 1991, **Federal Register**): Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves (FR 7/15/87), analogous state authority Ohio Administrative Code (OAC), chapter 3745, rules 54-18(C) and 65-18 effective 12/30/89; and Permit Life (FR 7/15/87), analogous State authority OAC rule 50-54(A) effective 3/4/85.

III. Corrections

One commenter pointed out that several corrections and additions to the table of authorities were necessary to reflect the current analogous State authority. EPA has amended the table of authorities with the corrected analogous sections reprinted below.

The following corrections are made to Volume 56, Number 67 Federal Register appearing on page 14203 and 14204, in the issue of April 8, 1991.

Federal requirement	Analogous state authority
★ Dioxin Waste Listing and Management Standards, 50 FR 1978-2006, January 14, 1985.	Ohio Administrative Code (OAC), Chapter 3745, rules 50-44(A)(7), 50-44(C)(2)(g), (3)(i), (4)(k), (5)(i), (7)(i), effective 6/3/90; Rules 51-31, appendix to rule 51-31, 51-33(F), appendix to rule 51-11, 55-75(C) & (D), effective 6/29/90; Rule 65-01, effective 4/1/90; Rules 51-05(E)(1) & (2), 51-07(B)(1) & (3), 51-20, 51-30(D), appendix to rule 51-30, 57-43(A), 66-83(A) & (B), effective 12/30/89; Rules 56-33(A) & (B), 56-60(A) & (B), 56-83(A) & (B), 57-18(A) & (B), and 66-52(A) & (B), effective 1/30/90;
★ Waste Minimization, 50 FR 28702, July 15, 1985	Rules 50-40(C), 50-56(J)(2), 52-41(A)(6)-(8), 54-70(I), 54-73(B)(9), effective 12/30/89;
★ Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves, 50 FR 28702.	Rules 54-18(C), 65-18, effective 12/30/89;
★ Liquids in Landfills, 50 FR 28702, July 15, 1985	Rules 57-14, 66-14(A) & (D), effective 12/30/89;
★ Ground-Water Monitoring, 50 FR 28702, July 15, 1985	Rule 54-90(B), effective 12/30/89;
★ Cement Kilns, 50 FR 28702, July 15, 1985	Rule 51-05(A)(2), effective 12/30/89; Rule 51-33, effective 6/29/90; Rule 56-42(C), effective 5/28/87;
★ Permit Life, 50 FR 28702, July 15, 1985	Rule 50-54(A), effective 3/4/85;
★ Listing of TDI, DNT, and TDA Wastes, 50 FR 42936-42943, October 23, 1985	Rules 51-33(F), 51-11, effective 6/29/90; Rules 51-20, 51-30, 51-32, effective 12/30/89;

Federal requirement	Analogous state authority
★ Burning of Waste Fuel and Used Oil, Fuel in Boilers and Industrial Furnaces, 50 FR 49164-49212, November 29, 1985, (as amended on November 19, 1986, at 51 FR 41900-41904, and April 13, 1987, at 52 FR 11819-11822).	Rules 51-03(C)(2)(b)(ii), 51-05(B), 51-06(A)(2)(c), (3)(c) & (g)-(i), 56-45(A)-(E) & (G), 56-46, 56-50(A)-(E), 56-51(A) & (B), effective 12/30/89; Rules 56-53, 56-54, effective 12/8/88; Rules 57-40(A)(2), 56-40(A) & (B), 56-42(A) & (B), 56-43(A)-(C), 56-44, 56-52, 56-40, effective 5/28/87;
★ Listing of Four Spent Solvents, 51 FR 6541-6542, February 25, 1986	Rules 51-31, 51-33, appendix to rule 51-11, effective 6/29/90; Appendix to rules 51-20, 51-30, effective 12/30/89;
★ Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25470-25486, July 14, 1986.	Rules 50-10(A)(2), (6), (14), (19), (31), (49), (53), (59), (67), (69), (95), (98), (107), (108), & (119), 50-44(A)(5) & (13), 50-44(C)(2), effective 6/3/90; Rules 51-04 (A)(6), 54-15(B)(4), 55-90, 66-90, 66-93, effective 6/29/90; Rules 52-34 (A)(1), (D)(2) & (3), 65-15(B)(4), effective 4/1/90; Rules 54-73 (B)(6), 65-13(B)(6), 65-73(B)(3) & (6), 66-95, 66-992, effective 12/30/89; Rules 55-10(B)(3), 55-40(B)(3), 55-91, 55-92, 55-93, 55-94, 55-95, 55-96, 55-97, 55-98, 55-99, 66-10(B)(3), 66-40(B), 66-91, 66-92, 66-94, 66-96, 66-97, 66-98, 66-99, 66-991, effective 12/8/88;
★ Listing of EBDC 51 FR 37723-37729 October 24, 1986	Rule 51-30, appendix II to rule 51-20, effective 12/30/89; Rule 51-32, effective 6/29/90;
★ Land Disposal Restrictions, 51 FR 40572-40664, November 7, 1986 (as amended on June 4, 1987, 52 FR 21010).	Rules 50-10, 50-44(A)(21), effective 6/3/90; Rules 51-04(c) & (D)(1), 59-41, 59-42(A) & (B), 59-43, effective 6/29/90; Rules 50-51(K)(5), 52-11(F), 54-01(H), 54-13(A)(1), (B)(6) & (7), 65-01(E), effective 4/1/90; Rules 51-01(A), 51-05(B), (C), (E), (F)(2), & (G)(2), 51-06(A)(3) & (C)(1), 51-07(A), 51-20, 53-12, 54-73(B)(3), & (10)-(14), 59-01(A)-(C), 59-02, 59-03, 59-04, 59-07, 59-30, 59-31, 59-40, 59-41, 59-44, 59-50, 65-13(A)(1), (B)(6) & (7), 65-73(B)(3) & (8)-(12), effective 12/30/89; Rule 49-031(A), effective 2/23/89; Rule 51-30(B), effective 4/15/81; Rule 50-01, effective 12/2/81;
★ Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, 52 FR 44314-44321, November 18, 1987.	Rules 55-47(G)(2) & (3), 55-51(H)(2), 66-47(G)(2) & (3), effective 6/29/90;
★ Technical Corrections; Identification and Listing of Hazardous Waste, 53 FR 13382-13383, April 22, 1988.	Rules 51-33(E) & (F), appendix to 51-11, effective 6/29/90;
★ Farmer Exemptions; Technical Corrections, 53 FR 27164-27165, July 19, 1988	Rules 52-10(B)(1) & (D), 54-01(G)(4), 65-01(C)(6), effective 4/1/90; Rules 50-45(C)(2), 59-01(C)(5), effective 12/30/89;
★ Land Disposal Restrictions for First Third Scheduled Wastes, 53 FR 31138-31222, August 17, 1988.	Rules 59-41(A), 59-42(A)(2), 59-43, effective 6/29/90; Rule 54-13(B)(7)(C), effective 4/1/90; Rules 54-73(B)(10)-(16), 56-30(B), 59-01(C)(3)-(5) & (D), 59-04(A)(2), 59-07, 59-08, 59-30(B) & (C), 59-31, 59-32(D)-(G), 59-33, 59-40(A) & (C), 59-50(D), 65-13(B)(7)(c), 65-73(B)(8)/(14), effective 12/30/89;
★ Hazardous Waste Management System: Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 FR 34079-34087, September 2, 1988.	Rules 50-10(A)(27), (28), (128) & (129), effective 6/3/90; Rules 55-14, 55-90, 66-90, 66-93(F)(3) & (G)(3)(c), effective 6/29/90; Rule 66-992(C)(3), effective 12/30/89; Rule 66-14, effective 02/23/89; Rules 55-93(F)(3), 55-96, 66-10(B)(2), 66-96, effective 12/8/88;

List of Subjects in 40 Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a) 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926 and 6974(b).

Valdas V. Adamkus,

Regional Administrator.

FR Doc. 91-14205 Filed 6-18-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 281

[FRL-3966-9]

New Hampshire; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on New Hampshire's application for final approval.

SUMMARY: The State of New Hampshire has applied for final approval of its underground storage tank program under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed New Hampshire's application and has reached a final determination that New Hampshire's underground storage tank program satisfies all the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of New Hampshire to operate its program.

EFFECTIVE DATE: Final approval for New Hampshire shall be effective at 1 p.m., July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Susan Hanamoto, Office of Underground Storage Tanks, HPU-1, U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203, 617/573-5748.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA enables EPA to approve state underground storage tank programs to operate in a state in lieu of the federal underground storage tank program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the federal program, and (2) provide for

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adequate enforcement (Section 9004 (a) and (b) of RCRA, 42 U.S.C. 6991c (a) and (b)).

On January 8, 1991, EPA acknowledged receiving from the State of New Hampshire a complete official application to obtain final approval to administer its underground storage tank program. On April 22, 1991, EPA published a tentative decision announcing its intent to grant New Hampshire final approval of its program. Further background on the tentative decision to grant approval appears at 56 FR 16276, April 22, 1991.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel for lack of public interest. Since there was no public request, the public hearing was canceled. No public comments were received regarding EPA's approval of New Hampshire's underground storage tank program.

B. Decision

I conclude that the State of New Hampshire's application for final approval meets all of the statutory and regulatory requirements established by subtitle I of RCRA. Accordingly, New Hampshire is granted final approval to operate its underground storage tank program. The State of New Hampshire now has the responsibility for managing all regulated underground storage tank facilities within its borders and carrying out all aspects of the federal underground storage tank program except with regard to Indian lands where EPA will have regulatory authority. New Hampshire also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA, 42 U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain federal regulations in favor of the State of New Hampshire's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks within the State. It does not impose any new burdens on small entities. This rule, therefore, does not require flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval and underground storage tanks.

Authority: Section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6991c.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 91-14621 Filed 6-18-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 64

[Docket No. FEMA 7515]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 *et. seq.*) Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Regular Program Conversions				
Region IV				
Georgia: Gordon County, unincorporated areas	130094	July 10, 1975, Emerg.; July 2, 1991, Reg.; July 2, 1991, Susp.	July 2, 1991	July 2, 1991.
Tennessee: Benton County, unincorporated areas	470216	Oct. 4, 1990, Emerg.; July 2, 1991, Reg.; July 2, 1991, Susp.	July 2, 1991	Do.
Region V				
Illinois: Hamburg, village of, Calhoun County	170734	Dec. 6, 1973, Emerg.; Feb. 15, 1984, Reg.; July 2, 1991, Susp.	July 2, 1991	Do.
Region VI				
New Mexico: Valencia County, unincorporated areas	350086	April 13, 1979, Emerg.; July 2, 1991, Reg.; July 2, 1991, Susp.	July 2, 1991	Do.
Region VIII				
Wyoming: Cheyenne, city of, Laramie County	560030	Dec. 12, 1973, Emerg.; Sept. 30, 1977, Reg.; July 2, 1991, Susp.	July 2, 1991	Do.
Region IX				
California: Big Bear Lake, city of, San Bernardino County	060731	March 7, 1989, Emerg.; March 7, 1989, Reg.; July 2, 1991, Susp.	July 2, 1991	Do.
Region I				
Connecticut:				
Derby, City of, New Haven County	090075	Feb. 4, 1972, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	July 16, 1991.
Seymour, town of, New Haven County	090088	Dec. 18, 1974, Emerg.; July 3, 1978, Reg.; July 16, 1991, Susp.	April 16, 1991	Do.
Maine:				
Franklin, town of, Hancock County	230282	Feb. 4, 1976, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
North Haven, town of, Knox County	230228	April 2, 1976, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Penobscot, town of, Hancock County	230290	June 14, 1976, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Massachusetts: Russell, town of, Hampton County	250148	Aug. 8, 1975, Emerg.; Dec. 15, 1990, Reg.; July 16, 1991, Susp.	Dec. 15, 1990	Do.
New Hampshire: Tamworth, town of, Carroll County	330018	July 21, 1976, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Vermont: Randolph, town of, Orange County	500073	Nov. 21, 1974, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Region III				
Pennsylvania: Connellsville, township of, Fayette County	421623	March 3, 1977, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Region IV				
Florida:				
Baker County, unincorporated areas	120419	Nov. 2, 1979, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Jefferson County, unincorporated areas	120331	April 21, 1978, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Liberty County unincorporated areas	120148	May 19, 1978, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.

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State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
North Carolina:				
Martin County, unincorporated areas	370155	Dec. 18, 1975, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Sampson County, unincorporated areas	370220	March 29, 1982, Emerg., July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Region VI				
New Mexico: Hobbs, city of, Lea County	350029	Sept. 20, 1976, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.
[FR Doc. 91-14445 Filed 6-18-91; 8:45 am]
BILLING CODE 6718-21-M

44 CFR Part 65

[Docket No. FEMA-7025]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: These modified base flood elevations are currently in effect and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 65.4).

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Jefferson	Unincorporated Areas	May 10, 1991, May 17, 1991, *Birmingham News.*	The Honorable Mary Buckelew, President, Jefferson County Board of Commissioners, County Courthouse, room 211, Birmingham, Alabama 35263.	Apr. 29, 1991	010217
Colorado: Boulder	City of Boulder	May 24, 1991, May 31, 1991, *Daily Camera.*	The Honorable Leslie Durgin, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	May 6, 1991	080024
Hawaii: Hawaii	Unincorporated Areas	May 17, 1991, May 24, 1991, *Hawaii Tribune Herald.*	The Honorable Lorraine R. Inouye, Mayor, Hawaii County, Hawaii County Office Building, 25 Aupuni Street, Hilo, Hawaii 96720.	May 14, 1991	155166
Mississippi: Rankin	City of Richland	June 5, 1991, June 12, 1991, *Rankin County News.*	The Honorable Lester Spell, Jr., Mayor, City of Richland, City Hall, P.O. Box 180127, Richland Mississippi 39218.	June 24, 1991	280280
Missouri: St. Louis	City of Cool Valley	May 15, 1991, May 22, 1991, *The St. Louis Post Dispatch.*	The Honorable Eileen H. McCartney, Mayor, City of Cool Valley, 100 Signal Hill Drive, Cool Valley, Missouri 63121.	Apr. 29, 1991	290342
Nevada: Independent City	City of Carson City (FEMA Docket No. 7014).	Feb. 12, 1991, Feb. 15, 1991, *Nevada Appeal.*	The Honorable Mary Teixeira, Mayor, City of Carson City, 2621 Northgate Lane, Carson City, Nevada 89706.	Feb. 5, 1991	320001
North Carolina: Craven	Town of Trent Woods	June 6, 1991, June 13, 1991, *New Bern Sun Journal.*	The Honorable Leroy H. Price, Mayor, Town of Trent Woods, P.O. Box 2392, New Bern, North Carolina 28561-2392.	June 24, 1991	370434
Tennessee: Shelby	City of Memphis	June 6, 1991, June 13, 1991, *Memphis Daily News.*	The Honorable Richard C. Hackett, Mayor, City of Memphis, 125 North Mid-America Mall, Memphis, Tennessee 38103.	June 24, 1991	470177

Issued: June 6, 1991.

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.
[FR Doc. 91-14442 Filed 6-18-91; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

EFFECTIVE DATE: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

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PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Unincorporated Areas.	Pima County (FEMA Docket No. 7014).	February 15, 1991, February 22, 1991, *Daily Territorial*.	The Honorable Dan Eckstrom, Chairman, Pima County Board of Supervisors, 130 West Congress, Fifth Floor, Tucson, Arizona 85701.	Feb. 5, 1991	040073
Florida: Monroe (Docket No. FEMA-7014).	Unincorporated Areas	February 11, 1991, February 18, 1991, *The Key West Citizen*.	The Honorable Wilhelmina Harvey, Mayor, Monroe County, 310 Fleming Street, P.O. Box 93, Key West, Florida 33040.	Feb. 4, 1991	125129
Illinois: Kankakee (Docket No. FEMA-7014).	Village of Bourbonnais	February 12, 1991, February 19, 1991, *The Bourbonnais Herald*.	The Honorable Terry Vaughn, Mayor, Village of Bourbonnais, 700 Main Street, NW., Bourbonnais, Illinois 60914.	Feb. 1, 1991	170337
Illinois: Kankakee (Docket No. FEMA-7014).	Village of Bradley	February 12, 1991, February 19, 1991, *The Kankakee Daily Journal*.	The Honorable Kenneth P. Hayes, Mayor, Village of Bradley, 147 South Michigan Avenue, Bradley, Illinois 60915.	Feb. 1, 1991	170338
Indiana: Marion (Docket No. FEMA-7016).	City of Indianapolis	February 21, 1991, February 28, 1991, *Indianapolis Star*.	The Honorable William H. Hudnut III, Mayor, City of Indianapolis, 2501 City-County Building, Indianapolis, Indiana 46204.	Feb. 11, 1991	180159
Nevada: Elko	City of Elko (FEMA Docket No. 7021).	February 7, 1991, and February 14, 1991, *Elko Daily Free Press*.	The Honorable D. George Corner, Mayor, City of Elko, 1751 College Avenue, Elko, Nevada 89801.	Jan. 31, 1991	320010

Issued: June 6, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-14441 Filed 6-18-91; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the revised Flood Insurance Rate Map (FIRM) showing modified base flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and an opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided. The proposed modified elevations were also published in the **Federal Register**. The Administrator has resolved any appeals resulting from these notifications.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies, for reasons set out in the proposed rule, that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited for each community.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) modified
ARKANSAS	
Baxter County (Unincorporated Areas) (FEMA Docket No. 7018)	
White River:	
Approximately 371 miles above confluence with Black River	*366
Approximately 381.5 miles above confluence with Black River	*408
Maps available for inspection at the Mountain Home City Hall, Mountain Home, Arkansas.	
Jonesboro (City), Craighead County (FEMA Docket No. 7008)	
Whitemen's Creek:	
At County Route 674	*231
Approximately 160 feet downstream of Union Pacific Railroad	*249
Approximately 317 feet upstream of Union Pacific Railroad	*251
Approximately 730 feet downstream of Caraway Road	*256
Moore's Ditch Lateral:	
At the confluence with Moore s Ditch	*237
Approximately 50 feet upstream of Union Pacific Railroad	*250
Butlers Ditch:	
At confluence with Little Bay Ditch	*232
Approximately .25 mile upstream of State Route 18	*235
Maple Slough Ditch:	
At the confluence with Gum Slough Ditch	*232
At the State Route 18	*236
Christian Creek:	
At the confluence with Lost Creek	*287
At Oakhurst Street	*295
Approximately 422 feet downstream of Wood Springs Road	*314
Approximately 211 feet downstream of Covey Road	*339
Christian Creek Lateral:	
At the confluence with Cristian Creek	*288
Approximately 750 feet upstream of the confluence with Christian Creek	*290
At West Johnson Avenue	*293
Approximately 900 feet downstream of Clubhouse Street	*294
Turtle Creek:	
At the confluence with Whitemen's Creek	*248
At St. Louis Southwestern Railway	*257
At the downstream side of U.S. Route 49 and State Route 1	*297
Gum Slough Ditch:	
At a point approximately 150 feet downstream of County Route 51	*232
At a point approximately 450 feet upstream of County Route 51	*232
Viney Slough Ditch:	
Approximately .25 mile upstream of County Route 151	*232
At the confluence of Higginbottom Creek (County Route 143)	*247
Lateral No. 3:	
At the confluence with Little Bay Ditch	*232
At Commerce Drive	*236
Little Bay Ditch:	
Approximately .5 mile downstream of the confluence of Lateral No. 3	*232
Approximately .3 mile upstream of State Route 18	*236
Higginbottom Creek:	
At the confluence with Viney Slough Ditch	*247
Approximately 250 feet downstream of State Route 1 Bypass	*256
At Caraway Road	*264
Downstream of Parker Road	*282
Lost Creek:	
Approximately .2 mile downstream of U.S. Route 63	*283
Approximately .3 mile upstream of Clubhouse Road	*294
Approximately 800 feet upstream of Church Street	*299
County Road	*323
Turtle Creek Lateral:	
At the confluence with Turtle Creek	*260
Approximately 280 feet upstream of the confluence with Turtle Creek	*260
Maps available for inspection at the City Hall, 314 W. Washington, Jonesboro, Arkansas.	
Norfork (City), Baxter County (FEMA Docket No. 7018)	
White River:	
Approximately 374 miles above confluence with Black River	*362
Approximately 377 miles above confluence with Black River	*369
Maps available for inspection at the City Hall, Norfork, Arkansas.	
CALIFORNIA	
Mendota (City), Fresno County (Docket No. 7018)	
Panoche Creek:	
At the intersection of Sorensen and Holmes Avenues	*168
Maps are available for review at City Hall, 643 Quince Street, Mendota, California.	
CONNECTICUT	
West Hartford (Town), Hartford County (FEMA Docket No. 7018)	
Tumbledown Brook Tributary:	
At downstream corporate limits	*137
At upstream corporate limits	*147
Maps available for inspection at the Town Planner's Office, 50 South Main Street, West Hartford, Connecticut.	
GEORGIA	
Warner Robins (City), Houston County (FEMA Docket No. 7018)	
Sandy Run Creek:	
Just upstream of State Route 247	*270
About 3,800 feet upstream of confluence of Howard Branch	*283
Howard Branch:	
At mouth	*305
About 470 feet upstream of mouth	*305
Maps available for inspection at the City of Warner Robins, Engineering Department, Warner Robins, Georgia.	
MAINE	
Sanford (Town), York County (FEMA Docket No. 7018)	
Mousam River:	
At confluence with Estes Lake	*216
Approximately 1,100 feet upstream of State Route 109	*432
Estes Lake:	
At the Estes Lake Dam	*216
Approximately 7,300 feet upstream of Pool's Crossing	*217
Maps available for inspection at the Town Hall, 267 Main Street, Sanford, Maine.	
MARYLAND	
Frederick County (Unincorporated Areas) (FEMA Docket No. 7018)	
Unnamed Tributary to Hollow Creek:	
Approximately 450 feet downstream of Beech Tree Lane	*579
At downstream side of Beech Tree Drive	*607
Maps available for inspection at the Winchester Hall, 12 East Church Street, Frederick, Maryland.	
MASSACHUSETTS	
Harwich (Town), Barnstable County (FEMA Docket No. 7018)	
Pleasant Bay:	
At the northern corporate limits	*17
Muddy Creek:	
At the intersection of Sugar Hill Drive and Nickerson Road	*12
Maps available for inspection at the Engineering Department, Town Hall, 732 Main Street, Harwich, Massachusetts.	
Orleans (Town), Barnstable County (FEMA Docket No. 7018)	
Atlantic Ocean Shoreline:	
Sarah's Pond	*12
East of Little Pochet Island	*15
Little Pleasant Bay:	
Pilgrim Lake	*13
Meeting House Pond	*13
Namequoit River	*13
Paw Wah Pond	*14
Portanimicut Road extended	*17
Pleasant Bay:	
Northwest of intersection of Tar Kiln Road and State Route 28 (South Orleans Road)	*12
Eastern shoreline of Sipson Island	*17
Maps available for inspection at the Town Office, 19 School Road, R.R. #1, Orleans, Massachusetts.	
NEW JERSEY	
Ridgefield Park (Village), Bergen County (FEMA Docket No. 7018)	
Overpeck Creek:	
At Tidegate at New Jersey Turnpike (I-95)	*7
Approximately 1.2 miles upstream of U.S. Route 46	*7
Maps available for inspection at the Village Administrative Offices, 234 Main Street, Ridgefield Park, New Jersey.	
NEW YORK	
Northumberland (Town), Saratoga County (FEMA Docket No. 7018)	
Hudson River:	
At corporate limits	*101
At downstream side of Thomson Dam	*108
Champlain Canal:	
At corporate limits	*102
Approximately 500 feet downstream of Divergence with Hudson River	*108
Maps available for inspection at the Town Hall, Catherine Street, Ganseboort, New York.	
OKLAHOMA	
Henryetta (City), Okmulgee County (FEMA Docket No. 7018)	
Coal Creek:	
Approximately 450 feet upstream of confluence of Unnamed Creek	*654
Approximately .28 mile downstream of U.S. Highway 62 & 75	*656
Unnamed Creek:	
Approximately .03 mile downstream of U.S. Highway 62 & 75	*653
Approximately .075 mile downstream of U.S. Highway 62 & 75	*653
Dutch Creek:	
Approximately 230 feet downstream of Corporation Street	*691
Approximately 140 feet upstream of Corporation Street	*691
Maps available for inspection at the City Hall, 4th & Broadway, Henryetta, Oklahoma.	
Okmulgee (City), Okmulgee County (FEMA Docket No. 7018)	
North Okmulgee Creek:	
At downstream corporate limits	*674
Approximately .69 mile upstream of corporate limits	*680
Cussetah Creek Tributary:	
At downstream corporate limits	*645
Approximately .7 mile upstream of Mission Road	*667
South Okmulgee Creek:	
Approximately .75 mile downstream of corporate limits	*645
Approximately 1,900 feet upstream of corporate limits	*645
Maps available for inspection at the City Engineer's Office, 111 E. 4th, Okmulgee, Oklahoma.	
TEXAS	
Denton County (Unincorporated Areas) (FEMA Docket No. 7012)	
Timber Creek:	
At the upstream corporate limits of the Town of Double Oak	*588
Approximately 225 feet upstream of the upstream corporate limits of the Town of Double Oak	*588
Cottonwood Branch:	
Approximately 0.43 mile downstream of State Route 423	*599
Approximately 900 feet downstream of State Route 423	*644
Maps available for inspection at 110 West Hickory, Denton, Texas.	

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Issued: June 6, 1991.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-14443 Filed 6-18-91; 8:45 am]

BILLING CODE 6718-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-130; RM-6966; RM-6990]

Radio Broadcasting Services; Medical Lake and Davenport, Washington, and Sandpoint, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sunbrook Communications II, L.P. and Blue Sky Broadcasting: (1) Substitutes Channel 270C2 for Channel 237A at Medical Lake, Washington, and modifies the license of Station KAAR(FM) accordingly; (2) substitutes Channel 237C1 for Channel 237A at Sandpoint, Idaho, and modifies the license of Station KPND(FM) accordingly; and (3) substitutes Channel 247A for unoccupied but applied for Channel 273A at Davenport, Washington. See 54 FR 26219, June 22, 1989. The applicant for Channel 273A at Davenport may amend its application to specify Channel 247A without loss of cut-off protection. With this action, this proceeding is terminated. See Supplementary Information, *infra*.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: Channel 270C2 can be allotted to Medical Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.8 kilometers (9.2 miles) northwest to accommodate Sunbrook's desired transmitter site, at coordinates 47-41-30 and 117-46-00. Channel 237C1 can be allotted to Sandpoint with a site restriction of 34.6 kilometers (21.5 miles) northeast to avoid short-spacings to Station CBTA-FM, Channel 238C, Trail, British Columbia, Canada, to unoccupied and unapplied for Channel 239C at Trail, British Columbia, and to the pending application (BPH-900616ID) of Station KLER-FM for Channel 237C3, Orofino, Idaho, at coordinates 46-25-19 and 116-08-30. Channel 247A can be allotted to Davenport without the imposition of a site restriction at coordinates 47-39-06 and 118-09-06.

This is a synopsis of the Commission's Report and Order, MM Docket No. 89-130, adopted May 30, 1991, and released June 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 237A and adding Channel 237C1 at Sandpoint.

3. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 273A and adding Channel 247A at Davenport, and by removing Channel 237A and adding Channel 270C2 at Medical Lake.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14492 Filed 6-18-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 73 and 74

[MM Docket No. 90-263; FCC 91-155]

Settlement Agreements Among Applicants for Construction Permits

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In responding to petitions for reconsideration and a request to defer the effective date, the Commission clarifies and modifies the rules adopted in its Report and Order (56 FR 373, January 4, 1991) in this proceeding. These rules limit payments that may be received by competing applicants for construction permits for new broadcast stations or modifications to facilities of existing stations. The Commission modified the settlement payment limits to permit recovery of expenses at any stage in the comparative hearing process. The Commission clarified that it will not apply the settlement limitations to settlement arrangements that are part of a *bona fide* merger of the settling applicants. This action is taken as part of the Commission's continuing effort to eliminate abuse of the Commission's licensing processes.

EFFECTIVE DATE: August 1, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Beverly McKittrick, Mass Media Bureau, Policy and Rules Division, (202) 632-5414.

SUPPLEMENTARY INFORMATION: Public reporting burden for § 73.3525 (3060-0213) is estimated to be 8 hours per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0213), Washington, DC 20503.

This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 90-263, adopted May 9, 1991, and released May 15, 1991. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC.

Synopsis of Memorandum Opinion and Order

1. Through this decision, the Commission clarified and modified the rules adopted in the Report and Order in this proceeding to reflect its effort to eliminate abuse of Commission processes by limiting the payments that can be made to settle cases involving competing applications for construction permits for new broadcast stations or modifications to facilities of existing stations.

2. On reconsideration, the Commission was persuaded that an across-the-board limitation on settlement payments to expenses is sufficient to deter speculative applicants because it forecloses applicants from making a profit on settlements. While an absolute bar on settlement payments after the start of the trial would no doubt encourage earlier settlements, the Commission was concerned that this may prevent *bona fide* applicants with limited financial resources from prosecuting their applicants past the start of the trial. Moreover, by making it impossible for parties to fully recoup their expenses at later hearing stages, such a policy would discourage those that had decided against early settlement from settling at some later point. Therefore, the Commission concluded that, in the context of comparative proceedings involving applicants for new stations, the benefit of eliminating settlement payments after the trial starts, encouraging earlier settlements, was insufficient to outweigh the possible adverse consequences of such a prohibition. In light of the modification of our settlement policy, applicants will be able to recoup their expenses at any point in the comparative new proceeding.

3. The Commission clarified that its new rules would not apply to settlements by merger of applicants. The rules limiting settlement payments to legitimate expenses should not be applied in such a manner as to preclude or unduly hinder legitimate merger transactions involving competing applicants. The Commission noted that it will rely on the broad principles of case-by-case analysis outlined in Venton Corporation, 90 FCC 2d 307 (1982). In addition, the Commission intends to follow certain specified guidelines in reviewing merger proposals for legitimacy. First, it will examine with a heightened level of scrutiny any merger proposal where the dismissing applicant receives cash, either up-front or on a deferred basis, and the payment is guaranteed regardless of the outcome of the business venture. The Commission will accord similar scrutiny to any merger proposal that provides for cash or similar liquid asset payments to the dismissing applicant in excess of its out-of-pocket expenses. Finally, out of concern for the potential abuse of its processes that the merger exception may engender, the Commission will be inclined to disallow merger settlements that present a close question. To aid the Commission in its scrutiny of merger settlement agreements, the Commission will require applicants to submit a full explanation and justification of the parties' exchange of consideration in addition to the itemization of expenses required in non-merger settlements.

4. The Commission denied the request to defer the effective date of the settlement limits and to require applicants who pay their hearing fee on or before March 21, 1991, to serve notice of such payment of competing applicants. This deferral and notice requirement would provide a longer period for an applicant to offer unlimited settlement payments to other applicants after ascertaining, by payment of hearing fees, which of the other applicants intended to go forward and should be approached about settlement. The Commission pointed out that pending applicants have had ample notice of the Commission's intention to impose settlement limits and can settle without any limits before the effective date of the adopted rules.

5. The Commission affirmed its determination that the proposal to create a minority media ownership trust was beyond the scope of this proceeding because it implicates a board range of issues unrelated to the issues in this proceeding. It will be considered separately. The Commission rejected a proposal to create an exception for minorities to a general prohibition against third-party buyouts. The Commission noted that while it is interested in new and creative proposals to foster its longstanding goal of diversifying ownership of broadcast media, it cannot adopt policies that hold substantial potential for abuse of Commission processes.

Final Regulatory Flexibility Statement

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rule will have a beneficial impact on entities of all sizes because it will reduce the number of competing applications filed in bad faith. As a result, hearings will likely be less complex in terms of numbers of parties and issues. This will be especially beneficial to small entities with limited financial resources.

7. Accordingly, *it is ordered,* That the Petition for Partial Reconsideration of the Federal Communications Bar Association *is granted.*

8. *It is further ordered,* That the Petition for Reconsideration filed by Hampton Broadcasting *et al. is granted* to the extent indicated above and *is denied* in all other aspects.

9. *It is further ordered,* That the Petition for Partial Reconsideration and Request for Deferral of Effective Date filed by Melanie Bruton *et al. is denied.*

10. *It is further ordered,* That the Petition for Reconsideration, or in the Alternative Petition for Rulemaking filed by the National Association for the Advancement of Colored People, *et al. is denied* to the extent indicated above.

11. *It is further ordered,* That the Motion for Partial Deferral of Effective Date filed by the Federal Communications Bar Association is Dismissed as Moot.

12. *It is further ordered,* That pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, parts 73 and 74 of the Commission's Rules, 47 CFR parts 73 and 74, *are amended* as set forth below, effective August 1, 1991, subject to Office of Management and Budget approval.

List of Subjects in 47 CFR Part 73 and 74

Radio broadcasting, Television broadcasting.

Amendatory Text

PART 73—[AMENDED]

Parts 73 and 74 of title 47 of the Code of Federal Regulations are amended as follows:

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. Sections 154 and 303.

2. Section 73.3525 is revised to read as follows:

§ 73.3525 Agreements for removing application conflicts.

(a) Except as provided in § 73.3523 regarding dismissal of applications in comparative renewal proceedings, whenever applicants for a construction permit for a broadcast station enter into an agreement to procure the removal of a conflict between applications pending before the FCC by withdrawal or amendment of an application or by its dismissal pursuant to § 73.3568, all parties thereto shall, within 5 days after entering into the agreement, file with the FCC a joint request for approval of such agreement. The joint request shall be accompanied by a copy of the agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth:

(1) The reasons why it is considered that such agreement is in the public interest;

(2) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;

(3) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; *Provided:* That this provision shall not apply to *bona fide* merger agreements;

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(4) The exact nature and amount of any consideration paid or promised;

(5) An itemized accounting of the expenses for which it seeks reimbursement; and

(6) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

(b) Whenever two or more conflicting applications for construction permits for broadcast stations pending before the FCC involve a determination of fair, efficient and equitable distribution of service pursuant to section 307(b) of the Communications Act, and an agreement is made to procure the withdrawal (by amendment to specify a different community or by dismissal pursuant to § 73.3568) of the only application or applications seeking the same facilities for one of the communities involved, all parties thereto shall file the joint request and affidavits specified in paragraph (a) of this section.

(1) If upon examination of the proposed agreement the FCC finds that withdrawal of one of the applications would unduly impede achievement of a fair, efficient and equitable distribution of radio servce among the several States and communities, then the FCC shall order that further opportunity be afforded for other persons to apply for the facilities specified in the application or applications to be withdrawn before acting upon the pending request for approval of the agreement.

(2) Upon release of such order, any party proposing to withdraw its application shall cause to be published a notice of such proposed withdrawal at least twice a week for 2 consecutive weeks within the 3-week period immediately following release of the FCC's order, in a daily newspaper of general circulation published in the community in which it was proposed to locate the station. However, if there is no such daily newspaper published in the community, the notice shall be published as follows:

(i) If one or more weekly newspapers of general circulation are published in the community in which the station was proposed to be located, notice shall be published in such a weekly newspaper once a week for 3 consecutive weeks within the 4-week period immediately following the release of the FCC's order.

(ii) If no weekly newspaper of general circulation is published in the community in which the station was proposed to be located, notice shall be published at least twice a week for 2 consecutive weeks within the 3-week period immediately following the release of the FCC's order in the daily newspaper having the greatest general circulation in the community in which the station was proposed to be located.

(3) The notice shall state the name of the applicant; the location, frequency and power of the facilities proposed in the application; the location of the station or stations proposed in the applications with which it is in conflict; the fact that the applicant proposes to withdraw the application; and the date upon which the last day of publication shall take place.

(4) Such notice shall additionally include a statement that new applications for a broadcast station on the same frequency, in the same community, with substantially the same engineering characteristics and proposing to serve substantially the same service area as the application sought to be withdrawn, timely filed pursuant to the FCC's rules, or filed, in any event, within 30 days from the last date of publication of the notice (notwithstanding any provisions normally requiring earlier filing of a competing application), will be entitled to comparative consideration with other pending mutually exclusive affidavits.

(5) Within 7 days of the last day of publication of the notice, the applicant proposing to withdraw shall file a statement in triplicate with the FCC giving the dates on which the notice was published, the text of the notice and the name and location of the newspaper in which the notice was published.

(6) Where the FCC orders that further opportunity be afforded for other persons to apply for the facilities sought to be withdrawn, no application of any party to the agreement will be acted upon by the FCC less than 30 days from the last day of publication of the notice specified in paragraph (b)(2) of this section. Any applications for a broadcast station on the same frequency in the same community, with substantially the same engineering characteristics and proposing to serve substantially the same service area as the application sought to be withdrawn, filed within the 30-day period following the last date of publication of the notice (notwithstanding any provisions normally requiring earlier filing of a competing application), or otherwise timely filed, will be entitled to comparative consideration with other pending mutually exclusive applications. If the application of any party to which the new application may be in conflict has been designated for hearing, any such new application will be entitled to consolidation in the proceeding.

(c) Except where a joint request is filed pursuant to paragraph (a) of this section, any applicant filing an amendment pursuant to § 73.3522(a) or a request for dismissal pursuant to § 73.3568(a) which would remove a conflict with another pending application; or a petition for leave to amend pursuant to § 73.3522 (b) or (c) which would permit a grant of the amended application or an application previously in conflict with the amended application; or a request for dismissal pursuant to § 73.3568(c), shall file with it an affidavit as to whether or not consideration (including an agreement for merger of interests) has been promised to or received by such applicant, directly or indirectly, in connection with the amendment, petition or request.

(d) Upon the filing of a petition for leave to amend or to dismiss an application for broadcast facilities which has been designated for hearing or upon the dismissal of such application on the FCC's own motion pursuant to § 73.3568(b), each applicant or party remaining in hearing, as to whom a conflict would be removed by the amendment or dismissal shall submit for inclusion in the record of that proceeding an affidavit stating whether or not he has directly or indirectly paid or promised consideration (including an agreement for merger of interests) in connection with the removal of such conflict.

(e) Where an affidavit filed pursuant to paragraph (c) of this section states that consideration has been paid or promised, the affidavit shall set forth in full all relevant facts, including, but not limited to, the material listed in paragraph (a) of this section for inclusions in affidavits.

(f) Affidavits filed pursuant to this section shall be executed by the applicant, permittee or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(g) Requests and affidavits which relate to an application which has not been designated for hearing shall bear the file number of such application. If the affiant is also an applicant, the affidavit shall also bear the file number of affiant's pending application(s). Requests and affidavits which relate to an application which is designated for hearing shall bear the file number of that application and the hearing docket number and will be acted on by the presiding officer.

(h) For the purposes of this section an application shall be deemed to be "pending" before the FCC and a party shall be considered to have the status of an "applicant" from the time an application is filed with the FCC until an order of the FCC granting or denying it is no longer subject to reconsideration by the FCC or to review by any court.

(i) For purposes of this section, "legitimate and prudent expenses" are those expenses reasonably incurred by an applicant in preparing, filing, prosecuting, and settling its application for which reimbursement is being sought.

(j) For purposes of this section, "other consideration" consists of financial concessions, including, but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(k) For purposes of this section, an "ancillary agreement" means any agreement relating to the dismissal of an application or settling of a proceeding, including any agreement on the part of an applicant or principal of an applicant to render consulting services to another party or principal of another party in the poroceeding.

Note: Although § 74.780 of the Rules makes this section generally applicable to low power TV, TV translators, and TV booster stations, paragraph (b) of this section shall not be applicable to such stations.

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. Sections 154 and 303.

2. Section 74.780 is amended by revising the sentence that cross-references § 73.3525, to read as follows:

§ 74.780 Broadcast regulations applicable to translators, low power, and booster stations.

* * * * *

Section 73.3525—Agreements for removing application conflicts.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-14460 Filed 6-18-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 915, 917, 950 and 970

Acquisition Regulation

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: On February 7, 1991, the Department of Energy (DOE) published an Interim Final Rule which amended the Department of Energy Acquisition Regulation (DEAR) regarding its contracting practices and fee arrangements with its profit making and fee bearing (hereinafter referred to as "profit making") management and operating (M&O) contractors. 56 FR 5064. These amendments were made in order to clarify the responsibilities in the performance of these contracts while providing additional incentives to enhance the accountability of M&O contractors to DOE. In today's notice, DOE responds to significant comments on the interim final rule which raise new arguments.

This final rule adopts as final the interim final rule published in the **Federal Register** on February 7, 1991, with certain minor changes as indicated below.

EFFECTIVE DATES: July 19, 1991.

FOR FURTHER INFORMATION CONTACT:

Stephen D. Mournighan, Office of Policy, PR-12, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-8182

Lawrence R. Oliver, Assistant General Counsel, for Procurement and Finance (GC-34), 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-2440

OR

Mary Ann Masterson, Deputy Assistant General Counsel for Procurement and Finance, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 586-1900

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments Received
III. Procedural Requirements

I. Background

1. Introduction

On February 7, 1991, DOE published a notice of interim final rulemaking with opportunity for public comment. The interim final rule amended DOE regulations regarding contracting practices and fee arrangements with profit making management and operating (M&O) contractors. 56 FR 5064. In the preamble, DOE provided an opportunity for public comment on the interim final rule (IFR). The principal purpose of today's notice is to respond to comments DOE received which raise new arguments or perspectives warranting a formal response. A secondary purpose is to make minor changes, in the nature of technical corrections and clarifications, to the IFR which do not alter the text substantively. Details regarding the procedural background of this rulemaking and previous responses to public comments appear in the preamble to the IFR.

2. Summary of IFR

In the administration of its profit making M&O contracts, the accountability portion of the rule clarified the responsibilities of the parties and provided additional incentives directed toward improved accountability of M&O contractors. One of DOE's objectives in implementing this new rule is to emphasize the importance it places on the responsibility and accountability of its M&O contractors for excellent performance, particularly in the areas of environment, health and safety, in managing and operating DOE facilities.

In addition, the structure and amounts of fees to be paid to its profit making M&O contractors were changed to compensate profit making M&O contractors for the increased financial exposure placed on M&O contractors by the accountability provisions of the final rule. First, an important purpose of the award fee provisions of the final rule is to provide another management tool to promote performance above expected levels by establishing a fee arrangement which provides strong financial incentives for contractor performance at substantially higher levels than those which were utilized under the old fee structure. In addition, contractors who perform at less than satisfactory levels will find a portion of their basic fee to be at risk. Second, the fee schedules which were included in the old DEAR provisions were issued in 1983 and have been updated to recognize the economic impacts of inflation since that time. Third, the techniques for establishing fees in award fee have been revised.

II. Discussion of Comments Received

Comments on the IFR were required to be received on or before April 8, 1991. DOE received comments from eight commenters in response to the IFR. DOE has reviewed and analyzed all of the comments received.

DOE's specific responses to issues raised by the commenters to the IFR are addressed to the extent that such comments differ from those provided in response to the RPR or the extent that different arguments have been advanced or facts provided in support of additional changes to the provisions contained in the IFR.

1. Insurance

Comment: One commenter raised the question whether "similar types of required insurance [which] remain an allowable cost" include DOE's retrospective-rated insurance plans, which in addition to covering Worker's

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Compensation also cover Employer's Liability and General Liability coverage.

"[S]imilar types of required insurance" refers to insurance listed as an allowable cost in DEAR 970.5204–3(d)(8)(ii) and 970.5204–14(d)(8)(ii). This clause generally covers legally required insurance, such as unemployment and workmen's compensation, and personnel related insurance plans, such as employee health and retirement plans. Employer and general liability insurance would not be covered. This type of coverage would be inconsistent with a fundamental principle of the final rule, which is not to reimburse contractors for insuring against the financial risk of incurring Avoidable Costs.

2. Liability Cap for Subcontractors

Comment: One commenter suggested that, with respect to financial guarantees required of subcontractors, the final rule should provide (1) that the guarantee remain in effect for a period of one year after expiration or termination of the subcontract and (2) that the same flexibility as to the form and amount of the required financial guarantee afforded the contractor's financial guarantee, including the option of retainage, should be provided to subcontractors.

DOE agrees with these comments and the necessary changes have been made to the final rule. These changes may be found at new DEAR subsection 970.5204–55(b) (2).

3. Subcontractors and Environmental Restoration Contractors

Comment: One commenter questioned the limitation on the financial obligations of fixed price subcontractors under subsection 970.5204–55(b) (1) to the fee or profit earned under the fixed price subcontract. The commenter believed that fixed price subcontractors should take all the financial risk of rework, losses, fines and penalties and damage to government property as they do now.

DOE is aware that, in most instances, fixed price subcontractors do bear substantially all of such financial risks. However, it is anticipated that there may be a number of subcontractors, including fixed price subcontractors, performing work in the future which may involve difficult, non-routine efforts, and some degree of uncertainty and risk. This may often be the case in environmental clean-up efforts in particular. In addition, not all fixed price contracts are the same with regard to the assumption of financial risks and/or with regard to the type of financial incentives provided. DOE has concluded that until it has had the opportunity to gain some experience with this process, the reasons for limiting the fixed price subcontractor's financial obligation provided in the IFR are more persuasive. No change has been made from the IFR.

4. Litigation Costs and Control

Comment: One commenter raised questions concerning the mechanics for the application of the litigation clause and whether current practices, including submission of pleadings for review to DOE counsel and other contacts with DOE counsel, should continue or whether the Contracting Officer must be contacted first to authorize this involvement.

The question whether and to what extent DOE counsel should review directly and/or control ongoing litigation will be decided on a case by case basis. Contractors should consult with the Contracting Officer to determine the appropriate course of action in each case.

5. Government Property

Comment: One commenter raised questions concerning the mechanics and application of property valuation for loss of or damage to government property and the basis on which a Contracting Officer could determine depreciated value to be the appropriate measure instead of replacement cost.

DOE is continuing to review the question of property valuation for lost, damaged or stolen government property and will be supplying additional guidance to Contracting Officers as part of its implementation of this final rule. However, resolution of questions concerning property valuation will necessarily vary depending on the circumstances and facts of each case.

6. Non-Profit Subcontractors of Profit-Making M&O Contractors

Comment: One commenter sought clarification on whether or not the accountability provisions apply to non-profit subcontractors of profit-making M&O contractors.

Non-Profit subcontractors of profit-making M&O contractors are exempt from the accountability provisions of the rule. To clarify this issue, language has been added to DEAR 970.5204–13, *Allowable costs and fixed-fee (Management and Operating contracts)*, (36) (ii); as well as DEAR 970.5204–14(e), *Allowable costs and fixed-fee (Support contracts)*, Items of unallowable costs, (34) (ii); and DEAR 950.7011, *General contract authority indemnity*, (c) (2).

7. Liability for Ordinary Negligence and Third Party Liability

Comment: One commenter asked for DOE's rationale for adopting an indemnification policy for non-nuclear damage which is perceived by the commenter to be inconsistent with the indemnification policy under the Price-Anderson Act.

A major public policy underlying the Price-Anderson Act is adequate protection, and compensation, of the public in the event of a nuclear accident. The policy underlying this Rulemaking is to enhance accountability of M&O contractors and provide incentives for improvement in the contractual performance of their non-nuclear related responsibilities. As the rationale for this rule is not the same as the Price-Anderson Act, there is no basis for treatment of these potential liabilities in the same manner. Holding M&O contractors responsible for their activities within their control and responsibility is consistent with the management responsibility these contractors would have in their non-governmental business operations, many of which involve high risks, and sound management practices generally. The Final Rule has not changed in this regard.

This final rule applies only to DOE's profit making M&O contractors and subcontractors.

III. Procedural Requirements

1. Review Under Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared prior to promulgation of a "major rule," and subject to certain exceptions, provides for submission of rules to the Office of Management and Budget (OMB) for formal regulatory review. The term "major rule" is defined by Executive Order 12291 to include "any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets."

For reasons set forth in detail in the preamble to the IFR, DOE concluded that this rulemaking does not involve a "major rule". Today's notice does not affect that conclusion.

DOE submitted the IFR to OMB as described in the preamble to the IFR. OMB completed its review.

2. Review Under the Regulatory Flexibility Act

In the preamble to the IFR, DOE concluded that the rule would not have a significant economic impact on a substantial number of small entities and that no regulatory flexibility analysis was necessary. DOE reaffirms that conclusion.

3. Review Under the Paperwork Reduction Act

In the preamble to the IFR, DOE concluded that the rule did not contain new "information collection" requirements requiring clearance by OMB pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). DOE reaffirms that conclusion.

4. Review Under the National Environmental Policy Act

It has been and continues to be DOE's policy that contractors comply with all applicable environmental requirements. DOE anticipates that the DEAR amendments adopted in today's Final Rule will act to encourage diligence in fulfilling this commitment. However, it is not possible at this time to speculate concerning specific actions, if any, which may be taken in response to the rule, or whether they would have significant environmental effects. Therefore, no meaningful NEPA analysis can be prepared in conjunction with promulgation of this rule. DOE will continue to examine individual actions to determine the appropriate level of NEPA review.

5. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41285 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's Final Rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

List of Subjects in 48 CFR Parts 915, 917, 950 and 970

Government contracts, DOE management and operating contracts.

Issued in Washington, DC on June 7, 1991.

Silas B. Fisher,

Director, Office of Procurement, Assistance and Program Management.

Accordingly, 48 CFR parts 915, 917, 950, and 970 are revised to read as follows:

PART 915—CONTRACTING BY NEGOTIATION

1. The authority citation for part 915 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Section 915.971–5 is amended by revising paragraphs (d), (f), and (h) to read as follows:

915.971–5 Fee schedules.

* * * * *

(d) The following schedule sets forth the base for construction contracts:

CONSTRUCTION CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
100,000	5,400	5.40	5.30
300,000	16,000	5.33	5.00
500,000	26,000	5.20	4.80
1,000,000	50,000	5.00	3.55
3,000,000	121,000	4.03	3.00
5,000,000	181,000	3.62	2.62
10,000,000	312,000	3.12	2.36
15,000,000	431,000	2.87	2.01
25,000,000	632,000	2.53	1.79
40,000,000	900,000	2.25	1.58
60,000,000	1,216,000	2.03	1.43
80,000,000	1,502,000	1.88	1.29
100,000,000	1,759,000	1.76	1.15
150,000,000	2,333,000	1.56	0.99
200,000,000	2,829,000	1.41	0.73
300,000,000	3,563,000	1.19	0.63
400,000,000	4,186,000	1.05	0.52
500,000,000	4,706,000	0.94	
Over $500 million	4,706,000		[1] 0.52

[1] 0.52% excess over $500 million.

* * * * *

(f) The following schedule sets forth the base for construction management contracts:

CONSTRUCTION MANAGEMENT CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
100,000	5,400	5.40	5.30
300,000	16,000	5.33	5.00
500,000	26,000	5.20	4.80
1,000,000	50,000	5.00	3.55
3,000,000	121,000	4.03	3.00
5,000,000	181,000	3.62	2.62
10,000,000	312,000	3.12	2.36
15,000,000	431,000	2.87	2.01
25,000,000	632,000	2.53	1.79
40,000,000	900,000	2.25	1.58
60,000,000	1,216,000	2.03	1.43
80,000,000	1,502,000	1.88	1.29
100,000,000	1,759,000	1.76	1.15
150,000,000	2,333,000	1.56	0.99
200,000,000	2,829,000	1.41	0.73
300,000,000	3,563,000	1.19	0.63
400,000,000	4,186,000	1.05	0.52
500,000,000	4,706,000	0.94	
Over $500 million	4,706,000		[1] 0.52

[1] 0.52% excess over $500 million.

CONSTRUCTION MANAGEMENT CONTRACTS SCHEDULE—Continued

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
25,000,000	632,000	2.53	1.79
40,000,000	900,000	2.25	1.58
60,000,000	1,216,000	2.03	1.43
80,000,000	1,502,000	1.88	1.29
100,000,000	1,759,000	1.76	
Over $100 million	1,759,000		[1] 1.29

[1] 1.29% excess over $100 million.

* * * * *

(h) The schedule of fees for consideration of special equipment purchases and for consideration of the subcontract program under a construction management contract is as follows:

SPECIAL EQUIPMENT PURCHASES/ SUBCONTRACT WORK SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
100,000	1,500	1.50	1.50
200,000	3,000	1.50	1.50
400,000	6,000	1.50	1.50
600,000	9,000	1.50	1.50
800,000	12,000	1.50	1.00
1,000,000	15,000	1.50	1.00
2,000,000	25,000	1.25	0.85
4,000,000	42,000	1.05	0.70
6,000,000	56,000	0.93	0.65
8,000,000	69,000	0.86	0.60
10,000,000	81,000	0.81	0.56
15,000,000	109,000	0.73	0.48
25,000,000	157,000	0.63	0.43
40,000,000	222,000	0.56	0.40
60,000,000	301,000	0.50	0.36
80,000,000	372,000	0.47	0.34
100,000,000	439,000	0.44	0.25
150,000,000	566,000	0.38	0.21
200,000,000	670,000	0.34	0.12
300,000,000	793,000	0.26	
Over $300 million	793,000		[1] 0.12

[1] 0.12% excess over $300 million.

3. The introductory text to section 915.972(a) is revised to read as follows:

915.972 Special consideration for cost-plus-award-fee contracts.

(a) When a contract is to be awarded on a cost-plus-award-fee basis in accordance with 916.404–2, several special considerations are appropriate. Fee objectives for management and operating contracts, including those using the Construction or Construction Management fee schedules from section 915.971–5, shall be developed pursuant to the procedures set forth in section 970.1509–6. Fee objectives for other cost-plus-award-fee contracts shall be developed as follows:

* * * * *

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PART 917—SPECIAL CONTRACTING METHODS

4. The Authority citation for part 917 continues to read as follows:

Authority: 42 U.S.C. 7254; 42 U.S.C. 2160.

917.605 [Amended]

5. Section 917.605 is amended by revising paragraph (b)(2)(iii) to read as follows:

(b) * * *

(2) * * *

(iii) Where the contract is a cost-plus-award-fee (CPAF) or similar arrangement, include a discussion of award fee experience since the date that the contract was last extended, showing the basic fee, award fee pool, award fee appraisals, and award fee earned.

* * * * *

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

6. The authority citation for part 950 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

7. In section 950.7011 paragraph (c) is revised to read as follows:

950.7011 General contract authority indemnity.

* * * * *

(c) (1) While it is normally DOE policy to require its non-management and operating contractors to obtain insurance coverage against public liability for nonnuclear risks, there may be circumstances in which a contractual indemnity may be warranted to protect a DOE non-management and operating contractor against liability for uninsured nonnuclear risks.

(2) It is DOE policy that, except to the extent required by the direction of the Contracting Officer and in the case of Small Businesses and Small Disadvantaged Businesses and non-profit subcontractors, management and operating contractors shall not obtain reimbursement for bonds or insurance to cover otherwise unallowable Avoidable Costs. M&O contractors may only be reimbursed for insurance against nonnuclear risk above the liability ceiling provided in 970.5204–55, subject to the approval of the Contracting Officer.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

8. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

9. Section 970.1509–5 paragraph (b) is revised to read as follows:

970.1509–5. Limitations.

* * * * *

(b) The applicable schedules and maximum fees are:

PRODUCTION EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
Up to $1 Million			7.00
1,000,000	70,000	7.00	6.20
3,000,000	194,000	6.47	5.55
5,000,000	305,000	6.10	4.48
10,000,000	529,000	5.29	3.86
15,000,000	723,000	4.82	3.39
25,000,000	1,062,000	4.25	3.06
40,000,000	1,521,000	3.80	2.67
60,000,000	2,054,000	3.42	2.35
80,000,000	2,524,000	3.16	2.14
100,000,000	2,952,000	2.95	1.32
150,000,000	3,813,000	2.41	1.02
200,000,000	4,123,000	2.06	0.56
300,000,000	4,576,000	1.56	0.48
400,000,000	5,162,000	1.29	0.41
500,000,000	5,574,000	1.11	
Over $500 million	5,574,000		[1] 0.41

[1] 0.41% excess over $500 million.

RESEARCH AND DEVELOPMENT EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
25,000	2,500	10.00	10.00
50,000	5,000	10.00	10.00
100,000	10,000	10.00	8.00
200,000	18,000	9.00	8.00
400,000	34,000	8.50	7.50
600,000	49,000	8.17	7.00
800,000	63,000	7.88	7.00
1,000,000	77,000	7.70	6.40
3,000,000	205,000	6.83	6.25
5,000,000	330,000	6.60	5.68
10,000,000	614,000	6.14	5.22
15,000,000	875,000	5.83	4.43
25,000,000	1,316,000	5.27	3.86
40,000,000	1,897,000	4.74	3.38
60,000,000	2,572,000	4.29	2.99
80,000,000	3,170,000	3.96	2.46
100,000,000	3,662,000	3.66	1.54
150,000,000	4,434,000	2.96	1.04
200,000,000	4,955,000	2.48	0.61
300,000,000	5,561,000	1.85	0.53
400,000,000	6,085,000	1.52	0.46
500,000,000	6,556,000	1.31	
Over $500 million	6,556,000		[1] 0.46

[1] 0.46% excess over $500 million.

10. In section 970.1509–6 paragraphs (b), (c), (d) and (e) are revised to read as follows:

970.1509–6 Special considerations—award fee.

* * * * *

(b) In management and operating contracts, the basic fee portion of the fee negotiation objective shall be established equal to what would otherwise have been the applicable fixed fee established in accordance with 970.1509–4. This basic fee includes a 50% base fee and a 50% "at risk fee." No variations from this objective are authorized without the prior approval of the Procurement Executive. The basic fee shall be paid in equal monthly installments, in accordance with the clause at 970.5204–16, Payments and Advances. However, in the event the contractor's performance is judged by the Fee Determination Official to fall into the performance categories of Marginal or Unsatisfactory, as those terms are defined in subparagraph (d) of this section, the contractor shall be required to refund to the Government up to 50% of the basic fee paid for that evaluation period at a rate of 5% for each performance point below 76, as shown in the table in subparagraph (d) of this section.

(c) The award fee portion of the fee objective for a management and operating contract shall be established for each contract using the following formula:

Basic Fee Amount X (multiplied by the) Applicable Award Fee Factor. The applicable award fee factor shall be established according to the following category placements as set forth below:

Defense Facility—A
Defense Facility—B
Enrichment Plant
Miscellaneous

Individual DOE facilities which are operated under award fee arrangements will be assigned to each category by the Procurement Executive, whose designee shall distribute a list of such assignments to all Heads of Contracting Activities (HCAs). In assigning facilities to categories, the Procurement Executive will consider the factors listed below, to determine the risks—technical, management, and financial—which the contractor will assume in fulfilling the contract requirements. Contracts which involve higher levels of risks shall be placed in higher categories and be eligible for higher award fees. The Procurement Executive, or designee, shall review the category assignments on a regular basis or upon request by the HCA for a particular contract. Reassignments may be made based upon a change in contract requirements or changes in any of the following factors:

(1) Placement of the facility on the EPA's National Priority List (NPL). Facilities which are listed on the NPL shall be considered to involve higher risks.

(2) Nature of the contractor's work at the facility. Contracts involving the management of facilities listed on the NPL or requiring the environmental restoration of NPL sites, shall be considered to involve higher risks, whereas contracts involving unrelated work may be considered of lesser risk, regardless of NPL designations.

(3) Size of the facility in relationship to the areas of risk. Management of a large facility with a minor site designated on the NPL would be considered a lesser risk than management of a small facility which includes several major sites listed on the NPL.

(4) Quantity, complexity and type of Government property for which the contractor is responsible. Contracts requiring control over large quantities of sensitive Government property shall be considered of higher risk than those involving relatively small quantities.

(5) Exposure to Third-Party Liability. Contract activities which expose the contractor to the risk of third-party liability will be considered, and such risk assessed accordingly.

(6) The extent to which the work at the facility presents health and safety risks to the workers at the facility and the public.

In considering the above factors, any risks which are indemnified by the Government (for example, by the Price-Anderson Act) will not be considered as risk to the contractor. Where a single contract involves multiple facilities falling into different categories, the basic fee amount shall be divided into amounts applicable to the operation of each facility before applying the award fee pool factor. The following potential award fees shall apply in each category (percent is stated as a percentage of the otherwise applicable maximum fixed fee amount) which is now the basic fee:

Category	Basic fee (percent)	Potential award fee (percent)	Potential maximum total (percent)
Defense Facility—A	100	200	300
Defense Facility—B	100	150	250
Enrichment Plant	100	150	250
Miscellaneous	100	100	200

(d) All management and operating contracts awarded on an award fee basis shall incorporate the following performance grading and fee conversion system into the contract, by including the system in the Performance Evaluation Plan required by the contract clause at 970.5204–54. The performance grading and fee conversion system consists of a set of adjectival grades defined in a narrative form, in terms of performance points, and the percentage of available award fee earned as follows:

FEE CONVERSION TABLE

[The contractor's performance shall be evaluated by the Fee Determination Official at the end of each evaluation period, and graded in accordance with the scale below]

Performance score	Percent of award fee earned
Outstanding	
Any score in the Outstanding category will earn 100% of the available award fee	
96 and above	100.0
Good	
95	94.0
94	88.0
93	82.0
92	75.0
91	68.0
90	60.0
89	51.0
88	43.0
87	36.0
86	30.0
85	25.0
84	20.0
83	15.0
82	10.0
81	5.0
Satisfactory	
80	0.0
79	0.0
78	0.0
77	0.0
76	0.0

Performance score	Percent of basic fee refunded
Marginal	
75	5.0
74	10.0
73	15.0
72	20.0
71	25.0
70	30.0
69	35.0
68	40.0
67	45.0
66	50.0
Unsatisfactory	
Below 65	50.0

Performance scores should be rounded to the nearest tenth of a point and the percent of award fee determined accordingly (e.g., a score of 88.4 equals 46.2% of award fee earned).

Narrative Description of Performance Adjectives

Adjective	Definition (performance description)
Outstanding	Performance substantially exceeds expected levels of performance. Several significant or notable achievements exist. No notable deficiencies in performance.
Good	Performance exceeds expected levels and some notable achievements exist. Although some notable deficiences may exist, no significant deficiencies exist.
Satisfactory	Performance meets expected levels. Minimum standards are exceeded and "good practices" are evident in contract operations. Notable achievements or notable deficiencies may or may not exist.
Marginal	Performance is less than expected. No notable achievements exist; however, some notable deficiencies exist, or any notable achievements which exist are more than offset by significant or notable deficiencies.
Unsatisfactory.	Performance is below minimum acceptable levels. Significant deficiencies causing severe impacts on mission capabilities exist. Performance at this level in any area mentioned in the Performance Evaluation Plan may result in a decision by the Fee Determination Official to withhold all award fees for the period.

Definitions

Significant: This term indicates a major event or sustained level of performance which, due to its importance, has a substantial positive or negative impact on the contractor's ability to carry out its mission.

Notable: This term indicates an event or sustained level of performance which is of lesser importance than a "significant" event, but nonetheless deserves positive or negative recognition.

(e) Prior approval of the Procurement Executive, is required for total fee (basic plus award fee pool) exceeding the guidelines in paragraph (d), of this section. Additionally, in the event use of the award fee guidelines in paragraph (d), of this section, result in total fees which exceed or are expected to exceed the statutory limitations imposed by 10 U.S.C. 2308(d) and 41 U.S.C. 254(b), prior

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approval of the Procurement Executive shall be obtained.

* * * * *

11. Section 970.3102-21 is revised as follows:

970.3102-21 Fines and penalties.

(a) It is DOE policy to reimburse nonprofit management and operating contractors for fines and penalties that are incurred in the performance of their contracts. Any such reimbursement for fines and penalties incurred under the contract will be made as long as such fines and penalties are not the result of the willful misconduct or lack of good faith on the part of the contractor's officers, directors or supervising representatives.

(b)(1) It is DOE policy not to reimburse profit making management and operating contractors for fines and penalties that are incurred in the performance of their contracts where such fines or penalties are incurred as a result of contractor negligence or willful misconduct where the breach of the contractor's legal duty giving rise to such a fine or penalty involves an area of responsibility clearly placed on the contractor.

(2) For purposes of this section the phrase "fines and penalties" means a sum of money the payment of which Federal or state law or regulation exacts as punishment for or deterrence against doing some act which is prohibited, or not doing some act which is required by law or regulation. The assessment is imposed by statute or regulation as a consequence of the commission of an offense or act of omission, and the payment is intended as a punishment or deterrent. The fine or penalty may be imposed in a civil enforcement action or result from a criminal conviction. A fine or penalty shall not be construed as an assessment which is imposed as damages on the basis of civil litigation or which is imposed on the basis of strict liability, that is, without regard to the fault or negligence of the party involved.

(3) In assessing any claim for payment by the contractor for a fine or penalty as an allowable cost under the contract the Contracting Officer shall, among other factors, consider the following:

(i) Whether the act which resulted in the fine or penalty was a result of negligence, willful misconduct, or strict liability on the part of personnel of the contractor or a subcontractor, at any tier or level; and

(ii) All of the factors specified at 970.3102-22.

These are only some of the factors to be considered and do not represent all factors which may be pertinent in each case. Criminal fines and penalties which represent the judicial determination beyond a reasonable doubt that the contractor acted wrongfully are generally not considered to be an allowable cost and will not be considered by the Contracting Officer for reimbursement except under extraordinary circumstances. Any final decision to reimburse a criminal fine or penalty shall be made by the Procurement Executive and shall only be made with the concurrence of the General Counsel.

(c) It is DOE's policy not to reimburse any profit making contractor for civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, Public Law 100-408, 42 U.S.C. 2273, 2282, and for the costs of litigation relating to such assessments, except as may be specifically provided in regulations implementing those civil and criminal penalties provisions.

12. Section 970.3102-22 is added to read as follows:

970.3102-22 Avoidable Costs for Profit Making Contractors.

In determining whether a cost is an "Avoidable Cost" for profit making contractors as specified in 970.5204-13 (e)(12) and (e)(17)(iv), 970.5204-14 (e)(10) and (e)(15)(iv), 970.5204-21(j) and 970.5204-31, the Contracting Officer, shall, among other factors, consider:

(a) Whether the contractor's conduct resulted from compliance with written direction from the Contracting Officer.

(b) Whether the contractor's conduct occurred after specific instances of noncompliance were reported by the contractor to the Contracting Officer and necessary funding or authorization to correct the conditions were unavailable.

(c) Whether the act or failure to act resulted from a violation of a formal DOE regulation or order. The Contracting Officer will also assess the completeness, efficiency and effectiveness of the contractor's internal control systems and procedures (e.g., operational, maintenance, security), as well as determine whether, in the case of damage to, destruction of, or loss of Government property, the contractor has faithfully implemented the DOE-approved property management system, whether proper training and instruction were provided to employees, whether all reasonable precautions were taken, whether problems were promptly identified and reported to DOE and whether adequate corrective actions were taken to preclude future occurrences.

(d) Whether the contractor voluntarily informed the Contracting Officer in a timely good faith manner of the condition or activity which later resulted in the incurrence of Avoidable Costs. The period of time that the contractor was aware or should have been aware of the problem prior to reporting it is also pertinent.

(e) Whether the contractor was newly selected to manage the facility and whether it had sufficient time to discern the problem and report it prior to the incurrence of Avoidable Costs.

These considerations will also be used to determine whether all or a portion of the Avoidable Cost, which would otherwise be totally nonreimbursable, may be reimbursed because of the presence of the mitigating factors described above. This decision will be made by the Contracting Officer.

13. Section 970.5204-13 is amended by revising (e)(12), and by adding new paragraphs (e)(17)(iv) and (e)(36) as follows:

§ 970.5204-13 Allowable costs and fixed fee (management and operating contracts)

* * * * *

(e) * * *

(12) *Fines and penalties.*

Note 1: In contracts with nonprofit contractors, use the following clause:

Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with, Federal, state, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments, are unallowable except as may be specifically provided in regulations implementing those civil and criminal penalty provisions.

Note 2: In contracts with profit making contractors, use the following clause:

Fines and penalties, including assessed interest and cost of litigation, that are incurred as a result of contractor and/or subcontractor negligence or willful misconduct where the breach of the legal duty of the contractor and or its subcontractor giving rise to such fine or penalty involves an area of responsibility clearly placed on the contractor and/or the subcontractor. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments are also unallowable except as may be specifically provided in regulations implementing those civil or criminal penalty provisions.

* * * * *

(17) * * *

(iv) **Note:** In contracts with profit making contractors, add the following paragraph:

or, are direct costs which are avoidable that are incurred by the contractor and/or subcontractor, at any tier or level, without any fault of DOE, exclusively as a result of the negligence or willful misconduct on the part of any of the contractor's and/or its subcontractor's personnel, at any tier or level, in performing work under the contract.

(A) Such direct costs may include, for example, additional programmatic expenses for research and development or production activities, and third party claims against the contractor, but shall not include scrap, waste and other routine damages or losses which occur as part of the cost of doing business and are reasonably anticipated and shall not include consequential damages.

(B) Costs of litigation incurred by the contractor or subcontractor in bringing or defending claims relating to these costs are also unallowable.

* * * * *

(36) **Note:** In contracts with profit making contractors, add the following clauses:

(i) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the contractor and/or subcontractor against otherwise unallowable Avoidable Costs, such as fines and penalties, third party claims, negligently or willfully caused damage to, destruction of, or loss of Government property and theft or unauthorized use of government property, except and only to the extent that such insurance or bond is required by the specific written direction of the Contracting Officer.

(ii)(A) The unallowable costs provisions of subparagraph (e)(17)(iv) dealing with avoidable costs and subparagraph (i) of this clause, the profit making provision of the clause set forth at 970.5204-13(e)(12), the clause set forth at 970.5204-21(j), and the profit making provision of the clause set forth at 970.5204-31 are not applicable to Small Businesses and Small Disadvantaged Businesses as defined in the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns." All costs resulting from the actions or inactions of Small Businesses and Small Disadvantaged Businesses which would otherwise be determined to be Avoidable Costs are allowable costs to the contractor.

(B) The above cited provisions in subparagraph (ii)(A) are also not applicable to Non-profit subcontractors of profit-making contractors and profit making subcontractors of non-profit contractors. All costs resulting from the actions or inactions of non-profit subcontractors which would otherwise be determined to be Avoidable Costs are allowable costs to the contractor.

14. Section 970.5204-14(e) is amended by revising paragraph (e)(10), and by adding new paragraphs (e)(15)(iv) and (e)(34) as follows:

970.5204-14 Allowable costs and fixed fee (support contracts).

* * * * *

(e) * * *

(10) Fines and penalties.

Note 1: In contracts with non-profit contractors, use the following clauses:

Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with Federal, state, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments, are also unallowable except as may be specifically provided in regulations implementing those civil and criminal penalty provisions.

Note 2: In contracts with profit making contractors, use the following clause:

Fines and penalties, including assessed interest and costs of litigation, that are incurred as a result of contractor and/or subcontractor negligence or willful misconduct where the breach of the legal duty of the contractor and or subcontractor giving rise to such fine or penalty involves an area of responsibility clearly placed on the contractor and or subcontractor. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments are unallowable except as may be specifically provided in regulations implementing those civil or criminal penalty provisions.

* * * * *

(15) * * *

(iv) **Note:** In contracts with profit making contractors, add the following paragraph:

or, are direct costs which are avoidable that are incurred by the contractor and/or subcontractor, at any tier or level, without any fault of DOE, exclusively as a result of the negligence or willful misconduct on the part of any of the contractor's and/or its subcontractor's personnel, at any tier or level, in performing work under the contract.

(A) Such direct costs may include, for example, additional programmatic expenses for research and development or production activities, and third party claims against the contractor, but shall not include scrap, waste, and other routine damages or losses which occur as part of the cost of doing business and are reasonably anticipated and shall not include consequential damages.

(B) Costs of litigation incurred by the contractor and or subcontractor in bringing or defending claims relating to these costs are also unallowable.

* * * * *

(34) **Note:** In contracts with profit making contractors, add the following clauses:

(i) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the contractor and/or subcontractor against otherwise unallowable Avoidable Costs, such as fines and penalties, third party claims, negligently or willfully caused damage to, destruction of, or loss of government property and theft or unauthorized use of government property, except and only to the extent such insurance or bond is required by the specific written direction of the Contracting Officer.

(ii)(A) The unallowable costs provisions of subparagraph (e)(15)(iv) dealing with Avoidable Costs and subparagraph (i) of this clause, the profit making provision of the clause set forth at 970.5204-14(e)(10), the clause set forth at 970.5204-21(j), and the profit making provision of the clause set forth at 970.5204-31 are not applicable to Small Businesses and Small Disadvantaged Businesses as defined in the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns." All costs resulting from the actions or inactions of Small Business and Small Disadvantaged Businesses which would otherwise be determined to be Avoidable Costs are allowable costs to the contractor.

(B) The above cited provisions in subparagraph (ii)(A) are also not applicable to nonprofit subcontractors

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of profit making contractors and profit making subcontractors of non-profit contractors. All costs resulting from the actions or inactions of non-profit subcontractors which would otherwise be determined to be Avoidable Costs are allowable costs to the contractor.

15. Section 970.5204–16 is amended by revising the heading of the clause and revising Note 2 and paragraph (a) to read as follows:

970.5204–16 Payments and advances.

Payments and Advances (January, 1991)

* * * * *

Note 2: When award-fee provisions in this clause are used, in lieu of paragraph (a), use the following text:

(a) Payment of Basic Fee and Award Fee. The basic fee shall become due and payable in equal monthly installments, *Provided,* However, that the contractor shall refund to the Government a portion of the basic fee if its performance during an evaluation period falls below the level of acceptable performance, i.e., a performance score of 75 or less. Such refund shall be at the rate of 5% of the basic fee allocated to the evaluation period in question for each performance point below 76, as assigned by the Government Fee Determination Official (FDO), provided that no more than 50% of the basic fee shall be required to be refunded under this provision. Award fees earned shall become due and payable following the issuance by the FDO of a Determination of Award Fee Earned, in accordance with the clause of this contract entitled "Basic Fee and Award Fee."

* * * * *

16. Section 970.5204–18 is added as follows:

970.5204–18 Definition of nonprofit and profit making management and operating contractors and subcontractors.

For purposes of subsections 970.5204–13(e)(12) and (e)(17)(iv), 970.5204–14(e)(10) and (e)(15)(iv), 970.5204–21(j) and 970.5204–31, a nonprofit management and operating contractor or subcontractor is one which receives no fee and is considered nonprofit under the laws of the jurisdiction where it is incorporated. A subsidiary may be a nonprofit contractor or subcontractor if all entities above it in the corporate structure are considered nonprofit under the laws of the incorporating jurisdiction. A profit making subcontractor of a nonprofit contractor is a nonprofit subcontractor for the purpose of the applicability of the subsections specified in this paragraph. A non-profit subcontractor of a profit making contractor is also a non-profit subcontractor for purposes of the applicability of the subsections specified in this paragraph. A Contracting Officer may also treat as nonprofit a contractor whose particular corporate organization or circumstances, in the judgment of the Contracting Officer, warrants such consideration. All other management and operating contractors are considered profit making.

17. Section 970.5204–21 is amended by adding a new paragraph (j):

970.5204–21 Property.

* * * * *

(j) *Additional responsibility for risk of loss of government property.* The following paragraph (j) shall be added in contracts with profit making contractors:

Notwithstanding the limitation of liability described in paragraph (f) of this section, the contractor and/or subcontractor shall be liable, respectively, for direct costs and expenses resulting from damage to, destruction of, or loss of Government property as a direct result of contractor and/or subcontractor negligence or willful misconduct where the costs which are to be borne by the contractor and/or subcontractor are those incurred in effecting the repairs to, or replacement of, Government property. These Avoidable Costs do not include scrap, waste and other routine damages or losses which occur as part of the cost of doing business and are reasonably anticipated. Costs which shall not be reimbursable are the result of circumstances: (1) Clearly within the contractor's and/or subcontractor's sole and exclusive control and (2) resulting from acts or omissions of the contractor and/or subcontractor, in which the exercise of reasonable care would have avoided the loss or destruction or damage. In the event that such direct costs and expenses resulting from loss, or destruction of, or damage to Government property are also in part caused by third parties, other than DOE, such costs and expenses will not be reimbursed by DOE. The allocation of financial responsibility between the contractor and such third party should be determined by the parties involved. In addition, the contractor shall be liable for direct damage to, destruction of, or loss of Government property stemming from theft, embezzlement, unauthorized use, or any other ultra vires activity by any contractor or subcontractor personnel at any level. Under these circumstances the contractor shall be required to bear the cost of repairing or replacing the damaged, destroyed or lost government property. For purposes of this clause, negligence is the failure to exercise that standard of care which a reasonable and prudent person would exercise under the same or similar circumstances in an identical or similar environment.

18. Section 970.5204–31 is revised to read as follows:

970.5204–31 Litigation and claims.

(a) *Initiation of litigation.* The contractor may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

(b) *Defense and settlement of claims.*

Note 1: In contracts with nonprofit contractors, add the following clause:

The contractor shall give the Contracting Officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract, and (2) of any claim against the contractor, the cost and expense of which is allowable under the clause entitled "Allowable Costs and Fixed-Fee." Except as otherwise directed by the Contracting Officer, in writing, the contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the contractor may, with the Contracting Officer's approval, settle any such action or claim; shall effect, at the Contracting Officer's request, an assignment and subrogation in favor of the Government of all of the contractor's rights and claims (except those against the Government) arising out of such action or claim against the contractor; and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the contractor is undertaken by the Government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the contractor is not covered by a policy of insurance, the contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith and in such event the defense of the

action shall be at the expense of the Government, *Provided, however,* That the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the contractor failed to secure or maintain through its own fault or negligence.

Note 2: In contracts with profit making contractors, add the following clause:

(1) The contractor shall give the Contracting Officer immediate notice in writing of any action, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract, and of any claim against the contractor the costs and expense of which the contractor would propose to submit as a claim for allowable costs under the terms of the clause entitled "Allowable Costs and Fixed-Fee."

(2) Except to the extent prohibited by the Major Fraud Act of 1988, 41 U.S.C. 256, the Contracting Officer may choose to instruct the contractor to proceed in good faith with the defense of the claim subject to the direction of the Government. Except as otherwise directed by the Contracting Officer in writing, the contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the contractor with respect to such action or claim. The contractor may, with the Contracting Officer's approval, settle any such action or claim. The contractor shall effect, at the Contracting Officer's request, an assignment and subrogation in favor of the Government of all of the contractor's rights and claims (except those against the Government) arising out of or related to such action or claim against the contractor, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the contractor is undertaken by the Government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. If an adverse judgment is entered against the contractor in a case where the Contracting Officer has approved and/or directed the defense as provided in this paragraph, the costs of litigation and liability for any resulting claim or damages shall be at the expense of the Government, *Provided, however,* That the Government shall not be liable for such expenses to the extent that they would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the contractor failed to secure or maintain through its own fault or negligence.

(3) Should the Contracting Officer not choose to approve or direct the defense of the litigation as provided in paragraph (2), the Government has no liability for the costs of litigation except as provided in paragraphs (4) and (5). The contractor may request that the Contracting Officer assume direction of the litigation at any point when new facts on the matter would so warrant; *Provided, however,* That the Contracting Officer may assume direction of the litigation or direct settlement, without a request from the contractor, at any time during the litigation process when the Contracting Officer determines that it is in the best interest of the Government to do so, in which case the liability for any resulting claims or damages shall be at the expense of the Government.

(4) The contractor must inform the Contracting Officer of any proposed settlement agreement. The notification shall be supported by all information available to the contractor which is pertinent to the settlement.

(i) Except to the extent prohibited by the Major Fraud Act of 1988, 41 U.S.C. 256, the Contracting Officer has the option of accepting the settlement reached by the contractor. If the settlement is accepted, the Contracting Officer and the contractor shall negotiate the Government's share of the settlement and litigation expenses. Any agreement reached at this point shall be under the authority, and subject to the restrictions, of FAR 33.210.

(ii) If the contractor proceeds without, or otherwise does not obtain, Contracting Officer approval of the settlement agreement, the cost of the agreement and all related costs of litigation shall be at the contractor's own risk and expense.

(5)(i) If the contractor has suffered a final judgment, a claim for reimbursement of the costs of litigation or any resulting damages or both may be made to the Contracting Officer. Except to the extent prohibited by the Major Fraud Act of 1988, 41 U.S.C. 256, the Contracting Officer is authorized, in his discretion, to negotiate a settlement with the contractor.

(ii) Reimbursement of costs of litigation and judgments under subparagraph (5)(i) may be paid by the Government notwithstanding the prohibitions contained in subsections 970.5204–13(e)(12) and (17)(iv), subsections 970.5204–14(e)(10) and (15)(iv) and section 970.5204–21(j) and section 970.5204–31.

(6) *Certification of costs.* The Contracting Officer may not accept any settlement or otherwise authorize reimbursement of costs and/or damages where the contractor has not certified, in the form required by the clause of this contract entitled "Disputes," the facts known by the contractor, at the time the matter is submitted for review, which form the basis upon which the contractor seeks reimbursement of these costs.

(c) *Costs of Litigation.*

"Costs of Litigation" as used herein, includes, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; all elements of compensation, related costs, and expenses of employees, officers, and directors; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding which bear direct and substantial relationship to the proceedings.

19. Section 970.5204–32 is revised to read as follows:

970.5204–32 Required bond and insurance-exclusive of Government property.

Note 1: In contracts with nonprofit contractors use the following clause:

The contractor shall procure and maintain such bonds and insurance as are required by law or by the written direction of the Contracting Officer. The terms and conditions of such bonds and insurance shall conform to the directions of the Contracting Officer. In view of the provisions of section 970.5204–21, "Property," the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of, or damage to, Government property.

Note 2: In contracts with profit makingcontractors use the following clause:

The contractor shall procure and maintain such bonds and insurance as required or approved in writing by the Contracting Officer. The terms and conditions of any such bonds and insurance shall conform to the directions of the Contracting Officer. In view of the provisions of 970.5204–21, "Property," the contractor may, at its own expense and not as an allowable cost, procure for its own protection insurance covering loss or destruction of, or damage to, Government property to compensate the contractor for any

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unallowable or nonreimbursable costs incurred in connection with such property.

20. Section 970.5204-54 is revised to read as follows:

970.5204-54 Basic fee and award fee.

(a) Basic Fee and Award Fee. It is herewith agreed that a basic fee and an award fee, to be determined in accordance with the provisions of this clause, are available for payment in accordance with the clause of this contract entitled Payments and Advances.

(b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon, the contracting officer and contractor shall enter into negotiation of a basic and award fee. This contract shall be modified at the conclusion of each negotiation to reflect the negotiated amount for the basic fee and to identify the available award fee amount. It is herein agreed the award fee amount shall be assigned to evaluation periods six months in duration. If the parties are unable to agree on a reasonable fee, the contracting officer shall unilaterally determine the basic fee and the available award fee, subject to the clause of this contract entitled Disputes.

(c) Determination of Award Fee Earned.

(1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance for a determination of award fee earned.

(2) For this contract, the Government Fee Determination Official (FDO) will be (insert title of FDO). The contractor agrees that the determination as to the amount of award fee earned will be made by the Government FDO and such determination is binding on both parties and shall not be subject to appeal under the "Disputes" clause or any other appeal clause.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan described in subparagraph (d), below. The contractor shall be promptly advised in writing of the determination, and the reasons why the award fee was or was not earned. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, in accordance with the Performance Evaluation Plan, the FDO may also consider any information available to him or her which relates to the contractor's performance of contract requirements. In the event that the contractor's performance is considered unacceptable in any area of contract performance which is specified in the Performance Evaluation Plan, even if no weight or fee is specifically assigned to the particular performance area, the FDO may at his/her discretion determine the contractor's overall performance to be unacceptable, and accordingly may withhold the entire award fee for the evaluation period.

(4) An award fee cycle usually consists of two six-month award fee periods in a single fiscal year. Unearned award fee may be carried over within a single fiscal year, or other two-period fee negotiation cycle, as may have been agreed upon. The FDO may, at his/her sole discretion, specify in a fee determination that award fee not earned during the first evaluation period of a two-period fee cycle may be allocated to the second fee period in that fee cycle. The contractor shall not, however, be entitled to earn any of this "carry-over" fee if its overall performance in the latter evaluation period does not reflect an improvement over the prior evaluation period. Overall performance evaluations in the second period which are equal to or the same as those in the first period shall not be considered as improvements providing entitlement to the carry-over portion of the award fee pool. If the single negotiation of a basic and the resulting award fee amount (fee cycle) will be for more than two evaluation periods, unearned award fees in any one of the evaluation periods established by that negotiation may be carried over only to the next period covered by that negotiation. Fees unearned under one fee cycle may not be carried forward to another fee cycle.

(d) Performance Evaluation Plan. (1) The Government shall establish unilaterally a Performance Evaluation Plan upon which the determination of the amount of award fee earned shall be based. Such Plan shall include the criteria to be considered under each area evaluated and the percentage of award fee available for each area. A copy of the Plan shall be provided to the contractor thirty (30) calendar days prior to the start of an evaluation period.

(2) The Performance Evaluation Plan will set forth the criteria upon which the contractor will be evaluated for performance relating to any technical, schedule, management, and/or cost objectives selected for evaluation.

(3) The Performance Evaluation Plan may, consistent with the contract statement of work, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor at least thirty (30) calendar days prior to the start of the evaluation period to which the change will apply.

(e) Contractor Self-Assessment. Following each evaluation period, the contractor shall submit a self-assessment within (Insert Number) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the contractor's performance during the evaluation period. Where deficiencies in performance are noted, the contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The FDO will review the contractor's self-assessment as part of his/her evaluation of the contractor's management during the period. An unrealistic self-assessment will result in lower award fee determinations. The contractor will not be penalized for a realistic self-assessment, although deficiencies noted by the contractor may be reflected in the Government's evaluation. The self-assessment itself will not be the basis for the award fee determination.

(f) Schedule for Award Determinations. The FDO shall issue the final award fee determination in accordance with a schedule set forth in the Performance Evaluation Plan. However, a determination must be made within sixty (60) calendar days after the receipt by the contracting officer of the contractor's self-assessment discussed in paragraph (e), above. If the determination is delayed beyond that date, the contractor shall be entitled to interest on the determined award fee amount at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest on any late award fee determination amount will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of award fee and be subject to interest if not paid in the succeeding 30-day period.

21. Sections 970.5204-55 and 970.5204-56 are added as follows:

970.5204-55 Ceiling on certain liabilities for profit making contractors.

(a) The profit making contractor's potential financial obligations under the unallowable Avoidable Cost provisions contained in 970.5204-13(e)(12) and (e)(17)(iv), 970.5204-14(e)(10) and (e)(15)(iv), 970.5204-21(j), and 970.5204-31, (including (1) noncriminal fines and penalties, (2) losses which are avoidable losses or other third party claims including the costs of defense of such litigation, (3) additional programmatic expenses which are Avoidable Costs, and (4) the costs of contractor responsibility for lost or damaged Government property) shall be limited to the amount of the actual award fee earned and the actual basic fee earned under the contract (or the amount of 6-months of fixed fee in the case of cost-plus-fixed fee contracts) in the evaluation period when the event or events which led to the imposition of the incurrence of costs or liabilities or the imposition of fines and penalties occurred. This limitation or ceiling does not apply to any other categories of unallowable costs, nor shall any other unallowable costs be utilized in the calculation of that ceiling for any evaluation period. In the case of continuing activities of the contractor which occur over a number of evaluation periods and result in costs or liabilities described above, the potential financial obligation of the contractor shall be limited to the amount of the actual award fee earned and the actual basic fee earned in the single evaluation period when the incident(s) or event(s) (the negligent act(s)) giving rise to the contractor's disallowed cost or expense took place. If it is not possible to relate or reasonably allocate particular activities to individual evaluation periods, the financial obligation of the contractor shall be limited to the amount of the actual award fee earned and actual basic fee earned in the evaluation period when the amount of such nonreimbursable costs or liabilities were finally determined. If the determination as to which award fee period(s) the incident or activity occurred resulting in the unallowable avoidable costs is made following the expiration of the contract, or the contractor is otherwise replaced, the actual award fee earned and the actual basic fee earned for the last evaluation period that the contract was in effect shall be utilized after deducting disallowed Avoidable Costs that were previously charged to the contractor during that period.

(b)(1) The financial obligations of a subcontractor, at any tier or level, under the profit making contractor's and subcontractor's unallowable Avoidable Cost provisions contained in 970.5204-13(e)(12) and (e)(17)(iv), 970.5204-14(e)(10) and (e)(15)(iv), 970.5204-21(j), and 970.5204-31, (including (i) noncriminal fines and penalties, (ii) losses which are avoidable losses or other third party claims including the costs of defense of such litigation, (iii) additional programmatic expenses which are Avoidable Costs, and (iv) the costs of subcontractor responsibility for lost or damaged Government property) shall be limited to the cumulative amount of the fee or profit actually earned under the subcontract, whether cost-plus or fixed-price, during the six-month contractor evaluation period when the event or events which were caused by the subcontractor led to the incurrence of costs or liabilities or the imposition of fines and penalties occurred, *Provided, however,* If the contractor cannot reasonably determine the amount of profit earned, the amount of profit earned shall be deemed to be 15% of the subcontract price, prorated to the applicable six-month award fee period, which shall be the liability cap for such period. This limitation or ceiling does not apply to any other categories of unallowable costs. In the case of continuing activities of the subcontractor which occur over a number of contract evaluation periods and result in costs or liabilities described above, the potential financial obligation of the subcontractor shall be limited to the amount of the fee or profit earned in the single contractor evaluation period when the incident(s) or event(s) (the negligent act(s)) giving rise to the subcontractor's disallowed cost or expense took place. If it is not possible to relate or reasonably allocate particular activities to individual contractor evaluation periods, the financial obligation of the subcontractor shall be limited to the amount of the actual fee or profit earned, or the percentage of the subcontract price designated by the Contracting Officer during the evaluation period when the amount of such nonreimbursable costs or liabilities were finally determined. If the determination as to which award fee period(s) the incident or activity occurred resulting in the unallowable avoidable costs is made following the expiration of the contract, or the subcontractor is otherwise replaced, the actual fee or profit earned, or the percentage of the contract price designated by the Contracting Officer for the last contractor evaluation period that the subcontract was in effect shall be utilized, after deducting disallowed Avoidable Costs that were previously charged to the subcontractor during that period.

(2) The contractor shall cause all subcontractors to be responsible for all costs and liabilities described in this paragraph (b), up to the amount of the actual fee or profit earned in the pertinent contractor evaluation period. The contractor shall cause all subcontractors to agree to provide a reasonable financial guarantee to assure that the subcontractor will have sufficient resources to satisfy all costs and liabilities up to the amount of the actual fee or profit earned based upon the highest amount of profit or fee received by the subcontractor during the last two contractor evaluation periods. Alternatively, at the election of the subcontractor, at the end of each evaluation period the contractor may retain a percentage of the fee or profit earned as reasonably determined to be sufficient by the contractor to protect the interests of the Government. With respect to new subcontracts or subcontracts that have been in effect for less than one year (or two six-month evaluation periods), the guarantee shall be in an amount that the contractor reasonably determines to be in the best interest of the Government, but not to exceed the amount of fee or profit available for the upcoming evaluation period. The financial responsibility of the subcontractor and the guarantee or retainage of the subcontractor shall remain in effect for one year after the termination or expiration of the subcontract, at which time any financial guarantee, including retainage, shall be returned to the subcontractor.

(3) Where the amount of fee or profit earned by a subcontractor during the contractor's evaluation period is not sufficient to pay in full all Avoidable Costs incurred during that period, the excess amount of these costs will be reimbursed or otherwise treated as allowable costs to the contractor by DOE; *Provided, however,* That the contractor shall be responsible for the payment of such Avoidable Costs in excess of the subcontractor's ceiling if such costs and/or damages were caused in whole or in part by the negligence of the contractor; *Provided, further,* That, in any case, the contractor's obligation to pay Avoidable Costs incurred by the negligence of the subcontractor is limited to the extent that (i) the subcontractor's profit for that evaluation period was insufficient to pay the Avoidable Costs in full and (ii) the contractor's ceiling on Avoidable Costs liabilities specified in this subsection and in subparagraph (a) of this section has not been reached for that evaluation period. The contractor shall not require a subcontractor, at any tier or level, to

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provide financial guarantees for the payment of Avoidable Costs beyond the profit or fee earned by the subcontractor in the relevant contractor's six-month evaluation period.

(4) The contractor shall cause appropriate provisions to implement the subcontractor liability ceiling and financial responsibility obligation contained in this subparagraph (b) to be inserted in every subcontract, at any tier or level, entered into with the contractor or subcontractor on, before or after the effective date of this contract, *Provided, however,* That such subcontracts shall provide that to the extent that Avoidable Costs incurred by the negligence of the subcontractor are reimbursed by the Government to the contractor, the contractor shall reimburse its subcontractor for all such costs to the extent that such subcontractor has already paid, or incurred without reimbursement, such costs; *Provided further* That all of such subcontracts shall provide that the financial guarantees provided by subcontractors to contractors shall remain in effect for not more than one year after termination or expiration of such subcontracts.

(c) The contractor shall be responsible for all costs and liabilities described in subparagraphs (a) and (b) of this section, up to the amount of the actual award fee earned and the actual basic fee earned in the pertinent evaluation period. The contractor agrees to provide, in such form and amount as shall be satisfactory to the Contracting Officer, a financial guarantee to assure that the contractor will have sufficient resources to satisfy all costs and liabilities up to the amount of the actual award fee earned and the actual basic fee earned for a period based upon the highest amount of fee received over the last four evaluation periods. Alternatively, at the election of the contractor, at the end of each evaluation period the Contracting Officer may retain a percentage of the award fee and basic fee as determined to be sufficient by the Contracting Officer to protect the interests of the Government. With respect to new contracts or contracts that have been in effect for less than two years (or four six-month evaluation periods), the guarantee shall be in an amount that the Contracting Officer determines to be in the best interest of the Government, but not to exceed the amount of award fee and basic fee available for the upcoming evaluation period. The financial responsibility of the contractor and the guarantee or retainage of the contractor shall remain in effect for one year after the termination or expiration of the contract, at which time any financial guarantee, including retainage, shall be returned to the subcontractor. Any costs or liabilities to third parties beyond the limitations described above would be reimbursed subject to the other provisions of the contract governing cost reimbursement. The contractor's potential financial risk for proceedings costs under the Major Fraud Act of 1988, 41 U.S.C. 256, or the civil or criminal penalties provisions of the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, will not be limited except as provided in regulations implementing those provisions.

970.5204-56 Determining avoidable costs.

(a)(1) Avoidable Costs are those costs specified in 970.5204-13(e)(12) and (e)(17)(iv), 970.5204-14(e)(10) and (e)(15)(iv), 970.5204-21(j), and 970.5204-31 which are incurred by the contractor and/or its subcontractors, in carrying out the terms and conditions of the contract when:

(i) The work is clearly within the sole and exclusive control of the contractor and/or subcontractor personnel at any tier or level; and

(ii) The increased costs or expenses result from the negligence or wilful misconduct of the contractor or subcontractor personnel at any tier or level; and

(iii) DOE is not responsible in any way for the act or omission which resulted in the additional costs.

(2) The cost and expenses of litigation, settlements, and related litigation costs (including attorneys fees), fines, penalties, judgments and liabilities resulting from administrative findings, and damage to, or loss of, Government property when carrying out well understood non-experimental work and damage to, or loss of, Government property as the result of theft, embezzlement or other unauthorized use are unallowable to the extent that the acts or omissions resulting in these costs are Avoidable Costs as defined in paragraph (1) above. Such costs are unallowable except as specifically authorized by the Contracting Officer and within the scope of work in the contract.

(b) For purposes of this section, negligence is the failure to exercise that standard of care which a reasonable and prudent person would exercise under the same or similar circumstances in an identical or similar environment.

(c) Avoidable Costs shall not include the cost of losses or damages incurred by the contractor as a result of the acts or omissions of employees who, during the phase-in period of a new contract, the contractor is required to employ as a result of assuming the management of a DOE facility. The length of this phase-in period shall be ____ months. It shall in no event, however, exceed twelve months. The contractor is always responsible for the acts or omissions of any employee hired directly by the contractor.

[FR Doc. 91-14086 Filed 6-18-91; 8:45 am]
BILLING CODE 6450-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1043 and 1084

[Ex Parte No. MC-5 (Sub No. 11)]

RIN: 3120-AB63

Revision of Regulations Governing Insurance and Surety Companies Making ICC Filings

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; interpretation.

SUMMARY: The Commission is issuing revised rules to clarify its intended meaning of its rules at 49 CFR Parts 1043 and 1084 governing financial responsibility requirements for motor carriers, property brokers and freight forwarders. The Commission interprets the terms "legally authorized" as used in 49 CFR 1043.8 and "authorized" as used in 49 CFR 1084.5 to describe an insurance company which has been licensed or admitted in at least one state to issue insurance policies or bonds, and clarifies its policy that it will accept certificates of insurance issued only by licensed or admitted companies.

EFFECTIVE DATE: The rules are effective on July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Alice K. Ramsay (202) 275-0854 or Heber P. Hardy (202) 275-7148 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Energy and Environmental Considerations

This action does not significantly affect the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that revision and clarification of the final rules will not have a significant impact upon a substantial number of small entities. These revisions do not impose excessive regulatory burdens, nor do they require unnecessary Federal supervision. Furthermore, the revisions do not require small entities to do anything substantially different in filing evidence of required coverage under 49 CFR 1043.8 and 1084.5 than is required already. We do not expect that any small entities will suffer any significant adverse economic impact. As our figures below indicate, there are numerous companies that make insurance filings at the Commission, and only a minimal number fall into the category of unlicensed excess/surplus lines insurers, leaving a large number of companies available to motor carriers to satisfy their insurance requirements. Moreover, the number of carriers using unlicensed excess/surplus lines companies is also relatively small.

The current regulations affect approximately 50,000 motor carriers of property; approximately 550 freight forwarders; and approximately 1,550 insurance and surety companies writing policies for the motor carriers and freight forwarders operating under the Commission's jurisdiction.

An estimated 835 motor carriers that are covered by unlicensed insurance companies, or 1.7 percent of the approximately 50,000 motor carriers currently covered by insurance filings, will be affected by this decision. Approximately 72 unlicensed insurance companies, or 4.6 percent of the over 1550 insurance companies making filings at the Commission, also will be affected. Notably, as of April 11, 1991, the Commission's records reflect that the above 835 motor carriers were covered by only 857 (approximately one percent) of the over 81,000 insurance filings on file and in effect.

Prior to the order by the United States Court of Appeals in *Owner-Operator Service, Inc. et al.* v. *Interstate Commerce Commission and the United States of America,* No. 90-1274, an estimated 58 unlicensed companies had made insurance filings on behalf of motor carriers. As of April 11, 1991, of the filings made by those companies, approximately 445 filings were on file and in effect. Since the court order, only 16 additional unlicensed companies have made insurance filings. As of April 11, 1991, of the filings made by the latter 16 companies, approximately 412 filings were on file and in effect. The following table illustrates that the vast majority of the 72 unlicensed insurance companies have made five or less filings:

No. of filings	No. of companies
1-5	51
6-10	7
11-50	8
50-100	5
over 200	1

There does not appear to be a problem in obtaining insurance from licensed companies. For example, when the Commission issued an order March 4, 1991, revoking all certificates filed by a licensed insurer which specialized in coverage for small motor carriers and was declared insolvent by a state court, 439 carriers were affected. During the period since that order, evidence of replacement coverage for these carriers has been filed with the Commission and, as of May 7, 1991, 89 percent of the carriers had achieved full compliance, while an additional three percent can operate under their contract authority only. It is likely that the remaining carriers that wish to continue operating will come into compliance. Of the over 390 replacement filings made on behalf of the affected carriers, as of May 7, 1991, only seven were made by unlicensed companies.

Summarizing, we do not expect these revisions to have a significant impact on a substantial number of motor carriers or insurance companies. The Commission's insurance company eligibility requirements at 49 CFR 1043.8 and 1084.5, as revised and clarified, remain substantively identical to the requirements of DOT at 49 CFR 387.11. Furthermore, because DOT does not require evidence of insurance or bonds to be filed, the filing requirements in the ICC's rules do not duplicate DOT's rules. Accordingly, this action will not require additional record keeping or report filing by small entities.

List of Subjects

49 CFR Part 1043

Insurance, Motor carriers, Surety bonds.

49 CFR Part 1084

Freight forwarders, Insurance, Surety bonds.

Decided: June 7, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1043 and 1084 of the Code of Federal Regulations are amended as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for 49 CFR part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

2. Section 1043.8 is revised to read as follows:

§ 1043.8 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company that is authorized (licensed or admitted) to issue bonds or underlying insurance policies:

(a) In each state in which the motor carrier is authorized by the Commission to operate, or

(b) In the state in which the motor carrier has its principal place of business or domicile, and will designate in writing upon request by the Commission, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any state in which the carrier operates, or

(c) In any state, and is eligible as an excess or surplus lines insurer in any state in which business is written, and will make the designation of process agent described in paragraph (b) of this section.

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

3. The authority citation for 49 CFR part 1084 continues to read as follows:

Authority: 49 U.S.C. 10102, 10321, and 10927; 5 U.S.C. 553.

4. Section 1084.5 is revised to read as follows:

§ 1084.5 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company that is authorized (licensed or admitted) to issue bonds or underlying insurance policies:

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(a) In each state in which the freight forwarder is authorized by the Commission to perform service, or

(b) In the state in which the freight forwarder has its principal place of business or domicile, and will designate in writing upon request by the Commission, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any state in which the freight forwarder performs service; or

(c) In any state, and is eligible as an excess or surplus lines insurer in any state in which business is written, and will make the designation of process agent prescribed in paragraph (b) of this section.

[FR Doc. 91-14467 Filed 6-18-91; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), is prohibiting further retention of pollock by vessels fishing in the Eastern Regulatory Area of the Gulf of Alaska. This action is necessary to prevent further catch of pollock in the Eastern Gulf in excess of the total allowable catch (TAC). The intent of this action is to promote optimum use of groundfish while conserving pollock stocks.

EFFECTIVE DATES: 12 noon on June 13, 1991, Alaska local time, (A.l.t.), through midnight, A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council (Council) and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups (defined at § 672.20(b)) are specified annually within the OY range and are apportioned among the regulatory areas and districts.

Under § 672.20(c)(3), if the Regional Director determines that the TAC of any target species or "other species" category in a regulatory area or district has been reached, the Secretary will publish a notice in the **Federal Register** declaring that the species or species group is to be treated as a prohibited species under § 672.20(e) in all or part of that regulatory area or district. During the time that this notice is in effect, the operator of every vessel regulated must minimize the catch of that species in the area or district, or part thereof where the notice is applicable.

Section 672.20(c)(1)(ii) provides that the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final prohibited species catch amounts, and final quarterly allowances of pollock. These final specifications will supersede the interim specifications.

The Secretary declined to implement initial 1991 TACs for pollock without further study, because Steller sea lions have been listed as threatened under the Endangered Species Act, and pollock are important in the diet of Steller sea lions. Additional information about pollock stocks has recently become available through a special status of stock report prepared by the Alaska Fisheries Science Center, NMFS. On the basis of this information, the Secretary is implementing a pollock TAC of 3,400 mt in the Eastern Regulatory Area of the Gulf of Alaska in a notice of initial harvest specifications for pollock, published elsewhere in this issue of the **Federal Register**.

However, the total pollock catch in the Eastern Regulatory Area has already been reached. Therefore, pursuant to § 672.20(c)(3), the Secretary is declaring that pollock must be treated in the same manner as prohibited species in the Eastern Regulatory Area of the Gulf of Alaska, effective 12 noon, A.l.t., June 14, 1991, through the remainder of this fishing year.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 13, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-14510 Filed 6-13-91; 4:38 pm]
BILLING CODE 3510-22-M

50 CFR Parts 672 and 675

[Docket No. 910643-1143]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of initial harvest specifications for pollock; emergency interim rule; reapportionment of reserves; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) by this notice announces the approval of the 1991 total allowable catch (TAC) specifications for pollock and the reapportionment of pollock reserve to domestic annual processing (DAP). To ensure that pollock fishing does not jeopardize the continued existence or recovery of the threatened Steller sea lion, the Secretary, by emergency rule, is also establishing certain groundfish fishery restsrictions in the Gulf of Alaska (GOA) to minimize the adverse effects of the pollock fishery on Steller sea lions. The emergency rule contains measures that are designed to protect Steller sea lions by (1) allocating the pollock TAC for the combined Western/Central (W/C) Regulatory Areas equally between two subareas located east and west of 154°W. longitude, (2) limiting the amount of unharvested pollock TAC that may be rolled over to subsequent quarters in a fishing year, and (3) prohibiting fishing with trawl gear in the Exclusive Economic Zone (EEZ) within 10 nautical miles (nm) of 14 Steller sea lion rookeries. In order to implement the intent of these Steller sea lion emergency measures, the emergency rule also mends the definition of fishing trip for purposes of the directed fishing rule and deletes statistical area 621. Emergency action by the Secretary is necessary to prevent further economic hardship to the fishing industry and to ensure adequate safeguards, as required by the Endangered Species Act (ESA), for the threatened Steller sea lion. The actions included in this notice are intended to further the goals and objectives contained in the Fishery Management Plan for Groundfish of the GOA and the ESA.

DATES: Pollock harvest specifications are effective June 13, 1991.

Amendments to 50 CFR parts 672 and 675 are in effect from June 13, 1991, through September 17, 1991.

Comments are invited on the reapportionment of the pollock reserve to DAP through July 5, 1991. Comments also are particularly invited on the environmental assessment prepared for this action.

ADDRESSES: Copies of the environmental assessment (EA), biological opinion, and an updated status of stock assessment for GOA pollock may be obtained from Dale R. Evans, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fisheries Management Division, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the EEZ of the GOA are managed by the Secretary under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations governing the foreign fishery at 50 CFR part 611 and by regulations governing the U.S. fishery at 50 CFR part 672. Additional regulations on U.S. fishermen are found at 50 CFR part 620.

At times, amendments to the FMP and/or its implementing regulations are necessary to respond to fishery conservation and management problems that cannot be addressed within the time frame of the normal procedures provided for by the Magnuson Act. Section 305(c) of the Magnuson Act provides for implementation by emergency rules to address conservation and management problems in the fishery for 90 days with a possible 90-day extension.

Because of the need to complete additional data analyses and to conclude ESA section 7 consultation, a final TAC for GOA pollock has not yet been specified for the 1991 fishing year. Because no TAC level has been specified, the directed fishery for pollock in the GOA has been closed since February 15, 1991 (56 FR 6992, February 21, 1991). The closure of the pollock fishery has caused an economic hardship to fishermen, seafood processors, and related industries. This economic hardship has been exacerbated by a second quarter GOA closure to all non-pelagic trawling because of halibut bycatch levels.

This action includes a notice to implement annual pollock TAC specifications of 3,400 metric tons (mt) for the Eastern Regulatory Area and 100,000 mt for the Western/Central (W/C) Regulatory Areas in the GOA that will be in effect during the 1991 fishing year. Under 50 CFR 672.20(a)(2)(iv), the pollock TAC specification in the W/C Regulatory Areas is apportioned into equal quarterly allowances. Because it is anticipated that DAP will require all reserve amounts of pollock, reserve amounts of pollock are reapportioned to DAP by this action. This action also includes an emergency rule to implement three measures that are necessary to ensure that pollock harvest will not jeopardize Stellar sea lions.

These measures will:

(1) Allocate the pollock TAC specification in the combined W/C Regulatory Areas equally between two subareas located east and west of 154° W. longitude;

(2) Stipulate that any unharvested amount of any quarterly allowance of TACs will be added in equal proportions to the quarterly allowances of the following quarters, resulting in a sum for each quarter not to exceed 150 percent of the initial quarterly allowance; and

(3) Prohibit fishing with trawl gear in the EEZ within 10 nm of the 14 GOA Steller sea lion rookeries. Since 4 of the 14 rookeries border the Bering Sea/Aleutian Island (BSAI) FMP area, fishing closure areas extend into the BSAI area.

A fourth emergency measure amends the definition of fishing trip and deletes statistical area 621. This fourth measure is necessary to implement the allocation of the pollock TAC east and west of 154° W. longitude.

A description of, and reasons for, this action are as follows:

A. Notice Establishing Pollock TAC Specifications

Secretarial approval of the pollock TACs—Acceptable biological catches (ABCs) and TACs for pollock, as well as for each of the target groundfish species categories managed under the FMP, are specified for each new fishing year. The process for determining ABCs and TACs for groundfish species in the GOA is established by the FMP and is implemented in regulations at 50 CFR 672.20(a). The sum of the TACs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000-800,000 mt.

The Council met during December 3-7, 1990, for purposes of recommending 1991 TAC specifications for pollock, as well as other groundfish. It reviewed the best available scientific information about pollock stocks, which was contained in the Stock Assessment and Fishery Evaluation (SAFE) report, dated November 1990. The SAFE Report was prepared and presented by the GOA Groundfish Plan Team to the Council and to the Council's Scientific and Statistical Committee and Advisory Panel. Information contained in the SAFE report is incorporated herein by reference. The Council also reviewed intended industry harvest plans for 1991, and estimates made by NMFS concerning the extent to which U.S. fishermen would harvest amounts of pollock.

Information about pollock in the SAFE report was derived from:

1. The 1990 hydroacoustic survey conducted by the NMFS Alaska Fisheries Science Center (AFSC);

2. 1990 NMFS fishery observer reports;

3. Results of the 1990 bottom trawl surveys in the GOA, which were conducted by the AFSC; and

4. Groundfish catches obtained from the 1990 Weekly Production Reports.

The Council recommended ABCs and TACs for GOA groundfish totaling 773,643 mt and 331,069 mt, respectively, for the 1991 fishing year. The sum of the TACs falls within the groundfish OY range specified in the FMP. The recommended pollock ABC and TAC contributed 133,400 mt to each sum of the groundfish ABCs and TACs. Interim specifications for all groundfish were in effect on January 1, 1991 (see 55 FR 47897, November 16, 1990), based on procedures contained in regulations at 50 CFR 672.20(c)(1)(i). Interim pollock TACs of 850 mt and 17,500 mt were specified for the Eastern Regulatory Area and the W/C Regulatory Areas, respectively. A final notice of 1991 groundfish specifications, other than for pollock, was published in the **Federal Register** on March 1, 1991 (56 FR 8723).

The Council recommended 1991 pollock ABCs and TACs of 130,000 mt in the Western/Central GOA Regulatory Areas and 3,400 mt in the Eastern Regulatory Area. The 1991 Western/Central Regulatory Areas pollock TAC recommended by the Council is 82 percent higher than the 1990 GOA pollock TAC. Because of concern for potential adverse effects to Steller sea lions' food supply, NMFS decided that further evaluation of the GOA pollock TAC, and available data on the GOA

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pollock fishery and Steller sea lions was needed before setting the final pollock TAC specification.

The NMFS AFSC reevaluated all available data, and has revised the 1991 pollock exploitable biomass estimate and ABC recommendation of the Western/Central GOA Regulatory Areas. These revisions stem from an improvement in the GOA bottom trawl biomass estimates, specifically, in the methods used to determine when a fishing power correction should be applied and how it should be calculated. Based on these new analyses, the AFSC now recommends an ABC of 100,000 mt for Western/Central GOA pollock, approximately 10 percent of the exploitable biomass. This ABC is appropriately conservative of the pollock stock and is supported by the best available scientific information. The proposed harvest level is substantially below the fishing mortality rate that would result in overfishing.

NMFS concluded formal section 7 consultation on the GOA FMP, GOA fishery, and 1991 TAC specifications for groundfish other than pollock on April 18, 1991. NMFS concluded formal consultation on the 1991 GOA pollock TAC specifications and emergency fishery restrictions on June 5, 1991. The biological opinions prepared during these consultations concluded that these actions are not likely to jeopardize the continued existence of any endangered or threatened species under NMFS's jurisdiction. Copies of the biological opinions may be obtained from the previously listed address.

On the basis of this information, the Secretary is implementing a pollock TAC of 100,000 mt in the W/C Regulatory Areas as listed in the following table. For the Eastern Regulatory Area, the Secretary is implementing the Council's recommended TAC of 3,400 mt.

ABCs, Initial groundfish TACs and DAPs (metric tons) for pollock in the Western/Central (W/C), Western (W), Central (C), and Eastern (E) Regulatory Areas and in the West Yakutat (WYK), Southeast Outside/East Yakutat (SEO/EYK), Gulf-Wide (GW), and Southeast Outside (SEO) Districts of the Gulf of Alaska. Amounts specified as JVP and TALFF initially are set at zero and are not shown in this table. Reserves are apportioned to DAP, effective January 1, 1991.

Species	Area	ABC	TAC-DAP
.	.	.	.
Pollock	W/C	100,000	
Statistical area	61, 62		50,000
	63		50,000
	E	3,400	3,400
Total		103,400	103,400
.	.	.	.
Total		743,643	299,589

The total pollock catch in the Eastern Regulatory Area has reached this amount. As a result, retention of pollock in the Eastern Regulatory Area is prohibited for the remainder of 1991 as described in a separate document in this issue.

Reopening of Western/Central Regulatory Areas to a Pollock Directed Fishery

The Secretary closed the directed fishery for pollock in the entire Western/Central Regulatory Areas, when the interim TAC of 17,500 mt was reached (56 FR 6992, February 21, 1991). The fishery will reopen in the combined Western/Central Regulatory Areas at noon, Alaska local time (A.l.t), on June 13, 1991. The total catch, including discards, when the fishery closed was 22,000 mt. Relative to the first quarter TAC allowance, this amount results in a harvest shortfall which will be added in equal proportions to quarterly allowances in the second, third, and fourth quarters. The amount of pollock available for the second quarter in the W/C Regulatory Areas is 13,000 mt in each subarea east and west of 154° W. longitude. The calculations made to arrive at this figure are presented in the discussion of the rollover emergency measure.

Apportionment of Pollock Reserve to Domestic Annual Processing (DAP)

The FMP stipulates, in part, that 20 percent of the pollock TAC be set aside in a reserve for possible reapportionment at a later date (§ 672.20(d)(2)(i)). Because DAP is projected to need all reserve amounts, the Secretary is reapportioning the pollock reserve to DAP under § 672.20(a)(1)(ii). By doing so, the Secretary is anticipating that the domestic industry will need all the pollock DAP amount. Comments are invited on the reapportionment for 15 days after the effective date of this notice under § 672.20(d)(5)(iv). Comments should focus on whether, and the extent to which, vessels of the United States will harvest reserve or DAP amounts for pollock during the remainder of the year and whether, and the extent to which, U.S. harvested pollock can or will be processed by U.S. fish processors or received at sea by foreign fishing vessels.

B. Measures Implemented By Emergency Rule

The Steller sea lion population has drastically declined in a large portion of its geographic range, including the GOA. This population decline prompted NMFS to list the Steller sea lion as a threatened species, and to establish certain conservation measures to aid the species' recovery (55 FR 49204, November 28, 1990). Consistent with the ESA, section 7 consultation was reinitiated on all Federal fishery management plans and fisheries, including the GOA fishery, within the range of Steller sea lions.

The 1991 GOA pollock TAC specifications were withheld until additional data analyses and section 7 consultation could be completed, primarily because of the concern that the pollock fishery removals would restrict the availability of food to Steller sea lions. As a result of the analyses conducted, NMFS determined that the emergency measures listed below are necessary to ensure that the GOA pollock fishery will not jeopardize the continued existence of Steller sea lions. Based on the economic hardship to the fishing industry, and the need to implement emergency measures to protect Steller sea lions simultaneously with the pollock fishery opening, it is contrary to the public interest to provide prior notice and opportunity to comment on the emergency measures contained in this notice.

Allocation of the pollock TAC east and west of 154° W. longitude

The final pollock specifications notice apportions the 100,000 mt pollock TAC for the W/C Regulatory Areas equally to areas (subareas) east and west of 154° W. longitude. The purpose of the 50,000 mt subarea allocations is to prevent an entire quarterly allowance from being harvested in a concentrated area within the W/C Regulatory Areas. Otherwise, such harvests could result in local depletion of pollock, which may adversely affect the feeding success of Steller sea lions. The limited available data from satellite-transmitter tagged Steller sea lions suggests that sea lions associated with the four major rookeries in the GOA that have shown the steepest recent declines feed in or around the east side of Kodiak Island. These same locations have accounted for the majority of the pollock catch since 1987. The proposed spatial allocation of the quarterly TAC will

divert some fishing effort away from these Steller sea lion foraging habitats.

This measure requires an amendment by emergency rule to the definition of a fishing trip in regulations at 50 CFR 672.20(h)(2) for purposes of managing prohibitions to directed fishing for pollock in each of the two subareas. The operator of a vessel entering a reporting area or district with a specific pollock TAC must initiate a new trip to avoid an unintentional violation. Should NMFS prohibit directed fishing for pollock in either subarea, amounts of pollock retained on board a vessel must be less than 20 percent of the amount of all other fish species retained on board that vessel at any time until any offload or transfer of any fish or fish product from that vessel or until the vessel leaves reporting areas 61 and 62 combined, or reporting area 63, or the Eastern Regulatory Area, where fishing activities commenced, whichever occurs first.

The above area division also requires an amendment by emergency rule to delete statistical area 621 (Shelikof Strait District) in 50 CFR 672.2, which is necessary, because the longitude of 154° would otherwise bisect statistical area 621, and determining which part of the pollock catch was east and west of 154° W. longitude would not be possible with existing reporting requirements under 50 CFR 672.5. Fish that might have been reported from the Shelikof Strait District must now be reported by either Reporting Area 62 or 63, as appropriate.

Limit on Rollover of the Pollock TAC Quarterly Allowances

Existing regulations at 50 CFR 672.20(a)(2)(iv) require the pollock TAC for the W/C Regulatory Areas to be divided equally into four quarterly allowances. Under this emergency rule, each 50,000 mt TAC allocation in the subareas east and west of 154° W. longitude (W/C subareas) is apportioned into 12,500 mt allowances for each calender quarter. Existing regulations also require that any unharvested amount of a quarterly allowance, or excessive harvests of a quarterly allowance, will be added to (rolled over), or subtracted from, in equal proportions, the subsequent quarters' allowances.

To prevent excessive accumulation of any quarterly allowance, an amendment to these regulations is implemented by emergency rule to limit the maximum amount of any subsequent quarterly allowance to 150 percent of the initial quarterly allowance. Thus, in 1991, because each initial quarterly allowance of each pollock TAC is 12,500 mt, the maximum amount of any subsequent quarterly allowance resulting from rollovers is 18,750 mt in each of the two subareas. The purpose of the amendment is to prevent excessive harvests of pollock, in any quarter, which could reduce amounts of food available for sea lions, or limit their feeding efficiency.

As discussed above, the first quarter catch was 22,000 mt. Based on a TAC of 100,000 mt, each quarterly apportionment is 25,000 mt. Subtracting the first quarter catch from the first quarter apportionment results in a 3,000-mt harvest shortfall. Thus, 500 mt is added to each following quarter's apportionment in each subarea east and west of 154° W. longitude resulting in 13,000 mt (the sum of 12,500 mt and 500 mt) in each subarea. Each quarterly allowance in each subarea will be subject to notices of closure under 50 CFR 672.20(c).

Trawl Closures Around Steller Sea Lion Rookeries

Closures to groundfish trawling in the EEZ within 10 nm of 14 Steller sea lion rookeries are implemented. A list of the rookeries is in § 672.24(e) of this notice.

These closures are intended to further reduce any effects that groundfish trawling may have on the Steller sea lions, particularly to their foraging success. The 10-nm closures are based on the average distance travelled by foraging female Steller sea lions during the summer reproductive period. Maintenance of the buffer zones in the non-breeding season is primarily intended to protect juvenile sea lions. Juvenile sea lions are likely to be the most susceptible to prey depletion, since they are less adept predators than adults. These young animals are also less likely to swim far from their rookery of birth, particularly during their first year. Thus, nearshore zones proximal to rookeries are likely to be important feeding areas throughout the year.

Secretarial Determinations

The Secretary has reviewed the purposes of the measures contained in this emergency rule and has determined that they are necessary and appropriate for the conservation and management of the groundfish fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this emergency rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator finds that reasons summarized above justifying promulgation of this emergency rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

An EA was prepared for this rule and the Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Director at the above address.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why following the usual procedures of that order is not possible.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

Other Matters

This action to implement pollock TAC specifications is taken under 50 CFR 611.92 and 50 CFR 672.20 and complies with Executive Order 12291. The Secretary finds that the purpose of the pollock reserves was to save portions of the TAC in case they were needed by DAP later in the fishing year rather than apportioning them to joint venture processing (JVP) or total allowable level of foreign fishing (TALFF) at the beginning of the fishing year. Because the best available information indicates that DAP will harvest all the pollock TAC, no JVP or TALFF specifications have been established, and no JVP or TALFF apportionments are expected during 1991. Because retention of a pollock reserve could result in a premature fishery closure, this apportionment to DAP is made

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immediately effective under 50 CFR 672.20(d)(5)(iv)(A)(3). This apportionment is effective June 13, 1991. Comments are invited on the reserve apportionments through July 5, 1991.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: June 13, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 672.2 [Amended]

2. In § 672.2, in the definition of "statistical area," the description of "statistical area 621" is suspended from June 13, 1991, through September 17, 1991.

3. In § 672.20, paragraphs (a)(2)(iv) and (h)(2)(i) are suspended and paragraphs (a)(2)(v), (h)(2) (iii) and (iv) are added from June 13, 1991, through September 17, 1991, to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) * * *

(v) The TAC for pollock in the Central and Western Regulatory Areas will be apportioned equally to statistical areas 61 and 62 combined, and to statistical area 63. Each apportionment will be divided equally into the four quarterly reporting periods of the fishing year. Within any fishing year, any unharvested amount of any quarterly allowance of TACs will be added in equal proportions to the quarterly allowances of the following quarters, resulting in a sum for each quarter not to exceed 150 percent of the initial quarterly allowance. Within any fishing year, harvests in excess of a quarterly allowance of any TAC will be deducted in equal proportions from the quarterly allowances of each of the remaining quarters of that fishing year.

* * * * *

(h) * * *

(2) * * *

(iii) From the commencement of or the continuation of fishing for any groundfish other than sablefish and pollock, after the effective date of a notice under paragraph (c)(2) of this section prohibiting directed fishing, until any offload or transfer of any fish or fish product from that vessel or until the vessel leaves the regulatory area where fishing activities commenced, whichever occurs first.

(iv) From the commencement of or continuation of fishing for pollock after the effective date of a notice under paragraph (c)(2) of this section prohibiting directed fishing until any offload or transfer of any fish or fish product from that vessel or until the vessel leaves reporting areas 61 and 62 combined, or reporting area 63, or the Eastern Regulatory Area, where fishing activities commenced, whichever occurs first.

4. In § 672.24, paragraph (e) is added from June 13, 1991, through September 17, 1991, to read as follows:

§ 672.24 Gear limitations.

* * * * *

(e) Steller sea lion areas. Trawling is prohibited year round in the Gulf of Alaska within 10 nautical miles of each of the following Steller sea lion rookeries listed at 50 CFR 227.12(a)(3): Outer Island, Sugarloaf Island, Marmot Island, Chirikof Island, Chowiet Island, Atkins Island, Chernabura Island, Pinnacle Rock, North and South Clubbing Rocks, Ugamak Island, Akun Island, Akutan Island, Adugak Island, and Ogchul Island.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In §675.24, paragraph (f) is added from June 13, 1991 through September 17, 1991 to read as follows:

§ 675.24 Gear limitations.

* * * * *

(f) Steller sea lion areas. Trawling is prohibited year round in the Bering Sea and Aleutian Islands area within 10 nautical miles of each of the following Steller sea lion rookeries listed at 50 CFR 227.12(a)(3): Ugamak Island, Akun Island, Akutan Island, and Adugak Island.

[FR Doc. 14477 Filed 6-13-91; 4:36 p.m.]

BILLING CODE 3510-22-M

50 CFR Part 685

[Docket No. 910645-1145]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; longline area closures in the Main Hawaiian Islands.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency interim rule amending current regulations promulgated under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP). This action is needed to minimize gear conflicts between longline and troll/handline pelagic fisheries in Main Hawaiian Island (MHI) waters. MHI waters are defined in this emergency rule as the Exclusive Economic Zone (EEZ) of the Hawaiian Islands Archipelago lying to the east of 161° West longitude. Gear conflicts have increased throughout the MHI since August 1989, when longline vessels began fishing near the Waianae Coast, an area fished heavily by troll/handline fishermen, both commercial and recreational. These conflicts have hindered fishing activities and resulted in loss of gear, in some cases due to willful destruction. Increasing tensions between pelagic user groups have led to concerns of public safety. In response, the Western Pacific Fishery Management Council (Council) has proposed, and the Secretary concurs with, implementation of this temporary emergency rule to prohibit longline fishing within 75 nautical miles (nm) around Kauai County (which includes the islands of Kauai, Niihau, and Kaula) and Honolulu County (which is the island of Oahu), and 50 nm around Hawaii County (which is the island of Hawaii) and Maui County (which includes the islands of Maui, Kahoolawe, Lanai, and Molokai).

EFFECTIVE DATE: The emergency rule is effective from 0000 hours local time June 14, 1991, to 2400 hours local time August 19, 1991.

ADDRESSES: Copies of the documentation supporting the Council's emergency action request and the environmental assessment (EA) for this action may be obtained from, and comments should be sent to, E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, (808) 523-1368 or (FTS) 551-1974, Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514-6660 or (FTS) 795-6660, or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808) 955-8831 or (FTS) 551-2927.

SUPPLEMENTARY INFORMATION: Stocks of pelagic species around Hawaii have been traditionally harvested by both longline and trolling gear. Between 1967 and 1990, the longline fleet tripled (from approximately 45 vessels to 150 vessels), while the commercial troll/handline fleet (including charterboats) increased from 2,232 vessels to 2,409 vessels. During this same time period, total longline catches increased 3.4 times from 3.9 million pounds (lb) (1,769 metric tons (mt)) to 13.1 million lb (5,941 mt), while troll catches decreased 16 percent from 5.3 million lb (2,419 mt) to 4.5 million lb (2,041 mt).

In August 1989, conflicts between longliners, many recently arrived from the Gulf of Mexico, and troll/handline fishermen, both commercial and recreational, attracted media attention. Some of these interactions, which first occurred off Waianae, Oahu, lead to physical confrontations and destruction of gear. State officials met with both charterboat and small boat troll fishermen and with longline fishermen. As a result of these meetings a voluntary informal agreement was reached whereby longline fishermen would stay at least 20 nm from shore.

Not all longliners adhered to this informal agreement and allegations of gear conflicts escalated, particularly around the islands of Oahu, Kauai, and Maui, as the longline fleet grew. Tensions continued to mount throughout 1990 and the Council was increasingly concerned that continued gear conflicts might lead to violent confrontations.

In December 1990, the Council decided to request emergency action to impose a moratorium on new entry into the longline fishery to halt growth and provide a period of stability in which to collect data and to analyze the impact of the longline fishery on the stocks, examine the interaction between various sectors of the pelagic fishery such as the longline and troll/handline fleets, and evaluate long-term management alternatives. The emergency moratorium was implemented on April 23, 1991. The Council intends to submit a follow-up plan amendment to this emergency moratorium that would establish a 3-year moratorium on new entry into the longline fishery. The moratorium will, by limiting the number of vessels, control escalation of the gear conflicts, but does not resolve fundamentally the existing public safety problem.

Concerned about the continuing negative social impacts and potential economic impact of these interactions, the Council appointed a Pelagic Task Force in December 1990. The Task Force, comprised of longliners, commercial and recreational trollers, and handliners (including charterboat representatives), was charged with developing recommendations for possible area closures to address this problem. Public hearings were also held throughout the MHI.

The Task Force members agreed that some type of area closure was needed but could not agree on the magnitude of such area closures. Commercial and recreational trollers and handline fishermen, including charterboat representatives, who made up the majority of Task Force members recommended a minimum of 75 nm around all MHI while longliners and fish processors favored 20 to 30 nm.

After examining available data, recommendations of the Task Force, and public input, the Council concluded that a 75-nm closure around Kauai County and Honolulu County and a 50-nm closure around Maui County and Hawaii County are warranted. Examination of State of Hawaii catch reports shows that, while the majority of commercial trolling trips are taken within 20 nm of shore, an increasing number of trips are reported at distances of 50 to 60 nm off Kauai, Oahu, and the west coast of Hawaii, and 40 nm off Maui, Molokai, and Lanai. Distances travelled, and thus the potential for gear conflict, are greatest during the summer yellowfin tuna season. Little information is available from the recreational fishery but an informal poll was taken of both commercial troll and recreational fishermen in early 1991. According to respondents, the maximum distances fished were as follows: Kauai, 70 nm; Oahu, 53 nm; Maui County, 47 nm; and Hawaii, 47 nm.

Analyses of existing information with respect to the potential adverse impacts of the longline fishery on the catch per unit of effort and markets of troll/handline pelagic fishermen are inconclusive. Gaining a better understanding of the interaction between sectors is one of the objectives of the data collection and analysis plan during the planned 3-year moratorium. Preliminary 1990 data on blue marlin catches may indicate adverse interaction. Blue marlin is a highly valued recreational species that plays an important part in the Hawaii charterboat industry. Blue marlin is also a by-catch species in the longline fishery. During 1990, the longline harvest of blue marlin increased 7 percent while commercial troll landings decreased by 42 percent. Oahu troll/handline monthly catch per trip information (calculated from market data) shows that the season peak, which occurred in August and September during 1987–89 (90–125 lb or 40.5–56.3 kilograms (kg) per trip), did not occur in 1990 when catch rates remained relatively stable at 25–40 lb (11.3–16.0 kg) per trip throughout the year. Analyses of similar trends in the Atlantic fishery have shown a negative correlation between longline harvests and recreational catch rates.

Vessels in the Hawaii longline fleet range in length from about 23 feet (ft) to 113 ft (7.0 to 34.4 meters (m)). Twenty five percent of the 157 vessel fleet are less than 57 ft (17.4 m) in length. During the first 3 months of the longline permit and logbook program (November 27, 1990, to February 24, 1991), 29 percent of the total longline effort took place within the proposed 75/50-nm closure area compared to 48 percent in the remaining EEZ around the MHI and 23 percent in the NWHI. However, for the quarter of the fleet less than 57 ft (17.4 m) in length, 46 percent of the effort occurred within the proposed 75/50-nm closure area. Catches from this area accounted for 65 percent of the swordfish harvest, 40 percent of the bigeye tuna harvest, and 54 percent of the yellowfin tuna harvest by vessels under 57 ft (17.4 m) in length. This segment of the fleet, which includes a number of smaller vessels with a long history of longlining within Hawaiian waters, will be the most negatively impacted by the area closure.

From May to September, when seas are calmer and the yellowfin tuna season is at a peak, commercial and recreational trolling effort normally increases and occurs at greater distances from shore. While Federal longline logbook data are not available for that time period, state catch reports show longline effort occurring within the 75/50-num closure area, particularly between Kauai and Oahu. While the growth of the longline fleet has been temporarily halted with the emergency moratorium, other actions by the Council (e.g., a 50-nm closure in the NWHI to prevent interaction with endangered monk seals) may exacerbate gear conflicts, causing operators of longline vessels to look for alternative fishing grounds. For these reasons, emergency action is necessary

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in order to have area restrictions in place by the time of greatest potential conflict. A 75-nm closure around Oahu and Kauai provides a 15-nm buffer zone beyond the maximum distance reported by commercial trolling fishermen on state catch reports. In recent years, the commercial troll, charterboat, and recreational fleets located in these areas have reported traveling to fishing grounds farther offshore. The area closure for Maui and Hawaii Counties was determined to be 50 nm based on the maximum distance reported on state catch report forms, except for east Hawaii where the maximum distance reported was 20 nm. The Council intends to follow this emergency action with an amendment incorporating area restrictions into the FMP.

This emergency rule defines the term Main Hawaiian Islands as the EEZ of the Hawaiian Islands Archipelago lying to the east of 161° West longitude. It is being defined to clarify where the area closures are being implemented and to distinguish this portion of the Hawaiian Island chain from the Northwestern Hawaiian Islands, where a protected species zone area closure was implemented under emergency regulations in April 1991.

The Council is concerned about enforcement of the area closure regulations. Automated vessel position indicating devices (transponders) hold promise for enhancing enforcement activities. The Council is currently conducting field experiments to determine the feasibility of employing transponders to monitor the location of longline vessels. When this technology is operationally available, the Council may propose new regulations that require longline vessels to carry transponders.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law. This rule is effective for 90 days from the date of publication under section 305(c)(3)(B) of the Magnuson Act and may be extended for an additional 90 days with the agreement of the Council. The Assistant Administrator has determined that conditions in the fishery are such that delaying this rule would pose a substantial risk of severe social conflict with potential adverse public safety implications as well as possible adverse economic impacts.

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comments upon, or to delay for 30 days the effective date of these emergency regulations under section 553 (b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order (E.O.) 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not practicable to follow the regular procedures of that order.

The Council prepared an EA for this action. The Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Southwest Region (see **ADDRESSES**).

An informal consultation was conducted under section 7 of the Endangered Species Act (ESA) and it was determined that this action is not likely to adversely affect any endangered or threatened species listed under the ESA.

The Assistant Administrator has determined that this emergency rule will be implemented in a manner that is consistent to the maximum extent practical with the approved coastal zone management program of the State of Hawaii. The Council requested that the State of Hawaii concur with the Assistant Administrator's finding and the State of Hawaii has concurred.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing.

Dated: June 13, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 685.2, effective from 0000 hours local time June 14, 1991, to 2400 hours local time August 19, 1991, new definitions for "Longline fishing prohibited area" and "Main Hawaiian Islands" are added, in alphabetical order, to read as follows:

§ 685.2 Definitions.

* * * * *

Longline fishing prohibited area means the waters within 75 nm of the Islands of Oahu, Kauai, Niihau, and Kaula, and the waters within 50 nm of the islands of Hawaii, Maui, Kahoolawe, Lanai, and Molokai, as measured from the baseline from which the seaward boundary of the State of Hawaii is defined.

Main Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the east of 161° West longitude.

* * * * *

3. In § 685.5, new paragraph (u) is added to be effective from 0000 hours local time June 14, 1991, to 2400 hours local time August 19, 1991, to read as follows:

§ 685.5 Prohibitions.

* * * * *

(u) Fish with longline gear within the longline fishing prohibited area in the Main Hawaiian Islands as defined in § 685.2 of this part.

[FR Doc. 91-14568 Filed 6-4-01; 12:18 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 118
Wednesday, June 19, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Part 1600

Meetings of the Board of Directors of the Rural Telephone Bank

AGENCY: Rural Telephone Bank, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Telephone Bank (Bank) proposes to amend 7 CFR chapter XVI of the Code of Federal Regulations to add a new part 1600. This new part implements the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and sets forth the procedural requirements designed to provide the public with information to the fullest extent practicable, regarding the decision making process of the Board of Directors (Board) of the Bank. The regulations include provisions for giving advance notice of meetings of the Board, for holding meetings which may lawfully be closed to the public, for maintaining copies of transcripts, electronic recordings, or minutes of closed meetings, and for the availability of the non-exempt portions of such records to the public.

All Rural Telephone Bank Borrowers will be affected by new part 1600 in that the borrowers bill be provided with information regarding the Board's decision making processes.

DATES: Public comments concerning this proposed rule must be received by the Bank or bear a postmark or its equivalent no later than July 19, 1990.

ADDRESSES: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Telephone Loans and Management Staff, Rural Electrification Administration, room 2250-South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-8530. Comments received may be inspected in room 2250. The Bank requests an original and three copies of all documents.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Telephone Loans and Management Staff, Rural Electrification Administration, room 2250-South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-8530.

SUPPLEMENTARY INFORMATION: This proposed rule is issued in conformance with Executive Order 12291. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be non major.

This action does not fall within the scope of the Regulatory Flexibility Act. The Bank has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.852, Rural Telephone Bank Loans. For the reasons set forth in 7 CFR part 3015, subpart V (50 FR 47034), this program is excluded from the scope of Executive Order 12372 which requires inter-governmental consultation with state and local officials.

This proposed rule contains no information collection or recordkeeping requirements which would require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Background

Subtitle F of the Rural Economic Development Act of 1990, (RED Act) (Pub. L. 101-624), requires the Bank to promulgate regulations that implement provisions of the Government in the Sunshine Act. Section 2363 of the RED Act requires that Bank Board meetings comply with the requirements of the Sunshine Act. Therefore, a new part 1600 is proposed to be added to 7 CFR chapter XVI to include this new requirement.

The Rural Telephone Bank is an agency and instrumentality of the United States within the United States Department of Agriculture (USDA). The Bank was established on May 7, 1971, (Pub. L. 92-12) as a lending agency operating in conjunction with the Rural Electrification Admininstration (REA) to provide supplemental financing for the REA Telephone Loan Program. The Adminsitrator of REA also serves as the Governor of the Bank, its chief executive officer.

Management of the Bank is vested in a Board of Directors. The Board consists of thirteen members; seven members are appointed by the President and six members are elected by holders of Class B and Class C Bank stock. Five of the seven Presidential appointees are officers or employees of USDA but not officers or employees of REA. Historically, these directors have been high officials of USDA who are responsible for the operation of major agencies and programs of the Department. The remaining two presidential appointees are from the general public and are not officers or employees of the Federal Government. The commercial-type and cooperative-type entities that hold Class B or C Bank stock elect six members (three from each corporate category) to serve on the Bank Board. The elected members represent the corporations that have borrowed from the Bank.

List of Subjects in 7 CFR Part 1600

Sunshine Act.

For reasons set forth in the preamble, the Bank proposes to amend 7 CFR chapter XVI to add a new part 1600 as follows:

PART 1600—GENERAL INFORMATION

Meetings of the Board of Directors of the Rural Telephone Bank

Sec.

1600.1 General.
1600.2 Definitions.
1600.3 Open meetings
1600.4 Scheduling of meetings.
1600.5 Public announcement of meetings.
1600.6 Bases for closing a meeting to the public.

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Sec.
1600.7 Procedures for closing a meeting to the public
1600.8 Transcript, recording or minutes; availability to the public.

Authority: 7 U.S.C. 941 et seq.

§ 1600.1 General.

The purpose of this part is to effectuate the provisions of the Government in the sunshine Act. This part applies to the deliberations of a quorum of the Directors of the Bank required to take action on behalf of the Bank where such deliberations determine or result in the joint conduct or disposition of official Bank business. Any deliberation to which this part applies is hereinafter in this part referred to as a meeting of the Board of Directors.

§ 1600.2 Definitions.

As used in this part:

(a) *Board* means Board of Directors of the rural Telephone Bank (Bank).

(b) *Director* means an individual who is a member of the Board.

(c) *Legal Counsel* means the legal counsel of the Bank.

(d) *Meeting* means the deliberations (including those conducted by conference telephone call or by any other method) among a quorum of the Directors, where such deliberations determine or result in joint conduct of official business of the Board. For purposes of this Part, each item on the agenda of a meeting is considered a meeting or a portion of a meeting. To the extent that the discussions do not result in the beginning of deliberations or achieve a consensus on a matter of official agency business or effectively predetermine official actions, the term Meeting does not include:

(1) Deliberations to determine whether a meeting or portions of a meeting will be open or closed or whether information pertaining to closed meetings will be disclosed;

(2) Calling a meeting at a date earlier than announced as provided in § 1600.5;

(3) Changing the subject matter of a publicly announced meeting as provided in § 1066.5;

(4) Disposition of Board business by circulation of materials to individual Board members;

(5) Staff briefings of Board members;

(6) Informal background discussions among Board members and staff which clarify issues and expose varying views; or

(7) Sessions with individuals from outside the Bank where Board members listen to a presentation and may elicit additional information.

(e) *Open to public observation* means the right of any member of the public to attend and observe, but not participate or interfere in any way in an open meeting of the Board.

§ 1600.3 Open Meetings.

(a) Except as provided for in § 1600.6 every portion of every meeting of the Board shall be open to public observation. Observation does not include participation or disruptive conduct by observers, and persons engaging in such conduct will be removed from the meeting. Documents being considered at meetings of the Board may be obtained subject to the exemptions set forth in § 1600.6.

(b) Board members shall not jointly conduct or dispose of official Board business other than in accordance with this part.

(c) The Secretary of the Board shall be responsible for assuring that ample space, sufficient visibility, and adequate acoustics are provided for public observation of meetings of the Board.

§ 1600.4 Scheduling of meetings.

A decision to hold a meeting of the Board should be made as provided in the bylaws of the Bank and at least ten days prior to the scheduled meeting date in order for the Secretary of the Bank to give the public notice required by § 1600.5. Special meetings of the Board may be held on less than ten days notice if a majority of the Board determines by a recorded vote that Bank business requires that the special meeting be held on less than ten days notice. After public announcement of a meeting of the Board under the provisions of § 1600.5, the subject matter thereof, or the determination to open or close a meeting, or portion thereof, may only be changed if a majority of the Directors determines by a recorded vote that business so requires and that no earlier announcement of the change is possible.

§ 1600.5 Public announcement of meetings.

(a) Except as otherwise provided in this section, public announcement of open meetings and meetings or portions thereof closed under § 1600.7 will be made at least seven days in advance of each meeting. Except to the extent that such information is determined to be exempt from disclosure under § 1600.6, each such public announcement will state the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the official designated to respond to requests for information about the meeting. Each such announcement shall be submitted for publication in the **Federal Register**. Copies of the announcement shall also be mailed to holders of Class B and Class C Bank stock.

(b) If a meeting is closed, the Board may omit from the announcement information usually included, if and to the extent that it finds that disclosure would be likely to have any of the consequences listed in § 1600.6.

(c) Where a majority of the Board members determine by recorded vote that Bank business requires that a meeting be called on less than ten days notice, public announcement shall be made at the earliest practicable time. Such announcement will state the time, place, and the subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the official designated to respond to requests for information about the meeting.

(d) The time or place of a meeting may be changed following the public announcement required by paragraph (a) of this section only if the Secretary publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Board to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this section only if:

(1) A majority of the Directors determines by a recorded vote that business so requires and that no earlier announcement of the change was possible, and

(2) The Secretary publicly announces such change and the vote of each Director upon such change at the earliest practicable time.

(e) The earliest practicable time, as used in this subsection, means as soon as possible, which should in few, if any, instances be later than the commencement of the meeting or portion in question.

(f) Each person interested in attending an open meeting of the Board should notify the Assistant Secretary of the Board at least one business day prior to the open meeting of their intention to attend the meeting. Any person who fails to do so may not be accommodated if there is insufficient space in the meeting room.

§ 1600.6 Bases for closing a meeting to the public.

(a) A portion or portions of a Board meeting may be closed to the public and any information pertaining to such meeting otherwise required by § 1600.3 to be disclosed to the public may be withheld, where the Board determines that public disclosure of information to be discussed at such meetings is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Relate solely to the internal personnel rules and practices of the Bank;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or to an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy, or

(iv) Disclose the identity of a confidential source, and, in the case of a record compiled by a criminal enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Bank or any other agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Board or of another agency, except that this shall not apply in any instance where the content or nature of the proposed action has already been disclosed to the public or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Board of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Any Board meeting or portion thereof, which may be closed, or any information which may be withheld under paragraph (a) of this section, will not be closed or withheld, respectively, in any case where the Board finds the public interest requires otherwise.

§ 1600.7 Procedures for closing a meeting to the public.

(a) A majority of all Directors may vote to close a meeting or withhold information pertaining to that meeting. A separate vote shall be taken with respect to any action under § 1600.6(a). A majority of the Board may act by taking a single vote with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular subject matter and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Director participating in such vote shall be recorded and no proxy shall be allowed.

(b) Whenever any person whose interest may be directly affected by a portion of the Board's meeting requests that the Board close such portion to the public on the basis of exemptions in paragraph (a) (5), (6), or (7) of § 1600.6, the Board, upon request of any one of its members, will vote whether or not to close such portion of the meeting. The vote of each Director participating in such vote shall be recorded and no proxy shall be allowed.

(c) Before every Board meeting closed on the basis of one or more of the exemptions in § 1600.6(a), the Legal Counsel will publicly certify that, in Counsel's opinion, the meeting may be closed to the public and shall state each relevant exemption.

(d) Within one business day after any vote taken pursuant to paragraph (a), (b), or (c) of this section, the Board will make publicly available a written copy of the vote, reflecting the vote of each Board member. Except to the extent that such information is exempt from disclosure, if a meeting or portion of a meeting is to be closed to the public, the Board will make publicly available within one business day after the required vote a full written explanation of its action, together with a list of all persons expected to attend the meeting and their affiliation.

§ 1600.8 Transcript, recording or minutes; availability to the public.

(a) The Secretary of the Board will maintain the following records for each Board meeting, or portion thereof which is closed to the public pursuant to a vote under § 1600.7:

(1) A copy of the Legal Counsel's certification required by § 1600.7;

(2) A copy of a statement from the presiding officer which sets forth the time and place of the closed meeting or portion thereof and a list of persons present; and

(3) A complete verbatim transcript or electronic recording adequate to record fully the proceedings of each Board meeting or portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public on the basis of exemption in paragraph (a)(8) or (10) of § 1600.6, the Secretary of the Board will maintain either a transcript, electronic recording, or a complete set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote reflecting the vote of each member on the question. All documents considered in connection with any action will be identified in such minutes.

(b) The retention period for the records required by paragraph (a) of this section will be for a period of at least two years after the particular Board meeting or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

(c) The Secretary of the Board will make promptly available to the public the transcript, electronic recording, transcription of the recording, or minutes of the discussion of any item on the agenda of a Board meeting, except for such item or items of such discussion as the Board determines to contain

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information which may be withheld on the basis of one or more of the exemptions in § 1600.6.

(d) Requests for public inspection of electronic recording, transcripts or minutes of Board meetings shall be made to the Assistant Secretary of the Board of Directors of the Rural Telephone Bank, room 4051-South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250. Requests for inspection or copies of transcripts shall specify the date of the meeting, the name of the agenda and the agenda item number; this information will appear in the notice of the meeting.

(e) The transcripts, minutes, or transcriptions of electronic recordings of a Board meeting will disclose the identity of each speaker, and will be furnished to any person at the actual cost of transcription or duplication.

Dated: May 3, 1991.

Gary C. Byrne,

Governor, Rural Telephone Bank.

[FR Doc. 91-14335 Filed 6-18-91; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-91-12]

Petition for Rulemaking; Summary of Petition Received; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for rulemaking received; reopening of comment period.

SUMMARY: This action reopens the comment period of a petition for rulemaking published on April 11, 1991 (56 FR 14660). The comment period in the matter of Docket No. 26487 is being reopened for an additional 90 days in order to provide the citizens who will be affected by this proposal for additional time to submit their comments.

DATES: Comments on the petition must be received on or before: September 17, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9688.

SUPPLEMENTARY INFORMATION:

Docket No.: 26487.

Petitioner: Mr. Harry E. McClure.

Regulations Affected: 14 CFR 43.1(b).

Description of Petition: To clarify the wording in § 43.1(b) to include provisions to control the maintenance that must be performed an amateur-built aircraft, and who is authorized to maintain them in an airworthy condition.

Petitioner's Reason for the Request: The petitioner is concerned that a large number of amateur-built aircraft are incorporating type certificated engines and propellers into their amateur-built aircraft and there are no provisions to control the maintenance that must be performed on these products and who is authorized to maintain them in an airworthy condition.

Issued in Washington, DC, on June 12, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

[FR Doc. 91-14559 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ANM-08]

Proposed Amendment, Control Zone and Transition Area, Pullman, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Pullman, Washington Control Zone and Transition Area. This action is necessary because a new VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME-A) approach is being established for the Pullman Airport. The effect would be to define new controlled airspace which will contain the new procedure. The intent of the action is to accurately define the controlled airspace for pilot reference. The changes would be depicted on aeronautical charts enabling pilots to determine when instrument flight rules may be required.

DATES: Comments must be received on or before August 15, 1991.

ADDRESSES: Send comments on the proposal to: Bette VanManen, ANM-538, Federal Aviation Administration, Docket No. 90-ANM-08, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Bette VanManen, ANM-538, Federal Aviation Administration, Docket No. 90-ANM-08, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Telephone: (206) 227-2538.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ANM-08." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM-530, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA proposes an amendment to §§ 71.171 and 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Pullman, Washington Control Zone and Transition Area. This would define new controlled airspace which will contain the new VOR/DME-A approach being established for the Pullman-Moscow Regional Airport. The intent of this action is to accurately define the controlled airspace for pilot reference. The changes would be depicted on aeronautical charts enabling pilots to determine when instrument flight rules may be required. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control zones, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Pullman, WA [Revised]

Within a 4.8 mile radius of Pullman-Moscow Regional Airport (lat 46°44'36" N, long 117°06'31" W) and within 2 miles each side of the Pullman VOR/DME (lat 46°40'28" N, long 117°13'21" W) 047° radial extending from the 4.8 mile radius to the VOR/DME, and within 2 miles each side of the 046° radial extending from the 4.8 mile radius to 16 miles northeast of the VOR/DME. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will be continuously published in the Airport/Facility Directory.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Pullman, WA [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Pullman-Moscow Regional Airport (lat 46°44'36" N, long 117°06'31" W) and within 2 miles each side of the Pullman VOR/DME (lat 46°40'28" N, long 117°13'21" W) 232° and 047° radials extending from the 5-mile radius to 8 miles southwest of the VOR/DME, and that airspace within a 24-mile radius of the Pullman VOR/DME extending clockwise from the 342° radial to a line 5 miles east of and parallel to the 046° radial of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within 9 miles northwest and 6 miles southeast of the Pullman VOR/DME 052° and 232° radials extending from 17.5 miles southwest to 7.5 miles northeast of the VOR/DME.

Issued in Seattle, Washington, on June 13, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91-14567 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-59-89]

RIN 1545-AG37

Proceeds of Bonds Used for Reimbursement; Correction

AGENCY: Internal Revenue Service.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (FI-59-89), which was published in the Federal Register on April 25, 1991 (56 FR 19046). The proposed regulations clarify when the allocation of bond proceeds to reimburse expenditures previously made by an issuer is treated as an expenditure of the bond proceeds.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo, (202) 566-3283 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections amends the Income Tax Regulations (26 CFR part 1) to provide proposed rules regarding when the use of bond proceeds to reimburse a previously paid expenditure is treated as an expenditure of the bond proceeds for purposes of sections 103 and 141-150 of the Internal Revenue Code. The proposed regulations reflect the modifications to section 103 and the addition of sections 141-150 to the Code by the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2602).

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

PART 1—[CORRECTED]

Accordingly, the publication of proposed regulations (FI-59-89), which was the subject of FR Doc. 91-9561, is corrected as follows:

§ 1.103-17 [Corrected]

Paragraph 1. In the list below for § 1.103-17(f)(5) *Example 1* and *Example 2*, for each location indicated in the left column, remove the date indicated in the middle column, and add the date indicated in the right column:

Location	Remove	Add
Example 1:		
(i), line 1	1993	1994
(i), line 18	1993	1994
(i), line 19	1993	1994
(ii), line 1	1994	1995
(ii), line 7	1991	1992
(ii), line 8	1994	1995
(ii), line 13	1993	1994
(ii), line 14	1993	1994
(ii), line 15	1994	1995
(iii), line 2	1993	1994

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Location	Remove	Add
(ii), line 4	1994	1995
Example 2: (i), line 17	1993	1994

§ 1.103–18 [Corrected]

Par. 2. On page 19054, column 3, § 1.103–18(a), line 4, the language "bond under section 141(d)(1)(A) relating" is corrected to read "bond under section 141(e)(1)(A) relating".

Par. 3. On page 19054, column 3, § 1.103–18(a), line 6, the language "141(d)(1)(D) relating to qualified small" is corrected to read "141(e)(1)(D) relating to qualified small".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–14548 Filed 6–18–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[CO–90–90]

RIN 1545–AP28

Income From Discharge of Indebtedness—Acquisition of Indebtedness by Person Related to the Debtor; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (CO–90–90), which was published on Friday, March 22, 1991 (56 FR 12135). The proposed regulations provide rules concerning the acquisition of outstanding indebtedness by a person related to the debtor from a person who is not related to the debtor.

FOR FURTHER INFORMATION CONTACT: Victor L. Penico (202) 566–3618 or Warren Joseph at (202) 566–4430 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections proposes the addition of § 1.108–2 to part 1 of title 26 of the Code of Federal Regulations under section 108.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

PART 1—[CORRECTED]

Accordingly, the publication of the proposed regulations (CO–90–90), which was the subject of FR Doc. 91–6904, is corrected as follows:

§ 1.108–2 [Corrected]

Par. 1. On page 12139, column two, in § 1.108–2, paragraph (b)(2)(ii)(B), line two, the colon is removed following the word "both" and is corrected to read "—".

Par. 2. On page 12140, column two, in § 1.108–2, paragraph (e)(2) under the heading *"Examples"*, lines six and seven, the language "jurisdiction of a court in a title 11 the gross income of the related holder" is corrected to read "jurisdiction of a court in a title 11 case and no indebtedness is qualified farm indebtedness described in section 108(g)".

Par 3. On page 12140, column two, in § 1.108–2, paragraph (e)(2), under *Example 1*, lines five, six, and seven, the language "$10,000,000 and provides for interest payments of 10 percent on December 31 of each year and a payment at maturity of" is corrected to read "$10,000,000 and provides monthly for interest payments of $80,000 payable at the end of each month and a payment at maturity of".

Par. 4. On page 12140, column two, in § 1.108–2, paragraph (e)(2), paragraph (iii) of *Example 1*, lines four and five, the language "$321,697.52, in 1993, $333,196.33; and in 1994, $345,106.15" is corrected to read "$289,144.88; in 1993, $331,286.06; and in 1994, $379,569.06".

Par. 5. On page 12140, column two, in § 1.108–2, paragraph (e)(2), under *Example 2*, line eight, the figure "$9,321,697.52" is corrected to read "$9,289,144.88".

Par. 6. On page 12140, column two, in § 1.108–2, paragraph (e)(2), under *Example 2*, line nine, the figure "$78,302.48" is corrected to read "$110,855.12".

Par. 7. On page 12140, column two, in § 1.108–2, paragraph (e)(2), under *Example 3*, line seven, the language "$9,028,808.13, which is the" is corrected to read "$9,022,621.41 which in this case equals the".

Par. 8. On page 12140, column two, in § 1.108–2, paragraph (e)(2), under *Example 3*, lines ten, eleven, and twelve, the language "($9,000,000) plus the sum of the daily portions from January 1, through February 1 ($26,808.13)" is corrected to read "($9,000,000) plus the accrued original issue discount through February 1 ($22,621.41)".

Par 9. On page 12140, column three, in § 1.108–2, paragraph (e)(2), under *Example 3*, line eight, the language "to P's adjusted basis, and under section" is corrected to read "to P's adjusted basis, and, under section".

Par. 10. On page 12140, column three, in § 1.108–2, paragraph (e)(2), under *Example 3*, line ten, the figure "$9,028,808.13" is corrected to read "$9,022,641.41".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–14549 Filed 6–18–91; 8:45 am]

BILLING CODE 4830–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket Number FEMA–7024]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the Nation. The base (100-year flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program

regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own; or pursuant to policies established by other Federal, state or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance coverage on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with minimum Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Flooding source	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	City of Birmingham, Jefferson County.	Unnamed Creek 31	About 1,050 feet upstream of 10th Avenue	*591	*591
			Just downstream of 1st Avenue	*605	*604
Maps available for inspection at the Community Planning Department, 710 North 20th Street, Birmingham, Alabama.					
Send comments to The Honorable Richard Arrington, Jr., Mayor, City of Birmingham, 710 North 20th Street, Birmingham, Alabama 35203.					
Georgia	Unincorporated areas of Walker County.	Chattanooga Creek	About 400 feet downstream of the confluence of Dry Creek.	*658	*660
			Just downstream of upstream crossing of State Route 193.	*685	*685
			Just upstream of upstream crossing of State Route 193.	*685	*690
			Just downstream of Nickajack Road	*700	*700
		Dry Creek	At mouth	*658	*660
			About 1,160 feet upstream of Maple Street	*660	*660
Maps available for inspection at the Property and Records Office, P.O. Box 445, Lafayette, Georgia.					
Send comments to The Honorable Roy E. Parrish, Jr., Walker County Commissioner, P.O. Box 445, Lafayette, Georgia 30728.					
Maryland	Secretary, Town Dorchester County.	Warwick River North Branch	Along northern corporate limits	None	* 6
		Warwick River South Branch	Along southern corporate limits	None	* 6
Maps available for inspection at the Town Hall, Main Street, Secretary, Maryland.					
Send comments to The Honorable Walter R. Collins, Mayor of the Town of Secretary, Dorchester County, P.O. Box 246, Secretary, Maryland 21664.					
Michigan	Township of Clinton, Macomb County.	Clinton River	Just downstream of confluence of Clinton River North Branch.	* 593	* 593
			About 2,100 feet upstream of confluence of Red Run Drain.	* 602	* 601
		Red Run Drain	At mouth	* 602	* 601
			About 2,650 feet upstream of Metropolitan Parkway.	* 605	* 604
Maps available for inspection at the Planning Department, Mr. Steve Cassin, 40700 Romeo Plank Road, Mt. Clemens, Michigan.					
Send comments to The Honorable Mark Kohl, Township Supervisor, Township of Clinton, 40700 Romeo Plank Road, Mt. Clemens, Michigan 48044.					
Nevada	Elko County Unincorporated Areas.	Susie Creek	Just below Western Pacific Railroad	None	* 4,907
			At U.S. Highway 40	None	* 4,913
			Approximately 300 feet upstream of westbound land of Interstate 80.	None	* 4,917
		Unnamed Wash	Approximately 1,500 feet downstream of Lamoille Highway.	None*	5,070
			Approximately 1,200 feet downstream of Lamoille Highway.	None	* 5,075

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Flooding source	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 800 feet downstream of Lamolle Highway.	None	*5,081
			Approximately 40 feet downstream of Lamolle Highway.	None	*5,087
			Approximately 40 feet upstream of Lamolle Highway.	None	*5,094
			Approximately 300 feet upstream of Lamolle Highway.	None	*5,094

Maps are available for review at the Elko County Engineering Department, 569 Court Street, Elko, Nevada.

Send comments to the Honorable Emie Hall, Chairman, Elko County Board of Commissioners, County Courthouse, Elko, Nevada 89801.

New Jersey	Teaneck, Township Bergen County.	Overpeck Creek	At the downstream corporate limits	*9	*7
			Approximately 1,000 feet upstream of State Route 4.	*9	*8
		Teaneck Creek	At confluence with Overpeck	*9	*7
			Approximately 1,800 feet upstream of Degraw Avenue.	*9	*8
		Tributary to Overpeck Creek	At confluence with Overpeck Creek	*9	*8
			At Overpeck Avenue	*9	*8

Maps available for inspection at the Municipal Building, 816 Teaneck Road, Teaneck, New Jersey.

Send comments to The Honorable Eleanor M. Wallazek, Mayor of the Township of Teaneck, Bergen County, Municipal Building, 816 Teaneck Road, Teaneck, New Jersey 07666.

New York	Allegany, Village Cattaraugus County.	Five Mile Creek	At downstream corporate limits	* 1,416	* 1,415
			Approximately 100 feet upstream of upstream corporate limits.	* 1,417	* 1,416

Maps available for inspection at the Village Hall, 188 West Main Street, Allegany, New York.

Send comments to The Honorable Joseph M. Catalona, Mayor of the Village of Allegany, Cattaraugus County, 188 West Main Street, Allegany, New York 14706.

North Dakota	City of Rugby Pierce County.	Tributary to Rush Lake	At the downstream extraterritorial limits	*1,520	*1,518
			Just downstream of Fourth Avenue Southwest (State Highway 3).	*1,523	*1,521
			Just upstream of Third Avenue Southeast	*1,533	*1,530
			Approximately 1,800 feet upstream of the county road located east of the City of Rugby.	*1,535	*1,535

Maps are available for review at the City Auditor's Office, City Hall, 223 South Main Avenue, Rugby, North Dakota.

Send comments to The Honorable Carlie Teigen, Mayor, City of Rugby, City Hall, 223 South Main Avenue, Rugby, North Dakota 58368.

Oklahoma	Glenpool, City Tulsa County.	Nichols Creek	At the downstream side of U.S. Routes 75 & 169.	*884	*885
			33rd West Avenue (upstream corporate limits)	None	*757
		Rolling Meadows Creek	At U.S. Routes 75 & 169	None	*895
			At the upstream corporate limits	None	*727

Maps available for inspection at the City Manager's Office, 14522 Broadway, Glenpool, Oklahoma.

Send comments to The Honorable Don Bahenmeier, Mayor of the City of Glenpool, Tulsa County, P.O. Box 70, 14522 Broadway, Glenpool, Oklahoma 74037.

Oklahoma	Owasso, City Tulsa County.	Bird Creek Tributary 5A	Approximately 350 feet upstream of U.S. Highway 169.	*803	*804
			Approximately 3,150 feet upstream of 86th Street North.	*853	*854

Maps available for inspection at the Community Development Office, 207 South Cedar, Owasso, Oklahoma.

Send comments to Mr. Rodney Ray, Owasso City Manager, Tulsa County, 207 South Cedar, Owasso, Oklahoma 74055.

Oklahoma	Sequoyah County Unincorporated Areas.	West Shiloh Branch	Approximately 0.8 mile downstream of West Shiloh Avenue.	*481	*482
			Approximately 130 feet upstream of County Road.	None	*540
		Little Sallisaw Creek	Just upstream of Dogwood Street	*482	*481
			Approximately 0.5 mile upstream of Interstate Route 40.	None	*501
		Hog Creek	At confluence with Little Sallisaw Creek	*494	*491
			Approximately 0.9 mile downstream of U.S. Route 59.	*521	*522

Maps available for inspection at the Sequoyah County Conservation District, 101 McGee Drive, Sallisaw, Oklahoma.

Send comments to Mr. Bruce Tabor, Chairman of th eSequoyah County Board of Commissioners, 117 South Oak, Sallisaw, Oklahoma 74955.

Pennsylvania	Wilkes-Barre, city, Luzerne County.	Susquehanna River	Approximately .4 mile upstream of the downstream corporate limits.	*545	*545
			At upstream corporate limits	*551	*549

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Flooding source	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Mill Creek	At confluence with the Susquehanna River	*551	*549
			Approximately 800 feet upstream of George Avenue.	*551	*550
		Laurel Creek	At confluence with Mill Creek	*551	*548
			Approximately 1,200 feet upstream of the confluence of Coal Brook.	*562	*561
		Coal Brook	At confluence with Laurel Run	None	*551
			Approximately 1,040 feet upstream of State Route 309.	None	*553

Maps available for inspection at the City Hall, Planning Department, 40 East Market Street, Wilkes-Barre, Pennsylvania.

Send comments to The Honorable Lee A. Namey, Mayor of the City of Wilkes-Barre, Luzerne County, 40 East Market Street, Wilkes-Barre, Pennsylvania 18711.

South Dakota	Union County	Missouri River	At the confluence with Big Sioux River (county boundary).	None	*1,090
			Approximately 3.2 miles upstream of the confluence with Big Sioux River (at river mile 737.0).	None	*1,092
			Approximately 4.4 miles upstream of the confluence with Big Sioux River (at river mile 736.2).	None	*1,093
		Big Sioux River	At the confluence with Missouri River (county boundary).	None	*1,090
			Approximately 2,200 feet downstream of Interstate Highway 29	None	*1,093
			Just downstream of Interstate Highway 29	None	*1,094

Maps are available for review at the Office of the Land Use Administrator, Union County Courthouse, 200 East Main Street, Elk Point, South Dakota.

Send Comments to The Honorable M.C. Bak, Chairman, Union County Commissioners, P.O. Box 518, Elk Point, South Dakota 57025-0640.

Virginia	Bedford, city, independent city.	Unnamed tributary to Little Otter River.	At confluence with Little Otter River	None	*841
			Approximately 850 feet upstream of Crenshaw Street.	None	*920
		West Branch	Approximately 400 feet upstream of confluence with unnamed tributary to Little Otter River.	None	*892
			At U.S. Route 460	None	*892
		Little Otter River	Approximately 500 feet downstream of State Route 43.	None	*836
			At confluence of unnamed tributary to Little Otter River.	None	*841

Maps available for inspection at the City Hall, 215 E. Main Street, Bedford, Virginia.

Send Comments to The Honorable G. Michael Shelton, Mayor of the City of Bedford, P.O. Drawer 807, Bedford, Virginia 24523.

Issued: June 10, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-14447 Filed 6-18-91; 8:45 am]

BILLING CODE 6718-03-M

44 CFR PART 67

[Docket No. FEMA-7020]

Proposed Flood Elevation Determination

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 56 FR 22679 on May 16, 1991. This notice corrects the name of the state in which the City of Clarksburg, Harrison County, West Virginia, is located.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Clarksburg, Harrison County, West Virginia, previously published at 56 FR 22679 on May 16, 1991, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

On page 22684, in the May 16, 1991 issue of **Federal Register**, the entry under State name for Clarksburg, City, Harrison County, is corrected to read, "West Virginia".

Issued: June 7, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-14446 Filed 6-18-91; 8:45 am]

BILLING CODE 6718-03-M

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FEDERAL MARITIME COMMISSION

46 CFR Part 504

[Docket No. 91-28]

Procedures for Environmental Policy Analysis

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its Procedures for Environmental Policy Analysis, which set forth requirements for environmental analysis of Commission actions under the National Environmental Policy Act of 1969. Specifically, the proposed amendment would categorically exclude from the requirement for an environmental analysis actions concerning non-vessel-operating common carrier ("NVOCC") filings of surety bonds and designations of resident agents for service of process pursuant to 46 CFR part 583.

DATES: Comments due on or before July 19, 1991.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523-5866.

SUPPLEMENTARY INFORMATION: The Commission's Procedures for Environmental Policy Analysis (46 CFR part 504) specify the types of environmental analyses required for Commission actions under the National Environmental Policy Act of 1969. Actions having a potential for environmental impact as defined in § 504.2(c) are subjected to environmental assessments that result in either findings of no significant impact (§ 504.6) or environmental impact statements (§ 504.7). Actions with little or no potential for environmental impact are categorically excluded from the requirements for environmental assessment (§ 504.4).

Section 504.4 lists routine types of Commission actions that are excluded from the requirements for analysis. The activities covered by categorical exclusion do not individually or collectively have significant effects upon the quality of the human environment, because they are purely ministerial, or because they do not significantly increase or decrease air, water or noise pollution or use of fossil fuels, recyclables or energy.

On January 15, 1991, (56 FR 1499) the Commission published an interim rule to implement the NVOCC Amendments of 1990, section 710 of Public Law 101-595. This rule contains, among other things, provisions for the filing of NVOCC surety bonds and designations of resident agents for service of process (for foreign-domiciled NVOCCs). These actions appear to have no potential for environmental impact. Accordingly, the Commission proposes to add such matters to the list of actions excluded from environmental analysis under § 504.4.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501-3520, does not apply to this notice of proposed rulemaking because the amendment to part 504 of title 46, Code of Federal Regulations, does not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

Lists of Subjects in 46 CFR Part 504

Environmental Impact Statements.

Therefore, pursuant to 5 U.S.C. 553, 42 U.S.C. 4332(2)(b), section 710 of Public Law 101-595 and 46 U.S.C. app. section 1716, the Federal Maritime Commission proposes to amend part 504, title 46, Code of Federal Regulations, as follows:

1. The authority citation for part 504 continues to read as follows:

Authority: 5 U.S.C. 552, 553; Sec. 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 820 and 841a); secs. 13 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712 and 1716); sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(b)) and sec. 352(b) of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6302)

2. Section 504.4 is amended by adding a new paragraph (a)(3), to read as follows:

§ 504.4 Categorical exclusions.

(a) * * *

(3) Filings by non-vessel-operating common carriers of surety bonds and designations of resident agents for service of process pursuant to 46 CFR part 583.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14408 Filed 6-19-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-158, RM-7719]

Radio Broadcasting Services; Medicine Lodge, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Florida Public Radio, Inc., proposing the substitution of Channel 269C2 for Channel 240A at Medicine Lodge, Kansas, and modification of the construction permit for Station KREJ to specify the new channel. In accordance with section 1.420(g) of the Commission's Rules, should another party indicate interest in the Class C2 allotment, the modification cannot be implemented unless an equivalent class channel is also allotted. The coordinates for Channel 269C2 are 37-13-59 and 98-39-43.

DATES: Comments must be filed on or before August 5, 1991, and reply comments on or before August 20, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Randy Henry, President, Florida Public Radio, Inc., 505 Josephine Street, Titusville, FL 32796; (petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-158, adopted May 31, 1991, and released June 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14403 Filed 6-18-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-160, RM-7718]

Radio Broadcasting Services; Sterling, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Early Williams proposing the allotment of Channel 239A to Sterling, Kansas, as that community's first FM broadcast service. There is a site restriction 4.6 kilometers (2.9 miles) southwest of the community at coordinates 38-10-56 and 98-14-27.

DATES: Comments must be filed on or before August 5, 1991, and reply comments on or before August 20, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Early Williams, 2301-22nd Street West, Bradenton, Florida 34205; (petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-160, adopted May 31, 1991, and released June 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14404 Filed 6-18-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-161, RM-7701]

Radio Broadcasting Services; Jasper, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by James M. Lout seeking the allotment of Channel 297A at Jasper, Texas, as the community's third local FM transmission service. Channel 297A can be allotted to Jasper in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.5 kilometers (0.9 miles) north of the community to avoid a short-spacing to the vacant allotment of Channel 297C3, Lake Arthur, Louisiana. The coordinates for Channel 297A at Jasper are North Latitude 30-56-13 and West Longitude 93-59-47.

DATES: Comments must be filed on or before August 5, 1991, and reply comments on or before August 20, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Julian P. Freret, Esq., Booth Freret & Imlay, 1920 N Street, NW., Suite 150, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-161 adopted May 31, 1991, and released June 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14405 Filed 6-18-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

[PR Docket No. 91-167; FCC 91-168]

Second Calling Channel on VHF Marine Radio, Channel 9

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission proposes to amend the Maritime Services Rules in PR Docket No. 91-167, FCC 91-168, to permit VHF marine radio channel 9 to be used as a second calling channel. By proposing to establish a second calling channel, it is believed that congestion on channel 16, the internationally designated distress, safety and calling frequency, will be reduced. This Rule Making was proposed by the Field Operations Bureau, Boston Marine Safety Project, as part of an ongoing effort to improve safety and distress communications procedures.

DATES: Comments must be submitted on or before August 2, 1991. Reply comments may be submitted on or before August 19, 1991.

ADDRESSES: Comments may be mailed to the Federal Communications Commission, Office of the Secretary, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Jones, Private Radio Bureau, Aviation and Marine Branch, 2025 M Street, NW., Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: To aid us in the final determination in this matter, we are conducting a study, in cooperation with the U.S. Coast Guard, on the effect of using marine VHF channel 9 as a second calling channel in the Boston Harbor and its effect on reducing congestion on channel 16. We will use results from this study and the comments we receive in this proceeding to determine any future action.

List of Subjects for 47 CFR Part 80

Maritime services, Frequencies, Radio.

Authority: Authority for issuance of this Notice is contained in sections 4(i), 303(f) and (r), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) 303(f) and (r).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-14646 Filed 6-18-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. MC-91-6]

RIN 2125-AC26

Federal Motor Carrier Safety Regulations; General; Motor Vehicle Marking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing to amend its commercial motor vehicle marking requirements to apply to every commercial motor vehicle subject to the Federal Motor Carrier Safety Regulations (FMCSRs). This action to include a broader range of vehicles will improve uniformity of identification of commercial motor vehicles operated on the nation's highways and aid enforcement officers in carrying out their duties.

DATES: Comments must be received on or before August 19, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC 91-6, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk in standard or high density formats containing files compatible with word processing programs such as WordPerfect, WordStar, or Microsoft "Word" for IBM systems, or WordPerfect or Microsoft Word for Macintosh. Commenters should clearly label submitted disk with the software format used (e.g., WordPerfect 5.0 (IBM) or Microsoft Word 4.0 (Mac)). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards (202) 366-2981, or Mr. Paul L. Brennan, Office of the Chief Counsel (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A final rule published in the **Federal Register** on May 19, 1988 (53 FR 18042, Docket No. MC-114) (effective November 15, 1988), among other things amended part 390 of the FMCSRs by adding § 390.21, marking of commercial motor vehicles. This rule generally requires self-propelled motor vehicles operated by interstate private motor carriers of property and interstate motor carriers of migrant workers to be marked. The marking is to be located on both sides of the self-propelled vehicle and consists of the motor carrier's name or trade name, the city or community and State (name abbreviated) in which the carrier maintains its principal place of business or in which the vehicle is customarily based, and the motor carrier identification number, if issued by the FHWA, preceded by the letters "USDOT."

Four classes of motor carriers were not subject to the DOT's 1988 final rule. They included: (1) For-hire motor carriers transporting the U.S. mail in interstate commerce under contract to the United States Postal Service; (2) for-hire motor carriers of passengers transporting school children and/or school personnel in interstate commerce when such transportation is at the direction and/or under the control of a public school system and is not a "school bus operation" as defined in § 390.5; (3) for-hire motor carriers of property engaged in the emergency towing of disabled vehicles from the point of disablement to another location in interstate commerce; and (4) ICC "exempt" motor carriers (i.e., economically exempt, eg., agricultural commodity carriers). These carriers operate a significant number of commercial motor vehicles in interstate commerce.

Private motor carriers of passengers are not now subject to the FMCSRs. 49 CFR 390.3(f)(6). School Bus Fleet Magazine reports in its January 1990 issue that 36 States use contractors for the transportation of school children. Those contractors operated more than 90,000 vehicles during the 1987-1988 school year. The National Star Route Mail Contractors Association estimates that 5,500 of its members operate commercial motor vehicles.

The Interstate Commerce Commission (ICC) regulates the marking of commercial motor vehicles operated by a certain segment of the motor carrier industry. That segment is comprised of two groups of for-hire motor carriers, namely, common and contract motor carriers of property or passengers.

The ICC published a final rule entitled Identification of Vehicles in the **Federal Register** on March 27, 1990 (55 FR 11199). The Commission extended its

regulation to "govern all for-hire motor carriers except those providing (a) Joint, through, regular-route passenger service under continuing lease or interchange agreements, if the vehicle owner's name and "MC" number are displayed as prescribed at 49 CFR 1058.2, and if the carriers have filed with the Commission's appropriate Regional Director(s) and posted in each terminal and ticket agency on the involved routes a published schedule showing the points between which each joint carrier assumes control and responsibility for the vehicle's operation; and (b) Nonscheduled, charter, luxury-type passenger service using limousine-type vehicles with a capacity of six or fewer passengers."

49 CFR 1058.1

The ICC also discontinued a rulemaking in the **Federal Register** on July 11, 1990 (55 FR 28419), which would have eliminated the vehicle marking requirements of 49 CFR 1058 and adjusted the leasing regulations at 49 CFR 1057. The overwhelming majority of the comments received by the ICC indicated that the marking requirement is essential to public safety, allowing immediate identification of vehicles in situations involving moving violations, stolen equipment, security, and unauthorized or uninsured operations.

The Motor Carrier Safety Act of 1984 (MCSA of 1984) (49 U.S.C. app. 2501-2520 (1988)) authorizes the FHWA to establish vehicle marking requirements for all commercial motor vehicles, as defined in the MCSA of 1984, if the agency determines that such a requirement will assist in ensuring that commercial motor vehicles are safely maintained, equipped, loaded, and operated. Requiring all commercial motor vehicles operated in interstate commerce to meet a single identification standard would create a needed nationwide uniformity. Such action would assist Federal and State enforcement personnel in properly identifying motor carriers during roadside vehicle inspections and accident investigations, thus assuring the submission of accurate inspection and accident results and other data into the FHWA and State management information systems. Also, the general public would be able to identify and report to the motor carrier or an enforcement agency any operations being conducted in an unsafe manner by the operator of a commercial motor vehicle.

Unique identification numbers are important to provide motor carrier safety and enforcement personnel and concerned highway users a rapid and sure way to distinguish a particular motor carrier's vehicles. There are many companies with the same name but which are located in different cities or states. As an example, there are twelve independent Arrow Trucking Companies, located in twelve different cities. Without the ability to quickly identify the city and State of domicile, the name of the motor carrier alone will be of little value to the average motorist.

In view of the foregoing, the FHWA proposed to amend its marking requirement regulation to encompass all commercial motor vehicles operated in interstate commerce. Those commercial motor vehicle operated by for-hire motor carriers under authority issued by the ICC would be allowed to meet the FHWA's rules by complying with the compatible marking requirements of the ICC.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action taken by the FHWA in this document will amend the commercial motor vehicle marking requirements to apply to every commercial motor vehicle subject to the FMCSRs. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), the agency has evaluated the effects of this proposal on small entities. This proposal, if adopted, would require motor carriers to mark commercial motor vehicles. The FHWA believes that the cost of this marking will be minimal. Therefore, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The Agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

Regulation Identifier Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Motor vehicle marking, Motor vehicle safety.

Issued on June 11, 1991.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, subtitle B, chapter III, part 390, as follows:

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

§ 390.21 [Amended]

2. Paragraph (a) of section 390.21 is revised to read as follows:

§ 390.21 Marking of commercial motor vehicles.

(a) *General.* Every self-propelled commercial motor vehicle operated in interstate commerce and subject to the rules of subchapter B of this chapter must be marked as specified in paragraphs (b), (c) and (d) of this section. Self-propelled commercial

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motor vehicles operated by for-hire motor carriers under authority issued by the Interstate Commerce Commission (ICC) may meet the requirements of this section by complying with the marking requirements set forth in 49 CFR part 1058.

* * * * *

[FR Doc. 91-14502 Filed 6-18-91; 8:45 am]
BILLING CODE 4910-60-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 840

Notification of Railroad Accidents

AGENCY: National Transportation Safety Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to add a new § 840.7 to part 840, the NTSB Rules Pertaining to Notification of Railroad Accidents. It requires that the operator of a railroad that notifies the NTSB of an accident under § 840.3 must preserve intact and make no attempt to extract data from any event recorder or event recorder data pack, any speed tape, or any other data recording medium that was aboard the accident train or that recorded events pertaining to the accident train during the time surrounding the accident. Recent railroad accident experience has prompted the need for action by the NTSB to ensure the integrity and utility of recorded data pertaining to railroad accidents.

DATES: Interested persons are invited to submit written comments on or before July 19, 1991.

ADDRESSES: Comments should be sent in duplicate to Daniel D. Campbell, General Counsel, National Transportation Safety Board, room 816, 800 Independence Avenue SW., Washington, DC 20594.

FOR FURTHER INFORMATION CONTACT: Daniel D. Campbell, General Counsel (202) 382-6540.

SUPPLEMENTARY INFORMATION: Section 840.3 requires notification to the National Transportation Safety Board of certain railroad and rail rapid transit accidents. By the addition of a new section to part 840, the Board is proposing to require that the operator of a railroad that notifies the NTSB of an accident under § 840.3 also be required to preserve intact, and make no attempt to extract data from, any event recorder or data pack from any event recorder, any speed tape, or any other recording medium, that contains or that may contain information pertaining to the operation of the accident train, until the NTSB takes custody thereof or a release is made to the operator by a representative of the NTSB.

Recent railroad accident experience has prompted the need for action by the NTSB to ensure the integrity and utility of recorded data pertaining to railroad accidents. Two examples are the August 9, 1990, collision between two Norfolk Southern freight trains near Sugar Valley, Georgia, and the December 12, 1990, collision between an Amtrak train and a Massachusetts Bay Transportation Authority train in Boston. In both of these accidents, valuable information was lost because the available event recorder data packs were mishandled. In the latter accident an end-of-tape mark was placed over approximately 13.6 minutes of recorded data that extended from approximately 1.2 minutes before the last stop of the train prior to the accident to approximately 3.0 minutes after the accident. NTSB laboratory personnel worked for weeks to recover and interpret the remaining raw electrical data in the area of the end-of-tape mark. Similarly, a read-out induced anomaly obscured needed information in the earlier Norfolk Southern collision. Other investigations have also been delayed or potentially compromised because of delayed release of recorders to the NTSB for recovery of data. These occurrences have made it apparent that there is, within the rail community, some lack of appreciation regarding the NTSB's authority over the instrumentalities of transportation that have been involved in an accident within NTSB jurisdiction.

It should be beyond question (1) that the Safety Board can require the production of evidence in the context of a safety investigation and, (2) that the Board has the authority to secure and control the scene of an accident and the instrumentalities of transportation involved.[1] Similarly, the Board has the authority to do such testing of equipment and facilities as is necessary, with recognition of an operator's need to be free of unnecessary obstruction to continue operation of his business.[2] In general, testing is to be accomplished with the cooperation of the owner and in a manner that preserves, to the maximum extent possible, any evidence related to the accident. But the manner of testing and control of the accident scene are ultimately committed to the Board's discretion.[3]

The rule here proposed is fully consistent with the scope and intent of the Independent Safety Board Act.[4] The rule is meant only to preserve evidence. It imposes no requirement as to the use of event recorders. The proposal merely requires that if an event recorder or similar device were installed at the time of an accident, the recorder and all data packs, paper tapes or other recording media should be preserved as evidence for initial examination by the Board. The rule will not obstruct unnecessarily the use of transport facilities or unnecessarily delay their reopening. Further, it has been the Board's customary practice to return event recorders to their owners as soon as practical after data has been extracted. Consequently, operators will not suffer significant inconvenience regarding their own post-accident analysis.[5] And, as a result of implementation, the likelihood of preservation of evidence will, if anything, be enhanced.

Regulatory Flexibility Act

Under the criteria of the Regulatory Flexibility Act (5 U.S.C. 605(b), the NTSB has determined that this proposed rule, if adopted, will not have a significant economic impact on any entity. Because the new rule will simply require preservation of available data and information in the form in which it is already contained, the costs of complying with the rule are not substantial, and the NTSB has so certified.

Executive Order 12291

The NTSB has determined that, if adopted, this is not a major rule under Executive Order 12291.

Paperwork Reduction Act

This regulation will not impose any information collection requirements requiring Office of Management and

[1] See 49 U.S.C. 1903 (b)(1) and (b)(2).

[2] 49 U.S.C. 1903(b)(2).

[3] 49 U.S.C. 1903(b)(2), as amended by section 3 of Public Law 101-641, November 28, 1990.

[4] The Board's authority to promulgate rules necessary for the exercise of its functions is found at 49 U.S.C. 1903(b)(12).

[5] Currently, event recorders are used aboard locomotives to accomplish such tasks as fuel conservation, speed monitoring between points for which limits have been set, and the monitoring of brake systems. The brief delay imposed on any operator by the requirement that the event recorder be preserved until the NTSB either takes custody or releases it will not result in postponement of any tasks for which the event recorder was installed because the occurrence of the accident itself typically suspends accomplishment of all tasks other than those that pertain to accident investigation.

Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 49 CFR Part 840

Administrative practice and procedure, investigation, hazardous materials transportation, railroad safety, reporting and recordkeeping requirements, recording media, event recorder, speed tape, information retrieval.

The Proposed Amendments

In consideration of the foregoing, the NTSB proposes to amend 49 CFR part 840 as follows:

1. The authority citation for part 840 is revised to read as follows:

Authority: 49 U.S.C. 1903.

2. A new § 840.7 is added to read as follows:

§ 840.7 Preservation of event recorders or data packs from event recorders, speed tapes, and other recording media.

The operator of a railroad involved in a railroad accident for which notification must be given to the NTSB, as specified in § 840.3, must preserve intact and make no attempt to extract data from any event recorder or data pack from any event recorder, any speed tape, or any other recording medium that contains or that may contain information in any way pertinent to the accident for which notification has been given, until the NTSB takes custody thereof or until released by a representative or the NTSB.

Issued in Washington, DC on this 13th day of June, 1991.

James L. Kolstad,
Chairman.

[FR Doc. 91-14455 Filed 6-18-91; 8:45 am]
BILLING CODE 7533-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

RIN 1018-AB25

Addition of Five National Wildlife Refuges to the Lists of Open Areas for Hunting, Two to the List for Sport Fishing and Pertinent Refuge-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish Wildlife Service (Service) proposes to add five national wildlife refuges (NWRs) to the lists of open areas for migratory game bird hunting, upland game hunting, and/or big game hunting, two NWR's to the list for sport fishing and pertinent refuge-specific regulations for those activities. The Service has determined that such uses will be compatible with and, in some cases, enhance the major purposes for which each refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with the principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

DATES: Comments must be received on or before July 19, 1991.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Room 3248, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Division of Refuges, MS 670-ARLSQ, 1849 C Street NW., Washington, DC 20240; Telephone; (703) 358-2043.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open five refuges to hunting and two to sport fishing. All of the hunting and fishing programs have proposed refuge-specific hunting or fishing regulations which are included in this rulemaking.

This rulemaking will delist Desert National Wildlife Range, Nevada from upland game hunting and sport fishing because these activities have not been permitted since the jurisdictional change in 1966. The refuge does not harbor sport fish species and there is no public demand for hunting of the few upland game species that exist.

The Willow Creek NWR was at some point wrongly listed under Montana. This rulemaking will also delist Willow Creek NWR from Montana and relist it correctly under California.

Department of the Interior policy is whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is the purpose of this proposed rulemaking to seek public input regarding the proposed opening of the refuges cited below to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. Accordingly, interested persons may submit written comments concerning this proposal to the Assistant Director—Refuges and Wildlife (address above) by the end of the comment period. All relevant comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460K) govern the administration and public use of national wildlife refuges. Specifically, Section 4 (d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the major purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

In accordance with the NWRSAA and the RRA, the Secretary has determined that these openings for hunting and fishing are compatible and consistent with the primary purposes for which each of the refuges listed below was established, and that funds are available to administer the programs. The hunting and fishing programs will be general within State and Federal (migratory game bird) regulatory frameworks. A brief description of the proposed hunting and fishing programs follows:

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Salinas River NWR, located 11 miles north of Monterey, California, was established in 1973 for wildlife conservation purposes and, in particular, for carrying out the national migratory bird management program. The 366-acre Refuge consists of several ecotypes and provides habitat for large numbers of wading birds, waterfowl, pelicans, gulls, and terns. The proposed migratory bird hunting would take place on a 48-acre portion of the Salinas River and a 14-acre portion of adjacent uplands. The hunt is designed to contribute to and be compatible with refuge purposes and objectives and in compliance with the NWRSAA. It would provide high quality, wildlife-oriented recreational use of a renewable resource that is expected to be enjoyed by about 140 hunting visitors. A section 7 evaluation under the Endangered Species Act found that the proposed action is not likely to adversely affect any listed species. The current Refuge budget provides adequate funds to administer the proposed hunt and is in compliance with the RRA.

Hakalau Forest NWR, located on the island of Mauna Kea, was established October 29, 1985, to assure the protection, perpetuation and maintenance of five endangered forest bird species and their rainforest habitat. The Service, in cooperation with the State of Hawaii and other agencies, has undertaken a number of actions to ensure the continued existence of endangered Hawaiian forest birds and protection of their habitats. These include land acquisition, control of feral animals and alien plants, reforestation, and research to determine the limiting factors on the distribution and number of native birds. The initial guiding force behind these actions was the recovery plan for Hawaii Forest Birds. The Plan states that "the biggest threat to the continuing survival of Hawaii's forest birds is the destruction and severe disruption of their habitat as a result of * * * grazing and browsing by feral animals * * *," namely the feral pig. A section 7 evaluation under the Endangered Species Act found that opening the refuge to big game hunting would have a highly beneficial effect on the listed species and their habitat. The proposed hunt is designed to contribute to and be compatible with refuge purposes and objectives and would be in compliance with the NWRSAA. It would also provide high quality, wildlife-oriented recreational use of a renewable resource that is expected to be enjoyed by about 600 hunter visits. The current annual budget provides adequate funds to administer the proposed hunting programs and is in compliance with the RRA.

Bayou Sauvage NWR, located in the eastern portion of Orleans Parish, Louisiana, was established in 1986, to enhance the population of migratory, shore and wading birds; to encourage the natural diversity of fish and wildlife species, to protect the endangered and threatened species and to provide opportunities for fish and wildlife oriented public uses and recreation in an urban setting. The proposed sport fishing program would take place on the 13,000 acres of fresh water marsh and impoundments and the 10,000 acres of tidal marsh on the Refuge. All access to the fresh water marsh or impoundments must be made via Refuge property thereby affording the opportunity to ensure that all State laws and Refuge regulations are observed by anglers. The proposed sport fishing program would provide high quality wildlife-oriented recreational use of a renewable resource that because of its close proximity to New Orleans is expected to be enjoyed by about 11,000 fishing visitors each year. It has been designed to contribute to and be compatible with the legislated purposes for which the Refuge was established and would be in compliance with the NWRSAA. The current Refuge budget provides adequate funds to administer the proposed fishing program and is in compliance with the RRA. A section 7 evaluation under the Endangered Species Act found that the proposed action is not likely to adversely affect any listed species.

Dahomey NWR, located approximately 30 miles north of Greenville, Mississippi, was established to preserve and enhance endangered species, protect waterfowl and their habitat, preserve bottomland hardwood habitat and provide for wildlife-oriented recreational opportunities. Based on qualitative and quantitative measures of habitats present on the Refuge, and on population parameters of proposed species of gray and fox squirrel, raccoon, cottontail and swamp rabbits, opossum, beaver and white-tailed deer, the proposed big game and upland game hunting program would allow for the maintenance of wildlife and its supporting habitat in a desirable and healthy status. The proposed hunting programs has been designed to contribute to and be compatible with refuge purposes and objectives and be in compliance with the NWRSAA. It would provide high quality, wildlife-oriented recreational use of a renewable resource that is expected to be enjoyed by about 1,000 hunting visitors. A Section 7 evaluation under the Endangered Species Act found that the proposed action is not likely to adversely affect any listed species. The current Refuge budget provides adequate funds to administer the proposed hunts and is in compliance with the RRA.

St. Catherine Creek NWR, located about seven miles south of the City of Natchez, Mississippi, was established in 1989, to protect and preserve a portion of internationally significant waterfowl habitat. At present, approximately 6,950 acres of bottomland and upland hardwoods, cypress swamps, cleared land and fallow fields have been acquired. Old St. Catherine Creek and Butler Lake are the two permanent water bodies on the Refuge. Areas that will support the fisheries resource are limited to the impounded water areas, creeks, and the backwater areas of the Refuge. The proposed sport fishing program has been designed to contribute to and be compatible with Refuge purposes and would be in compliance with the NWRSAA. It would provide high quality, wildlife-oriented recreational use of a renewable resource that is expected to be enjoyed by about 6,000 fishing visitors each year. A Section 7 evaluation under the Endangered Species Act found that the proposed action is not likely to adversely affect any listed species.

Supawna Meadows NWR, located along the Delaware River in Salem, New Jersey, was established in 1994 as a refuge and breeding ground for migratory birds and animals, and administered under the Tinicum National Environmental Center Complex. Over 85 percent of the Refuge is in wetlands and serves as an important migration area. The proposed migratory bird hunting would occur on the "Goose Pond" section of the Refuge under Special Conditions. The proposed hunt has been critically designed to contribute to and be compatible with the legislated purposes for which the Refuge was established and has been so certified. In re-establishing a former use of the area prior to Refuge ownership, it is expected to provide some 625 hunting visitors with high quality wildlife-oriented recreational use of a renewable resource. The Refuge budget provides adequate funds to administer the proposed program and is in compliance with the RRA. A Section 7 evaluation under the Endangered Species Act found that the proposed hunt is not likely to adversely affect any listed species.

Roanoke River NWR, located near Windsor, North Carolina, was established August 14, 1988, to protect and enhance approximately 33,000 acres of strategically located wooded wetlands consisting of bottomlands and swamps with high waterfowl value. Upland and big game hunting would be open on the majority of the Refuge with migratory game bird hunting allowed on no more than 40 percent of the refuge. Properly administered public deer hunting will reduce the potential of refuge habitat being overbrowsed and upland game hunting (raccoon) will reduce competition with wood ducks for nesting cavities and reduce predation on eggs and incubating females. In a Memorandum of Understanding signed by the Service and the North Carolina Wildlife Resources Commission for cooperative management of the Refuge, hunting was recognized as a legitimate use of joint venture lands where no conflict with primary project objectives would be created by such an activity. As such hunting would be allowed within the framework established by the two bureaus. The proposed hunts have been designed to contribute to and be compatible with Refuge purpose and objectives and is in compliance with the NWRSAA. It would provide high quality, wildlife-oriented recreational use of a renewable resource that is expected to be enjoyed by about 1,200 hunting visitors. A section 7 consultation under the Endangered Species Act found that the proposed hunt is not likely to adversely affect any listed species. The refuge budget provides adequate funds to administer the proposed program and is in compliance with the RRA.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. It is estimated that opening these refuges to hunting and fishing will generate approximately 21,034 visits annually. Using data from the 1985 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, total annual receipts generated from purchases of food, transportation, hunting and fishing equipment, fees, and licenses associated with these programs are expected to be approximately $12,751,586 or substantially less than $100 million. In addition, since these estimated receipts will be spread over six states, the implementation of this rule should not have a significant economic impact on the overall economy of a particular region, industry, or group or industries, or level of government.

With respect to small entities, this rule will have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. The openings will provide recreational opportunities and generate economic benefits that may not now exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal government of law enforcement, posting, and other actions needed to implement activities under this rule will be considerably less than the income generated from the implementation of these hunting and/or sport fishing programs. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in parts 32 and 33 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), environmental assessments have been prepared for these proposed openings pursuant to the Endangered Species Act. These documents are available for public inspection and copying in Room 670, 4401 North Fairfax Drive, Arlington, Virginia, or by mail, at the address listed in the section **"ADDRESSES"** above.

Nancy Marx, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this proposed rulemaking document.

List of Subjects 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

Accordingly, it is proposed to amend parts 32 and 33 of chapter I of Title 50 of the Code of Federal Regulations as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i.

2. Section 32.11 would be amended by adding alphabetically by State, Salinas River NWR, CA, Supawna Meadows NWR, NJ, and Roanoke River NWR, NC:

§ 32.11 List of open areas; migratory game birds.

* * * * *

California

* * * * *

Salinas River National Wildlife Refuge

* * * * *

New Jersey

* * * * *

Supawna Meadows National Wildlife Refuge

* * * * *

North Carolina

* * * * *

Roanoke River National Wildlife Refuge

* * * * *

3. Section 32.12 would be amended by redesignating paragraphs (f)(4) (1) and (2) as paragraphs (f)(4) (i) and (ii), and (f) (11) through (16) as paragraphs (f) (12) through (17); adding paragraph (f)(11); redesignating paragraphs (aa) (1) through (7) as (aa)(1) (i) through (vii) and paragraph (aa) as (aa)(i); adding

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paragraphs (aa)(2) and (aa)(2) (i) through (v); redesignating paragraph (dd)(5) as (dd)(6); adding paragraphs (dd)(5) and (dd)(5) (i) and (ii) as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(f) *California* * * *

(11) *Salinas River National Wildlife Refuge.* Hunting of geese, ducks, coots, and moorhens is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(aa) *New Jersey* * * *

(2) *Supawna Meadows National Wildlife Refuge.* Hunting of geese and ducks is permitted on designated areas of the refuge subject to the following conditions:

(i) All goose and duck hunting will close after the last day of the regular duck season for the south zone of New Jersey.

(ii) Snow goose hunting will begin with the Canada goose season for the south zone of New Jersey only.

(iii) Loaded and uncased firearms are permitted in an unanchored boat only when retrieving crippled birds.

(iv) All hunting blind materials, boats, and decoys must be removed at the end of each hunting day. Permanent blinds are not permitted.

(v) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(dd) *North Carolina* * * *

(5) *Roanoke River National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

4. Section 32.21 would be amended by adding alphabetically by State, Dahomey NWR, MS and Roanoke River NWR, NC; and removing Desert National Wildlife Range, NV as follows:

§ 32.21 List of open areas; upland game.

* * * * *

Mississippi

* * * * *

Dahomey National Wildlife Refuge

* * * * *

North Carolina

* * * * *

Roanoke River National Wildlife Refuge

* * * * *

5. Section 32.22 would be amended by redesignating paragraphs (v) (2) through (7) as (v) (3) through (8); adding paragraphs (v) (2) and (cc) (3); and redesignating (dd)(4) (1) and (2) as (dd)(4) (i) and (ii) and (dd)(5)(1) as (dd)(5)(i) as follows:

§ 32.22 Refuge-specific regulations; upland game.

* * * * *

(v) *Mississippi.* * * *

(2) *Dahomey National Wildlife Refuge.* Hunting of squirrel, rabbit, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(cc) *North Carolina.* * * *

(3) *Roanoke River National Wildlife Refuge.* Hunting of squirrel, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required

* * * * *

6. Section 32.31 would be amended by adding a new state, Hawaii and adding alphabetically by State, Hakalau Forest NWR, HI, Dahomey NWR, MS, and Roanoke River NWR, NC as follows:

§ 32.31 List of open areas; big game.

* * * * *

Hawaii

Hakalau Forest National Wildlife Refuge

* * * * *

Mississippi

* * * * *

Dahomey National Wildlife Refuge

* * * * *

North Carolina

* * * * *

Roanoke River National Wildlife Refuge

* * * * *

7. Section 32.32 would be amended by redesignating paragraphs (k) through (uu) as (l) through (vv); adding paragraph (k); redesignating newly redesignated paragraphs (u)(3)(1) as (u)(3)(i) and (z)(2) through (7) as (z)(3) through (8); adding paragraphs (z)(2) and (hh)(6); and redesignating newly redesignated paragraphs (ss)(4)(1) through (5) as (ss)(4)(i) through (v) as follows:

§ 32.32 Refuge-specific regulations; big game.

* * * * *

(k) *Hawaii—Hakalau Forest National Wildlife Refuge.* Hunting of feral pigs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(z) *Mississippi.* * * *

(2) *Dahomey National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(hh) *North Carolina.* * * *

(6) *Roanoke River National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

PART 33—[AMENDED]

8. The authority citation for Part 33 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i.

9. Section 33.4 would be amended by adding alphabetically by State, Willow Creek NWR, CA, Bayou Sauvage NWR, LA, and St. Catherine Creek NWR, MS; and removing Willow Creek NWR, MT and Desert NWR, NV as follows:

§ 33.4 List of open areas; sport fishing.

* * * * *

California

* * * * *

Willow Creek National Wildlife Refuge

* * * * *

Louisiana

Bayou Sauvage National Wildlife Refuge

* * * * *

Mississippi

* * * * *

St. Catherine Creek National Wildlife Refuge

* * * * *

10. Section 33.22 would be amended by redesignating paragraphs (a) through (j) as (b) through (k); adding paragraphs (a) (1) through (6) as follows:

§ 33.22 Louisiana.

(a) *Bayou Sauvage National Wildlife Refuge.* Finfishing and shellfishing are permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted during daylight hours only from March 16 through October 31, with the following exceptions: bank fishing from U.S. Highway 11 is permitted year-round; the area south of intracoastal Waterway is permitted year-round; the areas outside the Hurricane Protection Levee, the main Canal from U.S. Highway 11 to the borrow pits (2) within the Blind lagoon Unit, and the area bounded by I–10, Lake Pontchartrain, and Levee #27 is permitted from the end of the State waterfowl season (East Zone) through October 31.

(2) Only rod and reel or pole and line is permitted for finfishing. All hand lines and crabbing equipment must be attended.

(3) The use of trotlines, slat traps, or nets is prohibited, with the following exceptions: bait shrimp may be taken with cast nets; crayfish and crabs with ring nets up to 20 inches in diameter.

(4) Daily crab and crayfish limit is 100 pounds per vehicle or boat.

(5) Outboard motors not to exceed 25 horsepower are permitted in waterways, canals, and pools within the Hurricane Protection Levee (#26, #27, and #28).

(6) Air-thrust boats, motorized pirogues, and go-devils are prohibited in refuge waters.

* * * * *

11. Section 33.28 would be amended by adding paragraph (c) to read as follows:

§ 33.28 Mississippi.

* * * * *

(c) *St. Catherine Creek National Wildlife Refuge.* Sport fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing and access is permitted during daylight hours only from March 1 through September 15 in areas designated by refuge signs and/or leaflets with the exception that fishing and access may be permitted year-round in some areas if designated by refuge signs and/or leaflets.

(2) Access to the refuge fishing areas is restricted to roads and trails designated by refuge signs and/or leaflets.

(3) Boats may not be left on the refuge overnight.

* * * * *

Dated: May 17, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–14375 Filed 6–18–91; 8:45 am]

BILLING CODE 4310–55–M

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Notices

Federal Register
Vol. 56, No. 118
Wednesday, June 19, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 910358-1132]

Foreign Availability Determination: 5-Axis Computer Numerical Control Units

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Department of Commerce.

ACTION: Notice of negative determination.

SUMMARY: On May 14, 1991, consistent with the provisions of section 791 of the Export Administration Regulations (EAR), the Department of commerce determined that foreign availability of 5-Axis Computer Numerical Control Units controlled under ECCN 1091A of the commodity Control List (CCL) (15 CFR 799.1, Supp. 1), does not exist to controlled countries. As a result of this negative determination, the Department of Commerce will not amend the existing export controls on this item.

FOR FURTHER INFORMATION CONTACT: Steven C. Goldman, Director, Office of Foreign Availability, room SB-097, Department of Commerce, Washington, DC 20230; Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Background

Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12730 of September 30, 1990.

Part 791 of the EAR (15 CFR 730 *et seq.*) implements and establishes the procedures and criteria for determining the foreign availability of goods and technology whose export is controlled for national security reasons. The Secretary of Commerce or his designee determines whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to affected countries if the Secretary or his designee determines that items of comparable quality are available in fact to such countries from a foreign source in quantities sufficient to render the controls ineffective.

On January 14, 1991, the Office of Foreign Availability (OFA) initiated a foreign availability assessment of 5-Axis Computer Numerical Control Units to controlled countries. These items are controlled under ECCN 1091A of the CCL. On March 29, 1991, the Department published a notice of the initiation of this assessment in the **Federal Register** (56 FR 13114).

OFA provided its assessment and recommendation to the Deputy Assistant Secretary for Export Administration. The Deputy Assistant Secretary considered the assessment and other relevant information and determined that foreign availability does not exist to controlled countries within the meaning of section 791 of the EAR for 5-Axis Computer Numerical Control Units. The Department provided all interested government agencies, including the Departments of State and Defense, with the opportunity to review and comment on the assessment and determination. As a result of this negative determination, the Department of Commerce will not amend the existing export controls on these items.

If OFA receives new evidence concerning this foreign availability determination, OFA may reevaluate its assessment. Inquiries concerning the scope of this assessment should be sent to the Director of the Office of Foreign Availability at the above address.

Dated: June 13, 1991.

James M. LeMunyon,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-14556 Filed 6-18-91; 8:45 am]
BILLING CODE 3510-DT-M

International Trade Administration

Automotive Parts Advisory Committee; Renewal

The delegate of the Secretary of Commerce renewed the U.S. Automotive Parts Advisory Committee (APAC). The renewal of the committee is in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2, and 41 CFR part 101-6.10 (1990), Federal Advisory Committee Management Rule.

The APAC was established by the Secretary of Commerce on June 6, 1989 to advise Department of Commerce officials on issues related to sales of U.S.-made auto parts to Japanese markets.

The Committee functions as an advisory body in accordance with the Federal Advisory Committee Act. Additional information may be obtained from Stuart Keitz, U.S. Department of Commerce, International Trade Administration, (202) 377-0669.

Dated: June 2, 1991.

Mary A. Toman,
Deputy Assistant Secretary for Automotive Affairs and Consumer Goods.

[FR Doc. 91-14472 Filed 6-18-91; 8:45 am]
BILLING CODE 3510-DR-M

[A-351-605]

Frozen Concentrated Orange Juice From Brazil; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review; Intent To Revoke in Part the Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Termination in Part of Antidumping Duty Administrative Review; Intent to Revoke in Part the Antidumping Duty Order.

SUMMARY: In response to a request by respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. The review covers five producers and/or exporters of this merchandise to the United States and the period May 1, 1989 through April 30, 1990. We preliminarily determine the weighted-average dumping margins for all respondents during this period to be zero or *de minimis*. Because Branco Peres Citrus S.A. and Citro-Pectina S.A. withdrew their requests for review, we are terminating the review with respect to those firms. If, by virtue of the final results of this review, Cargill Citrus Limitada, Citrosuco Paulista, Coopercitrus Industrial Frutesp S.A. and Montecitrus Trading S.A. have three consecutive years of sales at not less than fair value, and it is likely that they will not sell the subject merchandise at less than fair value in the future, the Department will revoke the antidumping duty order with respect to these firms upon publication of these final results. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 19003) of the antidumping duty order on frozen concentrated orange juice from Brazil (52 FR 16426; May 5, 1987). In May 1990, seven respondents, Cargill Citrus Ltda., Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., Montecitrus Trading S.A., Frutropic S.A., Citro-Pectina S.A., and Branco Peres Citrus S.A., requested an administrative review of the order. We initiated the review, covering the period May 1, 1989 through April 30, 1990, on July 6, 1989 (55 FR 27359). A timely request for revocation of the antidumping duty order, accompanied by the required certification, was submitted by Cargill Citrus Ltda., Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., and Montecitrus Trading S.A. Because Citro-Pectina S.A. and Branco Peres Citrus S.A. subsequently withdrew their requests for review, the Department is terminating the review of their sales for this period. The Department has now conducted the review for the remaining companies in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review were published on November 14, 1990 (55 FR 47502).

Scope of the Review

Imports covered by the review are shipments of frozen concentrated orange juice (FCOJ) from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period May 1, 1989 through April 30, 1990 and five producers and/or exporters of Brazilian FCOJ to the United States: Cargill Citrus Ltda., Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., Frutropic S.A., and Montecitrus Trading S.A. The review of this period with respect to Citro-Pectina S.A., and Branco Peres Citrus S.A. is being terminated.

The Department intends to revoke the antidumping duty order with respect to four firms: Cargill Citrus Ltda., Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A. and Montecitrus Trading S.A. if, at the time the Department publishes the final results of this review, the four firms have demonstrated three consecutive years of sales at not less than fair value, and it is not likely that these firms will sell subject merchandise at less than fair value in the future. The additional respondent who submitted a revocation request, Frutropic S.A., is not eligible for revocation as provided in § 353.25(a) of the Department's regulations because it failed to meet the requirement of having sold the merchandise at not less than fair value for three consecutive years. As required by § 353.25(c) of the Department's regulations, the Department conducted a verification of all factual information submitted by those firms eligible for revocation.

United States Price

In calculating the United States price, we used both purchase price and exporter's sales price (ESP) as defined in section 772 of the Tariff Act. Purchase price was used for those sales to the United States which were made prior to importation, while exporter's sales price was used for those sales which were made after importation. Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States. ESP was based on the packed delivered price to the first unrelated purchaser in the United States. For purchase price sales, where applicable, we made deductions for Brazilian brokerage expenses, discounts, export taxes, port fees, foreign inland freight and insurance. For ESP sales, we made deductions for discounts, U.S. duty and Customs' fees, harbor maintenance fees, U.S. inland freight and insurance, brokerage and handling expenses, ocean freight and marine insurance, credit expenses and indirect selling expenses. Where foreign market value was based on home market prices, we made an addition to U.S. price for taxes which were not collected by reason of exportation of the merchandise to the United States. No other adjustments were claimed or allowed.

Foreign Market Value

The Department based foreign market value on ex-factory or delivered prices to unrelated purchasers in the home market or on third country f.o.b. prices, in accordance with section 773 of the Tariff Act. We made deductions, where appropriate, for foreign inland freight, marine insurance, and export taxes. Where applicable, we deducted foreign packing expenses and added U.S. packing to home market price (packing costs were not incurred on bulk sales). We adjusted foreign market value for differences in credit expenses, post-sale warehousing expenses, indirect taxes, and differences in the physical characteristics of the merchandise. In the case of comparisons to ESP sales, we made an adjustment for indirect selling expenses, limited by the amount of indirect selling expenses incurred in the United States. No other adjustments were claimed or allowed. Where distortions would have been created through the use of a monthly foreign market value, we calculated foreign market value based on shorter periods.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine the weighted-average margins for the period May 1, 1989 through April 30, 1990 to be:

Manufacturer/Exporter	Margin (percent)
Citrosuco Paulista S.A.	0.03
Cargill Citrus Ltda.	zero
Coopercitrus Industrial Frutesp S.A.	0.11
Montecitrus Trading S.A.	0.09
Frutropic S.A.	0.06

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service upon completion of this review.

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Further, as provided for by section 751(a)(1) of the Tariff Act, because there were either *de minimis* or no margins for Cargill Citrus Ltda., Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., Frutropic S.A. and Montecitrus Trading S.A. no cash deposit will be required for these manufacturers. The cash deposit rate for all other exporters/producers shall continue to be at the rate established in the final results of the last administrative review (55 FR 47502; November 14, 1990) or the antidumping duty order (52 FR 16426; May 5, 1987), as applicable. These deposit requirements/waivers, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Parties to the proceeding may request disclosure within five days and interested parties may request a hearing not later than ten days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted no later than seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than ten days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 and 353.25.

Dated: June 12, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-14632 Filed 6-18-91; 8:45 am]

BILLING CODE 3510-DS-M

Exemption of Foreign Air Carrier From Customs Duties and Taxes; Request for Finding of Reciprocity (Saudi Arabia)

Notice is hereby given that the Department of Commerce is undertaking to determine whether, pursuant to sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), and section 4221 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 4221), the Government of Saudi Arabia allows substantially reciprocal customs and tax exemptions to aircraft of U.S. registry in connection with international commercial operations to those exemptions granted to aircraft of foreign registry under the aforementioned statutes. The basis of this undertaking is the request of Saudi Arabian Airlines Corporation (Saudia) for a finding of such reciprocity effective retroactively to April 1, 1990.

The above-cited statutes provide exemptions for aircraft of foreign registry from payment of import duties and certain internal revenue taxes on the import or purchase of supplies in the United States for such aircraft in connection with their international commercial operations. "Supplies" as used in this context indicates a wide range of articles used by aircraft in international operations, including fuel and lubricants, spare parts, consumable supplies, and ground handling and support equipment. These exemptions apply upon a finding by the Secretary of Commerce, or his designee, and communicated to the Department of the Treasury, that such country allows, or will allow, "substantially reciprocal privileges" to aircraft of U.S. registry with respect to imports or purchases of such supplies in that country.

Interested parties are invited to submit their views and comments in writing concerning this matter to Ms Linda F. Powers, Deputy Assistant Secretary for Services, Room 1128, U.S. Department of Commerce, Washington, DC 20230. All submissions should be made in five copies and should be received no later than thirty (30) days following the publication of this notice.

Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 5 p.m. Monday through Friday in the Freedom of Information Records Inspection Facility, International Trade Administration, room 4102, U.S. Department of Commerce, Washington, DC.

FOR FURTHER INFORMATION CONTACT: C. William Johnson, Transportation, Tourism and Marketing Industries Division, Office of Service Industries, International Trade Administration, Room 1120, U.S. Department of Commerce, Washington, DC 20230, or telephone (202) 377-5071.

Dated: June 13, 1991.

Linda F. Powers,

Deputy Assistant Secretary for Services

[FR Doc. 91-14557 Filed 6-18-91; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 87-6A004.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the National Machine Tool Builders' Association on May 19, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 87-00004, was issued to the National Machine Tool Builders' Association ("NMTBA") on May 19, 1987 (52 FR 19371, May 22, 1987) and previously amended on December 11, 1987 (52 FR 48454, December 22, 1987), January 3, 1989 (54 FR 837, January 10, 1989), April 20, 1989 (54 FR 19427, May 5, 1989), May 31, 1989 (54 FR 24031, June 12, 1989), and May 29, 1990 (55 FR 23576, June 11, 1990).

NMTBA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate: Advanced Technologies, Incorporated, Bay City, MI; Black Brothers Co., Mendota, IL; Blue Valley Machine and Mfg. Co., Inc., Kansas City, MO; Broaching Machine Specialties, Novi, MI (controlling entity: Machinery & Equipment Exchange, Inc.); Coherent General, Inc., Sturbridge, MA (controlling entity: Coherent Inc.); Crouch Machinery, Inc., Pinehurst, NC; Curtin Hebert Co. Inc., Gloversville, NY; Debur Corporation, Chelmsford, MA; Easco Sparcatron, Whitmore Lake, MI (controlling entity: Liquid Drive Corp.); Gold Crown Machinery, Inc., Cincinnati, OH; Haas Automation, Inc., Sun Valley, CA; Hess Engineering, Inc., Niles, MI (controlling entity: Hess Industries, Inc.); Jorgensen Conveyors, Inc., Mequon, WI; MBD Machines Division, Warsaw, IN (controlling entity: Tyler Machinery Co., Inc.); Maho Machine Tool Corporation, Naugatuck, CT (controlling entity: Maho A.G., Germany); Mega Manufacturing Inc., Hutchinson, KS; Mikron Corp. Monroe, Monroe, CT (controlling entity: Mikron Holding); Murata Wiedemann Inc., King of Prussia, PA (controlling entity: Murata Machinery Ltd); Roto-Finish Co., Inc., Kalamazoo, MI (controlling entity: Kalamazoo Co.); Seneca Falls Machine Tool Co., Inc., Seneca Falls, NY (controlling entity: SFM Corporation); Wadell Machine & Tool Co., Inc., Somerset, NJ; and Xermac, Inc., Royal Oak, MI;

2. Delete each of the following companies as a "Member" of the Certificate: Autonumerics, Inc.; CAM-APT Inc.; CM Systems, Inc.; Eltee Pulsitron; Innovex; George T. Schmidt Inc.; Timmco International, Inc.; Wes-Tech Automation Systems; Western Machine Tool Works; and Wisconsin Drill Head Co.; and

3. Change the listing of current "Member" Sheffield Machine Tool Company to Sheffield Schaudt Grinding Systems, Inc.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 14, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-14633 Filed 6-18-91; 8:45 am]

BILLING CODE 3510-DR-M

University of California, Santa Barbara; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-232R. *Applicant:* University of California, Santa Barbara, Santa Barbara, CA 93106. *Instrument:* Mass Spectrometer, Model PRISM SERIES II. *Manufacturer:* VG Isotech, United Kingdom. *Intended Use:* See notice at 55 FR 2861, January 29, 1990.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) An automatic cold finger micro volume inlet with a guaranteed internal precision of 0.006 per mil for 20 bar μ1 samples of N^2 and (2) a reproducibility for hydrogen isotope ratio analysis of 0.5 per mil. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-14634 Filed 6-18-91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 910528-1128]

RIN 0693-AA91

Proposed Withdrawal of Twelve Federal Information Processing Standards

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to announce the proposed withdrawal of twelve Federal Information Processing Standards (FIPS). These standards are proposed for withdrawal because the technical specifications that they adopt are obsolete and are no longer supported by industry.

The standards proposed for withdrawal are the following:

—FIPS 3-1, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI) (ANSI X3.22-1973).

—FIPS 25, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Encoded) (ANSI X3.39-1973).

—FIPS 50, Recorded Magnetic Tape for Information Interchange, 6250 cpi (246 cpmm), Group Coded Recording (ANSI X3.54-1976).

—FIPS 51, Magnetic Tape Cassettes for Information Interchange (3.810 mm [0.150 in] Tape at 32 bpmm [800 bpi], PE) (ANSI X3.48-1977).

—FIPS 52, Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (¼ in), 63 bpmm (1600 bpi), Phase Encoded (ANSI X3.56-1977).

—FIPS 79, Magnetic Tape Labels and File Structure for Information Interchange (ANSI X3.27-1978).

—FIPS 93, Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (¼ in), 63 bpmm (1600 bpi) Phase Encoded (ANSI X3.72-1981/R1987).

—FIPS 114, 200 mm (8 in Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (ISO 5654/2-1985).

—FIPS 115, 200 mm (8 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 13262 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (ISO 7065/2-1985).

—FIPS 116, 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (ISO 6596/2-1985).

—FIPS 117, 10 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (ISO 7487/3-1984).

—FIPS 118, Flexible Disk Cartridge Labelling and File Structure for Information Interchange (ISO 7665-1983).

Prior to the submission of this proposed withdrawal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

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Interested parties may obtain copies of these standards from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone (703) 487–4650.

DATES: Comments on this proposed withdrawal must be received on or before September 17, 1991.

ADDRESSES: Written comments concerning the withdrawal should be sent to: Director, Computer Systems Laboratory, ATTN: Withdrawal of Twelve FIPS, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2833.

Dated: June 14, 1991.

John W. Lyons,

Director.

[FR Doc. 91–14636 Filed 6–18–91; 8:45 am]

BILLING CODE 3510–CN–M

National Institute of Standards and Technology Visiting Committee on Advance Technology

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Wednesday, June 26, 1991, from 2:30 p.m. to 3:30 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to fully examine and discuss FY 1993 budget planning information for the National Institute of Standards and Technology.

DATES: The meeting will convene June 26, 1991, at 2:30 p.m. and adjourn at 3:30 p.m. on June 26, 1991.

ADDRESSES: The meeting will be held in room 5840, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Dale E. Hall, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899, telephone number (301) 975–2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, for Administration, with the concurrence of the General Counsel, formally determined on August 30, 1990, that portion of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: June 14, 1991.

John Lyons,

Director.

[FR Doc. 91–14637 Filed 6–18–91; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Export Licensing System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

June 14, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of export licenses/commercial invoices printed on blue paper.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the People's Republic of China have agreed, effective on July 1, 1991, to amend further the export licensing system to provide for the use of textile export licenses/commercial invoices, issued by the Government of the People's Republic of China for shipments exported from China on and after July 1, 1991, which are printed on blue guilloche patterned background paper. The blue form replaces the green and yellow licenses/invoices currently in use. The visa stamp is not being changed at this time.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 14, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive, as amended, establishes an export licensing system for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on July 1, 1991, the textile export license/commercial invoice, issued by the Government of the People's Republic of China, will be printed on blue guilloche patterned background paper for merchandise currently subject to the export licensing system, and exported from China on and after July 1, 1991. The blue form will replace the green and yellow form currently being used.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–14578 Filed 6–18–91; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Consolidation and Conversion of Defense Research and Development Laboratories Advisory Commission; Meeting

AGENCY: Department of Defense (DoD) Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Federal Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories will hold meetings on June 19–20, 1991, and on July 17–18, 1991, in Washington, DC area. These meetings will convene at 8:30 a.m. and adjourn at 5 p.m. on each day of the meetings. These sessions will be closed to the public.

The purpose of these meetings is to discuss technological factors involved in developing recommendations to the Secretary of Defense on consolidating, converting, or realigning various laboratories of the Department of Defense. The entire agenda for the meeting will consist of discussions of the key issues related to future military research and technology development. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Director of Defense Research and Engineering has determined, in writing, that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

This Notice of the June 19–20, 1991, meeting of the Commission is being published late due to the need to accelerate the schedule to meet the reporting dates mandated in section 246 of the National Defense Authorization Act for 1991. Operational necessity constitutes an exceptional circumstance not allowing Notice to be published in the Federal Register at least 15 days before the date of this meeting.

For further information concerning this meeting, contact: Dr. Michael Heeb, Executive Secretary to the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories, 5109 Leesburg Pike, suite 317, Falls Church, VA 22041, Phone (703) 756–8999.

Dated: June 14, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14573 Filed 6–18–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Naval Reserve Officers Training Corps Scholarship Program Applicant Questionnaire; NAVCRUIT 1131/6; OMB No. 0703–0028

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: .33 Minutes.

Responses Per Respondent: 1.

Number of Respondents: 40,000.

Annual Burden Hours: 13,200.

Annual Responses: 40,000.

Needs and Uses: An assessment of an individual's basic eligibility for the NROTC Scholarship Program is necessary for the initial screening of prospective applicants. In order to pre-screen applicants it is necessary to have information concerning date of birth, citizenship, high school graduation date, etc. Address and phone are needed to contact those individuals who are eligible and to inform those who are not. Information is provided to the individual who wishes to apply for the Four-Year NROTC Scholarship Program. The information gathered is used by Headquarters, Navy Recruiting Command to determine basic eligibility. Without this information, this could not be accomplished.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: June 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14575 Filed 6–18–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Inspector General

Membership of the Performance Review Board

AGENCY: Office of the Inspector General, Department of Defense (OIG, DOD).

ACTION: Notice of membership to the Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) for the OIG, DOD as required by 5 U.S.C. 4314(c)(4). the PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings, performance awards and recertification to the Inspector General.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Dona Seracino, Chief, Employee Relations Division, Personnel and Security Directorate, Office of the Assistant Inspector General for Administration and Information Management, OIG, DOD, 400 Army Navy Drive, Arlington, VA (202) 693–0257.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the appointed members of the PRB for the OIG, DOD are identified in the enclosures. They will serve until further notice.

Dated: June 14, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Derek J. Vander Schaaf—Deputy Inspector General, OIG, DOD

Nancy L. Butler—Director, Financial Management, Office of the Assistant Inspector General for Auditing, OIG, DOD

David A. Brinkman—Assistant Inspector General for Analysis and Followup, OIG, DOD

Katherine A. Brittin—Assistant Inspector General For Inspections, OAIG–INS, DOD

Donald E. Davis—Deputy Assistant Inspector General for Audit Policy and Oversight, OIG, DOD

Michael R. Hill—Assistant Inspector General for Audit Policy and Oversight, OIG, DOD

Edward R. Jones—Deputy Assistant Inspector General for Auditing, OIG, DOD

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Robert J. Lieberman—Assistant Inspector General for Auditing, OIG, DOD
Nicholas T. Lutsch—Assistant Inspector General for Administration and Information Management, OIG, DOD
Donald Mancuso—Assistant Inspector General for Investigations, OIG, DOD
William F. Thomas—Director, Readiness and Operational Support Directorate, Office of the assistant Inspector General for Auditing, OIG, DOD
Donald E. Reed—Director, Acquisition Management Directorate, Office of the Assistant Inspector General for Auditing, OIG, DOD
Jack L. Montgomery—Deputy Assistant Inspector General for Administration and Information Management, OIG, DOD
William G. Dupree—Deputy Assistant Inspector General for Investigations, OIG, DOD
Stephen A. Whitlock—Director, Inspections Directorate, Office of the Assistant Inspector General for Inspections, OIG, DOD
William R. Barton—Inspector General, General Services Administration
John Connors—Deputy Inspector General, Department of Housing and Urban Development
Joyce Fleischman—Deputy Inspector General, Department of the Interior
Lewis D. Rinker—Deputy Inspector General, National Aeronautics and space Administration

[FR Doc. 91-14574 Filed 6-18-91; 8:45 am]
BILLING CODE 3810-01-M

Department of the Navy

Privacy Act of 1974; Addition of a Proposed New Record System

AGENCY: Department of the Navy, DOD.
ACTION: Addition of a new record system.

SUMMARY: The Department of the Navy proposes to add one system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed action will be effective on July 19, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Mrs. Gwendolyn Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000. Telephone (703) 604-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the Federal Register as follows:

51 FR 12906 Apr. 16, 1986
51 FR 18086 May 16, 1986 (DON Compilation changes follow)
51 FR 19884 Jun. 3, 1986
51 FR 30377 Aug. 26, 1986
51 FR 30933 Aug. 29, 1986
51 FR 45931 Dec. 23, 1986
52 FR 2147 Jan. 20, 1987
52 FR 2149 Jan. 20, 1987
52 FR 6500 Mar. 18, 1987
52 FR 15530 Apr. 29, 1987
52 FR 22671 Jun. 15, 1987
52 FR 45645 Dec. 2, 1987
53 FR 17240 May 16, 1988
53 FR 21512 Jun. 8, 1988
53 FR 25363 Jul. 6, 1988
53 FR 39409 Oct. 7, 1988
53 FR 41224 Oct. 20, 1988
54 FR 6322 Feb. 28, 1989
54 FR 14378 Apr. 11, 1989
54 FR 32982 Aug. 9, 1989
54 FR 40160 Sep. 29, 1989
54 FR 41405 Oct. 10, 1989
54 FR 43453 Oct. 25, 1989
54 FR 45781 Oct. 31, 1989
54 FR 48131 Nov. 21, 1989
54 FR 51764 Dec. 18, 1989
54 FR 52976 Dec. 28, 1989
55 FR 21910 May 30, 1990 (Navy Mailing Addresses)
55 FR 37930 Sep. 14, 1990
55 FR 42758 Oct. 23, 1990
55 FR 47508 Nov. 14, 1990
55 FR 48678 Nov. 21, 1990
55 FR 53167 Dec. 27, 1990
56 FR 424 Jan. 4, 1991
56 FR 12721 Mar. 27, 1991

A new system report, as required by 5 U.S.C. 522a(r) of the Privacy Act, was submitted on June 10, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985).

Dated: June 14, 1991.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05100-2

SYSTEM NAME:
Scheduled Parachute Jump Program.

SYSTEM LOCATION:
Naval Safety Center, Naval Air Station, Norfolk, VA 23511-5796.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
All Navy and Marine Corps personnel and trainees who participate in the Scheduled Parachute Jump Program.

CATEGORIES OF RECORDS IN THE SYSTEM:
Unit reports of each scheduled jump, which includes name of parachutist, Social Security Number, Unit Identification Code (UIC), and model of parachute; total scheduled jump activity survey reports; and annual scheduled jump activity reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):
To track scheduled jump activity data for specific individuals or types of parachutes and correlate the information with parachute jump mishap data; analyze information to determine the relationship between various categories and combinations of jump experience and accident involvement.

To provide results of these studies to all echelons within the Navy and Marine Corps having responsibility for jump operations, parachute training, and allocation of resources to and within the parachute jump program.

To provide an annual summary of jump activity by parachute type to each reporting individual for his/her verification and personnel records. Upon request, a detailed by jump report for a specified time frame is also provided.

To provide records to the Chief of Naval Personnel for promotional screening, detailing, and compliance with minimum standards.

To provide summaries of jump activity for Marine Corps personnel to the Commandant of the Marine Corps.

To provide records of specific jump designated personnel to contractors, if required, for projects either funded by or deemed potentially valuable to the Department of the Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:
STORAGE:
Magnetic tape and computer printouts.

RETRIEVABILITY:
Name, Social Security Number, Unit Identification Code (UIC), and model of parachute.

SAFEGUARDS:
Computer area is locked after hours and access is strictly controlled. Hard drive locked to preclude unauthorized access. Only two individuals have a key to access hard drive. Building is under 24 hour watch.

RETENTION AND DISPOSAL:
Permanent. Magnetic tape files contain all available records and are never purged.

SYSTEM MANAGER(S) AND ADDRESS:
Director of Aviation Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511-5796.

NOTIFICATION PROCEDURE:
Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director of Aviation Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511-5796.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURE:
Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director of Aviation Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511-5796.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURE:
The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:
Navy and Marine Corps jumpers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:
None.

[FR Doc. 91-14577 Filed 6-18-91; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites cosuments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by July 12, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: June 13, 1991.

Mary P. Liggett,
Acting Director, Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited
Title: Application for Grants Under the Minority Outreach Program.
Abstract: This form will be used by State Educational agencies and non-profit institutions to apply for funding under the Minority Outreach Program.
Addition Information: An expedited review is requested in order to keep the grant awards under the Minority Outreach Program in FY 1991. This application contains General Information and instructions for the program narrative, Part II of the Budget Information, Standard Form 424 (Application for Federal Assistance), Standard Form 424B (Assurances), Lobbying Certifications, Debarment Certifications, Drug-Free Certifications, and Lobbying Activities Disclosures.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 15.
Burden Hours: 630.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

DRAFT

General Information

Over the past several decades, the field of special education has experienced considerable growth. Development in the preparation of committed, skilled personnel have accompanied the substantial advances in the application of knowledge, theory, and promising diagnostic and instructional practices in diverse educational settings. The Training Personnel for the Education of Individuals with Disabilities program is designed to assist institutions of higher education (IHEs) and other appropriate nonprofit agencies (NPAs) in the development and implementation of quality preservice and inservice training programs. Since its inception, the program has provided professional, technical, and financial assistance to improve the quality and increase the supply of special education and support personnel across the nation.

One Competition: This package covers a new application for one separate competition, distinguished by an independent training focus and review schedule. A description of the purpose, available resources, and program focus pertinent to this competition is provided in this application package.

Specify Absolute and Competitive Priorities: In applying for new grant funds under this program, please specify the individual competition (absolute priority) to which your agency/institution is submitting. Should

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situations arise in which a training activity appears to be appropriate for more than one competition, applicants are advised to select the single competition that most accurately reflects the primary training audience to be served by the project. Applicants are responsible for selecting the most appropriate competition for proposed activities. In the event that an agency or institution develops several activities which cut across competitions, it is better to submit separate applications for activities which accurately correspond to each individual competition. It is relatively unusual for a given application to be equally appropriate under more than one competition.

Conversely, it is quite common for applications to address one or more of the competitive priorities listed. In 1990, 74 percent of applications received addressed one or more areas now listed as competitive priorities in addition to major areas identified as absolute priorities.

Applicants must complete Item 10 of ED Form 424 to identify the selected absolute priority. Applicants are urged to include in the descriptive project title (Item 11) information further clarifying the intent of the application in terms of the absolute priority. Such identification will insure the accurate and timely processing of applications.

Content and Format: Applicants are urged to review the criteria upon which applications will be evaluated, we strongly recommend that you use this form as a guide in preparing the application narrative. Peer reviewers have been consistent in their preference for applications arranged to conform with the evaluation criteria.

Public reporting burden for this collection of information is estimated to average 42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–NEW *, Washington, DC 20503.

[FR Doc. 91–14639 Filed 6–18–91; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(CA)–10, for the transfer of 25 kilograms of enriched uranium scrap, enriched to 93.15 percent in the isotope uranium-235 from Chalk River, Ontario, Canada to Dounreay, Scotland, the United Kingdom, for recovery of the uranium. The recovered uranium metal is to be returned to Canada.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on June 17, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91–14714 Filed 6–18–91; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 10909–000 New York]

Kinderhook Hydro, Inc.; Availability of Environmental Assessment

June 12, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Kinderhook Project located on the Kinderhook Creek in Columbia County, near the Village of Valatie, New York, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14542 Filed 6–18–91; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. JD91–07190T Mississippi–4]

State Oil and Gas Board of Mississippi; Notice of Determination Designating Tight Formation

June 12, 1991.

Take notice that on June 4, 1991, the State Oil and Gas Board of Mississippi (Mississippi) submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the LT–3 Tuscaloosa Formation in the Maxie Field, in Forrest County, Mississippi, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination cover sections 1, 2, 11, and 12 in Township 1 South, Range 13 West, sections 4–7 in Township 1 South, Range 12 West, and sections 31–33 in Township 1 North, Range 12 West. The notice of determination also contains Mississippi's findings that the referenced portion of the LT–3 Tuscaloosa Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14539 Filed 6–18–91; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. JD91–07206T West Virginia–6]

State of West Virginia; Notice of Determination Designating Tight Formation

June 12, 1991.

Take notice that on June 10, 1991, the Oil and Gas Section of the Division of Energy, within the Department of Commerce, Labor and Environmental Resources, for the State of West Virginia (West Virginia), submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Keefer Sandstone Formation in Mineral and Hampshire Counties, West Virginia, qualifies as a tight formation under § 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers all of Mineral and Hampshire Counties. The notice of determination also contains West Virginia's findings that the referenced portion of the Keefer Sandstone Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR § 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, sections 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14540 Filed 6–18–91; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. MT88–1–006]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that Algonquin Gas Transmission Company (Algonquin) on June 7, 1991, tendered for filing as part of its FER Gas Tariff, Third Revised Volume No. 1, six copies of the tariff sheets listed in the attached appendix.

Algonquin states that the revised tariff sheets are being filed to comply with the Commission's Order Nos. 497 and 497–A and in Docket No. MT88–1–000 *et al.* and MG88–3–000 *et al.* issued May 23, 1991.

The proposed effective date of the tariff sheets listed above is June 7, 1991.

Algonquin states that copies of the filing are being served on Algonquin's jurisdictional sales and transportation customers, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14532 Filed 6–18–91; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. MT90–6–003]

Mississippi River Transmission Corp.; Proposed Change in FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing Substitute Fourth Revised Sheet No. 72 to its FERC Gas Tariff, Original Volume No. 1–A, with a proposed effective date of November 15, 1990.

MRT states that this filing is being made in compliance with an Order issued by the Commission on May 23, 1991, in which the Commission directed MRT to set forth the title of the operating personnal shared with its affiliated marketing or brokering company.

MRT states that a copy of this filing has been mailed to each of MRT's jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14528 Filed 6–18–91; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. MT91–2–004]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, National Fuel Gas Supply Corporation ("National") tendered for filing Second Revised Sheets Nos. 248, 249 and 250 to its FERC Gas Tariff, Second Revised Volume No. 1, proposed to become effective on July 8, 1991.

National's proposed tariff sheets are filed in response to an order requiring compliance issued by the Commission to National on May 23, 1991 in Docket Nos. MT91–2–000, MT91–2–002 and MT91–2–003. That order required various changes in the form of National's Transportation Service Request Form to bring National into compliance with the requirements of Order No. 497–A applicable to interstate pipelines which conduct transportation transactions with affiliated marketing or brokering entities.

National states that copies of this filing were served upon the Company's jurisdictional customers and the regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in

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determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14533 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-27-007]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, Northern Border Pipeline Company (Norther Border) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of July 8, 1991:

Third Revised Sheet No. 260

Northern Border states that the purpose of this filing is to comply with the Commission's Order Nos. 497 and 497-A Compliance Filing issued in Docket No. MT88-1-000, *et al.* on May 23, 1991.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14536 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-1-005]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that Northern Natural Gas Company (Northern) on June 7, 1991, tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume 1, the following tariff sheets:

Third Revised Volume No. 1

First Revised Sheet No. 52F.12a
Second Revised Sheet No. 52F.12b

Northern states that such tariff sheets, with a proposed effective date of July 7, 1991, are being submitted in compliance with the Commission Orders on the following Dockets:

RM87-34-065, et al. issued April 4, 1991 related to Order 500 crediting regulations
MT88-01-000, et al. issued May 23, 1991 related to Order 497 affiliate identification

Northern futher states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of Practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14534 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-20-000]

PJM Group; Notice of Filing

June 13, 1991.

Take notice that on May 30, 1991, Pennsylvania-New Jersey-Maryland (PJM) tendered for filing a Second Response to Additional Staff Inquiries in the above referenced docket.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14529 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2687 California]

Pacific Gas & Electric Co.; Intent To File an Application for a New License

June 12, 1991.

Take notice that Pacific Gas & Electric Company, the existing licensee for the Pit 1 Hydroelectric Project No. 2687, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2687 was issued effective May 1, 1965, and expires December 31, 1995.

The project is located on the Fall River in Shasta County, California. The principal works of the Pit 1 Project include Pit 1 forebay and dam; a diversion dam and intake structure; a tunnel; penstocks; Pit 1 powerhouse with an installed capacity of 61 MW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 245 Market Street, San Francisco, CA 94106, Attn: Mr. Steve Christ, room 514, Telephone No. (415) 973-2629.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applciations for license for this project must be filed by December 31, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14543 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-32-003]

Sea Robin Pipeline Co.; Proposed Changes to FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following revised sheets to Original Volume No. 1 of it's FERC Gas Tariff:

Third Revised Sheet No. 45
First Revised Sheet No. 45-B
Second Revised Sheet No. 47
Third Revised Sheet No. 52
Second Revised Sheet No. 71

Sea Robin states that its proposed tariff sheets are being submitted in accordance with the Commission's Order No. 500-K and its order in Sea Robin Pipeline Company. Docket No. MT88-32-000 and reflect.

(1) The elimination from Sea Robin's tariff of all references to the Order No. 500 take-or-pay crediting program; and
(2) A change in the time in which Sea Robin will respond to complaints from 2 business days to 48 hours.

Sea Robin states that copies of the filing are being served on Sea Robin's jurisdictional shippers, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, 20426, in accordance with Rules 214 and 211 of the commission's rules of practices and procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14537 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-21-003]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 12, 1991

Take notice that on June 7, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing the following sheets to its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of July 7, 1991:

Second Revised Sheet No. 34Q.01
Fourth Revised Sheet No. 34T

South Georgia states that the purpose of this filing is to comply with the Commission's Order Nos. 497 and 497-A Compliance Filing issued in Docket No. MT88-1-000, *et al.* on May 23, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14530 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1934 California]

Southern California Edison Co.; Intent To File an Application for a New License

June 12, 1991.

Take notice that Southern California Edison Company, the existing licensee for the Mill Creek Nos. 2 and 3 Hydroelectric Project No. 1934, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1934 was issued effective May 1, 1946, and expires April 30, 1996.

The project is located on Mill Creek, a tributary of the Santa Ana River, in San Bernardino County, California. The principal works of the Mill Creek Project include 3 concrete diversion dams; conduits about 11 miles long; forebays; penstocks; two powerhouses with a total installed capacity of 3.25 MW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 2244 Walnut Grove Avenue, Rosemead, CA 91770, Tele. (818) 302-8944.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14524 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1930 California]

Southern California Edison Co.; Notice of Intent To File an Application for a New License

June 12, 1991.

Take notice that Southern California Edison Company, the existing licensee for the Kern River No. 1 Hydroelectric Project No. 1930, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1930 was issued effective May 1, 1946, and expires April 30, 1996.

The project is located on the Kern River in Kern County, California. The principal works of the Kern River Project include a concrete gravity diversion dam; a conduit about 8.5 miles long; a concrete regulating forebay; a penstock; a powerhouse with an installed capacity of 24.8 MW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 2244 Walnut Grove Avenue, Rosemead, CA 91770, Tele. (818) 302-8944.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14525 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1932 California]

Southern California Edison Co.; Notice of Intent To File an Application for a New License

June 12, 1991.

Take notice that Southern California Edison Company, the existing licensee for the Lytle Creek Hydroelectric Project No. 1932, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the

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Commission's Regulations. The original license for Project No. 1933 was issued effective May 1, 1948, and expires April 30, 1998.

The project is located on Lytle Creek, a tributary of the Santa Ana River, in San Bernardino County, California. The principal works of the Lytle Creek Project include a diversion dam; a conduit about 22,735 feet long; a concrete regulating forebay, a penstock about 1,546 feet long; a powerhouse with a total installed capacity of 800 kW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 2244 Walnut Grove, Rosemead, CA 91770, Tele. (818) 302-8044.

Purusuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any operating license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14526 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1933 California]

Southern California Edison Co.; Notice of Intent To File an Application for a New License

June 12, 1991.

Take notice that Southern California Edison Company, the existing licensee for the Santa Ana Nos. 1 and 2 Hydroelectric Project No. 1933, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1933 was issued effective May 1, 1948, and expires April 30, 1998.

The project is located on the Santa Ana River River in San Bernardino County, California. The principal works of the Senate Ana Project include 6 diversion dams on the Santa Ana River and tributaries; conduits with aggregate length of about 5 miles; two penstocks; two powerhouses with a total installed capacity of 5.0 MW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 2244 Walnut Grove Avenue, Rosemead, CA 91770, Tele. (818) 302-8044.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing licensee applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14527 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-20-004]

Southern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, Southern Natural Gas Company (Southern Natural) tendered for filing the following sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, with a proposed effective date of July 7, 1991:

Third Revised Sheet No. 45R.19a
Second Revised Sheet No. 45R.20a

Southern Natural states that the purpose of this filing is to comply with the Commission's Order Nos. 497 and 497-A Compliance Filing issued in Docket No. MT88-1-000, *et al.* on May 23, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14535 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1014-005]

Southwest Gas Storage Co.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that Southwest Gas Storage Company (Southwest) on June 7, 1991 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, six (6) copies of the following tariff sheets:

First Revised Sheet No. 61
Original Sheet No. 61A
First Revised Sheet No. 62
First Revised Sheet No. 72
First Revised Sheet No. 102
Original Sheet No. 102A
First Revised Sheet No. 103
First Revised Sheet No. 114

Southwest states that these revised tariff sheets are being filed to comply with the Commission's Order on Order Nos. 497 and 497-A Compliance Filings dated May 23, 1991 in Docket No. CP90-1014-002.

The proposed effective date of the tariff sheets listed above is June 7, 1991.

Southwest states that copies of its filing were served on its jurisdictional customers and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14535 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-34-002]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, Tennessee Gas Pipeline Company ("Tennessee") filed an original and 10 copies of the following revised tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff 1, to be effective June 7, 1991:

First Revised Sheet No. 282
First Revised Sheet No. 283

Tennessee states that the purpose of the filing is to comply with the Commission's order of May 23, 1991, issued in the above-referenced dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14544 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-17-001]

Texas Sea Rim Pipeline, Inc.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, Texas Sea Rim Pipeline Inc. (Sea Rim) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2, with a proposed effective date of July 1, 1991:

First Revised Sheet No. 10
First Revised Sheet No. 113
First Revised Sheet No. 114
First Revised Sheet No. 115
First Revised Sheet No. 116
Original Sheet No. 116a

Sea Rim states that the purpose of this filing is to comply with the Commission's Order Nos. 497 and 497-A Compliance Filing issued in Docket No. MT88-1-000, *et al.* on May 23, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14536 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-14-003]

Williams Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that Williams Natural Gas Company (WNG) on May 31, 1991, tendered First Revised Sheet Nos. 273 and 276 to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date of these tariff sheets is July 1, 1991.

WNG states that First Revised Sheet Nos. 273 and 276 are being filed in compliance with Commission Order (order) issued May 23, 1991. Ordering Paragraph (B)(13) required WNG to file within 15 days of the issuance of the order to include in its transportation request form the item required by § 250.16(b)(2)(vii).

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14531 Filed 6-18-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3966-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for reivew and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Phosphate Rock Plants (Subpart NN). (ICR No. 1078.03; OMB No. 2060-0111). This is a reinstatement of a previously approved collection.

Abstract: Owners or operators of phosphate rock plants must notify the delegated State authority or EPA of construction, reconstruction, anticipated and actual startup, and dates and results of the initial performance tests. Records must be maintained of the performance test results and all startups, shutdowns, and malfunctions. Owners or operators must install and maintain a continuous monitoring system (CMS) to measure opacity, or if a wet scrubber is used, monitor pressure drop and flow rate. Semiannual reports of excess emissions or monitoring system performance are required. The States and EPA use the data to ensure compliance with the standards and to target inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 12 hours per response for reporting, and 262.5 hours per recordkeeper annually. The estimated reporting burden includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of phosphate rock plants.

Estimated No. of Respondents: 13.

Estimated No. of Responses per Respondent: 6.

Estimated Total Annual Burden on Respondents: 4,324 hours.

Frequency of Collection: Once and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy

Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: June 12, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-14622 Filed 6-18-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3966-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Title: Records of Polychlorinated Biphenyls (PCBs) Use, Storage and Disposal—(EPA ICR No. 0583.04; OMB #2070-0061). This is an extension of the expiration of a currently approved collection.

Abstract: In compliance with TSCA Section 6(e), owners of PCBs or equipment containing PCBs, must record the dates of PCBs removal from service, and they must record the quantity of PCBs removed from service; they must record the name of the owner of the initial storage and disposal facility, and they must record the quantity of PCBs remaining in service at the end of each calendar year. Owners of storage and disposal facilities must record the date when PCBs are received; they must record the date and identification of specific PCBs that are transferred or disposed of at another storage or disposal facility. Owners or operators of incinerators must record the quantity of PCBs fed into the incinerator, and they must track and maintain records of PCBs' incineration processes. Owners of chemical waste landfills must collect samples of surface and ground water at locations and frequencies specified by EPA; they must conduct analysis of the samples for PCBs, pH, specific conductance, and chlorinated organics, and they must record results of all analysis. Owners of high efficiency boilers must record the amount of PCBs burned each month; they must monitor the combustion processes, and they must record the results of all analysis. In addition, owners and operators of storage for disposal facilities (including high efficiency boiler operations) must maintain documents on the various facility approval actions required by Federal regulations, as well as any State or local government approval actions. Records must be maintained by the owners of PCBs and PCBs containing equipment, or the owners of the facility using, storing or disposing of PCBs. The EPA uses these data to monitor the movement and final disposal of PCBs.

Burden Statement: The annual public burden for this collection of information is estimated to average 35 hours per recordkeeper. This estimate includes the time needed to review instructions, search data sources, gather the data needed, and review the collection of information.

Respondents: Owners of PCBs' owners and operators of PCBs containing equipment; owners and operators of facilities using, storing or disposing of PCBs.

Estimated No. of Respondents: 5,501.

Estimated Total Annual Burden on Respondents: 192,535 hours.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: June 12, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-14623 Filed 6-18-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3966-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Continuous Release Reporting under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (EPA ICR #1445.02; OMB #2050-0086). This ICR requests renewal of the existing clearance.

Abstract: CERCLA 103(f)(2) provides relief from the per-occurrence notification requirements of section 103(a) for hazardous substance releases that are "continuous" and "stable in quantity and rate," provided that such releases are reported annually, or at such time as there is any statistically significant increase in the quantity of the release. Under the continuous release reporting regulation (CRRR), developed by EPA's Emergency Response Division in the Office of Solid Waste and Emergency Response, the term "continuous" includes routine, anticipated, intermittent releases, in addition to releases that are continuous without interruption. Similarly, the CRRR considers a release to be "stable in quantity and rate" if it is predictable and regular in quantity and rate of release.

The information collected under the CRRR is used to evaluate the acute and chronic effects of a continuous release in order to determine if a response action is necessary to prevent or mitigate any adverse effects. Any hazardous substance release that equals or exceeds its RQ warrants a timely evaluation of its source, emission rate, and chemical form, the proximity of sensitive populations or ecosystems, and the ambient conditions, to ensure the protection of human health, welfare, and the environment. The information is also used by State and local government authorities for emergency planning and response purposes.

To report a "continuous" release, the regulated community is expected to perform the following activities: (1) One or more initial phone calls to the National Response Center (NRC); (2) an initial written report to the EPA Region; (3) a follow-up written report to the EPA Region one year after the submission of the initial written report; (4) notification to the EPA Region of any changes in release information previously submitted; (5) the immediate notification of any statistically significant increase (SSI) in the quantity of release to the NRC; (6) comply with EPA-mandated response activities; (7) and keep records on the release, including documentation of the annual evaluation. Activities (4), (5), and (6) are conditional activities expected to be necessary for only a small fraction of the continuous releases reported each year.

Burden Statement: The estimated public reporting burden for this collection of information is 14.6 hours per affected facility. This estimate includes time for determining if the hazardous substance release qualifies for reporting under the continuous release final rule, gathering and maintaining the required information, completing and reviewing the telephone and written reports, and recordkeeping.

Respondents: Any facility subject to the hazardous substance notification requirements of CERCLA section 103(a).

Estimated No. of Respondents: 12,628 affected facilities.

Estimated Total Annual Burden on Respondents: 187,379 hours.

Frequency of Collection: On occasion, when "continuous" releases meet the criteria of CERCLA 103(f)(2).

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: June 12, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-14624 Filed 6-18-91; 8:45 am]

BILLING CODE 6560-50-M

[PP OG3819/T605; FRL 3925-8]

Chloroethoxyphos; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide chloroethoxyphos (phosphorothioic acid, O,O-diethyl O-(1,2,2,2,-tetrachloroethyl) ester) in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire April 9, 1992.

FOR FURTHER INFORMATION CONTACT By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703)-557-2386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the Federal Register of June 14, 1990 (55 FR 24151), announcing the establishment of temporary tolerances for the combined residues of the insecticide chloroethoxyphos (phosphorothioic acid, O,O-diethyl O-(1,2,2,2,-tetrachloroethyl) ester) in or on the raw agricultural commodities field corn, grain, forage and fodder at 0.02 part per million (ppm). These tolerances were issued in response to pesticide petition (PP) 0G3819, submitted by E. I. du Pont de Nemours and Co., Inc., Agricultural Products, P.O. Box 80038, Wilmington, DE 19880-0038.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 352-EUP-152, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. E. I. du Pont de Nemours and Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 9, 1992. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: May 21, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-14207 Filed 6-18-91; 8:45 am]

BILLING CODE 6560-50-F

[PP 9G3797/T607; FRL 3892-3]

Quinclorac; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the herbicide quinclorac in or on certain raw agricultural commodities. These temporary tolerances were requested by BASF Corp., Agricultural Chemicals Division.

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DATES: These temporary tolerances expire March 1, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703)–557–1800.

SUPPLEMENTARY INFORMATION: BASF Corp., Agricultural Chemicals Division, P.O. Box 13528, Research Triangle Park, NC 27709-3528, has requested in pesticide petition (PP) 9G3797, the establishment of temporary tolerances for residues of the herbicide quinclorac 3,7-dichloro-8-quinoline carboxylic acid in or on the raw agricultural commodities rice at 5.0 parts per million (ppm); rice straw at 12.0 ppm; rice bran at 15.0 ppm; milk at 0.05 ppm; eggs at 0.05 ppm; meat and fat of cattle, goats, hogs, sheep, horses, and poultry at 0.05 ppm; meat byproducts of cattle, goats, hogs, sheep, and horses at 0.05 ppm; and meat byproducts of poultry at 0.10 ppm. EPA issued a related food additive regulation (40 CFR 186.5225) for quinclorac, published in the **Federal Register** of April 10, 1991 (56 FR 14473). These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 7969–EUP–25, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. BASF Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 1, 1992. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: May 29, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–14206 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66146; FRL 3885–7]

Sodium Arsenite; Receipt of Request to Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt to Cancel Registrations.

SUMMARY: This Notice, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces EPA's receipt of a November 13, 1990 request from Agtrol Chemical Products to voluntarily cancel their registrations for products containing sodium arsenite.

DATES: Unless the request is withdrawn, a cancellation order is likely to be issued on or about September 17, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Lisa Engstrom, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, rm. 2N6, Westfield Building # 3, 2800 Jefferson Davis Highway, Arlington, VA. (703) 308–8010.

SUPPLEMENTARY INFORMATION: This notice announces receipt of a request to cancel the registrations for products containing sodium arsenite.

I. Background

Sodium arsenite is used to control two types of fungus on grapes, Phomopsis and Black Measles, for which no alternative chemical control is known to exist. The use of sodium arsenite is limited to California since outbreaks occur only in that state. The chemical, which is packaged as a spray and applied by a unique vertical boom application, is used during December and January on dormant grape vines. The amount used is determined by the extent of disease infestation: while no treatment is required some years, other years up to 60,000 gallons may be used on up to 40,000 acres of grape vines.

II. Intent to Cancel and Delist

On November 13, 1990, the registrant, Agtrol Chemical Products submitted a letter to EPA requesting voluntary cancellation of their two products containing sodium arsenite, Sodium Arsenite Solution # 4 (EPA # 55146–35) and Sodium Arsenite Solution # 6 (EPA # 55146–25). As the basis for requesting voluntary cancellation, the company concluded the cost of generating required data did not justify continued registration of their products. It should be noted that several studies were overdue on or about the time of the cancellation request. Had voluntary cancellation not been requested, EPA would have proceeded with suspension action pursuant to FIFRA section 3(c)(2)(B). In addition, sodium arsenite is currently undergoing a Special Review for carcinogenicity concerns for workers. Sodium arsenite, an inorganic arsenical, is classified as a Group A, or known human carcinogen.

Section 6(f) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

If a valid registration for a sodium arsenite pesticide is transferred from Agtrol Chemical Products to another person desiring retention of theregistration during the 90–day period pursuant to 40 CFR 152.135, EPA will not issue the cancellation order. Nevertheless, the new registrant would be responsible for all outstanding data requirements. As noted above, at the time voluntary cancellation was requested, Agtrol Chemical Products was overdue on several data requirements and EPA planned to initiate a suspension action. Thus, if a sodium arsenite registration is transferred during the 90–day period, the new registrant would be at risk of suspension until all outstanding data requirements are met.

Comments on this voluntary cancellation request may be submitted to the contact person listed under **FOR FURTHER INFORMATION CONTACT** by September 17, 1991. In addition, interested persons desiring retention of a registration should contact the registrant directly during this 90–day period at the following address: Dr. Herbert O'Neal, Agtrol Chemical Products, 7322 Southwest Freeway, suite 1400, Houston, TX 77074, (713) 995–0111.

Unless the request for voluntary cancellation is withdrawn by the registrant, or a registration is transferred as described above, within 90 days of publication of this notice, an order is likely to be issued cancelling all registrations for sodium arsenite.

Unless the burden of supporting sodium arsenite through reregistration is assumed by the current registrant or another party who acquires the rights to a current registration containing it, sodium arsenite will no longer be a registered active ingredient and will be removed from List B. Once an active ingredient is cancelled, any person wishing to bring the pesticide back on the market would need to apply to EPA for a "new chemical" registration. Such a registration generally would not be approved until all applicable data requirements are satisfied.

III. Procedures for Withdrawal of Request

If the registrant chooses to withdraw its request for cancellation, it must submit such withdrawal in writing to Lisa Engstrom at the address given earlier, postmarked before September 17, 1991. This written withdrawal of the request for cancellation must include a commitment to pay any reregistration or registration maintenance fees due, and to fulfill any applicable unsatisfied data requirements. It should be noted, however, that because Agtrol Chemical Products is currently overdue on several studies, it may be subject to a suspension action until all outstanding data requirements are met.

IV. Existing Stocks Determination

Also included in Agtrol's voluntary cancellation request was provision for allowing the registrant to sell all stocks until depletion. The company noted they have 30,000 gallons of stock ready for the next growing season. It is not EPA policy to allow a registrant unlimited stocks provision, especially in light of an imminent suspension action. EPA therefore proposes to allow the registrants to sell and distribute their products containing sodium arsenite for 1 year after the date of cancellation. EPA will allow sale and use of products containing sodium arsenite by those holding stocks already in chains of distribution (i.e., stocks already in the hands of dealers or users). Because sodium arsenite use each year is unpredictable, EPA believes it is appropriate to allow sale and use until stocks already in chains of distribution are exhausted rather than impose a time limit on use of existing stocks, so that persons who have legally purchased stocks of sodium arsenite will be able to sell or use those stocks without violating the cancellation order.

Dated: May 24, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–14628 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–140144; FRL–3882–8]

Access to Confidential Business Information by Research and Evaluation Associates, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Research and Evaluation Associates, Incorporated (REA), of Chapel Hill, North Carolina, for access to information which has been submitted to EPA under section 5 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than July 1, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D8–0118, contractor REA, of 100 Europa Drive, suite 500, Chapel Hill, North Carolina, will assist the Office of Toxic Substances (OTS) in preparing hazard and health assessments of existing chemicals, and Community Right-to-Know Fact Sheets for substances regulated under TSCA and the Superfund Amendments and Reauthorization Act (SARA).

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D8–0118, REA will require access to CBI submitted to EPA under section 5 of TSCA to perform successfully the duties specified under the contract. REA personnel will be given access to information submitted to EPA under section 5 of TSCA. Some of the information may be claimed or determined to be CBI. EPA is issuing this notice to inform all submitters of information under section 5 of TSCA that EPA may provide REA access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and 411 Chapel Hill St., Durham, North Carolina facilities only.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1992.

REA personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 13, 1991.

George A. Bonina,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–14627 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 91–710]

Comments Invited on Kansas Public Safety Plan

June 12, 1991.

The Commission has received the public safety radio communications plan for Kansas (Region 16).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, parties may file comments on or before July 19, 1991 and reply comments on or before August 5, 1991. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87–112, Region 16 consists of the State of Kansas. (See Memorandum Opinion and Order, General Docket No. 87–112, 3 FCC Rcd 2113 (1988).)

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Comments should be clearly identified as submissions to PR Docket 91-162 Kansas—Region 16, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 91-14496 Filed 6-18-91; 8:45 am]
BILLING CODE 6712-01-M

[GEN Docket No. 90-217; DA 91-713]

Filing Requirements for Pioneer's Preference

Dated: June 13, 1991.

In the *Report and Order* in GEN Docket No. 90-217, the Commission adopted rules that provide preferential treatment in its licensing processes for parties requesting spectrum allocation rule changes associated with the development of new communications services and technologies.[1] This public notice is issued to address inquiries received by Commission staff regarding application of the *Report and Order* to matters now pending before the Commission.

For Commission proceedings initiated before April 9, 1991 (the date of adoption of the *Report and Order*), a preference applicant will not be required to submit a petition for rule making provided that it has previously submitted a petition for rule making or experimental license application or submits an experimental license application (or demonstration of technical feasibility) before the July 30, 1991 effective date of the *Report and Order*.[2] As the Commission stated in the *Report and Order*: "In situations where a petition for rule making has been filed or a notice of inquiry adopted, a request for a pioneer's preference may be filed by entities that either filed a petition for rule making proposing a new service or innovative technology or who filed some other request with the Commission (*e.g.*, an experimental license application) proposing a new service or innovative technology. This approach will avoid treating unfairly entities who did not file separate petitions for rule making at a time when doing so did not provide any licensing benefits, but who had come forward with a new service or innovative technology proposal."[3]

A preference request may be filed at any time subsequent to release of the *Report and Order*. While the *Report and Order* specified an effective date of July 30, 1991, preference requests filed after release of the *Report and Order* on May 13, 1991, will be accepted. However, such requests will not receive a higher ranking or other special consideration in relation to other preference requests also submitted during this initial filing period.

The Commission periodically will issue public notices soliciting comment on those requests for a pioneer's preference filed in proceedings initiated prior to the adoption of the *Report and Order*. An applicant submitting such a request should reference on the first page the rule making or docket number to which the request relates. Each such request will be assigned a file number and will be available for public inspection at the Commission's Dockets Reference Center, Room 239, 1919 M Street, NW, Washington, DC 20554, or through purchase from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW, Washington, DC 20036.

This action is taken by the Chief Engineer pursuant to authority found in §§ 0.31 and 0.241 of the Commission's Rules. For further information, contact Rodney Small, (202) 653-8116.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 91-14647 Filed 6-18-91; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-906-DR]

Mississippi; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-906-DR), dated May 17, 1991, and related determinations.

DATES: June 11, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated May 17, 1991, is hereby amended to add Public Assistance and include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991:

The counties of Pontotoc, Prentiss, and Union for Individual Assistance and Public Assistance; and the counties of Humphreys, Itawamba, Lee, Leflore, Monroe, Quitman, Sunflower, Tallahatchie, Tishomingo, and Washington for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,
Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.
[FR Doc. 91-14440 Filed 6-18-91; 8:45 am]
BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Port of New Orleans/Coastal Cargo Company, Inc; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200447-002.

Title: Port of New Orleans/Coastal Cargo Company, Inc. Terminal Agreement.

Parties: Port of New Orleans (Port)
Coastal Cargo Company, Inc.

Filing Party: Joseph W. Fritz, Jr., Staff Attorney, The Port the New Orleans, P.O. Box 60046, New Orleans, LA 70160.

Synopsis: The Agreement, filed June 7, 1991, provides for an increased rental rate for the second year of the basic agreement for the lease of certain portions of the Port's Mandeville Street Wharf.

By Order of the Federal Maritime Commission.

Dated: June 13, 1991.

Joseph C. Polking,
Secretary.
[FR Doc. 91-14500 Filed 6-18-91; 8:45 am]
BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 450, as amended:

Costa Cruise Lines N.V., Costa Crociere S.P.A. Milestone N.V. and Prestige Cruises N.V., World Trade Center, 80 S.W. 8th Street, Miami, FL 33130-3097

Dated: June 13, 1991.

Vessel: DAPHNE

Joseph C. Polking,
Secretary.
[FR Doc. 91-14499 Filed 6-18-91; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0716]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of Final Action.

DATE: June 13, 1991.

SUMMARY: The Board has approved a requirement that all depository institutions that originate or receive commercial automated clearing house (ACH) transactions through Federal Reserve Banks establish electronic access to the Reserve Banks for ACH services by July 1, 1993. The Board anticipates significant increases in nonelectronic input and output fees in January 1992 and January 1993, reflecting the higher cost of providing those aspects of the ACH service in an increasingly electronic environment. The Board has determined that the anticipated increases in nonelectronic input and output fees should provide sufficient encouragement for depository institutions to convert to electronic access. Therefore, the Board has not adopted the per transaction surcharge to nonelectronic endpoints that was proposed to be implemented in January 1993.

An all-electronic ACH will improve the efficiency of the ACH mechanism by promoting timely posting of ACH payments to customer accounts and will enhance the attractiveness of the ACH system by allowing greater processing flexibility. Also, an all-electronic ACH will enhance the integrity of the ACH mechanism by reducing credit and fraud risk, providing a higher level of security, and improving contingency and disaster recovery capabilities.

EFFECTIVE DATE: The requirement that institutions that originate or receive commercial ACH transactions through Federal Reserve Banks establish electronic connections to the Reserve Banks for ACH services will be effective July 1, 1993. The new fee structure for the nonelectronic aspects of the ACH service will be effective January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874), Gayle Brett, Manager (202/452-2934), or Scott Knudson, Senior Financial Services Analyst, (202/452-3959), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The ACH is a value-dated electronic payments mechanism that supports both debit and credit payments. In ACH debit transactions, funds flow from the depository institution receiving the transaction to the institution originating the transaction. Debit payments include the collection of insurance premiums, mortgage and loan payments, consumer bill payments, point-of-sale transactions, and corporate cash concentration transactions. In ACH credit transactions, funds flow from the depository institution originating the transaction to the institution receiving the transaction. Examples of credit payments include direct deposit of payroll and corporate payments to contractors and vendors. In 1990, the Reserve Banks processed 490.8 million commercial debit transactions valued at $3.18 trillion, and 424.5 million commercial credit transactions valued at $980.2 billion.[1]

Unlike Fedwire, in which funds transfers are processed individually and settled immediately at the time of processing, the ACH is a batch-processing system in which transactions are generally deposited at Reserve Banks for processing one or two days before the settlement date and are processed and delivered to receiving institutions during either the day or night processing cycle.

As of March 31, 1991, approximately 7,200 of the 10,050 endpoints that receive commercial ACH services directly from the Reserve Banks did not have electronic data communications links with the Reserve Banks for ACH services. These nonelectronic endpoints receive ACH transactions using magnetic tape, diskette, or paper media. Some nonelectronic endpoints use messengers to deposit ACH input and either pick up ACH output or receive it by Federal Reserve check courier or by mail.

Because of the additional time required to deliver ACH output to nonelectronic endpoints, ACH credit payment information necessary to update customers' accounts may not be received by some receiving institutions until after the opening of business on the settlement day. In addition, the need to deliver some ACH output nonelectronically restricts the Federal Reserve's ability to offer ACH deposit and distribution schedules that better meet the needs of depository institutions and their customers. Moreover, the need to originate many ACH credit payments up to two days prior to settlement date in order to help ensure timely receipt by the nonelectronic endpoints makes the ACH system unattractive for certain payment applications and increases credit risk in the system. Finally, the security and disaster recovery capabilities associated with nonelectronic delivery of ACH payments are inferior to those associated with electronic transmission.

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[1] *See Report and Order*, GEN Docket No. 90-217, released May 13, 1991, FCC 91-112.

[2] A proceeding will be considered to have been initiated before the adoption of the *Report and Order* if the Commission adopted a notice of inquiry before this date (as was the case, for example, in GEN Docket No. 90-314, dealing with new personal communications services, and GEN Docket No. 90-357, dealing with new digital audio radio services) or if a petition for rule making was filed and accepted before this date (as was the case, for example, in RM No. 7394, dealing with a petition filed by Orbital Communications Corporation to establish a low-Earth orbit satellite service).

[3] *Report and Order*, at para. 70.

[1] Commercial ACH transactions are ACH transactions originated by depository institutions. Government ACH transactions are originated by the federal government.

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Proposal to Implement an All-Electronic ACH

The Board believes that the Federal Reserve could make significant improvements to its ACH service if all participating institutions accessed the service electronically to originate and receive ACH transactions. Some of these improvements cannot be fully acheived unless all ACH endpoints send and receive ACH transactions electronically.

The Monetary Control Act directs the Federal Reserve to consider, in its pricing principles, the provision of an adequate level of service nationwide. This provision relates not only to the availability of the service to all depositary institutions, but also to the level of service that is provided. The Board believes that the establishment of an all-electronic ACH is consistent with the Monetary Control Act and Federal Reserve policies concerning payment services in that it will enable the Federal Reserve to make major improvements to its ACH service.

An all-electronic ACH will enable Federal Reserve Banks to make significant improvements to their processing schedules. Current schedules are constrained by the timing of check courier dispatches because check couriers deliver ACH output to many receiving institutions. The elimination of these constraints will allow for later deposit deadlines, thereby facilitating the use of the ACH for a broader range of payment applications.

Another benefit of an all-electronic ACH is the increased speed with which ACH payments can be delivered. This would ensure that all institutions, regardless of their volume or location, would receive ACH output on a timely and consistent basis to enable them to post payment information to customers' accounts sooner and thereby provide more prompt funds availability. The assurance of timely delivery may facilitate the use of the ACH for payments, such as hourly payroll, that are not generally made via the ACH today.

Depository institutions in an all-electronic environment will be able to reduce the credit risks associated with ACH credit transfers because the time between the time of deposits and settlement of transactions can be reduced. Credit risk associated with debit return items is also reduced because the originating institution generally will receive the return item one or two days sooner than if it were received in nonelectronic form.

An all-electronic ACH network will result in a higher level of security for all ACH transactions. The Reserve Banks currently offer data encryption and other security procedures to electronic endpoints to assure confidentiality of ACH transactions and authenticity of the sender. This provides a significantly higher level of security than for nonelectronic deposit and delivery alternatives.

Finally, an all-electronic ACH will improve disaster recovery and contingency processing capabilities. Electronic access to ACH services will eliminate delays associated with transporting nonelectronic input and output media to and from a remote site in a contingency processing or disaster recovery situation.

The Reserve Banks have already taken certain steps to require electronic access. Beginning January 1, 1991, new commercial ACH receiving points (including endpoints that had received only government ACH transactions but begin to receive commercial transactions) were required to receive ACH transactions from the Reserve Banks electronically. In addition, beginning July 1, 1991, new sending points will be required to originate ACH transactions to Reserve Banks electronically.

If the benefits of an all-electronic ACH are to be realized within the next few years, the Board believes that the Federal Reserve will have to encourage more actively the development of an all-electronic ACH network. In December 1990, the Board requested comment on a proposal to require depository institutions that originate or receive commercial ACH transactions through the Federal Reserve Banks to establish electronic connections with the Reserve Banks for ACH services (55 FR 53051, December 26, 1990). Specificially, the Board proposed that the Federal Reserve's commercial ACH service would no longer be provided to institutions that could not deposit and receive ACH transactions electronically, beginning July 1, 1993. In order to encourage institutions to establish electronic connections prior to the conversion deadline and thus avoid a large number of requests for electronic access immediately prior to the deadline, the Board also proposed that a per transaction surcharge on commercial ACH transactions originated or received be assessed to depository institutions using nonelectronic ACH deposit or delivery alternatives, beginning January 1, 1993. In addition, to further encourage nonelectronic endpoints to convert to electronic access, the Board indicated that ACH fees for nonelectronic input and output media likely would be increased significantly.

Summary of Comments

The Board received 61 comments on the proposal. The following table reflects the number of comments by category of respondent.

	Comments Received
Commercial Banks/Bank Holding Companies	42
ACH Associations	15
Trade Associations	8
Credit Unions	6
Data Processors	4
Savings Bank	1
Corporation	1
Department of the Treasury	1
Federal Reserve Banks	3
Total	81

Seventy commenters supported the Board's proposal to establish an all-electronic ACH. Thirty-three commenters supported the proposal in its entirety, and thirty-seven commenters supported the Board's objective to establish an all-electronic ACH but expressed some reservations about certain aspects of the proposal. The reservations generally centered on the use of incentive pricing (i.e., the proposed transaction surcharge and the anticipated increase in nonelectronic input and output fees), and the cost to small depository institutions of establishing an electronic connection. The commenters that opposed the use of transaction surcharges and nonelectronic input and output fee increases argued that incentive pricing is inconsistent with provisions of the Monetary Control Act and were concerned that the Federal Reserve would use the revenue obtained from the incentive fees to subsidize other ACH fees, thereby creating potential competitive inequities between the Federal Reserve and private-sector ACH processors.

Eleven commenters opposed the proposal. These commenters, which were small depository institutions concerned about the cost to establish an electronic connection for delivery of ACH transactions, generally questioned the benefits to them of an all-electronic ACH. These commenters were generally less than $50 million in asset size and generally originated and/or received an average of approximately 1,000 items per month.

Commenters generally supported the establishment of a conversion deadline for electronic access. These commenters indicated that transaction surcharges and nonelectronic input and output fee increases alone would not be sufficient to encourage all depository institutions (particularly smaller institutions) to convert to an electronic connection. Commenters generally indicated that there are no significant obstacles to prevent them from converting by the mid-1993 proposed conversion deadline. Several commenters expressed concern that the Federal Reserve may not be able to provide training and installation support sufficient to meet the proposed conversion deadline. Several other commenters expressed a preference for an earlier conversion date.

Overall, the commenters believed that the Federal Reserve's electronic access alternatives—computer interface (bulkdata or vendor software), Fedline, and FLASH-Light [3]—are sufficient to meet the institutions' needs. There was some concern, however, that these alternatives may be too expensive for very low-volume institutions. Finally, several commenters suggested that in order to ensure the success of the conversion effort, there needs to be more publicity and awareness of the effort, and the Federal Reserve System should work closely and cooperatively with the ACH associations and other industry groups.

The Board, after considering the comments received, has adopted a mandatory conversion deadline for an all-electronic ACH of July 1, 1993. In addition, the Board anticipates that it will increase significantly, beginning January 1992, the nonelectronic tape input and output fees and paper output fees to reflect the higher cost of providing these aspects of the ACH service in an increasingly electronic environment. The Board believes that these fee increases also will serve to provide sufficient encouragement for depository institutions to convert to electronic access for Federal Reserve ACH services and therefore has not adopted the per transaction surcharge to nonelectronic endpoints proposed to be implemented in January 1993. The following discusses the specific issues raised by the commenters and the Board's response.

[3] The Federal Reserve currently offers depository institutions several connection alternatives to facilitate the conversion to electronic access for ACH services. The alternatives are designed to meet the needs of institutions with various transaction volume levels. Medium- to high-volume institutions can use a computer interface connection using either the Federal Reserve's bulkdata software or vendor software that meets Federal Reserve protocol specifications. Low- to medium-volume institutions can use Fedline intelligent-terminal software, and low-volume institutions can use FLASH-Light intelligent-terminal software with receive-only capabilities.

Conversion Deadline. The Board proposed that the Federal Reserve will no longer provide commercial ACH services to depository institutions that have not established an electronic connection for ACH services, beginning July 1, 1993. Sixty-seven commenters supported the imposition of a conversion deadline for electronic access. Of those, six commenters expressed concerns regarding the Federal Reserve's ability to convert the large number of nonelectronic endpoints by that date. Seven commenters that supported a conversion deadline indicated that the Federal Reserve could set an earlier target date to achieve an all-electronic ACH and two commenters recommended that the Federal Reserve set an earlier conversion date. Two commenters that supported the concept of an all-electronic ACH questioned the need for a mandatory conversion date.

The Board has adopted the proposed July 1, 1993, conersion deadline. This deadline should provide reasonable time for depository institutions to establish electronic access. The Board believes that this schedule is ambitious but realistic in terms of the ability of the Federal Reserve Banks to support the conversion. The Reserve Banks have developed conversion plans and are devoting additional resources to the electronic conversion effort. To ensure that the conversion deadline is achieved and to avoid a large number of conversions at the end of the transition period, nonelectronic endpoints should allow sufficient lead time when requesting electronic access to allow for ordering equipment, testing, and training their staffs. Therefore, depository institutions requiring computer interface (bulkdata or vendor software) connections should place orders for the connections no later than February 28, 1993. Depository institutions planning to use Fedline or FLASH-Light connections should place orders no later than March 31, 1993. The earlier date for computer interface connections reflects the additional time required for testing and training when installing these connections.

Nonelectronic Input and Output Fee Increases and transaction Surcharge

The Board proposed that a transaction surcharge be assessed on commercial ACH transactions originated and received by nonelectronic deposit and delivery alternatives, beginning January 1, 1993. The Board also indicated that ACH fees for nonelectronic input and output media would be increased significantly, beginning January 1, 1992. Forty-one commenters supported the fee increases or indicated that higher fees would encouarge the conversion to electronic connections. Fourteen commenters opposed the use of the surcharge. Although the Board did not anticipate that the proposed fee increases would result in an overrecovery of the cost of providing ACH services, eleven commenters opposed the nonelectronic input and output fee increases and transaction surcharges on the gorunds that all fees should be based on the cost of providing the service. They argued that, if the Federal Reserve were to base fees on factors other than cost, these fees could be used to subsidize the ACH transaction fee assessed to electronic endpoints, which could create competitive inequities between the Federal Reserve and private-sector ACH processors. Other commenters opposing the surcharge stated that the higher costs could be punitive for small depository institutions, which may elect to cease participation in the ACH.

Under the current fee structure, both paper and tape output are assessed the same fee, with a higher fee assessed for output delivered by the Federal Reserve rather than picked up by the depository institution. To reflect more accurately the significant differences in cost between tape and paper output, separate fees will be assessed for tape and paper output, beginning January 1, 1992.

Nonelectronic input and output fees have increased significantly in recent years to better reflect the cost of providing these aspects of the ACH service. In its request for comment, the Board indicated that nonelectronic input and output fees may increase by 50 to 100 percent in January 1992. The Board anticipates that the tape input and output fees and paper output fees will increase substantially in 1992 because, in the case of the tape fees, the current fees do not fully recover the cost of providing these nonelectronic aspects of the ACH service, and because the fixed costs of providing these input and output options will be spread over fewer nonelectronic endpoints as conversions occur. These fees will further increase in 1993 as the number of nonelectronic endpoints continues to decrease.

The Board anticipates that it will set the tape input fees at the same level as the tape output fees and that these fees will be in the range of $12.00 to $15.00 (compared to $4.50 or $5.25 for output or $6.00 for input in 1991). The Board anticipates that paper output fees in 1992 will be in the range of $6.00 to $9.00 (compared to $4.50 or $5.25 in 1991). Output fees may be set somewhat higher for output delivered by the Federal

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Reserve rather than picked up by the depository institution. The Board anticipates that these increases in nonelectronic input and output fees should be sufficient to encourage an orderly migration to an all-electronic environment, and thus has not adopted the proposed transaction fee surcharge.

Depository institutions that wish to establish an electronic connection in 1991 and thus avoid the 1992 nonelectronic input and output fee increases should allow sufficient lead time when requesting electronic access. Depository institutions planning to establish Fedline or FLASH-Light connections in 1991 should request their conversion to electronic access no later than September 30, 1991. Depository institutions that plan to establish computer interface (bulkdata or vendor software) connections in 1991 should request their conversion no later than August 31, 1991. To avoid further nonelectronic input and output fee increases in 1993, depository institutions that plan to establish computer interface connections (bulkdata or vendor software) during 1992 should request their connections by August 31, 1992. Institutions that plan to establish Fedline or FLASH-Light connections during 1992 should request their connections by September 30, 1992. A depository institution that requests, by the applicable date noted above, to establish an electronic connection will not be assessed the increased input and output fees that take effect the following year if there is a delay in the installation of the electronic connection that is not attributable to the depository institution.

Several commenters suggested an alternative approach to the proposed pricing incentives that would encourage depository institutions to convert to electronic access prior to the conversion deadline. They recommended that the Federal Reserve waive the installation and training fees that are assessed when an electronic connection is established, noting that this approach would be similar to measures taken by the New York Clearing House in its all-electronic ACH conversion effort. Although the Board agrees that this approach would provide further incentive to depository institutions to establish electronic access for ACH services, it believes this approach would be unfair to those depository institutions that have already established an electronic connection and paid the applicable training and installation fees.

Electronic Access Alternatives

Twenty-six respondents commented on the acceptability of the currently available electronic access alternatives. Ten of these commenters indicated that the alternatives are acceptable and meet the needs of depository institutions. Fourteen commenters, however, believed that the alternatives are expensive, especially for low-volume institutions, and may not provide enough features to be cost effective for all institutions. A few commenters believed that the personal computers on which Fedline is run cannot be used efficiently for other purposes, and noted that institutions with FLASH-Light connections lack the ability to originate return items and notifications of change (NOCs) electronically.

Depository institutions are not required to dedicate a personal computer to Fedline use. The personal computer used for Fedline can be used to support other software applications. A recent System study of Fedline users indicated that currently about 40 percent of the users also use their Fedline personal computer for other purposes. Federal Reserve Bank personnel are working closely with institutions to improve their level of service by dedicating their personal computers for Fedline use to only certain peak times during the day. The Federal Reserve will continue its efforts to improve the ease of use and the efficiency of the Fedline software. Software compression techniques have been developed to make the Fedline applications run more efficiently, and the capability of offering Fedline on a modular basis is being researched. In addition, the Federal Reserve will enhance the FLASH-Light software to enable it to receive Fedwire funds transfers, in addition to ACH transactions.

To enable FLASH-Light users to have a more automated means of originating return items and NOCs via telephone access, all Reserve Banks will offer return item database services by year-end 1991, and telephone voice-response access capabilities by year-end 1992. These services will create the return item or NOC transaction from information about the transaction that is stored on a database and accessed via touch-tone telephone by the depository institution. Although the cost of these services is more than the cost of an electronically originated return item or NOC, it is considerably less than the current cost of a paper return or NOC.

Two respondents indicated that reductions in the up-front cost of establishing an electronic connection could be achieved if a larger variety of personal computers is certified by the Federal Reserve. The Federal Reserve System has certified Fedline software to run on IBM and some IBM-compatible personal computers. In addition, some districts have certified other compatible personal computer hardware. The majority of personal computers in use should be capable of running Fedline software. The Federal Reserve Banks will work with institutions to identify whether a specific model of personal computer will support Fedline software if there is sufficient demand. To assist those depository institutions that might not have a compatible computer, the Federal Reserve Banks have entered into group purchase agreements with a number of vendors in order to obtain equipment at a reasonable cost.

The Board acknowledges that in some cases very low-volume depository institutions may conclude that they cannot justify the cost of an electronic connection for their ACH activity and may elect to stop participating in the ACH. In lieu of incurring the cost of an electronic connection, these institutions can continue to participate in ACH through a correspondent institution or other service provider that has established an appropriate electronic connection with the Federal Reserve.

Two commenters that indicated that the current electronic access alternatives are too expensive identified the need for a low-cost fax alternative for the very low-volume depository institutions. The Federal Reserve System recently completed a pilot test using current fax technology for low-volume ACH receivers. The results of the study indicated that current fax technology does not meet the minimum security standards required by the Federal Reserve for its ACH service. Once adequate security features are added, the cost of fax would exceed the cost of intelligent-terminal access.

Additional Issues Fourteen commenters stated that in order for the Federal Reserve System to establish an all-electronic ACH within the projected timeframe, there needs to be a strong education and marketing effort that is closely coordinated between the Federal Reserve Banks and ACH associations and other industry trade groups. The Federal Reserve Banks are working closely with the appropriate ACH groups to encourage conversion to electronic connections. For example, the Federal Reserve Banks have informed the local ACH associations of which of their members obtain Federal Reserve ACH services electronically and nonelectronically and have provided a contact name at each Federal Reserve Bank, enabling the associations to work with their members interested in establishing electronic connections to the Federal Reserve. In addition, the Federal Reserve will continue to work with other trade associations that are interested in disseminating information regarding the all-electronic ACH effort to their memberships.

Seven commenters stated that government-only ACH receivers should be treated the same as commercial ACH receivers and also be required to establish electronic connections to more fuly realize the benefits of an all-electronic ACH. The Board believes that the majority of the benefits of an all-electronic ACH environment can be derived for commercial ACH participants even if some government-only endpoints remain nonelectronic. Nonetheless, an all-electronic environment for government ACH transactions would provide benefits both to the receiving institutions and to the U.S. government. Therefore, the Board is continuing to work with the Treasury on plans to establish an all-electronic ACH for government-only receivers, and anticipates that it will request comment in late 1991 on a proposal to achieve this objective.

Several commenters raised issues related to contingency backup in an all-electronic ACH environment. They suggested that magnetic tape capabilities should continue to be made available for backup purposes. Improved contingency processing and disaster recovery capabilities are benefits of an all-electronic processing environment. Electronic access to ACH services would eliminate the delays associated with delivering physical input and output media from a remote processing site in a contingency processing or disaster recovery situation. Moreover, depository institutions can send payment file corrections to their Reserve Bank more quickly through electronic transmission than if physical delivery of the payment file information were necessary, reducing the likelihood of a delay in normal processing as well as in a contingency processing situation. For those contingency situations where electronic backup cannot be utilized, the Federal Reserve plans to maintain capabilities for nonelectronic input and output options.

The Federal Reserve Bank of Minneapolis recently lost its primary computer processing capability and was required to begin processing its ACH and other electronic payments at the Federal Reserve's backup processing center in Culpepper, Virginia. This experience demonstrated that depository institutions that were electronically connected to the Federal Reserve Bank were able to send and receive ACH transactions on a more timely and efficient basis than were nonelectronic depository institutions.

Competitive Impact Analysis

The Board does not believe that this action will have any adverse effects on the ability of other ACH service providers to compete effectively with the Federal Reserve in providing ACH services. The New York Automated Clearing House currently requires its members to send and receive ACH transactions electronically. Other ACH service providers also predominately serve participants electronically.

By order of the Board of Governors of the Federal Reserve System, June 13, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-14584 Filed 6-18-91; 8:45 am]

BILLING CODE 6210-01-M

NBD Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., Detroit, Michigan; to acquire 100 percent of the voting shares of FNW Bancorp, Inc., Mount Prospect, Illinois, and thereby indirectly acquire Countryside Bank of Stratford, Bloomingdale, Illinois; The First National Bank of Elgin, Elgin, Illinois; The Larkin Bank, Elgin, Illinois; The First National Bank of Lake Zurich, Lake Zurich, Illinois; The Heritage Bank of Lemont, Lemont, Illinois; Countryside Bank, Mount Prospect, Illinois; The First National Bank of Mount Prospect, Mount Prospect, Illinois; and The Heritage Bank, Woodridge, Illinois.

In connection with this application, Applicant also proposes to acquire FNW Capital, Inc., Mount Prospect, Illinois, and thereby engage in commercial leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14582 Filed 6-18-91; 8:45 am]

BILLING CODE 6210-01-F

National City Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

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processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 8, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio; to acquire 100 percent of the voting shares of Gem Bank, National Association, Dayton, Ohio, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of Huron Corporation, Bad Axe, Michigan; to acquire 100 percent of the voting shares of State Bank of Port Hope, Port Hope, Michigan.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Laredo National Bancshares, Inc., Laredo, Texas; to acquire 100 percent of the voting shares of Southshares, Inc., Laredo, Texas, and thereby indirectly acquire South Texas National Bank of Laredo, Laredo, Texas.

Board of Governors of the Federal Reserve System, June 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14581 Filed 6-18-91; 8:45 am]

BILLING CODE 6210-01-F

Shawmut Corp.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1991.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Shawmut Corporation, Boston, Massachusetts; to engage *de novo* through its subsidiary, Shawmut Development Association Inc., Boston, Massachusetts, in making equity and debt investments in corporations or projects designed primarily to promote community welfare pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14583 Filed 6-18-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transactions Granted Early Termination Between: 052791 and 060791

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	Pmn Number	Date Terminated
Colorado National Bankshares, Inc., Citizens First Bancorp, Inc., Citizens First National Bank of New Jersey	91-0862	05/29/91
GATX Corporation, Itel Corporation, Itel Distribution Systems, Inc.	91-0914	05/29/91
Wallace Computer Services, Inc., MGI Industries, Inc., MGI Industries, Inc	91-0866	05/30/91
Amelia Holdings, Blenheim Group PLC, Blenheim Group PLC	91-0922	05/30/91
Thorn EMI plc, Charles A. Koppelman, SBK Records	91-0934	05/30/91
V.F. Corporation, Anthony B. Ritter, The Barbizon Corporation & Barbizon Lingerie Co., Inc	91-0943	05/30/91
Maurice Wilder, c/o Wilder Corporation of Delaware, George N. Gillett, Jr., The Norris Farm, Inc.	91-0944	05/30/91
The Meiji Mutual Life Insurance, American General Corporation, Hawaiian Life Insurance Co., Ltd	91-0957	05/30/91
Marmon Holdings, Inc., TIE/Communications, Inc., TIE/Communications, Inc.	91-0973	05/30/91
Edwards Dunlop and Company Limited, The Meade Corporation, Seaboard Paper Company	87-1488	05/30/91
Sentara Health System, Humana, Inc., Humana Virginia Hospital Corporation, et al.	90-2191	05/31/91
Gemina S.p.A., The Kaiser Family Trust, Carolco Pictures, Inc.	91-0935	05/31/91
Sisters of Charity of Leavenworth Health Services Corp., Archdiocese of Kansas City, Providence—St. Margaret Health Center	91-0947	06/03/91

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	Pmn Number	Date Terminated
First Union Corporation, First Security Corporation of Kentucky, First Security National Bank & Trust Co. of Lexington	91-0975	06/03/91
Golder, Thoma, Cressey Fund III Limited Partnership, CII Associates, Limited Partnership, HCRC Inc.	91-0990	06/03/91
Laidlaw Inc., Kenneth N. Bigham, Technical Environmental Systems, Inc., Safeco	91-0948	06/04/91
Carrefour, Office Depot, Inc., Office Depot, Inc.	91-0956	06/04/91
Carrefour, Office Depot, Inc., Office Depot, Inc.	91-0966	06/04/91
Tele-Communications, Inc., United Cable Television of Oakland County, Ltd., United Cable Television of Oakland County, Ltd.	91-0969	06/04/91
Peter Karmanos, Jr., XA Systems Corporation, XA Systems Corporation	91-0977	06/04/91
The Prudential Insurance Company of America, The May Department Stores Co., Montgomery Mall Ltd. Partnership	91-0979	06/04/91
The May Department Stores Co., The Prudential Insurance Company of America, Montgomery Mall Limited Partnership	91-0980	06/04/91
Beiersdorf AG, Ms. Georgette Mosbacher, La Prairie, Inc.	91-0985	06/05/91
Berkshire Hathaway Inc., Estate of Ray W. Heffernan, H.H. Brown Shoe Company, Inc.	91-0998	06/05/91
Minorco, Inspiration Resources Corporation, Inspiration Resources Corporation	91-0915	06/06/91
HRM Holdings Corp., Philips Electronics N.V., Philips Optical Media Corporation	91-0956	06/06/91
Salomon Inc., JM Petroleum Corporation, JM Petroleum Corporation	91-0975	06/06/91
Inoco Plc, Nycal Corporation, Nycal Corporation	91-0999	06/06/91
Nycal Corporation, Gulf Resources & Chemical Corporation, Gulf Resources & Chemical Corporation	91-1000	06/06/91
THORN EMI, plc., THORN EMI, plc, SBK Records	91-0942	06/07/91
GEICO Corporation, The NWNL Companies, Inc., Meraster Insurance Company	91-0991	06/07/91
Boston Ventures Limited Partnership III, The News Corporation Limited (an Australian company), NENQ, Inc.	91-1005	06/07/91
The Liberty Corporation, Fund C under Trust Agreement of Garvice D. Kincaid, Kentucky Central Life Insurance Company	91-1007	06/07/91
900 Partners' Investments, Pacific Telesis Group, Gensub, Inc.	91-1011	06/07/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-14572 Filed 6-18-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892-3081]

Taylor Woodcraft, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Malta, Ohio, furniture company from representing that any household furniture product is constructed of a solid wood, unless every exposed surface of the furniture is made of that solid wood.

DATES: Comments must be received on or before August 19, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kelly Larrick-Serrat, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520-A, Cleveland, OH 44114, (216) 522-4210.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Taylor Woodcraft ("proposed respondent"), a corporation, and it now appearing that proposed respondent is willing to enter into an agreement containing an Order to Cease and Desist from the use of the acts or practices being investigated,

It is Hereby Agreed by and between proposed respondent, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located in Malta, Ohio.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft Complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft Complaint here attached.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant

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to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its Complaint corresponding in form and substance with the draft Complaint and its Decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and Decision containing the agreed-to Order to proposed respondent's address as stated in this Agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint attached hereto may be used in construing the terms of the Order. No agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

For purposes of this Order, the following definition applies:

(A) *Exposed surface* means those parts and surfaces exposed to view when furniture is placed in the generally accepted position for use. Included in this definition are visible backs of such items of furniture as open bookcases, hutches, etc.

I

It Is Ordered that respondent Taylor Woodcraft, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the the manufacture, advertising, offering for sale, sale, or distribution of any household furniture in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such furniture is constructed of a solid wood, unless every exposed surface of such product is made of that solid wood.

II

It Is Further Ordered that respondent shall maintain for a period of three (3) years, and upon request make available to the Commission for inspection and copying, accurate records of all materials relied upon by respondent to substantiate any representation covered by this Order.

III

It Is Further Ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the Order.

IV

It Is Further Ordered that respondent shall:

A. Notify any purchaser, prior to delivering the purchaser's order from household furniture and excluding those purchasers to whom the respondent has distributed this order under B of this paragraph, that the furniture contains exposed veneered surfaces, if the respondent has made representations that the furniture is solid wood and the furniture, in fact, contains exposed veneered surfaces.

B. Distribute this order to the following:

1. Each of its operating divisions, officers and other personnel responsible for the preparation or review of promotional material;

2. Each distributor, retail outlet, and wholesale outlet that stocks or has stocked Taylor Woodcraft's furniture and to which it has sold or delivered household furniture since January of 1987; and

3. Each distributor, retail outlet and wholesale outlet to which Taylor Woodcraft has sold or delivered household furniture for which it received payment of $2,000 or more in any year since January of 1987.

V

It Is Further Ordered that respondent shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an Agreement to a proposed Consent Order from Taylor Woodcraft. The agreement would settle charges by the Commission that Taylor Woodcraft violated section 5 of the Federal Trade Commission Act by misrepresenting its furniture in promotional materials.

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received, and will decide whether it should withdraw from the Agreement and take other appropriate action or make final the proposed Order contained in the Agreement.

This matter concerns promotional materials for Taylor Woodcraft's household furniture which claim that certain furniture is made of solid wood.

The Commission's Complaint in this matter charges Taylor with disseminating promotional materials containing false and unsubstantiated representations regarding the content of its furniture. Some of the promotional materials imply that certain of Taylor's furniture pieces are constructed entirely of solid wood. The Complaint alleges that these claims are, in fact, false, because such furniture contains veneered exposed surfaces. Claims such as these are inconsistent with the Commission's "Guides for the Household Furniture Industry," 16 CFR 250.2(b).

The Consent Order contains provisions designed to remedy the violations charged, as well as prevent Taylor from engaging in similar acts and practices in the future. Part I of the Order prohibits Taylor from representing, directly or by implication, that its furniture is constructed of solid wood, unless every exposed surface of the furniture is made of solid wood.

Part II of the Order requires Taylor Woodcraft to retain all substantiation relied upon for its promotional materials for a period of three (3) years.

Part III of the Order requires Taylor to report to the Commission at least thirty (30) days before certain corporate changes are made.

Part IV of the Order requires that Taylor Woodcraft provide a copy of the Order to many of its distributors, retail outlets and wholesale outlets and notify certain future purchasers that furniture contains exposed veneered surfaces if Taylor has falsely represented that the furniture is solid wood.

The purpose of this Analysis is to facilitate public comment on the proposed Order. It is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-14571 Filed 6-18-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89D-0363]

Action Levels for Residues of Certain Pesticides in Food and Feed; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; general statement of policy; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that published in the **Federal Register** on July 27, 1990 (55 FR 307976). The July 27, 1990, document was also intended to correct an error that appeared in the **Federal Register** of April 17, 1990 (55 FR 14350), by changing the residue level in the table under the heading "C. Chlordane" for the last five commodity entries to read "0.01" rather than ".1". However, this was not appropriate and the residue level should have remained ".1". This notice intends to resolve any confusion that may have resulted from the July 1990 publication.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Office of Regulatory Affairs (HFC-6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1815.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 17, 1990, FDA published a notice explaining how the agency will use action levels in regulating residues of certain pesticides (55 FR 14359). FDA subsequently published corrections to the April 17, 1990, notice in the **Federal Register** of July 27, 1990 (55 FR 30796). Item 3 of the correction notice stated "On page 14361, in the third column, in the table for C. Chlordane, the last five entries in the second column should read '0.01'." FDA has since determined that the correction set out in item 3 of the July 7, 1990, notice was in error. Accordingly, FDA confirms that the correct action level for chlordane residues in sweet potatoes, swiss chard, tomatoes, turnips (with or without tops), and turnip greens should read ".1," as originally set out in the April 17, 1990, notice.

Dated: June 13, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-14509 Filed 6-18-91; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection request it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on June 7, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of request.)

1. National Exposure Registry—0923-0001—ATSDR will establish a National Registry of individuals exposed to toxic substances. This Registry will serve as a permanent record of persons exposed to toxic chemicals and will aid in assessing long-term health consequences of this exposure. *Respondents:* Individuals or households; *Number of Respondents:* 23,244; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .396 hours; *Estimated Annual Burden:* 11,175 hours.

2. Surveillance and Associated Epidemiologic Investigations of Occupationally-Related Infection with Human Immunodeficiency Virus in Health Care & Public Safety Settings—N/A—The data collection instrument is designed to gather information on documented or presumed occupational exposure to HIV and to establish whether seroconversion or an illness consistent with an acute retroviral illness has occurred. *Respondents:* Individuals or households; Number of *Respondents:* 100; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1 hours; *Estimated Annual Burden:* 100 hours.

3. Infant Feeding Practices Study—0910-0220—A sample of women will be followed by mail questionnaires from late pregnancy through the baby's first year to provide data for describing infant feeding patterns, health promotion activities, and market related behaviors. The information will be used to meet FDA's commitments in the feeding safety and health promotion of infants. *Respondents:* Individuals and households; *Number of Respondents:* 610; *Number of Responses per Respondent:* 11; *Average Burden Per Response:* .228 hours; *Estimated Annual Burden:* 1,530 hours.

4. Nursing Student Education Loan Demonstration Program—New—Full-time nursing students wishing to participate in the Nursing Student Education Loan Program must complete an application. Applicants must arrange employment at an eligible facility and secure an employer's commitment to repay the education loans in return for services provided by the applicant. *Respondent:* Individuals or households, businesses or other for-profit, small businesses or organizations.

	No. of respondents	No. of responses per respondent	No. of hours per response
Nursing Student Applicant	30	1	15
Employment Confirmation	30	1	1
School Documents	30	1	1

Estimated Annual Burden ..... 510 hours

5. National Survey of Worksite Health Promotion Activities 1991—New—The Office of Disease Prevention and Health Promotion is sponsoring this survey of worksites with 50 or more employees to determine the nature and extent of activities, to measure progress since a 1985 survey and to assess success on achieving 1990 and Year 2000 disease prevention/health promotion objectives. *Respondents:* Businesses or other for-profit, non-profit institutions; *Number of Respondents:* 1,551; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .475 hours; *Estimated Annual Burden:* 739 hours.

6. Loans for Disadvantaged Students and Scholarships for Disadvantaged Students—New—Health Professions schools applying to participate in the Loans for Disadvantaged Students (LDS) and/or Scholarships for Disadvantaged Students (SDS) programs provide information on the application about the schools' programs and the race/ethnicity of full-time students and minority faculty. This information is needed to determine program eligibility. *Respondents:* Non-profit insitutions; *Number of Respondents:* 500; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 5 hours; *Estimated Annual Burden:* 2,500.

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7. NIDA Quick Response Surveys—Concept—New—The National Institute on Drug Abuse (NIDA) proposes to undertake an indefinite quantity of telephone, mail, and public interception surveys at the request of the Office of National Drug Control Policy and other Federal policy bodies. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; *Annual Reporting Burden:* Since this is a concept clearance, definitive burden estimates are not yet available. These estimates will be provided when the study design and questionnaires are final and the final clearance request is submitted.

8. National Sample Survey of Registered Nurses V—New—The Bureau of Health Professions (BHPr), Health Resources and Services Administration, does not have current national data on the employment and practice of registered nurses needed to assess the current supply and project the future availability of nurses. This proposed project will provide detailed statistics on the registered nurse population needed to prepare the mandated Secretary's Report to Congress. *Respondents:* Individuals or households; *Number of Respondents:* 33,000; *Number of Responses per Respondent: 1; Average Burden per Response:* .33 hours; *Estimated Annual Burden:* 11,000 hours.

OMBB Desk Officer: Shannah Koss-McCallum.

4. Nursing Student Education Loan Demonstration Program—New—Full-time nursing students wishing to participate in the Nursing Student Education Loan Program must complete an application. Applicants must arrange employment at an eligible facility and secure an employer's commitment to repay the education loans in return for services provided by the applicant. *Respondents:* Individuals or households, businesses or other for-profit, small businesses or organizations.

	No. of respondents	No. of responses per respondent	No. of hours per response
Nursing Student Applicant	30	1	15
Employment Confirmation	30	1	1
School Docments	30	1	1

Estimated Annual Burden.....510 hours

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 13, 1991.

Sandra K. Mahkam,

Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91-14585 Filed 6-18-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3283]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to:

Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 11, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Monthly Report of Excess Income.

Office: Housing.

Description of the Need for the Information and its proposed use: Owners of Section 236 insured and uninsured projects are required by law to pay to HUD the total rental charges collected that are in excess of the basic rents approved for all occupied units. Owners use the HUD-93104/A to compute any required payment due HUD.

Form: HUD-93104 and 93104A.

Respondents: Businesses or Other For-Profit, Federal Agencies or Employees, and Non-Profit Institutions.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD forms HUD-93104/A	4,523		12		0.5164		28,043

Total Estimated Burden hours: 28,043.

Status: Revision.

Contact: James J. Tahash, HUD, (202) 708-3944, Wendy Swire, OMB, (202) 395-6880.

Dated: June 11, 1991.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Block Grants for Indian Tribes and Alaskan Native Villages.

Office: Community Planning and Development.

Description of the Need For the Information and its Proposed Use: HUD will use the information collection requirement of the Indian CDBG Program to select the best projects for funding during annual competitions. In addition, these requirements are essential to monitor grants to assure that grantees are using Federal dollars properly.

Form Number: SF 269, SF 424, HUD 4121, 4122, 4123, 4125, and 4126.

Respondents: State or Local Governments and Indian Tribes.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application (SF-424, HUD 4121, 4123 and Maps)	260		1.1		60		17,160
Preaward Requirements (HUD-4123, 4125, and 4126	120		.1		20		2,400
Supporting Documentation	10		.1		20		200
Force Account Approval	40		.1		5		200
Status Report	120				10		1,200

Total Estimated Burden hours: 21,160.

Status: Extension.

Contact: Stephen M. Rhodeside, HUD, (202) 708-1322, Wendy Swire, OMB, (202) 395-6880.

Dated: June 11, 1991.

[FR Doc. 91 14640 Filed 6-18-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-01-4212-12; AZA 25309]

Realty Action; Exchange of Public Lands, Pima County, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 17 S., R. 10 E.,
Sec. 23, Lots 1, 2, NW¼NE¼, W½;
Sec. 27, S½;
Sec. 34, N½.
T. 18., R. 12 E.,
Sec. 11, Lots 1, 2, S½NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 12, All unpatented land.
Containing approximately 1600 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1 (b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: June 10, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91-14504 Filed 6-18-91; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-758359

Applicant: Rey Stroube, Houston, TX.

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by F.W.M. Bowker, Jr., Grahmstown, Republic of South Africa for the purpose of enhancement of propagation of the species.

PRT-758340

Applicant: St. Louis Zoological Park, St. Louis, MO.

The applicant requests a permit to import a captive born male Malayan tapir (*Tapirus indicus*) from Zoo Mulhouse, Mulhouse, France for breeding educational purposes. The tapir will be held and maintained at the Minnesota Zoological Garden, Apple Valley, Minnesota.

PRT-757093

Applicant: Hummer's Acid-Wetland Flora, Arlington, VA.

The applicant requests a permit to export for sale in foreign commerce the following species of artificially propagated pitcher plants: *Sarracenia alabamensis alabamensis* and *S. jonesii*.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

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Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone (703/358–2104); FAX (703/358–2281)

Dated: June 14, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–14619 Filed 6–18–91; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0006); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Outer Continental Shelf Minerals, General (30 CFR part 256).

OMB approval number: 1010–0006.

Abstract: Respondents submit information necessary for MMS to determine which tracts will be leased, to identify areas for environmental study and further consideration for leasing, and to determine if the applicant or bidder for an Outer Continental Shelf (OCS) lease is qualified to hold such a lease.

Bureau form numbers: None.

Frequency: On occasion.

Description of respondents: Federal OCS oil and gas lessees, potential bidders, and the public.

Estimated completion time: 1.8 hours (rounded).

Annual responses: 2,683.

Annual burden hours: 4,809.

Bureau clearance officer: Dorothy Christopher, (703) 787–1239.

Dated: May 15, 1991.

Thomas Gernhofer,

Associated Director for Offshore Minerals Management.

[FR Doc. 91–14508 Filed 6–18–91; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Rock Creek Park—Tennis Stadium and Surrounding Recreational Fields and Facilities; Intention To Prepare an Environmental Impact Statement

SUMMARY: Over the past months National Park Service staff from Rock Creek Park have met with several neighborhood citizen associations and the Carter Barron Community Task Force regarding recent proposals to introduce additional activities to the Rock Creek Park tennis complex at 16th and Kennedy Streets. The Park Service is aware of the concerns expressed by the park's neighbors regarding the additional activities and is sensitive to the potential impacts such activities may cause.

The National Park Service intends to establish a policy which will regulate additional activities and govern the use of those park fields and facilities.

Given that potential conflicts may arise from additional activities at the Tennis Center, and in accordance with section 102(c) of the National Environmental Policy Act of 1969, the National Park Service is preparing an Environmental Impact Statement (EIS) for the management of Rock Creek Park Tennis Stadium and its surrounding facilities.

The area is more specifically identified as being within Rock Creek Park, Washington, DC bounded by 16th Street on the east, Colorado Avenue on the south, Stage Road on the West, and Kennedy Place on the north. The area is known as the Brightwood Park area and is frequently referred to as Carter Barron, which is the name of the nearby amphitheater located on Colorado Avenue. The operation of the Carter Barron Amphitheater is not included within the scope of this EIS.

The role of Rock Creek Park in the community has traditionally been interpreted to include providing community focused recreation in the Brightwood Park area. There is an extensive history of meeting that role with the fields along 16th Street being used for recreational purposes as early as the 1920's. Later, the National Park Service provided a recreation center which included tennis courts, a small tennis stadium and concession facilities. More recently, the Park Service entered into an agreement with the Washington Tennis Foundation to expand these facilities in an effort to promote instructional tennis programs for youth, seniors and special populations.

This use policy will in no way abrogate any right or privilege which the United States has previously agreed to with the Washington Tennis Foundation with respect to the sponsoring of a men's professional tennis tournament and a women's professional tennis tournament.

The primary mission of the area is to provide for the recreational needs of the public. It is recognized that activities which limit public access to park facilities must be balanced with the needs of the public.

A public scoping meeting will be held at the Rock Creek Park Nature Center July 11, at 7:30 p.m. to elicit public comment on issues and alternatives for the Environmental Impact Statement. A scoping document will be prepared as an outcome of this meeting.

The responsible official is Robert Stanton, Regional Director, National Capital Region, National Park Service.

Dated: June 13, 1991.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 91–14631 Filed 6–18–91; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–324]

Certain Acid-Washed Denim Garments and Accessories; Decision Not To Review an Initial Determination Terminating the Investigation as to One Respondent on the Basis of a Consent Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 8) granting a joint motion to terminate the investigation as to respondent Bon Jour International, Ltd., Inc., on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)–252–1116. Copies of the ID, consent order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436; telephone: (202)–252–1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal at (202)–252–1810.

SUPPLEMENTARY INFORMATION: On January 2, 1991, Greater Texas Finishing Corporation and Golden Trade S.R.L. filed a complaint alleging a violation of section 337 in the importation, sale for importation, or sale after importation of acid-washed denim products by reasons of infringement of claims 6 and 14 of U.S. Letters Patent 4,740,213 (the '213 patent). The Commission voted to institute an investigation of the complaint on January 28, 1991, and published notice of institution of the investigation in the Federal Register. 56 FR 4851 (Feb. 6, 1991).

On April 19, 1991, complainants and respondent Bon Jour moved jointly pursuant to interim rule 210.51 to terminate the investigation as to Bon Jour on the basis of a consent order and consent order agreement (Motion Docket No. 324–10). The Commission investigative attorney filed a response in support of the joint motion. On May 3, 1991, the presiding administrative law judge issued an ID granting the motion (ALJ Order No. 8). Notice of the ID was published in the Federal Register on May 22, 1991. 56 FR 23596. No petitions for review or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules 210.53 and 211.21 (19 CFR 210.53 and 211.21, as amended).

Issued: June 10, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–14600 Filed 6–18–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–227]

Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers

AGENCY: International Trade Commission.

ACTION: Notice of deadline to submit comments in connection with 1990 annual report.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: James E. Stamps (202–252–1227), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND: Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit annual reports to the Congress and the President on the impact of the act. The Commission instituted the present investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) on March 21, 1986, for the purpose of gathering and presenting such information through the termination of duty-free treatment under the CBERA. Notice of institution of the investigation and the schedule for such reports was published in the Federal Register of May 14, 1986 (51 FR 17678). The sixth report, covering calendar year 1990, is to be submitted by September 11, 1991.

In the original notice of investigation, it was announced that, as provided in section 215(b) of the CBERA, the Commission in such reports is required to assess the actual effect of the act on the United States economy generally as well as on appropriate domestic industries and to assess the probable future effect which the act will have on the United States economy generally and on such domestic industries.

WRITTEN SUBMISSIONS: The Commission does not plan to hold a public hearing in connection with the sixth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Priactice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statments relating to the Commission's report should be submitted at the earliest practical date and should be received no later than July 26, 1991. All submissions should be addressed to the Secretary to the Commission, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252–1809.

Issued: June 10, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–14599 Filed 6–18–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–474 and 475 (Final)]

Chrome-Plated Lug Nuts From the People's Republic of China and Taiwan

AGENCY: Untied States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202–252–1187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain informaiton on this matter by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION: On April 18, 1991, the Commission instituted the subject investigations and established a schedule for their conduct (56 FR 21380, May 8, 1991). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from June 24, 1991 to July 25, 1991, for Taiwan and to September 3, 1991, for China. The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedules.

The Commission's new schedule for the investigaitons is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than July 25, 1991; the prehearing conference will be held at

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the U.S. International Trade Commission Building on July 29, 1991; the prehearing staff report will be placed in the nonpublic record on July 19, 1991; the deadline for filing prehearing briefs is July 29, 1991; the hearing will be held at the U.S. International Trade Commission on August 1, 1991; and the deadline for filing posthearing briefs is August 9, 1991. In addition, the Commission will allow parties in the investigation involving China to comment on Commerce's final determination; such comments will be due no later than one working day after the day Commerce announces its final determination.

For further inforamtion concerning these investigations see the Commission's notice of investigations cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: June 14, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14601 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-473 (Final)]

Certain Electric Fans From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-473 (Final) under section 735(b) of the Tariff act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of certain electric fans,[1] provided for in subheading 8414.51.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-252-1188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of oscillating fans and ceiling fans from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 31, 1990, by Lasko Metal Products, Inc., West Chester, PA.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entires of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on August 5, 1991, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on August 22, 1991, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 13, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 14, 1991, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is August 15, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is August 29, 1991; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 29, 1991. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

[1] For the purposes of this investigation, the term "certain electric fans" is defined as oscillating fans and ceiling fans, with a self-contained electric motor of an output not exceeding 125 watts. Oscillating fans direct a flow of air using a fan blade/motor unit that pivots back and forth on a stationary base ("oscillates"). Ceiling fans direct a downward and/or upward flow of air using a fan blade/motor unit; ceiling fans are designed for permanent or semi-permanent installation. The petition does not include industrial or commercial ventilation fans or window fans.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: June 14, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14602 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-516 (Preliminary)]

Fresh Kiwifruit From New Zealand

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from New Zealand of fresh kiwifruit, provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 25, 1991, a petition was filed with the Commission and the Department of Commerce by the Ad Hoc Committee for Fair Trade of the California Kiwifruit Commission and individual California kiwifruit grower members of the Committee, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of fresh kiwifruit from New Zealand. Accordingly, effective April 25, 1991, the Commission instituted preliminary antidumping investigation No. 731-TA-516 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 1, 1991 (56 FR 20022). The conference was held in Washington, DC, on May 15, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 10, 1991. The views of the Commission are contained in USITC Publication 2394 (June 1991), entitled "Fresh kiwifruit from New Zealand: Determination of the Commission in Investigation No. 731-TA-516 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 11, 1991.

By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14585 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[Inv. No. 731-TA-523 (Preliminary)]

Commercial Microwave Ovens, Assembled or Unassembled, From Japan

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-523 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of commercial microwave ovens, assembled or unassembled, (CMOs),[1] that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 25, 1991.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202-252-1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on June 10, 1991, by Menumaster, Inc., Sioux Falls, SD.

Participation in the investigation and public service list. Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on Monday, July 1, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202-252-1179) not later than Wednesday, June 26, 1991, to

[1] The products covered by this investigation are commercial microwave ovens, whether assembled or unassembled. These products are provided for in subheading 8516.60.40 but may enter under subheading 8516.60.80 of the Harmonized Tariff Schedule of the United States (HTS).

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arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before Friday, July 5, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 12, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14593 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-323]

Certain Monoclonal Antibodies Used for Therapeutically Treating Humans Having Gram Negative Bacterial Infections: Decision To Grant Application for Appeal of Administrative Law Judge Order No. 5; Reversal of Order Denying Respondent's Renewed Motion To Suspend the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant respondents' motion for interlocutory appeal of Administrative Law Judge Order No. 5, denying respondents' renewed motion to suspend the above-captioned investigation. On appeal, the Commission has determined to reverse Order No. 5. The Commission's action suspends the investigation until after completion of post-trial briefing in *Xoma Corp* v. *Centocor, Inc.* Civil Action No. C 90 1129 (RHS)(N.D. Cal.).

ADDRESSES: Copies if the ID, the Commission's order, the Commission memorandum opinion, and all other non-confidential documents filed in connection with this investigation are or will be able for inspection during official business (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On December 20, 1990, Xoma Corp. of Berkeley, California filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain monoclonal antibodies covered by claims 6 and 7 of U.S. Patent No. 4,918,163 under license to Xoma. Such monoclonal antibodies are used to treat patients having gram negative bacterial infections. The Commission instituted an investigation of Xoma's complaint on January 30, 1991. 56 FR 3484-85. The Commission's notice of institution named Centocor, Inc., and Centocor Partners II, L.P., both of Malvern, Pennsylvania, and Centocor B.V. of Leiden, The Netherlands (collectively, Centocor) as respondents.

On February 15, 1991, Centocor moved to suspend the Commission's investigation until the U.S. District Court for the Northern District of California issued its final judgment in concurrent litigation between Xoma and Centocor, *Xoma Corp. v. Centocor, Inc.*, Civil Action No. C 90 1129 (RHS). On April 3, 1991, the Commission reversed the ID suspending the investigation. 56 FR 14538 (April 10, 1991).

On May 21, 1991, Centocor filed a renewed motion to suspend the investigation, this time until the completion of post-trial briefing in *Xoma Corp. v. Centocor, Inc.* Centocor's motion requested suspension of the Commission investigation so that a conflict between the Commission evidentiary hearing and the district court trial would be avoided. The renewed motion was opposed by Xoma and supported by the Commission investigation attorney. On May 24, 1991, the ALJ issued an order denying Centocor's motion. On the same date, the ALJ certified Order No. 5 for interlocutory review by the Commission. On May 30, 1991, Xoma filed an opposition to the application for interlocutory appeal. The Commission investigation attorney responded in support of the application on May 31, 1991.

Authority: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.59(b) and 210.70(b) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.59(b) and 210.70(b)).

Issued: June 11, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14597 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-517 (Preliminary)]

Refined Antimony Trioxide From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China of refined antimony trioxide, provided for in subheading 2825.80.00 of the Harmonized Tariff Schedule of the United States,[3] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 25, 1991, a petition was filed with the Commission and the Department of Commerce by the Coalition for Fair Trade in Refined Antimony Trioxide,[4] alleging that an industry in the United States is materially injured and it threatened with material injury by reason of LTFV imports of refined antimony trioxide from the People's Republic of China. Accordingly, effective April 25, 1991, the Commission instituted preliminary antidumbing investigation No. 731-TA-517 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 3, 1991 (56 FR 20443). The conference was held in Washington, DC, on May 16, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Issued: June 12, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14596 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-464 (Final)]

Sparklers From China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from China of sparklers, provided for the subheading 3604.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective December 17, 1990, following a preliminary determination by the Department of Commerce that imports of sparklers from China were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 16, 1991 (56 FR 1650). The hearing was held in Washington, DC, on April 30, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 10, 1991. The views of the Commission are contained in USITC Publication 2387 (June 1991), entitled "Sparklers from the People's Republic of China: Determination of the Commission in Investigation No. 731-TA-464 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 11, 1991.

By Order of The Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14594 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-325]

Certain Static Random Access Memories and Integrated Circuit Devices Containing Same, Processes for Making Same, Components Thereof, and Products Containing Same; Determination Not to Review an Initial Determination Designating the Investigation "More Complicated"

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) designating the above-captioned investigation "more complicated". The deadline for completion of the investigation is extended by six months, *i.e.*, from February 21, 1992, to August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1096.

SUPPLEMENTARY INFORMATION: On April 23, 1991, all of the respondents filed a motion to designate the investigation "more complicated". The complainant opposed the motion and the Commission investigative attorneys supported the motion. On May 9, 1991, the presiding ALJ issued an ID (Order No. 5) designating the investigation as "more complicated". The ID states that the case involved 26 claims of four SRAM patents, and that because of the complexity of semiconductor technology, the subject matter of the case supports the "more complicated" designation.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule § 210.53, 19 CFR 201.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: June 10, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14598 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub 396X)]

CSX Transportation, Inc.; Abandonment Exemption—in Raleigh County, WV

Applicant has filed a notice of exemption under 49 CFR part 1152, subpart F—*Exempt Abandonments* to abandon its 2.24-mile line of railroad between milepost 0.00, at Pettus, and milepost 2.24, at Marfolk, in Raleigh County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)) (as amended, 56 FR 11924 (March 21, 1991)).

[2] Acting Chairman Brunsdale determines that there is a reasonable indication that an industry in the United States is materially injured by reason of dumped imports of refined antimony trioxide from the People's Republic of China.

[3] For purposes of this investigation, refined antimony trioxide (also known as antimony oxide) is a crystalline powder of the chemical formula (Sb_2O_3). The refined antimony trioxide which is the subject of this investigation includes blends with organic or inorganic additives comprising up to and including 20 percent of the blend by volume or weight.

[4] The individual member firms comprising the coalition include: (1) Anzon, Inc., Philadelphia, PA; (2) Atochem North America, Inc., Philadelphia, PA; (3) Laurel Industries, Inc., Cleveland, OH; (4) United States Antimony Corp., Thompson Falls, MT; and (5) United States Antimony Sales Corp., Natick, MA.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

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by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 19, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 1, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by July 9, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Karen A. Koster, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 24, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it [room 3219, Interstate Commerce Commission, Washington, DC 20423] or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 12, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14411 Filed 6-18-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-286 (Sub-No. 2X)]

The New York, Susquehanna and Western Railway Corporation Abandonment Exemption; Portion of the Edgewater Branch in Bergen Co., NJ

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the New York, Susquehanna and Western Railway Corporation of 1.6 miles of rail line in Bergen County, NJ, subject to standard labor protective conditions and completion of the section 106 process of the National Historic Preservation Act.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 19, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 29, 1991, petitions to stay must be filed by July 1, 1991, and petitions for reconsideration must be filed by July 9, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-286 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representatives: Nathan R. Fenno, Michael F. Armani, The New York, Susquehanna and Western Railway Corporation, One Railroad Avenue, Cooperstown, NY 13326.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: June 11, 1991.

By the Commission, Chairman Phillips, Vice chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner McDonald concurred in the result with a separate expression. Chairman Phillips did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14435 Filed 6-18-91; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] See *Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 10, 1991 a proposed Consent Decree in *United States* v. *Metropolitan Council at al.*, Civil Action No. 4-88-600, was lodged with the United States District Court for the District of Minnesota. The proposed Consent Decree concerns the Blue Lake Wastewater Treatment Plant located in Shakopee, Minnesota, and the Seneca Wastewater Treatment Plant in Eden, Minnesota. The proposed Consent Decree requires defendants Metropolitan Council and the Metropolitan Waste Control Commission ("defendants") to pay the United States $395,000, in settlement of defendants' liability for violations of the Clean Water Act, 33 U.S.C. 1251 for failure to comply with final effluent limits on July 1, 1988. In addition to paying the civil penalty, the defendants will also carry out a study of infiltration and inflow problems in the area of the Blue Lake and Seneca plants.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Metropolitan Council*, D.J. Ref. 90-5-1-1-3160.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Minnesota, 234 U.S. Courthouse, 110 South 4th Street, Minneapolis, Minnesota 55401, and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Street, Chicago, Illinois 60604. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202/347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost), payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-14508 Filed 6-18-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice pursuant to the National Cooperative Research Act of 1984—High Speed Serial Data Communication Research and Development Partnership

Notice is hereby given that, on May 20, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the High Speed Serial Data Communication Research and Development Partnership ("Partnership") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Partnership and (2) the Partnership's nature and objectives. The notification was filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Partnership and its general area of planned activities are given below.

The Current members to the Partnership are: Chrysler Corporation; Ford Motor Company; and General Motors Corporation. The computerization and Research Program of SAE International is not a party to the Partnership, but has provided administrative assistance during its ongoing development and intends to continue to provide such assistance.

The parties intend to identify opportunities of joining aspects of their independent research and development efforts pertaining to high speed serial data communication within motor vehicles. The objectives are to avoid inefficient duplication of effort and expense, improve general scientific knowledge in this area by answering fundamental questions, and accelerate the development of this technology so that all companies can intelligently participate on an individual basis in standard activities. To meet these objectives, the Partnership will collect, exchange and analyze research information in these areas; conduct tests and develop basic engineering techniques of use in proof of theories and concepts in the relevant topics; interact with domestic or international organizations to further this research; encourage the use of its fruits through actions short of petitions for standard-setting; and perform further acts allowed by the National Cooperative Research Act that would advance the Partnership's objectives in this area. The parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-14057 Filed 6-18-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 30, 1991, Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Secobarbital (2315)	II
Pentobarbital (2270)	II
Methadone (9250)	II
Metopon (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 19, 1991.

Dated: May 31, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14550 Filed 6-19-91; 8:45am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 4, 1991, Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

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Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, attention: DEA Federal Register Representative (CCR), and must be filed no later than July 19, 1991.

Dated: May 31, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14551 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances, Registration

By Notice dated April 8, 1991, and published in the **Federal Register** on April 16, 1991, (56FR15382), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II
Hydrocodone (9193)	III

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 5, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14552 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedules I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 13, 1991, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of a basic classes of controlled substances listed below:

Drug	Schedule
Etorphine (Except HCl)(9056)	I
Heroin (9200)	I
Mescaline (7381)	I
1-Methyl-4-Phenyl-4-propionoxypiperidine (MPPP)(9661).	I
Dilenodin (9168)	II
Pyrrolidine analog of phencyclidine (7458).	II
Fenethylline (1503)	I
Morphine-N-Oxide (9307)	I
4-methoxyamphetamine (7411)	I
3,4-methylenedioxyamphetamine (MDA)(7400).	I
3,4-methylenedioxymethamphetamine (MDMA)(7405).	I
Alpha-methylfentanyl (9814)	I
3-Methylfentanyl (9813)	I
Psilocyn (7438)	I
Dimethyltryptamine (7435)	I
Diethyltryptamine (7434)	I
Marihuana (7360)	I
Ethylamine analog of phencyclidine (7455).	II
4-bromo-2,5-Dimethoxyamphetamine (7391).	I
4-methyl-2,5-dimethoxy-amphetamine (7395).	I
Thiophene analog of phencyclidine (7470).	II
Lysergic acid diethylamide (7315)	I
2,5-dimethoxyamphetamine (DMA)(7396).	I
Psilocybin (7437)	I
Bufotenine (7433)	I
Tetrahydrocannabinols (7370)	I
Ibogaine (7260)	I
Normorphine (9313)	II
Thiophene analog of phencyclidine (7470).	I
Tetrahydrocannabinols (7370)	I
Methaqualone (2565)	I
Beta-hydroxyfentanyl (9830)	I
Pentobarbital (2270)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
1-piperidinocyclohexanecarbonitrile (PCC)(8603).	II
Oxymorphone (9652)	II
Ethylmorphine (9190)	II
Morphine (9300)	II
Ardidine (9020)	II
Diprenorphine (9058)	II
Secobarbital (2315)	II
Benzoylecgonine (9180)	II
Amphetamine (1100)	II
Cocaine (9041)	II
Codeine (9050)	II
Methamphetamine (1105)	II
Fentanyl (9801)	II
Methadone (9250)	II
Morphine (9300)	II
Phencyclidine (7471)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Oxymorphone (9652)	II
Meperidine (pethidine) (9230)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 19, 1991.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: May 31, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14554 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 5, 1991, Smithkline Beecham Chemicals, Division of Smithkline Beecham Corporation, 900 River Road (L-11), Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, attention: DEA Federal Register Representative (CCR), and must be filed no later than July 19, 1991.

Dated: May 31, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14553 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Use of Alternative Dispute Resolution and Negotiated Rulemaking Procedures by the Department of Labor

AGENCY: Office of the Secretary.

ACTION: Extension of comment period.

SUMMARY: The Department is extending the period for interested parties to submit comments which will be used in developing a policy to implement two important and recently enacted amendments to the Administrative Procedure Act. These amendments are the result of the Administrative Dispute Resolution Act (ADR) and the Negotiated Rulemaking Act (Neg-Reg). Both of these acts authorize and encourage agencies to use arbitration, mediation, negotiated rulemaking, and other consensual methods of dispute resolution.

Section 3(a) and the ADR requires the Department to adopt a policy as to how it intends to implement that statute in each of the following areas: (a) Formal and informal adjudications; (b) rulemakings; (c) enforcement actions; (d) issuing approvals and variances; (e) contract administration; (f) litigation brought against or by any part of the Department; and (g) other Departmental actions. The Department is seeking comments at this time so that the affected public may be involved at the outset in the development of procedures to implement both ADR and Neg-Reg in the Department of Labor.

On May 22, 1991, the Department published a notice in the **Federal Register** (56 FR 23509) requesting that comments be submitted by July 22, 1991. In order to provide interested parties sufficient time to prepare and submit substantive comments, the period for submission is being extended.

DATES: Comments are due by August 23, 1991.

ADDRESSES: Send comments to Roland Droitsch, Deputy Assistant Secretary for Policy, U.S. Department of Labor, room S-2312, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210. Telephone 202-523-6197.

FOR FURTHER INFORMATION CONTACT: Roland Droitsch, Deputy Assistant Secretary for Policy, U.S. Department of Labor. Telephone 202-523-6197.

SUPPLEMENTARY INFORMATION: In response to a requirement of the Administrative Dispute Resolution Act, Public Law 101-552, the Department intends to develop a general policy which encourages greater use of alternative dispute resolution techniques whenever the parties involved agree to them and it is practical to do so in light of other statutory requirements. Among the alternative dispute resolution techniques mentioned in the law is the use of negotiated rulemaking under appropriate circumstances, the criteria for which are set forth in more detail in a separate enactment, the Negotiated Rulemaking Act, Public Law 101-648.

The scope of these two new statutes is broad. In enacting the ADR, Congress expressed concern that administrative proceedings have become too formal and lengthy, and asserted that alternative procedures may, in at least some instances, be faster, less contentious, and more economical. However, ADR techniques will not be appropriate in every situation; the statute indicates, for example, they should not be used for precedent setting cases, those where a formal record is essential, and those bearing on significant policy questions. Within such limitations, the Department plans to explore extensive use of ADR techniques, including whether any of its current procedures and rules need to be modified to allow for greater use of ADR.

In enacting the Neg-Reg statute, Congress indicated its concern that traditional rulemaking procedures may discourage affected parties from communicating openly with each other with Federal agencies, and encourages them to assume extreme conflicting positions which often results in costly and time-consuming litigation. While agencies have been able to experiment with alternative techniques to avoid these consequences, the Neg-Reg Act amended the Administrative Procedure Act to clearly establish a process for negotiating a proposed rule.

The Department will develop its ADR policy with full consultation with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service as required by Section 3(a) of the ADR Act. To this end, the Department has already designated its ADR Specialist (the Assistant Secretary for Policy) to serve as liaison with those agencies and as coordinator of the Department's ADR implementation. A full survey of existing Departmental practices is planned.

Commenters are encouraged to provide specific comments that relate to activities of the Department; and most particularly, to bring to the attention of the Department any experience to date with ADR or Neg-Reg activities of the Department, areas of the Department's operations which might readily benefit from the use of such techniques, areas in which such techniques should be limited or not used at all, or any other matter which they believe would be of interest to the Department as it develops its policy in these areas.

Signed at Washington DC this 13th day of June, 1991.

Debra R. Bowland,

Acting Assistant Secretary for Policy.

[FR Doc. 91-14501 Filed 6-18-91; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic

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Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by July 22, 1991. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States Citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received is as follows:

1. Applicant

Deneb Karentz, Laboratory for Radiobiology & Environmental Health, University of California, San Francisco, CA 94143.

Activity for Which Permit Requested

Introduction of non-indigenous species into Antarctic. The applicant is conducting research on the physiological ecology of UV-absorbing compounds in Antarctic organisms. The research requires culturing of invertebrate larvae in enclosed tanks. A permit is requested to take unicelluar algae to Antarctic to use as food for the larvae. These algae will be species of *Dunaliella* and/or *Rhodomonas*. None of these cultures will be released to the Antarctic environment.

Location: Palmer Station, Antarctica
Dates: August 1991

2. Applicant

Wayne Z. Trivelpiece, Old Dominion University Research Foundation, P.O. Box 955, Bolinas, CA 04924

Activity for Which Permit Requested

Taking, import into U.S.A., enter site of special scientific interest. The applicant is conducting research on the behavioral ecology and population biology of penguins and their principal avian predators. He proposes to band up to 2000 Adelie, Gentoo, and Chinstrap penguins. Up to 50 adults of each penguin species will be fitted with radio transmitters and time depth recorders. All birds will be released after the experiments are completed. The study site is within the borders of site of special scientific interest #8, Admiralty Bay, King George Island. The applicant also proposes to salvage and import to the U.S.A. carcasses or skeletons of penguins or other birds for educational and scientific study. No birds would be killed to obtain these materials.

Location: Antarctica peninsula area
Dates: October 1991–March 1992

3. Applicant

G.A. McFeters, Department of Microbiology, Montana State University, Bozeman, Montana 59717

Activity for Which Permit Requested

Inroduction of non-indigenous species into Antarctica. The applicant is conducting research on enteric bacteria in the Antarctic environment. Permission is requested to take three bacterial cultures to McMurdo Station, Antarctica: *Escherichia coli; Hersinia enterocolitica,* and *Salmonella typhimurium.* Although it is nearly certain that these bacteria are already present in the human population in Antarctica, the research requires that pure cultures be used. None of these pure cultures will be released to the Antarctic environment after the completion of the experiments.

Location: McMurdo Station, Antarctica
Dates: October 1991–January, 1992

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91–14546 Filed 6–18–91; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; Index of Government-wide Systems of Records

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice.

SUMMARY: OMB has oversight responsibility for implementation of the Privacy Act of 1974, 5 USC 552a. OMB is publishing this notice as a finding aid to the current **Federal Register** notices for all government-wide systems of records under the Privacy Act of 1974.

Seven agencies have responsibility for one or more government-wide systems of records under the Privacy Act. These agencies are:

Equal Employment Opportunity Commission
Federal Emergency Management Agency
General Services Administration
Department of Labor
Merit Systems Protection Board
Office of Government Ethics
Office of Personnel Management

Following the name of each agency is the name and phone number of the individual who can best answer questions regarding the system(s) of that agency. Then follows the name of each system, a citation to the most recent full system notice published in the **Federal Register**, and a short description.

FOR FURTHER INFORMATION CONTACT: Maya A. Bernstein, Information Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503. Telephone: (voice) 202/395–3785 (fax) 202/395–7285.

Government-wide Systems of Records:

Equal Employment Opportunity Commission (EEOC)

Contact: Thomas J. Schlageter (Office of Legal Counsel), 202/663–4670

EEOC/GOVT–1

SYSTEM NAME:

EEOC Records and Appeal Records.
System notice last published at: 56 F.R. 10900, March 14, 1991.

Description:

EEOC/GOVT–1 is a collection of records on applicants for Federal employment and current and former Federal employees who file complaints of discrimination or reprisal, or who file appeals with EEOC from agency decisions, petitions for review of decisions of the Merit System Protection Board, or requests for review of final decisions in negotiated grievance actions.

FEDERAL EMERGENCY MANAGEMENT ASSOCIATION (FEMA)

Contact: Sandra Jackson, 202/646–3840

FEMA/GOVT–1

SYSTEM NAME:

National Defense Executive Reserve System (NDER).
System notice last published at: 55 FR 37191, September 7, 1990.

Description:

FEMA/GOVT–1 includes records on applicants for and incumbents of NDER assignments. The system contains FEMA Form 85–3, NDER Qualifications Statement, which is used to determine membership for units of the NDER in Federal departments and agencies in accordance with Executive Order No. 11179 as amended by Executive Order No. 12148.

GENERAL SERVICES ADMINISTRATION (GSA)

Contact: Helen Maus (Office of the General Counsel), 202/501–1460; Mary Cunningham (Information Collection), 202/501–2691

GSA/GOVT–2

SYSTEM NAME:

Employment Under Commercial Activities Contracts.
System notice last published at: 48 FR 6176, February 10, 1983.

Description:

GSA/GOVT–2 includes records on former Federal employees involuntarily separated from government employment as a result of a commercial activity contract. The system is used to provide government agencies with necessary information on former Federal employees hired by contractors to ensure the proper distributions of severance pay by the government.

GSA/GOVT–3

SYSTEM NAME:

Travel Charge Card Program.
System notice last published at: 48 FR 44656, September 29, 1983.

Description:

This system includes records of current Federal employees who use government assigned charge cards while in travel status. It is used to provide government agencies with (1) necessary information on the commerical travel and transportation payment and expense control system which will provide travelers charge cards for official travel and related travel expenses on a worldwide basis, (2) attendant operational and control support, and (3) management information reports for expense control purposes.

GSA/GOVT–4

SYSTEM NAME:

Contracted Travel Service Program.
System notice last published at: 50 FR 20294, May 15, 1985, (amended 50 FR 28088, July 17, 1985).

Description:

This system includes records on individuals who are current Federal employees on travel and individuals being provided travel by the government. It is used to enable travel agents who are under contract to the Federal government to issue and account for travel provided to individuals.

DEPARTMENT OF LABOR (DOL)

Contact: Miriam Miller (Office of the Solicitor), 202/523–8188

DOL/ESA 13

SYSTEM NAME:

Employment Standards Administration, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File.
System notice last published at: 55 FR 7121, February 28, 1990.

Description:

DOL/ESA–13 records are kept on FECA benefit recipients. These are Federal employees injured in the performance of duty, or beneficiaries of employees killed in the performance of duty. These records provide information and verification about covered employees' work related injuries. Entitlement to medical treatment and vocational rehabilitation are based on these records. Entitlement to and computation of continuation of pay, compensation, survivors' benefits under FECA, and certain other statutes, are also based on these records.

DOL/ETA 14

SYSTEM NAME:

Employment Training Administration (ETA) Job Corpsman Records.
System notice last published at: 55 FR 7137, February 28, 1990.

Description:

The system includes information on ETA Job Corps enrollees and termineés. These records are maintained to ensure that all appropriate documents of the corpsmember's stay in Job Corps (from entrance to placement and/or termination) are retained and are available to those officials who have a legitimate need for the information in performing their duties. These records also serve the interest of the corpsmembers in accordance with 29 U.S.C. 1691 et seq.

MERIT SYSTEMS PROTECTION BOARD (MSPB)

Contact: Michael Hoxie (Office of the Clerk), 202/653–7124

MSPB/GOVT–1

SYSTEM NAME:

Appeal and Case Records.
System notice last published at: 55 FR 17842, April 27, 1990.

Description:

This sytem includes records on two categories of individuals: (a) Current and former Federal employees, applicants for employment, annuitants, and other individuals who have filed appeals with MSPB, or with respect to whom a Federal agency has petitioned MSPB concerning any matter over which the Board has jurisdiction, and (b) current and former employees of State and local governments who have been investigated by the Special Counsel and have had a hearing before MSPB concerning possible violation of the Hatch Act.

The records are used to document and adjudicate appeals and other matters arising under the MSPB original and appellate jurisdiction. They also serve a management information function by providing statistical data for reports, physical file location, and staff productivity.

OFFICE OF GOVERNMENT ETHICS (OGE)

Contact: William (Bill) Gressman, (202/FTS) 523–5757 x1110

OGE/GOVT–1

SYSTEM NAME:

Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records.
System notice last published at: 55 6328, FR February 22, 1990.

Description:

This system includes records on the President, the Vice President, candidates for those offices, Administrative Law Judges, members of uniformed services at pay grade 0–7 or higher, the Postmaster General and Deputy Postmaster General, designated agency ethics officials, appointed civilians to the Executive Office of the President, nominees for positions requiring Senate confirmation, and

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many government officials classified at the equivalent of grade level GS–16 or higher, as well as Schedule C appointees. The system includes records on both former and current employees, and may contain records on any employee of the executive branch if required for the administration of the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989.

These records are maintained to meet the requirements of the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989, as amended, regarding the filing of financial status reports, reports concerning certain agreements between the covered individual and any prior private sector employer, ethics agreements, and the preservation of waivers issued to an officer or employee pursuant to section 208 of title 18, U.S.C., and certificates of divestiture issued pursuant to section 502 of the Ethics Reform Act. Such statements and related records are required to assure compliance with these acts and to preserve and promote the integrity of public officials and institutions.

OGE/GOVT–2

SYSTEM NAME:

Confidential Statements of Employment and Financial Interests.

System notice last published at: 55 FR 6330, February 22, 1990.

Description:

This system includes records of former or current employees required by their agency to file such statements. The records are maintained to meet requirements of Executive Order Nos. 12674 (as modified by 12731), 12565, and 11222, agency regulations and section 107 of the Ethics in Government Act of 1978 concerning the filing of employment and financial interest statements. They assist in assuring compliance with standards of conduct for government employees and to determine if a conflict of interest exists between the employment of individuals by the Federal government and their personal employment and financial interests.

OFFICE OF PERSONNEL MANAGEMENT (OPM)

Contact: John Sanet, 202/606–1955

OPM/GOVT–1

SYSTEM NAME:

General Personnel Records.

System notice last published at: 55 FR 3836, February 5, 1990.

Description:

General Personnel Records include current and former Federal employees as defined in 5 USC 2105. This system covers OPM's Central Personnel Data File and related agency personnel management information systems. The Official Personnel Folder (OPF) and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long-term records in the OPF, give legal force and effect to pesonnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

These files and records provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices.

OPM/GOVT–2

SYSTEM NAME:

Employee Performance File System Records.

System notice last published at: 55 FR 3842, February 5, 1990.

Description:

OPM/GOVT–2 includes records on current or former Federal employees, including appointees to the Senior Executive Service. These records are maintained to ensure that all appropriate records on an employee's performance are retained and are available (1) to agency officials having a need for the information; (2) to employees; (3) to support actions based on the records; (4) for use by the Office of Personnel Management in connection with its personnel management evaluation role in the executive branch; and (5) to identify individuals for personnel research.

OPM/GOVT–3

SYSTEM NAME:

Records of Adverse Actions and Actions Based on Unacceptable Performance.

System notice last published at: 55 FR 3845, February 5, 1990.

Description:

OPM/GOVT–3 includes records on current or former Federal employees, including Senior Executive Service employees, against whom such an action has been proposed or taken in accordance with 5 CFR parts 432, 732, 752, or 754 of OPM's regulations. These records result from the proposal, processing, and documentation of these actions taken either by OPM or agencies against employees in accordance with 5 CFR parts 432, 752, or 754 of OPM's regulations.

OPM/GOVT–4

[Reserved.] Formerly Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records. [Replaced by OGE/GOVT–1]

OPM/GOVT–5

SYSTEM NAME:

Recruiting, Examining, and Placement Records.

System notice last published at: 55 FR 3847, February 5, 1990.

Description:

This system includes two categories of record subjects: (1) Persons who have applied to OPM or agencies for Federal employment, and current and former Federal employees submitting applications for other positions in the Federal service; and (2) applicants for Federal employment believed or found to be unsuitable for employment on medical grounds.

The records are used in considering indivfduals who have applied for positions in the Federal service by making determinations of qualifications (including medical qualifications), for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment or promotion. Records derived from OPM-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These records may also be used to locate individuals for personnel research.

OPM/GOVT–6

SYSTEM NAME:

Personnel Research and Test Validation Records.

System notice last published at: 55 FR 3850, February 5, 1990.

Description:

OPM/GOVT–6 includes records on current and former Federal employees, applicants for Federal employment, current and former State and local government employees, and applicants for State and local government employment, selected private sector employees and applicants for sample comparison groups. The records are collected, maintained, and used by OPM or other Federal agencies for the construction, analysis, and validation of written tests, and for research on and evaluation of personnel/organizational management and staffing methods, including workforce effectiveness studies.

OPM/GOVT–7

SYSTEM NAME:

Applicant—Race, Sex, National Origin and Disability Status Records.

System notice last published at: 55 FR 3852, February 5, 1990.

Description:

This database includes records on current and former Federal employees and individuals who have applied for Federal employment. The records are used by OPM and agencies to evaluate personnel/organizational measurement and selection records, implement and evaluate Federal Equal Opportunity Recruitment and affirmative action programs, prepare reports regarding breakdowns by race, sex, and national origin of applicants, and to locate individuals for personnel research.

OPM/GOVT–8

[Reserved.] Formerly Confidential Statement of Employment and Financial Interest. [Replaced by OGE/GOVT–2]

OPM/GOVT–9

SYSTEM NAME:

File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.

System notice last published at: 55 FR 3854, February 5, 1990.

Description:

This database includes records on current and former Federal employees who have either: (a) Filed a position classification appeal or a job grading appeal with OPM's Agency Compliance and Evaluation, an OPM regional office, or with their agencies; or (b) filed a retained grade or pay appeal with OPM's Agency Compliance and Evaluation or an OPM regional office. These records are used primarily to document the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. Internally, OPM may use these records to locate individuals for personnel research.

OPM/GOVT–10

SYSTEM NAME:

Employee Medical File System Records.

System notice last published at: 55 FR 3855, February 5, 1990.

Description:

This database includes records on current and former civilian Federal employees. Some records are required to be maintained on a long-term basis. They also provide data to ensure proper medical evaluation, diagnosis, history, treatment, and continuity of care. They provide documentation of hazard exposures, treatment, medically-related employment decisions, and communications among health care providers. They are also used to enable planning of further care, evaluate quality of health care rendered, and to ensure proper operation of an agency's drug testing program.

James B. MacRae, Jr.,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 91–14589 Filed 6–18–91; 8:45 am]

BILLING CODE 3110–01–M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Advance notice of revisions to an existing system.

SUMMARY: The purpose of this document is to publish, as required by 5 U.S.C. 552a(e)(11), advance notice of modifications to Privacy Act system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel folders and Records Related thereto). This change is necessary due to amendement of the Federal Employees Health Benefits (FEHB) Program under the provisions of Public Law 100–654, which requires the Postal Service to maintain information on certain former spouse and family members who may be eligible for health benefits coverage under the FEHB Program. For USPS 120.070, the Postal Service proposes to expand the category of individuals covered by the system and make editorial corrections and revisions to the system.

EFFECTIVE DATE: This notice is effective on an interim basis upon publication June 19, 1991, in order to correspond with the implementation provisions of Public Law 100–654. However, interested persons are invited to submit written data, views, or arguments concerning the changes in compliance with 5 U.S.C. 552a(e)(11). Comments must be received on or before July 19, 1991.

ADDRESSES: Comments may be mailed to: Records Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington DC 20260–5010 or delivered to room 8141 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in room 8141.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter, Records Office (202) 268–4872.

SUPPLEMENTARY INFORMATION: Under the provisions of Public Law 100–654, the children and former spouse of a current or former employee who lost eligibility for coverage on or after January 1, 1990, may qualify for temporary continuation of coverage under the FEHB Program. As a result, the Postal Service will maintain health benefits information pertaining to the former spouse and children who qualify and apply for health benefits coverage.

As provided by 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views or arguments on this proposal. Prior to publication of this proposal, a report describing the proposed changes has been filed with Congress and the Office of Management and Budget for their evaluation. A waiver of the 60-day advance period, pursuant to OMB Circular A–130, has been requested. If the waiver is granted, and unless comments suggest the need for revisions, it is expected that the system changes will become effective as proposed following the expiration of the 30-day comment period.

The most recent description of USPS 120.070 appears at 54 FR 43652, dated October 26, 1989. The description is modified as shown in italics below.

USPS 120.070

SYSTEM NAME:

Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto), 120.070.

SYSTEM LOCATION:

Personnel offices at all USPS facilities; National Personnel Records Center, St. Louis, MO; Information Services Branch, Headquarters; Postal Data Center, Minneapolis, MN; National Test Administration Center Alexandria, VA; and selected contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former USPS employees; and current employees' children or former spouses and former employees' family members or former spouses who qualify and apply for Federal Employees Health Benefits coverage under Public Laws 98–615 or 100–654.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, resumes, merit evaluations, promotion/salary change and other personnel actions, health benefit and life insurance elections and other documents pertaining to preemployment, prior Federal employment and current service as prescribed by USPS directives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1001, 1005; 42 U.S.C. 2000–16. Executive Orders 11478 and 11590.

PURPOSE:

Used by administrators, *managers, selection review committees,* and individual employee supervisors to perform routine personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, *I,* K, L, and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To provide information to a prospective employer of a USPS employee or former USPS employee.

2. To provide statistical reports to Congress, agencies, and the public on characteristics of the USPS work force.

3. To provide data for the compilation of a local seniority list that is used by management to make decisions pertaining to appointment and assignments among craft personnel. The list is posted in local facilities where it may be reviewed by USPS employees.

4. *To* transfer to the OPM upon retirement of an employee *information necessary* for processing retirement benefits.

5. Disclosure of relevant and necessary information pertaining to an employee's participation in health, life insurance and retirement programs may be made to the Office of Personnel Management and private carriers for the provision of related benefits to the participant (also see USPS 050.020).

6. Disclosure of minority designation codes may be made to the Equal Employment Opportunity Commission for the oversight and enforcement of Federal EEO regulations.

7. Disclosure of records of discipline relating to individual employees may be made to State Employment Security Agencies at the initial a determination level of the unemployment compensation claim process.

8. Information pertaining to an employee who is a retired military officer will be furnished to the appropriate service finance center as required under the provisions of the Dual Compensation Act.

9. May be disclosed to a Federal or State agency, providing parent locator services or to other authorized persons as defined by Pub. L. 93–647.

10. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, preprinted forms, Official Personnel Folders, magnetic tape and other computer storage devices.

RETRIEVABILITY:

Employee name and location of employment and social security number.

SAFEGUARDS:

Folders are maintained in locked cabinets to which only authorized personnel have access; *automated records are* protected by computer passwords and tape or disc library physical security.

RETENTION AND DISPOSAL

a. Official Personnel Folder (OPF) Records—These records are considered to be permanent and are maintained until employee is separated, and then are sent to the National Personnel Records Center, St. Louis, for storage, or to another Federal agency to which the individual transfers employment.

b. Personnel Work Sheets—Destroy 30 days after a new PS 50 is issued.

c. Temporary Records of Individual Employees—Destroy when 2 years old, upon separation, or upon transfer of employee, whichever is sooner.

d. Service Record Cards—Destroy 3 years after separation or transfer of employee.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, DC 20260-4200.*

NOTIFICATION PROCEDURE:

Employees wishing to gain access to their Official Personnel Folders should submit requests to the facility head where employed. Headquarters employees should submit requests to the System Manager. Former Postal Service employees should submit request to any Postal Service facility head giving name, date of birth and social security number. Former Post Office Department employees having no Postal Service employment (prior to July 1971) should submit the request to the Office of Personnel Management (formerly the U.S. Civil Service Commission), *Compliance and Investigations Group, Washington, DC 20415-0001.*

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access procedures above.

RECORD SOURCE CATEGORIES:

Individual employee, personal references, former employers and USPS 050.020 [Finance Records–Payroll System).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–14468 Filed 6–18–91; 8:45 am]

BILLING CODE 7710–12

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29301; File No. SR–BSE–91–4]

Self-Regulatory Organizations; the Boston Stock Exchange; Order Granting Temporary Accelerated Approval to Proposed Rule Change and Amendments No. 1 and 2 Relating to Price Protection of Limit Orders

I. Introduction

On May 13, 1991, the Boston Stock Exchange ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to add a new Chapter IIB, Facilitation of GTX Orders, to the Exchange's Rules of the Board of Governors which would require BSE specialists to provide primary market protection for limit orders, designated as executable after the BSE close, based on volume that prints in the primary market's after-hours session.[3] Amendments No. 1 and 2, submitted on May 24 and May 29, 1991, respectively, further explain the proposed rule change.[4] The BSE requests accelerated approval of the proposed rule change.[5]

The proposed rule change was published for comment in Securities Exchange Act Released No. 29289 (June 3, 1991), 56 FR 26701 (June 10, 1991). No comments were received regarding the proposed rule change.

II. Description of the Proposal

The BSE proposal is designed to protect limit orders on the books of BSE specialists by providing primary market protection if an issue trades at the limit price in a primary market's after-hours trading session. The BSE submitted this rule change as a competitive response to the New York Stock Exchange's ("NYSE") Off-Hours Trading ("OHT") facility that was recently approved by the Commission.[6]

The BSE proposes to add a new Chapter IIB, Facilitation of GTX Orders, which would apply to the facilitation of certain orders after the close of the 9:30 a.m. to 4 p.m. trading session. Specifically, the new rules create a new type of order on the BSE—a "GTX" order. The BSE proposal defines a GTX order as an unconditioned "GTC" ("good 'till cancelled") [7] order designated by the entering broker as executable at 5:00 p.m. at the primary market closing price.[8] Under the BSE proposal, pursuant to the BSE Execution Guarantee Rule,[9] If an issue has traded at the limit price in a primary market's after-hours trading session, the BSE specialist would be required to fill GTX orders based on volume that prints in the primary market's after hours trading session.

Section 33.01(c) of the BSE' Execution Guarantee Rule requires a specialist to fill all agency limit orders if the issue is trading on the primary market at the limit price, unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market, or the broker and specialist agree to a specific volume-related or other criteria requiring a fill. In effect, the BSE's new rule extends this execution guarantee rule by requiring that, if an issue has traded to the limit price in a primary market's after-hours trading session, the BSE specialist must fill limit orders, designated as executable after the BSE close by the GTX designation, based on volume that prints in the primary market's after-hours session.

Thus, the BSE proposal does not propose to establish a separate after-hours trading session. Instead, it proposes to amend the Exchange's execution guarantee rules to require Exchange specialists to fill certain limit orders (orders which satisfy certain stated criteria) after the close of the regular BSE auction market trading session.

Under the BSE proposal, the BSE's Automated Communications and Order Routing Network ("BEACON"), would scan the limit order books of BSE specialists for limit orders that are priced at the NYSE closing price and have been designated as GTX. The BSE proposal would give customers the option of deciding whether they want their limit orders to be designated as GTX orders and thus eligible for execution after the close of the regular BSE auction trading session.[10] If a limit order meets these criteria (*e.g.,* it has been designated as eligible for execution in an after-hours session and is priced at the NYSE closing price), then it would become eligible for a fill at the NYSE closing price based on volume that prints in the primary market's after-hours session. Under the proposal, customers could cancel GTX orders during the regular the 9:30 a.m. to 4 p.m. trading day and from 4 p.m. to 5 p.m.

The only two situations under which a BSE specialist would not be obligated to fill customer limit orders, designated as GTX, based on volume that prints in the primary market's after-hours session are: (1) If it can be demonstrated that the order would not have been executed if it has been transmitted to the primary market; and (2) if a customer cancels a GTX order. In other words, unless a specialist can demonstrate that, upon receipt of a customer's GTX order, a duplicate order was transmitted by the specialist to the NYSE, and that duplicate order was not executed in NYSE's Crossing Session I, or that a GTX order was cancelled at the initiation of a customer, the specialist would be required to fill all eligible GTX orders up to the amount of the volume that prints at the end of NYSE's Crossing Session I. GTX orders would retain the priority among themselves that exists on the specialist's books and would be entitled to an execution based on that priority. If a limit order that is eligible for execution in an after-hours session does not get executed, it will remain on the limit order book of the BSE specialist and would retain its priority during the next day's regular trading session.

Specialists would manually execute GTX orders once the appropriate volume in a particular security in NYSE's Crossing Session I has been determined. As a practical matter, this will occur at approximately 5 p.m. In addition, the BSE proposes to report GTX executions to the consolidated tape after the NYSE prints its 5 p.m. Crossing Session I transactions. Each individual trade would be reported "regular way,"

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1990).

[3] The Commission notes that the BSE proposal is substantially similar to proposals by the Midwest ("MSE"), Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges which are also being approved on an accelerated basis by the Commission. See Files No. SR–MSE–91–11; SR–PSE–91–21; SR–Phlx 91–20.

[4] Amendments No. 1 and 2 do not change the substance of the proposed rule change, but instead add new language clarifying the specialists' obligations with respect to GTX orders under the requirements of the new rule.

[5] See Amendment No. 2 to File No. SR–BSE–91–4.

[6] The NYSE's OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4:00 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing-price orders and crosses of single-stock closing-price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24053 (May 31, 1991) ("NYSE OHT Release") (approving Files No. SR–NYSE–90–52 and NYSE–90–53). The Commission approved the NYSE's OHT facility (Files No. SR–NYSE–90–52 and NYSE–90–53) on May 20, 1991. The NYSE has indicated to the Commission that it is prepared to begin the operation of its OHT facility on June 13, 1991.

[7] BSE chapter I, section 3 states that a GTC order is an order to buy or sell which remains in effect until it is either executed or cancelled.

[8] The new rules also define two other new order types. A one-sided single stock order ("OS") is defined as a buy or sell order entered after 4 p.m. for execution in after-hours trading session; and a two-sided single stock order ("TS") is defined as a coupled buy and sell order entered after 4 p.m. for execution in an after-hours trading session. At the current time, however, the BSE does not intend to change its trading hours and operations to accommodate OS and TS orders. The BSE has defined these new order types in this rule filing so that, if the Exchange decides at some future time to accommodate such orders, the Exchange Rules will already define them. See letter from Brian L. Riddell, Executive Vice President, Trading Services, BSE, to Howard Kramer, Assistant Director, Division of Market Regulations, SEC, dated May 23, 1991.

[9] See infra.

[10] The BSE states that it will use its existing systems to implement the proposed rule change and execute GTX orders. The BSE represents that it has no systems capacity concerns regarding the execution of GTX orders and that modifications to its systems to permit the execution of those orders were tested successfully prior to this order.

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as is the current practice during the 9:30 a.m. to 4 p.m. trading session.[11]

Finally, the BSE seeks exemptive relief from the requirements of Rule 10a–1 under the Act ("short sale rule") for the limited purpose of providing full primary market protection for its GTX limit orders.[12]

III. Discussion and Commission Findings

After careful consideration, the Commission believes that the BSE proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communication systems and the practicability of brokers executing investors' orders in the best market. For these reasons and for the additional reasons set forth below, the Commission finds that approval, for a temporary period ending on May 24, 1993, of the Exchange's proposal rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6 and 11A of the Act.[13]

In the recent Commission release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through development of an after-hours trading session. The Commission in that order also stated that the NYSE OHT sessions should enhance competition by providing a service to customers that other exchanges currently are not providing.[14] In that release, the Commission noted that innovation that provides marketplace benefits to attract order flow to one marketplace does not result in unfair competition if the other markets are free to compete in the same manner.[15] In this regard, the Commission noted that, if other U.S. securities marketplaces desire to compete with the NYSE's OHT facility, they could provide a similar service.[16]

Although the BSE proposal does not copy the NYSE's OHT facility, it nonetheless presents a reasonable competitive response. By allowing GTX orders that could be executed on the NYSE to receive a similar fill on the BSE, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market. Accordingly, the Commission believes that the BSE proposal should be approved for many of the same reasons that the Commission approved the NYSE OHT facility.[17]

The Commission believes that both the instant BSE proposal and the NYSE's OHT facility, as well as several proposals recently received by the Commission from other U.S. marketplaces, demonstrate the competitiveness of the U.S. securities markets. As a result of these marketplace initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed on both the NYSE and the BSE after the close of the regular 9:30 a.m. to 4 p.m. trading session at the closing price established on the primary market. Moreover, the Commission believes that the increased competition that results from permitting BSE specialists to attract GTX orders should enhance the quality of customer order executions.

In addition, the Commission believes that the BSE proposal is consistent with the maintenance of fair and orderly markets and should contribute to the practicability of brokers achieving a best execution for customer orders. The new BSE rules would achieve this by imposing additional obligations on Exchange specialists to provide their customers with primary market price protection. The parameters of the new rule are expressed clearly in the text of the rule and do not leave any discretion to specialists in deciding which orders to fill and what priority to give these orders. The new rule makes clear that if customer limit orders are designated as GTX and are priced at the primary market closing price, then the specialist is obligated to fill those orders up to the volume that prints at the end of NYSE Crossing Session I.[18] The specialist is relieved of this obligation only if he or she can demonstrate that a particular order would not have been executed if it had been transmitted to the primary market. As discussed above, the Commission believes that the only way in which this can be demonstrated is by showing that an order was sent to the primary market and it was not filled or if a customer cancels a GTX order prior to its execution.

In addition, the BSE proposal does not disturb the priority rules currently in force at the Exchange. During the regular trading hours, orders on the specialist's book would maintain the same priority as existed before adoption of this proposal. Among GTX orders that are eligible after 4:00 p.m. for possible execution, priority is maintained as it was during the regular trading day. If a GTX order is not executed, it will remain on the specialist's book and will maintain its priority.

Furthermore, the Commission believes that, although BSE specialists will know which limit orders are designated "GTX" and will manually execute GTX orders, they should not be able to use this information to their own advantage. As discussed above, the BSE proposal constitutes an extension of the BSE's daytime executive guarantee system. It does not create an additional session where specialists can participate. Specialist participation would be limited to filling the contra side of a customer limit order that is eligible, pursuant to the new rule, for a fill. The specialist would have no discretion in choosing which orders to fill and which priority to give orders. Orders would be eligible for a fill based on strict criteria (*e.g.*, orders that are priced at the NYSE closing price and have been designated GTX are eligible to be filled based on volume that prints in the primary market's after-hours session). In addition, orders would be eligible to be filled according to the priority that already exists on the specialists' books. Thus, the Commission is satisfied that, although BSE specialists will have knowledge of which limit orders have been designated GTX, they will not be able to use this knowledge to the detriment of investors because their participation in the execution of GTX orders will be limited. The Commission expects, however, that the BSE will monitor carefully the execution of GTX orders to ensure that BSE specialists are not taking unfair advantage of this information. In this regard, the Commission expects the BSE to report, within 18 months of the date of the approval of this order, on this issue. The Commission may, at that time, wish to revisit this issue.

The Commission notes that the NYSE's OHT facility was approved for a two year temporary period, commencing on May 24, 1991. In approving the NYSE proposal for a temporary period, the Commission noted that the NYSE OHT facility raised several "intermarket" issues, such as: (i) Whether the Intermarket Trading System ("ITS") should be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (ii) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order book; (iii) if so, with what priority, if any; and (iv) who should bear the cost of developing a working mechanism for such transmittal.

In the release approving the NYSE OHT facility, the Commission also noted that, because at least one other exchange had proposed a trading session similar or identical to the NYSE's OHT facility, significant national market system issues would have to be resolved by the NYSE and the competing market, in conjunction with the SEC. Although the BSE proposal does not present an after-hours crossing session like the NYSE's OHT facility, it would establish an after-hours trading system that will compete directly with NYSE Crossing Session I. Accordingly, the Commission believes that a temporary approval period ending on May 24, 1993, is also appropriate for the BSE proposal.[19]

The Commission believes that this time period will provide an opportunity for the Commission and market participants to observe the actual operation of the NYSE's OHT facility and the BSE's after-hours proposal. Based on these observations the Commission and market participants will be in a better position to evaluate whether further steps to link the NYSE's OHT facility with comparable systems operating at the same time are necessary or appropriate to protect investors or promote fair competition and whether any other linkage issues arise. In this regard, 18 months from the date of approval of the instant proposal, the BSE should submit a new filing pursuant to Rule 19b–4 under the Act requesting permanent approval of its proposed rule change, as well as a report describing the BSE's experience with the new rule during that 18-month period. The report should include, but not be limited to, the following information (broken down by month) for the 18-month period:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders
- The number, if any, of GTX orders executed after the close of the BSE's regular auction trading session pursuant to the new rule
- The number, if any, of GTX orders that remain unexecuted after the BSE specialist has fulfilled his or her obligations in connection with the new rule
- The number and percentage of GTC orders on the book that were designated "GTX" and thus eligible to be filled
- Whether the BSE marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading sessions after the initiation of the new rule
- Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the new rule
- Whether the Exchange or any specialist has given any special guarantees to execute GTX orders over and above the current requirements of the Execution Guarantee Rule and the requirements of the new rule

In addition, the Commission expects that the BSE, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission expects the BSE to keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

Finally, the Commission finds good cause for approving the proposed rule change and Amendments No. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof. The BSE's proposal merely extends the Exchange's execution guarantee procedures to incorporate GTX orders and the possibility of a 5 p.m. execution. It does not substantially alter current BSE procedures, nor does it raise issues not already addressed in the order approving the NYSE's OHT system. Accordingly, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that it can be in effect on the date that the NYSE's OHT facility commences operation. This will permit the BSE to compete with Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change is approved for a temporary period ending on May 24, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Dated: June 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14611 Filed 6–18–91; 8:45 am]

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[11] See letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Kathryn Natale, Assistant Director, Division of Market Regulation, SEC, dated May 31, 1991.

[12] See letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Larry Bergmann, Associate Director, Division of Market Regulation, SEC, dated May 29, 1991. The Commission will issue a letter that addresses the Exchange's request for an exemption from Rule 10a–1.

[13] 15 U.S.C. 78f and 78k–1 (1988).

[14] See NYSE OHT Release, *supra*, note 6.

[15] *Id.*

[16] Id.

[17] See NYSE OHT Release, *supra*, note 6.

[18] Under the BSE proposal, a broker and BSE specialist may agree upon a specific volume related or other criteria for requiring a fill. this means, however, that they may agree to have the specialist fill *more* than the amount of the NYSE Crossing Session I print, not *less* than the amount of the NYSE Crossing Session I print. Of course, if no volume prints in NYSE Crossing Session I in a particular stock, then the BSE specialist cannot execute any GTX orders after regular trading hours that day.

[19] To achieve uniformity, the temporary approval period would run until May 24, 1993, the sunset of the NYSE's OHT facility.

[20] 15 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a) (12) and (15) (1990).

[Release No. 34–29289; International Series No. 269; File No. SR–CBOE–91–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing of Index Warrants Based on the Europe-Australia-Far East ("EAFE") Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing under Rule 31.5(E) of the Exchange's Rules to list and trade index warrants based on the Morgan Stanley Capital International ("MSCI") Europe-Australia-Far East ("EAFE") Index, which is a capitalization-weighted index representative of the stock market structure of Europe and the Pacific Basin. In accordance with the requirements set forth in Securities Exchange Act Release No. 28556

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(October 19, 1990), 55 FR 43233, the CBOE has submitted this filing pursuant to Rule 19b–4 under the Act to obtain Commission approval to list these warrants.

The text of the proposed rule is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE Rule 31.5(E) sets forth the guidelines applicable to listing index warrants based on established foreign and domestic stock indexes. The Exchange is proposing to list index warrants based on the EAFE Index. EAFE is a broad-based index designed to represent the performance of an unmanaged portfolio of stocks listed for trading on stock markets other than those in North America. As of March 31, 1991, the index consisted of 1,068 companies traded on stock markets in 18 countries in Europe and the Pacific Basin.[1] Unlike other broad-based indexes, the number of stocks included in EAFE is not fixed and may vary to enable the Index to continue to reflect the primary home markets of the constituent countries. Changes in the Index will be announced when made. EAFE is a capitalization-weighted index calculated by MSCI based on the official closing prices for each stock in its primary local or home market. The base value of the index was equal to 100.0 on January 1, 1970. As of March 27, 1991, the current value of the Index was 842.70.

The warrant issues will conform to the listing guidelines under Rule 31.5(E) which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in Rule 31.5(A); (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

EAFE index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant sturcutred as a "put" would receive payment in U.S. dollars to the extent that the EAFE Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the EAFE Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The CBOE has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Exchange Rule 30.50 Interpretation .02 sets forth suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. It applies the options suitability standards in Rule 9.9 to recommendations regarding index warrants; and recommends that index warrants be sold only to options-approved accounts.

In addition, Exchange Rule 30.50 Interpretation .03 requires that the standards of Rule 9.10(a) regarding discretionary orders be applied to index warrants. This Rule requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day the order is entered. In addition, the Exchange, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the EAFE Index.

In the generic approval order for index warrants,[2] the Commission noted that, with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the CBOE is undertaking to establish an appropriate means to accomplish such information sharing.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers of dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up of 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifty Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 11, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14521 Filed 6–18–91; 8:45 am]

BILLING CODE 8010–01–M

[1] The weighing of the EAFE Index by country is as follows: (1) Australia (2.40%); (2) Austria (0.47%); (3) Belgium (1.18%); (4) Denmark (0.78%); (5) Finland (0.40%); (6) France (5.42%); (7) Germany (5.66%); (8) Hong Kong (1.64%); (9) Italy (2.38%); (10) Japan (50.66%); (11) Netherlands (2.67%); (12) New Zealand (0.18%); (13) Norway (0.44%); (14) Singapore/Malaysia (1.21%); (15) Spain (1.99%); (16) Sweden (1.74%); (17) Switzerland (3.22%); and (18) United Kingdom (17.36%).

[Release No. 34–29236; International Series No. 288; File No. SR–NYSE–91–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing of Warrants Based on the European-Australia-Far East ("EAFE") Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 10, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under section 703.17 (Index Warrants) of the Exchange's Listed Company Manual warrants based on the Europe-Australia-Far East ("EAFE") Index that Morgan Stanley Capital International ("MSCI") [1] owns, calculates and disseminates. the EAFE Index currently consists of 1,068 of the most highly capitalized and actively-traded stocks on stock exchanges located in Australia, New Zealand and 16 other countries throughout Europe and the Far East.

[1] EAFE, MSCI are trademarks and service marks of Morgan Stanley & Co. Incorporated.

The text of the proposed rule is available at the Office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, or the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under section 703.17 (Index Warrants) of the NYSE's Listed Company Manual, the Exchange may approve for listing index warrants based on established foreign and domestic indexes. The NYSE is proposing to list index warrants based on the EAFE Index, an internationally-recognized, capitalization-weighted, broad-based index representing the performance of an unmanaged portfolio of stocks listed for trading on stock markets in Europe, New Zealand and the Far East. As of March 31, 1991, the Index consisted of 1,068 stocks traded on stock exchanges located in 18 countries.[2] The Index has been calculated since January, 1970.

MSCI currently disseminates the EAFE Index throughout the United States and other parts of the world by assorted publications and market data vendors. MSCI owns the EAFE Index and is responsible for calculating and maintaining the Index. It monitors corporate developments relating to the Index's component stocks and makes determinations as to additions to and deletions from the EAFE Index. MSCI has arranged to have an independent third party, The Economist, review its recommendations for additions and deletions in order to confirm that those recommendations conform to the stated methodology.

[2] The weighing of the EAFE Index by country is as follows: (1) Australia (2.40%); (2) Austria (0.47%); (3) Belgium (1.18%); (4) Denmark (0.78%); (5) Finland (0.40%); (6) France (5.42%); (7) Germany (5.66%); (8) Hong Kong (1.64%); (9) Italy (2.38%); (10) Japan (50.66%); (11) Netherlands (2.67%); (12) New Zealand (0.18%); (13) Norway (0.44%); (14) Singapore/Malaysia (1.21%); (15) Spain (1.99%); (16) Sweden (1.74%); (17) Switzerland (3. 22%); and (18) United Kingdom (17.36%).

EAFE Index warrant issues will conform to the listing guidelines under section 703.17 (Index Warrants) of the Listed Company Manual, which provides that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in section 102.01 of the Listed Company Manual; (2) the term of the warrants shall be for a period of at least one year from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have a minimum eggregate market value of $4,000,000.

EAFE Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the EAFE Index settlement price has declined below a pre-stated strike price. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the EAFE Index settlement price has increased above the pre-stated strike price. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The NYSE has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Supplementary Material .30 of Rule 405 ("Diligence as to Accounts") applies the options suitability standard in Rule 723 ("Suitability") to recommendations regarding index warrants, and recommends that index warrants be sold only to options-approved accounts. Supplementary Material .10 of Rule 408 ("Discretionary Power in Customers' Accounts") requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day the order is entered. In addition, the Exchange, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the EAFE Index.

In the generic approval order for index warrants,[3] the Commission noted

[3] Securities Exchange Act Release No. 28153 (June 26, 1990), 55 FR 27734.

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that, with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the NYSE has entered into information sharing agreements with the regulatory authorities of a number of constituent countries and is seeking to enter into such agreements with the regulatory authorities of other constituent countries to provide for the sharing of necessary information between the Exchange and those authorities to fulfill their respective regulatory responsibilities.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section (b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 11, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14523 Filed 6-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29292; File No. SR-DTC-91-12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Fee Schedule for DTC Services

June 12, 1991

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-91-12) as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Depository Trust Company ("DTC") is filing herewith the following changes in the fee schedule for DTC services:

Service	Fee
SDFS Delivery Orders:	
• Via PTS, MDH or CCF for each delivery item presented Prior PM, AM opening to 6:15 PM.	$1.86 to the deliverer, $2.11 to the deliverer, $1.95 for each item received.
• ID System	$1.86 for each item delivered or received.
• Commercial Paper (CP).	$1.95 for each item delivered or received.
• CP Maturity Presentments.	$1.81 for each item delivered or received.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change, which will be effective for services provided after May 31, 1991, is to recover DTC's cost of expanding by $100 million its lines of credit for loans to facilitate SDFS settlement.

Since the proposed rule change relates to the equitable allocation of dues, fees and other charges among Participants, it is consistent with the requirements of section 17A(b)(3)(D) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change, Received From Members, Participants, or Others

DTC has not sought or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder, because the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-91-12 and should be submitted by July 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14519 Filed 6-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29296; File No. SR-DTC-91-13]

Self-Regulatory Organizations; the Depository Trust Co.; Notice of a Proposed Rule Change Relating to Expanded Use of the Seg-100 Account.

June 13, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 31, 1991, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-91-13) as described in Items I, II, and III below, which items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In 1988, DTC introduced the Segregation Account No. 100 ("Seg-100") to allow participants to deposit foreign-owned shares of certain U.S. communications and maritime issues in their DTC accounts.[2] Until now, Seg-100 has been used exclusively for the segregation of these types of issues.

Under the proposed rule change, participants may use Seg-100 to segregate securities with other specialized ownership restrictions that are imposed by applicable law and that are based on the beneficial owner's residence, domicile, or citizenship.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's current Seg-100 procedure allows participants to deposit foreign-owned shares of certain U.S. communications and maritime issues in their DTC accounts. The purpose of the proposed rule change is to enable participants to use Seg-100 to segregate securities with other specialized ownership restrictions that are imposed by applicable law and that are based on the beneficial owner's residence, domicile, or citizenship. For example, under applicable law beneficial owners of certain issues may lose tax benefits if the number of shares beneficially owned by citizens or residents of a particular political or geographical region exceeds a specified percentage of all shares issued and outstanding. At the time each issue with specialized ownership restrictions that are imposed by applicable law and that are based on the beneficial owner's residence, domicile, or citizenship is made eligible, DTC will announce to participants the CUSIP number of the securities and the issuer's description of the type of ownership restriction triggering the requirement that the securities must be segregated via the Seg-100 function.

In all other respects, Seg-100 will continue to operate as it does now. As participants know, DTC will notify the issuer or its agent periodically of the aggregate number of shares of a particular CUSIP number in participants' Seg-100 accounts. The issuer or its agent will then inform DTC if any transfers to participants' Seg-100 accounts caused the applicable restriction on ownership for that CUSIP number to be exceeded. In any such event, as is done currently, DTC will debit the account of the participant that last transferred shares to its Seg-100 account, and the participant will be required to withdraw those shares immediately from its DTC general account. Under these circumstances, DTC's current practice includes acting affirmatively to facilitate the certificate withdrawal, including, where necessary, disclosing to the issuer the identity of the affected participant and the number of shares to be withdrawn.

Seg-100 thus continues to centralize and automate communications between DTC participants and issuers of securities in cases where because of ownership restrictions imposed by applicable law the issuer or its agent must have specialized information about the citizenship, residence, or domicile of beneficial owners of securities registered in the name of DTC's nominee, Cede & Co.

The proposed rule change, therefore, is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder. Because it removes a disincentive to registering certain shares in the name of DTC's nominee, it promotes the immobilization of securities certificates at DTC.

[2] Securities Exchange Act Release No. 25968 (August 10, 1988), 53 FR 30693 (notice of filing and immediate effectiveness of Seg-100). See also Securities Exchange Act Release No. 27346 (October 5, 1989), 54 FR 43010 (notice of filing and immediate effectiveness of proposed rule change clarifying procedures relating to Seg-100).

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(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited or received written comments on the proposed rule change. In discussions between DTC and representatives and counsel of the issuer and underwriter of the first CUSIP to be eligible for the expanded use of Seg-100, DTC ascertained that the existing Seg-100 function could be adapted to satisfy their needs.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at the address above.

Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR-DTC-91-13 and should be submitted by July 10, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14607 Filed 6-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29291; File No. SR-DTC-91-08]

Self-Regulatory Organizations; The Depository Trust Co.; Order Approving a Proposed Rule Change Relating to a New Legal Notice System

June 12, 1991.

I. Introduction

On April 10, 1991, The Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-91-08) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] Notice of the proposal was published in the **Federal Register** on May 8, 1991, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal.

II. Description of the Proposal

The proposed rule change establishes procedures whereby DTC participants ("Participants") may order certain notices received by DTC that they wish to review. Participants will choose notices from a menu on their Participant Terminal System ("PTS") screen through DTC's Legal Notice System ("LENS").

According to DTC, its current notice distribution system has become an enormous and expensive enterprise requiring duplication and distribution of up to 850,000 copies per day. The expense for all of this is borne by Participants and is paid for out of their general fee. A recent DTC survey revealed that most Participants found that only a fraction of currently distributed notices were of interest to them.

Participants asked DTC to create a system that would reduce the amount of notices they receive. LENS was developed accordingly to allow Participants to prescreen certain notices that are received by DTC and that DTC chooses to make available to Participants via LENS. Notices include legal notices relating to bankruptcies and class actions and asset-backed notices relating to default and performance histories of asset-backed securities. LENS will enable Participants to avoid receiving and, ultimately, to avoid paying for the duplication and distribution of notices that are irrelevant to them.[3]

LENS also will allow, where practical, certain enhancements to the current distribution system. Under the proposal, Participants can: (1) Identify the CUSIP numbers associated with the issues that are the subject of the notices; (2) search for notices by CUSIP numbers; (3) conduct position checks by CUSIP numbers; and (4) access, with automatic order capability, an automated record of notices requested during the prior year. The proposal also will facilitate DTC's distribution of certain lengthy notices (*e.g.*, notices relating to default and performance histories of asset-backed securities) that might otherwise have been too expensive to duplicate and distribute to all DTC Participants.[4] DTC also believes the proposal will facilitate the DTC's effort to establish equitable fees for this service.[5]

Participants interested in obtaining a copy of a particular notice will order it through LENS. DTC will send the ordering Participant the notice by DD box [6] or first class mail early on the third business day following the request. DTC plans to charge Participants a per page fee for copies of notices ordered through LENS.[7]

III. Discussion

The Commission believes that DTC's proposed rule change is consistent with the Act and in particular with Section 17A of the Act. Accordingly, for the reasons discussed below, the Commission is approving the proposal.

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29133 (April 30, 1991), 56 FR 20691.

[3] As an alternative to the ordering process via PTS, DTC will provide a standard ordering agreement under which Participants may place a one time request to have a copy of each legal and/or asset-backed notice that DTC makes available automatically forwarded to them via their DTC DD box.

[4] Pursuant to the requirements under Commission Rule 17a-22 (17 CFR 240.17a-22), DTC will be required to file with the Commission copies of all LENS notices it issues or makes available to its participants.

[5] A Participant would not be charged any fee for the duplication and distribution of any notices in which the Participant was not interested and did not order. Currently, all Participants contribute to the cost of duplication and distribution out of DTC's general fees.

[6] DD box is DTC's designation for its lock-box system.

[7] In order to fully implement the proposal, DTC will be required to file with the Commission an additional proposed rule change setting forth the fees it intends to assess its Participants for their use of LENS.

The Commission believes that the proposal is consistent with sections 17A(a)(1) (B) and (C) of the Act.[8] Those sections articulate findings that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement and that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors. DTC has indicated that LENS efficiently facilitates the communication to Participants of information that is germane to the Participants' clearance and settlement activities. The Commission concurs and believes that LENS will provide added speed and efficiency to the transfer of information between DTC and Participants and should help eliminate much of the waste built into the current system.

IV. Conclusion

For the reasons stated above, the Commission finds that DTC's proposal is consistent with section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that DTC's proposed rule change (SR-DTC-91-08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14608 Filed 6-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29297; File No. SR-MSE-91-11]

Self-Regulatory Organizations; the Midwest Stock Exchange; Order Granting Temporary Accelerated Approval to Proposed Rule Change Relating to Price Protection of Limit Orders

I. Introduction

On May 7, 1991, the Midwest Stock Exchange ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Article XX, Rule 37 (Guaranteed Execution System) of the Exchange's Rules of the Board of Governors and to add Interpretation and Policy paragraph .02, which would require MSE specialists to provide primary market protection for limit orders, designated as executable after the MSE close, based on volume that prints in the primary market's after-hours session.[3] The MSE requests accelerated approval of the proposed rule change.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 29200 (May 16, 1991), 56 FR 23048 (May 24, 1991). No comments were received regarding the proposed rule change.

II. Description of the Proposal

The MSE proposal is designed to protect limit orders on the books of MSE specialists by providing primary market protection if an issue trades at the limit price in a primary market's after-hours trading session. The MSE submitted this rule change as a competitive response to the New York Stock Exchange's ("NYSE") Off-Hours Trading ("OHT") facility that was recently approved by the Commission.[5] In its rule filing, the MSE states that the proposal is designed to compete directly with NYSE "Crossing Session I," which enables orders in individual stocks to be executed at the NYSE closing price.

The MSE proposes to add new language to Rule 37 ("Guaranteed Execution System"). Rule 37.3 currently states that:

3. All agency limit orders in Dual Trading System [6] issues will be filled if one of the following conditions occur: (a) the bid or offering at the limit price has been exhausted in the primary market * * * (b) there has been a price penetration of the limit in the primary market, or (c) the issue is trading at the limit price on the primary market unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related or other criteria for requiring a fill.

The MSE proposal would amend this subsection to require that all agency limit orders in Dual Trading System issues be filled if the issue is trading at the limit price on the primary market in either the regular trading session or an after-hours trading session, unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related or other criteria for requiring a fill. New Interpretation and Policy .02 would qualify specialists' obligations under this amended subsection by providing that if the issue has traded at the limit price in a primary market's after-hours trading session the MSE specialist would fill limit orders, designated as executable after the MSE close, based on volume that prints in the primary market's after-hours session.

Thus, the MSE proposal does not propose to establish a separate after-hours trading session to compete with NYSE's Crossing Session I. Instead, it proposes to amend the Guaranteed Execution System to require its specialists to fill certain limit orders (orders which satisfy certain stated criteria) after the close of the regular MSE auction market trading session.

Under the MSE proposal, the MSE's Automated Execution System ("MAX") would scan the limit order books of MSE specialists at 4 p.m. for limit orders that are priced at the NYSE closing price and have been designated as "GTX" ("good 'til cancelled, executable in the after-hours session").[7] The MSE proposal would give customers the option of deciding whether they want their limit orders to be designated as GTX orders and thus eligible for execution after the close of the regular MSE auction trading session.[8] If a limit order meets these

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[1] 15 U.S.C. 78q-1(a)(1)(C).

[2] 15 U.S.C. 78s(b)(2).

[3] 17 CFR 200.30-3(a)(12).

[4] 15 U.S.C. 78s(b)(1)((1988).

[5] 17 CFR 240.19b-4 (1990).

[8] The Commission notes that the MSE proposal is substantially similar to proposals by the Boston ("BSE"), Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges which are also being approved on an accelerated basis by the Commission. *See* Files No. SR-BSE-91-4; SR-PSE-91-21; SR-Phlx-91-28.

[4] *See* File No. SR-MSE-91-11 and letter from Daniel J. Liberti, Associate Counsel, MSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated May 23, 1991.

[5] The NYSE's OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing-price orders and crosses of single-stock closing-price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. *See* Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) ("NYSE OHT Release") (approving Files No. SR-NYSE-90-52 and NYSE-90-53). The Commission approved the NYSE's OHT facility (Files No. SR-NYSE-90-52 and NYSE-90-53) on May 20, 1991. The NYSE has indicated to the Commission that it is prepared to begin the operation of its OHT facility on June 13, 1991.

[6] The Dual Trading System of the MSE allows the execution of both round-lot and odd-lot orders in certain issues assigned to specialists on the MSE and listed on either the NYSE or the American Stock Exchange ("Amex"). MSE Guide, Explanatory Notes, at 803 (CCH 1990).

[7] The MSE proposal defines GTX orders as "good 'till cancelled, eligible for primary market protection based on volume that prints in a primary market's after-hours trading session." See letter from Daniel J. Liberti, Associate Counsel, MSE, to Mary R. Revell, Branch Chief, Division of Market Regulation, SEC, dated June 6, 1991.

[8] The MSE states that it will use its existing systems to implement the proposed rule change and

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criteria (e.g., it has been designated as eligible for execution in an after-hours session and is priced at the NYSE closing price), then it would become eligible for a fill at the NYSE closing price based on volume that prints in the primary market's after-hours session. The only two situations under which the MSE specialist would not be obligated to fill customer limit orders, designated as GTX, based on volume that prints in the primary market's after-hours session are: (1) If it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market; and (2) if a customer cancels a GTX order.[9] In other words, unless a specialist can demonstrate that, upon receipt of a customer's GTX order, a duplicate order was transmitted by the specialist to the NYSE, and that duplicate order was not executed in NYSE's Crossing Session I, or that a GTX order was cancelled at the initiation of the customer, the specialist would be required to fill all eligible GTX orders up to the amount of the volume that prints at the end of NYSE's Crossing Session I. GTX orders would retain the priority among themselves that exists on the specialists' books and would be entitled to an execution based on that priority. If a limit order that is eligible for execution in an after-hours session does not get executed, it will remain on the limit order book of the MSE specialist and would retain its priority during the next day's regular trading session.

Specialists would manually execute GTX orders once the appropriate volume in a particular security in NYSE's Crossing Session I has been determined. As a practical matter, this will occur at approximately 5 p.m. (ET). The MSE proposes to report trades as a single print per issue which will show the aggregate size of the executions.

Finally, the MSE seeks exemptive relief from the requirements of Rule 10a-1 under the Act ("short sale rule") for the limited purpose of providing full primary market protection for its GTX limit orders.[10]

execute GTX orders. The MSE represents that it has no systems capacity concerns regarding the execution of GTX orders, and that modifications to its systems to permit the execution of these orders were tested successfully prior to this order.

[9] Under the MSE proposal, a customer can cancel a GTX order during the regular 8:30 a.m. to 3 p.m. (CT) trading session and at any time up until the execution based on the NYSE Crossing Session I print.

[10] *See* letter from Daniel J. Liberti, Associate Counsel, MSE, to Larry Bergmann, Associate Director, Division of Market Regulation, SEC, dated June 3, 1991. The Commission will issue a letter that addresses the Exchange's request for an exemption from Rule 10a-1.

III. Discussion and Commission Findings

After careful consideration, the Commission believes that the MSE proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communication systems and the practicability of brokers executing investors' orders in the best market. For these reasons and for the additional reasons set forth below, the Commission finds that approval, for a temporary period ending on May 24, 1993, of the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6 and 11A of the Act.[11]

In the recent Commission release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through development of an after-hours trading session. The Commission in that order also stated that the NYSE OHT sessions should enhance competition by providing a service to customers that other exchanges currently are not providing.[12] In that release, the Commission noted that innovation that provides marketplace benefits to attract order flow to one marketplace does not result in unfair competition if the other markets are free to compete in the same manner.[13] In this regard, the Commission noted that, if other U.S. securities marketplaces desire to compete with the NYSE's OHT facility, they could provide a similar service.[14] Although the MSE proposal does not copy the NYSE's OHT facility, it nonetheless presents a reasonable competitive response. By allowing GTX orders that could be executed on the NYSE to receive a similar fill on the MSE, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market. Accordingly, the Commission believes that the MSE proposal should be approved for many of the same reasons that the Commission approved the NYSE OHT facility.[15]

[11] 15 U.S.C. 78f and 78k-1 (1988).

[12] *See* NYSE OHT Release, supra, note 5.

[13] *Id.*

[14] *Id.*

[15] See NYSE OHT Release, supra, note 5.

The Commission believes that both the instant MSE proposal and the NYSE's OHT facility, as well as several proposals recently received by the Commission from other U.S. marketplaces, demonstrate the competitiveness of the U.S. securities markets. As a result of these marketplace initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed on both the NYSE and the MSE after the close of the regular 9:30 a.m. to 4 p.m. (ET) trading session at the closing price established on the primary market. Moreover, the Commission believes that the increased competition that results from permitting MSE specialists to attract GTX orders should enhance the quality of customer order executions.

In addition, the Commission believes that the MSE proposal is consistent with the maintenance of fair and orderly markets and should contribute to the practicability of brokers achieving a best execution for customer orders. The new MSE rule would achieve this by imposing additional obligations on Exchange specialists to provide their customers with primary market price protection. The parameters of the new rule are expressed clearly in the text of the rule and do not leave any discretion to specialists in deciding which orders to fill and what priority to give these orders. The new rule makes clear that if customer limit orders are designated as GTX and are prices at the NYSE closing price, then the specialist is obligated to fill those orders up to the volume that prints at the end of NYSE Crossing Session I. The specialist is relieved of this obligation only if he or she can demonstrate that a particular order would not have been executed if it had been transmitted to the primary market. As discussed above, the Commission believes that the only way in which this can be demonstrated is by showing that an order was sent to the primary market and it was not filled or if a customer cancels a GTX order prior to its execution.[16]

In addition, the MSE proposal does not disturb the priority rules currently in force at the Exchange. During the regular trading hours, orders on the specialist's book would maintain the same priority as existed before adoption of this proposal. Among GTX orders that are eligible after 4 p.m. (ET) for possible execution, priority is maintained as it was during the regular trading day. If a GTX order is not executed, it will remain on the specialist's book and will maintain its priority.

[16] Under the MSE proposal, a broker and MSE specialist may agree upon a specific volume related or other criteria for requiring a fill. This means, however, that they may agree to have the specialist fill more than the amount of the NYSE Crossing Session I print, not less than the amount of the NYSE Crossing Session I print. Of course, if no volume prints in NYSE Crossing Session I in a particular stock, then the MSE specialist cannot execute any GTX orders after regular trading hours that day.

Furthermore, the Commission believes that, although MSE specialists will know which limit orders are designated "GTX" and will manually execute GTX orders, they should not be able to use this information to their own advantage. As discussed above, the MSE proposal constitutes an extension of the MSE's daytime execution guarantee system. It does not create an additional session where specialists can participate. Specialist participation would be limited to filling the contra side of a customer limit order that is eligible, pursuant to the new rule, for a fill. The specialist would have no discretion in choosing which orders to fill and which priority to give orders. Orders would be eligible for a fill based on strict criteria (e.g., orders that are priced at the NYSE closing price and have been designated GTX are eligible to be filled based on volume that prints in the primary market's after-hours session). In addition, orders would be eligible to be filled according to the priority that already exists on the specialists' books. Thus, the Commission is satisfied that, although MSE specialists will have knowledge of which limit orders have been designated GTX, they would not be able to use this knowledge to the detriment of investors because their participation in the execution fo GTX orders will be limited. The Commission expects, however, that the MSE will monitor carefully the execution of GTX orders to ensure that MSE specialists are not taking unfair advantage of this information. In this regard, the Commission expects the MSE to report, within 18 months of the date of the approval of this order, on this issue. The Commission may, at that time, wish to revisit this issue.

The Commission notes that the NYSE's OHT facility was approved for a two year temporary period, commencing on May 24, 1991. In approving the NYSE proposal for a temporary period, the Commission noted that the NYSE OHT facility raised several "intermarket" issues, such as: (i) Whether the Intermarket Trading System ("ITS") should be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (ii) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order book; (iii) if so, with what priority, if any; and (iv) who should bear the cost of developing a working mechanism for such transmittal.

In the release approving the NYSE OHT facility, the Commission also noted that, because at least one other exchange had proposed a trading session similar or identical to the NYSE's OHT facility, significant national market system issues would have to be resolved by the NYSE and the competing market, in conjunction with the SEC. Although the MSE proposal does not present an after-hours crossing session like the NYSE's OHT facility, it would establish an after-hours trading system that will compete directly with NYSE Crossing Session I. Accordingly the Commission believes that a temporary approval period ending on May 24, 1993 is also appropriate for the MSE proposal.[17]

The Commission believes that this time period will provide an opportunity for the Commission and market participants to observe the actual operation of the NYSE's OHT facility and the MSE's after-hours proposal. Based on these observations the Commission and market participants will be in a better position to evaluate whether further steps to link the NYSE's OHT facility with comparable systems operating at the same time are necessary or appropriate to protect investors or promote fair competition and whether any other linkage issues arise. In this regard, 18 months from the date of approval of the instant proposal, the MSE should submit a new filing pursuant to Rule 19b-4 under the Act requesting permanent approval of its proposed rule change, as well as a report describing the MSE's experience with the new rule during that 18-month period. The report should include, but not be limited to, the following information (broken down by month) for the 18-month period:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders
- The number, if any, of GTX orders executed after the close of the MSE's regular auction trading session pursuant to the new rule
- The number, if any, of GTX orders that remain unexecuted after the MSE specialist has fulfilled his or her obligations in connection with the new rule
- The number and percentage of GTC orders on the book that were designated "GTX" and thus eligible to be filled
- Whether the MSE marketplace has experienced any increased volatility during the last hour of the 8:30 a.m. to 3 p.m. (CT) trading sessions after the initiation of the new rule
- Whether there were greater (wider) quote spreads during the last hour of the 8:30 a.m. to 3 p.m. (CT) trading session after the initiation of the new rule
- Whether the Exchange or any specialist has given any special guarantees to execute GTX orders over and above the current requirements of the Guaranteed Execution System and the requirements of the new rule

In addition, the Commission expects that the MSE, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission expects the MSE to keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

Finally, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The MSE's proposal merely extends the Exchange's execution guarantee procedures to incorporate GTX orders and the possibility of a 4 p.m. (CT) execution. It does not substantially alter current MSE procedures, nor does it raise issue not already addressed in the order approving the NYSE's OHT system. Accordingly, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that it can be in effect on the date that the NYSE's OHT facility commences operation.

This will permit the MSE to compete with Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change is approved for a temporary period ending on May 24, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

[17] To achieve uniformity, the temporary approval period would run until May 24, 1993, the sunset of the NYSE's OHT facility.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30-3(a)(12) (1988).

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Margaret H. McFarland,
Deputy Secretary.
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[Release No. 34-29296; File No. SR-MSRB-90-2]

Self-Regulatory Organization; Proposed Rule Change; Municipal Securities Rulemaking Board

The Self-Regulatory Organizations; Order Approving Proposed Rule Change of Municipal Securities Rulemaking Board Relating to the Proposed Operation of the Official Statement and Advance Refunding Document—Paper Submission System (OS/ARD) of the Municipal Securities Information Library System.

I. Introduction

The Municipal Securities Rulemaking Board ("MSRB" or "Board") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change [1] on June 22, 1990, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b-4 [3] thereunder. The proposed rule change would permit the Board to establish and operate a central electronic facility, the Municipal Securities Information Library ("MSIL"), through which information collected pursuant to MSRB Rule G-36 [4] would be made available electronically to market participants and information vendors.[5]

Notice of the filing of the proposal was published in Securities Exchange Act Release No. 28197 (July 12, 1990), 55 FR 29436. The Commission received 145 comment letters in response to this notice. Of those comment letters, 113 express support for the MSIL proposal, 28 are in opposition and four oppose the proposal as drafted but provide specific comments for its improvement. The Commission has determined, for the reasons discussed below, to approve the proposal.

II. Background

The creation of a central repository for municipal securities has been under consideration for several years by various sectors of the municipal industry. The Government Finance Officers Association ("GFOA") has supported the concept of a central repository since 1979,[6] and the National Association of State Auditors, Comptrollers and Treasurers ("NASACT") created a task force in 1989 to explore the feasibility of a centralized repository.[7]

Over the last five years, the Board has held many discussions on the need for a central source of official, descriptive information on municipal securities. One area on which the Board focused was the increasing complexity of municipal securities issues,[8] resulting in investor confusion and pricing inefficiencies. After extensive consideration of these and other problems, the Board concluded that the difficulties could be addressed only by ensuring enhanced access for all market participants to official information about municipal securities issues.

At the same time, the Commission was evaluating the adequacy of information dissemination in the municipal securities market. This effort resulted in the Commission's adoption in June of 1989 of Rule 15c2-12 under the Act.[9] Rule 15c2-12 was designed to establish standards for the procurement and dissemination of disclosure documents by underwriters as a means of enhancing the accuracy and timeliness of disclosure to investors in municipal securities. Among other things, the Rule requires underwriters to provide, for a specified period of time, copies of final OSs to any potential customer upon request.

After the Commission's adoption of the rule, the Board continued to consider a facility for the collection and dissemination of OSs and advance refunding documents ("ARDs").[10] The Board appointed a Repository Committee to oversee the development of the project. The Board also contracted with the MITRE Corporation to provide technical advice on the planning and implementation of the facility. The Board, the Repository Committee, the Board's staff and MITRE representatives discussed the repository idea with numerous parties, including investors, issuers, rating agencies, dealers, analysts, private information providers, industry and trade groups, and several parties who had expressed interest in becoming involved in the information dissemination process.

On June 1, 1990, the Commission approved MSRB Rule G-36.[11] The rule requires underwriters to provide OSs to the Board within time frames keyed to the production and delivery requirements of Rule 15c2-12 and applies to all issues, with certain exceptions for issues with limited placements, short-term issues and issues with short-term characteristics. The Board will accept OSs not subject to the rule, if voluntarily provided by underwriters. The Rule also requires underwriters to file with the Board Form G-36, which identifies the issue and its CUSIP number [12] and certain other information.

III. Description of the Proposal

The Board proposed to establish and operate MSIL initially to store and disseminate OSs collected pursuant to Rule G-36. The Board's stated purpose is to provide market participants and information vendors with better access to more descriptive information on municipal securities and their issuers. After extensive consultations with its technical advisor, the MITRE Corporation, the Board decided to use digital imaging technology, which allows the MSRB to accept paper copies, in any format, capture digitized electronic images of the documents and reproduce exact copies of the original.

The Board noted both practical considerations (comparatively inexpensive, long-term storage) and legal constraints (the Board is prohibited from dictating the form or content of issuer documents) [13] in describing its choice. Two initial outputs will be produced: single printed copies of OSs and ARDs and a magnetic tape containing all documents imaged in one day. Within three business days of receipt of new issue documents, the system will have completed its processing and will make the documents and an index available in both tape and paper form. Documents received by the Board will continue to be available at its public access facility ("PAF") on the day they are received.[14] The Board will also provide an interim list of documents processed each day by 9:00 a.m. the following business day.

Electronic storage involves storing images or characters on electronic devices controlled by computers. The digital imaging process converts the image of each page of a paper document into digitized code. The page images are stored in this form on computer readable media such as optical disks. With the assistance of a computer, the images of the pages then can be retrieved and printed with a very high quality of reproduction, similar to that achieved by top-quality photocopying machines. The process allows for electronic storage of documents, while preserving the graphic characteristics of each page (styles and sizes of type, page structure, etc.). The digital imaging process is now used by many companies and government agencies for efficient storage, access and reproduction of paper documents.[15]

The Board anticipates that users of the MSIL system will be value-added vendors, municipal securities professionals and individual investors. Several private information vendors currently provide a variety of information services to the market, including sales of OSs as well as summary information. The Board repeatedly has asserted that it will not summarize documents or sell document summaries, as is now done by private sources.[16]

A. Computer Index

One of the MSIL specifications established by the MSRB is that the system include a computer-based index of the system's contents. The MSRB will require the system contractor to develop an MSIL system index to track all documents received by the Board efficiently and access them quickly. In addition, because a number of documents may relate to the same issue (*e.g.*, an OS, ARD and continuing disclosure information ("CDI")),[17] the computer index also must record relationships between documents. The basic concept is that of an electronic "file folder"—all documents pertaining to an issue will be related through the index. This will facilitate the identification of documents that relate to specific issues.

B. Data and System Integrity [18]

The Board established quality standards that are intended to ensure that every document page is imaged and that the printed version is as legible as the original. The system contractor will apply exception procedures to pages of documents containing poorly printed text, foldouts, the use of color, and grey or halftone art work. In general, the imaging technology employed will store any information contained on a page with the same degree of accuracy as a photocopying machine. The system contractor will develop procedures in its quality assurance plan to be followed to ensure that these standards are met. MSIL also will retain paper copies of inputted documents for one year, then discard them.

The Board will require the system contractor to assure the reliability of the system, including a redundancy of critical hardware components, protection with a power line filter, an uninterruptible power supply and the development, implementation of a maintenance plan for all hardware components that will assure maximum availability.[19] The Board believes that the MSIL system will be reasonably designed to handle the estimated flow of documents through the system.

With respect to security, the MSRB will require the system contractor to have a written security plan that addresses physical, technical, personnel and administrative security.[20] The administrative security program will include, among other things, employee passwords that change at least once every six months, storing copies of critical data off-site and random unannounced security audits by a designated security officer. The personnel security program will include, among other things, the development, implementation, maintenance and enforcement of staff user access privileges. The physical security program will include, among other things, a dedicated locked room for the magnetic and optical storage devices. The technical security program will include, among other things, audit programs, logging access to all system activities and network protection from intrusion or hackers. In addition, off-site storage of backup media, as well as a catastrophic failure plan, will be instituted. The goal of the plan will be to relocate and make the MSIL system operational within 24 hours of a catastrophic failure.[21] The Board believes that the MSIL system will be reasonably designed to prevent external and internal physical attacks on the system.

C. Costs and Pricing

Since 1976, the Board has required underwriters to pay a fee to the Board based on the par amount of municipal securities underwritten. This fee has ranged from $.01 to $.05 during this period. The Board last raised the fee from $.01 to $.02 in October, 1989. The fee increase was based on the Board's declining fund balance and expected expenses to plan the MSIL system.

The Board expects to fund MSIL's operation through a combination of user fees and Board funds. The Board stated that, in planning the MSIL system, it believed that the average annual cost of contracting with a service provider for this facility would be $.01 or less per $1,000 par value of the bond based on current bond volume. The MITRE

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[1] File No. SR-MSRB-90-2.
[2] 15 U.S.C. 78s.
[3] 17 CFR 240.19b-4.
[4] Rule G-36 requires underwriters to provide Official Statements ("OS") to the Board within certain timeframes. See Securities Exchange Act Release No. 28091 (May 31, 1990), 55 FR 23333.
[5] The proposed rule change was filed simultaneously with two other rule changes: File No. SR-MSRB-90-3, Securities Exchange Act Release No. 28198 (July 12, 1990), 55 FR 29067, which would amend Rule G-36 to require underwriters to deliver advance refunding documents to the MSRB; and SR-MSRB-90-4, Securities Exchange Act Release No. 29199 (July 12, 1990), 55 FR 29091, which would permit the Board to establish and operate a central facility, the Continuing Disclosure Information/Electronic Submission ("CDI/ES") System, to accept voluntary submission of continuing disclosure information electronically. See Securities Exchange Act Release No. 29200 (June 13, 1991), approving File No. SR-MSRB-90-3.
[6] Letter from Jeffrey Esser, Executive Director, GFOA, to Jonathan G. Katz, Secretary, SEC, dated September 24, 1990 ("GFOA Letter"). The GFOA, however, opposes the proposal under consideration.
[7] NASACT, Municipal Disclosure Task Force Report (May 25, 1990).
[8] *E.g.*, complicated put and call provisions.
[9] 17 CFR 240.15c2-12. See Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799.
[10] ARDs include information regarding a change in the credit of the security brought about by an advance refunding.
[11] See Securities Exchange Act Release No. 28091 (May 31, 1990), 55 FR 23333.
[12] The Committee on Uniform Securities Identification Procedures ("CUSIP") number is an identification number assigned to each issue, usually printed on the face of each individual certificate of the issue. The numbers are intended to help facilitate the identification and clearance of municipal securities.
[13] See discussion of the Board's authority below.
[14] See letter from Diane G. Klinka, General Counsel, MSRB, to Elizabeth MacGregor, Attorney, Market Regulation Division, SEC, dated March 15, 1991.
[15] For example, copies of individual credit card sales receipts often are imaged and reprinted for inclusion with the monthly bill.
[16] The Board designed the facility to accommodate foreseeable changes in information dissemination technology and municipal securities disclosure practices without requiring the initial "imaging" system to be abandoned or redesigned. As an example, the technology chosen will allow amendments to OSs or ARDs to be accommodated in the system. In addition, some issuers have expressed an interest in providing documents to the facility that later could be incorporated by reference in an OS or other document submitted to the facility. The MSIL system will be designed to accommodate "modular submissions," in which separately submitted documents are combined into one document for dissemination. This should allow a quick evolution to accommodate issuers wishing to take these approaches. The Board intends that the MSIL system will have the flexibility to develop various services in which documents may be made available in formats different from the daily computer tape or paper copies.
[17] The voluntary collection of CDI is the subject of a separate filing. See SR-MSRB-90-4.
[18] The Board is required to report to the Commission on the integrity of the MSIL system before the system is permitted to operate. Specifically, the system should be tested for capacity to confirm that it can accept the volume that the MSRB expects to receive. The MSRB should submit to the Commission a representation that the system has been so tested.
[19] Additional information is provided in section C.11.1.12 of the Request for Proposal ("RFP").
[20] Moreover, when the MSIL system becomes operational, this plan should be made available to the Commission staff.
[21] Further information is available to Sections C.11.4, C.11.5, and C.11.8 of the RFP and Amendment No. 1 to the RFP.

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Corporation provided estimates to the Board that ranged between $700,000 and $1 million, depending on the volume of documents that were processed. The Board believes that the current public access facility should cost approximately $200,000–$250,000 per year.

The Board plans to use its general revenues for the collecting, indexing and storing costs of MSIL system documents. The Board stated in its filing that, upon the Commission's approval of the MSIL system, the Board believes another $.01 fee increase (bringing the total fee to $.03) will be necessary to cover MSIL system expenses. The Board does not foresee additional fee increases based on MSIL system expenses. The costs of providing paper copies and the daily tape will be paid for by user fees. The Board believes that any further enhancements should be self-supporting.

Based on the information currently available to the Board, the Board anticipates charging approximately $15.00 for a paper copy of an OS or an ARD. The daily tape will be provided on an annual subscription basis of approximately $12,000. Postage or delivery fees also will be added to the tape or document price. Based on an average of 25 documents per daily tape, this will result in a per document cost of less than $2.00 per OS or ARD. The Board believes that subscribers will include users interested in maintaining their own comprehensive libraries for private use and vendors who wish to resell the documents through their own distribution channels or summarize, abstract or extract the documents and sell the information in a more compact form. The Board stated in its filing that it will review the MSIL system prices annually to ensure that the MSIL system dissemination costs are paid for from user fees. The Board does not expect to make a profit from the MSIL system.

D. Standards for System Contractor

The Board has stated that it will ensure that the MSIL system makes the information available to all parties on an equal basis. Information acquired from the Board also may be used, resold or disseminated by any person without restriction and without payment of additional fees.[33]

Any organization hired by the Board to operate the MSIL system will be subject to detailed oversight by the Board, both to ensure that information is provided to all parties on an equal basis and to ensure that operations proceed in a cost-effective manner. The Board will not permit the organization to use this access for its own benefit in the market. To ensure this, the Board's contract with the organization will prohibit the operator from brokering or dealing in municipal securities or engaging in municipal securities information services not covered by the contract that create the appearance of a conflict of interest with the purposes of the MSIL system. All MSIL system revenues collected by the system contractor will go directly to the Board to defray operating expenses. The system contractor will receive its MSIL system income solely from the Board.

[33] This is similar to the requirement in Section 35A of the Securities Exchange Act, which applies to the retransmission of EDGAR information. See 15 U.S.C. 78kk.

IV. Summary of Comments

The Commission received a total of 145 comment letters on the proposed rule changes. Of those comment letters, 113 express support for the MSIL proposal, 28 are in opposition and four oppose the proposal as drafted but provide specific comments for its improvement.[34] In addition, the MSRB responded to the comments by letter.[35] A separate summary of comments was prepared and is available in the public file. The specific issues addressed by commentators will be discussed in the appropriate sections of this order.

V. Discussion

The Commission has determined to approve the Board's proposed rule change because it believes that the proposal is consistent with the Act, and in particular, section 15B(b)(2)(C), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and processing information with respect to transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest.[36] Most of the favorable comments, as discussed below, cited a need for greater information dissemination in the municipal securities market. Moreover, the Commission believes that the MSIL system will provide a vastly superior mechanism for disseminating this information than the PAF or other paper-based systems could. The Commission agrees that there exists a lack of adequate information regarding municipal issuers and the terms of municipal securities in the market, and that increased availability of offering statements and other disclosure items already voluntarily prepared by municipal issuers would increase efficiency and fairness in the marketplace and provide needed protection to investors from sales practice fraud and manipulation. The Commission believes that MSIL will make municipal securities information more readily available, resulting in increased market efficiency and investor protection.

[34] The Commission received comments from 20 broker-dealers; four issuer associations (See GFOA Letter and letters to Jonathan G. Katz, Secretary, SEC, from John T. McEvoy, Executive Director, National Council of State Housing Agencies, dated September 24, 1990 ("NCSHA Letter"); D. Kathryn Fern, President, National Council of Health Facilities Finance Authorities, dated September 24, 1990 ("NCHFFA Letter"); Mary Ellen Withrow, President, NASACT, dated September 24, 1990 ("September NASACT Letter"); and Edward Renfrow, President NASACT, dated January 17, 1991 ("January NASACT Letter")); 22 issuers; four municipal securities information vendors, all of whom are potential competitors of the Board; 13 arbitrators; 24 investors; seven trustees; three bond lawyers; 11 municipal securities analysts; the Public Securities Association (See letter from William W. Moore, Chairman, Municipal Securities Division, Public Securities Association, to Jonathan G. Katz, dated September 20, 1990 ("PSA Letter")); the National Association of Bond Lawyers (See letter from Stanley Keller, Chairman and Paul S. Maco, Director, National Association of Bond Lawyers, to Jonathan G. Katz, dated October 10, 1990 ("NABL Letter")); the American Bankers Association (See letter from Sarah A. Miller, Senior Government Relations Counsel, American Bankers Association Corporate Trust Committee, to Jonathan G. Katz, dated August 8, 1990 ("ABA Letter")); the Southern Municipal Finance Society (See letter from Robert W. Doty, Chairman, Southern Municipal Finance Society, to Jonathan G. Katz, dated September 20, 1990 ("SMFS Letter")); Doty Research and Development Company (See letter from Robert W. Doty, President, Doty Research and Development Company, to the Honorable Richard C. Breeden, Chairman, SEC, dated September 20, 1990 ("Doty Letter")); the National Federation of Municipal Analysts (See letter from the National Federation of Municipal Analysts Board of Governors Executive Committee, to Jonathan G. Katz, dated August 15, 1990 ("NFMA Letter")); the North American Securities Administrators Association (See letter from Sherwood N. Cook, Chairman, North American Securities Administrators Association Municipal Securities Committee, to Jonathan G. Katz, dated September 7, 1990 ("NASAA Letter")); the National Association of Securities Dealers (See letter from Frank J. Wilson, Executive Vice President and General Counsel, National Association of Securities Dealers, to Jonathan G. Katz, dated December 24, 1990 ("NASD Letter")); and one member of Congress (See letter from the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, to the Honorable Richard C. Breeden, dated August 17, 1990 ("Dingell Letter")).

The Board received five comment letters apparently in response to the SEC's Notice. In addition, the Board received 16 comment letters in response to its Request for Comments on the proposal. The Board described those comments and responded to them in its submission to the Commission, which was described in the notice of the proposed rule change published by the Commission. See Securities Exchange Act Release No. 28197 (July 12, 1990), 55 FR 29436.

[35] See letter from Diane G. Klinke, General Counsel, MSRB, to Kathryn V. Natale, Assistant Director, Division of Market Regulation, SEC, dated October 11, 1990.

[36] The Commission conditions approval of the proposed rule change upon the representation by the MSRB that the Board will not offer any value-added dissemination services in connection with the MSIL system prior to filing a proposed rule change with the Commission for review under Rule 19b-4. In addition, before the system becomes operational, the Board must: (1) Report to the Commission on the integrity of the MSIL system; (2) file the annual subscription fee for the daily tape, the price for individual copies of OSs and any underwriter fee increase with the Commission for review under Rule 19b-4; and (3) file any substantive changes to the system with the Commission for review under Rule 19b-4. Finally, before the system becomes operational, the system contractor's written security plan should be made available to the Commission.

The MSRB will be required to report periodically prior to initiation of the service on any material developments. It must also provide a report on the operation of the system one year following intiation. The operational report should discuss in detail demand for the system, including a list of subscribers to the daily tape and a tally of requests

Continued

A. The Need for Enhanced Information and Benefits of MSIL

1. *Comments.* In general, the commentators, representing a diverse range of participants in the municipal securities market, agree that accurate, complete and timely disclosure is key to the efficient operation of the municipal securities market. Many commentators stated that they believe, however, that there is a lack of available and accessible information in the municipal market.[26] Many commentators complained that official statements are often difficult, and sometimes impossible, to obtain, and that the lack of availability and access to accurate information results in unfair and inefficient pricing.[27] One commentator defined the market's inability to provide efficient access to available information as a "chronic problem," and noted that, because the secondary market for municipal securities does not enjoy a reputation for great liquidity, investors demand an additonal increment of yield to compensate them, which increases borrowing costs.[28] Another commentator stated that the "more knowledge investors have about what they're buying, the lower the 'risk premium' they'll require."[29] This commentator therefore believes that "the broadest dissemination possible is the wisest course * * * [and] wholeheartedly supports and encourages the MSRB's initiatives."[30] Two issuer associations supporting the proposal believe that the MSIL system would benefit the market significantly by providing a centralized source for information on municipal securities issues.[31]

"One clear advantage of the MSRB repository is the assurance that there will be an archive for the documents it collects."[32] Another commentator noted that, in addition to permanence, a Board-sponsored respository would be "ultimately more accessible to the public than one sponsored by any private vendor where profitability is a primary motive."[33] This commentator believes that "[t]he best reason supporting the role of the MSRB as the library's sponsor is that the scope of the project can be expanded."[34] Another commentator believes that the MSIL system "would greatly enhance the marketability of . . . [municipal] securities by making appropriate credit risk information more accessible * * *."[35] Another commentator stated that the benefits of the Board's proposed repository "are substantial," and that "market disclosure may reduce the cost of * * * bond issuance by increasing purchaser confidence * * *."[36]

Furthermore, several commentators contended that not all dealers (or other market participants) have equal access to municipal securities information and that there is a "bona fide need" among dealers for better information.[37] One commentator stated that certain market participants currently have substantial information advantages and that a broadened information base will minimize this problem.[38] In addition, one commentator noted that "[i]t is also imperative that the facility providing the information be a neutral one that is available on equal terms to all users * * *."[39] Many commentators believe that by offering one central, public source for information, the MSIL system will increase and ensure access to complete and accurate information in a fair and non-discriminatory manner, and will result in fairer prices in both the primary and secondary markets.[40]

In a letter to SEC Chairman Breeden, Chairman Dingell of the Energy and Commerce Committee of the U.S. House of Representatives stated that his Committee is conducting a review of the adequacy of municipal securities industry disclosure and other practices to evaluate the need to address such

for individual copies of OSs. The report should state funds expended in operating the system for the first year, discuss any problems the MSRB has encountered in operating the system and any suggestions from users or potential users for improvements. The report should indicate the extent to which private information vendors have been able to interface with the system and detail suggestions by private vendors to improve the system. The report should discuss any system enhancements the MSRB has proposed or expects to propose.

[26] *E.g.*, letter from John W. Waechter, Executive Vice President, William R. Hough & Co., to Jonathan G. Katz, Secretary, SEC, dated July 30, 1990 ("Waechter Letter").

[27] *See, e.g.*, letters to Jonathan G. Katz, Secretary, SEC, from Daniel M. Hazard, Vice President, Eaton Vance High Yield Municipals Trust, dated July 16, 1990 ("Hazard Letter"); Robert J. Beck, General Principal, and Victoria Rupp Westall, C.P.A., C.F.A., Municipal Analyst, Edward D. Jones & Co., dated July 25, 1990; and Rachel Dennis, Vice President and Portfolio Manager, Aegon Insurance Group, dated July 31, 1990.

[28] Letter from Richard Evans, Finance Director, City of Savannah, Georgia, to the Honorable Richard C. Breeden, Chairman, SEC, dated July 16, 1990 ("Evans Letter").

[29] Letter from Leslie Nelman, Vice President, and Mark Macdonald, Director, Farmers Insurance Group of Companies, to Jonathan G. Katz, Secretary, SEC, dated August 2, 1990 ("Nelman Letter").

[30] *Id.*

[31] NCHFFA and NCSHA Letters.

[32] GFOA Letter.

[33] Letter from R. Duke McElroy, Duke McElroy & Company, to Jonathan G. Katz, Secretary, SEC, dated September 19, 1990 ("McElroy Letter"). See also letter from James W. Perkins, Palmer & Dodge, to Jonathan G. Katz, Secretary, SEC, dated September 21, 1990 ("J.W. Perkins Letter").

[34] McElroy Letter. For example, the commentator suggested that MSIL could include authorizing bond resolutions, trust indentures and current financial statements.

[35] Letter from James C. Boakes, to the SEC, dated September 19, 1990.

[36] NCHFFA Letter. This commentator bases it support of the MSIL system on the Board's representations that it will not be involved in the form and content of disclosure.

[37] Waechter and Nelman Letters and letter from F.E. James, Ph.D., James Investment Research, to Jonathan G. Katz, Secretary, SEC, dated July 24, 1990.

[38] Letter from H. Keith Brunnemer, Jr., Chairman, First Charlotte Corporation, to the Honorable Richard C. Breeden, Chairman, SEC, dated July 9, 1990. See also letters to the Honorable Richard C. Breeden, Chairman, SEC, from Richard F. Chapdelaine, Chairman of the Board, and Richard C. McDermott, Jr., President, Chapdelaine & Co., dated June 8, 1990 ("Chapdelaine Letter"); Robert J. Ellwood, President, R.W. Ellwood & Co., Inc., dated June 11, 1990; E.J. Bowler, Senior Vice President and Treasurer, West American Bank, dated August 10, 1990; and John E. Gilchrist, Chairman and Senior Managing Director, First Chicago Capital Markets, Inc., dated August 21, 1990.

[39] NFMA Letter and letter from John D. Boritzke, C.F.A., Vice President, M & I Investment Management Corp., to Jonathan G. Katz, Secretary, SEC, dated July 30, 1990. See also letter from Steven Goldspiel, President, Disclosure, Inc., to Jonathan G. Katz, Secretary, SE, dated August 24, 1990 ("Goldspiel Letter").

[40] See, *e.g.*, Nelman and Hazard Letters and letters to Jonathan G. Katz, Secretary, SEC, from Thomas R. Hackett, Senior Vice President, Harris Trust Bank of Arizona, dated July 26, 1990; John L. Bowles, Vice President and Senior Investment Officer, First Virginia Banks, Inc., dated July 13, 1990; and Samuel A. Ramirez, President, Samuel A. Ramirez & Co., dated July 11, 1990.

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issues this year. Chairman Dingell stated that "investors in municipal securities, particularly in the wake of WPPSS, deserve better protections than they have had heretofore." [41]

The American Bankers Association Corporate Trust Committee ("ABA") stated that the MSIL system is of "vital concern" to its membership, and that the MSIL system would "go a long way toward satisfying the information requirements of the marketplace." [42] The National Association of Securities Dealers ("NASD") stated that "there currently exists a critical need for improved access to information about municipal securities issues, and [the NASD] feel[s] that the MSIL will address this need, providing a centralized facility available on an equitable basis to both individual users and information vendors." [43]

A significant minority of commentators questioned whether MSIL serves a need in the municipal securities market. A number of issuers submitted virtually identical letters in which they stated that the MSIL and CDI systems "are overreactions to perceived problems and they should not be approved in their present form." [44] These same commentators believe that the Board's proposals "seek to fill an information gap that does not exist . . . [and there] is no crisis in the municipal market that warrants making untimely decisions." [45] Although the GFOA acknowledged that disclosure problems have been identified concerning information in the secondary market, it does not believe that "there is any evidence of crisis in the market that requires action immediately." [46]

Furthermore, these commentators stated that whatever the benefits to the market in terms of enhanced information disclosure, they would come at too high a cost. A number of commentators believe that the technology the MSRB has adopted for the proposed MSIL has not been shown to be necessary.[47] Several commentators believe that the Board has failed to do a detailed cost/benefit analysis, with a detailed consideration of alternatives to MSIL.[48] For example, the National Association of Bond Lawyers ("NABL") suggested that it may be preferable to build a linkage among the nationally recognized municipal securities information repositories ("NRMSIRs"). The NABL believes it is appropriate to require the NRMSIRs to share, at cost, OSs and to open the Board's OS files to them.[49]

Many issuers also expressed concern that the cost of the MSIL system will be financed by an assessment on underwriters that will be passed through to issuers and stated that, should MSIL be implemented, the direct beneficiaries of the system should pay for it.[50] In addition, two commentators claimed that the ability of users to support the facility has not been demonstrated [51] and questioned how the system will be financed if it is not self-supporting.[52]

2. *Commission Analysis.* The Commission concurs with the conclusion of numerous commentators that there currently are significant inadequacies in the availability of municipal securities disclosure. Currently, there are over $636 billion of outstanding municipal securities issues issued by more than 50,000 state and local government units.[53] Months or years after an offering of municipal securities, investors and even dealers may have difficulty in accessing information regarding either the terms of a municipal security or the municipal issuer. As a result, the Commission is aware of instances in which there has been substantial confusion in the market over items as critical as the call provisions for an issue of municipal securities.[54] Similarly, the lack of availability of offering statements or other disclosure items significantly decreases the ability of an investor to protect herself from misrepresentations or other fraudulent activities by municipal securities dealers' registered representatives. Finally, the Commission concurs with the conclusions of a number of commentators that the lack of an efficient and timely means to access disclosure regarding municipal securities may competitively disadvantage dealers who did not participate in the initial underwriting syndicate or otherwise do not have established relationships with the particular municipal issuer in question.

Moreover, the Commission believes that current market conditions underline the importance of efforts to enhance the availability of disclosure information. For example, regional economic pressures in many areas of the country have limited the availability of income and sales tax revenues and have contributed to a decline of the value of residential and commercial properties built with municipal financing. In such an environment, availability of disclosure statements becomes especially important to investors and potential investors in these securities. The MSIL system could be an important mechanism to enhance the timeliness and availability of disclosure information in the market.

With respect to technology, the Commission also believes that the Board made a responsible choice that will result in relatively small costs.[55] The MSIL system could have adopted, among other things, paper, microform or electronic storage. The Board concluded that paper-based storage would be unacceptable because: (1) Reproduction of paper documents requires handling that eventually would destroy the documents; (2) documents would have to be printed in a manner to assure that they would not physically age for the life of the bonds; (3) paper would not encourage or facilitate the development of information dissemination services by private vendors; and (4) paper requires a great deal of storage space. Likewise, the Board concluded that microform-based storage is unacceptable because: (1) It does not encourage or facilitate information dissemination by private vendors; (2) it is inflexible to adjust to changes in technology of document storage and dissemination and to changes in disclosure practices; and (3) original document quality problems can prevent generation of a good copy. Electronic storage involves storing images or characters on electronic devices controlled by computers. Electronic storage is highly flexible and can greatly improve the accessibility of information. Of the choices, electronic storage is clearly the most desirable. The Commission has received no indication that a lower cost system could have provided the necessary functionality for the system.

Several commentators expressed concern that the additional fees to finance the MSIL system will be inappropriately passed through to issuers rather than to the users of the system. The Commission has no basis to conclude that underwriters will, or even could, recover the costs of the system by increasing the underwriting spread charged issuers, or that to the extent these costs are itemized, the underwriting spread will not be equally reduced. Indeed, it appears at least as likely in terms of overall compensation that the underwriters will either recover those costs from their sales to customers or simply be forced, based on competitive forces, to absorb those costs. Even if underwriters are able to pass on the costs of MSIL to issuers without lowering their spread, that pass-through would be no different than costs incurred as a result of any other rule or regulation imposed by the SEC or the MSRB. In the final analysis, therefore, the fees assessed are consistent with the Act if the benefits of MSIL outweigh the costs to municipal securities dealers, issuers or customers. For the reasons stated above, the Commission believes that all market participants would benefit from the MSIL system. Moreover, the result of more efficient provision of disclosure information should be lower interest cost for resulting increased efficiency, fairness and public confidence in the municipal securities market.

As described above, some commentators expressed concern that the system would be funded through MSRB general revenues rather than through user fees.[56] The Board stated in its proposal that it plans to use general revenues for collecting, indexing and storing MSIL system documents. The costs of paper copies and the daily tape would be paid for through user fees. The Commission notes that several commentators, even those opposed to an electronic system, have asked for an improved index to permit better access to the information accumulated by the MSRB. Part of the funds expended by the MSRB will cover this aspect of the MSIL system. Finally, the Board will incur many of the expenses associated with the MSIL system (*e.g.*, costs of document collection, storage and information indexing) solely as a result of operating the PAF.[57] Therefore, the Commission concludes that the projected costs of developing and operating the MSIL system are reasonable and justified and will not unduly burden any sector of the municipal securities market.

B. Competition With Private Vendors

1. *Comments.* A number of commentators believe that the MSIL system will reduce the costs of entry into the information vendor business. They believe that this will benefit the municipal securities marketplace by encouraging competition among vendors, which should result in improved information products and the development of new products and services.[58] One commentator asserted that some information from private vendors is inaccurate [59] or is withheld from certain subscribers.[60] Several commentators suggested that the Board will offer the longevity necessary to provide an archival service so that changing economic conditions will not affect the level of service provided by the MSIL system.[61]

A number of other commentators believe, however, that it is inappropriate for a quasi-governmental entity to compete in the collection, storage and dissemination of information.[62] Despite the Board's assertion that MSIL will in fact be pro-competitive because it will provide a ready source of OSs to other information vendors who wish to enter this market, several commentators believe that, in fact, the Board will be a direct competitor to them, with the ability to sell subsidized copies of OSs to their customers at the same price at which the Board would sell OSs to the vendors.[63]

2. *Commission Analysis.* Having concluded that MSIL will have a substantial beneficial impact on the market, the Commission must assess its effect on competition. Section 15B(b)(2)(C) of the Act requires that, before approving Board rules, the Commission find that the proposed rules do not "impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title." [64] The

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[41] Dingell Letter.

[42] ABA Letter.

[43] NASD Letter.

[44] Letters to Jonathan G. Katz, Secretary, SEC, from Arthur R. Lynch, Director of Finance, City of Glendale, Arizona, dated September 21, 1990; M.E. Poole, Director, Loudoun County, Virginia, dated September 27, 1990; Ruth M. Levine, Director of Finance, City of Milford, Connecticut, dated September 18, 1990; Paul E. Haney, Director of Finance, Monroe County, New York, dated September 18, 1990; William J. Cochran, Director of Finance, City of Hartford, Connecticut, dated September 19, 1990; Ronald A. Morris, Budget and Accounting Manager, New Castle County, Delaware, dated September 20, 1990; Arthur D. Heilman, Director, Bureau of Revenue, Cash Flow and Debt, Commonwealth of Pennsylvania, dated September 24, 1990; Richard G. Hilde, City Treasurer, City of Long Beach, California, dated September 24, 1990; George Cranmer, City Controller, City of Houston, Texas, dated September 26, 1990; and E.J. VanOverbeke, Finance Director/City Clerk, City of Eagan, Minnesota, dated September 28, 1990.

[45] *Id.*

[46] GFOA Letter.

[47] See GFOA Letter.

[48] See NABL Letter.

[49] In addition, NABL stated that the MSRB should be designated a NRMSIR so that, by submitting OSs to the MSRB, underwriters may reduce their delivery obligations under Rule 15c2-12. Both the NABL and the GFOA support the idea of a Commission-sponsored advisory committee to provide a forum to discuss disclosure issues. See NABL and GFOA Letters.

[50] See, e.g., GFOA Letter and letters to Jonathan G. Katz, Secretary, SEC, from Edward J. Mazur, C.P.A., Comptroller, Commonwealth of Virginia, dated September 26, 1990 ("Mazur Letter"); and Lynn Hampton, CPA, Chief Financial Officer, Washington Metropolitan Airports Authority, dated September 24, 1990.

[51] September NASACT Letter.

[52] Mazur Letter.

[53] PSA, An Investors Guide to Tax-Exempt Securities 1, 11 (1991).

[54] See Securities Exchange Act Release No. 28100 (September 22, 1990), 55 FR 37775 at 37781.

[55] For example, on a $50 million issue, the increase in underwriter fees attributable to MSIL would be approximately $300.

In addition, it could be argued that MSIL will reduce the cost to the market of the creation of redundant data bases by investment banks, institutional investors and others who collect information on the municipal securities market for their own use.

[56] It is important to point out that the Board is required to file any new or modified fees to the Commission for review under section 19(b)(1) of the Act. This is also true of any system changes to MSIL the Board might wish to implement in the future.

[57] It should be noted that even those commentators critical of MSIL generally were supportive of the PAF. See, *e.g.*, GFOA Letter and letters to Jonathan G. Katz, Secretary, SEC, from J. Kevin Kenny, President and Chief Executive Officer, J.J. Kenny Co., Inc., dated September 24, 1990 ("Kenny Letter"); and Joseph V. Riccobono, Executive Vice President, Securities Group, American Banker-Bond Buyer, dated September 21, 1990 ("AB-BB Letter").

[58] See *e.g.*, PSA, J.W. Perkins and Evans Letters and letters to the Honorable Richard C. Breeden, Chairman, SEC, from the Honorable Harlan E. Boyles, Treasurer, State of North Carolina, dated June 26, 1990; C.M. Perkins, Associate General Manager, Salt River Project, dated July 17, 1990; and Thomas Sexton, Managing Director, First Boston, Dated July 20, 1990; letters to the Honorable Edward H. Fleischman, Commissioner, SEC, from H. Keith Brunnemer, Jr., Chairman, First Charlotte Corporation, dated July 9, 1990; and Walter P. Stern, Chairman of the Board, Capital Group International, Inc., dated July 10, 1990.

[59] Letter from Robert J. Martin, Vice President, Continental Asset Management, to Kathryn Natale, Assistant Director, Market Regulation Division, SEC, dated September 21, 1990.

[60] See Chapdelaine Letter, in which the commentator, a broker's broker and a competitor of a Kenny affiliate, described being denied access to certain Kenny information.

Kenny responded that it terminated several contracts for access to its Kennybase municipal securities database, a service separate from its NRMSIR operation, that is available by subscription. The contracts terminated were with brokers' brokers who, according to Kenny, had been redistributing the information to customers in violation of the subscription contract and terminated prior to Kenny's designation as a NRMSIR. *See* letter from David Francescani, Executive Vice President and General Counsel, J.J. Kenny, Co., Inc., to the Honorable John D. Dingell, dated August 21, 1990.

[61] Evans Letter and letters to the Honorable Richard C. Breeden, Chairman, SEC, from David E. Hartley, Managing Partner, Stone & Youngberg, dated July 11, 1990; John M. Gunyou, City Finance Officer, City of Minneapolis, dated July 13, 1990; David J. Master, dated August 21, 1990; and Elizabeth A. Roistacher, Professor, Queens College of The City University of New York, dated August 10, 1990; and letter from Joan L. Lavell, Senior Vice President and Director of Compliance, Lovett Underwood Neuhaus & Webb, Inc., to Jonathan C. Katz, Secretary, SEC, dated August 29, 1990.

[62] Kenny, GFOA, September NASACT, Mazur, NABL and AB-BB Letters.

[63] See Kenny Letter.

[64] Section 15B(b)(2)(C) of the Act. *Cf.* Bradford Nat'l Clearing Corp., v. SEC, 590 F.2d 1065 (D.C. Cir. 1978); Clement v. SEC, 674 F.2d 641 (7th Cir. 1982).

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Commission has examined closely the potential anti-competitive effect of the Board's proposal and has determined that the proposed rule change does not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[65]

The Commission believes that the MSIL system will foster competition in the dissemination of municipal securities information by reducing the cost of entry into the market.[66] Vendors will no longer need to invest in the infrastructure and facilities necessary to collect and store official disclosure documents. Moreover, new entrants will not be confronted with the unwillingness of some underwriters or issuers to supply copies to entities other than the already established NRMSIRs. Thus, all vendors will have equal access to these public documents and will be able to develop whatever information products they believe will be marketable.

Some of the commentators appear to be operating on the basic misassumption that the Commission's action today will require that information be channelled exclusively through the MSIL system. Despite the claims of certain commentators, the Board will not have a monopoly on the information contained in MSIL. The incentives created by Rule 15c2-12 to provide OSs to a NRMSIR should continue to provide a ready source of OSs for vendors.[67] This is borne out by the Board's experience with the PAF to date. From the time the PAF began operation on June 1, 1990, until May 21, 1991, 402 visits were made to the facility, and three major value-added vendors (who operate the three existing NRMSIRs) accounted for all but 25 of the visits. This would appear to indicate that while the PAF provides vendors with an opportunity to acquire missing OSs, on the whole, those vendors have been successful in obtaining OSs voluntarily. Therefore, it would appear that, despite the Board's collection efforts, the vendors' long-established relationships with underwriters and issuers remain in place. MSIL should, therefore, be a source of documents to new entrants to the market without adversely affecting the ability of the existing vendors to acquire those statements directly.

As discussed above, several commentators, particularly vendors, believe that by operating the MSIL system, the MSRB will compete unfairly with established private sector information vendors. In analyzing these contentions it is important to focus on the functions MSIL will, and will not, provide. As part of its agreement with its MSIL system contractor, the MSIL system will provide individual paper copies of system documents, upon request. While certain vendors also currently provide this paper copy service, the Board will be charging an amount higher than current NRMSIRs charge.[68] The Commission, therefore, does not believe that the MSIL system will usurp the opportunity of the current NRMSIRs to market paper documents, but rather will serve as an assurance to the market that a comprehensive collection always will be available. It also will promote the activities of NRMSIRs by assuring that the NRMSIRs can obtain paper copies to complete their collection.[69]

In addition, the daily tape provided by the MSRB will contain every document entered into the system on a specific day. It will not be organized to individual user needs. The imaging technology requires more computer data storage capability for a complete collection of documents than is normally possessed by most end-users. It is unlikely that end users would prefer a daily tape of imaged documents in no particular order to privately offered alternatives that would be designed for end user needs, indexed for maximum efficiency and capable of being used on in-house equipment.

In short, the MSIL system is intended to foster "value-added" information products. Vendors will be able to resell whole documents and/or information from those documents (*e.g.*, extracts, summaries) in any format the vendor chooses (*e.g.*, paper, CD Rom, optical disks). The daily tape can be translated into character-coded form to allow for computerized text searches of documents. The Board believes that demand for new products will occur as market participants seek to ensure that they have full access to the information found in the MSIL system database and will be shaped by availability of documents in electronic format. Thus, rather than monopolizing the field, MSIL will simply provide raw data which will increase the ability of vendors to compete in the provision of value-added services.[70]

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[65] Several commentators also believe that operating the MSIL system could subject the Board to antitrust liability. One stated that the "sale of whole documents apart from any secondary value-added service, constitutes a well-established market served by . . . private vendors." GFOA Letter. See also SMFS Letter and Doty Letter, stating that the MSIL system "will discourage competition in, and will likely constitute a monopoly over, the dissemination of whole documents." Because exemptions from the antitrust laws are available to self-regulatory organizations ("SROs") "Only if necessary to make the . . . Act work, and even then only to the minimum extent necessary," these commentators argued that the broad proposal by the MSRB may not be protected under the exemptive provisions of the Act. See Kenny Letter, citing Silver v. New York Stock Exchange, 373 U.S. 341, 357 (1963).]

The Commission is unpersuaded by this argument. The Commission believes that MSIL falls within the scope and purposes on the Act. (See Section C below.) As such, the MSIB's actions are subject to the antitrust exemption for self-regulatory organizations. See U.S. v. Nat'l Ass'n of Sec. Dealers, 422 U.S. 694, 733 (1975) and Gordon v. New York Stock Exchange, 422 U.S. 659, 691 (1975). Moreover, for the reasons discussed above, the Commission does not believe that the MSRB's entrance into the whole document market will have a significant adverse impact on any private vendors' provision of these services.

[66] This position is supported by comment letters the Commission received from two information vendors, Interactive Data and Disclosure Incorporated, who expressed support for the Board's proposal. *See* Goldspiel Letter and letter from John Poignand, Vice President, Interactive Data, to Jonathan G. Katz, Secretary, SEC, dated August 2, 1990.

[67] Rule 15c2-12 requires underwriters subject to the rule to send any potential customer, upon request, a copy of the final OS, from the time it becomes available until the earlier of: (1) Ninety days from the end of the underwriting period; or (2) the time when the OS is available to any person from a NRMSIR, but in no case less than 25 days following the end of the underwriting period. 15 CFR 240.15c2-12.

[68] One vendor argued that the Board's proposed fee for an annual subscription to a daily tape containing all OSs received each day, which the Board estimates at approximately $2 per OS, is far less, and thus unfair competition with, the current vendor fee of $20 for OSs. Kenny Letter. The Commission believes that this comparison is inapt. The sale of single documents and complete daily tapes are two entirely different types of services. The daily tape is geared toward professional users with a need for a complete collection of OSs. The cost appropriately reflects the economy of scale of duplication of a complete tape rather than the provision of a single document. The vendors' charge for individual copies of OSs hardly can be seen to be aimed at the same need.

[69] One commentator stated that pursuant to Office of Management and Budget ("OMB") Circular No. A-130, the MSRB should have examined whether information needs could have been met by the private sector. CFOA Letter. However, the MSRB is not subject to OMB Circular A-130. The circular applies to federal government agencies and the term "agency" is defined as any "executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency." While the MSRB may be described as exercising "quasi-governmental power," it is not an agency but rather a "self-regulatory organization"; a term that is defined in Section 3(a)(26) of the Act. Thus, OMB Circular A-130 is inapplicable.

[70] One vendor expressed concern that the NRMSIRs will become dependent on the MSIL for information, because "[a]lthough some issuers may still send OSs to Kenny and other NRMSIRs, each issuer need only mail an OS to one of the NRMSIRs * * *." Kenny Letter. The Board, however, has indicated that it does not intend to apply to the Commission for NRMSIR status. Accordingly, underwriters who deliver OSs to the Board will not be assured that they have met their OS delivery requirements under SEC Rule 15c2-12. Furthermore, because these vendors offer value-added products

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C. Authority.

1. General

a. *Comments.* A number of commentators questioned whether the Board has the authority to create the MSIL system.[71] These commentators argued that the act contains statutory restrictions on the MSRB and that the legislative history evidences Congress's intent to create a narrow role for MSRB.

One commentator contends that by creating an electronic library, the MSRB is engaging in operational activities that are beyond its limited function and responsibility to prescribe rules for the municipal securities industry.[72] Furthermore, the language of Section 15B of the Act, which requires that the rules of the Board be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating * * * transactions in municipal securities and, in general, to protect investors and the public interest"[73] cannot be read as a specific grant of authority to the MSRB to engage in activities that do not themselves constitute rulemaking.[74] Under this analysis, if Congress had intended the MSRB to have the authority create the MSIL system, it would have provided so explicityly in Section 15B.[75] Furthermore, since Section 15B prohibits the MSRB from promulgating rules that burden competition and requires the Board to enact rules that foster cooperation and coordination, MSIL is beyond the scope of the statute, because it would compete with and possibly drive out of business established vendors.[76]

b. *Commission Analysis.* The Commission believes that the Board's plans to create the MSIL are designed to further the purposes of the Act by accomplishing the important objective, which has long been of concern to the Commission, of encouraging greater dissemination of information regarding the terms of municipal securities and the financial position of municipal issuers. In creating the MSRB Congress was explicit that the MSRB "would have primary authority with respect to the activities of municipal securities dealers and transactions in municipal securities."[77] Indeed, Congress emphasized the breadth of this wide grant to authority when it stated that it "did not believe it would be desirable to restrict the Board's authority by a specific enumeration of subject matters."[78] Rather, Congress emphasized "that the Board has ample authority to deal with the problems of the municipal securities industry."[79] Thus Congress stated "[t]he scope of the Board's authority and responsibility would be defined in terms of purposes rather than subject matters."[80]

The Act provides the Board authority to adopt rules that, "as a minimum," effectuate certain purposes; among them,

> to prevent fraud and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest.[81]

Enhanced information regarding municipal securities terms and municipal issuers will result in greater efficiency and fairness in the market and will protect investors and the public interest. MSIL will provide a central source for issuer documents for dealers, which will help them comply with MSRB fair practice rules in their transactions with customers and thus should prevent fraudulent and manipulative acts and practices and should enhance investor protection. In addition, readily available information should enhance the pricing efficiency of the markets. Finally, MSIL will also promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in transactions in municipal securities by providing broker-dealers with an easier means to check call provisions and other terms of municipal securities issuances before making recommendations to customers and engaging in transactions. The Commission thus believes that the proposed rule change represents a proper exercise of the Board's statutory authority, pursuant to section 15B(b)(2)(C) of the Act.

Commentators argued that Section 15B of the Act limits the MSRB's function to the adoption of rules for the municipal securities market, and that the creation of MSIL is beyond that statutory authority. These commentators placed great emphasis on language in the legislative history that states that "the sole function and responsibility of the Board would be to prescribe rules for the municipal securities industry and

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derived from the OSs they collect that the market, including underwriters, support, the Commission believes that underwriters should recognize they will continue to benefit by providing OSs to both the MSRB and all three NRMSIRs, rather than only the MSRB. Thus, the Commission believes that the MSIL system should not create a disincentive for underwriters to send OSs to NRMSIRs.

One commentator suggested as an alternative to MSIL that: (1) all NRMSIRs be required to share copies of OSs with each other, upon request, at cost; and (2) access be provided to the MSRB's files accumulated under Rule G-36 for any OS not filed with a NRMSIR. NABL Letter. Another commentator suggested that the Commission consider extending SEC Rule 15c2-12 to a greater array of issues. AB-BB Letter. One commentator believes that the Commission should adopt a mechanism to encourage issuers to disseminate their current reports directly to investors. Doty Letter. This commentator also suggested that the federal securities laws be amended to modify the so-called "Tower Amendment" (Section 15B(d)(1) of the Act) and that the Board be recognized as a federal governmental agency, treated as such for federal budgetary purposes and granted an improved system of enforcement. *Id.*

While the Commission believes that at least some of these proposals merit consideration, the Commission believes that these proposals would be better considered at another time; for example, after MSIL has been in operation and the effects on the market and vendors are clearer.

[71] Kenny, September NASACT, Mazur, NABL, Doty and SMFS Letters, letter from Frieda K. Wallison, Jones, Day, Reavis & Pogue, to the Honorable Richard Breeden, Chairman, SEC, dated October 31, 1990; and letter from Lynn Hampton, C.P.A., Chief Financial Officer, Metropolitan Washington Airport Authority, to Margaret H. McFarland, Deputy Secretary, SEC, dated August 2, 1990.

[72] *See, e.g.*, September NASACT Letter.

[73] Section 15B(b)(2)(C) of the Act.

[74] September NASACT Letter.

[75] AB-BB Letter.

[76] *Id.*

In discussing the Board's authority, one commentator noted that Section 11A of the Act provides for Commission regulation of self-regulatory organizations in their information provision activities but contains an exemption for municipal securities. The commentator argues that this is evidence that the MSRB has no authority to engage in the business of collecting and disseminating issuer documents. Doty Letter. Another commentator stated that if "Congress intended for the MSRB to operate or regulate a 'securities information provider' it could easily have provided for it in the 1975 amendments [to the Act]." Kenny Letter.

The argument regarding Section 11A does not withstand scrutiny for two reasons. First, the Commission believes that this provision defines the Commission's authority, not the SROs'. Second, the Commission believes that the commentators' reference to Section 11A is inapposite because the purpose of that section is to enhance the availability of quotation and transaction information, not official public disclosure documents. While the goals of Section 11A may buttress the SROs' authority to operate facilities for the collection processing and dissemination of market data, the SROs must, and in fact do, find their authority for such operations in Section 15A in the case of the NASD and Section 6 in the case of the exchanges.

[77] S. Rep. No. 75, 94th Cong., 1st Sess. 47, reprinted in 1975 U.S. Code Cong. & Ad. News 225.

[78] *Id.*

[79] *Id.* at 46, reprinted in 1975 U.S. Code Cong. & Ad. News 223.

[80] *Id.* at 47, reprinted in 1975 U.S. Code Cong. & Ad. News 225.

[81] Section 15B(b)(2)(C) of the Act.

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with respect to transactions in municipal securities * * *."[83] In addition, commentators pointed to language in the legislative history that states that the MSRB is to be a "limited self-regulatory organization" with authority to "formulate rules regulating the activities of municipal securities dealers."[84]

The Commission believes that, by divorcing these passages from the context of the concerns that they were intended to address, the commentators misconstrue the intent of this language. The creation of the MSRB was characterized by great concern on the part of municipal issuers of federal interference in matters that traditionally had been left to those issuers.[85] As a result, Congress was careful to strike a delicate balance between providing the Board authority to carry out the important investor protection objectives of the Act and the concerns over comity among various levels of government.[86] The language referred to above clarifies that the Board was not to have authority over issuers. It should not be read to limit the Board's authority to propose and adopt rules, including those that would implement a facility, if those rules effectuate the purposes of the Act and do not violate the express prohibitions in the Act.[86]

Another reason for the limiting language described above was to address concerns that the municipal securities industry, composed of diverse entities, already was subject to regulation by an array of regulatory bodies, including the NASD, the SEC and banking regulatory agencies. Rather than require the MSRB to examine and discipline municipal securities dealers, existing entities were required to do so.[87] Again, the Commission believes that the language in the legislative history relied upon by these commentators, when read in context, is not as broad as those commentators would have the Commission believe and does not limit the MSRB's authority to implement MSIL.

With respect to those commentators arguing that the MSIL system is inconsistent with the Section 15B prohibition of rules that burden competition, the Commission emphasizes that the Act prohibits only rules that "impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the federal securities laws]".[88] As discussed above,[89] the Commission concludes that the competitive impact of the MSIL system will be small, and in any event, outweighed by the benefits of the system.

The Commission also disagrees with the argument put forward by some commentators that had Congress intended the MSRB to operate a system such as MSIL, it would have granted express authority to do so. While it is fair to read specific grants of authority to indicate clear Congressional intent that the Board achieve certain objectives,[90] it does not follow that the lack of other specific grants of authority indicate that Congress did not intend the MSRB to perform other functions not necessary or appropriate to further the goals set forth in Section 15B. In fact, the Senate Report indicates that the MSRB was being granted "broad rulemaking authority over all municipal securities dealers and [the legislation would] require it to promulgate rules to effect the purposes of this legislation and the Exchange Act."[91] Furthermore, the express language of the statute provides that Board rules should be designed, "as a minimum," to achieve the purposes discussed above.[92] The limitations on activities such as inspection and enforcement were intended to avoid over-regulation of municipal securities dealers already subject to the regulation of the banking agencies and the NASD.[93] The MSRB was not limited in its rulemaking authority as an SRO, and further, it was granted the authority to collect the information that is proposed to be disseminated through the electronic library.

The Commission believes that an SRO's authority to adopt rules is broad enough to include the authority to build systems such as the National Association of Securities Dealers Automated Quotation system ("NASDAQ") and the proposed MSIL when the systems effectuate the purposes of the rules. There is no particular provision in Section 15A, which is the source of authority for registered securities associations (*i.e.*, the NASD), that explicitly grants authority to the NASD to run a system such as NASDAQ; rather, it is implicit in Section 15A. Congress, in the legislative history accompanying the Securities Act Amendments of 1975, explicitly acknowledged the NASD's authority to adopt rules "for collecting and publishing quotations" without in any way questioning the NASD's authority to develop and implement the NASDAQ system.[94] Similar to the NASD under Section 15A, the MSRB is explicitly authorized under Section 15B to design rules to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing and processing information with respect to transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.[95] The proposed rules to implement MSII are designed simply to accomplish these goals by the electronic storage and dissemination of the information the MSRB is otherwise authorized to collect and disseminate under section 15B.[96]

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[83] September NASACT Letter, citing S. Rep. No. 75, 94th Cong., 1st Sess. 114.

[84] *Id.* at 46.

[85] S. Rep. No. 75, 94th Cong., 1st Sess. 44, reprinted in 1975 U.S. Code Cong. & Ad. News 221, 222.

[86] *Id.* at 44, 45, reprinted in 1975 U.S. Code Cong. & Ad. News 222, 223.

[86] The Commission believes that the authority to promulgate rules includes the authority to create a facility. Rule 19b–4 provides that a stated policy, practice or interpretation of an SRO shall be deemed to be a proposed rule change unless certain limitations apply. The Commission has defined, in Rule 19b–4, "policy, practice or interpretation" to include "any material aspect of the operation of the facilities of the self-regulatory organization." Rule 19b–4(b). Rule 19b–4 is a longstanding Commission interpretation that pre-dates the instant rule filing. The legislative history to section 19 of the Act indicates that rule filings should be "in accordance with such rules as the Commission may prescribe." S. Rep. No. 75, 88th Cong., 1st Sess. 120, reprinted in 1975 U.S. Code Cong. & Ad. News 308. Courts ordinarily defer to an agency's interpretation of its statute and regulations when they are consistent with the intent of Congress and supported by substantial evidence. Oregon Dept. of Human Resources v. Dept. of Health and Human Services, 727 F.2d 1411, 1413 (9th Cir. 1983).

[87] S. Rep. No. 75, 94th Cong., 1st Sess. 46, reprinted in 1975 U.S. Code Cong. & Ad. News 234.

[88] Section 15B(b)(2)(C) of the Act.

[89] See section B. above.

[90] For example, section 15B(b)(2)(D) explicitly grants the MSRB the authority to adopt rules governing the arbitration of disputes over transactions in municipal securities.

[91] S. Rep. No. 75, 94th Cong., 1st Sess. 114, reprinted in 1975 U.S. Code Cong. & Ad. News 291.

[92] Section 15B(b)(2) of the Act.

[93] *Id* at 46, reprinted in 1975 U.S. Code Cong. & Ad. News 224.

[94] *Id* at 27, reprinted in 1975 U.S. Code Cong. & Ad. News 205.

[95] In addition, the NASD finds authority to operate NASDAQ under Section 15A, which grants the NASD the authority to adopt rules governing the form and content of quotations. See section 15A(b)(11).

[96] One commentator argued that "[W]hen the [NASD] wanted authority to conduct business enterprises, it was given explicit authority in its corporate charter to do so" [citation omitted]. Doty Letter. The MSRB, however, is a general purpose corporation organization under the Virginia Nonstock Corporation Act. The Articles of Incorporation of the MSRB authorize it to "discharge its mandate under the Securities Exchange Act, * * * to propose and adopt rules to effect the purposes of the Act with respect to

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As the Commission stated in its release approving Rule G–36, section 15B(b)(2)(C) is a broad grant of authority to the Board. The proposed rule change to implement MSIL is intended to provide an efficient means of storing and disseminating the information that the MSRB is authorized to collect, and thus, for the reasons discussed above, is designed to prevent fraud and manipulation, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and processing information with respect to transactions in municipal securities and to remove impediments to and perfect the mechanism of a free and open market in municipal securities. Making information available through MSIL is a natural result of being able to collect the information. In this light the Commission concludes that MSIL is reasonably designed to further the purposes of section 15B(b)(2)(C) of the Act.[97]

2. Standardization of Form and Content of Issuer Documents

a. *Comments.* Several commentators expressed concern that by operating MSIL, the MSRB may be in a position to set standards for the form and content of issuer documents.[98] Three commentators cited the voluntary efforts by industry organizations such as the GFOA, the National Federation of Municipal Analysts, the National Council of State Housing Agencies and the American Bankers Association Corporate Trustee Committee to achieve uniformity in reporting.[99] They urged that standardized formats be adopted only after full and open discussion by all interested parties takes place,[100] observing that no single uniform format will suffice, as requirements vary by sector.[101] Furthermore, while acknowledging that the MSRB has publicly stated that it has no authority to dictate the form or content of issuer documents, a number of commentators noted concerns that the MSRB may, in the future, attempt to establish standards for format and content.[102] Several of these commentators requested that the Commission state in its order that the MSRB has no authority in this area.[103]

b. *Commission Analysis.* Section 15B(d)(2) of this Act, the so-called "Tower Amendment," prohibits the Board from requiring municipal issuers, directly or indirectly, through a municipal securities broker or municipal securities dealer or otherwise, to furnish to the MSRB any application, report, document or information with respect to such issuer. The Commission believes that this statutory limitation prevents the MSRB from setting form and content standards for issuer documents notwithstanding its position as the operator of the electronic repository.[104] The Board has repeatedly acknowledged this limitation on its authority.[105]

The MSRB has indicated that it chose the scanning technology so that the MSIL system could accept documents in any format and store them exactly as provided. The Commission believes that this technology permits adequate flexibility and that the system in no way forces standardized formats on issuers. Furthermore, the Commission's decision is conditioned on the MSRB's representation that it will not attempt to dictate the content of disclosure.

D. Other Issues

1. Timeliness

a. *Comments.* One vendor believes that the customers of the OS/ARD system would encounter "an information bottleneck in terms of at least a three day delay in receiving documents."[106] Another vendor believes that the Board's PAF "already provides a level of service that is clearly superior to the MSIL's best."[107]

b. *Commission Analysis.* The Board has indicated that in many cases, documents will be available prior to the three-day deadline. In addition, all documents submitted to the MSRB, together with an index of those documents, will be available in the PAF on the day they are received. The Board has further committed that if a user wishes to determine if the board had received a document prior to its being listed on the index, the Board would allow such individual to review and photocopy the documents received by the Board and not yet entered into the computer index at the PAF.[108]

The Commission is satisfied that users of the MSIL system will not be significantly disadvantaged by the delay for scanning the documents. The Commission believes that the MSRB has made suitable arrangements for those users needing documents more quickly. Moreover, as discussed above, Rule 15c2–12 will continue to provide

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transactions in municipal securities effected by brokers, dealers and municipal securities dealers and otherwise to engage in any lawful activities permitted under the Virginia Nonstock Corporation Act to the extent those activities are not inconsistent with the Act." Articles of Incorporation of the MSRB, ¶ 2. In the absence of express restrictions, a corporation has discretionary authority to enter into contracts and transactions that may be deemed reasonably incidental to its business purpose. Fletcher Cyc. Corp. § 2486 (Perm. Ed. 1986). The Commission believes that because the MSRB is authorized to collect and disseminate the information, MSIL is "fairly incident" to that authority, because it increases the speed and accuracy of collection and dissemination.

[97] A number of commentators stated that the Board's composition favors the dealer community, and that any entity establishing a system such as MSIL should have a more balanced membership. Mazur and NABL Letters. Two commentators suggested that the Commission create an advisory committee composed of representatives of every segment of the market to provide a forum to discuss disclosure issues, conduct research on selected topics, and make recommendations to the SEC. GFOA and January NASACT Letter. Another commentator believes that, should the SEC approve MSIL, the Commission should create an oversight committee, composed of representatives of all sectors with direct authority over supervision of the MSIL system. NABL Letter.

The Commission believes that it would be inappropriate to delay the implementation of MSIL pending the creation and recommendations of an advisory or oversight committee. All issues related to the creation of the library have been fully aired, as evidenced by 145 thoughtful and thorough comment letters. In addition, the MSRB has formed a MSIL system advisory committee already, representative of all sectors of the municipal industry, that has and will continue to advise the MSRB in the creation and operation of the MSIL. In addition, NASACT sponsored a group, in which Commission staff participated as observers, that was charged with examining the feasibility and advisability of developing a repository for municipal securities disclosure information. Thus, the Commission does not believe that there is much to be gained from establishing yet another group to examine these issues. With respect to an oversight committee with authority over the MSIL, the Commission already has oversight authority over the MSRB and the Commission believes it is not only unnecessary but also would be contrary to its statutory responsibility to cede this authority to any other entity.

Regarding the composition of the MSRB, the Commission disagrees with the view that it favors the dealer community. The balance of the Board was determined by Congress during the creation of the MSRB. The MSRB, composed of fifteen members, must have five individuals not associated with any broker, dealer or municipal securities dealer. Section 15B(b) (1) of the Act. While the majority of the MSRB Board is associated with municipal securities dealers, this composition appears appropriate in light of the continuing restrictions on the MSRB from imposing direct or indirect requirements on issuers. The Commission believes that the Board's composition has not prejudiced its rulemaking process, and for the reasons described herein, concludes that the Board has fairly considered the effect of the proposal upon all sectors of the market.

[98] September NASACT, NABL, Mazur and January NASACT Letters.

[99] NCSHA, GFOA and ABA Letters.

[100] NCSHA Letter.

[101] GFOA Letter.

[102] See *e.g.*, September NASACT, NABL and Mazur Letters.

[103] See NABL and Mazur Letters.

[104] The MSRB may, however, require reports from underwriters to accompany such documents.

[105] See e.g., letter from Diane G. Klinke, General Counsel, MSRB, to Kathryn Natale, Assistant Director, SEC, dated October 12, 1988.

[106] Kenny Letter.

[107] AB–BS Letter. See also Section D(3) below.

[108] Letter from Diane G. Klinke, General Counsel, MSRB, to Elizabeth MacGregor, Attorney, Market Regulation Division, SEC, dated March 15, 1991.

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incentives to underwriters to provide copies of documents directly to vendors who are also NRMSIRs.

2. Improvements to the PAF or the NRMSIRs

a. *Comments.* Several commentators suggested that the MSRB can improve disclosure by making improvements to its PAF.[109] Suggestions included creating an index of the documents MSIL receives in its central repository; disseminating that index and preparing a cross-reference to CUSIP numbers for securities listed in the index; [110] filling requests for documents by electronic facsimile transmission, courier delivery, and regular mail service; modeling the PAF after news bureaus in government agencies; using microfiche; [111] improving the copying machines; [112] and relocating the PAF to New York City.[113]

b. *Commission Analysis.* With respect to indexing, the MSIL system will have a more sophisticated index of documents than that of the PAF. Regarding the remaining comments, the Commission believes that the commentators have raised concerns that merit consideration. If the demand exists, the MSRB should consider adding these services. The Commission believes, however, that the dissemination methods proposed are certainly adequate for the start-up period.[114]

VI. Conclusion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and, in particular, section 15B(b)(2)(C), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in municipal securities and, in general, to protect investors and the public interest. In addition, the proposed rule change is consistent with the objectives of Rule 15c2–12, which requires underwriters to provide, for a specified period of time, copies of final OSs to any potential customer upon request.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change described above be, and hereby is, approved.

By the Commission.
Dated: June 13, 1991.

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[Release No. 34-29296; File No. SR-MSRB-90-3]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to the Delivery of Advance Refunding Documents, Recordkeeping and Form G-36

I. Introduction

The Municipal Securities Rulemaking Board ("MSRB" or "Board") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change [1] on June 22, 1990, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b-4 [3] thereunder. The proposed rule change would amend Rule G-36 to require underwriters to deliver advance refunding documents to the MSRB.[4]

Notice of the filing of the proposal was published in Securities Exchange Act Release No. 28196 (July 12, 1990), 55 FR 29687. The Commission received 63 comment letters in response to this notice. Of those comment letters, 40 express support for the proposal, 22 are in opposition and one comment in neutral. The Commission has determined, for the reasons discussed below, to approve the proposal.

II. Background

The Board has long been concerned about the adequacy of disclosure in light of the increasing complexity of municipal bonds. For example, in 1987 the Board wrote to the Commission about its concern over confusion in the market concerning issuers' authority to exercise optional redemption features of escrowed to maturity municipal securities.[5] Inadequate disclosure of call provisions had resulted in several incidents in which municipal issuers attempted to call bonds that had been traded in the secondary markets as escrowed to maturity. Because these bonds had been sold to investors in the secondary market on the basis of the yields to a fixed maturity, the exercise of early call provisions in the outstanding bonds would have altered significantly the actual yield received by investors. Although the issuers ultimately dropped their attempts to call the bonds, the Board believed that significant issues had been raised concerning the adequacy of disclosure. In response, the Division of Market Regulation noted in a letter to the MSRB that, before a security is sold as "escrowed to maturity" or "pre-refunded to a call," the dealer "should have conducted a reasonable investigation to satisfy itself that the issue, including the official statement and escrow trust agreement, support such characteristization." [6]

As a result of these events, the Board determined that refunding documents should be added to Rule G-36 for inclusion in its public access facility ("PAF") and the planned MSIL system because of the importance of such information to the purchase and sale of the refunded issue.

In August 1989, the Board requested comment on draft Rule G-36 which, among other things, would have required underwriters to deliver to the Board certain refunding documents. The August 1989 version of Rule G-36 defined refunding documents as those documents that "set forth the terms and conditions under which an issue of municipal securities is advance refunded, including the refunding escrow trust agreement, or its equivalent, and the notice of defeasance." The draft rule required the underwriter to deliver such documents within one business day of receipt from the issuer or its agent but no later than eight business days after the date of the final agreement to purchase, offer or sell the municipal securities.

Prior to adopting a delivery requirement for refunding documents, the Board decided to solicit further comment on a revised definition of refunding documents and the timing of delivery of these documents. In November 1989, the Board proposed revised draft amendments to Rule G-36, which would define refunding documents to include the refunding escrow trust agreement, notice of defeasance, and trust indenture for the refunded issue (or their equivalents).[7]

III. Description

The proposed rule change would require underwriters of refunding issues to send two copies of the refunding escrow trust agreement, or its equivalent, if prepared by or on behalf of the issuer, and, if the escrow agreement is prepared, two copies of completed Form G-36 (ARD) to the Board within five business days of the closing of the issue.[8] For issues not subject to Rule 15c2-12,[9] the requirement to send advance refunding documents only applies if an OS is prepared for the refunding issue. In addition, within 60 days of the effective date of the proposed rule change, underwriters must provide two copies of advance refunding documents and Forms G-36 (ARD) for refunding issues underwritten since January 1, 1990. This "look-back" provision is identical to that currently included in Rule G-36 regarding sending OSs to the Board.

Finally, the proposed rule change revises Form G-36 and provides for two forms—Form G-36(OS) to be sent with OSs and Form G-36(ARD) to be sent with advance refunding documents. Technical amendments to Rule G-8 also have been proposed to correspond with the two new forms.

IV. Summary of Comments

The Commission received a total of 63 comment letters on the proposed rule changes. Of those comment letters, 40 express support for the proposal, 22 are in opposition and one comment is neutral.[10] With a few exceptions, the commentators expressed only general support or opposition for the rule filing in the context of commenting jointly on this filing and the two MSIL filings.[11]

As a general matter, municipal securities analysts commenting supported the filing. They argued that maintenance of advance refunding documents by the Board "is needed today because equal access to all market participants to such information often is lacking, and this results in problems in pricing municipal securities." [12] Dealers also provided support for the proposal. One dealer described a situation in which a particular security that had been traded with the understanding that it was escrowed to maturity, was in fact not escrowed as believed. As a result, the securities were misvalued by numerous parties. Subsequently, the bonds were pre-refunded to an early call date, resulting in a perceived drop in the value of the securities of several points. The dealer maintained that the misunderstanding continued for more than a year after the pre-refunding, stating that "[t]he example . . . demonstrates that there is a bona fide need among the dealer community for better information on the securities being traded in the market every day." [13]

The Commission also received 36 generally supportive comments,[14] which

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[109] GFOA Letter. See also NCSHA Letter. In some cases, this suggestion was made as an alternative to building MSIL and in others, in addition to MSIL.

[110] *Id.*

[111] AB-BB Letter.

[112] *Id.* and NCSHA Letter.

[113] GFOA and Kenny Letters.

[114] Several commentators also recommended centralizing or linking the NRMSIRs towards the goal of improving their services. See e.g., NABL and GFOA Letters. The Commission agrees that a linkage among the NRMSIRs would be a favorable development. Such a linkage could help the NRMSIRs provide better service, without having to rely on MSIL if they chose not to.

[1] File No. SR-MSRB-90-3.

[2] 15 U.S.C. 78s.

[3] 17 CFR 240.19b-4.

[4] The proposed rule change was filed simultaneously with two other rule changes: File No. SR-MSRB-90-2, Securities Exchange Act Release No. 28107 (July 12, 1990), 55 FR 29438, which would permit the Board to establish and operate a central electronic facility, the Municipal Securities Information Library ("MSIL") system, through which information collected pursuant to Rule G-36 would be made available electronically to market participants and information vendors; and File No. SR-MSRB-90-4, Securities Exchange Act Release No. 28199 (July 12, 1990), 55 FR 29691, which would permit the Board to establish a central facility, the Continuing Disclosure Information/Electronic Submission ("CDI/ES") System, to accept voluntary submission of continuing disclosure information electronically. See Securities Exchange Act Release No. 29296 (June 13, 1991), approving File No. SR-MSRB-90-2.

[5] See letter from H. Keith Brunnemer, Jr., Chairman, MSRB, to the Honorable David S. Ruder, Chairman, SEC, dated September 16, 1987.

[6] Letter from Richard Ketchum, Director, Division of Market Regulation, SEC, to H. Keith Brunnemer, Jr., Chairman, MSRB, dated June 24, 1988. The letter also notes that "an issuer that wishes to reserve its contractual right to exercise optional redemption provisions in the prior bonds should clearly and conspicuously disclose its intention in the defeasance notices and official statement for the refunding bonds."

[7] In its notice, the Board requested comment on whether additional information should be required (*e.g.*, the accountant's report on the adequacy of the escrow account and the official statement for the refunded issue). In addition, the Board asked for comment on whether it should consider requiring trust indentures for all issues, not just refunded issues, to be sent to the Board.

[8] The requirement that two copies of the advance refunding documents be provided was included because of the Board's PAF. The Board is concerned that excessive handling of the documents in the PAF would affect adversely their quality and thus impair the Board's ability to store electronically the documents in the planned MSIL system. Thus, one copy will be provided in the PAF and one will be used in the MSIL system.

[9] Rule 15c2-12 encourages the procurement and dissemination of disclosure documents by underwriters as a means of enhancing the accuracy and timeliness of disclosure to investors in municipal securities. The Rule requires underwriters to provide, for a specified period of time, copies of final official statements ("OS") to any potential customer upon request.

[10] The Commission received comments from six broker-dealers; three issuer associations [See letters to Jonathan G. Katz, Secretary, SEC, from D. Kathryn Fern, President, National Council of Health Facilities Finance Authorities, dated September 24, 1990 ("NCHFFA Letter"); and Jeffrey L. Esser, Executive Director, Government Finance Officers Association, dated September 24, 1990 ("GFOA Letter"); and letter from Edward Renfrow, President, National Association of State Auditors, Comptrollers and Treasurers, to the Honorable Richard C. Breeden, Chairman, SEC, dated January 17, 1991 ("NASACT Letter")]; 15 issuers; two municipal securities information vendors, both of whom are potential competitors of the Board; four arbitrators; seven investors; three trustees; seven municipal securities analysts; the Public Securities Association (See letter from William W. Moore, Chairman, Municipal Securities Division, Public Securities Association, to Jonathan G. Katz, dated September 20, 1990 ("PSA Letter")); the Southern Municipal Finance Society (See letter from Robert W. Doty, Chairman, Southern Municipal Finance Society, to Jonathan G. Katz, dated September 20, 1990 ("SMFS Letter")); Doty Research and Development Company (*See* letter from Robert W. Doty, President, Doty Research and Development Company, to the Honorable Richard C. Breeden, Chairman, SEC, dated September 20, 1990 ("Doty Letter")); the North American Securities Administrators Association (See letter from Sherwood N. Cook, Chairman, North American Securities Administrators Association Municipal Securities Committee, to Jonathan G. Katz, dated September 7, 1990 ("NASAA Letter")); and one member of Congress (See letter from the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, to the Honorable Richard C. Breeden, dated August 17, 1990 ("Dingell Letter")).

In addition, the Board received five comment letters in response to its Request for Comments on the proposal. The Board described those comments and responded to them in its submission to the Commission, which was described in the notice of the proposed rule change published by the Commission. See Securities Exchange Act Release No. 28196 (July 12, 1990) 55 FR 29687.

[11] The general comments are summarized in the separate summary of comments available in the public file and analyzed in Securities Exchange Act Release No. 29296.

[12] Letter from F.E. James, James Investment Research, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 24, 1990.

[13] Letter from John W. Waechter, Executive Vice President, William R. Hough & Co., to Jonathan G. Katz, Secretary, SEC, dated July 30, 1990.

[14] NCHFFA, NASAA, PSA, GFOA and Dingell Letters, letters to Jonathan G. Katz, Secretary, SEC, from Robert L. Adler, dated August 1, 1990; R. Duke McElroy, Duke McElroy & Company, dated September 19, 1990; Gerald T. Grady, Jr., Branch Manager and Vice President, A.G. Edwards & Sons, updated; Mark S. Borowy, Municipal Bond Analyst, Erie Insurance Group, dated August 20, 1990; Stuart Bromberg, Director—Municipal Securities, First Boston, dated July 24, 1990; William J. McCarthy, Vice President, Fitch Investors Services, Inc., dated July 25, 1990; Steven Permut, and Casey Colton, C.F.A., Municipal Credit Analysts, Benham Capital Management Group, dated August 13, 1990; John Poignand, Vice President, Interactive Data, dated August 2, 1990; Thomas B. Martin, Esq., Circle Consulting Group, Inc., dated July 24, 1990; Robert D. Cathcart, dated August 13, 1990; O. Delton Bennett, dated August 12, 1990; William N. Appel, Appel & Glueck, dated July 30, 1990; Robert L. Foerstering, First Vice President, Blunt, Ellis & Loewi, dated July 16, 1990; Jeffrey J. Powell, Vice President, The First National Bank of Chicago, dated July 31, 1990; A. Rodney Boren, Jr., Executive Vice President, Norwest Bank Minnesota, N.A., dated September 28, 1990; Karen W. Brabham, Assistant Vice President and Trust Officer, South Carolina National Bank, dated August 15, 1990; Jane M. Thompson, Reiger, Robinson & Harrington, dated August 8, 1990; Ralph Weickel, Manager—Investments, First Interstate Bank, dated July 30, 1990; Staats M. Pellett, Jr., Senior Vice President, Bessemer Trust Company, N.A., dated August 2, 1990; Douglas J. White, Vice President, Piper Capital Management Group, dated September 13, 1990; and Rachel Dennis, Vice President and Portfolio Manager, Aegon Insurance Group, dated July 31, 1990; letters to the Honorable Richard C. Breeden, Chairman, SEC, from David J. Master, dated August 21, 1990; H. Keith Brunnemer, Jr., Chairman, First Charlotte Corporation, dated July 9, 1990; Samuel A. Ramirez, President, Samuel A. Ramirez & Co., Inc., dated July 11, 1990; Robert W. Chamberlin, Senior Vice President, Dean Witter Reynolds, Inc., dated July 17, 1990; and C.M. Perkins, Associate General Manager, Salt River Project, dated July 17, 1990; letter from Robert J. Martin, Vice President,

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provided no detailed discussion of the issue.

The issuer community provided the bulk of the adverse reaction to the filing. On the whole, issuers appeared to be concerned about encroachment on their role in the disclosure process. One issuer argued that "although the guidelines established in this proposal are directed at dealers and underwriters, the issuer should be considered. The state and local governments should be adequately represented in any policy decisions regarding the content or timing of municipal securities documentation to be delivered to the dealers and underwriters." [16] Another issuer maintained that "[i]t is the responsibility of bond counsel and the issuer to determine the status of the bonds to be refunded. The filing of documents that are not used in the marketing of municipal bonds should not be the responsibility of the underwriter, but should be held by the issuer and bond counsel." [16]

The Commission also received 17 critical comments [17] and one neutral comment [18] which provided no detailed discussion of the issue.[19]

V. Discussion

The Commission believes the Board's proposal is consistent with the Act, and in particular, section 15B(b)(2)(C), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and, in general, to protect investors and the public interest. The Commission believes that it will make municipal securities information more readily available, resulting in increased market efficiency and investor protection.[20]

The supportive commentators cited a lack of information about advance refundings in the municipal securities markets. The Commission agrees that such information is essential to the market and that currently access to such documents is limited. Including advance refunding documents in the MSIL system will significantly increase the scope of information concerning refunded securities made available to the general public and market participants. In addition, the proposed rule change would allow dealers to comply with the Commission's statement that, prior to the sale of municipal securities as escrowed to maturity or pre-refunded to a call, a dealer should conduct a reasonable investigation to satisfy itself that the documents relating to the prior bond issue and the refunding bond issue, including the official statement and escrow trust agreement, support such characterization. The amendment to Rule G–36 would permit the collection and storage of these critical documents to the benefit of the municipal securities market.

With respect to the argument that the issuer and bond counsel, rather than the underwriter, should be responsible for the dissemination of documents associated with refundings, the Commission emphasizes that section 15B(d)(2) of the Act permits the MSRB to require that OSs or other documents that are available from sources other than the issuer, such as the underwriter, be provided to investors. This is, in fact, the basis for Rule G–36.[21]

VI. Conclusion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and, in particular, section 15B(b)(2)(C), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in municipal securities and, in general, to protect investors and the public interest. In addition, the proposed rule change is consistent with the objectives of Rule 15c2–12, which requires underwriters to provide, for a specified period of time, copies of final OSs to any potential customer upon request.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change described above be, and hereby is, approved.

Dated: June 13, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14605 Filed 6–18–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29290; File No. SR–MSRB–91–02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to the Activities of Financial Advisors

On March 14, 1991, the Municipal Securities Rulemaking Board ("Board") filed with Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] amending the Board's rule G–23 on activities of financial advisors. The proposed rule change requires disclosure by an underwriter to the issuer of any corporate affiliation with the issuer's non-dealer financial advisor and places recordkeeping requirements on dealers subject to this provision. The Commission published notice of the proposed rule change on April 5, 1991.[2] No comments were received on the proposal.

Rule G–23 establishes disclosure and other requirements for dealers that act as financial advisors to issuers of municipal securities.[3] The rule is designed principally to minimize the *prima facie* conflict of interest that exists when a municipal securities dealer acts as financial advisor and underwriter with respect to the same issue. Specifically, it requires a finanical advisor to alert the issuer to the potential conflict of interest that might lead the dealer to act on its own best interest as underwriter rather than the issuer's best interest.

The Board has been asked whether Rule G–23 applies in two situations: (1) When a non-dealer bank acts as financial advisor and a broker/dealer affiliate of the bank wishes to underwrite the issue; and (2) when a non-dealer subsidiary of a dealer bank acts as a financial advisor and the dealer bank wishes to underwrite the issue. Since the bank and the non-dealer affiliate are not dealers in these instances, they are not subject to the requirements of the Rules. The Board has stated, however, that disclosure by the dealer to the issuer of its affiliation with the financial advisor would be advisable under these circumstances.

With this proposal, the Board has determined to codify this recommendation into the requirements of Rule G–23. The Board believes that the issuer should be aware of any corporate affiliation between the financial advisor and the dealer, even if the financial advisor is not a dealer. The Board, however, does not believe that it is necessary for the underwriter to comply with all the disclosure requirements of Rule G–23 in this instance. In addition, the proposed rule change places recordkeeping requirements on dealers subject to this provision.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and, in particular, section 15B(b)(2)(c), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in municipal securites and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: June 11, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14520 Filed 6–18–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29304; File No. SR–NASD–91–25]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Interim Ban on Autoquoting in the NASDAQ System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a six month extension to the interim ban on autoquoting currently in place in the NASDAQ system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing to extend for six months its interim ban on automated update of quotations by market makers in the NASDAQ system. In effect this policy, approved by the Commission for one year ending June 15, 1991,[1] prohibits systems known as "autoquote" systems from effecting automated quote updates or tracking of inside quotations in the NASDAQ system, with two exceptions. Automated updating of quotations is permitted when the update is in response to an execution in the security (such as execution of an order that partially fills a market maker's quotation size) or when it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to the NASDAQ system). This interim ban was necessary in order to study the impact on the NASDAQ system of certain autoquote systems that track changes to the inside quotation in NASDAQ and automatically react by generating another quote to keep the market maker's quote away from the best market.

The NASD completed a study of the impact of autoquoting on the NASDAQ system and submitted a copy to the Commission on March 15 1991.[2] The study revealed that all members surveyed indicated strong objections to any kind of capability that would allow NASDAQ market makers to automatically track the NASDAQ inside quotation or another market maker's quotation. In the members' view, allowing automatic tracking could create a "fair-weather" market making environment that would not contribute to the depth or liquidity for trading the security.

The NASD believes, however, that automation in the securities markets should be encouraged, and is therefore proposing to extend the interim moratorium on autoquoting for six months in order to study further the question of eventually allowing autoquoting in certain additional prescribed circumstances. For example, several members believed that an

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Continental Asset Management Corporation, to Kathryn Natale, Assistant Director, SEC, dated September 21, 1990; letter from Leon J. Karvelis, Jr., Executive Vice President, Municipal Bond Investors Assurance Corporation, to the SEC, dated July 17, 1990; and letters to the Honorable Philip R. Lochner, Jr., the Honorable Mary L. Schapiro, and the Honorable Edward H. Fleischman, Commissioners, and the Honorable Richard C. Breeden, from Walter P. Stern, Chairman, Capital Group International, dated July 10, 1990.

[16] Letter from Edward J. Mazur, C.P.A., Comptroller, Commonwealth of Virginia, to Jonathan G. Katz, Secretary, SEC, dated September 24, 1990.

[16] Letter from Lynn Hampton, C.P.A., Chief Financial Officer, Washington Metropolitan Airports Authority, to Jonathan G. Katz, Secretary, SEC, dated August 2, 1990.

[17] SMFS, NASACT and Doty Letters, letters to Jonathan G. Katz, Secretary, SEC, from Lynn Hampton, C.P.A., Chief Financial Officer, Metropolitan Washington Airports Authority, dated September 24, 1990; William J. Cochran, Director of Finance, City of Hartford, Connecticut, dated September 19, 1990; Ronald A. Morris, Budget and Accounting Manager, New Castle County, Delaware, dated September 20, 1990; Paul E. Haney, Director of Finance, Monroe County, New York, dated September 18, 1990; Arthur D. Heilman, Director, Bureau of Revenue, Cash Flow and Debt, Commonwealth of Pennsylvania, dated September 24, 1990; Arther R. Lynch, Director of Finance, Glendale, Arizona, dated September 21, 1990; M.E. Poole, Director, Loudoun County, Virginia, dated September 27, 1990; Eugene VanOverbeke, City Clerk, City of Eagan, Minnesota, dated September 20, 1990; James D. Forte, Director of Finance, City of Plano, Texas, dated September 27, 1990; Lucille Maurer, Treasurer, State of Maryland, dated October 1, 1990; George Greanias, Controller, City of Houston, Texas, dated September 24, 1990; Ruth M. Levine, Director of Finance, City of Milford, Connecticut, dated September 18, 1990; and Richard G. Hilde, Treasurer, City of Long Beach, California, dated September 24, 1990.

[18] Letter from Charles O. Trotter, Vice President and Senior Trust Officer, Central Bank of the South, to Jonathan G. Katz, Secretary, SEC, dated August 7, 1990.

[19] Finally, J.J. Kenny Co., Inc. does not object to the proposed amendments to Rules G–36 and G–8, so long as the documents are to be collected by and maintained in the MSRB's PAF. Letter from J. Kevin Kenny, *et al.*, J.J. Kenny Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated September 24, 1990.

[20] The issues raised by commentators to this proposal were also raised in the two related filings, SR–MSRB–90–2 (MSIL) and SR–MSRB–90–4 (CDI/ES System) and are discussed in the Commission's order issued today on SR–MSRB–90–2. See Securities Exchange Act Release No. 28298.

[21] See Securities Exchange Act Release No. 28061 (May 31, 1990), 55 FR 23333.

[1] 15 U.S.C. 78s(b)(1).

[2] See Securities Exchange Act Release No. 29051 (April 5, 1991), 56 FR 15118.

[3] Rule G–23 does not apply when, in the course of acting as an underwriter, a municipal securities dealer renders financial advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities.

[1] See Securities Exchange Act Release No. 28338 (August 13, 1990), 55 FR 34636 (August 23, 1990), approving a one-year ban on autoquoting proposed in SR–NASD–90–8.

[2] The NASD requested confidential treatment for the results of the study because of the proprietary nature of the information regarding the NASDAQ system contained in the study.

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autoquoting capability that would keep a market maker's quotation at the inside NASDAQ quote, thus reducing the need for manual quote updates and ensuring depth and liquidity in the securities traded should be permitted as soon as the system is capable of processing the additional traffic. Another suggestion was to allow an autoquoting function that would permit a market maker to update quotations of a predefined group of related securities with a single quotation update, similar to what options market makers accomplish with autoquoting for selected options series. The extension of the ban on autoquote for an additional six months will provide the opportunity for additional consideration of autoquote functions that will facilitate member trading at the best market and for study of the technology required to process the additional traffic generated.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act.[8] Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**, and in any event, on or before June 15, 1991, the date on which the current approval for the ban on autoquoting expires. The NASD believes that extending the ban on autoquoting for six months to conduct further review of the feasibility of permitting types of autoquoting and of the capacity constraints on the NASDAQ system benefits members and the public by assuring that the NASDAQ system is capable of processing additional quotation traffic. In light of these factors, the NASD has requested that the Commission approve the rule change on an accelerated basis on or before June 15, 1991.

Although the Commission does not favor limitations on the use of technological advances in the securities markets, the approach sought by the NASD herein is reasonable. A six month extension of the ban on the use of autoquote functions will enable the NASD to determine which functions would benefit NASDAQ. The six month extension also will allow the NASD to investigate ways to enhance the NASDAQ system to handle the additional volume of computer messages that would be generated by autoquote functions. Accordingly, the Commission believes that the ban on autoquoting should not be terminated while these efforts are ongoing.

The Commission finds that, for the reasons stated herein, the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with section 15A(b)(6) of the Act. Further, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the publication of notice of filing thereof. The current ban on the use of autoquote functions expires on June 15, 1991. The Commission believes that accelerated approval will avoid an unnecessary and potentially problematic interruption in the ban. Both the NASD membership and the public will benefit if there is no interruption in the ban at this time.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any other person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1991.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–91–25 be, and hereby is, approved for a six-month period expiring December 15, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: June 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14609 Filed 6–18–91; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. section 78o–3 (1982).

[Release No. 34–29305; File No. SR–PSE–91–21]

Self-Regulatory Organizations; Filing and Order Granting Partial Temporary Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Price Protection of Limit Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 5, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend several rules of the Exchange's Rules of the Board of Governors in order to allow the Exchange to provide primary market protection to orders that have been entered with the PSE but are designated to receive the execution price that will be established in the primary market's after-hours session. The PSE also proposes to extend the PSE's auction market trading session to 1:50 p.m. (P.t.) and to allow the entry of a new type of order, one-sided ("OS") closing price orders. The PSE has requested accelerated approval of the proposed

rule change.[1] This order grants temporary approval to a portion of the filing.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

The PSE proposes the instant rule change as a competitive response to the New York Stock Exchange's ("NYSE") Off-Hours Trading ("OHT") facility that was recently approved by the Commission.[3]

The NYSE's OHT facility permits the NYSE to conduct an after-hours closing-price trading session known as Crossing Session I ("CSI"). The NYSE's OHT facility also creates a new order type, known as a "GTX" order ("good 'til cancelled, executable through crossing session"), which will be eligible for execution in Crossing Session I of the OHT facility. The GTX order is specifically designed to participate in CSI and will "migrate" from the regular day trading session into CSI if the GTX order is priced at or better than the 4 p.m., e.t., NYSE closing price. The NYSE's OHT facility also permits the entry of single-sided closing-price orders in CSI by NYSE members.

The PSE proposes to amend its rules so that it can offer primary market protection to designated orders.[4] The PSE proposes to establish a separate designator, "GTX" ("good 'til cancelled, eligible for execution in the post-1 p.m. (P.t.) auction market trading session and closing price protection sessions") for those limit orders that customers want to have filled based on executions in the primary market's after-hours session. As described more fully below, GTX orders will migrate to the PSE's current post-1 p.m. extended hours trading session and, if eligible, may be executed as ordinary good till cancelled orders during this session or in the closing price protection session. If not filled, the orders will remain on the PSE specialists' limit order books and will retain their priority.

The PSE extended hours trading session will consist of two separate sessions. The PSE proposes to extend its current auction market by 20 minutes to 1:50 p.m. (P.t.). At 1:50 p.m. the auction market will cease and the PSE will establish a new session between 1:50 to 2 p.m. (P.t.) which will serve as an order protection environment against NYSE Crossing Session I.

In the auction market between 1 and 1:50 p.m. (P.t.), the PSE will respond to the NYSE filing by providing that the following orders will be eligible for execution:

- "GTX" orders that are priced equal to or better than the NYSE closing price.
- One-sided orders if they can be executed at the NYSE closing price or better.
- Regular market and limit orders entered during this time period or that have been authorized by a SCOREX [5] user as eligible for this time period.

(Note: Execution reports will be sent to firms as executions occur.)

In the new session that will be created between 1:50 p.m. and 2 p.m. (P.t.), the following orders will be provided professional protection vis-a-vis NYSE Crossing Session I:

- Unexecuted "GTX" orders priced at the NYSE closing price or better
- Unexecuted one-sided orders entered during the auction market period
- One-sided orders entered after 1:50 p.m.

(Note: Execution reports will be sent following the NYSE Crossing Session I print.)

In addition to establishing this new session between 1:50 and 2 p.m., the PSE will be adjusting the parameters of its SCOREX system. This will involve extending the SCOREX operation hours to 2 p.m.

SCOREX will be structured so that up to 1 p.m., SCOREX will accept limit orders containing a "GTX" designation, but SCOREX will not accept the "GTX" designation for any market, stop, stop limit, or odd-lot order.

Between 1 and 1:50 p.m., SCOREX will accept the following:

One-sided orders

- Regular market and limit orders (Day and GTC)
- "CXLs" for "GTX" and one-sided orders
- "CFOs" and "CXLs" for SCOREX limit orders that have been authorized as eligible by a SCOREX user [6]

During this period (1 and 1:50 p.m.), SCOREX will act as an order routing mechanism. There will be no automatic executions based upon PSE quotations.

From 1:50 to 2 p.m., SCOREX will accept one-sided orders and cancellations for "GTX" and one-sided orders.

This proposal will mean that SCOREX will be operable for an additional hour (from the current 1 p.m. to the proposed 2 p.m.), but the PSE represents that this will have no impact on existing SCOREX capabilities and trade proceeding capabilities.[7]

Under the PSE proposal, the specialist will know which orders have been designated as GTX orders.

In addition to these changes, the PSE also requests that the Commission extend the same exemptive relief that it has granted to the NYSE in connection with the operation of the NYSE's OHT facility for the requirements of Rule 11Aa3–1 (Trade Reporting), Rule 10a–1 (Short Sales),[8] and section 31 (Transaction Fees) to the PSE.

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[1] See File No. SR–PSE–91–21 and letter from David P. Semak, Vice President, Regulation, PSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated June 11, 1991.

[2] See letter from David P. Semak, Vice President, Regulation, PSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated June 11, 1991.

[3] The NYSE's OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4:00 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing-price orders and crosses of single-stock closing-price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24053 (May 31, 1991) ("NYSE OHT Release") (approving Files No. SR–NYSE–89–42 and NYSE–90–53). The Commission approved the NYSE's OHT facility (Files No. SR–NYSE–90–52 and NYSE–90–53) on May 20, 1991. The NYSE has indicated to the Commission that it is prepared to begin the operation of its OHT facility on June 13, 1991.

[4] The Commission notes that this aspect of the PSE proposal is substantially similar to proposals by the Boston ("BSE"), Philadelphia ("Phlx"), and Midwest ("MSE") Stock Exchanges which are also being approved on an accelerated basis by the Commission today. See Files No. SR–BSE–91–4; SR–Phlx–91–26; SR–MSE–91–11.

[5] SCOREX is the PSE's automated order routing and execution system.

[6] "CXLs" and "CFOs" are cancellation orders.

[7] The PSE states that it will use its existing systems to implement the proposed rule change and execute GTX orders. The PSE represents that it has no systems capacity concerns regarding the execution of GTX orders, and that modifications to its systems to permit the execution of those orders were tested successfully prior to this order.

[8] The Commission will issue a letter that addresses the Exchange's request for an exemption from Rule 10a–1.

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The proposed rule change is consistent with section 6(b) (5) of the Act in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to foster a free and open market and, in general, to protect investors and the public interest by encouraging the competitive market place.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements will respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-91-21 and should be submitted by July 10, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission has determined to approve the portion of the PSE proposal that would require PSE specialists to provide primary market protection for certain designated GTX orders. Specifically, this order approves only that part of the filling which allows good til cancelled orders on the limit order books of PSE specialists to be designated as GTX orders, and therefore eligible for migration to the PSE's 1 to 1:30 p.m. (P.t.) auction market trading session and to the PSE's new closing price protection session for possible execution at the NYSE closing price. This order does not approve that portion of the filing which proposes to extend the PSE's auction market session until 1:50 p.m. (P.t.), nor does it approve that portion of the filing which allows OS orders to be accepted after 1:00 p.m. (P.t.). These latter portions of the proposed rule change will be addressed by the Commission at a future date.

The Commission believes that the portions of the PSE proposal regarding GTX orders are reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking or qualified markets through appropriate communication systems and the practicability of brokers executing investors' orders in the best market. For these reasons and for the additional reasons set forth below, the Commission finds that approval, for a temporary period ending on May 24, 1993, of that portion of the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6 and 11A of the Act.[9]

In the recent Commission release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through development of an after-hours trading session. The Commission in that order also stated that the NYSE OHT sessions should enhance competition by providing a service to customers that other exchanges currently are not providing.[10] In that release, the Commission noted that innovation that provides marketplace benefits to attract order flow to one marketplace does not result in unfair competition if the other markets are free to compete in the same manner.[11] In this regard, the Commission noted that, if other U.S. securities marketplaces desire to compete with the NYSE's OHT facility, they could provide a similar service.[12] Although the PSE proposal does not copy the NYSE's OHT facility, it nonetheless presents a reasonable competitive response. By allowing GTX orders that could be executed on the NYSE to receive a similar fill on the PSE, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market. Accordingly, the Commission believes that the PSE proposal should be approved for many of the same reasons that the Commission approved the NYSE OHT facility.[13]

The Commission believes that both the instant PSE proposal and the NYSE's OHT facility, as well as several proposals recently received by the Commission from other U.S. marketplaces, demonstrate the competitiveness of the U.S. securities markets. As a result of these marketplace initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed on both the NYSE and the PSE after the close of the regular 9:30 a.m. to 4 p.m. trading session at the closing price established on the primary market. Moreover, the Commission believes that the increased competition that results from permitting PSE specialists to attract GTX orders should enhance the quality of customer order executions.

The Commission believes that allowing GTX orders to migrate to the PSE's post-1:00 p.m. (P.t.) extended hours trading session and, if eligible, to be executed in either the 1 to 1:30 p.m. (P.t.) auction market session or the closing price protection session is consistent with the Act. First, allowing GTX orders to participate as market and limit orders in the PSE's extended auction market session will improve the execution opportunities for GTX orders. Instead of having to wait for NYSE Crossing Session I to finish, these orders may have the opportunity for an earlier execution. In addition, the Commission believes that, because any GTX orders executed during the PSE's post-1:00 p.m. (P.t.) extended hours trading session will occur at a preset price (the NYSE closing price or better), the potential for abuse of these orders by market participants during this session is small. Accordingly, this part of the PSE proposal is consistent with the maintenance of fair and orderly markets and should contribute to the practicability of brokers achieving a best execution for customer orders. The Commission also believes that allowing GTX orders to migrate to a 2 p.m. price protection system is consistent with the maintenance of fair and orderly markets and should contribute to the practicability of brokers achieving a

[9] 15 U.S.C. 78f and 78k-1 (1988).

[10] See NYSE OHT Release, *supra*, note 3.

[11] *Id.*

[12] *Id.*

[13] See NYSE OHT Release, *supra*, note 3.

best execution for customer orders. The new PSE rule would achieve this by imposing additional obligations on Exchange specialists to provide their customers with primary market price protection. The parameters of the new rule are expressed clearly in the text of the rule and do not leave any discretion to specialists in deciding which orders to fill and what priority to give these orders. The new rule makes clear that if customer limit orders are designated as GTX and are priced at the NYSE closing price, then the specialist is obligated to fill those orders up to the volume that prints at the end of NYSE Crossing Session I.[14] The specialist is relieved of this obligation only if he or she can demonstrate that a particular order would not have been executed if it had been transmitted to the primary market. As discussed above, the Commission believes that the only way in which this can be demonstrated is by showing that an order was sent to the primary market and it was not filled or if a customer cancels a GTX order prior to its execution.

In addition, the PSE proposal does not disturb the priority rules currently in force at the Exchange. During the regular trading hours, orders on the specialist's book would maintain the same priority as existed before adoption of this proposal. Among GTX orders that are eligible after 1 p.m. (P.t.) for possible execution, priority is maintained as it was during the regular trading day. If a GTX order is not executed, it will remain on the specialist's book and will maintain its priority.

Furthermore, the Commission believes that, although PSE specialists will know which limit orders are designated "GTX" and will manually execute GTX orders, they should not be able to use this information to their own advantage. During the 1 to 1:30 session, these orders will operate as limit orders in the same manner as they would operate during the regular trading session. To the extent they migrate to the closing price protection session, specialists' participation is strictly circumscribed. Specialist participation would be limited to filling the contra side of a customer limit order that is eligible, pursuant to the new rule, for a fill. The specialist would have no discretion in choosing which orders to fill and which priority to give orders. Orders would be eligible for a fill based on a strict criteria (e.g., orders that are priced at the NYSE closing price and have been designated GTX are eligible to be filled based on volume that prints in the primary market's after-hours session). In addition, orders would be eligible to be filled according to the priority that already exists on the specialists' books. Thus, the Commission is satisfied that, although PSE specialists will have knowledge of which limit orders have been designated GTX, they would not be able to use this knowledge to the detriment of investors because their participation in the execution of GTX orders will be limited. The Commission expects, however, that the PSE will monitor carefully the execution of GTX orders to ensure that PSE specialists are not taking unfair advantage of this information. In this regard, the Commission expects the PSE to report, within 18 months of the date of the approval of this order, on this issue. The Commission may, at that time, wish to revisit this issue.

The Commission notes that the NYSE's OHT facility was approved by a two year temporary period, commencing on May 24, 1991. In approving the NYSE proposal for a temporary period, the Commission noted that the NYSE OHT facility raised several "intermarket" issues, such as: (i) Whether the Intermarket Trading System ("ITS") should be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (ii) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order book; (iii) if so, with what priority, if any; and (iv) who should bear the cost of developing a working mechanism for such transmittal.

In the release approving the NYSE OHT facility, the Commission also noted that, because at least one other exchange had proposed a trading session similar or identical to the NYSE's OHT facility, significant national market system issues would have to be resolved by the NYSE and the competing market, in conjunction with the SEC. Although the PSE proposal does not present an after-hours crossing session like the NYSE's OHT facility, it would establish an after-hours trading system that will compete directly with NYSE Crossing Session I. Accordingly, the Commission believes that a temporary approval period ending on May 24, 1993 is also appropriate for the PSE proposal.[15]

The Commission believes that this time period will provide an opportunity for the Commission and market participants to observe the actual operation of the NYSE's OHT facility and the PSE's after-hours proposal. Based on these observations the Commission and market participants will be in a better position to evaluate whether further steps to link the NYSE's OHT facility with comparable systems operating at the same time are necessary or appropriate to protect investors or promote fair competition and whether any other linkage issues arise. In this regard, 18 months from the date of approval of the instant proposal, the PSE should submit a new filing pursuant to Rule 19b-4 under the Act requesting permanent approval of its proposed rule change, as well as a report describing the PSE's experience with the new rule during that 18-month period. The report should include, but not be limited to, the following information (broken down by month) for the 18-month period:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders
- The number, if any, of GTX orders executed after the close of the PSE's regular auction trading session pursuant to the new rule
- The number, if any, of GTX orders that remain unexecuted after the 1:00 to 1:30 p.m. (PT) trading session and after 2:00 p.m. (PT)
- The number and percentage of GTC orders on the book that were designated "GTX" and thus eligible to be filled
- Whether the PSE marketplace has experienced any increased volatility during the last hour of the 6:30 a.m. to 1:00 p.m. (PT) trading sessions after the initiation of the new rule
- Whether there were greater (wider) quote spreads during the last hour of the 6:30 a.m. to 1:00 p.m. (PT) trading session after the initiation of the new rule
- Whether the Exchange or any specialist has given any special guarantees to execute GTX orders over

[14] Under the PSE proposal, a broker and PSE specialist may agree upon a specific volume related or other criteria for requiring a fill. This means, however, that they may agree to have the specialist fill more than the amount of the NYSE Crossing Session I print, not less than the amount of the NYSE Crossing Session I print. Of course, if no volume prints in NYSE Crossing Session I in a particular stock, then the PSE specialist cannot execute any GTX orders after regular trading hours that day.

[15] To achieve uniformity, the temporary approval period would run until May 24, 1993, the sunset of the NYSE's OHT facility.

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and above the requirements of the new rule

In addition, the Commission expects that the PSE, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission expects the PSE to keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

Finally, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The PSE's proposal merely extends the Exchange's execution guarantee procedures to incorporate GTX orders and the possibility of a 2 p.m. (p.t.) execution. It does not substantially alter current PSE procedures, nor does it raise issues not already addressed in the order approving the NYSE's OHT system. Moreover, to the extent that GTX orders can participate in the 1 to 1:30 p.m. trading session, this would permit these orders to receive a possible fill without having to wait for the 2 p.m. trade, and at a price at or better than the NYSE closing price. Accordingly, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that it can be in effect on the date that the NYSE's OHT facility commences operation. This will permit the PSE to compete with Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the portion of the proposed rule change that would require PSE specialists to provide primary market protection for certain designated GTX orders is approved for a temporary period ending on May 24, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Dated: June 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14606 Filed 6-18-91; 8:45 am]

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[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-28300; File No. SR-PHLX-91-28]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Price Protection of Limit Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 11, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt new Rule 232 to require Phlx specialists to provide primary market protection for limit orders, entered during the Phlx's regular 9:30 a.m. to 4:00 p.m. trading session, that are designated as executable after the Phlx close ("GTX orders").[1] The execution of these orders will be based on volume that prints in the primary market's after-hours trading session.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 10, 1991, the Phlx submitted File No. SR-Phlx-91-25 to the Commission regarding a proposal substantially similar to Files No. SR-NYSE-90-52 and SR-NYSE-90-53, which proposed the New York Stock Exchange's ("NYSE") Off-Hours Trading ("OHT") facility.[2] The Phlx's filing stated specifically that SR-PHLX-91-25 was solely in competitive response to the NYSE's proposals. The Phlx filing requested that, if the Commission approves the NYSE's proposals, the Commission should approve SR-PHLX-91-25 simultaneously. On May 20, 1991, the Commission approved the NYSE's OHT facility (Files No. SR-NYSE-90-25 and SR-NYSE-90-53). Because the Phlx's filing is still in the public comment period,[3] the Phlx hereby files the instant rule change proposing to adopt new Rule 232 as a competitive response to the NYSE and to clarify in the near term how the Phlx will handle its customers' GTX orders.

New Rule 232 will provide a guarantee to Phlx GTX orders [4] similar to the guarantees proposed by the MSE and BSE filings.[5] In short, the Phlx will authorize member firms on behalf of customers to designate limit orders as GTX orders. GTX orders will be executed as ordinary good til cancelled orders during regular Phlx trading hours. If they are not executed during regular trading hours and are priced at the closing NYSE price, Phlx GTX orders will be eligible for an execution after the Phlx close based on volume executed in the NYSE's after-hours trading session. Such Phlx GTX orders will be executed on a priority and precedence basis depending upon their order of entry during regular trading hours. Unexecuted GTX orders will retain their priority on the specialists' limit order book. No GTX orders can be entered on the Phlx after the close, but the Phlx will permit GTX orders to be cancelled until the NYSE reports its after-hours trading session volume to the consolidated tape. The Phlx is seeking relief from Rule 10a-1 under the Act ("short sale rule") for any GTX order executed by the specialist pursuant to Rule 232's execution guarantee.[6]

Once the NYSE's after-hours volume is published, the Phlx specialist will execute GTX orders constituting, at a minimum, the same number of shares executed by NYSE in Crossing Session I.[7] A Phlx specialist may not be required to execute the same number of shares that were executed during NYSE's Crossing Session I only if the Phlx specialist can demonstrate that his or her customer's GTX order would not have received an execution if it had been originally routed to the NYSE. This can be demonstrated if, for instance, the Phlx specialist routes a comparable GTX order to the NYSE immediately after receiving a similar order for placement on the Phlx specialist's book. If the former order is not executed in the NYSE's after-hours trading session, a presumption can be asserted that the Phlx customer order also would not have been entitled to an execution on the NYSE.[8]

Should the Phlx specialist not engage in a hedge strategy of this nature, he or she would be expected to undertake the risk of executing a Phlx GTX order based strictly on what volume prints on the NYSE and whether the PHLX GTX order is within the group of Phlx GTX orders that are entitled to priority in relationship to the Phlx specialists' commitment to match for share the number of shares executed on the primary exchange.

Under the Phlx proposal, GTX orders executed after the close of the regular 9:30 a.m. to 4:00 p.m. trading session will be reported as one print per stock to the consolidated tape shortly after 5:00 p.m. (ET).

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-91-28 and should be submitted by July 11, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission believes that the Phlx proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communication systems and the practicability of brokers executing investors' orders in the best market. For these reasons and for the additional reasons set forth below, the Commission finds that approval, for a temporary period ending on May 24, 1993, of the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of section 6 and 11A of the Act.[9]

In the recent Commission release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through development of an after-hours trading session. The Commission in that order also stated that the NYSE OHT sessions should enhance competition by providing a service to customers that other exchanges currently are not providing.[10] In that release, the Commission noted that innovation that provides marketplace benefits to attract order flow to one marketplace does not result in unfair competition if the other markets are free to compete in the same manner.[11] In this regard, the Commission noted that, if other U.S. securities marketplaces desire to compete with the NYSE's OHT facility, they could provide a similar service.[12] Although the Phlx proposal does not copy the NYSE's OHT facility, it nonetheless presents a reasonable competitive response. By allowing GTX orders that could be executed on the NYSE to receive a similar fill on the Phlx, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market. Accordingly, the Commission believes that the Phlx proposal should be approved for many of the same reasons that the Commission approved the NYSE OHT facility.[13]

The Commissioon believes that both the instant Phlx proposal and the NYSE's OHT facility, as well as several propoals recently received by the Commission from other U.S. marketplaces, demonstrate the competitiveness of the U.S. securities markets. As a result of these marketplace initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed on both the NYSE and the Phlx after the close of the regular 9:30 a.m. to 4 p.m. trading session at the closing price established

[1] The Commission notes that the Phlx proposal is substantially similar to proposals by the Boston ("BSE"), Pacific ("PSE"), and Midwest ("MSE") Stock Exchanges which are also being approved on an accelerated basis by the Commission. See Files No. SR-BSE-91-4; SR-PSE-91-21; SR-MSE-91-11.

[2] The NYSE's OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing-price orders and crosses of single-stock closing-price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 28237 (May 24, 1991), 56 FR 24663 (May 31, 1991) ("NYSE OHT Release") (approving Files No. SR-NYSE-90-52 and NYSE-90-53). The Commission approved the NYSE's OHT facility (Files No. SR-NYSE-90-52 and NYSE-90-53) on May 20, 1991. The NYSE has indicated to the Commission that it is prepared to begin the operation of its OHT facility on June 13, 1991.

[3] That filing (SR-Phlx-91-25) differed from the NYSE's OHT facility in that the Phlx specialist would be able to discern which orders in his or her book were GTX or regular good until cancelled, whereas, in NYSE's Crossing Session I, that differentiation would not be revealed to the specialist.

[4] The new rule defines a GTX order as an order that is "good til cancelled, eligible for the primary market protection based on volume that prints on the NYSE after-hours trading session."

[5] See supra note 1.

[6] The Commission will issue a letter that addresses the Exchange's request for an exemption from Rule 10a-1.

[7] The Phlx states that it will use its existing systems to implement the proposed rule change and execute GTX orders. The Phlx represents that it has no systems capacity concerns regarding the execution of GTX orders, and that modifications to its systems to permit the execution of those orders were tested successfully prior to this order.

[8] The new Phlx rule also allows a broker and a Phlx specialist to agree upon a specific volume related or other criteria for requiring a fill. This means, however, that they may agree to have the specialist fill more than the amount of the NYSE Crossing Session I print, not less than the amount of the NYSE Crossing Session I print. Of course, if no volume prints in NYSE Crossing Session I in a particular stock, then the Phlx specialist cannot execute any GTX orders after regular trading hours that day.

[9] 14 U.S.C. 78f and 78k-1 (1988).

[10] See NYSE OHT Release, *supra*, note 2.

[11] Id.

[12] Id.

[13] See NYSE OHT Release, *supra*, note 2.

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on the primary market. Moreover, the Commission believes that the increased competition that results from permitting Phlx specialists to attract GTX orders should enhance the quality of customer order executions.

In addition, the Commission believes that the Phlx proposal is consistent with the maintenance of fair and orderly markets and should contribute to the practicability of brokers achieving a best execution for customer orders. The new Phlx rule would achieve this by imposing additional obligations on Exchange specialists to provide their customers with primary market price protection. The parameters of the new rule are expressed clearly in the text of the rule and do not leave any discretion to specialists in deciding which orders to fill and what priority to give these orders. The new rule makes clear that if customer limit orders are designated as GTX and are priced at the NYSE closing price, then the specialist is obligated to fill those orders up to the volume that prints at the end of NYSE Crossing Session I. The specialist is relieved of this obligation only if he or she can demonstrate that a particular order would not have been executed if it had been transmitted to the primary market.As discussed above, the Commission believes that the only way in which this can be demonstrated is by showing that an order was sent to the primary market and it was not filled or if a customer cancels a GTX order prior to its execution.

In addition, the Phlx proposal does not disturb the priority rules currently in force at the Exchange. During the regular trading hours, orders on the specialist's book would maintain the same priority as existed before adoption of this proposal. Among GTX orders that are eligible after 4 p.m. for possible execution, priority is maintained as it was during the regular trading day. If a GTX order is not executed, it will remain on the specialist's book and will maintain its priority.

Furthermore, the Commission believes that, although Phlx specialists will know which limit orders are designated "GTX" and will manually execute GTX orders, they should not be able to use this information to their own advantage. As discussed above, the Phlx proposal consists of an execution guarantee system. It does not create an additional session where specialists can participate. Specialists participation would be limited to filling the contra side of a customer limit order that is eligible, pursuant to the new rule, for a fill. The specialist would have no discretion in choosing which orders to fill and which priority to give orders. Orders would be eligible for a fill based on strict criteria (e.g., orders that are priced at the NYSE closing price and have been designated GTX are eligible to be filled based on volume that prints in the primary market's after-hours session). In addition, orders would be eligible to be filled according to the priority that already exists on the specialists' books. Thus, the Commissioin is satisfied that, although Phlx specialists will have knowledge of which limit orders have been designated GTX, they would not be able to use this knowledge to the detriment of investors because their participation in the execution of GTX orders will be limited. the Commission expects, however, that the Phlx will monitor carefully the execution of GTX orders to ensure that Phlx specialists are not taking unfair advantage of this information. In this regard, the Commission expects the Phlx to report, within 18 months of the date of the approval of this order, on this issue. The Commission may, at that time, wish to revisit this issue.

The Commission notes that the NYSE's OHT facility was approved for a two year temporary period, commencing on May 24, 1991. In approving the NYSE proposal for a temporary period, the Commission noted that the NYSE OHT facility raised several "intermarket" issues, such as: (i) Whether the Intermarket Trading System ("ITS") should be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (ii) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order book; (iii) if so, with what priority, if any; and (iv) who should bear the cost of developing a working mechanism for such transmittal.

In the release approving the NYSE OHT facility, the Commission also noted that, because at least one other exchange had proposed a trading session similar or identical to the NYSE's OHT facility, significant national market system issues would have to be resolved by the NYSE and the competing market, in conjunction with the SEC. Although the Phlx proposal does not present an after-hours crossing session like the NYSE's OHT facility, it would establish an after-hours trading system that will compete directly with NYSE Crossing Session I. Accordingly, the Commission believes that a temporary approval period ending on May 24, 1993 is also appropriate for the Phlx proposal.[14]

The Commission believes that this time period will provide an opportunity for the Commission and market participants to observe the actual operation of the NYSE's OHT facility and the Phlx's after-hours proposal. Based on these observations the Commission and market participants will be in a better position to evaluate whether further steps to link the NYSE's OHT facility with comparable systems operating at the same time are necessary or appropriate to protect investors to promote fair competition and whether any other linkage issues arise. In this regard, 18 months from the date of approval of the instant proposal, the Phlx should submit a new filing pursuant to Rule 19b–4 under the Act requesting permanent approval of its proposed rule change, as well as a report describing the Phlx's experience with the new rule during that 18-month period. The report should include, that not be limited to, the following information (broken down by month) for the 18-month period:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders
- The number, if any, of GTX orders executed after the close of the Phlx's regular auction trading session pursuant to the new rule
- The number, if any, of GTX orders that remain unexecuted after the Phlx specialist has fulfilled his or her obligations in connection with the new rule
- The number and percentage of GTC orders on the book that were designated "GTX" and thus eligible to be filled
- Whether the Phlx marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading sessions after the initiation of the new rule
- Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the new rule
- Whether the Exchange or any specialists has given any special guarantees to execute GTX orders over and above the requirements of the new rule

[14] To achieve uniformity, the temporary approval period would run until May 24, 1993, the sunset of the NYSE's OHT facility.

In addition, the Commission expects that the Phlx, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation of trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission expects the Phlx to keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

Finally, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Phlx's proposal merely extending the Exchange's execution guarantee procedures to incorporate GTX orders and the possibility of a 4 p.m. execution. It does not substantially alter current Phlx procedures, nor does it raise issues not already addressed in the order approving the NYSE's OHT system. Accordingly, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that it can be in effect on the date that the NYSE's OHT facility commences operation. This will permit the Phlx to compete the Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change is approved for a temporary period ending on May 24, 1993.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.[16]

Dated: June 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14610 Filed 6–18–91; 8:45 am]

BILLING CODE 8010-01-M

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30-3(a)(12) (1990).

[Rel. No. IC–18189; 811–3463]

Putnam Capital Fund; Notice of Application

June 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Putnam Capital Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 16, 1991 and amendments were filed on May 13, 1991 and May 28, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 8, 1991 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Post Office Square, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272–300 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representatives

1. On April 24, 1967, applicant's predecessor, Putnam Duofund, filed a registration statement pursuant to the Securities Act of 1933, which became effective on June 29, 1967. Putnam Duofund operated as a closed-end investment company until January 3, 1983, when it converted to an open-end investment company and changed its name to Putnam Capital Fund, Inc. Applicant, organized as a Massachusetts business trust, became the successor to Putnam Capital Fund, Inc. on April 27, 1984.

2. On June 3, 1988, applicant's board of trustees approved a plan of reorganization. On June 30, 1988, applicant filed proxy materials relating to the proposed reorganization with the Commission. Applicant's shareholders approved the reorganization at a special meeting held on September 8, 1988.

3. The plan of reorganization provided for the transfer of applicant's assets to Depositors Investment Trust ("DIT") in exchange for shares of OTC Emerging Growth Fund ("OTC"), a series of DIT. On September 12, 1988, applicant exchanged 1,728,432 of its shares valued at $5.31 per share for 370,378 OTC shares valued at $24.78 per share. The exchange occurred at relative net asset value.

4. Pursuant to the merger, applicant's shareholders received OTC shares equal in value to their *pro rata* share of the assets of applicant.

5. The total expenditures incurred in connection with the merger was $85,525. The expenses were allocated as follows: $32,525 to applicant, $35,000 to OTC, and $18,000 to applicant's investment adviser.[1]

6. Applicant has filed an instrument of termination with the Secretary of State of the Commonwealth of Massachusetts and has been terminated.

7. As of the date of the application, applicant had no assets, debts, liabilities, or securityholders. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to wind-up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14516 Filed 6–18–91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–18188; 811–3899]

Putnam Corporate Cash Trust—Adjustable Rate Preferred Portfolio; Application

June 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Putnam Corporate Cash Trust—Adjustable Rate Preferred Portfolio.

RELEVANT ACT SECTION: Section 8(f).

[1] By letter dated June 10, 1991, Counsel for applicant stated that the expenses incurred with the merger were accrued for and reflected in the applicant's and OTC's net asset value prior to the actual reorganization to ensure an equitable distribution of these expenses among the shareholders of applicant and OTC.

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SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 14, 1991 and amendments were filed on May 13, 1991 and May 28, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 8, 1991 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Post Office Square, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a Massachusetts business trust. On November 8, 1983, applicant registered under the 1940 Act and filed a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on December 21, 1983.

2. On April 12, 1990, after applicant's board of trustees had approved a plan of reorganization, applicant filed proxy materials relating to the proposed reorganization with the Commission. Applicant's shareholders approved the reorganization at a special meeting held on July 12, 1990.

3. The plan of reorganization provided for the transfer of applicant's assets to Putnam Corporate Cash Trust—Diversified Strategies Portfolio ("DSP") in exchange for shares of DSP. On July 16, 1990, applicant exchanged 2,306,594 of its shares valued at $32.52 per share for 1,965,451 DSP shares valued at $38.15 per share. The exchange occurred at relative net asset value. Upon completion of the reorganization, DSP changed its name to Putnam Corporate Cash Trust.

4. Pursuant to the merger, applicant's shareholders received DSP shares equal in value to their *pro rata* share of the assets of applicant.

5. Applicant and DSP shared equally the expenses, totalling $80,000, that were incurred in connection with the merger.[1]

6. Applicant has filed an instrument of termination with the Secretary of State of the Commonwealth of Massachusetts and has been terminated.

7. As of the date of the application, applicant had no assets, debts, liabilities or securityholders. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to windup its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14516 Filed 6-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18190; 811-2777]

Unified Municipal Fund, Inc.; Notice of Application

June 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregulation under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Unified Municipal Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N–8F was filed on January 31, 1991 and amendments were filed on May 6, 1991 and May 28, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 8, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 429 N. Pennsylvania Street, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company that was organized as a corporation under the laws of the State of Indiana. On October 3, 1977, applicant, previously named Unified Accumulation Fund, Inc., filed a notification of registration and registration statement pursuant to section 8 of the 1940 Act. On that date, applicant also field a registration statement pursuant to the Securities Act of 1933, which was declared effective on November 11, 1977.

2. At a meeting held on July 27, 1990, applicant's board of directors adopted a plan of reorganization. On October 16, 1990, applicant filed proxy materials with the Commission relating to the proposed reorganization. Applicant's shareholders approved the reorganization at a special meeting held on October 31, 1990.

3. The plan of reorganization permitted applicant to merge with Unified Funds, an Indiana business trust (the "Trust"). Other Unified managed investment companies also merged into the Trust, each of which will operate as a separate series of the Trust.

4. As of October 31, 1990, applicant had two portfolio series called the General Series and the Indiana Series. Pursuant to the merger, the shareholders of both series received shares in the Trust's Indiana Municipal Bond Fund series equal in value to their shares in applicant.

5. Pursuant to applicant's plan of reorganization, applicant distributed 519,105 shares with a net asset value of $9.43 per share to the General Series' shareholders and 1,148,534 shares with a net asset value of $8.79 per share to the Indiana Series. The shares were valued and distributed on October 31, 1990.

6. After the reorganization, Unified Funds liquidated some of the portfolio securities previously held in the General Series and reinvested the proceeds by November 1, 1990. No commissions were paid in connection with the sale of such securities.

7. The total expenditures incurred in connection with the merger were $28,000. This amount will be paid by applicant under its new existence as the Trust's Indiana Municipal Bond Fund series over a period of five years.

8. Applicant has filed a certificate of dissolution with the Secretary of State of Indiana.

9. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

10. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14517 Filed 6-18-91; 8:45 am]

BILLING CODE 8010-01-M

[1] By letter dated June 10, 1991, Counsel for applicant stated that these expenses were accrued for and reflected in applicant's and DSP's net asset value prior to the actual merger to ensure an equitable distribution of these expenses between the shareholders of applicant and DSP.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 7, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47565.
Date filed: June 3, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 492 (TC3 Normal Fares between USSR and China).
Proposed Effective Date: July 2, 1991.
Docket Number: 47567.
Date filed: June 5, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 485 (Tariffs from Kenya in U.S. Dollars—PAXJ; Mail Vote 486 (Tariffs from Kenya in U.S. Dollars—Cargo).
Proposed Effective Date: May 15, 1991.
Docket Number: 47568.
Date filed: June 5, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/C0333 Dated May 21, 1991, TC2 Expedited Reso 003bb (R–1); TC2 Reso/C0334 dated May 21, 1991, TC2 Expedited Reso (R–2 to R–7); TC2 Reso/C0335 dated May 21, 1991, TC2 Expedited Resos (R–8 to R–10).
Proposed Effective Date: July 1 & August 1, 1991.
Docket Number: 47569.
Date filed: June 5, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/C0687 dated May 1, 1991, North Atlantic (USA/US Territories—Africa R–1 to R–4, TC12 Rates 0466 dated May 22, 1991—Rates Tables.
Proposed Effective Date: October 1, 1991.
Docket Number: 47570.
Date filed: June 7, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 495 (Currency Amendments).
Proposed Effective Date: July 1, 1991.
Docket Number: 47577.
Date filed: June 7, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 496 (Brazilian currency); R–1—Reso 021e
Proposed Effective Date: July 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-14515 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 7, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47563.
Date filed: June 3, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 1, 1991.
Description: Application of Servicios Aereos Litoral, S.A. DE C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to provide scheduled transportation between the United States and Mexico.
Docket Number: 47571.
Date filed: June 5, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 3, 1991.
Description: Application of Air Micronesia, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for an amendment to its certificate of public convenience and necessity for route 170 so as to be authorized to engage in foreign air transportation of persons, property, and mail between the coterminal points Guam and Saipan, Northern Mariana Islands, on the one hand, and coterminal point or points in Korea and Taiwan, on the other.
Docket Number: 47572.
Date filed: June 6, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1991.
Description: Application of Amerijet International, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests a new or amended certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of property and mail between Miami, Florida and St. Lucia, West Indies.
Docket Number: 47574.
Date filed: June 6, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1991.
Description: Application of Zuliana De Aviacion C.A., pursuant to section 402 of the Act and subpart Q of the Regulations, for a foreign air carrier permit authorizing the carriage of persons, property and mail on a scheduled basis between Venezuela via the Netherlands West Indies and Jamaica to Miami and Houston. Zuliana also requests that it be granted authority to operate charters subject to the Department's Rules and Regulations.
Docket Number: 46756.
Date filed: June 7, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1991.
Description: Application of Lokes Aviation, pursuant to section 401(h) of

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the Act and subpart Q of the Regulations, requests transfer of its certificate to Loken Aviation, Inc., and files all necessary continuing fitness data to support this transfer and activate its 401 authority in accordance with Order 90-21-1.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-14514 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Approval of Noise Compatibility Program for San Diego International Airport-Lindbergh Field, San Diego, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the San Diego Unified Port District under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On January 30, 1989 the FAA determined that the noise exposure maps submitted by San Diego Unified Port District under part 150 were in compliance with applicable requirements. On June 5, 1991 the Assistant Administrator for Airports approved the San Diego International Airport-Lindbergh Field noise compatibility program. Nineteen of the twenty-four recommendations of the program were approved. Five noise abatements measures were disapproved.

EFFECTIVE DATE: The effective date of the FAA's approval of the San Diego International Airport-Lindbergh Field noise compatibility program is June 5, 1991.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner, Planning Section, AWP-611.2 telephone 213/297-1534, Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, Telephone 213/297-1250. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location .

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for San Diego International Airport-Lindbergh Field, effective June 5, 1991.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel. Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Assistant Administrator for Airports prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Hawthorne, California.

The San Diego Unified Port District submitted to the FAA on November 7, 1986 and December 11, 1987 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1985 through September 1989. The San Diego International Airport-Lindbergh Field noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 30, 1989. Notice of this determination was published in the Federal Register on March 30, 1989.

The San Diego International Airport-Lindbergh Field study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on December 5, 1990 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twenty-four proposed actions for noise mitigation both on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective June 5, 1991.

Outright approval was granted for nineteen of the specific program elements. Five elements were disapproved. The approved elements included expansion of nighttime restrictions, existing nighttime restrictions, prohibitions of nighttime engine tests or engine runups, pilot program of sound attenuation of one public public school, urge city of San Diego to prohibit incompatible land uses, encourage the city to review land use policies, study and upgrade the noise monitoring system, develop a data base on general aviation and commuter, maintain noise advisory committee, maintain noise information center, and its public records, continue to employ a noise information officer, regular meeting with commercial airline representatives, issue "best efforts on noise letter", continue to provide noise and aircraft operations related information, expand the quarterly reports, cooperate with city or county of San Diego public recognition program to airport users, cooperate with studies concerning air carrier service for the San Diego Region and program revisions.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on June 5, 1991. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the San Diego Unified Port District.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 91-14617 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the meeting of the Executive Committee to be held July 12, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) approval of the May 24, 1991, Executive Committee Meeting Minutes; (3) Executive Director's report; (4) RTCA Special Committee activities report for May-June 1991; (5) Fiscal and Management subcommittee report; (6) Facilities Working Group report; (7) consideration of proposals to establish new special committees; (8) consideration of approval of special committee reports; (a) Special Committee 159 report: "Minimum Operational Performance Standards for Airborne Supplemental Navigation Equipment Using Global Positioning System (GPS)"; (b) Special Committee 142 report: Proposed DO-181A, "Minimum Operational Performance Standards for Air Traffic Control Radar Beach System/Mode Select (ATCRBS/Mode S) Airborne Equipment," incorporating changes no. 1, no. 2, and no. 3.; (9) other business; (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 12, 1991.

Clyde Miller,

Designated Officer.

[FR Doc. 91-14618 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report the results of the fourth session of the United Nations' Sub-Committee of Experts on the Transport of Dangerous Goods.

DATES: July 18, 1991 at 9:30 a.m.

ADDRESSES: Room 4234, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: This meeting will be held to describe the outcome of the fourth session of the Sub-Committee of Experts on the Transport of Dangerous Goods to be held July 1 to 12, 1991, in Geneva and to discuss the U.S. delegation's plans for participating in the Sub-Committee's fifth session to be held December 2 to 13, 1991. Topics to be covered include packaging and classification issues relating to explosives; performance packaging test requirements for non-bulk packagings; classification of specific dangerous goods; and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the fourth session of the UN Sub-Committee meeting and, when available, a copy of the report of the Sub-Committee may be obtained from RSPA for a nominal fee. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202-366-4453). For more information on the use of the HMIX system, contact the HMIX information center; 1-800-FLANFOR (782-6367); in Illinois, 1-800-367-6582; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council (HMAC), suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; telephone number (202) 728-1460.

Issued in Washington, DC, on June 13, 1991.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 91-14512 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 13, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

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Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0173.
Form Number: 4563.
Type of Review: Extension.
Title: Exclusion of Income for Bona Fide Residents of American Samoa.
Description: Used by bona fide residents of American Samoa whose income is from sources within American Samoa, Guam, and the Northern Mariana Islands to the extent specified in Internal Revenue Code section 931. This information is used by the Service to determine if an individual is eligible to exclude possession source income.
Respondents: Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 33 minutes
Learning about the law or the form, 5 minutes
Preparing the form, 25 minutes
Copying, assembling, and sending the form to IRS, 17 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 135 hours.
OMB Number: 1545–0238.
Form Number: W–2G.
Type of Review: Extension.
Title: Certain Gambling Winnings.
Description: Internal Revenue Code section 6041 requires payers of certain gambling winnings to report them to the IRS. If applicable, section 3402(q) and section 3406 require tax withholding on these winnings. We use the information to ensure taxpayer income reporting compliance.
Respondents: Businesses or other-profit, Small businesses or organizations.
Estimated Number of Respondents: 3,283.
Estimated Burden Hours Per Response: 19 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 449, 223 hours.
OMB Number: 1545–1065.
Form Number: 9003.
Type of Review: Extension.
Title: Additional Questions to be Completed by All Applicants for Permanent Residence in the United States.
Description: Form to be used by the State Department and the Immigration and Naturalization Service to gather certain additional information on "green card" applicants for the IRS as required by section 6039E(b) of the Tax Reform Act. The answers will be transcribed into a data base for IRS computer processing.
Respondents: Individuals or households.
Estimated Number of Respondents: 650,000.
Estimated Burden Hours Per Response: 5 minutes.
Frequency of Response: When applying for green card.
Estimated Total Reporting Burden: 54,166 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 91–14586 Filed 6–18–91; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review.

Dated: June 13, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Focus Groups on Unnecessary Filings.
Description: These focus groups will be conducted as part of IRS' implementation responsibility under OMB Circular A–132. IRS needs to explore public perceptions on why they file tax returns when not legally required to do so, and to develop methods to stop preparation of these returns.
Respondents: Individuals or households.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 3 hours.
Frequency of Response: One-time.
Estimated Total Reporting Burden: 222 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitutional Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 91–14587 Filed 6–18–91; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 13, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0019
Form Number: 1133.
Type of Review: Extension.
Title: Claim Against the United States for the Proceeds of a Government Check.
Description: If a payee claims non-receipt of a Treasury check, the FMS–1133 claim form and a copy of the negotiated check are sent to the payee. If the payee wishes to claim forgery, he or she answers questions on the form, and signs and returns it to the Adjudication Division. Claims Examiners review the claim to determine final action on the case.
Respondents: Individuals or households.
Estimated Number of Respondents: 127,877.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 21,323 hours

Clearance Officer: Jacqueline R. Perry (301) 436–6453, Financial Management Service, room B–101, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 91–14588 Filed 6–18–91; 8:45 am]
BILLING CODE 4810–35–M

Customs Service

New Importer Identification Numbering System

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: Notice of New Importer Identification Numbering System.

EFFECTIVE DATE: July 1, 1991.
FOR FURTHER INFORMATION CONTACT: Entry Operations Branch, (202) 566–5307.
SUPPLEMENTARY INFORMATION: The Customs Service has undertaken a project to modernize the importer name, address and identification number file contained in our Automated Commercial System. A major objective of this project is to provide standardized data and uniformity of input into this file. A part of this project is the establishment of a new Customs assigned importer identification numbering system.

The Customs Service will implement a new Customs assigned importer identification numbering system on July 1, 1991. The new Customs assigned number will be automatically generated via the Automated Commercial System within Customs after an individual or business has made application for such a number on a Customs Form 5106.

In general, the new Customs assigned number will only be available to individuals and businesses which do not possess a valid Internal Revenue Service employer identification number or a Social Security number.

Pursuant to § 24.5, Customs Regulations (19 CFR 24.5), an importer is required by Customs to be identified by a specific number. There are three types of numbers currently used by the Customs Service for this purpose. They are either an Internal Revenue Service employer identification number, a Social Security number, or a Customs assigned number. Section 24.5 states:

> If an Internal Revenue Service employer identification number, a Social Security number, or both, are obtained after an importer number has been assigned by Customs, a new Customs Form 5106 shall not be filed unless requested by Customs.

Pursuant to 19 CFR 24.5(c), this public notice is to serve as the request by Customs to furnish either an Internal Revenue Service employer identification number or Social Security number for importers who have received a Customs assigned number. The position of the Customs Service is that each person who enters into a Customs transaction using an existing Customs assigned number shall update that identification number by furnishing the importer's Social Security number or Internal Revenue Service employer identification number within 30 days of receipt of such a number. The information should be furnished on a Customs Form 5106.

Each person who engages in a Customs transaction using a Customs assigned identification number issued prior to the new numbering system must update that identification number by furnishing a Social Security number or employer identification number if available. If a Social Security number or employer identification number is not available, application for a new Customs assigned number must be made on a Customs Form 5106.

Importers that need to obtain a new Customs assigned number (those that do not have an Internal Revenue Service employer identification number or Social Security number) are expected to obtain a new Customs assigned number and request that the old numbers be deactivated.

The format of the new Customs assigned number is YYDDPPNNNNN where YY is the calendar year of input, DDPP is the district and port code, and NNNNN is a sequentially system assigned number.

Because the importer identification number cannot be changed on a Customs bond using a rider, importers who have filed Customs bonds using a Customs assigned identification number must replace their existing bond, on their anniversary date, with a new bond and bond application using an Internal Revenue Service employer identification number or a Social Security number, or the importer must obtain a new Customs assigned number.

Customs expects a 1-year transition phase to accommodate all importers. During this period, Customs will allow for dual processing of old and new Customs assigned numbers.

A false statement contained on a Form 5106 may subject the filer to prosecution under the provisions of 18 U.S.C. 1001 or sanctions or penalties under other applicable laws or regulations.

This Notice supersedes the Federal Register Notice dated January 9, 1990, volume 55, number 6.

Dated: June 14, 1991.

Samuel H. Banks,
Assistant Commissioner, Office of Commercial Operations.
[FR Doc. 91–14603 Filed 6–18–91; 8:45 am]
BILLING CODE 4820–02–M

Internal Revenue Service

Establishment of Internal Revenue Service Information Reporting Program Advisory Committee

AGENCY: Internal Revenue Service, Treasury.

ACTION: Announcement.

SUMMARY: The Internal Revenue Service has established an Information Reporting Program (IRP) Advisory Committee. The primary purpose of this Advisory Committee is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the Internal Revenue Service and representatives of the payer community. The Committee will offer constructive observations about the Internal Revenue Service's current or proposed policies, programs, and procedures in this area and, when necessary, suggest ways to improve the Information Reporting Program operation.

SUPPLEMENTARY INFORMATION: The Committee will report to the Director, Information Reporting Program, who is the executive responsible for information reporting and is charged with its system-wide planning and improvement. The Advisory Committee will be instrumental in providing advice to enhance the Information Reporting Program and achieve forms simplification and fairness to taxpayers. Increasing citizen participation in the planning and improvement of the tax system will help achieve the goal of enhancing voluntary compliance. Committee members are not paid for their time or services; but, consistent with Federal regulations, they will be reimbursed for their travel and lodging expenses to attend a two-day meeting twice each year.

The Internal Revenue Service is interested in representation from different areas of the payer community (e.g., banking, real estate, life insurance, securities, etc.). Anyone wishing to be considered for participation on the Advisory Committee should so advise the Internal Revenue Service. Please complete the following questionnaire and forward to Ms Susan Hinton, Staff

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Chief, Information Reporting Program Planning Staff, at the address below.

ADDRESSES: Internal Revenue Service, 1111 Constitution Avenue, NW., EX:I:P, room 2011, Washington, DC 20224.

DATES: Completed questionnaires should be received by July 19, 1991. If you have already submitted an application, you do not need to reapply in response to this announcement. An acknowledgment letter will be sent upon receipt of your application.

FOR FURTHER INFORMATION CONTACT: Kate LaBuda at (202) 566-6542 (not a toll-free number).

Dated: June 3, 1991.

Susan Hinton,

Staff Chief, Planning and Management Staff, Information Reporting Program.

Interest Questionnaire—Information Reporting Program Advisory Committee

This questionnaire must be completed by anyone interested in becoming a member of the Information Reporting Program Advisory Committee. The form should be returned to Ms. Susan Hinton, Staff Chief, Information Reporting Program Planning Staff, Internal Revenue Service, 1111 Constitution Avenue, NW., EX:I:P room 2011, Washington, DC 20224, and must be received in that office by July 19, 1991. Applications received after this date will not be considered. If you have already applied, you do not need to reapply in response to this announcement. All applications received will be acknowledged. Questions should be directed to Kate LaBuda at (202) 566-6542.

1. Name:
2. Title:
3. Company or Organization Name:
4. Business Address:
5. Home Address:
6. Business Phone:
7. Home Phone:
8. Social Security Number (This is Reqired for a Tax Check):
9. Prior IRS employment (if applicable, please state position/s and title/s):
10. Professional credentials (e.g., Ph.D., CPA, Enrolled Agent, Attorney, Accountant, Tax Practitioner, Professor, etc.)
11. Which one professional credential most accurately describes your current professional activity?
12. How many years of experience do you have?

_____ Tax related (general)
_____ Information Reporting.

13. What most closely describes your *primary area(s)* of tax administration expertise? (Select no more than three.)

_____ Individual taxpayers
_____ Corporate taxpayers
_____ Small business taxpayers
_____ Minority taxpayers
_____ Employee plans
_____ General tax practice
_____ Information systems
_____ Rulings & Regulations
_____ International taxpayers
_____ Taxpayer service/assistance
_____ Compliance activities
_____ Exempt organizations
_____ Quality management
_____ Other (please describe below)

14. With which of the following information reporting groups does your business or organization most closely identify? (Select no more than three.)

_____ Banking
_____ Data processing
_____ Real estate
_____ Securities
_____ Large corporations
_____ Retirement groups
_____ Utilities
_____ Other (please describe below)
_____ Savings & Loans/Credit Unions
_____ Mortgage companies
_____ Life insurance
_____ Stock broker/Finan. planner
_____ State governments
_____ Trust companies
_____ Federal government agencies.

15. Summarize your background and identify organizations to which you belong and any leadership positions you have held. Please limit job and organization entries to five each (total of 10).

16. We would like you to propose two topic ideas that you would feel appropriate for discussion by the new Information Reporting Program Advisory Committee.

A. Suggested Topic:
Description (no more than two sentences):

B. Suggested Topic:
Description (no more than two sentences):

[FR Doc. 91-14643 Filed 6-18-91; 8:45 am]
BILLING CODE 4830-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on U.S. Negotiations With the Republic of Poland in the Context of the Renegotiation of Poland's Terms of Accession to the General Agreement on Tariffs and Trade (GATT)

ACTION: Notice of request for comments.

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting written comments on Poland's announced intention to renegotiate its Protocol of accession to the GATT and establish a GATT schedule of tariff concessions, and on the negotiations that are part of this process. Comments received will be considered by the Executive Branch in developing U.S. positions and objectives in the bilateral and multilateral negotiations that will take place in response to Poland's request.

DATES: Public comments are due by 12 noon, Friday, July 12, 1991.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Cecilia Leahy Klein, Director for GATT Affairs (202-395-3063), or Gordana Earp, Deputy Assistant USTR for East-West Trade Policy (202-395-3074), Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

1. Written Comments

The Chairman of the TPSC invites written public comments on issues to be addressed in the course of examination by the Contracting Parties (CPs) to the GATT of the request by Poland for renegotiation of the terms of its Protocol of accession to the GATT. In addition, public advice is sought concerning tariff concessions that might be requested as part of the negotiations. The TPSC is particularly interested in assessments of the impact on U.S. trade of recent Polish economic and trade reforms, on specific issues that should be addressed in developing new terms of Polish participation in the GATT, and on recent experiences of U.S. firms in trading with Poland.

Persons wishing to submit comments should provide a written statement, in twenty copies, by noon, Friday, July 12, 1991, to Carolyn Frank, TPSC Secretary, Office of the U.S. Trade Representative, room 414, 600 17th Street, NW., Washington, DC 20506. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, 600 17th Street, NW., room 101, Washington, DC, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment call Brenda Webb on 202-395-6186. Business confidential information will be subject to the requirements of 19 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages, and must be accompanied by a non-confidential summary thereof.

2. Background

On January 15, 1990, the Republic of Poland informed the GATT CPs of its desire to renegotiate the accession Protocol established on June 13, 1967, and to establish a tariff-based schedule of concessions to replace the original non-tariff provisions of Schedule LXV. Special Protocol terms were established for Poland in 1967 to protect GATT CPs from the unbalanced trade effects of non-market economic regimes. These special provisions included a selective safeguard clause, annual reviews of Poland's trade progress with GATT CPs, and provisions for the withdrawal of concessions if Poland's trade practices damaged the industries or trade of other CPs. In addition, and in lieu of tariff commitments that were meaningless under the economic and trade regime existing at the time of Poland's accession, Poland established a GATT schedule that bound Poland to fixed yearly increases in imports from GATT CPs. In the mid-1970s, Poland abandoned this import commitment. The GATT CPs declined to release Poland from its obligation, however, and Poland ceased consulting with GATT CPs concerning its conformity to the provisions of its Protocol and schedule. The safeguard mechanism, designed to permit the application of selective import restrictions by CPs against Polish exports proved cumbersome, and was seldom used. Poland's inability to meet its Protocol and schedule obligations, however, allowed other CPs, including the United States, to withdraw or withhold GATT benefits from Poland without violating their own GATT obligations.

Based on its conviction that recent reforms in its economic and trade regime have substantially eliminated the non-market, centrally planned economic system that made such special, non-market terms of GATT accession necessary, Poland now seeks to establish new terms of GATT participation that are like those traditionally negotiated with other CPs. A Working Party to examine this request, composed of interested GATT CPs was established in February 1990, and Poland circulated a description of its foreign trade regime in September 1990. The Working Party will examine Poland's current foreign trade regime, assess its consistency with GATT obligations, and submit recommendations to the GATT Council that may include a draft Protocol containing new terms of GATT participation for Poland.

As part of the renegotiation process, Poland will also initiate negotiations with interested GATT members to formulate a schedule of tariff concessions that may become part of its new Protocol, attached to the text of the General Agreement. Such concessions normally consist of tariff reductions and/or commitments not to increase tariffs above certain levels. Poland established its current applied tariff regime in 1988, but the rates applied were subsequently altered based on the rapidly changing needs of the Polish economy. Sudden internal economic and price reform, the sharp decline in commerce among the former members of the Council of Mutual Economic Assistance (CMEA) as Eastern and Central Europe converted fully to hard currency trade, and increased competition from imports as quantitative restrictions were eliminated created pressures first to suspend many existing tariffs, then to raise some of them. It is expected that Poland will soon establish a new applied tariff regime, which may be shaped by Poland's tariff negotiations with the GATT.

Poland is also engaged in negotiations with the European Communities (EC) to establish a broad agreement covering economic, cultural, political, and trade relations. Part of this agreement would be a free trade arrangement which would eliminate most tarriffs on trade between Poland and the EC over perhaps a ten year period, with Polish access to the EC market to be improved in advance of similar Polish liberalization. U.S. exports to Poland would continue to be subject to import tariffs and other border restrictions after such measures against EC exports had been eliminated.

If Poland establishes new terms of GATT participation closer to traditional Protocol provisions, Poland will be expected to conduct its trade policies in accordance with the rules set out in the General Agreement, and the terms of its Protocol. Basic GATT obligations include full transparency in trade regulation, national treatment for imported goods, non-discrimination among trading partners, the elimination of quantitative restrictions in trade and a reliance on tariffs, and observance of GATT rules on dumping, subsidies, customs procedures, and state trading. Poland's economic and trade regime must also be capable of responding to GATT provisions in a manner that grants other CPs reciprocal market access and fair trade standards in the conduct of GATT trade relations.

Authority: 15 CFR 2002.2.

Daniel F. Leahy,

Acting Chairman, Trade Policy Staff Committee.

[FR Doc. 91-14592 Filed 6-18-91; 8:45 am]
BILLING CODE 3190-01-M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 118
Wednesday, June 19, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June, 11, 1991, 56 FR 26849.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 12, 1991, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added to Item CAG-15 on the Agenda scheduled for June 12, 1991:

Item No., Docket No., and Company

CAG-15—Docket No. RP91-111-000, North Penn Gas Company

Lois D. Cashell,

Secretary.

[FR Doc. 91-14672 Filed 6-14-91; 4:45 am]

BILLING CODE 6717-01-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m. Tuesday, June 25, 1991.

PLACE: The Park Hyatt, 24th and M Streets, NW., Washington, DC 20037.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board will consider the following:

1. 1992 Budget
2. Strategic Plan
3. Compensation Policy for Bank Presidents

The above matters are exempt under one or more of sections 552(c)(2), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408-2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 91-14663 Filed 6-14-91; 4:55 pm]

BILLING CODE 6725-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m. Monday, June 24, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 14, 1991.

William W. Wiles,

Secretary to the Board.

[FR Doc. 91-14685 Filed 6-14-91; 4:55 pm]

BILLING CODE 6210-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 3-91

Notice of Meetings

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time	Subject Matter
Thurs, June 27, 1991 at 10:00 a.m.	Consideration of Proposed Decisions on claims against Iran. Hearings on the Record on objections to Proposed Decisions issued on claims against the Government of the Islamic Republic of Iran: IR-0123—Leslie F. Noell, Jr. IR-1866-Elga Skinders.
Thurs, June 27, 1991 at 2:00 p.m.*.	Oral Hearings on objection to Proposed Decision issued on claim for prisoner of war compensation under the War Claims Act of 1948: SPN-1868—Michael Joseph Bosiljevac, Dec'd.

* The hearing site will be: 601 D Street, NW., Room 10418 (Classroom B), 10th Floor, Patrick Henry Bldg., Washington, DC.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, D.C. on June 17, 1991.

Judith H. Lock,

Administrative Officer.

[FR Doc. 91-14729 Filed 6-17-91; 12:08 pm]

BILLING CODE 4410-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, June 25, 1991.

PLACE: Conference Rooms 8A, B, C, Eighth Floor, 800 Independence Avenue, SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5416B—Aircraft Accident Report: Northwest Airlines Flights 299 and 1482 (B-727 and DC-9), Detroit, Michigan, December 3, 1990.

NEWS MEDIA CONTACT: Brent N. Bahler Telephone (202) 382-6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: June 13, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91-14689 Filed 6-17-91; 9:07 am]

BILLING CODE 7533-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, July 1, 1991, and at 8:30 a.m. on Tuesday, July 2, 1991, in

Washington, D.C. The July 1 meeting, at which the Board will consider the Postal Rate Commission's May 24, 1991, Opinion and Further Recommended Decision in Docket No R90-1, is closed to the public. (See 56 FR 26457, June 7, 1991)

The July 2 meeting is open to the public and will be held in the Benjamin Franklin Room on the 11th floor of U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

Agenda

Monday Session

July 1—1:00 p.m. (Closed)

1. Consideration of the Postal Rate Commission's Opinion and Further Recommended Decision in Docket No. R90-1.

Tuesday Session

July 2—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 3-4, 1991.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Status Report on the Strategic Plan. (Frank R. Power, Assistant Postmaster General, Planning Department)
4. Status Report on the Integrated Logistics Support System (ILSS). (William J. Dowling, Assistant Postmaster General, Engineering and Technical Support Department, and Jean J. Provost, Director, Office of Procurement and Supply Systems)
5. Briefing on the Expedited Mail Service Project. (Robert E. Michelson, General Manager, Expedited Mail Services Division)
6. Status Report on Olympic Sponsorship. (Deborah K. Bowker, Assistant Postmaster General, Communications Department)
7. Capital Investment. (William J. Dowling, Assistant Postmaster General, Engineering and Technical Support Department)
   a. Flats Sorting Machine—Flat Mail Bar Code Sorter Modification.
8. Tentative Agenda for August 5-6, 1991, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 91-14761 Filed 6-17-91; 2:26 pm]

BILLING CODE 7710-12-M

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Corrections

Federal Register
Vol. 56, No. 118
Wednesday, June 19, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90927-1123]

Northeast Multispecies Fishery

Correction

In proposed rule document 91-12638 beginning on page 24169, in the issue of Wednesday, May 29, 1991 make the following correction:

On the same page, in the third column, in the first paragraph, in the fourth line, after "then to" insert the following, "42°11.0'N. Latitude, 70°04.0'W. Longitude; then back to".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP91-1957-000, et al.]

El Paso Natural Gas Co. et al.; Natural Gas Certificate Filings

Correction

In notice document 91-12084 beginning on page 23562, in the issue of Wednesday, May 22, 1991, make the following corrections:

1. On page 23565, in the third column, the first Docket No. for entry number 11 should read "CP91-1958-000".

2. On page 23566, in the first column, the Docket No. for entry number 12 should read "CI87-910-003".

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067-AB68

National Flood Insurance Program; Assistance to Private Sector Property Insurers

Correction

In proposed rule document 91-11642 beginning on page 22670 in the issue of Thursday, May 16, 1991, make the following corrections:

§ Appendix B to Part 62 [Corrected]

1. On page 22674, in the first column, in paragraph a., in the fifth line "62.23" should read "62.63".

2. On the same page, in the same paragraph, in the sixth line "62.63" should read "63.23".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employmnet and Training Administration

Job Training Partnership Act and Targeted Jobs Tax Credit; Lower Living Standard Income Level

Correction

In notice document 91-12464 beginning on page 24097 in the issue of Tuesday, May 28, 1991, make the following correction:

On page 24099, in the first column, in Table 1., the first entry under "Region" should read "Northeast".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 3

RIN 2900-AF09

Omnibus Budget Reconciliation Act of 1990: To Implement Provisions of Public Law 101-508

Correction

In rule document 91-12992 beginning on page 25043 in the issue of Monday, June 3, 1991, make the following correction:

On page 25043, in the third column, under "SUPPLEMENTARY INFORMATION:", in the second paragraph, in the second line, "28" should read "38".

BILLING CODE 1505-01-D

federal register

Wednesday
June 19, 1991

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 240

Qualifications for Locomotive Engineers; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR-9, Notice 5]

RIN 2130-AA51

Qualifications for Locomotive Engineers

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is establishing minimum qualifications for locomotive engineers. The rule requires railroads to have a formal process for evaluating prospective operators of locomotives and determining that they are competent before permitting them to operate a locomotive or train. The procedures would require that railroads (1) make a series of four determinations about a person's competency; (2) devise and adhere to an FRA-approved training program for locomotive engineers; and (3) employ standard methods for identifying qualified locomotive engineers and monitoring their performance. FRA is adopting this regulation to minimize the potentially grave risks posed when unqualified people operate trains.

DATES: *Effective Date:* The rule is effective on September 17, 1991.

OTHER DATES: (1) Compliance with the requirements for initially identifying supervisors of locomotive engineers and "grandfathered" certified engineers is authorized on and after the effective date and is mandatory for supervisors and locomotive engineers after October 31, 1991. Submission of programs adopted by individual railroads is mandatory by November 15, 1991 for Class I railroads; May 1, 1992 for Class II railroads; and November 1, 1992 for Class III railroads. Compliance with the requirements for the issuance of identification documents to all certified engineers is authorized on and after August 1, 1991 and is mandatory after December 31, 1991.

(2) Any petition for reconsideration of any portion of the rule must be submitted no later than 60 days after publication in the **Federal Register.**

(3) In a separate notice to be published shortly, FRA will announce the dates for conferences to be held in several cities for the purpose of acquainting the railroads, employees, and other interested parties with the requirements of the rule.

(4) Compliance with the record keeping and reporting requirements of this rule is authorized on or after the rule's effective date. See the Paperwork Reduction Act discussion below for additional information concerning mandatory compliance dates.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard M. McCord, Regional Director for Safety, FRA, Chicago, Illinois (Telephone: 312-353-6203); or Lawrence I. Wagner, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202-366-0628); or Edward R. English, Director, Office of Safety Enforcement, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202-366-9252).

SUPPLEMENTARY INFORMATION: Prior to 1970, FRA lacked the legal authority to issue regulations concerning the qualifications of locomotive engineers. However, the Federal Railroad Safety Act of 1970 ("FRSA") (45 U.S.C. 421, 431 *et seq.*) granted FRA regulatory authority over "all areas of railroad safety" and signalled that authority to include employee "qualifications * * * specifically related to safety." At that time, FRA's accident data indicated that its first priority should be track and equipment safety. Since then the mix of accident causes has gradually shifted. Accidents resulting from failure in human performance, although declining in absolute numbers along with all rail accidents, have increased as a percentage of all accidents and become the dominant cause of serious accidents.

Prior to 1988, FRA's analysis of accident data had not indicated that the agency's regulatory priorities should include adoption of locomotive engineer qualification standards. Even if FRA's analysis had so indicated, until very recently, FRA lacked the necessary tools to effectively regulate in this area. However, with passage of the Rail Safety Improvement Act of 1988 ("RSIA") (Pub. L. 100-342, 102 Stat. 624), FRA acquired enforcement authority over individual railroad employees. That authority was a practical necessity for the establishment of an effective locomotive engineer licensing or certification program.

Section 4 of the RSIA, adopted in the wake of the Amtrak/Conrail accident at Chase, Maryland, directed that FRA adopt appropriate regulations concerning the qualifications of locomotive engineers. Congress thus determined the existence of a safety need for such requirements and required that certain subject areas be addressed within those regulations. Section 4(a) of the RSIA provides in pertinent part as follows:

> (l)(1) The Secretary shall, within 12 months after the date of the enactment of this subsection, issue such rules, regulations, orders, and standards as may be necessary to establish a program requiring the licensing or certification of any operator of a locomotive, including any locomotive engineer, after the expiration of 12 months following the establishment of such program.
>
> (2) The program established by the Secretary under paragraph (1)—
>
> (A) shall be implemented through review and approval of each railroad's operator qualification standards;
>
> (B) shall provide minimum training requirements;
>
> (C) shall require comprehensive knowledge of applicable railroad operating practices and operating rules;
>
> (D) shall, except as provided in paragraph (4), require the consideration, to the extent information is available, of the motor vehicle driving record of each individual seeking licensing or certification under such program, including—
>
> (i) any denial of a motor vehicle operator's license by a State for cause within the previous 5 years;
>
> (ii) any cancellation, revocation, or suspension of a motor vehicle operator's license by a State for cause within the previous 5 years; and
>
> (iii) any conviction within the previous 5 years of an offense described under section 205(a)(3) (A) or (B) of the National Driver Register Act of 1982, and may, based on such driving record require disqualification of an individual or the granting of a license or certification conditioned on such terms as the Secretary may prescribe; and
>
> (E) shall require any individual seeking a license or certification under this subsection to—
>
> (i) request the chief driver licensing official of each State in which such individual has within the previous 5 years held a motor vehicle operator's license to provide information to his or her employer or prospective employer, or to the Secretary, as the Secretary may determine, with respect to such individual's driving record; and
>
> (ii) make the request provided for in section 206(b)(5) of the National Driver Register Act of 1982 for information to be transmitted to his or her employer, prospective employer, or the Secretary, as the Secretary may determine. * * *

The remaining provisions of section 4 establish detailed constraints on the use of motor vehicle operator licensing data and make changes to the National Driver Register Act of 1982 to afford individuals access to motor vehicle operator licensing information.

Thus, Congress did not require that FRA assume direct responsibility for the daily implementation of qualification requirements, providing instead that the program could be based on either licensing or certification and that it "shall be implemented through review and approval of each railroad's operator qualification standards."

This final rule establishes requirements for (1) testing visual and aural acuity; (2) assessing training and knowledge and performance skills; and (3) evaluating past conduct. To minimize governmental intervention, FRA is adopting a certification process rather than a traditional government licensing system.

This final rule is not issued within the statutory deadline. Since enactment of the RSIA, FRA has conducted the ambitious regulatory program contemplated by that statute. The scope of that effort and the magnitude of the task involved in devising an appropriate qualification system for locomotive engineers made it impossible to meet the deadline. The number and the complexity of the issues in this proceeding required substantial time for both the NPRM and the final rule.

FRA's NPRM was published in the **Federal Register** on December 11, 1989 (54 FR 50890). Response to the NPRM from all segments of the railroad industry and the general public was extensive, generating in excess of 220 written comments and more than 1,000 pages of transcript reflecting testimony heard during very full days of public hearings. Virtually all commenters expressed negative views about one or more aspects of the proposal, and a number of commenters suggested that FRA withdraw this NPRM and then publish a significantly revised proposal. The nature and tone of many comments suggest significant misunderstanding of the proposal.

GENERAL SUMMARY OF THE COMMENTS

1. Issues of Terminology and Approach

Reaction to the NPRM

FRA's decision to employ the more expansive but unfamiliar term "locomotive operator" was misunderstood by nearly all commenters. FRA explained that use of the term "locomotive operator" was intended to communicate the application of the proposed rule to individuals identified by a wide range of job titles in the industry. However, some commenters perceived the term as denigrating the more traditional "locomotive engineer." In addition, many individual commenters believed that this rulemaking imposes undeserved "punishment" that is being imposed on all locomotive engineers for the aberrant behavior of a single person who caused the tragic accident at Chase, Maryland. Many commenters objected to the proposal as coming hard on the heels of other recently imposed burdens, such as random drug testing that may detect off-duty substance abuse and individual liability for civil penalties or disqualification (including a prohibition against tampering with locomotive safety devices).

FRA's decision to adopt a certification rather than a governmental licensing scheme generated additional confusion. Many commenters viewed FRA "certification" as unnecessary given existing railroad practices and as undue interference with management prerogative and with matters that rail management and labor have addressed in collective bargaining agreements. Commenters argued that FRA had a burden of proving that the existing system for qualifying engineers, which includes use of labor management agreements and long standing dispute resolution mechanisms, was deficient before FRA should disturb it. Many commenters did not perceive the difference between federally mandated qualifications standards and voluntary, collectively bargained arrangements which are subject to the Railway Labor Act ("RLA") (45 U.S.C. 151 *et seq.*).

In a traditional licensing scheme, a governmental agency is responsible for testing knowledge and performance skills; issuing licensing documents; revoking or suspending licenses; and processing reviews and appeals. Other issues, such as obtaining or retaining employment, seniority rights, or rates of pay, are not comprehended by the agency's licensing responsibility although the agency's decisions can have a direct impact on those job-related issues.

Apparently because FRA proposed a certification system rather than a traditional governmental licensing scheme, several commenters made inappropriate suggestions, for example, that FRA plan to bargain for testing conditions on individual railroads. One commenter, the Association of American Railroads (AAR), argued that no legal theory would support a conclusion that decisions by railroads to grant or withhold this "certificate" could ultimately become FRA's responsibility. Other commenters believed that FRA should not address topics already addressed in collective bargaining agreements and that FRA should have no regulatory provisions relating to "due process" considerations given the dispute resolution mechanisms of the RLA.

FRA's Response

FRA is electing to use the term "locomotive engineer," in which many commenters expressed pride, as urged by many commenters. Since there is some risk of confusion, FRA has included regulatory language to minimize that risk.

FRA also has decided to retain the "certification" option provided by the statute and not resort to a more traditional licensing scheme. FRA is opting for certification in large measure because it permits all parties to continue to rely on the promptness and efficiency of existing programmatic structures. These structures, which have evolved over many years on the individual railroads, have familiar procedures and are administered by experienced and knowledgeable personnel. Licensing, on the other hand, would generate a need to duplicate or replace, to some degree, the existing private sector system with a governmental system that might or might not operate with the same degree of promptness or economic efficiency. Creation of a governmental licensing system would also entail significant new agency costs that arguably would have to be shouldered by railroads under the user fees established by the Omnibus Budget Reconciliation Act of 1990 (sec. 10501, Pub. L. 101-508, 104 Stat. 1388). Perhaps because of such cost implications, few commenters urged that FRA substitute licensing for certification.

In a traditional governmental licensing scheme, such as those devised for the aviation and maritime industries, the licensing agency (a) sets criteria for eligibility; (b) evaluates candidates; (c) issues the necessary documents; (d) provides a system for assessing licensee performance; and (e) provides a mechanism for resolving disputes arising from decisions to deny or rescind licenses. The certification approach of this rule differs by making a railroad responsible for some of these functions. FRA is setting eligibility criteria but leaving it to railroads to evaluate candidates by those standards, affording railroads considerable latitude. Their discretion will extend to the design and administration of test and examination procedures. Railroads will be responsible for daily administration of the program, including issuance and retention of licenses. However, railroads will have limited authority to deny or revoke a person's certificate, and FRA will have responsibility for resolution of disputes arising from decisions to deny or rescind certificates.

FRA will exercise limited control in the daily administration of each railroad's program. Although the rule affords railroads considerable

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discretion, FRA bears responsibility for the manner in which railroads exercise that discretion, since the performance of the railroads under this rule will determine whether its safety purposes are fulfilled. Until now, railroads and their employees could negotiate the terms of employment related to operation of a locomotive. This final rule signals a major change in the status quo. Determinations of qualifications must be accomplished under this rule, and the contractual consequences, if any, of those determinations must be sorted out separately. FRA's role will be to assure that the former are performed in compliance with the rule and to take appropriate remedial action if it detects noncompliance; however, it has no role with respect to the latter. (For example, FRA cannot order a railroad to alter its seniority rosters to accommodate a finding that a railroad wrongfully denied certification.)

This institutional arrangement is similar to those in other transportation modes where governmental bodies grant licenses to drive commercial trucks, fly commercial aircraft, or command commercial vessels. Those governmental actions are then givens that must be accommodated by employment contracts.

2. Appropriateness of the Approach

Reaction to the NPRM

Many commenters argued that FRA's proposal was unduly intrusive into the routine management of railroads and carried staggering cost implications. A common theme found in many of the comments was that FRA had failed to demonstrate a need for many aspects of the proposal. For example, many commenters argued that FRA failed to demonstrate a need to regulate the initial training of engineers, noting that FRA failed to cite accidents clearly attributable to specific weaknesses in existing training practices. Where commenters conceded the need to address a particular issue, they often viewed FRA's choice of remedy as unwise, *e.g.*, an overly simplified response to a complex situation, unwarranted constraint to future innovation, or unduly expensive.

FRA's Response

Questions about the need for, and kind of, Federal regulation are appropriate. Railroads have made unprecedented improvements in the safety of their operations in recent years. For example, since 1979 overall accident rates have declined 62.8 percent; track and equipment-related accidents have declined 75.2 percent; and on-duty fatalities for rail employees have declined 43.8 percent. No other mode of transportation approached this record of improvement during these years. Additional safety regulations will have economic consequences, and railroads are legitimately concerned about effects that additional costs can have on the industry's ability to compete for a share of the transportation market.

FRA understands these concerns; however, FRA's discretion in this proceeding is circumscribed by the Congressional determination that additional regulations are needed. As a result, this proceeding has deviated from FRA's usual regulatory practice. Normally, FRA commences with an analysis of accident data that defines a particular safety problem. FRA then reviews the options for solving that problem, and only when it is convinced that Federal rules are needed does FRA contemplate and devise a carefully focused regulatory solution. In devising that solution, FRA attempts to find the regulatory response that will produce an optimal ratio of benefits from the rule to costs associated with compliance. In this proceeding, however, FRA is constrained by the dictates of the RSIA: FRA must (i) approve the qualifications standards set by railroads for engineers; (ii) prescribe minimum training requirements; (iii) require comprehensive knowledge of relevant operating procedures; and (iv) provide for consideration of motor vehicle driving records. As required, FRA's proposal addressed these issues, but did not go beyond them.

FRA's consideration of these issues has benefited greatly from the comments made directly during this proceeding. FRA's overall design for the final rule and its particular provisions have been modified accordingly. In drafting this final rule, FRA has sought to simplify the proposal, avoid constraints to innovation, and promote a positive cost/benefit ratio.

3. Need for a Revised Structure

Reaction to the NPRM

Many commenters suggested that FRA issue a significantly revised proposal, expressing concern about the difficulty of responding to such a complicated proposal to which they objected in one or more ways.

FRA's Response

After reviewing all the comments, FRA has concluded that the NPRM identified all relevant substantive issues and the alternatives available for addressing them; therefore, FRA can in this final rule effectively address the legitimate problems and weaknesses found in the proposal, including those identified by the commenters. None of the comments challenge FRA's safety goals, raises previously unidentified problems, or provides previously unidentified and feasible alternative regulatory approaches to establishing qualification standards. Although it can be argued that a new NPRM could be of some benefit, FRA does not believe that further delay is warranted.

Design of the Final Rule

1. The Concept

A premise of FRA's proposed rule was that every engineer would be trained, tested, and evaluated using the same criteria, with some exceptions for operators of smaller trains at lower speeds. These criteria were distilled from FRA reviews of existing individual railroad programs for setting qualification standards. Rather than make a case-by-case evaluation and approval of individual railroad qualification systems, FRA proposed a general review and approval process. FRA's proposed rule design resembled the motor vehicle licensing scheme employed by state governments for issuance of commercial truck driver licenses.

In contrast to the proposed rule, the final rule takes a more individual approach that tracks the statutory language, *i.e.*, each railroad will formulate an individual program for setting qualifications standards and submit that program to FRA for approval. In formulating its program, each railroad will address specified subject areas while conforming to FRA-established criteria. Each engineer will then be evaluated in terms of meeting the qualification criteria thus established for each subject area.

2. The Regulatory Structure

FRA has reorganized the final rule to reflect this shift, resulting in five subparts rather than the ten found in the proposal. Three of the five subparts contain the major substantive provisions of the rule. One of these subparts provides the elements and the criteria for formulating an individual program concerning each of the subject areas. Another subpart provides for the process of implementing both the overall regulatory program and each of the individual railroad programs subsequent to their approval by FRA. A third subpart provides for the ongoing administration of the railroad programs.

3. Components of a Railroad's Program

FRA is requiring that each railroad adopt its own program for determining the qualifications of its engineers. That program must address the following subjects: (1) Selection of designated supervisors of locomotive engineers; (2) selection of the classes of service for engineers; (3) evaluation of the safety conduct of engineers; (4) evaluation of engineer hearing and visual acuity; (5) education of engineers; (6) testing of engineers; (7) operational monitoring of engineers; and (8) procedural aspects of the operation of the certification program. Each railroad will submit its program to FRA for approval. After approval, the railroad will evaluate every person the railroad wants to authorize to operate a locomotive and determine whether each person meets the qualification requirements to be a locomotive engineer on that railroad. If the railroad determines that the person meets the qualifications for a locomotive engineer, the railroad will certify that person as qualified and issue a certificate documenting that determination.

4. Reasons for Changing the Concept

FRA's proposed rule focused on the common denominators that exist for all railroads and all locomotive engineers. It proposed a qualification system that organized the certification process around the similarities that exist among railroads. FRA proposed gradations in the system only where there appeared to be a major difference that would form a logical basis for distinguishing between the qualifications needed to operate trains of given size and operational complexity. However, commenters repeatedly stressed the individuality of railroads and suggested a better approach to be to sanction individualized solutions on each railroad. Finding these views persuasive, FRA has reoriented its approach in the final rule to permit each railroad to retain its existing program, while bringing it into conformity with a federally established norm. This approach will allow individual programs to differ somewhat as appropriate, yet still result in consistent qualification standards for all railroads.

FRA discusses below the comments received in response to the NPRM, organized in the structure of the final rule. A brief synopsis of the relevant portion of the proposal precedes the discussion.

Requirements of the Final Rule

1. Designated Supervisors of Locomotive Engineers

FRA proposed that railroads be required to use a particular type of person, a designated supervisor of locomotive engineers, to make decisions about the performance skills of locomotive engineers. In FRA's judgment, it is difficult for anyone to evaluate those skills without having had substantial experience as a locomotive engineer; accordingly, FRA proposed that these designated supervisors have a minimum of three years of such experience. Commenters criticized this proposal on three grounds: (1) It failed to give sufficient recognition to the fact that simulator technology could play a very useful role in evaluating performance skills under the proper circumstances; (2) it constrained and might even prevent small railroads from using consultants to perform this function; and (3) it posed an unnecessary hardship for large railroads that had been restructuring their work forces.

In response, FRA has deleted the requirement of three years experience, requiring, instead, that railroads have a specific procedure for evaluating those it is considering designating as a supervisor of locomotive engineers. At a minimum, the procedure shall provide a mechanism by which the candidate for designation will demonstrate to the railroad that he or she has the requisite knowledge to perform this function and adequate supervisory experience both to evaluate a locomotive engineer's skills and, where necessary, to prescribe appropriate remedial actions to correct detected deficiencies. Railroads will have the freedom to use existing procedures, such as selecting experienced senior locomotive engineers with supervisory experience, and the power to create trainee programs that substitute training for experience. Since the procedure can be applied to consultants, small railroads lacking the resources to have a designated supervisor as part of its permanent staff can more easily comply with this regulation.

2. Classes of Service

FRA proposed to divide locomotive engineers into five categories corresponding to gradations of proficiency at handling trains of varying degrees of difficulty, addressing such factors as the number, nature, and placement of cars, the speed of the train, and the effect of terrain on train operation.

Commenters criticized the various category thresholds proposed by FRA. In general, commenters suggested changes that reflected the particular operations on their individual railroads, often urging a reduction in the level of training needed for particular classes of service.

In response, FRA is establishing three classes of service in the final rule: Student engineers, locomotive servicing engineers, and train service engineers. Railroads can use one or all of these classes of service. A railroad that does not have much occasion to move locomotives that are not hauling cars may not want to have locomotive servicing engineers as a class of service on that railroad. Likewise, a railroad that will not have occasion to educate student engineers may not have that class of service.

3. Safety Conduct of Engineers

FRA proposed a system for reviewing the prior safety record of persons seeking certification as a qualified locomotive engineer. Under that proposal, a railroad would have been required to review information concerning both the safety conduct of that person as a railroad employee and as a driver of motor vehicles. Specified types of poor safety conduct while driving a motor vehicle and while operating a locomotive were identified and assigned point values. To be eligible for certification, a person's total accumulated points from incidents in all contexts could not exceed a stated numerical value. Virtually every commenter objected to this scheme, maintaining that consideration of railroad employee conduct in this context is redundant, since railroads already consider it.

Commenters argued that FRA should avoid the motor vehicle issue altogether, asserting the irrelevance of motor vehicle driving data to the qualifications of locomotive engineers. However, Congress found otherwise, requiring in section 4 of the RSIA that consideration of such information be made part of this rule. The statute thus rendered moot further debate of this issue.

(a) Availability of Data

(1) *Motor Vehicle Operation.* Even those commenters who recognized the statutory mandate criticized FRA's proposal, some arguing that FRA had gone too far and others saying not far enough. Some commenters invoked the legal concepts of *ex post facto* laws and double jeopardy, while others decried the lack of a provision for remedial efforts such as attendance at driver

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education programs. Others noted that some individuals who use public transportation have no motor vehicle driving record, while still others objected to the weighting of various events under the proposed point system and expressed fear that inequitable enforcement of motor vehicle laws could result in loss of employment.

Many commenters suggested that FRA conduct a study to gain some better insight into the relationship between motor vehicle record data and railroad train operation data before taking final regulatory action. During the public hearings and in written comments, a number of railroads and representatives of several labor organizations indicated they would be willing to assist in the conduct of such a study. Such willingness was predicated on the study being conducted in a scientifically valid manner that respected the privacy of individuals who would provide access to the records being studied.

FRA agrees and has decided to defer most aspects of its proposed eligibility criteria predicated on motor vehicle driver data until completion of such a study, which FRA anticipates can be completed within one year. After completion, FRA will then determine the appropriate course of action.

This decision does not, however, apply to the aspect of FRA's proposal concerning motor vehicle data involving alcohol and drug incidents. Most commenters acknowledged that driving under the influence of alcohol or drugs could be relevant to a person's qualification to be an engineer. Consequently, FRA has retained the portion of the proposed rule that requires evaluation of motor vehicle incidents involving alcohol or drugs. As discussed below, FRA's requirements concerning this data have been modified from those initially proposed.

(2) *Train operation.* FRA has been acquiring data on the causes of train accidents for many years. Railroads have been required since 1975 to report rail equipment accidents and incidents that exceed a dollar threshold set forth in its regulations (49 CFR part 225). Except for revisions to this threshold, FRA's accident reporting requirements have remained essentially the same for many years.

As part of those reporting requirements, railroads must use one of the cause codes listed in the "FRA Guide for Preparing Accident/Incident Reports" to indicate what the railroad has determined to be the cause of each reportable accident. An extensive list of cause codes is provided to segregate accident data into relevant analytic groupings. FRA looked at twenty of those cause codes that reflect poor safety performance by a locomotive engineer. FRA identified 6,990 train accidents during the period 1977–1987 that were reported as attributable in whole or in part to one of those cause codes. Those cause codes indicate instances in which a locomotive engineer failed to properly use the train's brake systems, failed to control train speed, failed to obey signal indications, entered track without authority, or failed to operate the train safely in a variety of other ways.

Among the more notable of these accidents were the following: The train handling derailment at Thayer, Iowa on October 17, 1985; the overspeed derailments at Sanataria Springs, New York on March 22, 1985, Crooks, Oregon on November 25, 1985, and Pittsburgh, Pennsylvania on April 11, 1987; the collisions resulting from failures to obey signal indications at Palmer Lake, Colorado on May 27, 1983, Montello, Nevada on June 22, 1985, Lockair, Georgia on November 6, 1985, Bunnell, Florida on April 11, 1987, and Nugget, Wyoming on November 8, 1987; the unauthorized track occupancy collision at Broomfield, Colorado on August 2, 1985; the improper train operation collisions at Eldon, Texas on November 19, 1983, and Marquette, Iowa on February 2, 1985; and of course the multiple failures at Chase, Maryland.

Given the events that preceded the enactment of the RSIA, the kind of accident data just summarized, and FRA's basic safety mission, FRA must address the safety conduct of those seeking certification as a locomotive engineer.

As noted in the NPRM, detailed analysis of the data concerning those nearly 7,000 accidents is difficult, since FRA lacks specific information for each one. Thus, although the cause codes are helpful, the locomotive engineers' actions could have a wide variety of explanations.

FRA has acted to reduce this problem in the future by revising its procedures for investigating train accidents and by amending its accident reporting rules to provide railroad employees, including locomotive engineers, with a mechanism for supplementing the information being furnished FRA (55 FR 37818). Since December 1, 1990, when a railroad characterizes an accident as having been caused in whole or in part by the act, omission, or physical condition of an engineer, the railroad must notify the engineer of that fact and of his or her right to submit a statement to FRA to supplement the railroad's report. A copy of that statement must also go to the railroad and, if the railroad receives such a statement, the railroad must correct any deficiencies in its report to FRA.

(b) Conclusions Based on the Data

FRA believes that the poor safety performance by locomotive engineers reflected in the accidents data it studied stemmed from either some lack of or failure to employ knowledge, skill, or ability.

The provisions in this final rule concerning the training and testing of locomotive engineers respond to the first problem. By requiring that engineers be trained and that they demonstrate their knowledge, skill, and ability, this rule should reduce the number of accidents attributable to this deficiency. FRA's intent is to prevent recurrence of such accidents as the head-on collision at Randles, Missouri in 1982, the derailment at Missouri Valley, Iowa in 1980, the derailment at Crestview, Florida in 1979, and the head-on collision at Lake Point, Utah in 1977.

Failures to apply acquired knowledge, skill, or ability in a specific situation arise from distortions in engineer judgment, generally induced by abuse of alcohol or drugs, stress and fatigue, or lack of routine vigilance.

(1) *Alcohol and drug abuse.* In 1985 FRA issued its rule on the control of alcohol and drug use by rail workers (49 CFR Part 219), which prohibits possession and/or use of alcohol and controlled substances when assigned to perform service covered by the Hours of Service Act. In addition, the rule prohibits reporting for, going on, or remaining on duty while under the influence of or impaired by alcohol or a controlled substance. In response to the RSIA, FRA has included provisions in this final rule requiring consideration of instances of operation of a motor vehicle while under the influence of or impaired by alcohol or a controlled substance.

(2) *Stress and fatigue.* For several reasons, FRA is not addressing accidents that arguably arise from stress and fatigue. First, the hours that railroad employees may be on duty are controlled by the Hours of Service Act (45 U.S.C. 61–64b), which does not give FRA authority to prescribe through regulation the appropriate tour of duty limitations or rest intervals for locomotive engineers. In 1990, the Department submitted proposed legislation that would have given FRA regulatory authority over this area.

Even if FRA had such authority, it now lacks sufficient information to appropriately regulate the hours of duty of locomotive engineers. Accordingly, FRA is conducting research to gain more understanding of sleep deficiency problems for rail workers. Building on efforts of other modal administrations, FRA is designing methods for scientifically testing the degradation in locomotive engineer performance and vigilance due to fatigue. Once effective tests are devised, they will permit FRA to use locomotive simulators to effectively measure skill performance degradation under varying levels of fatigue.

FRA is also studying the issue of how the work schedules of locomotive engineers are determined. Since there is very little documentation on this subject, this study seeks to determine how locomotive engineers are currently being scheduled for work, why there is so much unpredictability in those schedules, how various aspects of current practices contribute to stress and fatigue, and what options exist to improve matters. After such studies have been completed, FRA will consider whether to address this issue in an amendment to this rule.

(3) *Lack of routine vigilance.* Although some accidents can be attributed to fatigue and improper use of controlled substances, others are caused by a lack of routine vigilance by locomotive engineers. By requiring that engineers be periodically monitored and provided remedial training when appropriate, this rule should help reduce such accidents. FRA rejects commenter suggestions that this rule be silent on the issue of poor safety conduct by locomotive engineers.

(c) The Final Rule's Provisions on Safety Conduct

This final rule requires that each railroad adopt procedures for reviewing and evaluating the safety record of each candidate to determine whether he or she is eligible to be a certified locomotive engineer. The procedures shall include evaluation of information concerning the person's prior safety conduct as a railroad employee and the person's prior safety conduct as an operator of a motor vehicle. To the extent that the candidate controls access to the information that will form the basis of the evaluation, FRA is imposing a duty on the candidate to furnish that information or access to that information to the railroad.

FRA is modifying its proposal significantly. As previously noted, one change involves deferring a decision concerning the use of non-alcohol and drug related motor vehicle licensing information. FRA has also made changes to respond to commenter concern that FRA's proposal could be implemented in a manner that would not be in harmony with FRA's existing rules for controlling substance abuse by railroad workers. In view of several factors, including the decision to defer implementation of some aspects of the motor vehicle operator data pending completion of a study and the need for better integration of its alcohol and drug rules, FRA has decided not to employ the specific point system proposed in the NPRM.

The risk posed by misuse of alcohol and drugs appears in two distinct forms: (1) Substance abuse disorders that are illnesses; and (2) specific instances of inappropriate conduct, such as prohibited use or possession of alcohol or drugs on the job or operation of motor vehicles under their influence, that may suggest a proclivity for reckless conduct in the future. For any given period of time, one form of risk may exist without the other as to any individual. For instance, an employee may use marijuana on the job without having a chemical dependency; or a person who is in an incipient stage of cocaine dependency may manage to resist using the drug while on the job and function normally for a time, until the disordering effects of the drug lead to an unsafe practice. Both forms of risk must be addressed; and, with respect to specific instances of conduct, it may be pertinent whether the conduct occurred within the regulated occupational context.

(1) *Substance abuse disorders.* Whenever a safety-sensitive employee acquires a substance abuse disorder, the risk increases significantly that the physical or psychological dependence, and loss of control often associated with such disorders, will lead the person to appear on the job significantly impaired. Impairment may result from the acute, chronic, or withdrawal effects of the drug (including, for this purpose, alcohol). See, *e.g.*, 53 FR 16640, 16641–16644 (May 10, 1988). Though many who are in the process of developing a chemical dependency will resist use of drugs in the work environment in order to avoid detection and protect their source of income, in the later stages of the disorder this will often prove impossible. Even if drugs are not actually ingested on the job, their effects may be substantial.

Having a substance abuse disorder is not "conduct" properly punishable under any scheme of regulation. A substance abuse disorder may be acquired without violating any law (*e.g.*, alcoholism) and even as a result of misguided medical treatment. However, this status does render the individual unsuitable for safety-sensitive responsibilities during the period the disorder is active (*i.e.*, while drug intake continues and until post-cessation symptoms have been treated). This is a principle that is already embodied in a variety of Federal regulations analogous to this final rule. See, *e.g.*, 49 CFR 391.41 (motor carrier drivers); 14 CFR 67.13 (pilots).

FRA has previously required successful treatment of substance abuse disorders prior to return to service, where chemical tests indicate violation of alcohol or drug use prohibitions and in certain other circumstances. 49 CFR 219.104(d), 219.405. In providing for certification of engineers pursuant to the mandate of the statute, FRA bears a special responsibility to ensure, to the extent practical through regulatory action, that these individuals are free of active substance abuse disorders. The final rule therefore treats an active substance abuse disorder as a condition rendering the person ineligible to hold a certificate. Following successful completion of primary treatment, the individual is entitled to conditional certification. Where the individual self-refers without prompting under the voluntary referral provision of the FRA alcohol/drug regulations (49 CFR 219.403), confidentiality is maintained and there is no effect on certification status provided the engineer follows through with the recommended course of treatment.

(2) *Motor vehicle data.* Information concerning the non-occupational conduct of the candidate for certification, such as that required to be provided with respect to motor vehicle driving history, has possible significance both with respect to the presence of a substance abuse disorder and with respect to a habit or unpredictable pattern of reckless or irresponsible behavior that may carry over into railroad duties. As explained above, FRA has determined that the weight such information should be given as "unsafe conduct" will be the subject of further study.

However, information such as convictions for drunk or drugged driving also raises the question whether the individual has an active substance abuse disorder. This question may be rather urgent, as in the case of an employee who has been convicted twice in the recent past in incidents involving extremely high blood alcohol concentrations. At the other extreme, the information may be consistent with a single incident almost three years prior involving a somewhat lower level of alcohol. The important point is that the information should be considered, along with the railroad service record (attendance, job-related problems, medical problems, etc.), in the context of

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a clinical evaluation of the employee by an appropriate professional.

Accordingly, the rule provides that any conviction for a specified alcohol/drug offense that occurs during the 36-month period prior to certification will result in an evaluation by an "EAP Counselor" to determine whether the person has an active substance abuse disorder. In this setting, the motor vehicle information is merely a factor to be considered and does not, by itself, dictate any outcome.

(3) *Role of the EAP counselor.* The "EAP Counselor" is a concept derived from the FRA alcohol/drug rule (49 CFR part 219) and refers to an appropriate professional who will be responsible for conducting the evaluation and (in words suggested by a commenter) "managing an appropriate treatment plan." As a practical matter, most large railroad systems will likely employ their salaried or contract employee assistance program (EAP) counselors to perform this function. These individuals have extensive experience in evaluating employee substance abuse problems, referring those individuals for appropriate treatment, and monitoring progress after return to service. Their extensive clinical experience and knowledge of the railroad occupational environment make employee assistance counselors a major asset that must be utilized for substance abuse case management. However, any qualified person, such as a physician with knowledge and experience in the field of substance abuse disorders (*e.g.*, a Medical Review Officer), a certified alcohol/drug counselor working in the community, a psychologist with experience in treating substance abuse disorders, etc., could perform the "EAP Counselor" function with respect to evaluation of the substance abuse disorder. It is intended that the EAP Counselor be able to draw upon the usual sources of assistance for this purpose from the health care and mental health communities. Similarly, a qualified person who is reasonably familiar with the particular railroad occupational environment should be capable of managing aftercare.

Certain commenters in this proceeding suggested that FRA should require certification of EAP counselors for this purpose. FRA recognizes that occupational substance abuse professionals providing services to the railroads are drawn from a wide range of backgrounds and differ in education, experience, and formal credentials. FRA believes that it should be the railroad's responsibility to identify and employ (or contract with) appropriately qualified persons to perform this function, taking into consideration any applicable state requirements. This may mean that the person designated as EAP counselor will need to draw upon diagnoses from other professionals in making a final evaluation; or, with respect to a particular case or category of cases, the function itself may need to be transferred to an appropriate professional with specialized knowledge concerning the particular disorder.

FRA does not believe it is the role of a safety regulatory agency to govern provision of these services through a specialized credentialing system. Given the increasing reliance on contract services in the railroad industry and the number of regional and short line railroads that must obtain these services from local contract sources, it does not appear practical to insist on creation of a new substance abuse specialty within the several health care and mental health fields that provide these services. However, FRA is contributing to the augmentation of employee assistance personnel skills in the railroad industry by sponsoring the development of a flexible curriculum model for EAP personnel serving the railroad industry. This effort, which will be founded on a counselor curriculum developed by the National Institute on Drug Abuse, is intended to supplement the extensive educational and training opportunities available from other sources and to provide a bench mark that railroads can employ in providing supplemental and continuing training for salaried personnel and contract personnel who handle railroad employee referrals.

(d) Misuse of Alcohol and Controlled Substances as Conduct

Quite apart from the presence or absence of an active substance abuse disorder, it is critical both to the success of substance abuse prevention and treatment and to the safety of railroad operations that safety-critical personnel be held accountable for the prohibited use of alcohol and controlled substances.

Section 219.101 of current FRA regulations prohibits engineers and other Hours of Service employees from going or remaining on duty while using, possessing, or being under the influence of or impaired by alcohol or a controlled substance or while having a blood alcohol concentration of .04% or more. Section 219.102 prohibits the same individuals from using a controlled substance without specific medical authorization, whether on or off duty. FRA has previously left to the railroads the responsibility for assessing discipline based on violations of these regulations, subject to minimum standards for evaluation, testing and return to service (§ 219.104(d)). This flexibility has generally permitted employers to fashion appropriate responses within the overall employment context, including labor agreements and cooperative programs that seek to involve employees in substance abuse prevention (*e.g.*, Operation Red Block, Operation Stop). However, this flexibility has also led to a wide range of employer responses to individual cases and carries the risk of permitting individual arbitrators to impose a wide range of sanctions. Further, it may be possible for a person dismissed from one railroad to go to work in a similar position with a second railroad. Accordingly, with the onset of Federally-mandated certification of locomotive engineers, it will be important to establish standards for revocation of certificates—without prejudice to the ability of railroad management to impose more severe discipline.

It is useful to re-emphasize for purposes of this discussion that the revocation periods provided in the final rules are minimum periods for revocation of the locomotive engineer certificate. However, holding a certificate does not create an entitlement to employment as an engineer—it merely establishes eligibility to perform certain duties insofar as the Federal regulations are concerned. An employee may be eligible under the regulations, but unqualified under a more stringent company policy. If the employee is unqualified under company policy and the company therefore elects not to consider an application for certification or recertification under the Federal rule (*i.e.*, since any certificate action would have no practical meaning), then it will be critical for the company to clearly state that company policy is the basis of its action.

This final rule includes specific standards for revocation periods that are intended to ensure adequate minimum sanctions without disrupting other countermeasures currently in place. In general, first-time violators of § 219.102 (prohibited use of controlled substances) would be handled in the same manner required in the FRA alcohol/drug regulations. Subsequent violations would require specific revocation periods. First-time violators of § 219.101 (on-duty use, possession, impairment, BAC .04% or more) would be subject to revocation for 9 months, the same period employed in the alcohol/drug rule for refusal of an FRA mandated chemical test. Those standards are discussed more fully in the section-by-section analysis below.

(5) *Unsafe operation of trains.* Commenters objected to the proposal to hold engineers accountable for unsafe operation of trains, arguing that such a rule would be redundant given the railroads' existing disciplinary system or that, if promulgated, such authority should only rarely be exercised. Several of the Class I railroads argued that FRA has a duty under section 202 of the FRSA to prove that the existing private system for responding to unsafe train operation behavior is flawed before FRA has the legal authority to intervene. They also argued that, even if FRA has the authority, as a matter of policy it should not intervene given the likely complication and confusion that would result. Some commenters expressed concern that the proposal made inadequate allowance for remedial actions and prescribed unduly harsh consequences for unsafe behavior.

A premise of the comments was that the existing system effectively responds to unsafe operation of trains. As noted in the NPRM, FRA has found little evidence supporting or negating that proposition. As FRA's routine investigatory efforts, anecdotal information, commenter responses, and industry literature indicate, administration of the current system is not uniform, *i.e.*, industry handling of alcohol and drug incidents leads to a wide range of responses to similar cases.

FRA recognizes that devising a comprehensive means of responding to operational misconduct by locomotive engineers would require extensive additional study. However, as indicated in the NPRM, FRA data show that noncompliance with five types of railroad operating rules generated a significant portion (more than 5,000) of the 6,990 train accidents described above. The five types of rules are those: (1) Requiring adherence to signal indications; (2) limiting train speed; (3) prescribing operation of the train and engine brake system so as to safely control train operation; (4) prohibiting occupying a track without authority; and (5) prohibiting the unauthorized nullification of locomotive-mounted safety devices.

Given their accident-causing potential, FRA has selected these five kinds of misconduct as requiring attention under this certification program. As noted earlier, FRA's proposed point system was criticized by commenters as faulty. FRA agrees and has amended that approach in this final rule.

FRA's response to unsafe operational conduct by locomotive engineers rests on several policy considerations. First is the need to incorporate sanctions to deter future unsafe conduct. At the same time, we need to account for the fact that unsafe conduct may represent a rare lapse of judgment or may demonstrate a need for supplemental training. As pointed out by commenters, FRA's rule also needs to avoid conflict with its existing rules controlling alcohol and drug use by locomotive engineers. Finally, FRA's rule must recognize the railroads' primary role in detecting the evidence of unsafe conduct, assessing its adequacy, and pursuing appropriate action.

Under the revised approach adopted in this final rule, a railroad's finding that an engineer has failed to comply with one of the five types of safety rules will have two consequences: (1) Revocation of the engineer's certificate for 30 days; and (2) initiation of a probationary period of three to five years during which the engineer will suffer increasingly severe sanctions in the event of additional rules violations. If a second event occurs within three years, the period of mandatory revocation will increase to one year. If a third event occurs within five years, the revocation period increases to five years. After three years with no additional rules violations, a second incident would not result in the one-year revocation. However, that second incident would start a new three-year period within which a second incident would generate a one-year revocation. Moreover, both events would be relevant if a third incident occurs within five years of the first.

FRA has also revised its proposal to mandate responses to alcohol and drug incidents of on-duty possession, use, and impairment. These responses are integrated into the unsafe conduct provisions just described and are fully consistent with FRA's current rules concerning the control of alcohol and drug use by railroad workers.

The revocation periods in this rule have been set so as not to cause unduly harsh punishment in the routine administration of this rule. FRA recognizes that punishment may not always be an appropriate response to the types of conduct addressed in this rule. Particularly flagrant noncompliance, especially that which produces severe consequences, may warrant very serious sanction. Of course, where violations of Federal rules have occurred, FRA may assess civil penalties or disqualify employees from safety-sensitive service. These issues are discussed more extensively in the section-by-section analysis below.

4. Evaluation of Engineer Hearing and Visual Acuity

FRA proposed hearing and visual acuity testing based on standards similar to those found in other transportation modes, published FRA research, and recommended industry guidelines.

Commenters raised four objections to FRA's proposal. As with other aspects of the NPRM, some commenters argued for no action on this subject because of existing practices on a given railroad or group of railroads. Others suggested different acuity standards. Still others urged discretion to permit individualized assessments of acuity. Finally, some commenters wanted greater freedom in selecting ways to accomplish FRA's stated goals. Discussion of this last issue is deferred to the section-by-section analysis below.

FRA has rejected the suggestion that this rule remain silent on the question of physical capacity. As explained in the NPRM, this regulation needs to address a person's physical capacity to serve as an engineer. The absence of reliable scientific data supporting commenter-suggested substitute acuity thresholds means we have no basis for altering those proposed. However, several commenters did provide evidence that supports affording railroads more discretion.

FRA's proposed rule contemplated that there would be few instances of failure to meet the criteria and that in those few cases most candidates could otherwise demonstrate an ability to safely perform as a locomotive engineer. Thus, FRA believed the agency could directly resolve the matter through its own waiver process. Commenters indicate that more than a few instances exist. For example, several commenters cited a number of individuals with only one functioning eye who have learned to adjust for the resulting loss of depth perception and can safely operate locomotives. Commenters from the medical community agreed with FRA's basic theory that individualized evaluations were needed in instances where a person's acuity levels were below the stated minimum, but urged that FRA afford railroads discretion to make those medical judgments. After review of the comments, FRA has decided to afford railroads such discretion in this final rule. Medical discretion will allow railroads to respond appropriately when they encounter individuals who fail to meet the FRA-prescribed acuity levels, but

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demonstrate that they can compensate to a sufficient degree for their diminished acuity level.

If in the professional judgment of the railroad's medical officer a person not meeting FRA standards can safely perform the tasks of a locomotive engineer on that railroad, the railroad is authorized to certify that person as a locomotive engineer. The medical officer can, if necessary, impose conditions on the service that person is permitted to perform. Although not raised by commenters, FRA's revised approach to this issue is consistent with the spirit of the recently enacted Americans with Disabilities Act (Pub. L. No. 101–336, 104 Stat. 329 (1990)).

FRA received a number of comments about a perceived unfairness of the proposed rule concerning its contemplated requirement for hearing acuity. Several commenters asserted that there has been serious degradation in the hearing acuity of engineers resulting from exposure to high noise levels in locomotives cabs. FRA is portrayed in these comments as having failed to correct this situation and thus as being responsible to some degree for creating potentially disqualifying hearing impairment of people seeking to be certified. This generated a demand that FRA defer action on hearing acuity until it acts to lower the noise levels found in locomotive cabs.

However, FRA does have noise standards for locomotive cabs (see 49 CFR 229.121). The permissible noise exposure levels are consistent with those formulated by the Occupational Safety and Health Administration (OSHA) and have been in effect for more than ten years. The issue of hearing degradation attributable to cab noise levels was extensively discussed and resolved in the regulatory proceedings that led to the adoption of those standards. To date no party has provided a valid basis for suggesting that FRA should alter those noise exposure thresholds. Thus, FRA does not agree that it should defer action until it lowers exposure levels. Moreover, as pointed out in the proposed rule, there is a need to ensure that engineers have the appropriate level of hearing so that they can safely operate trains. Those who want more information on this topic are referred to FRA's final rule published on March 31, 1980 (45 FR 21092).

Commenter concern over these issues has led FRA to conclude that the agency should sponsor a technical conference on the acuity standards being adopted in this rule. Notice of that conference will be provided in the **Federal Register**.

5. Education of Locomotive Engineers

FRA proposed to regulate both the initial training of persons new to locomotive operation and the continuing education of experienced engineers. FRA proposed detailed rules for initial training and more limited, but no less controversial, rules for continuing education.

A number of commenters objected to the detailed requirements for railroads' initial training programs in the proposal. Small railroads were concerned about the apparent cost of compliance. Comments on the proposed continuing education requirement were critical of the provisions relating to maintaining familiarity with the physical characteristics of the territory. Some commenters saw FRA as unduly restrictive by requiring actual train operation over the territory. Others saw the number of trips specified as too few or too many depending on the physical configuration of the territory. These provisions were generally viewed as too costly.

In response to the comments, FRA has changed the proposed rule to allow railroads greater discretion to design their own course of study for the initial training of locomotive engineers, specifying only the general subject matter to be covered. The final rule will thus accommodate those railroads already developing new programs, *e.g.*, using computer-based training techniques or advanced train control systems that will change the knowledge and skill required of engineers. Smaller railroads will also be afforded the latitude to tailor their programs to meet their more limited needs.

Similar changes providing significant discretion have been made with respect to continuing education of engineers. To assure engineer familiarity with a territory, railroads will have the freedom to select the interval at which familiarization must be provided and the authority to use a variety of methods (*e.g.*, hi-rail trips, simulators, and films of the right of way) to keep their engineers conversant with the physical characteristics of the territory they can be called to operate over.

In reviewing the railroads' individual programs, FRA will consider the degree to which each deviates from the norms established by this final rule. Where a program deviates materially, FRA will focus on the rationale for the alternative approach and evaluate the degree to which that approach is likely to produce locomotive engineers with the knowledge, skill, and ability to safely operate trains.

6. Knowledge and Skill Testing of Locomotive Engineers

FRA proposed requiring periodic knowledge and skill performance testing of locomotive engineers. The proposal prescribed the subject matter to be covered, the manner of administering the test, and the consequences of failure.

Some commenters viewed these requirements as redundant, given existing railroad operating rules examinations. Commenters objecting to FRA's limitations on the manner for administering the knowledge test took exception to the number of questions criteria, to the passing score requirements, and to taking written tests without reference materials available. Commenters objecting to FRA's skill performance test were concerned about the consequences of failure.

The concern about redundancy appears to rest on an assumption that the FRA knowledge tests would add yet another tier of examinations to existing periodic rules testing. However, FRA does not anticipate a new tier of tests; instead, FRA expects that railroads will modify their existing periodic rules examinations to include the subject matter specified by FRA to the extent those subjects are not covered by existing tests.

Other commenter criticisms are well taken. FRA agrees that there is no particular value in employing a 150-question test rather than a test with 300 or 100 questions. Similarly, no compelling rationale supports setting 85 percent as the passing grade. There is, however, substantial value in requiring that written objective testing be conducted and that tests be conducted without immediate access to reference materials. Engineers must have effective reading skills to comprehend the myriad written instructions they are given to ensure the safe operation of trains. Tests must be conducted fairly and be reviewable. These are objectives most likely to be achieved through the use of written examinations. Prohibiting immediate access to reference materials assists railroads in determining whether candidates are familiar with the rules and comprehend them. In most situations an engineer will not have time to consult a rule book before taking action to safely control his or her train. However, FRA agrees that a railroad test intended to evaluate an engineer's ability to use reference materials requires access and the rule has been modified to accommodate such testing.

Response to FRA's proposed consequences for test failures generally focused on existing contractual arrangements concerning railroad operating rules examinations. FRA proposed that a person who failed a periodic test would be retested at specified intervals and precluded from operating a locomotive until he or she was successful.

Commenters objected to FRA's disrupting contractual agreements that permit those who fail tests to continue operating trains pending retest and interfering with provisions that specify the number of and intervals between retests. Others urged FRA to supersede those contractual arrangements to avoid the potential for reinstituting the presence of "firemen" on locomotives or to assure public safety by precluding less than fully knowledgeable or fully skilled engineers from operating locomotives.

In part, the concerns of these commenters reflect the government rule/private contract debate discussed earlier. FRA proposed periodic examinations to assure that an engineer maintains the requisite levels of knowledge and skill. If a railroad elects to conduct a separate examination on railroad-specific issues with contractual implications, railroads could create the "fireman flowback" problem they fear. To clarify the intent of this provision, FRA has added an explanatory section to this final rule. Discussion of this new provision is provided in the section-by-section analysis below.

FRA accepts commenter arguments that the rule should focus on FRA's bottom-line objective, *i.e.*, whether a locomotive engineer has the requisite knowledge and performance skills. Accordingly, FRA has eliminated its proposed provisions concerning the number of and interval between retests and other consequences of test failure. Only the prohibition against operating a locomotive prior to success on the test has been retained in the final rule.

7. Monitoring Certified Engineers While Operating Trains

FRA proposed that railroads monitor the routine operations of locomotive engineers to assure that they demonstrate appropriate operating skills and compliance with safety rules. FRA's proposal called for annual unannounced rules compliance tests and in-cab observations of performance.

Few commenters objected to this proposal. Those objecting to unannounced testing argued that such testing (*i.e.*, "efficiency testing") already exists, can breed distrust, will be applied unfairly, and should not apply to railroad managers who only operate trains on rare occasions. Those objecting to in-cab observations wanted FRA to reduce the duration, frequency, and restrictive methods proposed. In general, these commenters wanted discretion to prescribe the duration of the observation period, the interval between observations, and the use of electronic monitoring.

FRA investigatory efforts and accident data have indicated serious deficiencies in current railroad operating rules testing. In the context of safety assessments, FRA has repeatedly advised railroads about the poor quality of their existing "efficiency testing" programs, and the agency's routine monitoring of railroad testing suggests that the minimal failure rates often reported by railroads are misleading. A quality program that ensures the competence of engineers should inspire confidence in rail employees and dispel any lack of trust. The suggestion that FRA should employ a lower standard for one group of locomotive engineers, those who hold managerial positions, is unwarranted. Those who infrequently operate locomotives clearly need such testing. Assuring that testing is conducted for all operators of locomotives according to established criteria should reduce any perception of unfairness.

In response to comments, FRA has amended its proposal for in-cab observations, including elimination of the proposed prescriptions for the duration of monitoring. Designed to permit evaluation of engineer response to an appropriate range of situations, FRA's proposal would have compelled railroads to allocate substantial resources to this task. FRA believes that railroads should be given more discretion on this point. FRA also believes that commenter suggestions that electronic monitoring be permitted have merit. Train monitoring devices ("event recorders" or "black boxes") and advanced train control systems now under development can provide electronically much of the monitoring FRA believes necessary. Moreover, these devices can define the nature and timing of critical events. There is also some risk that FRA's proposed requirements on this issue could be viewed as a disincentive to the use or future installation of such devices. FRA has decided, therefore, to allow the use of such devices in the final rule. These changes obviate the need to adopt commenter suggestions for a longer interval between observations.

Although not directly raised by commenters, FRA's proposal concerning operational monitoring failed to address the question of whether it was permissible to use simulators in satisfying this monitoring requirement. Recognizing the value of simulators of the type FRA is otherwise sanctioning for the purposes of this rule, FRA has modified the final rule to permit the use of simulators for operational monitoring.

8. Implementing Each Railroad's Program

FRA's proposal addressed in some detail the process of converting from the current industry practice to the certification system prescribed by this rule. The NPRM also contained proposed procedures that would be employed in the routine administration of the certification system.

(a) The Conversion Process

The conversion process was discussed primarily in terms of the "grandfathering" of existing engineers, since it envisioned an initial recognition of the qualifications of those currently authorized by railroads to operate locomotives. Under FRA's proposal, railroads would be free to select and identify those individuals it deemed eligible for certification on the basis of their prior experience as engineers. Those persons would be certified without evaluating their eligibility based on prior conduct or testing of their knowledge, skill, or acuity levels. That initial certification would remain in effect for three years, during which the railroads would conduct "formal" evaluations that fully comply with the requirements of this rule.

Commenters raised four objections to FRA's proposed conversion process. Some commenters wondered why FRA did not immediately test all engineers prior to initial certification, given the volume of accidents attributed to poor performance as engineers. Other commenters, particularly individuals who would be affected by this rule, felt that FRA should not require any testing of those who have already proved themselves. Still others argued that requiring older engineers to pass the same kinds of tests that are given to new engineers who have the benefit of long, sophisticated training programs is unfair. A number of commenters urged FRA to use a five-year transition period.

Most commenter objections appeared to stem from an interest in maintaining the status quo. At present, once a railroad qualifies an employee to be an engineer, the railroad does not review that decision unless the railroad takes exception to poor performance by the engineer. While some railroads aggressively monitor the knowledge and skill of their engineers on a periodic basis, most wait until they see a problem before considering whether to

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re-evaluate an engineer's qualifications. FRA proposed and is requiring all railroads to conduct periodic reassessments because that is the more effective way to prevent accidents.

FRA has not accepted commenter suggestions for no phase-in period for certification of experienced engineers. As noted in the NPRM, the rail industry has compiled an enviable safety record that does not warrant such an extraordinary step.

As to the nature of the tests and capacity of engineers to pass them, FRA believes that the testing proposed is similar to that currently used by many railroads on their operating rules. FRA proposed and is requiring that railroads expand the subjects covered by these "book of rules" examinations to include additional topics required by this final rule, such as train handling and Federal rules concerning the operation of trains. Although railroads already require their engineers to know this additional information and to comply with Federal rules, some commenters expressed concern that engineers will fail these tests in significant numbers—apparently as a result of poor test-taking skills. Such fears can be allayed by administering preliminary examinations, a procedure that can give candidates insight into their command of the subject matter and their test-taking skills. Pretesting could be presented by rail labor organizations, railroads, or outside educational services, as could any needed refresher training.

The final concern expressed by commenters was the duration of the conversion period. Many commenters suggested a five-year period, and a number wanted to delay the start of formal evaluations for those five years. Virtually no rationale was provided in support of these suggestions. However, several reasons appeared in commenter discussion of other issues: (1) Small railroads may require more time than large railroads; (2) delay would limit consideration of prior events for certification purposes; and (3) a five-year recertification cycle suggests a similar period for conversion.

FRA is electing to retain the three-year phase-in-period; however, FRA is staggering the beginning dates to give smaller railroads more time to complete conversion. Commenter concern about the certification import of prior events has been resolved through deletion of the proposed point system and the changes made concerning motor vehicle driving data and train operation data.

(b) FRA Approval of Railroad Programs

FRA has amended the process for implementing the certification program. As a first step, all railroads will identify their designated supervisors of locomotive engineers and then their existing locomotive engineers whom they intend to "grandfather".

All railroads are to complete conversion to the certification program by December 31, 1991. After that date, all who operate locomotives must be certified engineers as required by this rule, either as new engineers certified under approved programs or as grandfathered engineers.

For Class I railroads, commuter railroads, and Amtrak, January 1, 1992 will mark the start of the three-year period for evaluating the qualifications of existing certified engineers. After that date, Class I railroads must certify engineers in accordance with FRA-approved programs.

Those programs will be submitted to FRA no later than November 15, 1991, giving FRA thirty days to make an initial evaluation. FRA will respond in writing only to those railroads whose program submissions are deficient. Since railroads generally have an analogous process in place for making qualification determinations, FRA expects that its initial review and approval should be easier and can be accomplished fairly quickly.

FRA will subsequently conduct a more detailed, extended assessment of the programs, which will include such tasks as evaluating the questions on a railroad's written knowledge examination. Delaying implementation of railroad programs until completion of such a detailed review is not warranted, given the safety record of train operations during the past ten years.

If FRA finds deficiencies during these detailed reviews, FRA will address them with the railroads. Based on past responsiveness, FRA expects this to be an effective way to proceed. FRA, of course, retains the authority to rescind its approval if identified deficiencies are not cured.

A similar pattern will be followed with Class II and Class III railroads. For Class II railroads, June 1, 1992 will mark the start of the three-year period for evaluating the qualifications of their existing certified engineers. After that date, Class II railroads must certify engineers in accordance with their FRA-approved programs. Those programs will be submitted to FRA no later than May 1, 1992. For Class III railroads the relevant dates are November 1, 1992 for submission of programs and December 1, 1992 for implementation of approved programs. Since FRA is phasing in the formal certification decisions for Class II and Class III railroads, FRA is allowing these railroads an extended period in which to certify engineers on the basis of their existing practices. That extension terminates on the same dates such railroads are required to implement their FRA-approved programs.

(c) Administration of the Program

FRA proposed that, once the program was established, railroads would routinely conduct evaluations of each engineer's qualifications by examining information relevant to eligibility and by administering tests concerning knowledge, skill, and acuity levels. Such evaluations would be mandatory for all initial certifications of new locomotive engineers and for periodic evaluations of previously certified locomotive engineers. The proposal addressed issues of the certification candidate's rights to due process in the conduct of evaluations; the documentation needed for formal evaluations, including the certificate to be issued to accredited locomotive engineers; the degree of reliance that one railroad might place on evaluations performed by another railroad; and the mechanism for resolving disputes about denial, suspension, or revocation of certification.

Commenters responded to a few of these issues. Several wanted intervals of five years instead of three years for recertification and suggested that railroads be given more time to perform the testing at recertification. Other commenters, usually individuals, wanted greater access to records containing adverse information before railroads could rely on such information. A few commenters desired clarification of FRA's views on how the inter-railroad reliance provisions would function. A few commenters were concerned about administrative details such as the need for better identification of certificate holders and for a method of obtaining replacement certificates. Finally, a number of commenters voiced concerns about the proposed dispute resolution mechanisms.

As noted above, FRA is not adopting a five-year recertification interval. However, comments suggesting the railroads be given more time to conduct the required acuity, knowledge, and skill testing have merit. These suggestions would not seriously impinge on FRA's objective of assuring that such testing be contemporaneous with the qualification decision. Accordingly, FRA is modifying the rule to accommodate these suggestions; details can be found in the discussion of § 240.217 in the section-by-section analysis below.

Due process concerns about the accuracy of information considered by railroads were addressed in the proposed rule only in the context of motor vehicle data. FRA agrees that it should provide similar protection to train operation conduct records and has modified the proposal accordingly. FRA response to commenter desires for clarification concerning the reliance by one railroad on decisions reached by another railroad are also found in the section-by-section analysis, particularly the discussion of §§ 240.225 through 240.229.

FRA response to commenter concern with administrative detail can be found in the section-by-section analysis. With only minor exceptions discussed there, FRA is adopting the proposed administrative provisions.

Commenters expressed concerns about the proposed dispute resolution mechanisms for railroad decisions regarding periodic certification and unsafe conduct.

Commenters did not object to the mechanism FRA proposed for initially resolving questions of whether a person was or was not entitled to obtain or retain certification; they were instead concerned about the appeals process. In response, FRA reviewed its entire approach to the issue and has made several changes in the final rule that are discussed in the section-by-section analysis below.

Under the proposed rule, FRA took responsibility for dispute resolution, and we continue to believe that the propriety of a railroad's decision to deny a person certification—to the extent that denial is based on a railroad's application of the minimum qualification standards of FRA's rule—is FRA's responsibility. The final rule provides the mechanism necessary to carry out that responsibility.

The comments reflected concern about the relationship between FRA decisions on appeal under this rule and extra-regulatory matters. Such FRA decisions will not necessarily be relevant to the person's employment status or any rights or obligations arising from that employment relationship. A railroad and its employees can agree that such decisions are or are not relevant to those issues. Resolution of contractual disputes is entrusted to the dispute resolution mechanisms under the Railway Labor Act.

Given the clarity of this demarcation, FRA does not believe the conflicting decisions feared by some commenters, one from FRA and another from a Railway Labor Act decisionmaker, will occur.

(d) Reliance on Decisions by Other Railroads

FRA's proposal to allow one railroad to rely heavily on the qualification decisions of another railroad prompted a few comments seeking clarification. FRA has made several changes in this regard to reflect changes in the design of the final rule.

The rule addresses reliance in three contexts: (1) Where a locomotive engineer operating in this country has been qualified under foreign law; (2) where a locomotive engineer seeks to work for a different railroad; and (3) where a locomotive engineer is to operate on trackage under the operational control of another railroad.

For the purpose of this rule, FRA proposed to accept qualification decisions made under the regulations issued by Transport Canada, and this final rule retains that provision.

Where a certified locomotive engineer seeks certification by a second railroad, FRA proposed a minimal check of the person's background. Under the final rule, however, the second railroad must first evaluate the engineer's knowledge, skill, and ability and assure that the engineer is familiar with the territory. Only the safety performance and acuity testing aspects of the prior certification will not require reevaluation.

Most locomotive engineers will operate trains only on the tracks of the railroad that issued them their certification as a qualified engineer. However, the reliance issue also involves those situations in which an engineer has occasion to operate over trackage controlled by a foreign railroad, *e.g.*, near large metropolitan areas where the trains of several railroads operate over a single set of tracks.

In such settings, one railroad has responsibility for the control of trains operating over the joint trackage. Since that railroad selects and administers the operating rules for the trackage, it must determine whether a locomotive engineer is qualified to operate in that environment.

FRA has adopted its proposal to permit the controlling railroad to rely on the qualification decisions made by other railroads. However, FRA has modified the relevant provisions to handle situations in which joint operations are an exception. Joint operations can occur unexpectedly; for example, adverse weather conditions result in trains of one railroad being rerouted over the lines of another. In these circumstances, commenters noted, it would be difficult to comply with the reliance provisions of FRA's proposed rule. Commenters raised similar questions with respect to such situations as military trains operated by members of the armed forces, steam excursions requiring special expertise, and track inspection, rail flaw detection, and rail grinding trains that have distinctive operating characteristics. FRA agrees that its proposed rule did not sufficiently accommodate this problem and has modified the final rule accordingly.

(e) Other Details

FRA's proposed rule concerning administration of the certification process by railroads did not cover such details as how to handle replacement of lost or damaged certificates, how to accommodate the need on some railroads to assign certain ministerial functions to people other than those initially envisioned by FRA, the functioning of the process for revoking a certification during its normal duration, and the dispute resolution process involving FRA.

Although commenters did not focus much of their attention on these aspects of the proposed rule, FRA is acting to correct several minor problems it has identified. These are discussed in the section-by-section analysis.

(f) Future Issues

A significant number of commenters argued that FRA's proposal was deficient because it did not address issues of stress and fatigue associated with the work of locomotive engineers. In the view of many of these commenters, safety lapses by engineers were more directly related to these problems than any other.

As noted in the earlier discussion concerning locomotive engineer conduct, FRA did not address these issues in this proposal for several reasons. After the ongoing studies and Congressional decision making have been completed, it may be appropriate for FRA to directly respond to these commenter concerns with subsequent regulatory proposals.

SECTION-BY-SECTION ANALYSIS

This rule contains five subparts that correspond to the organizational structure of the certification process. This new organization is different from and more compact than that employed in the NPRM.

Subpart A

This subpart contains the general provisions of the rule, as did subpart A in the NPRM, but it has been significantly rewritten to, for example, include new sections concerning

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information collection and the relationship of this rule to other laws.

Section 240.01

Section 240.01 has been revised and expanded to more fully explain the purpose and scope of this rule. The purpose of the rule is to prescribe the minimum standards for qualification, training, and monitoring of virtually any person who operates a locomotive. Although such persons are called "locomotive engineers" under this regulation, the rule will affect a wide variety of personnel, including those holding such job titles as hostler, machinist, utility person, trainmaster, or transportation specialist. Since FRA uses the term "locomotive engineer" throughout the text of the rule and a person reading only the regulatory text could be confused or misled by prior industry practice or nomenclature, FRA has added a new clarifying paragraph (c).

Section 240.03

Section 240.03 contains the same applicability section that FRA proposed. FRA has not accepted the suggestions of a variety of commenters that FRA exclude from this rule operations that are conducted primarily inside an installation, such as steel plants or mining and logging areas. These commenters wanted the authority to operate trains on the general railroad system without the responsibility for meeting the minimum safety criteria of this regulation, arguing they made only limited use of the general system. Although operations within an installation may not require a high degree of sophistication, whenever a locomotive is operating on the general system, minimum standards must apply. The safety risks posed by operations on the general system demand that qualified engineers be at the controls of a locomotive.

Section 240.05

Section 240.05 addresses several legal issues. Paragraphs (a) and (b) note that FRA's rule will preempt existing State law covering the same subject matter, with an exception for State criminal law. The remaining paragraphs address the relationship of this rule to preexisting legal relationships.

Section 240.07

Section 240.07 contains the definitions in proposed 240.05. A few changes have been made in response to commenter suggestions or as a result of the new structure of the rule. For example, FRA has deleted the definition of what constitutes a "designated supervisor of locomotive engineers," deleted the definition of "class instructor," and revised the definition of "locomotive" to mirror that in part 229. FRA also has revised its definition of "simulators" to reflect a more precise grouping of available equipment. That revised definition continues to reflect FRA's belief that, for the purposes of this rule, simulators must be truly analogous to the operation of a real train, not a mere piece of video software.

FRA has not adopted three major changes advocated by commenters. Several suggested that FRA alter the definition of "locomotive." The commenters were concerned that FRA had excluded only hi-rail and specialized maintenance equipment from the scope of the definition and urged exclusion of other equipment. FRA has elected to stay with a narrow set of exclusions. If the equipment in question is deemed a locomotive for the purposes of compliance with part 229, the rule requires that a railroad have a certified engineer at the controls. To illustrate the kinds of issues raised by the comments, FRA intends that engines coupled to rail grinding equipment, self-propelled track inspection equipment, or rail flaw detection cars as well as track mobiles be operated by qualified locomotive engineers. This equipment is operated in the same manner and with the same safety implications as any train. The exclusion covers only equipment designed to maintain the track structure and not normally capable of being operated like a train, such as self-propelled tampers and mobile cranes.

In a similar vein, commenters suggested that FRA narrow the definition of the functions to be covered by this rule by, for example, lengthening the distances that can be operated and expanding the types of movement that can occur without having a certified engineer at the controls. FRA has not accepted this suggestion since it intends to exclude only those incidental movements of locomotives to accomplish inspection and maintenance functions and those operations within a locomotive servicing area with limits marked in accordance with part 218. Adopting the suggested changes, which envisioned movements of nearly a half mile and routine switching functions for certain freight cars, would be contrary to FRA's basic safety premise that all who operate a locomotive on the general system should be qualified, unless there is some other way to provide an equivalent degree of safety. At least one commenter provided a description of a unique factual setting that may indeed present a different way to provide an equivalent degree of protection when conducting operational tests of locomotives. That fact pattern presents the type of issue more appropriately addressed in terms of a waiver of compliance rather than creation of a regulatory provision to accommodate unique facts. Another commenter inferred from the proposal that a railroad could comply with the letter of the rule by moving only 100 feet, then stopping, and then moving another 100 feet with an uncertified person at the controls as long as necessary to reach the destination. As with other rules, blatant efforts to circumvent the intent of the regulation will be treated as noncompliance and responded to appropriately by FRA when detected.

Commenters suggested that FRA employ a new definition for "EAP counselor." FRA has decided to retain the originally proposed definition that mirrors the definition in its rules concerning control of alcohol and drug use by railroad workers (part 219). The reasons advanced by commenters for altering FRA's proposed definition were considered and rejected in the context of amending the alcohol and drug rules.

FRA has also added definitions of "drug" and "substance abuse disorder," also found in part 219 to ensure that the two regulations are consistent. "Drug" is defined as any substance (other than alcohol) that has known mind- or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances. The term is intended to refer to substances that have a significant potential for abuse and/or dependence. Normal ingestion of caffeine in beverages and use of nicotine from tobacco products, even though involving some degree of habituation or dependence, are not intended to be included within the definition.

Similarly, "substance abuse disorder" is defined as a psychological or physical dependence on alcohol or a drug or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. This is essentially the same language employed to govern disposition of employees referred to an employee assistance program under the "co-worker report" (bypass) provision of the alcohol/drug regulations. It describes the condition of chemical dependency, as determined by an appropriate professional. Reference is made to other disorders involving abuse of alcohol and other drugs to avoid disputes concerning diagnoses of "underlying" problems. The point is, very simply, that a person making uncontrolled use of alcohol or drugs is not a suitable candidate for the highly sensitive duties entrusted to a locomotive engineer. Since chemical dependency typically has the aspect of poly-drug abuse, and in essentially all cases bears the potential for abuse of more than one substance, the appropriate long-term therapy is abstinence from alcohol and all other drugs.

The definition explains that the disorder is considered "active" within the meaning of the rule if the person is not currently abstaining from use of alcohol and drugs (except under medical supervision consistent with FRA's alcohol/drug regulations) or has not participated in treatment as required.

FRA is aware that many individuals abuse alcohol and drugs, with consequent ill-effects on their health and potential implications for fitness, without fitting within common definitions of chemical dependency. However, degrees of abuse are difficult to define; and significant disagreements prevail with regard to appropriate therapeutic responses. Accordingly, FRA has not required withholding of certification for patterns of abuse that fall short of chemical dependency. At the same time, FRA does not intend to convey that the concept of chemical dependency need meet the most rigid test used in any particular segment of the health care or mental health communities. For instance, much of the medical community was slow to recognize the dependence potential of cocaine, while other clinicians were properly recognizing and beginning to treat very serious cocaine addiction cases encountered in their practices. The critical point here with respect to safety is that engineers not be in the grip of uncontrolled abuse patterns that, if addressed through treatment and permanent abstinence, could be put behind them.

Finally, FRA has altered the definition of "knowingly." FRA is not changing the proposed standard of care to which parties will be held under certain portions of this rule, but has concluded that the new definition is more clear. The definition found in the rule is modeled on one formulated in recently enacted legislation that addresses a similar issue (see section 12 of Pub. L. 101 615, 104 Stat. 3244).

Sections 240.09 and 240.11

Sections 240.09 and 240.11, essentially renumbered versions of sections found in the NPRM, relate to waivers and the consequences of noncompliance.

Section 240.11 contains the penalty provisions of the rule. FRA has already provided extensive guidance on how it intends to use its enforcement power in this context (53 FR 52918). In addition to FRA's general policy statement concerning exercise of its enforcement authorities (49 CFR part 209, app. A; 53 FR 52918), readers may want to review FRA's comments on the discharge of its responsibilities under the regulations establishing disqualification procedures (54 FR 42894), prohibiting alcohol and drug use by rail workers (50 FR 31508, 31567), and those prohibiting tampering with locomotive-mounted safety devices (54 FR 5485). This section also addresses the potential for criminal sanctions for knowing and willful falsification of records required by this rule, as authorized by section 209(e) of the Federal Railroad Safety Act of 1970. Final decisions to bring charges under this provision would rest with the Department of Justice.

Section 240.13

Section 240.13 is new and is designed to aid those who have an interest in the information collection or record keeping requirements of this rule.

Subpart B

This subpart contains the basic elements of the railroad certification program required by this rule. It has no precise counterpart in the NPRM because it contains the elements that were spread out over five different subparts in the proposal.

Section 240.101

This section requires that each railroad have a written program composed of eight elements, each of which comports with specific provisions relating to that element.

Section 240.103

This section requires each railroad to submit its program and a summary outline to FRA for approval in accordance with the following schedule: Class I railroads, Amtrak, and the commuter railroads by November 15, 1991; Class II railroads by May 1, 1992; and Class III railroads or others not classified elsewhere by November 1, 1992. The format and contents of the submission are discussed at length in appendix B. This section also requires that each railroad indicate how it intends to acquire future engineers. If the railroad wants the power to train a previously uncertified person to become an engineer, the railroad must explain its training regimen for such trainees, including provisions for relying on another railroad or other some outside training organization to provide the actual training. The rule provides only thirty days for FRA review and approval of railroad programs, which will limit the depth of the review that FRA can accomplish. FRA is proceeding in this manner because most railroads have existing programs intended to accomplish a similar goal that can be easily modified; the quality of such programs is generally good; and the problems that may be encountered will not involve basic design flaws and generally will not surface until FRA has had time to observe the actual administration of the program. In screening all submissions FRA should be able to quickly detect any substantial deficiencies. Given the quality of existing programs, FRA sees little value in delaying implementation of the programs for time-consuming agency review. FRA may, of course, disapprove any program during the review cycle or at a later date. FRA will explain any deficiencies in writing. This section provides for timely railroad response to an FRA disapproval action. In addition to its limited initial review of a railroad's program, FRA intends to conduct a more thorough evaluation at a later date to assure that all aspects of the program are properly analyzed.

Section 240.105

In the NPRM, FRA proposed that individuals responsible for evaluating the skills of engineer candidates have a specified level of experience as an engineer and hold supervisory authority within the railroad. FRA's proposal was designed to ensure that these individuals have the requisite knowledge, skill, and judgment to be effective decision makers. However, some commenters objected that experience was not a legitimate substitute for good judgment; that the specified level of three years' experience was unacceptably long base on current industry practices; and that the approach prevented small railroads from continuing to employ part-time evaluators with no direct supervisory duties.

In response to these comments, FRA has amended the proposal to give to railroads the discretion to select the individuals who will evaluate their engineer candidates. Section 240.105, which replaces the proposed definition of "designated supervisors," implements that decision. Each railroad must now have a procedure for determining the qualifications of individuals to serve as designated supervisors of locomotive engineers. The section contains a performance standard for measuring a

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person's capabilities and, in conjunction with § 240.203, gives FRA the power to respond to abuse of this discretion. Each railroad must have at least one designated supervisor of locomotive engineers, although many railroads would want to have more. FRA has deleted its proposed requirement that the designated supervisor be an employee of the railroad. Thus, a railroad that does not have a reason to have such a designated supervisor available on a full-time basis can obtain the services of a designated supervisor on a part-time or contract basis.

To assure that designated supervisors have the necessary knowledge and skills, paragraph (b)(4) requires that all designated supervisors be certified under this rule. This paragraph should be read in conjunction with § 240.211, which does not permit self-certification under this rule.

This section does not fully respond to commenter suggestions that FRA devise a way of more objectively determining the qualifications of designated supervisors. FRA is unable, at this time, to provide an effective objective testing scheme for such designated supervisors. FRA may consider improved methods for evaluating designated supervisors in the future.

Section 240.107

This section contains the simplified scheme for classifying those authorized to operate locomotives. Section 240.13 of the NPRM proposed five classifications; section 240.107 of this rule establishes three: Train service, locomotive servicing, and student engineer. The gradations of train service that were integral to a standardized training and testing scheme have been eliminated in light of FRA's decision to allow individual railroad programs for training and testing engineers.

This simplified classification scheme will indirectly respond to numerous suggestions by commenters on ways to alter the threshold levels proffered in the NPRM. This simplification does have implications for the "portability" of certificates when an engineer wants to move from one railroad to another. This issue is discussed further in connection with the analysis of § 240.225.

Section 240.109

This section defines the processes required for evaluating a candidate's qualifications. It contains elements of the NPRM that can be found in proposed §§ 240.51 and 240.57. Few commenters focused on these mechanics.

A railroad's procedures must include an evaluation process that effectively examines relevant prior conduct and may reflect the railroad's current approaches. Since motor vehicle data will go directly to the railroad, FRA requires in paragraphs (f) and (g) of this section that the certification candidate be given an opportunity to review those records that contain adverse information. This review will avoid the potential for accidental reliance on records that were somehow erroneously associated with a candidate. It will also allow the candidate to explain or offer any mitigating information the railroad should consider before making an eligibility decision. Since an opportunity for review and comment is not needed in all instances, FRA is only imposing the duty to afford that opportunity to a candidate whose record contains sufficient adverse data to support a determination of ineligibility. This section does not contain detailed procedures for informing the candidate, specific limits on the time for review or submission of rebuttal information, or a variety of other possible controls for implementing the intent of this section. Instead, FRA has required that these be reasonable and be described in the program description submitted for FRA's approval in accordance with § 240.109 and appendix B.

The requirements of this section are equally applicable to the issues presented when a railroad is confronting data concerning prior railroad service. The provisions of these paragraphs are similar to proposed § 240.55.

As originally proposed, FRA has limited railroads to considering only certain types of incidents involving safety-related action or inaction by a person seeking certification or recertification as a train or locomotive servicing engineer. These involve failure to comply with rules designed to prevent accidents. FRA has deleted the NPRM's provisions focusing on individuals who were seeking certification as a student engineer. Commenters have convinced FRA that the proposed provisions, which would have permitted railroads to consider an additional group of incidents concerning student certification candidates who may have provided prior service as a member of a train crew, are not necessary at this time.

This section also responds to commenter concern about the degree to which railroads would be permitted to base their certification decisions on conduct that occurred prior to adoption of this rule. Several commenters offered the view that, by permitting a railroad to rely on incidents of misconduct that occurred before locomotive engineers had any basis of suspecting that such action could render them ineligible for certification, the regulation would constitute an *ex post facto* application of the rule. Other commenters, while not articulating any legal theory to support their views, urged that all locomotive engineers be permitted to start with a clean slate for certification purposes as a matter of basic fairness.

Permitting railroads to impose additional, retroactive consequences for incidents that occurred prior to adoption of this rule would not mean that this regulation has a prohibited *ex post facto* effect. Such retroactive effect, although not absolutely precluded by the Administrative Procedure Act (5 U.S.C. 553), is discouraged under existing law (see *Bowen* v. *Georgetown University Hospital*, 109 S. Ct. 468 (1988)). Moreover, FRA agrees that fairness precludes the use of events that occurred prior to the effective date of this rule, and this section so provides.

This section also permits railroads and candidates to create arrangements whereby the railroad can directly obtain motor vehicle data or prior railroad service data. This last provision responds directly to the concerns of many individual commenters who felt aggrieved that they were being required to personally participate in a procedure that could ultimately render them ineligible.

Section 240.111

This section essentially contains the requirements proposed in § 240.52 of the NPRM. The major difference is that FRA has responded to commenter suggestions that FRA expand the responsibility of the certification candidate for soliciting motor vehicle data. In instances where a railroad's initial check of motor vehicle records revealed the existence of additional information in the control of a state licensing agency, FRA had proposed that the railroad seek the secondary information. Commenters pointed out that railroad access could be as easily stymied when seeking the secondary data as it could under the circumstances that had prompted FRA to make the certification candidate initially responsible for seeking motor vehicle data. Therefore, § 240.111 charges the candidates with responsibility for requesting the information. Finally, § 240.111 has been revised to require timely provision of the information to the railroad.

Section 240.113

This section contains requirements analogous to those just described for seeking motor vehicle records when a railroad needs information concerning prior railroad service. As noted earlier, most commenters wanted FRA to delete any consideration of prior conduct and thus to eliminate this section from the final rule. The few commenters who discussed evaluation of prior conduct data urged that FRA establish a similar duty to provide information because of difficulties railroads have experienced on this score. In response, FRA has established that duty in this section. The section requires timely provision of the information to the railroad.

Section 240.115

This section imposes a duty on railroads to make proper determinations concerning an individual's eligibility to become a certified engineer based on the person's motor vehicle driving record. It draws on §§ 240.53, 240.57, and 240.59 of the NPRM. Similar to proposed § 240.53, this section sets limits on railroads in considering motor vehicle driving data.

As noted earlier, until completion of a study of the possible correlation between safe train operation and motor vehicle conduct, this rule will only permit consideration of data involving incidents of alcohol- or drug-related motor vehicle driving operation. Thus, this section does not address any motor vehicle record data that involves events such as excessive speed, racing on the highway, or reckless driving.

This section identifies the types of events that can be considered and allows both convictions and state actions that revoke, cancel, suspend, or deny licensing to be considered. Actual operation of a vehicle while impaired or under the influence of alcohol or drugs, as well as refusal to undergo testing to determine whether the person is impaired or under the influence, will be considered by the railroad. Paragraph (a) requires that a railroad review the available information concerning the candidate's motor vehicle driving record.

Paragraph (b) requires evaluation of motor vehicle driving records to determine if specified alcohol/drug-related conduct has occurred. If an incident is identified, this information is provided to the EAP Counselor, along with railroad service record data (rules compliance, attendance, other job-related incidents), and the engineer is referred for evaluation. The engineer is required to furnish any other pertinent records concerning counseling or treatment for confidential review by the EAP Counselor. The purpose of this referral and review is to determine whether the person currently has an active substance abuse disorder.

If the person is found not to have an active substance abuse disorder, the data will not be considered further with respect to the certification (and the EAP Counselor retains as confidential the data provided by the employee concerning any prior treatment). However, if the EAP Counselor determines that the person has in the past had an active substance abuse disorder, the EAP Counselor may recommend that certification be conditioned on any needed aftercare. It is intended that this decision be made based on the EAP Counselor's clinical evaluation. For example, an employee treated three years before who could demonstrate sobriety over that period might in an appropriate case receive unconditional certification. By contrast, an employee with a history of substance abuse episodes, including a relapse after treatment a few months before, might receive conditional certification.

As provided in § 240.119, a person with an active substance abuse disorder could not be currently certified. However, that employee would be permitted to utilize the voluntary referral policy of the alcohol/drug rule (§ 219.403) if the employee had not previously taken advantage of the policy. This provision is in contrast to handling under § 240.119, where violation of § 219.101 or § 219.102 leads to adverse certificate action and access to the EAP is a matter of management policy. In those cases (except co-worker reports, which are treated differently), management will have detected violative behavior; and the voluntary referral rule by its own terms will not apply. In the context of motor vehicle driving data, however, referral to the EAP Counselor is necessary for the purpose of evaluation; and cooperation by the employee may be critical to documenting the extent and nature of the substance abuse disorder—*i.e.*, the motor vehicle record will seldom be dispositive in the sense of providing a wholly satisfying foundation for a professional evaluation. Both for the purpose of preserving the experience and training represented by the current employee (an important factor in safety) and for the purpose of encouraging development of all the pertinent clinical indications, it is desirable for the person being evaluated to know that help, if needed, will be available. The same considerations do not apply with equal force to a person who is not a current employee, and the employer would have no obligation to make available the services of the EAP in that case.

The section also prohibits use of data so old as to be irrelevant to present condition or future behavior. With the exception of some information involving substance abuse and unsafe operating safety practices, the rule limits railroads to considering events that occurred within the previous 30 months. FRA originally proposed a five-year period, but has learned that a number of states do not maintain records for that length of time. The final rule's three-year period matches the minimum record retention practices of all state driver licensing agencies and the retention interval for most data found in the NDR.

Section 240.117

This section requires that railroads have a program for examining incidents in which certified locomotive engineers may have failed to comply with railroad safety rules or procedures intended to ensure the safe operation of trains. To comply with this requirement and the related provisions of section 240.307, the railroad's program must afford each locomotive engineer the opportunity to participate in the fact-finding process. Except in relatively rare instances, it will be the railroads themselves that will, before action required by this rule will be taken, detect the evidence of possibly unsafe conduct, make the decision on whether there is sufficient evidence to proceed with formal responsive action, and convince a railroad's hearing officer that the operating rule was violated.

The section makes clear that the railroad's responsibilities for responding to infractions by locomotive engineers are not limited to periodic recertification, providing that any pertinent incident can prompt review of certification status.

Paragraph (e) identifies the five kinds of rule infractions covered by this regulation: failure to comply with railroad rules (1) requiring adherence to a signal indication; (2) limiting the operating speed of the train; (3) prescribing operation of the train and engine brake system so as to safely control train operation; (4) prohibiting occupying a track without authority; or (5) prohibiting the unauthorized nullification of locomotive-mounted safety devices. Railroads should, of course, respond to other forms of unsafe train operation conduct as appropriate.

Paragraph (g) provides that once a railroad has determined that an engineer has failed to comply with its mandatory safety rule concerning one of these five types of incidents, two consequences will occur. First, the railroad will be required to revoke the engineer's certificate for 30 days. Second, that finding will initiate a period during

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which the engineer will suffer an increasingly more severe response if additional incidents occur in the next 36 to 60 months. If a second event occurs within 36 months of the first event, the period of mandatory revocation will increase to one year. If a third event occurs within 60 months, the revocation period increases to five years. If the locomotive engineer does not engage in unsafe conduct for three years, a second incident will not serve as an aggravating factor warranting imposition of the one-year revocation. However, that second incident will start a new 36-month period during which a second incident can generate a one-year revocation. Moreover, both events will be relevant if a third incident occurs within 60 months. This paragraph also integrates certain aspects of alcohol and drug related data stemming from detected incidents of on-duty possession, use, and impairment. If both this section and § 240.119 apply to a given incident, the longer mandatory period of revocation will control.

Paragraph (g) also addresses instances when the locomotive engineer is found to have violated the pertinent provisions of the railroad's rules twice within a three-year period. Although the railroad must revoke certification and/or deny recertification for at least one year, a railroad can reinstate a person after a minimum period of six months. Prior to reinstatement the engineer must be evaluated by a designated supervisor and the designated supervisor must conclude that the remedial action was effective. If the designated supervisor does not so conclude, the engineer must await passage of the full year interval. A railroad that concludes that the engineer needs supplemental training, prior to early reinstatement, must determine that the engineer has successfully completed that training before it can authorize reinstatement.

If the locomotive engineer is found to have violated the pertinent rules three times in any consecutive 60-month interval the engineer shall be ineligible for certification for five years. No railroad can reinstate a person until after expiration of that 60-month period.

Section 240.119

This section addresses two separate dimensions of the alcohol/drug problem in relation to engineers—(1) active substance abuse disorders and (2) specific alcohol/drug regulatory violations.

Paragraph (a) requires railroads to address both dimensions of this issue in their programs. Paragraph (b) provides that a person with an active substance abuse disorder shall not be currently certified as a locomotive engineer. This means that appropriate action should be taken with respect to a certificate (whether denial or suspension) whenever the existence of an active substance abuse disorder comes to the official attention of the railroad, with the exception discussed below. This section and § 240.115 address certain situations in which inquiry must be made into the possibility that the individual has an active substance abuse disorder if the individual is to obtain or retain a certificate. The fact that specific instances are cited does not exclude the general duty of the railroad to take reasonable and proportional action in other appropriate cases. Declining job performance, extreme mood swings, irregular attendance and other indicators may, to the extent not immediately explicable, indicate the need for an EAP evaluation. These issues are addressed in the FRA Field Manual for Control of Alcohol and Drug Use in Railroad Operations, the revised edition of which will be available in the next few months.

Paragraph (c) deals with conduct constituting a violation of § 219.101 or § 219.102 of the alcohol/drug regulations. Section 219.101 prohibits any employee from going or remaining on duty in covered service while using, possessing, or being under the influence of or impaired by alcohol or a controlled substance or with a blood alcohol concentration of .04% or more. This is conduct that specifically and directly threatens safety in a way that is wholly unacceptable, regardless of its genesis and regardless of whether it has occurred previously. It is roughly analogous to a violation of the railroad's own Rule G, for which the traditional sanction was dismissal (albeit with possibility of reinstatement following a first offense). In its more extreme forms, such conduct is punishable as a felony under the criminal laws of the United States (18 U.S.C. 341 *et seq.*) and a number of states.

Section 219.102 prohibits use of a controlled substance by a covered employee, at any time, on or off duty, except under the exception for approved medical use. Abuse of marijuana, cocaine, amphetamines, and other controlled substances poses unacceptable risks to safety. However, where on-the-job use, possession, or impairment is not established, as is most often the case where urinalysis is the means of detection (*e.g.*, through a random drug test which can detect drugs remaining in the system for some period after actual use), this violation is marginally less serious than a § 219.101 violation.

Under the alcohol/drug regulations, whenever a violation of § 219.101 or § 219.102 is established based on authorized or mandated chemical testing, the employee must be removed from service and may not return until after an EAP evaluation, any needed treatment, or a negative return-to-duty test, and is subject to follow-up testing (§ 219.104). This structure suggests an absolute minimum for action when a locomotive engineer is determined to have violated one of these prohibitions. Considering the need both for general and specific deterrence with respect to future unsafe conduct, additional action should be premised on the severity of the violation and whether the same individual has prior violations.

One key consideration in evaluating this conduct and appropriate responses is the duration of retrospective review. The final rule uses the same nominal period set forth in the statute for consideration of alcohol/drug related motor vehicle conduct—5 years (60 months). This is also the same period used by FRA as a maximum period for follow-up of those who commit violations (§ 219.104(d)) and has been employed in some railroad "bypass agreements" as the retrospective period to determine if the employee has a prior alcohol/drug rule violation or prior treatment. Further, it is employed in this rule as the maximum period of ineligibility for certification following repeated alcohol/drug violations.

Use of a 5-year cycle reflects anecdotal experience in the railroad industry indicating that conduct committed as much as 5 years before may tend to predict future alcohol or drug abuse behavior (and recognizes the reality that most individual violations are probably not detected). On the other side of the coin, it reflects a certain confidence in the resilience of human nature—*i.e.*, a reasonable expectation that the person who remains in compliance for that period of time will not again be found in violation.

The full reach of the 5-year period will not be realized initially. Since § 219.101 did not become effective until February 10, 1986 and § 219.102 was effective on October 2, 1989, even if FRA has not elected to employ the retrospective limitations discussed earlier, conduct prior to those dates could not properly be measured against those standards with respect to certification. Of course, railroads retain the flexibility to consider prior conduct (including conduct more than 5 years prior) in determining whom they will hire and assign as locomotive engineers.

Note that conduct violative of the FRA proscriptions against alcohol and drugs need not occur while the person is serving in the capacity of a locomotive engineer in order to be considered. For instance, an employee who violated § 219.101 while working as a conductor and then sought engineer certification six months later (under the provision described below) would not be currently eligible for certification.

The railroad's responsibility is not limited to periodic recertification. The rule provides that any conduct in violation of § 219.101 or § 219.102 shall prompt a review of certification status.

The rule requires a determination of ineligibility for a period of 9 months for an initial violation of § 219.101. This parallels the 9-month disqualification for refusal to cooperate in post-accident or random testing and also matches most estimates of discipline actually assessed, on average, in the railroad industry. FRA does not believe that a locomotive engineer should be able to seek the shelter of a collective bargaining agreement or more lenient company policy in the case of a clear on-the-job violation, insofar as Federal eligibility to serve as a locomotive engineer is concerned. Specifying a period of ineligibility will serve the interest of deterrence while giving further encouragement to co-workers to deal with the problem before it is detected by management.

In order to preserve and enhance the leverage available to co-workers, the 9-month period is waived only in the case of a qualifying co-worker report (§ 219.405). FRA believes that this distinction in treatment is warranted as a strong inducement to participation by other employees in enforcement of the regulations. Although few actual co-worker reports may be generated, the intended result will be served if an atmosphere of intolerance for drug abusing behavior is reinforced in the workplace and violators know that they will be turned in if they come on the job impaired.

In the case of a second violation of § 219.101, the engineer will be ineligible for a period of 5 years. Given railroad employment practices and commitment to alcohol/drug compliance, it is likely, of course, that any individual so situated would also be permanently dismissed from employment. However, it is important that the employing railroad also follow through and revoke the certificate under this rule so that the engineer does not go to work for another railroad within the 5-year period using the certificate issued by the first railroad as the basis for certification. We note that these sanctions are reasonably consistent with the Commercial Motor Vehicle Safety Act, title XII, Public Law No. 99-570, 100 Stat. 3207-170, which requires the Federal Highway Administration to disqualify a commercial motor vehicle driver for one year in the case of driving a commercial motor vehicle under the influence (defined as a blood alcohol concentration of .04% or greater) and for life in the case of a second offense.

Under this rule, one violation of § 219.102 within the 5-year window would require only temporary suspension and the minimum response described in paragraph (d) (referral for evaluation, treatment as necessary, negative return-to-duty test, and appropriate follow-up). FRA has considered whether a more stern approach should be required, but does not wish to undercut the therapeutic approach to drug abuse employed by many railroads. This approach permits first-time positive drug tests to be handled in a non-punitive manner that concentrates on remediation of any underlying substance abuse problem and avoids the adversarial process associated with investigations, grievances and arbitrations under the Railway Labor Act and collective bargaining agreements. This approach is most often coupled to commitments from labor organizations to lead peer prevention efforts such as Operation Red Block and Operation Stop. While time may yet prove this approach to be excessively lenient, FRA is not persuaded that experience has impeached the seasoned judgment of railroad medical officers, EAP personnel, operating officers, and employees who have committed their companies to this approach.

A second violation of § 219.102 would subject the employee to a mandatory 2-year period of ineligibility. A third violation within 5 years would lead to a 5-year period of ineligibility.

The rule also addresses violations of §§ 219.101 and 219.102 in combination. A person violating § 219.101 after a prior § 219.102 violation would be ineligible for 3 years; and the same would be true for the reverse sequence. A person violating either section thereafter (cumulative 3rd violation) would be ineligible for 5 years from the most recent violation.

Refusals and failures to participate in chemical tests are treated as if the test were positive. A post-accident blood analysis for alcohol and controlled substances, for instance, in the worst case could establish use on the job, violation of the .04% alcohol prohibition, or—with other evidence—impairment. Such a refusal would be "scored" as if a § 219.101 violation. The same would be true for refusal to take a breath alcohol test. Refusal of a drug urinalysis, which in most cases could only be used to establish a § 219.102 violation, would be treated as if it were a violation of that section.

The refusal or failure to participate in testing as required under part 219 would be treated as provided in the rule even though the testable event did not involve a mandatory 9-month disqualification under part 219. Under part 219 a "refusal" triggers a mandatory disqualification only in the case of post-accident and random tests. The term "failure to participate" is used here to denote other instances of noncooperation involving a federally mandated or authorized test (*e.g.*, reasonable cause, follow-up) where FRA regulations do not specify the responsive action.

The specific periods of ineligibility obviously represent decisions about which "reasonable minds may differ." However, they have antecedents in other fields of regulation and reflect FRA's best judgment of what would be both fair to locomotive engineers and reasonably effective from the point of view of deterrence. It is important that practice among the railroads with respect to certification be as uniform as possible, regardless of more stringent disciplinary action that may (and likely would) be taken in the case of some of the cases posited. Further, it is a legitimate objective to avoid excessive FRA involvement in reviewing requests for exceptions for alleged hardship, particularly since railroad disciplinary policy can normally be expected to address most cases at the other extreme of the range of culpability.

Paragraph (d) prescribes the conditions under which employees may be certified or recertified after a determination that the certification should not be granted, or should be suspended or revoked, due to a violation of § 219.101 or § 219.102 of the alcohol/drug regulations. These conditions closely parallel the return-to-duty provisions of the alcohol/drug rule, but are more stringent in the following respects:

- Return-to-duty testing shall be for both alcohol and controlled substances, regardless of the nature of the original violation.
- Follow-up tests must include at least 6 alcohol tests and 6 drug tests during the first 12 months following return to service and may include tests for both alcohol and controlled substances throughout the period.

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Alcohol tests may be on either blood or breath samples using methods described in the alcohol/drug regulation. Alcohol tests must be conducted while the employee is in "duty status" in the sense that the employee is available for duty and is subject to the commingled service provisions of the Hours of Service Act. The regulation does not require compensation of the employee for the time spent in this testing, which is a condition precedent to retention of the certificate; but the issue of compensation is ultimately resolved by reference to the collective bargaining agreement or other terms and conditions of employment under the Railway Labor Act.

Paragraph (e) ensures that an engineer, like any other covered employee, may self-refer for treatment under the alcohol/drug rule (§ 219.403) before being detected in violation of alcohol/drug prohibitions and is entitled to confidential handling of that referral and subsequent treatment. This means that the railroad will not normally receive notice of any substance abuse disorder identified by the EAP Counselor. However, the paragraph also provides that the railroad policy must (rather than may) provide that confidentiality is waived if the engineer fails to participate successfully in treatment as directed by the EAP Counselor, to the extent that the railroad must receive notice that the employee has an active substance abuse disorder so that appropriate certificate action can be taken. The effect of this provision is that the certification status of an engineer who seeks help and cooperates in treatment will not be affected, unless the engineer fails to follow through.

Section 240.121

This section contains requirements for visual and hearing acuity testing that a railroad must incorporate in its program. FRA's proposal for visual and hearing acuity were proposed as § 240.43 of the NPRM.

As FRA pointed out when it issued the proposal, any person who operates a locomotive must have sufficient vision and hearing acuity if there is to be a reasonable expectation that trains will be operated safely by that person. Since many railroads do not have standards for either visual or hearing acuity or any program to periodically monitor these aspects of an engineer's health, FRA proposed to require both periodic examinations and minimum acuity thresholds.

This section contains FRA's revised criteria for a railroad's program concerning acuity standards. Since none of the commenters provided scientific evidence or documented research findings that provide a sound basis for setting acuity thresholds for locomotive engineers different from those used in other transportation modes, FRA has retained the acuity values proposed in the NPRM in paragraphs (c) and (d).

FRA has modified this section, by the inclusion of the wording in paragraphs (c) and (d), to afford railroads some discretion in applying these criteria. Commenters have persuaded FRA that some individuals, although not meeting these threshold acuity levels, may be able to compensate in other ways that will permit them to function at an appropriate safety level despite their physical limitations. FRA, therefore, has revised this section by the inclusion of paragraph (e) to permit a railroad to have procedures whereby doctors can evaluate such individuals and make discrete determinations about each person's ability to compensate for his or her physical limitations. If the railroad's doctor concludes that an individual has compensated for his or her limitations and can safely operate a locomotive on that railroad, the railroad can certify that person under this regulation once it possesses the doctor's professional medical opinion to that effect.

FRA has also revised the wording of paragraph (d) of this section. One aspect of the revision deletes the authorization to have hearing acuity tests performed without the use of audiometers. As pointed out by several commenters, audiometers are generally available throughout this country. Thus, there should not be any problem, or at most a minimal problem in isolated cases, for engineers to obtain access to these devices for testing purposes. Since there is no scientifically reliable basis on which to determine hearing acuity absent the use of this device, FRA is requiring that they be used. The other aspect of the revision involves the reference to the calibration standards which must be adhered to when determining that an audiometer is functioning properly. As one commenter noted, FRA could simplify compliance with its rule by requiring use of the same calibration standard that OSHA employs for other workers. FRA agrees and has used the same calibration standard mandated by OSHA.

Section 240.123

This section contains FRA's revised approach to the education of locomotive engineers. It melds ideas contained in §§ 240.61 through 240.67 of the NPRM and converts them to design and performance criteria. It also contains the concepts of section 240.19 of the NPRM that dealt with the need for maintaining familiarity with physical characteristics.

This section contains the requirement that each railroad provide for the continuing education of its engineers. At a minimum, that continuing education effort must address the need to keep engineers conversant with the personal safety directives of the railroad, the operating rules and practices of the railroad with which the engineer must comply, the rules for inspecting and testing the mechanical condition of rolling equipment with which the engineer must comply, and the methods of safe train handling, including familiarity with physical characteristics. As noted earlier, this section does not require that a railroad conduct its training at FRA-determined intervals or for specified durations as was proposed. This section affords each railroad the latitude to design its own program so long as that design addresses each of the required elements.

In designing its program, railroads must ensure that their engineers are kept advised of changes. These changes can include a wide range of subjects such as new or amended guidance provided in documents such as new "general orders" or "special instructions," amendments to its "book of rules," changes that occur in the physical characteristics of the territory with which the engineer is required to be familiar, and the introduction of new technology. The railroad must also provide for programs to ensure that each engineer stays familiar with existing rules and procedures that were initially learned years ago, as well as with the physical characteristics of the territory learned at some point in the past but unused for a significant period. Since the railroads' training programs must be described and submitted to FRA for approval, the exercise of the discretion being afforded railroads by this section will be monitored by FRA.

This section also contains requirements for the initial training of persons not previously trained as engineers. It identifies the subject matter to be covered and contains minimum constraints on the manner in which the training is to be conducted.

Section 240.125

This section, derived from § 240.73 of the NPRM, requires that railroads provide for the periodic testing of engineers. That testing must effectively examine and measure an engineer's knowledge of five subject areas: the personal safety directives of the railroad, the operating rules and practices of the railroad, the rules for inspecting and testing the mechanical condition of rolling equipment, the methods of safe train handling including familiarity with physical characteristics, and compliance with Federal safety laws.

Again, railroads have discretion to design the tests that will be employed; for most railroads that will entail some modification of their existing "book of rules" examination to include new subject areas. This section does not specify things like the number of questions to be asked or the passing score to be obtained. It does retain the proposed requirement that the test not be conducted with open reference books unless use of such materials is part of a test objective. This section also requires that the test be in writing. FRA was not unmindful of commenter concern over the test taking skills of some individuals or of the possibility that some persons may have literacy problems when FRA decided to require a written test. However, FRA believes that minimum reading and comprehension skills are needed to assure safe train operations by a locomotive engineer. Some commenters asserted that there may be existing engineers who lack such basic skills. Those individuals, perhaps assisted by their railroad and co-workers, will have ample opportunity to achieve the requisite degree of literacy before being required to pass such a test for recertification purposes. This section affords each railroad latitude in designing its own testing effort so long as that design addresses each of these elements. Since the testing effort selected by the railroad must be submitted to FRA for approval, the exercise of the discretion being afforded railroads by this section will be monitored by FRA.

Section 240.127

This section, originally found in § 240.63 of the NPRM, requires that railroads provide for the periodic testing of an engineer's applied knowledge and performance skills. At a minimum, that testing effort must effectively examine and measure an engineer's knowledge and skill when operating a train or a locomotive. The test can be conducted when the engineer is operating either an actual train or a simulator. Whether real or simulated, the train must be representative of the type of train the engineer could reasonably expect to encounter in normal operations and must be operated over the type of terrain the engineer can reasonably be expected to encounter. The test must cover the engineer's applied knowledge of the operating rules and practices of the railroad with which the engineer must comply, the rules for inspecting and testing the mechanical condition of rolling equipment with which the engineer must comply, the methods of safe train handling including familiarity with physical characteristics, and compliance with Federal safety laws.

Unlike the proposed rule, this section does not specify the duration of the operation of the test train that must be witnessed. Deletion of that requirement responds to repeated commenter assertions that the proposal was unduly restrictive in requiring a lengthy period of test observation. This section does not authorize the use of anything less than a Type 1 or Type 2 simulator, since other simulators do not provide a sufficient replication of the real world environment to provide the degree of assurance needed concerning an individual's applied knowledge and skills. Again, a railroad's submitted plan regarding duration of the observation period for testing purposes is subject to FRA approval.

Section 240.129

This section derived from § 240.93 of the NPRM, requires that each railroad provide for the annual observation and compliance testing of its engineers' applied knowledge and performance skills. At a minimum, that compliance testing effort must effectively examine engineer response when operating a train or a locomotive and confronted with an unforeseen situation that requires affirmative reaction to less favorable conditions than those that existed prior to initiation of the test. The test can be conducted when the engineer is operating either an actual train or a simulator, but it must be done without prior warning to the engineer being tested.

The test required under this section is intended to improve routine compliance with major operating rules such as those that require engineers to operate prepared to stop within one-half the person's range of vision, or to approach a signal at reduced speed prepared to stop or make a diverging movement. Very few comments were received about this aspect of the monitoring proposal. Among those comments, two that have been rejected by FRA merit mention. One commenter urged that FRA not require tests because of a belief that covert testing breeds distrust and another commenter urged that this requirement not be applicable to those who only occasionally operate trains. FRA's routine field observations, experiences during system assessments, and some of the accident data clearly show the need for covert testing, since in its absence major safety rules intended to prevent collisions and derailments are often violated. FRA would expect that rail employees, whose safety is at issue, would understand this program as inuring to their benefit. The need for testing compliance with operating rules does not disappear because a person only occasionally operates a locomotive. There may in fact be a heightened value in assuring that those who do not routinely operate locomotives have their knowledge and skill periodically tested. One commenter did raise a valid concern that must be addressed by railroads during their design and implementation efforts: The failure of some railroads to properly control the placement of loads and empties when making up a train's consist. Unorthodox placement of loaded and empty freight cars does have the potential for generating severe train handling problems when engineers are required to respond to a compliance test conducted in territory that already presents an engineer with difficult train handling situations.

This section also requires an annual observation of each certified engineer by a supervisor of locomotive engineers, not as part of a test, but to provide for observation performance in routine operations, rather than merely in test environments. FRA has revised the portion of the section that pertains to such operational monitoring in light of the comments received. Railroads will be free to select the duration of the monitoring effort devoted to each individual engineer. Railroads also will have the option of using some or all of the following techniques: on-board observations, simulator observations, and evaluation of train operation event recorder data. As with prior provisions, this section affords each railroad latitude in designing its own monitoring effort, so long as that design addresses each of these elements. Since the testing and monitoring effort selected by the railroad must submitted to FRA for approval, the exercise of the discretion being afforded railroads by this section will be monitored by FRA.

This section has been revised to clearly indicate the duties of a railroad responsible for conducting joint operations under this section. FRA will permit but not require a railroad responsible for conducting joint operations, which involve certified engineers from other railroads operating over its territory, to annually observe and perform compliance tests of all such engineers under § 240.229.

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Subpart C

Reflecting FRA's effort to simplify this rule, this subpart sets out the steps for implementing the railroads' certification programs. This subpart has no counterpart in the NPRM because its provisions appeared throughout the proposal.

Section 240.201

This section contains the timetable for implementation of the rule; its provisions are drawn primarily from §§ 240.1, 240.3, and 240.61 of the proposed rule.

This section requires that railroads identify supervisors of locomotive engineers and qualified engineers by November 1, 1991. All engineers must be issued certificates documenting their status by the end of 1991. Beginning in January 1992, no person may operate a locomotive without having an engineer's certificate in his or her possession.

Class I railroads, Amtrak, and commuter railroads may designate additional locomotive engineers without formal qualification findings until the end of 1991. Beginning in January 1992, those railroads must make the series of formal determinations required under this rule before issuing additional certificates. Similar provisions apply to Class II and Class III railroads effective May 31, 1992 and November 30, 1992, respectively. Any railroad that comes into existence before the date for mandatory compliance with formal procedures applicable to similar railroads may employ the grandfathering approach of this section. A railroad that commences operation after the pertinent date for mandatory compliance by similar railroads must comply with the formal determination procedures of this rule. This section also contains a requirement that railroads make formal determinations concerning those they have grandfathered within 36 months of the date for compliance by their class of railroad.

Section 240.203

This section, derived from §§ 240.21, 240.41, 240.71 and 240.81 of the proposal, imposes a duty on railroads to make proper decisions in designating locomotive engineers.

Paragraph (a) requires that a railroad evaluate candidates in accordance with its approved program and determine that those it designates as locomotive engineers, including students, meet the criteria of this rule. The paragraph is organized to assure that railroads make the basic decisions about all engineers to preclude ineligible persons or those with unacceptably poor acuity levels from gaining access to the controls of a locomotive.

Paragraph (b) permits railroads that are conducting the initial training of persons as engineers to upgrade those students to the status of train or locomotive servicing engineer. It also authorizes such advancement without revisiting questions of the person's eligibility and acuity, provided the upgrading occurs within the time limits specified.

Section 240.205

This section, derived from §§ 240.21, 240.51, and 240.55 of the proposal, imposes a duty on railroads to employ proper procedures and make appropriate decisions in selecting persons to be locomotive engineers.

Paragraph (a) requires that a railroad evaluate candidates in accordance with its approved program and determine that those it designates as locomotive engineers, including students, meet the criteria of this rule. Paragraph (b) requires that the railroad have appropriate documentation to assure that railroads have the basic data to support their decisions about all engineers including decisions to preclude ineligible persons from being authorized access to the controls of a locomotive.

Section 240.207

This section, derived from §§ 240.41 and 240.45 of the proposed rule requires that a railroad have either a medical examiner's certificate documenting that the candidate has been tested and found to meet the acuity thresholds or a written opinion from the railroad's medical examiner that the candidate has adequate acuity to perform safely as an engineer. In response to commenter suggestions, the section permits the actual administration of the acuity test to be done by a wider variety of personnel than was contemplated by the NPRM. Allowing broader participation in the conduct of the test while maintaining responsibility for proper conduct of the test, at higher levels, should assist in lowering the cost of conducting such tests. FRA has also changed the reference to the calibration standard to be consistent with the OSHA calibration requirements (29 CFR part 1910) that apply when railroads are testing the hearing acuity of other railroad workers.

If the acuity testing reveals that a person needs corrective lenses or a hearing aid to function as an engineer, that fact must be noted on the actual certificate issued to the engineer and imposes a duty on the engineer to use the needed device while operating a locomotive. The wording of this section has also been revised to accommodate situations in which improvements occur that obviate the need for corrective devices.

A number of commenters questioned who would have responsibility for absorbing the costs associated with obtaining the necessary tests. This section does not address that issue since it is not a safety matter but may be an appropriate subject for discussion among the affected parties.

Section 240.209

This section, drawn from §§ 240.73 and 240.79 of the proposed rule, requires that a railroad employ the FRA-approved testing procedures in concluding that a person has sufficient knowledge concerning the railroad's rules and practices for the safe operation of trains. It also contains a requirement to document that testing and a prohibition against permitting a person who has failed a test to operate as a train or locomotive servicing engineer until successful completion of a reexamination.

This section differs from the proposed rule in that it tracks the performance approach to test and examination designs contained in § 240.125 and it omits all references to the conduct of reexaminations. FRA has concluded in both instances that commenter suggestions for altering the proposal were valid. FRA is sensitive to the fact that precluding those who fail such tests from operating a locomotive until successful passage of a reexamination will place a premium on proper preparation for such tests. But allowing those who have failed to demonstrate the knowledge needed to operate a locomotive, as was urged by a number of commenters, is simply not acceptable from a safety perspective.

Section 240.211

This section, drawn from §§ 240.83 and 240.89 of the proposed rule, requires that a railroad employ the skill testing procedures approved by FRA in concluding that a person has the ability to safely operate locomotives and trains. The same analysis provided for § 240.209 applies to this section with one change. Paragraph (d) prohibits a designated supervisor of locomotive engineers from sitting in judgment of his or her own skills. Railroads that have only a single designated supervisor of locomotive engineers will have to make arrangements with other parties to facilitate skill performance evaluation of its designated supervisor.

Section 240.213

This section, drawn from § 240.61 of the proposed rule, imposes a duty on railroads to make determinations concerning a student's overall knowledge, applied knowledge, and skill in the safe operation of trains before certifying that person as a train or locomotive servicing engineer.

The section has been written to better accommodate the potential for a wide variety of providers who may train students to be engineers. It requires that a railroad relying on skill training off its own lines examine the candidate's familiarity with the physical characteristics of the certifying railroad's trackage.

Section 240.215

This section, derived from §§ 240.103 and 240.107 of the NPRM, contains the record keeping responsibilities of railroads for those persons it has certified as locomotive engineers. FRA has revised this section to specify the records that must be kept by the railroad. FRA has provided this detailed recitation to eliminate any possible misunderstandings that might arise from the use of the phrase, "the information relied on," that was in the proposed rule. This section consolidates record keeping duties that were scattered throughout the NPRM.

Section 240.217

This section, drawn from §§ 240.45, 240.77, and 240.87 of the NPRM, contains the various time constraints that FRA has established to preclude railroads from relying on stale information when evaluating a candidate for certification or recertification. All of the time constraints in this section have been lengthened in response to commenter requests.

Section 240.219

This section, drawn from §§ 240.57, 240.59, 240.107, and 240.113 of the NPRM, establishes the procedures to be followed when a railroad decides to deny a person certification or recertification.

This section has no equivalent in the proposed rule. Although several sections of the NPRM provided for notice to candidates that the railroad possessed adverse information and required that candidates be given an opportunity to review and respond to that information, these provisions were not consistent and did not reach all the kinds of adverse data that a railroad might possess. Several commenters expressed concern about this situation. Thus, FRA has decided to clearly provide for an opportunity for review in all instances. Since some provisions of this final rule contain a similar but discrete opportunity for review, FRA does not intend to impose a second opportunity under this section. Moreover, the proposed rule impliedly required a railroad to communicate to the candidate, and document in writing, the basis for any decision to deny. This section clearly obligates a railroad to perform that function within a reasonable time after it makes its decision to deny.

Section 240.221

This section, proposed § 240.105, requires that each railroad maintain a list of its designated supervisors of locomotive engineers and certified locomotive engineers. This section has been revised slightly to resolve three different concerns about its content. First, FRA has specifically provided for the periodic updating of the list so that it retains its usefulness. Second, FRA has responded to commenter concern over where such information must be kept available by establishing an optional special approval process for railroads that conduct far flung operations but want to maintain data at a central location. Finally, FRA has included a provision addressing the duty of a railroad that controls operations over joint operations territory and certifies engineers for the limited purpose of operating over such territory under § 240.229 to comply with this section.

Section 240.223

This section, which appeared as proposed § 240.101, contains the requirements for the certificate that must be carried by each locomotive engineer. FRA has revised this section slightly to provide for better identification of the person to whom it has been issued by adding a duty to include the person's employee identification number if one is used by the railroad or the person's social security number if no unique identification code is used by the railroad. It also requires that identification data be included to provide assurance that the bearer of the card is the person to whom it was issued. The identification data can be either a physical description (height, weight, eye color and hair color) or a photograph. This change responds to commenter suggestions that FRA require that a photograph of the engineer be part of the certificate. While railroads are not foreclosed from using photographs, FRA is not convinced that their use should be mandated. The revised section also requires that the certificate include the date of the engineer's most recent operational monitoring test.

Although it has been suggested, FRA has not imposed specific duties on a railroad to institute security and audit procedures to preclude unauthorized acquisition and use of blank certificate forms. FRA is confident that railroads, on their own initiative, will take effective steps to properly monitor and control access to these documents.

Section 240.225

This section, derived from proposed § 240.25, contains the requirements that apply when a previously certified engineer is about to begin service for a different railroad. It has been revised to reflect the renumbering of various provisions occasioned by reorganization of this part. It also has been changed, in response to a commenter suggestion, to preclude a railroad from upgrading the class of service an engineer may perform on the second railroad without tests to determine the engineer's ability to handle the demands of the upgraded classification. It also imposes a duty on the second railroad to determine that the transferring engineer has the necessary knowledge concerning the new railroad's operating rules and practices and that the engineer has the necessary skills, including familiarity with physical characteristics of the second railroad. The need for this detailed independent assessment by the second railroad stems from the decision to eliminate the more stratified classification system for types of locomotive engineers contained in the NPRM.

Section 240.227

This section contains the requirements for a railroad that wants to rely on the system of locomotive engineer qualification established by the Canadian Government. It is virtually unchanged from the provisions of proposed § 240.27 of the NPRM, except to show Transport Canada as the Canadian agency with responsibility for rail safety.

Section 240.229

This section, proposed § 240.23, contains requirements for railroads responsible for conducting joint operations with another railroad. Several commenters suggested that FRA clarify this section to account for unusual situations in which a train from another railroad or another entity needs to operate on its lines, *i.e.*, a steam train operated on an excursion trip, a short-term detour routing caused by adverse

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weather conditions, or other *ad hoc* joint operations. FRA agrees that the proposal focused on longer term operations and did not adequately address these unusual situations. FRA, therefore, has revised this section to permit railroads to conduct joint operations by providing a qualified person to accompany a "foreign" train over its lines. In this way, the railroad with responsibility for conducting the joint operations will have a simple and prompt response capability when confronted with the types of situations posed by the commenters. Since the person providing guidance on how to negotiate the joint operations territory will have to offer guidance on or provide for proper train handling procedures while traversing the territory, FRA has included criteria for what will constitute a qualified person in such situations.

This section also has been revised to clearly permit a controlling railroad, certifying a person for the limited purpose of operating over joint operations territory, to fulfill its duty to issue that person a certificate by endorsing the preexisting certificate issued by the other railroad as provided for in paragraph (c) of § 240.223.

Subpart D

This subpart reflects FRA's effort to simplify this rule. It provides for the routine administration of the railroad certification programs. This subpart has no counterpart in the NPRM, but contains the provisions of proposed subpart I and elements found in other subparts in the proposal.

Section 240.301

This section has no counterpart in the proposed rule. Although FRA proposed a fairly comprehensive approach to the issuance and reissuance of certificates and their possible revocation or suspension, FRA's proposal did not contain a clear requirement that railroads have a system for the replacement of lost or damaged certificates. Several commenters were concerned that, in the absence of such a requirement, they could encounter problems replacing certificates. In response, FRA has decided to require that railroads have a system that allows the replacement of certificates when necessary. Commenters urging adoption of such an approach suggested that engineers should not have to bear any expenses in connection with obtaining replacements. This provision does not attempt to resolve the question of who will bear the cost of operating such a replacement system, since that is not a safety matter and is an appropriate subject for discussion among the affected parties.

Section 240.303

This section, which appeared as proposed § 240.93, contains the requirements for conducting the operational monitoring and compliance testing of certified engineers. It imposes a duty on railroads to adhere to their approved monitoring program and to conduct their unannounced compliance test program in a particular manner. Few comments were received on this proposal and FRA has revised this section only to reflect the greater latitude given railroads to design the implementation of its program (see the earlier discussion of § 240.129) for routine periodic operational monitoring of each engineer. Since FRA will allow railroads to select the best way to conduct annual monitoring from among several options, in lieu of the proposed requirement for an extended on-board observation, FRA has not accepted commenter suggestions that these observation be conducted at 18-month intervals. This options approach was discussed above in connection with the discussion of § 240.129.

Section 240.305

This section, which appeared as § 240.93 of the NPRM, proscribes certain types of conduct once the initial phase of the certification program is implemented. As noted in the preamble discussion of the proposed rule, FRA has identified three types of events not covered by current Federal safety rules that FRA believes should be regulated here: Operating a locomotive or train at excessive speed; failing to stop at signals requiring a stop; and entering a segment of track without proper authority. FRA received very few comments on this proposal. Those rare comments from individual engineers objected to the idea that FRA would now have enforcement powers similar to those of railroad companies; other comments urged adoption of the section so as to provide a basis for disqualification proceedings under part 209.

FRA is adopting the section but with two changes. First, this section will not become effective before railroads have completed their initial selection of locomotive engineers and had an opportunity to issue the certificates required by this rule. Second, FRA has revised this section to make the prohibitions against the three types of conduct mentioned above clearly applicable to both railroads and individual engineers. Although the wording of this section does not reflect that railroad companies and individuals are held to different standards, the fact is that FRA can only take civil penalty action against individuals who willfully violate the provisions of this section.

In devising the wording of this section and in administering the new authority contained in this section, FRA will approach the question of whether particular facts warrant the initiation of civil penalty action or some other remedial response in accordance with FRA's statement of enforcement policy in appendix A to part 209. FRA will also be guided by the following principles in interpreting the operational constraint provisions of this section. FRA will consider whether train speed is excessive by looking at the limits for train speed established by the timetable, train order, or similar mandatory directive. Where FRA observes, or has evidence supporting a finding that, a train's speed exceeding the maximum by one half the authorized speed but less than a 10-mile-per-hour overspeed, FRA will acknowledge the calibration limitations of locomotive speed indicators. In determining whether a train has been operated past a signal that requires a complete stop in contravention of a railroad rule requiring a stop, FRA will be guided by railroad interpretations of the application of that rule to particular factual settings. In this context the term "signal" encompasses the same wide range of devices currently employed by the industry and is not limited to automatic roadway signals regulated by FRA in parts 233, 235, and 236 of its regulations. Similarly, FRA will be guided by the individual railroad's operating rules and practices, including railroad interpretations of these rules and practices when evaluating whether a train entered a segment of track without proper authority.

Section 240.307

This section, which appeared as § 240.95 of the NPRM, requires that a railroad proceed in a specified manner when it acquires information indicating that a certified engineer no longer meets these qualification standards.

The rare comments received on this matter focused on the topic of loss of eligibility due to poor safety conduct and generally urged FRA either to ignore the topic or invoke the FRA disqualification procedures. As previously explained it is not appropriate for FRA to ignore issues such as loss of eligibility or simply rely on its disqualification procedures. Since an engineer can cease to meet these qualification standards in a variety of

ways, FRA is retaining, but revising, these provisions. Paragraph (a) now provides that a railroad shall suspend the certificate of an engineer about whom it has acquired convincing information indicating he or she no longer meets the qualification criteria of this rule.

Paragraph (b) requires that before suspending a certificate, or contemporaneous with the suspension, the railroad shall give the engineer written notice of the reason for the pending revocation action and provide an opportunity for a hearing. The duration of the suspension is limited since the engineer can demand that the hearing be held within 10 calendar days of the suspension. If the person is ill, injured, or unavailable for sufficient cause, the hearing can be delayed. At the hearing, the railroad hearing officer shall determine on the record, if such a conclusion is reached by the hearing officer, the basis for the hearing officer's finding that the engineer no longer meets the qualifications established by this regulation. Based on such a conclusion the railroad shall revoke the locomotive engineer's certificate.

Since there is reason to believe that the parties to a hearing required under this section may wish to consolidate that hearing with disciplinary or other proceedings arising from the same facts, FRA has provided for such consolidation in paragraph (c). FRA also has sanctioned, in paragraph (d), parties' adhering to different procedural arrangements, such as those concerning disciplinary matters that were arrived at through collective bargaining in lieu of adhering to the procedural constraints specified in subparagraphs (b)(1) and (b)(2).

Paragraphs (e) and (f) address the issue of what response is required when a person has been certified by more than one railroad. Such dual certification typically occurs so that an engineer can operate in joint operations territory, but may also occur when an engineer holds dual employment. Under such circumstances, when information is acquired causing belief that the person may no longer meet the requirements of this part, the duty to hold a hearing under this section need be satisfied by only one of the railroads. If the railroad holding the hearing concludes that the person's certificate must be revoked, other railroads will be bound by that determination. Railroads will receive notification of such revocation because the locomotive engineer is obligated to advise all affected railroads of such adverse action under the provisions of § 240.305(d). Paragraphs (e) and (f) do not dictate which railroad should hold the hearing.

Section 240.309

This section, derived from §§ 240.51, 240.55, 240.57, and 240.59 of the NPRM, establishes internal review and analysis procedures to be followed by Class I and Class II railroads. As discussed earlier, most commenters objected to FRA's proposal to identify particular types of unsafe performance, assign each type a point value, and then predicate loss of eligibility on the accumulation of a certain number of points. The commenters strongly urged FRA to allow railroads to employ their existing, non-regulatory system of imposing punishment for failures to comply with safety directives, rather than adopt a rigid point system. That approach is rejected because it would be inappropriate to resolve issues at the heart of a Federal safety rule through a collective bargaining mechanism.

As discussed earlier, FRA is requiring railroads to have their own individual systems for examining and evaluating incidents of noncompliance with its rules and procedures for the safe operation of trains. FRA has formulated the information collection requirements of this section to ensure that railroads collect data on engineer safety behavior and feed that information back into its operational monitoring efforts, thereby enhancing safety. As acknowledged by commenters, railroads lack a current system for routinely monitoring and evaluating the effectiveness of their existing discipline system. Although some types of disciplinary data may be monitored for limited purposes, such as the conduct of labor relations activities, the broad spectrum of such data is not routinely integrated and applied to the evaluation of the effectiveness of railroad safety programs. Several commenters endorsed this type of information gathering as an interim response.

This section requires that, beginning on January 1, 1992, large and medium sized railroads have an internal auditing plan to keep track of 10 distinct kinds of events that involve poor safety conduct by locomotive engineers. For each event, the railroad will have to indicate what response it took to that situation. The railroad will evaluate this information, together with data showing the results of annual operational testing and the causation of FRA reportable train accidents, to determine what additional or different efforts, if any, are needed to improve the safety performance of that railroad's certified locomotive engineers.

FRA is not requiring that a railroad furnish this data or its analysis of the data to FRA. Instead, FRA requires that the railroad be prepared to submit such information when requested.

Subpart E

FRA proposed to establish a simplified set of procedures to permit quick resolution of any disputes concerning a railroad's decision to deny certification or recertification or to revoke certification. Except for comments suggesting that FRA defer to the existing dispute resolution mechanisms of the Railway Labor Act, in lieu of creating a separate set of dispute resolution procedures, FRA received only one substantive comment on its proposal concerning this issue. That commenter urged that FRA use the identical procedures for this process that FRA has adopted for instituting FRA-initiated disqualification proceedings. FRA believes the commenter fails to recognize the significant differences that exist in the two distinct settings. These differences make it inappropriate for FRA to burden the engineer, the railroad, or the agency to the same degree in both situations. In the context of disputes about qualifications under this rule, FRA will be reviewing a detailed record of events rather than conducting a fact finding effort of its own.

Section 240.401

This section, § 240.111 in the proposed rule, has been adopted with only minor editorial changes.

Section 240.403

This section was identified as § 240.113 in the proposed rule. Paragraphs (c) and (d) have been reworded to indicate that failure to adhere to the time limit of 180 days for seeking FRA review will result in dismissal of the review petitions as untimely. In addition, some minor editorial changes have been made to this section.

Section 240.405

This section, § 240.115 of the proposed rule, has been adopted without change.

Section 240.407

This section, § 240.117 of the proposed rule, has been adopted without substantive change.

Section 240.409

This section, § 240.119 of the proposed rule, has been adopted without substantive change.

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Section 240.411

This section, § 240.120 of the proposed rule, has been adopted without change.

Appendix A

FRA noted in the NPRM that Appendix A of the final rule would contain a schedule of civil penalties similar to that FRA has issued for all of its regulations. Although such an appendix is a statement of policy, FRA solicited public comments expressing views on how FRA should handle this matter. Despite the extensive number of comments filed, no party commented on this appendix. Appendix A specifies the civil penalty FRA will ordinarily assess for the violation of a particular provision of this rule and reserves FRA's right to assess a penalty up to the statutory maximum where circumstances warrant. The process by which FRA will seek to impose such penalties is described in part 209.

Appendix B

FRA is providing both the organizational requirements and a narrative description of the submission required under §§ 240.101 and 240.103. FRA is not requiring that railroad submissions be made on a Federally mandated form. Instead, FRA is prescribing only minimal constraints on the organization and manner of presenting information. FRA requires that the submission be divided into six sections. FRA requires that each section deal with a different subject matter and that the railroad identify the appropriate person to be contacted in the event FRA needs to discuss some aspect of the railroad's program which relates to that section.

Although FRA is not prescribing in detail the form of the submission, FRA will make available, during the meetings held to discuss compliance with this rule, sample formats for such submissions. To assist those who must generate these submissions, FRA has provided a narrative description of the kinds of topics that should be covered in a railroad's submission. This narrative description is intended to aid railroads in preparing their submissions and should not be read as modifying or replacing any of the specific requirements of the relevant regulatory section(s) to which it relates.

Appendix C

In this appendix FRA is providing a narrative discussion of the procedures that a person seeking certification or recertification will have to follow to furnish a railroad with information concerning his or her motor vehicle driving record. The appendix has been modified to reflect the changes made to § 240.113, which places full responsibility on the individual to seek data.

Appendix D

This appendix contains the list of participating state motor vehicle licensing agencies that can directly furnish data on both NDR information and the state's own internal recorded information. As noted in the proposed rule, there are multiple advantages when a certification candidate can discharge both aspects of his or her responsibilities under § 240.113 by contacting such agencies. Thus, FRA has made this the preferred practice under this rule.

Appendix E

FRA has included an appendix that contains recommended practices for conducting skill performance tests. FRA has provided in this appendix an outline of the types of concerns that should be addressed during the administration of a skill performance test and guidance on how a form could be devised to assist in promoting uniformity in the application of this test.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies an Procedures

This rule has been evaluated in accordance with existing regulatory policies and is considered to be non-major under Executive Order 12291. However, it is considered to be significant under the DOT policies and procedures (44 FR 11034; February 26, 1979) because it initiates a substantial regulatory program.

Consequently, FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economc impact of this rule. It may be inspected and copied at room 8201, 400 Seventh Street, SW., Washington, DC. Copies may be obtained by submitting a written request to the FRA Docket Clerk at the same address.

The economic evaluation identifies total estimated potential benefits, from avoidance of accidents and incidents, of $334 million and total estimated costs of $50 million over a twenty-year period that can be associated with adoption of this proposal. Both benefits and costs are stated at a discounted present value (10% discount factor) for a program life of 20 years using constant 1988 dollars. The 20 year estimated program life appears reasonable given the relatively long tenure of locomotive engineers, the useful life of any equipment used for this rule's purposes, and the recurring costs assumed over the life of the program.

There are two points that bear mention concerning FRA's economic evaluation. In determining the quantifiable benefits from the proposed rule, FRA selected accidents that occurred during the period 1977 through 1987 that were caused by human factors that appear to reflect poor locomotive operator performance. Although human factor accidents have seen a dramatic reduction in actual numbers, they have not been decreasing at the same rate as accidents attributed to other causes. Of the 18,140 human-factor caused accidents reported during the period, FRA identified a total of 6,990 train accidents that resulted in 61 fatalities, 1,482 personal injuries, and $325 million in property damage that can be ascribed to poor locomotive operator performance. Those accidents included 214 resulting from improper use of the automatic brake, 62 due to improper use of dynamic brake, and an additional 171 due to improper use of the independent brake valve. These appear to stem from poor performance curable through improved training. Also within that total are some 1,649 accidents attributed to excessive speed and 3,375 caused by excessive in-train force levels that may not be as directly related to training.

The difficulty that FRA encountered in analysis of the data involves the absence of specific information that indisputably identifies inadequate training as a causal factor. This resulted in FRA's encountering difficulty in reliably estimating a specific effectiveness level for accident avoidance that could be employed in estimating the benefits associated with adoption of this rule. The difficulty in estimating any specific effectiveness level is caused by an inability to document with specificity the correlation between testing, training, and actual safety performance. In essence, accident investigation data in the railroad industry at times reflect a conclusion that locomotive operators did not take effective action. The investigations generally do not isolate whether that stemmed from inadequate training, a failure to recall a vital piece of information learned long ago, or lack of proper execution due to simple inattentiveness. Although data limitations do not make it possible for FRA to reliably estimate a specific level of effectiveness for this rule, it would only require about a 14 percent realization of the potential benefits to make this proposed rule economically justified. FRA believes that such a level of realization is achievable.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. These rules will apply to railroads and individuals seeking to operate locomotives for railroads. Although a substantial number of small railroads will be subject to this regulation, the economic impact of this rule will not be significant for several reasons. Small railroads historically have not elected to train their own engineers and thus generally will not incur the training costs associated with this rule. Thus, the only costs that a small railroad normally will incur are those associated with routine administration of the certification program. Since small railroads individually and in the aggregate employ only a few locomotive engineers, FRA concludes that this economic impact will not be significant. As noted, FRA estimates that roughly 34,000 locomotive engineers are currently in service. Each of these individuals could be expected to incur some nominal expenses under this rule. Every three years, each engineer may be required to pay a fee of less than $10 for furnishing motor vehicle driver's license data. This fee reflects the costs associated with getting a document notarized and paying state motor vehicle agency documentation charges.

The proposed rule will have no direct impact on small units of government, businesses, or other organizations. State rail agencies will be free to participate in the administration of this program but are not required to do so. State motor vehicle driver's licensing agencies can anticipate on a nationwide basis that they will annually receive 10,000 additional requests for motor vehicle driver's licensing data. Since such state agencies costs are reimbursed through fees paid by the person making the data request, this rule would not have a direct adverse economic impact on these agencies.

Paperwork Reduction Act

There are collection of information requirements contained in this rule and, in accordance with the Paperwork Reduction Act of 1980, the record keeping and reporting requirements contained in this rule have been submitted to the Office of Management and Budget for approval. The information collection requirements of this rule will become effective when they are approved by OMB. FRA has endeavored to keep the burden associated with these rules as simple and as minimal as possible for such a program. For some entities that already have similar programs in place, the burden created will be minimal. For others, the burden could be extensive.

There are significant variables in the time required to comply with these requirements. Thus a total overall estimate of the reporting burden is not easily arrived at and could be seriously misleading. FRA, therefore, has elected to identify each of the sections that contain information collection requirements and indicate the time estimated to fulfill each requirement. All of these estimates include time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information.

Section	Brief description	Estimated average time
240.9	Request for Waiver	1 hour each.
240.101 & 240.103 & 240.107 & 240.109 & 240.119 & 240.121 & 240.123 & 240.125 & 240.127 & 240.129 & 240.303 & Appendix B.	Certification Program —preparation if perform student training. —preparation if do not perform student training. —submission to FRA.	200 hours each railroad. 40 hours each railroad. 1 hour each railroad.
240.111 &	Request for State License Data.	15 minutes per person.
Appendix C	Request for NDR data.	30 minutes per person.
240.111 &	Notice of Absence of License.	15 minutes per person.
Appendix D	Additional data-follow-up request.	30 minutes per person.
240.111	Request for Railroad Data.	15 minutes per person.
	Response to Data Request.	30 minutes per person.
240.115	Review of Eligibility Data.	30 minutes per person.
240.201 &	List of—Designated Supervisors updating.	15 minutes per railroad.
240.221	—Certified Engineers updating.	15 minutes per railroad.
240.201 & 240.207 & 240.223 & 240.229 & 240.301.	Locomotive Engineers Certificates.	5 minutes per person.
240.205	Data to EAP Counselor.	5 minutes per person.
240.207	Medical Certificate	30 minutes per person.
240.209 &	Written Test	2 hours per person.
240.211 &	Performance Test	2 hours per person.
240.213	Annual Operational Monitor Test.	1 hour per person.
	Annual Operational Observation.	2 hours per person.
	—Examination Grading.	15 minutes per person.
240.215	Record Keeping for each Engineer.	1 hour per person.
240.219	Certification Denial Notice.	1 hour per person.
	Response to Notice	1 hour per person.
240.221	Request Electronic listing.	30 minutes per railroad.
240.227	Canadian Certification Data.	15 minutes per person.
240.305	—Engineer's Notice of Non-Qualification.	15 minutes per person.
	—Engineer's Notice of loss of qualification.	1 hour per person.
240.307	Notice to Engineer of Disqualification.	1 hour per person.
240.309	Railroad Annual Review & Analysis.	80 hours per railroad.
240.401 & 240.403.	Engineer Appeals to FRA if lose certification.	30 minutes per person.
240.405	Railroad Response to Appeal.	15 minutes per person.
240.407	Request for Hearing	30 minutes per person.
240.411	Appeals	30 minutes per person.
Appendix C	Notice to Engineer about State with Driver Record.	15 minutes per person.
	Response to Follow-up request for Data.	15 minutes per person.

Although FRA solicited comments on the accuracy of the FRA estimates, the practical utility of the information, and alternative methods for obtaining this information that might be less burdensome, FRA did not receive many comments on this aspect of its proposal. As stated earlier, FRA received virtually no comments on the alternative procedures for obtaining information concerning a certification candidate's driving record, specifically in accessing the National Driver Register. The comments that addressed the issue of information collection were limited to suggestions that FRA employ a longer interval for certification (*e.g.*, five years instead of three years). The five-year interval is an alternative FRA found to be undesirable for the reasons previously given. The costs estimated to be associated with the information collection requirements are contained in the regulatory evaluation.

Environmental Impact

FRA has evaluated this regulation in accordance with its procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related directives. This regulation meets the

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criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 240

Railroad safety, railroad operating procedures.

The Rule

Therefore, in consideration of the foregoing, FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

1. By adding a new part 240 to read as follows:

Part 240—Qualification and Certification of Locomotive Engineers

Subpart A—General

Sec.
240.1 Purpose and Scope
240.3 Applicability
240.5 Construction
240.7 Definitions
240.9 Waivers
240.11 Consequences for Noncompliance
240.13 Information Collection Requirements

Subpart B—Component Elements of the Certification Process

Sec.
240.101 Certification Program Required
240.103 Approval of Design of Individual Railroad Programs by FRA
240.105 Criteria for Selection of Designated Supervisors of Locomotive Engineers
240.107 Criteria for Designation of Classes of Service
240.109 General Criteria for Eligibility Based on Prior Safety Conduct
240.111 Individual's Duty to Furnish Data on Prior Safety Conduct as Motor Vehicle Operator
240.113 Individual's Duty to Furnish Data on Prior Safety Conduct as an Employee of a Different Railroad
240.115 Criteria for Consideration of Prior Safety Conduct as a Motor Vehicle Operator
240.117 Criteria for Consideration of Operating Rules Compliance Data
240.119 Criteria for Consideration of Data on Substance Abuse Disorders and Alcohol/Drug Rules Compliance
240.121 Criteria for Vision And Hearing Acuity Data
240.123 Criteria for Initial and Continuing Education
240.125 Criteria for Testing Knowledge
240.127 Criteria for Examining Skill Performance
240.129 Criteria for Monitoring Operational Performance of Certified Engineers

Subpart C—Implementation of the Certification Process

Sec.
240.201 Schedule for Implementation
240.203 Determinations Required as a Prerequisite to Certification
240.205 Procedures for Determining Eligibility Based on Prior Safety Conduct
240.207 Procedures for Making the Determination on Vision and Hearing Acuity
240.209 Procedures for Making the Determination on Knowledge
240.211 Procedures for Making the Determination on Performance Skills
240.213 Procedures for Making the Determination on Completion of Training Program
240.215 Retaining Information Supporting Determinations
240.217 Time Limitations for Making Determinations
240.219 Denial of Certification
240.221 Identification of Qualified Persons
240.223 Criteria for the Certificate
240.225 Reliance on Qualification Determinations Made by Other Railroads
240.227 Reliance on Qualification Requirements of other Countries
240.229 Requirements for Joint Operations Territory

Subpart D—Administration of the Certification Programs

Sec.
240.301 Replacement of Certificates
240.303 Operational Monitoring Requirements
240.305 Prohibited Conduct by Certified Engineers
240.307 Revocation of Certification
240.309 Railroad Oversight Responsibilities

Subpart E—Dispute Resolution Procedures

Sec.
240.401 Review Board Established
240.403 Petition Requirements
240.405 Processing Qualification Review Petitions
240.407 Request for a Hearing
240.409 Hearings
240.411 Appeals

Appendix A to Part 240—Schedule of Civil Penalties
Appendix B to Part 240—Procedures for Submission and Approval of Locomotive Engineer Qualification Programs
Appendix C to Part 240—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data
Appendix D to Part 240—Identification of State Agencies that Perform National Driver Register Checks
Appendix E to Part 240—Recommended Procedures for Conducting Skill Performance Tests

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

Subpart A—General

§ 240.1 Purpose and scope.

(a) The purpose of this part is to ensure that only qualified persons operate a locomotive or train.

(b) This part prescribes minimum Federal safety requirements for the eligibility, training, testing, certification, and monitoring of all locomotive engineers. This part does not restrict a railroad from implementing additional or more stringent requirements for its locomotive engineers that are not inconsistent with this part.

(c) The qualifications for locomotive engineers prescribed in this part are pertinent to any person who operates a locomotive, unless that person is specifically excluded by a provision of this part, regardless of the fact that a person may have a job classification title other than that of locomotive engineer.

§ 240.3 Applicability.

(a) This part applies to all railroads that operate locomotives on standard gage track that is part of the general railroad system of transportation.

(b) This part does not apply to:

(1) rapid transit operations in an urban area that are not connected with the general system of transportation; and

(2) a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

§ 240.5 Construction.

(a) Under section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter.

(b) FRA does not intend by issuance of these regulations to preempt any provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

(c) FRA does not intend, by use of the term "locomotive engineer" in this Part, to preempt or otherwise alter the terms, conditions, or interpretation of existing collective bargaining agreements that employ other job classification titles when identifying persons authorized by a railroad to operate a locomotive.

(d) FRA does not intend by issuance of these regulations to preempt or otherwise alter the authority of a railroad to initiate disciplinary sanctions against its employees, including managers and supervisors, in the normal and customary manner, including those contained in its collective bargaining agreements.

(e) Nothing in this part shall be construed to create an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

§ 240.7 Definitions.

As used in this part—

Alcohol means ethyl alcohol (ethanol) and includes use or possession of any beverage, mixture, or preparation containing ethyl alcohol.

Controlled Substance has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301-1316).

Current Employee is any employee with at least one year of experience in transportation service on a railroad.

Designated Supervisor of Locomotive Engineers is a person designated as such by a railroad in accordance with the provisions of § 240.105 of this part.

Drug means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

EAP Counselor means a person qualified by experience, education, or training to counsel people affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An EAP Counselor can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated by the railroad to perform functions in connection with alcohol or substance abuse evaluation or counseling. As used in this rule, the EAP Counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of an employee.

FRA Representative means the Associate Administrator for Safety, FRA, and the Associate Administrator's delegate, including any safety inspector employed by the Federal Railroad Administration and any qualified state railroad safety inspector acting under Part 212 of this Chapter.

Instructor Engineer means a person who

(1) Is a qualified locomotive engineer under this part,

(2) Has been selected by the railroad to teach others proper train handling procedures, and

(3) Has demonstrated an adequate knowledge of the subjects under instruction.

Joint Operations means rail operations conducted by more than one railroad on the same track regardless of whether such operations are the result of—

(1) Contractual arrangement between the railroads,

(2) Order of a governmental agency or a court of law, or

(3) Any other legally binding directive.

Knowingly means having actual knowledge of the facts giving rise to the violation or that a reasonable person acting in the circumstances, exercising due care, would have had such knowledge.

Locomotive means a piece of on-track equipment, other than hi-rail or specialized maintenance equipment

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

Locomotive engineer means any person who moves a locomotive or group of locomotives regardless of whether they are coupled to other rolling equipment except:

(1) A person who moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area as defined in 49 CFR 218.5(f); or

(2) A person who moves a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes.

Medical examiner means a person licensed as a doctor of medicine or doctor of osteopathy. A medical examiner can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified practitioner designated by the railroad to perform functions in connection with medical evaluations of employees. As used in this rule, the medical examiner owes a duty to the railroad to make an honest and fully informed evaluation of the condition of an employee.

Newly hired employee is any person who is hired with no prior railroad experience, or one with less than one year of experience in transportation service on that railroad or another railroad.

Railroad means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Railroad Officer means any supervisory employee of a railroad.

Segment means any portion of a railroad assigned to the supervision of one superintendent or equivalent transportation officer.

Substance abuse disorder refers to a psychological or physical dependence on alcohol or a drug or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. A substance abuse disorder is "active" within the meaning of this Part if the person (1) is currently using alcohol and other drugs, except under medical supervision consistent with the restrictions described in § 219.103 of this chapter or (2) has failed to successfully complete primary treatment or successfully participate in aftercare as directed by an EAP Counselor.

Type I Simulator means a replica of the control compartment of a locomotive with all associated control equipment that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Pictorially, audibly and graphically illustrates the route to be taken;

(3) Graphically, audibly, and physically illustrates the consequences of control manipulations in terms of their effect on train speed, braking capacity, and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

Type II Simulator means a replica of the control equipment for a locomotive that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to

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appropriately respond to the consequences of that manipulation;

(2) Pictorially, audibly, and graphically illustrates the route to be taken;

(3) Graphically and audibly illustrates the consequences of control manipulations in terms of their effect on train speed braking capacity, and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

Type III Simulator means a replica of the control equipment for a locomotive that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Graphically illustrates the route to be taken;

(3) Graphically illustrates the consequences of control manipulations in terms of their effect on train speed braking capacity, and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

§ 240.9 Waivers.

(a) Any person may petition the Federal Railroad Administration for a waiver of compliance with any requirement prescribed in this Part.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, he or she may grant the waiver subject to any conditions he or she deems necessary.

§ 240.11 Consequences for Noncompliance.

(a) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250, but not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A is a statement of policy that contains a schedule of civil penalty amounts used in connection with this rule.

(b) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this Part or causes the violation of any such requirement may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(c) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who knowingly and willfully falsifies any record required by this Part may be subject to criminal penalties under the provisions of 45 U.S.C. 438.

(d) In addition to the enforcement methods referred to in paragraphs (a), (b), and (c) of this section, FRA may also address violations of this Part by use of the emergency order, compliance order, and/or injunctive provisions of the Federal Railroad Safety Act.

§ 240.13 Information collection requirements.

(a) The information collection requirements of this Part are being reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have not yet been assigned an OMB control number.

(b) The information collection requirements are found in the following sections: § 240.101, § 240.103, § 240.105, § 240.107, § 240.109, § 240.111, § 240.113, § 240.115, § 240.117, § 240.119, § 240.121, § 240.123, § 240.125, § 240.127, § 240.129, § 240.201, § 240.205, § 240.207, § 240.209, § 240.211, § 240.213, § 240.215, § 240.219, § 240.221, § 240.223, § 240.227, § 240.229, § 240.301, § 240.303, § 240.305, § 240.307, § 240.309, § 240.401, § 240.403, § 240.405, § 240.407, § 240.411.

Subpart B—Component Elements of the Certification Process

§ 240.101 Certification program required.

(a) After September 17, 1991, each railroad in operation on that date and subject to this Part shall have in effect a written program for certifying the qualifications of locomotive engineers.

(b) A railroad commencing operations after September 17, 1991, shall have such a program in effect prior to commencing operations.

(c) After the pertinent date specified in paragraphs (e), (f), or (g) of § 240.201, each railroad shall have a certification program approved in accordance with § 240.103 that includes:

(1) A procedure for designating any person it determines to be qualified as a supervisor of locomotive engineers that complies with the criteria established in § 240.105;

(2) A designation of the classes of service that it determines will be used in compliance with the criteria established in § 240.107;

(3) A procedure for evaluating prior safety conduct that complies with the criteria established in § 240.109;

(4) A procedure for evaluating visual and hearing acuity that complies with the criteria established in § 240.121;

(5) A procedure for training that complies with the criteria established in § 240.123;

(6) A procedure for knowledge testing that complies with the criteria established in § 240.125;

(7) A procedure for skill performance testing that complies with the criteria established in § 240.127; and

(8) A procedure for monitoring operational performance that complies with the criteria established in § 240.129.

§ 240.103 Approval of design of individual railroad programs by FRA.

(a) Each railroad shall submit its written program and a description of how its program conforms to the specific requirements of this part in accordance with the procedures contained in appendix B and the following schedule:

(1) A Class I railroad (including National Railroad Passenger Corporation) and a railroad providing commuter service shall submit no later than November 15, 1991;

(2) A Class II railroad shall submit no later than May 1, 1992; and

(3) A Class III railroad (including a switching and terminal railroad or any other railroad not otherwise classified) shall submit no later than November 1, 1992.

(4) A railroad commencing operations after the pertinent date previously specified in this paragraph shall submit its certification program for approval at least 60 days before commencing operations.

(b) That submission shall state the railroad's election either:

(1) To accept responsibility for the training of student engineers and thereby obtain authority for that railroad to initially certify a person as an engineer in an appropriate class of service, or

(2) To recertify only engineers previously certified by other railroads. A railroad that elects to accept responsibility for the training of student engineers shall state in its submission whether it will conduct the training program or employ a training program conducted by some other entity on its behalf but adopted and ratified by that railroad.

(c) A railroad's program is considered approved and may be implemented thirty days after the required filing date (or the actual filing date) unless the Administrator notifies the railroad in writing that the program does not conform to the criteria set forth in this part.

(1) If the Administrator determines that the program does not conform, the Administrator will inform the railroad of the specific deficiencies.

(2) If the Administrator informs the railroad of deficiencies more than 30 days after the initial filing date, the original program may remain in effect until 30 days after approval of the revised program is received.

(d) A railroad shall resubmit its program within 30 days after the date of such notice of deficiencies. A failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this part.

(1) The Administrator will inform the railroad in writing whether its revised program conforms with this part.

(2) If the program does not conform, the railroad shall resubmit its program.

(e) A railroad that intends to materially modify its program after receiving initial FRA approval shall submit a description of how it intends to modify the program in conformity with the specific requirements of this Part at least 30 days prior to implementing such a change.

(1) A modification is material if it would affect the program's conformance with this part.

(2) The modification submission shall contain a description that conforms with the pertinent portion of the procedures contained in appendix B.

(3) The modification submission will be handled in accordance with the procedures of paragraphs (c) and (d) of this section as though it were a new program.

§ 240.105 Criteria for selection of designated supervisors of locomotive engineers.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) The railroad shall examine any person it is considering for qualification as a supervisor of locomotive engineers to determine that he or she:

(1) Knows and understands the requirements of this part;

(2) Can appropriately test and evaluate the knowledge and skills of locomotive engineers;

(3) Has the necessary supervisory experience to prescribe appropriate remedial action for any noted deficiencies in the training, knowledge or skills of a person seeking to obtain or retain certification; and

(4) Is a certified engineer.

§ 240.107 Criteria for designation of classes of service.

(a) Each railroad's program shall state which of the three classes of service, provided for in paragraph (b) of this section, that it will cover.

(b) A railroad may issue certificates for any or all of the following classes of service:

(1) Train service engineers,

(2) Locomotive servicing engineers, and

(3) Student engineers.

(c) The following operational constraints apply to each class of service:

(1) Train service engineers may operate locomotives singly or in multiples and may move them with or without cars coupled to them;

(2) Locomotive servicing engineers may operate locomotives singly or in multiples but may not move them with cars coupled to them; and

(3) Student engineers may operate only under direct and immediate supervision of an instructor engineer.

(d) Each railroad is authorized to impose additional conditions or operational restrictions on the service an engineer may perform beyond those identified in this section provided those conditions or restrictions are not inconsistent with this part.

§ 240.109 General criteria for eligibility based on prior safety conduct.

(a) Each railroad's program shall include criteria and procedures to implement this section.

(b) A railroad shall evaluate the prior safety conduct of any person it is considering for qualification as a locomotive engineer and the program shall require that a person is ineligible if the person has an adverse record of prior safety conduct as provided for in § 240.115, § 240.117, or § 240.119.

(c) The program shall require evaluation of data which reflect the person's prior safety conduct as a railroad employee and the person's prior safety conduct as an operator of a motor vehicle, provided that there is relevant prior conduct. The information to be evaluated shall include:

(1) The relevant data furnished from the evaluating railroad's own records, if the person was previously an employee of that railroad;

(2) The relevant data furnished by any other railroad formerly employing the person; and

(3) The relevant data furnished by any governmental agency with pertinent motor vehicle driving records.

(d) The railroad's process for evaluating information concerning prior safety conduct shall be designed to conform wherever necessary with the procedural requirements of § 240.111, § 240.113, § 240.115, § 240.117, § 240.119, and § 240.217.

(e) When evaluating a person's motor vehicle driving record or a person's railroad employment record, a railroad shall not consider information concerning motor vehicle driving incidents or prior railroad safety conduct that

(1) Occurred prior to the effective date of this rule; or

(2) Occurred at a time other than that specifically provided for in § 240.115, § 240.117 or § 240.119 of this subpart.

(f) A railroad's program shall provide a candidate for certification or recertification a reasonable opportunity to review and comment in writing on any record which contains information concerning the person's prior safety conduct, including information pertinent to determinations required under § 240.119 of this subpart, if the railroad believes the record contains information that could be sufficient to render the person ineligible for certification under this subpart.

(g) The opportunity for comment shall be afforded to the person prior to the railroad's rendering its eligibility decision based on that information. Any responsive comment furnished shall be retained by the railroad in accordance with § 240.215 of this part.

(h) The program shall include a method for a person to advise the railroad that he or she has never been a railroad employee or obtained a license to drive a motor vehicle. Nothing in this section shall be construed as imposing a duty or requirement that a person have prior railroad employment experience or obtain a motor vehicle driver's license in order to become a certified locomotive engineer.

(i) Nothing in this section, § 240.111, or § 240.113 shall be construed to prevent persons subject to this part from entering into an agreement that results in a railroad's obtaining the information needed for compliance with this subpart in a different manner than that prescribed in § 240.111 or § 240.113.

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§ 240.111 Individual's duty to furnish data on prior safety conduct as motor vehicle operator.

(a) Except for initial certifications under paragraphs (b), (h), or (i) of § 240.201 or for persons covered by § 240.109(h), each person seeking certification or recertification under this part shall, within 180 days preceding the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraphs (b) through (h) or paragraph (g) of this section to make information concerning his or her driving record available to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning his or her driving record available to that railroad.

(b) Each person seeking certification or recertification under this Part shall:

(1) Request, in writing, that the chief of each driver licensing agency identified in paragraph (c) of this section provide a copy of that agency's available information concerning his or her driving record to the railroad that is considering such certification or recertification; and

(2) Request, in accordance with the provisions of paragraph (d) or (e) of this section, that a check of the National Driver Register be performed to identify additional information concerning his or her driving record and that any resulting information be provided to that railroad.

(c) Each person shall request the information required under paragraph (b)(1) of this section from:

(1) The chief of the driver licensing agency which last issued that person a driver's license; and

(2) The chief of the driver licensing agency of any other state or states that issued or reissued him or her a driver's license within the preceding five years.

(d) Each person shall request the information required under paragraph (b)(2) of this section from the Chief, National Driver Register, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 in accordance with the procedures contained in appendix C unless the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in appendix D.

(e) If the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in appendix D, the person shall request the chief of that driver licensing agency to perform a check of the National Driver Register for the possible existence of additional information concerning his or her driving record and to provide the resulting information to the railroad.

(f) If advised by the railroad that a driver licensing agency or the National Highway Traffic Safety Administration has informed the railroad that additional information concerning that person's driving history may exist in the files of a state agency not previously contacted in accordance with this section, such person shall:

(1) Request in writing that the chief of the state agency which compiled the information provide a copy of the available information to the prospective certifying railroad; and

(2) Take any additional action required by State or Federal law to obtain that additional information.

(g) Any person who has never obtained a motor vehicle driving license is not required to comply with the provisions of paragraph (b) of this section but shall notify the railroad of that fact in accordance with procedures of the railroad that comply with § 240.109(d).

(h) The actions required for compliance with paragraph (a) of this section shall be undertaken within the 180 days preceding the date of the railroad's decision concerning certification or recertification.

§ 240.113 Individual's duty to furnish data on prior safety conduct as an employee of a different railroad.

(a) Except for initial certifications under paragraphs (b), (h), or (i) of § 240.201 or for persons covered by § 240.109(h), each person seeking certification or recertification under this part shall, within 180 days preceding the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraph (b) of this section to make information concerning his or her prior railroad service record available to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning his or her service record available to that railroad.

(b) Each person seeking certification or recertification under this Part shall request, in writing, that the chief operating officer or other appropriate person of the former employing railroad provide a copy of that railroad's available information concerning his or her service record to the railroad that is considering such certification or recertification.

§ 240.115 Criteria for consideration of prior safety conduct as a motor vehicle operator.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred more than 36 months before the month in which the railroad is making its certification decision and shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance; (2) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(c) If such an incident is identified,

(1) The railroad shall provide the data to the railroad's EAP Counselor, together with any information concerning the person's railroad service record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder;

(2) The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the EAP Counselor in the context of such evaluation; and

(3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the railroad shall, on recommendation of the EAP Counselor, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the EAP Counselor consistent with the technical standards specified in § 240.119(d)(3) of this part.

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the person shall not be currently certified and the provisions of § 240.119(b) will apply.

§ 240.117 Criteria for consideration of operating rules compliance data.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A person who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.

(c) A certified engineer who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall have certification revoked.

(d) *Limitations on consideration of prior operating rule compliance data.* In determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider as operating rule compliance data only conduct described in paragraph (e) of this section that occurred within a period of 60 consecutive months prior to the determination. A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any occurrence of conduct described in this paragraph.

(e) A railroad shall consider violations of its operating rules and practices that involve:

(1) Failure to control a locomotive or train in accordance with a signal indication;

(2) Failure to adhere to limitations concerning train speed;

(3) Failure to adhere to procedures for the safe use of train or engine brakes;

(4) Entering track segment without proper authority;

(5) Failure to comply with prohibitions against tampering with locomotive mounted safety devices; and

(6) Incidents of noncompliance with § 219.101 of this Chapter; however such incidents shall be considered as a violation only for the purposes of subsections (2) and (3) of paragraph (g) of this section.

(f) If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section.

(g) A period of ineligibility described in this paragraph shall:

(1) Begin, for a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(2) Begin, for a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked; and

(3) Be determined according to the following standards:

(i) In the case of a single incident involving violation of one or more of the operating rules or practices described paragraphs (e)(1) through (e)(5) of this section, the person shall be ineligible to hold a certificate for a period of one month.

(ii) In the case of two separate incidents involving violations of one or more of the operating rules on practices described in paragraph (e) of this section that occurred within 36 months of each other, the person shall be ineligible to hold a certificate for a period of one year.

(iii) In the case of more than two such violations in any consecutive 60 month interval, the person shall be ineligible to hold a certificate for a period of five years.

(iv) Where, based on the occurrence of violations described in subparagraph (e)(6) of this section, different periods of ineligibility may result under the provisions of this section and § 240.119, the longer period of ineligibility shall control.

(h) *Future eligibility to hold certificate.* Only a person whose certification has been denied, suspended or revoked for a period of one year in accordance with the provisions of paragraph (g)(2) for reasons other than noncompliance with § 219.101 of this chapter shall be eligible for grant or reinstatement of the certificate prior to the expiration of the initial period of ineligibility. Such a person shall not be eligible for grant or reinstatement unless and until—

(1) The person has been evaluated by a designated supervisor of locomotive engineers and determined to have received adequate remedial training;

(2) The person has successfully completed any mandatory program of training or retraining, if that was determined to be necessary by the railroad prior to return to service; and

(3) At least one half the pertinent period of ineligibility specified in paragraph (g)(2) has elapsed.

§ 240.119 Criteria for consideration of data on substance abuse disorders and alcohol drug rules compliance.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) *Fitness requirement.* (1) A person who has an active substance abuse disorder shall not be currently certified as a locomotive engineer.

(2) Except as provided in paragraph (e) of this section, a certified engineer who is determined to have an active substance abuse disorder shall be suspended from certification. Consistent with other provisions of this part, certification may be reinstated as provided in paragraph (d) of this section.

(3) In the case of a current employee of the railroad evaluated as having an active substance abuse disorder (including a person identified under the procedures of § 240.115), the employee may, if otherwise eligible, voluntarily self-refer for substance abuse counseling or treatment under the policy required by § 219.403 of this chapter; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to current ineligibility for certification.

(c) *Prior alcohol/drug conduct; Federal rule compliance.* (1) In determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider conduct described in paragraph (c)(2) of this section that occurred within a period of 60 consecutive months prior to the review. A review of certification shall be initiated promptly upon the occurrence and documentation of any incident of conduct described in this paragraph.

(2) A railroad shall consider any violation of § 219.101 or § 219.102 of this chapter and any refusal or failure to provide a breath or body fluid sample for testing under the requirements of Part 219 of this chapter when instructed to do so by a railroad representative.

(3) A period of ineligibility described in this paragraph shall:

(i) Begin, for a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(ii) Begin, for a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked; and

(4) The period of ineligibility described in this paragraph shall be determined in accordance with the following standards:

(i) In the case of a single violation of § 219.102 of this chapter, the person shall be ineligible to hold a certificate during evaluation and any required primary treatment as described in paragraph (d) of this section. In the case of two violations of § 219.102, the person shall be ineligible to hold a certificate for a period of two years. In the case of more than two such violations, the person shall be ineligible to hold a certificate for a period of five years.

(ii) In the case of one violation of § 219.102 of this chapter and one violation of § 219.101 of this chapter, the

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person shall be ineligible to hold a certificate for a period of three years.

(iii) In the case of one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of 9 months (unless identification of the violation was through a qualifying "co-worker report" as described in § 219.405 of this chapter and the engineer waives investigation, in which case the certificate shall be deemed suspended during evaluation and any required primary treatment as described in paragraph (d)). In the case of two or more violations of § 219.101, the person shall be ineligible to hold a certificate for a period of five years.

(iv) In the case of a refusal or failure to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative, the refusal or failure shall be treated for purposes of ineligibility under this paragraph in the same manner as a violation of—

(A) § 219.102, in the case of a refusal or failure to provide a urine specimen for testing; or

(B) § 219.101, in the case of a refusal or failure to provide a breath sample (subpart D), or a blood specimen for mandatory post-accident toxicological testing (subpart C)).

(d) *Future eligibility to hold certificate following alcohol/drug violation.* The following requirements apply to a person who has been denied certification or who has had certification suspended or revoked as a result of conduct described in paragraph (c) of this section:

(1) The person shall not be eligible for grant or reinstatement of the certificate unless and until the person has—

(i) Been evaluated by an EAP Counselor to determine if the person currently has an active substance abuse disorder;

(ii) Successfully completed any program of counseling or treatment determined to be necessary by the EAP Counselor prior to return to service; and

(iii) Presented a urine sample for testing under Subpart H of this Part that tested negative for controlled substances assayed and has tested negative for alcohol under paragraph (d)(4) of this section.

(2) An engineer placed in service or returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the EAP Counselor and shall be subject to a reasonable program of follow-up alcohol and drug testing without prior notice for a period of not more than 60 months following return to service. Follow-up tests shall include not fewer than 6 alcohol tests and 6 drug tests during the first 12 months following return to service.

(3) Return-to-service and follow-up drug tests shall be performed consistent with the requirements of subpart H of part 219 of this chapter.

(4) Return-to-service and follow-up alcohol tests shall consist of—

(i) Analysis of a breath specimen for alcohol under safeguards consistent with those specified for reasonable cause breath testing under subpart C of part 219 of this chapter; or

(ii) Analysis of a blood specimen for alcohol in the same manner as prescribed in § 219.303(c) of this chapter. Alcohol tests shall be conducted while the employee is in duty status. However, this paragraph shall not be construed to require compensation of an employee or applicant for any period devoted exclusively to such tests.

(5) Satisfaction of the more stringent return-to-service requirements of this paragraph shall also be deemed to satisfy the requirements of § 219.104(d) of this chapter.

(6) This paragraph does not create an entitlement to utilize the services of a railroad EAP Counselor, to be afforded leave from employment for counseling or treatment, or to employment as a locomotive engineer. Nor does it restrict any discretion available to the railroad to take disciplinary action based on conduct described herein.

(e) *Confidentiality protected.* Nothing in this part shall affect the responsibility of the railroad under § 219.403 of this chapter ("Voluntary Referral Policy") to treat voluntary referrals for substance abuse counseling and treatment as confidential; and the certification status of an engineer who is successfully assisted under the procedures of that section shall not be adversely affected. However, the railroad shall include in its voluntary referral policy required to be issued pursuant to § 219.403 of this chapter a provision that, at least with respect to a certified locomotive engineer or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the EAP Counselor official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

§ 240.121 Criteria for vision and hearing acuity data.

(a) Each railroad's program shall include criteria and procedures implementing this section.

(b) *Fitness Requirement.* A person who does not have visual acuity and hearing acuity that meets or exceeds the levels prescribed in this section shall not, except as permitted by paragraph (e) of this section, currently be certified as a locomotive engineer.

(c) Except as provided in paragraph (e), each person shall have visual acuity that meets or exceeds the following thresholds:

(1) for distant viewing either

(i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or

(ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

(2) a field of vision of at least 70 degrees in the horizontal meridian in each eye; and

(3) the ability to recognize and distinguish between the colors of signals.

(d) Except as provided in paragraph (e) of this section, each person shall have hearing acuity that meets or exceeds the following thresholds when tested by use of an audiometric device (calibrated to American National Standard Specification for Audiometers, S3.6–1969): the person does not have an average hearing loss in the better ear greater than 40 decibels at 500Hz, 1,000 Hz, and 2,000 Hz with or without use of a hearing aid.

(e) A person not meeting the thresholds in paragraphs (c) and (d) of this section may be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely operate a locomotive. If the medical examiner concludes that, despite not meeting the threshold(s), the person has the ability to safely operate a locomotive, the person may be certified as a locomotive engineer and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary.

§ 240.123 Criteria for initial and continuing education.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A railroad shall provide for the continuing education of certified locomotive engineers to ensure that each engineer maintains the necessary knowledge, skill and ability concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with

physical characteristics), and relevant Federal safety rules.

(c) A railroad that elects to train a previously untrained person to be a locomotive engineer shall provide initial training which, at a minimum:

(1) is composed of classroom, skill performance, and familiarization with physical characteristics components;

(2) includes both knowledge and performance skill testing;

(3) is conducted under the supervision of a qualified class instructor;

(4) is subdivided into segments or periods of appropriate duration to effectively cover the following subject matter areas:

(i) Personal safety,

(ii) Railroad operating rules,

(iii) Mechanical condition of equipment,

(iv) Train handling procedures (including use of locomotive and train brake systems),

(v) Familiarization with physical characteristics including train handling, and

(vi) Compliance with Federal regulations;

(5) is conducted so that the performance skill component shall

(i) Be under the supervision of a qualified instructor engineer located in the same control compartment whenever possible;

(ii) Place the student engineer at the controls of a locomotive for a significant portion of the time; and

(iii) Permit the student to experience whatever variety of types of trains are normally operated by the railroad.

§ 240.125 Criteria for testing knowledge.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A railroad shall have procedures for testing a person being evaluated for qualification as a locomotive engineer in either train or locomotive service to determine that the person has sufficient knowledge of the railroad's rules and practices for the safe operation of trains.

(c) The testing methods selected by the railroad shall be:

(1) designed to examine a person's knowledge of the railroad's rules and practices for the safe operation of trains;

(2) objective in nature;

(3) administered in written form;

(4) cover the following subjects:

(i) Personal safety practices;

(ii) Operating practices;

(iii) Equipment inspection practices;

(iv) Train handling practices including familiarity with the physical characteristics of the territory; and

(v) compliance with Federal safety rules;

(5) Sufficient to accurately measure the person's knowledge of the covered subjects; and

(6) Conducted without open reference books or other materials except to the degree the person is being tested on his or her ability to use such reference books or materials.

(d) The conduct of the test shall be documented in writing and the documentation shall contain sufficient information to identify the relevant facts relied on for evaluation purposes.

§ 240.127 Criteria for examining skill performance.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A railroad shall have procedures for examining the performance skills of a person being evaluated for qualification as a locomotive engineer in either train or locomotive service to determine whether the person has the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform.

(c) The testing procedures selected by the railroad shall be:

(1) Designed to examine a person's skills in safely operating locomotives or trains including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains when performing the most demanding class or type of service that the person will be permitted to perform;

(2) Conducted by a designated supervisor of locomotive engineers;

(3) Cover the following subjects during the test period

(i) Operating practices;

(ii) Equipment inspection practices;

(iii) Train handling practices; and

(iv) Compliance with Federal safety rules;

(4) Be of sufficient length to effectively evaluate the person's ability to operate trains; and

(5) Conducted when the person either

(i) Is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification or

(ii) Is at the controls of a Type I or Type II simulator programmed to replicate the responsive behavior of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification.

(d) The conduct of the test shall be documented in writing by the designated supervisor and the documentation shall contain:

(1) The relevant facts concerning the train being operated;

(2) The constraints applicable to its operation; and

(3) The factors observed and relied on for evaluation purposes by the designated supervisor.

§ 240.129 Criteria for monitoring operational performance of certified engineers.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A railroad shall have procedures for monitoring the operational performance of those it has determined as qualified as a locomotive engineer in either train or locomotive service.

(c) The procedures shall:

(1) Be designed to determine that the person possesses and routinely employs the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives and trains;

(2) Be designed so that each engineer shall be annually monitored by a designated supervisor of locomotive engineers;

(3) Be designed so that the locomotive engineer is either accompanied by the designated supervisor for a reasonable length of time or has his or her train handling activities electronically recorded by a train operations event recorder;

(d) The procedures may be designed so that the locomotive engineer being monitored either

(i) Is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification or

(ii) Is at the controls of a Type I or Type II simulator programmed to replicate the responsive behavior of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification.

(e) The testing and examination procedures selected by the railroad for the conduct of a monitoring program shall be:

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(1) Designed so that each locomotive engineer shall be given at least one unannounced test each calendar year.

(2) Designed to test engineer compliance with provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a signal system that must comply with part 236 of this chapter;

(3) Designed to test engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive engineer to less favorable conditions than that which existed prior to initiation of the test;

(4) Designed to test engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives violation of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 225 of this Chapter in the preceding calendar year;

(5) Designed so that the administration of these tests is effectively distributed throughout whatever portion of a 24-hour day that the railroad conducts its operations; and

(6) Designed so that individual tests are administered without prior notice to the engineer being tested.

Subpart C—Implementation of the Certification Process

§ 240.201 Schedule for implementation.

(a) After October 30, 1991, each railroad in operation on that date shall designate in writing any person(s) it deems qualified as a designated supervisor of locomotive engineers. Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge, skills, and ability to be a designated supervisor of locomotive engineers.

(b) No later than November 1, 1991, each railroad shall designate in writing all persons that it will deem to be qualified as certified locomotive engineers for the purpose of initial compliance with paragraph (d) of this section, except as provided for in paragraph (h) of this section.

(1) Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge and skills to be a certified locomotive engineer.

(2) Each railroad shall issue, no later than December 31, 1991, a certificate that complies with § 240.223 to each person that it designates as qualified under the provisions of paragraph (b) of this section.

(c) No railroad shall permit or require a person, designated as qualified for certification under the provisions of paragraph (b) of this section, to perform service as a certified locomotive or train service engineer for more than the 30-month period beginning on the pertinent date for compliance with the mandatory procedures for testing and evaluation set forth in the applicable provisions of paragraph (a), (f) or (g) of this section unless that person has been determined to be qualified in accordance with procedures that comply with subpart C.

(d) After December 31, 1991, no railroad shall permit or require any person to operate a locomotive in any class of locomotive or train service unless that person has been certified as a qualified locomotive engineer and issued a certificate that complies with § 240.223.

(e) After December 31, 1991, no Class I railroad (including the National Railroad Passenger Corporation) or railroad providing commuter service shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in either locomotive or train service unless that person has been tested, evaluated, and determined to be qualified in accordance with procedures that comply with subpart C.

(f) After May 31, 1992 no Class II railroad shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in any class of locomotive or train service unless that person has been tested, evaluated and determined to be qualified in accordance with procedures that comply with subpart C.

(g) After November 30, 1992 no Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in any class of locomotive or train service unless that person has been tested, evaluated and determined to be qualified in accordance with procedures that comply with subpart C.

(h) A railroad may continue to designate any person it deems qualified as a designated supervisor of locomotive engineers or as a certified engineer, on the basis of paragraph (b) determinations, prior to the pertinent date by which a railroad of its class must comply with the procedures for testing and evaluating persons required under subpart C. Each person designated as a locomotive engineer shall be issued a certificate that complies with § 240.223 prior to being required or permitted to operate a locomotive.

(i) A railroad commencing operations prior to the pertinent date for compliance by a railroad of its class may designate any person it deems qualified as a designated supervisor of locomotive engineers or as a certified locomotive engineer on the basis of paragraph (b) until the pertinent date for compliance with the procedures for testing and evaluating required under subpart C. Each person designated as a locomotive engineer shall be issued a certificate that complies with § 240.223 prior to being required or permitted to operate a locomotive.

§ 240.203 Determinations required as a prerequisite to certification.

(a) Except as provided in paragraph (c), after the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall, in accordance with its FRA-approved program determine in writing that:

(1) The individual meets the eligibility requirements of §§ 240.15, 240.117 and 240.119; and

(2) The individual meets the vision and hearing acuity standards of § 240.121;

(3) The individual has the necessary knowledge, as demonstrated by successfully completing a test that meets the requirements of § 240.125;

(4) The individual has the necessary applied knowledge and operating performance skills, as demonstrated by successfully completing an operational performance test that meets the requirements of § 240.127; and

(5) Where a person has not previously been certified, that the person has completed a training program that meets the requirements of § 240.123.

(b) A railroad may certify a person as a student engineer after determining that the person meets the vision and hearing acuity standards of § 240.121. A railroad may subsequently certify that student engineer as either a locomotive servicing engineer or a train service engineer without further review of his or her acuity status provided it determines that:

(1) The person successfully completed a training program that complies with § 240.123;

(2) The person meets the eligibility requirements of §§ 240.109 and 240.119; and

(3) A period of not more than twenty-four months has elapsed since the student engineer certification was issued.

§ 240.205 Procedures for determining eligibility base on prior safety conduct.

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall determine that the person meets the eligibility requirements of § 240.115 involving prior conduct as a motor vehicle operator, § 240.117 involving prior conduct as a railroad worker, and § 240.119 involving substance abuse disorders and alcohol/drug rules compliance.

(b) In order to make the determination required under paragraph (a) of this section, a railroad shall have on file documents pertinent to the determinations referred to in paragraph (a) of this section, including a written document from its EAP Counselor either a document reflecting his or her professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder and is ineligible for certification.

§ 240.207 Procedures for making the determination on vision and hearing acuity.

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall determine that the person meets the standards for visual acuity and hearing acuity prescribed in § 240.121.

(b) In order to make the determination required under paragraph (a), a railroad shall have on file either:

(1) a medical examiner's certificate that the individual has been medically examined and meets these acuity standards; or

(2) a written document from its medical examiner documenting his or her professional opinion that the person does not meet one or both acuity standards and stating the basis for his or her determination that

(i) The person can nevertheless be certified under certain conditions or

(ii) The person's acuity is such that he or she cannot safely operate a locomotive even with conditions attached.

(c) Any examination required for compliance with this section shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant such that:

(1) A licensed optometrist or a technician responsible to that person may perform the portion of the examination that pertains to visual acuity; and

(2) A licensed or certified audiologist or a technician responsible to that person may perform the portion of the examination that pertains to hearing acuity.

(d) If the examination required under this section discloses that the person needs corrective lenses or a hearing aid, or both, either to meet the threshold acuity levels established in § 240.121 or to meet a lower threshold determined by the railroad's medical examiner to be sufficient to safely operate a locomotive or train on that railroad, that fact shall be noted on the certificate issued in accordance with the provisions of this part.

(e) Any person with such a certificate notation shall use the relevant corrective device(s) while operating a locomotive in locomotive or train service unless the railroad's medical examiner subsequently determines in writing that the person can safely operate without using the device.

§ 240.209 Procedures for making the determination on knowledge.

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to initially certifying or recertifying any person as an engineer for any class of train or locomotive service, shall determine that the person has, in accordance with the requirements of § 240.125 of this Part, demonstrated sufficient knowledge of the railroad's rules and practices for the safe operation of trains.

(b) In order to make the determination required by paragraph (a) a railroad shall have written documentation showing that the person either

(i) Exhibited his or her knowledge by achieving a passing grade in testing that complies with this Part or

(ii) Did not achieve a passing grade in such testing.

(c) If a person fails to achieve a passing score under the testing procedures required by this Part no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a reexamination of his or her knowledge.

§ 240.211 Procedures for making the determination on performance skills.

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to initially certifying or recertifying any person as an engineer for any class of train or locomotive service, shall determine that the person has demonstrated, in accordance with the requirements of § 240.127 of this Part, the skills to safely operate locomotives or locomotives and trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform.

(b) In order to make this determination, a railroad shall have written documentation showing the person either

(i) Exhibited his or her knowledge by achieving a passing grade in testing that complies with this part or

(ii) Did not achieve a passing grade in such testing.

(c) If a person fails to achieve a passing score under the testing and evaluation procedures required by this part, no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a reexamination of his or her performance skills.

(d) No railroad shall permit a designated supervisor of locomotive engineers to test, examine or evaluate his or her own performance skills when complying with this section.

§ 240.213 Procedures for making the determination on completion of training program.

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to the initial issuance of a certificate to any person as a train or locomotive service engineer, shall determine that the person has, in accordance with the requirements of § 240.123 of this Part, the knowledge and skills to safely operate a locomotive or train in the most demanding class or type of service that the person will be permitted to perform.

(b) In making this determination, a railroad shall have written documentation showing that:

(1) The person completed a training program that complies with § 240.123 of this part;

(2) The person demonstrated his or her knowledge and skills by achieving a passing grade under the testing and evaluation procedures of that training program; and

(3) The person is familiar with the physical characteristics of the railroad or its pertinent segments.

§ 240.215 Retaining information supporting determinations.

(a) After the pertinent date in paragraphs (e), (f) or (g) of § 240.201, a railroad that issues, denies, or revokes a certificate after making the determinations required under § 240.203 shall maintain a record for each certified engineer or applicant for certification that contains the information the railroad relied on in making the determinations.

(b) The information concerning eligibility that the railroad shall retain includes:

(1) Any relevant data from the railroad's records concerning the person's prior safety conduct;

(2) Any relevant data furnished by another railroad;

(3) Any relevant data furnished by a governmental agency concerning the person's motor vehicle driving record; and

(4) Any relevant data furnished by the person seeking certification concerning his or her eligibility.

(c) The information concerning vision and hearing acuity that the railroad shall retain includes:

(1) The relevant test results data concerning acuity; and,

(2) If applicable, the relevant data concerning the professional opinion of the railroad's medical examiner on the adequacy of the person's acuity.

(d) The information concerning demonstrated knowledge that the railroad shall retain includes:

(1) Any relevant data from the railroad's records concerning the person's success or failure of the passage of knowledge test(s); and

(2) A sample copy of the written knowledge test or tests administered.

(e) The information concerning demonstrated performance skills that the railroad shall retain includes:

(1) The relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the evaluation is based including the observations and evaluation of the designated supervisor of locomotive engineers;

(2) If a railroad relies on the use of a locomotive operations simulator to conduct the performance skills testing required under this part, the relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the determination was based including the observations and evaluation of the designated supervisor of locomotive engineers; and;

(3) the relevant data from the railroad's records concerning the person's success or failure on tests the railroad performed to monitor the engineer's operating performance in accordance with § 240.129.

(f) If a railroad is relying on successful completion of an approved training program conducted by another entity, the relying railroad shall maintain a record for each certified engineer that contains the relevant data furnished by the training entity concerning the person's demonstration of knowledge and performance skills and relied on by the railroad in making its determinations.

(g) If a railroad is relying on a certification decision initially made by another railroad, the relying railroad shall maintain a record for each certified engineer that contains the relevant data furnished by the other railroad which it relied on in making its determinations.

(h) All records required under this section shall be retained for a period of six years from the date of the certification, recertification, denial or revocation decision and shall be made available to FRA representatives upon request during normal business hours.

(i) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the record(s) required by this section; or

(2) Otherwise falsify such records through material misstatement, omission, or mutilation.

§ 240.217 Time limitations for making determinations.

(a) After the pertinent date in paragraphs (e), (f) or (g) of § 240.201, a railroad shall not certify or recertify a person as a qualified locomotive engineer in any class of train or engine service, if the railroad is making:

(1) A determination concerning eligibility and the eligibility data being relied on were furnished more than 180 days before the date of the railroad's certification decision;

(2) A determination concerning visual and hearing acuity and the medical examination being relied on was conducted more than 180 days before the date of the railroad's certification decision;

(3) A determination concerning demonstrated knowledge and the knowledge examination being relied on was conducted more than 360 days before the date of the railroad's certification decision; or

(4) A determination concerning demonstrated performance skills and the performance skill testing being relied on was conducted more than 360 days before the date of the railroad's certification decision;

(b) The time limitations of paragraph (a) do not apply to a railroad that is making a certification decision in reliance on determinations made by another railroad in accordance with § 240.227 or § 240.229.

(c) Except as provided in § 240.201 concerning implementation dates for initial certification decisions and paragraph (b) of this section, no railroad shall:

(1) Certify a person as a qualified locomotive engineer for an interval of more that 36 months; or

(2) Rely on a certification issued by another railroad that is more than 12 months old.

(d) Except as provided for in § 240.201 concerning initial implementation of the program, a railroad shall issue each person designated as a certified locomotive engineer a certificate that complies with § 240.223 no later than 30 days from the date of its decision to certify or recertify that person.

§ 240.219 Denial of Certification.

(a) A railroad shall notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and provide the person a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification.

(b) This section does not require further opportunity to comment if the railroad's denial is based solely on factors addressed by §§ 240.115, 240.117, and 240.119 and the opportunity to comment afforded by those sections has been provided.

(c) If it denies a person certification or recertification, a railroad shall notify the person of the adverse decision and explain, in writing, the basis for its denial decision. The document explaining the basis for the denial shall be mailed or delivered to the person within 10 days after the railroad's decision and shall give the date of the decision.

§ 240.221 Identification of qualified persons.

(a) After November 1, 1991, a railroad shall maintain a written record identifying each person designated by it as a supervisor of locomotive engineers.

(b) After November 1, 1991, a railroad shall maintain a written record identifying each person designated as a certified locomotive engineer. That listing of certified engineers shall indicate the class of service the railroad determines each person is qualified to perform and date of the railroad's certification decision.

(c) If a railroad is responsible for controlling joint operations territory, the listing shall include person(s) certified in accordance with § 240.229.

(d) The listing required by paragraphs (a), (b), and (c) shall be updated at least annually.

(e) The record required under this section shall be kept at the divisional or regional headquarters of the railroad and shall be available for inspection or copying by FRA during regular business hours.

(f) A railroad may obtain approval from FRA to maintain this record electronically or maintain this record at the railroad's general offices, or both. Requests for such approval shall be filed in writing with the Associate Administrator for Safety and contain sufficient information to explain how FRA will be given access to the data that is fully equivalent to that created by compliance with paragraph (e).

§ 240.222 Criteria for the certificate.

(a) As a minimum, each certificate issued in compliance with this part shall:

(1) Identify the railroad that is issuing it;

(2) Indicate that the railroad, acting in conformity with this part, has determined that the person to whom it is being issued has been determined to be qualified to operate a locomotive;

(3) Identify the person to whom it is being issued (including the person's name, date of birth and employee identification number, and either a physical description or photograph of the person);

(4) Identify any conditions or limitations, including the class of service or conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority;

(5) Show the date of its issuance;

(6) Be signed by a supervisor of locomotive engineers or other individual designated in accordance with paragraph (b) of this section;

(7) Show on the date of the person's last operating performance test as required by § 240.129 and § 240.303; and

(8) Be of sufficiently small size to permit being carried in an ordinary pocket wallet.

(b) Each railroad to which this part applies shall designate in writing any person, other than a supervisor of locomotive engineers, that it authorizes to sign the certificates described in this section. The designation can identify such persons by name or job title.

(c) Nothing in paragraph (a) of this section shall prohibit any railroad from including additional information on the certificate or supplementing the certificate through other documents.

(d) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on that certificate; or

(2) Otherwise falsify that certificate through material misstatement, omission, or mutilation.

§ 240.225 Reliance on qualification determinations made by other railroads.

After December 31, 1991, any railroad that is considering certification of a person as a qualified engineer may rely on determinations made by another railroad concerning that person's qualifications. A railroad relying on another's certification shall determine that:

(a) The prior certification is still valid in accordance with the provisions of §§ 240.201, 240.217, and 240.307;

(b) The prior certification was for the same classification of locomotive or train service being issued under this section;

(c) The person has received training on and visually observed the physical characteristics of the new territory in accordance with § 240.123;

(d) The person has demonstrated the necessary knowledge concerning its operating rules in accordance with § 240.125.

(e) The person has demonstrated the necessary performance skills concerning its operating rules in accordance with § 240.127.

§ 240.227 Reliance on qualification requirements of other countries.

(a) A railroad that conducts joint operations with a Canadian railroad may certify, for the purposes of compliance with this part, that a person is qualified to be a locomotive or train service engineer provided it determines that:

(1) The person is employed by the Canadian railroad; and

(2) The person meets or exceeds the qualifications standards issued by Transport Canada for such service.

(b) Any Canadian railroad that is required to comply with this regulation may certify that a person is qualified to be a locomotive or train service engineer provided it determines that:

(1) The person is employed by the Canadian railroad; and

(2) The person meets or exceeds the qualifications standards issued by Transport Canada for such service.

§ 240.229 Requirements for joint operations territory.

(a) After December 31, 1991, no railroad that is responsible for controlling the conduct of joint operations with another railroad shall permit or require any person to operate a locomotive in any class of train or engine service unless that person has been certified as a qualified locomotive engineer for the purposes of joint operations and issued a certificate that complies with § 240.223.

(b) Each railroad that is responsible for controlling the conduct of joint operations with another railroad shall certify a person as a qualified locomotive engineer for the purposes of joint operations either by making the determinations required under subpart C of this part or by relying on the certification issued by another railroad under this part.

(c) If the controlling railroad relies on the certification issued by another railroad, the controlling railroad shall determine:

(1) That the person has been certified as a qualified engineer under the provisions of this Part by the railroad which employs that individual;

(2) That the person certified as a locomotive engineer by the other railroad has demonstrated the necessary knowledge concerning the controlling railroad's operating rules, if the rules are different;

(3) That the person certified as a locomotive engineer by the other railroad has the necessary operating skills concerning the joint operations territory; and

(4) That the person certified as a locomotive engineer by the other railroad has the necessary familiarity with the physical characteristics for the joint operations territory.

(d) A railroad that controls joint operations and certifies locomotive engineers from a different railroad may comply with the requirements of paragraph (a) of this section by noting its supplemental certification decision on the original certificate as provided for in § 240.223(c).

(e) A railroad responsible for controlling the conduct of joint operations with another railroad shall be deemed to be in compliance with paragraph (a) of this section when it provides a qualified person to accompany a locomotive engineer who

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lacks joint operations certification during that engineer's operations in joint operations territory. As used in this section qualified person means either a designated supervisor of locomotive engineers or a certified train service engineer determined by the controlling railroad to have the necessary knowledge concerning the controlling railroad's operating rules and to have the necessary operating skills including familiarity with its physical characteristics concerning the joint operations territory.

Subpart D—Administration of the Certification Programs

§ 240.301 Replacement of certificates.

A railroad shall have a system for the prompt replacement of lost, stolen or mutilated certificates and that system shall be reasonably accessible to certified locomotive engineers in need of a replacement certificate.

§ 240.303 Operational monitoring requirements.

(a) After December 31, 1991, each railroad to which this part applies shall, prior to FRA approval of its program in accordance with § 240.201, have a program to monitor the conduct of its certified locomotive engineers by performing both operational monitoring observations and by conducting unannounced operating rules compliance tests.

(b) The program shall be conducted so that each locomotive engineer shall be given at least one operational monitoring observation by a qualified supervisor of locomotive engineers in each calendar year.

(c) The program shall be conducted so that each locomotive engineer shall be given at least one unannounced compliance test each calendar year.

(d) The unannounced test program shall:

(1) Test engineer compliance with one or more provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a signal system that must comply with part 236 of this chapter;

(2) Test engineer compliance with one or more provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive engineer to less favorable conditions than that which existed prior to initiation of the test;

(3) Test engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives the violations of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 225 of this chapter for the preceding year;

(4) Be conducted that so that the administration of these tests is effectively distributed throughout whatever portion of a 24-hour day that the railroad conducts its operations;

(5) be conducted so that individual tests are administered without prior notice to the locomotive engineer being tested; and

(6) be conducted so that the results of the test are recorded on the certificate and entered on the record established under § 240.215 within 30 days of the day the test is administered.

§ 240.305 Prohibited conduct by certified engineers.

After December 31, 1991,

(a) It shall be unlawful to:

(1) Operate a locomotive or train at a speed that exceeds the maximum authorized limit by at least 10 miles per hour or exceeds the maximum speed by more than one half of the authorized speed, whichever is less;

(2) Operate a locomotive or train past any signal, without completely stopping the locomotive or train, when that signal requires a complete stop before passing it; or

(3) Fail to comply with any mandatory directive concerning the movement of a locomotive or train by entering a segment of track without authority.

(b) Each locomotive engineer who has received a certificate required under this part shall:

(1) Have that certificate in his or her possession while on duty as an engineer; and

(2) Display that certificate upon the receipt of a request to do so from

(i) A representative of the Federal Railroad Administration,

(ii) An officer of the issuing railroad, or

(iii) An officer of another railroad when operating a locomotive or train in joint operations territory.

(c) Any locomotive engineer who is notified or called to operate a locomotive or train that would cause him or her to exceed the limits set forth in subpart B shall immediately notify the railroad that he or she is not qualified to perform that anticipated service.

(d) During the duration of any certification interval, a locomotive engineer who has a current certificate from more than one railroad shall immediately notify the other certifying railroad(s) if he or she is denied recertification by a railroad or has his or her certification revoked by a railroad.

(e) Nothing in this section shall be deemed to alter a certified locomotive engineer's duty to comply with other provisions of this chapter concerning railroad safety.

§ 240.307 Revocation of certification.

(a) A railroad that issues a person certification or recertification as a qualified locomotive engineer and, during that certification interval, acquires information which convinces the railroad that the person no longer meets the qualification requirements of this part, shall revoke the person's certificate as a qualified locomotive engineer.

(b) Pending a revocation determination under this section, the railroad shall:

(1) Upon receipt of reliable information indicating the person's lack of qualification under this part, immediately suspend the person's certificate;

(2) Prior to or upon suspending the person, provide notice of the reason for this suspension, the pending revocation, and an opportunity for hearing before a presiding officer other than the charging official;

(3) Convene the hearing within ten calendar days of the suspension when so demanded by the person;

(4) Determine, on the record of the hearing, whether the person no longer meets the qualification requirements of this part stating explicitly the basis for the conclusion reached;

(5) When appropriate, impose the pertinent period of revocation provided for in § 240.117 or § 240.119; and

(6) Retain the record of the hearing for 3 years after the date the decision is rendered.

(c) The hearing may be consolidated with any disciplinary or other hearing arising from the same facts but the presiding officer for the hearing shall make separate findings as to the revocation required under this section.

(d) A hearing that conforms procedurally to the applicable collective bargaining agreement shall be deemed to satisfy the procedural requirements of this section.

(e) A railroad that has relied on the certification by another railroad under the provisions of § 240.227 or § 240.229, shall revoke its certification if, during the pendency of that certification interval, the railroad acquires information which convinces it that another railroad has revoked its certification after determining, in accordance with the provisions of this section, that the person no longer meets the qualification requirements of this part.

(f) The requirement to provide a hearing under this section does not impose a duty on more than one railroad to hold a hearing prior to the revocation by more than one railroad arising from the same facts.

§ 240.309 Railroad oversight responsibilities.

(a) No later than March 31 of each year (beginning in calendar year 1993), each Class I railroad (including the National Railroad Passenger Corporation and a railroad providing commuter service) and Class II railroad shall conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified locomotive engineers during the prior calendar year.

(b) Each review and analysis shall involve:

(1) The number and nature of the instances of detected poor safety conduct including the nature of the remedial action taken in response thereto;

(2) The number and nature of FRA reported train accidents attributed to poor safety performance by locomotive engineers;

(3) The number and type of operational monitoring test failures and observations of inadequate skill performance recorded by supervisors of locomotive engineers; and

(4) If it conducts joint operations with another railroad, the number of locomotive engineers employed by such other railroad(s) to which such events were ascribed which the controlling railroad certified for joint operations purposes.

(c) Based on that review and analysis each railroad shall determine what action(s) it will take to improve the safety of train operations to reduce or eliminate future incidents of that nature.

(d) If requested in writing by FRA, the railroad shall provide a report of the findings and conclusions reached during such annual review and analysis effort.

(e) For reporting purposes, the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes in the following manner:

(1) Incidents involving noncompliance with part 218;

(2) Incidents involving noncompliance with part 219;

(3) Incidents involving noncompliance with part 232;

(4) Incidents involving noncompliance with the railroad's operating rules involving operation of a locomotive or train to operate at a speed that exceeds the maximum authorized limit;

(5) Incidents involving noncompliance with the railroad's operating rules resulting in operation of a locomotive or train past any signal that requires a complete stop before passing it;

(6) Incidents involving noncompliance with the railroad's operating practices including train handling procedures resulting in improper use of dynamic brakes;

(7) Incidents involving noncompliance with the railroad's operating practices (including train handling procedures) resulting in improper use of automatic brakes;

(8) Incidents involving noncompliance with the railroad's operating practices (including train handling procedures) resulting in improper use of a locomotive's independent brake;

(9) Incidents involving noncompliance with the railroad's operating practices (including train handling procedures) resulting in excessive in-train force levels; and

(10) Incidents involving noncompliance with the railroad's operating practices that require operation of a train at a speed that permits stopping within less than the engineers range of vision.

(e) For reporting purposes each category of detected poor safety conduct identified in paragraph (d) of this section shall be capable of being annotated to reflect the following:

(1) The total number of incidents in that category;

(2) The number of incidents within that total which reflects incidents requiring an FRA accident/incident report; and

(3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

(f) For reporting purposes each category of detected poor safety conduct identified in paragraph (d) of this section shall be capable of being annotated to reflect the following:

(1) The nature of the remedial action taken and the number of events subdivided so as to reflect which of the following actions was selected:

(i) Imposition of informal discipline;

(ii) Imposition of formal discipline;

(iii) Provision of informal training; or

(iv) Provision of formal training; and

(2) If the nature of the remedial action taken was formal discipline, the number of events further subdivided so as to reflect which of the following punishments was imposed by the hearing officer:

(i) The person was withheld from service;

(ii) The person was dismissed from employment or

(iii) The person was issued demerits. If more than one form of punishment was imposed only that punishment deemed the most severe shall be shown.

(g) For reporting purposes each category of detected poor safety conduct identified in paragraph (d) of this section which resulted in the imposition of formal or informal discipline shall be annotated to reflect the following:

(1) The number of instances in which the railroad's internal appeals process reduced the punishment initially imposed at the conclusion of its hearing; and

(2) The number of instances in which the punishment imposed by the railroad was reduced by any of the following entities: the National Railroad Adjustment Board, a Public Law Board, a Special Board of Adjustment or other body for the resolution of disputes duly constituted under the provisions of the Railway Labor Act.

Subpart E—Dispute Resolution Procedures

§ 240.401 Review board established.

(a) Any person who has been denied certification, denied recertification, or has had his or her certification suspended or revoked and believes that a railroad incorrectly determined that he or she failed to meet the qualification requirements of this regulation when making the decision to deny, suspend, or revoke certification, may petition the Federal Railroad Administrator to review the railroad's decision.

(b) The Federal Railroad Administrator has delegated initial responsibility for adjudicating such disputes to the Locomotive Engineer Review Board.

(c) The Locomotive Engineer Review Board shall be composed of at least three employees of the Federal Railroad Administration selected by the Administrator.

§ 240.403 Petition Requirements.

(a) To obtain review of a railroad's decision to deny certification, deny recertification, or revoke certification, a person shall file a petition for review that complies with this section.

(b) Each petition shall:

(1) Be in writing;

(2) Be submitted in triplicate to the Docket Clerk, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC, 20590;

(3) Contain all available information that the person thinks supports the

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person's belief that the railroad acted improperly, including:

(i) The petitioner's full name;

(ii) The petitioner's current mailing address;

(iii) The petitioner's daytime telephone number;

(iv) The name and address of the railroad; and

(v) The facts that the petitioner believes constitute the improper action by the railroad, specifying the locations, dates, and identities of all persons who were present or involved in the railroad's actions (to the degree known by the petitioner);

(4) Explain the nature of the remedial action sought;

(5) Be supplemented by a copy of all written documents in the petitioner's possession that document that railroad's decision; and

(6) Be filed in a timely manner.

(c) A petition seeking review of a railroad's decision to deny certification or recertification filed with FRA more than 180 days after the date of the railroad's denial decision will be denied as untimely.

(d) A petition seeking review of a railroad's decision to revoke certification in accordance with the procedures required by § 240.307 filed with FRA more than 180 days after the date of the railroad's revocation decision will be denied as untimely.

§ 240.405 Processing qualification review petitions.

(a) Each petition shall be acknowledged in writing by FRA and the acknowledgement shall contain the docket number assigned to the petition.

(b) Upon receipt of the petition, FRA will notify the railroad that it has received the petition and provide the railroad with a copy of the petition.

(c) The railroad will be given a period of not to exceed 30 days to submit to FRA any information that the railroad considers pertinent to the petition.

(d) A railroad that submits such information shall:

(1) Identify the petitioner by name and the docket number of the review proceeding;

(2) Provide a copy of the information being submitted to FRA to the petitioner.

(e) Each petition will then be referred to the Locomotive Engineer Review Board for a decision.

(f) The Board will determine whether the denial or revocation of certification or recertification was improper under this regulation (*i.e.*, based on an incorrect determination that the person failed to meet the qualification requirements of this regulation) and grant or deny the petition accordingly. The Board will not otherwise consider the propriety of a railroad's decision, *i.e.*, it will not consider whether the railroad properly applied its own more stringent requirements.

(g) Notice of that decision will be provided in writing to both the petitioner and the railroad. The decision will include findings of fact on which it is based.

§ 240.407 Request for a hearing.

(a) If adversely affected by the decision, either the original petitioner or the railroad involved shall have a right to an administrative hearing concerning that decision.

(b) To exercise that right, the adversely affected party shall file a written request within 20 days of service of the Board's decision on them.

(c) Failure to request a hearing within the period provided in paragraph (b) of this section constitutes a waiver of the right to a hearing.

(d) If a party elects to request a hearing, that person shall submit a written request to the Docket Clerk containing the following:

(1) The name, address, and telephone number of the respondent and the requesting party's designated representative, if any;

(2) The specific facts that the requesting party alleges the Board wrongly determined in making its decision; and

(3) The signature of the requesting party or the requesting party's representative, if any.

(e) Upon receipt of a hearing request complying with paragraph (d) of this section, the Federal Railroad Administration shall schedule a hearing at the earliest practicable date.

§ 240.409 Hearings.

(a) An administrative hearing for review of a locomotive engineer qualification petition shall be conducted by a presiding officer, who can be any person authorized by the FRA Administrator, including an administrative law judge.

(b) The presiding officer may exercise the powers of the Federal Railroad Administrator to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.

(c) The presiding officer shall convene and preside over the hearing.

(d) Testimony by witnesses at the hearing shall be given under oath and the hearing shall be recorded verbatim.

(e) The presiding officer shall employ the Federal Rules of Evidence for United States Courts and Magistrates as general guidelines for the introduction of evidence. All relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(f) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided for in § 209.7 of part 209 in this chapter;

(3) Adopt any needed procedures for the submission of evidence in written form;

(4) Examine witnesses at the hearing;

(5) Convene, recess, adjourn or otherwise regulate the course of the hearing; and

(6) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(g) The party favored by FRA's disposition of the initial petition under this subpart, may participate in the hearing as a third party. Parties may appear and be heard on their own behalf or through designated representatives. Respondents may offer relevant evidence including testimony and may conduct such cross-examination of witnesses as may be required for a full disclosure of the relevant facts.

(h) The record in the proceeding shall be closed at conclusion of the hearing unless the presiding officer allows additional time for the submission of information. In such instances the record shall be left open for such time as the presiding officer grants for that purpose.

(i) At the close of the record, the presiding officer shall prepare a written decision in the proceeding.

(j) The decision:

(1) Shall contain the findings of fact and conclusions of law, as well as the basis therefore, concerning all material issues of fact or law presented on the record;

(2) Shall be served on the respondent and any other directly affected party;

(3) Shall not become final for 35 days after issuance;

(4) Constitutes final agency action unless an aggrieved party files an appeal within 35 days after issuance; and

(5) Is not precedential.

(k) The FRA shall have the burden of proving that its grant or denial of the initial petition was in accordance with law and supported by substantial evidence.

§ 240.411 Appeals.

(a) Any party aggrieved by the presiding officer's decision may file an appeal. The appeal must be filed within 35 days of issuance of the decision with the Federal Railroad Administrator, 400 Seventh Street SW., Washington, DC 20590. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record.

(b) A party may file a reply to the appeal within 25 days of service of the appeal. The reply shall be supported by reference to applicable laws and regulations and with specific reference to the record, if the party relies on evidence contained in the record.

(c) The Administrator may extend the period for filing an appeal or a response for good cause shown, provided that the written request for extension is served before expiration of the applicable period provided in this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument

(e) The Administrator may affirm, reverse, alter or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action.

APPENDIX A TO PART 240—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
Subpart B—Component Elements		
240.101—Program Failures		
(a) Failure to have program	$5,000	$10,000
(b) Program that fails to address a subject	2,500	5,000
240.103—Failure to:		
(a) follow Appendix B	1,000	2,000
(d) to resubmit, when directed by FRA	1,000	2,000
240.105—Failure to have adequate procedure for selection of supervisors	2,500	5,000
240.107—Classes of Service		
(a) Failure to designate classes of service	2,000	4,000
240.108—Limitations on considering prior conduct records		
(a) Failure to have procedure for determining eligibility	2,500	5,000
(e) Considering excluded data	2,000	4,000
(f,g) Failure to provide timely review opportunity	2,000	4,000
240.111—Furnishing Motor Vehicle Records		
(a) Failure to action required to make information available	1,000	2,000
(b) Failure to request:		
(1) local record	1,000	2,000
(2) NDR record	1,000	2,000
(f) Failure to request additional record	1,000	2,000
(e) Failure to notify of absence of license	750	1,500
(h) Failure to submit request in timely manner	750	1,500
240.113—Furnishing prior employment information		
(a) Failure to take action required to make information available	1,000	2,000
(b) Failure to request record	1,000	2,000
240.115—Criteria for considering prior motor vehicle conduct		
(b) Considering excluded data	2,000	4,000
(c) Failure to		
(1) consider data	5,000	7,500
(3,4) properly act in response to data	2,500	5,000
240.117—Consideration of operational rules compliance records		
(a) Failure to have program and procedures	5,000	10,000
(b–d) Failure to have adequate program or procedure	2,500	5,000
240.119—Consideration of substance abuse /rules compliance records		
(a) Failure to have program and procedures	5,000	10,000
(b–e) Failure to have adequate program or procedure	2,500	5,000
240.121—Failure to have adequate procedure for determining acuity	2,500	5,000
240.123—Failure to have		
(a) adequate procedures for continuing education	2,500	5,000
(b) adequate procedures for training new engineers	2,500	5,000
240.125—Failure to have		
(a) adequate procedures for testing knowledge	2,500	5,000
(d) adequate procedures for documenting testing	2,500	5,000
240.127—Failure to have		
(a) adequate procedures for evaluating skill performance	2,500	5,000
(c) adequate procedures for documenting skills testing	2,500	5,000
240.129—Failure to have		
(a–b) adequate procedures for monitoring performance	2,500	5,000
Subpart C—Implementation of the Process		
240.201—Schedule for Implementation		
(a) Failure to select supervisors by specified date	1,000	2,000
(b) Failure to identify grandfathered engineers	2,000	4,000
(c) Failure to issue certificate to engineer	1,000	2,000
(d) Allowing uncertified person to operate	5,000	10,000
(e–g) Certifying without complying with subpart C	2,500	5,000
(h–i) Failure to issue certificate to engineer	1,000	2,000
(j) Allowing person to continue to operate after 12/31/92 without testing or evaluation	2,500	5,000
240.203 (a) Designating a person as a supervisor without determining that		
(1) person knows and understands this part;	2,500	5,000
(2) person can test and evaluate engineers;	5,000	7,500
(3) person has experience to prescribe remedies	2,500	5,000

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Section	Violation	Willful violation
(b) Certifying a person without determining that		
(1) person meets the eligibility criteria;	2,500	7,500
(2) person meets the medical criteria;	2,500	5,000
(3) person has demonstrated knowledge	2,500	5,000
(4) person has demonstrated skills	2,500	5,000
(c) Certifying a person without determining that		
(1) person has completed training program	2,500	5,000
(2) person meets the eligibility criteria	2,500	5,000
(3) time has elapsed		
240.205—Procedures for determining eligibility based on prior safety conduct		
(a) Selecting person lacking eligibility	2,500	7,500
(d) Failure to have basis for taking action	2,500	5,000
240.207—Ineligibility based on medical condition		
(a) Selecting person lacking proper acuity	2,000	4,000
(b) Failure to have basis for finding of proper acuity	1,000	2,000
(c) Acuity examinations performed by unauthorized person	1,000	2,000
(d) Failure to note need for device to achieve acuity	1,000	2,000
(e) Failure to use device needed for proper acuity	1,000	2,000
240.209—Demonstrating knowledge		
(b) Failure to properly determine knowledge	2,500	5,000
(c) Improper test procedure	2,000	4,000
(d) Failure to document test results	1,000	2,000
(e) Allowing person to operate despite test failure	2,500	5,000
240.211—Demonstrating skills		
(b) Failure to properly determine knowledge	2,500	5,000
(c) Improper test procedure	2,000	4,000
(d) Failure to document test results	1,000	2,000
(e) Allowing person to operate despite test failure	2,500	5,000
240.213—Completion of approved training program		
(a) Failure to properly determine	2,500	5,000
(b) Failure to document successful program completion	2,000	4,000
240.215—Supplying information		
(a, f–h) Failure to have a record	1,000	2,000
(b) Failure to have complete record	500	1,000
(i) Falsification of record	(-)	10,000
240.217—Time limits for making determinations		
(a, c) Exceeding time limit	2,000	4,000
240.219—Denial of certification		
(a) Failure to notify or provide opportunity for comment	2,000	4,000
(c) Failure to notify, provide data, or untimely notification	2,000	4,000
240.221—Identification of persons		
(a–b) Failure to have record	2,000	4,000
(c) Failure to update record	2,000	4,000
(b) Failure to issue certificate	1,000	2,000
(e–f) Failure to make record available	1,000	2,000
240.223—Certificate criteria		
(a) Improper certificate	500	1,000
(b) Failure to designate those with signatory authority	500	1,000
(d) Falsification of certificate	(-)	10,000
240.225—Railroad Relying on Determination of Another		
(a) Reliance on expired certification	2,500	5,000
(b) Reliance on wrong class of service	2,500	5,000
(c) Failure to familiarize person with new operational territory	2,000	4,000
(d) Failure to determine knowledge	2,000	4,000
240.227—Railroad Relying on Requirements of a Different Country		
(a) Joint operator reliance		
(1) on person not employed	1,000	2,000
(2) on person who fails to meet Canadian requirements	1,000	2,000
(b) Canadian railroad reliance		
(1) on person not employed	1,000	2,000
(2) on person who fails to meet Canadian requirements	1,000	2,000
240.229—Railroad Controlling Joint Operation Territory		
(a) Allowing uncertified person to operate	2,000	4,000
(b) Certifying without making determinations or relying on another railroad	2,500	5,000
(c) Certifying without determining:		
(1) certification status	2,500	5,000
(2) knowledge	2,500	5,000
(3) skills	2,500	5,000
(4) familiarity with physical characteristics	2,000	4,000
(d) Failure to provide qualified person	2,000	4,000
Subpart D—Program Administration		
240.301—Failure to have system for certificate replacement	2,000	4,000
240.303—Monitoring operations		
(a) Failure to have program	4,000	8,000
(b) Failure to observe each person annually	1,000	2,000
(c) Failure to test each person annually	1,000	2,000
(d) Failure to test properly	1,000	2,000
240.305—Certified engineer conduct		
(a) Failure of engineer to		
(1) properly control speed	2,500	5,000
(2) stop at signal	2,500	5,000

Section	Violation	Willful violation
(3) obey rules for track occupancy authority	2,500	5,000
(b) Failure of engineer to		
(1) carry certificate	1,000	2,000
(2) display certificate when requested	1,000	2,000
(c–d) Failure of engineer to notify railroad of limitations, revocation or denial	4,000	8,000
240.309—Revocation of certification		
(a) Failure to withdraw person from service	2,500	5,000
(b) Failure to notify, provide hearing opportunity, or untimely procedures	2,000	4,000
240.307—Oversight responsibility report		
(a) Failure to report or to report on time	500	1,000
(b–f) Incomplete or inaccurate report	2,000	4,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Appendix B to Part 240—Procedures for Submission and Approval of Locomotive Engineer Qualification Programs

This appendix establishes procedures for the submission and approval of a railroad's program concerning the training, testing, and evaluating of persons seeking certification or recertification as a locomotive engineer in accordance with the requirements of this part (see §§ 240.101, 240.103, 240.105, 240.107, 240.123, 240.125, 240.127 and 240.129). It also contains guidance on how FRA will exercise its review and approval responsibilities.

Submission by a Railroad

As provided for in § 240.101, each railroad must have a program for determining the qualifications of each person it permits or requires to operate a locomotive. In designing its program a railroad must take into account the trackage and terrain over which it operates, the system(s) for train control that are employed, the operational design characteristics of the track and equipment being operated including train length, train makeup, and train speeds. Each railroad must submit its individual program to FRA for approval as provided for in § 240.103. Each program must be accompanied by a request for approval organized in accordance with this appendix. Requests for approval must contain appropriate references to the relevant portion of the program being discussed. Requests should be submitted in writing on standard sized paper (8-1/2 x 11) and can be in letter or narrative format. The railroad's submission shall be sent to the Associate Administrator for Safety, FRA. The mailing address for FRA is 400 Seventh Street, SW., Washington, DC 20590.

Organization of the Submission

Each request should be organized to present the required information in the following standardized manner. Each section must begin by giving the name, title, telephone number, and mailing address of the person to be contacted concerning the matters addressed by that section. If a person is identified in a prior section, it is sufficient to merely repeat the person's name in a subsequent section.

Section 1 of the Submission: General Information and Elections

The first section of the request must contain the name of the railroad, the person to be contacted concerning the request (including the person's name, title, telephone number, and mailing address) and a statement electing either to accept responsibility for educating previously untrained persons to be qualified locomotive engineers or recertify only engineers previously certified by other railroads (see § 240.103(b)).

If a railroad elects not to conduct the training of persons not previously trained to be a locomotive engineer, the railroad is not obligated to submit information on how the previously untrained will be trained. A railroad that makes this election will be limited to recertifying persons initially certified by another railroad. A railroad that initially elects not to accept responsibility for training its own locomotive engineers can rescind its initial election by obtaining FRA approval of a modification of its program (see § 240.103(e)).

If a railroad elects to accept responsibility for conducting the education of persons not previously trained to be locomotive engineers, the railroad is obligated to submit information on how such persons will be trained but has no duty to actually conduct such training. A railroad that elects to accept the responsibility for the training of such persons may authorize another railroad or a non-railroad entity to perform the actual training effort. The electing railroad remains responsible for assuring that such other training providers adhere to the training program the railroad submits.

This section must also state which class or classes of service the railroad will employ. (See § 240.107).

Section 2 of the Submission: Selection of Supervisors of Locomotive Engineers

The second section of the request must contain information concerning the railroad's procedure for selecting the person or persons it will rely on to evaluate the knowledge, skill, and ability of persons seeking certification or recertification. As provided for in § 240.105 each railroad must have a procedure for selecting supervisors of locomotive engineers which assures that persons so designated can appropriately test and evaluate the knowledge, skill, and ability of individuals seeking certification or recertification.

Section 240.105 provides a railroad latitude to select the criteria and evaluation methodology it will rely on to determine which person or persons have the required capacity to perform as a supervisor of locomotive engineers. The railroad must describe in this section how it will use that latitude and evaluate those it designates as supervisors of locomotive engineers so as to comply with the performance standard set forth in § 240.105(b). The railroad must identify, in sufficient detail to permit effective review by FRA, the criteria for evaluation it has selected. For example, if a railroad intends to rely on one or more of the following, a minimum level of prior experience as an engineer, successful completion of a course of study, or successful passage of a standardized testing program, the submission must state which criteria it will employ.

Section 3 of the Submission: Training Persons Previously Certified

The third section of the request must contain information concerning the railroad's program for training previously certified locomotive engineers. As provided for in § 240.123(b) each railroad must have a program for the ongoing education of its locomotive engineers to assure that they maintain the necessary knowledge concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules.

Section 240.123(b) provides a railroad latitude to select the specific subject matter to be covered, duration of the training, method of presenting the information, and the frequency with which the training will be provided. The railroad must describe in this section how it will use that latitude to assure that its engineers remain knowledgeable concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.123(b). This section must contain sufficient detail to permit effective evaluation of the railroad's training program in terms of the subject matter covered, the frequency and duration of the training sessions, the training environment employed (for example, and use of classroom, use of computer based training, use of simulators, use of film or slide presentations, use of on-job-training) and which aspects of the program are voluntary or mandatory.

Safe train handling involves both abstract knowledge about the appropriate use of engine controls and the application of that

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knowledge to trains of differing composition traversing varying terrain. Time and circumstances have the capacity to diminish both abstract knowledge and the proper application of that knowledge to discrete events. Time and circumstances also have the capacity to alter the value of previously obtained knowledge and the application of that knowledge. In formulating how it will use the discretion being afforded, each railroad must design its program to address both loss of retention of knowledge and changed circumstances, and this section of the submission to FRA must address these matters.

For example, locomotive engineers need to have their fundamental knowledge of train operations refreshed periodically. Each railroad needs to advise FRA how that need is satisfied in terms of the interval between attendance at such training, the nature of the training being provided, and methods for conducting the training. A matter of particular concern to FRA is how each railroad acts to assure that engineers remain knowledgeable about safe train handling procedures if the territory over which a locomotive engineer is authorized to operate is territory from which the engineer has been absent. The railroad must have a plan for the familiarization training that addresses the question of how long a person can be absent before needing more education and, once that threshold is reached, how the person will acquire the needed education. Similarly, the program must address how the railroad responds to changes such as the introduction of new technology, new operating rule books, or significant changes in operations including alteration in the territory engineers are authorized to operate over.

Section 4 of the Submission: Testing and Evaluating Persons Previously Certified

The fourth section of the request must contain information concerning the railroad's program for testing and evaluating previously certified locomotive engineers. As provided for in § 240.125 and § 240.127, each railroad must have a program for the ongoing testing and evaluating of its locomotive engineers to assure that they have the necessary knowledge and skills concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules. Similarly, each railroad must have a program for ongoing testing and evaluating to assure that its locomotive engineers have the necessary vision and hearing acuity as provided for in § 240.121.

Sections 240.125 and 240.127 require that a railroad rely on written procedures for determining that each person can demonstrate his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe operation of a locomotive or train. Section 240.125 directs that, when seeking a demonstration of the person's knowledge, a railroad must employ a written test that contains objective questions and answers and covers the following subject matters: (i) Personal safety practices; (ii) operating practices; (iii) equipment inspection practices; (iv) train handling practices (including familiarity with the physical characteristics of the territory); and (v) compliance with relevant Federal safety rules. The test must accurately measure the person's knowledge of all of these areas.

Section 240.125 provides a railroad latitude in selecting the design of its own testing policies (including the number of questions each test will contain, how each required subject matter will be covered, weighting (if any) to be given to particular subject matter responses, selection of passing scores, and the manner of presenting the test information). The railroad must describe in this section how it will use that latitude to assure that its engineers will demonstrate their knowledge concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.125.

Section 240.127 directs that, when seeking a demonstration of the person's skill, a railroad must employ a test and evaluation procedure conducted by a designated supervisor of locomotive engineers that contains an objective evaluation of the person's skills at applying the railroad's rules and practices for the safe operation of trains. The test and evaluation procedure must examine the person's skills in terms of all of the following subject matters: (i) Operating practices; (ii) equipment inspection practices; (iii) train handling practices (including familiarity with the physical characteristics of the territory); and (iv) compliance with relevant Federal safety rules. The test must be sufficient to effectively examine the person's skills while operating a train in the most demanding type of service which the person is likely to encounter in the normal course of events once he or she is deemed qualified.

Section 240.127 provides a railroad latitude in selecting the design of its own testing and evaluation procedures (including the duration of the evaluation process, how each required subject matter will be covered, weighting (if any) to be given to particular subject matter response, selection of passing scores, and the manner of presenting the test information). The section should provide information concerning the procedures which the railroad will follow that achieve the objectives described in FRA's recommended practices (see appendix E) for conducting skill performance testing. The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct the test and evaluation procedure. A railroad must describe in this section how it will use that latitude to assure that its engineers will demonstrate their skills concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.127.

Section 240.121 provides a railroad latitude to rely on the professional medical opinion of the railroad's medical examiner concerning the ability of a person with substandard acuity to safely operate a locomotive. The railroad must describe in this section how it will assure that its medical examiner has sufficient information concerning the railroad's operations to effectively form appropriate conclusions about the ability of a particular individual to safely operate a train.

Section 5 of the Submission: Training, Testing, and Evaluating Persons Not Previously Certified

Unless a railroad has made an election not to accept responsibility for conducting the initial training of persons to be locomotive engineers, the fifth section of the request must contain information concerning the railroad's program for educating, testing, and evaluating persons not previously trained as locomotive engineers. As provided for in § 240.123(c), a railroad that is issuing an initial certification to a person to be a locomotive engineer must have a program for the training, testing, and evaluating of its locomotive engineers to assure that they acquire the necessary knowledge and skills concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules.

Section 240.123 establishes a performance standard and gives a railroad latitude in selecting how it will meet that standard. A railroad must describe in this section how it will use that latitude to assure that its engineers will acquire sufficient knowledge and skill and demonstrate their knowledge and skills concerning the safe discharge of their train operation responsibilities. This section must contain the same level of detail concerning initial training programs as that described for each of the components of the overall program contained in sections 2 through 4 of this appendix. A railroad that plans to accept responsibility for the initial training of locomotive engineers may authorize another railroad or a non-railroad entity to perform the actual training effort. The authorizing railroad may submit a training program developed by that authorized trainer but the authorizing railroad remains responsible for assuring that such other training providers adhere to the training program submitted. Railroads that elect to rely on other entities, to conduct training away from the railroad's own trackage, must indicate how the student will be provided with the required familiarization with the physical characteristics for its trackage.

Section 6 of the Submission: Monitoring Operational Performance by Certified Engineers

The final section of the request must contain information concerning the railroad's program for monitoring the operation of its certified locomotive engineers. As provided for in § 240.129, each railroad must have a program for the ongoing monitoring of its locomotive engineers to assure that they operate their locomotives in conformity with the railroad's operating rules and practices including methods of safe train handling and relevant Federal safety rules.

Section 240.129 requires that a railroad annually observe each locomotive engineer demonstrating his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe operation of a locomotive or train. Section 240.129 directs that the observation

be conducted by a designated supervisor of locomotive engineers but provides a railroad latitude in selecting the design of its own observation procedures (including the duration of the observation process, reliance on tapes that record the specifics of train operation, and the specific aspects of the engineer's performance to be covered). The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct monitoring observations. A railroad must describe in this section how it will use that latitude to assure that the railroad is monitoring that its engineers demonstrate their skills concerning the safe discharge of their train operation responsibilities. A railroad that intends to employ train operation event recorder tapes to comply with this monitoring requirement shall indicate in this section how it anticipates determining what person was at the controls and what signal indications or other operational constraints, if any, were applicable to the train's movement.

Section 7 of the Submission: Procedures for Routine Administration of the Engineer Certification Program

The final section of the request must contain a summary of how the railroad's program and procedures will implement the various specific aspects of the regulatory provisions that relate to routine administration of its certification program for locomotive engineers. At a minimum this section needs to address the procedural aspects of the rule's provisions identified in the following paragraph.

Section 240.109 provides that each railroad must have procedures for review and comment on adverse prior safety conduct, but allows the railroad to devise its own system within generalized parameters. Sections 240.115, 240.117 and 240.119 require a railroad to have procedures for evaluating data concerning prior safety conduct as a motor vehicle operator and as railroad workers, yet leave selection of many details to the railroad. Sections 240.203, 240.217, and 240.219 place a duty on the railroad to make a series of determinations but allow the railroad to select what procedures it will employ to assure that all of the necessary determinations have been made in a timely fashion; who will be authorized to conclude that person is or is not qualified; and how it will communicate adverse decisions. Documentation of the factual basis the railroad relied on in making determinations under §§ 240.205, 240.207, 240.209, 240.211, and 240.213 is required, but these sections permit the railroad to select the procedures it will employ to accomplish compliance with these provisions. Sections 240.225 and 240.227 permit reliance on qualification determinations made by other entities and permit a railroad latitude in selecting the procedures it will employ to assure compliance with these provisions. Similarly, § 240.229 permits use of railroad selected procedures to meet the requirements for certification of engineers performing service in joint operations territory. Sections 240.301 and 240.307 allow a railroad a certain degree of discretion in complying with the requirements for replacing lost certificates or the conduct of certification revocation proceedings.

This section of the request should outline in summary fashion the manner in which the railroad will implement its program so as to comply with the specific aspects of each of the rule's provisions described in preceding paragraph.

FRA Review

The submissions made in conformity with this appendix will be deemed approved within 30 days after the required filing date or the actual filing date whichever is later. No formal approval document will be issued by FRA. The brief interval for review reflects FRA's judgment that railroads generally already have existing programs that will meet the requirements of this part. FRA has taken the responsibility for notifying a railroad when it detects problems with the railroad's program. FRA retains the right to disapprove a program that has obtained approval due to the passage of time as provided for in section § 240.103.

FRA initially proposed specifying the details for most aspects of the programs being submitted under this appendix. The proposed rule contained a distillation of the essential elements of pre-existing training, testing, evaluating, and monitoring programs that appear to result in railroads having locomotive engineers who operate locomotives and trains safely. The proposal contained very specific details for each aspect of the program that appeared to contribute to that result. Those details included such things as the duration of classes intended to teach operating rules as well as the interval and methodology for acquiring familiarization with physical characteristics of an engineer's operational territory. Railroads commenting on the proposed rule did not question the validity of the FRA's views concerning the essential elements of an effective program but did convince FRA that they should be given more discretion to formulate the design of their individual programs.

Rather than establish rigid requirements for each element of the program as initially proposed, FRA has given railroads discretion to select the design of their individual programs within a specified context for each element. The proposed rule, however, provides a good guide to the considerations that should be addressed in designing a program that will meet the performance standards of this final rule. In reviewing program submissions, FRA will focus on the degree to which a particular program deviates from the norms identified in its proposed rule. To the degree that a particular program submission materially deviates from the norms set out in its proposed rule which was published in the Federal Register on December 11, 1990 (54 FR 50890), FRA's review and approval process will be focused on determining the validity of the reasoning relied on by a railroad for selecting its alternative approach and the degree to which the alternative approach is likely to be effective in producing locomotive engineers who have the knowledge, skill, and ability to safely operate trains.

Appendix C to Part 240—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data

The purpose of this Appendix is to outline the procedures available to individuals and railroads for complying with the requirements of section 4(a) of the Railroad Safety Improvement Act of 1988 and §§ 240.109, 240.111 and 240.205 of this part. These provisions require that railroads consider the motor vehicle driving record of each person prior to issuing him or her certification or recertification as a qualified locomotive engineer.

To fulfill that obligation, a railroad must review a certification candidate's recent motor vehicle driving record. Generally, that will be a single record on file with the state agency that issued the candidate's current license. However, it can include multiple records if the candidate has been issued a motor vehicle driving license by more than one state agency. In addition, the railroad must determine whether the certification candidate is listed in the National Driver Register and, if so listed, to review the data that caused the candidate to be so listed.

Access to State Motor Vehicle Driving Record Data

The right of railroad workers, their employers, or prospective employers to have access to a state motor vehicle licensing agency's data concerning an individual's driving record is controlled by state law. Although many states have mechanisms through which employers and prospective employers such as railroads can obtain such data, there are some states in which privacy concerns make such access very difficult or impossible. Since individuals generally are entitled to obtain access to driving record data that will be relied on by a state motor vehicle licensing agency when that agency is taking action concerning their driving privileges, FRA places responsibility on individuals, who want to serve as locomotive engineers to request that their current state drivers licensing agency or agencies furnish such data directly to the railroad considering certifying them as a locomotive operator. Depending on the procedures adopted by a particular state agency, this will involve the candidate's either sending the state agency a brief letter requesting such action or executing a state agency form that accomplishes the same effect. It will normally involve payment of a nominal fee established by the state agency for such a records check. In rare instances, when a certification candidate has been issued multiple licenses, it may require more than a single request.

The National Driver Register

In addition to seeking an individual state's data, each engineer candidate is required to request that a search and retrieval be performed of any relevant information concerning his or her driving record contained in the National Driver Register. The National Driver Register (NDR) is a system of information created by Congress in 1960. In essence it is a nationwide repository of information on problem drivers that was created in an effort to protect motorists. It is

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a voluntary State/Federal cooperative program that assists motor vehicle driver licensing agencies in gaining access to data about actions taken by other state agencies concerning an individual's motor vehicle driving record. The NDR is designed to address the problem that occurs when chronic traffic law violators, after losing their license in one State travel to and receive licenses in another State. Currently the NDR is maintained by the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation under the provisions of the National Driver Register Act (23 U.S.C. 401 note). Under that statute, state motor vehicle licensing authorities voluntarily notify NHTSA when they take action to deny, suspend, revoke or cancel a person's motor vehicle driver's license and, under the provisions of a 1982 change to the statute, states are also authorized to notify NHTSA concerning convictions for operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance, and for traffic violations arising in connection with a fatal traffic accident, reckless driving or racing on the highway even if these convictions do not result in an immediate loss of driving privileges.

The information submitted to NHTSA contains, at a minimum, three specific pieces of data: the identification of the state authority providing the information, the name of the person whose license is being affected, and the date of birth of that person. It may be supplemented by data concerning the person's height, weight, color of eyes, and social security account number, if a State collects such data.

Access to NDR Data

Essentially only individuals and state licensing agencies can obtain access to the NDR data. Since railroads have no direct access to the NDR data, FRA requires that individuals seeking certification as a locomotive engineer request that an NDR search be performed and direct that the results be furnished to the railroad. FRA requires that each person request the NDR information directly from NHTSA unless the prospective operator has a motor vehicle driver license issued by a state motor vehicle licensing agency that is "participating" under the provisions of the National Driver Register Act of 1982. Participating states can directly access the NDR data on behalf of the prospective engineer. The state agencies that currently are authorized to access NDR data in that manner are identified in appendix D of this regulation.

Requesting NHTSA to Perform the NDR Check

The procedures for requesting NHTSA performance of an NDR check are as follows:

1. Each person shall submit a written request to National Highway Traffic Safety Administration at the following address: Chief, National Driver Register, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

2. The request must contain:

(a) The full legal name;

(b) Any other names used by the person (*e.g.*, nickname or professional name);

(c) The date of birth;

(d) Sex;

(e) Height;

(f) Weight;

(g) Color of eyes;

(h) Driver's license number (unless that is not available).

3. The request must authorize NHTSA to perform the NDR check and to furnish the results of the search directly to the railroad.

4. The request must identify the railroad to which the results are to be furnished, including the proper name of the railroad, and the proper mailing address of the railroad.

5. The person seeking to become a certified locomotive engineer shall sign the request, and that signature must be notarized.

FRA requires that the request be in writing and contain as much detail as is available to improve the reliability of the data search. Any person may supply additional information to that being mandated by FRA. Furnishing additional information, such as the person's Social Security account number, will help to more positively identify any records that may exist concerning the requester. Although no fee is charged for such NDR checks, a minimal cost may be incurred in having the request notarized. The requirement for notarization is designed to ensure that each person's right to privacy is being respected and that records are only being disclosed to legally authorized parties.

Requesting a State Agency to Perform the NDR Check

As discussed earlier in connection with obtaining data compiled by the state agency itself, a person can either write a letter to that agency asking for the NDR check or can use the agency's forms for making such a request. If a request is made by letter the individual must follow the same procedures required when directly seeking the data from NHTSA. At present there are only a limited number of state licensing agencies that have the capacity to make a direct NDR inquiry of this nature. It is anticipated that the number of states with such capability will increase in the near future; therefore, FRA will continue to update the identification of such states by revising Appendix D to this regulation to identify such state agencies. Since it would be more efficient for a prospective locomotive engineer to make a single request for both aspects of the information required under this rule, FRA anticipates that state agency inquiry will eventually become the predominant method for making these NDR checks. Requests to state agencies may involve payment of a nominal fee established by the state agency for such a records check.

State agencies normally will respond in approximately 30 days or less and advise whether there is or is not a listing for a person with that name and date of birth. If there is a potential match and the inquiry state was not responsible for causing that entry, the agency normally will indicate in writing the existence of a probable match and will identify the state licensing agency that suspended, revoked or canceled the relevant license or convicted the person of one of the violations referenced earlier in this appendix.

Actions When a Probable NDR Match Occurs

The response provided after performance of an NDR check is limited to either a notification that no potential record match was identified or a notification that a potential record match was identified. If the latter event occurs, the notification will include the identification of the state motor vehicle licensing authority which possesses the relevant record. If the NDR check results indicate a potential match and that the state with the relevant data is the same state which furnished detailed data (because it had issued the person a driving license), no further action is required to obtain additional data. If the NDR check results indicate a potential match and the state with the relevant data is different from the state which furnished detailed data, it then is necessary to contact the individual state motor vehicle licensing authority that furnished the NDR information to obtain the relevant record. FRA places responsibility on the railroad to notify the engineer candidate and on the candidate to contact the state with the relevant information. FRA requires the certification candidate to write to the state licensing agency and request that the agency inform the railroad concerning the person's driving record. If required by the state agency, the person may have to pay a nominal fee for providing such data and may have to furnish written evidence that the prospective operator consents to the release of the data to the railroad. FRA does not require that a railroad or a certification candidate go beyond these efforts to obtain the information in the control of such a state agency, and a railroad may act upon the pending certification without the data if an individual state agency fails or refuses to supply the records.

If the non-issuing state licensing agency does provide the railroad with the available records, the railroad must verify that the record pertains to the person being considered for certification. It is necessary to perform this verification because in some instances only limited identification information is furnished for use in the NDR and this might result in data about a different person being supplied to the railroad. Among the available means for verifying that the additional state record pertains to the certification candidate are physical description, photographs and handwriting comparisons.

Once the railroad has obtained the motor vehicle driving record which, depending on the circumstance, may consist of more than two documents, the railroad must afford the prospective engineer an opportunity to review that record and respond in writing to its contents in accordance with the provisions of § 240.219. The review opportunity must occur before the railroad evaluates that record. The railroad's required evaluation and subsequent decision making must be done in compliance with the provisions of this part.

Appendix D to Part 240—Identification of State Agencies That Perform National Driver Register Checks

Under the provisions of § 240.111 of this part, each person seeking certification or recertification as a locomotive operator must request that a check of the National Driver Register (NDR) be conducted and that the resulting information be furnished to his or her employer or prospective employer. Under the provisions of paragraphs (d) and (e) of § 240.111, each person seeking certification or recertification as a locomotive engineer must request that National Highway Traffic Safety Administration conduct the NDR check, unless he or she was issued a motor vehicle driver license by one of the state agencies identified in this appendix. If the certification candidate received a license from one of the designated state agencies, he or she must request the state agency to perform the NDR check. The state motor vehicle licensing agencies listed in this appendix participate in a program that authorizes these state agencies, in accordance with the National Driver Register Act of 1982, to obtain information from the NDR on behalf of individuals seeking data about themselves. Since these state agencies can more efficiently supply the desired data and, in some instances, can provide a higher quality of information, FRA requires that certification candidates make use of this method in preference to directly contacting NHTSA.

Although the number of state agencies that participate in this manner is limited, FRA anticipates that an increasing number of states will do so in the future. This appendix will be revised periodically to reflect current participation in the program. As of December 31, 1989, the motor vehicle licensing agencies of the following states participate under the provisions of the 1982 changes to the NDR Act: North Dakota, Ohio, Virginia, and Washington.

Appendix E to Part 240—Recommended Procedures for Conducting Skill Performance Tests

FRA requires (see § 240.127 and § 240.211) that locomotive engineers be given a skill performance test prior to certification or recertification and establishes certain criteria for the conduct of that test. Railroads are given discretion concerning the manner in which to administer the required testing. FRA has afforded railroads this discretion to allow individual railroad companies latitude to tailor their testing procedures to the specific operational realities. This appendix contains FRA's recommendations for the administration of skill performance testing that occurs during operation of an actual train. It can be modified to serve in instances where a locomotive simulator is employed for testing purposes. These recommended practices, if followed, will ensure a more thorough and systematic assessment of locomotive engineer performance.

The Need for a Systematic Approach

There are numerous criteria that should be monitored when a designated supervisor of locomotive engineers is observing a person to determine whether that individual should be certified or recertified as a qualified locomotive engineer. The details of those criteria will vary for the different classes of service, types of railroads, and terrain over which trains are being operated. At a minimum, the attention of a designated supervisor of locomotive engineers should concentrate on several general areas during any appraisal. Compliance with the railroad's operating rules, including its safety directives and train handling rules, and compliance with Federal regulations should be carefully monitored. But, in order to effectively evaluate employees, it is necessary to have something against which to compare their performance. In order to hold a locomotive engineer accountable for compliance, a railroad must have adequate operating, safety and train handling rules. Any railroad that fails to have adequate operating, safety, or train handling rules will experience difficulty in establishing a objective method of measuring an individual's skill level. Any railroad that requires the evaluation of an individual's performance relative to its train handling rules needs to have established preferred operating ranges for throttle use, brake application, and train speed. The absence of such criteria results in the lack of a meaningful yardstick for the designated supervisor of locomotive engineers to use in measuring the performance of locomotive engineers. It also is essential to have a definite standard so that the engineer and any reviewing body can know what the certification candidate is being measured against.

Evaluating the performance of certain train operation skills will tend to occur in all situations. For example, it would be rare for a designated supervisor of locomotive engineers to observe any operator for a reasonable period of time and not have some opportunity to review that engineer's compliance with some basic safety rules, compliance with basic operating rules, and performance of a brake test. As the complexity of the operation increases, so does the number of items that the operator must comply with. Higher speeds, mountainous terrain, and various signal systems place increased emphasis on the need for operator compliance with more safety, operating, and train handling rules. Accounting for such variables in any universal monitoring scheme immediately results in a fairly complex system.

FRA therefore recommends that designated supervisors of locomotive engineers employ a written aid to help record events and procedures that as a minimum should be observed for when conducting a skills performance test. FRA is providing the following information to assist railroads in developing such a written aid so as to ensure meaningful testing. When conducting a skills performance test, a designated supervisor of locomotive engineers should be alert to the following:

—Does the employee have the necessary books (Operating Rules, Safety Rules, Timetable, etc.)?

—Are predeparture inspections properly conducted (Radio, Air Brake Tests, Locomotive, etc.)?

—Does the employee comply with applicable safety rules?

—Does the employee read the bulletins, general orders, etc.?

Enroute, does the employee:

—Comply with applicable Federal Rules?

—Monitor gauges?

—Properly use the horn, whistle, headlight?

—Couple to cars at a safe speed?

—Properly control in train slack and buff forces?

—Properly use the train braking systems?

—Comply with speed restrictions?

—Display familiarity with the physical characteristics?

—Comply with signal indications?

—Respond properly to unusual conditions?

At the conclusion of the trip, does the employee:

—Apply a hand brake to the locomotives?

—Properly report locomotive defects?

Obviously, the less sophisticated the railroad's operations are, the fewer the number of identified practices that would be relevant. Hence, this list should modified accordingly.

The Need for Objectivity, Use of Observation Form

It is essential that railroads conduct the performance skills testing in the most objective manner possible, whether this testing is the locomotive engineer's initial qualification testing or periodic retesting. There will always be some potential for the subjective views, held by the designated supervisor of locomotive engineers conducting the testing, to enter into evaluations concerning the competency of a particular individual to handle the position of locomotive engineer. Steps can be taken, and need to be taken, to minimize the risk that personality factors adversely influence the testing procedure.

One way to reduce the entry of subjective matters into the qualification procedures is through the use of a document that specifies those criteria that the designated supervisor of locomotive engineers is to place emphasis on. The use of an observation form will reduce but not eliminate subjectivity. Any skill performance test will contain some amount of subjectivity. While compliance with the operating rules or the safety rules is clear in most cases, with few opportunities for deviation, train handling offers many options with few absolute right answers. The fact that an engineer applies the train air brakes at one location rather than a few yards away does not necessarily indicate a failure but a question of judgment. The use of dynamic braking versus air brakes at a particular location may be a question of judgment unless the carrier has previously specified the use of a preferred braking method. In any case the engineer's judgment, to apply or not apply a braking system at a given location, is subject to the opinion of the designated supervisor of locomotive engineers.

A railroad should attempt to reduce or eliminate such subjectivity through use of some type of observation or evaluation. For railroads developing any evaluation form, the areas of concern identified earlier will not be relevant in all instances. Railroads that do not have sophisticated operations would only

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need a short list of subjects. For example, most smaller railroads would not require line items pertaining to compliance with signal rule compliance or the use of dynamic brakes. Conversely, in all instances the observation forms should include the time and location that the observer started and ended the observation. FRA believes that there shou d be a minimum duration for all performance skills examinations. FRA allows railroads to select a duration appropriate for their individual circumstances, requiring only that the period be "of sufficient length to effectively evaluate the person." In exercising its discretion FRA suggests that the minimums selected by a railroad be stated in terms of a distance since the examination has to be of a sufficient duration to adequately monitor the operator's skills in a variety of situations. FRA also suggests that the format for the observation form include a space for recording the observer's comments. Provision for comments ideally would allow for the inclusion of "constructive criticism" without altering the import of the evaluation and would permit subjective comments where merited.

Issued in Washington, DC on June 11, 1991.

Gilbert E. Carmichael,
Administrator.

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Wednesday
June 19, 1991

Part III

Department of Education

Children and Youth With Serious Emotional Disturbance Program; Grant Priorities and Selection Criteria; Notices

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DEPARTMENT OF EDUCATION

Grants; Children and Youth With Serious Emotional Disturbance Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities and selection criteria.

SUMMARY: The Secretary proposes to establish annual funding priorities and selection criteria for the new Program for Children and Youth with Serious Emotional Disturbance to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1991.

DATES: Comments must be received on or before July 19, 1991.

ADDRESSES: All comments concerning these proposed priorities should be addressed to: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3095—M/S 2313–2640), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, telephone: (202) 732–1099. (TDD: (202) 732–6153.)

SUPPLEMENTARY INFORMATION: The Program for Children and Youth with Serious Emotional Disturbance provides assistance for projects designed to improve special education and related services to children and youth with serious emotional disturbance (SED).

Proposed Priorities and Selection Criteria

The Secretary proposes to establish the following priorities and selection criteria for the Program for Children and Youth with Serious Emotional Disturbance, CFDA 84.237. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Analyzing the Professional Knowledge Base for Students With Serious Emotional Disturbance (CFDA 84.237)

Issue

Children and youth with serious emotional disturbance represent a large group of unserved and underserved students with disabilities. Students experiencing serious emotional disturbance provide a complex and multi-faceted problem in the delivery of appropriate educational programs. They have one of the highest probabilities of failure in school, work and the community. To improve outcomes for these students the educational community must participate in the development of a plan to identify the most critical areas for improving curricula, instruction, service delivery, and professional development.

Over the past several years, a considerable knowledge base regarding the provision of educational services to individuals with serious emotional disturbance has accumulated. This knowledge base contains programs demonstrated to be effective in obtaining desired student outcomes; research relating to the identification, assessment, instruction, and service delivery system; and the experiences of successful and non-successful instructional personnel. The development of a plan requires an ordering, formatting, and mapping of the knowledge base to identify the critical features that must be addressed.

Background

The Department has been engaging practitioners, researchers, parents, and professional associations in describing current practice and research needs. Current efforts include evaluating outcomes for students with serious emotional disturbance, analyzing definition issues, and compiling information on effective intervention strategies. However, additional information is needed on personnel preparation and placement procedures for students with serious emotional disturbance.

The current efforts in educational reform have highlighted many issues related to teacher preparation. Issues such as teacher competencies, credentialling procedures, and retention are critical to the overall educational reform movement and particularly critical to programs for students with serious emotional disturbance. Research has indicated that teachers in programs for students with serious emotional disturbance have the highest attrition of any teaching group. Yet, little is known regarding their preparation for the teaching profession. There is a critical need to assess our professional knowledge base relative to the structure and content of personnel preparation programs.

Students with serious emotional disturbance provide a unique challenge and place unique demands on service delivery. These students constitute a heterogenous group in terms of academic, social, and emotional needs. As a result of this diversity, a wide range of placement options are required to best address the needs of these students. The extent to which the service delivery system attempts to meet the needs of these students in alternative placements and the process, rationale, and procedures for placement decisions are largely unknown. There is a critical need to address not only the extent to which these students needs are being addressed outside the traditional educational system, but how these students are reintroduced into the system if they have been removed for service.

Purpose

The purpose of this priority is to provide information to support the development of plans for improving outcomes for children with serious emotional disturbance. This priority supports activities designed to identify, organize, interpret, and disseminate the knowledge bases related to personnel preparation and student placement. One award will be funded in each area for up to 24 months duration.

Focus

Each project funded under this priority must develop procedures for: (a) Identifying and organizing the current state of knowledge; (b) interpreting the current state of knowledge to draw implications for research and practice; and (c) disseminating the project's findings and interpretations to policy makers practitioners, parents, and researchers.

Personnel Preparation. It is anticipated that one cooperative agreement will be awarded dealing with the preparation of teachers to work with students with serious emotional disturbance. The project must determine the current status of personnel preparation from at least three perspectives. First, the project must review each State's requirements for teacher licensure and approving programs for training teachers of students with serious emotional disturbance, and prepare a compendium of these extant data materials. Based on this review of State licensure and approval criteria, the project must develop a conceptual framework that is comprehensive and reflects the complexity contributing to State variations. This comprehensive conceptual framework must be used to select a representative sample of States for subsequent analysis. The comprehensive conceptual framework must be used as the basis for defining the sampling frames for selecting States. Each sampling frame derived from the comprehensive conceptual framework must include at least two or three representative States consistent with that particular frame. The selection of these States must allow for testing for the replication of findings across State entities. The project must provide a comprehensive profile of approaches to State program approval; examples of course sequences and content associated with those sequences; and examples of the knowledge, skills, and competencies required by the States in licensing teachers of children and youth with serious emotional disturbance. This must provide a comprehensive comparison of the various approaches along relevant dimensions identified in the applicant's organizational framework.

Second, the project must compare the accrediting agency (e.g., National Council Accreditation Teacher Education (N.C.A.T.E.)) standards in relation to teacher training for children and youth with serious emotional disturbance. This comparison must include course requirements, and field experiences that impact the design and structure of training programs. However, the comparison need not be limited to these factors and may include other factors that impact the design and structure of training programs deemed relevant by the project. The diversity of approaches currently employed by institutions of higher education to meet accrediting agency standards across States and institutions must be highlighted.

Third, the project must classify approaches to personnel preparation programs for preparing teachers to work with children and youth with serious emotional disturbance. For example, personnel preparation programs might be classified according to the primary roles for which they train personnel such as case managers of instructional services; designers and providers of specially designed instruction; or crisis managers of student behavior. The project must provide a method of classification that will identify the major approaches as a framework for communicating the critical content and process features of personnel preparation programs. This information must be prepared for use by policy makers, researchers, teacher trainers, and other consumers. The project must provide a synthesis of information, gathered from the literature, practitioners, and administrators, that highlights the critical issues related to personnel preparation including the quality of the work environment, alternative career opportunities, and salary studies.

Student Placement Issues. A second cooperative agreement will be awarded for an analysis of placement issues related to children with serious emotional disturbance. In this agreement, the project will address the complex issues relating to placement decisions for children with serious emotional disturbance. Specific attention must be given to the decisions to place children with serious emotional disturbance outside the school system to receive educational services (e.g., private hospitals or out of district residential programs), and decisions to return children to their community and school. Projects must provide information on the rationale, procedures, participants, and contexts for those decisions.

Activities

Identification of Knowledge Sources. Projects must provide an initial identification of the source and nature of information to be considered. These information sources may include, but are not limited to: (1) Research literature; (2) professional literature containing program descriptions and evaluations; (3) State legal and policy documents including applicable regulations and policies; (4) practitioners (including teachers and administrators) involved in the delivery or management of programs for students with serious emotional disturbance; and (5) parents of students with serious emotional disturbance. Information sources may be readily available (e.g., extant data bases or documents) or sources that require that the project access potential sources using a range of methodologies in order to access useful information.

Organization of Knowledge Base. Projects must develop an initial framework for organizing information along relevant dimensions. This framework must provide a map of what is known in the areas of personnel preparation and student placement as it relates to children and youth with serious emotional disturbance. This framework must be developed with input from potential consumers of the information (e.g., policy makers, parents, practitioners, and researchers) so as to ensure the usability and validity of project efforts.

Interpretation of Knowledge Base. Projects must develop detailed descriptions of procedures for analyzing and interpreting information that will provide implications for developing plans for improving outcomes for children and youth with serious emotional disturbance. Procedures must be appropriate for the nature of information collected.

Coordination/Collaboration. Each project must cooperate with the Department to ensure non-duplicative efforts with other projects and maximize efficiency in identifying and obtaining information. Recipients of awards will be required to meet in Washington, DC after award to coordinate project activities. Projects must have access to extant information sources and collaborate with relevant stakeholders in the respective areas. Information must also be shared between relevant projects to ensure that resulting implications for research and practice are as current and complete as possible.

Dissemination Activities. Projects must make available to relevant national, professional, and parent organizations their methods, findings, and interpretations.

National Dissemination and Exchange Forum. Each project must provide draft copies of their findings and interpretations to participants invited to attend a national forum. Project directors must present the results of their activities at the national forum, and participate in discussions with representatives from professional associations, the research community, policy makers, parents, and other parties having significant involvement with children and youth with serious emotional disturbance. It is anticipated that the final drafts of findings and interpretations will be based on the feedback from this forum.

Selection Criteria

The following selection criteria will be used to evaluate applications for projects submitted under this priority.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national

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origin, gender, age, or disabling condition.

(3) The Secretary reviews each application to determine the quality of the evaluation plan for the project, and considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

Cross Reference

34 CFR 75.590, *Evaluation by the grantee.*

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(e) *Importance.* (15 points) The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation of, or compensation for, the problem or issue that relates to the early intervention with or special education of infants, toddlers, children, and youth with disabilities.

(f) *Impact.* (15 points) The Secretary reviews each application to determine the probable impact of the proposed research products on infants, toddlers, children, and youth with disabilities, or personnel responsible for their education.

(g) *Organizational capability.* (5 points) The Secretary considers—

(1) The applicant's experience in special education; and,

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that the findings can be used effectively.

(h) *Technical soundness.* (35 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) The instrumentation; and

(4) The data analysis procedures.

Priority 2: Designing and Implementing a Comprehensive System of Education and Support for Children With Serious Emotional Disturbance (CFDA 84.237)

Issue

Although public school programming for children with serious emotional disturbance has expanded significantly since passage of Public Law 94–142, these children remain an under-identified and underserved population. The Eleventh and Twelfth Annual Reports to Congress on the Implementation of the Education of the Handicapped Act included reported data and findings from the National Longitudinal Study that suggested the inadequacy of current efforts to meet the complex needs of these children. School dropout rates, course failure, and post-school arrest rates of adolescents and young adults with serious emotional disturbance provide clear evidence of the need to provide early and more effective family, school, community, mental health, and social service practices.

The problems of children with serious emotional disturbance are evidenced not only in school settings but also at home and in the community. Children with serious emotional disturbance and their families are likely to become involved with multiple service systems (e.g. education, mental health, juvenile justice, social service, and the child welfare systems). Services are often fragmented due to a lack of coordination between service systems. Effective identification and treatment of children with serious emotional disturbance and their families requires the involvement and expertise of multiple service providers and often of multiple agencies to effect a comprehensive system of services that addresses the child's physical, emotional, social and educational needs.

There have been several promising initiatives to promote comprehensive community based systems of support for children with serious emotional disturbance. However, there remains a critical absence of information on models for integrating school and community assistance and resources to provide the full array of services needed by children with serious emotional disturbance and their families.

Purpose

This priority will support partnership among school districts, communities, and States for projects that: (a) Design and assess the feasibility for providing education and support services, and (b) develop and implement a comprehensive system of education and support for children with serious emotional disturbance. This priority is structured in two phases:

Phase 1—This phase will support approximately 10 projects to design and assess the feasibility for developing and implementing a comprehensive system of education and support for children with serious emotional disturbance. Phase 1 will be for an 18-month period. A broad spectrum of projects reflecting different contexts (i.e. policy, fiscal, inter-agency relationships, geography, ethnic diversity) will be supported in order to accumulate across projects the full range of issues, options, and designs required to provide a comprehensive system of education and support for children with serious emotional disturbance.

Phase 2—This phase will provide continued support for three to four projects from Phase 1 for an additional two-year period in order to implement the system design. Although not all projects will be selected for Phase 2, projects must include a plan for both phases.

The purpose of these projects is to identify the issues and options the school districts, communities, and States must address in order to develop a comprehensive system of education and support for children with serious emotional disturbance and their families. Each project must prove the design feasibility of procedures and structures that if implemented would have the capacity for efficiently and effectively providing: Early screening and identification, case management, evaluation, comprehensive plan of service (including the Individualized Education Program (IEP)), service continuity, and multi-agency coordination and planning. Projects must design systems to provide education and support services that are available, responsive to diverse and changing needs, coordinated, and provided in a manner assuring continuity in meeting the needs of children with serious emotional disturbance and their families.

Activities

Phase 1: Phase 1 projects must develop a design for a comprehensive education and support system for children with serious emotional disturbance and assess its feasibility for implementation. The Department has substantial interest in these projects being able to collectively contribute to advancing an understanding of the design features and implementation issues and solutions to problems related to developing a comprehensive system of education and support for children with serious emotional disturbance and their families.

School District, Community, and State Site Selection. The project must select a school district, community, and State where two or more public agencies have an historical track record of collaboration, coordination, and resource sharing at the State and community level. Project sites must be selected on the basis of having all or most components of a comprehensive system of education and support for children with serious emotional disturbance. The project sites must be selected where the prerequisite fiscal, administrative commitment, and experience are consistent with designing and implementing system improvements. Each project, at a minimum, must include the active participation of a local school district, a community mental health agency, and a social service agency. Other agencies such as primary health providers and juvenile justice offices should be encouraged, if appropriate, to participate as part of a comprehensive system. Each project must provide letters of commitment to participate in the design of this comprehensive system.

Site. Each project must determine the range, nature, and frequency of educational and other care needs of children with serious emotional disturbance in its school district and community. Based on this analysis and profile of educational and support needs, each project must review current school and community practice related, but not limited to: Early screening and identification, case management and ombudsperson assistance, family participation, evaluation, comprehensive plan of service (including Individualized Education Programs (IEP)), service continuity, and multi-agency coordination and planning. The needs of children with serious emotional disturbance and their families, and the analysis of current practice, provides the template for identifying potential areas for designing system improvement.

Designing System Improvements. For each potential system improvement area identified, projects must determine: (a) The rationale, including support from a review of the literature as well as service provision experience, for giving priority attention to that area; (b) current system limitations; (c) system improvement options considered; (d) criteria for selecting and rejecting various improvement options; and (e) implementation requirements. System improvement options considered must draw on the growing professional knowledge base of effective strategies for:

(1) The appropriate identification and treatment of children with serious emotional disturbance whose families, as a whole, are from racially, ethnically or linguistically diverse populations;

(2) The integration of validated practices into a coordinated system for delivering educational and community services;

(3) The coordinated delivery of a full range of school and community services (e.g. special education, mental health, child welfare, recreation, health, juvenile justice, etc.); and

(4) The successful collaboration between multiple service providers with respect to resources (particularly financial), eligibility criteria, policy and other areas.

The system improvements to be designed must draw from previous special education, mental health, and human services research. Specific interventions may be implemented by educational, related service, or other community service personnel in a range of educational and community based settings, but those personnel and settings must be part of a coordinated system of educational and community services.

Determining Feasibility of System Improvement Design. Each project must determine the capacity and readiness of the school district, community, and State sites to implement each identified potential system improvement in terms of, but not limited to: Policy, fiscal, administrative, personnel, attitude, and timeframe implications. Criteria for determining feasibility shall be documented for each proposed system improvement, the arguments for and against each proposed system improvement described, and evidence provided for each potential system improvement as to the likely feasibility of implementation, effectiveness, and impact. Projects must determine critical coordination issues they identify during implementation such as leadership, staff and parent training, and interagency relationships.

Collaboration. All Phase 1 projects must cooperate with the Department in providing their reviews of literature and rationale for the selection of designs for improving components of their systems. Projects must budget one trip to Washington, DC, to develop a cross-project dissemination product of the rationals for giving priority attention to those areas including support from the reviews of literature. Projects will then be required to use the information derived from this meeting to refine the final development of designs during the last six months of Phase 1.

Phase 2: The selection of up to four projects for the Phase 2 option will be based upon the innovativeness and quality of proposed system improvements, strength of evidence to support feasibility of implementation, contribution to understanding diverse contexts (i.e. geography, inter-agency relationships) thought to affect implementation, evidence of strength of commitment, resources to implement system improvements, realistic timeline for achieving full implementation, and evidence of full participation by parents and advocates.

Implementing System Improvements. Each project selected for Phase 2 implementation must address child and family needs. An implementation schedule must reflect the rationale for sequencing activities, and evidence of critical implementation support. Procedures for ensuring the integrity of the improvements must be implemented. The implementation of system improvements must be achieved and documentation maintained describing the nature and extent of participation of all relevant parties.

Evaluating Comprehensive System of Education and Support. The primary question being tested is the efficacy and effectiveness of a comprehensive system of education and care for children with serious emotional disturbance and their families. Each project must rigorously

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study this question. Each project must conduct an evaluation that not only addresses the question of overall efficacy, but the contribution of individual components. The component designs and overall system improvement features must be documented in such a way that others interested in utilizing these designs and system improvement features could evaluate their applicability and potential for implementation in their school district and community. In addition, each project must document and study implementation and exportability of each component as well as the overall model.

Collaboration. The Department has substantial interest in the projects awarded under this priority. This interest includes capturing across projects the full range, nature, and frequency of educational and support needs of children with serious emotional disturbance; current state of school, community, and State services; identification of areas for targeting comprehensive system improvements; and options and rationales for system improvements selected for implementation. This requires each project to cooperate with the Department in designing their studies to permit a cross-project summary of findings. Projects must also cooperate with the Department in working with coalitions of professionals and parent organizations to develop cross-project dissemination materials to be used by those organizations with their respective membership.

Dissemination Activities. Individual projects must make available to relevant national, professional, and parent organizations their methods, findings, and interpretations.

Selection Criteria

The following selection criteria will be used to evaluate applications for projects submitted under this priority.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross Reference

34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine—

(1) The extent to which the service delivery problem addressed by the proposed project is of concern to others in the Nation; and,

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's experience in special education or early intervention services; and

(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points) The Secretary reviews each application to determine the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

Intergovernmental Review

The Program for Children and Youth with Serious Emotional Disturbance is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 1428.

(Catalog of Federal Domestic Assistance Number 84.237, Program for Children and Youth with Serious Emotional Disturbance)

Dated: April 25, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-14636 Filed 6-18-91; 8:45 am]

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Part IV

Department of the Interior

Bureau of Indian Affairs

Grant Availability to Federally Recognized Indian Tribes for Projects Implementing Traffic Safety on Indian Reservations; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Grant Availability to Federally Recognized Indian Tribes for Projects Implementing Traffic Safety on Indian Reservations

June 11, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of a grant program.

SUMMARY: The Bureau of Indian Affairs (BIA) intends to make funds available to Federally-Recognized Indian tribes on an annual basis for the purpose of financing highway traffic safety projects which are designed to reduce the high number of traffic accidents and their resulting fatalities, injuries, and property damage within Indian reservations. Due to the limited funding available for this program, all projects will be reviewed and selected on a competitive basis. This notice is intended to inform Indian tribes on the availability of the grant monies and the process in which the projects are selected.

DATES: Applications must be received by July 1 of each program year.

ADDRESSES: Each tribe must submit its application to the BIA Agency or Area Office serving the area in which the tribe is located. The application will be addressed to the attention of: "Indian Highway Safety Program Coordinator". Application packets will be distributed on May 1 of each program year to the tribal address as shown on the latest Tribal Leaders' List whch is compiled by the Bureau of Indian Affairs' Tribal Government Services, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tribes should direct all questions concerning the grant program and applications to the Area Indian Highway Safety Program Coordinator having responsibilities for the applicant tribe. More general inquiries on the National Indian Highway Safety Program may be directed to Charles L. Jaynes, Program Administrator, Bureau of Indian Affairs, P.O. Box 2006, Albuquerque, New Mexico 87103. Telephone: (505) 766–2181.

SUPPLEMENTARY INFORMATION:

Background

The Federal-Aid Highway Act of 1973 (Pub. L. 93–87) provides for U.S. Department of Transportation funding to assist Indian tribes in financing highway safety projects. These projects are designed to reduce the number of traffic crashes and their resulting fatalities, injuries, and property damage within Indian reservations. All Federally-recognized Indian tribes on Indian reservations are eligible to receive this assistance, and at such time as highway safety projects are approved, the tribal governing bodies will carry out and administer the programs. All tribes which avail themselves of this assistance are reimbursed for costs incurred under the terms of a Federal/Reservation agreement. The Department of Transportation pays from 75% to 100% of all costs of highway safety projects approved for funding under provisions of the Highway Safety Act.

Responsibilities

For purposes of application of the Act, Indian reservations are collectively considered a "State" and the Secretary, U.S. Department of the Interior (DOI), is considered the "Governor of a State". The Secretary, DOI, delegated the authority to administer the programs throughout all the Indian reservations in the United States to the Commissioner, Bureau of Indian Affairs.

The Commissioner of the BIA further delegated the responsibility for primary administration of the Indian Highway Safety Program to the Central Office Division of Safety Management (DSM), located in Albuquerque, New Mexico. The Chief, DSM, as program administrator of the Indian Highway Safety Program, has one full-time staff member to assist in program matters and provide technical assistance to the Indian tribes. It is at this level that contacts with the U.S. Department of Transportation are made with respect to program approval, funding of projects and technical assistance. The U.S. Department of Transportation, through the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA), is responsible for assuring that the Indian Highway Safety Program is carried out in accordance with 23 U.S.C. 402 and other applicable Federal regulations.

The National Highway Traffic Safety Administration is responsible for the apportionment of funds to the Secretary of the Interior, review and approval of the highway safety plan involving NHTSA highway safety areas of responsibilities, and technical guidance and assistance to BIA field offices and tribal coordinators by NHTSA regional offices in the general administration of the program.

The Federal Highway Administration is responsible for review and approval of highway safety plan involving FHWA highway safety areas of responsibilities and technical guidance and assistance to BIA field offices and tribal coordinators by FHWA division offices.

Program Areas

The Department of Transportation, at the direction of Congress, in the Omnibus Budget Reconciliation Act of 1981, conducted a major review to determine which state and local highway safety programs have been most effective in reducing traffic crashes, injuries and fatalities. The six most effective NHTSA and FHWA highway safety programs are: (1) Alcohol and other drugs Countermeasures; (2) Police Traffics; (3) Occupant Protection; (4) Traffic Records; (5) Emergency Medical Services, and; (6) Roadway Safety and Motorcycle Safety.

Funding Criteria

The Bureau of Indian Affairs will reimburse for costs associated with the following:

(1) Alcohol and other drugs Countermeasures—Salary (DWI) enforcement/education/rehabilitation); (DWI) training; breath-testing equipment; community/school alcohol traffic safety education; (DWI) offender education/rehabilitation, and vehicle expenses.

(2) Police Traffic Services—Salary (traffic enforcement/education); traffic enforcement training; speed enforcement equipment; community/school education, and vehicle expenses.

(3) Occupant Protection—(A) Child Car Seat Program—child car seats; car seat transportation/storage; education materials, and; office expenses. (B) Community Seat Belt Program—Salary; educational/promotional materials; office expenses; and training.

(4) Traffic Records—salary; computerized equipment.

(5) Emergency Medical Services—training is the only allowable cost for funding.

(6) Roadway Safety and Motorcycle Safety—Traffic signs (warning, regulatory, work zone); hardware and sign posts.

Project Application

Application packets will be forwarded to the tribes on May 1 of each program year. Upon receipt of the application packet, each tribe should prepare a proposed project application based upon the following guidelines:

A. *Program Planning.* Program planning shall be based upon the highway safety problems identified and countermeasures selected by the tribe for the purpose of reducing traffic crash factors.

B. *Problem Identification.* Highway traffic safety problems shall be identified from the best data available.

The data may be found in tribal enforcement records on traffic crashes. Other sources of data include ambulance records, court and police arrest records. The problem identification process may be aided by using professional opinions of personnel in law enforcement, Indian Health Service, driver education, road engineers, etc.

Impact problems will be identified during the identification process. An impact problem is a highway safety problem that contributes to car crashes, fatalities and/or injuries, and one which may be corrected by the application of countermeasures. Impact problems can be identified from analysis of statewide and/or tribal traffic records. The analyses should consider, as a minimum: Pedestrian, motorcycle, pedalcycle, passenger car, school bus, and truck accidents; records on problem drivers, roadside and roadway hazards, alcohol involvement, youth involvement, defective vehicle involvement, suspended or revoked driver involvement, speed involvement and safety belt usage.

C. *Countermeasure Selection.* When tribal highway traffic safety problems are identified, appropriate countermeasures shall be developed by the tribe to solve or reduce the problems. The development of these countermeasures should take into account the overall cost of the countermeasure versus its possible effects on the problem.

D. *Objectives/Performance Indicators.* After countermeasure selection, the objective(s) of the project must be expressed in clearly defined, time-framed and measurable terms.

E. *Budget Format.* The activities to be funded shall be outlined according to BIA object groups, i.e., personal services, travel, supplies and materials, equipment, contracts, training, etc. Each object group shall be quantified, i.e., personal activities should show number to be employed, hours to be employed, hourly rate of pay, etc. Each object group shall have sufficient detail to show what is to be procured, unit cost, quarter in which the procurement is to be made and the total cost, including any tribal contribution to the project.

F. *Evaluation Plan.* Evaluation is the process of determining whether a highway safety activity should be undertaken, if it is being properly conducted and if it has accomplished its objective. A plan explaining how the evaluation will be accomplished and identifying the criteria to be used in measuring performance shall be included in the grant application.

G. *Technical Assistance.* Bureau of Indian Affairs personnel will be available to tribes for technical assistance in the preparation of tribal project applications.

H. *Section 402 Project Length.* Section 402 funds shall not be used to fund the same project at one location or jurisdiction for more than three years.

Submission Deadline

Each tribe must submit its application to the BIA Agency or Area Office serving the area in which the tribe is located. The application will be sent to the attention of: Indian Highway Safety Program Coordinator. The application must be received by July 1 of each program year. Request for extension to this deadline will not be granted.

Selection Criteria

Project application will be reviewed and evaluated by the Indian Highway Safety Program Office and applications will be ranked by assigning points to four areas of consideration. Those areas of consideration and their respective point values are listed below:

Magnitude of Problem—50 Points

1. Does a highway safety problem exist?
2. Is the problem significant?
3. Does the project contribute to the solution of the problem identified?
4. Number of traffic crashes last three years? Alcohol related?
5. Number of reported fatalities last three years? Alcohol related?

Countermeasure Selection—40 Points

1. Are the countermeasures selected the most effective?
2. Are they cost effective?
3. Have objectives been stated in realistic performance terms and are they attainable?
4. Are the objectives time-framed and are the time-frames realistic and attainable?

Tribal Leadership and Community Support—10 Points

1. Are tribal resources used in this project? Tribal Resolution?
2. Does the project have community support? Support Letters?

Past Performance + or − —10 Points

1. Reporting (Financial & Programmatic).
2. Accomplishments.

Notification of Selection

The tribes selected to participate will be notified by letter. Each tribe will be requested to submit a Certification Regarding Drug-Free Workplace Requirements. Indian tribes receiving highway safety grants through the Indian Highway Safety Program must certify that they will maintain a drug-free workplace. The certification must be signed by an individual authorized to sign for the tribe. The certification must be received by the BIA and U.S. Department of Transportation prior to the release of grant funds for the tribe.

Notification of Non-Selection

The program Administrator will notify each tribe not selected. The tribe will be advised of the reason for non-selection.

Uniform Administrative Requirements for Grants-in-Aid

Uniform grant administration practices have been established on a national basis for all grant-in-aid programs by OMB Circular A–102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments". Cost principles applicable to grants and contracts with State and local governments have been established by OMB Circular A–87 and NHTSA Order 462–13A. It is the responsibility of the Program Administrator, Area Coordinators, and Contracting/Grants Officers to establish operating procedures consistent with the applicable provisions of those circulars.

Standards for Financial Management System

Tribal financial management systems must provide for:

1. Accurate, current, and complete disclosure of financial results of the highway safety project.
2. Adequate recordkeeping.
3. Control over and accountability for all funds and assets.
4. Comparison of actual with budgeted amounts.
5. Documentation of accounting records.
6. Appropriate auditing. Highway safety projects will be included in the tribal A–128 Single Audit.

Tribal programs will provide a monthly financial status report to the Department of Transportation. This report of expenditures will be submitted to the Program Administrator no later than 15 days beyond the reporting month.

Project Monitoring

During the program year, it is the responsibility of the BIA to maintain a degree of project oversight, provide technical assistance as needed to assist the tribe in fulfilling its objectives, and assure that grant provisions are complied with.

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Project Evaluation

A performance evaluation will be conducted for each highway safety project by the Bureau of Indian Affairs. The evaluation will measure the actual accomplishments to the planned activity.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-14644 Filed 6-18-91; 8:45 am]

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June 19, 1991

Part V

Department of Housing and Urban Development

Office of Assistant Secretary

Public and Indian Housing Drug Elimination Program; Notice of Funding Availability

VOL 56 ISS 118 JE 19 1991 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3268; FR-3052-N-01]

NOFA for the Public and Indian Housing Drug Elimination Program—FY 1991

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for FY 1991.

DATES: Applications are due on or before 5:15 p.m. local time, on July 26, 1991. An original and two copies of the application must be received by this deadline at the local HUD field office with jurisdiction over Public Housing Agency (PHA) applicants or, in the case of Indian Housing Authority (IHA) applicants, in the local HUD Office of Indian Programs, Attention: Assisted Housing Management Branch Director, or Office of Indian Programs Director.

SUMMARY: This NOFA announces HUD's FY 1991 funding of $140,775,000 for the Drug Elimination Program (DEP). In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, and application processing, including how to apply and how selections will be made.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1197 or 708-3502. A telecommunications device for deaf persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: .

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Expedited review has been requested with a twenty day public comment period, so that the application process described in this notice may be carried out after approval of the described collections of information.

Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the documents making up the collection of information. Information on the estimated public reporting burden is provided below:

Section of NOFA affected	No. of respondents	No. of respondents per response	Total annual responses	Hours per response	Total hours
I(c)(f)	300	1	300	6	1,800
III (entire)	500	1	500	70	35,000
Total annual reporting burden					36,800

Send comments regarding this burden estimate, or any other aspect of this collection of information, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Paperwork Reduction Project, Office of Management and Budget, Washington, DC 20503.

I. Purpose and Substantive Description

(a) Authority

This program is authorized under chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101-625. Before the NAHA amendments to the Drug Elimination Program, a final rule implementing DEP, codified as 24 CFR part 961, was issued by HUD at 55 FR 27598 (July 3, 1990). Because of the amendments made by NAHA, a revised rule for the Drug Elimination Program is being proposed that will amend 24 CFR part 961. However, the requirements of this NOFA will provide guidance for applicants that will implement the NAHA changes for this year's program funding while the rulemaking is pending.

HUD has determined that Congress intended the Drug Elimination Program as amended by NAHA to apply to the FY 1991 program funding. The NAHA amendments specifically authorize the appropriation of program funding for FY 1991, indicating a clear intent to carry out the Drug Elimination Program as amended by NAHA. While HUD is issuing a proposed rule for public comment to implement the NAHA amendments, a final rule could not take effect for at least ninety days at the very earliest, allowing for a sixty day comment period on the proposed rule and a thirty day waiting period after publication of the final rule, in keeping with the Department's rulemaking policy and procedure at 24 CFR part 10. The existing regulation at 24 CFR part 961 only implements the Drug Elimination Program as it existed before amendment by NAHA, and in some respects, the existing regulation frustrates the changes that Congress saw fit to enact. For example, NAHA permits the funding of drug treatment programs, the existing rule does not; the existing rule requires programs designed to reduce the use of drugs in and around public housing projects to be "innovative," but NAHA removes the requirement of innovation. Accordingly, HUD considers those portions of 24 CFR part 961 that conflict with NAHA no longer to be valid. Rather, the guidance provided in this NOFA is to be followed by program applicants.

Besides implementing NAHA, the additional information provided in this NOFA will be responsive to program applicants who, in HUD's experience in implementing DEP so far, have demonstrated a need for more detailed guidance in the preparation of applications.

(b) Allocation Amounts

The amount available for funding under this NOFA in FY 1991 is $140,775,000. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1991, approved November 5, 1990, Public Law 101-507, appropriated $150 million for the Drug Elimination Program and for drug information clearinghouse services for FY 1991. Of this amount, $1 million is to be used for technical assistance and training. The clearinghouse services have been allocated $725,000. In addition, section 520 of NAHA set aside five percent of funds appropriated for the Drug Elimination Program for the Youth Sports Program, a total figure of $7.5 million for FY 1991. The remaining $140,775,000 is the funding available for this program.

HUD is distributing grant funds under this NOFA to each of its 10 regional offices on the basis of a formula allocation. The formula has been re-computed for FY 1991 to achieve a more equitable distribution of funds. The formula allocation is based upon the relationship of the number of public/Indian housing units per region and the level of drug-related crime within each region, based upon statistics compiled by the U.S. Department of Justice, Federal Bureau of Investigation, ("Uniform Crime Reports for Drug Abuse Violations—1989").

Maximum grant award amounts under this NOFA are based upon a sliding scale, using either an overall cap to the grant award or a maximum per unit cap, depending upon the number of units in a housing authority. HUD's rationale for using this sliding scale is that larger PHAs have more efficient economies of scale. Under the schedule listed below, a housing authority with 20,000 units could apply for a maximum grant award of $3,000,000, i.e. 20,000 units x $150 per unit = $3,000,000, which is greater than the maximum flat grant award of $1,000,000. The maximum grant awards under this NOFA are as follows, although HUD has discretion to determine the amount of any grant award:

(i) For housing authorities with 1-499 units: the maximum grant award is either a maximum cap of $600 per unit or a maximum grant award of $50,000, whichever is greater;

(ii) For housing authorities with 500-4,999 units: the maximum grant award is either a maximum cap of $200 per unit or a maximum grant award of $250,000, whichever is greater;

(iii) For housing authorities with 5,000-44,999 units: the maximum grant award is either a maximum cap of $150 per unit or a maximum grant award of $1,000,000, whichever is greater;

(iv) For housing authorities with 45,000 or more units: the maximum grant award is a maximum cap of $100 per unit.

Any grant funds under this NOFA that are allocated to a region, but that are not reserved for obligation for specific grantees within the time period to be specified in the application package by the Secretary for this fiscal year, must be returned to HUD Headquarters for reallocation to other regions. The reallocation of these funds to the regions will be based upon the formula allocation method described in this NOFA, except that HUD will omit from the formula allocation those figures representing the extent of drug-related crime and the number of public housing units for the region that returned the grant funds. Regions that receive reallocated funds will use those funds to award grants to eligible applicants that did not get funded under the initial competition held under this NOFA. These grants will be awarded by each HUD regional office to the highest-ranked remaining applicants in the region that scored at least 80 points under the selection criteria. HUD is distributing grant funds under this NOFA to its 10 regional offices, in accordance with the following schedule:

HUD Region	Allocation
Region I	$7,516,600
Region II	25,485,194
Region III	14,859,144
Region IV	37,052,317
Region V	23,343,982
Region VI	14,746,201
Region VII	5,876,617
Region VIII	2,602,734
Region IX	6,478,466
Region X	2,964,583

(c) Eligibility

Eligible Applicants

Although section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Public Law 101-625, expanded this program to include assisted housing, the appropriation for the program in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1991, approved November 5, 1990, Public Law 101-507, did not include any funds for assisted housing. Hence, funding under his NOFA is available only for PHAs and IHAs authorized under the United States Housing Act of 1937 (other than under section 8). Assisted housing is not funded under this NOFA. Public Housing Agencies and Indian Housing Authorities are eligible to apply for Drug Elimination grants for drug elimination activities in public and Indian housing projects.

Eligible Activities

Grant funds may be used as indicated for one or more of the following activities designed to eliminate drug-related crime:

(a) *Security personnel.* (1) Employment of security personnel in public and Indian housing projects is permitted under this program. Security personnel employed under this section shall be required as a condition of employment to meet all relevant State, tribal or local insurance, training, licensing, or other similar requirements.

(2) Security personnel shall not be employed under this section to provide any services except those over and above what the local government is contractually obligated to provide under its Cooperation Agreement with the PHA or IHA (as required by the grantee's Annual Contributions Contract).

(b) *Additional security and protective services.* (1) Reimbursement of local/tribal law enforcement agencies for the cost of providing additional security and protective services for public and Indian housing projects is permitted under this program. The security and protective services provided must be either:

(i) A service that no local/tribal law enforcement agency (or agencies) provided for public or Indian housing projects administered by the grantee within the six months immediately preceding the publication of this Notice of Funding Availability (NOFA) allocating assistance under this program, except for services funded under this program; or

(ii) A quantifiable increase in the level of an ongoing service above that which the local/tribal law enforcement agency (or agencies) provided for public or Indian housing projects administered by the grantee, within the six months immediately preceding the publication of this NOFA allocating assistance under this program, except for services funded under this program.

(2) Additional security and protective services to be funded under this program must be over and above those that the local/tribal government where the proposed project is located is contractually obligated to provide under its Cooperation Agreement with the PHA or IHA (as required by the grantee's Annual Contributions Contract). Grant funds shall only be used to pay for the cost of additional law enforcement services over and above those for which the local/tribal government is already contractually

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obligated to provide under the Cooperation Agreement. The additional services shall be verifiable through time sheets and written work assignments.

(3) Communications equipment, computers accessing local, tribal, State and national security networks and databases, facsimile machines, telephone equipment, bicycles, and scooters may be eligible items as incidental costs if used primarily in connection with the provision of additional services, such as the establishment of a law enforcement substation on the funded premises of the grantee. Acquisition procedures for equipment purchased with funding under this section must be in compliance with all HUD requirements and must remain the property of the grantee. For PHAs and IHAs, the procurement standards to be followed are found at 24 CFR 85.36.

(4) Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations; or for the purchase, contract for or maintenance of security dogs for use by local/tribal law enforcement agencies.

(5) Funding is not permitted for compensating informants or confidential informants.

(6) Funding is not permitted under this section for the purchase or leasing of police cars, vans, buses, motorcycles, or motor bikes.

(7) Funding is not permitted to purchase or lease any clothing or equipment that would be normally provided by the law enforcement agency, i.e., uniforms, weapons, protective vests, etc.

(8) Funding under this section is only permitted if the grantee has executed an agreement for such additional law enforcement services.

(c) *Physical Improvements to Enhance Security.* (1) Physical improvements that are specifically designed to enhance security are permitted under this program. These improvements may include (but are not limited to) the installation of lighting systems, fences, bolts, locks; the landscaping or reconfiguration of common areas so as to discourage drug-related crime; and other physical improvements in public and Indian housing projects that are designed to enhance security and discourage drug-related activities.

(2) An activity or project that is funded under any other HUD program, such as the modernization program at 24 CFR Part 968 or 24 CFR Part 905, shall not also be funded by the program under this section.

(3) Funding is not permitted for physical improvements that involve the demolition of any units in a project.

(4) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(5) Funding is not permitted for the acquisition of real property.

(d) *Employment of investigators.* (1) Employment of one or more individuals is permitted under this program to:

(i) Investigate drug-related crime in or around the real property comprising any public or Indian housing project; and

(ii) Provide evidence relating to any such crime in any administrative or judicial proceedings.

(2) Investigators employed under this program are required as a condition of employment to meet all relevant State, tribal, or local training, insurance, licensing, or other similar requirements.

(3) Funding is not permitted for the purchase of controlled substances for any purpose, including use in sting operations.

(4) Funding is not permitted for compensating informants or confidential informants.

(e) *Voluntary tenant patrols.* (1) The provision of training, communitions equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting in cooperation with officials of local/ tribal law enforcement agencies is permitted under this program. Members must be volunteers and must be tenants of the project that the tenant patrol represents. Patrols established under this program are expected to undertake surveillance for drug-related criminal activity in the projects proposed for assistance, and to report such activities to the cooperating local law enforcement agency. Grantees are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this program. The cost of this insurance will be considered an eligible program expense.

(2) The applicant, cooperating local law enforcement agency and the members of the tenant patrol are required, prior to putting the tenant patrol into effect, to enter into and execute a written agreement that describes the following:

(i) The nature of the activities to be performed by the tenant patrol, and the patrol's scope of authority;

(ii) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program;

(iii) The type of initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required prior to putting the tenant patrol into effect);

(iv) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a PHA's or IHA's liability insurance.

(3) Tenant patrols established under this program are required to meet all relevant State, local or tribal training, insurance, licensing, or other similar, requirements.

(4) Communication equipment eligible for funding under this program shall be equipment that is reasonably related to the operation of the tenant patrol and that is otherwise permissible under State, local or tribal law.

(5) Related equipment eligible for funding under this program shall be equipment that is reasonably related to the operation of the tenant patrol and that is otherwise permissible under State, local or tribal law.

(6) Funding is not permitted to obtain ammunition, firearms or other weapons. Tenant patrols are expressly prohibited from carrying or using firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program.

(7) Under this program, bicycles and uniforms (caps and other clothing items that identify voluntary tenant patrol members, including patrol t-shirts and jackets) to be used by the members of the tenant patrol may be eligible items.

(8) Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations; or for the purchase, contract for, or maintenance of security dogs for use by local law enforcement agencies.

(9) Funding is not permitted under this program for the purchase or leasing of police cars, vans, buses, motorcycles or motor bikes, bullet-proof vests, etc.

(10) Funding is not permitted for compensating informants or confidential informants.

(11) Drug Elimination Program funds may not be used for any type of compensation for voluntary tenant patrol participants.

(f) *Programs to reduce the use of drugs.* Programs that reduce the use of drugs in and around the premises of public and Indian housing projects, including drug abuse prevention, intervention, referral and treatment programs are permitted under this program.

(1) *Drug Prevention.* Programs that will be considered for funding under this

program must provide a comprehensive drug prevention approach for public and Indian housing residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in public or Indian housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of which the housing project of the applicant is a part, and the applicant must act to bring those available program components onto the premises. The salary of a coordinator whose responsibilities would include finding out what community resources are already available and bringing these resources onto the premises, or providing residents referrals to them, as components of a comprehensive drug prevention program is an eligible activity under this paragraph. Activities that should be included in these programs are:

(i) Drug education opportunities for public and Indian housing residents. The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract with drug education professionals to provide appropriate training or workshops. The drug education professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public and Indian housing residents.

(ii) Family and other support services. Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for public and Indian housing facilies.

(iii) Youth services. Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving public and Indian housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(iv) Economic/educational opportunities for residents and youth. Drug prevention programs should demonstrate a capacity to provide public and Indian housing residents the opportunities for interaction with or referral to established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide public and Indian housing residents the opportunity to interact with private sector businesses in their immedate community for the same desired goals.

(2) *Intervention.* The aim of intervention is to identify and refer public and Indian housing resident drug users and to assist them in modifying their behavior or, if necessary, to obtain early treatment. The applicant must establish a program with the goal of preventing drug problems from continuing once detected. The training of housing staff and residents for this purpose is an eligible activity under this paragraph, as is the employment of a coordinator to establish and implement the program.

(3) *Drug Treatment.* Drug treatment programs designed to reduce use of drugs in and around public and Indian housing are made eligible under this program. The cost of leasing, acquiring, constructing or rehabilitating the facility space for a drug treatment program is not an eligible expense, but the costs of staffing and reasonable expenses for furnishing and equipping a facility are eligible expenses.

(i) Treatment funded under this program shall be in or around the premises of housing projects to provide tenants more effective treatment. For the purposes of this program, "in or around" means within, or immediately adjacent to, the physical boundaries of a public or Indian housing project.

(ii) Treatment professionals hired under this program are required to meet all relevant State, tribal, or local training or continuing training, insurance, licensing, or other similar requirements.

(iii) Funds awarded under this program are targeted towards the development and implementation of new treatment programs, or the improvement of, or expansion of existing programs on-site in public and Indian housing developments.

(iv) Each proposed drug treatment program should address the following goals:

(A) Increase resident accessibility to drug treatment services,

(B) Decrease criminal activity in and around public and Indian housing projects by reducing illicit drug use among public and Indian housing residents, and

(C) Provide services designed for youth and/or maternal drug abusers, i.e., prenatal/post partum care, specialized counseling in women's issues, parenting classes.

(v) Treatment programs should meet the following criteria:

(A) Applicants must be able to demonstrate the ability to provide comprehensive drug treatment programs which may include drug-free housing units specially set asite for residents in treatment and their families, if any, who normally reside with them, and intensive outpatient and aftercare components, all of which must be on-side. Grant funds may also be used to provide necessary treatment-related services to residents and their families in their existing units. Applicants may provide the service of formal referral arrangements to other treatment programs not in or around the assisted projects in instances where the resident is able to obtain treatment costs from sources other than this program.

(B) Family/collateral counseling.

(C) Linkages to educational/ vocational counseling.

(D) Therapeutic approaches which have proven effective with similar populations will be considered, e.g., therapeutic community approaches, cognitive restructuring approaches which empower residents cognitive restructuring approaches which empower residents to address their recovery, behavioral approaches with emphaisis on educational and vocational accomplishments.

(E) Coordination of services to appropriate local drug, HIV-related service agencies, state mental health and public health programs.

(vi) Applicants must demonstrate a working partnership with the Single State Agency or current state licensure provider, to coordinate, develop and implement the drug treatment proposal.

(vii) The Single State Agency or State licensure provider must certify that the drug treatment provider(s) has provided drug treatment services to similar

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populations, identified in the application, for two prior years.

(viii) The Single State Agency must certify that the drug treatment proposal is consistent with the State treatment plan; and that the treatment provider(s) meets all State licensing requirements.

(4) Funding is not permitted for treatment of residents at long-term, in-patient treatment programs, or any programs not in or around the premises of the grantee's housing projects.

(5) Funding is not permitted for insurance for residents for drug treatment.

(6) Funding is not permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(7) Funding is not permitted for the leasing, acquisition, construction or rehabilitation of drug treatment facilities.

(8) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g., methadone maintenance), rather than for immediate control of a disorder.

(9) Funding is not permitted to subgrantees until they obtain required insurance coverage.

(10) Funding is not permitted for T-shirts, caps, (except tenant patrol uniforms) buttons, advertising campaigns, rallies, marches, or community celebrations.

(11) The administrative costs related to screening or evicting residents for drug-related crimes are not permitted.

(12) Funding is not permitted for the purchase of vehicles for youth activities.

(13) Funding is permitted for the leasing of vehicles for youth activities.

(g) *RMCs and RCs.* Funding under this program is permitted for PHAs and IHAs to contract with RMCs and incorporated RCs to develop security and drug abuse prevention programs involving site residents. Such programs may include (but are not limited to) voluntary tenant patrol activities, drug education, drug intervention, referral, and outreach efforts.

(d) Selection Criteria and Ranking Factors: Selection Criteria.

Each application for funding under this NOFA must include a plan as described below for addressing the problem of drug-related crime on the premises of the public or Indian housing for which the application is being submitted. Each application submitted by a PHA or IHA for a grant under this NOFA will be evaluated on the basis of the following selection criteria:

(1) *Factor 1: The extent of the drug-related crime problem in the public or Indian housing project or projects proposed for assistance.* (Maximum points: 35) In assessing this criterion, HUD will consider the following factors:

(i) The severity of the drug-related crime problem, as reflected by:

(A) Crime statistics and other data as described in this paragraph or paragraph (B), submitted in the applicant's plan that is prepared in accordance with Section III(c)(2) of this NOFA. Information under this paragraph would consist of the best available objective data on the nature, source, and extent of the problem of drug-related crime, and the problems associated with drug-related crime. These data may include (but not necessarily be limited to) crime statistics from Federal, State, tribal or local law enforcement agencies, or information from the applicant's records on the types and sources of drug-related crime in the projects proposed for assistance; descriptive data as to the types of offenders committing drug-related crime in the applicant's projects (e.g., age, residence, etc.); the number of lease terminations or evictions for drug-related criminal activity; the number of emergency room admissions for drug use or drug-related crime; the number of police calls for drug-related criminal activity; the number of residents placed in treatment for substance abuse; and the school drop-out rate and level of absenteeism for youth. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from its records or those of RMCs or RCs. The crime statistics should be reported both in real numbers, and as a percentage of the residents in each project (e.g., 20 arrests for distribution of heroin in a project with 100 residents reflects a 20% occurrence rate). The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years. Applicants must address in their assessment how these crimes have affected the PHA's or IHA's targeted projects, and how the applicant's overall plan and strategy is specifically tailored to address these drug-related crime problems.

(B) To the extent that data in accordance with paragraph (A), above, are not available, HUD will consider other relevant information. Examples of such information include: Resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; the use of local government or scholarly studies or other research conducted in the past year that analyze drug activity in the targeted projects; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police; and the opinions and observations of individuals having direct knowledge of drug-related crime problems concerning the nature and extent of those problems in the projects proposed for assistance. (These individuals may include law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.)

(C) In awarding points under paragraphs (1)(i)(A) and (B) of this section, HUD will evaluate the extent to which the applicant has provided data that reflects a severe drug-related crime problem, both in terms of the frequency and nature of the drug-related crime incidents and the problems associated with drug-related crime in the projects proposed for funding; the extent to which such data are meaningfully grouped by the variables listed under paragraphs (1)(i)(A) and (B) of this section; and the extent to which such data reflect an increase in drug-related crime over a period of time in the projects proposed for assistance. However, a reduction in drug-related crime in the housing of an applicant for years during which the applicant had in place a program under this part will not be considered to the disadvantage of the applicant. (Maximum points under paragraphs (A) and (B) of this section: 20.)

(ii) The relative severity of the drug-related crime in the applicant's projects, as reflected by the statistics submitted under paragraphs (1)(i)(A) and (B) of this section, in comparison to other applications submitted for funding under this program. However, a reduction in drug-related crime in the housing of an applicant for years during which the applicant had in place a Drug Elimination Program will not be considered to the disadvantage of the applicant. (Maximum points: 5)

(iii) The extent to which the applicant has analyzed the data compiled under paragraphs (1)(i)(A) and (B) of this section, and has clearly articulated its needs for reducing drug-related crime in the projects proposed for assistance. (Maximum points: 10)

(2) *FACTOR 2: The quality of the plan to address the crime problem in the public or Indian housing projects proposed for assistance, including the extent to which the plan includes initiatives that can be sustained over a period of several years.* (Maximum points: 35) The portion of this criterion dealing with initiatives that can be sustained over a period of years has been added by NAHA. In assessing this criterion, HUD will consider the following factors:

(i) The extent to which the applicant establishes a relationship between its drug-related crime problem (as identified in its plan assessment and its strategy for eliminating drug-related crime under the plan; the extent to which the applicant has considered and articulated its strategy goals and objectives; the extent to which the applicant's strategy provides for a comprehensive approach to eliminating drug-related crime in its projects (e.g., the strategy includes management practices, enforcement/security techniques, and a combination of intervention, referral, treatment and prevention programs); and the extent to which funding under this program will be targeted to the applicant's identified needs. (Maximum points: 15)

(ii) The extent to which the applicant's strategy is realistic, given the amount of funding requested under this program in relation to the overall strategy, and the timetable indicated by the applicant for beginning and completing each component of the strategy; the extent to which the applicant provides a cost analysis for each component of its strategy and describes the financial and other resources (as applied for under this NOFA and from other sources) that may reasonably be expected to be available to carry out each component; the extent to which the applicant describes the activities to be funded under this NOFA and indicates how such activities will be coordinated with, and complemented by, current services; and the extent to which the applicant describes how funding decisions were reached. (Maximum points: 5)

(iii) The extent to which the applicant has developed an evaluation process that includes measures it believes to be critical in evaluating the success of the plan; the extent to which the applicant has described in its plan the information to be gathered, and the method to be used to gather this information; and the extent to which the applicant relates the evaluation process to its assessment of the drug-related crime problem in the targeted projects (e.g., tracking of changes in identified crime statistics). (Maximum points: 10)

(iv) The extent to which the plan identifies non-HUD resources that the applicant reasonably expects to be available for the continuation of the program at the end of the grant term and the extent to which the applicant identifies initiatives that can be sustained over a period of years beyond the grant term. (Maximum points: 5)

(3) *FACTOR 3: The capability of the applicant to carry out the plan.* (Maximum points: 25) In assessing this criterion, HUD will consider the following factors:

(i) The extent of the applicant's administrative capability to manage its projects, as measured by its performance with respect to operative HUD requirements under the ACC and 24 CFR Chapter IX. In evaluating administrative capability under this factor, HUD will also consider whether there are any unresolved findings from prior HUD reviews or audits undertaken by the Inspector General, the General Accounting Office, or Independent Public Accountants; whether the applicant is operating under court order; and, if applicable, the progress made by a Troubled PHA in achieving goals established under a Memorandum of Agreement executed with HUD. (Maximum points: 10)

(ii) The extent to which the applicant has implemented effective screening procedures to determine an individual's suitability for public or Indian housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202, and 29 U.S.C. 794 and 24 CFR 8.4 which deal with individuals with disabilities); implemented a plan to reduce vacancies; implemented eviction procedures in accordance with 24 CFR part 966, subpart B, and section 503 of NAHA; or undertaken other management practices to eliminate drug-related crime in its projects. (Maximum points: 5)

(iii) The extent of, and degree of, success reflected by the applicant's prior track record in implementing and managing HUD grant programs (including funding under this program or other grant programs such as CIAP, youth sports, child care, resident management, etc.), and other Federal drug-related grant programs. (Maximum points: 5)

(iv) The extent to which the applicant has already undertaken successful anti-drug related crime efforts that will serve as the foundation for the proposed grant under this program. (Maximum point: 5)

(4) *Factor 4: The extent to which tenants, the local government and the local community support and participate in the design and implementation of the activities proposed to be funded under the application.* (Maximum points: 30) Prior to amendment by NAHA, the statutory wording of this criterion read, "the extent to which the local government and local community support the anti-crime activities of the public housing agency." In assessing this criterion, HUD will consider the following factors:

(i) The extent to which the local community, as represented by local organizations, businesses, and residents, and local government, through its agencies and officials, participate in the design and implementation of the applicant's plan; and the extent to which the applicant has leveraged funds and other resources from other public and private sources, as evidenced by letters of commitment to provide funding, staff, or in-kind resources. (Maximum points: 10)

(ii) The extent to which the relevant governmental jurisdiction has met its law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantee's Annual Contributions Contract with HUD). (Maximum points: 10)

(iii) The extent to which project tenants, and an RMC or RC, where they exist, are involved in the planning and development of the grant application and plan strategy, and support and participate in the design and implementation of the activities proposed to be funded under the application as reflected by information provided by the applicant, augmented with information concerning tenants, the applicant's response to tenant and RMC/RC comments, and the certification of resident involvement. (Maximum points: 10)

Ranking Factors

Each application for a grant award that is submitted in a timely manner to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Indian Programs, and that otherwise meets the requirements of this NOFA, will be evaluated in accordance with the selection criteria specified above. Applications from PHAs will be jointly evaluated and scored by the HUD field and regional offices with jurisdiction over the public housing authority. Applications from IHAs will be jointly evaluated and scored by the HUD Office of Indian Programs and the regional office with jurisdiction over the housing authority. *An application must receive a minimum score of 80 points out of the maximum of 125 points awardable under this competition to be eligible for funding.* Each HUD regional office will rank the eligible applications for its region based upon their overall rating scores. Grants will be awarded by each HUD regional office to the highest-ranked applications within its region.

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II. Application Process

(a) To apply for a grant, PHAs must request an application package from the local HUD field office with jurisdiction over their agency. Indian Housing Authorities (IHAs) must request an application package from the HUD Office of Indian Programs with jurisdiction over their authority. Application packages are also available through the Drug Information Strategy Clearinghouse, by calling 1-800-245-2691. (See the appendix to this NOFA for a list of HUD field offices, and HUD Offices of Indian Programs.)

(b) PHAs must submit an original plus two copies of their completed grant application by the submission deadline to the local HUD field office with jurisdiction over their agency. IHAs must submit their completed grant application by the submission deadline to the HUD Office of Indian Programs with jurisdiction over their authority. (A complete listing of HUD regional and field offices, including HUD Offices of Indian Programs, is provided in the appendix to this NOFA).

(c) The deadline for the submission of grant applications under this NOFA is 5:15 p.m. local time, on July 25, 1991. Applications (original and two copies) must be physically received by the deadline at the local HUD field office or, in the case of IHAs, in the local HUD Office of Indian Programs, with jurisdiction over the PHA or IHA. Attention: Assisted Housing Management Branch Director, or Office of Indian Programs Director. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable.

III. Checklist of Application Submission Requirements

The application requirements consist of the following procedures:

(a) An application package may be obtained from the local HUD field office or Office of Indian Programs having jurisdiction over the PHA or Indian housing authority making an application, or by calling HUD's Drug Information and Strategy Clearinghouse, telephone 800-245-2691. The application package contains information on all exhibits and certifications required under this NOFA.

(b) For assistance in completing the application or information on training/workshops, the PHA or Indian housing authority may contact the local HUD field office, or Office of Indian Programs, or Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, telephone 202-708-3502 or 202-708-3503.

(c) To qualify for a grant under this program, an applicant must submit an application to HUD that contains the following:

(1) Standard Grant Application Form SF-424 and SF-424A with narrative describing each major program and its related cost;

(2) A plan for addressing the problem of drug-related crime on the premises of the housing for which the application is being submitted that provides the following information:

(i) An assessment of the severity of the drug-related crime problem, as reflected by crime statistics or other information prepared in accordance with section I(d)(1) (A) and (B), above, of this NOFA;

(A) The assessment provided under paragraph (i) can be accomplished through a variety of methods, using more than one existing source of information, including: surveys; on-site reviews/management reviews; statistical indicators (such as type of crimes, area where the offenders reside, age of offenders, school attendance, health service referrals, grade point averages, vandalism costs, vacancy rates, unemployment rates, library check out records, etc.); research or studies conducted by local officials; and analysis and critique of a particular drug-related crime problem;

(ii) The applicant must specify the measures that it believes to be important in evaluating the success of the plan, including goals that relate back to the assessment data provided under paragraph (i); discuss the types of information the applicant will need to measure the plan's success; and indicate the method by which the applicant will gather and analyze this information;

(iii) The plan must include a narrative discussion of the applicant's current activities, if any, to eliminate drug-related crime in its targeted projects, including its efforts to implement screening procedures to determine an applicant's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202, and 29 U.S.C. 794 and 24 CFR 8.4 which deal with individuals with disabilities); its efforts to implement eviction procedures in accordance with 24 CFR part 866, subpart B, and section 503 of NAHA; its efforts to implement a plan to reduce vacancies; or its other management practices to eliminate drug-related crime in the applicant's projects; the applicant should also describe its experience, if any, in implementing and managing other HUD grant programs (e.g., CIAP, youth sports, child care, etc.), and other Federal anti-drug-related crime programs; describe the current activities, if any, being undertaken by community and governmental entities, project residents, or RMCs or RCs, to address the problem of drug-related crime in the projects proposed for assistance; and provide a listing of the names of agencies or other entities (including the applicant), if any, currently providing assistance to address the drug-related crime problem in the targeted projects and describe what assistance they are providing;

(iv) A narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each of the projects proposed for assistance must be included in the plan; at a minimum, the discussion must include the following information for each of the projects proposed for assistance:

(A) A narrative describing each major activity in the applicant's strategy and how these components interrelate; the applicant should specifically address whether it plans to implement a comprehensive drug elimination strategy that involves management practices, enforcement/security techniques, and a combination of drug abuse prevention, intervention, referral, and treatment programs; the applicant should indicate how its proposed activities will complement, and be coordinated with, current services;

(B) The anticipated cost of each component of the strategy, and the financial and other resources (including funding under this program, and from other resources) that may reasonably be expected to be available to carry out each component;

(C) A timetable for beginning and completing each component of the strategy;

(D) The role of residents, and RMCs and RCs where they exist, in planning and developing the grant application and strategy, and in implementing the applicant's plan; the applicant must provide the name of the RMC or incorporated RC that will develop any security and drug abuse prevention programs involving site residents; the applicant must describe the role of any other entities (e.g., local and State governments and community organizations) in planning and carrying out the strategy;

(E) The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the anti-drug related effort and how they will be allocated to plan components that can be sustained over a period of years;

(F) If grant amounts are to be used for physical improvements, a statement as to how these improvements will be coordinated with the applicant's modernization program under 24 CFR part 968 or 24 CFR part 905;

(G) If grant amounts are to be used for prevention, intervention or treatment programs to reduce the use of drugs in and around the premises of public or Indian housing projects, a statement by the applicant as to the nature of the program, a discussion of how the program represents a prevention, intervention or treatment strategy, and how the program will further the PHA's or IHA's strategy to eliminate drug-related crime in the projects proposed for assistance;

(3) Summary of any written resident and resident organization comments submitted to the applicant on the design and implementation of the plan;

(4) A certification by the applicant that:

(i) The applicant's assessment of its drug-related crime problem is based upon the best available objective data; and that the description of current activities being undertaken by the applicant to address the problem of drug-related crime in its projects, and the information regarding the applicant's strategy for addressing the problem of drug-related crime in its projects are both accurate and complete;

(ii) The applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.);

(iii) The applicant will comply with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101-121, approved October 23, 1989), as implemented in HUD's interim final rule published in the Federal Register on February 26, 1990 (55 FR 6736) (This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.);

(5) A certification by the chief executive officer of a State or a unit of general local government (including an Indian tribe), in which the projects proposed for assistance are located that:

(i) Grant funds provided under this part will not substitute for activities currently being undertaken by the jurisdiction to address the problem of drug-related crime in these projects;

(ii) Any additional security and protective services to be provided under this program meet the requirements of this program as indicated in this NOFA;

(iii) The relevant governmental jurisdiction will take the actions described in the applicant's strategy under its plan;

(iv) That the locality is meeting its obligations under the Cooperation Agreement with the PHA or IHA, particularly with regard to law enforcement services (Whether or not a locality is meeting its obligations under the Cooperation Agreement with the applicant, the CEO for the locality must describe the current level of law enforcement services being provided to the projects proposed for assistance. If the jurisdiction is not meeting its obligations under the Cooperation Agreement, the CEO should identify any special circumstances relating to its failure to do so.);

(6) If applying for voluntary tenant patrol funding, a certification from the chief of the local law enforcement agency, that the law enforcement agency has entered into, or will enter into, an agreement with the voluntary tenant patrol and the applicant, in accordance with the requirements of this program;

(7) A certification by the RMC or RC, or other involved resident group where an RMC or RC do not exist, that the grant application was jointly prepared with the applicant, and that the applicant's description of the activities that the resident group will implement under the program is accurate and complete;

(8) Letters of commitment from governmental or private entities that describe the financial or other resources (e.g., staff or in-kind resources) that the entity agrees to provide for the applicant's anti-drug related crime efforts under this program;

(9) If applying for treatment program funding, a certification that the applicant has notified and consulted with the relevant Single State Agency or authority with drug program coordination responsibilities concerning its application; that the drug treatment provider(s) has provided drug treatment to a similar population for two prior years; that the proposed drug treatment project is consistent with the State treatment plan; and that the treatment providers meet all State licensing requirements.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, within three working days of the receipt of the application, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of receipt of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(1) are not necessary for HUD review under selection criteria/ranking factors; and

(2) cannot be submitted after the application due date has expired, to improve the substantive quality of the proposal. An example of a technical deficiency would be the failure of an applicant to submit a certification with its proposal.

V. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20401.

(b) *Federalism impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA implements a program that encourages PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and makes available grants to PHAs and IHAs to help them carry out their plans. As such, the program helps PHAs and IHAs to combat serious drug-related crime problems in their projects, thereby strengthening their role as instrumentalities of the States. Further review under the Order is also unnecessary since the NOFA generally tracks the statute and involves little implementing discretion.

(c) *Family Impact.* The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA implements a program that encourages PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and makes available

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grants to help PHAs and IHAs to carry out this plan. As such, the program is intended to improve the quality of life of public and Indian housing project residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is also not necessary since the NOFA essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

(d) *Section 102 HUD Reform Act.* On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under this program available on a competitive basis, Part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14(b)) HUD will provide further guidance on how this material may be accessed in a later Notice published in the **Federal Register.**

—Publish a Notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

Subpart C of the rule requires applicants that seek assistance from HUD for a specific project or activity must make the disclosures required under § 12.32. This subpart will be made effective through later publication of a Notice in the **Federal Register.** Since it will apply to applications solicited on or after the effective date of the Notice, this NOFA is not subject to its provisions.

Authority: Sec. 8127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et. seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 5, 1991.

Michael B. Janis,

General Deputy Assistant, Secretary for Public and Indian Housing.

Appendix

HUD Field Offices

REGION I

Jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts Regional Office

Harold Thompson, *(Acting) Regional Administrator,* Regional Housing Commissioner, HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, Massachusetts 02222-1092, (617) 565-5234, (FTS) 835-5234

Hartford, Connecticut Office

William Hernandez, Jr., Manager, HUD—Hartford Office, 330 Main Street, Hartford, Connecticut 06106-1860, (203) 240-4523, (FTS) 244-4523

Manchester, New Hampshire Office

James Barry, Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101-2487, (603) 666-7681, (FTS) 834-7681

Providence, Rhode Island Office

Casimir J. Kolaski, Jr., Manager, HUD—Providence Office, 330 John O. Pastore Federal Building and U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903-1745, (401) 528-5351, (FTS) 838-5351

Bangor, Maine Office

Richard Young, Supervisory Appraiser, HUD—Bangor Office, Professional Building, Casco Northern Bank Building, 23 Main Street, Bangor, Maine 04401-4316, (207) 945-0467 (FTS) 833-7534

Burlington, Vermont Office

William Peters, Chief, HUD—Burlington Office, Federal Building—Room B311, 11 Elmwood Avenue, Post Office Box 879, Burlington, Vermont 05402-0879, (802) 951-6290, (FTS) 832-6290

REGION II

Jurisdiction: New York, New Jersey

New York Regional Office

Dr. Anthony Villane, Regional Administrator-Regional Housing Commissioner, HUD—New York Regional Office, 26 Federal Plaza, New York, New York 10278-0068, (212) 264-8068, (FTS) 264-8068

Buffalo, New York Office

Joseph Lynch, Manager, HUD—Buffalo Office, Lafayette Court, 5th Floor, 465 Main Street, Buffalo, New York 14203-1780, (716) 846-5755), (FTS) 437-5733

Camden, New Jersey Office

Elmer Roy, Manager, HUD—Camden Office, 519 Federal Street, Camden, New Jersey 08103-9998, (609) 757-5081, (FTS) 488-5081

Newark, New Jersey Office

Theodore Britton, Jr., Manager, HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102-5504, (201) 877-1662, (FTS) 349-1614

Albany, New York Office

John Petricco, Manager, HUD—Albany Office, Leo W. O'Brien Federal Building, North Pearl Street and Clinton Avenue, Albany, New York 12207-2395, (518) 472-3567, (FTS) 562-3567

REGION III

Jurisdiction: Pennsylvania, Washington, D.C., Maryland, Delaware, Virginia, West Virginia

Philadelphia, Pennsylvania Regional Office

Harry Staller, Deputy Regional Administrator, HUD—Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106-3392, (215) 597-2560, (FTS) 597-2560

Washington, D.C. Office

I. Toni Thomas, Manager, HUD—Washington, D.C. Office, Union Center Plaza, Phase II, 820 First Street, N.E., Suite 300, Washington, D.C. 20002-4205, (202) 275-9200, (FTS) 275-9200

Baltimore, Maryland Office

Maxine Saunders, Manager, HUD—Baltimore Office, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202-1865, (301) 962-2121, (FTS) 922-3047

Pittsburgh, Pennsylvania Office

William Costello, (Acting) Acting Manager, HUD—Pittsburgh Office, 412 Old Post Office Courthouse Bldg., 7th Ave. & Grant St., Pittsburgh, PA 15219-1906, (412) 644-6428, (FTS) 722-6360

Richmond, Virginia Office

Mary Ann Wilson, Manager, HUD—Richmond Office, 400 North 8th Street, Richmond, Virginia 23240, (804) 771-2721, (FTS) 925-2721

Charleston, West Virginia Office

Michael Kulick, Manager, HUD—Charleston Office, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301-1795, (304) 347-7000, (FTS) 930-7036

Wilmington, Delaware Office

A. David Sharbaugh, Chief, HUD—Wilmington Office, 844 King Street, Wilmington, Delaware 19801, (302) 573-6300, (FTS) 487-6300

REGION IV

Jurisdiction: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

Atlanta, Georgia Regional Office

Raymond A. Harris, Regional Administrator-Regional Housing Commissioner, HUD—Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303-3388, (404) 331-5136 (FTS) 841-5136

Birmingham, Alabama Office

Robert E. Lunsford, Manager, HUD—Birmingham Office, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209-3144, (205) 731-1617, (FTS) 229-1617

Louisville, Kentucky Office

Verna V. Van Ness, Acting Manager, HUD—Louisville Office, 601 West Broadway, Post Office Box 1044, Louisville, Kentucky 40201-1044, (502) 582-5251, (FTS) 352-5251

Jackson, Mississippi

Sandra Freeman, Manager, HUD—Jackson Office, Dr. A.H. McCoy Federal Building, 100 W. Capitol Street, Room 910, Jackson, Mississippi 39269-1096, (601) 965-4702, (FTS) 490-4702

Greensboro, North Carolina

Larry J. Parker, Manager, HUD—Greensboro Office, 415 North Edgeworth Street, Greensboro, North Carolina 27401-2107, (919) 333-5363, (FTS) 699-5361

Caribbean Office

Rosa Villalonga, Acting Manager, HUD—Caribbean Office, San Juan Center, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918-1804, (809) 766-5201, (FTS) 498-5201

Columbia, South Carolina Office

Ted B. Freeman, Manager, HUD—Columbia Office, Strom Thurmond Federal Building, 1835-45 Assembly Street, Columbia, South Carolina 29201-2480, (803) 765-5592, (FTS) 577-5592

Knoxville, Tennessee Office

Richard B. Barnwell, Manager, HUD—Knoxville Office, John J. Duncan Federal Bldg., 710 Locust Street, S.W., Knoxville, Tennessee 37902-2526 (615) 549-9384, (FTS) 854-9384

Memphis, Tennessee Office

Bob Atkins, Manager, HUD—Memphis Office, 200 Jefferson Avenue, Suite 1200, Memphis, Tennessee 38103-2335, (901) 521-3367, (FTS) 222-3367

Nashville, Tennessee Office

John H. Fisher, Manager, HUD—Nashville Office, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228-1803, (615) 736-5213, (FTS) 852-5213

Jacksonville, Florida Office

James T. Chaplin, Manager, HUD—Jacksonville Office, 325 West Adams Street, Jacksonville, Florida 32202-4303, (904) 791-2626, (FTS) 946-2626

Coral Gables, Florida Office

Orlando L. Lorie, Manager, HUD—Coral Gables Office, Gables One Tower, 1320 S. Dixie Hwy., Coral Gables, Florida 33146-2911, (305) 662-4510, (FTS) 350-4010

Orlando, Florida Office

M. Jeannette Porter, Manager, HUD—Orlando Office, Langley Building, 3751 Maguire Boulevard, Suite 270, Orlando, Florida 32803-3032, (302) 648-6441, (FTS) 820-6441

Tampa, Florida Office

George A. Milburn, Jr., Manager, HUD—Tampa Office, Suite 700, Timberlake Federal Bldg. Annex, 501 East Polk Street, Tampa, Florida 33602-3945 (813) 228-2501 (FTS) 826-2501

REGION V

Jurisdiction: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Chicago, Illinois Regional Office

Gertrude Jordan, Regional Administrator—Regional Housing Commissioner, HUD—Chicago Regional Office, 626 West Jackson Boulevard, Chicago, Illinois 60606, (312) 353-5680, (FTS) 353-5680

Detroit, Michigan Office

Harry I. Sharrott, Manager, HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226-2592, (313) 226-6280, (FTS) 226-7900

Indianapolis, Indiana Office

J. Nicholas Shelley, Manager, HUD—Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204-2526, (317) 226-6303, (FTS) 331-6303

Grand Rapids, Michigan Office

Choice Edwards, (Acting) Manager, HUD—Grand Rapids Office, 2922 Fuller Avenue, N.E., Grand Rapids, Michigan 49505-3409, (616) 456-2100, (FTS) 372-2162

Minneapolis-St. Paul, Minnesota

Thomas Feeney, Manager, HUD—Minneapolis-St. Paul Office, 220 Second Street, South, Bridge Place Building, Minneapolis, Minnesota 55401-2195, (612) 370-3000, (FTS) 782-3002

Cincinnati, Ohio Office

Steve Havens, (Acting) Manager, HUD—Cincinnati Office, Federal Office Building, Room 9002, 550 Main Street, Cincinnati, Ohio 45202-3253 (513) 684-2884, (FTS) 684-2884

Cleveland, Ohio Office

George L. Engel, Manager, HUD—Cleveland Office, One Playhouse Square, 1375 Euclid Avenue, Room 420, Cleveland, Ohio 44115-1832, (216) 522-4065, (FTS) 942-4065

Columbus, Ohio Office

Robert W. Dolin, Manager, HUD—Columbus Office, 200 North High Street, Columbus, Ohio 43215-2499, (614) 469-5737, (FTS) 943-7345

Milwaukee, Wisconsin Office

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Flint, Michigan Office

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Springfield, Illinois Office

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REGION VI

Jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Fort Worth, Texas Regional Office

Sam R. Moseley, Regional Administrator-Regional Housing Commissioner, HUD—Fort Worth Regional Office, 1600 Throckmorton, Post Office Box 2905, Fort Worth, Texas 76113-2905 (817) 885-5401 (FTS) 728-5401

Dallas, Texas Office

Clarence D. Babers, Manager, HUD—Dallas Office, 555 Griffin Square Building, 525 Griffin Street, Room 105, Dallas, Texas 75202-5007 (214) 767-8308 (FTS) 729-8308

Albuquerque, New Mexico

Michael R. Griego, Manager, HUD—Albuquerque Office, 625 Truman Street, N.E., Albuquerque, New Mexico 87110-6443 (505) 262-6463 (FTS) 474-6463

Houston, Texas Office

William Robertson, Jr., (Acting) Manager, HUD—Houston Office, National Bank of Texas Building, 2211 Norfolk, Suite 300, Houston, Texas 77098-4096 (713) 229-3569 (FTS) 526-7586

Lubbock, Texas Office

Henry E. Whitney, Manager, HUD—Lubbock Office, Federal Building, 1205 Texas Avenue, Lubbock, Texas 79401-4093 (806) 743-7265 (FTS) 738-7265

San Antonio, Texas Office

Cynthia Leon, Manager, HUD—San Antonio Office, Washington Square Building, 800 Dolorosa Street, San Antonio, Texas 78207-4563 (512) 229-6794 (FTS) 730-6606

Little Rock, Arkansas Office

Roger Zachritz, (Acting) Manager, HUD—Little Rock Office, Lafayette Building, 523 Louisiana, Suite 200, Little Rock, Arkansas 72201-3523 (501) 378-5931 (FTS) 740-5401

New Orleans, Louisiana Office

Joe Brinkley, (Acting) Manager, HUD—New Orleans Office, Fisk Federal Building, 1661 Canal Street, P.O. Box 70288, New Orleans, Louisiana 70172-2967 (504) 589-7200 (FTS) 682-7200

Shreveport, Louisiana Office

David E. Gleason, Manager, HUD—Shreveport Office, New Federal Building, 500 Fannin Street, Shreveport, Louisiana 71101-3077 (318) 226-5385 (FTS) 493-5385

Oklahoma City, Oklahoma Office

Troy Grigsby, (Acting) Manager, HUD—Oklahoma City Office, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102-3202 (405) 231-4181 (FTS) 736-4891

Tulsa, Oklahoma Office

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REGION VII

Jurisdiction: Iowa, Kansas, Missouri, Nebraska

Kansas City, Missouri Regional Office

William H. Brown, Regional Administrator-Regional Housing Commissioner, HUD—

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Kansas City Regional Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101-2406 (913) 236-2162 (FTS) 757-2162

Omaha, Nebraska Office

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St. Louis, Missouri Office

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Des Moines, Iowa Office

William McNarney, Manager, HUD—Des Moines Office, Federal Building, 210 Walnut Street, Room 259, Des Moines, Iowa 50309-2155 (515) 284-4512 (FTS) 862-4512

REGION VIII

Jurisdiction: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Denver, Colorado Regional Office

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Fargo, North Dakota Office

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REGION IX

Jurisdiction: Arizona, California, Hawaii, Nevada, Guam, American Samoa

San Francisco, California Regional Office

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Indian Programs Office

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Honolulu, Hawaii Office

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Los Angeles, California Office

Charles Ming, Manager, HUD—Los Angeles Office, 1615 W. Olympic Boulevard, Los Angeles, California 90015-3801, (213) 251-7122, (FTS) 963-7122.

Sacramento, California Office

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Phoenix Office

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Fresno, California Office

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REGION X

Jurisdiction: Alaska, Idaho, Oregon, Washington

Seattle, Washington Office

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Boise, Idaho Office

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Spokane, Washington Office

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Hugh Johnson, Director, Oklahoma City Indian Programs Division, 6.7P, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102

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[FR Doc. 91-14642 Filed 6-18-91; 8:45 am]
BILLING CODE 4210-33-M

federal register

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Part VI

Department of Transportation

Office of the Secretary
Federal Highway Administration

49 CFR Part 24

Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. 91-14]

RIN 2125 AC75

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would amend 49 CFR 24.103(d), which concerns the qualifications of appraisers who value property for Federal and federally assisted projects. The proposed amendment provides that, if a detailed appraisal is necessary, and the agency employs a contract (fee) appraiser to perform the appraisal, such appraiser must be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) Public Law 101-73, 103 Stat. 183, 511 (Aug. 9, 1989). The FIRREA requires the establishment of State programs for the licensing and certification of appraisers. Using such certified appraisers for detailed appraisals of property subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 42 U.S.C. 4601-4655, would strengthen the integrity of the acquisition process. If adopted, this proposal would apply to the real property acquisition activities of 17 Federal agencies as well as the Department of Transportation.

DATES: Comments must be received on or before August 19, 1991.

ADDRESSES: Submit signed, written comments to FHWA Docket No. 91-14, Federal Highway Administration, room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Gerald B. Saunders, Chief, Operations Division, Office of Right-of-Way, HRW-20, (202) 366-0142; or Reid Alsop, Office of the Chief Counsel, HCC-31, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The FIRREA established requirements for the licensing and certification of appraisers for thrift institution appraisal work when there is a Federal financial interest in the transaction. These requirements are implemented through laws enacted by the States. Governmentwide regulations implementing the Uniform Act currently contain appraisal criteria in 49 CFR 24.103.

While the FIRREA applies only to transactions which are associated with thrift institutions, there is a similar Federal concern for the integrity of the appraisal process for Federal or federally assisted projects or programs covered by the Uniform Act. The FIRREA requires establishment of a nationwide State-based system for appraiser licensing and certification. Extending this system to projects or programs under the Uniform Act would ensure consistency in the qualifications of contract (fee) appraisers, and thereby enhance acquisition practices.

To carry out this idea, the Office of Management and Budget (OMB) organized an interagency group and charged it with the responsibility to formulate an implementation proposal for applying the system established by FIRREA to Federal and federally assisted programs or projects. The FHWA was a member of that group, along with representatives of several other Federal agencies which have a significant amount of appraisal work for programs covered by the Uniform Act. The implementation proposal developed by the group is described below:

Implementation Proposal

As lead agency for implementation of the Uniform Act, the FHWA is proposing an amendment to 49 CFR part 24, the governmentwide regulations that implement the Uniform Act, which would apply FIRREA principles to certain transactions covered by the Uniform Act.

Section 24.103(a), Standards of Appraisal, currently provides that detailed appraisals are required only for complex appraisal problems, and the agency itself is the decision-maker regarding if or when a detailed appraisal is required. It further provides that "A detailed appraisal shall reflect nationally recognized appraisal standards * * *" This proposal would add a part of the national system for appraisal licensing and certification established by FIRREA, to the appraisal criteria contained in the governmentwide regulations implementing the Uniform Act.

Section 24.103(d), Qualifications of Appraisers, currently provides that each affected agency shall establish appraiser qualifications that are consistent with the level of difficulty of the appraisal. This proposal would amend § 24.103(d) by adding a new paragraph (d)(2) which would provide that when an agency contracts out the appraisal assignment for preparation of a detailed appraisal, the agency must use the services of an appraiser who is certified in accordance with the FIRREA.

The FIRREA provides for two levels of appraiser qualification. The senior level is "certified," and the second level is "licensed." This distinction is reflected in the proposed amendment.

This proposal would not prevent an agency from going beyond the minimum standards (certified appraisers required only for preparation of detailed appraisals for complex acquisitions) in establishing its licensing and certification requirements. This could be mandated by State law, or it could be a policy decision of the agency. Several States extended the applicability of licensing and certification requirements to virtually all appraisal activities in enacting legislation to implement the FIRREA, and State law would control as to federally assisted acquisitions undertaken in such States.

This proposal does not address the use of licensed appraisers, which would be left to the discretion of the agency or the provisions of State law. However, there is no change to the policy statement in § 24.103(d) that "Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignments."

This proposal does not include agency staff appraisal personnel in the certification requirement, because:

1. The FIRREA does not mandate such coverage, and we desire to parallel FIRREA to the extent practicable;
2. The majority of State laws and/or regulations implementing FIRREA exclude governmental staff;
3. There are provisions elsewhere in 49 CFR part 24, such as the requirement for an independent review of the appraisal and the requirement to establish minimum qualifications for all appraisers, that serve as safeguards against a substandard appraisal product; and
4. The vast majority of acquisitions subject to the Uniform Act are made by agencies with the power of eminent domain, with its inherent checks and balances, including judicial review.

This proposal is not intended to discourage the use of agency staff appraisal personnel when the use of staff personnel is more cost-effective and productive. Further, it should not be interpreted to discourage staff appraisers from taking steps to become licensed or certified. Rather, staff appraisers should be encouraged to become licensed or certified.

It is noted that The Appraisal Standards Board of the Appraisal Foundation has determined that the appraisal criteria in section 24.103 are consistent with the Uniform Standards of Professional Appraisal Practice developed by the Board pursuant to FIRREA and published in the Federal Register (55 FR 53609, Dec. 31, 1990).

Cross References

Part 24 of title 49, CFR, constitutes the governmentwide regulation implementing the Uniform Act. The regulations of seventeen other Federal Departments and agencies contain a cross reference to this part in their regulations, and the change proposed in this notice of proposed rulemaking would be directly applicable to the real property acquisition activities of these departments and agencies. Those departments and agencies, and the parts of the Code of Federal Regulations which contain a cross reference to this part, are listed below:

Department of Agriculture

7 CFR Part 21

Department of Commerce

15 CFR Part 11

Department of Defense

32 CFR Part 2509

Department of Education

34 CFR Part 15

Department of Energy

10 CFR Part 1039

Environmental Protection Agency

40 CFR Part 4

Federal Emergency Management Agency

44 CFR Part 25

General Services Administration

41 CFR Part 105-51

Department of Health and Human Services

45 CFR Part 15

Department of Housing and Urban Development

24 CFR Part 42

Department of the Interior

41 CFR Part 114-50

Department of Justice

41 CFR Part 128-16

Department of Labor

29 CFR Part 12

National Aeronautics and Space Administration

14 CFR Part 1206

Pennsylvania Avenue Development Corporation

36 CFR Part 904

Tennessee Valley Authority

18 CFR Part 1306

Veterans Administration

38 CFR Part 25

Consequently, the proposed change in this NPRM would be directly applicable to the real property acquisition activities of those seventeen departments and agencies. The proposed change would also apply to other agencies within DOT that are covered by the Uniform Act.

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Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has analyzed the effect of this action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. The rulemaking would not affect the level of funding available in Federal or federally assisted programs covered by the Uniform Act, or otherwise have a significant economic impact, so that neither a preliminary regulatory impact analysis nor a preliminary regulatory evaluation is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that for each rule with a "significant economic impact upon a substantial number of small entities" an analysis be prepared describing the rule's impact on small entities, and identifying any significant alternatives to the rule that would minimize the economic impacts on small entities. The proposed rule would require that there be consistency in the qualifications of contract appraisers when detailed appraisals are required for Federal and federally assisted projects. Based on information available to FHWA at this time and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Environmental Impacts

The FHWA has also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The current regulation requires that detailed appraisals must reflect nationally recognized appraisal standards and that agencies must establish appraiser qualifications consistent with the level of difficulty of the appraisal. The FIRREA established a new nationwide State-based system for appraiser qualifications, that is applicable to various federally-related transactions. Applying FIRREA to fee appraisers that undertake detailed appraisals on projects covered by the Uniform Act reflects current regulatory requirements and is not considered to have significant federalism impacts.

Paperwork Reduction Act

This proposed rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, since it does not require the collection or retention of any new data.

Regulation Identification Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

In accordance with the foregoing, the FHWA proposes to amend Part 24 of Title 49, Code of Federal Regulations, as set forth below.

PART 24—[AMENDED]

1. The authority citation for part 24 is revised to read as follows:

Authority: 42 U.S.C. 4601 *et seq.*; 49 CFR 1.48(cc).

2. Section 24.103(d) is amended by designating the text after the heading "Qualifications of appraisers" as paragraph (d)(1) and by adding paragraph (d)(2) to read as follows:

§ 24.103 Criteria for appraisals.

* * * * *

(d) *Qualifications of appraisers.*

(1) * * *

(2) If the appraisal assignment requires the preparation of a detailed appraisal pursuant to § 24.103(a), and the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified in accordance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1331 *et seq*).

* * * * *

Issued on: June 11, 1991.

T.D. Larson,

Administrator.

[FR Doc. 91-14501 Filed 6-18-91; 8:45 am]

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June 19, 1991

Part VII

Department of the Interior

Bureau of Indian Affairs

Approved Tribal-State Compact; Indian Gaming; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Approved Tribal-State Compact: Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the Federal Register, Notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Compact between the Yankton Sioux Tribe and the State of South Dakota executed on April 29, 1991.

DATES: June 19, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC (202) 208-7445.

Dated: June 13, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-14045 Filed 6-18-91; 8:45 am]

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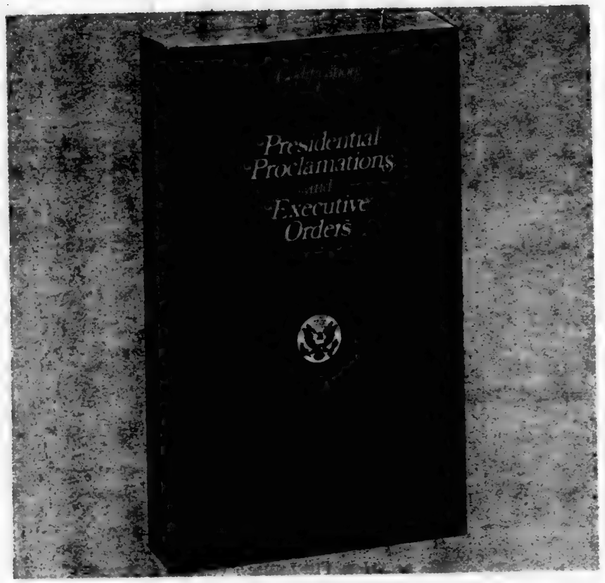
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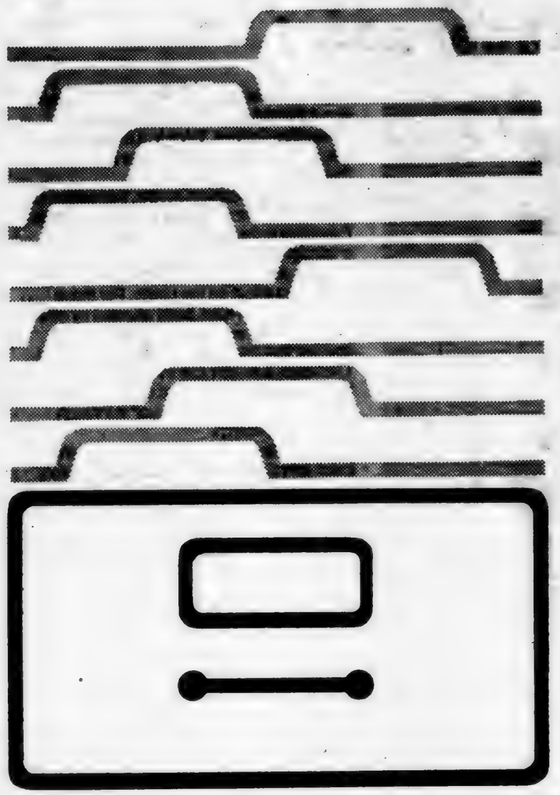
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Rules and Regulations

Federal Register
Vol. 56, No. 119
Thursday, June 20, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 572

RIN 3206-AE34

Expanded Authority To Pay Travel Expenses for New Appointments and Interviews

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement provisions of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The Act permits agencies to pay candidates' travel expenses for interviews and new appointees' travel expenses to the first post of duty for any position.

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer (202) 606-0960 or FTS 266-0960.

SUPPLEMENTARY INFORMATION: FEPCA amended 5 U.S.C. 5723 to remove the requirement that a shortage of candidates exist before agencies may pay new appointees' travel and transportation expenses and to provide explicit authority for agencies to pay candidates' travel expenses to report for interviews.

Interim regulations implementing these provisions were published on February 14, 1991 (56 FR 6204). Those regulations removed all instructions for determining shortages but retained language reinforcing agency discretion in deciding whether to pay relocation or interview expenses for any position.

We received only one comment on the interim regulations. The General Services Administration (GSA), which is responsible for regulating actual payments under 5 U.S.C. 5723, suggested that we include a cross-reference to GSA's Federal Travel Regulations (FTR) (41 CFR chapters 301-304). That suggestion has been adopted. With that change, we are adopting the interim regulations as final.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) or Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the procedures used to appoint certain Federal employees.

List of Subjects in 5 CFR Part 572

Administrative practice and procedures, Government employees.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM's interim regulations under part 572 published February 14, 1991, at 56 FR 6204, are adopted as final with the following changes:

PART 572—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES AND INTERVIEWS

1. The authority for part 572 continues to read as follows:

Authority: 5 U.S.C. 5708b and 5723.

2. Section 572.101 is revised to read as follows:

§ 572.101 Agency authority.

(a) An agency may determine which positions qualify for the payment of a new appointee's travel expenses to the first post of duty. Payment of travel and transportation expenses will be in accordance with the Federal Travel Regulation (FTR) (41 CFR chapters 301-304).

(b) An agency may determine which interviewees are eligible for payment of pre-employment interview travel expenses. Payment of these travel expenses will be in accordance with the FTR.

[FR Doc. 91-14753 Filed 6-19-91; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 921, 922, 923 and 924

[Docket No. FV-91-266FR]

Expenditures and Assessment Rates for Specified Marketing Orders for the 1991-92 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates for the 1991-92 fiscal year (April 1-March 31) under Marketing Order Nos. 921, 922, 923 and 924. These expenditures and assessment rates are needed by the marketing committees established under these marketing orders to pay marketing order expenses and collect assessments from handlers to pay those expenses. This action will enable these committees to perform their duties and the orders to operate.

EFFECTIVE DATE: April 1, 1991 through March 31, 1992 for each order.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order Nos. 921 (7 CFR part 921) regulating the handling of fresh peaches grown in designated counties in Washington; 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington; 923 (7 CFR part 923) regulating the handling of cherries grown in designated counties in Washington; and 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture

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(Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 70 handlers of Washington peaches, 30 handlers of Washington apricots, 85 handlers of Washington cherries, and 35 handlers of Washington-Oregon prunes subject to regulation under their respective marketing orders. In addition, there are about 390 Washington peach producers, 190 Washington apricot producers, 1,115 Washington cherry producers and 375 Washington-Oregon prune producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the Department, require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of these committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the tons of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

A proposed rule concerning the 1991-92 budget was published in the Federal Register (56 FR 14318, April 9, 1991), with a comment period ending May 31, 1991. Comments were received from the Washington Fresh Peach Marketing Committee (WPMC), the Washington Apricot Marketing Committee (WAMC), the Washington Cherry Marketing Committee (WCMC), and the Washington-Oregon Fresh Prune Marketing Committee (WOPMC). The committees met in late May to review crop and marketing conditions. On the basis of these reviews, each committee filed comments unanimously recommending changes in their expenditure and assessment rate levels from those contained in the proposed rule. The recommended changes are based on the more recent crop and expenditure estimates. These changes are incorporated in the final rule.

The expenditure amounts and assessment rates contained in the proposed rule were issued on the recommendations of the Stone Fruit Executive Committee (SFEC) in March, based on the best information available at that time. The SFEC is made up of officers of the marketing committees established under these orders, and is authorized to recommend the budgets early in the season.

The WPMC met May 22, 1991 and unanimously recommended 1991-92 expenditures of $21,356 and an assessment rate of $2.00 per ton of assessable peaches shipped under M.O. 921. This compares with expenditures of $21,304 and an assessment rate of $3.00 contained in the proposed rule. The lower expenditures reflected a reduction in auditing costs. The recommended $2.00 assessment rate is based on revised estimated 1991-92 shipments of 7,875 tons of assessable peaches. This would generate income of $15,750 and result in a reduction in the WPMC's reserve fund. The WPMC's reserves are adequate to cover the anticipated deficit for 1991-92. Budgeted expenditures were $18,841 and the assessment rate was $1.00 per ton in 1990-91.

The WAMC met May 22, 1991 and unanimously recommended 1991-92 expenditures of $7,723 and an assessment rate of $1.50 per ton of assessable apricots shipped under M.O. 922. This compares with expenditures of $7,700 and an assessment rate of $4.00 contained in the proposed rule. The lower expenditures reflect a reduction in auditing costs. The recommended $1.50 assessment rate is based on revised estimated 1991-92 shipments of 3,700 tons of assessable apricots. This would generate income of $5,550 and result in a reduction of the WAMC's reserve fund. The WAMC's reserves are adequate to cover the anticipated deficit for 1991-92. Budgeted expenditures were $6,965 and the assessment rate was $1.00 per ton in 1990-91.

The WCMC met May 23, 1991 and unanimously recommended 1991-92 expenditures of $96,092 and an assessment rate of $3.00 per ton of assessable cherries shipped under M.O. 923. This compares with expenditures of $104,130 and an assessment rate of $5.00 contained in the proposed rule. The lower expenditures reflect a reduction in auditing costs and an $8,000 reduction in market development expenditures. The recommended $3.00 assessment rate is based on revised estimated 1991-92 shipments of 31,000 tons of assessable cherries. This would generate income of $93,000 and result in a reduction in the WCMC's reserve fund. The WCMC's reserves are adequate to cover the anticipated deficit for 1991-92. Budgeted expenditures were $94,545 and the assessment rate was $2.00 per ton in 1990-91. The 1991-92 cherry market development project will be submitted for approval once the recommended budget is approved.

The WOPMC met May 29, 1991 and unanimously recommended 1991-92 expenditures of $16,578 and an assessment rate of $2.00 per ton of assessable prunes shipped under M.O. 924. This compares with expenditures of $18,115 and an assessment rate of $3.00 contained in the proposed rule. The lower expenditures reflect a reduction in auditing costs and the elimination of $1,500 for production research. The recommended $2.00 assessment rate is based on revised estimated 1991-92 shipments of 5,750 tons of assessable prunes. This would generate income of $11,500 and result in a reduction in the WOPMC's reserve fund. The WOPMC's reserves are adequate to cover the anticipated deficit for 1991-92. Budgeted expenditures were $16,149 and the assessment rate was $1.50 per ton in 1990-91.

The stone fruit marketing committees' 1991-92 budgets are similar in scope and size to those approved for 1990-91. These committees share a joint office and related expenses, based on an arrangement among the committees. The budgeted expenditures are for marketing order administration, which includes employees' salaries and travel, office operations, and miscellaneous costs, along with expenditures for cherry market development.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule adds new §§ 921.230, 922.230, 923.231, and 924.231 under these marketing orders, based on the committees' recommendations and other information.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because approval of the expenses and assessment rates must be expedited. The fiscal year for each of these marketing orders began on April 1, 1991, and the committees need sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 921, 922, 923 and 924

Apricots, Cherries, Marketing agreements, Peaches, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 921, 922, 923 and 924 are amended as follows:

1. The authority citation for 7 CFR parts 921, 922, 923 and 924 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. A new § 921.230 is added to read as follows:

§ 921.230 Expenses and assessment rate.

Expenses of $21,356 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $2.00 per ton of assessable peaches is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990-91 fiscal year may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. A new § 922.230 is added to read as follows:

§ 922.230 Expenses and assessment rate.

Expenses of $7,723 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $1.50 per ton is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990-91 fiscal year may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

4. A new § 923.231 is added to read as follows:

§ 923.231 Expenses and assessment rate.

Expenses of $96,092 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $3.00 per ton is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990-91 fiscal year may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

5. A new § 924.231 is added to read as follows:

§ 924.231 Expenses and assessment rate.

Expenses of $16,578 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $2.00 per ton of assessable prunes is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990-91 fiscal year may be carried over as a reserve.

Dated: June 17, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-14727 Filed 6-19-91; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1944

Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to implement changes made to the Housing Act of 1949 by section 702 of the Cranston-Gonzalez National Affordable Housing Act. This action is required to be taken to clarify the determination of family size and composition for eligibility under the rural housing loan making program. The intended effect is to assist low-income families whose children have been removed from the applicant/borrower family and placed in foster care. Therefore, the final rule is issued on an emergency basis by the Agency to comply with this Congressional mandate.

DATES: This action will take effect on July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Karen S. Murray, Senior Loan Specialist, Farmers Home Administration, USDA, room 5334-S, South Agriculture Building, 14th and Independence Ave., SW., Washington, DC 20250, Telephone (202) 382-1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions, or significant adverse effects on competition, employment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion

Section 702 of the Cranston-Gonzalez National Affordable Housing Act amends section 501(b)(4) of the Housing Act of 1949 by inserting the following new sentence: "The temporary absence of a child from the home due to placement in foster care should not be

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considered in considering family composition and family size." This language has been incorporated into subpart A of part 1944 of this chapter, where appropriate.

Section 534 of the Housing Act of 1949 requires that all rules and regulations issued pursuant to that Act must be published for public comment. The one noted exception is for a rule or regulation issued on an emergency basis. This action is not published for proposed rule making because it does nothing more than implement a statutory language change over which FmHA has no administrative control, and as such, must be implemented immediately.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Programs Affected

This program is listed in the catalog of Federal Domestic Assistance under 10.410, Low Income Housing Loans.

Intergovernmental Consultation

For the reason set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs—housing and community development, Low and moderate income housing—rental, Mobile homes, Mortgages, Rural housing, Subsidies.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations.

2. Section 1944.2 is amended by revising paragraph (j) to read as follows:

§ 1944.2 Definitions.

* * * * *

(j) *Household or family.* The applicant, co-applicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months. Children who are members of the family, but have been removed and placed in foster care, will be counted as residents of the household. Foster care children placed in the borrower's home and live-in aides will not be counted as members of the household.

* * * * *

3. Section 1944.8 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1944.8 Adjusted annual income.

* * * * *

(a) A deduction of $480 for each resident of the household, as defined by § 1944.2 of this subpart, other than the applicant, spouse, or co-applicant, who is:

* * * * *

Dated: May 15, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–14660 Filed 6–19–91; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1945

Final Implementation of Farmer Program Loan Provisions of the 1990 Farm Bill

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adopts its interim rule published January 16, 1991 (56 FR 1563–1565) as a final rule without change. This action amends FmHA regulations by authorizing special disaster assistance to eligible farmers and ranchers who sustained severe production losses in 1989 or 1990 as a result of natural disasters. This action is necessary to finalize the interim rule, which implemented the provisions of the 1990 Farm Bill (Pub. L. 101–624), dated November 28, 1990, that was incorporated into existing FmHA regulations.

EFFECTIVE DATE: June 20, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Ferguson, Loan Specialist, Farmer Programs Loan Making Division, Farmers Home Administration, USDA South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475–4018.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Department Regulation 1512–1, which implements Executive Order 12291, and has been determined nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

For the reasons set forth in the final rule related to notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans are excluded from the scope of Executive Order 12372, which require intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA program as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of Final Rule

On January 16, 1991, FmHA published an interim rule amending 7 CFR part 1945, subpart D, in the **Federal Register** (56 FR 1563–1565) with a comment period ending February 15, 1991. The 1990 Farm Bill (Pub. L. 101–624), dated November 28, 1990, amended FmHA's statutory loan making authorities. It was necessary to implement these authorities upon publication to provide immediate assistance to farmers and ranchers who had suffered major crop production losses as a result of natural disasters in 1989 or 1990.

The Bill mandates changes in the emergency loan regulations. These changes ease the requirements for obtaining assistance under this program, as did previous changes made as a result of the Disaster Assistance Acts of 1988 and 1989. These changes are fully addressed in the interim rule. These regulations provide assistance to many needy farmers and ranchers who, without this assistance, are or will be in danger of losing their operations.

Discussion of Comments

No comments were received.

List of Subjects in 7 CFR Part 1945

Agriculture, Disaster assistance.

Therefore, FmHA adopts its interim rule, dated January 16, 1991 (56 FR 1563–1565), as a final rule without change.

Dated: May 20, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–14666 Filed 6–19–91; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 204 and 245

[INS Number: 1419–91]

Powers and Duties of Service Officers; Petition To Classify Alien as Immediate Relative of a United States Citizen or Preference Immigrant; Adjustment of Status to That of a Person Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 702 of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, November 29, 1990, by allowing a citizen or lawful permanent resident petitioner, or an alien applicant for permanent resident status, to seek an exemption from the general prohibition against approval of immigration benefits based upon a marriage entered into while the beneficiary or applicant was under deportation, exclusion or related judicial proceedings. This rule is necessary to establish procedures to allow persons who have bona fide marriages to obtain immigration benefits without complying with the two year foreign residency requirements.

DATES: This interim rule is effective June 20, 1991. Comments must be received on or before July 22, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5304, Washington, DC 20536. To ensure proper handling please reference INS number 1419–91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Rita A. Boie, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street NW., Room 7223, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: The Immigration Marriage Fraud Amendments of 1986 (IMFA) were enacted to deter aliens from marrying solely to obtain immigration benefits. Two provisions of the IMFA were specifically designed to reduce the incentive for an alien to enter into a fraudulent marriage during deportation or exclusion proceedings. These provisions restricted the immigration benefits that could be granted based upon the marriage. Both required the alien to live outside the United States for at least two years following the marriage. Only after the foreign residency requirement was fulfilled would the alien be eligible to obtain permanent residence based upon the marriage. These provisions were incorporated into the Act as sections 204(h) and 245(e).

Section 702 of IMMACT 90 was enacted to allow aliens in marriages which were clearly bona fide to be exempted from compliance with the foreign residence requirement. Section 702 also contained a purely technical amendment redesignating section 204(h) of the Act as section 204(g).

This interim rule allows the petitioner or applicant to request consideration for the new exemption by filing a relative visa petition or application for adjustment of status, accompanied by clear and convincing evidence that the marriage is bona fide. No additional application forms or fees are required.

Procedures are also established for use by applicants or petitioners who wish to appeal a denial based upon failure to qualify for the exemption. Denials of visa petitions may be appealed to the Board of Immigration Appeals. Adjustment of status applications denied by the district director because the applicant did not qualify for the exemption may be appealed to the Associate Commissioner, Examinations. Adjustment of Status applications denied by the district director for other reasons will continue to be reviewable only in deportation proceedings.

Those whose earlier requests for benefits were denied because of failure to comply with the foreign residence requirement may reapply. Citizens petitioning for immediate relatives and applicants for adjustment of status who are not under deportation proceedings may choose to file new applications or petitions. As an alternative, they may file motions to reopen prior applications or petitions. An applicant for adjustment of status who is under deportation proceedings may file a motion with the immigration judge having jurisdiction over the deportation proceeding. The new applications, petitions or motion must be accompanied by clear and convincing evidence of a bona fide marriage.

Preference petitioners may also request consideration for the new benefits. However, these petitioners must file new petitions, unless the filing date of the original petition is on or after November 29, 1990. This restriction is necessary because preference aliens are issued immigrant visas strictly in priority date order. The priority date for a relative preference petition is established by the date the petition is properly filed with the Service. In many categories, the demand for visas far exceeds the number allowed by law. Preference aliens whose priority dates cannot be reached are placed on a waiting list. To allow these aliens to utilize the earlier date would mean that they would obtain immigrant visas before aliens who waited to file until they were fully qualified under the laws and regulations in effect at the time. Such a result would be unfair to the fully qualified aliens and would be contrary to regulations and long-held Service precedents.

Technical revisions to the existing regulations are contained in this rule. These revisions are necessary to clarify requirements and procedures established by the regulations and to remove grammatical inconsistencies caused by the addition of the new exemptions.

Additional technical revisions to regulations which were not affected by the IMMACT 90 amendments are also contained in this rule. References to the cancellation of the Notice to Applicant for Admission Detained for Hearing before Special Inquiry Officer have been removed since neither the Act nor the Code of Federal Regulations contain provisions authorizing the cancellation of the Notice.

The method by which the Service determines the date deportation proceedings begin for the purpose of applying the two year foreign residence requirement is also changed. Formerly, the Service considered the alien to be under deportation proceedings on the

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date the Order to Show Cause was issued when determining whether or not the alien was subject to this requirement. This rule provides that aliens named in Orders to Show Cause issued on or after June 20, 1991 will not be considered to be under deportation proceedings until the Order to Show Cause is filed with the Office of the Immigration Judge. This new definition of the commencement of deportation proceedings conforms with the provisions of 8 CFR 3.13 and 8 CFR 242.1.

The general prohibition against approval of an application for adjustment of status is extended to marriages entered into on November 10, 1986, while the alien was under proceedings. The prior regulations inadvertently excluded reference to marriages entered into on that date. The language of the IMFA clearly states that this prohibition will apply to marriages entered into both on and after November 10, 1986.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date are impracticable and unnecessary as the changes have been mandated by the passage of Public Law 101-649, (IMMACT 90), which amends the Marriage Fraud Amendments of 1986 (IMFA). Early implementation will allow United States citizens and aliens who have entered into bona fide marriages to obtain immigration benefits without being required to comply with the two year foreign residency requirement.The change in the method by which the Service determines the date on which deportation proceedings commence will result in fewer aliens being subject to the foreign residence requirement.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this regulation has been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5.

List of Subjects

8 CFR Part 204

Reporting and recordkeeping requirements, Visa petitions.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. The authority citation for part 204 continues to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217; 100 Stat. 3537, 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255 and 8 CFR part 2.

2. In § 204.1, paragraph (a)(2)(iii) is revised to read as follows:

§ 204.1 Petition.

(a) * * *

(2) * * *

(iii) *Marriage during proceedings—general prohibition against approval of visa petition.* A visa petition filed on behalf of an alien by a United States citizen or lawful permanent resident spouse shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in deportation or exclusion proceedings, or judicial proceedings relating thereto.

(A) *Commencement of proceedings.* The period during which the alien is in deportation or exclusion proceedings, or judicial proceedings relating thereto commences:

(*1*) With the issuance of the Order to Show Cause and Notice of Hearing (Form I–221) prior to June 20, 1991;

(*2*) With the filing of an Order to Show Cause and Notice of Hearing (Form I–221) issued on or after June 20, 1991 with the Office of the Immigration Judge;

(*3*) With the issuance of the Notice to Applicant for Admission Detained for Hearing before Immigration Judge (Form I–122);

(B) *Termination of proceedings.* The period during which the alien is in deportation or exclusion proceedings, or judicial proceedings relating thereto terminates:

(*1*) When the alien departs from the United States while an order of deportation is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation under 8 CFR 243.5;

(*2*) When the alien departs from the United States pursuant to an order of exclusion;

(*3*) When the alien is found not to be excludable or deportable from the United States;

(*4*) When the Order to Show Cause is canceled pursuant to 8 CFR 242.7(a);

(*5*)When proceedings are terminated by the immigration judge, or the Board of Immigration Appeals; or

(*6*) When a petition for review or an action for habeas corpus is granted by a Federal Court on judicial review.

(C) *Exemptions.* This prohibition shall no longer apply if:

(*1*) The alien is found not to be excludable or deportable from the United States;

(*2*) The Order to Show Cause is canceled pursuant to 8 CFR 242.7(a);

(*3*) Proceedings are terminated by the immigration judge or the Board of Immigration Appeals;

(*4*) A petition for review or an action for habeas corpus is granted by a Federal Court on judicial review;

(*5*) The alien has resided outside the United States for two or more years following the marriage;

(*6*) The petitioner establishes eligibility for the bona fide marriage exemption under section 204(g) of the Act by providing clear and convincing evidence that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place, was not entered into for the purpose of procuring the alien's entry as an immigrant, and no fee or other consideration was given (other than to an attorney for assistance in preparation of a lawful petition) for the filing of the petition.

(D) *Request for exemption.* No application or fee is required to request an exemption. The request must be made in writing and submitted with the Form I–130, Petition for Alien Relative. The request must state the reason for seeking the exemption and must be supported by documentary evidence establishing eligibility for the exemption.

(E) *Evidence to establish eligibility for the bona fide marriage exemption.* In order to establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant, the petitioner shall submit evidence such as:

(*1*) Documentation showing joint ownership of property;

(*2*) Lease showing joint tenancy of a common residence;

(*3*) Documentation showing commingling of financial resources;

(*4*) Birth certificates of children born to the petitioner and beneficiary;

(*5*) Affidavits of third parties having knowledge of the bona fides of the marital relationship, or

(*6*) Other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States.

(F) *Decision.* Any petition filed during the prohibited period shall be denied, unless the petitioner establishes eligibility for an exemption from the general prohibition. The petitioner shall be notified in writing of the decision of the director.

(G) *Denials.* The denial of a petition because the marriage took place during the prohibited period shall be without prejudice to the filing of a new petition after the beneficiary has resided outside the United States for the required period of two years following the marriage. The denial shall also be without prejudice to the consideration of a new petition or a motion to reopen the visa petition if deportation or exclusion proceedings are terminated after the denial other than by the beneficiary's departure from the United States. Furthermore, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the visa petition, if the petitioner establishes eligibility for the bona fide marriage exemption contained in this part: *Provided,* That no motion to reopen visa petition proceedings may be accepted if the approval of the motion would result in the beneficiary being accorded a priority date within the meaning of section 203(c) of the Act earlier than November 29, 1990.

(H) *Appeals.* The decision of the Board of Immigration Appeals concerning the denial of a relative visa petition because the petitioner failed to establish eligibility for the bona fide marriage exemption contained in this part will constitute the single level of appellate review established by statute.

(I) *Priority Date.* A preference beneficiary shall not be accorded a priority date within the meaning of section 203(c) of the Act based upon any relative petition filed during the prohibited period, unless an exemption contained in this part has been granted. Furthermore, a preference beneficiary shall not be accorded a priority date prior to November 29, 1990, based upon the approval of a request for consideration for the bona fide marriage exemption contained in this part.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 1257; 8 CFR part 2.

4. In § 245.1, paragraph (b)(14) is revised to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) * * *

(14) Any alien who seeks to adjust status based upon a marriage which occurred on or after November 10, 1986, and while the alien was in deportation or exclusion proceedings, or judicial proceedings relating thereto.

(i) *Commencement of proceedings.* The period during which the alien is in deportation or exclusion proceedings, or judicial proceedings relating thereto commences:

(A) With the issuance of the Order to Show Case and Notice of Hearing (Form I–221) prior to June 20, 1991;

(B) With the filing of the Order to Show Cause and Notice of Hearing (Form I–221) issued on or after June 20, 1991 with the Office of the Immigration Judge; or

(C) With the issuance of the Notice to Applicant for Admission Detained for Hearing before Immigration Judge (Form I–122).

(ii) *Termination of Proceedings.* The period during which the alien is in deportation or exclusion proceedings, or judicial proceedings relating thereto terminates:

(A) When the alien departs from the United States while an order of deportation is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation under 8 CFR 243.5;

(B) When the alien departs from the United States pursuant to an order of exclusion;

(C) When the alien is found not to be excludable or deportable from the United States;

(D) When the Order to Show Cause is canceled pursuant to 8 CFR 242.7(a);

(E) When the proceedings are terminated by the immigration judge or the Board of Immigration Appeals; or

(F) When a petition for review or an action for habeas corpus is granted by a Federal Court on judicial review.

(iii) *Exemptions.* This prohibition shall no longer apply if:

(A) The alien is found not to be excludable or deportable from the United States;

(B) The Order to Show Cause is canceled pursuant to 8 CFR 242.7(a);

(C) Proceedings are terminated by the immigration judge or Board of Immigration Appeals;

(D) A petition for review or an action for habeas corpus is granted by a Federal Court on judicial review;

(E) The alien has resided outside the United States for two or more years following the marriage; or

(F) The alien establishes that the marriage is bona fide by providing clear and convincing evidence that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place, was not entered into for the purpose of procuring the alien's entry as an immigrant, and no fee or other consideration was given (other than to an attorney for assistance in preparation of a lawful petition) for the filing of a petition.

(iv) *Request for exemption.* No application or fee is required to request the exemption under section 245(e) of the Act. The request must be made in writing and submitted with the Form I–485, Application for Permanent Residence. The request must state the basis for requesting consideration for the exemption and must be supported by documentary evidence establishing eligibility for the exemption.

(v) *Evidence to establish eligibility for the bona fide marriage exemption.* Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. Evidence that a visa petition based upon the same marriage was approved under the bona fide marriage exemption to section 204(g) of the Act will be considered primary evidence of eligibility for the bona fide marriage exemption provided in this part. The applicant will not be required to submit additional evidence to qualify for the bona fide marriage exemption provided in this part, unless the district director determines that such additional evidence is needed. In cases where the district director notifies the applicant that additional evidence is required, the applicant must submit documentary evidence which clearly and convincingly establishes that the marriage was entered into in good faith and no

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entered into for the purpose of procuring the alien's entry as an immigrant. Such evidence may include:

(A) Documentation showing joint ownership of property;

(B) Lease showing joint tenancy of a common residence;

(C) Documentation showing commingling of financial resources;

(D) Birth certificates of children born to the applicant and his or her spouse;

(E) Affidavits of third parties having knowledge of the bona fides of the marital relationship, or

(F) Other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States.

(vi) *Decision.* An application for adjustment of status filed during the prohibited period shall be denied, unless the applicant establishes eligibility for an exemption from the general prohibition.

(vii) *Denials.* The denial of an application for adjustment of status because the marriage took place during the prohibited period shall be without prejudice to the consideration of a new application or a motion to reopen a previously denied application, if deportation or exclusion proceedings are terminated while the alien is in the United States. The denial shall also be without prejudice to the consideration of a new application or motion to reopen the adjustment of status application, if the applicant presents clear and convincing evidence establishing eligibility for the bona fide marriage exemption contained in this part.

(viii) *Appeals.* An application for adjustment of status to lawful permanent resident which is denied by the district director solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in this part may be appealed to the Associate Commissioner, Examinations, in accordance with 8 CFR part 103. The appeal to the Associate Commissioner, Examinations, shall be the single level of appellate review established by statute.

* * * * *

Dated: March 18, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-14697 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 23

[Docket No. 91-5]

Lease Financing Transactions

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: This Office of the Comptroller of the Currency (the OCC) is amending its regulation on lease financing transactions of national banks. This action is prompted by an amendment to Revised Statute 5136 (12 U.S.C. 24) by section 108 of the Competitive Equality Banking Act (CEBA), Public Law 100-86, 101 Stat. 579 (August 10, 1987). The final rule is designed to balance a national bank's interest in exercising its statutory authority with the national interest in a safe and sound national banking system. Through this final rule, the OCC is re-issuing its current Interpretive Ruling on lease financing transactions, presently codified at 12 CFR 7.3400, as a subpart of the new regulation. The OCC had issued this Interpretive Ruling earlier, recognizing that, incidental to the authority to make loans, national banks were also authorized to enter into lease financing transactions. See 44 FR 22393 (April 13, 1979). Re-issuing the Interpretive Ruling as part of this final rule consolidates the OCC's substantive lease financing regulations and clarifies the two types of lease financing authority available to national banks.

To achieve this consolidation, the final rule is organized into three subparts. Subpart A applies to all lease financing transactions, whether entered into under the authority of 12 U.S.C. 24(7), as incidental to banking, or under the specific authority of section 108 of CEBA. Subpart B addresses additional requirements applicable only to lease financing transactions entered into under section 108 of CEBA. Subpart C incorporates the provisions of Interpretive Ruling 7.3400 into the regulation, and addresses additional requirements applicable only to lease financing transactions entered into under the general authority of 12 U.S.C. 24(7).

In order to integrate the provisions of Interpretive Ruling 7.3400 into the framework of the final rule, the OCC has substantially reorganized it. Notwithstanding this reorganization of the Interpretive Ruling, the OCC has made only two substantive changes: (1) addressing the re-leasing of property acquired for lease financing transactions; and (2) applying 12 U.S.C. 371c-1 to lease financing transactions. Both of these changes have been addressed through the generally applicable provisions of subpart A.

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Robert J. Hemming, National Bank Examiner, Supervision Policy/Research Division (202) 874-5350; Richard Shack, Bank Accounting (202) 874-5350; or Robert J. Roth, Attorney, Legal Advisory Services Division (202) 874-5300.

SUPPLEMENTARY INFORMATION:

Background

This final rule is derived from a notice of proposed rulemaking (NPRM) published by the OCC on December 27, 1989. See 54 FR 53071. Nineteen comments were received during the comment period, which ended February 26, 1990. Portions of the proposal have been modified in response to comments received during the comment period. Following is a discussion of the major issues raised by the commenters. Included in this discussion are any substantive changes from the NPRM and their incorporation into the final rule.

Discussion of Comment Letters

"Net lease basis" Definition

Several commenters accepted the OCC's invitation to comment on whether the definition of net lease should be rewritten to afford banks greater flexibility in exercising their statutory leasing authority. The vast majority of the commenters advocated expanding the definition of net lease to include various marketing, finder or other activities in connection with a bank's lease financing operations. After evaluating these comments, the OCC has decided to provide relief from some of the restrictions imposed by the net lease definition.

Accordingly, a new paragraph (d) has been added to section 23.2 which authorizes national banks to arrange for any of the services proscribed by paragraph (a), *i.e.*, repair and maintenance, insurance, etc., to be provided by third-party servicers on behalf of lessees whose property national banks hold title to as lessor. The OCC believes that the expansion of the net lease definition is consistent with the parameters set forth in *M & M Leasing Corporation* v. *Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) (M & M Leasing), since the lessee, and not the bank, will remain responsible for paying for the cost of insurance and for all repairs and maintenance. The OCC believes that the rendering of such service responsibilities by third-parties is distinguishable from situations in which operational services are provided by the lessor.

Arranging for such incidental service arrangements provides national banks with an efficient means by which they may exercise greater control over the leased property while in the hands of the lessee, thereby protecting the residual value of the property by ensuring that such property is properly insured and serviced during the lease term. In providing lessees with the opportunity to purchase incidental service arrangements, national banks should ensure that such programs are structured to comply with the antitying provisions of 12 U.S.C. 1972.

In addition, it is the OCC's intention that the restrictions imposed by paragraph (a) not be read as precluding national banks from engaging in activities incidental to the leasing function which the OCC has previously found to be within the business of banking. Thus, acting as finder under Interpretative Ruling 7.7200 or similar agent or broker functions would not be foreclosed to national banks due to the restrictions on net leases imposed by paragraph (a).

The OCC has also made an additional change to the net lease definition in § 23.2. Specifically, § 23.2(b)(1) has been changed to clarify that a lessor, in addressing a deteriorating lease situation, is not only freed from the "net lease" requirements under § 23.2(a), but also from the residual value limitations imposed under § 23.11. While both CEBA and 12 U.S.C. 24(7) leases must be on a net basis, only the latter must be on a full-payout basis. As proposed, § 23.2(b)(1) could have been interpreted as removing only the net lease requirement in paragraph (a) without any impact on the full-payout requirement applicable to leases entered into under 12 U.S.C. 24(7). This change is intended to retain the flexibility contained in the distress provision previously found in Interpretive Ruling 7.3400(d)(1), which made specific reference to net, full payout leases.

Investment in Personal Property

a. Legally Binding Written Commitment Requirement. Several commenters objected to the proposed change in § 23.3(a) which would have prevented banks from acquiring property on behalf of a lessee in the absence of a legally binding written commitment to lease. These commenters noted that this proposed change was more restrictive than that imposed by current Interpretive Ruling 7.3400, which authorizes a national bank to acquire such property at the request of the lessee who wishes to lease it from the bank. In addition, some commenters noted that several types of leasing activities make it impractical to have a lease signed prior to the order or acquisition of the property.

In proposing the legally binding written commitment standard, it was not the OCC's intent to interfere with established bank leasing practices. The primary purpose of the change was to prevent national banks from either inventorying or speculating in property which it may not subsequently be able to lease or sell. The measure was further intended to limit a bank's exposure in the event a potential lessee refused to proceed with a lease financing transaction. The final rule adopts a compromise position which the OCC believes provides sufficient flexibility to bank lessors, while ensuring that banks are adequately insulated from loss associated with an unconsummated lease transaction in which the bank has already acquired the property. This has been accomplished by amending § 23.3(a) to require either a legally binding written commitment to lease or a legally binding written agreement which indemnifies the bank against loss in connection with the acquisition of the leased property.

b. Off-Lease Property Holding Period

Section 23.3(b) has also been modified in the final rule. Instead of a one year holding period for off-lease property with the possibility of subsequent extensions upon a showing of exceptional circumstances, the OCC is adopting a two year holding period for off-lease property, with no possibility of extension. The two year holding period will commence on the expiration date of the initial lease, or in the event of default, on the date the lease is declared in default. The OCC believes that this change will provide banks with a more realistic time frame for disposing of previously leased property, while at the same time eliminating the regulatory burden associated with requests for holding period extensions. Thus, upon the expiration of the two year holding period, national banks will be required to write-off any remaining book value for off-lease assets. National banks will be expected to actively attempt to either re-lease off-lease property or dispose of such property as soon as practicable. Adherence to the two year holding period will be verified through the examination process.

c. Interim or Bridge Leases

Finally, § 23.3(c) has been amended to provide additional guidance on the permissible uses of bridge or interim leases. The NPRM, in addressing the return of leased property at the expiration of a conforming lease term, or upon the default of a lessee, required that any subsequent bridge lease be in conformance with the requirements of subpart A and only be used to facilitate conforming long-term lease financing transactions. Some commenters sought clarification on whether the reference to subpart A implied that even short-term bridge leases would be required to comply with the § 23.1(b) requirement that a bank must reasonably expect to realize a return of its full investment in the leased property. As noted by the commenters, in most cases, a short-term bridge lease would not satisfy the full return on investment requirement. Additionally, the commenters sought clarification on whether § 23.3(c) would preclude a national bank from arranging for a lessee to go month-to-month on the expiration of a conforming lease.

Commenters noted that the need for short-term extensions might be desirable in certain equipment leasing transactions in which project delays may extend the remaining project term beyond the initial lease term, but may not warrant a long-term renewal. In such cases, the lessee may wish to continue leasing the equipment on a month-to-month basis pending the project's completion. In such situations, commenters felt a bridge lease would be appropriate notwithstanding the fact that such leases would not be facilitating conforming long-term leases.

The OCC believes that interim leases of off-lease property benefit banks in several ways. First, interim leases generate additional rental revenues. Second, they reduce bank costs associated with storage, transportation, security, etc. pending sale or long-term lease of the property. Finally, interim leases benefit banks by requiring the interim lessee to pay for the various servicing, repair and insurance obligations associated with the property during the off-lease period.

Accordingly, the final rule liberalizes the use of short-term leases by amending § 23.3(c) to authorize a national bank/lessor to enter into occasional interim lease financing transactions, but only at the conclusion of a lease which originally conformed with the requirements of subpart A and either subpart B or C, or which would have conformed with those provisions except for a default by the original

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lessee. Based on this amendment a national bank may lease off-lease property on a month-to-month basis to either the initial lessee (assuming the lessee has not defaulted on the original lease) or to a new lessee, subsequent to the termination of a conforming lease. Under these limited circumstances, the lease need only comply with the net lease requirements of subpart A and will not be subject to the more specific requirements of subpart B or C. This change is intended to aid national banks in maintaining cash flow associated with off-lease property pending sale or re-lease of the property as a conforming lease transaction.

Application of Lending Limits; Restrictions on Transactions with Affiliates

Section 23.5 of the final rule makes it clear that lease financing transactions, whether entered into under Section 108 of CEBA or 12 U.S.C. 24(7), are subject to the per borrower limitations of 12 U.S.C. 84. This section also makes the substantive provisions of 12 U.S.C. 371c and 371c–1 applicable to all lease financing transactions.

Some commenters objected to the application of 12 U.S.C. 84 to CEBA leases, stating that such leases are not required to be the functional equivalent of loans and, therefore, should be exempt from the loans to one borrower restriction imposed by the section. Notwithstanding this view, the OCC believes that 12 U.S.C. 84 should apply to CEBA leases in order to limit a bank's risk of exposure to any one lessee or group of lessees and to promote diversification of a bank's lease portfolio. Consistent with the NPRM, nonrecourse debt may be subtracted from the aggregate book value of leased property to determine the lessee's appropriate lending limit position.

Minimum Lease Term

Section 23.8, which imposes a minimum lease term of 90 days, is intended to address the Conference Report statement that section 108 of CEBA is not intended to allow national banks to engage in daily or short-term leases of personal property. Some commenters opposed the imposition of any minimum lease term for CEBA leases. Others suggested that the prohibition against short-term rentals was intended only to protect nonbank rental companies, such as daily or weekly car rental agencies from national bank competition and that the requirement that all leases be on a "net lease" basis effectively prohibited a bank from inventorying and maintaining property consistent with the needs of a short-term rental company. Some commenters suggested that if Congress wanted to establish a minimum lease term for CEBA leases it could have easily done so.

Congress enacted section 108 of CEBA to provide national banks with relief from the residual value restrictions imposed under Interpretive Ruling 7.3400, thereby enabling banks to engage in shorter term leases and compete with nonbank lessors in the high-grade commercial equipment lease market. The OCC believes that a 90 day minimum lease term provides national banks with sufficient flexibility to meet the leasing needs of its customers. Further, a minimum lease term is advisable in that it provides banks with a standard for determining what constitutes a permissible lease term. In addition, setting the minimum lease term at 90 days eliminates the need to test the outer limits of the meaning of the phrase short-term, thereby avoiding any possible conflict with Congress' express intent that national banks refrain from engaging in the daily or short-term equipment or automobile rental business.

The OCC has decided to modify the minimum lease term in the final rule to permit national banks to acquire property subject to existing leases having remaining maturities of less than 90 days, provided that such leases, at their inception, were in conformance with the general lease requirements of subpart A and those applicable to CEBA leases under subpart B. This amendment is intended to provide national banks with additional flexibility in managing their lease portfolios consistent with the intent of CEBA.

Calculating Volume Limitation for CEBA Leases

The NPRM made clear that the volume restriction for CEBA leases, which limits lease volume to 10 percent of an institution's assets, is computed with reference to a national bank's total consolidated assets. The OCC further stated that the 10 percent volume limitation is to be based on the aggregate book value of all tangible personal property held for lease financing transactions under section 108. In calculating this volume limitation, the NPRM indicated that nonrecourse debt is not to be subtracted.

Some commenters stated that the inclusion of nonrecourse debt in arriving at the overall volume limitation would substantially exaggerate a national bank's true exposure in a leasing transaction. As nonrecourse debt does not represent an obligation of the bank, it was suggested that attributing the nonrecourse debt to the bank for volume limitation purposes would be inappropriate. Moreover, in accounting for leveraged leases, the lessor bank records its investment net of the nonrecourse debt. Accordingly, the OCC has decided that when calculating the volume limitation on CEBA leases, nonrecourse debt may be subtracted from this calculation. This change more accurately reflects a bank's true lease exposure and is consistent with the treatment of nonrecourse debt in calculating a lessee's lending limit position.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), it is certified that this final rule, will not have a significant impact on a substantial number of small entities.

Executive Order 12291

The OCC has determined that this final rule is not classified as a major rule, and therefore does not require a regulatory impact analysis.

List of Subjects 12 CFR Parts 7 and 23

National banks, Leasing, Lease financing transactions.

Authority and Issuance

For the reasons set forth in the Preamble, chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 7—[AMENDED]

1. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 et seq.; 12 U.S.C. 93a.

2. Section 7.3400, Interpretive Ruling 7.3400, is removed effective July 22, 1991.

PART 23—[ADDED]

3. Part 23 is added to read as follows:

PART 23—LEASING

Subpart A—General Provisions

Sec.
23.1 Authority.
23.2 Net lease basis.
23.3 Investment in personal property.
23.4 Segregation of records.
23.5 Application of lending limits; restrictions on transactions with affiliates.
23.6 Consumer Leasing Act of 1976.

Subpart B—CEBA Leases

Sec.
23.7 General rule.
23.8 Lease term.
23.9 Transition period.

Subpart C—Leases Under the Authority of 12 U.S.C. 24 (7)

Sec.
23.10 General rule.
23.11 Maximum estimated residual value.
23.12 Transition rule.

Authority: 12 U.S.C. 1; 12 U.S.C. 24(7) and (10); 93a.

Subpart A—General Provisions

§ 23.1 Authority.

(a) A national bank may engage in lease financing transactions under either of two distinct lines of authority. In order to enter into a lease financing transaction as specifically authorized by 12 U.S.C. 24(10), *i.e.*, a CEBA Lease, a national bank must comply with subparts A and B of this part. In order to enter into a lease financing transactions as generally authorized by 12 U.S.C. 24(7), a national bank must comply with subparts A and C of this part.

(b) On entering into a lease financing transaction in compliance with this subpart, a bank must reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from —

(1) Rentals;

(2) Estimated tax benefits; and

(3) The estimated residual value of the property at the expiration of the term of the lease.

§ 23.2 Net lease basis.

(a) A *net lease* is a lease under which the national bank will not, directly or indirectly, provide or be obligated to provide for:

(1) The servicing, repair or maintenance of the leased property during the lease term.

(2) The purchasing of parts and accessories for the leased property; however, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with any applicable requirements for maximum estimated residual value.

(3) The loan of replacement or substitute property while the leased property is being serviced.

(4) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance.

(5) The renewal of any license or registration for the property unless such action by the bank is necessary to protect its interest as owner or financier of the property.

(b) If, in good faith, a national bank believes that there has been an unexpected change in conditions which threatens its financial position by significantly increasing its exposure to loss, the limitations contained in paragraph (a) of this section shall not prevent the bank—

(1) As the owner and lessor under a net lease, (including a full-payout lease entered into under 12 U.S.C. 24(7)), from taking reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease; or

(2) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

(c) The limitations contained in paragraph (a) of this section do not prohibit a national bank from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraph (b) of this section.

(d) The limitations contained in paragraph (a) of this section do not prohibit a national bank from arranging for any of the services enumerated in paragraph (a) of this section to be provided by a third party to a lessee (at the expense of the lessee) with respect to property leased by the lessee.

§ 23.3 Investment in personal property.

(a) A national bank may acquire specific property to be leased only after the bank has entered into either:

(1) A legally binding written agreement which indemnifies the bank against loss in connection with its acquisition of the property; or

(2) A legally binding written commitment to lease the property on terms which comply with the provisions of this subpart and either subpart B or C of this part.

(b) At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, all of the bank's interest in the property shall either be liquidated or re-leased in conformance with this subpart and either subpart B or C of this part, as soon as practicable, but in no event later than two years from the expiration of the lease. Property which the bank retains in anticipation of re-leasing must be revalued at the lower of current fair market value or book value prior to any subsequent lease.

(c) Notwithstanding the provisions of paragraph (b) of this section, on the return of leased property at the expiration of a conforming lease term, or on the default of a lessee, a short-term bridge or interim lease is permissible if it otherwise conforms with the net lease requirements of § 23.2 of this subpart A. Such a short-term bridge or interim lease need not comply with the further requirements of subpart B or C of this part. Short-term bridge or interim leases may be used pending the sale of off-lease property, or its re-lease as a conforming long-term lease financing transaction.

§ 23.4 Segregation of records.

Where a national bank enters into both CEBA leases and leases under the authority of 12 U.S.C. 24(7), the bank must specifically identify any records it maintains on its CEBA leases to distinguish them from those records which the bank maintains on its leases under the authority of 12 U.S.C. 24(7).

§ 23.5 Application of lending limits; restrictions on transactions with affiliates.

Leasing financing transactions entered into under this part are subject to the limitations on loans or extensions of credit under 12 U.S.C. 84 and to the restrictions on transactions with affiliates under 12 U.S.C. 371c and 371c–1. The Comptroller of the Currency reserves the right to determine that such leases are also subject to the limitations of any other law, regulation or ruling.

§ 23.6 Consumer Leasing Act of 1976.

Nothing in this part shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 U.S.C. 1667 *et seq.*

Subpart B—CEBA Leases

§ 23.7 General rule.

Pursuant to 12 U.S.C. 24(10), a national bank may invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, or may become the owner and lessor of such tangible personal property by purchasing the property from another lessor in connection with its purchase of the related lease; provided that the requirements of subpart A of this part and this subpart are met, and the aggregate book value of all tangible personal property held for lease (under the authority of 12 U.S.C. 24(10)) does not exceed 10 percent of the consolidated assets of the national bank.

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§ 23.8 Lease term.

(a) Lease financing transactions entered into under this subpart must have an initial term of not less than 90 days.

(b) The minimum lease term provided for in paragraph (a) of this section, shall not be applicable to the acquisition of property subject to an existing lease with a remaining maturity of less than 90 days, provided that, at its inception, such lease was in conformance with the requirements of subpart A of this part and this subpart.

§ 23.9 Transition period.

(a) Lease financing transactions entered into under the authority of 12 U.S.C. 24(10) prior to July 22, 1991 may continue to be administered in accordance with the lease financing terms agreed to by the bank/lessor and lessee. With respect to the applicability of § 23.5, when making new extensions of credit, including leases, to a customer, a national bank must consider all outstanding leases regardless of the date on which they were made.

(b) Any lease which was entered into in good faith prior to July 22, 1991 which does not satisfy the requirements of subpart A of this part and this subpart may be renewed without violation of this part only if there is a binding agreement in the expiring lease which requires the bank to renew it at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to do so, and the bank in good faith determines and demonstrates, by full documentation, that renewal of the lease is necessary to avoid significant financial loss and recover its total investment in, plus the cost of financing, the property.

Subpart C—Leases Under the Authority of 12 U.S.C. 24(7)

§ 23.10 General rule.

Pursuant to 12 U.S.C. 24(7), a national bank may become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property; or become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property; provided that the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease, and the requirements of subpart A of this part and this subpart are met.

§ 23.11 Maximum estimated residual value.

(a) Any unguaranteed portion of the estimated residual value relied upon by the bank to yield a full return under this subpart shall not exceed 25 percent of the original cost of the property to the lessor. The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or a third party which is not an affiliate (as defined by 12 U.S.C. 371c) of the bank, may exceed 25 percent of the original cost of the property, where the bank has determined, and can provide full, supporting documentation, that the guarantor has the resources to meet the guarantee.

(b) Calculations of estimated residual value on leases of personal property to Federal, State, or local governmental entities may be based on reasonably anticipated future transactions or renewals.

(c) In all cases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

§ 23.12 Transition rule.

This part shall not apply to any leases executed prior to June 12, 1979. With respect to the applicability of § 23.5, when making new extensions of credit, including leases, to a customer, a national bank must consider all outstanding leases regardless of the date on which they were made. Any lease which was entered into in good faith prior to such date which does not satisfy the requirements of this part may be renewed without violation of this part only if there is a binding agreement in the expiring lease which requires the bank to renew it at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to do so, and the bank in good faith determines and demonstrates, by full documentation, that renewal of the lease is necessary to avoid significant financial loss and recover its total investment in, plus the cost of financing, the property.

Dated: June 13, 1991.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 91-14511 Filed 6-19-91; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-119-AD; Amendment 39-7045; AD 91-14-03]

Airworthiness Directives; McDonnell Douglas Model MD-11 and MD-11F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model MD-11 and MD-11F series airplanes, which requires inspections and repositioning, if necessary, of the tail tank fuel distribution pipe assembly in the left main landing gear wheel well. This amendment is prompted by an in-service report of an uncontained fuel leak in the wheel well. This condition, if not corrected, could result in a fuel leak in the left main landing gear wheel well area, and the possibility of an in-flight or ground fire.

DATES: Effective July 5, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 5, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: DC-10 Technical Publications, Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5282.

SUPPLEMENTARY INFORMATION: Recently, an uncontained fuel leak was detected in the left main landing gear wheel well of a McDonnell Douglas Model MD-11 series airplane. Investigation has revealed that the tail tank fuel pipe assembly migrated, which allowed the O-ring that provides the seal between the shroud of the pipe assembly and coupling shroud assembly to be exposed. This resulted in fuel leaking into the main landing gear wheel well. This condition, if not corrected, could result in a fuel leakage in the left main landing gear wheel well area, and the possibility of an in-flight or ground fire.

The FAA has reviewed and approved McDonnell Douglas MD-11 Alert Service Bulletin A28-14, dated April 11, 1991, which describes procedures to visually inspect the tail tank fuel pipe assembly for the proper position in the left main landing gear wheel well area, and to reposition the fuel pipe assembly, if required. The FAA has also reviewed and approved McDonnell Douglas Service Bulletin 28-14, dated May 17, 1991, which describes procedures for installing a fuel pipe assembly shroud support bracket; installation of this bracket precludes the need for the visual inspections.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive visual inspections and repositioning, if necessary, of the tail tank fuel distribution pipe assembly in the left main landing gear wheel well, in accordance with Alert Service Bulletin A28-14, previously described. To terminate the inspections, operators may install the support bracket in accordance with Service Bulletin 28-14.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

This is considered interim action. The FAA may consider further rulemaking to require additional corrective action to minimize migration of the tail tank fuel distribution pipe assemblies and the possibility of fuel leakage on Model MD-11 and MD-11F airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is a emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-14-03. McDonnell Douglas: Amendment 39-7045. Docket No. 91-NM-119-AD.

Applicability: Model MD-11 and MD-11F series airplanes, with manufacturer's fuselage numbers 447 through 449, 451 through 461, and 463, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent fuel leakage from the tail tank fuel distribution pipe assembly shroud coupling when the shroud system contains fuel, accomplish the following:

(a) Within 30 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 100 flight hours, visually inspect the tail tank fuel distribution pipe assembly located in the left main landing gear wheel well for correct pipe flange position, in accordance with the accomplishment instructions of McDonnell Douglas MD-11 Alert Service Bulletin A28-14, dated April 11, 1991 (hereinafter referred to as SB A28-14).

(1) If the pipe flange measurement is within the dimensions specified in SB A28-14, no action is required.

(2) If the pipe flange measurement is not within the dimensions specified in SB A28-14, prior to further flight, accomplish either subparagraph (a)(2)(i) or (a)(2)(ii) of this AD:

(i) Reposition the pipe assembly in accordance with the accomplishment instructions of SB A28-14 and continue inspections at intervals not to exceed 100 flight hours; or

(ii) Install a fuel pipe assembly shroud support bracket in accordance with the accomplishment instructions of McDonnell Douglas MD-11 Service Bulletin 28-14, dated May 17, 1991.

(b) Installation of a fuel pipe assembly shroud support bracket in accordance with the accomplishment instructions of McDonnell Douglas Service Bulletin 28-14, dated May 17, 1991, constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may concur or comment and then send it to the Manger, Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The inspection, repositioning, and installation requirements shall be done in accordance with McDonnell Douglas MD-11 Service Bulletin A28-14, dated April 11, 1991; and Service Bulletin 28-14, dated May 17, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: DC-10 Technical Publications, Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment (39-7045, AD 91-14-03) becomes effective on July 5, 1991.

Issued in Renton, Washington, on June 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14726 Filed 6-19-91; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-29886]

Exemption of Stocks Contained in Standardized Market Baskets From Registration Under Section 12(a) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of Rule 12a–7 (Rule) under the Securities Exchange Act of 1934 (Act). The rule exempts from the registration provisions of section 12(a) of the Act securities that are traded as part of a market basket transaction provided that each component security otherwise is a national market system security and is listed and registered on another national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System. In addition, to be eligible for an exemption pursuant to Rule 12a–7, the stocks must be part of a standardized market basket containing at least 100 securities. The exemption is applicable only to facilitate the trading of securities as part of a standardized market basket that previously has been approved for exchange trading by the Commission pursuant to the requirements of section 19(b) of the Act.

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon Lawson, Special Counsel, Office of Self-Regulatory Oversight, (202) 272–2408, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Securities and Exchange Commission ("Commission") is today announcing the adoption of Rule 12a–7 ("Rule") under the Securities Exchange Act of 1934 ("Act").[1] Under the Rule, securities comprising a market basket [2] can be traded on a national securities exchange, solely as part of the market basket, without registering the securities on such an exchange under section 12 of the Act, provided the conditions specified in the rule are satisfied at or prior to execution of the market basket trade.

The adoption of the Rule will permit the New York Stock Exchange, Inc. (NYSE) (and, potentially other exchanges in the future) to trade market basket contracts [3] without having to register, or be granted unlisted trading privileges (UTP), under section 12 of the Act in replacement securities in the indexes on which the contracts are based.[4]

As discussed in the Proposing Release, the Commission proposed the rule because of concern that trading in market baskets could be disrupted if the NYSE had to submit a UTP application for replacement securities in the index on which the market baskets are based and wait the 10 day notice period required under the Act before it could trade the replacement security as part of its market basket.[5] As discussed in more detail below, the Commission believes the limited exemption that will be provided by the Rule will avoid unduly disrupting the trading in stock market baskets on an exchange any time a stock in an index on which the market basket is based is replaced with another security.[6]

II. Discussion

As adopted Rule 12a–7 provides a limited exemption from the registration requirements of section 12(a) of the Act for those stocks that are traded on an exchange only as part of a standardized market basket.[7] Under the terms of the rule the exemption only is available for stocks included in a standardized market basket if the market basket has been approved by the Commission for listing on a national securities exchange pursuant to the requirements of section 19(b) of the Act. Accordingly, the exemption under the Rule is immediately available for those stocks included in the Commission approved market basket currently traded by the NYSE.[8]

Further, to be eligible for the exemption under the Rule, a stock must be a national market system (NMS) security as defined in rule 11Aa2–1 under the Act and either (1) registered on another national securities exchange or (2) quoted on the National Association of Securities Dealers Automated Quotation (NASDAQ) System. These requirements are important for several reasons.

First, the NMS designation requirement is significant because to be designated a NMS security last sale information must be reported through a consolidated transaction reporting system established pursuant to rule 11Aa3–1 under the Act. Although individual transactions in exempted securities would not be permitted under the rule, the Commission believes that consolidated transaction data is an important requirement for all individual stocks traded as part of a market basket on an exchange, because a buyer of a basket takes ownership of each component stock and will be free to sell or hold each stock separately.

Second, the requirements noted above ensure that there is adequate information available to the public on all stocks eligible for an exemption under the rule. This is because all exempted exchange-traded stocks under the rule must be registered on at least one national securities exchange under section 12(b). That section requires specific information and disclosure from issuers seeking to have their stock exchange traded.

As for over-the-counter (OTC) issues eligible for an exemption under the rule, the NMS requirement coupled with the requirement for NASDAQ quotation means that only those stocks meeting the National Association of Securities Dealers' (NASD) NASDAQ/NMS eligibility criteria would be entitled to an exemption under the rule. Under that criteria, such stocks, with limited exceptions for insurance and investment companies, must be registered under section 12(g) of the Act.[9] This is important because the information that must be provided by the issuer to register securities under section 12(g) is substantially similar to the information required to register a security on a national securities exchange under section 12(b). Moreover, issuers having securities registered under section 12 of the Act have continuing reporting obligations under other sections of the Act.[10] Accordingly, the requirements that stocks be NMS stocks that are either registered on a national securities exchange or quoted on NASDAQ to be eligible for an exemption under the Rule, ensures that information on such stocks is readily and publicly available, consistent with the purposes underlying the registration requirements of section 12.

Finally, we note that OTC securities that are designated NASDAQ/NMS stocks must meet specific quantitative and qualitative requirements similar to those required for exchange listed stocks.[11] Accordingly, the NMS designation requirement, coupled with NASDAQ quotation or exchange listing, will ensure that all the stocks eligible for an exemption under the Rule are active and liquid stocks.

In summary, the Commission believes that the conditions of the rule ensure that the regulatory purposes underlying section 12 will be met. For example, as noted above, with the limited exception for certain investment and insurance companies, only securities registered under either section 12(b) or 12(g) of the Act can be exempted under the rule, thereby assuring that information about the issuers of those securities is available to the public. Further, last sale reports must be available on a security for it to be eligible for the exemption. Finally, the Commission will continue to ensure that it is appropriate to grant stocks comprising a particular market basket an exemption under section 12(a) through its authority under section 19(b) to review market basket proposals of the national securities exchanges.[12]

The Commission recognizes that rule 12a–7 has the effect of eliminating the requirements for a discrete notice and comment period for each unlisted trading privilege application. The Commission believes that this result is justified because inclusion of a stock in a market basket should not have the potential of changing the primary locus of trading in the individual stock. In this regard, we note that each individual stock that is a component of a market basket only accounts for a small component of the total index value [13] and that the 12(a) exemption under the rule is only applicable to trading in the market basket. In addition, no issuer to date has commented on the inclusion of its stock in market basket trading. Accordingly, we believe that the impact on a particular underlying stock will be minimal. Finally, through the section 19(b) review process of market basket proposals and public comment on such proposals, the Commission will have an opportunity to assess the overall impact market basket trading may have on the stocks which are included in the basket and address any concerns.[14]

In light of the potential benefits to be achieved by market basket trading, we do not believe on balance that any further regulatory goals would be achieved by requiring the exchanges to register, or apply for UTP, on each individual stock included in a market basket. To the contrary, it is our belief that without the availability of the exemption in the rule, trading in market baskets could be unduly disrupted every time a security is replaced by another for little public benefit.

III. Regulatory Flexibility Act Status

Pursuant to section 605(b) of the Regulatory Flexibility Act,[15] when the Commission proposed rule 12a–7, the Chairman of the Commission certified that the proposed rule if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments on the Chairman's certification.

IV. Effects on Competition and Other Findings

Section 23(a)(2) of the Act [16] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the adoption of the rule in light of the standards cited in section 23(a)(2) and believes that the rule's adoption will not impose any burden on competition not necessary or appropriate in furtherance of the Act. This finding is made for the reasons set forth above in this release. As stated herein, the rule is designed to

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[1] The Commission proposed for comment Rule 12a–7 in Securities Exchange Act Release No. 27834 (March 22, 1990), 55 FR 11307 (Proposing Release). No comments were received on the proposal.

[2] Market baskets or stock portfolios enable the trading of standardized baskets of stocks at an aggregate price in a single execution on an exchange floor. A trade in a market basket or portfolio results in a transfer to the buyer of ownership of each of the component stocks. When the transaction is completed, the buyer will be entitled to all rights attending ownership of the basket component stocks (including rights to vote and receive dividends), and will be free to sell or hold each stock separately.

[3] The NYSE trades Exchange Stock Portfolios based on the Standard & Poor's ("S&P") 500 Portfolio Index. Trading volume has been relatively low in market baskets. Since the commencement of trading in October 1989, a total of 289 baskets have traded on the NYSE, with only four basket contracts traded during the last six months.

At the time the rule was proposed the Chicago Board Options Exchange ("CBOE") also traded market baskets based on the S&P 500 Index. The CBOE, however, has informed the Commission that it is delisting market baskets from exchange trading because of lack of investor interest, the last trade having occurred on November 2, 1989. *See* letter from Robert F. Ackermann, Vice President, CBOE to Howard Kramer, Assistant Director, Commission, dated December 18, 1990. Nevertheless, CBOE rules would permit it to trade market baskets on the S&P 500 and 100 indexes, at a future date, if it so desired.

[4] Section 12 of the Act requires any security, other than an exempt security, to be registered in accordance with the requirements of that section before it can be traded on a national securities exchange. Section 12(f) of the Act, however, permits the Commission to extend UTP to national securities exchanges if the security is registered pursuant to section 12 of the Act or would be required to be so registered except for the exemption from registration provided in section 12(g) of the Act. Under section 12(f)(5) of the Act, before approving an application for UTP, 10 days notice must be given to the issuer of the security and the exchange on which the security is registered.

[5] Changes in an index can occur at any time for a variety of reasons such as the elimination of a component security due to a merger, acquisition, or going private transaction. As discussed in the Proposing Release, if an exchange traded contract was unable to be amended immediately, buyers, in addition to incurring unnecessary transaction costs, would incur new basis risk because the price of the index, as amended, could deviate by more than a minimal amount from the price of the component stocks of the market basket contract.

[6] Since Commission approval of market baskets in October 1989, there have been UTP requests for approximately nine replacement stocks. The CBOE and NYSE were permitted to trade these replacement stocks immediately pursuant to no-action letters issued by the Commission staff on the condition, among other things, that the markets promptly submit UTP requests for the replacement stocks. To date no comments on the UTP requests for replacement securities have been received.

[7] Under the rule, the term standardized market basket is defined as a group of at least 100 stocks purchased or sold in a single execution and at a single trading location with physical delivery and transfer of ownership of each component stock resulting from such execution.

[8] *See* note 3, *supra*. Of course a stock would have to meet the other requirements of the rule to be granted an exemption from registration.

[9] *See* NASD By-Laws, Schedule D, Part III, Para. 1910. The NASD's rules authorize the securities of insurance companies meeting the conditions of section 12(g)(2)(G) of the Act and closed-end investment companies registered under section 8 of the Investment Company Act of 1940 and whose securities are registered under the Securities Act of 1933 to be designated NASDAQ/NMS securities. Such issuers are subject to comprehensive disclosure under State law and the Federal securities laws, respectively. American Depository Receipts based on the equity security of a foreign issuer also are eligible for NASDAQ/NMS inclusion if the underlying equity securities are registered under section 12 of the Act.

[10] *See, e.g.*, section 13 of the Act and the rules thereunder.

[11] For example, these requirements set forth quantitative standards for inclusion in NASDAQ/NMS such as minimum public float and market value.

[12] In limiting the exemption under the rule to stocks included in market baskets that are only traded on a national securities exchange, the Commission does not intend to raise any implications that it believes such a market basket would not be appropriate for quotation on the NASDAQ System. Unlike the registration requirements for securities traded on exchanges under section 12(a) of the Act, there is no section of the Act that would prohibit the NASD from trading exchange listed stocks as part of a market basket approved by the Commission. The Commission, however, recognizes the competitive implications of exchange off-board trading restrictions that would prohibit exchange members from trading certain securities off an exchange floor. In this context, the Commission would be concerned about any exchange restrictions that would limit the ability of a market to quote and trade a market basket product similar to the market baskets approved for trading on the NYSE and CBOE.

[13] As noted above, the rule only applies to standardized market baskets which contain at least 100 stocks.

[14] Although not all securities ultimately included in a market basket will be known at the time of the Commission's review of a proposal to trade a market basket due to future substitutions, the Commission will know the characteristics and type of securities which are intended to be included in a proposed market basket.

[15] 5 U.S.C. 605(b).

[16] 15 U.S.C. 78w(a)(2) (1988).

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exempt from the registration requirements of section 12(a) of the Act certain stocks that are only traded on an exchange as part of a Commission approved market basket.

Insofar as the rule contains limitations, they are designed to promote the purposes of the Act by ensuring that adequate information will be available on the stocks included in a market basket consistent with the purposes underlying the section 12 registration requirements.

V. Statutory Basis

Rule 12a–7 is being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12), 6, 11A, 12 and 23(a)(1) of the Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VI. Text of Rule

For the reasons set out in the preamble, title 17, chapter II, part 240 of the Code of Federal Regulations is amended as set forth below.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citation after the general authority:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

* * * § 240.12a–7 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), 6, 15 U.S.C. 78(f), 11A, 15 U.S.C. 78k, 12, 15 U.S.C. 78(l), and 23(a)(1), 15 U.S.C. 78(w)(a)(1).

2. By adding § 240.12a–7 as follows:

§ 240.12a–7 Exemption of stock contained in standardized market baskets from section 12(a) of the Act.

(a) Any component stock of a standardized market basket shall be exempt from the registration requirement of section 12(a) of the Act, solely for the purpose of inclusion in a standardized market basket, provided that all of the following terms and conditions are met:

(1) The standardized market basket has been duly approved by the Commission for listing on a national securities exchange pursuant to the requirements of section 19(b) of the Act; and

(2) The stock is a National Market System security as defined in rule 11Aa2–1 under the Act (17 CFR 240.11Aa2–1) and is either:

(i) Listed and registered for trading on a national securities exchange by the issuer or

(ii) Quoted on the National Association of Securities Dealers Automated Quotation System;

(b) When used in this rule, the term standardized market basket means a group of at least 100 stocks purchased or sold in a single execution and at a single trading location with physical delivery and transfer of ownership of each component stock resulting from such execution.

By the Commission.

Dated: June 11, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14515 Filed 6–19–91; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[FRL–3966–1]

Approval and Promulgation of Implementation Plans; ND Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today providing notice that it granted delegation of authority to North Dakota on January 7, 1991 to implement and enforce the New Source Performance Standards (NSPS) for 40 CFR part 60, subpart QQQ. This is a result of a request for delegation from the State of North Dakota on June 26, 1990.

This notice also approves revisions to the North Dakota NSPS as part of the State Implementation Plan (SIP). Although the North Dakota NSPS were originally approved as part of the SIP, subsequent revisions to the State's NSPS were approved by delegation of authority to the State to implement and enforce the NSPS and were not included as part of the SIP. This created much confusion on the enforcement of these NSPS. This notice now clarifies past EPA actions by approving all of the State's NSPS regulations as part of the SIP.

DATES: *Effective Date:* This action will become effective on August 19, 1991, unless notice is received by July 22, 1991, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the submittal are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, CO 80204–2405

Division of Environmental Engineering, State Department of Health and Consolidated Laboratories, P.O. Box 5520, Bismarck, North Dakota 58502–5520

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Environmental Protection Agency, region VIII, Air Programs Branch, suite 500, Denver, CO 80202–2405, (303) 293–1676, (FTS) 330–1676.

SUPPLEMENTARY INFORMATION: EPA has two options for the approval of a State's NSPS regulations. Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce standards set forth in 40 CFR part 60, NSPS. EPA also has the option of approving State NSPS regulations as part of the SIP. The difference between these two options is in the enforcement abilities of EPA and the State. Originally, North Dakota's NSPS regulations were approved as part of the SIP. However, subsequent revisions to the State's NSPS regulations were not approved as part of the SIP. Instead, the State was delegated the authority to implement and enforce the regulations. This resulted in much confusion over the authority for enforcement of the North Dakota NSPS regulations. By approving the June 26, 1990 revisions to North Dakota's NSPS regulations as part of the SIP, the authority for enforcement will be consistent for all of the State's NSPS regulations.

On May 26, 1976, the state of North Dakota submitted their original procedures for NSPS. EPA approved these NSPS regulations as part of the SIP on May 26, 1977 (42 FR 26078). Subsequent revisions to the State's NSPS regulations were delegated to the State on September 17, 1984 (49 FR 36328), December 16, 1988 (53 FR 50524), and July 17, 1990 (55 FR 29015).

On June 26, 1990, the State of North Dakota submitted revisions to its NSPS regulations. Such revisions included the addition of one NSPS for the following source category: Volatile organic compounds (VOC) emissions from petroleum refinery wastewater systems (40 CFR part 60, subpart QQQ). Pursuant to such submittal, on January 7, 1991, delegation was given with the following letter:

Hon. George A. Sinner,
Governor of North Dakota, State of North Dakota, Office of the Governor, Bismarck, North Dakota 58505.

Dear Governor Sinner: This letter is in response to your submittal dated June 26, 1990. The submittal was a revision to the implementation Plan for the Control of Air Pollution for the State of North Dakota. The submittal modified several chapters of the State's Air Pollution Control Regulations: the Prevention of Significant Deterioration of Air Quality (PSD) regulations to incorporate the nitrogen dioxide (NO_2) increments; the Ambient Air Quality Standards to amend the State's hydrogen sulfide standard; the Standards of Performance for New Stationary Sources (NSPS); the Emission Standards for Hazardous Air Pollutants (NESHAPS); and various other minor changes. This letter addresses only the modification to the NSPS chapter which added a new category of NSPS. The remaining regulations are being addressed through separate actions.

Subsequent to states adopting NSPS regulations, the Environmental Protection Agency (EPA) delegates the authority for the implementation and enforcement of those NSPS so long as those regulations are equivalent to, or more stringent than, the federal regulations. EPA, therefore, is acting on the delegation of authority to North Dakota for implementation and enforcement of one NSPS.

EPA has reviewed the pertinent statutes and regulations of the State of North Dakota and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of North Dakota. Therefore, pursuant to section 111(c) of the Clean Air Act (CAA), as amended, and 40 CFR part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR part 60. The category of new stationary sources covered by this delegation is as follows: volatile organic compounds (VOC) emissions from the petroleum refinery wastewater systems (subpart QQQ).

(B) Not all authorities of NSPS can be delegated to states under section 111(c) of the CAA. The EPA Administrator retains the authority to implement those sections of NSPS that require: (1) Approving equivalency determinations and alternative test methods; (2) decision making to ensure national consistency; and (3) EPA rulemaking to implement. Therefore, EPA cannot delegate the authority provided in 40 CFR 60.804 [33–15–13–64(30)(1) in North Dakota's Regulations].

(C) As 40 CFR part 60 is updated by EPA, North Dakota must revise its rules and regulations accordingly.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of August 30, 1976, except that condition 5, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority as stated in condition 2 and if at any time there is a conflict between a State and Federal Regulation (40 CFR Part 60), the Federal Regulation must be applied if it is more stringent than that of the State, as stated in condition 7 of our letter dated August 30, 1976.

A copy of the August 30, 1976 letter was published in the notices section of the Federal Register of October 18, 1976 (41 FR 44884), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of North Dakota (41 FR 44885). Copies of the Federal Register are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to have accepted all the terms of this delegation.

Sincerely,

James J. Scherer,

Regional Administrator.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 19, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 19, 1991.

Final Action

As stated above, the North Dakota NSPS rules have been processed under separate actions. This notice clarifies that all of North Dakota's NSPS rules are approved as part of the SIP. The NSPS authority, however, does not extend beyond what was stated in the above letter, i.e., EPA retains the authority specified in 40 CFR 60.804. Federal approval of the North Dakota NSPS rules includes only those regulations which are equal and consistent with the Federal regulations. Approval of such rules are noted in 40 CFR 52.1820(c) and 40 CFR 60.4(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities [See 46 FR 8709].

This action has been classified as a table 3 action by the Regional Administrator under procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from the date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements [See section 307(b)(2).]

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by reference.

40 CFR Part 60

Air pollution control, Asphalt, Asphalt concrete plants, Bulk gasoline terminals, Coal preparation plants, Electric utility steam generators, Equipment leaks of volatile organic compounds (VOC's), Fossil fuel fired steam generators, Grain elevators, Incinerators, Lime manufacturing plants, Nitric acid plants, Nonmetallic mineral processing plants, Onshore natural gas processing.

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Petroleum, Petroleum dry cleaners, Petroleum refineries, Petroleum liquid storage vessels, Phosphate fertilizer industry, Portland cement plants, Sewage treatment plants, Sulfur dioxide (SO_2) emissions, Stationary gas turbines, Synthetic organic chemical manufacturing, Sulfuric acid plants, Volatile organic compounds (VOC), Petroleum refinery wastewater systems.

Dated: May 29, 1991.

Jack McGraw,

Acting Regional Administrator.

PART 52—[AMENDED]

40 CFR part 52, subpart JJ is amended as follows:

Subpart JJ—North Dakota

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

2. Section 52.1620 is amended to by adding paragraph (c)(21) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(21) On June 20, 1990, the Governor of North Dakota submitted revisions to the plan for new source performance standards.

(i) Incorporation by reference.

(A) Revisions to the Air Pollution Control Rules of the State of North Dakota Chapter 33–15–12 which was effective on June 1, 1990.

(ii) Additional material.

(A) January 7, 1991, letter from James J. Scherer, EPA, to George A. Sinner, Governor, State of North Dakota, on the authority for implementation and enforcement of the New Source Performance Standards (NSPS) for 40 CFR part 60, subpart QQQ.

PART 60—[AMENDED]

40 CFR part 60, subpart A, is amended as follows:

Subpart A—General Provisions

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7411

2. Section 60.4(c) is amended by revising the table to read as follows:

§ 60.4 Address.

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

	Subpart	State					
		CO	MT [1]	ND [1]	SD [1]	UT [1]	WY
A	General Provisions	*	*	*	*	*	*
D	Fossil Fuel Fired Steam Generators	*	*	*	*	*	*
Da	Electric Utility Steam Generators	*	*	*	*	*	*
Db	Industrial-Commercial-Institutional Steam Generators	*	*	*	*	*	*
E	Incinerator	*	*	*	*	*	*
F	Portland Cement Plant	*	*	*	*	*	*
G	Nitric Acid Plants	*	*	*	*	*	*
H	Sulfuric Acid Plant	*	*	*	*	*	*
I	Asphalt Concrete Plants	*	*	*	*	*	*
J	Petroleum Refineries	*	*	*	*	*	*
K	Petroleum Storage Vessels (6/11/73–5/19/78)	*	*	*	*	*	*
Ka	Petroleum Storage Vessels (5/19/78–7/23/84)	*	*	*	*	*	*
Kb	Petroleum Storage Vessels (after 7/23/84)	*	*	*	*	*	*
L	Secondary Lead Smelters	*	*	*	*	*	*
M	Secondary Brass & Bronze Production Plants	*	*	*	*	*	*
N	Primary Emissions from Basic Oxygen Process Furnaces (after 6/11/73)	*	*	*	*	*	*
Na	Secondary Emissions from Basic Oxygen Process Furnaces (after 1/20/83)	*	*	*	*	*	*
O	Sewage Treatment Plants	*	*	*	*	*	*
P	Primary Copper Smelters	*	*	*	*	*	*
Q	Primary Zinc Smelters	*	*	*	*	*	*
R	Primary Lead Smelters	*	*	*	*	*	*
S	Primary Aluminum Reduction Plants	*	*	*	*	*	*
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Plants	*	*	*	*	*	*
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	*	*	*	*	*	*
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	*	*	*	*	*	*
W	Phosphate Fertilizer Industry: Triple Super-Phosphate Plants	*	*	*	*	*	*
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	*	*	*	*	*	*
Y	Coal Preparation Plants	*	*	*	*	*	*
Z	Ferroalloy Production Facilities	*	*	*	*	*	*
AA	Steel Plants: Electric Arc Furnaces (10/21/74–8/17/83)	*	*	*	*	*	*
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (after 8/7/83)	*	*	*	*	*	*
BB	Kraft Pulp Mills	*	*	*	*	*	*
CC	Glass Manufacturing Plants	*	*	*	*	*	*
DD	Grain Elevator	*	*	*	*	*	*
EE	Surface Coating of Metal Furniture	*	*	*	*	*	*
GG	Stationary Gas Turbines	*	*	*	*	*	*
HH	Lime Manufacturing Plants	*	*	*	*	*	*
KK	Lead-Acid Battery Manufacturing Plants	*	*	*	*	*	*
LL	Metallic Mineral Processing Plants	*	*	*	*	*	*
MM	Automobile & Light Duty Truck Surface Coating Operations	*	*	*	*	*	*
NN	Phosphate Rock Plants	*	*	*	*	*	*
PP	Ammonium Sulfate Manufacturing	*	*	*	*	*	*
QQ	Graphic Arts Industry: Publication Rotogravure Printing	*	*	*	*	*	*
RR	Pressure Sensitive Tape & Label Surface Coating	*	*	*	*	*	*
SS	Industrial Surface Coating: Large Appliances	*	*	*	*	*	*
TT	Metal Coil Surface Coating	*	*	*	*	*	*
UU	Asphalt Processing & Asphalt Roofing Manufacture	*	*	*	*	*	*
VV	Synthetic Organic Chemicals Manufacturing: Equipment Leaks of VOC	*	*	*	*	*	*

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS—Continued

[(NSPS) for Region VIII]

	Subpart	State					
		CO	MT [1]	ND [1]	SD [1]	UT [1]	WY
WW	Beverage Can Surface Coating Industry	*	*			*	*
XX	Bulk Gasoline Terminals	*	*	*		*	*
AAA	Residential Wood Heaters					*	*
BBB	Rubber Tires					*	*
FFF	Flexible Vinyl & Urethane Coating & Printing	*	*			*	*
GGG	Equipment Leaks of VOC in Petroleum Refineries	*	*	*		*	*
HHH	Synthetic Fiber Production	*	*			*	*
III	VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes					*	
JJJ	Petroleum Dry Cleaners	*	*	*		*	*
KKK	Equipment Leaks of VOC from Onshore Natural Gas Processing Plants	*	*	*		*	*
LLL	Onshore Natural Gas Processing: SO2 Emissions	*	*	*		*	*
NNN	VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Distillation Operations					*	
OOO	Nonmetallic Mineral Processing Plants	*	*	*	*	*	*
PPP	Wool Fiberglass Insulation Manufacturing Plants	*	*			*	*
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems			*		*	
SSS	Magnetic Tape Industry					*	
TTT	Plastic Parts for Business Machines Coatings					*	*
VVV	Polymeric Coating of Supporting Substrates					*	

* Indicates approval of State regulation.

[1] Indicates approval of New Source Performance Standards as part of the State Implementation Plan (SIP).

[FR Doc. 91–14020 Filed 6–19–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 9F3744/R1123; FRL–3931–9]

RIN 2070 AB–78

M-One Plus Bioinsecticide; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insecticide M-One Plus® Bioinsecticide containing the delta endotoxin of *Bacillus thuringiensis* variety *San Diego* encapsulated in killed *Pseudomonas fluorescens* when used in or on all food and feed crops. This request for an exemption from the requirement of a tolerance was requested by Mycogen Corp. This regulation eliminates the need to establish a maximum permissable level for residues of this killed microbial pesticide.

EFFECTIVE DATE: Effective on June 20, 1991.

ADDRESSES: Written objections, identified by document control number [PP 9F3744/R1123], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Phillip G. Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–557–2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of March 19, 1990 (54 FR 21664), which announced that it had received pesticide petition (PP) 9F3744 from the Mycogen Corporation, 5451 Oberlin Drive, San Diego, CA 92121, proposing that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the insecticide M-One Plus Bioinsecticide in or on all raw agricultural commodities (RACs) when formulated in an encapsulated system.

No comments were received in response to this notice of filing. However, comments were received when the EPA published its receipt of an application for an Experimental Use Permit (and temporary tolerance exemption) for this pesticide. The comments received raised a concern that the EPA would register M-One Plus under the existing 40 CFR 180.1011 tolerance exemption for *Bacillus thuringiensis*. EPA responded by indicating to the commenter that MVP was considered a new active ingredient and therefore would require a unique risk assessment and determination regarding the requirement for a tolerance or exemption from the requirement for a tolerance. This satisfied the concerns of the commenter. The experimental use permit and temporary exemption from the requirement of a tolerance were then granted.

M-One Plus is a killed microbial pesticide and is to be registered for the control of coleopteran larvae, through the toxic action of the *B. t.* protein crystal. This protein toxin is selective for the larvae of coleoptera. Such specificity is advantageous in limiting the potential effects on nontarget organisms, especially beneficial parasites and predators in other orders of insects. The recommended application rates are as follows: 1.5 to 4 quarts per acre depending on the severity of the larval infestation. For best results, the initial spray must be made when eggs hatch and small larvae are first observed.

Residue Chemistry Data

Residue chemistry data were not required. Such data were determined to be necessary only if the submitted toxicology studies indicated that additional Tier II or III toxicology data would be required as specified in 40 CFR 158.165(e). The submitted toxicology data for this use indicated that the product is of low mammalian toxicity/pathogenicity and Tier II or III data were not required. Therefore, no residue data are required in order to grant an exemption from the requirement of a tolerance for M-One Plus Bioinsecticide.

Toxicology Data

The following data submitted in support of the petition and other relevant material have been evaluated. The toxicology data considered in support of this exemption from the requirements of a tolerance include the following:

1. *Acute Oral Toxicity in Rats (Technical Grade Active Ingredient*

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[TGAI]), Guideline Nos. 81-1/152-30. The acute oral LD_{50} for the TGAI as indicated by the data is greater than 5050 mg/kg (4.63 ml/kg), the highest dose tested, when administered undiluted to albino rats.

2. *Acute Dermal Toxicity in Rats (Technical), Guideline Nos. 81-2/152-31.* The acute dermal LD_{50} for the TGAI as indicated by the data is greater than 2020 mg/kg (1.85 mL/kg), the highest dose tested, when administered undiluted to albino rats.

3. *Acute Pulmonary Toxicity in Rats (Technical), Guideline Nos. 81-3/152-32.* The acute pulmonary LD_{50} for the TGAI (technical) as indicated by the data is greater than 0.1 mL per animal, the highest dose tested, or approximately 10^5 nonviable cells per animal when administered undiluted to albino rats.

4. *Acute Intravenous Toxicity in Rats (Technical), Guideline Nos. 152-33.* The acute intravenous LD_{50} for the TGAI (technical) as indicated by the data is greater than 0.5 mL per animal, the highest dose tested, or approximately 10^4 nonviable cells per animal when administered as a 1:100 dilution in sterile water to albino rats.

5. *Primary Dermal Irritation in Rabbits (Technical), Guideline Nos. 81-5/152-34.* The TGAI produced mild dermal irritation with a primary irritation score of 2.96 when tested in albino rabbits and is not considered a primary irritant.

6. *Eye Irritation in Rabbits (Technical), Guideline Nos. 81-4/152-35.* The TGAI technical was rated as minimally irritating in nonwashed eyes of albino rabbits when administered as 0.1 mL of a 50 percent v/v solution of the test material in sterile water. The maximum average irritation score was 3.7 and the test material was categorized in Toxicity Category III.

The results of the above studies indicate that the potential acute toxicity/pathogenicity of M-One Plus is sufficiently low to support the proposed exemption from the requirements for a tolerance on all raw agricultural commodities (RACs).

1. M-One Plus Bioinsecticide is *Bacillus thuringiensis* variety *San Diego* delta endotoxin which has been genetically engineered into *Pseudomonas fluorescens* which is subsequently rendered nonviable. This effectively creates a biologically encapsulated delta endotoxin as the active ingredient. This also renders the endotoxin less sensitive to environmental ultraviolet light inactivation.

2. This product is an aqueous flowable, based on an encapsulated system.

3. M-One Plus Bioinsecticide will be applied on a variety of vegetable crops at rates varying from 1.5 to 4 quarts per acre.

A lack of demonstrable toxicity to M-One Plus Bioinsecticide indicates that its use to aid in control of a wide variety of coleopteran pests would not result in hazards to public health. The data submitted or referenced in this petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirements of a tolerance did not show any deleterious effects that would indicate a cause for concern from the use of this product.

The acceptable daily intake and maximum permissible intake considerations are not relevant to this petition, because of the low toxicity/pathogenicity demonstrated in the submitted studies.

M-One Plus Bioinsecticide is considered useful for the purpose for which the exemption from the requirements of a tolerance is sought. It is concluded that a tolerance for M-One Plus is not necessary to protect the public health. Therefore, 40 CFR part 180 is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue pursuant to 40 CFR 178.32. A request for the hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account the uncontested claims or facts to the contrary; resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests

Dated: June 17, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, new § 180.1108 is added, to read as follows:

§ 180.1108 Delta endotoxin of Bacillus thuringiensis variety San Diego encapsulated into killed Pseudomonas fluorescens; exemption from the requirement of a tolerance.

The delta endotoxin of *Bacillus thuringiensis* variety *San Diego* encapsulated into killed *Pseudomonas fluorescens* is exempt from the requirements of a tolerance in or on all raw agricultural commodities.

[FR Doc. 91-14824 Filed 6-19-91; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 1F3963/R1122; FRL-3931-8]

RIN 2070-AB78

MVP Bioinsecticide; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insecticide MVP® Bioinsecticide containing the delta endotoxin of *Bacillus thuringiensis* variety *kurstaki* encapsulated in killed *Pseudomonas fluorescens* when used in or on all food and feed crops. This rule eliminates the need to establish a maximum permissible level for residues of this killed microbial. Mycogen Corp. requested this tolerance exemption.

EFFECTIVE DATE: Effective on June 20, 1991.

ADDRESSES: Written objections, identified by the document control number [PP 1F3963/R1122], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Phillip O. Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2690.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of May 1, 1991 (56 FR 1997), which announced that it had received pesticide petition (PP) 1F3963 from the Mycogen Corp., 5451 Oberlin Drive, San Diego, CA 92121, proposing that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the insecticide MVP Bioinsecticide in or on all raw agricultural commodities (RACs) when formulated in an encapsulated system.

No comments were received in response to this notice of filing. However, comments were received when EPA published the receipt of an application for an Experimental Use Permit (EUP) for this pesticide. The comments raised a concern that EPA would register MVP under the existing 40 CFR 180.1011 tolerance exemption for *Bacillus thuringiensis*. EPA responded to the commenter that MVP was considered a new active ingredient and therefore would require a unique risk assessment and exemption from the requirement for a tolerance. This satisfied the concerns of the commenter. The temporary tolerance exemption and the experimental use permit were subsequently granted.

MVP is a killed microbial pesticide and is to be registered for the control of lepidopterous larvae, through the toxic action of the *B. t.* protein crystal. This protein toxin is selective for the larvae of lepidoptera. Such specificity is advantageous in limiting the potential effects on nontarget organisms, especially beneficial parasites and predators in other orders of insects.

The recommended application rates are as follows: 1 to 4 quarts per acre depending on the severity of the larval infestation. If the infestations are exceptionally heavy, 3 to 4 quarts per acre are recommended. The higher recommended rates should be used for aerial application. For best results, the initial spray must be made when eggs hatch and small larvae are first observed.

Residue Chemistry Data

Residue chemistry data were not required. Such data were determined to be required only if the submitted toxicology data indicated that additional Tier II or III toxicology data are necessary as specified in 40 CFR 158.165(e). The submitted toxicology data for this use indicated that the product is of low mammalian toxicity/pathogenicity and Tier II or III data were not required. Therefore, no residue data are required in order to grant an exemption from the requirement of a tolerance for MVP.

Toxicology Data

The following data were submitted in support of the petition, and other relevant material have been evaluated. The toxicology data considered in support of this exemption from the requirements of a tolerance include the following:

1. *Acute Oral Toxicity in Rats (Technical Grade Active Ingredient [TGAI]), Guideline Nos. 81-1/152-30.* The acute oral LD_{50} for the TGAI as indicated by the data is greater than 5050 mg/kg (4.63 mL/kg), the highest dose tested, when administered undiluted to albino rats.

2. *Acute Oral Toxicity in Rats (Flowable), Guideline Nos. 81-1/152-30.* The acute oral LD_{50} for the typical end-use product (TEP) as indicated by the data is greater than 5050 mg/kg (4.76 mL/kg), the highest dose tested, when administered undiluted to albino rats.

3. *Acute Dermal Toxicity in Rats (Technical), Guideline Nos. 81-2/152-31.* The acute dermal LD_{50} for the TGAI as indicated by the data is greater than 2020 mg/kg (1.85 mL/kg), the highest dose tested, when administered undiluted to albino rats.

4. *Acute Pulmonary Toxicity in Rats (Technical), Guideline Nos. 81-3/152-32.* The acute pulmonary LD_{50} for the TGAI (technical) as indicated by the data is greater than 0.1 mL per animal, the highest dose tested, or approximately 10^5 nonviable cells per animal when administered to albino rats.

5. *Acute Intravenous Toxicity in Rats (Technical), Guideline Nos. 152-33.* The acute intravenous LD_{50} for the TGAI (technical) as indicated by the data is greater than 0.05 mL per animal, the highest dose tested, or approximately 10^5 nonviable cells per animal when administered as a 1:100 dilution in sterile water to albino rats. While this dosage is considered low, it was demonstrated that higher dosages of the killed gram-negative bacterium elicit shock reactions typical of reactions to the cell wall components of gram-negative bacteria in general.

6. *Primary Dermal Irritation in Rabbits (Technical), Guideline Nos. 81-5/152-34.* The TGAI produced mild to moderate dermal irritation with a primary irritation score of 1.04 when tested in albino rabbits and is not considered a primary irritant on that basis. However, there were signs of irritation at 14 days, and focal bleeding was reported on day 1. Therefore, the product is classified in Toxicity Category II.

7. *Primary Dermal Irritation in Rabbits (Flowable), Guideline Nos. 81-5/152-34.* The TEP flowable produced mild dermal irritation with a primary irritation score of 0.66 when tested in albino rabbits and is not considered a primary irritant.

8. *Eye Irritation in Rabbits (Technical), Guideline Nos. 81-4/152-35.* The TGAI technical was rated as minimally irritating in nonwashed eyes of albino rabbits when administered as 0.1 mL of a 50 percent v/v solution of the test material in sterile water. The maximum average irritation score was 3.7 and the test material was categorized in Toxicity Category III.

9. *Eye Irritation in Rabbits (Flowable), Guideline Nos. 81-4/152-35.* The TEP flowable was rated as minimally irritating in nonwashed eyes of albino rabbits when administered as 0.1 mL of undiluted test material. The maximum average irritation score was 1.3 and the test material was categorized in Toxicity Category III.

10. *Dermal Sensitization in Guinea Pigs (Flowable), Guideline Nos. 81-6/152-36.* The TEP was categorized as a mild sensitizer when administered undiluted to albino guinea pigs. Average skin reaction scores ranged from 0 to 0.6 on a scale of 0 to 4.0.

The exemption from the requirement for a tolerance on all raw agricultural commodities (RAC's) is toxicologically supported.

1. MVP Bioinsecticide is *Bacillus thuringiensis* variety *kurstaki* delta endotoxin which has been genetically engineered into *Pseudomonas fluorescens* which is subsequently rendered nonviable. This effectively creates a biologically encapsulated delta endotoxin as the active ingredient. This also renders the endotoxin less sensitive to environmental ultraviolet light inactivation.

2. This product is an aqueous flowable, based on an encapsulated system.

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3. MVP Bioinsecticide will be applied on a wide variety of vegetable crops at rates varying from 1 to 4 quarts per acre.

A lack of demonstrable toxicity to MVP Bioinsecticide indicates that its use to aid in control of a wide variety of lepidopteran pests would not result in hazards to public health.

Due to the quantity of product being used and its host specificity, it is unlikely that the environment will be adversely affected. The acceptable daily intake and maximum permissible intake considerations are not relevant to this petition, because the submitted toxicology data support the exemption from a requirement for a tolerance.

The data submitted or referenced in this petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirements of a tolerance did not show any deleterious effects that would indicate a cause for concern from the use of this product.

MVP Bioinsecticide is considered useful for the purpose for which the exemption from the requirements of a tolerance is sought. It is concluded that a tolerance for MVP is not necessary to protect the public health. Therefore, 40 CFR part 180 is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections mustinclude a statement of the factual issue(s) on which a hearing is requested pursuant to 40 CFR 178.32, and the hearing will be granted if the Administrator determines that the material shows the following: There is a genuine and subetential issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administative practicle and procedure, Agricultural commodities, Pesticides and pests

Dated: June 17, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1107, to read as follows:

§ 180.1107 Delta endotoxin of Bacillus thuringiensis variety kurstaki encapsulated into killed Pseudomonas fluorescens; exemption from the requirement of a tolerance.

The delta endotoxin of *Bacillus thuringiensis* variety *kurstaki* encapsulated into killed *Pseudomonas fluorescens* is exempt from the requirements of a tolerance in or on all raw agricultural commodities.

[FR Doc. 91-14823 Filed 6-19-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed

below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ARIZONA	
Buckeye (town), Maricopa County (FEMA Docket No. 7008)	
Gila River:	
At Palo Verde Road	*808
Immediately upstream of State Highway 85-U.S. Highway 80	*830
At Miller Road	*840
At Rainbow Road	*858
At Airport Road	*871
Approximately 2,000 feet downstream of 195th Avenue	*880
At 195th Avenue	*882
Approximately 3,760 feet upstream of 195th Avenue	*886
Approximately 550 feet upstream of Perryville Road (extended)	*888
Hassayampa River:	
At intersection of Bruner Road and Narramore Road	*813
Just upstream of Old U.S. Highway 80	*843
Just upstream of Southern Pacific Railroad	*873
At Base Line Road	*880
Approximately 2.9 miles downstream of Interstate Highway 10	*950
Maps are available for review at the Town Hall, 100 North Apache Road, Buckeye, Arizona.	
Camp Verde (town), Yavapai County (FEMA Docket No. 7010)	
West Clear Creek:	
At confluence with Verde River	*3,017
At confluence with Wildcat Creek	*3,080
At intersection of Verde Lakes Drive and White Cap Drive	*3,132
Approximately 400 feet upstream of Forest Highway 9	*3,201
Maps are available at Town Hall, Planning and Zoning Division, Main Street, Camp Verde, Arizona.	
Carefree (town), Maricopa County (FEMA Docket No. 7008)	
Galloway Wash:	
Approximately 140 feet downstream of Scopa Trail	*2,311
At Tranquil Trail	*2,374
Galloway Wash Middle Branch:	
At confluence with Galloway Wash	*2,395
At Mule Train Road	*2,437
Approximately 100 feet upstream of intersection of Pima Road and Cow Tract Drive	*2,598
Galloway Wash Lower Branch:	
Approximately 60 feet upstream of confluence with Galloway Wash	*2,396
Just upstream of Carefree Drive	*2,438
At Pima Road	*2,585
Maps are available for review at the Town Hall, 11 Sundial Circle, Carefree, Arizona.	
Cave Creek (town), Maricopa County (FEMA Docket No. 7008)	
Galloway Wash:	
Approximately 440 feet downstream of Scopa Trail	*2,304
Approximately 180 feet downstream of Scopa Trail	*2,310
Maps are available for review at the Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona.	
Goodyear (town), Maricopa County (FEMA Docket No. 7008)	
Gila River:	
At 195th Avenue	*882
Approximately 580 feet upstream of Perryville Road (extended)	*888
Approximately 5,800 feet upstream of Perryville Road (extended)	*892
Approximately 300 feet upstream of Sarival Lane	*904
Approximately 300 feet downstream of Rooma Road	*910
Approximately 200 feet upstream of Bullard Avenue	*916
Agua Fria River:	
At confluence with the Gila River	*923
Approximately 350 feet downstream of Litchfield Road	*924
Waterman Wash:	
Approximately 2,000 feet north of intersection of 187th Avenue and Germann Road	*989
Approximately 200 feet downstream of Chandler Height Road	*1,058
At Riggs Road	*1,083
Approximately 300 feet downstream of 147th Avenue	*1,122
Maps are available for review at the City Hall, 119 North Litchfield Road, Goodyear, Arizona.	
Maricopa County (unincorporated areas) (FEMA Docket No. 7008)	
Agua Fria River:	
At confluence with the Gila River	*923
Approximately 350 feet downstream of Litchfield Road	*924
At Broadway Road	*935
At Lower Buckeye Road	*950
Approximately 150 feet downstream of Buckeye Road	*962
At Van Buren Street	*971
Approximately 675 feet upstream of Interstate 10 westbound	*981
At McDowell Road	*985
At Thomas Road	*999
Approximately 530 feet upstream of Indian School Road	*1,010
At Camelback Road	*1,024
Approximately 200 feet upstream of the confluence with the New River	*1,033
Approximately 1,320 feet downstream of Glendale Avenue	*1,050
At Northern Avenue	*1,082
Approximately 1,700 feet upstream of Olive Road	*1,095
Approximately 1,500 feet downstream of Grand Avenue	*1,119
Approximately 1,200 feet upstream of Grand Avenue	*1,131
At 115th Avenue	*1,137
Approximately 2,100 feet upstream of Bell Road	*1,165
Approximately 1 mile downstream of West Rose Garden Avenue	*1,186
Approximately 1 mile upstream of West Rose Garden Avenue	*1,214
Approximately 2 miles upstream of West Rose Garden Avenue	*1,229
Approximately 3 miles upstream of West Rose Garden Avenue	*1,247
Approximately 1.5 miles downstream of Beardsley Canal	*1,316
Approximately 2 miles upstream of Granite Reef Aqueduct	*1,378
Approximately 0.8 mile upstream of Morristown-New River Highway	*1,425
Shallow flooding at approximately 250 feet upstream of Buckeye Road along west bank of Agua Fria River	*963
Shallow flooding at approximately 200 feet upstream of Buckeye Road along east bank of Agua Fria River	*964
Shallow flooding at approximately 1,100 feet downstream of McDowell Road along east bank of Agua Fria River	*982
Shallow flooding along west bank of Agua Fria River at McDowell Road	*983
Shallow flooding along east bank of Agua Fria River at McDowell Road	*984
Shallow flooding along west bank of Agua Fria River immediately upstream of Indian School Road	*1,006
Agua Fria River West Split Flow:	
Approximately 0.9 mile downstream of Grand Avenue	*1,111
Approximately 0.5 mile downstream of Grand Avenue	*1,118
Approximately 0.3 mile upstream of Grand Avenue	*1,131
Gila River:	
At Crest of Gillespie Dam Road	*782
Approximately 550 feet upstream of Agua Caliente Road	*775
Immediately upstream of Rose Road (extended)	*782
Approximately 200 feet downstream of Johnson Road	*801
At Palo Verde Road	*808
Immediately upstream of State Highway 85-U.S. Highway 80	*830
At Miller Road	*840
At Rainbow Road	*858
At Airport Road	*871
Approximately 2,000 feet downstream of 195th Avenue	*880
Approximately 2,000 feet upstream of 195th Avenue	*884
Approximately 550 feet upstream of Perryville Road (extended)	*888
Approximately 5,800 feet upstream of Perryville Road (extended)	*892
Approximately 300 feet upstream of Sarival Lane	*904
Salt River:	
At State Highway 87	*1,217
Approximately 2 miles upstream of State Highway 87	*1,233
At North Gilbert Road	*1,254
Approximately 2 miles upstream of North Gilbert Road	*1,272
Approximately 4 miles upstream of North Gilbert Road	*1,286
Approximately 6.5 miles upstream of North Gilbert Road	*1,309
At Scottsdale Road	*1,163
Approximately 740 feet upstream of Hayden Road	*1,174
Approximately 1,700 feet upstream of Hayden Road	*1,174
Circle City Area Wash 1:	
Approximately 700 feet upstream of Black Mountain Road	*1,853
Approximately 1,100 feet downstream of Atchison, Topeka and Santa Fe Railway	*1,863
Approximately 200 feet upstream of Atchison, Topeka and Santa Fe Railway	*1,879
Circle City Area Wash 2:	
Approximately 550 feet upstream of confluence with Circle City Area Wash	*1,881
Approximately 0.5 mile upstream of confluence with Circle City Area Wash 1	*1,906
Approximately 0.8 mile upstream of confluence with Circle City Area Wash 1	*1,913
Circle City Area Wash 2 along Atchison, Topeka and Santa Fe Railway:	
Approximately 350 feet upstream of confluence with Wash 2	*1,884
Approximately 1,000 feet upstream of confluence with Wash 2	*1,899
Circle City Area Wash 3:	
Approximately 220 feet upstream of Black Mountain Road	*1,838
Approximately 1,500 feet upstream of Black Mountain Road	*1,849
Approximately 350 feet upstream of confluence with Circle City Area Wash 6	*1,858
At confluence with Circle City Area Wash 4	*1,870
Approximately 280 feet downstream of Atchison, Topeka and Santa Fe Railway	*1,862
Approximately 950 feet upstream of Atchison, Topeka and Santa Fe Railway	*1,895
Approximately 2,200 feet upstream of Atchison, Topeka and Santa Fe Railway	*1,908
Circle City Area Wash 4:	
Approximately 250 feet upstream of confluence with Circle City Area Wash 3	*1,872
Approximately 280 feet downstream of Atchison, Topeka and Santa Fe Railway	*1,882
Approximately 600 feet upstream of Atchison, Topeka and Santa Fe Railway	*1,895
Approximately 1,750 feet upstream of Atchison, Topeka and Santa Fe Railway	*1,907

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Circle City Area Wash 4 along Atchison, Topeka, and Santa Fe Railway:	
Approximately 650 feet upstream of confluence with Circle City Area Wash 4	*1,861
Approximately 650 feet upstream of confluence with Circle City Area Wash 4	*1,865
Approximately 900 feet upstream of confluence with Circle City Area Wash 4	*1,868
Circle City Area Wash 6:	
Approximately 200 feet upstream of confluence with Circle City Area Wash 6	*1,861
Approximately 100 feet upstream of Atchison, Topeka, and Santa Fe Railway	*1,902
Approximately 650 feet upstream of Atchison, Topeka, and Santa Fe Railway	*1,908
Circle City Area Wash 8:	
Approximately 150 feet upstream of confluence with Circle City Area Wash 3	*1,885
Approximately 1,500 feet upstream of confluence with Circle City Area Wash 3	*1,857
Approximately 110 feet upstream of confluence with Circle City Area Wash 5	*1,880
Approximately 400 feet upstream of Atchison, Topeka, and Santa Fe Railway	*1,904
Circle City Area Wash 7:	
At Limit of Detailed Study	*1,847
Approximately 600 feet upstream of Limit of Detailed Study	*1,851
Approximately 2,800 feet upstream of Limit of Detailed Study	*1,873
Approximately 4,750 feet upstream of Limit of Detailed Study	*1,884
Tilby Wash near Circle City:	
Approximately 300 feet downstream of Black Mountain Road	*1,848
Approximately 75 feet downstream of Atchison, Topeka, and Santa Fe Railway	*1,855
Approximately 2,250 feet upstream of Atchison, Topeka, and Santa Fe Railway	*1,862
Approximately 1 mile upstream of Atchison, Topeka, and Santa Fe Railway	*1,922
Tilby Wash:	
Approximately 3.0 miles above McMicken Dam Outlet Works	*1,350
Approximately 600 feet downstream of 203rd Avenue	*1,407
Approximately 0.5 mile upstream of 203rd Avenue	*1,424
Approximately 300 feet downstream of 211th Avenue	*1,441
Approximately 900 feet upstream of Deer Valley Road	*1,467
Approximately 0.5 mile downstream of Pinnacle Peak Road (extended)	*1,483
Approximately 2,300 feet upstream of 219th Avenue	*1,512
Approximately 600 feet upstream of Happy Valley Road	*1,531
Approximately 4,150 feet upstream of Happy Valley Road	*1,548
Wetmore Wash—West Split:	
Approximately 1,200 feet downstream of Patton Road	*1,550
Approximately 1,000 feet upstream of Patton Road	*1,559
Approximately 4,100 feet upstream of Patton Road	*1,586
McMicken Dam Outlet Wash:	
Approximately 600 feet upstream of confluence with the Agua Fria River	*1,181
Approximately 1,000 feet downstream of Beardsley Road	*1,204
Approximately 1,150 feet upstream of Beardsley Road	*1,213
Approximately 0.5 mile upstream of Beardsley Road	*1,238
Approximately 1 mile upstream of Beardsley Road	*1,250
Approximately 1.5 miles upstream of Beardsley Road	*1,269
Approximately 500 feet downstream of Pinnacle Peak Road	*1,293
Approximately 1,050 feet upstream of Pinnacle Peak Road	*1,299
Approximately 0.5 mile upstream of Pinnacle Peak Road	*1,306
Approximately 1 mile upstream of Pinnacle Peak Road	*1,311
Approximately 1.0 miles upstream of Pinnacle Peak Road	*1,314
Wetmore Wash—Upper Reach:	
Approximately 2,950 feet downstream of Crosby Street	*1,697
Approximately 1,925 feet downstream of Crosby Street	*1,706
Approximately 1,000 feet downstream of Crosby Street	*1,717
Approximately 265 feet upstream of Crosby Street	*1,727
Wetmore Wash—South Split:	
Approximately 1,100 feet downstream of Center Street	*1,681
Approximately 330 feet downstream of Center Street	*1,688
Approximately 845 feet upstream of Center Street	*1,696
Wetmore Wash—North Split:	
Approximately 1,100 feet downstream of Center Street	*1,681
Approximately 460 feet downstream of Center Street	*1,696
Approximately 660 feet upstream of Center Street	*1,696
Wetmore Wash along Atchison, Topeka, and Santa Fe Railway:	
Approximately 845 feet downstream of Center Street	*1,693
Approximately 1,570 feet upstream of Center Street	*1,706
Approximately 2,300 feet upstream of Center Street	*1,706
Wetmore Wash Grand Avenue to CAP 1 West Overchute:	
Approximately 350 feet upstream of overchute at CAP 1 West	*1,662
Approximately 300 feet upstream of 303rd Avenue	*1,566
Approximately 0.5 mile upstream of 303rd Avenue	*1,671
Approximately 1 mile upstream of 303rd Avenue	*1,693
Approximately 350 feet upstream of Dilbeta Drive	*1,697
Approximately 9,200 feet upstream of Dilbeta Drive	*1,619
Approximately 700 feet upstream of Lone Mountain Road	*1,650
Approximately 600 feet downstream of Grand Avenue	*1,671
Approximately 650 feet upstream of Grand Avenue	*1,680
Cave Creek Wash:	
At confluence with Salt River	*1,011
At 51st Avenue	*1,015
Cemetery Wash:	
At confluence with Hassayampa River	*2,021
At unnamed dirt road (ford) downstream crossing	*2,111
Approximately 220 feet upstream of the upstream crossing of an unnamed dirt road (ford)	*2,139
Centennial Wash:	
Approximately 250 feet downstream of Old U.S. Highway 80	*776
At Southern Pacific Railroad Bridge	*856
At Ward Road	*952
At Baseline Road	*1,058
Approximately 1,000 feet downstream of Gin Road	*1,111
At Courthouse Road	*1,189
Approximately 200 feet upstream of Eagle Eye Road	*1,262
At Maricopa/La Paz County Line	*1,316
Centennial Wash (Left Overbank):	
Just upstream of confluence with Centennial Wash	*1,067
At intersection of Courthouse and Gin Roads	*1,139
Approximately 200 feet downstream of divergence from Centennial Wash	*1,202
Hassayampa River:	
At confluence with Gila River	*902
Just above Old U.S. Highway 80	*965
Just upstream of Southern Pacific Railroad	*975
At Interstate Highway 10	*1,067
Just upstream of Tonopah Salome Highway	*1,074
Just upstream of CAP Siphon	*1,085
Approximately 200 feet upstream of Atchison, Topeka and Santa Fe Railroad	*1,808
Approximately 600 feet upstream of confluence of Monarch Wash	*1,828
Approximately 1,600 feet upstream of Highways 60 and 89	*2,052
At Maricopa/Yavapai county line	*2,103
Wickenburg Wash:	
Approximately 2,000 feet downstream of Elliot Road	*966
Just downstream of Tutthill Road	*968
Approximately 660 feet upstream of Riggs Road	*1,065
Approximately 200 feet upstream of 147th Avenue	*1,123
At confluence with West Prong Wickenburg Wash	*1,139
Maps are available for review at the Flood Control District of Maricopa County, 2235 West Durango Street, Phoenix, Arizona.	
Scottsdale (city), Maricopa County (FEMA Docket No. 7066)	
Gallowey Wash Middle Branch:	
Approximately 80 feet upstream of Pima Road	*2,596
At Cox Tract Drive	*2,619
Gallowey Wash Lower Branch:	
Just upstream of Pima Road	*2,596
Approximately 500 feet upstream of Pima Road	*2,599
Maps are available for review at the City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona.	
Wickenburg (town), Maricopa County (FEMA Docket No. 7066)	
Hassayampa River:	
Approximately 600 feet upstream of Cemetery Wash	*2,022
Just downstream of U.S. Highway 60-89 Bridge	*2,045
At confluence with Sols Wash	*2,051
Approximately 2,400 feet downstream of confluence with Blue Tank Wash	*2,080
Approximately 4,400 feet upstream of confluence with Blue Tank Wash	*2,093
Cemetery Wash:	
Approximately 520 feet upstream of unnamed dirt road (ford) downstream crossing	*2,116
Approximately 1,700 feet upstream of unnamed dirt road (ford) upstream crossing	*2,169
Maps are available for review at the Town Hall, 120 East Apache Road, Wickenburg, Arizona.	
ARKANSAS	
Benton County (unincorporated areas) (FEMA Docket No. 7066)	
Osage/Turtle Creek:	
Approximately 1.66 miles downstream of County Route 51	*1,159
Approximately .67 mile downstream of Turtle Creek Road	*1,255
Spring Creek:	
Approximately 100 feet downstream of confluence with Puppy Creek	*1,164
Approximately 825 feet upstream of confluence of Tributary 5 to Spring Creek	*1,233
Puppy Creek:	
Approximately 400 feet downstream of County Route 60	*1,165
Approximately 694 feet upstream of County Route 240	*1,251
Decatur Branch:	
Approximately 106 feet downstream of County Route 346	*1,295
Approximately 845 feet upstream of County Route 346	*1,316
Wolf Creek:	
Approximately 110 feet downstream of Kansas City Southern Railroad	*1,114
Approximately 185 feet upstream of County Route 346	*1,305
Little Sugar Creek:	
At downstream County boundary	*970
Approximately 830 feet upstream of State Route 94	*1,140
McKisic Creek:	
Approximately 211 feet downstream of State Route 72	*1,162

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately .2 mile upstream of State Route 102	*1,241
Tributary I to McKisic Creek:	
Approximately 2.8 miles upstream of its confluence with McKisic Creek	*1,180
Approximately 3.8 miles upstream of its confluence with McKisic Creek	*1,288
Tributary 2 to Little Osage Creek:	
Approximately 1,376 feet downstream of "I" Street SW	*1,270
Approximately 450 feet downstream of "I" Street SW	*1,272
Turtle Creek Tributary:	
At confluence with Osage/Turtle Creek	*1,276
Approximately 400 feet downstream of Dixieland Road	*1,310
Blossom Way Creek:	
At South 28th Street	*1,276
Approximately .25 mile upstream of County Route 55 (Dixieland Road)	*1,300
Sugar Creek:	
Approximately 1.16 miles downstream of Dogwood Street	*1,038
Approximately 430 feet upstream of Bus Springs Road	*1,130
South Fork Prairie Creek:	
Approximately 1,360 feet downstream of State Route 12	*1,133
Approximately 170 feet upstream of Lake Atlanta Road	*1,162
Tributary I to Sugar Creek:	
At University Street	*1,091
Approximately 1,580 feet upstream of University Street	*1,109
Tributary 2 to Sugar Creek:	
At confluence with Sugar Creek	*1,105
Approximately 275 feet upstream of State Routes 68 and 68	*1,148
Tributary 3 to Sugar Creek:	
At the State boundary	*1,040
Downstream side of State Route 48	*1,096
Tributary 3 to Spring Creek:	
At the County boundary	*1,228
Approximately .5 mile upstream of County boundary	*1,271
Little Osage Creek:	
Approximately .3 mile downstream of State Route 102	*1,264
Approximately 700 feet downstream of State Route 102	*1,269
Maps available for inspection at the Benton County Courthouse, Bentonville, Arkansas.	
Centerton (city), Benton County (FEMA Docket No. 7066)	
McKisic Creek:	
Upstream side of State Route 102	*1,240
At the County Route 539	*1,271
Little Osage Creek:	
Approximately .25 mile downstream of State Route 102	*1,265
Downstream side of State Route 102	*1,275
Maps available for inspection at the City Hall, Centerton, Arkansas.	
Craighead County (unincorporated areas) (FEMA Docket No. 7067)	
Little Bay Ditch:	
At the County Route 781	*224
At the County Route 64	*248
Whitemans Creek:	
At the confluence with Little Bay Ditch	*227
Approximately 100 feet downstream of Union Pacific Railroad	*240
Gum Slough Ditch:	
At the confluence with Big Bay Ditch	*225
At the County Route 61	*232
Maple Slough Ditch:	
At the confluence with Gum Slough Ditch	*232
Approximately 1.0 mile upstream of County Route 78	*239
Viney Slough Ditch:	
At the County Route 781	*887
At the confluence of Higginbottom Creek	*547
Christian Creek:	
At the confluence with Lost Creek	*267
Downstream of Oakhurst Street	*295
Christian Creek Lateral:	
At the confluence with Christian Creek	*266
Approximately 517 feet downstream of Clubhouse Street	*294
Lateral No. 5:	
At the confluence with Little Bay Ditch	*232
Approximately 1,500 feet upstream of Commerce Drive	*237
Lost Creek:	
Approximately 1,056 feet downstream of U.S. Route 63	*263
At the County road	*323
Moore's Ditch Lateral:	
Approximately 158 feet upstream of confluence with Moore's Ditch	*237
Approximately 158 feet upstream of Commerce Drive	*238
Higginbottom Creek:	
At the confluence with Viney Slough Ditch	*247
At the downstream side of Parker Road	*262
Turtle Creek:	
At the St. Louis Southwestern Railway	*257
Downstream side of State Route 1	*297
Turtle Creek Lateral:	
At the confluence with Turtle Creek	*259
Approximately 284 feet upstream of confluence with Turtle Creek	*269
Tributary to Maple Slough Ditch:	
Approximately 50 feet downstream of Rural Road Bridge	*249
Approximately 0.4 mile upstream of County Route 74 (Stephens Avenue)	*271
Wiseley Slough Ditch:	
Approximately 1,300 feet downstream of State Route 230	*255
Approximately 900 feet downstream of U.S. Route 63	*258
Butlers Ditch:	
At the confluence with Little Bay Ditch	*232
Downstream side of County Route 64	*236
Maps available for inspection at the County Courthouse, 511 South Main Street, Room 100, Jonesboro, Arkansas.	
Faulkner County (unincorporated areas) (FEMA Docket No. 7067)	
Arkansas River:	
At downstream County boundary with Pulaski County	*295
At confluence of Cadron Creek	*298
Palarm Creek:	
At confluence with Arkansas River	*269
Just downstream of Lake Conway Dam	*270
Lake Conway: Entire shoreline with community	*272
Gold Creek (South):	
At confluence with Lake Conway	*272
At confluence to Gold Creek South Tributary	*315
Gold Creek South Tributary:	
At confluence with Gold Creek (South)	*315
At approximately 850 feet upstream of County Route 14	*333
Gold Creek (East):	
At confluence with Little Creek	*277
At approximately 2,270 feet upstream of Wiggle Worm Road	*285
Little Creek:	
At the confluence with Lake Conway	*272
Approximately 130 feet upstream of the upstream crossing of State Route 286	*279
Tucker Creek:	
Approximately 2.5 miles upstream of confluence with Tupelo Bayou	*285
Approximately 100 feet upstream of County Club Road (extended)	*286
Tucker Creek Tributary:	
At confluence with Tucker Creek	*286
Approximately 1,700 feet upstream of State Route 60	*295
Unnamed Tributary to Tucker Creek Tributary:	
At State Route 60	*285
Stone Dam Creek:	
At confluence with Lake Conway	*272
Downstream side of Sturges Road	*276
Greenbrier Creek: Approximately 500 feet upstream of State Route 225	*305
Maps available for inspection at the Faulkner County Courthouse, Conway, Arkansas.	
Greenland (city), Washington County (FEMA Docket No. 7068)	
West Fork White River:	
Approximately 1.2 miles downstream of U.S. Route 71	*1,240
Approximately 0.2 mile upstream of old U.S. Route 71	*1,254
Maps available for inspection at the City Hall, 1 Ross Street, Greenland, Arkansas.	
Lincoln (city), Washington County (FEMA Docket No. 7068)	
Moores Tributary:	
Lincoln corporate limits	*1,425
Approximately 0.1 mile upstream of Lincoln corporate limits	*1,429
Maps available for inspection at the City Hall, 108 Arthur, Lincoln, Arkansas.	
Little Flock (town), Benton County (FEMA Docket No. 6957).	
Little Sugar Creek:	
Approximately 260 feet upstream of State Route 72	*1,093
Approximately 1,850 feet downstream of State Route 94	*1,132
Maps available for inspection at the City Hall, Little Flock, Arkansas.	
Mayflower (city), Faulkner County (FEMA Docket No. 7067)	
Arkansas River: Backwater approximately 400 feet north of Old Sandy Road	*271
Lake Conway: Entire shoreline within community	*272
Palarm Creek:	
At Interstate Route 40 and U.S. Route 65	*270
Just downstream of Lake Conway Dam	*270
Maps available for inspection at the City Hall, #2 Ashmore, Mayflower, Arkansas.	
Tontitown (city), Washington County (FEMA Docket No. 7068)	
Main Ditch:	
Approximately 0.9 river mile above confluence with Brush Creek	*1,273
Approximately 1,085 river miles above confluence with Brush Creek	*1,282
Maps available for inspection at the City Hall, Tontitown, Arkansas.	
Washington County (unincorporated areas) (FEMA Docket No. 7068)	
West Fork White River:	
Approximately 0.9 mile downstream of Harvey Owl Road	*1,188
Approximately 2.3 miles upstream of West Fork corporate limits	*1,300
Clabber Creek:	
Confluence with Harnessring Creek	*1,141
Fayetteville corporate limits	*1,193
Harnessring Creek:	
Confluence of Clabber Creek	*1,141
Fayetteville corporate limits	*1,184
Owl Creek:	
Approximately 240 feet downstream of County Route 27	*1,176
Approximately 0.3 mile upstream of County Route 599	*1,209
Clear Creek:	
Approximately 210 feet downstream of State Route 112	*1,144
Approximately 250 feet upstream of City of Johnson corporate limits	*1,171
Moores Creek:	
Approximately 475 feet downstream of State Route 620	*1,407
Approximately 0.29 mile upstream of U.S. Route 62	*1,417
Moores Tributary:	
Confluence with Moores Creek	*1,411

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
City of Lincoln corporate limits	*1,455
Muddy Fork:	
Approximately 266 feet downstream of County Route 98	*1,111
Approximately 0.22 mile upstream of U.S. Route 62	*1,135
Brush Creek:	
Approximately 0.5 mile downstream of Emma Road	*1,243
Approximately 0.3 mile downstream of Emma Road	*1,250
Airport Branch:	
At confluence with West Fork White River	*1,218
At the City of Fayetteville downstream corporate limits	*1,230
Mud Creek:	
At a point approximately 900 feet downstream of Johnson Road	*1,180
At a point approximately 600 feet downstream of Johnson Road	*1,180
Tributary 4:	
Approximately 100 feet downstream of Johnson Road	*1,207
Approximately 100 feet upstream of Johnson Road	*1,209
Maps available for inspection at the County Courthouse, 2 South College, Fayetteville, Arkansas.	
CALIFORNIA	
Hollister (city), San Benito County (FEMA Docket No. 7009)	
San Benito River:	
Approximately 200 feet downstream of State Highway 156	*256
Just upstream of State Highway 156	*256
Just upstream of Nash Road	*261
Approximately 4,100 feet upstream of Nash Road	*280
Santa Anna Creek:	
Approximately 3,700 feet downstream of Fallon Road	*210
Just downstream of Fallon Road	*233
Approximately 3,300 feet upstream of Fallon Road	*234
Maps are available for review at the City Planning Department, 430 Hill Street, Building A, Hollister, California.	
Merced (city), Merced County (FEMA Docket No. 7010)	
Black Rascal Creek:	
At the intersection of Snelling Highway and Santa Fe Avenue	*162
Approximately 1,800 feet upstream of the confluence with Bear Creek	*163
Just upstream of the Atchison, Topeka, and Santa Fe Railroad	*166
At the confluence with Fahrens Creek	*166
Fahrens Creek:	
At the confluence with Black Rascal Creek	*166
Approximately 5,000 feet upstream of the confluence with Black Rascal Creek	*167
Approximately 9,000 feet upstream of the confluence with Black Rascal Creek	*168
At the confluence with Cottonwood Creek	*170
Maps are available for review at City Hall, 678 West 18th Street, Merced, California.	
Monterey County (unincorporated areas) (FEMA Docket No. 7010)	
Reclamation Ditch (downstream of Boronda Road):	
At confluence with Tembladero Slough	*14
Near intersection of Route 183 and Copper Road extended	*23
At San Jon Road	*29
Just upstream of a private drive approximately 6,900 feet downstream of Boronda Road	*32
Just downstream of Boronda Road	*36
Maps are available for review at the Monterey County Flood Control Office, 965 East Laurel Drive, Building G, Salinas, California.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
San Benito County (unincorporated areas) (FEMA Docket No. 7009)	
Pajaro River:	
At confluence of San Benito River	*139
Just upstream of State Highway 101	*144
San Benito River:	
Approximately 2,300 feet downstream of State Highway 156	*232
Just upstream of State Highway 156	*235
Just upstream of Clerogas Road	*296
Just upstream of Hospital Road	*316
Approximately 1,300 feet upstream of Hospital Road	*316
Santa Ana Creek:	
Just downstream of State Highway 156	*188
Just downstream of Fallon Road	*223
Approximately 400 feet upstream of McCloskly Road	*267
Just upstream of Fairview Road	*308
Santa Ana Creek Tributary:	
At the confluence with Santa Ana Creek	*286
Approximately 100 feet upstream of Santa Ana Road	*290
Just upstream of Sunnyslope Road	*378
Approximately 240 feet upstream of Fairview Road	*417
San Juan Creek:	
At confluence of San Juan Creek Tributary	*189
Approximately 80 feet upstream of State Highway 156	*198
Just downstream of Mission Vineyard Road	*228
Approximately 2,700 feet upstream of San Juan Canyon Road	*267
San Juan Creek Tributary:	
Approximately 600 feet upstream of the confluence with San Juan Creek	*190
Just downstream of San Juan Grade Road	*270
Approximately 600 feet upstream of San Juan Grade Road	*280
Maps are available for review at the San Benito County Planning Department, 2220 Southside Road, Hollister, California.	
Santa Barbara (city), Santa Barbara County (Docket No. 7010)	
Mission Creek:	
Just above Arrellaga Street	*85
Just above Padregosa Street Bridge	*105
At Pueblo Street Bridge	*129
Just below Tallant Road	*159
Approximately 1,800 feet above State Street	*251
Mission Creek Overflow:	
Just above confluence with Mission Creek	*129
Just above Castillo Street	*147
At intersection of Bath Street and Quinto Street	*161
At divergence from Mission Creek	*167
Maps are available for review at The Community Development Office, 630 Garden Street, Santa Barbara, California.	
Simi Valley (city), Ventura County (FEMA Docket No. 7010)	
Arroyo Simi:	
At Western Corporate Limits	*816
At confluence with Alamos Canyon	*843
At confluence with Brea Canyon	*880
At confluence with Sycamore Canyon, 1,800 feet downstream of Madera Road Bridge	*899
Maps are available for review at the Development Services Building, 3855 North Alamo Street, Simi Valley, California.	
Solano County (unincorporated areas) (FEMA Docket No. 7010)	
Union Creek:	
Approximately 1,200 feet downstream of abandoned Union Pacific railroad	*72
At Cordero Junction	*81
Just upstream of Cannon Road	*87
Maps are available for review at the Solano County Transportation Department, 1661 Weitare Court, Fairfield, California.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
COLORADO	
Meeker (town), Rio Blanco County (FEMA Docket No. 7010)	
White River:	
Approximately 700 feet downstream of Tenth Street Bridge	*6,201
Just upstream of Tenth Street Bridge	*6,206
Approximately 2,800 feet upstream of Tenth Street Bridge	*6,216
Maps are available for review at Town Hall, 236 Seventh Street, Meeker, Colorado.	
Parachute (town), Garfield County (FEMA Docket No. 7010)	
Colorado River:	
Approximately 3,000 feet downstream of confluence of Parachute Creek	*5,047
Just upstream of County Road 300	*5,072
Approximately 1,000 feet upstream of County Road 300	*5,075
Parachute Creek:	
At confluence with Colorado River	*5,055
At South Frontage Road	*5,075
At First Street	*5,098
Approximately 2,900 feet upstream of First Street	*5,108
Maps are available for review at Town Hall, 222 Grand Valley Way, Parachute, Colorado.	
Weld County (unincorporated areas) (FEMA Docket No. 7010)	
Cache La Poudre River:	
Approximately 8,000 feet downstream of the confluence with Consolidated Law Ditch	*4,728
Just upstream of Colorado State Highway 257	*4,749
At Weld County Road 17	*4,763
At Larimer-Weld County Road	*4,788
At the intersection of Larimer-Weld County Road and County Road 66½	*4,794
Maps are available for review at the Weld County Planning Department, 915 Tenth Street, Greeley, Colorado.	
Windsor (town), Weld County (FEMA Docket No. 7010)	
Cache La Poudre River:	
Approximately 100 feet downstream of Weld County Road 17	*4,768
Approximately 5,800 feet upstream of Weld County Road 17	*4,776
Maps are available for review at Town Hall, 301 Walnut Street, Windsor, Colorado.	
GEORGIA	
Dallonega (city), Lumpkin County (FEMA Docket No. 7010)	
Yahoola Creek:	
About 780 feet downstream of Wimpy Mill Road	*1,226
Just downstream of Wimpy Mill Road	*1,241
Tarpard Branch:	
About 3000 feet downstream of the Concrete Plant Road	*1,210
Just downstream of Pine Tree Road	*1,333
Just upstream of Pine Tree Road	*1,351
Just downstream of State Route 60	*1,369
Happy Hollow Creek:	
At mouth	*1,190
Just downstream of Happy Hollow Road	*1,262
Tributary C:	
About 1660 feet downstream of the Sanitary Landfill Road	*1,235
About 800 feet upstream of Sanitary Landfill Road	*1,308
Cane Creek:	
Just upstream of State Route 9	*1,186
About 660 feet upstream of Torrington Road	*1,192
Maps available for inspection at the Building Inspector's Office, City Hall, 1699 Riley Road, Dahlonega, Georgia.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
IDAHO	
Idaho County (unincorporated areas) (FEMA Docket No. 7010)	
Clearwater River:	
Approximately 3,000 feet downstream of the Union Pacific Railroad Bridge	*1,174
Just downstream of the Union Pacific Railroad Bridge	*1,178
Just upstream of U.S. Highway 12	*1,184
Approximately 4,160 feet upstream of the confluence of Lawyer Creek	*1,194
Clearwater River at Kooskia:	
Approximately 3,300 feet downstream of State Highway 13 Bridge	*1,837
Approximately 600 feet downstream of State Highway 13	*1,844
Lawyer Creek:	
Approximately 100 feet downstream of Union Pacific Railroad Bridge	*1,189
Approximately 600 feet downstream of Hill Street	*1,830
Approximately 4,150 feet upstream of Hill Street	*1,864
South Fork Clearwater River:	
Just upstream of the intersection of Fourth Avenue and Main Street (State Highway 13)	*1,253
At the confluence of an unnamed tributary approximately 3,800 feet from the southern end of Kooskia Airport	*1,272
Approximately 200 feet upstream of Bridge Street Bridge	*1,316
Approximately 100 feet upstream of the confluence of Threemile Creek	*1,390
Approximately 1,100 feet upstream of the confluence of Beare Creek	*1,573
Middle Fork Clearwater River (At Kooskia):	
Just downstream of U.S. Highway 13	*1,245
Approximately 6,000 feet upstream of State Highway 13	*1,256
Main Threemile Creek:	
At Airport Road	*2,264
Approximately 40 feet downstream of County Road	*2,279
Approximately 60 feet upstream of County Road	*2,295
West Fork Threemile Creek:	
Approximately 80 feet downstream of Madison Street	*3,461
Approximately 130 feet upstream of Madison Street	*3,467
East Fork Threemile Creek:	
Approximately 340 feet downstream of Maple Street	*3,437
At Maple Street	*3,446
Approximately 1,330 feet upstream of Maple Street	*3,466
Long Haul Creek:	
Just upstream of County Road	*2,296
Just downstream of Camas Prairie Railroad	*2,302
Maps are available for review at the County Recorder's Office, County Courthouse, 321 West Main Street, Grangeville, Idaho.	
City of Meridian, Ada County (FEMA Docket No. 7010)	
Fivemile Creek:	
At Claire Street	*2,566
At Meridian Road	*2,583
Just upstream of Fairview Avenue	*2,594
Just upstream of Union Pacific Railroad	*2,611
Ninemile Creek:	
Approximately 2,000 feet downstream of West Chateau Road	*2,553
Just upstream of Cherry Lane	*2,566
Just upstream of Meridian Road	*2,601
Just upstream of Franklin Road	*2,607
Just upstream of Overland Road	*2,632
Tenmile Creek:	
Just downstream of Interstate Highway 80 westbound	*2,606
At Meridian Road	*2,613
At the City of Meridian corporate limits	*2,632
Maps are available for review at City Hall, 33 East Idaho Avenue, Meridian, Idaho.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
KANSAS	
Edgerton (city), Johnson County (FEMA Docket No. 7009)	
Martin Creek:	
Just upstream of Atchison, Topeka, and Santa Fe Railway	*954
Just downstream of U.S. Highway 56	*966
Santa Fe Lake Tributary:	
At mouth	*960
About 1600 feet upstream of Santa Fe Lake Dam	*969
Maps available for inspection at the City Hall, 404 East Nelson, Edgerton, Kansas.	
Fairway (city), Johnson County (FEMA Docket No. 7009)	
Rock Creek:	
About 750 feet downstream of Mission Road	*864
Just downstream of U.S. Highway 56	*913
Maps available for inspection at the City Hall, 5252 Belinder Road, Fairway, Kansas.	
Jefferson County (unincorporated areas) (FEMA Docket No. 7007)	
Kansas River	
About 0.5 mile downstream of confluence of Buck Creek	*837
At confluence of Little Muddy Creek	*875
Stone House Creek:	
At mouth	*841
Just downstream of U.S. Highway 59	*877
Big Muddy Creek:	
At mouth	*867
Just downstream of State Highway 4	*896
Little Muddy Creek:	
At mouth	*875
Just upstream of State Highway 4	*901
Maps available for inspection at the County Courthouse, Oskaloosa, Kansas.	
Johnson County (unincorporated areas) (FEMA Docket No. 7009)	
Negro Creek Tributary: Within community	*872
Blue River:	
About 4000 feet upstream of 151st Street	*875
About 2500 feet upstream of U.S. Highway 69	*906
Wolf Creek:	
At mouth	*908
About 3.0 miles upstream of Antioch Road	*953
Camp Branch:	
At mouth	*894
Just downstream of Union Pacific Railroad southernmost crossing	*978
Just upstream of Union Pacific Railroad southernmost crossing	*1,006
About 3650 feet upstream of 199th street	*1,050
Coffee Creek:	
At mouth	*908
About 1.5 miles upstream of Switzer Road	*959
Mill Creek:	
Just upstream of Holliday Drive	*767
About 1050 feet downstream of confluence of Mill Creek Tributary No. 2	*950
Camp Creek:	
At mouth	*789
Just downstream of 127th Street	*955
Little Cedar Creek Tributary:	
At mouth	*879
About 1500 feet upstream of mouth	*985
Little Cedar Creek:	
Just upstream of 119th Street westernmost crossing	*854
About 1.0 mile upstream of 119th Street eastmost crossing	*908
West Branch Cedar Creek:	
At mouth	*966
About 750 feet upstream of 135th Street	*978
Cedar Creek:	
At mouth	*784
About 1,750 feet upstream of 135th Street	*985
Santa Fe Lake Tributary:	
At mouth	*960
About 1,800 feet upstream of Santa Fe Lake Dam	*969
Marsh Creek:	
At confluence of Santa Fe Lake Tributary	*960
About 1,180 feet upstream of Edgerton Road	*967
Kill Creek: Within community	*782
Kansas River:	
About 0.8 mile downstream of confluence of Cedar Creek	*783
About 1.1 miles upstream of confluence of Captain Creek	*799
Maps available for inspection at the County Courthouse, 100 East Park, Olathe, Kansas.	
Leawood (City), Johnson County (FEMA Docket No. 7008)	
James Branch:	
At mouth	*832
Just downstream of Sagamore Drive	*837
Just upstream of Sagamore Drive	*843
Just downstream of Ensley Lane	*879
Just upstream of Ensley Lane	*885
Just downstream of 97th Place	*887
Just upstream of 97th Place	*895
Dyke Branch:	
Just upstream of State Line Road	*880
Just downstream of Lee Boulevard	*878
Just upstream of Lee Boulevard	*884
About 1,050 feet upstream of Wenonga Road	*916
Indian Creek:	
About 1,200 feet downstream of State Line Road	*839
Just downstream of 109th Terrace	*849
Tomahawk Creek:	
At mouth	*844
Just downstream of Nall Avenue	*875
Blue River: Within community	*857
Negro Creek:	
Just upstream of Kenneth Road	*871
About 1,050 feet downstream of Nall Avenue	*911
Negro Creek Tributary:	
About 1.3 miles downstream of Mission Road	*872
About 3,000 feet upstream of Mission Road	*916
Maps available for inspection at the City Hall, 9617 Lee Boulevard, Leawood, Kansas.	
Lenexa (city), Johnson County (FEMA Docket No. 7008)	
Little Mill Creek:	
About 3150 feet downstream of 79th Street	*899
Just downstream of 87th Street	*937
Just upstream of 87th Street	*948
About 800 feet upstream of 91st Terrace	*977
Mill Creek:	
About 1.1 miles downstream of Old 87th Street	*905
Just downstream of Old 87th Street	*921
Just upstream of 87th Street Viaduct	*926
Just downstream of State Highway 10	*995
Mill Creek Tributary No. 1:	
At mouth	*898
About 800 feet upstream of Ridgeview Road	*999
Turkey Creek:	
About 700 feet upstream of Marshall Drive	*980
About 1380 feet upstream of a service road	*999
Maps available for inspection at the City Hall, 12350 W. 87th Street Parkway, Lenexa, Kansas.	
Merriam (city), Johnson County (FEMA Docket No. 7008)	
Turkey Creek:	
Just upstream of Antioch Road	*886
Just downstream of 83rd Street	*932
Just upstream of 83rd Street	*937
Just downstream of 75th Street	*966
Turkey Creek Tributary:	
At mouth	*931
About 400 feet upstream of 83rd Street	*936
Maps available for inspection at the City Hall, 6000 West 62nd Terrace, Merriam, Kansas.	
Mission (city), Johnson County (FEMA Docket No. 7008)	
Rock Creek:	

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Just downstream of U.S. Highway 56	*913
Just downstream of Woodson Avenue	*953
Just upstream of Woodson Drive	*969
Just downstream of Lamar Avenue	*985
Maps available for inspection at the City Hall, 8080 Woodson, Mission, Kansas.	
Mission Hills (city), Johnson County (FEMA Docket No. 7008)	
Rock Creek:	
At mouth	*963
About 750 feet downstream of Mission Road	*984
Maps available for inspection at the Mission Hills City Hall, 6000 State Line Road, Shawnee Mission, Kansas.	
Mission Woods (city), Johnson County (FEMA Docket No. 7008)	
Brush Creek: Within community	*933
Maps available for inspection at the City Hall, 5522 Mission Woods Road, Mission Woods, Kansas.	
Olathe (city), Johnson County (FEMA Docket No. 7008)	
Little Cedar Creek Tributary:	
About 1,600 feet above mouth	*885
About 1,300 feet upstream of State Highway 7	*944
Little Cedar Creek:	
At mouth	*839
Just downstream of State Highway 7	*962
Just upstream of State Highway 7	*1,001
About 800 feet upstream of Dennis Avenue	*1,035
Cedar Creek:	
About 3,000 feet downstream of State Highway 10	*799
Just downstream of Olathe Lake Dam	*886
Indian Creek:	
Just upstream of Pflumm Road	*947
About 0.9 mile upstream of 151st Street	*1,043
Mill Creek Tributary No. 1:	
About 600 feet downstream of State Highway 10	*899
Just downstream of State Highway 10	*905
Just upstream of State Highway 10	*916
About 3,500 feet upstream of State Highway 10	*929
Mill Creek:	
Just upstream of State Highway 10	*895
Just upstream of Keeler Street	*1,032
Mill Creek Tributary No. 2:	
At mouth	*952
Just downstream of Nelson Street	*1,002
Cedar Creek Tributary:	
At mouth	*907
About 2,800 feet upstream of easternmost 103rd Street	*918
Indian Creek Tributary No. 6:	
At mouth	*996
Just upstream of 143rd Street	*1,017
West Branch Cedar Creek:	
About 750 feet upstream of 143rd Street	*979
About 1.0 mile upstream of 143rd Street	*1,003
Maps available for inspection at the Engineering Department, City Hall, 217 West Park, Olathe, Kansas.	
Overland Park (city), Johnson County (FEMA Docket No. 7008)	
Turkey Creek:	
Just downstream of Southbound U.S. Highway 69	*864
Just upstream of Burlington Northern Railroad	*864
Just downstream of Marshall Drive	*876
James Branch:	
Just upstream of 97th Place	*886
About 350 feet upstream of 97th Place	*898
Indian Creek Tributary No. 1:	
At mouth	*888
Just downstream of 103rd Street	*896
Just upstream of 103rd Street	*904
Just downstream of 99th Street	*900
Indian Creek Tributary No. 2:	
At mouth	*886
Just downstream of 107th Street	*896

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Just upstream of 107th Street	*905
Just downstream of Interstate 435	*909
Just upstream of Interstate 435	*912
About 750 feet upstream of 110th Street	*913
North Branch Indian Creek:	
At mouth	*905
Just downstream of 103rd Street	*987
Tributary A:	
At mouth	*925
Just downstream of Interstate 435	*931
Just upstream of Interstate 435	*936
Just downstream of 103rd Street	*947
Tributary B:	
At mouth	*935
Just downstream of Westgate Road	*952
Just upstream of Westgate Road	*958
About 600 feet upstream of 116th Street	*974
Indian Creek Tributary No. 3:	
At mouth	*870
Just downstream of 97th Street	*904
Just upstream of 97th Street	*911
About 1900 feet upstream of 95th Street	*929
Indian Creek Tributary No. 4:	
At mouth	*874
About 380 feet upstream of Hadley Drive	*929
Indian Creek Tributary No. 5:	
At mouth	*887
About 1250 feet upstream of 99th Street	*944
Tomahawk Creek:	
About 1950 feet upstream of 119th Street	*985
Just downstream of Pflumm Road	*1005
Negro Creek:	
At mouth	*899
Just downstream of Nall Avenue	*914
Just upstream of Nall Avenue	*920
Just downstream of U.S. Highway 69	*966
Indian Creek:	
Just upstream of 109th Terrace	*849
Just downstream of Pflumm Road	*947
Camp Branch: Within community	*884
Blue River:	
About 3600 feet downstream of confluence of Negro Creek	*887
About 0.81 mile upstream of confluence of Camp Branch	*896
Maps available for inspection at the City Hall, 8500 Santa Fe Drive, Overland Park, Kansas.	
Prairie Village (city), Johnson County (FEMA Docket No. 7008)	
Dyke Branch:	
About 1050 feet upstream of Wenonga Road	*917
About 1400 feet upstream of Wenonga Road	*922
Maps available for inspection at the City Hall, 7700 Mission Road, Prairie Village, Kansas.	
Shawnee (city), Johnson County (FEMA Docket No. 7008)	
Mill Creek:	
At mouth	*767
About 1.1 miles downstream of Old 67th Street	*808
Little Mill Creek:	
At mouth	*784
Just downstream of Lackman Road	*875
Just upstream of Lackman Road	*882
About 3,150 feet downstream of 79th Street	*889
Turkey Creek Tributary:	
About 400 feet upstream of 63rd Street	*937
Just downstream of Flint Avenue	*967
Kansas River:	
About 3,200 feet downstream of confluence of Hill Creek	*766
About 3,900 feet upstream of confluence of Cedar Creek	*786
Turkey Creek:	
Just downstream of Marshall Drive	*878
About 700 feet upstream of Marshall Drive	*890
Cedar Creek:	
Within community	*784
Maps available for inspection at the City Hall, 1111 Johnson Drive, Shawnee, Kansas.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
LOUISIANA	
St. Helena Parish (unincorporated areas) (FEMA Docket No. 7010)	
Amite River:	
Approximately 1.8 miles downstream of confluence of Chaney Branch	*86
Approximately 6.1 miles upstream of State Route 432	*805
Darling Creek:	
At confluence with Amite River	*156
Approximately 0.7 mile upstream of State Route 10	*187
Sandy Run:	
At confluence with Darling Creek	*184
Approximately 1.5 miles upstream of State Route 173	*208
Little Natalbany River:	
Approximately 0.3 mile downstream of confluence of Tributary No. 2 of Little Natalbany River	*87
Approximately 1.1 miles upstream of confluence of Tributary No. 1 of Little Natalbany River	*100
Tributary No. 1 of Little Natalbany River:	
At confluence with Little Natalbany River	*93
Approximately 1.1 miles upstream of confluence with Little Natalbany River	*98
Tributary No. 2 of Little Natalbany River:	
At confluence with Little Natalbany River	*88
Approximately 1.6 miles upstream of confluence with Little Natalbany River	*99
Ticklaw River:	
Approximately 1.8 miles downstream of State Route 16	*110
Approximately 2.3 miles upstream of confluence of Tributary of Ticklaw River	*119
Tributary of Ticklaw River:	
At confluence with Ticklaw River	*113
Approximately 2.4 miles upstream of confluence with Ticklaw River	*127
Twelvemile Creek:	
At confluence with Ticklaw River	*111
Approximately 0.7 mile upstream of confluence with Red Hill Branch	*129
Maps available for inspection at the Courthouse, Greensburg, Louisiana.	
Tangipahoa Parish (unincorporated areas) (FEMA Docket No. 7007)	
Chappapeela Creek:	
Approximately .8 mile upstream of confluence with Tangipahoa River	*41
Approximately 1.1 miles upstream of Zemurry Lodge Road	*69
Bedico Creek:	
Approximately 5.2 miles upstream of confluence with Tangipahoa River	*9
Approximately 0.7 mile upstream of U.S. Route 190	*39
Hickley Creek:	
At confluence with Tangipahoa River	*26
Approximately 2.0 miles upstream of U.S. Route 190	*37
Yellow Water River:	
Approximately .7 mile upstream of confluence with Ponchatula Creek	*8
Upstream side of Parish Road 134	*58
Little Chappapeela Creek:	
Approximately 1.1 miles upstream of Zemurry Lodge Road	*89
At upstream side of Terrace Road	*112
Maps available for inspection at the Courthouse Building, Amite, Louisiana.	
MAINE	
Norway (town), Oxford County (FEMA Docket No. 7007)	
Pennesseewassee Stream:	
At confluence with Little Androscoggin River	*327
Approximately 600 feet upstream of Highland Avenue Bridge	*360
Bird Brook:	
At confluence with Pennesseewassee Stream	*375
Approximately 75 feet upstream of Elm Hill Road Bridge	*362

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Little Androscoggin River:	
At downstream corporate limits	*326
At upstream corporate limits	*329
Maps available for inspection at the Town Clerk's Vault, Town Office, 39 Danforth Street, Norway, Maine.	
Paris (town), Oxford County (FEMA Docket No. 7010)	
Little Androscoggin River:	
Approximately 600 feet upstream of State Route 26 in Oxford, Maine	*324
Approximately 100 feet upstream of upstream corporate limits	*366
Story Brook:	
At confluence with Little Androscoggin River	*350
Approximately 0.6 mile upstream of Brett Hill Road	*429
Maps available for inspection at the Town Clerk's Vault, Town Office, Paris, Maine.	
MICHIGAN	
Hersey (village), Osceola County (FEMA Docket No. 7007)	
Muskegon River:	
About 1,500 feet downstream of Fourth Street	*858
About 1,800 feet upstream of Fourth Street	*862
Hersey River:	
At mouth	*861
Just downstream of Hersey Dam	*873
Just upstream of Hersey Dam	*876
About 2,500 feet upstream of Hersey Dam	*876
Maps available for inspection at the Village Hall, 306 East Third Street, Hersey, Michigan.	
James (township), Saginaw County (FEMA Docket No. 7007)	
Shiawassee River: Within community	*504
Tittabawassee River:	
Just upstream of Center Road	*595
About 0.84 mile upstream of Conrail	*598
Maps available for inspection at the Township Hall, 6080 Swan Creek Road, James, Michigan.	
Lincoln (township), Newaygo County (FEMA Docket No. 7007)	
White River:	
About 2.0 miles downstream of State Highway 20	*762
About 2.7 miles upstream of Baldwin Avenue	*794
Maps available for inspection at the Township Hall, Weiner Road, White Cloud, Michigan.	
Port Huron (township), St. Clair County (FEMA Docket No. 7007)	
Black River:	
About 2,150 feet downstream of Interstate 94	*586
About 6.6 miles upstream of Interstate 94	*595
Maps available for inspection at the Township Hall, 3800 Lapeer Road, Port Huron, Michigan.	
MINNESOTA	
Cloquet (city), Carlton County (FEMA Docket No. 7010)	
St. Louis River:	
Just upstream of Knife Falls Dam	*1,181
About 3.2 miles upstream of State Route 33	*1,188
North Channel:	
Just upstream of Knife Falls Dam	*1,181
About 9700 feet upstream of Knife Falls Dam	*1,182
South Channel:	
Just upstream of Duluth and Northeastern Railroad	*1,182
About 1600 feet upstream of Main Street	*1,184
Maps available for inspection at the Planning Department, City Hall, 1307 Cloquet Avenue, Cloquet, Minnesota.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Hibbing (city), St. Louis County (FEMA Docket No. 7010)	
Sucker Creek:	
About 2600 feet upstream of mouth	*1,304
About 1700 feet upstream of Dixon Road	*1,344
Penobscot Creek:	
At mouth	*1,329
Just downstream of Tamminen Road	*1,392
Maps available for inspection at the Zoning Department, City Hall, Hibbing, Minnesota.	
Ranier (city), Koochiching County (FEMA Docket No. 7010)	
Rainy Lake:	
Along shoreline	*1,113
Maps available for inspection at the City Clerk's Office, City Hall, Ranier, Minnesota.	
MISSISSIPPI	
Natchez County (unincorporated areas) (FEMA Docket No. 7007)	
Tombigbee River:	
About 2500 feet downstream of Sarra Ferry Road	*242
Just downstream of Walker Road	*300
Tennessee-Tombigbee Waterway:	
At southern county boundary	*249
Just downstream of Lock C	*263
Just upstream of Lock C	*270
Just downstream of Lock D	*271
Just upstream of Lock D	*300
Just downstream of Lock E	*300
About 4300 feet upstream of Lock E	*330
Twentymile Creek:	
At mouth	*280
Just downstream of Natchez Trace Parkway	*300
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, 201 West Main Street, Fulton, Mississippi.	
NEW MEXICO	
Dona Ana County (unincorporated areas) (FEMA Docket No. 7010)	
Send Hill Arroyo (Flow Path 1):	
Approximately .4 mile downstream of Ellis Drive	*3,958
Approximately 1,500 feet downstream of Elks Drive	*3,973
Flow Path 4: At Dona Ana Road approximately 0.40 mile downstream of Alameda Boulevard	*3,806
Flow Path 6:	
At Las Cruces corporate limits	*3,877
Approximately 100 feet downstream of Union Avenue	*3,880
Flow Path 10:	
Approximately 450 feet upstream of Interstate Route 25	*4,014
Approximately 600 feet upstream of Interstate Route 25	*4,017
Flow Path 11:	
At Las Cruces Lateral	*3,882
Approximately 1,450 feet downstream of Interstate Route 10	*3,806
Flow Path 12:	
Approximately 720 feet downstream of Stern Drive	*3,934
Approximately 1,660 feet upstream of Las Alturas	*3,983
Stream Bibo:	
Approximately 0.75 mile upstream of Picacho Drain	*3,987
Approximately 1.2 miles upstream of Picacho Drain	*4,125
Stream 13:	
Approximately 0.6 mile upstream of Picacho Drain	*3,934
Approximately 1.25 miles upstream of Picacho Drain	*4,095
Stream 14:	
Approximately 0.45 mile upstream of Picacho Drain	*3,999
Approximately 1.2 miles upstream of Picacho Drain	*4,126

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Stream 15:	
Approximately 0.2 mile upstream of Picacho Drain	*3,892
Approximately 1.0 mile upstream of Picacho Drain	*4,069
Stream 16:	
Approximately 0.5 mile upstream of Picacho Drain	*3,935
Approximately 1.0 mile upstream of Picacho Drain	*4,067
Stream 17:	
Approximately 0.6 mile upstream of Picacho Drain	*3,955
Approximately 1.0 mile upstream of Picacho Drain	*4,075
Stream 21:	
Approximately 0.5 mile upstream of Picacho Drain	*3,902
Approximately 0.95 mile upstream of Picacho Drain	*4,061
Stream 22:	
Approximately 0.5 mile upstream of Picacho Drain	*3,941
Approximately 0.85 mile upstream of Picacho Drain	*3,997
Stream 23:	
Approximately 0.5 mile upstream of Picacho Drain	*3,968
Approximately 0.7 mile upstream of Picacho Drain	*4,036
Stream 24:	
Approximately 0.85 mile upstream of Picacho Drain	*3,952
Approximately 1.8 miles upstream of Picacho Drain	*4,065
Shallow Flooding	
Stream Bibo:	
At cross section A	#1
At corporate limits	#1
Stream 12:	
At corporate limits	#1
At cross section A	#2
Stream 14:	
At corporate limits	#1
At cross section A	#2
Stream 15:	
At a point approximately 1,000 feet downstream of cross section A	#1
At cross section A	#2
Stream 16:	
At cross section A	#1
At Picacho Drain	#1
Stream 17: Area from cross section A to Picacho Drain	#1
Stream 21: At cross section A	#1
Stream 22: Area from cross section A to Picacho Drain	#1
Stream 23: Area from cross section A to Picacho Drain	#1
Stream 24:	
At Picacho Drain	#2
At cross section A	#3
Maps available for inspection at the County Courthouse, 180 West Amador, Las Cruces, New Mexico.	
Mesilla (town), Dona Ana County (FEMA Docket No. 7010)	
Stream Bibo: Shallow flooding (Alluvial fan) from Picacho Drain to the corporate limits	#1
Stream 12: At the corporate limits	#1
Stream 14: Shallow flooding (Alluvial fan) from Picacho Drain to the corporate limits	#1
Stream 16:	
At Picacho Drain	#1
Shallow flooding (Alluvial fan) at a point approximately 200 feet downstream of cross section A	#2
Stream 21: At the corporate limits	#1
Maps available for inspection at the Town Hall, Mesilla, New Mexico.	

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
NEW YORK	
Corning (town), Steuben County (FEMA Docket No. 7016)	
Bailey Creek:	
At downstream corporate limits	*976
Approximately 110 feet upstream of Private Road	*1,165
Cutler Creek:	
At State Route 41	*965
Approximately 0.2 mile upstream of Corning-Hornby Road	*1,066
Hanlest Creek:	
Approximately 900 feet downstream of Hickory Lane	*926
Approximately 0.8 mile upstream of Hickock Golf Road	*1,306
Chemung River:	
At the downstream corporate limits	*897
Approximately 1.2 miles upstream of downstream corporate limits	*907
Maps available for inspection at the Corning Town Hall, 20 South Maple Street, Corning, New York.	
Flower Hill (village), Nassau County (FEMA Docket No. 7007)	
Hempstead Harbor:	
Approximately 300 feet east of West Shore Road	*15
Southern corporate limits	*17
Maps available for inspection at the Village Hall, Manhasset, New York.	
Woodstock (town), Ulster County (FEMA Docket No. 7007)	
Saw Kill:	
At downstream corporate limits	*293
Approximately 110 feet upstream of MacDaniel Road	*857
Beaver Kill:	
At downstream corporate limits	*780
Approximately 0.5 mile upstream of Sickler Road	*1,084
East Branch Tannery Brook:	
At the confluence with West Branch Tannery Brook	*586
Approximately 140 feet upstream of State Route 212 (Glasco Turnpike)	*717
West Branch Tannery Brook:	
At the confluence with Saw Kill	*520
Approximately 120 feet upstream of State Route 212 (Glasco Turnpike)	*681
Maps available for inspection at the Town Hall, 81 Tinker Street, Woodstock, New York.	
OHIO	
Perry County (unincorporated areas) (FEMA Docket No. 7010)	
Center Branch:	
At mouth	*813
Just downstream of State Route 668	*846
Tributary P:	
At mouth	*820
Just downstream of County Route 94B	*845
Rush Creek:	
At county boundary	*867
Just downstream of Township Road 364	*873
Tributary T:	
At mouth	*830
Just downstream of Township Road 131	*848
Tributary G:	
At mouth	*849
Just downstream of Mainesville Road	*863
Moxahala Creek:	
Just upstream of Cornell	*736
About 0.8 mile upstream of Waterworks Road	*758
Maps available for inspection at the County Courthouse, 121 W. Brown, New Lexington, Ohio.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Pickaway County (unincorporated areas) (FEMA Docket No. 7016)	
Scioto River:	
Just upstream of county boundary	*652
About 2,000 feet upstream of confluence of Big Walnut Creek	*664
Walnut Creek:	
At mouth	*679
Just downstream of Lockbourne Road	*684
Big Darby Creek:	
At mouth	*671
Just downstream of State Route 316	*731
Maps available for inspection at the County Courthouse, 29 S. Main Street, Circleville, Ohio.	
Union County (unincorporated areas) (FEMA Docket No. 7016)	
Mill Creek:	
About 700 feet downstream of Thompson Road	*919
About 2.20 miles upstream of U.S. Route 33	*984
Big Darby Creek:	
About 0.45 mile downstream of U.S. Route 36	*979
About 1.42 miles upstream of North Lewisburg Road	*1050
Sugar Run:	
About 1.70 miles downstream of Converse Road	*920
Just downstream of Taylor Road	*954
Fulton Creek:	
About 2.6 miles downstream of State Route 4	*923
Just downstream of State Route 739	*1,030
Elliot Run:	
At mouth	*934
Just downstream of Kinney Pike	*945
Ash Run:	
At mouth	*941
Just downstream of Race Road	*943
Big Run:	
At mouth	*977
Just downstream of Boundary Road	*980
Maps available for inspection at the County Courthouse, Marysville, Ohio.	
OKLAHOMA	
Apache (city), Caddo County (FEMA Docket No. 7016)	
Bax Elder Creek:	
Approximately 1,000 feet downstream of State Route 19	*1,256
Approximately 400 feet upstream of State Route 19	*1,260
Maps available for inspection at the City Hall, Apache, Oklahoma.	
Binger (town), Caddo County (FEMA Docket No. 7016)	
Sugar Creek:	
Approximately 800 feet downstream of US Route 281	*1,293
Approximately 175 feet upstream of upstream Town of Binger corporate limits	*1,305
Maps available for inspection at the Town Hall, 303 W. Main, Binger, Oklahoma.	
Breckenridge (town), Garfield County (FEMA Docket No. 7016)	
Unnamed Tributary of Red Rock Creek:	
At the downstream corporate limits	*1,089
At the upstream corporate limits	*1,091
Red Rock Creek:	
Approximately .40 mile downstream of the confluence of Unnamed Tributary of Red Rock Creek	*1,084
Approximately 50 feet downstream of the confluence of Unnamed Tributary of Red Rock Creek	*1,089
Tributary 3 Reach 2:	
At 78th Street	*1,197
Maps available for inspection at the Town Hall, Route 8, Enid, Oklahoma.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Bryan County (unincorporated areas) (FEMA Docket No. 7008)	
Mineral Bayou:	
Approximately 0.56 mile downstream of the confluence of Mineral Bayou Tributary 6	*576
Approximately 0.96 mile upstream of the confluence of Mineral Bayou Tributary 6	*588
Mineral Bayou Tributary 0:	
At its confluence with Mineral Bayou	*579
At State Routes 48 and 78	*631
Mineral Bayou Tributary 1:	
At confluence with Mineral Bayou	*596
Approximately 200 feet upstream of North First Avenue	*618
Mineral Bayou Tributary 4:	
At confluence with Mineral Bayou	*640
Approximately 810 feet upstream of U.S. Routes 69 and 75	*656
Mineral Bayou Tributary 5:	
At confluence with Mineral Bayou	*622
At U.S. Routes 69 and 75	*671
Mineral Bayou Tributary 5 South Branch:	
At confluence with Mineral Bayou Tributary 5	*621
Approximately 90 feet downstream of Missouri-Kansas- Texas Railroad	*639
Mineral Bayou Tributary 6:	
At the confluence with Mineral Bayou	*954
At Sunnyside Drive	*968
Chuckwa Creek:	
At the confluence with Mineral Bayou	*596
Approximately 1,900 feet upstream of confluence of Chuckwa Creek Tributary 4	*680
Chuckwa Creek Tributary 2:	
At confluence with Chuckwa Creek	*625
Approximately 1,125 feet upstream of the confluence of Chuckwa Creek Tributary 2 South Branch	*697
Chuckwa Creek Tributary 2 South Branch:	
At confluence with Chuckwa Creek Tributary 2	*691
Approximately 1,500 feet upstream of confluence with Chuckwa Creek Tributary 2	*697
Chuckwa Creek Tributary 3:	
At confluence with Chuckwa Creek	*662
Approximately 1.0 mile upstream of confluence with Chuckwa Creek	*712
Chuckwa Creek Tributary 4:	
At confluence with Chuckwa Creek	*671
At Wilson Road	*672
Maps available for inspection at the County Courthouse, 402 Evergreen, Durant, Oklahoma.	
Caddo County (unincorporated areas) (FEMA Docket No. 7016)	
Deer Creek:	
Approximately 1,000 feet downstream of confluence of Deer Creek East Tributary	*1,476
Approximately 1,100 feet upstream of confluence of Deer Creek West Tributary	*1,488
Deer Creek West Tributary:	
At the confluence with Deer Creek	*1,487
Approximately .5 mile upstream of confluence with Deer Creek	*1,498
Deer Creek East Tributary:	
At the confluence with Deer Creek	*1,477
Approximately 1.1 miles upstream of confluence with Deer Creek	*1,537
Sugar Creek:	
Approximately 8 miles upstream of the confluence with Washita River	*1,212
Approximately .8 mile upstream of Washita Avenue	*1,353
Box Elder Creek West Tributary:	
At confluence with Box Elder Creek	*1,264
Approximately 3,100 feet upstream of confluence with Box Elder Creek	*1,274
Box Elder Creek:	
At State Route 19	*1,257
Approximately 1.1 miles upstream of State Route 19	*1,272
Tonkawa Creek:	
Approximately 100 feet downstream of Peirce Road	*1,168
Approximately .4 mile downstream of Section Line Road	*1,194

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Caddo County Courthouse, Anadarko, Oklahoma.	
Devol (town), Cotton County (FEMA Docket No. 7016)	
Red River Tributary 1:	
Approximately 1,300 feet downstream of U.S. Route 70 and State Route 36	*1,019
Approximately 3,000 feet upstream of U.S. Route 70 and State Route 36	*1,032
Maps available for inspection at the Town Hall, Devol, Oklahoma.	
Enid (city), Garfield County (FEMA Docket No. 7016)	
Tributary 1:	
At confluence with Tributary 3	*1,145
At upstream side of Willow Road	*1,167
Tributary 2:	
At confluence with Tributary 3	*1,150
At upstream side of Purdue Avenue	*1,208
Tributary 3:	
Approximately 1,350 feet upstream of confluence with Skeleton Creek	*1,140
Approximately 1.1 miles upstream of Willow Road	*1,211
Tributary 3, Reach 2:	
At confluence with Tributary 3	*1,187
At downstream side of 76 Street	*1,198
Tributary 4:	
At confluence with Skeleton Creek	*1,141
At Atchison Topeka & Santa Fe Railway	*1,205
Boggy Creek Tributary: At confluence with Boggy Creek	*1,275
Sand Creek:	
Approximately .54 mile upstream of U.S. Route 60	*1,143
At West Chestnut Avenue	*1,162
Maps available for inspection at the City Hall, Enid, Oklahoma	
Fairmont (town), Garfield County (FEMA Docket No. 7016)	
Pleasantdale Creek:	
At the confluence with Bethany Creek	*1,113
Approximately .74 mile upstream of the confluence with Bethany Creek	*1,132
North Creek:	
At confluence with Bethany Creek	*1,130
At Rupe Avenue	*1,142
Bethany Creek:	
Approximately 1,000 feet downstream of the confluence of Pleasantdale Creek	*1,111
Approximately 1.62 miles upstream of the confluence of Pleasantdale Creek	*1,137
Levangood Creek:	
At downstream corporate limits	*1,113
Approximately 100 feet upstream of upstream corporate limits	*1,130
Dinker Creek:	
Approximately 350 feet upstream of the confluence of Dinker Overflow Tributary	*1,113
Approximately 1.53 miles upstream of the divergence of Dinker Overflow Tributary	*1,170
Unnamed Tributary of Dinker Creek:	
At the downstream corporate limits	*1,135
Approximately .52 mile upstream of the confluence with Dinker Creek	*1,143
Skeleton Creek:	
Approximately 1,800 feet upstream of Southgate Road	*1,123
Upstream corporate limits	*1,132
Maps available for inspection at the Town Hall, Fairmont, Oklahoma.	
Fort Cobb (town), Caddo County (FEMA Docket No. 7016)	
Cobb Creek:	
Approximately 1,000 feet downstream of East Konnor Avenue	*1,249
At the East Konnor Avenue	*1,251
Maps available for inspection at the Town Hall, 201 E. Main, Fort Cobb, Oklahoma.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Garfield County (unincorporated areas) (FEMA Docket No. 7016)	
Green Valley Creek:	
Approximately 1.3 miles downstream of N Street	*1,207
Approximately 700 feet upstream of N Street	*1,229
Clear Creek-Sand Creek:	
Approximately 3.4 miles upstream of confluence with Turkey Creek	*1,217
Approximately 1.1 miles upstream of West Chestnut Avenue	*1,265
Levangood Creek:	
Approximately .5 mile upstream of confluence with Dinker Creek	*1,108
Approximately 2.2 miles upstream of confluence with Dinker Creek	*1,136
Tributary 3 Reach 2:	
Approximately 200 feet upstream of 76th Street	*1,186
Dinker Creek:	
Approximately 3,500 feet upstream of confluence with Levengood Creek	*1,108
Approximately 1.7 miles upstream of divergence of Dinker Overflow Tributary	*1,175
Dinker Overflow Tributary:	
Confluence with Dinker Creek	*1,111
Divergence from Dinker Creek	*1,131
Unnamed Tributary of Dinker Creek:	
Confluence with Dinker Creek	*1,130
Approximately 1,500 feet above confluence with Dinker Creek	*1,137
Red Rock Creek:	
Approximately .4 mile downstream of confluence of Unnamed Tributary of Red Rock Creek	*1,084
Approximately 1.26 miles upstream of confluence of Unnamed Tributary of Red Rock Creek	*1,100
Approximately 1,000 feet downstream of Burlington Northern Railroad	*1,175
Approximately 1 mile upstream of confluence of Lahoma Tributary	*1,230
Unnamed Tributary of Turkey Creek near Fish Hatchery:	
At confluence with Turkey Creek	*1,186
At U.S. Route 60	*1,236
Unnamed Tributary of Turkey Creek Northeast of Fish Hatchery:	
At confluence with Unnamed Tributary near Fish Hatchery	*1,210
At U.S. Route 60	*1,244
Lahoma Tributary:	
At confluence with Turkey Creek	*1,227
At Missouri-Kansas-Texas Railroad	*1,255
Unnamed Tributary of Lahoma Tributary:	
At confluence with Lahoma Tributary	*1,234
At Missouri-Kansas-Texas Railroad	*1,254
Maps available for inspection at County Courthouse, Enid, Oklahoma.	
Gracemont (town), Caddo County (FEMA Docket No. 7016)	
Sugar Creek:	
Approximately .4 mile downstream of Unnamed Road	*1,215
At the Unnamed Road	*1,218
Maps available for inspection at the Town Hall, Gracemont, Oklahoma.	
Grady County (unincorporated areas) (FEMA Docket No. 7016)	
Bridge Creek:	
Approximately 500 feet downstream of County boundary	*1,199
Approximately 0.8 mile upstream of County Road (6th crossing)	*1,264
Worley Creek:	
At upstream side of State Route 37	*1,243
Approximately 2.1 miles upstream of County Road	*1,277
Worley Creek Tributary:	
At confluence with Worley Creek	*1,244
Approximately 0.9 mile upstream of County Road	*1,281
Coal Creek:	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
At upstream side of State Route 37	*1,241
Approximately 1.2 miles upstream of County Road	*1,592
Coal Creek Tributary:	
At upstream side of State Route 37	*1,234
Approximately 1.3 miles upstream of Dove Creek Road	*1,332
Maps available for inspection at the Grady County Courthouse, Chickasha, Oklahoma.	
Hydro (town), Caddo County (FEMA Docket No. 7016)	
Deer Creek:	
Approximately 250 feet downstream of State Route 58	*1,482
Approximately 650 feet downstream of confluence of Deer Creek West Tributary	*1,486
Deer Creek East Tributary:	
Approximately 400 feet upstream of North Central Oklahoma Railway	*1,486
Approximately 1,150 feet upstream of North Central Oklahoma Railway	*1,494
Maps available for inspection at the Town Hall, 505 W. Fifth Street, Hydro, Oklahoma	
Kingfisher County (unincorporated areas) (FEMA Docket No. 7016)	
Kingfisher Creek (Lower Reach):	
Approximately 0.9 mile downstream of U.S. Route 81 (Main Street)	*1,040
Approximately 1.56 miles upstream of State Routes 3 and 35	*1,075
Kingfisher Creek (Upper Reach):	
Approximately 1.4 miles downstream of Unnamed Road	*1,148
Approximately 0.8 mile upstream of Unnamed Road	*1,183
Kingfisher Creek Tributary A:	
At confluence with Kingfisher Creek	*1,054
At Will Rogers Drive	*1,073
Dead Indian Creek:	
At confluence with Kingfisher Creek	*1,057
At Will Rogers Drive	*1,083
Kingfisher Creek Tributary B:	
At confluence with Kingfisher Creek	*1,066
Approximately 1.3 miles upstream of confluence with Kingfisher Creek	*1,075
Cooper Creek:	
Approximately 1.16 miles downstream of Ist Street	*1,107
Approximately 1.22 miles upstream of Ist Street	*1,122
Cimarron River:	
Approximately 1.7 miles upstream of confluence of Turkey Creek at low flow	*1,037
Approximately 1,750 feet downstream of U.S. Route 81	*1,024
Turkey Creek (Main Channel):	
At confluence with Cimarron River at high flow (approximately 1.6 miles downstream of Boundary Street)	*1,034
Approximately 0.7 mile upstream of Boundary Street	*1,041
Turkey Creek—West Overflow (east of railroad tracks):	
Approximately 1.3 miles downstream of U.S. Route 81	*1,024
Approximately .5 mile upstream of Red Fork Drive	*1,041
Turkey Creek—East Overflow (east of railroad tracks):	
Approximately 1.7 miles downstream of corporate limits	*1,034
At corporate limits	*1,032
Uncle John's Creek:	
At confluence with Kingfisher Creek	*1,042
Approximately 0.3 mile upstream of Oklahoma Avenue	*1,048
Maps available for inspection at the Kingfisher County Courthouse, Kingfisher, Oklahoma.	
Lahoma (town), Garfield County (FEMA Docket No. 7016)	
Lahoma Tributary:	
Approximately .4 mile downstream of U.S. Route 60 and State Route 15	*1,231

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately .4 mile upstream of U.S. Route 90 and State Route 16	*1,250
Unnamed Tributary of Lahoma Tributary:	
At the downstream corporate limits	*1,254
Approximately 100 feet upstream of corporate limits	*1,254
Maps available for inspection at the Town Hall, 203 Main Street, Lahoma, Oklahoma.	
Loclosha (town), Caddo County (FEMA Docket No. 7016)	
Sugar Creek:	
Approximately 125 feet downstream of downstream corporate limits of Town of Loclosha	*1,340
At upstream corporate limits of Town of Loclosha	*1,349
Maps available for inspection at the Town Hall, Loclosha, Oklahoma.	
Nash (town), Grant County (FEMA Docket No. 7016)	
East Side Creek:	
Approximately 900 feet downstream of Grand Avenue	*1,111
Approximately 1,400 feet upstream of Grand Avenue	*1,119
Maps available for inspection at the Town Hall, 115 South Main Street, Nash, Oklahoma.	
Okmulgee County (unincorporated areas) (FEMA Docket No. 7016)	
Deep Fork Creek:	
Approximately 3.1 miles downstream of Burlington Northern Railroad	*625
Approximately 2.2 miles upstream of confluence of South Okmulgee Creek	*648
Coal Creek:	
Approximately .5 mile downstream of confluence of Coal Creek Tributary	*645
Approximately .5 mile upstream of upstream crossing of Union Pacific Railroad	*686
Cusseta Creek:	
At confluence of Deep Fork Creek	*629
Approximately .8 mile upstream of U.S. Route 62 and State Route 56	*644
South Okmulgee Creek:	
At confluence with Deep Fork Creek	*645
Approximately 1.7 miles upstream of confluence with Deep Fork Creek	*845
North Okmulgee Creek:	
Approximately 100 feet downstream of State Route 56	*666
Approximately 1.42 miles upstream of Gun Club Road	*680
Dutch Creek:	
At confluence with Coal Creek	*666
Approximately 55 feet upstream of Interstate Highway 40	*691
Cusseta Creek Tributary:	
At confluence with Cusseta Creek	*631
At County Road	*645
Unnamed Creek:	
At confluence with Coal Creek	*660
Approximately 880 feet upstream of U.S. Routes 62 and 75	*666
Maps available for inspection at 719 E. Eighth Street, Okmulgee, Oklahoma.	
OREGON	
Grants Pass (city), Josephine County (FEMA Docket No. 7016)	
Rogue River:	
At Dowson Lane	*905
Approximately 1,000 feet downstream of the sewage treatment plant	*909
At Bella Alra Drive	*921
Approximately 1,400 feet upstream of Elm Lane extended	*926
Maps are available for review at the Department of Public Works, 101 Northwest A Street, Grants Pass, Oregon.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Jackson County (unincorporated areas) (FEMA Docket No. 7016)	
Applegate River:	
At the Jackson-Josephine County boundary	*1,167
Approximately 140 feet upstream of Applegate Bridge	*1,285
Just upstream of Cantrall Bridge	*1,429
Approximately 160 feet upstream of Cameron Bridge	*1,463
Just upstream of Markee Bridge	*1,913
Maps are available for review at the Jackson County Planning Department, Room 100, County Courthouse, 10 South Oakdale, Medford, Oregon.	
Josephine County (unincorporated areas) (FEMA Docket No. 7016)	
Rogue River:	
Approximately 2,600 feet upstream of Sycamore Drive along Lower River Road	*886
At Coulont Lane extended	*891
Approximately 300 feet downstream of Lincoln Avenue	*908
At Shannon Lane extended	*926
Louse Creek:	
Just upstream of Granite Pass Road extended	*1,103
Just downstream of Monument Drive	*1,121
Just upstream of Soldier Creek Road	*1,188
Just upstream of Granite Hill Road	*1,262
Applegate River:	
Approximately 800 feet downstream of confluence with Oasor Creek	*1,095
At the confluence with Carls Creek	*1,135
At the Josephine-Jackson County boundary	*1,167
Waters Creek:	
At confluence with State Creek	*1,087
Just upstream of State Highway 199	*1,093
At confluence with Salt Creek	*1,112
Just above Waters Creek Road	*1,160
Maps are available for review at the Department of Public Works, Josephine County Courthouse, Grants Pass, Oregon.	
PENNSYLVANIA	
Bulletin (township), Potter County (FEMA Docket No. 7009)	
Mill Creek:	
At downstream corporate limits	*1,716
Approximately .3 mile upstream of State Route 3006	*1,754
Maps available for inspection at the Township Secretary's Residence, call for an appointment (814) 274-8102.	
Masontown (borough), Fayette County (FEMA Docket No. 7007)	
Monongahela River:	
At downstream corporate limits	*795
At upstream corporate limits	*795
Maps available for inspection at the Borough Building, Two Court Street, Masontown, Pennsylvania.	
Nicholson (township), Fayette County (FEMA Docket No. 7007)	
Monongahela River:	
At confluence of Cats Run	*787
At confluence of Georges Creek	*801
Maps available for inspection at the Nicholson Township Building, Old Frame, Pennsylvania.	
Shenango (township), Mercer County (FEMA Docket No. 7007)	
Shenango River:	
At the downstream corporate limits	*819
Approximately 0.46 mile upstream of State Route 718	*826
Maps available for inspection at the Shenango Township Building, R.D. 1, West Middlesex-Hubbard Road, West Middlesex, Pennsylvania.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
West Middlesex (borough), Mercer County (FEMA Docket No. 7007)	
Shenango River:	
Approximately 180 feet downstream of the downstream corporate limits	*827
Approximately 240 feet upstream of the upstream corporate limits	*829
Maps available for inspection at the Borough Office, corner of Erie and Walnut, P.O. Box 502, West Middlesex, Pennsylvania.	
TENNESSEE	
Bradley County (unincorporated areas) (FEMA Docket No. 7007)	
Hiwassee River:	
About 2.95 miles downstream of confluence of Candies Creek	*669
About 11.70 miles upstream of Norfolk Southern Railway	*711
Candies Creek:	
About 900 feet downstream of Lower River Road	*680
About 2,900 feet upstream of Black Fox Road	*765
South Mouse Creek:	
About 0.84 mile downstream of Charleston Access Road	*686
Just downstream of Charleston Access Road	*703
Just upstream of Charleston Access Road	*709
About 1.14 miles upstream of Mapleton Drive	*770
Coahulla Creek:	
About 3,800 feet downstream of confluence of Wolf Branch	*809
About 1,150 feet upstream of Patterson Road	*850
Wolf Branch:	
At mouth	*809
About 1,400 feet upstream of Hunt Road	*846
Tributary C:	
At mouth	*826
About 2,800 feet upstream of mouth	*831
Goodwill Branch:	
At mouth	*804
Just upstream of Goodwill Road	*821
Waterville Branch:	
At mouth	*819
About 0.83 mile upstream of mouth	*829
Maps available for inspection at the County Courthouse, Cleveland, Tennessee.	
DeKalb County (unincorporated areas) (FEMA Docket No. 7016)	
Smith Fork Creek:	
At county boundary	*514
About 2,200 feet upstream of Holton Road	*548
Maps available for inspection at the County Courthouse, Smithville, Tennessee.	
Maddison County (unincorporated areas) (FEMA Docket No. 7007)	
Hiwassee River:	
At county boundary	*689
At county boundary	*710
Opatawaste Creek:	
About 2,500 feet downstream of confluence of Black Branch	*640
About 1,500 feet upstream of confluence of Black Branch	*648
Black Branch:	
At mouth	*643
At confluence of Walker Branch	*645
Walker Branch:	
At confluence with Black Branch	*645
About 350 feet upstream of confluence with Black Branch	*647
North Mouse Creek:	
Just upstream of Peoby Mount Road	*785
Just downstream of County Route 255	*851
Little North Mouse Creek:	
At mouth	*831
Just downstream of Shoemaker Road	*868
Just upstream of Shoemaker Road	*868
About 0.88 mile upstream of County Route 260	*920
Tributary No. 1 to North Mouse Creek:	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
At mouth	*803
About 0.3 miles upstream of mouth	*808
Maps available for inspection at the County Courthouse, Athens, Tennessee.	
Monroe County (unincorporated areas) (FEMA Docket No. 7007)	
Sinkhole Creek:	
Just upstream of Cagle Road	*884
Just downstream of confluence of Tributary B	*1013
Bat Creek:	
About 660 feet upstream of confluence of Tributary C	*868
About 3,000 feet upstream of confluence with Bat Creek Tributary	*884
Bat Creek Tributary:	
At confluence of Bat Creek	*910
About 3,800 feet upstream of confluence of Bat Creek	*922
Maps available for inspection at the County Courthouse, Madisonville, Tennessee.	
Rhea County (unincorporated areas) (FEMA Docket No. 7007)	
Tennessee River:	
At downstream county boundary	*698
Just downstream of Watts Bar Dam	*698
Watts Bar Lake: Within community	*746
Piney River:	
About 1,080 feet downstream of Toasting Road	*746
About 3,100 feet upstream of State Route 68	*825
Town Creek:	
About 460 feet upstream of Kemmer Road	*767
Just downstream of J Lee Faust Highway	*777
Little Richland Creek:	
About 400 feet downstream of Walnut Grove Road	*696
About 120 feet downstream of Norfolk Southern Railway, upstream at confluence of Yarborough Branch	*761
Tributary to Little Richland Creek:	
About 480 feet downstream of Hidden Valley Road	*725
About 300 feet upstream of Bach Valley Road	*740
Roaring Creek:	
At mouth	*717
Just downstream of Brayton Mountain Road	*867
Just upstream of Brayton Mountain Road	*876
About 1,570 feet upstream of Brayton Mountain Road	*894
Sale Creek:	
At confluence of Roaring Creek	*717
About 1.4 miles upstream of Norfolk Southern Railway	*740
Mc6ill Creek:	
At mouth	*717
About 1,300 feet upstream of Walker Road	*767
Hickman Branch:	
At mouth	*731
About 2,000 feet upstream of County Road	*748
Whites Creek:	
About 2.5 miles downstream of J Lee Faust Highway	*746
About 0.48 miles upstream of Norfolk Southern Railway	*761
Maps available for inspection at the County Courthouse, Dayton, Tennessee.	
TEXAS	
Bowie County (unincorporated areas) (FEMA Docket No. 7016)	
Waggoner Creek:	
Approximately 0.4 mile downstream of U.S. Route 82	*300
Upstream side of Bledsoll-Davis Road	*356
Stream WC-1:	
At the confluence with Waggoner Creek	*307
Approximately 300 feet upstream of Jonathon Street	*886
Stream WC-2:	
At the confluence with Waggoner Creek	*316
Approximately 0.4 mile upstream of Concord Place	*341
Stream WC-3:	
At the confluence with Waggoner Creek	*323
Approximately 700 feet upstream of FM 989	*347
Stream WC-4:	
At the confluence with Waggoner Creek	*325
Approximately 0.6 mile upstream of confluence with Waggoner Creek	*338
Spring Creek:	
Approximately 1.9 miles upstream of confluence with Sulphur River	*214
Approximately 0.9 mile upstream of confluence of Stream SC-6	*301
Stream SC-1:	
Approximately 0.7 mile upstream of confluence with Spring Creek	*214
Approximately 100 feet upstream of FM 2516	*259
Stream SC-2:	
At the confluence with Spring Creek	*219
Approximately 0.9 mile upstream of confluence with Spring Creek	*258
Stream SC-3:	
At the confluence with Spring Creek	*245
Approximately 100 feet upstream of FM 989	*287
Stream SC-3A:	
At the confluence with Stream SC-3	*271
Approximately 950 feet upstream of FM 989	*290
Stream SC-4:	
At the confluence with Spring Creek	*245
Approximately 1,250 feet upstream of Randall Road	*274
Stream SC-5:	
At the confluence with Spring Creek	*264
Approximately 400 feet upstream of Cherokee Trail	*279
Stream SC-6:	
At the confluence with Spring Creek	*276
Approximately 100 feet upstream of FM 989	*297
Allen Creek:	
Approximately 0.5 mile downstream of Henery Road	*236
Approximately 0.3 mile upstream of Access Road	*316
Stream AC-1:	
At the confluence with Allen Creek	*244
Approximately 0.5 mile upstream of confluence of Stream AC-1A	*286
Stream AC-1A:	
At the confluence with Stream AC-1	*279
Approximately 0.5 mile upstream of confluence with Stream AC-1	*301
Stream AC-2:	
At the confluence with Allen Creek	*250
Approximately 1,200 feet upstream of the confluence of Stream AC-2A	*303
Stream AC-2A:	
At the confluence with Stream AC-2	*296
Approximately 1,220 feet upstream of confluence with Stream AC-2	*316
Stream AC-3:	
At the confluence with Allen Creek	*264
Approximately 2.0 miles upstream of confluence with Allen Creek	*307
Stream AC-4:	
At the confluence with Allen Creek	*295
Approximately 180 feet upstream of Oak Forest Road	*294
Stream AC-5:	
At the confluence with Allen Creek	*265
Approximately 0.4 mile upstream of confluence with Allen Creek	*291
Stream AC-6:	
At the confluence with Allen Creek	*270
Approximately 70 feet upstream of Tri State Road	*290
Stream AC-7:	
At the confluence with Allen Creek	*283
Approximately 1,100 feet upstream of Tri State Road	*305
Stream AC-7A:	
At the confluence with Stream AC-7	*292
Approximately .8 mile upstream of confluence with Stream AC-7	*313
Stream AC-7B:	
At the confluence with Stream AC-7	*287
Approximately 0.4 mile upstream of confluence with Stream AC-7	*306
Stream MB-1:	
Approximately 0.4 mile upstream of confluence with McKinney Bayou	*280
Approximately 0.5 mile upstream of confluence with McKinney Bayou	*317
Stream MB-1A:	
Approximately 225 feet upstream of confluence with Stream MB-1	*290
Approximately 810 feet upstream of confluence with Stream MB-1	*299
Clear Creek:	
Approximately 1.8 miles upstream of confluence with McKinney Bayou	*305
Approximately 0.7 mile upstream of confluence of Stream CC-6	*323
Stream CC-1:	
At the confluence with Clear Creek	*305
Approximately 0.5 mile upstream of confluence with Clear Creek	*327
Stream CC-2:	
At the confluence with Clear Creek	*305
Approximately 0.4 mile upstream of confluence with Clear Creek	*311
Stream CC-3:	
At the confluence with Clear Creek	*305
Approximately 200 feet upstream of FM 559	*323
Stream CC-4:	
At the confluence with Stream CC-3	*305
Approximately 0.7 mile upstream of confluence with Stream CC-3	*334
Stream CC-5:	
At the confluence with Stream CC-3	*305
Approximately 100 feet upstream of Leggett Drive	*323
Stream CC-6:	
At the confluence with Clear Creek	*306
Approximately 80 feet upstream of Lionel Street	*334
Stream BC-1:	
Approximately 1,640 feet upstream of confluence with Kings Lake	*293
Approximately 290 feet upstream of Channel Dam	*348
Stream BC-1A:	
Approximately 1,440 feet upstream of confluence with Stream BC-1B	*293
Approximately 1.0 mile upstream of confluence with Stream BC-1B	*333
Stream BC-2:	
Approximately 1.0 mile upstream of confluence with Barkman Creek	*295
Approximately 1,900 feet upstream of Carter Lane	*300
Stream BC-3A:	
Approximately 1,420 feet upstream of confluence with BC-2	*295
Approximately 1.3 miles upstream of confluence with BC-2	*308
Stream BC-3:	
Approximately 0.9 mile upstream of confluence with Barkman Creek	*295
Approximately 150 feet upstream of Myrtle Springs Road	*329
Stream BC-3A:	
Approximately 300 feet upstream of confluence with BC-3	*307
Approximately 100 feet upstream of Myrtle Springs Road	*329
Maps available for inspection at 100 N. State Line Road, Texarkana, Texas.	
Cedar Park (city), Williamson County (FEMA Docket No. 7010)	
Black House Creek:	
At downstream side of U.S. Route 183	*969
Approximately 3,840 feet upstream of County Route 278	*1,014
Spanish Oak Creek:	
Approximately 700 feet downstream of FM 1431	*912
Approximately 160 feet upstream of Dolis Lane	*982
Cluck Creek:	
At the confluence with South Brushy Creek	*949
Approximately 1,530 feet upstream of Pine Oaks Drive	*1,005
Cluck Creek Tributary 1:	
At confluence with Cluck Creek	*990
Approximately 2,800 feet upstream of confluence with Cluck Creek	*994
Buttercup Creek:	

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
At confluence with South Brushy Creek	*849
Approximately 1,050 feet upstream of County Route 162 (Cypress Creek Road)	*929
South Brushy Creek:	
Approximately 600 feet downstream from confluence of Chalk Creek and Buttercup Creek	*847
At confluence of Chalk Creek and Buttercup Creek	*849
Maps available for inspection at City Hall, Cedar Park, Texas.	
El Paso County (unincorporated areas) (FEMA Docket No. 6999)	
Stream 1:	
Approximately 0.6 mile downstream of U.S. Route 80 (eastbound)	*3,662
Approximately 480 feet upstream of Barkley	*3,679
Stream 2:	
Approximately 0.6 mile downstream of U.S. Route 80 (eastbound)	*3,666
Approximately 1.4 miles upstream of U.S. Route 80 (westbound)	*3,631
Stream 3:	
Approximately 0.6 mile downstream of U.S. Route 80 (eastbound)	*3,679
Approximately 0.4 mile upstream of U.S. Route 80 (westbound)	*3,632
Stream 4:	
Approximately 0.6 mile downstream of U.S. Route 80 (eastbound)	*3,679
Approximately 0.4 mile upstream of U.S. Route 80 (westbound)	*3,615
Stream 5:	
Approximately 0.6 mile downstream of U.S. Route 80 (eastbound)	*3,696
Approximately 0.6 mile upstream of U.S. Route 80 (westbound)	*3,662
Stream 6:	
Approximately 0.6 mile downstream of U.S. Route 80 (eastbound)	*3,694
Approximately 500 feet downstream of U.S. Route 80 (westbound)	*3,775
Stream 7:	
Approximately 0.6 mile downstream of U.S. Route 80 (eastbound)	*3,690
Approximately 0.6 mile upstream of U.S. Route 80 (westbound)	*3,656
Stream 8:	
Approximately 0.6 mile downstream of U.S. Route 80 (eastbound)	*3,661
Approximately 0.6 mile upstream of U.S. Route 80 (westbound)	*3,675
Stream 9:	
Approximately 0.4 mile downstream of confluence with Stream 10	*3,690
Approximately 0.6 mile upstream of the confluence with Stream 10	*3,750
Stream 10:	
At confluence with Stream 9	*3,686
Approximately 375 feet downstream of U.S. Route 80 (eastbound)	*3,766
Stream 11:	
Approximately 0.7 mile downstream of U.S. Route 80 (eastbound)	*3,673
Approximately 400 feet downstream of U.S. Route 80 (eastbound)	*3,767
Stream 12:	
Approximately 800 feet downstream of confluence with Stream 13	*3,709
Approximately 400 feet downstream of U.S. Route 80 (eastbound)	*3,756
Stream 13:	
At confluence with Stream 12	*3,729
Approximately 125 feet downstream of U.S. Route 80 (eastbound)	*3,766
Shallow Flooding:	
On the east side of Mesa Spur Drain from approximately 0.6 mile downstream of Moon Road to approximately 0.4 mile upstream of the apex of Stream 4	#1
On the east side of Mesa Spur Drain from approximately 0.4 mile upstream of the apex of Stream 4 to approximately 0.6 mile downstream of the apex of Stream 5	#2
At the apex of Stream 3	#2
At the apex of Stream 4	#2

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
On the east side of Salado lateral from approximately 0.6 mile downstream of the confluence of Valela Lateral to approximately 2.7 miles downstream of Calum Road	#1
From approximately 0.2 mile upstream of the apex of Stream 6 to approximately 0.4 mile downstream of the apex of Stream 7	#2
From approximately 500 feet upstream of the apex of Stream 8 to approximately 500 feet downstream of the apex of Stream 9	#2
Maps available for inspection at the City-County Building, 500 E. San Antonio Street, Room 08, El Paso, Texas.	
Florence (city), Williamson County (FEMA Docket No. 7016)	
South Salado Creek:	
Approximately 230 feet downstream of State Route 195	*963
At the Sawyer Lane	*968
Fisher Branch:	
Approximately 210 feet downstream of FM 970 (South Street)	*970
Approximately 1,100 feet upstream of State Route 467 (Main Street)	*992
Maps available for inspection at the City Hall, Florence, Texas.	
Georgetown (city), Williamson County (FEMA Docket No. 7016)	
San Gabriel River:	
At confluence of Berry Creek	*639
At confluence of North Fork San Gabriel River and South Fork San Gabriel River	*685
North Fork San Gabriel River:	
At confluence with South Fork San Gabriel River	*685
Approximately 1.4 miles upstream of the confluence of North Fork San Gabriel River Tributary 1	*730
South Fork San Gabriel River:	
At confluence with the San Gabriel River	*685
Approximately 2.1 miles upstream Interstate Route 35 (Southbound)	*744
Middle Fork San Gabriel River:	
At confluence with North Fork San Gabriel River	*692
Approximately 2.9 miles upstream at confluence with North Fork San Gabriel River	*768
Berry Creek:	
At confluence with San Gabriel River	*639
Approximately 50 feet upstream of Service Road to Interstate 35 (Southbound)	*666
Pecan Branch:	
Approximately 140 feet downstream of Loop 416	*711
Approximately 350 feet downstream of Serenada Drive	*760
Smith Branch:	
Approximately 0.6 mile upstream of confluence with San Gabriel River	*664
Approximately 180 feet upstream of Missouri-Kansas-Texas Railroad	*736
West Fork of Smith Branch:	
Approximately 250 feet upstream of confluence with Smith Branch	*717
Approximately 1,200 feet upstream of Service Road to Interstate Route 35 (Southbound)	*761
North Fork San Gabriel River Tributary 1:	
At confluence with North Fork San Gabriel River	*688
Approximately 300 feet upstream of confluence with North Fork San Gabriel River	*705
Maps available for inspection at City Hall, Georgetown, Texas.	
Granger (city), Williamson County (FEMA Docket No. 7016)	
Willis Creek Tributary 1:	
Approximately 700 feet downstream of FM 971 (Davila Street)	*543
Approximately 590 feet upstream of Oak Street	*555
Maps available for inspection at City Hall, Granger, Texas.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Hamilton (city), Hamilton County (FEMA Docket No. 7007)	
Pecan Creek:	
Approximately 1,800 feet downstream of East Gentry Street	*1,125
At upstream corporate limits	*1,160
Tributary A:	
At confluence with Pecan Creek	*1,146
At upstream corporate limits	*1,811
Tributary B:	
At confluence with Tributary A	*1,152
At upstream corporate limits	*1,207
Maps available for inspection at the City Hall, 200 East Main, Hamilton, Texas 76531.	
Henderson (city), Rusk County (FEMA Docket No. 7016)	
Dutch Creek:	
At confluence with Sherman Creek	*390
Approximately 500 feet upstream of State Route 840	*422
Sherman Creek:	
Approximately 1.9 miles downstream of confluence of Dutch Creek	*366
Approximately 70 feet upstream of U.S. Route 79	*436
Bromley Creek Tributary 1:	
At downstream corporate limits	*396
Approximately 1,100 feet upstream of State Route 13	*411
Bromley Creek:	
Approximately 500 feet downstream of downstream corporate limits	*366
Approximately 1.5 miles upstream of U.S. Route 79	*379
Hardy Creek:	
Approximately 900 feet downstream of South Evenside Street	*378
Approximately 1,400 feet upstream of State Route 64	*437
Maps available for inspection at the City Hall, 400 West Main Street, Henderson, Texas.	
Henderson County (unincorporated areas) (FEMA Docket No. 7016)	
Flat Creek:	
At State Route 314 (confluence with Lake Palestine)	*354
At Dam of Lake Athens	*409
Caney Creek:	
Approximately 0.81 mile downstream of County Route 1403	*334
At the County Route 3907	*392
Walnut Creek (Lower Reach):	
Approximately 0.82 mile downstream of State Route 3441	*292
At the State Route 758	*350
Sanders Creek:	
Approximately 0.7 mile downstream of FM 3225	*298
Approximately 1.1 miles upstream of County Route 2404	*347
Walnut Creek (Upper Reach):	
Approximately 0.9 mile downstream of County Route 1500	*395
Approximately .5 mile upstream of County Route 1505 (West College Street)	*398
Coon Creek:	
Approximately 0.81 mile downstream of City of Athens	*423
At the City of Athens corporate limits	*452
Coon Creek North Tributary:	
Approximately 500 feet upstream of the confluence with Coon Creek	*415
Approximately 2,170 feet upstream of the confluence with Coon Creek	*434
Coon Creek South Tributary:	
Approximately 0.7 mile downstream of Athens corporate limits	*425
Approximately 1,089 feet upstream of FM 1615	*461
Maps available for inspection at Henderson County Courthouse Annex, 2nd Floor, Athens, Texas.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Hunt County (unincorporated areas) (FEMA Docket No. 7007)	
South Fork Sabine River:	
Approximately 2,200 feet downstream of State Route 34	*448
Approximately 1,300 feet upstream of County boundary	*484
Greasy Creek:	
At the confluence with South Fork Sabine River	*461
Approximately 300 feet upstream of County boundary	*474
Sharpen Creek:	
At the confluence with South Fork Sabine River	*459
Approximately 0.85 mile upstream of Interstate Route 30 and U.S. Route 67	*592
Brushy Creek:	
At the confluence with West Caddo Creek	*477
Approximately 300 feet upstream of F.M. 6	*594
Lower Caddo Creek:	
Approximately 600 feet downstream of State Route 34	*446
At the confluence of West Caddo Creek	*463
West Caddo Creek:	
At the confluence with Lower Caddo Creek	*463
At the confluence of Brushy Creek	*477
Jones Creek:	
Approximately 0.66 mile downstream of State Route 34	*447
Approximately 850 feet downstream of State Route 276	*486
Parker Creek:	
Approximately 100 feet downstream of FM 1903	*486
Approximately 3.8 miles upstream of Interstate Route 30 and U.S. Route 67	*580
Maps available for inspection at the Hunt County Courthouse, Greenville, Texas.	
Hutto (city), Williamson County (FEMA Docket No. 7016)	
Cottonwood Creek:	
Approximately 500 feet downstream of County Route 132	*841
At downstream side of County Route 136	*852
Maps available for inspection at the City Hall, Hutto, Texas.	
Johnson County (unincorporated areas) (FEMA Docket No. 7016)	
East Buffalo Creek:	
At confluence of Unnamed Stream	*714
At downstream side of County Route 705	*837
McAnear Creek:	
At confluence with East Buffalo Creek	*720
At County Route 1216	*828
West Buffalo Creek:	
At confluence with East Buffalo Creek	*739
Approximately 460 feet downstream of Country Club Road	*740
Locket Branch:	
Approximately 1,200 feet upstream of confluence with East Buffalo Creek	*762
Approximately 0.84 mile upstream of U.S. Route 67	*762
Village Creek:	
At County Route 714	*725
Approximately 760 feet upstream of the confluence of Stream VC-6	*769
Quil Miller Creek:	
Approximately 100 feet upstream of the confluence of Hurst Creek	*676
Approximately 200 feet upstream of Interstate Route 35W (southbound)	*725
Hurst Creek:	
Approximately 50 feet upstream of the confluence with Quil Miller Creek	*676
Approximately 400 feet upstream of County Route 602	*691
Bypass Creek:	
At confluence with Quil Miller Creek	*704
Approximately 300 feet downstream of Interstate Route 35W (northbound)	*721

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Shannon Creek:	
Approximately 1 mile upstream of State Route 174	*755
Approximately 60 feet upstream of Atchison, Topeka & Santa Fe Railway	*763
Stream VC-5:	
Approximately 100 feet downstream of Mountain Valley Estates Dam	*767
Approximately 0.5 mile upstream of County Route 602	*800
Stream VC-6A:	
At the confluence with Stream VC-6	*776
Approximately 75 feet upstream of County Route 602	*819
Willow Creek:	
Approximately 600 feet upstream of State Route 174 westbound	*792
At the Atchison, Topeka Santa Fe Railway	*816
East Buffalo Creek Tributary A:	
At the confluence with East Buffalo Creek	*823
Approximately 0.76 mile upstream of the confluence with East Buffalo Creek	*843
East Buffalo Creek Tributary B:	
At the confluence with East Buffalo Creek	*804
Approximately 0.56 mile upstream of FM 3046	*844
South Shannon Creek:	
Approximately 0.7 mile upstream of County Route 920 (Shellfield Road)	*776
Approximately 1 mile upstream of County Route 920 (Shellfield Road)	*786
Walnut Creek:	
Approximately 20 feet downstream of the confluence of Valley Branch	*827
Approximately 50 feet downstream of FM 917	*710
Walnut Creek Tributary A:	
At confluence with Walnut Creek	*668
At downstream side of County Route 529	*719
Walnut Creek Tributary B:	
At confluence with Walnut Creek	*691
At Interstate Route 35W Service Road	*811
Valley Branch:	
At the confluence with Walnut Creek	*827
Approximately 50 feet downstream of County Route 529	*883
Valley Branch Tributary A:	
At the confluence with Valley Branch	*857
Approximately 1.3 miles upstream of County Route 608	*708
King Branch:	
At the confluence with Walnut Creek	*648
Approximately 1.1 miles upstream of County Route 610	*687
Maps available for inspection at the County Courthouse, Main and Henderson, Cleburne, Texas.	
Joshua (city), Johnson County (FEMA Docket No. 7016)	
Village Creek:	
At Lakeside Drive and Dam	*808
Approximately 2,000 feet upstream of Lakeside Drive and Dam	*817
Maps available for inspection at the City Hall, Joshua, Texas.	
Kaufman County (unincorporated areas) (FEMA Docket No. 7008)	
Buffalo Creek (North):	
At FM 740	*406
Approximately 2.5 miles upstream of FM 740	*429
Buffalo Creek (South):	
Approximately 2,000 feet downstream of FM 2932	*436
Approximately .5 mile upstream of Interstate 20	*443
Big Brushy Creek:	
At FM 148 and FM 1641	*423
Approximately 200 feet upstream of FM 548	*476
Kings Creek (Upper Reach):	
Approximately 1,200 feet downstream of the confluence with Hardin Branch	*450
Approximately 100 feet downstream of College Mound Road	*458
Hardin Branch:	
At confluence with Kings Creek (Upper Reach)	*452
At upstream side of FM 429	*466

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Greasy Creek:	
Approximately 1,980 feet downstream of County boundary	*472
At FM 986	*539
Duck Creek:	
Approximately 2,600 feet downstream of County boundary	*454
Approximately 1,980 feet upstream of FM 2728	*486
Kings Creek (Lower Reach):	
Approximately 1,700 feet upstream of confluence of Big Cottonwood Creek	*368
Approximately 2.5 miles upstream of FM 1369	*376
Prairie Branch:	
Approximately 2,350 feet upstream of confluence with Big Cottonwood Creek	*367
Upstream side of U.S. Route 175	*407
Walnut Creek:	
At the confluence with Cedar Creek	*349
Approximately 2.2 miles upstream of confluence with Cedar Creek	*370
Cedar Creek:	
Approximately 1.7 mile downstream of confluence of Walnut Creek	*341
At the confluence of Walnut Creek	*349
Lacy Fork:	
Approximately 650 feet upstream of U.S. Route 175	*323
Approximately 1.9 miles upstream of U.S. Route 175	*338
Maps available for inspection at the County Courthouse, Kaufman, Texas.	
Leander (city), Williamson County (FEMA Docket No. 7016)	
South Fork of Brushy Creek:	
Approximately 700 feet downstream of Southern Pacific Railroad	*905
Approximately 0.6 mile upstream of FM 2243	*968
Mason Creek:	
At confluence with Brushy Creek	*926
Just upstream of County Route 276 (Bagdad Road)	*1,015
Block House Creek Tributary 1:	
At County Route 272	*971
Approximately 1,700 feet upstream of U.S. Route 183	*1,006
Block House Creek Tributary 2:	
Approximately 50 feet downstream of U.S. Route 183	*971
Approximately 1,550 feet upstream of Emerald Isle Drive	*1,019
Brushy Creek:	
At confluence of Mason Creek	*926
Just downstream of FM 2243	*929
Maps available for inspection at the City Hall, Leander, Texas.	
Llano County (unincorporated areas) (FEMA Docket No. 7007)	
Colorado River:	
Approximately 1,800 feet downstream of the downstream Llano County boundary	*928
At the upstream Llano County boundary	*1,029
Llano River:	
At the confluence with the Colorado River	*939
At the downstream corporate limits of the City of Llano	*1,010
Maps available for inspection dullnestion are available for review at the County Courthouse, 801 Ford Street, Llano, Texas.	
Madison County (unincorporated areas) (FEMA Docket No. 7016)	
Navasota River:	
At downstream County boundary	*240
At upstream County boundary	*271
Maps available for inspection at the County Courthouse, Madisonville, Texas.	
Meadowlakt (city), Henderson County (FEMA Docket No. 7016)	
Walnut Creek (Lower Reach):	
Approximately 400 feet downstream of State Route 9441	*297

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 800 feet upstream of State Route 3441 (Old State Route 90)	*299
Maps available for inspection at the City Hall, 109 South Milton, Idalou, Texas.	
Midland (city), Midland County (FEMA Docket No. 7019)	
Midland Draw:	
At upstream side of U.S. Route 80	*2,752
Approximately 0.9 mile upstream of upstream corporate limits	*2,833
Jet Draw:	
At confluence with Midland Draw	*2,789
Approximately 1,200 feet upstream of Loop 250	*2,835
Stream MD1:	
Approximately 900 feet upstream of FM 158	*2,739
700 feet upstream of confluence of Stream MD1A	*2,742
Stream MD1A:	
At confluence with Stream MD1	*2,742
1,800 feet upstream of U.S. Route 80	*2,827
Stream MD3:	
At confluence with Midland Draw	*2,767
600 feet upstream of North "I" Street	*2,769
Stream MD2:	
Approximately 1,800 feet upstream of Fairground Road	*2,766
850 feet upstream of Lee Street	*2,771
Maps available for inspection at City Hall, 300 North Loraine, Midland, Texas.	
Midland County (unincorporated areas) (FEMA Docket No. 7019)	
Midland Draw:	
0.6 mile downstream of County Route 120	*2,691
Approximately 0.9 mile upstream of corporate limits of City of Midland	*2,834
Jet Draw:	
Approximately 1,200 feet upstream of Loop 250	*2,838
Downstream side of FM 1788	*2,886
Stream MD1:	
At confluence with Midland Draw	*2,723
Approximately 500 feet upstream of FM 158	*2,739
Stream MD1A:	
Approximately 650 feet upstream of confluence with Stream MD1	*2,742
At downstream side of U.S. Route 80	*2,814
Stream MD2:	
At confluence with Midland Draw	*2,749
Approximately 1,200 feet upstream of Fairground Road	*2,766
Monahans Draw:	
Approximately 2.1 miles downstream of County Route 1160	*2,694
Approximately 0.8 mile upstream of Tower Road	*2,754
Maps available for inspection at the County Extension Building, East Highway 80, Midland, Texas.	
Parker County (unincorporated areas) (FEMA Docket No. 7019)	
Clear Fork Trinity River:	
Approximately 0.4 mile downstream of confluence with Stream CFWP-1	*823
Approximately 1.2 miles upstream of Crown Road	*869
Squaw Creek:	
At the confluence with Clear Fork Trinity River	*840
Approximately 0.4 mile upstream of confluence with Clear Fork Trinity River	*840
Brazos River:	
At downstream County boundary	*713
Approximately 1,000 feet downstream of upstream County boundary	*773
Maps available for inspection at the County Courthouse, 1 Courthouse Square, Weatherford, Texas.	
Quitman (city), Hunt County (FEMA Docket No. 7007)	
Jones Creek:	
Approximately 200 feet downstream of State Route 276	*486
At the State Route 276	*488
Maps available for inspection at the City Hall, Quitman, Texas.	
Round Rock (city), Williamson and Travis Counties (FEMA Docket No. 7019)	
Brushy Creek:	
At County Route 122 bridge	*641
Approximately 325 feet upstream of confluence of Dry Fork	*746
Chandler Branch:	
Approximately 300 feet downstream of Union Pacific Railroad	*843
Approximately 300 feet upstream of Interstate Route 35 bridge (Southbound)	*743
Chandler Branch Tributary 1:	
At confluence with Chandler Branch	*726
Approximately 1,400 feet upstream of Chandler Road	*769
Dyer Branch:	
At confluence with Brushy Creek	*681
At upstream side of County Route 169 (Gattis School Road)	*731
Dry Branch:	
At confluence with Dyer Branch	*661
Approximately 675 feet upstream of County Route 169 (Gattis School Road)	*725
Dry Branch Tributary 1:	
At confluence with Dry Branch	*680
Approximately 200 feet upstream of Williams Drive	*772
Lake Creek:	
At confluence with Brushy Creek	*669
Approximately 700 feet upstream of confluence of Rattan Creek	*754
Lake Creek Tributary 1:	
At confluence with Lake Creek	*700
Approximately 1,350 feet upstream of Frontier Trail	*775
Rattan Creek Tributary 1:	
Approximately 750 feet downstream of Quanah Drive	*765
Approximately 100 feet upstream of Union Pacific Railroad	*790
Onion Branch:	
At confluence with Brushy Creek	*695
Approximately 600 feet upstream of FM 3406 (Old Settlers Boulevard)	*752
Maps available for inspection at City Hall, 221 East Main Street, Round Rock, Texas.	
Rusk County (unincorporated areas) (FEMA Docket No. 7019)	
Shawnee Creek:	
At confluence with Bromley Creek	*358
Approximately .66 mile upstream of FM 3310	*397
Bromley Creek:	
At confluence with Shawnee Creek	*358
Approximately 800 feet upstream of State Route 13	*367
Dutch Creek:	
Approximately .3 mile upstream of confluence with Shawnee Creek	*408
Approximately 680 feet upstream of State Route 840	*422
Adaway Creek:	
Approximately 1,180 feet above confluence with Mill Creek	*372
Approximately 75 feet upstream of Dam	*456
Taylor Branch:	
Approximately .3 mile upstream of confluence with Martin Creek	*299
Approximately 90 feet upstream of Doc Young Dam	*305
Taylor Branch Tributary 1:	
At confluence with Taylor Branch	*284
Approximately .55 mile upstream of State Highway 93	*340
Hardy Creek:	
At confluence with Bromley Creek	*370
Approximately 800 feet upstream of FM 323	*443
Bromley Creek Tributary 1:	
At confluence with Bromley Creek	*381
Approximately 730 feet upstream of Asphalt Drive	*411
Maps available for inspection at the Rusk County Courthouse, 115 North Main, Henderson, Texas.	
Sunrise Beach Village (city), Llano County (FEMA Docket No. 7019)	
Lake Lyndon Baines Johnson (Colorado River):	
At Shady Side Lane	*830
At Cottonwood Drive extended	*832
Maps available for inspection at the City Hall, 311 Sunrise Drive, Sunrise Beach, Texas.	
Williamson County (unincorporated areas) (FEMA Docket No. 7019)	
Brushy Creek:	
Approximately 1.2 miles downstream of County Route 458	*482
Approximately 1,025 feet upstream of County Route 278	*1,000
Cottonwood Creek:	
At confluence with Brushy Creek	*567
Approximately 1,800 feet upstream of County Route 136	*657
McNutt Creek:	
At confluence with Brushy Creek	*630
Approximately 1,750 feet upstream of County Route 117	*692
Chandler Branch:	
At confluence with Brushy Creek	*643
Approximately 1.18 miles upstream of Georgetown Railroad	*774
Chandler Branch Tributary 1:	
Approximately 900 feet upstream of Chandler Road	*704
Approximately 0.7 mile upstream of Chandler Road	*762
Dyer Branch:	
Approximately 100 feet downstream of Missouri-Kansas-Texas Railroad	*691
Approximately 0.63 mile upstream of Gattis School Road	*706
Dry Branch:	
Approximately 50 feet downstream of Missouri-Kansas-Texas Railroad	*668
Approximately 0.50 mile upstream of Gattis School Road	*741
Dry Branch Tributary 1:	
Approximately 760 feet upstream of Logan Drive	*685
Approximately 2,100 feet downstream of Gattis School Road	*715
Lake Creek:	
At the confluence with Brushy Creek	*669
Approximately 1,200 feet upstream of Deerbrook Trail	*964
Lake Creek Tributary 1:	
Approximately 1,125 feet upstream of Frontier Trail	*773
Approximately 0.53 mile upstream of Frontier Trail	*789
Rattan Creek Tributary 1:	
At the confluence with Rattan Creek	*755
Approximately 0.5 mile upstream of Union Pacific Railroad	*810
Davis Spring Branch:	
At the confluence with Lake Creek	*790
Approximately 1.3 miles upstream of FM 620	*851
Lake Creek Tributary 2:	
At the confluence with Lake Creek	*674
Approximately 50 feet upstream of Spillway Drive	*806
Onion Branch:	
Approximately 600 feet upstream of FM 3406	*752
Approximately 0.71 mile upstream of FM 3406	*798
South Brushy Creek:	
At the confluence with Brushy Creek	*764
At the confluence of Cluck Creek and Buttercup Creek	*848
Buttercup Creek:	
At the confluence with South Brushy Creek	*849
Approximately .8 mile upstream of County Route 182	*898
Cluck Creek:	
At the confluence with South Brushy Creek	*849
Approximately 0.49 mile upstream of Prize Oaks Drive	*1,018

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Cluck Creek Tributary 1:	
Approximately .5 mile upstream of the confluence with Cluck Creek	*803
Approximately 1.42 miles upstream of the confluence with Cluck Creek	*844
Spanish Oak Creek:	
At the confluence with Brushy Creek	*795
Approximately 980 feet upstream of Doris Lane	*1,001
Black House Creek:	
At the confluence with Brushy Creek	*809
Approximately 0.80 mile upstream of County Route 278	*1,017
Black House Creek Tributary 1:	
At the confluence with Black House Creek	*900
At the Southern Pacific Railroad	*988
Black House Creek Tributary 2:	
At the confluence with Black House Creek	*817
At the U.S. Route 183	*871
Mason Creek:	
At the confluence with Brushy Creek	*826
Approximately 50 feet upstream of County Route 278	*1,018
South Fork of Brushy Creek:	
At the confluence with Brushy Creek	*833
Approximately 1.08 miles upstream of FM 2243	*1,013
San Gabriel River:	
Approximately 0.45 mile downstream of downstream County boundary	*416
Approximately 100 feet downstream of Park Road	*676
North Fork San Gabriel River:	
Approximately 900 feet upstream of confluence of Middle Fork San Gabriel River	*662
Approximately 1.2 miles upstream of the confluence of North Fork San Gabriel River Tributary 1	*722
Willis Creek Tributary 1:	
At the confluence with Willis Creek	*526
Approximately 0.52 mile upstream of Oak Street	*561
Berry Creek:	
At the confluence with the San Gabriel River	*696
Approximately 1.3 miles upstream of the confluence of Cowan Creek	*821
Berry Creek Tributary 1:	
At the confluence with Berry Creek	*700
Approximately 0.54 mile upstream of Logan Road	*762
Pecan Branch:	
At the confluence with the San Gabriel River	*696
Approximately 1,400 feet upstream of La Paloma	*825
Pecan Branch Tributary 1:	
At the confluence with Pecan Branch	*777
Approximately 425 feet upstream of Sequoia Trail East	*796
Smith Branch:	
At the confluence with the San Gabriel River	*662
Approximately 1,150 feet upstream of FM 1460	*756
West Fork of Smith Branch:	
At the confluence with Smith Branch	*717
Approximately 0.44 mile upstream of Service Road to Interstate Route 35	*765
South Fork San Gabriel River:	
Approximately 150 feet upstream of Interstate Route 35 Southbound	*722
Approximately 2.17 miles upstream of FM 1660	*1,001
Middle Fork San Gabriel River:	
Approximately 0.83 mile upstream of the confluence with the San Gabriel River	*714
Approximately 15.6 miles upstream of the confluence with the San Gabriel River	*1,007
Donahoe Creek:	
At the downstream County boundary	*528
Approximately 3.0 miles upstream of FM 1105	*730
Long Branch:	
At the confluence with Donahoe Creek	*549
Approximately 2.3 miles upstream of County Route 301	*643
Salado Creek:	
At the downstream County boundary	*712
At the confluence of North and South Salado Creeks	*833
South Salado Creek:	
At the confluence with Salado Creek	*833
Approximately 1.2 miles upstream of Main Street	*1,004
North Salado Creek:	
At the confluence with Salado Creek	*833
Approximately 4 miles upstream of the confluence with Salado Creek	*912
Fisher Branch:	
At the confluence with South Salado Creek	*960
At the downstream side of County Route 229	*1,006
North Fork San Gabriel River Tributary 1:	
Approximately 300 feet upstream of the confluence with the North Fork San Gabriel River	*706
Approximately 0.73 mile upstream of Booty's Crossing Road	*810
Mustang Creek:	
Approximately 0.4 mile upstream of Eastbound U.S. Highway 79 (Carlos Parker Loop)	*806
Approximately 0.84 mile upstream of U.S. Highway 79	*850
Bull Branch:	
Approximately 150 feet upstream of North Drive	*584
Approximately 1,700 feet upstream of North Drive	*588
Railroad Lake Draw:	
Approximately 750 feet upstream of U.S. Highway 79	*561
Approximately 0.6 mile upstream of U.S. Highway 79	*574
Maps available for inspection at the Williamson County Courthouse, Georgetown, Texas.	
VERMONT	
Corinth (town), Orange County (FEMA Docket No. 7010)	
Waits River:	
Approximately 200 feet downstream of downstream corporate limits	*521
Approximately 150 feet downstream of upstream corporate limits	*520
Tabor Branch:	
At confluence with Waits River	*660
At upstream corporate limits	*713
Maps available for inspection at the Town Office, Corinth, Vermont.	
Groton (town), Caledonia County (FEMA Docket No. 7010)	
Wells River:	
Approximately 1.4 miles downstream of Town Highway 32	*741
Approximately 2.16 miles upstream of confluence of South Branch Wells River	*1,052
South Branch Wells River:	
At confluence with Wells River	*861
Approximately 80 feet upstream of confluence of Heath Brook	*1,267
North Branch Wells River:	
At confluence with Wells River	*820
Approximately 100 feet upstream of U.S. Route 302	*837
Keenan Brook:	
At confluence with Wells River	*780
Approximately 1,765 feet upstream of Town Highway 32	*798
Heath Brook:	
At confluence with South Branch Wells River	*1,266
Approximately 80 feet upstream of Town Highway 34	*1,267
Maps available for inspection at the Town Office, Groton, Vermont.	
Pittsfield (town), Rutland County (FEMA Docket No. 7007)	
Tweed River:	
Downstream corporate limits	*787
At the confluence of West Branch Tweed River and South Branch Tweed River	*836
South Branch Tweed River:	
At the confluence with Tweed River	*836
Upstream corporate limits	*1,110
West Branch Tweed River:	
At the confluence with Tweed River	*836
Upstream corporate limits	*1,006
Guernsey Brook:	
Downstream corporate limits	*836
Approximately 1,600 feet upstream of State Route 100	*903
Maps available for inspection at the Town Clerk's Vault, Pittsfield, Vermont	
Topsham (town), Orange County (FEMA Docket No. 7010)	
Waits River:	
At downstream corporate limits	*810
Approximately .9 mile upstream of State Route 25	*1,006
Tabor Branch:	
At downstream corporate limits	*713
Approximately 240 feet upstream of downstream corporate limits	*716
Maps available for inspection at the Town Office, West Topsham, Vermont.	
Vernon (town), Windham County (FEMA Docket No. 7010)	
Connecticut River:	
At the downstream corporate limits	*209
At the upstream corporate limits	*229
Maps available for inspection at the Town Office, Vernon, Vermont.	
WEST VIRGINIA	
Gauley Bridge (town), Fayette County (FEMA Docket No. 7010)	
Kanawha River:	
Approximately .5 mile downstream of confluence with New River and Gauley River	*663
At confluence with New River and Gauley River	*666
New River:	
At confluence with Kanawha River and Gauley River	*665
Approximately 1 mile upstream of confluence with Kanawha River	*667
Gauley River:	
At confluence with Kanawha River	*665
Approximately .7 mile upstream of CONRAIL Bridge	*669
Maps available for inspection at the Town Hall, Gauley Bridge, West Virginia.	
Keyser (city), Mineral County (FEMA Docket No. 7013)	
North Branch of Potomac River:	
Approximately 210 feet upstream of confluence with New Creek	*790
Approximately 6,380 feet upstream of U.S. Route 220 Bridge	*828
New Creek:	
Approximately 560 feet downstream of CSX Transportion Bridge	*800
Approximately .5 mile upstream of Cross Street Bridge	*833
Maps available for inspection at Ms. Penny Sanders Office, City Clerk, 111 North Davis Street, Keyser, West Virginia.	
Mineral County (unincorporated areas) (FEMA Docket No. 7018)	
North Branch Potomac River:	
Approximately 3.4 miles downstream of confluence of Patterson Creek	*563
Approximately 1.5 miles upstream of Westvaco Dam	*662
Approximately 8.5 miles upstream of Bloomington Lake Dam	*1,507
Approximately 1,030 feet upstream of confluence of Abram Creek	*1,602
New Creek:	
Approximately 1.1 miles downstream of confluence of Stony Run	*828
Approximately 0.9 mile upstream of upstream crossing of County Route 5/2 Bridge	*1,374
Patterson Creek:	
At confluence with North Branch Potomac River	*577
Approximately 0.2 mile upstream of confluence of Horseshoe Creek	*593
Maps available for inspection at Michael Bland's Office, County Coordinator, 150 Armstrong Street, Keyser, West Virginia.	

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Piedmont (city), Mineral County (FEMA Docket No. 7013)	
North Branch of Potomac River:	
Approximately 2,845 feet downstream of confluence with Georges Creek	*896
Approximately 560 feet upstream of Old Cromwell Street	*927
Maps available for inspection at the City Hall, 52 Second Street, Piedmont, West Virginia.	
Randolph County (unincorporated areas) (FEMA Docket No. 7010)	
Tygart Valley River:	
Approximately 1.5 miles downstream of confluence of Leading Creek	*1,909
Approximately 1.7 miles upstream of County Route 39	*2,020
Leading Creek:	
At confluence with Tygart Valley River	*1,913
Approximately .5 mile upstream of confluence of Pearcy Run	*1,931
Cut-Off Canal:	
At confluence with Tygart Valley River	*1,914
At divergence from Tygart Valley River	*1,924
Maps available for inspection at the County Assessor's Office, County Annex Building, Randolph Street, Elkins, West Virginia.	
Richwood (city), Nicholas County (FEMA Docket No. 7010)	
Cherry River:	
Approximately .8 mile downstream of County Road 19	*2,158
At confluence of North Fork of Cherry River and South Fork of Cherry River	*2,213
North Fork of Cherry River:	
At confluence with Cherry River	*2,213
Approximately 60 feet upstream of upstream corporate limits	*2,256
South Fork of Cherry River:	
At confluence with Cherry River	*2,213
At upstream corporate limits	*2,229
Maps available for inspection at the City Hall, 6 White Street, Richwood, West Virginia.	
WISCONSIN	
Amery (city), Polk County (FEMA Docket No. 6951)	
Apple River:	
Just upstream of Griffin Street	*1,052
Just downstream of Amery Dam	*1,059
Just upstream of Amery Dam	*1,086
About 1.0 mile upstream of Amery Dam	*1,096
Maps available for inspection at the City Hall, 118 Center Street, Amery, Wisconsin.	
Crawford County (unincorporated areas) (FEMA Docket No. 7010)	
Kickapoo River:	
About 1.0 mile downstream of Pleasant Ridge Road	*680
About 0.6 mile downstream of State Highway 131	*723
Mississippi River:	
At confluence of Wisconsin River	*629
At county boundary	*634
Wisconsin River:	
At mouth	*629
At county boundary	*660
Maps available for inspection at the Zoning Administration Office, 229 N. Beaumont Road, Prairie du Chien, Wisconsin.	
Elroy (city), Juneau County (FEMA Docket No. 7007)	
Baraboo River:	
About 1,000 feet downstream of Main Street	*942
About 2,500 feet upstream of Academy Street	*948
Maps available for inspection at the City Hall, 225 Main Street, Elroy, Wisconsin.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Independence (city), Trempealeau County (FEMA Docket No. 7010)	
Trempealeau River:	
About 1,600 feet downstream of Green Street	*771
About 700 feet upstream of confluence of Elk Creek	*777
Elk Creek:	
At mouth	*777
About 2,700 feet upstream of State Highway 95	*788
Maps available for inspection at the City Hall, 110 W. Adams Street, Independence, Wisconsin.	
Juneau County (unincorporated areas) (FEMA Docket No. 7007)	
Yellow River:	
Just upstream of County Highway G	*863
At northern county boundary	*865
Lemonweir River:	
At mouth	*855
Just downstream of County Highway C	*858
Just upstream of Lemonweir Dam	*864
Just downstream of County Highway M	*869
Cranberry Creek:	
At mouth	*925
Just downstream of County Highway F	*947
Little Yellow River:	
At mouth	*893
Just downstream of 30th Street	*903
Baraboo River:	
About 2200 feet upstream of Hillsboro Street	*914
Just downstream of Hillsboro and Northeastern railway	*918
West Branch Baraboo River:	
At mouth	*918
Just upstream of Smith Road	*934
Wisconsin River:	
At southern county boundary	*846
Just downstream of Castle Rock Dam	*864
Just upstream of Castle Rock Dam	*863
Just downstream of Petenwell Dam	*925
Just upstream of Petenwell Dam	*925
At northern county boundary	*929
Black Hawk Divergence:	
At mouth	*848
At divergence with Wisconsin River	*849
Maps available for inspection at the Courthouse Annex, Room 28, Mauston, Wisconsin.	
Marquette County (unincorporated areas) (FEMA Docket No. 7010)	
Fox River:	
At east county boundary	*769
At south county boundary	*782
Neenah Creek:	
About 2.6 miles upstream of mouth	*769
At confluence of Big Slough	*791
Neenah Lake: Along shoreline	*853
Lake Puckaway: Along shoreline	*770
Lake Montello: Along shoreline	*767
Maps available for inspection at the Zoning Department, County Courthouse, Room 104, Montello, Wisconsin.	
Mauston (city), Juneau County (FEMA Docket Number 7007)	
Lemonweir River:	
About 0.8 mile downstream of Union Street	*857
About 2.3 miles upstream of Union Street	*874
Maps available for inspection at the City Hall, 303 Mansion Street, Mauston, Wisconsin.	
Necedah (village), Juneau County (FEMA Docket No. 7007)	
Yellow River:	
About 0.9 mile downstream of Chicago and North Western railroad	*909
About 0.8 mile upstream of State Highway 21	*908
Maps available for inspection at the Village Hall, 109 Center Street, Necedah, Wisconsin.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
New Lisbon (city), Juneau County (FEMA Docket No. 7007)	
Lemonweir River:	
About 0.9 mile downstream of Soo Line Railroad	*880
About 1,160 feet upstream of Interstate 90	*883
Maps available for inspection at the City Hall, 218 E. Bridge Street, New Lisbon, Wisconsin.	
Richland County (unincorporated areas) (FEMA Docket No. 7010)	
Pine River:	
Just upstream of County Highway O	*716
Just downstream of County Highway AA	*744
Mill Creek:	
About 1.2 miles downstream of U.S. Highway 14	*736
About 1,850 feet downstream of U.S. Highway 14	*740
Wisconsin River:	
At western county boundary	*680
Just upstream of State Highway 130	*702
Richgrove River:	
About 1,400 feet downstream of State Route 99	*787
About 2,000 feet upstream of State Route 99	*789
Maps available for inspection at the Zoning Administrators Office, County Courthouse, Richland Center, Wisconsin.	
Union Center (village), Juneau County (FEMA Docket No. 7007)	
Baraboo River:	
About 3,300 feet downstream of confluence of West Branch Baraboo River	*918
Just downstream of Hillsboro and Northeastern railway	*918
Maps available for inspection at the Village Hall, Union Center, Wisconsin.	
Wonewoc (village), Juneau County (FEMA Docket No. 7007)	
Baraboo River:	
About 1.4 miles downstream of Gehri Road	*912
About 0.8 mile upstream of Hillsboro Street	*915
Maps available for inspection at Village Hall, 109 Washington Street, Wonewoc, Wisconsin.	
WYOMING	
Laramie County (unincorporated areas) (FEMA Docket No. 7010)	
Crow Creek:	
2,500 feet downstream of Campstool Road	*5,852
Just downstream of Wyoming Hereford Ranch Reservoir No. 1 Dam	*5,919
Just upstream of South College Drive	*5,977
Just upstream of Refinery Road	*6,008
Just downstream of Interstate 25	*6,074
Dry Creek:	
At confluence with Crow Creek	*5,866
Just upstream of the Union Pacific Railroad	5,937
Just upstream of U.S. Highway 30	*5,971
Just upstream of Prairie Avenue	*6,091
Just downstream of Buffalo Avenue	*6,153
Western Hills Draw (North Fork Dry Creek):	
Just above Highway 25	*6,151
Wyoming Hereford Ranch Reservoir No. 1 Emergency Spillway:	
At the confluence with Crow Creek	*5,913
Just upstream of Old Campstool Road	*5,919
Just upstream of Kingham Ditch	*5,925
At Wyoming Hereford Ranch Reservoir Dam Breast	*5,941
Maps are available for review at the County Engineering Office, 2503 East Fox Farm Road, Cheyenne, Wyoming.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ARIZONA	
Phoenix (city), Maricopa County (FEMA Docket No. 7008)	
Agua Fria River:	
Shallow flooding along west bank of Agua Fria River immediately upstream of Indian School Road	*1,008
At Thomas Road	*999
Approximately 530 feet upstream of Indian School Road	*1,010
At Camelback Road	*1,024
Approximately 200 feet upstream of the confluence with the New River	*1,033
Approximately 0.5 mile upstream of confluence with the New River	*1,039
Cave Creek Wash (Below Grand Canal):	
Just upstream of 51st Avenue	*1,014
Just downstream of 35th Avenue	*1,041
At Van Buren Street	*1,073
Just upstream of Thomas Road	*1,095
Just downstream of Grand Canal	*1,120
Cave Creek Wash (Shallow Flooding Areas)	
Approximately 800 feet upstream of the intersection of 19th Avenue and Earll Drive	*1,102
At 23rd Avenue, just downstream of Grand Canal	*1,117
Cave Creek Wash (Shallow Flooding Along 21st Avenue):	
Approximately 200 feet downstream of Grand Canal	*1,118
At Turney Avenue	*1,120
At Missouri Avenue	*1,142
Cave Creek Wash (Shallow Flooding Along 19th Avenue):	
At Roma Avenue	*1,120
At Lawrence Road	*1,171
Approximately 700 feet downstream of Northern Avenue	*1,162
Cave Creek Wash (Shallow Flooding Along 15th Avenue):	
At Grand Canal	*1,120
At Hazelwood Street	*1,125
Approximately 350 feet upstream of Montebello Avenue	*1,146
Cave Creek Wash (Shallow Flooding Along 17th Avenue):	
At Bethany Home Road	*1,151
Approximately 600 feet downstream of Maryland Avenue	*1,160
Approximately 500 feet downstream of Glendale Avenue	*1,169
Cave Creek Wash (shallow flooding along 11th Avenue):	
At Highland Avenue	*1,126
At Missouri Avenue	*1,140
Approximately 100 feet upstream of Montebello Avenue	*1,148
Cave Creek Wash (shallow flooding along 7th Avenue):	
At Highland Avenue	*1,125
At Georgia Avenue	*1,137
Approximately 500 feet downstream of Lawrence Road	*1,169
Maps are available for review at the City Hall, 251 West Washington Street, Phoenix, Arizona.	
WEST VIRGINIA	
Alderson (town), Greenbrier and Monroe Counties (FEMA Docket No. 6997)	
Greenbrier River:	
Downstream corporate limits	*1,549
Approximately 330 feet upstream of upstream corporate limits	*1,553
Maps available for inspection at the City Building, 282 South Monroe Street, Alderson, West Virginia.	

Issued: June 11, 1991.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-14444 Filed 6-19-91; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

48 CFR Parts 243, 249, and 252

Department of Defense Federal Acquisition Regulation Supplement; Contract Modifications and Termination of Contracts; Correction

AGENCY: Department of Defense (DOD).

ACTION: Interim rule with request for comments; correction.

SUMMARY: The Defense Acquisition Regulations (DAR) Council has issued an interim DFARS rule to implement section 4201 of the Fiscal Year 1991 DoD Authorization Act (Pub. L. 101-510) which requires the Secretary of Defense to notify the Secretary of Labor if a modification or termination of a major defense contract or subcontract will have a substantial impact on employment. This is a correction to the interim rule, published on May 28, 1991, (56 FR 24030), to provide the effective date of the interim rule.

DATES: *Effective Date:* May 14, 1991.

Comment Date: Comments on the interim rule should be submitted in writing at the address shown below on or before June 28, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 90-339 in all correspondence.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric Mens, Procurement Analyst, DAR Council, OUSD(A)DP(DARS), room 3D139, The Pentagon, Washington, DC 20301-3000. Telefax Number (703) 697-9845.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, Procurement Analyst, DAR Council, (703) 697-7266.

Nancy L. Ladd,

Colonel, USAF, Director, Defense Acquisition Regulations Council.

[FR Doc. 91-14744 Filed 6-19-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Winged Mapleleaf Freshwater Mussel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the winged mapleleaf mussel (*Quadrula fragosa*) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). Historically, this freshwater mussel occurred extensively in the Mississippi, Tennessee, Ohio and Cumberland River drainages in the states of Ohio, Indiana, Missouri, Tennessee, Nebraska, Iowa, Illinois, Wisconsin, Oklahoma and Kentucky. As a result of land use changes, river alterations and pollution, the winged mapleleaf mussel has been reduced to a single known population located in the St. Croix River between northwestern Wisconsin and east/central Minnesota. Critical habitat is not being proposed.

EFFECTIVE DATE: July 22, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Service Regional Office, Federal Building, Ft. Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Harrison, Chief, Division of Endangered Species at the above address (612/725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

The earliest record of the winged mapleleaf mussell (*Quadrula fragosa*) dates from 1835 when Conrad described this North American freshwater mussel from the Scioto River, Ohio. He described this species as similar to the mapleleaf mussel (*Quadrula quadrula*),

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but "much more ventricose" having more prominent tubercles and being very distinct. Occurrence records of the winged mapleleaf were not infrequently reported until about 1920. From the 1920's to the present, few occurrences were reported and some experts considered it extinct. These few post-1925 occurrence records include the collection of three specimens from Wayland, Missouri (Ohio State Museum of Zoology collection), possibly as late as 1966 and a small population on the St. Croix River between Minnesota and Wisconsin discovered in 1987 (Marion Havlik, Malacological Consultants, *in litt.*, 1990).

There is a disagreement about whether the winged mapleleaf mussel, *Quadrula fragosa*, is a distinct species or a subspecies of *Quadrula quadrula*. *Quadrula fragosa* was synonymized as a variant of *Q. quadrula* by Neel (1941) based on morphological intergrades. Since Neel's study Burch (1975), Johnson (1980), and Oesch (1990) have recognized the synonymy. Recently, David Stansbery (Ohio State University, *in litt.*, 1991) has refuted Neel based on his own research of morphological characteristics, stating, "An examination of material of these two species in all or nearly all of our major museums over the years has failed to turn up any intergrading forms between the two. This total lack of intergrades indicates that they are distinct species rather than subspecies or environmental forms as was previously believed by myself and others * * *" Stansbery also said that there may be a second population or sibling species of *Q. fragosa* on the Kiamichi River in Oklahoma. The Service recognizes the need for further taxonomic and distributional research, but does not intend to allow the St. Croix River population to go extinct while the uncertainties are resolved.

The winged mapleleaf can be distinguished from *Q. quadrula* using several characteristics. The shell is more inflated and more quadrate in outline. The shell's beaks are more elevated and turned forward over the lunule (Baker 1928). The winged mapleleaf is more alate and has ridges on the alae while the mapleleaf often has distinct pustules (Stansbery, pers. comm.). Young in the genus *Quadrula* are almost indistinguishable (Neel 1941).

Little is known about the ecology and habits of the winged mapleleaf, presumably because of its historic rarity and early population reductions. Baker (1928) reported it occupied larger rivers on a mud bottom in water two meters or more in depth. Ortmann (1925) indicated it may prefer gravel bars. Recent observation on the extant population indicated that it exists in the riffle areas of the St. Croix and is absent from muddy microhabitat (David Heath, Wisconsin Department of Natural Resources, *in litt.*, 1989).

Few historical records exist that report population demographics or brooding period of the winged mapleleaf. Recent attempts have been made to determine when the winged mapleleaf broods young. No individuals have been observed brooding young. In addition, in a simple of 41 specimens, none were collected that were younger than four years of age (Heath and Rasmussen 1990). In fact, a survey by the Wisconsin Department of Natural Resources conducted in 1988 suggests that the St. Croix population has not reproduced since 1983. Population density at the only known location was one individual per 52 square meters and constituted less than 0.02% of the mussel community.

A fairly rich mussel assemblage of 32 species inhabit the extant winged mapleleaf site on the St. Croix River. Most associates are fairly common species in the upper Mississippi River system, but several species are considered rare. These rare species, which are characteristic of well-preserved streams, include the Federal Category 2 spectacle case (*Cumberlandia monodonta*), salamander mussel (*Simpsonaias ambigua*), and the Federally endangered Higgins' eye (*Lampsilis higginsi*). Other rare species that co-occur include the snuffbox (*Epioblasma triquetra*), purple wartyback (*Cyclonaias tuberculata*), and buckhorn (*Tritogonia verrucosa*).

The historic geographic range of the winged mapleleaf is fairly well-documented. It occurred in at least ten states; Ohio, Indiana, Missouri, Tennessee, Nebraska, Iowa, Illinois, Wisconsin, Oklahoma, and Kentucky. Disregarding the single known extant population, nearly all collections were made prior to 1925.

Simpson (1900, 1914) and La Rocque (1967) reported the winged mapleleaf from the Ohio, Cumberland, and Tennessee River systems west probably to Minnesota and Nebraska. It was reported from the Ohio River by the Commonwealth of Kentucky Department of Fish and Wildlife Resources (1989), Sterki (1907), Coker (1921), Call (1886, 1900), Simpson (1900, 1914), La Rocque (1967), Stansbery (1985, 1989), and vouchered in the United States National Museum (USNM) collection. Ohio River tributaries where the winged mapleleaf was reported include the Scioto River (Conrad 1836, the Ohio State University Museum of Zoology (OSUMZ) collection), the Licking River (Commonwealth of Kentucky State Natural Preserves Commission 1988, Commonwealth of Kentucky Department of Fish and Wildlife Resources 1989), Racoon Creek (OSUMZ collection, Watters 1988), the Wabash River (Call 1886, OSUMZ collection, USMN collection, La Rocque 1967) and the White River (Call 1886, Academy of Natural Sciences of Philadelphia (ANSP) collection).

Within the Tennessee River System, collections have been reported from the Tennessee River (Ortmann 1925, Starnes and Bogan 1988), the Cumberland River (Wilson and Clarke 1914, Danglade 1914, Starnes and Bogan 1988, Commonwealth of Kentucky State Natural Preserves Commission 1989, Commonwealth of Kentucky Department of Fish and wildlife Resources 1989), the Harpeth River (Starnes and Bogan 1988), and from the Duck River (Ortmann 1925, Starnes and Bogan 1988).

In the upper Mississippi River system, it has been reported from the Mississippi River (Utterback 1915–1916, Stansbery 1969, Frest 1987, Grier and Mueller 1922–1923, Shimek 1888, 1921, Field Museum of Natural History (FMNH) collection, OSUMZ collection, Illinois Natural History Survey (INHS) collection, USNM collection, Keys 1889, Havlik and Stansbery 1977, Havlik and Marking 1980, Heath 1981–1985, Bell Museum of Natural History (BMNH) collection). Upper Mississippi River tributaries containing winged mapleleaf included the Cedar River (Frest 1987, Shimek 1888, FMNG collection, OSUMZ collection, USMN collection); the Des Moines River (Keyes 1889); the Racoon River; the Iowa River (Keyes 1889); the Illinois, Kaskaskia and Spoon Rivers, (Grier and Mueller 1922–1923, Baker 1906; FMNH collection, ANSP collection, Starrett 1971, and Strode 1891, 1892); and the Sangamon River (OSUMZ collection, ANSP collection, University of Michigan Museum of Zoology (UMMZ) collection, INHS collection). Additional upper Mississippi River drainage locales where the winged mapleleaf have been recorded include the Wisconsin and Baraboo Rivers (Baker 1928, Morrison 1929, Heath 1988b, FMNH collection, BMNH collection, OSUMZ collection), the Minnesota River (Havlik 1990, OZUMZ collection, BMNH collection), and the St. Croix River (Heath 1985, University of Illinois Museum of Natural History (UIMNH) collection).

In Oklahoma, the winged mapleleaf occurred in the Boggy, Little, and Neosho Rivers (Isley 1925). There may be an existing population or sibling species of *Q. fragosa* in the Kiamichi River (Stansbery, *in litt.*, 1991). In Nebraska the mussel occurred in the Bow and Blue Rivers (Aughey 1877). Missouri records were from the Osage, Fox, and 102 (at St. Joseph) Rivers (Utterback 1915–1916, OSUMZ collection).

The winged mapleleaf freshwater mussel was included as a Category 2 species in the 1984 notice of review (49 FR 21664–21675). Category 2 species are those for which the Service does not have conclusive data on biological vulnerability and threat to the degree that support a proposed rule. In the 1989 notice of review (54 FR 554–579) the mussel was changed to a Category 3C species, which indicated that it was more abundant and/or widespread than previously thought, and that threats were not substantial. However, the Service was advised that this designation might be in error. Subsequently, all states with historic records were again contacted. As a result of that correspondence and information gained through recent surveys, the Service determined that the species was in need of protection. The most recent surveys and biological data as to distribution and threats were incorporated into the proposed rule to determine endangered status for the winged mapleleaf freshwater mussel issued in the Federal Register of August 6, 1990 (55 FR 31664–31667).

Summary of Comments and Recommendations

In the August 6, 1990 proposed rule, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A notice inviting public comment was published in the St. Paul Pioneer Press, August 28, 1990.

Eight comments were received: five of these were letters of support for listing the winged mapleleaf mussel as endangered (Minnesota Department of Natural Resources, National Park Service, Wisconsin Department of Natural Resources, Dr. David Stansbery of the Museum of Zoology, Ohio State University, and Fish and Wildlife Service, Region 4); one letter, from Dr. Richard Johnson, Harvard University, questioned the taxonomic decision to treat *Q. fragosa* as a species. The Kansas Biological Survey observed that the mussel did not occur in Kansas as originally stated in the proposed rule. One letter, from Northern States Power Company, was in opposition to the proposed listing.

Northern States Power Company questioned the validity of listing this species based on present evidence. They believed that the taxonomic status of the species should be confirmed before listing. They suggested the flow regime at the power plant on the St. Croix River actually might be beneficial to the population since the regime hadn't changed in 84 years.

The Service considered these comments and criticisms and rewrote the final rule to address them. The Service recognizes that the taxonomic question needs further study, and that there is a need for more research on the distribution and ecology of the species. The Service decided to proceed with listing in view of the evidence of morphological distinctiveness and the potential threat to the St. Croix River population of *Quadrula fragosa*.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the winged mapleleaf mussel, *Quadrula fragosa*, should be classified as an endangered species. Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provision of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened according to one or more of the five factors described in section 4(a)(1). These factors and their application to the winged mapleleaf are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, the winged mapleleaf mussel was known from eleven states and three major drainage systems in North America. This species has been eliminated from 99% of its historical range. Habitat modification including land use changes, river channel modifications, and pollution are the primary factors threatening the continued existence of the winged mapleleaf. The species was usually found in well-preserved large to medium-sized clear-water streams in riffles or on gravel bars. These areas have been lost due to the development of impoundments, channelization, soil erosion, and sediment accumulation originating from land use practices.

Additional threats to the small, remaining population include expanded agriculture or modified land use practices in the watershed, toxic substance spills, point discharges of harmful chemicals, low water levels, and large recreational boat traffic. The small size of the population makes it particularly vulnerable to single catastrophic events and genetic deterioration. These factors may affect the host fish (presently unknown) which is necessary for the reproduction of the winged mapleleaf in addition to affecting the remaining mussel population.

Minnesota and Wisconsin Departments of Natural Resources agree that the peaking operation of Northern States Power Company power plant located upstream from the mussel bed is posing a possible threat to the mussel population. The normal winter operation of Northern States Power Company is a twice daily peaking mode (once a day during droughts) with only 800 cfs being discharged between peaking operations. It appears that this is not enough water to cover the beds at night so the clams are exposed to freezing, abrasion, and predation. In fact, in 1989, the peaking operation completely exposed the beds during the night. In 1991, the Wisconsin Department of Natural Resources surveyed the bed and found that a layer of ice 13 inches deep was laid directly on the gravel of the bed with each lowering of flow (Miller, *in litt.*, 1991). The ice layer adhered to and abraded the bottom exposing the mussels. The Minnesota Department of Natural Resources conducted a wetted perimeter study for this portion of the river and found that the dam must release 1980 cfs to adequately protect the mussel beds (Nargang, *in litt.*, 1991). Given the direct exposure that the mussel bed is currently experiencing, the Service believes that there is an immediate danger to the only known population of *Q. fragosa*. The Service will cooperate with Northern States Power Company, the Minnesota and Wisconsin Departments of Natural Resources, and the National Park Service to study the affect of "peaking" on the population.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Collection of the winged mapleleaf for these purposes is believed to have been a minor factor in its decline. It was harvested during the early 1900's for the pearl button industry in the United States (Coker 1921). At present the population is partially protected from harvest by Wisconsin harvesting laws and by a National Park Service Superintendent Determination (March 5, 1990) for the St. Croix

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National Scenic Riverway. Some recreational collecting may occur.

C. *Disease or predation.* No disease or predation has been recorded for the winged mapleleaf.

D. *The inadequacy of existing regulatory mechanisms.* The winged mapleleaf is presently protected by Wisconsin and by a Superintendent Determination (March 5, 1990) of the National Park Service (NPS) for the St. Croix National Scenic Riverway. The Act offers possibilities for additional protection through Section 6 by cooperation between States and the Service, and cooperation through section 7 (interagency cooperation) requirements, in particular with the NPS St. Croix National Scenic Riverway.

E. *Other natural or manmade factors affecting its continued existence.* The single remaining population is small, located on less than five miles of the St. Croix River and is immediately threatened by lack of any reproduction. During surveys in 1988 and 1989, Heath and Rasmussen (1990) were unable to locate individuals less than four years of age although members of related species in the genus *Quadrula* were collected that were less than four years of age. In addition, they were unable to locate any winged mapleleaf individuals brooding young. Lack of young individuals and brooding females could be a natural cyclic phenomenon, an artifact of sampling, or an abrupt cessation of reproduction, but other mussels at the location did not evidence reproductive problems. If recent observations reflect trends in the population, the continued existence of the species is in serious doubt.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the winged mapleleaf as an endangered species. Due to the threats and vulnerability of the single remaining population, it is believed that the species will continue to decline unless immediate corrective actions are taken. For reasons detailed below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the winged mapleleaf freshwater mussel. This determination is based on the premise that such designation would not be beneficial to the species (50 CFR 424.12), and little additional benefit would be gained, since the single extant location is presently receiving protection from the NPS and the State of Wisconsin. Critical habitat designation would not provide additional protection over that afforded through the normal section 7 consultation procedures. The NPS and the States of Minnesota and Wisconsin are cognizant of the location of this population of winged mapleleaf and of the importance of protecting its habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The NPS administers the portion of the St. Croix River where the winged mapleleaf is found. The Service has not identified any ongoing or proposed NPS projects that could affect this species.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.22 and 17.23 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connections with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from (see **ADDRESSES** above).

Author

The primary author of this final rule is Jan L. Eldridge (see **ADDRESSES** section). Mr. David J. Heath, Wisconsin Department of Natural Resources, Rhinelander, Wisconsin 54501 (715) 362-7616, provided substantial information.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
Mussel, winged mapleleaf	*Quadrula fragosa*	U.S.A. (WI, IL, MN, MO, OH, NE, TN, KY, IN, IA, OK).	NA	E		NA	NA.

Dated: June 11, 1991.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-14655 Filed 6-19-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640-1140]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule; corrections.

SUMMARY: NMFS corrects errors in the emergency rule governing the Atlantic swordfish fishery published June 12, 1991 (56 FR 26934).

EFFECTIVE DATES: June 12, 1991 through December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, NMFS (F/CM3), 301-427-2347.

SUPPLEMENTARY INFORMATION: In rule document 91-13924 beginning on page 26934 in the issue of Wednesday, June 12, 1991, make the following corrections:

1. On page 26934, in the first column, under the "**SUMMARY**" heading in the tenth line after "carcass length" insert "or 41 pounds (18.6 kilograms) dressed carcass weight".

2. On page 26935, in the third column, under the "*Minimum Size Limit*" subheading in the second line after "carcass length" insert "or 41 pounds (18.6 kilograms) dressed carcass weight".

3. On page 26936, in the first column, under the "*Minimum Size Limit*" subheading in the fortieth line after "carcass length" insert "or 41 pounds (18.6 kilograms) dressed carcass weight".

4. On page 26936, in the third column, under the "*Annual Quota*" subheading in the 42nd line after "closure is" insert "at least".

§ 630.26 [Corrected]

5. On page 26936, in the third column, in § 630.26 (a), *Minimum Size*, in the eleventh line after "(CK measurement)" insert ", or 41 pounds (18.6 kilograms) dressed carcass weight".

Dated: June 14, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 91-14664 Filed 6-19-91; 8:45 am]

BILLING CODE 3510-22-M

VOL 56 ISS 119 JE 20 1991 UMI

Proposed Rules

Federal Register
Vol. 56, No. 119
Thursday, June 20, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 581

RIN 3206-AE54

Processing Garnishment Orders for Child Support and/or Alimony

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: On November 5, 1990, Congress enacted the Federal Employees Pay Comparability Act of 1990, Public Law 101-509. As a result of this legislation, the Office of Personnel Management proposes a revision to its regulations in 5 CFR part 581 concerning the processing of garnishment orders for child support and/or alimony. The proposed amendment adds several new types of bonuses, allowances, and adjustments that were authorized by the Pay Comparability Act to the list of payments that OPM considers to be remuneration for employment for purposes of garnishment. At the request of the Federal Retirement Thrift Investment Board, we are deleting the reference to 5 U.S.C. 8437 in the authority citation.

DATES: Comments should be received by July 22, 1991.

ADDRESSES: Send or deliver comments and/or designated agent information, including new WITS telephone number(s), to Jaime Ramon, General Counsel, Office of Personnel Management, room 7355, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, (202) 606-1980 or FTS 266-1980.

SUPPLEMENTARY INFORMATION: Governmental entities are urged to review the current list of designated agents, appendix A to part 581 (55 FR 1354, January 16, 1990), to ensure that their listing is correct. The great majority of entities who have received new Washington Interagency Telecommunications System (WITS) telephone numbers have not yet notified OPM of their new number(s).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited primarily to Federal employees.

List of Subjects in 5 CFR Part 581

Alimony, Child welfare, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM proposes to amend 5 CFR part 581 as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

1. The authority citation for part 581 is revised to read as follows;

Authority: 42 U.S.C. 659, 661-662; 15 U.S.C. 1673; E.O. 12105

2. Section 581.103 is amended by republishing paragraph (a) introductory text, revising paragraphs (a)(10), (a)(20), (a)(21), (a)(22), and (a)(23)(v), and by adding paragraphs (a)(24), (a)(25), (a)(26), and (a)(27) to read as follows:

§ 581.103 Moneys which are subject to garnishment.

(a) For the personal service of a civilian employee obligor:

* * * * *

(10) Recruitment incentives, recruitment and relocation bonuses and retention allowances;

* * * * *

(20) Cash awards, including performance-based cash awards;

(21) Agency and Presidential incentive awards (except where such award is for making a suggestion);

(22) Senior Executive Service rank and performance awards;

(23) Moneys due for the services of a deceased employee obligor, including:

* * * * *

(v) Amounts of checks drawn for moneys due which were not delivered by the governmental entity to the employee obligor prior to the employee obligor's death or which were not negotiated and returned to the governmental entity because of the death of the employee obligor, except those moneys due that are listed in § 581.104(i);

(24) Interim geographic adjustments and locality-based comparability payments;

(25) Staffing differentials;

(26) Supervisory differentials; and

(27) Special pay adjustments for law enforcement officers in selected cities.

* * * * *

[FR Doc. 91-14754 Filed 6-19-91; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1924

Construction and Repair

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Construction and Repair regulations. This action is taken to implement the provisions of the Cranston-Gonzalez National Affordable Housing Act, to remove a sentence that restricts random development of sites in open country. A paragraph is added to explain site approval in remote rural areas. The intended effect of this action is to strengthen the Agency's mission rural development.

DATES: Comments must be received on or before August 19, 1991.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture building, 14th and Independence SW., Washington DC 20250. All written comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Billy J. Chapman, Senior Loan Specialist, at Farmers Home Administration, USDA, Room 5464, South Agriculture Building, 14th and Independence SW, Washington DC 20250, Telephone (202) 382-1485.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, States, or local government agencies or geographical regions or significant adverse effects on competition, employment, productivity, innovation or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

La Verne Ausman, Administrator of Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect FmHA processing and servicing of insured and guaranteed rural housing loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

For the reason set forth in the final rule related notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs Affected

This change affects a program listed in the catalog of Federal Domestic Assistance under 10.410, Very Low and Low Income Housing Loans.

List of Subjects in 7 CFR Part 1924

Housing standards, Low and moderate income housing, Rural areas.

Discussion

On November 28, 1990, the President signed the Cranston-Gonzalez National Affordable Housing Act. This act provided for revision to FmHA's site approval instructions, mandating that: "The Secretary may not refuse to make, insure, or guarantee a loan that otherwise meets the requirements under this section solely on the basis that the housing involved is located in an area that is excessively rural in character or excessively remote."

This revision removes language regarding random development of sites in open country, and includes language that allows approval of such sites.

The substance of the revisions will have a significant impact on the program. For this reason, this action is set forth as a proposed rule.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Planning and Performing Site Development Work

2. Section 1924.107 is amended by revising the introductory text of paragraph (e), paragraph (e)(1)(iii), and adding paragraph (e)(1)(iv) to read as follows:

§ 1924.107 Location.

* * * * *

(e) A scattered site must be planned and developed under this subpart, subpart A of part 1944, and subpart G of part 1940, with particular emphasis on location as specified in § 1940.304. A scattered site must comply with all of the following:

(1) * * *

(iii) May be a site located within a subdivision which has HUD or VA acceptance that meets the requirements of § 1924.119(c) of this subpart, or

(iv) May be a site located in open country or a remote rural area.

* * * * *

Dated: April 23, 1991.

La Verne Ausman,
Administrator, Farmers Home Administration.

[FR Doc. 91-14666 Filed 6-19-91; 8:45 am]
BILLING CODE 3410-07-M

7 CFR Part 1980

Guaranteed Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulation to allow Community and Business Programs guaranteed loans where guarantee authority is unavailable when the application is filed to be placed in a pending status rather than disapproved.

This action will enhance the application process and expand and clarify the requirements for eligible lenders for guaranteed loans due to amendments in the law and to allow additional lenders to participate in the guaranteed loan programs. The intended effect of the action will be to promote additional development in rural areas.

DATES: Comments must be received on or before July 22, 1991.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, Washington, DC 20250. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, Business and Industry Loan Specialist, Farmers Home Administration, USDA, Room 6327, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 475-3805.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be non-major. The annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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Intergovernmental Review

The programs impacted by this action are listed in the Catalog of Federal Domestic Assistance under numbers 10.422, Business and Industrial Loans; 10.423, Community Facilities Loans; and 10.418, Water and Waste Disposal Systems for Rural Communities Loans and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983). FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1901–H.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Background

The current regulation for the FmHA guaranteed loan programs requires that all guaranteed loan applications must be approved or disapproved not later than 60 days after receipt of a completed application. Public Law 101–624 requires loans that would otherwise be disapproved due to lack of funds available to make the loan will be placed in a pending status. When funds become available the pending applications will be either approved or disapproved within 60 days.

The current FmHA regulation allows insurance companies to be eligible lenders if they are regulated by the National Association of Insurance Commissioners. Currently this Association does not have regulatory control over insurance companies. The regulation is being revised to read that insurance companies must be regulated by a State or national insurance regulatory agency.

The current FmHA regulation allows credit unions to participate as eligible lenders only for guaranteed Farmer Program loans. The regulation is being revised to extend lender eligibility criteria for all guaranteed loans to include credit unions if they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency.

In addition, the titles of two forms to be used with Disaster Assistance for Rural Business Enterprise (DARBE) guaranteed loans are being corrected in an administrative provision in the current regulations.

Lists of Subjects in 7 CFR Part 1980

Loan programs—Agriculture, Business and industry, Community facilities, and Disaster assistance

Accordingly, chapter XVIII, title 7, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 7 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—General

2. Section 1980.13 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1980.13 Eligible lenders.

* * * * *

(b) *An eligible lender is:* Any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, Building and Loan Association, mortgage company that is a part of a bank-holding company, or an insurance company that is regulated by a State or national insurance regulatory agency. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions that are subject to credit examination and supervision by either the National Credit Union Administration or a State agency. For Farmer Program loans an agricultural credit corporation which is a subsidiary of any Federal or State chartered bank is an eligible lender. Only those lenders listed in this paragraph are eligible to make and service guaranteed loans, and such lenders must be in good standing with their licensing authority and have met licensing, loan making, loan servicing, and other requirements of the State in which the collateral will be located and the loan making and/or loan servicing office requirements in paragraph (b)(3) of this section. A lender must have the capability to adequately service the loan for which a guarantee is requested.

* * * * *

3. Section 1980.47 is amended by revising the introductory paragraph and adding paragraph (d) as follows:

§ 1980.47 Time frame for processing applications for loan guarantees.

All guaranteed loan applications must be approved or disapproved, and the lender notified in writing, not later than 60 days after receipt of a completed application, except as noted in paragraph (d) of this section.

* * * * *

(d) Applications for Community and Business Programs guaranteed loans that would otherwise be disapproved due to the lack of guarantee authority available to make the loan will now be placed in a pending status. The applications will remain in a pending status until guarantee authority becomes available. Within sixty days after funds become available, Farmers Home Administration will notify the applicants of the approval or disapproval of the loan.

4. Section 1980.83(b) is amended by revising the entries for FmHA Form No. 1980–71 and 1980–72 to read as follows:

§ 1980.83 FmHA Forms.

* * * * *

(b) * * *

FmHA Form No.	Title of form	Purpose and code
*	*	*
1980–71	Lender's Agreement—Disaster Assistance for Rural Business Enterprises (DARBE) Guaranteed Loans.	Used to establish contract between FmHA and lender on a DARBE guaranteed loan. (2)
1980–72	Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises (DARBE) Guaranteed Loans.	Used to express terms of the guarantee of a DARBE guaranteed loan. (1)
*	*	*

Dated: May 1, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–14667 Filed 6–19–91; 8:45 am]

BILLING CODE 3410–07–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL-3923-7]

New Hampshire; Approval of State Underground Storage Tank Program

Correction

Document 91-9366, beginning on page 16276, in the issue of Monday, April 22, 1991, was published in the "Rules and Regulations" section of the issue. It should have appeared in the "Proposed Rules" section.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 473

[BPD–604–P]

RIN 0938–AE93

Medicare Program; Aggregation of Medicare Claims and Administrative Appeals and Judicial Review

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: Under section 1869 of the Social Security Act, Medicare beneficiaries and, under certain circumstances, providers, physicians and other entities furnishing health care services, may appeal adverse determinations regarding certain claims for benefits payable under Part A and Part B of Medicare. For administrative appeals at the carrier (or intermediary, where appropriate) hearing level or administrative law judge (ALJ) level and for any subsequent judicial review, the amount remaining in dispute must meet or exceed the threshold amounts set by the statute. Section 1869 permits claims to be aggregated to reach the ALJ and judicial review threshold amounts. This proposed rule would establish in Medicare regulations a uniform policy on aggregation of Medicare claims to obtain the right to a carrier (or, if appropriate, intermediary) hearing, an ALJ hearing and judicial review. The proposed rule would also apply to appeals of determinations made by Peer Review Organizations (PROs), health maintenance organizations (HMOs) and competitive medical plans (CMPs).

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 19, 1991.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–604–P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD–604–P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Paul Olenick, (301) 966–4472.

SUPPLEMENTARY INFORMATION:

Background

Statutory Basis

Section 1869 of the Social Security Act (the Act) grants Medicare beneficiaries who are dissatisfied with certain Medicare determinations the right to a hearing before an administrative law judge (ALJ) and the right to judicial review. The Social Security Administration (SSA) makes determinations concerning entitlement to Medicare. Other determinations concerning payment are made initially by Medicare contractors. Fiscal intermediaries make most Part A and some Part B determinations; carriers make most Part B determinations. Our regulations generally address appeals of claims arising under Part A at 42 CFR part 405, subpart G and appeals of claims under Part B at 42 CFR part 405, subpart H.

PROs also make certain types of Part A and Part B determinations. Section 1155 of the Act establishes beneficiary rights to hearings and judicial review of certain Medicare issues (mostly inpatient hospital service denials) adjudicated initially by PROs. Our regulations address this subject at 42 CFR part 473, subpart B.

For enrollees of HMOs and CMPs, the HMO or CMP is responsible for making the initial determinations. Section 1876(c)(5)(B) of the Act establishes beneficiary rights to ALJ hearings and judicial review of certain Part A and Part B claims submitted by or on behalf of enrollees of HMOs or CMPs. Our regulations address this subject at 42 CFR 417.600 to 417.638.

For the following discussion, the term "provider" refers to a hospital, skilled nursing facility, home health agency, hospice program or comprehensive outpatient rehabilitation facility, that has in effect an agreement to participate in Medicare. See section 1861(u) of the Act and 42 CFR 400.202.

The term "supplier" is defined in § 400.202 and means a physician or other practitioner, or an entity other than a provider, who furnishes health care services under Medicare. Although "supplier" encompasses physicians, our usual phraseology is "physician or supplier".

Under section 1879(d) of the Act, a provider, or a physician or supplier that has taken assignment of a claim, may have the same appeal rights as that of an individual beneficiary under certain limited circumstances when the issue in dispute involves medical necessity, custodial care, or home health denials involving the failure to meet homebound or intermittent skilled nursing care requirements.

Under section 1842(1) of the Act, a physician who does not accept assignment must refund to the beneficiary any amounts collected for services found to be not reasonable and necessary. A refund is not required if the physician did not know and could not reasonably have been expected to know that Medicare would not pay for the services, or if the beneficiary was appropriately informed in advance that Medicare would not pay for the services and agreed to pay for them. Our regulations at 42 CFR 411.406 provide that if payment is denied for nonassignment-related claims because the services are found to be not reasonable and necessary, the physician who does not accept assignment will have the same appeal rights as the physician who submits claims on an assignment-related basis, as detailed in subpart H of part 405 and subpart B of part 473. (See 55 FR 24561, June 18, 1990.)

Omnibus Budget Reconciliation Act of 1986

Before the enactment of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86) (Pub. L. 99–509), section 1869 of the Act provided for ALJ hearings and

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judicial review of claims for entitlement to Medicare Parts A and B, and of disputes over claims for benefits under Part A. There was no provision for ALJ hearings or judicial review for disputes over the amount of Part B benefits, except under section 1876 of the Act pertaining to HMO and CMP denials, and under certain PRO matters as authorized by section 1155 of the Act. Instead, as specified in section 1842(b)(3)(C) of the Act and 42 CFR part 405, subpart H, Medicare carriers (or, if appropriate, intermediaries) performed initial determinations and reviews of claims for Part B benefits and provided for hearings before a carrier (or, if appropriate, intermediary) hearing officer when the amount remaining in controversy was $100 or more.

Section 9341 of OBRA '86 amended Section 1869 of the Act to permit hearings before ALJs and judicial review of claims for benefits under Part B.

OBRA '86 also provided that, for a Part B ALJ hearing, the amount in controversy must be at least $500 and, for judicial review, the amount in controversy must be at least $1000. It did not change the existing amount in controversy requirements ($100 and $1000, respectively, under the Medicare Part A provisions and $200 and $2000, respectively, under the PRO provisions) for ALJ hearings and judicial review.

OBRA '86 further provided that "in determining the amount in controversy, the Secretary, by regulations, shall permit claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals." This provision applies to both Part A and Part B claims.

The legislative history that accompanied OBRA '86 did not indicate whether the intent of the aggregation provision was to expand or restrict appeal rights. Nor did it indicate whether the types of aggregation then permitted for Part A ALJ hearings and judicial review were also appropriate for Part B appeals.

The Omnibus Budget Reconciliation Act of 1990

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508) provided additional legislative direction regarding the aggregation of Medicare claims. Section 4113 of OBRA '90 states the following:

"The Secretary of Health and Human Services shall carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under section 1869(b)(2). Such study shall be conducted in at least four carrier areas. The Secretary shall report on the results of such study and any recommendations to the Committee on Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives by December 31, 1992."

Aggregation Before OBRA '86

Before OBRA '86 the statute was silent on the issue of aggregating claims to meet the threshold amounts to establish a right to Part A or Part B hearings or judicial review. We had, however, provided for beneficiaries to aggregate certain Part A claims in our regulations at 42 CFR 405.740 and 405.745. The amount in controversy for a Part A hearing is so low ($100) that a one-day hospital stay or short series of home health treatments was sufficient for almost every beneficiary to meet the threshold amount. Our regulations at 42 CFR 405.741 provide that the presiding officer at the hearing (i.e., the ALJ) determines whether the $100 threshold is met. The current regulations do not allow a provider to aggregate claims involving more than one beneficiary.

We had also in § 405.820(b) provided for the aggregation of Part B claims to reach the amount in controvery required for a hearing before a carrier hearing officer. This regulation permits a beneficiary to aggregate any and all Part B claims for treatment provided or medical equipment or supplies (or both) furnished to him or her within certain time periods. A physician or supplier may aggregate any and all claims accepted on an assignment-related basis for services or supplies he or she provided to one or more beneficiaries. Each such claim must be at the proper level of appeal and the request for subsequent appeal of each such claim must be timely filed.

Status of Regulations

To implement section 9341 of OBRA '86, HCFA and SSA (the agency responsible for conducting ALJ hearings) published a joint notice (52 FR 20023, June 1, 1988) stating that ALJ hearings under Part B would be governed to the extent possible by existing SSA regulations at 20 CFR part 404, Subparts J and R, and existing Part A regulations at 42 CFR part 405, subpart G. The notice further provided that "ALJ hearings will be held for Medicare Part B claims that meet the amount in controversy requirement established by section 9341 of OBRA '86." Manual instructions implementing the new appeal provisions directed the carriers to continue using the existing Part B regulation governing aggregation for carrier hearings, as these rules differed from the OBRA '86 provisions, and the statutory provisions required implementation by regulation.

Proposed Revisions

Scope of Revisions

We are developing a proposed rule that, among other things, would implement the various appeals provisions contained in section 9341 of OBRA '86 and the congressional intent enunciated in section 4113 of OBRA '90. This has proven to be a time-consuming process because of the complexities of the provisions and the statute's lack of specificity regarding aggregation of claims by two or more claimants. In view of the current amount of interest in our policy on aggregating claims to establish the amount in controversy requirements for an ALJ hearing and judicial review, we are issuing this proposal apart from the other appeal provisions. This proposal would apply to determining the amount in controversy thresholds for both Part A and Part B ALJ hearings under sections 1869, 1876, 1879, 1155 and 1842(1) of the Act, to Part B carrier appeals, and to judicial review under Parts A and B. We would apply to Part B ALJ hearings our consistent policy that determinations of the amount in controversy are made by the ALJs.

Proposal

Review of congressional reports that accompanied OBRA '86 and precursor bills discloses no discussion of the basis for the statutory change addressing aggregation of claims. The specific statutory language directs the Secretary to issue regulations for aggregation of claims under the circumstances specified in section 1869(b)(2) of the Act to reach threshold amounts in controversy for ALJ hearings and judicial review. We would rescind our current regulations governing aggregation for carrier hearings under Part B (§ 405.820(b)(2)) because they conflict with the literal reading of the OBRA '86 amendment. We believe that it is appropriate to have a uniform aggregation policy for all levels of administrative appeal. We would use the same aggregation policy for all levels of review because it would be administratively cumbersome and confusing to claimants to use different policies. The current regulations governing aggregation under Part A (§§ 405.740(c) through 405.740(f)) and governing determination of amount in controversy (§ 405.741) need only minor

amendment to satisfy the OBRA '86 requirements.

The amendment to section 1869 of the Act is written in the passive voice and does not state who may aggregate claims for appeal. However, all of section 1869 is written in terms of individual beneficiary rights of appeal, without reference to rights of appeal by providers, physicians, or suppliers. By regulation, the Secretary has provided that, in certain circumstances, providers and physicians and suppliers who accept assignment may pursue appeals. This right to appeal is derivative of the beneficiary's rights. Except for the appeal provisions concerning limitation of liability, refund requirements, and certain PRO and HMO/CMP appeals, the statute is otherwise silent on the rights of providers, physicians and suppliers to appeal individual benefit determinations. Accordingly, in construing the aggregation amendment, we first consider its application to beneficiaries, and then consider its effect on providers, physicians and suppliers.

The first clause of the amendment applies to claims that "involve the delivery of similar or related services to the same individual." It describes the circumstances under which an individual claimant has a right to combine claims for services furnished or received. The second clause, "* * * claims involving common issues of law and fact arising from services furnished to two or more individuals", describes the rights of providers, physicians and suppliers to aggregate claims for services furnished to two or more beneficiaries, rights that derive from the appeal rights of the involved beneficiaries.

Providers and physicians and suppliers who accept assignment (and, in certain cases, physicians who do not accept assignment) would be able to aggregate claims for beneficiaries to whom they provided services, but would not be permitted to aggregate claims with other providers, physicians, or suppliers. This interpretation is consistent with the focus of the statute on individual beneficiary rights. It further avoids the inadvertent creation of direct or indirect group appeal rights for beneficiaries, providers, physicians and suppliers not contemplated by Congress.

The plain language of section 1869 of the Act addresses appeal rights of individual beneficiaries or other individual claimants whose rights are derived from those individual beneficiaries; it does not address the rights of groups of beneficiaries or other claimants. The Secretary has interpreted this provision on an individual basis since the inception of the Medicare program.

We have considered, but have decided against, permitting aggregation by groups of claimants because, in our view the OBRA '86 aggregation provision is not a basis for establishing group appeals. Section 1869 of the Act in all respects applies to claims filed by "individuals"; that is, by beneficiaries. Because the OBRA '86 aggregation provision amended section 1869 of the Act, we believe that only individual appeals are affected. Therefore, only individual claimants may aggregate their claims to reach the jurisdictional minimums required for an ALJ hearing. Had Congress intended to create a sweeping change in Medicare's Part A and Part B appeals processes by permitting for the first time group appeals for claimants, we believe it would have amended section 1869 of the Act to enunciate such a policy change clearly. Further, the fact that Congress included in the law a mechanism for individuals to aggregate claims evinces its intent to retain the concept of individual appeals. Allowing several different claimants to group their claims to meet a relatively low jurisdictional minimum renders the requirement for a minimum amount in controversy meaningless and leads to a potential result whereby hundreds and even thousands of claimants could effectively unite to appeal denials of trivial amounts.

We believe that, in the absence of specific legislative history guidance, the OBRA '86 aggregation rule should apply to physicians and suppliers accepting assignment of individual claims. Because it has been our longstanding policy that assignees of Medicare Part B claims generally have the same appeal rights as beneficiaries, we see no reason why this aggregation rule should not also apply to these individuals.

Moreover, we consider permitting group appeals for claimants premature in light of the OBRA '90 provision in which Congress directed HHS to conduct a pilot study to investigate the effect of permitting aggregation by two or more claimants when physician services are furnished. We believe this action by Congress confirms, for the present, that Congress has not required the Secretary to provide for aggregation of claims by two or more claimants. Moreover, by requiring this study, Congress has implicitly accepted the position for the time being that individual claimants alone may aggregate their claims.

To aggregate claims under Parts A and B, we propose the following operational rules:

1. The request for a carrier hearing (or, if appropriate, intermediary hearing) or ALJ hearing must specifically identify the claims that comprise the total amount in controversy. The claimant must identify each claim by: Type of item or service, date of service, person or entity that furnished the item or service and the amount being contested. The claimant must also identify the basis for the aggregation; i.e., describe way the claims are either "similar or related" or involve "common issues of law and fact." For example, a beneficiary breaks a hip and is provided with several treatments by a physical therapist over a period of months. The beneficiary submits claims to the carrier for these treatments and they are denied or reduced. In addition to identifying the type of service, the dates of service, the practitioner's name, and the amount contested, the beneficiary should also include in his or her request for carrier or ALJ hearing a statement that the claims are "similar or related" because they arise from the same continuous course of treatment. In another example, several different beneficiaries are provided with routine chest x-rays by the same radiologist under similar circumstances. All claims submitted by the radiologist are denied by the carrier on the same statutory basis. In his request for carrier or ALJ hearing, the radiologist should state, among other things, that aggregation of the claims is being sought because they involve "common issues of law and fact arising from services furnished to two or more individuals"; i.e., the denials for each claim are on the same statutory basis and the same factual issue for each claim is presented for appeal.

2. At each review level, the filing time limit must be met for all claims to be aggregated. For example, the claims involved in two or more carrier hearing officer decisions, one received on June 5 and one received on July 10, may be aggregated by a claimant in a single request for an ALJ hearing only if the hearing is requested not later than August 4 since the hearing must be requested within 60 days after receipt of the first carrier hearing decision.

3. For an ALJ hearing under Part A (or Part B, for certain PRO or HMO/CMP matters), the claims first must have been reconsidered by the appropriate entity;

4. For a carrier (or, as appropriate, intermediary) fair hearing under Part B, the claims must have been reviewed by the carrier or intermediary, except when an initial payment request has not been

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acted upon with reasonable promptness as provided by § 405.801(a);

5. For an ALJ hearing under Part B, except for certain PRO or HMO/CMP matters, the claims must have a carrier (or, as appropriate, intermediary) hearing officer decision;

6. Unless provided elsewhere, a claimant may not combine Part A and Part B claims together to meet the requisite amount in controversy for a carrier (or, as appropriate, intermediary) hearing, ALJ hearing or judicial review.

We would amend § 405.740 to reflect the aggregation provisions of section 1869(b)(2) of the Act for providers and beneficiaries for Part A ALJ hearings under title XVIII. Except for the amounts in controversy threshould for ALJ hearings, the additional provisions of the revised § 405.740 would be approximately the same as those for Part B in proposed § 405.820(b)(2).

As noted earlier, we would rescind our current regulations at 42 CFR 405.820(b)(2), which allow an individual Part B claimant to combine any and all claims from different physicians and suppliers, and a physician or supplier-claimant to combine any and all claims accepted on an assignment-related basis from different beneficiaries. Based on the amended statute, as discussed above, we would permit aggregation only for those claims involving "similar or related services to the same individual" or for those claims involving "common issues of law and fact arising from services furnished to two or more individuals." The phrase "common issues of law and fact" requires commonality of both the factual basis for the denial and the appealable issue presented by the denial. Accordingly, we interpret this phrase to mean that a provider, or a physician or supplier who accepts claims on an assignment-related basis, may aggregate only those claims in which that provider, physician or supplier furnishes the same item or service to two or more individuals and for which adverse determinations were made on the same statutory basis, and the appeal is made on the same basis.

We are proposing to revise 42 CFR 405.820(b)(2) to allow Part B claims to be aggregated to meet amount in controversy requirements for carrier appeals, ALJ hearings and judicial review as follows:

1. A beneficiary may aggregate claims from the same or different physician(s) or supplier(s) if the claims involve the delivery of similar or related services.

2. A single physician or supplier of services may aggregate assigned claims from the same beneficiary if the claims involve the delivery of similar or related services, or may aggregate assigned claims from several different beneficiaries if common issues of law and fact are involved; i.e., the same service is furnished to two or more beneficiaries and the adverse determinations were made on the same grounds.

3. We are also proposing to extend these aggregation rules to appeals involving section 1842(1) of the Act, which concerns refunds to beneficiaries for medically unnecessary services from physicians not accepting assignment. We would permit a single physician to (a) aggregate unassigned claims from the same beneficiary if the claims involve the delivery of similar or related services to the same individual or (b) aggregate unassigned claims from several beneficiaries if common issues of law and fact are involved.

In §§ 405.701, Basis and Scope, and 405.802, Definitions, we would add definitions of "delivery of similar or related services," "services," "common issues of law and fact," "common issues of law," "common issues of fact," and "mutually exclusive bases for appeal." We would also revise the title of § 405.701 to include definitions and we would rearrange the current contents of § 405.802 into alphabetical order.

"Delivery of similar or related services" to the same individual would refer to services that are—

a. In the case of part A, similar or related by virtue of having been provided under the same diagnosis related group (DRG) code, or by virtue of such similarity or identity that they are identically coded, or by virtue of having been provided to a single beneficiary during the same continuous course of treatment or continous period of medical care; or

b. In the case of part B, similar or related by virtue of such similarity or identity that they have the same procedural terminology and code (identical CPT code), or by virtue of having been provided to a single beneficiary during the same continuous course of treatment or continous period of medical care;

"Services" would refer to any medical service, test, course of treatment, period of care, item, device, supply, or equipment that may be covered under part A or part B of Medicare, or both.

"Common issues of law and fact" arising from services furnished to two or more individuals presumes the essential similarity of the issues presented in both of two contexts: law and fact.

"Common issues of law" occur when two or more claims have been denied on the same statutory basis and present the same issue for appeal; e.g., the issue relates to denials or reductions of program payment under the identical statutory exclusion and the basis for the appeal is that payment should be made because the statutory exclusion was improperly applied and the services are actually covered by the program under the same circumstances in all the aggregated cases.

We believe that common issues of law must arise from the same statutory provision and must present the same issue concerning application of that provision for review. For example, even though two claims for the same service may be denied under section 1862(a)(1)(A) of the Act, they would not share the necessary "common issues of law" if the first claim was denied because that service is considered experimental for the first patient's condition, but the second claim was denied as not required by the second individual's medical condition.

Each statutory basis for denial or each basis for appeal is mutually exclusive from each and every other statutory basis for denial or appeal. Aggregation of claims on the basis of more than one statutory basis for denial or appeal would not be permitted. Mutually exclusive bases for appeal include but are not limited to:

Erroneous application by a Medicare contractor of a specific statutory basis for denial; program payment should have been made.

Erroneous application by a Medicare contractor of a specific statutory basis for denial; program payment should not have been made, but the liability of the provider, physician, or supplier is affected because the provider, physician, or supplier did not know or have reason to know that the service was not covered.

Whether proper and timely notice of noncoverage was given to the beneficiary.

Erroneous application of an applicable coinsurance.

Amount of an applicable deductible.

The number of days of the 60-day lifetime reserve utilized for inpatient hospital coverage.

Whether the charges for items and services furnished under Part B are reasonable.

"Common issues of fact" occur when two or more claims arise from the same face pattern; i.e., the issues relate to "similar or related services," as defined here; the issues would relate to two or more beneficiaries in an identical manner ("common issues of fact" may arise when medical necessity determinations relating to two or more beneficiaries result in substantially similar, but not necessarily exact, medical findings); and the nature of the denials, and their effects, are the same (e.g., denials or program payment resulting in the provider, physician, or supplier being held fully liable for the unpaid amounts).

Because determinations of the amount in controversy are made by the appropriate hearing officer, ALJ or court, we would revise § 405.741, which concerns determining the amount in controversy, and add a provision to § 405.820(b). We would provide that the carrier or intermediary hearing officer, ALJ, or court, as appropriate, determines whether the amount in controversy meets the required threshold level. We would further provide that the carrier or intermediary hearing officer, ALJ, or reviewing court, as appropriate, will also make the determination as to what constitutes "similar or related services" and "common issues of law and fact."

We emphasize that the purpose of these regulations is to provide criteria for aggregation of claims in order to meet the amount in controversy requirements (i.e., the jurisdictional threshold) for appealing Medicare claims. These rules are not meant to address procedures (or alter existing provisions) concerning the conduct of hearings once the required amount in controversy is established or to address the discretion of the presiding officer to join claims in a single hearing for administrative purposes.

The level of review between the ALJ hearing and judicial review levels is known as Appeals Council review. If dissatisfied with the ALJ hearing decision or dismissal, a party to the hearing may request that the Appeals Council review that action or the Appeals Council may initiate such review on its own motion. The Appeals Council may deny or dismiss the request for review or grant the request. If the Appeals Council grants the request for review, it may reverse, affirm or modify a decision or dismissal made by an ALJ, or remand the case to an ALJ for further action. Because the Appeals Council has the authority to review an ALJ's decision or dismisal, it may also address whether or not an ALJ properly applied the operating rules for aggregating claims, as set forth in these regulations. For example, in a case in which an ALJ fails to aggregate claims as required by these regulations and dismisses a request for hearing due to an insufficient amount in controversy, the Appeals Council may find that aggregation was warranted and remand the case to an ALJ for a hearing. However, neither HCFA contractors, ALJs nor the Appeals Council are required to initiate aggregation if it has not been requested by a claimant.

Section 405.832 of the regulations gives the hearing officer the authority to dismiss a claimant's hearing request for various reasons, one of which (§ 405.832(d)) is the failure to meet the threshold $100 amount in controversy requirement. We would add to this provision the right of a claimant to appeal such dismissal to an ALJ where the underlying basis of the dismissal is the hearing officer's determination that the claims at issue may not be aggregated because they do not involve "delivery of similar or related services" or "common issues of law and fact." Further, we are providing that the ALJ must remand the case to the hearing officer when the ALJ finds that the hearing officer wrongfully dismissed the appeal request because of failure to meet the amount in controversy requirements.

Sections 417.630 and 473.44 of the existing regulations specify procedures for determining amounts in controversy for beneficiary appeals of matters arising under sections 1876 and 1155 of the Act. Section 417.630, by cross-reference, applies the rules of §§ 405.740 and 405.820(b) for determining the amount in controversy. Section 473.44, by cross-reference, applies the rules of § 405.740 for determining the amount in controversy. We would retain these cross-references, making the proposed rules for aggregating claims applicable to claims under sections 1876 and 1155. We would further amend § 473.44 to include a cross-reference to § 405.820(b) to address claims involving Part B services. (Section 417.630 already addresses Part B services.)

We are also proposing to make some technical changes to update cross references.

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all beneficiaries, physicians, providers, and suppliers are treated as small entities.

Section 1869 of the Act provides that, for claims arising under Part A, a beneficiary may request a hearing before an ALJ if he or she is dissatisfied with a determination by the intermediary if the amount of Part A benefits in controversy is at least $100. Under our current rules at § 405.740, a beneficiary may aggregate certain Part A claims to reach the threshold amount.

For claims arising under Part B, section 1842(b)(3)(C) of the Act provides that a beneficiary dissatisfied with the initial review determination may request a fair hearing before a carrier hearing officer if the amount in controversy is at least $100. This provision was not amended by section 9341 of OBRA '86. It remains in the satute. In determining the amount in controversy for carrier hearings in the past, we have used the following procedures found in 42 CFR 405.820(b) and section 12015H of the Medicare Carriers Manual:

1. A beneficiary may combine any and all claims from different physicians and/or suppliers; and

2. A physician or supplier may combine any and all assigned claims from different beneficiaries.

Effective January 1, 1987, section 9341 of OBRA '86 amended section 1869(b) of the Act to allow beneficiaries a right to an ALJ hearing if, among other things, the amount of part B benefits in controversy is $500 or more.

Other provisions of the statute, or the Secretary's regulations, also permit providers, physicians or suppliers to exercise a beneficiary's hearing rights in certain limited circumstances.

Section 1869 as amended also directed the Secretary, when determining the amount in controversy for either part A or part B ALJ hearings, to allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.

For the reporting period October 1989 through April 1990 total payments awarded to beneficiaries, suppliers, and providers as a result of ALJ hearings and intermediary and carrier appeals were less than $20 million (Bureau of Program Operations, Health Care Financing Administration). We do not believe that the provisions in this proposed rule would alter that amount significantly. Therefore, we do not believe that this proposed rule would

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meet the $100 million threshold criterion of E.O. 12291. We also do not believe that the other threshold criteria of E.O. 12291 and the RFA will be met. Therefore, we have determined, and the Secretary certifies, that a regulatory impact analysis under E.O. 12291 and a regulatory flexibility analysis under the RFA are not required.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Paperwork Burden

These changes do not impose paperwork collection requirements. Consequently, they need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

Chapter IV, title 42 of the Code of Federal Regulations would be amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, subpart G is amended to read as follows:

Subpart G—Reconsiderations and Appeals Under Medicare Part A

1. The authority citation for subpart G is revised to read as follows:

Authority: Secs. 1102, 1154, 1155, 1869(b), 1871, 1872 and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1320c–3, 1320c–4, 1306ff(b) 1395hh, 1395ii and 1395pp).

2. In § 405.701, the section heading is revised and a new paragraph (d) is added to read as follows:

§ 405.701 Basis, purpose and definitions.

* * * * *

(d) *Definitions.* As used in subpart G, the term—

*Common issues of * * * fact,* in the phrase "common issues of law and fact," occurs when two or more claims arise from the same fact patten; that is, the issues relate to the delivery of similar or related services, as defined in this paragraph; the issues relate to two or more beneficiaries in an identical manner; and the nature of the denials, and their effects, are the same (e.g., denials of program payment resulting in the provider, physician, or supplier being held fully liable for the unpaid amounts).

Common issues of law, in the phrase "common issues of law and fact," occur when two or more claims have been denied on the same statutory basis and present the same issue for appeal; e.g., the issue relates to denials of program payment under the identical statutory exclusion; the basis for the appeal is that payment should be made because that statutory exclusion was improperly applied; and the service is actually covered by the program under the same circumstances in all the aggregated cases.

Common issues of law and fact arising from services furnished to two or more individuals refers to the essential similarity of the issues presented in both of two contexts: law and fact.

Delivery of similar or related services means services that are—

(1) In the case of Part A, similar or related by virtue of having been provided under the same diagnosis related group (DRG) code or International Classification of Diseases, Clinical Modification, 9th Edition (ICD-9-CM) code; or by virtue of having been provided to a single beneficiary during the same continuous course of treatment or continuous period of medical care; or

(ii) In the case of Part B, similar or related by virtue of such similarity or identity that they have the same procedural terminology and code (identifical Common Procedure Terminology (CPT) or HCFA Common Procedure Coding System (HCPCS) code), or by virtue of having been provided to a single beneficiary during the same continuous course of treatment or continuous period of medical care.

Mutually exclusive bases for appeal include but are not limited to:

(i) Erroneous application by a Medicare contractor of a specific statutory basis for denial; program payment should have been made.

(ii) Erroneous application by a Medicare contractor of a specific statutory basis for denial; program payment should not have been made, but the liability of the provider, physician, or supplier is affected because the provider, physician, or supplier did not know or have reason to know that the service was noncovered.

(iii) Whether proper and timely notice of noncoverage was given to the beneficiary.

(iv) Erroneous application of an applicable coinsurance.

(v) Amount of an applicable deductible.

(vi) The number of days of the 60-day lifetime reserve utilized for inpatient hospital services.

Services is defined in § 400.202 of this chapter.

3. In § 405.740, the introductory text and paragraphs (a) and (h) are revised and new paragraphs (i) (j) are added to read as follows:

§ 405.740 Principles for determining the amount in controversy.

The following principles are applicable for purposes of determining the amount in controversy:

(a) The amount in controversy is computed as the actual amount charged the individual for the items and services in question less deductible and coinsurance amounts applicable in the particular case.

* * * * *

(h) Notwithstanding the provisions of paragraph (a) of this section, when payment is made for certain excluded services pursuant to § 411.400 of this chapter, or the liability of the individual for those services is limited pursuant to § 411.402 of this chapter, the amount in controversy is computed as the amount that would have been charged the individual for the items and sevices in question, less deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid pursuant to § 411.400 of this chapter or had such liability not been limited pursuant to § 411.402 of this chapter.

(i) Notwithstanding the provisions of paragraphs (c) through (f) of this section, two or more timely filed appeals may be aggregated to reach the $100 jurisdictional amount required for a hearing and the $1000 amount required for judicial review as follows:

(1) A beneficiary may combine claims from the same or different providers(s) if the claims involve the delivery of similar or related services.

(2) A single provider of services may combine its claims from the same beneficiary if the claims involve the delivery of similar or related services; or

(3) A single provider of services may combine its claims from several different beneficiaries if common issues of law and fact are involved; i.e., the same service is furnished to two or more beneficiaries and the adverse determinations were made on the same grounds.

(j) When a provider furnishes items or services under Medicare Part B, these appeals are conducted by intermediaries and administrative law judges under the regulations governing appeals of part B claims, found at 42 CFR part 405, subpart H.

4. Section 405.741 is revised to read as follows:

§ 405.741 Determinations of amount in controversy.

(a) The determination as to whether the amount in controversy is—

(1) $100 or more is made by the presiding officer;

(2) $1,000 or more is made by the reviewing court.

(b) In determining the amount in controversy, the presiding officer and the reviewing court, as appropriate, also make the determination as to what constitutes "similar or related services" and "common issues of law and fact."

(c) In the determination of "common issues of law" each statutory basis for denial or each basis for appeal is mutually exclusive from each and every other statutory basis for denial or appeal. Aggregating claims on the basis of more than one statutory basis for denial or appeal in order to reach a minimum amount in controversy needed for appeal is not permitted.

5. A new § 405.742 is added to read as follows:

§405.742 Procedural rules for aggregating claims.

In order for claims to be aggregated to meet the amount in controversy requirements of § 405.740(i) and (j) of this subpart, the following requirements must be met:

(a) The request for a hearing must specifically identify the claims that comprise the total amount in controversy. The claimant must identify each claim by: type of item or service, date of service, person or entity that furnished the item or service and the amount being contested. The claimant must also identify the basis for the aggregation; i.e., describe why the claims are either "similar or related" or involve "common isues of law and fact."

(b) At each review level, the filing time limit must be met for all claims to be aggregated. For example, the claims involved in two or more reconsideration determinations, one received on June 5 and one received on July 10, may be aggregated by a claimant in a single request for an ALJ hearing only if the hearing is requested not later than August 4 because the hearing must be requested within 60 days after receipt of the reconsideration determination.

(c) For a hearing under part A (or part B, for certain PRO or HMO/CMP matters), the claims first must have been reconsidered by the appropriate entity;

(d) Unless authorized elsewhere in the regulations, a claimant may not combine part A and part B claims together to meet the requisite amount in controversy for a hearing or judicial review.

B. Part 405, Subpart H is amended as follows:

Subpart H—Review and Hearing Under the Supplementary Medical Insurance Program

1. The authority citation for subpart H is revised to read as follows:

Authority: Secs. 1102, 1842(b)(3)(C), and 1869(b) of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), 1395ff(b)).

2. Section 405.802 is revised to read as follows:

§ 405.802 Definitions.

As used in subpart H, the term—

Assignee means a physician or supplier who furnished services to a beneficiary under the supplementary medical insurance program and who has accepted a valid assignment executed by the beneficiary.

Assignment means the transfer by the assignor of his or her claim for payment to the assignee in return for the latter's promise not be charge more for his or her services than the carrier (or, as appropriate, intermediary) finds to be the reasonable charge or other approved amount.

Assignor means a beneficiary under Medicare Part B whose physician or supplier has taken assignment of a claim.

Carrier means an organization which has entered into a contract with the Secretary pursuant to section 1842 of the Act and which is authorized to make determinations with respect to part B of title XVIII of the Social Security Act.

*Common issues of * * * fact,* in the phrase "common issues of law and fact," occur when two or more claims arise from the same fact pattern; that is, the issues relate to the delivery of similar or related services, as defined in this section; the issues relate to two or more beneficiaries in an identical manner; and the nature of the denials, and their effects, are the same (e.g., denials of program payment resulting in the provider, physician, or supplier being held fully liable for the unpaid amounts.)

Common issues of law, in the phrase "common issues of law and fact," occur when two or more claims have been denied or reduced on the same statutory basis and present the same issue for appeal; e.g., the issue relates to denials of program payment under the identical statutory exclusion; the basis for the appeal is that payment should be made because that statutory exclusion was improperly applied; and the service is actually covered by the program under the same circumstances in all the aggregate cases.

Common issues of law and fact arising from services furnished to two or more individuals refers to the essential similarity of the issues presented in both of two contexts: Law and fact.

Delivery of similar or related services means services that are—

(1) In the case of part A, similar or related by virtue of having been provided under the same diagnosis related group (DRG) code or International Classification of Diseases, Clinical Modification, 9th Edition (ICD–9–CM) code, or by virtue of such similarity or identity that they are identically coded; or by virtue of having been provided to a single beneficiary during the same continuous course of treatment or continuous period of medical care; or

(2) In the case of part B, similar or related by virtue of such similarity or identity that they have the same procedural terminology and code (identical Common Procedure Coding System code); or by virtue of having been provided to a single beneficiary during the same continuous course of treatment of continuous period of medical care.

Mutually exclusive bases for appeal include but are not limited to:

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(1) Erroneous application by a Medicare contractor of a specific statutory basis for denial; program payment should have been made.

(2) Erroneous application by a Medicare contractor of a specific statutory basis for denial; program payment should not have been made, but the liability of the provider, physician, or supplier is effected because the provider, physician, or supplier did not know or have reason to know that the service was noncovered.

(3) Whether proper and timely notice of noncoverage was given to the beneficiary.

(4) Erroneous application of an applicable coinsurance.

(5) Amount of an applicable deductible.

(6) Whether the charges for items and services furnished under Part B are reasonable.

Party means an individual enrolled under Medicare Part B, the individual's assignee, or other entity having standing in the initial or appellate proceedings.

Representative means an individual meeting the conditions described in §§ 405.870–405.871.

Services is defined in § 400.202 of this chapter.

3. In § 405.820, paragraphs (a), (b), and (d) are revised to read as follows:

§ 405.820 Right to hearing.

(a) *General.* Any party designated in § 405.822 is entitled to a carrier (or, if appropriate, intermediary) hearing after a review determination has been made by the carrier (or, if appropriate, intermediary) if the remaining amount in controversy is $100 or more as determined in accordance with paragraph (b) of this section when such party files a written request for a hearing. The same parties are also entitled to a hearing before an administrative law judge (ALJ) following the carrier (or, if appropriate, intermediary) hearing if the amount remaining in controversy is $500 or more and to judicial review following an ALJ hearing if the amount remaining in controversy is $1,000 or more.

(b) *Amount in controversy.* For the purpose of determining an individual's right to a hearing before a hearing officer or ALJ or to judicial review under paragraph (a) of this section:

(1) The amount in controversy is computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the carrier and less any deductible and coinsurance amounts applicable in the particular case.

(2) In determining the amount in controversy, two or more timely filed claims may be aggregated under the following circumstances:

(i) A beneficiary may combine claims from the same or different physician(s) or supplier(s) of services if the claims involve the delivery of similar or related services;

(ii) A single physician or supplier of services may combine his or her assigned claims from the same beneficiary if the claims involve the delivery of similar or related services; or

(iii) A single physician or supplier of services may combine his or her assigned claims from several different beneficiaries if common issues of law and fact are involved; i.e., the same service is furnished to two or more beneficiaries and the adverse determinations were made on the same grounds.

(iv) In order to challenge the refund requirements under section 1842(l) of the Act, a single physician may combine his or hers assessigned claims from a single beneficiary if the claims involve the delivery of similar or related services to that individual, or a single physicen may combine his or her assessigned claims from several different beneficiaries if common issues of law and fact are involved.

(3) The determination as to whether the amount in controversy is $100 or more is made by the carrier (or, if appropriate, intermediary) hearing officer. The determination as to whether the amount in controversy is $500 or more is made by the ALJ. The determination as to whether the amount in controversy is $1000 or more is made by the reviewing court. In determining the amount in controversy, the carrier (or, if appropriate, intermediary) hearing officer, the ALJ and the reviewing court, as appropriate, will also make the determination as to what constitutes "similar or related services" and "common issues of law and fact." In the determination of "common issues of law," each statutory basis for denial or each basis for appeal is mutually exclusive from each and every other statutory basis for denial or appeal. Aggregating claims on the basis of more than one statutory basis for denial or appeal in order to reach a minimum amount in controversy needed for appeal is not permitted.

(4) Notwithstanding the provisions of paragraph (b)(1) of this section, when payment is made for certain excluded services pursuant to §411.400 of this chapter or the liability of the individual for those services is limited pursuant to § 411.402 of this chapter, the amount in controversy is computed as the amount that would have been charged the individual for the items or services in question, less any deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid pursuant to § 411.400 of this chapter or had such liability not been limited pursuant to § 411.402 of this chapter.

* * * * *

(d) *Time of filing request.* Except where the initial determination has been made at a carrier (or, if appropriate, intermediary) hearing (where a claim is not acted upon with reasonable promptness (see § 405.801 of this subpart)), there is a period of 6 months after the date of the notice of the review determination within which a party to the initial or review determination may request a carrier (or, if appropriate, intermediary) hearing. The carrier (or, if appropriate, intermediary) may, upon request by a party, extend the period for filing the request for carrier (or, if appropriate, intermediary) hearing.

4. A new § 405.827 is added to read as follows:

§ 405.827 Procedural rules for aggregating claims.

In order for claims to be aggregated to meet the amount in controversy requirements of § 405.820(b) of this subpart, the followng requirements must be met:

(a) The request for a carrier (or, if appropriate, intermediary) or ALJ Hearing must specifically identify the claims that comprise the total amount in controversy. The claimant must identify each claim by: Type of item or service, date of service, person or entity that furnished the item or service and the amount being contested. The claimant must also identify the basis for the aggregation; i.e., describe why the claims involve the delivery of "similar or related services" or involve "common issues of law and fact."

(b) At each review level, the filing time limit must be met for all claims to be aggregated. For example, the claims involved in two or more carrier hearing officer decisions, one received on June 5 and one received on July 10, may be aggregated by a claimant in a single request for an ALJ hearing only if the hearing is requested not later than August 4 because the hearing must be requested within 60 days after receipt of the carrier hearing decision.

(c) For a carrier (or, if appropriate, an intermediary) hearing, the Part B) claims must have been reviewed by the carrier (or intermediary), except when an initial payment request has not been acted upon with reasonable promptness as provided by § 405.801(a);

(d) For an ALJ hearing under Part B, the claims first must have received a hearing before a carrier (or, if appropriate, intermediary) hearing officer; and

(e) Unless provided elsewhere in regulations, a claimant may not combine Part A and Part B claims together to meet the requisite amount in controversy for a carrier (or, if appropriate, intermediary) hearing, ALJ Hearing or judicial review.

5. In § 405.832, paragraphs (c) and (d) are revised as follows:

§ 405.832 Dismissal of request for carrier (or, if appropriate, intermediary) hearing.

* * * * *

(c) *Dismissal for cause.* The hearing officer may, on his own motion, dismiss a hearing request, either entirely or as to any stated issue, under either of the following circumstances:

(1) Where the party requesting a hearing is not a proper party under § 405.822 or does not otherwise have a right to a hearing under section 1842(b)(3)(C) of the Act; or

(2) Where the party who filed the hearing request dies and there is no information before the hearing officer showing that an individual who is not a party may be prejudiced by the carrier's determination.

* * * * *

(d) *Dismissal for failure to meet amount in controversy.* The hearing officer may on his own motion dismiss a hearing request where the amount in controversy is less than $100.

(1) Dismissal by the hearing officer because requirements for aggregating claims on the basis of "delivery of similar or related services" or "common issues of law and fact" (as those terms are defined in § 405.802) are not met may be appealed to an ALJ within 60 days of the date of receipt of the notice of dismissal to the party.

(2) The ALJ must remand the case for hearing to the hearing officer if the dismissal described in paragraph (d)(1) of this section is found to be improper.

* * * * *

PART 473—RECONSIDERATION AND APPEALS

Subpart B is amended to read as follows:

A. The authority citation for part 473 continues to read as follows:

Authority: Secs. 1102, 1154, 1155, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c-3, 1320-4, 1395cc, 1395hh, and 1395pp).

B. Section 473.44(a) is revised to read as follows:

§ 473.44 Determining the amount in controversy for a hearing.

(a) After a party has submitted a request for a hearing, the ALJ determines the amount in controversy in accordance with § 405.740 of this chapter for Part A services or § 405.820(b) of this chapter for Part B services.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 93.773, Medicare—Hospital Insurance; No. 93.774, Medicare—Supplementary Medicare Insurance)

Dated: April 26, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: May 31, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-14630 Filed 6-19-91; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 90-25]

Publication and Filing of Payments Made by Common Carriers to Foreign Freight Forwarders and Ocean Freight Brokers in Tariffs and Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Federal Maritime Commission ("Commission") is discontinuing this rulemaking proceeding, which would have amended its foreign tariff and service contract filing regulations to require common carriers and conferences to state in their tariffs and service contracts the amount of payments made, and a description of services for which any payments are made, to foreign freight forwarders or ocean freight brokers. The Proposed Rule also would have defined foreign freight forwarders, foreign freight forwarding services and ocean freight brokers. The Commission has decided that no regulatory purpose would be served by pursuing the Rule at this time.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission initiated this proceeding by publishing in the **Federal Register** (55 FR 39181) a Proposed Rule ("Proposed Rule") to amend its tariff and service contract rules in 46 CFR parts 580 and 581. The Proposed Rule would have addressed the issue of payments made by carriers to intermediaries. Neither the Shipping Act of 1984 ("1984 Act") 46 U.S.C. app. 1701–1720, nor the Commission's regulations, define such intermediaries with respect to operations in inbound trades, nor do they explicitly require that payments made by carriers to such intermediaries be listed in the carriers' tariffs or service contracts.

The Commission received 17 comments from conferences, carriers, trade associations, a foreign freight forwarder and the Department of Justice. One commenter supported the Proposed Rule as published, noting its advantages for the freight forwarding community. Seven other commenters supported the Proposed Rule in part, while suggesting changes or additions ranging from clarification of a single item to the expansion of the scope of the Rule beyond that of the instant proceeding.

Nine commenters opposed the Proposed Rule. Some claimed that the Commission lacks authority to promulgate a final rule in this proceeding. These parties contended that neither the language of the statute nor its legislative history showed that Congress intended the Commission to have jurisdiction over third party entities which operate in the inbound trades. However, the Proposed Rule would not have regulated foreign freight forwarders or ocean freight brokers. Rather, it would have directed carriers to publish specific information regarding their practices and relationships with foreign freight forwarders and ocean freight brokers. The Commission, therefore, rejects the argument that it lacks the statutory authority to implement the Proposed Rule.

Other objections to the Rule were that it was unnecessary and unduly burdensome. Some complained that the Proposed Rule would require a carrier to update information each time it used the services of a new forwarder or broker, or entered into new arrangements with an existing forwarder or broker. Some also contended that the Proposed Rule

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would inhibit service competition that results through the use of foreign freight forwarders and ocean freight brokers. By requiring conference carriers to adhere to the fixed terms of arrangements in collective tariffs, the Proposed Rule, according to one commenter, would deny individual conference carriers the flexibility which the 1984 Act preserved for them to respond to competition from their conference rivals.

The Commission takes cognizance of the commenters' concerns and is persuaded as to the merits of some of these. Moreover, the Non-Vessel-Operating Common Carrier Amendments of 1990 (Section 716 of Pub. L. No. 101–595) ["NVOCC Amendments"],[1] and the Commission's Interim Rule issued to implement them, may eliminate some of the problems which the Proposed Rule sought to resolve. NVOCCs are now required to post a $50,000 bond to evidence their financial responsibility, and to designate an agent for service of process if foreign-domiciled. Many persons thought to be operating as intermediaries as defined in the Proposed Rule are subject to the tariff filing and bonding requirements of the Interim Rule. Consequently, the impact of the instant rulemaking on the industry, as well as its utility for the Commission, may be reduced. The Proposed Rule may therefore be unnecessary. For all the above reasons, it appears that no regulatory purpose would be served by pursuing the Proposed Rule at this time.

Thus, upon consideration of the comments and intervening legislation, the Commission has decided against issuing a final rule, and is discontinuing this proceeding without prejudice to any subsequent determination by the Commission that further action is warranted. The Commission, however, will continue its enforcement efforts under the 1984 Act by pursuing possible malpractices involving shipper intermediaries on a case-by-case basis.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–14094 Filed 6–19–91; 8:45 am]

BILLING CODE 6730–01–M

[1] The NVOCC Amendments were enacted during the Proposed Rule's comment period. The effective date of the initial Interim Rule was stayed from February 14, 1991, to April 15, 1991. (Docket No. 91–01 *Bonding of Non-Vessel-Operating Common Carriers* and Petition P1–91 *Non-Vessel-Operating Common Carriers Bonding Requirements, Petition for Temporary Exemption.*)

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Marbled Murrelet in Washington, Oregon and California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the marbled murrelet (*Brachyramphus marmoratus*) a threatened species in Washington, Oregon and California pursuant to the Endangered Species Act of 1973, as amended (Act). The subspecies ranges from Alaska (Aleutian Archipelago, Kodiak Island, and Kenai Peninsula) south to central California. Some wintering birds are found in southern California. The marbled murrelet is threatened by the loss or adverse modification of nesting habitat (old-growth and mature forests) primarily due to commercial timber harvesting. It is also threatened from mortality associated with current gill-net fishing operations and the effects of oil spills throughout its range. If made final, the proposed action would extend the Act's protection to the marbled murrelet in California, Oregon and Washington. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by September 18, 1991. Public hearing requests must be received by August 5, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Portland Field Station, 2600 SE 98th Ave, suite 100, Portland, Oregon 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Russell D. Peterson, Field Supervisor, Portland Field Station at the above address [503/231–6179 or FTS 429–6179].

SUPPLEMENTARY INFORMATION:

Background

Life History Summary

The marbled murrelet (*Brachyramphus marmoratus*) is a robin-sized member of the Alcidae family. It was first described in 1789 by Gmelin as *Colymbus marmoratus*, but in 1837 Brandt placed it under the genus *Brachyramphus* (American Ornithologists' Union 1983). The North American subspecies (*B. m. marmoratus*) ranges from the Aleutian Archipelago in Alaska, eastward to Cook Inlet, Kodiak Island, Kenai Peninsula and Prince William Sound, southward coastally throughout the Alexander Archipelago of Alaska, and through British Columbia, Washington, Oregon, to central California. Some wintering birds are found in southern California. A separate subspecies (*B. m. perdix*) is present in Asia. Marbled murrelets feed primarily on fish and invertebrates in near-shore marine waters. Although some are found on rivers and inland lakes up to 50 miles from the ocean, most sightings have been within or adjacent to the marine environment (Carter and Sealy 1986).

Although the marbled murrelet is not colonial like most other alcids, small nesting aggregations are evident. Adult marbled murrelets have a low (1 egg per nest) and variable (not all adults may nest every year) reproductive rate. The marbled murrelet uses two nesting strategies; murrelets in the Alaskan Aleutian Archipelago eastward to the Alaskan Kenai Peninsula are apparently ground-nesters, whereas those of the Alaskan Alexander Archipelago and south are tree-nesters. In Alaska, there may be overlap in ground-nesting and tree-nesting on the Kenai Peninsula, Kodiak Island, and Prince William Sound area (Kuletz, USFWS, pers. com.). We ground nests have been located, to date, in the extensively forested area of its range, which extends from southeastern Alaska to central California.

In tree nests, adult marbled murrelets lay one egg on the flat surface of large moss covered branches of coniferous trees. Nesting occurs over an extended period from mid-April to late September (Carter and Sealy 1987). Incubation lasts about 30 days and fledgling takes another 28 days (Simons 1980, Hirsch et al. 1980). Both sexes incubate the egg in 24-hour shifts (Simons 1980). Flights by adults are made from ocean feeding areas to inland nest sites most often at dusk and dawn. The chick is fed at least once a day; only one fish at a time is carried to the young (Carter and Sealy 1987). The young are altricial, but remain in the nest longer than young of most other alcids. Before leaving the nest, the young molt into a distinctive juvenile plumage. Fledglings probably fly from the nest to the sea. Marbled murrelets do not reach sexual maturity until their second year. Longevity of marbled murrelets is unknown, as are survival and mortality rates.

Throughout the forested portion of the subspecies' range, marbled murrelets used old-growth and old-growth/mature forests occurring near the coastline for nesting and possibly for other activities, such as roosting. From the Alexander Archipelago of Alaska and south, nesting occurs in trees in old-growth and old-growth/mature forests (Binford et al. 1975; Carter and Sealy 1987; Quinlan and Hughes 1990; Nelson, OR Coop. Wildl. Res. Unit, pers. com.; Cummins, Wash. Dept. of Wildl., pers. com.; Burger 1990; Singer et al. 1988). Evidence of tree nesting in old-growth forests has been documented by: (1) Actual tree nests in old-growth trees located in California, Oregon, Washington, British Columbia, and southeast Alaska; (2) stranded downy young and fledglings found on the ground in or near old-growth forests; (3) murrelet concentrations offshore from old-growth and mature forests during the nesting season, and; (4) numerous sightings and aural detections of marbled murrelets flying in or adjacent to old-growth and mature forests (Marshall 1988). Furthermore, the bird is cryptically colored and lacks a leg structure typical of burrowing alcids.

Twelve tree nests have been located in North America: three each in Washington and California, four in Oregon, and one each in Alaska and British Columbia. All of these nests were located on large, moss covered limbs, associated with old-growth or mature trees. Stands containing nest trees were composed of large trees with open crowns. Nests were located high above ground and usually had good overhead protection; such locations would seem to allow easy access to the exterior of the forest. Nest sites were located in old-growth redwood (*Sequoia sempervirens*) stands in California and in stands dominated by Douglas-fir (*Pseudotsuga menziesii*) in Oregon and Washington. In Alaska, the nest was located in a mountain hemlock (*Tsuga mertensiana*) in an old-growth hemlock stand. In British Columbia, the nest tree was located in an old-growth stand of Sitka spruce (*Picea sitchensis*).

Small numbers of nestlings or flightless young have been found throughout the subspecies' range. Carter and Sealy (1987) reported that 8 of 10 downy young and 20 of 31 fledglings from throughout the range were located in old-growth coniferous forests, with the remaining being adjacent or near to old-growth forests.

Marbled Murrelet Detections and Old-growth Habitat

Significantly higher detection rates for marbled murrelets have been observed in old-growth forests compared to mixed-age and young forests in California, Oregon, and Washington (Ralph *et al.* 1990; Nelson 1990; Hamer 1990). The number of detections in California were also greater in larger stands of old-growth (greater than 500 acres) than in smaller stands (less than 100 acres), with the majority of transects near stands less than 60 acres having no detections (Paton and Ralph 1988, Ralph *et al.* 1990). Concentrations of murrelets offshore were almost always adjacent to old-growth forests on-shore. Where old-growth forests were absent, murrelets were absent offshore (Speich *et al.* 1988, Nelson 1990, Ralph *et al.* 1990).

Marbled Murrelet Detections and Forest Fragmentation

In Washington, marbled murrelet detections increased when the percent of old-growth/mature forests available made up over 30 percent of the landscape. Similarly, detections of murrelets decreased when the percent of clearcut/meadow available on the landscape increased above 25 percent (Hamer 1990). Nelson (1990) found that the number of detections were significantly lower in the highly fragmented Oregon Coast Range, compared to detection rates documented by Paton and Ralph (1988) in a less fragmented area in northern California.

Population Size

Washington's breeding population is estimated at about 5,000 birds (Speich et al. 1988). Fewer than 5,000 birds inhabit coastal Oregon (Marshall 1988, Varoujean and Williams 1987) with the most recent estimates being less than 1,000 pairs (Nelson, OR Coop. Wildl. Res. Unit, pers. com.). Biologists in California have conducted the most recent extensive inventories and estimate about 2,000 individuals, or fewer than 1,000 pairs, are present in the state during the breeding season (Marshall 1988). Marbled murrelets in British Columbia appear to occupy the entire length of the coast. The most thorough censuses have been done in Barkley and Clayoquot sounds on Vancouver Island and, based on these census results and other counts, it is estimated that there are approximately 20,000 to 45,000 breeding birds in British Columbia (Kaiser, Canadian Wildl. Serv., pers. com.; Rodway and COSEWIC 1990). The population in Alaska is not well understood, but has been estimated to be from 50,000 to more than 250,000; the greatest densities occur in southeast Alaska (Mendenhall 1988).

Seasonal changes (winter to summer) in population distribution and numbers are evident, indicating local migration. Breeding populations are discontinuously distributed throughout the forested portion of the range and gaps exist between separate nesting aggregations. Nesting aggregations are concentrated in remaining patches of old-growth and old-growth/mature forests. Small numbers of isolated birds exist between these concentrated aggregations, however the breeding status of these birds is unknown. A large break in the breeding distribution is located at the southern portion of the range in California, where about 300 miles separate southern breeding populations in San Mateo County from the next site to the north in Humboldt County (Humboldt Redwoods State Park). This unpopulated reach contained marbled murrelets prior to extensive logging (Paton and Ralph 1988). Another gap is located between the Olympic Peninsula in Washington and Tillamook County in Oregon. The degree of genetic exchange among marbled murrelets in the northern and southern portions of the subspecies' range is unknown.

The principal factor affecting the marbled murrelet throughout the southern portion of its range (from California north to British Columbia) is the loss of old-growth and mature forests. In Oregon, historic records show that marbled murrelets were consistent summer residents, particularly in Lincoln, Tillamook, and Lane counties (Gabrielson and Jewett 1940). That is no longer true in Tillamook County, where nearly all of the old-growth forests near the coast have been cut, or lost due to fire. The species is no longer found in significant numbers during the nesting season near the mouth of the Columbia River, where old-growth forests have been cut. Loss of old-growth forests due to timber harvest also takes place in southeast Alaska, although the degree to which Alaskan populations are affected is unknown.

Old-growth and mature forests have declined throughout the range of the marbled murrelet as a result of commercial timber harvest, with additional losses from natural causes such as fire, windthrow, etc. Current estimates of 7.1 million acres of old-growth and mature forests in western Oregon and Washington indicate a reduction of over 60 to 90 percent in the past 190 years (USDA 1989). Old-growth forests in the douglas-fir/mixed conifer region of northwestern California may

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have undergone a similar reduction of about 45 to 60 percent since the mid-1800's (Laudenslayer 1985; Fox 1988; California Department of Forestry and Fire Protection 1988). This acreage is distributed over a broader geographic area than is occupied by the marbled murrelet but the amount and rate of habitat loss are similar within the murrelet's range.

Most suitable nesting habitat (old-growth and mature forests) on private lands within the range of the subspecies in Washington, Oregon, and California has been eliminated by timber harvest (Green 1985, Norse 1988, Thomas et al. 1990). Remaining tracts of potentially suitable habitat on private lands throughout the range are subject to continuing timber harvest operations.

Petition Process Background

The National Audubon Society submitted a petition to the Service on January 15, 1988, to list the California, Oregon, and Washington populations of the marbled murrelet as a threatened species. Section 4(b)(3)(A) of the Act requires that, to the maximum extent practicable, within 90 days of receipt of a petition to list, delist, or reclassify a species, a finding be made as to whether or not substantial information has been presented indicating that the requested action may be warranted. The 90-day finding stating that the petition had presented substantial information to indicate that the requested action may be warranted was published in the **Federal Register** on October 17, 1988 (53 FR 40479). Because of the increased research efforts and the amount of new data available, the status review period was reopened, with the concurrence of the petitioners, from March 5, 1990 through May 31, 1990 (55 FR 4913).

The marbled murrelet has been listed on the Service's Notice of Review for vertebrate wildlife as a category 2 candidate species for listing. A category 2 candidate is one for which information contained in Service files indicates that preparation of a proposal to list the species is possibly appropriate but additional data is needed to support a listing proposal. The best available scientific and commercial data have now been analyzed and evaluated as a result of the recent status review for the marbled murrelet. These data contributed to the information on which was based the decision to propose this subspecies in California, Oregon and Washington for listing. The review included the pertinent data available from both published and unpublished sources. Unpublished sources included solicited progress and final reports, file data, meeting notes, letters, and personal contact with agencies, organizations, and individuals. This proposed rule to list the marbled murrelet as a threatened species in California, Oregon and Washington constitutes the 12-month finding that the petitioned action is warranted, in accordance with section 4(b)(3)(B) of the Act.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the marbled murrelet (*Brachyramphus marmoratus marmoratus*) in California, Oregon, and Washington, are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range.* Western Oregon and Washington were covered by approximately 24 to 28 million acres of forest at the time of modern settlement (early to mid-1800's), of which about 70 percent (14 to 19 million acres) is estimated to have been old growth (Society of American Foresters Task Force 1983, Spies and Franklin 1988, Morrison 1988, Norse 1988). Historical estimates for northwestern California are not as precise, but suggest there were between 1.3 and 3.2 million acres of old-growth Douglas-fir/mixed conifer forest and approximately 2.2 million acres of old-growth coastal redwood forest (Society of American Foresters Task Force 1983, Laudenslayer 1985, Fox 1988, California Department of Forestry and Fire Protection 1988, Morrison 1988).

Current estimates of 7.1 million acres of old-growth and mature forests in western Oregon and Washington indicate a reduction of over 60 to 90 percent in the past 190 years (USDA 1989). Old-growth forests in the Douglas-fir/mixed conifer region of northwestern California have undergone a similar reduction of about 45 to 80 percent since the mid-1800's (Laudenslayer 1985, Green 1985; Fox 1988; California Department of Forestry and Fire Protection 1988). Recent estimates (Spies and Franklin 1988, Morrison 1988, Norse 1988) suggest that this reported decline in historical old-growth habitat, in fact, may be as high as 83 to 86 percent. Reduction of the remaining old-growth and mature forest has not been evenly distributed over western Oregon, Washington and northwestern California. Harvest has been concentrated at the lower elevations and the Coast Ranges (Thomas et al. 1990), generally equating with the range of the marbled murrelet. Reduction of these older forests is largely attributable to timber harvesting and land conversion practices, although natural perturbations, such as forest fires and windthrow, have caused losses as well.

Forests generally require approximately 200 years to develop old-growth characteristics, however, forests in Washington, Oregon, and northern California have been subjected to, and are proposed for, intensive management with average cutting rotations of 70 to 120 years to produce wood at a non-declining rate (USDI 1984, USDA 1988). Cutting rotations of 40 to 50 years are used for some private lands. Current preferred timber harvest strategies on Federal lands and some private lands emphasize dispersed clearcut patches for even-aged management as the pattern of harvest. Thus, public forest lands that are intensively managed for timber production (cutting rotations of 70 to 120 years) are, in general, not allowed to develop old-growth characteristics. As a result of this short rotation age and the continued harvest of old-growth and mature forests, loss and fragmentation of remaining suitable nesting habitat for marbled murrelets will continue throughout the forested range of the subspecies under current management practices, except in reserved areas.

The geographic distribution of the marbled murrelet along the west coast of North America is discontinuous. About one-third of the bird's range is in California, Oregon, and Washington and contains less than 10 percent of the entire population (Marshall 1988). The gap in the present distribution in the southern portion of the range in California was apparently the result of extensive clearcutting of forests in the earlier half of this century that eliminated most nesting habitat (Paton and Ralph 1988, Carter and Erickson 1988). Other local breeding populations, especially between the Olympic Peninsula in Washington and Tillamook County in Oregon, may have been eliminated through loss of their nesting habitat—old-growth and mixed old-growth/mature coniferous forests within 50 miles of marine environments (Nelson, OR Coop. Wildl. Res. Unit, pers. com.). Logging of those forests within the subspecies' range has been extensive. Most remaining nesting habitat within the petitioned states is on Federal and State owned lands, as most nesting habitat on private lands has been eliminated. Under current forest management practices, logging of the remaining old-growth and old-growth/mature forests is likely to continue.

Canada has officially listed the marbled murrelet as a threatened species in British Columbia. The primary threat in British Columbia is the harvest of marbled murrelet nesting habitat (old-growth and mature forests). Secondary threats identified in the Canadian listing report included gill-net fishing and oil spills (Rodway and COSEWIC 1990).

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.* Not known to be applicable.

C. *Disease or Predation.* Predation on nests has been documented on several occasions. Predators include corvids (crows, ravens, and jays), great horned owls, and peregrine falcons. Although predators take nests (eggs and/or downy young), predation and disease are not known to be significant factors in the decline of marbled murrelet populations.

D. *Inadequacy of Existing Regulatory Mechanisms.* Marbled murrelets are protected from "take" by the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), but no protection is afforded habitat under this statute. Other laws and regulations to protect the subspecies' habitat in the United States have not been enacted by the Federal government. The marbled murrelet is identified as Sensitive by the USDA Forest Service and the Bureau of Land Management. California, Oregon, and Washington have legislative mandates and acts specific to listing and protecting species determined to be endangered or threatened. The marbled murrelet has not been declared endangered or threatened by any of these states, but is listed as a species of special concern in California by the California Department of Fish and Game and as Sensitive in Oregon and Washington by the Oregon Department of Fish and Wildlife and Washington Department of Wildlife, respectively. None of the above categories of status provide any mandated protection.

The National Forest Management Act of 1976 and its implementing regulations require the USDA Forest Service to manage National Forests to provide sufficient habitat to maintain viable populations of native vertebrate species, such as the marbled murrelet. These regulations define a viable population as one which "has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed" (36 CFR 219.19). Current management by the Forest Service in Oregon, Washington, and California (55 FR 23396), and Bureau of Land Management in Oregon protects proposed Habitat Conservation Areas (HCAs) for northern spotted owls (*Strix occidentalis caurina*) (Thomas et al. 1990). Some of these HCAs occur within portions of the range of the marbled murrelet (within 50 miles of the coast) in all three states. In Oregon and Washington, the HCAs, plus other set aside areas, would protect about 74 percent of the suitable marbled murrelet habitat, but only about 63 percent of the known occupied sites (USDA 1991). The majority of detections and number of birds in Oregon occur within 12 miles of the coast, where much of the suitable habitat and known sites are not protected (Nelson, OR Coop. Wildl. Res. Unit, pers. com.). In addition, since the relationship between patch size and occupancy or reproductive success through time is not known, long-term protection should not be assumed. Protection may not be adequate in such areas as Category 4 HCAs which are a maximum of 60 acres or sites on the edge of protected areas. Therefore, these HCAs and other set asides may not provide sufficient incidental protection for marbled murrelets. No analysis of HCA overlap with marbled murrelet nest stands has been completed for California.

On May 6, 1991, the Service proposed to designate 11.6 million acres as critical habitat for the northern spotted owl in Washington, Oregon and California (56 FR 20616). These critical habitat areas include most of the HCAs and add areas around and between them. It is not currently known to what extent these proposed critical habitat areas may provide additional protection for the marbled murrelet.

E. *Other Natural or Man-made Factors Affecting its Continued Existence.* Mortality from gill-net fishing and oil spills has had a negative impact on the marbled murrelet. Gill-net fishing is an annual occurrence in Washington and British Columbia. For example, about 1,200 gill-net licenses are issued each year in Washington. A gill-net fishery occurs in all areas of marbled murrelet concentrations in Washington (Speich et al. 1988). One study conducted in British Columbia along Vancouver Island documented gill-netting as responsible for killing approximately eight percent of the potential fall population of marbled murrelets (Carter and Sealy 1984). Gill-net fisheries exist in Washington but the mortality rate is unknown.

Marbled murrelets have a high susceptibility to mortality from oil spills because they tend to spend most of their time swimming on the sea surface and feeding in local concentrations close to shore. Oil spills are chance events but, depending on the location, extent, and season of spill, could have significant adverse effects on local or regional populations of marbled murrelets. The *Exxon Valdez* oil spill of 1989 occurred in Prince William Sound, Alaska, and adversely affected local populations of marbled murrelets (Piatt *et al.* 1990). Oil tanker use is substantial in coastal waters throughout the subspecies range. For the three-state area of this proposed rule, Puget Sound in Washington is a special concern.

Marbled murrelets are found both during the nesting season and during winter within areas affected by oil shipments. If approved, proposed oil exploration, possibly leading to production and increased movement of oil along the near-shore marine environment in Washington, Oregon, and California would increase the degree of threat from oil spills. Oiled marbled murrelets were reported in Washington during the *Seagate* oil spill of 1956 and during the *Arco Anchorage* oil spill of 1985 (Leschner and Cummins 1990). Several instances of marbled murrelet mortality due to oil spills have been documented in California, as well (Carter and Erickson 1988). Because the populations in Oregon, Washington, and California are small and locally concentrated, oil spills could result in local extirpations.

The marbled murrelet's reproductive strategy offers little opportunity for the population to rapidly increase in number. Murrelets may not reproduce every year, and pairs only lay one egg in a nest. Such a low reproductive rate is unlikely to yield a rapidly increasing population, or one that can easily recover once numbers have been depleted.

The Service has carefully assessed the best scientific and commercial data available and concluded that the marbled murrelet in California, Oregon, and Washington is threatened due to loss of mature and old-growth forests which provide suitable nesting habitat. Secondary threats include gill-net fisheries and oil spills. The degree of threat facing the marbled murrelet does not suggest that extinction is imminent, but continued loss of nesting habitat throughout the forested portion of its range, especially in California, Oregon, and Washington, indicates the species is likely to become endangered within the foreseeable future throughout a significant portion of its range.

The Act defines "endangered species" as any species which is in danger of extinction throughout all or a significant portion of its range. The term

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"threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

California, Oregon, and Washington constitute a significant portion of the marbled murrelet's range. In these states, the species is immediately threatened by the loss of nesting habitat (old-growth and mature forests). Although the proposed spotted owl HCAs in California, Oregon, and Washington would provide some protection, they would not provide sufficient protection for marbled murrelet nesting habitat. Critical habitat areas that have recently been proposed for the northern spotted owl may also provide some protection for the marbled murrelet, however, at this time it is not known to what extent. Mortality from gill-net fishing and the risk of mortality from oil spills are also threats, but these threats are not as immediate or as major as the loss of nesting habitat.

The status of marbled murrelets in Alaska is not well understood. Studies to be conducted during the summer of 1991 should provide information to better evaluate marbled murrelets in Alaska.

Critical Habitat

Critical habitat is defined as the specific areas within the geographical area currently occupied by a species on which are found the physical or biological features essential to the conservation of the species and that may require special management considerations or protection (16 U.S.C. 1532(5); 50 CFR 424.02(d)). Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)). Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is listed as endangered or threatened.

The Service finds that critical habitat for the marbled murrelet is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state the critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Much of the old-growth and mature forests from central California to southeast Alaska have been fragmented by logging and many stands are isolated from each other or are too small in size to provide support for nesting marbled murrelets. Information on size, spatial configuration, and juxtaposition of habitat blocks essential to the conservation of the marbled murrelet is not available at this time. Inland survey data on marbled murrelet presence is also lacking throughout much of the species' range. Proposed HCAs for the spotted owl encompass some of the nesting areas currently utilized by marbled murrelets in California, Oregon, and Washington, but the extent of the overlap is not completely known, as is the extent of long-term commitment to HCA management. Additional information on nest sites, flight corridors, and other aspects of marbled murrelet behavior is needed to determine critical habitat.

During the comment period on the proposed listing, the Service will seek additional agency and public input on critical habitat, along with information on the biological status of the threats to the marbled murrelet. The Service will use this and other information in formulating a decision on critical habitat designation for the marbled murrelet.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recover actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Regulations governing these conferences are found at 50 CFR 402.10. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service and Bureau of Land Management have active timber sale programs in Washington, Oregon and California, whereby private timber companies bid for timber on Federal land. A substantial portion of these timber sales occur in old-growth/mature forests. The Forest Service and Bureau of Land Management would review and assess the potential impacts of these timber sales on the murrelet, and would consult with the Service on these sales to ensure compliance pursuant to section 7 of the Act.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States, to take (defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these activities), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any threatened species not covered by a special rule. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing threatened species permits are provided in 50 CFR 17.32. Unless otherwise provided by special rule, such permits are available for scientific purposes, to enhance the propagation or survival of the species, for economic hardship, zoological exhibition, educational purposes, special purposes consistent with the Act, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule, are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) of this species;

(2) The location of any additional populations of this species;

(3) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(4) Additional information concerning the range, distribution, and population size of this species; and

(5) Current or planned activities in the subject area and their possible impacts on this species.

Final action concerning this proposal will take into consideration the comments and any additional data received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Endangered species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the field supervisor, Portland Field Station (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, U.S. Fish and Wildlife Service, Portland Field Station, 2600 S.E. 98th, suite 100, Portland, Oregon 97266.

Authors

The primary authors of this proposed rule are Gary S. Miller, U.S. Fish and Wildlife Service (see **ADDRESSES** section); telephone 503/231-6179 or FTS 429-6179; and Robert Ruesink, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 911 NE 11th Avenue, Portland, Oregon, 97232 (503/231-6131 or FTS 429-6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds							
Murrelet, marbled	*Brachyramphus marmoratus*	U.S.A. (CA, OR, WA, AK); Canada (British Columbia).	WA, OR, CA	T		NA	NA

Dated: June 14, 1991.

Richard N. Smith,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-14374 Filed 6-19-91; 8:45 am]

BILLING CODE 4310-55-M

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Notices

Federal Register
Vol. 56, No. 119
Thursday, June 20, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

Dated: June 14, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questons about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

New Collection-Emergency

- Agricultural Stabilization and Conservation Service

7 CFR 1427—Upland Cotton First Handler and Domestic User/Exporter Agreement and Payment Program
CCC–1044 and CCC–1045
On occasion; Weekly
Farms; Small businesses or organizations; 29,000 responses; 14,500 hours
Janice Zygmont, (202) 447–6734

Reinstatement

- Farmers Home Administration

7 CFR 1955–A, Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property
Form FmHA 1955–1
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 10,410 responses; 5,917 hours
Jack Holston, (202) 382–9736.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 91–14665 Filed 6–19–91; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Ketchikan Pulp Company 50-Year Timber Sale Contract, Tongass National Forest, Ketchikan Area, Revillagigedo Island

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare a site-specific Environmental Impact Statement (EIS) as part of its on-going commitment to provide timber to Ketchikan Pulp Company (KPC) under the terms of an existing timber sale contract. The Record of Decision (ROD) will decide how to provide sufficient harvest units, roads, and associated timber harvesting facilities to meet the operational needs of KPC for an estimated 2 to 3 year period. Harvest units will be located within the primary sale area boundaries, mainly on Revillgigedo Island.

DATE: Comments concerning the scope of the analysis should be received by July 15, 1991.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis must be sent to Dave Rittenhouse, Forest Supervisor, Tongass National Forest, Ketchikan Area, Federal Building, Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Walter Dortch, Planning Staff Officer, Tongass National Forest, Ketchikan Area, Federal Building, Ketchikan, AK 99901, phone 907–225–3101.

SUPPLEMENTARY INFORMATION: The Agency proposes to authorize harvest of approximately 200 MMBF of timber, and to construct roads and facilities necessary to transport this timber, to salt water. The authorization is expected to include harvest of approximately 8,000 acres of land within Visual Quality Units (VCU's) 732, 733, 735, 736, 737, 738, 739, and 740, and will be made available to KPC, under the terms of the existing long-term timber sale contract, in several offerings.

The Responsible Official for this EIS is the Regional Forester, Michael A. Barton, who must decide on various unit locations and acreage necessary to meet the objectives of the EIS. He will select from a full array of alternatives presented in the EIS, including the alternative of "no action". Site-specific issues for this project are expected to include:

1. Do the harvest units being evaluated in the alternatives provide for an economically viable offering under the terms of the long-term timber sale contract?

2. What are the projected impacts to subsistence users of the land being proposed for timber harvest if harvest is authorized?

3. What are the effects of the harvest of timber and associated road construction on forest resources such as visual quality, fish and wildlife habitat, and upon wildlife species thought to be dependent upon old-growth habitat. Mitigation measures, as well as standards and guidelines for setting harvest units and roads, will be prescribed in the EIS for each harvest unit and road being evaluated.

4. What are the projected cumulative environmental effects resultant from harvesting individual units and roads within these prescription? Do these prescriptions provide results consistent with the expectations of the Tongass National Forest Land Management Plan Land Use Designations for the sites being evaluated?

5. The Tongass Timber Reform Act of 1991 provides for certain desired forest conditions with respect to proportionality and fisheries protection. Do the harvest units and roads proposed provide for those desired forest conditions?

Public participation will be especially important at several points during the analysis. The first point is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in, or affected by, the proposed action. This input will be used in preparation of the Draft Environmental Impact Statement (DEIS). Scoping is to begin in June 1991. Public meetings are planned for Ketchikan in September 1991 and August 1992. Subsistence hearings, as provided for in ANILCA, are planned for July 1992. The DEIS should be filed with EPA April 1992, and the final EIS filed in December 1992.

The comment period on the DEIS will be 45 days from the date the Environmental protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in this proposed action participate at this time. To be the most helpful, comments on the DEIS statement should be as specific as possible, and may address the adequacy of the statement or the merits of the alternatives discussed. (See The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of DEIS statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v *Hodel, Harris*, (9th Circuit, 1986), and *Wisconsin Heritages, Inc.* v *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Permits required for implementation include the following:

1. U.S. Army Corps of Engineers:
—Approval of the discharge of dredged or fill materials into waters of the United States, under section 404 of the Clean Water Act.
—Approval of the construction of structures or work in navigable waters of the United States, under section 10 of the River and Harbor Act of 1899.

2. Environmental Protection Agency:
—National Pollutant Discharge Elimination System (402) permit.
—Review Spill Prevention Control and Countermeasure Plan.

3. State of Alaska, Department of Natural Resources:
—Tideland Permit and Lease or Easement.

4. State of Alaska, Department of Environmental Conservation:
—Solid Waste Disposal Permit.
—Certification of Compliance with Alaska Water Quality Standards (401 Certification).

Michael A. Barton, Regional Forester, Region 10, Box 21628, Juneau, Alaska 99802, is the responsible official. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the ROD.

Dated: June 11, 1991.

Michael A. Barton,
Regional Forester.

[FR Doc. 91–14703 Filed 6–19–91; 8:45 am]
BILLING CODE 3410–11–M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*)

GA–210—Sandy Point Horse & Tack Auction, Lizella, Georgia.

MO–270—Norwood Public Auction Yards, Inc., Norwood, Missouri.

NV–103—Fallon Livestock Auction, Fallon, Nevada.

Pursuant to the authority under section 302 of the Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, room 3408-South Building, U.S. States Department of Agriculture, Washington, DC 20250, by June 29, 1991.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 14th day of June, 1991.

Daniel L. Van Ackeren,
Acting Director, Livestock Marketing Division.

[FR Doc. 91–14761 Filed 6–19–91; 8:45 am]
BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Under Secretary for Economic Affairs and Administrator, Economics and Statistics Administration; Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009; Establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101–6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census Related Activities for 2000–2009 is in the public interest in connection with duties imposed on the Department by law.

The Committee will advise the Secretary, through the Under Secretary for Economic Affairs, on how the Department might best conduct the year 2000 decennial census of population and housing.

The Committee will consist of twenty-five (25) members to be appointed by the Secretary to assure a balanced representation among private sector census data users, minority groups, professional associations, the Congress, State and local governments, and other organizations. The Committee membership is designed to be as encompassing as possible of all perspectives on decennial censuses.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, fifteen (15) days from the date of publication of this Notice.

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Interested persons are invited to submit comments regarding the establishment of this Committee to Harry A. Scarr, Deputy Assistant Secretary for Statistical Affairs, Economics and Statistics Administration, room 4836, Department of Commerce, Washington, DC 20230. Telephone: 202–377–2760; Fax: 202–377–0432.

Dated: June 10, 1991.

Michael Darby,

Under Secretary and Administrator.

[FR Doc. 91–14558 Filed 6–19–91; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket 33–91]

Foreign-Trade Zone 125—South Bend, Indiana; Application for Subzone; Coachmen Compact Recreational Vehicle Plant, Middlebury, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Joseph County Airport Authority, grantee of FTZ 125, requesting special-purpose subzone status for a proposed compact recreational vehicle (RV) assembly operation at the plant of Coachmen Recreational Vehicle Company (Coachmen), (subsidiary of Coachmen Industries, Inc.) located in Middlebury, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 31, 1991.

The Coachmen plant (468,636 sq. ft. on 130 acres) is located at 423 North Main St., Middlebury, Indiana, some 50 miles southeast of Chicago and 30 miles east of South Bend, Indiana. While the facility is currently used to assemble a variety of vehicles, including Type A RVs and camping trailers, subzone status is being requested only for the proposed manufacture of compact (micro-mini) RVs (<6,000-lb. GVW). The company projects that the new operation will employ some 85 persons in the first year of operation, rising to 300 at full production. The micro-mini RV would be built on a foreign-sourced light pickup truck cab/chassis. All other components and materials would involve domestic or duty-paid merchandise.

Zone procedures would exempt Coachmen from Customs duty payments on the foreign light pick-up truck cab/chassis used in vehicles produced for export. On its domestic sales, the company would be able to choose the lower finished vehicle duty rate (2.5 percent) rather than the pickup truck cab/chassis rate (25 percent). The application indicates that zone savings will help Coachmen improve its international competitiveness and increase export sales. Two other domestic RV plants currently operate under zone procedures: The Forest City, Iowa facility of Winnebago, Industries, Inc. (FTZ Subzone 107A, Board Order 273, 49 FR 35971, 9/13/84); and, the Perris, California facility of National RV (FTZ Subzone 50C, Board Order 484, 55 FR 35159, 8/28/90).

In accordance with the Board's regulations, an examiners committee has been approved to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Richard Roster, District Director, U.S. Customs Service, North Central Region, suite 217, 610 South Canal Street, Chicago, Illinois 60607; and Colonel Richard Kanda, District Engineer, U.S. Army Engineer District Detroit, McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226.

Comments concerning the proposed subzones are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 29, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, 1406 Mid-Continental Plaza Bldg., 55 E. Monroe St., Chicago, Illinois 60603.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: June 13, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–14746 Filed 6–19–91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 19–91]

Foreign-Trade Subzone 78A, Nissan Auto/Truck Plant, Smyrna, TN; Application for Expansion; Extension of Public Comment Period

The comment period for the above case, requesting authority to expand the subzone and the scope of manufacturing authority for Foreign-Trade Subzone 78A of Nissan Motor Manufacturing Corporation U.S.A. (56 FR 16067, 4/19/91), is extended to August 6, 1991, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 13, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–14747 Filed 6–19–91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–201–803]

Preliminary Negative Determination of Critical Circumstances; Steel Wire Rope From Mexico

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: June 20, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–4136.

Preliminary Negative Determination of Critical Circumstances

The Department of Commerce (the Department) published its preliminary determination of sales at less than fair value in this investigation on April 22, 1991 (56 FR 16317). On May 14, 1991, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise. A supplement to that allegation was filed on May 28, 1991. Petitioner and respondent, Grupo Industrial Camesa, S.A. de C.V. (Camesa), submitted case briefs on June 3, 1991 to the Department, which included comments on the critical circumstances allegation. On June 4, 1991, we also received comments on the critical circumstances allegation from Cablesa S.A. de C.V., another Mexican manufacturer of the subject merchandise.

In accordance with 19 CFR 353.16(b)(2)(ii), when a critical circumstances allegation is filed later than 20 days before the scheduled date of the preliminary determination (as was done in this case), we must issue our preliminary determination not later than 30 days after the allegation is filed.

Section 733(e)(1) of the Act provides that the Department will preliminary determine that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

In this investigation, we relied on U.S. Commerce Department import data to reach this determination. We did not request monthly shipment data from Camesa because, given that Camesa failed to correct the deficiencies in its questionnaire response that resulted in a preliminary determination based on the best information available, verification of the accuracy of any company-specific shipment data would have been unlikely. Moreover, the Harmonized Tariff Schedule (HTS) numbers under which the subject merchandise enters the United States are exclusive to the subject merchandise and are thus a reliable indicator as to whether or not there have been massive imports of steel wire rope since the filing of the petition.

Pursuant to 19 CFR 353.16(g), we compare the export volume for a minimum three-month period beginning with the month the petition was filed (the comparison period) with a minimum three-month period prior to the filing of the petition (the base period). Since complete import data are available to extend the comparison period to five months, we compared that five-month period to a five-month base period.

Petitioner has argued that we should include the month prior to filing of the petition, October 1990, in the comparison period, rather than the base period, contending that the Mexican producers of the subject merchandise had prior knowledge, through petitioner's extensive market research activities, that an antidumping petition would be filed. Thus, petitioner contends that the Mexican producers capitalized on this advance knowledge and shipped large quantities of the merchandise as early as October 1990 in order to avoid prospective antidumping duties. We find that there is no information on the record, apart from petitioner's claim, to support the contention that Mexican producers had prior knowledge of the petition. Consequently, we have not changed our base or comparison periods.

Our analysis of the imports of steel wire rope from Mexico shows that the volume of imports increased by less than five percent from the base period to the comparison period. Under 19 CFR 353.16(f)(2), unless imports of the subject merchandise have increased by at least 15 percent, we will not consider the imports massive. Consequently, we have found there have not been massive imports of the subject merchandise since the filing of the petition. Therefore, we do not need to consider whether there is a history of dumping or whether importers of steel wire rope knew or should have known that it was being sold at less than fair value. Thus, we preliminary determine that critical circumstances do not exist with respect to imports of steel wire rope from Mexico. We will make a final determination of critical circumstances by July 1, 1991.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

Public Comment

Since this determination is being made subsequent to the due dates for public comment as published in our notice of preliminary determination of sales at less than fair value, we will accept written comments limited to this preliminary determination on critical circumstances if they are submitted to the Assistant Secretary for Import Administration no later than June 20, 1991.

This determination is published pursuant to section 733(f) of the Act.

Dated: June 13, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–14748 Filed 6–19–91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Correction.

In notice document 91–11690 beginning on page 22844 in the issue of Friday, May 17, 1991, make the following correction:

On page 22844 in the second column under the section Members (in addition to applicant), revise the member name "Douglas County, Inc." to read "Douglas County, Inc. dba Douglas County Forest Products."

Dated: June 14, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91–14605 Filed 6–19–91; 8:45 am]

BILLING CODE 3510-DR-M

Applications; for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91–076. *Applicant:* Wake Forest University, Department of Chemistry, Winston-Salem, NC 27109. *Instrument:* Stopped-Flow Spectrofluorimeter, Model DX.17MV/S. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for research focussing on the chemistry of decomposition in aqueous solutions of N-alkyl-N'-nitro-N-nitrosoquanidines and alkane diazotates. The purpose of the research project is to understand the aqueous reaction chemistry of intermediates that are central to the bioactivity of a wide range of carcinogenic and cancer chemotherapeutic agnets. Specific interest is in the lifetimes of these species in aqueous solutions and the mechanisms by which they decompose. There is the need to know whether there are conditions—particular reagents or pH effects—that stimulate the decomposition of these intermediates. It is also essential to be able to

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characterize the physical nature of the intermediates under the reaction conditions in terms of their ultraviolet and visible absorption spectra for the purposes of identification of these and related species in other reaction types. *Application Received by Commissioner of Customs:* May 14, 1991.

Docket Number: 91-077. *Applicant:* Baylor College of Medicine, One Baylor Plaza, Houston, TX 77030. *Instrument:* Automated Breath ^{13}Carbon Analyser System. *Manufacturer:* Europa Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used to determine the presence of Helicobacter pylori infection in individuals through the use of a non-invasive breath test. Experiments to be conducted deal with the efficacy of selected drugs in the eradication of the organism in order to find a way to prevent relapse of gastric and duodenal ulcers and eliminate the potential for development of gastric carcinoma. In addition, the instrument will be used for hands-on training for postgraduate scientists in the operation of the instrument and interpretation of isotope ratio data. *Application Received by Commissioner of Customs:* May 15, 1991.

Docket Number: 91-078. *Applicant:* Michigan State University, Department of Mechanical Engineering, Engine Research Facility, Engineering Building, East Lansing, MI 48824. *Instrument:* Excimer Laser, Model EMG-160T. *Manufacturer:* Lambda Physik, Inc., West Germany. *Intended Use:* The instrument will be used to measure radical species such as OH, CH, CN, NH, NO_x, SO_x and liquid/vapor phase of fuel-air mixtures in combustion engine and gas turbines. *Application Received by Commissioner of Customs:* May 20, 1991.

Docket Number: 91-080. *Applicant:* National Institutes of Standards and Technology, Nuclear Methods Group, Gaithersburg, MD 20899. *Instrument:* Automatic Sample Changer, Model ASC-50. *Manufacturer:* Tracerlab Instruments, West Germany. *Intended Use:* The instrument will be used with two germanium radioactivity detectors coupled with multi-channel analyzers, which measure the pulse height of gamma-ray emissions from samples made radioactive in the NIST nuclear reactor. The materials or phenomena to be studied include elemental foils for reactor fluence measurement research; trace elements in NIST superconductor materials, both starting materials and the final superconductor; trace elements in biological Standard Reference Materials such as total diet materials and apple leaves; coal fly ash samples for environmental research; and measurement of ultrahigh precision in trace element analysis through use of high counting rates, and the effect of high count rates on dead time errors. *Application Received by Commissioner of Customs:* May 21, 1991.

Docket Number: 91-081. *Applicant:* University of Nebraska, Department of Chemistry, Lincoln, NE 68588-0304. *Instrument:* (2) Computer System for Upgrade of Mass Spectrometers. *Manufacturers:* Kratos Analytical, United Kingdom. *Intended Use:* The instruments are to be integral parts of two mass spectrometers which will be used to obtain (1) high resolution mass spectra of a wide variety of compounds including: Natural products of plant and animal origin and products of chemical synthesis and (2) accurate molecular masses for chemical substances that are not amenable to EI and CI mass spectrometry. *Application Received by Commissioner of Customs:* May 21, 1991.

Docket Number: 91-082. *Applicant:* University of North Carolina at Chapel Hill, Department of Biochemistry and Biophysics, Campus Box 7260, Chapel Hill, NC 27599-7260. *Instrument:* Cryogenic Airstream Device. *Manufacturer:* Stoe Diffraction Systems, United Kingdom. *Intended Use:* The instrument will be used for studies of single crystals of proteins and other biological macromolecules by X-ray diffraction at very low temperatures in order to measure their diffraction data with greatly reduced radiation damage. The overall goal of the research is to specify the atomic positions of the non-hydrogen atoms in the structures for the purpose of studying enzyme mechanisms and other questions relevant to biotechnology. *Application Received by Commissioner of Customs:* May 22, 1991.

Docket Number: 91-083. *Applicant:* Fox Chase Cancer Center, 7701 Burholme Avenue, Philadelphia, PA 19111. *Instrument:* Electron Microscope, Model EM-900. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for the study of ultrastructural details of human tumors, normal mortal and immortal human breast epithelial cells in culture, and cells treated with carcinogens or transfected with oncogenes. Investigations will be conducted for identification of (1) the cell of origin of human tumors, (2) the ultrastructural characteristics defining early changes of cell transformation and (3) specific cytoskeletal changes and modifications in cellular organelles relating to a process of cell immortalization, chemical carcinogen-induced transformation, and activation of oncogenes. In addition, the instrument will be used in courses entitled, "Tumor diagnosis by electron microscopy" to provide pathologists with training in electron microscopy techniques. *Application Received by Commissioner of Customs:* May 23, 1991.

Docket Number: 91-084. *Applicant:* University of California, Irvine, 250 Public Service Building, Irvine, CA 92717. *Instrument:* Time Resolved Picosecond Diffraction X-ray Streak Camera. *Manufacturer:* Kentech, United Kingdom. *Intended Use:* The instrument will be used to study the dynamics of structural deformation materials after laser illumination. Properties such as melting, isomerization and lattice deformation will be investigated for the purpose of devloping a sensitive picosecond detector and understanding molecular structural changes as a function of time. In addition, the instrument will be used in a course on physical chemistry research on ultrafast spectroscopy to teach the fundamentals of layers and time resolved x-ray diffraction to students and postgraduates. *Application Received by Commissoner of Customs:* June 5, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-14749 Filed 6-19-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of an amendment to a fishery management plan.

SUMMARY: NOAA announces approval of Amendment 3 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). The amendment contains definitions of overfishing for Atlantic mackerel, *Loligo* squid, *Illex* squid, and butterfish. No rulemaking is involved in this action.

EFFECTIVE DATE: June 13, 1991.

ADDRESSES: Copies of the amendment and environmental assessment are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 21, 15 Federal Building, 300 S. New Street, Dover, Delaware 19901-6790.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Resource Management Specialist, 508-281-9273.

SUPPLEMENTARY INFORMATION: The mackerel, squid, and butterfish fisheries are managed under the FMP prepared by the Mid-Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 655 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended. In accordance with the Guidelines for Fishery Management Plans (50 CFR part 602), Amendment 3 adds to the FMP an objective and measurable definition of overfishing.

Amendment 3 was submitted by the Council for review and approval by the Secretary of Commerce (Secretary) on March 13, 1991. A notice of availability of Amendment 3 and request for comments was published in the **Federal Register** on March 21, 1991 (56 FR 11983). No comments were received.

Under the FMP, as revised by Amendment 3, overfishing is defined as follows:

Atlantic Mackerel

Overfishing is defined as the catch of Atlantic mackerel exceeding the annual quota for the species. The FMP provides for setting of annual quota for the species. The FMP provides for setting of annual quotas through quantitative biological parameters. The Initial Optimum Yield, Domestic Annual Harvest, Domestic Annual Processing, Joint Venture Processing, and the Total Allowable Level of Foreign Fishing are determined yearly by the Director, Northeast Region, NMFS, (Regional Director) and the Council based on the best scientific information available. The procedures for setting of annual quotas are intended to prevent overfishing.

Loligo and Illex Squid, and Butterfish

Overfishing for *Loligo pealei, Illex illecebrosus,* and butterfish is defined as occurring for a species when the 3-year moving average of pre-recruits from the Northeast Fisheries Center's autumn bottom trawl survey (mid-Atlantic to Georges Bank) falls within the lowest quartile of the time series (1967 to present for *Loligo,* 1968 to present for *Illex* and butterfish). This means, for example, that when the 1990 index is available (and thus a 24-year time series exists) that the sixth lowest annual index will be compared to the average of the 1988, 1989, and 1990 indices. If the 3-year average is below the sixth lowest index, overfishing will be defined as occurring. Quotas for these species are set annually by the Regional Director in accordance with the FMP. Annual Quotas can be set within the range of 0 to 44,000 metric tons (mt) for *Loligo,* 0 to 33,000 mt for *Illex,* and 0 to 16,000 mt for butterfish, based on the estimated maximum sustainable yields (MSY).

The basic assumption for these definitions is that in periods of sustained poor recruitment (a 3-year moving average of years), spawning stock, and thus fishable biomass, will decline. In order to reduce the harvest rate of spawners during periods of low spawning biomass, allowable landings (relative to the historical average as the basis for MSY and acceptable biological catch calculations) will be reduced.

The Northeast Fisheries Center NMFS (Center), has certified these definitions to be acceptable under the revised guidelines for fishery management plans with the following clarification: That the "annual quota" mentioned in the definition refers to the allowable biological catch (ABC), which in turn is a portion of the largest possible catch in the upcoming fishing years from the latest agreed upon stock assessment (as produced by the center), while maintaining a spawning stock biomass of 600,000 mt in the following year. The overfishing definition, therefore, is based on maintaining a minimum spawning stock biomass of 600,000 mt while allowing for a predicted Canadian catch and a fishing mortality rate that fluctuates according to the size of the stock. The Council concurred in this interpretation and will include it in Amendment 4 to the FMP, which is currently under preparation.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that Amendment 3 is necessary for the conservation and management of the Atlantic mackerel, squid, and butterfish fisheries and that it is consistent with the Magnuson Act and other applicable law.

Because Amendment 3 requires no implementing regulations, 5 U.S.C., section 553 of the Administrative Procedure Act, E.O. 12291, and the Regulatory Flexibility Act do not apply to this notice of approval.

This amendment does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

The Council prepared an environmental assessment (EA) for this amendment that discusses the impact on the environment. Based on the EA, the Assistant Administrator found that there will be no significant impact on the environment as a result of this action. A copy of the EA and finsind of no significant impact may be obtained from the Council (see ADDRESSES).

This amendment does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Council determined that Amendment 3 is consistent to the maximum extent practicable with the approved coastal zone management programs of the applicable states. Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, New York, and Pennsylvania submitted letters of agreement with this determination. None of the other states commented, and; therefore, consistency is inferred.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 13, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 91-14656 Filed 6-19-91; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)-55, for the transfer of fuel elements for the JRR-3 research reactor from the Federal Republic of Germany to Japan, containing 66.875 kilograms of uranium, enriched to 19.95 percent in the isotope uranium-235.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

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Issued in Washington, DC on June 17, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91-14717 Filed 6-19-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-483-000, et al.]

Arizona Public Service Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 13, 1991.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER91-483-000]

Take notice that on June 10, 1991, Arizona Public Service Company (Arizona) tendered for filing an Off-Peak Power Sales Agreement between Arizona Power Pooling Association (APPA) and Arizona executed on April 11, 1991.

This Agreement provides for the sale of seasonal off-peak capacity and energy by Arizona and APPA for a period of ten years commencing on June 1, 1991.

Copies of this filing are being served upon APPA, Electric District No. 2, and the Arizona Corporation Commission.

Comment date: June 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Electric Company, et al.

[Docket No. ER91-482-000]

Take notice that on June 10, 1991, Pennsylvania Electric Company, Metropolitan Edison Company and Jersey Central Powers & Light Company (collectively, the GPU Companies) tendered for filing a new Schedule 5.011 to the GPU System Power Pooling Agreement as a change in rate schedule. Schedule 5.011 provides for transmission service charges among the GPU Companies for intrasystem transmission services under the Power Pooling Agreement to be provided for the delivery of capacity and energy being purchased by Metropolitan Edison Company and Jersey Central Power & Light Company from Cleveland Electric Illuminating Company' share of the Seneca Pumped Storage Hydro Electric Plan under a certain Power Supply Agreement dated January 3, 1990, which has been accepted for filing in Docket No. ER90-588. The GPU Companies have requested a waiver of the Commission's Regulations to permit the rate schedule to become effective May 1, 1991, coincident with the effective date of sales under the Seneca Power Supply Agreement.

Copies of the filing have been served on the Pennsylvania Public Utility Commission and Board of Public Utilities of the State of New Jersey.

Comment date: June 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Orange and Rockland Utilities, Inc.

[Docket No. ER88-112-000]

Take notice that on June 7, 1991, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing an amendment to Orange and Rockland's previous filing of March 27, 1991, pursuant to the Federal Energy Docket No. ER88-112-000, of an executed Service Agreement between Orange and Rockland and Delaware Valley Cement Block Co., Inc.,

Comment date: June 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Company

[Docket No. ER91-481-000]

Take notice that on June 7, 1991 Pennsylvania Power & Light Company (PP&L) tendered for filing a Capacity Credit Sales Agreement (Agreement) between PP&L and Baltimore Gas and Electric Company (BG&E), which complements the Capacity and Energy Sales Agreement, dated January 26, 1988, as supplemented by a First Supplemental Agreement dated August 10, 1988, as supplemented by a Second Supplemental Agreement dated May 31, 1989, and as further supplemented by the Third Supplemental Agreement dated May 31, 1991, between PP&L and BG&E (the Capacity and Energy Sales Agreement) on file with the Commission as the Company's Rate Schedule FERC No. 92, as supplemented. The Agreement provides for the sale by PP&L to BG&E's use in the Pennsylvania-New Jersey-Maryland (PJM) Interconnection's planned and/or accounted for installed capacity accounting.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and Section 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 10, 1991. Service under the Agreement is expected to commence on June 10, 1991.

PP&L states that a copy of its filing was served on BG&E, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: June 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company

[Docket No. ER91-480-000]

Take notice that on June 7, 1991, Jersey Central Power & Light Company tendered for filing proposed changes in its currently effective rate schedule for supplemental and wheeling service to its wholesale customers and its contract for service to Allegheny Electric Cooperative, Inc. Jersey Central states that the charges produce additional revenues of $3,022,349 on an annual basis.

JCP&L requests an effective date of August 7, 1991.

Copies of the filing were served upon each customer and upon the New Jersey Board of Public Utilities.

Comment date: June 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER79-150-017]

Take notice that on June 5, 1991, Southern California Edison Company (SCE) tendered for filing a Refund Report in the above-referenced docket pursuant to the Commission's order dated April 3, 1991.

Comment date: June 27, 1991, in accordance with Standard Paragraph E end of this notice.

7. D C Tie Inc.

[Docket No. ER91-435-000]

Take notice that on June 11, 1991, tendered for filing pursuant to Rule 215 of the Commission's Rules of Practice and Procedure, (18 CFR 385.215 (1990), an Amendment to its Petition filed on May 10, 1991. D C Tie's original Petition for Disclaimer of Jurisdiction Under section 201 of the Federal Power Act, Waivers, Blanket Approvals, and Order Accepting Rate Schedule was filed with the Commission on May 10, 1991. The original Petition sought certain waivers and blanket approvals under the Federal Power Act. In addition, D C Tie Inc., sought approval of its initial rate schedule, to be effective on July 10, 1991. The rate schedule provided for the sale of energy and capacity at agreed prices subject to a ceiling equal to the purchaser's alternative cost of energy. No contracts have been signed to the proposed rate schedule.

The Amendment to the Petition of D C Tie Inc., provides additional information which was requested by the Rate Filings Branch of the Commission. The additional information relates to the following areas: the ownership structure of D C Tie Inc.; the ownership's affiliation of lack of affiliation with any utility or inputs of the utility industry; and the ownership's agreements or lack of agreements with potential buyers or sellers. This Amendment also requests that the Commission waive the notice requirement and retain the July 10, 1991 effective date requested in the original Petition.

Comment date: June 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Interstate Power Company

[Docket No. ES91-35-000]

Take notice that on June 6, 1991, Interstate Power Company ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to 204 of the Federal Power Act seeking authorization to issue not more than $60 million of short-term promissory notes and/or commercial paper on or before December 31, 1992, with a final maturity date no later than December 31, 1993.

Comment date: July 5, 1991 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14675 Filed 6-19-91; 8:45 am]

BILLING CODE 6717-01-M

1. SEMASS Partnership

[Docket No. ER91-479-000]

June 11, 1991.

Take notice that on SEMASS Partnership (SEMASS), a qualifying small power production facility on June 6, 1991, tendered for filing as a rate schedule change an executed Second Amendment to power Sale Agreement for SEMASS Expansion dated as of May 24, 1991 (the "Second Amendment), between SEMASS and Commonwealth Electric Company (CEC). The Second Amendment relates to the Power Sale Agreement for SEMASS Expansion dated January 15, 1988 (the "PSA-11"-) between SEMASS and CEC which was accepted for filing by the Commission on February 16, 1989 (ER89-174-000). The PSA-II was previously amended by a certain Amendment to power Sale Agreement for SEMASS Expansion dated as of March 14, 1990 between SEMASS and CEC which was accepted for filing by the Commission on May 18, 1990 (ER90-317-000). The Second Amendment amends two provisions of the PSA-II. The first amended provision requires SEMASS to deliver to CEC a letter of credit which CEC may draw upon if SEMASS does not give the notice to proceed under the construction contract for the expansion unit by December 31, 1991. The second amended provision extends the date by which the in-service date for the expansion unit must occur to July 1, 1995 and requires SEMASS to pay monthly penalties in the event the in-service date does not occur by May 1, 1994. SEMASS is subject to the Commission's ratemaking jurisdiction because its power production capacity is in excess of 30 megawatts. SEMASS also requests waiver of the Commission's regulations requiring that rate schedules be submitted no more than 120 days before the rates are to become effective.

The Second Amendment is necessary because of unforseen delays which have occurred in the development of the expansion unit to which the PSA-II relates.

Copies of the filing were served upon CEC and the Massachusetts Department of Public Utilities.

Comment date: June 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. PSI Energy, Inc.

[Docket No. ER91-474-000]

June 11, 1991.e

Take notice that PSI Energy, Inc. (PSI) on June 3, 1991, tendered for filing changes to the rates for certain of its services pursuant to the Interconnection Agreement between PSI and Northern Indiana Public Service Company (NIPSCO), dated January 1, 1974.

The filed changes modify the rates for services provided by PSI under the following Service Schedules of the Interconnection Agreement:

1. Service Schedule A—Emergency Service
2. Service Schedule B—Interchange Power
3. Service Schedule E—Short Term Power

Copies of the filing were served on the Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

PSI has requested a waiver of the Commission's Rules and Regulations to permit the proposed rates for services to become effective April 15, 1991.

Comment date: June 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Dr. Kathryn A. McCarthy

[Docket No. ID-2033-000]

June 11, 1991.

Take notice that on June 4, 1991, Dr. Kathryn A. McCarthy (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Massachusetts Electric Company

Director, State Mutual Life Assurance Company of America

Comment date: June 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. The Washington Water Power Company

[Docket No. ER91-476-000]

June 11, 1991.

Take notice that on June 3, 1991, The Washington Water Power Company (WWP), tendered for filing a Firm Energy Sale Agreement between WWP and Southern California Edison Company. WWP requests that the Commission (a) accept the Agreement for filing, effective as of February 1, 1991, and (b) grant a waiver of notice pursuant to 18 CFR 35.11, to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is to commence.

A copy of the filing was served upon Southern California Edison Company.

Comment date: June 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

[Docket Nos. ER91-479-000, et al.]

SEMASS Partnership, et al. Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

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5. United Illuminating Company

[Docket Nos. ER91-385-000 and ER91-386-000]

June 11, 1991.

Take notice that on May 22, 1991, United Illuminating Company (UI) tendered for filing an amendment in support of its original rate filings in the above referenced dockets. UI states that the amendment provides answers to questions asked by the Commission's staff.

Comment date: June 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. EC91-15-000]

June 11, 1991.

Take notice that on June 6, 1991, Tampa Electric Company (Tampa Electric) tendered for filing an application for Commission authorization to purchase from the Sebring Utilities Commission (Sebring) certain transmission facilities with a value in excess of $50,000. The facilities include 21.5 miles of 69 kV transmission line and certain equipment and other property at the Phillips and Diner Lake substations.

Tampa Electric states that the transmission facilities will continue to be used to serve Sebring's municipal distribution system, and to transmit excess power from Tampa Electric's Phillips and Dinner Lake generating plants.

Copies of the application have been served on Sebring and the Florida Public Service Commission.

Comment date: June 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Company

[Docket Nos. ER90-525-000 and ER90-526-000]

June 11, 1991.

Take notice that on June 7 1991, New England Power Company (NEP) filed a Compliance Refund Report and supporting documentation that effectuates the terms of an uncontested settlement agreement in the W-12(a) rate proceeding in the referenced dockets.

NEP states that appropriate refunds, including interest, were made on May 22, 1991 for the period January 1, 1991 through March 31, 1991.

Comment date: June 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Massachusetts Municipal Wholesale Electric Company v. Northeast Utilities Service Company

[Docket No. EL91-36-000]

June 11, 1991.

Take notice that on May 28, 1991, the Massachusetts Municipal Wholesale Electric Company (MMWEC) tendered for filing a complaint against Northeast Utilities Service Company (NU), in its capacity as agent for the Connecticut Light and Power Company and Western Massachusetts Electric Company.

In its complaint, MMWEC challenges the imposition by NU (through New England Power Company) of "capability responsibility" or "tie line" adjustment charges, which are included in the Non-firm Agreement. In addition, to requesting that complaint proceedings be initiated with respect to the tie line adjustment charge, MMWEC requests that the issue be consolidated with pending review of the identical tie line adjustment in Northeast Utilities Service Company, FERC Docket Nos. ER90-390-000, *et al.*

Comment date: July 11, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Delano Energy Company Inc.

[Docket No. QF84-52-002]

June 11, 1991.

On May 31, 1991, Delano Energy Company Inc. (Applicant) of 101A First Avenue, Waltham, Massachusetts 02254-9047 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in Kern County, California. The primary energy source is biomass in the form of orchard and vineyard prunings, cotton ginnings, almond shells, wood fuels and other agricultural residues. The maximum net electric power production capacity is 49.9 MW.

The original certification was issued on March 23, 1984 (28 FERC 62,302. The instant recertification is requested due to a change in ownership. On December 4, 1990, the Applicant's right, title and interest to the facility were transferred to Manufacturers Hanover Trust Company of California, not in its individual capacity but as owner trustee for the benefit of Westinghouse Credit Corporation.

Comment date: July 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Cogentrix of Mayaquez, Inc.

[Docket No. QF91-154-000]

June 11, 1991.

On May 30, 1991, Cogentrix of Mayaquez, Inc. of 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28273 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Mayaquez, Puerto Rico. The facility will consist of two coal-fired boilers and two extraction/condensing steam turbine generators. Thermal energy recovered from the facility will be used in the food processing plants for the cooking, washing and sterilizing operations associated with the processing and canning of tuna fish. The primary energy source will be coal. The net electric power production capacity will be 316.24 megawatts. Installation of the facility will begin after January 1, 1994.

Comment date: July 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Central Vermont Public Service Corporation

[Docket No. ER91-463-000]

June 11, 1991.

Take notice that on May 31, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing the 1990 Cost Report required under Article 2.4 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3 of CVPS.

Comment date: June 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Central Vermont Public Service Corporation

[Docket No. ER91-462-000]

June 12, 1991.

Take notice that on May 31, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing the 1990 Cost Report required under Paragraph Q-1 on Original Sheet No. 18 of the RS-2 rate schedule under which CVPS sells electric power to Connecticut Valley Electric Company Inc.

Comment date: June 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Central Vermont Public Service Corporation

[Docket No. ER91-461-000]

June 12, 1991.

Take notice that on May 31, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing the 1990 Cost Report required under Article 2.3(A) on Original Sheet No. 21 of FERC Electric Tariff, Original Volume No. 4, of CVPS.

Comment date: June 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance wth Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pulic inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14676 Filed 6-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2282-004—Maine]

Central Maine Power Co.; Availability of Environmental Assessment

June 14, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license at the Gulf Island-Deer Rips Project to allow Central Maine Power Company (licensee) to grant an easement to the Joint Venture for Gulf Island Oxygenation Project (Joint Venture). The easement will allow the Joint Venture to construct an oxygen diffuser system in the Androscoggin River in order to meet state water quality standards.

The staff of OLH's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that approval of the amendment would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14680 Filed 6-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 663-001, Puerto Rico]

Puerto Rico Electric Power Authority; Availability of Environmental Assessment

June 14, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a major license for the existing Rio Blanco Project located on the Rio Blanco in the municipality of Naguabo, near Naguabo, Puerto Rico, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, N.E., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14683 Filed 6-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST91-8463-000 through ST91-8638]

Red River Pipeline; Self Implementing Transactions

[June 14, 1991].

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Land Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to section 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to section 284.223 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

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§ 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations

Lois D. Cashell,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Affiliated Y/N	Date commenced	Projected termination date
ST91-8460	Red River Pipeline	KN Energy, Inc.	05-01-91	C	100,000	N	04-01-91	Indefinite.
ST91-8464	Nycotex Gas Transport	UGI Corp.	05-01-91	C	10,000	N	04-01-91	Indefinite.
ST91-8465	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	05-01-91	C	15,000	N	04-01-91	04-30-91.
ST91-8466	Rocky Mountain Natural Gas Co.	Northwest Pipeline Corp.	05-01-91	C	10,000	N	05-12-91	12-31-93.
ST91-8467	Delhi Gas Pipeline Corp.	Transwestern Pipeline Co.	05-01-91	C	100,000	N	04-01-91	Indefinite.
ST91-8468	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co.	05-01-91	C	2,500	N	04-01-91	Indefinite.
ST91-8469	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	05-01-91	B	123	N	04-18-91	Indefinite.
ST91-8470	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	05-01-91	B	541	N	04-18-91	Indefinite.
ST91-8471	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	05-01-91	B	210	N	04-18-91	Indefinite.
ST91-8472	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	05-01-91	B	315	N	04-11-91	Indefinite.
ST91-8473	National Fuel Gas Supply Corp.	Power Authority of New York State.	05-01-91	G-S	200,000	N	04-02-91	07-31-91.
ST91-8474	National Fuel Gas Supply Corp.	Trinity Pipeline Inc.	05-01-91	G-S	60,000	N	04-03-91	06-01-91.
ST91-8475	National Fuel Gas Supply Corp.	Reliance Gas Marketing Co.	05-01-91	G-S	20,000	N	04-02-91	07-31-91.
ST91-8476	National Fuel Gas Supply Corp.	Atlas Gas Marketing, Inc.	05-01-91	G-S	14,142	N	04-01-91	07-30-91.
ST91-8477	National Fuel Gas Supply Corp.	Meridian Marketing and Transportation Corp.	05-01-91	G-S	1,000	N	04-01-91	07-30-91.
ST91-8478	National Fuel Gas Supply Corp.	Appalachian Gas Sales, Inc.	05-01-91	G-S	20,000	N	04-05-91	06-03-91.
ST91-8480	National Fuel Gas Supply Corp.	Poco Petroleums Ltd.	05-01-91	G-S	100,000	N	04-01-91	07-30-91.
ST91-8481	National Fuel Gas Supply Corp.	O&R Energy, Inc.	05-01-91	G-S	50,000	N	04-04-91	08-02-91.
ST91-8482	National Fuel Gas Supply Corp.	Aquila Energy Marketing Corp., Inc.	05-01-91	G-S	150,000	N	04-03-91	09-01-91.
ST91-8483	National Fuel Gas Supply Corp.	Brooklyn Interstate Nat. Gas Corp.	05-01-91	G-S	50,000	N	04-05-91	06-03-91.
ST91-8484	National Fuel Gas Supply Corp.	Graham Energy Marketing Corp.	05-01-91	G-S	100,000	N	04-04-91	08-02-91.
ST91-8485	National Fuel Gas Supply Corp.	Niagara Gas Transmission	05-01-91	G-S	1,000	N	04-04-91	08-02-91.
ST91-8486	Natotnal Fuel Gas Supply Corp.	Boston Gas Co.	05-01-91	G-S	100,000	N	04-03-91	08-01-91.
ST91-8487	National Fuel Gas Supply Corp.	United Refining CP.	05-01-91	G-S	50,000	N	04-01-91	07-30-91.
ST91-8495	National Fuel Gas Supply Corp.	Meridian Oil Trading Inc.	05-01-91	G-S	100,000	N	04-03-91	08-01-91.
ST91-8496	National Fuel Gas Supply Corp.	Chautauqua Energy Inc.	05-01-91	G-S	20,000	N	04-03-91	08-01-91.
ST91-8499	National Fuel Gas Supply Corp.	Polaris Pipeline Corp.	05-01-91	G-S	24,137	N	04-12-91	08-10-91.
ST91-8500	National Fuel Gas Supply Corp.	BP Gas Inc.	05-01-91	G-S	25,000	N	04-05-91	08-03-91.
ST91-8501	National Fuel Gas Supply Corp.	Energy Marketing Exchange, Inc.	05-01-91	G-S	88,550	N	04-04-91	08-02-91.
ST91-8503	National Fuel Gas Supply Corp.	Northridge Petroleum Marktng., Inc.	05-01-91	G-S	20,000	N	04-03-91	08-01-91.
ST91-8504	National Fuel Gas Supply Corp.	Ocean State Power L.P.	05-01-91	G-S	50,000	N	04-02-91	07-31-91.
ST91-8505	National Fuel Gas Supply Corp.	V.H.C. Gas Systems	05-01-91	G-S	100,000	N	04-04-91	08-02-91.
ST91-8509	National Fuel Gas Supply Corp.	V.H.C. Gas Systems	05-01-91	G-S	100,000	N	04-04-91	08-02-91.
ST91-8511	National Fuel Gas Supply Corp.	Tennessee Corp.	05-01-91	G-S	150,000	N	04-02-91	07-31-91.
ST91-8515	National Fuel Gas Supply Corp.	NJ Natural Gas Co.	05-01-91	G-S	630	N	04-03-91	08-01-91.
ST91-8521	Black Marlin Pipeline Co.	Conoco, Inc.	05-01-91	G-S	20,000	N	11-01-90	02-28-91.
ST91-8522	Natural Gas P/L Co. of America	City of Salem	05-01-91	B	200,000	Y	05-01-91	02-29-96.
ST91-8523	Arkla Energy Resources	Transok, Inc.	05-01-91	B	80,000	Y	01-01-91	Indefinite.
ST91-8524	United Gas Pipe Line Co.	Nerco Oil and Gas, Inc.	05-01-91	G-S	77,250	N	03-15-91	07-13-91.
ST91-8525	United Gas Pipe Line Co.	Nerco Oil and Gas, Inc.	05-01-91	G-S	306	N	03-15-91	07-13-91.
ST91-8526	Texas Eastern Transmission Corp.	Coast Energy Group, Inc.	05-01-91	G-S	35,000	N	04-08-91	08-07-91.
ST91-8527	Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	05-01-91	G-S	200,000	N	04-10-91	08-08-91.
ST91-8528	Nolhern Natural Gas Co.	Northwestern Public Service Co.	05-01-91	B	100,000	N	04-05-91	Indefinite.
ST91-8529	Northern Natural Gas Co.	Eastex Hydrocarbons, Inc.	05-01-91	G-S	100,000	N	04-03-91	08-01-91.
ST91-8530	Transok, Inc.	Phillips Gas Pipeline Co.	05-01-91	C	50,000	N	04-01-91	Indefinite.
ST91-8531	Transok, Inc.	Arkla Energy Resources	05-01-91	C	100,000	N	04-05-91	Indefinite.
ST91-8532	Algonquin Gas Transmission Co.	O & R Energy, Inc.	05-01-31	G-S	100,000	N	04-01-91	07-30-91.
ST91-8533	Algonquin Gas Transmission Co.	Chevron U.S.A., Inc.	05-01-91	G-S	600,000	N	04-02-91	07-31-91.
ST91-8534	Algonquin Gas Transmission Co.	Colonial Gas Co.	05-01-91	B	20,000	N	04-01-91	07-03-91.
ST91-8535	Algonquin Gas Transmission Co.	O & R Energy, Inc.	05-01-91	G-S	100,000	N	04-02-91	07-31-91.
ST91-8536	Tennessee Gas Pipeline Co.	Texas-Ohio Gas, Inc.	05-01-91	G-S	80,000	N	03-06-91	06-06-91.
ST91-8537	Tennessee Gas Pipeline Co.	Fulton Cogeneration Associates	05-01-91	G-S	12,500	N	04-01-91	07-30-91.
ST91-8538	Tennessee Gas Pipeline Co.	Clinton Gas Transmission, Inc.	05-01-91	G-S	1,000	N	04-02-91	07-31-91.
ST91-8539	Tennessee Gas Pipeline Co.	Ball Incon Glass Packaging Corp.	05-01-91	G-S	800	N	04-01-91	07-30-91.
ST91-8540	Panhandle Eastern Pipe Line Co.	Access Energy Corp.	05-01-91	G-S	30,000	N	10-01-91	Indefinite.
ST91-8541	Panhandle Eastern Pipe Line Co.	Panda Resources, Inc.	05-01-91	G-S	25,000	N	10-01-91	Indefinite.
ST91-8542	Panhandle Eastern Pipe Line Co.	Mountain Iron & Supply Co.	05-01-91	G-S	10,000	Y	04-16-91	08-14-91.
ST91-8543	Panhandle Eastern Pipe Line Co.	Two Rivers Oil and Gas Co, Inc.	05-01-91	G-S	150	N	04-01-91	07-30-91.
ST91-8544	Panhandle Eastern Pipe Line Co.	Aquila Gas Marketing, Inc.	05-01-91	G-S	100,000	Y	04-01-91	07-30-91.
ST91-8545	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc.	05-01-91	G-S	20,000	N	04-01-91	07-30-91.
ST91-8546	CNG Transmission Corp.	American Central Gas	05-01-91	G-S	75,000	N	04-16-91	08-14-91.
ST91-8547	CNG Transmission Corp.	Fulton Cogen Association	05-01-91	G-S	12,300	N	04-01-91	07-30-91.
ST91-8548	CNG Transmission Corp.	Hope Gas, Inc.	05-01-91	B	4,000	Y	04-04-91	Indefinite.
ST91-8549	CNG Transmission Corp.	Access Energy	05-01-91	G-S	750	N	04-03-91	08-01-91.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Affiliated Y/N	Date commenced	Projected termination date
ST91-8550	CNG Transmission Corp.	Hope Gas, Inc.	05-01-91	B	100	Y	04-11-91	Indefinite.
ST91-8551	CNG Transmission Corp.	Wabash Alloyd Division-Connell	05-01-91	G-S	5,000	N	04-11-91	06-09-91.
ST91-8552	CNG Transmission Corp.	Bethleham Steel	05-01-91	G-S	50,000	N	04-02-91	07-31-91.
ST91-8553	CNG Transmission Corp.	Citizens Gas Supply	05-01-91	G-S	25,000	N	04-03-91	08-01-91.
ST91-8554	CNG Transmission Corp.	Citizens Gas Supply	05-01-91	G-S	25,000	N	04-03-91	08-01-91.
ST91-8555	CNG Transmission Corp.	American Central Gas	05-01-91	G-S	75,000	N	04-16-91	08-14-91.
ST91-8556	CNG Transmission Corp.	Indeck Energy Services	05-01-91	G-S	5,000	N	04-01-91	07-30-91.
ST91-8557	CNG Transmission Corp.	Bethleham Steel	05-01-91	G-S	8,000	N	04-05-91	06-05-91.
ST91-8558	Tejas Gas Corp.	Natural Gas P/L Co. of America	05-02-91	C	15,000	N	04-01-91	Indefinite.
ST91-8559	East Texas Gas Systems	Texas Eastern Transmission	05-02-91	C	100,000	N	04-01-91	Indefinite.
ST91-8560	Florida Gas Transmission Co.	Louis Dreyfus Energy Corp.	05-02-91	G-S	100,000	N	04-12-91	06-09-91.
ST91-8561	Willson Basin Interstate P/L Co.	Inland Oil & Gas Corp.	05-02-91	G-S	2,714	N	04-04-91	06-01-91.
ST91-8562	Tennessee Gas Pipeline Co.	East Ohio Gas Co.	05-02-91	B	3,000	N	04-08-91	Indefinite.
ST91-8563	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	05-02-91	G-S	51,150	N	04-02-91	07-31-91.
ST91-8564	Natural Gas P/L Co. America	Bishop Pipeline Corp.	05-02-91	G-S	50,000	N	04-03-91	06-01-91.
ST91-8565	Natural Gas P/L Co. America	Eastex Hydrocarbons, Inc.	05-02-91	G-S	50,000	N	04-04-91	06-02-91.
ST91-8566	Natural Gas P/L Co. America	Kerr-McGee Corp.	05-02-91	G-S	50,000	N	04-05-91	06-03-91.
ST91-8567	Columbia Gulf Transmission Co.	North Penn Gas Co.	05-02-91	B	5,000	N	01-01-91	Indefinite.
ST91-8568	Colorado Interstate Gas Co.	K N Gas Marketing, Inc.	05-02-91	G-S	119,000	N	04-07-91	06-05-91.
ST91-8569	Colorado Interstate Gas Co.	Northern Illinois Gas Co.	05-02-91	B	50,000	N	04-11-91	Indefinite.
ST91-8570	Transcontinental Gas P/L Corp.	Citizens Gas Supply Corp.	05-03-91	G-S	250,000	N	07-01-91	10-28-91.
ST91-8571	Enogex, Inc.	Arkla Energy Resources	05-03-91	C	50,000	N	04-24-91	Indefinite.
ST91-8572	Northern Natural Gas Co.	Llano, Inc.	05-03-91	B	20,000	N	04-11-91	Indefinite.
ST91-8573	Natural Gas P/L Co. of America	Bridgegas U.S.A., Inc.	05-03-91	G-S	200,000	N	04-06-91	06-04-91.
ST91-8574	Tennessee Gas Pipeline Co.	Southern Connecticut Gas Co.	05-03-91	B	58,000	N	04-19-91	Indefinite.
ST91-8575	Tennessee Gas Pipeline Co.	Equitable Petroleum Corp.	05-03-91	B	1,700	N	04-26-91	Indefinite.
ST91-8576	Great Lakes Gas Transmission Co.	Utilicorp United, Inc.	05-06-91	G-S	1,298	N	04-01-91	07-29-91.
ST91-8577	Viking Gas Transmission Co	Triumph Gas Marketing Co.	05-06-91	G-S	30,000	N	04-24-91	06-22-91
ST91-8578	Tennessee Gas Pipeline Co.	Berkshire Gas Co.	05-06-91	B	8,000	N	12-22-89	Indefinite.
ST91-8579	Black Marlin Pipeline Co.	Northern Natural Gas Co.	05-06-91	B	100,000	Y	04-12-91	Indefinite.
ST91-8580	Northern Natural Gas Co.	Union Pacific Fuels, Inc.	05-06-91	G-S	88,457	N	04-16-91	08-15-91.
ST91-8581	Transwestern Pipeline Co.	Mewbourne Oil Co.	05-06-91	G-S	50,000	N	05-01-91	08-29-91.
ST91-8582	Enogex, Inc.	Panhandle Eastern Pipeline Co.	05-06-91	C	10,000	N	04-27-91	Indefinite.
ST91-8583	Panhandle Eastern P/L Co.	Central Illinois Public Service Co.	05-06-91	B	13,725	N	04-01-91	Indefinite.
ST91-8584	Williams Natural Gas Co.	Rangeline Corp.	05-06-91	G-S	250	N	04-03-91	08-01-91.
ST91-8585	United Gas Pipe Line Co.	Bishop Pipeline Corp.	05-06-91	G-S	41,200	N	04-21-91	08-19-91.
ST91-8586	Gas Company of New Mexico	El Paso Natural Gas Co.	05-06-91	G-HT	16,500	N	04-01-91	04-30-91.
ST91-8587	Gas Company of New Mexico	El Paso Natural Gas Co.	05-06-91	G-HT	4,000	N	04-01-91	03-31-92.
ST91-8588	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	05-06-91	G-S	10,300	N	04-05-91	06-03-91.
ST91-8589	Southern Natural Gas Co.	Appalachian Gas Sales	05-06-91	G-S	5,000	N	04-13-91	06-11-91.
ST91-8590	Southern Natural Gas Co.	Consolidated Fuel Corp.	05-06-91	G-S	10,000	N	04-12-91	08-10-91.
ST91-8591	Southern Natural Gas Co.	Shell Gas Trading Co.	05-06-91	G-S	60,000	N	03-19-91	07-17-91.
ST91-8592	Southern Natural Gas Co.	South Georgia Natural Gas Co.	05-06-91	G	2,800	Y	04-06-91	06-04-91.
ST91-8593	Southern Natural Gas Co.	Texas Gas Transmission Corp.	05-06-91	G	100,000	N	04-10-91	06-08-91.
ST91-8594	Southern Natural Gas Co.	City of Sylvester	05-06-91	G	381	N	04-02-91	07-31-91.
ST91-8595	Southern Natural Gas Co.	Waverly Mineral Products Co.	05-06-91	G-S	2,800	N	04-06-91	06-04-91.
ST91-8596	ONG Transmission Co.	Natural Gas P/L Co of America	05-07-91	C	100,000	N	04-25-91	04-24-91.
ST91-8597	Tennessee Gas Pipeline Co.	Berkshire Gas Co.	05-07-91	B	50,000	N	01-15-91	Indefinite.
ST91-8598	Lone Star Gas Co.	Tennessee Gas Pipeline Co.	05-07-91	C	8,000	N	03-27-91	Indefinite.
ST91-8599	Lone Star Gas Co.	Natural Gas P/L Co. of America	05-07-91	C	8,000	N	03-27-91	Indefinite.
ST91-8600	Texas Gas Transmission Corp.	TPC Pipeline, Inc.	05-07-91	B	100,000	N	05-01-91	Indefinite.
ST91-8601	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	05-07-91	B	190	N	04-18-91	Indefinite.
ST91-8602	Arkla Energy Resources	Arkansas Electric Cooperative	05-08-91	G-S	16,560	Y	04-24-91	08-23-91.
ST91-8603	Arkla Energy Resources	Cincinnati Gas & Electric et al	05-08-91	B	45,000	N	06-01-91	Indefinite.
ST91-8604	Arkla Energy Resources	Oryx Energy Co.	05-08-91	G-S	12,000	N	04-11-91	08-10-91.
ST91-8605	Arkla Energy Resources	Louisiana Intrastate Gas Corp.	05-08-91	B	240,000	Y	02-01-91	Indefinite.
ST91-8606	Arkla Energy Resources	Enron Gas Marketing	05-08-91	G-S	102,000	N	02-14-91	06-15-91.
ST91-8607	Arkla Energy Resources	Arkla Energy Marketing Co.	05-08-91	G-S	70,000	Y	11-01-90	03-01-91.
ST91-8608	Arkla Energy Resources	Arkla Energy Marketing Co.	05-08-91	G-S	90,000	Y	03-06-91	07-05-91.
ST91-8609	Arkla Energy Resources	Conagra Frozen Foods	05-08-91	G-S	400	N	11-01-90	03-01-91.
ST91-8610	Arkla Energy Resources	Arkla Energy Marketing Co.	05-08-91	G-S	150,000	Y	12-22-90	04-22-91.
ST91-8611	Mississippi River Trans. Corp.	Enrade Corp.	05-07-91	G-S	50,000	N	04-11-91	08-08-91.
ST91-8612	Columbia Gulf Transmission Co.	Shell Gas Trading Co.	05-07-91	G-S	57,000	N	04-29-91	08-26-91.
ST91-8613	Columbia Gulf Transmission Co.	CNG Trading Co.	05-07-91	G-S	10,000	N	03-23-91	07-21-91.
ST91-8614	Columbia Gulf Transmission Co.	Hudson Gas Systems, Inc.	05-07-91	G-S	121,500	N	04-13-91	08-11-91.
ST91-8615	Colorado Interstate Gas Co.	Texaco Gas Marketing, Inc.	05-08-91	G-S	20,000	N	04-01-91	07-30-91.
ST91-8616	ANR Pipeline Co.	Rochester Gas and Electric Corp.	05-08-91	B	129,277	N	04-13-91	Indefinite.
ST91-8617	ANR Pipeline Co.	Cincinnati Gas and Electric Co.	05-08-91	B	150,000	Y	04-19-91	Indefinite.
ST91-8618	Delhi Gas Pipeline Corp.	Panhandle Eastern Pipeline Co.	05-08-91	C	10,000	N	04-21-91	Indefinite.
ST91-8619	ONG Transmission Co.	Natural Gas P/L Co. of America	05-08-91	C	75,000	N	05-01-91	04-30-93.
ST91-8621	Acadian Gas Pipeline System	Transcontinental Gas P/L Corp.	05-08-91	C	50,000	N	04-01-91	Indefinite.
ST91-8622	Acadian Gas Pipeline System	Natural Gas P/L Co. of America	05-08-91	C	20,000	N	05-01-91	Indefinite.
ST91-8623	Northern Natural Gas Co.	Citizens Gas Supply Corp.	05-08-91	G-S	22,000	N	04-11-91	08-09-91.
ST91-8624	United Gas Pipe Line Co.	Enron Gas Marketing Inc.	05-08-91	G-S	515,000	N	04-19-91	08-17-91.
ST91-8625	Trailblazer Pipeline Co.	Southern California Gas Co.	05-09-91	B	353,000	N	04-11-91	Indefinite.
ST91-8626	Trunkline Gas Co.	Cent. Hudson Gas & Ele. Co., et al.	05-09-91	B	50,000	N	04-18-91	Indefinite.
ST91-8627	Trunkline Gas Co.	Exxon Corp.	05-09-91	G-S	25,000	N	04-18-91	08-16-91.
ST91-8628	Arkla Energy Resources	Entex	05-09-91	B	1,000	Y	05-01-91	Indefinite.

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Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Affiliated Y/N	Date commenced	Projected termination date
ST91-8629	Arkla Energy Resources	Agrico Chemical Co	05-09-91	G-S	7,000	Y	11-01-90	03-01-91.
ST91-8630	Natural Gas P/L Co. of America	Williams Gas Marketing Co	05-10-91	G-S	25,000	N	04-10-91	08-06-91.
ST91-8631	Acadian Gas Pipeline System	Sabine Pipeline Co	05-10-91	C	65,000	N	05-01-91	Indefinite.
ST91-8632	Neches Pipeline System	Natural Gas P/L Co. of America	05-10-91	C	15,000	N	05-01-91	Indefinite.
ST91-8633	Northern Natural Gas Co	Amarillo Natural Gas, Inc	05-10-91	B	200	N	04-13-91	Indefinite.
ST91-8634	Northern Natural Gas Co	Texas Utilities Fuel Co	05-10-91	G-S	35,000	N	05-01-91	08-29-91.
ST91-8635	Northern Natural Gas Co	Richardson Products Co	05-10-91	G-S	75,000	N	04-28-91	08-26-91.
ST91-8636	Northern Natural Gas Co	ELF Exploration, Inc	05-10-91	G-S	20,000	N	05-02-91	08-30-91.
ST91-8637	Northern Natural Gas Co	Sunrise Energy Co	05-10-91	G-S	10,000	N	05-01-91	08-29-91.
ST91-8638	Transok, Inc	Northern Natural Gas Co	05-10-91	C	30,000	N	04-12-91	Indefinite.
ST91-8639	Williston Basin Interstate P/L Co	Coastal Gas Marketing Co	05-10-91	G-S	71,484	Y	04-29-91	07-07-91.
ST91-8640	Columbia Gas Transmission Corp.	Manville Sales Corp	05-10-91	G-S	1,300	N	03-10-91	07-06-91.
ST91-8641	Columbia Gas Transmission Corp.	Fuel Services Group, Inc	05-10-91	G-S	300,000	Y	04-15-91	08-16-91.
ST91-8642	Trunkline Gas Co	Columbia Gas Transmission Corp.	05-10-91	G	50,000	N	04-30-91	Indefinite.
ST91-8643	Trunkline Gas Co	Columbia Gas Transmission Corp.	05-10-91	G	50,000	N	04-30-91	Indefinite.
ST91-8644	Panhandle Eastern Pipe Line Co	Bishop Pipeline Corp	05-10-91	G-S	10,000	Y	04-01-91	07-30-91.
ST91-8645	Panhandle Eastern Pipe Line Co	Northern In Public Service Co	05-10-91	G	20,000	N	04-21-91	Indefinite.
ST91-8646	Transcontinental Gas P/L Corp	Cokinos Transmission Co	05-10-91	B	50,000	N	04-19-91	Indefinite.
ST91-8647	Transcontinental Gas P/L Corp	Pennsylvania Gas and Water Co	05-10-91	B	20,000	N	04-29-91	Indefinite.
ST91-8648	Transcontinental Gas P/L Corp	Consolidated Fuel Corp	05-10-91	G-S	130,000	N	04-30-91	08-17-91.
ST91-8648	Transcontinental Gas P/L Corp	Owens-Corning Fiberglas Corp	05-10-91	G-S	3,000	N	04-01-91	07-29-91.
ST91-8650	United Gas Pipe Line Co	Laser Marketing Co	05-13-91	G-S	616,000	Y	05-01-91	08-29-91.
ST91-8651	Florida Gas Transmission Co	HGX Gas Transmission Corp	05-13-91	G-S	10,000	N	05-01-91	08-29-91.
ST91-8652	Florida Gas Transmission Co	City of Starke	05-13-91	G-S	62	N	05-01-91	08-29-91.
ST91-8653	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America	05-13-91	C	3,000	N	05-01-91	Indefinite.
ST91-8654	Lone Star Gas Co	El Paso Natural Gas Co	05-13-91	C	100,000	N	04-01-91	Indefinite.
ST91-8655	Natural Gas P/L Co. of America	Northern Illinois Gas Co	05-13-91	B	500,000	N	04-06-91	Indefinite.
ST91-8656	Natural Gas P/L Co. of America	Columbia Gas Distribution Co. of NY.	05-13-91	G-S	300,000	N	10-01-90	Indefinite.
ST91-8658	Tennessee Gas Pipeline Co	East Ohio Gas Co	05-13-91	B	4,000	N	04-11-91	Indefinite.
ST91-8659	Texas Eastern Transmission Corp.	Hope Gas Inc	05-13-91	B	21,500	N	04-02-91	Indefinite.
ST91-8660	Mississippi River Trans. Corp	Delta Jamex, et al	05-13-91	B	2,000	N	04-15-91	06-12-91.
ST91-8661	Mississippi River Trans. Corp	Boyd Rosen and Associates, Inc	05-13-91	G-S	25,000	N	04-27-91	08-24-91.
ST91-8662	Natural Gas P/L Co. of America	Williams Gas Marketing Co	05-14-91	G-S	50,000	N	04-01-91	07-30-91.
ST91-8663	Natural Gas P/L Co. of America	Midcon Marketing Corp	05-14-91	G-S	5,000	Y	04-01-91	07-30-91.
ST91-8664	Natural Gas P/L Co. of America	Midcon Marketing Corp	05-14-91	G-S	50,000	Y	04-01-91	07-30-91.
ST91-8665	Natural Gas P/L Co. of America	Southern California Gas Co	05-14-91	B	500,000	N	04-14-91	Indefinite.
ST91-8666	Natural Gas P/L Co. of America	Conoco, Inc	05-14-91	G-S	5,000	N	04-01-91	07-30-91.
ST91-8667	Wester Transmission Co	El Paso Natural Gas Co	05-14-91	C	2,000	N	04-10-91	Indefinite.
ST91-8668	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	05-14-91	B	50,000	N	05-01-91	Indefinite.
ST91-8669	Texas Gas Transmission Corp	Amoco Energy Trading Corp	05-14-91	G-S	100,000	N	05-08-91	09-02-91.
ST91-8670	Texas Gas Transmission Corp	Western Kentucky Gas Co	05-14-91	B	195	N	05-01-91	Indefinite.
ST91-8671	Texas Gas Transmission Corp	Enron Gas Marketing, Inc	05-14-91	G-S	100,000	Y	05-01-91	08-26-91.
ST91-8672	Transcontinental Gas P/L Corp	Citizens Gas Supply Corp	05-14-91	G-S	300,000	N	05-09-91	07-31-91.
ST91-8673	Transcontinental Gas P/L Corp	Cokinos Natural Gas Co	05-14-91	G-S	75,000	N	04-16-91	08-16-91.
ST91-8674	Columbia Gas Transmission Corp.	Toledo Marriott Portside	05-14-91	G-S	800	Y	05-03-91	08-31-91.
ST91-8675	Columbia Gas Transmission Corp.	Ashland Exploration, Inc	05-14-91	G-S	30,000	Y	05-01-91	08-29-91.
ST91-8676	Midwestern Gas Transmission Co.	Neste OY	05-15-91	G-S	50,000	N	05-01-91	08-29-91.
ST91-8677	Tennessee Gas Pipeline Co	UGC Energy Corp	05-15-91	B	20,875	N	11-01-90	Indefinite.
ST91-8678	Tennessee Gas Pipeline Co	Energyworth, Inc	05-15-91	B	25,130	N	05-03-91	Indefinite.
ST91-8679	Tennessee Gas Pipeline Co	VA Electric and Power Co	05-15-91	G-S	50,000	N	04-19-91	08-17-91.
ST91-8680	Tennessee Gas Pipeline Co	UGC Energy Corp	05-15-91	B	60,430	N	11-01-90	Indefinite.
ST91-8681	Tennessee Gas Pipeline Co	Nycotex Gas Transport	05-15-91	B	60,000	N	01-29-90	Indefinite.
ST91-8682	Trailblazer Pipeline Co	Northern Illinois Gas Co	05-15-91	B	353,000	N	03-01-91	Indefinite.
ST91-8683	Natural Gas P/L Co. of America	East Ohio Gas Co	05-15-91	B	500,000	N	04-01-91	Indefinite.
ST91-8684	Natural Gas P/L Co. of America	Peoples Gas Light and Coke Co	05-15-91	B	500,000	N	04-04-91	Indefinite.
ST91-8685	Natural Gas P/L Co. of America	Amoco Gas Co	05-15-91	B	200,000	N	04-08-91	Indefinite.
ST91-8686	United Gas Pipe Line Co	Amex Financial Inc	05-15-91	G-S	15,450	N	05-08-91	09-05-91.
ST91-8687	United Gas Pipe Line Co	Midcon Marketing Corp	05-15-91	G-S	721,000	N	05-06-91	09-03-91.
ST91-8688	El Paso Natural Gas Co	Western Gas Processors, Ltd	05-15-91	G-S	15,000	Y	04-19-91	08-16-91.
ST91-8689	Red River Pipeline	Arkla Energy Resources	05-15-91	C	50,000	N	04-23-91	Indefinite.
ST91-8694	Columbia Gas Transmission Corp.	Access Energy Corp	05-15-91	G-S	60,000	N	04-15-91	08-13-91.
ST91-8695	Arkla Energy Resources	New Jersey Natural Gas Co	05-15-91	B	25,000	N	04-02-91	Indefinite.
ST91-8696	High Island Offshore System	Oryx Gas Marketing L/P	05-16-91	K-S	154,200	N	04-02-91	05-02-91.
ST91-8697	Transcontinental Gas P/L Corp	Citizens Gas Supply Corp	05-16-91	G-S	100,000	N	12-01-89	03-30-90.
ST91-8698	Florida Gas Transmission Co	Gainesville Regional Utilities	05-16-91	B	219	N	05-01-91	Indefinite.
ST91-8699	Transwestern Pipeline Co	Gulf Gas Utilities Co	05-16-91	G-S	6,000	N	05-06-91	09-03-91.
ST91-8700	Tennessee Gas Pipeline Co	Mississippi Fuel Co	05-16-91	B	20,000	N	04-10-91	Indefinite.
ST91-8701	Texas Gas Transmission Corp	Southern Gas Co., Inc	05-16-91	G-S	450	N	05-01-91	08-28-91.
ST91-8702	Pelican Interstate Gas System	Natural Gas P/L Co. of America	05-17-91	K	15,000	N	09-01-90	Indefinite.
ST91-8703	Pelican Interstate Gas System	Natural Gas P/L Co. of America	05-17-91	K	75,000	N	04-01-91	Indefinite.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Affiliated Y/N	Date commenced	Projected termination date
ST91-8704	Pelican Interstate Gas System	Natural Gas P/L Co. of America	05-17-91	K	105,000	N	09-01-90	Indefinite.
ST91-8705	Acadian Gas Pipeline System	ANR Pipeline Co	05-17-91	C	10,000	N	11-01-90	Indefinite.
ST91-8706	Acadian Gas Pipeline System	Columbia Gulf Transmission	05-17-91	C	10,000	N	05-01-91	Indefinite.
ST91-8707	Columbia Gas Transmission Corp.	Access Energy Pipeline Corp	05-17-91	G-S	25,000	N	05-10-91	09-07-91.
ST91-8708	Columbia Gulf Transmission Co	Bridgeline Gas Distribution Co	05-17-91	B	150,000	N	04-29-91	Indefinite.
ST91-8709	Columbia Gulf Transmission Co	Tijas Power Corp	05-17-91	G-S	150,000	N	04-29-91	08-26-91.
ST91-8710	Columbia Gulf Transmission Co	Diamond Shamrock Offshore Par. L.P.	05-17-91	G-S	7,000	N	04-29-91	08-26-91.
ST91-8711	Columbia Gulf Transmission Co	Columbia Gas Development Corp.	05-17-91	G-S	250,000	N	04-29-91	08-26-91.
ST91-8712	Columbia Gulf Transmission Co	UER Marketing Co	05-17-91	G-S	150,000	N	04-29-91	08-26-91.
ST91-8713	Rocky Mountain Natural Gas Co	Greeley Gas Co	04-29-91	G-S	10,000	N	04-09-91	Indefinite.
ST91-8714	Arkla Energy Resources	Valero Natural Gas Co	04-29-91	B	200,000	N	05-01-91	Indefinite.
ST91-8715	Tennessee Gas Pipeline Co	North Canadian Marketing Corp	04-29-91	G-S	200,000	N	04-29-91	05-18-91.
ST91-8716	Tennessee Gas Pipeline Co	Meridian Marketing and Trans. Corp.	04-29-91	G-S	500	N	05-01-91	05-29-91.
ST91-8717	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	04-29-91	B	40,000	N	04-30-91	Indefinite.
ST91-8718	Tennessee Gas Pipeline Co	Libra Marketing Co	04-29-91	G-S	50,000	N	04-29-91	08-27-91.
ST91-8719	Louisiana Intrastate Gas Corp	Tennessee Gas Pipeline Co	05-20-91	C	3,000	N	05-01-91	Indefinite.
ST91-8721	Louisiana Intrastate Gas Corp	Tennessee Gas Pipeline Co	05-20-91	C	3,000	N	04-01-91	Indefinite.
ST91-8722	Trailblazer P/L Co	Northern Illinois Gas Co	05-20-91	B	50,000	N	04-20-91	Indefinite.
ST91-8723	Natural Gas P/L Co. of America	Green Valley Chemical Corp	05-20-91	G-S	3,800	N	05-01-91	08-29-91.
ST91-8724	Columbia Gas Transmission Corp.	GTE Products Corp	05-20-91	G-S	1,650	Y	05-06-91	09-05-91.
ST91-8725	Columbia Gas Transmission Corp.	Texas Eastern Transmission Corp.	05-20-91	G-S	50,000	Y	04-18-91	08-16-91.
ST91-8726	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	05-21-91	C	2,000	N	05-02-91	Indefinite.
ST91-8727	Lone Star Gas Co	El Paso Natural Gas Co	05-21-91	C	2,000	N	05-01-91	Indefinite.
ST91-8728	Lone Star Gas Co	El Paso Natural Gas Co	05-21-91	C	15,000	N	04-26-91	Indefinite.
ST91-8729	Transwestern Pipeline Co	Natural Gas Clearinghouse	05-22-91	G-S	100,000	N	03-01-91	Indefinite.
ST91-8730	Transwestern Pipeline Co	Transm Energy, Inc	05-21-91	G-S	50,000	N	05-08-91	09-05-91.
ST91-8731	Transwestern Pipeline Co	NGC Transportation, Inc	05-21-91	G-S	50,000	N	05-16-91	09-13-91.
ST91-8732	Northern Natural Gas Co	Brooklyn Interstate Nat. Gas Corp.	05-21-91	G-S	88,457	N	05-01-91	08-29-91.
ST91-8733	Columbia Gulf Transmission Co	Phibro Energy, Inc	05-21-91	G-S	5,000	N	05-01-91	08-29-91.
ST91-8734	Columbia Gulf Transmission Co	American Central Gas Marketing Co.	05-21-91	G-S	40,000	N	05-01-91	08-29-91.
ST91-8736	Columbia Gulf Transmission Co	Appalachian Gas Sales	05-21-91	G-S	50,000	N	05-01-91	08-28-91.
ST91-8736	Columbia Gulf Transmission Co	Superior Natural Gas Corp	05-21-91	G-S	30,000	N	05-10-91	09-06-91.
ST91-8737	Columbia Gulf Transmission Co	Aquila Energy Marketing Corp	05-21-91	G-S	13,400	N	05-01-91	08-28-91.
ST91-8738	Valero Transmission, L.P	Natural Gas P/L Co. of America	05-22-91	C	8,000	N	05-06-91	Indefinite.
ST91-8739	Stingray Pipeline Co	NGC Transportation, Inc	05-22-91	K-S	100,000	N	04-01-91	07-30-91.
ST91-8740	Natural Gas P/L Co. of America	KN Gas Marketing, Inc	05-22-91	G-S	150,000	N	04-17-91	08-15-91.
ST91-8741	Natural Gas P/L Co. of America	Total Minatome Corp	05-22-91	G-S	25,000	N	04-01-91	07-30-91.
ST91-8742	Natural Gas P/L Co. of America	American Central Gas Companies	05-22-91	G-S	5,000	N	04-01-91	07-30-91.
ST91-8743	Natural Gas P/L Co. of America	V.H.C. Gas Systems, L.P	05-22-91	G-S	23,000	N	04-01-91	07-30-91.
ST91-8744	Natural Gas P/L Co. of America	Vesta Energy Co	05-22-91	G-S	100,000	N	04-01-91	07-30-91.
ST91-8745	Natural Gas P/L Co. of America	V.H.C. Gas Systems, L.P	05-22-91	G-S	23,000	N	04-01-91	07-30-91.
ST91-8746	Natural Gas P/L Co. of America	Corn Products	05-22-91	G-S	5,000	N	04-01-91	07-30-91.
ST91-8747	Natural Gas P/L Co. of America	American Central Gas Marketing Co.	05-22-91	G-S	15,000	N	12-01-91	03-31-91.
ST91-8748	Natural Gas P/L Co. of America	Midcon Marketing Corp	05-22-91	G-S	15,000	Y	04-01-91	07-30-91.
ST91-8749	Northern Natural Gas Co	Enmark Gas Corp	05-22-91	B	40,000	N	04-24-91	Indefinite.
ST91-8750	Trunkline Gas Co	Tejas Power Corp	05-22-91	G-S	100,000	N	05-10-91	09-07-91.
ST91-8751	Trunkline Gas Co	Hadson Gas Systems, Inc	05-22-91	G-S	100,000	N	05-04-91	09-01-91.
ST91-8752	Trunkline Gas Co	Freeport-McMoran Oil and Gas Co.	05-22-91	G-S	3,000	N	05-01-91	08-29-91.
ST91-8753	Trunkline Gas Co	V.H.C. Gas Systems, L.P	05-22-91	G-S	200,000	N	05-01-91	08-29-91.
ST91-8754	Trunkline Gas Co	Bishop Pipeline Corp	05-22-91	G-S	20,000	N	05-01-91	08-29-91.
ST91-8755	Trunkline Gas Co	Shell Gas Trading Co	05-22-91	G-S	100,000	N	05-01-91	08-29-91.
ST91-8756	Trunkline Gas Co	Memphis Light, Gas and Water Div.	05-22-91	B	6,210	N	05-07-91	Indefinite.
ST91-8757	Trunkline Gas Co	Baltimore Gas and Electric Co	05-22-91	B	100,000	N	05-01-91	Indefinite.
ST91-8758	Trunkline Gas Co	Eastex Hydrocarbons, Inc	05-22-91	G-S	100,000	N	05-14-91	09-11-91.
ST91-8759	Trunkline Gas Co	Transco Energy Marketing Co	05-22-91	G-S	10,000	N	05-01-91	08-29-91.
ST91-8760	Trunkline Gas Co	Unifield Natural Gas Group	05-22-91	G-S	100,000	N	05-01-91	08-29-91.
ST91-8761	ANR Pipeline Co	Entrade Corp	05-22-91	G-S	100,000	N	04-27-91	08-24-91.
ST91-8762	ANR Pipeline Co	Iowa-Illinois Gas and Electric Co	05-22-91	B	100,000	N	04-27-91	Indefinite.
ST91-8763	ANR Pipeline Co	Elf Exploration, Inc	05-22-91	G-S	75,000	N	04-27-91	08-24-91.
ST91-8764	ANR Pipeline Co	Enron Gas Marketing, Inc	05-22-91	G-S	100,000	N	04-24-91	08-21-91.
ST91-8765	Exxon Gas System, Inc	Northern Natural Gas Co	05-23-91	C	10,000	N	01-04-91	Indefinite.
ST91-8766	Exxon Gas System, Inc	Corpus Christi Industrial P/L Co	05-23-91	C	10,000	N	05-01-91	Indefinite.
ST91-8767	Delhi Gas P/L Corp	Transwestern P/L Co	05-23-91	C	20,000	N	05-01-91	Indefinite.
ST91-8768	Panhandle Eastern P/L Co	Unified Natural Gas Group	05-23-91	G-S	20,000	N	05-01-91	08-29-91.
ST91-8769	Panhandle Eastern P/L Co	Gastrak Corp	05-23-91	G-S	62,500	N	05-01-91	08-29-91.
ST91-8770	Panhandle Eastern P/L Co	Gastrak Corp	05-23-91	G-S	342,000	N	05-01-91	08-29-91.
ST91-8771	Panhandle Eastern P/L Co	Enron Gas Marketing, Inc	05-23-91	G-S	25,000	N	05-01-91	08-29-91.
ST91-8772	Panhandle Eastern P/L Co	Panhandle Trading Co	05-23-91	G-S	10,000	Y	05-01-91	08-29-91.

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Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Affiliated Y/N	Date commenced	Projected termination date
ST91-5773	Panhandle Eastern P/L Co	Hadson Gas Systems, Inc	05-23-91	G-S	100,000	N	05-03-91	08-31-91.
ST91-5774	Panhandle Eastern P/L Co	Unified Natural Gas Group	05-23-91	G-S	30,000	N	05-01-91	08-29-91.
ST91-5775	Panhandle Eastern P/L Co	Panhandle Trading Co	05-23-91	G-S	100,000	Y	05-01-91	08-29-91.
ST91-5776	Panhandle Eastern P/L Co	Midwest Grain Products of IL	05-23-91	G-S	2,900	N	05-01-91	08-29-91
ST91-5777	Panhandle Eastern P/L Co	AMGAS, Inc	05-23-91	G-S	40	N	05-01-91	08-29-91.
ST91-5778	Panhandle Eastern P/L Co	Columbia Gas Transmission Corp.	05-23-91	G	50,000	N	04-01-91	Indefinite.
ST91-5779	Panhandle Eastern P/L Co	Texper Energy, Inc	05-23-91	G-S	100,000	N	05-01-91	08-29-91.
ST91-5780	Panhandle Eastern P/L Co	Enron Gas Marketing, Inc	05-23-91	G-S	100,000	N	05-01-91	08-29-91.
ST91-5781	Sea Robin P/L Co	United Gas P/L Co	05-23-91	G	5,000	N	05-01-90	Indefinite.
ST91-5782	Northwest P/L Corp	Biomass One L.P.	05-23-91	G-S	5,000	N	04-29-91	08-25-91.
ST91-5783	Northwest P/L Corp	Greeley Gas Co	05-23-91	G-S	540	N	05-01-91	08-29-91.
ST91-5784	EL Paso Natural Gas Co	Westar Transmission Co	05-23-91	G-S	150,000	Y	05-01-91	08-29-91.
ST91-5785	Arkla Energy Resources	Arkla Energy Marketing Co	05-23-91	G-S	450	Y	04-01-91	07-20-91.
ST91-5786	Arkla Energy Resources	Lafayette Gas Intrastate	05-23-91	B	25,000	Y	04-01-91	Indefinite.
ST91-5787	Arkla Energy Resources	Arkla Energy Marketing Co	05-23-91	G-S	150,000	Y	04-04-91	08-03-91.
ST91-5788	Transcontinental Gas P/L Corp	Moebacher Energy Co	05-23-91	G-S	200	N	04-22-91	08-19-91.
ST91-5789	Tennessee Gas P/L Co	Southern Gas Co, Inc	05-24-91	G-S	25,000	N	04-24-91	08-22-91.
ST91-5790	Lone Star Gas Co	Natural Gas P/L Co of America	05-24-91	C	12,000	N	04-25-91	Indefinite.
ST91-5791	ONG Transmission Co	Natural Gas P/L Co of America	05-24-91	C	50,000	N	05-01-91	04-30-03.
ST91-5792	Natural Gas P/L Co of America	Hadson Gas Systems, Inc	05-24-91	G-S	100,000	N	05-01-91	08-29-91.
ST91-5793	Natural Gas P/L Co of America	Phibro Energy, Inc	05-24-91	G-S	50,000	N	05-01-91	08-29-91.
ST91-5794	High Island Offshore System	Williams Gas Marketing Co	05-24-91	K-S	50,000	N	05-17-91	09-13-91.
ST91-5795	Northern Natural Gas Co	Unigas Corp	05-24-91	G-S	100,000	N	05-01-91	08-29-91
ST91-5796	Northern Natural Gas Co	Howard Energy Co	05-24-91	G-S	100,000	N	05-04-91	09-03-91.
ST91-5797	Northern Natural Gas Co	Natgas U.S. Inc	05-24-91	G-S	350,000	N	05-07-91	08-04-91.
ST91-5798	Southern Natural Gas Co	Texaco Inc	05-24-91	G-S	100,000	N	05-03-91	08-31-91.
ST91-5799	Southern Natural Gas Co	Peoples Gas System, Inc	05-24-91	B	50,000	N	05-13-91	Indefinite.
ST91-5800	Southern Natural Gas Co	Centran Corp	05-24-91	G-S	4,000	N	05-07-91	09-04-91.
ST91-5801	Southern Natural Gas Co	Excel Gas Marketing Inc	05-24-91	G-S	100,000	N	05-03-91	08-31-91.
ST91-5802	Southern Natural Gas Co	Peoples Gas System, Inc	05-24-91	B	10,050	N	05-17-91	Indefinite.
ST91-5803	South Georgia Natural Gas Co	Peoples Gas System, Inc	05-24-91	B	10,000	N	05-17-91	Indefinite.
ST91-5804	South Georgia Natural Gas Co	Peoples Gas System, Inc	05-24-91	B	50,000	N	05-17-91	Indefinite.
ST91-5805	South Georgia Natural Gas Co	Consolidated Fuel Corp	05-24-91	G-S	10,000	N	04-12-91	06-10-91.
ST91-5806	El Paso Natural Gas Co	Gas Co of New Mexico	05-25-91	B	39,758	Y	04-06-91	Indefinite.
ST91-5807	Colorado Interstate Gas Co	Marathon Oil Co	05-25-91	G-S	60,000	N	05-11-91	09-09-91.
ST91-5808	Northern Natural Gas Co	West Texas Gas, Inc	05-25-91	B	100,000	Y	05-01-91	Indefinite.
ST91-5809	Northern Natural Gas Co	GPC Marketing Co	05-25-91	G-S	20,000	N	05-15-91	09-12-91.
ST91-5810	Tennessee Gas P/L Co	Equitrans, Inc	05-25-91	G	2,073	N	05-01-91	Indefinite.
ST91-5811	Tennessee Gas P/L Co	Dacota P/L Co, Inc	05-25-91	G-S	4,000	N	05-01-91	08-29-91.
ST91-5812	Tennessee Gas P/L Co	East Ohio Gas Co	05-25-91	B	50,000	N	04-27-91	Indefinite.
ST91-5813	Tennessee Gas P/L Co	Texas Gas P/L Co	05-25-91	G	6,300	N	04-03-91	Indefinite.
ST91-5814	Transok, Inc	Natural Gas P/L Co of America	05-25-91	C	100,000	N	05-04-91	Indefinite.
ST91-5815	Transok, Inc	Phillips Gas P/L Co	05-25-91	C	25,000	N	04-26-91	Indefinite.
ST91-5816	Transok, Inc	Natural Gas P/L Co of America	05-25-91	C	50,000	N	05-01-91	Indefinite.
ST91-5817	Columbia Gas Transmission Corp.	Columbia Gas of PA, Inc	05-25-91	B	407	Y	05-21-91	Indefinite.
ST91-5818	Columbia Gas Transmission Corp.	New York State Electric and Gas Corp.	05-25-91	G-S	300,000	Y	05-21-91	06-30-91.
ST91-5819	Tennessee Gas P/L Co	East Ohio Gas Co	05-29-91	B	30,000	N	05-14-91	Indefinite.
ST91-5820	Tennessee Gas P/L Co	Endevco Oil and Gas Co	05-29-91	G-S	50,000	N	05-02-91	08-30-91.
ST91-5821	Natural Gas P/L Co of America	Southern California Gas Co	05-29-91	B	500,000	N	04-02-91	Indefinite.
ST91-5822	Natural Gas P/L Co of America	Interstate Power Co	05-29-91	B	25,000	N	05-04-91	Indefinite.
ST91-5823	Natural Gas P/L Co of America	Northern Illinois Gas Co	05-29-91	B	5,500	N	05-01-91	Indefinite.
ST91-5824	Natural Gas P/L Co of America	Entex	05-29-91	B	500,000	N	05-01-91	Indefinite.
ST91-5825	Algonquin Gas Transmission Co	Entrade	05-29-91	G-S	200,000	N	05-01-91	08-29-91.
ST91-5826	Algonquin Gas Transmission Co	Distrigas of Mass Corp	05-29-91	B	66,612	N	05-01-91	Indefinite.
ST91-5827	Algonquin Gas Transmission Co	Phibro Energy, Inc	05-29-91	G-S	50,000	N	05-01-91	Indefinite.
ST91-5828	Algonquin Gas Transmission Co	Distrigas of Mass Corp	05-29-91	B	66,612	N	04-01-91	Indefinite.
ST91-5829	Algonquin Gas Transmission Co	Distrigas of Mass Corp	05-29-91	B	66,612	N	04-01-91	Indefinite.
ST91-5830	Algonquin Gas Transmission Co	Distrigas of Mass Corp	05-29-91	B	66,612	N	04-01-91	Indefinite.
ST91-5831	Texas Eastern Transmission Corp.	North Canadian Marketing Corp	05-29-91	G-S	145,261	N	05-06-91	09-05-91.
ST91-5832	Texas Eastern Transmission Corp.	Equitable Gas Co	05-29-91	B	5,000	N	05-01-91	Indefinite.
ST91-5833	Transcontinental Gas P/L Corp	Long Island Lighting Co	05-29-91	B	250,000	N	07-01-91	08-20-91.
ST91-5834	Texas Gas Transmission Corp	Exxon Corp	05-29-91	G-S	100,000	Y	05-11-91	09-07-91.
ST91-5835	Columbia Gas Transmission Corp.	Howell Gas Management Co	05-29-91	G-S	500,000	Y	05-01-91	08-29-91.
ST91-5836	Sea Robin Pipeline Co	Louis Dreyfus Energy Corp	05-30-91	G-S	100,000	N	02-01-91	08-29-91.
ST91-5837	Channel Industries Gas Co	Natural Gas P/L Co of America	05-30-91	C	40,000	N	05-29-91	Indefinite.
ST91-5838	Questar Pipeline Co	City of Springfield	05-30-91	B	5,230	Y	05-02-91	09-30-91.
ST91-5839	Questar Pipeline Co	KPL Gas Service Co	05-30-91	B	30,000	N	05-02-91	Indefinite.
ST91-5840	Natural Gas P/L Co of America	Teneska Marketing Ventures	05-30-91	G-S	5,000	N	05-01-91	08-29-91.
ST91-5841	Natural Gas P/L Co of America	Industrial Energy App Inc	05-30-91	G-S	200,00	N	05-01-91	08-29-91.
ST91-5842	ANR Pipeline Co	Union Light, Heat and Power Co	05-30-91	B	7,000	N	05-01-91	Indefinite.
ST91-5843	ANR Pipeline Co	Wisconsin Public Service Corp	05-30-91	B	20,000	N	05-01-91	Indefinite.
ST91-5844	ANR Pipeline Co	Wisconsin Public Service Corp	05-30-91	B	20,000	N	05-01-91	Indefinite.
ST91-5845	ANR Pipeline Co	Wisconsin Gas Co	05-30-91	B	9,500	N	05-01-91	Indefinite.
ST91-5846	ANR Pipeline Co	Mitchigan Consolidated Gas Co	05-30-91	B	25,456	N	05-01-91	03-31-92.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Affiliated Y/N	Date commenced	Projected termination date
ST91-5847	ANR Pipeline Co	Amoco Production Co	05-30-91	G-S	150,000	N	05-01-91	Indefinite.
ST91-5848	ANR Pipeline Co	Triumph Gas Marketing Co	05-30-91	G-S	1,000	N	05-01-91	08-29-91.
ST91-5849	ANR Pipeline Co	Triumph Gas Marketing Co	05-30-91	G-S	1,800	N	05-01-91	08-29-91.
ST91-5850	ANR Pipeline Co	Northern Indiana Public Ser Co	05-30-91	B	30,000	N	05-04-91	Indefinite.
ST91-5851	ANR Pipeline Co	Cincinnati Gas and Electric Co	05-30-91	B	23,000	N	05-01-91	Indefinite.
ST91-5852	ANR Pipeline Co	Niagra Mohawk Power Corp	05-30-91	B	12,500	N	05-01-91	Indefinite.
ST91-5853	Transcontinental Gas P/L Corp	Energy Marketing Exchange, Inc	05-30-91	B	100,000	N	05-01-91	Indefinite.
ST91-5854	United Gas Pipeline Co	Tejas Hydrocarbons	05-30-91	G-S	50,000	N	05-02-91	09-17-91.
ST91-5855	Arkla Energy Resources	Gaylord Container, Inc	05-30-91	G-S	500	N	01-01-91	05-01-91.
ST91-5856	Delhi Gas Pipeline Corp	Natural Gas P/L Co of America	05-31-91	C	2,000	N	05-16-91	Indefinite.
ST91-5857	Exxon Gas System, Inc	Neches Gas Distribution Co	05-31-91	C	10,000	N	05-01-91	Indefinite.
ST91-5858	Channel Industries Gas Co	Moss Bluff Gas Storage Systems	05-31-91	C	40,000	N	10-05-90	Indefinite.
ST91-5859	Columbia Gulf Transmission Co	CNG Trading Co	05-31-91	G-S	50,000	N	05-04-91	08-31-91.
ST91-5860	Natural Gas P/L Co. of America	Owens-Illinois Glass Container	05-31-91	G-2	1,000	N	05-01-91	08-29-91.
ST91-5861	Natural Gas P/L Co. of America	San Diego Gas & Electric Co	05-31-91	B	225,000	N	05-01-91	Indefinite.
ST91-5862	Northern Natural Gas Co	Enron Oil & Gas Co	05-31-91	G-S	50,000	Y	05-10-91	09-08-91.
ST91-5863	Northern Natural Gas Co	Broad Street Oil and Gas Co	05-31-91	G-S	33,333	N	05-15-91	09-12-91.
ST91-5864	Gulf States Trans. Corp	Crosstex Marketing Co	05-31-91	G-S	20,000	N	05-01-91	08-29-91.
ST91-5865	Gulf States Trans. Corp	Westchester Gas Co	05-31-91	G-S	50,000	N	05-01-91	08-29-91.
ST91-5866	Tennessee Gas Pipeline Co	Southeastern Natural Gas Co	05-31-91	B	50,000	N	05-01-91	Indefinite.
ST91-5869	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp.	05-31-91	G	50,000	N	05-01-91	Indefinite.
ST91-5870	Tennessee Gas Pipeline Co	CNG Transmission Corp	05-31-91	G	50,000	N	05-01-91	Indefinite.
ST91-5871	Tennessee Gas Pipeline Co	East Ohio Gas Co	05-31-91	B	100,000	N	05-04-91	Indefinite.
ST91-5872	Tennessee Gas Pipeline Co	Nycotex Gas Transport	05-31-91	B	100,000	N	05-04-91	Indefinite.
ST91-5873	Panhandle Eastern P/L Co	Cibola Corp	05-31-91	G-S	100,000	N	05-01-91	08-29-91.
ST91-5874	Panhandle Eastern P/L Co	West Ohio Gas Co. et al	05-31-91	B	50,000	N	05-01-91	Indefinite.
ST91-5875	Panhandle Eastern P/L Co	Baltimore Gas and Electric Co., et al.	05-31-91	B	100,000	N	05-01-91	Indefinite.
ST91-5876	Panhandle Eastern P/L Co	Caterpillar, Inc	05-31-91	G-S	15,000	N	05-01-91	08-29-91.
ST91-5877	Panhandle Eastern P/L Co	Dunn/Seco Partners	05-31-91	G-S	3,700	N	04-01-91	07-30-91.
ST91-5878	Panhandle Eastern P/L Co	Accese Energy Corp	05-31-91	G-S	50,000	N	05-01-91	08-29-91.
ST91-5879	Colorado Interstate Gas Co	Golden Gas Energies, Inc	05-31-91	G-S	5,000	N	05-17-91	09-16-91.
ST91-5880	Colorado Interstate Gas Co	Aquila Energy	05-31-91	G-S	14,009	N	05-05-91	09-03-91.
ST91-5881	Colorado Interstate Gas Co	Louis Dreyfus Energy Co	05-31-91	G-S	50,000	N	05-01-91	08-29-91.
ST91-5882	Colorado Interstate Gas Co	Vesgas Co	05-31-91	G-S	2,000	N	05-01-91	08-29-91.
ST91-5883	Colorado Interstate Gas Co	Texaco Gas Marketing, Inc	05-31-91	G-S	100,000	N	05-01-91	08-29-91.
ST91-5884	Williston Basin Interstate P/L Co	Amerada Hess Corp	05-31-91	G-S	26,000	N	05-01-91	07-31-91.
ST91-5885	Williams Natural Gas Co	Universal Resources Corp	05-31-91	G-S	5,000	N	05-01-91	08-26-91.
ST91-5886	Transcontinental Gas P/L Corp	Appalachian Gas Sales	05-31-91	B	50,000	N	05-01-91	Indefinite.
ST91-5887	Transcontinental Gas P/L Corp	Appalachian Gas Sales	05-31-91	B	50,000	N	05-01-91	Indefinite.
ST91-5888	Transcontinental Gas P/L Corp	Superior Natural Gas Corp	05-31-91	G-S	25,000	N	05-01-91	08-28-91.

Below is a ST-docketed initial report which is noticed out of sequence. This initial report was not noticed previously because it required additional commission staff reviews.

ST91-5233	Arkla Energy Resources	Phoenix Gas P/L	01-09-91	G-S	150	N	12-27-90	04-25-91.

[1] Transportation service converted from authority under 18 C.F.R. section 284.106, subpart B, to authority under 18 C.F.R. section 284.223(f)(1), subpart G-S.
[2] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[3] Estimated maximum daily volumes includes volumes reported by the filing company in mmbtu, mcf and dt.

[FR Doc. 91-14679 Filed 6-19-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP91-2192-000, et al.]

United Gas Pipe Line Company, et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company, et al.

[Docket Nos. CP91-2192-000, CP91-2193-000, CP91-2194-000, CP91-2195-000, CP91-2196-000]

June 10, 1991.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and it summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: July 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

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APPENDIX A

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2185-000 (5-6-91)	Laser Marketing Company (Marketer).	616,000 616,000 225,570,000	Various	Various	12-16-88, ITS, Interruptible.	ST91-8858, 5-1-91.
CP91-2193-000 (5-6-91)	Midcon Marketing Corp. (Marketer).	721,000 721,000 263,165,000	Various	Various	4-30-86, Interruptible.	ST91-8887, 5-15-91.
CP91-2194-000 (5-6-91)	Amos Financial Incorporated (Marketer).	15,450 15,450 5,639,250	Various	Various	7-14-89, ITS, Interruptible.	ST91-8888, 5-6-91.
CP91-2195-000 (5-6-91)	Texaco Gas Marketing Inc. (Marketer).	[1] 100,000 20,000 7,300,000	WY	KS	8-1-88, TI-1, Interruptible.	ST91-8883, 5-1-91.
CP91-2196-000 (5-6-91)	Sunrise Energy Company (Marketer).	10,450 7,500 3,850,000	OK, TX	TX	5-1-91, FT-1, Firm	ST91-8897, 5-1-91.

[1] Measured in Mcf.

APPENDIX B

Applicant's address	Blanket docket
Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944	CP86-589, et al.
Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP86-435-000
United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478	CP88-6-000

Northern Natural Gas Company, et. al.

[CP91-2172-000,[2] CP91-2173-000, CP91-2174-000, CP91-2175-000, CP91-2176-000]

June 10, 1991.

Take notice that on June 4, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under their respective blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the transportation service agreement between the Applicant and the respective shipper, the reference number of the transportation service agreement, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants allege that they would provide the proposed service for each shipper under an executed transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules. The Applicants contend that construction of facilities is not required with each of the Applicants using existing facilities to provide the proposed transportation service.

Comment date: July 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

APPENDIX

Docket No., Trans. Agree. (Ref. No.)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of Receipt	Points of Delivery	Start up date, rate schedule, service type	Related[3] dockets
CP91-2172-000, 5-7-91, (5915)	Northern Natural Gas Co., 1400 Smith Street, P.O. Box 1188, Houston, TX 77251-1188.	Neigas U.S. Inc.	350,000 262,500 127,750,000	Various	Various	5-7-91, IT-1, Interruptible.	CP86-435-000, ST91-8797-000.
CP91-2173-000, 5-15-91, (78008)	Northern Natural Gas Company.	GPC Marketing Company.	20,000 15,000 7,300,000	Various	Various	5-15-91, IT-1, Interruptible.	CP86-435-000, ST91-8860-000.
CP91-2174-000, 5-8-91 (5892)	Northern Natural Gas Company.	Unigas Corporation.	100,000 75,000 36,500,000	Various	Various	5-1-91, TI-1, Interruptible.	CP86-435-000, ST91-8795-000.

APPENDIX—Continued

Docket No., Trans. Agree. (Ref. No.)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of Receipt	Points of Delivery	Start up date, rate schedule, service type	Related[3] dockets
CP91-2175-000, 9-12-90, (P-PLT-3382)	Panhandle Eastern Pipe Line Co., P.O. Box 1642 Houston, TX 77251-1642.	Dunn/Seco Partners.	3,750 Dt 3,750 Dt 1,350,500 Dt	Various	MI	9-12-90, PT, Interruptible.	CP86-585-000, ST91-8877-000.
CP91-2176-000, 11-26-90, (97R7)	El Paso Natural Gas Co., P.O. Box 1492, El Paso, 79978.	Wester Gas Processors, Ltd.	15,000 7,500 2,737,500	NM, CO, & UT	CO	4-18-91, T-1, Interruptible.	CP88-433-000, ST91-8588-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[3] The CP Docket number corresponds to the Applicants' blanket transportation certificate. The ST docket indicates that 120-day transportation service was initiated under § 284.223(a) of the Commission's Regulations.

3. Northern Natural Gas Company, et al.

[Docket Nos. CP91-2184-000, CP91-2185-000, CP91-2186-000, and CP91-2188-000]

June 10, 1991.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: July 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2184-000 (6-4-91)	Amoco Energy Trading Corporation (Marketer).	100,000 20,000 3,650,000	OK	TX	3-5-91, IT-1, Interruptible.	ST91-8669, 5-6-91.
CP91-2185-000 (6-4-91)	Enron Gas Marketing, Inc. (Marketer).	100,000 100,000 36,500,000	Various	Various	3-5-91, TI-1, Interruptible.	ST91-8671, 5-1-91.
CP91-2186-000 (6-4-91)	Southern Gas Company, Inc. (Marketer).	450 450 164,000	Various	Various	3-8-91, FT, Firm	ST91-8701, 5-1-91.
CP91-2188-000 (6-5-91)	Marathon Oil Company (Producer).	60,000 60,000 21,900,000	OK, TX, KS, CO, WY	CO	3-5-91, TI-1, Interruptible.	ST91-8807, 5-11-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Applicant's address	Blanket docket
Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944	CP86-589, et al.
Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP86-435-000.
Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301	CP88-686-000.

4. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP91-2116-000]

June 10, 1991.

Take notice that on June 6, 1991, Arkla Energy Resources, a division of Arkla, Inc. (AER) filed in Docket No. CP91-2116-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for six shippers under AER's blanket certificate issued in Docket No. CP88-820-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Information applicable to each shipper, including the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by AER and is summarized in the attached appendix.

Comment date: July 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

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APPENDIX

Shipper name (type)	Peak day average day annual MMBtu	Receipt points	Delivery points	Rate schedule service type	ST docket start up date
Arkla Energy Marketing (Marketer).	115,000 92,000 33,580,000	OK, TX, AR, LA	OK, TX	IT, Interruptible	ST91-8373, 12-1-90.
Calumet Refining (Industrial)	4,200 4,200 1,533,000	OK, TX, AR, LA	LA	FT, Firm	ST91-8387, 10-25-90.
Amoco Energy Trading Corp. (Marketer).	16,606 16,606 6,061,190	OK, TX, AR, LA	TX	FT, Firm	ST91-8291, 12-1-90.
Arkla Energy Marketing (Marketer).	125,000 100,000 36,500,000	OK, TX, AR, LA	OK	IT, Interruptible	ST91-8937, 11-1-90.
Arkla Energy Marketing (Marketer).	150,000 120,000 43,800,000	OK, TX, AR, LA	MO	IT, Interruptible	ST91-8610, 12-23-90.
Enron Gas Marketing (Marketer).	150,000 120,000 43,800,000	OK, TX, AR, LA	OK, TX, AR, LA	IT, Interruptible	ST91-8906, 2-14-91.

5. Northern Natural Gas Company

[Docket No. CP91-2242-000]

June 11, 1991.

Take notice that on June 10, 1991, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-2242-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Enron Oil & Gas Company, a producer, under the blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that, pursuant to an agreement dated May 10, 1991, under its Rate Schedule IT-1, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas. Northern indicates that it would transport 37,500 MMBtu on an average day and 18,250,000 MMBtu annually. Northern further indicates that the gas would be transported from various receipt points, and would be redelivered in Kansas, Texas, Oklahoma, Wisconsin, and Iowa.

Northern advises that service under § 284.223(a) commenced May 10, 1991, as reported in Docket No. ST91-8862-000.

Comment date: July 26, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Transcontinental Gas Pipe Line Corporation, et al.

[Docket Nos. CP91-2197-000, [4] CP91-2198-000, CP91-2199-000, CP91-2200-000]

June 11, 1991.

Take notice that the above referenced companies (Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transaction service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 26, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notices requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of [2] Receipt	Points of [2] Delivery	Start up date, rate schedule	Related [3] dockets
CP91-2197-000 (6-06-91)	Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251.	Colinco Natural Gas Company.	75,000 30,000 10,950,000	OTX, OLA	TX, LA	04-19-91, IT	ST91-8573-000, CP88-328-000.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of [2] Receipt	Points of [2] Delivery	Start up date, rate schedule	Related [3] dockets
CP91-2198-000 (6-06-91)	Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001.	Enron Gas Marketing, Inc.	130,000 80,000 16,250,000	LA, OLA	LA, OLA, TN, MS	04-24-91, IT-1 & IT-2.	ST91-8458-000, CP86-239-000.
CP91-2199-000 (6-06-91)	Sea Robin Pipeline Company, P.O. Box 2563, Birmingham, Alabama 35202-2563.	Louis Dreyfus Energy Corporation.	100,000 100,000 36,500,000	OLA	LA	02-90, ITS	ST91-8761-000, CP86-624-000.
CP91-2200-000 (6-07-91)	Stingray Pipeline Company, 701 East 22nd St., Lombard, Illinois 60148.	NGC Transportation, Inc.	100,000 40,000 14,600,000	LA, OLA, OTX	LA, OTX	04-01-91, ITS	ST91-8736-000, RP89-70-000.

[1] Quantities are shown in dt for Transco; MMBtu for Columbia and Stingray; and Mcf for Sea Robin.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX, respectively.
[3] The CP and RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. Commonwealth Gas Company

[Docket No. CI91-85-000]

June 11, 1991.

Take notice that on May 14, 1991, Commonwealth Gas Company (COMGas), a local distribution company, of 157 Cordaville Road, Southborough, Massachusetts 01772, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of any natural gas including gas purchased in a first sale, imported natural gas and liquified natural gas, natural gas purchased from interstate and intrastate pipelines and from local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: July 1, 1991, in accordance with Standard Paragraph J at the end of this notice.

8. Allied Producers Gas Service, Inc.

[Docket No. CI91-81-000]

June 11, 1991.

Take notice that on May 3, 1991, Allied Producers Gas Service, Inc. (Allgas) of suite 2230, LB 127, Plaza of the Americas, 600 North Pearl Street, Dallas, Texas 75201, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of natural gas subject to the Commission's jurisdiction including imported gas, liquified natural gas, gas purchased from interstate natural gas pipelines pursuant to interruptible sales service programs, and gas purchased for "non-first sellers" such as intrastate pipelines and local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: July 1, 1991, in accordance with Standard Paragraph J at the end of this notice.

9. Yates Petroleum Corporation

[Docket No. CI91-86-000]

June 11, 1991.

Take notice that on May 15, 1991, Yates Petroleum Corporation (Yates) of 105 South Fourth Street, Artesia, New Mexico 88210, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of natural gas from any source including sales for resale of imported natural gas and liquified natural gas, gas purchased from non-first sellers pursuant to interstate pipelines discount sales authority and gas purchased from other non-first sellers such as intrastate pipelines and local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: July 1, 1991, in accordance with Standard Paragraph J at the end of this notice.

10. Husky Gas Marketing Inc.

[Docket No. CI91-87-000]

June 11, 1991.

Take notice that on May 16, 1991, Husky Gas Marketing Inc. (HGMI), c/o Husky Oil Operations Ltd., 707—8th Avenue, SW., Box 6525, Station D, Calgary, Alberta, Canada T2P 3G7, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of any natural gas including all NGPA categories of NGA gas, imported natural gas or liquified natural gas, and natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: July 1, 1991, in accordance with Standard Paragraph J at the end of this notice.

11. Doswell Limited Partnership

[Docket No. CI91-88-000]

June 11, 1991.

Take notice that on May 20, 1991, Doswell Limited Partnership (Doswell) of 2112 West Laburnum Avenue, suite 108, Richmond, Virginia 23227, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate

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with pregranted abandonment authorizing sales for resale in interstate commerce of all NGPA categories of gas subject to the Commission's NGA jurisdiction, gas purchased from non-first sellers such as intrastate pipelines and local distribution companies, imported natural gas or liquified natural gas, and natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply, all as more fully set forth in the applications which is on file with the Commission and open for public inspection.

Comment date: July 1, 1991, in accordance with Standard Paragraph J at the end of this notice.

12. National Fuel Gas Supply Corporation

[Docket Nos. CP91-2234-000, CP91-2235-000, CP91-2236-000, CP91-2237-000, CP91-2238-000, CP91-2239-000, CP91-2240-000]

June 12, 1991.

Take notice that on June 10, 1991, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP89-1582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by National and is summarized in the attached appendix.

Comment date: July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract data, rate schedule, service type	Related docket, start up date
CP91-2234-000 (6-10-91)	Reliance Gas Marketing Company.	20,000 20,000 7,300,000	NY, PA	NY, PA	1-2-91, IT, Interruptible.	ST91-8475-000, 4-2-91.
CP91-2235-000 (6-10-91)	Northridge Petroleum Marketing, Inc.	20,000 20,000 7,300,000	NY, PA	NY, PA	12-28-90, IT, Interruptible.	ST91-8503-000, 4-3-91.
CP91-2236-000 (6-10-91)	Power Authority of the State of New York.	200,000 200,000 73,000,000	NY, PA	NY, PA	1-2-91, IT, Interruptible.	ST91-8473-000, 4-2-91.
CP91-2237-000 (6-10-91)	The Polaris Pipeline Company.	24,137 24,137 8,810,005	NY, PA	NY, PA	4-4-91, IT, Interruptible.	ST91-8499-000, 4-12-91.
CP91-2238-000 (6-10-91)	Atlas Gas Marketing, Inc.	14,142 14,142 5,161,830	NY, PA	NY, PA	12-28-90, IT, Interruptible.	ST91-8476-000, 4-1-91.
CP91-2239-000 (6-10-91)	O & R Energy, Inc.	50,000 50,000 18,250,000	NY, PA	NY, PA	12-28-90, IT, Interruptible.	ST91-8481-000, 4-4-91.
CP91-2240-000 (6-10-91)	Boston Gas Company	100,000 100,000 36,500,000	NY, PA	NY, PA	12-28-90, IT, Interruptible.	ST91-8486-000, 4-3-91.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14673 Filed 6-19-91; 8:45 am]

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[Docket Nos. CP91-2207-000, et al.]

Viking Gas Transmission Company, et al.; Natural Gas Certificate Filings

July 13, 1991.

Take notice that the following filings have been made with the Commission:

1. Viking Gas Transmission Company

[Docket No. CP91-2207-000]

Take notice that on June 7, 1991, Viking Gas Transmission Company (Viking), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-2207-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Wisconsin Public Service Corporation, an LDC, under the blanket certificate issued in Docket No. CP90-273-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Viking states that, purusant to an agreement dated September 21, 1990, under its Rate Schedule IT-2, it proposes to transport up to 11,820 Dth per day equivalent of natural gas. Viking indicates that the gas would be transported from Wisconsin, Minnesota, and North Dakota, and would be redelivered in Wisconsin, Minnesota, and North Dakota. Viking further indicates that it would transport 11,820 Dth on an average day and 4,314,300 Dth annually.

Viking advises that service under § 284.223(a) commenced February 1, 1991, as reported in Docket No. ST91-8896.

Comment date: July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP91-2248-000]

Take notice that on June 10, 1991, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE. Charleston, West Virginia 25314, filed in Docket No. CP91-2249-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate on new delivery point as a jurisdictional sales facility to accommodate natural gas deliveries to Delta Natural Gas Company, Inc. (Delta) in Lee County, Kentucky for the Market Area of Beattyville, under Columbia's blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is said that the sales through this delivery point would be under Columbia's SGS rate schedule to Delta for residential, commercial and/or industrial service. It is further said that the quantities to be provided through the new delivery point are within Columbia's currently authorized level of service and would be within existing peak day entitlements of Delta.

Comment date: July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP91-2169-000]

Take notice that on June 3, 1991, Panhandle Eastern Pipe Line Company (Panhandle) filed in Docket CP91-2169-000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon partically the sale of natural gas to Central Illinois Light Company (CILCO) and for authorization to increase the service level for Northern Indiana Public Service Company NIPSCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that it serves CILCO and NIPSCO pursuant to Panhandle's Rate Schedule G. It is stated that due to recent developments, CILCO and NIPSCO have executed new service agreements to reflect their desired level of contract demand quantity. Panhandle indicates that CILCO's new service agreement would provide for a reduction of its contract demand levels and that NIPSCO's new service agreement would reallocate its summer period monthly contract demand levels, resulting in an overall increase in its annual contract demand. Panhandle states that each of these service agreements would be effective April 1, 1991, and would continue until October 31, 1992.

Panhandle indicates that CILCO's annual contract demand would decrease by 4,071,225 Mcf from the current figure of 27,156,525 Mcf to 23,085,300 Mcf. Panhandle further indicates that NIPSCO's annual contract demand would increse by 14, 900 Mcf from the current figure of 18,803,800 Mcf to 18,818,700 Mcf. Panhandle requests an effective data of April 1, 1991.

Comment date: July 5, 1991, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Company; Transcontinental Gas Pipe Line Corporation

[Docket Nos. CP91-2247-000, CP91-2246-000]

Take Notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, and Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-6-000 and Docket No. CP88-328-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

APPENDIX

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBTu	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-2247-000 (6-10-91)	Tejas Hydrocarbons Company (marketer).	154,500 154,500 56,392,500	LA, OLA, TX, MS	LA, TX, MS	1-13-88 ITS Interruptible.	ST91-8854, 5-30-91.

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APPENDIX—Continued

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBTu	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-2248-000 ST91-8786 (6-10-91)	Mosbacher Energy Company (producer).	[2] 200 200 73,000	MS	MS	1-16-91 ITS interruptible.	4-22-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Measured in dt equivalent.

5. Louisiana-Nevada Transit Company

[Docket No. CP91-2160-000]

Take notice that on May 31, 1991, Louisiana-Nevada Transit Company (LNT), P.O. Box 488, Hope, Arkansas 71801, LNT filed a request with the Commission in Docket No. CP91-2160-000 pursuant to section 7(b) of the Natural Gas Act, as amended, and part 157 of the Regulations thereunder, for permission and approval to abandon service to: (1) Arkansas Louisiana Gas Company (Arkla) under LNT's Rate Schedule G-1; and (2) United Gas Pipe Line Company (United) under LNT's Rate Schedule X-2. LNT states that it also proposes to cancel said Rate Schedules G-1 and X-2, all as more fully set forth in the application on file with the Commission and open to public inspection.

LNT states that the service to Arkla sought to be abandoned was authorized by Commission order issued September 30, 1961, in Docket No. G-1440-001, where LNT was authorized to sell to Arkla up to 5,000 Mcf of natural gas per day, but not more than 1,013,185 Mcf of gas for any 12-month period beginning September 1 of each year. LNT also states that by notice dated September 4, 1986, LNT notified United that LNT did not wish to renew the subject service agreement, and that Arkla, by letter dated December 16, 1986, notified LNT of the cancellation of that service agreement, effective December 17, 1986. It is asserted that such service has been provided under LNT's Rate Schedule G-1, which LNT proposes to cancel.

LNT indicates that the service to United sought to be abandoned was authorized by Commission order issued February 27, 1961, in Docket No. CP60-488. LNT avers that such order authorized it to sell to United certain imbalance gas in conection with an exchange agreement, and certain other volumes of gas as LNT may have available. LNT states that such sales were made pursuant to a gas purchase agreement dated August 5, 1960, which contained a 10-year term, that sales terminated as of February 1987, and that such agreement has terminated by its terms. It is stated such service has been provided under LNT's Rate Schedule X-2, which LNT proposes to cancel.

In addition, it is stated that LNT requests an effective date of June 1, 1991, for abandonment to both Arkla and United, to coincide with the proposed effective date in a section 4 rate filing submitted to the Commission concurrently with the abandonment application.

Comment date: July 5, 1991, in accordance with Standard Paragraph F at the end of this notice.

6. National Fuel Gas Supply Corporation

[Docket Nos. CP91-2226-000, CP91-2227-000]

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

APPENDIX

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-2226-000 6-10-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Appalachian Gas Sales, Inc.	20,000 20,000 7,300,000	NY, PA	NY, PA	IT, Interruptible 4-5-91.	CP89-1582-000, ST91-8478-000.

APPENDIX—Continued

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-2227-000 6-10-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Trinity Pipeline Incorporated.	60,000 60,000 2,190,000	NY, PA	NY, PA	IT, Interruptible 4-3-91.	CP89-1582-000, ST91-8474-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. El Paso Natural Gas Company, et al.

[Docket Nos. CP91-2216-000, CP91-2217-000, CP91-2218-000, CP91-2219-000, and CP91-2220-000]

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

APPENDIX

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-2216-000 6-7-91	El Paso Natural Gas Company, P.O. Box 1492, El Paso, TX 79978.	Bridge Gas U.S.A. Inc.	206,000 206,000 75,190,000	All on system points.	AZ	5-17-91, T-1	ST91-8693-000
CP91-2217-000 6-10-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	BP Gas, Inc	25,000 25,000 9,125,000	NY, PA	NY, PA	4-5-91, IT	ST91-8483-000
CP91-2218-000 6-10-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY.	New Jersey Natural Gas Company.	630 630 229,950	NY, PA	NY, PA	4-3-91, IT	ST91-8515-000
CP91-2219-000 6-10-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Niagara Gas Transmission.	1,000 1,000 365,000	NY, PA	NY, PA	4-4-91, IT	ST91-8485-000
CP91-2220-000 6-10-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Aquila Energy Marketing Corporation.	150,000 150,000 54,750,000	NY, PA	NY, PA	4-3-91, IT	ST91-8482-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

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8. National Fuel Gas Supply Corporation

[Docket Nos. CP91-2221-000, CP91-2222-000, CP91-2223-000, CP91-2224-000, CP91-2225-000]

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Applicant: National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.
Blanket Certificate, Issued in Docket No. CP89-1582-000.

APPENDIX

Docket No. (date filed)	Shipper name (type shipper)	Peak day [1] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [2] dockets
CP91-2221-000 (06-10-91)	Energy Marketing Exchange, Inc.	88,550 88,550 32,320,750	NY, PA	NY, PA	04-04-91, IT	ST91-8501-000
CP91-2222-000 (06-10-91)	Ocean State Limited Partnership.	50,000 50,000 18,250,000	NY, PA	NY, PA	04-02-91, IT	ST91-8504-000
CP91-2223-000 (06-10-91)	Meridian Oil Trading, Inc.	100,000 100,000 36,500,000	NY, PA	NY, PA	04-03-91, IT	ST91-9495-000
CP91-2224-000 (06-10-91)	V.H.C. Gas Systems	100,000 100,000 36,500,000	NY, PA	NY, PA	04-04-91, IT	ST91-8505-000
CP91-2225-000 (06-10-91)	Chautauqua Energy, Inc.	20,000 20,000 7,300,000	NY, PA	NY, PA	04-03-91, IT	ST91-8496-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14674 Filed 6-19-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM91-8-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

June 14, 1991.

Take notice that on June 12, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581 filed the tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, proposing changes in rates.

Second Revised Sixth Revised Sheet No. 21
Second Revised Sheet No. 22
Third Revised Sheet No. 24

Granite State proposes an effective date of July 1, 1991 for Second Revised Sixth Revised Sheet No. 21 and Second Revised Sheet No. 22. Granite State proposes an effective date of July 13, 1991 for Third Revised Sheet No. 24.

According to Granite State, its filing is submitted to track the passthrough to its customers of take-or-pay buydown and buyout costs charged Granite State by Tennessee Gas Pipeline Company (Tennessee).

Granite State states that on May 31, 1991, Tennessee filed revised tariff sheets to recover additional new transition costs in Docket No. RP91-29-000. According to Granite State, its tariff sheets reflect the changes in Tennessee's allocation of take-or-pay costs to Granite State in the May 31, 1991 Tennessee filing, and also comply with the requirements of the reallocation of costs to small customers pursuant to Order No. 528-A.

According to Granite State the proposed rate changes are applicable to its jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. and to a sale to a direct customer, Pease Air Force Base. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14677 Filed 6-19-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA88-3-7-001]

Southern Natural Gas Co.; Request for Authorization for Residual Three-Year Surcharge Balance

June 14, 1991.

Take notice that on May 16, 1991, Southern Natural Gas Company (Southern), filed with the Commission a request for authorization from the Commission to transfer to its regular Account No. 191 that unrecovered portion of the principal amount included in the three-year surcharge adjustment authorized by the Commission in Docket Nos. TA88-3-7-000, as of the end of the three-year surcharge period, April 1, 1991.

Southern states that the amount to be transferred ($4,464,559) represents less than 14% of the initial balance, and includes no interest since all interest was computed as if the entire principal balance of the three-year surcharge was to be recovered in one year.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are alreadyparties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14681 Filed 6-19-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP88-224-000, RP89-203-000, RP90-139-000 and RP91-88-000]

Southern Natural Gas Co.; Informal Settlement Conference

Dated: June 14, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on June 26, 1991, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status prusuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Besty R. Carr at (202) 208-1240 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14682 Filed 6-19-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP91-72-003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 14, 1991.

Take notice that Texas Eastern Tranamission Corporation (Texas Eastern) on June 11, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets.

Proposed to be Effective February 15, 1991

Sub Eleventh Revised Sheet No. 72
Sub Eleventh Revised Sheet No. 73
Sub Tenth Revised Sheet No. 74
Sub Eleventh Revised Sheet No. 75
Sub Alt Original Sheet No. 483.1
Sub Alt Original Sheet No. 483B.1
Sub Original Sheet No. 483F.1

Proposed to be Effective April 28, 1991

1st Revised Original Sheet No. 463D.1

Proposed to be Effective July 1, 1991

Sub First Revised Sheet No. 483D.1

Texas Eastern states that the purpose of this filing is to revise the date through which carrying charges on excess take-or-pay surcharge amounts were collected in Docket Nos. RP91-73, RP91-74, and RP91-75 and set forth a refund provision to refund amounts to customers that have paid excess take-or-pay surcharge amounts in Docket No. RP91-72.

The proposed effective dates of the tariff sheets are as listed above.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers,

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interested state commissions and all parties in Docket Nos. RP91–72, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14678 Filed 6–19–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Fe Docket No. 91–22–NG]

Bonus Gas Processors, Inc.; Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Bonus Gas Processors, Inc. blanket authorization to import and export a combined total of up to 110 Bcf of natural gas, including liquefied natural gas, over a two-year period beginning on the date of first import or export. Under this order, Bonus is authorized to import and export natural gas from and to any country with which trade in natural gas has not been prohibited.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 13, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–14716 Filed 6–19–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of May 13 Through May 17, 1991

During the week of May 13 through May 17, 1991 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Daniel P. Smith, 5/16/91, LFA–0110

Daniel P. Smith (Smith) filed an Appeal from a denial by the Department of Energy's Chicago Operations Office (COO) of a Request for Information which Smith had filed under the Freedom of Information Act (FOIA). In his request, Smith sought a technical proposal that Engineering Resources, Inc. had submitted to COO in response to a Notice of Program Interest. COO released to Smith a copy of the proposal that COO had redacted pursuant to Exemption 4 of the FOIA. In his Appeal, Smith sought the deleted portions of the portions of the proposal. The Office of Hearings and Appeals (OHA) found that COO had properly withheld certain secrets and proprietary commercial information under Exemption 4, but had failed to segregate and release non-exempt items from the proposal. Consequently, OHA remanded the case to COO for segretation and release of non-exempt information.

James L. Schwab, 5/17/91, LFA–115

James L. Schwab filed an Appeal from a determination issued by the DOE's Freedom of Information and Privacy Acts Activities Branch (FOI Branch) of a request for information under the Freedom of Information Act. Mr. Schwab, a former employee of a DOE subcontractor, requested information concerning the temination of his employment. The FOI Branch interpreted Schwab's request to mean that he was seeking documents concerning the termination of his employment by the DOE. Because Schwab had never been employed by the DOE, and had not been terminated by the agency, the FOI Branch determined that no responsive documents could possibly exist. In considering the Appeal, the Office of Hearings and Appeals (OHA) found that although the request submitted by Schwab contained some inaccuracies, and could possibly be interpreted in the manner chosen, the FOI Branch, should have attempted to clarify the request. Accordingly, the OHA granted Schwab's Appeal, and remanded the matter to the FOI Branch to make a new determination on the Appellant's restated request.

Refund Application

Atlantic Richfield Company/Agway Petroleum Corporation, 5/15/91, RF304–1922

The DOE issued a Decision and Order in the ARCO special refund proceeding concerning an Application for Refund filed by Agway Petroleum Corporation (Agway). Agway, a farm supply and food marketing agricultural cooperative owned by 90,000 member-stockholders, resold a total of 68,210,475 gallons of propane, gasoline and #2 heating fuel to members as well as non-members. Agway was granted a full volumetric refund under the end-user/cooperative presumption of injury based on the 1,943,999 gallons of ARCO product that it sold to members. The full volumetric refund yielded $2,068 ($1,429 in principal and $659 in interest). Agway was then granted a medium range presumption of injury refund for the 66,266,476 gallons of ARCO products that it resold to non-members. The medium range refund yielded $29,177 ($19,989 in principal plus $9,208 in interest). The total amount of the refund granted in the Decision was $31,285 ($21,398 in principal and $9,887 in interest).

Atlantic Richfield Company/Galassos Arco Service, Et Al., 5/13/91, RF304–3486, et al.

The DOE issued a Decision and Order concerning nine applications for refund in the Atlantic Richfield Company (ARCO) special refund proceeding. Each of the applications had originally been filed by P.A.D., a "filing service" that was subsequently barred from representing any refund claimants before the DOE. Second applications were then filed on behalf of the same claimants under the same case numbers by Akin Energy, Inc. and/or Fuel Refunds, Inc. The DOE granted refunds to all nine applicants and directed that the refunds be paid directly to the applicants on the basis that the Akin Energy and Fuel Refunds submissions were superfluous and not considered.

The refunds granted in this decision totaled $13,628, including $4,280 in accrued interest.

Exxon Corporation/Fred Wachel Exxon Et Al., 5/17/91, RF307–6220 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed in the Exxon Corporation special refund proceeding. All of these applications involved two retail outlets that operated as partnerships. Each of the outlets purchased directly from Exxon and was a reseller whose allocable share is less than $5,000. Each applicant was determined to be eligible for either one-half or one-fourth of the allocable share of his respective outlet. The sum of the refunds granted in this Decision is $1,461 ($1,041 principal plus $420 interest).

Exxon Corporation/GAF Corporation, 5/17/91, RF307–6243

The DOE issued a Decision and Order concerning an Application for Refund filed by GAF Corporation in the Exxon Corporation special refund proceeding. GAF, an end-user of products purchased directly from Exxon, was found to be eligible to receive a refund equal to its full allocable share. The refund granted in this Decision is $13,066 ($9,315 principal puls $3,751 interest).

Gulf Oil Corporation/Dock Rabon Gulf, North Trimble Car Wash, Inc., 5/13/91, RR300–19, RR300–20

The DOE issued a Decision and Order concerning Motions for Reconsideration filed by Dock Rabon Gulf and North Trimble Car Wash, Inc. in the Gulf Oil Corporation special refund proceeding. Both applicants had previously filed Applications for Refund in the Gulf Proceeding which were dismissed because the applicants did not provide the information requested by the DOE. In their motions, the applicants provided the required information. Both motions were granted and the applicants were granted refunds totaling $1,596.

North Bergen Piece Dye Works, 5/16/91, RF272–52576

North Bergen Piece Dye Works (North Bergen), a company that consumed petroleum products in the process of dyeing and finishing textiles, filed an Application for Refund in the subpart V crude oil special refund proceeding being conducted by the Office of Hearings and Appeals of the Department of Energy (DOE). The North Bergen Application had been filed by Federal Action, a filing service. The DOE determined, after conversations with the President of Federal Action, that Federal Action had inadequately represented the Applicant and thus the refund would be sent directly to North Bergen. In order to derive the amount of the firm's purchases, the DOE determined the average prices for No. 6 heating oil for the years 1973, 1974, 1975, and 1981. As an end-user, North Bergen Piece Dye Works received a refund of $727.

Quintana Energy Corporation, et al./ Texaco, Inc., 5/14/91, RF332–1

The Office of Hearings and Apeals (OHA) issued a Decision and Order concerning an Application for Refund submitted in the Quintana Energy Corporation, *et al.*, special refund proceeding by Texaco, Inc. The OHA made an initial determination that Texaco was a spot purchaser. The OHA notified Texaco about the initial determination and gave Texaco an opportunity to either show that it was not a spot purchaser or prove that it was injured by its purchases from the consent order firm. Texado did not respond. Accordingly, the OHA denied Texaco's claim based upon the presumption of non-injury for spot purchasers.

Shell Oil Company/Western Motor Service, Inc., Western Motors Service, Inc., 5/14/91, RF315–7032, RF315–10138

The DOE issued a Decision and Order denying the refund application of Kiyoshi Teshima, former owner of Western Motor Service, Inc., and granting the application of Elvin Kaiakapu, present owner of Western Motors Service, Inc. The sale transaction between Mr. Teshima and Mr. Kaiakapu transferred all of the corporation's stock and assets, including the right to receive a refund, to Mr. Kaiakapu.

Texaco, Inc./Coulter Oil Company, Inc., Et Al., 5/17/91, RF321–6966 Et Al.

The DOE issued a Decision and Order concerning six Applications for Refund filed in the Texaco Inc. special refund proceeding. The six applicant firms were owned by the same corporation, but requested that the applications be considered separately because the firms had been unrelated during the consent order period. This request was denied and the purchase volumes were combined in determining the applicable presumption of injury. The sum of the refunds granted in this Decision is $14,464 ($11,712 principal and $2,752 interest).

Texaco Inc./Fred C. Burns Distributing Co. Et Al., 5/16/91, RF321–2309 Et Al.

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Texaco Inc. special refund proceeding. The Applications were all based on the purchases of Texaco products by Fred C. Burns, a Texaco jobber and consignee. Two applications, filed by Fred C. Burns Distributing Co., the corporation that purchased the business were denied because the right to a refund was not transferred upon the sale of the business. The firm was a sole proprietorship before the sale and it was found that there was not transfer of the rights to the refund with the sale of the business. The other applications, filed by Fred C. Burns, the owner of the business during the consent order period, were approved. The refund granted was $12,349 ($10,000 principal plus $2,349 interest).

Texaco Inc./Freeway Texaco, 5/14/91, RR321–24

Robert A. Williams filed a Motion for Reconsideration of a Decision and Order that denied a refund application that he had filed under the name Richard Raine, the former owner of Freeway Texaco. In the Motion, Mr. Williams stated that he had signed Mr. Raine's name because during a portion of the refund period Mr. Raine was the lessee of the station. Mr. Williams also asserted that he intended to forward to Mr. Raine a portion of the refund attributable to the period of time in which Mr. Raine operated the station. The DOE denied the Motion, finding that Mr. Williams had presented no compelling reason for reconsidering the denial of his refund application on the grounds that it had been fraudulently filed.

Texaco Inc./Marshall's Texaco, 5/16/91, RF321–15249

On June 15, 1990, the DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Marshall's Texaco, a retailer of Texaco products. That refund was based upon the applicant's claim that he operated the retail outlet from May 1978 to January 1981, and the volume of purchases at that location between those dates. Subsequently, another applicant filed an application for refund for the same retail location for the period ending December 1978. That second applicant submitted documentary evidence to support its claim. Accordingly, the DOE found that the owner of Marshall's Texaco should repay, with interest, the portion of the refund attributable to purchases made before December 1978.

Washington County, Cecil County Public Schools, Marvland State

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Highway Administration, State of Maryland Department of General Services, 5/17/91, RF272–63493, RF272–63496, RF272–63623, RF272–63624

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to four governmental entities within the State of Maryland that sought refunds based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The DOE rejected objections filed by Phillip P. Kalodner, counsel for utilities, transporters and manufacturers in regard to the latter two of these Applications. The four applicants were granted refunds totaling $402,847.

Whiteford Transport Systems, Inc., 5/14/91, RF272–48380

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The Applicant, Whiteford Transport Systems, Inc. (Whiteford), is a transportation and leasing company. A group of state governments and two territories of the United States (the States) objected to the application filed by Whiteford and provided evidence concerning resellers and retailers. During the period of price controls, Whiteford was engaged in two distinct lines of business: Transportation and leasing. Whiteford has stated that during the crude oil price control period it did lease trucks to customers who were required to pay the cost of fuel. Whiteford's crude oil refund claim, however, was only for those gallons which it consumed as a transporter. The Decision determined that Whiteford was eligible to receive a refund for the gallonage identified in its refund application and granted the firm a $20,177 refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Agway, Inc./Defense Fuel Supply Center	RF324–49	05/15/91
Adell Cooperative Grain Company et al	RF272–75773	05/17/91
Exxon Corporation/Brookfield Bus Tours, Inc	RF307–10186	05/17/91
Exxon Corporation/General Motors Corp	RF307–6931	05/17/91
Fairfax County Government	RF272–21871	05/15/91
Guardian Industries Corp	RF272–25974	05/17/91
Guardian Industries Corp	RD272–25974	05/17/91
Gulf Oil Corp./Holiday Gulf on 11th	RF300–11353	05/17/91
Gulf Oil Corp./Jenkins' Service Station et al	RF300–10912	05/16/91
Gulf Oil Corp./LJ's Gulf	RF300–11935	05/17/91
Gulf Oil Corp./State of Alabama	RF300–11532	05/13/91
Gulf Oil Corp./Virginia Concrete Company, Inc	RF300–11399	05/16/91
Gulf Oil Corp./Whitt's Gulf Service et al	RF300–11905	05/15/91
Gulf States Paper Corporation	RA272–40	05/14/91
Hancor, Inc. et al	RF272–55840	05/15/91
J.F. Shea Company, Inc	RF272–8096	05/13/91
Austin Paving Company	RF272–8212	
Austin Paving Company	RD272–8212	
Austin Paving Company	RF272–8333	
Westside Construction Company	RF272–20545	05/14/91
Louisiana Department of Natural Resources	RF272–73563	05/15/91
Lowry Time Company, Inc	RF272–14990	05/15/91
Orth Oil Company	RF272–31946	05/14/91
Richard Gough	RF315–9622	05/16/91
Shell Oil Company/Growmark, Inc	RF315–492	05/16/91
Shell Oil Company/J.P. Mills, Inc. et al	RF315–507	05/15/91
Shell Oil Company/Longview Fibre Company et al	RF272–67248	05/17/91
State of Michigan	RF272–59065	05/16/91
State of Utah	RF321–899	05/14/91
Texaco Inc./Bruce's Texaco Service et al	RF321–3797	05/17/91
Texaco Inc./Herbie Adams et al	RF321–1867	05/15/91
Texaco Inc./Lloyd Wiemann et al	RF321–8645	05/17/91
Texaco Inc./Lovelace Oil Co., Inc. et al	RF321–4739	05/14/91
Texaco Inc./Servair Accessories, Inc. et al	RF334–8	05/16/91
Time Oil Company/Huff Petroleum Company	RF272–68264	05/17/91
Total Supply, Inc. et al		

Dismissals

The following submissions were dismissed:

Name	Case No.
Altamount ARCO	RF304–7142
Attala County, MS	RF272–57874
Bay County, MI	RF272–57779
Becker County, MN	RF272–57778
Bill Wagler	RF315–9266
Borough of Mifflinburg, PA	RF272–57957
Broadbent's Texaco	RF321–6460
Charles Lindberg	RF272–49268
Circleville, OH	RF272–56296
City of Coalinga, CA	RF272–57849
City of Danbury, CT	RF272–57844
City of El Cajon, CA	RF272–57848
City of Ironton, OH	RF272–57856
City of Kingmen, KS	RF272–57843
City of Neptune Beach, FL	RF272–57845
City of Olean, NY	RF272–57851
City of Orland, CA	RF272–57853
City of Sterling, KS	RF272–57847
City of Williamston, MI	RF272–57846
Clarke County, VA	RF272–57717
Clay's Texaco	RF321–124
Clinton County, IN	RF272–57767
Coldwater Community Schools	RF272–57603
Connecticut Stamping and Bending	RF321–6405
Copake-Taconic Hills Central S.D	RF272–56492
Corinth Central School	RF272–57607
Crosby Texaco and Rental	RF321–4797
Dee's ARCO	RF304–7302
Dr. Pepper Bottling Co. of Galveston, Inc.	RF272–56550
Fairless Local School District	RF272–57604
Farmers Cooperative Co	RF272–75833
Fayetteville City Elementary School District	RF272–75719
Frank's ARCO Service	RF304–6868
Fulton County, IL	RF272–57774
Greene County, Arkansas	RF272–57609

Name	Case No.
Greene County, MS	RF272–57773
H.B. Fuller Company	RF272–71336
Heinz, U.S.A.	RF272–56467
Hereford Independent School District	RF272–56348
Holiday Gulf	RF300–15315
Humphreys County, MS	RF272–57770
Ionia County, MI	RF272–57769
Jay Fullwood & Sons, Inc	RF272–59041
Jim Hogg County, TX	RF272–57772
Lacey ARCO	RF304–7244
M&E Corporation	RF304–6810
Merced County, CA	RF272–56002
Mike's ARCO	RF304–6839
Monk's Construction	RF304–4563
Moore, OK	RF272–56149
Nemaha County, KS	RF272–56106
Nettles' Texaco Self-Service	RF321–13756
New Hanover County, NC	RF272–57785
O'Brien's ARCO	RF304–7242
Pennoyer Brothers ARCO	RF304–6832
Performance ARCO	RF304–6802
Pontotoc City Schools	RF272–57606
Primerica Corporation	RF304–11883
Raleigh Tire—ARCO	RF304–4202
Roaring Spring, PA	RF272–57842
Robert Wood University Hospital	RF272–56404
Rock Island County, IL	RF272–57856
Rockingham County, NH	RF272–57764
Sevier County, UT	RF272–57900
Smooch & John's Texaco	RF321–4509
Spencer School District 43–4	RF272–57601
St. Charles Perish, LA	RF272–57898
St. Mary Parish, LA	RF272–57453
State of North Carolina	RF272–75913
Tippecanoe County, IN	RF272–57899
Town of Bolton, CT	RF272–57854
Town of Winthrop, MA	RF272–57850
Township of Brownsville, PA	RF272–57856
Trenton, MO	RF272–57949
University of Nebraska	RF272–54889
Washington County, IN	RF272–57901
Wauseon, OH	RF272–56026
Weyrick's ARCO	RF304–7062
Wynot Public Schools	RF272–57608
Wyomissing, PA	RF272–57899

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: June 14, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91–14715 Filed 6–19–91; 8:45 am]

BILLING CODE 6450–01–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advory Committee of the Export-Import Bank of the United States; Correction

ACTION: Notice of correction of revised meeting agenda.

SUMMARY: The Advisory Committee was established by Public Law 96–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Tuesday, July 2, 1991, from 9:30 a.m. to 12 noon. The meeting will be held at Eximbank in room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

AGENDA: This notice corrects the meeting agenda previously published in the Federal Register June 17, 1991 (56 FR 27752). The revised agenda will include a discussion of the following topics: Program Activity Report/Tied Aid Status, Advisory Committee Comment on Competitiveness Report, Advisory Committee Discussion of Project Financing Parameters, Subcommittee Status Reports: (Emerging Trade Finance—Small Business—Banking), Next Steps, and other topics.

All other information remains the same.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 91–14728 Filed 6–18–91; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Virginia International Terminals, Inc., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–200530.

Title: Virginia International Terminals, Inc./Montemar S.A. Terminal Agreement.

Parties:

Virginia International Terminals, Inc. (VIT)

Montemar S.A. (Pan American).

Synopsis: The Agreement provides for Pan American to have the non-exclusive use of the marine terminal facilities at Newport News Marine Terminal (Port), and VIT shall furnish terminal services connected with the operation. Pan American guarantees movement of a minimum of 35,000 short tons per year through the Port. VIT grants Pan American an incentive of 15% discount off tariff charges for wharfage, portainer rental, transtainer-toploader, maintenance and repair inspections, receiving and delivery charges. The term of agreement is for three years.

By Order of the Federal Maritime Commission.

Dated: June 17, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–14662 Filed 6–19–91; 8:45 am]

BILLING CODE 6730–01–M

P&O Containers, Ltd., et al.; Request for Additional Information

Agreement No.: 203–011330.

Title: Information System Agreement.

Parties:

P&O Containers, Ltd.,

American President Lines, Ltd.,

Sea-Land Service, Inc.,

A.P Moller-Maersk Line.

Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1705), has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 203–011330 required by

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the Act. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Dated: June 17, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14600 Filed 6-19-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Star Clippers, Inc., Luxembourg Shipping Services, S.A. and White Star Clippers, N.V., 2333 Bird Avenue, Miami, FL 33133-4604. Vessel: Star Flyer.

Dated: June 17, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14601 Filed 6-19-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Star Clippers, Inc., Luxembourg Shipping Services, S.A. and White Star Clippers, N.V., 2333 Bird Avenue, Miami, FL 33133-4604. Vessel: Star Flyer.

Dated: June 17, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14602 Filed 6-19-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement Number 127]

Pilot and Epidemiologic Studies To Determine the Relationship Between Human Exposure to Hazardous Substances and Adverse Health Outcomes

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the continuation of its Superfund-related cooperative agreement/grant program to conduct pilot studies, analytic epidemiologic studies, and site-specific surveillance to determine the relationship between human exposure to hazardous substances in the environment and adverse health outcomes (e.g., selected cancers, birth defects and reproductive diseases, kidney dysfunction, liver dysfunction, immune dysfunction, neurotoxic disorders, and lung and respiratory diseases). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized in section 104(i)(15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)(15)].

Eligible Applicants

Eligible applicants are the official public health agencies of the states and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, American Samoa, and federally recognized Indian Tribes. Local health jurisdictions may apply with written concurrence of the state health officer.

Availability Of Funds

Approximately $3,300,000 is available in Fiscal Year 1991 to fund approximately 13 awards. It is expected that 8 non-competing continuations totaling approximately $1,800,000 and about 2 to 5 new and competing renewal awards totaling $1,500,000 will be made. It is anticipated that awards will be for a 12-month budget period with a proposed project period ranging from 1 to 3 years. The length of the project period will depend on the complexity of the problems associated with any particular hazardous substance site. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. Pending availability of funds in Fiscal Year 1992 ATSDR will continue approved projects and may fund new projects. Funding estimates may vary and are subject to change.

Purpose

The purpose of this program is to enhance the recipients' capabilities to characterize the relationship between exposure to hazardous substances and adverse health outcomes through the development and use of site-specific health study protocols, studies at multiple sites with similar hazardous substances, and the implementation of site-specific or multiple-site health investigations.

Project Types

Assistance, both financial and technical, will be provided to the recipients for conducting the following types of projects:

A. Pilot Studies of Exposed Individuals

A pilot study is defined as any investigation of exposed individuals, using epidemiologic methods, which would assist in determining exposures or possible public health impacts by defining health problems requiring further investigation through epidemiologic studies, environmental monitoring or sampling, surveillance, or registries. A number of possible investigative plans may be available for conducting pilot studies.

1. Human biologic indicator exposure studies may consist of the sampling of biologic indicators of persons at potentially high risk of exposure to determine whether exposure can be verified. Test results will be compared with published normal values or with results from unexposed reference populations. The biologic tests may include direct assay of chemicals or their metabolites or an indirect assay testing for other biologic markers of exposure. If exposure to hazardous substances can be verified, additional investigations may be recommended to determine whether adverse health effects are occurring. Follow-up recommendations may include public education, additional environmental sampling, additional biologic exposure studies, analytic epidemiologic studies, registries, surveillance projects, or remedial actions.

2. Cluster investigation studies are investigations of putative disease clusters to determine whether the cases represent an unexpected excess in the number of cases in the concerned community. Investigations are designed to confirm the case reports; determine whether they represent an unusual disease occurrence; and, if possible, explore possible etiologic and environmental factors. Follow-up recommendations may include public education, additional environmental sampling, biologic exposure studies, epidemiologic studies, registries, analytic surveillance projects, or remedial actions.

3. Disease- and symptom-prevalence studies are designed to measure the occurrence of self-reported diseases that may be validated through medical records, if available, or specific medical examination. In these studies investigators collect citizens' health concerns in a standardized manner and determine whether a health problem exists in the community that requires further investigation. If an unusual disease occurrence is discovered, additional investigations may be undertaken to determine etiologic factors. The recommendations developed for identified health problems may include public education, additional environmental sampling, biologic exposure studies, analytic epidemiologic studies, registries, surveillance projects, or remedial actions.

B. Analytic Epidemiology Studies

Analytic epidemiologic studies are investigations designed to evaluate the casual nature of associations between exposure to hazardous substances and disease outcome by testing scientific hypotheses. Information to be considered includes the strength of the association between two factors and the biologic plausibility of the outcome. Case-control, cohort, cross-sectional, mortality, or other scientifically valid study designs may be considered, as appropriate. Recommendations may include public education, additional environmental sampling, registries, surveillance projects, or remedial actions.

Surveillance

Surveillance at a particular site may focus on specific hazardous substances at that site as well as monitoring plausible health outcome data (morbidity or mortality) for a specific medical condition. Periodic follow-up of a well-defined, unexposed cohort can be a useful measure of baseline patterns for that disease. The site-specific surveillance may detect usual or unusual patterns of disease; the latter may trigger further investigations, such as a pilot study of exposed individuals or an analytic epidemiologic study. Recommendations based on site-specific surveillance data may include continued surveillance, additional site-specific environmental sampling, remedial action, public education, or the development of a formal exposure or disease registry.

Program Requirements

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. These two types of federal assistance are explained below.

A. Grants

In a grant, the applicant will be required to conduct the pilot study of exposed individuals, analytical epidemiologic study, and site-specific surveillance without substantial programmatic involvement. Therefore, the grantee's application should be presented in a manner that demonstrates the applicant's ability to address the environmental health problems. In addition, the applicant's protocol should contain consent forms and questionnaires, baseline morbidity and mortality information, procedures for collecting biologic and environmental specimens and for conducting laboratory analysis and medical evaluation of the test results of biologic specimens and statistical and epidemiologic analysis of the study information, and a description of the safeguards for protecting the confidentiality of individuals on whom data are collected.

The grantee is expected to maintain accurate and timely accounting records with proper classification of expenditures to allow a full cost recovery of funds awarded under the grant.

By comparison, the activities of the recipient and the ATSDR for a cooperative agreement are described in paragraph B.

B. Cooperative Agreements

In a cooperative agreement, the funding agency will assist the collaborator in conducting the studies to determine the relationship between exposure to hazardous substances and illness. The application should be presented in a manner that demonstrates the applicant's ability to address the health problem in a collaborative manner with the funding agency.

The cooperative activities of the recipient agency and the funding agency are:

1. Recipient Activities

a. Recipient will review Superfund related environmental sampling information, human disease surveillance information, and other appropriate information to identify populations potentially exposed to hazardous substances.

b. Recipient will design, develop, and implement a protocol to conduct the necessary pilot study of exposed individuals, epidemiologic study, or site-specific surveillance.

c. Recipient is expected to maintain accurate and timely accounting records with proper classification of expenditures to allow a full cost recovery of funds awarded under the grant or cooperative agreement.

d. Recipient is required to provide proof, by citation of State code or regulation or other state procurement given the authority of law, that medical information obtained pursuant to the agreement, which pertains to an individual and is therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

e. Recipient is required to provide written explanation to detail the disposition of technical review comments on all protocols, studies, and results of research (example: final report, scientific presentation, etc.). These technical review comments will be provided to recipient through ATSDR.

f. Recipient will develop a mechanism for ongoing interaction with the affected community.

2. ATSDR Activities

a. ATSDR will assist in developing the pilot study, analytic epidemiologic study, or site-specific surveillance.

b. ATSDR will assist in analyzing the information on background morbidity and mortality rates for the study area.

c. ATSDR will provide epidemiologic and other technical assistance in both the planning and implementation phases of the field work called for under the study protocol.

d. ATSDR will provide consultation and assist in monitoring the collection and handling of information and the sampling and testing activities.

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e. ATSDR will participate in the statistical and epidemiologic analysis.

f. ATSDR will collaborate in interpreting the study findings.

g. ATSDR will perform technical review as noted above.

Evaluation Criteria

All applications will be reviewed and evaluated based on the following criteria:

1. Scientific and Technical Review Criteria of New Applications

a. Appropriateness and Knowledge of Study Design—30%

The extent to which the applicant's proposal addresses (1) a rationale for the proposed study design; (2) the identification of a target (exposed/diseased) population; (3) the identification of an appropriate comparison group; (4) a consideration of sample size; (5) a plan for exposure assessment and/or a plan for evaluating adverse health outcomes; and (6) a detailed plan for analysis of the data.

b. Proposed Study—30%

The adequacy of the proposal relevant to (1) the study purpose, objectives, and rationale; (2) the quality of program objectives in terms of specificity, measurability, and feasibility; (3) the specificity and feasibility of the applicant's timetable for implementing program activities and timely completion of the study; and (4) the likelihood of the applicant agency completing proposed program activities and attaining proposed objectives based on the thoroughness and clarity of the overall program.

c. Applicant Capability and Coordination Efforts—15%

The extent to which the proposal has described (1) the capability of the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; (2) the capability of the applicant to demonstrate appropriate plan for interaction with the community; and (3) the suitability of facilities and equipment available or to be purchased for the project.

d. Quality of Data Collection—15%

The extent to which (1) the questionnaire ascertains the information necessary to meet the objectives, including (but not limited to) information on pathways of exposure and confounding factors; (2) the quality control and quality assurance of questionnaire data are provided, including (but not limited to) interviewer training and consistency checks of data; (3) the laboratory tests (if applicable) are sensitive and specific for the analyte or disease outcome of interest; and (4) the quality control, quality assurance, precision, and accuracy of information for the proposed tests are provided and acceptable.

e. Program Personnel—10%

The extent to which the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate.

f. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement/grant funds.

2. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

a. Satisfactory progress has been made in meeting project objectives;

b. Objectives for the new budget period are realistic, specific, and measurable;

c. Proposed changes in described long-term objectives, methods of operation, need for grant/cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

d. The budget request is clearly justified and consistent with the intended use of cooperative agreement/grant funds.

Other Requirements

A. Objective Review

Applications will be reviewed by an ATSDR convened ad hoc review group established in accordance with the Public Health Service Grants Policy Statement.

B. Technical Review

All protocols, studies, and results of research that ATSDR carries out or funds in whole or in part will be reviewed to meet the requirements of CERCLA section 104(i)(13) as amended by SARA. ATSDR funded or conducted studies must:

1. Be reported or adopted only after appropriate review.

2. Be technically reviewed within a period of 60 days to the maximum extent practical.

3. Be reviewed by no fewer than three or more than seven reviewers who (a) are selected by the Administrator, ATSDR; (b) are disinterested scientific experts; (c) have a reputation for scientific objectivity; and (d) who lack institutional ties with any person involved in the conduct of the study or research under review.

C. Paperwork Reduction Act

Clearance by the Office of Management and Budget (OMB) under Paperwork Reduction Act, is required whenever a *cooperative agreement* recipient uses a reporting form or plans to collect identical kinds of information or data from 10 or more persons. The recipient will not be authorized to expend any funds or take any action whatsoever in soliciting data from any of the public respondents until the CDC Grants Management Officer has notified the recipient that OMB clearance has been obtained.

D. Protection of Human Subjects

This program requires research on human subjects, therefore, all applicants must comply with 42 U.S.C. 289, as implemented by 45 CFR Part 46 regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOC's including their names, addresses, and telephone numbers is included in the application kit. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

The following state departments have elected not to participate in the "Intergovernmental Review of Federal Programs": Alaska, Idaho, Kansas, Minnesota, Nebraska, Virginia, American Samoa, the Marshall Islands, the Federated States of Micronesia, and The Republic of Palau.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161, Health Programs for Toxic Substances and Disease Registry.

Application Submission and Deadline Dates

The original and two copies of application form PHS Form 5161–1 (revised 3/89) shall be submitted to Henry S. Cassell, III, Grants Management Officer, CDC Procurement and Grants Office, 255 East Paces Ferry Road NE., Room 300, Atlanta, Georgia, 30305 by July 19, 1991. By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late competing applications not accepted for processing may either be returned to the applicant or held for the next scheduled review cycle.

Where To Obtain Additional Information

If you are interested in obtaining additional information on application procedures, copies of application forms, and other material, please contact the following CDC/ATSDR personnel.

Business Management Technical Assistance: Mr. Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mail Stop E–14, Atlanta, Georgia 30305 or by calling (404) 842–6630 or FTS 236–6630.

Programmatic Technical Assistance: Ms. Terry C. Maricle, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Mail Stop E–31, Atlanta, Georgia 30333 or by calling (404) 639–0550 or FTS 236–0550.

Please Refer to Announcement Number 127 When Requesting Information and Submitting an Application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: June 13, 1991.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91–14701 Filed 6–19–91; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control

Sixth National Conference on Chronic Disease Prevention and Control

The Centers for Disease Control (CDC), the Association of State and Territorial Health Officials, and the Association of State and Territorial Chronic Disease Program Directors (ASTCDPD) will cosponsor the following meeting.

Name: Sixth National Conference on Chronic Disease Prevention and Control: Making Prevention a Reality.

Time and Date: Registration—12 noon–6 p.m., October 21, 1991, and throughout the conference. 8:30 a.m.–5:30 p.m., October 22–23, 1991. 8:30 a.m.–11:30 a.m., October 24, 1991.

The preregistration deadline is September 18, 1991. Preregistration fee is $35; on-site registration fee is $40. Make checks payable to ASTCDPD and mail to Chronic Disease Conference, Pace Enterprises, Inc., 17 Executive Park Drive, Suite 200, Atlanta, Georgia 30329.

Place: Omni Shoreham Hotel, 2500 Calvert Street NW, Washington, DC 20008, telephone 202/234–0700. Conference attendees receive special room rates of $97 for single occupancy and $116 for double occupancy. Reservations should be made directly with the hotel.

Status: Open to the public, limited only by available space.

Purpose: Attendees from around the nation and the world will have both structured and informal opportunities to exchange information, skills, knowledge, and experiences related to chronic disease prevention and control.

Matters to be Discussed: Potentially preventable chronic diseases such as cardiovascular disease, cancer, and women's health issues which account for more than 70 percent of all deaths that occur in the United States and diminish the quality of life of millions of Americans will be discussed.

Contact Person for More Information: Mr. Jack Friel, Chief, Conference Management Operations, Center for Chronic Disease Prevention and Health Promotion, CDC, 1600 Clifton Road, NE, Mailstop K–43, Atlanta, Georgia 30333, telephone 404/488–5390 or FTS 236–5390.

Dated: June 13, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–14699 Filed 6–19–91; 8:45 am]

BILLING CODE 4160–18–M

Technical Advisory Committee for Diabetes Translation and Community Control Programs; Meeting

In Accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

Time and Date: 8 a.m.–4:30 p.m., Tuesday, July 23, 1991.

Place: Rhodes Building, 4th Floor Conference Room, 3005 Chamblee-Tucker Road, Atlanta, Georgia 30341. (Exit Chamblee-Tucker Road off I–85).

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce morbidity and mortality from diabetes and its complications. The Committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary, and private resources involved in the provision of services to people with diabetes.

Matters to be Discussed: The Committee will work to identify long-range goals and objectives for the Technical Advisory Committee for Diabetes Translation and Community

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Control Programs. In addition, Division of Diabetes Translation (DDT) staff will provide a comprehensive review of diabetes control programs located in 28 states and territories nationwide.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Frederick G. Murphy, Program Analyst, DDT, Center for Chronic Disease Prevention and Health Promotion, CDC, 1600 Clifton Road, NE, (K-10), Atlanta, Georgia 30333, telephone 404/488-5005 or FTS 236-5005.

Dated: June 13, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-14700 Filed 6-9-91; 8:45 am]

BILLING CODE 4160-18-M

Office of Community Services

[Program Announcement No. OCS-91-1]

Request for Applications Under the Office of Community Services' Fiscal Year 1991 Discretionary Grants Program; Correction

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Request for applications under the Office of Community Services' Discretionary Grants Program; correction.

SUMMARY: This notice is being issued to correct certain information in the Program Announcement which was published June 4, 1991 (56 FR 25492-25523). All other information, as published, remains the same.

FOR FURTHER INFORMATION CONTACT: Joseph D. Reid, Chief, Division of Discretionary Grants, 202-401-9345.

In FR Doc. 91-13041, in the issue of June 4, 1991, make the following corrections:

On page 25494, in the second column, second paragraph, last sentence, the amount of the grants should read $50,000.

On page 25497, third column, first complete paragraph, the date for the comment period should read September 6, 1991.

On page 25523, second column, Attachment J, should read as follows:

Attachment J—Checklist for Use in Submitting OCS Grant Applications (Optional)

The application should contain:

1. A signed "Application for Federal Assistance" (SF-424). The letter code for the priority area should be in the lower right-hand corner of the paper;

2. "Budget Information—Non-Construction Program (SF-424A);

3. A signed "Assurances—Non-Construction Program" (SF-424B;

4. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(a) Eligibility Confirmation
(b) Analysis of Need
(c) Organizational Experience and Staff Responsibilities
(d) Work Program
(e) Appendices, including By-Laws; Articles of Incorporation; proof of non-profit status where applicable; resumes; Single Point of Contact comments; and, for Priority Area 1.4 only, a written agreement signed by the applicant and an organization funded by the Department of Labor in FY 90 under the YOU Program.

The total number of pages for the entire application package should not exceed 50 pages.

On page 25523, following Attachment J, the following should be inserted:

Attachment K—List of Organizations Funded by the Department of Labor under the YOU Program and Contact Persons

Ms. Gloria Moore, Job Training Division, City of Los Angeles Community Development Department, 215 Sixth Street/10th Floor, Los Angeles, California 90014, 213-237-1747.

Ms. Frankie Coleman, Columbus Private Industry Council, 400 East Town Street/Suite 220, Columbus, Ohio 43215, 614-228-3907.

Ms. Margie Rosas, San Diego Private Industry Council, 1551 4th Avenue/Suite 600, San Diego, California 92101, 619-235-1445 or 619-525-1739.

Ms. Jean Denson, Mississippi Economic Development Department, 301 W. Pearl Street, Jackson, Mississippi 39203, 601-949-2123.

Ms. Ana Palmer, Office of Employment Development, 417 East Fayette Street/Room 468, Baltimore, Maryland 21212, 301-396-5586.

Ms. Deborah Johnson, Philadelphia Private Industry Council, 1617 JFK Boulevard, Suite 1300, Philadelphia, Pennsylvania 19103, 215-567-5627.

Mr. Alvin Darden, Atlanta Private Industry Council, 100 Edgewood Avenue/Suite 1600, Atlanta, Georgia 30303, 404-658-6681.

Dated: June 14, 1991.

Karen Saunders,

Deputy Director, Office of Community Services.

[FR Doc. 91-14657 Filed 6-19-91; 8:45 am]

BILLING CODE 4130-04-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) is amended to reflect minor changes to the Bureau of Data Management and Strategy (BDMS). The Division of Medicaid Statistics (DMS) is established in the Office of Program Systems, (OPS) Bureau of Data Management and Strategy, Office of the Associate Administrator for Management and the Medicaid Data Branch, National Claims History Division (NCHD), OPS is abolished. The DMS will gain the responsibility formally vested with the NCHD for input data relating to the Medicaid Statistical Information System. The NCHD will be concerned with the integrity of the National Claims History database for the Medcare program and related hardware requirements.

The Specific Amendment to Part F. is Described Below

• Section FH.20.D.3.b., National Claims History Division (FHE32) is amended and Section FH.20.D.3.c., Division of Medicaid Statistics (FHE33) is added to reflect a focal coordinating point for Medicaid statistics, formerly located within the National Claims History Division. The new sections read as follows:

b. National Claims History Division (FHE32)

• Manages and directs the receipt, control, editing, quality assurance, and basic monitoring of the common working file claims and program liability data.

• Performs the planning, organization, technical consultation, and coordination activities required to design, develop, document control, and ensure the integrity of HCFA's National Claims History database (NCHDB) for the Medicare program and related hardward requirements.

• Defines systems accesses, interfaces, and operational requirements to ensure the efficient development and use of the NCHDB for program purposes.

• Negotiates user requirements and develops design alternatives, systems specifications, test, conversion and implementation plans, operation plans (e.g., HDC support requirements), and documentation for the NCHDB and related applications.

• Defines and coordinates an NCHDB and beneficiary record quality assurance program including the development of process controls, edits, and statistical measures to ensure database validity and integrity for use in program development and evaluating ongoing program operations. Defines and coordinates a beneficiary record quality assurance program to ensure the consistency of data maintained at the Common Working File sites with the enrollment databases.

• Manages NCH database administration activities directed toward ensuring the integrity of the databases.

• Participate in the development and establishement of data standards used for HCFA programs, including uniform billing, uniform coding systems, and common reporting systems.

c. Division of Medicaid Statistics (FHE33)

• Manages and directs the receipt, control, edit, quality assurance, and basic monitoring of input data relating to the Medicaid Statistical Information System (MSIS) and the HCFA-2082.

• Performs the planning, organization, technical consultation, and coordination activities required to design, develop, document control, and ensure the integrity of HCFA's National Claims History database (NCHDB) for the Medicaid program and related hardware requirements.

• Provides standard and ad hoc data files and reports on Medicaid data.

• Designs, implements, and maintains the Medicaid drug information databases.

• Develops, implements, and maintains ADP application telecommunications software to provide access and front end quality control for the various systems maintained in the branch.

• Designs, implements, maintains, and ensures the continuing operations of software applications which array Medicaid dtat in accordance with the ongoing program management needs of HCFA.

• Develops short- and long-range Medicaid IRM plans to ensure that the proper hardware and software is maintained to meet the Agency's PM operations support needs.

• Negotiates user requirements and develops design alternatives, systems specifications, test, conversion and implementation plans, operation plans (e.g., HDC supprot requirements), and documentation for Medicaid and related applications.

• Defines and coordinates a Medicaid data quality assurance program including the development of process controls, edits, and statistical measures to ensure that the databases are reliable for use in program development and evaluating ongoing program operations.

• Identifies and implements processes and procedures that will take maximum advantage of HCFA's multi-level data processing architecture; e.g., taking advantage of the microcomputers to put data and application development at the desk-top where appropriate, as well as to maximize the efficient use of the mainframe to process large-scale applications.

Dated: June 11, 1991.

Robert A. Streimer,

Associate Administrator for Management.

[FR Doc. 91-14752 Filed 6-19-91; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Institute; Meeting of the Cancer Biology-Immunology Contracts Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, June 27, 1991, Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 10 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Committee, 5333 Westbard Avenue, room 805, Bethesda, Maryland 20892 (301/496-7575) will furnish substantative program information.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attandance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: June 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-14818 Filed 6-19-91; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting: Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, June 24, 1991, Executive Plaza North, Conference Room G, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 9:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, Tel. 301-496-5708, will provide a summary of meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Biometry and Epidemiology Contract Review Committee, 5333 Westbard Avenue,

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room 807, Bethesda, Maryland 20892, Tel. 301–496–7030, will furnish substantive program information.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

[FR Doc. 91–14619 Filed 6–19–91; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Meeting of the Advisory Committee on Scientific Integrity, Public Health Service

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee on Scientific Integrity, Public Health Service, on July 15–16, 1991 at the National Institutes of Health, Bethesda, MD. The meeting will take place July 15 from 8:30 a.m. to 4:30 p.m., and on July 16 from 8:30 a.m. to 12:30 p.m., Building 31, C Wing, Conference room 7. The meeting will be open to the public.

The Committee reviews and evaluates, on an ongoing basis, the efficacy of policies and procedures of the Department of Health and Human Services in detecting, deterring, investigating, and resolving allegations of scientific misconduct and makes recommendations to the Secretary and the Assistant Secretary for Health on improving these policies and procedures.

The purpose of the meeting will be to introduce the Committee to the structure and function of the PHS Scientific Integrity programs and to examine ongoing activities. The Committee members will also begin to formulate future plans for the Committee.

Henrietta D. Hyatt-Knorr, Executive Secretary, Advisory Committee on Scientific Integrity Review, Rockwall II, suite 1113, 5515 Security Lane, Rockville MD 20852, (301) 443–5300, will furnish the meeting agenda, a roster of the Committee members, and substantive program information upon request. Members of the public wishing to make presentations should contact the Executive Secretary and forward a copy of their presentation at least two weeks ahead of time. Depending on the number of presentations and other considerations, the Executive Secretary will allocate a time frame for each speaker.

Lyle W. Rivers,

Director, Office of Scientific Integrity Review.

[FR Doc. 91–14654 Filed 6–19–91; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Central Arizona Project (CAP) Water Allocations and Water Service Contracting

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposal water reallocation decision for uncontracted CAP non-Indian agricultural water allocations and request for comments.

SUMMARY: The purpose of this action is to provide public notice of the Department's proposes reallocation of currently uncontracted CAP non-Indian agricultural water allocations. Except as noted below, the Department proposed to reallocate 29.3 percent of CAP uncontracted non-Indian agricultural water allocations as recommended by the Arizona Department of Water Resources (ADWR) and to offer amendatory or new subcontracts for such water to non-Indian agricultural users. The contracting process which follows the final allocation decision will include consideration of a full range of contracting terms and conditions and will provide an opportunity for public review and comment. The Department will reserve for discretionary use any non-Indian agricultural allocations that are uncontracted after completion of the contracting process.

DATES: All written comments relevant to the proposed reallocation decision that are received on or before July 22, 1991, will be considered.

ADDRESSES: Interested parties should contact Mr. Donald Walker, Contracts and Repayment Specialist, Bureau of Reclamation, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 (telephone: 202–208–5671) or Mr. Steve Hvinden, Regional Economist, Bureau of Reclamation, PO Box 427, Boulder City, Nevada 89005 (telephone 702–293–8651).

SUPPLEMENTARY INFORMATION: Previous Departmental Federal Register notices relating to CAP water allocations are as follows: 37 FR 28092, December 20, 1972; 40 FR 17297, April 18, 1975; 41 FR 45863, October 18, 1976; 45 FR 52936, August 8, 1980; 45 FR 81265, December 10, 1980; 46 FR 29544, June 2, 1981; 48 FR 60656, December 11, 1981; and 48 FR 12446, March 24, 1983. CAP water allocation decisions are made pursuant to the Reclamation Act of 1902, as amended and supplemented (32 Stat. 388, 43 U.S.C. 391), the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057, 43 U.S.C. 617), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501), the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR part 1505), the Implementing Procedures of the Department of the Interior (516 DM 5.4), and in recognition of the Secretary's trust responsibility to the Indian tribes of central Arizona.

Forcing Event

Section 11(h) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (Pub. L. 100–512) (102 Stat. 2550) provides that the Secretary must reallocate uncontracted non-Indian agricultural CAP water within 180 days of receiving ADWR's recommendations. The official date of receipt of ADWR's allocation recommendations was January 29, 1991, thereby establishing July 28, 1991, as the deadline for this reallocation decision.

Background

The CAP is a multi-purpose project which provides water for municipal and industrial (M&I), Indian, and non-Indian agricultural uses. The last allocations of CAP water, the conditions upon which those allocations were made, and the procedures for water service contracting were published in the Federal Register (48 FR 12446, March 24, 1983). That notice contained the Secretary's final decision, summarized CAP issues, and provided basic background information applicable to this proposed reallocation.

In the 1983 notice, the Secretary allocated 638,823 acre-feet of water per year to non-Indian M&I users and 309,828 acre-feet of water per year to Indian users. The non-Indian agricultural water users were to receive any CAP supply that remained after the non-Indian M&I and Indian entities used their entitlements. The supply allocated to each of the 23 non-Indian agricultural users was stated in terms of a percentage of the total non-Indian agricultural supply. The non-Indian agricultural allocation was based on a percentage which represented each allottee's portion of the total irrigated acreage, with an adjustment to reflect any other surface water supply available to the allottee.

Since the 1983 notice was published, the Central Arizona Water Conservation District (CAWCD) and the Bureau of Reclamation (Reclamation) have been entering into long-term CAP water service subcontracts with those entities receiving an allocation of CAP agricultural water. CAWCD is the entity which has contracted with Reclamation for repayment of the costs of the project. The combined entitlement for entities which have entered into CAP water service subcontracts subsequent to the 1983 notice represents 70.7 percent of the non-Indian agricultural supply. Eleven entities have declined their CAP water allocation for a total of 23.82 percent of the non-Indian agricultural supply. Two entities which were allocated the remaining 5.48 percent of the agricultural supply have not yet contracted for such water.

Water deliveries pursuant to the subcontracts will begin following Reclamation's issuance of a notice of completion for CAP. It is anticipated that such a notice will be issued sometime in late 1992. In the meantime, CAP water deliveries have been made and are being made through completed portions of the CAP aqueduct pursuant to interim water service contracts.

The 1983 notice provided for a reallocation of the CAP water after the initial round of water service contracting had been completed. An interest in proceeding with the reallocation has existed for several years. However, the Department and ADWR have refrained from proceeding with the reallocation until there was more certainty about the amount of allocations involved and until ongoing negotiations for Indian water rights settlements had been completed. The Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, in effect, compelled the Secretary to request ADWR in November of 1988 to make a recommended reallocation of uncontracted non-Indian CAP agricultural water to the Secretary. The amount of time that ADWR had to respond to the request was not specified. However, ADWR was required to complete its recommendation by January 7, 1991, by the decision of the Arizona Superior Court in the case, *Central Arizona Irrigation and Drainage District et al.* v. *Plummer*, No. CIV–30612.

In response to the request from Reclamation and in compliance with the Court order, ADWR recommended to the Secretary by its letter dated January 7, 1991, how the remaining 29.3 percent of the non-Indian agricultural supply should be reallocated. In arriving at its recommendations, ADWR conducted an extensive public input and review process which elicited numerous opinions, options, and alternatives. By letter dated January 15, 1991, ADWR supplemented its recommendations to the Secretary with a report explaining the methodologies used to calculate the water recommendations, discussing the factors considered in making the recommendations, and addressing issues and concerns raised by public comments. Some of these issues and concerns are discussed below.

ADWR's report submitted with the January 15, 1991, letter was fully considered and used in developing options for consideration. Anyone interested in receiving a copy of ADWR's letters dated January 7 and 15, 1991, and accompanying report, should refer to the "Addresses" section of this notice for a contact person.

Policy and Legal Issues

Issue 1. Reallocation of uncontracted non-Indian agricultural water allocations for use in central and southern Arizona Indian water rights settlements.

Discussion: Negotiated water rights settlements with Indian tribes have been and are being pursued by the United States for tribes in central and southern Arizona. Generally, the United States participates in settlements by making contributions of water and/or money. Potential water supplies for existing and future settlements are limited. Some parties view the uncontracted CAP agricultural water supply as a potential source of water for Indian water rights settlements.

The Department believes that there are barriers which prohibit the first round reallocation of non-Indian agricultural water for Indian water rights settlements. As noted in the "Forcing Event" section of this notice, subsection 11(h) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 provides that "Within thirty days after the date of enactment of this Act, the Secretary shall request the Arizona Department of Water Resources to recommend a reallocation of non-Indian agricultural CAP water that has been offered to but not contracted for by potential non-Indian agricultural subcontractors. Within one hundred and eighty days of receipt of such recommendation, the Secretary shall reallocate such water for non-Indian use, and the Secretary and CAWCD shall thereafter offer amendatory or new subcontracts to non-Indian agricultural users." A similar provision is included in existing CAP water service subcontracts with agricultural subcontractors. The subcontracts provide that "After consultation with the Arizona Department of Water Resources, the Secretary shall reallocate to non-Indian agricultural use all entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available."

Issue 2. Impact of reallocation decisions on CAP cost allocation.

Discussion: CAWCD is the repayment entity for CAP through its repayment contract with the United States. CAWCD will rely on revenues received from the sale of power, ad valorem taxes, and revenues from its water service subcontractors to make its annual payments to the United States. The question arises as to how any reallocation decision will impact the CAP cost allocation.

If the reallocation decision only alters the distribution of uncontracted water allocations among the non-Indian agricultural entities, there would be no change in the amount of costs allocated to CAWCD. If some of the non-Indian agricultural allocations were allocated for Indian water rights settlement purposes, the CAP cost allocation would be affected.

Issue 3. Impact of reallocation decision on the repayment capabilities of CAP non-Indian irrigation districts.

Discussion: Existing CAP water entitlements for each irrigation district which contracts for CAP water will change. In almost all cases the quantities of CAP water available to each irrigation district will increase. This will affect the districts' operation and maintenance cost structure since the districts will probably use more CAP water and less ground water than would have been the case in the absence of the reallocation. If CAP water costs more than ground water, which is likely to be the case for most districts in the early years of CAP operations, the reallocation might have an adverse impact on the districts' ability to pay CAP water service charges and to repay the debt owed to the Federal Government for CAP distribution systems.

Issue 4. Local concerns addressed by ADWR.

Discussion: During its public involvement process, ADWR heard numerous local concerns, which are discussed in its January 15, 1991, reallocation report entitled "Recommendation to the Secretary of the Interior on Reallocation of Central Arizona Project Non-Indian Agricultural Water". These concerns, among others, included whether (1) new entities should be considered for an allocation, (2) entities outside of the CAWCD three-

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county service area should be considered for an allocation, and (3) CAP water should be reallocated to the State active management areas (AMA) in the same proportion as in the 1983 allocation.

The Department does not believe that the reallocation must be limited to the existing subcontractors. With respect to whether CAP water can only be delivered for use within CAWCD's three-county service area (Maricopa, Pinal, and Pima Counties), CAWCD's repayment contract provides for delivery of CAP water outside of CAWCD's service area if the Contracting Officer approves such delivery. Therefore, the Department believes that CAP agricultural water can be allocated, as ADWR recommends, for use outside the three-county area.

Entities in the Tucson area have indicated that agricultural water allocations that were rejected in the original contracting process should be reallocated to the same AMA. These entities have indicated that the ADWR recommendations result in a gain to the other AMA's at the expense of the Tucson AMA.

The Department does not believe that the water allocation relationships that existed in the 1983 allocation must necessarily be preserved in the reallocation. Non-Indian agricultural supplies for CAP have been allocated and continue to be allocated on the basis of eligible acreage. Since some of the irrigation districts within the Tucson AMA rejected their CAP water allocations, there are fewer eligible lands within the Tucson AMA that can participate in the reallocation. The Department cannot require entities in the Tucson AMA to contract for CAP agricultural water. Allocation of CAP water on the basis of eligible acreage cannot be accomplished by adhering strictly to the water allocation relationships among AMA's that existed in the 1983 allocation.

Options

1. Reallocate in accordance with ADWR recommendations.

2. Reallocate to the 10 existing subcontractors, with the stipulation that any allocations not contracted for within 180 days of the reallocation decision shall revert to the Secretary for discretionary use.

3. Reallocate as recommended by ADWR, with the stipulation that any allocations not contracted within the timeframes recommended by ADWR shall revert to the Secretary for discretionary use.

Option 1. Reallocate in accordance with ADWR recommendations. The complete text of the ADWR recommendations is quoted below. Bracketed words are inserted for clarification purposes.

1. Entitlements contained in article 4.13(a) of all existing non-Indian agricultural subcontracts be adjusted pursuant to article 4.13(b) as follows:

Irrigation district (subcontractor)	Existing entitlement (percent)	Proposed new entitlement (percent)
Central Arizona IDD	18.01	22.74
Chandler Heights Citrus ID	0.28	0.30
Harquahala Valley ID	7.67	6.79
HoHoKam ID	6.36	6.97
Maricopa-Stanfield IDD	20.48	22.75
New Magma IDD	4.34	7.23
Queen Creek ID	4.83	4.83
Roosevelt Water CD	5.96	6.33
San Tan ID	0.77	0.77
Tonopah ID	1.98	1.98

2. Entitlements for entities which received original allocations [48 FR 12446, March 24, 1983] but the contracting deadlines have not been imposed [entities which have not entered into water service subcontracts] be adjusted as follows:

Subcontractor	Original entitlement (percent)	Adjusted entitlement (percent)
Farmers Investment Co. [FICO]	1.39	1.64
San Carlos IDD [SCIDD]	4.09	6.84

3. New subcontracts be offered with the indicated entitlements to:

Subcontractor	Entitlement (percent)
Arizona State Land Department:	
Lease #01-00694 (Picacho Pecans)	0.54
Lease #01-077685 (Aguirre)	0.11
McMullen Valley Water CDD [MVWCDD]	3.17
Roosevelt ID [RID]	5.0

4. No subcontract be offered to an entity in Recommendation No. 3 above unless within one year from [the Secretary's] decision on the allocation the entity provides the following:

a. Demonstration to the satisfaction of both the Secretary and Department [ADWR] that it is economically feasible to distribute CAP water for agricultural production to the eligible lands in the entity's leasehold or service area and there is no impediment to any necessary exchange agreements.

b. A commitment to relinquish any allocation of "Hoover B" electric power [Incremental capacity and energy resulting from the up-rating program of the Hoover Dam Power Plant pursuant to Pub. L. 98-381 (98 Stat. 1333)].

c. Demonstration to the satisfaction of the Secretary and the Department [ADWR] that there will be in place provisions to comply with section 304(c)(1) of Public Law 90-537 for any entity located outside of an existing Active Management Area or Irrigation Non-expansion Area.

5. A determination of eligible acres be made [by the Secretary] before a subcontract is offered to an entity in Recommendation No. 3 above and the allocation adjusted, if necessary, in a manner consistent with the methodology used by the Department [ADWR] in this recommended reallocation.

6. Once the record of decision is made [by the Secretary], the adjustments to the existing subcontractor's entitlements be completed in 6 months. New subcontracts should be executed within 6 months [with the allottees listed in item No. 3] after the requirements of Recommendation No. 4 have been completed.

7. If any of the allottees decides [sic] on a lesser entitlement than the amount recommended, or that it does not want to subcontract, then all remaining entities' entitlements should be increased [by the Secretary] in a manner consistent with the methodology used by the Department [ADWR] in this recommended reallocation.

Discussion: ADWR developed three criteria for determining whether an entity should be included in the reallocation. These criteria include the following: (1) The entity must have lands that are eligible to receive CAP agricultural water; (2) the entity must be located in an area experiencing a declining ground water table; and (3) the entity must currently be providing water for agricultural use.

In addition to the 10 entities that have signed CAP water service subcontracts, ADWR has recommended allocations to: (1) Three new entities (MVWCDD and the two State leases); (2) two entities included in the 1983 allocation (SCIDD and FICO) but which have not yet signed a CAP subcontract; and (3) one entity (RID) which had previously rejected a CAP subcontract but subsequently decided to seek an allocation during the reallocation recommendation process.

With one exception, all of the allottees would take direct delivery of CAP water. RID would benefit from the reallocation through an effluent exchange with the city of Phoenix. RID's CAP agricultural water would be delivered to Phoenix and Phoenix would deliver treated effluent to RID for agricultural purposes. Under the State's recommendation, RID would have to document to the Secretary and ADWR that there is no impediment to implementing such an exchange as a prerequisite to receiving an offer of a CAP water service subcontract. The facilities to deliver effluent from Phoenix to RID will be constucted as part of an exchange agreement under the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

The State's recommendation would expand the eligible land base (418,890 acres) to receive CAP agricultural water, thereby increasing the possibility that Arizona will be able to use its full apportionment of Colorado River water. One of the primary purposes of CAP is to provide a means for the State to fully utilize such apportionment. The land base currently under subcontract may not be great enough to use all available CAP agricultural water in the early project years. Presently, the State does not have the capability to recharge large amounts of CAP water during the early years of the project.

Expanding the eligible land base increases Federal oversight required for administering the Reclamation Reform Act of 1982. However, these additional Federal costs are not expected to be substantial.

ADWR has recommended that MVWCDD receive a water allocation. The city of Phoenix owns most of the lands in the District. Phoenix has purchased the lands in MVWCDD as a water farm and intends to eventually transport ground water from such lands to the Phoenix service area. Phoenix plans to farm the land until such time as the ground water is needed within its service area. The use of CAP agricultural water on the MVWCDD lands will allow Phoenix to retain more ground water in the aquifer for future use in its service area.

An allocation to MVWCDD would require a high pump lift (approximately 600 feet) to convey CAP water to the District's lands. Nearly all of the CAP agricultural water for other CAP users will be delivered by gravity systems. Because of the high lift required for MVWCDD to utilize CAP water, the State has recommended that MVWCDD document that it has the financial capability to take and use CAP water for agricultural purposes before a subcontract can be offered to MVWCDD. The State has also recommended that the financial feasibility requirement be applied to RID and the two State leases.

ADWR has recommended that two other conditions be imposed on MVWCDD in order for MVWCDD to receive an offer of a CAP subcontract. The CAP authorizing legislation provides that subcontracts must require that adequate measures are in effect to control expansion of irrigation from aquifers in the subcontractor's service area. There is nothing under State law which would prevent MVWCDD from expanding its irrigation service area after it receives a CAP subcontract. The State has recommended that MVWCDD must satisfy the Department and ADWR that MVWCDD can meet the Federal requirement. ADWR has also recommended that MVWCDD must relinquish its allocation of Hoover B electric power as a condition of receiving a CAP water service subcontract. This condition would place MVWCDD on the same footing as the existing CAP water subcontractors, which were required to relinquish their entitlement to Hoover B power as a condition of receiving CAP water. Hoover B power is capacity and energy made available due to the up-rating of the power plant at Hoover Dam that was authorized by the Hoover Dam Power Plant Act of 1984 (Pub. L. 98-381, 98 Stat. 1333).

Under the CAP agricultural water service subcontracts, the agricultural water service subcontractors have the right to convert the agricultural entitlement to an M&I entitlement at the rate of 1 acre-foot per acre when the agricultural entitlement is no longer needed for agricultural purposes or when the eligible lands convert to M&I use. Any expansion of the CAP eligible acreage increases the potential for M&I conversions in the future. Since M&I water made available as a result of conversions has the same priority as the original 640,000 acre-feet of water that was allocated for M&I use, the allocation of agricultural water to new areas has the potential to further dilute the priority of the entire CAP M&I water supply during times of CAP water shortages.

Selection of this option would indicate that the Secretary had accepted the State's criteria and rationale for the reallocation. The Department has a history of giving deference to the State's recommendations regarding the use of Colorado River water by non-Indian entities.

Option 2. Reallocate uncontracted agricultural water allocations to the 10 existing subcontractors with the stipulation that any allocations not contracted for within 180 days of the reallocation decision shall revert to the Secretary for discretionary use. Water service contracts would be offered based on the percentages shown in the table below.

Irrigation district (Subcontractor)	Existing entitlement (Percent)	Proposed new entitlement (Percent)
Central Arizona IDD	18.01	27.67
Chandler Heights Citrus ID	0.28	0.36
Harquahala Valley ID	7.67	10.62
HoHoKam ID	6.36	8.45
Maricopa Stanfield IDD	20.48	27.67
New Magma IDD	4.34	5.78
Queen Creek ID	4.83	5.83
Roosevelt Water CD	5.96	7.70
San Tan ID	0.77	0.91
Tonopah ID	1.98	1.98

Discussion: Under this option, all CAP agricultural water allocations would be reallocated to existing subcontractors located in existing State-identified critical ground water basins.

The reservation feature of this option may provide a source of water for meeting the Secretary's obligation as trustee for Indian tribes. Litigation concerning Indian reserved water rights in central and southern Arizona has been proceeding for more than 15 years. Settlements have been reached in several cases, and negotiations are ongoing for the San Carlos Apache Tribe and the Gila River Indian Community. The Secretary has not yet identified firm supplies of water to meet his obligations under existing water rights settlement acts, and must identify and secure additional blocks of water for pending settlements. The Secretary is committed to finding sources of water for existing Indian water rights settlements where sources of water have not been identified and in finding sources of water for use in pending Indian water rights settlements. This option would also be consistent with the Secretary's legal obligation to protect the Federal reserved rights of Indian tribes.

Option 3. Reallocate uncontracted agricultural water allocations as recommended by ADWR, with the stipulation that any allocations not contracted for within the timeframes recommended by ADWR shall revert to the Secretary for discretionary use.

Discussion: This option is a combination of options 1 and 2 above. By selecting this option, the Secretary would be adopting the State's criteria and rationale for the reallocation but would be retaining some flexibility for use of the non-Indian agricultural allocations in Indian water rights settlements and for other purposes in the event that some of the uncontracted allocations are not placed under

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contract. Please refer to the discussion under options 1 and 2. This option would not fully accept the State's recommendation because it does not reallocate any agricultural allocations remaining after the contracting process to the remaining subcontractors.

Proposed Reallocation Decision

Option No. 3. The State has adopted reasonable criteria for developing its allocation recommendations, and the recommendations were developed through a process which solicited public input. Given the existing contracts and the legal requirements contained in section 11(h) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act that the uncontracted water allocations must be allocated for non-Indian agricultural use, the Department believes that it is appropriate to defer to the State with respect to the allocation of the non-Indian agricultural water supply. The Department has a history of giving deference to the State's recommendations regarding the allocation of water among non-Indian entities and a policy of deferring to the State on water issues unless there is an overriding Federal interest. The Department believes, however, that it is appropriate that the Secretary retain some flexibility to use any allocations that become available following completion of the contracting program for use in Indian water rights settlements or for other purposes. With that understanding, the Department proposes to reallocate uncontracted CAP non-Indian agricultural water allocations and to proceed with water service contracting as recommended by ADWR.

Compliance with the National Environmental Policy Act of 1969 (NEPA)

Previous notices concerning compliance with NEPA in connection with CAP water allocations were published on June 2, 1981 [46 FR 29544]; December 4, 1981 [46 FR 58316]; December 11, 1981 [46 FR 60658]; and March 24, 1982 [47 FR 12669]. The Department has prepared an environmental assessment (EA) on the proposed reallocation decision and on alternative reallocation options. The draft EA is currently being circulated for public review and comment. Anyone interested in receiving a copy of the draft EA should contact Mr. Bruce Ellis, Chief, Environmental Division, Arizona Projects Office, Bureau of Reclamation, P.O. Box 9980, Phoenix, Arizona 85068 (telephone 602-870-6767).

Once the EA has been completed, the Department will determine whether to prepare a "Finding of No Significant Impact" or an environmental impact statement. Implementation of the reallocation decision will be subject to further compliance with the requirements of NEPA.

Effect on Previous Decisions

When finalized, the proposed decision will supplement, and to the extent it is inconsistent therewith, supersede the non-Indian agricultural water allocation published by Secretary Watt on March 24, 1983.

Dated: June 17, 1991.

Manuel Lujan Jr.,

Secretary of the Interior.

[FR Doc. 91-14750 Filed 6-19-91; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[AZ-930-01-4214-12; A-702, A-2885]

Termination of Multiple-Use Classification and Natural Area Designation; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Present action terminates the multiple-use classification and natural area designation on approximately 44 acres of public land and will allow for a land exchange for the enhancement of other Bureau programs. The subject area is in an area of potential development and no longer suitable for multiple-use management or natural area designation. Disposal of the property is in conformance with recommendations in the Arizona Strip Resource Management Plan.

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: John Mezes, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 640-5509.

SUPPLEMENTARY INFORMATION: On June 20, 1967, and November 15, 1968, the land described below was included as a part of multiple-use classification actions segregating it from most forms of entry under the general land laws and the mining laws pursuant to the terms and conditions of the Act of September 19, 1964. On January 10, 1969, the area was designated a Class III natural environment area under the Bureau of Outdoor Recreation system of classification.

With the passage of the "Arizona Wilderness Act of 1984" on August 28, 1984, the Paria Canyon-Vermillion Cliffs area was designated as wilderness. With boundary adjustments allowed by the Wilderness Act, the subject area was eliminated from the wilderness designation. The lands retained its multiple-use classification and natural area designation. Lands affected by this action are located and identified as follows:

Gila and Salt River Meridian

T. 39 N., R. 7 E.,
Section 7, Lots 6 and 7, S½S½ (that portion between the wilderness boundary, Vermillion Cliffs Lodge and the private land belonging to the Badger Creek Homeowners lying west of Highway 89A).

The area contains approximately 44 acres in Coconino County.

1. The classification decisions dated June 20, 1967, and November 15, 1968, and the natural area designation dated January 10, 1969, as published in the Federal Register are hereby terminated in their entirety as they affect the above-described lands.

2. At 10 a.m. on June 20, 1991, the above-described land will be opened to operation of the public land laws, subject to valid existing rights and the provisions of applicable law.

3. At 10 a.m. on June 20, 1991, the above-described land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, any segregation of record and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Beaumont C. McClure,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 91-14718 Filed 6-19-91; 8:45 am]

BILLING CODE 4310-32-M

[UT-050-01-4233-16]

Off-road Vehicle (ORV) Designation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the Henry Mountain Resource Area ORV Designations.

SUMMARY: Notice is hereby given relating to the use of ORV's on public lands according with the authority and requirements of Executive Orders 11644 and 11989 and regulations contained in 43 CFR part 8340. The following described lands under administration of the Richfield District of the Bureau of Land Management are designated as closed, limited, or open to ORV use.

The 1,413,490 acres of public land affected by the designations are within the Henry Mountain Resource Area in Wayne and Garfield Counties, Utah. The designations are a result of resource management decisions made in the Henry Mountain Resource Area Management Framework Plan, revised in 1982. Public comments concerning the implementation plan were received during August of 1990.

These designations for the Public land located within the areas listed below are effective immediately and will remain in effect until modified or rescinded by the Authorized Officer.

SUPPLEMENTARY INFORMATION: ORV designations are effective for the Henry Mountain Resource Area.

A. Open Designation—942,926 acres
B. Limited Vehicle Use Area—312,639 acres
C. Closed Designation—157,925 acres

For further information contact Sheldon Wimmer, Area Manager, Henry Mountain Resource Area, PO Box 99, Hanksville, UT 84734.

Dated: June 11, 1991.

Sam Rowley,

Assistant District Manager Resources.

[FR Doc. 91-14724 Filed 6-19-91; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-943-4214-10; GP1-211; OR-6761(WASH)]

Opening of National Forest Lands; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will terminate the temporary segregative effect as to 1,120 acres of National Forest System lands included in an application for withdrawal involving the extension of the White Pass Recreation Area.

EFFECTIVE DATE: October 20, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2310.2-1(e), at 8:30 a.m., on October 20, 1991, the following described lands will be relieved of the temporary segregative effect of withdrawal application OR-6761(WASH). The withdrawal application will continue to be processed unless it is cancelled or denied:

Willamette Meridian

Gifford Pinchot and Snoqualmie National Forests

T. 13 N., R. 11 E., unsurveyed,
Sec. 1, S½NW¼;
Sec. 2, S½NE¼;
Sec. 10;
Sec. 11, S½S½;
Sec. 12, S½S½.

The areas described aggregate approximately 1,120 acres in Lewis and Yakima Counties.

Dated: June 10, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-14725 Filed 6-19-91; 8:45 am]

BILLING CODE 4310-33-M

[CA-050-09-4212-11; CA 20002]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Trinity Co., CA

ACTION: Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Trinity County, California.

SUMMARY: The following public land in Trinity County, California has been examined and found suitable for classification for lease to the Douglas City Community Services District, under provisions of the Recreation and Public Purposes Act, as amended (43 USC 869, et seq). The Douglas City Community Services District proposes to use the land for a fire station.

Mount Diablo Meridian

T. 33 N., R. 9 W.,
Section 34: Lot 7; portion of
Containing 1.00 acre, more or less.

The lands are not needed for Federal purposes. Lease is consistent with current Bureau of Land Management land-use planning and would be in the public interest.

DATES: For a period of 45 days from the date of publication of this notice, interested parties may submit comments regarding the proposed lease or classification of the lands to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective August 19, 1991.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

ADDRESSES: Detailed information concerning this action is available for review at the Office of Bureau of Land Management, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Patricia Cook, Realty Specialist, at the address listed above.

Mark Morse,

Area Manager.

[FR Doc. 91-14721 Filed 6-19-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-050-01-4212-13]

Realty Action, Acquisition of Lands in Humboldt Co., Calif., Through Exchange

ACTION: CA CA 26604 PT, Notice of Realty Action, Acquisition of Lands in Humboldt County, California, through Exchange.

SUMMARY: Pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Arcata Resource Area, has identified the following described private lands in Humboldt County, California, as being suitable for acquisition by the United States by way of a land exchange with The Nature Conservancy subject to valid existing rights:

T.2S., R.2W., Humboldt Meridian, California
Section 17, W2NW, NENW;
Section 18, NWSE.
T.2S., R.3W., Humboldt Meridian, California
Section 12, Lot 3;
Section 13, Lots 1 & 2.

Lands are shown on the Humboldt County Assessor's records as AP 104-181-04, 105-031-05, 104-183-01, 105-031-01, containing a total of 308.39± acres.

This notice deals exclusively with the private lands listed above. An amended Notice of Realty Action will address the public (selected) lands to be disposed of by the Bureau of Land Management.

The purpose for acquiring the lands listed above is to improve the Bureau's management of adjoining public land, and to enhance public recreation.

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wildlife and riparian habitat at the mouth of the Mattole River. This exchange acquisition will meet the Bureau's land use planning goals and objectives as outlined in the Scattered Tracts Management Framework Plan and interim management under the Draft Arcata Resource Management Plan.

The publication of this notice is for the purpose of soliciting comments on the offered private lands listed above. For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the address below.

FOR FURTHER INFORMATION: Detailed information concerning the exchange, including the draft environmental assessment, is available for review at the address given below, or by calling (707) 822-7648, Lynda J. Roush, Area Manager, BLM—Arcata Resource Area, 1125 16th Street, Room 219, Arcata, CA 95521-5580.

D.E. Averill,
Supervisory Resource Management Specialist.

[FR Doc. 91-14720 Filed 6-19-91; 8:45 am]
BILLING CODE 4310-40-M

[CA-940-01-3110-10-0004; CACA 23833, CACA 23834, CACA 23836, CACA 23839, CACA 23914, CACA 23918, CACA 23929, CACA 24290, CACA 24291, CACA 24307, and CACA 24454]

Exchanges of Public and Private Lands in Kern County, California, and Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and opening order.

SUMMARY: The purpose of these exchanges was to acquire non-Federal lands within the designated Desert Tortoise Research Natural Area. The public interest was well served through completion of these exchanges. The lands acquired in these exchanges will be opened to the operation of the public land laws, subject to all the laws and regulations governing the particular kind of entry, selection, or other disposal. The lands will be opened to mineral leasing. The lands are closed to mining.

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, Federal Office Building, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: Public Land Order 5694, published in the Federal Register, 45 FR 7815, February 5, 1980, withdrew the land described therein from location and entry under the general mining laws, 30 U.S.C. ch. 2, in aid of a program of the Department of the Interior for the preservation and protection of the desert tortoise for a period of 20 years from the date of publication of the order. The private lands described in this notice became subject to this ordr upon acceptance of title on behalf of the United States.

1. The United States issued exchange conveyance documents to the exchange proponents listed below under section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described lands:

Sigmund J. Lichter and Elizabeth C. Lichter, as Trustees of The Sigmund and Elizabeth Lichter Revocable Trust dated August 14, 1980
Serial No. CACA 23833
Date of conveyance: May 1, 1991
Public land description: N½S½SE¼ and S½S½SE¼ sec. 8, T. 11 N., R. 10 W., S.B.M., containing 80 acres.

Hans Niederberger and Elizabeth R. Niederberger
Serial No. CACA 23834
Date of conveyance: February 22, 1990
Public land description: NW¼SW¼ sec. 14, T. 32 S., R. 38 E., M.D.M., containing 40 acres.

Mark H. Batz
Serial No. CACA 23836
Date of conveyance: March 4, 1991
Public land description: NW¼NW¼ and SW¼SW¼ sec. 8, T. 11 N., R. 10 W., S.B.M., containing 80 acres.

Victor Maron, as Trustee under the Victor Maron and Florence P. Maron Trust Agreement dated April 11, 1973
Serial No. CACA 23839
Date of conveyance: July 20, 1990
Public land description: E½NE¼ and W½NW¼ sec. 14, T. 32 S., R. 38 E., M.D.M., containing 160 acres.

Barton H. Welsh and Olivia W. Welsh
Serial No. CACA 23914
Date of conveyance: February 28, 1990
Public land description: NW¼NW¼NW¼, NE¼NW¼NW¼, SW¼NW¼NW¼, SE¼NW¼NW¼, NW¼NE¼NW¼, NW¼SW¼NW¼, NE¼SW¼NW¼, SW¼SW¼NW¼, SE¼SW¼NW¼, S½NE¼NW¼, NE¼NE¼NW¼, SE¼NW¼, NW¼SW¼, SW¼SW¼, E½SW¼, and W½SW¼SE¼ sec. 22, T. 32 S., R. 38 E., M.D.M., containing 340 acres.

George M. Novicoff and Betty Ruth Novicoff
Serial No. CACA 23915
Date of conveyance: January 28, 1990
Public land description: SW¼SW¼ sec. 14, T. 32 S., R. 38 E., M.D.M., containing 40 acres.

Walter A. Detjen and Patricia A. Detjen
Serial No. CACA 23920
Date of conveyance: February 5, 1990
Public land description: NW¼NE¼, NE¼NE¼, N½SE¼NE¼, and SW¼SE¼NE¼ sec. 22, T. 32 S., R. 38 E., M.D.M., containing 110 acres.

Raymond H. Smith, Earl Lee Miller, Ronald Jay Stahl, Guyle W. Stahl, Dennis Lee Stahl, Gwendolyn Ione Day, Chris A. Stahl, Henry J. Sanchez, Barbara A. Sanchez, Odysseas Christou, Anastasia Christou, Gloria H. Berry, John A. Handon, Jr., and Dorothy Ferguson.
Serial No. CACA 24290
Date of conveyance: September 13, 1990
Public land description: NE¼NW¼ sec. 14, T. 32 S., R. 38 E., M.D.M., containing 40 acres.

William J. Howard, Frances E. Howard, Ronald K. Ortt, Henry P. Loustalet, and Clarice W. Gorman
Serial No. CACA 24291
Date of conveyance: July 20, 1990
Public land description: SE¼NW¼ sec. 14, T. 32 S., R. 38 E., M.D.M., containing 40 acres.

Wojtek Andre Jaskiewicz
Serial No. CACA 24307
Date of conveyance: August 2, 1990
Public land description: S½N½SE¼ sec. 8, T. 11 N., R. 10 W., S.B.M., containing 40 acres.

Gale McMahon
Serial No. CACA 24454
Date of conveyance: March 26, 1991
Public land description: NE¼NW¼SE¼, NW¼NE¼SE¼, and NE¼NE¼SE¼ sec. 8, T. 11 N., R. 10 W., S.B.M., containing 30 acres.

The areas described aggregate 1,000 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands from the above named exchange proponents:

Private land description: Portions of secs. 19, 21, 27, 31, and 33, T. 31 S., R. 38 E., M.D.M.

The areas described aggregate 997.85 acres of private lands.

A specific description of these acquired lands, including exceptions and reservations too numerous to list in this notice, is available in the above listed case files which are located in the California State Office.

3. At 10 a.m. on July 22, 1991, the lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on July 22, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m. on July 22, 1991, the lands described in paragraph 2 will be opened to applications and offers under the mineral leasing laws.

The values of the Federal public lands and the non-Federal lands in the exchange were appraised at $316,100 and $315,000, respectively. An equalization payment in the amount of $2,000 was paid to Barton W. Welsh and Olivia W. Welsh by the United States, and equalization payments in the amounts of $2,400, $1,200, and $1,500 were paid to the United States by Sigmund J. Lichter and Elizabeth C. Lichter, the Desert Tortoise Preserve Committee on behalf of Wojtek Andre Jaskiewicz, and Gale McMahon, respectively.

Dated: June 10, 1991.
Nancy J. Alex,
Chief, Lands Section.

[FR Doc. 91-14505 Filed 6-19-91; 8:45 am]
BILLING CODE 4310-40-M

[CO-010-01-4212-13; COC-52964]

Realty Action: Exchange of Public and Private Lands in Grand and Jackson Counties, Colorado

AGENCY: Bureau of Land Mangement, Department of Interior.

ACTION: Notice of realty action.

SUMMARY: Pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Kremmling Resource Area is considering the following described land in Grand and Jackson Counties as suitable for disposal by exchange. This action is in response to a land exchange proposal submitted by Daniel Ritchie, Grand River Ranch.

Selected Public Land

Sixth Principal Meridian, Colorado

Muddy Pass—4632.68 acres.
T. 4N., R. 81W.,
Sec. 6, Lots 1 & 2, SE¼NE¼, NE¼SE¼.
Sec. 7, Lots 3 & 4, SE¼NE¼, E½SE¼, SW¼SE¼,
Sec. 8, NW¼NW¼, S½NW¼, W½SE¼,
Sec. 17, NW¼, NW¼NE¼, N½SW¼, SE¼SW¼,
Sec. 18, NE¼NE¼;
T. 4N., R. 82W.,
Sec. 1, Lots 5-8;
T. 5N., R. 81W.,
Sec. 7, Lots 12 & 13,
Sec. 17, Lots 11-13,
Sec. 18, Lots 7-10, 13, 19 & 20,
Sec. 19, Lots 5, 6, 11-14, 19 & 20,
Sec. 20, Lots 2-5, 11 &12,
Sec. 29, Lots 5-9 & 11-15,
Sec. 29, Lots 5-8,
Sec. 30, Lots 5 & 8-12,
Sec. 31, Lots 5-12, 15-18 & 20,
Sec. 32, Lots 3 & 9
Sec. 33, Lots 4, 5 & 12;
T. 5N., R. 82W.
Sec. 23, Lots 1-5
Sec. 24, Lots 3-5, 12 & 14,
Sec. 25, Lots 1 & 10.
Tyler Mtn.—385.04 acres.
T. 3N., R. 82W.,
Sec. 24, Lots 3 & 4,
Sec. 25, Lots 1, 2, 5 & 6,
Sec. 36, Lots 1, 4, 5 & 11.
Mitchell—345.42 acres.
T. 3N., R. 80W.,
Sec. 30, Lots 8 & 9,
Sec. 31, Lot 6;
T. 3N., R. 81W.
Sec. 25, W½NE¼, E½NW¼, SW¼SE¼, SE¼SW¼

The selected lands described above contain 5,568.09 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Daniel Ritchie, Grand River Ranch.

OFFERED PRIVATE LAND:

Sixth Principal Meridian

Williams Fork—2,638.03 acres more or less.
Metes and Bounds description in Sections 28, 29, 31, 32 and 33, T. 1S., R. 78W., and Sections 5, 7, 8, 17, and 18, T. 2S., R. 78W., and Sections 12 and 13, T. 2S., R. 79W.; containing 2,638.03 acres more or less.
Red Dirt Reservoir—803.16 acres.
T. 3N., R. 82W.,
Tracts 46, 49 & 48A;
T. 2N., R. 82W.,
Tract 36A.
Diamond Creek—91.11 acres.
T. 5N., R. 81W.,
Sec. 33, Lots 10 & 15
The offered lands described above contain 3,322.3 acres more or less.

FOR FURTHER INFORMATION AND PUBLIC COMMENT: Additional information concerning this exchange, is available for review in the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to facilitate improved resource management and to dispose of scattered, difficult to manage public land parcels while consolidating ownership of other public lands.

The exchange will be completed on an equal value basis. Full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25 percent of the value of the lands being transferred out of federal ownership.

The exchange will not be completed until all necessary field inventories and environmental assessments are completed.

The following reservations will be made in a patent issued for the public lands:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of all mineral deposits of known value.

3. A reservation of all existing and valid land uses, including grazing leases, unless waived.

Publication of this notice in the Federal Register segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing and exchange under section 206 of FLPMA. The segregated effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

Dated: June 10, 1991.
William J. Pulford,
District Manager.

[FR Doc. 91-14723 Filed 6-19-91; 8:45 am]
BILLING CODE 4310-JB-M

[NV-930-01-4212-14; N-50236]

Realty Action; Sales, Leases, etc.; Nevada; Correction

ACTION: Notice of Realty Action Correction.

SUMMARY: This is a correction of the Notice of Realty Action (NORA) published in the Federal Register, April 25, 1991, Vol. 56, No 80, pp. 19122-23 (FR Doc. 91-9729). The NORA is hereby corrected to read as follows:

"Notice is given that pursuant to the Act of October 21, 1976 (43 U.S.C. 1713, sec. 203), the Bureau of Land Management is offering for sale, two parcels of public land, ten acres each. The parcels will be sold to the highest bidder for no less than the appraised value of $250.00 per acre. Bids may be received by the Bureau of Land Management on either parcel or both. Do Not submit a bid for part of one parcel. The parcels are described as follows:

Mount Diablo Meridian, Nevada

T. 37 N., R. 36 E., Sec. 33,
Parcel 1: SE¼SE¼SW¼
Parcel 2: SE¼NE¼SE¼

The date of the sale is changed from June 19, 1991 to July 15, 1991. All other information contained in the NORA as published April 25, 1991, remains the same and is not changed.

FOR FURTHER INFORMATION CONTACT: Hal Green, District Realty Specialist, Winnemucca District Office, Bureau of Land Management, 705 E. 4th St., Winnemucca, NV 89445, (702) 623-1530.

Dated: June 5, 1991.
Ron Wenker,
Winnemucca District Manager.

[FR Doc. 91-14722 Filed 6-19-91; 8:45 am]
BILLING CODE 4310-HC-M

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[ID-943-01-4214-11; IDI-16701]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 134.30 acre withdrawal for Powersite Classification No. 50, continue for an additional 20 years. The land has a potential for waterpower development. These lands will remain closed to surface entry, but have been and would remain open to mineral leasing and mining.

DATE: Comments should be received on or before September 18, 1991.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, (208) 384-3166.

The Bureau of Land Management proposes that the existing land withdrawal made by Secretarial Order dated September 29, 1922, for Powersite Classification No. 50, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following-described land:

Boise Meridian

T. 27 N., R. 1 E.,
Sec. 15, lot 4.
T. 24 N., R. 21 E.,
Sec. 10, lot 1;
Sec. 18, lots 4 and 9.
The area described contains 134.30 acres in Idaho and Lemhi Counties.

The withdrawal is essential for protection of potential waterpower development. The withdrawal closed the described land to surface entry but not to mineral leasing and mining. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: June 6, 1991.

William E. Ireland,
Chief, Realty Operations Section.

[FR Doc. 91-14719 Filed 6-19-91; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Natchez National Historical Park; Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the National Park Service (NPS), Natchez National Historical Park, is preparing an Environmental Impact Statement (EIS) to assess the impacts of alternative management strategies for the park, which will be described in a General Management Plan (GMP). A range of alternatives will be formulated for resource protection, visitor use and interpretation, facilities development and operations.

Persons wishing to provide input to the scoping process for the GMP and EIS should address comments to the Superintendent, Natchez National Historical Park, P.O. Box 1086, Natchez, Mississippi 39121. Comments should be received no later than 60 days from the publication of this notice. For further information, contact the Superintendent, Natchez National Historical Park, at the above address, or at telephone (601) 442-7047.

The responsible official is Robert M. Baker, Regional Director, Southeast Regional Office, National Park Service, 75 Spring Street, SW, Atlanta, Georgia 30303. The draft GMP and EIS are expected to be completed and available for public review by early 1992. The final GMP, EIS and Record of Decision are expected to be completed in late 1992.

Dated: June 11, 1991.

C.W. Ogle,
Acting Regional Director, Southeast Region.

[FR Doc. 91-14755 Filed 6-19-91; 8:45 am]

BILLING CODE 4310-70-M

Gulf Islands National Seashore; Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Advisory Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act of 1972, Public Law 92-463, 86 Stat. 770, that a meeting of the Gulf Islands National Seashore Advisory Commission is scheduled for Friday, July 26. The commission was established pursuant to Public Law 91-660, January 8, 1971. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Gulf Islands National Seashore and on matters relating to zoning within the seashore. The meeting will convene on July 26 at the Naval Live Oaks Visitor Center auditorium in Gulf Breeze, Florida, at 1:30 p.m.

The matters to be discussed at this meeting will include:

(1) Superintendent's Annual Report.
(2) Status of natural resource management projects.
(3) Status of cultural resource management projects.
(4) Other business.

The meeting will be open to the public. However, facilities and space for accomodating members of the public are limited, and it is expected that not more than 20 persons will be able to attend the meeting in addition to the commission members. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent. Further information concerning this meeting may be obtained from the Superintendent, Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida 32561.

Dated: June 11, 1991.

C.W. Ogle,
Regional Director, Southeast Region.

[FR Doc. 91-14756 Filed 6-19-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (91-3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved the third quarter 1991 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter RCAF (Unadjusted) is 1.146. The third quarter RCAF (Adjusted) is 1.045, a decrease of 0.8 percent from the second quarter 1991 RCAF (Adjusted) of 1.045. Maximum third quarter 1991 RCAF rate levels may not exceed 99.4 percent of maximum second quarter 1991 RCAF rate levels.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 275-7354; Robert C. Hasek, (202) 275-6838; TDD for hearing impaired (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, or call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: June 13, 1991.

By the Commission, Chairman Phillips, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-14736 Filed 6-19-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31880]

Wisconsin Central Ltd.—Purchase—Chicago and North Western Transportation Co. Line Between South Itasca and Cameron, WI; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration, the application filed on May 21, 1991, by Wisconsin Central Ltd. (WCL) and Chicago and North Western Transportation Company (CNW) (collectively applicants). WCL seeks to purchase a 97.03-mile continuous line of CNW railroad between South Itasca and Cameron, WI. Pursuant to 49 CFR part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than July 22, 1991 and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transporation and Attorney General of the United States must be filed by August 6, 1991. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of the service list and confirmed by certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list in this proceeding have been properly served copies of these comments. Applicants' reply is due by August 26, 1991.

ADDRESSES: Send original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, attn: Finance Docket No. 31880, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and to applicant's representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, room 8201, 400 Seventh St., SW., Washington, DC 20590.

Attorney General of the United States, United States Department of Justice, 10th & Constitution Ave., Washington, DC 20530.

William C. Sippel, Oppenheimer Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, suite 2400, Chicago, IL 60601.

Stuart F. Gassner, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: By application filed May 21, 1991, Wisconsin Central Ltd. (WCL) and Chicago and North Western Transportation Company (CNW), collectively referred to as applicants, seek approval under 49 U.S.C. 11343, *et seq.*, for WCL to purchase CNW's line between milepost 49.60 at Cameron, WI and milepost 97.13 at Trego, WI and between milepost 0.00 at Trego (same point) and milepost 56.90 at South Itasca, WI, a total distance of 97.03 miles (Cameron Line).[1] Applicants intend to consummate the transaction as soon as practicable after the Commission's order approving this application becomes effective. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they have submitted an application in accordance with the railroad consolidation procedures at 49 CFR part 1180 for minor transactions.

Applicants also intend to consummate, simultaneously with the purchase of the Cameron Line, related transactions in the following proceedings: (1) Finance Docket No. 31881, Wisconsin Central Ltd.—Trackage Rights Exemption—Over Duluth, Missabe and Iron Range Railway Company (notice of exemption served June 6, 1991), where the Duluth, Missabe and Iron Range Railway Company (DMIR) has agreed to grant trackage rights to WCL between South Itasca and Saunders, WI and South Itasca and Ambridge, WI, allowing WCL to access the Cameron Line at the north end and to effect interchange with other rail carriers at Superior, WI; (2) Finance Docket No. 31882, Chicago and North Western Transportation Company—Trackage Rights Exemption—Over Wisconsin Central Ltd. (notice of exemption served June 6, 1991), where WCL has agreed to grant trackage rights to CNW between Cameron and Wisconsin Rapids, WI, providing CNW with an alternate route between Cameron and CNW's main line at Necedah, WI; and (3) Docket No. AB-303 (Sub-No. 8X), Wisconsin Central Ltd.—Abandonment Exemption—In Barron County, WI (petition for exemption filed under 49 U.S.C. 10505 on May 21, 1991), where WCL seeks to abandon its exiting parallel line between Cameron and Rice Lake, WI.

WCL, an Illinois corporation, is a Class I common carrier operating over 2,000 route miles of rail lines in the States of Illionis, Michigan, Minnesota and Wisconsin and in the Province of Ontario, Canada.[2] At the time of the original acquisition of the lines from Soo Line Railroad Company (Soo) that created WLC, Soo declined to sell to WCL its line between Ladysmith, WI and Superior, WI (Ladysmith Line) and instead granted restricted trackage

[1] As part of the transaction, WCL will purchase CNW's terminal and yard facilities at Spooner, WI and also acquire the right to use a portion of CNW's "New Yard" at South Itasca.

[2] WCL had been a Class II carrier since its formation in 1987, but was reclassified as a Class I carrier effective January 1, 1991. In Ex Parte No. 492 (Sub-No. 1) Montana Rail Link, Inc. and Wisconsin Central Ltd., Petition for Temporary Accounting and Reporting Exception from 49 CFR part 1201 (not printed), served February 4, 1991, the Commission temporarily excepted WCL for 1 year from the accounting and reporting requirements otherwise applicable to Class I rail carriers.

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rights prohibiting WCL's handling of most overhead traffic over that line.[5] These trackage rights have otherwise given WCL direct access to the Duluth, MN/Superior, WI (Duluth/Superior) market, including access to all industries open to WCL and interchange with rail and water carriers at Duluth/Superior.

CNW, a Delaware corporation, is a Class I common carrier operating over 5,000 route miles of rail lines in the States of Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, South Dakota, Wisconsin and Wyoming. It will retain overhead trackage rights over the Cameron Line. It will also continue to own and operate the Trego-Hayward, WI branch line and will continue to serve all industries at Trego exclusively.

Applicants do not expect that the proposed transaction will in any way lessen intramodal competition nor create a monopoly or restrain trade in freight surface transportation in any region in the United States. Applicants state that the proposed transaction is pro-competitive and will improve the adequacy of transportation service to the public. As a result of the proposed transaction, WCL will have an alternate route to Duluth/Superior free of the contractual traffic restrictions associated with its existing route via trackage rights over Soo's Ladysmith Line. According to applicants, WCL will be able to solicit and compete on an unrestricted basis with the other competing carriers—CNW, Soo and Burlington Northern Railroad Company (BN)—for overhead traffic moving via the Duluth/Superior gateway. By virtue of its retained trackage rights over the Cameron Line, newly acquired trackage rights over WCL's lines between Cameron and Wisconsin Rapids, and existing trackage rights between South Itasca and Necedah, WI, CNW would also have an alternate service route in the Duluth/Superior-Chicago corridor. Applicants say that the proposed transaction therefore will provide shippers with increased intramodal competition and new price and service options on overhead traffic between Duluth/Superior and Chicago.[6]

Applicants also say that all local industries on the Cameron Line not served by CNW will be served by WCL, that no industry will lose rail service as a result of the proposed transaction, that the increased line density brought about by the consolidation of CNW and WCL operations over a single line will permit maintenance of the line to competitive standards, and that WCL will maintain the Cameron Line and its lines between Ladysmith and Wisconsin Rapids at FRA Class III standards to maintain an effective service route between Duluth/Superior and Chicago. Applicants also note that the proposed transaction has the potential for serving as the initial phase of a multi-carrier rationalization of lines in northwestern Wisconsin with the potential to eliminate excess rail facilities and improve service without any reduction in competition.[7]

Under the Asset Purchase Agreement, WCL will pay CNW $5,600,000 for the Cameron Line and other related assets, plus the additional amounts for listed equipment. CNW will pay $.35 per loaded car mile for trackage rights over WCL lines between Cameron and Wisconsin Rapids. As an incentive to CNW to operate its trains over WCL's line between Cameron and Wisconsin Rapids (in lieu of CNW's own line via Eau Claire, WI), WCL will pay CNW $11.90 per loaded car handled by CNW over WCL's line between Cameron and Ladysmith. WCL projects an increase of approximately 14,000 carloads (excluding existing traffic and overhead iron ore traffic) generating approximately $10.8 million in gross freight revenue in the first year following acquisition of the line. In addition, WCL expects to save approximately $1 million annually in trackage rights fees by handling existing Duluth/Superior through traffic via the Cameron Line instead of via its trackage rights over Soo's Ladysmith Line. Subtracting the cost of maintaining the Cameron Line, yields net savings of approximately $250,000 annually.[8]

WCL will not incur any additional debt in connection with its purchase of the Cameron Line. Consequently, the proposed transaction will not result in any increase in fixed charges. The proposed purchase will be funded with internally generated funds and does not involve the issuance of any new securities.

WCL currently operates one through train in each direction per day between the Duluth, Winnepeg and Pacific's Pokegema Yard at Superior and WCL's yard at Stevens Point, WI (on WCL's Twin Cities-Chicago mainline 11 miles east of Junction City, WI). These trains operate via trackage rights over Soo's Ladysmith Line. Extra through trains, such as to handle iron ore traffic, are operated as needed. After the transaction is completed, these through trains will be rerouted to operate between Pokegema Yard and Stevens Point via the Cameron Line. WCL expects to create 11 additional positions to handle the increased traffic volumes and maintenance responsibility associated with acquisition of the Cameron Line.[9] The proposed transaction will have no effect on existing WCL employees.

The transaction will result in the abolition of 13 CNW positions.[9] CNW does not expect abolition of any train or engine positions as a result of the proposed transaction. Applicants acknowledge that the appropriate level of labor protection in a purchase transaction is that set forth in New York Dock Ry.—Control—Brooklyn East. Dist., 360 I.C.C. 60 (1979), as clarified in Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc., 6 I.C.C. 2d 799 (1990).

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor, or exempt. Although the proposal here involves two Class I rail carriers,[9] it has no regional or national significance and will not result in a major market extension. Between Duluth/Superior and Chicago, WCL's primary gateway, the Cameron Line route is approximately 30 miles longer than via WCL's existing Ladysmith Line route. Acquisition of the Cameron Line therefore will not create a shorter route for WCL to and from Duluth/Superior. By acquiring the Cameron Line, WCL will have the opportunity to compete for overhead traffic on an unrestricted basis in the Duluth/Superior market. Three other rail carriers (BN, CNW, and Soo) currently serve this market and WCL has served all other segments of this market since its formation in October of 1987. Thus, WCL's acquisition of the Cameron Line will not extend its haul on any existing traffic beyond existing interchanges, will not significantly increase its service capabilities on traffic moving to and from Duluth/Superior, and will not result in any curtailment of service by any of the other competing rail carriers now serving Duluth/Superior.

Accordingly, we find that the proposal is a minor transaction as defined in 49 CFR 1180.2(c). Since the application complies with our regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the comments include a request for that status. Accordingly, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, i.e., whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this proceeding constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

(2) The parties shall comply with all provisions as stated above.

3. This decision is effective on June 19, 1991.

Decided: June 12, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14736 Filed 6-19-91; 8:45 am]

BILLING CODE 7035-01-M

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[5] The Ladysmith Line roughly parallels the Cameron Line that WCL seeks to purchase from CNW. WCL attempted to purchase the Ladysmith Line last fall, but parties were unable to agree on terms. Since 1989, Soo for a fee has waived the overhead traffic restriction to permit WCL to handle approximately 12,000 carloads of certain iron ore traffic between Duluth/Superior and Chicago.

[6] Applicants also note that the proposed transaction will assure an additional friendly connection to Canadian National Railway Company (CN) and its subsidiary, Duluth, Winnipeg and Pacific Railroad Company (DWP), for the Canadian traffic moving via DWP through the Duluth/Superior gateway as a partial substitute for Soo as Soo is absorbed into Canadian Pacific, Ltd.'s rail system, CN's major competitor.

[7] As noted, WCL has attempted unsuccessfully to purchase the Ladysmith Line from Soo. However, a dispute over Soo's right under the original asset purchase agreement with WCL to require WCL to purchase the Ladysmith Line and the terms on which Soo may exercise that right are currently the subject of litigation in the *Soo Line Railroad Company* v. *Wisconsin Central Ltd.*, No. 3-90-91 (D. Minn.). If WCL should purchase the Ladysmith Line, it would rationalize the two parallel lines by filing the appropriate applications or petitions for exemption with the Commission at that time. According to applicants, consummation of the Cameron Line purchase is in no way contingent on any future transaction with Soo involving the Ladysmith Line.

[8] In addition, there will be annual savings to WCL from the related abandonment of its Cameron-Rice Lake line, although the amount has not been quantified.

[9] At Spooner, WCL expects to add one maintenance of way foreman, one maintenance of way laborer, and one maintenance of way machine operator. At Solon Springs, WI, WCL expects to add one maintenance of way foreman and one maintenance of way laborer. At Stevens Point, WCL expects to add six train service employees.

[9] At Spooner, CNW expects abolition of 11 BMWE (maintenance) personnel positions and one signal maintainer position. At Altoona, WI, CNW expects abolition of one lineman electrician position.

[9] As noted, WCL has been temporarily excepted from only the accounting and reporting requirements for Class I railroads.

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 91-CV-32-74]

United States v. Brown University, et. al.; Competitive Impact Statements and Proposed Consent Judgment

Correction

In notice document 91-13287 concerning *U.S.* v. *Brown University, et al.*, appearing in the issue of Thursday, June 6, 1991 at 56 FR 26156, the following corrections are made to the published signatures to the Stipulation: Ronald G. Carr (Counsel for the Trustees of Princeton University), Bruce D. Sokler (Counsel for the Trustees of Dartmouth College), and Roger Fendrich (Counsel for Yale University).

Counsel for Massachusetts Institute of Technology ("MIT") was also incorrectly identified as signing the Stipulation. MIT is not a signatory to the Stipulation.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91-14710 Field 6-19-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research, Bell Communications Research, Inc.; Notification

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on May 21, 1991, filed a written notification on behalf of Bellcore and Nederlandse Philips Bedrijven B.V., ("Philips") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general area of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Philips is a corporation of The Netherlands having a place of business whose address is P.O. Box 218, 5600 MD Eindhoven, The Netherlands.

On April 22, 1991, Bellcore and Philips entered into an agreement to engage in cooperative research in the field of video communication including architectures for such video communication systems and transmission and coding techniques and to cooperate in studies to obtain a better understanding of the feasibility and applicability of the above-mentioned technologies and of the possible partitioning of various functions over the public network (including exchange and exchange access portions thereof), the network access point, the in-house communication system, and the connected sets, including prototype fabrication and demonstration of the mentioned technologies in experimental systems.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91-14704 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Ethanol Joint Venture; Notification

Notice is hereby given that, on May 16, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Amrep, Incorporated filed a written notification simultaneously with the

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Attorney General and the Federal Trade Commission disclosing a change in the membership of the Ethanol Joint Venture ("Joint Venture"). The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The current membership is:

Amrep, Inc.; CCL Custom Manufacturing, Inc.; Calgon Vestal Laboratories; Caltech Industries Inc.; Catalytic Generators; Cello/Grow Group, Inc.; Central Solutions Inc.; Chemical Specialties Manufacturers Association; Claire Manufacturing; Ecolab, Inc.; Dymon, Inc.; Hysan Corporation; S.C. Johnson Wax; L & F Products Group (National Laboratories); MDT Corporation; Penn Champ, Inc.; Spartan Chemical Company; and Zep Manufacturing Company.

No other changes have been made in either the membership, the objectives or the planned activities of the Joint Venture.

On June 1, 1990, S.C. Johnson & Son, Incorporated filed the original notification concerning the Joint Venture pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on July 5, 1990, at 55 FR 27700.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91-14705 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research (MCNC; Notification

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), MCNC (formerly the Microelectronics Center of North Carolina) on April 2, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of MCNC. The additional written notification was filed for the purpose of extending the protections of Section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On June 6, 1988, MCNC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to Section 6(b) of the Act on August 1, 1988 (53 FR 28922). On December 19, 1989, MCNC filed an additional written notification. The Department published a notice in the Federal Register in response to the additional notification on February 12, 1990 (55 FR 4916).

Effective April 2, 1991, NCR Corporation and LAM Research Corporation have been admitted as affiliates of MCNC, and Megatest Corporation is no longer an affiliate of MCNC.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91-14706 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Petroleum Environmental Research Forum; Notification

Notice is hereby given that, on May 13, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the membership of PERF. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional parties have become members of PERF: Lion Oil Company, 1000 McHenry Avenue, El Dorado, Arkansas 71730; and Phibro Refining, Inc., 8934 Manchester, Houston, Texas 77012.

No other changes have been made in either the membership or the planned activities of PERF.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903). On May 6, 1986, May 27, 1986, June 23, 1986, February 3, 1988, March 21, 1989, October 31, 1989, April 19, 1990, and June 25, 1990, PERF filed additional written notifications. The Department published notices in the Federal Register in response to these additional notifications on June 9, 1986, (51 FR 20937), June 19, 1986 (51 FR 22305), July 17, 1986 (51 FR 25957), March 1, 1988 (54 FR 8607), April 20, 1989 (54 FR 16014), December 8, 1989 (54 FR 50661), May 30, 1990 (55 FR 21951), and July 18, 1990 (55 FR 21951), respectively.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91-14707 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification; Reckitt & Colman Household Products (MY 235 Consortium) Joint Venture

Notice is hereby given that, on May 20, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), written notice has been filed by Reckitt & Colman Household Products simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the New York 235 Consortium ("Joint Venture") and (2) the nature and objectives of the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Joint Venture and its general areas of planned activity are given below.

The parties to the Joint Venture are: J&L Adikes, Inc.; American Cyanamid Company; American Home Products Corporation; American Household Products; American Wax Co. Inc.; Amrep, Inc.; Avon Products, Inc.; Bengal Chemical, Inc.; Betco Corporation; Big D Industries, Inc.; Bonide Products; Brondow, Inc.; Buckingham Wax Co., Inc.; Butcher Company; Calgon Vestal Laboratories; Caltech Industries, Inc.; Car Freshner Corporation; Carroll Company; Carter Wallace, Inc.; Cello/Grow Group, Inc.; Cetylite Industries, Inc.; Chase Products Company; Chemical Specialties Manufacturers Association; Chemsico; Ace Hardware; K-Mart; Spectrum Group; Chevron Chemical Co.; Church & Dwight, Co., Inc.; Claire Manufacturing Co.; Combe Incorporated; ConAgra Pet Products, Inc.; CSA Limited, Inc.; Davies-Young Company; Buckeye International, Inc.; E. Davis Inc.; Dexol Industries; The Dial Corporation; Diversey Wyandotte Corporation; DowBrands, Inc.; The Drackett Company; DuBois Chemicals, Inc.; DVM (Dermatologics for Veterinary Medicine); Dymon, Inc.; Ecolab Inc.; Eight in One Pet Products Inc.; Enforcer Products; Epic Industries; Fairfield American Corporation; Farnum Companies, Inc.; FMC Corporation; Foster & Co. Inc.; Four Paws Products, Ltd.; Fuller Industries Inc.; Halbro Control Industries; Hartz Mountain Corporation; Huntington Laboratories, Inc.; Hysan Corporation; IBC Corporation; Waico-Linck Co.; IGI, Inc.; International Minerals & Chemicals Corporation; Coopers Animal Health Inc.; Pitman-Moore, Inc.; S.C. Johnson Wax; King Research Inc.; Knight Oil Co.; L & F Products Group; The d-Con Company; National Laboratories; U.S. Professional Laboratories; Winthrop Pharmaceuticals; Withrop Veterinary; Magnum Research Corporaiton; Mason Chemical Company; McLaughlin Gormley King Co.; Midco Prod. Co., Inc.; CDC Products Corporation; Miles Inc.; National Chemical Laboratories, Inc.; NCH Corporation; Noble Pine Products Co.; Omni Tech International; OSR-Cleaning Specialties; Platte Chemical Co.; Pollitt, Inc.; Stanson Corporation; PortionPac Chemical Corporation; Positive Formulators, Inc.; Prentiss Drug & Chem. Co., Inc.; J.L. Prescott Company; Purex Industrial; Reckitt & Colman Household Products; Airwick Industries; Boyle Midway; Aveco Company, Inc.; Fort Dodge Laboratories, Inc.; Franklin Laboratories, Inc.; Rite-Off, Inc.; RocCorp, Inc.; Rockland Chemical Co.; Roussel Bio Corp.; Russall Products, Inc.; Safeguard Chem. Corp.; Contact Industries; Schering-Plough Healthcare Products Inc.; Scott Sani-Fresh International; Scott's Liquid Gold-Inc.; Service Master Co.; Terminix International; Sidmar Enterprises, Inc.; SmithKline Beecham Animal Health; Adams Veterinary Laboratories; Affiliated Laboratories; Beecham Laboratories; Norden Laboratories; SmithKline Beecham Consumer Brands; Spartan Chemical Co., Inc.; Speer Products, Inc.; Shirlo Division; Sprayon Products, Division of Sherwin Williams; Stanhome Inc.; State Chem. Manufacturing Co.; Stearns Packaging Corporation; UAP Special Products; Uncle Sam Chemical Co., Inc.; Union Camp Corporation; Unsmoke, USA Group; Virbac, Inc.; Carson Chemicals, Inc.; Waterbury Companies, Inc.; Wave Energy Systems, Inc.; Whink Products Co.; Whitmire Research Laboratories, Inc.; Zema Corporation; Zep Manufacturing Co.; Zoe Chemical Co.; Zoecon Corporation.

The objective of the Joint Venture is to sponsor and conduct reserach studies relating to the reduction of VOC emissions resulting from the use of air freshener, disinfectant and insecticide products sold within the New York Metropolitan area as required by the New York State Department of Environmental Conservation (NYSDEC) pursuant to 6 NYCRR 235 and to submit the results of this research to NYSDEC as required by part 235, Environmental Conservation Law, sections 3-0301 and 19-G301(1)(a).

Membership in the Joint Venture remains open, and the parties intend to file additional written notification disclosing any changes in membership.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91-14709 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-01-M

UNIX International, Inc; National Cooperative Research Notification

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX") on May 17, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on March 1, 1989 (54 FR 8608). On May 4, 1989, August 1, 1989, October 31, 1989, January 31, 1990, May 1, 1990, July 30, 1990, November 13, 1990, and February 6, 1991, UNIX filed additional written notifications. The Department published notices in the Federal Register in response to the additional notifications on June 22, 1989 (54 FR 26266), August 17, 1989 (54 FR 33985), November 29, 1989 (54 FR 49124), March 14, 1990 (55 FR 9517), May 21, 1990 (55 FR 20862), September 17, 1990 (55 FR 38173), December 28, 1990 (55 FR 53368), and March 15, 1991 (56 FR 11273), respectively.

As of May 9, 1991, the following have become members of UNIX International, Inc.:

Advanced SW Technology Res. Inst. of Kyoto
Centre National d'Etudes des Telecomms
Chinese University of Hong Kong
Computer Center, Tohoku University
CREO
EDS
Facom Center Association
Facom Software Association
GIPSI S.A.
Hitachi Micro Systems, Inc.
Hyatt Hotels Corporation
IXI Limited
J.C. Penney Co., Inc.
Kubota Pacific Computer, Inc.
Lionel Singer Corporation, Inc.
MANA Systems Limited
Marriott Corportaion
Marshfield Clinic
NTA Japan Technociates
NUC
OSA
OTSUKA SHOKAI
Pacific Dunlop Limited Patriot Partners
Petroleos de Venezuela, S.A.
POSIX Software Group
SANYO
Seiko Epson Corporation
SISA ACCOUNTING software
Tetra Ltd.
Texas A&M University, Computing Services
United States Air Force
University of British Columbia
Wollongong Group, Inc.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91-14708 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-01-M

Parole Commission

Elimination of the Western Region and Incorporation of States Formerly in the Western Region in the North Central and South Central Regions

AGENCY: United States Parole Commission, Justice.

ACTION: Notice of regional office closing and redefinition of regional boundaries.

SUMMARY: The U.S. Parole Commission is eliminating its Western Region and Western Regional Office, and incorporating the states presently included in the Western Region into the North Central and South Central Regions. The purpose of this change is to permit the Commission to manage its affairs more efficiently in view of its declining caseload and statutorily-scheduled abolition on November 1, 1997.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Attorney, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission has the authority, under 18 U.S.C. 4203(a)(2) (1976), to "* * * create such regions as are necessary to carry out the provisions of this chapter [The Parole Commission and Reorganization Act of 1976]." There are currently five regions. Under this system, all cases not specially designated for the Commission's original jurisdiction are initially decided by Regional Commissioners, or Acting Regional Commissioners, who exercise delegated authority from the Commission to grant or deny applications for parole, to impose parole conditions, and to modify or revoke an order of parole. See 18 U.S.C. 4203(c)(1) (1976).

Under the Sentencing Reform Act of 1984 (as amended) Public Law 98-473,

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the Parole Commission's jurisdiction is limited to federal prisoners and parolees who committed their offenses prior to November 1, 1987, and the Commission is scheduled for abolition on November 1, 1997. Accordingly, the Commission's caseload is declining, and the Commission is obliged to implement an orderly reduction of its operations. This includes the closing of regional offices, as well as reductions in the agency's staff.

In addition to the consolidation of the Northeast and Southeast Regional Offices with the Commission's headquarters in Chevy Chase, Maryland (with a view toward eventual creation of a single Eastern Region), the Commission has decided to eliminate its Western Region, and to close the Western Regional Office in Belmont, California. The states that now comprise the Western Region will be reassigned to the North Central and South Central Regions, so as to divide among the Regional Commissioners for those regions the jurisdiction presently exercised by the Acting Regional Commissioner for the Western Region. As of the effective date of this action (October 18, 1991), all cases in the Western Region that are pending a decision from the Commission will fall under the jurisdiction of either the North Central or the South Central Region, according to the assignment of states listed below.

In preparation for this transfer of jurisdiction, the Commission will attempt to have its case files transferred to the appropriate regional office at least two weeks prior to the effective date. Prisoners, parolees, and interested members of the public are advised, in addressing administrative appeals, petitions for reopening, and other communications to the Commission after October 1, 1991, to address their communications to the appropriate regional office in order to avoid delay. The addresses are as follows:

North Central Regional Office, U.S. Parole Commission, 10920 Ambassador Drive, Airworld Center, suite 220, Kansas City, Missouri 64153.

South Central Regional Office, U.S. Parole Commission, 525 Griffin Street, suite 820, Dallas, Texas 75202.

Jurisdiction is determined by the state in which the prisoner is confined, or in which the parolee is under supervision, or in which the hearing has been held in the case to be decided.

Accordingly, the Commission has taken the following actions:

1. The Western Region will be eliminated effective October 18, 1991.

2. The following states presently included in the Western Region shall be included in the North Central Region effective October 18, 1991: Alaska, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

3. The following states and territories presently included in the Western Region shall be added to the South Central Region effective October 18, 1991: Arizona, California, Hawaii, and Guam.

Dated: June 12, 1991.

Carol Pavlick Getty,

Chairman, U.S. Parole Commission.

[FR Doc. 91-14653 Filed 6-19-91; 8:45 am]

BILLING CODE 4410-01-M

MERIT SYSTEMS PROTECTION BOARD

Opportunity To Comment on the 1992 Research Agenda of the Merit Systems Protection Board (MSPB), June 1991

AGENCY: Merit Systems Protection Board.

ACTION: Notice of opportunity to comment on the 1992 research agenda of the U.S. Merit Systems Protection Board.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is required by law to conduct special studies of the civil service and other Federal merit systems to determine whether they adhere to the merit principles governing the Federal civil service. MSPB is also required by law to report annually to the President and the Congress on the "significant actions" of the Office of Personnel Management (OPM). Based on this research, MSPB reports to the Congress and the President on whether the public interest in a civil service free of prohibited personnel practices is being adequately protected. MSPB is in the process of determining its 1992 research agenda. This notice invites public comment on personnel management issues to be considered as topics for merit systems studies, and solicits suggestions regarding OPM programs and activities to be included in the annual review and analysis of OPM significant actions.

DATE: Comments must be received on or before July 22, 1991.

ADDRESS: Comments must be made in writing and sent to the Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., 8th Floor, Washington, DC 20419, Attention: Ms. Karen Robinson.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Robinson, Research Analyst, Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., 8th Floor, Washington, DC 20419, (202) 653-5812.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 established a list of statutory merit principles and prohibited personnel practices as standards for personnel management in the Federal Government. MSPB is responsible for protecting the public interest in a civil service administered according to these standards. The Office of Policy and Evaluation has principal responsibility within MSPB for OPM oversight and merit systems studies.

(a) What Is a Merit System Study?

The law does not specify criteria for MSPB to use in determining the scope and nature of merit systems studies. In exercising its discretion as to which studies to conduct, MSPB relies on its internal research staff as well as input from a broad range of outside individuals and organizations. In conducting any study, MSPB is also authorized to make such inquiries as may be necessary and, unless otherwise prohibited by law, to have access to personnel records or information from OPM or other agencies as needed.

(b) What Is an OPM Significant Action?

The law also does not specify criteria for MSPB to use in determining which actions of OPM are significant for purposes of preparing its report. In exercising its discretion as to which actions of OPM to study, MSPB considers the following:

(1) Any OPM policy or program which might conflict with the statutory merit principles or contribute to the commission of a prohibited personnel practice;

(2) The extent to which other major decisions made or actions taken by OPM are in accord with and promote the merit principles; and

(3) OPM's overall impact on personnel management within the merit systems of the Federal civil service.

(c) Public Comment on MSPB's 1992 Research Agenda

MSPB invites any interested person or organization to comment on: Any systemic personnel management issues or practices the examination of which would assist MSPB in determining adherence to the merit principles and the absence of prohibited personnel practices. Individual personnel actions are outside the scope of the research agenda.

Interested persons or organizations are further invited to comment on: which actions of OPM since January 1990 were "significant" for the merit systems, and whether those actions were consistent with merit system principles and free from prohibited personnel practices. Although comments are invited on any action taken by OPM since January 1990, they should be consistent with the criteria described above.

(d) Format for Comments

The comments should contain for each topic a short statement of the issue being raised, a brief explanation as to why it should be studied, and a description of the impact of the issue on the Federal service.

(e) Acknowledgement of Comments

Due to the nature of this notice (i.e., a request for suggestions), no acknowledgement or response will be provided to those who submit comments.

(f) Confidentiality

MSPB will protect the identity of persons submitting comments and the confidentiality of such comments to the extent permitted by law.

Dated: June 14, 1991.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 91-14652 Filed 6-19-91; 8:45 am]

BILLING CODE 7400-1-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-59]

NASA Cleveland Wage Survey Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 2024, Notice Number 91-36, May 2, 1991.

PREVIOUSLY ANNOUNCED DATES, TIMES AND ADDRESS OF MEETING: June 24, 1991, 1 p.m. to 3:30 p.m.; Conference Room 6004, 400 Maryland Avenue, SW., Washington, DC 20546.

CHANGES IN THE MEETING: Date changed to July 9, 1991.

FOR FURTHER INFORMATION CONTACT: Deborah Green Glasco, Code NHM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-3781).

Dated: June 14, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-14713 Filed 6-19-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice 91-58]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Space Station Science and Applications Advisory Subcommittee (SSSAAS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee (SSAAC), Space Station Science and Applications Advisory Subcommittee (SSSAAS).

DATES: July 22, 1991, through July 24, 1991, 8 a.m. to 10:30 p.m. each day; July 25, 1991, 8 a.m. to 5:30 p.m.; and July 26, 1991, 8:30 a.m. to Noon.

ADDRESSES: The Stanley Hotel, Estes Park, CO 80517.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code SM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1570).

SUPPLEMENTARY INFORMATION: The Space Station Science and Applications Advisory Subcommittee (SSSAAS) reports to the Space Science and Applications Advisory Committee (SSAAC) and consults with and advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized. It also advises the NASA Space Station Freedom Office on how the Space Station program may most effectively support potential science and applications users. The Subcommittee will meet to discuss restructured Space Station accommodations, scientific perspectives, and science operations status. The Subcommittee is chaired by Dr. Robert J. Bayuzick and is composed of 16 members. The meeting will be open to the public up to the seating capacity of the room (approximately 100 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Monday, July 22

8 a.m.—Orientation and Workshop Overview.
8:30 a.m.— Space Station Freedom (SSF) Program and Policy Overview.
9 a.m.—The Restructured Station—its Capabilities and Changes: Technical Perspective.
10:30 a.m.—The Restructured Station—its Capabilities and Changes: Science Perspective.
11:15 a.m.—Attached Pressurized Module Status, Capabilities and Utilization Plans.
1 p.m.—Japanese Experiment Module Status, Capabilities and Utilization Plans.
1:30 p.m.—Canadian Elements: Status, Capabilities and Utilization Plans
2 p.m.—Status of OSSA Utilization Plans.
3 p.m.—Office of Aeronautics, Exploration and Technology Utilization Plans.
3:15 p.m.—Office of Commercial Programs Utilization Plans.
3:30 p.m.—Data Management and Communication Systems.
5:30 p.m.—Break.
7 p.m.—Reconvene: Data Systems Utilization.
8 p.m.—Discussion and Preparation of Draft SSSAAS Recommendations.
10:30 p.m.—Adjourn.

Tuesday, July 23

8 a.m.—OSSA Strategic Plan.
8:30 a.m.—Early Utilization—Microgravity Transition Science.
9:30 a.m.—Early Utilization—Life Sciences.
10:15 a.m.—Utilization Flights/Assembly Flights: Capabilities and Plans.
10:45 a.m.—Space Station Freedom Capabilities for Untended Operations.
Noon—Break.
7 p.m.—Reconvene: Splinter Group Discussions—Payload Descriptions, Science Strategies, Opportunities and Limitations.
10:30 p.m.—Adjourn.

Wednesday, July 24

8 a.m.—Life Sciences: Payloads and Science Programs.
9 a.m.—Material Sciences: Payloads and Science Programs.
10 a.m.—Mature Science Operations: Payload Operations Integration Center/Integrated Science Operations Center Functions and Relationships.
10:45 a.m.—European Space Agency

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(ESA) Telescience Workshop Report.
11:15 a.m.—Operations Discussion.
Noon—Break.
7 p.m.—Reconvene: Splinter Group Sessions—Mature Operations and Utilization.
10:30 p.m.—Adjourn.
Thursday, July 25
8 a.m.—Multilateral Science Working Group Report.
8:15 a.m.—Utilization Technology Working Group Report/Steering Committee.
8:30 a.m.—Responses to SSSAAS Recommendations.
10 a.m.—Report from the ESA Columbus VII Symposium.
10:15 a.m.—OSSA Participation in Astronaut Selection.
10:30 a.m.—Unresolved Space Station Accommodation Issues.
1 p.m.—Preparation of Splinter Group Reports.
2 p.m.—Preparation of Recommendations and Findings.
5:30 p.m.—Adjourn.
Friday, July 26
8:30 a.m.—Discussion of Workshop Findings and Recommendations.
11:45 a.m.—Committee Discussion.
Noon—Adjourn.

Dated: June 14, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-14712 Filed 6-19-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

White House Conference on Library and Information Services

Authority: The White House Conference on Library and Information Services (Conference) is authorized by Public Law 100-382.

Purpose: The purpose of the Conference shall be to develop recommendations for the further improvement of the library and information services of the Nation and their use by the public.

Dates: The Conference opens on July 10, 1991 and continues through July 13, 1991.

Place: Washington, DC, Convention Center, 900 9th Street NW., Washington, DC 20001.

Information: To request further information about the Conference phone 202/254-5100 or 800/942-5472. (Note: A registration fee is required for entrance to the Conference.)

Dated: June 14, 1991.

Jean M. Curtis,

Executive Director, White House Conference on Library and Information Services.

[FR Doc. 91-14664 Filed 6-19-91; 8:45 am]

BILLING CODE 7527-01-M

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the Nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and to report to the nation on the progress toward the goals. Members of the National Education Goals Panel are six governors appointed by the Chairman of the National Governor's Association, four senior Administration officials, and four Congressional leaders. Governor Roy Romer of Colorado is the initial chairman.

TENTATIVE AGENDA ITEMS: The tentative agenda for the meeting includes discussion of indicators to include in the September 1991 report card to the Nation.

DATE: The seventh meeting is scheduled for Monday, July 1, 1991. Time TBA.

ADDRESS: Location TBA.

FOR FURTHER INFORMATION CONTACT: Pat Forgione at the National Education Goals Panel office to indicate attendance or for further information on specific time and location. The phone number is (202) 632-0952.

Dated: June 14, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91-14785 Filed 6-19-91; 8:45 am]

BILLING CODE 3127-01-M

Interim Council on Standards and Testing; Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the Nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and to report to the nation on the progress toward the goals.

The Interim Council on Standards and Testing is composed of 28 members, including members of the panel, members of Congress, Federal officials, and members of the education and labor communities. The council will report to the panel by December 31, 1991 on issues related to developing national standards and a national assessment system for education. Governor Roy Romer and Governor Carroll Campbell serve as co-chairmen.

TENTATIVE AGENDA ITEMS: The tentative agenda for the meeting includes discussion of current standard setting activities in five core academic subjects.

DATE: The first meeting is scheduled for Monday, June 24, 1991. Time TBA.

ADDRESS: Grand Hyatt, 1000 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Stevenson at the National Education Goals Panel office. The phone number is (202) 632-0952.

Dated: June 14, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91-14784 Filed 6-19-91; 8:45 am]

BILLING CODE 3127-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Notice of Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published May 23, 1991 (56 FR 23725). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be closed in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the July 1991 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492-4600 (recording) or 301/492-7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Extreme External Phenomena, July 10, 1991, Bethesda, MD. The Subcommittee will discuss the NUMARC/EPRI Fire Vulnerabilities Evaluation (FIVE) Methodology for the IPEEE.

AC/DC Power Systems Reliability, July 30, 1991, Bethesda, MD. The Subcommittee will discuss the implementation status of the station blackout rule for current operating plants.

AC/DC Power Systems Reliability, July 31, 1991, Bethesda, MD. The Subcommittee will discuss adoption of the N+2 concept for electrical systems design for future nuclear plants (GE, W, CE and EPRI).

Advanced Reactor Designs, August 6, 1991, Bethesda, MD. The Subcommittee will review the modular high-temperature gas cooled reactor (MHTGR) and the power reactor innovatively small (PRISM) designs sponsored by DOE.

Extreme External Phenomena, August 7, 1991, Bethesda, MD. The Subcommittee will discuss the results of the Diablo Canyon Long-Term Seismic Program.

Instrumentation and Control Systems, August 29, 1991, Bethesda, MD. The Subcommittee will discuss EPRI's reactor set-point methodology for future designs.

Advanced Pressurized Water Reactors, September 4, 1991, Bethesda, MD. The Subcommittee will continue its review of the CE System 80+ Standard Plant with a detailed look at the NUPLEX 80+ Advanced Instrumentation and Control System design and the Probabilistic Risk Assessment as applied to this new design.

Improved Light Water Reactors, September 17, 1991, Bethesda, MD. The Subcommittee will review draft safety evaluation reports corresponding to chapters 1 and 10 of the EPRI's Requirements Document for Evolutionary Designs.

Advanced Boiling Water Reactors, September 18, 1991, Bethesda, MD. The Subcommittee will review draft safety evaluation reports corresponding to chapters 1, 2, 3, 4, 5, 6 and 17 of the GE/Standard Safety Analysis Report.

Thermal Hydraulic Phenomena, Date to be determined (August, tentative), Bethesda, MD. The Subcommittee will continue its review of the NRC staff program to address the issue of interfacing systems LOCAs.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined, Bethesda, MD. The Subcommittee will continue its review of the issues pertaining to BWR core power stability.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will review the status of the application of the Code Scaling, Applicability, and Uncertainty (CSAU) Evaluation Methodology to a small-break LOCA calculation for a B&W plant.

Severe Accidents, Date to be determined, Bethesda, MD. The Subcommittee will discuss elements of the Severe Accident Research Program.

Regulatory Activities, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed final resolution of Generic Safety Issue-113, "Dynamic Qualification Testing of Large Bore Hydraulic Snubbers."

Occupational and Environmental Protection Systems, Date to be determined, Bethesda, MD. The Subcommittee will review the regulatory guides related to the implementation of the revised 10 CFR part 20 rule.

Systematic Assessment of Experience, Date to be determined, Bethesda, MD. The Subcommittee will discuss the safety significance of the lessons learned from the operating experience with solenoid-operated valves (SOVs). Also, it will discuss the comments received from the Nuclear Utility Group on Equipment Qualification regarding the AEOD's findings on SOV problems at U.S. nuclear powerplants.

Thermal Hydraulic Phenomena, Date to be determined, Los Alamos, NM. The Subcommittee will review the documentation associated with the TRAC-PF1/MOD2 code version.

ACRS Full Committee Meetings

375th ACRS Meeting, July 11-13, 1991, Bethesda, MD. Items are tentatively scheduled.

*A. *Reactor Operating Experience (Open/Closed)*—Briefing by and discussion with representatives of the NRC staff regarding recent nuclear powerplant incidents and events, including a loss of all off-site power event at the Vermont Yankee nuclear station and a generator fire at the Maine Yankee nuclear plant.

*B. *Fire Vulnerabilities Evaluation (Open/Closed)*—Briefing by and discussion with representatives of NUMARC/EPRI and the NRC staff regarding the NUMARC/EPRI fire vulnerabilities evaluation methodology (FIVE) and the draft NRC position on this matter.

C. *Meeting With Director, NRC Office for Analysis and Evaluation of Operating Experience (Open)*—Meeting with the Director, AEOD, to discuss items of mutual interest including the status and general use of the NRC performance indicator program, and activities of the NRC Committee to Review Generic Requirements.

*D. *General Electric SBWR (Open/Closed)*—Briefing by and discussion with representatives of the GE Company and the NRC staff regarding design features of the Simplified Boiling Water Reactor (SBWR) passive nuclear powerplant.

*E. *Fitness for Duty (Open/Closed)*—Briefing by and discussion with representatives of the NRC staff regarding experience associated with current NRC fitness for duty regulations including incidents at nuclear power stations that have involved fitness for duty considerations. Representatives of the nuclear industry will participate, as appropriate.

F. *Review of Evolutionary and Advanced Nuclear Power Plant Designs (Open)*—Briefing by and discussion with representatives of the NRC staff and the Department of Energy regarding anticipated schedules for review and evaluation of evolutionary and advanced nuclear power plant designs. Also, discussion among committee members of key technical issues in need of early resolution.

G. *NRC Safety Research Program (Open)*—Discussion among committee members regarding the scope and nature of proposed ACRS report to the Commission on the NRC Safety Research Program and budget.

H. *ACRS Subcommittee Activities (Open)*—Reports of and discussion regarding the status of assigned ACRS Subcommittee activities, including the May 30, 1991 Advanced BWRs Subcommittee meeting on the GE/ABWR design, and June 18-19, 1991

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Regional Programs Subcommittee meeting, and other related activities of the Committee members.

I. *Use of Probabilistic Risk Assessment (Open)*—Discussion of a proposed committee report to the NRC regarding use of probabilistic risk assessment in the regulatory process.

J. *Future ACRS Activities (Open)*—Discussion of anticipated Subcommittee activities and items proposed for full consideration by the full Committee.

K. *Improved Guidance for Performing Regulatory Analyses (Open)*—Briefing by and discussion with representatives of the NRC staff regarding SECY–91–114, Proposed Actions to Improve Guidance for Performing Regulatory Analyses.

L. *Operator Requalification (Open)*—Briefing by and discussion with representatives of the NRC staff regarding the program for requalification of operators including the impact of using symptom-based emergency procedures on the requalification of nuclear power plant operators.

M. *Preparation of ACRS Reports (Open)*—Discussion of proposed Committee reports to NRC on proposed resolution of Generic Safety Issue 130, Essential Service Water System Failures at Multi-Unit Sites, risks associated with low-power and shutdown operations at nuclear power plants, and the proposed schedule for NRC/ACRS review of Evolutionary and advanced nuclear power plant designs including the proposed EPRI Requirements for Advanced LWRs.

N. *Miscellaneous (Open)*—Complete discussion of items that were not completed during previous ACRS meetings as time and availability of information permit.

378th ACRS Meeting, August 8–10, 1991—Agenda to be announced.

377th ACRS Meeting, September 5–7, 1991—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

33rd ACNW Meeting, July 25–26, 1991, Bethesda, MD. Items are tentatively scheduled.

A. Meet with the NRC Commissioners to discuss items of mutual interest.

B. Discuss a recent trip to and meeting at the Center for Nuclear Waste Regulatory Analyses.

C. Discuss the use of expert judgment in conducting performance assessments in support of licensing of high-level and low-level waste repositories. Prepare a report for the Commission on the proper role of expert judgment in performance assessment.

D. Hear a briefing by the NRC/RES staff on proposed revisions to the NRC regulations on transportation of radioactive materials that are being revised to be consistent with the IAEA recommended guidance.

E. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

34th ACNW Meeting, August 28–29, 1991—Agenda to be announced.

35th ACNW Meeting, September 25–27, 1991—Agenda to be announced.

36th ACNW Meeting, October 23–24, 1991—Agenda to be announced.

37th ACNW Meeting, November 20–21, 1991—Agenda to be announced.

38th ACNW Meeting, December 18–19, 1991—Agenda to be announced.

ACNW Working Group on Preparation of Regulatory Guides for Implementing Revisions to 10 CFR part 20, August 20–22, 1991, Bethesda, MD. The Working Group will review nine regulatory guides related to the implementation of the revised 10 CFR Part 20, which assess the impacts of handling, storage and treatment of nuclear waste materials, as well as other activities related to nuclear energy.

ACNW Working Group on NRC staff Computer Modeling and Performance Assessment Capabilities in High-Level and Low-Level Waste, September 11–13, 1991. The Working Group will review the NRC staff's capabilities to make independent evaluations of licensee proposals with respect to the performance of low-level and high-level radioactive waste disposal facilities. Emphasis will be placed on computer capabilities involving modeling, documentation, verification and validation.

ACNW Working Group on Geologic Dating, October 22, 1991, Bethesda, MD. The Working Group will review the problems and limitations with various Quaternary dating methods to be used in the assessment of volcanic features and materials for the site characterization of a high-level waste repository.

ACNW Working Group on Residual Contamination Clean-up Criteria, October 25, 1991, Bethesda, MD. The Working Group will review the clean-up criteria for unrestricted use of contaminated sites that have been, or were at one time, under AEC or NRC license. The NRC staff is in the process of determining acceptable levels for uranium- and thorium- contaminated soils and structures to be released for unrestricted use.

ACNW Working Group on the Impact of Long-Range Climate Change in the Area of the Southern Basin and Range, November 19, 1991, Bethesda, MD. The Working Group will review the potential long-range climate changes and their impact on performance assessments of a proposed high-level repository.

ACNW Working Group on Post-Closure Monitoring, November 22, 1991, Bethesda, MD. The Working Group will review the potential problems and possible limitations associated with the post-closure monitoring of a proposed high-level waste repository. The potential utilization of non-invasive methods for the attainment of such a capability as well as the duration of such monitoring, and the significance and impact of results will also be considered.

ACNW Working Group on Inadvertant Human Intrusion Related to the Presence of Natural Resources at a High-Level Waste Site, December 17, 1991, Bethesda, MD. The Working Group will review the methodologies for assessment of the potential for natural resources at a proposed high-level waste site.

Dated: June 14, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

FR Doc. 91–14640 Filed 6–19–91; 8:45 am]

BILLING CODE 7590–01–M

Solicitation of Public Comments on Generic Issue 23, "Reactor Coolant Pump Seal Failure", Extension of Public Comment Period

The U.S. Nuclear Regulatory Commission (NRC) is announcing an extension of the public comment period regarding Generic Issue 23, "Reactor Coolant Pump Seal Failure." The public comment period was to expire on July 31, 1991. (See **Federal Register** Notice dated April 19, 1991, Page 16130). The NRC has decided to extend the public comment period to September 30, 1991, due to requests for additional time to prepare responses.

Dated at Rockville, MD this 11 day of June, 1991.

For the Nuclear Regulatory Commission.

Warren Minners,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 91–14732 Filed 6–19–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61 issued to Connecticut Yankee Atomic Power Company (the licensee, CYAPCO) for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would replace footnotes (a) and (b) to table 3.3–2, items 3.a.1, 3.a.2, and 6.a with footnotes (c) and (d), to allow the feedwater isolation system to be defeated during surveillance testing and the Limiting Condition for Operation would only be applicable when the feedwater control system is in the automatic mode.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided the following analysis:

1. *Involve a significant increase in the probability or consequences of an accident previously evaluated.*

Most of the proposed changes consist of clarifications or editorial changes. The one significant change (Note "c" for Item 6.a of Table 3.3–2) specifies that the (steam generator (SG)) overfill protection system is required to be operable only when feedwater control is in the automatic mode. This is a relaxation from the recently issued Technical Specification that requires the SG overfill protection system to be operable at all times when the reactor is above 10% power.

As discussed in CYAPCO's February 28, 1991 license amendment request, the design basis analysis does not take credit for the automatic feedwater control system. Therefore, no design basis accidents are affected by this change. There is no impact on the probability of occurrence or the consequences of any design basis events. No safety systems are adversely affected by these changes.

It was CYAPCO's intention to add the feedwater isolation function to the Tables for ESFAS operability and surveillance requirements to enhance the reliability of the SG overfill protection system when the feedwater control system is in the automatic mode. The changes proposed herein do not detract from that original intention.

2. *Create the possibility of a new or different kind of accident from any previously evaluated.*

The changes proposed herein do not alter the operation of the plant such that there is the potential for an unanalyzed accident. Without the proposed changes, plant operation above 10% power would be eventually prohibited. With the changes as proposed, plant operation can continue as it was prior to the issuance of License Amendment No. 136.

3. *Involve a significant reduction in margin of safety.*

Since the proposed changes do not affect the consequences of any accident previously analyzed, there is no reduction in any margin of safety. The proposed changes do not have any adverse impact on the protection boundaries. As stated previously, the feedwater isolation function is not credited in any design basis analysis.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 22, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of

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the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten [10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esq., Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06457, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 14, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, MD, this 17th day of June 1991.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I-4, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-14731 Filed 6-19-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Lighting Co.; Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (the Commission) has issued *Amendment No. 7 to Facility Operating License No. NPF-82*, issued to Long Island Lighting Company (*LILCO* or the licensee), which revised the Technical Specifications for operation of the Shoreham Nuclear Power Station, Unit 1 (the facility) located in Suffolk County, New York. This license amendment will become effective ten (10) working days after the date of publication in the Federal Register of the Notice of Issuance of this amendment. If during this period a motion for a stay is filed with the U.S. Court of Appeals, the date when this amendment becomes effective will automatically be extended an additional ten (10) working days to provide the court with time to review the matter.

The amendment removes the licensee's authority to operate the Shoreham facility. The amendment modifies License No. NPF-82 from a full-power operating license to a possession-only license. The amendment is published herewith, without Appendices.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the Federal Register on August 21, 1990 (55 FR 34098). A request for a hearing was filed on September 20, 1990, by the Shoreham-Wading River Central School District and the Scientists and Engineers for Secure Energy, Inc. Additionally, counsel for both organizations filed, on October 10, 1990 and February 11, 1991, supplemental comments on the staff's proposed no significant hazards consideration determination.

Further the Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration, and that the facility can continue to be maintained by the licensee without endangering the health and safety of the public. The basis for this determination is contained in the Safety Evaluation related to this action.

Additionally, the Commission has determined that this amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

For further details with respect to the action see (1) the application for amendment dated January 5, 1990, and supplemented by letter dated August 30, 1990, October 30, 1990, February 26, 1991, March 11, 1991, and March 26, 1991. [These supplemental letters did not change the scope of the initial application request and did not affect the staff's initial no significant hazards determination), (2) Amendment No. 7 to Facility Operating License No. NPF-82 (including Appendix A Technical Specification, and Appendix B Environmental Protection Plan), (3) the Commission's related Safety Evaluation, and (4) Commission Memorandum and Order, CLI-91-08, dated June 12, 1991. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York, 11786-9697. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of Advanced Reactors and Special Projects.

Dated at Rockville, Maryland this 14th day of June 1991.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

Long Island Lighting Co.; Shoreham Nuclear Power Station, Unit 1 Amendment to Possession Only License; Docket No. 50-322

Amendment No. 7, License No. NPF-82

1. The U.S. Nuclear Regulatory Commission (the Commission) has found that:

A. The application for amendment by Long Island Lighting Company (the licensee), dated January 5, 1990 and supplemented on August 30, 1990, October 30, 1990, February 26, 1991, March 11, 1991, and March 26, 1991, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;

B. The facility will be maintained in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;

C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;

D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and

E. The issuance of this amendment is in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Facility Operating License No. NPF-82 is hereby amended in its entirety to read as follows:

A. The license applies to the Shoreham Nuclear Power Station, Unit 1, a boiling water nuclear reactor and associated equipment, owned by the licensee. The facility is located in Suffolk County, New York, and is described in the licensee's Defueled Safety Analysis Report (DSAR), which includes, by reference, the appropriate sections of the Updated Safety Analysis Report (USAR), as supplemented and amended, and the licensee's Environmental Report, as supplemented and amended.

B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses the Long Island Lighting Company (LILCO, the licensee):

(1) Pursuant to section 103 of the Act and 10 CFR part 50, to possess, use, but not operate the facility at the designated location in Suffolk County, New York, in accordance with the procedures and limitations set forth in this license;

(2) Pursuant to the Act and 10 CFR part 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Updated Safety Analysis Report, as supplemented and amended;

(3) Pursuant to the Act and 10 CFR parts 30, 40, and 70, to receive, possess, and use at any time any byproduct, source and special nuclear material as sealed neutron sources for reactor startup, sealed neutron sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;

(4) Pursuant to the Act and 10 CFR part 30, 40, and 70, to receive, possess, and use in amounts as required any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and

(5) Pursuant to the Act and 10 CFR parts 30, 40, and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect and is subject to the additional conditions specified or incorporated below:

(1) *Maximum Power Level.*

The licensee is not authorized to operate the facility at any core power level.

(2) *Technical Specifications and Environmental Protection Plan.*

The Technical Specifications contained in Appendix A and the Environmental Protection Plan contained in Appendix B, as revised through Amendment No. 7 are hereby incorporated into this license. Long Island Lighting Company shall maintain the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

(3) *Requirement to Obtain NRC Approval to Place Fuel in the Reactor Vessel.*

The licensee shall not place any fuel assemblies in the reactor vessel without the prior approval of the NRC staff.

D. The licensee shall implement and maintain in effect all provisions of the approved fire protection program as described in the Fire Hazards Analysis Report and the Defueled Safety Analysis Report for the facility and as approved in the SER dated April 1981 and Supplements 2 dated February 1982 and 9 dated December 1985, subject to the following provision:

The licensee may make changes to the approved fire protection program

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without prior approval of the Commission only if these changes would not adversely affect the ability to maintain the fuel in the Spent Fuel Pool in a safe condition in the event of a fire.

E. The licensee shall fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to CFR 73.55 (51 FR 27817 and 27822) and to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The plans, which contain Safeguards Information protected under 10 CFR 73.21, are entitled: "Shoreham Nuclear Power Station Security Plan for Fuel Storage in the Spent Fuel Pool," with revisions submitted through April 5, 1990; the "Shoreham Nuclear Power Station Guard Training and Qualification Plan," with revisions submitted through December 14, 1983; and "Shoreham Nuclear Power Station Safeguards Contingency Plan," with revisions submitted through May 13, 1988. Changes made in accordance with 10 CFR 73.55 shall be implemented in accordance with the schedule set forth therein.

F. The licensee shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.

G. This license shall expire at midnight on April 13, 2013.

3. This license amendment will become effective ten (10) working days after the date of publication in the Federal Register of the Notice of Issuance of this amendment. If during this period a motion for a stay is filed with the U.S. Court of Appeals, the date when this amendment becomes effective will automatically be extended an additional ten [10] working days to provide the court with time to review the matter.

Dated of Issuance: June 14, 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-14730 Filed 6-19-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-440-A and 50-346-A; ASLBP No. 91-644-01-A]

Ohio Edison Co., Cleveland Electric Illuminating Co. and Toledo Edison Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Ohio Edison Co.
Perry Nuclear Power Plant, Unit 1
Facility Operating License No. NPF-58
The Cleveland Electric Illuminating Co.
The Toledo Edison Co.
Perry Nuclear Power Plant, Unit 1
Facility Operating License No. NPF-58
Davis-Besse Nuclear Power Station, Unit 1
Facility Operating License No. NPF-3
(Suspension of Antitrust Conditions)

This Board is being established pursuant to a notice published by the Commission on May 1, 1991 in the Federal Register (56 FR 20057) entitled, "Notice of Denial of Applications for Amendments to Facility Operating Licenses and Opportunity for Hearing."

The purpose of the licensees' amendment requests was to suspend the antitrust conditions in the two operating licenses as they apply to the respective licensees. The NRC staff has advised the licensees that the proposed amendments are denied, based on the staff's evaluation of the arguments made in support of the applications, the extensive public comments received on the proposed amendments, and the views expressed by the Department of Justice. The licensees were notified of the Commission's denial of the proposed amendments in a letter dated April 24, 1991. However, the licensees have been advised that they may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

The Board is comprised of the following administrative judges:

Marshall E. Miller, Chairman, 1920 South Creek Boulevard, Spruce Creek Fly-In, Daytona Beach, FL 32124

Charles Bechhoefer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

John H. Frye, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the judges in accordance with 10 CFR 2.701.

Issued at Bethesda, MD, this 13th day of June, 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge Atomic Safety and Licensing Board Panel.

[FR Doc. 91-14733 Filed 6-19-91; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Statement of Policy Regarding the Payment of State and Local Property Taxes

AGENCY: Resolution Trust Corporation.

ACTION: Policy statement.

SUMMARY: After considering (1) the powers granted to it under the Constitution and Federal law, (2) its obligation to maximize recoveries from the disposition of financial institutions and their assets, and (3) the potential effect of its actions upon state and municipal tax schemes, the Resolution Trust Corporation (the "Corporation") has issued the following policy statement to provide guidance as to how it will administer its statutory responsibilities in this area.

DATES: This policy statement is effective June 4, 1991.

FOR FURTHER INFORMATION CONTACT: David R. Wiley, Senior Asset Specialist, RTC, (202) 416-7136, Robert I. Dodge, Assistant Director for Real Estate Management, RTC, (202) 417-7475, David N. Wall, Senior Counsel, Legal Division, (202) 736-0115, or Camille E. Evans, Senior Attorney, Legal Division, (202) 416-7028.

SUPPLEMENTARY INFORMATION:

A. Scope and Applicability

This policy statement generally applies to the Corporation when it is liquidating assets in its corporate and receivership capacities. The policy statement generally does not apply when the Corporation is acting (1) as conservator; (2) with respect to special asset pools covered by assistance transactions where the Corporation does not retain ownership or (3) with respect to a subsidiary of a receivership.

B. Taxes

Payment of Taxes

The Corporation will pay its proper tax obligations when they come due. Furthermore, the Corporation will pay claims for delinquencies as promptly as is consistent with sound business practice and the orderly administration of the institution's affairs. The Corporation may decline to pay property tax claims in situations where abandonment of its interest in the property is appropriate.

Owned Real Property

Owned real property of the Corporation is subject to state and local real property taxes, if those taxes are assessed according to the property's value. The Corporation is immune from real property taxes assessed on other bases.

Secured Interests in Real Property

Real property which is subject to a security or lien interest is subject to *ad valorem* taxes and taxes assessed on other bases.

Personal Property

The Corporation is immune from all forms of personal property taxation on owned personal property.

Other Related Taxes

The Corporation is immune from taxes other than *ad valorem* real property taxes. Taxes on sales, transfers, or other dispositions of Corporation property are generally in the nature of excise taxes which are levied on the transaction and not on the property (although the calculation of the amount of tax may be based on the property's sale price); the Corporation is immune from such taxes.

C. Interest and Penalties

Interest

The Corporation will pay claims for interest on delinquent taxes properly owed at the rate provided under state law. The Corporation will generally follow a state's own characterization as to whether a delinquency charge constitutes a penalty, but will reserve its right to challenge any charge (or portion thereof) called interest that is demonstrably a penalty.

Penalties

The Corporation is not liable for any amounts in the nature of fines or penalties. The Corporation will not pay, nor recognize liens for, such amounts. The Corporation will not pay attorneys' fees or other similar costs that may be imposed under state law in connection with the resolution of tax disputes.

D. Tax Liens

General Principles

If any property taxes (including interest) on Corporation owned property are secured by a valid lien (in effect before the property became owned by the Corporation), the Corporation will pay those claims. With respect to property not owned by the Corporation, but in which the Corporation has a lien interest, and property taxes (including interest) secured by a valid lien with priority over the Corporation's lien interest will be paid. However, if abandonment of its interest in the property is appropriate, the Corporation may elect not to pay such claims.

Foreclosure

No property of the Corporation is subject to levy, attachment, garnishment, foreclosure, or sales without the Corporation's consent. Furthermore, a lien for taxes and interest may attach, but the Corporation will not permit a lien or security interest held by it to be eliminated by foreclosure without the Corporation's consent.

Sales of Tax Liens

In cases in which a tax lien has been sold to a private party under state law, if (1) the tax lien has priority over the Corporation's lien, and (2) the Corporation desires to eliminate the tax purchaser's interest, the Corporation will pay the amount required by state law to satisfy such interest (other than any fees or penalties specifically imposed to redeem such interest). If the tax lien does not have priority, the Corporation will take whatever action is necessary to ensure that its interest is satisfied first.

E. Challenges to Assessments

The Corporation is only liable for state and local taxes which are based on the value of the property during the period for which the tax is imposed, notwithstanding the failure of any person, including prior record owners, to challenge an assessment under the procedures available under state law. In the exercise of its business judgment, the Corporation may challenge assessments which do not conform with the statutory provisions, and during the challenge will generally pay tax claims based on the assessment level deemed appropriate. The Corporation will generally limit challenges to the current and immediately preceding taxable years and to the pursuit of previously filed tax protests. However, the Corporation may, in the exercise of its business judgment, challenge *any* prior taxes and assessments provided that (1) the Corporation's records (including appraisals, offers or bids received for the purchase of the property, etc.) indicate that the assessed value is clearly excessive, (2) a successful challenge will result in a substantial savings to the Corporation, (3) the challenge will not unduly the sale of the property, and (4) there is a reasonable likelihood of a successful challenge.

F. Dispute and Notification Procedures

Disputes

The Corporation will attempt to advise taxing authorities of its statutory rights and resolve all tax disputes as taxes become due. In order to dispose of property subject to disputed tax claims, the Corporation may, as business judgment dictates, enter into agreements with taxing authorities, title companies, or prospective purchasers which provide for the disputed amounts to be held in escrow. When the closing of a transaction is threatened because of disputed tax amounts, the Corporation may, as business judgment dictates, elect to pay the disputed tax claims under protest. In all such cases the Corporation shall reserve its legal rights to a refund of such disputed amounts and may pursue, through litigation if necessary, a reimbursement of the disputed amounts and any attendant costs, and interest.

Notification

The Corporation will attempt to notify state and local taxing authorities of the existence of an interest in property which the Corporation believes to be within the authority's jurisdiction.

G. Subsidiaries and Conservatorships

For the present, the Corporation has determined not to assert Federal tax immunity on behalf of state-chartered corporations, the stock of which is wholly or partially owned by the Corporation acting in any of its capacities. Additionally, for the present, the Corporation will not assert Federal tax immunity for conservatorships or special asset pools covered by assistance transactions where the Corporation does not retain ownership. However, a conservatorship of a newly-formed institution is not liable for obligations not specifically assumed from a receiver (as in a "pass-through receivership"). In this situation, the *de novo* institution may not be liable for any penalties assessed prior to the "pass-through receivership," but would be liable for any penalties assessed after the establishment of the *de novo* institution. Finally, when acting in these

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capacities, current and prior assessments may be challenged to the extent permitted by state law.

By order of the Board of Directors.

Dated at Washington, DC, this 4the day of June 1991.

William J. Tricarico,

Assistance Executive Secretary.

[FR Doc. 91-14088 Filed 6-19-91; 8:45 am]

BILLING CODE 8714-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29306; File No. SR-NYSE-91-21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 80A (Limitations on Trading During Significant Market Declines)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 10, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change seeks to make permanent the provisions of rule 80A regarding stabilization procedures as they apply to index arbitrage orders in component stocks of the S&P 500 Stock Price Index when the Dow Jones Industrial Average advances or declines by 50 points from the previous day's closing value.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In recent years, the securities markets have experienced unprecedented volatility. The Exchange and other market centers have been concerned that sophisticated trading strategies related to program trading may create excess volatility that undermines investor confidence in the fairness and orderliness of the securities markets, and may, in fact, constitute a threat to the viability of America's capital markets.

In response to these concerns, the Exchange adopted and the Commission approved rule 80A in 1988 (Limitations on Trading During Significant Market Declines). To respond to changes in market needs and conditions, the Exchange has amended the rule on various occasions. In brief, the rule addresses market volatility by providing the following:

(i) The Exchange, in conjunction with the Chicago Mercantile Exchange, developed procedures whereby program trading orders are diverted to a separate file for five minutes on any day that the price of the primary Standard and Poor's 500 ("S&P 500") Stock Price Index futures contract trade on the Chicago Mercantile Exchange declines 12 points below its closing value on the previous trading day. (See SR-NYSE-88-22).

(ii) All index arbitrage orders to sell in component stocks of the S&P 500 Stock Price Index must be entered with the instruction "sell plus" when the Dow Jones Industrial Average ("DJIA") declines 50 points or more from its previous trading day's closing value, and all index arbitrage orders to buy in component stocks of the S&P 500 index must be entered with the instruction "buy minus" when the DJIA advances 50 points or more from its previous trading day's closing value (See SR-NYSE-90-5). These requirements do not apply when the DJIA subsequently reaches a value that is no more than 25 points above (as to buy minus orders) or below (as to sell plus orders) the previous day's close.[1]

(iii) Regarding trading in the Exchange Stock Portfolio ("ESP"), when the DJIA is up 50 points or more from its previous close, no purchase of a basket may be made at a price equal to or greater than the aggregate Tier 1 offer in the cash market. When the DJIA is down 50 points or more from its previous close, no sale of a basket may be made at a price equal to or less than the aggregate Tier 1 bid in the cash market. Specialists are required to maintain Tier 1 and Tier 2 quotations in each of the specialty basket stocks. The ESP system automatically establishes the Tier 1 bid and offer for a basket's component stock.[2]

These requirements do not apply if the DJIA subsequently reaches a value that is no more than 25 points above (as to the restriction on a purchase of a basket of stocks) or below (as to the restriction on a sale of a basket of stocks) the previous day's close.[3]

These latter two provisions (paragraphs (c) and (d) of Rule 80A) were approved for a pilot program which will end on July 31, 1991. The Exchange is now seeking permanent approval of these provisions.

The Exchange believes that the provisions of rule 80A have been helpful in promoting market stability by minimizing excess volatility during periods of significant market movement on the NYSE, without adversely impacting the markets in derivative equity instruments.

Interim and Final Report on Pilot Program's Effect. In its Approval Order, the Commission requested an interim and final report analyzing the effects of rule 80A. On January 31, 1991, the Exchange forwarded an interim report as requested. Under separate cover, the Exchange has forwarded a final report on the effects of rule 80A.[4]

Additional Commission Requests. In addition to the interim and final reports referred to above, the Commission's staff has requested [5] information in a number of other areas. Responses to these requests are presented below:

Appropriateness of 50 Point Trigger Value. As outlines above, the order entry restrictions of rule 80A are triggered by a 50 point move in the Dow Jones Industrial Average from the previous day's closing value. The Commission has requested the Exchange's view as to whether this 50 point value continues to be the appropriate level.

While there is no specific, comparative data available to indicate that the 50 point trigger value represents an *ideal or optimal level* for the restrictions, the experience of the pilot to date is that the 50 point level appears to be high enough that it is not triggered too frequently, yet low enough to act as meaningful check on excess market volatility which might be associated with index arbitrage activity. The rule's provisions were invoked 22 times between August 1, 1988 and April 30, 1991. Twenty-three of these occurred in the first five months of the pilot. As was noted in the interim report, this period coincided with several events which themselves had an impact on financial markets, including the Gulf Crisis, difficult Federal budget negotiations and increasing evidence of a recession. Since January 1, 1991 the rule has been applied to date eight times over five months. This latter pattern (about twice a month) appears to be representative of a more "normal" instance of the rule's invocation. As noted in the interim report, "it seems that many investors take comfort from the fact that on volatile days when the market moves 50 points, index arbitrage orders must meet a tick test." In addition, it appears that the securities industry and the financial marketplaces have come to accept the 50 point level as appropriate.

The Exchange does not believe that there is a significant benefit to be gained by testing additional or alternate trigger levels. The Exchange believes that the marketplace has judged the 50 point level and found it acceptable.

Comments On the Operation of the Rule. The provisions of rule 80 A have been the subject of several public pronouncements and much media coverage. The Exchnage, however, has not received any written comments with respect to the rule.

(b) Statutory Basis

The basis under the Securities Exchange Act of 1934 ("the Act") for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 14, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14739 Filed 6-19-91; 8:45 am]

BILLING CODE 8010-01-M

[1] See Securities Exchange Act Release No. 28282 (July 30, 1990), 55 FR 31466 ("Approval Order").

[2] See Securities Exchange Act Release No. 27382 (October 20, 1989), 54 FR 45534.

[3] See Approval Order, *supra* note 1.

[4] The reports are incorporated into this filing and are available from the NYSE or the Commission's Public Reference Room.

[5] See letter of April 29, 1991 from Howard Kramer, Assistant Director of the Division of Market Regulation to Donald Siemer, Director of Market Surveillance.

[Rel. No. IC-18197; 811-5408]

Adirondack Income Shares, Inc.; Application

June 13, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Adirondack Income Shares, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on April 10, 1991 and an amendment was filed on June 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o DG Bank, 609 Fifth Avenue, New York, New York 10017-1021.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a corporation under the laws of the State of Maryland. On December 8, 1987, applicant filed a notification of registration pursuant to section 8(a) of the 1940 Act and a registration statement pursuant to

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section 8(b) of the 1940 Act. Applicant's securities are not registered under the Securities Act of 1933. Applicant has no more than 100 security holders and has never made a public offering of its securities.

2. Applicant was organized primarily to provide institutional investors organized in the Federal Republic of Germany with an investment subject to favorable tax treatment. Pursuant to a new income tax treaty between the United States and what was then the Federal Republic of Germany, these tax advantages were eliminated as of December 31, 1990. Upon losing the tax advantages, applicant's shareholders requested the redemption of all outstanding shares. Because of the redemptions, on April 1, 1991, applicant's board of directors authorized the dissolution of applicant.

3. Pursuant to the liquidation, applicant's portfolio securities were sold through government dealers at market price without the payment of any brokerage commission.

4. On January 2, 1991, applicant distributed to its shareholders $9.29 per share, which represented all of applicant's assets on that date.

5. Applicant paid approximately $3,500 in legal and other expenses related to the liquidation.

6. Applicant is in the process of filing articles of dissolution with the State of Maryland.

7. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

8. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs as an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14740 Filed 6-19-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18199; 811-5619]

Allegheny Income Shares, Inc.; Application

June 13, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Allegheny Income Shares, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on April 10, 1991 and an amendment was filed on June 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o DG Bank, 609 Fifth Avenue, New York, New York 10017-1021.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Jeremy N. Rebenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a corporation under the laws of the State of Maryland. On July 20, 1988, applicant filed a notification of registration pursuant to section 8(a) of the 1940 Act and a registration statement pursuant to section 8(b) of the 1940 Act. Applicant's securities are not registered under the Securities Act of 1933. Applicant has no more than 100 security holders and has never made a public offering of its securities.

2. Applicant was organized primarily to provide institutional investors organized in the Federal Republic of Germany with an investment subject to favorable tax treatment. Pursuant to a new income tax treaty between the United States and what was then the Federal Republic of Germany, these tax advantages were eliminated as of December 31, 1990. Upon losing the tax advantages, applicant's shareholders requested the redemption of all outstanding shares. Because of the redemptions, on April 1, 1991, applicant's board of directors authorized the dissolution of applicant.

3. Pursuant to the liquidation, applicant's portfolio securities were sold through government dealers at market price without the payment of any brokerage commission.

4. On January 2, 1991, applicant distributed to its shareholders $9.57 per share, which represented all of applicant's assets on that date.

5. Applicant paid approximately $3,500 in legal and other expenses related to the liquidation.

6. Applicant is in the process of filing articles of dissolution with the State of Maryland.

7. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

8. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs as an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14747 Filed 6-19-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18198; 811-5699]

June 13, 1991.

The Boston Company Index and Blue Chip Trust; Application

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: The Boston Company Index and Blue Chip Trust.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 22, 1990, and amended on June 12, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 8, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Boston Place, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an open-end investment company organized under Massachusetts law, filed a registration statement with respect to an indefinite number of shares under the Securities Act of 1933 on May 31, 1988 which registration statement was declared effective on October 11, 1988. The shares consisted of four separate series: Equity Index Fund, Blue Chip Fund, Small Capitalization Equity Index Fund, and Bond Index Fund. On October 21, 1988, applicant registered under the 1940 Act by resubmitting Form N-8A which it had sent to the Commission earlier along with its registration statement.

2. On January 10, 1990, applicant's adviser, The Boston Company Advisors, Inc., recommended to applicant's board of trustees that applicant cease the sale of its shares with a view toward winding up its affairs due to its uneconomical size and the lack of any growth prospects. The board of trustees approved the investment adviser's recommendation. On January 25, 1990, applicant sent a leter to all of its 443 shareholders informing them of the board's action and urging them to consider redeeming or exchanging their shares for shares in comparable investment companies within the same group of funds. As of January 25, 1990, each series had the following aggregate net assets and per share net asset value, respectively: Equity Index Fund: $307,803,098 and $10.91; Blue Chip Fund: $67,092,703 and $8.97; Small Capitalization Equity Index Fund: $212,147.91 and $14.66; and Bond Index Fund: $1,991,703.98 and $11.37. By June 5, 1990, all shareholders, except the investment adviser, had instructed their transfer agent to either redeem or exchange their shares. Each transaction was processed in the ordinary course of business and all shares were redeemed at the net asset value next determined after the redemption request was received.

3. On July 18, 1990, the board of trustees approved a plan of liquidation and termination which was thereafter approved by the investment adviser as applicant's sole shareholder. As of December 31, 1989, applicant ceased amortizing organizational expenses so the balance of the remaining expenses would continue unchanged for the remaining life of the applicant. These expenses were deducted from the cash proceeds paid to the adviser on August 29, 1990 for its shares, thus charging it with all remaining organizational expenses.

4. Applicant will terminate its existence under Massachusetts law. Applicant has no assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no remaining shareholders.

5. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14742 Filed 6-19-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18200; 811-4456]

Humboldt Income Shares, Inc.; Application

June 13, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Humboldt Income Shares, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on April 10, 1991 and an amendment was filed on June 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1991, and should be accompanied by proof of service on application, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o DG Bank, 609 Fifth Avenue, New York, New York 10017-1021.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulations).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a corporation under the laws of the State of Maryland. On November 4, 1985, applicant filed a notification of registration pursuant to section 8(a) of the 1940 Act and a registration statement pursuant to section 8(b) of the 1940 Act. Applicant's securities are not registered under the Securities Act of 1933. Applicant has not more than 100 security holders and has never made a public offering of its securities.

2. Applicant was organized primarily to provide institutional investors organized in the Federal Republic of Germany with an investment subject to favorable tax treatment. Pursuant to a new income tax treaty between the United States and what was then the Federal Republic of Germany, these tax advantages were eliminated as of December 31, 1990. Upon losing the tax advantages, applicant's shareholders requested the redemption of all outstanding shares. Because of the redemptions, on April 1, 1991,

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applicant's board of directors authorized the dissolution of applicant.

3. Pursuant to the liquidation, applicant's portfolio securities were sold through government dealers at market price without the payment of any brokerage commission.

4. On January 1, 1991, applicant distributed to its shareholders $6.81 per share, which represented all of applicant's assets on that date.

5. Applicant paid approximately $5,500 in legal and other expenses related to the liquidation.

6. Applicant is in the process of filing articles of dissolution with the State of Maryland.

7. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

8. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs as an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14749 Filed 6-19-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2288]

Louisiana; With Contiguous Counties in Arkansas, Mississippi & Texas; Amendment #3, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated May 21, 1991, to the President's major disaster declaration of May 3, to include the parishes of Livingston and St. Charles in the State of Louisiana as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding and to establish the incident period as beginning on April 27 and continuing through May 31, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous parish of St. Helena and Orleans Parish, which was omitted from the previous amendment for the State of Louisiana, may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 2, 1991, and for economic injury until the close of business on February 3, 1992.

The economic injury numbers are 731300 for Louisiana; 731400 for Arkansas; 731500 for Mississippi, and 7318 for Texas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 7, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-14689 Filed 6-19-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2286]

Mississippi; With Contiguous Counties in Arkansas, Alabama, Tennessee, Louisiana; Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated May 23, 30, and 31, and June 3, 1991, to the President's major disaster declaration of May 17, to include the counties of Alcorn, Bolivar, Calhoun, Clay, George, Harrison, Issaquena, Itawamba, Lee, Lowndes, Madison, Monroe, Pearl River, Tishomingo, Webster, and Yazoo in the State of Mississippi as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding and to establish the incident period as beginning on April 28 and continuing through May 31, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Benton, Chickasaw, Choctaw, Forest, Greene, Hancock, Jackson, Lamar, Leake, Marion, Noxubee, Oktibbeha, Perry, Pontotoc, Prentiss, Rankin, Scott, Stone, Tippah, and Union in the State of Mississippi; Desha County in the State of Arkansas; Colbert, Franklin, Lamar, Lauderdale, Marion, Mobile, and Pickens Counties in the State of Alabama; Fayette, Hardeman, Hardin, McNairy, and Shelby Counties in the State of Tennessee; and St. Tammany and Washington Counties in the State of Louisiana may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 15, 1991, and for economic injury until the close of business on February 18, 1992.

The economic injury numbers are 731500 for Mississippi, 731300 for Louisiana; 731400 for Arkansas; 7319 for Alabama; and 7322 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 7, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-14688 Filed 6-19-91; 8:45 am]

BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund twenty-four presently existent Small Business Development Centers (SBDCs) on October 1, 1991. Currently there are 57 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Alabama, Alaska, Connecticut, Delaware, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New York (Upstate), New York (Downstate), Ohio, Puerto Rico, Dallas, Houston, Lubbock, San Antonio, Vermont, Virgin Islands, West Virginia and Wyoming. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR part 135.

EFFECTIVE DATE: 90 days from date of publication.

ADDRESSES: Comments should be addressed to Ms. Johnnie L. Albertson, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street SW., Sixth Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of twenty-four presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the expected date of refunding these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Johnnie L. Albertson, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street SW., Sixth Floor, Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commenter prior to refunding the SBDC.

Description of the SBDC Program

The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties.

SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of Public Law 96-302, as amended by Public Law 98-395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

Purpose and Scope

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources;

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information, and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition

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of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hour week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year.

The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Dated: June 6, 1991.

Patricia Saiki,

Administrator.

Addresses of Relevant SBDC State Directors

Dr. Jeff Gibbs, State Director, University of Alabama, 1717 11th Ave. South, suite 419, Birmingham, AL 35294, (205) 934-7260

Mr. John P. O'Connor, State Director, University of Connecticut, Box U-41, room 422, Storrs, CT 06268, (413) 545-6301

Mr. Ronald Manning, State Director, Iowa State University, 137 Lynn Avenue, Ames, IA 50010, (515) 292-6351

Dr. John Baker, State Director, Northeast Louisiana University, College of Business Admin., 700 University Avenue, Monroe, LA 71209, (318) 342-5506

Mr. John Ciccarelli, State Director, University of Massachusetts, School of Management, Amherst, MA 01003, (413) 545-6301

Mr. Raleigh Byars, State Director, University of Mississippi, Old Chemistry Building, University, MS 38677, (601) 234-2120

Mr. James L. King, State Director, State University of New York, SUNY Plaza, S-523, Albany, NY 12246, (518) 443-5398

Ms. Jan Fredericks, State Director, University of Alaska/Anchorage, 430 West 7th Avenue, suite 115, Anchorage, AK 99501, (907) 274-7232

Ms. Linda Fayerweather, State Director, University of Delaware, suite 005—Purnell Hall, Newark, DE 19711, (302) 451-2747

Ms. Janet Holloway, State Director, University of Kentucky, 488 East High Street, suite 201, Lexington, KY 40507-1941, (606) 257-7668

Mr. Elliott Rittenhouse, Jr., State Director, Department of Economic and Employment Development, 217 East Redwood St., 10th Floor, Baltimore, MD 21202, (301) 333-6998

Dr. Norman Schlafmann, State Director, Wayne State University, 2727 Second Avenue, Detroit, MI 48201, (313) 577-4848

Mr. Max Summers, State Director, University of Missouri, suite 300, University Place, Columbia, MO 65211, (314) 882-1348

Mr. Jack Brown, State Director, Ohio Department of Development, 30 East Broad Street, Columbus, OH 43266-1001, (614) 466-5111

Mr. Jose Romaguera, Director, University of Puerto Rico, Box 5253—College Station, Mayaguez, PR 00709, (809) 834-3590

Dr. Elizabeth Gatewood, Region Director, University of Houston, 601 Jefferson, suite 2330, Houston, TX 77002, (713) 752-8444

Mr. Robert McKinley, Region Director, Univ. of Texas at San Antonio, San Antonio, TX 78285-0880

Dr. Solomon Kabuka, Jr., Director, Univ. of the Virgin Islands, Grand Hotel Building, Annex B, P.O. Box 1087, St. Thomas, US V. Islands 00804, (809) 776-3206

Ms. Barbara Brews, Acting State Director, Casper Community College, 111 West Second Street, suite 416, Casper, WY 82601

Dr. Norb Dettmann, Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75215, (214) 565-5831

Mr. Craig Bean, Acting Region Director, Texas Tech University, 2579 South Loop 289, suite 114, Lubbock, TX 79423-1637, (806) 745-3973

Mr. Norris Elliott, State Director, University of Vermont, Morrill Hall, Burlington, VT 05405

Ms. Eloise Jack, State Director, Governor's Office of Community and Industrial Development, 1115 Virginia Street, East, Charleston, WV 25316, (304) 348-2960

[FR Doc. 91-14661 Filed 6-19-91; 8:45 am]

BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund thirty-three presently existant Small Business Development Centers (SBDCs) on January 1, 1992. Currently there are 57 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington and Wisconsin. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR part 135.

EFFECTIVE DATE: 90 days from date of publication.

ADDRESSES: Comments should be addressed to Ms. Johnnie L. Albertson, Associate Administrator for SBDC Program, U.S. Small Business Administration, 490 Third Street SW., Sixth Floor, Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Same as above

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out it obligations under that Executive Order. See 13 CFR part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of thirty-three presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the expected date of refunding these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Johnnie L. Albertson, Associate Administrator for SBDC program, U.S. Small Business Administration, 409 Third Street, SW., Sixth Floor, Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90-day period. If the comments cannot be accommodate by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties.

SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from source other than the Federal Government. SBDCs operate under the provisions of Public Law 96-302, as amended by Public Law 98-395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

Purpose and Scope

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources;

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must ensure that at least 90 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resources management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information, and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and

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each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hour week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year.

The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Dated: June 6, 1991.

Patricia Saiki,

Administrator.

Addresses of Relevant SBDC State Directors

Mr. Dave Smith, State Director, Gateway Community College, 108 North 40th St., suite 148, Phoenix, AZ 85034, (602) 392–5224
Dr. Edward Kawahara, State Director, Department of Commerce, 1121 L Street, suite 600, Sacramento, CA 95814
Ms. Nancy Flake, Director, Howard University, 6th & Fairmount Street SW., Washington, DC 20059, (202) 806–1550
Mr. Hank Logan, Acting State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (404) 542–5760
Mr. Ronald Hall, State Director, Boise State University, College of Business, 1910 University Drive, Boise, ID 83725, (208) 385–1640
Mr. Steve Thrash, State Director, Economic Development Council, One North Capitol, suite 200, Indianapolis, IN 46204, (317) 634–1690
Ms. Diane Branscomb, Acting State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103, (207) 780–4420
Mr. Paul McGinnis, State Director, University of Arkansas, 100 South Main, suite 401, Little Rock, AR 72201, (501) 324–9043
Mr. Rick Garcia, State Director, Office of Business Development, 1625 Broadway, suite 1710, Denver, CO 80203
Mr. Jerry Cartwright, State Director, University of West Florida Building 38, Pensacola, FL 32514 (904) 474–3016
Ms. Janet Nye, State Director, University of Hawaii/Hilo, 523 West Lanikaula Street, Hilo, HI 96720–4091, (808) 933–3459
Mr. Jeffrey Mitchell, State Director, Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, IL 62701, (217) 524–5856
Mr. Tom Hull, State Director, Wichita State University, 1749 Yale Street, Wichita, KS 67218, (316) 689–3193
Mr. Randall Olson, State Director, Dept. of Trade and Economic Dev., 150 East Kellogg Boulevard, St. Paul, MN 55101–1421, (612) 297–5773
Mr. Evan McKinney, State Director, Department of Commerce, 1424 Ninth Avenue, Helena, MT 59620, (406) 444–4780
Mr. Sam Males, State Director, University of Navada/Reno, College of Business Admin., room 411, Reno, NV 89557–0016, (702) 784–1717
Ms. Brenda B. Hopper, State Director, Rutgers University, 180 University Street, Newark, NJ 07102, (201) 648–5950
Mr. Scott Daugherty, State Director, University of North Carolina, 4509 Creedmoor Road, suite 201, Raleigh, NC 27612, (919) 733–4643
Dr. Grady Pennington, State Director, SE Oklahoma State University, 517 West University, Durant, OK 74701, (405) 924–0277
Mr. Greg Higgins, State Director, University of Pennsylvania, The Wharton School, 444 Vance Hall, Philadelphia, PA 19104, (215) 898–1219
Mr. John Lanti, State Director, University of South Carolina, College of Business Admin., 1710 College Street, Columbia, SC 29208, (803) 777–4907
Mr. Robert Bernier, State Director University of Nebraska/Omaha, Peter Kiewit Center, Omaha, NE 68182, (402) 554–2521
Ms. Helen Goodman, State Director, University of New Hampshire, University Center, 400 Commercial Street, room 311, Manchester, NH 03101, (603) 625–4522
Mr. Randy Grissom, State Director, Santa Fe Community College, P.O. Box 4187, Santa Fe, NM 87502–4187, (505) 438–1362
Mr. Wally Kearns, State Director, University of North Dakota, Gamble Hall, University Station, Grand Forks, ND 58202–7308, (701) 777–3700
Mr. Sandy Cutler, State Director, Lane Community College, 99 West 10th Avenue, suite 216, Eugene, OR 97401, (503) 726–2250
Mr. Douglas Jobling, State Director, Bryant College, 1150 Douglas Pike, Smithfield, RI 02917–1284, (401) 232–6111
Mr. Donald Greenfield, State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677–5272
Dr. Kenneth J. Burns, State Director, Memphis State University, Memphis, TN 38152, (901) 678–2500
Dr. Robert Smith, State Director, Department of Economic Development, 1021 East Cary Street, Richmond, VA 23219–798, (804) 371–8100
Mr. William Pinkovitz, State Director, University of Wisconsin, 432 North Lake Street, room 423, Madison, WI 53706, (608) 263–7794
Mr. David Nimkin, State Director, University of Utah 102 West 500 South Salt Lake City, UT 84102 (801) 581–7905
Mr. Lyle Anderson, State Director, Washington State University, College of Business and Economics, Pullman, WA 99164, (509) 335–1576

[FR Doc. 91–14662 Filed 6–19–91; 8:45 am]

BILLING CODE 8025–01–M

Region VII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Kansas City, will hold a public meeting from 10 a.m. to 3 p.m. on Tuesday, July 2, 1991, at 1010 Grand, Kansas City, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others presented.

For further information, write or call Dan Loar, Special Assistant to the Regional Administrator, U.S. Small Business Administration, 911 Walnut, Kansas City, MO 64106, telephone (816) 426–3125.

Dated: June 13, 1991.

Jean M. Nowak,

[FR Doc. 14656 Filed 6–19–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1415]

Presidential Task Force on U.S. Government International Broadcasting; Meetings

The Task Force announces the following schedule of meetings all which will take place at 1555 Wilson Blvd., suite 604, Arlington, Virginia:

June 26–27, 1991; August 7–8, 1991; September 11–12, 1991; October 2–3, 1991.

The June 26–27 meeting will occur less than fifteen days from the publication of this notice. This occurs because the duration of the Task Force is severely limited and it is necessary to obtain information as quickly as possible to assure that recommendations are made to the President by the November 23, 1991 time set in the White House announcement of the Task Force.

The meetings will be in two segments each day, from 9 a.m. to noon and from 2 p.m. to 5 p.m. All segments of the meetings will be open to the public except the afternoon sessions of the second day of each meeting which, in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. I, section 10(d), have been determined to involve the discussion of matters exempt from disclosure under 5 U.S.C. 55b(c)(1).

The reasons supporting this determination are that the Task Force's meetings during these periods will involve the discussion and examination of materials properly classified under the terms of Executive Order 12065 of June 28, 1978, and the effect of such materials on the deliberations of the Task Force in carrying out the tasks assigned to it by the President in the White House statement of April 29, 1991 establishing the Task Force.

Members of the general public may attend the meetings, except for the afternoon sessions of the second day of each meeting, and may participate in discussions, subject to instructions from the Chairman. Admittance will be limited to the seating available. All those planning to attend should call 703–235–9000 prior to the appropriate meeting to assure that seating will be available.

Dated: June 14, 1991.

C. Edward Dillery,

Executive Director, Task Force on U.S. Government International Broadcasting.

[FR Doc. 91–14745 Filed 6–19–91; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD1 91–059]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on July 18, 199', in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update of Marine Events.
3. Update of dredging operations in New York Harbor.
4. Update on Vessel Traffic Service.
5. Topics from the floor.
6. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than one day before the meeting. Any member of the public may present a written statement to the Committee at that time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J.E. Bussey, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Vessel Traffic Service, Building 333 Third floor, Governors Island, New York, NY 10004–5070; or by calling (212) 668–7429.

Dated: June 3, 1991.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 91–14702 Filed 6–19–91; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environment Impact Statement; Cooper Landing, AL

AGENCY: Federal Highway Administration (FHWA), Alaska Department of Transportation and Public Facilities (ADOT&PF).

ACTION: Notion of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project near Cooper Landing, Alaska.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Moreno, Field Operations Engineer, Alaska Division FHWA, Post Office Box 21648, Juneau, Alaska, 99802–1648, Telepone (907) 586–7428; Mr. Hank Wilson, P.E., Project Manager, Preliminary Design and Environmental, ADOT&PF, Post Office Box 196900, Anchorage, Alaska 99519–6900, Telephone (907) 266–1581.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with ADOT&PF is currently preparing a Draft Environmental Impact Statement (DEIS) and section 4(f) Evaluation, in accordance with title 23 CFR part 771, for the Sterling Highway, MP 37 to 60 (Project F–021–2[15]), in the Kenai Peninsula Borough in Southcentral Alaska.

The highway provides the only road linking western Kenai Peninsula communities, including Kenai, Soldotna, Homer, and Seldovia, with the remainder of the state. Within the project area is the community of Cooper Landing, the Chugach National Forest, the Kenai River Special Management Area, the Squilantnu Archaeological District, and the Kenai National Wildlife Refuge.

The proposed action would reconstruct the 22-mile segment of the Sterling Highway between the Seward Highway junction and the Skilak Lake Road. Alternatives under evaluation are: No-Build, Reconstruction of the Existing Alignment, and two realignments to avoid unstable slopes and valuable resources along the existing highway.

The Quartz Creek Alternative is an approximate 4.2-mile realignment which would depart from the Seward Highway at MP 38, north of the existing Sterling Highway junction, and traverse the south side of Quartz Creek Valley, merging with the Sterling Highway near MP 40.

The Juneau Creek Alternative would depart from the Sterling Highway above Kenai Lake, near MP 47. This 11.4-mile realignment would follow along a bench north of Cooper Landing, crossing Juneau Creek, and merge with the Sterling Highway at approximately MP 55.

Land from the Kenai National Wildlife Refuge, established under the Alaska National Interest Lands Conservation Act (ANILCA), would be involved with this reconstruction project. Right-of-Way acquisition for transportation purposes is subject to requirements established under ANILCA Title 50 CFR part 36 for compliance with the National

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Environmental Policy Act (NEPA) Title 40 CFR parts 1500 to 1508.

The U.S. Department of the Interior, Fish and Wildlife Service, Regional Administrator has agreed to combine the environmental requirements imposed by ANILCA with the 23 CFR part 771 by designating the FHWA as the lead agency for compliance with NEPA. The FHWA hereby provides notice of the proposed action.

Since 1978, ADOT&PF has been evaluating the subject project and published a DEIS/4(f) in 1982. However, due to environmental issues such as the creation of the Kenai River Special Management Area in June 1984, which put the river under the jurisdiction of the Alaska State Park System, and the discovery of additional prehistoric cultural sites, it was determined that additional alternatives should be evaluated and a new DEIS prepared.

Changes since the 1982 DEIS have been brought to the attention of the public. The scoping process included a Sterling Highway newletter (September 3, 1985); letters to agencies (May 13, 1986) and local organizations (June 10, 1986); a notice to the **Federal Register** (FR Doc. 86-23178, June 25, 1986); a meeting with interested agencies (August 12, 1986); and public information meetings in Cooper Landing (September 4, 1986) and Anchorage (October, 21, 1986).

Comments and suggestions are invited from all interested parties and should be directed to the FHWA or ADOT&PF at the addresses provided above. The U.S. Army Corps of Engineers, U.S. Forest Service, Alaska Department of Fish and Game, and the Alaska Department of Natural Resources—Division of Parks, have been requested to participate as Cooperating Agencies in accordance with 40 CFR 1501.6.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 21, 1991.

Robert E. Ruby,

Division Administrator, Federal Highway Administration.

[FR Doc. 91-14698 Filed 6-17-91; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 91-28; Notice 01]

Insurer Reporting Requirements; Reports on Section 612 of the Motor Vehicle Theft Law Enforcement Act of 1984

AGENCY: National Highway Traffic Safety Administration, NHTSA, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of two reports. Section 612(b) of Title VI of the Motor Vehicle Information and Cost Savings Act (MVICSA, Pub. L. 93-513) requires this information be periodically compiled and published by the agency in a form that will be helpful to the public, including Federal, State, and local police, and Congress. The two reports are for reporting years 1986 and 1987. These reports cover section 612 which provides information on theft and recovery of vehicles; rating rules and plans used by motor vehicle insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts.

The agency published a notice in the **Federal Register** on February 19, 1988, (53 FR 5076) announcing the availability of the first of these reports for reporting period 1985.

ADDRESSES: Interested persons may obtain a copy of the Section 612 informational report by contacting the Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.) Requests should refer to Docket No. 91-28; Notice 01.

FOR FURTHER INFORMATION CONTACT: Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1740).

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) was implemented to enhance detection and prosecution of motor vehicle theft (Pub. L. 98-547). The Theft Act added a new title VI to the Motor Vehicle Information and Cost Savings Act, which requires the Secretary of Transportation to issue a theft prevention standard for identifying major parts of certain high-theft lines of passenger cars. The Theft Act also addressed several other actions to reduce motor vehicle theft, such as: Increased criminal penalties for those who traffic in stolen vehicles and parts; curtailment of the exportation of stolen motor vehicles and off-highway mobile equipment; establishment of penalties for dismantling vehicles for the purpose of trafficking in stolen parts; and development of ways of encourage decreases in premiums charged consumers for motor vehicle theft insurance.

Title VI was designed to impede the theft of motor vehicles by creating a theft prevention standard which requires manufacturers of designated high-theft car lines to mark or inscribe them with a vehicle identification number. The theft standard became effective in Model Year 1987 for designated high-theft car lines.

Section 612 of the Theft Act requires subject insurers or designated agents to report annually to the agency on theft and recovery of vehicles; rating rules and plans used by insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts. Rental and leasing companies also are required to provide annual theft reports to the agency.

The annual insurer reports provided under section 612 of the Theft Act are intended to aid in implementing the Theft Act and fulfilling the Department's requirements to report to the public the results of the insurer reports. The first annual insurer reports, referred to as the Section 612 Report on Motor Vehicle Theft, was prepared by the agency and issued in December 1987. A notice announcing the availability of the first report was published in the **Federal Register** February 19, 1988. The report included theft and recovery data by vehicle type, make, line, and model which are tabulated by insurance company, State, and rental and leasing companies. Comprehensive premium information for each of the reporting insurance companies was also included. The second and third reports disclose the same subject information and follow the same reporting format.

Issued on: June 14, 1991.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 91-14648 Filed 6-19-91; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 119
Thursday, June 20, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 25, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employees.

DATE AND TIME Thursday, June 27, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Presidential Primary Matching Fund Submission and Certification Procedures: Notice of Proposed Rulemaking. (Continued from meeting of June 19, 1991, if necessary).
Proposed Letter to Honorable Nicholas F. Brady. (Continued from June 19, 1991, if necessary).
Presidential Primary and General Election Regulations: Final Rules and Explanation and Justification. (Continued from June 19, 1991, if necessary).
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-14796 Filed 6-18-91; 11:15 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., June 26, 1991.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, DC 20573-0001.

STATUS: Part of the meeting will be open to the public.

The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED:

Portion Open to the Public

1. Report to the Commission in Fact Finding Investigation No. 19—Passenger Vessel Financial Responsibility Requirements.

Portion Closed to the Public

1. Report on Laws, Rules, Regulations, Policies and Practices of the People's Republic of China Affecting Shipping in the United States/PRC Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725

Joseph C. Polking,

Secretary.

[FR Doc. 91-14868 Filed 6-18-91; 3:31 pm]

BILLING CODE 6730-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday June 26, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14867 Filed 6-18-91; 3:31 pm]

BILLING CODE 6210-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 24, 1991.

PLACE: Commission Conference Room, 1333 H Street, N.W., Washington, D.C., 20268-0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 1992.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, N.W., Washington, D.C. 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 91-14869 Filed 6-18-91; 3:31 pm]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [56 FR 27998, June 18, 1991].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, June 13, 1991.

CHANGE IN THE MEETING: Additional meeting.

The following item will be considered at a closed meeting on Tuesday, June 18, 1991, at 5:30 p.m.:

Opinion.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Edward Pittman at (202) 272-2400.

Dated: June 18, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14885 Filed 6-18-91; 4:04 pm]

BILLING CODE 8010-01-M

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federal register

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Part II

Department of the Interior

Surface Mining Reclamation and Enforcement Office

30 CFR Part 722, et al.
Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Service of Documents; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 722, 723, 724, 843, 845, and 846

RIN 1029-AB41

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Service of Documents

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is revising its Initial and Permanent Regulatory Program rules governing service of process to provide for increased flexibility and uniformity in the methods of service of process for notices of violation, cessation and show cause orders, and proposed civil penalty and individual civil penalty assessments.

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; telephone (202) 208-2550 (Commercial) or 268-2550 (FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Comments
III. Procedural Matters

I. Background

Section 521 of the Act provides authority to the Secretary of the Interior and his authorized representatives to issue citations for violations of the Act. The regulations governing the service of process for notices and orders are found at 30 CFR parts 722 and 843. Part 722 contains the Initial Program regulations which were promulgated on December 13, 1977 (42 FR 62639). Part 843 contains the Permanent Program regulations which were first promulgated on March 13, 1979 (44 FR 14902), and subsequently revised on August 16, 1982 (47 FR 35620). The regulations governing service of process of proposed civil penalty assessments are found at 30 CFR parts 723 and 845. Part 723 contains the Initial Program regulations which were first promulgated on December 13, 1977 (42 FR 62639) and subsequently revised on September 4, 1980 (45 FR 58780). Part 845 contains the Permanent Program regulations which were first promulgated on March 13, 1979 (44 FR 14902) and subsequently revised on August 16, 1982 (47 FR 35620). The regulations governing service of process of proposed individual civil penalty assessments are found at 30 CFR parts 724 and 846. Parts 724 and 846 contain the Initial and Permanent Program regulations respectively which were promulgated on February 8, 1988 (53 FR 3663).

On September 27, 1990 (55 FR 39360), OSM proposed two sets of revisions to its rules.[1] The first set of revisions at 30 CFR 723.13(b)/845.13(b), 723.15(b)/845.15(b), and 843.14(a) were proposed in order to provide for consistent phraseology within each of the rules by replacing the term "permittee" with the phrase "person to whom the notice or order was issued" or "person to whom it (the notice or order) was issued".

The second set of revisions at 30 CFR 722.14(a)/843.14(a), 723.17(b)/845.17(b) and 724.17(c)/846.17(c) were proposed in order to provide increased flexibility within each rule and uniformity among the rules regarding the methods of acceptable service of process. The previous versions of these rules all varied in the methods by which their service of process was performed. Sections 722.14/843.14 provided for service by personal delivery or by certified mail. Sections 723.17/845.17 provided for service by only certified mail. Sections 724.17/846.17 provided that service would be sufficient if it satisfies Rule 4 of the Federal Rules of Civil Procedures for service of a summons and complaint (hereinafter Rule 4).

OSM solicited public comments on the proposed revisions. The comment period closed November 27, 1990 with three commenters responding. No request was received for a public hearing and none was held.

After careful review of the comments received, OSM has decided to withdraw from this rulemaking the first set of proposed revisions relating to consistent phraseology. OSM is adopting as final rules both the second set of proposed revisions relating to methods for service of process as well as conforming changes to the service rules relating to refusal of service. These conforming changes will be discussed below at II.B.1.

[1] For ease of reference, the respective Initial Program and Permanent Program sections are cited together in this preamble. For instance, references to 30 CFR 723.13(b) and 845.13(b) will be cited as 30 CFR 723.13(b)/845.13(b).

II. Discussion of Final Rule and Comments

A. Withdrawal of Proposed Revisions to §§ 723.13(b)(3)(ii)(B)/845.13(b)(3)(ii)(B), 723.15(b)(2)/845.15(b)(2), and 843.14(a)(2)(2)—Consistent Phraseology

OSM proposed revisions to these sections which would have changed the term "permittee" to either "person to whom the notice or order was issued" or "person to whom it (the notice or order) was issued." The intent of such changes was to make consistent the phraseology within each section and to more accurately identify those parties with actual on-site capacity to prevent or abate violations.

Each of the three commenters expressed concerns over the proposed revisions. The fundamental concern of two commenters was that the proposed rule improperly expanded the class of persons who may be assessed civil penalties beyond permittees to include operators as well as any other person to whom a notice or order might be issued. One of these commenters stated that such assessments would be contrary to both: (a) The provisions of Section 518(a) of the Act which limits civil penalties to violations committed by permittees, and (b) the principle that civil penalties cannot be assessed against a class of individuals not already subject to enforcement under Section 521(a) which speaks only of permittee violations of permit conditions or the Act.

A related concern was that civil penalty assessments against permittees, operators, and other mine-site parties would allow for "double recover" of penalties, for which no statutory authority was seen to exist.

The same commenter also asserted that OSM had cited no credible evidence of the need for the rulemaking and had failed to document any specific enforcement problem arising from the implementation of the current regulations. The commenter stated that if the purpose of the rule was to ensnare "wildcat" or "contract" operators, OSM had failed to provide any analysis to show why the term "permittee," as defined by 30 CFR 701.5, had not proven sufficiently broad to implement the provisions of Section 518 effectively.

Conversely, another commenter stated that the proposed revisions would appear to authorize a violation or civil penalty assessment not to be issued against a permittee, thereby conflicting with section 521(a) of the Act which holds permittees ultimately responsible for violations on surface coal mining operations.

The final commenter was concerned that the proposed revisions would adversely affect the individual civil penalty protections provided by section 518(f) of the Act and "refine(d)" by the decisions in *United States* v. *Dix Fork Coal Co.*, 692 F.2d 436 (6th Cir. 1982), and *United States* v. *Daugherty*, 599 F. Supp. 671 (1984).

In response to the comment that no compelling regulatory need was presented in the proposed rulemaking for replacing the term "permittee" with either the phrase "person to whom the notice or order was issued" or "person to whom it (the notice or order) is issued," OSM would stress that these revisions were only intended to make consistent the phraseology within the affected sections and to more accurately identify those parties with actual on-site capacity to prevent or correct violations. Nonetheless, because of the commenter concerns engendered by the proposed revisions, OSM has decided to withdraw them from the current rulemaking. The longstanding references to "permittee" in the cited sections will remain as they were.

OSM wishes to make clear that the withdrawn revisions were never intended as a means of changing the scope of the agency's enforcement authority. The scope of that authority is established by the enforcement provisions of section 521 of the Act and its implementing regulations at 30 CFR parts 722/843, and not the penalty provisions of section 518 of the Act and its implementing regulations at 30 CFR parts 723/845. It is section 521 and 30 CFR parts 722/843, not section 518 and parts 723/845, which define the class of persons against whom enforcement actions could be taken and, therefore, those who would be subject to civil penalties. Accordingly, the withdrawn revisions to 30 CFR parts 723/845 would have neither limited nor expanded the class of affected persons as asserted by commenters. The withdrawn revisions to 30 CFR part 843 dealt with alternative service of process and would also have neither limited nor expanded the class of persons subject to civil penalty assessments.

With regard to OSM's enforcement scheme, OSM will continue to issue notices of violation under 30 CFR 722.11–.12/843.12 to the permittee and any other persons responsible for compliance with performance standards applicable to the operation. As it has in the past, OSM will cite operators when they are deemed responsible for operations. Such has always been the case, for example, with "wildcat" operations and those operations abusing the two-acre exemption. In those instances when both a permittee and an operator are cited for a single violation, it is the longstanding policy of OSM that both parties are jointly and severally liable for the penalty amount associated with that violation. Under such a policy, there would not be a "double recovery" of the penalty amount.

OSM also wishes to make clear that the withdrawn revisions were never intended to adversely affect the individual civil penalty provisions established by section 518(f) of the Act. The individual civil penalty provisions of section 518(f) are implemented at 30 CFR parts 724/846. Proposed revisions to 30 CFR part 843 and 30 CFR parts 723/845 would not, therefore, have affected those provisions. Neither would the revisions have conflicted with the court decisions cited by the commenter.

B. Sections 722.14/843.14, 723.17/845.17 and 724.17/846.17

1. Service of Process

Final 30 CFR 722.14/843.14, 723.17/845.17, and 724.17/846.17 are adopted as proposed to provide for increased flexibility and uniformity in the methods of service of process for notices of violation, cessation and show cause orders, and proposed civil penalty assessments. Final 30 CFR 722.14/843.14, 723.17/845.17, and 724.17/845.17 combine all of the methods of service of the previous rules to allow service under each section by either personal delivery, certified mail, or any other alternative means consistent with rule 4 of the Federal Rules of Civil Procedure for service of summons and complaint. As will be discussed below, these final rules also include conforming changes to their provisions governing refusal of service.

Three commenters submitted comments on the proposed rule. One commenter stated that the proposed revision to 30 CFR 843.14(a)(2) allowing for alternative service on "*any* person" did not guarantee that the permittee would be notified in time to correct the violation or request administrative review before the Department of the Interior (emphasis added).

OSM does not agree with this conclusion. The revision to 30 CFR 843.14(a)(2) does not allow for alternative service on *any* person, but rather on "the person to whom it [the notice or order] is issued or his or her designated agent." Such language is consistent both with that of 30 CFR 843.14(a)(1) and with its Initial Program counterpart at 30 CFR 722.14(a)(2). Moreover, 30 CFR 722.14(a)/843.14(a) both require that citations be served "promptly"; and under 43 CFR 4.1162(a), a permittee's time for requesting administrative review does not begin to run until service has been effected. Thus, the commenter's concern about delay in service is unfounded.

Another commenter questioned whether the use of "regular" mail without a record of receipt might prove problematic in demonstrating proof of service. Presumably the commenter is referring to the service by first-class mail allowed by Section (c)(1)(C)(ii) of rule 4, since the other service by mail prescribed in this rulemaking is by certified mail.

The use of first-class mail will not create a problem in demonstrating proof of service. Section (c)(2)(C)(ii) of rule 4 requires that an acknowledgement form shall be sent with the service of process. This acknowledgement form is to be returned within 20 days after the date of mailing. If no acknowledgement of service is received by the sender within 20 days after the date of mailing, the above-referenced section specifies that service shall be by the personal delivery provisions of subsections (d)(1) and (d)(3) of rule 4.

A commenter asserted that service of process prescribed under the proposed rules should be limited to methods available under rule 4 so as to both prevent duplication between the "personal service" provided by the prior rules and the "personal service" of rule 4 and to avoid confusion as to the limits of permissible service.

OSM does not agree with the commenter's proposal. Its effect would be to limit the service of process in final 30 CFR parts 722/843, 723/845, and 724/846 to rule 4 procedures previously provided only in part 724/846. Such reliance upon rule 4 procedures would have foreclosed both service certified mail and the personal service previously provided by the parts 722/843 and 723/845.

The personal service provided by the prior rules is not duplicative of rule 4 personal service as asserted by the commenter. For example, under the procedures previously employed by OSM under 30 CFR 722.14(a)(2), and 843.14(a)(2), the personal service of a notice or order issued to a corporate permittee was considered complete, for instance, upon tender of such notice or order to a secretary working in the office of the permittee. Under section (d)(3) of rule 4, personal service to a corporate permittee would be complete upon tender of the notice or order to an officer, a managing or general agent, or to any other agent authorized by appointment or law to receive service of

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process. The commenter's proposal limiting service to rule 4 procedures would have required, therefore, the elimination of the personal and certified mail methods of service of process available under prior rules. Such a result works against the flexibility of service intended by this rulemaking.

OSM disagrees with the commenter's contention that this rulemaking will cause confusion as to the limits of permissible service because it allows for service of process by either personal service, certified mail or any other alternative method consistent with rule 4. Each of these methods of service is taken from a prior rule with established limits of permissible service. Methods of service which individually did not prove confusing should not proving confusing when provided for in the alternative.

2. Refusal of Service

In the process of reviewing the proposed rules and comments thereto, OSM determined that conforming changes were also needed to the provisions dealing with refusal of service to provide both consistency within and uniformity among the respective service rules.

Three sets of rules are involved in these conforming changes. Two sets, at 30 CFR 722.14(a)(2)/843.14(a)(2) and 723.17(b)/845.17(b)(1), already have provisions governing the refusal of tendered service documents. These are longstanding provisions of both the Initial and Permanent Program rules and are consistent with the line of cases, including *U.S.* v. *Pryor Bolton*, 761 F.2d 528 (6th Cir. 1985), which held adequate service to exist even where there was refusal to accept delivery. Conforming changes are needed to the refusal provisions of these two sets of rules to reflect the previously discussed changes made to their methods of service of process. The third set of rules at 30 CFR 724.17(c)/846.17(c) did not have provisions governing the refusal of tendered service documents. Refusal provisions are needed to conform these rules to the other service rules which do contain such provisions.

The last sentence of both previous and proposed 30 CFR 722.14(a)(2)/843.14(a)(2) provided that "[s]ervice shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept." Under this final rule, it will read "[s]ervice shall be complete upon tender of the notice or order or of the *certified* mail and shall not be deemed incomplete because of refusal to accept." (Emphasis added.) The underlined word "certified" is added not as a substantive change but rather to conform the quoted passage to other provisions of both prior and proposed Sections 722.14(a)(2)/843.14(a)(2) which provided that service shall be by "certified mail". Under both these rules, refusal of tendered mail constituted service. The "certified" qualifier in the final rules will also serve to distinguish that type of mail service from the First Class mail service now allowed under final Sections 723.14(a)(2)/845.14(a)(2) through alternative Rule 4 procedures. The refusal of First Class mail is not covered by the final rule.

Previous 30 CFR 723.17(b)/845.17(b)(1) provided that "[i]f the mail is tendered * * * and he or she refuses to accept delivery of or to collect such mail, the requirement of this paragraph shall be deemed to have been complied with upon such tender." Final 723.17(b)/845.17(b)(1) will provide that "[i]f a copy of the proposed assessment and work sheet or certified mail is tendered * * * and he or she refuses to accept delivery of or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender." (Emphasis added.) The underlined phrase "a copy of the proposed assessment and work sheet or certified mail" is added to conform the quoted passage to other provisions of proposed and final 30 CFR 724.17(b) and 845.17(b) which provide that "[t]he Office shall serve a copy of the proposed assessment and of the work sheet * * * on the person to whom the notice or order was issued, by certified mail, or by an alternative means consistent with * * * Rule 4 of the Federal Rules of Civil Procedure * * *" Service of the copy of the proposed assessment and worksheet was not expressly provided for in the refusal of tender sections of the previous rules.

The "certified" qualifier will again serve to distinguish that type of mail service comprehended by the refusal of service provisions of §§ 723.17(b) and 845.17(b)(1) from the First Class mail service also allowed by the final rules under alternative rule 4 procedures. The word "documents" replaces the word "mail" found in both the proposed and final rules and reflects that either a copy of the proposed assessment and work sheet or the certified mail containing the assessment documents may be tendered under specified circumstances to complete service of process.

The last sentence of proposed 30 CFR 724.17(c)/846.17(c) will also be revised in the final rule to more precisely conform to the refusal provisions of the other service rules. The previous version of 30 CFR 724.17(c)/846.17(c) did not contain a refusal of service provision. Proposed 724.17(c)/846.17(c) provided that "[i]f the mail is tendered at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein and that person refuses to accept delivery, the requirements of this paragraph shall be deemed to have been complied with upon such tender." This passage depicts a scenario not found in the other service rules. Final 724.17(c)/846.17(c) will instead state that "[s]ervice shall be complete upon tender of the notice of proposed assessment and included information or the certified mail and shall not be deemed incomplete because of refusal to accept." This language is modeled on the refusal of service provisions of final 30 CFR 722.14(a)(2)/843.14(a)(2). It is consistent with the refusal of service provisions of final 30 CFR 723.17(b) and 843.17(b)(1), and will contribute to increased uniformity of language among the service rules. Tender of the documents at a person's dwelling or usual place of abode to a person of suitable age and discretion then residing therein will still suffice where such service is authorized by Rule 4(d)(1).

III. Procedural Matters

Effect of the Rule in Federal Program States and on Indian Lands

The rule will apply, through cross-referencing, to the following States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule will also apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR part 750. No comments were received concerning unique conditions in any of these States or on Indian lands which would require changes to the national rules as specific amendments to any or all of the Federal programs.

Effect of the Rule in States With Primacy

Section 518(i) of the Act and the Federal regulations at 30 CFR 840.13(c) require approved State programs to contain procedures the same or similar to the provisions of section 518 of the Act and consistent with those of 30 CFR parts 843, 845, and 846. States which desire more flexibility in their method of service of documents may desire to amend their programs but are not bound to do so.

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291

The Department of the Interior has examined the rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the rule will not have a significant economic impact on a substantial number of small entities. The rule merely allows for greater flexibility of service of documents.

National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

Author

The principal author of this rule is John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 208-2550 (Commercial) or 268-2550 (FTS).

List of Subjects

30 CFR Part 722

Law enforcement, Public health, Safety, Surface mining, Underground mining.

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedures, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Accordingly, 30 CFR parts 722, 723, 724, 843, 845, and 846 are amended as set forth below:

Dated: May 14, 1991.

Dave O'Neal,

Assistant Secretary, Land and Minerals Management.

Subchapter B—Initial Program Regulations

PART 722—ENFORCEMENT PROCEDURES

1. The authority citation for Part 722 continues to read as follows:

Authority: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

2. Section 722.14 is amended by revising paragraph (a)(2) to read as follows:

§ 722.14 Service of notices of violation, cessation orders, and orders to show cause.

(a) * * *

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his or her designated agent, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

* * * * * *

PART 723—CIVIL PENALTIES

3. The authority citation for part 723 continues to read as follows:

Authority: Surface Mining Control and Reclamation Act of 1977, Secs. 201, 501, 518 (30 U.S.C. 1211, 1251, 1268) and Pub. L. 100-34.

3a. Section 723.17 is amended by revising paragraph (b) to read as follows:

§ 723.17 Procedures for assessment of civil penalties.

* * * * * *

(b) The Office shall serve a copy of the proposed assessment and of the work sheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order. If a copy of the proposed assessment and work sheet or the certified mail is tendered at the address of that person set forth in the sign required under 30 CFR 715.12(b) or at any address at which that person is in fact located, and he or she refuses to accept delivery or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

* * * * * *

PART 724—INDIVIDUAL CIVIL PENALTIES

4. The authority citation for part 724 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); and Pub. L. 100-34.

5. Section 724.17 is amended by revising paragraph (c) to read as follows:

§ 724.17 Procedure for assessment of individual civil penalty.

* * * * * *

(c) *Service.* For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

Subchapter L—Permanent Program Inspection and Enforcement Procedures

PART 843—FEDERAL ENFORCEMENT

6. The authority citation for part 843 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

7. Section 843.14 is amended by revising paragraph (a)(2) to read as follows:

§ 843.14 Service of notices of violation, cessation orders, and show cause orders.

(a) * * *

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or

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order by certified mail or by hand to the permittee or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

* * * * *

PART 845—CIVIL PENALTIES

8. The authority citation for part 845 continues to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, Pub. L. 100-202, and Pub. L. 100-446.

9. Section 845.17 is amended by revising paragraphs (b) introductory text and (b)(1) to read as follows:

§ 845.17 Procedures for assessment of civil penalties.

* * * * *

(b) The Office shall serve a copy of the proposed assessment and of the work sheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order.

(b)(1) If a copy of the proposed assessment and work sheet or the certified mail is tendered at the address of that person required under 30 CFR 816.11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

* * * * *

PART 846—INDIVIDUAL CIVIL PENALTIES

10. The authority citation for part 846 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); Pub. L. 100-34.

11. Section 846.17 is amended by revising paragraph (c) to read as follows:

§ 846.17 Procedure for assessment of individual civil penalty.

* * * * *

(c) *Service.* For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

[FR Doc. 91-14555 Filed 6-19-91; 8:45 am]
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federal register

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Part III

Department of Transportation

Coast Guard

33 CFR Part 1
46 CFR Parts 10 and 12
User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

46 CFR Parts 10 and 12

[CGD 91-002]

RIN 2115-AD72

User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to recent statutory requirements, the Coast Guard proposes to establish user fees for Coast Guard services related to merchant marine licenses, certificates of registry, and merchant mariner documents. The fees in this proposal are based on the way the Coast Guard presently conducts the merchant marine licensing and documentation activities and current costs of providing these Coast Guard services.

DATES: Comments must be received on or before August 5, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-002), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LT J.K. Gillespie, Planning Division (G-MP-1), Office of Marine Safety, Security, and Environmental Protection, (202) 267-6923.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-002) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are LT J.K. Gillespie, Project Manager, and C.G. Green, Project Counsel, Office of Chief Counsel.

Background and Purpose

The Omnibus Budget Reconciliation Act of 1990 (the Act) amended section 2110 of title 46, United States Code, to remove long-standing prohibitions against collecting certain user fees. Although, prior to amendment by the Act, section 2110 did not prohibit the Coast Guard from charging fees for merchant mariner documentation services, it did prohibit fees for "licensing of masters, mates, pilots, and engineers." The Coast Guard did not, therefore, exercise its authority to charge only one group of mariners out of all those receiving these Coast Guard services.

Section 2110 now requires the establishment and collection of user fees for Coast Guard services provided under subtitle II of title 46, United States Code. The Coast Guard must establish these fees in accordance with the criteria in section 9701 of title 31, United States Code (General User Fee Statute). The fees would not affect current Coast Guard appropriations. They would "be deposited in the general fund of the U.S. Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities."

Marine licensing and merchant mariner documentation, vessel documentation, commercial vessel inspections, and vessel plan review and equipment approval are program areas in subtitle II for which fees must be established. This proposal would establish user fees only for Coast Guard services relating to the issuance of merchant marine licenses, certificates of registry, and merchant mariner documents. Fees for other Coast Guard services in subtitle II of title 46, United States Code, will be established in separate rulemakings.

General Discussion of the Proposal

Section 2110 requires direct user fees be established for services provided by the Coast Guard under subtitle II of title 46, United States Code. To comply with this mandate, the Coast Guard proposes to amend 46 CFR parts 10 and 12 to establish user fees for specific activities conducted when individuals obtain a license, certificate of registry, or merchant mariner document.

Section 2110 allows adjustments of fees to accommodate changes in the cost of providing the services. The proposed fees are based on current costs and the way the Coast Guard presently conducts the merchant marine licensing and documentation program. The Coast Guard intends to review the fees annually to determine if adjustments or changes to the fees are necessary. The Coast Guard will revise these proposed fees when costs change because of inflation, deflation, or changes in the way the services are provided. New statutes, such as the Oil Pollution Act of 1990, may require the Coast Guard to establish new regulations or make substantive amendments to existing regulations. When this occurs, the Coast Guard will propose appropriate user fees in each rulemaking.

Section 2110 provides that the fee for a service may also include the cost of collecting the fee. The Coast Guard has not yet determined collection procedures for the proposed fees. However, the Coast Guard anticipates that, at a minimum, collecting fees at Regional Examination Centers (REC) will be needed because many licensing services are provided to "walk-in" applicants. This proposal includes estimated collection costs in the fees.

Section 2110 also provides authority to recover "appropriate collection and enforcement costs associated with delinquent payments of the fees." The Coast Guard may employ any government agency (Federal, State, or local) or a private enterprise or business (e.g., collection agency) to recover delinquent fees or civil penalty charges. Since the Coast Guard proposes to collect fees prior to the services being provided, delinquent payments should not occur in most cases.

Section 2110 allows exemption of certain persons from fees, "if in the public interest." While the Coast Guard does not now propose to exercise this authority, we are interested in comments on exemptions that could be in the public interest. One example might be for persons who, while not actively employed aboard vessels, choose to participate in a merchant marine reserve program and, therefore, would be required to hold a marine license, certificate of registry, or merchant mariner document. Is it in the public interest to have a "pool" of qualified persons available during times of national emergency, and, if so, should exemptions from the proposed fees be established to encourage participation in a merchant marine reserve program? The public is invited to comment on this or similar reasons to establish "public interest" exemptions.

Discussion of fees. In developing the proposed fees, the Coast Guard reviewed all the specific licensing and merchant mariner documentation activities in 46 CFR parts 10 and 12. The process of obtaining a license or certificate of registry under part 10 and of obtaining a merchant mariner document under part 12 are generally similar in that there are three identifiable phases in the overall process: Evaluation of the application, examination of the applicant, and issuance of the license or document. The Coast Guard chose to separate the process into these three phases for establishing user fees, as some applicants either do not complete the entire process or must repeat certain phases (e.g., examination). The Coast Guard, therefore, proposes that each fee be paid just prior to receiving the service, thus ensuring that applicants are not charged for a service not provided, but that they will be charged appropriate additional fees when a phase is repeated. We have summarized the proposed fees in Figure I.

FIGURE I.—PROPOSED USER FEES FOR MARINE LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINER DOCUMENT ACTIVITIES

Category	Evaluation fee [1]	Examination fee	Issuance fee	Total [2]
License				
Upper Level	$70 ($17)	[3] $225	$35	$330 ($347)
Lower Level	65 (17)	[3] 80	35	180 (197)
Radio Officer	45 (17)	—	35	80 (97)
Renewals or Endorsements	45	55	[4] 35	135
Certificate of Registry				
Chief Purser, Purser, and Senior Assistant Purser	45 (17)	—	35	80 (97)
Junior Assistant Purser, Medical Doctor, and Professional Nurse	— (17)	—	35	35 (52)
Merchant Mariner Document (MMD)				
MMD Endorsed with Qualified Rating	60 (17)	40	35	135 (152)
MMD without Qualified Rating	— (17)	—	35	35 (52)
Other Fees				
Duplicate or Replacement of License, Certificate of Registry, or MMD [5]	—	—	35	35

[1] An additional $17 charge for an FBI criminal record check would be added to the evaluation fee if the application is for an original license, original certificate of registry, or original merchant mariner document.

[2] Maximum totals—without and with an FBI criminal record check.

[3] For limited examinations administered for certain licenses, the proposed examination fee is $55.

[4] This fee also applies to issuance of a renewal with a continuity endorsement issued under § 10.209(g).

[5] There is presently a $10 fee in 33 CFR subpart 1.25 for a duplicate continuous discharge book or copies of certificates of discharge. The Coast Guard proposes to move this fee from 33 CFR subpart 1.25 to a section in 46 CFR part 12.

The proposed fees are based on the cost to the Coast Guard of providing the services. The Coast Guard incurs costs each time an individual is provided a service, regardless of the end result achieved by the individual. Thus, an individual who fails an examination and allowable retests must repeat the examination phase and pay another examination fee.

In 46 CFR parts 10 and 12, the Coast Guard proposes to define the term "evaluation" to make clear that the evaluation phase for which an applicant pays a fee is more than a review of an application form. The evaluation phase begins when the Coast Guard receives the application package. It includes establishing an individual's file, completing paperwork for a Federal Bureau of Investigation (FBI) criminal record check when required, searching through Coast Guard and other government records, making verifications, and conducting follow up phone calls. The evaluation phase is completed when the Coast Guard determines whether or not an applicant meets all the prerequisite requirements. The evaluation fee would be paid when the individual submits the application package to the Coast Guard.

The next phase is examination. The Coast Guard does not propose to define the term "examination" since its use should be clearly understood within the existing and proposed regulations. The examination phase involves scheduling, proctoring, and grading examination sections, and notifying applicants of results.

The examination fee would be paid when an applicant reserves a place on a scheduled test date for examination sections administered at Regional Examination Centers (REC), or administered at other locations by Coast Guard traveling examination teams. This fee covers the administration of all sections of an examination required for a particular license or endorsement. The Coast Guard does not propose to charge a fee for necessary retests prior to the lapse period required in 46 CFR 10.217(a) (1) and (2). After a required lapse period, an applicant would have to begin the examination phase again and a new examination fee would be assessed. If the applicant misses taking a scheduled examination, however, the Coast Guard will allow rescheduling of missed examination sections without an additional fee as long as the individual's application remains valid.

The last phase is issuance. The Coast Guard does not propose to define the term "issuance" since its use should be clearly understood within the existing and proposed regulations. The issuance phase includes preparing forms, reviewing, and signing of documents by appropriate REC personnel. The issuance fee would be paid before an individual receives the actual license, certificate of registry, or merchant mariner document.

There are several circumstances when the applicant would not be charged a fee for one or more of the three phases (i.e., evaluation, examination, and issuance). Under the criteria of the General User Fee Statute, it would be inappropriate for the Coast Guard to charge a fee for a service not provided.

An evaluation fee would not be required for all applicants. For example, a person applying for a radar observer

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endorsement, who has successfully completed a Coast Guard-approved course, would not be assessed an evaluation fee. The Coast Guard also proposes no evaluation fee for certificates of registry for Junior Assistant Purser, Medical Doctor, or Professional Nurse; or for a merchant mariner document without a qualified rating endorsement. These activities do not require significant amounts of evaluation time. However, the Coast Guard will assess a $17 fee for an original merchant mariner document or certificate of registry to cover the cost of a required FBI criminal record check.

There are no examination requirements for Radio Officer licenses; certificates of registry; merchant mariner documents not endorsed with a qualified rating; and some license endorsements. An example of an endorsement for which there would be no examination fee is a radar observer endorsement. An applicant who successfully completes a Coast Guard-approved radar observer qualification course is eligible for that endorsement.

If an examination is waived, then no examination fee would be assessed. For example, the Officer in Charge of Marine Inspection may waive the examination requirement for an endorsement to raise or remove horsepower limitations under 46 CFR 10.503(d).

The full examination fee proposed for upper level and lower level licenses would not be appropriate when an applicant needs only a partial or limited examination. Limited examinations have only one or two sections, and their administration is comparable with the time and effort required to administer the open book exercises for renewal of licenses. The Coast Guard, therefore, proposes a lesser fee for limited examinations. This fee would be the same as the examination fee for the open book exercise required in some cases for renewals. A limited examination is referred to in the regulations in 46 CFR 10.412, 10.418, 10.426, 10.429, 10.466 and 10.456. The Coast Guard also considers the examination referred to in 46 CFR 10.427 and 10.454 to be a limited examination.

The Coast Guard proposes to charge an issuance fee for all licenses, including licenses with a continuity endorsement, even though an applicant with this endorsement may not require an evaluation or examination and would not be assessed these other fees. The Coast Guard also proposes to charge an issuance fee for all certificates of registry, and merchant mariner documents (CG Form 2838) including temporary documents (CG Form 2838T). However, for conversion of the temporary merchant mariner document to a permanent document, there would be no issuance fee. Additionally, consistent with proposed § 10.219 and existing § 12.02-23 of 46 CFR, no fee is proposed for issuance of a duplicate license, certificate of registry, or merchant mariner document when its loss is due to a shipwreck or other casualty described by these sections.

Collection fees and penalties for failure to pay. The Coast Guard is presently reviewing a variety of fee collection procedures in addition to having collection clerks at each REC. The Coast Guard is also considering alternatives to cash payment including checks, money orders, credit cards, and electronic payment procedures. Convenience to the applicant will be an important factor in selecting the procedures to be used. Although these administrative details are not required to be subject to notice and comment, the Coast Guard invites comments on desirable features of a collection system. The Coast Guard will include the collection procedure details in the Final Rule.

The Coast Guard also intends to establish penalties for failure to pay fees. A civil penalty of up to $5,000 is authorized in 46 U.S.C. 2110. The Coast Guard proposes to treat a check returned due to insufficient funds as a late payment and to recover appropriate collection and enforcement costs in these cases. Multiple checks returned for insufficient funds could be treated as failure to pay and subject to a civil penalty. The Coast Guard also proposes to withhold additional license, certification, or merchant mariner documentation services pending payment of any outstanding fees.

Cost methodology. The Coast Guard developed fees in this proposal using information from workload analysis studies and costs of conducting marine licensing activities at the 17 Coast Guard RECs which provide the licensing and merchant mariner documentation services. The proposed fees are based on three basic costs.

The first cost is for the personnel and associated infrastructure necessary to provide the licensing services. These include, but are not limited to: office space; office equipment and supplies such as telephones, computers, and copiers; special training; and other personnel-related costs. Using information from a workload analysis study, hourly standard rates provided in the Coast Guard Standard Rate Instruction (COMDTINST 7310.1D), and the Coast Guard Staffing Standards Manual (COMDTINST M5312.11A); the Coast Guard calculated this total cost to be approximately $5.9 million.

The second cost is associated with collecting fees. Both the General User Fee Statute and 46 U.S.C. 2110 allow this cost to be included in the user fee itself. The Coast Guard is reviewing various collection procedures, and is considering accounting requirements, as well as convenience to the public. Since the Coast Guard does not presently know what collection procedures will be used, a collection cost figure of $300,000 was estimated for the purpose of this proposed rulemaking. This amount would fund eight persons to supplement existing personnel so that each unit having an REC would have a collection clerk. When the collection procedure is chosen, the Coast Guard will adjust the $300,000 estimate to reflect the actual cost of the collection procedure, and will adjust the proposed fees if necessary.

The third cost is for an FBI criminal record check conducted on applicants. Approximately 16,000 FBI criminal record checks are now conducted each year. For each criminal record check, the FBI charges the Coast Guard $17, which results in an annual cost of approximately $300,000.

The Coast Guard presently requires the FBI criminal record check on applicants for original licenses, certificates or registry, or merchant mariner documents. For each of these applicants, the $17 charge would be added to the evaluation fee. In 46 CFR part 12, the term "original merchant mariner document" means the first document issued to an individual. An individual already holding an original merchant mariner document would not be charged for an FBI criminal record check when applying for any merchant mariner document subsequent to the original. However, a holder of a merchant mariner document applying for a license will be charged for the required FBI check for the evaluation of an original license.

Fee categories and amounts. The Coast Guard developed the proposed fee amounts using personnel and cost data for each phase of the licensing and documentation activities. The issuance fee for all activities was essentially the same, but examination and evaluation fees for the activities varied substantially. The Coast Guard, therefore, divided the licensing activities into three groups and the certificate of registry and documentation activities into two groups each so that fees could be set for groups of activities based on similarities of costs in each phase.

For the issuance phase, the actual preparation of the document involved similar amounts of time and the cost of this phase was practically identical for all licenses, certificates of registry, and merchant mariner documents. The issuance fee, therefore, is the same for all categories of licenses, certificates of registry, and merchant mariner documents. The original calculated costs were rounded down to $35 to reduce confusion and for administrative simplicity.

License fees (part 10). The Coast Guard proposes fees for upper level and lower level license categories and for Radio Officers. The Coast Guard is defining the terms "upper level" and "lower level" in this proposed rule as follows:

Upper level means a category of deck and engineer licenses established for assessment of fees. Upper level licenses are those licenses for which the requirements are listed in §§ 10.404 to 10.407 of subpart D, and §§ 10.510, 10.512, 10.514 and 10.516 of subpart E of 46 CFR part 10. In general, these include all ocean or near coastal deck and engineer licenses for inspected vessels over 1600 gross tons.

Lower level means a category of deck and engineer licenses established for assessment of fees. Lower level licenses are all licenses, other than those defined as upper level, for which the requirements are listed in subparts D, E and G of 46 CFR part 10. These will include original issues or upgrades for all other licenses found in 46 CFR part 10, except Radio Officers. This category also includes First Class Pilots.

The Coast Guard is proposing separate fees for a Radio Officer license. There is no requirement for a Coast Guard examination for this license, so there would be no examination fee. The evaluation fee is lower than the other two license categories because there are no service requirements to review, and part of the evaluation is conducted by the Federal Communications Commission (FCC) prior to submitting an application with the Coast Guard. Applicants for the Radio Officer license are required to present a current first or second class radiotelegraph operator license issued by the FCC. The FCC license is accepted without further evaluation by the Coast Guard. The issuance fee for a Radio Officer license, however, is the same as for other marine licenses.

The Coast Guard proposes identical fees for license renewals and for endorsements added to an existing license. Average costs for conducting evaluation, examination, and issuance phases were similar for renewal and license endorsement activities. The Coast Guard proposes that the same evaluation, examination, and issuance fees be assessed for all license endorsement applications. If a single application requests more than one endorsement, the Coast Guard will process the application as a single activity.

Certificates of registry (part 10). The Coast Guard has divided the certificates of registry (listed in 46 CFR part 10) into two groups, based on differences in the evaluation required. The evaluation of an applicant for Chief Purser, Purser, and Senior Assistant Purser is similar to the evaluation required for a lower level license applicant. Junior Assistant Purser, Medical Doctor, and Professional Nurse applicants must produce documents required under § 10.807 of 46 CFR part 10 and fill out an application form. The evaluation of these applications is minimal and the Coast Guard proposes to charge no fee for these applicants. However, when an FBI check is required, the Coast Guard will assess a $17 fee.

Merchant mariner documents (part 12). The Coast Guard proposes no fee for evaluation or for examination for a merchant mariner document not endorsed with a qualified rating. There is minimal processing of the application and no examination requirement prior to issuance of the document. However, when an FBI check is required, the Coast Guard will assess a $17 fee.

The Coast Guard is proposing a fee of $60 for evaluation and $40 for examination for a merchant mariner document endorsed with a qualified rating. The Coast Guard is defining the term "qualified rating" as any category of Able Seaman, Qualified Member of the Engine Department, Lifeboatman, or Tankerman endorsement on a merchant mariner document. Requirements for the qualified rating endorsements are specified in §§ 12.05, 12.07, 12.10, 12.15, 12.17 or 12.20 of part 12. The Coast Guard proposes that the same evaluation, examination, and issuance fees be assessed for all qualified rating endorsement applications. If a single application requests more than one endorsement, the Coast Guard will process the application as a single activity.

Section by Section Analysis

46 CFR part 10

The Coast Guard proposes to update the authority citation and include statutes related to user fees (i.e., 14 U.S.C. 664, 31 U.S.C. 9701, 46 U.S.C. 2110) and a statute (i.e., 46 U.S.C. 7501) which provides authority relating to issuing a duplicate license or certificate of registry.

Section 10.103—The Coast Guard proposes definitions for the terms "evaluation", "upper level" and "lower level."

Section 10.109—Proposed user fees for licensing and certification activities.

Section 10.110—This section is reserved for payment procedures which will provide instructions on how fees are to be paid.

Section 10.111—This section establishes penalties for failure to pay fees.

Section 10.205, § 10.207 and § 10.209—These sections are revised to include a cross-reference to required fees listed in § 10.109.

Section 10.217—The Coast Guard revises this section to establish a requirement for assessing additional examination fees when an applicant repeats the examination phase.

Section 10.219—A fee for reissuance of a license or certificate of registry is referenced. Paragraph (b) is also added to conform with a statute allowing free issuance of these documents if loss is due to shipwreck or other casualty. This section applies the same criteria as 46 CFR 12.02-23 for consistency between 46 CFR parts 10 and 12.

46 CFR part 12

The Coast Guard proposes to revise the authority citation to include statutes related to user fees (i.e., 14 U.S.C. 664, 31 U.S.C. 9701, 46 U.S.C. 2110) and a statute (i.e., 46 U.S.C. 7501) which provides authority relating to issuing a duplicate merchant mariner document.

Section 12.01-6—The Coast Guard proposes definitions for the terms "evaluation", "original document", and "qualified rating."

Section 12.02-18—Proposed user fees for merchant mariner document activities. There is a $10 fee assessed in 33 CFR subpart 1.25 for a duplicate continuous discharge book or copies of certificates of discharge. The Coast Guard proposes to move this fee from 33 CFR subpart 1.25 to this section, so that all fees for merchant mariner document services will be contained in part 12.

Section 12.02-18—The Coast Guard also proposes to include penalties for failure to pay fees.

Section 12.02-23—This section was amended to reference fees in § 12.02-18 and to delete outdated sections and references to 33 CFR subpart 1.25.

33 CFR Subpart 1.25—The Coast Guard proposes to make conforming amendments to 33 CFR subpart 1.25 and move appropriate merchant mariner documentation fees to 46 CFR 12.02-18.

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Regulatory Evaluation

The Act requires the Coast Guard to collect user fees for commercial vessel services provided under subtitle II of title 46 United States Code. These services include: Marine licensing and merchant mariner documentation, vessel documentation, commercial vessel inspections, and vessel plan review and equipment approval. Because these regulations may impact the same individuals or companies, it is necessary to briefly examine the total cost of these regulations combined. Although precise final cost impacts await further study, the total cost of direct user fees under Subtitle II is estimated to be less than $45 million on an annual basis. The merchant marine licensing and merchant mariner documentation regulation represents only $6 million out of the maximum estimate of $45 million. This is well below the $100 million threshold that would make this a major regulation under Executive Order 12291.

Even though not major, this rulemaking is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979) and a draft Regulatory Evaluation has been prepared. This draft is available in the docket for inspection or copying where indicated under "ADDRESSES." The evaluation focused on the annualized cost of the user fees and compared them to typical salaries of merchant mariners. It also looked at the proposed user fees and compared them to other types of professional license fees. The evaluation concluded that the financial impact on the public, and individuals subject to these direct user fees, would be minimal.

A cost-benefit analysis was not prepared since this regulatory proposal is a deficit-reduction measure of the Act. Benefits to the public affected by this proposal are already captured by the issuance of the marine license, certificate of registry, or merchant mariner document which is currently provided free of charge by the Coast Guard. As such, there will be no additional benefits to the segment of public affected by this proposal. However, the regulatory proposal will have an impact on many individuals since any fee represents an impact, no matter how small.

The cost of the regulations to the individual merchant mariner varies according to the type of license or service being requested. Since licenses are renewed every five years, to estimate the annual cost to an individual the total fee amount for obtaining the license is divided by five. For example, the proposed total fee for obtaining an original upper level license is $347. If an upper level license holder held the new license for 5 years, the annualized cost to that person would be approximately $70. A proposed renewal fee for this license is only $135, so the annualized cost of a renewed license is $27.

The U.S. Maritime Administration provided typical salaries to the Coast Guard. Persons having an upper level license and employed in the position of third assistant engineer have a monthly base wage of $3,283 with overtime of $2,577 a month. The third mate monthly wages are $3,105 with overtime of $2,437. In general persons who are employed in higher grade license positions (e.g., chief mate, chief engineer, master, etc.) earn more than a person with a third assistant engineer or third mate license. The annual user fees stated above represent an insignificant amount compared to the typical salaries of merchant marine officers.

For merchant mariner documents, the fee for obtaining a document endorsed as Able Seaman (example of highest fee item in documentation) is $152. Currently, renewal of this document is not required. However, under the Oil Pollution Act of 1990, both existing and new merchant mariner documents will be renewed every five years. A merchant mariner may seek an additional endorsement within a few years which would also require payment of fees. If spread out over a five year period, the annualized cost would be approximately $30. The typical salary of an Able Seaman ranges from $1,403 (the median monthly wages of an Able Seaman on a U.S. flag deep sea tanker reported by the Bureau of Labor Statistics) to $1,589 base monthly wages with $1,232 in overtime. On an annualized basis, the costs to the average employed seaman should represent significantly less than one day's wages. For an active merchant mariner, this regulation will represent a small cost.

In summary, the Coast Guard's position is that the impact of these proposed regulations on the general public will be imperceptible and the impact on maritime industries of the U.S. will also be small. The impact on individual merchant mariners who are active in their trade should be minimal, based on the information collected. However, comprehensive data was not available for certain categories of licensed mariners, such as small passenger vessel operators. The Coast Guard invites public comment or data relating to the impact of the proposed fees on small passenger vessel operators or for any other category of license holder. The Coast Guard's position is that the proposed user fees will not have a significant impact on inflation, or any one industry, geographic region, or international trade. On the other hand, there are people who have no intention of returning to sea who retain their license or merchant mariner document for convenience or other purposes. As a consequence, some of these individuals may well choose not to renew their licenses or documents. This will benefit the Coast Guard by removing these persons from our records of active mariners; saving record keeping costs and providing a more accurate indication of available merchant mariner reserves.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no additional collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Existing requirements are covered under Office of Management and Budget control numbers OMB 2115-0514 and OMB 2115-0111.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Section 2.B.2.1 of that instruction excludes "administrative actions and procedural regulations and policies which clearly do not have any environmental impacts." A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Freedom of information, Penalties.

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 1 and 46 CFR parts 10 and 12 as follows:

Title 33—[Amended]

Subchapter A—General

PART 1—GENERAL PROVISIONS

1. The authority citation for subpart 1.25 continues to read as follows:

Authority: Sec. 3, 80 Stat. 238, as amended; secs. 632, 638, 83 Stat. 545; sec. 301, 85 Stat. 290; 5 U.S.C. 552; 14 U.S.C. 632, 633; Department of Transportation Order 1100.1 Mar. 31, 1967; 49 CFR 1.4(a)(2).

2. The heading of subpart 1.25 is revised to read as follows:

Subpart 1.25—Fees and Charges for Certain Records and Services

§ 1.25-40 [Amended]

3. In § 1.25-40 paragraph (b) is removed and reserved.

4. Table 1.25-40(b) is removed.

Title 46—[Amended]

Subchapter B—Merchant Marine Officers and Seamen

PART 10—LICENSING OF MARITIME PERSONNEL

5. The authority citation for part 10 is revised to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2103, 2110, 2113, 7101, 7106, 7701, 8906; 49 CFR 1.46, 1.46; section 10.107 also issued under the authority of 44 U.S.C. 3507.

6. Section 10.103 is amended by adding the following definitions in alphabetical order:

§ 10.103 Definitions of terms used in this part.

* * * * *

Evaluation means processing an application, from the point of receipt to approval or rejection of the application, including review of all documents and records submitted with an application as well as those obtained from public records and databases.

* * * * *

Lower level means a category of deck and engineer licenses established for assessment of fees. Lower level licenses are all licenses, other than those defined as upper level, for which the requirements are listed in subparts D, E and G of this part.

* * * * *

Upper level means a category of deck and engineer licenses established for assessment of fees. Upper level licenses are those licenses for which the requirements are listed in §§ 10.404 to 10.407 of subpart D of this part and §§ 10.510, 10.512, 10.514 and 10.516 of subpart E of this part.

* * * * *

7. Section 10.109 is added to read as follows:

§ 10.109 Fees.

(a) The following fees are required for license and registration activities in this part:

(b) For licenses. (1) Upper level:

(i) For evaluation for an original license, $57.

(ii) For evaluation for a license other than an original, including a raise in grade of a license, $70.

(iii) For administration of an examination, including allowable retests, $225.

(iv) For administration of a limited examination required under subpart D of this part, including allowable retests, $55.

(v) For issuance of a license, $35.

(2) Lower level:

(i) For evaluation for an original license, $62.

(ii) For evaluation for a license other than an original, including a raise in grade of a license, $65.

(iii) For administration of an examination, including allowable retests, $80.

(iv) For administration of a limited examination required under subpart D of this part, including allowable retests, $55.

(v) For issuance of a license, $35.

(3) Radio Officer:

(i) For evaluation for an original license, $62.

(ii) For evaluation for a license other than an original license, $45.

(iii) For issuance of a license, $35.

(c) For endorsements subsequent to the issuance of the license:

(1) For evaluation for single or multiple endorsements, $45.

(2) For administration of examinations, including allowable retests, $55.

(3) For issuance of single or multiple endorsements to an existing license, $35.

(d) For renewal of a license:

(1) For evaluation for renewal of a license, $45.

(2) For administration of an open-book exercise if required under § 10.209 of this part, $55.

(3) For issuance of a renewed license, $35.

(e) For Certificates of Registry:

(1) For Chief Purser, Purser, and Senior Assistant Purser:

(i) For evaluation of an unlicensed applicant for a certificate of registry, $62.

(ii) For evaluation of an applicant who holds a license or certificate of registry issued under this part, $45.

(iii) For issuance of a certificate of registry, $35.

(2) For Junior Assistant Purser, Medical Doctor, and Professional Nurse:

(i) For evaluation of an unlicensed applicant for a certificate of registry, $17.

(ii) For evaluation of an applicant who holds a license or certificate of registry issued under this part, no fee.

(iii) For issuance of a certificate of registry, $35.

(f) For reissue of a license or certificate of registry issued in this part where a fee is required in § 10.219, $35.

(g) For endorsements to existing license, a raise in grade of a license, an additional license, or certificate of registry where further evaluations are not required, no evaluation fee.

(h) For endorsements to existing license, a raise in grade of a license, or an additional license where further examinations are not required, no examination fee.

8. Section 10.111 is added to read as follows:

§ 10.111 Penalty for failure to pay fees.

(a) A person that violates this subpart by failing to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

(b) The Coast Guard may assess additional charges to a person to recover collection and enforcement costs associated with delinquent payments of or failure to pay a fee. Coast Guard licensing services may also be withheld pending payment of outstanding fees.

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9. Section 10.205 is amended by revising paragraph (a) to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

(a) *General.* The applicant for an original license or certificate of registry shall present satisfactory documentary evidence of eligibility in respect to the requirements of this section. All applicants shall make written application on a Coast Guard furnished form and submit the evaluation fee set out in § 10.109.

* * * * *

10. Section 10.207 is amended by revising paragraph (a) to read as follows:

§ 10.207 Requirements for raise of grade of license.

(a) *General.* Before any person is issued a raise of grade of license, the applicant shall present satisfactory documentary evidence of eligibility. All applicants shall make written application on a Coast Guard furnished form and submit the evaluation fee set out in § 10.109.

* * * * *

11. Section 10.209 is amended by revising paragraph (a) to read as follows:

§ 10.209 Requirements for renewal of license.

(a) *General.* Except as provided in paragraph (g) of this section, applicants for renewal of licenses shall establish that they possess all of the qualifications necessary before they are issued a renewal of license. All applications must be on a Coast Guard furnished form, and accompanied by the evaluation fee set out in § 10.109. The applicant may appear in person at any Regional Examination Center listed in § 10.107 or may renew the license by mail under paragraph (e)(3) of this section. The applicant must submit the license to be renewed or a photocopy of the license. If requested, the old license will be returned to the applicant.

* * * * *

12. Section 10.217 is amended by revising paragraphs (a) (1) and (2) to read as follows:

§ 10.217 Examination procedures and denial of licenses.

(a)(1) The examinations for all deck and engineer unlimited licenses are administered at periodic intervals. The examination fee in § 10.109 must be paid when the examination is scheduled. If the applicant fails three or more sections of the examination, a complete reexamination must be taken, but may be taken during any of the scheduled exam periods. On the subsequent exam, if the applicant again fails three or more sections, at least three months must lapse before another complete examination is attempted, and a new examination fee will be required. If an applicant fails one or two sections of an examination, he or she may be retested twice on these sections during the next three months. If the applicant does not successfully complete these sections within the three month period, a complete reexamination must be taken after a lapse of at least three months from the date of the last retest, and a new examination fee will be required. The three month retest period may be extended by the OCMI if the examinee presents discharges documenting sea time which prevented the taking of a retest during the three month period. The retest period may not be extended beyond seven months from the initial examination.

(2) The scheduling of all other deck and engineer license examinations will be at the discretion of the OCMI. The examination fee in § 10.109 must be paid when the examination is scheduled. In the event of a failure, the applicant may be retested twice whenever the examination can be rescheduled with the OCMI. The applicant must be examined in all of the unsatisfactory sections of the preceding examination. If the applicant does not successfully complete all parts of the examination during a three month period from the initial test date, then after a lapse of at least two months from the date of the last retest a complete reexamination must be taken, and a new examination fee will be required.

* * * * *

13. Section 10.219 is amended by redesignating the existing text as paragraph (a) and adding new paragraphs (b) and (c) to read as follows:

§ 10.219 Issuance of duplicate license or certificate of registry.

* * * * *

(b) If a person loses a license or certificate of registry by shipwreck or other casualty, a reissue of such license or certificate or registry will be supplied free of charge. The phrase or other casualty as used in this section is interpreted to mean any damage to a ship caused by collision, explosion, tornado, wreck or flooding of the ship, such as a tidal wave or grounding of the ship on a sand bar, or a beaching of the ship on a shore or by fire or other causes in a category with these mentioned.

(c) If a person loses a license or certificate of registry otherwise than by shipwreck or other casualty, and wants a reissue, he or she will be required to pay the appropriate fee set out in § 10.109.

PART 12—CERTIFICATION OF SEAMEN

14. The citation of authority for part 12 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 46 U.S.C. 2110, 7301, 7501, 7701, 8105, 10104; 49 CFR 1.46.

15. The table of contents for part 12 is amended by adding entries for §§ 12.01–6 and 12.02–18 to read as follows:

Subpart 12.01—General

Sec.

* * * * *

12.01–6 Definitions of terms used in this part.

* * * * *

Subpart 12.02—General Requirements for Certification

* * * * *

12.02–18 Fees.

* * * * *

16. Section 12.01–6 is added to read as follows:

§ 12.01–6 Definitions of terms used in this part.

Evaluation means processing an application, from the point of receipt to approval or rejection of the application, including review of all documents and records submitted with an application as well as those obtained from public records and databases.

Original document means the first merchant mariners document issued to any person by the Coast Guard.

Qualified rating means various categories of Able Seaman, Qualified Member of the Engine Department, Lifeboatman, or Tankerman endorsements on merchant mariner documents.

17. Section 12.02–18 is added to read as follows:

§ 12.02–18 Fees.

(a) The following fees are required for merchant mariner document activities in this part:

(1) For evaluation for an original document, (does not apply if applicant holds a license or certificate of registry issued under part 10 of this subchapter), $17.

(2) For evaluation for a merchant mariner document endorsed with a qualified rating:

(i) For an original merchant mariner document, $77.

(ii) For a merchant mariner document other than original, $80.

(3) For administration of examination, $40.

(4) For issuance of a document, $35.

(5) For duplicate of a merchant mariner document issued in this part where a fee is required in § 12.02–23, $35.

(6) For a duplicate continuous discharge book or copies of certificates of discharge, $10.

(b) [Reserved.]

(c) The following apply to persons failing to pay user fees:

(1) A person violating this subpart by failing to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

(2) The Coast Guard may assess additional charges to a person to recover collection and enforcement costs associated with delinquent payments of or failure to pay a fee. Coast Guard documentation services may also be withheld pending payment of outstanding fees.

18. Section 12.02–23 is amended by revising paragraphs (b) and (c) to read as follows:

§ 12.02–23 Issuance of duplicate documents.

* * * * *

(b) If a seaman loses a continuous discharge book, or merchant mariner's document, or certificate of discharge, otherwise than by shipwreck or other casualty, and wants a reissue, he or she will be required to pay for a reissue at an amount equal to the cost of such document or certificate to the Coast Guard as prescribed in § 12.02–18 of this part.

(c) A person entitled to duplicate merchant mariner document or record of sea service may obtain the document by applying at the nearest office of the Officer in Charge, Marine Inspection, by:

(1) Completing the application form provided by the Coast Guard; and

(2) Paying the fee prescribed in § 12.02–18 of this part.

* * * * *

Dated: June 13, 1991.

Martin H. Daniell,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 91–14431 Filed 6–19–91; 8:45 am]

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Part IV

Environmental Protection Agency

Registration and Agreement for TSCA Section 8(e) Compliance Audit Program Modification; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-60015B; FRL-3932-1]

Registration and Agreement for TSCA Section 8(e) Compliance Audit Program Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice, pursuant to sections 15 and 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq., announces the availability of the TSCA section 8(e) reporting guide and modifications to EPA's TSCA Section 8(e) Compliance Audit Program and the Agreement for the TSCA Section 8(e) Compliance Audit Program ("CAP Agreement"). The modifications to the TSCA Section 8(e) Compliance Audit Program and the CAP Agreement include the extension of the registration deadline until July 1, 1991, the addition of provisions for listing of certain types of previously reportable TSCA section 8(e) information now in EPA's possession, and modification of EPA's guidance for reporting information concerning "widespread and previously unsuspected distribution in environmental media" and "emergency incidents of environmental contamination" under TSCA section 8(e).

DATES: The Registration period for the TSCA Section 8(e) Compliance Audit Program closes on July 1, 1991. All persons interested in registering for the TSCA Section 8(e) Compliance Audit Program must request a CAP Agreement and submit a signed CAP Agreement to EPA no later than July 1, 1991.

ADDRESSES: Copies of the modified CAP Agreement and the TSCA section 8(e) reporting guide may be obtained from the TSCA Assistance Information Service, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 1, 1991 (56 FR 4128), EPA announced the opportunity to register for the TSCA Section 8(e) Compliance Audit Program. The TSCA Section 8(e) Compliance Audit Program is a one-time voluntary compliance audit program developed to obtain outstanding TSCA section 8(e) data and foster compliance with the statutory obligations of TSCA section 8(e).

On April 26, 1991 (56 FR 19514), EPA modified the TSCA Section 8(e) Compliance Audit Program and the CAP Agreement. The modifications included extension of the registration and termination dates, the opportunity to petition EPA for a case-by-case extension of the termination date, modifications to the CAP Agreement provisions regarding admission of a violation of TSCA section 8(e) and waiver of right to a hearing, and EPA's development of a TSCA section 8(e) reporting guide.

II. TSCA Section 8(e) Reporting Guide

Since the April 26, 1991 modifications were announced, EPA completed development of the TSCA section 8(e) reporting guide. The guide contains useful reporting and implementation guidance and includes two major indices. The first index, which references approximately 150 section 8(e) "Status Reports," is arranged by toxicologic study type with subheadings related to section 8(e) reporting criteria. The second index is cumulative and is arranged by type of study for all initial submissions received under section 8(e) from January 1, 1977, to October 1, 1990.

There are two major objectives for presenting the guide. First, the guide makes certain information pertaining to section 8(e) reporting more accessible to members of the regulated community and others. Second, the guide provides reference to both general and specific examples of submitted information as well as EPA's comments regarding such submissions. The examples are intended to help persons who are subject to section 8(e) understand better the types of information that should be submitted to EPA under this important mandatory chemical hazard/risk information reporting provision of TSCA.

Most of the guide is presented in a basic question and answer format reflecting primarily the most common questions asked about section 8(e) of TSCA. The guide also contains EPA's comments regarding the TSCA section 8(e)-applicability/reportablity of a number of toxicologic "case studies" provided to the Agency by the Chemical Manufacturers Association (CMA).

Copies of the TSCA section 8(e) reporting guide may be obtained from the TSCA Assistance Information Service, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

III. Modifications to the TSCA Section 8(e) Compliance Audit Program and the CAP Agreement

A. Registration Requirements

The registration deadline/audit commencement date has been extended for approximately two weeks to July 1, 1991. Thus, Units I.B and D of the CAP Agreement have been modified to read as follows:

> B. To register for the TSCA Section 8(e) Compliance Audit Program, the Regulatee must, no later than July 1, 1991, sign and return this CAP Agreement by certified mail-return receipt requested to. . . .
>
> D. The TSCA Section 8(e) Compliance Audit Program shall commence no later than July 1, 1991.

No other modifications to the "Registration Requirements" portion of the CAP Agreement have been made.

B. Terms of Agreement--TSCA Section 8(e) Compliance Audit Program and Civil Penalties Concerning Late Reporters

EPA has received inquiries regarding instances of late reporting of section 8(e) information when such studies or reports were (1) received by the Office of Toxic Substances (OTS) on a "For Your Information" ("FYI") basis and included in the formal OTS "FYI" filing system, or (2) submitted to EPA pursuant to a mandatory reporting obligation under a statute administered by EPA. By late reporting, EPA is referring to information received beyond the 15 working days deadline as set forth in Part IV of EPA's March 16, 1978, "Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk" (43 FR 11110) ("TSCA Section 8(e) Policy Statement"). After evaluation of the issue, EPA has determined that a reduced penalty scheme is appropriate for instances of late reporting of section 8(e) information when the studies or reports were (1) submitted in writing to and received by EPA prior to June 18, 1991, pursuant to a mandatory reporting obligation under TSCA or another EPA-administered statute, or (2) received by OTS on an "FYI" basis and included in the formal OTS "FYI" filing system, prior to June 18, 1991. This approach meets EPA's TSCA Section 8(e) Compliance Audit Program goal of obtaining, in the context of an enforcement initiative, outstanding section 8(e) information. Instead of

resubmitting copies of these types of studies or reports, the information may simply be listed under the TSCA Section 8(e) Compliance Audit Program and identified by cover letter. A $5,000 stipulated civil penalty will be assessed for each study or report listed. Thus, Unit II.B.1.c has been added to the CAP Agreement to read as follows:

> c. Data that would have been reportable under TSCA Section 8(e) when initially obtained by the Regulatee, and that subsequent to the section 8(e) reporting deadline (and before June 18, 1991), were (i) submitted in writing to and received by EPA pursuant to a mandatory reporting requirement under TSCA or another statute administered by EPA, or (ii) received by the Office of Toxic Substances (OTS) on a "For Your Information" ("FYI") basis and included in the formal OTS "FYI" filing system: The Regulatee will list the study or report pursuant to Unit II.B.3 of this CAP Agreement. Only information that meets the requirements of Unit II.B.1.c is eligible for this listing provision.

Unit II.B.3 has been added to the CAP Agreement to read as follows:

> 3. The following provisions shall govern the list required to be submitted under Unit II.B.1.c of this CAP Agreement:
>
> a. For each study or report listed, the listing must comply with the requirements of Unit II.C of this CAP Agreement, must describe the date of the submission and (i) the mandatory reporting requirement of TSCA or another EPA-administered statute under which the study or report was submitted, or (ii) the Office of Toxic Substances "FYI" filing system number for the submission. Within 360 days after submission of the list, EPA may request the Regulatee to submit any of the listed information in order to determine if the Regulatee correctly listed rather than submitted the study or report.
>
> b. The Regulatee agrees to pay the following stipulated civil penalty for information listed under this audit as data that would have been reportable under TSCA Section 8(e) when initially obtained by the Regulatee, and that subsequent to the section 8(e) reporting deadline as specified in Part IV of the TSCA Section 8(e) Policy Statement (and before June 18, 1991), were (i) submitted in writing to and received by EPA pursuant to a mandatory reporting requirement under TSCA or another statute administered by EPA, or (ii) received by the Office of Toxic Substances (OTS) on an "FYI" basis and included in the formal OTS "FYI" filing system: $5,000 per study or report.

C. Additions to the TSCA Section 8(e) Reporting Guide

In response to a written request from the Chemical Manufacturers Association (CMA) for additional guidance on the section 8(e) reportability of certain types of health effects and environmental effects/release information, EPA agreed to perform an expedited review of a limited number of case studies submitted by CMA. The Office of Pesticides and Toxic Substances (OPTS) established a panel of EPA toxicologists, biologists, chemists, medical and public health experts, environmental scientists, TSCA policy staff, and legal and enforcement staff to perform an expedited review of the case studies which were submitted by CMA. EPA reviewed the case studies involving reportability of health effects information, and provides an analysis of the toxicologic significance and TSCA section 8(e)-reportability of the health effects case studies in the TSCA section 8(e) reporting guide described above and referenced in the CAP Agreement.

D. Reporting of Information Referenced in Parts V(b)(1) and V(c) of EPA's Section 8(e) Policy Statement

TSCA section 8(e) requires reporting of information which reasonably supports the conclusion that a chemical substance or mixture presents a substantial risk of injury to the environment. EPA provided guidance on how persons could fulfill their section 8(e) reporting obligations in the TSCA Section 8(e) Policy Statement. However, in reviewing this guidance in connection with the TSCA Section 8(e) Compliance Audit Program, EPA has determined that Part V(b)(1) ("widespread and previously unsuspected distribution in environmental media") and Part V(c) ("emergency incidents of environmental contamination") of the TSCA Section 8(e) Policy Statement need additional clarification and that possible misinterpretation with regard to the guidance in these sections could lead to overreporting under the TSCA Section 8(e) Compliance Audit Program.

Therefore, EPA plans to initiate a review of the reporting of information on widespread environmental distribution and emergency incidents of environmental contamination under TSCA section 8(e) and other Federal statutes in order to determine what information of these types should continue to be considered for submittal under section 8(e). The review may involve discussions with other EPA program offices, EPA Regional offices, other Federal Agencies, State Governments, members of the regulated industry, environmental interest groups, and others. All interested persons will have the opportunity to comment on any proposed revisions to Parts V(b)(1) and V(c) of the TSCA Section 8(e) Policy Statement that result from this review.

In the interim, regulatees auditing their files for reportable environmental risk information under the TSCA Section 8(e) Compliance Audit Program should be guided by the statutory language of section 8(e) and Part V(b)(2) through (b)(5) of EPA's TSCA Section 8(e) Policy Statement. In assessing whether information or studies involving widespread and previous unsuspected environmental distribution, emergency incidents of environmental contamination, or other previously unknown situations involving significant environmental contamination should be submitted under the TSCA Section 8(e) Compliance Audit Program, or under section 8(e) in general, regulatees should make a reasonable judgement whether such information meets the statutory standards of TSCA section 8(e) instead of relying on Parts V(b)(1) or V(c) of the TSCA Section 8(e) Policy Statement. Even though EPA is suspending the applicability of Parts V(b)(1) and V(c) of the TSCA Section 8(e) Policy Statement, persons are still responsible under TSCA section 8(e) to report information that reasonably supports a conclusion of substantial risk of injury to the environment. This is a continuing statutory obligation. Thus, to reflect this change, Unit II.B.1 of the CAP Agreement has been modified to read as follows:

> 1. In conducting the TSCA Section 8(e) Compliance Audit Program, the Regulatee shall follow the statutory language of TSCA section 8(e) and EPA's guidance on section 8(e) in the March 16, 1978, "Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk" (43 FR 11110) ("TSCA Section 8(e) Policy Statement"), with the exception of Parts V(b)(1) and V(c) of the TSCA Section 8(e) Policy Statement, to determine whether the reviewed study or report is: . . . .

No other modifications to the "Terms of Agreement" provisions of the CAP Agreement have been made.

IV. Conclusion

EPA believes that the actions described above emphasize the Agency's strong commitment to making

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the TSCA Section 8(e) Compliance Audit Program a successful initiative. EPA believes that providing the section 8(e) reporting guide as well as the results of the Agency's review of several toxicologic case studies will enhance understanding of the TSCA section 8(e) program, and assist the regulated community as they participate in the TSCA Section 8(e) Compliance Audit Program. Any further information regarding this Compliance Audit Program or the CAP Agreement may be obtained from the contact person noted above.

Dated: June 18, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-14833 Filed 6-19-91; 8:45 am]

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Part V

The President

Executive Order 12766—European Bank for Reconstruction and Development and European Space Agency

Memorandum of June 10, 1991—Delegation of Authority Regarding Report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on Humanitarian and Development Assistance Priorities of the Cambodian People

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Presidential Documents

Title 3—

The President

Executive Order 12786 of June 18, 1991

European Bank for Reconstruction and Development and European Space Agency

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Organizations Immunities Act (22 U.S.C. 288), Reorganization Plan No. 4 of 1965 (5 U.S.C. App.), the European Bank for Reconstruction and Development Act, as incorporated in section 562 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513, 104 Stat. 1979, 2034) (the "Act"), and Executive Order No. 11760, and in order to facilitate U.S. participation in the European Bank for Reconstruction and Development and the European Space Agency, it is hereby ordered as follows:

Section 1. The European Bank for Reconstruction and Development, in which the United States participates pursuant to the Act and the Agreement Establishing the European Bank for Reconstruction and Development (29 International Legal Materials 1077 (1990)) (the "Agreement"), is hereby designated a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges and immunities which such organization has acquired or may acquire by treaty, international agreement, or congressional action. This designation shall not affect in any way the applicability of Chapter VIII of the Agreement.

Sec. 2. Executive Order No. 11269, as amended, is further amended by deleting "and Multilateral Investment Guarantee Agency" and inserting in lieu thereof "Multilateral Investment Guarantee Agency, and European Bank for Reconstruction and Development" in sections 2(c), 3(d), and 7, respectively.

Sec. 3. Executive Order No. 11760 of January 11, 1974, is amended by striking out "European Space Research Organization" and inserting in lieu thereof "European Space Agency." Substituting the European Space Agency for the European Space Research Organization is not intended to abridge in any respect privileges, exemptions, or immunities that the European Space Agency may have acquired or may acquire by treaty, international agreement, or congressional action.

Sec. 4. Section 3 of this order shall be deemed effective as of November 22, 1983.

THE WHITE HOUSE,
June 18, 1991.

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Presidential Documents

Memorandum of June 10, 1991

Delegation of Authority Regarding Report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on Humanitarian and Development Assistance Priorities of the Cambodian People

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State the functions vested in me by section 562A(d)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513), relating to the submission of a report to the Congress regarding humanitarian and development assistance priorities of the Cambodian people. The authority delegated by this memorandum may be further redelegated within the Department of State.

You are authorized and directed to publish this memorandum in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, June 10, 1991.

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Filed 6–18–91; 4:50 pm]
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H.R. 232/Pub. L. 102–54

To amend title 38, United States Code, with respect to veterans programs for housing and memorial affairs, and for other purposes. (June 13, 1991; 105 Stat. 267; 23 pages) Price: $1.00

H.R. 2251/Pub. L. 102–55

Dire Emergency Supplemental Appropriations From Contributions of Foreign Governments And/Or Interest for Humanitarian Assistance to Refugees and Displaced Persons in and Around Iraq as a Result of the Recent Invasion of Kuwait and for Peacekeeping Activities and Other Urgent Needs Act of 1991. (June 13, 1991; 105 Stat. 290; 6 pages) Price: $1.00

H.J. Res. 219/Pub. L. 102–56

To designate the week beginning June 9, 1991, as "National Scleroderma Awareness Week". (June 13, 1991; 105 Stat. 296; 1 page) Price: $1.00

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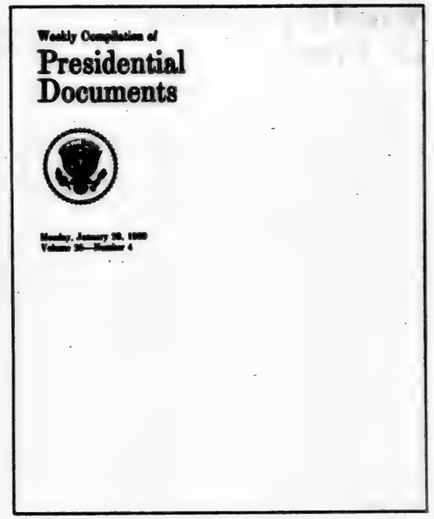
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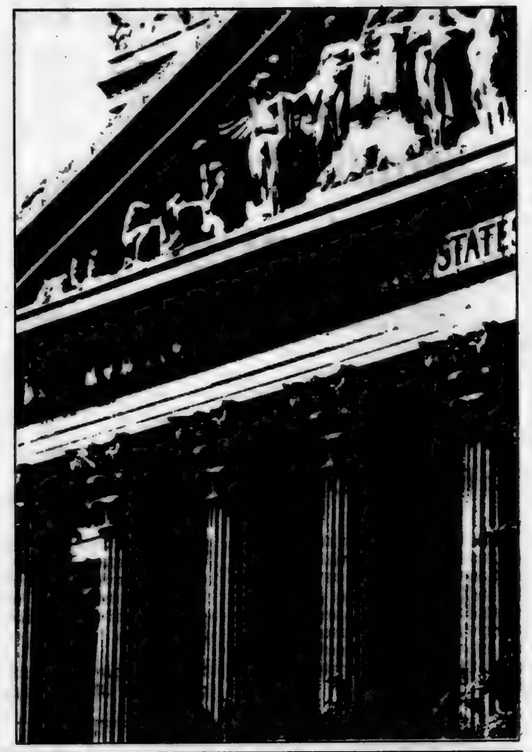
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Presidential Documents

Title 3—

The President

Presidential Determination No. 91-40 of June 5, 1991

Presidential Determination Under Subsection 2(b)(2) of the Export-Import Bank Act of 1945, as Amended—Bulgaria

Memorandum for the Secretary of State

Pursuant to subsection 2(b)(2) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(2)), I hereby determine that it is in the national interest for the Export-Import Bank of the United States to guarantee, insure, extend credit, and participate in the extension of credit in connection with the purchase or lease of any product by, for use in, or for sale or lease to Bulgaria.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, June 5, 1991.

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Rules and Regulations

Federal Register
Vol. 56, No. 120
Friday, June 21, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1930 and 1944

RIN 0575-AA62

Farm Labor Housing Loan and Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Farm Labor Housing Loan and Grant Regulations. This action is taken to provide the opportunity for retired or disabled farm laborers to occupy housing financed under the Farm Labor Housing program if not needed by active farm laborers and to remove criteria related to type of employer from the definitions of farm labor. The intended effect is to conform the regulations to authorizing legislation for the farm labor housing programs (section 305 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) and section 1043 of the Omnibus McKinney Homeless Assistance Act of 1988 (Pub. L. 100-628)).

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Sanders, Senior Loan Officer, or John H. Pentecost, Chief, Special Authorities Branch, Multi-family Housing Processing Division, FmHA, USDA, Washington, DC 20250, telephone (202) 382-1606 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "non major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions, or significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Background/Discussion

On April 13, 1988, Farmers Home Administration published a proposed rule (54 FR 14822) to amend FmHA Instructions 1944-D, "Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations," and 1930-C, "Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients." The proposed rule invited comments for 60 days ending June 12, 1988. The purpose of the revisions was to bring the regulations into conformance with revisions to authorizing legislation for the farm labor housing programs (section 305 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) and Section 1043 of the Omnibus McKinney Homeless Assistance Act of 1988 (Pub. L. 100-628)).

The intended effect of the revisions is to provide the opportunity for retired or disabled farm laborers to occupy housing financed under the Farm Labor Housing program when not needed by active farm laborers and to remove criteria related to type of employer from the definitions of farm labor. In addition, the program regulations need to establish a process for use of farm labor housing units by non-farm laborers when demand by farm laborers diminishes to the point of jeopardizing the viability of the facility.

Discussion of Comments

Eleven letters were received from interested parties in response to the Agency's request for specific comments on the policies proposed, especially concerning the definitions of "disabled" and "retired." One respondent did not address the issues of the proposed rule and was not considered. Two respondents were late, however, their comments were pertinent and are considered in the final rule. Overall, the comments were supportive of the Agency's policies and direction, and where there were recommendations for changes, the writers made very constructive contributions.

Based on the comments, FmHA has revised the proposed rule in part, most critically in terms of age of retirement, documentation for "disabled" farm laborer eligibility, and definition of "farm laborer." The following is a discussion of the comments by general topic areas and such comments' impact on the proposed rule:

1. Definition of "Retired" Farm Laborer (Age and Activities)

Seven comments were received on using 55 years of age rather than 62. Those in favor of a lower "retired" age for farm laborers applauded the Agency's recognition of the physical rigors of farm work. Those opposed indicated that sawmill workers, miners, steelworkers and other physically demanding careers probably had as difficult and demanding jobs as farm laborers. There was also one comment by a current manager of farm labor facilities about the problem raised by a retired, 55 year-old farm laborer continuing to work outside of farm labor while still being eligible to live in farm labor housing. The point was also made that farm laborers generally worked in some less physically stressful aspect of farm work as they became older.

The Agency considers the primary intent of the farm labor housing program is to serve active farm laborers. The legislation clearly indicates this priority. The Agency is aware that persons aged 55 to 62 may still be physically able to perform some aspect of farm labor. However, occupancy by retired farm laborers is predicated on a diminished need by active farm laborers. The Agency believes the retirement age of 55 to be an age generally recognized as the threshold age to elderly status. Age 55 is recognized as being eligible for such programs as Meals on Wheels. For Native Americans age 55 is considered elderly by the Bureau of Indian Affairs. The Agency will use age 55 as the minimum age for consideration of eligibility as a "retired" farm laborer.

2. Definition of "Disabled" Farm Laborer

Seven of the ten respondents made comments on the definition of a

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"disabled farm laborer." Three supported the definition as it was presented. Two requested greater specificity in defining a farm laborer as "substantially" disabled to perform farm work. Two requested that the Agency remove the time period to demonstrate that one was a farm laborer prior to becoming disabled in order to be considered a "disabled" farm laborer.

While the need for greater specificity may be desired, most comments supported the overall thrust of this definition. The Agency interprets the legislative mandate to maintain more flexibility and considers the definition of disabled to encompass farm labor. Therefore, disabled farm laborer is not defined under the same criteria as a "disabled" person as used under the section 515, Rural Rental Housing Procedures. Accordingly, the Agency has kept this aspect of the definition as it was proposed; should experience indicate abuse or its impracticality, the Agency has the option to revise it in the future to be more specific.

The other point raised in the responses was that a disabled farm laborer should be treated differently than a retired farm laborer and not have to meet as rigid a time period as a farm laborer in order to be eligible. The majority of the comments on this point supported this view. Accordingly, the Agency has revised the regulations to require that a disabled farm laborer need only be an eligible "domestic farm laborer" when disabled to qualify as a "disabled farm laborer."

3. Documentation of Eligibility for "Disabled" or "Retired" Farm Laborer

Three commenters asked for more flexibility when it came to documentation of experience as a farm laborer when going back more than a couple of years. Since we have accepted the comment concerning "disabled farm laborers" needing only to be eligible as domestic farm laborers at the time of becoming disabled, this now applies to only retired farm laborers. The Agency agrees that self-certification and affidavits may be used as a last resort. The final rule has been revised accordingly.

4. Definition of "Farm Laborer"

Four comments were received raising issue with FmHA's use of the word "employed" in the definition of "domestic farm laborer." One of the principle legislative mandates this rule implements is the removal of the requirement that a farm laborer be employed by a "farmer." The law and the regulations recognize that changes in the agricultural workplace have created a variety of employment opportunities and mechanisms for those persons doing farm labor. In lieu of defining the variety of employment relationships, the proposed regulation stipulated that a domestic farm laborer be an "employed person (not self-employed)." The intent is that the applicant for housing be a person that earns his or her income from farm labor in an employer-employee relationship, not that such person be specifically employed at the time of application. The applicant's work records should reflect such farm labor employment over the prior 12 months, whether employed at the time of application or not, that would support a finding of his or her eligibility as a domestic farm laborer. This has been clarified in the final rule.

Additional comment was made by two of the four respondents that tests for such employment should be individually determined in the absence of employment and income documentation with W-2 forms. The Agency was advised that this is especially important where the local agriculture employment practice is to use a contractual or share-crop relationship rather than a conventional employment relationship and where the documentation is with an IRS Form 1099, "Report of Contractual Wage Paid." In such cases, the actual work must be the same as if employed by the farmer, though the payment and documentation for such payment may be different. The procedure in its final form has been clarified for this area and requires application of IRS's Common Law rules regarding self-employment.

There was no disagreement with continuing to prohibit "self-employed" persons who do farm work from being eligible for the benefits under the labor housing program. Again, distinguishing between contract farm laborers and self-employed farm laborers will require analysis of local employment practices for farm work.

Further comment was made on the limited range of activities under defined "farm labor." These have been expanded slightly to address those concerns and to include the broadest spectrum possible of those persons involved in "the primary production of agricultural or aquacultural commodities or the handling of such commodities in the unprocessed stage," as stated in the program's authorizing legislation. The Agency has searched for an overall definition of agricultural commodities or products and has failed to find one. Therefore, rather than limiting farm labor by products, types of operations, etc., FmHA has determined to keep the broadest latitude by keeping the term "farm labor" undefined any further than the legislation. Questions on specific products and types of operations will continue to be handled on a case-by-case basis.

One respondent recommended defining "commercial" as used in the activities not considered farm labor. Rather than attempting to define commercial, the Agency added "processing." Similar to the intent to enable persons engaged in farm labor to be eligible regardless of employment, those engaged in processing would be ineligible regardless of employment.

5. Definition of "Substantial Portion of Income" for Farm Labor Eligibility

Seven respondents made recommendations for this area. The Agency did not solicit specific comment on this area nor has it revised the procedure which would open the door for the changes proposed by the respondents. However, it is obviously causing difficulties for the program and needs to be addressed. The comments will be taken under advisement for the regulation revision proposed for this program in the October 1, 1990, Federal Register (55 FR 39982).

6. Priorities Established for Initial Occupancy

Two respondents asked that the final rule reflect equal priority for occupancy between active, retired, or disabled. Another asked that priority in all three areas be established based on percent of farm labor income to total income immediately prior to application for tenancy. Another asked that a high percent retired farm laborer should receive preference over a low percent active farm laborer.

Basically, while these comments have some merit, the law itself establishes the order of priority for occupancy of vacant units.

A farm laborer household becomes eligible for FmHA farm labor housing on the basis of one or more of the adult household members being an eligible active farm laborer or a retired or disabled farm laborer. Once a household has been determined eligible, priority for occupancy or filling of vacancies will be based on the priority order established in the final rule. Only in the case of active farm laborers is further priority established based on percent of farm labor income to total household income. The only preferences established for retired or disabled farm laborers is based on where such person worked, with preference established in law for those active in the local farm market area.

Income documentation is difficult even for active farm laborers and the respondents to the proposed rule cited additional verification problems for income and farm worker eligibility for retired or disabled farm laborers. Therefore, the Agency sees little gain (and much trouble for managers) in requiring further prioritization of retired and disabled farm laborers by percent of household income from farm labor prior to their retiring or becoming disabled.

Once the category of eligibility (active, retired, disabled) is established, the rental benefits and subsidies are based on the total household income. In addition, such income may not exceed the moderate income levels of the community.

A retired or disabled farm laborer who currently resides in the facility will not be displaced in favor of an active farm laborer.

7. Process for Permitting Use of Units by Section 515 Eligible Tenants in Lieu of Farm Laborers

Three commenters called for greater specificity in this area in terms of who would determine that a market no longer exists for housing for farm laborers and what documentation would be acceptable. The Agency agrees that in this case greater control is needed to protect the few units nationally available for farm laborers and has modified the procedures to require National Office concurrence and to mandate specific information to be provided by the owner of the labor housing facility to document the lack of long-term need by farm laborers, either active, retired or disabled. Such a study would also define the farm market area.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an environmental impact statement is not required.

This program/activity is listed in the Catalog of Federal Domestic Assistance under Numbers 10.405, Farm Labor Housing Loans and Grants, and 10.427, Rural Rental Assistance Payments (Rental Assistance), and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

The Administrator has determined that this final action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements. The action will only affect a small number of rural communities.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, and Reporting requirements.

7 CFR Part 1944

Farm labor housing, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, and Rural housing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit B of Subpart C is amended by revising paragraphs VI B 1 g, VI B 5 b, and paragraph VII C 1; and adding paragraphs VI B 1 n, VI C 3 g, VI D 2 f, and VI F 5 to read as follows:

Exhibit B—Multiple Housing Management Handbook

* * * * *

VI. Renting Procedure

* * * * *

B. * * *

1. * * *

g. In LH projects designed and operated either for year-round or seasonal occupancy, eligibility is established in subpart D of part 1944 of this chapter.

* * * * *

n. A domestic farm laborer may continue occupancy of an LH project after retirement (having reached age 55) or after becoming disabled (determined to have an impairment which is expected to be of long-continued and indefinite duration and substantially impedes the person's ability to earn a livelihood from farm labor (as certified by a licensed physician)).

* * * * *

5. * * *

b. Tenants in LH projects who no longer meet the farm labor occupation requirements, and who are neither retired nor disabled domestic farm laborers, are considered to be "formerly eligible tenants" as long as a need for housing for domestic farm laborers exist in the project's farm market area

* * * * *

C. * * *

3. * * *

g. In LH projects, lists should be maintained in accordance with the priorities of occupancy established by § 1944.154 of subpart D of part 1944 of this chapter.

* * * * *

D. * * *

2. * * *

f. Retired or disabled domestic farm labor applicants must meet the definition requirements of § 1944.153 of subpart D of part 1944 of this chapter.

* * * * *

F. * * *

5. In LH projects, paragraphs VI F 1 and 2 of this exhibit do not apply. The priorities for tenant's occupancy established by § 1944.154(a) of subpart D of part 1944 of this chapter and the processes mandated by paragraphs VI F 3 and 4 of this exhibit will be used. However, when FmHA concurs with the LH borrower's determination that there is a diminished need for housing for domestic farm laborers in accordance with § 1944.154(b), all the provisions of this paragraph are applicable to initial occupancy by applicants eligible only under the RRH program.

* * * * *

VII. Verification and Certification of Tenant Income and/or Employment:

* * * * *

G. * * *

1. Verification of income is required for all occupants of LH projects. When tenants do not have easily verifiable income, the borrower may project monthly income expected to be received by the tenant during occupancy for determining eligibility and subsidy assistance. Self-certifications and affidavits may be accepted. Records from Migrant Health Centers or other public or private farmworker support services are also acceptable.

* * * * *

PART 1944—HOUSING

3. The authority citation for part 1944 continues to read as follows:

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Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

4. Section 1944.152 is revised to read as follows:

§ 1944.152 Objective.

The basic objective of the Farmers Home Administration (FmHA) in making domestic Farm Labor Housing (LH) loans is to provide decent, safe, and sanitary housing for domestic farm labor to be located in areas where a need for farm labor exists and in making LH grants where there is a pressing need for such facilities in the area for farm laborers and there is a reasonable doubt that the housing can be provided without the grant assistance.

5. Section 1944.153 is revised to read as follows:

§ 1944.153 Definitions.

Applicant. The applicant for or the recipient of an LH loan or grant.

Association of farmers. Two or more farmers acting as a single legal entity. Association members may include the individual members of farming partnerships or corporations.

Board and directors. Includes the governing body and members of the governing body of an organization.

Construct or repair. To construct new structures or facilities, or to acquire, relocate, or repair or improve existing structures or facilities.

Development cost. Includes the cost of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities, buying household furnishings, and purchasing or improving the necessary land. It includes necessary architectural, engineering, legal fees and charges, and other appropriate technical and professional fees and charges. It does not include fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans. For all types of LH applicants, other than the individual farmowners, family farm corporation and partnerships, and associations of farmers, the development cost may include initial operating expenses of up to 2 percent of the permitted costs.

Domestic farm laborer. A person who receives a "substantial portion of his or her income" performing farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence. This definition may include the immediate family members residing with such a person. (See the definition for Self-employed in this section and/or exhibit L of this subpart which is available in any FmHA office.)

Familial status. (See subpart E of part 1944 of this chapter or subpart C of part 1930 of this chapter.)

Family farm corporation or partnership. A private corporation or partnership in which at least 90 percent of the stock or interest is owned and controlled by members of the same family. These family members must be related by blood or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership must be:

(1) Legally organized and authorized to own and operate a farm business within the State,

(2) Legally able to carry out the purposes of the loan, and

(3) Prohibited from the sale or transfer of 90 percent of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

Farm labor. For purposes of this subpart, farm labor includes services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity.

Farm Labor Contractor. Any person—other than an agriculture employer, an agricultural association, or an employee of an agriculture employer or agriculture association—who, for any money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes, or transports any year round or migrant farm laborer.

Farm owner. A natural person or persons who are the "owners" of a "farm" as these two terms are further defined in subpart A of part 1944 of this chapter.

Farmer. A person who is actually involved in day to day on-site operations of a farm and who devotes a substantial amount of time to personal participation in the conduct of the operation of a "farm".

Handicap. (See subpart C of part 1930 of this chapter.)

Home base. A home base State is a State which the farm laborer claims as his/her domicile.

Household furnishings. Such basic durable items as stoves, refrigerators, drapes, drapery rods, tables, chairs, dressers, and beds. Items such as bedding, linens, dishes, silverware, and cooking utensils are not included in this definition.

Housing. New or existing structures which are or will be suitable for decent, safe and sanitary dwelling use by domestic farm labor. "Housing" may include household furnishings and related facilities where appropriate.

Individual. A natural person. It may include the spouse.

LH fund(s). May include either loan or grant monies or both in this subpart.

Local broad-based nonprofit organization. An organization, public or private, that operates in one employment area and which:

(1) Is incorporated with the State, Puerto Rico, or Virgin Islands, or a federally recognized Indian Tribe;

(2) Is organized and operated on a nonprofit basis;

(3) Is legally precluded from distributing any profits or dividends to its members or any private individual during its corporate lifetime;

(4) Is not grower oriented (majority of board must be nonfarmers);

(5) Pledges to administer the housing as a community service in the interest of the whole community, regardless of race, color, national origin, sex, religion, age, handicap, and marital or familial status;

(6) Has at least 25 members for projects with a total development cost of up to $100,000 and additional members for projects costing more than $100,000; and

(7) Has a membership reflecting a variety of interests of the area where the housing will be located.

Members and membership. Includes stockholders and stock when appropriate.

Migrant agricultural laborers. Agricultural laborers and family dependents who establish a temporary residence while performing agriculture work at one or more locations away from the place he/she calls home or home base. (This does not include day-haul agricultural workers whose travels are limited to work areas within one day of their work locations.)

Mortgage. May include any appropriate form of security instrument.

Nonprofit organization of farmworkers. A nonprofit organization which is incorporated with the State, Puerto Rico, or the Virgin Islands, which has local representation in the membership, and whose membership is composed of at least 51 percent farmworkers.

Organization. A broad-based nonprofit organization, a nonprofit organization of farmworkers, federally recognized Indian Tribe, or an agency or Political subdivision of State or local government.

Promissory note. May include a bond or other evidence of indebtedness.

Regional or statewide broad-based nonprofit organization. Any organization that operates or plans to operate in more than one employment area, that provides or is planning to provide labor housing to those areas and that meets the following criteria in addition to those in paragraphs (1) through (6) under the definition for "local broad-based nonprofit organization:"

(1) The membership of the organization must be broadly representative of the region or state by having representation from either the counties or employment areas in which it provides or is planning to provide labor housing; and

(2) The membership must include at least eight (8) members from the employment area to be served by the project who represent a variety of interests of the employment area. If the project is located in a community or dependent upon a community for essential services, at least four of the eight members must be residents of that community.

Related facilities. Includes community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and other essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply. All related facilities must be reasonably necessary for proper use of the housing as dwellings for domestic farm labor occupants.

Retired or disabled domestic farm laborer. A "retired domestic farm laborer" is a person who is at least 55 years of age and who has spent the last 5 years prior to retirement as a domestic farm laborer or spent the majority of the last 10 years prior to retirement as a domestic farm laborer (self-certification and employer affidavits may be used as a last resort). A "disabled domestic farm laborer" is a person who is determined to have an impairment which is expected to be of long-continued, indefinite duration, and substantially impedes the person's ability to earn a livelihood from farm labor (as certified by a licensed physician) and who is a domestic farm laborer prior to disability.

Seasonal housing. Described in exhibit I of subpart A of part 1924 of this chapter.

Self-employed. The determination of self-employed farm laborers is in accordance with the Common Law test used by the Internal Revenue Service to determine an employer-employee relationship. The Common Law Rules Factors are included in exhibit L of this subpart and are available for review in any FmHA Office. Exhibit L of this subpart is provided for situations when it is not clear an employer-employee relationship exists for eligible farm labor. The eligibility determination and use of the Common Law Rules Factors may be referred to the District or State Director for resolution.

Subsequent LH loan or grant. A loan or grant to an applicant or borrower to complete the units planned with the initial loan or grant.

Substantial portion of income. That portion of income received which has been derived from farm labor performed by a farm laborer as defined of this section.

(1) To determine if income is considered substantial, the measure to be used will be:

(i) Actual dollars earned from farm labor by domestic farm laborers other than migrant laborers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions, as shown in exhibit J of this subpart (which is available in any FmHA office). For migrant laborers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual limits as shown in Exhibit J of this subpart.

(ii) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm as a domestic farm worker during the preceding 12 months. In order to be considered as substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of, at least 7 hours. When using a period of more than one year, a yearly average amounting to at least 110 days per year must be computed.

(2) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the last full year of work will be used to determine, substantial portion of income under paragraph (1) of this definition.

(3) The tenant who qualifies as a domestic farm laborer in order to reside or continue to reside in the project must not have household income which exceeds the moderate income limit as shown in exhibit C of subpart A of part 1944 of this chapter (which is available in any FmHA office), for the appropriate household size and appropriate geographical area.

(i) Income for purposes of this section is defined in exhibit B (II)(C) of subpart C of part 1930 of this chapter and also includes the full amount of periodic payments received from Social Security (including Social Security payments received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits (except lump sum settlements) and other similar types of periodic receipts, as well as any payments that will begin during the next 12 months, such as payments in lieu of earnings, such as unemployment and disability compensation, worker compensation and severance pay.

(ii) Exempted income is income of dependents, unmarried minors, under 18 years of age except as specified in paragraph (3)(i) of this definition. (Tenants or co-tenants or spouses of either are not considered as minors for purposes of this section.)

Variety of interests. To meet the representation of a variety of interests in a broad-based nonprofit organization, members should be actively affiliated with or participating in civic, business, agricultural, or service organizations in their community; members' previous and current occupations may be considered in this determination. Individual members may represent multiple interests as well.

6. Section 1944.154 is redesignated as 1944.155 and a new 1944.154 is added to read as follows:

§ 1944.154 Priorities for tenants' occupancy.

(a) Tenant occupancy in labor housing is prioritized in the following order:

(1) First priority is to be given to eligible farm laborer households based upon percent of total earnings from farm labor in the following ranked categories: 71 to 100 percent; 51 to 70 percent; 26 to 50 percent; and less than 25 percent.

(i) For LH units without Rental Assistance, occupancy priority within each ranking category is according to the household's income, very-low, low-, then moderate.

(ii) For LH units with Rental Assistance, tenant occupancy priority is given to all eligible very-low income farm worker households by ranked category, then to low income farm

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worker households by ranked category. Moderate income may be served when there are no very-low or low-income eligible farm workers on the waiting lists, again by ranked category.

(2) Second priority is given to retired or disabled farm laborer households who were in the local farm market area at the time of retirement or becoming disabled. Occupancy priority will be by paragraph (a)(1) (i) or (ii) of this section without the farm income ranking category.

(3) Third priority is to be given to other retired or disabled farm laborer households. Occupancy priority will be by paragraph (a)(1) (i) or (ii) of this section without the farm income ranking category.

(b) When there is a diminished need for housing by persons or families in the above categories, such units may be made available to persons or families eligible for occupancy under the section 515, Rural Rental Housing program. Section 515 tenants may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph (a) of this section. As the basis for FmHA's approval or disapproval of a borrower's determination of diminished need, the borrower must submit to FmHA a current analysis of need and demand, identical to the market survey required of applicants in exhibit A–I of this subpart. The borrower's determination and the State Director's recommendation should be forwarded to the National Office for concurrence.

(c) For additional guidance on occupancy and rental assistance, refer to FmHA Instruction 1930–C, exhibit B VI of this subpart, Renting Procedures, and exhibit E of this subpart, Rental Assistance Program. The Agency is required by statute to provide affordable housing to eligible farm workers and their families as a first program priority and to provide Rental Assistance as a second program priority. If it appears there is conflict in FmHA Instructions concerning the housing of an eligible Domestic or Migrant Farm Worker, document the problem and consult the District Director. If necessary, the problem may be referred to the State Office and/or the National Office for resolution.

§ 1944.157 [Amended]

7. Section 1944.157 (b)(1) is amended in the first sentence by changing the reference "§ 1944.153(i)" to "§ 1944.153."

Dated: May 1, 1991

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–14670 Filed 6–20–91; 8:45 am]

BILLING CODE 3410–07–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 602 and 603

RIN 3052–AA05

Releasing Information; Privacy Act Regulations; Fees Imposed on Information Requests

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) adopts final regulations that amend 12 CFR parts 602 and 603, relating to the availability of records of the FCA. The regulations implement statutory changes made by the Freedom of Information Reform Act of 1986, Pub. L. 99–570, by amending the fee structures and related provisions governing fee charges for document requests. The regulations also implement the provisions of Executive order 12600 by providing predisclosure notification procedures for confidential commercial or financial information.

DATES: These regulations shall become effective on the expiration of 30 days after this publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Ronald H. Erickson, Freedom of Information Officer, Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4113;

or

James M. Morris, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration (FCA) is adopting final regulations relating to Freedom of Information Act requests. These final regulations incorporate changes required as a result of the Freedom of Information Reform Act of 1986, Pub. L. 99–570 (1986 Act), implement the provisions of Executive order 12600, and make certain other technical changes.

The 1986 Act amended the Freedom of Information Act (FOIA) (5 U.S.C. 552) by establishing a new fee structure governing the fees that can be imposed for providing information and requiring the Office of Management and Budget (OMB) to promulgate guidelines regarding such fee structure. On March 27, 1987, the OMB published the Uniform Freedom of Information Act Fee Schedule and Guidelines at 52 FR 10012 (OMB Guidelines). On January 5, 1990, the FCA published for comment regulations reflecting changes required as a result of the 1986 Act, Executive order 12600, and the OMB Guidelines (55 FR 440). During the public comment period, comments were received from the Farm Credit Council (Council), the Farm Credit Bank of Baltimore (Baltimore FCB) and the Reporters Committee for Freedom of the Press (Committee).

The final regulations generally enable the FCA to recover the actual costs incurred in releasing information, impose new limitations on the amount of fees that can be imposed on certain persons or entities requesting information, authorize fees for reviewing documents for persons or entities requesting information for commercial purposes, and revise the criteria used in determining whether to waive or reduce fees. In addition, the regulations implement the 1986 Act's amendment of FOIA exemption (b)(7), which relates to records compiled for law enforcement purposes. The final regulations implement Executive order 12600, concerning predisclosure notification procedures for confidential commercial information. The regulations provide that, prior to releasing certain commercial or financial information to a requester, the FCA will, to the extent permitted by law, notify the person which submitted the information, and afford the submitter a reasonable period within which to object to disclosure. Finally, the final regulations make certain technical changes which reflect changes in the internal organization of FCA.

Section 602.282—Release of Business Information

Section 602.282 implements requirements of Executive order 12600, concerning release of business information. Several comments were received concerning this section. The Committee commented that FCA regulations should "emphasize the duty of the agency by law to respond to requesters within 10 working days and to pass business notification procedures that enable the agency to comply with the law." The Committee asked that the words "to the extent permitted by law" be inserted in this section to indicate that such notification should not contravene the statute's specific time limits for agency responses to FOIA requests.

The agency believes that it is appropriate to include the qualifying words "to the extent permitted by law" in § 602.282, since Executive order 12600 uses those words to qualify the requirements which it imposes concerning opportunities for objections to disclosure of confidential information. Accordingly, § 602.282(c)(1), concerning the notice to the business submitter, and § 602.282(e), concerning affording a reasonable period for the business submitter to object to disclosure, have been revised to include the words "to the extent permitted by law" in order to more closely conform those sections to the wording of the Executive order.

In addition, § 602.282(f)(2) provides that, if the FOIA Officer plans to release business information, the officer must forward to the business submitter a written notice within a reasonable number of days prior to the specified date upon which disclosure is intended, "as circumstances permit." The Council commented that the words "as circumstances permit" should be deleted, in order to more closely conform the requirements of § 602.282(f)(2) to the wording of the Executive order. The agency agrees, and the final § 602.262(f)(2) replaces the words "as circumstances permit," with the words "to the extent permitted by law."

The Council and the Baltimore FCB commented that the protection afforded to business information by the proposed regulations should be broadened. The Baltimore FCB and the Council took exception to § 602.282(d)(1)(i) which provides that for business information submitted prior to January 1, 1988 and which is less than 10 years old, the notice requirement is only applicable if the information is subject to a prior express commitment of confidentiality by the agency. Both commenters indicated that this was a material difference from Executive order 12600, section 3(a)(i), which provides for notification of such business submitters when records are less than 10 years old and "the information has been designated by the submitter as confidential commercial information."

In response to this comment the FCA notes that this was a technical error in the proposed regulations. The regulations should have been consistent with the Executive order and accordingly § 602.262(d)(1)(i) has been revised to reflect this change. When requested records are less than 10 years old and business submitters have designated the information as confidential commercial information, the business submitter will be informed of the request under the procedures prescribed by § 602.262(d)(1). The requirement that business submitters be informed of requests for information which is subject to FCA's express prior commitment of confidentiality, formerly contained in § 602.282(d)(1)(i), has been moved to a new § 602.282(d)(1)(iii).

Section 602.285(e)—Definition of "Representative of the News Media"

Section 602.285(e), as proposed, defined the term "representative of the news media" as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." The Committee objected to this definition, claiming that it was contrary to the decision in *National Security Archive* v. *U.S. Department of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), *cert. denied* ___ U.S. ___, 110 S.Ct. 1478, 108 L.Ed. 2d 615 (March 19, 1990). The Committee argues that the definition should include "anyone whose activities are associated with publishing or disseminating information," and urges that the FCA adopt regulations defining "representative of the news media" as "any person or organization which regularly publishes or disseminates news to the public, in print or electronically."

The FCA disagrees with the commenter's interpretation of the National Security Archive case. That case did not invalidate the Department of Defense regulation definition of "representative of the news media," or the OMB Guidelines' definition upon which it was modeled. Neither the Department of Defense nor other agencies have been required to modify their definition of "representative of the news media" by reason of the National Security Archive decision. See 55 FR 17602, April 26, 1990. In National Security Archive the Court stated, "A representative of the news media is, in essence, a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." The agency does not believe that the definition of "representative of the news media" contained in § 602.285(e) is inconsistent with the National Security Archive decision.

The regulations define "news" as "information that is about current events or that would be of current interest to the public." The Committee objected that the definition places agency personnel in the position of making editorial judgments. The FCA does not agree with this comment, although agency personnel must determine whether a requester is seeking information as part of news gathering, and is engaging in activities which a representative of the news media engages in, the inclusion of a definition of "news" in the regulations does not require that agency personnel evaluate whether the information sought is, in fact, newsworthy. Accordingly, the agency adopts § 602.285(e) without change.

Section 602.287(e)—Duplication Charges

Section 602.287(e) provides that the agency may charge 15 cents per page for copies of documents furnished to requesters. The Committee objects to the copying charge of 15 cents per page, stating that it amounts to an increase of 50 percent over the 10 cents per page charge in former FCA regulations. In support of its position, the Committee also stated that, if work were contracted out by the agency, the costs would be from 3 cents to 5 cents per page. In response to this comment, the agency believes that the charge of 15 cents reflects an average agencywide per page charge for reproduction of documents at the Farm Credit Administration. This charge represents the reasonable direct costs of making copies, taking into account the salary of the operators as well as the cost of duplicating machines. The agency notes that the former charge of 10 cents per page was adopted in 1975, over 15 years ago. Finally, in response to the suggestion that such work could be contracted out, the agency points out that information requested under the Freedom of Information Act is often copied from the only file copy. In light of the danger of lost documents, and the sensitive nature of financial and other information handled by the agency, which regulates the activities of banks and other lending institutions, the agency does not believe it would be appropriate to make a practice of sending material contained in official agency files to commercial photocopy services for duplication. Accordingly, § 602.287(e) is adopted without change.

Section 603.345—Fees for Privacy Act Requests

A technical amendment is made to § 603.345. Section 603.345 provides that fees for copies of records requested under the Privacy Act of 1974 will be the same as fees for copies of documents requested under the FOIA. Amendments made to part 602 make it necessary to amend § 603.345 by replacing its

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reference to former § 602.285 with a reference to new §§ 602.287 and 602.288.

List of Subjects in 12 CFR Parts 602 and 603

Courts, Freedom of information, Government employees, Privacy.

For the reasons stated in the preamble, parts 602 and 603 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 602—RELEASING INFORMATION

1. The authority citation for part 602 continues to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252; 5 U.S.C. 552, E.O. 12600, 52 FR 23781, 3 CFR 1987, p. 235.

Subpart B—Availability of Records of the Farm Credit Administration

2. Section 602.250 is amended by revising paragraph (a)(7) to read as follows:

§ 602.250 Official records of the Farm Credit Administration.

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

* * * * *

§ 602.280 [Amended]

3. Section 602.280 is amended by removing the words ", other than records identified in § 602.285(a) of this part which are available in a public reference facility in the offices of the Farm Credit Administration," from the first sentence.

§ 602.281 [Amended]

4. Section 602.281 is amended by removing the words "Office of Administration" and adding in their place, "Office of Resources Management" each place they appear in paragraphs (b), (c) and (d).

5. Section 602.282 is added to read as follows:

§ 602.282 Business information.

(a) Business information provided to the Farm Credit Administration by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. The requirements of this section shall not apply if:

(1) The Farm Credit Administration determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(b) For the purpose of this section, the following definitions shall apply.

(1) *Business information* means trade secrets or other commercial or financial information.

(2) *Business submitter* means any person or entity which provides business information to the government.

(3) *Freedom of Information Officer* means the Freedom of Information Officer, Office of Congressional and Public Affairs.

(4) *Requester* means the person or entity making the Freedom of Information Act request.

(c)(1) The Freedom of Information Officer shall, to the extent permitted by law, provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (d) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) Whenever the Freedom of Information Officer provides a business submitter with the notice set forth in paragraph (c)(1) of this section, the Freedom of Information Officer shall notify the requester that the request includes information that may arguably be exempt from disclosure under 5 U.S.C. 552(b)(4) and that the person or entity who submitted the information to the Farm Credit Administration has been given the opportunity to comment on the proposed disclosure of information.

(d)(1) For business information submitted to the Farm Credit Administration prior to January 1, 1988, the Farm Credit Administration shall provide a business submitter with notice of a request whenever:

(i) The information is less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) The Farm Credit Administration has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter; or

(iii) The information is less than 10 years old and is subject to a prior express commitment of confidentiality given by the Farm Credit Administration to the business submitter.

(2) For business information submitted to the Farm Credit Administration on or after January 1, 1988, the Farm Credit Administration shall provide a business submitter with notice of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) The Farm Credit Administration has reason to believe that the disclosure of the information may result in commercial or financial injury to the business submitter.

(3) Notice of a request for business information falling within paragraph (d)(2)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the business submitter requests and provides acceptable justification for a specific notice period of greater duration.

(4) Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter that the information in question is in fact a trade secret or commercial or financial information that is privileged or confidential.

(e) Through the notice described in paragraph (c) of this section, the Farm Credit Administration shall, to the extent permitted by law, afford a business submitter a reasonable period within which it can provide the Farm Credit Administration with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of the exemption provided by 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f)(1) The Farm Credit Administration shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Farm Credit Administration decides to disclose business information over the objection of a business submitter, the Freedom of Information Officer shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) The notice of intent to disclose required by this paragraph shall be sent, to the extent permitted by law, within a reasonable number of days prior to the specified date upon which disclosure is intended.

(3) The Freedom of Information Officer shall send a copy of such disclosure notice to the requester at the same time the notice is sent to the business submitter.

(g) Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Farm Credit Administration shall promptly notify the business submitter of such action.

Subpart D—[Redesignated From Subpart C]

6. Subpart C, consisting of §§ 602.280 through 602.289, is redesignated as new subpart D.

§ 602.285 [Removed]

7. Section 602.285 is removed.

8. A new subpart C, consisting of §§ 602.265 through 602.272, is added to read as follows:

Subpart C—Fees for Provision of Information

Sec.
602.265 Definitions.
602.266 Categories of requesters—fees.
602.267 Fees to be charged.
602.268 Waiver or reduction of fees.
602.269 Advance payments—notice.
602.270 Interest.
602.271 Charges for unsuccessful searches or reviews.
602.272 Aggregating requests.

Subpart C—Fees for Provision of Information

§ 602.265 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) The term *commercial use request* means a request for information that is from or on behalf of an individual or entity seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or on whose behalf the request is being made. To determine whether a request is properly classified as a commercial use request, the Farm Credit Administration shall determine the purpose for which the documents requested will be used. If the Farm Credit Administration has reasonable cause to doubt the purpose, specified in the request, for which a requester will use the records sought, or where the purpose is not clear from the request itself, the Farm Credit Administration shall seek additional clarification before assigning the request to a specified category.

(b) The term *direct costs* means those expenditures the Farm Credit Administration actually incurs in searching for and reproducing documents to respond to a request for information. In the case of a commercial use request, the term also means those expenditures the Farm Credit Administration actually incurs in reviewing documents to respond to the request. The direct cost shall include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating reproduction equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education that operates a program or programs of scholarly research.

(d) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial, trade or profit basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunication services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by the organization. A publication contract would be the clearest proof that a journalist is working for a news organization, but the Farm Credit Administration may look to a requester's past publication record to determine whether a journalist is working for a news organization.

(f) The terms *reproduce* and *reproduction* mean the process of making a copy of a document necessary to respond to a request for information. Such copies take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(g) The term *review* means the process of examining documents located in response to a request for information to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure (e.g., doing all that is necessary to prepare the documents for release). The term *review* does not include the time spent resolving general legal or policy issues

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regarding the application of exemptions. The Farm Credit Administration shall only charge fees for reviewing documents in response to a commercial use request.

(b) The term *search* includes all time spent looking for material that is responsive to a request for information, including page-by-page or line-by-line identification of material within documents. Searching for material shall be done in the most efficient and least expensive manner so as to minimize the costs of the Farm Credit Administration and the requester. For example, a line-by-line search for responsive material should not be performed when merely reproducing an entire document would be the less expensive and the faster method of complying with a request for information. Searches may be done manually or by computer using existing programming. A "search" for material that is responsive to a request should be distinguished from a "review" of material to determine whether the material is exempt from disclosure.

§ 602.266 Categories of requesters—fees.

There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(a) The Farm Credit Administration shall charge fees for records requested by or on behalf of educational institutions and non-commercial scientific institutions in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(b) The Farm Credit Administration shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(c) The Farm Credit Administration shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents. In accordance with § 602.271, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(d) The Farm Credit Administration shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (a), (b) or (c) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 602.271 requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(e) For purposes of the exceptions contained in this section on assessment of fees, the word *pages* refers to paper copies of "8½ ×11" or "11 × 14." Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or a computer disk containing the equivalent of 100 pages of computer printout meet the terms of the exception.

(f) For purposes of paragraph (d) of this section, the term *search time* has as its basis, manual search. To apply this term to searches made by computer, the Farm Credit Administration will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search, i.e., the operator, the Farm Credit Administration will begin assessing charges for computer search.

§ 602.267 Fees to be charged.

(a) Generally, the fees charged for requests for records shall cover the full allowable direct costs of searching for, reproducing and reviewing documents that are responsive to a request for information.

(b) Manual searches for records will be charged at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search.

(c) Computer searches for records will be charged at the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to the Farm Credit Administration for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(d) Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time the Farm Credit Administration analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(e) Records will be reproduced at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of producing the document(s) shall be charged.

(f) The Farm Credit Administration will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Farm Credit Administration.

(h) A receipt for fees paid will be given upon request.

§ 602.268 Waiver or reduction of fees.

(a) The Farm Credit Administration may grant a waiver or reduction of fees if the Farm Credit Administration determines that the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and the disclosure of the information is not primarily in the commercial interest of the requester.

(b) The Farm Credit Administration will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs of receiving and recording a requester's remittance, and processing the fee.

§ 602.269 Advance payments—notice.

(a) Where it is anticipated that the fees chargeable will amount to more that $25.00 and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof that can be readily estimated.

(b) If the anticipated fees exceed $250.00 and if the requester has a history of promptly paying fees charged in connection with information requests, the Farm Credit Administration may obtain satisfactory assurances that the requester will fully pay the fees anticipated.

(c) If the anticipated fees exceed $250.00 and if the requester has no history of paying fees charged in connection with information requests, the Farm Credit Administration may require an advance payment of fees in an amount up to the full amount anticipated.

(d) If the requester has previously failed to pay a fee charged within 30 days of the date of a billing for fees charged in connection with information requests, the Farm Credit Administration may require the requester to pay the fees owed, plus interest, or demonstrate that the full amount owed has been paid, and require the requester to make an advance payment of the full amount of the fees anticipated before processing a new request or a pending request from that requester.

(e) The notice of the amount of an anticipated fee or a request for an advance deposit shall include an offer to the requester to confer with identified Farm Credit Administration personnel to attempt to reformulate the request in a manner which will meet the needs of the requester at a lower cost.

§ 602.270 Interest.

The Farm Credit Administration may begin charging interest on unpaid fees, starting on the 31st day following the day on which the bill for such fees was sent. Interest will not accrue if payment of the fees has been received by the Farm Credit Administration, even if said payment has not been processed. Interest will accrue at the rate prescribed in section 3717 of title 31, United States Code, and will accrue from the day on which the bill for such fees was sent.

§ 602.271 Charges for unsuccessful searches or reviews.

The Farm Credit Administration may assess charges for time spent searching for records on behalf of requesters in the categories provided for in § 602.266 (c) and (d), even if there are no records that are responsive to the request or there is ultimately no disclosure of records. The Farm Credit Administration may assess charges for time spent reviewing records for requesters in the category provided for in § 602.266(c) even if the records located are determined to be exempt from disclosure.

§ 602.272 Aggregating requests.

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Farm Credit Administration reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Farm Credit Administration may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

PART 603—PRIVACY ACT REGULATIONS

9. The authority citation for part 603 continues to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

§ 603.345 [Amended]

10. Section 603.345 is amended by removing the reference to "§ 602.265" and adding in its place "§§ 602.267 and 602.269".

Dated: June 13, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-14785 Filed 6-20-91; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-116-AD; Amendment 39-7040; AD 91-13-09]

Airworthiness Directives; McDonnell Douglas Model DC-9-20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-20, -30, -40, -50, and C-9 (Military) series airplanes, which currently requires repetitive inspections for cracks of the forward slat drive drums bellcrank shafts, and replacement, if necessary. This amendment requires more stringent repetitive inspection intervals and the use of an improved visual inspection procedure. This amendment is prompted by a number of reports of slat drive bellcrank failures resulting in slat malfunction. This condition, if not corrected, could result in slat asymmetry and potential reduction of lift and lateral control of the aircraft at takeoff rotation, as well as the potential for rejected takeoffs from speeds beyond V_1 (the critical engine failure speed.).

DATES: Effective July 8, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Technical Publications—Technical Administrative Support, C1-L5B (54-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the

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Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ali Bahrami, Aerospace Engineer, Los Angeles Aircraft Certification Office, Airframe Branch, ANM-120L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90808-2425; telephone (213) 988-5236.

SUPPLEMENTARY INFORMATION: On November 19, 1984, the FAA issued AD 84-24-03, Amendment 39-4956 (49 FR 46027, December 10, 1984), applicable to certain McDonnell Douglas Model DC-9 series airplanes, to require repetitive inspections for cracks of the forward slat drive drum bellcrank shafts, and replacement, if necessary. That action was prompted by 18 reported instances of slat drum bellcrank failures due to cracking, all of which resulted in slat malfunction. This condition, if not corrected, could result in slat asymmetry and potential reduction of lift and lateral control of the aircraft at takeoff rotation, as well as the potential for rejected takeoffs from speeds beyond V_1 (the critical engine failure speed).

Since issuance of that AD, there have been 4 additional (22 total) instances of slat drive drum bellcrank failures. Investigation of these failures has resulted in a re-evaluation of the previously mandated inspection procedures and intervals. Based on this re-evaluation, the FAA has determined that a new improved inspection procedure and a reduced repetitive inspection interval are necessary in order to detect cracking in a timely manner. The new inspection interval is one-half of that previously mandated.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-250, Revision 3, dated May 15, 1991, which describes procedures for visual inspection of the slat drive drums bellcrank for cracks.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 84-24-03 to add a more stringent repetitive inspection interval and a new improved inspection procedure, in accordance with the service bulletin previously described.

This rule differs from the existing rule in that all references to the use of "later FAA-approved revisions of the applicable service bulletins," have been removed. This has been done in order to be consistent with FAA policy in that regard. Use of later revisions of the service bulletin may be approved as an alternative means of compliance with this AD, as provided by paragraph (g).

The requirements of this AD are considered interim action. The FAA will consider further rulemaking action to require replacement of the slat drive drum bellcrank as terminating action for the required inspections.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-4956 and by adding the following new airworthiness directive:

91-13-09. McDonnell Douglas: Amendment 39-7040. Docket No. 91-NM-116-AD. Supersedes AD 84-24-03.

Applicability: Model DC-9-30, -50, -40, -50, and C-9 (Military) series airplanes, which correspond to factory serial numbers listed in McDonnell Douglas Service Bulletin 27-198, Revision 1, dated September 28, 1984, or Revision 2, dated December 17, 1990; Service Bulletin 27-250, dated August 29, 1984, or Revision 1, dated October 18, 1984, or Revision 2, dated January 3, 1990; and Alert Service Bulletin A27-250, Revision 3, dated May 15, 1991; certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To detect cracks and prevent failure of the slat drive mechanism and its interrelated structure, accomplish the following:

(a) Within 30 days or 125 landings, whichever occurs first after January 10, 1985 (the effective date of AD 84-24-03, amendment 39-4956), inspect the left and right actuator slat drive mechanism in accordance with McDonnell Douglas Service Bulletin 27-198, Revision 1, dated September 28, 1984, or Revision 2, dated December 17, 1990.

(1) If no cracks are found, no further inspection is required.

(2) If a crack is found, and the crack is less than 1 inch in length, continue to inspect the actuator slat drive shaft at intervals not to exceed 1,600 landings in accordance with the service bulletin.

(3) If a crack is found, and the crack is one inch or greater in length, prior to further flight, replace the actuator slat drive shaft in accordance with Condition II specified in the service bulletin. Such replacement constitutes terminating action for the inspections required by paragraph (a)(2) of this AD.

(b) Within 20 days or 135 landings, whichever occurs first after January 10, 1985 (the effective date of AD 84-24-03, amendment 39-4956), inspect the forward slat drive drums' bellcrank shafts that have accumulated 4,000 or more landings since new or last overhaul.

(1) If no cracks are detected, continue to inspect the slat drive drum bellcrank shaft for cracks at intervals not to exceed 1,500 landings as shown in Figure 1 of McDonnell Douglas Service Bulletin 27-250, dated August 29, 1984; Revision 1, dated October 18, 1984; or Revision 2, dated January 3, 1990.

(2) If cracks are found, prior to further flight, replace the slat drive drum bellcrank shaft in accordance with Condition II of the service bulletin. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(1) of this AD.

(c) Within 500 landings after the effective date of this AD or at the next scheduled inspection in accordance with paragraph (b) of this AD, whichever occurs earlier, inspect the slat drive drums bellcrank shaft for cracks in accordance with McDonnell Douglas Alert Service Bulletin A27-250, Revision 3, dated May 15, 1991. This inspection constitutes terminating action for the repetitive inspection requirements of paragraph (b)(1) of this AD.

(1) If no cracks are found, repeat the inspection of the slat drive drum bellcrank shaft for cracks at intervals not to exceed 750 landings, in accordance with the alert service bulletin.

(2) If cracks are found, prior to further flight, replace the slat drive drum bellcrank shaft with a new drum shaft, P/N 5820212-505, in accordance with Condition II specified in the alert service bulletin. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraph (c)(1) of this AD.

(d) If cracks are found in locations in the slat drive shaft(s) other than those specified in McDonnell Douglas Service Bulletin 27-198, Revision 1 or 2, and Alert Service Bulletin A27-250, Revision 3, prior to further flight, replace or rework the cracked component(s) in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(e) Replacement of both the actuator slat drive mechanism and the slat drive drum bellcrank shaft in accordance with Condition II of the following service bulletins, as applicable, constitutes terminating action for the requirements of this AD:

McDonnell Douglas service bulletin No.	Revision level	Date
27-198	Revision 1	Sept. 28, 1984.
	Revision 2	Dec. 17, 1990.
27-250	Original	Aug. 29, 1984.
	Revision 1	Oct. 18, 1984.
	Revision 2	Jan. 3, 1990.
A27-250	Revision 3	May 15, 1991.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note. The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(h) Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

(i) The inspection and replacement requirements shall be done in accordance with McDonnell Douglas Service Bulletin 27-198, Revision 1 dated September 28, 1984, or Revision 2, dated December 17, 1990; Service Bulletin 27-250, dated August 29, 1984, or Revision 1, dated October 18, 1984, or Revision 2, dated January 3, 1990; and Alert Service Bulletin A27-250, Revision 3, dated May 15, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, attention: Business Unit Manager of Technical Publications—Technical Administrative Support, C1-L5B (54-60). Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment supersedes Amendment 39-4956, AD 84-24-03.

This amendment (39-7040, AD 91-13-09) becomes effective July 8, 1991.

Issued in Renton, Washington, on June 5, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14774 Filed 6-20-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Cultural and Historic Resources

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed changes revise certain permit application requirements and review procedures relating to cultural and historic resources; modifies certain definitions; and further defines areas where mining is prohibited, limited or unsuitable. The amendment is intended to revise the Maryland program and to be consistent with the corresponding Federal requirements.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On February 18, 1982, the Secretary of Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982 Federal Register (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of Amendment

By letter dated June 9, 1987, OSM sent to Maryland a list of areas of the State's program OSM had determined to be less effective than the Federal requirements for surface mining and reclamation operations (Administrative Number MD-369).

By letter dated March 23, 1990 (Administrative Record No. MD-445), the Maryland Department of Natural Resources, Energy Administration, Bureau of Mines (MDBOM) submitted a proposed amendment to modify the following sections of the Maryland program: Code of Maryland (COMAR) 08.13.09.02, 08.13.09.05, 08.13.09.10, and 08.13.09.11.

OSM announced receipt of the proposed amendment in the April 25, 1990 Federal Register (55 FR 17458), and in the same notice opened the public comment period and provided for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 25, 1990.

By letter dated March 26, 1991 (Administrative Record No. MD-517), Maryland submitted additional information to both support and modify its proposed amendment. The additional information was submitted in response to letters dated November 28, 1990, and January 28, 1991 (Administrative Record Nos. MD-486 and MD-508, respectively), from OSM. OSM announced receipt of the revisions of the previously proposed amendment in the April 16, 1991, Federal Register (56 FR 15511) and in the same notice, reopened the public comment

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period. The comment period closed on May 1, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 732.17, are the Director's findings concerning the proposed amendment to the Maryland program. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions that are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

In its submission of March 23, 1990, Maryland proposed revisions to COMAR 08.13.09.02K(2)(b) and 08.13.09.02L(1)(1) expanding coverage of these rules to cultural and historic resources eligible for listing on the National Register of Historic Places. However, these proposed revisions were previously approved by the Director in the final rule published on May 22, 1991 (56 FR 23505). Therefore, no further action is being taken by the Director on these revisions.

1. COMAR 08.13.09.02K(2)(b)

Maryland is revising paragraph K(2)(b) to provide that an applicant for a permit may be required to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places through (i) Collection of additional information; (ii) Conduct of field investigations; or (iii) other appropriate analyses. In addition, Maryland, in response to a letter from OSM dated January 28, 1991 (Administrative Record No. MD–506), has agreed to change the term "archeological features" to archeological sites" (Administrative Record No. MD–517). These proposed changes render the State rule substantively identical to the corresponding Federal rule at 30 CFR 779.12(b) (1) and (2). With the understanding that Maryland will use the phrase "archeological sites" in the final rule as promulgated, the Director finds the revised State rule no less effective than the Federal rule.

2. COMAR 08.13.09.02L(1)(1)

In response to a letter from OSM dated January 28, 1991 (Administrative Record No. MD–506), Maryland submitted a letter dated March 26, 1991 (Administrative Record No. MD–517) in which the State agreed to change the term "mine plan or adjacent areas" to "permit and adjacent areas," in paragraph L(1)(1), to conform to the language of the Federal rule at 30 CFR 779.24(i). With the understanding that Maryland will revise the wording of the rule prior to promulgating amended regulations, the Director finds the proposal to be no less effective than its Federal counterpart.

3. COMAR 08.13.09.020(23)

Maryland is revising this rule to provide that every permit application shall include descriptions of measures to be used to prevent, or where valid existing rights exists or joint agency approval is obtained, to minimize adverse impacts to any publicly owned parks or any historic or archeological properties listed or eligible for listing on the National Register of Historic Places. The description shall include a schedule for completion of these measures prior to initiating any mining operations affecting these properties. While the proposed language is similar to 30 CFR 780.31(b), the Federal rule further specifies that the regulatory authority may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures, which may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

In response to a letter from OSM dated November 28, 1990 (Administrative Record No. MD–486), Maryland agreed (Administrative Record No. MD–517), to add a new rule at COMAR 08.13.09.10C(8) which provides that the Bureau may require the permit applicant to protect historic and archeological properties listed on or eligible for listing on the National Register for Historic Places through appropriate mitigation and treatment measures. Present subsection .10C(8) will be renumbered as.10C(9). In the same letter from Maryland dated March 26, 1991, the State agreed to correct an erroneous reference in section 02O(23) by changing the reference from COMAR 08.13.09.10A(2) to COMAR 08.13.09.10C(7). With the understanding that Maryland will make the reference correction and will add new COMAR 08.13.09.10C(8) prior to promulgating amended regulations, the Director finds that the proposed rules at section 02O(23) and section 10C(8) when read together are no less effective than the Federal counterpart at 30 CFR 780.31 (a) and (b).

4. COMAR 08.13.09.05A(6)

In its submission dated March 23, 1990, Maryland proposed to revise COMAR 08.13.09.05A(5). However, section 05A(5) was previously revised and approved in a final rule published on May 22, 1991 (56 FR 23505). In a letter dated May 31, 1991 (Administrative Record No. MD–533), the State acknowledged that the proposed revision was erroneously referenced and, in the final promulgation, the rule will be identified as COMAR 08.13.09.05A(6) with the existing subsections A (6) through (11) being renumbered as A (7) through (12).

The rule provides that in approving a permit, the Bureau must find in writing that it has taken into account the effect of the proposed operation on properties listed or eligible for listing on the National Register of Historic Places and has found that all necessary protection measures have been included in the approved application or permit conditions. While the language of the proposed rule is similar to the language of the Federal rule at 30 CFR 773.13(c)(11), the Federal rule further provides for a documented decision in those cases where the regulatory authority determines that no additional protection measures are necessary. In response to a letter dated November 28, 1990, from OSM (Administrative Record No. MD–486), the State agreed (Administrative Record No. MD–517) to further revise the proposed rule by adding the phrase "or that no additional protection measures are necessary." With the understanding that Maryland will add this phrase prior to promulgating amended regulations, and will change rule identification to section .05A(6), the Director finds that the proposed rule is no less effective than its Federal counterpart at 30 CFR 773.15(c)(11).

5. COMAR 08.13.09.10B(2)

Maryland is revising this rule in order to make the language consistent with the wording of the Federal rule at 30 CFR 761.11(c). The changes include adding the phrase "where mining" in identifying the lands covered by the rule, and eliminating the phrase "publicly owned" in identifying places listed on the National Register of Historic Places. As revised, the language of the proposed rule is substantively identical to the Federal rule at 30 CFR 761.11(c). Therefore, the Director finds the proposed rule to be no less effective than its Federal counterpart.

6. COMAR 08.13.09.10B(7)

Maryland is revising this rule by adding a provision whereby cemeteries may be relocated if authorized by applicable State law or regulation. The revised wording of this rule is identical to the Federal rule at 30 CFR 761.11(g). Therefore, the Director finds the proposed rule to be no less effective than its Federal counterpart.

7. COMAR 08.13.09.10C(7)

Maryland is revising this rule in order to make the language consistent with its Federal counterpart. The changes include replacing the phrase "public park" with the phrase "publicly owned park," and eliminating the phrase "publicly owned" in identifying places listed on the National Register of Historic Places. As revised, the language of the proposed rule is substantively identical to the Federal rule at 30 CFR 761.12(f)(1). Therefore, the Director finds the proposed rule to be no less effective than its Federal counterpart.

8. COMAR 08.13.09.11A (1) and (2)

Maryland is revising the definitions of "Fragile lands" in subsection A(1) and "Historic lands" in subsection A(2) in order to make them identical to the Federal definitions in 30 CFR 762.5. Since the revised definitions are identical to the Federal definitions, the Director finds the proposals no less effective than the Federal counterparts.

IV. Summary and Disposition of Comments

Public Comments. The public comment period and opportunity to request a public hearing announced in the April 25, 1990, **Federal Register** (55 FR 17458) ended May 25, 1990. An extended comment period announced in the April 18, 1991, **Federal Register** (56 FR 15311) ended May 1, 1991. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments. Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Soil Conservation Service, Mine Safety and Health Administration, and the Army Corps of Engineers all generally supported the amendment and subsequent revisions, or had no substantive comments.

Advisory Council on Historic Preservation (ACHP) Comments

The ACHP filed comments regarding several areas of the State's proposed rules. The ACHP expressed concern with the use of the discretionary word "may" in the phrase "the Bureau may require the applicant to identify and evaluate important historic and archeological resources * * *" at COMAR 08.13.09.02K(2)(b). The wording as proposed by the State, is identical to the wording in the Federal rule at 30 CFR 779.12(b)(2). As stated in the preamble to the Federal rule published on February 10, 1987, (52 FR 4244–4263), "OSMRE proposed to add a new paragraph (2) to clarify that the regulatory authority can, where appropriate, require applicants to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places." Further, the preamble provided that "Clearly, paragraph (b)(2) allows the regulatory authority to require identification and necessary treatment or mitigation of currently unknown resources, when the regulatory authority determines that such activities are appropriate." As proposed, the State's rule meets the intent and is no less effective than the Federal rule. Therefore, the Director is not recommending any changes to the State's proposal.

The ACHP expressed similar concerns regarding proposed revisions to COMAR 08.13.09.020(23) and 08.13.09.05A(5). As stated by the ACHP, "* * * the Bureau again will be making decisions about the appropriateness of mitigation measures, and (presumably) will require their implementation, but with no reference to a process about how the decisions will be reached or by whom." The ACHP suggested their implementing regulations, which set forth such a process, should be referenced in the State's proposal, with the State Historic Preservation Officer (SHPO) referenced as the initial point of contact. The State's proposed rules are substantively identical to the Federal counterparts at 30 CFR 780.31 and 30 CFR 773.15(c)(11). As pointed at by OSM in response to comments regarding the new 30 CFR 773.15(c)(11), the National Historic Preservation Act and implementing regulations do not apply directly to permits to conduct surface coal mining operations issued by State regulatory authorities (52 FR 4257). In addition, the Director feels that the State program provides adequate opportunity for the SHPO to participate in the permitting process in a significant manner through notice and opportunity to comment. The Director does not feel that any changes to the State's proposal are required.

The ACHP suggests that the proposed revision to the definition of "Historic lands" at COMAR 08.13.09.11A(2) be modified to recognize other provisions such as the National Historic Preservation Act and the American Indian Religious Freedom Act (Pub. L. 95–341). The definition as proposed by the State is identical to the Federal definition at 30 CFR 767.5. The Director feels the State rule is no less effective than the Federal rule and, therefore, no changes to the State's proposal are necessary.

Finally, the ACHP expressed their belief that all exclusions based on valid existing rights should be deleted. In particular, the ACHP cited COMAR 08.13.09.10B, which identifies areas where mining is prohibited or limited subject to valid existing rights. The rule cited by the ACHP, which is not being revised in the program amendment being discussed, is identical to the Federal rule at 30 CFR 761.11 which implements section 522(e) of SMCRA. Since the State rule is identical to the Federal rule, the Director is not requiring that any changes be made.

The State Historical Preservation Officer for the State of Maryland reviewed the proposed program amendment and indicated his general agreement with the proposal.

V. Director's Decision

Based on the above findings, the Director is approving the proposed program amendment submitted by Maryland on March 23, 1990, and modified on March 26, 1991. The Federal rules at 30 CFR part 920 concerning the Maryland program are being amended to implement the Director's decision. The Director is approving these State rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

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VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA [30 U.S.C. 1292(d)], no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements, rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 13, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 920.15, a new paragraph (l) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory program.

* * * * *

(l) The following amendments submitted to OSM on March 23, 1990 and modified and resubmitted on March 26, 1991, are approved as set forth in paragraph (l)(1) of this section effective June 21, 1991.

(1) Revisions of the following rules of Code of Maryland Administrative Regulations:

08.13.09.02 Permit Applications: General Requirements.
08.13.09.05 Permit Applications: Bureau Decision.
08.13.09.10 Areas Where Mining is Prohibited or Limited.
08.13.09.11 Designation of Areas as Unsuitable for Mining.

[FR Doc. 91-14855 Filed 6-20-91; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve, with an additional requirement, a proposed amendment to the New Mexico permanent regulatory program (New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the hydrologic balance as it relates to water quality standards and effluent limitations, and postmining land use. The amendment revises the New Mexico program to provide additional safeguards and improve operational efficiency.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico 87102, Telephone (505) 776-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated April 24, 1990 (Administrative Record No. NM-580), New Mexico submitted a proposed amendment to its permanent regulatory program pursuant to SMCRA. New Mexico submitted the proposed amendment on its own initiative.

The rules that New Mexico proposed to revise pertained to the definition of "coal" at Coal Surface Mining Commission (CSMC) Rule 80-1-1-5, hydrologic balance as it relates to water quality standards and effluent limitations at CSMC Rules 80-1-20-42 (a)(8) and (a)(9), and postmining land use at CSMC Rule 80-1-20-133(c).

OSM published a notice in the May 11, 1990, **Federal Register** (55 FR 19752) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-565). The public comment period closed June 11, 1990.

During its review of the amendment, OSM identified concerns relating to the definition of "coal" at CSMC Rule 80-1-1-5 and postmining land use at CSMC Rule 80-1-20-133(c). OSM notified New Mexico of the concerns by letter dated July 16, 1990 (Administrative Record No. NM-597). By letter dated October 18, 1990 (Administrative Record No. NM-616), New Mexico (1) withdrew from the amendment the proposed revisions to the definition of "coal" at CSMC Rule 80-1-1-5 and (2) corrected a cross reference to another State rule at CSMC Rule 80-1-20-133(c).

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that the proposed amendment as submitted by New Mexico on April 24, 1990, and revised on October 18, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

1. CSMC Rules 80-1-20-42 (a)(8) and (a)(9), Water Quality Standards and Effluent Limitations

New Mexico proposed to revise CSMC Rule 80-1-20-42 by deleting the existing paragraphs (a)(8) and (a)(9), which set effluent requirements for discharges from areas disturbed by "surface coal mining operations." New Mexico at CSMC Rule 80-1-1-5 defines "surface coal mining operations" as activities conducted in connection with both surface and underground coal mines. In place of the deleted paragraphs, New Mexico proposed a new paragraph (a)(8), which would require that discharges from areas disturbed by "surface mining activities" comply with applicable State and Federal water quality laws and regulations, including the effluent limitations set forth at 40 CFR part 434. New Mexico at CSMC Rule 80-1-1-5 defines "suface mining activities" as those activities incidental to the surface mining of coal. The effect of New Mexico's proposed revisions is that, whereas deleted paragraphs (a)(8) and (a)(9) required both surface and underground mining operations to comply with the State and Federal water quality laws and regulations, new paragraph (a)(8) would only require surface mining activities to comply with such regulations.

The Federal regulations at 30 CFR 816.42 and 817.42 respectively require surface and underground mining operations to comply with the same standards as proposed in New Mexico's rules.

The Director finds that New Mexico's newly-proposed rule at CSMC Rule 80-1-20-42(a)(8) is no less effective than the Federal regulation at 30 CFR 816.42 but is less effective than the Federal regulation at 30 CFR 817.42. The Director is approving newly-proposed CSMC Rule 80-1-20-42(a)(8) but is requiring New Mexico to revise its program to also require discharges from areas disturbed by underground mining activities to comply with applicable State and Federal water quality laws and regulations and with the effluent limitations set forth at 40 CFR Part 434.

2. CSMC Rule 80-1-20-133(c), Postmining Land Use

CSMC Rule 80-1-20-133(c) sets forth requirements for approval of alternative postmining land uses pertaining to both surface mining activities and underground mining activities and includes the criteria that must be met before the Director of the New Mexico Mining and Minerals Division (MMD) would approve an alternative postmining land use change requested by a permittee. New Mexico proposed at CSMC Rule 80-1-20-133(c) to replace the reference to "section 17-12(c)" with "Section 14-40" because section 17 no longer exists in the New Mexico program. Section 14-40 pertains to the requirements for releasing performance bonds on reclaimed mine lands. The corresponding Federal regulations at 30 CFR 816.133(c) and 817.133(c) do not reference the Federal regulations pertaining to the requirements for releasing performance bonds on reclaimed mine lands, nor any other Federal regulations. The Director finds that the correction of this reference is a nonsubstantive revision.

New Mexico also proposed to delete the phrase "before surface coal mining operations begin" from CSMC Rules 80-1-20-133(c) (1), (3), and (8). This proposed revision would allow the Director of MMD to approve alternative postmining land use changes requested by the permittee after MMD has issued the original mining permit, rather than requiring such approvals to be requested only through the original permit application and before surface or underground mining activities have begun. New Mexico also proposed that the various plans, letters, and approvals required by these rules for the approval of an alternative postmining land use be submitted no less than 60 days prior to the proposed date that the postmining land use change would take effect.

The corresponding Federal regulations at 30 CFR 816.133(c) and 817.133(c), as interpreted by the regulations at 30 CFR 784.200(a) and 817.200(a), allow for the approval of requests for alternative postmining land use changes through the permit revision procedures of 30 CFR 774.13 rather than limiting such approvals to the original permit application process. These regulations do not specify any time period during which information required for approval of alternative postmining land use changes must be submitted.

The Director understands that New Mexico, consistent with the Federal interpretive regulations at 30 CFR 784.200(a) and 817.200(a), would process requests for alternative postmining land uses as permit revisions in accordance with its permit revision requirements at CSMC Rule 80-1-13-12. This New Mexico rule corresponds to the Federal regulations at 30 CFR 774.13. For this issue, the Director finds that New Mexico's proposed postmining land use requirements at CSMC Rules 80-1-20-133(c) (1), (3), and (8), in conjunction with the existing permit revision requirements at CSMC Rule 80-1-13-12, are not inconsistent with the Federal regulations at 30 CFR 816.133(c) and 817.133(c), as interpreted at 30 CFR 784.200(a) and 817.200(a).

The Director also finds that the 60-day time period proposed at CSMC Rules 80-1-20-133(c) (1), (3), and (8) is not inconsistent with the Federal regulations at 30 CFR 816.133(c) and 817.133(c) and the Federal interpretive regulations at 30 CFR 784.200(a) and 817.200(a). In making this finding, the Director notes that any new requirements that would be imposed by proposed CSMC Rule 80-1-20-133(c), such as the 60-day time period, are in addition to and do not replace the existing New Mexico requirements at CSMC 80-1-13-12 for processing permit revisions.

For the reasons discussed above, the Director finds that New Mexico's proposed rules at CSMC Rules 80-1-20-133(c) (1), (3), and (8) are no less effective than the corresponding Federal regulations at 30 CFR 816.133(c), 817.133(c), 784.200(a), and 817.200(a). The Director is approving the proposed rules.

IV. Public and Agency Comments

Public Comments

The Director solicited public comments and provided opportunity for a public hearing on the proposed amendment. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and various other Federal agencies with an actual or potential interest in the New Mexico program.

The Bureau of Land Management responded that it had no questions or recommended revisions to the proposed amendment (Administrative Record No. NM-591). EPA, Region 6, responded that it had no objections to the proposed amendment (Administrative Record No. NM-586). The U.S. Fish and Wildlife Service responded that it concurred with the proposed changes to New Mexico's rules (Administrative Record No. NM-593). The Mine Safety and Health Administration (MSHA) responded that New Mexico's proposed rules are acceptable and do not appear to conflict with current MSHA regulations (Administrative Record No. NM-592).

EPA Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of EPA with the respect to provisions of the State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). By letter dated June 22, 1990, EPA gave such written concurrence (Administrative Record No. NM-595).

V. Director's Decision

Based on the above findings, the Director is approving the proposed

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amendment as submitted by New Mexico on April 24, 1990, and as revised by it on October 18, 1990. In addition, as discussed in finding No. 1, the Director is requiring New Mexico to amend its program to require that discharges from areas disturbed by underground mining activities comply with applicable State and Federal water quality laws and regulations and with the effluent limitations set forth at 40 CFR part 434. The Director's approval of the proposed amendment is contingent upon New Mexico's promulgation of the proposed revisions in the identical form as submitted to and approved by OSM.

To implement this decision, the Director is amending the Federal regulations at 30 CFR Part 931 that codify all decisions concerning the New Mexico program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 14, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 931—NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended by adding a new paragraph (n) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(n) The following amendment, as submitted on April 24, 1990 and as revised on October 18, 1990, is approved effective June 21, 1991: Revisions to the New Mexico Coal Surface Mining Commission (CSMC) rules pertaining to water quality standards and effluent limitations at CSMC Rule 60-1-20-42(a)(6); and postmining land use at CSMC Rule 60-1-20-133(c).

3. Section 931.16 is amended by adding paragraph (b) to read as follows:

§ 931.16 Required program amendments.

* * * * *

(b) By August 20, 1991, New Mexico shall submit for OSM approval a program amendment to require discharges from areas disturbed by underground mining activities to comply with applicable State and Federal water quality laws and regulations and with the effluent limitations set forth at 40 CFR part 434.

[FR Doc. 91-14866 Filed 6-20-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Annual Fiscal Year Deductible for Outpatient Services or Supplies

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This amendment incorporates the applicable provisions of recent statutes relevant to the deductible amounts for outpatient care. Public laws 101-510 and 101-511 provide that effective April 1, 1991, the deductible amounts for medical care or services will increase from fifty dollars ($50.00) to one hundred and fifty dollars ($150.00) for an individual and from one hundred dollars ($100.00) to three hundred dollars ($300.00) for a family to include all CHAMPUS beneficiaries except dependents of active duty sponsors in pay grades E-4 or below. However, the Persian Gulf Conflict Supplemental Authorization and Personnel Benefit Act of 1991, Public Law 102-25, stipulates that, in the case of dependants of a member of the Uniformed Services who served or serves on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm, the provisions of Public Laws 101-510 and 101-511, shall not become effective until October 1, 1991. This latter category is defined in the rule as those dependents whose sponsors, are, or were, entitled to Special pay for Hostile Fire/Imminent Danger authorized by section 310 of title 37, United States Code, for service in the Persian Gulf Area.

DATES: *Effective Date:* April 1, 1991. Comments may be received by August 20, 1991.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: A. Chris Arnijo, Office of Program Development, OCHAMPUS Telephone (303) 361-3630.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7634, appearing in the Federal Register on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title. 32 CFR part 199 (DoD 6010.8-R) was revised and published in the Federal Register on July 1, 1988 (51 FR 24008).

Since the purpose of this amendment is to implement legislative requirements, we are proceeding to the final rulemaking stage. For fiscal year 1991, the increased deductible has no impact if the beneficiary does not receive additional outpatient services on or after April 1, 1991. However, except for dependents of sponsors who served or are serving in the Persian Gulf in

connection with Operation Desert Storm, whose increased deductibles will not be effective until October 1, 1991, additional outpatient services received on or after April 1, 1991, will be subject to the increases. Any deductible paid in the same fiscal year prior to April 1, 1991, will be credited toward the deductible for services received after April 1, 1991 . Comments from the general public or from other governmental agencies are welcome and any comments received within 60 days of publication of the final rule and requiring a response will be addressed in a later publication of the Federal Register.

This rule was written to implement the law as described above, and we certify that it will not have a significant impact on a substantial number of small business entities under the critieria of the Regulatory Flexibility Act.

In compliance with Executive Order 12291, we certify that this is not a major rule and will, therefore, not have a signficant impact on the economy.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, and Military Personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by revising paragraphs (f)(2)(i), (f)(3)(i), and (f)(4)(i) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(f) * * *

(2) * * *

(i) *Annual fiscal year deductible for outpatient services and supplies.*

(A) For are rendered all eligible beneficiaries prior to April 1, 1991, or when the active duty sponsor's pay grade is E-4 or below, regardless of the date of care:

(1) *Individual Deductible.* Each beneficiary is liable for the first fifty dollars ($50.00) of the CHAMPUS-determined allowable amount on claims for care provided in the same fiscal year.

(2) *Family Deductible:* The total deductible amount for all members of a family with the same sponsor during one fiscal year shall not exceed one hundred dollars ($100.00).

(B) For care rendered on or after April 1, 1991, for all CHAMPUS beneficiaries except dependents of active duty sponsors in pay grades E-4 or below.

(1) *Individual Deductible:* Each beneficiary is liable for the first one hundred and fifty dollars ($150.00) of the CHAMPUS-determined allowable amount on claims for care provided in the same fiscal year.

(2) *Family Deductible:* The total deductible amount for all members of a family with the same sponsor during one fiscal year shall not exceed three hundred dollars ($300.00).

(*C*) CHAMPUS-*approved Ambulatory Surgical Centers or Birthing Centers.* No deductible shall be applied to allowable amounts for services or items rendered to active duty for authorized NATO dependents.

(D) *Allowable Amount does not exceed Deductible Amount.* If fiscal year allowable amounts for two or more beneficiary members of a family total less than $100.00 ($300.00 if paragraph (f)(2)(i)(B)(*2*) of this section applies), but more of the beneficiary members submit a claim for over $50.00 ($150.00 if paragraph (f)(2)(i)(B)(*1*) of this section applies), neither the family nor the individual deductible will have been met and no CHAMPUS benefits are payable.

(E) For any family the outpatient deductible amounts will be applied sequentially as the CHAMPUS claims are processed.

(F) If the fiscal year outpatient deductible under either paragraphs (f)(2)(i)(A) or (f)(2)(i)(B) of this section has been met by a beneficiary or a family through the submission of a claim or claims to a CHAMPUS fiscal intermediary in another geographic location from the location where a current claim is being submitted, the beneficiary or sponsor must obtain a deductible certificate from the CHAMPUS fiscal intermediary where the applicable beneficiary or famiy fiscal year deductible was met. Such deductible certificate must be attached to the current claim being submitted for benefits. Failure to obtain a deductible certificate under such circumstances will result in a second beneficiary or family fiscal year deductible being applied. However, this second deductible may be reimbursed once appropriate documentation, as described in paragraph (f)(2)(i)(F) of this section, is supplied to the CHAMPUS fiscal intermediary applying the second deductible.

(G) Notwithstanding the dates specified in paragraphs (f)(2)(i)(A) and (B) of this section, in the case of dependents of active duty members of rank E-5 or above with Persian Gulf conflict service, the deductible shall be the amount specified in paragraph (f)(2)(i)(A) of this section for care rendered prior to October 1, 1991, and the amount specified in paragraph (f)(2)(i)(B) of this section for care rendered after October 1, 1991. For purposes of the preceding sentence, a member with Persian Gulf conflict service is a member who is, or was, entitled to special pay for hostile fire/imminent danger authorized by 37 U.S.C. 310, for services in the Persian Gulf area in connection with Operation Desert Shield or Operation Desert Storm.

* * * * *

(3) * * *

(i) *Annual fiscal year deductible for outpatient services or supplies.* The annual fiscal year deductible for otherwise covered outpatient services or supplies provided retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees is the same as the annual fiscal year outpatient deductible applicable to dependents of active duty members of rank E-5 or above as specified in paragraph (f)(2)(i)(A) or (B) of this section.

* * * * *

(4) * * *

(i) *Annual fiscal year deductible for outpatient services or supplies.* An eligible former spouse is responsible for the payment of the first $150.00 of the CHAMPUS-determined reasonable costs or charges for otherwise covered outpatient services or supplies provided in any one fiscal year. (Except for services received prior to April 1, 1991, the deductible amount is $50.00). The former spouse cannot contribute to, nor benefit from, any family deductible of the member or former member to whom the former spouse was married or of any CHAMPUS-eligible children.

* * * * *

3. Section 199.7 is proposed to be amended by revising paragraph (a)(6) as follows:

§ 199.7 Claims submission, review, and payment.

(a) *General* * * *

(6) *Deductible certificate.* If the fiscal year outpatient deductible, as defined in § 199.4(f)(2) has been met by a beneficiary or a family through the submission of a claim or claims to a

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CHAMPUS fiscal intermediary in a geographic location different from the location where a current claim is being submitted, the beneficiary or sponsor must obtain a deductible certificate from the CHAMPUS fiscal intermediary where the applicable individual or family fiscal year deductible was met. Such deductible certificate must be attached to the current claim being submitted for benefits. Failure to obtain a deductible certificate under such circumstances will result in a second individual or family fiscal year deductible being applied. However, this second deductible may be reimbursed once appropriate documentation, as described in this paragraph is supplied to the CHAMPUS fiscal intermediary applying the second deductible (refer to § 199.4 (f)(2)(i)(F)).

* * * * *

Dated: June 17, 1991.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14802 Filed 6-20-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[CGD 191-048]

Safety Zone Regulation: New York, New Jersey and the Lower Hudson River

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in New York, New Jersey and the Lower Hudson River. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATE: This regulation becomes effective at 10 p.m. local time 30 June 1991. It terminates at 11:15 p.m. local time 30 June 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information: The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port New York, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation: The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 10 p.m., 30 June 1991 to 11:15 p.m. 30 June 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. A new § 165.T1049 is added to read as follows:

§ 165.T1049 Safety Zone: New York, New Jersey and the Lower Hudson River.

(a) *Location.* The following area has been declared Safety Zones: All waters of the Lower Hudson River within a 300 yard radius of the fireworks barge located 350 yards west of Pier 45 Manhattan.

(b) *Effective date.* This regulation becomes effective at 10 p.m. local time 30 June 1991. It terminates at 11:15 p.m. local time 30 June 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 13, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-14797 Filed 6-20-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991-AA40

Civil Money Penalties for Failure To Report Medical Malpractice Payments and for Breaching the Confidentiality of Information

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes civil money penalties (CMPs) pursuant to title IV of Public Law 99-660, the Health Care Quality Improvement Act of 1986 (HCQIA), as amended by section 402(a) of Public Law 100-177. Section 421(c) of HCQIA establishes a CMP against any entity that fails to report information that is required to be reported on medical malpractice payments. Section 427(b) of HCQIA establishes a CMP against any person that breaches the confidentiality of information which is reported or furnished pursuant to HCQIA and which the Secretary has established the National Practitioner Data Bank to collect and disseminate.

EFFECTIVE DATE: These regulations are effective on June 21, 1991. See section IV of Supplementary Information in this preamble for further information.

FOR FURTHER INFORMATION CONTACT: Zeno W. St. Cyr, II, Legislation and Regulations Staff, (202) 619-3270.

SUPPLEMENTARY INFORMATION:

I. Background

A. Health Care Quality Improvement Act

The Health Care Quality Improvement Act (HCQIA), title IV of Public Law 99-660 as amended by section 402(a) of Public Law 100-177, sets forth specific requirements governing the reporting and disclosure of information concerning: (1) Payments made for the benefit of physicians, dentists and other health care practitioners as a result of medical malpractice actions or claims, and (2) certain adverse actions taken regarding the licenses or clinical privileges of physicians, dentists, and, in some cases, other health care practitioners. The stated purpose of these provisions is to improve the quality of medical care by identifying those physicians, dentists, or other health care practitioners who are engaged in unprofessional behavior, and to restrict their ability to move from one State to another without disclosure or discovery of their damaging or incompetent performance.

HCQIA requires the Secretary to establish, either directly or through an appropriate public or private agency designated by the Secretary, a National Practitioner Data Bank (the Data Bank) to serve as a national source of information on physicians, dentists and, under certain circumstances, other health care practitioners concerning: (1) Payments made as a result of medical malpractice actions or claims; (2) adverse licensure actions taken by Boards of Medical Examiners and equivalent State licensing boards for other health care practitioners; and (3) adverse actions on clinical privileges taken by health care entities.

HCQIA also provides that information reported or furnished pursuant to part B is confidential and is to be disclosed only for purposes specified in the law. This information is intended to be used solely with respect to activities in furtherance of the quality of health care. The specific procedures and requirements for reporting and dissemination of this information by the Data Bank are contained in final regulations published in the October 17, 1988, issue of the Federal Register (54 FR 42722).

B. Civil Money Penalty Authority

In recent years, Congress has provided the Department of Health and Human Services with increasing civil money penalty (CMP) authorities to ensure compliance with statutory provisions. The original CMP authorities were specifically designed to provide penalties for fraudulent and abusive practices, such as the submission of false claims, involving the Medicare and Medicaid programs. The authority for levying CMPs was further expanded in recent years to address issues involving the quality of care, other reimbursement issues, and other State health care programs. With enactment of the Health Care Quality Improvement Act, Congress has broadened the Department's existing CMP authorities by specifically providing new CMPs to enforce the requirements of HCQIA relative to reporting medical malpractice payment information and maintaining the confidentiality of information reported or disclosed under HCQIA. Authority for imposing the new CMPs has been delegated to the Inspector General

II. Summary of the Provisions of the Proposed Rule

A notice of proposed rulemaking (NPRM) addressing the Office of Inspector General's (OIG) civil money penalty authorities under title IV of Public Law 99-660 was published in the Federal Register on March 21, 1988 (53 FR 9260). The provisions of that proposed notice set forth two new CMPs for inclusion in regulations and included a discussion of criteria to be considered in determining penalty amounts.

A. CMP for Failure To Report Medical Malpractice Payments

The proposed rules provided that, under the provisions of section 421(c) of HCQIA, a CMP could be imposed against any person or entity, including an insurance company, that fails to report certain information that is required to be reported on medical malpractice payments. The required information must be reported to the Data Bank as well as to the appropriate licensing board(s) in the State in which the medical malpractice action or claim arose. To assure the timely and complete reporting of medical malpractice payments, the OIG has been delegated the specific responsibility to levy a CMP of up to $10,000 for each payment involved, against any person or entity that fails to report information as required under HCQIA and the regulations set forth in 45 CFR part 60, subpart B.

B. CMP For Breaching The Confidentiality of Information

The proposed rules provided that, under the provisions of section 427(b)(2) of HCQIA, a CMP of up to $10,000 could be imposed against any person or entity who violates the confidentiality of information reported pursuant to HCQIA. The NPRM indicated that the CMP could be imposed against State licensing board employees; employees of health care entities, including health maintenance organizations; employees of the Secretary or a private or public agency; or could be imposed directly against those persons, entities, or organizations that violate the confidentiality requirements of the law. In any case in which it is determined that more than one party was responsible for improperly disclosing confidential information, a penalty, up to the maximum limit, could be imposed against each responsible individual, entity or organization.

C. Determining the Amount of Penalty

In determining the penalty amount for each violation, the proposed regulations set forth five criteria for consideration: (1) The nature and circumstances resulting in the failure to report medical malpractice payments or the improper disclosure of information; (2) the degree of culpability of the person or entity in failing to provide timely and complete payment data or in breaching the confidentiality of reported information; (3) the materiality or significance of omission of the information to be reported with regard to medical malpractice payment judgments or settlements, or the materiality of the improper disclosure of information; (4) any prior history of the individual or entity with respect to these violations; and (5) such other matters required by justice.

The NPRM noted that violations of HCQIA would be subject to the same notification, effectuation, and appeal procedures as CMP violations under section 1128A(a) of the Social Security Act which are set forth at 42 CFR part 1003.

III. Summary of and Response to Comments

In response to our NPRM, we received a total of 43 timely-filed public comments. Comments were received from a broad spectrum of interested parties—including several professional, medical and State hospital associations and various State medical, dental, professional regulatory and licensing boards—who voiced specific concerns over both the OIG proposed regulations and the proposed rulemaking by the Public Health Service. Only 24 of these comments were specifically related to the OIG's authorities for levying CMPs for HCQIA violations. The remainder of the comments were forwarded to PHS and were addressed in the Preamble to the final PHS Data Bank regulations that were published in October 1989.

A. Section 1003.101—Definitions

Comment: Several commenters requested that we clarify the definition set forth in § 1003.101 regarding the term "medical malpractice action or claim." Commenters questioned whether this term was limited to claims or actions filed in court or whether it also included administrative claims. In addition, commenters questioned the use of the term "other adjudicative bodies" as used in the definition with regard to where a medical malpractice action or claim may be filed.

Response: This issue was fully addressed in the Preamble to the final PHS regulations. We have incorporated the changes made in the final PHS regulations. As revised, "medical

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malpractice action or claim" means a written complaint or claim demanding payment based on a physician's, dentist's, or other health care practitioner's provision of or failure to provide health care services, and includes the filing of a cause of action based on the law of tort brought in any State or Federal court or other adjudicative body. This definition specifically includes the filing of medical malpractice claims on an administrative level, as well as judicial claims and actions. In addition, as used in this definition, "other adjudicative body" is intended to specify medical malpractice actions which are brought before boards and other dispute resolution mechanisms prior to or instead of a formal court action.

B. Section 1003.102—Basis for CMPs and Assessments

Comment: One commenter expressed uncertainty over which person or entity has the responsibility of reporting the payment information.

Response: Under the provisions of HCQIA and the implementing regulations, any person or entity (such as an insurance company, a self-insured hospital, a self-insured physician or dentist, etc.) that makes a payment on behalf of any licensed health care practitioner as the result of a claim or judgment for medical malpractice must report certain information regarding the payment to the Data Bank and the appropriate State licensing board(s). The specific responsibilities of a person or entity, relative to reporting medical malpractice payment information, are set forth in § 60.7 of the final PHS regulations on the Data Bank, 54 FR 42731. Thus, it is the person or entity that actually makes the payment that is required to report the required information.

Comment: The proposed regulations at § 1003.102(c) stated that a penalty may be imposed against any person or entity that "improperly discloses" information in violation of section 427 of HCQIA. One commenter recommended that the term be described in greater detail to indicate what constitutes an improper disclosure. Another commenter suggested that proposed § 1003.102(c) should, in addition to stating that a penalty will be assessed against a person who improperly "discloses" information, include the word "uses" to incorporate the concept included in section 427(b)(3) of the statute.

Response: The provisions authorizing CMPs do not specifically cover section 427(b)(3) of HCQIA. However, we concur with the addition of the word "use" and have revised the regulations to be more specific as to what constitutes an "improper disclosure." We have elected to specify that permitting unauthorized access to or use of reported information constitutes a breach of the confidentiality of such information and hence, a violation of section 427(b). Section 427(b)(1) provides that all information reported pursuant to Part B of HCQIA is considered confidential. That section also specifies the conditions under which such information may be shared. The statute explicitly limits access to the information to certain persons or entities. It also specifies the purposes for which the information may be used when it is provided to those persons or entities. Section 427(b)(2) authorizes a CMP against any person who violates the provisions of section 427(b)(1). Thus, we believe that the statute authorizes the imposition of a CMP against anyone who discloses reported information: (1) To a person who is not entitled to receive it; or (2) for a purpose or activity not authorized by the statute or regulations. Since the statute specifically prohibits the improper disclosure of reported information, we believe that unauthorized access to the information is also covered since such access results in an unauthorized or improper disclosure of information. As revised, the regulations provide for a CMP against any person who improperly discloses reported information, who improperly uses reported information, or who permits unauthorized access to reported information. Section 1003.102(c)(2) has also been revised to clarify that the release of information reported to the Data Bank in response to a subpoena or discovery request is a violation of the confidentiality provisions of section 427. The Department has further clarified that the confidentiality provisions do not, however, apply to an entity's original documents or underlying records from which the information that was reported pursuant to Part B was obtained, compiled, or derived. For example, if a hospital takes an adverse action against a physician, reports it pursuant to the provisions of Part B of Title IV, and later receives a subpoena for its underlying records, the hospital may not refuse to provide the requested documents on the grounds that section 427 bars the release of the records. On the other hand, if the hospital receives a subpoena for a report it furnishes to the Data Bank or a subpoena for a report it receives from the Data Bank, the hospital may not release the report it furnishes to or receives from the Data Bank in response to the subpoena as this would constitute an improper disclosure in violation of section 427 of Public Law 99-660.

Comment: One commenter requested clarification of whether disclosure of information to members and employees of a "professional review body" is authorized.

Response: Section 60.13 of the PHS final rule (54 FR 42734) contains provisions relative to the confidentiality of Data Bank information and sets forth certain conditions under which Data Bank information may be disclosed. Specifically this section provides that while the confidentiality restrictions apply to parties who receive information directly from the Data Bank or indirectly from the requesting party, information received from the Data Bank is permitted and authorized to be disclosed to members and employees of a professional review body in the course of performing the activity for which it was sought. The OIG regulations conform to the final PHS rules, indicating who may request information, what information may be made available, and limitations on disclosure.

Comment: Several commenters also suggested amending § 1003.102(c) to clarify that employees, consultants and others associated with the Data Bank are subject to penalties if they use or disclose the information in a manner inconsistent with their work on the Data Bank.

Response: The statute and the implementing regulations addressing this area specifically provide that any "person" who improperly discloses or uses information is subject to a CMP. The CMP regulations at 1003.101 broadly define the term "person" to include individuals as well as public or private entities. We have revised the final rules to provide that a CMP can be imposed against any person who improperly discloses, uses, or permits access to the confidential information collected or reported, either directly or indirectly, by the Data Bank. Therefore, we do not believe it is necessary to single out employees, consultants, or others associated with the Data Bank.

Comment: One commenter indicated that the reference in § 1003.102(c) regarding improper disclosure as a violation of "section 60.11 of this title" is incorrect.

Response: The correct reference in this subsection should be to 45 CFR, part 60. We have amended this reference accordingly.

C. Section 1003.103—Amount of Penalty

Comment: One commenter predicted that some insurers initially may experience difficulties complying with the new reporting requirements and believed that no CMPs should be assessed against insurers for omissions or errors in reporting for six months after the regulations are effected. This commenter also believed the regulations should state that the maximum $10,000 CMP will be applied only rarely and only in cases of egregious and flagrant disregard. Another commenter, however, indicated that a CMP of up to $10,000 does not set forth a sufficient and adequate deterrent to individuals for an improper disclosure of information reported or collected by the Data Bank.

Response: The $10,000 maximum penalty amount per violation has been established by statute. We believe the Public Health Service's establishment of the Data Bank and its instructions on how and in what form to report the required information give the provider community adequate time and warning to be aware of what requirements have been placed on them. The OIG will, of course, as in the case of assessing other civil money penalties, consider a full array of aggravating and mitigating factors in determining penalty amounts for failure to report required information relating to malpractice payments and for violating the confidentiality of reported information.

D. Section 1003.109—Notice of Proposed Determination

Comment: Several commenters stated that the regulations should be clarified to assure that institutions cannot be suspended from Medicare and Medicaid participation for failing to report malpractice settlement payments or violating confidentiality obligations.

Response: There is no authority under the Health Care Quality Improvement Act for imposing a suspension from the Medicare and Medicaid programs. Regulations set forth at 42 CFR 1003.105 specifically provide that a suspension may be imposed against persons subject to a penalty and assessment under § 1003.102 (a) and (b); the CMPs relating to violations of the Health Care Quality Improvement Act are set forth under § 1003.102(c). However, while we believe that the regulations in 42 CFR Part 1003 are sufficiently clear that suspension is applicable only to certain types of CMP cases, we are revising the language in § 1003.109(a) to clarify this point and to read, "penalty, assessment, and suspension, as applicable."

Comment: One commenter believed that in order to draw attention to the seriousness of a proposed adverse determination by the OIG, it would be appropriate for § 1003.109(a)(6) to highlight the instructions for responding to a proposal, as well as specifying the respondent's right to secure legal representation by the attorney of his or her choice.

Response: We believe that it is unnecessary and inappropriate to include such information in regulatory language and to provide legal advice to the subjects of administrative actions. The notice sent to individuals is designed to (1) inform them that failure to respond may result in the imposition of a penalty and (2) provide them with a copy of the rules that apply. We believe that this sufficiently communicates the seriousness of the action while concurrently apprising the subject of applicable legal provisions. We see no reason to distinguish the notice sent in this type case with that of other CMP cases, many of which impose higher penalties for violations.

Comment: One commenter believed that § 1003.109(a)(5) should require the Inspector General to state specifically what information was considered relevant with regard to the mitigating and aggravating factors considered.

Response: Under § 1003.109, the OIG is required to state in a notice of proposed determination what factors set forth in § 1003.106 were considered in determining the amount of a CMP. While at this time we do not have enough specific information to set forth and identify the full range of possible aggravating and mitigating factors, the letter sent to the person or entity subject to a penalty will clearly indicate what specific circumstances and factors were considered in setting the amount of the penalty.

E. Section 1003.114—Issues and Burden of Proof

Comment: Proposed § 1003.114(b) provides that the standard of proof will be "by a preponderance of the evidence." One commenter recommended that the standard of proof should be by "clear and convincing" evidence in contested cases.

Response: The civil money penalties contained in HCQIA are to be imposed and collected in the same manner as are CMPs under section 1128A(a) of the Social Security Act. The section 1128A(a) standard is proof by a "preponderance of the evidence." This is the traditional standard generally held applicable in administrative or civil proceedings and it has been upheld in CMP cases by courts that have considered it.

F. Section 1003.331—Records to the Public

Comment: One commenter indicated that the proposed regulations did not include any amendment to existing § 1003.131. This section states that all documents contained in the records of formal proceedings for imposing a penalty may be inspected and copied, unless ordered sealed by the Administrative Law Judge. The commenter believed that since the reports of medical malpractice claims are subject to the confidentiality provisions of HCQIA, the provisions of § 1003.131 should not be applicable to proceedings to impose CMPs for violations of the statute.

Response: While information reported pursuant to HCQIA is confidential, the use of such information in a CMP proceeding is not covered by the HCQIA provisions. We see no reason to distinguish the records of CMP proceedings under HCQIA from the records of such proceedings under the Social Security Act, which may also involve the use of confidential information. Any individual may seek protection of court documents by requesting that certain material be sealed. We believe this is the most appropriate way to protect confidential information while maintaining the public nature of these proceedings. Further, since all documents or information in a CMP case may not be confidential or may not reveal confidential information, we think it is inappropriate to require sealing all or particular types of records as a matter of course.

IV. Effective Date of the Final Rule

The final regulations providing for operation of the Data Bank were published on October 17, 1989 in the Federal Register (54 FR 42722). The opening of the Data Bank was announced in the August 1, 1990 Federal Register (55 FR 31239); and on September 1, 1990, the Data Bank became operational. The OIG final regulations provide for penalties that may be imposed for certain violations relative to the Data Bank. As a result, and because the Data Bank already has been operational for several months, the provisions contained herein will be effective on June 21, 1991.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires the Department to prepare a regulatory impact analysis for any major rule, that is, any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies or geographic

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regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have determined that this rule does not meet the criteria for a major rule as defined by section 1(b) of the Executive Order. As indicated, the regulations establish new authority for the OIG to impose CMPs against those who fail to report required information and against those who breach the confidentiality of the information reported to the National Practitioner Data Bank. As such, we have concluded that this regulation will not have a direct effect on the economy or on Federal or State expenditures.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980, Pub. L. 96-354, 5 U.S.C. 604(a), we are to prepare and publish a regulatory flexibility analysis unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action will have on small entities, and to develop lower cost or burden alternatives. We have determined that these regulations will have no significant economic impact. While some CMPs imposed by the OIG as a result of these regulations could have an impact on some small business entities, we do not anticipate that a substantial number of small entities will be affected by this rulemaking. Therefore, we have concluded that a regulatory flexibility analysis is not required for this rulemaking.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pubic Law. 96-511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. While the final regulations prepared by PHS contain specific information collection requirements, we have determined that these penalty provisions do not contain such information collection requirements and will not increase the Federal paperwork burden on the public and private sectors.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR chapter V, part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for part 1003 is revised to read as follows:

Authority: Secs. 1102, 1128, 1128A, 1842(j) and 1842(k) of the Social Security Act, and Secs. 421(c) and 427(b)(2) of Pub. L. 99-660 (42 U.S.C. 1302, 1320a-7, 1320a-7a, 1395u(j), 1395u(k), 11131(c) and 11137(b)(2)).

2. Section 1003.100 is revised to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1842(j) and 1842(k) of the Social Security Act, and sections 421(c) and 427(b)(2) of Pub. L. 99-660 (42 U.S.C. 1320a-7(c), 1320a-7a, 1395u(j), 1395u(k), 11131(c) and 11137(b)(2).

(b) *Purpose.* This part—

(1) Establishes procedures for imposing:

(i) Civil money penalties and assessments against persons who have submitted certain prohibited claims under the Medicare, Medicaid, or the Maternal and Child Health Services Block Grant programs; and

(ii) Civil money penalties against persons who fail to report information concerning medical malpractice payments or who improperly disclose, use, or permit access to information reported under part B of title IV of Public Law 99-660, and regulations specified in 45 CFR part 60;

(2) Establishes procedures for suspending from the Medicare and Medicaid programs, certain persons against whom a civil money penalty or assessment has been imposed; and

(3) Specifies the appeal rights of persons subject to a penalty or assessment.

3. Section 1003.101 is amended by adding, in alphabetical order, a definition for the term "medical malpractice action or claim" to read as follows:

§ 1003.101 Definitions.

* * * * *

Medical malpractice claim or action means a written complaint or claim demanding payment based on a physician's, dentist's or other health care practitioner's provision of, or failure to provide health care services, and includes the filing of a cause of action based on the law of tort brought in any State or Federal court or other adjudicative body.

* * * * *

4. Section 1003.102 is amended by redesignating existing paragraphs (c) (1) and (2) as paragraphs (d) (1) and (2) and republishing them; and by adding new paragraphs (c) and (d)(3) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(c) The OIG may impose a penalty against—

(1) Any person, including an insurance company, that fails to report information concerning a payment made under an insurance policy, self-insurance or otherwise, for the benefit of a physician, dentist or other health care practitioner in settlement of, or in satisfaction in whole or in part of, a medical malpractice claim or action or a judgment against such physician, dentist, or other health care practitioner in accordance with section 421 of Public Law 99-660 (42 U.S.C. 11131) and as required by regulations at 45 CFR part 60.

(2) Any person that improperly discloses, uses, or permits access to information reported pursuant to part B of title IV of Public Law 99-660, in violation of section 427 of Public Law 99-660 (42 U.S.C. 11137) or regulations at 45 CFR part 60. The disclosure of information reported pursuant to part B of title IV in response to a subpoena or a discovery request is considered to be an improper disclosure in violation of section 427 of Public Law 99-660. However, disclosure or release by an entity of original documents or underlying records from which the reported information is obtained or derived is not considered to be an improper disclosure in violation of section 427.

(d)(1) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a claim as described in paragraph (a) of this section, each such person may be held liable for the penalty prescribed by this part, and an assessment may be imposed against any one such person or jointly and severally against two or more such persons, but the aggregate amount of the assessments collected may not exceed the amount that could be assessed if only one person was responsible.

(2) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a request for payment described in paragraph (b) of this section, each such person may be held liable for the penalty prescribed by this part.

(3) In any case in which it is determined that more than one person was responsible for failing to report information that is required to be reported on a medical malpractice payment, or for improperly disclosing, using, or permitting access to information, as described in paragraph (c) of this section, each such person may be held liable for the penalty prescribed by this part.

5. Section 1003.103 is revised to read as follows:

§ 1003.103 Amount of penalty.

(a) The OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under paragraphs (a) and (b) of § 1003.102.

(b) The OIG may impose a penalty of not more than $10,000 for each payment for which there was a failure to report required information or for each improper disclosure, use, or access to information that is subject to a determination under paragraph (c) of § 1003.102.

6. Section 1003.105 is amended by revising paragraph (a) to read as follows:

§ 1003.105 Suspension from participation in Medicare and Medicaid.

(a) A person subject to a penalty or assessment determined under § 1003.102 (a) and (b) may, in addition, be suspended from participation in Medicare for a period of time determined under § 1003.107. The OIG may require the appropriate State agency to suspend the person from the Medicare program for a period he shall specify. The State agency may request the OIG to waive suspension of a person from the Medicaid program under this section if it concludes that, because of the shortage of providers or other health care personnel in the area, individuals eligible to receive Medicaid benefits would be denied access to medical care or that such individuals would suffer hardship. The OIG will notify the State agency if and when it waives suspension in response to such a request.

* * * * *

7. Section 1003.106 is amended by revising paragraphs (a), (b) introductory text, (b) (1), (2), and (3), and (c) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) (1) In determining the amount of any penalty or assessment, in accordance with § 1003.102 (a) and (b), the OIG will take into account:

(i) The nature of the claim or request for payment and the circumstances under which it was presented;

(ii) The degree of culpability of the person submitting the claim or request for payment;

(iii) The history of prior offenses of the person submitting the claim or request for payment;

(iv) The financial condition of the person presenting the claim or request for payment; and

(v) Such other matters as justice may require.

(2) In determining the amount of any penalty in accordance with § 1003.102(c), the OIG will take into account:

(i) The nature and circumstances resulting in the failure to report medical malpractice payments or the improper disclosure of information;

(ii) The degree of culpability of the person in failing to provide timely and complete malpractice payment data or in improperly disclosing, using, or permitting access to information;

(iii) The materiality, or significance of omission, of the information to be reported with regard to medical malpractice judgments or settlements, or the materiality of the improper disclosure of, use of, or access to information;

(iv) Any prior history of the person with respect to violations of these provisions; and

(v) Such other matters as justice may require.

(b) *Guidelines for determining the amount of the penalty or assessment.* As guidelines for taking into account the factors listed in paragraph (a)(1) of this section, the following circumstances are to be considered:

(1) *Nature and circumstances of the claim.* It should be considered a mitigating circumstance if all the items or services subject to a determination under § 1003.102 (a) and (b) included in the action brought under this part were of the same type and occurred within a short period of time, there were few such items or services, and the total amount claimed for such items or services was less than $1,000. It should be considered an aggravating circumstance if such items or services were of several types, occurred over a lengthy period of time, there were many such items or services (or the nature and circumstances indicate a pattern of claims for such items or services), or the amount claimed for such items or services was substantial.

(2) *Degree of culpability.* It should be considered a mitigating circumstance if the claim for the item or service was the result of an unintentional and unrecognized error in the process respondent followed in presenting claims, and corrective steps were taken promptly after the error was discovered. It should be considered an aggravating circumstance if the respondent knew the item or service was not provided as claimed, or if the respondent knew that no payment could be made because he had been excluded from program reimbursement as specified in § 1003.102(a)(2) or because payment would violate the terms of an assignment agreement or an agreement with a State agency under § 1003.102(b).

(3) *Prior offenses.* It should be considered an aggravating circumstance if at any time prior to the presentation of any claim which included an item or service subject to a determination under § 1003.102 (a) and (b), the respondent was held liable for criminal, civil, or administrative sanctions in connection with a program covered by this part or any other public or private program of reimbursement for medical services.

* * * * *

(c) As guidelines for determining the amount of the penalty and assessment to be imposed for every item, service or incident subject to a determination under § 1003.102 (a) and (b)—

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently below the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently close to or at the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(3) Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment should never be less than double the approximate amount of damages sustained by the United States, or any State, as a result of claims subject to a determination under § 1003.102 (a) and (b).

* * * * *

8. Section 1003.109 is amended by revising paragraph (a) to read as follows:

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§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes to impose a penalty or assessment, or to suspend a respondent from participation in Medicare or Medicaid, as applicable, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent, written notice of his or her intent to impose a penalty, assessment, and suspension, as applicable. The notice will include:

(1) Reference to the statutory basis for the penalty, assessment, and suspension, as applicable;

(2) With respect to determinations under § 1003.102 (a) and (b), a description of the claims and requests for payment with respect to which the penalty, assessment, and suspension are proposed (except in cases where the Inspection General is relying upon statistical sampling pursuant to § 1003.133, in which case the notice shall describe those claims and requests for payment comprising the sample upon which the Inspector General is relying and shall also briefly describe the statistical sampling technique utilized by the Inspector General);

(3) With respect to determinations under § 1003.102(c), a description of the violation and the circumstances under which the penalty is being imposed;

(4) The reason why such claims and requests for payment, or with respect to Title IV of Public Law 99–660, such failure to report required information or improper disclosure of, use of, or access to information, subject the respondent to a penalty, assessment, and suspension, as applicable, and the amount of the proposed penalty and assessment along with the period of proposed suspension, as applicable;

(5) Any circumstances described in § 1003.106 which were considered when determining the amount of the proposed penalty, assessment, period of suspension, as applicable;

(6) Instructions for responding to the notice, including a specific statement of respondent's right to a hearing, of the fact that failure to request a hearing within 30 days permits the imposition of the proposed penalty, assessment, and suspension, as applicable, without right to appeal, and of respondent's right to request an extension of time in which to respond to the notice and a copy of the rules contained in this part.

* * * * *

9. Section 1003.114 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1003.114 Issues and burden of proof.

(a) To the extent that a proposed penalty and assessment is based on claims or requests for payment presented on or after August 13, 1981, the Inspector General must prove by a preponderance of the evidence that the respondent presented or caused to be presented such claims or requests for payment as described in § 1003.102 (a) and (b).

(b) To the extent that a proposed penalty is based on a violation of title IV of Public Law 99–660, the Inspector General must prove by a preponderance of the evidence that the respondent failed to report medical malpractice payment information on a timely and complete basis, or the respondent improperly disclosed, used, or permitted access to information, as set forth in § 1003.102(c) and in 45 CFR part 60.

(c) Where a final determination has been rendered, in any proceeding in which the respondent was a party and had an opportunity to be heard, that the respondent—

(1) Presented or caused to be presented a claim or request for payment falling within the scope of § 1003.102 (a) and (b); or

(2) Failed within the scope of § 1003.102(c) to report medical malpractice payment information or improperly disclosed, used, or permitted access to information;

the respondent shall be bound by such determination in any proceeding under this part.

* * * * *

10. Section 1003.125 is amended by revising paragraph (c) to read as follows:

§ 1003.125 Initial decision; administrative review, finality.

* * * * *

(c) The findings of fact shall include a finding on each of the following issues for every item, service or occurrence with respect to which a penalty or assessment was proposed.

(1) Whether the item, service or occurrence is subject to a determination under § 1003.102;

(2) If the item, service or occurrence is subject to a determination under § 1003.102 whether there are mitigating or aggravating circumstances as described in § 1003.106.

* * * * *

Dated: December 3, 1990.

Richard P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–13174 Filed 6–20–91; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 89–07]

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade

AGENCY: Federal Maritime Commission.

ACTION: Proceedings on request for enforcement of final rule.

SUMMARY: The Federal Maritime Commission published a final rule in this proceeding as 46 CFR 586.3 (1990). In response to a request for enforcement of the rule filed by Overseas Enterprises, Inc., the Federal Maritime Commission has instituted a Fact Finding Investigation into current operations in the trade and the waiver process under Government of Ecuador Resolution No. 012/87. The Fact Finding proceeding will be conducted as part of the proceeding in Docket No. 89–07 by a Fact Finding Officer appointed by the Commission pursuant to sections 19 (1)(b), (19)(6) and (15)(7) of the Merchant Marine Act of 1920, 46 U.S.C app. 876 (1)(b), (6) and (7).

DATES: Report of the Fact Finding Officer due on or before September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Carol J. Neustadt, Office of General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: This proceeding was initiated by the Federal Maritime Commission ("Commission" or "FMC") under section 19(1)(b) of the Merchant Marine Act of 1920 ("section 19"), 46 U.S.C. app. 876(1)(b). Section 19 authorizes the Commission to

make rules and regulations affecting shipping in the foreign trade * * * in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel operating common carrier operations, and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules or regulations * * *.

The Commission's Notice of Inquiry instituting the proceeding was based on the allegations of a U.S. company, Overseas Enterprises, Inc. ("OEI"), that it had been unable to reestablish a liquid bulk service in the U.S./Ecuador trade ("Trade") as a result of a decree of the Government of Ecuador ("GOE"), GOE Resolution No. 012/87.[1]

On January 16, 1990, the Commission issued a final rule in this proceeding, finding conditions unfavorable to shipping in the U.S. trades with Ecuador (55 FR 2071, January 22, 1990). The Commission's final rule ordered the Ecuadoran-flag carrier Maritima Transligra, S.A. ("Transligra") to pay a fee of $50,000 for each subsequent voyage it performed and to report to the Commission periodically on its operations in the Trade, including the names of vessels operated, dates of voyages and cargoes carried. To date no fees have been paid or reports filed pursuant to the rule.[2]

Alleging that the unfavorable conditions continue to exist in the Trade and that the final rule's sanctions are being evaded, OEI filed a request for Enforcement of the rule. A notice of the filing of OEI's Request for Enforcement, inviting public comments, was published in the **Federal Register** (56 FR 1372, January 14, 1991). Replies from two parties, Chemical Tankers of America, Inc. ("Chemical Tankers") and Shippers for Competitive Ocean Transportation ("SCOT"), were received prior to publication of the notice; none was received in response to the notice.

Background

The Commission's final rule finding conditions unfavorable to shipping in the trade was issued after lengthy proceedings, including repeated attempts by OEI as well as diplomatic efforts by the Department of State ("DOS") to secure access in the Trade for OEI. Transligra participated in the Commission's proceedings, arguing in several rounds of comments that the Commission lacked authority under section 19 to act on behalf of any person other than a U.S.-flag carrier [3] and that the Ecuadorian cargo reservation policies established in Resolution No. 012/87 and other decrees were an economic necessity. Comments and arguments submitted by Transligra were accompanied on two occasions by an affidavit of Transligra's Vice President, Wil W. Nefkens. Several shipper organizations, individual shippers, carriers and the DOS also participated in the proceeding.

Subsequent to issuance of the final rule, Transligra informed the Commission by letter from its counsel that it had sold the only Ecuadorian-flag vessel it operated in the Trade, the CHIMBORAZO, and would cease its liquid bulk operations as an Ecuadorian-flag carrier in the Trade. Thereafter, however, OEI provided information to the Commission which indicated that Transligra continued to operate vessels in the Trade. Additional information, discussed below, concerning the individual and corporate identity of the parties presently operating vessels transporting liquid bulk cargoes from U.S. Gulf ports to Ecuador was secured through inquiries undertaken by the Houston Office of the Commission's Bureau of Investigations and the DOS.

Request for Enforcement

OEI alleges in its Request for Enforcement that Transligra has continued service in the Trade, but that OEI "still is barred from effective participation." Waivers allegedly must be obtained on a voyage-by-voyage basis and are difficult to get.[4] OEI charges that it has been constantly obstructed by delays, as a result of which it is unable to make or meet commitments to customers and secure profitable cargoes. OEI indicates that it has taken up to 27 days to secure a waiver, despite the assistance of the Ecuadorian embassy in the U.S., and that such lengthy processing creates a major problem when the custom in the Trade is to book a cargo firm within 10 to 15 days prior to scheduled vessel departure. OEI also reports having made only two voyages in the Trade from January through September 1990. Transligra is said to remain the dominant carrier in the Trade, operating chartered vessels under the same operating structure but apparently with a changed "operating identity." Request, 3.

Replies to Request for Enforcement

Chemical Tankers, identifying itself as general agents for Andino Chemical Tankers, Inc. ("Andino"), advises by letter that the vessels identified by OEI as belonging to Transligra are in fact owned or chartered and operated by Andino, with all shipments to Ecuador moving under Andino bills of lading. Chemical Tankers states that Transligra "was closed when it sold its vessel MT CHIMBORAZO in May 1990, and is not operating any vessels whatsoever." The letter is signed by the Vice President of Chemical Tankers of America, Wil W. Nefkens.

SCOT reiterates its general opposition to GOE policies which restrict access to the Trade for third-flag carriers. SCOT concurs with the Commission's finding that conditions unfavorable to shipping exist in the Trade and states that its "members report no change in the conditions since the Commission's findings were published that would indicate a change in policy by the Government of Ecuador." SCOT refers on several occasions to service presently offered by "Transligra" or vessels operated by "Transligra or a sister company." Nevertheless, because of its members' needs for stable service and long-term contracts, SCOT emphasizes that any solution to the problem be implemented in a manner that assures continuity of essential service.[5]

Discussion

As noted above, OEI has provided documents and information to the Commission at various times since issuance of the final rule in this proceeding which, OEI contends, show that Transligra has continued to operate vessels in the Trade. Cargo manifests, which OEI reports are "from the Guayaquil port authority," list

[1] Resolution No. 012/87 of March 1987, reserves solid and liquid bulk import cargo from the United States to Ecuador for Ecuadoran-flag vessels belonging to Ecuadoran shipping companies, or foreign vessels chartered by Ecuadoran shipping companies, or vessels flying the flag of the United States. The stated rationale in Resolution No. 012/87 for narrowing the application of the cargo reservation law solely to the trade between the United States and Ecuador is that 86 percent of Ecuador's imported bulk cargo originates "in the Gulf of the United States."

[2] Soon after issuance of the final rule, Transligra informed the Commission by letter that it had ceased operations as an Ecuadoran-flag carrier of liquid bulk cargoes.

[3] This position was rejected by the FMC in the order promulgating the proposed rule which discussed Transligra's jurisdictional arguments at length and reaffirmed the Commission's long-held interpretation of section 19. Notice of proposed rulemaking, 54 FR 34014 (August 18, 1989). These arguments were reiterated by Transligra in its comments on the proposed rule and again rejected by the Commission in promulgating the final rule. The Commission's interpretation of the scope of section 19 has been recently codified in the amendment of section 19 passed by the last Congress. Public Law No. 101–595, November 16, 1990, 104 Stat. 2979.

[4] "Waivers for OEI's participation on a voyage-by-voyage basis are difficult to obtain. If in fact they are issued * * *." Request, 2. Thus, although OEI implies that waivers are sometimes denied, it does not so state explicitly and provides no details of waivers requested, granted, refused, or processed.

[5] SCOT supported the final rule and the imposition of the sanctions in comments on the proposed rule.

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Transligra as the operator of the vessels ANTISANA, GORGONILLA, and TAMA CARIBBEAN and reflect numerous port calls by these vessels during the year since issuance of the final rule.[6] A total of 15 voyages by these vessels is shown for the period January to September, 1990; 13 of these voyages would appear to have occurred after the effective date of the final rule. The liquid bulk cargoes listed on the manifests are shown as originating from U.S. Gulf ports, including New Orleans, Houston and Lake Charles.

Each of the vessels named above is identified in the comments filed by Chemical Tankers as being operated by Andino. The ANTISANA and GORGONILLA are said to be owned by subsidiaries of Andino and the TAMA CARIBBEAN time chartered by Andino. The ANTISANA was identified in the first of two Nefkens affidavits filed during earlier proceedings in this case as the vessel being built for Transligra as a replacement for the CHIMBORAZO, the only vessel then operated under the Ecuadorian flag by Transligra. In that affidavit, Nefkens identified himself as Vice President of Transligra, a position he had held since 1977.

Information supplied in interviews conducted by the Houston Office of the Commission's Bureau of Investigations with several present and former officers of companies apparently related to Transligra, suggests that movement of these cargoes in the Trade by the same persons or corporations has continued without disruption since issuance of the final rule. Although the vessels were reported by Nefkens, in Chemical Tankers' comment, to be owned by a subsidiary of Andino, it appears that the common owner of Transligra, Chemical Tankers and Andino is Holland Chemical International (HCI). Neither Chemical Tankers' comments nor the letter from counsel for Transligra informing the Commission of the sale of the CHIMBORAZO [7] referred to the apparent common ownership of these companies.

Thus, the record contains contradictory information from various sources.[8] There are, nevertheless, strong indications that the liquid bulk cargoes carried by Transligra continue to move in the Trade aboard vessels operated by the same persons formerly operating Transligra. As noted above, the comments filed on behalf of Chemical Tankers in response to the Request for Enforcement were filed by the same individual who filed two affidavits on behalf of Transligra. In addition, the comments of SCOT as well as the information transmitted by the U.S. Embassy leave the impression that shippers and even GOE authorities generally regard the present service as being provided by Transligra.

The Commission's final rule imposed sanctions specifically on Transligra, on two bases: its status as an Ecuadorian-flag carrier, and as the sole beneficiary of the specific cargo reservation law at issue, Resolution No. 012/87, applicable only to the U.S.-Ecuador parcel tanker trade. However, insofar as the sanctions established in the final rule are concerned, taken as a whole, it appears from this record that the real party in interest may be HCI, which reportedly is or was the parent company of Transligra, Andino, and Chemical Tankers. It appears, moreover, that HCI has been able to continue serving the Trade with non-Ecuadorian flag vessels, routinely securing waivers which have been difficult if not impossible for the U.S. company, OEI, to secure on a commercially viable basis. Information indicates that the vessels operated by HCI/Chemical Tankers dominate the Trade, carrying 85 per cent of the cargo during the period from January to September, 1990. Thus, it appears that HCI may be receiving favorable treatment by the GOE despite the flagging of its vessels outside of Ecuador. There does not appear to be any basis in Ecuadorian law for the more favorable treatment apparently accorded the non-Ecuadorian flag operations of HCI/Chemical Tankers. There is no indication that Resolution No. 012/87 has been changed. Although the U.S. interests represented by OEI are apparently being subjected to discriminatory practices by the GOE, the party being favored by those practices may not be of Ecuadorian citizenship. It may have manufacturing and business interests resident in Ecuador, however. The corporate structure and vessel flagging employed by HCI/Chemical Tankers may have been used to evade the reporting requirements and sanctions imposed by the final rule. If, upon further investigation, this proves to be the case, the Commission will consider whether to implement § 566.3(d) of the Final rule, by requesting the U.S. Customs Service to refuse clearance to the named vessels at ports in the U.S. Gulf.

Based upon the apparent conditions described above, the Commission would like additional documentary or testimonial evidence, particularly with respect to the issues of the corporate relationships among Transligra, Andino, Chemical Tankers, HCI and the vessels presently being operated in the Trade. Supplementation of the present record as to the process by which waivers are granted is also desirable.

Recent amendments to section 19 have added Commission authority to secure information in an expeditious and timely manner in proceedings under that section. See Public Law 101–595. That amendment not only authorizes the Commission to require the filing of information by any person, including bulk operators, but also makes available the compulsory processes of discovery and subpoena used in adjudicatory proceedings.[9]

Therefore, in order to provide a better basis upon which the Commission can determine the most appropriate course of action in furtherance of the goals of this proceeding, the Commission will seek further information regarding the current operations of and relationships among Chemical Tankers, Andino, HCI and related companies. Such information will enable us to determine whether the existing sanctions, including any request to the U.S Customs Service to deny clearance to vessels operated by or on behalf of those companies, can or should be made applicable to those companies. Additional information will also be sought on the waiver system established by the GOE and the process by which waivers are granted for shipments moving on the vessels operated by Chemical Tankers and OEI.

The Commission will appoint a Fact Finding Officer to conduct this further inquiry within the context of this proceeding under section 19. The Fact Finding Officer shall have all the powers of the Commission pursuant to sections (6) and (7) of section 19, as amended, and shall report her findings to the Commission within 90 days of publication of this Order.

Following this process, the Commission will consider whether Chemical Tankers, HCI, Andino or some other entity may appropriately be found to be subject to the sanctions established at § 566.3(b) and (d) of the final rule as a successor, alter ego or substitute for Transligra. If so found, the Commission will consider restricting their sailings or cargoes in a manner reflecting the level of service permitted OEI or third-flag operators generally.

The Commission will also consider whether it continues to be appropriate to limit the application of these sanctions to carriers operating in the liquid bulk trade between the U.S. and Ecuador; *i.e.* whether these sanctions should be applied to Ecuadorian-flag carriers operating in other segments of the ocean-borne trade between the U.S. and Ecuador, as well as whether alternative or additional sanctions which could be imposed under section 19 might be effective. The Commission originally declined to impose sanctions more broadly, explaining in promulgating the proposed rule in August 1989, (54 FR 34,914) that sanctions would be imposed only on Transligra as the chief, if not sole, beneficiary of Resolution No. 012/87. The Commission may, however, reconsider that conclusion in light of subsequent indications that GOE administration of Resolution No. 012/87 has not been consistent, but appears to have focussed on benefits to Ecuadorian interests broader than those of Transligra. At this later stage in the proceeding, the Commission may also find it appropriate to consider whether the waiver system itself creates a condition unfavorable to shipping by the burdens it imposes on U.S. shippers, whether or not it is administered in a manner which discriminates among U.S. and other non-Ecuadorian companies engaged in the business of ocean shipping.

Therefore, it is ordered, That pursuant to sections 19 (6) and (7) of the Merchant Marine Act of 1920, as amended, and subpart R of the Commission's Rules of Practice and Procedure, 46 CFR 502.281 *et seq.*, as part of this proceeding, a nonadjudicatory investigation is hereby instituted into: (1) Corporate or other relationships of Transligra Maritima, S.A., Chemical Tankers of America, Inc., Holland Chemical International, Andino Chemical Tankers, Inc., Texas Maritime Agency, and related companies; and (2) the granting or securing of waivers under GOE 012/87 for shipments on non-Ecuadorian flag vessels. This Order constitutes the Order of Investigation for purposes of rule 283, 46 CFR 502.283 (1990).

It is further ordered, That pursuant to sections 19 (6) and (7) of the Merchant Marine Act of 1920, as amended, the Commission's powers to require the production of documents and information by order, deposition or subpoena, or any other manner authorized therein, are delegated to the Fact Finding Officer named below to conduct the nonadjudicatory investigation instituted above;

It is further ordered, That the Fact Finding Officer shall be Carol J. Neustadt of the Commission. Ms. Neustadt shall direct the Fact Finding proceeding and shall be assisted by such staff members as she may designate or as may be assigned by the Commission's Managing Director;

It is further ordered, That the Fact Finding Officer shall make a report of findings to the Commission no later than 90 days from the date of publication of this Order in the Federal Register; such report is to remain confidential unless and until the Commission rules otherwise; and

It is further ordered, That the Commission shall thereafter take such further action as may be warranted in this proceeding. By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14569 Filed 6-20-91; 8:45 a.m.]

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[6] The manifests' origins with the Port Authority of Guayaquil, and the information reflected on them, were confirmed by information received through the U.S. embassy in Quito in response to a Commission request to the Department of State. The Embassy transmitted information from the Consulate at Guayaquil, including copies of additional manifests, which indicate that "Transligra Shipping Lines" did make vessel calls subsequent to the Commission's Final Rule and after the sale of the CHIMBORAZO. These manifests also show that the Panamanian-flagged vessels recorded as operating for Transligra in April, May and June, 1990 were the TAMA CARIBBEAN and the ANTISANA.

[7] In fact, that letter stated that "Neither Transligra nor any related company now operates, or plans to operate, any Ecuadorian-flag vessel; or now qualifies for or receives any benefits under the Ecuadorian Cargo Reservation laws; or can transport cargo in the Ecuadorian trade without a governmental waiver."

[8] For example, information provided to the U.S. Embassy from a source within the GOE agency responsible for administration of the cargo reservation laws and policies indicates that Transligra continued to operate through 1990. This is inconsistent with Nefkens' assertions in the comments of Chemical Tankers that Transligra "was closed when it sold * * * [the] CHIMBORAZO in May, 1990, and is not operating any vessels whatsoever." Nefkens' statement is itself inconsistent with the February, 1990 letter from Transligra's counsel in which it was reported that the CHIMBORAZO had been sold.

[9] The Commission may, under section 19(6), (a) * * * by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate; (b) * * * require a report or answers to questions to be made under oath; and (c) * * * prescribe the form and the time for response to a report and answers to questions; * * *. Under section 19(7), the Commission may * * * (b) * * * by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence; * * *

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 90-499, FCC 91-166]

Broadcast Auxiliary Services; Use of F3Y Emission for Encryption

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this decision, the Commission permits the use of F3Y emission for digitally encrypting communications in the Remote Pickup Broadcast Service. This action is taken in response to several requests for waiver of the Commission's Rules to use F3Y emission to prevent unauthorized use of communications in the Remote Pickup Broadcast Service. The action taken will permit licensees in the Remote Pickup Broadcast Service to use the digital encryption techniques to prevent interception and unauthorized use of communications (of particular concern to broadcasters are those communications related to news-gathering activities).

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Hank Van Deursen, Mass Media Bureau, Policy and Rules Division, (202) 632-9060.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order (R&O) in MM Docket No. 90-499, adopted May 22, 1991 and released on June 11, 1991.

The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M St., NW., room 246, Washington, DC 20554.

Synopsis of Report and Order

1. This action is taken in response to a Notice of Proposed Rule Making (55 FR 46871, November 23, 1990) and a comment filed by Capital Cities/ABC, Inc. ("ABC") in response thereto. The Notice was prompted by the staff's receipt of several applications for authorization to use F3Y emission in the Remote Pickup Broadcast Service. Basically, the applicants desired to keep communications relating to news reporting confidential until the stories could be "aired." The broadcasters maintained that although third party

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reception and use of such radio signals is prohibited by section 605 of the Communications Act of 1934, as amended, the aggressive competition among news crews to be first with an exclusive news story sometimes makes the extra level of protection afforded by digital encryption technology necessary.

2. In its comments, ABC supported the Commission's proposals and requested that stations using F3Y emission be required to transmit unscrambled analog or international Morse Code station identification at intervals not exceeding 15 minutes during operation, preferably using the broadcast station's part 73 call sign. This procedure would enable any party receiving interference from such operation to more rapidly identify the source and would minimally inconvenience the user of the F3Y emission. Moreover, the part 73 call sign can be traced easily through commercial sources without recourse to FCC files. The Commission agrees with ABC's suggestion and therefore concludes that this suggestion has merit and has amended the final rules appropriately.

3. In conclusion, the Commission notes that the proposed (and herein adopted) emission limits applicable to the F3Y emission permit only 20 kHz nominal occupied bandwidth operation. Thus, the bandwidth required for F3Y emission precludes its use at facilities in the 450.01 to 455.99 MHz band, which are authorized the use of 30 kHz bandwidth channels. Moreover, even though F3Y emission could be used on a normally wide bandwidth channel (e.g., a 100 kHz bandwidth channel in the 450.925 and 455.925 MHz band), only F3Y emissions authorized a 20 kHz bandwidth may be used in the Remote Pickup Service. This is necessary because the F3Y emission limitations are based on the use of a digitizing method which uses the minimum signal sampling rate necessary for satisfactory voice intelligibility. The resultant emissions are compatible with voice-modulated narrowband FM emissions traditionally used in the land mobile services and on most remote pickup channels. These "narrowband" emission limitations, which envision operation on 25 kHz or 30 kHz bandwidth channels, do not permit use of the wider emitted bandwidths that would be required for digitizing systems using the higher signal sampling rates necessary for quality reproduction of music or other high fidelity programming. Therefore, the Commission will not authorize wider bandwidth (i.e., greater than 20 kHz) F3Y emissions for use in scrambling high fidelity programming.

Final Regulatory Flexibility Analysis Statement

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have no adverse impact on small entities. This action merely allows licensees in the Broadcast Remote Pickup Service more flexibility and choice in how they transmit confidential information and other material that they do not wish disseminated without their control or approval.

5. Accordingly, It is ordered that, pursuant to authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C.154 and 303, that effective July 25, 1991, part 74 of the Commission's Rules *Is Amended* as set forth below.

List of Subjects in 47 CFR Part 74

Broadcast Auxiliary Stations. Radio broadcasting.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

PART 74—[AMENDED]

47 CFR part 74 is amended as follows:

1. The authority citation for part 74 will continue to read as follows:

Authority: 47 U.S.C. 154, 303.

2. 47 CFR 74.462 is amended by revising the table in paragraph (b) and by adding new paragraphs (f) and (g) to read as follows:

§ 74.462 *Authorized bandwidths and emissions.*

* * * * *

(b) * * *

Frequencies (megahertz)	Authorized bandwidth: [1] (kilohertz)	Maximum frequency deviation [2] (kilohertz)	Type of emission [3] [4]
25.87 to 26.03	40	10	A2, F3, F3Y, F9
26.07 to 26.47	20	5	A3, F8, F8Y, F9
152.87 to 153.35 [5]	30/60	5/10	A3, F3, F8Y, F9
160.89 to 161.37	60	10	A1, A2, A3, F1, F2, F3, F3Y, F9
161.64 to 161.76	30	5	A1, A2, A3, F1, F2, F3, F3Y, F9
166.25 to 170.15	25	5	A1, A2, A3, F1, F2, F3, F3Y, F9
450 to 455.99 (10 kHz channels)	10	1.5	A1, A2, A3, F1, F2, F3, F9
450.0875 to 455.9125 (25 kHz channels)	25	5	A1, A2, A3, F1, F2, F3, F3Y, F9
450.05 to 455.99 (50 kHz channels)	50	15	A1, A2, A3, F1, F2, F3Y, F9
450.925 and 455.925 (100 kHz channels)	100	35	A1, A2, A3, F1, F2, F3, F3Y, F9

[1] Notwithstanding the authorized bandwidths shown in the table, not more than 20 kHz bandwidth will be authorized in the case of F3Y emission.
[2] Applies where class F1, F2, F3, or F9 emission is used.
[3] Stations operating above 450 MHz shall show a need for employing A1, A2, F1, or F2 emission.
[4] The emission designators shown in the table are longer conform to those contained in subpart C of part 2 of the Commission's Rules and Regulations. They will be re-conformed after necessary modifications to broadcast auxiliary application processing programs are completed. For transmitting equipment which is type accepted, emission designators will appear in the Commission's Radio Equipment List. Equipment approved for emissions contained in subpart C of part 2 may be used by part 74 stations if their emissions are equivalent to the previous emission designators shown in the table.
[5] New or modified licenses for use of the frequencies will not be granted to utilize transmitters on board aircraft, or to use a bandwidth in excess of 3 MHz and maximum deviation exceeding 5 kHz.

* * * * *

(f) For those transmitters using the F3Y emission and operating in the frequency range between 25.87 MHz and 170.15 MHz, the power of any emission shall be attenuated below the unmodulated carrier power (P) in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (F_d in kHz) of more than 5 kHz, up to and including 10 kHz: At least 83 Log_{10} (F_d/5) decibels;

(2) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (F_d in kHz) of more than 10 kHz, up to and including 250 percent of the authorized bandwidth: At least 116 Log_{10} (F_d/6.1) decibels or 70 decibels, whichever is the lesser attenuation.

(3) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 + 10 Log_{10} (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

Note: The measurements of emission power can be expressed in peak or mean values provided they are expressed in the same parameters as the unmodulated transmitter carrier power.

3. 47 CFR 74.462 is amended by adding a new paragraph (e) and a note to read as follows:

§ 74.462 Station identification.

* * * * *

(e) For stations using the F3Y emission, identification shall be transmitted in the unscrambled analog (F3) mode or in International Morse Code pursuant to the provisions of (d) of this section at intervals not to exceed 15 minutes. For purposes of rule enforcement, all licensees using F3Y emissions shall provide, upon request by the Commission, a full and complete description of the encoding methodology they currently use.

Note: Stations are encouraged to identify using their associated part 73 station call sign.

[FR Doc. 91-14401 Filed 6-20-91; 8:45 am]
BILLING CODE 6712-01-M

authorized bandwidth: At least 43 plus 10 Log_{10} (output power in watts) decibels or 60 decibels, whichever is the lesser attenuation.

(g) For those transmitters using the F3Y emission and operating in the frequency range between 450.01 MHz and 455.925 MHz, the power of any emission shall be attenuated below the unmodulated carrier power (P) in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (F_d in kHz) of more than 5 kHz, up to and including 10 kHz: At least 83 Log_{10} (F_d/5) decibels;

(2) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (F_d in kHz) of more than 10 kHz, up to and including 250 percent of the authorized bandwidth: At least 116 Log_{10} (F_d/6.1) decibels or 70 decibels, whichever is the lesser attenuation.

(3) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 + 10 Log_{10} (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

Note: The measurements of emission power can be expressed in peak or mean values provided they are expressed in the same parameters as the unmodulated transmitter carrier power.

3. 47 CFR 74.462 is amended by adding a new paragraph (e) and a note to read as follows:

§ 74.462 Station identification.

* * * * *

(e) For stations using the F3Y emission, identification shall be transmitted in the unscrambled analog (F3) mode or in International Morse Code pursuant to the provisions of (d) of this section at intervals not to exceed 15 minutes. For purposes of rule enforcement, all licensees using F3Y emissions shall provide, upon request by the Commission, a full and complete description of the encoding methodology they currently use.

Note: Stations are encouraged to identify using their associated part 73 station call sign.

[FR Doc. 91-14401 Filed 6-20-91; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-536; RM-7528, RM-7566, RM-7629]

Radio Broadcasting Services; Claxton, Waynesboro, GA and Bluffton, SC

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document substitutes Channel 297C3 for Channel 296A at Claxton, Georgia, at the request of Evans Broadcasting Company, Inc., substitutes Channel 296C3 for Channel 296A at Waynesboro, Georgia, in response to a petition filed by Clifford Jones, and substitutes Channel 295C1 for Channel 295C2 at Bluffton, South Carolina, in response to a counterproposal filed by DHA Broadcasting, Inc. See 55 FR 47895, November 16, 1990, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-536, adopted June 6, 1991, and released June 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

Channel 297C3 can be allotted to Claxton in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.8 miles) northwest, in order to avoid short-spacings to Station WCRJ(FM), Channel 297C1, Jacksonville, Florida, and Station WKQB(FM), Channel 298C, St. George, South Carolina. The coordinates are North Latitude 32-10-20 and West Longitude 81-55-09. Channel 296C3 can be allotted to Waynesboro, Georgia, in compliance with the Commission's minimum distance separation with a site restriction of 18.9 kilometers (11.7 miles) northeast, in order to avoid a short-spacing to Station WLOW(FM), Channel 295C1, Bluffton, South Carolina. The coordinates are North Latitude 33-12-56 and West Longitude 81-52-39. Channel 295C1 can be allotted to Bluffton, South Carolina, in compliance with the Commission's minimum distance separation requirements with a site restriction of 14 kilometers (8.7 miles) southwest, in order to avoid a shortspacing to Station WAGW(FM), Channel 296C3, Waynesboro, Georgia. The coordinates are North Latitude 32-09-14 and West Longitude 80-58-24. In addition, the authorizations of Station WCLA(FM), Claxton, Station WAGW(FM), Waynesboro, and Station WLOW(FM), Bluffton, are modified to specify the new channels. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio Broadcasting

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 296A and adding Channel 297C3 at Claxton, and by removing Channel 296A and adding Channel 296C3 at Waynesboro.

3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 295C2 and adding Channel 295C1 at Bluffton.

Federal Communications Commission.
Andrew J. Rhodes,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 91-14782 Filed 6-20-91; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the remaining share of the total allowable catch amount (TAG)

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for sablefish allocated to hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (Central Gulf) for the 1991 fishing year is needed as a bycatch amount to support directed fisheries in that area for remaining groundfish species. The Secretary of Commerce is prohibiting further directed fishing for sablefish by vessels using hook-and-line gear in the Central Gulf. This action is necessary to prevent the hook-and-line share of sablefish in that area from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving sablefish stocks.

DATES: Effective from 12 noon, Alaska local time (A.l.t.), on June 17, 1991, through December 31, 1991. Comments are invited for 15 days following the effective date of this notice.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska (GOA) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Section 672.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) for all groundfish species in the GOA management area. The TAC for target species and the "other species" category are specified annually within the OY range and are apportioned among the regulatory areas and districts.

The 1991 TAC specified for sablefish in the Central Gulf is 10,575 mt (56 FR 8723; March 1, 1991). The portion of that TAC assigned to hook-and-line gear is 8,460 mt.

Under §§ 672.20(c) (2) and 672.24(c)(3)(i), if the Regional Director determines that the share of the sablefish TAC assigned to any type of gear in any regulatory area or district is likely to be reached, the Regional Director may establish a directed fishing allowance. In establishing a directed fishing allowance, the Regional Director shall consider the amount of sablefish that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for sablefish in the specified regulatory area or district by that gear type.

The Regional Director has determined that the remaining hook-and-line gear share of sablefish in the Central Gulf, 425 mt, will be necessary as bycatch to support remaining groundfish fisheries in that area. With this action the Regional Director is establishing a directed fishing allowance of 8,035 mt for the Central Gulf and is prohibiting directed fishing for sablefish taken with hook-and-line gear in the Central Gulf, effective 12:00 noon, A.l.t., June 17, 1991. After the closure, in accordance with § 672.20(g)(2), amounts of sablefish retained onboard hook-and-line vessels in the Central Gulf at any time during a trip must be less than 4 percent of the total amount of all other fish species retained at the same time by the vessel during the same trip.

Classification

This action is taken under §§ 672.20 and 672.24 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent excessive harvest of sablefish by hook-and-line gear that will occur if amounts of the sablefish TACs that are allocated to hook-and-line gear are exceeded and retention of sablefish is prohibited. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay its effective date. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 17, 1991.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–14763 Filed 6–17–91; 4:48 pm]

BILLING CODE 3510-22-M

50 CFR Parts 672 and 675

[Docket No. 900833–1095]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Pacific halibut and red king crab bycatch rate standards and request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), announces Pacific halibut and red king crab bycatch rate standards for the second half of 1991 for purposes of the vessel incentive program that has been implemented to reduce prohibited species bycatch rates in the groundfish trawl fisheries. This action is necessary to implement the bycatch rate standards that must be met by individual trawl vessel operators who participate in specified groundfish fisheries included in the incentive program. The intent of this action is to enhance prohibited species bycatch management and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 am, Alaska local time (A.l.t.), July 1, 1991, through 12:00 midnight, December 31, 1991. Comments on this action are invited through July 2, 1991.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9100 Mendenhall Mall Road, Federal Building Annex, Suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fishery Management Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSAI) and Gulf of Alaska (GOA) are managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the FMP for Groundfish of the Gulf of Alaska. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations appearing at 50 CFR part 611 for the foreign fishery and at 50 CFR parts 672 and 675 for the U.S. fishery. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

The interim final rule for revised Amendment 16 to the BSAI FMP and revised Amendment 21 to the GOA FMP (56 FR 21619; May 10, 1991) implemented a vessel incentive program to reduce halibut and red king crab bycatch rates in specified groundfish trawl fisheries. Under the incentive program, operators of individual trawl vessels are held accountable for their bycatch of halibut in the BSAI and GOA Pacific cod trawl fisheries, the BSAI flatfish fisheries, and the GOA "bottom rockfish" trawl fishery. Vessel operators also are held accountable for their bycatch of red king crab in the BSAI flatfish fisheries in Zone 1, as defined in § 675.2. Definitions of the fisheries included under the incentive program are set forth in regulations at § 672.26(b) and § 675.26(b).

Regulations implementing the incentive program require the Regional Director to publish a notice in the **Federal Register** prior to January 1 and July 1 of each year, specifying halibut and red king crab bycatch rate standards for each fishery monitored under the incentive program. These standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Any vessel whose monthly bycatch rate exceeds the bycatch rate standard is in violation of the regulations implementing the incentive program.

Bycatch rate standards for the first half of 1991 were published in the **Federal Register** as part of the rulemaking that implemented the incentive program. At its April 22–27, 1991 meeting, the North Pacific Fishery Management Council recommended bycatch rate standards for the second half of 1991. These standards are set forth in Table 1.

Table 1.—Bycatch Rate Standards, by Fishery and Quarter, for the Second Half of 1991 for Purposes of the Vessel Incentive Program in the BSAI and GOA.

Halibut bycatch as kg of halibut/mt of allocated groundfish catch	
Fishery and quarter	1991 bycatch standard
BSAI Pacific cod	
Qt 3	22.5
Qt 4	22.5
BSAI flatfish	
Qt 3	3.0
Qt 4	3.0
GOA rockfish	
Qt 3	40.0
Qt 4	40.0
GOA Pacific cod	
Qt 3	32.9
Qt 4	51.5
Zone 1 red king crab bycatch rates (number of crab/mt of allocated groundfish)	
BSAI flatfish	
Qt 3	1.50
Qt 4	1.50

The Council's recommended bycatch rate standards for July 1 through December 31 are based on the following information, as required by § 672.26(c) and § 675.26(c):

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under § 672.20(f) and § 675.21;

(D) Anticipated groundfish harvests; and

(E) Anticipated seasonal distribution of fishing effort for groundfish.

Observer data for the BSAI Pacific cod fishery during the last half of 1990 is not available because the fishery was closed during this period due to halibut prohibited species catch (PSC) restrictions. Therefore, the Council recommended that the bycatch rate standard for the BSAI Pacific cod trawl fishery during the last half of 1991 be set at the average rate observed on trawl vessels participating in this fishery through the first calendar quarter of 1991, or 22.5 kilograms of halibut per metric ton of groundfish (2.25 percent). The Council recognized that the Pacific halibut bycatch allowance apportioned to the "other fishery" under § 675.21, including that for Pacific cod, will likely cause the Pacific cod fishery to be closed early in the third quarterly reporting period. Nonetheless, the Council determined that a bycatch rate of 2.25 percent is appropriate in view of the Council's intent for the incentive program to reduce halibut bycatch rates in the Pacific cod fishery.

The remaining bycatch rate standards set forth in Table 1 were originally recommended by the Council at its December 3–7, 1990, meeting. These standards were subsequently reaffirmed for the last half of 1991 by the Council at its April 1991 meeting. When the Council reaffirmed the halibut bycatch rate of 0.3 percent for the BSAI flatfish fishery, which is based on rates observed in historical joint venture fisheries, it reviewed actual bycatch rates observed during the second half of 1990. Although the 1990 rate was less than 0.2 percent, the Council considered this rate to be too constraining, and opted to affirm the historical joint venture rate. The Council further determined that the 1991 TAC amounts specified for yellowfin sole and other flatfish could be harvested by trawl vessels under the halibut PSC restrictions set forth for these fisheries at § 675.21 if vessels maintained halibut bycatch rates at the recommended bycatch rate standard.

In reaffirming its recommended halibut bycatch rate standards for the GOA Pacific cod trawl fishery, the Council noted that most of the GOA is closed to directed fishing for Pacific cod for the remainder of the year because of attainment of total allowable catch (TAC) amounts. Even so, the Council recommended that the GOA halibut bycatch rate standards for the Pacific cod trawl fishery be based on average 1990 bycatch rates observed in the Central Regulatory Area, rather than in the GOA as a whole. The Council made this recommendation because (1) 1990 observer data showed bycatch rates of halibut in the Central Gulf are typically higher than in other areas of the GOA, and (2) a bycatch rate standard based on a GOA-wide average would be too conservative for the Pacific cod fishery in the Central Regulatory Area.

Last, the Council's recommended rate for the GOA "bottom rockfish" fishery was based on historical bycatch rates in the GOA and a desire to restrict halibut bycatch rates to levels consistent with the intent of the Council to reduce halibut bycatch rates under the incentive program. Observed halibut bycatch rates in this fishery during the first 3 months of 1991 were over three times higher than the rates observed during this period in 1990. Additional harvests of rockfish are anticipated in 1991 under existing halibut PSC restrictions, but halibut bycatch rates must be reduced in the rockfish fishery if this fishery is to avoid taking a disproportionate share of the halibut PSC limit specified for trawl gear under § 672.21. Therefore, the Council recommended to maintain the halibut bycatch rate standard at more historic levels, rather than at 1991 observed rates, to more fully support its intent for the incentive program to reduce halibut bycatch rates in the "bottom rockfish" fishery.

The Regional Director has determined that Council recommendations for bycatch rate standards are appropriately based on the information

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and considerations necessary for such determinations under §§ 672.26(c) and 675.26(c). He concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the second half of 1991 as set forth in Table 1. These bycatch rate standards may be revised by notice in the Federal Register when deemed appropriate by the Regional Director pending his consideration of the information set forth at §§ 672.26(c) and 675.26(c).

Classification

This action is taken under 50 CFR 672.26 and 675.26 and complies with Executive Order 12291.

This notice must be effective by July 1, 1991, to avoid a lapse in vessel accountability under the vessel incentive program. Without this accountability, prohibited species bycatch rates will increase in the groundfish trawl fisheries, prohibited species bycatch allowances will be reached sooner, specified groundfish trawl fisheries will be closed, and owners and operators of groundfish trawl vessel will incur additional forgone revenues. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to extend prior notice and comment on this notice beyond July 1, 1991, or to delay its effective date.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 17, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-14776 Filed 6-17-91; 4:48 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 56, No. 120

Friday, June 21, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[AMS-FV-91-235]

RIN 0581-AA47

Potato Research and Promotion Plan; Procedure for the Conduct of Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action gives notice of proposed amendments to the Potato Research and Promotion Plan (Plan), the Rules and Regulations issued thereunder, and the Procedure for the Conduct of Referenda in accordance with amendments made to the Potato Research and Promotion Act by the Food, Agriculture, Conservation, and Trade Act of 1990. The proposed amendments to the Plan include: (1) Levying assessments on imported potatoes, potato products, and seed potatoes equal to that levied on domestic production and subject importers to the terms and conditions of the Potato Research and Promotion Act; and (2) eliminating the provision of the Plan which permits refunds of assessments. In addition, conforming amendments are proposed to the Rules and Regulations issued under the Plan and the Procedure for the Conduct of Referenda.

DATES: Comments must be received by July 22, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attn: Desk Officer for the Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Arthur L. Pease, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-So., P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 475-3915.

SUPPLEMENTARY INFORMATION: In response to an invitation to submit proposals for amendments to the Potato Research and Promotion Plan (Plan) published in the Federal Register on February 28, 1991, (Vol. 56, No. 40), the National Potato Promotion Board submitted a proposal. The amendments to the Plan (7 CFR 1207.301-1207.412) (Plan) are proposed in accordance with recent amendments to the Potato Research and Promotion Act, as amended (84 Stat. 2041, 7 U.S.C. 2611-2627), hereinafter referred to as the Act. Amendments to the Act were made by sections 1935-1946 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624) (Farm Bill). In view of this legislation, changes are also proposed in the Rules and Regulations (7 CFR 1207.500-1207.550) and in the Procedure for the Conduct of Referenda (7 CFR 1207.200-1207.207) issued pursuant to the Plan.

This rule has been reviewed by the Department in accordance with Executive Order 12291 and U.S. Department of Agriculture (USDA) Regulation 1512.1 and has been determined to be a "non-major" rule under the criteria contained in the Executive Order.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities. The amendments impose a reporting and recordkeeping burden on importers of Irish potatoes and potato products for consumption by humans and on importers of seed potatoes.

There are an estimated 2,000 handlers and 6,000 producers who are currently subject to the provisions of this Plan, and there are approximately 80 importers of potatoes and potato products for human consumption and approximately 25 importers of seed potatoes who would be subject to the Plan as proposed to be amended. The majority of these persons would be classified as small businesses under the criteria established by the Small Business Administration.

The reporting burden on importers, if submission of reports becomes necessary, would require approximately 6 hours per year for each importer of potatoes and potato products for human consumption and for each importer of seed potatoes.

The changes proposed in the Plan, rules and regulations, and procedures for conduct of referenda are a result of amendments to the Act. The economic impact of these proposed changes on importers, which are described herein, is not expected to be significant since the assessment to be levied on imports of potatoes, potato products for human consumption, and seed potatoes is the same as that imposed on domestic producers (currently 2 cents per hundredweight or equivalent for potato products). As noted above, the proposed changes would also authorize reporting requirements and impose recordkeeping requirements on importers. However, the economic impact of these requirements is not expected to be significant, in that normal business records can be used for completing any authorized reports, and the recordkeeping requirements are consistent with normal business practices. The amendments would also eliminate refunds of assessments. However, currently approximately 95 percent of producers do not seek refunds. Refunds are made on only 18 percent of the assessments paid. Assessment income for fiscal year 1990 was $6,072,669. Thus, the elimination should not be significant. The increase in funds to the National Potato Promotion Board (Board) from nonrefundable assessments on imports is estimated at $160,000, less than 3 percent of the total projected assessments collected. Furthermore, the research and promotion program is expected to benefit producers, handlers, and importers alike by expanding and maintaining new and existing markets. Accordingly, the Administrator of the AMS has determined that this action

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will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act (PRA) of 1980 and Office of Management and Budget (OMB) regulations (5 CFR part 1320) (44 U.S.C. chapter 35), the information collection and recordkeeping requirements contained in this action were submitted to the OMB and approved under OMB Control No. 0581–0093. OMB approval of information collection and recordkeeping requirements expires March 31, 1994. The Plan, as proposed to be amended herein, would authorize the Board to collect assessments on potatoes, potato products for human consumption, and seed potatoes imported into the United States from foreign countries. Importers of such potatoes, potato products, and seed potatoes would be required to submit such reports to the Board as it deems necessary to administer the provisions of the Plan. However, no immediate reporting requirements by importers are contemplated at this time since the Board plans to have the U.S. Customs Service collect assessments on imported potatoes, potato products, and seed potatoes. Importers would be required to maintain records, and the records would be subject to inspection. Records would be required to be maintained for 2 years beyond the first period of their applicability.

It is estimated that approximately 105 importers would be subject to these requirements. Because the Board contemplates levying the assessment at the time of importation or withdrawal for consumption into the United States, there would be no added reporting requirements on importers. Importers nominated for membership on the Board would complete a membership background information sheet. The estimated number of respondents to this form would be at most five nominees with an estimated reporting burden of 0.5 hours per response. Such information sheets have been previously approved by the OMB and assigned OMB number 0505–011.

In addition to importers, handlers in the States of Alaska and Hawaii would be required to submit the same reports as those handlers located in the 48 contiguous United States are currently required to submit. It is estimated there are approximately six handlers in Alaska and Hawaii, and the added maximum burden would be about 0.33 hours for each handler per month or 3.0 hours per year.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC.

This proposed rule invites comments on changes to the Plan, the rules and regulations issued thereunder, and to the procedure for the conduct of referenda. The changes are in accordance with the amendments to the Act made by the Farm Bill.

The Act, as amended, changes the definition of potatoes to include potatoes produced in foreign countries and imported into the United States. Currently, there is no provision in the Plan for levying assessments on imported potatoes. The Act, as recently amended, provides authority for such a provision, but the continuance of the provision is contingent on approval by potato producers and importers in a referendum to be conducted within 24 months. Thus, the Plan is proposed to be amended to include assessments on potatoes produced in foreign countries and imported into the United States. Further, the recently amended Act requires the inclusion under any Plan of potatoes produced in the States of Alaska and Hawaii. Thus, it is also proposed to amend the Plan to include potatoes produced in the States of Alaska and Hawaii.

To facilitate collection of the assessments on imported potatoes and potato products, the Board recommends and the Secretary proposes that the United States Customs Service of the Department of the Treasury be designated as the collecting agency for assessments levied on such imports. Since all imported potatoes, potato products, and seed potatoes are imported into the United States under the supervision and control of the Customs Service, this is an appropriate and efficient method to collect the Board's assessment. Other commodity research and promotion programs utilize the Customs Service as a means of collecting assessments on imported products, and the Customs Service is agreeable to collect these potato assessments. An agreement between the USDA and the Customs Service would be entered into to implement this action.

If imports are to be included in the Plan, the Act, as amended, requires importer representation on the Board. Up to five representatives of importers, appointed by the Secretary, are authorized to serve as importer members on the Board. At the current time, the Secretary is proposing to add two importer members based on the same criteria as that used to calculate the number of producer positions on the Board. This would be roughly equivalent to the number of producer members that would be appointed to the Board based on hundredweights of potatoes produced by domestic producers. This representation would enable importers to participate in developing the Board's programs, plans and projects, and express their views and concerns on how Board funds are used. To obtain nominees for the importer member positions on the Board, importer associations or organizations will be requested by the Board to furnish eligible nominees. Thus, appropriate amendments implementing importer representation are being proposed.

The Act, as recently amended, also authorizes the elimination of assessment refunds. Pursuant to the request of the National Potato Promotion Board (Board), it is also proposed to eliminate the current provisions of the Plan and Rules and Regulations providing for such refunds.

If imports are to be included in the Plan, or if refunds of assessments are to be eliminated, the Act, as recently amended, requires the establishment of an interest-bearing escrow account equal to 10 percent of the Board's proceeds from assessments collected from both domestic producers and importers. This escrow fund is to be established after the amendments to the Plan are finalized and before a referendum is conducted among producers and importers to determine if the amendments made to the Plan continue in effect or if the Plan, except for the provision adding Alaska and Hawaii to the covered States, reverts back to its pre-amendment status. As noted earlier, this referendum must be held within 24 months after the amended Plan is effective. If producers and importers favor continuing the amendments, then the escrow funds become part of the Board's general fund.

However, if producers and importers voting in the referendum do not favor continuing the amended Plan, then the escrow funds will be used to pay producers and importers who request a refund of their assessments paid. Such requests for refunds shall be submitted to the Board during a 90-day period which begins 90 days after publication of the results of the referendum. If the requests for refunds exceed the amount in the escrow account, then the funds will be prorated among those requesting a refund. Appropriate amendments are proposed to implement the escrow account and the refund provisions of the Act.

The Act, as amended, changes the voting requirements in all referenda by authorizing importers to vote in any referendum when importers would be subject to the terms and conditions of the Plan. Producers and importers voting in referenda vote on the basis of one person or entity having one vote.

The recent amendments to the Act eliminate any consideration of production or importation volumes with regard to voter approval. Also, this statutory change provides that the vote shall be determined by majority vote. Amendments are proposed to the Plan and Rules and Regulations to reflect these changes in the Act.

Various other minor changes are proposed to achieve conformity between the Act as amended, the Plan, the Rules and Regulations, and the Procedure for the Conduct of Referenda.

All written comments received in response to this publication by the date specified herein will be considered prior to finalization of the proposed amendments.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that chapter XI of title 7, part 1207 be amended to read as follows:

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1207 is revised to read as follows:

Authority: 7 U.S.C. 2611 *et seq.*

2. Section 1207.302 is revised to read as follows:

§ 1207.302 Act.

Act means the Potato Research and Promotion Act (title III of Pub. L. 91–670, 91st Congress, approved January 11, 1971, 84 Stat. 2041), as amended.

3. Section 1207.306 is amended to read as follows:

§ 1207.306 Potatoes.

Potatoes means any or all varieties of Irish potatoes grown by producers in the 50 states of the United States and grown in foreign countries and imported into the United States.

4. Sections 1207.312 and 1207.313 are added to read as follows:

§ 1207.312 Importer.

Importer means any person who imports tablestock, frozen or processed potatoes for ultimate consumption by humans, or seed potatoes into the United States.

§ 1207.313 Customs Service.

Customs Service means the United States Customs Service of the United States Department of the Treasury.

5. Section 1207.320 is amended by revising paragraph (a), redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively, adding a new paragraph (c), revising newly redesignated paragraphs (d) and (f) to read as follows:

§ 1207.320 Establishment and membership.

(a) There is hereby established a National Potato Promotion Board, hereinafter called the "Board", composed of producers, importers, and a public member appointed by the Secretary. Producer members shall be appointed from nominations submitted by producers in the various States or groups of States pursuant to § 1207.322. Importer members shall be appointed from nominations submitted by importers pursuant to § 1207.322. The public member shall be nominated by Board members in such manner as recommended by the Board and approved by the Secretary, and shall be appointed by the Secretary.

* * * * *

(c) The number of importer member positions on the Board shall be based on the hundredweights of potatoes, potato products equivalent to fresh potatoes, and seed potatoes imported into the United States but shall not exceed five importer members. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, there shall be one importer member position for each 5 million hundredweight, or major fraction thereof, of potatoes, potato product equivalents, and seed potatoes imported into the United States.

(d) Any State in which the potato producers fail to respond to an officially called nomination meeting may be combined with an adjacent State for the purpose of representation on the Board, in which case the Board's producer member selected by the Secretary will represent both States, but his voting power under § 1207.325 shall not be increased.

* * * * *

(f) Should the Board fail to nominate a public member, the Secretary may appoint such member.

6. Section 1207.321 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1207.321 Term of office.

* * * * *

(b) The terms of office of the Board's producer members shall be so determined that approximately one-third of the terms will expire each year. Importer and public member terms shall run concurrently. All members serving on the Board on the effective date of this amendment to the Plan shall continue serving the term to which they were appointed.

* * * * *

(d) No member shall serve for more than two full successive terms of office

7. Section 1207.322 is amended by revising the section heading, revising the introductory text to the section, redesignating current paragraph (d) to paragraph (e), adding a new paragraph (d), and revising the first sentence of newly redesignated paragraph (e) to read as follows:

§ 1207.322 Nominations and appointment.

The Secretary shall select the producer, importer, and public members of the Board from nominations which may be made in the following manner.

* * * * *

(d) The importer members shall be nominated by importers of potatoes, potato products and/or seed potatoes. The number of importer members on the Board shall be announced by the Secretary and shall not exceed five members. The Board may call upon organizations of potato, potato products and/or seed potato importers to assist in nominating importers for membership on the Board. If such organizations fail to submit nominees or are determined by the Board to not adequately represent importers, then the Board may conduct meetings of importers to nominate eligible importers for Board member positions. In determining if importer organizations adequately represent importers, the Board shall consider:

(1) How many importers belong to the association,

(2) What percentage of the total number of importers is represented by the association,

(3) Is the association representative of the potato, potato product, and seed potato import industry,

(4) Does the association speak for potato, potato product, and seed potato importers, and

(5) Other relevant information as may be warranted.

(e) The public member shall be nominated by the producer and importer members of the Board. * * *

8. Section 1207.328 is amended by revising paragraphs (f) and (h), and adding paragraphs (j) and (k) to read as follows:

§ 1207.328 Duties.

* * * * *

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(f) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers, handlers, and importers;

* * * * *

(h) To act as intermediary between the Secretary and any producer, handler, or importer;

* * * * *

(j) To prepare and submit to the Secretary such reports from time to time as may be prescribed by the Secretary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board; and

(k) To establish an interest-bearing escrow account, pursuant to section 1946(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, with a bank which is a member of the Federal Reserve System and to deposit into such account an amount equal to the product obtained by multiplying the total amount of assessments collected by the Board, during the period from the effective date of this amended Plan to the time a referendum, required by section 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990, is conducted on these amendments, by 10 percent. If the Plan is approved pursuant to the referendum, all funds in the escrow account shall be returned to the Board for its use. If the amendments to the Plan are not approved in the referendum, then the funds in the escrow account will be refunded to producers and importers who demand such refunds in accordance with the requirements under section 1946(e) of the Food, Agriculture, Conservation, and Trade Act of 1990. If the escrow account funds are not sufficient to refund the total amount demanded by all eligible producers and importers, then the funds in the escrow account will be prorated among those producers and importers properly demanding a refund. Any funds remaining in the escrow account after disbursement of such funds to those producers and importers who demanded a refund shall be returned to the Board for its use.

9. Section 1207.342 is amended by revising the first sentence of paragraph (a), redesignating current paragraphs (c) and (d) as paragraphs (e) and (f), and adding new paragraphs (c) and (d) to read as follows:

§ 1207.342 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon handlers and importers as designated in regulations recommended by the Board and issued by the Secretary. * * *

* * * * *

(c) The importer of imported potatoes, potato products, or seed potatoes shall pay the assessment to the Board at the time of entry or withdrawal for consumption of such potatoes and potato products into any State.

(d) The assessment on imported tablestock potatoes and frozen or processed potato products for ultimate consumption by humans and on seed potatoes shall be established by the Board so that the effective assessment shall be equal to that on domestic production.

* * * * *

10. Section 1207.343 is revised to read as follows:

§ 1207.343 Refunds.

Any producer or importer who has paid an assessment under this amended Plan and who is not in favor of supporting the research and promotion program as provided for in this Plan shall have the right to demand and receive from the Board a one-time refund of such assessment upon submission of proof satisfactory to the Board that the assessment for which the refund is sought has been paid; *Provided,* That the amendment to the Plan to eliminate provisions for refunds of assessments is not approved pursuant to a referendum conducted under section 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990. Any such demand shall be made personally by such producer or importer on a form which shall be signed by such producer or importer and within a time period prescribed by the Board pursuant to the regulations. A handler who is also a producer shall be eligible for refunds only on potatoes produced by that handler.

11. Section 1207.350 is amended by redesignating paragraphs (a), (b), and (c) as (1), (2), and (3), respectively, and designating the introductory text to the section as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 1207.350 Reports.

* * * * *

(b) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

12. Section 1207.351 is amended by revising the first sentence of the paragraph to read as follows:

§ 1207.351 Books and records.

Each handler or importer subject to this part shall maintain and make available for inspection by authorized employees of the Board and the Secretary such books and records as are appropriate and necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any reports required. * * *

13. Section 1207.352 is revised to read as follows:

§ 1207.352 Confidential treatment.

All information obtained from books, records, or reports required pursuant to this part shall be kept confidential by all employees of the Department of Agriculture and of the Board, and by all contractors and agents retained by the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this Plan, which statements do not identify the information furnished by any person, or

(b) The publication by direction of the Secretary of the name of any person violating this Plan, together with a statement of the particular provisions of this Plan violated by such person.

14. Section 1207.362 is amended by revising paragraph (b) to read as follows:

§ 1207.362 Suspension or termination.

* * * * *

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the potato producers and importers to determine whether potato producers and importers favor termination or suspension of this plan. The Secretary shall suspend or terminate such plan at the end of the marketing year whenever the Secretary determines that its suspension or termination is favored by a majority of the potato producers and importers voting in such referendum who, during a representative period, determined by the Secretary, have been engaged in the production or importation of potatoes or potato products and who produced or imported more than 50 percent of the volume of the potatoes or potato products produced or imported by the producers and importers voting in the referendum.

15. Section 1207.363 is amended by revising paragraph (d) to read as follows:

§ 1207.363 Proceedings after termination.

* * * * *

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and importers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and importers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1207.412 [Removed]

16. The undesignated center heading above § 1207.412 and § 1207.412 are removed.

17. Section 1207.500 is amended by removing paragraphs (a), (b), (c), (d), (e), (f), (g), and (h), adding a new paragraph (a), and redesignating paragraph (i) as paragraph (b) to read as follows:

§ 1207.500 Definitions.

(a) Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Potato Research and Promotion Plan.

* * * * *

18. Section 1207.502 is added to read as follows:

§ 1207.502 Determination of membership.

Pursuant to § 1207.320 and the recommendation of the Board, annual producer memberships on the Board shall be determined on the basis of the average potato production of the three preceding years in each State as set forth in the Crop Production Annual Summary Reports issued by the Crop Reporting Board of the U.S. Department of Agriculture

19. Section 1207.503 is amended by revising the last sentence of paragraph (a), redesignating paragraph (b) as paragraph (c) and revising the newly redesignated paragraph (c), and by adding paragraphs (b) and (d) to read as follows:

§ 1207.503 Nominations.

(a) * * * A list of nominees shall be submitted to the Secretary for consideration by November 1 of each year.

(b) Nominations for importer member positions to the Board shall be obtained from potato or potato product importer associations or organizations. If such organizations fail to submit nominees or are determined by the Board to not adequately represent importers, then the Board may conduct meetings of importers to nominate eligible importers for Board member positions. In determining if importer organizations adequately represent importers, the Board shall consider:

(1) How many importers belong to the association,

(2) What percentage of the total number of importers is represented by the association,

(3) Is the association representative of the potato and potato product import industry,

(4) Does the association speak for potato and potato product importers, and

(5) Other relevant information as may be warranted.

(c) Such meetings shall be well publicized with notice given to producers, importers, and the Secretary at least 10 days prior to each meeting.

(d) The public member shall be nominated by the producer and importer members of the Board.

20. Section 1207.507 is amended by revising paragraph (a) to read as follows:

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee consisting of not more than 27 members to include 25 producers, 1 importer, and the public member. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the Chairperson and six Vice-Chairpersons, one of whom shall also serve as the Secretary and Treasurer of the Board.

* * * * *

21. Section 1207.510 is revised to read as follows:

§ 1207.510 Levy of assessments.

(a) An assessment of 2 cents per hundredweight shall be levied on all potatoes produced within the United States and on all tablestock, frozen or processed potatoes imported into the United States for ultimate consumption as human food and all seed potatoes imported into the United States.

(b) Potatoes used for other nonhuman food purposes, including starch, are exempt from assessment but are subject to the disposition of exempted potatoes provisions of § 1207.515 of this subpart.

(c) No more than one such assessment shall be made on any potatoes or potato products.

(d) No assessments shall be levied on potatoes grown in the 50 States of the United States by producers of less than 5 acres of potatoes.

(e) No assessments shall be levied on otherwise assessable potatoes which are contained in imported products wherein potatoes are not a principal ingredient.

(f) The Board shall provide a formula to the Customs Service to convert imported frozen or processed potato products to fresh hundredweight equivalents for assessment purposes.

22. Section 1207.512 is amended by revising the introductory text to the section to read as follows:

§ 1207.512 Designated handler.

The assessment on each lot of potatoes produced in the 50 States of the United States and handled shall be paid by the designated handler as hereafter set forth:

* * * * *

23. Section 1207.513 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (b)(1), revising the first sentence of newly redesignated paragraph (b)(1), adding paragraph (b)(2), and revising paragraph (c)(1) to read as follows:

§ 1207.513 Payment of assessments.

(a) *Time of payment.* The assessment on domestically produced potatoes shall become due at the time a determination of assessable potatoes is made in the normal handling process, pursuant to § 1207.511. If no determination is made of the utilization of a lot, assessments shall be due on the entire lot when it enters the current of commerce. The assessment on imported potatoes, potato products, and seed potatoes shall become due at the time of entry or withdrawal for consumption into the United States.

(b) *Responsibility for payment.* (1) The designated handler is responsible for payment of the assessment on domestically produced potatoes. * * *

(2) The Customs Service shall collect payment of assessment on imported potatoes, potato products, and seed potatoes from importers and forward such assessment per agreement between the Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessment directly to the Board of any assessment due but not collected by the Customs Service at the time of entry or

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withdrawal for consumption into the United States. An importer may apply to the Board for reimbursement of assessments paid on exempted products.

(c) *Payment directly to the Board.* (1) Except as provided in paragraphs (b) and (d) of this section, each designated handler or importer shall remit assessments directly to the Board by check, draft, or money order payable to the National Potato Promotion Board, or NPPB, not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

* * * * *

24. Section 1207.514 is revised to read as follows:

§ 1207.514 Refunds.

A one-time refund of assessments may be obtained by a producer or importer only by following the procedure prescribed in this section: *Provided,* That the amendment to the Plan to eliminate provisions for refunds of assessments is not approved pursuant to a referendum conducted under section 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990.

(a) *Application form.* A producer or importer shall obtain a refund form from the Board by written request which shall bear the producer's or importer's signature. For partnerships, corporations, associations, or other business entities, a partner or an officer of the entity must sign the request and indicate the partner's or officer's title.

(b) *Submission of refund application to the Board.* Any producer or importer requesting a refund shall mail an application on the prescribed form to the Board during a 90-day period which begins 90 days after publication of the results of the referendum held pursuant to section 1946(d) of the Food, Agriculture, Conservation, and Trade Act of 1990. The refund application shall show:

(1) Producer's or importer's name and address,

(2) Handler's or handlers' name(s) and address(es),

(3) The number of hundredweight on which the refund is requested,

(4) Date or inclusive dates on which assessments were paid,

(5) Total amount requested to be refunded,

(6) The producer's or importer's signature.

Where more than one producer or importer shared in the assessment payment, joint or separate refund application forms may be filed. In any such case, the refund application shall show the names, addresses, proportionate shares, and the signature of each producer or importer.

(c) *Proof of payment of assessment.* Evidence satisfactory to the Board that payment of assessment has been made shall accompany the producer's or importer's refund application. Such evidence would include, but not be limited to, receipts given to the producer by the handler, or copy thereof, import documents showing payment, and receipts of payment by importers directly to the Board.

(d) *Payment of refund.* Should the amendment to the Plan to eliminate provisions for refunds of assessments not be approved pursuant to the referendum, the Board shall pay refund requests to producers and importers who properly demand such refunds within 60 days after the closing date for requesting such refunds as specified in paragraph (b) of this section. If funds in the escrow account, established pursuant to section 1946(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, are not sufficient to refund the total amount demanded by all eligible producers and importers, then the funds in the escrow account shall be prorated among those eligible producers and importers demanding a refund.

25. Section 1207.515 is amended by revising the first sentence to read as follows:

§ 1207.515 Safeguards.

The Board may require reports by designated handlers and importers on the handling, importation, and disposition of exempted potatoes.* * *

26. Section 1207.532 is amended by revising the introductory text of the section to read as follows:

§ 1207.532 Retention period for records.

Each handler and importer required to make reports pursuant to this subpart shall maintain and retain such records for at least two years beyond the end of the marketing year of their applicability:

* * * * *

27. Section 1207.533 is revised to read as follows:

§ 1207.533 Availability of records.

(a) Each handler and importer required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

(b) Importers shall also maintain for 2 years records on the total quantities of potatoes imported and on the total quantities of potato products imported, and a record of each importation of potatoes, potato products, and seed potatoes including quantity, date, and port of entry, and shall make such records available for inspection by authorized employees of the Board or the Secretary during regular business hours.

28. Section 1207.540 is revised to read as follows:

§ 1207.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handler and importers and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1207.352 of the Plan.

§ 1207.550 [Removed]

29. Section 1207.550 is removed.

30. Section 1207.200 is revised to read as follows:

§ 1207.200 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a potato research and promotion plan, or the continuance, termination, or suspension of such a plan, is approved or favored by producers and importers shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

31. Section 1207.201 is amended by revising paragraph (a) and by adding paragraph (i) to read as follows:

§ 1207.201 Definitions.

(a) *Act* means the Potato Research and Promotion Act (title III of Public Law 91-670, 91st Congress, approved January 11, 1971, 84 Stat. 2041), as amended.

* * * * *

(i) *Importer* means any person who imports tablestock, frozen or processed potatoes for ultimate consumption by humans, or seed potatoes into the United States.

32. Section 1207.202 is amended by revising paragraph (a), the first two sentences of paragraph (b), and (c) to read as follows:

§ 1207.202 Voting.

(a) Each person who is a producer or importer, as defined in this subpart, at the time of any referendum and who also was a producer or importer during the representative period, shall be entitled to only one vote in the referendum, except that in a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote in any referendum.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer or importer, or an administrator, executor or trustee of a producing estate may cast a ballot on behalf of such producer, importer, or estate. Any individual so voting in a referendum shall certify that that individual is an officer or employee of the producer or importer, or an administrator, executor, or trustee of a producing estate, and that such person has the authority to take such action.* * *

(c) Each producer or importer shall be entitled to cast only one ballot in the referendum.

33. Section 1207.203 is amended by revising paragraphs (b), (c) (2) and (3), adding a new paragraph (c)(4), and revising paragraphs (e) and (f) to read as follows:

§ 1207.203 Instructions.

* * * * *

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or importers, or by any combination of the foregoing.

(c) * * *

(2) for producers, the acreage of potatoes produced by the voting producer during the representative period.

(3) for producers, the total volume in hundredweight of potatoes produced during the representative period, and

(4) for importers, the total quantity of potatoes or equivalent potato products imported during the representative period.

* * * * *

(e) Make available to producers and importers instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of a plan, a summary of the terms and conditions of the Plan, *Provided,* That no person who claims to be qualified to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each producer and importer whose name and address is known to the referendum agent.

* * * * *

34. Section 1207.204 is amended by revising paragraph (c) to read as follows:

§ 1207.204 Subagents.

* * * * *

(c) Distribute ballots and the aforesaid texts to producers and importers and receive any ballots which are cast; and

* * * * *

Dated: June 13, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-14613 Filed 6-20-91; 8:45 am]

BILLING CODE 3410-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3967-3]

Alternative Emission Control Plan for Dow Chemical, U.S.A., Louisiana Division, Plaquemine, LA

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of the Dow Chemical, U.S.A., Plaquemine Plant Alternative Emission Reduction (bubble) request as a revision to the Louisiana State Implementation Plan (SIP). The bubble uses credit from a process change at its Glycol II expander unit which reduced emissions of waste volatile organic compounds (VOCs), in lieu of placing controls on four VOC storage tanks. The emission reduction credit (ERC) was determined to be valid for trading purposes as evaluated for consistency with EPA's Emissions Trading Policy Statement (ETPS) of December 4, 1986 (51 FR 43814).

DATES: Comments must be received on or before July 22, 1991.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section (6T-AP), Air Programs Branch, Air, Pesticides and Toxics Division, Region 6, U.S. EPA, at the address below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Louisiana Department of Environmental Quality, Office of Air Quality, P.O. Box 44096, 625 North 4th Street, Baton Rough, Louisiana 70804.

U.S. Environmental Protection Agency—Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 1200, Dallas, Texas 75202-2733.

The interested person wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before arrival.

FOR FURTHER INFORMATION CONTACT: Bill Nelly, Planning Section (6T-AP), Air Programs Branch, Air, Pesticides and Toxics Division, Region 6, U.S. EPA, at 214-655-7214 (FTS 255-7214).

SUPPLEMENTARY INFORMATION:

Background

On October 19, 1983, the Governor of Louisiana submitted a request to revise the Louisiana SIP to include an alternative emission reduction plan for the Dow Chemical, U.S.A., facility located at Plaquemine, Iberville Parish. The submittal contains verification that adequate notice and a public hearing were provided for the alternate emission reduction plan. EPA proposes to approve the SIP revision and invites comments from all interested persons. Comments received at the EPA Region 6 address listed above within 30 days of the publication of this notice will be considered by EPA.

In June 1977, Dow instituted a process improvement at its Glycol II Expander unit that reduced emissions from a waste gas vent from 595.7 tons per year (TPY) of VOCs to 140.6 TPY of VOCs. The emissions listed above are the actual emissions (after the VOCs flow through the incineration unit). Dow has proposed to use credit from the emission reduction at this waste gas vent as a substitute for installing controls on four VOC storage tanks. Two of the tanks are fixed roof tanks containing methanol. Emissions from these two tanks are 5.72 and 1.35 TPY. Two other tanks contain an impure mixture of hexane and other VOCs. Only one of the hexane tanks is operating at any one time, while the other is idle. The company did actual field testing of the two hexane tanks and found their emissions to be 28.00 and 6.57 TPY of VOC. EPA calculated the emissions from the hexane tanks and determined theoretical total loss for one tank to be 16.9 TPY and found the standing storage loss from the other to be 2.76 TPY. The higher, actual values, rather than the theoretical values, are used in the trade. Total allowable emissions from the four tanks with external floating roof tanks and rim mounted secondary seals are 0.45 TPY. Louisiana Air Qualify Regulation (LAQR) 22.8(a), requiring incineration as an equipment standard for waste gas vents containing nonhalogenated compounds, was approved on February 14, 1980 (45 FR 9903). LAQR 22.8(b), a regulation proposing controls for waste gas vents containing halogenated hydrocarbons, has not yet been acted on by EPA.

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The credits the company is claiming result from a process change whereby Dow added an additional reactor before the incinerator to the process and thereby reduced the amount of VOCs going to the control device. This consequently resulted in a reduction in emissions from the control device. After using the necessary 41.19 TPY of ERC, and allowing for a 5.7 TPY net air quality benefit, Dow would have 408.2 TPY of ERC remaining. The entire trade as proposed is summarized in the table below.

ERC from reduction of vent emissions (−455.1 TPY)	Emissions from four VOC storage tanks (+41.19 TPY)	Net air quality benefit (+5.7 TPY)

REMAINING ERC (−408.2 TPY)

[Emissions (tons/year)]

Sources	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
Storage Tanks	5.72	5.72	0	.16	5.72	5.56
	1.35	1.35	0	.03	1.35	1.32
	28.00	28.00	0	.14	28.00	27.86
	6.57	6.57	0	.12	6.57	6.45
Waste Gas Vents	595.7	140.6	−455.1	595.7	140.6	−455.10
Air Quality Benefit	0	0	0	0	5.7	5.7
Total	637.4	182.24	−456.1	598.15	187.94	−408.2

This emissions table reflects calculations that have had the ethane component removed from the Dow calculations because ethane is not treated as a VOC in accordance with EPA policy.

The current air quality is designated nonattainment of National Ambient Air Quality Standards (NAAQS) for ozone. The last eight years of data for Iberville Parish are summarized below.

Year	NAAQS (parts per million, PPM)	Highest violation (PPM)	No. of violations for that year
1983	.12	.168	4
1984	.12	.129	1
1985	.12	.129	2
1986	.12	.133	3
1987	.12	.134	2
1988	.12	.148	3
1989	.12	.149	5
1990	.12	.157	5

On May 26, 1988, EPA sent a letter to the Governor of Louisiana identifying areas in Louisiana that would receive a post-87 SIP call.

According to EPA's proposed post-87 policy, the SIP planning area has been expanded to the entire Metropolitan Statistical Area (MSA) and adjacent Parishes with monitored or modeled nonattainment. Therefore, Iberville Parish was included in the SIP call for Baton Rouge, Louisiana.

Review

The bubble was reviewed for compliance with the requirements of section 110 of the Clean Air Act, 40 CFR part 51, EPA's proposed ETPS of April 7, 1982 [47 FR 15076], and the final ETPS of December 4, 1986 [51 FR 43814]. EPA has reviewed the State submittal and developed an Evaluation Report.[1] This report is available for inspection by interested parties during normal business hours at the EPA Region 6 office. The review is summarized below.

The final ETPS sets out current EPA policy for approving bubbles. EPA policy differs depending on whether the bubble is in a nonattainment area with an approved attainment demonstration (NAWAD) or a nonattainment area lacking an approved attainment demonstration (NALAD).

A bubble in a NAWAD is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS [51 FR 43838 column 3].

A bubble in a NALAD is approvable only if it meets the following three requirements:

(i) The baseline must be calculated using the lower of actual, SIP-allowable, or RACT [2]-allowable values for each baseline factor, determined as of the date the source submitted the bubble application to the State.

(ii) The bubble must produce a reduction of at least 20% in the emissions remaining after application of the baseline specified above.

(iii) The State must provide assurances that the proposed trade will be consistent with its efforts to attain the ambient standard. The final ETPS sets out five representations that the State must make [51 FR 43839–40].

EPA believes that these NALAD requirements are necessary to ensure that the bubble will not interfere with attainment as expeditiously as practicable, as required under 42 U.S.C. 7410 and 7502.

However, the final ETPS relaxes these NALAD requirements for pending bubbles. A pending bubble is defined as a bubble submitted by the State to EPA before EPA published the final ETPS [51 FR 43840 column 1]. The rules for a pending bubble in a NALAD are as follows:

(i) The baseline must be calculated using the lower of actual, SIP-allowable, or RACT-allowable values for each baseline factor, determined as of the date the source submitted the bubble application to the State.

(ii) The bubble must produce some reduction—but need not produce a 20% reduction—in the emissions remaining after application of the baseline specified above.

Grandfathering Principles

Because the final ETPS is a policy statement, it does not set out requirements that apply with equal force in all circumstances. Beyond this, the actions proposed in today's notice are consistent with the principles of grandfathering that the Court of Appeals for the District of Columbia Circuit has applied when an agency changes policy requirements, but seeks to apply the former policy to certain actions pending before the agency at the time of the policy change. Under these principles, the agency may apply the former policy when: (i) The new rule represents an abrupt departure from well-established practice, (ii) affected parties have relied on the old rule, (iii) the new rule imposes a large burden on those affected, and (iv) there is no strong statutory interest in applying the new rule generally (*Sierra Club* v. *EPA*, 719 F.2d 436 [D.C. Cir. 1982], *cert. den.* 466 U.S. 1204 [1984]).

[1] Evaluation Report for the Alternative Emission Control Plan for Dow Chemical U.S.A., Louisiana Division, Plaquemine Plant, June 1990.

[2] RACT refers to Reasonably Available Control Technology.

Proposed Ozone Strategy and SIP Calls

By notice dated November 24, 1987 [52 FR 45044], EPA published a proposed policy (Proposed Ozone Strategy) to address the fact that many areas in the country were not expected to attain the NAAQS for ozone (and carbon monoxide) by the end of 1987—the latest date for attainment expressly identified in the Clean Air Act (42 U.S.C. 7502). In general, EPA stated that in the spring of 1988, it would issue SIP calls to areas where, based on recent monitoring data, EPA determined that the SIPs were substantially inadequate to attain the NAAQS. The issuance of SIP calls would trigger a new round of SIP development by the states.

EPA proposed to require that the states that receive SIP calls develop revised inventories within one year of the SIP call, and develop and submit for EPA approval new SIPs within two years of the SIP call. EPA further proposed to require that, in general, the new SIPs must persuasively demonstrate attainment of the NAAQS within five years of the SIP call (in order to avoid construction ban penalties). EPA further proposed to require that, in general, the State demonstrate that the SIP would produce expeditious progress in the interim before attainment. This reasonable rate of progress would be an average annual emissions reduction of at least three percent in the base year inventory for the area [see 52 FR 45045].

On May 26, 1988, EPA issued SIP calls with respect to many areas of the country, including the areas to which this notice applies. The SIP calls trigger a two-step planning process that ultimately should result in the creation of SIP revisions that will produce near term attainment of the standards.

Application to Dow

The State submitted this bubble to EPA before EPA published the final ETPS on December 4, 1986. Thus, EPA considers this a pending bubble under the final ETPS. At the time the State submitted this bubble, the area was classified as a NAWAD for purposes of applying the final ETPS. As noted above, under the final ETPS, a bubble in a NAWAD is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS. This bubble meets these requirements.

To be valid for trading purposes, an emission reduction must be surplus, enforceable, permanent, and quantifiable. First, Dow has shown in this submittal that they added an additional reactor (final reactor) between the tertiary reactors and the control device. This process change involving the installation of this additional reactor results in greater conversion of VOCs, thereby reducing the VOC emissions to the control device and reducing final emissions of VOCs. RACT is determined in this case by the regulation approved by the State in 1980 which requires incineration (control device). The control device was already installed when the process improvement was made in June of 1977. The baseline is the level of pollutant output below which a source must reduce its emissions in order to qualify for an emissions reduction. EPA interprets baseline as an emission rate. RACT, in this case, is the piece of process control equipment and the baseline is the actual rate of emissions coming from that piece of process control equipment. Dow was meeting RACT both before and after the process improvement, but did experience a reduction of emissions with the addition of the final reactor. RACT and baseline can be, and in this case are, independent variables. Dow did not go beyond the requirement to have an incinerator in place, but it did voluntarily decrease emissions by reducing the flowrate of VOCs into the incinerator which resulted in fewer emissions out of the incinerator. As an example, if an incinerator is ninety-five percent efficient and it is receiving 10,000 tons of waste gas per year, then it will release 500 tons of uncombusted waste gas per year. But if that same incinerator only receives 2,000 tons of waste gas per year, then it will only release 100 tons of uncombusted waste gas per year. In this example, the benefit to the environment is that 400 fewer tons of uncombusted waste gas per year are being released to the atmosphere. (Example from the Vista bubble, 55 FR 3596.) By changing the VOC input to the incinerator, Dow reduced the amount of waste gas created in the reaction. The ERC is a result of the process change. Therefore, the emission reductions are surplus.

Second, the emissions reductions will need to be made enforceable at the State level. The emission limits were originally included in permit No. 1638T issued March 31, 1983. It is necessary that the Louisiana Department of Environmental Quality (LDEQ) revise the permit to be accurate and enforceable in accordance with the current situation as depicted in the emission table given earlier in this notice. The State should model the permit after the Vulcan and American Cyanamid permits issued for the final approval of these bubbles.

Third, the emission reductions are permanent in that they are a permanent process change and would need to be a part of the plant permit. Any change in the process that would increase emissions would have to be re-permitted and would then be subject to Federal review to enforce conditions of this bubble.

Fourth, calculations quantifying all of the emissions involved in the trade were submitted to EPA. EPA has reviewed all of the calculations and found they are acceptable according to EPA criteria.

While EPA was considering this bubble, it received additional information that the SIP for the Baton Rouge MSA does not in fact provide for attainment by the end of 1987. In the November 24, 1987, Federal Register notice describing EPA's proposed policy for areas that are not expected to attain by the end of 1987, EPA stated that a SIP call would likely be issued for this area [52 FR 45100–3]. On May 26, 1988, EPA issued the SIP call for this area.

A SIP call is a finding by EPA under Clean Air Act 110(a)(2)(H) that the SIP is substantially inadequate to achieve the NAAQS, and amounts to a provisional finding that the area receiving the call is, for the purposes of the general applicability of the final ETPS, a NALAD.

The pending bubble requirements of the final ETPS contemplate a bubble submitted by the State before publication of the final ETPS, at a time when the area is a NALAD, with no EPA action on the bubble by the date of publication of the final ETPS. These pending bubble requirements do not explicitly contemplate the circumstances here, in which the bubble was submitted by the State before publication of the final ETPS, at a time when the area was NAWAD, but the areas subsequently received a SIP call that converted it to NALAD before EPA acted on the bubble.

EPA has determined that different policy elements would apply to this pending bubble. EPA does not believe that the bubble should be required to use a trading baseline of the lower of actual, SIP-allowable, or RACT-allowable emissions. Rather, the bubble may continue to use the baseline that is consistent with the assumptions in the applicable attainment demonstration.

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Nor is the bubble required to show any reduction in emissions beyond the baseline.

However, EPA does believe that for these bubbles, the State should provide certain State assurances. Specifically, the State must make the following representations to EPA:

(i) The bubble emission limits will be included in any new SIP and associated control strategy demonstration.

(ii) The State or local agency's ability to obtain any additional emission reductions needed to expeditiously attain the maintain ambient air quality standards is not compromised and the source may be revisited for additional emission reductions.

(iii) The State or local agency is making reasonable efforts to develop a complete approvable SIP and provides EPA a schedule for such development (including dates for completion of emissions inventory and subsequent increments of progress).

EPA believes that if the State adequately makes these representations, EPA will be able to approve this bubble on grounds that it does not interfere with attainment and maintenance of the ozone NAAQS, in accordance with Clean Air Act section 110(a)(2). EPA believes that applying the policy elements described above would be consistent with the fact that the final ETPS is a policy statement whose tests may not apply with equal force in all circumstances. Moreover, although grandfathering principles under the case law described above do not literally apply in the case of this bubble because EPA has not issued any new rule, EPA believes that these principles provide a helpful analogy because of the changed circumstances—conversion from NAWAD to NALAD—these areas found themselves in while EPA was considering the bubble application.

Specifically, EPA believes it appropriate to exempt this bubble from using a lower of actual-or-allowable baseline, or providing 20% progress beyond baseline emissions, on equitable grounds; the State and the source had submitted the bubble several years ago, and had relied on the area's classification as a NAWAD in submitting the bubble. Subjecting the bubble to the stricter baseline requirements and the progress requirements would be a significant burden because the bubble would likely require significant restructuring to be approvable, which would require the State to undergo its rulemaking process again.

EPA further believes, however, that State assurances of the type described above are necessary. These assurances would protect the requirement of noninterference with attainment because the ongoing state planning process can be expected to result in a SIP that will provide attainment.

The final policy at 51 FR 43840 under the "Treatment of Pending Bubble Applications" notes the following guidance for rural ozone nonattainment areas: "In other areas these bubbles must show that applicable standards, increments, and visibility requirements will not be jeopardized. Pending bubbles which meet these tests and all other applicable requirements of the 1982 policy will be processed for approval." The 1982 policy states at 47 FR 15077: "In nonattainment areas with approved demonstrations of attainment, the baseline must be consistent with assumptions used to develop the area's SIP. Only reductions not assumed in the area's demonstration of reasonable further progress and attainment can be considered surplus. This generally means that actual emissions must be the baseline where actual emissions were used for such demonstrations, and that allowable emissions may be the baseline where allowable emissions were used for such demonstrations." The question now arises whether Dow conformed to these requirements. Before EPA takes final action on this bubble, the State must make the following commitments to EPA: (i) That the State will document that it did not rely on any emissions reductions from Dow in developing its SIP for the area. This means that the State developed its SIP based on the full 595.7 TPY being emitted to the atmosphere on a continuous basis and worked on reductions elsewhere. This also means that allowable emissions (in this case the 595.7 TPY) may be used as the baseline; (ii) that the 408.2 TPY which was designated for the bank will be voided and that no credit beyond that needed for the four uncontrolled tanks will be used. This would benefit the environment; (iii) that the State will submit an enforceable permit to reflect the circumstances of this bubble proposal in accordance with the emissions table of this notice. The permit will be modeled after the Vulcan and American Cyanamid permits issued for the final approval of these bubbles; (iv) that the State is addressing the post-87 SIP call; (v) that the State will submit a plan to demonstrate attainment; and (vi) that the State will commit that it has the resources to fulfill the requirements of numbers (iv) and (v) above.

The State has already agreed to do the following:

(i) Submit revisions involving the trade to the existing permit to improve its enforceability.

(ii) Commit that it did not use Dow's credits in the State's SIP planning.

(iii) Document that the 408.2 TPY designated for the Bank will be voided.

Proposed Action

Today's notice proposes to approve the emissions trade for Dow Chemical, U.S.A. Dow is using a reduction in emissions from a process improvement as a credit to be used toward allowing four storage tanks to remain uncontrolled. The regulations call for the tanks to have a control device. Before the trade is approved, the State must provide assurances that the State:

1. Will submit an enforceable permit to reflect the circumstances of this bubble proposal in accordance with the emissions table of this notice, with the permit being modeled after the Vulcan and American Cyanamid permits issued for the final approval of these bubbles.
2. Did not use the credits from Dow in its former SIP planning, so that the full 595.7 TPY may be used as the baseline.
3. Will void the remaining credits from this trade (408.2 TPY) and that no extra credit beyond what is needed for the four uncontrolled tanks will be used.
4. Is addressing the post-87 SIP call.
5. Will submit a plan to demonstrate attainment.
6. Has the resources to fulfill the requirements of numbers 4. and 5. above.

EPA is providing a thirty-day comment period on this notice of proposed rulemaking. Public comments received on or before July 22, 1991 will be considered in EPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region 6 office listed at the front of this notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities [see 46 FR 8709].

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 [54 FR 2214–2225]. On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions [54 FR 2222] from the requirements of Section 3 of Executive Order 12291 for a period of two years.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7642.

Dated: June 12, 1991.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 91–14826 Filed 6–20–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 482, and 485

[BPD-646-P]

RIN 0938-AE46

Medicare Program; Conditions of Coverage for Organ Procurement Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth changes to the conditions of coverage for Organ Procurement Organizations (OPOs). It would redefine an OPO service area, revise the qualifications for the Board of Directors, specify the assistance to be provided by an OPO to hospitals in establishing and implementing protocols governing organ procurement activity, require an OPO to establish criteria for allocating organs, and require an OPO to ensure that tests are performed on serum from prospective organ donors to prevent the acquisition of organs that are infected with the etiologic agent for Acquired Immune Deficiency Syndrome. These changes are required by the Health Omnibus Programs Extension Act of 1988 (Pub. L. 100–607) and the Transplant Amendments Act of 1990 (Pub. L. 101–616).

We also would clarify the distinction between certification and designation, and amend the designation and redesignation criteria with respect to compliance with performance standards, change of ownership, and termination procedures. Finally, we solicit comments on criteria that should be used to determine if an OPO's service area is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 20, 1991.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–646–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code BPD–646–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890). If comments concern information collection or recordkeeping requirements, please address comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

FOR FURTHER INFORMATION CONTACT: John Powell, (301) 966–9671.

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Amendments of 1972 (Pub. L. 92–603) extended Medicare coverage to individuals with end stage renal disease who require dialysis or kidney transplantation. Section 1881 of the Social Security Act (the Act) provides for Medicare payment for kidney transplantation. Medicare also covers certain other organ transplants that HCFA has determined are "reasonable and necessary" under section 1862 of the Act, and pays for those transplants and related organ procurement services.

Section 1138(b) of the Act, as added by section 9318 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), sets forth the statutory qualifications and requirements an Organ Procurement Organization (OPO) must meet in order for the costs of its services in procuring organs for hospitals and transplant centers to be reimbursable under the Medicare and Medicaid programs. The corresponding regulations are found at 42 CFR part 485 (Conditions of Participation and Conditions for Coverage: Specialized Providers) under subpart D (Conditions of Coverage: Organ Procurement Organizations).

These regulations were published in the Federal Register on March 1, 1988 (53 FR 6550). In general, § 485.303(a) states that payment may be made under the Medicare and Medicaid programs for organ procurement costs attributable to payments to an OPO only if the organization has been designated by the Secretary as meeting the conditions for coverage as an OPO. OPOs are not generally paid directly for organ procurement costs; rather, the transplanting hospital pays those costs to the OPO and claims them on its cost report. However, the OPO does have to file a cost report with HCFA at the end of its fiscal year, at which time HCFA settles with it for any overpayment or under payment it has made *vis-a-vis* hospitals during the cost year. To be designated as an OPO, § 485.303(b) requires that an organization must—

- Apply to HCFA in writing using the application form prescribed by HCFA;
- Meet the qualifications listed at 42 CFR 485.304 (Condition: Qualifications required of an organization for it to be a designated organ procurement organization); and
- As specified in 42 CFR 485.305, be a member of, have executed a written agreement with, and abide by the rules and requirements of the Organ Procurement and Transplantation Network (OPTN) established in accordance with section 372 of the Public Health Service Act.

The Health Omnibus Programs Extension Act of 1988 (Pub. L. 100–607) was enacted on November 4, 1988. The Organ Transplant Amendments Act of 1988, title IV of Public Law 100–607, amends section 371 of the Public Health Service Act, which defines OPOs.

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Specifically, section 402(c)(1)(A) of Public Law 100-607 amended section 371(b)(1)(E) of the Public Health Service Act. It revised the definition of "service area" that must be encompassed by an entity in order for the entity to be recognized by the Secretary as an OPO. Prior to the enactment of Public Law 100-607, the law provided that, unless the service area comprised an entire State, it had to be of sufficient size to include "at least 50 potential organ donors" each year. Section 402 of Public Law 100-607 revised section 371 of the Public Health Service Act to require the service area to be large enough that the OPO "can reasonably expect to procure organs from not less than 50 donors each year". Under section 371, the Secretary would determine if the OPO can "reasonably expect" to procure organs from not less than 50 donors.

We have determined that this change would have resulted in a substantial number of existing OPOs failing to qualify for redesignation, because we interpret the requirement that the OPO "can reasonably expect [emphasis added] to procure organs from not less than 50 donors" to be more stringent than the current requirement that the service area include "at least 50 potential [emphasis added] organ donors." According to a Departmental study cited in the Report of the Committee on Energy and Commerce on a precursor to the 1988 Public Health Service Act legislation, the Organ Transplant Amendments Act of 1987 (H.R. Rep. No. 383, 100th Cong., 1st Sess. 5-6 (1987)), the average OPO was, at the time of the report, procuring organs from only 44 donors per year. (Because more than one organ may be obtained from a donor, the average number of organs obtained per OPO per year is about 110.)

Most of the currently designated OPOs were scheduled for redesignation beginning in March 1990 and would have been required to meet the new requirement imposed by Public Law 100-607. Contacts with many of the designated OPOs and with representatives of the Association of Organ Procurement Organizations (AOPO) revealed that almost one-half of the OPOs would not have been able to meet the new requirement. It was also the opinion of some organ procurement and transplantation experts that many of the OPOs that would not have a realistic expectation of procuring organs from at least 50 donors were nonetheless effective and efficient entities. The Department and other interested parties sought statutory relief to avoid disruption to the nation's organ procurement system. On April 23, 1990, Public Law 101-274 was passed. It postponed the effective date of the service area organ donor requirement to January 1, 1992. Therefore, the "at least 50 potential donors" requirement would have remained in full force and effect until that date. However, the Transplant Amendments Act of 1990 (Pub. L. 101-616) was enacted on November 16, 1990. That Act amended section 371(b)(1)(E) of the Public Health Service Act to require an OPO to have a "* * * defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of the area". The Secretary is required under section 201(d)(2) of Public Law 101-616 to publish a proposed definition of "service area" by February 14, 1991, and final regulations defining "service area" by November 16, 1991. As discussed in II. below ("Provisions of the Regulations"), we are soliciting comments on the criteria for identifying a sufficient-sized service area for efficient and effective OPOs. After reviewing public comments, HCFA will decide which criteria to apply and will publish them in final regulations.

All other changes relating to OPOs that are required by Public Law 100-607 would be implemented by these proposed regulations:

- Section 371(b)(1)(G)(i)(III) of the Public Health Service Act was amended to allow either a physician or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility to serve on an OPO's board of directors or advisory board. Prior to the amendment, the statute required that at least one board member have knowledge, experience, or skill in the field of histocompatibility, and that he or she also be a physician.
- Section 371(b)(3)(E), as subsequently amended by section 201(d)(1) of Public Law 101-616, was amended to specify that an OPO is responsible for allocating organs equitably among the patients who need a transplant, in accordance with OPTN criteria. The waiting lists for organs have lengthened and concerns have been raised that OPOs might be in a position to show favoritism to a particular transplant facility. Congress' purpose in adding this amendment was to assure equity in the distribution of organs among patients needing transplants, rather than to focus on distribution of organs to transplant centers. (See page 12 of Senate Committee on Labor and Human Resources Rep. No. 310, 100th Cong., 1st Sess. (1987) and page 6 of H.R. Committee on Energy and Commerce Rep. No. 383, 100th Cong., 1st Sess. (1987).)
- Section 371(b)(3)(C), as subsequently amended by section 201(d)(1) of Public Law 101-616, was amended to require OPOs to ensure that tests are performed to prevent the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome, and to assist hospitals to comply with the requirement in section 1138(a) of the Act that hospitals have protocols for making routine inquiries regarding potential donors.

All of these OPO requirements and responsibilities are prerequisites not only for qualifying for grants under section 371 of the Public Health Service Act, but also for designation under section 1138(b) of the Social Security Act.

In addition to the provisions that are necessary to implement these statutes, we are proposing some other amendments to current regulations that are derived from HCFA's experience in administering the OPO program that are not related to either piece of legislation. The most noteworthy of these latter provisions deal with change of ownership and termination. In interpreting current regulations, questions have arisen recently with regard to what standards and procedures are required when two OPOs voluntarily merge or consolidate or when there is a change of ownership or service area. Our current regulations also are silent on conditions for termination, whether the termination is voluntary or involuntary. To address these concerns and to clarify our operational policies with regard to change of ownership and terminations, we are proposing to add two new provisions to the current regulations. Specific provisions of these new sections are discussed in more detail below.

II. Provisions of the Regulations

The proposed regulations would make a technical correction in §§ 405.2163 ("Condition: Minimal service requirements for a renal dialysis facility or renal dialysis center.") and 405.2171 ("Condition: Minimal service requirements for a renal transplant center."). In paragraph (f) of the former and paragraph (e) of the latter, we would change the phrase "certified or recertified" to "designated or redesignated". This change was inadvertently omitted when OPO regulations were published in the Federal Register on March 1, 1988.

These proposed regulations also would implement section 402 of Public Law 100-607 and section 201 of Public Law 101-616 by amending certain sections of part 482, which sets forth the Medicare conditions of participation for hospitals, and subpart D of part 485, which sets forth the Medicare conditions of coverage for OPOs, to conform them to the statute.

We would revise paragraph (c)(5)(ii) of § 482.12 (Condition of participation: Governing body) to state that no hospital will be considered to be out of compliance with section 1138(a)(1)(B) of the Act or with the requirements at § 482.12(c)(5)(ii), unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the hospital from the OPTN and has notified the hospital in writing.

We would delete the reference to section 9318 of Public Law 99-509 in the last sentence in § 485.301 ("Basis and scope.") because it is unnecessary.

Section 485.302 ("Definitions.") would be amended to change the definition of "service area" by using the phrase "is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs" as opposed to the current phrase "at least 50 potential organ donors." If our evaluation of the comments reveals it to be necessary, we will publish an amended notice of proposed rulemaking in 1991 to propose more detailed criteria. In any event, we will specify in the final rules criteria HCFA will use to determine the service areas of an OPO. Each OPO will be required to meet the definitions specified in the final rule.

As previously noted, we have determined that application of the 50 donor requirement as set forth in Public Law 100-607 to OPOs coming up for redesignation in 1990 would have resulted in over half of them failing to be redesignated (see Table A).

TABLE A: ACTUAL DONOR RANGE AND FACILITY COMPLIANCE COMPARISON—1989

Number of Donors	Facilities meeting requirement	Facilities failing to meet requirement
50 or more	31	39
40	36	32
30	50	20
25	55	15
20	59	11
15	64	6

In amending this provision and requiring the OPO to have a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, Congress mandated that the Department develop effective criteria for identifying such a service area A number of criteria are being considered. They are described below, and we solicit public comment on them and on any other criteria that might lead to valid identification of a sufficient-sized service area to assure effective OPOs.

Possible criteria to be considered would fall under one of two existing types of requirements: Qualifying criteria and performance standards. Qualifying criteria are used to determine if an OPO should be designated, and performance standards are used to measure the effectiveness of a designated OPO's performance. We also may use qualifying criteria that differentiate between existing and new OPOs. For instance, existing OPOs may be judged on historical yields when determining a realistic expectation of achieving the necessary procurement levels, while new OPOs may be judged by some other proxy measure, such as overall population in the service area.

The qualifying criteria we propose to use may include one or more of the following:

- An area encompassing an entire State or States. For the purposes of implementing this requirement we would not consider an area to encompass an entire State if even one county of the State is included in another OPOs service area. This could occur, for example, in places where a standard metropolitan statistical area (SMSA) overlaps State lines. We would not permit a service area to contain an SMSA which is broken up.
- A population of at least sufficient size so that there would be a reasonable expectation that procurements would be made from at least that number of donors determined to be needed to assure maximum effectiveness in the procurement and equitable distribution of organs. For example, if we determine that an OPO must procure organs from at least 50 donors to meet this requirement, then perhaps a population of at least 2.5 million would be a qualifying criterion. This is based on the assumption that an OPO should be able to procure organs from at least 20 donors per million population. Of course, if this assumption is incorrect, then some other ratio would be needed and another population size would be required to yield at least 50 donors. We request public comment on whether this ratio is appropriate.
- A documented showing (or a realistic expectation) that an OPO's service area has historically yielded at least 50 actual donors per year.
- A realistic expectation of procuring organs from some number of donors other than 50. For example, would an entity be considered capable of operating effectively if it procures organs from less than 24 donors a year? Would staff skills, effective community contact, and economy be maintained if the OPO procures organs from an average of less than two donors a month?

The performance standards we propose to use may include one or more of the following:

- The performance standards currently at § 485.306(a) (1) and (2). They state that each OPO must—

+ Procure within its service area a minimum ratio of 23 cadaveric kidneys per million population of its service area for each 12 month period surveyed;
+ Provide a minimum ratio of cadaveric kidneys procured in its service area and transplanted (either locally or exported and transplanted) of 19 cadaveric kidneys per million population of its service area for each 12 month period surveyed.

- Performance standards for the procurement of hearts and livers. We solicit comments on appropriate performance standards for the procurement of these organs.
- The cost per organ procured. Since there is a long history or acquisition costs for kidneys, a likelihood that all designated OPOs would retrieve kidneys, and, we believe, greater standardization in determining which components of cost should be included, we propose to use cost per kidney procured as a yardstick for determining if an OPO is effectively procuring organs. We would compare costs against a national or regional measurement. Those OPOs that showed unexplaind high costs (for example, greater than 10 percent above the national or regional measurement) per kidney would be reviewed closely and possibly considered for termination, depending upon the apparent reasons for the high cost. One such reason could be that the size or character of the service area is such that the OPO could not function effectively or equitably. A similar standard will be developed for hearts and livers, and appropriate measures will be incorporated.
- The use of a formula to calculate the expected number of donors per year for each OPO. It would be based on

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population, size, and composition (see Table B). The number of projected donors per year would be calculated and listed for each designated OPO, along with a frequency distribution showing by what percentage each OPO was above or below its projected number. All OPOs meeting or exceeding their projected number of donors would be considered to be in compliance. OPOs at a certain level (for example, more than 10 percent) below the projected total, without a reasonable explanation, would be considered to be out of compliance with this performance requirement. Acceptable rationale for failure to achieve the minimum number of donors could include a lack of cooperation by certain health professionals in key donor hospitals, unexpected loss of transplant coordinators, and a high prevalence of Human Immunodeficiency Virus infection in the service area population. HCFA would consider these and similar factors in deciding whether the OPO merits continued designation.

Table B.—Expected Number of Organ Donors for Individual OPOs Based on National Rates of Organ Donors per Million Population and the Population Composition of Individual OPOs

1. No. U.S. donors for each age, race/ethnicity, and gender category/U.S. population for each age, race/ethnicity, and gender category×1,000.00=U.S. donors per million population by age, race/ethnicity, and gender category.
2. U.S. donors per million population for each age, race/ethnicity, & gender category/1,000,000×individual OPO population for each age, race/ethnicity, and gender category=expected individual OPO donors for each age, race/ethnicity, and gender cateogy.
3. Add the expected individual OPO donors for each age, race/ethnicity, and gender categories obtained in No. 2 above to get the total number of expected donors for an individual OPO.

• AOPO has forwarded a recommendation for a performance standard based on population and potential activity benchmarks.

The Association recommends that an OPO be required to demonstrate that it achieves at least 75 percent of the national means for per capita organ recovery in four of the following performance categories over the previous two calendar year period. The national means would be derived from the experience of designated OPOs in these categories:

—Actual donors per million population.
—Number of kidneys recovered per million population.
—Number of kidneys transplanted per million population.
—Extrarenal organs recovered per million population.
—Actual number of extrarenal organs transplanted per million population.

Under this performance standard, failure to achieve 75 percent of the national means in four of the five categories would require an investigation to determine why the OPO did not achieve minimum goals. If an investigation determines that the OPO's inefficiency, poor management, or like reasons are the major cause of the low performance, then termination action would be initiated.

• Since organ donation is a function of trauma patterns and where patients die, it has been suggested that these facets be included in measuring an OPO's effectiveness. Therefore, we would propose to look at the ratio or organ donors to the number of hospital deaths of individuals under age 70. These statistics would be gathered at hospitals where an OPO has an agreement. Primarily, but not exclusively, this would be at hospitals in the designated OPO's service area.

Section 485.302 would be expanded to include the following definitions:

• "Certification" or "recertification" denotes that an OPO is recommended by the HCFA Regional Office to the Administrator for designation because the OPO has been found by the Regional Office to meet the standards for a "qualified OPO" under section 371(b) of the Public Health Service Act, as well as the additional conditions for designation in subparagraphs (B)–(E) of section 1138(b)(1). Section 1138(b)(1)(A) requires that recertification must be completed at least every two years and must be completed prior to the end of the 2-year designation period. No payment ensues from certification alone.

• "Designation" or "redesignation" signifies HCFA has selected an entity to be the OPO for a particular service area for Medicare and Medicaid payment purposes.

• "Interim redesignation period" means a period of time, not to exceed 60 days, after the designation period has expired and during which an OPO is temporarily recertifed and redesignated by HCFA after an interim determination is made that the OPO is in compliance with the requirements of section 371(b) of the Public Health Service Act and other statutory requirements contained in section 1138(b) of the Act. The interim determination is made prior to the expiration of the designation or redesignation period. The interim redesignation period is available only when additional time is needed by HCFA for more comprehensive review.

• "Open area" means a service area for which HCFA is accepting applications for designation via public notification. A service area becomes open for competition once the normal two-year designation period or brief interim redesignation period has expired, or the designated status of the existing OPO is terminated, or when no OPO previously has been designated for such area. HCFA may also declare the service area open in the event an OPO ceases to operate or HCFA has reasonable ground for anticipating it will cease to operate. In cases of urgent need (such as medically unsound practices being discovered), HCFA may terminate an OPO immediately. The service area remains open until an OPO is designated for it.

Paragraph (c) of § 485.303 ("Condition: Organ procurement organization qualifications—General.") would be amended to state that an initial designation means that an OPO is designated for two years (the normal designation period) and is not required to demonstrate compliance with the performance standards in § 485.306(a) (1) and (2) as a condition for designation or as a condition for continuing designated status during that period. However, it must meet and continue to meet the requirements contained in § 485.304 ("Condition: Qualifications required of an organization for it to be a designated organ procurement organization."), § 485.305 ("Condition: Organ Procurement and Transplantation Network participation."), and paragraph (a)(3) of § 485.306 ("Condition: Performance standards for organ procurement organizations."), which requires an OPO to enter into a working relationship with any hospital or transplant center in the OPO's service area that request a working relationship. HCFA will consider applications from all entities which apply to be the designated OPO for an area that has been declared to be an open area. It would also state that HCFA may redesignate an organization for an interim redesignation period (either the previously designated OPO or another organization) if the extension is needed to permit HCFA sufficient time to conduct a more comprehensive review.

Paragraph (d) of § 485.303 would state that to be redesignated, an OPO must comply with all the requirements in subpart D, including those at § 485.306.

Paragraph (e) of § 485.303 would state that an OPO must obtain HCFA approval before entering into any change of ownership, assignment, merger, or consolidation. Failure to do so could result in termination.

Paragraph (f) of § 485.303 would set forth the specific terms of the OPO's agreement with HCFA. The agreement becomes effective upon submission by the OPO and acceptance for filing by HCFA, but may be terminated by either party. If an OPO is terminated, payment for organ procurement costs attributable to it will not be reimbursed by Medicare or Medicaid effective for services furnished on or after the effective date of termination. In the agreement, the OPO agrees to:

• Maintain compliance with the requirements of titles XVIII and XIX of the Act, section 1138 of the Act, and applicable regulations, including the conditions set forth in subpart D, part 485, and the rules and requirements of the OPTN approved and issued by the Secretary, and to report promptly to the Secretary any failure to do so;

• File a cost report in accordance with § 413.24(f) within three months after the end of each fiscal year;

• Permit HCFA to designate an intermediary to determine the interim reimbursement rate payable to the transplant hospitals for services provided by the OPO and to make a determination of reasonable cost based on the cost report it files;

• Provide such budget or cost projection information as may be required to establish an initial interim reimbursement rate;

• Pay to HCFA amounts that have been paid by HCFA to transplant hospitals and that are determined to be in excess of the reasonable cost of the services provided by the OPO;

• Not charge an individual for items or services for which that individual is entitled to have payment made under section 1881 of the Act;

• Maintain and make available to the HCFA, the Comptroller General, or their designees data that show the number of organs procured and transplanted; and

• Maintain data in a format that can be readily assumed by a successor OPO and turn over to HCFA copies of all records, data, and software necessary to assure uninterrupted service by a successor OPO that is newly designated. Records and data subject to this requirement include records on individual donors (both identifying data and data on organs retrieved), records on transplant candidates (both identifying data and data on immune system and other medical indications), and procedural manuals and other materials used in conducting OPO operations. Donor records must include at least information identifying the donor (for example, name, address, date of birth, Social Security number, etc.), the organs and tissues retrieved, date of the organ retrieval, and test results.

These requirements are part of the application process and we are adding them as a new section to codify them in regulations. Section 485.304 sets forth the qualifications required of an organization for it to be a designated OPO. Paragraph (d) of § 485.304 would require an OPO's service area to be of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs (as determined by HCFA), and that either includes an entire metropolitan area (as specified by the Director of the Office of Management and Budget) or does not include any part of such an area.

Section 485.304(f)(3) would be amended to allow either a physician or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility to serve on an OPO board of directors or an on advisory board. The current § 485.304(f)(3) requires that the individual be a physician.

Section 485.304(i) would be revised to require an OPO to have a system to allocate donated organs equitably among transplant patients consistent with OPTN criteria as approved by the Secretary. The current text does not include the word "equitably."

A new paragraph (q) would be added to § 485.304. It would require OPOs to assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors. According to existing Federal regulations (§ 482.12 "Condition of participation: Governing body."), hospitals are already required to refer all potential organ donors to an OPO.

A new paragraph (r) would be added to § 485.304 to require OPOs to assure that appropriate tests, consistent with OPTN standards and CDC guidelines, are performed to prevent the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome.

The amendments to section 485.304(f), (i), (q) and (r) are all conforming changes to implement Public Law 101–607.

Section 485.304 would be revised to specify that the term "rules and requirements of the OPTN" means those rules and requirements that the Secretary has issued and published.

Paragraph (a) of § 485.306 ("Condition: Performance standards for organ procurement organizations.") would be revised to state that HCFA will not "redesignate" (it currently reads "recertify") any OPO that fails to meet the performance standards contained in the section. As previously explained by the new definitions added to § 485.302, certifications and recertifications are merely recommendations that HCFA approve an OPO because it is in compliance with the Medicare conditions for coverage. HCFA approval of an OPO for a particular service area for payment purposes is accomplished by either designation or redesignation.

Section 485.306(b) would be amended to set forth language that makes a distinction between an OPO which has not previously been designated by HCFA for a particular service area and a redesignated OPO with respect to the exemption from meeting the performance standards in § 485.306(a) (1) and (2) for the first two years.

Section 485.307 ("Failure to meet requirements ") would be revised and restructured. It would continue to state that a newly designated OPO is exempt from meeting the performance standards at § 485.306(a) (1) and (2) for two years. We would delete the statement in the current § 485.307 that an OPO whose payment is suspended or whose agreement is terminated may appeal the action. The appeal right for termination actions would be included in the new § 485.311(c). HCFA would not redesignate the OPO at the end of the initial two-year designated period unless the OPO meets those standards.

The section heading of § 485.308 ("Designation of one OPO for each service area.") would be revised to read "OPO service area requirements", and paragraph (a) would be amended to clarify that an entity may apply for designated status only when the service area is open, as described in § 485.302.

A new § 485.309 ("Changes in ownership or service area.") would be added. It would explain the term "change of ownership" in terms of changes in partnership, transfer of an unincorporated proprietorship, merger, consolidation, and assignment. A designated OPO must notify HCFA before it effects a change in ownership. This notification is required to assure that the entity, as changed, will continue to satisfy Medicare and Medicaid requirements. We propose that a change of ownership takes place if any of the following occurs:

• If, in the case of a partnership, one or more partners are gained, lost, or substituted.

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• If, in an unincorporated sole proprietorship, title and property is transferred to another party.

• The merger of one entity into another or the consolidation of one entity with another.

Paragraph (b) of § 485.309 would state that if HCFA approval of a change in ownership is not obtained, the OPO agreement may be terminated and would result in HCFA's declaring that service area to be an open area. This approval is required to assure that the entity, as changed, will continue to satisfy Medicare and Medicaid requirements. The period of designation for the newly reorganized designated OPO would be the remaining designation term of the OPO that was reorganized. If more than one designated OPO is involved in the reorganization, the remaining designation term would ordinarily be the longest of the remaining terms. HCFA may, however, establish a shorter remaining designation period. The performance standards of § 485.306 will apply at the end of this remaining period. HCFA determines whether to approve a change of ownership on a case-by-case basis. When two or more designated OPOs receive HCFA approval to merge or consolidate, HCFA will ordinarily not declare an open area. However, in such cases, the entities involved in this type of organizational change must submit anew the information required in an application for designation, or other such written documentation as HCFA may determine necessary for designation purposes.

A new § 485.311 would be added to set forth conditions for termination. Paragraph (a) would set forth the following types of terminations:

• Voluntary termination. If an OPO wishes to terminate its agreement, it must send written notice of its intention with the proposed effective date to HCFA. HCFA may approve the proposed date, set a different date no later than 6 months after the proposed effective date, or set a date less than 6 months after the proposed date if it determines that it would not—

—Disrupt services to the service area; or

—Otherwise interfere with the effective and efficient administration of the Medicare and Medicaid programs.

If HCFA determines that a designated OPO has ceased to furnish organ procurement services to its service area, the cessation of services will be deemed to constitute a voluntary termination by the OPO, effective on a date determined by HCFA.

• Involuntary termination. HCFA may terminate an agreement if it determines that the OPO no longer meets the conditions for coverage at part 485 (Conditions of Participation and Conditions for Coverage: Specialized Providers) under subpart D (Conditions of Coverage: Organ Procurement Organizations), or is not in substantial compliance with any other applicable Federal statutes or regulations. HCFA may also terminate an OPO immediately in cases of urgent need, such as the discovery of unsound medical practices.

Paragraphs (b) and (c) of the proposed § 485.311 would state that HCFA gives notice of termination to an OPO at least 15 days before the effective date stated in the notice, and that the OPO may appeal its termination in accordance with the provisions set forth in part 498 ("Appeals Procedures for Determinations that Affect Participation in the Medicare Program").

Paragraph (d) of § 485.311 would set forth the effects of termination:

• Payments are not made for OPO services furnished on or after the effective date of termination.

• HCFA will accept applications from any entity to be the designated OPO for that area.

Paragraph (e) of § 485.311 would state that, in the case of voluntary termination, the OPO must give prompt public notice of the date of termination, and such information regarding the effect of that termination as HCFA may require, through publication in local newspapers in the service area. In the case of involuntary termination, HCFA gives notice of the date of termination.

Paragraph (f) of § 485.311 would state that HCFA may, at its discretion, reinstate a terminated OPO if it finds that the cause for termination has been removed, is satisfied that it is not likely to recur, and has not designated another OPO for the service area. We specifically invite comment on whether we should provide in the rule a minimum period of time before reinstatement occurs, and if so, what a reasonable amount of time should be.

III. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all organ procurement organizations are considered as small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Public Law 101-274 amends the Health Omnibus Programs Extension Act of 1988 (Public Law 100-607), to postpone the effective date of the requirement that an OPOs service area can reasonably be expected to yield not fewer than 50 potential donors each year in order to qualify for payments under section 1138(b) of the Act until January 1, 1992.

Most participating OPOs were scheduled to be redesignated beginning in March 1990. The Department of Health and Human Services would have been required to determine if these OPOs met the requirements imposed by Public Law 100-607 in order for them to continue to participate in the Medicare and Medicaid programs. As previously mentioned in the preamble, a Departmental study cited in the committee report (H.R. Rep. No. 383, 100th Cong., 1st Sess. (1987)) indicated that the average OPO is currently procuring organs from only 44 donors per year.

According to another committee report (H.R. Rep. No. 101-447, 101th Cong., 2nd Sess. (1990)), the Committee was advised by HCFA that over one-half of the existing OPOs scheduled for redesignation on March 1990 did not procure organs from 50 donors during 1989, (see Table A in the preamble), and many of these organizations were in jeopardy of not being redesignated. An abrupt change in organ procurement of this magnitude could have seriously disrupted the organ transplant program and would have a harmful effect on

those needy patients awaiting transplants. OPOs challenged that the 50 donor requirement was not a valid measure of their effectiveness. Subsequently, the Transplant Amendments Act of 1990, Public Law 101-616, enacted November 16, 1990, amended section 371(b)(1)(E) of the Public Health Service Act to require that a qualified OPO have a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as defined by the Director of the Office of Management and Budget) or does not include any part of the area. We are soliciting comments to determine what criteria, (refer to the criteria being considered in Part II of the preamble), would be better measures to determine OPOs efficiency and effectiveness. After review and analysis of the comments received on this proposed rule, the specific criteria to be utilized will be published in final regulations.

We expect that the implementation of the other provisions of this proposed rule may cause some OPOs to accrue some additional costs; however, we believe that the costs are minimal compared to the improvement these provisions would have on the quality of health care for organ recipients. We have determined that the provisions of this proposed rule would not meet the $100 million criteria nor would it meet any of the other criteria of E.O. 12291; therefore, this is not a major rule and an impact analysis under E.O. 12291 is not required. We have also determined and the Secretary certifies that this proposed rule would not have a significant effect on a substantial number of small entities and OPOs (independent and hospital-based) are not considered small rural hospitals since they service large geographical areas. Thus, a regulatory flexibility analysis under the RFA and a rural impact analysis under section 1102(b) of the Act are not required.

IV. Information Collection Requirements

Proposed regulations at § 485.304 contain information collection and recordkeeping requirements that are subject to review by the Office of Management and budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements concern quantifiable data for submission to HCFA that documents an OPO's statement that its service area is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of such an area. Public reporting burden for this collection of information is estimated to be (estimate to be provided by OCEP) hours per submission. A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESS" section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV would be amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, subpart U, is amended as set forth below:

Subpart U—Conditions for Coverage of Supplies of End-Stage Renal Disease (ESRD) Services

1. The authority citation for subpart U, part 405 continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. In § 405.2163, the introductory text is republished and paragraph (f) is revised as follows:

§ 405.2163 Condition: Minimal service requirements for a renal dialysis facility or renal dialysis center.

The facility must provide dialysis services, as well as adequate laboratory, social, and dietetic services to meet the needs of the ESRD patient.

* * * * *

(f) *Standard: Participation in recipient registry.* The dialysis facility or center participates in a patient registry program with an OPO designated or redesignated under Part 485, Subpart D of this chapter for patients who are awaiting cadaveric donor transplantation.

3. In §405.2171, the introductory text is republished and paragraph (e) is revised as follows:

§ 405.2171 Condition: Minimal service requirements for a renal transplant center.

Kidney transplantation is furnished directly by a hospital which is participating as a provider of services in the Medicare program and is approved by the Secretary as a Renal Transplantation Center. The Renal Transplantation Center is under the overall direction of a hospital administrator and medical staff; if operated by an organizational subsidiary, it is under the direction of an administrator and medical staff member (or committee) who are directly responsible to the hospital administrator and medical staff, respectively. Patients are accepted for transplantation only on the order of a physician and their care continues under the supervision of a physician.

* * * * *

(e) *Standard:* Organ procurement. A renal transplant center utilizing the services of an organ procurement organization designated or redesignated under Part 485, Subpart D of this chapter to obtain donor organs has a written agreement covering these services. The renal transplant center agrees to notify the Secretary in writing within 30 days of the termination of such arrangements.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

B. Part 482, subpart B, is amended as set forth below:

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1138, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1338, 1395f (a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), (z),

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and (ee), 1395aa, 1395hh, 1395ll, 1395ww, 1396a (a)(30), and 1396(a)).

Subpart B—Administration

2. In § 482.12, the introductory text for the section and paragraph (c) introductory text are republished, and paragraph (c)(5)(ii) is revised as follows:

§ 482.12 Condition of participation: Governing Body.

The hospital must have an effective governing body legally responsible for the conduct of the hospital as an institution. However, if a hospital does not have an organized governing body, the persons legally responsible for the conduct of the hospital must carry out the functions specified in this Part that pertain to the governing body.

* * * * *

(c) *Standard: Care of patients.* In accordance with hospital policy, the governing body must ensure that the following requirements are met:

* * * * *

(5) * * *

(ii) In the case of a hospital in which organ transplants are performed, the hospital must be a member of the Organ Procurement and Transplantation Network (OPTN) established under section 372 of the Public Health Service Act and abide by its rules and requirements. No hospital is considered to be out of compliance with section 1138(a)(1)(B) of the Act or with the requirements in this paragraph, unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the hospital from the OPTN and has notified the hospital in writing.

* * * * *

PART 485—CONDITIONS OF PARTICIPATION AND CONDITIONS FOR COVERAGE: SPECIALIZED PROVIDERS

C. Part 485, subpart D, is amended as set forth below:

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102, 1138, 1861(aa), and (cc) and 1871 of the Social Security Act; (42 U.S.C. 1302, 1320b–8, 1395x, and 1395hh).

Subpart D—Conditions for Coverage: Organ Procurement Organizations

2. Section 485.301 is revised as follows:

§ 485.301 Basis and scope.

This subpart sets forth the qualifications and requirements an organ procurement organization (OPO) must meet in order for the costs of its services in procuring organs for hospitals and transplant centers to be reimbursable under Medicare and Medicaid. Its statutory basis is section 1138(b) of the Act.

3. In § 485.302, the introductory text for the section is republished, the definition of "service area" is revised, and three new definitions are added in alphabetical order as follows:

§ 485.302 Definitions.

As used in this subpart, the following definitions apply:

Certification or *recertification* denotes that an OPO is recommended by the HCFA Regional Office to the Secretary for designation because the OPO has been found by the Regional Office to meet the standards for a "qualified OPO" under 371(b) of the Public Health Service Act, as well as the additional conditions for designation in subparagraphs (B)–(E) of section 1138(b)(1). For recertification, section 1138(b)(1)(A) requires that HCFA finds that, in the interval since the last certification or recertification, the OPO has continued to meet the standards to be a qualified OPO. Recertification must be completed at least every two years and must be completed prior to the end of the 2-year designation period. No payment ensues from certification alone.

Designation or *redesignation* means HCFA's approval of an OPO for Medicare and Medicaid payment purposes.

* * * * *

Interim redesignation period means a period of time, not to exceed 60 days, after the designation period has expired and during which an OPO is temporarily redesignated by HCFA after an expedited determination is made that the OPO is in compliance with the requirements of section 371(b) of the Public Health Service Act and other statutory requirements contained in section 1138(b)(1) of the Act. The expedited determination is made prior to the expiration of the designation period. The interim redesignation period is available only when additional time is needed by HCFA for a more comprehensive review.

Open area means a service area for which HCFA is accepting applications for designation via public notification. A service area becomes open for competition once the normal two-year designation period or brief interim redesignation period has expired, or the designated status of the existing OPO is terminated, or when no OPO previously has been designated for such area. HCFA may also declare the service area open in the event an OPO ceases to operate or HCFA has reasonable ground for anticipating it will cease to operate. In cases of urgent need (such as medically unsound practices being discovered), HCFA may terminate an OPO immediately. The service area remains open until an OPO is designated for it.

* * * * *

Service area means a geographical area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire standard metropolitan statistical area or does not include any part of such an area.

* * * * *

4. In § 485.303, paragraph (c) is revised and new paragraphs (d), (e), and (f) are added as follows:

§ 485.303 Condition: Organ procurement organization qualifications—General.

* * * * *

(c) Upon its initial designation, and OPO is designated for two years (the normal designation period) and is not required to demonstrate compliance with the standards at § 485.306(a) (1) and (2), which sets forth performance standards for organ procurement organizations, as a condition for designation or as a condition for continuing designated status, during that period. It must, however, meet and continue to meet the standards at § 485.304 concerning qualifications for designation, § 485.305 concerning participation in the Organ Procurement and Transplantation Network, and § 485.306(a)(3) concerning working relationships with hospitals or transplant centers. HCFA will consider applications from all entities which apply to be the designated OPO for an area that has been declared to be an open area. HCFA may redesignate an organization for an interim redesignation period (either the previously designated OPO or another organization) if the extension is needed to permit HCFA to have sufficient time to make a determination. An organization designated for an interim period must meet all requirements of section 371(b) of the Public Health Service Act and must not be out of compliance with any other requirements of section 1138(b).

(d) To be redesignated, an OPO must comply with all the requirements of this subpart, including those at § 485.306, which sets forth performance standards for organ procurement organizations.

(e) An OPO must obtain HCFA approval before entering into any change of ownership, assignment, merger, consolidation, or change in its service area (see § 485.309 which sets forth requirements concerning approval for changes in ownership and service area.) Failure to do so could result in termination.

(f) An OPO must enter into an agreement with HCFA. The agreement becomes effective upon submission by the OPO and acceptance by HCFA, but may be terminated by either party. If an OPO is terminated, payment will not be made for services furnished on or after the effective date of termination. In the agreement, the OPO must agree to:

(1) Maintain compliance with the requirements of titles XVIII and XIX of the Act, section 1138 of the Act, and applicable regulations, including the conditions set forth in subpart D, part 485, and the rules and requirements of the OPTN approved and issued by the Secretary, and to report promptly to the Secretary any failure to do so;

(2) File a cost report in accordance with § 413.24(f) of this chapter within three months after the end of each fiscal year;

(3) Permit HCFA to designate an intermediary to determine the interim reimbursement rate payable to the transplant hospitals for services provided by the OPO and to make a determination of reasonable cost based on the cost report it files;

(4) Provide such budget or cost projection information as may be required to establish an initial interim reimbursement rate;

(5) Pay to HCFA amounts that have been paid by HCFA to transplant hospitals and that are determined to be in excess of the reasonable cost of the services provided by the OPO;

(6) Not charge an individual for items or services for which that individual is entitled to have payment made under section 1881 of the Act;

(7) Maintain and make available to HCFA, the Comptroller General, or their designees data that show the number of organs procured and transplanted; and

(8) Maintain data in a format that can be readily assumed by a successor OPO and turn over to HCFA copies of all records, data, and software necessary to assure uninterrupted service by a successor OPO that is newly designated. Records and data subject to this requirement include records on individual donors (both identifying data and data on organs retrieved), records on transplant candidates (both identifying data and data on immune system and other medical indications), and procedural manuals and other materials used in conducting OPO operations. Donor records must include at least information identifying the donor (for example, name, address, date of birth, Social Security number, etc.), the organs and tissues retrieved, date of the organ retrieval, and test results.

5. In § 485.304, the introductory text of the section is republished; the introductory text for paragraph (d) is revised; the introductory text for paragraph (f) is republished; paragraph (f)(3), (i), (o), and (p) are revised; and new paragraphs (q) and (r) are added as follows:

§ 485.304 Condition: Qualifications required of an organization for it to be a designated organ procurement organization.

To be designated by the Secretary as the OPO for its service area in accordance with § 485.303 of this subpart, an organization must at the time of application and throughout the period of its designation—

* * * * *

(d) Make available to HCFA documentation of its service area. An OPO must provide to HCFA quantifiable data showing that the area is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of such an area. Documentation that precisely defines the proposed service area includes the following:

* * * * *

(f) Have a board of directors or an advisory board that has the authority to recommend policies relating to the donation, procurement, and distribution of organs. The board of directors or advisory board must include—

* * * * *

(3) A physician with knowledge, experience, or skill in the field of human histocompatibility, or an individual with a doctorate degree in a biological science and with knowledge, experience, or skills in the field of human histocompatibility;

* * * * *

(i) Have a system to allocate donated organs equitably among transplant centers and patients consistent with OPTN criteria as approved by the Secretary;

* * * * *

(o) Have a procedure for ensuring the confidentiality of patent records. Information from or copies of records may be released only to authorized individuals and the OPO must ensure that unauthorized individuals cannot gain access to or alter patient records. Original medical records may be released by the OPO only in accordance with Federal or State laws, court orders, or subpoenas;

(p) Conduct and participate in professional education concerning organ procurement;

(q) Assist hospitals in establishing and implementing protocols for making routine inquires about organ donations by potential donors; and

(r) Assure appropriate tests consistent with OPTN standards and CDC guidelines are performed to prevent the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome.

6. Section 485.305 is revised as follows:

§ 485.305 Condition: Organ Procurement and Transplantation Network participation.

In order to be designated as the OPO for its service area, and to continue to be the designated OPO once designated, and OPO must be a member of, have a written agreement with, and abide by the rules and requirements of the Organ Procurement and Transplantation Network (OPTN), established and operated in accordance with section 372 of the Public Health Service Act. The term "rules and requirements of the OPTN" means those rules and requirements that have been approved and issued by the Secretary. In order to be binding on OPOs participating in Medicare or Medicaid, the Secretary must have given formal approval to the rule or requirement. No OPO is considered to be out of compliance with section 1138(b)(1)(D) of the Act or regulations in this section unless the Secretary has given the OPN formal notice that he or she approves the decision to exclude the entity from the OPTN and also has notified the entity in writing.

7. Section 485.306 is amended by revising the introductory text of paragraph (a) and paragraph (b) as follows:

§ 485.306 Condition: Performance standards for organ procurement organizations.

(a) HCFA will not redesignate any OPO that fails to meet the following performance standards:

* * * * *

(b) An OPO which has not previously been designated by HCFA for a particular service area is exempt from meeting the performance standards in paragraphs (a) (1) and (2) of this section for its first two years of designation as the OPO for that area. These performance standards are not used to measure the OPO's qualifications to be

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designated until two years after the OPO has been first designated.

8. Section 485.307 is revised to read as follows:

§ 485.307 Failure to meet requirements.

Failure to continue to meet any of the requirements in §§ 485.304 and 485.305 of this subpart or to meet the performance standards in § 485.306(a) of this subpart (after two years after designation (see § 485.306(b) of this subpart)) may result in termination of the OPO's agreement with the Secretary.

9. In § 485.306, the section heading and paragraph (a) introductory text are revised as follows:

§ 485.306 OPO service area requirements.

(a) The Secretary may designate only one OPO per service area. Applications for designation are accepted only during a period when the service area is an open area. If more than one organization applies and substantially meets the requirements of § 485.304 of this subpart in a given service area, the Secretary will consider other factors in reaching a decision concerning which organization to designate. These factors are as follows:

* * * * *

10. A new § 485.309 is added as follows:

§ 485.309 Changes in ownership or service area.

(a) If a designated OPO is considering a change in ownership or a change in its service area, it must notify HCFA before putting the change into effect. This notification is required to assure that the entity, as changed, will continue to satisfy Medicare and Medicaid requirements. A change in ownership takes place if any of the following occurs:

(1) If, in the case of a partnership, one or more partners are gained, lost, or substituted.

(2) If, in an unincorporated sole proprietorship, title and property is transferred to another party.

(3) The merger of one entity into another or the consolidation of one entity with another.

(b)(1) If HCFA finds that the changed entity has changed to such an extent that it no longer satisfies the prerequisites for OPO designation, HCFA may terminate the OPO's agreement and declare the OPO's service area to be an open area.

(2) If HCFA finds that the changed entity continues to satisfy the prerequisites for OPO designation, the period of designation is the remaining designation term of the OPO that was reorganized. If more than one designated OPO is involved in the reorganization, the remaining designation term is ordinarily the longest of the remaining period. The performance standards of § 485.306 apply at the end of this remaining period.

(c) If a designated OPO is considering a change in its service area, it must obtain HCFA approval before putting the change into effect. In the case of a service area change that results from a change of ownership due to merger or consolidation, the entities involved must submit anew the information required in an application for designation, or other such written documentation as HCFA may determine to be necessary to determine the remaining period of designation.

11. A new § 485.311 is added as follows:

§ 485.311 Terminations.

(a) *Types.*—(1) *Voluntary termination.* If an OPO wishes to terminate its agreement, it must send written notice of its intention with the proposed effective date to HCFA. HCFA may approve the proposed date, set a different date no later than 6 months after the proposed effective date, or set a date less than 6 months after the proposed date if it determines that it would not disrupt services to the service area or otherwise interfere with the effective and efficient administration of the Medicare and Medicaid programs. If HCFA determines that a designated OPO has ceased to furnish organ procurement services to its service area, the cessation of services is deemed to constitute a voluntary termination by the OPO, effective on a date determined by HCFA.

(2) *Involuntary termination.* HCFA may terminate an agreement if it finds that an OPO no longer meets the conditions for coverage in this subpart, or is not in substantial compliance with any other applicable Federal regulations or provisions of titles XI, XVIII, or XIX of the Act. HCFA may also terminate an OPO immediately in cases of urgent need, such as the discovery of unsound medical practices.

(b) *Notice to OPO.* HCFA gives notice of termination to an OPO at least 15 days before the effective date stated in the notice.

(c) *Appeal right.* The OPO may appeal its termination in accordance with the provisions set forth in part 498 of this chapter, which sets forth appeals procedures for determinations that affect participation in the Medicare and Medicaid programs.

(d) *Effects of termination.* When an OPO is terminated—

(1) Payments are not made to it for services furnished on or after the effective date of termination; and

(2) HCFA will accept applications from any entity to be the designated OPO for that area.

(e) *Public notice.* In the case of voluntary termination, the OPO must give prompt public notice of the date of termination, and such information regarding the effect of that termination as HCFA may require, through publication in local newspapers in the service area. In the case of involuntary termination, HCFA gives notice of the date of termination.

(f) *Reinstatement.* HCFA may, at its discretion, reinstate a terminated OPO if it finds that the cause for termination has been removed, is satisfied that it is not likely to recur, and it has not designated another OPO for the service area.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: January 12, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: April 25, 1991.

Louis W. Sullivan,

Secretary.

Editorial Note: This document was received at the office of the Federal Register June 17, 1991.

[FR Doc. 91-14751 Filed 6-20-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Extension of Public Comment Period on Proposed Endangered Status for Six Plants and Myrtle's Silverspot Butterfly From Coastal Dunes in Northern and Central California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that a public hearing will be held on the proposed endangered status for six plants and one butterfly:

Chorizanthe howellii (Howell's spineflower), *Chorizanthe valida* (Sonoma spineflower), *Erysimum menziesii* (Menzie's wallflower), *Gilia tenuiflora* ssp. *arenaria* (Monterey gilia), Layia carnosa (beach layia), *Lupinus tidestromii* (clover lupine), and Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*) and that the comment period is reopened and extended. The hearing and reopening and extension of the comment period will allow all interested parties to submit oral or written comments on the proposal. The proposed rule was published March 22, 1991 at 56 FR 12318.

DATES: The comment period on the proposal is reopened and extended until July 22, 1991. The public hearing will be held from 7 p.m. to 9 p.m. on Wednesday, July 10, 1991, in San Rafael, California. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held in room 322 of the Marin County Civic Center in San Rafael, California. Written comments and materials should be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E-1823, Sacramento, California 95825. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Jim A. Bartel or Mr. Chris Nagano, Sacramento Field Office, at the above address (telephone (916) 978-4866 or FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

The six plants and the butterfly proposed for listing are restricted to northern and central California within the foredunes and adjacent sandy habitats occupied by coastal scrub or coastal prairie. The six plant taxa, the butterfly and its larval foodplant are threatened by one or more of the following: Commercial and residential development, competition from alien plants, off-road vehicle use, equestrian use, trampling by hikers and livestock, sand mining, disposal of dredged material, and perhaps stochastic (i.e., random) extinction by virtue of the small isolated nature of the remaining populations. A proposal to list the six plants and the butterfly as endangered species was published in the Federal Register on March 22, 1991 (56 FR 12318).

Subsection 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On May 3, 1991, the Service received a written request for a public hearing from Ms. Mary L. Hudson of Howard, Rice, Nemerovski, Canady, Robertson and Falk representing the Marin Coast Golf Ranch. As a result, the Service scheduled a public hearing for July 10, 1991, from 7 p.m. to 9 p.m. in room 322 of the Marin County Civic Center, San Rafael, California.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period closes on July 22, 1991. Written comments should be submitted to the Service in the **ADDRESSES** section.

Author

The primary author of this notice is Mr. Chris Nagano, Staff Entomologist, Sacramento Field Office, at the above address.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.)

List of Subject in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: June 17, 1991.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 91-14790 Filed 6-20-91; 8:45 am]

BILLING CODE 4310-55-M

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Notices

Federal Register
Vol. 56, No. 120
Friday, June 21, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 91-065]

Receipt of Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release a genetically engineered organism into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: A copy of the application referenced in this notice, with any confidential business information deleted, is available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of this document by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Programs Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release a genetically engineered organism into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91-144-01	Monsanto Agricultural Company.	05-24-91	Cotton plants genetically engineered to express the *Bacillus thuringiensis* subsp. *kurstaki* deltaendotoxin protein.	Kauai County, Hawaii.

Done in Washington, DC, this 17th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-14758 Filed 6-20-91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Management Direction on Northern Spotted Owls: National Forests in Oregon, Washington, and Northern California

AGENCY: Forest Service, USDA.

ACTION: Notice: revised notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service published a notice of intent to prepare an environmental impact statement on management direction for northern spotted owls on May 8, 1991, at 56 FR 21354. That notice indicated the Forest Service expected to make the draft environmental impact statement (DEIS) available for agency and public review by January 1992, and the final environmental impact statement (FEIS) available by July 1992. The agency gives notice that it now expects to make the DEIS available for agency and public review on or about September 14, 1991, and the FEIS on or about February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Jerald N. Hutchins, Leader, Spotted Owl Team, c/o John F. Butruille, Regional Forester, 319 SW. Pine Street, P.O. Box 3623, Portland, Oregon 97208.

Dated: June 17, 1991.

Jeff M. Sirmon,

Deputy Chief, FS.

[FR Doc. 91-14759 Filed 6-20-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-039]

Canned Bartlett Pears From Australia; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce has determined not to revoke the antidumping finding on canned Bartlett pears from Australia because it continues to be of interest to interested parties.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: David S. Levy or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

As of March 31, 1990, the Department of Commerce (the Department) had not received a request for an administrative review of the antidumping finding on canned Bartlett pears from Australia (38 FR 7586, March 23, 1973) for four consecutive annual anniversary months. As specified by § 353.25(d)(4) of the Commerce Regulations, the Department published a notice of intent to revoke this finding in the Federal Register at the beginning of the fifth annual anniversary month, and served written notice of its intent on each interested party on its service list (56 FR 8962, March 4, 1991). This notice afforded interested parties the opportunity to submit written objections to the proposed revocation, and stated that the Department would proceed with revocation if no interested party filed written objections or a request for review by March 31, 1991.

Scope of Finding

Imports covered by this finding are shipments of canned Bartlett pears from Australia. Such merchandise was classifiable under item number 148.8600 of the Tariff Schedules of the United States Annotated through 1988. This merchandise is currently classifiable under item number 2008.40.00 of the HTS. The HTS item number is provided only for convenience and Customs purposes. The written description of the scope remains dispositive.

Determination Not To Revoke

The Department may revoke a finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. According to § 353.25(d)(4)(iii) of the Commerce Regulations, the Secretary is authorized to reach this conclusion if, after publication of a notice of intent to revoke a finding or order in the Federal Register, the Department receives no written objections to the proposed revocation or requests for review of the finding in question within the time limits specified in the notice.

On March 29, 1991, we received a written objection from counsel to the Pacific Coast Canned Pear Service, the petitioner in this case, in response to our notice of intent to revoke the antidumping finding on canned Bartlett pears from Australia. Based on this objection, the Department has concluded that the finding continues to be of interest to interested parties. Therefore, we have determined not to revoke the antidumping finding on canned Bartlett pears from Australia.

Dated: April 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14849 Filed 6-20-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-437-801]

Preliminary Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary

AGENCY: International Trade Administration, Import Administration, Commerce.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Brad Hess, or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8371, 377-3773, or 377-3965, respectively.

PRELIMINARY RESULTS OF ANTIDUMPING DUTY ADMINISTRATIVE REVIEW:

Background

On November 19, 1990, the Department published in the Federal Register (55 FR 46146) the final results of its last administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, (TRBs) from Hungary (52 FR 23319, June 19, 1987). The petitioner, The Timken Company, requested that we conduct an administrative review in accordance with 19 CFR 353.22(a). We published a notice of initiation of this antidumping duty administrative review on July 20, 1990 (55 FR 30490). The Department is conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We sent a questionnaire to Magyar Gordulocsopagy Muvek ("MGM") on October 11, 1990. On October 31, 1990, MGM requested an extension of time to respond to the questionnaire. We granted the extension until November 21, 1990. On November 13, 1990, MGM requested an additional extension of time to respond to the questionnaire, until January 24, 1991. We granted an extension only until December 10, 1990. We received MGM's questionnaire response on the extended due date. We sent a deficiency letter to MGM on December 20, 1990. On December 21, 1990, MGM requested an extension of time to respond to the deficiency letter. We granted the extension until January 25, 1991. We received MGM's deficiency response on the extended due date. We conducted verification of MGM's questionnaire responses from May 6, 1991, to May 10, 1991, in Budapest and Diosd, Hungary.

Scope of Review

Imports covered by this review are shipments of TRBs from Hungary. This merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers one manufacturer/exporter of Hungarian TRBs and the period June 1, 1989, through May 31, 1990. MGM accounts for all Hungarian exports to the United States of the subject merchandise.

United States Price

We based the United States Price on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Purchase price was based on either the FOB Hamburg port price to unrelated purchasers or the ex-factory price to unrelated purchasers. With respect to FOB Hamburg sales, we made deductions for brokerage and handling and foreign inland freight charges. For the brokerage and handling reported for the TRB model examined at verification, we noted that the correct calculation methodology yielded an amount different from that reported. MGM officials were unable to demonstrate how they allocated total brokerage and handling charges to arrive at the amount reported for each TRB. Therefore, for every TRB model we have used the corrected per-kilogram brokerage and handling amount for the TRB model we examined at verification as best information available. We valued the inland freight deductions using surrogate data based on Yugoslavian freight costs. We selected Yugoslavia as the surrogate country for the reasons

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explained in the "Foreign Market Value" section of this notice.

Foreign Market Value

In the most recent review of this order, the Department treated Hungary as a non-market economy country. None of the parties to the proceeding are contesting such treatment in this review, so we have calculated foreign market value in accordance with section 773(c) of the Tariff Act and § 353.8 of the applicable Commerce Regulations (1988). Section 773(c) of the Act requires us to base foreign market value on a valuation of the factors of production in a market economy country that is at a level of development comparable to the non-market economy country and is a significant producer of comparable merchandise.

It is the Department's practice to value factor of production inputs at actual acquisition prices if it can be established that those inputs are purchased from a market economy country. Where market economy prices were not provided, we obtained information for valuing the factors of production from publicly available sources in a market economy.

We determined that South Africa, Yugoslavia, Algeria, Malaysia, Brazil and Venezuela would be the most appropriate surrogates for Hungary. We sent cables requesting values for the factors of production to the American Embassies in each possible surrogate country. Although we received a response from each country, we did not receive complete information from any one country. We chose Yugoslavia as the surrogate for valuing the factors of production because we were able to obtain more complete publicly available data pertaining to Yugoslavia than for other potential surrogate countries with comparable economies.

We utilized factors of production reported by MGM. The material cost for each component was determined by multiplying the gross weight of steel by the steel unit price less the salable scrap. The scrap factor was reduced to account for waste and burn off. MGM did not submit actual material usage factors for three of the TRBs under review. For these TRBs we increased standard material factors by the average variance found for each part. Average variances were calculated for cups, cones and rollers. MGM failed to report actual material usage for cages. Therefore, the reported standard material costs for cages were increased by the overall average percentage variance calculated for cups, cones and rollers.

The labor cost for each component was calculated by multiplying the total labor minutes by the surrogate labor rate. As described in our verification report, we noted that MGM made several errors in the labor usage factors reported. MGM submitted actual labor usage information for only five of eight products. Standard labor hours, instead of actual labor hours, were reported for one of the production steps in the calculation. In addition, actual labor factors were not submitted for any of the TRB cages, a washing stage for cups and cones, and the TRB assembly steps. Actual labor usage figures submitted by MGM were increased to account for MGM's failure to include certain actual labor factors in its calculations. The standard labor factors, for parts and processes for which actual labor factors were not submitted, were adjusted and used in the absence of actuals as follows: Increased by either the average variance found for that part, where available, or, otherwise, by the percentage of the overall variance found, as applicable.

We valued the factors of production as follows:

- Certain raw material costs were valued based on MGM's imports of steel products from market economies which were paid for in freely convertible currency. As described in our verification report, the price that MGM's importer pays the steel supplier (the supplier's asking price less a negotiated discount) is the only portion of the transaction that occurs in hard currency. Therefore, we have used the price paid by MGM's importer as the price of these inputs. However, as set forth in our verification report, we noted that not all of the prices of steel inputs were reported at prices for which the discount had already been deducted. For those steel input prices where we could not document the inclusion or exclusion of discounts, we assumed that the discounts had already been deducted and used the reported prices as best information available.

Based upon findings at verification, we adjusted MGM's market economy steel import data to include shipments that were omitted from its response and to correct clerical errors. These unreported and misreported shipments were at prices both higher and lower than the reported shipments. Therefore, we used these shipment data as corrected at verification, in our calculations of the average hard-currency steel purchase prices.

- In the absence of market economy prices paid by MGM, we valued other raw material inputs using Statistics of Foreign Trade of the SFR Yugoslavia Year 1989. We used Yugoslavian C.I.F. import data to value hot-rolled steel rods, steel strips and steel scrap.
- We valued both inland freight for the finished TRBs and inland freight on the steel inputs using publicly available Yugoslavian truck freight rates. This information was taken from the public record of the 1987–1988 Administrative Review of TRBs from the Republic of Romania.
- We valued direct labor using Yugoslavian labor rate data obtained from the United Nations' Industrial Statistics Yearbook 1988. We used the International Financial Statistics wage index to adjust the labor rate to more closely coincide with the period of review. This rate is the average of salaries and wages of employees plus supplements to wages and salaries for the metal products industry in Yugoslavia. Therefore, this rate is representative of actual labor rates in Yugoslavia for all categories of employees within the metal products industry.
- We used the International Financial Statistics producer price index to adjust factor values drawn from periods outside the review period.
- We were unable to obtain factory overhead and indirect labor from any of the potential surrogate countries. Therefore, we valued factory overhead and indirect labor using information supplied by the American Embassy in Lisbon for a previous review period of TRBs from Hungary. The information provided by the Embassy reflects the costs a producer of TRBs would incur in Portugal and is the most reasonable data available.
- We used the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses.
- We used the statutory minimum of eight percent of material and fabrication costs plus general expenses for profit.
- Consistent with our valuation of packing in the Final Determinations of Sales at Less than Fair Value: TRBs from the Hungarian People's Republic, 52 FR 17428 (May 8, 1989), TRBs from the Socialist Republic of Romania, 52 FR 17433 (May 8, 1989), TRBs from the People's Republic of China, 52 FR 19748 (May 27, 1987), and Final Results of Antidumping Duty Administrative Review: TRBs from the Republic of Hungary, 55 FR 46146 (November 19, 1990), the value for packing was based on publicly available data contained in the public file of the investigation of TRBs from Italy, 52 FR 24196 (June 29, 1987).

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Bank or at the rates published by the International Monetary Fund in International Financial Statistics. Daily certified rates were not available for Yugoslavian dinars for the period of review. Therefore, for purposes of these preliminary results, we used the daily exchange rates provided by Jugobanka in New York. Jugobanka officials explained that the rates provided to the Department were obtained from the Yugoslavian central bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margin to be:

Manufacturer/exporter	Time period	Margin (percent)
Magyar Gordulocsopagy Muvek	6/1/89–5/31/90	1.43

The Department will issue appraisement instructions concerning MGM directly to the Customs Service upon completion of this administrative review.

Furthermore, the cash deposit rate for MGM or any other producer or exporter of Hungarian TRBs will be that established in the final results of this administrative review. This deposit requirement will be effective upon publication of the final results of this administrative review for all shipments of Hungarian TRBs entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act. This deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration on or before July 12, 1991, and rebuttal briefs no later than July 19, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, on July 23, 1991, in room 3708 in the main Commerce Building, at 1:30 p.m., to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Persons interested in attending the hearing should contact the Department as the scheduled date approaches to confirm the date and time of the hearing.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number, (2) the reasons for attending, (3) a list of the issues to be discussed, and (4) the number of participants.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Department's regulations (19 CFR 353.22(c)(5)).

Dated: June 14, 1991.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–14850 Filed 6–20–91; 8:45 am]

BILLING CODE 3510–DS–M

(C–357–005)

Certain Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On January 4, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain cold-rolled carbon steel flat-rolled products from Argentina. We have now completed that review and determine the total bounty or grant during the period January 1, 1987 through December 31, 1987 to be 0.0001 percent *ad valorem* for Propulsora Siderurgica, S.A.I.C., and 2.40 percent *ad valorem* for all other firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem is de minimis.*

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 417) the preliminary results of its administrative review of the countervailing duty order on certain cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006; April 26, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of Argentine cold-rolled carbon steel flat-rolled products, whether or not corrugated or crimped, whether or not painted or varnished, and whether or not pickled, not cut, not pressed, and not stamped to non-rectangular shape, not coated or plated with metal; over 12 inches in width, and 0.1875 inch or more in thickness, as provided for during the review period in item 607.8320 of the Tariff Schedules of the United States Annotated (TSUSA); or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils, as provided for during the review period in items 607.8350, 607.8355 or 607.8360 of the TSUSA. Such merchandise is currently classifiable under the following *Harmonized Tariff Schedule* (HTS) item numbers:

7209.11.00	7209.12.00	7209.13.00	7209.14.00
7209.21.00	7209.22.00	7209.23.00	7209.24.00
7209.31.00	7209.32.00	7209.33.00	7209.34.00
7209.41.00	7209.42.00	7209.43.00	7209.44.00
7209.90.00	7210.70.00	7211.30.50	7211.41.00
7211.49.50	7211.90.00	7212.40.50	

The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987, and thirteen programs: (1) Rebate upon export of indirect taxes paid (Reembolso); (2) Export financing under OPRAC–1, Circular RF–2i; (3) Pre-financing of exports, Circular RF–153; (4) Medium and long-term loans under Law 22.510; (5) Preferential pricing for purchases of inputs; (6) Purchase of residue coal at preferential prices; (7) Capital and income tax exemptions; (8) Incentives for trade (stamp tax exemption under Decree 716); (9) Equity infusions and capitalization; (10) Capital grants; (11) Government loan guarantees; (12) Incentives for export; and (13) Forgiveness of debt.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the petitioner, USX

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Corporation, and from two respondents, Propulsora Siderurgica S.A.I.C. (Propulsora) and Sociedad Mixta Siderurgica Argentina (Somisa).

Comment 1: Petitioner argues that the Department should determine that benefits were received by Somisa in 1987 from government equity infusions made from 1978 through 1983; the Department found Somisa unequityworthy, and the equity infusions inconsistent with commercial considerations, in Cold-rolled Carbon Steel Flat-rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 18006; April 26, 1984), hereinafter Final Determination). Petitioner further alleges that Somisa received countervailable benefits in 1987 from government equity infusions provided from 1984 through 1987 under Decree 2687/78, which authorized government reimbursement of debt expenditure, including payment of interest, commissions and other fees, in exchange for equity in Somisa.

Department's Position

We found Somisa to be unequityworthy from 1978 through 1983 in our Final Determination, and we have examined whether equity infusions found countervailable in that determination provided benefits to Somisa in 1987. In addition, we examined Somisa's financial statements since 1983 and found that the Argentine Treasury continued to provide equity infusions to the company from 1984 through 1987 pursuant to Decree 2687/78. The statements also show that the company posted operating losses and did not register net profits for that period. Based on our evaluation of the financial statements, we determine that Somisa continued to be unequityworthy from 1984 through 1987. Consequently, equity infusions received between the period 1978 through 1987 may confer a benefit.

Due to inflation, the nominal values of the equity infusions in Somisa have increased over the years. In fact, Argentine companies must periodically restate the value of certain accounts (including equity) to reflect the effects of inflation. Since we do not have the standard index used in making these valuation adjustments, as best information available we used the annual average austral/U.S. dollar exchange rate in the year of receipt to obtain the dollar value of the government's equity infusions in each year since 1978.

To calculate the benefit from the equity infusions, we applied the rate of return shortfall methodology. We measured Somisa's rate of return by dividing its net loss in 1987 by its total equity and compared the result with an estimated average rate of return in 1987 for U.S. firms investing in Argentina. We used this rate of return as best information available because a national average rate of return on equity for Argentina was not available. Our estimated figure was derived from data in the August 1990 Survey of Business Trends published by the Department of Commerce, Economics and Statistics Administration, Bureau of Economic Analysis. We then multiplied the rate of return shortfall by the dollar value of all government equity infusions received from 1978 through 1987.

In those instances where the benefit calculated using the rate of return shortfall methodology exceeded the amount we would have calculated for the review period had we treated the equity infusion as an outright grant, we applied the grant cap. To determine the grant cap, we used a declining balance methodology and allocated each equity infusion over 15 years (the average useful life of steel industry assets in integrated steel mills according to the Asset Guideline Classes of the U.S. Internal Revenue Service). We used as the discount rate the national average corporate bond rates in the United States as reported in the Morgan Guaranty Trust Company's World Financial Markets.

As applicable, we added the total dollar benefit from either the rate of return shortfall or from the amount allocated to the review period as a result of applying the grant cap, and converted the sum to australs using the 1987 average austral/U.S. dollar exchange rate. Finally, we divided this austral benefit by the value of total sales in the review period. On this basis, we determine the benefit to Somisa from equity infusions to be 0.65 percent *ad valorem*.

Comment 2: Propulsora requests that, if the Department determines that Somisa received a benefit in the review period from equity infusions, the Department calculate a company-specific rate for Propulsora, in accordance with 19 CFR 355.20(d)(2), because the two companies would show "materially different benefits."

Department's Position

We have applied a company-specific rate to Propulsora because Propulsora's benefit in this review is *de minimis* which, pursuant to 19 CFR 355.22(d)(2), is significantly different.

Comment 3: Petitioner claims that Decree 1554/86 allows the temporary admission of certain products used in the manufacture of cold-rolled sheet and strip to be imported into Argentina for industrial processing and eventual export without payment of import duties and certain taxes. Since the 1986 tax incidence study for the reembolso is premised on the assumption that imported materials consumed in the production of cold-rolled sheet are subject to the payment of these taxes and import duties, exporters of this product effectively receive a double rebate: the exemption of these duties and taxes and the receipt of the full 10 percent reembolso. While the Department verified the payment of these taxes and duties on 1986 imports, it did not verify their payment on 1987 imports. Consequently, the only allowable indirect taxes in this review are those paid at the final stage, since the validity of the 1986 study cannot be accepted for 1987 with respect to the incidence of indirect taxes at prior stages.

Propulsora and Somisa dispute petitioner's contention that the Temporary Admission program provided for in Decree 1554/86 renders the 1986 tax incidence study invalid. Although the Temporary Admission program gives an exporter the option of importing raw material or inputs without the payment of any import duties or certain taxes, use of the program effectively lowers the amount of the rebate under the reembolso program, since the base on which the reembolso is paid is reduced by the value of the imported raw material or input.

Propulsora further contends that petitioner's allegation is based on the premise that exporters actually used the temporary admission program during the review period. In fact, Propulsora, like many other exporters, preferred to pay the duties on its imported raw materials rather than use the Temporary Admission program, so that it would be entitled to the full reembolso amount.

Finally, respondents dismiss petitioner's contention that the reembolso study had become invalid by arguing that, in fact, there was no change in the tax structure. Furthermore, the Government of Argentina periodically requires the submission of new studies whenever there are material changes in the tax structure which would affect the reembolso; it should not be expected to do so every time there is a change in the tax rates. The Department requires only that the government reexamine its rebate schedules periodically. The Department thoroughly examined the 1986 tax incidence study and determined that it provided a reasonable basis for the reembolso rate during 1987. Moreover, the Department's examination of 1987 company documents further supported the validity of the study.

Department's Position

We disagree with the petitioner. The argument that changes in Argentine law allowing the exemption of import duties and taxes invalidated the 1986 tax incidence study with respect to exports for 1987 has no merit, since the Temporary Admission program does not affect the tax incidence for reembolso purposes. Article 1 of Decree 1555/86 limits the reembolso program to a rebate of internal taxes and "taxes for the previous import for use or consumption" of an input; Article 3 of Decree 1554/86 clarifies that imports entering under the Temporary Admission program are not imports for consumption. Therefore, if no import duties are paid, they cannot be rebated. As Propulsora points out, this is implemented in the calculation of the reembolso rebate: the base on which the rebate is calculated is reduced by the value of any product imported under the Temporary Admission program. Therefore, we determine that the 1986 tax incidence study is valid for the purposes of assessing whether the reembolso rates applied in 1987 reasonably reflect the amount of actual duties and indirect taxes paid on the subject merchandise.

Comment 4: Propulsora argues that the Department must take into account the total cost of all RF–21 loans to determine whether the use of the program as a whole conferred a benefit. Because the exporter does not discount individual letters of credit and negotiate the terms of each loan individually to obtain RF–21 financing, the Department cannot accurately analyze the benefit conferred by the program on a loan-by-loan basis. Rather, the exporter negotiates a line of credit to discount the receivables based on projected sales. The fact that there may be a mix of receivables (and, therefore, individual loans) is irrelevant from the exporter's perspective. Furthermore, the exporter can only judge the effect of its financial decision by reviewing the totality of its financing over the relevant period.

Department's Position

We disagree. RF–21 financing is based on the discounting of foreign bills of exchange on an export sale-specific basis. Therefore, we look at each loan independently to determine if a countervailable benefit was conferred.

Comment 5: Propulsora and Somisa argue that the Department's failure to consider all costs incurred on repayment of the RF–21 and RF–153 loans distorts the analysis and creates artificial subsidies. The Department incorrectly disregarded the dollar-indexed principal repayments (and, therefore, the devaluation expense) on loans where some interest payments were made in 1987 but all principal repayments were made in 1988. Respondents contend that the preferentiality of these dollar-indexed loans can only be determined by examining the costs incurred over the entire life of the loan. If the Department examines the entire loan and determines that it is not preferential, the Department should then determine that there is no countervailable benefit during the review period. If the analysis of the entire loan reveals a benefit, the Department should countervail any benefit received on those interest payments made during the review period according to its standard cash-flow approach.

Department's Position

Loans provided under RF–21 and RF–153 are short-term fixed-rate dollar-indexed loans granted in australs at annual interest rates of 1 to 3.50 percent. Interest payments on RF–21 loans are due in June and December of each year, and principal payments are made in two equal installments every six months. Interest payments on RF–153 loans are due each calendar quarter with the principal due at maturity. Since the principal payable in australs is equivalent to the U.S. dollar value of the principal disbursed in australs, the repayment of the principal included significant devaluation costs, given the depreciation of the austral vis-a-vis the U.S. dollar during 1987–88. The cost of these loans, therefore, consisted of relatively low interest payments made during the life of the loan with the major cost incurred at maturity when the principal was repaid.

The commercial loan we used for our benchmark is a 30-day, rolled-over loan, which was the predominant alternative form of trade financing in Argentina during the review period. Interest rates ranged from 6.4 to 14.3 percent per month during the review period. Because interest payments were due every 30 days, the cost of the commercial benchmark loan was relatively even throughout the life of the loan.

A comparison between the program loans and the commercial benchmark loans shows a difference in the cash-flow effect due to the timing of interest payments and the repayment of principal. As long as the full term of the loan fell within the review period, the difference in the timing of the payments created no problem for the calculation of the benefit. However, in those instances where the final interest payments and principal repayments on the RF–21 and RF–153 loans fell outside the review period, our cash-flow methodology, when applied only to the payments made during the review period, potentially overstates the benefit of these loans.

In order to determine whether the benefit was overstated in our preliminary results, we calculated the total cost of each program loan, including interest and devaluation, and the total cost of the commercial benchmark loan. To do so, we had to extend our analysis beyond the review period. The program loans extended to May 1988. To ensure comparability between program loans and benchmark loans in terms of maturity and prevailing interest rates, we constructed four annual benchmarks, each beginning in a different quarter of the review period. We then calculated the benefit on the basis of the appropriate benchmark rate applicable to the quarter in which the program loan originated. If the total cost of the program loan exceeded the total cost of the commercial loan, we determined that there was no benefit during the review period. For the remaining loans, we used our cash-flow methodology to calculate the cost differential between the program loans and the loans at the benchmark rate up to the end of the review period. However, if the differential during the review period exceeded the benefit calculated over the life of the preferential loan, we capped the benefit for the review period at the latter amount. On this basis, we determine the bounty or grant from RF–21 financing to be 0.0001 percent *ad valorem* for Propulsora and from RF–153 financing to be 1.75 percent *ad valorem* for Somisa.

Comment 6: Petitioner contends that in determining the benefit from export financing under RF–21 and RF–153 loans, the Department should use the average interest rates for the months in which loans were outstanding rather than for the whole twelve-month review period. This would be consistent with the use of semi-annual benchmarks in Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products From Argentina (53 FR 37619; September 27, 1988).

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Propulsora does not object to the use of semi-annual average monthly interest rates. Somisa, on the other hand, agrees with the Department's use of an annual average rate.

Department's Position

We agree that a single average benchmark for the twelve-month review period is not appropriate. As we point out in Department's Position to Comment 5, we have used four annual benchmarks to more accurately determine whether, and to what extent, benefits were received from RF–21 and RF–153 loans during the review period.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be 0.0001 percent *ad valorem* for Propulsora and 2.40 percent *ad valorem* for all other firms for the period January 1, 1987 through December 31, 1987. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Propulsora and to assess countervailing duties of 2.40 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms exported on or after January 21, 1987 and on or before December 31, 1987.

Further, as provided by for section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to waive the cash deposit of estimated countervailing duties on all shipments of the subject merchandise from Propulsora and to collect a cash deposit of estimated countervailing duties of 2.40 percent of the f.o.b. invoice price on all shipments of this merchandise from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 13, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–14861 Filed 6–20–91; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-507]

Certain Fresh and Chilled Whole Atlantic Groundfish From Canada; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: The Department of Commerce is revoking the countervailing duty order on certain fresh and chilled whole Atlantic groundfish from Canada, effective January 1, 1991, because it is no longer of interest to interested parties.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 20596) its intent to revoke the countervailing duty order on certain fresh and chilled whole Atlantic groundfish from Canada (51 FR 17785; May 15, 1986).

Interested parties who objected to the revocation were provided the opportunity to submit their comments on or before May 31, 1991. Additionally, as required by § 355.25(d)(4)(ii) of the Department's regulations, the Department served written notice of its intent to revoke this order on each interested party listed on the service list. On May 21, 1991, the Department published a notice of opportunity to request administrative review in this proceeding (56 FR 23271) for the period January 1, 1990 through December 31, 1990.

Imports covered by this order are shipments of certain fresh and chilled whole Atlantic groundfish, including cod, haddock, pollock, hake, and flatfish (including flounder and sole). These species are generally referred to collectively as "groundfish" because they live on or near the seabed. The term "fresh" includes fish that are chilled, but excludes fish that have been frozen. Whole fish include fish which are whole, or processed by removal of heads, viscera, fins or any combination thereof, but not otherwise processed. Through 1988, such merchandise was classifiable under item numbers 110.1585, 110.1593, 110.3580, 110.5200 of the Tariff Schedules of the United States Annotated (TSUSA).

This merchandise is currently classifiable under item numbers 0302.21.00 (excluding halibut), 0302.22.00, 0302.23.00, 0302.29.00, 0302.50.00, 0302.62.00, 0302.63.00, 0302.69.10, and 0302.69.20 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Determination to Revoke

We received no objections to our notice of intent to revoke the countervailing duty order on certain fresh and chilled whole Atlantic groundfish from Canada and have not received a request to conduct an administrative review of the order for the past five consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Therefore, the Department is revoking the countervailing duty order on certain fresh and chilled whole Atlantic groundfish from Canada. The effective date of revocation is January 1, 1991.

Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported from Canada on or after January 1, 1991.

This notice is in accordance with 19 CFR 355.25(d)(3)(vii) and 355.25(d)(5).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–14862 Filed 6–20–91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-005]

Litharge and Red Lead From Mexico; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances countervailing duty administrative review and revocation of countervailing duty order.

SUMMARY: On May 6, 1991, the Department of Commerce published the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on litharge and red lead from Mexico. We have now completed that review and determine to revoke the countervailing duty order on litharge and red lead from Mexico effective July 1, 1990.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 20596) the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on litharge and red lead from Mexico (47 FR 54847; December 6, 1982). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are litharge and red lead from Mexico. Through 1988, such merchandise was classifiable under item numbers 473.5200 (litharge) and 473.5600 (red lead) of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under the following Harmonized Tariff Schedule (HTS) numbers: 2824.10.00 and 2824.20.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments.

Final Results of Review and Revocation

As a result of our changed circumstances administrative review, we are revoking the countervailing duty order on litharge and red lead from Mexico. The effective date of the revocation is July 1, 1990.

Therefore, the Department will instruct the Customs Service to terminate the suspension of liquidation and refund any cash deposits of estimated countervailing duties made on any shipments of litharge and red lead from Mexico entered, or withdrawn from warehouse, for consumption on or after July 1, 1990.

This changed circumstances administrative review, revocation and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 355.22(h)(1) and 355.25 (d)(1), (d)(2), and (d)(3).

Dated: June 14, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–14863 Filed 6–20–91; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Live Swine From Canada; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On February 12, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on live swine from Canada. We have now completed that review and determine the net subsidy during the period April 1, 1988 through March 31, 1989 to be Can$0.0449/lb. for live swine (other than sows and boars) and Can$0.0047/lb. for sows and boars.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Britt Doughtie or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 5676) the preliminary results of its administrative review of the countervailing duty order on live swine from Canada (50 FR 32260; August 15, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of live swine from Canada. Through 1988, such merchandise was classifiable under item number 100.8600 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 0103.91.00 and 0103.92.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1988 through March 31, 1989 and 41 programs: (1) Agricultural Stabilization Act; (2) Feed Freight Assistance Program; (3) National Tripartite Stabilization Scheme for Hogs; (4) Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement (ARDSA); (5) Canada/Quebec Subsidiary Agreement on Agri-Food Development; (6) Saskatchewan Hog Assured Returns Program (SHARP); (7) British Columbia Farm Income Insurance Plan (FIIP); (8) Quebec Farm Income Stabilization Insurance Programs (FISI); (9) Alberta Crow Benefit Offset Program; (10) Ontario Farm Tax Rebate Program; (11) Ontario (Northern) Livestock Improvement and Transportation Assistance Programs; (12) Ontario Pork Industry Improvement Plan (OPIIP); (13) Quebec Productivity Improvement and Consolidation of Livestock Production Program; (14) Quebec Regional Development Assistance Program; (15) Saskatchewan Livestock Investment Tax Credit; (16) Saskatchewan Livestock Facilities Tax Credit Program; (17) British Columbia (B.C.) Feed Grain Market Development Program; (18) British Columbia Special Hog Payment Program; (19) Manitoba Hog Income Stabilization Plan; (20) Alberta Red Meat Interim Insurance Program; (21) British Columbia Swine Herd Improvement Program; (22) New Brunswick Hog Price Stabilization Program; (23) New Brunswick Livestock Incentives Program; (24) New Brunswick Agricultural Development Act-Swine Assistance Program; (25) New Brunswick Hog Marketing Program; (26) New Brunswick Swine Industry Financial Restructuring Program; (27) New Brunswick Swine Assistance Policy on Boars; (28) Newfoundland Weanling Bonus Incentive Policy; (29) Newfoundland Hog Stabilization Program; (30) Nova Scotia Natural Products Act-Pork Price Stabilization Program; (31) Nova Scotia Swine Herd Health Policy; (32) Nova Scotia Transportation Assistance Program; (33) Nova Scotia Improved Sire Policy; (34) Prince Edward Island Hog Price Stabilization Program; (35) Prince Edward Island Transportation Grants;

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(36) Prince Edward Island Swine Development Program; (37) Prince Edward Island Interest Payments on Assembly Yard Loan; (38) Ontario Hog Price Stabilization Program; (39) Ontario Weaner Pig Stabilization Plan; (40) Newfoundland Farm Products Corporation-Hog Price Support Program; and (41) Newfoundland Weanling Bonus Incentive Policy.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Case briefs were submitted by the petitioner, the National Pork Producers Council (NPPC), and four parties to the proceeding, the Canadian Pork Council (CPC), the Government of Quebec (GOQ), P. Quintaine & Son Ltd., of Brandon, Manitoba (Quintaine), and Pryme Pork Ltd., of St. Malo, Manitoba (Pryme). Rebuttal briefs were submitted by the NPPC, CPC, and the GOQ. At the request of the NPPC, the GOQ, and Pryme, we held a public hearing on April 8, 1991.

Comment 1: NP argues that the Tripartite Scheme for hogs is *de jure* limited to a specific industry, since the most appropriate level of analysis for determining specificity is the Tripartite Scheme for hogs itself. NPPC further argues that Bill C–25 was only an enabling statute which allowed the federal government to create a number of distinct programs targeted toward specific commodities, with each distinct program *de jure* limited to a specific industry because each: (1) Is separately administered; (2) is separately negotiated at different times for different purposes; (3) covers different geographical areas; (4) uses individual plan-specific formulae which have no necessary relationship to differences in the types of commodities or markets; and (5) is separately funded. NPPC also states that the Tripartite Scheme for hogs is not "integrally linked" to other Tripartite stabilization schemes. NPPC submits that for the forgoing reasons, the Department should perform its specificity analysis at the level of the individual stabilization agreement as in *IPSCO, Inc.* v. *United States*, 667 F. Supp. 814, (U.S. Court of International Trade (CIT), 1988), hereinafter *IPSCO*, and *Comeau Seafoods* v. *United States*, 724 F. Supp. 1407 (CIT 1989), hereinafter *Comeau Seafoods*. By its very terms, the Tripartite Scheme for hogs provides benefits only to hog producers. Accordingly, its benefits are *de jure* limited to a specific industry and are thus countervailable.

NPPC further argues that if the Department should decide to evaluate specificity at the level of Tripartite schemes collectively, Tripartite benefits viewed collectively remain *de jure* limited to a specific group of industries. In evaluating *de jure* specificity, NPPC argues, the Department must examine not only the relevant statute, but also any implementing regulations. In the case of Tripartite schemes, the implementing regulations are contained within the particular commodity-specific agreements. Considered collectively, these agreements explicitly limit benefits, *de jure*, to producers of nine commodities. Since the number of industries covered by Tripartite agreements constitute only a small portion of the vast agricultural sector, benefits under the collective Tripartite schemes are *de jure* limited to a specific group of industries and are thus countervailable.

CPC argues that Tripartite agreements are *de jure* generally available to any agricultural commodity in Canada. CPC states that the language of the Agricultural Stabilization Act (ASA) makes Tripartite agreements generally available to producers of "any natural or processed product of agriculture." The Tripartite Program does not act in law to limit the number of commodities that may be covered under agreements. The Department correctly conducted its specificity analysis at the level of the Tripartite enabling legislation, rather than at the level of the individual Tripartite Scheme for hogs.

In response to NPPC's argument that each individual Tripartite scheme has independent administrative control, CPC points out that Bill C–25 provides a framework for the implementation of each Scheme as part of the Tripartite Program, including basic principles for every agreement and arrangements for the scheme's administration and funding. CPC notes that to allege that there are no common requirements for the implementation of individual Tripartite scheme is to ignore the language of the statute, which contains a long list of requirements which must be specified in the agreement establishing each scheme. However, if Bill C–25 had required all of the scheme to be completely uniform, there would be a loss of comparable benefits among the various commodities, as each commodity is different and thus requires a scheme to be shaped to best fit that commodity producers' needs.

CPC argues that *IPSCO* and *Comeau Seafoods* provide no support for NPPC's view, and *Comeau Seafoods* specifically endorses the Department's level of analysis in this review. In these cases, the Department conducted its specificity analysis at the level of the individual subsidiary agreements negotiated pursuant to federal-provincial agreements. However, these federal-provincial agreements are not comparable to a statutory scheme such as Bill C–25 or the ASA. Therefore, argues CPC, there is no analogy between the federal-provincial agreements found in *IPSCO* and *Comeau Seafoods* and the statutory scheme of ASA/Tripartite, and therefore no basis to argue that the Department's level of analysis should be the individual Tripartite Scheme for hogs. Moreover, in *Comeau Seafoods*, the Court ruled that when the specificity test was applied properly, loans from the Fisheries Loans Boards were *de facto* nonspecific, because they were made as "part of an overall lending development policy administered through the Rural Development Loan Program"—in the same way that the Tripartite Scheme for hogs was negotiated as part of an overall Tripartite policy.

Department's Position: The Department determines that each product-specific scheme is structured pursuant to the enabling legislation and basic principles provided in Bill C–25, and, therefore, the implementing legislation and product-specific schemes are integral parts of the Tripartite Program. Although many aspects are specific to the individual schemes, the Department finds that these product-specific schemes exist, and operate, under the framework of the ASA and Bill C–25. The language of Bill C–25 does not limit the availability of these Tripartite programs to certain agricultural commodities or products. We therefore stand by our determination that the Tripartite program is not *de jure* specific. We have determined instead that the Tripartite program is *de facto* specific for the reasons enumerated in Comment 3.

Comment 2: NPPC argues that benefits under Quebec's Piglet and Feeder Hog Schemes are *de jure* limited to a specific industry. The Act Respecting Farm Income Stabilization Insurance (FISI Act) does not establish particular programs, nor does it prescribe a particular method for the stabilization of income with respect to covered commodities, but instead is a broad and vague authorization for the creation of various commodity-specific schemes, each with its own particular terms. NPPC states that the FISI Act: (1) Did not create a FISI Scheme and (2) did not provide for the administration and funding of a FISI Scheme; and that FISI Schemes (3) are separately created at

different times for different purposes; (4) provide different levels of support for reasons unrelated to differences in the types of commodities or markets; (5) are separately funded; and that the Feeder Hog Scheme and Piglet Scheme are not "integrally linked" to other FISI Schemes. Therefore, it is appropriate for the Department to perform its specificity analysis of FISI at the level of the particular scheme, and benefits under each scheme are *de jure* limited to a specific industry and are thus countervailable.

Furthermore, NPPC argues that FISI benefits remain *de jure* specific when analyzed at the collective level. In evaluating *de jure* specificity, the Department must examine not only the relevant statute but also any implementing regulations. Stabilization pursuant to the FISI Act is implemented through regulations, which establish each particular scheme. Each scheme specifies, by regulation, the manner in which benefits are calculated and paid and the class of eligible producers. These implementing regulations explicitly limit benefits, *de jure*, to producers of hogs, lambs, beef (slaughter cattle, feeder cattle, feeder calves (cow-calf)), apples, sugar beets, white pea beans and other dry edible beans (kidney, cranberry, and other colored beans). Accordingly, FISI benefits are *de jure* limited to those commodities for which a particular scheme has been established by regulation, and are thus *de jure* limited to a specific group of industries and countervailable.

The GOQ argues that NPPC arguments on FISI's *de jure* specificity contradict Department determinations, a CIT decision, as well as two decisions of a binational panel constituted under the Free Trade Agreement. (Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled and Frozen Pork Products from Canada (50 FR 25104; June 17, 1985), hereinafter *Pork; Alberta Pork Producers' Marketing Board* v. *United States*, 669 F. Supp. 455, 452 (CIT 1987); Memorandum Opinion and Order, In the Matter of Fresh, Chilled, and Frozen Pork, United States-Canada Binational Panel Reviews, USA–89–1904–06 at 79–80, September 25, 1990 and USA–89–1904–06 at 19–20, March 8, 1991). Furthermore, the GOQ states that to argue that FISI is *de jure* limited is to ignore the distinction set out by the CIT between *de jure* and *de facto* tests for specificity. In fact, argues the GOQ, the *de jure* test involves only an examination of statutes and regulations. Furthermore, the cases on which the NPPC relies to allege *de jure* specificity have nothing to do with the *de jure* test.

Lastly, the GOQ argues that FISI regulations must conform with the statute, authority for specific regulations must be specifically delegated to the administrative agency, and the regulations must have the full force of law, but always subject to the precise terms of the statute. Hence, the statute and its regulations must be taken together: the regulations have no force without the guiding statute, and the statute cannot be implemented without the regulations. Therefore, the GOQ submits that FISI is generally available according to the statute and regulations and confers equal benefits upon all users, and is thus *de jure* not specific.

Department's Position: The Department has consistently determined that FISI is not *de jure* limited to a specific enterprise or industry or group of enterprises or industries. The Department finds that the language of the FISI Act does not limit the availability of these programs to certain agricultural commodities or products. Although many aspects of FISI's implementation and administration are left to the specific schemes, the program exists and operates under the framework of the FISI Act, which is not limited statutorily to specific enterprises or industries.

Comment 3: CPC disagrees with the Department's finding that Tripartite is *de facto* specific, arguing that the Department has failed to consider all of the information provided by the Government of Canada, particularly the information provided during verification, and that, when all the facts are considered fairly, the Tripartite Scheme does not meet the "specificity test" set forth in § 355.43(b)(2) of the Department's proposed regulations, and is thus not countervailable.

CPC argues that the Department failed to properly apply the specificity test in this case by: (1) Focusing too narrowly on the number of commodities for which there already are finalized Tripartite agreements, rather than recognizing Tripartite as a relatively new program with an expanding number of plans (and thus penalizing hog producers for having been among the first commodities to complete a Tripartite agreement); (2) relying too heavily on the fact that 52 percent of the Tripartite payments made to participating producers went to hog producers, rather than examining payouts in the overall context of the program; (3) looking at Tripartite in a "snap-shot" fashion, focusing only on one year, when in fact payments to producers of one commodity will exceed payments to others in any given year; and (4) examining hog producers in a vacuum, making no attempt to define the universe in which dominant users (or disproportionate benefits) are to be measured.

NPPC states that CPC's arguments in this case are the same arguments that were rejected by the Department in *Pork;* the Department's determination with respect to the *de facto* specificity of the Tripartite program has been upheld by the U.S. - Canada binational panel in the *Pork* case which reviewed that determination (Memorandum Opinion and Order Regarding Commerce's Determination on Remand, Case No. USA–89–1904–06, March 8, 1991). NPPC further argues that claims made by CPC that variations in the support formulae for different commodities are "solely due to the economic circumstances of each commodity" run counter to the evidence, and that these variations show that different Tripartite plans adopt fundamentally different approaches and provide benefits which differ in kind from benefits under other plans, including plans for similar commodities.

NPPC further argues that the Department's findings of *de facto* specificity of the Tripartite programs would not change if the Department examined a period longer than one year, since it has been established that over 96 percent of all Tripartite payments arose during calendar year 1988.

In response to CPC's argument that although hog producers may have received 52 percent of all Tripartite payouts in the review period, these producers also made almost 50 percent of all producer contributions to Tripartite during the period, NPPC argues that the proportion of producer premiums paid into the fund is irrelevant to an analysis of disproportionality because the Department's concern is with the government monies paid to producers, not with the producers' own contributions. If the analysis of disproportionality requires any examination of contributions to the fund, the proper subject of analysis would be the contributions of governments, not the producers, and hog producers also benefitted disproportionately by this measure.

NPPC rejects CPC's assertion that Tripartite Schemes might be created in the future for other commodities as irrelevant to the Department's specificity analysis. Indeed, the pace at which new commodities are added is slowing, not accelerating. Also, the rejection of Tripartite Agreements for asparagus, sour cherries, and corn (See

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Pork) remains relevant to the Department's specificity analysis.

Department's Position: In analyzing *de facto* specificity, the Department looks at the actual number of commodities covered during the particular period under review. There is general agreement that there are at least 100 commodities produced in Canada. However, despite Tripartite's nominal general availability to all commodities, the Annual Report of the Agricultural Stabilization Board for the fiscal year ending March 31, 1989, shows that there were only six Tripartite agreements in place, covering just nine commodities. Furthermore, hog producers received 52 percent of the total payouts made under the six Tripartite Schemes in the review period. Since Tripartite's inception, 51 percent of all Tripartite payments made to all schemes have gone to hog producers. Although CPC argues that there are other Tripartite Schemes under negotiation (and honey and onion negotiations have been completed after the review period) we have no authority to take into account predictions about the future growth of the Tripartite Stabilization Plan. During the review period the program was limited, *de facto*, to a specific group of enterprises or industries, and is therefore countervailable.

Comment 4: CPC, Quintaine, and Pryme argue, in separate briefs, that the Alberta Crow Benefit Offset Program (ACBOP) is not a countervailable subsidy because benefits that compensate partially for disadvantages caused by a related government program are not countervailable. Furthermore, because the average Crow Benefit payment is twice the amount of an ACBOP payment, Alberta's program only partially offsets the artificially high price paid for grain. CPC adds that if the Department does countervail ACBOP benefits, it must correct an error in its calculation methodology.

Pryme and CPC argue that the Department has found no countervailable subsidy exists when the benefits of one governmental program merely counteract the disadvantages of a related program, thus resulting in no overall "economic benefit" (Certain Steel Products from the Federal Republic of Germany, 47 FR 39345; September 7, 1982, hereinafter German Steel). A parallel situation exists in this review: ACBOP is "inseparably linked" with the Crow Benefit payments made under the Western Grains Transportation Act (WGTA). Because ACBOP does not completely correct the price distortion, grain purchasers in Alberta remain at a disadvantage. In the 1986/86 administrative reviews of Live Swine, the Department assumed that it would be possible for Alberta livestock producers to purchase less expensive feed grains from outside Alberta. In fact, WGTA and its grain price enhancement effect applies to the entire western Canada grain-producing region, putting grain purchasers in Alberta at a competitive disadvantage. ACBOP removes part, but not all, of that disadvantage, and there is therefore no subsidy for the Department to countervail.

Pryme argues that if any benefit does flow to hog producers, that benefit goes to an input, and the Department must conduct an upstream subsidy investigation. And only after an affirmative "threshold determination" may Commerce proceed with an upstream subsidy investigation. Unless and until an upstream subsidy investigation is carried out, the benefit, if any, to hog producers from the ACBOP cannot be measured.

CPC argues that the methodology used by the Department to calculate the amount of benefit contains a significant error. CPC argues that the Department should have considered industry standards that 3.5 pounds of livestock feed will be necessary to produce 1 pound of weight gain, and that 15–16 percent of this livestock feed is made up of protein supplement, not feed grain. By asserting that 3.5 pounds of grain, not feed, is required to produce 1 pound of weight gain, the Department has significantly overstated the amount of grain consumed by hogs in Alberta. Also, the Economic Indicators of the Farm Sector publication used by the Department is not a valid document for the purpose for which it has been used by the Department. It provides cost of production information for American Farmers, not Canadian farmers, and higher U.S. hog weights increase the feed-grain to weight-increase ratio. Therefore, the Department should revise its calculations, using a document provided at verification containing Canadian industry standards.

NPPC argues that the Department has previously rejected the same arguments on the countervailability of ACBOP in Pork and that the 0.2. - Canada binational panel also rejected CPC's and other Canadian parties' claims that the ACBOP was not countervailable, thus rejecting the German Steel argument as it applies to this case. NPPC adds that neither CPC nor Pryme have attempted to show that the Department's decision was erroneous or that the Panel's determination is not intrinsically persuasive.

Department's Position: We agree with the NPPC. Unlike the Special Canada Grains Program, this program is not tied to grain production; it is limited to feed grain users and merchants. Therefore, we have determined that it is countervailable. The fact that a program is designed to offset the economic effect of another government program or policy does not exempt it from investigation under the countervailing duty law. We reject respondents' claim that this program is analogous to German Steel. In that investigation, the German government chose to impose an import ban on coal and to subsidize coal production. We found no countervailable benefit to steel producers resulting from the coal subsidy because the price that steel producers were paying for coal was higher than the world price. Since the German Steel determination, we have adopted an upstream subsidy analysis, which would now be applied to determine whether benefits to coal producers passed through to steel producers. In this review, the benefit is paid directly to grain users and not to grain producers. Thus, there is no need to conduct an upstream subsidy analysis. Payments under the ACBOP are not part of a comprehensive program relating to the input product, but rather are received directly by the hog producers. Therefore, Commerce is not required to conduct an upstream analysis, and we reasonably determined that compensation under the ACBOP confers a countervailable benefit on Alberta hog producers.

Concerning CPC's argument that the Department should change its methodology when calculating the amount of benefit hog producers receive from the ACBOP, we determine that the source used by the Department, Economic Indicators of the Farm Sector, a U.S. Department of Agriculture (USDA) document, provides similar information to verbal information provided during verification. We used the information found in the USDA document as the best information available because the information on the record was inadequate. Upon our return from verification, CPC provided a document titled Nutrient Requirements of Swine, also a U.S. publication, from the National Research Council. The document provided an inadequate basis for calculating the amount of benefit for the following reasons: (1) The document does not provide usable information on the amount of protein supplement added to the cereal grain feed since it provides a chart showing the required percentage of dietary protein without specifying whether that percentage is in addition to or inclusive of the percentage of protein naturally contained in the cereal feed; and (2) the listed grain consumption to weight grain-ratios are calculated in hog weight steps of 10–20 kilos, 20–50 kilos, and 50–110 kilos, with no indication of the time periods hogs remain in each weight stage, so no weighting of stages is possible. By contrast, the document used by the Department provides one grain to weight-gain ratio (348.3 lbs. of grain to 100 lbs. of weight gain), and lists separately protein supplements as well (81.2 lbs. of supplements for each 100 lbs. of weight gain).

For these reasons, we continue to base our final calculations on the USDA document, although we have made an adjustment in our ratio, from 3.5 pounds of grain for each 1 pound of weight gain to 3.483 pounds of grain for each 1 pound of weight gain to more accurately reflect the information as presented in Economic Indicators of the Farm Sector. This change in our methodology does not change the calculated benefit of Can$0.0042/lb. for all live swine.

Comment 5: CPC argues that the Feed Freight Assistance Program (FFA) is not a countervailable subsidy, because any benefit that accrues to livestock producers from this program is incidental, and that before the Department can impose a countervailing duty it must determine that a government "is providing a subsidy with respect to the manufacture, production or exportation of a class or kind of merchandise imported into the United States." (See 19 U.S.C. 1671(a)). FFA benefits are provided with regard to the manufacture of feed from grain, with no evidence that the grain is imported into the United States. CPC further argues that to countervail benefits paid to producers of feed grain for livestock, the Department would have to conduct a separate investigation.

NPPC argues that the same arguments with respect to FFA were considered and rejected by both the Department and the FTA Panel in Pork.

Department's Position: In the preliminary results, we determined that this program is countervailable because it is limited to a specific enterprise or industry, or group of enterprises or industries. The Department countervailed only the amount of FFA benefits paid to livestock producers who have indicated that they raise hogs. FFA benefits, in the form of reduced costs for feed, result in a direct reduction in the cost of production of hogs. Therefore, the Department is not required to conduct an upstream subsidy investigation under section 771(A) (See, United States-Canada Binational Panel Review of Fresh, Chilled and Frozen Pork, Secretariat File No. USA–89–1904–06, September 28, 1990, at page 57). This rationale has been consistently applied in previous reviews of this order. In this review, CPC submitted no new information. Therefore, the Department's determination remains unchanged.

Comment 6: CPC argues that the Department has erroneously calculated the countervailing benefit to swine resulting from the Ontario Farm Tax Rebate Program, using total rebates paid to swine producers in all of Ontario, rather than viewing the program as a regional subsidy within the Province. CPC believes the Department should have countervailed only the benefit to farmers in eastern and northern Ontario whose annual output is at least Can$5,000 but less than Can$8,000, as the Department has done in the past.

NPPC argues that because the program is limited to specific, scheduled commodities, the program is *de jure* limited to a specific group of industries and provides countervailable benefits to all recipients, not just those in the favored region.

Department's Position: We agree with CPC that this program provides a regional subsidy and that only the benefit to farmers in eastern and northern Ontario whose annual output is at least Can$5,000 but less than Can$8,000 is countervailable. We have adjusted our calculations accordingly. As a result of this change, the benefits from this program during the review period are significantly less than Can$0.0001/lb., which is effectively zero, for both sows and boars and other live swine.

Comment 7: CPC argues that the British Columbia Farm Income Insurance Program (FIIP) is generally available to producers of any viable commodity with an interest in, and a demonstrated need for, such a program, with no evidence of selective treatment in the establishment of schemes, and is therefore not a countervailable program as it pertains to benefits to hog producers. CPC argues that although only 36 percent of farm cash receipts in B.C. are covered by FIIP (for potatoes, vegetables, apples, other tree fruits, strawberries, other berries and grapes, cattle, calves, hogs, sheep and lambs), almost another 40 percent are covered by federal supply management programs (dairy, poultry and eggs), another 3 percent are covered by crop insurance or the Western Grains Stabilization Act (grains and oilseeds), and almost another 4 percent (honey and grapes) are covered by crop insurance. Therefore, argues CPC, approximately 82–83 percent of the farm cash receipts for the province are provided by commodities participating in one of these various programs, with the remainder being too profitable for their producers to be interested.

CPC argues that finding FIIP countervailable because it is only available to farmers producing commodities specified in the Schedule B guidelines (to the Farm Income Insurance Act of 1973), as the Department did in its Preliminary Results, is incorrect. CPC states that this is not evidence of selective treatment because commodities have been added to, and removed from, Schedule B since the statute authorizing FIIP was promulgated in 1973. Therefore, there is no evidence to support the Department's assertion that benefits provided under the FIIP are not generally available.

NPPC argues that the countervailability of FIIP was affirmed by the CIT in *Alberta Pork*, and that CPC's arguments are without merit.

Department's Position: We disagree with CPC's first argument because it is our view that crop insurance and supply management are sufficiently different so as to make the linkage with FIIP inappropriate. Crop insurance protects against climatic disasters, while FIIP is an income stabilization program. As noted by the March 8, 1991 U.S.—Canada binational panel decision in Pork, supply management type programs tend to restrict production, while income stabilization programs tend to encourage production. Therefore, it is inappropriate to link FIIP to crop insurance or to supply management programs.

Even though raspberries were removed from participation in FIIP in 1985 and potatoes were added in 1983, the Department finds these changes in Schedule B insufficient to counter evidence of selective treatment. By CPC's own admission, only 36 percent of British Columbia's farm cash receipts are covered by FIIP. The program is only available to farmers producing commodities specified in the Schedule B guidelines to the Farm Income Insurance Act of 1973 (with a limited number of agricultural products listed), and is therefore limited to a specific group of enterprises or industries, and therefore countervailable.

Comment 8: CPC argues that the British Columbia Feed Grain Market Development Program is not countervailable because it attempts to counteract the disadvantage caused by the Western Grains Transportation Act. As in the German Steel case, this program was designed solely to

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counteract the competitive disadvantage caused by a related governmental program. The B.C. Feed Grain Market Development Program was an attempt to encourage grain producers in B.C. to sell their grain in the province, rather than exporting it, and to accomplish this it was necessary to offset the competitive advantage provided by the federal Crow Benefit payments. The Department has previously determined that no countervailable subsidy exists when the benefits of one governmental program merely counteract the disadvantages of a related program, and should thus make the same determination of no countervailable benefit as regards the B. C. Feed Grain Market Development Program.

NPPC argues that CPC's argument, identical to that used concerning the Alberta Crow Benefit Offset program, is no more persuasive in the context of the British Columbia Feed Grain Market Development program.

Department's Position: We disagree with CPC. The facts in this case differ from German Steel in that payments under the British Columbia Feed Grain Market Development program do not benefit the producers of the input product, but are received directly by the hog producers, therefore reducing their cost of production. We continue to find this program limited to grain producers and grain users in B. C., and thus limited to a specific group of enterprises or industries and therefore countervailable.

Comment 9: Pryme argues that weanling pigs (weanlings) are a separate class or kind of merchandise, outside the scope of the present case, or, in the alternative, should at least be accorded a separate countervailing duty rate based on their minimal direct contact with the farm economy before being sold abroad to feeders. Pryme points out that the International Trade Commission's (ITC) definition of "live swine" was based on animals destined for immediate slaughter, and that a review of the ITC record shows that the inclusion of weanlings in the scope of this case cannot be justified. Furthermore, Pryme argues, with the adoption of the Harmonized System, weanlings are now classified separately from all other live swine for duty purposes, as "live swine, other, weighing less than 50 kg each." Accordingly, with the new tariff classification, weanlings can be easily segregated by weight.

Pryme notes that in Certain Steel Products from the United Kingdom (47 FR 35668; August 12, 1982), hereinafter Steel Products, the Department found that certain merchandise was held to be of the same class or kind as the goods which were originally investigated, but sufficiently different in its characteristics to merit a separate margin. Pryme argues that if the Department follows the same reasoning applied in that case, weanlings would be excluded from the scope of the order on live swine because weanlings have: (1) A different tariff classification; (2) dissimilar physical characteristics; (3) separate pricing mechanisms from that of live swine; (4) different buyer expectations; (5) distinguishable channels of trade; (6) different uses; (7) extensive processing after sale; and (8) are customarily categorized differently from live swine.

Pryme argues that if weanlings are not removed from the scope of this case, as the Steel Products case would imply, there can be no justification for applying alleged bounties or grants awarded to indexed slaughter hogs in calculating benefits received by weanlings. Furthermore, the Department did arrive at a separate rate for sows and boars in this case; the facts of the weanlings' situation should garner, at least, a similar finding leading to a separate countervailing duty rate based on the principles the Department applied to sows and boars in this proceeding.

Department's Position: We stand by the determination reached in our preliminary results that weanlings are within the scope of this order. Pryme did not request a separate rate for weanlings until its submission of a case brief. At that time, the Department deemed it inappropriate to delay the processing of the review to solicit the necessary information in order to determine whether it is appropriate or possible to calculate a separate rate for weanlings in these final results. Based on the record, we have no way of determining how many weanlings were raised by, and exported from, each province, nor do we have complete knowledge of weanling producers' participation in the various programs.

The information presented in this review does not allow the Department to disaggregate the data between weanlings and other live swine. Weanlings are young hogs; in some cases, such as Ontario's implementation of the Tripartite Scheme for hogs, they are even specifically assigned a percentage of the program's overall benefits. We disagree with Pryme that in the Harmonized Tariff Schedule weanlings are classified separately from all other live swine for duty purposes. While weanlings certainly fall within HTS item number 0103.92.00, other live swine are also included under this subheading, since it encompasses "live swine, other, weighing 50 kg. or less each." Pryme's own definition of weanlings is the following: "(weanlings) are swine at the age when they are taken from their mothers and placed on diets of solid food to prepare them for market. They typically weigh 35 to 40 pounds (15.5 to 17.8 kg.) at the time of sale." The HTS subheading thus encompasses swine other than weanlings, because weanlings weigh no more than 17.8 kg., while the subheading covers swine weighing up to 50 kg. Therefore, the swine entering the United States under HTS 0103.92.00 may eat a solid diet of feed grains, and may receive benefits under many of the grain-related and other programs the Department has found countervailable.

Therefore, we will continue to allocate countervailable benefits over total live swine, including weanlings.

Comment 10: The GOQ argues that Quebec's Regional Development Assistance (RDA) program is not countervailable because all of the hogs benefitting from this program were slaughtered in Quebec, as verified and as dictated in Quebec's law. The transportation support under this subprogram is provided, by law, exclusively to move swine to Quebec slaughterhouses. In the Final Affirmative Countervailing Duty Determination; Porcelain-on-Steel Cooking Ware from Mexico, 51 FR 36447, 36449 (1986), and the Final Results of Countervailing Duty Administrative Review; Industrial Nitrocellulose from France, 52 FR 833, 836 (1987), the Department clearly held that support for products or merchandise that are not exported cannot be countervailed. Hence, Quebec's RDA program, and more particularly the Livestock Transportation subprogram, by law cannot be countervailed because it does not benefit the "manufacture, production, or exportation" of the merchandise that is under review. 19 U.S.C. 1671(a)(1)(B).

Department's Position: We agree with the GOQ that the Livestock Transportation subprogram of Quebec's RDA program is not countervailable, because it does not benefit merchandise that is exported, and have revised our calculations accordingly.

Comment 11: The GOQ argues that the Farm Building Improvements subprogram of Quebec's Productivity Improvement and Consolidation of Livestock Production Program is not countervailable: (1) Because the product benefitted is pork, not swine, as the swine are slaughtered by the farmers receiving the assistance; and (2) because it is not specific to an enterprise, industry, or group thereof. Furthermore, there is no evidence of targeting.

Therefore, the program satisfies both *de jure* and *de facto* tests.

Department's Position: The record does not support the GOQ's contention that all swine producers benefitting from the Farm Building Improvements subprogram of Quebec's Productivity Improvement and Consolidation of Livestock Production Program slaughter their swine on their premises, as opposed to selling the swine to slaughterhouses or exporters.

We also disagree with the GOQ's second argument that the subprogram is not specific to an enterprise, industry, or group thereof. This program is not available to all agricultural commodities. Rather, the program is limited to farm buildings housing livestock, and covers cow-calves, veal calves, cattle, sheep, hogs, pigs, livestock for dairy production, horses, rabbits, goats, and bees. Therefore, we continue to find the Farm Building Improvements subprogram of Quebec's Productivity Improvement and Consolidation of Livestock Production Program limited to a specific group of enterprises or industries, and therefore countervailable.

Comment 12: The GOQ argues that Quebec's Farm Income Stabilization Insurance (FISI) is not countervailable because it is neither *de jure* nor *de facto* specific to enterprises or industries. There is no allegation that Quebec's statutes or regulations limit access to FISI's benefits, or target beneficiaries. Therefore, there is no allegation of *de jure* specificity. The issue is whether the Department's evidence that the program covers fourteen producer groups, and that several major agricultural commodities are not covered under this program, warrants the conclusion that FISI is *de facto* specific.

The GOQ continues, arguing that the record contains ample evidence that FISI is not countervailable. For the review period, 74.4 percent of the total insured value of commercial farm production in Quebec was covered by FISI, with the verification report noting that 84.8 percent of the total value of agricultural production in Quebec is covered for risks related to price fluctuation (by FISI and supply management) or climatic disaster (by crop insurance). The record plainly shows that Quebec's insurance programs are comprehensive, generally available, and almost universally used.

The Department's argument that one reason for finding FISI countervailable is that eggs, dairy products, and poultry are not enrolled does not make note of the fact that producers of these products are governed by federally established marketing boards that limit market risk by managing supply. For this reason, these producers are not subject to price fluctuations, and have no need to pay for related insurance. They are, however, eligible to enroll in FISI, although they simply choose not to enroll.

The Department's argument that the program is countervailable because it provides benefits to only fourteen commodities does not take into account the fact that fourteen is a large number of commodities in Quebec, where climate and soil conditions limit agricultural diversity to approximately forty-five distinct products in the insurable agricultural sector. Fourteen very different commodities, ranging from piglets to barley, can hardly be classified as a specific group of enterprises or industries, especially when reviewing other Department decisions. The GOQ concludes by arguing that the Department should follow the decision of the U.S.-Canada Binational Panel in Pork, which, in two separate opinions, held that FISI is not *de facto* specific.

NPPC comments that the Panel's decision with respect to FISI appears to be based upon perceived deficiencies in the record and dissatisfaction with the Department's explanation of its findings. NPPC argues that the GOQ's statement that "for the review period, 74.4 percent of the total insured value of commercial farm production in Quebec was covered by FISI" is misleading. According to the Department's verification report, the fourteen commodities covered by FISI account for 30.9 percent (by value) of Quebec's total agricultural production, as reported by Quebec officials. Furthermore, NPPC argues that it is the number, not the relative value of each industry's annual production, that is relevant to the specificity analysis, and therefore the relative size of the industry is not an important criteria for analysis, as the GOQ suggests.

Department's Position: While we agree with the GOQ's statement that FISI benefits are not *de jure* specific (see Comment 2), we disagree with their argument that FISI benefits are not *de facto* provided to specific enterprises or industries.

In a province producing at least 45 commodities, FISI benefits are provided through 10 schemes covering only 14 commodities, and have been provided to the same 14 commodities since 1981, with no change in the commodities covered. Furthermore, according to information provided by the GOQ in its supplemental questionnaire response, and sourced from Quebec's Regie des Assurances Agricole's, these 14 commodities represent only 27 percent of the total value of agricultural production in Quebec.

The GOQ has relied on insured value figures when stating that 74.4 percent of the total insured value of commercial farm production in Quebec was covered by FISI. However, reliance on insured value figures understates the value of agricultural production in Quebec because not all products are insured.

When the GOQ states that 84.8 percent of the total value of agricultural production in Quebec is covered by a combination of FISI, supply management, and crop insurance, the GOQ links three separate commodity programs which are fundamentally different from one another in their operation and purpose. In fact, while crop insurance protects against climatic disasters, FISI is an income stabilization program; while supply management programs tend to restrict production, income stabilization programs tend to encourage production. For these reasons, we find it inappropriate to incorporate this linkage into our analysis, and we continue to consider FISI independently of the other insurance programs.

There have been prior inconsistent judicial decisions regarding the FISI program. The CIT affirmed the Department's finding of *de facto* specificity in a challenge to the investigation of Live Swine and Fresh, Chilled and Frozen Pork from Canada. *See, Alberta Pork Producers' Marketing Board* v. *United States*, 669 F. Supp. 445 (CIT 1987). On the other hand, the binational panel's decision regarding FISI in the *Pork* case was based on the Department's failure, for that period of investigation, to provide sufficient evidence to support a specificity finding. These two decisions were based on different administrative records and, in the case of Pork, a separate administrative case. These decisions are not controlling where the record of this fourth administrative review supports a finding of *de facto* specificity.

Based on the evidence on the record, we find FISI *de facto* specific to a group of enterprises or industries, and therefore countervailable.

Final Results of Review: After reviewing the comments received, we determine the net subsidy for the period April 1, 1988 through March 31, 1989 to be Can$0.0047/lb. for sows and boars and Can$0.0449/lb. for all other live swine.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of Can$0.0047/lb. on all shipments of sows and boars, and Can$0.0449/lb. on all shipments of all

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other live swine, exported on or after April 1, 1988, and on or before March 31, 1995.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of Can$0.0047/lb. on all shipments of sows and boars, and Can$0.0449/lb. on all shipments of all other live swine, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 355.22).

Dated: June 12, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14854 Filed 6-20-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[P322B]

Marine Mammals; Application for Modification; Dr. Steven Katona

Notice is hereby given that Dr. Steven K. Katona, Allied Whale, College of the Atlantic, 105 Eden Street, Bar Harbor, Maine 04609 requested a modification of Permit No. 735 issued on April 22, 1991 (56 FR 19350), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

Permit No. 735 authorized the take by harassment while photographing and collecting biopsy samples from up to 500 fin whales and the export and import of tissue samples collected from fin whales in areas outside the United States by other researchers. The Permit Holder is requesting that the Permit be modified to allow the harassment of up to 50 minke whales (*Balaenotera acutorostrata*) over a 5-year period while photographing and collecting biopsy samples and the export of part of the samples to Denmark for DNA studies.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427-2289).

Director, National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, MA 01930 (508/281-9200).

Dated: June 14, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-14778 Filed 6-20-91; 8:45 am]

BILLING CODE 3510-22-M

[P77 #54]

Marine Mammals; Issuance of Permit; NMFS, Southwest Fisheries Science Center

On June 12, 1991, the Assistant Administrator for Fisheries issued an emergency permit pursuant to section 10(a)(1)(A) of the Endangered Species Act to authorize the lethal take of one adult male Hawaiian monk seal (*Monachus schauinslandi*) at French Frigate Shoals in the Northwestern Hawaiian Islands due to the animal's observed aggression that resulted in the deaths of several newborn pups. In accordance with 50 CFR 222.24(e), the Assistant Administrator waived the standard thirty day comment period due to the emergency nature of the permit request. The U.S. Marine Mammal Commission reviewed the permit application and recommended that the emergency permit be issued. Further, prior to permit issuance, several Hawaiian environmental groups were consulted. All agreed that the proposed taking was appropriate.

Since 1988, the French Frigate Shoals population of Hawaiian monk seals appears to have experienced a severe decline. Recent field data indicate a reduction of all age/sex classes except adult males. For example, from 1988 to 1990 the average number of pups born was 119 (range 108-127). In 1990, that number dropped to 92. Current field monitoring indicates the decline in the number of juveniles and subadults may be even more severe (on a percentage basis) than the decline in number of pups born.

Field biologists at French Frigate Shoals recently identified a single adult male Hawaiian monk seal that was associated with the deaths of at least four weaned pups. In addition, this animal was prevented from killing two additional pups by a field biologist observing the events. Prior to the requested lethal take of this individual, the field biologists were monitoring the animal on a 24 hour per day basis, but were unable to monitor or prevent mortalities that may have been occurring offshore. Assuming no unobserved pup deaths occurred, the observed pup deaths attributable to the identified adult male monk seal alone account for a minimum of five percent of this season's pup population. This excessive mortality not only reduces the current population at French Frigate Shoals, but also reduces the reproductive capacity of the population for the future.

Before lethal take authorization was requested or granted, nonlethal alternatives were considered and rejected. These alternatives included: (1) Injection with a testosterone-suppressing drug; and (2) capture and holding in a captive setting. It was considered unlikely that a testosterone-suppressing drug would reduce the aggressive behavior of this male because similar treatment on captive animals has shown an initial period of approximately two weeks during which blood testosterone levels increase. Further, the reduction of aggressive behavior via this method is only considered likely if the drug is given before the seasonal increase in blood testosterone levels that occur during the reproductive season. Hence, it was believed that drug treatment would not have the necessary effect within an acceptable time period. The second alternative was to capture and transport the animal to a captive holding facility. Past experience indicated that adult male monk seals are particularly sensitive to capture stress. Thus, this animal would likely have succumbed as a result of capture, extended (albeit temporary) holding French Frigate Shoals, transport to a permanent holding facility, or adjustment to that facility. Due to the remote location of the island and other logistical constraints, the capture, holding and transport of this animal would have required more than a month of effort before the animal could be placed in a holding facility. A month-long delay in addressing this animal's aggression that resulted in alarming pup mortality rates was determined to be unacceptable. As a result, lethal injection was determined to be the single effective alternative.

The lethal take of the identified adult male Hawaiian monk seal was authorized on June 12, 1991. The objective of this authorized taking was to prevent further pup mortality due to the aggressive behavior of the subject animal. The animal was to be captured and restrained with a net and given an intramuscular or intravenous injection of the tranquilizer, diazepam (valium). After a suitable period to allow the tranquilizer to calm the animal, he was to be given a lethal intravenous injection of pentobarbital.

Notice is hereby given that on June 12, 1991, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued an emergency Permit authorizing the above taking for the purpose of enhancing the propagation and survival of the species. The taking was subject to the terms and conditions set forth in the Permit.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permit.

The application, Permit and supporting documentation are available for review by interested persons by appointment in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, Maryland 20910 (301/427-2289); and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/413-6196).

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-14777 Filed 6-20-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: July 22, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 2, 1990, April 12 and 26, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 46238, 56 FR 14931 and 19352) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Bottom Assembly, Crew Berth
1680-00-677-2080
Bag, Plastic
8105-LL-N89-0073
8105-LL-N89-0075
(Requirements of Norfolk Naval Shipyard, Portsmouth, VA)
Hood, Extreme Cold Weather
8415-00-472-8965

Services

Commissary Warehousing,
Lowry Air Force Base, Colorado
Janitorial/Custodial,
William Cotter Federal Building,
135 High Street,
Hartford, Connecticut
Janitorial/Custodial,
Buildings 33, 404, 499, 589, 20107, 20160, 20203, 21851 and 21852,
Kirtland Air Force Base, New Mexico
Restroom Cleaning,
Federal Center,
Buildings 1, 1A, 1B, 2, 2A and 2C,
74 North Washington Avenue,
Battle Creek, Michigan

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-14831 Filed 6-20-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 22, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is

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to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Seal, Metallic
- 5340-00-491-7632
- 5340-00-902-0425

Reel, Cable
- 8130-L0-015-3420
- 8130-L0-015-3520

Holder, Card Label
- 9905-00-045-3624
- 9905-00-045-3625
- 9905-00-782-3768

Services

Grounds Maintenance, Lexington Blue Grass Army Depot, Richmond, Kentucky

Janitorial/Custodial, Building 243 "A–G" Bay, McClellan Air Force Base, California

Janitorial/Custodial, Federal Building, 250 West Cherry, Carbondale, Illinois

Janitorial/Custodial, Federal Building and U.S. Courthouse, 250 West Cherry, Social Security Administration, 2700 N. Knoxville, Peoria, Illinois

Deletions

It is proposed to delete the following commodities from the Procurement List:

Commodities

Topper, Woman's
- 8410-01-187-9636
- 8410-01-187-9637
- 8410-01-187-9628
- 8410-01-187-9629
- 8410-01-187-9630
- 8410-01-187-9631
- 8410-01-187-9642
- 8410-01-187-9643
- 8410-01-187-9644
- 8410-01-187-96[illegible]
- 8410-01-187-9632
- 8410-01-187-9633
- 8410-01-187-9634
- 8410-01-187-9635
- 8410-01-187-9650
- 8410-01-187-9651
- 8410-01-187-9652
- 8410-01-187-9653
- 8410-01-187-9638
- 8410-01-187-9639
- 8410-01-187-9640
- 8410-01-187-9647
- 8410-01-187-96[illegible]
- 8410-01-187-96[illegible]
- 8410-01-187-9710
- 8410-01-187-9660
- 8410-01-187-9661
- 8410-01-187-9662
- 8410-01-187-9663
- 8410-01-187-9664
- 8410-01-187-9665
- 8410-01-187-9646
- 8410-01-187-9647
- 8410-01-187-9648
- 8410-01-187-9649
- 8410-01-187-9674
- 8410-01-187-9686
- 8410-01-187-9687
- 8410-01-187-9688
- 8410-01-187-9705
- 8410-01-187-9706
- 8410-01-187-9707
- 8410-01-187-9708
- 8410-01-187-9697
- 8410-01-187-9698
- 8410-01-187-9699
- 8410-01-187-9700
- 8410-01-187-9709
- 8410-01-187-9675
- 8410-01-187-9676
- 8410-01-187-9677
- 8410-01-187-9654
- 8410-01-187-9655
- 8410-01-187-9656
- 8410-01-187-9657
- 8410-01-187-9682
- 8410-01-187-9683
- 8410-01-187-9684
- 8410-01-187-9685
- 8410-01-187-9711
- 8410-01-187-9689
- 8410-01-187-9690
- 8410-01-187-9691
- 8410-01-187-9692
- 8410-01-187-9666
- 8410-01-187-9667
- 8410-01-187-9668
- 8410-01-187-9669
- 8410-01-187-9670
- 8410-01-187-9671
- 8410-01-187-9672
- 8410-01-187-9673
- 8410-01-187-9693
- 8410-01-187-9694
- 8410-01-187-9695
- 8410-01-187-9696
- 8410-01-187-9678
- 8410-01-187-9679
- 8410-01-187-9680
- 8410-01-187-9681
- 8410-01-187-9701
- 8410-01-187-9702
- 8410-01-187-9703
- 8410-01-187-9704

Pants, Woman's
- 8410-01-189-9909
- 8410-01-189-9910
- 8410-01-189-9911
- 8410-01-189-9912
- 8410-01-189-9913
- 8410-01-189-9914
- 8410-01-189-9915
- 8410-01-189-9919
- 8410-01-189-9920
- 8410-01-189-9921
- 8410-01-189-9916
- 8410-01-189-9917
- 8410-01-190-9274
- 8410-01-190-9271
- 8410-01-190-9272
- 8410-01-190-9273
- 8410-01-190-9276
- 8410-01-190-9277
- 8410-01-189-9918
- 8410-01-189-9922
- 8410-01-189-9923
- 8410-01-189-9924
- 8410-01-189-9925
- 8410-01-190-4257
- 8410-01-190-9278
- 8410-01-190-9279
- 8410-01-190-9280
- 8410-01-190-9281
- 8410-01-189-9926
- 8410-01-190-9275
- 8410-01-189-9927
- 8410-01-189-9928
- 8410-01-189-9929
- 8410-01-189-9930
- 8410-01-190-9931
- 8410-01-190-9932

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-14832 Filed 6-20-91; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in cash settled short term (two year) U.S. Treasury note futures options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before July 22, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT cash settled short term U.S. Treasury note futures option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254–7303.

SUPPLEMENTAL INFORMATION: In addition to requesting comment on the terms and conditions of the proposed futures option contract, the Division also is requesting comment on the merits of a petition filed by the CBT pursuant to § 33.11 of the Commission's option rules. The petition requests exemptive relief from the trading volume tests for options on futures as set forth in Commission Rule 33.4(a)(5)(iii).

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on June 17, 1991.

Gerald Gay,
Director.

[FR Doc. 91-14767 Filed 6-20-91; 8:45 am]

BILLING CODE 6351-01-M

Commodity Exchange, Inc., Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Availability of the Terms and Conditions of Proposed Commodity Option Contract.

SUMMARY: The Commodity Exchange, Inc. (COMEX or Exchange) has applied for designation as a contract market in five day silver physical options. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before July 22, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the COMEX five day silver option.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254–7303.

SUPPLEMENTAL INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the COMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the COMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington DC 20581, by the specified date.

Issued in Washington, DC on June 17, 1991.

Gerald Gay,
Director.

[FR Doc. 91-14766 Filed 6-20-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet June 25, 1991 from 0900 to 1530, at the Center for Naval Analyses, 4401 Ford Avenue, Arlington, Virginia. This session is closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

For further information concerning this meeting, contact: LT J. E. Williams (OP-213E), Pentagon, room 4D544, Washington, DC 20350, Telephone Number: (703) 697-8887.

Dated: June 19, 1991.

Wayne T. Baucino
Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-14871; Filed 6-20-91; 8:45 a.m.]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as

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required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 22, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;
(2) Title;
(3) Frequency of collection;
(4) The affected public;
(5) Reporting burden; and/or
(6) Recordkeeping burden; and
(7) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: June 17, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Indian Student Eligibility Certification for Formula Grants to Local Education Agencies under the Indian Education Act of 1988.
Frequency: Annually.
Affected Public: Individuals or households; State or local governments.
Reporting Burden:
Responses: 25,000.
Burden Hours: 6,250.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by local education agencies (LEAs) to provide information on a child's eligibility as an Indian to LEAs applying for Indian Education Act formula grants. The Department uses this information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Performance Report for Desegregation of Public Education Programs.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 63.
Burden Hours: 189.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This performance report is required to evaluate the performance of the grantee under the Desegregation of Public Education Programs. The Department uses the reports to monitor compliance with terms and conditions of grant awards.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for Grants Under the Endowment Challenge Grant Program.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 500.
Burden Hours: 1,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational Agencies (SEAs) and non-profit institutions to apply for grants under the Endowment Challenge Grant Program. The Department uses the information to make grant awards.

[FR Doc. 91–14787 Filed 6–20–91; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver Pursuant to Section 207(j) (5), Title 18, United States Code

Section 207(j)(5), title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of section 207(a), title 18, United States Code, where a former employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and it has been determined that the national interest would be served by the participation of the former employee.

It has been established to my satisfaction that Lewis E. Temple, Jr., who has been Director of the Construction, Environment, and Safety Division of the Office of Energy Research since May 1985, has a unique combination of outstanding qualifications in the field of nuclear engineering and in the management of construction projects. I am further satisfied that it will serve the national interest to permit him, in his capacity as Project Director for the Advanced Photon Source (APS), Argonne National Laboratory, to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to management and direction of construction of the APS Project. I am satisfied that these activities are in a technical field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of section 207(a), title 18, United States Code, in consultation with the Director of the Office of Government Ethics, to permit contact by Dr. Temple with employees of the Department of Energy and other Government agencies with respect to management and direction of construction of the APS Project.

Dated: May 28, 1991.

James D. Watkins,

Admiral, U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 91–14842 Filed 6–20–91; 8:45 am]
BILLING CODE 6450–01–M

Financial Assistance to Colorado Center for Environmental Management, Technology/Regulation Integration Project

AGENCY: Rocky Flats Office, DOE.

ACTION: Notice of acceptance of an unsolicited financial assistance application for a grant award.

SUMMARY: Based upon a determination made in accordance with 10 CFR 600.14(e)(1), the Department of Energy, Rocky Flats Office (DOE–RFO) gives notice of its plan to award a five year grant to the Colorado Center for Environmental Management (CCEM) for approximately $7,000,000. The pending award is in response to an unsolicited proposal submitted by CCEM in accordance with the Catalog of Federal Domestic Assistance program listing number 81.103. The purpose of the grant is to support the Technology/Regulation Integration Project to develop and assess alternative ways for achieving regulatory approval and effective citizen participation in the selection and deployment of innovative technological systems for the remediation of hazardous waste sites. The effort will involve several small and full-scale demonstrations in cooperation with local industry to test and evaluate emergent technologies.

FOR FURTHER INFORMATION CONTACT: Mariane Anderson, Contract Specialist, U.S. DOE, Rocky Flats Office, Contracts and Services Division, P.O. Box 928, Golden, CO 80402–0928, Purchase Requisition Number: 34–91RF00117.

Issued at Golden Colorado, June 11, 1991.

Robert M. Nelson, Jr.,

Manager.

[FR Doc. 91–14843 Filed 6–20–91; 8:45 am]
BILLING CODE 6450–01–M

Financial Assistance to the University of Cincinnati

AGENCY: U. S. Department of Energy.

ACTION: Acceptance of an unsolicited proposal application of a grant award with the University of Cincinnati.

TITLE: Low Temperature SO_2 Removal with Solid Sorbents in a Circulating Fluidized Bed Absorber.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.14 (D) and (E), it intends to award a Grant based on unsolicited application submitted by the University of Cincinnati for "Low Temperature SO_2 Removal with Solid Sorbents in a Circulating Fluidized Bed Absorber."

SCOPE: The primary objective of the project is to achieve 70 to 90 percent SO_2 removals at relatively low temperatures in a Circulating Fluidized Bed Absorber (CFBA) using a toroidal nozzle design and by recycling the sorbent. This project will evaluate a CFBA using a calcium oxide (CaO) sorbent which is not extremely effective at low temperatures. However, introducing moisture using the novel nozzle design is believed to increase the reactivity of the CaO and SO_2, thus increasing the SO_2 removal efficiency.

A secondary objective of the proposed work is to obtain sufficient operating data on the toroidal nozzle design to perform a preliminary economic evaluation.

The University of Cincinnati is recognized for its experience in testing flue gas cleanup techniques and currently operates the test facility that will be utilized for this research. The existing facility consists of a gas heating system, flow control system, fluidized bed reactor, sorbent injection system, particle recycle system, gas sampling system, and temperature and pressure monitoring system. As a result, this project would require only construction and installation of the toroidal nozzle.

In accordance with 10 CFR 600.14 (D) and (E), the University of Cincinnati has been selected as a grant recipient. DOE support of this activity will benefit the public by providing increased knowledge of low temperature SO_2 removal from flue gas, a step preceding the transfer of the technology to industry in order to comply with stringent air emission standards. This activity is considered meritorious and is not eligible for financial assistance under a recent, current, or planned solicitation. DOE has determined that a competitive solicitation would be inappropriate.

The term of the grant is for a six-month period at an estimated value of $26,051. There will be no cost-sharing involved in this transaction; financial assistance will be provided by the Federal Government to the University of Cincinnati.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Karen S. Olean, Telephone: AC (412) 892–6202.

Dated: June 11, 1991.

Carroll A. Lambton,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91–14844 Filed 6–20–91; 8:45 am]
BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–32–NG]

Conoco Inc.; Application for Blanket Authorization to Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on May 7, 1991, of an application filed by Conoco Inc. (Conoco) requesting blanket authorization to import and export up to a combined total of 50 billion cubic feet (Bcf) of natural gas, including liquefied natural gas (LNG), over a two-year period beginning with the date of first delivery. In its application, Conoco requested an amendment to its existing authorization contained in DOE/FE Opinion and Order No. 348 (Order 348), which gave blanket authority to Conoco to import from Canada up to 20 Bcf of natural gas over a two-year term that began with the company's first import on November 1, 1990. Should Conoco's new request be authorized, the new order would replace Conoco's existing authority under Order 348.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 22, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7249.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

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SUPPLEMENTARY INFORMATION: Conoco, a Delaware corporation whose principal place of business is in Houston, Texas, intends to import and export the natural gas either for its own account or for the accounts of others from and to any international market, subject to trade restrictions. The terms of each contract would be negotiated in response to market conditions. In addition, Conoco intends to use existing facilities for all imports and exports and states that it will submit quarterly reports detailing each transaction.

The decision on this application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import and export authority. The applicant asserts that imports and exports made under the proposed arrangement will be competitive and otherwise consistent with DOE import and export policy. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Conoco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 17, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-14845 Filed 6-20-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-35-LNG]

Enron Gas Liquids, Inc.; Application to Import Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of application for blanket authorization to import liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on May 14, 1991, of an application filed by Enron Gas Liquids, Inc. (EGLI) requesting blanket authorization to import on a short-term or spot basis up to 200 billion cubic feet (Bcf) (or 200 trillion BTU) of liquefied natural gas (LNG) over a two-year period beginning with the date of first delivery. EGLI intends to use existing U.S. receiving facilities and to import LNG from a variety of international sources. EGLI states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., July 22, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7249.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: EGLI, a wholly owned subsidiary of Enron Corp., is a Delaware corporation with its principal place of business in Houston, Texas. EGLI purchases, sells and imports LNG for resale to purchasers located in the United States. The applicant intends to import the LNG for its own account or for the account of others.

EGLI requests blanket authority to import LNG at each of the four U.S. receiving facilities (Distrigas—Everett, MA; Cove Point—Cove Point, MD; Elba Island—Elba Island, GA; and Lake Charles—Lake Charles, LA) whether or not such receiving facility is presently in operation. In its application, EGLI states that it understands that additional authority may be required from other governmental agencies. EGLI asserts that the import authorization would provide it the flexibility to negotiate numerous transactions, involving various international sources with which trade in natural gas has not been prohibited, under a single license. EGLI proposes to make its imported gas available to purchasers under contract terms that will be market-competitive and that will remain competitive throughout the contract period.

The decision on this import application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable.

The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EGLI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 14, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-14846 Filed 6-20-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-30-NG]

Wes Cana Marketing (U.S.) Inc.; Application for Blanket Authorization to Import and Export Natural Gas

AGENCY: Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 2, 1991, of an application filed by Wes Cana Marketing (U.S.) Inc. (Wes Cana) for blanket authorization to import and export a combined total of up to 75 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year period commencing with the date of first import or export. Although Wes Cana is primarily interested in importing and exporting natural gas from and to Canada, it also seeks authority to import and export natural gas, including LNG, from and to other countries. Wes Cana would import and export the natural gas on its own account and as agent for the accounts of others for sale on a spot market basis. Wes Cana would use existing facilities in transporting the proposed import and export of natural gas.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, July QQ, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy Forrestal Building, room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585 (301) 353-3166.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S.

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Department of Energy Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-0503.

SUPPLEMENTARY INFORMATION: Wes Cana is a U.S. corporation organized under the laws of the State of Delaware with its principal place of business in Calgary, Canada. Wes Cana, a wholly owned subsidiary of Saskatchewan Oil and Gas Corporation, is engaged as a gas marketing company in purchasing and reselling natural gas to various purchasers on a spot market or long term basis. Wes Cana states that, under the proposed authorization, natural gas would be imported and exported pursuant to contracts with terms of up to two years and anticipates that the price would not remain fixed in any of the contracts for a period of more than one year. Wes Cana also states that the price will be determined in arms length negotiations and will reflect the price and availability of competing fuels, including domestic natural gas. Wes Cana asserts that it will notify the DOE of the date of first delivery of natural gas imported or exported and will submit quarterly reports setting forth the details of each transaction.

Wes Cana is currently authorized to import up to 75 Bcf of Canadian gas under DOE Opinion and Order Nos. 138 and 138-A. Wes Cana intends the requested authorization to supersede its existing import authorization and is, therefore, requesting that its current authorization be terminated upon approval of the requested import/export arrangement.

In support of its application, Wes Cana states that the proposed imports will be competitively priced and the proposed exports will not be needed domestically over the course of the authorization. Further, Wes Cana asserts the export/import arrangement would remove artificial trade barriers and contribute to the overall efficiency of the North American gas market.

The application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-27. In reviewing a natural gas import application, the competitiveness of an import in the market served is the primary consideration in determining whether the proposed import arrangement meets the public interest requirements of section 3 of the NGA. In reviewing a natural gas export application, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their on trade arrangements. Parties that may oppose this application should comment in their responses on these matters as they may relate to the requested import or export authority. The applicant asserts that the import and export authority requested would be in the public interest because it would facilitate short-term and spot market transactions and promote competition in the gas marketplace. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316

A copy of Wes Cana's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 17, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-14847 Filed 6-20-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES90-47-001, et al.]

Electric Rate, Small Power Production, and Interlocking Directorate Filings; Upper Peninsula Power Co., et al.

June 14, 1991.

Take notice that the following filings have been made with the Commission:

1. Upper Peninsula Power Company

[Docket No. ES90-47-001]

Take notice that on May 30, 1991, Upper Peninsula Power Company ("Applicant") filed an amendment with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to increase the authorized amount of unsecured promissory notes from $12 million to $18 million for the period August 1, 1991 through November 30, 1991 and to permit the proceeds to be used to redeem 23,700 shares of the Company's Cumulative Preferred Stock, 8% Series. All other terms and conditions as approved are to remain unchanged.

Comment date: June 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. SEMASS Partnership

[Docket No. ES91-38-000]

Take notice that on June 14, 1991, SEMASS Partnership ("SEMASS") filed an application with the Federal Energy Regulatory Commission pursuant to 204 of the Federal Power Act seeking authority (1) to assume an obligation, with respect of up to $340 million in Resource Recovery Revenue Bonds to be issued by the Massachusetts Industrial Finance Agency, under a Loan, Security and Trust Agreement between SEMASS, the Massachusetts Industrial Finance Agency and State Street Bank and Trust Company and (2) to reallocate partnership interests among the existing partners of SEMASS in connection with additional capital contributions to be made by certain partners of SEMASS in the amount of up to $16 million.

Comment date: June 28, 1991 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14779 Filed 6-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-136-002]

Centra Pipelines Minnesota Inc.; Compliance Filing

June 17, 1991.

Take notice that on May 30, 1991, Centra Pipelines Minnesota, Inc. (Centra Minnesota), filed Second Revised Volume No. 2, Original Sheets Nos. 1 through 31, with a proposed effective date of October 18, 1991, to comply with the Commission's order issued May 15, 1991.

Centra Minnesota states that a copy of the compliance filing has been mailed to Centra Minnesota's two customers and the Minnesota Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14788 Filed 6-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR91-1-000]

Conoco Inc., Kerr-McGee Refining Corp., and Texaco Refining and Market, Inc. v. Williams Pipe Line Co.; Complaint Filed

June 17, 1991.

Take notice that on May 17, 1991, Conoco Inc., Kerr-McGee Refining Corporation, and Texaco Refining and Marketing, Inc. filed a Complaint pursuant to sections 9 and 13(1) of the Interstate Commerce Act against Williams Pipe Line Company in the above referenced docket.

The complaint requests the Commission, pursuant to sections 9 and 13(1) of the Interstate Commerce Act (ICA), to: (1) Find and declare that Williams' implementation of non-tariff charges is in violation of sections 1(5), 3(1), and 6 of the ICA and section 310.10 of the Commission's regulations; (2) order that Williams cease from further levying such non-tariff charges; (3) award reparations to the shippers equal to the total amount of the charges paid by each shipper, plus interest calculated in accordance with the Commission's regulations; (4) impose sanctions on Williams for violating section 6 of the ICA; and, (5) grant such additional relief as it deems appropriate.

Any person desiring to be heard or to protest the instant complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 17, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before July 17, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14780 Filed 6-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10564-001 Alabama]

Edwards Energy Systems, Inc; Surrender of Preliminary Permit

June 17, 1991.

Take notice that Edwards Energy Systems, Inc., permittee for the Claiborne Hydropower Project located on the Albama River in Monroe County, Alabama, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 22, 1988, and would have expired on October 31, 1991. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on May 9, 1991, and the preliminary permit for Project No. 10564 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided

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for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14782 Filed 6-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. ES91-36-000]

Application; Golden Spread Electric Cooperative, Inc.

June 17, 1991.

Take notice that on June 11, 1991, Golden Spread Electric Cooperative, Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act seeking authorization to issue not more than $30 million of short-term securities on or before July 31, 1993, with a final maturity date no later than July 31, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR and 385.214). All such motions or protests should be filed on or before July 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14786 Filed 6-20-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-3967-2]

Preliminary Draft List of Categories and Subcategories Under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of preliminary draft list of categories and Subcategories and Request for Information.

SUMMARY: This notice announces the availability of a preliminary draft of the list of categories and subcategories required under Section 112(c) of the Clean Air Act (CAA) as amended in 1990. The CAA requires that "a list of all categories and subcategories" (hereafter collectively referred to as categories) "of major sources and area sources * * *" (listed under section 112(c)(3)) of hazardous air pollutants (HAP's) be published within 1 year of enactment of the CAA Amendments of 1990. This notice provides the public with an opportunity to comment on the preliminary draft list of categories prior to the publication of the final list (scheduled to be published in November of 1991). Facilities within these categories of sources are potentially subject to emissions standards under section 112 of the CAA. The schedule for promulgation of these standards will be published within 2 years of enactment of the CAA Amendments of 1990. The identification of categories and subcategories of major sources in this preliminary draft listing has no bearing on whether any particular facility or grouping is a "source" for purpose of the early reductions program under Section 112(i)(5), or a "major source" for purposes of Section 112(a)(1). The term "major source" is defined under Section 112(a)(1) in such a way that it refers to the emissions occurring from a contiguous area under common control. By contrast, EPA must identify "categories and subcategories" of major and area source generically for the purposes of today's preliminary draft list and standard setting under Section 112(d). In most cases, this identification will be made as product or process oriented groupings which will not affect the definition of "source" for purposes of either the early reductions under section 112(i)(5) or the definition of a "major source" under section 112(a)(1). The definition of source in the early reduction program is described in Section II.B. of the Proposed Regulations Governing Compliance Extensions for Early Reduction of Hazardous Air Pollutants (June 13, 1991, 56 FR 27338). Today's draft list is not the final list that EPA will use as the basis for publishing the scheduling for promulgation of emission standards in November 1992.

The publication of a list of categories of major sources and area sources enables potentially affected sources, the public, and regulatory agencies to understand the scope of the HAP control program. Through this notice, the Agency solicits comment on the preliminary draft list of categories of major and area sources subject to standards. The Agency also solicits comment on the procedures used to develop this list, and alternative interpretations of the subject legislation.

DATES: *Comments.* Written comments must be received on or before July 21, 1991. Requests for extensions to this comment period are not anticipated to be granted, due to the limited time available for list publication.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attn: Docket No. A-90-49, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket. Docket No. A-90-49, containing supporting information used in developing the notice, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Air Docket, room M-1500, First Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Robert E. Rosensteel, Chief, Chemical Manufacturing Section, Chemicals and Petroleum Branch (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-5608; (FTS) 629-5608 concerning sources emitting organic pollutants, and Kenneth R. Durkee, Chief, Standards Documentation Section, Industrial Studies Branch (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-5425; (FTS) 629-5425, concerning sources emitting inorganic pollutants. For general comments about this notice contact Tom Lahre, Pollutant Assessment Branch (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-5668; (FTS) 629-5668.

SUPPLEMENTARY INFORMATION:

I. Background

The CAA Amendments of 1990 [Pub. L. 101-549] require, under the revisions to section 112, that EPA evaluate and control emissions of HAP's. The control of HAP's is achieved through promulgation of emission standards under sections 112(d) and 112(f) for categories of sources that emit HAP's. This notice outlines the procedures used to identify a list of categories of major sources and area sources of HAP's, and includes a preliminary draft list of such categories. The term "major source" as defined in paragraph 112(a)(1) to mean "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." The EPA may establish a lesser quantity of pollutant emissions for a major source than that specified in the previous sentence, based on various characteristics of the pollutant including potency, persistence, potential for bioaccumulation, or other relevant factors. The EPA may establish different criteria for a major source in the case of radionuclides. The term "area source," as defined in section 112(a)(2), means any stationary source of HAP's that is not a major source. Section 112(c) requires EPA to list "categories of major sources and area sources." Because most groupings of sources are based on process or product-oriented criteria, they may include a mix of both major and area sources. The distinction between categories of major and area sources is discussed in more detail below.

Section 112(b) of Title III includes a list of chemicals, compounds, or groups of chemicals. Section 112(c)(1) requires EPA to publish, within 1 year of enactment of the CAA amendments of 1990, a list that includes all categories of major sources of these HAP's. Section 112(c)(3) requires EPA to include on this list each category of area sources that EPA finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under section 112.

There are additional specific requirements for listing categories under section 112(c)(3) and section 112(c)(6). Section 112(c)(3) refers to the area sources strategy under section 112(k). This strategy requires, within 5 years of enactment of the CAA amendments, listing of categories of area sources which address 90 percent of the aggregate emissions of 30 HAP's. Section 112(c)(6) requires the listing of categories of sources which address 90 percent of the aggregate emissions of seven specific pollutants within 5 years of enactment of the CAA amendments. Although some of the categories that will be identified under these sections are probably already included on today's preliminary draft list, there are likely to be others which have not yet been identified due to a lack of data. The publication of today's draft list does not constitute completion of the requirements under section 112(c)(3) or section 112(c)(6).

Specific requirements are also provided for listing research facilities (section 112(c)(7)), boat manufacturing (section 112(c)(8)), and oil and gas wells and pipeline facilities (section 112(n)(4)).

The EPA must periodically, but no less often than every 8 years, in response to public comment or new information, revise, if appropriate, the list of categories. The EPA may at any time designate additional categories of HAP sources according to the same criteria as were applied to the initial list.

Under section 112(c)(9), the EPA may delete a category from the list, based on petition of any person or on the Administrator's own motion, whenever certain determinations are made. In the case of HAP's emitted by sources in listed categories that may result in cancer in humans, the EPA may delete a category if it is determined that no source in the category (or group of sources in the case of area sources) emits such HAP's in quantities which may cause a lifetime risk of cancer greater than 1 in 1 million to the individual in the population who is most exposed to such emissions. In the case of HAP's emitted by sources in the category that may result in adverse health effects in humans other than cancer or adverse environmental effects, the EPA may delete a category if no source in the category (or group of sources in the case of area sources) emits such HAP's in quantities that exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or group of sources in the case of area sources). The EPA shall grant or deny a petition to delete a category within 1 year after the petition is filed. Procedures for such petitions will be addressed in a separate **Federal Register** notice.

Section 112(c)(2) requires establishment of emission standards under section 112(d) for every category of sources included on the final list to be published under section 112(c)(1). The emission standards written for the categories listed under section 112(c) shall be promulgated according to the schedule for standards set forth in section 112(e). Section 112(e) requires EPA to determine the priorities for promulgating emission standards for listed categories under section 112(d). In determining such priorities, EPA shall consider the known or anticipated adverse effects of the emitted pollutants on health and the environment; the quantity and location of emissions; and the efficiency of grouping categories according to the pollutants emitted, or the processes or technologies used. A schedule establishing a date for promulgation of emission standards for each category of HAP sources is to be published in a separate **Federal Register** notice, after an opportunity for comment, within 24 months of enactment (i.e., by November 15, 1992).

A. Discussion of Major Issues

1. Categories and Subcategories: Section 112(d)(1) states that in establishing emission standards that EPA "may distinguish among classes, types and sizes of sources within a category or subcategory." The terms "category" and "subcategory" are not defined under section 112. The EPA has not distinguished categories from subcategories in today's preliminary draft list. Table 1, which is the preliminary draft list of categories, is arranged in large groups of industries. For some of these industry groupings, EPA has more data available to facilitate the identification of categories. For example, the air toxics emissions from the industry group identified as "Production of Synthetic Organic Chemicals" have been studied extensively and, therefore, many categories within this group have been identified. In this case, it may be useful to define the industry group as a category and to define all of the categories within this group as subcategories. For other industry groups, however, not as much is known about the processes involved and the resultant air toxics emissions. It is likely that further subdivision of many of the groups for which there is less information will be recognized as more data becomes available.

The issue of defining categories and subcategories is important in the development of the schedule of standards required under section 112(e). Section 112(e)(1) outlines a schedule for the promulgation of emission standards in groups that are to be promulgated within 2, 4, 7, and 10 years after enactment of the CAA amendments. This schedule is to be based on the "categories of sources initially listed for regulation pursuant to subsection (c)(1)." Today's notice announces the preliminary draft of the list of categories. The definitive list, which will form the basis for the schedule for standards, is scheduled to be published in November of 1991 after opportunity for comment for today's preliminary draft list. Once the definitive list is published, however, Section 112(e)(1) requires that the categories of sources "initially" listed are to be used to develop the schedule for promulgation of emission standards. This means that if the categories on this list are

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subsequently divided into subcategories, all of these subcategories would have to be regulated on the same schedule (i.e., within either 2, 4, 7 or 10 years after enactment of the CAA amendments). If EPA intends to regulate various subcategories of a category at different times (e.g., regulate one subcategory within 4 years but other subcategories in the same category within 7 years), the subcategories need to be identified separately on the list of categories and subcategories to be published in November, 1991.[1] Due to a lack of information regarding characterization of industries, today's preliminary draft list may include categories which encompass multiple subcategories. The EPA is soliciting comment on the criteria for defining categories and subcategories. In addition, EPA is requesting information which could be used for the definition of subcategories for the groups of sources on today's preliminary draft list.

2. Listing of Categories of Area Sources: As noted above, section 112(c)(3) requires that EPA list categories of area sources that present "a threat of adverse effects to human health or the environment" warranting regulation under section 112. Categories of area sources may also be added to the list in satisfaction of the requirements of section 112(k)(3)(B) (area source strategy) or section 112(c)(6) (sources of specific pollutants). The showing required for listing categories of area sources under section 112(c)(3) would not apply to the additional requirements under these provisions.

The draft list of source categories which accompanies today's notice does not distinguish between categories or major and area sources and does not present specific findings in support of the presence of categories of area sources on the list. As described in the following section, the information used to develop this list is not sufficient to adequately determine whether individual facilities within listed categories exceed the major source definition (i.e., emission of 10 tons per year for one listed pollutant or 25 tons per year for a combination of listed pollutants or a lesser quantity for highly toxic pollutants). Although additional data are being gathered as well as solicited through this notice, the EPA anticipates that major information gaps will continue to exist by the November 15, 1991 statutory deadline for publication of the list of source categories. Several approaches are under consideration for addressing area source categories in the November listing. These include:

a. Constrain the initial list to categories of major sources and those categories of area sources that are sufficiently well characterized to permit findings of potential adverse effects threat. Additional categories of area sources would be subsequently added to the list on the basis of further study and a finding of potential adverse effects. Such a finding could be made at any time prior to or at the proposal of a relevant emission standard.

An example of a well characterized category which is composed of a majority of area sources is commercial ethylene oxide sterilization. Although there are some major sources within this category, the majority of the sources are, under the definition in the CAA amendments, area sources. The EPA has evaluated this category for regulation development for several years and has collected substantial information on the emissions, potential health impacts and control techniques available for commercial ethylene oxide sterilizers. Under this approach, the data available for commercial ethylene oxide sterilization would likely be sufficient to make the determination to include this category on the list, however, the nature of the specific finding necessary for listing would need to be defined (i.e., the data necessary to indicate the threat of adverse health effects). Although the ethylene oxide sterilization category provides an example of a well characterized category composed of mainly area sources, the amount of detailed information which exits for this category is not intended to represent the minimum necessary to make an adverse effects finding to support the listing of categories of area sources.

b. Make an interim finding that all categories of area sources are candidates for listing by virtue of their emissions of listed hazardous air pollutants. Remove any categories determined to be inappropriately listed through the source category deletion provisions in section 112(c)(9) as outlined previously.

Under this approach, all categories included in the November listing, whether composed of major or area sources, would be subject to emissions standards under section 112 unless deleted from the list prior to proposal of a relevant standard. The risk-based findings for deletion from the list (i.e., all facilities in the category pose lifetime cancer risk of less than 1 in 1 million for the most exposed individual and have a level of emissions which protects against other health and environmental effects with an ample margin of safety) would be operative for such deletions.

c. Develop a method for making the required finding for listing categories of area sources that is commensurate with the limitations of available data and apply the method comprehensively in the November publication. Approaches could include: evaluating the magnitude and nature of available data on constituent emissions, constructing a hazard or relative toxicity ranking of the pollutants emitted, or some combination of the above.

This approach would involve the development and application of criteria to support a finding of potential adverse effects required for the listing of categories of area sources. While a similar finding would also be needed for Approach a, under this approach the finding would be applied to all identified categories of area sources prior to the November publication of the list. Such a finding would be based on the limited data available supplemented by public comments prior to November. For example, if the finding were based, in part, on the magnitude of emissions of listed pollutants, the EPA would attempt to estimate the emissions for all identified categories of area sources in advance of the November publication of the list. In comparison to Approach a, the finding required for listing categories of area sources under this approach would likely be less rigorous given the time constraint of the November publication deadline. This approach, however, would result in a more comprehensive initial list than the approach envisioned under Approach a.

The EPA requests comment on these or alternative approaches to the incorporation of area sources in the category list. The EPA also requests comments on alternative methods for making the "threat of adverse effects" finding for listing categories of area sources under section 112(c)(3).

3. Utility and Solid Waste Incineration Categories: The listing of some categories of HAP-emitting sources is affected by other sections of the CAA. The regulation of electric utility steam generating units (above 25 megawatts electrical output, hereafter referred to as categories of utilities) under section 112 is dependent on the outcome of a study of this industry mandated under section 112(n)(1). The Agency is contemplating two alternatives for the listing of categories of utilities. The first alternative is to omit categories of utilities from the list until such time as the conclusions of the section 112(n)(1) study indicate that these categories warrant regulation under section 112. This alternative, however, may appear inequitable because it would preserve the listing and regulation of other (potentially smaller) categories of non-utility boilers (e.g., industrial boilers) while omitting, at least until the completion of the section 112(n)(1) study, utility boilers. The second alternative is to include categories of utilities on the list until such time as the conclusions of the section 112(n)(1) study indicate that these categories do not warrant regulation under section 112. While this alternative would appear to be more equitable, it would require an action to delete the utility categories from the list if the section 112(n)(1) study concludes that these categories do not warrant regulation under section 112. Such a deletion action would be subject to the risk-based findings required under section 112(c)(9) (outlined above). Categories of utility boilers above 25 megawatts of electrical output have been omitted from today's preliminary draft list. The Agency is soliciting comment on the appropriate alternative to employ for the listing of categories of utilities.

An additional group of categories on the list which are affected by another CAA section are the solid waste incineration categories. Municipal waste combustors, medical waste incinerators as well as commercial and industrial waste incinerators are specifically addressed under the authority of section 129. The categories included on the list developed under section 112(c) are subject to regulation under section 112. Solid waste incineration categories subject to regulation under section 129 should not be listed under section 112(c). Municipal waste combustors, medical waste incinerators and general industrial solid waste incineration were omitted from today's preliminary draft list because these categories are specifically addressed under section 129. Due to a lack of data, however, there may be other categories on today's preliminary draft list which could be defined as categories of commercial or industrial solid waste incineration. The Agency is soliciting information on listed categories which are engaged in commercial or industrial incineration of solid waste as defined under section 129.

[1] Nothing in this notice or list shall limit EPA's authority to promulgate emission standards for an entire facility or portion thereof, regardless of the number of source categories and subcategories contained in that facility.

B. Identification of Categories

The preliminary draft list of categories is presented in Table 1. The section below describes the approach used for the development of today's preliminary draft list as well as the rationale for the use of this approach.

The general approach employed to identify categories of major and area sources was to identify all such categories associated with the emission of one or more of the listed HAP's. The basis for this approach originated from a review of the available data sources for this activity. There is no single comprehensive and complete source of information regarding the emissions of HAP's from industries in the United States. In addition, most of the data sources provide information covering only a limited range of industrial sectors (e.g., manufacturing). Some of these data sources are not specific to the listed air toxics or do not give source specific information regarding emission of HAP's. Given the relative paucity of available data and the need to be comprehensive in identification of categories of HAP-emitting sources, the approach employed herein was to identify and include in the preliminary draft list any category associated with the emission of one or more HAP's. The information sources available for this activity do not, in many cases, support a further breakdown of this list and, thus, today's notice does not distinguish between categories of major and area sources. In addition, for many of the industries identified, there were insufficient data to distinguish source categories from subcategories. It is envisioned that such refinements will be made as the EPA learns more about the listed categories either in the regulatory development process or through information submitted from the public.

Several sources of information were used to identify categories of sources emitting HAP's. A document entitled "Documentation for Developing the Source Category List" which catalogs the literature source(s) used to identify specific categories is included in the docket. The date sources used are described below:

1. The National Emissions Data System (NEDS) is an EPA data base of reported emissions from sources emitting more than 100 tons per year of criteria pollutants (U.S. EPA, 1988), including volatile organic compounds (VOC) and particulate matter (PM). (NOTE: In 1990, the NEDS system was replaced with a new EPA software system, the Facility Subsystem of the Aerometric Information Retrieval System (AFS). The 1985 NEDS data have been converted to AFS.) The sources included in NEDS are classified by unique identifiers, termed source classification codes. Speciation profiles have been assigned to each of the source classification codes. These speciation profiles are an estimate of the chemical species breakdown of the total VOC or PM constituents for a category. Species profiles from EPA's Air Emissions Species Manual were applied to the VOC and PM emission estimates in NEDS in order to identify if HAP emissions are associated with a particular source category. Species profiles offer a means of estimating the weight percent of specific pollutants in an emission stream based on knowledge of the type of source category and quantity of VOC or PM emissions. Species profiles have been developed by EPA for a number of purposes including the preparation of air toxics and acid precipitation emission inventories, receptor modeling and ozone strategy development. EPA has published species factors with assigned data quality rankings ranging from A to E. An "A" quality ranking indicates the highest quality profile, based on a composite of several tests and accepted analytical techniques, and can be considered representative of the total population of sources within a category. Conversely, an "E" quality ranking indicates the lowest quality profile, based on engineering calculations from only one source or perhaps simply based on engineering judgement, and may not be considered representative of the total population of sources within a category. EPA, in preparing today's draft source category list, using the NEDS data, only employed species profiles having data quality rankings of A, B, C and D. The use of profiles with a ranking of E was not considered appropriate because of the extreme uncertainty of the applicability of these profiles, even to a single source within a source category. Profiles with a quality ranking of D are based on measured emissions from a single source or engineering calculations from more than one source. The use of profiles ranked D and higher was considered appropriate because EPA believes a profile need only be representative of one or several sources within a category in order to qualify that source category for inclusion on today's draft list. EPA requests comment on this approach.

There are several limitations to the use of the NEDS estimates and speciation factors to identify categories of emission sources. First, States are only required to report data for sources emitting more than 100 tons per year of a criteria pollutant. Second, not all categories have been identified within the NEDS, especially many of the categories that produce or use organic chemicals. The NEDS emission profiles

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generally were developed to aid modeling of criteria pollutants, not as a basis for a toxic pollutant inventory. Third, there is a lack of measured emissions data for many of the pollutant profiles listed in NEDS. For these reasons, other data sources were accessed to identify additional categories.

2. Categories of the synthetic organic chemical manufacturing industry (SOCMI) were identified from literature describing SOCMI reactants and products. A SOCMI category was listed if it either manufactured a chemical on the list of HAP's or if it used one or more of the listed HAP's to produce another chemical.

3. Published production and consumption data for organic chemicals were used to identify organic chemical end user processes emitting HAP's. There are a total of five general category groupings for which such data were used: foam blowing processes, process solvent use, polymerization processes, pesticide production, and pharmaceutical production.

Production and consumption data were obtained for each chemical from readily available literature. Each end use of a chemical was identified as a category.

4. The EPA's Toxic Release Inventory System (TRIS) was a fourth source that was used to identify HAP emitters. The TRIS data base contains emissions data reported by individual industrial facilities as required under section 313 of the Emergency Planning and Community Right-to-know Act of 1986. Emissions data in TRIS are reported on a plant-wide basis. Standard Industrial Classification Codes are reported in TRIS but the entries are usually not specific enough to identify categories of sources. For this reason it is difficult to use the TRIS data base for identifying categories, or to determine where there is overlap between the TRIS data base and the methods described above. The TRIS data base did, however, identify plants emitting listed pollutants not identified through the methods described above. Where this was the case, a general "TRIS" category and the pollutant name was added to the list. Further work will be needed to identify the specific categories involved.

5. The list of categories developed by using the several data sources described above was augmented by reviewing existing studies by the EPA Office of Air Quality Planning and Standards. A major portion of this effort consisted of reviewing data developed in support of previous Federal Register notices describing previous section 112 regulatory decisions. For the most part, the methods described above had already identified most of the categories. However, in some cases additional categories were identified from these references and were added to the list.

II. Request for Comment

The EPA requests comment in the following areas:

1. Comment is requested on the appropriate distinctions EPA should make between categories and subcategories. In addition, information is requested for the division of listed groups of sources into categories and subcategories. All informaton supporting the definition of categories and subcategories should be accompanied by adequate supporting documentation.

2. Comment is requested on the appropriate approach to employ for the listing of categories of area sources and whether any source categories on the preliminary draft list are composed solely of area sources. The Agency also solitics comments on the specific findings required to fulfill the criteria for listing categories of area sources under section 112(c)(3) (i.e., threat of adverse effects to health or the environment).

3. Comment is requested on the scope and completeness of the preliminary draft of categories. Specifically, comments are requested on any additional or omitted categories or additional information about the categories on the preliminary draft list. All comments supporting the addition or removal of categories should be accompanied by adequate supporting information.

4. Comment is requested on the use of data bases noted above in identifying categories of sources as well as any additional data bases which could be used for this purpose. Comment is requested on categories and subcategories of sources included based on speciation profiles having a relatively poor quality ranking, as itemized and discussed in Table 1.

5. Comment is requested on the appropriate alternative for listing electric utility steam generating units.

6. Information is requested for the identification of categories engaged in commercial or industrial solid waste incineration as defined under Section 129.

III. Miscellaneous

Executive Order 12291 requires EPA to determine whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements. This notice was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and written EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980.

Dated: May 31, 1991.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

Table 1—Preliminary Draft List of Categories of Major and Area Sources of Hazardous Air Pollutants

Listed below are the categories of major and area sources associated with emission of one or more listed HAP's. For convenience, the list is organized by major industry groupings (e.g., polymers and resins production). The miscellaneous grouping contains categories which are not part of the other listed industry groups. The order of the categories within each industry group is based on the data bases used to develop this list not on their regulatory priority. Nothing in this notice or list shall limit EPA's ability to promulgate emission standards for an entire facility or portion thereof, regardless of the number of source categories and subcategories contained in that facility. A reference and a list of the HAP's associated with each category is included in the docket.

Industry Group—Fuel Combustion

Category Name

Industrial External Combustion Boilers
Institutional External Combustion Boilers
External Combustion Space Heaters
Industrial Electric Generation Turbines
Industrial Reciprocating IC Engines
Commercial/Institutional Turbines
Commercial Reciprocating IC Engines
Test Engine Aircraft
Test Engines—Turbine *
Test Engines—Reciprocating
Process Heaters
Secondary Metals Process Heaters
Petroleum Industry Process Heaters
Oil and Gas Steam Generation
Industrial In-Situ Fuel Use
Prescribed Burning
Residential Boilers
Residential Wood Combustion—Fireplaces
Residential Wood Combustion—Woodstoves

Industry Group—Metallurgical Industry: Nonferrous Metals

Category Name

Aluminum Production *
Primary Lead Smelting
Primary Metals—Miscellaneous*
Secondary Aluminum*
Secondary Copper*

Industry Group—Metallurgical Industry: Nonferrous Metals

Category Name

Battery Manufacturer: Non-Lead Types
Cadmium Refining
Lead Acid Battery Manufacturing
Non-Ferrous Alloys Production
Primary Copper Smelters
Secondary Metals—Miscellaneous
Zinc Smelting

Industry Group—Metallurgical Industry: Ferrous Metals

Category Name

Ferroalloys Production
Iron & Steel Manufacturing
Gray Iron Foundries
Steel Foundry
Coke by-Product Plants
Coke Ovens
Metal Shredding (Recycling)
Steel Pickling

Industry Group—Mineral Products Processing and Use

Category Name

Taconite Iron ore Processing*
Asphalt Concrete Manufacture
Brick Manufacturing
Cement Kilns*
Glass Manufacture*
Stone Quarries
Mining Operation—Sand/Gravel*
Metal Pipe Coating Asphalt/Coal Tar*
Asbestos Fabricating
Asbestos Manufacturing
Asbestos Milling
Asbestos Removal: Demolitions
Asbestos Removal: Renovations
Asbestos Waste Disposal: Demolitions
Asbestos Waste Disposal: Renovations
Construction: Spraying and Insulation
Asphalt Paving and Roofing Operations
Asphalt Processing
Automotive Transmission Plates Manufacturing
Brake Parts Manufacturing
Ceiling Tile Manufacturing
Friction Material Manufacturing
Mineral Dryers/Calciners
Mineral Wool Production
Ore Flotation
Refractories Production

Industry Group—Mineral Products Processing and Use

Talc Manufacturing
Vermiculite Manufacturing
Wool Fiberglass Manufacturing

Industry Group—Petroleum Refineries

Category Name

Petroleum Refining

Industry Group—Petroleum and Gasoline Production and Marketing

Category Name

Oil and Gas Production
Gasoline/Petroleum Storage
Petroleum Marketing (With Bulk Terminals and Plants)
Manganese Fuel Additives
Natural Gas Storage/Transmission
Oil Shale Retorting

Industry Group—Surface Coating Processes

Category Name

Fabric Printing
Surface Coating Operations—General Solvent Uses
Fabric Coating*
Paper Coating*
Large Appliance*
Magnet Wire*
Auto and Light Duty Truck
Metal Can*
Metal Coil*
Wood Furniture*
Metal Furniture*
Flat Wood Products*
Plastic Part*
Large Ship*
Large Aircraft*
Printing/Publishing
Architectural
Magnetic Tapes

Industry Group—Waste Treatment and Disposal

Category Name

Solid Waste Disposal-Open Burning
Sewage Sludge Incineration*
Municipal Landfills*
Groundwater Cleaning
Hazardous Waste Incineration
Tire Burning
Tire Pyrolysis
Cooling Water Chlorination-Steam Electric Generators
Wastewater Treatment Systems
Water Treatment Purification
Water Treatment-Boilers

Industry Group—Agricultural Chemicals Production and Use

Category Name

2,4-D Salts and Esters Production
4,6-Dinitro-O-Cresol Production
4-Chloro-2-methylphenoxyacetic Acid Production
Baygon (tm) Production
Captafol (tm) Production
Captan (tm) Production
Carbamate Insecticides Production
Chlorthalonil Production
Dacthal (tm) Production
Dichlorodiphenyltrichloroethane Production
Fumigation Use
Grain Fumigation Production
Metribuzin Production
Parathion Use
Pentachloronitrobenzene Production
Pentachlorophenol Production
R-11 (Butadiene Furfural-Cotrimer) Production
Sodium Pentachlorophenate Manufacture
Soil Fumigant Use
Space Fumigant Use
Substituted Phenyl Ureas Production
Thiocarbamates Production
Tordon Acid Production

Industry Group—Fibers Production Processes

Category Name

Acrylic Fibers/Modacrylic Fibers
Nylon Fibers
Rayon
Spandex
Triacetate Fibers

Industry Group—Food and Agriculture Industry

Category Name

Bakers Yeast Manufacturer
Coffee Roasting
Cotton Ginning
Prepared Food Manufacturing

Industry Group—Pharmaceutical Production Processes

Category Name

Pharmaceuticals Production

Industry Group—Polymers and Resins Production

Category Name

Acetal Resins Production
Acrylonitrile-Butadiene-Styrene/Styrene-Acrylonitrile
Alkyd Resins Production
Butyl Rubber Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers
Epichlorohydrin Elastomers
Epoxy Resins
Foamed Plastics
Formaldehyde Resins Production
Hypalon (tm) Production
Maleic Copolymers Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene

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Methyl Methalcrylate-Butadiene Styrene Terpolymers
Methylcellulose Production
Neoprene Production
Nitrile Butadiene Rubber Production
Nylon Plastics Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Plastics
Polyester Resins Production
Polyether Polyols Production
Polyethylene Terephthalate Production
Polymerization of Vinylidene Chloride
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polyurethane Foam
Polyurethane Production
Polyvinyl Acetate Emulsions
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastics
Styrene Butadiene Rubber and Latex Production

Industry Group—Production and Use of Inorganic Chemicals

Category Name

Aluminum Chloride
Aluminum Fluoride
Ammonium Phosphates
Ammonium Sulfate
Calcium Oxide Production
Carbon Black
Charcoal
Chemical Intermediate
Chlorine
Chromium Chemicals Manufacturer
Cyanuric Chloride
Detergent
Fertilizer Formulation and Use

Industry Group—Production and Use of Inorganic Chemicals

Category Name

Fluorides
Hydrochloric acid
Hydrogen cyanide
Hydrogen fluoride
Isopropanolamines
Manganese chemicals
Phosphate fertilizers
Phosphoric acid
Phosphorus pentasulfide production
Phosphorus production
Phosphorus trichloride/oxychloride production
Quaternary ammonium compounds production
Rocket engine fuel
Sodium cyanide production
Uranium hexafluoride production

Industry Group—Production of Synthetic Organic Chemicals

Category Name

Acenaphthene production
Acetaldehyde production
Acetaldol production
Acetamide production
Acetanilide production
Acetic acid production
Acetic anhydride production
Acetoacetanilide production
Acetone cyanohydrin production
Acetone production
Acetonitrile production
Acetophenone production
Acetyl chloride production
Acrolein production
Acrylamide production
Acrylic acid production
Acrylonitrile production
Adiponitrile production
Alizarin production
Alkyl anthraquinones production
Alkyl naphthalene sulfonates production
Allyl alcohol production
Allyl chloride production
Allyl cyanide production
Aminophenol (p-isomer) production
Aminophenol sulfonic acid (o,p-isomer) production
Ammonium thiocyanate production
Aniline hydrochloride production
Aniline production
Anisidine (o-isomer) production
Anthracene production
Anthraquinone production
Azobenzene production
Benzaldehyde production
Benzene production
Benzenedisulfonic acid production
Benzenesulfonic acid production
Benzil production
Benzilic acid production
Benzoic acid production
Benzoin production
Benzophenone production
Benzoyl chloride production
Benzyl acetate production
Benzyl alcohol production
Benzyl benzoate production
Benzyl chloride production
Benzyl dichloride production
Biphenyl production
Bis (chloromethyl) ether production
Bisphenol A production
Bromobenzene production
Bromoform production
Bromonaphthalene production
Butadiene (1,3-isomer) production
Butanediol (1,4-isomer) production
Butyl acrylate (N-isomer) production
Butylamine (N-isomer) production
Butylamine (S-isomer) production
Butylamine (T-isomer) production
Butylbenzyl phthalate production
Butylene glycol (1,3-isomer) production
Butyrolactone production
Caprolactam production
Carbaryl production
Carbazole production
Carbon Disulfide production
Carbon Tetrabromide production
Carbon Tetrachloride production
Carbon Tetraflouride production
Chloral production
Chloroacetic acid production
Chloroacetophenone (2-isomer) production
Chloroaniline (o-isomer) production
Chloroaniline (p-isomer) production
Chlorobenzaldehyde production
Chlorobenzene production
Chlorodifluoroethane production
Chlorodifluoromethane production
Chloroform production
Chloronaphthalene production
Chloronitrobenzene (1,3-isomer) production
Chloronitrobenzene (o-isomer) production
Chloronitrobenzene (p-isomer) production
Chlorophenols production
Chloroprene (2-chloro-1,3-butadinene) production
Chlorosulfonic acid production
Chlorotoluene (m-isomer) production
Chlorotoluene (o-isomer) production
Chlorotoluene (p-isomer) production
Chlorotrifluoromethane production
Chrysene production
Cresol (m-isomer) production
Cresols (o-isomer) production
Cresols (p-isomer) production
Cresols cresylic acid (mixed) production
Crotonaldehyde production
Cumene production
Cumene hydroperoxide production
Cyanamide production
Cyanoacetic acid production
Cyanoformamide production
Cyanogen chloride production
Cyanuric chloride production
Cyclohexane production
Cyclohexanol production
Cyclohexanone production
Cyclohexylamine production
Cyclooctadiene (1,5-isomer) production
Cyclooctadiene production
Decahydronaphthalate production
Di (2-methoxyethyl) phthalate production
Di-o-tolyguanidine production
Diacetoxy-2-butene (1,4-isomer) production
Diallyl phthalate production
Diaminophenol hydrochloride production
Dibromomethane production
Dibutoxyethyl phthalate production
Dichloro-1-butene (3,4-isomer) production
Dichloro-2-butene (1,4-isomer) production
Dichloroaniline (all isomers) production

Dichlorobenzene (1,4-isomer) (p-isomer) production
Dichlorobenzene (m-isomer) production
Dichlorobenzene (o-isomer) production
Dichlorodifluoromethane production
Dichloroethane (1, 2-isomer) production
Dichloroethyl ether production
Dichloroethylene (1, 2-isomer production
Dichlorophenol (2,4-isomer) production
Dichloropropene (1,3-isomer) production
Dichlorotetrafluoroethane production
Dicyanidiamide production
Diethanolamine production
Diethyl phthalate production
Diethylamine production
Diethylaniline (2,6-isomer) production
Diethylene glycol dibutyl ether production
Diethylene glycol diethyl ether production
Diethylene glycol dimethyl ether production
Diethylene glycol monobutyl ether production
Diethylene glycol ether monobutyl acetate production
Diethylene glycol monoethyl ether production
Diethylene glycol monoethyl ether acetate production
Diethylene glycol monohexyl ether production
Diethylene glycol monomethyl ether production
Diethylene glycol monomethyl ehter acetate production
Diethylene glycol production
Diisodecyl phthalate production
Diisooctyl phthalate production
Dimethyl benzidine (3,3-isomer) production
Dimethyl ether-N,N production
Dimethyl formamide (N,N-isomer) production
Dimethyl hydrazine (1,1-isomer) production
Dimethyl phthalate production
Dimethyl sulfate production
Dimethyl terephthalate production
Dimethylamine production
Dimethylaminoethanol (2-isomer) production
Dimethylaniline N, N production
Dinitrobenzenes production
Dinitrophenol (2,4-isomer) production
Dinitrotoluene (2,4-isomer) production
Dioxane production
Dioxilane production
Diphenyl methane production
Diphenyl oxide production
Diphenyl thiourea production
Diphenylamine production
Dipropylene glycol production
Dodecyl benzene (branched) production
Dodecyl phenol (branched) production
Dodecylaniline production
Dodecylbenzene (N-isomer) production
Dodecylphenol production
Epichlorohydrin production
Ethanolamines (all isomers) production
Ethyl acetate production
Ethyl acrylate production
Ethyl benzene production
Ethyl chloride production
Ethyl chloroacetate production
Ethyl orthoformate production
Ethylamine production
Ethylaniline (N-isomer) production
Ethylaniline (O-isomer) production
Ethylcellulose production
Ethylcyanoacetate production
Ethylene dibromide production
Ethylene glycol diacetate production
Ethylene glycol dibutyl ether production
Ethylene glycol diethyl ether production
Ethylene glycol dimethyl ether production
Ethylene glycol monoacetate production
Ethylene glycol monobutyl ether production
Ethylene glycol monobutyl ether acetate production
Ethylene glycol monoethyl ether production
Ethylene glycol monoethyl ether acetate production
Ethylene glycol monohexyl ether production
Ethylene glycol monomethyl ether production
Ethylene glycol monomethyl ether acetate production
Ethylene glycol monooctyl ether production
Ethylene glycol monophenyl ether production
Ethylene glycol monopropyl ether production
Ethylene glycol production
Ethylene imine production
Ethylene oxide production
Ethylenediamine production
Ethylenediamine tetraacetic acid production
Ethylhexyl acrylate (2-isomer) production
Ethylnapthalene (2-isomer) production
Fluoranthene production
Formaldehyde production
Formamide production
Formic acid production
Fumaric acid production
Glutaraldehyde production
Glyceraldehyde production
Glycerol dichlorohydrin production
Glycerol production
Glycine production
Glyoxal production
Guanidine nitrate production
Guanidine production
Hexachlorobenzene production
Hexachlorobutadiene production
Hexachlorocyclopentadiene production
Hexachloroethane production
hexadiene (1,4-isomer) production
Hexamethylenetetramine production
Hexanetriol (1,2,6-isomer) production
Hydrogen cyanide production
Hydroquinone production
Hydroxyadipaldehyde production
Iminodiethanol (2,2-isomer) production
Isobutyl acrylate production
Isobutylene production
Isophorone nitrile production
Isophorone production
Isophthalic acid production
Isopropylphenol production
Lactic acid production
Lead phthalate production
Linear alkylbenzene production
Maleic anhydride production
Maleic hydrazide production
Malic acid production
Metanilic acid production
Methacrylic acid production
Methanol production
Methionine production
Methyl acetate production
Methyl acrylate production
Methyl bromide production
Methyl chloride production
Methyl ethyl ketone production
Methyl formate production
Methyl hydrazine production
Methyl isobutyl carbinol production
Methyl isobutyl ketone production
Methyl isocyanate production
Methyl mercaptan production
Methyl methacrylate production
Methylnapthalenes production
Methyl phenyl carbinol production
Methyl tert butyl ether production
Methylamine production
Methylaniline (N-isomer) production
Methylcyclohexane production
Methylcyclohexanol production
Methylene chloride production
Methylene dianiline (4,4-isomer) production
Methylene diphenyl diisocyanate production
Methylionones (A-isomer) production
Methylpentynol production
Methylstyrene (A-isomer) production
N-vinyl-2-pyrrolidine production
Naphthalene production
Naphthalene sulfonic acid (A-isomer) production
Naphthalene sulfonic acid (B-isomer) production
Naphthol (A-isomer) production
Naphthol (B-isomer)Naphtholsulfonic acid (1-isomer) production
Naphthylamine (1-isomer) production
Naphthylamine (2-isomer) production
Naphthylamine sulfonic acid (1,4-isomer) production
Naphthylamine sulfonic acid (2,1-isomer) production
Nitrilotriacetic acid production
Nitroaniline (M-isomer) production
Nitroaniline (O-isomer) production
Nitroanisole (O-isomer) production
Nitroanisole (P-isomer) production
Nitrobenzene production
Nitronaphthalene (1-isomer) production

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Nitrophenol (4-isomer) (P-isomer) production
Nitrophenol (O-isomer) production
Nitropropane (2-isomer) production
Nitrotoluene (2-isomer) (O-isomer) production
Nitrotoluene (3-isomer) (M-isomer) production
Nitrotoluene (4-isomer) (P-isomer) production
Nitrotoluene production
Nitroxylene production
Nonylbenzene (branched) production
Nonylphenol production
Octene-1 production
Octylphenol production
P-tert-butyl toluene production
Paraformaldehyde production
Paraldehyde production
Pentachlorophenol production
Pentaerythritol production
Perchloroethylene production
Perchloromethyl mercaptan production
Phenanthrene production
Phenetidine (P-isomer) production
Phenol production
Phenolphthalein production
Phenolsulfonic acids (all isomers) production
Phenylenediamine (P-isomer) production
Phyloroglucinol production
Phosgene production
Phthalic acid production
Phthalic anhydride production
Phthalimide production
Phthalonitrile production
Picoline (B-isomer) production
Polyethylene glycol production
Polypropylene glycol production
Propiolactone (B-isomer) production
Propionaldehyde production
Propionic acid production
Propyl chloride production
Propylene carbonate production
Propylene dichloride production
Propylene glycol monomethyl ether production
Propylene glycol production
Propylene oxide production
Pyrene production
Pyridine production
Quinone production
Resorcinol production
Salicylic acid production
Sodium chloroacetate production
Sodium cyanide production
Sodium methooxide production
Sodium phenate production
Stilbene production
Styrene production
Succinic acid production
Succinonitrile production
Sulfanilic acid production
Sulfolane production
Tartaric acid production
Terephthalic acid production
Tert-butylbenzene production
Tetrabromophthalic anhydride production
Tetrachlorobenzene (1,2,4,5-isomer) production
Tetrachloroethane (1,1,2,2-isomer) production
Tetrachlorophthalic anhydride production
Tetraethyl lead production
Tetraethylene glycol production
Tetraethylenepentamine production
Tetrahydronaphthalene production
Tetrahydrophthalic anhydride production
Tetramethylenediamine production
Tetramethylethylenediamine production
Thiocarbanilide production
Thiourea production
Toluene 2,4-diamine production
Toluene 2,4-diisocyanate production
Toluene diisocyanates (mixture) production
Toluene production
Toluenesulfonic acids (all isomers) production
Toluenesulfonyl chloride production
Toluidine (O-isomer) production
Trichloroaniline (2,4,6-isomer) production
Trichlorobenzene (1,2,4-isomer) production
Trichloroethane (1,1,2-isomer) production
Trichloroethylene production
Trichlorofluoromethane production
Trichlorophenol (2,4,5-isomer) production
Trichlorotrifluoroethane (1,2,2 -1,1,2 isomer) production
Triethanolamine production
Triethylamine production
Triethylene glycol dimethyl ether production
Triethylene glycol monomethyl ether production
Triethylene glycol production
Trimethylamine production
Trimethylcyclohexanol production
Trimethylcyclohexanone production
Trimethylcyclohexylamine production
Trimethyloipropane production
Trimethylpentane (2,2,4-isomer) production
Tripropylene glycol production
Vinyl acetate production
Vinyl chloride production
Vinyl toluene production
Vinylcyclohexene (4-isomer) production
Vinylidene chloride production
Xanthates (potassium ethyl xanthate) production
Xylene (M-isomer) production
Xylene sulfonic acid production
Xylenes (mixed) production
Xylenes (O-isomer) production
Xylenes (P-isomer) production
Xylenol production

Industry Group—Miscellaneous

Category Name

Asphalt roofing manufacture
Pulp & paper production
Plywood/particle board manufacture*
Sawmill operations*
Tire production
Dry cleaning (petroleum solvent)
Dry cleaning (chlorinated solvents)—coin operation plant
Dry cleaning (chlorinated solvents)—coin operation self
Dry cleaning (chlorinated solvents)—commercial
Dry cleaning (chlorinated solvents)—industrial
Cold degreasing
Fabric dyeing*
Solvent extraction processes
Acrylic sheeting production
Aerosols production
Anesthetics
Benzyltrimethylammoniumchloride production
Boat building
Butadiene cylinders, lab testing
Butadiene dimers production
Chelating agents production
Chlorinated parafins production
Chloroneb production
Chromium electroplating
Comfort cooling towers
Commercial sterilization facilities
Conveyorized degreasing
Deodorant production
Disinfectants production
Dodecanedioic acid production
Dyes and pigments production
Electric wiring
Electronics manufacture
Ethylidene norborne production
Explosives production
Flame retardant production
Hospital sterilizers
Hydrazine production
Industrial cooling towers
Industrial process aids-enhanced oil recovery
Ion exchange resins production
Jet fuel deicer use
Leather tanning
Lube oil additives
Lub oil dewaxing
Moth repellant
Oil/gas well acidizing
Open top vapor degreasing
Other electroplating
Paint removers use
Paints, coatings & adhesives: manufacture & use (other than surface coating)
Phosphate esters production
Photographic chemicals manufacture
Photographic film processing
Phthalate plasticizers production
Polymerization inhibitors use
Resins catalyst production
Rubber antioxidants production
Rubber cement manufacturing
Rubber chemicals production
Semiconductors manufacturing
Surface active agents production
Symmetrical tetrachloropyridine process
Synthetic tanning agents production
Vinylidene chloride copolymer fabrication
Wood preservation—direct use

Industry Group—Production and Use Activities (TRIS)

Category Name

1,1,2,2,-Tetrachloroethane
1,1-Dimethyl hydrazine
1,2,4-Trichlorobenzene
1,2-Epoxybutane
1,2-Propylenimine
1,3-Dichloropropene
1,3-Propane sultone
1,4-Dioxane
2,4,6-Trichlorophenol
2,4-D Salts and esters
2,4-Dinitrophenol
2,4-Dinitrotoluene
2,4-Toluene diamine
2-Chloroacetophenone
3,3-Dichlorobenzidene
4,4-Methylene bis
4,6-Dinitro-o-cresol, and salts
4-Aminobiphenyl
4-Nitropropane
Acetamide
Acetonitrile
Allyl chloride
Antimony compounds
Benzotrichloride
Beryllium compounds
Bis (2-ethylhexyl) phthalate
Bis (chloromethyl) ether
Calcium cyanamide
Captan
Carbaryl
Carbonyl sulfide
Catechol
Chlorambden
Chlordane
Chlorobenzilate
Chloromethyl methyl ether
Cobalt compounds
Cresols/cresylic acid (isomers and mixture)
Dibenzofurans
Dichloroethyl ether
Dichlorvos
Diethanolamine
Diethyl sulfate
Dimethyl sulfate
Ethyl carbamate
Ethylene imine
Ethylene thiourea
Heptachlor
Hexachlorobenzene
Hexachlorobutadiene
Hexachlorocyclopentadiene
Hexachloroethane
Lindane (all isomers)
Mercury compounds
Methoxychlor
Methyl hydrazine
Methyl iodide
Methyl isocyanate
N,N-Diethylaniline
O-Anisidine
O-Toluidine
P-Phenylenediamine
Pentachloronitrobenzene
Polychlorinated biphenyls (aroclors)
Propoxur
Quinone
Styrene oxide
Titanium tetrachloride
Trifluralin
Vinyl bromide
Vinylidene chloride

* These source categories and subcategories were considered for inclusion on this draft list based, in part, on specialties profiles of relatively poor quality ranking (i.e., they are based on measured data from a single facility or process or from a number of facilities or processes based on engineering calculations).

[FR Doc. 91-14735 Filed 6-20-91; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3967-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 3, 1991 through June 7, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-J65177-MT Rating LO, Turkey Salvage Timber Sale and Road Construction, Implementation, Lewis and Clark National Forest, Judith Ranger District, Judith Basin County, MT.

Summary: EPA has no objection to the Lewis and Clark National Forest's preferred alternative.

ERP No. D-AFS-K65131-AK Rating EC2, Starfish Timber Sale, Implementation Analysis, section 404 Permit, Tongass National Forest, Etolin Island, Stikine Area, AK.

Summary: EPA is concerned about the potential effect of the action alternatives on water quality and fisheries. Additional information is needed on monitoring and mitigation.

ERP No. D-BLM-L67027-ID Rating EC2, Stone Cabin Open Pit Gold and Silver Mine Development and Operation, Plan of Operations Approval and NPDES Permit Issuance, Florida Mountain, Boise District, Owyhee County, ID.

Summary: EPA's environmental concerns are based on the potential for acid or toxic drainage, the adverse water quality effects on a "special resource water", effects on redband trout a Federal Candidate 2 species and wetland impacts. Additional information is needed to better describe the proposed acid mine drainage mitigation, measures to minimize nonpoint source pollution, the effectiveness of mitigation measures in general, and the wetland communities and their functions and values.

ERP No. D-COE-E36168-FL Rating EC2, Central and Southern Florida Project, Flood Control and Canal 51-West End, Control Structures 155A, 380, Pump Station 319 and Levee Construction, Implementation, Palm Beach County, FL.

Summary: EPA has concerns about the potential long-term environmental consequences of this proposal especially accelerated conversion of the remaining natural areas/wetlands. The final document needs to detail the relationship, if any, of this project to other actions and projects.

Final EISs

ERP No. F-AFS-L61165-AK, Frosty Bay Timber Sale, Implementation, Frosty Study Area, Tongass National Forest, Wrangell Ranger District, AK.

Summary: EPA has concerns with the effect of the action alternatives on water quality. EPA believes that the lack of a water quality monitoring plan may make it difficult to ensure that Alaska Water Quality Standards (WQS) are met and will demonstrate that beneficial uses are protected.

ERP No. F-COE-H36143-KS, Cross Creek Flood Protection Plan, section 205 Small Flood Control Project, Implementation, City of Roseville, Shawnee County, KS.

Summary: EPA feels the responses to the comments on the draft EIS are sufficient to satisfy the concerns raised.

ERP No. F-FHW-K40168-CA, I-5 Widening and Interchange Improvements, I-5 at Genesee Avenue, I-805 at Mira Mesa Boulevard and I-5 at Del Mar Heights Road, Funding, section 404 and Bridge Permits, City and County of San Diego, CA.

Summary: EPA requested the FHW to more fully explore the project's air quality conformity before approving the Record of Decision, that additional means to reduce air quality impacts be explored, and that the Record of Decision include commitments to protect wetlands, water quality and air quality as reflected in the final EIS.

ERP No. F-FHW-K40170-CA, I-5/Santa Ana Freeway Widening and Interchanges I-5/CA-22 and I-5/CA-91 Reconstruction, Funding and section 404

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Permit, Cities of Santa Ana, Orange County, CA.

Summary: EPA requested that the FHW not approve the Record of Decision until the project's conformity under the Clean Air Act was ensured. EPA requested that the Record of Decision contain various trip management measures to mitigate the long-term air quality impacts.

ERP No. F-MMS-L02019-AK, 1991 Chukchi Sea Outer Continental Shelf (OCS) Oil and Gas Sale 126, Leasing, AK.

Summary: EPA has environmental concerns with the proposed action due to the uncertainty about the long-term disturbance effects (during development and production) on endangered bowhead whales if leasing is allowed in the spring lead system. Since the final EIS concludes that the lease sale stipulations included in the PNS will not effectively minimize potential impacts on the whales, the most effective mitigation involves the deferral of the 501 blocks in the Point Lay deferral area.

ERP No. F-UAF-K11045-NV, Tonopah Test Range 37th Tactical Fighter Wing Relocation and other Tactical Force Structure Actions at Holloman and Nellis AFB, Nye County, NV.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-UMC-E11022-NC, Camp Lejeune Marine Corps Base Camp, Expansion and Realignment for Additional Training Needs, Implementation, Onslow County, NC.

Summary: EPA believes the procedural aspects of the project will be satisfied as long as a mutually agreeable natural resources plan is completed which incorporates the greater Sandy Run area acquisition and commitments are made by the Marine Corps for its implementation prior to section 404 permit application.

ERP No. F-UMT-E54008-GA, North Atlanta Corridor Transit Improvements, Medical Center Station to North Springs, Funding, Fulton and Dekalb Counties, GA.

Summary: EPA expressed environmental concern regarding wetlands, noise and groundwater impacts.

ERP No. F-USN-K09804-NV, Naval Air Station Fallon Geothermal Resources for Electrical Power Generation, Phase I and II Development, COE section 404 Permit and Right-of-Way Grants, Churchill County, NJ.

Summary: EPA noted that a number of project impacts and mitigation measures were not fully identified in the final EIS due to its programmatic nature. EPA requested that future site-specific documents for geothermal energy developments more fully disclose specific impacts and mitigation.

Dated: June 18, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-14858 Filed 6-20-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3967-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed June 10, 1991 through June 14, 1991 pursuant to 40 CFR 1506.9.

EIS No. 910194, DRAFT EIS, AFS, ID, Accelerated Engelmann Spruce Harvest and Reforestation in Brush Creek, Hendricks Creek, and Copet Creek Salvage Timber Sales, Implementation, McCall Ranger District, Payette National Forest, Adams and Idaho Counties, ID, Due: August 05, 1991, Contact: Linda Fisher (208) 634-1440.

EIS No. 910195, FINAL EIS, SCS, CA, McCoy Wash Watershed, Flood Prevention Plan, Implementation, Section 404 Permit, Riverside County, CA, Due: July 22, 1991, Contact: Pearlie S. Reed (916) 449-2861.

EIS No. 910196, DRAFT EIS, AFS, MS, W. W. Ashe Nursery Integrated Pests Management Plan, Implementation, DeSoto National Forest, Forest County, MS, Due: August 05, 1991, Contact: Sally Campbell (503) 328-7755.

EIS No. 910197, DRAFT EIS, FAA, Terminal Doppler Weather Radar Site Determination Program, Implementation and Funding, Due: August 05, 1991 Contact: Ray C. Weimer, Jr. (202) 267-8420.

EIS No. 910198, FINAL SUPPLEMENT, AFS, AR, Ozark-St. Francis National Forest, Land and Resource Management Plan, Additional Information, Amendment to Alternative D, Implementation, Several Counties, AR, Due: July 22, 1991, Contact: Lynn C. Neff (501) 968-2354.

EIS No. 910199, DRAFT EIS, BLM, NV, Betze Open Pit Gold Mine Expansion, Implementation, Elko and Eureka Counties, NV, Due: July 22, 1991, Contact: Nick Rieger (702) 753-0200.

EIS No. 910200, DRAFT EIS, AFS, ID, Deep Creek and Copper Creek Timber Harvest and Road Construction, Implementation, Council Ranger District, Payette National Forest, Adams County ID, Due: August 12, 1991, Contact: Phil Gilman (208) 634-1304.

EIS No. 910201, DRAFT EIS, FAA, AZ, Phoenix Sky Harbor International Airport Master Plan Update Improvements, Runway 6L/26R Extension, Funding, City of Phoenix, Maricopa County, AZ, Due: August 05, 1991, Contact: David Kessler (213) 297-1534.

EIS No. 910202, FINAL EIS, UAF, NH, ME, Pease Air Force Base (AFB) Disposal and Reuse, Implementation, Portsmouth, Newington, Greenland, Rye, Dover Durhan, Madburg, Rochester, NH and Kittery, Eliot and Berwicks, ME, Due: July 22, 1991, Contact: LTC. Thomas Bartol (714) 382-4891.

EIS No. 910203, DRAFT EIS, FHW, NH, New Hampshire Route 101/51 Corridor Improvement, Epping to Hampton, Funding, COE Section 10 and 404 Permits, U.S. Coast Guard Permit, Rockingham County, NH, Due: August 15, 1991, Contact: William F. O'Donnell (603) 225-1608.

Dated: June 18, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-14857 Filed 6-20-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-81020; FRL-3927-2]

Availability of Updated TSCA Inventory Computer Tapes Including a New Tape Linking PMN Case Numbers and TSCA Numbers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Updated computer tapes identifying substances included in the nonconfidential Toxic Substances Control Act (TSCA) Chemical Substance Inventory (Inventory) as of January 8, 1991, are available for sale from the National Technical Information Service (NTIS). Also available for sale is a new tape containing cross-references between Premanufacture Notifications (PMNs) and Chemical Abstracts Service Registry Numbers (CASRNs) or Accession Numbers (collectively and generally referred to as TSCA Numbers). The new tape includes only those PMNs for which EPA has received a Notice of Commencement (NOCs) of Manufacture/Import. If the specific chemical identity of a PMN substance is not confidential, the PMN case number is associated with a CASRN; if the identity of the PMN substance is confidential, the PMN case number is associated with an Accession Number.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460, (202-554-1404), TTD: (202-554-0551).

SUPPLEMENTARY INFORMATION: Section 8(b) of the Toxic Substances Control Act requires the Administrator of EPA to identify, compile, keep current, and publish a list of chemical substances which are manufactured, imported, or processed for commercial purposes in the United States. In meeting this requirement, EPA issues printed versions of the TSCA Inventory, the first of which appeared in 1979. The latest edition is the "1990 Supplement to the 1985 Edition of the TSCA Inventory." The 1990 Supplement together with the 1985 Edition of the TSCA Inventory constitute the most current printed version of the TSCA Inventory. Copies of both editions are available to the public through the Government Printing Office.

Persons who wish to purchase copies may contact: Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Order Desk: (202) 783-3238. Requests for copies of the 1990 Supplement should specify the document number (GPO Stock No. 055-000-00361-1) and be accompanied by a check or money order in the amount of $15.00 per copy ($18.75 outside the U.S.). Requests for copies of the five volume set of the 1985 Edition of the TSCA Chemical Inventory should specify the document number (GPO Stock No. 055-00000254-1) and be accompanied by a check or money order in the amount of $161.00 for the five volume set ($201.00 outside the U.S. and Canada).

At the same time the 1990 Supplement was published, computer tapes corresponding to the nonconfidential chemicals included in the 1985 Inventory plus the 1990 Supplement, were made available to the public through the National Technical Information Service.

EPA has now made available the complete nonconfidential TSCA Inventory including all chemical substances included on the TSCA Inventory since it was first published in 1979 until January 8, 1991. Three computer tapes are available. The first tape, entitled "Preferred Name File," lists chemical substances according to CASRN, preferred chemical name, and where appropriate, molecular formula.

The second tape or "Synonym File," is an alphabetical listing of chemical name synonyms for the preferred chemical names of substances included in the nonconfidential TSCA Inventory. The synonyms listed in the tape include only those submitted to EPA by reporting companies in their submissions. The printed Inventory includes these synonyms along with others that are copyrighted by the Chemical Abstracts Service. The tape does not include the generic names of substances for which the specific chemical identities were claimed as confidential.

A new, third computer tape, the "Cross-Reference File," has been produced to comply with numerous requests from industry for CASRNs and Accession Numbers. It contains the case numbers of all PMNs (P case numbers) and Polymer Exemption Applications (Y case numbers), added to the TSCA Inventory as of January 8, 1991. Each case number is associated with a CASRN if the chemical identity is nonconfidential, or an Accession Number if the chemical identity is confidential. The link between a P or Y case number and a CASRN or Accession Number is not TSCA confidential business information.

Copies of all computer tapes are now available for sale from the National Technical Information Service (NTIS). Persons/firms who wish to purchase copies may contact National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Order desk: (703) 487-4850. Requests for copies of the two TSCA Inventory tapes, the Preferred Name File, and the Synonym File should specify the order number (PB91-50730) and be accompanied by a check or money order in the amount of $560.00 ($1120.00 outside the U.S. and Canada). Requests for copies of the Cross Reference File information of PMNs and Ys and matching CASRNs or Accession Numbers should specify the order number (PB91-50731) and be accompanied by a check or money order in the amount of $220.00 ($440.00 outside the U.S. and Canada). EPA plans to update these computer tapes periodically.

Dated: June 10, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Pesticides and Toxic Substances.

[FR Doc. 91-14825 Filed 6-20-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 91-142; DA 91-589]

Hearing Designation Order and Order to Show Cause

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order, Order Designating Applications for Hearing and Order to Show Cause.

SUMMARY: Cellular applications are designated for hearing and licensees are ordered to show cause why their licenses should not be revoked.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carmen Borkowski, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of a Memorandum Opinion and Order, Order Designating Applications for Hearing and Order to Show Cause, in CC Docket No. 91-142, adopted May 13, 1991 and released May 29, 1991.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St. NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21 St, NW., Washington, DC 20037.

Summary of Memorandum Opinion and Order, Order Designating Applications for Hearing and Order to Show Cause

The Chief, Common Carrier Bureau, under delegated authority, has designated for hearing cellular radio system applications and has ordered licensees to show cause why their licenses should not be revoked. The applicants and licensees apparently participated in agreements styled as "Mutual Contingent Risk Sharing Agreement" (Risk Sharing Agreements). The applications were prepared by The Cellular Corporation.

Pursuant to section 309(e) of the Communications Act of 1934, as amended, the following applications have been designated for hearing upon the issues listed below:

Applicant	RSA	File No.
Algreg Cellular Engineering	Alabama 1	10607-CL-P-307-A-89
Cranford Cellular Communications	Alabama 5	10611-CL-P-311-A-89

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Applicant	RSA	File No.
New-Era Cellular Tele-Communications	Arkansas 9	10563-CL-P-332-A-89
Bay Cellular of Florida	Mississippi 5	10754-CL-P-497-A-89
Florida Cellular	Missouri 2	10445-CL-P-505-A-89
A-1 Cellular Communications	Missouri 11	10454-CL-P-514-A-89
Bravo Cellular	North Carolina 15	10673-CL-P-579-A-89
TNT Communications	North Dakota 3	10233-CL-P-582-A-89
Alpha Cellular	Ohio 2	10909-CL-P-588-A-89
CEL-TEL Communications	Ohio 5	10912-CL-P-589-A-89
EJM Cellular Partners	Oklahoma 1	10587-CL-P-595-A-89
Pinellas Communications	Pennsylvania 2	10808-CL-P-613-A-89
Centaur Partnership	South Carolina 7	10720-CL-P-631-A-89
Signal Cellular Communications	South Carolina 8	10721-CL-P-632-A-89
A-1 CELLULAR COMMUNICATIONS	Texas 10	10409-CL-P-661-A-89
EJM Cellular Partners	Wyoming 4	10116-CL-P-721-A-89
TNT Communications	Puerto Rico 5	10676-CL-P-727-A-89

(1) To determine all the facts and circumstances surrounding the applicant's involvement with the Agreements.

(2) To determine, based on the evidence adduced in issue (1) above, which if any of the applicants entered into the Agreements.

(3) To determine, based on the evidence adduced above, which if any of the applications should be denied.

Pursuant to section 312 of the Communications Act of 1934, as amended, the licensees listed below, were ordered Show Cause why their licenses Should not be Revoked, the inquiry to focus on the matters listed below:

Licensee	Station	RSA	File No.
Satellite Cellular Systems	KNKN 266	Arizona 1	10037-CL-P-316-A-89
Jaybar Communications	KNKN 251	Arizona 6	10042-CL-P-323-A-89
Data Cellular Systems	KNKN 250	California 10	10029-CL-P-345-A-89
Cellular Pacific	KNKN 252	California 11	10031-CL-P-346-A-89
			06606-CL-MP-90
			06606-CL-MP-90
North American Cellular	KNKN 253	Idaho 1	10066-CL-P-368-A-89
Alpha Cellular	KNKN 340	Indiana 6	10318-CL-P-410-A-89
			04924-CL-AL-1-90
Edison Cellular	KNKN 281	Minnesota 4	10282-CL-P-485-A-89
Alee Cellular Communications	KNKN 271	New Mexico 3	10074-CL-P-555-A-89
Crystal Communication Systems	KNKN 309	Oregon 1	10075-CL-P-606-A-89

(1) To determine all the facts and circumstances surrounding the permittees involvement in the Agreements.

(2) To determine, based on the evidence adduced in (1) above, which if any of the permittees entered into the Agreements.

(3) To determine whether the permittees who entered into the Agreements falsely certified their applications (§ 22.923) or violated § 1.65 of the rules with regard to their applications when they were pending.

(4) To determine whether Alee Cellular lacked candor in failing to reveal to the Commission an alien general partner or that it changed the nature of its partnership.

(5) To determine whether Alee Cellular complied with the requirements of section 310(b) of the Communications Act and § 22.4 of the rules.

(6) To determine, based on the totality of the evidence adduced pursuant to 1, 3, 4 and 5 above, whether the permits of any of the captioned permittees should be revoked.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 91-14763 Filed 6-20-91; 8:45 am]

BILLING CODE 6712-01-M

Q 3 Corp. et al.; Applications

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant; city and state	File No.	MM docket no.
	I	
A. Q 3 Corporation; Bolingbroke, GA.	BPH-900529MD	91-156
B. Donald L. Jones; Bolingbroke, GA.	BPH-900530ME	
C. Leslie E. Grsdick; Bolingbroke, GA.	BPH-900530MG	
D. Joseph I. Kendrick; Bolingbroke, GA.	BPH-900531ME	

Applicant; city and state	File No.	MM docket no.
Issue Heading and Applicants		
1. Comparative, A, B, C, D		
2. Ultimate, A, B, C, D		
	II	
A. Sacred Heart University, Inc.; Noyack, New York.	BPED-901215MK	91-157
B. Connecticut Public Broadcasting, Inc.; Southampton, New York.	BPED-900306MD	
C. Long Island University; Noyack, New York.	BPED-900516MA	
D. Long Island Educational TV Council, Inc.; Southampton, New York.	BPED-900516MB	
E. State University of New York; Stony Brook, New York.	BPED-900516MH	

Applicant; city and state	File No.	MM docket no.
Issue Heading and Applicants		
1. Financial Qualifications, A, D		
2. 307(b), Noncommercial Educational, A, B, C, D, E		
3. Contingent Comparative Noncommercial Education FM, A, B, C, D, E		
4. Ultimate, A, B, C, D, E		
	III	
A. Twinlakes Communications; Russell Springs, KY.	BPH-900419MT	91-156
B. Reid D. Rippetoe; Russell Springs, KY.	BPH-900423MY	
Issues Heading and Applicants		
1. Comparative, A, B		
2. Ultimate, A, B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202-452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-14764 Filed 6-20-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Adoption of Rules of Operation

[Docket No. AS91-2]

Appraisal Subcommittee; Adoption of Rules of Operation

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Adoption of Rules of Operation and a Resolution delegating authority to the Chairman.

SUMMARY: This notice announces the Appraisal Subcommittee ("ASC") of the Federal Financial Institutions Examination Council's ("FFIEC") May 29, 1991 adoption of its Rules of Operation. The notice also announces the ASC's June 14, 1991 adoption of a Resolution delegating authority from the ASC to its Chairman with respect to internal administrative matters.

SUPPLEMENTARY INFORMATION: Section 1102 (12 U.S.C. 3310) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") [1] established the ASC and placed it within the FFIEC. The ASC consists of representatives appointed by the heads of each Federal Financial Institutions Regulatory Agency ("FFIRA") and the Department of Housing and Urban Development. The ASC has permanent, professional staff to assist the ASC, to provide advice to the States and to carry out ASC rules, interpretations, policies and directives.

The ASC has several statutory duties under title XI. First, the ASC must monitor the appraisal regulations adopted by the FFIRAs and the Resolution Trust Corporation. Those regulations set out appraisal standards for federally related transactions and define those federally related transactions requiring the services of a State certified or State licensed appraiser. Second, the ASC must monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation. Third, the ASC must monitor each State's certification and licensing programs for real estate appraisers. In that regard, each State with an appraiser certifying and licensing agency is responsible for transmitting to the ASC a roster of these individuals, along with an annual registry fee. The ASC must maintain a national registry of all state certified and licensed appraisers who perform or seek to perform appraisals in federally related transactions. The ASC also must review each State's compliance with the requirements of title XI and is authorized by title XI to take action against non-complying States.[2]

The Rules of Operation largely codify the informal procedures under which the ASC has been operating since its inception. They describe, among other things, the organization of ASC meetings, notice requirements for meetings, quorum requirements, and certain practices regarding the disclosure of information. The Subcommittee Resolution delegates authority from the ASC to its Chairman regarding matters of internal administration, including prescribing a system of administrative control of funds and reallocating budgetary resources within certain limits.

The ASC believes that the Rules of Operation and the Resolution should facilitate the ASC's and its staffs efforts in implementing, administering and enforcing title XI.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel; Appraisal Subcommittee, Federal Financial Institutions Examination Council; 1776 G Street, NW.; suite 850B; Washington, DC 20006; (202) 357-0133.

Dated: June 14, 1991.

Fred D. Finke,

Chairman, Appraisal Subcommittee, Federal Financial Institutions Examination Council.

Rules of Operation

Article I

Nature and Purpose

Section 1.01. *Appraisal Subcommittee described.* The Appraisal Subcommittee, hereinafter referred to as the Subcommittee, is established by title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. 101-73, 103 Stat. 511 (1989); 12 U.S.C. 3310, 3331-3351), hereinafter referred to as the Act.

Section 1.02. *Functions.* The functions of the Subcommittee are set forth in section 1103 of the Act (12 U.S.C. 3332).

Section 1.03. *Definitions.* The words and phrases used herein shall, where applicable, have the definitions set forth in section 1121 of the Act (12 U.S.C. 3350).

Section 1.04. *Authority.* Except as otherwise provided in the Act, all authority for carrying out the functions of the Subcommittee shall reside in the Subcommittee; however, the Subcommittee may delegate any of its authority as it from time to time deems appropriate to Subcommittee members, officers, or employees or as otherwise authorized by law. As provided in section 1105 of the Act (12 U.S.C. 3334), the Chairperson of the Subcommittee shall have authority to appoint such officers and staff as may be necessary to carry out the functions of the Subcommittee.

Article II

Assessments

Section 2.01. *Assessments.* In accordance with section 1109 of the Act

[1] Public Law No. 101-73, 103 Stat. 511 (1989); 12 U.S.C. 3310, 3331-3351.

[2] See title XI, section 1118, 12 U.S.C. § 3347.

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(12 U.S.C. 3338), the Subcommittee shall have the authority to receive an annual fee from each State licensed or certified appraiser eligible to do appraisals in federally related transactions. Any increase in the initial fee, which shall be not more than $25 per annum, is subject to the approval of the Federal Financial Institutions Examination Council (the Council). The statutory maximum fee is $50 per annum.

Article III

Members of the Subcommittee

Section 3.01. *Members.* The members of the Subcommittee shall be those persons described in section 1102 of the Act (12 U.S.C. 3310) and, pursuant to 12 U.S.C. 1708(e)(2), the Secretary (or designee) of the Department of Housing and Urban Development.

Section 3.02. *General Powers.* The affairs, business and property of the Subcommittee shall be managed by the Chairperson of the Subcommittee pursuant to the Subcommittee's direction and the Subcommittee's powers shall include those set forth in section 1106 of the Act (12 U.S.C. 3335).

Section 3.03. *Compensation and Expenses of Members.* Each member shall serve on the Subcommittee without compensation other than that received from their respective employing Federal agency; but each member shall be entitled to an advance or reimbursement for reasonable expenses in carrying out their official duties as a member. Such advance or reimbursement shall be made only upon written request accompanied by adequate documentation of such expenses.

Section 3.04. *Chairperson of the Subcommittee.* (a) The Council shall elect a Chairperson of the Subcommittee. The term of office of the Chairperson shall be for a two (2) year term. Section 1104(a) (12 U.S.C. 3333(a)). The Chairperson shall carry out all duties required by the Act and these Rules and shall perform such other duties as from time to time may be assigned by the Subcommittee.

(b) The Subcommittee shall designate from time to time one of its members to act on behalf of the Subcommittee in the absence or incapacity of the Chairperson. The Subcommittee expects that the member designated will be the member whose agency follows that of the Chairperson in the listing in section 1121(6) the Act (12 U.S.C. 3350(6)).

Section 3.05. *Member Vacating Position in Respective Federal Financial Institutions Regulatory Agency.* A person shall remain a member of the Subcommittee until (a) that person resigns, (b) is no longer employed by the designating agency, or (c) the agency head designates a replacement. If the vacating member is Chairperson of the Subcommittee, a succeeding Chairperson shall be selected by the Council under section 1104(a) of the Act (12 U.S.C. 3333(a)).

Section 3.06. *Organization of Subcommittee Meetings.* (a) The Chairperson of the Subcommittee shall preside at Subcommittee meetings. In his or her absence, whether or not he or she has designated another to attend the meeting pursuant to section 3.11 of these Rules, the member designated under section 3.04(b) shall preside at such Subcommittee meeting.

(b) The Secretary, or in the absence of the Secretary, any person designated by the Chairperson, shall draft and transmit the minutes of the meeting to each member. The Executive Director is appointed to serve as Secretary, and shall be responsible for recording the minutes, including the full text of each resolution voted on by the Subcommittee and the substance of each action voted on by the Subcommittee as well as the vote. The Secretary will also be responsible for certifying or attesting to true copies, minutes, or other documetns stating that actions were in fact taken by the Subcommittee. The Secretary will also be responsible for maintaining and preserving at a single place, available for inspection at reasonable times by any member of the Subcommittee or any person designated by any member, the complete minutes of the proceedings of the Subcommittee. The Executive Director may delegate the ministerial duties of Secretary to Subcommittee staff.

(c) Regular meetings of the Subcommittee shall be held in Washington, DC, at a location designated by the Chairperson, or in such other place as the Subcommittee may designate. Special meetings shall be held in such place and at such location as designated by the calling party or parties.

(d) Regular meetings of the Subcommittee shall be held at least monthly at the call of the Chairperson. Special meetings shall be held as provided in section 3.07(b) below.

Section 3.07. *Notice of Meetings.* (a) The Secretary shall send a notice of each regular meeting to each Subcommittee member at least five (5) days prior to the date the regular meeting is to be held, or shall cause such notice to be delivered by hand at least five (5) days prior to the date of the regular meeting is to be held. Delivery by facsimile will be considered the equivalent of hand delivery. Every regular meeting notice shall specify at least the place, date and hour of the meeting.

(b) The Chairperson or any four (4) or more members may call a special meeting by giving one business day oral, written or facsimile notice to each meber and the Secretary. Said notice shall inform the members at least of the place, date and hour of the meeting and of the nature of the business to be conducted at the meeting.

(c) A waiver of any meeting notice signed by a member shall be the equivalent of timely giving to and receipt by that member of notice. A member's attendance at any meeting shall constitute waiver of notice of that meeting unless the member attends solely for the purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

Section 3.08. *Quorum, Manner of Acting and Adjournment.* (a) At any regular or special meeting, the presence of a majority of the members of the Subcommittee shall constitute a quorum for the transaction of business. For the purpose of the preceding sentence, an alternate will count only if he/she has been so designated in writing by the head of the respective agency. The acts voted by a majority of its members present at such meeting shall be the acts of the Subcommittee. A member who is present at a meeting but who abstains from voting on any matter shall be counted for purposes of determining whether a quorum is present, whether that member withdraws from or remains in the meeting during such vote. A majority of the members present at any meeting, whether or not there is a quorum present, may ajourn the meeting. In transacting the business of the Subcommittee, each members shall be entitled to only one vote.

(b) No item shall be voted upon by the Subcommittee except (1) where notice that the item will be on the agenda of a regular meeting has been given pursuant to section 3.09(a) of these Rules, (2) where written notice that the item will be on the agenda of any meeting is delivered to each member at least two (2) full business days prior to the date of such meeting, or (3) upon the unanimous consent of all members of the Subcommittee.

Section 3.09. *Agenda of Subcommittee Meetings.* (a) The agenda for meetings shall be determined by the Chairperson in consultation with the Secretary, or where appropriate by the four (4) or more members calling the meeting; provided that the Chairperson shall include any item on the agenda when

he/she receives a request in writing from any single member at least three (3) full business days prior to the date of the meeting.

(b) Any member may request during any regular or special meeting that an item be placed on the agenda of that meeting. The item shall be placed on the agenda for discussion but only if a majority of those present approve the request.

Section 3.10. *Certain Interest of the Members.* No person serving as an officer or employee of the Subcommittee shall be deemed to have an interest adverse to the interest of the Subcommittee solely because that person is employed by a Federal agency and assigned to the Subcommittee. No Subcommittee member shall be required to abstain from voting on any matter solely because the Federal agency employing that member is or will be affected. No act of the Subcommittee shall be subject to challenge nor is any way be a affected by participation of said member in such vote.

Section 3.11. *Proxies.* A Subcommittee member may from time to time designate an alternate from his or her agency to carry out the member's duties on the Subcommittee. Such alternate may act in all matters as member of the Subcommittee, except that he/she may not act as the presiding officer of a Subcommittee meeting or vote unless so authorized in writing by the agency head.

Section 3.12. *Use of Conference Call Communications Equipment.* Any or all members of the Subcommittee may participate in a meeting through the use of conference call telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak and hear each other. Any member so participating in the meeting shall be deemed to be present for all purposes. Actions taken by the Subcommittee at meetings where one or more members participate through the use of such equipment, including the votes of each member, shall be recorded in the minutes of the meeting.

Section 3.13. *Transaction of Business by Circulation of Written Items.* Any other provision of these Rules to the contrary notwithstanding, business may be conducted by the Subcommittee by the circulation of written items to all members where all members participate in consideration of each written item and where all members approve the action proposed. The refusal by any member to vote on any written item within a reasonable time, or in the alternative, a set time agreed to by a majority of all of the members, shall be considered a negative vote by that refusing member. The disposition of each written item circulated for vote, including the vote of each member, shall be recorded in the minutes of the Subcommitte.

Article IV

Officers and Employees

Section 4.01. *Permanent Officers and Employees.* (a) Except as otherwise specifically directed by the Subcommittee, its Chairperson shall have power to appoint and terminate such officers and employees as from time to time deemed necessary to carry out the Subcommittee's mission. Position descriptions will be written for all permanent personnel employed by the Subcommittee. Procedures relative to the appointment, termination, and compensation practices of the Subcommittee shall be consistent with the appointment and compensation practices of the Council or in accord with the policies set forth in Title 5, United States Code and applicable OPM rules and regulations.

(b) The Subcommittee may adopt from time to time such rules or regulations governing the conduct of officers and employees as it deems appropriate.

Section 4.02. *Officers and Employees Detailed From Federal Agencies.* Any person in the employ of any Federal agency detailed to the Subcommittee shall be considered an officer or employee of the Subcommittee. Such persons shall be assigned to and serve the Subcommittee for a designated, but renewable, priod of time and salaries and benefits received by such officers or employees shall be paid to them by the agency from which that officer or employee is assigned. All salaries and benefits received by such officers and employees shall be reimbursed by the Subcommittee to detailee's home agency. Each Federal agency will apply its own rules, regulations, and policies to the circumstances under which officers or employees assigned to the Subcommittee may resume their duties at that agency upon termination of assignment to the Subcommittee.

Article V

Fiscal year

Section 5.01. *Fiscal Year.* The Subcommittee budget shall be prepared on the basis of a fiscal year ending on September 30th.

Article VI

Amendments

Section 6.01. *Amendments.* Unless specifically stated herein, any of these Rules may be altered, amended or repealed, or new Rules may be adopted at any meeting, regular or special, of the Subcommittee by the affirmative act of a majority of all members of the Subcommittee, so long as such action is consistent with the requirements of applicable law. Amendments to these Rules shall not be given retroactive effect.

Article VII

Public Information

Section 7.01. *Disclosure of Information.* All matters pertaining to the disclosure of information by the Subcommittee shall be governed by applicable law and such resolutions, orders, rules and regulations that may be adopted by the Subcommittee.

Section 7.02. *Public Statements and Statements to the Press.* No written statments shall be made to the press expressing the Subcommittee's policy or descriptive of its action except as authorized pursuant to the procedures to be adopted by the Subcommittee. Such statements shall be issued, when authorized and approved, through the office of the Executive Director as delegated by the Chairperson. Where an individual member is responding on issues before the Subcommittee, that member should use best efforts to alert other members and the Secretary concerning the substance of the response as soon as possible.

Section 7.03. *Disclaimer.* Except when otherwise authorized by the Subcommittee, individual members, officers and employees shall include in written statements and oral presentations the following disclaimer of responsibility:

The Appraisal Subcommittee, as a matter of policy, disclaims responsibility for any private publication or statement by any of its members, officers, or employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Subcommittee.

The wording of the disclaimer may vary with the circumstances so long as its substance is clearly communicated.

Any written statement or oral presentation which reflects Subcommittee positions must set forth those positions accurately and, if it contains differences with Subcommittee positions, it should clearly state that such positions are solely those of the author.

Article VIII

Advisory Committee

Section 8.01. *Appointment of an Advisory Group.* Subject to the Federal

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Advisory Committee Act (5 U.S.C. App. 1–14) and to such procedures as it may from time to time adopt, the Subcommittee may establish nonvoting advisory group(s). Such advisory group(s) shall meet with the Subcommittee on a schedule determined by the Subcommittee. Members of the advisory group(s) may receive from the Subcommittee an allowance, in an amount to be determined by the Subcommittee, for necessary expenses incurred in attending such meetings.

Article IX

Administrative Support

Section 9.01. *Service of Administrative Support.* (a) To insure that the orderly administration of the affairs of the Subcommittee is accomplished, administrative support functions shall be provided by the permanent staff of the Subcommittee with assistance, when needed, from staff of the Federal agencies that are members of the Subcommittee.

(b) The Chairperson shall have the authority to negotiate and execute agreements regarding personnel, payroll, grant administration, procurement, and other services, consistent with directives of the Subcommittee. In executing this authority, the Chairperson shall be authorized to obtain such administrative support services as he/she deems necessary.

Article X

Report to Congress

Section 10.01. *Annual Report to Congress.* In accordance with section 1103 of the Act (12 U.S.C. 3332), the Subcommittee shall prepare an annual report to the Congress not later than January 31 of each year. The report will cover the activities of the Subcommittee during the preceding year.

Section 10.02. *Preparation of Reports.* The Executive Director or other party as designated by the Subcommittee is authorized and directed to cause to be prepared in a timely fashion, for review and approval by the Subcommittee, the annual report and such other documents concerning the activities or decisions or recommendations of the Subcommittee as is required by law or requested by the Congress or any other party.

Article XI

Conduct and Responsibilities

Section 11.01. *Ethics Provision.* The members of the Subcommittee and its officers and employees shall be required to abide by a code of ethics, consistent with applicable law, that will be formulated and adopted by the Subcommittee.

Resolution

Whereas, The responsibilities of the Chairperson of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council include the internal administration of the Appraisal Subcommittee:

Now, therefore, be it resolved, That the Chairperson is hereby delegated the administrative responsibilities set forth below.

The Chairperson,

(1) Prescribes a system of administrative control of funds.

(2) Approves and/or delegates the approval of the distribution of budgetary resources in the form of a Budget Execution Plan and may reallocate resources among object classes so long as: (a) Aggregate obligations do not exceed the annual budget approved by the Subcommittee; (b) no single reallocation action exceeds $100,000 without the consent of the Subcommittee; and (c) every reallocation action of $100,000 or less shall be reported to the Subcommittee at the Subcommittee meeting following the reallocation action.

(3) Delegates authority for the issuance of allotments and the incurrence of obligations.

The Chairperson is delegated authority, subject to the Rules of Operation, concerning personnel actions, including the appointment, promotion, and removal of personnel, other than officers, employed by the Subcommittee.

The Chairperson is delegated authority over all other matters of internal administration not listed above unless such authority is specifically retained by the Subcommittee or specifically delegated to another party.

Finally, the Chairperson is authorized to delegate to members, officers, or employees of the Subcommittee, as the Chairperson may deem necessary, any of the above authorities delegated to the Chairperson with the exception of the authority to supervise the position of Executive Director.

Be it further resolved, That the Chairperson shall perform duties under this authority only when serving as the Subcommittee's Chairperson. In other instances, (i.e., serving as the Subcommittee's member) the interest of his/her home agency is represented. The Subcommittee may act in any matter delegated herein upon its own motion or at the request of the Chairperson.

[FR Doc. 91–14860 Filed 6–20–91; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1964.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010676–048.

Title: South Europe/U.S.A. Freight Conference.

Parties: Achille Lauro. Compagnie Generale Maritime. Compania Trasatlantica Espanola, S.A. Evergreen Marine Corporation (Taiwan Ltd. Farrell Lines, Inc. "Italia" di Navigazione, S.p.A. Jugolinija. Jugooceanija. Lykes Lines. A.P. Moller-Maersk Line. Nedlloyd Lines. Sea-Land Service, Inc. P&O Containers Limited. Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would modify the Agreement's independent action (IA) provisions by permitting the parties, upon 10 days notice, to increase, as well as decrease, the amount of brokerage and freight forwarder compensation. However, this authority will expire on November 1, 1991. It would also permit a party to adopt the IA of another party on time-volume rated items and allow cargo carried by the adopting members to be counted towards the common shipper's volume commitment.

By Order of the Federal Maritime Commission.

Dated: June 17, 1991.

Joseph C. Polking

Secretary.

[FR Doc. 91–14775 Filed 6–20–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

F.N.B. Corporation, et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to engage *de novo* through its subsidiary, Dollar Interim Savings Association, New Castle, Pennsylvania, in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to engage *de novo* in community development, in the form of equity investments in rental real estate projects which will qualify for the low-income housing credit under section 42 of the Internal Revenue Code of 1986 pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–14792 Filed 6–20–91; 8:45 am]

BILLING CODE 6210–01–F

KKR Associates, L.P., et al.; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 8, 1991.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. KKR Associates, L.P., New York, New York; KKR Partners II, L.P., New York, New York; and Whitehall Associates, L.P., New York, New York; to acquire securities exercisable for or convertible into at least 10 percent, but not more than 25 percent, of the outstanding common stock of Fleet/Norstar Financial Group, Inc., Providence, Rhode Island, and thereby indirectly acquire Fleet National Bank, Providence, Rhode Island; Fleet National Bank of Boston, Boston, Massachusetts; Fleet National Bank of Connecticut, Hartford, Connecticut; Fleet Bank of Connecticut, Hartford, Connecticut; Fleet Bank of Maine, Portland, Maine; Fleet Bank-NH, Nashua, New Hampshire; Norstar Bank of Upstate New York, Albany, New York; Norstar Bank, N.A., Buffalo, New York; Norstar Bank of Central New York, Syracuse, New York; Norstar Bank, Melville, New York; New Bank of New England, N.A., Boston, Massachusetts; New Connecticut Bank and Trust Company, N.A., Hartford, Connecticut; and New Maine National Bank, Portland, Maine.

Board of Governors of the Federal Reserve System, June 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–14793 Filed 6–20–91; 8:45 am]

BILLING CODE 6210–01–F

Manufacturers National Corporation; Detroit, Michigan; Proposal to Provide Financial Advisory Services; Engage in Private Placement Activities; and Act as a Broker or Agent in Financial Transactions

CORRECTION

This notice corrects a previous *Federal Register* notice (FR Doc. 91–13659) published at page 26684 of the issue for Monday, June 10, 1991.

The 15th paragraph of the entry for Manufacturers National Corporation, Detroit, Michigan, is amended to read as follows:

The Board previously has approved applications by bank holding companies to provide M&A Advisory Services, Valuation Services, Fairness Opinions and Feasibility Studies, *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987), and to engage in Private Placement Activities, *J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 28 (1990). Applicant proposes to conduct these activities in substantial compliance with the Board's prior Orders. In connection with its Private Placement Activities, Applicant has indicated that it will not engage in the private placement of securities issued by investment companies that are sponsored or advised by Applicant or any of its affiliates.

Comments on this application must be received by July 8, 1991.

Board of Governors of the Federal Reserve System, June 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–14794 Filed 6–20–91; 8:45 am]

BILLING CODE 6210–01–F

NierBanc Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the

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Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 10, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. NierBanc Corporation, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Castle Rock Industrial Bank, Castle Rock, Colorado, which is in the process of converting to a state-chartered commercial bank under the name of Legacy Bank.

Board of Governors of the Federal Reserve System, June 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14795 Filed 6-20-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Developmental Disabilities

Interagency Committee on Developmental Disabilities; Meeting

Agencies holding the meeting: Administration on Developmental Disabilities, Administration on Children and Families, U.S. Department of Health and Human Services; Office of Special Education and Rehabilitative Services, U.S. Department of Education.

Time and Date: Wednesday, July 10, 9:30 a.m. to 12.

Place: Auditorium of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Meeting is open to the public.

Contact people: Ronald W. Conley, room 348F, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 (202-245-7617) or Wendell Johnson, room 3014A, Mary Switzer Building, 330 C Street, SW., Washington, DC 20202 (202-732-1274).

The Interagency Committee on Developmental Disabilities (ICDD) was established by the Developmental Disabilities Assistance and Bill of Rights Act of 1984 (Pub. L. 98-527) to "meet regularly to coordinate and plan activities by Federal departments and agencies for persons with developmental disabilities." The Developmental Disabilities Assistance and Bill of Rights Act of 1990 (Pub. L. 101-496) added the requirement that the meetings be open to the public and that a notice of the meeting be published in the **Federal Register**. The ICDD is co-chaired by the Assistant Secretary for Special Education and Rehabilitative Services and the Commissioner of the Administration on Developmental Disabilities.

The meeting will cover four topics: (1) Proposed changes in procedures in order to enhance the effectiveness of the Interagency Committee; (2) approval of subcommittee activities; (3) a proposal to collect information of several data items uniformly across advocacy programs (Protection and Advocacy for People with Developmental Disabilities, Protection and Advocacy for People with Mental Illness, Client Assistance Program, and Ombudsman Program); and (4) problems in providing long-term funding for people in supported employment. Among proposals to enhance the effectiveness of the ICDD are more frequent and regularly scheduled meetings, and direct agency approval of the work of the subcommittees to the Interagency Committee.

Dated: June 14, 1991.

Will Wolstein,

Acting Commissioner, Administration on Developmental Disabilities.

[FR Doc. 91-14800 Filed 6-20-91; 8:45 am]

BILLING CODE 4130-01-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in July

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of Meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of July 1991.

The initial review committees will be performing review of applications for Federal assistance and the Drug Testing Advisory Board, NIDA, will be performing reviews of National Laboratory Certification Program inspections and operations. Therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c) (2),(4) and (6) and 5 U.S.C. app. 2 10(d).

The Advisory Committee of the Task Force on Homelessness and Severe Mental Illness, NIMH, will include discussion of housing issues relevant to the homeless mentally ill population; the Advisory Panel on Alzheimer's Disease, NIMH, will discuss plans for the third annual report and a special report on ethnic minority and crosscultural issues in Alzheimer's disease; and the ADAMHA AIDS Advisory Committee will include presentations and discussion of behavior change research and AIDS prevention, as well as AIDS research demonstrations and treatment interventions. These meetings will be open and attendance by the public will be limited to space available; however, due to security requirements of the meeting location of the Advisory Committee of the Task Force on Homelessness and Severe Mental Illness, it will be necessary to register your intent to attend with the contact person listed below.

Notice of these meetings is required under the Federal Advisory Committee Act, Public Law 92-463.

Committee Name: Sociobehavioral Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA.
Meeting Date(s): July 9-11, 1991.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: July 9, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: H. Noble Jones, Room 10-22, Parklawn Building Telephone: (301) 443-9042.

Committee Name: Drug Testing Advisory Board, NIDA.
Meeting Date(s): July 10, 1991.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20857.
Open: July 10, 9 a.m. to 12 noon.
Closed: Otherwise.
Contact: Donna M. Bush, Room 9A-53, Parklawn Building Telephone (301) 443-6014.

Committee Name: Biobehavioral/Clinical Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA.
Meeting Date(s): July 10-11, 1991.
Place: Hyatt Regency Hotel, One Metro Center, Bethesda, MD 20814.
Open: July 10, 9 a.m. to 9:30 a.m.
Closed: Otherwise.

Contact: Iris W. O'Brien, Room 10-42, Parklawn Building, Telephone: (301) 443-2620.

Committee Name: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.
Meeting Date(s): July 11-12, 1991.
Place: Hyatt Regency Hotel, One Metro Center, Bethesda, MD 20814
Open: July 11, 9 a.m. to 10 a.m.
Closed: Otherwise.
Contact: Barbara Smothers, Ph.D., Room 16C-26, Parklawn Building, Telephone (301) 443-6101.

Committee Name: Advisory Committee of the Task Force on Homelessness and Severe Mental Illness.
Meeting Date(s): July 17, 1991.
Place: Hubert H. Humphrey Building Stonehenge Conference Room (615F) 200 Independence Avenue, SW. Washington, DC.
Open: July 17, 9 a.m. to 5 p.m.
Contact: Jane Steinberg, Room 11C-03, Parklawn Building, Telephone: (301) 443-0000.

Committee Name: Advisory Panel on Alzheimer's Disease, NIMH.
Meeting Date(s): July 24-25, 1991.
Place: Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, DC 20008.
Open: July 24, 9 a.m. to 5:30 p.m., July 25, 8:30 a.m. to 3:30 p.m.
Contact: George Niederehe, Room 7-103, Parklawn, Building, Telephone (301) 443-1185.

Committee Name: Psychobiological, Biological, and Neurosciences Subcommittee of the Mental Health Acquired Immunodeficiency Syndrome Research Committee, NIMH.
Meeting Date(s): July 25-26, 1991.
Place: The Wyndham Bristol Hotel 2430 Pennsylvania Avenue, NW. Washington, DC 20037
Open: July 25-26, 8:30 a.m. to 9:15 a.m.
Closed: Otherwise.
Contact: Rehana Chowdhury, Room 9C-15, Parklawn Building, Telephone (301) 443-6470.

Committee Name: Clinical, Psychosocial, and Behavioral Sciences Subcommittee of the Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH.
Meeting Date(s): July 25-26, 1991.
Place: The Wyndham Bristol Hotel 2430 Pennsylvania Avenue, NW. Washington, DC 20037
Open: July 25-26, 8:30 a.m. to 9:15 a.m.
Closed: Otherwise.
Contact: Regina Thomas, Room 9C-15, Parklawn Building, Telephone (301) 443-6470.

Committee Name: ADAMHA AIDS Advisory Committee.
Meeting Date(s): July 30-31, 1991.
Place: National Institutes of Health Building 1, Wilson Hall, Bethesda, MD.
Open: July 30, 8:30 a.m. to 5 p.m., July 31, 8:30 a.m. to 3 p.m.
Contact: Ellen Stover, Room 17C-06, Parklawn Building, Telephone (301) 443-3596.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, room 16C-20, (301) 443-4375; Ms. Camilla Holland, NIDA Committee Management Officer room 10-42, (301) 443-2755; Ms. Joanna Kieffer, NIMH Committee Management Officer, room 9-105, (301) 443-4333; Ms. Peggy Cockrill, ADAMHA Committee Management Officer, room 13-103, (301) 443-4266. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: June 17, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-14759 Filed 6-20-91; 8:45 am]

BILLING CODE 4160-20-M

Health Resources and Services Administration

Availability of Funds for New Community Health Centers and Expanded Community Health Center Activities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the due date previously published in the **Federal Register** on June 4, 1991 (56 FR 25435) for applications to establish new community health centers and expand the capacity of existing community health centers. The new due date is July 15, 1991.

All other information remains unchanged.

Dated: June 17, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-14862 Filed 6-20-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Meeting of the Genome Research Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, July 2, 1991, at the St. James Hotel, 950 24th Street, NW., Washington, DC. This meeting will be open to the public on July 2nd from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 522b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on July 2nd from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 604, Bethesda, Maryland 20892 (301) 402-0838, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: June 17, 1991.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 91-14820 Filed 6-20-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-31]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 21, 1991.

ADDRESSES: For further information, contact James N. Forsberg, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 581 and § 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other

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real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter ot James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Air Force: John Carr, Realty Specialist, HQ-ASESC/BC Pentagon, Washington, DC 20330; (703) 697-7462. (These are not toll-free numbers.)

Dated: June 14, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

California—George Air Force Base

All properties included in this Notice are located at George Air Force Base, San Bernardino, California. The Base is being closed pursuant to the 1988 Base Closure and Realignment Act. The Department of the Air Force is the landholding and disposal agency. All the properties will be excess to the needs of the Air Force on or about December 31, 1992. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 668 properties that HUD has determined suitable include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures. The Air Force has determined that all suitable properties are available for use to assist the homeless.

Extensive assistance, including maps, tours, and details on specific properties, is available for interested homeless assistance providers at the Base; interested parties should contact Lt. Col. Zernow at (619) 209-2020.

Suitable/Available Properties

Property Numbers: 199120001-199120420
Type Facility: Housing—420 buildings with a total of 1,636 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos
Property Numbers: 199120421-199120473
Type Facility: Office/administration—53 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos
Property Numbers: 199120474-199120505
Type Facility: Recreation—22 buildings including theatre, recreation center, bowling center, gym, library, craft center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos
Property Numbers: 199120506-199120547
Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—42 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4700 sq. ft. to 25000 sq. ft. for living quarters; 380 sq. ft. to 2400 sq. ft. for sheds; possible asbestos
Property Numbers: 199120548-199120587
Type Facility: Aircraft and airport related facilities—40 structures including hangers, shops, tower, terminal, lab, docks, storage, control center, navigation station, runways; sizes up to 86,000 sq. ft.; possible asbestos
Property Numbers: 199120588-199120608
Type Facility: Maintenance and engineering facilities—21 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos
Property Numbers: 199120609-199120618
Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos
Property Numbers: 199120619-199120630
Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos
Property Numbers: 199120631-199120632
Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos
Property Number: 199120633
Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos
Property Numbers: 199120634-199120635
Type Facility: Fire facilities—2 buildings; fire station and command center; possible asbestos
Property Numbers: 199120636-199120638
Type Facility: Audio visual and photo lab—3 buildings; wood and concrete; 1800 sq. ft. to 2300 sq. ft.; possible asbestos
Property Numbers: 199120639-199120645
Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos
Property Numbers: 199120646-199120655
Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care centers; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos
Property Numbers: 199120656-199120666
Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos
Property Numbers: 199120667-199120678
Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos

Unsuitable Properties

Property Number: 199120679
Type Facility: Small arms
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 199120680-199120687
Type Facility: Hazardous storage facilities—8 buildings
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 199120688-199120713
Type Facility: Explosives and munitions facilities—26 buildings
Reason: Within 2000 ft. of flammable or explosive materials
Property Numbers: 199120714-199120732
Type Facility: Fuel facilities—19 structures
Reason: Within 2000 ft. of flammable or explosive materials

[FR Doc. 91-14641 Filed 6-20-91; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3237; FR-3013-C-02]

Funding Availability for Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Correction

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice; correction.

SUMMARY: This document corrects the addresses and telephone numbers for the field offices in Birmingham and Knoxville which were erroneously published in a notice of funding availability for Fiscal Year 1991 that appeared in the **Federal Register** on Thursday, May 23, 1991 (56 FR 23738).

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Moderate Rehabilitation Division, room 6130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-4969. Hearing-or-speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free numbers).

Accordingly, beginning on page 23742 the following correction is made to FR Doc. 91-12216 in the issue of May 23, 1991:

Region IV

Birmingham Office

The address and telephone number should read "Beacon Ridge Tower, 600 Beacon Parkway W., suite 300, Birmingham, AL 35209-3144 (205) 290-7617".

Knoxville Office

The address and telephone number should read "John J. Duncan Federal Building, 710 Locust St., suite 300, Knoxville, TN 37902-2526 (615) 549-9384".

Dated: June 17, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91-14791 Filed 6-20-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-964-4230-15; F 19154-3]

Alaska; Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(c), will be issued to NANA Regional Corporation, Inc. for approximately 3,271.06 acres. The lands involved are in the vicinity of Kobuk, Alaska, within T. 19 N., R. 9 E., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Archorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 22, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91-14837 Filed 6-20-91 8:45 am]

BILLING CODE 4310-JA-M

[CO-010-01-5101-08-C003: COC-52705]

Application for a Natural Gas Pipeline Right-of-Way

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Application for a Right-of-Way to Construct, Operate, and Maintain a 20-Inch Buried Natural Gas Pipeline, and Request for Comments.

SUMMARY: Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Colorado Interstate Gas Company (CIG) has filed an application with the Bureau of Land Management for a right-of-way to construct, operate, and maintain a 20-inch buried, natural gas pipeline. This proposed pipeline, referred to as the Uinta Basin Lateral, would be approximately 223 miles long, crossing public, state, tribal, and private lands in Uinta County, Utah, Rio Blanco County, Colorado, Moffat County, Colorado, and Sweetwater County, Wyoming. It is the purpose of this notice to inform the public and other interested parties that the Bureau of Land Management (BLM) will be proceeding with the preparation of an environmental assessment for this action, and to allow such interested parties to comment on the application.

DATES: Written comments will be accepted until July 22, 1991. No public meetings are presently planned.

ADDRESS: Comments should be sent to the Project Manager, Bureau of Land Management, Post Office Box 928, Meeker, Colorado, 81641.

FOR FURTHER INFORMATION CONTACT: Dan Martin, Project Manager, (303) 878-3601, or FTS 581-5505.

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SUPPLEMENTARY INFORMATION: The Uinta Basin Lateral Project is being proposed by CIG in order to connect natural gas supplies in the Natural Buttes area in Utah, and the Piceance Basin in Colorado with their existing Rock Springs to Denver Main Line, for delivery to markets in the Midwest and east. The proposal is to construct, operate, and maintain a 20-inch, buried natural gas pipeline, from the vicinity of Bonanza, Utah, through western Colorado, and on to the vicinity of Wamsutter, Wyoming.

The proposed pipeline would be approximately 223 miles long, and would have a capacity of approximately 180 MMcf per day. Related facilities would include new and additional compression at two sites, four meter stations, and two communication sites. The proposed pipeline would parallel existing pipeline rights-of-way for approximately 85% of its length.

Construction would take approximately nine (9) months, and would take place in multiple spreads or segments. All related activities would be performed in compliance with requirements specified in all applicable authorizing documents.

Activities would begin with centerline survey and staking. The right-of-way, which would have a width of 50 feet (with an additional 10 feet for workspace during construction), would be cleared, and the topsoil stripped and stockpiled for use in reclamation. Cut and fill techniques would only be utilized in rugged topography where steep side-slopes are encountered.

Ditching would generally be accomplished by using a mechanical trencher or a backhoe. However, some blasting may be necessary where surface or subsurface rock precludes other ditching methods. In these latter instances, precautions necessary for the protection of existing structures, facilities, and water supplies will be adhered to. After the ditch is prepared the pipe will be positioned, welded, and placed in the trench following standard pipeline construction methods. The pipeline will be tested in accordance with Department of Transportation regulations.

After pipeline installation is completed, all work areas will be restored to as near their pre-construction condition as possible.

The right-of-way will be waterbarred as necessary, and will be reseeded.

Based on an initial review of the application, several potential issues have been identified. These include threatened and endangered species of plants and animals, cultural resources, wildlife, steep slopes, fragile soils, major river crossings (5), riparian areas, and alternatives. The public is invited to identify other potential issues or concerns to be considered during the environmental review.

Because most of the proposed pipeline route is on public land administered by the Bureau of Land Management (BLM), the BLM will be the lead Federal agency for preparation of the required environmental documentation under the National Environmental Policy Act. However, authorization would also be required from the Federal Energy Regulatory Commission (FERC), the Bureau of Indian Affairs (BIA), and the Corps of Engineers (COE). These agencies are requested to formally indicate whether they wish to be cooperating agencies in the environmental documentation process.

William J. Pulford,

District Manager, Craig District.

[FR Doc. 91-14875 Filed 6-20-91; 8:45 am]

BILLING CODE 4310-JB-M

[OR-943-4214-10; GP1-212; OR-10139]

Opening of National Forest Lands; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will terminate the temporary segregative effect as to 545 acres of National Forest System lands included in an application for withdrawal involving the Bagby Research Natural Area.

EFFECTIVE DATE: October 20, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2310.2-1(e), at 8:30 a.m., on October 20, 1991, the following described lands will be relieved of the temporary segregative effect of withdrawal application OR-10139. The withdrawal application will continue to be processed unless it is cancelled or denied:

Willamette Meridian

Mt. Hood National Forest

T. 7 S., R. 5 E.,

Two tracts of land located within the following described subdivisions and more particularly identified and described upon the official records of the Oregon State Office, Bureau of Land Management:

Sec. 22, SE¼SW¼, NE¼NE¼SE¼, S½N½SE¼, and S½SE¼;

Sec. 23, S½NE¼SW¼, NW¼SW¼, S½SW¼, and SW¼SE¼;

Sec. 28, NE¼NE¼, W½NE¼, NW¼SE¼NE¼, N½NW¼, SE¼NW¼, N½NE¼SW¼, and NW¼NW¼SE¼;

Sec. 27, NE¼NE¼, W¼NE¼, NE¼NW¼, and N½SE¼NW¼.

The areas described aggregate approximately 545 acres in Clackamas County.

Dated: June 10, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-14772 Filed 6-20-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-10; GP1-210; OR-16757]

Opening of National Forest Land; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will terminate the temporary segregative effect as to 1,318 acres of National Forest System lands included in an application for withdrawal involving the Metolius Research Natural Area.

EFFECTIVE DATE: October 20, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2310.2-1(e), at 8:30 a.m., on October 20, 1991, the following described land will be relieved of the temporary segregative effect of withdrawal application OR-16757. The withdrawal application will continue to be processed unless it is cancelled or denied:

Willamette Meridian

Deschutes National Forest

T. 12 S., R. 9 E.,

A tract of land within Secs. 25, 26, 34, 35, and 36, more particularly described as follows: Beginning at a point 396 feet west of the quarter corner between Secs. 34 and 35, T. 12 S., R. 9 E.; thence in a northerly direction parallel to and 100 feet east of the centerline of Road No. 113 to a point on the east-west line between Secs. 23 and 26, T. 12 S., R. 9 E.; thence easterly along the line between Secs. 23 and 26 and between Secs. 24 and 25, T. 12 S., R. 9 E., to a point on the summit of Green Ridge approximately 1,000 feet west of the quarter corner between Secs. 24 and 25, T. 12 S., R. 9 E.; thence in a southerly direction along the summit of Green Ridge to a point on the east-west line between Sec. 36, T. 12 S., R. 9 E., and Sec. 1, T. 13 S., R. 9 E., approximately 300 feet west of the quarter corner between said Sections; thence in a westerly direction along said section line to the section corner common to Secs. 35 and 36, T. 12 S., R. 9 E., and Secs. 1 and 2, T. 13 S., R. 9 E.; thence in a northerly direction along the section line between Secs. 35 and 36, T. 13 S., R. 9 E., to the quarter corner common to said Sections; thence in a westerly direction approximately 5,670 feet to point of beginning.

The area described contains approximately 1,318 acres in Jefferson County.

Dated: June 10, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-14773 Filed 6-20-91; 8:45 am]

BILLING CODE 4310-33-M

[MT-930-4410-08]

Availability of the Draft Judith-Valley-Phillips Resource Management Plan/ Environmental Impact Statement; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act of 1976 and section 102(c) of the National Environmental Policy Act of 1969, the Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared for the Judith-Valley-Phillips planning area. The RMP/EIS describes and analyzes future options for managing approximately 2.8 million BLM surface acres and 3.4 million acres of federal minerals in Valley, Phillips, Fergus, Petroleum, and Judith Basin Counties and that portion of Chouteau County south of the Missouri River. The RMP/EIS provides a comprehensive plan for managing federal resources administered by BLM.

PUBLIC PARTICIPATION: Copies will be available at each public library located in Valley, Phillips, Fergus, Petroleum, Judith Basin, and Chouteau Counties. Copies will be available from the Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457-1160, 406-538-7461. Public reading copies will be available for review at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC 20240.

External Affairs Office, Montana State Office, P.O. Box 36800, 222 North 32nd Street, Billings, MT 59107.

Lewistown District Office, Judith Resource Area, Airport Road, P.O. Box 1160, Lewistown, MT 59457-1160.

Valley Resource Area, Route 1, 4775, Glasgow, MT 59230.

Phillips Resource Area, 501 South Second Street East, Malta, MT 59538.

Written comments on the Draft RMP/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice Of Filing of the Draft in the Federal Register. Comments can also be presented at seven public meetings to be held:

July 23, 1991	7 p.m	National Guard Armory, South of Malta, Malta, MT.
July 24, 1991	7 p.m	Elks Club, 309 Second Avenue South, Glasgow, MT.
July 25, 1991	7 p.m	Hays Recreation Center, Hays, MT.
July 29, 1991	7 p.m	Winifred High School, Winifred, MT.
July 30, 1991	7 p.m	Ramada Inn, 1223 Mullowney Lane, Billings, MT.
July 31, 1991	7 p.m	Winnett Court House, Winnett, MT.
August 1, 1991	7 p.m	BLM District Office, Airport Road, Lewistown, MT.

ADDRESSES: Written comments on the document should be addressed to: B. Gene Miller, District Manager, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457-1160.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, RMP/EIS Team Lead, Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457-1160, 406-538-7461.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS analyzes five alternatives to resolve nine issues: Land acquisition and disposal, access to BLM land, off-road vehicles, oil and gas leasing and development, hardrock mining, riparian and wetland management of watersheds, elk and bighorn sheep habitat management, prairie dog and black-footed ferret management, and areas with special management concerns. Each alternative represents a complete management plan for the area. The alternatives can be summarized as: (A) Current Management or No Action; (B) Resource Production; (C) Resource Protection; (D) a Balance Between Production and Protection; and (E) the Preferred Alternative which is a combination of the previous four.

The RMP/EIS evaluates 31 Areas of Critical Environmental Concern (ACEC) nominations of which 8 met the relevance and importance criteria and are studied for special management.

The South Moccasin-Judith Mountains Scenic Area would be designated an ACEC to protect the scenic qualities of the visual resources in the Judith and South Moccasin Mountains. Surface-disturbing activities would not be allowed which could not be mitigated and reclaimed to natural conditions. The area would remain open to mineral entry with mitigating measures to protect the scenic qualities. The area would be an avoidance area for rights-of-way, and off-road travel would be restricted yearlong to designated roads and trails.

The Acid Shale-Pine Forest in Petroleum County would be designated an ACEC to protect an endemic plant community unique to the area and a fragile watershed. Disposal of forest products from the area would be prohibited, unless necessary for stand preservation, and off-road travel would be restricted yearlong to designated roads and trails.

The Square Butte Outstanding Natural Area would be designated an ACEC to protect natural endemic systems, cultural sites, scenic qualities, and rare geologic features unique to Montana. The BLM would pursue a protective withdrawal to segregate the area from mining claim location, and the area would be withheld from oil and gas leasing except for a 1/4-mile perimeter of the Butte. Surface-disturbing activities, including transmission lines, roads, communication sites, pipelines, and off-road travel would be prohibited.

Collar Gulch in the Judith Mountains would be designated an ACEC to protect a pure strain of westslope cutthroat trout. The BLM would pursue a protective withdrawal to segregate the area from mining claim location, and the area would be closed to off-road travel except for the main Judith Peak road and connected Big Grassy Peak and Crystal Peak/Collar Ridge access roads.

Azure Cave in the Little Rocky Mountains would be designated an ACEC to protect cave resources and the potentially northernmost bat hibernaculum in the United States. The

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BLM would continue the withdrawal which segregates the area from mining claim location, and the area would be closed to oil and gas leasing. Off-road travel would be restricted yearlong to designated roads and trails.

Big Bend of the Milk River would be designated an ACEC to protect archaeological resources representing bison hunting and prehistoric ceremonial use of the Northwestern Plains. The BLM would pursue a protective withdrawal to segregate the area from mining claim location and solid mineral leasables. Off-road travel would be restricted to designated roads and trails.

Prairie dog towns within the black-footed ferret reintroduction area, which includes two nominations (Complex 1 and Complex 2) would be designated an ACEC to protect habitat for the black-footed ferret. Powerline rights-of-way would be located to avoid prairie dog towns and discourage raptor perching.

Management prescriptions for these potential ACECs vary by alternative and are described in the RMP/EIS.

The RMP/EIS evaluates the eligibility of 187 rivers and streams within the planning area for further study as potential components of the National Wild and Scenic Rivers System. One segment of the Judith River was determined to be eligible and classified as wild, but not suitable for inclusion in the National Wild and Scenic Rivers System.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register** in September 1988. Since that time public meetings, mailings, and briefings were conducted to solicit comments and ideas. All comments presented throughout the process have been considered.

This Notice meets the requirements of 43 CFR 1610.7-2 for designation of ACECs and the requirements of the Final Revised USDI-USDA Guidelines for Eligibility, Classification, and Management of Rivers (47 FR 39454).

Dated: June 13, 1991.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 91-14838 Filed 6-20-91; 8:45 am]

BILLING CODE 4310-DN-M

National Park Service

Shenandoah National Park; Insignia; Prescription

I hereby prescribe the "Shenandoah National Park" logo which is depicted below as the official insignia of the Shenandoah National Park, a unit of the National Park system, United States Department of the Interior.

In making this prescription, I give notice that, under section 701 of title 18 of the United States Code, whoever manufactures, sells or possesses any badge, identification card, or other insignia of the design herein prescribed, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving, photograph, print or impression in the likeness of any imitation thereof, except as authorized under regulations made pursuant law, shall be fined not more than $250 or imprisoned not more than six months, or both.

Notice is given that in order to prevent proliferation of the distinctive "Shenandoah National Park" Insignia and to assure against its use for purposes other than marking informational signs, interpretive exhibits, information literature for park visitors, official correspondence and notices of the Shenandoah National Park and those purposes which, in the determination of the National Park Service, are consistent with the purpose for which the National Park was established, the National Park Service will proceed to secure trademark registration under section 1115 of title 15 of the United States Code for Shenandoah National Park "SHENANDOAH NATIONAL PARK" Insignia.

Shenandoah National Park Logo as follows



Dated: May 30, 1991.

Anthony M. Corbisiero,

Acting Regional Director.

[FR Doc. 91-13379 Filed 6-20-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

Name: Michelin Corporation,
Address 515 Madison Avenue, New York, New York 10022

2. Owned subsidiaries (directly or indirectly) which will participate in the operations, and State(s) of incorporation:

a. *Michelin Tire Corporation, a New York corporation*

b. *Uniroyal Goodrich Tire Company, a Delaware corporation*

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14798 Filed 6-20-91; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 491]

Railroad Cost of Capital—1990

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision.

SUMMARY: On June 20, 1991, the Commission served a decision to update its estimate of the railroad industry's cost of capital for 1990. The composite cost of capital rate for 1990 is found to be 11.8 percent, based on a current cost of debt of 9.8 percent, a cost of preferred equity capital of 8.1 percent, a cost of common equity capital of 12.9 percent, and a 34.7 percent debt/0.7 percent preferred equity/64.6 percent common equity capital structure mix. The cost of capital finding made in this proceeding will enable the Commission to make its annual determination of railroad revenue adequacy for 1990.

EFFECTIVE DATE: June 21, 1991 .

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 275-7489 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision should be used to evaluate the adequacy of railroad revenues for 1990 under the standards and procedures promulgated in *Standards for Railroad Revenue Adequacy*, 3 I.C.C. 2d 261 (1986). This finding may also be used in proceedings involving the prescription of maximum reasonable rate levels.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: June 12, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14809 Filed 6-20-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-101 (Sub-No. 9X)]

Duluth, Missabe and Iron Range Railway Co.—Abandonment Exemption—in St. Louis, Co., MN

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 1-mile line of railroad between mileposts 14.4 and 15.4, near Biwabik, in St. Louis County, MN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 21, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 1, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by July 11, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Colette F. Shotton, 135 Jamison Lane, P.O. Box 68, Monroeville, PA 15146.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 26, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 6, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14737 Filed 6-20-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Finance Docket No. 31671]

Indiana Hi-Rail Corp.; Modified Rail Certificate

On April 23, 1991, Indiana Hi-Rail Corporation (IHRC) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150.23 to operate a line of railroad between milepost, 54.4 at Lima, OH, and milepost 84.2, at Glenmore, OH.

The line was formerly owned by the Erie Lackawanna Railway Company (EL) and acquired by the State of Ohio. At the time of the acquisition the line was not designated to Consolidated Rail Corporation (Conrail), but was available for subsidy under section 304 of the Regional Rail Reorganization Act of 1973 (3R Act). USRA-Final System Plan-July 1975—Vol. II, page 122. Under section 304, EL gave notice of intent to abandon the line effective March 31, 1976. The line was then acquired by the Ohio Rail Transportation Authority in 1977 and the Spencerville & Elgin Railroad Company (S&E) was designated as operator. *See* D-OP 23, Certificate of Designated Operator—Spencerville & Elgin Railroad Company (not printed), served February 13, 1979. In 1979 the Van Wert County-Allen County Port Authority acquired the line. On November 7, 1990, S&E gave notice of intent to terminate service on or about 60 days from the date of notice. S&E no longer provides service on the line.

This rail line qualifies for a modified certificate of public convenience and necessity. A rail line which was approved for abandonment under the Final System Plan, but over which operations were continued by a D-OP, has been "fully abandoned, or approved for abandonment" within the meaning of 49 CFR 1150.21. *See* Finance Docket No. 28990F, Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions (not printed), served July 16, 1981, pp. 9-10.

No subsidy is involved and there are no preconditions for shippers to meet in order to receive rail service. Operations over the line will be conducted indefinitely unless terminated upon appropriate notice in accordance with 49 CFR 1150.24.

This line connects at Ohio City, OH, with IHRC's St. Mary's district line between Van Buren, IN, and Douglas, OH, and connects with Conrail at Lima. IHRC has served customers on the Lima-Glenmore line as an intermediate carrier and under the modified certificate will provide a more efficient service by serving customers directly.

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This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: June 17, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14810 Filed 6-20-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated April 8, 1991, and published in the **Federal Register** on April 16, 1991, (56 FR 15382), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146. 7, State Road, Mayaquez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of dextropropoxyphene, bulk (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 13, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14803 Filed 6-20-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 7, 1991, MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcenent Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1/24)	II
Diphenoxylate (9170)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing theron in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 21, 1991.

Dated: June 10, 1991

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14804 Filed 6-20-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated April 8, 1991, and published in the **Federal Register** on April 16, 1991, (56 FR 15383), MD Pharmaceutical, Inc. 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 13, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14805 Filed 6-20-91; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated April 8, 1991, and published in the **Federal Register** on April 16, 1991, (56 FR 15383), Minn-Dak Growers Limited, Highway 81 North, P.O. Box 1276, Grand Forks, North Dakota 58206, made application to the Drug Enforcement Administration to be registered as an importer of marijuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 13, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14806 Filed 6-20-91; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated April 8, 1991, and published in the **Federal Register** on April 16, 1991, (56 FR 15384), Sterling Drug, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as an importer of meperidine (pethidine) (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 13, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-14807 Filed 6-20-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: July 10, 1991, 9:30 am-12 noon, rm. S-2217, FPBldg., Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavalle, Director, Trade Advisory Group, Phone: (202) 523-2752.

Signed at Washington, DC this 17th day of June 1991.

Robert Bostick,

Associate Deputy Under Secretary, International Affairs.

[FR Doc. 91-14816 Filed 6-20-91; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 1, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 1, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 10th day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Big Yank Corp. (Wkrs)	Wewoka, OK	06/10/91	05/29/91	25,910	Jeans.
BP Oil Pipeline Co. (CO)	Kirbyville, TX	06/10/91	05/28/91	25,911	Oil & Gas.
BP Oil Pipeline Co. (CO)	Longview, TX	06/10/91	05/28/91	25,912	Oil & Gas.
Converse Inc. (Wkrs)	N Reading, MA	06/10/91	05/30/91	25,913	Athletic Shoes.
Converse Inc. (Wkrs)	Lumberton, NC	06/10/91	05/30/91	25,914	Athletic Shoes.
Fred Stecker Oldsmobile Inc. (Wkrs)	Euclid, OH	06/10/91	05/31/91	25,915	Oldsmobile Sales.
H.S. Automotive, (Longview) (USWA)	Mansfield, OH	06/10/91	05/28/91	25,916	Auto Seats.
H.S. Automotive, (Rupp) (USWA)	Mansfield, OH	06/10/91	05/28/91	25,917	Auto Seats.
J&G Shake Co. (Wkrs)	Forks, WA	06/10/91	05/22/91	25,918	Shakes and Shingles.
JO-MAR Inc. Textile Div. (CO)	Philadelphia, PA	06/10/91	05/30/91	25,919	Textiles for Apparel.
Kozee Komfort Products (Wkrs)	Brooklyn, NY	06/10/91	05/28/91	25,920	Baby Bed Equip.
McNally Replacement Parts Inc. (Wkrs)	Pittsburg, KS	06/10/91	05/28/91	25,921	Mining Machinery.
MGM/UA Home Video (Wkrs)	Gallatin, TN	06/10/91	05/28/91	25,922	Video Cassettes.
Rocky Mountain Temporaries (Wkrs)	Longmont, CO	06/10/91	05/31/91	25,923	Hard Disk Drives.
Shelborne Shirt Co., Inc. (Wkrs)	New York, NY	06/10/91	05/30/91	25,924	Shirts.
Thomas & Betts (IBEW)	Elizabeth, NJ	06/10/91	05/24/91	25,925	Electrical Fittings.
U.S. Steel/Shawnee Mine (AMWA)	Pineville, WV	06/10/91	06/03/91	25,926	Volatile Metallurgical Coal.
Union Railroad Co	Monroeville, PA	06/10/91	06/03/91	25,927	Hauling of Steel.

[FR Doc. 91-14811 Filed 6-20-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production

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Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,667; Dinner Bell Foods, Inc., Defiance, OH

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,717; Marnik Fashions, Inc., Glassboro, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,664; CTS Electronics Corp., Brownsville, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,707; Elco Processors, Inc., Bronx, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,673; Gilbert & Bennett Manufacturing Co., Georgetown, CT

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,681; Pacific Press & Shear, Mt. Carmel, IL

U.S. Imports of machine tool (metal cutting and metal forming) decreased absolutely in 1990 compared to the same period in 1989.

TA-W-25,690; Tektronix, Inc., Hybrid Components Div., Beaverton, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,726; Unitog Co., Clinton, MO

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-25,680; Otis Elevator, NAO, Bloomington, IN

A certification was issued covering all workers separated on or after March 25, 1990.

TA-W-25,655; Trenton Terminals, Inc. Utica, NJ

A certification was issued covering all workers separated on or after March 7, 1990.

TA-W-25,634; Teledyne Control Applications Div, Teledyne Geotech, Garland, TX

A certification was issued covering all workers separated on or after March 18, 1990.

TA-W-25,616; Carolina Glove Co., Conover, NC

A certification was issued covering all workers separated on or after March 22, 1990.

TA-W-25,676; K.T. Swasey, Solon, OH

A certification was issued covering all workers separated on or after April 4, 1990.

I hereby certify that the aforementioned determinations were issued during the month of June, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 17, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-14815 Filed 6-20-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 719]

OPTO Generic Devices, Inc., Van Hornesville, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 22, 1991 in response to a worker petition which was filed on April 22, 1991 on behalf of workers to OPTO Generic Devices, Inc., Van Hornesville, New York.

The petitioners have requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC., this 14th day of June, 1991

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-14814 Filed 6-20-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 350]

Shot Point Services, Inc., Houston, TX

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Shot Point Services, Incorporated, Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25, 350; Shot Point Services, Incorporated, Houston, Texas (June 13, 1991)

Signed at Washington, DC, this 13th day of June, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-14813 Filed 6-20-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 583; Toshiba America Consumer Products, Inc., Lebanon, TN

TA-W-25, 515; Sebewaing Industries, Inc., Sebewaing, MI

TA-W-25, 642; Custom Electronics, Inc., Oneonta, NY

TA-W-25, 659; Affiliated Industries of Shippensburg, Inc., Shippenburg, PA

TA-W-25, 617; Cars and Concepts, Inc., Brighton, MI

TA-W-25, 520; AMPEX Corp., Colorado Springs, Co

TA-W-25, 675; HBI Automotive Glass, Lancaster, OH

TA-W-25, 697; A.O. Smith Electrical Motors Div., Mt. Sterling, KY

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25, 672; General Electric Co., Cicero, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 627; Vigor Co., New York, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 684; Rodime, Inc., Boca Raton, FL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 661; Bates Corrugated, Townsend, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 593; Goss & Deleeuw Machine Co., Kinsington, CT

U.S. imports of machine tools (metal cutting and metal forming) declined absolutely and relative to domestic shipment in 1990 compared to 1989.

TA-W-25, 683; Quantum Chemical Corp., USI Chemicals Div., Rolling Meadows, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 648; GCA Tropel, Fairport, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant periods as required for certification.

TA-W-25, 700; Biltwell, Salesbury, MO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant periods as required for certification.

TA-W-25, 652; Pioneer Indistrial Products, Attica, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 589; Comair Rotron, Inc., Saugerties, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25, 591; Federal Mogual Corp., Blacksburg, VA

U.S. imports of ball and roller bearings and parts declined in the first 6 months of 1990 compared to the same period in 1989.

TA-W-25, 541; The Toro Co., Home Improvement Div., Willmar, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 674; Glamour Sportswear Corp., Frackville, PA

Workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-25, 658; Tuff-Bilt Tractors Ltd, Cumming, GA

A certification was issued covering all workers separated on or after March 29, 1990.

TA-W-25, 724; Syntrex, Inc., Eatontown, NJ

A certification was issued covering all workers separated on or after March 1, 1990.

TA-W-25, 663; Crydom Corp., Milwaukee, WI

A certification was issued covering all workers separated on or after March 27, 1990.

TA-W-25, 695; Weather Tamer, Inc., Centerville, TN

A certification was issued covering all workers separated on or after March 30, 1990.

TA-W-25, 727; Weather Tamer, Inc., Columbia, TN

A certification was issued covering all workers separated on or after April 1, 1990.

TA-W-25, 712; Leonard Electric Products Co., Inc., Brownsville, TX

A certification was issued covering all workers separated on or after April 4, 1990.

TA-W-25, 744; Gadsden Sportswear, East Gadsden, AL

A certification was issued covering all workers separated on or after April 9, 1990.

TA-W-25, 804; Golan Manufacturing Co., Abingdon, VA

A certification was issued covering all workers separated on or after April 30, 1990.

TA-W-25, 685; Sharpe Cedar Products, Onalaska, WA

A certification was issued covering all workers separated on or after March 31, 1990.

TA-W-25, 714; Marlene Industries Corp d.b.a. Decaturville Sportswear Co., Decaturville, TN

A certification was issued covering all workers separated on or after April 8, 1991.

TA-W-25, 715; Marlene Industries Corp d.b.a. Decaturville Sportswear Co., Lexington, TN

A certification was issued covering all workers separated on or after April 8, 1991.

TA-W-25, 716; Marlene Industries Corp d.b.a. Trousdale Manufacturing Co., Hartsville, TN

A certification was issued covering all workers separated on or after April 8, 1991.

TA-W-25, 716A; Marlene Industries Corp d.b.a. Russell Sportswear Co., Russell Springs, KY

A certification was issued covering all workers separated on or after April 8, 1991.

I hereby certify that the aforementioned determinations were issued during the month of June, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 12, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-14812 Filed 6-20-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study

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of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA91-1 (Feb. 22, 1991)..... p. 421, pp. 422-438.
MA91-2 (Feb. 22, 1991)..... p. 439, pp. 440-452.
MA91-3 (Feb. 22, 1991)..... p. 453, pp. 456-462.
New Jersey, NJ91-4 (Feb. 22, 1991). p. 745, pp. 746-749.
Virginia:
VA91-5 (Feb. 22, 1991)..... p. 1243, p. 1244.
VA91-9 (Feb. 22, 1991)..... p. 1253, p. 1254.
VA91-50 (Feb. 22, 1991)..... p. 1357, p. 1358.
West Virginia:
WV91-2 (Feb. 22, 1991)..... p. 1421, pp. 1421-1444a.
WV91-3 (Feb. 22, 1991)..... p. 1445, pp. 1446-1458a.

Volume II

Illinois:
IL91-9 (Feb. 22, 1991)..... p. 153, pp. 154-160.
IL91-12 (Feb. 22, 1991)..... p. 171, pp. 172-182a.
IL91-13 (Feb. 22, 1991)..... p. 183, pp. 184-194b.
IL91-14 (Feb. 22, 1991)..... p. 195, pp. 196-204b.
IL91-15 (Feb. 22, 1991)..... p. 205, pp. 206-214.
Indiana:
IN91-1 (Feb. 22, 1991)..... p. 243, pp. 244, 257.
IN91-2 (Feb. 22, 1991)..... p. 259, pp. 260-278.
IN91-4 (Feb. 22, 1991)..... p. 291, pp. 292-304b.
Kansas, KS91-6 (Feb. 22, 1991). p. 363, pp. 364-366.
Michigan, MI91-7 (Feb. 22, 1991). p. 515, pp. 516-534.
Missouri, MO91-1 (Feb. 22, 1991). p. 551, pp. 552-572.

Volume III

California, CA91-6 (Feb. 22, 1991). p. 131, pp. 131-132.
Colorado:
CO91-1 (Feb. 22, 1991)..... p. 151, pp. 152-154.
CO91-5 (Feb. 22, 1991)..... p. 177, pp. 176-177.
Idaho:
ID91-4 (Feb. 22, 1991)..... p. 225, pp. 226-227.
ID91-5 (Feb. 22, 1991)..... p. 229, p. 230.
Oregon, OR91-1 (Feb. 22, 1991). p. 371, pp. 383-387.
Washington:
WA91-1 (Feb. 22, 1991)..... p. 451, pp. 452-476.
WA91-2 (Feb. 22, 1991)..... p. 477, pp. 478-486b.
WA91-5 (Feb. 22, 1991)..... p. 495, pp. 496-498.

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 17th Day of June 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-14697 Filed 6-20-91; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

[Docket No. NRTL-1-90]

Communication Certification Laboratory; Application for Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the Communication Certification Laboratory's application for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the Communication Certification Laboratory, which made application for recognition pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The address of the laboratory covered by this recognition is: Communication Certification Laboratory, 1940 West Alexander Street, Salt Lake City, Utah 84119.

Background

The Communication Certification Laboratory (CCL) was formed in 1971 to test telephone terminal equipment for connection to the telephone network, and since then has been engaged in testing all types of electronic equipment. In the early seventies, CCL was testing to the interconnect standards of New York, Illinois and California. When the Federal Communications Commission (FCC) adopted part 68 for telephone terminal equipment in 1976, the emphasis of the testing shifted to that required for FCC part 68.

In 1985, the laboratory moved to its present site in Salt Lake City, Utah. In 1986, CCL accredited by the National Voluntary Laboratory Accreditation Program (NVLAP). CCL has also done testing to many EIA, AT&T, and Rural Electrification Administration (REA) standards, which included acoustic, surge, and mechanical and electrical testing.

The Communication Certification Laboratory applied to OSHA for recognition as a Nationally Recognized Testing Laboratory in January 1990. The application was subsequently revised and additional data provided as requested. As on-site evaluation was conducted on March 20 and 21, 1990, and the results discussed with the applicant who responded with appropriate corrective actions and clarifications to recommendations made as a result of the survey. The final on-site review report (Ex. 3A), consisting of the on-site evaluation of CCL's testing facilities and administrative and technical practices and the corrective action taken by CCL in response to these evaluations, and the OSHA staff recommendation, were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of CCL's application together with a positive preliminary finding was published in the **Federal Register** on December 26, 1990 (55 FR 53063-53065). Interested parties were invited to submit comments.

There was one response to the **Federal Register** notice of the CCL application and preliminary finding (Docket No. NRTL-1-90). The respondent (Ex. 4-1) was concerned with two issues. (1) Whether a certification mark must be registered by the applicant with the U.S. Patent and Trademark Office under the Lanham Act, 15 U.S.C., paragraphs 1051-1127, in order to obtain approval from OSHA as an NRTL, and (2) Whether OSHA must examine more completely the ownership of the applicant in order to assure its independence under 29 CFR 1910.7(b)(3).

OSHA determined that CCL had made formal application for a registered certification mark with the U.S. Patent and Trademark Office. OSHA also reexamined in depth the nature of CCL's claimed independence and determined, to its satisfaction, that the applicant met its requirements as delineated in 29 CFR 1910.7(b)(3).

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

Based upon the on-site review report and the products and standards in question, CCL's laboratory has adequate floor space for testing and evaluation and an adequate number of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks.

The laboratry leases a 12,000 square foot brick building on a 1.4 acre site in an industrial park. Approximately 4,000 square feet is used for product testing and evaluation. The laboratory has been at this location since November 1985. Water, electric and gas utilities are available in the laboratory. The test standards for which CCL requested recognition do not require utilities that are not available in the laboratory. Environmental conditions within the laboratory are controlled by a central heating, air conditioning and ventilation system. Three environmental chambers are used to control temperature and humidity required for some tests specified in the standards. The laboratory has a shipping/receiving area to control and identify products submitted for testing. Product samples are tagged and marked with a number that identifies the laboratory department conducting the evaluation and the test number that has been assigned sequentially to that product. A decription of all products received and shipped are recorded in a log book and the information entered into a computer data base. Documents and invoices received with the product are placed in the Test File for that test number. The main entrance to the building is monitored during working hours by a receptionist and by office workers located adjacent to the entrance. Visitors are required to identify themselves and to sign in and out in a visitor's register. The facility is locked during non-working hours. The facility has no perimeter alarm system. A controlled access room, with a code access key pad, motion detector and door sensor, is available for clients requiring confidentiality. The alarm system is connected to a contracted security agency. A lockable equipment cabinet and fire-proof file cabinet are located inside the room.

The laboratory employs some 35 people at the laboratory site, nine of whom are currently involved in testing and evaluation to the product standards listed. Key personnel consist of 2 technicians, 3 engineers and supervisors, and 4 support personnel.

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The president of CCL has overall responsibility for product testing and evaluation.

CCL submitted position descriptions, which included education, training and experience, for the job titles of the personnel involved in product testing and evaluation. The personnel appear to have the proper training to carry out the duties they are assigned.

The laboratory identified more than 100 test instruments and devices used in testing products. Equipment is available in the laboratory to perform the tests specified in the standards. The laboratory's Quality Manager maintains a current inventory of test equipment including the model number, serial number and type of equipment, name of the manufacturer, date received, and range of measurement. Service manuals and other literature received with newly acquired test equipment are filed in the laboratory's library and are available to all personnel. Malfunctioning test equipment is removed from service for evaluation and repair by the Engineer Support Technician.

Test equipment is calibrated off-site by a contracted vendor who is required to certify that each calibrated instrument is traceable to National Institute of Standards and Technology (NIST) standards. Test instruments are generally calibrated at intervals recommended by the manufacturer. However, the interval may be varied based upon the instrument's calibration history. An Engineering Support Technician is responsible for the calibration of test equipment. The Engineering Manager is notified monthly of test equipment requiring calibration the following month. The calibration status of a test instrument is indicated on a calibration label affixed to the instrument by the contracted calibration laboratory. Records of the repair, maintenance and calibration of all test equipment are kept by the Quality Manager.

The laboratory maintains a Technical Standard describing the test procedures used to evaluate telephone equipment per UL 1459. This document indicates the standard number and specific section of the standard, detailed testing procedures, test equipment required for the test, and evaluation criteria for determining whether the equipment passes or fails. The Technical Standard also includes narrative notes and diagrams as necessary to explain set-up of the test. A Technical Standard will be written for each requested standard prior to certifying equipment to that standard. Test methods in the Technical Standard are prepared and revised as necessary by the Engineering Manager responsible for that testing area, who also reviews and approves the entire Technical Standard. At the time of the investigation, CCL had in place only CCL Technical Standard 50-790-02, the testing procedures for UL 1459. The test procedures for ANSI/UL 478, ANSI/UL 1012, and UL 1950 were in development. CCL made the commitment to OSHA not to list any products to these three standards until the proper test operations and testing procedures have been through the necessary evaluation and review and have been submitted to the OSHA NRTL staff for their approval.

The laboratory performs all product testing in-house and does not subcontract any of the tests specified in the standards.

CCL maitains a Quality Assurance (QA) Procedures Manual which includes the organization structure, documentation requirements, calibration system, testing complaints, training and certification, and operational procedures of the laboratory. The manual is reviewed annually with the Quality Systems under the direction of the Vice-President. Quality assurance responsibilities are assigned for each function of the laboratory's operation. CCL's president is responsible for the Quality Assurance Program. The Project Engineer, Engineering Manager and Vice-President of Engineering review all test reports prepared by the Test Technician for completeness and accuracy. If a discrepancy is discovered during the review process, the report is returned to the Test Technician for revision. This revised report is then again routed through the review process.

The operational procedures for product testing and evaluation include inital administrative procedures, incoming inspection, storage and handling of product and component samples, in-process control, testing, reports, equipment storage, and return shipping to the client.

Test data sheets for testing conducted per UL 459 have been prepared and will be prepared for the other requested test standards. These data sheets are included in the laboratory's Technical Standard for telephone equipment. These test data sheets include the name of the test, the project number, the applicant's name, product model number, the specification reference (standard and section number), reference laboratory test procedure, test data to be recorded, test results, comments, signature of the person conducting the test and date of test. The laboratory requires that components used in listed products be recognized by an NRTL where required by the standard. The laboratory does not list or recognize components.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system.

CCL's application as well as the on-site review report indicate that the applicant does maintain effective procedures for producing creditable findings and reports that are objective.

The General Laboratory Practices Manual lists the contents of the final report as: The name and address of the laboratory; pertinent dates and identifying numbers; client name; description or identification of each product sample; identification of known deviations from test methods, measurements, examinations, or derived results, and identification of test anomalies; a statement, if necessary, as to whether or not the test results comply with the requirements of product or project specifications; signature of the person having technical responsibility for the test report; the laboratory's assigned test number; and any other items required by the test method.

A typical test report is assigned a laboratory number and a date of issue, and identifies the manufacturer, model, type and trade name of the product, name of the applicant and addresses of the manufacturer and applicant, and the number and edition of the standard to which the equipment was tested and evaluated. It contains a detailed description of the product, schematics, parts lists, drawings reproduced from the clients or vendor's supplied documentation, and photographs where applicable. The report also includes a section-by-section narrative to address each section of the standard. Sections that do not apply to that product are so noted. The report specifies and describes the manufacturing and production tests required by the standard. As applicable, the report may require that a label, containing the manufacturer's name, catalog number, and the certifier's logo and listing number, be attached to the product. Other information included in the report includes installation and maintenance instructions, and information to be included in the instruction manual required by the standard. Test data sheets are not included in the test reports but are filed in the test file maintained for each project.

The test reports are written by a Test Technician, reviewed by the Engineering Manager who signs the report for the laboratory and, prior to issuance, reviewed by the Vice-President of Engineering. Changes in the product are reflected in the report in the following way: These reports are to be amended if less than 50 percent of the report would be changed because of product revisions or changes to the standard. A new report is to be issued if more than 50 percent of the report would be changed. The original test reports are sent to the applicant. Copies of the entire test files are stored off-site in the event the original files are lost or destroyed. CCL also maintains a computer data base of all test reports issued, which may be used to verify the status of listed products for local inspection authorities. There are log in/log out procedures to identify test files taken from the files room. Test records are loose-leafed in the file. The completeness of a test file can be determined by an index located at the front of the test file.

CCL subscribes to the UL updating service for the ANSI/UL and UL test standards for which recognition is requested. Copies of standards and revisions are distributed to laboratory personnel requiring the information. Revised and superseded standards are archived in the laboratory library for reference.

The Quality Assurance Procedures Manual includes formal procedures that the client or other interested parties may use to question test results or to challenge a test method or an interpretation or application of the test standard. The Vice-President of Engineering will notify the client, in writing, of the laboratory's reply. The client may appeal this decision to the President of the laboratory. If the disagreement involves a method of measurement, the laboratory will solicit the NIST for an interpretation of the method of measurement.

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: Testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. CCL has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures to the extent necessary for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

CCL has a written Factory Inspection Program to assure that the product currently manufactured is identical to the product previously tested and certified. The laboratory has not yet implemented this program since they have not certified any products prior to applying for acceptance as an NRTL.

The Factory Inspection Program includes the following requirements:

Unannounced inspections will be conducted quarterly at the final manufacturing site.

Prior to the inspection, the inspector will review the laboratory copy of the test report and will discuss the product with the laboratory's Project Engineer. A copy of the test report and the applicable standard will be taken to the inspection site.

A random sample of the product will be selected from inventory. If the product is not available from inventory, the manufacturer will be asked to provide information on where the product may be purchased and inspected.

The procedures for the factory inspection will include, as applicable, an examination or test of the sample for the following: Proper packaging, marking and labeling; current and leakage measurements; components and workmanship of the assembly; the sample product compared with the test report photographs; spacing measurements; and quality assurance procedures (which will be reviewed with the manufacturer).

The laboratory will use its own personnel or will contract through another laboratory or organization for conducting the follow-up inspections. Alternatively, CCL may purchase the product to be inspected and tested at the laboratory's facility. If discrepancies are noted in the product sample, the inspector will notify the manufacturer and suspend further shipment of labeled products until evaluation by CCL. If the discrepancies are serious, appropriate action will be taken to correct any products shipped by the factory during the previous six months.

Independence

Section 1910.7(b)(3) requires that an NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendors of equipment or materials being tested. The applicant stated in its application that it is in complete compliance with this requirement.

OSHA requested and reviewed information from CCL concerning stock holdings and other company board memberships of officers/members of the Board of Directors of CCL and believes that based upon this review, an examination of the application, and discussions with executives of the CCL, the Communication Certification Laboratory can be considered to be in compliance with the requirements of § 1910.7(b)(3).

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an ANSI safety designated product standard. As to the two non-ANSI UL test standards for which CCL has applied to test products to, OSHA previously had examined the status of the Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c)(1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report, OSHA finds that the Communication Certification Laboratory has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the Communication Certification

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Laboratory is hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

CCL has stated that all the standards in these categories are used to test equipment or materials which may be used in environment under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ANSI/UL 478—Information-Processing and Business Equipment
ANSI/UL 1012—Power Supplies
UL 1459—Telephone Equipment
UL 1950—Information Technology Equipment Including Electrical Business Equipment

The Communication Certification Laboratory must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to CCL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CCL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CCL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CCL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

CCL shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

CCL will continue to meet the requirements for recognition in all areas where it has been recognized; and

CCL will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATES: This recognition will become effective on June 21, 1991, and will be valid for a period of five years from that date, until June 21, 1996, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 18th day of June, 1991.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 91-14817 Filed 6-20-91; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Inter-Arts Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice of a meeting of the Inter-Arts Advisory Panel (Dance on Tour Section) to the National Council on the Arts (originally published June 10, 1991, **Federal Register** No. 111 FR 26697) which was to have been held June 25-26, 1991 from 9:30 a.m.-5 p.m. will be held on June 25 only.

Portions of this meeting will be open to the public from 9:30 a.m.-10 a.m. and 3 p.m.-5 p.m. The topics will be opening remarks, guidelines review/policy discussion—state component.

Further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: June 13, 1991.

Robbie McEwen,

Acting Advisory Committee Management Officer, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-14840 Filed 6-20-91; 8:45 am]

BILLING CODE 7537-01-M

POSTAL RATE COMMISSION

[Order No. 867; Docket No. A91-6]

Pardeesville, Pennsylvnia 18243 (Maurice DeLorenzo, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b) (5)

Issued June 17, 1991.

Name of Affected Post Office: Pardeesville, Pennsylvania 18243.

Name(s) of Petitioner(s): Maurice DeLorenzo.

Type of Determination: Closing.

Date of Filing of Appeal Papers: June 13, 1991.

Categories of Issues Apparently Raised.

1. Requirement that written determination be made available to persons served by the post office (39 U.S.C. 404(b)(3)).

2. Requirement of adequate notice to insure that persons served by the post office will have an opportunity to present their views (39 U.S.C. 404(b)(1)).

3. Availability for public inspection of supporting material (Exh. 432.31, Post Office Discontinuance Guide).

4. Effect on the community (39 U.S.C. 404(b)(2)(A).

5. Effect on postal services (39 U.S.C. 404(b)(2)(C).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders:

(A) The record in this appeal shall be filed on or before June 28, 1991.

(B) The Secretary shall publish this notice and order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp

Secretary.

June 13, 1991—Filing of petition.
June 17, 1991—Notice and order of filing of appeal.
July 8, 1991—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).
July 16, 1991—Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b)).
August 7, 1991—Postal Service Answering Brief (see 39 CFR 3001.115(c)).
August 22, 1991—Petitioner's Reply Brief should Petitioner choose to file one (see CFR 3001.115(d)).
August 29, 1991—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
October 11, 1991—Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 91-14768 Filed 6-20-91; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29312; File No. SR-Amex-90-32]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Temporarily Approving Proposed Rule Change Relating to Procedures for Handling and Executing Market-On-Close Orders

I. Introduction

On April 18, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to amend Amex Rule 109 in order to make the procedures currently used to execute market-on-close ("MOC") orders in certain stocks on expiration Fridays applicable to all MOC orders on every trading day.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 29126 (April 24, 1991), 56 FR 20244 (May 2, 1991). No comments were received on the proposal.

II. Background

In 1987, Exchange Rule 109 was amended to implement a specific procedure for handling MOC orders on expiration Fridays in Amex-listed stocks that are components of a stock index on which an option and/or futures contract is traded (*e.g.*, the Standard and Poor's 500 Stock Index). Under this procedure, described more fully below, MOC buy and sell orders are paired off against each other, and the imbalance is executed against the prevailing bid or offer as appropriate. The procedure was implemented because many trading strategies involving stock indices require the unwinding of positions in the component stocks at the closing price on expiration Friday, since this is the price upon which index options and some future contracts base their settlement.

The procedure currently used for handling MOC orders on a daily basis other than expiration Fridays requires that, when the closing spread is no wider than the minimum fractional change in which the stock trades,[4] MOC orders to buy be executed against the offer, and MOC orders to sell be executed against the bid. The current procedure, therefore, assures that one type of order will not receive the final closing price.

Thus, because the Exchange has become aware that a number of trading techniques and strategies used by institutional investors have been developed which call for a single closing price on a daily basis, not just on expiration Fridays, the Exchange proposes to amend rule 109 in order to extend the procedures currently used to execute MOC orders in certain stocks only on expiration Fridays to all Amex-listed stocks on every trading day.

III. Description of Proposal

The proposal requires that all buy and sell MOC orders be paired-off against each other at the close of every trading day. If there is an imbalance, the imbalance would be executed against the closing bid if it is on the sell side and against the closing offer if it is on the buy side. The paired-off orders would then be executed at the same price as the imbalance. If there is no imbalance, the paired-off orders would be executed at the last sale on the Exchange prior to the close of trading in that stock. The Exchange states that this procedure assures that all MOC orders in a particular stock will be executed at the same price. In addition, those orders that are paried-off in implementing the procedure are reported as "stopped stock," informing customers with unexecuted limit orders on the specialist's book that the MOC transaction was executed outside the regular auction market, and for that reason their orders may not have participated.

IV. Discussion and Conclusion

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with sections 6 and 11A of the Act [5] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Amex proposal is substantially similar to a New York Stock Exchange, Inc. ("NYSE") proposal which was approved by the Commission for a one year pilot period.[6] As stated in the Order approving the NYSE's proposal, the Commission is aware that the use of composite-asset trading techniques and strategies have increased substantially over the past several years, prompting a growing need to establish greater pricing certainty at the close. Both the stock exchanges and broker-dealer have developed products to facilitate the trading of portfolios of securities.[7] The

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] The original proposed rule change, which was filed with the Commission on December 11, 1990, was revised by the Exchange to include a more detailed description of the proposed procedures for handling MOC orders. See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Mary Revell, Esq., Branch Chief, SEC, dated April 16, 1991. In addition, the Amex requested that the Commission approve the proposed rule change for a one year pilot period. See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Dated January 3, 1991.

[4] Currently, the minimum fractional change for securities selling under $.25 is 1/32 of $1.00 per share; above $.25 but below $1.00 is 1/16 of $1.00 per share; and at $1.00 and over is 1/8 of $1.00 per share. See Amex Rule 127. The Exchange recently submitted to the Commission a proposed rule change to amend Rule 127. See Securities Exchange Act Release No. 29183 (May 9, 1991), 56 FR 22741 (noticing File No. SR-Amex-91-07).

[5] 15 U.S.C. 78f and 78k-1 (1988).

[6] The Amex proposal herein is similar to the NYSE proposal with regard to making the procedures used for the execution of MOC orders on expiration Fridays applicable to every trading day. The NYSE proposal went even further than the Amex proposal, however, by allowing for the execution of matched MOC orders entered by the same member firm. See Securities Exchange Act Release No. 28167 (June 29, 1990), 55 FR 28117 (order granting approval for a one-year pilot period to File No. SR-NYSE-89-10).

[7] *See, e.g.*, Securities Exchange Act Release No. 28237; International Series Release No. 275 (May 24,

Continued

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Amex's proposal is yet another attempt to respond to the demand of customer and member firms to engage in index-related trades.

In addition, because the Amex proposal is substantially similar to the NYSE proposal approved by the Commission,[9] the Commission believes that approval of the Amex proposal also is consistent with section 11A of the Act.[9] Section 11A(a)(1)(C) states that fair competition among exchange markets "is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly market." The Commission believes that denying approval to the Amex proposal herein would impede competition between exchange markets, ultimately causing harm to both individual investors and the maintenance of a fair and orderly market. Furthermore, the Commission believes that denying Amex members the use of the proposed MOC procedures would unfairly discriminate between exchange members in contravention of section 6(b)(5) of the Act.

Thus, because the proposed MOC procedures are similar to procedures currently used by the Amex on expiration Fridays and the NYSE on every trading day, and because of the anticipated benefits of the proposed procedures, which include providing customers with additional flexibility in order execution, the Commission agrees with the Exchange that it would be appropriate to approve the proposed rule change. Like the approval of the NYSE proposal, the Amex proposal would be approved for a one-yer pilot period. During this period, the Commission expects the Exchange to develop criteria to evaluate the effects of the MOC procedures. When evaluating the effects of the MOC procedures, the Exchange should focus on, for example, any changes in stock market volatility or order flow during the last hour of trading (*i.e.*, between 3: and 4: p.m.).[10] The Exchange also should examine the use of the MOC procedures for Amex stocks that are not included in indexes underlying standardized options and determine how MOC orders are being used for these stocks.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change be, and hereby is, approved for a one year pilot period ending on June 14, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: June 14, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14628 Filed 6-20-91; 8:45 am]

BILLING CODE 8010-01-M

1991) (order approving an NYSE proposal to institute an off-hours trading facility which will allow the execution of crosses of multiple-stock aggregate-price buy and sell orders); and letter from Brandon Becker, Associate Director, Division of Market Regulation, SEC, to Lloyd H. Feller, Esq., Morgan Lewis and Bockius, dated July 28, 1987 (no-action letter issued by the Commission staff under sections 5 and 6 of the Act on behalf of a request by Jeffries and Co., Inc. to implement a computerized order entry mechanism to allow for trading customized portfolios of stocks).

See note 6, *supra*.

[9] 15 U.S.C. 78k-1 (1988).

[10] In this regard, the Commission expects the Amex to submit a report detailing its experience with the MOC procedures at least three months prior to the expiration of the one year pilot program. Further, at the same time, the Amex should submit to the Commission a proposed rule change, pursuant to rule 19b-4 of the Act, either to extend the pilot program for an additional year or to request permanent approval of the procedures.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30-3(a)(12) (1990).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

June 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Americus Trust for American Telephone & Telegraph Co.
Series 2 Unit Component, No Par Value (File No. 7-6937)
Americus Trust for GTE Corp.
Unit Component, No Par Value (File No. 7-6938)
Americus Trust for International Business Machines Co.
Unit Component, No Par Value (File No. 7-6939)
Americus Trust for Mobil Corp.
Unit Component, No Par Value (File No. 7-6940)
Americus Trust for Xerox Corp.
Unit Component, No Par Value (File No. 7-6941)
Haemonetics Corp.
Common Stock, $0.01 Par Value (File No. 7-6942)
Home Insurance Co.
Series A Preferred Stock, $2.95 Par Value (File No. 7-6943)
Jones Apparel Group, Inc.
Common Stock, $0.01 Par Value (File No. 7-6944)
National City Corp.
Depository Receipts (File No. 7-6945)
New Valley Corp.
Common Stock, $0.01 Par Value (File No. 7-6946)
Republic New York Corp.
$3.375 Cum. Conv. Pfd. (Fil. No. 7-6947)
Safeway, Inc.
Common Stock, $0.01 Par Value (File No. 7-6948)
Security Pacific Corp.
Depository Shares (File No. 7-6949)
Sun Distributors LP
Class A Ltd. Partnership Interest (File No. 7-6950)
Telefonos de Mexico S.A. de C.V.
American Depository Shares (File No. 7-6951)
UniCARE Financial Corp.
Common Stock, No Par Value (File No. 7-6952)
Vigoro Corp.
Common Stock, $0.01 Par Value (File No. 7-6953)
Wahlco Environmental Systems, Inc.
Common Stock, $0.01 Par Value (File No. 7-6954)
Americus Trust for American Express
Prime Component, No Par Value (File No. 7-6955)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 9, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-14627 Filed 6-20-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Bairnco Corporation
Common Stock, $.05 Par Value (File No. 7-6956)
Health Equity Properties, Inc.
Common Stock, No Par Value (File No. 7-6957)
Nichols Institute
Common Stock, $.10 Par Value (File No. 7-6958)
Nichols Institute
Class C Non-Voting Common Stock, $.01 Par Value (File No. 7-6959)
Nova Nordisk A/S
Rights to Purchase American Depositary Shares, No Par Value (File No. 7-6960)
F.A. Tucker Group, Inc.
Common Stock, $.01 Par Value (File No. 7-6961)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 9, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW,, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-14821 Filed 6-20-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Albany International Corporation
Class A Common Stock, $0.001 Par Value (File No. 7-6928)
Angelica Corporation
Common Stock, $1 Par Value (File No. 7-6929)
Bancorp Hawaii Incorporation
Common Stock, $2 Par Value (File No. 7-6930)
City National Corporation
Common Stock, $1 Par Value (File No. 7-6931)
Critical Care American Inc.
Common Stock, $0.10 Par Value (File No. 7-6932)
Diagnostic Products Corporation
Common Stock, No Par Value (File No. 7-6933)
Ennis Business Forms
Common Stock, $2.50 Par Value (File No. 7-6934)
IVAX Corporation
Common Stock, $0.10 Par Value (File No. 7-6935)
UNIFI Incorporated
Common Stock, $0.01 Par Value (File No. 7-6936)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 9, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-14822 Filed 6-20-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8 91-13]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, July 23, 1991, in the 29th Floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, Louisiana at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the April 23, 1991 meeting.
3. Update on past resolutions.
4. Reprot from the VTS Subcommittee.
5. New Business.

A. Army Corps of Engineers Rock Dike Project for the Mississippi River.

B. Army Corps of Engineers Inner Harbor Canal Lock relocation project.

6. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eight Coast Guard District on all areas of maritime safety affecting this waterway.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C. T. Bohner, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eight Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-3074.

Dated: June 11, 1991.

J. M. Loy,

Rear Admiral, U.S. Coast Guard, Commander, Eight Coast Guard District.

[FR Doc. 91-14798 Filed 6-20-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Tolland County, Connecticut

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation improvement in Tolland County, Connecticut.

FOR FURTHER INFORMATION CONTACT: James J. Barakos, Division Administrator, 450 Main Street, Hartford, Connecticut 06103; Telephone: (203) 240-3705; or Edgar T. Hurle, Director of Environmental Planning,

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Connecticut Department of Transportation, 24 Wolcott Hill Road, Wethersfield, Connecticut 06109-1100; Telephone: (203) 566-6704.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Connecticut Department of Transportation (ConnDOT), will prepare an environmental impact statement (EIS) on transportation improvements in the U.S. Route 6 (U.S.6) corridor between the eastern terminus of Interstate 384 in Bolton and the western terminus of the U.S.6 Willimantic by-pass in Windham.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include: (1) Taking no action; (2) using alternate travel modes; (3) widening or upgrading the existing two-lane highway; and (4) constructing a four-lane, limited access highway on a new location.

The U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Department of Interior (Fish and Wildlife Service), Connecticut State Historic Preservation Officer, and the Connecticut Department of Environmental Protection will be asked to be Cooperating Agencies. Letters describing the study and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. Any reviewer interested in submitting comments or questions should contact the FHWA or ConnDOT at the address provided above.⅛

The draft EIS will be available for public and agency review and comment. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on June 5, 1991.

James J. Barakos,

Division Administrator, Hartford, CT.

[FR Doc. 91-13614 Filed 6-20-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 17, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 8038-Q.
Type of Review: New Collection.
Title: Issuer's Information Return for Qualified Mortgage Bonds (QMBs).
Description: Form 8038-Q is used by issuers of qualified mortgage bonds to report information to the Internal Revenue Service applicable to each federally-subsidized mortgage loan financed through the issuance of a bond and to furnish certain required information to the mortgagors (borrowers). These issuers include state and local governments.
Respondents: State or local governments.
Estimated Number of Respondents: 74,500.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—5 hours, 16 minutes.
Learning about the law or the form—1 hour, 5 minutes.
Preparing copying, assembling, and sending the form to IRS—1 hour, 13 minutes.
Frequency of Response: A filing for each federally-subsidized mortgage granted.
Estimated Total Recordkeeping/Reporting Burden: 1,212,800 hours.
OMB Number: 1545-0121.
Form Number: 1116.
Type of Review: Revision.
Title: Foreign Tax Credit—Individual, Fiduciary, or Nonresident Alien Individual.
Description: Form 1116 is used by individuals (including non-resident aliens) and fiduciaries who paid foreign income taxes on U.S. taxable income, to compute the foreign tax credit. This information is used by IRS to verify the foreign tax credit.
Respondents: Individual or households.
Estimated Number of Respondents: 569,900.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—2 hours, 44 minutes.
Learning about the law or the form—44 minutes.
Preparing the form—1 hour, 34 minutes.
Copying, assembling, and sending the form to IRS—35 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 3,309,339 hours.
OMB Number: 1545-0235.
Form Number: 730.
Type of Review: Extension.
Title: Tax on Wagering.
Description: Form 730 is used to identify taxable wagers and collect the tax monthly. The information is used to determine if persons accepting wages are correctly reporting the amount of wagers and paying the required tax.
Respondents: Individual or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 4,150.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—3 hours, 26 minutes.
Learning about the law or the form—1 hour, 4 minutes.
Preparing the form—2 hours, 6 minutes.
Copying, assembling, and sending the form to IRS—16 minutes.
Frequency of Response: Monthly.
Estimated Total Recordkeeping/Reporting Burden: 339,000 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-14790 Filed 6-20-91; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 120
Friday, June 21, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:10 p.m. on Tuesday, June 18, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Administrative enforcement proceedings.

A matter relating to the Corporation's corporate activities.

A certain application of an operating noninsured institution for Federal deposit insurance.

A matter relating to a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred by in Mr. Jonathan Fiechter, acting in the place and stead of Director T. Timothy Ryan (Office of Thrift Supervision), Mr. Dean S. Marriott, acting in place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Chairman L. William Seidman that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: June 19, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-14920 Filed 6-19-91; 10:16 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

NOTICE OF AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 25, 1991, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Final amendments to Part 312 of the Corporation's rules and regulations, entitled "Assessment of Fees Upon Entrance to or Exit from the Bank Insurance Fund or the Savings Association Insurance Fund," which partially revise the method of computing entrance fees that must be paid by insured depository institutions participating in conversion transactions (transfers between the deposit insurance funds).

Memorandum re: Changes to the Section 19 Policy Statement and Guidelines.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: June 18, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-14913 Filed 6-19-91; 9:10 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:00 p.m. on Tuesday, June 25, 1991, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,710
First South, FA, Pine Bluff, Arkansas

Discussion Agenda

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the

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provisions of subsections (c)(6), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 18, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–14914 Filed 6–19–91; 9:10 am]

BILLING CODE 6714–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session following the FDIC Open Board meeting beginning at 2:00 p.m. on Tuesday, June 25, 1991 to consider the following matters:

Summary Agenda

None.

Discussion Agenda

A. *Memorandum re:*
Interim final rule on Suspension and Exclusion of Registered Contractors and Rescission of Contracts.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: June 18, 1991.

Resolution Trust Corporation

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–14967 Filed 6–19–91; 1:55 pm]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 56, No. 120
Friday, June 21, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Trail System and Off-Road Vehicle Management and Development, Ochoco National Forest and Crooked River National Grassland, Crook, Grant, Harney, and Wheeler Counties, OR

Correction

In notice document 91-12097 beginning on page 23546, in the issue of Wednesday, May 22, 1991, in the third column, the subject heading should read as shown above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3954-7]

Approval and Promulgation of State Implementation Plans; Wyoming; Prevention of Significant Deterioration and New Source Review

Correction

In rule document 91-12395 beginning on page 23810 in the issue of Friday, May 24, 1991, make the following corrections:

§ 52.2620 [Corrected]

1. On page 23812, in § 52.2620(c)(21)(i), in the fourth line, insert *"Permit"* before *"Requirements"*.

2. On the same page, in the same section, in the fifth line, remove *"Permit Regulations"*.

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301-12, 302-1

[FTR Amendment 17]

Federal Travel Regulation; Pre-Employment Interview Travel Expenses and Relocation Expenses of New Appointees

Correction

In rule document 91-12252 beginning on page 23653 in the issue of Thursday, May 23, 1991, make the following corrections:

1. On page 23656, in the first column, in the heading for PART 301-12, in the third line "ON" should read "OR".

§ 302-1.3 [Corrected]

2. On the same page, in the second column, in § 302-1.3, in item 30., in the fourth line "§ 302-1.5" should read "§ 301-1.5".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 131 and 135

[Docket Nos. 89P-0208 and 89P-0444]

Yogurt Products; Frozen Yogurt, Frozen Lowfat Yogurt, and Frozen Nonfat Yogurt; Petitions To Establish Standards of Identity, and to Amend the Exist- ing Standards

Correction

In proposed rule document 91-12955, beginning on page 24760, in the issue of Friday, May 31, 1991, make the following corrections:

1. On page 24760, in the third column, in the first paragraph, in the fourth line from the bottom, "21 U S.C. 271(e)." should read "21 U.S.C. 371(e).>

2. On page 24761, in the second column, in the sixth line from the top, "approval" should read "approved".

3. On page 24763, in the third column, in § 135————————(a), in the second line from the bottom remove "not".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 88P-0373]

Canned Green Beans and Canned Wax Beans; Amendment of the Standard of Identity

Correction

In proposed rule document 91-13098 beginning on page 25385 in the issue of Tuesday, June 4, 1991, make the following corrections on page 25385:

1. In the first column, in the **SUMMARY**, in the third line; and in the third column, in the third complete paragraph, in the third line, "identify" should read "identity".

2.In the second column under **SUPPLEMENTARY INFORMATION:**, in the first paragraph, in the next to last line, insert "green" after "canned".

3. In the third column, in the first complete paragraph, in the tenth line, "amendment" should read "amendments".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 890

[Docket No. R-91-1525; FR-2974-I-01]

RIN 2502-AF20

Supportive Housing for Persons With Disabilities

Correction

In rule document 91-13637 beginning on page 27070 in the issue of Wednesday, June 12, 1991, make the following correction:

§ 890.245 [Corrected]

On page 27083, in § 890.245, in the second column, in the last line "(c)" should be inserted before "For".

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Or-130-01-4212-13; GP1-227]

Realty Action; Washington

Correction

In notice document 91-12328 appearing on page 23031 in the issue of Friday, May 24, 1991, make the following correction:

.In the second column, in the first paragraph, in the last line, after "Kittitas County:", insert "T15N, R19E, WM".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-01-4214-10; IDI-3378]

Notice of Termination of Proposed Withdrawal and Reservation of Lands; Idaho

Correction

In notice document 91-8389 appearing on page 14532 in the issue of Wednesday, April 10, 1991, make the following corrections:

1. In the second column, under *Lynn Crandall Dam and Reservoir*, and "T.1N.,R.43E.,"in the line beginning "Sec. 9,", insert a "," between the second "NE¼ and "NW¼". In the line beginning "Sec.17", "NW¼NW¼" should read "NE¼NW¼"

2. In the same column, under the same heading, and under "T.2 N., R.43 E.", in the line beginning "Sec. 35, "NW¼SE¼ " should read "NW¼SW¼".

BILLING CODE 1505-01-D

federal register

Friday
June 21, 1991

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 101, 130, et al.
Food Labeling; Declaration of Ingredients; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PARTS 101, 130, 131, 133, 135, 136, 137, 139, 145, 146, 150, 152, 155, 156, 158, 160, 161, 163, 164, 166, 168, and 169

[Docket No. 90N-0361]

RIN 0905-AD08

Food Labeling; Declaration of Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations to make ingredient labeling more useful for consumers. The agency is also responding to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) which amends the Federal Food, Drug, and Cosmetic Act (the act) by proposing to require listing of the common or usual names of (1) all ingredients in standardized foods and (2) all color additives required to be certified by FDA.

In addition, the proposed amendments will: (1) Require that, when more than one sweetener is used in a product, all sweeteners be listed together in the ingredient list under the collective term "sweeteners," in the order of predominance appropriate for the sum of all sweeteners in the food (following the collective term, each sweetener will be listed in parentheses by its common or usual name in descending order of predominance by weight in the food); (2) permit inclusion of the food source in the names of the sweeteners defined by the food standards in 21 CFR 168.110 and 168.111 (i.e., "corn sugar anhydrous" and "corn sugar monohydrate" would be permitted in addition to names already provided for in 21 CFR 168.110(b) ("dextrose anhydrous" or "anhydrous dextrose") and 168.111(c) ("dextrose monohydrate" or "dextrose")); (3) require the declaration of protein hydrolysates (hydrolyzed vegetable protein and others), including the identification of the food source, e.g., "hydrolyzed corn protein," in the list of ingredients; (4) require identification of a caseinate (e.g., sodium caseinate) as a milk derivative when used in foods that claim to be nondairy foods; (5) require that labels explain that the list of ingredients is in descending order of predominance; and (6) provide a uniform format for voluntary declaration of percentage ingredient information. However, the agency is not proposing to eliminate "and/or" labeling exemptions. The agency is proposing these actions in response to the comments that it has received on ingredient labeling issues as part of the food labeling initiative that the agency announced on August 8, 1989 (54 FR 32610). FDA also is reproposing the proposal on labeling requirements for sulfiting agents in standardized foods that it published in the **Federal Register** of December 19, 1988 (53 FR 51062). That proposal would require label declaration of sulfiting agents present in standardized foods. Additionally, that proposal set forth the circumstances under which a standardized food containing sulfiting agents conforms to the applicable food standard.

Further, the agency is responding to a citizen's petition (from the United Fresh Fruit and Vegetable Association, the Produce Marketing Association, the Food Marketing Institute, and the New York Kosher Food Advisory Council) by proposing certain exemptions from requirements for listing the specific common or usual names of preservative coatings on fresh fruits and vegetables.

DATES: Written comments by August 5, 1991. The agency is proposing that any final rule that may issue based upon this proposal become effective on the effective date of any nutrition labeling final rule based on the proposal issued in the **Federal Register** of July 19, 1990 (55 FR 29487), and the 1990 amendments.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, 301-443-1751.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0229.

SUPPLEMENTARY INFORMATION:

I. Background

This document is part of the Department of Health and Human Services' (DHHS) major initiative to reform the nation's food labeling system. The initiative originated in 1989 when Dr. Louis W. Sullivan, Secretary of DHHS, directed FDA to determine what changes in food labeling requirements were necessary to make the food label more useful and understandable to consumers. FDA responded to Secretary Sullivan's directive by initiating a variety of proceedings to assess the nature of the needed changes.

In the **Federal Register** of August 8, 1989 (54 FR 32610), FDA published an advance notice of proposed rulemaking (ANPRM) soliciting public comment on a wide range of food labeling issues. More than 2,000 written comments were received in response to the ANPRM. Further, the agency published in the **Federal Register** of September 20, 1989 (54 FR 38806), a notice of public hearings concerning issues raised in the ANPRM. Some 200 people testified at four major hearings held across the country, and more than 1,500 people participated in 50 local "consumer exchange" meetings. Many of the written comments and much of the oral testimony addressed ingredient labeling.

Several current requirements bear on ingredient labeling. Most significantly, in section 403(i) (21 U.S.C. 343(i)), the act requires, with certain specific exceptions, that ingredients be listed by their common or usual names on food labels. Consumers can use this information to avoid certain ingredients for health or other reasons based on personal preference. On November 8, 1990, this section of the act was amended by the 1990 amendments (section 7 of Pub. L. 101-535) to eliminate the exceptions from the ingredient listing requirements that had existed for standardized foods and for colorings required to be certified by FDA under section 706(c) of the act (21 U.S.C. 376(c)). As a result, consumers will get more complete information about the components of the foods they eat.

In addition, FDA has established in 21 CFR 101.4(a)(1) a requirement that the ingredients of a food be listed in descending order of predominance by weight on either the principal display panel or on the information panel of the food label. This requirement is intended to assist consumers with purchase decisions by providing them with information on the relative levels of ingredients in the food. They can thus use the order of predominance information in making value comparisons between similar foods.

The ingredient listing requirements are not intended, however, to assure that the food label provides consumers with all the information they may need. There are other labeling regulations that provide additional, more specific, consumer assistance. For example, FDA adopted the nutrition labeling regulation, 21 CFR 101.9, to enable consumers to compare the nutritional attributes of different foods and to plan nutritionally sound diets. FDA has proposed (55 FR 29487, July 19, 1990), and Congress has acted in the 1990

amendments to strengthen the nutrition labeling regulation by extending its provisions to most foods. In addition, considerable information about a food is communicated to consumers through other kinds of label statements (e.g., "low sodium," "artificially sweetened," and "reduced calories") that are defined in separate regulations.

In the ANPRM, the agency asked whether: (1) Major ingredients should be listed by percentage; (2) current "and/or" labeling regulations should be revised (e.g., should this labeling be permitted for sweeteners and prohibited for fats and oils); (3) ingredient labeling regulations should be expanded to require labeling of specific spices, colorings, and flavorings; (4) ingredient labeling of "fast" foods should be required; (5) the agency should act, either administratively or by seeking legislation, to require labeling of all ingredients in standardized foods as is now required for nonstandardized foods; and (6) ingredient labeling format should be revised to be more informative to consumers.

As stated above, Congress has acted with respect to at least two of these issues. Moreover, after consideration of the written comments and oral testimony that it received in response to the ANPRM, FDA has reached tentative conclusions about the rest of these ingredient labeling issues, as well as about other issues raised in the comments. In reaching these tentative conclusions, the agency considered other relevant background information in addition to the comments. For example, in the **Federal Register** of December 21, 1979 (44 FR 75990), following a food label review that FDA conducted with the Department of Agriculture (USDA) and the Federal Trade Commission (FTC), FDA published tentative positions on many of the same food labeling issues that have been identified in the current labeling initiative. These tentative positions were developed after consideration of oral comments at a series of hearings in 1978 as well as written comments. Information from these earlier comments confirms longstanding consumer interest in certain labeling information.

A complete discussion of the agency's tentative conclusions with respect to ingredient labeling, as well as of the effects of the congressional action, follows.

II. Ingredients of Standardized Foods

Consumer comments responding to the 1989 ANPRM expressed considerable interest in the declaration of all ingredients in foods for which there are standards of identity.

Before the 1990 amendments were enacted, the act provided FDA with authority to require the declaration of optional ingredients in standardized foods but not the declaration of mandatory ingredients (21 U.S.C. 343 (g) and (i) (1972 and 1989 supp.)). In the absence of statutory authority, FDA could not require complete listing of all ingredients in standardized foods. However, the 1990 amendments revised section 403(i) of the act to remove the exemption for standardized foods from the requirement for the listing of all food ingredients. Effective November 8, 1991, the act provides for the listing of all ingredients in standardized foods.

To make its ingredient labeling regulations consistent with the 1990 revision of section 403(i) that pertains to standardized foods, FDA is proposing to adopt new paragraph (e) in 21 CFR 130.3. The proposed paragraph specifies that all mandatory and optional ingredients of standardized foods must appear on food labels in accordance with the requirements of part 101, except that where a definition and standard of identity contains a specific provision with respect to the declaration of optional ingredients, the optional ingredients may be declared in accordance with that provision.

This optional ingredient exception is included to permit continued use of alternatives to the labeling requirements of part 101 where compliance with those requirements would be impracticable. For example, FDA is retaining a number of existing optional ingredient listing provisions that permit collective terms to be used rather than specific ingredient names where similar provisions are not present in part 101. Thus, the agency is retaining the provisions for listing the term "enzymes" rather than the specific name of the enzyme and the terms "milkfat and nonfat milk" or "nonfat milk and milkfat" for dairy ingredients in § 133.106, blue cheese; § 133.133, cream cheese; § 133.164, nuworld cheese; and a number of other standards.

FDA is also proposing to amend all the standards of identity to require that all ingredients be declared on the label in accordance with the applicable sections of parts 101 and 130. Most of the standards already provide for declaration of all optional ingredients used in accordance with the applicable sections of part 101 and the wording in these standards has been amended accordingly. Where there is no existing provision for ingredient labeling, FDA has added a paragraph to the standard to include the new labeling provisions.

The agency has reviewed all of the standards of identity in 21 CFR parts 131 through 169 to determine which standards provide for exemptions in the labeling of some ingredients. A number of these exemptions are already included in part 101 and do not need to be duplicated in the individual standards.

Several of the dairy standards contain exemptions that provide for the declaration of the use of bacterial cultures on the label by the word "cultured" followed by the name of the substrate, e.g., "cultured cream" or "made from cultured skim milk." Other cheese standards provide for the use of terms such as "cream" for plastic cream and dried cream, "milk" for concentrated milk and dried milk, "skim milk" for concentrated skim milk and nonfat dry milk, and "whey" for cheese whey, concentrated cheese whey, and dried cheese whey. Section 101.4(b) provides for these labeling exemptions, and FDA believes that the language does not need to be repeated in each standard of identity.

The standard in § 150.110 for fruit butter states that if sugar or invert sugar is the sweetener used, the term "sugar" may be used, and if the sweetener used is derived from corn the term "corn sweetener" may be used. FDA proposes to remove this provision and require that the ingredient declaration for fruit butter conform to regulations in part 101. As discussed subsequently in section VI.B.1. of this preamble, the agency is terminating the rulemaking to permit the use of the terms "sugar" and "corn syrup" as collective ingredient designations for foods subject to part 101 labeling regulations. The agency has determined that declaration of specific names for sweeteners within these collective categories is practicable. Consistent with this action, the agency has tentatively concluded that declaration of the specific names of sweeteners is also practicable for standardized foods.

The standards in § 164.110 and § 164.150 for mixed nuts and peanut butter both provide for the use of the term "hydrogenated vegetable oil" or "vegetable oil" with the optional use of the name of the vegetable source. In addition, § 164.110 requires that when antioxidant preservatives are used in the finished food, the label shall state that these ingredients are added either as preservatives or to inhibit rancidity. The agency proposes to delete the requirements for label declaration of optional oils and chemical preservatives used in these foods since required label declarations are clearly delineated in §§ 101.4(b)(14) and 101.22(j), respectively. Moreover, the "and/or"

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labeling exemption in § 101.4(b)(14) should effectively eliminate the need for collective names for vegetable oils in these standards.

FDA points out that it has proposed revision of some of the cheese standards (October 4, 1977, 42 FR 53970) and all the cacao products standards (January 25, 1989, 54 FR 3615). In some of these proposed amendments one or more paragraphs have been added to or deleted from the standards. If the proposals on the standards for cacao products or for cheeses become final rules before this proposal becomes final, the paragraph designations for sections affected by this document will be redesignated accordingly.

Some current standards require that optional ingredients be declared on the principal display panel of the label or wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase. FDA is requesting comment from interested individuals on whether these requirements are needed if all of the ingredients are declared elsewhere on the label.

In addition, the agency is proposing changes in a number of regulations in part 101 to reflect the new ingredient listing requirements in section 403(i) of the act. FDA is proposing to revoke § 101.6, which provides guidance on the voluntary listing of ingredients in standardized foods, because such guidance is no longer valid with the new mandatory ingredient listing requirements. For this same reason, the agency is proposing to revise 21 CFR 101.4(a)(1) to clarify that all standardized foods must comply with § 101.4, rather than only those foods specifically required to do so by the standards.

FDA is also proposing to modify 21 CFR 101.4(b)(2)(i). This regulation provides that when an ingredient itself contains two or more ingredients, the ingredient may be declared by listing its common or usual name followed by a parenthetical listing of all ingredients contained therein in descending order of predominance "except that, if the ingredient is a food subject to a definition and standard of identity * * *, only the ingredients required to be declared by the definition and standard of identity need be listed * * *." In view of the new statutory requirements for the listing of all ingredients in standardized foods, this exception is no longer appropriate. The agency is proposing to revise this exception to make clear that a standardized food is subject to the same treatment as any other food, except that where the food is subject to a standard that makes specific provision for the labeling of optional ingredients, the optional ingredients may be declared in accordance with those provisions.

There is an additional issue that relates to the ingredients of standardized foods. On December 19, 1988 (53 FR 51062), FDA proposed to adopt § 130.9. That proposed regulation addressed the circumstances under which the presence of sulfiting agents in a standardized food would not render the product misbranded under section 403(g) of the act. For administrative efficiency, and because of the relation that proposed regulation has to ingredient labeling, FDA is reproposing § 130.9 in this document. The preamble to the December 19, 1988, proposal is hereby incorporated in this final rule. FDA will consider all comments received in response to the earlier proposal and to this reproposal in deciding what action to take on this issue.

III. Flavors, Colors, and Spices

A. Background

Before passage of the 1990 amendments, the act provided that flavorings, colorings, and spices need not be declared by their common or usual name but could be designated by the collective terms "flavorings," "colorings," and "spices" (21 U.S.C. 343 (g) and (i) (1972 and 1989 supp.)). The 1990 legislation amended 21 U.S.C. 343(i) with respect to colorings, so that after November 8, 1991, only colorings not required to be certified by FDA under 21 U.S.C. 376(c) will be exempt from label declaration by their common or usual name. Color additives for which certification is required will have to be declared in this way.

In the 1989 ANPRM, the agency had requested comments on whether it should seek legislation to require the declaration of the flavorings, colorings, and spices in a food (54 FR 32613). FDA received comments on this issue from a wide range of sources, including consumers, consumer organizations, professional associations, government agencies, industry, and industry trade associations. Many of these comments specifically addressed the question of how foods should be labeled with regard to the presence of two food components, monosodium glutamate and hydrolyzed vegetable protein. These comments and the agency's responses, along with the agency's response to the 1990 amendments concerning declaration of colorings, are discussed in the following three sections.

B. General Labeling of Flavorings, Colorings, and Spices

1. Comments

Consumer comments largely favored the complete declaration of specific flavorings, colorings, and spices on food labels. In support of this position, consumers generally asserted that they have a right and, in many cases, a need to know the identity of all ingredients in their food. One consumer whose family is on a medically imposed restricted diet because of food allergies, commented that labels can never be too detailed for the food-sensitive population. Another consumer commented that "the health benefits from revised food labeling will more than justify the economic costs of this action and food manufacturers will definitely notice an increase in sales if consumers are assured that their purchases meet their needs."

Some comments stated that the agency should seek legislation requiring that flavorings, colorings, and spices be specifically declared on food labels. One recommended that FDA give top priority to this endeavor. These and other comments stated that incomplete declarations were inadequate for individuals who experience hypersensitivity reactions to these ingredients. Other comments favored label declaration of these ingredients only if the additive is suspected or known to have an adverse health effect in certain individuals.

Comments from the food industry generally opposed any agency action that would require the complete declaration of flavorings, colorings, and spices on food labels. Some comments maintained that there is no public health benefit to be derived from requiring complete disclosure of these ingredients, and that the unnecessary costs to the industry of complying with such requirements would ultimately be borne by consumers. Several of these comments maintained that the identities of these ingredients as used in foods are valuable trade secrets and should not be required to be disclosed on the food label. Other comments maintained that complete declaration of these ingredients would be difficult to achieve within available labeling space and would create consumer confusion because of the complexity of the technical names of these types of ingredients. One comment stated that the increased complexity of food labels would detract from public health objectives.

Several industry comments acknowledged that it would be appropriate to require the label declaration of a specific flavoring, coloring, or spice when public health concerns justify such a requirement. One industry comment stressed that the basis for imposing such a requirement for a particular ingredient should be a scientific consensus. This comment argued that available data should make it clear that a significant portion of the population has a need to know for health reasons that the ingredient is present in food, and that procedural safeguards, e.g., public notice and opportunity for comment, should be built into any regulatory requirement. One comment stated that FDA already has the legal authority to require label declaration in such instances, as it did when it required the label declaration of the color additive FD&C Yellow No. 5 in foods (see 42 FR 6635, February 4, 1977 and 44 FR 37212, June 26, 1979).

2. Agency Response

The agency has carefully considered all the comments that it received concerning general labeling issues for flavorings, colorings, and spices. Comments seeking the required declaration of colorings added to food were largely prompted by concerns regarding chemically synthesized color additives. Congress agreed with these concerns in amending the act to require the declaration of these colorings, which are also known as "coal tar dyes" (Ref. 1) and which collectively comprise the food colorings for which certification is required under 21 U.S.C. 376(c). FDA is therefore proposing to amend the labeling regulations for colorings in 21 CFR 101.22(k) to reflect the requirements of the 1990 amendments to the act.

Congress did not, however, revoke the exemption from required declaration for spices and flavorings or for noncertified colors. The agency encourages firms to voluntarily declare spices when they are added to food because FDA supports the declaration of ingredients on food labels to the extent that it is practical. In most cases, spices can be declared without requiring undue label space or divulging valuable trade secrets. As for flavorings, the agency believes that the exemption from required declaration for these ingredients is appropriate for several reasons:

(1) The mandatory declaration of flavorings would require considerable additional label space in many instances because of the relatively large number of flavor ingredients used in certain foods, and it would thus make many food labels unduly lengthy without significantly enhancing the information to the consumer about the basic composition, economic value, or nutritional value of the product.

(2) The identities of the flavoring ingredients of a food are legitimate trade secrets of considerable commercial value to the food processor and, in general, should not be required to be disclosed in the absence of a public health need.

(3) If it becomes necessary for public health or other reasons to require the label declaration of any food ingredient that is exempt from required label declaration, the agency can establish such a requirement as it has done for flavorings, colorings, and spices when used in infant foods (§ 105.65) and hypoallergenic foods (§ 105.62) and for the color additive FD&C Yellow No. 5 when used in foods generally.

C. Label Declaration of Color Additives

1. FDA Action in Response to 1990 Amendments Requiring Declaration of Certified Color Additives

As a result of the 1990 amendments to the act, certified color additives are no longer exempt from required label declaration. As a result of this change in the statute, under 21 U.S.C. 343(i), each certified color additive used in a food must be declared by its common or usual name, while noncertified colorings may still be declared collectively. FDA is proposing to add a new paragraph to the food labeling regulations to elucidate these declaration requirements for colorings in food along with several exceptions to the requirements.

The proposed new paragraph, 21 CFR 101.22(k), requires that color additives subject to certification be declared by the common or usual names established in 21 CFR parts 74 and 82, wherein certified color additives permitted for use in foods and their lakes (i.e., insoluble derivatives of the certified colorings) are listed.

The agency believes that the declaration of a certified color additive by its common or usual name meets the requirements of both 21 U.S.C. 343 (i) and (k), which requires that the label of a food that bears or contains an artificial coloring must state this fact. The common or usual names of certified color additives used in food, such as FD&C Blue No. 1 and FD&C Yellow No. 5, are broadly understood to be names of artificial colorings when they are encountered in an ingredient list. Therefore, in 21 CFR 101.22(k)(1), the agency is proposing to permit certified color additives to be declared simply by their common or usual names without requiring the use of a term explaining the function of these ingredients.

The proposed regulation also provides guidance concerning appropriate terminology for declaring the presence in food of the noncertified colorings that are listed in part 73. As stated above, the declaration of a coloring in the ingredient list must comply with the requirements of 21 U.S.C. 343 (i) and (k). However, because FDA considers any coloring that is added to food to be artificial, FDA has not required that the term "artificial" be included in the required label statement as a condition of compliance with 21 U.S.C. 343(k) (Ref. 2). The agency considers the term "color added," as well as such terms as "artificial color" or "artificial color added," to be acceptable for the purpose of meeting the requirements of this section because these terms clearly indicate the addition of coloring to a food.

Because industry has used terms such as "color added" in good faith to declare the presence of an artificial color, the agency tentatively concludes that it would not serve a useful purpose to change its position at this time. Therefore, the agency is proposing in 21 CFR 101.22(k)(2) to include the above terms as examples of appropriate terms for the declaration of noncertified colorings in an ingredient list. The proposed regulation also allows the use of any other equally informative term that makes clear that a coloring has been added to the food.

The proposed regulation also cites terms such as "colored with ——" and "——(color)" as examples of appropriate terms for the voluntary declaration of a noncertified coloring when the blank is filled with the name of the listed coloring in 21 CFR part 73. Thus, a term such as "caramel (color)" is appropriate for label declaration of this noncertified coloring.

The proposed regulation also elucidates the exceptions to the general requirements for declaring certified and noncertified colorings. One exception, set forth in proposed 21 CFR 101.22(k)(3), applies to butter, cheese, and ice cream, which are exempt from the requirements of 21 U.S.C. 343 (i) and (k) except where declaration of a coloring is required under part 74 (21 CFR part 74) to assure safe conditions of use. Such a situation applies when the coloring FD&C Yellow No. 5 is used in food. Section 74.705 requires the declaration of FD&C Yellow No. 5 when this color additive is used in foods, including butter, cheese, and ice cream. Moreover, pursuant to a notice published in the Federal Register of December 6, 1988 (53 FR 49138), the agency intends to issue a proposal shortly to require label declaration of FD&C Yellow No. 6 to assure safe conditions of use when this coloring is

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used in drugs. (The notice also stated that the agency would propose a label declaration requirement for this color additive when it is used in food, but this intention has been obviated by the 1990 amendments.)

In proposed 21 CFR 101.22(k)(3), the agency is recommending that manufacturers voluntarily declare all colorings in butter, cheese, and ice cream. The agency believes that this practice will provide consumers with more information consistent with their stated interests, and that it will not consume undue label space or divulge trade secrets. This recommendation is currently contained in the standard of identity for ice cream and frozen custard in 21 CFR 135.110.

The other exception to the general requirements for declaring colorings applies to hypoallergenic foods and infant foods. The proposed regulation, in 21 CFR 101.22(k), will make it clear that these foods are subject to the labeling requirements of 21 CFR 105.62 and 105.65, which require the declaration by common or usual name of all ingredients including flavorings, colorings, and spices in these foods.

2. Use of Abbreviated Names to Declare Certified Color Additives

In the **Federal Register** of June 6, 1985 (50 FR 23815), the agency proposed to permit the use of abbreviated names for certain certified color additives in declaring their presence in foods, drugs, cosmetics, and medical devices. Previously, on January 26, 1983, in response to two petitions from the Grocery Manufacturers of America, the agency issued an advisory opinion saying that it would not object to the use of abbreviated names in declaring certified color additives used in foods (Ref. 3). In the advisory opinion, the agency stated that although it believed that the common or usual names by which the color additives are listed in parts 74 and 82 are the most appropriate names for identifying these color additives, it also believed that more manufacturers would voluntarily declare color additives in an ingredient list if the agency permitted the use of abbreviated names for such declaration (e.g., "FD&C Blue No. 1" could be declared simply as "Blue 1"). Because such a practice would provide more information to consumers than use of the collective term, which at that time satisfied the requirements of the act, the agency permitted the use of the abbreviated names and had intended to finalize the 1985 proposal to codify its policy and extend its application to drugs, cosmetics, and medical devices.

The 1990 amendments to the act require that certified colorings used in food be declared, and thus it is no longer appropriate for FDA to finalize the 1985 proposal with respect to foods as a means of encouraging the voluntary declaration of these color additives. However, since the agency issued its advisory opinion, many food firms that have voluntarily declared color additives have used the abbreviated names. These names have gained a degree of recognition as names for these color additives, while no problems with consumer understanding of these names have come to light. The agency also believes that the use of the abbreviated names has some advantage for industry because they consume less label space. Moreover, Congress noted the utility of the abbreviated names in its debate on requiring the declaration of certified color additives (Ref. 1). For these reasons, the agency believes that the option to use the abbreviated names for declaring certified color additives in foods should be continued, and therefore it is proposing in § 101.22(k)(1) not to require the inclusion of the "FD&C" prefix in the declaration of a certified coloring in the ingredient list. Furthermore, the agency intends to issue shortly a tentative final rule to codify the provisions in the 1985 proposal with respect to certified color additives used in foods, drugs, cosmetics, and medical devices.

The agency solicits comments on its tentative decision to proceed with the rulemaking to establish abbreviated names for the declaration of certified color additives. The agency is also interested in receiving comments on whether such a tentative final rule should include abbreviated names for color additive lakes and suggestions for such names. No such names were included in the 1985 proposal.

D. Labeling of Protein Hydrolysates Used for Flavor-Related Purposes

1. Composition, Preparation, and Uses of Protein Hydrolysate

Protein hydrolysates are used in many foods as flavors and flavor enhancers. Certain protein hydrolysates can also be used in foods for purposes not related to flavoring, including as a formulation aid, leavening agent, stabilizer, thickening agent, nutrient supplement, and protein source. However, the latter uses are not the subject of this section, inasmuch as these nonflavor-related uses were never exempt from the ingredient declaration requirements of the act.

a. *Composition.* Protein hydrolysates are acid or enzymatically treated proteins from certain food sources. The principal components of protein hydrolysates are amino acids (and their salts), which are the basic biochemical building blocks of protein molecules; peptides, which are small fragments of protein molecules containing intact amino acid units; salt (in some products); ash; organic acids, which are substances produced in normal cell metabolism; and other nonproteinaceous source-derived materials such as carbohydrates and lipids (Ref. 4).

Protein hydrolysates are produced in such a manner that the amino acids present as a result of the hydrolysis of the protein source exist largely in the salt form of the amino acid (Ref. 4). Because glutamic acid is the predominant naturally occurring amino acid in the protein sources from which protein hydrolysates are derived, glutamates, the salts of glutamic acid, are the predominant amino acid salts in these products and are usually present at levels of 5 to 15 percent of the protein hydrolysate (Ref. 4). In the instances where sodium is added in the manufacture of protein hydrolysates following hydrolysis, the glutamate fraction of the product largely consists of monosodium glutamate, a sodium salt of glutamic acid.

b. *Preparation.* Protein hydrolysates used for flavor-related purposes are products prepared either by the acid hydrolysis of protein derived from a plant, edible yeast, or animal source or from the enzymatic hydrolysis of edible strains of yeast.

i. *Acid-hydrolyzed protein hydrolysates.* Acid-hydrolyzed protein hydrolysates used for flavor-related purposes may be prepared from protein-containing matter derived from plant sources, such as soy meal, wheat gluten, corn gluten, rice flour, and peanut meal; from edible strains of yeast; or from certain animal sources such as casein, a protein derived from milk (Ref. 4). The manufacturing process typically employs food-grade hydrochloric acid and temperatures of 100 to 130° C to chemically digest the source protein (Ref. 4). Sodium carbonate is typically used to neutralize the product following acid treatment, and thus the salt content (sodium chloride) of a typical acid-hydrolyzed protein hydrolysate is about 40 percent (Ref. 4). Because of the high degree of hydrolysis that occurs as a result of the acid digestion of the source protein, 75 to 95 percent of the amino acids from the source protein exist as free amino acids and their salts, with the remainder of the amino acid units existing as components of peptides (Ref 4).

ii. *Enzymatically hydrolyzed protein hydrolysates.* The principal enzymatically hydrolyzed protein hydrolysates used for flavor-related purposes are autolyzed yeast extracts, which are derived from edible yeast strains such as *Saccharomyces cerevisiae* (Ref. 4). Autolyzed yeast extracts are prepared by heating yeast cell preparations under highly controlled conditions, which causes the yeast cells to rupture, allowing the endogenous proteolytic enzymes of the yeast to partially hydrolyze the yeast protein (Ref. 4). Because enzymatic hydrolysis is less complete than acid hydrolysis, the free amino acid content of autolyzed yeast extracts can be as little as 45 percent (Ref. 4).

Because enzymatically hydrolyzed protein hydrolysates do not require neutralization, the salt (sodium chloride) content is generally lower than that of acid hydrolyzed protein hydrolysates (Ref. 4). However, some of these products do contain added salt (Ref. 4). Because whole cells are used as the starting material, autolyzed yeast extracts, unlike acid-hydrolyzed protein hydrolysates, contain significant levels of non-proteinaceous source components (Ref. 4).

c. *Uses of protein hydrolysates in foods.* Protein hydrolysates are used as flavorings and flavor enhancers in foods such as baked goods, soups and soup mixes, gravies, sauces, seasonings, relishes, and salt substitutes (Ref. 4). Data provided to the agency by industry on the use of protein hydrolysates in foods show that the average use level of acid-hydrolyzed protein in 70 different foods was 0.60 percent with a range of 0.19 to 1.30 percent (Ref. 4). The average use level of autolyzed yeast extract in 36 processed foods was 0.30 percent with a range of 0.10 to 0.50 percent (Ref. 4).

2. Regulatory Status of Protein Hydrolysates Used for Flavor-Related Purposes

a. *GRAS status and uses in standardized foods.* FDA has stated in a number of letters that protein hydrolysates are GRAS for use in food (Ref. 5). However, FDA is conducting a comprehensive review of the safety of the human food ingredients that the agency considered to be GRAS in 1969. As part of this review, FDA published a proposal in the **Federal Register** of December 8, 1983 (48 FR 54990), to affirm that several protein hydrolysates, including acid-hydrolyzed plant protein, acid-hydrolyzed casein (a milk protein), and acid- and enzymatically hydrolyzed yeast protein, were GRAS for use as firming agents, flavor enhancers, and flavoring agents and adjuvants in foods other than infant formulas and baby foods. (In the 1983 proposal, the agency also proposed to affirm that the use of enzymatically hydrolyzed casein (another protein hydrolysate which is not used for flavor-related purposes) as a nutrient supplement and as a source of protein is GRAS.) FDA has not taken final action on this proposal.

Protein hydrolysates are listed as optional ingredients in the standards of identity for certain foods. Hydrolyzed vegetable protein (that is, protein hydrolysates derived from vegetable sources) and autolyzed yeast extract are listed as optional ingredients in canned vegetables in 21 CFR part 155, and hydrolyzed protein and hydrolyzed protein with reduced monosodium glutamate content are listed as optional ingredients in canned tuna in § 161.190. Hydrolyzed plant protein, autolyzed yeast extract, and milk protein (casein) hydrolysates are listed by USDA as flavoring agents that can be used in certain meats and meat products in 9 CFR part 319.

b. *Labeling of protein hydrolysates.* Section 101.35 of FDA's regulations (first published as a "Statement of General Policy or Interpretation" in the **Federal Register** of June 7, 1951 (16 FR 5394)) sets out the agency's policy on the declaration of certain hydrolyzed vegetable protein products when used as food ingredients. This regulation states that when the specified hydrolyzed vegetable proteins are used as ingredients in a fabricated food, they may be declared as "salt and hydrolyzed vegetable protein" (or "salt and hydrolyzed plant protein").

Moreover, in letters, FDA employees have stated that because protein hydrolysates are considered to be flavor enhancers (and not flavorings), they are required to be declared by their common or usual name in the ingredient list when used in foods (Ref. 6). In a 1988 letter, an FDA employee elucidated the agency's position on how canned tuna should be labeled when hydrolyzed casein (a milk protein) is used as an optional ingredient (Ref. 7). This letter involved the standard of identity for canned tuna (21 CFR 161.190), which requires that when hydrolyzed protein is used to season the product, the label declare the ingredient by name by stating "Seasoned with (name of seasoning)." In commenting on whether it was appropriate to use the term "hydrolyzed protein" to declare hydrolyzed casein in canned tuna, the agency stated that the designation "hydrolyzed protein" in the standard is a general designation for a group of ingredients. However, for labeling purposes, the source of the protein is "important information for consumers with allergy and religious concerns," and "if hydrolyzed milk protein is added to canned tuna it should be declared by that name in the ingredient statement," i.e., not by the general designation "hydrolyzed protein."

Yet, despite the existence of § 101.35 and the position that agency employees have taken, many in industry have taken the position that when protein hydrolysates are added to food as a flavoring, they need not be declared by name in the ingredient list. Instead, they have listed these ingredients as "flavor" or "natural flavor."

3. Issues Associated With the Declaration of Protein Hydrolysates in the Ingredient List

a. *International hydrolyzed protein council petition.* A citizen petition submitted to the agency by the International Hydrolyzed Protein Council (the Council) in 1985 asked the agency to revoke § 101.35 because the regulation is obsolete. The petition pointed out that this regulation refers only to hydrolyzed vegetable protein substances, whereas the agency, in the period since this regulation was established, has come to recognize protein hydrolysates derived from other sources such as casein (milk protein) and yeast. The petition also stated that one type of protein hydrolysate described in the regulation, "hydrolyzed vegetable protein with reduced monosodium glutamate content," is no longer produced.

The Council also requested that FDA issue an advisory opinion on the propriety of listing hydrolyzed vegetable proteins only as "flavor" or "natural flavor" in the ingredient list when these ingredients are used as flavoring in foods. The Council argued that the flavor uses of hydrolyzed vegetable proteins come under the act's exemption from required ingredient labeling of flavorings, colorings, and spices. The Council asserted that the inclusion of the term "protein hydrolysate" in the definition of the term "natural flavor" in 21 CFR 101.22 leaves no question that the agency, in establishing the definition, "intended to, and did, include all protein hydrolysates used as flavors (including hydrolyzed vegetable protein) within the definition of natural flavor," and that in so doing, the agency "intended that hydrolyzed vegetable protein (and all other natural flavors) could be listed simply as 'natural flavor' in a list of ingredients." FDA is responding to the Council's petition in this rulemaking.

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b. *Issues raised in comments concerning declaration of protein hydrolysates.* Some consumer comments to the 1989 ANPR stated that FDA should require the declaration of protein hydrolysates in the ingredient list, and that such declaration should identify the protein source. The rationale expressed in these comments is that some individuals are allergic to some of the food sources from which protein hydrolysates are prepared, and declaration of the protein hydrolysate and its source food is necessary to alert those individuals to the presence of these ingredients in a food. For instance, one consumer stated that her son is allergic to peanuts, which may be used as a source material for protein hydrolysates, and that the term "vegetable protein" is too general for labeling purposes.

Other consumer comments expressed concern about the presence of monosodium glutamate as a component of protein hydrolysates. In general, these comments urged the agency to require that monosodium glutamate be declared on the label as a component of protein hydrolysates, just as it must be declared when it is used as an ingredient of a food. The comments argued that this step is necessary because monosodium glutamate causes hypersensitivity reactions in some individuals. One comment stated that under the current labeling standards, it is often not possible to determine whether monosodium glutamate is present in a food, no matter how careful a consumer is in trying to avoid this substance.

Another comment, however, disputed the allegations of hypersensitivity reactions to monosodium glutamate, claiming that no scientific evidence exists to substantiate such reactions. In addition, in its 1985 request for an advisory opinion, the Council asserted that some persons "wrongly" believe that they may be allergic to some constituents of hydrolyzed vegetable protein.

c. *Agency considerations.* In response to the Council's petition and the consumer comments, FDA considered: (1) Whether protein hydrolysates are exempt from required ingredient labeling when used for flavor-related purposes in foods; (2) whether the possibility of adverse reactions to the food source of a protein hydrolysate justifies a requirement that the food source be identified in the ingredient list along with the protein hydrolysate; and (3) whether the glutamate component of protein hydrolysates should be separately declared when protein hydrolysates are added to foods because of the possibility of adverse reactions to monosodium glutamate. The relevant information considered by the agency, and its tentative conclusions, are discussed in the following two sections.

4. Declaration of Protein Hydrolysates in the Ingredient List

a. *Flavors and flavor enhancers.* The scientific and technical literature recognizes several different categories of substances that contribute to the flavor characteristics of food. They are flavorings, flavor enhancers, and flavor potentiators (Refs. 6 through 9). While there are hundreds of flavorings that are available for use in food, there are only a small number of substances that have been classified in the technical literature as flavor potentiators or as flavor enhancers (Ref. 8). Generally, a flavoring is considered to be a substance that has a flavor of its own at the level at which it is used in a food, while flavor enhancers and flavor potentiators do not themselves impart flavor but rather intensify in some manner the flavors that are naturally present or are added to food (Refs. 8 through 10). Although food technologists distinguish flavorings from flavor enhancers and flavor potentiators, the terminology used for the latter two categories of substances is not uniform in the literature. For example, some references classify flavor enhancers as substances that simply intensify flavor sensations and flavor potentiators as substances that intensify flavor sensations through a synergistic mechanism in combination with other ingredients (Ref. 19). Others do not distinguish between enhancers and potentiators and simply refer to all such substances as "potentiators" (Ref. 8).

FDA's regulations describing the various functional effects of human food ingredients differentiate between "flavoring agents and adjuvants" and "flavor enhancers." "Flavoring agents and adjuvants" are defined in 21 CFR 170.3(o)(12) as "substances added to impart or help impart a taste or aroma in food." "Flavor enhancers" are defined in § 170.3(o)(11) as "substances added to supplement, enhance, or modify the original taste and/or aroma of a food, without imparting a characteristic taste or aroma of its own." FDA considers the latter definition to be broad enough to include the substances referred to in the literature as "flavor enhancers" and as "flavor potentiators."

b. *FDA's treatment of flavor enhancers.* Because flavor enhancers are not flavorings, they are not exempt from the ingredient declaration requirements of the act and thus must be declared in the ingredient list by their common or usual names (21 U.S.C. 343(g) and (i)). Historically, FDA has addressed the relatively few labeling questions that have arisen concerning flavor enhancers on a case-by-case basis.

The most widely used flavor enhancer is monosodium glutamate. In a trade correspondence letter designated as "T.C. 233," which was issued in 1940, the agency stated that monosodium glutamate was an artificial flavoring when added to food and must be declared as such in the ingredient list. During the late 1940's however, increased supplies of monosodium glutamate became available to the food industry, prompting a surge of interest in its use in foods. Studies began appearing in the scientific literature that demonstrated that monosodium glutamate markedly enhanced the flavor of food to which it was added while being scarcely noticeable itself. In the **Federal Register** of May 27, 1949 (14 FR 2791), the agency issued a "Statement of General Policy or Interpretation on the Labeling of Foods Containing Monosodium Glutamate" as 21 CFR 3.10, in which it stated:

> In the light of information now before the Food and Drug Administration on the manner of use of monosodium glutamate in foods, this Agency is not disposed to maintain the position that monosodium glutamate be designated as an artificial flavoring on labels of foods to which it is added. Where it is used as an ingredient in a food for which a standard of identity has not been promulgated under the Federal Food, Drug, and Cosmetic Act, its presence should be declared on the label by its common or usual name, monosodium glutamate, in compliance with section 403(i)(2) of the act.

In 1973, the agency amended the food labeling regulations (38 FR 20718, August 2, 1973) to clarify its policy on several issues pertaining to the labeling of flavorings, colors, and spices. Section 3.10 was incorporated into the new regulations as 21 CFR 1.12(h)(5) (since recodified as 21 CFR 101.22(h)(5)), which requires that any monosodium glutamate used as an ingredient in food be declared in the list of ingredients by its common or usual name. In the preamble to the 1973 final rule, the agency stated that monosodium glutamate "is not a spice or flavor, and it must be declared by its common or usual name."

In other specific situations, the agency has simply rendered informal opinions in letters concerning the application of the act's labeling requirements to specific flavor enhancers. For example, the agency did so with respect to a class of flavor enhancers generically referred to as the "5'-nucleotides," which includes guanosine 5'-monophosphate, disodium guanylate, inosine "5'-monophosphate, and disodium inosinate (Ref. 11). A regulation clarifying the labeling requirements for these ingredients has not been necessary. Since they became widely available in the 1960's, these substances have never been regarded as anything other than flavor enhancers (Ref. 12), and thus, when they are used in a food, they must be declared in the ingredient list by their common or usual name.

c. *Protein hydrolysates as flavors and flavor enhancers.* Protein hydrolysates are recognized in the scientific literature as the most significant source of meat-like flavors available to the food industry, with their unique flavoring characteristics being dependent upon the protein source and the conditions of hydrolysis (Ref. 13). At the same time, the literature stresses the importance of a significant glutamic acid fraction in the protein source material for achieving an acceptable protein hydrolysate and emphasizes the important functional role of the glutamate component of protein hydrolysates as a flavor enhancer (Refs. 8, 14, 15). In fact, the protein fractions of the common protein hydrolysate sources all contain significant levels of glutamic acid, with the glutamic acid percentages of the protein fractions being: Wheat gluten, 36 percent; corn gluten, 24.5 percent; peanut flour, 19.5 percent; soybean flour, 21 percent; casein, 22 percent; rice, 24.1 percent; and yeast, 18.5 percent (Ref. 15).

Protein hydrolysates are sometimes used as substitutes for monosodium glutamate (Refs. 15, 16) and as sparing agents (less costly partial substitutes) for 5'-nucleotides (Ref. 9). These uses attest to the ability of protein hydrolysates to function as flavor enhancers. The agency thus finds that the available literature and other technical data on protein hydrolysates (Refs. 8, 17) demonstrate that these ingredients function as both flavorings and flavor enhancers. The literature even suggests that the flavor enhancement occurs whenever protein hydrolysates are used (Ref. 10). Therefore, FDA tentatively concludes that wherever a protein hydrolysate is added to a food for its effect on flavor, it functions both as a flavoring and as a flavor enhancer.

d. *Tentative conclusion to require labeling.* This tentative conclusion has a significant effect on the circumstances in which protein hydrolysates must be declared in the ingredient list. As stated above, the act exempts only flavorings from required label declaration. It does not exempt flavor enhancers. Therefore, because a protein hydrolysate that is used in a food as a flavoring is also being used as a flavor enhancer, it does not fall under the act's exemption from label declaration. For this reason, FDA tentatively concludes that all uses of protein hydrolysates are subject to the act's provisions requiring ingredient declaration, and any protein hydrolysate used in food must be declared in the ingredient list by its common or usual name.

The agency's tentative determination that protein hydrolysates are not exempt from required label declaration responds in part to the Council's request for an advisory opinion on the propriety of listing hydrolyzed vegetable protein as "flavor" or "natural flavor" in the ingredient list when it is used as a flavoring ingredient in foods. FDA's tentative view is that such a listing would misbrand the food.

FDA has considered the Council's contention that the inclusion of "protein hydrolysates" in the definition of "natural flavor" in § 101.22(a)(3) indicates that the agency, in establishing this regulation, intended that hydrolyzed vegetable protein could be listed simply as "natural flavor." The agency does not agree. While FDA acknowledges that the Council's contention represents one interpretation of § 101.22, it is also true that a major function of § 101.22 is to distinguish between artificial flavors and natural flavors for purposes of 21 U.S.C. 343(k). As such, inclusion of the term "protein hydrolysate" in § 101.22(a)(3) establishes that a protein hydrolysate can be considered to be a "natural flavor" when it functions as a flavor in foods. Thus, a product flavored with a protein hydrolysate can bear the statement "contains no artificial flavors." However, nothing in § 101.22(a)(3) would preclude the agency from determining, as it is proposing to do, that a protein hydrolysate should also be specifically declared in the ingredient list because it has other functions in the food in addition to flavoring.

The agency emphasizes that the conclusion that it has tentatively reached for protein hydrolysates is specific to this class of flavoring ingredients. The vast majority of flavoring ingredients used in foods are flavorings only, and the agency has no reason to question their eligibility for exemption from label declaration under the provisions of the act.

Because many uses of protein hydrolysates in foods have long been regarded by industry as flavoring uses, and thus considered to be exempt from required label declaration, and because protein hydrolysates will continue to be listed in the regulation which defines "natural flavors," the agency believes that a new provision in the regulations is necessary to make clear exactly what the labeling requirements are for protein hydrolysates. FDA therefore is proposing to add a new paragraph (h)(7) to § 101.22. If adopted, this new paragraph will require that any protein hydrolysate used for flavor-related purposes in food be specifically declared in the ingredient list because these ingredients function in foods not only as flavors but as flavor enhancers.

e. *Terminology for declaration of protein hydrolysates.* Section 102.5(a) sets forth the general principles for common or usual names for nonstandardized foods. This regulation states that the common or usual name of a food shall describe, in as simple and direct terms as possible, the basic nature of the food or its characterizing properties or ingredients. Furthermore, this regulation states that each class or subclass of food shall be given its own common or usual name that states what it is in a way that distinguishes it from different foods.

In instances where manufacturers have declared protein hydrolysates in an ingredient list, they have frequently used general terms such as "hydrolyzed vegetable protein" and "hydrolyzed protein," which appear in 21 CFR 101.35 and in the previously cited standards of identity to describe this entire class of substances. FDA believes that such general terms do not adequately describe the nature of protein hydrolysates, and that they do not distinguish between the different types of ingredients within this general class of ingredients. For example, hydrolyzed wheat gluten and hydrolyzed soy protein are different ingredients which have completely different amino acid profiles, and therefore these two ingredients should not be declared by a general name. Furthermore, such basic differences in amino acid composition exist among all protein hydrolysates (Ref. 22). Therefore, FDA finds that such general terms as "hydrolyzed protein" and "hydrolyzed vegetable protein" do not fulfill the requirements for common and usual names set forth in § 102.5(a).

Because the source of a protein hydrolysate has a significant effect on its compositional and functional properties, inclusion of the source in the name of a protein hydrolysate is essential to adequately describe the nature of the ingredient. Therefore, in accordance with the requirements of

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§ 102.5(a), the common or usual name used to declare a protein hydrolysate must identify the food source from which the ingredient was prepared.

Moreover, comments on the 1989 ANPRM revealed that consumers are interested in being able to identify the food source of a protein hydrolysate for two reasons. First, for religious or cultural reasons, some consumers wish to avoid foods or food ingredients that are of animal origin because their dietary convictions prohibit or discourage the consumption of such foods. If, for example, hydrolyzed casein, a protein hydrolysate derived from the milk protein casein, were used as an ingredient in a food, the name used to declare this ingredient would have to convey the animal origin of the protein source to adequately inform such an individual of the nonacceptability of the food in his/her diet. The term "protein hydrolysate" would not convey this information. The term "hydrolyzed casein," however, would convey the animal origin of the ingredient.

The agency tentatively finds that the food source of a protein hydrolysate is information of material importance for a person who desires to avoid certain foods for religious or cultural reasons. This information is necessary for such an individual to determine whether the food is acceptable or nonacceptable for inclusion in their diet. If such information is not included in the declaration of a protein hydrolysate, a consumer would have no way of knowing that he/she was consuming a food prohibited or discouraged by his/her personal convictions. The agency thus tentatively concludes that the food source of a protein hydrolysate is a material fact under 21 U.S.C. 321(n), and that the failure to identify the food source in the declaration of a protein hydrolysate would cause the food to be misbranded.

The second reason consumers are interested in being able to identify the source of a protein hydrolysate is that an individual may be allergic to the source food of a protein hydrolysate (e.g., corn, wheat, milk) and would desire to avoid foods containing ingredients derived from such foods. Concerning the possibility of food specific allergic reactions to protein hydrolysates, the agency believes that such reactions are unlikely to occur because the high degree of hydrolysis (i.e., chemical breakdown of the protein) generally employed in the manufacture of these ingredients is likely to destroy the allergenic potential of the starting protein (Ref. 18). For this reason, the agency tentatively concludes that source declaration for protein hydrolysates is not necessary for the protection of individuals who are allergic to the source foods of these ingredients.

Because of the industry's past use of names that do not convey the specific identity or the food source of protein hydrolysates, and in order to clarify how these substances would be required to be declared, the agency is proposing to include in new § 101.22(h)(7), a requirement that the common or usual name used to declare the ingredient be specific to the ingredient, and that it identify the food source from which the protein hydrolysate was derived. Examples in the proposed regulation illustrate both acceptable and unacceptable names for the declaration of a protein hydrolysate derived from a specific milk protein, casein. The term "hydrolyzed milk protein" would not be acceptable because protein hydrolysates may be prepared from milk proteins other than casein, and thus the name is not specific to the ingredient. An appropriate name would be "hydrolyzed casein." The proposed regulation also cites examples of other names that the agency considers appropriate for the declaration of protein hydrolysates, such as "hydrolyzed soy protein" and "hydrolyzed wheat gluten." To emphasize that some names previously used for protein hydrolysates are not in accord with the proposed requirements, the proposed regulation also states that "hydrolyzed vegetable protein" and "hydrolyzed protein" are not acceptable names because they do not identify the food source of the protein.

In addition, the agency advises that the rationale for proposed § 101.22(h)(7) would apply in determining appropriate common or usual names for the declaration of protein hydrolysates used for non-flavor-related purposes (e.g., one used as a protein supplement). Accordingly, such protein hydrolysates should be labeled in accordance with the provisions of the proposed regulation to ensure compliance with the requirements of the act.

The agency agrees with the Council that § 101.35 is obsolete in that it does not include many of the protein hydrolysates now used in foods. The agency also believes the terminology for the declaration of protein hydrolysates prescribed in this regulation is not appropriate based upon its review of this issue and is inconsistent with proposed § 101.22(h)(7). For these reasons, the agency is also proposing to delete § 101.35 from the regulations.

5. Declaration of Glutamate in Protein Hydrolysates

a. *Potential for adverse reactions to glutamates.* The agency has considered the comments cited above that relate to the glutamate (and monosodium glutamate) component of protein hydrolysates. Some of these comments argued that monosodium glutamate should be declared on the label of foods containing protein hydrolysates because of the possibility of adverse reactions to the monosodium glutamate component of these foods.

Because monosodium glutamate, as it occurs in protein hydrolysates, is a component of these ingredients, and is not itself an ingredient, it is not subject to the ingredient declaration requirements of the act. For the agency to require that monosodium glutamate be declared as a component of protein hydrolysates, it would have to conclude either (1) that such declaration is necessary to provide for the safe use of the ingredient (i.e., protein hydrolysates), according to section 409(c)(1)(A) of the act, or (2) that such declaration constitutes a material fact, under section 201(n) of the act, with respect to the consequences that may result from the use of the food containing the protein hydrolysate. Therefore, in considering this matter, the agency reviewed the available information from case reports (Ref. 20), from the scientific literature that relates monosodium glutamate to adverse reactions (Ref. 19), and, in particular, to a symptom complex that has gained public recognition as "Chinese Restaurant Syndrome," to determine whether this information provides a basis for requiring the label declaration of monosodium glutamate when it is present in a food as a result of being a component of an ingredient.

The agency's review revealed that in spite of a large amount of information regarding hypersensitivity reactions to monosodium glutamate, the extent of the problem remains unknown because of a lack of reliable information regarding the prevalence or incidence of reactions in the general population (Ref. 37). Most of the adverse reaction reports that the agency has obtained consist of anecdotal information that a person had a reaction after eating a certain food (Ref. 20). Although such information may be of value in providing direction for further studies, it does not provide the basis for any definitive determinations about the effects of monosodium glutamate (Ref. 21). While the agency believes that there is some evidence in case reports and in the scientific literature that dose dependent, mild reactions to monosodium glutamate occur in a small portion of the population (Refs. 37, 38), FDA is not aware of any scientific evidence that establishes that monosodium glutamate causes particularly severe adverse reactions, or that reactions to low doses of monosodium glutamate occur and are life-threatening (Refs. 19 through 21).

b. *Tentative decision not to require declaration of monosodium glutamate in protein hydrolysates.* After carefully considering the information discussed above, the agency has tentatively concluded that it does not provide an appropriate basis to find that label declaration of monosodium glutamate as a component of protein hydrolysates is necessary to assure the safe use of protein hydrolysates, and that it does not provide an appropriate basis to conclude that the declaration of monosodium glutamate constitutes a material fact under section 201(n) of the act. Therefore, the agency is not proposing to require the declaration of monosodium glutamate as a component of protein hydrolysates.

The agency is evaluating the safety of both monosodium glutamate and protein hydrolysates as part of its comprehensive review of the safety of human food ingredients classified as GRAS. The agency will consider all safety-related issues pertaining to these ingredients in conjunction with these evaluations. Moreover, because of the comments that it received at the food labeling hearings, the agency has expanded its efforts to track and investigate reports of adverse reactions involving both monosodium glutamate and protein hydrolysates and is prepared to take any necessary action to protect the public health should scientific evidence become available to warrant such action.

IV. Use of "and/or" Labeling

A. Background

1. General

"And/or" (i.e., disjunctive) labeling permits a manufacturer to list together in the ingredient list of a food product all the ingredients of a particular type (e.g., fats or oils) that it sometimes uses to make the product, without having to specify the ingredients that are actually present in the product. To make clear that not all of the ingredients identified are actually present, the entry in the ingredient list must include the words "or," "and/or," or "contains one or more of the following." For example, the ingredient list on a package of crackers may include an entry "partially hydrogenated vegetable shortening (soybean oil, canola oil, and/or palm oil)."

"And/or" labeling is intended to provide manufacturers with flexibility to choose among similar food ingredients without having to revise their labels each time their choice changes. Current regulations allow for the use of "and/or" labeling for fats and oils (§ 101.4(b)(14)), leavening agents (§ 101.4(b)(16)), yeast nutrients (§ 101.4(b)(17)), dough conditioners (§ 101.4(b)(18)), and firming agents (§ 101.4(b)(19)) when manufacturers are unable to adhere to a consistent pattern of use of these ingredients in their products. Of these uses of "and/or" labeling, the comments make clear that its use for fats and oils generates the most controversy.

2. Regulatory History of "and/or" Labeling

Historically, FDA permitted fat and oil ingredients to be declared in the ingredient list by the generic terms "vegetable oil," "animal fat," and "marine oil," or as "shortening," without naming the specific fat, oil, or type of shortening. In 1971 (36 FR 11521, June 15, 1971), however, FDA proposed to require the declaration of fat and oil ingredients by specific common or usual names instead of by generic names (e.g., "corn oil" instead of "vegetable oil" or "shortening"). FDA issued this proposal in response to requests from consumers and consumer organizations, as well as from health professionals.

The 1971 proposal to specify the source of the oil was opposed by a number of food manufacturers. Their opposition was mainly based on two contentions: (1) That manufacturing techniques alter fats and oils so that the ingredients in finished form do not differ greatly regardless of source; and (2) that requiring more specific ingredient listings would increase food costs because manufacturers would have to reprint labels whenever fat and oil ingredients were changed in response to fluctuations in price or supply.

After considering the comments, FDA issued its current regulation, § 101.4(b)(14) (41 FR 1165, January 6, 1976), which requires that fat and oil ingredients be declared by their specific common or usual names. This regulation also provides, however, that when the fats and oils are not the predominant ingredient in a food (i.e., do not make up the greatest proportion of the food on a weight basis), a manufacturer can declare the fats and oils in the list of ingredients by use of a collective term, followed by a parenthetical listing of the common or usual name of each fat and oil ingredient that might be used. For example, as stated above, a label might bear the statement "vegetable oil (may contain soybean, cottonseed, and/or corn oil)." The flexibility provided by this regulation permits manufacturers to use any one of the three oils listed in the parentheses, or a combination of them, depending on marketplace factors such as availability and price, without changing the label. Consequently, manufacturers can keep ingredient and labeling costs as low as possible and pass these cost savings on to the consumer. Where fats or oils are the predominant ingredient (as in cooking oils or shortenings), manufacturers are required to declare the specific fat or oil ingredients present in the product in descending order of predominance.

The January 6, 1976 (41 FR 1156), final rule also amended § 101.4 concerning the manner in which ingredients are to be declared on food labels. The new regulation specifically required that all ingredients be listed by their common or usual name and not by a collective (generic) name. It also rescinded the existing policy on declaration of leavening agents, yeast nutrients, and dough conditioners in bakery products (Trade Correspondence Number 94 (TC 94)). TC 94 had permitted use of the general terms "leavening [agent]," "yeast nutrient," and "dough conditioner" to declare these types of ingredients in bakery products.

In response to these changes, several industry petitions were filed that requested flexibility in the labeling of these ingredients. On June 6, 1978, FDA published a regulation (43 FR 24518) that authorized the use of "and/or" labeling for leavening agents, yeast nutrients, and dough conditioners.

In addition, amendments to the standards of identity for canned vegetables and canned tomato products, and the revised ingredient labeling regulations (see 41 FR 1156), raised a similar labeling problem for firming agents. Before the agency adopted these amendments, the standards permitted the use of five or more different calcium salts for the purpose of assuring the firmness of canned products after processing. The use of these ingredients was declared as "trace of calcium salt added," thus permitting the manufacturers to choose among the various salts as necessary. The revised standards of identity and the January 6, 1976, ingredient labeling regulation required that each optional ingredient, including the various calcium salts, be declared by its common or usual name.

As a result, the agency received a petition to allow the same labeling flexibility for firming agents in canned vegetable and canned tomato products

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that it had permitted for leavening agents, yeast nutrients, and dough conditioners. On February 25, 1983 (48 FR 8053), the agency published a final rule permitting the use of "and/or" labeling for firming agents.

B. Comments and Agency Response

1. Nutrition Concerns

Many of the comments responding to FDA's 1989 ANPRM addressed "and/or" labeling. A majority of those comments objected to "and/or" labeling of fats and oils and expressed a desire to have the specific fats and oils present in a food identified. The primary reason given for wanting to know the specific fats and oils present was the desire to select a diet low in saturated fatty acids consistent with medical advice or with current dietary recommendations (Refs. 22 through 29). Comments argued that when the fats and oils present in a particular food are not specifically identified in the ingredient list, consumers have little basis on which to assess the saturated fatty acid content of the product and therefore find it impossible to follow medical advice or dietary recommendations.

In the July 19, 1990 proposal (55 FR 29495), entitled "Food Labeling; Mandatory Status of Nutrition Labeling and Nutrient Content Revision," FDA recognized the importance of the level of saturated fatty acids in the diet. In recognition of the recommendations to limit saturated fatty acid intake (Refs. 23, 25, and 26), FDA proposed to require that, in addition to the current requirement that total fat be declared, the amount of saturated fatty acids present in a serving of food be a mandatory component of nutrition labeling. The 1990 amendments also include requirements for listing total fat and saturated fat on all foods (sec. 2—sec. 403(q)(1)(D)).

Thus, it is very likely that the nutrition labeling regulations that FDA will ultimately adopt as part of the DHHS initiative and in response to the 1990 amendments will ensure that consumers are provided with the information that they need to regulate their daily dietary intake of saturated fatty acids. The quantitative declaration of saturated fatty acid content in the nutrition label will better inform consumers about the level of saturated fatty acids present in a food than a listing of specific fat or oil sources in descending order of predominance in the ingredient list.

For consumers, nutrition labeling is the most readily available information about the nutritional value of foods and enables them to compare nutritional properties of different products. Therefore, FDA believes that the primary need expressed in the comments that opposed "and/or" labeling of fats and oils, the need for information on the saturated fatty acid content of the product, is best satisfied by the proposed revisions to nutrition labeling. Accordingly, the agency tentatively finds that it is not necessary to eliminate "and/or" labeling for fats and oils to meet this need.

The agency's view is supported by comments that suggested that disclosure of fat and fatty acid content would provide consumers with the information necessary to make wise dietary choices. As stated by a representative of the American Dietetic Association at the public hearing in San Antonio on November 1, 1989, "With strong nutrition information labeling regulations, 'and/or' labeling could continue, as mixtures of fats and oils allow food manufacturers the flexibility to respond to fluctuations in price and availability."

A few comments stated that the substitution of fats and oils within the "and/or" list would substantially affect the saturated versus unsaturated fatty acid profile of the finished product. However, data were not included with these comments to support this position. Because fats and oils have a specific technological effect in food product formulations, they are often altered by processing techniques, so that those used interchangeably in the finished product are not significantly different with respect to melting point and flow characteristics, regardless of their sources (Ref. 26a). Such alterations affect the level of saturated fatty acids in the source oils, diminishing any differences that may have existed among them before processing. This fact was reflected in a comment from industry that stated that 'and/or' labeling is compatible with fatty acid labeling, when saturates and total unsaturates are declared, since many of these vegetable oils have very similar fatty acid compositions."

A number of written and oral comments suggested allowing "and/or" labeling only when the fats or oils used in a product are nutritionally alike.

FDA does not believe that such a limit on the use of "and/or" labeling would significantly limit the use of this type of labeling. As discussed above, when oils from several sources are listed as having been used interchangeably, they are either inherently similar or have been altered by hydrogenation or other processes to have similar physical and chemical properties, such as melting point and consistency. Therefore, although the source oils may not have been nutritionally alike, they are likely to be similar at the time they are incorporated into the food product.

Moreover, the agency believes that the proposed requirement for saturated fatty acid declaration in nutrition labeling will provide an incentive to maintain nutritional consistency of source fats and oils. FDA has proposed to limit the amount that the saturated fatty acid content of a food can exceed the value that is declared on its label to not more than 20 percent (see proposed § 101.9(e)(5) in the Federal Register of July 19, 1990 (55 FR 29516)). This proposed limitation will mean that the quantitative declaration of saturated fatty acids within nutrition labeling will need to be high enough to cover the use of the fat or oil with the highest saturated fatty acid content. Because manufacturers would not be expected to want to declare higher saturated fatty acid values than necessary, FDA expects that the food industry will use fats and oils with similar saturated fatty acid levels.

Comments indicate an apparent belief among consumers that manufacturers sometimes include dissimilar oils within the "and/or" statement (e.g., "contains one or more of the following vegetable oils: Corn, soy, and/or coconut") with no intention of using the oils lowest in saturated fatty acids but simply to raise the possibility in the purchaser's mind that the product is lower in saturated fatty acids than it actually is. However, to avoid misbranding a product under proposed § 101.9(e)(5), a manufacturer would need to declare in nutrition labeling the amount of saturated fatty acids present when the oil (or blend of oils) containing the greatest amount of saturated fatty acids is used. FDA expects that this requirement will provide an incentive for the food industry to use oils or blends with the lowest saturated fatty acid content possible and will result in accurate information about the actual selection of oils that may have been used in the food.

Other comments suggested allowing "and/or" labeling if the total fat in a food falls below a specific level. The levels mentioned in the comments range from less than 5 to 10 percent by weight and from less than 3 to 5 grams per serving.

This suggestion is similar to the agency's 1979 tentative position. At that time, FDA and USDA stated their intentions to amend their ingredient labeling regulations to require that foods containing 10 percent or more total fat on a dry weight basis declare the specific source of the fat or oil

ingredients used in the food. This cutoff was based on 21 CFR 101.25(c)(1), which provides that a food containing 10 percent or more fat on a dry weight basis and at least 2 grams of fat per serving may bear labeling declaring the amount of fatty acids present because it is a significant source of fat in the diet. (FDA has proposed to delete this threshold provision (55 FR 29487, July 19, 1990) because it proposes to require that saturated fatty acids be included in all nutrition labeling.)

The agency believes that the levels suggested are unduly restrictive and are unnecessary in light of the proposed nutrition labeling revisions that will require declaration of the amount of saturated fatty acid. It should be noted that current regulations restrict "and/or" labeling to situations where fats and oils are not the predominant ingredient (§ 101.4(b)(14)). The agency is not proposing to change this restriction.

2. Allergy Concerns

Comments also cite an additional problem created by "and/or" labeling: An individual allergic to any of the ingredients listed in the "and/or" declaration would need to avoid the finished food. The comments argued that if the ingredient actually used were identified, the individual might be able to consume the product. Several comments on the 1989 ANPRM pointed to this problem, with particular emphasis on allergic reactions to vegetable oils.

Allergic reactions to oils would be caused by specific proteins in the oil rather than by its fatty acids which are likely to be present in different amounts in all oils. Proteinaceous materials are removed from oils during extraction and refining, leaving a relatively pure isolate (Ref. 27). However, FDA acknowledges the possibility that traces of protein related to the plant source, e.g., soy protein in soybean oil, might occasionally be found in some oils which could trigger an allergic reaction.

Other than anecdotal information, however, the agency has not been able to find any reported cases of food allergies to the oils commonly available for commercial use. In fact, one double blind crossover trial showed that peanut oil is not allergenic to persons allergic to peanuts, and that it was therefore unnecessary to eliminate or restrict the use of peanut oil by peanut-sensitive individuals (Ref. 28). The authors of this study stated that "changes in the food labeling regulations that "require source labeling of fats and oils, if based solely on the risk of allergic reactions to certain oils, may not be warranted." The American Academy of Allergy and Immunology's Committee on Adverse Reactions to Foods concluded that oils are probably infrequently responsible for significant allergic reactions, and that, accordingly, "avoidance of these oils and foods containing them is probably not necessary" (Ref. 29, p. 163).

In addition, FDA has not received any reports of adverse reactions by infants to vegetable oils, such as corn and soybean oils, used in commercially available infant formulas. This fact leads FDA to tentatively conclude that these oils are well absorbed by this sensitive population, that traces of protein in such oils are insufficient to cause allergic reactions, and, therefore, that the oils used create no problem with allergenicity. This tentative conclusion is supported by the findings of the Surgeon General's Report on Nutrition and Health (Ref. 22), which reviewed the subject of food allergies and did not report any adverse reactions that were related to vegetable oils.

Accordingly, FDA tentatively finds that, in the absence of scientific data showing that vegetable oils will trigger allergic reactions, there is no basis to eliminate "and/or" labeling for fats and oils. The agency encourages anyone with scientific data that shows that fat or oils can cause such reactions to submit that data in a comment on this proposal.

In summary, in light of the proposed revisions in nutrition labeling regulations and the 1990 amendments, which mandate declaration of the saturated fatty acid content of a food, the agency does not believe that the potential benefits from requiring more specific labeling of fats and oils will outweigh the adverse impact of the higher costs of food to all consumers that may accrue from restricting manufacturers' ability to respond to marketplace factors without having to change food labels. Accordingly, FDA is not proposing to revise § 101.4(b)(14) at this time.

Likewise, the agency does not find any basis to propose to revise other paragraphs in § 101.4(b) that permit "and/or" labeling of other food categories. FDA is not aware of any significant health problems that are associated with any of the ingredients that are subject to these provisions, nor is it aware of any reason why consumers would wish to avoid any of these ingredients. In adopting these provisions, FDA concluded that the flexibility that they provide to manufacturers is significant, and that consumers would not be deprived of necessary information by them. FDA has not been provided with any basis to reconsider these conclusions.

V. Source Labeling

A. For All Foods

Many consumers responding to the 1989 ANPRM requested that the specific source-food from which an ingredient is made appear in the list of ingredients along with the ingredient name. For example, some of these comments requested that the term "sodium caseinate" appear in an ingredient list as a term such as "sodium caseinate (from milk)." Some consumer comments pointed out that individuals with corn allergies frequently encounter sweeteners in ingredient lists that are derived from corn but that are not readily identifiable as such. Most of these comments expressed a desire to avoid certain ingredients because of special diets, allergies, or religious reasons.

FDA appreciates consumer needs and concerns about source labeling. In many situations, the agency already provides for source information as a part of the ingredient name because often such information is essential to adequately describe the basic nature of the food ingredient. For example, gluten, the principal protein component of corn endosperm and of wheat, must be identified in ingredient lists as "corn gluten" (21 CFR 184.1321) or "wheat gluten" (21 CFR 184.1322), as appropriate. Also, a fruit juice ingredient in a food must be identified in the ingredient list with the name of the specific fruit source from which the juice is made (21 CFR 101.4(a)(1) and 102.5(a)).

In these situations, FDA considers source information to be part of the ingredient's common or usual name that is required under the provisions of section 403(i) of the act. The agency requires that such names accurately identify or describe, in as simple and direct terms as possible, the basic nature of the ingredient or its characterizing properties. This requirement is set forth in § 102.5(a), which establishes principles for devising common or usual names for foods.

However, there are situations in which source information is not part of the common or usual name of food ingredients. In most instances, these are ingredients that have a long history of use. For FDA to provide for declaration of the source of these ingredients, it would have to amend the common or usual names of all foods to include their source. However, for the agency to adopt such a requirement would require enormous resources, and the agency simply does not have such resources available. Moreover, many of these

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ingredients are so well known that most consumers understand the source of the ingredient from its name (e.g., raisins from grapes, sugar from sugar cane or sugar beets, whey from milk). Accordingly, FDA is not moving to provide source information in the common or usual names of all foods.

B. For Specific Foods

In specific situations, however, where source information has a material bearing on the purchase of a food, or where consumers may be misled without such information, FDA may take steps to require this information. For example, where the source is important to the value of a food, or where consumers may be faced with significant adverse health consequences without this information, the agency will initiate rulemaking procedures to require that source be included in the ingredient name.

1. Mandatory Labeling Requirements

At this time, FDA is aware of only two situations in which source labeling is not being provided, but the agency has tentatively determined that it should be. The first is the declaration of protein hydrolysates, which the agency has discussed above. Second, some products that are marketed as dairy product substitutes bear labeling that includes the statement "nondairy" and yet contain a caseinate milk derivative. For example, some substitutes for dairy cream contain caseinates as ingredients but are labeled as "nondairy" coffee whiteners. (A number of State regulatory agencies require the "nondairy" legend to appear on these foods.) In such situations, consumers may be led to believe that the caseinates are not milk derived. However, for consumers with allergies to milk proteins, such a belief may lead to life-threatening consequences (Refs. 29, 30, 31).

The agency has informally advised producers of these products that, following the listing of the common or usual name of the specific caseinate, the ingredient statement should include a term that identifies the source of the caseinate, such as "(a milk derivative)," so that the label will not be misleading. FDA has tentatively decided to codify this advice under authority of sections 201(n), 403(a)(1), and 701(a) of the act (21 U.S.C. 321(n), 343(a)(1), and 371(a)).

Accordingly, the proposed rule, in § 101.4(d), provides that wherever "nondairy" statements appear on the label of a product that contains a milk derivative, the source of the milk derivative must be declared. This proposed requirement is consistent with source labeling requirements for hypoallergenic foods that FDA has already established in 21 CFR 105.62. The agency solicits comments concerning whether the proposed requirement will adequately protect consumers with allergies to milk protein, or whether additional labeling requirements (e.g., where the term "nondairy" appears, that term would also be qualified by a term such as "contains a milk derivative") are also necessary. However, where a "nondairy" statement is not present, FDA is not proposing a source labeling requirement because in this instance there is no basis to conclude that the specific name of the caseinate without source information is misleading.

2. Voluntary Labeling Provisions

a. *Background.* Comments requesting source labeling for corn sweeteners bear on four standards of identity in 21 CFR part 168—Sweeteners and Table Sirups: § 168.110 *Dextrose anhydrous*; § 168.111 *Dextrose monohydrate*; § 168.120 *Glucose sirup*; and § 168.121 *Dried glucose sirup*. As is the case with any food subject to a standard of identity, these sweeteners may be identified in an ingredient list on the label of a formulated food product only by a name specified in the standard. Thus, each of the standards lists the permitted names for these sweeteners.

The standards for glucose sirup and dried glucose sirup permit the optional inclusion of the type of starch from which the sirup was produced in the name of the sweetener, e.g., "corn sirup," "tapioca sirup," "corn sirup solids," or "tapioca sirup solids." Therefore, food processors may include the food source when declaring these syrups in an ingredient list.

However, the standards for dextrose anhydrous and dextrose monohydrate do not provide for the inclusion of the food source, which is almost exclusively corn, in the permitted names of these sweeteners. Therefore, a food processor is precluded from stating the source of these ingredients in the ingredient list.

b. *Factors considered in response to comments.* In response to the comments concerning the labeling of corn-derived sweeteners, FDA has considered whether it should propose to permit the voluntary inclusion of the term "corn" (or other food source) in the permitted names of dextrose anhydrous and dextrose monohydrate, or whether it should propose to adopt common or usual names for these ingredients, as well as glucose sirup and dried glucose sirup sweeteners, that mandate inclusion of the food source.

The agency has decided not to propose to require inclusion of the food source in the names of these sweeteners. The permitted names for these foods have been used for many years, and FDA believes that most consumers are aware that these foods may have been derived from corn. In view of the long history of use of these names, the agency believes that it would have to find that the established names do not adequately describe the ingredient before proposing to require mandatory inclusion of the food source in these names.

One concern that has been expressed, however, is that corn sensitive consumers are put at risk by the current regulations. FDA discussed the concern about allergies in its proposal to affirm the generally recognized as safe (GRAS) status of corn sugar and corn syrup which was published in the **Federal Register** of November 30, 1982 (47 FR 53917 at 53918). A final rule affirming the GRAS status of these and other sweeteners was published in the **Federal Register** of November 7, 1988 (53 FR 44862). In the 1982 proposal, the agency pointed out that there are conflicting reports on the allergenicity of these sweeteners. For example, ingestion of corn sugar and corn syrup (Ref. 32) and intravenous injections of corn sugar (Ref. 33) were reported to result in the production of allergic symptoms in some individuals highly sensitive to corn. "Blindfold" ingestion studies involving 25 patients with histories suggestive of corn allergy, however, resulted in a few cases of reaction to large feedings of the starches of corn, tapioca, and arrowroot but no case of susceptibility to corn syrup or corn sugar (Ref. 34). Another study also failed to demonstrate sensitivity to corn syrup in an ingestion test of an individual sensitive to corn meal and corn starch (Ref. 35).

Further, the agency advised in the 1986 "Report From FDA's Sugars Task Force" that there was no evidence in the literature at that time that allergic reactions to corn-derived sweeteners pose a major health concern in the United States, although there have been isolated case reports suggesting that the corn-derived sweeteners may contribute to food-induced allergic reactions in some patients (Ref. 36).

The agency is not aware of any other concerns that would justify changing the names of these sweeteners.

c. *Tentative conclusions and proposal to permit voluntary source declaration.* In the absence of more conclusive evidence of a hazard to consumers from these standardized sweeteners or of any other basis for changing the names provided for in the standards of identity, FDA is not prepared to propose source labeling requirements for these sweeteners. Consumers can avoid these sweeteners by familiarizing themselves with the names of these sweeteners and by looking for these names in lists of ingredients.

Although the agency is not proposing to require source labeling for the standardized sweeteners, FDA has tentatively concluded that firms should be permitted to identify corn (or other foods) as the source of dextrose anhydrous and dextrose monohydrate. The fact that the existing standards for these two sugars do not provide this option seems inappropriate in light of the concerns expressed by consumers about source labeling for corn sweeteners. The agency is therefore proposing to amend §§ 168.110(b) and 168.111(c) to provide for the optional declaration of the food source in the naming of dextrose anhydrous and dextrose monohydrate.

For corn sugar, the proposed amendments to the standards effectively provide for the voluntary use of the names "corn sugar anhydrous," "anhydrous corn sugar," "corn sugar monohydrate," and "corn sugar," as alternatives to those names already permitted. Other sources for these two sugars, such as grapes, could also be declared under the amended standard. However, corn is by far the principal source of dextrose used in foods.

d. *Guidance on sweetener nomenclature.* FDA has received inquiries from industry as to whether the terms "corn sugar," "dextrose," "glucose," "glucose syrup," and "corn syrup" are appropriate for inclusion in ingredient lists.

FDA advises that the current standards of identity for sweeteners do not permit the unqualified use of the term "glucose" or the use of the term "corn sugar" as the names of sweeteners. Thus, these terms should not be used in ingredient lists. The standards of identity in §§ 168.110, 168.111, 168.120, and 168.121 permit the use of several different names for sweeteners in ingredient lists, and the agency has no objection to the use of any of these names. However, in view of the significant consumer interest in source labeling, the agency suggests that source labeling be used where the standards provide for it. For example, FDA considers terms such as "corn syrup," "wheat syrup," "dried corn syrup," and "dried wheat syrup" to be preferable to the terms "glucose syrup" and "dried glucose syrup". For further guidance on appropriate names for other sweeteners, FDA refers interested parties to regulations pertaining to these substances found in 21 CFR parts 168, 172, 180, 182, and 184.

VI. Other Sweetener Labeling Issues

A. Background

1. FDA's 1974 Proposal on Sweetener Labeling

In the **Federal Register** of June 14, 1974 (39 FR 20888), FDA issued a proposal concerning, in part, the label designation of ingredients. Among the ingredients covered by this document were several sweeteners. The agency proposed to revise § 101.4 (formerly 21 CFR 1.10) to: (1) Require that sucrose be declared as "sugar" and to permit the declaration of invert sugar as "sugar," and (2) permit the declaration of sweeteners derived from corn as "corn sweeteners." The proposal would not have required a listing of the individual common or usual names to follow these collective names.

In the **Federal Register** of January 6, 1976 (41 FR 1156), the agency acted on parts of this proposal but deferred action on the proposed collective ingredient designations for corn sweeteners and sugar, pending its review of the safety of certain of the commonly used sweeteners: Corn sugar, corn syrup, invert sugar, and sucrose. In the **Federal Register** of November 7, 1988 (53 FR 44862), the agency issued a ruling affirming that the use of these sweeteners as direct human food ingredients is GRAS. With the completion of its evaluation of the health aspects of these sweeteners, FDA is in a position to act on the proposed collective designations for corn sweeteners and sugar.

2. Response to the 1974 Proposal

For the most part, consumer and industry responses to the 1974 proposal were markedly different. Consumers expressed a desire for complete declaration of all ingredients and specifically opposed the proposed collective terms for sweeteners. Consumers wanted to know the specific names for all ingredients in their food in order to be able to avoid certain ingredients and to identify the presence of specific ingredients for health reasons.

Industry responded primarily by endorsing the establishment of collective terms for sweeteners because of the savings in labeling costs that would result if such terms could be used as substitutes for specific sweetener names. This response was expressed both in petitions attempting to justify the need for collective terms and in letters supporting the positions raised in the petitions. Supporting petitions were submitted by the Canada Dry Corp. (June 27, 1975—Docket No. 75P-0144), the Canners League of California (January 19, 1977—Docket No. 77P-0051), the Independent Bakers Association (September 22, 1977—Docket No. 77P-0357), the California Milling Corp. (June 19, 1978—Docket No. 77P-0051 CP0002), the Orth Co. (July 31, 1978—Docket No. 77P-0357), L. Karp & Sons, Inc. (August 11, 1978—Docket No. 77P-0357 CP0003), and the National Soft Drink Association (January 20, 1984—Docket No. 84P-0029). However, The Sugar Association, Inc., submitted a petition (February 8, 1984—Docket No. 84P-0047) expressing opposition to the establishment of these collective terms.

Some of the petitions urged adoption of the collective terms as proposed, but other petitions requested that collective terms encompass a broader group of sweeteners. These petitions asserted that the collective term "sugar" should include the sugars sucrose, glucose, and fructose (including starch-derived high-fructose sugars such as high-fructose corn syrup (HFCS)). A petition pointed out that HFCS contains approximately the same glucose-to-fructose ratio as honey, invert sugar, and sucrose. The petition maintained that the term "sugar" is appropriate for listing these sweeteners in soft drinks because of the similarity of all of these sweeteners after incorporation in these foods. The petition stated that in soft drinks, sucrose is gradually hydrolyzed to a mixture of sucrose, glucose, and fructose. Further, the petition stated that invert sugar is, for practical purposes, indistinguishable from the HFCS used in soft drinks, and that the net result of the hydrolysis is a mixture of sucrose, glucose, and fructose.

A number of petitions requested establishment of alternative sweetener labeling with collective terms followed with specific sweetener names subject to "and/or" labeling exemptions (e.g., "sweeteners (high-fructose corn syrup and/or sugar)") if FDA did not adopt the terms proposed. One of the petitions acknowledged that such an approach for sweeteners is already in use throughout the food industry and especially within the soft drink industry. The petition asserted that the agency should permit this practice to continue because of the adverse economic impact that would result if firms are forced to change their labels.

The petitions argued that establishment of the proposed collective terms, or the alternative labeling with "and/or" labeling exemptions, would provide important flexibility to

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producers, provide consumers with all the information that they are likely to need in making purchase decisions, and provide a means of avoiding "the burdensome costs and compliance nightmares associated with multiple labeling inventories." A few petitions asserted that collective terms would adequately inform consumers about the ingredients, and that more detailed nomenclature might only cause confusion. One of these petitions attempted to support this assertion by pointing out that if FDA required that every sweetener be declared by a specific term, these terms could be dispersed throughout the ingredient list in a manner that would mislead consumers about the aggregate sweetener content of the product.

The petition from the Sugar Association, Inc., opposed the establishment of collective terms for sweeteners, contending that FDA should initiate rulemaking to define "sugar" as sucrose that is derived from sugar cane or sugar beets. The petition included a variety of substantiating documents (e.g., copies of trade journal articles, other publications, and trade and government correspondence) to demonstrate that sucrose is the only sweetener that has traditionally been referred to as "sugar" by industry, consumers, and government regulatory agencies, including FDA. The petition stated that the narrower definition of sugar is necessary "due to the ever-increasing number of beverages that list sugar as part of their ingredient list when such beverages either fail to contain any sucrose whatsoever or contain a blend of sucrose with other sweeteners." The petition pointed out that corn sweeteners are almost always lower in price than sucrose, and that in the beverage industry, corn sweetener usage has dramatically increased, while sucrose usage has correspondingly decreased. The petition also included evidence that some beverage manufacturers are adjusting formulations to provide for corn sweeteners as the only sweeteners in their products. The petition argued that use of collective sweetener labeling in lieu of specific sweetener names would allow a processor to use the cheapest sweetener available without proper identification.

In addition, the Sugar Association's petition disagreed with the position that the use of the term "sugar" on a soft drink ingredient label is proper because the spectrum of sweeteners remaining in a soft drink after a period of time is approximately the same, irrespective of whether the sweetener actually used in the manufacture of the product was sugar or HFCS. The petition stated that "the ratio of glucose to fructose will be different in a sugar-based soft drink when compared with that in an HFCS-based soft drink. Further, a soft drink prepared from a blend of sugar and HFCS would also be detectably different in sweetener content at any time during the life of the beverage." Moreover, the petition submitted evidence that most soft drinks are sold and probably consumed long before all of the sugar in the sugarbased beverages would have been completely converted to glucose and fructose.

Opposition to use of the term "sugar" for other sweeteners was also voiced in an industry letter that pointed out that sugar may be heated with foods containing protein without reacting with the protein. The letter stated that invert sugar, however, can react with protein when heated and thereby decrease the nutritional value of the protein present in a food. Thus, a consumer would not know whether heating a food would affect its protein value if the ingredient list for the product only contained the proposed collective term "sugar."

3. Consumer Response to 1978 Food Label Review

Consumers reiterated their desire for specific ingredient information in response to the agency's request in 1978 for comments on several food labeling issues (43 FR 25296, June 9, 1978). FDA considered these comments as part of the review of the food label that it conducted with USDA and FTC.

In 1979, after reviewing these comments and conducting several hearings around the country, FDA issued a **Federal Register** notice with USDA and FTC in which it announced its agenda for modifying the food label (44 FR 76004, December 21, 1979). FDA announced its intention to propose to amend the nutrition labeling regulations (§ 101.9) to require declaration of the total sugars content in a food. However, the agency never acted on its announced intent.

4. The 1989 ANPRM

As stated above, in 1989, FDA again sought public comment on a wide range of food labeling issues. In response, consumers stated that they are concerned about the quantity of sugars that they are consuming, and that they want specific ingredient information on their foods. Further, many consumer comments requested information concerning the total quantity of all sweeteners in their foods. One comment from a consumer organization suggested that all sweeteners be grouped together in a parenthetical listing of the specific names of the actual sweeteners that are present. Another comment requested that whenever lactose is an ingredient in a food, the food's label bear the term "lactose" to alert lactose intolerant consumers of its presence.

B. Agency Response to Issues on Sweetener Labeling

1. Use of Alternatives to Specific Names

FDA finds that it would not be appropriate either to establish collective terms for use in declaring sweeteners in ingredient lists in lieu of the specific names for these ingredients or to permit the use of "and/or" labeling for sweeteners.

Under section 403(i) of the act, a food that is fabricated from two or more ingredients is misbranded unless the label bears the common or usual name of each such ingredient. However, the act also states that the agency is to provide for exemptions if compliance with this requirement is impracticable or results in deception or unfair competition. The agency finds that neither of these conditions is present with respect to the declaration of individual sweeteners.

As pointed out above, the industry petitions attempted to establish that current labeling requirements are impracticable by asserting that unnecessary labeling costs result from the lack of labeling flexibility with respect to the specific names of sweeteners. However, FDA finds that the petitions have not supported this claim.

Use of collective names in lieu of specific ingredient names and use of "and/or" labeling exemptions with specific ingredient names may, under certain circumstances, provide significant cost savings by allowing manufacturers to change the ingredient content of a food based upon the price of alternative ingredients without having to change the food's label. In the case of fats and oils, this flexibility is needed. The relative price differential between interchangeable fats and oils is small, as prices of these products tend to be similar (Ref. 37). However, the small price differential makes it more likely that relative prices of the individual fats and oils will fluctuate frequently because a small change in price may be sufficient to make one fat or oil more costly than another. A more costly oil in one month may be a less costly oil in another month (Ref. 37). A slight price differential is often sufficient to cause a manufacturer to choose different fats or oils or different amounts of the fat or oil to maintain the lowest cost blend. Over time, use of the lowest cost blend may significantly reduce production costs, but without the labeling flexibility provided by "and/or" exemptions, these savings could be severely curtailed or eliminated.

The relative prices of sweeteners do not appear to fluctuate in such a way that manufacturers would switch between products to use the lowest cost sweetener or sweetener blend. Industry information indicates that the price differential between sugar and corn sweeteners has remained relatively constant (Ref. 38). The price of sugar, often referred to as the "umbrella price," has consistently remained higher than the price of other corn sweeteners, primarily because of price supports and the high cost of processing sugar (Ref. 38). Therefore, based on past price fluctuation, FDA finds that a need for flexibility does not exist.

There appears to be very little potential for the price differential between sugar and corn sweeteners to change significantly. For such a change to take place, there would have to be a significant shortage in the supply of corn sweeteners, and such a shortage appears to be unlikely. Most practical substitutions of HFCS for sucrose have already occurred (Ref. 38). Most of the current and projected future growth in the market for HFCS is the result of population growth and increased use of corn sweeteners in foreign countries (Ref. 38). Concerns that the demand for corn sweeteners will exceed capacity have not been borne out (Ref. 38). In addition, several of the wet corn millers have announced an increase in the capacity for production of HFCS (Ref. 38). When demand is high, millers switch from production of ethanol to production of HFCS, thus expanding capacity (Ref. 39). Further, in the first quarter of any year, production generally outpaces demand, and manufacturers may store HFCS to help meet the higher demand that occurs in the hot summer months (Ref. 38).

However, none of the industry petitions has demonstrated that sweeteners are subject to the same frequency of formulation adjustment that occurs with respect to fats and oils and to the other types of ingredients for which FDA has permitted exemptions from requirements for specific ingredient listing.

In summary, the petitioners have not shown, nor does the evidence establish, that it is impracticable, or that it would result in deception or unfair competition, to require declaration of specific sweeteners in the ingredient list. To the contrary, the evidence indicates that declaration of specific sweeteners is practicable and should continue to be required.

Assertions that sweetener names should be based upon their form in a food after fabrication rather than on the form in which they are added to make the particular food product are inconsistent with the act itself. Section 403 of the act requires the declaration of the ingredients from which the food is fabricated by their common or usual names. Even if different sweeteners were identical in all respects after fabrication, and FDA has not been persuaded that this is in fact the case, this fact would not constitute the type of showing that is necessary to justify an exemption from the ingredient labeling requirements under section 403(i) of the act.

Assertions that FDA should not require declaration of specific sweeteners in the ingredient list because of the one-time costs that would be incurred if firms are forced to change violative labels also do not support the relief sought under the act. As stated previously, section 403(i) of the act requires, for establishment of exemptions, a showing that ingredient listing requirements would be impracticable or would result in deception or unfair competition. No such showing has been made, and no other provisions of the act provide the agency with discretion for establishment of ingredient labeling exemptions solely on the basis of cost.

Accordingly, FDA is withdrawing the proposal concerning the establishment of the terms "sugar" and "corn syrup" as collective ingredient designations. The agency is also denying the petitions, cited previously, that requested exemptions from requirements for the listing of specific common or usual names for sweeteners. Labels on products that do not include the names of the specific sweeteners used to fabricate the foods misbrand the products under section 403(i) of the act. Firms should take prompt steps to correct such misbranding.

2. The Sugar Association's Petition

The agency advises that the petition from The Sugar Association, Inc., requesting that FDA initiate rulemaking to establish a definition for the term "sugar" has effectively been granted.

"Sugar" is defined in 21 CFR 184.1854 (53 FR 44870, November 7, 1988). That regulation states that the terms "sucrose," "sugar," "cane sugar," and "beet sugar" are appropriate names for sucrose, which is obtained by crystallization from sugar cane or sugar beet juice that has been extracted by pressing or diffusion, then clarified and evaporated. To promote greater awareness of § 184.1854, FDA is specifically referencing it in proposed § 101.4(b)(22).

3. Grouping of Sweeteners in the Ingredient List

Although FDA considers collective terms for sweeteners to be inappropriate as substitutes for specific sweetener names, the agency believes that the use of a collective term that reflects their function (e.g., "sweeteners") as a part of the ingredient list, as suggested by the comments on the 1989 ANPRM, may be of significant value to consumers if it is followed by a list of all the sweeteners used in the food. This cumulative listing for sweeteners would be placed on the ingredient list based on the total weight of the sweeteners in the food.

This type of labeling would resolve many of the problems reported by consumers, who stated that they were misled by the prominence of added sweeteners by the practice of dispersing sweetener names throughout the ingredient list for some products. Although this practice is consistent with current ingredient listing requirements, FDA tentatively finds that it produces a result that is inconsistent with section 403(a)(1) of the act. The end result of this practice makes the ingredient list misleading with respect to the prominence of sweeteners in the food. FDA tentatively finds that it is misleading if the separate listing of sweetener ingredients on a label in descending order of predominance leads consumers to incorrectly believe that the added sweeteners constitute a smaller portion of a product than in fact is the case.

In reaching this tentative conclusion, FDA has considered consumer requests for information about the total amount of sugars in a food. However, as explained earlier in this preamble, ingredient listing requirements are not intended to assure that the food label provides consumers with all the information they may need. Instead, these requirements are limited to provide consumers with information on the substances that are combined to make a particular food product. Information on the total amount of particular component in a food, such as information on the total amount of sugars in a food, concerns the constituents of these substances and is beyond the scope of the ingredient labeling requirements.

FDA believes that label information on the precise total amount of sugars in a food is more appropriately regulated

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under nutrition labeling provisions than under ingredient labeling provisions. Because many consumers may place a high value on this type of information, the 1990 amendments provide specific authority for FDA to require this information as part of nutrition labeling (sec. 2—sec. 403(q)(1)(D)). In July of 1990, FDA proposed to make the amount of sugars a voluntary element. However, in a supplementary proposal that FDA will publish shortly, the agency will propose to make sugars declaration mandatory, although the agency will also seek comments on several concerns that it has about such a requirement.

FDA recognizes that if total sugars becomes a mandatory element of nutrition labeling, the importance of grouping sweeteners in the ingredient list will be diminished. However, the agency believes that even if this were to occur, there will still be a significant need for sweetener grouping in the ingredient list because consumers could still be confused by the practice of dispersing sweetener names throughout the ingredient list. In addition, the ingredient list should provide consumers with a quick means of assessing the significance of added sweeteners and a declaration of total sweeteners does not distinguish between added and naturally occurring sweeteners. Furthermore, as indicated above, there is no certainty that the agency will ultimately decide to include total sugars as a mandatory element of nutrition labeling. The 1990 amendments permit FDA to delete nutrients from the required list of nutrients in nutrition labeling where information on the nutrients is not necessary to assist consumers in maintaining healthy dietary practices. If comments persuade the agency that consumers may not find inclusion of added sugars useful in maintaining healthy dietary practices, FDA may withdraw the proposed requirement.

Accordingly, FDA is proposing to amend its ingredient labeling regulations in § 101.4(b)(21) (21 CFR 101.4(b)(21)) to require that when more than one sweetener is used in a product, all sweeteners be listed together by their common or usual names in parentheses in the list of ingredients following the collective term "sweeteners" in the order of predominance appropriate for the sum of all the sweeteners. The agency is also proposing that the listing of the common or usual names of the individual sweeteners in parentheses be in descending order of predominance. Under this proposal, where the combined weight of all sweeteners exceeds the weight of any other ingredient, the collective grouping of all sweeteners would appear first in the list of ingredients.

For purposes of the ingredient list, FDA is proposing in § 101.4(b)(21) a broad functional definition of the term "sweetener." The agency is proposing to include within this term (1) all standardized sweeteners and table syrups provided for in 21 CFR part 168; (2) all sweeteners affirmed as GRAS or approved for use as a food additive (including but not limited to sucrose (21 CFR 184.1854), high fructose corn syrup (21 CFR 182.1866), sugar alcohols (e.g., xylitol in 21 CFR 172.395, mannitol in 21 CFR 180.25, and sorbitol in 21 CFR 184.1835), aspartame (21 CFR 172.804), malt syrup (21 CFR 184.1445), and saccharin (21 CFR 180.37)); (3) all sweeteners eligible for classification as GRAS in accordance with 21 CFR 170.30(f) that are of natural biological origin (including but not limited to, fructose, maltose, honey, and fruit syrups other than those provided for in part 168, concentrated fruit juices (except where water is added to return the concentrate to its single-strength concentration), and concentrated modified fruit juices); and (4) all sweeteners that are used in accordance with a sanction or approval granted prior to September 6, 1958. FDA has included sweeteners with prior sanction or approval in this definition in the event that such sweeteners actually exist. However, the agency is not aware of any specific substances that could serve as examples of this last sweetener category.

Under this proposal, when any of these sweeteners serve functions in foods in addition to imparting significant sweetness (e.g., imparting flavor), the ingredient will still be required to be listed among other sweeteners following the term "sweeteners." For example, when concentrated fruit juices are ingredients in fruit spreads, the juices impart flavor to the spread as well as making a significant contribution toward the sweetness of the spread. Such juices would therefore be required to be listed along with other sweeteners when they are present. However, where a juice serves as the only sweetener, it would not be identified as a sweetener because this provision of the proposal is triggered only where more than one sweetener is in a food. Furthermore, the agency does not expect concentrated juices, which are fully reconstituted to the original single strength juice through addition of water in the production of a food, to be listed as sweeteners. The agency is proposing an exemption for such situations. For example, frozen concentrated orange juice would not be listed as a sweetener when it is an ingredient in a sweetened diluted orange juice beverage.

In proposing to establish this broad definition of the term "sweetener," the agency is attempting to respond to the consumer comments that expressed a desire for information concerning the identification and prominence of all sweetening ingredients. However, FDA recognizes that it may be possible for the ingredient list to not be fully informative in this regard despite the breadth of this definition. For example, firms could use more concentrated forms of certain sweeteners (e.g., syrups and dehydrated sweeteners), which would have the effect of minimizing the prominence of sweeteners in the list of ingredients. In some situations, the concentrated sweetener would have to be labeled as "concentrated," but consumers would not know the extent of concentration. The agency solicits comments on specifically how the proposed definition could be revised to deal with such situations.

FDA recognizes that for low calorie sweeteners (e.g., aspartame), order of predominance information is of little value to consumers. These sweeteners are frequently the only sweetener used in the food, and even when combined with other sweeteners, their intense sweetness will mean that their place in the ingredient list will not accurately reflect their contribution to the taste of the food. However, FDA is proposing that these sweeteners be included in the broad sweetener definition and therefore in the parenthetical listing. More confusion about the presence of low calorie sweeteners is likely to result from their exclusion from the parentheses than from their inclusion. Moreover, inclusion of low calorie sweeteners in the listing of sweeteners will be informative to consumers. There are some low calorie sweeteners with which consumers have little familiarity (e.g., acesulfame potassium). If these low calorie sweeteners are not included in the parenthetical listing, consumers might not realize that the ingredient has a sweetening function. FDA solicits comments on the inclusion of low calorie sweeteners within the parenthetical list of sweeteners, on whether their exclusion would mislead consumers, and on alternative approaches to addressing this issue.

4. Lactose Labeling

In response to consumer concern about lactose expressed in the comments on the 1989 ANPRM, FDA advises that its ingredient labeling regulations require the listing of lactose whenever it is used as an ingredient of food. Lactose-intolerant consumers may review ingredient lists to determine if this ingredient is present. However, these consumers should also consult ingredient lists for the presence of any milk component or milk product (e.g., whey, nonfat dry milk). These ingredients contain lactose. There is no requirement that the presence of lactose as a component of an ingredient be declared on the label, and FDA has never been presented with evidence that would justify such a requirement (see the discussion of the declaration of glutamate in section III.D.5. of this document, above). Therefore, lactose-intolerant consumers must be aware that this substance may be present in a food even if not declared in the ingredient list.

VII. Percentage Ingredient Labeling

A. Background

The responses to FDA's 1978 and 1989 requests for comments on ingredient labeling issues evidence a longstanding, strong consumer interest in percentage ingredient labeling. In 1979, the agency stated that it intended to expand the use of percentage labeling for valuable and characterizing ingredients as part of the names for foods; publish guidelines for voluntary percentage ingredient labeling as part of the ingredient statement; seek or support legislation explicitly giving FDA the authority to require percentage ingredient labeling as part of the ingredient statement; and seek or support legislation giving FDA access to a company's product formulas, quality control records, and related records to ensure that such expanded percentage ingredient labeling is truthful and accurate. However, the agency did not act on these intentions.

In response to the 1989 ANPRM, many consumers, consumer organizations, health professionals, and health organizations again expressed their support for inclusion of some form of percentage ingredient information on food labels for all, or for major, ingredients. These comments asserted that this information is necessary to inform and educate the public, to facilitate product comparisons, to enhance competition between products, and to evaluate claims about products.

Comments from food manufacturers and trade associations, however, objected strenuously to this type of labeling. Most of these comments maintained that such labeling would require disclosure of manufacturers' confidential product formulas. The comments pointed out that companies have invested considerable amounts of resources on research and development to produce these formulas and thereby to remain competitive in the food industry. Comments also pointed out that disclosing formulas through the percentage labeling of ingredients would stifle creative new product development and ultimately lead to fewer food choices. Comments advised that the labeling would limit flexibility in adjusting formulas and, in most cases, would contribute to information overload rather than consumer benefit. Further, the industry comments asserted that listing ingredients by percentage is unnecessary because it does not add information that people need in constructing a healthy diet.

B. Listing Ingredients by Order of Predominance and Mandatory Percentage Ingredient Labeling

While the act requires that food ingredients be identified on labels, it provides authority to require information on the specific amounts of those ingredients only where the ingredients have a valuable or characterizing nature (21 CFR part 102, established under authority of section 403(a) and 201(n) of the act), and where foods purport to be a beverage containing vegetable or fruit juice (section 403(i)(2) of the act). (The labeling of beverages containing vegetable or fruit juice will be discussed in a document published soon in a future issue of the **Federal Register**.) Under other circumstances, there is no basis under the act for the agency to require information on the specific amount of ingredients in food. Accordingly, FDA cannot propose to require general percentage labeling of all ingredients in all foods.

Although no authority for broad percentage labeling exists, FDA long ago determined that some information on amounts of ingredients was necessary and established the current requirement § 101.4(a)(1)) that ingredients be declared in descending order of predominance by weight. The 1989 food labeling comments suggested, however, that many consumers are not aware of this fact.

In light of this fact, FDA is now proposing to require in § 101.4(a)(3) that food labels bear a statement explaining that the list of ingredients is in descending order of predominance by weight. The proposed provision cites as an example of an appropriate statement the following: "Ingredients (in descending order of predominance by weight): _____, _____, and _____." The agency is basing this provision on sections 201(n), 403(a), and 701(a) of the act. The explanatory statement sets forth a fact that is material to an understanding of the ingredient list that is on the label.

C. Voluntary Percentage Ingredient Labeling

Although FDA has tentatively concluded that it does not have authority to require percentage ingredient labeling for all ingredients in all products, the agency recognizes that for some products with valuable or characterizing ingredients (such as those products for which 21 CFR part 102 common or usual names have been established) this labeling is needed, and that for other products, this labeling may be helpful to consumers even though it may not be critical to purchasing decisions. In fact, FDA has a policy of not objecting to firms voluntarily providing this type of labeling when the information is not misleading and is truthful in all respects. However, many firms may not be aware of this policy. Some of these firms apparently believe that such labeling is prohibited by 21 CFR 101.2(e), which prohibits inclusion of intervening material within certain required information, including the ingredient list. Such firms may not realize that the agency considers nondeceptive ingredient quantifying information to be unaffected by this provision. FDA believes that in most cases, such information enhances the required ingredient information.

Because both consumers and industry may benefit from more widespread use of percentage information, the agency considers it appropriate at this time to codify its voluntary percentage ingredient labeling policy. Accordingly, in this proposal FDA is providing for voluntary percentage ingredient labeling of all foods, both standardized and nonstandardized. FDA encourages manufacturers to provide percent information about ingredients in accordance with provisions of this proposal wherever practicable.

The agency is proposing in § 101.4(e) a uniform method for percentage declaration of ingredients to prevent consumer confusion that would be created if consumers were confronted with varying presentations of quantitative information on food labels. FDA is proposing to permit percentage declarations that are expressed in terms of percent by weight. Ingredients are required to be listed in the ingredient list in decreasing order of predominance by weight, and the agency believes that consumer confusion would be created if the percentage declarations in ingredient lists were calculated on a

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different basis (e.g., volume/volume) that could produce inconsistent results.

The proposed provision will also require percentage declarations to appear in parentheses following the name of the ingredient. Further, the provision will require that percentage declarations be expressed to the nearest 1 percent, except that where ingredients are present at levels of 2 percent or less, they may be grouped together and expressed in accordance with quantifying guidance set forth in § 101.4(a)(2) (55 FR 17433, April 25, 1990). (For example, "contains ___ percent or less of ___ with the blank percentage filled in with a threshold level of 2 percent, or, if desired, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate.) Firms could use percentage declarations for as many or as few ingredients that are present in the food as they choose.

VIII. Other Ingredient Labeling Issues

A. Format

A number of comments on the 1989 ANPRM requested that the format of ingredient labeling be revised to enhance the readability of the ingredient list. Some of these comments suggested that major ingredients be listed separately from minor ingredients. Other comments objected to the use of certain type styles for ingredient listing because they are less readable than other type styles. Some of these comments suggested that upper and lower case lettering also be required. Many of the comments requested that larger type size be required for ingredient listing. A few comments objected to the use of right justification (spacing adjustments for obtaining straight right margins) for ingredient listing.

FDA believes that the readability of the ingredient list should be enhanced as much as practicable. To assess the effect that the changes suggested by the comments would have on the ingredient list, the agency has had various versions of an ingredient list printed. These printings have been placed on display in the Dockets Management Branch (address above) as Ref. 40. The agency has examined these versions of the ingredient list and has tentatively concluded that a format change requiring the separation of major and minor ingredients would provide the greatest enhancement of readability with the minimum impact on the affected industry. This enhancement results primarily from the separation of ingredients that are present at low levels (minor ingredients) from the predominant ingredients of the product (major ingredients). (Minor ingredients would include all ingredients present in amounts of 2 percent or less by weight. See 55 FR 17432, April 15, 1990, comment 2.)

Although the agency believes that it would clearly improve the readability of the ingredient list to require that this list be separated into major and minor ingredients, FDA believes that its authority for doing so would rest primarily in section 403(f) of the act. This provision requires that all information required to appear on the label or labeling be placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. However, the comments did not submit any evidence that current ingredient listing requirements do not fully satisfy this section of the act. Without such evidence, FDA has no basis to propose new requirements to enhance readability. If such evidence is provided in the comments to this proposal, however, the agency will consider, depending on what this evidence shows, requiring separation of major and minor ingredients in the final rule.

Of course, an improvement in readability would result if FDA were to increase type size requirements, but the agency recognizes that such requirements would significantly increase the total ingredient display area. Many packages simply do not have sufficient room for such an increase. For example, two of the format printings that the agency had prepared (Ref. 40) had type size differences of only one-sixtyfourth inch in height. (One printing was in 6-point type (printing number 1) and the other printing was in 8-point type (printing number 8).) This increase in type size, spread throughout the ingredient list, resulted in an increase in total display area of 1.7 square inches.

The increase in total ingredient display area that would result from the separation of major and minor ingredients is, however, much less. For example, two of the format printings varying only in this separation (printing numbers 1 and 4) differed in display area by only 0.8 square inches. FDA considers that such an increase is likely to be the maximum that is practicable because larger increases would require significantly more package area, which, in many cases, would not be available.

Although other suggested format changes for ingredient lists do not appear to provide a significant enhancement of readability, FDA recognizes that consumers may have different views on this matter. FDA therefore specifically requests comments on this issue from all interested parties.

B. Restaurant Foods

Most consumer and consumer organization comments in response to the 1989 ANPRM favored some form of ingredient labeling for restaurant foods. Comments from restaurants, however, opposed imposition of ingredient labeling requirements, pointing out that this type of labeling presents significant feasibility problems in a number of situations. The comments from restaurants made the following points: Restaurants may not be able to develop consistent ingredient information on the foods that they sell because of frequent menu changes and variations in how the consumer wants the food prepared and served. For example, some specialty restaurants frequently vary the dishes that they serve. Moreover, many restaurants have menu items that vary daily, such as salad bars. Under these circumstances, the ingredient order of predominance information, as well as the ingredients themselves, could change throughout each day. Without ingredient consistency, frequent changes in ingredient labeling information would be necessary. These changes could become burdensome and costly, especially for small firms. As a result, firms could be inhibited from making frequent menu changes or be forced to limit the options that consumers will have in ordering a food. Further, comments pointed out that consumers can already obtain ingredient information at many restaurants, if they desire, by asking for it.

FDA believes that when the frequent changes cited by the restaurant comments are made, restaurants cannot reasonably be expected to provide information concerning ingredients. However, the agency also believes that it might be feasible for certain types of restaurants (e.g., "fast food" restaurants with standardized food preparation and ingredient specifications) to provide ingredient information. FDA does not, however, have sufficient information about the food service industry to be able to determine whether ingredient labeling by restaurants should be required and, if so, in what circumstances. The agency is, therefore, not in a position to propose ingredient labeling requirements for restaurants at this time.

However, the agency solicits comments on criteria that it can use to determine which types of restaurants, if any, can practicably provide ingredient

labeling information. Such comments should recognize that FDA would consider a variety of alternatives for how this information should be presented, and that the agency would not require that restaurant food itself be labeled. For example, the agency proposed alternative methods for public display, at point of purchase, of labeling information for food not in package form (although not restaurant food) in the nutrition labeling proposal published in the Federal Register of July 19, 1990 (55 FR 29487 at 29504). Under the proposal, the display could appear in a counter card, sign, tag affixed to the product, or some other appropriate device. FDA also proposed that the required information could be placed in a booklet, looseleaf binder, or other appropriate format available at the point of purchase. FDA requests comments on the use of these alternative methods for displaying ingredient information in the restaurant setting.

C. Vendor Foods

The automatic food vending industry requested an exemption from full ingredient labeling for commissary-prepared food (ready-to-eat foods prepared in a central location for sale by vendors) sold through automatic vending machines and by mobile catering trucks. The exemption request proposed that labels for this food be required to state only the principal ingredients of the food in descending order of predominance along with whether the food contains any artificial colorings, flavorings, and chemical preservatives. The vending industry alleged that it is confronted with the same feasibility problems as restaurants; that the requirement that all ingredients be listed results in labels of inordinate size; and that this requirement limits freedom of recipe adjustment.

The agency does not agree that commissary-prepared food should receive any ingredient labeling exemptions. This food is frequently in package form, whereas restaurant food is generally not in package form. Further, restaurant food is frequently prepared at the consumer's request, but commissary-prepared food is prepared in a more standard manner. Consequently, FDA sees little similarity between these types of food. The agency advises that when commissary food is in package form, the food will continue to be subject to full ingredient labeling requirements.

The agency believes that requiring commissary operators to label all ingredients is no more burdensome than requiring other assemblers of multicomponent food items to label all ingredients. Moreover, the comments that requested an exemption failed to submit evidence that would support a finding that it is impracticable for commissaries to consistently use the same components in assembling multicomponent foods.

The agency has not been persuaded that it is impracticable for the commissary food industry to comply with the full ingredient labeling requirement, or that compliance with that requirement is causing deception or unfair competition. Because the statutory criteria for exemption under section 403(i) of the act have not been met, the promulgation of an exemption from full ingredient labeling for vendor foods cannot be justified.

D. Fresh Fruits and Vegetables

1. Pesticides

Some of the comments requested that the agency require that fresh fruits and vegetables bear labeling listing substances such as pesticides that have been used on these foods. These comments contended that consumers had the right to know everything that is in the foods they purchase.

The only statutory authority for requiring label declaration of the pesticides present in a food appears in section 403(l) of the act. This provision requires that pesticides applied to a food after harvest be declared in labeling on the shipping container. However, this provision also states that no such labeling shall be required when the food is removed from the shipping container and is displayed for sale at retail in accordance with the custom of the trade. Thus, FDA is specifically prohibited from issuing regulations requiring retail labeling for postharvest pesticides.

The agency believes that the labeling prohibition pertaining to postharvest pesticides also extends to preharvest pesticides since the same type of labeling problems would be encountered with both types of application. Congress established the prohibition in section 403(l) of the act because retail postharvest labeling is not practicable (Ref. 41). Moreover, pesticide chemicals in raw agricultural commodities are specifically excluded from the requirement in section 403(k) of the act that chemical preservatives be identified as such.

Even if it had authority to require pesticide labeling, FDA would face significant problems in enforcing such a requirement. For example, pesticides may be present in such small amounts that they cannot be readily detected. In fact, pesticides may be applied to a commodity and not be present at all when the product is marketed. Moreover, the fact that fresh produce sold at retail usually consists of mixed lots would make accurate pesticide labeling extremely difficult for retailers.

All of these problems would be magnified for preharvest pesticide labeling. In fact it is likely that enforcement problems would be greater for preharvest pesticides because the application of the pesticides would not necessarily have occurred at a single location (e.g., individual farmers might use different pesticides at different times). In view of the significance of these problems, the agency is not prepared to seek statutory authority to require pesticide labeling at this time.

2. Wax or Resin Coatings

a. *Background.* For many years, FDA has advised that the presence of wax coatings on fresh fruits and vegetables must be declared by listing the common or usual names of the specific wax ingredients in labeling at the retail establishment. The agency provided this advice in the preamble to the final regulation on incidental additives in the Federal Register of August 2, 1973 (38 FR 20704 at 20705). In comment 7, FDA stated:

> One comment proposed that if an open container of a fresh fruit or vegetable is displayed at retail without labeling then it should be required to bear its interstate label or a counter card, sign or other device listing the ingredients.
>
> The Commissioner advises that if fresh fruits or vegetables retailed from bulk containers contain additional ingredients within the meaning of 403(i)(2) of the act, for example waxed fruits, they are required to be labeled in accordance with section 403(i)(2) of the act or the exemption provisions of § 1.10a(a)(2).

[Section 1.10 a(a)(2) was subsequently recodified and is now § 101.100(a)(3).]

This statement makes clear FDA's position that section 403(i)(2) of the act and the ingredient labeling regulations (including 21 CFR 101.4 and 101.100), which were promulgated, at least in part, under the authority of section 403(i)(2) of the act, apply to produce with wax or resin coatings. It also makes it clear that FDA believes that the only ingredients on such produce that are exempt from label disclosure are those that qualify as incidental additives. However, produce sold in small open containers is exempted from ingredient listing requirements under section 405 of the act. (In 21 CFR 101.100(c), a small open container of

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fresh produce is defined as one that is not more than 1 dry quart.)

Agency policy on this matter has also been set forth in Compliance Policy Guide (CPG) 7120.08 which states, in part:

> Waxed fruits and vegetables are subject to the requirements of section 403(i)(2) of the Act and 21 CFR 101.100(a)(3) of the regulations. Therefore, the absence of a proper declaration of ingredients by retail establishments on the sales bin or counters renders the food misbranded under section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act.
>
> FDA encourages enforcement action by the states as the most efficient and manageable approach to achieving compliance with the requirement at the retail level.

Compliance with these ingredient labeling requirements has been limited, at best. In fact, a petition (November 20, 1990—Docket No. 90P–0404) concerning these requirements from the United Fresh Fruit and Vegetable Association, the Produce Marketing Association, the Food Marketing Institute, and a New York Kosher Food Advisory Council ("the joint petition") advised that wax coatings have been used on fresh fruits and vegetables for many years without label declaration. This situation is probably the result of the fact that FDA generally does not engage in enforcement activity at the retail grocery store level. Instead, the agency directs its enforcement activities primarily to those firms engaged in the manufacture and distribution of food, so that FDA's limited resources can have the greatest impact.

b. *The Joint Petition.* i. *Requested provisions.* The joint petition requests that FDA propose new regulations permitting shippers of fresh fruits and vegetables treated with a postharvest coating of food-grade waxes or resins to disclose the presence of these substances through declaration of collective terms on the shipping container or on a placard inserted in the shipping container. These terms would advise if the produce is (1) coated with food grade vegetable or mineral based wax or resin, (2) coated with food grade lac-resin (i.e., a coating made up of a secretion of the lac insect), or (3) coated with food-grade animal based wax. The joint petition also requests that the retail establishment be permitted to disclose the existence of wax or resin coatings by displaying (1) the shipper's shipping container labeling in a conspicuous place in the produce section of the store or (2) labeling provided by the retailer.

Under the petition, retailer labeling would be placed on a sign in the produce department or on the produce department's plastic bags. Retailers would have to disclose the type of wax or resin that may have been used on the produce through use of the same collective terms as the shippers. Following a statement that produce items that "may" have been coated with a wax or resin, there would be a listing of the individual produce items that could have been coated with a particular type of coating. The joint petition asserts that the requested provisions will meet the needs of both consumers and industry. However, retailer labeling would not have to state that the produce items had actually been coated with a wax or resin.

ii. *Basis for requested provisions.* (1) *Absence of current labeling provisions.* The joint petition states that the industry does not believe that any labeling provisions exist that specifically apply to fresh fruits and vegetables coated with food grade wax. This position is based on the contention that wax and resin coatings are not ingredients because they do not change the natural characteristics of fresh produce. The joint petition argues that waxing serves to replace the natural waxes that retard moisture loss, maintain freshness, and protect the outer surface of the fruit or vegetable from scarring. The joint petition states that natural coatings are generally lost when the product is harvested and washed before packing. Further, the joint petition alleges that there are no consistent regulations or rulings that tell the shipper or the retailer what the label should state, or where the placard or shipping container label should be displayed.

(2) *Impracticability of listing specific ingredient information.* The joint petition maintains that full ingredient labeling showing the common or usual name of the waxes or resins that have been applied to fresh fruits and vegetables is impracticable for retailers. The joint petition states:

> The vast majority of fresh produce sold in the United States today is sold in bulk form (unpackaged). This trend to bulk displays has been driven by consumer demand for variety and choice. To meet this demand, the typical supermarket today carries some 200 produce items. These items are constantly moved within the produce department's display area, depending on season, availability and marketing conditions. In these circumstances individual counter cards providing waxing information are not possible. In many cases, there is simply no room for such cards or so little room that the card would have to be extremely small. And given the constantly changing nature of the produce displayed, it would be a monumental, perhaps impossible, task to assure that the right sign always appeared in the right spot at the right time.
>
> This difficulty is magnified because shippers often change their coatings depending on conditions at the time of packing. Additionally, the same items received from different growing areas may well contain different coatings which contain different ingredients.
>
> For example, a grocery store displaying tomatoes will likely have received these tomatoes from shippers in several growing areas. On any given day, the tomatoes offered for sale might have one type of wax while on the next day the coating might change. Moreover, as sources of supply change, the items on the display might be rotated and the product commingled. One display case might in these circumstances have several different kinds of waxes or resins.

In addition, the joint petition maintains that full ingredient labeling is impracticable for packing houses. The joint petition advised that many packing houses use several different kinds of coating depending on supply, cost, and the market for which the product is shipped.

A comment on the joint petition from the Dole Fresh Fruit Company (Comment No. 2, Docket No. 90P–0404) elaborated on the variability in the use of coatings. It pointed out that any single shipment of fresh produce may contain shipping containers with produce coated with several different waxes. The comment stated that Dole uses at least 13 waxes that are composed of 29 different ingredients. The Dole comment stated, "The particular wax used changes constantly within a growing season, based on availability and other factors." In a February 7, 1991 letter to FDA (Comment No. 4, Docket No. 90P–0404), Dole advised that in addition to availability, some of the reasons for changing waxes include cost, different functionality needs for different products, grower demand for particular waxes, time of the growing season (i.e., certain waxes are used on fruit picked early in the season while different waxes may be used on fruit picked later in the season), and the destination of the fruit.

In a February 19, 1991 supplement to its petition, the joint petitioners stated that the impracticability of providing specific ingredient information is intensified greatly by the fact that produce with different coatings may be commingled within individual shipping containers by packers. The petitioners explained that "it is a common practice for primary packers to place bulk produce in storage, until needed—depending on market demand and price. Stored produce from various lots, which may not have been coated with the same formula, eventually may be combined in a single shipping container. Contributing to the possibility that produce with different coatings may be commingled is the fact that primary packers may obtain produce from other primary packers to meet demand requirements and shortages."

The petitioners also stated in the February 19th supplement that there are thousands of repacking operations in the U.S., ranging from major terminal markets to specialty gift packers. The petitioners advised that these repackers purchase wax coated produce from multiple sources and repackage the majority of the produce to meet the specific quality and quantity requirements of their customers. The petitioners stated:

> The specifications of the repacker's customers often require produce of a certain quality grade, size, color, ripeness, or other characteristics. To meet these requirements, the repacker must be able to combine produce from different shipments, which may not have been coated with the same wax formula. The perishability of the produce and the accompanying time constraints in shipping add to the need to combine available produce from different shipments. For repackers to avoid the commingling of produce with different formulas would seriously impede if not prevent the repackers from meeting the shipment demands and specifications of their customers.

Further, the supplement asserted that specific ingredient information would not be meaningful to consumers or retailers. The supplement contended that consumers are primarily interested in whether the character of the wax is of an animal, vegetable, mineral, or lac resin nature. The supplement stated that both consumers and retailers would have trouble determining this nature if specific names of wax ingredients such as "coumaroune-idene resin" are provided for coated produce. It contends that the most economical and practical means for labeling shipping containers is prestencilling. According to the petition, prestenciling is economical only when the label declaration is broad enough to embrace several different types of waxes or resins. Thus, according to the joint petition, a label statement such as "coated with food-grade vegetable and/or mineral wax or resins" would provide sufficient flexibility to permit prestenciling.

iii. *Need for compliance guidelines.* The joint petition also asked for a ruling that compliance with the suggested regulation will be considered compliance with the law pending establishment of a final regulation.

c. *Agency Response to the Joint Petition.* i. *Absence of current labeling provisions.* Assertions that wax and resin coatings on food are not ingredients are incorrect. FDA's longstanding view (38 FR 20704 at 20705 (August 2, 1973); CPG 7120.08) is that a raw agricultural commodity in its untreated and natural state is not a fabricated food. When waxes are applied to a raw agricultural commodity after harvest, however, it is no longer in its true natural state. Further, as the joint petition acknowledges, waxing serves to replace the natural waxes that retard moisture loss and maintain freshness. Section 101.22(a)(5) of FDA's regulations defines the term "chemical preservative" as "any chemical that, when added to a food, tends to prevent or retard deterioration thereof. * * *."Waxes clearly meet this definition. Accordingly, a commodity with a wax or resin coating is a "fabricated" food because it contains preservatives that are not natural constituents of the food.

In enacting section 403(i)(2) of the act, Congress recognized the right of consumers to know the identity of substances added to the foods they eat. There is no indication in the legislative history of this provision that Congress intended to exempt waxes applied to produce from its coverage. This section specifically states that each ingredient in a fabricated food must be declared by its common or usual name, with the exception of spices, colorings (other than certified colorings), and flavorings, which can be declared as such. Based on section 403(i)(2), FDA adopted 21 CFR 101.4 (a) and (b), which restate the requirements of section 403(i)(2) and clarify that, except in the case of spices, flavorings, and some colorings, unless a specific exemption is established by regulation, the name of an ingredient shall be a specific name and not a collective (generic) name.

In view of the fact that the agency has not established an exemption from ingredient declaration for waxes or resins on fresh fruits and vegetables, the provisions of 21 CFR 101.4 (a) and (b) apply to these foods. Thus, the joint petition's assertion that there are no labeling provisions for these foods is not correct. All ingredient information about wax or resin coatings must be provided in labeling, or the fresh fruits and vegetables are misbranded.

There is nothing in the 1990 amendments that is inconsistent with this view. It is true that in section 5 of these amendments, Congress revised section 405 of the act to limit the exemption for fresh fruits and vegetables in small open containers so that it would not apply to the requirements of sections 403 (q) and (r) of the act and did not include a similar limitation for ingredient labeling. However, Congress's failure to do so cannot be seen as an indication that it no longer wants fresh fruits and vegetables to bear ingredient information. If an implication with respect to ingredient labeling is to be drawn from this action (and FDA considers it questionable at best to do so), Congress' action is more logically viewed simply as a reaffirmation of the current situation, including FDA's stated position.

As noted in the joint petition, FDA has advised that ingredient labeling information must be displayed in a conspicuous place where the produce is sold in bulk. The agency believes that it is not necessary to provide any additional guidance because retailers should be permitted to decide how to conform to this requirement given the circumstances in their establishment.

ii. *Impracticability of labeling requirements.* FDA has been persuaded that there may be some situations for retailers, packers, and repackers in which fresh produce cannot practicably bear labeling with the specific ingredient names of waxes or resins. For retailers, the agency has reached this tentative conclusion because of the joint petition's descriptions of fresh produce marketing practices involving constant change of: (1) Individual produce items and their display areas; and (2) Types of coatings applied by the various packing houses. For packers and repackers, the agency has reached this tentative conclusion because of descriptions of coating variability problems that occur with a high frequency. Where these problems are present, costs of labeling the produce with the common or usual names of the waxes or resins used may be significantly increased, and packers will surely pass these costs on to consumers. FDA does not believe that these costs can be justified if consumer needs can be met through alternative labeling provisions. Consequently, FDA is proposing to revise its regulations to provide relief to both retailers and packers (see section VIII.D.2.c.iv. below).

The agency is proposing to permit retailers to use appropriate collective names because of the constant change of produce items in marketing areas. Moreover, repackers and packers will be able to use these names when they are unable to adhere to a consistent pattern of wax or resin use on the produce. Section 403(i)(2) of the act provides for ingredient labeling exemptions only where compliance is impracticable, or where compliance results in deception or unfair

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competition. Only when a packer or repacker is unable to adhere to a consistent pattern of wax or resin use is one of these statutory conditions met. The agency is not persuaded by the other arguments that specific ingredient information should not be required. Where produce lots consistently have the same type of coating, firms clearly have the ability to provide ingredient labeling information concerning that coating. While providing ingredient labeling may increase costs for packers, such costs are already incurred by almost all other firms that produce food. Further, assertions that specific ingredient names are not meaningful are not valid because some specific ingredient names for wax or resin ingredients would be meaningful to consumers (e.g., beeswax, carnauba wax, rice bran wax.)

iii. *Adequacy of requested provisions.* FDA tentatively finds that it cannot grant the petition's request for retailers to comply with section 403(i) of the act with a statement that the produce that "may" have been treated with wax or resin coatings. This labeling would be of virtually no use to consumers because it would not advise them whether the produce had a wax coating. Further, to grant this request would be to deny the comments on the 1989 ANPRM that requested more specific information on the ingredients in fresh produce. The petition did not provide an adequate basis to do so.

In addition, the agency believes that the suggested alternative of ingredient information on plastic bags available in the produce department would not provide consumers with this information at the time they actually make purchase decisions. FDA believes that consumers generally make these decisions before placing produce in bags. Further, the agency doubts that consumers would notice ingredient information because the bags are usually distributed in rolls.

Accordingly, FDA is not proposing to adopt the approach requested by the joint petition. However, the agency solicits comments on this approach. If comments persuade FDA that its tentative finding in this matter is incorrect, and that the requested approach will actually meet the needs of consumers, the agency can adopt it in any final rule that it issues based on this proposal.

iv. *Proposed provisions.* In view of FDA's tentative finding that specific ingredient labeling at retail may be impracticable for fresh produce with wax or resin coatings, the agency has attempted to identify that information that would meet the needs of consumers and yet still be practicable for retailers to provide. The agency sees merit in the categories of waxes and resins set out in the joint petition because these categories would convey some source information to consumers. However, FDA recognizes that the practice of commingling produce could hinder accurate declaration of the applicable wax or resin category.

FDA believes that the needs of most consumers would be met if information is provided at the point of purchase on whether the produce has an animal-based wax coating, some other type of wax or resin coating, or no wax or resin coating at all. With these general categories, retail produce segregation problems would be minimized, and the burdens of retail labeling would be considerably less than under current labeling requirements. With these burdens lessened, compliance with produce ingredient labeling should increase markedly, and consumers should benefit.

Accordingly, FDA is proposing to revise the ingredient labeling provisions in 21 CFR 101.4 by adding a new paragraph (b)(25) to permit waxes and resins on fresh produce to be declared based on the three general categories described above. The proposal provides that waxes and resins may be declared on fresh produce by use of either the phrase "coated with food-grade animal-based wax" or the phrase "coated with a food-grade vegetable-, mineral-, beeswax-, and/or shellac- (or lac-) based wax or resin, as appropriate." If no wax is used on the produce, no declaration need be made.

The proposal does not require that the preservative function of the waxes or resins be included in either of these phrases because FDA believes that consumers generally recognize that this function is associated with the terms "wax" and "resin" for produce. Thus, for produce, these terms fulfill the requirements of § 101.22(j) and section 403(k) of the act with respect to the declaration of the preservative function. The agency specifically requests comments on this point.

Although FDA is proposing to permit the use of the term "mineral" in the designation of one of these categories, the agency is concerned that this term may not be adequately informative to consumers because it is also used with foods to refer to minerals such as calcium and magnesium. On fresh fruits and vegetables, however, the term will be used to encompass all coatings that are not of animal or vegetable origin, such as petroleum or other hydrocarbon-based waxy substances. FDA solicits comments on whether some other term, such as "petroleum-based" or "hydrocarbon-based," would be more meaningful.

In addition, FDA is proposing a number of other changes in its regulations to eliminate any doubts as to whether all fresh produce must bear ingredient labeling information when wax or resin coatings have been applied. Proposed paragraph (b)(25) states that wax and resin ingredients on fresh produce shall be declared either individually by their common or usual names or collectively as discussed above. The agency is also proposing a new paragraph (f) in § 101.4 which states that ingredients that must be declared in labeling because there is no label for the food shall be listed prominently and conspicuously by their common or usual name. (Section 201(k) of the act states that the term "label" means a display of written, printed, or graphic matter upon the immediate container of any article. Section 201(m) of the act states that the term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.)

Further, FDA is proposing changes in the ingredient listing exemption in 21 CFR 101.100(a)(2). This provision exempts food sold at retail establishments from ingredient listing requirements when the food is received in bulk containers, and the labeling of the food is displayed to the purchaser; or when a counter card, sign, or other appropriate device bears the required ingredient information in a prominent and conspicuous manner. The provision has no specific minimum height requirements for the ingredient information. Because the agency believes that type of less than ¼ inch in height would not generally be adequate for consumers to read easily at a produce bin, FDA is proposing that § 101.100(a)(2) be revised to require that labeling information appear in not less than ¼ inch type wherever the exemption is used. FDA recognizes that arguments can be made that a larger or smaller type size is more appropriate. The agency therefore solicits comments on this issue.

v. *Need for compliance guidelines.* FDA cannot grant the exemption requested by the joint petition from current ingredient labeling requirements pending establishment of a final regulation. Such an exemption would limit agency discretion and have a present, binding effect. We believe that such a binding exemption should be issued through notice and comment procedures. Thus, the agency disagrees with assertions in a comment on the joint petition from the Dole Fresh Fruit Co. (Comment No. 2, Docket No. 90P-0404). This comment contended that the agency has authority to grant the requested exemption. Although the agency has carefully considered the arguments in that comment, FDA is not persuaded that it can grant the exemption without appropriate rulemaking procedures.

The publication of a proposed rule provides an indication of the agency's views on the desireable content of a final regulation, prior to review of any comments that the agency may receive. Naturally, it is likely that the agency will exercise its enforcement discretion in accordance with those views. However, pending final agency action on this matter, any manufacturer, packer, or distributor who fails to label its produce in accordance with current ingredient labeling requirements does so at the risk that the produce will be subject to regulatory action.

E. Warning Statements

A number of consumers requested that FDA require the use of warning statements or symbols to announce the presence of certain ingredients, such as ingredients derived from dairy products or hydrolyzed vegetable protein. Many of these comments were based on the consumers' desire to avoid certain ingredients because of general concerns about safety or because of a specific health problem.

When confronted with a problem that threatens the general public, FDA has promulgated regulations requiring the placement of warning statements on the food label. For example, in 21 CFR 101.17(d), the agency requires a warning on protein products promoted for weight reduction. However, FDA is unwilling to require a warning statement in the absence of clear evidence of a hazard. If the agency were to require warnings for ingredients that only cause mild idiosyncratic responses, it is concerned that it would overexpose consumers to warnings. As a result, consumers may ignore, and become inattentive to, all such statements.

Based on its consideration of the practicality and desirability of requiring warnings on labels to announce the presence of specific ingredients, the agency has tentatively concluded that the information present in the ingredient list is adequate to enable the consumer to avoid ingredients of concern.

F. Simplified Names for Ingredients

Several comments requested that simplified terms be used in place of chemical or technical words in the ingredient list.

A basic requirement of the act is that ingredients be declared by their common or usual names. Although ingredient names required under the present labeling requirements are often technical, they represent the generally accepted name of the ingredient. In this regard, the names are responsive to consumers' expressed interest in exact specification of ingredients in food products.

For a coined new name to supplant an established name, the new name must be descriptive of the additive, must not provide misleading label information, and must be shown to be recognized by consumers (Ref. 42). Consumers can learn the new name by seeing the new name in parentheses following the established (recognized) chemical name. After the two names have appeared together for a sufficient time, reasonable grounds would exist for believing that the new name is recognized as the common or usual name of the food ingredient in the minds of manufacturers, distributors, users, and consumers. When the criteria stated in this policy have been met, the agency, usually in response to a petition submitted under 21 CFR 10.30, may provide for the use of that new name and allow the chemical name to be dropped from the ingredients list.

BHA (butylated hydroxy anisole), BHT (butylated hydroxy toluene), and canola oil (low erucic acid rapeseed oil) are examples of shorter, simpler names that can now be used after having become widely known using this procedure.

FDA has not been presented with any basis for changing its policy. It is open, however, to suggestions for procedures that would more rapidly allow the use of alternate names but at the same time would ensure that the name will adequately identify the ingredient.

G. Statements of Ingredients' Functions

Some comments asked the agency to require that the function or purpose of food ingredients be stated parenthetically after the name of the ingredient in the ingredient list.

The act specifically requires in section 403(k) (21 U.S.C. 343(k)) that when a food contains any artificial flavoring, artificial coloring, or chemical preservative, the label must state that fact. This requirement, and specific provisions for the required declarations, are codified at § 101.22. In addition, the act provides in section 409(c) (21 U.S.C. 348(c)) that in approving a use of a food additive, FDA can establish labeling requirements that it deems necessary to assure the safe use of the additive. The agency also has authority to require information on the label when the information is a material fact with regard to other representations made on the label or to consequences of use of the food under normal circumstances (21 U.S.C. 321(n)).

While comments have expressed the desire of some consumers for declaration of ingredients' functions, they have not provided an explanation of why the agency can and should require such a declaration. FDA will, however, consider any suggestion for declaration of the function of a particular ingredient or group of ingredients that is supported by appropriate evidence and that can be justified under one of the relevant statutory standards.

H. Irradiated Ingredients

A number of comments expressed a desire for the identification of irradiated ingredients on food labels.

The agency addressed this issue in the **Federal Register** of December 30, 1988 (53 FR 53176). The agency concluded that the labeling requirements for irradiated ingredients should be the same as for other processed ingredients, namely that they be declared by their common or usual name without requiring details on how they were processed (53 FR 53204).

Because the comments did not present any information that would cause FDA to reconsider this conclusion, the agency finds no basis on which to revise its 1988 conclusions.

I. Preemption Provisions of the 1990 Amendments Affecting Ingredient Labeling

The 1990 amendments included several provisions pertaining to Federa1 preemption of State and local labeling requirements. Specifically, section 6(a) of the 1990 amendments prohibits a State or a political subdivision of a State from establishing or continuing in effect any labeling requirement for food in interstate commerce that is not identical to certain provisions of section 403, including sections 403(i)(2) and 403(k) which pertain to ingredient labeling (section 403A (a)(2) and (a)(3) of the act). The 1990 amendments also preempt any State or local standards of identity for foods that are the subj ect of standards of identity established under section 401 of the act (21 U.S.C. 341) that are not identical to the Federal standards (section 403A(a)(1) of the act).

Congress included the preemption provisions in the 1990 amendments because it recognized that it would be

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difficult or impossible for food companies to operate in interstate commerce if they are confronted with conflicting and inconsistent Federal, State, and local requirements (Ref. 43). However, Congress also recognized that Federal preemption should only apply in matters where a strong Federal regulatory system is in place (Ref. 43). Congress also recognized a role for the States, permitting them to petition the Secretary for exemption from the preemption provisions in situations where the State requirement does not conflict with Federal law, does not burden interstate commerce, and addresses a need that is not met by the preemption provisions of the amendments (section 403A(b) of the act).

The preemption provision concerning foods subject to standards of identity established under section 401 of the act became effective upon enactment of the amendments (sec. 10(b)(1)(A), 1990 amendments). Accordingly, the proposed revisions in 21 CFR 168.110 and 168.111, amending the permissible names for dextrose anhydrous and dextrose monohydrate, will preempt any State or local requirement to the contrary if these revisions become final rules.

The preemption provision concerning section 403(i)(2) of the act (this section requires the label of a food to list all ingredients of the food by their common or usual name, except that flavorings, spices, and certain colorings may be declared collectively) will become effective 1 year after the date of enactment (sec. 10(b)(1)(B), 1990 amendments). The preemption provision concerning section 403(k) of the act (this section generally requires the label of foods containing any artificial flavoring, artificial coloring, or chemical preservative to state that fact) does not become effective until the Secretary determines that this section of the act is being adequately implemented by Federal regulations (sec. 10(b)(1)(C), 1990 amendments). The amendments direct the Secretary to enter into a contract with a public or nonprofit private entity to study laws and regulations at the Federal, State, and local levels pertinent to section 403(k) (and other provisions of section 403 not relevant to ingredient labeling) to determine whether Federal regulations adequately implement these sections (sec. 6(b)(1), 1990 amendments). The amendments also direct the Secretary to issue a proposed list (within 9 months of enactment) and a final list (within 24 months of enactment) of the sections of the act that are and that are not being adequately implemented (sec. 6(b)(3), 1990 amendments). Under the amendments the Secretary may also propose revisions (within 24 months of enactment) and issue final revisions (within 30 months of enactment) to any regulations found to be inadequate (sec. 6(b)(3), 1990 amendments).

The proposed regulations in this document affecting ingredient labeling, with the exception of proposed 21 CFR 101.4(b)(21) (which requires the grouping of sweeteners in the ingredient list) and § 101.4(d) (which requires source declaration for caseinate ingredients of nondairy foods), are issued in whole or in part under section 403(i)(2) of the act. Accordingly, if these regulations become final rules, they will preempt any State or local requirement of the same type 1 year after the enactment of the amendments (enactment was on November 8, 1990).

Proposed §§ 101.4(b)(21), 101.4(d), and the portion of proposed 101.22(h)(7) that requires the identification of the source food in the declaration of a protein hydrolysate, are issued under sections 201(n) and 403(a) of the act. The 1990 amendments did not state that sections 201(n) and 403(a) have preemptive effect (sec. 6(c)(1), but see sec. 6(c)(3), 1990 amendments).

The portion of proposed § 101.22(k) concerning the declaration of an artificial coloring in the ingredient list for the purpose of complying with the requirements of section 403(k) of the act is issued under section 403(k). As explained above, the Secretary must determine whether regulations issued under section 403(k) adequately implement this section of the act before such regulations become preemptive. Should proposed § 101.22(k) be adopted, it will be included in the Secretary's review.

IX. Economic Impact

The food labeling reform initiative, taken as a whole, will have associated costs in excess of the $100 million threshold that defines a major rule. Therefore, in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354), FDA is developing one comprehensive regulatory impact analysis (RIA) that will present the costs and benefits of all of the food labeling provisions taken together. When this RIA is finalized, a notice of its availability will be published in the Federal Register, and it will be made available at the Dockets Management Branch (address above). The costs of compliance with this proposal alone are, nevertheless, discussed below.

In this document, FDA is proposing changes to the food label that will, for the most part, codify changes mandated by the 1990 amendments. Costs which will be incurred as a result of the provisions of the 1990 amendments covered by this proposed regulation are expected to be $250 million. The requirements of this proposed regulation not directly mandated by the 1990 amendments will become effective concurrently with mandatory nutrition labeling and, therefore, will have no incremental costs associated with them.

A. Benefits

The proposed labeling changes will benefit consumers by giving them information to refine their food choices for health, religious, or other reasons. While it is not possible to quantify the benefits of the particular requirements in this proposed regulation, FDA will estimate the benefits of the food labeling reform initiative as a whole. Those benefits include reduced coronary heart disease and cancer as a result of people making more informed food choices. Other benefits not quantified by the agency will be benefits to consumers attempting to control weight or diabetes from listing of sugars, benefits to those consumers who wish to avoid artificial colors, and benefits to vegetarians, as well as others attempting to follow religious proscriptions, from a provision to label sodium caseinates as dairy products. There will also be benefits to sulfite-sensitive individuals as a result of labeling the presence of sulfites in standardized foods.

B. Costs

The agency has estimated that approximately 14,000 firms will have to modify 94,000 labels. The direct costs of modifying these labels include administrative costs, printing costs, and inventory costs. Some of the firms affected by this proposed regulation are also affected by the proposed percent juice labeling regulation requiring labeling of fruit and vegetable juices. Costs for those firms are estimated as a component of the percent juice labeling regulation and are not included in this analysis. Additionally, there may be reformulation and marketing costs, but it is questionable whether these indirect costs are solely attributable to the law.

The administrative costs associated with the law are the dollar value of the incremental administrative effort expended in order to comply. The administrative activities which are anticipated to be undertaken by firms in response to a change in a regulation include: Identifying and interpreting the policy, determining the scope and coverage related to the firms' product labels, formulating a method for compliance, and management of the process of compliance. The agency estimates administrative costs to be $20 million.

Printing costs are the costs of changing the labels to reflect the new requirements. The amount of printing costs assigned to a mandated printing change depends on the number and type of labels, the complexity of the label change, and the length of time allowed to make the change. FDA has estimated these costs to be $90 million.

Label inventory costs are the costs associated with discarding labels, which may include actual food containers. These costs vary with both the time given for firms to comply and with average inventories of labels and are estimated to be $140 million. The $140 million label loss is based on strict adherence to the statutory timeframes for compliance.

C. International Effects

In accordance with Executive Order 12291 and other guidance received from the Office of Management and Budget (OMB), FDA has also evaluated the effects of this proposed regulation on international trade. Guidance received from OMB requires agencies to make no explicit distinction between domestic and foreign resources when calculating costs and benefits of regulations. With the exception of the two voluntary provisions in this rule, all the other provisions are mandatory. However, these provisions are not generally mandatory in Canada, the European Economic Community, or other trading partners of the United States.

Provisions of this proposed rule will cause foreign firms to have to change their English label in order to market their food products in the United States. Also, because of different definitions for various micronutrients, additional analytical testing will be required to market across borders. These costs should be identical to those incurred by domestic firms to meet the requirements of this proposed regulation. Thus, as is generally true now, both importing and exporting firms must relabel in order to sell outside of their national boundary.

X. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Effective Date

In the Federal Register of July 19, 1990 (55 FR 29487), FDA proposed a nutrition labeling rule that, if finalized, would result in labeling changes for a large number of foods. The July 19th document proposed an effective date of 1 year following publication of a final rule. However, section 10 of the 1990 amendments has statutorily established a different effective date. The new effective date is 6 months following publication of a final rule. If no final rule has been issued by November 8, 1992, however, any proposed rule issued under the 1990 amendments is statutorily mandated to be considered the final rule, and the new effective date would be 6 months following that date, i.e., May 8, 1993. FDA is proposing to make the ingredient labeling regulations in the current proposal effective on the same date as the nutrition labeling rule. Both proposals are part of DHHS' major initiative to reform the nation's food labeling system and part of the Department's response to the 1990 amendments.

Although FDA is proposing to make these ingredient labeling regulations effective on the same date as the nutrition labeling final rule, the agency points out that the 1990 amendments (in section 10(c)) state that ingredient listing provisions shall take effect 1 year after enactment. Thus, on November 8, 1991, statutory provisions that require the listing of all ingredients in standardized food and the listing of all FDA-certified colorings will be in effect. (The provision requiring the declaration of the total percentage of fruit or vegetable juice in a food purporting to be a beverage containing vegetable or fruit juice will also be in effect. As explained previously in this preamble, a separate proposal addressing fruit or vegetable juice percentage listing requirements will be published soon in a future issue of the Federal Register.) The agency expects firms to comply with the statutory requirements. While FDA will not be bound by the provisions of this proposed rule, labels that comply with it would less likely be the subject of enforcement action than labels that do not. All labels ordered after the effective date of final regulations pertaining to section 7 requirements would be expected to be in full compliance with those regulations.

The agency is requesting comments on the proposed effective date for the ingredient labeling regulations. All comments concerning the effective date should be accompanied by data to support or justify any change in the proposed effective date.

XII. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Congressional Record—House, July 30, 1990, H5842.
2. FDA Compliance Policy Guide 7127.01.
3. FDA advisory opinion on Grocery Manufacturers of America Petitions (Docket Nos. 77N-0009 and 78P-0164), Joseph P. Hile, to Laurie Burg, January 28, 1983.
4. International Hydrolyzed Protein Council, 1977, comments with additional data by IHPC on SCOGS tentative evaluation of the health aspects of protein hydrolysates as food ingredients—Report 37b, International Hydrolyzed Protein Council, Washington, DC.
5. FDA opinion letter, Daniel D. Jones, GRAS Review Branch, to Charles L. Noland, October 18, 1978.
6. FDA opinion letter, Duane G. Groth, Advisory Opinions Branch, Division of Industry Advice, to Mrs. Betty B. Horn, May 4, 1965.
7. FDA opinion letter, Mary I. Snyder, Division of Regulatory Guidance, Center for Food Safety and Applied Nutrition, to Ellen J. Flannery, April 29, 1986.
8. Heath, H. B., and G. Reineccius, "Flavor Chemistry and Technology," Van Nostrand Reinhold Co., Inc., New York, pp. 319–331, 259–261, 1986.
9. Pease, H., "Prótein Hydrolysates and Flavor Enhancers," a paper given October 29, 1970, at Columbia University, to the graduate course in food product development, pp. 43.
10. Prendergast, K., "Versatility of Protein Hydrolysates," Food Manufacture, pp. 37, 39, and 57, April 1973.
11. FDA opinion letter, Taylor M. Quinn, Bureau of Foods, to Patrick L. Weidner, July 21, 1976.
12. Maga, J. A., "Flavor Potentiators," CRC Critical Reviews in Food Science and Nutrition, 18:231, 1983.
13. "The World of Meat Flavours," Food Manufacture, pp. 65–67, 71, September 1982.
14. Dzanic, H., I. Mujic, and V. Sudarski-Hack, "Protein Hydrolysates from Soy Grits and Dehydrated Alfalfa Flour," Journal of Agriculture and Food Chemistry, pp. 683–685, 1985 (33).
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16. "MSG Substitute is Cost-Effective," Food Engineering International, pp. 44–45, 1980 (5).
17. Prendergast, H., "Protein Hydrolysate—A Review," Food Trade Review, pp. 14–21, 1974 (44).
18. FDA opinion letter, Taylor M. Quinn, Office of Compliance, Center for Food Safety and Applied Nutrition, to Robert G. Hibbert, December 6, 1984.
19. Bernard, R. J. and Tollefson, L., "Hypersensitivity-Type Reactions Associated with MSG," FDA memorandum, September 18, 1989.

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20. Tollefson, L., FDA memorandum, June 6, 1990.
21. Tollefson, L., FDA memorandum, March 12, 1990.
22. U.S. Department of Health and Human Services, Public Health Service, The Surgeon General's Report on Nutrition and Health, 1988, DHHS (PHS) Publication No. 88-50210 (GPO Stock No. 017-001-00465-1, U.S. Government Printing Office, Washington, DC).
23. Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, "Diet and Health, Implications for Reducing Chronic Disease Risk," National Academy Press, Washington, DC, 1989.
24. U.S. Department of Agriculture and U.S. Department of Health and Human Services, "Nutrition and Your Health, Dietary Guidelines for Americans," Home and Garden Bulletin, No. 232, U.S. Government Printing Office, Washington, DC, 1985.
25. National Heart, Lung, and Blood Institute, "National Cholesterol Education Program Report of the Expert Panel on Population Strategies for Blood Cholesterol Reduction (Population Panel)," draft, February 2, 1990. 17126. U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health, Office of Medical Applications of Research, "Lowering Blood Cholesterol to Prevent Heart Disease," consensus development conference statement, vol. 5, No. 7, National Institutes of Health, Bethesda, MD, 1984.
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30. Woodruff, C. W., "Present Knowledge in Nutrition," The Nutrition Foundation, Inc., Washington, DC, pp. 479–487, 1976.
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32. Randolph, T. G., and L. B. Yeager, "Corn Sugar as an Allergen," Annals of Allergy, 7:651–661, 1949.
33. Randolph, T. G., J. P. Rollins, and C. K. Walker, "Allergic Reactions Following the Intravenous Injection of Corn Sugar (Dextrose)," Archives of Surgery, 61:554–564, 1950.
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36. Glinsmann, W. H., H. Irausquin, and Y. K. Park, "Report from FDA's Sugars Task Force, 1986: Evaluation of Health Aspects of Sugars Contained in Carbohydrate Sweeteners," Journal of Nutrition, vol. 116, No. 11S, supp., p. S169, November 1986.
37. Arthur D. Little, Inc., "Cost of Compliance and Economic Impact of Specific Source Declaration of Fats and Oils in Foods," May 1983.
38. U.S. Department of Agriculture, Economic Research Service, "Sugar and Sweetener Situation and Outlook Report," supp., January 1988.
39. Vuilleumier, Stephen, McKenny-Flavell Co., Inc., "World Outlook for High Fructose Syrups," presented to the 1983 International Sweetener Colloquium, Phoenix, AZ, January 31, 1983.
40. Printings for ingredient label format evaluation.
41. Senate Report No. 1546, June 20, 1960, U.S. Congressional and Administrative News 60–154, pp. 2649–2657.
42. FDA Letter of Denial of American Bakers Association Petition (Docket No. 76P–0285), Joseph P. Hile to Andrew S. Krulwich, Esq., March 18, 1977.
43. Congressional Record—House, July 30, 1990, H 5040.

XIII. Comments

Interested persons may, on or before August 5, 1991, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. to 4 p.m., Monday through Friday.

List of Subjects in 21 CFR

Part 101: Food labeling, Reporting and recordkeeping requirements.
Part 130: Food additives, Food grades and standards.
Part 131: Cream, Food grades and standards, Milk, Yogurt.
Part 133: Cheese, Food grades and standards, Food labeling.
Part 135: Food grades and standards, Food labeling, Frozen foods, Ice cream.
Part 136: Bakery products, Food grades and standards.
Part 137: Cereals (food), Food grades and standards.
Part 139: Food grades and standards.
Part 145: Food grades and standards, Fruits.
Part 146: Food grades and standards, Fruit juices.
Part 150: Food grades and standards, Fruits.
Part 152: Bakery products, Food grades and standards, Frozen foods, Fruits.
Part 155: Food grades and standards, Vegetables.
Part 156: Food grades and standards, Vegetable juices.
Part 158: Food grades and standards, Frozen foods, Vegetables.
Part 160: Eggs, Food grades and standards.
Part 161: Food grades and standards, Frozen foods, Seafood.
Part 163: Cacao products, Food grades and standards.
Part 164: Food grades and standards, Nuts, Peanuts.
Part 166: Food grades and standards, Food labeling, Margarine.
Part 168: Food grades and standards, Sugar.
Part 169: Food grades and standards, Oils and fats, Spices and flavorings.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA hereby withdraws the proposed amendment to § 101.4 (formerly § 1.10) pertaining to the establishment of the terms "sugar" and "corn syrup" as collective ingredient designations that was published in the Federal Register of June 16, 1976 (39 FR 20888); terminates the rulemaking proceeding initiated by that proposal; and denies the petitions commenting on that proposal from the Canada Dry Corp. (June 27, 1975—Docket No. 75P–0144), the Canners League of California (January 19, 1977—Docket No. 77P–0051), the Independent Bakers Association (September 22, 1977—Docket No. 77P–0357), the California Milling Corp. (June 19, 1978—Docket No. 77P–0051 CP0002), the Orth Co. (July 31, 1978—Docket No. 77P–0357), L. Kerp & Sons, Inc. (August 11, 1978—Docket No. 77P–0357 CP0003), and the National Soft Drink Association (January 26, 1984—Docket No. 84P–0029). FDA proposes that 21 CFR parts 101, 130, 131, 133, 135, 137, 139, 145, 146, 150, 152, 155, 156, 158, 160, 161, 163, 164, 166, 168, and 169 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.4 is amended by revising paragraph (a)(1), by adding new paragraph (a)(3), by revising paragraph (b)(2)(i), and by adding new paragraphs (b)(21), (b)(22), (b)(25), (d), (e), and (f) to read as follows:

§ 101.4 Food; designation of ingredients.

(a)(1) Ingredients required to be declared on the label or labeling of a food, including foods that comply with standards of identity, except those ingredients exempted by § 101.100, shall be listed by common or usual name in descending order of predominance by weight on either the principal display panel or the information panel in accordance with the provisions of § 101.2.

* * * * *

(3) The listing of ingredients required by paragraph (a)(1) of this section shall be preceded by a statement explaining that the ingredients are listed in descending order of predominance by weight, for example, "Ingredients (in descending order of predominance by weight): ____, ____, and ____."

(b) * * *

(2) * * *

(i) By declaring the established common or usual name of the ingredient followed by a parenthetical listing of all ingredients contained therein in descending order of predominance except that, if the ingredient is a food subject to a definition and standard of identity established in subchapter B of this chapter that has specific labeling provisions for optional ingredients, optional ingredients may be declared within the parenthetical listing in accordance with those provisions.

* * * * *

(21) When more than one sweetener is used in a product, ingredients that serve a sweetening function in a food shall be declared in the ingredient statement by stating the specific common or usual name of each individual ingredient in a parenthetical list following the term "sweeteners." The list of the individual sweetening ingredients in parentheses shall be in descending order of predominance by weight. The collective listing of the sweetener ingredients shall be placed in the ingredient statement based on the total weight of all sweetener ingredients. For purposes of this paragraph, the following ingredients shall be deemed to serve a sweetening function:

(i) All standardized sweeteners and table syrups provided for in part 168 of this chapter.

(ii) All sweeteners that the Food and Drug Administration has affirmed as generally recognized as safe (GRAS) or approved for use as a food additive (including, but not limited to, sugar (21 CFR 184.1854), high fructose corn syrup (21 CFR 182.1866), sugar alcohols, aspartame (21 CFR 172.804), malt syrup (21 CFR 184.1445), and saccharin (21 CFR 180.37)).

(iii) All sweeteners eligible for classification as GRAS in accordance with the provisions of 21 CFR 170.30(f) that are of natural biological origin (including, but not limited to, fructose, maltose, honey, and fruit syrups other than those provided for in part 168, concentrated fruit juices (except where water is added to return the concentrate to its single-strength concentration), and concentrated modified fruit juices).

(iv) All sweeteners that are used in accordance with a sanction or approval granted prior to September 6, 1958.

(22) For purposes of ingredient labeling, the term "sugar" shall refer to sucrose, which is refined from sugar cane or sugar beets in accordance with the provisions of § 184.1854 of this chapter.

* * * * *

(25) Wax and resin ingredients on fresh produce shall be declared in the ingredient statement individually by their common or usual names: Except that when such produce is held for retail sale, or when held for other than retail sale and packers or repackers are unable to adhere to a constant pattern of wax or resin ingredients on the produce, these ingredients may be declared collectively by the phrase "coated with food-grade animal-based wax" or the phrase "coated with food-grade vegetable-, mineral-, beeswax-, and/or shellac-based wax or resin," as appropriate. The term "food-grade" is optional. The term "lac-resin" may be substituted for the term "shellac".

* * * * *

(d) When foods characterized on the label as "nondairy" contain a caseinate ingredient, the caseinate ingredient shall be followed by a parenthetical statement identifying its source. For example, if the manufacturer uses the term "non-dairy" on a creamer that contains sodium caseinate, it shall include a parenthetical term such as "a milk derivative" after the listing of sodium caseinate in the ingredient list.

(e) If the percentage of an ingredient is included in the statement of ingredients, it shall be shown in parentheses following the name of the ingredient and expressed in terms of percent by weight. Percentage declarations shall be expressed to the nearest 1 percent, except that where ingredients are present at levels of 2 percent or less, they may be grouped together and expressed in accordance with the quantifying guidance set forth in paragraph (a)(2) of this section.

(f) Except as provided in § 101.100, ingredients that must be declared on labeling because there is no label for the food, including foods that comply with standards of identity, shall be listed prominently and conspicuously by common or usual name in the manner prescribed by paragraph (b) of this section.

§ 101.6 [Removed]

3. Section 101.6 *Label designation of ingredients for standardized foods* is removed.

4. Section 101.22 is amended by adding new paragraphs (h)(7) and (k) to read as follows:

§ 101.22 Foods; labeling of spices, flavorings, colorings and chemical preservatives.

* * * * *

(h) * * *

(7) Because protein hydrolysates function in foods as both flavorings and flavor enhancers, no protein hydrolysate used in food for its effects on flavor may be declared simply as "flavor" or "flavoring." The ingredient shall be declared by a common or usual name that is specific to the ingredient and that identifies the food source from which the protein was derived. "Hydrolyzed casein" is an example of an acceptable name, whereas: "hydrolyzed milk protein" is not an acceptable name for this ingredient because it is not specific to the ingredient (hydrolysates can be prepared from other milk proteins). "Hydrolyzed wheat gluten," "hydrolyzed soy protein," and "autolyzed yeast extract" are also examples of acceptable names. The names "hydrolyzed vegetable protein" and "hydrolyzed protein" are not acceptable because they do not identify the food source of the protein.

* * * * *

(k) The label of a food to which any coloring has been added shall declare the coloring in the statement of ingredients in the manner specified in paragraphs (k)(1) and (k)(2) of this section, except that colorings added to butter, cheese, and ice cream shall be declared in the manner specified in paragraph (k)(3) of this section, and colorings added to foods subject to §§ 105.62 and 105.65 of this chapter shall be declared in accordance with the requirements of those sections.

(1) A color additive subject to certification under 21 U.S.C. 376(c) shall be declared by the name of the color additive listed in the applicable regulation in part 74 or part 82 of this chapter, except that it is not necessary to include the "FD&C" prefix in the declaration.

(2) Color additives not subject to certification may be declared as "Artificial Color", "Artificial Color

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Added", or "Color Added" (or an equally informative term that makes clear that a color additive has been used in the food). Alternatively, such color additives may be declared as "Colored with ____" or "____ (color)", the blank to be filled with the name of the color additive listed in the applicable regulation in part 73 of this chapter.

(3) When a coloring has been added to butter, cheese, or ice cream, it need not be declared in the ingredient list unless such declaration is required by a regulation in part 73 or part 74 of this chapter to assure safe conditions of use for the color additive. Voluntary declaration of all colorings added to butter, cheese, and ice cream, however, is recommended.

§ 101.35 [Removed]

5. Section 101.35 *Notice to manufacturers and users of monosodium glutamate and other hydrolyzed vegetable protein products* is removed.

6. Section 101.100 is amended by revising paragraph (a)(2) to read as follows:

§ 101.100 Food; exemptions from labeling.

(a) * * *

(2) A food having been received in bulk containers at a retail establishment, if displayed to the purchaser with either:

(i) The labeling of the bulk container plainly in view, provided ingredient information appears prominently and conspicuously in lettering of not less than one-fourth inch in height; or

(ii) A counter card, sign, or other appropriate device bearing prominently and conspicuously, but in no case with lettering of less than one-fourth inch in height, the information required to be stated on the label pursuant to section 403(i)(2) of the act.

* * * * *

PART 130—FOOD STANDARDS: GENERAL

7. The authority citation for 21 CFR part 130 continues to read as follows:

Authority: Secs. 201, 306, 401, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 336, 341, 343, 371).

8. Section 130.3 is amended by adding new paragraph (e) to read as follows:

§ 130.3 Definitions and interpretations.

* * * * *

(e) Section 403(i) of the act requires the listing of all ingredients in standardized foods. All ingredients must be listed in accordance with the requirements of part 101 of this chapter, except that where a definition and standard of identity has specific labeling provisions for optional ingredients, optional ingredients may be declared in accordance with those provisions.

8a. New § 130.9 is added to subpart A to read as follows:

§ 130.9 Sulfites in standardized food.

(a) Any standardized food that contains a sulfiting agent or combination of sulfiting agents that is functional and provided for in the applicable standard or that is present in the finished food at a detectable level is misbranded unless the presence of the sulfiting agent or agents is declared on the label of the food. A detectable amount of sulfiting agent is 10 parts per million or more of the sulfite in the finished food. The level of sulfite in the finished food will be determined using §§ 20.123 through 20.125, "Total Sulfurous Acid," in "Official Methods of Analysis of the Association of Official Analytical Chemists," 14th Ed. (1984), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and the refinements of the "Total Sulfurous Acid" procedure in the "Monier-Williams Procedure (with Modifications) for Sulfites in Foods," which is appendix A to part 101 of this chapter. A copy of §§ 20.123 through 20.125 of the "Official Methods of Analysis of the Association of Official Analytical Chemists" is available from the Association of Analytical Chemists, 1111 North 19th St., suite 210, Arlington, VA 22209, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(b) Any standardized food that, as a result of actions that are consistent with current good manufacturing practice, contains an indirectly added sulfiting agent that has no functional effect in the food and that would, in the absence of § 101.100(a)(4) of this chapter, be considered to be an incidental additive for purposes of § 130.8, conforms to the applicable definition and standard of identity if the presence of the sulfiting agent is declared on the label of the food.

PART 131—MILK AND CREAM

9. The authority citation for 21 CFR part 131 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

10. Section 131.110 is amended by revising paragraph (f) to read as follows:

§ 131.110 Milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

11. Section 131.111 is amended by revising paragraph (h) to read as follows:

§ 131.111 Acidified milk.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

12. Section 131.112 is amended by revising paragraph (g) to read as follows:

§ 131.112 Cultured milk.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

13. Section 131.115 is amended by revising paragraph (f) to read as follows:

§ 131.115 Concentrated milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

14. Section 131.120 is amended by revising paragraph (e) to read as follows:

§ 131.120 Sweetened condensed milk.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

15. Section 131.122 is amended by revising paragraph (e) to read as follows:

§ 131.122 Sweetened condensed skimmed milk.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

16. Section 131.123 is amended by revising paragraph (f) to read as follows:

§ 131.123 Lowfat dry milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

17. Section 131.125 is amended by revising paragraph (e) to read as follows:

§ 131.125 Nonfat dry milk.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

18. Section 131.127 is amended by revising paragraph (f) to read as follows:

§ 131.127 Nonfat dry milk fortified with vitamins A and D.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

19. Section 131.130 is amended by revising paragraph (f) to read as follows:

§ 131.130 Evaporated milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

20. Section 131.132 is amended by revising paragraph (f) to read as follows:

§ 131.132 Evaporated skimmed milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

21. Section 131.135 is amended by revising paragraph (f) to read as follows:

§ 131.135 Lowfat milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

22. Section 131.136 is amended by revising paragraph (h) to read as follows:

§ 131.136 Acidified lowfat milk.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

23. Section 131.138 is amended by revising paragraph (g) to read as follows:

§ 131.138 Cultured lowfat milk.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

24. Section 131.143 is amended by revising paragraph (f) to read as follows:

§ 131.143 Skim milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

25. Section 131.144 is amended by revising paragraph (h) to read as follows:

§ 131.144 Acidified skim milk.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

26. Section 131.146 is amended by revising paragraph (g) to read as follows:

§ 131.146 Cultured skim milk.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

27. Section 131.147 is amended by revising paragraph (f) to read as follows:

§ 131.147 Dry whole milk.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

28. Section 131.149 is amended by revising paragraph (e) to read as follows:

§ 131.149 Dry cream.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

29. Section 131.150 is amended by revising paragraph (e) to read as follows:

§ 131.150 Heavy cream.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

30. Section 131.155 is amended by revising paragraph (e) to read as follows:

§ 131.155 Light cream

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

31. Section 131.157 is amended by revising paragraph (e) to read as follows:

§ 131.157 Light whipping cream.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

32. Section 131.160 is amended by revising paragraph (e) to read as follows:

§ 131.160 Sour cream.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

33. Section 131.162 is amended by revising paragraph (e) to read as follows:

§ 131.162 Acidified sour cream.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

34. Section 131.170 is amended by revising paragraph (h) to read as follows:

§ 131.170 Eggnog.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

35. Section 131.180 is amended by revising paragraph (e) to read as follows:

§ 131.180 Half-and-half.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

36. Section 131.185 is amended by revising paragraph (e) to read as follows:

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§ 131.185 Sour half-and-half.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

37. Section 131.187 is amended by revising paragraph (e) to read as follows:

§ 131.187 Acidified sour half-and-half.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

38. Section 131.200 is amended by revising paragraph (g) to read as follows:

§ 131.200 Yogurt.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

39. Section 131.203 is amended by revising paragraph (g) to read as follows:

§ 131.203 Lowfat yogurt.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

40. Section 131.206 is amended by revising paragraph (g) to read as follows:

§ 131.206 Nonfat yogurt.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

The authority citation for 21 CFR part 133 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

42. Section 133.102 is amended by revising paragraph (e) to read as follows:

§ 133.102 Asiago fresh and asiago soft cheese.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

43. Section 133.103 is revised to read as follows:

§ 133.103 Asiago medium cheese.

Asiago medium cheese conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed by § 133.102 for asiago fresh cheese, except that it contains not more than 35 percent moisture, its solids contain not less than 45 percent of milkfat, and it is cured for not less than 6 months.

44. Section 133.104 is revised to read as follows:

§ 133.104 Asiago old cheese.

Asiago old cheese conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed by § 133.102 for asiago fresh cheese, except that it contains not more than 32 percent moisture, its solids contain not less than 42 percent of milk fat, and it iscured for not less than 1 year.

45. Section 133.106 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.106 Blue cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

46. Section 133.108 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.108 Brick cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

47. Section 133.111 is amended by revising paragraph (f) to read as follows:

§ 133.111 Caciocavallo siciliano cheese.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

48. Section 133.113 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.113 Cheddar cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

49. Section 133.118 is amended by adding new paragraph (f) to read as follows:

§ 133.118 Colby cheese.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

50. Section 133.121 is amended by revising the introductory text to read as follows:

§ 133.121 Low sodium colby cheese.

Low sodium colby cheese is the food prepared from the same ingredients and in the same manner prescribed in § 133.118 for colby cheese and complies with all the provisions of § 133.118, including the requirements for label statement of ingredients, except that:

* * * * *

51. Section 133.123 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 133.123 Cold-pack and club cheese.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

52. Section 133.124 is amended by revising paragraph (h) to read as follows:

§ 133.124 Cold-pack cheese food.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that cheddar cheese, washed curd cheese, colby cheese, granular cheese, or any mixture of two or more of these, may be designated as "American cheese".

53. Section 133.125 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.125 Cold-pack cheese food with fruits, vegetables, or meats.

(a) Cold-pack cheese food with fruits, vegetables, or meats or mixtures of these is the food which conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients, prescribed for cold pack cheese food by § 133.124, except that:

* * * * *

54. Section 133.127 is amended by revising paragraph (d) to read as follows:

§ 133.127 Cook cheese, koch kaese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

55. Section 133.128 is amended by revising paragraph (e) to read as follows:

§ 133.128 Cottage cheese.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that milk-clotting enzymes may be declared by the word "enzymes".

56. Section 133.129 is amended by revising paragraph (e) to read as follows:

§ 133.129 Dry curd cottage cheese.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that milk-clotting enzymes may be declared by the word "enzymes".

57. Section 133.131 is amended by revising the introductory text to read as follows:

§ 133.131 Lowfat cottage cheese.

Lowfat cottage cheese is the food prepared from the same ingredients and in the same manner prescribed in § 133.128 for cottage cheese and complies with all the provisions of § 133.128 (including requirements for the label statement of ingredients), except that:

* * * * *

58. Section 133.133 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.133 Cream cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

59. Section 133.134 is amended by revising the introductory text paragraph (d) to read as follows:

§ 133.134 Cream cheese with other foods.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

60. Section 133.136 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.136 Washed curd and soaked curd cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

61. Section 133.138 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.138 Edam cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

62. Section 133.140 is amended by revising paragraph (c) to read as follows:

§ 133.140 Gammelost cheese.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

63. Section 133.141 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.141 Gorgonzola cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

64. Section 133.144 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.144 Granular and stirred curd cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

65. Section 133.146 is amended by revising the introductory text of paragraph (e) to read as follows:

§ 133.146 Grated cheese.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

66. Section 133.147 is amended by revising paragraph (e) to read as follows:

§ 133.147 Grated American cheese food.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that cheddar cheese, washed curd cheese, colby cheese, granular cheese, or any mixture of two or more of these may be designated "American cheese".

67. Section 133.148 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 133.148 Hard grating cheeses.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

68. Section 133.149 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.149 Gruyere cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

69. Section 133.150 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 133.150 Hard cheeses.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be

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declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

70. Section 133.152 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.152 Limburger cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

71. Section 133.153 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.153 Monterey cheese and monterey jack cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

72. Section 133.154 is revised to read as follows:

§ 133.154 High-moisture jack cheese.

High-moisture jack cheese conforms to the definition and standard of identity and is subject to the requirement for label statement of ingredients prescribed for monterey cheese by § 133.153, except that its moisture content is more than 44 percent but less than 50 percent.

73. Section 133.155 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.155 Mozzarella cheese and scamorza cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

74. Section 133.156 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.156 Low-moisture mozzarella and scamorza cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

75. Section 133.158 is revised to read as follows:

§ 133.158 Low-moisture part-skim mozzarella and scamorza cheese.

Low-moisture part-skim mozzarella cheese and low-moisture part-skim scamorza cheese conform to the definition and standard of identity and comply with the requirements for label declaration of ingredients prescribed for low-moisture mozzarella cheese and low-moisture scamorza cheese by § 133.156, except that their milkfat content, calculated on the solids basis, is less than 45 percent but not less than 30 percent.

76. Section 133.160 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.160 Muenster and munster cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

77. Section 133.162 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.162 Neufchatel cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

78. Section 133.164 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.164 Nuworld cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

79. Section 133.165 is amended by revising paragraph (e) to read as follows:

§ 133.165 Parmesan and reggiano cheese.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

80. Section 133.167 is amended by revising the introductory text to read as follows:

§ 133.167 Pasteurized blended cheese.

Pasteurized blended cheese conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized process cheese by § 133.169, except that:

* * * * *

81. Section 133.168 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.168 Pasteurized blended cheese with fruits, vegetables, or meats.

(a) Pasteurized blended cheese with fruits, vegetables, or meats or mixtures of these is the food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized blended cheese by § 133.167, except that:

* * * * *

82. Section 133.169 is amended by revising paragraph (g) to read as follows:

§ 133.169 Pasteurized process cheese.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that cheddar cheese, washed curd cheese, colby cheese, granular cheese, or any mixture of two or more of these may be designated as "American cheese".

83. Section 133.170 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.170 Pasteurized process cheese with fruits, vegetables, or meats.

(a) Unless a definition and standard of identity specifically applicable is established by another section of this part a pasteurized process cheese with fruits, vegetables, or meats or mixtures of these is a food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized process cheese by § 133.169, except that:

* * * * *

84. Section 133.171 is amended by revising the introductory text to read as follows:

§ 133.171 Pasteurized process pimento cheese.

Pasteurized process pimento cheese is the food which conforms to the definition and standard of identity for pasteurized process cheese with fruits, vegetables, or meats, and is subject to

the requirement for label statement of ingredients, except that:

* * * * *

85. Section 133.173 is amended by revising paragraph (h) to read as follows:

§ 133.173 Pasteurized process cheese food.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that cheddar cheese, washed curd cheese, colby cheese, granular cheese, or any mixture of two or more of these may be designated as "American cheese".

86. Section 133.174 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.174 Pasteurized process cheese food with fruits, vegetables, or meats.

(a) Pasteurized process cheese food with fruits, vegetables, or meats or mixtures of these is the food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized process cheese food by § 133.173, except that:

* * * * *

87. Section 133.175 is revised to read as follows:

§ 133.175 Pasteurized cheese spread.

Pasteurized cheese spread is the food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized process cheese spread by § 133.179, except that no emulsifying agent as prescribed by § 133.179(e) is used.

88. Section 133.176 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.176 Pasteurized cheese spread with fruits, vegetables, or meats.

(a) Pasteurized cheese spread with fruits, vegetables, or meats or mixtures of these is a food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized cheese spread by § 133.175, except that:

* * * * *

89. Section 133.178 is amended by revising paragraph (d) to read as follows:

§ 133.178 Pasteurized neufchatel cheese spread with other foods.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

90. Section 133.179 is amended by revising paragraph (i) to read as follows:

§ 133.179 Pasteurized process cheese spread.

* * * * *

(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that cheddar cheese, washed curd cheese, colby cheese, granular cheese, or any mixture of two or more of these may be designated as "American cheese".

91. Section 133.180 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 133.180 Pasteurized process cheese spread with fruits, vegetables, or meats.

(a) Pasteurized process cheese spread with fruits, vegetables, or meats or mixtures of these is a food which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for pasteurized process cheese spread by § 133.179, except that:

* * * * *

92. Section 133.181 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.181 Provolone cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

93. Section 133.182 is amended by adding paragraph (f) to read as follows:

§ 133.182 Soft ripened cheeses.

* * * * *

(f) Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

94. Section 133.183 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 133.183 Romano cheese.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

95. Section 133.184 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.184 Roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

96. Section 133.185 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.185 Samsoe cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

97. Section 133.186 is amended by revising paragraph (d) to read as follows:

§ 133.186 Sap sago cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

98. Section 133.187 is amended by adding new paragraph (g) to read as follows:

§ 133.187 Semisoft cheeses.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

99. Section 133.188 is amended by adding new paragraph (g) to read as follows:

§ 133.188 Semisoft part-skim cheeses.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

100. Section 133.189 is amended by adding new paragraph (e) to read as follows:

§ 133.189 Skim milk cheese for manufacturing.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the

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applicable sections of parts 101 and 130 of this chapter.

101. Section 133.190 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.190 Spiced cheeses.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter except that:

* * * * *

102. Section 133.191 is revised to read as follows:

§ 133.191 Part-skim spiced cheeses.

Part-skim spiced cheeses conform to the definition and standard of identity, and are subject to the requirements for label statement of ingredients prescribed for spiced cheeses by § 133.190, except that their solids contain less than 50 percent, but not less than 20 percent, of milkfat.

103. Section 133.193 is amended by revising paragraph (a) to read as follows:

§ 133.193 Spiced, flavored standardized cheeses.

(a) Except as otherwise provided for herein and in applicable sections in this part, a spiced or flavored standardized cheese conforms to the applicable definitions, standard of identity and requirements for label statement of ingredients prescribed for that specific natural cheese variety promulgated pursuant to section 401 of the act. In addition a spiced and/or flavored standardized cheese shall contain one or more safe and suitable spices and/or flavorings, in such proportions as are reasonably required to accomplish their intended effect: *Provided,* That, no combination of ingredients shall be used to simulate the flavor of cheese of any age or variety.

* * * * *

104. Section 133.195 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 133.195 Swiss and emmentaler cheese.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

PART 135—FROZEN DESSERTS

105. The authority citation for 21 CFR Part 135 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

106. Section 135.110 is amended by revising paragraph (f) to read as follows:

§ 135.110 Ice cream and frozen custard.

* * * * *

(f) *Label declaration.* Each of the ingredients used shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that the sources of milkfat or milk solids not fat may be declared in descending order of predominance either by the use of all the terms "milkfat and nonfat milk" when one or any combination of two or more of the ingredients listed in § 101.4 (b)(3), (b)(4), (b)(8), and (b)(9) of this chapter are used or alternatively as permitted in § 101.4 of this chapter. Under section 403(k) of the Federal Food, Drug, and Cosmetic Act, artificial color need not be declared in ice cream, except as required by § 101.22 (c) or (k) of this chapter. Voluntary declaration of all colors used in ice cream and frozen custard is recommended.

107. Section 135.115 is amended by revising paragraph (d) to read as follows:

§ 135.115 Goat's milk ice cream.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

108. Section 135.120 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 135.120 Ice milk.

(a) *Description.* Ice milk is the food prepared from the same ingredients and in the same manner prescribed in § 135.110 for ice cream and complies with all the provisions of § 135.110 (including the requirements for label statement of ingredients), except that:

* * * * *

109. Section 135.130 is amended by revising paragraph (e) to read as follows:

§ 135.130 Mellorine.

* * * * *

(e) *Label declaration.* Each of the ingredients used shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that sources of milkfat or milk solids not fat may be declared in descending order of predominance either by the use of the terms "milkfat and nonfat milk" when one or any combination of two or more of the ingredients listed in § 101.4 (b)(3), (b)(4), (b)(8), and (b)(9) of this chapter are used, or alternatively as permitted in § 101.4 of this chapter.

110. Section 135.140 is amended by revising paragraph (i) to read as follows:

§ 135.140 Sherbet.

* * * * *

(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

111. Section 135.160 is amended by revising paragraph (a) to read as follows:

§ 135.160 Water ices.

(a) *Description.* Water ices are the foods each of which is prepared from the same ingredients and in the same manner prescribed in § 135.140 for sherbets, except that the mix need not be pasteurized, and complies with all the provisions of § 135.140 (including the requirements for label statement of ingredients), except that no milk or milk-derived ingredient and no egg ingredient, other than egg white, is used.

* * * * *

PART 136—BAKERY PRODUCTS

112. The authority citation for 21 CFR Part 136 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

113. Section 136.110 is amended by revising paragraph (f) to read as follows:

§ 136.110 Breads, rolls, and buns.

* * * * *

(f) *Label declaration.* Each of the ingredients used shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

114. The authority citation for 21 CFR Part 137 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

115. Section 137.105 is amended by revising paragraph (b)(1) to read as follows:

§ 137.105 Flour.

* * * * *

(b)(1) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the

applicable sections of parts 101 and 130 of this chapter.

* * * * *

116. Section 137.155 is revised to read as follows:

§ 137.155 Bromated flour.

Bromated flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for flour by § 137.105, except that potassium bromate is added in a quantity not exceeding 50 parts to each million parts of the finished bromated flour, and is added only to flours whose baking qualities are improved by such addition.

117. Section 137.160 is revised to read as follows:

§ 137.160 Enriched bromated flour.

Enriched bromated flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for enriched flour by § 137.165, except that potassium bromate is added in a quantity not exceeding 50 parts to each million parts of the finished enriched bromated flour, and is added only to enriched flours whose baking qualities are improved by such addition.

118. Section 137.165 is amended by revising the introductory text to read as follows:

§ 137.165 Enriched flour.

Enriched flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for flour by § 137.105, except that:

* * * * *

119. Section 137.170 is amended by revising paragraph (a) to read as follows:

§ 137.170 Instantized flours.

(a) Instantized flours, instant blending flours, and quick-mixing flours, are the foods each of which conforms to the definition and standard of identity and is subject to the requirement for label statement of ingredients prescribed for the corresponding kind of flour by §§ 137.105, 137.155, 137.160, 137.165, 137.175, 137.180, and 137.185, except that each such flour has been made by one of the optional procedures set forth in paragraph (b) of this section, and is thereby made readily pourable. Such flours will all pass through a No. 20 mesh U.S. standard sieve (840-micron opening), and not more than 20 percent will pass through a 200 mesh U.S. standard sieve (74-micron opening).

* * * * *

120. Section 137.175 is amended by revising the introductory text to read as follows:

§ 137.175 Phosphated flour.

Phosphated flour, phosphated white flour, and phosphated wheat flour, conform to the definition and standard of identity, and are subject to the requirements for label declaration of ingredients, prescribed for flour by § 137.105, except that:

* * * * *

121. Section 137.180 is amended by revising paragraph (b) to read as follows:

§ 137.180 Self-rising flour.

* * * * *

(b) *Label declaration.* Each of the ingredients used in the food, shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

122. Section 137.185 is amended by revising the introductory text to read as follows:

§ 137.185 Enriched self-rising flour.

Enriched self rising flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for self-rising flour by § 137.180, except that:

* * * * *

123. Section 137.200 is amended by revising paragraph (b)(1) to read as follows:

§ 137.200 Whole wheat flour.

* * * * *

(b)(1) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

124. Section 137.205 is revised to read as follows:

§ 137.205 Bromated whole wheat flour.

Bromated whole wheat flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for whole wheat flour by § 137.200, except that potassium bromate is added in a quantity not exceeding 75 parts to each million parts of finished bromated whole wheat flour.

125. Section 137.225 is revised to read as follows:

§ 137.225 Whole durum flour.

Whole durum wheat flour conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for whole wheat flour by § 137.200, except that cleaned durum wheat, instead of cleaned wheat other than durum wheat and red durum wheat, is used in its preparation.

126. Section 137.235 is amended by adding new paragraph (c) to read as follows:

§ 137.235 Enriched corn grits.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

127. Section 137.260 is amended by adding new paragraph (c) to read as follows:

§ 137.260 Enriched corn meals.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

128. Section 137.270 is amended by adding new paragraph (c) to read as follows:

§ 137.270 Self-rising white corn meal.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

129. Section 137.305 is amended by revising paragraph (b)(1) to read as follows:

§ 137.305 Enriched farina.

* * * * *

(b)(1) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

130. Section 137.350 is amended by adding new paragraph (g) to read as follows:

§ 137.350 Enriched rice.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 139—MACARONI AND NOODLE PRODUCTS

131. The authority citation for 21 CFR Part 139 continues to read as follows:

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Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

132. Section 139.110 is amended by adding new paragraph (g) to read as follows:

§ 139.110 Macaroni products.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

133. Section 139.115 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.115 Enriched macaroni products.

(a) *Description.* Enriched macaroni products are the class of food each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients, prescribed for macaroni products by § 139.110 (a), (f), and (g), except that:

* * * * *

134. Section 139.117 is amended by revising paragraph (e) to read as follows:

§ 139.117 Enriched macaroni products with fortified protein.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

135. Section 139.120 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.120 Milk macaroni products.

(a) Milk macaroni products are the class of food, each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), and (g), except that:

* * * * *

136. Section 139.121 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.121 Nonfat milk macaroni products.

(a) Each of the macaroni products made with nonfat milk for which a definition and standard of identity is prescribed by this section conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), (f)(4), and (g), except that:

* * * * *

137. Section 139.122 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.122 Enriched nonfat milk macaroni products.

(a) Each of the enriched macaroni products made with nonfat milk for which a definition and standard of identity is prescribed by this section conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), (f)(4), and (g), except that:

* * * * *

138. Section 139.125 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.125 Vegetable macaroni products.

(a) Vegetable macaroni products are the class of food each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), and (g), except that:

* * * * *

139. Section 139.135 is amended by revising paragraph (a) to read as follows:

§ 139.135 Enriched vegetable macaroni products.

(a) Each of the macaroni products for which a definition and standard of identity is prescribed by this section conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed for macaroni products by § 139.110 (a), (f), and (g), and in addition is enriched to meet the requirements prescribed for enriched macaroni products by § 139.115 and contains a vegetable ingredient in compliance with the requirements prescribed for vegetable macaroni products by § 139.125.

* * * * *

140. Section 139.136 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.136 Whole wheat macaroni products.

(a) Whole wheat macaroni products are the class of food each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients, prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), (f)(4), and (g), except that:

* * * * *

141. Section 139.140 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.140 Wheat and soy macaroni products.

(a) Wheat and soy macaroni products are the class of food each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients, prescribed for macaroni products by § 139.110 (a), (f)(2), (f)(3), and (g), except that:

* * * * *

142. Section 139.150 is amended by adding new paragraph (i) to read as follows:

§ 139.150 Noodle products.

* * * * *

(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

143. Section 139.155 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 139.155 Enriched noodle products.

(a) Enriched noodle products are the class of food each of which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for noodle products by § 139.150 (a), (g), and (i), except that:

* * * * *

144. Section 139.160 is amended by revising paragraph (a) to read as follows:

§ 139.160 Vegetable noodle products.

(a) Vegetable noodle products are the class of food each of which conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for noodle products by § 139.150 (a), (g), and (i), except that tomato (of any red variety), artichoke, beet, carrot, parsley, or spinach is added in such quantity that the solids thereof are not less than 3 percent by weight of the finished vegetable noodle product (the vegetable used may be fresh, canned, dried, or in the form of puree or paste).

* * * * *

145. Section 139.165 is amended by revising paragraph (a) to read as follows:

§ 139.165 Enriched vegetable noodle products.

(a) Each of the noodle products for which a definition and standard of identity is prescribed by this section conforms to the definition and standard of identity and is subject to the requirements for label declaration of ingredients prescribed for noodle products by § 139.150 (a), (g), (h), and (i), and in addition is enriched to meet the requirements prescribed for enriched noodle products by § 139.155 and, except as hereinafter provided, contains a vegetable ingredient in compliance with the requirements prescribed for vegetable noodle products by § 139.160. Because they are apt to impart an egg-yolk color, carrots are not used in enriched vegetable noodle products.

* * * * *

146. Section 139.180 is amended by revising paragraph (a) to read as follows:

§ 139.180 Wheat and soy noodle products.

(a) Wheat and soy noodle products are the class of food each of which conforms to the definition and standard of identity and is subject to the requirements for label statement of ingredients prescribed for noodle products by § 139.150 (a), (g), and (i), except that soy flour is added in a quantity not less than 12.5 percent of the combined weight of the wheat and soy ingredients used (the soy flour used is made from heat-processed, dehulled soybeans, with or without the removal of fat therefrom).

* * * * *

PART 145—CANNED FRUITS

147. The authority citation for 21 CFR Part 145 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

148. Section 145.110 is amended by revising paragraph (a)(4) to read as follows:

§ 145.110 Canned applesauce.

(a) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter. However, when ascorbic acid (vitamin C) is added as provided for in paragraph (a)(2)(viii)(*b*) of this section, after the application of heat to the apples, preservative labeling requirements do not apply.

* * * * *

149. Section 145.115 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.115 Canned apricots.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

150. Section 145.116 is amended by revising paragraph (b)(2) to read as follows:

§ 145.116 Artificially sweetened canned apricots.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned apricots by § 145.115(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin". When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

151. Section 145.120 is amended by revising paragraph (a)(5)(iv) to read as follows:

§ 145.120 Canned berries.

(a) * * *

(5) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

152. Section 145.125 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.125 Canned cherries.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

153. Section 145.126 is amended by revising paragraph (b)(2) to read as follows:

§ 145.126 Artificially sweetened canned cherries.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned cherries by § 145.125(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin". When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

154. Section 145.130 is amended by revising paragraph (d)(4) to read as follows:

§ 145.130 Canned figs.

* * * * *

(d) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

155. Section 145.131 is amended by revising paragraph (b)(2) to read as follows:

§ 145.131 Artificially sweetened canned figs.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned figs by § 145.130. If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin". When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

156. Section 145.134 is amended by adding new paragraph (f) to read as follows:

§ 145.134 Canned preserved figs.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

157. Section 145.135 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.135 Canned fruit cocktail.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

158. Section 145.136 is amended by revising paragraph (b)(2) to read as follows:

§ 145.136 Artificially sweetened canned fruit cocktail.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label

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statement of ingredients used, as prescribed for canned fruit cocktail by § 145.135(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

159. Section 145.140 is amended by revising paragraph (d)(4) to read as follows:

§ 145.140 Canned seedless grapes.

* * * * *

(d) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

160. Section 145.145 is amended by revising paragraph (a)(4)(iii) to read as follows:

§ 145.145 Canned grapefruit.

(a) * * *

(4) * * *

(iii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

161. Section 145.170 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.170 Canned peaches.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

162. Section 145.171 is amended by revising paragraph (b)(2) to read as follows:

§ 145.171 Artificially sweetened canned peaches.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned peaches by § 145.170(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin". When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

163. Section 145.175 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.175 Canned pears.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

164. Section 145.176 is amended by revising paragraph (b)(2) to read as follows:

§ 145.176 Artificially sweetened canned pears.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned pears by § 145.175(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin". When any organic salt or acid or any mixture of two or more of these is added, the label shall bear the common or usual name of each such ingredient.

165. Section 145.180 is amended by revising paragraph (a)(5)(iii) to read as follows:

§ 145.180 Canned pineapple.

(a) * * *

(5) * * *

(iii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

166. Section 145.181 is amended by revising paragraph (b)(2) to read as follows:

§ 145.181 Artificially sweetened canned pineapple.

* * * * *

(b) * * *

(2) The artificially sweetened food is subject to the requirements for label statement of ingredients used, as prescribed for canned pineapple by § 145.180(a). If the packing medium is thickened with pectin, the label shall bear the statement "thickened with pectin".

167. Section 145.185 is amended by revising paragraph (a)(4)(iv) to read as follows:

§ 145.185 Canned plums.

(a) * * *

(4) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

168. Section 145.190 is amended by revising paragraph (c)(4) to read as follows:

§ 145.190 Canned prunes.

* * * * *

(c) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 146—CANNED FRUIT JUICES

169. The authority citation for 21 CFR part 146 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

170. Section 146.113 is amended by adding new paragraph (h) to read as follows:

§ 146.113 Canned fruit nectars.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

171. Section 146.114 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 146.114 Lemon juice.

(a) * * *

(3) * * *

(ii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

172. Section 146.120 is amended by revising paragraph (c) to read as follows:

§ 146.120 Frozen concentrate for lemonade.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

173. Section 146.121 is amended by adding new paragraph (f) to read as follows:

§ 146.121 Frozen concentrate for artificially sweetened lemonade.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

174. Section 146.126 is amended by revising paragraph (c) to read as follows:

§ 146.126 Frozen concentrate for colored lemonade.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

175. Section 146.132 is amended by revising paragraphs (a)(3)(iii) to read as follows:

§ 146.132 Grapefruit juice.

(a) * * *

(3) * * *

(iii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

176. Section 146.140 is amended by adding new paragraph (g) to read as follows:

§ 146.140 Pasteurized orange juice.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

177. Section 146.141 is amended by adding new paragraph (f) to read as follows:

§ 146.141 Canned orange juice.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

178. Section 146.145 is amended by adding new paragraph (f) to read as follows:

§ 146.145 Orange juice from concentrate.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

179. Section 146.146 is amended by adding new paragraph (g) to read as follows:

§ 146.146 Frozen concentrated orange juice.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

180. Section 146.148 is amended by revising paragraph (a) to read as follows:

§ 146.148 Reduced acid frozen concentrated orange juice.

(a) Reduced acid frozen concentrated orange juice is the food that complies with the requirements for composition and label declaration of ingredients prescribed for frozen concentrated orange juice by § 146.146, except that it may not contain any added sweetening ingredient. A process involving the use of anionic ion-exchange resins permitted by § 173.25 of this chapter is used to reduce the acidity of the food so that the ratio of the Brix reading to the grams of acid, expressed as anhydrous citric acid, per 100 grams of juice is not less than 21 to 1 or more than 28 to 1.

* * * * *

181. Section 146.150 is amended by revising paragraph (a) to read as follows:

§ 146.150 Canned concentrated orange juice.

(a) Canned concentrated orange juice is the food that complies with the requirements of composition, definition of dilution ratio, and labeling of ingredients prescribed for frozen concentrated orange juice by § 146.146, except that it is not frozen and it is sealed in containers and so processed by heat, either before or after sealing, so as to prevent spoilage.

* * * * *

182. Section 146.152 is amended by revising paragraph (d) to read as follows:

§ 146.152 Orange juice with preservative.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter. In addition, the name of each preservative shall be proceeded by a statement of the percent by weight of the preservative used. If the food is packed in container sizes that are less than 19 liters (5 gallons), the label shall bear a statement indicating that the food is for further manufacturing use only.

* * * * *

183. Section 146.153 is amended by revising paragraph (a) to read as follows:

§ 146.153 Concentrated orange juice for manufacturing.

(a) Concentrated orange juice for manufacturing is the food that complies with the requirements of composition and label declaration of ingredients prescribed for frozen concentrated orange juice by § 146.146, except that it is either not frozen or is less concentrated, or both, and the oranges from which the juice is obtained may deviate from the standards for maturity in that they are below the minimum Brix and Brix-acid ratio for such oranges: *Provided, however,* That the concentration of orange juice soluble solids is not less than 20° Brix.

* * * * *

184. Section 146.154 is amended by revising paragraph (d) to read as follows:

§ 146.154 Concentrated orange juice with preservative.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter. In addition, the name of each preservative shall be preceeded by a statement of the percent by weight of the preservative used. If the food is packed in container sizes that are less than 19 liters (5 gallons), the label shall bear a statement indicating that the food is for further manufacturing use only.

* * * * *

185. Section 146.185 is amended by revising paragraph (a)(3) to read as follows:

§ 146.185 Pineapple juice.

(a) * * *

(3) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

186. Section 146.187 is amended by adding new paragraph (d) to read as follows:

§ 146.187 Canned prune juice.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS

187. The authority citation for 21 CFR part 150 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

188. Section 150.110 is amended by revising the introductory text of

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paragraph (e)(1) and by removing paragraph (e)(2)(ii) and reserving it, to read as follows:

§ 150.110 Fruit butter.

* * * * *

(e)(1) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

(e)(2)(ii) [Reserved]

189. Section 150.140 is amended by revising the introductory text of paragraph (e)(2) to read as follows:

§ 150.140 Fruit jelly.

* * * * *

(e)(2) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

190. Section 150.141 is amended by adding new paragraph (h) to read as follows:

§ 150.141 Artificially sweetened fruit jelly.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

191. Section 150.160 is amended by revising the introductory text of paragraph (e)(2) to read as follows:

§ 150.160 Fruit preserves and jams.

* * * * *

(e)(2) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * *

192. Section 150.161 is amended by adding new paragraph (h) to read as follows:

§ 150.161 Artificially sweetened fruit preserves and jams.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 152—FRUIT PIES

193. The authority citation for 21 CFR part 152 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

194. Section 152.120 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 152.120 Frozen cherry pie.

(a) * * *

(4)(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 155—CANNED VEGETABLES

195. The authority citation for 21 CFR part 155 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

196. Section 155.120 is amended by revising paragraph (a)(5) to read as follows:

§ 155.120 Canned green beans and canned wax beans.

(a) * * *

(5) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

197. Section 155.130 is amended by revising paragraph (a)(5) to read as follows:

§ 155.130 Canned corn.

(a) * * *

(5) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

198. Section 155.131 is amended by revising paragraph (a)(1) to read as follows:

§ 155.131 Canned field corn.

(a) *Identity.* (1) Canned field corn conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients, prescribed for canned corn by § 155.130(a), except that the corn ingredient consists of succulent field corn or a mixture of succulent field corn and succulent sweet corn.

* * * * *

199. Section 155.170 is amended by revising paragraph (a)(4) to read as follows:

§ 155.170 Canned peas.

(a) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

200. Section 155.172 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 155.172 Canned dry peas.

(a) *Identity.* Canned dry peas conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients, prescribed for canned peas by § 155.170(a), except that:

* * * * *

201. Section 155.190 is amended by revising paragraph (a)(6) to read as follows:

§ 155.190 Canned tomatoes.

(a) * * *

(6) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

202. Section 155.191 is amended by revising paragraph (a)(3)(iv) to read as follows:

§ 155.191 Tomato concentrates.

(a) * * *

(3) * * *

(iv) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that water need not be declared in the ingredient statement when added to adjust the tomato soluble solids content of tomato concentrates within the range of soluble solids levels permitted for these foods.

* * * * *

203. Section 155.194 is amended by revising paragraph (a)(3)(iii) to read as follows:

§ 155.194 Catsup.

(a) * * *

(3) * * *

(iii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter; except that the name "tomato concentrate" may be used in lieu of the names "tomato puree," "tomato pulp," or "tomato paste" and when tomato concentrates are used, the labeling requirements of § 155.191(a)(3)(ii) (*a*) and (a)(3)(ii)(*b*) do not apply.

* * * * *

204. Section 155.200 is amended by revising paragraph (h) to read as follows:

§ 155.200 Certain other canned vegetables.

* * * * *

(h) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

205. Section 155.201 is amended by revising paragraph (a)(4)(ii) to read as follows:

§ 155.201 Canned mushrooms.

(a) * * *

(4) * * *

(ii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 156—VEGETABLE JUICES

206. The authority citation for 21 CFR part 156 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371).

207. Section 156.145 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 156.145 Tomato juice.

(a) * * *

(2) * * *

(ii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 158—FROZEN VEGETABLES

208. The authority citation for 21 CFR part 158 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371).

209. Section 158.170 is amended by revising paragraph (a)(4) to read as follows:

§ 158.170 Frozen peas.

(a) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

PART 160—EGGS AND EGG PRODUCTS

210. The authority citation for 21 CFR part 160 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

211. Section 160.105 is amended by adding new paragraph (e) to read as follows:

§ 160.105 Dried eggs.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

212. Section 160.110 is amended by adding new paragraph (d) to read as follows:

§ 160.110 Frozen eggs.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

213. Section 160.115 is amended by redesignating the existing text as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 160.115 Liquid eggs.

* * * * *

(b) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

214. Section 160.140 is amended by adding new paragraph (c) to read as follows:

§ 160.140 Egg whites.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

215. Section 160.145 is amended by adding new paragraph (f) to read as follows:

§ 160.145 Dried egg whites.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

216. Section 160.150 is amended by adding new paragraph (c) to read as follows:

§ 160.150 Frozen egg whites.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

217. Section 160.180 is amended by redesignating the existing text as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 160.180 Egg yolks.

* * * * *

(b) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

218. Section 160.185 is amended by adding new paragraph (e) to read as follows:

160.185 Dried egg yolks.

* * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

219. Section 160.190 is amended by redesignating the existing text as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 160.190 Frozen egg yolks.

* * * * *

(b) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 161—FISH AND SHELLFISH

220. The authority citation for 21 CFR part 161 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

221. Section 161.145 is amended by adding new paragraph (a)(4) to read as follows:

§ 161.145 Canned oysters.

(a) * * *

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

222. Section 161.170 is amended by revising paragraph (a)(5)(iii) to read as follows:

§ 161.170 Canned Pacific salmon.

(a) * * *

(5) * * *

(iii) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

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223. Section 161.173 is amended by revising paragraph (a)(5)(ix) to read as follows:

§ 161.173 Canned wet pack shrimp in transparent or nontransparent containers.

(a) * * *

(5) * * *

(ix) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * * *

224. Section 161.175 is amended by adding new paragraph (i) to read as follows:

§ 161.175 Frozen raw breaded shrimp.

* * * * * *

(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

225. Section 161.190 is amended by adding new paragraph (a)(9) to read as follows:

§ 161.190 Canned tuna.

(a) * * *

(9) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * * *

PART 163—CACAO PRODUCTS

226. The authority citation for 21 CFR part 163 continues to read as follows:

Authority: Secs. 201, 301, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 341, 343, 348, 371, 376).

227. Section 163.110 is amended by adding new paragraph (c) to read as follows:

§ 163.110 Cacao nibs.

* * * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

228. Section 163.111 is amended by adding new paragraph (c) to read as follows:

§ 163.111 Chocolate liquor.

* * * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

229. Section 163.112 is amended by adding new paragraph (c) to read as follows:

§ 163.112 Breakfast cocoa.

* * * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

230. Section 163.113 is revised to read as follows:

§ 163.113 Cocoa.

Cocoa, medium fat cocoa conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, prescribed for breakfast cocoa by § 163.112, except that it contains less than 22 percent but not less than 10 percent of cacao fat as determined by the method referred to in § 163.112(a).

231. Section 163.114 is revised to read as follows:

§ 163.114 Lowfat cocoa.

Lowfat cocoa conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for breakfast cocoa in § 163.112, except that the cacao fat content is less than 10 percent by weight, as determined by the method prescribed in § 163.112(a).

232. Section 163.117 is amended by revising paragraph (a) to read as follows:

§ 163.117 Cocoa with dioctyl sodium sulfosuccinate for manufacturing.

(a) *Description.* Cocoa with dioctyl sodium sulfosuccinate for manufacturing is the food additive complying with the provisions in § 172.520 of this chapter. It conforms to the definition and standard of identity, and is subject to the requirements for label statement of ingredients, for breakfast cocoa in § 163.112, or for cocoa in § 163.113, or for lowfat cocoa in § 163.114, except that the food additive contains dioctyl sodium sulfosuccinate (complying with the requirements of § 172.810 of this chapter, including the limit of not more than 0.4 percent by weight of the finished food additive).

* * * * * *

233. Section 163.123 is amended by adding new paragraph (i) to read as follows:

§ 163.123 Sweet chocolate.

* * * * * *

(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

234. Section 163.130 is amended by adding new paragraph (f) to read as follows:

§ 163.130 Milk chocolate.

* * * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

235. Section 163.135 is amended by adding new paragraph (c) to read as follows:

§ 163.135 Buttermilk chocolate.

* * * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

236. Section 163.140 is amended by adding new paragraph (c) to read as follows:

§ 163.140 Skim milk chocolate.

* * * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

237. Section 163.145 is amended by adding new paragraph (c) to read as follows:

§ 163.145 Mixed dairy product chocolates.

* * * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

238. Section 163.150 is amended by adding new paragraph (d) to read as follows:

§ 163.150 Sweet cocoa and vegetable fat (other than cacao fat) coating.

* * * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

239. Section 163.153 is amended by adding new paragraph (c) to read as follows:

§ 163.153 Sweet chocolate and vegetable fat (other than cacao fat) coating.

* * * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

240. Section 163.155 is amended by adding new paragraph (c) to read as follows:

§ 163.155 Milk chocolate and vegetable fat (other than cacao fat) coating.

* * * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by applicable sections of parts 101 and 130 of this chapter.

PART 164—TREE NUT AND PEANUT PRODUCTS

241. The authority citation for 21 CFR part 164 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

242. Section 164.110 is amended by revising the introductory text of paragraph (e), by removing paragraphs (e)(3) and (e)(4), and by revising paragraph (f) to read as follows:

§ 164.110 Mixed nuts.

* * * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that:

* * * * * *

(f) The words and statements specified in paragraph (e) of this section showing the ingredients present shall be listed on the principal display panel or panels or any appropriate information panel without obscuring design, vignettes, or crowding. The declaration shall appear in conspicuous and easily legible letters of boldface print or type the size of which shall be not less than one-half of that required by part 101 of this chapter for the statement of net quantity of contents appearing on the label, but in no case less than one-sixteenth of an inch in height. The entire ingredient statement shall appear on at least one panel of the label. If the label bears any pictorial representation of the mixture of nuts, it shall depict the relative proportions of the nut ingredients of the food. If the label bears a pictorial representation of only one of each nut ingredient present, the nuts shall be depicted in the order of decreasing predominance by weight. A factual statement that the food does not contain a particular nut ingredient or ingredients may be shown on the label if the statement is not misleading and does not result in an insufficiency of label space for the proper declaration of information required by or under authority of the act to appear on the label.

243. Section 164.150 is amended by revising paragraph (e) to read as follows:

§ 164.150 Peanut butter.

* * * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

PART 166—MARGARINE

244. The authority citation for 21 CFR part 166 continues to read as follows:

Authority: Secs. 201, 401, 403, 407, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 347, 348, 371, 376).

245. Section 166.110 is amended by revising paragraph (d) to read as follows:

§ 166.110 Margarine.

* * * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter. For the purposes of this section the use of the term "milk" unqualified means milk from cows. If any milk other than cow's milk is used in whole or in part, the animal source shall be identified in conjunction with the word milk in the ingredient statement. Colored margarine shall be subject to the provisions of section 407 of the Federal Food, Drug, and Cosmetic Act as amended.

PART 168—SWEETENERS AND TABLE SIRUPS

246. The authority citation for 21 CFR part 168 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

247. Section 168.110 is amended by revising paragraph (b) to read as follows:

§ 168.110 Dextrose anhydrous.

* * * * * *

(b) The name of the food is "Dextrose anhydrous" or "Anhydrous dextrose" or alternatively, "_____sugar anhydrous" or "Anhydrous _____sugar", with the blank to be filled with the name of the food source, for example, "Corn sugar anhydrous".

248. Section 168.111 is amended by revising paragraph (c) to read as follows:

§ 168.111 Dextrose monohydrate.

* * * * * *

(c) The name of the food is "Dextrose monohydrate" or "Dextrose" or alternatively, "_____sugar monohydrate" or "_____sugar", with the blank to be filled with the name of the food source, for example, "Corn sugar monohydrate" or "Corn sugar".

* * * * * *

249. Section 168.130 is amended by revising paragraph (d) to read as follows:

§ 168.130 Cane sirup.

* * * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

250. Section 168.140 is amended by revising paragraph (d) to read as follows:

§ 168.140 Maple sirup.

* * * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

251. Section 168.160 is amended by revising paragraph (d) to read as follows:

§ 168.160 Sorghum sirup.

* * * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

252. Section 168.180 is amended by revising (d)(1) to read as follows:

§ 168.180 Table sirup.

* * * * * *

(d) * * *

(1) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * * *

PART 169—FOOD DRESSINGS AND FLAVORINGS

253. The authority citation for 21 CFR part 169 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

254. Section 169.115 is amended by revising paragraph (e) to read as follows:

§ 169.115 French dressing.

* * * * * *

(e) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

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255. Section 169.140 is amended by revising paragraph (f) to read as follows:

§ 169.140 Mayonnaise.

* * * * *

(f) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

256. Section 169.150 is amended by revising paragraph (g) to read as follows:

§ 169.150 Salad dressing.

* * * * *

(g) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

257. Section 169.175 is amended by adding new paragraph (c) to read as follows:

§ 169.175 Vanilla extract.

* * * * *

(c) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

258. Section 169.176 is amended by revising paragraph (a) to read as follows:

§ 169.176 Concentrated vanilla extract.

(a) Concentrated vanilla extract conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla extract by § 169.175, except that it is concentrated to remove part of the solvent, and each gallon contains two or more units of vanilla constituent as defined in § 169.3(c). The content of ethyl alcohol is not less than 35 percent by volume.

* * * * *

259. Section 169.177 is amended by revising paragraph (a) to read as follows:

§ 169.177 Vanilla flavoring.

(a) Vanilla flavoring conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla extract by § 169.175, except that its content of ethyl alcohol is less than 35 percent by volume.

* * * * *

260. Section 169.178 is amended by revising paragraph (a) to read as follows:

§ 169.178 Concentrated vanilla flavoring.

(a) Concentrated vanilla flavoring conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla flavoring by § 169.177, except that it is concentrated to remove part of the solvent, and each gallon contains two or more units of vanilla constituent as defined in § 169.3(c).

* * * * *

261. Section 169.179 is amended by adding new paragraph (d) to read as follows:

§ 169.179 Vanilla powder.

* * * * *

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

262. Section 169.180 is amended by revising paragraph (a) to read as follows:

§ 169.180 Vanilla-vanillin extract.

(a) Vanilla-vanillin extract conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla extract by § 169.175, except that for each unit of vanilla constituent, as defined in § 169.3(c), contained therein, the article also contains not more than one ounce of added vanillin.

* * * * *

263. Section 169.181 is amended by revising paragraph (a) to read as follows:

§ 169.181 Vanilla-vanillin flavoring.

(a) Vanilla-vanillin flavoring conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla-vanillin extract by § 169.180, except that its content of ethyl alcohol is less than 35 percent by volume.

* * * * *

264. Section 169.182 is amended by revising paragraph (a) to read as follows:

§ 169.182 Vanilla-vanillin powder.

(a) Vanilla-vanillin powder conforms to the definition and standard of identity and is subject to any requirement for label statement of ingredients prescribed for vanilla powder by § 169.179, except that for each unit of vanilla constituent as defined in § 169.3(c) contained therein, the article also contains not more than 1 ounce of added vanillin.

* * * * *

Dated: May 28, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

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June 21, 1991

Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2510 and 2617

Annuitization of Participants and Beneficiaries Covered Under Employee Pension Plans; Selection of Annuity Providers for Terminating Pension Plans; Proposed Rules

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR 2510

Annuitization of Participants and Beneficiaries Covered Under Employee Pension Plans

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking solicits comments from the public on issues which the Department of Labor (the Department) has under consideration in deciding whether to publish a proposed regulation under title I of the Employee Retirement Income Security Act of 1974, as amended, (ERISA) establishing minimum standards for purposes of determining whether an annuity contract purchased from a particular insurance company serves to relieve a plan of future liability with respect to the participant or beneficiary on whose behalf the annuity is purchased. While it is clear that ERISA's fiduciary standards govern a plan fiduciary's consideration and selection of annuity providers, the Department believes that, in addition to and independent of the fiduciary standards, minimum standards for annuity providers may be appropriate and necessary in order to ensure a reasonable likelihood that participants or beneficiaries on whose behalf annuities are purchased will receive their promised pension benefits. Generally, under current Department regulations, a participant or beneficiary ceases to be a participant covered under an employee pension plan or a beneficiary receiving benefits under such plan if the entire benefit rights of the individual are fully guaranteed by an insurance company "licensed to do business in a state." One method for providing such minimum standards would be to amend the current regulation defining a participant covered under the plan. A consequence of such an approach would be to redefine the circumstances under which a participant or beneficiary ceases to be a covered participant or beneficiary, as well as the liability of the plan with respect to the participant or beneficiary. Accordingly, any such standards would, if adopted, affect participants, beneficiaries, plan sponsors and fiduciaries subject to title I of ERISA, as well as insurance carriers which compete for the business of issuing annuity contracts. The purpose of this notice is to obtain information from the public on whether minimum standards are necessary and what form such standards might take. A similar notice issued by the Pension Benefit Guaranty Corporation (PBGC) for purposes of title IV of ERISA appears elsewhere in today's Federal Register.

DATES: Comments must be received on or before August 20, 1991.

ADDRESSES: Comments (preferably, at least three copies) should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: "Annuity Standards Notice." All comments received will be available for public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mark Connor, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210; telephone (202) 523–8671; or Diane M. Pedulla, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523–9597. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. Background

Pension plans may purchase annuity contracts in a variety of circumstances. Annuities might be purchased for participants and beneficiaries in connection with the termination of a plan or, in the case of an ongoing plan, annuities might be purchased for participants who are retiring or separating from service with accrued vested benefits. Generally, when a plan purchases an annuity contract on behalf of a participant or beneficiary, whether upon termination of the plan or upon a participant's retirement or separation from service, it is the intention of the plan fiduciary purchasing the annuity to transfer liability for benefits promised under the plan from the plan to the annuity provider (i.e., the insurance company).

Pursuant to regulations issued by the Department, individuals cease to be participants covered under an employee pension plan or a beneficiary receiving benefits under an employee pension plan if the entire benefit rights of the individual are fully guaranteed by an insurance company, insurance service or insurance organization licensed to do business in a State, are legally enforceable by the sole choice of the individual against the insurance company, insurance service or insurance organization, and a contract, policy or certificate describing the benefits to which the individual is entitled under the plan has been issued to the individual. 29 CFR 2510.3–3(d)(2)(ii). Similarly, the Department, the Internal Revenue Service (IRS) and the PBGC have consistently taken the position that, for annual reporting purposes, the term "participant" does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan. See: Form 5500 Annual Return/Report Instructions, Item 7.

Several developments over the past few years have resulted in questions being raised about the security of the pension benefits promised to participants and beneficiaries under annuity contracts purchased on their behalf. In particular, concerns have been expressed about the ability of certain insurance carriers to satisfy their annuity liabilities because their investment portfolios contain substantial amounts of high-risk, high-yield debt securities (also known as "junk bonds") or troubled real-estate loans, or a combination of both.[1] The basis for such concerns is best exemplified by the recent and well publicized developments involving the Executive Life Insurance Companies of California and New York. State regulators in both California and New York were forced to take control of the operations of the Executive Life Companies, whose poor financial condition is principally attributable to substantial investments in high risk bonds.

The Department has long held the view that the selection of an annuity provider is an act governed by the fiduciary responsibility provisions of ERISA, including the exclusive purpose, prudence, and prohibited transaction provisions.[2] While ERISA's fiduciary provisions are intended, among other things, to ensure that the interests of plan participants and beneficiaries are not compromised in the annuity selection process, the Department believes it may nonetheless be appropriate to establish independent

[1] See, in this regard, Insurance Company Failures: Hearings Before the Subcomm. on Oversight and Investigation of the House Comm. on Energy and Commerce, 101st Cong., 2nd Sess. 101–204 (1990).

[2] See : ERISA sections 403(c)(1), 404(a)(1)(A), 404(a)(1)(B), 408, and March 13, 1990 Department of Labor letter to John N. Erienborn.

minimum standards relating to the quality of annuity providers which would serve to ensure a reasonable likelihood that all participants and beneficiaries on whose behalf annuities are purchased will receive their promised pension benefits. In this regard, the Department is considering amending § 2510.3–3(d)(2)(ii)(A) to require plans to purchase annuity contracts from an insurer which, in addition to being licensed to do business in a State, meets certain qualitative standards before the participant on whose behalf the annuity is purchased ceases to be a participant covered under the plan.[3]

The PBGC is also considering whether additional regulatory guidance under title IV of ERISA is necessary with respect to the purchase of annuities as part of the plan termination process, and has invited public comment on a number of relevant issues. Many of the issues identified by the PBGC in the course of its consideration of this problem under title IV of ERISA are equally relevant to consideration by the Department as to what regulatory action, if any, should be taken under title I of ERISA with regard to the purchase of annuity contracts for vested participants in ongoing plans who have retired or separated from service, as well as for participants in terminated plans. In this regard, the Department is working closely with PBGC on issues arising from the purchase of annuity contracts in order to develop a coordinated approach and to prevent any unnecessary duplication of regulation.

B. Issues Under Consideration

This notice is being published in order to obtain information and comments from the public for consideration by the Department in deciding whether to propose a regulation relating to the purchase of annuity contracts for plan participants and beneficiaries, and, if so, whether and to what extent any such regulation should provide minimum standards for determining whether the purchase of an annuity contract would relieve the plan of future liability with respect to the participant or beneficiary for whom the annuity is purchased.

As stated previously, one method for providing such minimum standards would be to amend 29 CFR 2510.3–3(d)(2)(ii)(A). A consequence of such an approach would be that a participant would cease to be a participant covered under the plan only to the extent that prescribed minimum standards are satisfied. Where an annuity contract is purchased from an insurer which does not satisfy the prescribed standards, the participant would continue to be covered under the plan and the plan would continue to be liable for the payment of any benefits to which the participant is entitled under the terms of the plan in the event of the annuity provider's default. The establishment of minimum standards would not limit the continued application of ERISA's fiduciary rules to the selection of annuity providers.

In order to assist interested parties in responding, this notice contains specific questions for comment and describes in some detail the context or background for these questions. The Department will analyze the responses to this notice as part of its process of determining whether regulatory action is necessary or appropriate and what form any needed action should take. To facilitate public comment, each specific question is numbered consecutively, with each question appearing under the heading "Requests for Comments." It is requested that the public, in responding to specific questions contained within this notice, refer to the question number or numbers listed in this notice.[4] Reference to the appropriate question number will assist the Department in analyzing the responses.

The Department also requests comments and suggestions concerning any other approaches or issues pertinent to the Department's consideration of whether to establish qualitative standards applicable to the purchase of annuity contracts on behalf of plan participants and beneficiaries.

Processes for Selecting Annuity Providers

The Department seeks information in several areas concerning the processes by which plan fiduciaries presently select annuity providers. Additional information concerning these processes would assist the Department in determining whether there is a need for additional regulation.

Request for Comments

(1) At what point in the annuitization process does a plan fiduciary begin to solicit bids for the purchase of annuity contracts?

(2) What processes do plan fiduciaries use in soliciting bids from annuity providers?

(3) What factors do plan fiduciaries consider in selecting an annuity provider?

(4) How many bids does a plan administrator typically obtain before selecting the provider, and how long does it typically take for the plan administrator to obtain bids?

(5) What processes do plan fiduciaries use in attempting to resolve conflicts between considerations of price and considerations of quality in selecting annuity providers?

(6) To what extent do plan fiduciaries rely upon independent experts in selecting an annuity provider?

(7) To what extent do plan fiduciaries or their consultants rely, in selecting an annuity provider, upon ratings of insurers by nationally recognized rating services?

(8) What information relating to the financial soundness of annuity providers, other than ratings, do plan fiduciaries rely upon in selecting a provider?

(9) Once a plan fiduciary has selected an annuity provider, how long does it typically take for the annuity contracts to be purchased and issued to participants?

(10)(a) When, in the plan termination process, does a plan become contractually liable to purchase annuities from the selected provider, and, in particular, can the plan be released from its contract to purchase annuities (either with or without any fees or costs to the plan) if the insurer suffers a financial setback prior to final distribution of plan assets?

(b) When, in the plan termination process, do the annuity contracts purchased for plan participants become "irrevocable," i.e., they cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and are legally enforceable by the participant or beneficiary?

(11) To what extent are the fiduciary standards of ERISA, in the absence of any prescribed minimum qualitative standards, sufficient to ensure that participants and beneficiaries receive secure annuities?

[3] 29 CFR 2510.3–3(d)(2)(ii)(A) provides that an individual is not a participant covered under an employee pension benefit plan or a beneficiary receiving benefits under such a plan if the entire benefit rights of the individual are fully guaranteed by a state-licensed insurance company, insurance service or insurance organization, are legally enforceable by the sole choice of the individual against the insurance carrier, and are evidenced by a contract, policy or certificate describing the benefits to which the individual is entitled pursuant to the terms of the plan.

[4] For example, response from the public concerning to what extent plan fiduciaries rely on independent experts in selecting an annuity provider should refer to Question number 6 of this notice.

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State Regulatory Requirements and Guaranty Programs

Historically, regulation of insurance companies has been conducted at the state government level. This is reflected by the enactment in 1945 of the McCarran-Ferguson Act, in which Congress indicated that insurance regulation appropriately should occur at the state rather than the federal level. States have enacted various laws and regulations which are aimed at protecting policyholders and investors against insurer insolvency through such mechanisms as financial examinations, requirements concerning the insurance company's levels of reserves and capital surplus, regulation of the insurer's investments, and guarantee fund coverage. It may therefore be appropriate, if selection requirements for annuity providers are to be promulgated, for the Department to consider the level of protection provided by state regulatory requirements and guaranty programs.

State Regulatory Requirements. Each insurer doing business within a state must submit to the state insurance commissioner an annual statement of its financial affairs. In an increasing number of states, insurers also are required to submit comprehensive annual audited financial reports to the state insurance department. State insurance departments are vested with the authority to examine the financial affairs of any insurance company doing business in the state. The states also conduct financial audits on a periodic basis of insurance companies that do business within their borders.

States historically have established minimum capital and surplus requirements that an insurance company must meet in order to be licensed to sell insurance within the state. Such state requirements, however, typically are not based upon the insurer's investment risks or the volume of business written by the insurer. State insurance laws and regulations also regulate the methodology by which the insurer's policy reserves and surplus are calculated. Such requirements are aimed at assuring that the insurance company's reserves, along with future premium payments and anticipated earnings, will enable the company to pay all future policyholder obligations on a timely basis. In some states, a qualified expert must provide a certification that the insurer's reserves have been correctly valued and are sufficient to provide for the company's financial obligations.

State insurance laws and regulations also regulate the form and amount of the investments that may be made by insurance companies. Permissible investments that may be made by insurance companies, as well as those which are prohibited, are set forth by statute. Many states have placed certain limitations upon the percentage of the insurer's assets that may be placed in a certain category of investment, most frequently with regard to investments in common and preferred stocks and real estate. Recently, as a result of concern about the decline of the high risk bond market, there has been legislative activity in the states with respect to limiting the percentage of the insurer's assets that may be held in bonds that are not rated as "investment grade" by bond rating organizations.

State guaranty Programs. At the present time, state insurance departments are responsible for administering the liquidation of insolvent companies. In addition, forty-seven states and Puerto Rico have established statutory guaranty programs, which are responsible for paying policyholder obligations if the insurer becomes insolvent. The structure of the guaranty programs vary from state to state, but generally they are administered by an association composed of the insurance companies that do business within a state.

State Guaranty programs that cover annuity policies are not funded in advance of an insurer's insolvency, but rather are financed on a "post-assessment" ("pay-as-you-go") basis. When an insolvency occurs, solvent insurers are assessed certain amounts (generally based upon a percentage of the premiums they collect) that are used to pay the obligations to policyholders of insolvent companies. In some states, there is a cap (generally based upon premium volume) on the amount that can be assessed each year against a solvent company.

Most state guaranty programs have placed certain limitations upon the policyholder obligations that they cover. In most states, the guaranty program is not required to guaranty claims under annuity contracts above a certain dollar amount per policyholder, usually $100,000.

State guaranty programs also typically have residency requirements. Generally, a state guaranty program is not responsible for obligations incurred by insurance companies that are not licensed to do business within the state. Further, even if the insolvent insurer is licensed to do business in the state, the state guaranty program may provide no coverage or only limited coverage to individuals who are not residents of the state at the time of the insurer's insolvency. The National Association of Insurance Commissioners (NAIC) has proposed model legislation that provides for reciprocity among state guaranty programs with respect to residency requirements.

The Department is interested in receiving comments concerning the amount of protection provided to annuitants by state regulatory requirements and guaranty programs and concerning whether and how present state regulation and guaranty programs could be incorporated into any regulation by the Department concerning the selection of annuity providers.

Request for Comments

(12) To what extent do state regulatory requirements, in combination with state guaranty programs (in states where they exist), sufficiently assure that annuitants will receive the amounts promised to them under their annuity contracts?

(13) In which particular states do (i) state regulatory requirements, and (ii) state guaranty programs, serve as a model with respect to the protection they provide annuitants?

(14) Are the funding mechanisms and requirements under state guaranty programs adequate to assure that policyholders will not experience losses as the result of insurance company insolvencies?

(15) To what extent do (i) residency requirements and (ii) other limitations significantly impact upon coverage in state guaranty programs with regard to the protection of annuitants?

(16) Should any Department of Labor regulation concerning the selection of annuity providers take into account the strength of regulatory requirements and guaranty programs in the states where the plan administrator, insurer, or participants are domiciled? If so, should state requirements and guaranty programs be considered in conjunction with other requirements, or as an alternative to other requirements?

Ratings By Nationally Recognized Rating Services

There presently are several nationally recognized rating services, such as A.M. Best Company, Inc. ("Best"), Duff & Phelps, Inc. ("Duff"), Moody's Investor's Inc. ("Moody's"), and Standard & Poor's Corporation ("S & P"), which assess the financial strength or claims-paying ability of insurance companies. The rating organizations, which are operated by private-sector enterprises, generally will provide a rating, for a fee, at the request of an insurance company. In some instances, however, the rating organizations will rate an insurance company on their own initiative. While the coverage of the insurance industry by nationally recognized ratings services is comprehensive, some insurance companies, typically of small to medium size, may not have received a rating or may have only a single rating from a rating service.

In rating insurance companies, the rating organizations examine factors such as their profitability, capital adequacy, liquidity, claims-paying history, investment risks, and management quality. The assessment of these factors is derived from financial statements filed by the insurance companies with state regulatory agencies, other financial information collected by the ratings organizations (including information obtained from non-public sources), meetings with the insurance company's management, and other sources. Although the methodologies the ratings services utilize for rating companies are basically similar, there are some differences among the organizations concerning their sources of information, the specific factors they consider in their assessments, and how they weigh those factors.

The rating organizations assign specific rating classifications to the insurance companies they rate. The highest level of rating (e.g. A+ from Best, AAA from Duff, Aaa from Moody's or AAA from S & P) is assigned to insurance companies that, in the opinion of the rating organization, have achieved "superior" or "exceptional" financial security with respect to their policyholder and other contractual obligations. The second highest rating level (e.g., A from Best, AA from Duff, Aa from Moody's, or AA from S & P) is assigned to insurance companies that have "excellent" or a "very high" financial strength or claims paying ability, but nevertheless are susceptible to risk if adverse economic or underwriting changes occur in the future. A lower rating denotes a lower level of financial security and indicates that the claims-paying ability of the insurance company may be speculative with respect to future obligations. Insurance companies that are facing liquidation under state insolvency proceedings are assigned a rating level below the level of "C" or are not assigned a rating by the rating organization.

If the Department were to establish minimum standards for the selection of annuity providers, the utilization of these pre-existing ratings could have certain advantages, since the rating services have developed expertise in assessing the financial strength of insurance companies, and their ratings have obtained a certain level of acceptance in the marketplace.

Request for Comments

(17) Do ratings by nationally-recognized rating services provide a sufficiently reliable assessment of an annuity provider's capacity to meet the obligations of its annuity contracts?

(18) How current is the information upon which the ratings are based, and how often are the ratings updated? Does the frequency with which ratings are updated have an effect upon their reliability concerning the annuity provider's capacity to meet its annuity obligations?

(19) If the Department were to adopt minimum standards relating to the selection of annuity providers, should such standards be based on the ratings from rating organizations? If so, which particular ratings services should be used, *i.e.*,

(a) Are there any significant differences among rating organizations, such as Best, Duff, Moody's, and S & P, with respect to whether their ratings are reliable measures of the ability of insurance companies to meet their future annuity contract obligations?

(b) How equivalent are the rating levels assigned by the various ratings organizations (e.g., is an A rating from Best, an AA from Duff, an Aa from Moody's, and AA from S & P essentially an equivalent measure of an insurance company's financial security)?

(20) If the Department were to adopt minimum standards based on ratings, should the ratings be used as the sole standard, or should they be used in conjunction with other criteria which relate to the financial soundness of the insurer? If so, what other criteria should be used?

(21) If minimum standards based on ratings were adopted,

(a) What particular levels, or combination of levels, of ratings from the rating services should the Department require? For example, should the required rating level be the highest (e.g., AAA from S & P and Duff, Aaa from Moody's, or A+ from Best), second highest (e.g., AA from S & P and Duff, Aa from Moody's, or A from Best), or the third highest (e.g., A from S & P, Duff, or Moody's, or A– from Best)?

(b) How many ratings should be required and should this requirement depend on the size of the insurer?

(c) How should "watchlist" and "contingent" ratings be treated?

(22) Should any standards that are promulgated by the Department require that the insurance company be given an acceptable rating from all the ratings organizations that rate it?

(23) If minimum standards based on ratings were adopted, should an insurance company be required to have maintained the specified rating, or a higher rating, for a specific number of years, if so, how many?

(24) If a rating is required to have been maintained for a particular number of years to meet a ratings-based minimum standard, what, if any, exceptions should be considered for new or previously unrated insurance companies, including newly established subsidiaries of rated-parent insurance companies?

Other Criteria Concerning Financial Security

As discussed above, under state regulatory schemes, insurance companies must satisfy various financial requirements, including those related to the company's reserves, capital surplus, types of investments, and other criteria concerning its financial condition. However, there may be wide differences among states in the degree to which such regulatory requirements protect annuity contract holders against potential loss. It also might be administratively impractical for the Department to base regulatory requirements upon state requirements, particularly in light of the variation in state regulatory practices and the possibility that plan administrators, insurers, and pension plan participants may be domiciled in different states. Thus, an appropriate regulatory option might be for the Department to develop independent criteria for the selection of the insurer. Ideally, such criteria might be comprised of objective measures of the insurer's financial security that would not be difficult for plan administrators or their consultants to apply in making annuity provider selections, or for the Department to apply in reviewing those selections.

Request for Comments

(25) Should the Department promulgate minimum standards for the selection of annuity providers based

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upon the insurer's reserves, surplus, type of investments, and other similar objective criteria that relate to the financial security of the insurer? If so, what should they contain?

(26) If specific criteria for the selection of annuity providers are established, should such criteria comprise the entire basis for any regulatory requirement, or should they be used in conjunction with other considerations, such as ratings from nationally-recognized ratings organizations?

(27) If the Department were to develop its own criteria for the selection of the annuity provider, what should they contain?

(28) If minimum standards are established, should the Department require a certification from a qualified expert (in accordance with state law, if state law provides for a financial valuation of the insurer's assets and liabilities) to authenticate that the insuror meets these criteria?

(29) If minimum standards are established, under what circumstances, if any, should a plan be permitted to purchase annuities from providers that do not meet specified requirements?

Reinsurance and Other Risk and Cost Sharing Arrangements in the Insurance Industry

Reinsurance is the process whereby insurance companies spread their risk exposure by transferring portions of specific policy liability to other insurance companies in return for their receiving part of the premiums or other payments. For reinsurers, reinsurance provides an opportunity to share, for a fee, in the business generated by other companies without the responsibility for developing customers and handling claims. Issuers of annuity contracts who obtain reinsurance are benefited by the reduction in their risk exposure on specific policies.

There may be other cost and risk sharing arrangements that exist both formally and informally within the insurance industry. The Department is interested in learning more about reinsurance and other risk and cost sharing arrangements within the insurance industry, and whether such arrangements provide protection to annuitants in the event that the insurance company that issues the annuity contract fails.

Request for Comments

(30) To what extent do reinsurance and other formal and informal risk and cost-sharing arrangements exist among insurance companies with respect to annuity contracts?

(31) What protection do such existing risk and cost-sharing arrangements provide to annuitants?

(32) To what extent, and in what manner, should such risk and cost sharing arrangements be considered in any regulations the Department may issue concerning the selection of annuity providers?

C. Impact of Possible Regulatory Activity

The purpose of any regulatory activity by the Department concerning the selection of annuity providers is to assure that the annuities distributed to plan participants upon separation from service, retirement or upon termination of the plan are financially secure. However, the Department recognizes that its regulation of the annuity selection decision may have substantial impact upon plan sponsors, annuity providers and plan policyholders, plan participants and beneficiaries, other federal and state government agencies, and other parties involved in the operation of the private sector pension system. For example, Department regulation could have the effect of reducing the number of qualified providers that could sell annuities to pension plans, thereby concentrating competition within the insurance industry or within the annuity products segment of it. Department regulation could also have the impact of increasing prices and decreasing the availability of annuities for both pension plans and other purchasers of annuity contracts.

Request for Comments

(33) For the regulatory options identified in this Advance Notice, the Department requests cost/benefit data and comment concerning the impact of those options upon the parties involved in the pension system and the public.

(34) If there are other regulatory approaches concerning the selection of annuity providers that the Department could adopt that would provide protection to pension plan participants and beneficiaries while minimizing possible detrimental effects of regulation, the Department requests cost/benefit data and comment concerning those approaches.

Signed at Washington, DC, this 18th day of June, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 91-14835 Filed 6-20-91; 8:45 am]

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Pension Benefit Guaranty Corporation

29 CFR Part 2617

RIN 1212-AA47

Selection of Annuity Providers for Terminating Pension Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking requests public comment concerning possible regulatory action by the Pension Benefit Guaranty Corporation ("PBGC") that would apply to the selection by pension plan administrators of annuity providers as part of the plan termination process under title IV of the Employee Retirement Income Security Act of 1974, as amended. PBGC regulations presently require that a terminating pension plan, in purchasing "irrevocable commitments" (annuity contracts) for the plan's participants, select an annuity provider that is "authorized to do business as an insurance carrier under the laws of a State or the District of Columbia." Additional regulatory requirements regarding annuity provider selection in terminating plans may be needed to ensure that participants receive financially-sound annuity contracts. The purpose and intended effect of this notice are to obtain information from the public on whether additional regulation by the PBGC is needed and what it might contain.

A similar notice issued by the Pension and Welfare Benefits Administration (PWBA) of the Department of Labor for purposes of title I of ERISA appears elsewhere in today's Federal Register.

DATES: Comments must be submitted on or before August 20, 1991.

ADDRESSES: Comments should be addressed to Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 7100, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Angela Arnett, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8820 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

Title IV of the Employee Retirement Income Security Act of 1974, as amended, (29 U.S.C. 1301–1461) ("ERISA"), which established the PBGC and its insurance programs, requires the PBGC to guarantee the payment of basic pension benefits in covered single-employer plans that terminate with insufficient assets to pay those benefits. Title IV also provides that the PBGC is to administer the statutory termination procedure for all terminating plans covered by the insurance program. See generally ERISA sections 4022, 4041(b), 4041(c), 4042, 4044, 4061.

ERISA's "standard termination" procedures apply to terminations of single-employer plans where plan assets are sufficient to satisfy all of the plan's benefit liabilities. ERISA section 4041(b). Under these procedures, the PBGC oversees the plan administrator's allocation of plan assets and distribution of benefits to ensure that plan participants receive the proper benefits upon termination. See generally ERISA sections 4041(b), 4044; 29 CFR part 2617.[1] In distributing the plan's assets, the plan administrator is required to provide for all benefit liabilities either (1) by the purchase of "irrevocable commitments" (annuity contracts) from an insurer, or (2) by providing benefits in other forms permitted by the provisions of the plan and any applicable regulations. ERISA section 4041(b)(3). The final distribution of all plan assets by the plan administrator, followed by the plan administrator's certification that such distribution has been accomplished, completes the plan termination process under a standard termination. ERISA section 4041(b)(3); 29 CFR 2617.20–2617.23.[2]

PBGC regulations provide that generally, when a pension plan terminates under standard termination procedures, any benefit payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of an "irrevocable commitment." 29 CFR 2617.4. An "irrevocable commitment" is defined in 29 CFR 2616.2 and Standard Termination Filing Instructions for PBGC Forms 500 and 501. The term means "an obligation by an insurer to pay benefits to a named plan participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary." For purposes of this advance notice, the term "annuity contract" has the same meaning as "irrevocable commitment." ERISA and PBGC regulations (29 CFR 2617.4) also allow a participant or beneficiary of a plan, with applicable spousal consent, to elect an alternative form of benefit distribution, such as a lump sum payment, if it is permitted under the provisions of the plan and applicable ERISA and Internal Revenue Code provisions.

The PBGC in its current regulations has provided plan administrators with only one express standard for the selection of an insurer to provide annuity contracts to participants in terminating sufficient plans. All such annuities must be purchased from "a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia." 29 CFR 2617.2, 2617.4, 2617.21(a).

The Purpose of This Advance Notice

The purpose of this advance notice of proposed rulemaking is to obtain information and comment from the public concerning whether additional regulation concerning the selection of an annuity provider is needed, and, if so, what such regulation should include. The PBGC is also interested in receiving comment concerning the impact that any regulatory activity might have upon the private sector pension system.

In order to assist interested parties in responding, this notice contains specific questions for comment and describes in some detail the context or background for these questions. The PBGC will analyze the responses to this notice as part of its process of determining whether regulatory action is necessary or appropriate and what form any needed action should take.

The public should keep in mind that the selection of an annuity provider by a pension plan is subject to the fiduciary requirements of title I of ERISA. The fiduciary requirements are administered and enforced by the Pension and Welfare Benefits Administration of the Department of Labor (PWBA). The discussion in this advance notice of possible standards or other regulatory requirements for the selection of annuity providers in terminating plans is not intended to address or define title I fiduciary requirements.

To facilitate public comment, we have numbered our specific questions consecutively, with each question appearing under the heading "Requests for Comments." We request that the public, in responding to specific questions contained within this notice, refer to the question number or numbers listed in this notice.[3] Reference to the appropriate question number will assist us in analyzing the responses.

The Possible Need for Regulatory Action

In the majority of plans that recently have terminated under standard termination procedures, all participants received their benefits as a lump sum. Nevertheless, approximately 20% of all pension plans that terminated in the latter part of 1990 purchased annuity contracts for at least some participants and beneficiaries. Although the purchase of annuities by terminating plans tends to occur in a higher percentage of large as compared to small pension plans, annuities have been purchased by all sizes of terminating plans.

To date, we know of no participant or beneficiary who has permanently lost benefits because of default by an insurance company on annuities purchased upon plan termination. We note, however, that in April, 1991, Executive Life Insurance Company, having sustained investment losses as a result of, among other things, the decline of the market for high risk bonds (also known as "junk bonds"), was placed in a court-supervised conservatorship by

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[1] PBGC regulations concerning termination procedures for sufficient single-employer plans are in the process of being revised. On September 2, 1987, PBGC published a notice of proposed rulemaking in the Federal Register, 52 FR 33318, that would replace the PBGC regulations on Notice of Intent to Terminate (29 CFR part 2616) and Determination of Plan Sufficiency and Termination of Sufficient Plans (29 CFR part 2617), as modified by the Notice of Interim Procedures, 51 FR 12851 (April 16, 1986). The regulations to be replaced were, to a great extent, rendered obsolete by Congressional passage of the Single-Employer Pension Plan Amendments Act of 1986 (Pub. L. 99-272) ("SEPPAA"). Subsequently, Congress enacted the Pension Protection Act (subtitle D of title IX of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203) ("PPA"), further amending ERISA. The PBGC thereafter published a Notice of Revised Termination Rules, 55 FR 1985 (January 22, 1990), noting that the final regulations to be issued following consideration of comments on the proposed regulations will reflect the PPA revisions to ERISA as well as the SEPPAA revisions.

[2] ERISA, as amended by SEPPAA and PPA, also provides that the standard termination procedures in ERISA section 4041(b)(3) apply to pension plans that qualify for distress terminations under ERISA section 4041(c) if plan assets are sufficient for benefits guaranteed by the PBGC but are not sufficient to provide for all benefit liabilities. ERISA section 4041(c)(2)(B)(ii).

[3] For example, a response from the public concerning the point in the plan termination process in which plan administrators begin to solicit bids for the purchase of annuities should refer to Question number 4 of this notice.

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the Insurance Commissioner of the State of California. At the present time, Executive Life is, by court order, restricted to paying only 70% of the amounts owed under retirement annuity policies. The court order also prohibits the company from commencing annuity payments to policyholders not yet in pay status. The California Commissioner has stated that he is seeking ways to rehabilitate the financial condition of Executive Life; thus, it is too soon to determine whether any payments under pension annuity contracts will be permanently affected.

Insurance companies are regulated by the states, and not by the federal government. Forty-seven states (soon to be 48) and Puerto Rico have guaranty arrangements that protect annuity contracts sold by licensed insurers. However, as discussed more fully below, these guaranty arrangements are not pre-funded and have limits and exclusions.

Different insurance companies have different investment philosophies, acquire and maintain different portfolios based on those philosophies, and are subject to different regulations depending upon the states in which they are doing business. Changes in economic conditions over the last several years have heightened those differences as some companies that may have chosen to seek higher returns by riskier investments have failed to achieve their anticipated investment returns. In particular, the recent decline of the high risk bond market and of certain sectors of the real estate markets have raised public concern that annuities purchased from some insurance companies may not be secure.

It has been suggested that this concern could be eliminated for certain of those annuity policyholders if PBGC were to insure annuity contracts purchased from private sector insurance companies for participants in terminating plans. However, after a thorough examination of ERISA's statutory provisions, the PBGC has concluded that it is not authorized to guarantee benefits provided under annuity contracts purchased from private sector insurance companies in the event that the insurer is unable to make payments under such contracts. A summary of the analysis follows.

The PBGC is not authorized to guarantee annuity contracts. The plan termination insurance program under title IV of ERISA was enacted based upon the Congressional finding that "owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits." ERISA section 2(a). Thus, title IV of ERISA was enacted, and the PBGC was established, so that benefits would be guaranteed in plans that terminate with insufficient funds to pay those benefits.

Since the inception of the single-employer insurance program, the program's "insurable event" has been plan termination. Thus, for example, ERISA section 4022(a) provides: "Subject to the limitations contained in subsection (b), the [PBGC] shall guarantee in accordance with this section the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a single-employer plan which terminates * * *." (Emphasis added.) Similarly, ERISA section 4061 provides that "[t]he [PBGC] shall pay benefits under a plan terminated under this title subject to the limitations and requirements of subtitle B of this title." (Emphasis added.) See also *PBGC* v. *LTV*, 110 S.Ct. 2668, 2672 (1990). PBGC is not authorized to pay benefits upon the occurrence of any other event, such as the failure of an insurance company.

For single-employer plans terminating under standard termination procedures, the "insurable event" of plan termination is completed upon the final distribution of plan assets. The distribution of assets is accomplished when all benefit liabilities under the plan are satisfied through the purchase of annuity contracts, the payment of lump sum amounts, or the distribution of benefits in other forms permitted by the plan and by PBGC and Internal Revenue Service regulations.

Accordingly, the distribution of plan assets under title IV's standard termination procedures, in the correct amount and proper form, extinguishes the PBGC's guarantee obligation. Cf. ERISA section 4041(b)(4) (PBGC is obligated to insure the payment of guaranteed benefits if the plan administrator has not made a proper distribution, i.e., if a participant is overlooked or paid an incorrect amount and if the plan administrator does not promptly correct the error in distribution); H.R. Rep. No. 99–241, part 2, 99th Cong., 2d Sess., reprinted in, 1986 U.S. Code Cong. & Admin. News 706. For example, PBGC does not stand behind benefits distributed in a lump sum payment, nor protect from subsequent loss a participant who chooses to "roll over" a lump sum distribution into an Individual Retirement Account. Similarly, the failure of an insurance company subsequent to a proper distribution of plan assets through the purchase of irrevocable annuity contracts does not result in an insurable event or reinstate the PBGC guarantee.

It is also clear from the manner in which the PBGC's single-employer insurance program is financed that Congress did not intend for PBGC to guarantee benefits that have been satisfied by a full distribution of plan assets upon plan termination. The PBGC's guarantee is financed primarily through the payment of premiums by covered plans. ERISA section 4007(a) provides: "Premiums shall continue to accrue [for a sufficient plan] until a plan's assets are distributed pursuant to a termination procedure [under section 4041(b)]." Thus, once a sufficient plan has terminated in a standard termination, no further premiums are paid with respect to that plan.[4] Had Congress intended the PBGC to guarantee against a subsequent failure of the insurance company from which annuities were purchased, it surely would not have provided that the plan sponsor's premium obligation ends at plan termination; rather, it would have designed a premium structure that would take into account the potential liability for such a post-termination event.[5]

In a 1981 preamble to PBGC's regulation concerning the termination of "sufficient" plans, the PBGC responded to a comment on an earlier notice of proposed rulemaking by indicating that the PBGC would pay benefits "in the unlikely event that an insurance company should fail and its obligations cannot be satisfied (e.g., through a reinsurance system)." 46 FR 9532, at 9534 (January 28, 1981). This preamble statement appears to have been made without any legal analysis; the PBGC has found no legal memoranda or other document that supports it. And, after a detailed analysis of the statutory provisions, PBGC has concluded that its earlier preamble statement was incorrect. For the reasons summarized above, PBGC has determined that it is not authorized to guarantee benefits payable under annuity contracts.

The guarantee of annuity contracts is appropriately a state function. It is the PBGC's view that the guarantee function with respect to annuity contracts should remain with the States. Historically, matters relating to the regulation of insurance companies has occurred at the state government level. This is reflected by the enactment in 1945 of the McCarran-Ferguson Act, 15 U.S.C. 1011–1015, in which Congress indicated that insurance regulation should occur at the state rather than the federal level. Also, as previously mentioned, almost all of the states have guaranty programs. If these state guaranty programs are not adequate, then the States and the insurance industry should be encouraged to make them adequate.

A federal program for the guarantee of annuity contracts purchased by pension plans would raise many complex and contentious issues. As discussed above, no premiums are owed to the PBGC for former plan participants whose benefits have been distributed through a pension plan's purchase of annuities. Insuring annuity contracts purchased by pension plans could increase the exposure of PBGC's premium payers to another $50 billion. The most equitable method to fund a guaranty program for annuity contracts probably would be to establish a risk-adjusted premium structure. However, that would be difficult to accomplish, since there has been no loss experience with respect to annuity contracts. There are also other complicated issues that would have to be addressed. These include how to provide for the guarantee of the estimated $50 billion in annuities already in place, and how to integrate a federal program with existing state guaranty programs. In addition, if the federal government were to guarantee annuities, the States might have an incentive to exclude from state guaranty protection annuity contracts covered by the federal guarantee. And, insurance companies might feel they could invest in lower quality assets without lowering their prices if a federal guarantee were standing behind their annuity products. As insurance companies are now regulated by the States, a federal guarantor would be unable to regulate the investment decisions of the insurer unless it was specifically authorized to do so by Congress.

The PBGC seeks information concerning the risk to annuity policyholders. The PBGC is concerned that annuity contracts purchased for participants and beneficiaries in terminating pension plans be financially secure. However, the PBGC presently lacks information concerning the extent to which there is a risk that some insurance companies will become insolvent and will be unable to meet their obligations under irrevocable annuity contracts, and that such obligations will not be fully provided for by the insurance industry and/or state guaranty funds. In the Executive Life situation, for example, the company may be financially rehabilitated; other insurance companies may purchase some of Executive Life's lines of business; or the State of California, the insurance industry, and the securities industry might stand behind annuity contracts issued by Executive Life. In any event, it is too soon to tell whether any annuitant who was a former participant of a pension plan permanently will lose benefits because of Executive Life's conservatorship. Through publishing this notice, the PBGC seeks to obtain information from the public concerning whether an "insurer insolvency problem" exists with respect to annuity contracts, and, if so, what the scope of the problem is.

Requests for Comments

[1] To what extent are some annuity providers in the insurance industry in danger of becoming insolvent?

[2] If some providers are in danger of becoming insolvent, what would be the effect on annuity policyholders if a provider did become insolvent?

[3] Do the answers to the first two questions vary from state to state, depending upon such factors as insurance industry practice in different areas, the strength of state insurance regulation, and the existence and strength of state guaranty arrangements?

Annuity Purchase Procedures

The PBGC's knowledge is incomplete in several areas concerning the procedures by which plan administrators presently select annuity providers. Additional information concerning these procedures would assist the PBGC in determining whether there is a need for additional regulation and, if so, how such regulation might be structured.

Requests for Comments

[4] At what point in the plan termination process does a plan administrator begin to solicit bids for the purchase of annuities?

[5] How many bids does a plan administrator typically obtain before selecting the provider, and how long does it typically take for the plan administrator to obtain bids?

[6] How far in advance of final distribution of assets is the annuity provider generally selected, and are there any reasons why the selection of the provider could not or should not occur at an earlier or later point in the plan termination process?

[7] (*a*) When in the plan termination process does the plan become contractually liable to purchase annuities from the selected provider, and, in particular, can the plan be released from its contract to purchase annuities (either with or without any fees or costs to the plan) if the insurer suffers a financial setback prior to final distribution of plan assets?

(*b*) When in the termination process do the annuity contracts purchased for plan participants become "irrevocable," i.e., non-cancellable under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary, and legally enforceable by the participant or beneficiary?

Possible Options for Regulation

If a need for PBGC regulation concerning the selection of annuity providers is established, the PBGC must then determine the regulation's structure and content.[6] Several possible options are identified below, but PBGC is also interested in eliciting comments identifying other regulatory approaches.

Assuming that PBGC decided to regulate in this area, it would amend its regulations to provide that a plan could not terminate in a standard termination unless the plan complied with PBGC's requirements for the selection of annuity providers. For example, if the PBGC decided to adopt specific standards for the selection of annuity providers (see discussion below), and the annuity provider selected by the plan administrator did not meet those standards, the PBGC would issue a "notice of noncompliance" in accordance with ERISA section 4041(b)(2)(C). As under present PBGC regulations, the impact of a "notice of noncompliance" under any amended PBGC regulations would be that the plan

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[4] The amount of the annual premium owed by a plan is based on the number of participants in the plan. ERISA section 4006. Under PBGC regulations (29 CFR 2610.2, 2620.22) no premium is owed for an individual who has received an irrevocable commitment from an insurer in satisfaction of his or her full plan benefit, because that individual no longer is a participant.

[5] Congress has recently reinforced the concept that the PBGC's premium structure is based on the financial liabilities to which the PBGC is exposed. Until 1987, the premium was simply a flat rate dollar amount, per year, per participant. In 1987, however, Congress enacted PPA to strengthen the single-employer insurance program. As part of the PPA reforms, Congress amended ERISA section 4006 to revise the single-employer plan premium structure. Under the revised structure, the existing flat rate premium was supplemented by an additional premium amount that is based on the amount of a plan's underfunding. Plan underfunding is, of course, a measure of the PBGC's financial exposure

[6] It has been suggested that, even if a problem exists, federal regulation may be unwarranted, i.e., that the problem could be handled by strengthening state regulation, including state guaranty funds. The PBGC, of course, has no control over state legislatures, and notes that two states and the District of Columbia have not put established guaranty funds. However, the PBGC will monitor and evaluate state legislative and regulatory developments relevant to the security of annuity policies in considering whether any federal regulatory activity is appropriate.

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administrator would not be permitted to commence the final distribution of plan assets and the standard termination proceeding would be nullified.

Assessment by the Plan Administrator

One option is for the PBGC to provide by regulation that a plan administrator be required to consider certain criteria in selecting the insurer, such as its ratings by nationally recognized ratings services, the amount of its reserves, its investment portfolio, and/or the protection provided by state guaranty arrangements in the event of the insurer's insolvency. See discussion below. Under this approach, the PBGC would not establish specific standards for the selection of annuity providers, but would require instead that the plan administrator assess the financial strength of the annuity provider and certify that such an assessment was made.

Requests for Comments

[8] Should the PBGC adopt a regulation requiring the plan administrator to assess the financial strength of the annuity provider before selecting the provider, and if so, what factors should the plan administrator be required to assess?

[9] Would such a regulatory approach provide sufficient guidance and adequate protection to assure that participants and beneficiaries in terminating plans will receive financially sound annuity policies?

Assessment by Independent Experts

The PBGC could also require the plan administrator to obtain the opinion of an independent expert before it makes its selection of an annuity provider for the terminating plan. Such experts would have knowledge that plan administrators might generally lack concerning the financial strength of prospective annuity providers.

Requests for Comments

[10] Should the PBGC adopt a regulation requiring the plan administrator to obtain the opinion of an independent expert before selecting an annuity provider?

[11] Would such a requirement provide adequate protection to participants and beneficiaries in terminating plans?

[12] If such a requirement is adopted, what qualifications should such independent experts have?

[13] Should the PBGC specify the criteria to be used by independent experts in assessing the financial security of the provider?

Standards for Annuity Provider Selection

Another option would be for the PBGC to establish by regulation specific standards for the financial security of the annuity provider. Under this approach, the plan administrator would be required to select an annuity provider that meets the PBGC's standards. As discussed in the next section of this notice, such standards could be based upon a wide range of criteria, including ratings by nationally recognized rating services, the amount of the insurer's reserves, its investment portfolio, and/or the availability of state guaranty programs that would provide protection to annuitants.

Requests for Comments

[14] Should the PBGC adopt by regulation standards which would govern the plan administrator's selection of the annuity provider?

[15] Would such standards provide adequate protection to participants and beneficiaries in terminating plans?

Criteria for the Selection of Annuity Providers

The preceding section identified some regulatory approaches that the PBGC could adopt with respect to the selection by plan administrators of annuity providers. This section focuses upon the specific criteria that could form the content of any regulatory option that is chosen.

State Regulatory Requirements and Guaranty Programs

As discussed above, historically the regulation of insurance companies has occurred at the state government level. States have enacted various laws and regulations which are aimed at protecting policyholders against insurer insolvency through such mechanisms as financial examinations, requirements concerning the insurance company's levels of reserves and capital surplus, regulation of the insurer's investments, and guaranty fund coverage. It may therefore be appropriate for any regulation to consider the level of protection provided by state regulatory requirements and guaranty programs.

State regulatory requirements. Every state requires each insurer doing business within a state to submit to the state insurance commissioner an annual statement of its financial affairs. In an increasing number of states, insurers also are required to submit comprehensive annual audited financial reports to the state insurance department. State insurance departments are vested with the authority to examine the financial affairs of any insurance company doing business in the state. The states also conduct financial audits on a periodic basis of insurance companies that do business within their borders.

States historically have established minimum capital and surplus requirements that an insurance company must meet in order to be licensed to sell insurance within the state. State insurance law and regulations also regulate the methodologies by which the insurer's policy reserves and surplus are calculated. Such requirements are aimed at assuring that the insurance company's reserves, along with future premium payments and anticipated interest earnings, will enable the company to pay all future policyholder obligations on a timely basis. In some states, a qualified expert must provide a certification that the insurer's reserves have been correctly valued and are sufficient to provide for the company's financial obligations. New York, which is viewed by some as having among the strictest insurance regulation standards, requires an actuarial valuation that reserves are adequate to meet liability claims under a variety of interest rate scenarios.[7]

State insurance laws and regulations also regulate the form and amount of the investments that may be made by insurance companies. Permissible investments, as well as those which are prohibited, are set forth by statute. Many states have placed certain limitations upon the percentage of the insurer's assets that may be placed in a certain category of investment, most frequently with regard to investments in common and preferred stocks and real estate. Recently, as a result of concern about the decline of the high risk bond market, there has been legislative activity in the states with respect to limiting the percentage of the insurer's assets that may be held in bonds that are not rated as "investment grade" by bond rating organizations.

State guaranty programs. At the present time, state insurance departments are responsible for administering the liquidation of insolvent companies. In addition, forty-seven (soon to be 48) states and Puerto Rico have established guaranty programs, which are responsible for

[7] Insurance Department, State of New York, Regulation No. 126, "Valuation of Annuity and Single Premium Life Reserves" (1990). See also Insurance Department, State of New York, Regulation No. 128, "Market Value Separate Accounts Funding Guaranteed Benefits; Separate Account Operations and Reserve Requirements" (1990).

paying policyholder obligations if the insurer becomes insolvent. The structure of the guaranty programs vary from state to state, but generally they are administered by an association composed of the insurance companies that do business within the state.

State guaranty programs that cover annuity policies are not funded in advance of an insurer's insolvency, but rather are financed on a post-assessment ("pay-as-you-go") basis. When an insurer becomes insolvent, other insurers are assessed certain amounts (generally based upon a percentage of the premiums they collect) that are used to pay the obligations to policyholders in insolvent companies. In some states, there is a cap (generally based upon premium volume) on the amount that can be assessed each year against an insurance company.

Most state guaranty programs have placed certain limitations upon the policyholder obligations that they cover. Most of the guaranty programs do not guarantee annuity policy obligations above a certain dollar amount per policyholder, usually $100,000.

State guaranty programs also typically have residency requirements. Generally, a state guaranty program will not cover obligations incurred by insurance companies that are not licensed to do business within the state. Further, even if the insolvent insurer is licensed to do business in the state, the state guaranty program may provide no or limited coverage to individuals who are not residents of the state at the time of the insurer's insolvency. The National Association of Insurance Commissioners ("NAIC") has proposed model legislation that provides for reciprocity among state guaranty programs with respect to residency requirements.

Requests for Comments

[16] Do state regulatory requirements, in combination with state guaranty programs (in the states where they exist), sufficiently assure that annuitants will receive the amounts promised to them under irrevocable annuity contracts?

[17] If state guaranty programs do not provide adequate protection, to what extent (if at all) is that the result of (a) a lack of adequate funding mechanisms and requirements for such programs; (b) residency requirements; (c) limitations upon the benefit amounts covered; and (d) other factors?

[18] In which particular states do (a) state regulatory requirements, and (b) state guaranty programs, serve as a model with respect to the protection they provide annuitants?

[19] Should any PBGC regulation concerning the selection of annuity providers take into account the strength of regulatory requirements and guaranty programs in the states where the plan administrator, insurer, or participants are domiciled? If so, should state requirements and guaranty programs be considered in conjunction with other requirements, or as an alternative to other requirements?

Ratings by Nationally Recognized Rating Services

There presently are several nationally recognized ratings services, such as A.M. Best Company, Inc. ("Best"), Duff & Phelps, Inc. ("Duff"), Fitch Investors Service, Inc. ("Fitch"), Moody's Investor's Inc. ("Moody's), and Standard & Poor's Corporation ("S&P"), which assess the financial strength and claims-paying abilities of insurance companies. The ratings services, which are operated by private-sector enterprises, generally will provide a rating at the request of an insurance company, for a fee. In some instances, however, the rating services will rate an insurance company on their own initiative. While the coverage of the insurance industry by nationally recognized ratings services is comprehensive, some insurance companies, typically of small to medium size, may not have received a rating or may have only a single rating from a rating service.

In rating insurance companies, the ratings services examine factors such as their profitability, capital adequacy, liquidity, claims-paying history, investment risks, and management quality. The assessment of these factors is based on financial statements filed by the insurance companies with state regulatory agencies, other financial information collected by the ratings services (including information obtained from sources that are non-public), meetings with the insurance company's management, and other sources. Although the methodologies the ratings services utilize for rating companies are basically similar, there are some differences among the services concerning their sources of information, the specific factors they consider in their assessments, and how they weigh those factors.

The ratings services assign specific rating classifications to the insurance companies they rate. The highest level of rating (e.g., A+ from Best, AAA from Duff, Fitch, and S&P, or Aaa from Moody's) is assigned to insurance companies that, in the opinion of the rating services, have achieved "superior" or "exceptional" financial security with respect to their policyholder and other contractual obligations. The second highest rating level (e.g., A from Best, AA from Duff, Fitch, and S&P, or Aa from Moody's) is assigned to insurance companies that have "excellent" or a "very high" financial strength or claims-paying ability. The third highest rating level (A from Best, and A from Duff, Fitch, Moody's, or S&P) is assigned to companies that have a "good," "high," or "strong" claims-paying ability, but nevertheless are susceptible to risk if adverse economic conditions or underwriting changes occur in the future. A rating below the level of "A" denotes a lower level of financial security and indicates that the claims-paying ability of the insurance company may be speculative with respect to future obligations. Insurance companies that are facing liquidation under state insolvency proceedings are assigned a rating level below the level of "C" or are not assigned a rating by the rating services.

If the PBGC were to adopt additional regulatory requirements concerning the selection of annuity providers, one alternative would be for the PBGC to base its regulatory requirements at least in part upon the ratings issued by nationally recognized ratings services. For example, plan administrators or independent experts employed by them might be required to consider ratings by designated nationally recognized ratings services in making their selection or recommendation for an annuity provider. Another option would be for the PBGC to establish standards based upon ratings from the ratings services that a plan administrator would be required to satisfy in selecting an annuity provider. The utilization of ratings services has certain advantages, since they have developed expertise in assessing the financial strength of insurance companies, and their ratings have obtained a certain level of acceptance in the marketplace. However, before taking any regulatory action, the PBGC would like to obtain public comment.

Requests for Comments

[20] Do the ratings by nationally recognized rating services provide a sufficiently reliable assessment of an annuity provider's capacity to meet the obligations of its irrevocable annuity contracts?

[21] How current is the information upon which the ratings are based, and how often are the ratings updated? Does the frequency with which the ratings are updated have an effect upon their reliability concerning the annuity

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provider's capacity to meet its annuity obligations?

[22] If the PBGC were to issue standards governing the plan administrator's selection of annuity providers, should such standards be based on the ratings from rating services? If so, which particular ratings services should be used:

(a) Are there any significant differences among ratings services, such as Best, Duff, Fitch, Moody's, and S & P, with respect to whether their ratings are reliable measures of the ability of insurance companies to meet their obligations under irrevocable annuity contracts?

(b) How equivalent are the ratings levels assigned by the various ratings services (e.g., is an A rating from Best, an AA from Duff, Fitch, and S & P, and an Aa from Moody's essentially an equivalent measure of an insurance company's financial security), or for example, as has been suggested, does a rating of A+ from Best's essentially cover companies whose financial strength would be rated as either AAA, Aaa, AA, or Aa by the other services?

[23] If the PBGC were to issue standards based on ratings, should the ratings be used as the sole standard, or should they be used in conjunction with other criteria which relate to the financial soundness of the insurer?

[24] If standards based on ratings are issued:

(a) What particular levels or combinations of levels of ratings from the rating services should the PBGC require? For example, should the required rating level be the highest (e.g., AAA from Duff, Fitch, or S & P, Aaa from Moody's, or A+ from Best), second highest (e.g., AA from Duff, Fitch, or S & P, Aa from Moody's, or A+ or A from Best), or the third highest (e.g., A from Duff, Fitch, Moody's, or S & P, or A or A− from Best)?

(b) How many ratings should be required and should this requirement depend on the size of the insurer?

(c) How should "watchlist" and "contingent" ratings be treated?

[25] Should any standards that are promulgated by the PBGC require that the insurance company be given an acceptable rating from all the ratings services that rate it?

[26] If minimum standards based on ratings were adopted, should an insurance company be required to have maintained the specified rating or a higher rating for a specific number of years, and, if so, how many?

[27] If a rating is required to have been maintained for a particular number of years to meet a ratings-based minimum standard, what, if any, exceptions should be considered for new or previously unrated insurance companies, including newly established subsidiaries of rated-parent insurance companies?

Other Criteria Concerning Financial Security

As discussed above, under state regulatory schemes insurance companies must satisfy various financial requirements, including those related to the company's reserves, its capital surplus, its type of investments, and other criteria concerning its financial condition. However, there may be wide differences among states in the degree to which such regulatory requirements protect annuity policyholders against potential financial loss. It also might be administratively impractical for the PBGC to base regulatory requirements upon state requirements, particularly in light of the variation in state regulatory practices and the possibility that in some plans the plan administrator, the annuity provider or providers, and the pension plan participants may be domiciled in different states. An appropriate regulatory option thus might be for the PBGC to develop independent criteria for the selection of the insurer. Such criteria might be comprised of objective measures of the insurer's financial security that would not be difficult for plan administrators or their consultants to apply in making annuity provider selections, or for the PBGC to apply in reviewing those selections.

Requests for Comments

[28] Should the PBGC develop its own criteria for the selection of annuity providers based upon the insurer's reserves, surplus, type of investments, and other similar measures of the financial security of the insurer? If so, what should the criteria include?

[29] If specific criteria for the selection of annuity providers are established, should such criteria comprise the entire regulatory requirement, or should they be used in conjunction with other considerations such as ratings from nationally recognized ratings services?

[30] If specific criteria are established, should the PBGC require a certification from a qualified expert (in accordance with state law, if state law provides for a financial valuation of the insurer's assets and liabilities) to authenticate that the insurer meets these criteria?

[31] If specific criteria are established, under what circumstances, if any, should a plan be permitted to purchase annuities from providers that do not meet specified requirements?

Reinsurance, Credit Enhancement, and Other Risk and Cost Sharing Arrangements in the Insurance Industry

Reinsurance is the process whereby insurance companies spread their risk by transferring portions of specific policy liability to other insurance companies in return for their receiving part of the premiums or other payments. For reinsurers, reinsurance provides an opportunity to share for a fee in the business generated by other companies, without the responsibility for developing customers and handling claims. Issuers of annuity contracts who obtain reinsurance are benefited because reinsurance reduces their risk on specific contracts.

There may be other cost and risk sharing arrangements that exist both formally and informally within the insurance industry. In order to strengthen the financial soundness of annuity contracts it sells, an insurer might obtain a guarantee supporting all of its annuity obligations or a limited segment of its annuity business. This form of credit enhancement occurs in other types of financial transactions, but the PBGC does not know whether it is common with respect to the sale of annuities. The PBGC is interested in learning more about reinsurance, credit enhancement, and other risk and cost sharing arrangements within the insurance industry, and whether such arrangements provide protection to annuity policyholders in the event that the insurance company that issues the annuity contract fails.

Requests for Comments

[32] To what extent do reinsurance and other formal and informal risk and cost-sharing arrangements exist among insurance companies with respect to annuity contracts?

[33] What protection do such existing risk and cost-sharing arrangements provide to annuitants?

[34] To what extent, and in what manner, should such risk and cost-sharing arrangements be considered in any regulations the PBGC may issue concerning the selection of annuity providers?

Impact of Possible PBGC Regulatory Activity

The purpose of any regulatory activity by the PBGC concerning the selection of annuity providers is to provide protection to pension plan participants with respect to the financial soundness of any irrevocable annuity contracts that may be purchased for them upon the termination of their pension plan. However, the PBGC recognizes that any regulation of the plan's annuity selection decision may have a substantial impact upon plan sponsors, annuity providers and policyholders, plan participants and beneficiaries, other federal and state government agencies, and other parties involved in the operation of the private sector pension system. For example PBGC regulation could have the effect of reducing the number of qualified providers that could sell annuities to pension plans, thereby concentrating competition within the insurance industry or within the annuity products segment of it. PBGC regulation could also have the impact of increasing prices and decreasing the availability of annuities for both pension plans and other purchasers of annuity contracts.

To the extent appropriate, the PBGC is interested in minimizing any detrimental impact its regulation would have upon such parties. Any regulatory action the PBGC may take should be consistent with the overall policy of the SEPPAA amendments to ERISA's plan termination insurance program, which is to reduce the PBGC's oversight role with respect to cases where plan assets are sufficient for benefit liabilities, while simultaneously establishing clear and objective criteria for those terminations and giving plan participants a number of tools to enable them to enforce their statutory rights upon plan termination.

Requests for Comments

[35] For the regulatory options identified in this Advance Notice, the PBGC requests cost/benefit data and comment concerning the impact of those options upon the parties involved in the pension system and the public.

[36] If there are other regulatory approaches concerning the selection of annuity providers that the PBGC could adopt that would provide protection to pension plan participants and beneficiaries while minimizing possible detrimental effects of regulation, the PBGC requests cost/benefit data and comment concerning those approaches.

Conclusion

The PBGC invites comments on the issues discussed in this notice, including specific suggestions as to how regulatory activity by the PBGC might address these issues. As discussed above, the PBGC requests that such comments refer to the question number or numbers listed in this notice.

Issued at Washington, DC on this 17th day of June, 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-14634 Filed 6-20-91; 8:45 am]

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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 33
Federal Acquisition Regulation; General Accounting Office Protest Costs; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAR Case 91-41]

Federal Acquisition Regulation; General Accounting Office Protest Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend Federal Acquisition Regulation (FAR) 33.104 to provide that, pending a judicial resolution of the constitutionality of 31 U.S.C. 3554(c), the General Accounting Office's awards of contract protest costs will be treated as advisory recommendations. Pending a judicial determination, agencies may continue to pay protest costs out of funds available for the acquisition of services or supplies, but such payments may be subject to recoupment if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 22, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405. Please cite FAR Case 91-41 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell at (202) 501-3856 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 91-41.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3554(c) of the title 31, United States Code, which was enacted as part of the Competition in Contracting Act of 1984 ("CICA" or "the Act"), purports to authorize the Comptroller General to make binding awards of attorneys' fees and bid preparation costs to successful bid protesters, and to require the Federal agencies concerned to pay such awards promptly out of funds available to or for their use for procurement purposes (the "costs and fees" provision). See 31 U.S.C. section 3554 (c)(1)(2), enacted as part of the Deficit Reduction Act of 1984, Public Law No. 98-369, tit. VII, section 2741, 98 Stat. 494. 1057, 1202 (1984). In his signing statement, President Reagan noted that this provision raised serious constitutional questions and asked the Department of Justice to inform Executive Branch agencies how they might comply with the Act in a manner consistent with the Constitution. See 20 Weekly Comp. Pres. Doc. 1037 (July 18, 1984). The Department of Justice has concluded that the cost and fees provision is unconstitutional as a violation of the separation of powers required by the Constitution.

In *INS* v. *Chadha*, 462 U.S. 919 (1983), the Supreme Court held that, except in certain constitutionally prescribed procedures such as impeachment, Congress may "alter[] the legal rights, duties and relations of persons * * * outside the legislative branch" only through the ordinary legislative process, including bicameralism and presentment to the President. *Id.* at 952. In *Bowsher* v. *Synar*, 478 U.S. 714, 732 (1986), the Court held that "because Congress has retained removal authority over the Comptroller General, he may not be entrusted with executive powers." The Court in *Bowsher* then concluded that under the statute in question, the Comptroller General's role "plainly entail[ed] execution of the law in constitutional terms," because the statute required the President to take actions that the Comptroller General believed were necessary under the statute. The Court reasoned that "[i]nterpreting a law enacted by Congress to implement the legislative mandate is the very essence of 'execution' of the law." *Id.* at 732-33. Accordingly, the Court held that the role assigned to the Comptroller General by the statute was unconstitutional.

In light of *Chadha* and *Bowsher*, it seems clear that CICA's costs and fees provision is unconstitutional. Under the provision, when "the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation," he may declare that the bid protester is entitled to recover its bid protest costs and attorneys' fees from the Executive Branch procuring agency. 31 U.S.C. 3554 (c). This provision purports to vest the Comptroller General with executive power because he is "[i]nterpreting a law enacted by Congress to implement the legislative mandate," *Bowsher*, 4760 U.S. at 733, and his action has "the purpose and effect of altering the legal rights, duties, and relations of persons * * * outside the Legislative Branch," *Chadha*, 462 U.S. at 952. As the Comptroller General may not exercise executive power, the provision violates the constitutional principle of separation of powers.

The proposed rule would amend the FAR regulations, 48 CFR 33.104, to provide that, pending a judicial resolution of the constitutionality of 31 U.S.C. 3554(c), the General Accounting Office's awards of contract protest costs will be treated as advisory recommendations. In the interim, agencies may continue to pay protest costs out of funds available for the acquisition of services or supplies, but this rule would provide notice that such payments may be subject to recoupment if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional.

B. Regulatory Flexibility Act

The proposed changes to FAR part 33 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the proposed rule, if implemented, may impose different requirements on both Federal agencies and contractors when GAO recommends award of protest costs. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAR Case 91-41) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 33

Government procurement; General Accounting Office protest costs.

Dated: June 18, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 33 be amended as set forth below:

1. The authority citation for 48 CFR part 33 continues to read as follows:

PART 33—PROTESTS, DISPUTES, AND APPEALS

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Section 33.104 is amended by revising paragraphs (g) and (h) to read as follows:

§ 33.104 Protests to GAO.

* * * * *

(g) *Notice to GAO.* The head of the agency or a designee (not below the level of the head of the contracting activity) responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General within 60 days of receipt of the GAO's recommendation, if the agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation, including any recommendation concerning the award of protest costs (i.e., the costs of filing and pursuing the protest, including reasonable attorneys' fees and bid and proposal preparation), will not be followed by the agency.

(h) *Award of protest costs.* Pending a final, nonappealable judicial determination of the constitutionality of 31 U.S.C. 3554(c), a recommended award of protest costs (as defined under paragraph (g)) may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services, but such payments may be subject to recoupment by the agency if 31 U.S.C. 3554(c) is judicially determined not to be constitutional.

[FR Doc. 91-14910 Filed 6-20-91; 8:45 am]

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Part V

Department of the Interior

Minerals Management Service

Final Leasing Notice, Outer Continental Shelf Mining Program; Norton Sound Lease Sale; Notice

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Final Leasing Notice, Outer Continental Shelf Mining Program; Norton Sound Lease Sale

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356 (1988)), and the regulations issued thereunder (30 CFR Part 281).

2. *Filing of Bids.* The Minerals Management Service (MMS) is proposing to lease rights to gold and any other mineral recovered with gold or other mineral recovered using technology similar to that used in recovering gold. Sealed bids will be received by the Regional Director (RD), Alaska OCS Region, MMS, Room 644, 949 East 36th Avenue, Anchorage, Alaska 99508–4302. Bids may be delivered in person to that address daily from 8:00 to 4:00 p.m., Alaska Standard Time (a.s.t.), until the Bid Submission Deadline at NOON, July 23, 1991. Bids received by the authorized officer later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the authorized officer prior to NOON, July 23, 1991. Bids may not be withdrawn unless written withdrawal is received by the authorized officer prior to 8:30 a.m., July 24, 1991. Bid Opening Time will be 9 a.m., July 24, 1991, at Alaska OCS Region, MMS, 949 East 36th Avenue, Room 601, (6th floor conference room), Anchorage, Alaska. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 281. Bidders are directed to 30 CFR 281.4 and 281.20 for instructions on submitting bids for this sale. In addition, a bidder's information packet is available from the MMS (at the above address), which contains forms described in this notice which bidders must complete and a copy of the MMS bid adequacy review procedures.

3. *Method of Bidding.* A separate bid in a sealed envelope labeled "Sealed Bid for OCS Mining Program Norton Sound Lease Sale (insert Official Protraction Diagram number(s) and name(s), if applicable, and block number(s)), not to be opened until 9 a.m., a.s.t., July 24, 1991," must be submitted for each block or prescribed bidding unit bid on. For those blocks which must be bid on as a bidding unit, it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid 10 percent of the cash bonus, in cash or by Federal Reserve check, commercial check, bank draft, money order, certified check, or cashier's check, made payable to "Department of the Interior—Minerals Management Service." No bid for less than all of any block or bidding unit as described in paragraph 12 will be considered. A sample bid form is reproduced at the end of this Notice.

Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Bidders are warned against violations of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. *Bidding Systems.* All bids submitted at this sale must provide for a cash bonus in the amount of $10 or more per hectare or fraction thereof. All leases awarded will provide for a yearly rental payment of $2.50 per hectare or fraction thereof, commencing upon lease execution. All leases will provide for a minimum royalty of $2.50 per hectare or fraction thereof. A cash bonus/fixed royalty bidding system with a royalty rate of 5 percent will be employed on all blocks or bidding units offered in this sale.

In the event the highest bids on a block or bidding unit are tied, the tied bidders may submit a supplemental sealed bid and include 10 percent of the cash bonus of the supplemental sealed bid in the same manner and location as stated in paragraph 3 of this Notice. The bidders will have up to a maximum of 4 hours from the announcement of the bids to submit the supplemental sealed bid. The time of bid closing will be announced at the sale site, after conferring with eligible bidders. Bidders may not submit supplemental sealed bids lower than their previous offer. Supplemental sealed bid opening and reading will commence approximately 15 minutes from the supplemental sealed bid closing in the MMS Sixth Floor Conference Room at 949 East 36th Avenue, Anchorage, Alaska. Bidders will not be allowed to withdraw any tie bids during or after the period for submitting supplemental sealed bids. If after reading the supplemental sealed bids there is again a tie, the process for determining the highest cash bonus bidder will be repeated. If a tied bidder declines to submit a higher supplemental sealed bid their previous bid will be considered final. If none of the tied bidders choose to submit a higher supplemental bid, all tie bids will be rejected. The Secretary retains the right to reject any and all sealed bids received for any tract, regardless of the amount offered.

5. *Equal Opportunity.* Each bidder must have submitted by the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985). See Affirmative Action paragraph under "Information to Lessees" (ITL) No. a.

6. *Bid Opening.* Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit of Payment.* Any cash, Federal Reserve check, commercial check, bank draft, money order, certified check, or cashier's checks, submitted with a bid may be deposited by the Government during the period the bids are being considered for acceptance or rejection. Such a deposit does not constitute and shall be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Blocks or Portions Thereof.* The United States reserves the right to withdraw any blocks or bidding units or portions thereof from this sale prior to issuance of a written acceptance of a bid for the block or bidding unit.

9. *Acceptance, Rejection, or Return of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any blocks or bidding units will be awarded to any bidder, unless:

a) the bidder has complied with all requirements of this Notice and applicable regulations;

b) the bid is the highest valid bid; and

c) the amount of the bid has been determined to be adequate by the authorized officer.

There is an administrative minimum cash bonus bid of $10 per hectare or fraction thereof. However, no bid will be accepted unless the authorized officer has determined such offer to be adequate compensation for the rights conveyed. The high bid for each block or bidding unit must satisfy the Government's criteria for bid adequacy. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and applicable regulations may be returned to the person submitting that bid by the authorized officer and not considered for acceptance.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental for each lease issued, by electronic funds transfer (EFT) in accordance with the requirements of 30 CFR 218.155. The Federal Reserve Bank of New York must receive the EFT payment no later than noon, Eastern Standard Time, on the eleventh business day after receipt of notice of bid acceptance. The term "business day" is defined as a day on which the Alaska OCS Region office is open for business.

11. *Official Protraction Diagrams (OPD).* Blocks or portions of blocks offered for lease may be located on the following OPD's which may be purchased for $2 each from the Records Manager, Alaska OCS Region, Room 502, at the first address stated in paragraph 2 of this Notice. A page-size map of the sale area is reproduced at the end of this Notice.

Outer Continential Shelf Official Protraction Diagrams:

NQ 3–7—Nome (Revised September 27, 1988)

NQ 3–8—Solomon (Revised September 27, 1988)

12. *Description of the Areas Offered for Bids.*

(a) Categories of blocks listed under OPD's:

The lease sale area offered for bids is listed by OPD. Two categories of blocks appear under each OPD listed: (1) whole blocks and (2) blocks which comprise bidding units.

Whole blocks fall entirely under the jurisdiction of the Federal Government. Each whole block must be bid on separately. The hectarage amount for whole blocks listed in this paragraph are 2,304.00 hectares.

Bidding units are a combination of portions of adjacent blocks. All parts of a bidding unit must be bid on together.

The letter symbol "D" appearing next to block numbers identifies a block or portion of a block where a jurisdictional dispute between the Federal and State Governments is pending before the United States Supreme Court, *United States of America v. State of Alaska*, No. 118, Original. Nothing in this Notice shall affect or prejudice the legal position of the United States in this case.

(b) The following blocks or portions of blocks are offered for bids:

Official Protraction Diagram NQ 3–7, Nome (revised September 27, 1988):

(1) Whole blocks: 641–643, 667–689.

(2)Bidding units:

Blocks	Hectares
552	1895.99
596	2304.00
Total Hectares	4199.99
563	1282.31
597	2304.00
Total Hectares	3586.31
554 D	30.91
555 D	65.89
599 D	198.70
Total Hectares	295.30
554	586.15
598	2304.00
Total Hectares	2870.15
555	0.04
599	1999.73
Total Hectares	1999.77
600	1545.55
644	2304.00
Total Hectares	3849.55
601	775.67
602	69.74
645	2304.00
Total Hectares	3149.41

Official Protraction Diagram NQ 3–8, Solomon (revised September 27, 1988):

(1) Whole blocks: 576–581 and 621.

(2)Bidding units:

Blocks	Hectares
490	0.59
534	1734.05
Total Hectares	1734.64
491	529.13
535	2304.00
Total Hectares	2833.13
492	1135.99
536	2304.00
Total Hectares	3439.99
493	1189.15
537	2304.00
Total Hectares	3493.15
533	436.36
577	2278.06
Total Hectares	2714.42

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have a primary lease term of 20 years. Leases will be issued on Forms MMS–2004 (July 1990). Copies may be obtained from the Alaska OCS Region at the address stated in paragraph 2 of this Notice.

(b) The following stipulations will be included in each lease resulting from the sale.

Stipulation No. 1.—Environmental Survey and Monitoring Program and Operations Management. The lessee is required to conduct environmental surveys. The survey plan will address water quality, EPA priority trace metals, and the presence, distribution, and composition of biological communities including organisms such as marine mammals, red king crabs, etc. The lessee also is required to conduct environmental monitoring to identify existing conditions and any trends or changes resulting from the mining activity. The environmental monitoring program will address measurement of trace metal concentrations in the water and sediment; bioaccumulation of trace metals in selected organisms such as mollusks, fish, marine mammals and the arctic peregrine falcon; turbidity and sedimentation; pre- and postmining bathymetric contours; and rate of recolonization of benthic communities. The Environmental Survey and Monitoring Program, including quality control, will be approved and monitored by the Regional Supervisor, Field Operations (RS/FO) as part of the testing or mining plan. The lessee will submit to the RS/FO an annual report with the results of the Environmental Survey and Monitoring Program including trends in trace-metal accumulation in selected monitored organisms. The report will be used by the RS/FO in coordination with appropriate State and Federal agencies to determine if any modification or suspension of operations is necessary to protect the biological resources. If it is determined that testing, mining, or processing activities are contributing to significant adverse effects from (1) an increase in trace metals in the selected marine organisms; (2) habitat alteration; or (3) water-quality degradation, the RS/FO, in consultation with the Environmental Protection Agency (EPA) and the State of Alaska, will determine what regulatory action is necessary and will order modification or suspension of activities, as appropriate. Recognizing that marine discharges, including the discharge of dredged materials, are subject to regulation by the EPA, MMS will coordinate the requirements for the Environmental Survey and Monitoring

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Program with EPA. The Environmental Survey and Monitoring Program will be evaluated at least once a year and the program may be modified, as appropriate, based on the results of prior surveys and other available information. The lessee shall notify the RS/FO of exceedances of EPA water-quality criteria within 24 hours of becoming aware of such exceedances.

The EPA has the authority to impose requirements on the lessee through the National Pollutant Discharge Elimination System (NPDES) permit process, in addition to those required under the Environmental Survey and Monitoring Program.

Stipulation No. 2—Prohibition of Use of Mercury or Other Toxic Substances in Processing. The lessee shall not store or use mercury or any other toxic substance for testing and/or the beneficiation of placer minerals onboard the dredging vessel, or any other vessel or offshore structure directly associated with dredging operations.

(Beneficiation means: 1. The dressing or processing of ores for the purpose of [a] regulating the size of a desired product, [b] removing unwanted constituents, and [c] improving the quality, purity, or assay grade of a desired product. 2. Concentration or other preparation of ore for smelting by drying, flotation, or magnetic separation.)

Stipulation No. 3—Baseline and Monitoring Studies on Mercuery Levels in Humans. The lessee will be required to monitor human health in a manner approved by the Regional Supervisor, Field Operations (RS/FO) if baseline information collected by the MMS or other Federal, State, or regional health agency indicates potential human health problems associated with mercury, and if site-specific environmental survey and monitoring or other information indicates lease activities may contribute to mercury levels adversely affecting human health. The RS/FO may require that monitoring of human health begin at the commencement of mining operations. The lessee will coordinate the preparation of any such human health monitoring program with appropriate Federal and State health agencies prior to submitting it to the RS/FO. For purposes of this stipulation, human health will be considered adversely affected by lease activities if they contribute to mercury levels in humans which closely approach or are at the safety levels established by the World Health Organization. The results of any human health monitoring will be used by the RS/FO in coordination with appropriate Federal and State agencies to determine if any modifications or suspension of operations are necessary to protect human health. If it is determined that lease activities are adversely affecting human health, the RS/FO, in consultation with the Environmental Protection Agency and the State of Alaska will determine what action is necessary and will require modification or suspension of activities as appropriate. Following the initiation of human health monitoring, the RS/FO will evaluate annually for at least 2 years, and as frequently thereafter as appropriate, the need to continue monitoring human health. The annual and any subsequent reviews will be made in coordination with other appropriate Federal, State, and local health agencies. Based on the results of such reviews and monitoring or other information, the RS/FO may require that the monitoring program be modified or eliminated.

Stipulation No. 4—Protection of Archaeological Resources.

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (Section 301[5], National Historic Preservation Act, as amended, 16 U.S.C. 470w[5]). "Operations" means any drilling, mining, or construction, or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Supervisor, Field Operations (RS/FO), believes an archaeological resource may exist in the lease area, the RS/FO will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RS/FO, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RS/FO for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RS/FO that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RS/FO. A report on the investigation shall be submitted to the RS/FO for review.

(3) If the RS/FO determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RS/FO will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RS/FO has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations in the lease area, the lessee shall report the discovery immediately to the RS/FO. The lessee shall make every reasonable effort to preserve the archaeological resource until the RS/FO has told the lessee how to protect it.

Stipulation No. 5—Agreement Between the United States of America and the State of Alaska.

This stipulation applies to the following blocks or portions of blocks referred in this Notice as disputed: NQ 3–7, Nome, blocks 554D, 555D, and 566D.

This lease is subject to the "Agreement between the United States of America and the State of Alaska Pursuant to Section 7 of the Outer Continental Shelf Lands Act and Alaska Statutes 38.05.137 for the Leasing of Disputed Blocks in Federal Outer Continental Shelf Mining Program, Norton Sound Lease Sale" (commonly referred to as the "Agreement"), and the lessee hereby consents to every term of that Agreement. Nothing in that Agreement or this Notice shall affect or prejudice the legal position of the United States in *United States of America* v. *State of Alaska*, No. 118, Original.

Any loss incurred or sustained by the lessee as a result of obtaining validation and recognition of this lease pursuant to the "Agreement," and in particular any loss incurred or sustained by the lessee as a result of conforming this lease with any and all provisions of all applicable laws of the party prevailing in *United States of America* v. *State of Alaska*, United States Supreme Court No. 118, Original, shall be borne exclusively by the lessee.

No taxes payable to the State of Alaska will be required to be paid with respect to this lease until such time as ownership of or jurisdiction over the lands subject to this lease is resolved. In the event that the lands subject to this lease or any portion of them are judicially determined to be State lands, the lessee shall pay to the State a sum equivalent to the State taxes which would have been imposed under Alaska law if the lands, or portion thereof determined to be State lands, had been undisputed State lands from the date the lease was executed, plus interest at the annual legal rate of interest provided under Alaska law accruing from the date the taxes would have become due under Alaska law. Such payment shall be in lieu of, and in satisfaction of, the actual State taxes.

14. *Information to Lessees*

(a) *Affirmative Action Requirements.* Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 16 of the lease form (Form MMS–2004, July 1990) would be deleted from leases resulting from this sale. In addition existing stocks of the affirmative action forms contain language that would be superseded by revised regulations at 41 CFR 60–1.5(a)(1) and 60–1.7(a)(1). Submission of Form MMS–2032 (June 1985) and Form MMS–2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(c) *Unitization.* Provision for the consolidation of two or more OCS mineral leases into a single mining unit is at 30 CFR 282.11(d)(1). The lessee may request consolidation or the Director may require consolidation of operations if it is determined to be in the interest of conservation of the natural resources of the OCS or for the prevention of waste. A mining unit may consist of all or portions of the OCS mineral leases with all or portions of adjacent State lease(s) in a common ore body. Minerals produced from consolidated State and Federal leases shall be accounted for separately unless otherwise approved by the Director and an appropriate State official.

(d) *Postlease Norton Sound Review Team.* Lessees are advised that, as provided in 30 CFR 282.4, a Postlease Norton Sound Review Team will be established to provide opportunity for representatives from Federal and State agencies and local governmental organizations to review proposed postlease OCS mining activities. The Review Team will also provide a forum for the exchange of information relating to mining activities. The Review Team will review proposed OCS Delineation, Testing, and Mining Plans and National Pollutant Discharge Elimination System permits, including any associated environmental survey and monitoring plans required by regulation (30 CFR 282), permit, or lease stipulations, and subsequent results.

The Review Team will be established in lieu of continuing the Prelease Coordination Team.

(e) *Bird and Marine Mammal Protection.* Lessees are advised that during the conduct of all activities related to leases issued as a result of this sale, the lessee and its agents, contractors, and subcontractors will be subject to, among others, the provisions of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361 et seq.); the Endangered Species Act (ESA), as amended (16 U.S.C. 1531 et seq.); and applicable International Treaties.

Lessees and their contractors should be aware that disturbance of wildlife could be determined to constitute harm or harassment and thereby be in violation of existing laws and treaties. With respect to endangered species and marine mammals, disturbance could be determined to constitute a "taking" situation. Under the ESA, the term "take" is defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct." Under the MMPA, "take" means "harass, hunt, capture, or kill, or attempt to harass, hunt, or kill any marine mammal." Violations under these Acts and applicable Treaties may be reported to the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (FWS), as appropriate.

Incidental taking of marine mammals and endangered and threatened species is allowed only when the statutory requirements of the MMPA and/or the ESA are met. Section 101(a)(5) of the MMPA allows for the taking of small numbers of marine mammals incidental to a specified activity within a specified geographical area. Section 7(b)(4) of the ESA allows for the incidental taking of endangered and threatened species under certain circumstances. If a marine mammal species is listed as endangered or threatened under the ESA, the requirements of both the MMPA and the ESA must be met before the incidental take can be allowed.

Under the MMPA, the NMFS is responsible for species of the order Cetacea (whales and dolphins) and the suborder Pinnipedia (seals and sea lions) except walrus; the FWS is responsible in Alaskan waters for the polar bears, sea otters, and walrus. Procedural regulations implementing the provisions of the MMPA are found at 50 CFR part 18.27 for FWS, and at 50 CFR part 228 for NMFS.

Lessees are advised that specific regulations must be applied for and in place and the Letters of Authorization must be obtained by those proposing the activity to allow the incidental take of marine mammals whether or not they are endangered or threatened. The regulatory process may require 1 year or longer.

Of particular concern is disturbance at major wildlife concentration areas, including bird colonies, marine mammal haulout and breeding areas, and wildlife refuges and parks. Maps depicting major wildlife concentration areas in the lease area are available from the Regional Supervisor, Field Operations. Lessees are also encouraged to confer with the FWS and NMFS in planning transportation routes between support bases and leaseholdings.

Behavioral disturbance of most birds and mammals found in or near the lease area would be unlikely if aircraft and vessels maintain at least a 1-mile horizontal distance and aircraft maintain at least a 1,500-foot vertical distance above known or observed wildlife concentration areas, such as bird colonies and marine mammal haulout and breeding areas.

For the protection of endangered whales and marine mammals throughout the lease area, it is recommended that all aircraft operators maintain a minimum 1,500-foot altitude when in transit between support bases and exploration sites. Lessees and their contractors are encouraged to minimize or reroute trips to and from the leasehold by aircraft and vessels when endangered whales are likely to be in the area. Human safety should take precedence at all times over these recommendations.

(f) *Arctic Peregrine Falcon.* Lessees are advised that the arctic peregrine falcon (*Falco peregrinus tundrius*) is

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listed as threatened by the U.S. Department of the Interior and is protected by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Peregrines are generally present in the vicinity of the sale area from April to September and are most disturbed by human activities near nest sites. There are 20 known nest sites along the northern shore of Norton Sound (from Cape Prince of Wales to Unalakleet) and six sites are located near the sale area. The conduct of OCS mining activities will not conflict with arctic peregrine falcons if the activities are located away from known nest sites. The lessee should contact the Fish and Wildlife Service (FWS) (Fish and Wildlife Enhancement Office, Fairbanks, Alaska) for information and protection criteria for the known nest sites of arctic peregrine falcons. The FWS will review delineation, testing, and mining plans submitted by lessees to the MMS and therefore the lessee should include arctic peregrine falcon protection measures as part of their plans. The FWS review may determine that certain restrictions could apply to further protect arctic peregrine falcon habitats. Lessees should advise their contractors and/or operators of the protection measures to further assure the protection of the arctic peregrine falcon.

(g) *Subsistence Activities.* Federal and State policies recognize subsistence as a priority use of wildlife resources. Lessees are therefore advised that operations should be conducted so as to avoid unnecessary interference with subsistence harvests. Consideration should be given to species harvested during the open-water season (from mid-May to mid-November) as follows:

1. From the beginning of June through September: marine fish, including salmon, smelt, and herring are harvested along the coast adjacent to the entire sale area and from the beginning of October through May tom cod are harvested along the coast adjacent to the entire sale area.

2. From the beginning of December to the end of June and from the beginning of mid-August to October: seals are harvested in the entire sale area.

3. From the beginning of April through the end of June: walruses are harvested in the entire sale area.

4. From mid-April through the beginning of November: waterfowl are harvested throughout the sale area.

Industry is encouraged to consult with local village and regional organizations, including the Eskimo Walrus Commission, Nome Eskimo Community, Sitnasuak Native Corporation, King Island Community, Kawerak Inc., Bering Straits Native Corporation, and the Bering Straits Coastal Management Program during all delineation, testing, and mining activities to minimize disturbance of subsistence activities.

(h) *Coastal Zone Management.* Lessees are advised that activities described in delineation, testing, and mining plans under leases resulting from this sale that may affect land or water uses in the coastal zone are subject to State coastal consistency review pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act.

Lessees are encouraged to consult and coordinate early with State and local agencies involved in coastal management review while preparing delineation, testing, and mining plans to ensure that they are fully aware of policies and requirements of the Alaska Coastal Management Program and approved local coastal management programs (CMP's). The City of Nome, Cenaliulriit and Bering Straits Coastal Resource Service Area CMP's have been approved by the State and Federal Governments.

(i) *Bonds and Leasing Requirements.* Lessees are directed to the requirements of 30 CFR 281.33 and 30 CFR 282.40. Prior to the commencement of any activity on a lease, the lessee shall submit a surety or personal bond as described in 30 CFR 282.40. Prior to the approval of a Delineation, Testing, or Mining Plan, the bond amount shall be adjusted, if appropriate, to cover the operations and activities described in the proposed plan.

(j) *Clean Air Act Amendments of 1990.* Under Section 601 of the Clean Air Act Amendments of 1990 (104 Stat. 2685 to be codified at 42 U.S.C. 7627), EPA has the authority and responsibility for regulating air pollution sources on the OCS. Lessees should contact the EPA regarding appropriate requirements specific to their operations.

15. *Reservations to the United States.* The United States reserves the rights to oil, gas, sulphur, and salt deposits, and sand and gravel deposits.

16. *Addendum to Lease.* The following will be incorporated into the lease.

Royalty Due on Production Schedule Pursuant to Section 5 of Lease.

The lessee shall pay to the lessor a royalty of 5 percent of the value of any and all gold concentrates and other minerals produced (sold, transferred, used, or otherwise disposed of) at the point of shipment to market, such point of shipment to be the mine site or dredging/processing point, as the case may be. The gold concentrates may consist of associated valuable minerals other than placer gold. Associated minerals may include, but are not limited to, silver, garnet, rare earths, zircon, barite, ilmenite, magnetite, chromite, platinum, scheelite, cassiterite, monazite, xeonotime, wolframite, and gem stones. For royalty purposes, the value shall be the gross proceeds received by the lessee for the disposition of the gold concentrates and associated valuable minerals produced from leased lands. Gross proceeds shall be:

(1) The price paid the lessee under bona fide transactions with independent parties for concentrates and other minerals produced from the leased lands, less the lessee's actual reasonable cost of transportation for lease production from the mine or dredging/processing point to the smelter, refinery, or point of first sale, or

(2) When concentrates are processed for lessee's account at its own (captive) or any other smelter or refinery, such gross proceeds shall be determined by the price received for gold and associated minerals sold by the lessee in bona fide transactions with independent third parties for the month or period less all of the lessee's costs and charges during such period in connection with the lessee's shipping, smelting, refining, and handling of lease production and less an allowance for freight thereon from the treating smelter or refinery to destinations to which gold bullion, refined gold, and other associated valuable minerals were shipped by lessee.

Lessee shall pay lessor royalty within 30 days after the end of the month in which the lessee receives payment from the buyer. In the event there is a provisional settlement between the lessee and the buyer, lessee shall pay lessor within 30 days after the end of the month in which lessee receives provisional payment, such royalty payment to be adjusted within 30 days after the end of the month in which lessee and the buyer reach final settlement. Following the month in which final settlement(s) is reached, the lessor shall require the payment of such additional royalties, or allow such credits or refunds as may be necessary to adjust royalty payment to reflect the actual gross proceeds.

In any event, the lessor expressly reserves the right to take in kind, as and for full payment of the royalty hereunder, that percentage of the concentrates produced from the leased lands equal to the percentage of the royalty rate in effect at the time the lessor elects to exercise such right; provided, however, that the lessee shall not be required to hold such royalty production in storage for a longer period than 30 days after the end of the calendar month in which such concentrates are produced and shall suffer no unreasonable inconvenience as a result of the exercise by the lessor of such right, and provided further that the lessee shall in no manner be held liable or responsible for loss, damage, or destruction of such concentrates caused without fault of the lessee while in such storage. A copy of all contracts for the sale or smelting/refining and shipping of concentrates produced from the lease must be furnished to the Director or designated authorized officer.

Sec. 25. *Royalty Valuation.* Should the valuation provisions contained herein be determined by the Director to be inappropriate, the Director shall determine a reasonable value in accordance with applicable regulations at 30 CFR 281 (1989).

Dated: June 18, 1991.

Albert L. Modiano,

Deputy Director, Minerals Management Service.

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SAMPLE BID FORM

(Bidders are advised that the following information must be included for each whole block or bidding unit bid on. However, any format may be used.)

Minerals other than Oil, Gas, and Sulphur

OPD Number	OPD Name	Block Number(s)	Total Amount of Bid	Amount Per Hectare	Amount Submitted with Bid (10 percent of Total Bid)

Bidder Qualification No. (Bidder needs to establish qualifications pursuant to 30 CFR 281.20.)	Proportionate Interest of Company Submitting Bid	Name and Address of Bidding Company

Authorized signatory's name and title

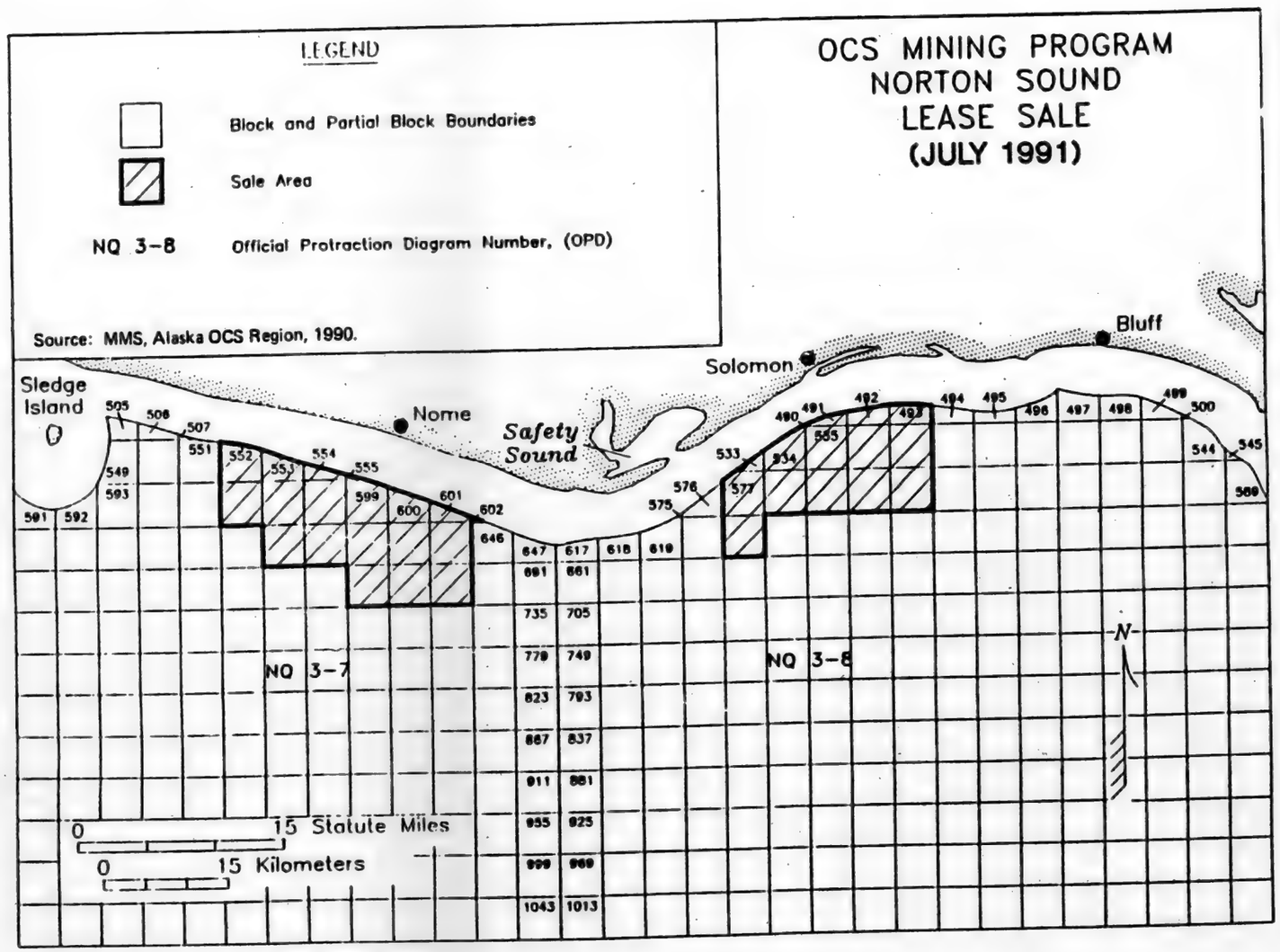
Bidder Qualification No. (Bidder needs to establish qualifications pursuant to 30 CFR 281.20.)	Proportionate Interest of Company Submitting Bid	Name and Address of Bidding Company

Authorized signatory's name and title

Bidder Qualification No. (Bidder needs to establish qualifications pursuant to 30 CFR 281.20.)	Proportionate Interest of Company Submitting Bid	Name and Address of Bidding Company

Authorized signatory's name and title

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 571

Community Development Block Grants for Indian Tribes and Alaskan Native Villages; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 571

[Docket No. R-91-1530; FR-2880-P-01]

RIN 2506-AB12

Community Development Block Grants for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations governing the Community Development Block Grant Program for Indian Tribes and Alaskan native villages. The amendments incorporate new policies and procedures. The most substantial change is the use of new selection criteria which would replace the "quality" and "impact" factors by which applications currently are rated and ranked. Other changes include: (1) An increase to 70 percent in the overall benefit to low- and moderate-income persons in the use of all but imminent threat grant funds; (2) guidelines for breaking ties among competing applications; (3) an additional component under Housing: "new construction"; (4) separate Community Facilities or Public Services categories: "infrastructure"; "buildings"; and "public services"; and (5) new relocation and acquisition language reflecting recent amendments to the Uniform Relocation Act.

DATES: Comments Due Date: August 20, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Kennedy, Director, State and Small Cities Division, Office of Block Grant Assistance, room 7184, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (202) 708-1322. TDD (202) 708-2565. (These are not toll-free numbers.)

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. Receipt of FAX transmittals will not be acknowledged, but a sender may request confirmation of receipt by calling the Rules Docket Clerk. (202) 708-2084.

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506-0063. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235) ("Reform Act") as amended by the Cranston-Gonzalez National Affordable Housing Act ("NAHA"), amended Title I of the Housing and Community Development Act of 1974 ("Act"), by transferring the authority for making grants to Indian Tribes from the section 107 discretionary fund to the allocation and distribution of funds provisions of section 106 of the Act. Under section 106, as so amended, 1 percent of the title I appropriation, excluding the amounts appropriated for use under section 107, is allocated for grants to Indian Tribes. The allocated amount is to be distributed to Indian Tribes on a competitive basis in accordance with selection criteria "contained in a regulation promulgated by the Secretary after notice and public comment." The Department is issuing this proposed rule to comply with the requirement for publication for comment. The Department invites, in particular, public comment on the revisions to the rating system.

Section 102 of the Reform Act requires the Secretary to publish in the Federal Register a Notice of Fund Availability (NOFA) regarding assistance. In addition to announcing the availability of funds, the NOFA will set forth application procedures and selection criteria. The NOFA will replace the regional rating and ranking guides which formerly contained the selection criteria.

Effective April 2, 1989, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) was amended to, among other things, expand coverage. Under the current rule published by the Department of Transportation (see 54 FR 8912, March 2, 1989), codified at 49 CFR part 24, any person (family, individual, business, nonprofit organization, or farm) displaced on or after April 2, 1989, as a direct result of acquisition, rehabilitation or demolition for a project assisted under this part is entitled to URA relocation assistance.

This proposed rule contains the URA subpart applicable to the ICDBG program.

For clarity during review of this rule by the public, part 571 has been republished in full with the revisions proposed in this rule making. The following revisions, however, are the most significant of the changes in part 571 contained in this proposed rule:

Subpart A—General Provisions

Section 571.4 Definitions

The definition of *Unemployment* will be removed from this section, because this term is not used in the body of the regulation.

Section 571.4(i) Low- and Moderate-Income Beneficiaries

This paragraph will define *low- and moderate-income* beneficiary as a family, household, or individual whose income does not exceed 80 percent of the median income for the area in which it is located. The following paragraph outlines the method the Department uses to calculate the median income for any area.

If the potential beneficiary is located in a metropolitan area, area median income is based on the metropolitan area's median income. If the potential beneficiary is located in a nonmetropolitan area, the area median income is based on the median income of the county in which the beneficiary is located, or the median income of the entire nonmetropolitan area of the State in which the beneficiary is located, whichever is higher. HUD will use published section 8 income limits to determine whether a beneficiary is low- and moderate-income.

Subpart C—Eligible Activities

Section 571.201 Primary and national objectives

This section will adopt an overall low- and moderate-income benefit requirement of 70 percent. That is, 70 percent of CDBG funds for each grant must be for activities which benefit low- and moderate-income persons. (Imminent threat grants are not subject to this requirement.) This section also will make applicable the criteria for meeting one of the three national objectives of benefit to low- and moderate-income persons: prevention or elimination of slums and blight; or needs having a particular urgency, set forth in § 570.208 of part 570, subpart C. The proposed regulation will continue to impose these requirements administratively, although they are not statutorily required.

Subpart D—Single Purpose Grant Application and Selection Process

Section 571.300(f)(2)(i)

This section amends the application submission requirement for a community development statement to include an *updated* description of community development needs.

Section 571.302(a)(2) Capacity and Performance

This section will add, under § 571.302(a)(2)(ii)(B), "support of other HUD-assisted projects" as a new performance criterion for consideration.

Section 571.302(c) Application Rating System

This section will adopt new selection criteria to replace the "impact" and "quality" selection criteria currently used to rate and rank projects. Project categories are: Housing; community facilities; and economic development. Field offices will rate each project on a 100-point scale. The Department will publish periodic Notices of Fund Availability (NOFAs) which will further define and assign points within each category.

Section 571.302(e) Ties

This new paragraph (e) will precede Competition documentation, which will become paragraph (f). Currently, each field office determines how to break ties among competing applications. In order to provide national consistency while maintaining a degree of regional flexibility, this section requires each field office to break ties, first, by funding any applications that can be fully funded. Then, if a tie still exists, the field office will use one or more "tiebreakers" described in the regulation. Periodic NOFAs will indicate which tiebreakers each field office will use.

Section 571.303 Housing

This section will outline for HUD field offices the factors to be used by them to rate housing applications. This category consists of three components: Housing rehabilitation; land to support new housing; and new housing construction. Housing rehabilitation and new housing construction each consist of three parts: "Project need and design"; "planning and implementation"; and "leveraging". Land to support new housing consists of two parts: "Project need and design"; and "planning and implementation".

In instances where Tribes establish Indian Housing Authorities (IHAs) and receive HUD housing assistance, this section will require Tribes to certify that tenants' and homeowners' payments are current, before using CDBG funds to assist residents.

Section 571.303(c) New Housing Construction/Direct Homeownership Assistance

This section will add "new housing construction/direct homeownership assistance" as a component under the housing category. New housing construction typically is ineligible for assistance under 24 CFR 570.207(b)(3). However, under § 570.204(a)(2), as modified by § 571.202, the applicant may designate a subrecipient—a Tribal-based nonprofit organization or local development corporation—to carry out the activity. Section 907 of NAHA adds direct homeownership assistance to the list of activities eligible for CDBG funding. This activity will be eligible until homeownership assistance is available under title II of NAHA (October 1, 1992 or 1993, as determined by the Secretary). Grantees may provide direct assistance to facilitate and expand homeownership among low- and moderate-income persons. This assistance is not considered to be a public service.

Section 571.304 Community Facilities

This section will outline for HUD field offices the factors they will use to rate community facilities applications. This category consists of two components: Infrastructure and buildings. Both components consist of three parts: "project need and design"; "planning and implementation"; and "leveraging."

Section 571.305 Economic Development

This section will outline for HUD field offices the factors they will use to rate economic development applications. This category consists of the three parts: "Project viability"; "job creation"; and "additional considerations."

Section 571.306 Additional Features of the Selection Process

This section will be removed because its provisions have essentially been incorporated in other revisions in the current selection process.

Subpart F—Grant Administration

Section 571.504 Grant Closeout Procedure

This new section explains which form is required for grant closeout and the applicability of 24 CFR 570.509.

Subpart G—Other Program Requirements

Section 571.602 Relocation and Acquisition

This section will set forth policies governing displacement, relocation, and real property acquisition under this part. These policies conform the regulations in this part to the requirements of 49 CFR part 24, the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), and related HUD policies.

Section 571.606 HUD Housing Assistance

This section will be removed. Section 571.303 now includes the substance of this section. Section 571.303 outlines performance considerations, including those applicable to Tribes that have established an Indian Housing Authority (IHA) and have obtained housing assistance from HUD.

Other Matters

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the

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National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

This rule would not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would establish criteria for funding eligible recipients among Indian Tribes, but have no impact on small entities.

This rule was listed as Item No. 1247 in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530, 44556) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. (Amendments added from the 1990 Act were not included in the October Agenda description.)

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. While the rule has some direct effects on States and political subdivisions, those effects are limited to direct implementation of instructions contained in statutes governing the grant program. Given the lack of discretion in the Department to refrain from implementing these statutory instructions, further analysis of federalism concerns would serve no useful purpose.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

The Catalog of Federal Domestic Assistance program numbers are 14.218, 14.219, and 14.229.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 571.300, 571.306, 571.500, 571.502, 571.504, and 571.700 of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

PROPOSED RULE—FR–2880 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of response per respondent	Total annual responses	Hours per response	Burden hours
Application: SF 424 (HUD–4121, 4122, 4123) and maps	§ 571.300	260	1.1	286	60	17,160
Preaward Requirements (HUD–4123, 4125, 4126)	§ 571.306	120	1	120	20	2,400
Supporting Documentation (not required of all grantees)	§ 571.500	10	1	10	20	200
Force Account Approval (only required of grantees using force account)	§ 571.502	40	1	40	5	200
Status Report (Monitoring and Annual Reports)	§ 571.700	120	1	120	10	1,200
Financial Status Report (SF–269)	§ 571.504	120	1	120	5	600
Totals		670	1.04	696	31.3	21,760

List of Subjects in 24 CFR Part 571

Alaska, Community development block grants, Grant programs-housing and community development, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 571 would be revised to read as follows:

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

Subpart A—General Provisions

Sec.
571.1 Applicability and scope.
571.2 Program objectives.
571.3 Nature of program.
571.4 Definitions.
571.5 Eligible applicants.
571.6 Technical Assistance.
571.7 Waivers.

Subpart B—Allocation of Funds

571.100 General.
571.101 Regional allocation of funds.

Subpart C—Eligible Activities

571.200 General.
571.201 Primary and national objectives.
571.202 Nonprofit organizations.
571.203 Administrative costs.

Subpart D—Single Purpose Grant Application and Selection Process

571.300 Application requirements.
571.301 Screening and review of applications.
571.302 Selection process.
571.303 Housing rating category.
571.304 Community facilities or public services rating category.
571.305 Economic development rating category.
571.306 Funding process.
571.307 Program amendments.

Subpart E—Imminent Threat Grants

571.400 Criteria for funding.
571.401 Application process.
571.402 Environmental review.
571.403 Availability of funds.

Subpart F—Grant Administration

571.500 General.
571.501 Designation of public agency.
571.502 Force account construction.
571.503 Indian preference requirements.
571.504 Grant closeout procedure.

Subpart G—Other Program Requirements

571.600 General.
571.601 Nondiscrimination.
571.602 Relocation and acquisition.
571.603 Labor standards.
571.604 Citizen participation.
571.605 Environment.
571.606 Conflict of interest.

Subpart H—Program Performance

571.700 Reports to be submitted by grantee.
571.701 Review of recipient's performance.
571.702 Corrective and remedial actions.
571.703 Reduction or withdrawal of grant.
571.704 Other remedies for noncompliance.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 571.1 Applicability and scope.

The policies and procedures described in this part apply only to grants to eligible Indian Tribes and Alaskan native villages under the Community Development Block Grant (CDBG) Program for Indian Tribes and Alaskan native villages.

§ 571.2 Program objectives.

The primary objective of the Indian CDBG (ICDBG) Program and of the community development program of each grantee covered under this Act is the development of viable Indian and Alaskan native communities, including decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income. The Federal assistance provided in this part is for the support of community development activites which further this objective. This assistance is not to be used to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of this assistance.

§ 571.3 Nature of program.

The ICDBG Program is competitive in nature. The demand for funds far exceeds the amount of funding available. Therefore, selection of eligible applicants for funds will reflect consideration of the relative adequacy of applications in addressing locally determined need. Applicants for funding must have the administrative capacity to undertake the community development activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 571.4 Definitions.

(a) *Act* means title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*).

(b) *Chief executive officer* means the elected official or legally designated official who has the prime responsibility for the conduct of the affairs of an Indian Tribe or Alaskan native village.

(c) *Eligible Indian populations* means the most accurate and uniform population data available from reliable sources for Indian Tribes and Alaskan native villages eligible under this part.

(d) *Extent of overcrowded housing* means the number of housing units with 1.01 or more persons per room, based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period of time.

(e) *Extent of poverty* means the number of persons whose incomes are below the poverty level, based on data compiled and published by the United States Bureau of the Census referable to the same point or period in time and the latest reports from the Office of Management and Budget.

(f) *Field offices* means the HUD Offices of Indian Programs or other HUD field offices having responsibility for the Indian CDBG Program.

(g) *HUD* means the Department of Housing and Urban Development.

(h) *ICDBG Program* means the Indian Community Development Block Grant Program.

(i) *Identified service area* means:

(1) A geographic location within the jurisdiction of a Tribe (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a service area;

(2) the Bureau of Indian Affairs (BIA) service area, including residents of areas outside the geographic jurisdiction of the Tribe; or

(3) the entire area under the jurisdiction of a Tribe which has a population of members of under 10,000.

(j) *Low- and moderate-income beneficiary* means a family, household, or individual whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families. However, the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low household or family incomes. In reporting income levels to HUD, the applicant must include and identify the distributions of Tribal or village income to families, households, or individuals.

(k) *Secretary* means the Secretary of HUD.

(l) *Tribal government, Tribal governing body* or *Tribal council* means the recognized governing body of an Indian Tribe or Alaskan native village.

(m) *Tribal resolution* means the formal manner in which the Tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic documents, a written expression adopted pursuant to Tribal practices will be acceptable.

(n) *URA* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

§ 571.5 Eligible applicants.

(a) Eligible applicants are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of Treasury, Office of Revenue Sharing.

(b) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that act for funds under this part when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

(c) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or organizations to assist in the preparation of applications and to help implement assisted activities.

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(d) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaskan native village, as provided in paragraph (a) of this section, or as a Tribal organization, as provided in paragraph (b) of this section, by the application submission date.

§ 571.6 Technical assistance.

On an annual basis, each field office will provide technical assistance to eligible applicants for these purposes:

(a) To provide eligible applicants with information on how to apply for funds and how grants will be selected and awarded; and

(b) To inform eligible applicants of changes in the program.

§ 571.7 Waivers.

The Secretary may waive any requirement of this part not required by law whenever it is determined that undue hardship will result from applying the requirement, and where application of the requirement would adversely affect the purposes of the Act.

Subpart B—Allocation of Funds

§ 571.100 General.

(a) *Types of grants.* Two types of grants are available under the Indian CDBG Program.

(1) *Single purpose grants* provide funds for one or more single purpose projects consisting of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single purpose projects.

(2) *Imminent threat grants* alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after a field office determines that such conditions exist and if funds are available for such grants.

(b) *Size of grants* (1) *Ceilings.* Each field office may establish grant ceilings for single purpose and imminent threat grant applications.

(2) *Individual grant amounts.* In determining appropriate grant amounts to be awarded, the field office may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives and the administrative capacity of the applicant to complete the activities in a timely manner. In considering an economic development project, the field office shall take into account the income stream that the applicant will receive, and limit the grant to the amount needed to make the project feasible, with a rate of return that is not excessive.

§ 571.101 Regional allocation of funds.

(a) Except as provided in paragraph (b) of this section, funds will be allocated to the field offices responsible for the program on the following basis:

(1) Each field office will be allocated $500,000 as a base amount, to which will be added a formula share of the balance of the Indian CDBG Program funds, as provided in paragraph (a)(2) of this section.

(2) The amount remaining after the base amount is allocated will be allocated to each field office based on the most recent data available from reliable sources referable to the same point or period in time, as follows:

(i) Forty percent (40%) of the funds will be allocated based upon each field office's share of the total eligible Indian population;

(ii) Forty percent (40%) of the funds will be allocated based upon each field office's share of the total extent of poverty among the eligible Indian population; and

(iii) Twenty percent (20%) of the funds will be allocated based upon each field office's share of the total extent of overcrowded housing among the eligible Indian population.

(b) If funds are set aside by statute for a specific purpose in any fiscal year, the formula in paragraph (a) of this section will apply unless otherwise specified in the law, or unless it is determined that the formula is inappropriate to accomplish the purpose, in which case the Secretary may establish other criteria to determine an allocation formula for distributing funds to the field offices.

(c) Data used for the allocation of funds will be based upon the Indian population of those Tribes and villages that is determined to be eligible ninety (90) days before the beginning of each fiscal year.

Subpart C—Eligible Activities

§ 571.200 General.

The eligibility requirements of part 570, subpart C of this Chapter—Eligible Activities—apply to grants under this part, except for those provisions which are specifically stated as applying only to the Entitlement Cities or Small Cities-HUD administered programs, and with the modifications stated in this subpart.

§ 571.201 Primary and national objectives.

(a) Not less than 70 percent of each single purpose grant must be used for activities that benefit low- and moderate-income persons under the criteria set forth in 24 CFR 570.208(a). In determining the percentage of funds used for such activities, the provisions of 24 CFR 570.200(a)(3) (i), (iv), and (v) shall apply. The requirements of this paragraph do not apply to imminent threat grants funded under subpart E of this part.

(b) In addition to the requirement of paragraph (a) of this section, each activity must meet one of the national objectives pursuant to the criteria set forth in 24 CFR 570.208.

§ 571.202 Nonprofit organizations.

Tribal-based nonprofit organizations replace neighborhood-based nonprofit organizations under 24 CFR part 570, subpart C. A Tribal-based nonprofit organization is an association or corporation duly organized to promote and undertake community development activities on a not-for-profit basis within an identified service area.

§ 571.203 Administrative costs.

(a) For purposes of this part, technical assistance costs associated with developing the capacity to undertake a specific funded program activity are not considered administrative costs. Therefore, these costs are not included in the twenty percent limitation on planning and administration stated in 24 CFR part 570, subpart C.

(b) Technical assistance costs cannot exceed ten percent of the total grant award.

As used in the part, "technical assistance" means the transfer of skills and knowledge in planning, developing, and administering the CDBG program to eligible Indian CDBG recipients who need them in order to undertake a specific funded program activity.

Subpart D—Single Purpose Grant Application and Selection Process

§ 571.300 Application requirements.

(a) *General.* Applications are required for assistance under this part. An applicant shall submit only one application, which may include an unlimited number of eligible projects, e.g., housing or public facilities. Each project within a single purpose grant applications will have each project rated separately, i.e., according to the rating category under which it fits. Field offices will fund the highest ranking projects from all applications, up to the grant ceiling. Applications shall include projects which can be completed within a reasonable period of time (generally not more than two years).

(b) *Application information.* Each field office shall recommend its application submission deadline to HUD Headquarters. Headquarters shall publish a Notice of Funding Availability (NOFA) in the **Federal Register** not less than 30 days before the deadline(s) for application submission. The NOFA will provide more detail regarding:

(1) Information about the availability of funds;

(2) A description of the forms and procedures for completing an application and the field offices' deadlines. Such description shall be designed to help eligible applicants apply for the funds; and

(3) The criteria used to select applications.

(c) *Demographic data.* Applicants may submit data that are unpublished and not generally available in order to meet the requirements of this section. The applicant must certify that:

(1) Generally available, published data are substantially inaccurate or incomplete;

(2) Data provided have been collected systematically and are statistically reliable;

(3) Data are, to the greatest extent feasible, independently verifiable; and

(4) Data differentiate between reservation and BIA service area populations when applicable.

(d) *Costs incurred by applicant.* (1) Notwithstanding any provision in part 570 of this chapter, HUD will not reimburse or recognize any costs incurred before submission of the single purpose grant application to HUD.

(2) Also, HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the field office may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue hardship on the applicant. Such authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in accordance with 24 CFR 58.22 and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(e) *Publication of community development statement.* Applicants for single purpose grants shall prepare and publish or post the community development statement portion of their application according to the citizen participation requirements of § 571.604.

(f) *Application components.* The NOFA will provide more detail about the application components outlined in this paragraph. Applicants for single purpose grants shall submit an application to the appropriate field office in a form prescribed by HUD. The application shall include:

(1) Standard form 424;

(2) Community development statement which includes:

(i) A brief description or an updated description of community development needs;

(ii) A brief description of proposed projects to address needs, including scope, magnitude, and method of implementing a project; and

(iii) Cost information by project, including specific activity costs, administration, planning, and technical assistance, total HUD share; and amount of other funds by source; and

(iv) Components that address the relevant selection criteria.

(3) A map showing project location, if appropriate; and

(4) Certification in the form of an official Tribal resolution that citizen participation requirements of § 571.604 have been met.

(5) As required by Section 102(b) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235), applicants that reasonably expect to receive more than $200,000 of funding from HUD during the fiscal year must provide the following information:

(i) Other related assistance that is expected to be made available for the project by the Federal government, State government, unit of local government, Tribe, Alaskan native village, or any agency or instrumentality of the above.

(ii) Name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project include but are not limited to developers, contractors, and consultants involved in the application for assistance or the planning, development and implementation of the project or activities. Residency of an individual in housing for which assistance is being sought is not considered a pecuniary interest.

During the period that the application is pending, or the project is open, the applicant shall update the aforementioned disclosure within 30 days of any substantial change.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0043.)

§ 571.301 Screening and review of applications.

(a) *Criteria for acceptance.* Each field office will initially screen applications for single purpose grants. They will accept applications if:

(1) They are received on or before the submission date;

(2) The applicant is eligible;

(3) The proposed activities are eligible; and

(4) They contain substantially all the components specified in § 571.300(f). Applications failing this initial screening shall be rejected and returned to the applicants unrated.

(b) *Demographic data.* HUD will review and accept demographic data provided by an applicant if, in HUD's determination the data are of the quality described in § 571.300(c). Where demographic data provided by an applicant are unacceptable, HUD will use the best available data at its disposal.

(c) *Grant ceiling.* HUD will review applications for compliance with grant ceilings that field offices establish.

(d) *Information submitted on request.* A field office shall notify applicants in writing of any technical deficiencies in their applications. Applicants will have 14 calendar days from the date of the field office notification to correct any technical deficiences. A technical deficiency means that an application lacks one or more elements required as part of a full application, but which is unnecessary to conduct the rating and ranking process. The field office also may request information to resolve ambiguities in the application and may, in its discretion, request that an applicant submit information that may help to clarify an application that, in the field office's view, contains information that is inconsistent with known facts or data. Periodic NOFAs may further define technical deficiences and the circumstances under which additional information will be requested. Applicants may submit only the information requested by HUD. Applicants may not submit information that will enhance a project's rating, and a new project(s) may not be substituted for one(s) proposed in the original application. The field office shall disqualify applicants that fail to submit the information requested if the field office determines that the applicant failed to meet the threshold requirements or to show compliance with requirements of this part, or if it determines that information is insufficient to make a rating decision.

§ 571.302 Selection process.

(a) *Threshold requirements.* In order for applications that have passed the initial screening tests of § 571.301 to be rated and ranked, field offices must

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determine that the following requirements have been met:

(i) *Community development need and appropriateness.* (i) The applicant's project(s) directly impacts on its community development needs;

(ii) The costs are reasonable;

(iii) The project(s) is appropriate for the intended use; and

(iv) The project(s) is usable or achievable (generally within a two-year period). If in the judgment of the field office, available data indicate that the proposed project(s) is inconsistent with the applicant's community development needs, its costs are unreasonable, it is inappropriate for the intended use, or not usable generally within two years, the field office shall determine that the applicant has not met this threshold requirement, and shall reject such project(s) from further consideration.

(2) *Capacity and performance.* The applicant has the capacity to undertake the proposed program. Additionally, applicants that previously have participated in the Indian CDBG Program must have performed adequately or, in cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance.

(i) *Capacity.* The applicant possesses, or will acquire, the managerial, technical, or administrative staff necessary to carry out the proposed projects. If the field office determines that the applicant does not have or cannot obtain the capacity to undertake the project(s), such project(s) will be rejected from further consideration.

(ii) *Performance*—(A) *Community development.* Performance determinations are made through the field office's normal monitoring process. Applicants that have been advised in writing of negative findings on previous grants, for which a schedule of corrective actions has been established, will not be considered for funding if they are behind schedule as of the deadline date for filing applications.

(B) *Housing assistance.* The applicant has taken actions within its control to facilitate the provision of housing assistance for low- and moderate-income members of the Tribe or village. Any action to prevent the provision or operation of assisted housing for low- and moderate-income persons also shall be evaluated in terms of whether it constitutes inadequate performance by the applicant. If inadequate performance is found, the applicant shall be rejected from further consideration. Subsequent applicants also will be similarly disqualified in subsequent competitions unless the applicant has taken corrective actions within its control.

(C) *Previous audit finding and outstanding monetary obligations.* An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current and subsequent competitions until the obligations are current. An applicant whose response to an audit finding(s) is overdue or unsatisfactory will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding(s). The field office director may provide exceptions to this disqualification requirement in cases where the applicant has made a good faith effort to clear the audit finding(s). In no instance, however, shall an exception be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made, and payments are current.

(b) *Application rating system.* (1) Applications that meet the threshold requirements established in paragraph (a) of this section will be rated competitively within each field office's jurisdiction. Field offices may conduct separate competitions among applicants on the basis of size.

(2) Periodic NOFAs will further weight and define the rating factors contained in this subpart. Each field office will rate applications on the basis of their responsiveness to the factors contained in this subpart and in the periodic NOFAs.

(3) In addition to meeting the requirements of this section, which apply to all applications, the field office will examine each project submitted to determine in which one of the three rating categories set out in § 571.303 through §571.305 the project most appropriately belongs. The project then will be rated on the basis of the criteria identified in the rating category component to which the project has been assigned. The total points for a rating component is 100, which is the maximum any project can receive.

(4) Due to the statutory 15 percent cap on public services activities, applicants may not receive single purpose grants solely to fund public services activities. However, any application may contain a public services component for up to 15 percent of the total grant. This component may be unrelated to the application's other component(s). If an application does not receive full funding, the public services allocation will be proportionately reduced to comprise no more than 15 percent of the total grant award.

(c) *Final ranking.* All projects will be ranked against each other according to the point totals they receive, regardless of the rating category or component under which the points were received. Projects will be selected for funding based on this final ranking, to the extent that funds are available. If the field office determines that an insufficient amount of money is available to fund adequately a project, it may decline to fund that project and fund the next highest ranking project(s) for which adequate funds are available.

HUD may select additional projects for funding, if one of the higher ranking projects is not funded, or if additional funds become available.

(d) *Ties.* Field offices shall approve projects involved in a tie that can be fully funded over those that cannot be fully funded. Only when such approval does not resolve a tie, shall the field office resort to one or more of the methods listed below ("tiebreakers"). Each field office's choice(s) of tiebreaker(s) will be published in the NOFA that is issued before each funding competition.

(1) The applicant that has not received a block grant over the longest period of time.

(2) The applicant that has received the fewest CDBG dollars since the inception of the program.

(3) The application that benefits the most low- and moderate-income persons.

(4) The application that benefits the highest percentage of low- and moderate-income persons.

(5) The applicant with the fewest projects that can be funded in the current year's competition.

(6) The applicant with the fewest active grants.

(e) *Competition documentation.* Field offices shall make available for public inspection each application and all related documentation and information, including letters of support, that indicate the basis on which the award was made or denied. Each field office shall make this documentation available for a period of at least five years starting 30 days from the date on which the award is made.

(f) *Procedural error.* If a field office makes a procedural error in the application and selection process that, when corrected, will result in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD may fund that applicant in the next year without further competition.

(g) *Setaside selection of projects.* If funds have been set aside by statute for a specific purpose in any fiscal year, other criteria pertinent to the setaside may be used to select projects for funding from the setaside. The selection of projects for setaside funding may be competitive or noncompetitive.

§ 571.303 Housing rating category.

The "housing rating" category consists of three components: Housing rehabilitation; land to support new housing; and new housing construction/direct homeownership assistance. Housing rehabilitation and new housing construction/direct homeownership assistance consist of three parts: Project need and design; planning and implementation; and leveraging. Land to support new housing consists of two parts: Projects need; and planning and implementation. Housing projects will be assigned to the appropriate component for rating and may receive a maximum of 100 points. In those instances where a Tribe has established or joined an Indian Housing Authority (IHA) and has obtained housing assistance from HUD, its compliance with the resolution set out in Article VIII of HUD's Model Tribal Ordinance will be a performance consideration under § 571.302. The applicant shall certify that it will use project funds to rehabilitate or construct units or to provide direct homeownership assistance only where the tenant's/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions, on a case-by-case basis, to the requirement that beneficiaries be current to permit housing rehabilitation, new construction, or direct homeownership assistance in emergency situations.

(a) *Housing rehabilitation component.* All applicants for housing rehabilitation grants shall adopt rehabilitation standards and rehabilitation policies, prior to submitting an application.

(1) Project need and design (45 points). The field office will consider the following when reviewing each application:

(i) The percentage of project funds committed to bring the housing up to standard condition, as defined by the applicant.

(ii) Proposed project staffing plan.

(iii) The degree to which the applicant's selection policy gives priority to the neediest households.

(iv) Documentation of project need.

(2) Planning and implementation (45 points). The field office will consider the following when reviewing each application:

(i) Rehabilitation policies, including adopted rehabilitation standards, rehabilitation selection criteria, and project planning documents.

(ii) Quality of post-rehabilitation maintenance policies.

(iii) Quality of cost estimates.

(iv) Cost effectiveness of the rehabilitation program.

(3) Leveraging (10 points). Applicants must provide documentation of the amount and sources of additional funds. This should include private contributions, including equity and loans, applicant funding, and other governmental funding.

(b) *Land to support new housing component.*

(1) Project need (40 points). The field office will consider the amount of land that the applicant already has that is available and suitable for new housing. (Applicants that have suitable land available will rate poorly on this factor.)

(2) Planning and implementation (60 points). The field office will consider the following when reviewing each application:

(i) Suitability of land to be acquired.

(ii) Housing resources that are committed at the time of project application.

(iii) Availability/accessibility of supportive services and employment opportunities.

(iv) Commitment that families will move into new housing.

(v) Land can be taken into trust or provisions have been made for taxes and fees.

(vi) Financial commitment for any infrastructure needed to support housing to be developed. (If needed infrastructure exists, maximum points will be awarded.)

(vii) Extent to which the proposed site meets the applicant's needs.

(c) *New housing construction/direct homeownership assistance component.*

(1) New housing construction can only be implemented through a nonprofit organization that is eligible under § 571.202 or is otherwise eligible under 24 CFR 570.207(b)(3). If an applicant plans to provide direct homeownership assistance under section 907 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625) to low- and moderate-income homebuyers who will occupy existing units, or if an applicant plans to build housing covered by mortgage insurance under section 248 of the National Housing Act, the field office will not consider the provisions of paragraphs (c)(2)(i) (A) and (B) and (c)(3)(iv) of this section when rating the proposal. The remaining subparts will be weighted so that direct homeownership assistance and section 248 projects may receive a maximum of 100 points. All applicants for new housing construction grants must document that no other housing is available in the immediate reservation area that is suitable for the family to be assisted. All applications for new housing construction/direct homeownership assistance grants must contain the following documentation:

(i) No other sources can meet the needs of the household(s) to be served; and

(ii) Rehabilitation of the unit occupied by the family to be housed is not economically feasible; or

(iii) The family to be housed currently is in an overcrowded unit (sharing unit with other household(s)); or

(iv) The family to be housed has no current residence.

(2) Project need and design (45 points). The field office will consider the following when reviewing each application:

(i) The applicant:

(A) Either is not a member of an IHA, or the umbrella IHA to which it belongs has not provided assistance to the applicant in a substantial period of time; or

(B) Has not received HUD Public and Indian Housing new construction or modernization assistance in a substantial period of time due to a lack of funds.

(ii) Adopted housing construction policies and plan.

(iii) Beneficiary identification (all households are low- and moderate-income). The households to be served have documented needs for housing assistance that cannot be met from other sources.

(3) Planning and implementation (45 points). The field office will consider the following when reviewing each application:

(i) Occupancy standards.

(ii) Site acceptability, including consideration of land control, access, utilities, infrastructure, physical characteristics, and whether the site is held in trust.

(iii) Energy conservation design.

(iv) Housing survey.

(v) Cost effectiveness.

(4) Leveraging (10 points). Applicants must provide documentation of the amount and sources of additional funds. This should include private contributions including equity and loans, applicant funding, and other governmental funding.

§ 571.304 Community facilities or public services rating category.

The *community facilities or public services rating* category consists of three components: Infrastructure, such

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as water, sewer or roads; buildings, such as a community center or child care facility; and public services, such as drug counselling. Each component consists of three parts: project need and design; planning and implementation; and leveraging. Community facilities or public services projects will be assigned to the appropriate component for rating and may receive a maximum of 100 points.

(a) *Infrastructure component.*

(1) Project need and design (45 points). The project will accomplish the following:

(i) Meet an essential community need.

(ii) Benefit the neediest segment of the population.

(iii) Provide infrastructure that currently does not exist either within or outside the community or reservation or replace an existing facility that no longer functions adequately to meet the current needs.

(iv) Eliminate or substantially reduce a health or safety problem.

(2) Planning and implementation (45 points). The application will show:

(i) A viable plan for maintenance and operation.

(ii) An appropriate and effective design, scale and cost.

(iii) That the project will serve a substantial number of low- and moderate-income persons.

(3) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

(b) *Buildings component.*

(1) Project need and design (45 points). The project will accomplish the following:

(i) Benefit the neediest segment of the population by targeting them to the greatest extent possible.

(ii) Provide a building that currently does not exist either within or outside the community or reservation or replace an existing facility that no longer functions adequately to meet the current needs.

(iii) Provide multiple uses or multiple benefits.

(iv) Meet an essential community need.

(v) Eliminate or substantially reduce a health or safety problem.

(2) Planning and implementation (45 points). The application will show:

(i) A viable plan for maintenance and operation.

(ii) An appropriate and effective design, scale, and cost.

(iii) That the project will serve a substantial number of low- and moderate-income persons.

(3) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

(c) Public services.

(1) Project need and design (45 points). The project will accomplish the following:

(i) Meet and essential community need.

(ii) Benefit the neediest segment of the population.

(iii) Provide a public service that currently does not exist either within or outside the community or reservation or expand and improve an existing service to meet growing needs.

(iv) Eliminate or substantially reduce a health or safety problem.

(2) Planning and implementation (45 points). The application will show:

(i) A viable plan for continuing provision of the service(s).

(ii) An appropriate and effective design, scale and cost.

(iii) That the project will serve a substantial number of low- and moderate-income persons.

(3) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

§ 571.305 Economic development rating category.

The *economic development rating* category has only one component, consisting of three parts: project viability; permanent full-time job creation; and additional considerations. Economic development projects may receive a maximum of 100 points. The application shall demonstrate the need for grant assistance by providing a determination that the assistance is appropriate to implement an economic development project and is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the project. In making this determination, the field office should consider the income stream that will be generated by the project. Projects with excessive income streams must contain a repayment provision if the funds are going to a nongovernmental entity.

(a) *Project viability* (60 points). The application will be rated on the adequacy and quality of the following subparts:

(1) Business/management plan, which includes elements such as: management capacity, organization, and market feasibility.

(2) Financial analysis, which includes the rate of return.

(3) High but not excessive rate of return or a lower rate of return and evidence that the business will provide a needed product or service or a lower rate of return and evidence that the business will employ a significant number of low- and moderate-income members of the Tribe or village.

(4) High leveraging ratio.

(b) *Permanent full-time job creation* (30 points). The application will be rated on the adequacy and quality of the following subparts:

(1) CDBG cost per job.

(2) CDBG cost per job targeted to low- and moderate-income persons.

(3) Quality of jobs targeted to low- and moderate-income persons.

(4) Employer commitment to provide training opportunities.

(c) *Additional considerations* (10 points). The project will accomplish one or more of the following:

(1) Use, improve, and expand members' special skills.

(2) Provide spin-off benefits beyond the initial economic development benefits.

(3) Provide special opportunities for residents of federally assisted housing.

(4) Provide benefits to other businesses owned by Indians or Alaskan natives.

§ 571.306 Funding process.

(a) *Notification.* Field offices will notify applicants of the actions taken regarding their applications. Grant amounts offered may reflect adjustments made by the field offices in accordance with § 571.109(b).

(b) *Pre-award requirements.* (1) Upon notification by HUD of successfully competing for a grant, the applicant shall submit, on forms prescribed by HUD, the following:

(i) Implementtion schedule.

(ii) Certifications.

(iii) Cost information, if changes have occurred or if the field office has adjusted the original grant request.

(2) Successful applicants also may be required to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects before a grant agreement can be executed. Applicants will be given an amount of time specified by the field office, between fifteen (15) and thirty (30) calendar days, to respond to such requirements. In the event that no response or an insufficient response is made within the prescribed time period, the field office may determine that the applicant has not met the requirements and the grant offer may be withdrawn. The field offices shall require supporting documentation in those instances where:

(i) Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; and/or

(ii) The applicant has not provided information verifying the commitment of other resources required to complete, operate, or maintain the proposed project.

(3) Grant amounts allocated for applicants unable to meet pre-award requirements will be offered to the next highest ranking unfunded project.

(4) New projects may not be substituted for those originally proposed in the application.

(c) *Grant award.* (1) As soon as HUD determines that the applicant has complied with the pre-award requirements and nothing has come to the attention of the field office which would alter the threshold determinations under § 571.302, the grant will be awarded. These regulations (*i.e.*, 24 CFR part 571) become part of the grant agreement.

(2) All grants shall be conditioned upon the completion of all environmental obligations and approval of release of funds by HUD in accordance with the requirements of part 58 of this title and, in particular, subpart J of 24 CFR part 58, except as otherwise provided in:

(i) 24 CFR 58.33, "Emergencies";

(ii) 24 CFR 58.34, "Exempt activities"; or

(iii) 24 CFR 58.22, "Activities," excepted from limitations on the commitment of funds and which are reimbursable under subpart C of 24 CFR part 570.

(3) HUD may impose other grant conditions where additional actions or approvals are required prior to the use of funds, such as:

(i) Pending site and neighborhood standards approval for a proposed housing project, if applicable;

(ii) Pending HUD approval of the use of Tribal work forces for construction or renovation activities in accordance with § 571.502; or

(iii) Pending receipt of other agencies' funding commitments required for the project. If the required conditions are not met within the prescribed time, HUD may unilaterally rescind the grant award.

(Approved by the Office of Management and Budget under OMB Control No. 2506-0043.)

§ 571.307 Program amendments.

(a) Grantees shall request prior HUD approval for all program amendments involving the alteration of existing activities that will significantly change the scope, location, objective, or class of beneficiaries of the approved activities, as originally described in the application.

(b) Amendment requests shall include the information required under § 571.300(f) (1) and (4), as well as any changes to the information requested under § 571.300(f) (2), (3) and (5).

(1) Amendments of $10,000 or more shall address all the rating parts and subparts of the last rating cycle. Approval is subject to the following:

(i) A rating equal to or greater than the lowest rating received by a funded project during the last rating cycle;

(ii) Capability to complete promptly the modified or new activities;

(iii) Compliance with the requirements of § 571.604 of this part for citizen participation; and

(iv) The preparation of an amended or new environmental review in accordance with part 58 of this title, if there is a significant change in the scope or location of approved activities.

(2) Amendments of less than $10,000 shall be approved subject to meeting the requirements of paragraphs (b)(1) (ii), (iii), and (iv) of this section.

(3) Amendments which address imminent threats to health and safety shall be reviewed and approved in accordance with the requirements of subpart E of this part.

(c) If a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for amendment shall be returned to HUD.

Subpart E—Imminent Threat Grants

§ 571.400 Criteria for funding.

The following criteria apply to requests for assistance under this subpart:

(a) In response to requests for assistance, the field office may make funds available under this subpart to applicants to alleviate or remove imminent threats to health or safety that require an immediate solution. The urgency and immediacy of the threat shall be independently verified prior to the approval of an application. Funds may only be used to deal with imminent threats that are not of a recurring nature, which represent a unique and unusual circumstance, and which impact on an entire service area.

(b) Funds to alleviate imminent threats may be granted only if the applicant can demonstrate to the satisfaction of HUD that other local or Federal funding sources cannot be made available to alleviate the threat.

§ 571.401 Application process.

(a) *Letter to proceed.* The field office may issue the applicant a letter to proceed to incur costs to alleviate imminent threats to health and safety only if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration. Reimbursement of such costs is dependent upon HUD approval of the application.

(b) *Applications.* Applications shall be submitted in accordance with § 571.300(f). Applications which meet the requirement of this section may be approved by the field office without competition.

§ 571.402 Environmental review.

In accordance with 24 CFR 58.34(a)(6), grants for imminent threat to health or safety are exempt from some or all of the environmental review requirements of part 58 of this title, to the extent provided.

§ 571.403 Availability of funds.

Field offices may set aside up to 15 percent of their allocation of funds under this part for imminent threat grants. The only funds reserved for imminent threat are those set aside by the field office each year. A field office may not retain imminent threat funds after the date upon which it receives its allocation for the succeeding fiscal year. Any imminent threat funds remaining will be used as if they are a part of the new allocation of funds. Field offices must correctly indicate, however, the fiscal year the residual funds were originally allocated when the funds are awarded to applicants.

Subpart F—Grant Administration

§ 571.500 General.

The requirements of part 570, subpart J of this chapter Grant Administration—apply to grants under this part except for those provisions that are specifically stated as applying to the Entitlement Cities or Small Cities—HUD administered programs, and with the modifications stated in this subpart.

(Approved by the Office of Management and Budget under OMB Control No. 2506-0043.)

§ 571.501 Designation of public agency.

One or more Tribal departments or authorities may be designated by the chief executive officer of an Indian Tribe or Alaskan native village as the operating agency to undertake activities assisted under this part. The Indian Tribe or Alaskan native village itself, however, shall be the applicant. Designation of an operating agency does

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not relieve the Indian Tribe or Alaskan native village of its responsibility to assure that the program will be administered in accordance with all HUD requirements, including these regulations.

§571.502 Force account construction.

(a) The use of Tribal work forces for construction or renovation activities performed as part of the activities funded under this part shall be approved by HUD before the start of project implementation. In reviewing requests for an approval of force account construction or renovation, HUD may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be utilized;

(3) Information showing that the workers to be utilized are, or will be listed on the Tribal payroll and are employed directly by an arm, department or other governmental instrumentality of the Tribe or village.

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part in accordance with § 571.307(b) or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include workman's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurement from outside vendors under this section, but not to other activities undertaken by force account. HUD may approve alternative requirements in lieu of bonding if compliance with the bonding requirements specified in 24 CFR 85.36(h) is determined by HUD to be infeasible or incompatible with the Indian preference requirements set forth in § 571.503.

(Approved by the Office of Management and Budget under OMB Control No. 2506-0043.)

§ 571.503 Indian preference requirements.

(a) *Applicability.* HUD has determined that grants under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians, and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(b) *Definitions.* Indian organizations and Indian-owned economic enterprises include both of the following:

(1) Any economic enterprise as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-262); that is, "any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership and control shall constitute not less than 51 percent of the enterprise"; and

(2) Any "Tribal organizations" as defined in Section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638); that is, "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities."

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians and Alaskan natives.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to HUD field office one-time approval, the grantee's own method of providing preference.

(2) If the grantee selects a method of providing preference that results in fewer than two responsible qualified Indian organizations or Indian-owned enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(i) Re-bid the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-bid the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid is received, request field office review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding solicitation and the bidding documents.

(5) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises; however, this information need not be submitted to HUD. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership, control, and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as the section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) preferences and opportunities for training and employment shall be given to Indians and

(B) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties of this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians and Alaskan natives.

(iv) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

(e) *Additional Indian preference requirements.* A grantee may, with prior HUD approval, provide for additional Indian preference requirements as conditions for the award of, or in the terms of, any contract in connection with a project funded under this part. The additional Indian preference requirements shall be consistent with the objectives of the section 7(b) clause of the Indian Act and shall not result in a significantly higher cost or greater risk of non-performance or longer period of performance.

§ 571.504 Grant closeout procedure.

Within 90 days of the date that HUD determines the grant has met the criteria for closeout, the grantee shall submit to HUD a completed Financial Status Report (SF-269). In addition, the requirements of 24 CFR 570.509, Grant closeout procedures, apply to the ICDBG program.

(Approved by the Office of Management and Budget under OMB Control No. 2506-0043.)

Subpart G—Other Program Requirements

§ 571.600 General.

The following requirements of 24 CFR part 570, Subpart K—Other Program Requirements—apply to grants under this part.

(a) 24 CFR 570.605, "National Flood Insurance Program."

(b) 24 CFR 570.608, "Lead-based paint."

(c) 24 CFR 570.609, "Use of debarred, suspended, or ineligible contractors or subrecipients."

(d) 24 CFR 570.610, "Uniform administrative requirements and cost principles."

§ 571.601 Nondiscrimination.

(a) Under the authority of section 107(e)(2) of the Act, the Secretary waives the requirement that recipients comply with section 109 of the Act except with respect to the prohibition of discrimination based on age, sex, or against an otherwise qualified handicapped individual.

(b) A recipient shall comply with the provisions of title II of Public Law 90-284 (24 U.S.C. 1301—the Indian Civil Rights Act) in the administration of a program or activity funded in whole or in part with funds made available under this part. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient; and "funded in whole or in part with funds made available under this part" means that community development funds in any amount have been transferred by the recipient to an identifiable administrative unit and disbursed in a program or activity.

§ 571.602 Relocation and acquisition.

(a) *General policy for minimizing displacement.* Consistent with the other goals and objectives of this part, grantees shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) the location of the suitable, safe and habitable dwelling to be made available for the temporary period;

(iii) the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) the provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655), as implemented by 49 CFR part 24.

(d) *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the grantee does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the grantee from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Obtain HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property. The grantee shall include with its request for such approval a copy of the appraisal(s) and, when applicable, a justification for any proposed acquisition payment that exceeds the fair market value of the property.

(e) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the grantee. A lower income person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of

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that determination to the HUD Field Office.

(f) *Responsibility of grantee.* The grantee shall certify that it will comply (*i.e.*, provide assurance of compliance as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The grantee shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions. The grantee shall maintain records in sufficient detail to demonstrate compliance with this section. The cost of relocation payments and other relocation assistance shall be paid from funds provided by this part or such other funds as may be available to the grantee from any other source.

(g) *Displaced person.* (1) For purposes of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this part. This includes any permanent, involuntary move for an assisted activity, including any permanent move from real property that is made:

(i) After notice by the grantee or property owner to move permanently from the property, if the move occurs on or after the date of the submission of an application for financial assistance by the grantee to HUD that is later approved for the requested activity.

(ii) Before the date of the submission of the application requesting assistance, if either HUD or the grantee determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after execution of the agreement between the grantee and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*1*) the tenant's monthly rent and estimated average monthly utility costs before the agreement; or

(*2*) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either:

(*1*) the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connnection with the temporary relocation; or

(*2*) other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if

(i) The person moved into the property after the submission of the application for financial assistance to HUD, and, before signing a lease or commencing occupancy, is provided written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation or a rent increase) and the fact that the person will not qualify as a displaced person;

(ii) A person who is not displaced, as defined under 49 CFR 24.2(g)(2).

(iii) A person who the grantee determines is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(3) A grantee may ask HUD, at any time, to determine whether a specific displacement is or would be covered under this section.

(h) *Initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation, demolition, or non-State agency acquisition of the real property, the term "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person.

§ 571.603 Labor standards.

In accordance with the authority under section 107(e)(2) of the Act, the Secretary waives the provisions of section 110 of the Act (Labor Standards) with respect to this part, including the requirement that laborers and mechanics employed by the contractor or subcontractor in the performance of construction work financed in whole or in part with assistance received under this part be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

§ 571.604 Citizen participation.

(a) In order to permit members of Indian Tribes and Alaskan native villages to examine and appraise the applicant's application for funds under this part, the applicant shall follow traditional means of citizen involvement which, at the least, include the following:

(1) Furnishing members information concerning amounts of funds available for proposed community development and housing activities and the range of activities that may be undertaken.

(2) Holding one or more meetings to obtain the views of members on community development and housing needs. Meetings shall be scheduled in ways and at times that will allow participation by members.

(3) Developing and publishing or posting a community development statement in such a manner as to afford affected members an opportunity to examine its contents and to submit comments.

(4) Affording members an opportunity to review and comment on the applicant's performance under any active community development block grant.

(b) Prior to submission of the application to HUD, the applicant shall certify by an official Tribal resolution that it has met the requirements of paragraph (a) of this section, and

(1) Considered any comments and views expressed by members and, if it deems it appropriate, modified the application accordingly, and

(2) Made the modified application available to members.

(c) No part of the requirement under paragraph (a) of this section shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the grant. Accordingly, the citizen participation requirements of this section do not include concurrence by any person or group in making final determinations on the contents of the application.

§ 571.605 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of block grant funds, the recipient shall comply with the Environment Review Procedures for the Community Development Block Grant Program (24 CFR part 58). Upon completion of the environmental review, the recipient shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR part 58.

§ 571.606 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A–110 shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A–110, the provisions of this section shall apply. Such cases include the provision of assistance by the recipient or by its subrecipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities under § 570.203 or § 570.204).

(b) *Conflicts prohibited.* The general rule is that no persons described in paragraph (c) of this section who have or had any functions or responsibilities with respect to Community Development Block Grant (CDBG) activities assisted under this part, or who are in a position to participate in a decision, or gain inside information about such activities, may obtain a personal or financial interest or benefit from these activities. Further, such persons may not have an interest in any contract, subcontract, or agreement concerning such activities; and such persons may not, during their employment or tenure in office and for one year thereafter, have an interest in the proceeds from these activities, either for themselves or for those with whom they have family or business ties. This paragraph does not apply to approved eligible administrative or personnel costs.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, or of any designated public agencies, or subrecipients under § 570.204 of this title, receiving funds under this part.

(d) *Exceptions requiring HUD approval*—(1) *Threshold requirements.* Upon the written request of a recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(i) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate Tribal laws on conflict of interest, or applicable State laws.

(2) *Factors to be considered for exceptions:* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(v) Whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(vi) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply.* (1) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of Tribal or State laws on conflict of interest would result, the prohibition does apply.

(2) All records pertaining to the recipient's decision under this section shall be maintained for HUD review upon request.

Subpart H—Program Performance

§ 571.700 Reports to be submitted by grantee.

Grant recipients shall submit an annual status report of progress made on previously funded open grants at a time determined by the field office. The status report shall be in narrative form addressing three areas:

(a) *Progress.* The progress in completing activities, the work remaining, changes in the implementation schedule, and a breakdown of funds expended on each approved project;

(b) *Grantee assessment.* Description of the effectiveness of funded activities in meeting the recipient's community development needs; and

(c) *Environment.* (1) Compliance with the conditions under § 58.34 of this title for exempt projects; and

(2) If appropriate, environmental reviews of emergency projects under § 58.33 of this title.

(Approved by the Office of Management and Budget under Control No. 2506–0043.)

§ 571.701 Review of recipient's performance.

(a) *Objective.* HUD will review each recipient's performance to determine whether the recipient has:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this part.

(b) *Basis for review.* In reviewing each recipient's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the recipient;

(3) Records maintained by the recipient;

(4) Results of HUD's monitoring of the recipient's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

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(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 571.702 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of the performance review, HUD determines that the recipient has not:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations, including the environmental responsibilities assumed under section 104(g) of title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Request the recipient to submit progress schedules for completing approved activities or for complying with the requirements of this part;

(2) Issue a letter of warning advising the recipient of the deficiency (including environmental review deficiencies and housing assistance deficiencies), describing the corrective actions to be taken, establishing a date for corrective actions, and putting the recipient on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;

(3) Advise the recipient that a certification of compliance will no longer be acceptable and that additional information or assurances will be required;

(4) Advise the recipient to suspend, discontinue, or not incur costs for the affected activity;

(5) Advise the recipient to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of Part 58 and provided that such reprogramming is subjected to the environmental review procedures of Part 58 of the title;

(6) Advise the recipient to reimburse the recipient's program account or line of credit in any amount improperly expended;

(7) Change the method of payment from a line of credit basis to a reimbursement basis; and/or

(8) Suspend the line of credit until corrective actions are taken.

§ 571.703 Reduction or withdrawal of grant.

(a) *General.* A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in § 571.702(b) has been taken and only then if the recipient has not made an appropriate and timely response. Prior to making such grant reduction or withdrawal, the recipient also shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the field office determines, on the basis of a review of the grant recipient's performance, that the objectives set forth in § 571.703 (a)(2) or (a)(3) have not been met, the field office may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

§ 571.704 Other remedies for noncompliance.

(a) *Secretarial actions.* If the Secretary finds a recipient has failed to comply with any provision of this part even after corrective actions authorized under § 571.702 have been applied, the following actions may be taken provided that reasonable notice and opportunity for hearing is made to the recipient. (The Administrative Procedure Act (5 U.S.C. 551 et seq.), where applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take action requiring reasonable notice and opportunity for a hearing.)

(1) Terminate the grant to the recipient;

(2) Reduce the grant to the recipient by an amount equal to the amount which was not expended in accordance with this part; or

(3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the recipient's line of credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe that a recipient has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with this part or for mandatory or injunctive relief.

Dated: May 22, 1991.

S. Anne Kondratas,

Assistant Secretary for Community Planning and Development.

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Part VII

Department of Energy

Proposed Adoption and Implementation of a United States Policy on Receipt and Reprocessing of Spent Research Reactor Fuel; Extension of Comment Period; Notice

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DEPARTMENT OF ENERGY

Extension of Public Comment Period for the Proposed Finding of No Significant Impact for the Proposed Adoption and Implementation of a United States Policy on Receipt and Reprocessing of Spent Research Reactor Fuel

AGENCY: Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: The Department of Energy (DOE) has prepared an Environmental Assessment (DOE/EA–0443) for the Proposed Adoption and Implementation of a United States Policy on Receipt and Reprocessing of Spent Research Reactor Fuel (Off-Site Fuels Policy). On May 23, 1991, the DOE published in the **Federal Register** (56 FR 23686–23688) a Proposed Finding of No Significant Impact for a 30-day public review and comment period. In response to requests, the DOE is extending the period for public comment to August 1, 1991.

For further information about the proposed action, or to obtain copies of the Environmental Assessment, contact Lynn Wade, DP–143, U.S. Department of Energy, 19001 Germantown Road, Germantown, Maryland 20874, (301) 353–6826. Comments on the Proposed FONSI should be sent to Lynn Wade at the address listed above. Comments should be postmarked by August 1, 1991, to ensure consideration. Comments postmarked after August 1, 1991, will be considered to the extent practicable.

For information regarding the NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

Issued at Washington, DC, this 20th day of June, 1991.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 91–15041 Filed 6–20–91; 11:50 am]

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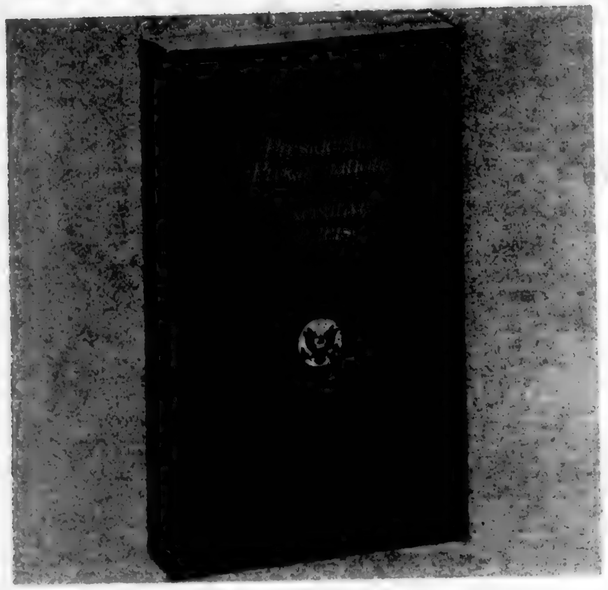
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H.J. Res. 91/Pub. L. 102–57

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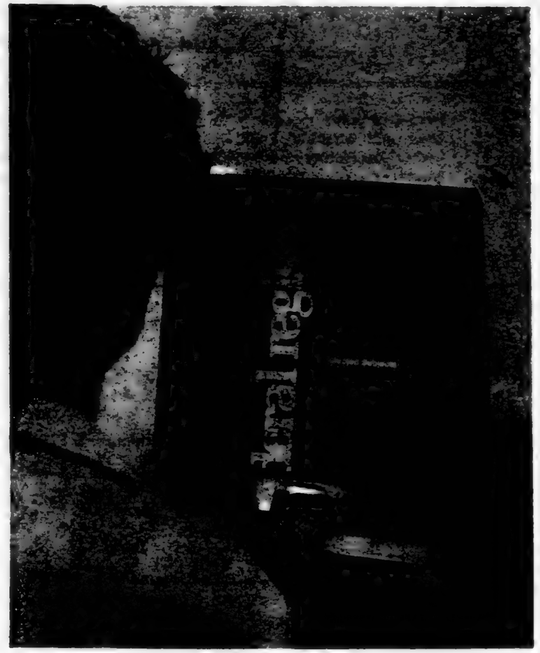
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102d Congress, 1st Session, 1991

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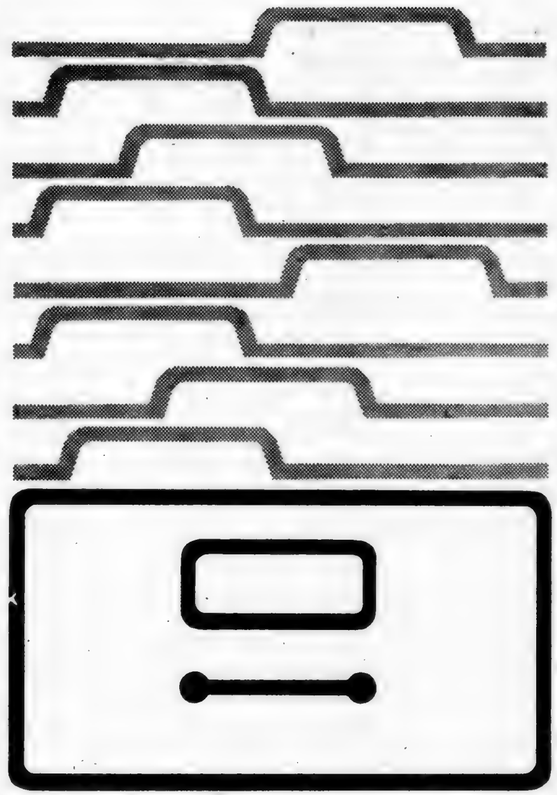
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Monday
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Briefing on How To Use the Federal Register
For information on briefings in Washington, DC, and New Orleans, LA, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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3. The important elements of typical Federal Register documents.
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Presidential Documents

Title 3—

The President

Presidential Determination No. 91-38 of May 31, 1991

Food Security Wheat Reserve Release

Memorandum for the Secretary of Agriculture

By virtue of the authority vested in me as President by the Food Security Wheat Reserve Act of 1980 (the "Act") (7 U.S.C. 1736f-1), I hereby authorize the release in fiscal year 1991 of up to 300,000 metric tons of wheat from the reserve established under the Act (the "reserve") for use under Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1691 *et seq.*), to meet relief needs that exist in developing countries of the Middle East, Africa, and Asia, which I hereby determine are suffering major disasters. The wheat will be used to provide urgent humanitarian relief to the peoples in the Middle East, Africa, and Asia who are suffering widespread hunger and malnutrition.

This action is taken because wheat needed for relief in these regions cannot be programmed for such purpose in a timely manner under the normal means of obtaining commodities for food assistance due to circumstances of unanticipated and exceptional need.

You are authorized and directed to publish this determination in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, May 31, 1991.

[FR Doc. 91-15106
Filed 6-20-91; 3:46 pm]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-39-AD; Amdt 39-7047; AD 91-14-06]

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes, which requires modification of the nose landing gear steering selector valve. This amendment is prompted by a report of water accumulating and freezing in the selector valve. This condition, if not corrected, could result in loss of nose wheel steering.

EFFECTIVE DATE: July 29, 1991.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Flight Test and Systems Branch, ANM-111; telephone (206) 227-2116. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes, which requires modification of the nose landing gear steering selector valve, was published in the **Federal Register** on March 21, 1991 (56 FR 11971).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Since issuance of the Notice, Aerospatiale has issued Revision 2 to Service Bulletin ATR42-32-0025, dated January 30, 1991, which changes the "Compliance" noted in the service bulletin from "Recommended" to "Mandatory." The FAA has revised the final rule to reflect this latest revision to the service bulletin as an additional service information source.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 58 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S operators is estimated to be $28,710.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above. I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-14-06. Aerospatiale: Amendment 39-7047. Docket No. 91-NM-39-AD.

Applicability: Model ATR42 series airplanes, Serial Numbers 3 through 157; and ATR72 series airplanes, Serial Numbers 126 through 150; certificated in any category.

Compliance: Required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent loss of nose wheel steering, accomplish the following:

A. Modify the nose landing gear steering selector valve in accordance with Messier-Hispano-Bugatti Service Bulletin 631-32-036, Revision 1, dated May 14, 1990; and Aerospatiale Service Bulletin ATR42-32-0025, Revision 1 dated January 15, 1990, or Revision 2, dated January 30 1991, or Aerospatiale Service Bulletin ATR72-32-1001, dated April 25, 1990 as applicable.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

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Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PI), who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse, Cedex 03, France.

These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7047, AD 91-14-06) becomes effective July 29, 1991.

Issued in Renton, Washington, on June 13, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14951 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-51-AD; Amdt. 39-7049; AD 91-14-08]

Airworthiness Directives; Aerospatiale Model SN 601 Corvette Series Airplanes With Modification 1390

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model SN 601 Corvette series airplanes, which requires replacement of the fuel heater thermostatic element. This amendment is prompted by reports that the existing thermostat does not provide adequate fuel icing protection. This condition, if not corrected, could result in ice formation in the fuel line and subsequent loss of engine power.

EFFECTIVE DATE: July 29, 1991.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Woodford Boyce, Standardization Branch, ANM-113; telephone (206) 227-2137. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Aerospatiale Model SN 601 Corvette series airplanes, which requires replacement of the fuel heater thermostatic element, was published in the **Federal Register** on March 20, 1991 (56 FR 11704).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry. The FAA has determined that this change will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The required parts will be supplied by the manufacturer to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $165.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-14-08. Aerospatiale: Amendment 39-7049. Docket No. 91-NM-51-AD.

Applicability: Model SN 601 Corvette series airplanes, which have incorporated Modification 1390, certificated in any category.

Compliance: Required within 100 landings after the effective date of this AD, unless previously accomplished.

To prevent ice formation in the fuel line and subsequent loss of engine power, accomplish the following:

A. Remove the existing thermostatic element, Part Number 9914, and install thermostatic element Part Number 5497-1, in accordance with Aerospatiale Corvette Service Bulletin 73-3, Revision 1, dated July 30, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

c. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment (39-7049, AD 91-14-08) becomes effective July 29, 1991.

Issued in Renton, Washington, on June 13, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14949 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-09; Amdt 39-6955]

Airworthiness Directives; Avco Lycoming ALF 502L Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Avco Lycoming ALF 502L series turbofan engines, which requires a one-time inspection of the third stage high compressor (HC) rotor disk bore for evidence of corrosion or cracking and the application of protective coatings. This amendment is prompted by reports of fatigue cracking of the third stage HC disk. This condition, if not corrected, could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft.

DATES: Effective July 15, 1991.

Comments must be received no later than July 15, 1991.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of July 15, 1991.

ADDRESSES: Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-09, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Karen M. Grant, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7087.

SUPPLEMENTARY INFORMATION: There have been five reports of fatigue cracking in the bores of third stage HC rotor disks originating from pitting caused by corrosion. All cracks were found by visual inspection during scheduled shop visits. This AD requires a one-time inspection of the third stage HC rotor disk bore for evidence of corrosion or cracking. Disks found with evidence of corrosion pitting or cracks are to be removed from service prior to further flight. Disks found serviceable are to be coated with "Sermetel W" or "ALSEAL-518" surface finish and reidentified. This condition, if not corrected, could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires a one-time inspection of the third stage HC rotor disk bore for corrosion or cracking, and the application of certain protective coatings in accordance with Textron Lycoming Service Bulletin ALF 502L 72-203, Revision 3, dated December 7, 1990.

Since this condition could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft, there is a need to minimize the exposure of revenue service aircraft to this failure mode. Therefore, safety in air transportation requires adoption of this regulation without prior notice and public comment. In addition, based on the above and the urgent need to inspect certain third state HC rotor disks for which the total number of cycles in service are unknown, immediate adoption of this regulation is necessary. Therefore, it is found that notice and public procedure are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-09, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulation (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91-14-05 Avco Lycoming: Amendment 39-6955. Docket No. 91-ANE-09.

Applicability: Avco Lycoming ALF 502L series turbofan engines installed on, but not limited to the Canadair Challenger CL601 aircraft.

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Compliance required as indicated, unless previously accomplished.

To prevent complete loss of engine power, uncontained disk failure, and possible damage to the aircraft, accomplish the following:

(a) Clean, visually inspect, cost with "Sermetel W" or "ALSEAL-516" and reidentify third stage high compressor (HC) rotor disks in accordance with Textron Lycoming Service Bulletin (SB) ALF 502L 72-203, Revision 3, dated December 7, 1990, as follows:

(1) For those third stage HC disks with 7,000 cycles since new (CSN) or greater on the effective date of this AD, within the next 500 cycles in service, not to exceed 8,500 CSN.

(2) For those third stage HC disks with less than 7,000 CSN on the effective date of this AD, at or prior to accumulating a total of 7,500 CSN.

(b) Remove, prior to further flight, third stage HC disks found with evidence of corrosion pitting or cracks.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The inspection procedures shall be done in accordance with the following Textron Lycoming service bulletin:

Document No.	Page No.	Issue/ Revision	Date
ALF 502L 72-203	1, 2, 4	3	December 7, 1990.
ALF 502L 72-203	3, 6	2	August 6, 1990.
ALF 502L 72-203	5	1	June 16, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401 Washington, DC.

This amendment (39-6509, AD 91-14-05) becomes effective July 15, 1991.

Issued in Burlington, Massachusetts, on June 12, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-14050 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-271-AD; Amdt. 39-7046; AD 91-14-04]

Airworthiness Directives; British Aerospace Model BAe 146-100A and 146-200A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A and 146-200A series airplanes, which requires visual inspections to detect incorrect positioning of the earth stud on the avionics rack at Frame 17 and chafing damage to adjacent wiring harnesses, and repair, if necessary. This amendment is prompted by a recent report of chafing of the wiring harness on an earth stud at the rear of the avionics rack. This condition, if not corrected, could result in failure or improper functioning of the wing flap, landing gear anti-skid, and turbine vibration indication systems.

EFFECTIVE DATE: July 29, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113, telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model 146-100A and 146-200A series airplanes, which requires visual inspections to detect incorrect positioning of the earth stud on the avionics rack at Frame 17 and chafing damage to adjacent wiring harnesses, and repair, if necessary, was published in the **Federal Register** on February 11, 1991 (56 FR 5371).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter objected to the applicability of the proposed rule, which extend beyond those airplanes listed in British Aerospace Service Bulletin 24-60, dated May 31, 1990. The commenter stated that information from the manufacturer indicated the abnormality addressed in the proposed rule was confined to early airplanes, prior to delivery to operators, and was corrected on later deliveries. The FAA concurs. The final rule has been revised so that it is applicable only to those airplanes listed in the aforementioned service bulletin.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,375.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-14-04. British Aerospace: Amendment 39-7046. Docket No. 90-NM-271-AD.

Applicability: Model BAe 146-100A and 146-200A series airplanes, as listed in British Aerospace Service Bulletin 24-60, dated May 31, 1990, certificated in any category.

Compliance: Required as indicated, unless previoulsy accomplished.

To prevent failure or improper functioning of the wing flap, landing gear anti-skid, and turbine vibration indication systems, accomplish the following:

A. Within 30 days after the effective date of this AD, perform a visual inspection of the earth stud on the avionics rack at Frame 17, in accordance with British Aerospace Service Bulletin 24-60, dated May 31, 1990.

1. If the earth stud is approximataly 33.0 inches from the airplane's center line, prior to further flight, perform a visual inspection of the adjacent wiring harnesses for chafing damage, and reclip any harnesses to ensure adequate clearance between the wire harnesses and the earth stud, in accordance with the service bulletin. Repair or replace any damaged wires prior to further flight.

2. If the earth stud is not positioned approximately 33.0 inches from the airplane's center line, prior to further flight, accomplish the following:

a. Perfrom an inspection of the adjacent wiring harnesses for signs of chafing damage, and, if damage is found, repair or replace any damaged wires prior to further flight in accordance with the service bulletin.

b. Remove the existing earth stud and install a new earth stud having the same part number in accordance with Figure 1 of the service bulletin.

c. Move and resecure any wiring harnesses that may contact the earth stud, in accordance with the service bulletin.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7046, AD 91-14-04) becomes effective July 29, 1991.

Issued in Renton, Washington, on June 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14928 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-28-AD; Amdt. 39-7044; AD 91-14-02]

Airworthiness Directives; SAAB-Scania Model SF-340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to SAAB-Scania Model SF-340A and SAAB 340B series airplanes, which currently requires repetitive inspections to detect cracks in the vertical stabilizer top closure rib, and repair, if necessary. This action will require either the installation of a new thicker rib with a larger radius, or reinforcement of the old rib and replacement of the attachment angle. Accomplishment of either of these actions terminates the current requirement for the repetitive inspections. This amendment is prompted by continued reports of fatigue cracking in the vertical stabilizer top closure rib. This condition, if not corrected, could result in jamming of the rudder.

EFFECTIVE DATE: July 29, 1991.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-16-02, Amendment 39-6676 (55 FR 30904, July 30, 1990), applicable to SAAB-Scania Model SF-340A and SAAB 340B series airplanes, to require repetitive inspections to detect cracks in the vertical stabilizer top closure rib, and repair, if necessary, was published in the **Federal Register** on March 8, 1991 (56 FR 9911).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph E. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD

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activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 108 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The estimated cost for required parts is $1,400. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $246,240.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6676 and by adding the following new airworthiness directive:

91-14-02. SAAB-Scania: Amendment 39-7044. Docket No. 91-NM-28-AD. Supersedes AD 90-16-02.

Applicability: Model SF-340A series airplanes, Serial Numbers 031 through 159; and SAAB 340B series airplanes, Serial Numbers 160 through 186; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent inhibited airplane rudder control due to cracking in the vertical stabilizer top closure rib, accomplish the following:

A. Prior to the accumulation of 500 hours time-in-service since new or within 100 hours time-in-service after August 30, 1990 (the effective date of Amendment 39-6676, AD 90-16-02), whichever occurs later, inspect the vertical stabilizer top closure rib for evidence of cracking, in accordance with SAAB Service Bulletin 340-55-022, Revision 1, dated February 27, 1990.

B. If no evidence of cracking is found, reinspect the vertical stabilizer top closure rib for cracking at intervals not to exceed 500 flight hours time-in-service.

C. If cracking is found, prior to further flight, stop drill the ends of the cracks, blend, clean, and apply aluminum tape, as specified in SAAB Service Bulletin 340-55-022, Revision 1, dated February 27, 1990. Reinspect for additional cracking and the condition of the aluminum tape at intervals not to exceed 100 hours time-in-service.

D. Within one year after the effective date of this amendment, either replace the rib with a new thicker rib with a larger radius, or reinforce the rib and replace the attachment angle, in accordance with SAAB Service Bulletin 340-55-023, dated October 1, 1990. Accomplishment of either of these modifications constitutes terminating action for repetitive inspections required by paragraphs B. and C. of this AD.

E. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Product Support, S-581.88, Linkoping, Sweden. These documents may be examined at the FAA, Northeast Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6676, AD 90-16-02.

This amendment (39-7044, AD 91-14-02) becomes effective July 29, 1991.

Issued in Renton, Washington, on June 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14929 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AWP-11]

Establishment of the Tucson/Ryan Field, Tucson, AZ, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Tucson/Ryan Field, Tucson, AZ, Control Zone. It provides controlled airspace for aircraft executing instrument approach and departure procedures to and from Tucson/Ryan Field.

EFFECTIVE DATE: 0901 UTC, September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Miller, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0433.

SUPPLEMENTARY INFORMATION:

History

On March 27, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Tucson/Ryan Field, Tucson, AZ, Control Zone. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes the Tucson/Ryan Field, Tucson, AZ, Control Zone. It provides controlled airspace for aircraft executing instrument approach and departure procedures to and from Tucson/Ryan Field.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control Zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71), is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Tucson/Ryan Field, Tucson, Arizona (New)

Within a 4-mile radius of the Tucson/Ryan Field (lat. 32°06'29" N., long. 111°10'24" W.), within 2 miles each side of the Ryan Runway 6 Localizer extending from the 4-mile radius zone to 7 miles southwest of the airport, and within 2 miles each side of the 317° bearing from the Ryan Radio Beacon (lat. 32°06'16" N., long. 111°09'39" W.) extending from the 4-mile radius zone to 7 miles northwest of the airport. This control zone shall be effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on June 6, 1991.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 91-14930 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 216

RIN 3220-AA15

Eligibility for an Annuity

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby revises part 216, Eligibility for an Annuity, to reflect amendments to the Railroad Retirement Act which became effective in 1981, 1983 and 1988. The action also revises the rules concerning eligibility in a manner to make them easier to use and understand.

EFFECTIVE DATE: June 24, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush, Chicago, Illinois 60611, (312) 751-4513, FTS 386-4513, TDD (312) 751-4701, TDD (FTS 386-4701).

SUPPLEMENTARY INFORMATION: Part 216 of the Board's regulations contains the eligibility requirements for annuities under the Railroad Retirement Act of 1974, as amended. Amendments made by the Omnibus Budget Reconciliation Act of 1981 (OBRA) (Pub. L. 97-35) to the Railroad Retirement Act added, as new categories of beneficiaries under the Act, divorced spouses, surviving divorced spouses, and remarried widow(er)s. Eligibility requirements for these types of annuities are found in subparts F and G. Section 1116(b)(2) of the OBRA liberalized the test to establish a current connection with the railroad industry for purposes of eligibility for the supplemental annuity and survivor annuities. Eligibility requirements reflecting these amendments are found in subpart B. Section 1117(a) of the OBRA restricted future supplemental annuity eligibility to employees with some service prior to October 1981. See subpart E. Section 104(a) of the Railroad Retirement Solvency Act of 1983 (Pub. L. 98-76) changed the eligibility requirements for a child's annuity when the child is a full-time student to conform to social security benefit provisions. These changes are reflected in subpart H. The Solvency Act, at section 413, also liberalized the eligibility conditions for a parent's annuity. This change is reflected in subpart I.

The Railroad Retirement Act of 1974, prior to its amendment in 1988 by the Railroad Unemployment and Retirement Improvement Act of 1988, provided that no annuity was payable in any month in which an annuitant performed compensated service for his or her last employer prior to retirement, commonly referred to as the "last person service restriction." An exception to this restriction was made if the last employer was a governmental unit and the annuitant was a compensated elected public official of this unit. A similar rule for appointed public officials receiving nominal salaries was established by administrative ruling. The 1988 amendments eliminated the prohibition against payment of an annuity for any month in which the beneficiary performed compensated service for the last pre-retirement employer and substituted an earnings deduction to be applied to the tier II annuity component of a beneficiary engaged in last person service. The amendment also removed the language excepting elected public service from the employment restrictions. This change is reflected in subpart C of this rule. Consistent with the amendment to the last person service provisions of the Railroad Retirement Act, the Board no longer will exempt public officers, elected or appointed, from the last person service work deductions. However, with respect to elected and appointed public officials this change will apply only to those individuals who file applications for annuities after the effective date of the final rule. Thus, elected and appointed public officials who will have applied for annuities prior to the effective date of the final rule will continue to be accorded the same treatment with respect to their service for a governmental unit as prior to the effective date of the final rule.

The Board also is reordering various sections of part 216 to facilitate the reader's use of that part. Provisions dealing with the definition of a current connection with the railroad industry are found in new subpart B.

All provisions dealing with work restrictions which impact upon eligibility for an annuity have been moved to subpart C. subparts D-I contain the eligibility provisions for the various types of annuities payable under the Railroad Retirement Act. Subpart J contains the restrictions on eligibility for more than one annuity. Finally, the following sections of the present part 216 which deal with the definitions of various family relationships have been removed and are now found in part 222: §§ 216.23, 216.24, 216.37, 216.48, and 216.63.

On March 12, 1991, the Board published this rule as a proposed rule (56 FR 10385), inviting comments on or before April 11, 1991. No comments were received.

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The Board has determined that this is not a major rule under Executive Order 12291. Therefore no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Part 216

Railroad employees, Railroad Retirement.

For the reasons set forth in the preamble, part 216 of subchapter B, chapter II, title 20 of the Code of Federal Regulations is revised as follows:

PART 216—ELIGIBILITY FOR AN ANNUITY

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Authority: 45 U.S.C. 231f.

Subpart A—General

§ 216.1 Introduction.

This part explains when an individual is eligible for a monthly annuity under the Railroad Retirement Act. An individual eligible for an annuity as described in this part may become entitled to an annuity only in such amount as set forth in parts 225 through 229 of this chapter

(a) *Regular annuity.* A regular monthly annuity is provided for:

(1) An employee who retires because of age or disability;

(2) An employee's spouse or divorced spouse; or

(3) The widow, widower, child, parent, remarried widow or widower, or surviving divorced spouse of an employee.

(b) *Supplemental annuity.* An employee who retires because of age or disability may also be entitled to a supplemental annuity.

§ 216.2 Definitions.

Except as otherwise expressly noted, as used in this part—*Age* means an individual's age on the day preceding the anniversary date of his or her birth.

Annuity means a payment due an entitled individual for a calendar month and made to him or her on the first day of the following month.

Apply means to sign a form or statement that the Railroad Retirement Board accepts as an application for benefits under the rules set out in part 217 of this chapter.

Attainment of age means that an individual attains a given age on the first moment of the day preceding the anniversary date of his or her birth corresponding to such numerical age.

Board means the Railroad Retirement Board.

Claimant means an individual who files an annuity application or for whom an annuity application is filed.

Eligible means that an individual meets all the requirements for payment of an annuity but has not yet applied for one.

Employee means an individual who is or has been in the service of an employer as here defined.

Employer means a company, individual, or other entity determined to be a covered employer under the Railroad Retirement Act as provided by part 202 of this chapter.

Entitled means that an individual has applied for and has established his or her rights to benefits.

Railroad Retirement Act means the Railroad Retirement Act of 1974, as amended.

Re-entitled annuity means an annuity to which an individual becomes entitled after an earlier-awarded annuity has been terminated. A re-entitled annuity is usually awarded on the basis of different factors of eligibility from the initial annuity, and may be awarded without the filing of another application.

Retirement age means, with respect to an employee who attains age 62 before January 1, 2000 (age 60 in the case of a widow(er), remarried widow(er) or surviving divorced spouse) age 65. For an employee who attains age 62 (or age 60 in the case of a widow(er), remarried widow(er), or surviving divorced spouse) after December 31, 1999, retirement age means the age provided for in section 216(1) of the Social Security Act.

Social Security Act means the Social Security Act as amended.

Tier I benefit means the benefit component calculated using Social Security Act formulas and based upon earnings covered under both the Railroad Retirement Act and the Social Security Act.

Tier II benefit means the benefit component calculated under a formula found in the Railroad Retirement Act and based only upon earnings and service in the railroad industry.

Year of service means 12 calendar months, consecutive or otherwise, of service creditable to an employee as described in part 210 of this chapter.

§ 216.3 Other regulations related to this part.

This part is related to a number of other parts. Part 217 of this chapter describes how to apply for an annuity. Part 218 indicates when annuities begin and when they terminate. Part 219 sets out what evidence is necessary to prove eligibility. Where eligibility for an annuity is based upon a family relationship to an employee (for example, a widow's annuity), the definition of such family relationship may be found in part 222 of this chapter. Part 225 of this chapter describes the computation of the primary insurance amount.

Subpart B—Current Connection With the Railroad Industry

§ 216.11 General.

A current connection with the railroad industry is required to qualify for certain types of railroad retirement benefits. The existence of a current connection is clear in most cases where entitlement or death immediately follows continuous years of railroad employment. However, there are cases in which the employee did not work for a railroad employer for a period of time before entitlement or death. In these situations, special tests are applied to determine whether the employee can be considered to have a current connection with the railroad industry for the purpose of determining his or her eligibility for an annuity or other benefits.

§ 216.12 When current connection is required.

(a) A current connection is required to qualify an individual for the following types of railroad retirement benefits:

(1) An employee occupational disability annuity as described in subpart D of this part;

(2) A supplemental annuity as described in subpart E of this part;

(3) An employee vested dual benefit in certain cases;

(4) A survivor annuity as described in subparts G, H, and I of this part; and

(5) A lump-sum death payment as described in part 234 of this chapter.

(b) A current connection which was established when an employee's annuity began is effective for:

(1) Any annuity under this part for which the employee later becomes eligible; and

(2) Any survivor annuity under this part or a lump-sum death payment under part 234 of this chapter.

§ 216.13 Regular current connection test.

An employee has a current connection with the railroad industry if he or she meets one of the following requirements:

(a) The employee has creditable railroad service in at least 12 of the 30 consecutive months immediately preceding the earlier of:

(1) The month his or her annuity begins; or

(2) The month he or she dies.

(b) The employee has creditable railroad service in at least 12 months in a period of 30 consecutive months and does not work in any regular non-railroad employment in the interval between the month the 30-month period ends and the earlier of:

(1) The month his or her annuity begins; or

(2) The month he or she dies.

§ 216.14 Regular non-railroad employment that will not break a current connection.

Regular non-railroad employment will not break an employee's current connection if it is performed during the 30-month period described in § 216.13(b), in or after the month the annuity begins, or in the month the employee dies.

§ 216.15 Special current connection test.

(a) *For survivor annuities.* An employee who does not have a current connection under the regular test has a current connection only to qualify an individual for a survivor annuity if:

(1) The employee would not be fully or currently insured under section 214 of the Social Security Act if his or her railroad compensation after 1936 were treated as social security earnings;

(2) The employee has no quarters of coverage as defined in section 213 of the Social Security Act; or

(3) The employee received a pension or a retirement annuity that began before 1948 based on at least 114 months of service.

(b) *For survivor and supplemental annuities.* An employee who does not have a current connection under the regular test has a current connection in order to pay a supplemental or survivor annuity if he or she meets all of the following requirements:

(1) Has been credited with at least 25 years of railroad service;

(2) Stopped working in the railroad industry "involuntarily and without fault" on or after October 1, 1975, or was on furlough, leave of absence or absent for injury on that date;

(3) Did not decline an offer of employment in the same "class or craft" as his or her most recent railroad service; and

(4) Was alive on October 1, 1981.

(c) *"Involuntarily and without fault" defined.* An employee is considered to have stopped railroad employment involuntarily and without fault if:

(1) The employee loses his or her job;

(2) The employee could not, through the exercise of seniority rights, remain in railroad service in the same class or craft as his or her most recent railroad service, regardless of the location where that service would be performed; and

(3) The employee did not lose his or her job because of poor job performance, misconduct, medical reasons or other action or inaction on the part of the employee.

(d) *Effect of separation allowance.* An employee who accepts a separation allowance and in so doing relinquishes his or her seniority rights to railroad employment is deemed to have voluntarily terminated his or her railroad service. However, if the employee stopped railroad employment involuntarily and without fault, as defined in paragraph (c) of this section, receipt of a separation allowance will not affect a current connection under paragraph (b) of this section.

(e) *"Class or craft" defined.* The terms "class or craft," as used in this section, have the same meaning as they do generally in the railroad industry.

(f) *For supplemental annuities only.* An additional special current connection test is required for an individual who was receiving a disability annuity which terminated due to the individual's recovery from disability. If the individual becomes entitled to a new annuity, a new current connection test based on the new annuity beginning date must be made. This test is made using the rules contained in §§ 216.13 and 216.17.

§ 216.16 What is regular non-railroad employment.

(a) Regular non-railroad employment is full or part-time employment for pay.

(b) Regular non-railroad employment does not include any of the following:

(1) Self-employment;

(2) Temporary work provided as relief by an agency of a Federal, State, or local government;

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(3) Service inside or outside the United States for an employer under the Railroad Retirement Act, even if the employer does not conduct the main part of its business in the United States;

(4) Involuntary military service not creditable under the Railroad Retirement Act;

(5) Employment with the following agencies of the United States Government:

(i) Department of Transportation;

(ii) Interstate Commerce Commission;

(iii) National Mediation Board;

(iv) Railroad Retirement Board; or

(v) National Transportation Safety Board;

(6) Employment entered into after early retirement by an employee who is receiving an annuity under Conrail's voluntary annuity program. This program is provided under the Staggers Rail Act of 1980 (Pub. L. 96–448); or

(7) Employment with the Alaska Railroad so long as it is an instrumentality of the State of Alaska.

§ 216.17 What amount of regular non-railroad employment will break a current connection.

The amount of regular non-railroad employment needed to break a current connection depends on when the applicable 30-month period ends (see § 216.13 of this part), as follows:

(a) If the 30-month period ends in the calendar year before or in the same calendar year as the annuity begins or the month the employee dies, the current connection is broken if the employee:

(1) Works in each month in the interval after the end of the 30-month period and before the earlier of the month the annuity begins or the employee dies; or

(2) Works and earns at least $200 in wages in any 3 months within the interval described in paragraph (a)(1) of this section.

(b) If the 30-month period ends more than a year before the calendar year in which the annuity begins or the employee dies, the current connection is broken if the employee:

(1) Works in any 2 consecutive years wholly or partially within the interval after the end of the 30-month period and before the month the annuity begins or the employee dies, whichever is earlier; and

(2) Earns at least $1,000 in wages in any year wholly or partially within the interval described in paragraph (b)(1) of this section (but not counting earnings during the 30-month period and after the annuity beginning date), even if that year is not one of the 2 consecutive years described in paragraph (b)(1) of this section.

Subpart C—Railroad and Last Non-Railroad Employment

§ 216.21 General.

To be eligible for an employee, a spouse, or a divorced spouse annuity, the Railroad Retirement Act requires that an applicant must stop work for pay performed as an employee for a railroad employer. In addition, no employee, spouse or divorced spouse annuity may be paid for any month in which the employee, spouse or divorced spouse annuitant works for pay for any railroad employer after the date his or her annuity began. No annuity may be paid to a widow or widower, surviving divorced spouse, remarried widow or widower, child, or parent for any month such individual works for pay for a railroad employer.

§ 216.22 Work as an employee which affects payment.

(a) *Work for a railroad employer.* Work for pay as an employee of a railroad employer always prevents payment of an annuity.

(b) *Work for last non-railroad employer.* Work for pay in the service of the last non-railroad employer by whom an individual is employed will reduce the amount of the tier II benefit of the employee, spouse and supplemental annuity as provided in part 230 of this chapter. An individual's last non-railroad employer is:

(1) Any non-railroad employer from whom the individual last resigned (in point of time) in order to receive an annuity; and

(2) Any additional non-railroad employer from whom the individual resigned in order to have an annuity become payable. Employment which an individual stops within 6 months of the date on which the individual files for an annuity will be presumed in the absence of evidence to the contrary to be service from which the individual resigned in order to receive an annuity.

(c) *Corporate officers.* An officer of a corporation will be considered to be an employee of the corporation. A director of a corporation acting solely in his or her capacity as such director is not an employee of the corporation.

§ 216.23 Work which does not affect eligibility.

An individual may engage in any of the following without adversely affecting his or her annuity:

(a) *Work for a railway labor organization.* An individual may work for a local lodge or division of a railway labor organization if the pay is under $25 a month, unless the work performed is solely for the purpose of collecting insurance premiums.

(b) *Work without pay.* Work performed for any person or entity for which no pay is received, or where the pay merely constitutes reimbursement for out-of-pocket expenses, or where the amount received consists only of fees will donations and there is no agreement that such donation shall constitute remuneration for services, does not affect entitlement to an annuity.

(c) *Self-employment.* Self-employment is work performed in an individual's own business, trade or profession as an independent contractor, rather than as an employee. An individual is not self-employed if the business is incorporated. The designation or description of the relationship between the individual and another person as anything other than that of an employer and employee is immaterial. If the Board determines that an employer-employee relationship exists, the fact that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like will be disregarded. An individual determined to be an employee of a railroad employer pursuant to part 208 of this chapter is not self-employed. Whether an individual performing services is an employee depends upon the degree to which the recipient of services controls the individual's work. Control is determined in accordance with general legal principles delineating an employer-employee relationship. Among the factors considered are:

(1) *Instructions.* An individual required to comply with instructions about when, where, and how to work is ordinarily an employee. Instructions may be oral or in the form of manuals or written procedures which show how the desired result is to be accomplished. An individual who ordinarily works without receiving instructions because he or she is highly skilled or knowledgeable may nevertheless be an employee if the employer has a right to instruct the individual in performance of the work.

(2) *Training.* Training provided an individual by an employer indicates that the employer wants the work to be performed in a particular method or manner, especially if the training is given periodically or at frequent intervals. An individual may be trained by an experienced employee working with him or her, by correspondence, by required attendance at meetings, or by other methods.

(3) *Integration into the employer's business.* Integration of an individual's services into the business operations of an employer generally shows that the individual is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the individuals who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

(4) *Services rendered personally.* A requirement that an individual personally work for the employer indicates that the employer is interested in the methods as well as the results, and that the employer intends to control the result by controlling who does the work.

(5) *Hiring, supervising, and payment of assistants.* An employer generally hires, supervises, and pays assistants. An individual who hires, supervises, and pays other workers at the direction of the employer may be an employee acting as a representative of the employer. However, if an individual hires, supervises, and pays his or her own assistants pursuant to a contract under which the individual agrees to provide materials and labor and under which the individual is responsible only for the attainment of a result, this factor indicates an independent contractor status.

(6) *Continuing work relationship.* A work relationship between an individual and an employer which continues over time indicates that the individual is an employee. A relationship may continue if the individual works at frequently recurring, though somewhat irregular intervals, either on call of the employer or when work is available.

(7) *Set hours of work.* A requirement that an individual work for an employer during a specified period of the day, week, month or year, or for a specified number of hours daily indicates that the individual is an employee. An individual whose occupation renders fixed hours impractical may be an employee if required by the employer to work at certain times.

(8) *Full time required.* A requirement that an individual devote full time to the employer's business indicates that the individual is an employee. What full time means may vary with the intent of the parties, the nature of the occupation, and customs in the locality. Full-time work may be required indirectly even though not specified in writing or orally. An individual required to produce a minimum volume of business for an employer may be compelled to devote full time to producing the work. Prohibiting work for any other employer may require an individual to work full time to earn a living However, part-time work performed on a regular basis, or on call of the employer, or when work is available, may also render an individual an employee.

(9) *Working on employer's premises.* Working on the employer's premises may indicate that an individual is an employee where by nature the work could be done elsewhere, because the employer's place of business is physically within the employer's direction and supervision. Desk space, telephone, and stenographic services provided by an employer place the worker within the employer's direction and supervision unless the worker has the option not to use these facilities. Work done off the employer's premises does not by itself indicate that the worker is not an employee because some occupations require that work be performed away from the premises of the employer. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

(10) *Order or sequence set.* Performing tasks in the order or sequence set by the employer indicates that the worker is an employee. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.

(11) *Oral or written reports.* Regular oral or written reports submitted to the employer indicate that the worker is an employee, compelled to account to the employer for his or her actions.

(12) *Payment by hour, week, month.* Payment at a fixed rate per hour, week, or month indicates that an individual is an employee. Payment by commission with a guaranteed minimum salary, or by a drawing account at stated intervals with no requirement to repay amounts which exceed the individual's earnings, also indicates that an individual is an employee. Payment in a lump sum for a completed job indicates that an individual is self-employed. The lump sum may be computed by the number of hours required to do the job at a fixed hourly rate, or by weekly or monthly installments toward a lump sum agreed upon in advance as the total cost. Payment made on a straight commission basis generally indicates that the worker is an independent contractor.

(13) *Payment of business and/or traveling expenses.* Payment by the employer of expenses which an individual incurs in connection with the employer's business indicates that the individual is an employee.

(14) *Furnishing of tools and materials.* The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

(15) *Investment in facilities.* If the worker invests in facilities which are used by the worker in performing services and which are not typically maintained by employees, such as an office rented by the worker from a party unrelated to the worker or to the employer, this factor tends to indicate that the worker is an independent contractor. On the other hand, if all facilities necessary to the work which an individual performs are furnished without charge by the employer, this factor indicates the existence of an employer-employee relationship. Facilities include equipment or premises necessary for the work, other than items such as tools, instruments, and clothing which may be commonly provided by an employee in a particular trade.

(16) *Realization of profit or loss.* An individual not in a position to realize a profit or suffer a loss as a result of work performed for an employer is an employee. An individual has an opportunity for profit or loss if he or she:

(i) Hires, directs, and pays assistants;

(ii) Has his or her own office, equipment, materials, or other facilities for doing the work;

(iii) Has continuing and recurring liabilities or obligations, and success or failure depends on the relation of receipts to expenditures; or

(iv) Agrees to perform specific jobs for prices agreed upon in advance and pays expenses incurred in connection with the work.

(17) *Working for more than one firm at a time.* If a worker performs more than *de minimus* services for a number of unrelated persons or firms at the same time, this factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

(18) *Making service available to the general public.* The fact that an individual makes his or her services available to the general public on a regular and consistent basis rather than to one employer indicates that the individual is self-employed rather than an employee of any one firm. An individual may make services available to the public by working from his or her own office with assistants, from his or

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her own home, by holding business licenses, by a listing in a business directory, or by advertising.

(19) *Employer's right to discharge.* The right to discharge a worker is a factor which indicates that the worker is an employee and the person who possesses the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An employer's right to discharge exists even if it is restricted due to a collective bargaining agreement. An employer ordinarily cannot end a relationship without incurring liability with a self-employed individual who meets contract specifications.

(20) *Employee's right to terminate.* The fact that an individual has the right to end his or her relationship with an employer at any time without incurring liability for work to be performed indicates that the individual is an employee. A self-employed individual is legally obligated to satisfactorily complete a specific job.

§ 216.24 Relinquishment of rights to return to work.

(a) *What return to work rights must be given up.* Before an individual may receive an annuity based on age, he or she must give up any seniority or other rights to return to work for any railroad employer.

(b) *When right to return to work is ended.* An individual's right to return to work for a railroad employer is ended whenever any of the following events occur:

(1) The employer reports to the Board that the individual no longer has the right;

(2) The individual or an authorized agent of that individual gives the employer an oral or written notice of the individual's wish to give up that right and:

(i) The individual certifies to the Board that the right has been given up;

(ii) The Board notifies the employer of the individual's certification; and

(iii) The employer either confirms the individual's right has been given up or fails to reply within 10 days following the day the Board mailed the notice to the employer;

(3) An event occurs which under the established rules or practices of the employer automatically ends that right;

(4) The employer or the individual or both take an action which clearly and positively ends that right;

(5) The individual never had that right and permanently stops working;

(6) The Board gives up that right for the individual, having been authorized to do so by the individual;

(7) The individual dies; or

(8) The individual signs a statement that he or she gives up all rights to return to work in order to receive a separation allowance or severance pay.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220-0016)

Subpart D—Employee Annuity

§ 216.30 General.

The Railroad Retirement Act provides annuities for employees who have reached a specified age and have been credited with a specified number of years of service. The Act also provides annuities for employees who become disabled. In addition, to be eligible for an annuity an employee must comply with the work restrictions outlined in subpart C of this part.

§ 216.31 Who is eligible for an age annuity.

The Railroad Retirement Act provides annuities based on the employee's age for employees who have been credited with at least 10 years of railroad service.

(a) *Annuities based on 10 years of service.* An employee with 10 years of railroad service but less than 30 years of service is eligible for an annuity if he or she:

(1) Has attained retirement age; or

(2) Has attained age 62 (the annuity cannot begin prior to the first full month during which the employee is age 62) but is less than retirement age. All components of the annuity are reduced for each month the employee is under retirement age when the annuity begins.

(b) *Annuities based on 30 years of service.* An employee who has been credited with 30 years of railroad service is eligible for an annuity at age 60 (the annuity cannot begin prior to the first full month the employee is age 60). The Tier I component of the annuity is reduced if the employee meets the following conditions:

(1) The employee annuity begins before the month in which the employee is age 62; and either

(2) He or she had not attained age 60, prior to July 1, 1984; or

(3) He or she had not completed 30 years of railroad service prior to July 1, 1984.

(c) *Change from employee disability to age annuity.* A disability annuity paid to an employee through the end of the month before the month in which the employee attains retirement age is converted to an age annuity beginning with the month in which he or she attains retirement age.

§ 216.32 Who is eligible for a disability annuity.

The Railroad Retirement Act provides two types of disability annuities for employees who have been credited with at least 10 years of railroad service. An employee may receive an annuity if his or her disability prevents work in his or her regular railroad occupation. An employee who cannot be considered for a disability based on ability to work in his or her regular railroad occupation may receive an annuity if his or her disability prevents work in any regular employment.

(a) *Disability for work in regular railroad occupation.* An employee disabled for work in his or her regular occupation, as defined in part 220 of this chapter, is eligible for a disability annuity if he or she:

(1) Has not attained retirement age; and

(2) Has a current connection with the railroad industry; and has either:

(3) Completed 20 years of service; or

(4) Completed 10 years of service and is at least 60 years old.

(b) *Disabled for work in any regular employment.* An employee disabled for work in any regular employment, as defined in part 220 of this chapter, is eligible for a disability annuity if he or she:

(1) Is under retirement age; and

(2) Has completed 10 years of service.

§ 216.33 What is required for payment of an age or disability annuity.

In addition to the eligibility requirements listed above, an employee may be required to meet other conditions before payment of his or her annuity may begin.

(a) To receive payment of an employee annuity based on age, an eligible employee must:

(1) Apply to be entitled to an annuity; and

(2) Give up the right to return to service with his or her last railroad employer.

(b) If a disability annuity is converted to an age annuity when the annuitant attains retirement age, the age annuity cannot be paid until the employee gives up the right to return to work as described in subpart C of this part. The employee may authorize the Board to relinquish any such right on his or her behalf at the time when he or she applies for the disability annuity.

(c) To receive payment of an employee annuity based on disability, and eligible employee must apply to be entitled to an annuity.

(d) When requested, the employee must submit evidence to support his or her application, such as proof of age or evidence of disability.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 3220-0002)

Subpart E—Supplemental Annuity

§ 216.40 General.

An employee with a current connection with the railroad industry at the time of retirement may qualify for a supplemental annuity in addition to the regular employee annuity. Supplemental annuities are paid from a separate account funded by employer taxes in addition to those assessed for regular annuities. The Board reduces a supplemental annuity if the employee receives a private pension based on contributions from a railroad employer.

§ 216.41 Who is entitled to a supplemental annuity.

An employee is entitled to a supplemental annuity if he or she:

(a) Has been credited with railroad service in at least one month before October 1981;

(b) Is entitled to the payment of an employee annuity awarded after June 30, 1966;

(c) Has a current connection with the railroad industry when the employee annuity begins;

(d) Has given up the right to return to work as shown in Subpart C of this part; and either

(e) Is age 65 or older and has completed 25 years of service; or

(f) Is age 60 or older and under age 65, has completed 30 years of service, and is awarded an annuity on or after July 1, 1974.

§ 216.42 How a private railroad pension affects a supplemental annuity.

(a) *What is a private railroad pension.* The Board determines whether a pension established by a railroad employer is a private pension that will cause a reduction in the employee's supplemental annuity. A private pension for purposes of this subpart is a plan that:

(1) Is a written plan or arrangement which is communicated to the employees to whom it applies;

(2) Is established and maintained by an employer for a defined group of employees; and

(3) Provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement or disability. Such a plan is sometimes referred to as a defined benefit plan.

(b) *Defined contribution plan.* A plan under which the employer is obligated to make fixed contributions to the plan regardless of profits (sometimes known as a money purchase plan) is a private pension plan. A plan under which the employer's contributions are discretionary is not a private pension plan under this section.

(c) *Other than retirement benefits.* A plan which provides benefits not customarily considered retirement benefits (such as unemployment benefits, sickness or hospitalization benefits) is not a private pension plan under this section.

(d) *Effective date of private railroad pension for supplemental annuity purposes.* A private pension reduces a supplemental annuity payment effective on the first day of the month after the month the Board determines that it is a private pension as defined in paragraph (a) of this section.

(e) *Effect of private railroad pension.* A supplemental annuity is reduced by the amount of any private pension the employee is receiving which is attributable to an employer's contributions, less any amount by which the private pension is reduced because of the supplemental annuity. The supplemental annuity is not reduced for the amount of a private pension attributable to the employee's contributions. The Board will determine the amount of a private pension for any month which is attributable to the employee's contributions.

§ 216.43 Effect of a supplemental annuity on other benefits.

(a) *Employee annuity.* A supplemental annuity that begins after December 31, 1974, does not affect the payment of a regular employee annuity. A supplemental annuity beginning prior to 1975 causes a reduction in the employee annuity as provided by section 3(j) of the Railroad Retirement Act of 1937.

(b) *Spouse or survivor annuity.* The payment of a supplemental annuity does not affect the amount of a spouse or survivor annuity.

(c) *Residual lump-sum.* The amount of a supplemental annuity is not deducted from the gross residual lump-sum benefit. See part 234 of this chapter for an explanation of the residual lump-sum benefit.

Subpart F—Spouse and Divorced Spouse Annuities

§ 216.50 General.

The Railroad Retirement Act provides annuities for the spouse, and divorced spouse, of an employee who is entitled to an employee annuity. A spouse may receive an annuity based on age, or on having a child of the employee in his or her care. A divorced spouse may only receive an annuity based on age. No spouse or divorced spouse annuity may be paid based upon disability.

§ 216.51 Who is eligible for a spouse annuity.

(a) To be eligible for an annuity, a spouse must:

(1) Be the husband or wife, as defined in part 222 of this chapter, of an employee who is entitled to an annuity described under subpart D of this part; and

(2) Stop working for any railroad employer.

(b) Where the employee's annuity began before January 1, 1975, the employee has completed less than 30 years of railroad service, and is age 65 or older, the spouse must be:

(1) Age 65 or older;

(2) Less than age 65 and have in his or her care a disabled child or minor child (a child under 18 years old if the spouse claimant is a wife, or under 16 years old if the spouse claimant is a husband) of the employee; or

(3) Age 62 or older but under age 65. In such case, all annuity components are reduced for each month the spouse is under age 65 at the time the annuity begins.

(c) Where the employee's annuity begins after December 31, 1974, the employee has completed 10 years but less than 30 years of railroad service, and has attained age 62, the spouse must be:

(1) Retirement age or older;

(2) Less than retirement age and have in his or her care a disabled child or a minor child (a child under 18 years old if the spouse claimant is a wife, or under 16 years old if the spouse claimant is a husband) of the employee; or

(3) Age 62 or older but under retirement age. In such case, all annuity components are reduced for each month the spouse is under retirement age at the time the annuity begins.

(d) Where the employee's annuity began after June 30, 1974, the employee has completed 30 years of railroad service, and is age 60 or older, the spouse must be:

(1) Age 60 or older;

(2) Less than age 60 and have in his or her care a disabled child or a minor child (a child under 18 years old if the spouse claimant is a wife, or under 16 years old if the spouse claimant is a husband) of the employee; or

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(3) Age 60 but less than retirement age. In such case, the tier I component is reduced if the following conditions are met:

(i) The employee was under age 62 at the time his or her annuity began;

(ii) The employee annuity began after June 30, 1984;

(iii) The employee was under age 60 on June 30, 1984 or completed 30 years of railroad service after June 30, 1984; and

(iv) The spouse annuity begins after June 30, 1984.

§ 216.52 Who is eligible for an annuity as a divorced spouse.

To be eligible for a divorced spouse annuity, the employee annuitant must be at least age 62 and the divorced spouse (see § 222.22 of this chapter) must:

(a) Be the divorced wife or husband of an employee;

(b) Stop work for a railroad employer;

(c) Not be entitled to an old-age or disability benefit under the Social Security Act based on a primary insurance amount that is equal to or greater than one-half of the employee's tier I primary insurance amount; and either

(d) Have attained retirement age; or

(e) Have attained age 62 but be under retirement age. The annuity is reduced for each month the spouse is under retirement age at the time the annuity begins.

§ 216.53 What is required for payment.

An eligible spouse or divorced spouse must:

(a) Apply to be entitled to an annuity; and

(b) Give up the right to return to work for a railroad employer.

(Approved by the Office of Management and Budget under control number 3220-0016 and 3220-0042).

§ 216.54 Who is an employee's wife or husband.

An employee's wife or husband is an individual who—

(a) Is married to the employee; and

(b) Has been married to the employee for at least one year immediately before the date the spouse applied for annuity;

(c) Is the natural parent of the employee's child;

(d) Was entitled to an annuity as a widow(er), a parent, or a disabled child under this part in the month before he or she married the employee; or

(e) Could have been entitled to a benefit listed in paragraph (d) of this section, if the spouse had applied and been old enough in the month before he or she married the employee.

Subpart G—Widow(er), Surviving Divorced Spouse, and Remarried Widow(er) Annuities

§ 216.60 General.

The Railroad Retirement Act provides annuities for the widow(er), surviving divorced spouse, or remarried widow(er) of an employee. The deceased employee must have completed 10 years of railroad service and have had a current connection with the railroad industry at the time of his or her death. A widow(er), surviving divorced spouse, or remarried widow(er) may receive an annuity based on age, on disability, or on having a child of the employee in his or her care.

§ 216.61 Who is eligible for an annuity as a widow(er).

A widow(er) of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry at death is eligible for an annuity if he or she:

(1) Has not remarried; and either

(2) Has attained retirement age;

(3) Is at least 50 but less than 60 years of age and became disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity);

(4) Is less than retirement age but has in his or her care a child who either is under age 18 (16 with respect to the tier I component) or is disabled and who is entitled to an annuity under subpart H of this part; or

(5) Is at least 60 years of age but has not attained retirement age. (In this case, all components of the annuity are reduced for each month the widow(er) is age 62 or over but under retirement age when the annuity begins. For each month the widow(er) is at least age 60 but under age 62, all components of the annuity are reduced as if the widow(er) were age 62).

§ 216.62 Who is eligible for an annuity as a surviving divorced spouse.

(a) A surviving divorced spouse of an employee who completed 10 years of railroad service and had a current connection with the railroad industry at death, is eligible for an annuity if he or she:

(1) Is unmarried;

(2) Is not entitled to an old-age benefit under the Social Security Act that is equal to or higher than the surviving divorced spouse's annuity before any reduction for age; and either

(3) Has attained retirement age;

(4) Is at least 50 years of age but less than retirement age and is disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity.);

(5) Is less than retirement age but has in his or her care a child who either is under age 18 or is disabled and who is entitled to an annuity under subpart H of this part; or

(6) Is at least 60 years of age but has not attained retirement age. In this case, the annuity is reduced for each month the surviving spouse is under retirement age when the annuity begins.

(b) A disabled surviving spouse's annuity is converted to an annuity based on age beginning the month he or she becomes 60 years old. The annuity rate does not change.

(c) If a surviving divorced spouse marries after attaining age 60 (or age 50 if he or she is a disabled surviving divorced spouse), such marriage shall be deemed not to have occurred.

§ 216.63 Who is eligible for an annuity as a remarried widow(er).

(a) A widow(er) of an employee who completed 10 years of railroad service and had a current connection with the railroad industry at death is eligible for an annuity as a remarried widow(er) if he or she:

(1) Remarried either:

(i) After having attained age 60 (after age 50 if disabled); or

(ii) Before age 60 but the marriage terminated;

(2) Is not entitled to an old-age benefit under the Social Security Act that is equal to or higher than the full amount of the remarried widow(er)'s annuity before any reduction for age; and

(3) Has attained retirement age;

(4) Is at least 50 but less than 60 years of age and is disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity);

(5) Has not attained retirement age but has in his or her care a child who either is under age 18 or is disabled, and who is entitled to an annuity under subpart H of this part; or

(6) Is at least age 60 but has not attained retirement age. (In this case, the annuity is reduced for each month the remarried widow(er) is under retirement age when the annuity begins.)

(b) An individual entitled to a widow(er)'s annuity may be entitled to an annuity as a remarried widow(er) if he or she:

(1) Remarries after having attained age 60 (after age 50 if he or she has been determined to be disabled prior to his or her remarriage) and is not a surviving divorced spouse; or

(2) Is entitled to an annuity based upon having a child of the employee in his or her care and marries an individual entitled to a retirement, disability, widow(er)'s, mother's, father's, parent's, or disabled child's benefit under the Railroad Retirement Act or Social Security Act.

§ 216.64 What is required for payment.

An eligible widow(er), surviving divorced spouse, or remarried widow(er) must:

(a) Apply to be entitled for an annuity; and

(b) Submit evidence requested by the Board to support his or her application.

(Approved by the Office of Management and Budget under control number 3220-0030.)

§ 216.65 Who is an employee's widow(er).

An individual who was married to the employee at the employee's death is the deceased employee's widow(er) if he or she:

(a) Was married to the employee for at least 9 months before the day the employee died;

(b) Is the natural parent of the employee's child;

(c) Was married to the employee when either the employee or the widow(er) adopted the other's child, or they both legally adopted a child who was then under 18 years old;

(d) Was married to the employee less than 9 months before the employee died but, at the time of marriage, the employee was reasonably expected to live for 9 months; and

(1) The employee's death was accidental;

(2) The employee died in the line of duty while he or she was serving active duty as a member of armed forces of the United States; or

(3) The surviving spouse was previously married to the employee for at least 9 months;

(e) Was entitled in the month before the month of marriage to either:

(1) A benefit under section 202 of the Social Security Act as a widow, widower, spouse (divorced spouse, surviving divorced spouse), father, mother, parent, or disabled child; or

(2) An annuity under the Railroad Retirement Act as a widow, widower, divorced spouse, or surviving divorced spouse, parent or disabled child; or

(f) Could have been entitled to a benefit listed in paragraph (e) of this section, if the widow(er) had applied and been old enough to qualify therefor in the month before the month of marriage.

§ 216.66 Who is an employee's surviving divorced spouse.

An individual who was married to the employee is the deceased employee's surviving divorced spouse if he or she:

(a) Was married to the employee for a period of at least 10 years immediately before the date the divorce became final, and applies for an annuity based on age or disability; or

(b) Applies for an annuity based on having a "child in care" and either:

(1) Is the natural parent of the employee's child;

(2) Was married to the employee at the time the employee or the surviving divorced spouse adopted the other's child who was then under 18 years old; or

(3) Was married to the employee at the time they adopted a child who was then under 18 years old.

§ 216.67 "Child in care."

(a) *Railroad Retirement Act.* Part 222 of this chapter sets forth what is required to establish that a child is in an individual's care for purposes of the Railroad Retirement Act. This definition is used to establish eligibility for the tier II component of a female spouse or widow(er) annuity under that Act. Under this definition a child must be under age 18 or under a disability before any benefit is payable based upon having the child in care.

(b) *Social Security Act.* In order to establish eligibility for the tier I components of a spouse or widow(er) annuity, and eligibility for a surviving divorced spouse annuity based upon having a child of the employee in care, the definition of "child in care" found in the Social Security Act is used. Under this definition, a child must be under age 16 or under a disability.

§ 216.68 Disability period for widow(er), surviving divorced spouse, or remarried widow(er).

A widow(er), surviving divorced spouse, or remarried widow(er) who has a disability as defined in part 220 of this chapter is eligible for an annuity only if the disability began before the end of a period which:

(a) Begins in the later of:

(1) The month in which the employee died;

(2) The last month for which the widow(er) or surviving divorced spouse was entitled to an annuity for having the employee's child in care; or

(3) The last month for which the widow(er) or surviving divorced spouse was entitled to a previous annuity based on disability; and

(b) Ends with the earlier of:

(1) The month before the month in which the widow(er) or surviving divorced spouse or remarried widow(er) become 60 years old; or

(2) The last day of the last month of a 7-year period (84 consecutive months) following the month in which the period began.

Subpart H—Child's Annuity

§ 216.70 General.

The Railroad Retirement Act provides an annuity for the child of a deceased employee but not for the child of a living employee. The Act does provide that the child of a living employee can establish another individual's eligibility for a spouse annuity or cause an increase in the annuities of an employee and spouse. The eligibility requirements described in this subpart also apply for the following purposes, except as otherwise indicated in this part:

(a) To establish annuity eligibility for a spouse under subpart F of this part if he or she has the employee's eligible child in care;

(b) To establish annuity eligibility for a widow(er), or surviving divorce spouse or remarried widow(er) under subpart G of this part if he or she has the employee's child in care; or

(c) To provide an increase in the employee's annuity under the Social Security Overall Minimum Guaranty (see part 229) by including the eligible child.

§ 216.71 Who is eligible for a child's annuity.

An individual is eligible for a child's annuity if the individual:

(a) Is a child of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry when he or she died;

(b) Is not married at the time the application is filed;

(c) Is dependent upon the employee as defined in part 222 of this chapter; and

(d) Meets one of the following at the time the application is filed:

(1) Is under age 16; or

(2) Is age 16 or older and either:

(i) Is disabled as defined in part 220 of this chapter before attaining age 22 (the disability must continue through the time of application for benefits);

(ii) Is under age 19 and is a full-time student as defined in § 216.74 of this part; or

(iii) Becomes age 19 in a month in which he or she is a full-time student and has not completed the requirement for, or received a diploma or certificate from, a secondary school.

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§ 216.72 What is required for payment of a child's annuity.

An eligible child of a deceased employee is entitled to an annuity upon applying therefor and submitting any evidence requested by the Board.

(Approved by the Office of Management and Budget under control number 3220-0030)

§ 216.73 Who may be re-entitled to a child's annuity.

If an individual's entitlement to a child's annuity has ended, the individual may be re-entitled if he or she has not married and he or she applies to be re-entitled. The re-entitlement may begin with:

(a) The first month in which the individual is a full-time student if he or she is under age 19, or is age 19 and has not completed requirements for, or received a diploma or certificate from, a secondary school;

(b) The first month the individual is disabled, if the disability began before he or she attained age 22 and continues through the time of application for benefits; or

(c) The first month in which the individual is under a disability that began before the last day of a 7-year period (84 consecutive months) following the month in which the previous child's annuity ended, or the individual was no longer included as a disabled child in a railroad retirement annuity paid under the Social Security Overall Minimum Annuity (see part 229).

§ 216.74 When a child is a full-time student.

(a) *Full-time student.* A child is considered a full-time student when that individual is in full-time attendance at an elementary or secondary school. An individual is not a full-time student if while attending an elementary or secondary school he or she is paid compensation by an employer who has requested or required that the individual attend the school. An individual is not a full-time student while he or she is confined in a penal institution or correctional facility because he or she committed a felony after October 19, 1980. A student who reaches age 19 but has not completed the requirements for a secondary school diploma or certificate and who is in full-time attendance at an elementary or secondary school will continue to be eligible for benefits until the first day of the first month following the end of the quarter or semester in which he or she is then enrolled, or if the school is not operated on a quarter or semester system, the earlier of:

(1) The first day of the month following completion of the course(s) in which he or she was enrolled when age 19 was reached; or

(2) The first day of the third month following the month in which he or she reached age 19.

(b) *Full-time attendance.* Full-time school attendance means that a student is enrolled in a non-correspondence course which is considered full-time for day students under the practices and standards of the elementary or secondary school. The course must last at least 13 weeks and the student's scheduled rate of attendance must be at least 20 hours a week. A student whose full-time attendance either begins or ends in a given month is in full-time attendance for that entire month. A student is in full-time attendance in the month in which he or she graduates, but has no classes, if classes end in the month before graduation.

(c) *Elementary or secondary school.* An elementary or secondary school is a school which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which it is located.

§ 216.75 When a child is a full-time student during a period of non-attendance.

A student who has been in full-time attendance at an elementary or secondary school is considered a full-time student during a period of non-attendance (include part-time attendance) if:

(a) The period of non-attendance is 4 consecutive months or less;

(b) The student shows to the satisfaction of the Board that he or she intends to return, or the student does return, to full-time attendance at the end of the period; and

(c) The student has not been expelled or suspended from the school.

Subpart I—Parent's Annuity

§ 216.80 General.

The Railroad Retirement Act provides an annuity for the surviving parent of a deceased employee. The deceased employee must have completed 10 years of railroad service and have had a current connection with the railroad industry at the time of his or her death. A parent may only receive an annuity based on age.

§ 216.81 Who is eligible for a parent's annuity.

(a) Where the employee is not survived by a widow(er), or child who is or ever could be entitled to an annuity as described by subpart G or H of this part, a parent of the deceased employee is eligible for both the tier I and tier II components of an annuity if he or she:

(1) Is age 60 or older;

(2) Has not married since the employee died;

(3) Received one-half of his or her support (as defined in part 222 of this chapter) from the employee at the time the employee died; and

(4) Files proof of support as provided for in paragraphs (b)(4) and (b)(5) of this section.

(b) Where the employee is survived by a widow(er), or child who is or ever could be entitled to an annuity as described by subpart G or H of this part, a parent of the deceased employee is eligible for an annuity consisting of the tier I component alone if he or she:

(1) Is age 60 or older;

(2) Has not married since the employee died;

(3) Is not in receipt of an old age benefit under the Social Security Act equal to or exceeding the amount of the parent's tier I annuity amount before it is reduced for the family maximum but after the sole survivor minimum is considered;

(4) Received at least one-half of his or her support (as defined in part 222 of this chapter) from the employee either:

(i) When the employee died, or

(ii) At the beginning of the period of disability if the employee has a period of disability (as explained in part 220 of this chapter) which did not end before death; and

(5) Files proof of support with the Board within 2 years after either:

(i) The month in which the employee filed an application for a period of disability if support is to be established as of the beginning of the period of disability; or

(ii) The date of the employee's death if support is to be established at that point.

(c) The Board may accept proof of support filed after the 2-year period for reasons which constitute good cause to do so as that term is defined in part 210 of this chapter.

§ 216.82 What is required for payment.

An eligible parent must file an application and submit the evidence requested by the Board to be entitled to an annuity.

(Approved by the Office of Management and Budget under control number 3220-0030)

Subpart J—Eligibility for More Than One Annuity

§ 216.90 General.

An individual may meet the eligibility provisions for more than one annuity

described in this part. The Railroad Retirement Act generally requires that the total amount of annuities otherwise independently payable to one individual must be reduced if that individual is entitled to multiple annuities. Entitlement as a survivor includes entitlement as a widow(er), surviving divorced spouse, remarried widow(er), child, or parent.

§ 216.91 Entitlement as an employee and spouse, divorced spouse, or survivor.

(a) *General.* If an individual is entitled to an annuity as a spouse, divorced spouse or survivor, and is also entitled to an employee annuity, then the spouse, divorced spouse or survivor annuity must be reduced by the amount of the employee annuity. However, this reduction does not apply (except as provided in paragraph (b) of this section) if the spouse, divorced spouse or survivor or the individual upon whose earnings record the spouse, divorced spouse or survivor annuity is based worked for a railroad employer or as an employee representative before January 1, 1975.

(b) *Tier I reduction.* If an individual is entitled to an annuity as a spouse, divorced spouse or survivor, and is also entitled to an employee annuity, then the tier I component of the spouse, divorced spouse or survivor annuity must be reduced by the amount of the tier I component of the employee annuity. Where the spouse or survivor is entitled to a tier II component, then a portion of this reduction may be restored in the computation of this component.

§ 216.92 Entitlement as a spouse or divorced spouse and as a survivor.

If an individual is entitled to both a spouse or divorced spouse and survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

§ 216.93 Entitlement to more than one survivor annuity.

If an individual is entitled to more than one survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

§ 216.94 Entitlement to more than one divorced spouse annuity.

If an individual is entitled to more than one annuity as a divorced spouse, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

Dated: June 14, 1991.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-14681 Filed 6-21-91; 8:45 am]

BILLING CODE 7905-01-M

20 CFR Part 330

RIN 3220-AA82

Determination of Daily Benefit Rates

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby revises part 330 of its regulations under the Railroad Unemployment Insurance Act to reflect current procedures for computing an employee's daily benefit rate for a given benefit year, and the maximum daily benefit rate authorized under the 1988 amendments to the Act.

EFFECTIVE DATE: June 24, 1991.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, Bureau of Law, Chicago, Illinois 60611; (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: Part 330 of 20 CFR chapter II was last amended on October 29, 1975 (40 FR 50257), to provide information about new Board procedures adopted following the enactment of the 1975 amendments to the Railroad Unemployment Insurance Act. In the period since then, Board procedures and forms have been modified to simplify the collection of data relating to this part and to eliminate collection of unnecessary data.

Under the 1975 amendments, the maximum daily benefit rate was increased to $25.00, and no further increase was possible except through legislative enactment. On November 10, 1988, section 7201 of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Pub. L. 100-647, 102 Stat. 3774) was enacted to amend section 2 of the Railroad Unemployment Insurance Act to increase the maximum daily benefit rate from $25.00 to $30.00 and to prescribe a procedure for determining when the maximum daily benefit rate may increase further. Under Public Law 100-647, the Railroad Retirement Board is required to compute annually the maximum daily benefit rate in accordance with the new statutory procedure and then to publish notice of such maximum daily benefit rate.

Under the 1988 amendments, future increases in the maximum daily benefit rate are indexed on a yearly basis to increases in wages, as reflected by increases in the maximum compensation base provided for tier I taxes under the Railroad Retirement Tax Act (Chapter 22 of the Internal Revenue Code of 1986). the tier I compensation base is adjusted annually so that it is the same amount as the social security wage base under the Federal Insurance Contributions Act; the social security wage base is adjusted annually to reflect growth in average national wages.

Consequently, whether the maximum daily benefit rate will increase depends on the extent of the increase in the tier I compensation base under the Railroad Retirement Tax Act. For example, the tier I compensation base increased from $45,000.00 to $48,000.00 for 1989. Under the new indexing procedure, the amount of that increase was sufficient to produce an increase in the maximum daily benefit rate from $30.00 to $31.00. That increase applied to days of unemployment and sickness in registration periods beginning after June 30, 1989, because of the increase in the tier I earnings base for 1988. However, when the tier I base increased to $51,300.00 for 1990 and to $53,400.00 for 1991, those increases were not sufficient to trigger an increase in the daily benefit rate for days of unemployment or sickness beginning after June 30, 1990 and after June 30, 1991, respectively.

Pursuant to the new statutory procedure, on December 7, 1988, the Board published a notice in the **Federal Register** that the maximum daily benefit rate would increase to $31.00 in July, 1989 (53 FR 49369-49370). On February 28, 1990, the Board published a notice in the **Federal Register** that the maximum daily benefit rate would remain at $31.00 with respect to days of unemployment or days of sickness in registration periods beginning after June 30, 1990 (55 FR 7075). On December 19, 1990, the Board published notice that the maximum daily benefit rate would continue to be $31.00 with respect to days of unemployment or days of sickness in registration periods beginning after June 30, 1991 (55 FR 52113).

Part 330 has therefore been revised to describe the procedure for computing the maximum daily benefit rate and for notifying interested parties of the results of such computation.

This Part has also been revised to reflect current Board procedures for determining an employee's daily benefit

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rate and to make the language of the regulation more readable. Specifically, § 330.3(c) has been revised to reflect that the number of miles constituting a basic day for certain railroad occupations has increased from the 100 and 150 mile standards presently found in § 330.2(b). Section 330.5 has been revised to provide that an employee's daily benefit rate shall be considered the minimum daily benefit rate of $12.70 until the employee or his or her employer provides evidence as to the employee's last daily rate of compensation in the applicable base year.

On February 5, 1991, the Board published this rule as a proposed rule (56 FR 4585), inviting comments on or before April 8, 1991. No comments were received. When published as a proposed rule, the formula set forth in proposed § 330.2(b) contained an error, which appeared in column 3 of page 4586 of the Federal Register published February 5, 1991, and which involved the placement of the open parenthesis sign. This final rule publication corrects the error.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections under this part have been approved by the Office of Management and Budget under control numbers 3220–0007, 3220–0006 and 3220–0097.

List of Subjects in 20 CFR Part 330

Railroad employees, Railroad employers, Railroad unemployment benefits.

For the reasons set out in the preamble, part 330 of title 20 of the Code of Federal Regulations is revised to read as follows:

PART 330—DETERMINATION OF DAILY BENEFIT RATES

Sec.
330.1 Introduction.
330.2 Computation of daily benefit rate.
330.3 Daily rate of compensation.
330.4 Last railroad employment in the base year.
330.5 Procedure for obtaining and using information about daily rate of compensation.

Authority: 45 U.S.C. 362(1).

§ 330.1 Introduction.

The Railroad Unemployment Insurance Act provides for the payment of benefits, at a specified daily benefit rate, to any qualified employee for his or her days of unemployment or days of sickness, subject to a maximum amount per day. The "daily benefit rate" for an employee is the amount of benefits that he or she may receive for each compensable day of unemployment or sickness in any registration period, not counting days of unemployment or sickness in the employee's non-compensable waiting period. This part explains how the daily benefit rate is determined.

§ 330.2 Computation of daily benefit rate.

(a) *Basic formula.* A qualified employee's daily benefit rate for a given benefit year, as defined in part 302 of this chapter, is an amount equal to 60 percent of the employee's daily rate of compensation for his or her last railroad employment in the applicable base year, but such rate will not exceed the maximum amount set forth in paragraph (b) of this section nor will it be less than $12.70 per day.

(b) *Maximum daily benefit rate.* The maximum daily benefit rate is the greater of $30.00, or the amount computed on the basis of this formula:

$$BR = 25\left(1 + \frac{A-800}{900}\right)$$

In this formula, "BR" represents the maximum daily benefit rate, and "A" represents the amount obtained by dividing, by 60, the amount of the tier I Railroad Retirement Tax Act earnings base as provided for in section 3231(e)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 3231(e)(2)) for the calendar year in which the benefit year begins, with this quotient being rounded down to the nearest multiple of $100.00. If the maximum daily benefit rate so computed is not a multiple of $1.00, the Board will round it to the nearest multiple of $1.00. Such rounding will be upward if the amount so computed is equidistant between two multiples of $1.00.

(c) *When increase effective.* Whenever the annual application of the formula in paragraph (b) of this section triggers an increase in the maximum daily benefit rate, such increase will apply to days of unemployment or days of sickness in registration periods beginning after June 30 of the calendar year involved in the computation of "A" in that formula.

(d) *Notice.* Whenever the annual application of the formula in paragraph (b) of this section triggers an increase in the maximum daily benefit rate, or if the annual application of the formula does not trigger an increase, the Board will publish a notice in the Federal Register explaining how it computed the maximum daily benefit rate for the year. The Board will also notify each employer of the maximum amount of the daily benefit rate. The Board will make the computation as soon as it knows the amount of the tier I Railroad Retirement Tax Act earnings base under section 3231(e)(2) of the Internal Revenue Code of 1986 for each calendar year and will publish notice as soon as possible thereafter but in no event later than June 1 of each year. Information as to the current amount of the maximum daily benefit rate will also be available in any Board district or regional office or from the Bureau of Unemployment and Sickness Insurance.

(e) *Sources of information.* In determining an employee's daily rate of compensation for the purpose of computing his or her daily benefit rate, the Board will rely on information furnished by the employee and his or her last employer in the base year. An employee's earnings from employment not covered by the Railroad Unemployment Insurance Act are not considered in computing his or her daily benefit rate.

§ 330.3 Daily rate of compensation.

(a) *Definition.* An employee's daily rate of compensation is his or her straight-time rate of pay, including any cost-of-living allowance provided in any applicable working agreement. It does not include any overtime pay, penalty payment, or other special allowance except as hereinafter provided. An employer's or employee's report of the daily rate of compensation shall, in the absence of information to the contrary, and subject to the considerations set forth in this section and §§ 330.4 and 330.5, be considered to show the daily rate of compensation of the employee by or for whom the report has been furnished. Where a rate other than a daily rate is reported, the Board will convert it to a daily rate.

(b) *Hourly, weekly or monthly rate.* An hourly rate shall be converted to a daily rate by multiplying such hourly rate by the number of hours constituting a working day for the employee's occupation or class of service. A weekly or monthly rate shall be converted to a daily rate by dividing such rate by the number of working days constituting the work week or work month, as the case may be, for the employee's occupation or class of service.

(c) *Mileage rate.* When a collective bargaining agreement provides for payment of compensation on a mileage basis, the employee's daily rate of compensation is his or her rate of pay for the number of miles constituting a basic day, including any allowance, as prescribed by the agreement, that is added to his or her basic rate of pay for the number of miles constituting a basic day.

(d) *Piece rate or tonnage rate.* Where a piece rate or tonnage rate is reported, the daily rate of compensation shall be determined by computing the employee's average earnings per day for the days on which he or she worked substantially full time (excluding any overtime pay or penalty rates) at such piece rate or tonnage rate during the last two pay periods in which he or she engaged in such work in the base year.

(e) *Commissions or percentage of sales.* Where the compensation reported consists of or includes commissions or percentages of sales, the daily rate of such commissions or percentage of sales shall be determined by computing the employee's average net commissions or percentage earnings (excluding any amounts he or she received to compensate him or her for expenses) per day for the days in the last two pay periods in which he or she worked on a commission or percentage basis in the base year.

(f) *International service.* In the case of an employee who, on his last day of employment in the base year, worked partly outside the United States and partly in the United States for an employer not conducting the principal part of its business in the United States, the employee's daily rate of compensation shall be determined in the same manner as it would if all his service on that day had been rendered in the United States.

§ 330.4 Last railroad employment in the base year.

The phrase "last railroad employment in the applicable base year," as used in § 330.2(a) of this part, means generally the employee's last "service performed as an employee," within the meaning of section 1(g) of the Railroad Unemployment Insurance Act. If an employee did not actually perform any service as an employee in the applicable base year (the calendar year preceding a benefit year) but did receive qualifying compensation such as vacation pay or pay for time lost for days in such base year, the Board will consider that his or her last railroad employment in the base year was the employment on which the qualifying compensation was based. The daily rate of such compensation shall be deemed to be the employee's daily rate of compensation for purposes of this part. If an employee's last railroad employment in the base year was casual or temporary work and was performed while on furlough from other base year railroad employment, the Board will disregard the daily rate of compensation paid for the casual or temporary work if such rate of compensation produces a daily benefit rate lower than the daily benefit rate based on the daily rate of compensation for the employment from which the employee was furloughed.

§ 330.5 Procedure for obtaining and using information about daily rate of compensation.

(a) *Information furnished by employers.* Every employer, as defined in part 301 of this chapter, shall furnish information to the Board with respect to the daily rate of compensation of each employee for his or her last employment in the applicable base year. The employer shall make such report when it files its annual report of compensation in accordance with part 209 of this chapter and shall use the form prescribed by the Board for that purpose. If an employee's last daily rate of compensation in the base year is $99.99 or more, the employer may report such rate as $99.99 instead of the employee's actual last daily rate of compensation. In the absence of evidence to the contrary or a challenge by the employee, the daily rate of compensation provided by an employer under this section shall be used to compute a qualified employee's daily benefit rate. If an employer fails to report the last daily rate of compensation for a qualified employee who has applied for benefits or if an employee challenges the daily rate reported by an employer, the procedure in paragraphs (b) and (c) of this section will apply.

(b) *Information furnished by employee.* The Board will afford an employee an opportunity to establish his or her last daily rate of compensation if the base year employer did not report a rate for the employee on its annual report of compensation or if the employee challenges the accuracy of the rate reported by the employer. Unless deemed unreasonable, a daily rate of compensation reported by an employee under this paragraph will be used provisionally to compute his or her daily benefit rate, but such rate will be verified in accordance with paragraph (c) of this section. In any case in which the employee's report is deemed unreasonable and no employer report has been provided, the employee's report shall be disregarded, and the Board will seek to verify the employee's last daily pay rate in accordance with paragraph (c) of this section. Pending receipt of such verification, the employee's daily benefit rate shall be set at $12.70. When an unverified and uncorrected pay rate has been verified or corrected, appropriate redetermination of the daily benefit rate shall be made, and such redetermined benefit rate shall be applied to all the employee's days of unemployment or sickness in the benefit year.

(c) *Employer verification.* Whenever an employee has established a daily rate of compensation under paragraph (b) of this section, the Board will request the employee's base year employer to verify such rate within 30 days. If such verification is not received within 30 days, the employee's daily rate of compensation may be based upon other evidence gathered by the Board if such evidence is reasonable in light of compensation rates reported for other employees of the base year employer in the same occupation or class of service as the employer or in light of previous compensation rates reported by the base year employer for its employees. A daily benefit rate established under this paragraph may not exceed the maximum daily benefit rate established under this part.

(d) *Protest.* An employee who is dissatisfied with the daily benefit rate computed under this part may contest such computation in accordance with part 320 of this chapter.

(Approved by the Office of Management and Budget under control numbers 3220–0007, 3220–0006 and 3220–0097)

By authority of the Board.

Dated: June 14, 1991.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91–14682 Filed 6–21–91; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Ch. I

[Docket No. N–91–2011; FR–2965–N–07]

Fair Housing Accessibility Guidelines; Technical Corrections

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of technical corrections; Fair Housing Accessibility Guidelines.

SUMMARY: On March 6, 1991 (56 FR 9472), the Department published in the Federal Register, final Fair Housing Accessibility Guidelines. The purpose of the Guidelines is to provide technical guidance on designing dwelling units as required by the Fair Housing Amendments Act of 1988. Subsequent to

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publication of the final Guidelines, the Department noted minor editorial errors in two sections of the text and accompanying diagrams in the Guideline for Requirement 7, which provides technical guidance on designing usable kitchens and bathrooms, and in one of the diagrams accompanying the Guideline for Requirement 8, which addresses grab bar reinforcement. The purpose of this document is to correct these errors, and thus, eliminate any confusion which may have resulted from the errors. The specific corrections being made to the Guidelines are explained in the Supplementary Information section below.

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Merle Morrow, Office of HUD Program Compliance, room 5204, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone (202) 708-2618 (voice) or (202) 708-0015 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On March 6, 1991 (56 FR 9472), the Department published in the **Federal Register**, final Fair Housing Accessibility Guidelines. (The Guidelines are to be codified as appendix II to 24 CFR ch. I, subch. A in the 1991 edition of the Code of Federal Regulations.) The design specifications presented in the Guidelines are intended to provide technical guidance to builders and developers in complying with the specific accessibility requirements of the Fair Housing Amendments Act of 1988 (Fair Housing Act). The Guidelines are divided into seven areas to address each of the seven areas of accessible design required by the Fair Housing Act. The Guideline for Requirement 8 provides technical guidance on installation of reinforcement in bathroom walls to allow later installation of grab bars. The Guideline for Requirement 7 provides technical guidance on designing usable kitchens and bathrooms as required by the Fair Housing Act. Subsequent to publication of the final Guidelines, the Department noted certain technical errors in the following text of the Guideline for Requirement 7 and in the following diagrams accompanying the Guidelines for Requirement 8 and Requirement 7:

(1) Paragraph (2)(b)(vi) of the Guideline for Requirement 7 (56 FR 9512) refers to measurement from the "head" of the bathtub; however, the accompanying illustration (Figure 8 at page 9515) shows measurement from the "foot" of the bathtub. Accordingly, paragraph (2)(b)(vi) will be corrected to provide for measurement from the "foot" of the bathtub.

(2) Paragraphs (2)(a)(ii) and (2)(b)(vii) of the Guideline for Requirement 7 (56 FR 9511, 9512, respectively) specify the appropriate measurements for a shower stall when the shower stall is the only bathing facility provided in a covered dwelling unit. Paragraph (2)(a)(iii) specifies those measurements at "at least 36 inches by 36 inches" (9511, second column). Paragraph (2)(b)(vii) specifies those measurements as "a nominal 36x36 or smaller" (9512, second column). The phrase "or smaller" in paragraph (2)(b)(vii) is incorrect. Accordingly, to appropriately reflect the Department's recommended measurements for a shower stall that is the only bathing facility in a covered dwelling unit, and to make paragraph (2)(b)(vii) consistent with paragraph (2)(a)(iii), the phrase—"or smaller"—in paragraph (2)(b)(vii) will be deleted.

(3) The center diagram in figure 5 (56 FR 9511), which illustrates the location of grab bar wall reinforcements for adaptable showers, contains an incorrect measurement. The outside measurement of 48 inches is incorrect and not applicable to this diagram. Accordingly, this document replaces Figure 5 with a corrected Figure 5.

(4) Figure 7(d) (56 FR 9514) shows the shower head control in the incorrect location. Accordingly, this document replaces this figure with a corrected Figure 7(d) which shows the shower head control in the correct location.

(5) Figure 8 (56 FR 9515) should have included the following note to clarify the illustration of clear floor space at a bathtub: "Clear floor space beside tub may overlap with clear space beneath adjacent fixtures." Accordingly, this document replaces Figure 8 with a corrected Figure 8 that includes this note.

Accordingly, FR Doc. 91-2011, published in the **Federal Register** on March 6, 1991 at 56 FR 9472, is amended by correcting the Fair Housing Accessibility Guidelines, codified as appendix II to 24 CFR ch. I, subch. A., to read and to illustrate as follows:

Appendix II to Chapter I Subchapter A—[Amended]

1. Guideline for Requirement 7. [Corrected]

On page 9512, first column, paragraph (2)(b)(vi) is corrected to read as follows:

(vi) Bathtubs and tub/showers located in the bathroom provide a clear access aisle adjacent to the lavatory that is at least 2'6" wide and extends for a length of 4'0" (measured from the foot of the bathtub). (See Figure 8.)

2. Guideline for Requirement 7. [Corrected]

On page 9512, second column, paragraph (2)(b)(vii) is corrected to read as follows:

(vii) Stall showers in the bathroom may be of any size or configuration. A minimum clear floor space 2'6" wide by 4'0" should be available outside the stall. (See Figure 7(d). If the shower stall is the only bathing facility provided in the covered dwelling unit, or on the accessible level of a covered multistory unit, and measures a nominal 36x36, the shower stall must have reinforcing to allow for installation of an optional wall hung beach.

3. Guideline for Requirement 8. [Corrected]

On page 9511, Figure 5 is corrected to appear as follows: [Insert corrected Figure 5].

4. Guideline for Requirement 7. [Corrected]

On page 9514, Figure 7(d) is corrected to appear as follows: [Insert corrected Figure 7(d)].

5. Guideline for Requirement 7. [Corrected]

On page 9515, Figure 8 is corrected to appear as follows: [Insert corrected Figure 8].

Dated: June 10, 1991.

Leonora L. Guarrala,

Deputy Assistant Secretary for Enforcement and Compliance.

BILLING CODE 4210-28-M

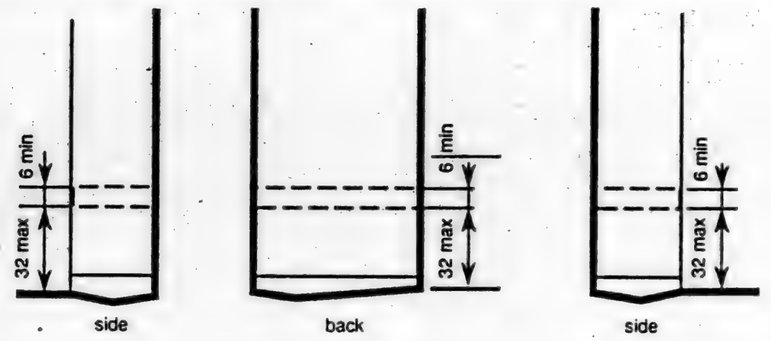
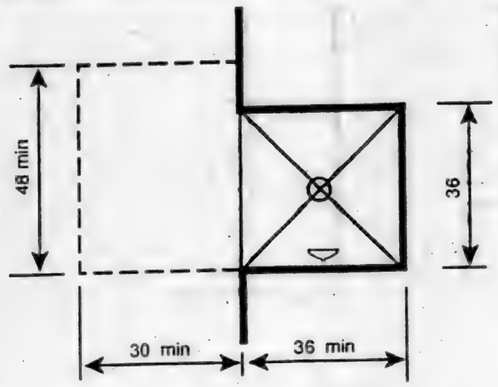


Fig. 5 Location of Grab Bar Reinforcements for Adaptable Showers

NOTE: The areas outlined in dashed lines represent locations for future installation of grab bars.

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(d) Clear Floor Space at Shower

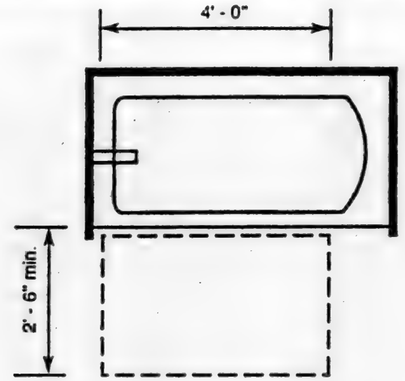


Fig. 8 Alternative Specification – Clear Floor Space at Bathtub

NOTE: Clear floor space beside tub may overlap with clear floor space beneath adjacent fixtures.

[FR Doc. 91-14924 Filed 6-21-91; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1-91-040]

Temporary Drawbridge Operation Regulations; Mystic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of Connecticut Department of Transportation (CONN DOT), the Coast Guard is issuing temporary regulations governing the US Route 1 drawbridge over Mystic River, at mile 2.8, at Mystic, Connecticut in order to evaluate suggested changes during the prime boating season. The temporary regulations would eliminate the 12:15 p.m. opening, Monday through Friday, excluding holidays, for recreational vessels. Commercial and public safety vessels would be passed immediately at anytime. The regulation will be in effect for 60 days from 1 July through 29 August 1991. This temporary regulation is being made to examine the effect on pedestrian, vehicular and marine traffic during the peak recreational boating season and provides for openings in emergency situations. This action should accommodate the needs of vehicular and pedestrian traffic, while providing for the reasonable needs of navigation.

EFFECTIVE DATE: This temporary regulation becomes effective 1 July 1991 thru 29 August 1991.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: This Final Temporary regulation is published in accordance with 33 CFR 117.43 in order to further evaluate suggested changes in the drawbridge operating requirements. On August 16, 1990, the Coast Guard published a Notice of Proposed Rulemaking and Public Hearing (55 FR 33540) concerning a similar amendment. In addition, the Coast Guard published a Temporary Final Rule (55 FR 33534) for the period 13 August–21 September 1990. The temporary final rule eliminated the 12:15 p.m. opening, Monday through Friday, with no exemption for commercial vessels. In each instance, the Commander, First Coast Guard District, also published these proposals as a Public Notice 1-724 and 1-723 dated 10 and 9 August 1990, respectively. In Public Notice 1-724, interested persons were given until 12 October 1990 to submit comments. In accordance with 5 U.S.C. 553, a notice of proposed temporary rulemaking was not published for these regulations and good cause exists for making them effective in less than 30 days after Federal Register publication. Publishing a Notice of Proposed Temporary Rulemaking and delaying its effective date would be contrary to the public interest since implementation of the temporary regulations is necessary to evaluate their effect during the months when boating, pedestrian and vehicular traffic are in greatest conflict.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project officer, and Lieutenant John Gately, Project Attorney.

Discussion of Comments

A Public Hearing held in the Fitch Senior High School Auditorium, in Groton, Connecticut on 25 September 1990, had 31 attendees with nine speakers. The speakers included six favoring, and three opposing the proposed regulation which would eliminate the 12:15 p.m. opening, Monday through Friday, but would exempt commercial vessels. In addition, written comments to the public notice included three each in support and opposition to the proposed regulations with one other respondent who requested exemption for commercial vessels. Since some of the hearing speakers also provided written comments in response to the public notice, the comments are addressed in general groupings. During the hearing several speakers raised navigational safety concerns regarding the Army Corps of Engineers' Permit issued to Historic Powerhouse Ltd. for the construction and maintenance of ramps, floating docks and slips at a critical bend in the Mystic River and the potential added congestion problems that would be created if the regulation was implemented. At the hearing, the public was advised that the Corps of Engineers permit had been issued and that it contained statements regarding reliance on the applicant's data and provided for reevaluation of the permit decision for cause. It was also stated that action regarding that permit was not a matter under the jurisdiction of the Coast Guard. The public, however, noted that both the Coast Guard and the Army Corps of Engineers are responsible for navigational safety. The opposing comments in writing and at the hearing expressed concerns with the potential navigational hazard that may be created, the additional length of time that would be required at the 11:15 a.m. and 1:15 p.m. openings, and the fact that the present reasonable balance between boat and vehicular traffic is disrupted.

The comments favoring the change expressed a concern for public safety and the inconvenience to land traffic. The safety issue was based on increased vehicular and pedestrian traffic at the noon hour and concern that ambulances and fire departments located a short distance from the bridge would be delayed. It would also allow employees and local residents to transact their business on both sides of the bridge during the lunch hour. Comments were also received that recommended additional signs indicating the elimination of the 12:15 p.m. opening be placed up and downstream well in advance of any temporary regulation period. Although any regular or temporary regulations are published in the Local Notice to Mariners, it was emphasized that probably over 90% of the recreational boaters do not receive the Local Notice to Mariners, and therefore additional signs indicating the Route 1 Bridge hours of operation needed to be posted downstream of the railroad bridge.

Additionally, it was noted that the temporary regulations were implemented during the latter portion of the summer period (13 August through 21 September 1990) when tourism had reportedly sharply declined and boating traffic was also not at its peak; therefore, not providing a comprehensive assessment of the full impact on land and marine traffic during the noon hour. This data was collected by the Groton Town Police Department during a short sampling period from Monday, 13 August, to Wednesday, 17 August 1990. The 11:15 a.m. opening ranged from 4 to 7 minutes to accommodate three to four boats. The 13:15 p.m. openings ranged from 10 to 12 minutes to accommodate 11 to 23 boats. Between openings for this same period the vehicular and pedestrian traffic varied from 2,220 vehicle and 554 pedestrian to 3,188 and 1090, respectively.

As a result of the data collected and the comments it has been determined that a second test period should be conducted during the middle of the summer to more fully evaluate the effects on pedestrian, vehicular and marine traffic during the peak boating season.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that the temporary regulation will not prevent the passage of commercial vessels but only require that recreational vessels schedule their transits around the 12:15 p.m. opening during weekdays, excluding holidays. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this temporary rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.211, paragraph (b)(1) is suspended and paragraphs (b) (3) and (4) are added for a 60 day period from 1 July through 29 August 1991 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.211 Mystic River

* * * * *

(b) * * *

(3) From July 1 through August 29 from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour. However, the draw need not open at 12:15 p.m. weekdays except federal holidays and as required by (b)(4).

(4) Public vessels of the United States, state and local vessels used for public safety, vessels in distress and commercial vessels shall be passed immediately at anytime.

Dated: June 11, 1991.

R.I. Rybecki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 91-14932 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3967-8]

Minnesota: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Minnesota has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Minnesota's application and has reached a decision, subject to public review and comment, that these hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Minnesota to operate its expanded program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA").

DATES: Final authorization for Minnesota's program revisions shall be effective August 23, 1991 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Minnesota's final authorization must be received by 4:30 p.m. central time on July 24, 1991. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a document containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

ADDRESSES: Copies of Minnesota's final authorization application are available during 9 a.m. to 4 p.m. at the following addresses for inspection and copying: Ms. Carol Nankivel, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155, Phone 612/643-3496; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone 202/382-5922; Ms. Christine Klemme, U.S. EPA, Region V, 230 S. Dearborn, 13th Floor, Chicago, Illinois 60604, Phone 312/886-3715. Written comments should be sent to Ms. Christine Klemme, Waste Management Division, Office of RCRA, 230 S. Dearborn, 5HR-JCK-13, Chicago, Illinois 60604, Phone 312/886-3715.

FOR FURTHER INFORMATION CONTACT: Christine Klemme, Minnesota Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR-JCK-13, 230 South Dearborn, Chicago, Illinois 60604, (312) 886-3715 [FTS 8 886-3715].

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. For further explanation, see section C of this notice.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessary because of changes to EPA's regulations in 40 CFR part 124, 260-268 and 270.

B. Minnesota

Minnesota initially received final authorization for its base RCRA program effective on February 11, 1985 (50 FR 3756, January 28, 1985). On June 30, 1986, January 29, 1988, November 18, 1988, and November 21, 1989, Minnesota submitted revision applications for program approval. On September 18, 1987, June 23, 1989, and August 14, 1990, (see 52 FR 27199, July 20, 1987; 54 FR 16361, April 24, 1989; and 55 FR 24232, June 15, 1990, respectively), Minnesota received authorization for additional program revisions.

Minnesota submitted an additional revision application on January 21, 1991. EPA has reviewed this application and has made an immediate final decision that Minnesota's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Minnesota final authorization for this additional program revision.

On August 23, 1991, (unless EPA publishes a prior FR action withdrawing

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this immediate final rule). Minnesota will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	Analogous state authority
*Household Waste, July 15, 1985, 50 FR 28702–28755	MN Rule 7045.0020(2)(k), 7045.0020(37a–c), 7045.0120(a), 7045.0310(1–6) effective 10–1–90.
*Dust Suppression, July 15, 1985, 50 FR 28702–28755	MN Rule 7045.0065(1), (1a)(A) effective 10–1–90.
*Double Liners, July 15, 1985, 50 FR 28702–28755	MN Rule 7045.0075(12), 7045.0532(3), 7045.0538(3), 7045.0630(1a), 7045.0632(4a), 7045.0638(1a) effective 2–11–91.
*Fuel Labeling, July 15, 1985, 50 FR 28702–28755	MN Rule 7045.0125(10D) effective 1–9–90.
*Burning of Waste Fuel and Used Oil Fuel, November 29, 1985, 50 FR 49164–49212) as amended November 19, 1986, (51 FR 41900–41904), and April 13, 1987, 52 FR 11819–11822.	MN Rule 7045.0020, 7045.0125(1)(3)(4), 7045.0214(3), 7045.0219, 7045.0692, 7045.0695 effective 1–9–90.
Correction: Identification and Listing of Hazardous Waste, April 22, 1986, 53 FR 13382–13383).	MN Rule 7045.0135(4)(E)(F), 7045.0141 effective 1–9–90.
*Correction: Identification and Listing of Hazardous Waste, July 19, 1988, (53 FR 27162–27163).	MN Rule 7045.0219(4) effective 1–8–91.
*Correction: Farmer Exemptions, July 19, 1988, (53 FR 27164–27165)	MN Rule 7045.0520, 7045.0211, 7045.0213, 7045.0450, 7045.0552, 7045.1300 effective 1–8–91.
Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption, July 19, 1988, (53 FR 27290–27302).	MN Rule 7045.0075, 7045.0020, 7045.0121 effective 3–26–90.
*Standards for Hazardous Waste Storage and Treatment Tank Systems, September 2, 1988, (53 FR 34079–34087).	MN Rule 7045.0020(21 a and b) (103a–c), 7045.0075(6D), 7045.0488(3), 7045.0528(1 and 4), 7045.0596, 7045.0600, 7045.0629(1, 4, and 8), 7045.0629(3c) effective 1–8–91.
*Pre-Construction Ban, July 15, 1985, 50 FR 28702–28755	MN Rule 7001.0520(8), effective 3/6/89.
Identification and Listing of Hazardous Waste, July 10, 1987, 52 FR 26012	MN Rule 7045.0135(4)(C), effective 3/6/89.
*Exception Reporting for SQG's, September 23, 1987, 52 FR 35894–35899	MN Rule 7045.0205(1), 7045.0298, effective 3/6/89.
*Corrective Action for Injection Wells, December 1, 1987, 52 FR 45788	MN Rule 7045.0460, 7045.0485, 7001.0520(3), 7045.0640 effective 3/6/89.
Identification and Listing of Hazardous Waste, and Designation, Reportable Quantities and Notification, September 13, 1988, (53 FR 35412–35421).	MN Rule 7045.0135(3)(I–M), 7048.0139(2b), 7045.0120(I) effective 1–8–91.
Clarification to Radioactive Mixed Waste Rule, September 28, 1988, (53 FR 37045).	MN Statute 116.06(13) effective 4–27–87.
Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities, October 11, 1988, (53 FR 39720–39731).	MN Rule 7045.0020 (15a) and (22a), 7045.0484(3), (11)(12)(13) effective 1–8–91.
Identification and Listing of Hazardous Waste, Removal of Iron Dextran from the list of Hazardous Wastes, October 31, 1988, (53 FR 43878–43881).	MN Rule 7045.0135(4F), 7045.0141(10B) effective 1–8–91.
Identification and Listing of Hazardous Waste, Removal of Strontium Sulfide from the list of Hazardous Wastes, October 31, 1988, (53 FR 43881–43884).	MN Rule 7045.0135(4E), 7045.0141(1B) effective 1–8–91.
Amendment to Requirements for Hazardous Waste Incinerators, January 30, 1989, (54 FR 4286–4358).	MN Rule 7001.0700(11) effective 8–27–90.
*Toxicity Characteristics, March 29, 1990, 55 FR 11798–11877	MN Rule 7045.0120 (K) and (Q), 7045.0131(7) and (8), 7045.0135, 7045.0634(3A) effective 1–9–91.

*HSWA requirement.

EPA shall administer any RCRA hazardous waste permits or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on February 11, 1985, September 18, 1987, June 23, 1989, and August 15, 1990, the effective dates of Minnesota's final authorization for the RCRA base program for non-HSWA Clusters I–IV and the majority of HSWA I revisions.

Minnesota is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Minnesota's Authorization

1. General

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized State and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new HSWA requirements and prohibitions take effect in authorized States at the same time they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in authorized and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, at one point, adopt HSWA-related provisions as State law to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there is a dual State/Federal regulatory program in Minnesota. To the extent HSWA does not affect the authorized State program, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Minnesota until the State is authorized for them.

Once EPA authorizes Minnesota to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's rulemaking includes authorization of Minnesota's program for several requirements implementing the HSWA. Those requirements implementing the HSWA are specified in the "Minnesota" section of this notice. Any effective State requirement that is more stringent or broader in scope than a Federal HSWA provision will continue to remain in effect; thus regulated handlers must comply with any more stringent State requirements.

EPA published a FR notice explaining in detail the HSWA and its affect on authorized States (50 FR 28702–28755, July 15, 1985).

2. Land Disposal Prohibitions

EPA does not intend to authorize Minnesota to impose additional land disposal prohibitions at this time. The regulations implementing the land disposal prohibitions are found in 40 CFR part 268. Under sections 5, 6, 42(b) and 44 of part 268, EPA has authority to consider petitions for case-by-case extensions to prohibition effective dates, exemptions to prohibitions based upon a showing of no potential for waste migration, alternate treatment methods, and variances from treatment standards, respectively. Consideration of the sections 5, 42(b) and 44 petitions is permanently reserved to EPA because consideration of those petitions requires a national perspective. In the future, EPA may authorize States to consider the section 6 petitions. However, EPA is currently requiring that EPA Headquarters handle these petitions. It should be noted that Minnesota has its own procedures for considering petitions for exemptions to prohibitions based upon a showing of no potential for waste migration. Nothing in RCRA prohibits a State from adopting requirements that parallel Federal requirements. Therefore, petitioners seeking a section 6 exemption must be granted approval by both EPA and the State.

On August 17, 1990, EPA promulgated the most recent phase of the regulatory framework implementing the land disposal prohibitions. EPA promulgated earlier phases on November 7, 1986; June 4, July 8, and October 10, 1987; August 17, 1988; February 27, May 2, June 23, and September 6, 1989; and June 1, June 13, and August 17, 1990. Minnesota's rulemaking process follows the EPA rulemaking process. An unavoidable consequence is that Minnesota's current land disposal prohibitions program is not as comprehensive as the Federal program. Since each new phase of the land disposal prohibition regulations has included modifications to earlier phases, and in most instances, those modifications have made the regulatory framework more stringent, certain Minnesota land disposal requirements may be superceded by Federal land disposal requirements. Minnesota is only authorized for the November 7, 1986, June 4, 1987, July 8, 1987, and October 10, 1987, rules (see June 15, 1990, 55 FR 24232). However, since the balance of the Federal regulations are promulgated pursuant to HSWA, the regulations are effective in Minnesota and all other States and are directly implemented by EPA. Regulated handlers must comply with any requirements of the retained Federal land disposal prohibitions program that may be more stringent than the analogous requirements of the Minnesota program. Conversely, because compliance with RCRA does not exempt regulated handlers from compliance with State law, such handlers must also meet any requirements of the Minnesota program that may be more stringent than the analogous requirements of the Federal program. As a consequence, regulated handlers facing an apparent conflict between State and Federal land disposal prohibitions must always comply with the more stringent of the two requirements.

D. Decision

I conclude that Minnesota's program revision application meets all the statutory and regulatory requirements established by RCRA and its amendments. Accordingly, EPA grants Minnesota final authorization to operate its hazardous waste program as revised. Minnesota currently has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program and its amendments. This responsibility is subject to the limitations of its program revision applications and previously approved authorities. Minnesota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 or RCRA, and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

E. Codification

EPA codifies authorized State programs in part 272 of 40 CFR. The purpose of codification is to provide notice to the public of the scope of the authorized program in each State. Codification of the Minnesota program will be completed at a later date.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Minnesota's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

Lists of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926 and 6974(b)).

Dated: June 14, 1991.

Todd A. Cayer,

Acting Regional Administrator.

[FR Doc. 91–14953 Filed 6–21–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–307; RM–6301]

Television Broadcasting Services; Ceres and Modesto, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

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SUMMARY: This document reallots UHF television Channel *23 from Modesto to Ceres, California, as that community's first local television broadcast service, and reserves the channel for noncommercial educational usage, in response to a petition for rule making filed on behalf of Bet Nahrain, Inc. See 54 FR 29756, July 14, 1989. Coordinates for Channel *23 at Ceres are 37–35–24 and 120–57–06.

This allotment falls within the boundaries of certain markets for which the Commission has imposed a "freeze" on TV allotments, or applications therefor. Ceres is further removed from the affected markets than was the allotment at Modesto. Potential applicants must seek a waiver of the freeze. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–307, adopted June 10, 1991, and released June 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments for California, is amended by removing Channel *23+ at Modesto, and by adding Ceres, Channel *23+.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14062 Filed 6–21–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–467; RM–7443; RM–7596]

Radio Broadcasting Services; Gualala, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 263B1 to Gualala, California, in lieu of previously proposed Channel 246B1, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Dr. Gerhard Hanneman (RM–7443). See 55 FR 45624, October 30, 1990. CBS, Inc., licensee of Station KRQR(FM), Channel 247B, San Francisco, California, counterproposed the allotment of Channel 263B1 to Gualala (RM–7596), to which the petitioner consented. Coordinates for Channel 263B1 at Gualala are 38–46–00 and 123–31–42. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 5, 1991. The window period for filing applications for Channel 263B1 at Gualala, California, will open on August 6, 1991, and close on September 5, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–467, adopted June 10, 1991, and released June 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments under California, is amended by adding Gualala, Channel 263B1.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14063 Filed 6–21–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; Uncompahgre Fritillary Butterfly Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service determines a butterfly, the Uncompahgre fritillary (*Boloria acrocnema*), to be an endangered species. Critical habitat has not been designated. This butterfly has been verified at only two major sites and two possible small colonies above 4,040 meters (13,200 ft.) elevation in the San Juan Mountains and southern Sawatch Range of southwestern Colorado. In 1989, the total known population was estimated to be less than 1,000 individuals. Taking by collectors, adverse climatic changes, lack of protective regulations, small population size, and low genetic variation endanger the species. Its habitat is potentially threatened by trampling from humans and livestock. This rule implements the protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: June 24, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Western Colorado Suboffice, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 529 25½ Road, suite B–113, Grand Junction, Colorado 81505.

FOR FURTHER INFORMATION CONTACT: Mr. John Anderson, Biologist, (see **ADDRESSES** above) at (303) 243–2778.

SUPPLEMENTARY INFORMATION:

Background

The Uncompahgre fritillary butterfly was discovered on Uncompahgre Peak, Hinsdale County, Colorado, on July 30, 1978. It was subsequently described as a new species (*Boloria acrocnema*) by Gall and Sperling (1980). The butterfly also has been included in the genus *Clossiana* (Ferris 1984), although this name is more properly considered a subgenus of *Boloria*.

The most recent treatment of North American butterflies lists this taxon as a species (Ferris 1989). Other major books published in the last 10 years also consider the Uncompahgre fritillary to be a full species (Ferris and Brown 1981, Gall 1983, Pyle 1981). However, one recent book considers the Uncompahgre fritillary to be a subspecies (*Boloria improba* ssp. *acrocnema*) of the dingy arctic fritillary (*Boloria improba*) (Scott 1986). For the purpose of this listing action, the Service will recognize this taxon at the species level. If the Uncompahgre fritillary is later recognized as a subspecies of *B. improba*, the designation of this taxon as an endangered species will remain valid because section 3(15) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) permits the listing of subspecies.

The Uncompahgre fritillary is a small butterfly with a 2–3 centimeter (1 in.) wingspan. Males have rusty brown wings criss-crossed with black bars; females' wings are somewhat lighter (Gall 1983). Underneath, the forewing is light ocher and the hindwing has a bold, white jagged bar dividing the crimson brown inner half from the purple-grey scaling on the outer wing surface. The body has a rusty brown thorax and a brownish black abdomen (Gall and Sperling 1980).

The Uncompahgre fritillary has the smallest total range of any North American butterfly species. Its habitat is limited to two verified major sites and two possible small colonies in the San Juan Mountains and southern Sawatch Range in Gunnison, Hinsdale, and possibly Chaffee counties in southwestern Colorado. One major site is the type locality on Uncompahgre Peak, which is managed by the Forest Service. The second major site was discovered in 1982 on land managed by the Bureau of Land Management and is not generally known. Because of the potential threat from collecting, the location of this colony is referred to herein only as "site 2."

Despite numerous attempts to locate other populations, no other major populations have been verified. In 1988, three individuals were captured at one new location and one individual was captured at another new location. These sites must be investigated to determine if they represent possible new colonies. There is a report of four (formerly five) colonies in the San Juan Mountains and southern Sawatch Range, but these unverified sites, if extant, have been kept secret by their discoverer. As the butterfly is found only in remote, generally inaccessible areas, it is possible that the species may occur in other mountain ranges in Colorado, but there have been no reports of the butterfly from these other mountain ranges.

All populations known to the Service are associated with large patches of snow willow (*Salix reticulata* spp. *nivalis*) above 4,040 meters (13,200 ft.), which provide food and cover. The species has been found only on northeast-facing slopes, which are the coolest and wettest microhabitat available in the San Juans (Brussard and Britten 1989). The females lay their eggs on snow willow, which also is the larval food plant, while adults take nectar from a wide range of flowering alpine plants.

Brussard and Britten (1989) believe that the species has a biennial life history, which means that it requires 2 years to complete its life cycle. Eggs laid in 1990 (even-year brood) would be caterpillars in 1991 and mature into adults in 1992. Similarly, eggs laid in 1991 (odd-year brood) would become adults in 1993. The odd- and even-year broods would function as essentially separate populations. It is assumed that odd- and even-year populations existed at both major sites historically, because there is anecdotal evidence that butterflies flew each year at these sites prior to 1987 (Brussard and Britten 1989).

During 1987 and 1988, field surveys and genetic studies were carried out by Dr. Peter Brussard and students under a contract funded by the Forest Service, Bureau of Land Management, and Fish and Wildlife Service (Brussard and Britten 1989). Though they visited over 50 sites that appeared to satisfy the butterfly's habitat requirements, they found only the few individuals at the two new sites previously mentioned.

These researchers believe there has been a decline in the butterfly's known population. Based on 1978–1988 data, the even-year broods at the two known sites appear to be declining. The odd-year brood at the type locality may be extinct, while the status of the odd-year brood at site 2 is unclear. On Uncompahgre Peak, the 1978 population (even-year brood) was estimated to be 800 individuals (Interagency Agreement 1984); the 1988 population was estimated to be 200 individuals (Brussard and Britten 1989). At site 2, the 1982 population was estimated to be between 1,000 and 1,500 individuals (Interagency Agreement 1984); the 1988 estimate was 492 individuals (Brussard and Britten 1989). There are anecdotal reports of an odd-year population at Uncompahgre Peak prior to 1987, but no Uncompahgre fritillaries were captured in 1987. The status of the odd-year population at site 2 is difficult to assess due to a lack of historical data on estimated population size. Assuming the species has a biennial life history, then adding the 1987 and 1988 data results in a total estimated population size at the two major sites of approximately 950 to 1,000 individuals.

In 1989, no population surveys were conducted. In 1990, a limited survey effort confirmed that the Uncompahgre fritillary persisted at site 2 (Seidl 1990, 1991). No Uncompahgre fritillaries were found at Uncompahgre peak in 1990 during three day trips; however, this does not constitute conclusive evidence that the butterfly no longer exists at Uncompahgre Peak. Thus, the limited data gathered since 1988 do not contradict the apparent downward trend shown for the 1978–1988 period.

Brussard and Britten (1989) also used electrophoretic techniques to examine population genetic variability. Their studies revealed only half the genetic variability in the Uncompahgre fritillary when compared to the Wind River Range, Wyoming, population of *Boloria improba harryi*, its closest geographic relative. This low genetic variability would indicate less environmental adaptability, i.e., a reduced ability to adapt to a changing environment. In fact, its range of habitat usage is less than that of *Boloria improba* populations in Wyoming and British Columbia.

The species faces many threats. As it is one of the few new North American butterfly species discovered in the last half century, it is attractive to collectors. Its sedentary nature, weak flying ability, and tendency to fly low to the ground make it easy to collect. Possible overcollection is considered the greatest human-caused threat to the species. Other actual or potential threats to the species include adverse climatic changes, lack of protective regulations, small population size, and low genetic variability. There is a minor potential threat from trampling by humans and livestock.

On November 5, 1979, the Service was petitioned by Lawrence F. Gall to list the butterfly under provisions of the Act of 1973. In response, the Service published a notice of status review on the butterfly on February 6, 1980 (45 FR 8029), which solicited public comments. Comments from the public supported listing and protection under the Act, but

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the Service did not propose its listing. Subsequently, the Service included the butterfly in a notice of petition findings on January 20, 1984 (49 FR 2485), which stated that listing the butterfly was warranted but precluded, and noted that it was a category 2 species (a species which may be appropriate to list, but for which there is not enough biological data at the time to support listing). Its status was changed from category 2 to category 1 (a species for which there is sufficient biological data on hand to support listing) in the Invertebrate Notice of Review published on May 22, 1984 (49 FR 21664). The Service made 1-year findings that listing the species was warranted but precluded on May 10, 1985 (50 FR 19761); January 9, 1986 (51 FR 996); June 30, 1987 (52 FR 24312); July 7, 1988 (53 FR 25511); December 29, 1988 (53 FR 52746); and April 25, 1990 (55 FR 17475). On October 15, 1990 (55 FR 41721), the Service published a proposed rule to determine that the species was endangered.

Summary of Comments and Recommendations

In the October 15, 1990, proposed rule and associated notifications all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Gunnison Country Times and the Rocky Mountain News on October 31, 1990, which invited general public comment. Fourteen comments, including 3 from other Federal agencies, 1 from the State of Colorado, and 10 from conservation organizations and individuals, were received.

Written comments received during the comment period are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. After describing generally supportive comments, four issues and the Service's response to each are discussed.

Thirteen of the fourteen persons who commented supported listing of the Uncompahgre fritillary as an endangered species. Four comments stated that they believed the Uncompahgre fritillary would receive increased protection by being listed under the Act. One commentor, although not specifically opposing the rule, stated that he believed the species would not receive additional benefits from being listed, because he believed that the Forest Service and Bureau of Land Management already prohibited collecting and patrolled the colonies during the butterfly's flight season. He also stated his belief that rare butterflies benefitted most from benign neglect and by having the location of their populations kept secret.

With regard to threats to the species, seven commentors stated they believed that collection of specimens for scientific or commercial purposes was a threat. Three commentors mentioned that grazing was a threat, although two mentioned that steps already had been taken to eliminate or reduce grazing at the known colonies. Two commentors mentioned recreational use as a threat. This recreational use is represented by potential disturbance to the habitat by hikers. Some trails through or near the colony areas already have been moved. One commenter believed that no further mark-recapture studies should be allowed because trampling of the caterpillar food plants by researchers could be a major mortality factor for the butterfly. Two commentors mentioned that the butterfly's low genetic variability was a factor contributing to its susceptibility to colony loss and extinction. One commentor mentioned that, based on his studies of the butterfly and its nearest relatives, the Uncompahgre fritillary was a narrow habitat specialist and that was a factor in its endangerment. One commentor stated that because of global warming and the butterfly's susceptibility to drought its chances for long-term survival were nil. One commentor mentioned that mining was a potential threat. One commentor stated that the colony areas should be closed to off-road vehicles, implying that off-road vehicles such as mountain bikes might constitute a threat to the species.

Issue 1: Whether critical habitat should be designated. Three commentors believed that designation of critical habitat would not be prudent. They believed that because collecting of specimens was a primary threat, critical habitat designation would increase that threat from collectors. In contrast, another commentor argued that critical habitat for the Uncompahgre fritillary should be designated. He stated that without critical habitat designation, degradation of the butterfly's habitat could occur as long as the continued existence of the species was not immediately threatened. This commentor also stated that because most butterfly collectors know the location of the two major colonies, the Uncompahgre fritillary would not be further jeopardized by specifically revealing the colony locations.

Response: At present, possible overcollection is perceived to be a greater threat to the Uncompahgre fritillary than potential habitat degradation. Because of this, the Service finds that designation of critical habitat is not prudent at this time. The Service believes that many collectors do not know the location of site 2, and only a few collectors are aware of other locations where only a few individual butterflies have been found. Designation of critical habitat requires publication of detailed maps of the location of critical habitat in the Federal Register and would only serve to increase the likelihood of illegal collection of the butterflies.

Issue 2: Whether listing would add to the protection already received by the butterfly. Three commentors stated that they believed the butterfly would gain added protection through its being listed under the Act, while another commentor believed that listing would probably not be beneficial because he believed the Bureau of Land Management and Forest Service already prohibited collection of butterflies at the two major colony sites. This commentor also believed that, in general, rare butterflies benefitted from benign neglect and having their population sites kept secret by their discoverer.

Response: The Service feels that listing is necessary to bring into effect the various conservation provisions of the Act including, but not limited to, prohibitions against taking, interagency consultation, recovery planning, and cooperation with the State of Colorado's conservation program. Moreover, though there is a collecting ban at the Uncompahgre Peak site, there is no such ban at site 2. The inadequacy of existing regulatory mechanisms and the additional protections that would follow from listing the Uncompahgre fritillary as endangered are discussed further under Factor D.

Issue 3: Whether the Uncompahgre fritillary is more widespread. One commentor listed 11 alleged "colonies," including seven locations known to the Service: The two major sites, a small satellite colony on Uncompahgre Peak, two places near site 2 (including one where a single individual butterfly was observed), and two other sites (one in the southern Sawatch Range, where either a single or a few butterflies were found). In the past, this commentor claimed to have found five new colonies, but would not disclose their locations. Based on the fact that Dr. Brussard and colleagues found only one of his undisclosed colonies in their searches, this commenter extrapolated

that there must be 40–50 colonies in the San Juans and southern Sawatch Range. He recommended that the Service use a helicopter and qualified butterfly colony locators to find all the probable colonies.

Response: The Service agrees that the Uncompahgre fritillary may be more abundant than is currently known but it must make its assessment of endangerment based on the best available scientific and commercial data available. The Service cannot accept this commenter's four undisclosed colonies as fact without independent scientific confirmation of their location and magnitude. Until such time that sufficient populations are verified that are not threatened, the Service must consider the Uncompahgre fritillary as an endangered species.

Issue 4: Whether the Uncompahgre fritillary is a subspecies. One commenter stated that the Uncompahgre fritillary is a subspecies of the dingy arctic fritillary (*Boloria improba*), while another commenter stated that she is aware of the issue and believes that the butterfly is a full species. The first commenter stated as his evidence that the Uncompahgre fritillary is similar in appearance, hostplants, and habits to Wyoming and Alberta populations of *Boloria improba*. He stated that Edward Pike and Clyde Gillette, two advanced amateurs, also believe that *Boloria acrocnema* should be referred to as *Boloria improba acrocnema*. In their letters, Dr. Brussard and Dr. Britten referred to the butterfly as *Boloria acrocnema*, but also used the name *Boloria improba/acrocnema* group or complex for the grouping that includes both species.

Response: The Service is aware that the known occurrences of the Uncompahgre fritillary are at the southernmost end of a series of *B. improba* populations extending down the Rocky Mountain cordillera from the Arctic. Whether the Uncompahgre fritillary is referred to as a species or subspecies depends on whether it is reproductively and behaviorally compatible with *B. improba* populations. Currently, no direct information exists on which to make this decision, but the preponderance of expert opinion is that the full species designation is most suitable. In any event, even if considered as a subspecies, the decision to list would be unaffected because endangered subspecies also qualify for full protection under the Act.

Summary of Factors Affecting the Species

After a through review and consideration of all information available, the Service has determined that the Uncompahgre fritillary butterfly should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Uncompahgre fritillary butterfly (*Boloria acrocnema*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment if its Habitat or Range

The populations of the butterfly known to the Service are on Federal land. The Uncompahgre Peak habitat is in the Big Blue Wilderness in the Uncompahgre National Forest, while site 2 is in a wilderness study area or land administered by the Bureau of Land Management. Both areas are above timberline, hence there are not threats from logging. Mining activity does not appear to be a threat to the known population. Historically, herds of sheep were driven over both mountains where the butterflies occur, but the Bureau of Land Management and Forest Service do not allow grazing at the major sites.

Traffic deviating from the main hiking trail to the summit of Uncompahgre Peak could impact the colony on that mountain, but there seems to be no evidence that hikers or pack horses have damaged the nature of the butterfly's habitat. One day's observation by the author of this rule demonstrated that hikers do not linger or rest in the colony area. Moreover, pack horses are uncommon on this trail. A hiking trail passes near site 2, but routing changes were made to the trail to reduce the likelihood that hikers will deviate from the trail and cross through the butterfly site. Trampling of the colonies by collectors or biologists is a potential threat, but there has been no demonstrated habitat change due to this factor.

The other two locations are small and remote, and no information on extent habitat-related threats is available.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Uncompahgre fritillary butterfly has been the subject of intense sampling by biologists and collectors since its discovery. In 1981, collection of the species for research or marketing to private collectors probably exceeded 100 adults, or up to 20 percent of the Uncompahgre Peak population (Interagency Agreement 1984). The genus *Boloria* is extremely popular with collectors. Specimens of *B. acrocnema* have been offered by dealers for prices exceeding $100 for males and even higher prices for females (Gall 1983). Collecting from small colonies or repeated handling and marking (particularly of females and/or in years of low abundance) could seriously damage the populations through loss of individuals and genetic variability. Collection of females dispersing from a colony also can reduce the probability that new colonies will be founded. Continual walking over the colony areas by collectors or researchers could result in mortality of the butterfly's early stages or change the nature of the habitat. Extremely small populations, such as those of the Uncompahgre fritillary, should not be subjected to undue pressure from collectors or researchers.

C. Disease or Predation

There are no known diseases of the butterfly that could threaten its continued existence. Wilcove (1980) recorded an instance of direct predation on the butterfly by a brown-capped rosy finch (*Leucosticte australis*), and identified other potential avian predators. However, there is no indication as yet that predation is a significant threat.

D. The Inadequacy of Existing Regulatory Mechanisms

The Uncompahgre Peak site is in the Big Blue Wilderness. In addition to wilderness management restrictions, the Forest Service has prohibited the collection of butterflies on Uncompahgre Peak since 1984. Nevertheless, it has been reported that some collectors may be collecting the species despite the ban. There is no sheep grazing on the site at the present time, and there is a proposal to restrict horse use on an area downslope from the butterfly site. Site 2 is located in a wilderness study area. The Bureau of Land Management has terminated grazing in this area, but there is no prohibition against collecting. The Colorado Division of Wildlife does not possess the legal authority to protect the species. The Colorado Natural Areas Program has registered, but not yet designated, the Uncompahgre Peak site as a State Natural Area. This means that the site has been identified as one deserving special attention, but a management agreement (for a Natural Area) has not been finalized. In 1984, the Forest Service and Bureau of Land Management signed an interagency

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agreement for the conservation of the Uncompahgre fritillary. The parties are implementing this agreement, but the level of implementation is limited by available funding.

These voluntary efforts on the part of the Forest Service, Bureau of Land Management, and the Colorado Natural Areas Program are commendable. Having identified the Uncompahgre fritillary as a species in need of protection, they have taken important steps to protect this species. However, these species-specific protections are discretionary and could be withdrawn or lapse in effectiveness if funding diminishes. Federal listing of the butterfly would provide a greater level of protection. Listing would ensure that Federal Agencies would not take actions likely to jeopardize the species, and promote efforts toward species recovery. It also would allow for the prosecution of collectors under Federal law and provide for the issuance of permits to limit and manage those who wish to conduct scientific studies of the butterfly. Finally, it would improve the cooperating agencies' chances of obtaining additional funding to protect, research, and recover the species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Many other factors threaten the continued existence of the Uncompahgre fritillary. First, the butterfly exists only in the highest, wettest peaks in southwestern Colorado. Biologists who completed population surveys of the butterfly in 1987–88 believe that several recent drought years have stressed the butterfly, which evidently requires a cool and wet microhabitat to successfully complete development (Brussard and Britten 1989). Climatic stress may be a major factor underlying recent population declines. If so, populations of the butterfly would possible disappear if predictions about global warming become a reality (Brussard, Univ. of Nevada, *in litt.*, 1990).

If the species does have a biennial life history, then the possible extinction of the odd-year population at Uncompahgre Peak is cause for concern. Odd-year and even-year broods function essentially as separate populations. It may be possible for an extinct odd-year population to be re-established if a few individuals from the even-year brood at the same site take 3 years instead of 2 years to complete development, but re-establishment would be very slow.

The small population size and limited genetic variability of the species is itself a threat. The small size of the known populations makes them vulnerable to extinction from natural (e.g., drought, exceptionally warm temperatures) or human (e.g., overcollection) causes. In addition, random demographic effects (e.g., skewed sex ratios) and/or loss of alleles due to random genetic effects could cause permanent loss of one or both populations.

As noted earlier, this butterfly has the smallest known range of any North American species when the total area occupied by the two verified major colonies are considered. Although small habitat size might normally be a threat in itself, the colonies are placed such that snow avalances, fire, or other kinds of calamities are not likely.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Uncompahgre fritillary butterfly (*Boloria acrocnema*) as endangered. Since the species' discovery in 1978, only two major colonies and two possible small colonies have been verified, and, based on available data, the total population has declined. The odd-year population at the type locality already may be extinct. Despite the administrative protections currently being implemented, the remaining populations are endangered by taking by collectors, adverse climatic changes, lack of protective regulations, small population size, and low genetic variation. The species' habitat is potentially threatened by trampling from humans and livestock. These factors could lead to the species' extinction throughout all or a significant portion of its range. Therefore, the Uncompahgre fritillary qualifies for endangered status as defined by the Act.

The Service recognizes that listing the species may increase collection pressures due to the loss of protective anonymity. However, the Service is required to list species deserving of the Act's protection, and final listing will provide additional protection, as explained above, and encourage actions to recover the species. The decision not to designate critical habitat will reduce any possible threat of increased overcollection that might result from listing the species.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time that a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the Uncompahgre fritillary. As discussed under Factor B in the "Summary of Factors Affecting the Species," possible overcollection of this butterfly is one of the major threats to its existence. Though some collectors know of the Uncompahgre Peak site, the exact location of site 2 is not generally known. Publication of the exact location of these sites would endanger the species further. The Forest Service and the Bureau of Land Management, upon whose land the butterfly occurs, are aware of the location of the butterfly populations and the importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the management measures already in place, the recovery process, and section 7 procedures.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

Current Federal involvement and management for the species was discussed earlier. Long-term monitoring should be continued, as well as research into the species' life history and habitat requirements. If possible, artificial recolonization should be attempted to establish additional colonies in suitable habitat to reduce the risk of extinction.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in inter-State commerce in the course of commercial activity, or sell or offer for sale in inter-State or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations on animals and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358–2093 or FTS 921–2093).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Wilcove, D.S. 1980. A report on the birds of Uncompahgre with reference to their predation on *Boloria acrocnema*. Unpublished report prepared for Larry Gall and the Xerces Society, in U.S. Fish and Wildlife Service files, Denver, Colorado. 5 pp.

Author

The primary author of this final rule is Dr. Paul A. Opler, Office of Information Transfer, U.S. Fish and Wildlife Service, 1025 Pennock Place, Suite 212, Fort Collins, Colorado 80524 (303/493–8401; FTS 323–5401).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
Butterfly, Uncompahgre fritillary.	*Boloria acrocnema*	U.S.A. (CO)	NA	E	427	NA	NA

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Dated: June 6, 1991.

Suzanne Mayer,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-14970 Filed 6-21-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 900783-1062]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; effective date extension and modification of permit criteria for Hawaii longline fishery moratorium.

SUMMARY: The Secretary of Commerce (Secretary) modifies and extends an emergency rule now in effect that establishes a moratorium on issuing permits for the longline fishery for pelagic management unit species around Hawaii. The eligibility criteria for limited entry permits issued during the moratorium are modified. The purpose of this extension of the emergency rule is to provide a continued period of stability necessary for the Western Pacific Fishery Management Council (Council) and NMFS to carry out a systematic, long-range fishery planning process; reduce the crisis atmosphere in the fishery; maximize fishing opportunities for fishermen; and minimize speculative sale of permits. The purpose of modifying the emergency provisions is to correct unanticipated discrepancies between the emergency and the long-term management plan. The modifications are expected to clarify ambiguities and relieve hardships on certain participants in the fishery.

EFFECTIVE DATE: The amendments to § 685.15 (a)(2) through (c)(4) are effective from 0000 hours local time June 19, 1991. The interim regulations published on April 12, 1991, (56 FR 14866), as amended by this document, are extended from 0000 hours local time July 12, 1991, through 2400 hours local time October 9, 1991.

ADDRESSES: Copies of the environmental assessment prepared for the emergency rule may be obtained from E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213) 514-6660, or Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, Honolulu, Hawaii (808) 523-1368.

SUPPLEMENTARY INFORMATION: Under the emergency action authority of section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency rule (56 FR 14866, April 12, 1991) temporarily amending the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) and its implementing regulations. The rule, which was made effective from 0001 hours local time April 23, 1991, establishes a moratorium on additional entry into the Hawaii longline fishery to provide a period of stability and allow for development of an amendment to the FMP providing for long-term management.

Under the moratorium, permits for the fishery are limited to persons who certify that they were: (1) Owners of vessels when those vessels made landings in Hawaii of longline-caught management unit species prior to December 5, 1990; (2) persons who were owners of vessels that had engaged in transshipments of longline-caught management unit species in the exclusive economic zone (EEZ) off Hawaii prior to December 5, 1990; (3) persons who made a substantial financial commitment or investment in gear prior to December 5, 1990, for a vessel owned by the person and located in Hawaii prior to December 5, 1990, so that the vessel could participate in the fishery; or (4) persons who by June 21, 1990, had made a substantial financial commitment or investment in the construction of a new fishing vessel for participation in the fishery and intended contemporaneously with the investment to participate in the fishery. Permits are not transferable from one owner to another during the emergency period except in cases of extreme hardship such as death or terminal illness preventing the vessel owner from participating in the fishery. The hardship determination will be made by the Regional Director in consultation with the Council. A permit holder can also replace the originally qualifying vessel with another vessel provided the Regional Director determines that the replacement vessel has comparable harvesting capacity.

At its meeting on May 16, 1991, the Council voted to request that the Secretary extend the moratorium for another 90-day period, and to institute immediately three modifications to the emergency rule: (1) Extend permit eligibility to persons who, prior to June 21, 1990, had made substantial financial commitment or investment in the refitting of a vessel for participation in the fishery in the EEZ surrounding Hawaii and who can establish intent to participate in the fishery prior to or at the time of the commitment or investment; (2) allow a permit holder to transfer a limited entry permit with the sale of the vessel one time during the combined emergency moratorium and subsequent moratorium through a regular plan amendment; and (3) clarify application of the rule to vessels owned by corporations and partnerships.

The Council requested that the proposed modifications be made effective as soon as possible.

The requested modifications will make the provisions of the emergency rule identical to the provisions agreed upon for the subsequent plan amendment. The Council would like these modifications to be effective as soon as possible because of the financial hardships that would result if they were not implemented during the emergency period. At least 12 longline vessels that will qualify for limited entry permits when the planned 3 year moratorium is implemented are otherwise prohibited from participating in the longline fishery during the emergency period. Preventing these fishing vessels from fishing during the emergency period will cause hardships not intended by the Council. The Council also recognized that if permits cannot be transferred with the sale of the vessel, fishing opportunities will be limited, with severe adverse effect on the value of the owners' vessels, which are their most significant asset. In addressing this concern by allowing the one-time transfer of permits, the Council also intended to minimize any speculative sale of permits.

The Council is proceeding with an amendment to the FMP to extend the moratorium for 3 years. The purpose of the moratorium is to allow the Council, NMFS, and industry to continue with data collection and analysis, evaluation of long-term management alternatives, including limited entry, and selection of a long-term management regime.

Other Matters

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. Because the circumstances in the fishery at the time of implementation of the emergency

interim rule still exist, the Secretary extends for 90 days the effective date of the rule under section 305(c)(3)(B) of the Magnuson Act.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 17, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 685.15, paragraphs (a)(2), (b), and (c)(1) are revised, paragraph (c)(2) is redesignated as (c)(3), and paragraphs (c)(2) and (c)(4) are added. See the "EFFECTIVE DATE" section in the preamble of this document.

§ 685.15 Limited entry permits.

(a)(1) * * *

(2) The person made a substantial financial commitment or investment by June 21, 1990, for construction of a new vessel or refitting of a vessel and intended at the time the investment was made that the vessel was to be used in the longline fishery in Hawaii or in the EEZ around Hawaii upon completion of construction or refitting of the vessel.

(b) *Duration.* Limited entry permits issued under this section are valid until they are revoked, suspended, modified under 15 CFR part 904, or until 2400 hours local time October 9, 1991, whichever comes first.

(c) *Transfer.* (1) Limited entry permits issued under this section are transferable with the sale of the vessel on one occasion in the period covered by this rule.

(2) In addition to the one-time transfer allowed by paragraph (c)(1) of this section, the Regional Director, in consultation with the Council, may allow the transfer of a limited entry permit with transfer of ownership of the vessel in cases of extreme hardship such as death or terminal illness preventing the vessel owner from participating in the fishery.

(3) * * *

(4) A limited entry permit may be held by a partnership or corporation. In such a case, if fifty percent (50%) or more of the ownership of the partnership or corporation that originally qualified for the permit changes, then the permit lapses and must be surrendered to the Regional Director.

[FR Doc. 91-14884 Filed 6-19-91; 8:45 am]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 56, No. 121
Monday, June 24, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-91-13]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No.————, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 19, 1991.

Deborah E. Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26553.
Petitioner: West Coast Air Charter, Inc.
Regulations Affected: 14 CFR § 135.31.
Description of Petition: Petitioner would add provisions to the existing section stating that no person may advertise or otherwise offer to perform any operations subject to this part without an appropriate Operating Certificate and Operation Specifications; and no person may engage in operations as a broker unless licensed by the IATA and is a member of Association of Retail Travel Agents.
Petitioner's Reason for the Request: The petitioner believes that non certificate holders can and do advertise that they have all types of aircraft for charter without any assurances that they are complying with the Federal Aviation Regulations and that brokers advertise to an unsuspecting public and are virtually unnoticed by any regulating authority.
Docket No.: 26560.
Petitioner: Mr. Richard Wussler.
Regulations Affected: 14 CFR part 43 appendix B.
Description of Petition: Petitioner would align the requirements of a person or repair station making and recording a major repair or major alteration with the requirements of § 43.9.
Petitioner's Reason for the Request: The petitioner believes that repair stations are circumventing the requirements of § 43.9 by citing part 43 appendix B and claiming that the owner of the aircraft is being advised as to the details via a copy of the work attached to his/her invoice while the technician performing the installation has no substantial documentation to show compliance with § 43.9 as it applies to the overhauled or repaired parts he is installing.

[FR Doc. 91-14944 Filed 6-21-91; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Parts 21 and 25

[Docket No. NM-58; Notice No. SC-91-6-NM]

Special Conditions: McDonnell Douglas DC-9 Airplanes; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for certain McDonnell Douglas DC-9 airplanes modified by ABX Air, Inc. These airplanes are equipped with high-technology digital avionics systems that perform critical and essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). This notice proposes additional safety standards that the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: Comments must be received on or before August 8, 1991.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-58, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM 58. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Woody Boyce, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4046; telephone (206) 227-2137.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-58." The postcard will be date/time stamped, and returned to the commenter.

Background

On November 2, 1990, ABX Air Inc. of Wilmington, Ohio, applied for a supplemental type certificate to modify Douglas DC-9 -11, -12, -13, -14, -15, -21, -31, -32, -32F, -33F, -34, -34F, -41, and -51 airplanes. The DC-9 is a two-crew, two-engine, turbine airplane with a maximum takeoff weight up to 122,200 lbs. The proposed modification incorporates the installation of an Electronic Flight Information System (EFIS) and Flight Director. The equipment originally installed in these airplanes presented the required information in the form of analog displays. The information presented is both flight critical and essential. The EFIS as a digital system is vulnerable to lightning and high-intensity radiated fields external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.115, Subchapter C, of the FAR, ABX Air, Inc. must show that the modified DC-9 airplanes meet the regulations incorporated by reference in Type Certificate No. A6WE, as specified in § 21.101(a), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under §§ 21.101 (a) or (b); or (3) special conditions are prescribed by the Administrator.

Based on the provisions of §§ 21.101 (a) and (b), ABX Air, Inc. will have to show compliance with the basic type certification basis per Type Certificate Data Sheet (TCDS) No. A6WE, plus the following FAR Part 25 requirements, up to Amendment 25-72, that are deemed necessary to provide an adequate level of safety: § 25.869(a), §§ 25.1303 (a), (b), and (c); §§ 25.1309 (a) thru (g); §§ 25.1321(e); § 25.1322 (a) thru (d); §§ 25.1331 (a) and (b); §§ 25.1333 (a), (b), and (c); § 25.1335, §§ 25.1355 (a) and (c); §§ 25.1359; (a) thru (d); §§ 25.1431 (a), (b), and (c); § 25.1525; § 25.1529; and § 25.1541(a).

If the Administrator finds that the applicable airworthiness regulations (i.e., part 4b plus applicable part 25 requirements) do not contain adequate or appropriate safety standards for the Douglas DC-9 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the McDonnell Douglas DC-9 that would require that the EFIS and Flight Director be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the proposed special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level.

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended

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period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ⅛ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (⅛ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t) = I_0 (e^{-at} - e^{-bt})$

where;

t = time in seconds,

i = current in amperes, and

		Severe Strike (Component A)	Restrike (Component D)	Multiple Stroke (⅛ Component D)	Multiple Burst (Component H)
I_0, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

I_{pk}	=	200 KA	100 KA	50 KA	10 KA

and

$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	

High-Intensity Radiated Fields

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS and Flight Director, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	80	80
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	33	33
200 MHz–400 MHz	150	33
400 MHz–1 GHz	5,300	2,000
1 GHz–2 GHz	9,000	1,500
2 GHz–4 GHz	17,000	1,200
4 GHz–6 GHz	14,500	800
6 GHz–8 GHz	4,000	666
8 GHz–12 GHz	9,000	2,000
12 GHz–20 GHz	4,000	500
20 GHz–40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the supplemental type certification basis for the modified McDonnell Douglas DC–9 airplanes:

1. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions

Critical Function. Functions whose failure could contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure could contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on June 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–14926 Filed 6–21–91; 8:45 am]

BILLING CODE 4910–13–M

[14 CFR Parts 21 and 25]

[Docket No. NM–59; Notice No. SC–91–7–NM]

Special Conditions: British Aerospace (Commercial Aircraft) Ltd. Model 4100 Series Airplanes; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the British Aerospace (Commercial Aircraft) Ltd. Model 4100 series airplanes. These airplanes are equipped with high-technology digital avionics systems that perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). This notice proposes additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: Comments must be received on or before August 8, 1991.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–59, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–59. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4046; telephone (206) 227–2144.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–59." The postcard will be date/time stamped, and returned to the commenter.

Background

On May 24, 1989, British Aerospace (Commercial Aircraft) Ltd. applied for a type certificate for their new Model 4100 series airplanes. The Model 4100 series is a pressurized, 29-passenger plus one cabin attendant, airplane with a

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maximum takeoff gross weight of 22,377 pounds, a maximum cruise speed of 250 knots, and a maximum operating altitude of 28,000 feet. It is powered by two Garrett TPE331–14GR/HR turbopropeller engines mounted one on each wing in tractor configuration. This airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, an electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), light emitting diode (LED) displays for engine parameters, and engine hydro-mechanical fuel control units coupled with integrated electronic controls (IEC's). The IEC employs digital electronics that provide numerous supervisory and trim functions including an automatic takeoff thrust control system (ATTCS), and propeller control system features such as autofeather and auto-shutdown. All such design features may be vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane. In addition to these novel or unusual design features, the Model 4100 series also incorporates other unrelated novel or unusual design features. Those features are the subject of separate notices of proposed special conditions.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, British Aerospace (Commercial Aircraft) Ltd. must show that the Model 4100 series meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–66. In addition, compliance with the noise certification requirements of part 36 of the FAR and the engine emission requirements of part 34 of the FAR, through the latest amendments in effect at the time of awarding the type certificate, must be shown. The special conditions which may be developed as a result of this notice will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model 4100 series because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Model 4100 series which would require that the new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), LED display for engine parameters, and supervisory digital engine control, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the proposed special conditions, a clarification on the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. When a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component h). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 80μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t) = I_o (e^{-at} - e^{-bt})$

where:

t = time in seconds,

i = current in amperes, and

		Severe Strike (Component A)	Restrike (Component D)	Multiple Stroke (½ Component D)	Multiple Burst (Component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

I_{peak}	=	200 KA	100 KA	50 KA	10 KA
(di/dt)$_{peak}$ (amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established. It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	80	80
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	33	33
200 MHz–400 MHz	150	33
400 MHz–1 GHz	6,850	2,000
1 GHz–2 GHz	8,000	1,600
2 GHz–4 GHz	17,000	1,200
4 GHz–6 GHz	14,500	900
6 GHz–8 GHz	4,000	600
8 GHz–12 GHz	9,000	2,000
12 GHz–20 GHz	4,000	500
20 GHz–40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the British Aerospace (Commercial Aircraft) Ltd. Model 4100 series airplanes:

1. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions

Critical Function. Functions whose failure could contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure could contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on June 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14027 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-67-AD]

Airworthiness Directives; Airbus Industrie Models A310, A320, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310, A320, and A300-600 series airplanes, which would require the installation of three modified Generator Control Units (GCU) with protective covers. This proposal is prompted by reports of internal shorts in the GCU's due to foreign liquid entering the units. This condition, if not corrected, could result in loss of the GCU's and AC electrical power.

DATES: Comments must be received no later than August 13, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-67-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-67-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A310, A320, and A300-600 series airplanes. There have been recent reports of internal shorts in the Generator Control Units (GCU) due to foreign liquid entering the units. This condition, if not corrected, could result in loss of the GCU's and AC electrical power.

Airbus Industrie has issued Service Bulletins A310-24-2040, Revision 1, dated January 28, 1991; A320-24-1050, dated February 11, 1991; and A300-24-6029, Revision 1, dated February 22, 1991; which describe procedures to replace the three currently installed GCU's with three modified GCU's having protective covers. The Airbus Industrie service bulletins reference Sundstrand Corporation Service Bulletin 735228/740206/740120-24-8, dated June 15, 1989, for additional instructions. The French DGAC has classified the Airbus service bulletins as mandatory, and has issued French Airworthiness Directive 90-197-118(B) addressing this subject.

These airplane models are manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the replacement of the three currently installed GCU's with three modified GCU's having protective covers, in accordance with the service bulletins previously described.

It is estimated that 67 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost for required parts is $333 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,996.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket No. 91-NM-67-AD.

Applicability: Model A310, A320, and A300-600 series airplanes, on which Modification 7766 has not been accomplished, certificated in any category.

Compliance: Required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent loss of the Generator Control Units (GCU) and AC electrical power, accomplish the following:

(a) Remove the three currently installed GCU's and replace them with three modified GCU's having protective covers in accordance with Airbus Industrie Service Bulletins A310-24-2040, Revision 1, dated January 28, 1991 (for Model A310); A320-24-1050, dated February 11, 1991 (for Model A320); A300-24-6029, Revision 1, dated February 22, 1991 (for Model A300-600); and Sundstrand Service Bulletin 735228/740206/740120-24-8 (for Models A310, A320, and A300-600), dated June 15, 1989 (Modification 7766).

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on June 13, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14028 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-109-AD]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which would require inspection, repair if necessary, and modification of the advanced cabin entertainment and service system (ACESS) wire bundle installation. This proposal is prompted by reports of chafed wiring resulting in short circuits which led to burned wire bundles. This condition, if not corrected, could result in smoke and fire in the passenger cabin.

DATES: Comments must be received no later than August 13, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 91-NM-109-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Oshiro, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2793. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this

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proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-109-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

One operator of Boeing Model 747-400 series airplanes has reported several incidents involving burned advanced cabin entertainment and service system (ACESS) wire bundles in the passenger cabin. Damage to the wire bundles resulted from electrical short circuits that were caused by chafing of the wire bundles at the cable raceway exits near the seat disconnects and at dado panels near the sidewall disconnects. This condition, if not corrected, could result in smoke and fire in the passenger cabin.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-23A2241, dated May 31, 1990, which describes procedures for inspection, replacement, and modification of the ACESS wire bundle installation to prevent chafing. The modification consists of installing teflon expandable sleeving over the cables and revising the cable and raceway installation at the dado panels near each sidewall disconnect.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection, repair if necessary, and modification of the ACESS wire bundle installations in accordance with the service bulletin previously described.

There are approximately 65 Model 747-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 10 airplanes of U.S. registry would be affected by this AD, that it would take approximately 150 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $82,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 91-NM-109-AD

Applicability: Model 747-400 series airplanes listed in Boeing Alert Service Bulletin 747-23A2241, dated May 31, 1990, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the occurrence of smoke and fire in the passenger cabin, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish the following on the main and upper decks:

(1) Inspect the advanced cabin entertainment and service system (ACESS) wire bundle installation at the dado panel near each sidewall disconnect for chafing and wear in accordance with Boeing Alert Service Bulletin 747-23A2241, dated May 31, 1990.

(i) If chafing or wear is found, prior to further flight, replace the ACESS cable and add teflon expandable sleeving in accordance with the service bulletin.

(ii) If no chafing or wear is found, install teflon expandable sleeving on the ACESS cable in accordance with the service bulletin.

(2) Inspect all advanced cabin entertainment and service system (ACESS) seat to seat cables for chafing and wear in accordance with Boeing Alert Service Bulletin 747-23A2241, dated May 31, 1990.

(i) If chafing or wear is found, prior to further flight, replace the seat to seat cable and ensure proper cable installation in accordance with the service bulletin.

(ii) If no chafing or wear is found, ensure proper cable installation in accordance with the service bulletin.

(3) Modify the ACESS wire bundle installation at the dado panel near each sidewall disconnect in accordance with Boeing Alert Service Bulletin 747-23A2241, dated May 31, 1990.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on June 13, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14945 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-117-AD]

Airworthiness Directives; British Aerospace Viscount Model 744, 745D, and 810 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes, which would require repetitive visual inspections to detect corrosion on elevator balance weights and elevator leading edge members, and repair or replacement, if necessary. This proposal is prompted by a report of corrosion found on the elevator balance weights and elevator leading edge member attachment. This condition, if not corrected, could result in reduced controllability of the airplane.

DATES: Comments must be received no later than August 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-117-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-117-AD." The postcard will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Viscount Model 744, 745D, and 810 series airplanes. There has been one report of corrosion found on the elevator balance weights and elevator leading edge member attachment. This condition, if not corrected, could result in reduced controllability of the airplane.

British Aerospace has issued Preliminary Technical Leaflet (PTL) No. 324, Issue 1, dated February 10, 1990, applicable to Model 700 series airplanes; and PTL No. 193, Issue 1, dated February 10, 1990, applicable to Model 810 series airplanes; which describe procedures for repetitive visual inspections of the elevator balance weights and elevator leading edge members for corrosion, and repair or replacement, if necessary. The United Kingdom CAA has classified the British Aerospace PTL's as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual inspections of the elevator balance weights and elevator leading edge members for corrosion, and repair or replacement, if necessary, in accordance with the PTL's previously described.

It is estimated that 29 airplanes of U.S. registry would be affected by this AD, that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be $25 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $159,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket No. 91-NM-117-AD.

Applicability: All Viscount Model 744, 745D, and 810 series airplanes, certificated in any category.

Compliance: Required within 180 days after the effective date of this AD, and thereafter at intervals not to exceed 4 years.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Perform a visual inspection of the elevators to detect corrosion of the mild steel balance weights and of the forward face of the leading edge members in accordance with British Aerospace Preliminary Technical Leaflet (PTL) No. 324 (for Viscount Model 744 and 745D series airplanes), Issue 1, or PTL No. 193 (for Viscount Model 810 series airplanes), Issue 1, both dated February 10, 1990, as applicable.

(1) If corrosion is found in the mild steel balance weights, prior to further flight, repair in accordance with the applicable PTL.

(2) If corrosion is found in the forward face of the leading edge members, prior to further flight, repair in accordance with the applicable PTL. If corrosion exceeds the limits specified in the PTL, prior to further flight, replace the members in accordance with the PTL.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

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Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on June 17, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14947 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-115-AD]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which would require replacement of all aileron, elevator, and rudder servomotors and servomounts. This proposal is prompted by extensive testing which has demonstrated that water ingress into the primary flight control servomounts and servomotors, and subsequent freezing, can lead to a servo jam. This condition, if not corrected, could result in reduced controllability of the airplane.

DATES: Comments must be received no later than August 19, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-115-AD, 1601 Lind Avenue S.W., Renton, Washington 98055-4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-115-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F-28 Mark 0100 series airplanes. Extensive testing by Collins and Fokker Aircraft has demonstrated that water ingress into the primary flight control servomotors and servomounts, and subsequent freezing, can lead to a servo jam. This condition, if not corrected, could result in reduced controllability of the airplane.

Fokker has issued Service Bulletins F100-22-015, dated November 16, 1990, and F100-22-018, Revision 1, dated January 24, 1991, which describe procedures for replacement of all aileron, elevator, and rudder servomotors and servomounts. The RLD has classified these service bulletins as mandatory.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacement of all aileron, elevator, and rudder servomotors and servomounts in accordance with the service bulletins previously described.

It is estimated that 20 airplanes of U.S. registry would be affected by this AD, that it would take approximately 36 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $38,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket No. 91-NM-115-AD.

Applicability: Model F-28 Mark 0100 series airplanes; Serial Numbers 11244 through 11306, 11308, 11310, 11312, 11313, 11314, 11316, and 11318; certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD:

(1) Replace all aileron, elevator, and rudder servomotors, P/N 622-7925-302, with modified servomotors, P/N 622-7925-303, in accordance with Fokker Service Bulletin F100-22-015, dated November 16, 1990; and

(2) Replace all aileron and rudder servomounts, P/N 622-7926-302; and elevator servomounts, P/N 622-8069-302; with modified servomounts, P/N 622-7926-303 and 622-8069-303, respectively, in accordance with Fokker Service Bulletin F100-22-018, Revision 1, dated January 24, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on June 17, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14948 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN 3220-AA90

General Administration

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend section § 200.8 of its regulations in order to make it clear that the Board has the authority to prevent a Board employee from being compelled to testify in a deposition, trial, or other similar proceeding, concerning information acquired in the course of performing official duties or because of the employee's official capacity, where the provision of such testimony would interfere with the employee's official duties and where the information sought may be obtained by means other than by testimony of the employee.

DATES: Comments must be submitted on or before July 24, 1991.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4945 (FTS 386-4945).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board (Board) is charged with the administration of both the Railroad Retirement Act (RRA) (45 U.S.C. 231 *et seq.*) and the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 351 *et seq.*). More and more frequently in recent years Board employees have been requested or subpoenaed to provide testimony, in a deposition, trial, or other similar proceeding, concerning information acquired in the course of performing official duties or because of the employee's official capacity. This increase has been particularly marked in divorce proceedings after the amendment of section 14 of the RRA (45 U.S.C. 231m) in 1983 to permit certain portions of a railroad retirement annuity to be divided as part of a division of property in such proceeding. The information sought by such subpoenas, particularly an estimate of benefits payable at retirement or the amount of benefits currently being paid or a description of the types of benefits payable under the RRA, can generally be easily furnished in a letter without the necessity of a Board employee taking time from his or her official duties to testify in a proceeding involving non-Federal litigants. See § 295.4(d) of this chapter.

Moreover, because the Board is a Federal agency, its employees are restricted with respect to the disclosure of information by the RRA, the RUIA, and the Privacy Act (5 U.S.C. 552a). However, there have been cases where, due to the insistence of an attorney or to the particular hostility of the parties to the divorce proceeding, a Board employee has been forced to take time away from official duties to travel long distances to a court proceeding only to wait several hours to be released from having to testify at all or to provide testimony consisting of information which either could have been provided by letter or which may not be provided at all due to the particular circumstances. In one instance, a Board field employee was threatened with being held in contempt of court and being placed in jail due to her refusal to testify to matters which the RRA and the Privacy Act clearly prohibited her from revealing in the given circumstances.

Section 200.8(d) of the Board's regulations sets forth the procedures to be followed when a Board employee receives a subpoena. The Board proposes to amend this section by the inclusion of a policy statement as the new first paragraph of § 200.8(d) in order to make it clear that the Board has the authority to prevent its employees from testifying where the provision of such testimony would interfere with the employee's official duties. The remaining paragraphs are proposed to be appropriately renumbered.

The Board proposes to redesignate paragraphs (f), (g) and (h) and add a new paragraph (f) to § 200.8 which provides for a procedure for requesting the voluntary testimony of a Board employee. Finally, the Board proposes to add a new paragraph (j) which provides that the Board will request the assistance of the Department of Justice where such assistance is necessary in order to represent the interests of the Board and its employees. This new paragraph simply reflects what has been and currently is the practice of the Board in such matters.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act.

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List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(6) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.8(b) is amended by adding at the end thereof the following new definition, to read as follows:

§ 200.8 Disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

* * * * *

Testify and testimony. The terms "testify" and "testimony" include both in-person oral statements before a court or a legislative or administrative body and statements made in the form of depositions, interrogatories, declarations, affidavits or other means of formal participation in such proceedings.

3. Section 200.8 is amended by redesignating paragraphs (d) (1), (2), and (3) as (d) (2), (3), and (4), respectively, and by adding the following new Paragraph (d)(1) to read as follows:

(d) *Subpoenas—statement of policy and general rule.* (1) It is the policy of the Board to provide information, data, and records to non-Federal litigants to the same extent and in the same manner that they are available to the general public. The availability of Board employees to testify before state and local courts and administrative and legislative bodies, as well as in Federal court and administrative proceedings which involve non-Federal litigants, concerning information acquired in the course of performing their official duties or because of the employee's official capacity, is governed by the Board's policy of maintaining strict impartiality with respect to private litigants and minimizing the disruption of an employee's official duties. Thus, the Board may refuse to make an employee available for testimony under this paragraph or paragraph (e) or (f) of this section if it determines that the information sought is available other than through testimony and where making such employee available would cause disruption of agency operations. However, this paragraph does not apply to any civil or criminal proceeding where the United States, the Railroad Retirement Board, or any other Federal agency is a party; to Congressional requests or subpoenas for testimony; to consultative services and technical assistance provided by the Board or the agency in carrying out its normal program activities; to employees serving as expert witnesses in connection with professional and consultative services rendered as approved outside activities (in cases where employees are providing such outside services, they must state for the record that the testimony represents their own views and does not necessarily represent the official position of the agency); or to employees making appearances in their private capacity in legal or administrative proceedings that do not relate to the official business of the agency (such as cases arising out of traffic accidents, crimes, domestic relations, etc.) and not involving professional and consultative services as described above.

3. Section 200.8 is amended by redesignating paragraphs (f), (g), and (h), as (g), (h), and (i) and by adding new paragraph (f) and a new paragraph (j) to read as follows:

§ 200.8 Disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

* * * * *

(f) *Requests for voluntary testimony.* All requests for testimony by a Board employee in his or her official capacity must be in writing and directed to the Deputy General Counsel. They shall state the nature of the requested testimony, why the information is not available by any other means, and the reasons, if any, why the testimony would be in the interest of the Board or the Federal government.

* * * * *

(j) The Deputy General Counsel or his designee will request the assistance of the Department of Justice where necessary to represent the interests of the agency and its employees under this section.

Dated: June 13, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-14683 Filed 6-21-91; 8:45 am]

BILLING CODE 7905-01-M

20 CFR Part 259

RIN 3220-AA88

Initial Determinations and Appeals From Initial Determinations With Respect to Employer Status and Employee Status

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend part 259 of its regulations to provide that determinations with respect to employer and employee status under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA) shall be made directly by the three-member Board. Under present regulations determinations with respect to employer and employee status are delegated to the Deputy General Counsel subject to administrative review by the three-member Board. The Board proposes to remove this delegation and place original jurisdiction over such questions at the Board level. The Board believes that this proposed change will make the decision making process with respect to employer and employee status questions more efficient.

DATES: Comments shall be submitted on or before August 23, 1991.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4920 (FTS 386-4920).

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: Part 259 presently delegates authority for initial and reconsideration determinations with respect to employer and employee status under the RRA and RUIA to the Board's Deputy General Counsel. His determinations on such questions are final unless a party to a determination appeals such determination to the three-member Board.

The Board proposes to remove this delegation. Under the proposed changes to this part the Deputy General Counsel will be responsible for making initial investigations with respect to the employer and employee status of any person and will submit to the Board a recommended decision with respect to the coverage of that person under the RRA or RUIA. Upon receipt of the Deputy General Counsel's recommendation the Board shall issue a coverage determination (proposed

§ 259.1). Any party aggrieved by this determination, as defined in § 259.2, may file a request for reconsideration with the Deputy General Counsel who shall submit a recommendation to the Board thereon. The Board shall then issue a decision on reconsideration (proposed § 259.2) Such decision is final subject to judicial review as provided for in proposed § 259.5 or to a new determination under proposed § 259.6.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections imposed by these amendments.

List of Subjects in Part 259

Railroad employees, railroads, railroad retirement, railroad unemployment insurance.

For the reasons set out in the preamble, 20 CFR part 259 of the Board's regulations are proposed to be amended as follows:

PART 259—INITIAL DETERMINATIONS AND APPEALS FROM INITIAL DETERMINATIONS WITH RESPECT TO EMPLOYER AND EMPLOYEE STATUS

1. The authority citation for part 259 is revised to read as follows:

Authority: 45 U.S.C. 231f; 45 U.S.C. 362(l).

2. Section 259.1 is revised to read as follows:

§ 259.1 Initial determinations with respect to employer and employee status.

The Deputy General Counsel of the Railroad Retirement Board or his or her designee shall make the initial investigations with respect to:

(a) The status of any person as an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act and the rules and regulations issued thereunder; and

(b) The status of any individual or group of individuals as an employee or employees of an employer covered under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Upon completion of this investigation the Deputy General Counsel or his or her designee, shall submit to the Board the results of the investigation together with a recommendation concerning the coverage determination. The Board shall make the initial determination with respect to the status of any person as an employer or as an employee under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. The Secretary to the Board shall promptly notify the party or parties, as defined in § 259.2 of this part, of the Board's determination.

3. Section 259.3 is revised to read as follows:

§ 259.3 Reconsideration of initial determinations with respect to employee or employer status.

A party to an initial decision issued under § 259.1 shall have the right to request reconsideration of that decision. A request for reconsideration shall be in writing and must be filed with the Deputy General Counsel within one year following the date on which the initial determination was issued. Where a request for reconsideration has been timely filed, the Deputy General Counsel or his or her designee shall notify all other parties to the initial determination of such request. The party who requested reconsideration and any other party shall have the right to submit briefs or written argument, as well as any documentary evidence pertinent to the issue under consideration. The Deputy General Counsel or his or her designee shall review the material furnished all parties and shall submit it to the Board with a recommendation as to the determination upon reconsideration. The Board shall then issue a determination with respect to the request for reconsideration. The Secretary to the Board shall promptly notify all parties of the determination upon reconsideration.

§ 259.4 [Amended]

4. Section 259.4 is amended by removing the word "rendering a determination" in the first sentence and subetituting therefor "performing his or her responsibilities".

§ 259.5 [Removed]

5. Section 259.5 is removed.

§ 259.6 [Redesignated as § 259.5]

6. Section 259.6 is redesignated as § 259.5

7. Section 259.7 is redesignated as § 259.6 and is revised to read as follows:

§ 259.6 Finality of determinations issued under this part.

Any determination rendered by the Board at the initial or reconsideration stages shall be considered a final determination and shall be binding with respect to all parties thereto unless a timely request has been made for reconsideration, or an appeal has been filed with the appropriate United States Court of Appeals, respectively. A final determination may be challenged at the request of a party who was, or could have been, a party to the final determination when the party alleges that the law or the facts upon which the final determination was based have changed sufficiently to warrant a contrary determination. Such a request shall be submitted to the Board's Deputy General Counsel, who shall consider such request as a request for an initial determination under § 259.1.

Dated: June 18, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-14841 Filed 6-21-91; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1-91-094]

Drawbridge Operation Regulations Saugus River, MS

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Metropolitan District Commission (MDC) and the Massachusetts Department of Public Works (MDPW), the Coast Guard is considering changes to the regulations governing the General Edwards SR1A Bridge, mile 1.7, between Revere and Lynn, Massachusetts, the Massachusetts Bay Transit Authority (MBTA)/AMTRAK Bridge, mile 2.1, and MDPW's Belden Bly (Foxhill) Bridge, mile 2.5 both between Lynn and Saugus, Massachusetts, all over the Saugus River, by revising the hours when advance notice for an opening is required at all three bridges. This proposal is being made because of the limited number of openings requested during the proposed time periods. This action should relieve the bridge owners of the burden of having persons constantly available to open the draws and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before August 8, 1991.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at the above address or at the John Foster Williams Building, 408 Atlantic Ave, Boston, Massachusetts. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to these addresses.

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FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge(s), and give reasons for concurrence with or any recommended changes in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed post card or envelope. The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information:

The drafters of this notice are Mr. John McDonald, Project Officer, and Lieutenant John Gately, project attorney.

Discussion of Proposed Regulations

The vertical clearances for the General Edwards SR1A Bridge, the MBTA/AMTRAK Bridge, and the Rt 107, Belden Bly (Foxhill) Bridge are 27', 07' and 6' at MHW and 36', 17' and 16' at MLW, respectively. The current regulations for these drawbridges are that they open on signal at all times. The Coast Guard has received requests from the MDC and MDPW to change the operating regulations for their bridges to permit 8 hours advance notice during periods of limited use as follows: (a) The General Edwards Bridge SR1A Bridge from December 1 thru March 31; (b) The MBTA/AMTRAK Bridge from 12 a.m. to 5 a.m., daily; and Belden Bly (Foxhill) Rt 107 Bridge from May 1 thru September 30, from 12 a.m. to 5 a.m. and from October 1 thru April 30, from 9 p.m. to 5 a.m. At all other times, these bridges would be manned and open on signal. Advance notice for the General Edwards Bridge will be made to the MDC personnel on watch at the Charles River Dam. The notifications for MDPW and MBTA bridges will be to their respective 24 hour phone numbers. The proposed regulations also require that all the bridges over the Saugus River open as soon as possible for public vessels of the United States, state and local vessels used for public safety purposes and vessels in distress. The owners of these bridges are also required to maintain clearance gauges to facilitate transit of small vessels while the bridges are in the closed position.

Appendix A to 33 CFR part 117 is revised to reflect the installation of radiotelephones on these bridges to improve communications, minimize delays to marine and land traffic, and enhance marine safety.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that the regulation changes will not prevent the mariners from transiting the bridges but shall just require advance notice for openings. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.818 is revised and Appendix A to part 117 is amended to add the Saugus River listings under the State of Massachusetts between the listings for Merrimack River and the Taunton River to read as follows:

§ 117.818 Saugus River

(a) The following requirements apply to all bridges across the Saugus River:

(1) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges with figures not less than 12 inches high designed, installed and maintained according to provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed seven minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraph (b) through (d) of this section the draws shall open on signal.

(b) The draw of the General Edwards SR1A Bridge, mile 1.7, between Revere and Lynn, Massachusetts, shall open on signal except that from December 1 through March 31 at least 8 hour advance notice shall be given by commercial and recreational vessels for an opening.

(c) The draw of the Massachusetts Bay Transportation Authority (MBTA)/AMTRAK Bridge, mile 2.1, between Saugus and Lynn, Massachusetts, shall open on signal except that from 12 a.m. to 5 a.m. daily at least 8 hour advance notice shall be given by commercial and recreational vessels for an opening.

(d) The draw of the Route 107, Belden Bly (Foxhill) Bridge, mile 2.5, between Saugus and Lynn, Massachusetts, shall open on signal except that at least 8 hours advance notice shall be given by commercial and recreational vessels for an opening from:

(1) May 1 through September 30, from midnight to 5 a.m., and

(2) October 1 through April 30, from 9 p.m. to 5 a.m.

APPENDIX A TO PART 117—DRAWBRIDGE EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
•	•	•	•	•	•	•
Massachusetts:						
•	•	•	•	•	•	•
Saugus River	1.7	Lynn-Revere	General Edwards SR1A, MDC	WHV 992	16	13

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
	2.1	Saugus-Revere	Saugus/MBTA, MBTA	KVY 568	16	13
	2.7	Saugus-Revere	Belden Bly(Foxhill), MDPW	Pending	16	13
•	•	•	•	•	•	•

Dated: June 7, 1991.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 91-14931 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN Docket No. 91-150; FCC 91-167]

RIN 3060-AD68

Additional Frequencies for Auditory Assistance Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule would expand the frequency bands in which unlicensed auditory assistance devices are permitted to operate. This change is necessary because hearing-impaired persons using auditory assistance devices in the frequency bands currently available to them are experiencing interference from licensed radio transmitters. This change would allow hearing-impaired persons to more easily interact with the rest of society.

DATES: Comments must be submitted on or before September 9, 1991, and reply comments on or before October 9, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653-8138.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in GEN Docket No. 91-150, FCC 91-167, adopted May 24, 1991. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422.

Summary of the Notice of Proposed Rule Making

1. The Commission proposes to amend 47 CFR part 15 of its rules by expanding the frequency bands in which auditory assistance devices are permitted to operate. This proposal addresses a petition for rule making before the Commission filed by Phonic Ear, Inc. ("Phonic Ear"), on December 12, 1988.

2. Auditory assistance devices operate on a non-licensed basis under 47 CFR part 15. An auditory assistance device is defined in 47 CFR 15.3(e) as an intentional radiator used to provide auditory assistance to a handicapped person or persons. Such devices are typically used for auricular training in an educational institution, for auditory assistance at places of public gatherings, and for auditory assistance to handicapped individuals in other locations. Auditory assistance devices currently operate in the frequency bands 72-73 MHz and 75.4-76 MHz. These frequency bands are allocated to the fixed and mobile services and are available for use under the Domestic Public Land Mobile Service (47 CFR part 22), the Private Land Mobile Service (47 CFR part 90), and the Personal Radio Service (47 CFR part 95). Under the 47 CFR part 15 conditions for operation, auditory assistance devices may not cause harmful interference to these services and must accept any interference received.

3. In its petition, Phonic Ear states that auditory assistance devices have been experiencing increasing amounts of interference due to growth in use of the 72-73 MHz and 75.4-76 MHz bands by the land mobile services. These services transmit signals at much higher levels than are permitted for auditory assistance devices under 47 CFR part 15. In particular, according to Phonic Ear, messages transmitted by paging systems often interrupt and override the voice of a teacher as heard by a hearing-impaired student using an auditory assistance device. Phonic Ear states that the number of usable frequencies is so severely limited by interference that, as a result, some large educational institutions are now unable to operate enough auditory assistance devices to cover all of their classrooms. In order to correct this situation, Phonic Ear proposes that the frequency bands which auditory assistance devices are permitted to use be expanded to include the 74.6-74.8 MHz and 75.2-75.4 MHz bands. This spectrum became available for fixed and mobile services after the two guardbands protecting aeronautical marker beacons at 75.0 MHz were narrowed from 400 kHz to 200 kHz on January 1, 1990. Phonic Ear states that auditory assistance devices would not experience significant interference on these frequencies because there is not existing use and any potential new services must be limited to operation below one watt in accordance with Footnote US 273 to the Table of Frequency Allocations.

4. Williams Sound Corporation filed comments in support of Phonic Ear's position. The Manufacturer's Radio Frequency Advisory Committee ("MRFAC") filed comments opposing Phonic Ear's petition. It points out that MRFAC has filed a separate petition for rule making requesting that the 74.6-74.8 MHz and 75.2-75.4 MHz bands be allocated to the Manufacturers Radio Service ("MRS") under 47 CFR part 90 of the Commission's rules. MRFAC wishes to use these frequencies for remote control of industrial equipment, and believes that auditory assistance devices operating in these bands would be difficult to locate and shut down should they cause harmful interference. MRFAC, therefore, believes that Phonic Ear's petition should be denied in order to prevent possible interference to remote control signals in manufacturing plants in the event that MRFAC's petition is granted.

5. Based on the argument presented in Phonic Ear's petition and the comments filed in response to that petition, it appears that auditory assistance devices are indeed experiencing significant interference problems in the bands in which they are currently permitted to operate. We believe the public interest would be served by making additional frequencies available to remedy the interference problem.

6. The frequency bands 74.6-74.8 MHz and 75.2-75.4 Mhz appear to be ideally suited as additional spectrum for auditory assistance devices. These frequencies would enable use of existing equipment designs because of the close proximity to the currently available frequencies. Therefore, we expect there would be little or no increase in the r of the equipment, which is often a

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matter of particular concern to the handicapped. Perhaps most important, auditory assistance devices are far less likely to experience interference on these frequencies since they are currently vacant. Moreover, any services that may be ultimately authorized to use these frequencies will be required to limit the transmitter output power to no more than one watt as specified in Footnote US 273 to the Table of Frequency Allocations. Thus, auditory assistance devices will not be exposed to the type of high power signals existing in the frequency bands currently being used. It is important to note that the proposed change will permit any 47 CFR part 15 device which complies with the general radiated emission limits in 47 CFR 15.209 to operate within these bands, along with auditory assistance devices. However, since the general emission limits of 47 CFR 15.209 are considerably lower than the emission limits provided for auditory assistance devices, it is not expected that other 47 CFR part 15 devices operating under this section will present any greater potential for interference.

7. We note that the Commission has made no finding on the merits of MRFAC's petition for use of the 74.6–74.8 MHz and 75.2–75.4 MHz bands by the Manufacturer's Radio Service. In any event, if we were to act favorably on MRFAC's petition we believe there would be little risk of interference from auditory training devices. The 72–73 MHz and 75.4–76 HMz bands, which auditory assistance devices have been using for nearly 20 years, are also used by the Manufacturer's Radio Service for fixed operations limited to the confines of manufacturing areas, and mobile operations limited to an output power of one watt. We are unaware of any harmful interference that has been caused to the Manufacturer's Radio Service by auditory assistance devices.

8. In light of these considerations, we are proposing to amend 47 CFR part 15 of the rules to allow auditory assistance devices to be operated in the 74.6–74.8 MHz and 75.2–75.4 MHz bands, as specified below. The administrative and technical requirements for operation in these bands are proposed to be identical to those for the existing auditory assistance devices. We invite comments regarding this proposal.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial analysis is as follows:

I. Reason for Action: Auditory assistance devices operating in the bands available to them under part 15 of the FCC Rules appear to be experiencing a significant amount of interference from common carrier and private radio systems. In some cases, this interference renders the auditory assistance devices unusable.

II. Objective: The objective of the proposed rules is to improve the quality of life for hearing impaired individuals by affording them the opportunity to better communicate with teachers, performers, and other public speakers.

III. Legal Basis: Action is proposed in accordance with sections 4(i), 302, 303(e), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended.

IV. Description, potential impact and number of small entities affected: The proposed changes in the regulations would affect only a few small entities. An estimate of the number of such parties affected is six or less. There would be no cost to the manufacturers to comply with the proposed rules because they would not be required to make any changes to their current operations. The new rules would simply provide them with design option which they did not have before.

V. Recording, record keeping and other compliance requirements: No changes in record keeping requirements are proposed. However, there may be an increase in the number of measurements performed on each auditory assistance device in preparation for filing or an equipment authorization.

VI. Federal rules which overlap, duplicate or conflict with the proposed rule: None.

VII. Any significant alternative minimizing the impact on small entities and consistent with the stated objectives: None.

List of Subjects in 47 CFR Part 15

Communications equipment, Education of handicapped.

Title 47 of the Code of Federal Regulations, part 15 is proposed to be amended as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.205(a) is revised to read as follows:

§ 15.205 Restricted bands of operation.

(a) Except as shown in paragraph (d) of this section, only spurious emissions are permitted in any of the frequency bands listed below:

MHz	MHz	MHz	GHz
0.090–0.110	156.7–156.9	2200–2300	9.0–9.2
0.49–0.51	162.0125–167.17	2310–2390	9.3–9.5
2.1735–2.1905	167.72–173.2	2483.5–2500	10.6–12.7
8.362–8.366	240–285	2655–2900	13.25–13.4
13.36–13.41	322–335.4	3260–3267	14.47–14.5
25.5–25.67	399.9–410	3332–3339	15.35–16.2
37.5–38.25	608–614	2345.8–3358	17.7–21.4
73–74.6	960–1240	3600–4400	22.01–23.12
74.8–75.2	1300–1427	4500–5250	23.6–24.0
108–121.94	1435–1626.5	5350–5460	31.2–31.8
123–138	1660–1710	7250–7750	36.43–36.5
149.9–150.05	1718.8–1722.2	8025–8500	(1)

[1] Above 38.6.

3. The § heading of § 15.237 is revised to read as follows:

§ 15.237 Operation in the bands 72.0–73.0 MHz, 74.6–74.8 MHz and 75.2–76.0 MHz.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–14065 Filed 6–21–91; 8:45 am]

BILLING CODE 6712–01–M

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Notices

Federal Register
Vol. 56, No. 121
Monday, June 24, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-91-011]

Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.
Date: July 11, 1991.
Time: 10:30 a.m.
Place: Campbell House Inn, 1375 Harrodsburg Road, Lexington, Kentucky 40405.
Purpose: To receive reports from subcommittees discuss new policies and procedures for the 1991 burley marketing season, review regulations pursuant to the Tobacco Inspection Act, 7 U.S.C. 511 *et seq.*, and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502, Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: June 18, 1991.
Daniel Haley,
Administrator.
[FR Doc. 91-14960 Filed 6-21-91; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket 91-079]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that eight environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton Givens, Program Assistant, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requested under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit No.	Applicant	Date Issued	Organism	Field Test Location
91-025-03	Ciba-Geigy Biotechnology Research	05-10-91	Corn plants genetically engineered to contain a gene for resistance to the antibiotic hygromycin and a marker gene encoding beta-glucuronidase.	McClean County, Illinois.
91-030-01	Monsanto Agricultural Company	05-10-91	Corn plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	Jersey County, Illinois.

Permit No.	Applicant	Date Issued	Organism	Field Test Location
91-035-06	Campbell Institute for Research and Technology.	05-10-91	Tomato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	Yolo County, California.
91-043-01	Louisiana State University	05-10-91	Rice plants genetically engineered to contain a hygromycin marker along with one of the following structural genes: a rice storage protein gene, pea storage protein gene, and a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	East Baton Rouge Parish, Louisiana.
91-072-01	Garst Seed Company	05-13-91	Corn plants genetically engineered to express genes from a non-pathogenic source organism.	Boone County, Iowa.
91-011-04	Monsanto Agricultural Company	05-14-91	Potato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *tenebrionis*.	Umatilla County, Oregon; Yakima County, Washington; and Waushara County, Wisconsin.
91-024-01	Monsanto Agricultural Company	05-14-91	Potato plants genetically engineered to contain a gene encoding the coat protein of the potato leaf roll virus.	Canyon County, Idaho; Jersey County, Illinois; and Benton County, Washington.
91-030-04	Monsanto Agricultural Company	05-17-91	Potato plants genetically engineered to express a carbohydrate biosynthetic enzyme.	Bingham County, Idaho.

Done in Washington, DC, this 19th day of June 1991.
James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 91-14959 Filed 6-21-91; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. A-17-91]

Foreign-Trade Subzone 15E—Kawasaki Engine Plant Nodaway County, MO; Foreign-Trade Subzone 59A—Kawasaki Motorcycle, Jetski, and All-Terrain Vehicle Plant, Lincoln, NE; Request Concerning Manufacturing Authority

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ Subzone 15E, on behalf of the small engine manufacturing plant of Kawasaki Motors Manufacturing Corporation, U.S.A. (KMM), in Nodaway County, Missouri, for a determination that certain proposed manufacturing activity is within the scope of authority approved by the Board.

In December 1989, the Board authorized FTZ Subzone 15E (Board Order 454, 54 FR 50257, 12/5/89). Some of the engines produced at the plant are for vehicles made at KMM's plant in Lincoln, Nebraska, which was authorized as Subzone 59A in September 1980 (Board Order 163, 45 FR 58637, 9/4/80). The Nebraska plant produces motorcycles, jetskis/snowmobiles, and all-terrain vehicles.

Engines and transmissions are among the components that KMM is currently sourcing from abroad for the all-terrain vehicles made at the Nebraska plant. KMM is in the process of shifting production of engines and transmissions for the Nebraska-made all-terrain vehicles from Japan to its Missouri engine plant. The production of engines has already been specifically approved as part of the original subzone plan for Subzone 15E (Missouri plant).

The production of transmissions appear to be within the range of activity approved for the Nebraska plant based on the expectation that the plant would increase domestic sourcing over time. Instead of shifting production of the transmissions to the Nebraska plant, however, KMM plans to use the Missouri plant because they are assembled with the same machinery as the engines.

Based on a preliminary review, it appears that the proposed activity is consistent with the activity approved in FTZ Board Orders 163 and 454, both of which apply to the related KMM plants. Engines and transmissions for all-terrain vehicles are closely interrelated, and the transmissions made under zone procedures at the Missouri plant will be shipped exclusively for assembly of all-terrain vehicles made at the KMM Nebraska plant. The production of the transmissions at the Missouri plant will be subject to the restrictions in Board Orders 163 and 454, including the condition that requires the election of privileged foreign status on all foreign merchandise subject to antidumping or countervailing duty orders at the time of admission to the subzone. Temporary authority has been given for this activity for a six-month period ending December 16, 1991, during which time the Board would review any comments received in response to this notice.

The FTZ Staff invites comments from interested parties for consideration prior to completing its review. Comments must be submitted by July 21, 1991. They shall be addressed as follows: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: June 14, 1991.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 91-14972 Filed 6-21-91; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A-583-810]

Postponement of Final Antidumping Duty Determination: Chrome-Plated Lug Nuts from Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 24, 1991.

FOR FURTHER INFORMATION CONTACT: Mi-Yong Kim or Rick Herring, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 377-0189 or 377-3530, respectively.

POSTPONEMENT: On May 29, 1991, Gourmet Equipment (Taiwan) Corporation (Gourmet), a respondent in this antidumping investigation, requested that the Department extend the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act). On June 4, 1991, petitioner opposed the extension.

Under § 353.20(b) of Commerce's regulations (19 CFR 353.20(b)), the Department will extend a final determination to not later than 135 day-

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after a preliminary affirmative determination at the request of a respondent accounting for a significant proportion of the merchandise, unless there are compelling reasons not to do so. In this investigation, we have determined that compelling reasons exist not to grant the full extension requested. While Gourmet accounts for a large majority of the sales being investigated, it was preliminarily found to have no sales at less than fair value and, hence, its entries of merchandise are not subject to suspension of liquidation. Therefore, we are granting only a limited extension and intend to make our final determination no later than July 25, 1991.

PUBLIC COMMENT: In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 1, 1991, and rebuttal briefs, no later than July 8, 1991. A public hearing will be held on July 15, 1991, at 10 a.m., at the U.S. Department of Commerce, room 1410, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should contact one of the individuals named in the "For Further Information Contact" section of this notice to confirm the date and location of the hearing. In accordance with 19 CFR 353.38(b), oral presentations will be limited to the issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: June 14, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-14973 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-535-001]

Cotton Shop Towels from Pakistan; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 1, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton shop towels from Pakistan for the period January 1, 1989 through December 31, 1989. We have now completed that review and determine the total bounty or grant to be 7.22 percent *ad valorem*.

EFFECTIVE DATE: June 24, 1991.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 8743) the preliminary results of its administrative review of the countervailing duty order on cotton shop towels from Pakistan (49 FR 8974; March 9, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Pakistani cotton shop towels. During the review period, such merchandise was classifiable under item number 6307.10.20 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989, and five programs: (1) Export Financing Scheme; (2) Excise Tax, Sales Tax and Customs Duty Rebate programs; (3) Income Tax Reductions for Exports; (4) Import Duty Rebates; and (5) Export Credit Insurance.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondents, the Export Promotion Bureau of Pakistan and the exporters of cotton shop towels from Pakistan.

Comment 1: The respondents point out that Index Linentex exported shop towels to the United States during the review period and the Department did not include their exports in its calculation of the weighted-average country-wide rate.

Department Position: We agree and have revised our calculations accordingly.

Comment 2: Respondents contend that, in calculating the benefit from the export financing scheme, the Department failed to recognize that several companies that used this program reported all export financing outstanding during the review period rather than financing solely on exports to the United States. As a result, the amount of financing attributed to their exports of cotton shop towels to the United States greatly exceeded the value of those exports.

This is unlikely in light of the Department's own description of this program's operation, which indicates that financing exceeding export performance would incur a stiff penalty. Therefore, since the amount of financing reported by these companies cannot be tied to exports of cotton shop towels to the United States, the Department should divide the benefit from the loans by each company's total exports.

Department's Position: We have examined the information provided in the questionnaire response and determined that three companies reported loan amounts that exceed the value of their exports of cotton shop towels to the United States. Because respondents did not demonstrate that any of these loans were attributable to non-U.S. exports, as best information available, we divided the benefit from these loans by each company's U.S. exports. However, it is unlikely that the program provides preferential financing at an amount greater than 100 percent of the value of those exports. Therefore, we calculated the benefit to these three companies based on an amount of financing equal to the value of each company's exports of cotton shop towels to the United States. On this basis, we determine the benefit from this program to be 1.47 percent *ad valorem* during the review period.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be 7.22 percent *ad valorem* during the period January 1, 1989 through December 31, 1989.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 7.22 percent of the f.o.b. invoice price on shipments on this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties of 7.22 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 14, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14974 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Decision of Extraordinary Challenge Committee

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of the Extraordinary Challenge Committee in review of the binational panel decision in the panel review of the affirmative determination of threat of material injury made by the U.S. International Trade Commission respecting Fresh, Chilled or Frozen Pork from Canada, Secretariat File No.: ECC-91-1904-01USA.

SUMMARY: On June 14, 1991, the Committee dismissed the request for an extraordinary challenge for failure to meet the standards of an extraordinary challenge set forth in FTA article 1904.13, and ordered that the Binational Panel's Memorandum Opinion and Order shall remain in effect and affirmed the Order of the Panel dated January 22, 1991. The Binational Panel Memorandum Opinion and Order remanded the U.S. International Trade Commission's affirmative determination of threat of material injury respecting Fresh, Chilled or Frozen Pork from Canada.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under article 1904.13 of the Agreement, where a Party alleges that a binational panel has seriously departed from a fundamental rule of procedure, has manifestly exceeded its powers, authority or jurisdiction or that a member of the panel has materially violated the Code of Conduct established pursuant to article 1910, and further alleges that any of these actions have materially affected the panel's decision and threaten the integrity of the binational panel review process, that Party may request that an Extraordinary Challenge Committee be established under the procedure set out in annex 1904.13 of the Agreement.

Under annex 1904.13 of the Agreement, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Extraordinary Challenge Committees ("ECC Rules"). These ECC Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53222). The ECC Rules give effect to the provisions of Chapter Nineteen of the Agreement with respect to Extraordinary Challenge Committee proceedings conducted pursuant to article 1904 of the Agreement. The ECC Rules are intended to result in decisions typically within 30 days after the establishment of the Extraordinary Challenge Committee. The Extraordinary Challenge Committee proceeding in this matter was conducted in accordance with these ECC Rules. On April 22, 1991, the Extraordinary Challenge Committee ordered that the deadline for the Committee to file its decision be extended to June 14, 1991.

Background

On September 13, 1989, the U.S. International Trade Commission (Commission) issued its final affirmative determination of threat of material injury respecting Fresh, Chilled or Frozen Pork from Canada. Requests for Panel Review were filed as required by the article 1904 Panel Rules, and a Binational Panel was convened to review the final determination.

On August 24, 1990, the Binational Panel remanded the Commission's final determination for reconsideration because the Panel found that the Commission relied heavily throughout on statistics which the Panel found questionable and which they found colored the Commission's assessment of much of the other evidence. The Panel instructed the Commission to reconsider the evidence on the record, and more particularly the figures on Canadian pork production. The Commission was given 60 days (until October 23, 1990) to take action consistent with the Panel's decision.

On October 23, 1990, the Commission issued its Determination on Remand, again finding that the United States pork industry was threatened with material injury by reason of imports of pork from Canada.

On October 26, 1990, a Motion for Panel Review of the Commission's Determination on Remand was filed by the Complainants pursuant to rule 75, which motion was granted by the Panel on November 5, 1990. The Commission and the National Pork Producers Council filed briefs in support of the Commission's Determination on Remand while the Complainants presented briefs contesting the Commission's findings on remand.

On January 22, 1991, the Panel issued its Decision on Remand pursuant to rule 75(5). The Panel found that the Commission committed an error of law because it exceeded the scope of its own Notice when reopening the administrative record on remand. The Panel further found that the Commission's findings of a threat of imminent material injury were not supported by substantial evidence. For these reasons, the Panel again remanded the Commission's Determination on Remand for action not inconsistent with the Panel's Decision of August 24, 1990, and not inconsistent with the Panel's decision in this panel review of the Commission's Determination on Remand. The results of this further remand were ordered to be provided by the Commission to the Panel within 21 days of the date of this decision (by not later than February 12, 1991).

On February 12, 1991, the Commission filed its Redetermination on Remand pursuant to the Panel decision. The Commission found no material injury nor threat of material injury, but outlined several errors which it alleged the Panel made in its January 22, 1991, decision.

On March 29, 1991, the United States Trade Representative filed a Request for an Extraordinary Challenge Committee on behalf of the United States Government in its capacity as a Party to the United States-Canada Free-Trade Agreement with the United States Secretary of the FTA Binational Secretariat. The Request alleged that in five instances the Binational Panel seriously departed from a fundamental rule of procedure or manifestly exceeded its powers, authority or jurisdiction set forth in article 1904 and further alleged that these actions

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materially affected the panel's decision and threatened the integrity of the binational panel review process. An Extraordinary Challenge Committee was convened to review these allegations.

Decision of the Committee

On June 14, 1991, the Committee dismissed the request for an extraordinary challenge for failure to meet the standards of an extraordinary challenge set forth in FTA article 1904.13. The Committee ordered that the Binational Panel's Memorandum Opinion and Order shall remain in effect and affirmed the Order of the Panel dated January 22, 1991.

Dated: June 19, 1991.

Caratina L. Alston,

Deputy United States Secretary, FTA Binational Secretariat.

[FR Doc. 91-14937 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Completion of Extraordinary Challenge Committee Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of the Extaordinary Challenge Committee Review of the binational panel review of the affirmative determination of threat of material injury made by the U.S. International Trade Commission respecting Fresh, Chilled or Frozen Pork from Canada, Secretariat File No: ECC-91-1904-01USA.

SUMMARY: Pursuant to rule 60 of the Rules of Procedure for article 1904 extraordinary Challenge Committees, and the Extraordinary Challenge Committee Memorandum Opinion and Order dated June 14, 1991, the Extraordinary Challenge Committee Review of the binational panel review described above was completed on June 17, 1991.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: By a decision dated June 14, 1991, the Extradordinary Challenge Committee in Secretariat File No: ECC-91-1904-01USA, dismissed the request for an extraordinary challenge of the Binational Panel's January 22, 1991 Memorandum Opinion and Order for failure to meet the standards of an extraordinary challenge set forth in FTA article 1904.13. The Committee ordered that the Binational Panel's Memorandum Opinion and Order shall remain in effect and affirmed the Order of the Panel dated January 22, 1991. Pursuant to rule 61, the Committee members are discharged from their duties effective June 17, 1991, the day after the decision affirming the panel decision.

Dated: June 19, 1991.

Caratina L. Alston,

Deputy United States Secretary, FTA Binational Secretariat.

[FR Doc. 91-14938 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final affirmative determination of threat of material injury made by the U.S. International Trade Commission (USITC), respecting Fresh, Chilled or Frozen Pork from Canada, Secretariat File No. USA-89-1904-11.

SUMMARY: Pursuant to rule 84 of the Article 1904 Panel Rules ("Rules") and the Extraordinary Challenge Committee Memorandum Opinion and Order dated June 14, 1991, the Panel Review of the final determination described above was completed on June 17, 1991.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: By a decision dated June 14, 1991, the Extraordinary Challenge Committee in Secretariat File No: ECC-91-1904-01USA, dismissed the request for an extraordinary challenge of the Binational Panel's January 22, 1991 Memorandum Opinion and Order for failure to meet the standards of an extraordinary challenge set forth in FTA article 1904.13. The Committee ordered that the Binational Panel's Memorandum Opinion and Order shall remain in effect and affirmed the Order of the Panel dated January 22, 1991. Pursuant to rule 85, the panelists are discharged from their duties effective June 17, 1991.

Dated: June 19, 1991.

Caratina L. Alston,

Deputy United States Secretary, FTA Binational Secretariat.

[FR Doc. 91-14939 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Grants; Dean A. Knauss Marine Policy Fellowship, Open for Applications

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dean John A. Knauss Marine Policy Fellowship; open for applications.

SUMMARY: In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The Fellowship program accepts applications once a year during the month of September. All applicants must submit an application to one of the state Sea Grant College Programs in their area.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shephard, Director, National Sea Grant Federal Fellows Program, National Sea Grant College Program, 1335 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 427-2431 or call your nearest Sea Grant program:

University of Alaska—(907) 474-7086.
University of California—(619) 534-4440.
University of Connecticut—(203) 445-3457.
University of Delaware—(302) 451-2841.
University of Florida—(904) 392-5870.
University of Georgia—(404) 542-7671.
University of Hawaii—(808) 956-7031.
University of Illinois—(217) 333-1824.
Lousiana State University—(504) 388-6710.
University of Maine—(207) 581-1435.
University of Maryland—(301) 405-6370.
Massachusetts Institute of Technology—(617 253-7131.
University of Michigan—(313) 763-1437.
University of Minnesota—(612) 625-2765.
Mississippi-Alabama Sea Grant Consortium—(601) 875-9341.
University of New Hampshire—(603) 862-2175.
New Jersey Marine Sciences Consortium—(908) 872-1300.
State University of New York—(516) 632-8905.
University of North Carolina—(919) 737-2454
Ohio State University—(614) 292-8948.
Oregon State University—(503) 737-3300.
University of Puerto Rico—(809) 832-3585.
Purdue University—(317) 494-3585.
University of Rhode Island—(401) 792-6500.
South Carolina Sea Grant Consortium—(803) 727-2078.
University of Southern California—(213) 740-1961.
Texas A&M University—(409) 845-3854.
Virginia Graduate Marine Science Consortium—(804) 924-5965.
University of Washington—(206) 543-6600.
University of Wisconsin—(608) 263-6566.
Woods Hole Oceanographic Institution—(508) 548-1400 x2578.

SUPPLEMENTARY INFORMATION: Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Federal Fellows Program, Purpose of the Fellowship Program.

In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The U.S. Congress recognized the value of this program and in 1987, Public Law 100-220 stipulated that the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows.

Announcement

Fellows program announcements are sent annually to all participating Sea Grant institutions and campuses by the state Sea Grant Director upon receipt of notice from the National Sea Grant College Program Office (NSGCPO). A brochure describing the program is also available from the NSGCPO for distribution by both that office and the state Sea Grant programs.

Eligibility

Any student who, at the time of application, is in a master's, doctoral or professional program in a marine related field from any accredited institution of higher education may apply to the NSGCPO through any state Sea Grant program.

Deadlines

- Students must submit applications to a state Sea Grant Director, who will be the applicants sponsor, by the date set by the Directors in their individual program announcement (usually early to mid-September).
- Applications are to be submitted to the NSGCPO by the sponsoring state Sea Grant Director, no later than close of business on September 30th of any given year.
- The selection process and subsequent notification will be completed by October 31st of any given year.

Stipend and Expenses

For 1992 a Fellow will receive a stipend amount of $24,000.

Application

An application will include:

- Personal and academic resume or curriculum vitae.
- Education and career goal statement from the applicant with emphasis on what the prospective Fellow expects from the experience in the way of career development. (not to exceed 2 pages)
- No more than two letters of recommendation with at least one being from the student's major professor. Thesis papers are not desired.
- A letter of endorsement from the sponsoring state Sea Grant Director.
- Copy of undergraduate and graduate student transcripts.

It is our intent that all applicants be evaluated only on their ability, therefore letters of endorsement from members of Congress, friends, relatives or others will not be considered.

Placement preference in the Executive or Legislative Branches of the Government may be stated, and will be honored to the extent possible.

Selection Criteria

The selection criteria will include:

- Strength of Academic Performance.
- Communication Skills (both written and verbal).
- Diversity of Academic Background.
- Work Experience.
- Support of Major Professor.
- Support of Sea Grant Director.
- Ability to Work with People.

Selection

Selection of finalist will be made by a panel chaired by the Director of Federal Fellowships of the NSGCPO and include representation from (1) the Council of Sea Grant Directors, (2) the Office of the Assistant Administrator for Oceanic and Atmospheric Research, and (3) the current and possibly past group of Fellows. The individuals representative of these groups will be chosen on a year by year basis according to availability, timing, and other exigencies. Selection of finalists by the panel will be done according to the criteria outlined above. After selection, the panel will group applicants into the two categories, legislative and executive, based upon the applicant's stated preference and/or the judgement of the panel based upon material submitted. The number of fellows assigned to the Congress will be limited to 10.

Dated: June 14, 1991.

Ned A. Ostenso,

Assistant Administrator, Oceanic and Atmospheric Research.

[FR Doc. 91-14941 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-12-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council and its Committees will hold a public meeting on June 25-26, 1991, at the King's Grant Inn (telephone: 508-774-6800), route 128 at Trask Lane, Danvers, MA.

The Atlantic Sea Scallop Committee report is the first item scheduled on the Council meeting agenda on June 25, 1991, at 10 a.m. The report will be followed by a public hearing on the current temporary adjustments to the sea scallop meat count shell height standards. The hearing will begin at 11 a.m. The National Marine Fisheries Service Regional Director will at that time recommend a temporary adjustment of standards from 30 to 33 meats per pound (shell height from 3½ inches to 3⅞ inches) for the period July 1, 1991, through September 30, 1991. If necessary, the Scallop Committee will continue its report after the Scallop hearing.

On the afternoon of June 26, 1991, there will be a brief report from the Habitat Committee Chairman and a review by Mr. Charles Karnella of the National Marine Fisheries Service of the proposed regime to govern interactions between marine mammals and commercial fishing operations.

On June 26, 1991, at 9 a.m., the Council Chairman, Executive Director, non-voting Council members, the Mid-Atlantic Fishery Management Council liaison and the National Marine Fisheries Services will give reports. The meetings will close with a Groundfish Committee report and discussion of any other relevant Council business.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone (617) 231-0422.

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Dated: June 19, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-14942 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in Harmonized Tariff Schedule Classification Numbers for Certain Part-Categories for Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Various Countries

June 18, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending Harmonized Tariff Schedule numbers for certain part-categories.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate implementation of bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after July 1, 1991, regardless of the date of export, certain HTS classification numbers for certain part-categories are being changed on all visa and certification arrangements and all import controls for countries with these part-categories. The changes contained below are being published in the first supplement to the 1991 Harmonized Tariff Schedule.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 18, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements which include cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following part-categories, produced or manufactured in various countries and entered in the United States for consumption or withdrawn from warehouse for consumption on and after July 1, 1991, regardless of the date of export.

Also, this directive amends, but does not cancel, all directives issued to you which establish visa arrangements for the following part-categories for all countries for which visa arrangements are in place with the United States Government.

Effective on July 1, 1991, you are directed to make the changes shown below in the aforementioned directives for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after July 1, 1991, regardless of the date of export.

Category	Obsolete number	New number
339-S	6104.29.2046	6104.29.2049
341-O	6204.29.4046	6204.29.4070
347-T	6113.00.0035	6113.00.0038
	6210.40.2030	6210.40.2035
348-T	6113.00.0040	6113.00.0042
	6210.50.2030	6210.50.2035
438-W	6104.29.2048	6104.29.2051
439-O	6117.90.0024	6117.90.0023
641-O	6204.29.4050	6204.29.4074
647-T	6113.00.0045	6113.00.0044
	6210.40.1030	6210.40.1035
648-T	6113.00.0050	6113.00.0052
	6210.50.1030	6210.50.1035
659-C	6114.30.3040	6114.30.3044
	6114.30.3050	6114.30.3054
845(1) (Hong Kong only)	6104.29.2072	6104.29.2079
	6117.90.0020	6117.90.0021
845(2) (Hong Kong only)	6104.29.2070	6104.29.2077
846(1) (Hong Kong only)	6104.29.2066	6104.29.2075
846(2) (Hong Kong only)	6104.29.2064	6104.29.2073

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-14971 Filed 6-21-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

FAR/FIRMR on CD-ROM Available through the Superintendent of Documents

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability.

SUMMARY: The texts of the Fedeal Acquisition Regulation (FAR) and the Federal Information Resources Management Regulation (FIRMR) are available on an electronic medium—Compact Disc-Read Only Memory (CD-ROM). These texts will be updated quarterly. The disc is available for purchase from the Superintendent of Documents on an annual subscription basis for $108.

ADDRESSES: To order FAR/FIRMR CD-ROM, List ID GSAFF, send prepayment to: Superintendent of Documents, Department 38-JR, Washington, DC 20402-9325. To order with VISA or Master Card, phone (202) 783-3238.

FOR FURTHER INFORMATION CONTACT: Mr. G. Doyle Dodge, Office of Federal Acquisition Policy, GSA, 18th & F Streets, NW., room 4037, Washington, DC 20405, telephone (202) 501-2801 or FTS 8-241-2801.

SUPPLEMENTARY INFORMATION:

System Requirements

The following minimum configuration is needed to use this CD-ROM disc:

1. An IBM PC/XT/AT or compatible with 256KB RAM.
2. MS-DOS version 3.1 or later.
3. CD-ROM drive with MS-DOS extensions capable of reading ISO 9660 format.

Benefits of CD-ROM

Users of the FIRMR and the FAR will find the CD-ROM issuances easier to use and to maintain in an updated status than the traditional paper issuances. The CD-ROM contains built-in indexing and retrieval programs that enable users to locate information easily and quickly If desired, small or large sections of information can be transferred to a computer disc; however, the indexing and retrieval program cannot be transferred.

Each new quarterly disc will incorporate the latest changes reflected in the FIRMR Transmittal Circulars and FAR Federal Acquisition Circulars. This will eliminate the need to insert page changes to the basic documents. Also, it is likely that additional acquisition and property/management regulations from GSA and other Federal agencies will be included on future discs.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 91-14872 Filed 6-21-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 155. This bulletin lists change in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Marina Islands and possessions of the United States. Bulletin Number 155 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 1991.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA:				
ADAK 5/	$ 40	$ 33	$ 73	06-01-91
ANAKTUVUK PASS	83	57	140	12-01-90
ANCHORAGE				
05-16--09-15	137	59	196	06-01-91
09-16--05-15	79	54	133	01-01-91
ATQASUK	129	86	215	12-01-90
BARROW	86	73	159	06-01-91
BETHEL	70	73	143	12-01-90
BETTLES	65	45	110	12-01-90
CANTWELL	62	46	108	06-01-91
COLD BAY	71	54	125	12-01-90
COLDFOOT	75	47	122	12-01-90
CORDOVA	74	89	163	01-01-91
CRAIG	65	35	100	06-01-91
DILLINGHAM	76	38	114	12-01-90
DUTCH HARBOR-UNALASKA	91	54	145	12-01-90
EIELSON AFB				
05-15--09-15	78	61	139	05-15-91
09-16--05-14	60	59	119	01-01-91
ELMENDORF AFB				
05-16--09-15	137	59	196	06-01-91
09-16--05-15	79	54	133	01-01-91
EMMONAK	60	40	100	06-01-91
FAIRBANKS				
05-15--09-15	78	61	139	05-15-91
09-16--05-14	60	59	119	01-01-91
FALSE PASS	80	37	117	06-01-91
FT. RICHARDSON				
05-16--09-15	137	59	196	06-01-91
09-16--05-15	79	54	133	01-01-91
FT. WAINWRIGHT				
05-15--09-15	78	61	139	05-15-91
09-16--05-14	60	59	119	01-01-91
GEORGE	100	39	139	06-01-91
HOMER	57	61	118	01-01-91
JUNEAU	96	70	166	01-01-91
KATMAI NATIONAL PARK	89	59	148	12-01-90
KENAI-SOLDOTNA				
05-01--09-30	86	70	156	05-01-91
10-01--04-30	64	70	134	01-01-91

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
KETCHIKAN	$ 81	$ 75	$156	01-01-91
KING SALMON 3/	75	59	134	12-01-90
KODIAK	68	61	129	01-01-91
KOTZEBUE	133	58	191	06-01-91
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA	72	44	116	06-01-91
MURPHY DOME				
05-15--09-15	78	61	139	05-15-91
09-16--05-14	60	59	119	01-01-91
NELSON LAGOON	102	39	141	06-01-91
NOATAK	77	66	143	12-01-90
NOME	61	75	136	01-01-91
NOORVIK	77	66	143	12-01-90
PETERSBURG	61	54	115	01-01-91
POINT HOPE	99	61	160	12-01-90
POINT LAY	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	64	57	121	12-01-90
SAND POINT	63	40	103	12-01-90
SELDOVIA	59	35	94	06-01-91
SEWARD	52	50	102	12-01-90
SHUNGNAK	77	66	143	12-01-90
SITKA-MT. EDGECOMBE	65	63	128	01-01-91
SKAGWAY	81	75	156	01-01-91
SPRUCE CAPE	68	61	129	01-01-91
ST. MARY'S	60	40	100	12-01-90
ST. PAUL ISLAND	81	34	115	12-01-90
TANANA	61	75	136	01-01-91
TOK	59	59	118	01-01-91
UMIAT	97	63	160	12-01-90
UNALAKLEET	58	47	105	12-01-90
VALDEZ				
05-01--10-31	116	66	182	05-01-91
11-01--04-30	85	63	148	01-01-91
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL	81	75	156	01-01-91
YAKUTAT	70	40	110	12-01-90
OTHER 3, 4/	42	47	89	01-01-91
AMERICAN SAMOA	55	47	102	12-01-90
GUAM	99	59	158	12-01-90

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LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
HAWAII:				
ISLAND OF HAWAII: HILO	$ 60	$ 38	$ 98	06-01-91
ISLAND OF HAWAII: OTHER	106	43	149	06-01-91
ISLAND OF KAUAI	112	48	160	06-01-91
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI: KIHEI				
04-01--12-19	85	50	135	12-01-90
12-20--03-31	97	50	147	12-20-90
ISLAND OF MAUI: OTHER	62	50	112	06-01-91
ISLAND OF OAHU	95	42	137	06-01-91
OTHER	59	47	106	12-01-90
JOHNSTON ATOLL 2/	18	17	35	12-01-90
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	45	31	76	12-01-90
SAIPAN	68	47	115	12-01-90
TINIAN	44	24	68	12-01-90
OTHER	20	13	33	12-01-90
PUERTO RICO:				
BAYAMON				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
CAROLINA				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
FAJARDO (INCLUDING LUQUILLO)				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
MAYAGUEZ	117	50	167	12-01-90
PONCE	117	50	167	12-01-90
ROOSEVELT ROADS				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
SABANA SECA				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO: (CONT'D)				
OTHER	$ 53	$ 43	$ 96	12-01-90
VIRGIN ISLANDS OF THE U.S.				
05-01--11-30	95	63	158	05-01-91
12-01--04-30	128	66	194	12-01-90
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

FOOTNOTES

1/ Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $25 is prescribed instead of the rate prescribed in the table.

BILLING CODE 3810-01-C

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Dated: June 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14578 Filed 6-21-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Anti-Tactical Ballistic Missile Requirements in the 2010 Timeframe will meet on June 25–27, 1991. The meeting will be held at the Applied Physics Laboratory, Johns Hopkins University, Johns Hopkins Road, Laurel, Maryland. The meeting will commence at 8 a.m. and terminate at 5 p.m. on June 25, 26, and 27, 1991. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide technical briefings for the panel members pertaining to their assessment of the vulnerability of U.S. naval forces to ballistic missile attack employing conventional, chemical, and nuclear munitions; and identifying the key issues related to the Navy ATBM program and the corresponding critical technology requirements. The agenda will include briefings and discussions related to sensors and processors, surveillance and tracking, seeker and technology discrimination, guidance and control, kill mechanism, boosters and propulsion, high temperature structures; and battle management and command, control and communications options in connection with the tactical ballistic missile threat. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matter to be discussed are inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters, listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of this meeting.

For further information concerning this meeting contact: Commander John Hrenko, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (703) 696–4870.

Dated: June 14, 1991.

W.T. Baucino,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91-15005 Filed 6-21-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Floodplain Notification for Proposed Removal Action at Properties Located in Hazelwood and Berkeley, MO

AGENCY: Department of Energy.

ACTION: Notice of floodplain involvement and opportunity for comment.

SUMMARY: The Department of Energy (DOE) proposes to remove radioactively contaminated material from properties in the vicinity of the Hazelwood Interim Storage Site (HISS) and to stabilize and control these materials at the HISS. The HISS is located in northern St. Louis County, approximately 3 km (2 mi) north of Lambert-St. Louis International Airport.

DOE proposes to conduct this removal action under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act and pursuant to 40 CFR 300.415(b)(2). The removal of radioactively contaminated material from residential, commercial and municipal properties would result in storage of the contaminated material at HISS. The action is necessary to remove contaminated soil that exceeds current DOE criteria for residual radioactivity established for the Formerly Utilized Sites Remedial Action Program.

DOE has determined, on the basis of a review of the National Flood Insurance Program's (Federal Emergency Management Agency) Flood Insurance Rate Maps for the area, that the proposed storage action would involve activities within the floodplain of Coldwater Creek. The proposed action, if implemented, will be carried out with the concurrence of the U.S. Environmental Protection Agency, the Army Corps of Engineers, and the Missouri Department of Health and Environment.

In accordance with DOE regulations, "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR part 1022), DOE will prepare a floodplain assessment to be incorporated in the Engineering Evaluation/Cost Analysis-Environmental Assessment and publish a statement of findings in accordance with these regulations. Further information is available from DOE at the address shown below. Public comments or suggestions regarding the proposed activities in this floodplain area are invited.

DATES: Any comments are due on or before July 9, 1991.

ADDRESSES: Send comments to: Lester K. Price, Director, Former Sites Restoration Division, U.S. Department of Energy, Oak Ridge Operations Office, Post Office Box E, Oak Ridge, Tennessee 37831, (615–576–0948), Fax comments to: (615)–576–0956.

Leo P. Duffy,

Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 91-14976 Filed 6-21-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP91-2243-000, et al.]

Distrigas of Massachusetts Corp., et al.; Natural Gas Certificate Filings

June 14, 1991.

Take notice that the following filings have been made with the Commission:

1. Distrigas of Massachusetts Corporation

[Docket No. CP91-2243-000]

Take notice that on June 10, 1991, Distrigas of Massachusetts Corporation [DOMAC], a Delaware Corporation with its principal place of business at 200 State Street, Boston, Massachusetts 02109, filed in Docket No. CP91-2243-000 an abbreviated application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing DOMAC to install additional vaporization capacity and install and construct additional facilities appurtenant thereto at DOMAC's liquified natural gas (LNG) terminal in Everett, Massachusetts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

DOMAC states that the additional LNG vaporization facilities will be built wholly within the boundary of its existing Everett Marine Terminal. DOMAC proposes the installation of a single vaporization train with a nominal capacity of 75,000 Mcf/d, which is to be delivered through the terminal's existing medium pressure send-out system. DOMAC indicates that the LNG supply line for the expansion project will tie into the existing 12-inch diameter storage tank manifold. DOMAC proposes the installation of a crossover line with a pressure reduction station from the new high pressure system to the existing medium pressure system which will allow the proposed facility to serve both as a back-up to the existing vaporizer facilities and as a source of additional gas supply. DOMAC states the metering, odorization and higher heating valve stabilization system of the existing medium pressure send-out system will be used for the proposed new facility.

DOMAC estimates that the cost of the proposed project will be approximately $8 million. DOMAC states that the project will be financed through cash on hand.

DOMAC submits that the requested facilities will be installed to meet an anticipated need for increased vaporization capacity in the fall of 1993. DOMAC states that the proposed project will have no impact on the rates charged for its sales service. DOMAC will assume 100% of the cost recovery risk related to the proposed plant improvements. DOMAC has requested waiver of the initial decision and expedited consideration of its application in order to permit engineering and construction to be completed in time to satisfy the expected need for greater send-out capacity in early 1993.

Comment date: July 5, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Chevron U.S.A. Inc., et al.

[Docket No. G-7143-001,[1] *et al.*]

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Comment date: July 3, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-7143-001, D, 4-29-91	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 75253-3725.	Tennessee Gas Pipeline Company, Heyser Field, Calhoun and Victoria Counties, Texas.	Assigned 12-1-90 to McGowan Working Partners.
G-13239-013, D, 4-8-91	ARCO Oil and Gas Co., Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	ANR Pipeline Company, Laverne Field, Beaver and Harper Counties, Oklahoma.	Assigned 1-1-90 to Cabot Petroleum Corporation.
CI64-106-003, D, 5-17-91	Oryx Energy Co., P.O. Box 2880, Houston, TX 75221-2880.	Northern Natural Gas Company, Division of Enron Corp. Ozona Field, Crockett County, Texas.	Assigned 11-1-90 to Enron Oil & Gas Company.
CI65-1284-002, D, 5-10-91	Union Oil Co. of California, P.O. Box 7600, Los Angeles, CA 90051.	Arkla Energy Resources, a division of Arkla, Inc. Northeast Amse Field, Major County, Oklahoma.	Assigned 10-1-90 to Universal Resources Corporation.
CI69-6-001, D, 5-17-91	Oryx Energy Co.	Colorado Interstate Gas Company, Mocane-lav Gas Area Field, Beaver County, Oklahoma.	Assigned 1-1-91 to OXY USA Inc.
CI72-26-000, D, 4-8-91	ARCO Oil and Gas Co., Division of Atlantic Richfield.	Arkla Energy Resources, a division of Arkla, inc. North Drummond Field, Garfield County, Oklahoma.	Assigned 9-1-90 to General Holding Corporation.
CI91-58-000, (G-17493), D, 3-26-91.	Union Oil Co. of California	Natural gas Pipeline Company of America, West Cement Field, Caddo County, Oklahoma.	Assigned 10-1-90 to Amerada Hess Corporation.
CI91-59-000, (CI62-1412), D, 3-29-91.	Oryx Energy Co.	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	Assigned 9-1-90 to Cross Timbers Oil Company, L.P.
CI91-72-000, (CI65-324), D, 4-12-91.	Sonat Exploration Co., P.O. Box 1513, Houston, TX 77251-1513.	Texas Gas Transmission Corporation, Bull Creek and E. Lisbon Fields, Union and Claiborne Parishes, Louisiana.	Assigned 8-1-90 to Hawkins Oil & Gas, Inc.
CI91-82-000, (CI73-325), D, 5-10-91.	Union Oil Co. of California	Florida Gas Transmission Corporation, Bayou Mallet Field, Arcadia Parish, Louisiana.	Assigned 9-1-89 to John W. McGowan.
CI91-89-000, (G-15434), D, 5-17-91.	Oryx Energy Co.	K N Energy, Inc., Hugoton Field, Hamilton County, Kansas.	Assigned 9-1-90 to Draco Gas Partners, L.P.
CI91-90-000, (G-14268), D, 5-17-91.	Oryx Energy Co.	Northern Natural Gas Company, Division of Enron Corp., Hugoton Field, Finney County, Kansas.	Assigned 9-1-90 to Draco Gas Partners, L.P.
CI91-91-000, (G-18173), D, 5-17-91.	Oryx Energy Co.	Colorado Interstate Gas Company, Hugoton Field, Kearny County, Kansas.	Assigned 9-1-90 to Plains Petroleum Operating Company.
CI91-92-000, (G-4268), D, 5-20-91.	Oryx Energy Co.	Colorado Interstate Gas Company, Hugoton Field, Kerny County, Kansas.	Assigned 9-1-90 to Draco Gas Partners, L.P.

Filing Code. A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Assignment of acreage. E—Succession. F—Partial Succession.

3. Natural Gas Pipeline Company of America

[Docket Nos. CP91-2201-000, CP91-2202-000, CP91-2203-000, CP91-2204-000, CP91-2205-000]

Take notice that on June 7, 1991, Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and

[2] These prior notice requests are not consolidated.

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service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX—PAGE 1 OF 2

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[2] dockets
CP91-2201-000 (6-7-91)	Natural Gas Pipeline Company of America.	Vesta Energy Company.	100,000 40,000 14,600,000	Offshore LA&TX, AR, CO, IA, IL, KS, LA, MO, NE, MN, OK, TX.	Offshore LA&TX, OK, LA, KS, AR, TX, IL, NM, CO.	4-1-91, ITS	CP86-582-000 ST91-8744-000
CP91-2202-000 (6-7-91)	Natural Gas Pipeline Company of America.	Bishop Pipeline Corporation.	50,000 25,000 9,125,000	Offshore LA&TX, AR, CO, IA, IL, KS, LA, MO, NE, MN, OK, TX.	Offshore LA&TX, OK, LA, KS, AR, TX, IL, NM, CO.	4-3-91, ITS	CP86-582-000 ST91-8584-000
CP91-2203-000 (6-7-91)	Natural Gas Pipeline Company of America.	Corn Products	5,000 5,000 1,825,000	OK, NE, IA, KS	IL	4-1-91, ITS	CP86-582-000 ST91-8746-000
CP91-2204-000 (6-7-91)	Natural Gas Pipeline Company of America.	Eastex Hydrocarbons, Inc.	50,000 25,000 9,125,000	Offshore LA&TX, AR, CO, IA, IL, KS, LA, MO, NE, MN, OK, TX.	Offshore LA&TX, OK, LA, KS, AR, TX, IL, NM, CO.	4-4-91, FTS	CP86-582-000 ST91-8565-000
CP91-2205-000 (6-7-91)	Natural Gas Pipeline Company of America.	American Central Gas Companies, Inc.	5,000 5,000 1,825,000	AR, TX	IL	4-1-91, FTS	CP86-582-000 ST91-8742-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Mississippi River Transmission Corporation

[Docket Nos. CP91-2244-000, CP91-2245-000]

Take notice that Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124, (MRT) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under §§ 284.223 of the Commission's Regulations, has been provided by MRT and is summarized in the attached appendix.

Comment date: July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

APPENDIX—PAGE 1 OF 1

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-2244-000 (6-10-91).	Entrade Corp. (marketer).	50,000 50,000 18,250,000	OK, LA, TX, IL, AR	IL, AR, MO, LA	3-22-91, ITS, Interruptible.	ST91-8611, 4-11-91.
CP91-2245-000 (6-10-91).	Robert L. Templeton, et al. (producer)[1].	2,000 2,000 730,000	TX	TX	4-10-91, ITS, Interruptible.	ST91-8650, 4-15-91.

[1] MRT indicates that the shipper is the estate of W.F. and Della James (deceased), the estate of W.H.J. Sorenson (deceased), W.H.J. Sorenson Trust, and Marchelle Daigle, William H. Johnson, Michelle Johnson and Robert L. Templeton, as individuals.

5. Equitrans, Inc., Columbia Gulf Transmission Company

[Docket Nos. CP91-2266-000, CP91-2267-000, CP91-2268-000, CP91-2269-000, CP91-2270-000, CP91-2271-000]

Take notice that on June 12, 1991, Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania 15275, and Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86-553-000 and Docket No. CP86-239-000, respectfully, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

APPENDIX—PAGE 1 OF 1

Docket No. (date filed)	Shipper name (typ.)	Peak day, average day, annual MMBtu	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2266-000 (6-12-91).	Philadelphia Gas Company.	9,685 392 70,560	PA, WV	PA, WV	5-31-91, ITS, Interruptible.	ST91-8965-000, 4-1-91.
CP91-2267-000 (6-12-91).	Columbia Gas Development Corp. (producer).	250,000 100,000 36,500,000	OLA, OTX, LA	OLA, OTX, LA, TX, TN, MS.	1-6-89,[2] ITS-1&2, Interruptible.	ST91-8711-000, 4-29-91
CP91-2268-000 (6-12-91).	LaSER Marketing Company (marketer).	150,000 60,000 21,900,000	LA	LA	4-1-87,[2] ITS-2, Interruptible.	ST91-8712-000, 4-29-91.
CP91-2269-000 (6-12-91).	Diamond Shamrock Offshore Partners Limited Partnership (producer).	7,000 2,000 730,000	OLA, LA	LA	4-1-87,[2] ITS-2, Interruptible.	ST91-8710-000, 4-29-91.
CP91-2270-000 (6-12-91).	Shell Gas Trading Company (producer).	57,000 30,000 10,950,000	OTX	TX	12-1-90,[2] ITS-2, Interruptible.	ST91-8612-000, 4-29-91.
CP91-2271-000 (6-12-91).	Tejas Power Corporation (marketer).	150,000 100,000 36,500,000	OLA, LA	OLA, LA	12-17-87,[2] ITS-2, Interruptible.	ST91-8709-000, 4-29-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] As amended.

6. PAR Minerals Corporation, et al.

[Docket Nos. CS71-603,[5] *et al.*]

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the National Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Comment date: July 3, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[5] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS71-603	[1]6-3-91	PAR Minerals Corporation American Tower, suite 200, 401 Market Street, Shreveport, LA 71101.
CS91-8-000	[2]5-5-91	David G. Di Tirro, *et al.* San Juan Resources, Inc. 1801 Broadway, suite 400, Denver, CO 80202.

[1] By letter dated May 29, 1991, Applicant requests that the small producer certificate issued to PAR Oil Corporation, in Docket No. CS71-603 be redesignated under the name PAR Minerals Corporation. Applicant states the company underwent an organizational change.
[2] The *et al.* parties are: James M. Martin and George Tasks.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing

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if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14895 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-65-003]

Arkla Energy Resources, a Division of Arkla, Inc.; Corrections to Tariff Filing

June 18, 1991.

Take notice that on June 14, 1991, Arkla Energy Resources ("AER"), a division of Arkla, Inc., filed Substitute Second Revised Sheet No. 5 and Substitute Alternate Second Revised Sheet No. 5 to First Revised Volume No. 1-A of its FERC Gas Tariff in order to correct two clerical errors in AER's May 31, 1991 filing in Docket No. RP91-65-002. AER requests that the Commission accept Substitute Second Revised Sheet No. 5 (or alternatively, for the reasons discussed in the May 31 filing, Substitute Alternate Second Revised Sheet No. 5) for filing and grant waiver of the thirty-day notice requirement, pursuant to 18 CFR 154.22, so that it may become effective July 1, 1991.

AER states that it has (1) corrected the compressor fuel percentages included on these tariff sheets to reflect the lower percentages in its December 31, 1990 filing in Docket No. RP91-65-000, and (2) corrected the gathering only commodity rate to include the amount to be collected by AER pursuant to section 19 of AER's Transportation General Terms and Conditions and the Commission's order dated January 10, 1991 in Docket No. RP91-49-000. AER further states that these corrections are reflected in its corrected filing in Docket No. TM91-1-31-000.

AER states that a copy of its filing has been served on all jurisdictional customers and interested state commissions, and on all parties on the Commission's official service list in Docket No. RP91-65-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14896 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-31-001]

Arkla Energy Resources, a division of Arkla, Inc.; Corrections to Tariff Filing

June 18, 1991.

Take notice that on June 14, 1991, Arkla Energy Resources ("AER"), a division of Arkla, Inc., filed Substitute Third Revised Sheet No. 5 and Substitute Alternate Third Revised Sheet No. 5 to First Revised Volume No. 1-A of its FERC Gas Tariff in order to correct two clerical errors in AER's May 31, 1991 filing in Docket No. TM91-1-31-000. AER requests that the Commission accept Substitute Third Revised Sheet No. 5 (or alternatively, for the reasons discussed in the May 31 filing, Substitute Alternate Third Revised Sheet No. 5) for filing and grant waiver of the thirty-day notice requirement, pursuant to 18 CFR § 154.22, so that it may become effective July 1, 1991.

AER states that it has (1) corrected the compressor fuel percentages included on these tariff sheets to reflect the percentages in its December 31, 1990 filing in Docket No. RP91-65-000, and (2) corrected the gathering only commodity rate to include the amount to be collected by AER pursuant to section 19 of AER's Transportation General Terms and Conditions and the Commission's order dated January 10, 1991 in Docket No. RP91-49-000. AER further states that it is correcting its motion rates filing in Docket No. RP91-65-002 accordingly.

AER states that a copy of its filing has been served on all jurisdictional customers and interested State commissions, and on all parties on the Commission's official service list in Docket No.RP91-49-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14899 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-4-51-000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

June 18, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on June 13, 1991 tendered for filing the following tariff sheets to its FERC Gas Tariff:

Original Volume No. 2

Fourth Revised Sheet No. 3-A
Fourth Revised Sheet No. 53-C

Original Volume No. 3

First Revised Third Revised Sheet No. 2
First Revised Third Revised Sheet No. 3

The tariff sheets were filed to reflect the updated Transporter's Use percentages effective July 1, 1991 pursuant to the provisions of its FERC Gas Tariff.

Great Lakes requested waiver of t notice requirements so as to permit t

tariff sheets to become effective July 1, 1991, as described, in order to implement the Transporter's Use percentages as prescribed by its FERC Gas Tariff.

Any person desiring to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14900 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-174-000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

June 18, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on June 13, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff proposed to be effective August 1, 1991:

First Revised Volume No. 1

Sixth Revised Sheet No. 3

Original Volume No. 2

Tenth Revised Sheet No. 3
Fifth Revised Sheet No. 3-A
Fifth Revised Sheet No. 53-C

Original Volume No. 3

Second Revised Sheet No. 1B
Second Revised Third Revised Sheet No. 2
Second Revised Third Revised Sheet No. 3
Second Revised Sheet No. 6
Second Revised Sheet No. 25
Second Revised Sheet No. 26
Second Revised Sheet No. 27
Second Revised Sheet No. 30
Second Revised Sheet No. 31
Second Revised Sheet No. 32
Second Revised Sheet No. 35
Second Revised Sheet No. 36
Second Revised Sheet No. 38
Second Revised Sheet No. 46
Second Revised Sheet No. 53

Great Lakes states that the above tariff sheets reflect changes, other than in rate level, related to rate schedules FT and IT for transportation service provided under part 284 of the Commission's Regulations to implement certain changes required for the efficient administration of Great Lakes' open access tariff. The need for these changes has become evident during the first seven months of open access operation.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 25, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14901 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-6-58-001]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 17, 1991.

Take notice that Northern Natural Gas Company, (Northern), on June 12, 1991, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to correct its tariff sheets to reflect a new Demand rate component of $4.778 per MMBtu. This rate will be effective July 1, 1991 through September 30, 1991. Northern also advises that the original filing of Docket No. TQ91-6-58-000 contained a provision to waive the PGA surcharge for the period July 1 through September 30, 1991. The original notice did not address such provision.

Copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Northern states that copies of the filing are being served on Northern's jurisdictional sales customers, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14898 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-126-000]

United Gas Pipe Line Co.; Notice

June 18, 1991.

In accordance with the order of the Commission issued April 30, 1991 in this proceeding,[1] a technical conference was held on June 11 and 12, 1991 to discuss the proposed revisions to United's tariff. At the conclusion of the technical conference, the parties agreed that written comments on the matters discussed may be submitted as follows:

July 1, 1991—United will submit initial comments and proposed tariff revisions.

July 12, 1991—Parties may submit comments in light of United's submission.

July 25, 1991—All parties may submit reply comments.

It was further agreed that the parties will deliver their comments, on the dates listed above, to the representative designated on the service list of each party represented at the technical conference. Other parties on the service list in this proceeding will be served by mail.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14902 Filed 6-21-91; 8:45 am]

BILLING CODE 6717-01-M

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[1] 55 FERC 61,152 (1991).

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Office of Fossil Energy

[FE Docket No. 91-10-LNG]

Phillips 66 Natural Gas Company and Marathon Oil Company; Order Amending Authorization To Export Liquefied Natural Gas to Japan

AGENCY: Office of Fossil Energy; Department of Energy.

ACTION: Notice of an order amending authorization to export liquefied natural gas to Japan.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order to Phillips 66 Natural Gas Company (Phillips 66) and Marathon Oil Company (Marathon) amending the pricing provisions of their existing long-term authorization under DOE/ERA Opinion and Order No. 261 to export liquefied natural gas to Japan.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 18, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-14677 Filed 6-21-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-31-NG]

Utrade Gas Co. Application to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 6, 1991, of an application filed by Utrade Gas Company (UTRADE) requesting blanket authorization to export from the United States to Mexico up to 146 Bcf of natural gas on a short-term or spot market basis over a two-year period beginning with the date of first delivery. UTRADE states that it will advise the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 24, 1991.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S.Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

Diane Stubbs, Office of Assistant General Counsel, for Fossil Energy, U.S. Department of Energy, Forrestal Building, room GE-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: UTRADE is a Delaware corporation with its principal place of business in Houston, Texas. According to UTRADE, the gas to be exported would be purchased from U.S. producers on the spot market and would be surplus to domestic need. The requested authority would be used primarily for sales to Petroleos Mexicanos (Pemex), Mexico's national oil company, for local distribution to industrial, commercial and residential users. All sales would result from arms-length negotiations and prices would be determined by market conditions. UTRADE intends to use existing pipelines facilities to export this gas.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notices of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures by provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of UTRADE's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 7, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-14676 Filed 6-21-91; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

L.A. Cruise Ship Terminals, Inc./ Metropolitan Stevedore Co. et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200129-002.

Title: L.A. Cruise Ship Terminals, Inc./Metropolitan Stevedore Company Terminal Agreement.

Parties:

L.A. Cruise Ship Terminals, Inc.

Metropolitan Stevedore Company.

Synopsis: The Agreement extends the term of the basic agreement to April 30, 1992.

Agreement No.: 224-200532.

Title: Manchester Terminal Corporation/Gulf Stream Marine, Inc. Marine Terminal Agreement.

Parties:

Manchester Terminal Corporation (MTC)

Gulf Stream Marine, Inc. (GSM).

Synopsis: The Agreement, filed June 14, 1991, allows GSM to provide cargo and container loading/unloading and handling at MTC's facilities. The initial term of the Agreement is for one year with a year to year renewal option.

Agreement No.: 224-200520-001.

Title: Georgia Ports Authority/Pan American Independent Line Terminal Agreement.

Parties:

Georgia Ports Authority

Pan American Independent Line (PAIL).

Synopsis: The Agreement, filed June 14, 1991 amends page 2, Article 1, Item 3 of the parties' basic agreement to read "Moving and Grounding" rather than "Mounting and Grounding".

Agreement No.: 224-200482-001.

Title: Georgia Ports Authority/ Companhia Maritima Nacional Terminal Agreement.

Parties:

Georgia Ports Authority

Companhia Maritima Nacional.

Synopsis: The Agreement, filed June 14, 1991, amends page 2, Article 1, Item 3 of the parties' basic agreement to read "Moving and Grounding" rather than "Mounting and Grounding".

Dated: June 18, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14864 Filed 6-21-91; 8:45 am]

BILLING CODE 6730-01-M

Port of Seattle/Samson Tug and Barge Co., Inc; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200531.

Title: Port of Seattle/Samson Tug and Barge Company, Inc. Terminal Agreement.

Parties:

Port of Seattle

Samson Tug and Barge Company, Inc.

Filing Party: Mr. Michael LaTorre, Director, Marine Services, Port of Seattle, P.O. Box 1209, Seattle, WA 98111.

Synopsis: The Agreement, filed June 14, 1991, provides a month to month agreement for the use of approximately 43,560 square feet of open storage yard area at the southwest corner of Terminal 115.

Dated: June 18, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14866 Filed 6-21-91; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. P3-91]

Trailer Marine Transport Corp. Application for Section 35 Exemption Puerto Rico and Virgin Island Trades

Notice is hereby given that Trailer Marine Transport Corporation ("TMT") has applied for an exemption pursuant to section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a. Specifically, TMT seeks an order from the Federal Maritime Commission to enlarge existing rate reduction exemptions from section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, in the Puerto Rico and Virgin Islands trade, to allow publication on one day's notice of all individual carrier actions resulting in cost reductions to shippers.

In order for the Commission to make a thorough evaluation of the application for exemption, interested persons are requested to submit views or arguments on the application no later than July 22, 1991. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 in an original and 15 copies. Responses shall also be served on William H. Fort, Esq., Fort & Schlefer, 1401 New York Avenue, NW., Suite 1200, Washington, DC 20005.

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Copies of the application are available for examination at the Washington, DC office of the Commission, 1100 L Street, NW., room 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14865 Filed 6-2-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Alpha Financial Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 15, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Alpha Financial Group, Inc., Minonk, Illinois; to acquire 67.9 percent of the voting shares of Washburn Bancshares, Inc., Washburn, Illinois, and thereby indirectly acquire The Washburn Bank, Washburn, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. The Merchants Holding Company, Winona, Minnesota; to acquire 28.72 percent of the voting shares of Bank of Melrose, Melrose, Wisconsin.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lawrence Financial Corporation, Lawrence, Kansas; to become a bank holding company by acquiring University National Bank, Lawrence, Kansas, successor to The Savings Bank of Lawrence F.S.B., Lawrence, Kansas.

Board of Governors of the Federal Reserve System, June 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14915 Filed 6-21-91; 8:45 am]

BILLING CODE 6210-01-F

Jan Schultz, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 15, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Jan Schultz, Margaret Schultz and John DiGiovanni of La Grange Park, Illinois; Frederick Brooks of St. Charles, Illinois; Michael Colbert of Schaumburg, Illinois; Anthony Kesman, Jr. of Lake Forest, Illinois; Jeannie Schultz of Olathe, Kansas; and William Handley of Bradenton, Florida; to acquire at least 26.6 percent of the voting shares of 1st Brookfield, Inc., Brookfield, Illinois, for a total of 31.0 percent, and thereby indirectly acquire First National Bank of Brookfield, Brookfield, Illinois.

Board of Governors of the Federal Reserve System, June 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14916 Filed 6-21-91; 8:45 am]

BILLING CODE 6210-01-F

United Security Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 15, 1991.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. United Security Bancorporation, Chewelah, Washington; to retain ownership of the assets of JLM Insurance Agency, Colville, Washington, and Ron Lee Insurance Agency, Chewelah, Washington, and thereby engage in insurance agency activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Colville, Washington, and Chewelah, Washington.

Board of Governors of the Federal Reserve System, June 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14917 Filed 6-21-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-36]

Quarterly Health Assessments Completed and Health Assessments to be Conducted in Response to Requests From the Public

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Pubic Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice contains the following: (1) A list of sites for which ATSDR has completed a health assessment, or issued an addendum to a previously completed health assessment, during the period January–March 1991. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL). (2) A list of sites for which ATSDR, during the same period, has accepted a request from the public to conduct a health assessment (petitioned health assessment). Acceptance of a request for the conduct of a health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a health assessment at the site.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639-0610, FTS 238-0610.

SUPPLEMENTARY INFORMATION: A list of completed health assessments, health assessments with addenda, and petitioned health assessments which were accepted by ATSDR during October–December 1990 was published in the Federal Register on Friday, March 22, 1991 (56 FR 12204). The quarterly announcement is the responsibility of ATSDR under the regulation, Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). The rule sets forth ATSDR's procedures for the conduct of health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9604(i)] and appeared in the Federal Register on February 13, 1990 (55 FR 5136).

Availability

The completed health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 31, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed health assessments are now available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487-4650. There is a charge determined by NTIS for these health assessments. The NTIS order numbers are listed in parentheses after the site name.

1. Health Assessments or Addenda Completed or Issued for NPL Sites

Between January 1, 1991, and March 31, 1991, health assessments or addenda to health assessments were issued for the NPL sites listed below:

California

CTS Printex, Inc.—Mountain View (PB91-173534)

Connecticut

Gallup's Quarry Site—Plainfield (PB91-173492)

Idaho

Bunker Hill Mining and Metallurgical Complex—Kellogg (PB91-173104)

Iowa

Chemplex Company—Clinton (PB91-173153)

E.I. DuPont (County Road X-23), James Baier Farm Site and McCarl Farm Site—West Point (PB91-173526)

Kentucky

Green River Disposal, Inc.—Maceo (PB91-173146)

Massachusetts

Sullivan's Ledge—New Bedford (PB91-173500)

New Hampshire

Kearsarge Metallurgical Corporation—Conway (PB91-176545)

New York

Action Anodizing, Plating, and Polishing Corporation—Coplaque (PB91-173757)

C&J Disposal Leasing Company Dump—Eaton (PB91-173138)

Circuitron Corporation—Farmingdale (PB91-173112)

Niagara Mohawk Power Corporation (Saratoga Springs Plant)—Saratoga Springs (PB91-173096)

North Dakota

Old Minot Landfill—Minot (PB91-173120)

Pennsylvania

AMP, Inc. (Glen Rock Facility)—Glen Rock (PB91-173518)

East Mount Zion—Springettsbury Township (PB91-173633)

Vermont

Tansitor Electronics, Inc.—Bennington (PB91-173658)

Virginia

Arrowhead Associates, Inc./Scoville Corporation—Montross (PB91-173880)

Suffolk City Landfill—Suffolk (PB91-173666)

2. Petitions for Health Assessments Accepted

Between January 1, 1991, and March 31, 1991, ATSDR determined that there was a reasonable basis to conduct a health assessment for the sites or facilities listed below in response to requests from the public. As of March 31, 1991, ATSDR has initiated a health assessment at these sites.

Kentucky

National Coil Electric—Dayhoit

Mississippi

Country Club Lakes Estates—Hattiesburg

Dated: June 17, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-14918 Filed 6-21-91; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Hanford Thyroid Morbidity Study Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Time and Date: 8:30 a.m.–5:15 p.m., July 9, 1991, 7:30 p.m.–9 p.m., July 9, 1991, 8:30 a.m.–2 p.m., July 10, 1991.

Place: Fred Hutchinson Cancer Research Center, 9th Floor Conference Room, 1124 Columbia Street, Seattle, Washington 98104.

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Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study.

Matters to be Discussed: This is the second meeting of the Hanford Thyroid Morbidity Study Advisory Committee and the first to be held in the northwest. The Committee will listen to presentations by a number of interest groups and will comment on the status of various components of the Hanford Thyroid Morbidity Study. Specifically, the discussions will focus on scientific rationale, tribal activities and plans, and clinical detection of thyroid disease. On July 9 at 7:30 p.m., the meeting will continue in order to allow more time for public input and comment not addressed during the morning and afternoon sessions.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mike Sage, Committee Manager, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., (F-28), Atlanta, Georgia 30333, telephone 404/488-4613 or FTS 236-4613.

Dated: June 18, 1991.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-14919 Filed 6-21-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91E-0106]

Determination of Regulatory Review Period for Purposes of Patent Extension; Bepadin® and Vascor®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Bepadin® and Vascor® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims these human drug products.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20657.

FOR FURTHER INFORMATION CONTACT: Richard Klein, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently simultaneously approved for marketing the human drug products Bepadin® and Vascor®. Both Bepadin® and Vascor® (bepridil hydrochloride) are indicated in chronic stable angina. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Bepadin® and Vascor® (U.S. Patent No. RE. 30,577) from Riom Laboratories C.E.R.M., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated April 12, 1991, advised the Patent and Trademark Office that these human drug products had undergone a regulatory review period and that the approval of the active ingredient, bepridil hydrochloride, represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine these products' regulatory review period.

FDA has determined that the applicable regulatory review period for Bepadin® is 4,658 days. Of this time, 2,108 days occurred during the testing phase of the regulatory review period, while 2,550 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The Date an Exemption Under Section 505(i) of the Federal Food, Drug, and Cosmetic Act Became Effective

March 30, 1978. The applicant claims March 24, 1977, as the date the investigational new drug (IND) application for Bepadin® became effective. However, FDA records indicate that IND became effective on March 30, 1978.

2. The Date the Application Was Initially Submitted With Respect to the Human Drug Product Under Section 505(b) of the Federal Food, Drug, and Cosmetic Act

January 5, 1984. The applicant claims December 28, 1983, as the date the new drug application (NDA) for Bepadin® (NDA 19-001) was initially submitted. However, FDA records indicate that the application was received on January 5, 1984.

3. The Date the Application was Approved

December 28, 1990. FDA has verified the applicant's claim that NDA 19-001 was approved on December 28, 1990.

FDA has determined that the applicable regulatory review period for Vascor® is 3,207 days. Of this time, 649 days occurred during the testing phase of the regulatory review period, while 2,558 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The Date an Exemption Under Section 505(i) of the Federal Food, Drug, and Cosmetic Act Became Effective

March 20, 1982. The applicant claims March 17, 1982, as the date the investigational new drug (IND) application for Vascor® became effective. However, FDA records indicate that the IND became effective on March 20, 1982.

2. The Date the Application was Initially Submitted With Respect to the Human Drug Product Under Section 505(b) of the Federal Food, Drug, and Cosmetic Act

FDA has verified the applicant's claim that NDA 19-002 was received on December 28, 1983.

3. The Date the Application was Approved

December 28, 1990. FDA has verified the applicant's claim that NDA 19-002 was approved on December 28, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 23, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before December 23, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 17, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-14934 Filed 6-21-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Systems of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for two existing systems of records.

SUMMARY: HCFA is proposing to add a new routine use to two existing systems of records: the "Municipal Health Services Program," HHS/HCFA/ORD No. 09-70-0022, and the "Person-Level Medicaid Data System," HHS/HCFA/ORD No. 09-70-0033. In addition, we are taking this opportunity to make minor editorial changes to the "Municipal Health Services Program." We invite comments on these changes.

EFFECTIVE DATES: The proposed changes shall take effect July 24, 1991, unless comments received on or before that date would warrant modification to the notice.

ADDRESSES: The public should address comments to: Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, room 108 Security Office Park Building, 7006 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Sydney P. Galloway, Office of Operations Support, Office of Research and Demonstrations, Health Care Financing Administration, room 2226 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966-6645.

SUPPLEMENTARY INFORMATION: The notice for the "Municipal Health Services Program," HHS/HCFA/ORD No. 09-70-0022, was most recently published in the Privacy Act Issuances, 1989 Compilation, Volume 1, Page 380. This system consists of bills and records submitted by clinics in the Municipal Health Services Program demonstrations to claim Federal reimbursement for services provided to Medicare beneficiaries.

The notice for the "Person-Level Medicaid Data System," HHS/HCFA/ORD No. 09-70-0033, was most recently published in the Privacy Act Issuances, 1989 Compilation, Volume I, Page 387. This system consists of unit record data files on all Medicaid enrollment, providers, and claims for hospital, physician, nursing home, prescription drug, and other Medicaid covered services in selected States beginning in 1980. This information contained in the records is obtained from existing State Medicaid Management Information Systems. The purpose of this system of records is to study Medicaid use and expenditures for basic research/information purposes and policy analysis.

HCFA's research routine use is normally included in all of HCFA's program system notices. We are proposing to add this routine use which was inadvertently left out of each of these systems of records. This will modify the system notice to permit HCFA to release data to research contractors and awardees and to contractors and awardees of other Federal agencies. These releases will be for research and evaluation projects that are determined by HCFA to be significant and which do not violate the agreements under which these data were voluntarily supplied by individual States and for which there is reasonable probability that the project will accomplish its objectives. Strict protection of the data by the requestor is required.

This routine use is similar in nature to the standard routine use that permits disclosure to a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in a system or for developing, modifying and/or manipulating ADP software.

To comply with the requirements of the Privacy Act, we are proposing to establish the routine use below, adding to previously published uses.

To an individual or organization for research or evaluation, if HCFA:

a. Determines that the proposed use does not violate the legal limitations under which the record was provided, collected, or obtained;

b. Determines that the proposed use does not violate the understandings with the States that voluntarily supplied the data;

c. Determines that the purpose for which the proposed use is to be made:

(i) Cannot be reasonably accomplished unless the record is provided in an individually identifiable form, and

(ii) Is of sufficient importance to warrant the effect on and/or risk to the privacy of the individual that additional exposure of the record might bring, and

(iii) There is a reasonable probability that the objective of the use would be accomplished;

d. Requires the recipient of the information to:

(i) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(ii) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and receives written authorization from HCFA that it is justified based on research objectives for retaining such information, and

(iii) Make no further use of the record except:

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(a) Under emergency circumstances affecting the health or safety of any individual,

(b) For use in another research project, following written authorization of HCFA,

(c) For disclosure to an identified person approved by HCFA for the purpose of auditing the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

e. Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

This new routine use is compatible with the purposes for which the information is collected because each system was established, in large part, to permit research (or evaluation) to be conducted. Addition of this new routine use can be accomplished with no reduction in Medicare beneficiary or Medicaid enrollee privacy because HCFA will impose requirements on the recipient of the data who must agree in writing to protect the data from unauthorized access and from being disclosed in a form that permits identification of individuals.

We are also taking this opportunity to make minor changes to the system notice for the "Municipal Health Services Program," HHS/HCFA/ORD No. 09-70-0022. These include extending the expiration date, changing the name of the evaluator and the location of the system, and updating the list of the clinics.

This action does not require a report of altered system under 5 U.S.C. 552a(o). For the convenience of the reader, the complete system notices are reprinted below.

Dated: June 18, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09-70-0022

SYSTEM NAME:

Municipal Health Services Program.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration (Primary Location), Office of Operations Support, Office of Research and Demonstrations (ORD), Division of Research and Demonstrations Systems Support, 6325 Security Boulevard, Baltimore, Maryland 21207; and Mathematica Policy Research, Inc., PO Box 2393, Princeton, New Jersey 08543-2393

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries who obtain health care services at any of the clinics being funded under the Municipal Health Services Program (MHSP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Bills and records submitted by MHSP clinics to claim Federal reimbursement for services provided to Medicare beneficiaries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402(a) of the Social Security Amendments of 1967, as amended by section 222(b)(1) of Public Law 92-603, and section 6135 of the Omnibus Budget Reconciliation Act of 1986, Public Law 101-239.

PURPOSE(S):

To provide billing data necessary to permit reimbursement and evaluation of the clinics participating in the MHSP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

1. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

2. The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components);

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. To contractors for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system.

4. To an individual or organization for a research, demonstration, evaluation, or epidemiologic project related to the prevention of disease or disability or the restoration or maintenance of health if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished.

c. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the researching project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Makes no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with the written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the recipient's understanding of a willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

ORD will store data of hardcopy billing forms and machine readable media in secure storage areas.

RETRIEVABILITY:

ORD retrieves the data by beneficiary name, date of service, and clinic name. ORD will use the data to determine the appropriate level of reimbursement to be made to MHSP clinics.

SAFEGUARDS:

ORD will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. ORD will store hardcopies of forms in the file cabinets in a locked office. For computerized records, HCFA will initiate ADP systems security procedures with reference to the guidelines contained in the HHS Information Resource Management Manual, Part 6, ADP System Security (e.g., HHS will store machine readable media in locked cabinets in a locked room accessible only to authorized personnel).

RETENTION AND DISPOSAL:

ORD will retain hardcopy bills and machine readable media tapes with identifiers in secure storage areas. HCFA waivers permitting reimbursement to MHSP clinics will be effective through December 1993. Therefore HCFA will retain all hardcopy and magnetic tape of disc data until December 1994. At that time, HCFA will destroy all hardcopy and strip all machine readable media of all identifying names and numbers by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

Individuals should address inquiries and requests concerning system records to the system manager, named above, specifying name, date of service, and clinic.

RECORD ACCESS PROCEDURE:

Any beneficiary who participates in the MHSP may request his or her data record in writing. Access procedure is the same as notification procedure. Requestor should also reasonably specify the record contents being sought. These procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

The information contained in this record system originates at MHSP clinics, specified in Appendix A to this notice, whenever a Medicare beneficiary obtains clinic services. Clinics in three of the cities, specified in Appendix B to this notice, will store hardcopies or machine readable media copies of the bills in their city health departments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Participating Centers and Clinics

Baltimore

Albert Wittke Medical Center, 3411 Bank Street, Baltimore, MD 21224
Brehms Lane Medical Center, 3400 Brehms Lane, Baltimore, MD 21213
Hollander Ridge Health Center, 2000 Odell Avenue, Baltimore, MD 21237
Matilda Koval Medical Center, 2323 Orleans Street, Baltimore, MD 21224
Washington Village Community Health Center, 700 Washington Boulevard, Baltimore, MD 21230

San Jose

Chaboya Clinic, 2410 Senter Road, San Jose, CA 95111
Family Health Foundation of Alviso, Inc., Alviso Health Center, 1621 Gold Street, Alviso, CA 95002
Gardner Health Center, Inc., 195 East Virginia Street, San Jose, CA 95112
St. James Health Center, 55 Julian Street, San Jose, CA 95102
Santa Clara Valley Medical Center, East Valley Clinic, 1993 McKee Road, San Jose, CA 95116

Cincinnati

Braxton Cann Memorial Health Center, 5919 Madison Road, Cincinnati, OH 45227
Northside Health Center, 3917 Spring Grove Avenue, Cincinnati, OH 45223
Winton Hills Medical and Health Center, 5275 Winneste Avenue, Cincinnati, OH 45232

Milwaukee

Capitol Drive Community Health Center, 2411 W. Capital Drive, Milwaukee, WI 53206
Isaac Coggs Community Health Center, 2770 North Fifth Street, Milwaukee, WI 53212
Johnston Community Health Center, 1230 W. Grant Street, Milwaukee, WI 53215

Appendix B—City Health Departments Where Records Will be Stored

Cincinnati Department of Health, 3101 Burnet Avenue, Cincinnati, OH 45229
Milwaukee Department of Health, 841 N. Broadway, Milwaukee, WI 53202
Baltimore City Department of Health, 303 East Fayette Street, Baltimore, MD 21202

09-70-0033

SYSTEM NAME:

Person-Level Medicaid Data System, HHS/HCFA/ORD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Research, ORD, HCFA, 6325 Security Boulevard, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are enrolled in the Medicaid program under either Federal or State provisions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data from 5 State Medicaid agencies (California, Georgia, Michigan, New York, and Tennessee) showing the demographic characteristics of the enrolled population, claims submitted for covered medical services, and provider characteristics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1902(a)(6) of the Social Security Act (42 U.S.C. 1396(a)(6)).

PURPOSE(S):

To study Medicaid use and expenditures in order to increase HCFA's understanding of the Medicaid and Medicare programs and to improve HCFA's ability to conduct program evaluation, strengthen program management, evaluate policy alternatives, conduct and evaluate demonstration projects, and advise States in the area of Medicaid financing. The proposed system will be used for purposes of research and statistics only.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made.

(1) To a Congressional office from the records of an individual in response to

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an inquiry from the Congressional office made at the request of that individual.

(2) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system.

(3) To a State Medicaid agency of a State participating in the Person-Level Medicaid Data System project. Disclosure may be made to a State only of data on eligibles in that State and only for purposes of research and statistics.

(4) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

To an individual or organization for research or evaluation, if HCFA:

a. Determines that the proposed use does not violate the legal limitations under which the record was provided, collected, or obtained;

b. Determines tht the proposed use does not violate the understandings with the States that voluntarily supplied the data;

c. Determines that the purpose for which the proposed use is to be made:

(i) Cannot be reasonably accomplished unless the record is provided in an individually identifiable form, and,

(ii) Is of sufficient importance to warrant the effect on and/or risk to the privacy of the individual that additional exposure of the record might bring, and

(iii) There is a reasonable probability that the objective of the use would be accomplished;

d. Requires the recipient of the information to:

(i) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(ii) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and receives written authorization from HCFA that it is justified based on research objectives for retaining such information, and

(iii) Make no further use of the record except:

(a) Under emergency circumstances affecting the health or safety of any individual,

(b) For use in another research project, following written authorization of HCFA,

(c) For disclosure to an identified person approved by HCFA for the purpose of auditing the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

e. Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic tape and computer disk.

RETRIEVABILITY:

Enrollment records are retrieved by Medicaid and Medicare identification numbers. Provider records are retrieved by Medicaid and Medicare provider identification numbers. Claims records contain both enrollee and provider identification numbers.

SAFEGUARDS:

For computerized records, safeguards established in accordance with guidelines in the DHHS ADP Systems Manual, Part 6, "ADP Systems Security," (e.g., security codes, use of passwords) will be used, limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers as long as needed for program research. Records will be disposed 3 years after research is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address shown above and give: (1) Name of system, (2) Medicaid identification number, (3) person's name, (maiden name, if applicable), (4) social security number (provision of social security number is voluntary), (5) address, (6) date of birth, and (7) sex. To ascertain whether the individual had utilization, give date of service and type of Medicaid service (i.e., outpatient, physician, dental, prescription, long-term care, home health, inpatient acute care, etc.).

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents.

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above, and reasonably identify the record and specify the information being contested. State the reason for contesting the records procedure with supporting justification, (e.g., why it is inaccurate, irrelevant, incomplete or not current).

RECORD SOURCE CATEGORIES:

Medicaid and Medicare enrollment, claims, and provider records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91-14940 Filed 6-21-91; 8:45 am]
BILLING CODE 4120-03-M

Health Resources and Services Administration

Availability of Funds for Demonstration Grants to States for Community Scholarship Programs

AGENCY: Health Resources and Services Administration.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $500,000 is available in fiscal year (FY) 1991 for demonstration grants to states for Community Scholarship Programs (CSP), as authorized under Section 338L of the Public Health Service Act.

Grants will be awarded to States for the purpose of increasing the availability of primary health care in urban and rural health professional shortage areas (HPSA) by assisting community organizations in rural and urban areas to provide scholarships for the education of individuals to serve as health professionals in these areas.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This grant program is related to the following priority area: To increase the availability of primary health care in urban and rural HPSAs by assisting community organizations located in HPSAs in providing scholarships for the education of individuals to serve as primary care health professionals in these areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0325 (telephone number 202-783-3238).

DUE DATES: To receive consideration, grant applications must be received by the Grants Management Office indicated below by July 25, 1991. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Applications received after the announced closing date will not be considered for funding and will be returned to the applicant.

ADDRESSES: An application kit (Form PHS 5161-1 as approved by the OMB under control number 0937-0189) may be requested by calling (301) 443-5887 or writing, to: Mrs. Harriet Green, Grants Management Branch (GMB), Bureau of Health Care Delivery and Assistance, 12100 Parklawn Drive, Rockville, Maryland 20857. Completed applications must be mailed to the same address. The GMB can also provide assistance on business management issues.

FOR FURTHER INFORMATION CONTACT: For further program information and technical assistance please contact Ms. Cheryl A. LaPointe, M.P.H., National Health Service Corps, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, 5600 Fishers Lane, room 7A-29, Rockville, Maryland 20857, (301) 443-1470.

SUPPLEMENTARY INFORMATION: Under this program, States will enter into agreements with public or private nonprofit community organizations located in HPSAs which will recruit qualified residents of their communities and provide scholarships to them to become physicians, certified nurse practitioners, certified nurse midwives, or physician assistants based on the needs of the communities.

This demonstration grant program is intended to be consistent with the efforts of the National Health Service Corps (NHSC) Scholarship and Loan Repayment Programs to meet the needs of underserved populations within HPSAs through the placement of primary care practitioners.

Grants averaging $45,000 will be made to up to 15 States, and only one grant will be made to each State annually. All awards will be for one year with project periods of up to three years. The number of grants will depend on the number of scholarships and types of practitioner training requested by the States. In an effort to assist the States and their communities in recruiting primary care practitioners, the Federal portion of the grant will provide for 40 percent of the costs of each scholarship. The States and local communities will be responsible for the remainder of the costs of the CSP. The Secretary is required by statute (Section 338L(1)(3) of the PHS Act) to ensure that, to the extent practicable, not less than 50 percent of the amount appropriated will be in the aggregate expended for making grants to community organizations that are located in rural HPSAs. In carrying out this requirement, however, the Secretary may not deny grants to States in which no rural HPSAs are located.

In order for a State to receive a grant under this program, the State must:

1. Have received funding for at least one grant, cooperative agreement, or contract under any provision of the Public Health Service Act other than section 338L, for the fiscal year for which the State is applying;

2. Agree that the grant program carried out by the State will be administered directly by a single State agency;

3. Agree to make grants to community organizations located in HPSAs in order to assist those community organizations in providing scholarships to individuals enrolled or accepted for enrollment as full-time students in health professions schools (see definition of "primary health care");

4. Agree that forty percent of the total costs of the scholarship will be paid from the Federal grant made to the State;

5. Agree that sixty percent of the total costs of the scholarship will be paid from non-Federal contributions made in cash by both the State and the community organization through which the scholarship is provided.

a. The State must make available through these cash contributions not less than 15 percent nor more than 25 percent of the scholarship costs.

b. The community organization must make available through these cash contributions not less than 35 percent nor more than 45 percent of the scholarship costs.

Non-Federal contributions provided in cash by the State and community organization (as in a and b above) may not include any amounts currently provided by the Federal Government to the State, or community organization involved, or to any other entity.

Non-Federal contributions required may be provided directly by the State and community organization involved, and may be provided through donations from public and private entities.

The Secretary will not award a grant unless the State involved agrees to carry out the purpose of the CSP grant program by operating a program through which the State makes grants to community organizations located in HPSAs in order to assist the organizations with the costs of entering into contracts under which—

1. Each community organization agrees to provide scholarships to individuals for attendance at health professional schools;

2. Each individual who is to receive a scholarship agrees to provide primary health care in a HPSA in which a community organization is located for:

a. A number of years equal to the number of years for which the scholarship is provided, or for a period of 2 years, whichever period is greater; or

b. Such greater period of time as the individual and the community organization may agree.

For purposes of this program, the term "primary health care" means health

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services regarding family medicine, internal medicine, pediatrics, or obstetrics and gynecology, that are provided by physicians, certified nurse practitioners, certified nurse midwives, or physician assistants.

Scholarship Contracts

To receive a grant, the State must agree that it will award a grant to a community organization for scholarships only if:

1. The individual who is to receive the scholarship under a contract is a resident of the HPSA in which the community organization is located.

2. The individual is enrolled or accepted for enrollment as a full-time student in a health professions school that is accredited by a body or bodies recognized for accreditation purposes by the Secretary of Education.

3. The individual agrees to maintain a level of academic standing at the school at which a full-time student retains eligibility to continue in attendance in school under the school's standards and practices.

4. The individual and the community organization agree that the scholarship:

a. Will be expended only for tuition expenses, other reasonable educational expenses, reasonable living expenses incurred while in attendance at the school, and for payment to the individual of a monthly stipend not more than the amout authorized for NHSC scholarship recipients under section 338A(g)(1)(B) of the PHS Act; and

b. Will not, for any year of such attendance for which the scholarship is provided, be in an amount exceeding the total amount required for the year for the purposes indicated in paragraph (a) above.

5. The individual agrees to meet the educational, certification, and licensure requirements necessary to become a physician, nurse practitioner, midwife, or physician assistant in the State in which the individual is to practice under the contract.

6. The individual agrees that, in providing primary health care pursuant to the scholarship, the individual (a) will not, in the case of an individual seeking care, discriminate on the basis of the ability of the individual to pay for such care or on the basis that payment for such care will be made pursuant to the program established in title XVIII of the Social Security Act (Medicare) or pursuant to the program established in title XIX of such Act (Medicaid), and (b) will accept assignment under section 1842(b)(3)(B), 1842(b)(3)(B)(ii) of the Social Security Act for all services for which payment may be made under part B of title XVIII of such Act, and will enter into an appropriate agreement with the State agency that administers the State plan for medical assistance under title XIX of such Act to provide service to individuals entitled to medical assistance under the plan.

Evaluaton Criteria

Applications for grants will be reviewed and evaluated according to the following criteria

(a) The extent to which the application describes a mechanism to determine the appropriateness of a community organization's participation in the CSP;

(b) The strength of the applicant's plan to monitor and evaluate a CSP;

(c) The ability of the applicant to administer a CSP, i.e., the administrative and managerial capability and staff experience;

(d) The extent to which the application justifies and documents the number and type of primary care providers the State proposes to support through this program relative to the needs of the community;

(e) The level of community commitment and involvement with the program including coordination with other Federal, State, and community programs for meeting health professional needs;

(f) The extent to which the applicant's and community's recruitment plans are consistent with long-term plans for meeting the needs of the community's primary care system; and

(g) The extent to which the application provides estimates of the amounts of the grant funds that will be expended on primary care for rural HPSAs and a similar estimate for urban HPSAs.

Other Grant Information

The CSP demonstration grant program is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package for this program will include a list of States with review systems and the single point of contact (SPOC) in each State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline. The Bureau of Health Care Delivery and Assistance does not guarantee that it will accommodate or explain its response to State process recommendations received after that date.

Grants will be administered in accordance with HHS regulations in 45 CFR part 92.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.

Dated: May 13, 1991.

John H. Kelso,

Acting Administrator.

[FR Doc. 91-14698 Filed 6-21-91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-010-01-4130-09-2519]

Availability of Final Environmental Impact Statement and Record of Decision on the Betze Mining Plan-of-Development in Northeastern Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the final environmental impact statement and record of decision on the Betze Mining Plan-of-Development in Northeastern Nevada.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior has prepared, by a third party contractor, a final environmental inpact statement (EIS) on the Betze plan-of-development in Northeastern Nevada, and has made copies of the document available for public review.

In addition, the BLM has released simultaneously with the FEIS, the Record of Decision (ROD) for the Betze Project. This project cannot begin until at least the public has had at least thirty days to review the FEIS.

The final EIS analyzes the environmental impacts that would result from the expansion of an existing open pit mining operation and the alternatives to that project.

DATES: Written comments on the final EIS and ROD will be accepted until July 22, 1991.

ADDRESSES: A copy of the final EIS and ROD can be obtained from: District Manager, Bureau of Land Management, ATTN: Betze Coordinator, P.O. Box 831, Elko, NV 89801.

The final EIS is available for inspection at the following locations: BLM State Office (Reno), Carson City, Ely, and Elko County Libraries, and the University of Nevada libraries in Reno and Las Vegas.

Written responses may be sent to the above address on or before close of business on July 22, 1991.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Nick Rieger at (702) 753-0200.

Dated: June 11, 1991.

Rodney Harris,

District Manager.

[FR Doc. 91-14678 Filed 6-21-91; 8:45 am]

BILLING CODE 4310-HC-M

[CO-010-01-4320-02]

Craig Colorado Advisory Council; Meeting

Time and date: July 10, 1991 10 a.m.

Place: BLM—Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters to be Considered

1. Status Report on Resolutions.
2. Status of Occidental C-b.
3. Colorado Division of Wildlife's Harvest Statistics.
4. Colorado Division of Wildlife's Deer, Elk, and Antelope Program Issues.
5. Habitat Partnership Program Update.
6. Recreation 2000.
7. Election of Officers.

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, phone (303) 824-8261.

Dated: June 14, 1991.

Jerry L. Kidd,

Associate District Manager.

[FR Doc. 91-14677 Filed 6-21-91; 8:45 am]

BILLING CODE 4310-JB-M

[UT-060-01-4320-02]

Moab District Grazing Advisory Board Meeting

June 14, 1991.

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Moab District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Moab District Grazing Advisory Board will be held on July 23, 1991. The meeting will be conducted during a field tour of the Comb Wash Coordinated Resource Management (CRMP) Planning Area west of Blanding, Utah. Participants in the tour will meet at the San Juan Resources Area office, 435 North Main, Monticello, Utah at 10 a.m. on July 23, 1991. The public will need to provide their own transportation for the tour, some of the roads which are on the tour route may require four-wheel drive. The tour site is approximately 50 miles southwest of Monticello, Utah.

Agenda items which will be discussed during the tour include:

1. Description/briefing on the Comb Wash CRMP;
2. Update on Range Valley Mountain CRMP/Habitat Management Plan;
3. Update on San Rafael and San Juan Final Resource Management Plans;
4. Update on Drought problems and concerns;
5. Briefing on Nature Conservancy's Acquisition of the Cunningham Ranch.

The meeting and tour is open to the public. Interested persons may make oral statements to the Board or file written statements for the Board's consideration. Anyone wishing to make an oral statement must submit a written summary of their statement to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532 by July 19, 1991. Written statements submitted for the Board's consideration must be received at the above address on or before July 19, 1991. Summary minutes of the Board meeting will be maintained in the District office and will be available within thirty (30) days following the meeting.

Gene Nodine,

District Manager.

[FR Doc. 91-14639 Filed 6-21-91; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-060-4320-10-005]

Roswell District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Grazing Advisory Board, Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

DATES: Tuesday, July 23, 1991, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

LOCATION: BLM Roswell District Office, 1717 West Second St., Roswell, New Mexico 88201.

FOR FURTHER INFORMATION CONTACT: David L. Mari, Associate District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88202-1397.

SUPPLEMENTARY INFORMATION: The agenda will consist of review and discussion of FY 92 Range Improvement Projects, and as time permits, updates on land exchanges, Resource Management Plans, Archeological Studies-land exchanges, quarterly billings, monitoring studies, and GAO visit to Carslbad Resource Area. The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by July 16, 1991. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours, within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: June 14, 1991.

Francis R. Cherry, Jr.,

District Manager.

[FR Doc. 91-14679 Filed 6-21-91; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Reclamation

Fish and Wildlife Service

Truckee River Operating Agreement, California and Nevada

AGENCY: Bureau of Reclamation (Interior) and U.S. Fish and Wildlife Service (Interior).

ACTION: Notice of intent to prepare a draft environmental impact statement/draft environmental impact report and notice of public scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and section 21002 of the California Environmental Quality Act, the Bureau of Reclamation (Reclamation), the U.S. Fish and Wildlife Service, and the California Department of Water Resources will prepare a joint draft environmental impact statement/draft environmental impact reprot (DEIS/DEIR) for an operating agreement for the Truckee River reservoirs in California and Nevada. The purpose of this project is to

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modify the current method of river regulation and coordinate the operation of the Truckee River reservoirs to improve the management of instream flows in the Truckee River basin, provide a municipal water supply during drought periods for the Reno-Sparks area, and enhance spawning flows for the endangered cui-ui and threatened Lahontan cutthroat trout in the lower Truckee River.

DATES/ADDRESSES: Five public meetings have been scheduled to solicit public input to determine alternatives to the proposed action and the scope of the DEIS/DEIR and to identify significant issues related to the proposed action:

- July 22, 1991, 7 p.m., Tahoe-Truckee Sanitation Agency, Joerger Drive, Truckee, California (Highway 267 to Joerger Drive, next to Teichert Aggregate);
- July 23, 1991, 7 p.m., City of South Lake Tahoe Council Chambers, 1900 Lake Tahoe Boulevard, South Lake Tahoe, California;
- July 24, 1991, 1 p.m., City of Reno Council Chambers, 400 South Center, Reno, Nevada;
- July 24, 1991, 7 p.m., Pyramid Lake Paiute Indian Tribal Council Chambers, Nixon, Nevada; and
- July 25, 1991, 7 p.m., Fallon Community Center, 100 Campus Way, Fallon, Nevada.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Olson, Bureau of Reclamation, Lahontan Basin Projects Office, 705 N. Plaza St., P.O. Box 640, Carson City, Nevada 89702, Telephone: (702) 882-3436; Mr. Tom Strekal, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Reno, Nevada 89502, Telephone: (702) 784-5227; or Ms. Sandra Maxwell, California Department of Water Resources, Central District, 3251 "S" Street, Sacramento, California 95816, Telephone: (916) 445-2592.

SUPPLEMENTARY INFORMATION: The Truckee River Operating Agreement is authorized in section 205 of title II (known as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act") of Public Law 101-618 (Pub. L. 101-618). The major purposes of title II are to ratify and implement a settlement involving the Pyramid Lake Paiute Tribe, the Sierra Pacific Power Company, the States of California and Nevada, the Federal Government, and other parties regarding apportioning Truckee River, Carson River, and Lake Tahoe waters, enhancing threatened and endangered species, and preserving wetlands.

Certain provisions of Pub. L. 101-618 will not take effect until several agreements, including the Truckee River Operating Agreement, are signed. The lakes and reservoirs affected by the operating agreement include both Federal (Lake Tahoe and Prosser Creek, Stampede, and Boca Reservoirs) and private facilities (Donner and Independence Lakes). The operating agreement does not require constructing any new water supply facilities. However, mitigation measures implemented as part of the agreement could include modifying existing facilities, such as installing stream gauges.

Alternatives being considered involve various changes to the existing streamflow requirements (known as Floriston rates or reduced Floriston rates, as established by Federal District Court decree) for the Truckee River at certain times of the year. Other alternatives may include altering some current procedures regarding reservoir storage and release for the affected reservoirs. These changes would be accomplished by negotiations among the settlement parties and related water rights holders; no third-party water rights would be affected. Other existing requirements, such as flood control criteria of the U.S. Army Corps of Engineers, would also remain unchanged. A no-action alternative will be included in the DEIS/DEIR.

The DEIS/DEIR will be completed and available for review and comment in 1994. Impacts that will be evaluated in the document include the effects of changes in reservoir levels and instream flows on littoral and riparian plants and fish and wildlife resources, water supply and water quality, recreation, and urban development. Other impacts discussed in the document will include those identified in the upcoming scoping process.

Anyone may participate in the scoping process by attending any of the scheduled public meetings. Interested parties may also submit written comments to Reclamation, the Fish and Wildlife Service, or the State of California postmarked no later than Tuesday, September 3, 1991. Anyone interested in more information concerning the propsoed project or who has other significant environmental issues should contact Messrs. Olson or Strekal or Ms. Maxwell at the addresses shown above.

Acting Regional Director,
U.S. Fish and Wildlife Service.

Dated: June 13, 1991.

Terry P. Lynott,

Director, Program Services Division, U.S. Bureau of Reclamation.

June. 11, 1991.

[FR Doc. 91-14880 Filed 6-21-91; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Speckled Pocketbook (Lampsilis streckeri) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the speckled pocketbook mussel (*Lampsilis streckeri*). This species occurs in the Middle Fork of the Little Red River, Arkansas. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 23, 1991, to receive consideration by the Service .

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Stewart at the above address (601/965-4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the speckled pocketbook mussel, *Lampsilis streckeri*. The area of emphasis for recovery actions is the headwater streams of the Little Red River, Arkansas. The historic range within this system has been adversely impacted by impoundment, water pollution and channel modification. Habitat restoration and protection, reestablishing populations and management are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 12, 1991.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 91-14874 Filed 6-21-91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Advisory Board Gulf of Mexico Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Gulf of Mexico Regional Working Group (RTWG) Meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463). The Gulf of Mexico RTWG meeting will be held July 23-24, 1991, 9 a.m. to 4 p.m., at the Holiday Inn Beachfront, Highway 90, Gulfport, Mississippi

The RTWG business meeting will be held July 24, 1991, and tentative agenda items are as follows:

- Roundtable Discussion
- Update on the MIRG Model
- Information Base Review
- Coordination of Coastal Natural Resources Information

FOR FURTHER INFORMATION: This meeting is open to the public. Individuals wishing to make oral presentations to the committee concerning agenda items should contact Ann Hanks of the Gulf of Mexico OCS Regional Office at (504) 736-2589 by July 10, 1991. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123.

A transcript and complete summary minutes of the meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Dated: June 13, 1991.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 91-14897 Filed 6-21-91; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc.

UNICOR Independent Market Study Briefing

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: Efforts are underway to complete an independent market study of UNICOR, based on the objectives set forth in Public Law 101-515 and the statement of work included in the contract awarded to conduct the study (contract # 1PI-C-0009-91). A final public briefing, conducted by Deloitte & Touche, has been scheduled to highlight study findings, conclusions and recommendations. The final study report is due to Congress on August 5, 1991.

DATES: The briefing is scheduled for Thursday, July 25, 1991, from 10 a.m. to 12 noon.

ADDRESSES: The briefing will be held in the Rayburn House Office Building, room 2359A, Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Foreman, (202) 955-4194.

Dated: June 18, 1991.

James Hegarty,

Manager, Market Research, Federal Prison Industries, Inc.

[FR Doc. 91-14986 Filed 6-21-91; 8:45 am]

BILLING CODE 4410-05-M

Office of Special Counsel for Immigration Related Unfair Employment Practices

Immigration Related Employment Discrimination Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, Department of Justice.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices ("OSC") announces the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provision of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration-related employment discrimination. Grants will range in size from $40,000 to $150,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualifies them to educate employers about the antidiscrimination provision of IRCA. Accordingly, OSC will accept proposals from diverse sources, such as not-for-profit community-based organizations, qualified designated entities (QDEs), and local ethnic and immigrants' rights advocacy organizations which serve potential victims of discrimination. OSC also welcomes proposals from trade associations, industry groups, professional organizations, and other not-for-profit entities providing information services to employers.

APPLICATION DEADLINE DATE: August 8,1991.

FOR FURTHER INFORMATION CONTACT: Juan Maldonado, Senior Trial Attorney

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or Pattie McEvoy, Public Affairs Specialist, Office of Special Counsel for Immigration Related Unfair Employment Practices, 1100 Connecticut Ave., NW., suite 800, P.O. Box 65490, Washington, DC 20035-5490. Tels. (202) 653-8121, 1-800-255-7688 (toll-free), (202) 298-0168 (TDD for the hearing impaired), or 1-800-237-2515 [toll-free TDD for the hearing impaired.

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration Related Unfair Employment Practices of the Department of Justice ("DOJ") announces the availability of funds to conduct public education programs concerning the antidiscrimination provision of the Immigration Reform and Control Act of 1986 ("IRCA"), 8 U.S.C. 1324b. Funds will be awarded to selected applicants who propose innovative and effective ways of disseminating information to employers and members of the protected class or to those who can fill a particular need not currently being met.

Background

On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986, Public Law No. 99-603. IRCA makes hiring aliens without work authorization unlawful, and it requires that employers verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions including fines and criminal prosecution.

During congressional debate of IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals simply because they looked or sounded foreign. Consequently, Congress enacted section 102 of IRCA, an antidiscrimination provision. Section 102 prohibits employers from discriminating against citizens and work authorized aliens who are protected individuals in hiring, firing, recruitment or referral for a fee. Protected non-citizens include permanent residents, temporary residents under the amnesty, the Special Agricultural Workers (SAWs) or the Replenishment Agricultural Workers (RAWs), refugees and asylees who apply for naturalization within six months of being eligible to do so. National origin discrimination against *any* work authorized individual is also prohibited. This prohibition applies to employers with four to fourteen employees. National origin discrimination complaints against employers with fifteen or more employees remain under the jurisdiction of the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.

Congress created the OSC to enforce section 102. OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with a specially designated administrative tribunal. OSC also initiates independent investigations of possible section 102 violations.

While OSC has established a record of vigorous enforcement, studies by the U.S. General Accounting Office and others have shown that there is an extensive lack of knowledge on the part of protected individuals and employers about the antidiscrimination provision. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of their responsibilities.

Purpose

OSC seeks to educate both potential victims of discrimination about their rights and employers about their responsibilities under the antidiscrimination provision of IRCA.

Program Description

The program is designed to develop and implement innovative and cost effective approaches to disseminating information regarding IRCA's antidiscrimination provision. The campaign should focus on educating potential victims of employment discrimination about their rights and educating employers about their responsibilities under IRCA. Applications may propose to educate potential victims only, employers only, or both in a single campaign. Proposals should outline the following key elements of the program:

Part I: Targeted Population

The educational efforts under the grant should be directed to (1) work authorized aliens who are protected individuals, since this group is especially vulnerable to employment discrimination, and/or to (2) employers. The proposals should define the characteristics of the work authorized alien population or the employer group(s) targeted for the educational campaign.

The proposals should also detail the reasons for targeting each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign targets and supporting the reasons for the selection, applicants may use studies or surveys conducted in the area, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise innovative, creative and effective means of public education and information dissemination that are specifically designed to reach the campaign targets. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of public communication may be less than optimal for disseminating information to members of national or linguistic groups that have limited community-based support and communication networks.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of innovative and cost effective dissemination of correct information to protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

A key element of the campaign is the accuracy of information disseminated about the OSC and its mission. Accordingly, any outreach and educational materials developed by a grantee must be reviewed by OSC for legal accuracy and proper emphasis prior to production. All information distributed should also include mention of the OSC as a source of assistance, information and action and the correct address and telephone numbers of the OSC (including the toll-free and TDD toll-free numbers for the hearing impaired)

Part III: Evaluation of the Strategy

One of the central goals of this program is determining what public education strategies are most effective in dispersing information about the antidiscrimination provision. To be effective in planning future public education efforts, OSC needs to know what works and what does not. Measuring the effectiveness of the campaign, therefore, is crucial, and the methods of measurement and their results must be detailed.

Full evaluation of a project's effectiveness should be performed at the midpoint and conclusion of the campaign. The midpoint report, due thirty days after the end of the second quarter of implementation, is intended to encourage productive alternations to

a campaign, when necessary, based on experience and knowledge gained in the first half of the project. Applicants are encouraged to discuss in their proposal the means they will use to devise alternate campaign strategies, if needed.

Selection Criteria

The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices after careful evaluation of each proposal by a panel of specialists within DOJ. The panel's results are advisory in nature and not binding on the Special Counsel. Each panelist will evaluate the proposals for effectiveness and efficiency with emphasis on the various factors enumerated below. Letters of support, endorsement, or recommendation will not be accepted or considered.

OSC anticipates seeking assistance from sources with specialized knowledge in evaluating proposals, including the agencies that are members of the IRCA Antidiscrimination Outreach Task Force: The Department of Labor, the Equal Employment Opportunity Commission, the Small Business Administration and the Immigration and Naturalization Service.

Applicants should be aware that some states are currently conducting IRCA antidiscrimination outreach and education programs with funds made available under the Immigrant Nurses Relief Act of 1989, Public Law 101-238. Unnecessary duplication of specific efforts under those programs should be avoided. OSC will take steps to coordinate these efforts but expects that, to the extent practicable, grantees will do so as well.

In determining which applications to fund, OSC will consider the following (based on a one-hundred and ten point scale):

1. Program Design (80 points)

Sound program design and innovative, cost effective strategies for dissemination of information to the targeted population are imperative. Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (10 points)

b. The applicant's selection and definition of the target population(s) for the campaign, and the factors, including special needs, that support the selection. (15 points)

c. An innovative, cost effective campaign strategy for disseminating information to employers and/or members of the protected class, and justification for the choice of strategy. (20 points)

d. The methods proposed by the applicant to measure the effectiveness of the campaign and their precision in indicating to what degree the campaign succeeds in meeting its goals. (15 points)

2. Administrative Capability (15 points)

Proposals will be rated in terms of the capability of the applicant to implement the targeting, public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided. (5 points)

3. Staff Capability (15 points)

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (10 points)

4. Previous Experience (20 points)

The applications will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Eligible Applicants

This grant competition is open to not-for-profit community-based organizations, qualified designated entities (QDEs), local ethnic and immigrants' rights advocacy organizations which serve potential victims of discrimination, trade associations, industry groups, professional organizations, and other entities providing information services to employers.

Grant Period and Award Amount

It is anticipated that several grants will be awarded and will range in size from $40,000 to $150,000. Publication of this announcement does not require the Office of Special Counsel to award any specific number of grants, to obligate the entire amount of funds available, or to obligate any part thereof. The period of performance will be twelve months from the date of the grant award. Those grantees who successfully achieve their goals may be considered for supplementary funding for a second year based on the availability of funds.

Application Deadline

All applications must be received by the close of business (5 p.m. e.d.t.) on Thursday, August 8, 1991, at the Office of Special Counsel for Immigration Related Unfair Employment Practices, 1100 Connecticut Ave., NW.—suite 800, P.O. Box 65490, Washington, DC 20035-5490.

Application Requirements

Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424) and Budget Information (Standard Form 424A).

2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).

3. An abstract of the full proposal, not to exceed one page.

4. A program narrative of not more than twenty (20) double-spaced typed pages which include the following:

a. A clear statement which describes the approach and strategy to be utilized to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion;

c. The proposed staffing plan;

d. Description of the proposed program design; and

e. Description of how the project will be evaluated.

5. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the Federal cognizant agency must accompany the budget.

6. Copies of resumes for the professional staff proposed in the budget.

Note: If the grant project manager is to be hired later as part of the grant, hiring is subject to review and approval by OSC at that time.

8. Detailed technical materials that support or supplement the description of the proposed effort should be included in the appendix.

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In order to facilitate handling, please do not use covers, binders or tabs.

Application forms may be obtained by writing or telephoning: Office of Special Counsel for Immigration Related Unfair Employment Practices, 1100 Connecticut Ave., NW.,—suite 800, P.O. Box 65490, Washington, DC 20035–5490. Tels. (202) 653–8121, 1–800–255–7688 (toll-free), (202) 296–0168 (TDD for the hearing impaired), or 1–800–237–2515 (toll-free TDD for the hearing impaired.

Dated: June 20, 1991.

Approved.

Andrew M. Strojny,

Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

[FR Doc. 91–[illegible] Filed 6–21–91; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–7870, et al.]

Proposed Exemptions; Equitable Life Assurance Society of the United States

AGENCY: Pension and Welfare Benefits Administration.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and a shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemption were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Equitable Life Assurance Society of the United States (Equitable) Located in New York, NY

[Application No. D–7870]

Proposed Exemption

Section I. Covered Transactions

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the sale, on December 16, 1988, of a 60 percent joint venture interest (the Joint Venture Interest) in the D/E Hawaii Joint Venture (the Joint Venture) by Equitable's General Account (the General Account) to Equitable-managed Separate Account No. 10–IV (the Separate Account) in which two pension plans covered by the Act invest pursuant to the terms of a group annuity contract (the Group Annuity Contract).

In addition, the restrictions of section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of a one-time performance fee (the Performance Fee) and a one-time disposition fee (the Disposition Fee) to Equitable by the Separate Account in connection with certain investment management services rendered by Equitable to the Separate Account if the conditions set forth in section II are met.

Section II. General Conditions

(1) The investment of plan assets in the Separate Account, including the terms of the Performance Fee and the Disposition Fee, was approved by a plan fiduciary independent of Equitable.

(2) Each participating plan (the Plan) investing in the Separate Account had total assets that were in excess of $50 million and no such Plan invested more than 10 percent of its assets in the Separate Account.

(3) At the time the transactions were entered into, the terms of the transactions were at least as favorable to the Separate Account as those obtainable in arm's length transactions between unrelated parties.

(4) Prior to making an investment in the Separate Account, each plan fiduciary received offering materials which disclosed all material facts concerning the purpose, structure and operation of the Separate Account and the investment in the Joint Venture.

(5) The total fees paid to Equitable constitute no more than reasonable compensation.

(6) The Performance Fee shall be payable only after achievement of the pre-established average annual returns set forth in the Group Annuity Contract. Two-thirds of the Disposition Fee should be payable only after the Plans receive a 100 percent return of capital plus a preferred return of 10 percent.

(7) Each Plan shall receive the following from Equitable with respect to its participation in the Separate Account:

(a) Audited financial statements, prepared by independent qualified public accountants, of the Separate Account and the Joint Venture, on an annual basis.

(b) Quarterly reports relating to the overall financial position and operating results of the Separate Account, which include all fees paid by the Separate Account and by the Joint Venture in which the Separate Account participates as well as dollar-weighted and time-weighted rates of return.

(c) Property updates and outlook reports for Separate Account-held properties.

(8) Except in the case of an enforced disposition under the terms of the Joint Venture Agreement (the Joint Venture Agreement), Equitable is precluded from recommending the disposition of the Separate Account during the first eight years of the Separate Account's initial term.

(9) No disposition of the Separate Account shall occur during years eight to ten of the Separate Account's initial term unless Equitable gives advance notice of such disposition to each participating Plan and it receives approval from those Plans holding a majority of interests in the Separate Account.

(10) Each extension of the Separate Account term shall be approved by those participating Plans holding a majority of interests in the Separate Account. In the event of such extension, the Performance Fee shall be payable during the tenth year of the Separate Account based upon an independent appraisal of the Joint Venture Interest as of the date of the vote to extend.

(11) Equitable shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (12) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Equitable and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than Equitable shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (12) below.

(12)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (11) of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(4) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraphs (2)–(4) of this paragraph (12) shall be authorized to examine the trade secrets of Equitable or commercial or financial information which is privileged or confidential.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material fact which are the subject of this exemption.

Effective Date: This proposed exemption, if granted, will be effective December 16, 1988.

Summary of Facts and Representations

1. Equitable is a mutual life insurance company organized under the laws of the State of New York and subject to the supervision and examination by the Superintendent of Insurance of the State of New York. The firm is one of the largest life insurance companies in the United States. Among the wide variety of insurance products and services it offers, Equitable provides funding, asset management and other services for several thousand employee benefit plans subject to the provisions of Title I of the Act.

Equitable maintains several pooled separate accounts in which pension, profit sharing the thrift plans participate. Equitable also has several single customer accounts and investment management accounts pursuant to which it manages all or a portion of the assets of a number of large plans. Equitable's real estate investment management subsidiary, Equitable Real Estate Investment Management, Inc. provides real estate investment advisory services to Equitable and other clients and property management services with respect to certain properties owned by Equitable accounts.

Equitable has substantial experience in managing real estate investments. Of the $50,388,388,984 in total assets held by Equitable at year-end 1990, Equitable's General Account held $10,822,148,586 in real estate mortgage loans and $2,944,225,898 in equity investments in real property. Additionally, the total assets that Equitable has allocated to real estate investments in its real estate separate accounts were $4,289,685,000.

2. In 1982, Equitable and Deici Hawaii Investments, Inc. (DHI), an unrelated party, formed a real estate joint venture in Honolulu, Hawaii for the purposes of acquiring, owning, developing, constructing, leasing, operating and managing certain commercial real property referred to herein as "the Ala Moana Complex" (the Ala Moana Complex). The Ala Moana Complex is the sole asset of the Joint Venture. At the time of formation, DHI, a subsidiary of The Deici, Inc., a Japanese corporation, held (and continues to hold) a 60 percent interest in the Joint Venture. Equitable's General Account held a 40 percent interest in the Joint Venture.

3. Under the provisions of the Joint Venture Agreement, Equitable is the managing co-venturer responsible for conducting the business of the Joint Venture. Overall control of the Joint Venture is, however, shared by the co-ventures through equal representation of both co-venturers on a management committee (the Management Committee) comprised of one representative of Equitable and one representative of DHI. The Management Committee is authorized to make major decisions on behalf of the Joint Venture as specifically enumerated in the Joint Venture Agreement. For example, the Management Committee must approve the selection of a property manager as well as any sale involving the Ala Moana Complex. The decisions of the Management Committee must be unanimous.

4. The Ala Moana Complex consists of a 1.5 million square foot shopping mall, a shopping plaza, two adjacent office buildings and three adjoining parcels of commercially-zoned land suitable for future development. Located in the Kapiolani Business District of Honolulu, Hawaii, the Ala Moana Complex is bounded by Ala Moana Boulevard, Kapiolani Boulevard, Piikoi Street and Atkinson Drive. The Joint Venture acquired the properties

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comprising the Ala Moana Complex from unrelated parties between 1962 and 1965 for an aggregate purchase price of approximately $270 million and it subsequently expanded and improved such properties.[1]

The Ala Moana Complex was appraised in April 1988 by John Child and Company, Inc. and by Hastings, Martin, Conboy, Braig and Associates, Ltd. (the Appraisers), independent real estate appraisal firms also located in Honolulu, Hawaii. The Appraisers determined that the aggregate fair market value of a fee simple interest in the Ala Moana Complex would be $702,850,000 as of January 1, 1989.[2]

5. On December 16, 1988, Equitable formed the Separate Account which is also known as the "Hawaii Properties Fund." The Separate Account is a closed-end, pooled real estate separate account maintained by Equitable in accordance with the laws of the State of New York. The Separate Account has three investment objectives: (a) To provide current income of at least 6.25 percent for its duration; (b) to increase income through the use of successful asset management strategies, including remerchandising (i.e., bringing in more successful tenants) and expansion of the Ala Moana Complex; and (c) to increase the value of the entire Ala Moana Complex through expansion and development. These objectives are consistent with those of the Joint Venture. Seven pension plans participate in the Separate Account. No one Plan may hold more than a 40 percent interest in the Separate Account nor may a Plan's participation in the Separate Account represent more than 10 percent of that Plan's total assets. The minimum investment for each subscribing Plan was $20 million. The decision by each of the Plans to invest in the Separate Account was made by a Plan fiduciary who was independent of Equitable.

6. Of the seven Plans participating in the Separate Account, five Plans are state governmental plans which have invested a total of $220 million in the Separate Account. These Plans and the amount of their investments are as follows: The California State Teachers Retirement System ($100 million); the Colorado Public Employees Retirement Association ($40 million); the Illionis Municipal Retirement Fund ($40 million); the School Employees Retirement System of Ohio ($20 million); and the Utah State Retirement System ($20 million).

The two remaining Plans investing in the Separate Account are corporate pension plans covered by the Act. These Plans are the Ameritech Information Technologies Corporation Pension Trust (the Ameritech Trust) sponsored by the Ameritech Information Technologies Corporation and the Chevron Corporation Master Trust (the Chevron Trust) which is sponsored by the Chevron Corporation.[3] The Ameritech Trust and the Chevron Trust have invested $30 million and $40 million, respectively, in the Separate Account. Equitable represents that both of these Plans are substantial, sophisticated investors with in-house pension staffs that thoroughly assess this type of investment opportunity. In addition, Equitable states that both Plans have engaged their own counsel to represent them in these negotiations and on an ongoing basis with respect to investment in the Separate Account. As noted above, Equitable did not provide investment advice to these Plans in connection with the decision to invest in the Separate Account.

7. It is anticipated that the Separate Account will have a duration of ten years from the date of its inception on December 16, 1988. Prior to the eighth anniversary of the closing date, Equitable is generally precluded from recommending the liquidation of the Separate Account's interests. The one exception is in the case of an enforced disposition resulting from either the activation of a buy/sell mechanism of the Joint Venture by the co-venturer, DHI, or due to circumstances beyond the control of Equitable, such as a default by DHI under the Joint Venture Agreement. During years eight to ten of the Separate Account's initial term, Equitable can recommend a disposition of the Separate Account's assets. However, such a disposition can only occur upon notice to the Plans and if approval of such disposition is received from the holders of a majority of the interests in the Separate Account. In the absence of such approval, Equitable may not unilaterally dispose of the Separate Account's Joint Venture Interest.

By a similar majority vote, the Plans may decide to continue the Separate Account beyond its initial term for a maximum of five, five year extension periods. At any time during an extension period, Equitable can recommend the disposition of the Separate Account's assets. However, no disposition can occur without a vote of the majority of the holders of interests in the Separate Account.

Even if the holders of a majority of the interests in the Separate Account approve liquidation, Equitable is still not free to conclude the disposition unilaterally. Instead, Equitable represents that the Joint Venture Agreement accords DHI a significant role which will vary depending upon the type of disposition being considered by Equitable. For example, if Equitable were to offer the Separate Account's Joint Venture Interest to a third party who accepted this offer, no disposition could occur without the written consent of DHI regardless of the fact that the holders of a majority of interests in the Separate Account had approved liquidation. Or, where Equitable receives a bona fide offer from a third party for the Joint Venture Interest and it wishes to accept that offer, the Joint Venture Agreement provides DHI with a right of first refusal to purchase the Joint Venture Interest for the amount that the Separate Account would have received had the third party offer been accepted. DHI has 45 days from the receipt of the third party offer in which to exercise the right of first refusal.[4]

8. Concurrent with the establishment of the Separate Account, on December 16, 1988, Equitable transferred the 40 percent Joint Venture Interest held by its General Account to the Separate Account. Equitable also notified DHI of the contemplated transaction and in the absence of receiving any objection, Equitable and the Plans consummated the sale. On the date of closing, each participating Plan entered into an Investment Allocation Agreement and a Group Annuity Contract with Equitable. The Group Annuity Contract provided that of the $260 million invested, $231.2 million would serve as the consideration for the sale of the Joint Venture Interest (the exact value of such interest having been based upon the third party appraisals) and $8.88 million would reflect consideration paid to Equitable for providing funding up to a cap of $12,580,000 during the first three years of the Separate Account in order to guarantee a 6.25 percent cash yield on the Plans' investment. After this consideration was paid to Equitable, $3 million was retained by the Separate Account for expenses associated with the development of the Ala Moana Complex. No real estate fees or commissions were paid by the Plans in connection with the sale.[5]

9. Equitable believes that the sale of the Joint Venture Interest by the General Account to the Separate Account may have resulted in the commission of a prohibited transaction in violation of the Act. In this regard, Equitable is requesting exemptive relief from the Department in connection with the sale transaction. Equitable represents that it is a party in interest with respect to the Ameritech Trust and the Chevron Trust because independent investment managers for these Plans have occasionally used an Equitable affiliate, Donaldson, Lufkin and Jenrette, Inc. (DLJ) to execute securities brokerage transactions and to conduct research on behalf of these Plans.[6] Moreover, Equitable notes that the Ameritech Trust and the Chevron Trust have confirmed that they have had no direct dealings with DLJ and they have not entered into directed brokerage arrangements with DLJ. Rather, Equitable explains that the appointed investment managers for these Plans, which are independent of the Plan sponsors, appear to have utilized DLJ no more than they have used any broker. According to Equitable, the Ameritech Trust and the Chevron Trust have assured Equitable that their investment managers were unaware of the sale transaction discussed herein.

10. After the sale of the Joint Venture Interest, Equitable began serving as the investment manager for the Separate Account. For services rendered to the Separate Account, Equitable is entitled to receive certain fees from the participating Plans based upon a multi-part fee structure that has been established for the Separate Account and approved by the investing Plans. Equitable represents that the payment of fees by the participating Plans, with the exception of the two fees described below, conforms to the requirements of section 408(b)(2) of the Act.[7]

a. *The Performance Fee* is a one-time fee payable to Equitable that is calculated based upon the following formula: "10 percent of the amount by which the cumulative average annual return * exceeds 12.5 percent up to and including 14 percent, plus 20 percent of any amount by which the average annual return exceeds 14 percent". The Performance Fee is payable at the time of the disposition of the Separate Account, or earlier, if the Joint Venture Interest is sold prior to the end to the initial ten year term of the Separate Account. Should Equitable recommend the disposition of the Separate Account during the eighth or ninth years that the Separate Account is in effect, the investing Plans, by majority vote, and DHI must approve such disposition and, in doing so, the payment of the Performance Fee. In addition, if a majority of the holders of interests in the Separate Account vote to extend the life of the Separate Account beyond its initial ten year term, the Performance Fee is payable at the end of the ten year term. In this situation, a three member appraisal panel (comprised of independent appraisers selected by Equitable, the Plans (as a group) and jointly by the two Equitable/Plans' designees) will value the Joint Venture Interest as of the date of the vote to extend and the Performance Fee will be calculated as if the Joint Venture Interest had been sold. At least two of the three appraisers on the panel must concur with the valuation determined. In the event of a deadlock (i.e., if each of the three appraisers is unable to agree with any of the other appraisers), the appraisers will settle their dispute through binding arbitration.

b. *The Disposition Fee* payable to Equitable is equal to .75 percent of the Separate Account's interest in the gross disposition price of the real estate assets of the Joint Venture, or the Joint Venture Interest. One-third of the fee is payable at the time of disposition and the remaining two-thirds portion of the Disposition Fee is payable only after the participating Plans receive a 100 percent return of capital plus a 10 percent average annual return as defined in the above footnote. If Equitable recommends a disposition of the Separate Account during its eighth or ninth year, once again, a majority of the interests held by the Plans in the Separate Account and DHI must approve the disposition.

Equitable believes that an exemption is appropriate in connection with its receipt of the Performance and the Disposition Fees. In this regard, Equitable represents that it, Institutional Property Consultants, Inc. (IPC), an independent real estate advisory firm, and other representatives of the Plans have negotiated the fees at arm's length and that such fees have been approved by the Plans. Equitable represents that the following extensive safeguards are present and inherent to the arrangement itself: (a) A system of internal checks and balances that are contained in the multi-part fee structure which are designed to prevent the possibility of abuse [8], (b) a fee structure that reflects

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[1] In this regard, the Joint Venture implemented a remerchandising strategy shortly after its acquisition of the shopping mall portion of the Ala Moana Complex. This resulted in a reorganization and consolidation of existing stores in the mall, the addition of new specialty shops and a food court, and the renovation of the mall's center court. In addition, the Joint Venture had a convenience center constructed on the site of the shopping plaza and an office building on the site of previously vacant land.

[2] Equitable attributes the increase in fair market value of the Ala Moana Complex to economic and market forces existing in Hawaii in the mid-1980's as well as to the successful management of the Joint Venture.

[3] The Ameritech Trust holds the assets of the Ameritech Pension Plan and the Ameritech Management Pension Plan. As of December 31, 1990, the Ameritech Trust had 80,180 participants and total assets of $12 billion of which 10 percent was allocated to various real estate investments. The Chevron Trust holds the commingled assets of several small pension plans and the Chevron Retirement Plan. As of December 31, 1990, the Chevron Trust had 78,000 participants and total assets of $8.7 billion of which 11.5 percent was allocated to real estate investments.

[4] In contrast, it should be noted that DHI's approval is not required for each extension of the Separate Account beyond its initial term. Equitable explains that for insurance purposes, it is treated as the legal owner of the Joint Venture regardless of the fact that the Joint Venture Interest has been allocated to the Separate Account.

[5] Equitable represents that the Joint Venture will function as a "real estate operating company" [REOC] within the meaning of 29 CFR 2510.3-101(e). Accordingly, Equitable explains that transactions involving the assets of the Joint Venture will not be deemed to involve plan assets and will not be subject to the prohibited transaction provisions of the Act. In this regard, the Department is providing no opinion or exemptive relief herein with respect to the provision of services and any fees that are received by Equitable as managing venturer of the Joint Venture. Further, the Department notes that in making the decision to invest in a REOC, plan fiduciaries should consider, among other factors, that the fiduciary responsibility provisions of the Act do not apply to the operation of the REOC.

[6] To the best of its knowledge, Equitable asserts that it has no other ongoing dealings with the Ameritech Trust. In the case of the Chevron Trust, Equitable represents that it has issued a group annuity contract valued at $6,694,262 to a plan participating in the Chevron Trust.

[7] The other components of the fee structure include a quarterly asset management fee, an investment fee on any additional contributions (above the $260 million aggregate initial investment made by the participating Plans in the Separate Account) to acquire additional assets and a development fee on any new contributions that are made to expand or improve the Joint Venture properties. In this regard, the Department notes that the relief provided by this proposed exemption, if granted, is limited solely to the Performance and Disposition Fees described herein.

[8] In this regard, Equitable notes that the mechanism of internal checks and balances contained in the fee structure for the Separate Account permits decreases in certain component fees to be offset by corresponding decreases in other fees. Equitable believes that such a mechanism is designed to ensure that it does not receive more than reasonable compensation from the Separate Account.

In addition, the mechanism of internal checks and balances is demonstrated by the performance benchmarks that the Separate Account must achieve in order for Equitable to be paid the Performance Fee as well as by the return of capital and the preferred return provisions of the Disposition Fee. Equitable explains that these

Continued

* Equitable represents that the "average annual return" as used herein is defined as the sum of (a) total income payments to a participating Plan (less all fees payable by such Plan) plus (b) the net proceeds of any disposition distributable to the Plan (after deduction of the Disposition Fee), less the Plan's total contributed capital, divided by the Plan's contributed capital adjusted to reflect the amount of time the Plan's contributions have been invested in the Separate Account, divided by the actual term of the Separate Account expressed as a number of full and partial years.

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the product of arm's length negotiation and which has been approved by IPC, an independent fiduciary acting on behalf of the participating Plans; (c) the absence of unilateral authority on the part of Equitable to cause the payment of such fees and Equitable's limited ability to recommend the liquidation of the Separate Account; (d) a level of investor sophistication in the Ameritech and Chevron Trusts which enables each Plan to engage in on-going and independent monitoring of Equitable; (e) continued monitoring of the exempted transactions on behalf of the public Plans participating in the Separate Account by IPC; and (f) the reporting and disclosure of financial and other information to the Plans with respect to their participation in the Separate Account and Joint Venture as detailed in paragraph 11 below. Equitable believes that these safeguards will prevent the possibility of any abuse. However, Equitable also recognizes that, as part of its management of the Separate Account, it has the discretionary authority to affect the timing and/or amount of the Performance and Disposition Fees. Therefore, Equitable has requested exemptive relief from sections 406(b)(1) and (b)(2) of the Act with respect to these fees.

11. Equitable represents that it is providing various oral and written reports to the participating Plans on a quarterly, semi-annual and annual basis. In this regard, Equitable states that it is required under the Group Annuity Contract to provide all participating Plans with audited financial statements of both the Separate Account and the Joint Venture. In addition, Equitable represents that it provides each investing Plan with quarterly financial reports of such Plan's investment in the Separate Account, including dollar-weighted and time-weighted rates of return. Moreover, Equitable explains that it periodically provices that portfolio manager for the Separate Account with written property updates and outlook reports for each of the properties in the Ala Moana Complex as of the current reporting period. Further, Equitale states that at the inception of the Separate Account, it established a committee of representatives of the participating plans. Equitable explains that it meets with this committee at least annually to review the activity and performance of the Separate Account.

12. For purposes of participating in the Separate Account as well as evaluating the terms of the sale and the receipt of fees by Equitable for its services as investment manager to the Separate Account, the Chevron Trust, the Ameritech Trust and the five public Plans decided to retain IPC, an independent real estate advisory firm which is principally located in Atlanta, Georgia and San Diego, California. IPC has substantial experience in providing consulting advice and valuations to U.S.-domiciled tax-exempt institutional clients having assets exceeding $200 billion. Clients of IPC include large public and corporate pension plans. The firm is also the largest real estate pension consultant in the United States and has capital allocated to real estate of approximately $20 billion. IPC is totally unaffiliated with Equitable and Equitable had no part in negotiating the tems of IPC's fee arrangements with each Plan participating in the Separate Account. The investing Plans appointed IPC as real estate advisor and consultant for purposes of analyzing the transaction described herein.

The five public Plans are retainer clients of IPC. These Plans compensate IPC on a flat fee basis. The Chevron Trust and the Ameritech Trust, which are not on-going retainer clients of IPC, appointed IPC to provide an analysis of the transactions similar to that provided to the public Plan investors. The Chevron and Ameritech Plans have also compensated IPC on a flat fee basis.

Pursuant to their respective arrangements, IPC furnished each Plan with a report evaluating the Ala Moana Complex, reviewing the price and other terms of Equitable's proposal, identifying certain conditions to be fulfilled before closing and recommending whether and on what basis each Plan should proceed with the investment. Prior to the date of closing, IPC issued a letter to each Plan discussing certain conditions precedent to the sale and recommending that the Plans move forward with the funding of the Separate Account. In turn, the Plans relied upon IPC's recommendation by investing in the Separate Account.

In examining all aspects of the sale transaction, IPC conducted its own financial analysis which included reviews of ten year cash flow pro forma statements developed by Equitable Real Estate Investment Management, Inc. (EREIM), a wholly owned subsidiary of Equitable that acts as investment advisor to Equitable for the Separate Account, as well as the appraisal reports that had been prepared of the Ala Moana Complex by the Appraisers. IPC represents that it agreed with the assumptions and valuation methodologies utilized by EREIM and the Appraisers in their reports. IPC also states that although it reviewed information regarding the Ala Moana Complex that had been furnished to it by Equitale and EREIM, it conducted an independent analysis of such data and drew its own conclusions with regard to the investment independently of any Equitable influence. IPC further asserts that it performed on site inspections of the Ala Moana Complex and found such properties to be well-managed and in good condition. With regard to the position of the Ala Moana Complex in its surrounding market, IPC represents that it analyzed competing shopping centers and office complexes and it concluded that the Ala Moana Complex would continue to dominate the regional shopping market in terms of location, merchandising selection and probable revenues. IPC also concluded that the two office buildings which from part of the Ala Moana Complex are Class "A" office buildings that hold a visual as well as an economic command of the market area and, as such, are positioned for long-term profitability. In addition to these analyses and investigations, IPC indicated that it would develop guidelines for a long-term asset management program established for the Separate Account. IPC said that such guidelines would addres asset and portfolio management matters as well as considerations that were germane to the Ala Moana Complex.

IPC represents that it also reviewed the fees that were to be paid by the Separate Account and it determined such fees to be reasonable and competitive both in specific part and as a whole. In this regard, IPC recommended that certain changes be made to the Performance Fee in order to provide the Plans with a preferred return of capital. These changes were subsequently incorporated into the Group Annuity Contract that was provided by Equitable to each investing Plan.

As a result of its independent analysis, IPC recommended that the Plans make their respective investments in the Separate Account. Each Plan then executed a Group Annuity Contract with Equitable on December 18, 1988 and the sale was entered into in the manner described above.

13. Since the date of closing, IPC has monitored the economic performance and general operations of the Separate Account and it has provided quarterly performance reports to each of its retainer clients. Such reports contain the following information: (a) The current investment value of individual assets and the value of the portfolio; (b) the economic performance of individual assets and the portfolio in terms of yields and returns; (c) reporting variances; (d) a portfolio composition characteristics summary and a comparison of IPC benchmark indices; and (e) a summary information sheet on individual assets. Although not required to do so, IPC represents that it has advised representatives for the Ameritech and Chevron Trusts on a periodic, but informal basis regarding said operations for no compensation.

In the event of a discrepancy between the kinds of information that is supplied to the participating Plans by IPC and by Equitable, Equitable states that it will confer with IPC at the annual meeting of participating Plans to ensure that any misinformation is corrected. Also, Equitable represents that it will afford IPC and all participating Plans the right to inspect Equitable's books and records to verify the accuracy of information that has been disseminated.

14. In summary, it is represented that the transactions satisfy the statutory criteria for an exemption under section 406(a) of the Act, among other things, because: (a) The decision by each of the Plans to invest in the Separate Account was made by Plan fiduciaries who are totally unrelated to Equitable; (b) each Plan investing in the Separate Account is a large, well-funded plan with substantial real estate assets and experienced in-house investment staff who are familiar with real estate investments and the types of incentive fees paid with respect to these investments; (c) the participating Plans retained an independent consultant, IPC, to review, negotiate and approve each Plan's investment in the Separate Account as well as the sale of the Joint Venture Interest by the General Account to the Separate Account and the multi-part fee structure; (d) the participating Plans will receive periodic reporting and disclosure regarding the Separate Account and the Joint Venture; (e) IPC will continue to monitor the interests of the public Plans investing in the Separate Account while independent Plan fiduciaries for the Ameritech Trust and the Chevron Trust will monitor their respective Plan's investments; and (f) the sale of the Joint Venture Interest by the General Account to the Separate Account involved a lump sum cash payment that was based upon the independently appraised value of the Joint Venture Interest and it did not involve the payment of any real estate fees or commissions by any of the investing Plans.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 406(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be the subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of June, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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internal checks and balances essentially guarantee that it will receive such fees only after the participating Plans have realized an adequate return on their investment in the Separate Account.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as requred by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before August 8, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or

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a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU-91-27). Career information and counseling records.

2. Department of the Air Force (N1-AFU-91-28). Equipment receipt lists.

3. Department of the Air Force (N1-AFU-91-30). Fixed communications-computer systems supply records.

4. Department of the Air Force (N1-AFU-91-32). Reports of payments to individuals required by IRS.

5. Department of the Air Force (N1-AFU-91-33). Records authorizing on-base day care providers.

6. Department of the Air Force (N1-AFU-91-34). Routine training materials.

7. Department of the Air Force (N1-AFU-91-35). Applications for Thrift Savings Plan participation.

8. Defense Logistics Agency (N1-361-91-10). Routine and facilitative records relating to distribution.

9. Defense Logistics Agency (N1-361-91-11). Routine and facilitative records relating to small business programs.

10. ACTION, Office of Management and Budget (N1-362-91-2). Routine administrative records relating to recruitment and finance.

11. ACTION, Office of Management and Budget (N1-362-91-3). Working files related to grant projects and records relating to the deferment of student loans for VISTA volunteers.

12. ACTION, Office of Management and Budget (N1-362-91-4). Agreements made with other agencies for routine administrative and housekeeping functions.

13. Department of Agriculture, Forest Service (N1-95-91-1). Administrative, local and unreadable electronic records that will not be converted to a new system.

14. Department of Agriculture, Forest Service (N1-95-91-2). Routine records concerning the administration of telecommunication activities.

15. Department of Agriculture, World Agricultural Outlook Board (N1-355-91-1). Routine administrative records concerning emergency preparedness, the distribution of information and inquiries from other federal agencies.

16. Commodity Futures Trading Commission (N1-180-91-1). Dockets of cases heard before the Department of Agriculture under the Commodity Exchange Act, 1947-1984.

17. Department of Energy (N1-434-91-3). Visitor tour records of the Stanford Linear Accelerator Center.

18. Federal Communications Commission, Common Carrier Bureau (N1-173-91-3). Statistical summaries, price lists, and other compliance-related records relating to telephone and telegraph carriers, 1923-85.

19. Federal Deposit Insurance Corporation, Office of Legislative Affairs (N1-34-91-3). Proposed legislation, Congressional correspondence, and hearing records.

20. Federal Deposit Insurance Corporation, Office of Corporate Communications (N1-34-91-6). Public relations and special events records.

21. General Accounting Office (N1-411-91-1). Fraud Hotline case files and related records.

22. Department of Health and Human Services, Centers for Disease Control (N1-442-91-3). Electronic data, input forms and printouts for the Vessel Sanitation and Medical Examiner/Coroner Information Sharing Programs; inputs to and special outputs from the Sudden Unexplained Death Syndrome Database.

23. Department of Justice, Federal Bureau of Investigation (N1-65-88-13). Program records of the National Center for the Analysis of Violent Crime.

24. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-2). External tank research and development reference reports, 1978-1985.

25. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-5). Research and development program briefing files.

26. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-11). Experimenter data tapes for International Satellite for Ionospheric Studies (ISIS-2), 1971-1978.

27. National Archives and Records Administration, Office of the National Archives, Textual Projects Division (N2-38-91-3). Accessioned records consisting of the Department of the Navy, Naval Historical Center. Copies of manuscripts submitted to the Office of Public Relations and miscellaneous books and periodicals, 1940-65.

28. Panama Canal Commission (N1-185-91-1). Records relating to the publication of rules in the Federal Register and Code of Federal Regulations.

29. Office of Price Stabilization (N1-295-91-1). Protest case files, subject files, price surveys and other documentation relating to routine operations (permanently valuable records are scheduled for immediate transfer to the National Archives).

30. Department of State, Bureau of International Scientific and Technological Affairs (N1-59-91-2). Routine and facilitative files.

31. Department of State, Bureau of Educational and Cultural Affairs (N1-59-91-15, -21, and -22). Routine, facilitative, and grant files.

32. Tennessee Valley Authority, Resource Development (N1-142-90-17). Comprehensive records schedule for Land Between the Lakes recreation area.

33. Department of the Treasury, Bureau of Public Debt (N1-53-91-1). Files dealing with the issuance of government securities.

Dated:

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91-14849 Filed 6-21-91; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 11-13, 1991, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the Federal Register on May 23, 1991.

Thursday, July 11, 1991

8:30 a.m.-8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 a.m.-10:15 a.m.: Proposed Schedule for Review of Evolutionary and Advanced Nuclear Power Plant Designs (Open)—The Committee will review the schedule proposed by the NRC staff for review of evolutionary and advanced nuclear power plant designs, the EPRI Advanced LWR Requirements Document, and the effort to revise regulatory guidance and the NRC standard review plan (SECY-91-161). Representatives of the NRC staff and DOE will participate in this session, and representatives of the nuclear industry may participate, as appropriate.

10:30 a.m.-11:a.m.: Proposed Actions for Improving Guidance for Performing Regulatory Analyses (Open)—The Committee will hear a briefing by and hold discussions with members of the NRC staff regarding proposed actions to improve guidance for the performance of regulatory analyses (SECY-91-114).

11:30 a.m.-12:15 p.m.: Activities of ACRS Subcommittees and Members (Open)—The Committee will hear reports and hold discussions regarding recent ACRS subcommittee meetings and related members' activities, including the May 30, 1991 Advanced BWRs Subcommittee meeting, June 18-19, 1991 Regional Programs Subcommittee meeting, a visit to the Vermont Yankee nuclear plant, and an NRC staff seminar on nuclear power plant aging.

1:15 p.m.-3:15 p.m.: NUMARC/EPRI Fire Vulnerabilities Evaluation Methodology (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of NUMARC/EPRI and the NRC staff regarding the NUMARC/EPRI fire vulnerabilities evaluation (FIVE) methodology and the draft NRC staff position on this matter.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

3:30 p.m.-5:30 p.m.: Meeting with Director, NRC Officew for Analysis and Evaluation of Operational Data (Open)—The Committee will hear a briefing and hold discussions regarding items of mutual interest, including the status and general use of the NRC performance indicator program, the role/impact of AEOD activities on the regulatory process, and the use of PRA by the Committee to Review Generic Requirements in its decisionmaking process.

5:30 p.m.-6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss the proposed report to NRC regarding the use of PRA in the regulatory process.

Friday, July 12, 1991

8:30 a.m.-12 noon: General Electric Company SBWR (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the General Electric Company and the NRC staff, as appropriate, regarding the standard BWR nuclear powr plant design.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this project.

1 p.m.-2:30 p.m.: Fitness for Duty (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding incidents at nuclear power plants that have involved fitness for duty considerations. Representatives of the nuclear industry may participate, as appropriate, in those limited portions of this session where they have specific information to contribute.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

2:45 p.m.-4:15 p.m.: Reactor Operating Experience (Open)—The Committee will hear briefings by and hold discussions with members of the NRC staff regarding recent incidents and events at nuclear power plants, including a loss of off-site power event at the Vermont Yankee nuclear station and a transformer failure/generator fire at the Maine Yankee nuclear plant.

4:15 p.m.-5 p.m.—Future ACRS Activities (Open)—The members will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

5 p.m.-6:30 p.m.: Preparation of ARS Reports to the NRC (Open)—The Committee will discuss proposed ACRS reports to the NRC regarding items that were not completed at previous meetings, various technical issues, and matters considered during this meeting, including use of PRA in the regulatory process; proposed resolution of GI-130, Essential Service Water System Failures at Multi-Unit Sites; the scope and nature of the General Electric ABWR review; and the NRC staff assessment of risk during low power and shutdown operations at nuclear power plants.

Saturday, July 13, 1991

8:30 a.m.-11:30 a.m.: Preparation of ACRS Reports to NRC (Open/Closed)—The Committee will discuss proposed ACRS reports to the NRC regarding items noted above and items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matter being considered and information the release of which would represent a clearly unwarranted invasion of personal privacy.

11:30 a.m.-12:30 p.m.: NRC Safety Research Program (Open)—The Committee will discuss the scope and nature of the proposed ACRS report to the NRC regarding the NRC safety research program.

1:30 p.m.-2:30 p.m.: Key Technical Issues for Future Nuclear Plants (Open)—The Committee will discuss a proposed list of key technical issues in need of early resolution for evolutionary and advanced nuclear power plants.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 2, 1990 (55 FR 40249). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statments should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Exective Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetins may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such re-scheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to discuss Proprietary Information applicable to the matter being considered (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8 a.m. and 4:30 p.m.

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Dated: June 18, 1991.
John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 91-14690 Filed 6-21-91; 8:45 am]
BILLING CODE 7000-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standards Board; Thresholds for Cost Accounting Standards Coverage

ACTION: Notice.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comment concerning a Staff Discussion Paper on the topic of revised thresholds for Cost Accounting Standards coverage, and Disclosure Statement requirements.

DATES: Requests for copies of the Staff Discussion Paper, and any comments upon its contents, should be received by August 23, 1991.

ADDRESSES: Requests for a copy of the Staff Discussion Paper, or comments upon its contents, should be addressed to Mr. Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. Attn: CASB Docket 91-01.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202-395-3254).

SUPPLEMENTARY INFORMATION: The Office of Federal Procurement Policy, Cost Accounting Standards Board, is releasing a Staff Discussion Paper concerning revised thresholds for application of the Cost Accounting Standards (CAS) to negotiated Government contracts. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standard, to consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard. The Board is considering action on this topic in order to adjust CAS applicability thresholds to levels reflecting experience with price inflation since the last quarter of 1977. In the intervening fourteen years, CAS applicability thresholds, last promulgated by the previous Board on September 12, 1977, under the authority of Public Law 91-379, have not been adjusted to reflect this inflation experience.

For the purpose of the Discussion Paper, the staff is proposing a modified CAS coverage threshold of $20 million (actual inflation experience rounded to the nearest five million dollar increment). This represents a doubling of the present threshold, and is consistent with inflation experience as measured by the consumer price index from the last quarter of calendar year 1977 through the first quarter of 1991.

The Board is also considering an adjustment in the so-called "trigger contract" threshold. This is the dollar threshold associated with the initiation of CAS coverage, in a segment or business unit, based on the award of a single negotiated Government contract. The present trigger contract threshold is a single negotiated national defense contract exceeding $500,000. Once awarded a negotiated national defense contract of at least this dollar amount in a single cost accounting period, government contractors are subject to some form of CAS coverage (either full or modified) for all subsequently awarded negotiated national defense contracts exceeding $100,000. Public Law 100-679 raised the threshold for individual CAS contract coverage to $500,000 (see proposed CAS recodification, 56 FR 20668), but did not address the issue of an increased threshold for the initial CAS trigger contract. Without such an adjustment, the minimum individual CAS contract threshold, and the initiating CAS "trigger contract" threshold will be one and the same. In light of the Board's consideration of the extension of CAS coverage to many of the negotiated contracts of the civilian procuring agencies (see 56 FR 12571), the staff believes that an adjustment in the trigger contract threshold for the initiation of CAS coverage may be appropriate. The staff proposal is for a doubling of the "trigger contract" dollar threshold applicable to initiation of CAS coverage from $500,000 to $1 million.

The purpose of the Staff Discussion Paper is to solicit public comment with respect to the Board's consideration of the topic of various thresholds applicable to CAS coverage. It reflects research accomplished to date by the staff in the respective subject area, and as such has not been formally approved by the Board.

Dated: June 18, 1991.
Allan V. Burman,
Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.
[FR Doc. 91-14691 Filed 6-21-91; 8:45 am]
BILLING CODE 3110-01-M

POSTAL RATE COMMISSION

[Order No. 888]

Order Granting Motion for Extension and Explaining Procedural Matters

Issued June 18, 1991.

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W. H. "Trey" LeBlanc, III; Patti Birge Tyson.

In the Matter of San Francisco Main Post Office, California 94101 (Paul A. Lovinger, et al., Petitioners).

On June 17, 1991, the Commission received a motion for an extension of time in which to respond to the Postal Service's motion to dismiss this appeal. The Petitioners request one-week extensions for the filing of their response to the motion and for the filing of their Participant Statement or Initial Brief. We are granting that motion, as well as adjusting the other procedural dates. We believe we can provide this additional time to the Petitioners without jeopardizing our ability to issue a decision by the procedural deadline of September 18, 1991. The revised Procedural Schedule is attached to this order.

The Commission has received a number of intervention notices in this appeal. As is the Commission's practice, these interventions will be consolidated into the docket established for the consideration of this appeal, Docket No. A91-4. A number of intervenors have requested that a hearing be held in San Francisco, California. The only "hearing" that could be held is a post office closing appeal case is an oral argument. As explained at 39 CFR 3001.116, oral argument will only be held on those unusual cases where it is a necessary addition to the written arguments presented by the parties. The Commission's experience is that written presentations are adequate. That section of our rules of practice and procedure also points out that oral arguments will be held in Washington, DC.

The Commission orders:

(A) The Petitioners' motion for an extension of time is granted.

(B) The Procedural Schedule attached to this order is adopted in Docket No. A91-1.

Charles L. Clapp,
Secretary.

San Francisco Main Post Office, California 94101

May 21, 1991	Filing of Petition
May 30, 1991	Notice and Order of Filing of Appeal
June 17, 1991	Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).
July 2, 1991	Petitioners' Participant Statement or Initial Brief (see 39 CFR 3001.115(a) and (b)).
July 23, 1991	Postal Service Answering Brief (see 39 CFR 3001.115(c)).
August 7, 1991	Petitioners' Reply Brief should Petitioners choose to file one (see 39 CFR 3001.115(d)).
August 4, 1991	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
September 18, 1991.	Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc 91-14921 Filed 6-21-91; 8:45 am]
BILLING CODE 7710-FW-M

Cancellation of Commission Visits

Notice is hereby given that the visits of Chairman Haley, Commissioner LeBlanc and other members of the Advisory Staff previously scheduled for June 18 and June 19, 1991 to Scan-Code, East Hartford, Connecticut and ADVO-System, Windsor, Connecticut, appearing in the Federal Register of June 7, 1991 at page 26446 (FR Doc. 91-13983), are cancelled.

Charles L. Clapp,
Secretary.
[FR Doc. 91-14670 Filed 6-21-91; 8:45 am]
BILLING CODE 7710-FW-01

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2141.
Upon Written Request Copy Available From: Securities and Exchange Commission Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension

File No. 270-48, Form 10-K
File No. 270-81, Form 10
File No. 270-84, Form S-11
File No. 270-55, Form S-8
File No. 270-61, Form S-3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval extension of the following: Form 10-K; Form 10; Form S-11; Form S-8; Form S-3. The forms and rule provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly traded securities provide investors and the marketplace with adequate information. Form 10-K affects 9,486 filers for a total of 18,195,857 burden hours; Form 10 affects 170 filers for a total of 12,240 burden hours; Form S-11 affects 350 filers for a total of 308,740 burden hours; Form S-8 effects 59 filers for a total of 472 burden hours; and Form S-3 affects 1,730 filers for a total of 724,870 burden hours. The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey of the cost of the Commission's rules and forms. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0063, 0064, 0067, 0068, 0070), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 1, 1991.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 91-14886 Filed 6-21-91; 8:45 am]
BILLING CODE 3010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.
Upon Written Request, Copy Available From: Securities and Exchange Commission Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Rescission

File No. 270-303—Rule 8c-9 and Form N-8C9

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted for OMB approval the rescission of Rule 8c-9 and Form N-8C9 under the Investment Company Act of 1940 (the "Act"). The rule permits a foreign bank or the bank's finance subsidiary to offer or sell its debt securities or non-voting preferred stock in the United States without registering as an investment company under the Act. The form is filed by foreign entities seeking to rely on the rule. The Commission's adoption of Rule 3a-6 and related rule changes, which except foreign banks and foreign insurance companies from the Act's definition of "investment company," has made the exemption provided by the rule unnecessary.

Each of the estimated one hundred respondents annually has incurred an average estimated one burden hour to comply with the requirement to file the form, which will now no longer be incurred. This estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: June 3, 1991.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 91-14887 Filed 6-21-91; 8:45 am]
BILLING CODE 3010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth Fogash, (202) 272-2142.
Upon written request copy available from: Securities and Exchange Commission Office of Filings, Information and Consumer Services Washington, DC 20549.

New, Form F-1, File No. 270-283
New, Form F-12, File No. 270-284
New, Form 13E4H, File No. 270-285
New, 14D1C, File No. 270-286

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44

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U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval new forms under the Securities Act of 1933 (1933 Act), and the Securities Exchange Act of 1934 (1934 Act) to be adopted pursuant to the Commission's rulemaking authority. The proposed forms are as follows:

Form F-11, registration pertaining to equity rights offerings by foreign issuers, (1933 Act),
Form F-12, registration of securities to be issued in an exchange offer, (1933 Act),
Form 14D1C, third party tender offer form (1934 Act), and
Form 13E4H, issuer tender offer form, (1934 Act).

The staff estimates that up to approximately 107 foreign companies may avail themselves of the new forms per year at an estimated average burden of two hours per response per form. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 12, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14688 Filed 6-21-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 18, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following security:

Societe National Elf Aquitane
American Depository Shares each representing ½ and ordinary share, FF 50 Nominal Value (File No. 7-6998)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 10, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-14690 Filed 6-21-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 18, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Club Med, Inc.
American Depositary Receipts (File No. 7-6962)
Coles Myer Ltd.
American Depositary Receipts (File No. 7-6963)
Curragh Resources, Inc.
American Depositary Receipts (File No. 7-6964)
Dickenson Mines Ltd.
Class A American Depositary Receipts (File No. 7-6965)
Domtar, Inc.
American Depositary Receipts (File No. 7-6966)
Electrochemical Industries
American Depositary Receipts (File No. 7-6967)
Elscint Ltd.
American Depositary Receipts (File No. 7-6968)
Emerging Germany Fund
Common Stock, $.01 Par Value (File No. 7-6969)
Emerging Mexico Fund
Common Stock, $.01 Par Value (File No. 7-6970)
ETZ Lavud, Ltd.
American Depositary Receipts (File No. 7-6971)
Europe Fund
Common Stock, $.01 Par Value (File No. 7-6972)
FAI Insurances Ltd.
American Depositary Receipts (File No. 7-6973)
Global Ocean Carriers, Ltd.
American Depositary Receipts (File No. 7-6974)
Huntington International Holdings
American Depositary Receipts (File No. 7-6975)
Indonesia Fund
Common Stock, $.01 Par Value (File No. 7-6976)
Inter City Products Corp.
American Depositary Receipts (File No. 7-6977)
Intertan, Inc.
American Depositary Receipts (File No. 7-6978)
Irish Investment Fund
Common Stock, $.01 Par Value (File No. 7-6979)
Italy Fund
Common Stock, $.01 Par Value (File No. 7-6980)
Jakarta Growth Fund
Common Stock, $.01 Par Value (File No. 7-6981)
Kubota Ltd.
American Depositary Receipts (File No. 7-6982)
Laser Industries, Ltd.
American Depositary Receipts (File No. 7-6983)
Luxottica Groupt SPA
American Depositary Receipts (File No. 7-6984)
Malartic Hygrade Gold Mines
American Depositary Receipts (File No. 7-6985)
MC Shipping, Inc.
American Depositary Receipts (File No. 7-6986)
Mitsubishi Bank Ltd.
American Depositary Receipts (File No. 7-6987)
Montecatini Edison SPA
American Depositary Receipts (File No. 7-6988)
NFC, PLC
American Depositary Receipts (File No. 7-6989)
National Australia Bank
American Depositary Receipts (File No. 7-6990)
National Westminster Bank
American Depositary Receipts (File No. 7-6991)
North American Vaccine
American Depositary Receipts (File No. 7-6992)
North Canadian Oils, Ltd.
American Depositary Receipts (File No. 7-6993)
Northgate Exploration, Ltd.
American Depositary Receipts (File No. 7-6994)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 10, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-14691 Filed 6-21-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29311; File No. SR-PTC-91-08]

Self-Regulatory Organizations; Participants Trust Company; Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Elimination of Prorated Charges to Participants for Principal and Interest Advances

June 14, 1991.

I. Introduction

On June 4, 1991, the Participants Trust Company ("PTC") filed a proposed rule change (File No. SR-PTC-91-08)[1] with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] The Commission is publishing this notice to solicit comments from interested persons. As discussed below, this order also approves the proposal on an accelerated basis.

[1] The proposed rule change was filed originally on October 23, 1990 (File No. SR-PTC-90-07) and was approved temporarily through April 30, 1991. See Securities Exchange Act Release No. 28720 (January 18, 1991), 56 FR 2787. On April 4, 1991, the proposed rule change was refiled (File No. SR-PTC-91-05) and approved temporarily through June 14, 1991. See Securities Exchange Act Release No. 29073 (April 22, 1991), 56 FR 19225.

[2] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article III, rule 2, section 2(f) of the rules of PTC, providing for the proration among benefited participants of the cost of financing principal and interest ("P&I") advances, is deleted and current section 2(g) is renumbered 2(f).

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, PTC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item V below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PTC has determined that the cost of financing principal and interest advances can be adequately covered by investing collected principal and interest payments upon receipt; the purpose of the proposed rule change to reduce fees and costs to participants.

The basis for this proposed rule change under the Act is the requirement under section 17A(b)(3)(D) that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not perceive that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from members or other interested parties.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

PTC has requested accelerated effectiveness. PTC believes that there is good cause to approve the proposal prior to the thirtieth day after publication in the Federal Register because it will allow PTC to continue covering the cost of borrowing P&I advances with interest from investing P&I receipts and because there will, accordingly, not be a lapse in effectiveness when the temporary approval for SR-PTC-91-05 expires on June 14, 1991. In addition the Commission has noticed the proposal and approved it on a temporary basis. No comments were received.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR-PTC-91-08 and should be submitted by July 15, 1991.

VI. Discussion

Section 17A(b)(3)(D) of the Act[3] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.[4] The proposal would eliminate the pro rata charge to participants for the borrowing cost relating to P&I advances. As discussed below, the Commission believes that the proposal is consistent with the Act and in particular section 17A(b)(3)(D).

Because of delays in collecting P&I and the lack of historical data concerning borrowing cost and interest income from investing P&I, PTC has

[3] 15 U.S.C. 78q-1(b)(3)(D).

[4] This proposal is not intended to have any effect on the Commission's directive in PTC's temporary registration order that requires PTC to modify its P&I collection and payment procedures to allow for voluntary instead of mandatory advances of P&I. See Securities Exchange Act Release No. 28671 (March 28, 1991), 54 FR 13288.

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charged participants who receive P&I advances pro rata for PTC's external borrowing costs, while at the same time earning interest income by investing P&I received prior to Distribution Date (the day after payment date). In effect, prior to the current temporary approval of this proposal, PTC was duplicating revenue associated with its P&I payment service by not offsetting borrowing costs with earned interest income. Due to PTC's efforts to encourage paying agents to make P&I payments available to PTC by payment date, PTC now believes that income from investing P&I received prior to Distribution Date is more than sufficient to satisfy anticipated borrowing cost. Thus, the proposal eliminates this inefficiency by applying P&I interest income towards the cost of financing P&I and eliminating the existing pro rata charge to participants for such cost.

Since PTC's inception as a clearing agency, the Commission has expressed concern that PTC retain sufficient funds and credit sources to adequately meet its payment obligations. The Commission is particularly concerned about the possible effects of the proposal on operating income and credit sources in the event interest earned on P&I receipts does not meet the cost of financing P&I advances. Because of this concern, the Commission requested that PTC monitor, on a monthly basis, the amount of funds borrowed for P&I advances, the cost of financing P&I advances, and the amount of interest earned on the investment of P&I receipts.[6] PTC's consequent monitoring of P&I receipts and disbursements disclosed that the income that the income generated from investing P&I receipts exceeded the cost of financing for P&I advances by 2:1 on an annualized basis.[6] Additionally, during the period of January, 1991, through March, 1991, the excess earnings from invested P&I receipts was over $2 million, substantially greater than the 2:1 ratio.

Because of the substantial income derived from the investment of P&I receipts, the Commission is concerned that PTC's Board of Directors establish policies concerning the use of P&I investment proceeds and that PTC's accounting controls adequately track P&I investment income and the use of that income. Accordingly, PTC has agreed to identify and track separately interest earned from P&I receipts and the cost of financing P&I advances and report to its Board of Directors ("Board") the amount of gross income earned on P&I payments invested, the cost of borrowing to meet P&I advances, and the net income earned from investing P&I receipts after offsetting the cost of borrowing for P&I advances on a monthly basis. PTC's management also has agreed to seek a policy statement from the Board within six months of the release of this order addressing the use of excess earnings from invested P&I receipts.[7]

The Commission believes that there is good cause for approving the proposal prior to the thirtieth day after publication in the **Federal Register**. The Commission has noticed for comment in the **Federal Register** and approved, on a temporary basis though June 14, 1991, two prior rule filings identical to the present filing. No comments regarding the proposal were received.[8] By accelerating the effective date of this filing, PTC can continue to cover the cost of borrowing for P&I advances with interest earned on investing P&I receipts, instead of reverting back to its previous policy of charging participants the cost of borrowing.

VII. Conclusion

For the reasons stated above, the Commission finds that PTC's proposal is consistent with Section 17A of the Act. The Commission also finds good cause for approving the proposal prior to the thirtieth day after publication in the **Federal Register**.[9]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that PTC's proposed rule change (SR–PTC–91–08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14689 Filed 6–21–91; 8:45 am]

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[6] This request was made in the temporary approval order for File No. SR–PTC–91–06. See supra note 1.

[7] Letter from Alison Hoffman, Assistant Counsel, PTC, to Scott Wallner, Staff Attorney, Division of Market Regulation, Commission (March 22, 1991).

[7] Letter from Leopold S. Rassnick, Vice President and General Counsel, PTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (May 23, 1991).

[8] See supra note 1.

[9] Pursuant to section 19(b)(4)(A) of the Act, 15 U.S.C. 78s(b)(4)(A), the Commission contacted the Federal Reserve Board of Governors ("Federal Reserve Board"), PTC's appropriate regulatory agency, regarding the proposed rule change. Don Vinnedge, Manager, Trust Activities Program, Federal Reserve Board, stated that the staff of the Federal Reserve Board believes that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of PTC or for which it is responsible. Telephone conversation between Don R. Vinnedge, Manager, Trust Activities Program, Federal Reserve Board, and Scott Wallner, Staff Attorney, Division of Market Regulation, Commission (June 4, 1991).

[10] 15 U.S.C. 78s(b)(2).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

June 18, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Sbarro Incorporated
Common Stock, $0.01 Par Value (File No. 7–6995)

Sensormatic Electronics Corporation
Common Stock, $.01 Par Value (File No. 7–6996)

Transatlantic Holdings, Inc.
Common Stock, $1 Par Value (File No. 7–6997)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 10, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–14802 Filed 6–21–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18202; 812–7622]

Equitable Life Funding Corporation; Application

June 17, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Equitable Life Funding Corporation.

RELEVANT ACT SECTIONS: Order requested under section 6(c) that would exempt applicant from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would permit it to sell certain debt instruments and use the proceeds to finance the business activities of its parent company, Equitable Life Assurance Society of the United States ("Equitable"), and certain companies controlled by Equitable.

FILING DATE: The application was filed on November 7, 1990, and amended on February 20, 1991 and May 28, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 15, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 787 Seventh Avenue, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was incorporated in Delaware in November of 1990. All of applicant's outstanding shares are owned either by The Equitable Life Assurance Society of the United States ("Equitable"), a New York mutual life insurance company, or by a holding company subsidiary of Equitable formed for the purpose of holding the stock of various Equitable subsidiaries. Equitable, directly and through its subsidiaries, issues a variety of life insurance and investment products, provides investment advisory services to individuals, businesses, and institutional investors, and manages its own portfolio of investments that support its obligations.

2. Applicant was organized to engage in financing activities to provide funds for use in the business operations of Equitable and its subsidiaries. Applicant proposes to borrow funds through the sale of debt securities in the United States and in overseas markets, and to lend the proceeds to Equitable and Equitable's direct and indirect subsidiaries.

3. Due to the nature of the debt markets, applicant may, from time to time, borrow amounts in excess of the amounts immediately required by Equitable and its subsidiaries. However, at least 85% of the cash or cash equivalents raised by applicant through the sale of debt securities will be loaned to Equitable or its subsidiaries as soon as practicable, but in no event later than six months after applicant's receipt of such cash or cash equivalents. Any cash that is not loaned to Equitable or its subsidiaries will be invested in government securities, securities of Equitable or a company controlled by Equitable (or in the case of a partnership or joint venture, the securities of the partners or participants in the joint venture), or debt securities which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act.

4. Before applicant begins issuing debt securities, Equitable will enter into a master guarantee agreement (the "Guarantee Agreement") with applicant under which Equitable will unconditionally guarantee the payment of principal, interest, and premium, if any, on debt securities issued by applicant. The Guaranty Agreement will give each holder of debt securities issued by applicant a direct right of action against Equitable to enforce Equitable's obligations under the Guaranty Agreement without first proceeding against applicant.

Applicant's Legal Analysis

1. Rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parents companies. The rationale underlying the rule is expressed in the SEC release in which the rule was adopted.[1] The release stated that a finance subsidiary of a non-investment company parent, through technically an investment companies itself, is essentially a conduit for its parent. Therefore, the release reasoned, if the parent can issue debt securities directly, there is no reason to impose the requirements of the Act on the subsidiary.

2. Rule 3a–5(b)(2)(i) defines "parent company" to be a corporation, partnership or joint venture that, *inter alia*, is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a). Equitable is not technically a "parent company" within the meaning of rule 3a–5(b)(2)(i) because it meets the definition of investment company in section 3(a) of the Act and is excepted from such definition by section 3(c)(3) of the Act.

3. The release adopting rule 3a–5 stated that relief similar to that granted under rule 3a–5 may be appropriate for a finance subsidiary of a parent company that derives its non-investment company status from section 3(c) of the Act. The release stated, however, that such requests should be examined on a case by case basis. According to the adopting release, the concern was that a company could be considered a non-investment company for the purposes of the Act under section 3(c) of the Act and still be engaged primarily investment company activities. To illustrate the concern, the release pointed to section 3(c)(1) of the Act, which provides an exemption from the Act for investment companies whose shares are beneficially owned by not more than one hundred persons which is not making and does not propose to make a public offering of its securities. Applicant argues that such concerns do not apply to Equitable because Equitable, unlike a section 3(c)(1) investment company, does not engage primarily in investment company activities. Instead, Equitable is an insurance company and is excluded from the definition of investment company under section 3(c)(3) of the Act.

4. Rule 3a–5(b)(3)(i) defines a "company controlled by the parent company" to be a corporation, partnership or joint venture that, *inter*

[1] Investment Company Act Release No. 14275 (December 14, 1984).

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alia, is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a). Certain of Equitable's subsidiaries do not fit within the technical definition of "companies controlled by the parent company." These subsidiaries, like Equitable, derive their non-investment company status from section 3(c) of the Act. Also like Equitable, non of the subsidiaries derives its non-investment company status from section 3(c)(2) of the Act and none is primarily engaged investment company activities. Instead, the subsidiaries derive their non-investment status 3(c)(2), 3(c)(3), 3(c)(4), and 3(c)(8) of the Act, except that is a subsidiary is exempted under section 3(c)(8) of the Act, it will not be primarily engaged, directly or through majority owned subsidiaries, in one or more of the businesses described in section 3(c)(5) of the Act.

5. Section 6(c) of the Act empowers the SEC to grant an exemption from the provisions of the Act when such exemption is necessary to appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. On the basis of the forgoing, applicant submits that its request for exemptive relief meets the standards set out in section 6(c) of the Act and therefore should be granted.

Applicant's Condition

Applicant will comply with all of the provisions of rule 3a-5 under the Act except: (a) Equitable will not meet the portion of the definition of "parent company" in rule 3A-5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(3) of the Act; and (b) applicant will be permitted to invest in or make loans to corporations, partnerships, and joint ventures that do not meet the portion of the definition of "company controlled by the parent company" in rule 3a-5(b)(3)(i) solely because they are excluded from the definition of investment company by sections 3(c)(2), 3(c)(3), 3(e)(4), or 3(c)(8) of the Act; provided that any such entity excluded from the definition of investment company under section 3(c)(6) of the Act will not be engaged primarily, directly or through majority-owned subsidiaries, in one or more of the businesses described in section 3(c)(5) of the Act.

For the commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14898 Filed 6-21-91; 8:45 am]

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[Release No. 35-25832]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 14, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 9, 1991, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant application(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Lehigh Utilities, Inc. (37-855)

Lehigh Utilities Inc. ("Lehigh"), 500 Construction Lane, Lehigh Acres, Florida, 33936-4848, a Florida corporation, has filed an application for an order under section 2(a)(4) of the Act declaring that it is not a "gas utility company" because it is primarily engaged in businesses other than that of a gas utility company, and it distributes at retail only small amounts of liquified petroleum ("LP") gas.

Lehigh is a wholly owned subsidiary of Lehigh Corporation, a real estate development company which originally developed the community in Lehigh Acres, Florida that Lehigh serves. Lehigh Corporation is primarily engaged, directly and through its subsidiaries, in the marketing and sale of homesites, timeshare units and residential dwelling units, as well as the operation of a motel and two golf courses, in Lee County, Florida. Lehigh Corporation is a wholly-owned subsidiary of Land Resources Corporation ("Land Resources"), a real estate holding company which is, in turn, a wholly owned subsidiary of Security Savings and Loan Association ("Security"), Scottsdale, Arizona, an institution under the receivership of the Resolution Trust Corporation ("RTC").

The RTC is pursuing the sale of all or part of Land Resources and its subsidiaries. As receiver for Security, the RTC has approved the sale of all of the common stock of Lehigh to Seminole Utility Company ("Seminole"), an indirect nonutility subsidiary, presently inactive, of Minnesota Power & Light Company, a holding company exempt from registration under section 3(a)(2) of the Act pursuant to rule 2.

Lehigh provides water, sewer, gas and garbage collection services to the town of Lehigh Acres. Lehigh's gas system is comprised of 100 buried 1,000 gallon tanks located throughout its service area. Distribution lines run from the tanks throughout portions of Lehigh Acres, and gas is piped to approximately 1,700 customers within Lehigh Acres, substantially all of which are residential customers. Lehigh's LP gas operations do not constitute a utility service under Florida law, and its rates for LP gas service are not subject to regulation by the Florida Public Service Commission.

Lehigh's operating revenues derived from sales of LP gas for the fiscal year ended September 30, 1990, were $463,698; approximately 9.1% of Lehigh's total fiscal 1990 operating revenues of $5,086,030. At September 30, 1990, Lehigh had total assets of $15,031,981, of which approximately $800,000, or 5%, constituted LP gas system properties.

Lehigh states that it is primarily engaged in businesses other than the business of a gas utility company, with revenues from such other businesses constituting approximately 91% of its total fiscal 1990 revenues. Lehigh further notes that its $463,698 revenues from retail sales of LP gas in fiscal year 1990 are small, both in absolute terms and as a percentage of Lehigh's total revenues. Lehigh thus asserts that it is not necessary in the public interest or for the protection of investors or consumers that it be considered a "gas utility company" under the Act.

Enerop Corporation (70-7301)

Enerop Corporation ("Enerop"), 10 Lafayette Square, Buffalo, New York 14203, a wholly owned subsidiary of National Fuel Gas Company ("National"), a registered holding company, has filed a post-effective amendment under sections 9(a) and 10 of the Act to the application-declaration which was filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45.

By orders dated May 1, 1986, and March 18, 1988 (HCAR Nos. 24061 and 24604, respectively), the Commission authorized, in relevant part: (1) National to loan $200,000 to Metscan, Inc. ("Metscan"), a New York corporation that has developed an electronic meter reading system ("Metscan System"), and to receive an option to convert the note ("Note") evidencing the loan into 80,000 shares of Metscan's preferred stock, at a price of $2.50 per share; (2) National to assign the Note and option from Metscan to Enerop; (3) National to provide Enerop $442,500 as a contribution to capital, which funds Enerop was authorized to invest, together with third parties, in Metscan Technology Partners ("Partnership"), a New York partnership formed by Metscan, after which Enerop would own approximately 9.96% of the Partnership; and (4) the Partnership and Metscan to be reorganized as a corporation before the end of 1989, and Enerop to acquire approximately 7.23% of the common stock of the new corporation.

The March 18, 1988 order contained a reservation of jurisdiction over this reorganization which was released by order dated April 27, 1989 (HCAR No. 24874). The reorganization occurred on May 17, 1989, and the new corporation was called Metscan Acquisition Corporation ("MAC"). Pursuant to the reorganization, the Note and Enerop's Partnership interest attributable to the $442,500 investment were converted into 80,000 shares and 177,00 shares of MAC common stock, respectively, at a conversion rate of $2.50 per share. MAC subsequently changed its name to Metscan, Inc., and the 257,000 shares that Enerop then owned represented 6.0% of the total shares of Metscan common stock outstanding, and 5.1% of that total if shares subject to outstanding warrants and employees' options were included.

By order dated September 7, 1990 (HCAR No. 25143), the Commission authorized Enerop to acquire an additional 143,000 shares of Metscan common stock for $357,500 ($2.50 per share), and 39,500 shares of Metscan preferred stock for $158,000 ($4 per share). The preferred stock pays a cumulative annual 7% dividend, and is convertible by the stockholders to Metscan common stock on a 1:1 basis, through July of 1995. Enerop now owns 9.4% of Metscan's common stock and 7.1% of Metscan's preferred stock, or 7.9% of such common stock if the preferred stock is converted into common stock, and if all warrants and other rights are exercised.

Enerop now proposes to purchase 17,000 additional shares of Metscan preferred stock for $68,000 ($4 per share). Once the proposed acquisition has been consummated, Enerop will own 9.8% of Metscan's preferred stock and 9.4% of Metscan's common stock, or about 8.2% of the actual and potential equity investment in Metscan. Enerop's total investment in Metscan will then total $1,226,000.

OLS Energy-Chino, et al. (70-7725)

OLS Energy-Chino ("Chino"), OLS Energy-Berkeley ("Berkeley") and OLS Energy-Camarillo ("Camarillo"), all located at One Gatehall Drive, 3rd Floor, Parsippany, New Jersey 07054, indirect subsidiary companies of General Public Utilities Corporation ("GPU"), a registered holding company, have filed a post-effective amendment to their declaration under sections 6(a) and 7 of the Act.

By orders dated May 10, 1989 and August 1, 1989 (HCAR Nos. 24885 and 24931, respectively), the Commission, among other things, authorized Energy Initiatives, Incorporated, a wholly owned indirect subsidiary company of GPU, to acquire through a newly formed, wholly owned subsidiary, Camchino Energy Corporation, general and limited partnership interests, aggregating a 50% interest, in OLS Power Limited Partnership ("Partnership"). The Partnership was authorized to acquire, directly or indirectly, all of the outstanding common stock of Chino, Berkeley and Camarillo.

Each of Chino, Berkeley and Camarillo is the lessee (collectively, "Lessees") of a qualifying cogeneration facility ("Facility") located in California. Prior to the acquisition, each of the Lessees had entered into a revolving credit agreement ("Credit Agreement") with General Electric Capital Corporation ("GECC"), the owner of the Facilities, to provide for the short-term working capital requirements of its Facility.

By orders dated February 9, 1990 and December 26, 1990 (HCAR Nos. 25038 and 25230, respectively), the Commission authorized Chino, Berkeley and Camarillo to enter into amendments to their Credit Agreements to, among other things: (a) Increase the aggregate amount of the notes which may be outstanding thereunder at any time from $1,000,000 to $1,250,000; (b) extend the time during which notes may be outstanding thereunder to June 30, 1991; and (c) reduce the rate of interest payable on any notes outstanding to 3% from 5% over the Prime Rate, as defined therein. In addition, Chino and Camarillo were authorized to arrange for the issuance of letters of credit ("LOCs") by GECC in favor of Southern California Gas Company as security for their respective obligations to pay for natural gas supplied to their Facilities. GECC has issued LOCs in the amount of $800,000 for Camarillo and $700,000 for Chino, and the maximum amounts of borrowings which Chino and Camarillo may make under their Credit Agreements have been reduced by the respective face amount of the LOCs.

Camarillo, Chino and Berkeley now seek authorization to borrow under their respective Credit Agreements to December 31, 1991. In addition, Chino and Camarillo propose that their respective LOCs be outstanding to December 31, 1991. All borrowings and LOC arrangements will not exceed the aggregate principal amount under each Credit Agreement of $1.25 million.

The Lessees would use the proceeds from such borrowings for working capital and general corporate purposes or, in the case of Chino and Camarillo, to repay GECC any amounts paid by GECC under the LOCs.

The Southern Company, et al. (70-7846)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and Southern Nuclear Operating Company, Inc. ("SONOPCO"), 40 Inverness Center Parkway, Birmingham, Alabama 35204, its wholly owned subsidiary company, have filed an application-declaration under section 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45 thereunder.

SONOPCO proposes through March 31, 1993 to borrow from Southern or lenders other than Southern in an aggregate principal amount not to exceed $10 million (such $10 million includes the $5 million currently outstanding in open account advances from Southern previously authorized by order dated December 14, 1990 (HCAR No. 25212) ("December 1990 Order")). Borrowings from Southern will accrue interest at a rate not to exceed the prime rate in effect at a bank to be designated by Southern. Loans obtained from lenders other than Southern will have maturities not to exceed 10 years and will accrue interest at a rate not to

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exceed the prime rate plus 2% for variable rate loans and the prime rate at the time of borrowing plus 2% for fixed rate loans. Such loans may be secured or unsecured and may be guaranteed by Southern.

Southern proposes through March 31, 1993 to make up to $5 million in open account advances to SONOPCO from time to time which, at the option of Southern, may be converted into capital contributions or additional shares of common stock of SONOPCO. Such advances would be in addition to the $5 million currently outstanding under the December 1990 Order. To the extent any such advances are converted to equity, the borrowing authority sought herein shall be reduced by the amount of the advances so converted, so that the total capitalization of SONOPCO does not exceed $11 million (including its present $1 million common equity) without further authorization from the Commission. The rate of return on SONOPCO's common equity capital will not exceed the average of the most recent rates of return allowed by the Alabama Public Service Commission and the Georgia Public Service Commission.

New England Power Company (70-7853)

New England Power Company ("NEP"), 25 Research Drive, Westborough, Massachusetts, a subsidiary of New England Electric System, a registered holding company, has filed a declaration under sections 6(a)(2), 7(e), and 12(e) of the Act and rules 62 and 65 thereunder.

The preference provisions of NEP's Dividend Series Preferred Stock and Preferred Stock—Cumulative (collectively, the "Cumulative Preferred Stock"), as set forth in NEP's Articles of Organization and By-Laws, provide that, except as voted by the holders of a majority of the Cumulative Preferred Stock, the short-term unsecured indebtedness of NEP shall not exceed 10% of the sum of (i) the principal amount of all outstanding bonds and other secured indebtedness and (ii) the capital, premium, and retained earnings of NEP, and that all unsecured indebtedness of NEP shall not exceed 20% of such sum. As used in NEP's Articles of Organization and By-Laws, short-term unsecured indebtedness means unsecured indebtedness having an original maturity of less than ten years. In recent years, NEP's unsecured indebtedness has been all short-term.

By a majority vote of the holders of the Cumulative Preferred Stock during a special meeting of stockholders held on December 6, 1984, and by order of the Commission (HCAR No. 23460, October 23, 1984), NEP was authorized to issue short-term unsecured indebtedness in excess of the 10% limitation thereon, provided that all unsecured indebtedness not exceed 20% of the sum of the principal amount of all outstanding bonds and other secured indebtedness and the capital, premium, and retained earnings of NEP and that any such unsecured indebtedness in excess of the 10% limitation be issued not later than November 1, 1991, and mature not later than November 1, 1992.

NEP now proposes to seek the affirmative vote of the holders of a majority of NEP's cumulative Preferred Stock, authorizing the continued issuance by NEP of short-term unsecured indebtedness in excess of the 10% limitation, provided (i) that any such excess indebtedness be issued not later than November 1, 1996, (ii) such excess indebtedness shall have a maturity not later than November 1, 1998 and (iii) the 20% limitation on all unsecured indebtedness of NEP shall remain in effect.

The continuation of the previously granted authorization requires the favorable vote, at a meeting called for that purpose, of a majority of the Cumulative Preferred Stock of all series now outstanding, voting as a single class. The Board of Directors intends to submit the proposal to the Cumulative Preferred Stockholders for approval, and to solicit proxies to obtain the required vote.

Consolidated Natural Gas Co. (70-7884)

Consolidated Natural Gas Co. ("consolidated"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222-3199, a registered holding company, and Virginia Natural Gas, Inc. ("VNG"), 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23502-3488, its wholly owned gas public-utility subsidiary company, have filed a declaration under section 12(h) of the Act and rule 45 thereunder.

In 1989, prior to its acquisition by Consolidated, authorized by order dated February 14, 1990 (HCAR No. 25040), VNG issued $20 million principal amount of 9.94% senior notes, series A, due January 1, 1999 ("Notes") to the Aid Association of Lutherans ("Association"), pursuant to a note purchase agreement dated January 1, 1989 ("Note Agreement"). The Note Agreement provides that interest on the unpaid principal is payable semi-annually on the first day of January and July of each year, commencing on July 1, 1989. The Note Agreement requires VNG to prepay $4 million principal amount of the Notes on January 1, 1995, and on each January 1 thereafter to and including January 1, 1998. The last $4 million installment would be paid at maturity on January 1, 1999. In addition, the Note Agreement requires VNG to provide to the Association copies of its financial statements accompanied by a report thereon of independent public accountants.

Consolidated proposes to enter into a guarantee agreement ("Guarantee") with the Association pursuant to which Consolidated would absolutely and unconditionally guarantee all of VNG's obligations under the Note Agreement in accordance with the terms thereof. In consolidation of the Guarantee, the Association would release VNG from having to provide reports of independent public accountants on its financial statements otherwise required by the Note Agreement. It is stated that the waiver of such requirement would result in an estimated savings to VNG of approximately $50,000 per year.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14896 Filed 6-21-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended June 14, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47583.
Date filed: June 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/C 0901 dated May 8, 1991; Europe To USA/US Territories, R-1 To R-7.
Proposed Effective Date: October 1, 1991.

Docket Number: 47584
Date filed: June 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/C 0201 dated May 27, 1991; TC23 Expedited (Except To/From US Territories), R-1 To R-3.
Proposed Effective Date: August 1, 1991.

Docket Number: 47585
Date filed: June 10, 1991.
Parties: Members of the International Air Transport Association.

Subject: TC23 Reso/C 0220 dated May 27, 1991; TC23 Expedited (To/From US Territories), R-2; intended effective date: August 1, 1991; TC23 Reso/C0203 dated May 27, 1991; TC23 (To/From US Territories); intended effective date: October 1, 1991.

Docket Number: 47586
Date filed: June 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC12 Resp/C 0004 dated May 1, 1991; North Atlantic Areawide (Except USA), R-1 to R-2; TC12 Reso/C 0006 dated May 1, 1991; Canada-Africa Reso, R-3 To R-6; TC12 Rates 0466 dated May 22, 1991—Tables; TC12 Reso/C 0000 dated May 1, 1991; Canada-Africa Resos, R-7 To R-12; TC12 Rate 0470 dated May 22, 1991—Tables.
Proposed Effective Date: October 1, 1991.

Docket Number: 47587
Date filed: June 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC31 Reso/C 0219 dated April 22, 1991; South Pacific (To/From USA/US Terr.), R- To R-4; TC31 Rates 0146 Dated May 15, 1991—Rates Tables; TC31 Reso/C 0221 dated April 22, 1991; Japan-USA/US Terr., R-5 To R-9; TC31 Reso/C 0223 dated April 22, 1991; Korea-USA/US Terr., R-10 To R-21; TC31 Rates 0144 dated May 3, 1991—Rates Tables; TC31 Reso/C 0224 dated April 22, 1991; Southeast Asia-USA/US Terr., R-22.
Proposed Effective Date: October 1, 1991.

Docket Number: 47588
Date filed: June 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/C 0071 dated May 21, 1991; TC3 (Except To/From US Territories), R-1 To R-13; TC3 Rates 0078 dated May 16, 1991—Rates Tables.
Proposed Effective Date: October 1, 1991.

Docket Number: 47589
Date filed: June 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC123 Reso/C0025 dated April 22, 1991; TC1-South Asian Subcontinent Via The Atlantic; (Except To/From US Terriroties), R-1 To R-6.
Proposed Effective Date: October 1, 1991.

Docket Number: 47590
Date filed: June 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC123 Reso/C 0026 dated April 22, 1991; TC1-South Asian Subcontinent Via The Atlantic; (To/From US Territories); TC31 Meet/C 0071/TC123 Meet/C0007 dated May 27, 1991—Minutes; TC123 Rates 0013 dated May 27, 1991—Rates Tables.
Proposed Effective Date: October 1, 1991.

Docket Number: 47591.
Date filed: June 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/C 0070 dated May 21, 1991; TC3 (To/From US Territories), R-1 To R-4; TC3 Meet/C 0021 dated May 27, 1991—Minutes; TC3 Rates 0077 dated May 16, 1991—Rates Tables.
Proposed Effective Date: October 1, 1991.

Docket Number: 47592.
Date filed: June 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC31 Reso/P dated May 27, 1991; Expedited North America-Southwest Pacific; (To/From US Territories) Reso 002d, R-1; intended effective date: July 1, 1991; TC31 Reso/P 0673 dated May 29, 1991; Expedited South Pacific (To/From US Territories); R-2 to R-5; intended effective date: August 1, 1991.

Docket Number: 47594.
Date filed: June 10, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC31 Reso/C 0216 dated April 22, 1991; South Pacific (Except To/From USA/US Terr.), R-1 to R-4; TC31 Rates 0147 dated May 15, 1991—Rates Tables; TC31 Reso/C 0220 dated April 22, 1991; Japan-TC1 (Except USA/US Terr.), R-5 To R-6; TC31 Rates) 143 dated May 3, 1991—Rates Tables; TC31 Reso/C 0222 dated April 22, 1991; SE Asia/Korea—(Except USA/US Terr.), R-10 To R-17.
Proposed Effective Date: October 1, 1991.

Docket Number: 47596.
Date filed: June 13, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 500 (Within Africa).
Proposed Effective Date: July 1, 1991.

Docket Number: 47599.
Date filed: June 13, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 499 (Diplomatic bags).
Proposed Effective Date: July 1, 1991.

Docket Number: 47600.
Date filed: June 13, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 497 (Fare Reduction from Italy).
Proposed Effective Date: July 1, 1991.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 91-14905 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-62-M

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80-2-69 established the first interim SFFL, and Order 91-4-27 established the currently effective two-month SFFL applicable through May 31, 1991.

In establishing the SFFL for the two-month period beginning June 1, 1991, we have projected non-fuel costs based on the year ended December 31, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

These projections reflect sizeable decreases in fuel prices.

By Order 91-6-17 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.4503
Latin America—1.4051
Pacific—1.8898
Canada—1.3809

For further information contact: Keith A. Shangraw (202) 366-2439.

Dated: June 17, 1991.

By the Department of Transportation.

Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-14907 Filed 6-21-91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended June 14, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth

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below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47595.
Date filed: June 10, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 8, 1991.
Description: Application of Ground Air Transfer, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a determination of fitness to provide, on a code-sharing basis, interstate and overseas transportation of persons, property, and mail.

Docket Number: 44992.
Date filed: June 10, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 8, 1991.
Description: Application of Compania de Aviacion "Faucett," S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for renewal of its foreign air carrier permit between the United States and Peru.

Docket Number: 44689.
Date filed: June 11, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 9, 1991.
Description: Application of Aeroperu, pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for renewal of its foreign air carrier permit, to engage in scheduled foreign air transportation of persons, property, and mail between the United States and Peru.

Docket Number: 44944.
Date filed: June 11, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 9, 1991.
Description: Application of Aeronaves Del Peru, pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for renewal of its foreign air carrier permit for an additional indefinite period authorizing it to engage in scheduled foreign air transportation of property and mail twice weekly between Lima, Peru; via the intermediate points Panama City, Panama; Guayaquil, Ecuador (blind sector); Bogata and Cali, Colombia (blind sectors); and the terminal point Miami, Flordia.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91-14906 Filed 6-21-91; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Air Traffic Procedures Advisory Committee; Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of Air Traffic Procedures Advisory Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 22, at 8 a.m., through July 25, 1991, at 4:30 p.m.

ADDRESSES: The meeting will be held at the Experimental Aircraft Association Aviation Center, 3000 Poberezny Road, Oshkosh, WI.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore H. Davies, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. 1), notice is hereby given of a meeting of the ATPAC to be held from July 22, at 8 a.m., through July 25, 1991, at 4:30 p.m., at the Experimental Aircraft Association Aviation Center, 3000 Poberezny Road, Oshkosh, WI. The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 19, 1991. The next quarterly meeting of the FAA ATPAC is planned to be held from October 21-24, 1991, in Washington, DC. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on June 17, 1991.

Theodore H. Davies,
Executive Director, Air Traffic Procedures Advisory Committee.
[FR Doc. 91-14925 Filed 6-21-91; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket 91-05-IP-No. 2]

General Motors Corporation; Denial of Petition for Determination of Inconsequential Noncompliance

This notice denies the petition by General Motors Corporation of Warren, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for apparent noncompliances with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, "Controls and Displays," and with 49 CFR 571.105, Federal Motor Vehicle Safety Standard No. 105, "Hydraulic Brake Systems." The company had petitioned for a determination that these noncompliances were inconsequential as they relate to motor vehicle safety.

Notice of receipt of the petition was published on February 4, 1991, and an opportunity afforded to comment (56 FR 4315).

Paragraph S5.3.1(d) of Standard No. 105 specifies that an indicator lamp shall be activated when the ignition (start) switch is in the "on" (run) position and whenever there is application of the parking brake. Paragraph S5.3.3 requires that the brake indicator lamp shall remain activated as long as the parking brake is applied and the ignition (start) switch is in the "on" position.

Paragraph S5.3.4(a) of Standard No. 101 specifies that means be provided which are capable of making telltales and their identification visible to the driver under all driving conditions. Paragraph S5.4(b) states that telltales shall be displayed at the initiation of any underlying condition. "Telltales" means a display that indicates the actuation of a device, a correct or defective functioning or condition, or a failure to function.

GM produced 14,400 Buick Rivieras and 4,200 Reattas of the 1990 model year which do not comply with the requirements of Standard No. 105 and Standard No. 101 mentioned above. The indicator lamp in these vehicles is not activated when the ignition is "on" and the transmission is in "Park" or "Neutral." GM supported its petition with the following arguments:

"First, the brake indicator light is displayed as soon as the vehicle is capable of being driven, *i.e.*, as soon as the transmission lever is shifted into reverse or any forward gear. This should have the effect of informing drivers if the parking brake has not been fully released before they proceed. If the parking brake has been firmly applied drivers will also experience obvious drag in both drive and reverse when attempting to move the vehicle.

"Second, the vehicles are equipped with 'pump-to-set' foot pedal parking brake systems. 'Pump-to-set' systems are applied with several strokes, *i.e.*, full application of the park brake system is achieved with approximately two and one half full strokes of the pedal. If the brake indicator lamp does not light when parking brake application has begun and after the transmission selector is placed in 'PARK' or 'NEUTRAL' drivers might be inclined to pump the pedal an additional time, which would have the desirable effect of assuring that the brake is more fully set.

"Third, GM has reviewed its files and had found no owner complaints regarding parking brake telltale operation on the subject Rivieras and Reattas.

"Finally, all 1990 Buick Rivieras and Reattas are equipped with automatic transmissions with parking mechanisms which must be engaged before the ignition key can be removed. The vehicles also meet the requirements of FMVSS 105, Section 5.2.2.3, *viz*, that without the parking brake engaged, the transmission parking mechanism will not disengage or fracture in a manner permitting vehicle movement in a prescribed barrier test. This transmission parking mechanism provides sufficient gradeability so that even if drivers do not fully set the parking brake, the parking mechanism is capable of holding the vehicles on a steep grade.

In summary, GM believes that drivers will be sufficiently alerted to release their parking brake, despite the noncompliance, by the activation of the brake indicator lamp when the vehicle is shifted into gear and by apparent drag when attempting to move the vehicle. Failure of the lamp to activate while drivers are applying the parking brake may prompt them to take additional precautions to assure the parking brake and transmission parking mechanism are engaged."

Two comments were received on the petition. Robert F. Schlegel, Jr., a professional engineer, supported GM, and J.P. Nenries, Captain, Virginia State Police, opposed the Petitioner.

Mr. Schlegel believes the petition should be granted, principally because the key interlock prevents the transmission from being in any position other than PARK when the key is removed (GM's final argument), and recommended that the petitioner compare the actual operation of the parking brake telltale with the description in the owner's manual, and provide corrective pages if required. Captain Henries would deny the petition on the basis that the brake system checks of Standard No. 105 are in the proper sequence to allow the driver's examination of the instrument panel upon activation of the ignition, and before his or her attention is diverted by the task of actually operating the vehicle. "To allow other manners of activation of brake system indicator lamps would send ambiguous messages to drivers." He also points out that failure to disengage the parking brake could result in a failure of the brake system.

The agency has carefully reviewed the arguments of the Petitioner, and the comments received in response to the notice. It has decided to deny the petition.

GM's first argument has two components. The first component is that the activation of the brake indicator lamp with the transmission lever in a position other than PARK or NEUTRAL will inform the driver if the parking brake has not been fully released. Second, drivers will also experience obvious drag in attempting to move the vehicle when the brake is wholly or partially engaged. The agency views these arguments as irrelevant. The safety issue is the indication of parking brake application, not its release. The safety importance of parking brake application is underscored by GM's own concern, as expressed in this warning in vehicle operator manuals: "It can be dangerous to get out of your car if the shift lever is not fully in "PARK" with the parking brake firmly applied. Your car can roll." Without the brake lamp indicator illuminating, a driver parking or exiting the vehicle will not be aware as to whether the parking brake is actually applied. In the nonconforming Rivieras, even partial application of the parking brake won't be indicated.

GM's second argument is that if the brake indicator lamp does not light, drivers might be inclined to pump the pedal that sets the parking brake an additional time. In NHTSA's views, this is a speculative argument, and the agency offers one of its own and that offered by Capt. Henries: that a driver not seeing the indicator light illuminate after pumping the pedal only once, would believe that the indicator lamp had failed, and respond in an inappropriate and unsafe manner. (S)he might not pump the pedal again, resulting in an insufficient application of the parking brake. Or, (s)he might release the brake entirely, to forestall the possibility of brake damage by inadvertently operating the vehicle with the parking brake engaged.

The third argument advanced by GM is that it has reviewed its files and has found no owner complaints regarding parking brake telltale operation. The agency notes that this is an argument frequently made by inconsequentiality petitioners, to which it has given little weight. In the absence of an actual malfunction affecting the systems under which a vehicle operates, it is unlikely that the average owner will even be aware that the informational safety check system of a vehicle is noncompliant. Nevertheless, the full benefit of safety systems should be available to a vehicle owner.

Finally, GM argued that the parking mechanism must be engaged before the key can be removed, which commenter Schlegel found persuasive. GM further argued that if a driver does not fully set the parking brake, the strength of the parking mechanism is sufficient to hold the vehicle on a steep grade. Standard No. 105 requires a vehicle to remain stationary on a 30 percent grade for 5 minutes, in either direction, with both the parking mechanism and parking brake engaged. GM does not specify that the "steep grade" is one of 30 percent, nor did it argue that it could meet the requirement using the parking pawl alone. Thus, NHTSA has found GM's final argument unpersuasive.

For the foregoing reasons, it is hereby found that petitioner has failed to meet its burden of persuasion that the noncompliances herein described are inconsequential, and its petition is denied.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: June 18, 1991.

Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 91-14908 Filed 6-21-91; 8:45 am]
BILLING CODE 4910-59-M

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Dryades Savings and Loan Association, F.A., Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Dryades Savings and Loan Association, F.A., New Orleans, Louisiana, on June 7, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-14960 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

First Commerce Savings Bank, FSB Lowell, IN; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Commerce Savings Bank, FSB, Lowell, Indiana, on June 14, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-14968 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

Springfield Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Springfield Federal Savings Association, Springfield, Pennsylvania, on June 14, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-14969 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator with a Receiver

Notice is hereby given that, on June 14, 1991 pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator with the Resolution Trust Corporation as sole Receiver for each of the following savings associations:

Name	Location	OTS No.
1. Atlanta Federal Savings Association	Atlanta, TX	8699
2. First Guaranty Federal Savings and Loan Association	Hattiesburg, MS	8712
3. Jasper Federal Savings and Loan Association	Jasper, TX	3190
4. South Savings and Loan Association, F.A.	Slidell, LA	8620
5. Southwestern Federal Savings Association	El Paso, TX	8703
6. Texas Commercial Savings Association	Sulphur Springs, TX	8946

Dated: June 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Coporate Secretary.

[FR Doc. 91-14965 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

Dryades Savings and Loan Association; Appointment of Receiver

Notice is hereby given. that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Dryades Saving and Loan Association, New Orleans, Louisiana, OTS No. 1022, June 7, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-14962 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

First Commerce Bank, a Federal Savings Bank, Lowell, IN; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Commerce Bank, A Federal Savings Bank, Lowell, Indiana, on June 14, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-14963 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

Guaranty Savings Bank, F.S.B.; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Guaranty Savings Bank, F.S.B., Fayetteville, North Carolina ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 14, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-14966 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

Springfield Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act, the Office of Thrift Supervision duly appointed the Resolution Trust Corporation as sole Receiver for Springfield Federal Savings and Loan Association, Springfield, Pennsylvania (OTS No. 5516), on June 14, 1991.

Dated: June 18, 1991.

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-14964 Filed 6-21-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Special Medical Advisory Group will be held on July 11-12, 1991, at the Ramada Renaissance Hotel, 999 9th Street, NW., Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration. The session on July 11 will convene at 6 p.m. and the session on July 12 will convene at 10 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertal, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/535-7603) prior to July 5, 1991.

Dated: June 18, 1991.

By Direction of the Secretary:

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91-14935 Filed 6-21-91; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 121
Monday, June 24, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, June 27, 1991.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report.

The staff will brief the Commission on various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492-6800.

Dated: June 20, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-15101 Filed 6-20-91; 3:07 p.m.]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Added for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be added to the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, June 25, 1991, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.:

Memorandum re: Policy Statement on Collaterized Letters of Credit and Collaterized Put Obligations.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: June 19, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-15082 Filed 6-20-91; 12:16 p.m.]

BILLING CODE 6714-01-M

NATIONAL LABOR RELATIONS BOARD

Changes to Previously Announced Meetings

"FEDERAL REGISTER" CITATIONS OF PREVIOUS ANNOUNCEMENTS: 56 FR 26851 and 56 FR 27297.

PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETINGS: 9:30 a.m. Tuesday, June 4, 1991 and 10:30 a.m. Tuesday, June 11, 1991.

CHANGES IN THE MEETINGS: Add to the reasons given for closing the meetings to public observation: 5 U.S.C. Section 552b(c)(10) (deliberations concern * * * the Board's participation in a civil action).

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, Telephone (202) 254-9430.

Dated, Washington, D.C., June 19, 1991.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 91-15020 Filed 6-19-91; 5:03 pm]

BILLING CODE 7445-01-M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 4:00 p.m., Monday, June 17, 1991.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c) (2) (internal personnel rules and practices (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy) and (c)(10) (deliberations concern * * * the Board's participation in a civil action.)

MATTERS CONSIDERED: Discussion of personnel matter.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, D.C., _____.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 91-15019 Filed 6-19-91; 8:45 am]

BILLING CODE 7445-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 28224, June 19, 1991.

PREVIOUSLY ANNOUNCED DATE OF MEETING: July 2, 1991.

CHANGE: Add the following items to the open meeting agenda:

7. Capital Investments.
   b. Memphis, Tennessee, Southern Region Office and Services Centers.
   c. Baton Rouge, Louisiana, General Mail Facility.
   d. Charleston, West Virginia, Mail Processing Annex.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 91-15046 Filed 6-20-91; 12:16 pm]

BILLING CODE 7710-12-M

RESOLUTION TRUST MEETING

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:29 p.m. on Tuesday, June 18, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of failed thrift institutions, and (2) the proposed contracting with the Small Business Administration for developing an RTC legal information system.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., and concurred in by Chairman L. William Seidman, Jonathan L. Fiechter acting in the place and stead of Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and Dean S. Marriott acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency) that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(5), (c)(6), (c)(7)(A), (c)(7)(C), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, DC.

Dated: June 19, 1991.

Resolution Trust Corporation.

John M. Buckley Jr.,

Executive Secretary.

[FR Doc. 91-15040 Filed 6-20-91; 8:45 am]

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Corrections

Federal Register
Vol. 56, No. 121
Monday, June 24, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

41 CFR Part 302-1

[FTR Amendment 16]

RIN 3090-AD76

Federal Travel Regulation; "Last Move Home" Benefits for Senior Executive Service Career Appointees Upon Retirement

Correction

In rule document 91-8711 beginning on page 15049 in the issue of Monday, April 15, 1991, make the following corrections:

1. On page 15049:

a. In the first column, in the SUMMARY:, in the last line, "retirement" was misspelled.

b. In the same column, under EFFECTIVE DATE:, in the third line, "eligible" was misspelled.

c. In the 2d column, under SUPPLEMENTARY INFORMATION:, in the 2d paragraph, in the 14th line, "awithin" should read "within"; and in the 21st line, "under" was misspelled.

d. In the same column, in the third paragraph, in the third line, "individual" should read "individuals".

e. In the third column, in the first full paragraph, in the sixth line from the bottom, "are" should read "and"; and in the fifth line from the bottom, "or" should read "of".

§ 302-1.101 [Corrected]

2. On page 15050:

a. In the second column, in § 302-1.101(b)(3), in the second line from the bottom, "subchapter" was misspelled.

b. In the same column, in § 302-1.101(d), in the last line, "disability" was misspelled.

§ 302-1.103 [Corrected]

3. On page 15050, in the second column, in § 302-1.103, in the fourth line, "specified" was misspelled.

§ 302-1.105 [Corrected]

4. On page 15050, in the third column, in § 302-1.105(a), in the fourth line from the bottom, "where" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 91-11905 beginning on page 23069 in the issue of Monday, May 20, 1991, make the following corrections:

On page 23071:

1. In the first column, under **Peripheral and Central** ***, in the second paragraph, in the third line, insert "public" after "unless".

2. In the second column, under **Fertility and Maternal** ***, in the second paragraph, in the third line, insert "public" after "unless".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0162]

FDA Report of Consumer Research on Alternative Nutrition Label Formats; Availability

Correction

In notice document 91-11845 beginning on page 23072 in the issue of Monday, May 20, 1991, make the following corrections:

1. On page 23072, in the second column, under **Background**, in the first paragraph, in the third line from the bottom, "NAPRM" should read "ANPRM".

2. On page 23074, in the second column, in the third full paragraph, in the fifth line from the bottom, "an" should read "and".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Social Security Ruling SSR 91-3p]

Title II: Determining Entitlement to Disability Benefits for Months Prior to January 1991 for Widows, Widowers and Surviving Divorced Spouses Claims

Correction

In notice document 91-12145 beginning on page 23589 in the issue of Wednesday, May 22, 1991, make the following corrections:

1. On page 23590, in the third column, beginning with the sixth line from the bottom of the page, remove the phrase "or step five (able to engage in past relevant work)".

2. On page 23591, in the 2d column, in the 25th line, insert "23," after "October".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-942-4214-11; UTU 9850, et al.]

Proposed Continuation of Withdrawals; Utah

Correction

In notice document 91-12352 beginning on page 23933 in the issue of Friday, May 24, 1991, make the following correction:

On page 23934, in the second column, under Hammond Canyon Archaeological and Scenic area, in Sec. 25, "W¼" should read "W½".

BILLING CODE 1505-01-D

federal register

Monday
June 24, 1991

Part II

Environmental Protection Agency

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; Lender Liability; Proposed Rule and Request for Comment

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3966-5]

National Oil and Hazardous Substances Pollution Contingency Plan; Lender Liability under CERCLA

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule and request for comment.

SUMMARY: The Environmental Protection Agency is proposing this rule to define the meaning of certain statutory elements in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which pertain to the liability of both privately-owned financial institutions and governmental receivers, conservators, loan guarantors, lending or other governmental entities that hold or maintain indicia of ownership as protection for a security interest in contaminated facilities. CERCLA section 101(20)(A) exempts persons whose indicia of ownership in a facility are held primarily to protect a security interest, provided that they do not participate in the management of the facility. In this proposed rule, EPA is interpreting the CERCLA section 101(20)(A) "security interest exemption" to clarify the range of activities that may be undertaken by a private or governmental lending institution or other entity that holds a security interest in a facility in the course of protecting the security interest, without being considered to be participating in the facility's management and thereby voiding the exemption.

In addition, EPA is proposing this rule to define the meaning of certain statutory elements in CERCLA that pertain to the liability of governmental entities that involuntarily acquire ownership or possession of contaminated facilities. Under CERCLA, a governmental lending entity, receiver, or conservator involuntarily acquiring a contaminated facility may be entitled to assert the so-called "innocent landowner defense" under sections 101(35)(A)(ii) and 107(b)(3), provided that the other elements of the defense are met. In this rule, EPA is interpreting CERCLA section 101(35)(A)(ii), which affects the ownership status under CERCLA of government entities that acquire contaminated facilities through escheat, eminent domain, involuntary transfer or acquisition, and other means, to include within its scope the acquisition of facilities by governmental entities through an involuntary transfer under statutes requiring the acquisition of property in which the governmental entity holds a security interest or has acted as a loan guarantor, conservator, or receiver, provided that the other elements of the defense are met. Governmental entities may also acquire property through other mechanisms, such as through civil and criminal seizures and asset forfeitures, and EPA is also seeking comment on regulatory language which would specify such other types of acquisitions by governmental entities that may be considered "involuntary" within the meaning of the statute.

DATES: Comments on this proposed rule must be submitted by July 24, 1991.

ADDRESSES: Commenters must send an original and two copies of their comments to: John Fogarty, Office of Enforcement, Superfund Division, Mail Code LE-134S, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should include the docket number NCP-LL/DSB. The public docket is located at EPA Headquarters at the above address in room 2427 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Fogarty at (202) 382-3050.

SUPPLEMENTARY INFORMATION:

I. Background

The Agency is proposing this rule to interpret the provisions of sections 101(20) and 101(35) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 *et seq.*, as they affect private lending institutions and governmental entities that hold a security interest in or that guarantee loans secured by a facility contaminated by or containing hazardous substances, or that acquire ownership of contaminated property in the course of acting as a conservator or receiver or protecting a secured interest.

Section 107(a) of CERCLA, 42 U.S.C. 9607(a), identifies four broad classes of responsible parties that are liable for the costs of cleaning up hazardous substances when the federal government, state government, or a private party brings suit. The first two classes include certain owners and operators of facilities contaminated by or containing hazardous substances, 42 U.S.C. 9607 (a)(1)–(a)(2). The third class consists of certain persons who arranged for disposal or treatment of hazardous substances. *Id.* section 9607(a)(3). Finally, the fourth class includes persons who accepted for transportation hazardous substances and selected the disposal facility. *Id.* section 9607(a)(4).

It is well-settled that each of the four groups of responsible parties is strictly liable under section 107(a). See, e.g., *United States* v. *Monsanto Co.*, 858 F.2d 160, 167 & n.11 (4th Cir. 1988), *cert. denied*, 109 S.Ct. 3156 (1989); *Tanglewood East Homeowners* v. *Charles-Thomas, Inc.*, 849 F.2d 1568, 1572 (5th Cir. 1988). In addition, it is also settled that such parties are jointly and severally liable when the environmental harm is indivisible. *United States* v. *Monsanto Co.*, 858 F.2d at 171; *United States* v. *Chem-Dyne Corp.*, 572 F. Supp. 802, 810–11 (S.D. Ohio 1983).

This proposed rule concerns only the first two of these categories of potentially liable parties—specifically "owners or operators" of facilities subject to CERCLA—which are defined in Section 101(20). Section 101(20)(A) exempts those persons who, without participating in the management of a facility, hold indicia of ownership in the facility [1] primarily to protect a security interest. 42 U.S.C. 9601(20)(A). Interpretation of this "security interest" exemption under CERCLA has generated uncertainty within the financial and lending communities, particularly with regard to the extent to which a secured creditor may undertake activities to oversee the affairs of a person whose facility is encumbered by a security interest (hereinafter the "borrower," "debtor," or "obligor") for the purposes of protecting the security interest, without incurring CERCLA liability. Specifically, there is concern over whether certain actions commonly taken by the holder of a security interest—such as monitoring facility operations, requiring compliance activities, refinancing or undertaking loan workouts, providing financial advice, and similar actions that may affect the financial, management, and operational aspects of a business—can be considered to be evidence that the security holder is "participating in the management of a facility."

Under section 101(20)(A), participation in management by the holder of a security interest will void the exemption. However, the extent to which a security holder may become involved in a facility without being considered to be participating in the management is not defined by the statute. Judicial interpretations of the exemption have varied in their articulations of the meaning of this term, without clearly defining a precise standard. See e.g., *United States* v. *Maryland Bank & Trust Co.*, 632 F. Supp. 573 (D. Md. 1986); *United States* v. *Mirabile*, 15 Envtl. L. Rep. (Envtl. L. Inst.) 20994 (E.D. Pa. 1985); *United States* v. *Fleet Factors Corp.*, 901 F.2d 1550 (11th Cir. 1990), *cert. denied*, No. 90-960 (U.S. Jan. 28, 1991) (cases suggesting that the exemption is abrogated once a security interest holder has divested the borrower or debtor of its management authority, such as when the holder becomes involved in the facility's day-to-day operations, where it becomes "overly entangled" in the affairs of the facility, or where its involvement otherwise affects a facility's hazardous waste practices). However, the few cases construing the exemption have uniformly indicated that a security holder's involvement in financially related matters, such as periodic monitoring or inspections of secured property, loan refinancing and restructuring, financial advice and similar activities will not necessarily void the exemption. See, e.g., *Guidice* v. *BFG Electroplating and Manufacturing Co.*, 732 F. Supp. 556 (W.D. Pa. 1989); *United States* v. *Nicolet*, 25 Env't Rep. Cas. (BNA) 1958 (E.D. Pa. 1987). Beyond these few judicial holdings, however, it is uncertain what activities are considered participation in the management of a facility, and which are not.

This uncertainty was heightened by *dicta* in the opinion of the Eleventh Circuit Court of Appeals in *United States* v. *Fleet Factors Corp.*, *supra*. In this opinion, the court suggested that a secured creditor may be liable, without being an operator, if it participates in the management of a facility "to a degree indicating a capacity to influence the corporation's treatment of hazardous wastes." 901 F.2d at 1557. While the court held that some level of actual participation by a security holder is required to abrogate the exemption, the court's opinion did not discuss what level of participation would be sufficient to support the inference that a security holder's involvement could influence operational decisions concerning a facility's treatment of hazardous waste. A subsequent decision by the Ninth Circuit Court of Appeals confirmed that the mere capacity or unexercised right to control facility operations is insufficient to void the exemption, and held that "there must be some actual management of the facility before a secured creditor will fall outside the exception." *In re Bergsoe Metal Corp.*, 910 F.2d 668, 672 (9th Cir. 1990) ("What is critical is not what rights the [creditor] took, but what it did. * * * [A creditor] cannot have participated in management if it never exercised [its rights].") See also *In re T.P. Long Chemical Inc.*, 45 Bankr. 270 (S.D. Ohio 1985) (bank that was not involved in facility's operations cannot be held to have voided security interest exemption). However, because the security holder in *Bergsoe Metals* was not in any way involved in the facility's operations, the court did not address the issue of the extent to which a security holder may act to protect its interest without being considered to be participating in the facility's management.

The scant legislative history of the security interest exemption sheds little light on this issue. The history of the exemption indicates only that it was added to the definitions of "owner or operator" out of a concern that the definition as initially drafted "inadvertently" included a person who held title or other ownership interest as security for a loan or other obligation, even though the security holder was not otherwise affiliated with or involved in the management of the facility. See House Debate on H.R. 85, 96th Cong., 1st Sess. (1979) (Sept. 19, 1980), reprinted in 2 A Legislative History of the CERCLA, Senate Comm. on Environment and Public Works, 97th Cong., 2d Sess. 998, 948 (Comm. Print 1983). The legislative history does not, however, provide any guidance or other indications of the types of activities that would be considered impermissible participation or involvement in the facility's management, or of the sorts of activities that were considered to be consistent with the exemption.

Uncertainty in this area has assumed particular importance for the Federal Deposit Insurance Corporation ("FDIC") and the Resolution Trust Corporation ("RTC"), both of which act as conservators and receivers of failing or failed insured depository institutions under the Federal Deposit Insurance Act ("FDI Act"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"), Public Law No. 101-73, 103 Stat. 183 (Aug. 9, 1989), due to their potential liability under CERCLA for the properties and assets owned by the failed lending institutions. Under this statutory mechanism, and because of the recent high failure rate of the country's lending institutions, these government entities are likely to own, possess, or have security interests in potentially contaminated properties as a consequence of their appointment as the conservator or receiver of failed and insolvent lending institutions. Additionally, other governmental entities that provide lending and credit services are also likely, through a variety of statutory mechanisms, to acquire or to have transferred to them an interest in or possession of diverse businesses, properties, and other assets which may be contaminated by hazardous substances. The governmental takeover of assets formerly held by private entities in this manner has raised pressing questions regarding the potential for CERCLA liability as an owner or operator as the result of such acquisitions, and the availability of the "innocent landowner" defense of sections 101(35)(A) and 107(b)(3) to these governmental entities.

To reduce these uncertainties, EPA is issuing this proposed rule to specify the range of permissible actions that may be undertaken by holders of a security interest within the bounds of the section 101(20)(A) security interest exemption. This rule will also specify the circumstances in which governmental entities that acquire possession or control of contaminated facilities as conservators or receivers will be considered "involuntary" owners for purposes of the section 101(35)(A)(ii) "innocent landowner" defense. Governmental entities may also acquire property through other mechanisms, such as through civil and criminal seizures and asset forfeitures. The Agency is also seeking comment on regulatory language which would specify such other types of acquisitions by governmental entities that may be considered "involuntary" within the meaning of the statute.

EPA is proposing this rule as a revision to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), codified at 40 CFR part 300 *et seq.*, under the authority of CERCLA sections 105 and 115. EPA recognizes that this revision to the NCP raises a number of important issues and is accepting public comment for a thirty-day period. Upon consideration and review of the comments, EPA may revise this proposed rule and will formally codify the provisions as subpart L in 40 CFR part 300. Prior to its promulgation as a final rule, this rule represents EPA's interpretations of sections 101(20)(A) and 101(35)(A)(ii), and EPA will utilize it as guidance for implementing these sections.

Judicial review of this proposed rule, when promulgated, will be governed by

[1] The CERCLA definition of "facility" includes real property as well as any equipment or other articles contaminated by hazardous substances. See CERCLA 101(9).

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the provisions of CERCLA section 113(a). These provisions mandate that any review of a regulation promulgated under CERCLA is confined to the United States Court of Appeals for the District of Columbia Circuit and that any application for such review must be made within ninety days of the rule's date of promulgation. By enacting these provisions, Congress intended that the District of Columbia Circuit Court would have "exclusive" jurisdiction to review regulations and that any petitions for review that were filed after the ninety day period would be barred. S. Rep. No. 848, 96th Cong., 2d Sess. 95 (1980); see *Lubrizol Corp.* v. *Train*, 547 F.2d 310, 314–16 (6th Cir. 1976) (by centralizing appeals in the D.C. Circuit under the Clean Air Act, Congress hoped to avoid needless delays in the implementation of important national programs caused by incessant litigation and inconsistent decisions).

II. Summary

A. Security Interest Exemption

This proposed rule interprets the section 101(20)(A) "security interest" exemption to permit the holder of a security interest to undertake a broad range of activity in the course of protecting a security interest in a facility that is subject to CERCLA, without being considered to be participating in the management of the facility. The activities specified in this rule are not mandatory or required to be undertaken as a condition of maintaining the exemption. Instead, this proposed rule identifies a range of permissible activities that a security holder may take to protect the security interest. The specific activities actually undertaken with respect to a particular facility in which a person holds a security interest may vary from case to case; the purpose of this rule is to specify, by illustration and example, the activities that a security holder may undertake without losing the exemption. The rule accomplishes this by defining the key terms of CERCLA section 101(20)(A): (1) "indicia of ownership," (2) "primarily to protect a security interest," and (3) "participating in the management of a . . . facility." This proposed rule does not define all possible activities that may be undertaken by a security holder without voiding the exemption: other permissible activities may be undertaken, even though not specifically identified in this rule.

With respect to a governmental lending entity that may assume ownership, conservatorship, or receivership of a lending institution or business, or that may acquire or have transferred to it property or other assets, through a variety of statutory mechanisms and thereby assume possession and control of a contaminated facility, this rule specifies circumstances in which the governmental lending entity may have a defense available under section 101(35)(A)(ii) of CERCLA.

While section 101(20)(A) provides persons who hold a security interest with a potential exemption from CERCLA liability when the real or personal property serving as the security is contaminated, this statutory provision does not otherwise provide protection from the ordinary risk assumed by the security holder that the facility's market value may not be sufficient to cover the borrower's debt. The CERCLA security interest exemption is not a loan guarantee for lending institutions and does not shift to the Superfund the cost of poor loan decisions, see *United States* v. *Maryland Bank & Trust, supra*, 632 F. Supp. at 580, but serves only as a shield from CERCLA liability where a person's ownership indicia are held as protection for a security interest.

From an environmental perspective, EPA must concern itself first with protection of public health, welfare, and the environment. Following expenditure of public funds to clean up contaminated property, EPA's mandate under CERCLA is to seek to recover the costs incurred by the Fund from those liable under CERCLA. Accordingly, where there is a release or threat of release of hazardous substances, CERCLA clearly imposes liability on owners of real property for the consequences of that release. However, security holders (commonly lending institutions) that possess an ownership interest in a facility may need to undertake certain activities in the course of protecting their security interest to manage properly their loan portfolios; such activities may include inspections or monitoring of the borrower's business and collateral, providing financial or other assistance, engaging in "loan workout" activities, and foreclosing on secured property.

This proposed rule seeks to reconcile a security holder's need to manage, oversee, or to otherwise act to protect a security interest, with EPA's duty to clean up waste sites and recover public funds spent in remediating these sites from those responsible or otherwise involved in the facility's operations, either through their participation in management (i.e., under section 107(a)(1)–(a)(2)) or through their own activities at the facility (i.e., under section 107(a)(3)–(a)(4)). EPA's interpretation of the security interest exemption both acknowledges and accommodates these competing interests within the current statutory scheme by specifying the permissible range of activities that may be undertaken by a security holder without voiding the exemption.

Specifically, the proposed rule provides that a security holder may, at its option, conduct or require an environmental inspection of a facility and may require cleanup of a facility prior to or during the life of the loan; may require from the facility owner or operator assurances of compliance with applicable federal, state, and local environmental and other laws, rules and regulations during the life of the loan; may periodically or regularly monitor or inspect both the facility (including site inspections) and the facility owner or operator's business or financial condition; may provide periodic financial or other advice to a financially distressed debtor; or may take other actions that are necessary for the security holder to adequately police the debt or other obligation or to comply with applicable legal requirements.

A security holder may also undertake so-called "loan workout" activities, such as restructuring or renegotiating the terms of the obligation, requiring payment of additional interest, extending the payment period, exercising forbearance, or providing advice or taking other actions that are necessary to protect the security interest. A security holder may also foreclose on the security (whether by formal means such as through the use of the judicial process, or by informal means such as by taking a deed in lieu of foreclosure), may wind-up operations, may liquidate or sell off assets, or may otherwise act to recover the value of the security interest in a manner consistent with good commercial practice. These activities are considered to be consistent with the CERCLA security interest exemption, and are not considered to be evidence of participation in management by a security holder. Note, however, that while a security holder may not be liable as an "owner" or "operator" under CERCLA section 107(a)(1) by virtue of the exemption, liability may nevertheless attach under section 107(a)(3) or section 107(a)(4) as the result of a security holder's own actions in connection with a facility.

It has become a customary or common practice for holders of security interests to undertake or require environmental inspections to minimize the risk that their loans will be secured by

contaminated property, and EPA considers such inspections to be consistent with this exemption from CERCLA liability. An inspection of a facility provides environmental advantages by identifying properties in need of cleanup or other environmentally beneficial response, and by helping to minimize environmental liability. Under this proposed rule, a security holder that undertakes or requires a borrower to undertake an environmental inspection or investigation of a facility securing the obligation is not considered to be participating in management. However, neither the statute nor this proposed rule requires a security holder to undertake an inspection to qualify for the exemption, and the liability of a security holder seeking to avail itself of the exemption cannot be based on or affected by the failure to conduct or require such an inspection.

This rule also proposes to define a security interest holder's obligations following foreclosure in cases where the security holder has not otherwise participated in the facility's management. Specifically, the proposal provides that a security holder may avail itself of the security interest exemption post-foreclosure unless it fails to take reasonable actions to sell the property, or it rejects or fails to act upon a written, *bona fide* offer for a value equal to or exceeding the outstanding loan obligation.

Under this proposal, a security holder, who did not prior to foreclosure participate in management, may foreclose, sell, liquidate, wind up operations, or retain and continue functioning the enterprise in order to protect the value of the secured asset prior to sale as a means to realize the debtor's unpaid obligation pending sale, liquidation, or other disposition of the property, without incurring liability under CERCLA section 1207(a)(1), unless (1) the security holder fails within twelve months following foreclosure to take the following actions to sell the property: (i) List the property with a broker, dealer or agent who deals with the type of property in question, and (ii) begin advertising the property as being for sale or disposition on at least a monthly basis in either a real estate publication, or a trade or other publication suitable for the property in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located; or (2) at any time after six months following foreclosure the security holder rejects, or does not act upon within 90 days of receipt of a written, *bona fide*, firm offer of fair consideration for the property. For purposes of this proposal: (a) a "written, *bona fide*, firm offer" is a legally enforceable offer, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the security holder's satisfaction the ability to perform; and (b) "fair consideration" is an amount equal to or in excess of the sum of the outstanding principal owed to the holder, plus any unpaid interest and penalties (whether arising before or after foreclosure), plus all reasonable and necessary costs, fees or other charges incurred by the holder incident to foreclosure, retention, continued functioning of the enterprise, and sale of the property, less any amounts received by the holder in connection with any partial disposition of the property or net revenues received as a result of continued functioning of the facility.

Unless otherwise provided by this proposal, during the applicability of the exemption, the security holder's CERCLA liability is only as provided for under CERCLA section 107(a)(3) or 107(a)(4), 42 U.S.C. 9607(a)(3)–(a)(4). In addition, where a defendant claims the section 101(20)(A) exemption from liability under section 107(a)(1), the burden is on the plaintiff to prove that the defendant is an owner or operator, as provided in this rule.

B. Involuntary Governmental Acquisition of Facilities

CERCLA section 101(20)(D) excludes from the definition of "owner or operator" a unit of state or local government which acquires ownership or control over a facility involuntarily by virtue of its function as sovereign. 42 U.S.C. 9601(20)(D). There is no comparable provision for Federal government entities. Section 101(35)(A)(ii), however, specifies that acquisition by any governmental entity is "involuntary" if the facility is acquired through "escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation." 42 U.S.C. 9601(35)(A)(ii).

An "involuntary transfer or acquisition" of a facility is an element of the "innocent landowner" or third-party defense for a government entity: Section 101(35)(A)(ii) works in conjunction with section 107(b)(3), which requires for the defense the absence of a "contractual relationship" concerning the manner in which the contaminated facility was acquired. Section 101(35) defines "contractual relationship" to exclude such involuntary transfers.[2] The chief difference is that a state or local government that involuntarily acquires a contaminated property is exempted from the definition of an owner or operator of the facility, whereas federal entities are not specifically accorded such treatment, but may be able to assert a defense to liability.

Government entities have become increasingly likely to own or possess properties as a consequence of bank and savings and loan failures, through statutory mechanisms that result in governmental takeover of the failed or insolvent lending institutions. Under the FDI Act, as amended by FIRREA, the Office of Thrift Supervision or the Office of the Comptroller of the Currency will direct the FDIC or RTC to acquire the property and assets of failed or insolvent banks, credit unions, savings institutions, and thrifts. The range of assets acquired by these governmental entities may include, among others, simple security interests, property for which the depository or thrift institution held record title or other form of title through foreclosure, or property that had been purchased or acquired as an investment by the failed institution or its subsidiary. Pursuant to these authorities, the FDIC and RTC succeed to such assets and act as the conservator or receiver of the insolvent lending institutions. For the purposes of CERCLA, there is no "contractual relationship" between the FDIC or RTC and the assets so acquired because this manner of acquisition by a government entity is an "involuntary transfer or acquisition" within the meaning of section 101(35)(A)(ii).

Other government financial regulatory or lending entities [3] that act in a similar

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[2] Section 101(35) specifies two other circumstances in which no "contractual relationship" exists with respect to the transfer of a facility for purposes of asserting the innocent landowner-third party defense: where the party acquiring the property did not and had no reason to know that hazardous substances had been released or disposed of on the property, after having undertaken "all appropriate inquiry" (CERCLA 101(35)(A)(i), 101(35)(B)); and where the property is acquired by inheritance or bequest (CERCLA 101(35)(A)(iii)).

[3] As used throughout this rule, the term "governmental lending entities" refers to governmental lending and credit institutions, loan guarantors, and financial regulatory entities which acquire security interests or properties of failed private lending and depository institutions as conservators or receivers.

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capacity under a statutory mandate are also considered to be similarly situated: "involuntary acquisitions" by such entities are discussed in greater detail in section IV. While this rule discusses generally the manner in which governmental lending entities involuntarily acquire property, it is not intended to preclude other similarly situated government entities that involuntarily acquire contaminated property from asserting the defense, nor are other means of involuntary acquisition by government entities intended to be excluded.

Governmental entities that acquire assets involuntarily in their capacity as a conservator or receiver may acquire some assets to which the security interest provisions of this rule will apply. Such assets include security interests securing performing loans, loans in workout, those in default or non-performing and are unforeclosed-upon, and foreclosed-upon assets not yet sold by the prior security holder, as examples. The involuntary governmental acquirer of such assets generally stands in the shoes of the prior security holder, and may exercise the same rights under the security interest provisions of this rule with respect to such assets. Where the governmental lending entity involuntarily acquires assets to which the security interest provisions would not apply—i.e., those which the predecessor did not hold as protection for a security interest—the "involuntary transfer or acquisition" provisions of this rule apply.

III. CERCLA Provisions Protecting the Holder of a Security Interest

The section 101(20)(A) security interest exemption is the principal means of avoiding CERCLA liability for the holder of a security interest in a facility.

Section101(20)(A) provides, in part:

> Such term [owner or operator] does not include a person who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility.

There are three key terms found in the exemption that are not otherwise defined in CERCLA: (1) "indicia of ownership" (2) the requirement that the ownership indicia be held "primarily to protect [the] security interest" in the facility, and (3) the prohibition of the security holder from "participating in the management" of the facility.

1. Indicia of Ownership

Ownership indicia within the meaning of section 101(20)(A) include evidence of interests in real or personal property held as security for a loan or other obligation, including title to the real or personal property acquired incident to foreclosure and its equivalents. The nature of the ownership interest may vary under the laws of different states and by the type of secured loan transaction. Examples of such indicia may include, but are not limited to, a mortgage, deed of trust, or legal title obtained pursuant to foreclosure or its equivalents, or an assignment, lien, pledge, or other right to or form of encumbrance against property that is legally recognized as establishing a *bona fide* security interest.

2. Primarily To Protect the Security Interest

Whether a person's ownership indicia bring it within or outside of the definition of "owner or operator" under CERCLA is determined by whether the indicia are held "primarily to protect [the] security interest." The use of this phrase requires that the ownership interest must be a legally recognized security interest, and not an interest in property held for some other reason. A *bona fide* security interest may arise pursuant to a variety of statutory or common law mechanisms. While a security interest is ordinarily created by mutual consent, such as a secured transaction within the scope of Article 9 of the Uniform Commercial Code, there are other means by which a legally recognized security interest may be created, some of which may or may not be the result of a consensual arrangement between the parties to the transaction. In general, a transaction that gives rise to a security interest is one that provides the security holder with recourse against real or personal property of the person pledging the security; the purpose of the interest is to secure the repayment of money, the performance of a duty, or of some other obligation. See generally J. White & R. Summers, Handbook on the Uniform Commercial Code section 22 (2d Ed. 1980); Restatement of Security [1941].

Recognized forms of security interests include mortgages, certain types of liens, forms of conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements or accounts receivable financing arrangements, and some forms of leases or consignments, among others.[6] In all cases, the salient question is whether a security interest arises under applicable law, regardless of the label given to the particular transaction.[7] A holder of a security interest may include the initial holder (such as the loan originator, for example), and any successor-in-interest, subsequent purchaser on the secondary market, loan guarantor, or other person who holds a security interest under the applicable law governing the transaction.

In contrast, under section 101(20)(A), "indicia of ownership" held "primarily to protect [a] security interest" do not include evidence of interests in the nature of an investment in the facility, or an ownership interest held for any reason other than as protection for a security interest. See, e.g., *United States* v. *Maryland Bank & Trust*, supra (actions taken by lending institution after foreclosure indicate property held as an investment rather than as security for a loan). EPA recognizes that lending institutions typically have revenue interests in the loan transactions that create security interests; such transactions are not considered to be investment interests, but are generally considered *bona fide* secured transactions falling within the exemption. *See In re Bergsoe Metal Corp.*, supra, 910 F.2d at 672 n.2. However, when a person holds indicia of ownership in a facility primarily for investment purposes, as opposed to assuring repayment of a loan or as security for some other obligation, the exemption will not apply.

Lending institutions, which typically hold a large number of security interests, may also act in some fiduciary or other capacity with respect to a facility. However, this proposed rule does not address circumstances in which a lending institution or any person acts in a non-lending capacity or has any interest in a facility other than a *bona fide* security interest in real or personal property. Because the exemption in section 101(20)(A) covers only security interests, any discussion of other interests or involvement in a facility is beyond the scope of this rule.

3. Participating in the Management of a Facility

Whether the holder of a security interest has participated in management sufficiently to void the exemption is a fact-sensitive inquiry. Participation in

[6] Whether a sale-and-leaseback, conditional sale, installment sales contract, or any other transaction creates a security interest and is within the security interest exemption under CERCLA is determined by the facts of each case.

[7] See, e.g., U.C.C. 1-201(37) ("'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation. . . . Whether a lease [or other transaction] is intended as security is to be determined by the facts of each case. . . .")

the management of a facility means actual participation in the management or operational affairs by the holder of the security interest, and does not include the mere capacity, ability, or unexercised right to influence facility operations. In all cases, the determination of whether a security holder is participating in management depends on the holder's actions with respect to the facility. A security holder is not considered to be participating in management within the meaning of section 101(20)(A) unless, while the borrower is still in possession, either: (1) The security holder is exercising decisionmaking control over the borrower's environmental compliance, such that the security holder has undertaken responsibility for the borrower's waste disposal or hazardous substance handling practices which results in a release or threatened release, or (2) the security holder is exercising control at a management level encompassing the borrower's environmental compliance responsibilities, comparable to that of a manager of the borrower's enterprise, such that the security holder has assumed or manifested responsibility for the management of the enterprise by establishing, implementing, or maintaining the policies and procedures encompassing the day to day environmental compliance decisionmaking of the enterprise. A security holder will not be considered to be participating in management when it undertakes certain actions to protect the security interest, as discussed in the following sections.

Consistent with the exemption, a security holder may act to protect the interest by, for example, policing the loan, undertaking financial workout with a borrower where the obligation is in threat of default, or by foreclosing and preparing the facility for sale or liquidation. Such actions are not considered to be participation in the management of a facility provided that the actions taken are reasonably necessary to protect the security interest.

Accordingly, the holder of a security interest is not considered to be acting outside the scope of the exemption when the holder regularly or periodically monitors the borrower's business, or requires or conducts on-site inspections and audits of the environmental condition of the facility or the borrower's financial condition, or monitors other aspects of the facility considered relevant for adequate protection of the security interest, or requires certification of financial information or compliance with applicable duties, laws or regulations, or requires other similar actions, provided that the borrower remains in possession and control of the operations of the facility (except as provided incident to foreclosure, discussed below). Such oversight and obligations of compliance imposed by the holder of a security interest are considered to be undertaken to protect the security interest and are not considered part of the management and operation of a facility. Although such requirements and oversight may inform the borrower's management of a facility, the security holder is not considered to be participating in management where the borrower continues to make operational decisions at the facility.

Cases addressing the issue of a security holder's involvement with a borrower have routinely held that financial, administrative, and similar general advice is not ordinarily considered to rise to the level of management participation. See, e.g., *United States* v. *Fleet Factors Corp.*, *supra*, 901 F. 2d at 1556–57 (facility monitoring and involvement in financial decisions permissible); *United States* v. *Mirabile*, *supra*, 15 Envtl. L. Rep. at 20996–97 (facility monitoring, involvement in financial decisions, restrictions on financial decisions contained in loan documents, and general financial advice permissible); *In re Bergsoe Metals Corp.*, *supra*, 910 F.2d at 672 (input at planning stages of project, inspection and entry rights permissible); *Guidice* v. *BFG Electroplating and Manufacturing Co.*, *supra*, 732 F. Supp. at 562 (monitoring of accounts and of business and personnel matters, site inspections, assistance in loan negotiations, loan restructuring, and procurement of purchaser for facility permissible).

This proposed rule describes a range of activities that a security holder may undertake in the course of protecting its security interest; these activities are not considered to be evidence of management participation. Certain activities—such as undertaking or requiring an environmental inspection at the creation of the security interest, policing the loan, engaging in so-called "loan workout," and foreclosure and liquidation of assets—are considered permissible and within the scope of the exemption. However, merely labeling a certain activity as part of a "workout," for example, is not by itself conclusive; what matters is what the security holder actually does. Permissible "loan workout" activities include financial and other advice, renegotiation of loan terms, and similar financially related activities, but do not include exercising decisionmaking control over the operational affairs of the facility. In this context, the statute does not permit a security holder to act as the operator of a facility (an independent basis of liability) under the mantle of holding a security interest. The range of permissible activities are discussed in greater detail in the following sections. This proposed rule does not define the only activities that may be undertaken by a security holder without voiding the exemption, and no inferences should be drawn about the impermissibility of activities not specifically mentioned in this rule—those will be addressed on a case-by-case basis. As discussed in detail in this rule, a security holder may monitor and police its security interest consistent with ordinary and customary loan management practices, without voiding the exemption. A security holder voids the exemption when it exercises decisionmaking control over facility operations, particularly with respect to the hazardous substances present at the facility.

Actions at the Inception of the Loan or Other Transaction Giving Rise to a Security Interest

Actions undertaken by a security holder prior to or at the inception of a security interest are not considered evidence of participation in management that would void the exemption. For example, consultation and negotiation concerning the structure and terms of the loan or other obligation, the payment of interest, the payment period, and specific or general financial advice, suggestions, counseling, guidance, or other actions incident or prior to creation of the security interest are not considered evidence of participation in management.

In addition to such involvement, a security holder may determine for risk management or other business purposes, to undertake or require an environmental inspection of a facility securing a loan or other obligation giving rise to a security interest. Such environmental inspections may be undertaken by the security holder, for example, or the security holder may require one to be conducted by another party (such as the borrower) as a condition of the loan or other transaction. The statute does not require that such an inspection be undertaken to qualify for the exemption, and the liability of a security holder seeking to avail itself of the exemption cannot be based on or affected by the omission or

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failure to undertake or require an inspection in connection with the security interest. In addition, neither can liability be premised on a security holder's having undertaken or required an inspection, and nothing in this rule should be understood to discourage a security holder from undertaking or requiring such an inspection in circumstances deemed appropriate by the security holder.

In the event that an environmental inspection of a facility reveals contamination, the security holder may undertake a variety of responses that it deems appropriate: for example, the holder may refuse to extend credit or to follow through with the transaction creating the security interest, or instead take a security interest in non-contaminated property. Alternatively, a security holder may determine that the risk of default is sufficiently slight (or that the extent of contamination is minimal and does not significantly affect the value of the facility) and proceed to take a security interest in the contaminated property. Additionally, the security holder may require the borrower to clean up the facility as a condition of the loan or other obligation. Such activities are not considered management participation, and knowingly taking a security interest in a contaminated facility will not subject a *bona fide* security holder to CERCLA liability.

Policing the Security Interest or Loan

Actions which are consistent with protecting a security interest include, but are not limited to, a requirement that the borrower clean up the facility prior to or during the life of the loan or security interest; a requirement of assurance of the borrower's compliance with applicable federal, state, and local environmental and other rules and regulations during the life of the loan or security interest; securing authority or permission for the security holder to periodically or regularly monitor or inspect both the facility in which the security holder possesses indicia of ownership (including site inspections) or the borrower's business or financial condition; or other requirements or conditions reasonably necessary for the security holder to police adequately the loan or security interest, or to comply with legal requirements.

Such requirements may be contained in contractual (e.g., loan) documents or other relevant documents specifying requirements for financial, environmental, and other warranties, covenants, and representations or promises from the borrower, as conditions for the loan or other obligation. While the exemption requires that the actions undertaken by a security holder be consistent with protecting a security interest, a security holder is not expected to be an insurer or guarantor of environmental safety at a facility in which it has a security interest. The inclusion of environmental warranties and covenants are not considered to be evidence of a security holder acting as an insurer or guarantor, and liability cannot be premised on the existence of such terms, or upon the security holder's actions that ensure that the facility is managed in an environmentally sound manner. Neither are these actions or requirements considered to be evidence of participation in management. See, *e.g., United States* v. *Fleet Factors Corp., supra*, 901 F.2d at 1558 (secured creditors "encouraged" to closely monitor waste treatment practices and policies of debtors, and may insist upon compliance with acceptable treatment standards as a condition of financial support, and may adjust loan terms to reflect debtor's hazardous waste practices).

Loan Workout

The holder of a security interest may determine that it needs to take action with respect to the facility to secure or safeguard the security interest from loss. These actions may be necessary when, for example, a loan is in default or threat of default, and are commonly referred to as "loan workout" activities. These actions will not take a security holder outside of the section 101(20)(A) security interest exemption provided that the actions are taken in the course of protecting the security interest. To remain within the exemption from CERCLA liability, all such actions must be structured to protect and preserve the security interest; such measures are taken to protect the security interest when the security holder is assisting the borrower in an effort to prevent default of the loan or diminution of the value of the security.

When the holder of a security interest undertakes work-out activities, provides financial or other advice, and similar support to a distressed borrower, the security holder will remain within the exemption if the holder does not divest the borrower of its decisionmaking control over facility operations, particularly with respect to any hazardous substances present at the facility, such that the borrower remains the ultimate decisionmaker for operation of the facility. Where the evidence demonstrates that the security holder controls the decisionmaking of the borrower, EPA considers the security holder to be "participating in the management of the facility" and therefore to have voided the exemption.

Activities that EPA considers to be permissible actions taken in the course of protecting a security interest (and which are not evidence of "participation in management") during the work-out period include, but are not limited to, restructuring or renegotiation of the terms of the loan obligation, requiring payment of additional interest, extension of the payment period, specific financial or operational advice, suggestions, counseling, guidance, or any other action reasonably necessary to protect the security interest.

While a security holder does not "participat[e] in the management" of a facility within the meaning of Section 101(20)(A) merely because it causes or contributes to hazardous substance contamination, in general a security holder must be cautious that its own actions do not result in independent liability under CERCLA. See, e.g., CERCLA section 107(a)(3)-(4), 42 U.S.C. 9607(a)(3)-(4). This admonition is not a new requirement or an obligation imposed by the terms of section 101(20)(A): in general, any person that is itself responsible for a release may be liable under section 107(a) of CERCLA and held strictly, jointly, and severally liable.[8] Even a party owning a facility that may have a defense to liability for pre-existing contamination [9] or that is by definition exempt from status as an owner or operator [8] may be held to be responsible for the costs of cleanup if its actions contribute to contamination at a facility.[9] Accordingly, a security holder is cautioned to be aware of the hazardous substances present at a facility when providing financial or other advice, or when otherwise acting to protect the security interest, to ensure that its actions do not subject it to liability under other provisions of CERCLA.

[8] See, e.g., *Tanglewood East Homeowners* v. *Charles-Thomas, Inc., supra*; *United States* v. *Monsanto, supra*; *United States* v. *Chem-Dyne Corp., supra*.

[9] The traditional "third-party" defense under section 107(b)(3) is voided where the defendant has failed to exercise due care with respect to the hazardous substances present at a facility. See CERCLA 107(b)(a)-(b), 42 U.S.C. 9607(b)(3)(a)-(b). Similarly, the "innocent landowner" defense under Section 101(35) is voided where the defendant, "by act or omission, caused or contributed to the release or threatened release of a hazardous substance." See *id.* Section 101(35)(D), 42 U.S.C. 9601(35)(D).

[8] A state or local government entity that acquires a contaminated facility "by virtue of its function as sovereign" is not an "owner or operator" of the facility, unless it "has caused or contributed to the release or threatened release of a hazardous substance." See CERCLA 101(20)(D), 42 U.S.C. 9601(20)(D).

[9] For example, by having arranged for disposal or treatment of a hazardous substance, under section 107(a)(3), 42 U.S.C. 9607(a)(3).

Foreclosure and Liquidation

The process of foreclosure and sale may require or result in the security holder taking record title to the property under the laws of some states. For the purposes of this proposed rule, foreclosure, purchase at foreclosure sale, acquisition or assignment of title in lieu of foreclosure, acquisition of a right to title, or other agreement in settlement of the loan obligation, or any other formal or informal manner by which the security holder acquires, for subsequent disposition, possession of the borrower's collateral, are considered to be actions within the scope of the statutory exemption as necessary incidents to protection of the security interest. However, the temporary acquisition must be reasonably necessary to ensure satisfaction or performance of the obligation. A security holder's actions in outbidding or refusing bids from parties offering fair consideration for the property are evidence that the property is no longer being held primarily to protect the security interest.[10] In this regard, "fair consideration" refers to an amount, taking into consideration the terms and conditions of the offer, that represents a value equal to or greater than the outstanding obligation of the debtor.[11]

To remain within the exemption after foreclosure, the foreclosing entity must be acting to preserve the assets of the facility for its subsequent sale. This means that the security holder must undertake to sell or liquidate the secured all assets, wind up operations, or take other action as appropriate for maximizing the value of the secured asset prior to sale as a means to realize the debtor's unpaid obligation. "Winding up" is construed as including those actions necessary to properly and responsibly close down a facility's operations, secure the site, and otherwise protect the value of the foreclosed assets for subsequent liquidation. See, e.g., *United States* v. *Mirabile, supra*. In winding up a facility a security holder may undertake all necessary security measures or take other actions that protect and preserve a facility's assets. In addition, steps taken to prevent or minimize the risk of a release or threat of release of hazardous substances are not considered evidence of management participation.[12]

In addition, there may be circumstances in which a security holder may determine a need to undertake certain actions with respect to a facility's operations in order to preserve the value of the foreclosed-on assets or to prevent a future release (such as by the removal of drummed waste), or to prepare property for safe public access incident to sale or liquidation of assets. Precisely because a security holder in charge of a facility may need to take affirmative action with respect to the hazardous substances that are known to be present, such mitigative actions are not considered to be evidence of participation in management.

For purposes of this proposed rule, mitigative or preventative measures that are environmentally responsible are considered to be actions that preserve and protect the value of the facility and, hence, protect the security interest. Accordingly, such actions are not considered evidence of participation in management. Security holders that undertake environmentally mitigative actions should be aware that section 107(d), 42 U.S.C. 9607(d), provides that no person is liable for CERCLA costs or damages "as a result of rendering care, assistance, or advice" with respect to hazardous substances—even if such actions result in the release or threat of release of a hazardous substance—so long as the actions taken are consistent with the NCP, or at the direction of an On-Scene Coordinator. The NCP, promulgated under CERCLA section 105, 42 U.S.C. 9605, specifies the appropriate response actions for addressing the release or threat of release of hazardous substances at a facility. 40 CFR part 300, 55 FR 8666 (Mar. 8, 1990). In addition, a security holder—or any person—is not considered to be liable under CERCLA for the release or threatened release of a hazardous substance for which another party is solely responsible, as provided in section 107(b), 42 U.S.C. 9607(b).

Holding Property for Disposition

Foreclosure and possession of property incident to sale or liquidation is often the only remedy the holder of a security interest may have to secure performance of an obligation. Several courts construing section 101(20)(A) have accordingly indicated that the mere foreclosure and taking of title does not necessarily void the security holder exemption. *United States* v. *Mirabile, supra*; *United States* v. *Maryland Bank and Trust, supra*; *In re T.P. Long Chemical Inc., supra*; but see *Guidice* v. *BFG Electroplating and Manufacturing Co., supra*. While mere foreclosure is considered permissible, a security holder that does not endeavor to sell or otherwise divest itself of foreclosed-on property runs the risk that it will be considered to be possessing the property for some purpose other than to protect its security interest in the property, such as for investment. See, *United States* v. *Maryland Bank and Trust, supra*. Existing case law provides little precise guidance regarding the period of time that is considered reasonable for a security interest holder to maintain possession of foreclosed-on property. Four years was found too long in *United States* v. *Maryland Bank and Trust, supra*, while four months was found reasonable in *United States* v. *Mirabile, supra*. In addition, the circumstances facing foreclosing security holders may vary widely, depending on, among other things, the nature of the property securing the obligation and local and national economic conditions. Thus, the time required to dispose of security property may vary widely, notwithstanding a security holder's best efforts. Accordingly, EPA believes that it is proper to define the obligations of a security holder seeking to remain within the exemption following foreclosure (in cases where the security holder has not otherwise participated in the facility's management prior to foreclosure) without regard to specific time periods within which a sale or other disposition must occur. Specifically, this proposal provides that a security holder may avail itself of the security interest exemption unless the holder fails to take reasonable steps to sell the property, or rejects or fails to act upon a written *bona fide* offer for a value equal to or exceeding the outstanding loan obligation.

Under this proposal, a security holder (who did not prior to foreclosure participate in management) may foreclose, retain possession, and, where necessary to maintain the value of the secured property, may continue functioning the enterprise in order to protect the holder's security interest, without triggering liability under CERCLA section 107(a)(1), 42 U.S.C. 9607(a)(1) (pertaining to the liability of owner or operator of a vessel or facility), unless the holder fails promptly to take specific actions to attempt to dispose of the property, or has rejected

[10] To the extent that the foreclosing lender is acting "primarily to protect its security interest" and is within the secured creditor exemption, EPA considers that the ownership of the property remains with the borrower for purposes of the CERCLA lien provision. See 42 U.S.C. 9607(1).

[11] See infra "Holding Property for Disposition"; 40 CFR 300.1100(b)(1)(iii) (definition of "fair consideration").

[12] A security holder also may be under an obligation to protect collateral from loss or impairment, or to act in a commercially reasonable manner. See, e.g., U.C.C. 9-207.

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or ignored a written *bona fide* firm offer of fair consideration for the property.[12]

Under this proposal, within twelve months following foreclosure the security holder must have taken at least the following actions to sell the property, in order to avoid triggering potential liability under section 107(a)(1): begin advertising the property on at least a monthly basis as being for sale in either a real estate publication, or a trade or other publication suitable for the property in question, or a newspaper or general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable Federal, State, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located; and at any time following six months after foreclosure, the security holder must not have rejected, or failed to act upon within 90 days of receipt of a written, *bona fide*, firm offer of fair consideration for the property. For purposes of this proposal, a "written, *bona fide*, firm offer" is a legally enforceable offer, containing all material terms of the transaction, from a ready, willing and able purchaser who demonstrates to the security holder's satisfaction the ability to perform. "Fair consideration" under this proposal is an amount equal to or in excess of the sum of the outstanding principal owed to the holder, plus any unpaid interest and penalties (whether arising before or after foreclosure), plus all reasonable and necessary costs, fees or other charges incurred by the holder incident to foreclosure, retention, continuing functioning of the enterprise, and sale of the property, less any amounts received by the holder in connection with any partial disposition of the property or net revenues received as a result of continued functioning of the facility.

Nothing in this proposal requires a security holder to hold secured property longer than it might otherwise do so in order to receive fair consideration, where business or other considerations would prompt a quicker disposition for a lesser amount. However, where a security holder rejects or fails to respond to a *bona fide* offer for an amount equal to or greater than the outstanding obligation at the time of the offer, it is reasonable to conclude that the security holder is holding the property for some reason other than to protect its security interest, and that the section 101(20)(A) exemption is voided.

Note: That during this period although a security holder may be exempt from liability as an owner or operator of a facility under section 107(a)(1) or section 107(a)(2), liability may still attach under section 107(a)(3) or section 107(a)(4).

Relationship to CERCLA Lien

In the event that EPA conducts a response action at a facility during the time that a security holder maintains indicia of ownership to protect a security interest, pursuant to CERCLA section 107(1), 42 U.S.C. 9607(1), a lien in favor of the United States may be imposed. See Adams, Guidance on Superfund Liens (EPA, Office of Enforcement and Compliance Monitoring, Sept. 22, 1987). In addition, should the EPA response action enhance the value of the facility and result in the security holder realizing an amount greater than that to which the security holder is entitled under rules of equity, the United States may seek equitable reimbursement under applicable principles of law, of the amount by which the security holder has been unjustly enriched or has benefited as a result of the EPA cleanup.

IV. Involuntary Transfer or Acquisition By A Government Entity

A government entity that involuntarily acquires a facility may be entitled to assert a defense to liability as an "innocent landowner" or, in the case of state and local government entities, it may be exempt from the definition of "owner or operator" under CERCLA.[14] The statute refers to "involuntary acquisitions" by government entities in two sections defining the terms used in CERCLA: section 101(20)(D) with respect to state and local governments, and section 101(35)(A)(ii) with respect to any governmental entity. Under the well-established principle of statutory interpretation that identical words used twice in a statute are presumed to have the same meaning, EPA interprets Congress' use of the same term in close proximity in the definitional section of CERCLA to refer to the same concept.[15]

Section 101(35)(A)(ii) was added by the Superfund Amendments and Reauthorization Act (SARA) of 1986, Public Law No. 99-499, 100 Stat. 1613 (Oct. 17, 1986). Where a government entity acquires property involuntarily within the meaning of this section, it may be able to assert a defense to liability as an "innocent landowner." The innocent landowner defense is part of the third-party defense contained in section 107(b)(3), which works in tandem with section 101(35).[16]

The relevant sections of the third-party/innocent landowner defense provide:

Section 107(b):

"There shall be no liability under [section 107(a)] for a person who can establish . . . that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(3) an act or omission of a third party other than . . . one whose act or omission occurs in connection with a *contractual relationship, existing directly or indirectly with the defendant* . . ., if [the defendant] (a) [has] *exercised due care with respect to the hazardous substances* . . ., and (b) he took precautions against the foreseeable acts or omissions of any . . . third party . . .."

Section 101(35):

"(A) The term 'contractual relationship,' for the purpose of section 107(b)(3), includes, but is not limited to, land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of hazardous substances, and . . .:

(ii) The defendant is a government entity which *acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation*. . . .

In addition, . . . the defendant must . . . satisf[y] the requirements of section 107(b)(3)(a) and (b). (emphasis added.)

The defense is available for the government-as-owner where the harm

[12] Notwithstanding this exemption from liability as an owner or operator, a security holder in possession of secured property may face potential CERCLA liability as provided for under section 107(a)(3) (affecting persons who arrange for disposal or treatment of hazardous substances at a facility owned or operated by another party or entity and containing such hazardous substances) and section 107(a)(4) (affecting persons who accept for transportation hazardous substances and selected the disposal facility).

[14] In addition, section 101(20)(A)(iii), 42 U.S.C. 9601(20)(A)(iii), specifies that where title or control of a facility is "conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government," the owner of the facility is the person "who owned, operated, or otherwise controlled activities at such facility immediately beforehand."

[15] See generally 2A Sutherland Statutory Construction section 46.06 (4th ed. 1984); *ICC Industries, Inc.* v. *United States*, 812 F.2d 694, 700 (Fed. Cir. 1987) (citing cases). Even though the language differs slightly between sections, this is not unusual in CERCLA and does not indicate that Congress intended different meanings in the absence of any legislative history to the contrary. See *Pennsylvania* v. *Union Gas Co.*, ___ U.S. ___, 109 S.Ct. 2273, ___ (1989) (similar language in different sections of CERCLA separately waiving State and Federal immunity held to have the same effect).

[16] See Guidance on Landowner Liability Under section 107(a)(1) of CERCLA, De Minimis Settlements Under section 122(g)(1)(B) of CERCLA, and Settlements With Prospective Purchasers of Contaminated Property, 54 Federal Regulation 34235 (Aug. 16, 1989).

was caused solely by the acts of third parties with which the government entity had no "contractual relationship," provided that certain additional elements specified in section 101(35)(A)–(B) are also established. Section 101(35)(A)(ii) lists those situations in which a government entity has no such "contractual relationship": acquisition through the exercise of eminent domain authority by purchase or condemnation, through escheat, or "through any other involuntary transfer or acquisition."

The legislative history of section 101(35)(A) does not discuss the issue of involuntary acquisitions or transfers to government entities, and with respect to this specific provision notes only that the cost of cleaning up a contaminated facility taken by eminent domain may be offset against the price paid to the owner of property as compensation. H. Conf. Rep. No. 962, *supra*, at 187. However, while it is clear that the clause is intended to shield a government entity from CERCLA liability in certain narrow and limited circumstances when a facility is involuntarily transferred to the government in its capacity as sovereign, it is also clear that it is not so broad as to serve as a defense in every instance in which the government owns contaminated property, however contaminated or acquired.

Section 101(20)(D) contains the statute's second use of the term "involuntary," and is substantially similar to section 101(35). The section, also added by the SARA of 1986, provides an exemption from the definition of "owner or operator" (and therefore liability under sections 107(a)(1) and (a)(2)) for state and local entities that acquire possession of property involuntarily. Section 101(20)(D) provides (in part):

> The term *'owner or operator' does not include* a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign.

The section's legislative history does not discuss the "other circumstances" in which acquisition of property by state or local governments may be involuntary; it only mentions that state and local governments will lose the exemption if they cause or contribute to the release or threat of release of hazardous substances at such involuntarily acquired properties. H. Conf. Rep. No. 962, 99th Cong., 2d Sess., at 185–86 (1986).

The examples of "involuntary" acquisition given in section 101(20)(D) may require some intentional or purposeful action on the part of the government to complete—abandonment, for example, requires government-initiated proceedings to determine that property has, in fact, been abandoned. See, e.g., *United States* v. *Sylvester*, 846 F.2d 520, 525 (9th Cir. 1988) (determination of abandonment a question of fact). However, once abandonment, tax delinquency, or bankruptcy has been determined, a state or local government acquiring the property that was the subject of such proceedings is not considered the "owner or operator" of the property because the transfer was "involuntary" for purposes of CERCLA. In addition, section 101(20)(D)'s use of the phrase "or other circumstances in which the government involuntarily acquires title or possession by virtue of its function as sovereign" indicates that the exemption includes other acquisitions in which the government has property involuntarily transferred to it—so long as the government's acquisition is by virtue of its function as sovereign.

Governmental ownership or control of property by involuntary transfer clearly includes acquisition that is involuntary to the government in its capacity as a sovereign. Involuntary acquisitions within the meaning of the statute includes acquisitions of property in which a governmental lending or credit institution or financial regulatory entity is assigned, required, appointed, or otherwise obligated to act as a conservator or receiver of a private lending institution, its assets and property, pursuant to specific enabling legislation. Acquisition under law as a conservator or receiver of property is not materially different from other forms of involuntary acquisitions listed in the statute, such as transfers to government entities pursuant to abandonment proceedings, or as the result of tax delinquency, or other circumstances in which the government obtains ownership of property by virtue of its function as sovereign.[17] Acquisition of property as a conservator or receiver is ordinarily pursuant to a clear and direct statutory mandate that provides little or no discretion with respect to fact and the manner of acquisition, and without regard to the condition of the property acquired. Such acquisitions are ordinarily for limited and non-proprietary purposes, and often occur because no entity other than a government entity is available to serve in this capacity with respect to the property so acquired.

Governmental entities that acquire assets involuntarily through their lending-related activities may acquire both security interests as well as properties wholly owned by the person from whom the government acquired the properties or assets. While all such assets may be involuntarily acquired within the meaning of this rule, with respect to security interests so acquired the acquiring governmental entity is permitted to exercise the same rights under the security interest provisions of this rule as the prior security holder. Where the security interest provisions are unavailable with regard to the assets so acquired, the "involuntary transfer or acquisition" provisions of this rule may apply.

In addition, all property acquired "involuntarily" within the meaning of this proposed rule by a governmental entity as a conservator or receiver, regardless of whether the property was formerly held as an investment property or for some other purpose by the prior owner, is defined to be property obtained through an "involuntary transfer or acquisition" under section 101(35)(A)(ii) of CERCLA. The manner or purpose for which the subject property was owned prior to its acquisition is irrelevant for determining whether the acquisition is "involuntary" for purposes of this rule, and accordingly this rule does not distinguish among former uses of property so acquired. Finally, where a governmental entity or its designee is acting as a conservator or receiver of an institution, the general rule that the liabilities against the institution's estate

[17] That property may be acquired by virtue of the government's function as sovereign is not necessarily dispositive, however; the clear terms of sections 101(20)(D) and 101(35)(A)(ii) require that the acquisition must be involuntary as well. Other sections of CERCLA indicate that government entities which acquire ownership or possession of facilities under circumstances different than those specified in sections 101(20)(D) and 101(35)(A)(ii), or where the government entity itself is responsible for contamination on property owned by it, are subject to CERCLA's liability provisions. See CERCLA 101(21), 42 U.S.C. 9601(21) (federal, state, and local governments included in definition of "person"); *id.* section 101(20)(D), 42 U.S.C. 9601(20)(D) (loss of exemption for involuntarily acquired property by state or local government where entity caused or contributed to release); *id.* section 107(d)(2), 42 U.S.C. 9607(d)(2) (government entity may be liable for gross misconduct in conducting cleanup action); *id.* section 120, 42 U.S.C. 9620 (federal government liable as *any* nongovernment entity under § 107). Reading the definition of "involuntary" to cover every instance of governmental ownership as ownership by virtue of its function as sovereign would render these other sections meaningless. *Pennsylvania* v. *Union Gas Co.*, ___ U.S. ___, 109 S. Ct. 2273, ___ (1989) (the narrow exclusion from liability provided for states in section 101(20)(D) is meaningful only because "Congress intended that States be liable along with everyone else for cleanup costs . . . .").

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are limited to the estate's assets will apply, and such liabilities do not extend to the assets of the conservator or receiver.

As part of this proposal, EPA is also seeking comment on the following language concerning the United States' potential liability when it acquires property pursuant to federal criminal or civil seizure or forfeiture statutes. Specifically, the Justice Department has opined that federal governmental agencies that seize property under federal forfeiture and seizure laws are entitled to the CERCLA liability defense found in sections 107(b) and 101(35). With this understanding, EPA is considering the following language for possible inclusion in the final rule:

> Acquisition of property by any department, agency, and instrumentality of the executive, legislative, or judicial branch of the federal government pursuant to any forfeiture or seizure law or authority of the United States shall be deemed to be an involuntary transfer within the meaning of CERCLA Section 101(35)(A)(ii). This language is being repeated in the regulatory text of this proposed rule.

V. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an annual effect on the economy of $100 million or more. By establishing criteria for determining which parties fall within the "secured creditor" exemption under CERCLA section 101(20)(A) and which governmental entities should be entitled to argue that they have involuntarily acquired a facility under CERCLA section 101(35)(A)(ii), this proposal could potentially result in costs savings to holders of security interests which may have previously been held liable under CERCLA sections 107(a)(1) or 107(a)(2). In addition, this proposed rule imposes no new requirements or reporting obligations upon a person who holds a security interest, or upon a person whose property is encumbered by a security interest. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, agencies must evaluate the effects of a regulation on small entities. If the rule is likely to have a "significant impact on a substantial number of small entities," then a Regulatory Flexibility Analysis must be performed. Because this proposal may result in cost savings for small entities that hold security interests in contaminated facilities, EPA certifies that today's proposed rule would not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 300

Hazardous substances, Intergovernmental relations, Superfund.

For the reasons set out in the preamble, title 40, chapter I, part 300 is proposed to be amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

2. Part 300 is proposed to be amended by adding subpart L to read as follows:

Subpart L—National Oil and Hazardous Substances Pollution Contingency Plan; Lender Liability Under CERCLA

Sec.
300.1100 Security interest exemption.
300.1105 Involuntary acquisition of property by the government.

Subpart L—National Oil and Hazardous Substances Pollution Contingency Plan; Lender Liability Under CERCLA

§ 300.1100 Security interest exemption.

(a) *Indicia of ownership* as used in section 101(20)(A) of CERCLA means evidence of interests in real or personal property held as security for a loan or other obligation, including full title to real or personal property acquired incident to foreclosure and its equivalents. Examples of such indicia may include, but are not limited to, a mortgage, deed of trust, or legal title obtained pursuant to foreclosure or its equivalents, or an assignment, lien, pledge, or other right to or other form of encumbrance against property that is recognized under applicable law as establishing a *bona fide* security interest. If a defendant claims the exemption the plaintiff has the burden of establishing that the defendant is the owner or operator as provided in this regulation.

(1) A holder of a security interest is a person who holds indicia of ownership in a vessel or facility to protect a security interest. A holder of a security interest includes the initial holder (such as the loan originator), and any successor-in-interest, including a subsequent purchaser on the secondary market, loan guarantor or insurer, or other person who holds a security interest under the applicable law governing the transaction.

(2) A borrower, debtor, or obligor is a person whose vessel or facility is encumbered by a security interest. These terms may be used interchangeably.

(b) *Primarily to protect a security interest* for the purposes of section 101(20)(A) of CERCLA means that the indicia of ownership in the vessel or facility are held for the purpose of securing payment or performance of an obligation. Recognized transactions that may create security interests include mortgages, certain types of liens, forms of conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, or accounts receivable financing arrangements, and some forms of leases or consignments, among others. Whether a sale-and-leaseback, conditional sale, installment sales contract, or any other transaction creates a security interest within the meaning of the security interest exemption under CERCLA is determined by the facts of each case and whether a security interest is created under applicable law. The term "security interest" does not include an ownership interest in property held for investment purposes, nor ownership indicia held for purposes other than as protection for a security interest.

(1) *Foreclosure, Holding for Disposition and Liquidation*—(i) *Foreclosure.* Indicia of ownership that are held "primarily to protect [a] security interest" may include full legal title acquired through foreclosure, purchase at foreclosure sale, acquisition or assignment of title in lieu of foreclosure, acquisition of a right to title, or other agreement in settlement of the loan obligation, or any other formal or informal manner by which the security holder temporarily acquires, for subsequent disposition, possession of the borrower's collateral, and are necessary incidents to protection of the security interest. A security holder's actions in outbidding or refusing bids from parties offering fair consideration for the property are evidence that the property is not held primarily to protect the security interest. "Fair consideration" refers to an amount, taking into consideration the terms and conditions of the offer, that represents a value equal to or greater than the outstanding obligation of the debtor, as defined in 40 CFR 300.1100(b)(1)(ii).

(ii) *Holding Property for Disposition and Liquidation.* A security holder, who did not participate in management prior to foreclosure, may, without incurring liability under CERCLA section 101(20)(A), foreclosure, sell, liquidate, wind up operations, or retain and continue functioning the enterprise in order to protect the value of the secured asset prior to sale as a means to realize the debtor's unpaid obligation pending sale, liquidation, or other disposition of the property, without incurring liability under CERCLA section 107(a)(1). A security holder retains this exemption unless:

(A) The holder fails, within twelve months following foreclosure, to list the property with a broker, dealer, or agent who deals with the type of property in question, and begin advertising the property as being for sale or disposition on at least a monthly basis in either a real estate publication, or a trade or other publication suitable for the property in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located; or

(B) If at any time after six months following foreclosure the security holder rejects, or does not act upon within 90 days of receipt of a written, *bona fide,* firm offer of fair consideration for the property. A "written, *bona fide,* firm offer" is a legally enforceable offer, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstates to the security holder's satisfaction the ability to perform. "Fair consideration" is an amount equal to or in excess of the sum of the outstanding principal owed to the holder, plus any unpaid interest and penalties (whether arising before or after foreclosure), plus all reasonable and necessary costs, fees or other charges incurred by the holder incident to foreclosure, retention, continuing functioning of the enterprise, and sale of the property, less any amounts received by the holder in connection with any partial disposition of the property or net revenues received as a result of continued functioning of the facility.

(2) [Reserved]

(c) *Participation in Management Defined*—

(1) *Actions That Are Participation in Management.* Participation in the management of a facility means, for the purpose of section 101(20)(A), actual participation in the management or operational affairs by the holder of the security interest, and does not include the mere capacity, or ability to influence, or the unexercised right to control facility operations. A security holder is considered to be participating in management if, while the borrower is still in possession, the security holder is either:

(i) exercising decisionmaking control over the borrower's environmental compliance, such that the security holder has undertaken responsibility for the borrower's waste disposal or hazardous substance handling practices which results in a release or threatened release; or

(ii) exercising control at a management level encompassing the borrower's environmental compliance responsibilities, comparable to that of a manager of the borrower's enterprise, such that the security holder has assumed or manifested responsibility for the management of the enterprise by establishing, implementing, or maintaining the policies and procedures encompassing the day-to-day environmental compliance decisionmaking of the enterprise.

(2) *Actions That Are Not Participation in Management.*—

(i) *Actions at the Inception of the Loan or Other Transaction Giving Rise to a Security Interest.* No act or omission prior to the creation of a security interest constitutes evidence of participation in management within the meaning of section 101(20)(A). The holder of a security interest who undertakes or requires an environmental inspection of the vessel or facility in which indicia of ownership are held is not by such action considered to be participating in the vessel or facility's management, nor is such ongoing involvement with the borrower that responds to the inspection by ensuring that the vessel or facility remains or is maintained in compliance with all applicable requirements considered to be evidence of management participation. Neither the statute nor this regulation require a holder of a security interest to conduct an inspection to qualify for the inspection, and the liability of a holder of a security interest cannot be based on or affected by a failure to conduct an inspection.

(ii) *Policing the Security Interest or Loan.* Actions that are consistent with protecting a security interest do not constitute participation in management for purposes of section 101(20)(A) of CERCLA. Such actions include, but are not limited to, a requirement that the borrower clean up the vessel or facility prior to or during the term of the security interest; a requirement of assurance of the borrower's compliance with applicable federal, state, and local environmental and other rules and regulations during the life of the loan or security interest; securing authority for the holder of the security interest to periodically or regularly monitor or inspect the vessel or facility in which the security holder possesses indicia of ownership (including site inspections) or the borrower's business or financial condition; or other requirements or conditions reasonably necessary for the security holder to adequately police the loan or security interest, or to comply with legal requirements. Such requirements may be contained in contractual documents or other relevant documents specifying requirements for financial, environmental, and other warranties, covenants, and representations or promises from the borrower.

(iii) *Work Out.* The holder of a security interest may act with respect to the vessel or facility to secure or safeguard the security interest from loss without being considered to have participated in management. "Work out" activities will not void the exemption provided that the actions are taken in the course of protecting the security interest. Work out activities must be structured to protect and preserve the security interest in an effort to prevent default of the obligation or the diminution in value of the security. When the holder of a security interest undertakes work-out activities, provides financial or other advice, or similar support to a distressed borrower, the security holder will remain within the exemption unless the holder participates in management, as specified in 40 CFR 300.1100(c)(1). Work out activities include, but are not limited to, restructuring or renegotiation of the terms of the loan or other obligation, payment of additional interest, extension of the payment period, specific or general financial advice, suggestions, counseling, guidance, or other actions reasonably necessary to protect the security interest.

§ 300.1105 Involuntary acquisition of property by the government.

Governmental ownership or control of property by involuntary transfer within the meaning of CERCLA section 101(35)(A)(ii) includes acquisition by the government in its capacity as a sovereign. An involuntary acquisition includes the transfer to a government entity pursuant to abandonment proceedings, as the result of tax delinquency, escheat, or other circumstances in which the government

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involuntarily obtains ownership or control of property by virtue of its function as sovereign, including situations in which a government entity or its agent (which includes governmental lending and credit institutions, loan guarantors, and financial regulatory entities which acquire security interests or properties of failed private lending and depository institutions) is assigned or required to act as a conservator or receiver pursuant to a clear and direct statutory mandate. An involuntary acquisition also includes the acquisition of assets through foreclosure or other means by a federal, state, or local governmental entity in the course of administering a governmental loan or loan guarantee program. Additional language under consideration: "Acquisition of property by any department, agency, and instrumentality of the executive, legislative, or judicial branch of the federal government pursuant to any forfeiture or seizure law or authority of the United States shall be deemed to be an involuntary transfer within the meaning of CERCLA section 101(35)(A)(ii)."

Dated: June 5, 1991

F. Henry Habicht,

Acting Administrator.

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June 24, 1991

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Harvest Information Program; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AB65

Migratory Bird Harvest Information Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This document announces the intention of the Fish and Wildlife Service (hereinafter the Service) to establish a National Migratory Bird Harvest Information Program. This notice provides the public with information about the need for such a program and the procedures that may be necessary to implement it. The notice will allow the Service to receive public comment and suggestions in advance of preparing a proposed rule, and therefore to develop proposals from a more complete information base.

DATES: Written comments pertaining to the intended establishment of a National Migratory Bird Harvest Information Program should be received on or before August 1, 1991.

ADDRESSES: Written comments should be sent to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Office of Migratory Bird Management, route 197 and Powder Mill Road, Laurel, Maryland 20708–6619. Comments received will be available for public inspection during normal business hours in room 228, Gabrielson Laboratory, Patuxent Wildlife Research Center, route 197 and Powder Mill Road, Laurel, Maryland.

FOR FURTHER INFORMATION CONTACT: Paul H. Geissler, Chief, Waterfowl Harvest Surveys Section, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Laurel, Maryland 20708–6619 (301) 498–0401, FAX (301) 498–0222.

SUPPLEMENTARY INFORMATION: Under the Migratory Bird Treaty Act (16 U.S.C. 703–711) the Secretary of Interior has responsibility for setting appropriate regulations for the hunting of migratory birds, with due regard for maintaining such populations at healthy levels. The Fish and Wildlife Service Act of 1956 (16 U.S.C. 742 a–d and e–j) more specifically authorizes collection of such information as is necessary to determine appropriate regulations.

Harvest estimates are one of the primary management tools. Waterfowl harvest is currently monitored by a national survey that has severe nonresponse problems; national surveys of the harvest of other migratory game birds are lacking. State harvest surveys provide some information but cannot produce coordinated national or regional estimates. To provide improved migratory bird harvest estimates, the Fish and Wildlife Service intends to revise the migratory bird hunting regulations to require all migratory bird hunters to have a Migratory Bird Harvest Information Program Card (Card) in their possession while they are hunting migratory birds. Some States may choose to combine this requirement with a State license requirement. Hunters would be required to supply their names and addresses as a condition for obtaining the Card. The names would provide a sampling frame for an expanded Migratory Bird Harvest Survey. All records of hunters' names and addresses would be deleted after each annual survey and no permanent records of names and addresses would be maintained by the Fish and Wildlife Service (Service). Cards would be distributed by State wildlife agencies through their hunting license vendors. The Service would provide the Cards to the State agencies without charge, but the State agencies may require a small handling fee to cover their administrative costs and to compensate their license vendors. The Program would be phased-in, starting with a few States in 1992. The Program would be expanded to other States at the rate of about 10-15 States per year starting in 1994 with the States that have the largest migratory bird harvest. All States would be required to comply by 1998.

Historical Review

Wildlife professionals have long recognized the need for reliable harvest data to guide management decisions. States have established surveys to meet their individual needs for resident game species, and a Federal waterfowl harvest survey has been conducted since 1952. During the past 25 years, several initiatives were begun to establish a basis for improving and expanding surveys to other nonwaterfowl species. Between 1957 and 1963, eight Congressional bills were drafted advocating a national permit for webless migratory shore and upland game birds to provide a sampling frame for generating harvest estimates and to provide modest income for funding needed research and management projects for these species. In 1969, a committee of the International Association of Fish and Wildlife Agencies (Association) proposed that a national woodcock harvest survey be established, and in its 1977 landmark book, Management of Shore and Upland Game Birds, the Association listed initiation of a national survey for nonwaterfowl migratory game birds, with a required permit or other sampling frame, as the number one priority among research and management needs.

In 1978, the National Program Planning Group was directed by the Association's Migratory Wildlife Committee to develop alternatives for addressing deficiencies in migratory bird harvest data. In 1979, this task force proposed establishment of a national permit required of all migratory bird hunters. A nominal fee to cover administrative costs and provide management program funding was suggested. The Migratory Wildlife Committee rejected the proposal and instructed the task force to consider an alternative whereby State surveys might be utilized to satisfy harvest data needs. A select committee of State, Federal and University employees with expertise in survey design was named to examine this option. In their 1980 report to the National Program Planning Group, this committee concluded that State surveys could not satisfy harvest data needs for migratory birds.

In 1980, the Service in cooperation with several States attempted to augment the sample of waterfowl hunters from the Federal Duck Stamps with a sample of other hunters from State license files. The attempt failed because of problems resolving differences between State surveys and obtaining hunter names in time for the survey.

In 1990, the Association unanimously recognized the deficiencies in harvest data for migratory birds and recommended that the Service publish a proposed rule in the Federal Register to establish a regulation that all migratory bird hunters annually obtain a national migratory bird hunting program card. Distribution and administration of this Card would be the responsibility of the individual States. The Service also acknowledges weaknesses in the methods now used to estimate harvest of migratory birds and intends to use this expansion of current survey methods to improve the extent and quality of information on all migratory bird harvest. The purpose of the proposed rule will be to implement the recommendations of the States expressed through the Association.

Description of Current Migratory Bird Harvest Surveys

The Federal Waterfowl Harvest Surveys provide some of the information that is used to set Federal hunting regulations. The estimates are provided in administrative reports prior to the July public hearings. There are two harvest surveys. The Hunter Survey estimates the duck harvest, goose harvest, coot harvest, and days of hunting. The harvest of mourning dove, woodcock, snipe, sora rail, other rails, gallinule, white-winged dove, band-tailed pigeon and sandhill crane by waterfowl hunters is also estimated. The Parts Survey estimates the species, age and sex composition of the harvest, and the distribution of harvest by date and county. There is also a separate sandhill crane harvest survey that uses names and addresses from sandhill crane permits.

Each year, a random sample of 3,400 post offices is selected from the 16,000 post offices that sell Federal Duck Stamps. Sample post offices are asked to distribute survey cards to Duck Stamp purchasers on a cost-reimbursable basis. Other Duck Stamp outlets such as stores, national wildlife refuges and conservation agencies are also sampled. About 64,000 survey cards are returned. Of these, 57,000 respondents who plan to hunt waterfowl are sent a questionnaire after the hunting season. Nonrespondents are sent a follow-up questionnaire. About 37,000 questionnaires are returned.

Successful waterfowl hunters who respond to the Hunter Survey are requested to contribute to the Parts Survey duck wings and goose tails from the birds they shoot. About 33,000 hunters contribute 64,000 duck wings and 21,000 goose tails each year. Hunters also report the date, time and county where each bird was taken. The parts are mailed to a central location in each flyway. State and Federal biologists meet at these locations in January and February to determine the species, age and sex of the birds.

Problems with the Current Migratory Bird Harvest Surveys

Of the five million migratory bird hunters, 2.3 million hunt only nonwaterfowl species, but they are not sampled to determine their hunting success.

Low response rates indicates that our waterfowl harvest estimates can have serious errors.

- 24% of people who buy Federal Duck Stamps at sample post offices are given survey cards by post office personnel.
- 54% of those who receive cards return them with their name and address.
- 65% of those who are sent questionnaires return them.
- [24%][54%][65%]=8% overall response rate of the inteaded sample.
- There is no legal requirement to return the cards.

Twenty-seven percent of duck stamps are sold by stores. Stores are not compensated for distributing name and address cards and have no obligation to cooperate. On the other hand, these vendors are usually compensated for selling State hunting licenses and State duck stamps. A system that also compensates vendors for obtaining the names and addresses of National Harvest Information Program Card purchasers would be a major improvement.

The primary purpose of duck stamps is to raise funds for wetland acquisition, and they are being aggressively marketed to both hunters and nonhunters. Stamps are sold through the Postal Service, National Wildlife Refuges, and directly to vendors, such as sporting goods stores. Sales through multiple outlets make it difficult to track the stamps and identify the purchasers who are hunters. This problem makes the estimation of the waterfowl harvest more complicated each year.

Hunters less than 16 years old are not required to purchase a duck stamp and are excluded from the current harvest survey and there is no direct estimate of their harvest.

State Harvest Surveys Cannot Provide Adequate National Estimates of Waterfowl and Other Migratory Bird Harvests

Some States do not conduct annual hunting surveys or maintain accessible lists of hunter names and addresses. The lists may be maintained at vendors or county seats and often are not available from a centralized location. Comparable information is not available from all States because each State has different licensing laws regulating who must buy a hunting license and different survey procedures. Some hunters can legally hunt without an annual State license. Hunters may buy more than one type of license in a single State and may buy licenses from more than one State, introducing duplication problems.

Many State license lists are not available in time for survey results to be useful for promulgating regulations for the following year. Harvest information for a given year must be ready at the time proposals are developed for the following year. Proposals are developed in late June for waterfowl seasons, but are developed in June for webless migratory birds seasons and for certain waterfowl seasons. For example, harvest information from the 1990–91 dove season must be available by June of 1991.

Use of State lists, where available, would not permit distribution of hunter records forms early in the hunting season. Budget constraints often prevent States from conducting harvest surveys during certain years or could cause some States to eliminate them completely. Previous attempts to use State information have not been successful because of the difficulty in reconciling State survey differences.

Advantages of Proposal

Requiring Survey Cards from all migratory bird hunters would provide a current list of names and addresses from which a sample could be drawn for a national Migratory Bird Harvest Survey. All migratory bird hunters would be included, not just waterfowl hunters, making precise estimates of dove, woodcock, snipe, rail and other migratory game bird harvests possible for the first time. Waterfowl harvest estimates would be improved and further deterioration of the present estimating system would be avoided.

An improved sampling frame would increase efficiency and reduce costs of State harvest surveys. The Service will cooperate with States in providing surveys to meet special management needs. Increased cooperation between Federal and State agencies would reduce duplication of survey efforts. Response rates would be increased by compensating vendors for distributing the permits.

Some hunting seasons have been threatened by legal action because of lack of adequate harvest estimates. Improved estimates of both population sizes and harvest are needed to assure that hunting does not threaten migratory bird population levels.

Survey Procedures

The National Migratory Bird Harvest Information Program (Program) would be phased-in, starting with a few States on January 1, 1992. All persons hunting migratory birds in specified States after July 1, 1992, would be required by Federal regulation to have in their possession a signed separate Program Card or a signed combination of Program Card and other State license requirement. A combination system must retain separate enough identities of the State and Federal requirement to allow the Federal part to be valid in any State regardless of the State in which it was purchased. Program Cards would be valid from July 1 until June 30 of the following year.

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The Program Card would bear the text "Migratory Bird Harvest Information Program," year issued, "Void after June 30, 19____" and a serial number assigned by the Service. There would be a space for the hunter's signature. The Service would print and distribute Program Cards to the States without charge by December 1 of each year, maintaining a list of serial numbers sent to the State. A Survey Card would be attached to each Program Card. The Survey Card would have space for the hunter's name and address and for the other questions described later. States would distribute Program and Survey Cards to migratory bird hunters through its license vendors, maintaining a list of serial numbers sent to each vendor. The State would provide the Service with that list of serial numbers by April 1 each year. The State may charge hunters a small handling fee to cover the State's administrative costs and the vendor's distribution costs.

State hunting license vendors would distribute Program Cards only to hunters who complete a Survey Card giving their name and complete address. It would be the policy of the Service and the State to use the names and addresses only for conducting hunter surveys and for no other purpose. Vendors would mail completed Survey Cards first class to specified locations within 4 days after the Program Card is provided to the hunter.

Survey Cards would have a standard format that would allow machine processing and would have room for questions in addition to the hunter's name and address. The State and the Service would have equal areas for additional questions. The Service's questions would be:

- Is this the first Migratory Bird Harvest Information card you have obtained this hunting season? YES____ NO____ (This question would identify duplicate cards.)

Kind of bird	Number bagged last season in U.S.		
	None	1–10	11+
Ducks	___	___	___
Geese	___	___	___
Doves	___	___	___
Woodcock	___	___	___

Please mark if you hunted these birds last season. ____Band-tailed Pigeons, ____ Coots, ____ Cranes, ____ Crows, ____ Gallinules, ____ Rails, ____ Snipe

(This question would identify what groups of species the respondent has hunted and would identify those who harvest large numbers of birds. Those who are very successful and those who hunt less-commonly hunted species would be sampled at a higher rate to substantially increase the efficiency and reduce the cost of the hunter surveys. No bias would be introduced. A separate hunter survey would be conducted for duck, goose, and coot hunting, for dove, woodcock, and band-tailed pigeon hunting; and for snipe, rail, gallinule, and crane hunting to reduce the burden on individual respondents. No one would be asked to participate in more than one survey.)

If a combination Program Card/State license requirement is used, specific details will have to be worked out on a State-by-State basis. Combination systems would also have to meet similar criteria on format and accountability as a separate Program Card.

The Service would select a sample of hunters for the harvest surveys. Personal letters, enclosing hunting record forms, would be mailed to selected hunters within 2 weeks of receipt of the names and addresses. At the State's request, another sample of hunter names and addresses derived from the Survey Cards would be express-mailed to the State within 1 week of receipt of the Survey Cards. To protect hunters' privacy, Survey Cards not selected for a survey would be destroyed by the Service immediately after the sample is selected and no records of the names or addresses would be kept. As soon as a hunter responds to a survey, all records of his/her name and address would be deleted by the Service. Names and addresses of nonresponding hunters would be deleted by the Service at the end of each annual survey.

Vendors would return unused Program Cards to a designated location within 30 days after the end of migratory bird hunting seasons in their States. The Service would provide States with a monthly accounting of Program Cards and a final accounting by May 1 of each year. States would follow-up with vendors who have not accounted for all their cards.

The Service would conduct surveys and provide migratory bird harvest and waterfowl age ratio estimates prior to the annual hunting regulations meetings. Survey procedures would be the same as the existing Waterfowl Harvest Surveys except that the hunter names would come from the Survey Card instead of from Federal Duck Stamp purchasers.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority: The Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. 701–711); the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742 a–d and e–j); and the fish and wildlife improvement Act of November 8, 1978, as amended, (16 U.S.C. 712).

Dated June 14, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–14646 Filed 6–21–91; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–275–3030).

H.R. 671/Pub. L. 102–58

To designate the facility of the United States Postal Service located at 630 East 105th Street, Cleveland, Ohio, as the "Luke Easter Post Office". (June 18, 1991; 105 Stat. 299; 1 page) Price: $1.00

S. 483/Pub. L. 102–59

Entitled the "Taconic Mountains Protection Act of 1991". (June 18, 1991; 105 Stat. 300; 2 pages) Price: $1.00

S.J. Res. 111/Pub. L. 102–60

Marking the seventy-fifth anniversary of chartering by Act of Congress of the Boy Scouts of America. (June 18, 1991; 105 Stat. 302; 1 page) Price: $1.00

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-53-AD; Amdt. 39-7043; AD 91-14-01]

Airworthiness Directives; British Aerospace (BAe), Limited Jetstream HP 137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to BAe Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes equipped with Dunlop wheel and brake assemblies and Models 3101 and 3201 airplanes equipped with B.F. Goodrich wheel and brake assemblies. This action requires an inspection of the main landing gear wheel bearings, and replacement if found damaged; and the installation of an improved flanged wheel retention nut on the main landing gear wheels. The wheel bearings on two of the affected airplanes failed and the main landing gear wheels separated from the axle. A check of several other of the affected airplanes shows that the torque values of the wheel retaining nut were out of tolerance. The actions specified by this action are intended to prevent separation of the landing gear wheel from the airplane, which could result in loss of control of the airplane during high-speed operations.

DATES: Effective July 22, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1991. Comments for inclusion in the Rules Docket must be received on or before August 26, 1991.

ADDRESSES: BAe Jetstream Alert Service Bulletin 32-A-JA 910140, dated May 17, 1991, and BAe Service Bulletin 32-46, dated April 9, 1991, that are discussed in this AD may be obtained from British Aerospace, Manager Customer Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44-292) 79888; Facsimile (44-292) 78703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100; Facsimile (703) 435-2628. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91-CE-53-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on British Aerospace (BAe), Limited Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes that are equipped with Dunlop wheel and brake assemblies. The CAA reports that the wheel bearings on two of the effected airplanes failed and the main landing gear wheels separated from the axle. A check of several other of the affected airplanes shows that the torque values of the wheel retaining nut were out of tolerance. This may lead to failure of the main wheel roller bearings, which may allow the outer race and main wheel to pass over the wheel nut and depart from the airplane.

British Aerospace (BAe) has issued BAe Jetstream Alert Service Bulletin (ASB) No. 32-A-JA 910140, dated May 17, 1991, which specifies inspection procedures for the main wheel bearings, and installation procedures for a flanged axle nut on BAe Limited Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. "Part 2—INSTALLATION OF FLANGED AXLE NUT" of the instructions in BAe ASB No. 32-A-JA 910140 references BAe Service Bulletin 32-46, dated April 9, 1991, which specifies procedures on refitting the wheel. The CAA classified these service bulletins as mandatory in order to assure the airworthiness of these airplanes in the United Kingdom. The airplanes are manufactured in the United Kingdom and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA totally informed of the above situation.

The FAA has examined the findings of the CAA, reviewed all available information and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. The FAA has issued Supplemental Type Certificate (STC) SA 1332GL for the Model 3101 airplanes and STC SA 1412GL for the Model 3201 airplanes to allow B.F. Goodrich wheel and brake assemblies to be installed in place of Dunlop wheel and brake assemblies. The FAA has determined that since the affected airplanes equipped with B.F. Goodrich wheel and brake assemblies are of the same type design as those equipped with Dunlop wheel and brake assemblies, the following AD action should apply to BAe Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes equipped with Dunlop wheel and brake assemblies and BAe Jetstream HP 137 Mk1, and Jetstream Models 3101 and 3201 airplanes equipped with B.F. Goodrich wheel and brake assemblies.

Since the BAe Limited Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes of this type design are equipped with only one Dunlop or B.F. Goodrich wheel and brake assembly per main landing gear, an emergency AD is being issued to prevent separation of the landing gear wheel from the airplane, which could result in loss of control during high-speed ground operations. The action requires an inspection of the

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main landing gear wheel bearings, and replacement if found damaged; and the installation of an improved flanged wheel retention nut on the main landing gear wheels. These actions shall be done in accordance with BAe Jetstream ASB No. 32–A–JA 910140, dated May 17, 1991 and BAe Service Bulletin 32–46, dated April 9, 1991.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91-14-91 British Aerospace (BAE), Limited: Amendment 39–7043; Docket No. 91–CE–53–AD.

Applicability: Jetstream HP 137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes (all serial numbers) that are equipped with Dunlop wheel and brake assemblies; and Jetstream Models 3101 and 3201 airplanes (all serial numbers) that are equipped with B.F. Goodrich wheel and brake assemblies, certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent separation of the landing gear wheel from the airplane, which could result in loss of control during high-speed ground operations, accomplish the following:

(a) Within the next 100 landings, inspect the main landing gear wheel bearings for damage in accordance with the instructions in "Part 1—Mainwheel Bearing Inspection" of BAe Jetstream Alert Service Bulletin (ASB) No. 32–A–JA 910140, dated May 17, 1991. If any damage is found, prior to further flight, replace the bearings in accordance with the instructions in the applicable maintenance manual.

Note: If no record of landings is maintained, hours time-in-service (TIS) may be used with one hour TIS equal to two landings. For example, 50 hours TIS is equal to 100 landings.

(b) Within the next 500 landings, install a flanged axle nut in accordance with the instructions in "Part 2—Installation of flanged axle nut" of BAe Jetstream ASB No. 32–A–JA 910140, dated May 17, 1991. The criteria of paragraph (10) of these instructions shall be accomplished in accordance with the instructions in BAe Service Bulletin 32–46, dated April 9, 1991. Perform whichever of the following is applicable:

(1) If the airplane is equipped with Dunlop wheel and brake assemblies, perform torque loading of the axle nuts in accordance with the instructions in the "Appendix Torque Loading Axle Nuts" of BAe Jetstream ASB No. 32–A–JA 910140, dated May 17, 1991; or

(2) If the airplane is equipped with B.F. Goodrich wheel and brake assemblies, accomplish the following:

(i) While rotating wheel, torque axle nut to 50 foot-pounds to properly set bearings.

(ii) Loosen nut to zero torque.

(iii) While rotating wheel, retighten to 25 foot-pounds in one continuous rotation of the axle nut. Check to ensure locking holes are aligned.

(iv) If locking holes are not aligned, rotate nut to closest locking hole, and secure the axle nut and recheck to ensure locking holes are aligned.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(e) The inspection and installation required by this AD shall be done in accordance with BAe Jetstream ASB No. 32–A–JA 910140, dated May 17, 1991, and BAe Service Bulletin 32–46, dated April 9, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Manager Customer Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44–292) 79888; Facsimile (44–292) 78703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435–9100; Facsimile (703) 435–2628. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on July 22, 1991.

Issued in Kansas City, Missouri, on June 11, 1991.

Don C. Jacobsen,
Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–15681 Filed 6–24–91; 8:45 am]
BILLING CODE 4910–13–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1600

Employee Responsibilities and Conduct; Collection of Debts by Salary Offset

AGENCY: Equal Employment Opportunity Commission.

ACTION: Interim final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) is proposing to revise its regulations on Employee Responsibilities and Conduct to include a subpart on procedures for the collection of debts by salary offset. This rule outlines the procedures to be followed by EEOC for collection of debts owed to the United States by present or former Commission employees under the Debt Collection Act of 1982 (Pub. L. 97–365), 5 U.S.C. 5514. The rule, in conjunction with appendices B and C of EEOC Order 475, "Procedures for the Collection of Debts by Salary Offset," will reflect the changes made to Federal claims collection by the Debt Collection Act of 1982.

DATES: The interim final rule is effective on June 25, 1991. Comments must be received by August 26, 1991.

ADDRESSES: Written comments should be addressed to Frances Hart, Executive Officer, Office of Executive Secretariat, Equal Employment Opportunity Commission, room 10402, 1801 L Street, NW., Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Acting Associate Legal Counsel, Kathleen Oram, Senior Attorney, or Daniel T. Riordan, Staff Attorney, at (202) 663–4669.

Copies of this interim final rule are available in the following alternate formats: Large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice) or (202) 663–4399 (TDD).

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 was designed to increase the efficiency of government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of such debts. Appendix B to EEOC Order 475, entitled "Procedures for the Collection of Debts by Salary Offset," describes the procedures for collection of debts owed to the United States by present or former Commission employees by salary offset under 5 U.S.C. 5514. Appendix C describes the procedures for requesting and providing oral hearings arising from salary and administrative offset actions. The Office of Personnel Management (OPM) approved the procedures in appendices B and C upon the condition that the Commission publish regulations implementing the Debt Collection Act of 1982. Proposed subpart E to 29 CFR part 1600, 29 CFR 1600.735–501 to 519, describes the EEOC procedures for the collection of debts by salary offset, and, inter alia, who may make a request for salary offset to another agency, the form of the request, and the procedure for submitting the request.

The Commission has determined that this rule does not constitute a major rule for the purposes of Executive Order 12291. It is a procedural rule relating to internal administration of Commission personnel matters. The Commission also certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that the proposed rule will not result in a significant impact on a substantial number of small employers. For this reason, a regulatory flexibility analysis is not required.

For the Commission,
Evan J. Kemp, Jr.,
Chairman.

Accordingly, it is proposed to amend 29 CFR part 1600 as follows:

PART 1600—[AMENDED]

1. It is proposed to revise the authority citation for 29 CFR part 1600 to read as follows:

Authority: E.O. 11122, 30 FR 6469, 3 CFR 1965 Supp.; 5 CFR 735.101 et seq.; U.S.C. 5514; 5 CFR 550.1101 et seq.

2. It is proposed to add subpart E to part 1600 to read as follows:

Subpart E—Procedures for the Collection of Debts by Salary Offset

Sec.
1600.735–501 Purpose.
1600.735–502 Scope.
1600.735–503 Definitions.
1600.735–504 Notice of salary offset.
1600.735–505 Request for reconsideration or request for consideration of waiver, compromise, or forgiveness.
1600.735–506 Reconsideration or consideration of waiver, compromise or forgiveness decision.
1600.735–507 Oral hearing.
1600.735–508 Method of collection.
1600.735–509 Source of deductions.
1600.735–510 Duration of deductions.
1600.735–511 Limitation on amount of deductions.
1600.735–512 When deductions may begin.
1600.735–513 Liquidation of final check.
1600.735–514 Recovery from other payments due a separated employee.
1600.735–515 Interest, penalties, and administrative costs.
1600.735–516 Non-waiver of rights by payments.
1600.735–517 Refunds.
1600.735–518 Salary offset requests by other agencies.
1600.735–519 Salary offset request by the Commission to another agency.

Subpart E—Procedures for the Collection of Debts by Salary Offset

§ 1600.735–501 Purpose.

This subpart sets forth the procedures to be followed in the collection of debts owed to the United States by present or former Commission employees by salary offset under 5 U.S.C. 5514.

§ 1600.735–502 Scope.

(a) *Applicability.* (1) The procedures in this subpart apply to the collection of debts owed to the Commission or another federal agency by present or former Commission employees by offset against their basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay from the Commission or other agency pursuant to the offset authority in 5 U.S.C. 5514.

(2) The procedures in this subpart apply to the collection by salary offset of the following types of debts owed to the United States: Interest, penalties, fees, direct loans, loans insured and guaranteed by the United States, leases, rents, royalties, services, sales of real or personal property, fines and forfeitures (except those arising under the Uniform Code of Military Justice), erroneous payments of pay and all other similar sources.

(b) *Non-applicability.* The procedures in this subpart do not apply where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108). The procedures in this subpart also do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended, 25 U.S.C. 1 et seq., the Social Security Act, 42 U.S.C. 301 et seq., or the tariff laws of the United States.

(c) *Waiver requests and claims to the GAO.* The procedures in this subpart do not preclude an employee from

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requesting waiver of a salary overpayment under 5 U.S.C. 5584, or any other similar provision of law, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office.

(d) *Compromise, suspension, or termination under the Federal Claims Collection Standards.* Nothing in this subpart precludes the compromise, suspension, or termination of 5 U.S.C. 5514 salary offset collection actions, where appropriate, in accordance with the Federal Claims Collection Standards in 4 CFR chapter II.

§ 1600.735–503 Definitions.

For the purpose of this subpart, terms are defined as follows:

(a) *Agency* means:

(1) An Executive agency as defined in section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in section 102 of title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) *Creditor agency* means an agency to which a debt is owed.

(c) *Debt* means an amount owed to the United Stated from sources that include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Deductions described in 5 CFR 581.105(b) through (f) will not be used to determine disposable pay subject to salary offset.

(e) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(f) *FCCS* means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR chapter II.

(g) *FRMS* means Financial and Resource Management Services, EEOC Office of Management.

(h) *Paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

(i) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(j) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 6346(b), or any other applicable statute.

§ 1600.735–504 Notice of salary offset.

(a) Notice of the Commission's intent to collect a debt by salary offset shall be given at least 30 days in advance. The written notice shall include, inter alia, the following:

(1) The Commission's determination that a debt is owed, including origin, nature, and amount of the debt;

(2) The Commission's intention to collect the debt by means of deduction from the employee's current disposal pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of the Commission's policy concerning interest, penalties, and administrative costs;

(5) The employee's right to inspect and copy the Commission's records relating to the debt;

(6) The opportunity to establish a schedule for voluntary repayment of the debt agreeable to the Commission in lieu of an offset;

(7) The employee's right to an oral hearing, the method and time period for petitioning for a hearing, and the oral hearing procedures;

(8) The employee's right to request reconsideration of the validity of the indebtedness; and

(9) The employee's right to request waiver, forgiveness, or compromise and the standards involved for each.

(b) *Exception to the advance notice requirement.* Where an adjustment to pay arises out of an employee's election of coverage or change in coverage under a Federal benefits program requiring periodic deductions from the employee's pay and the amount to be recovered was accumulated over four pay periods or less, the advance notice provision in paragraph (a) of this section is not required. In such cases, the Commission's servicing Payroll Office, General Services Administration's National Payroll Center, will notify the employee in writing that because of the employee's election his or her pay will be reduced to cover the period between the effective date of the election and the first regular withholding, and that the employee may dispute the amount collected or request waiver of the debt by filing a request in writing with the Director of Financial and Resource Management Services.

(c) *Acknowledgment of receipt of advance notice.* Notice will be acknowledged in writing. A copy of the notice with the acknowledgment containing the debtor's original signature will be returned to the sender.

§ 1600.735–505 Request for reconsideration or request for consideration of waiver, compromise, or forgiveness.

A request for reconsideration or a request for consideration of waiver, compromise, or forgiveness must be submitted to the Director of FRMS, or his or her designee, within 15 calendar days of the issuance of the demand for payment. The Director of FRMS may extend the time limit for filing when the employee shows he or she was notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the limit. Any employee requesting reconsideration or consideration of waiver, compromise, or forgiveness will be given a full opportunity to present all pertinent documentation and written information supporting his or her request.

§ 1600.735–506 Reconsideration or consideration of waiver, compromise or forgiveness decision.

Decisions will be based upon the employee's written submissions supported by evidence of record and other pertinent available information. After consideration of all pertinent documented information, a written decision will be issued as to whether the debt is valid, and the amount demanded is correct, or whether it will be waived, compromised, or forgiven. The decision will also inform the employee of his or her right to an oral hearing; hearing procedures contained in § 1600.735–507(c) of this subpart shall be attached to the decision.

§ 1600.735–507 Oral hearing.

(a) *Right to an oral hearing.* After a decision is issued on an employee's request for reconsideration, or consideration of waiver, compromise, or forgiveness, the employee is entitled to an oral hearing upon request prior to salary or administrative offset, on any issue that raises a significant question as to the credibility or veracity of any individual(s) involved in his or her case. The decision whether such a genuine issue exists will rest solely with the Commission. Further, where a claim has been reduced to judgment, a hearing only on the payment schedule need be given. A hearing shall not be provided, however, where a payment schedule was established by written agreement between the employee and the Commission.

(b) *Request for hearing.* (1) A request for an oral hearing must be made within 30 calendar days from the date of the written decision on reconsideration or consideration of waiver, forgiveness, or compromise decision. Requests made after this time will be accepted where the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit, unless the employee is otherwise aware of it.

(2) A debtor must file a petition for a hearing in writing. The petition must identify and explain with reasonable brevity the facts, evidence, and witnesses that the debtor believes support his or her petition, state the relief requested, and include the signature and address of the petitioner or authorized representative.

(3) The timely filing of a petition for an oral hearing shall automatically stay the commencement of collection action.

(c) *Hearing procedures.* (1) The hearing shall be conducted by a hearing official who is not an employee of EEOC or otherwise under the control or supervision of the Chairman.

(2) A debtor may represent himself or herself or may be represented by another person, including an attorney during any portion of the hearing.

(3) Where possible, the hearing will be held in a Commission office close to the debtor's home or place of work. Hearings may be scheduled so that several cases can be heard at one location. In such cases, the hearings will be scheduled in a location centrally located to all requesting parties.

(4) A record or transcript of the hearing shall not be made.

(5) At the hearing, the employee and the Commission may introduce evidence and may call witnesses. The hearing shall not be conducted in accordance with formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted. The hearing official may only permit the introduction of evidence that is relevant to the issues being considered. Witnesses shall testify under oath and may be cross-examined. The Commission has the burden of first presenting evidence on the relevant issues. The debtor then has the burden of presenting evidence regarding those issues.

(6) The hearing official shall issue a written opinion stating his or her decision with the rationale supporting the decision as soon as practicable after the hearing, but not later than 60 days after the timely filing of the petition requesting the hearing.

§ 1600.735–508 Method of collection.

A debt will be collected in a lump sum or by installment deductions at officially established pay intervals from an employee's current pay account, unless the employee and the Commission agree in writing to alternate arrangements for repayment.

§ 1600.735–509 Source of deductions.

Except as provided in § 1600.735–513 and § 1600.735–514 of this subpart, deductions will be made only from basic pay, special pay, incentive pay, retired pay, retainer pay or in the case of an employee not entitled to basic pay, other authorized pay.

§ 1600.735–510 Duration of deductions.

Debts will be collected in one lump sum when possible. If the employee is financially unable to pay in one lump sum or the amount of debt exceeds 15 percent of the employee's disposable pay for an officially established pay interval, collection by offset will be made in installments. Such installment deductions will be made over a period not greater than the anticipated period of active duty or employment of the employee, as the case may be, except as provided in § 1600.735–513 and § 1600.735–514 of this subpart.

§ 1600.735–511 Limitation on amount of deductions.

The size and frequency of installment deductions will bear a reasonable relationship to the size of the debt and the employee's ability to pay. The amount deducted for any period, however, will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment payments of less than $25 will be accepted only in the most unusual circumstances.

§ 1600.735–512 When deductions may begin.

(a) Deductions to liquidate an employee's debt should be scheduled to begin by the date and in the amount stated in the demand for payment.

(b) If the employee files a timely request for reconsideration or consideration of waiver, compromise or forgiveness, deductions will begin after a final decision is issued on the request.

(c) If the employee fails to submit a timely request for reconsideration or consideration of waiver, compromise, or forgiveness, or request for a hearing, deductions will commence in the next bi-weekly check vouchered for payment after the time limit to make such a request expires.

§ 1600.735–513 Liquidation of final check.

When the employee retires or resigns or if his or her employment or period of active duty ends before the debt is collected in full, the employee's debt will be automatically deducted from the final payments (e.g., final salary payment, lump-sum leave, etc.) due the employee to the extent necessary to liquidate the debt. If the employee's final pay is not sufficient to permit all deductions to be made, the order of precedence for the deductions will be: retirement and FICA; Medicare; Federal income taxes; health benefits; group life insurance; indebtedness due to the United States; state income taxes; and voluntary deductions and allotments.

§ 1600.735–514 Recovery from other payments due a separated employee.

When the debt cannot be liquidated by offset from any final payment due to the employee on the date of separation, the Director of FRMS will attempt to liquidate the debt by administrative offset as authorized under 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States. (See 4 CFR 102.3)

§ 1600.735–515 Interest, penalties, and administrative costs.

When a delinquent debt is collected by salary offset, interest, penalties, and administrative costs on the debt will be assessed, unless waived by the Management Director, or his or her designee, in accordance with 4 CFR 102.13.

§ 1600.735–516 Non-waiver of rights by payments.

An employee's payment of all or any portion of a debt collected by salary offset will not be construed as a waiver of any right the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless

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there are statutory or contractual provisions to the contrary.

§ 1000.726–617 Refunds.

Amounts paid, or deducted by salary offset, by an employee for a debt that is waived or otherwise not found owing to the United States will be promptly refunded to the employee. Refunds do not bear interest unless required or permitted by law or contract.

§ 1000.726–618 Salary offset requests by other agencies.

(a) *Statutory limitation.* Salary offset requests against Commission employees by other agencies may only be accepted within 10 years after the involved debt accrues. Whenever any request barred by this limitation is received in the Commission, the request shall be returned by FRMS to the requesting agency, with a copy of 4 CFR part 102, and this action shall be a complete response to the request.

(b) *Where salary requests should be filed.* Requests from other agencies for salary offset should be forwarded or addressed to:

Director, Financial and Grievance Management Services, Equal Employment Opportunity Commission, 1801 L Street, NW., room 9501, Washington, DC 20507.

(c) *Form of request.* (1) Requests shall be considered only when presented with a completed and certified appropriate debt claim.

(2) The requesting agency must certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is/are due, the date the Government's right to collect the debt first accrued, and that the requesting agency's regulations for salary offset have been approved by OPM.

(3) If the collection must be made in installments, the requesting agency must also advise FRMS of the number of installments and the commencing date of the first installment, if a date other than the next officially established pay period is required.

(4) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the writing or statement is attached to the debt claim form, the requesting agency must also indicate to FRMS the action(s) taken by it under its offset regulations and give the date(s) the action(s) was/were taken.

(d) *Submitting the Request for Offset*—(1) *Current Commission employees.* The requesting agency must submit a completed and certified debt claim, agreement, or other instruction on the payment schedule to FRMS.

(2) *Separating or separated Commission employees*—(i) *Separating employee.* If the employee is in the process of separating, the requesting agency must submit the debt claim to FRMS for collection as provided in § 1000.726–613 of this subpart. FRMS must certify the total amount of its collection and notify the requesting agency and the employee as provided in paragraph (d)(2)(ii) of this section. If FRMS is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it will send a copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding. The requesting agency, however, must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(ii) *Separated employee.* If the employee is already separated and all payments due the employee from the Commission have been paid, FRMS will return the request and notify the requesting agency in writing of the employee's separation, that all payments due the employee from the Commission have been paid, and that any monies due and payable to the employee from the Civil Service Retirement and Disability Fund, or other similar funds, may be administratively offset to collect the debt.

(iii) *Transferred employee.* If, after the requesting agency has submitted the debt claim to FRMS, the employee transfers to another agency before the debt is collected in full, FRMS shall certify the total amount of the collection made on the debt. FRMS shall furnish one copy of the certification to the employee and another to the requesting agency along with a notice of the employee's transfer. FRMS shall also provide the employee's personnel office at the new agency with the original debt claim form from the requesting agency to insert in the employee's Official Personnel Folder along with a copy of the certification of the amount which has been collected. It shall be the responsibility of the requesting agency to review the debt upon receiving from FRMS a notice of the employee's transfer to make sure the collection is resumed by the employee's new agency.

(e) *Processing the debt claim upon receipt by FRMS*—(1) *Complete claim.* If FRMS receives a properly certified debt claim from another agency on a current or separating Commission employee, FRMS shall schedule the requested deductions to begin prospectively at the next officially established pay interval. Before the deductions are made, FRMS shall provide the employee a copy of the debt claim form along with notice of the amount of the deductions, and of the date deductions will commence if different from that stated in the debt claim.

(2) *Incomplete claim.* If FRMS receives an improperly completed debt claim from another agency, FRMS shall return the request with a notice that procedures under 5 U.S.C. 5514 and 5 CFR Part 550, Subpart K must be followed and a properly certified debt claim received before action will be taken to collect the debt from the employee's pay.

(3) *Claims disputes.* The commission is not required or authorized to review the merits of the requesting agency's determination with respect to the amount or validity of the debt as stated in the debt claim.

§ 1000.726–619 Salary offset request by the Commission to another agency.

(a) *Statutory limitation.* Salary offset requests by the Commission to other agencies shall only be made within 10 years after the involved debt accrues, unless the right to collect the involved debt was unknown and could not reasonably have been known by the Commission employee responsible for the discovery and collection of the involved debt.

(b) *Who may make a request for salary offset to another agency.* Unless otherwise specifically provided, salary offset requests to other agencies to collect debts due to the Commission shall only be made by the Director of FRMS.

(c) *Form of request.* (1) FRMS shall make an offset request to another agency by presenting it with a completed and certified debt claim.

(2) FRMS shall certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is/are due, the date the Government's right to collect the debt first accrued, and that the Commission's salary offset regulations have been approved by OPM and published in the Federal Register.

(3) Where the collection must be made in installments, FRMS shall advise the involved agency of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment.

(4) Where the involved employee does not agree or consent to the offset, FRMS shall advise the other agency of this in writing and also indicate the action(s) taken by the Commission under its offset regulations and the date(s) the action(s) was/were taken.

(5) Where the employee agrees or consents to the offset, FRMS shall attach to the debt claim the employee's written agreement or consent.

(d) *Submitting the Request for Offset*—(1) *Current employees of other agencies.* FRMS shall submit a certified debt claim, agreement, or other instruction on the payment schedule to the employee's current employing agency.

(2) *Separating employees of other agencies.* If the employee is in the process of separating, FRMS shall submit a certified debt claim to the employee's employing agency for collection as provided in 5 CFR 550.1104(j).

[FR Doc. 91–14023 Filed 6–24–91 8:45 am]

BILLING CODE 6570–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 240

[DoD Instruction 1342.18]

Criteria and Procedures for Providing Assistance to Local Educational Agencies

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule implements the DoD Appropriations Act, 1991, title II (Pub. L. 101–511, 104 Stat. 1860). The rule is necessary to establish criteria for the Secretary of Defense to provide financial assistance to local educational agencies that are heavily impacted by the military presence. The FY 91 DoD Appropriations Act provides $10 million for this purpose.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez or Mr. John B. Shaver, telephone (703) 325–8162 or 325–8164.

SUPPLEMENTARY INFORMATION:

Background

On Tuesday, March 26, 1991, the Office of the Secretary of Defense published a proposed rule (32 CFR part 240) that implements the DoD Appropriations Act, 1991, title II (Pub. L. 101–511, 104 Stat. 1860). The rule establishes criteria for the Secretary of Defense to provide financial assistance to local educational agencies (LEAs) that are heavily impacted by the military presence. Today's final action does not differ from that proposed on March 26, 1991, except that the application period has been extended. Applications for financial assistance must be received no later than June 30, 1991.

Comments

Three comments were received from the public on the proposed rule.

1. *Comment:* Military sections 3(b) students should be included in calculating the payment under the proposed rule.

Reply: While payment is based on the average daily attendance (ADA) of military section 3(a) students only, the ADA of military section 3(b) students is considered in establishing basic eligibility.

2. *Comment:* The criteria for providing assistance in the proposed rule does not adequately address the true financial need of a LEA.

Reply: The funding formula addresses severity of need by comparing the LEA's average per-pupil expenditures (PPE) against the average PPE in the State. A preliminary review of data indicates that LEAs whose average PPE is less than the average PPE in the State can expect per-pupil payments that are approximately three times greater than LEAs whose average PPE is equal to or greater than the average PPE in the State.

3. *Comment:* The commentor stipulates that unique variables affect each LEA's average PPE and for this reason funds should be allocated to all eligible LEAs equally, regardless of the LEA's average PPE compared to the average PPE for the State.

Reply: While there may be unique variables that affect a LEA's average PPE, average PPE is a significant determinate of comparability. Moreover, this comparison provides for differentiated payments that addresses the need of the LEA.

List of Subjects in 32 CFR Part 240

Elementary and secondary education, Federally affected areas, Grant programs—education.

Accordingly, title 32, chapter I, subchapter M is amended to add part 240 to read as follows:

PART 240—CRITERIA AND PROCEDURES FOR PROVIDING ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

Sec.

240.1 Purpose.
240.2 Applicability and scope.
240.3 Policy.
240.4 Definitions.
240.5 Responsibilities.
240.6 Procedures.

Appendix A to Part 240—Sample Letter of Application for Financial Assistance

Authority: Department of Defense Appropriations Act, 1991, Title II (Pub. L. 101–511, 104 Stat. 1860); 10 U.S.C. 113(d).

§ 240.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures under Title II of Pub. L. 101–511 for the Department of Defense to provide financial assistance to the LEAs that are heavily impacted by the military presence.

§ 240.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary o Defense (OSD).

(b) The schools operated by the LEAs providing free public education to dependent children of Armed Forces members or DoD civilian personnel who reside on Federal property.

§ 240.3 Definitions.

(a) *Applicant.* Any LEA whose ADA military section 3(a) and section 3(b) students equals at least 35 percent of its total ADA and that submits a letter of application to the Department of Defense; files an application for financial assistance; has received, or shall receive funds under section 3 of the Impact Aid Program; and submits documents and forms required by Section 240.4(c)(5) (i) through (iii) of this part.

(b) *Current expenditures.* Expenditures for free public education, including expenditures for administration, instruction, attendance and health services, public transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, debt service, or any expenditures made from funds under Public Law No. 89–10, title I. See the amended definition of "current expenditures" in Public Law No. 100–297 (1988).

(c) *DoD Contribution.* The amount of financial assistance an applicant shall receive under Public Law No. 101–511, title II.

(d) *Federal property.* Real property that because of Federal law, agreement, or policy is exempt from taxation by a State or political subdivision of a State and that the United States owns in fee simple or leases from another party.

(e) *Local Education Agency (LEA).* A public organization (usually a school

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district) that has the authority to operate public schools within the limits of the applicable State law.

(f) *Military sponsor.* A person who is an Armed Forces member serving on active duty.

(g) *Military 3(a) student.* A child who attends the school(s) of a LEA that provides free public education and who, while attending such school(s) of the LEA, resides on Federal property and has a parent who is on active duty in the Armed Forces (as defined in section 101 of 10 U.S.C.).

(h) *Military 3(b) student.* A child who attends the schools of a LEA that provides a free public education and who, while attending such school(s), has a parent who is on active duty in the Armed Forces (as defined in 10 U.S.C. 101) but does not reside on Federal property.

(i) *Parent.* The lawful father or mother of a person.

(j) *Per-Pupil Expenditure (PPE).* The average current expenditure for an individual student.

§ 240.4 Policy.

It is DoD policy that:

(a) During fiscal year (FY) 1991, the Department of Defense shall obligate 10 million dollars to assist the LEAs that meet criteria in paragraph (c) of this section. Of this 10 million dollars:

(1) Eight hundred and eighty-six thousand dollars shall be provided to the Killeen, Texas, Independent School District.

(2) One hundred and sixty-seven thousand dollars shall be provided to the Copperas Cove, Texas, Independent School District.

(b) The remaining 9,847,000 dollars shall be used only to assist the eligible LEAs operating schools that provide free public education to dependent children of Armed Forces members of DoD civilian personnel who:

(1) While attending these schools, reside on Federal property.

(ii) Without such additional assistance, are unable to provide a level of education for such dependents equal to the comparable level of education provided in the State where such dependents reside.

(b) The OSD shall consult with the Office of the Secretary of Education before providing financial assistance to the LEAs.

(c) To be eligible for financial assistance:

(1) The LEA must be unable, without such additional assistance, to provide a level of education for such students equal to the comparable level of education provided in the State where such students reside (as determined by comparable student data).

(2) The LEA has in school year (SY) 1990–1991 an average daily attendance (ADA) of military section 3(a) or 3(b) students (see § 240.3 (g) and (h)) or a combination of military section 3(a) and 3(b) students that is not less than 35 percent of the LEA's total ADA. At least two students attending the LEA must be the dependents of Armed Forces members or of DoD civilian personnel. (For the purposes of this section, the Department of Defense shall rely on ADA data from the U.S. Department of Education (DoED)).

(3) For the prior and current FYs, the LEA has applied for and received, or shall receive, financial assistance from all regular Federal and State educational aid programs available to it, including the Impact Aid Program (Pub. L. No. 81–874, Section 3).

(4) The eligibility of the LEA under State law for State aid for free public education, and the amount of that aid, is no different than the eligibility and amounts received by the LEAs without military dependent students.

(5) The LEA files the following with the Assistant Secretary of Defense (Force Management and Personnel (ASD (FM&P)):

(i) A letter of application (see appendix A to this part).

(ii) One original and two copies of Table 8–3 and Table 9, which are published by the DoED, from the following forms:

(A) ED Form 4019 (Revised 8/90 Page 8), "Fiscal Report For Sections 2, 3(d)(2)(B), and 3(d)(3)(B)(ii) Payment Purposes."

(B) ED Form 4019 (Revised 8/90 Page 9), "Financial Burden and Effort Data."

(iii) A copy of an independently audited financial report of the applicant LEA for the second preceding FY.

(d) The eligible LEAs shall receive financial assistance only for those students who are dependent children of military personnel residing on Federal property while attending a school of the applicant LEA.

(e) Applications for financial assistance, under paragraphs (a)(1) through (a)(5)(ii)(B) of this section must be received no later than June 30, 1991.

(f) The amount of assistance (the DoD contribution) for the eligible LEAs may not exceed the amount derived from the following formula:

(1) Of the 10-million dollars available:

(i) Eight hundred and eighty-six thousand dollars shall be provided to the Killeen, Texas, Independent School District.

(ii) One hundred and sixty-seven thousand dollars will be provided to the Copperas Cove, Texas, Independent School District.

(iii) Of the 9,847,000 dollars remaining:

(A) Amounts of 6,561,310 dollars shall be obligated to those eligible LEAs, whose per-pupil expenditure (PPE) for the second preceding FY was less than the average PPE in the State for the second preceding FY.

(B) Amounts of 2,415,690 dollars shall be obligated to those eligible LEAs, whose PPE for the second preceding FY was equal to, or greater than, the average PPE in the State for the second preceding FY. (For the purposes of this section, the Department of Defense will rely on PPE data from the DoED.)

(2) For those eligible LEAs, whose average PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(a) ADA for SY 1990–1991.

(ii) Multiplied by the quotient of the funds available to those LEAs, whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (6,561,310 dollars).

(iii) Divided by the sum of the ADAs for SY 1990–1991 of military section 3(a) students of those same eligible LEAs.

(3) For those eligible LEAs, whose average PPE for the second preceding FY was equal to, or greater than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(a) ADA for SY 1990–1991.

(ii) Multiplied by the quotient of the funds available to those LEAs, whose PPE for the second preceding FY was equal to, or greater than, the average PPE in the State for the second preceding FY (2,415,690 dollars).

(iii) Divided by the sum of the ADAs for SY 1990–1991 of military section 3(a) students of those same eligible LEAs.

(4) The sum of the ADAs for SY 1990–1991 for the military section 3(a) students in Killeen, Texas, Independent School District, and the Copperas, Texas, Independent School District, shall:

(i) Be deducted from the sum of the ADAs for SY 1990–1991 for the military section 3(a) students of all the eligible LEAs.

(ii) Not be used in calculating the DoD contribution.

(g) The LEAs that have been identified in Public Law No. 101–511, Title II, shall receive the specified amount, but shall not be eligible for additional funding under paragraphs (f)(1)(i) through (iii) of this section.

(6) The ASD (FM&P) shall calculate the proposed contribution.

(g) The contribution may be used for all students in the LEA, at the discretion of the appropriate officials in the LEA.

§ 240.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Force management and Personnel)* shall:

(1) Ensure the implementation of these policies and procedures.

(2) Provide assistance, as required, to the potentially eligible LEAs to meet the requirements in § 240.4(c)(5)(i) through (iii) of this part.

(b) The *General Counsel of the Department of Defense* shall provide legal advice for the implementation of this part.

§ 240.6 Procedures.

(a) An applicant requesting assistance under those criteria for FY 1991 in § 240.4(c) (1) through (4) of this part, shall submit the following:

(1) A letter of application (see sample in appendix A to this part).

(2) One original and two copies of Table 8–3 and Table 9, which are published by the DoED, from the following forms:

(i) ED Form 4019 (Revised 8/90 Page 8), "Fiscal Report For Sections 2, 3(d)(2)(B), and 3(d)(3)(B)(ii) Payment Purposes."

(ii) ED Form 4019 (Revised 8/90 Page 9), "Financial Burden and Effort Data."

(3) A copy of an independently audited financial report of the applicant LEA for the second preceding FY, requesting a contribution and ensuring the ASD(FM&P) that the LEA has applied for, has received, or shall receive all financial assistance from other sources for which it is qualified.

(4) The letter of application to the following address:

Assistant Secretary of Defense (Force Management and Personnel)
Washington, DC 20301–8000.

(b) The applicant shall file a copy of the letter of application for financial assistance and required supportive information with the State educational agency (SEA). The SEA may submit comments on the LEA's application to the Department of Defense (at the address in § 240.6(a) of this part), by July 15, 1991. Such comments shall be considered, when applications are reviewed by the OSD.

(c) The application and all required supporting information must reach the ASD(FM&P) no later than June 30, 1991.

Appendix A to Part 240—Sample Letter of Application for Financial Assistance

Assistant Secretary of Defense (Force Management Personnel), Washington, DC 20301–8000

Dear Mr. Assistant Secretary:

Pursuant to title II of Public Law 101–511, "Department of Defense Appropriations Act," November 5, 1991, the (name of the local educational agencies (LEA)) requests financial assistance for the LEA for school year 1990–1991.

We certify that the LEA has applied for financial assistance from all sources, including the State of (name). We understand that funds available for that purpose shall be paid on a per-pupil basis for military section 3(a) students only. Enclosed find an original, and two copies, of Tables 8–3 and 9 from the "Application For School Assistance in Federally Affected Areas," published by the U.S. Department of Education, and a copy of our independent audit "(title)" prepared by (name of firm or agency). We have submitted a complete and timely application for section 3 impact aid assistance to the Secretary of Education. A copy of this letter, with the above supporting information, is being submitted to the State educational agency.

Sincerely,
(Authorized LEA Official)

Dated: June 19, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15047 Filed 6–24–91; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

Section 306 and Old-Law Pension Protection

AGENCY: Department of Veterans Affairs.

ACTION: Technical amendment.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations on section 306 and old-law pension protection. The intended effect of the change is to correct cross-references in those regulations.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of September 18, 1987 (52 FR 34900–10), VA published an amendment to 38 CFR 3.26 which dealt with section 306 and old-law pension annual income computations. That rulemaking, however, failed to amend the cross-reference to § 3.26 in 38 CFR 3.960 concerning section 306 and old-law pension protection. This oversight has now been corrected.

VA is amending the provisions of 38 CFR 3.960(b)(5) and (c) in order to correct the cross-references to 38 CFR 3.26. Because this amendment does not constitute a substantive change, publication as a proposed for public comment is unnecessary. For these reasons, this amendment is effective on June 25, 1991.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 31, 1991.

Edward J. Derwinski,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3, subpart A is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

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Authority: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

§ 3.960 [Amended]

2. In § 3.960(b)(5), remove the words "§ 3.26(b)" and add, in their place, the words "§ 3.26(c)".

3. In § 3.960(c), remove the words "§ 3.26(a) (1) or (2) or (b)(1)" and add, in their place, the words "§ 3.26(a), (b), or (c)".

[FR Doc. 91-15021 Filed 6-24-91; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301-4

[FTR Amdt. 18]

RIN 3090-AD87

Federal Travel Regulation; Automobile Mileage Reimbursement

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to increase the mileage reimbursement rate from 24 cents to 25 cents per mile for use of privately owned automobiles when authorized as advantageous to the Government. This FTR amendment reflects the results of the General Services Administration's (GSA's) report to Congress on the investigation of the cost of operating privately owned vehicles.

EFFECTIVE DATE: This final rule is effective June 30, 1991 and applies for travel performed on or after June 30, 1991.

FOR FURTHER INFORMATION CONTACT: Paul Thompson, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557-1264 or commercial (703) 557-1264.

SUPPLEMENTARY INFORMATION: The law (5 U.S.C. 5707(b)(2)) authorizes the Administrator of General Services to issue regulations prescribing, within statutory limits, mileage allowance rates. GSA is required by law to periodically investigate the cost of operating privately owned vehicles (motorcycles, automobiles, and airplanes) to employees while on official travel and report the results of the investigations to the Congress. GSA reported the results of the December 1989 investigation and indicated that the governing regulation would be revised to incerase the mileage allowance for use of privately owned automobiles from 24 cents to 25 cents per mile, the current statutory maximum allowance. The rates per mile now in effect for the use of motorcycles and airplanes, 20 cents and 45 cents, respectively, are at the statutory maximum levels.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 301-4

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301-4 is amended as follows:

PART 301-4—REIMBURSEMENT FOR USE OF PRIVATELY OWNED CONVEYANCES

1. The authority citation for part 301-4 continues to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301-4.2 is amended by revising paragraphs (a)(2), (d)(1), and (d)(2) to read as follows:

§ 301-4.2 When use of a privately owned conveyance is advantageous to the Government.

(a) * * *

(2) For use of a privately owned automobile: 25 cents per mile.

* * * * *

(d) * * *

(1) *Round trip instead of taxicab to carrier terminals.* Instead of using a taxicab under § 301-2.3(c), payment on a mileage basis at the rate of 25 cents per mile and other allowable costs as set forth in § 301-4.1(c) shall be allowed for the round-trip mileage of a privately owned automobile used by an employee going from either the employee's home or place of business to a terminal or from a terminal to either the employee's home or place of business. However, the amount of reimbursement for the round trip shall not in either instance exceed the taxicab fare, including tip, allowable under § 301-2.3(c) for a one-way trip between the applicable points.

(2) *Round trip instead of taxicab between residence and office on day of travel.* Instead of using a taxicab under § 301-2.3(d) (in connection with official travel requiring at least one night's lodging), payment on a mileage basis at the rate of 25 cents per mile and other allowable costs as set forth in § 301-4.1(c) shall be allowed for round-trip mileage of a privately owned automobile used by an employee going from the employee's residence to the employee's place of business or returning from place of business to residence on a day travel is performed. However, the amount of reimbursement for the round trip shall not exceed the taxicab fare, including tip, allowable under § 301-2.3(d) for a one-way trip between the points involved.

* * * * *

Dated: May 23, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91-14690 Filed 6-24-91; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 90-570 and 83-670; DA 91-686]

Broadcast and Cable Services; Children's Television Programming

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission, in its synopsis of the Report and Order in MM Docket Nos. 90-570 and 83-670 (FR Doc. No. 91-9736, 56 FR 19611, April 29, 1991) concerning children's television programming, inadvertently assigned erroneous section numbers to two new sections adopted in that decision. Those sections, 47 CFR 73.660 and 73.661 are now correctly designated as 47 CFR 73.670 and 73.671. Consequently, the reference to 47 CFR 73.660 found in the last sentence of § 73.3526(a)(8)(ii), also added in the Report and Order, is changed to 47 CFR 73.670.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, Mass Media Bureau, Policy and Rules Division (202) 632-5414.

SUPPLEMENTARY INFORMATION:

Erratum

In the Matter of Policies and Rules Concerning Children's Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations

Released: June 14, 1991.

The Report and Order in this proceeding (6 FCC Rcd 2111, 1991) added two new rule sections to 47 CFR part 73, designated as §§ 73.660 and 73.661. These new sections should have been designated as 47 CFR 73.670 and 73.671 and are now corrected accordingly. Consequently, the reference to § 73.660 in the last sentence of 47 CFR 73.3526(a)(8)(ii), also added in the Report and Order, is changed to 47 CFR 73.670.

Further information on this revision may be obtained by contacting Rita McDonald, Mass Media Bureau, at (202) 632-5414.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 91-14690 Filed 6-24-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AD66

Endangered and Threatened Wildlife and Plants; Emergency Rule to List the Mitchell's Satyr as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the Mitchell's satyr (*Neonympha mitchellii mitchellii*) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Recent heavy collecting pressure on this butterfly has resulted in the loss of several populations, and collection is believed to imminently threaten the survival of several more populations. Due to the need to immediately decrease collection of the species by affording it the protection of the Act, the Service finds that good cause exists to make this emergency rule effective upon publication. The emergency rule will implement Federal protection for 240 days.

A proposed rule to list the Mitchell's satyr as endangered will be published within 90 days. The proposed rule will provide for public comment and hearings (if requested).

EFFECTIVE DATE: This emergency determination is effective on June 25, 1991 and expires on February 20, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Twin Cities Regional Office, U.S. Fish and Wildlife Service, Division of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: William F. Harrison, Acting Chief, Division of Endangered Species, at the above address (telephone 612/725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

N. m. mitchellii is the nominate subspecies of one of two North American species of *Neonympha*. It was described by French in 1889 from a series of ten specimens collected by J.N. Mitchell in Cass County, Michigan (French 1889). It is a member of the family Nymphalidae (over 6,000 species worldwide), subfamily Satyrinae (estimated 2,400 species).

[The Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife * * *" (§ 4(15)). Therefore, although taxonomically recognized as a subspecies, *N. m. mitchellii* will be referred to as a "species" throughout the remainder of this emergency rule.]

Mitchell's satyr is a medium sized (36-44 millimeter wingspan) butterfly with an overall rich brown coloration. A distinctive series of submarginal yellow-ringed black circular eyespots (ocelli) with silvery centers are found on the lower surfaces of both pairs of wings. The number of the eyespots on the forewing varies between the sexes. The eyespots are accented by two orange bands along the posterior wing edges, as well as two fainter orange bands across the central portion of each wing. It is distinguished from its North American congener *N. areolata* by the latter's well-marked ocelli on the upper wing surfaces, as well as the lighter coloration, and stronger flight of *N. areolata* (French 1889; McAlpine et al 1960; Wilsmann and Schweitzer 1981).

N. m. mitchellii is one of the most geographically restricted butterflies in North America. Historical records exist for approximately 30 locations in four States, ranging from southern Michigan and adjacent counties of northeastern Indiana into Ohio, with several disjunct populations in New Jersey. The species has been documented from a total of 17 counties (Badger 1966; Martin 1967; Pallister 1977; Rutkowski 1982; Shuey et al 1987b; Wilsmann and Schweitzer 1981).

A second *Neonympha mitchellii* subspecies was discovered at Ft. Bragg, North Carolina in 1983 (Parshall and Kral 1985). This subspecies, *N. m. francisci*, is believed to have been collected to extinction since that time. Although additional suitable habitat probably exists on, and adjacent to Ft. Bragg, no additional populations have been discovered (Schweitzer 1989). This emergency listing action does not include *N. m. francisci*.

Although the species has been reported from Maryland, the lack of suitable habitat makes it more likely those 1940's specimens were misidentified members of a *Neonympha areolatus* subspecies. Apparently suitable habitat exists in New York, Connecticut, Massachusetts, and Pennsylvania. However, searches in these States have failed to locate any *N. m. mitchellii* populations (Schweitzer 1989; Wilsmann and Schweitzer 1981).

The habitat occupied by the species consist solely of wetlands known as fens. This is an uncommon habitat type that is characterized by calcareous soils which are fed by carbonate-rich water from seeps and springs. Fens are frequently components of larger wetland complexes. Due to the superficial resemblance of fens and bogs, the habitat of Mitchell's satyr has sometimes been erroneously described in the early literature as acid bogs (McAlpine et al 1960; Shuey et al 1987a; Wilsmann and Schweitzer 1981).

From 1985 through 1990 intensive searches were made of over 100 sites having suitable habitat for the species throughout its range. The sites visited were either known historical locations for the species, or were chosen because of the presence of a fen. All historical locations were checked if they could be relocated and the fen habitat still existed. Survey results indicated the species still occurred at only 15 sites, two of which were not historically known. Therefore, the species has disappeared from approximately one-half of its historical locations. No extant populations have been found in Ohio, and the sole extant 1985 populations in New Jersey is believed to have been extirpated by collectors subsequent to the survey. Thus, the species is currently believed to exist only in nine counties in Indiana and Michigan. Due to the extent of these and other recent surveys it is unlikely that many additional sites will be found where Mitchell's satyr

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continues to survive (Wilsmann and Schweitzer 1991).

A letter from Charles L. Remington, dated November 19, 1974, requested the Service work on protecting Mitchell's satyr (letter from Charles L. Remington to Dr. Paul A. Opler, U.S. Fish and Wildlife Service, dated November 19, 1974). That letter was treated as a petition to list the species as threatened or endangered. The Service subsequently found (49 FR 2485, January 20, 1984) that insufficient data was available to support listing at that time. The Service's May, 1984, Animal Notice of Review (49 FR 21664–21675) listed *Neonympha mitchellii* as a category 3C species, indicating the at that time species was believed to be too abundant for consideration for addition to the endangered and threatened species lists. In a subsequent January 6, 1989, Animal Notice of Review (54 FR 554–579) the species was upgraded to a category 2 candidate for listing, indicating renewed concern for the species' welfare, and encouraging further studies into the status of the species. The most recent status survey (Wilsmann and Schweitzer 1991) indicates that the species should be listed as endangered due to over-collection. The Service analyzed the status survey and determined that the species should be listed as endangered due to over-collection.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mitchell's satyr (*N. m. mitchellii*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Fen habitat is being destroyed and degraded by human activities and by natural succession. Human induced loss of historical sites has been documented in at least three cases. One Michigan site has been destroyed by urban development. Sites in Michigan and Ohio have been lost by conversion to agriculture. Another extant population in Michigan has had a portion of its habitat destroyed by hog farming activities and all terrain vehicle use. These activities constitute ongoing threats to other sites with extant populations of *N. m. mitchellii* (Shuey, et al 1987; Schweitzer 1989; Martin 1987; Wilsmann and Schweitzer 1991).

One Michigan site is bisected by a highway which is scheduled for realignment. Mitchell's satyr habitat is likely to be destroyed or degraded by the project. Discussions are underway to have the plans modified to diminish the adverse impact on the species.

Although natural succession in fens is incompletely understood, it appears that adjacent human activities can speed succession and subsequent loss of Mitchell's satyr habitat. For example, nearby drainage ditches may alter the hydrologic regime in the fen, resulting in lowered water levels, more xeric soil conditions, and increased invasion of brush and trees into the fen. There is evidence that this is occurring at one Michigan site (Wilsmann, Michigan Natural Features Inventory, 1990, pers. comm.).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Mitchell's satyr has long been considered a prize by butterfly collectors, and there is evidence that collection of the species continues despite its endangered or threatened classifications under Michigan, Indiana, and New Jersey rare species laws. Subsequent to the 1985 survey of New Jersey fens it is believed that the State's last remaining *N. m. mitchellii* population was eliminated by collectors. A collector's glassine envelope was found at the site during one survey. Another New Jersey *N. m. mitchellii* site, well known to butterfly collectors, was extirpated in the 1970's by over-collection. The other subspecies of Mitchell's satyr, *Neonympha mitchellii francisci*, is believed to have been collected to extinction. (Wilsmann and Schweitzer 1991; Breden, New Jersey Natural Heritage Program, 1991, pers. comm.; Schweitzer, The Nature Conservancy, 1991, pers. comm.).

Well-worn human paths have been seen at the site of several extant populations in Michigan during recent surveys. These paths wind through *N. m. mitchellii* habitat in the manner that would be expected of knowledgeable collectors and are viewed as evidence that collections are continuing, despite the species being listed as endangered and protected by State statute. At least five Michigan sites are sufficiently well known to collectors and/or have sufficiently small Mitchell's satyr populations so as to be extremely vulnerable to local extinction from over-collection during a period of one to several days (Wilsmann, 1991, pers. comm.). All known *N. m. mitchellii* sites are believed vulnerable to local extinction by overcollection (Schweitzer, 1991, pers. comm.).

C. *Disease or predation.* Little is known about these factors, and there are no indications that they might be contributing to the decline of Mitchell's satyr.

D. *The inadequacy of existing regulatory mechanisms.* Mitchell's satyr is currently listed under State statutes as endangered in Indiana and New Jersey, threatened in Michigan, and extirpated in Ohio. The classification in Michigan has been proposed to be changed to endangered.

Either endangered or threatened status in Michigan prohibits the collection of the species without a Michigan scientific collection permit. However, the threat of State prosecution has not ended collectors' illegal activities. Michigan Department of Natural Resources officials believe the threat of Federal prosecution will be a more effective deterrent. (T. Weise, Michigan Department of Natural Resources, Endangered Species Program, 1991, pers. comm.; Wilsmann, 1991, pers. comm.).

The Indiana endangered classification provides official recognition of species rarity, but the State's endangered species regulations do not prohibit taking listed insects unless they are also on the Federal endangered and threatened species list. Thus, the classification provides no legal deterrent to continued collection. The ability to legally collect the species in Indiana renders those populations likely subjects for heavy collecting pressure and extirpation. (Bacone, Indiana Natural Features Inventory, 1991, pers. comm.).

New Jersey regulations provide total protection for any Mitchell's satyrs that may be rediscovered within the State. (Frier-Murza, New Jersey Endangered Species Program, 1991, pers. comm.). The Ohio classification of extirpated carries with it no legal protection. However, if the species is rediscovered in the State, an emergency order can be invoked to list it as endangered and grant full protection under State statutes (Case, Ohio Department of Natural Resources, Division of Wildlife, 1991, pers. comm.).

E. *Other natural or manmade factors affecting its continued existence.* Mitchell's satyr has only a single flight period annually, lasting perhaps a week for an individual, and for about three weeks for a population as a whole. It exhibits relatively sedentary behavior and slow, very low level flights. Due to these characteristics the species seems to have only limited ability to colonize new habitat patches, to recolonize historical sites, or to provide significant gene flow among extant populations. Therefore, the isolation of small populations has great potential for local extinction if habitat degradation and/or collection pressure are also occurring (Wilsmann and Schweitzer 1991).

Reasons for Emergency Determination

In developing this rule the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to list Mitchell's satyr as endangered on an emergency basis. The species has experienced a severe decrease in the number of extant populations over its historical range, as well as probable extirpation from two of the four States with historical populations. Due to its continuing appeal to a segment of butterfly collectors, as well as its well known and narrow habitat requirements, approximately one-third of the remaining populations are extremely vulnerable to over-collection and local extinction, and all populations are believed susceptible to collection-induced extirpation. The Service has concluded that conducting the normal listing process will delay protection of the species until after the 1991 Mitchell's satyr flight period, thus subjecting the species to an additional year of excessive collecting pressure. The resulting possible extirpations of one or more populations might severely reduce the probability of species survival. Therefore the Service is making this listing on an emergency basis to provide maximum protection to all known populations during the 1991 Mitchell's satyr flight period.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. At this time the Service has made a preliminary finding that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the Summary of Factors Affecting the Species, *N. m. mitchellii* is primarily threatened by collecting pressure. Publication of critical habitat descriptions and maps would make Mitchell's satyr more vulnerable to collection, and increase enforcement problems, and the likelihood of extinction. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Comments regarding the designation of critical habitat will be accepted and reviewed during the comment period established by the proposed rule which will be published within 90 days.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation of survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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The primary author for this emergency rule is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Division of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, until February 20, 1992, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Insects" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Insects							
Satyr, Mitchell's	Neonympha mitchellii mitchellii	U.S.A. (IN, MI, NJ, OH)	NA	E		NA	NA

Dated: June 19, 1991.

Bruce Blanchard,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 91–15284 Filed 6–20–91; 2:37 pm]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 56, No. 122
Tuesday, June 25, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Petroleum Refining Industry

AGENCY: Small Business Administration.

ACTION: Notice of extension of comment period.

SUMMARY: On May 3, 1991 (56 FR 20382), the Small Business Administration (SBA) published a proposed rule to simplify the size standard for petroleum refining. Under the proposed rule, if adopted as final, SBA would eliminate the 50,000 barrel per day (BPD) capacity limit as a component of the size standard for petroleum refining. The current requirement that a small petroleum refiner, including all affiliates, have no more than 1,500 employees would remain. The reduction of the standard to a single size criteria is consistent with the single-size criteria used for all other industries. This notice extends the period to submit comments on the proposed rule.

DATES: Written comments on the proposed rule must be received on or before July 3, 1991.

ADDRESSES: Written comments should be submitted to Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street, NW., 5th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Norman S. Salenger, Economist, Size Standards Staff, (202) 205–6618.

SUPPLEMENTARY INFORMATION: In 1955, SBA first established the size standard for the Petroleum Refining Industry, Standard Industrial Classification (SIC) code 2911, at 1,000 employees with refining capacity not to exceed 30,000 barrels per day (BPD). At that time, small refiners produced 7.8 percent of the refining industry's output. By 1975, however, the small refiners' share of output had declined to 5.1 percent. To restore the small business share of output, both components of the size standard were raised, to 1,500 employees and 50,000 BPD. SBA's analysis of industry factors and trends now indicates a further adjustment of the size standard is warranted to maintain the small business share of output. The proposed rule and a discussion of the industry analysis supporting an adjustment of the size standard appear at 56 FR 20382.

This notice will extend the comment period in order to allow the public sufficient time to fully address the appropriateness of the proposed rule and its impact on the industry and on small refiners. Given the level of interest that has been expressed, the longer comment period will afford an opportunity for the proposed rule to reach a broader cross-section of the target audience than otherwise possible, an may generate valuable input from small refiners potentially affected by a size standard change.

Therefore the comment period on the proposed rule is hereby extended. The Agency will accept comments on the proposed rule until July 3, 1991.

Dated: May 31, 1991.

Patricia Saiki,

Administrator, U.S. Small Business Administration.

[FR Doc. 91–15025 Filed 6–24–91; 8:45 am]

BILLING CODE 8025–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Trade Regulation Rule: Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Denial of petition by State of Texas for statewide exemption from trade regulation rule concerning funeral industry practices.

SUMMARY: On December 7, 1988, the State of Texas filed its second petition for exemption from the FTC Funeral Rule. A request for public comment on the petition was published in the **Federal Register** on May 22, 1989, and the 90-day comment period ended on August 21, 1989. After careful consideration of the petition and its attachments, public comments on the petition, FTC enforcement actions in Texas, and other information made available to the Commission and placed on the public record, the Commission has determined that: (1) The state law does not afford an overall level of protection to consumers which is as great as, or greater than, the protection afforded by the FTC Funeral Rule; and (2) the Commission cannot conclude that Texas law enforcement is sufficient to warrant the grant of an exemption at this time. Accordingly, the petition is denied.

DATES: This action is effective June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION:

I. The Funeral Rule

On September 24, 1982, the Federal Trade Commission ("FTC" or "Commission") promulgated the Trade Regulation Rule concerning Funeral Industry Practices ("Funeral Rule" or "Rule").[1] The Rule, which became fully effective on April 30, 1984, requires funeral providers to: (1) Provide consumers with a written, itemized general price list, casket price list and outer burial container price list; (2) make truthful representations regarding legal and other requirements concerning funeral arrangements; (3) permit consumers to select and purchase only those goods and services they desire; (4) obtain express permission before performing embalming; (5) refrain from misrepresenting the preservative and protective value of funeral goods and services; and (6) provide price information over the telephone.

II. The Exemption Process

Section 453.9 of the Funeral Rule permits states to apply for exemption from the rule. It provides:

> If, upon application to the Commission by an appropriate state agency, the Commission determines that:
>
> (a) There is a state requirement in effect which applies to any transaction to which this rule applies; and
>
> (b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the

[1] 47 FR 42260 (September 24, 1982), 16 CFR part 453.

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Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the state administers and enforces effectively the state requirement.

In its Statement of Basis and Purpose for the Funeral Rule, the Commission stated that exemption requests would be considered on a case-by-case basis, and that exemption proceedings would be conducted pursuant to § 1.16 and subpart C, §§ 1.21–1.26 of the Commission's rules of practice.[3]

III. Commission Denial of Prior Texas Exemption Petition

The first Texas exemption petition was filed by the Texas State Board of Morticians on February 21, 1984, prior to the effective date of the Funeral Rule, and was supplemented by six additional filings that concluded on March 4, 1985.[4] Comments were received from 11 parties, including: The Consumer Protection Division of the Office of the Attorney General of Texas; Mr. T. Grady Baskin, Jr., a former member of the Texas State Board of Morticians; five memorial societies; Consumers Union; the Gray Panthers of Austin; and two individual consumers.[5] All of the commenting parties urged that the Commission deny the Texas petition.

The petition was denied because the Commission concluded that Texas law failed to provide an overall level of protection to consumers as great as that provided by the Funeral Rule. To illustrate its conclusion, the Commission cited the following three areas in which Texas law afforded consumers less protection than the Funeral Rule: [6]

A. Definition of "Prospective Customer"

Under Texas law, prospective customers were entitled to receive itemized written price information and disclosures. The term "prospective customer" was defined as "a consumer who enters a funeral establishment and inquires about the price of any funeral service or merchandise." Thus, consumers who entered a funeral establishment and inquired about funeral arrangements, but did not ask specifically about prices, might not be entitled to price disclosures as they would under the Funeral Rule. In addition, the definition, though including individual consumers, failed to include other entities that clearly are covered by the Funeral Rule, such as memorial associations.

B. Lack of Definition of "Services of Funeral Director and Staff"

Texas law did not define or limit the "services of funeral director and staff" that might be included in a non-declinable professional services fee. The Funeral Rule does define this term and makes clear that such a mandatory fee may not include other goods and services required to be separately itemized on the price list. The Commission concluded that Texas law, by this omission, did not prevent all tying arrangements that are prohibited under the Funeral Rule and that, as a result, consumers could be denied choice in the selection of funeral goods and services.

C. Timing of Providing Price Lists to Consumers

Texas law did not mandate the timing of the provision of required price lists and the itemized statement of goods and services selected to consumers. Thus, under Texas law consumers might not be provided with price disclosures early in the discussion of funeral arrangements as required by the Funeral Rule. Moreover, consumers might not receive the itemized statement, showing the cost of each item selected as well as the total cost of the funeral, at the conclusion of the arrangements discussion as mandated by the Funeral Rule.

The Commission stated that these aspects of Texas law differed from the Funeral Rule in important respects and that, taken together, they illustrated its conclusion that Texas law provided consumers less protection than the Funeral Rule. The Commission noted that several commenting parties had alleged inadequate enforcement of the state law. However, it determined that it need not address this issue since it had already decided to deny the petition. The Commission noted that before an exemption petition could be granted, however, it would have to find the state administered and enforced its law effectively.

IV. Second Texas Exemption Petition

On December 7, 1988, the State of Texas filed its second petition for exemption from the Funeral Rule.[7] The petition stated, in Exhibit E, that since the denial of its first exemption petition, "Texas has taken positive steps to correct any shortcomings in the state law and regulations." The petition cited the following changes:

A. Texas mortuary law has been changed to define "prospective customer" as "any consumer who enters a funeral establishment and inquires about any funeral service, cremation, or merchandise." Moreover, the law states that price information must be provided "regardless of any affiliation of the customer or whether the customer has a present need for the services or merchandise." [8]

B. The regulations of the Texas Funeral Service Commission (which has replaced the Texas State Board of Morticians) have been amended to define the term "other itemized services provided by the funeral home staff," which appears in the retail price list requirement in the Texas statute,[9] in a manner similar to the definition of "services of funeral director and staff" contained in the Funeral Rule, § 453.1(o).[9] Unlike the Funeral Rule, the Texas regulation adds the phrase "and any other services offered by the funeral establishment," after the list of suggested items that may be included in this fee. However, the Texas definition also provides that this fee should not include other items required to be separately itemized on the price lists.[10] In addition, the Texas rules contain an anti-tying provision that is virtually identical to § 453.4(b) of the Funeral Rule.[11]

C. The Texas Funeral Service Commission (hereafter "TFSC") has adopted a regulation requiring the presentation of the retail price list (which includes the general price list, casket price list, and outer burial container price list) "to any consumer who inquires in person about any funeral service, cremation or merchandise and prior to the consumer viewing or selecting any merchandise or service." The itemized statement of

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[3] 47 FR at 42287. In addition, the FTC staff published exemption guidelines to assist states desiring to petition for an exemption from the Funeral Rule. 50 FR 12521 (March 29, 1985).

[4] The first Texas exemption petition and supplemental filings were placed on the public record as Document Nos. XXIII–3–7 and 15, FTC File No. 215–46. (Unless otherwise noted, all citations to the public record are from FTC File No. 215–46.)

[5] The comments were placed on the public record as Document Nos. XXIV–24–29 and 31–37.

[6] 51 FR 45745, 45747–76 (December 4, 1986).

[7] The petition was placed on the public record as Document No. XXIII–15.

[8] Vernon's Texas Civil Statutes (hereafter VTCS), Article 4582b, section 2.V.

[9] VTCS, Article 4582b, section 1.S.

[9] 16 CFR 453.1(o) defines these services as follows: "The 'services of funeral director and staff' are the services, not included in prices of other categories in § 453.2(b)(4) which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices."

[10] 22 Texas Administrative Code (hereafter TAC) 203.17. The regulations of the Texas Funeral Service Commission have been promulgated pursuant to VTCS, Article 4582b, section 5.

[11] 22 TAC 203.11(h).

goods and services selected (called a "written memorandum" in Texas law) must be presented to the customer upon the conclusion of the arrangements discussion.[12]

The TFSC asserted, in Exhibit E of its petition, that as a result of these changes, which went into effect September 1, 1987, "Texas law now provides an overall level of protection to consumers as great as or greater than the Funeral Rule," and "that the only criterion that remains to be addressed is whether the state law is being administered and enforced effectively."

Other amendments to the Texas mortuary law were enacted by the legislature after the filing of the second Texas exemption petition and became effective September 1, 1989. These amendments were sent to the FTC staff by the TFSC, with a letter dated June 26, 1989, requesting that the exemption petition be amended accordingly.[13]

A request for public comment on the second Texas petition for exemption from the Funeral Rule was published in the Federal Register on May 22, 1989.[14] The notice described: (1) The Commission's basis for denial of the first Texas exemption petition; (2) the changes in Texas law since the denial;[15] (3) the remaining differences between Texas law and the Funeral Rule; and (4) the administration and enforcement of Texas law. Questions for public comment were posed with respect to items (2)–(4). The 90 day period for public comment ended on August 21, 1989.

V. Public Comments Concerning Texas Law

Comments on the second Texas exemption petition were filed by 14 parties.[16] The following seven parties supported the TFSC request for exemption from the Funeral Rule: Brown Claybar of Claybar Funeral Home and Legislative Chairman for the Texas Funeral Directors Association; Greg Kneibler and Ray Lunn of Lunn's Colonial Funeral Home; John W. Coker, Executive Director of the Texas Funeral Directors Association; Robert Lopez, Jr., of Allison Funeral Service; Scherry A. Allison of Allison Funeral Service; Dudley M. and Teresa Hughes of the Dudley M. Hughes Funeral Company; and John M. Kreidler of McAllen, Texas. The exemption request was opposed by the following seven individuals and organizations: Marvin A. Wilson of Houston, Texas (formerly employed in the funeral services industry); Antonia and Toby Robles of Dallas, Texas (consumers); American Association of Retired Persons (AARP) Texas State Legislative Committee; National Consumers League; Consumers Union, Southwest Regional Office; Texas Gray Panthers; and T. Grady Baskin, Jr. (former member of the Texas State Board of Morticians).

The commenters who supported granting Texas an exemption from the Funeral Rule made the following arguments: Texas law and regulations offer consumers protection that is equal to or greater than that provided by the FTC rule; the FTC rule is a duplication of regulatory effort that is confusing and unnecessary; consumers can resolve problems more quickly through the state agency than through the federal government; Texas funeral directors prefer state regulation over federal regulation; the TFSC is effectively enforcing state law; and the states are best equipped to regulate professions within their borders.

The commenters who opposed the exemption petition asserted that an exemption for the state of Texas from the Funeral Rule would result in less protection for Texas consumers. The consumer organizations and Mr. Baskin argued that the changes in Texas law since the FTC's denial of the first exemption petition were inadequate to correct the deficiencies found by the Commission. Most of the commenters also contended that enforcement of state law by the TFSC is inadequate. In addition, the consumer organizations suggested that it would be premature for the FTC to grant the Texas petition given its own ongoing mandatory review of the Funeral Rule,[17] and the fact that the Texas Sunset Advisory Commission was conducting an evaluation of the TFSC and its enabling statute and regulations.

Some of the commenters also addressed the specific questions concerning Texas law and its enforcement that were posed in the Federal Register notice of May 22, 1989.

A. Recent Changes in Texas Law and Regulations

1. Definition of "Prospective Customer"

The AARP, Consumers Union, and the National Consumers League commented on this change in Texas law. All of these organizations believe that the statute remains ambiguous on the issue of whether representatives of consumer groups or memorial societies, who are compiling information solely for comparative purposes, would be entitled to receive the retail price list. All three believe that the FTC's use of the word "person" [18] affords greater consumer protection by making clear that price information must be provided to anyone who inquires about prices or arrangements.

2. Definition of "Services of Funeral Director and Staff"

Consumers Union was the only party to comment on this amendment. It noted that the administrative regulation is described as a clarification of "other itemized services provided by the funeral establishment staff," which is listed under the statutory requirements for the retail price list.[19] Consumers Union objected to the fact that the TFSC regulation uses the term "other services" to define the statutory term "other * * * services." It stated: "The rule does nothing to clarify the statute—it in effect says that 'other services' are 'other services.'" [20]

3. Timing of Providing Price Lists to Consumers

The TFSC has adopted a regulation requiring that a price list be presented "prior to the consumer viewing or selecting any merchandise or service." [21] The AARP, Consumers Union, National Consumers League, and Mr. Baskin all concluded that the FTC Rule provides greater clarity and greater protection to consumers by requiring

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[12] 22 TAC 203.10.

[13] The letter and accompanying documents have been placed on the public record as Document No. XXIII–21. Among other things, the amendments: (1) Give the TFSC authority to act with regard to instances of misappropriation of funds paid for pre-need funeral arrangements; (2) authorize the TFSC to issue a reprimand for violation of relevant laws and regulations; and (3) add to the list of punishable statutory offenses the failure to provide general price information by telephone within a reasonable time.

[14] 54 FR 21873 (May 22, 1989).

[15] The most recent amendments to the Texas law, noted above, were enacted subsequent to publication of the May 22 Federal Register notice and hence were not mentioned therein. However, these documents were placed on the public record early in July 1989 and were noted by at least one of the commenting parties.

[16] These comments have been placed on the public record as Document Nos. XXIV–40–54.

[17] The Funeral Rule provides for a mandatory review proceeding to begin no later than four years after its effective date. 16 CFR 453.10. This proceeding commenced with a Notice of Proposed Rulemaking published in the Federal Register on May 31, 1988, 53 FR 19804. The proceeding has not yet been concluded.

[18] "Person" is defined as "any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity." 16 CFR 453.1(n).

[19] VTCS, Article 4582b, section 1.S.

[20] Document No. XXIV–55, p.3.

[21] 22 TAC 203.18.

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that a general price list be offered at the beginning of the arrangements discussion.[28] They believe that the Texas regulation is more ambiguous, appearing to allow the funeral provider to present the retail price list at any point prior to the actual selection of goods or services.

The comments of the AARP cited testimony by James P. Hunter III, Chairman of the TFSC, at Funeral Rule review hearings held in San Francisco in January 1989. Mr. Hunter expressed disagreement with the FTC requirement that a price list be offered at the beginning of the arrangements discussion. He further stated that the TFSC took the position that as long as the document was presented prior to the actual selection of goods, the public interest would be safeguarded.[29]

3. Remaining Differences Between the FTC Rule and Texas Law

Other differences between the Funeral Rule and Texas law were noted in the request for public comment on the first Texas exemption petition.[30] However, the Commission did not address these other differences in its denial of the first exemption petition. The Commission merely stated that the three items discussed therein "illustrate its conclusion that state law provides less protection than the Funeral Rule".[31] Therefore, the May 22, 1989, Federal Register notice requested public comment on whether remaining differences between the Funeral Rule and Texas law are significant and would afford Texas consumers less protection than they now enjoy if the exemption petition were granted. Some of the commenters addressed some of these remaining differences.

1. Transactions Covered by FTC Rule and Texas Law

The Funeral Rule covers all funeral providers, defined in § 453.1(j) as "any person, partnership, or corporation that sells or offers to sell funeral goods and funeral services to the public." Thus, the provisions of the Rule would extend to pre-need sellers who may not be licensed funeral directors.[32] The jurisdiction of the TFSC, however, is limited to licensed funeral establishments, licensed funeral directors, and licensed embalmers.[33] Comments filed by the Consumer Protection Division of the Texas Attorney General's Office with regard to the first Texas exemption petition made clear that the State Board of Morticians (now the TFCS) could not enforce state law against an unlicensed funeral provider.[34]

Both Consumers Union and Mr. Baskin state that there are sellers of pre-need funeral goods and services in Texas who would be covered by the FTC Federal Rule, but who are not subject to the jurisdiction of the TFSC.[35] The TFSC regulations, in fact, specifically exclude pre-need sellers from the requirement that only licensed funeral directors enter into contractual agreements for funeral services and merchandise.[36] Thus, it appears that there are sellers of funeral goods and services in Texas who are subject to the provisions of the FTC Funeral Rule, but who are not subject to the Texas laws and regulations that are the basis for this exemption petition.[37]

In addition, there appears to be a question as to the authority of the TFSC over pre-need transactions that are handled by licensed funeral directors and establishments. The TFFS asserts that the price information and disclosure requirements of Texas law apply to pre-need transactions and are enforceable by that agency.[38] However, the staff of the Texas Sunset Advisory Commission reached the conclusion that these disclosure requirements have not been applied to pre-need sales and that the TFSC lacks clear authority to enforce these regulations in pre-need transactions.[39]

2. Required Price Itemization

The Funeral Rule requires that consumers be provided with a general price list, showing prices for 17 specified items of service or merchandise, a casket price list, and an outer burial container price list.[40] Texas law requires a retail price list which includes the prices of caskets and outer burial containers, and various other charges for services, facilities, and automotive equipment.[41] The essential differences between the federal and state requirements are that Texas does not require any descriptive information about the caskets or outer containers listed on the price list and does not require itemized prices for other preparation of the body, other use of facilities, and other automotive equipment.[42] Consumers Union and the National Consumers League both commented on these differences as evidence that Texas law affords consumers less protection by providing them with less information that the FTC Rule.

3. Required Disclosures

(a) *selection of goods and services.* The FTC Funeral Rule has required disclosures for both the general price list and the itemized statement concerning the customer's right to choose and pay for only the items desired. Texas requires a dual set of disclosures for each document. The disclosures required by the TFSC rules track the language required by the FTC.[43] However, the Texas statute requires somewhat different wording, with a somewhat different meaning.[44] The TFSC states that both sets of disclosures are required on both documents.[45]—

Both Mr. Baskin and Consumers Union commented on these disclosures concerning the customer's right of choice.[46] Mr. Baskin states that the dual sets of disclosures "are confusing and seem to imply different standards." He and Consumers Union both note that the FTC disclosures allow the funeral provider to charge for items not selected only in very limited circumstances, such as to satisfy a legal requirement. They believe that the language required by the Texas statute, by contrast, implies broader discretion for the funeral provider to charge for items not selected even where the charge may not result from a legal requirement imposed by the cemetery or crematory.

(b) *Cash advance items.* The FTC Funeral Rule requires that the following disclosure appear in immediate conjunction with the itemized price information:

> This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected.[47]

Texas law requires the following notice on the retail price list: "Please note that there may be charges for items such as cemetery fees, flowers, and newspaper notices."[48]

(c) *Mandatory professional services fee.* The Funeral Rule requires the following disclosure, if the fee for services of funeral director and staff is non-declinable:

> This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)[49]

Texas law has no comparable disclosure. Consumers Union commented that both the cash advance and professional services fee disclosures are intended "to forewarn the consumer of the possibility of final charges which might not have been contemplated, or which could be used to pad increases in the final billing." It concluded that Texas law provides less warning to consumers.[50]

(d) *Embalming.* The Funeral Rule and the Texas regulations require virtually identical disclosures regarding embalming to appear on the general price list.[51] However, the Funeral Rule also requires the following disclosure to appear on the funeral services contract:

> If you selected a funeral which requires embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.[52]

Texas law does not require any disclosure concerning embalming to appear on the itemized statement or contract, and does not require written explanation of the reasons for embalming. Mr. Baskin commented that he believed these written disclosures should be required in Texas because "[e]mbalming is the foundation of the expensive funeral."[53]

4. Prior Approval for Embalming

Like the Funeral Rule, Texas law requires prior approval for embalming, or a reasonable effort to obtain such approval.[54] However, the Funeral Rule also provides that the customer need not pay for embalming performed without prior authorization if the customer selects funeral arrangements where the procedure is not needed. Texas has no comparable provision that would enable the customer to decline payment under such circumstances.

Mr. Baskin was the only party to comment on this difference, asserting that the TFSC should adopt the same provision "in light of the importance the embalming process plays in the total cost of the funeral."[55]

5. Telephone Price Disclosure

The TFSC regulation contain a telephone price disclosure requirement that is nearly identical to that of the Funeral Rule.[56] Both require an affirmative disclosure that price information is available over the telephone, as well as the actual conveying of such information upon request. An amendment to the Texas statute, adopted subsequent to the filing of the second exemption petition, authorizes the TFSC to bring an enforcement action against any licensee for failure to "provide general price information by telephone within a reasonable time."[57] Consumers Union pointed out that the TFSC regulation and later statutory amendment must be read together to determine the required timing for provision of telephone price information.

C. Provisions of Texas Law Not Included in the FTC Rule

The Texas exemption petition lists several state requirements that have no counterpart in the Funeral Rule. Most of these were also part of Texas law when the previous petition was filed. The Commission concluded that although these features of Texas law offered "tangible benefits to consumers," on balance they did "not compensate for the essential protections contained in the Funeral Rule that are absent from state law."[58]

These additional features of Texas law are as follows:

1. Each written memorandum [or itemized statement] must include the name, mailing address, and telephone number of the TFSC and a statement indicating that complaints may be directed to the TFSC.[59]

2. Funeral establishments must display their least expensive casket in the same general manner as other caskets are displayed. In addition, they must display five or more adult caskets in order to permit reasonable selection.[60]

3. Funeral directors may not state or imply that a customer's concern with the cost of any funeral service or merchandise is improper or indicates a lack of respect for the deceased.[61]

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[28] 16 CFR 453.2(b)(4)(i).

[29] FTC File No. 215-60, Tr. Vol. III, pp. 581-82.

[30] 50 FR 46271 (November 8, 1985).

[31] 51 FR at 43747.

[32] However, the Rule would not cover such sellers if they were engaged in the "business of insurance." 16 CFR 453.8(c).

[33] VTCS, Article 4582b, section 1.A, B, and G; section 3.H.

[34] 16 CFR 453.2(b)(3), (3) and (4).

[35] VTCS, Article 4582b, section 1.S, 3.h.22; 22 TAC 203.9, 203.17, and 203.18.

[36] The Texas statute does list a category of "other itemized services provided by the funeral establishment staff." However, the Texas regulations have defined this item as a professional service fee which, under both the Funeral Rule and Texas law, may be made a non-declinable item. Thus, it cannot be considered a catch-all category for other miscellaneous items of service, facilities or automotive equipment. VTCS, Article 4582b, section 1.S; 22 TAC 203.17; compare with 16 CFR 453.1(o) and 453.2(b)(4)(iii)(C).

[37] The following is required on the general price list: The goods and services shown below are those we can provide to our customers. You may choose only the items your desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected. 16 CFR 453.4(b)(2)(i)(A); 22 TAC 203.11(h)(2)(A)(i).

The following is required on the itemized statement: Charge are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below. 16 CFR 453.4(b)(2)(i)(B); 22 TAC 203.11(h)(2)(A)(ii).

[38] On the general price list, the Texas statute requires the following: You may choose only the items you desire. If you are charged for items you did not specifically request, we will explain the reason for the charges on the written memorandum. VTCS, Article 4582b, section 1.S.

The following is required on the itemized statement or written memorandum: Charges are made only for items that are used. If the type of funeral selected requires extra items, we will

Continued

[39] Document No. XXIV-34.

[40] Document No. XXIV-30, pp.4-5, and No. XXIV-54, pp.2-3.

[41] 22 TAC 203.18(d).

[42] All sellers of pre-arranged or pre-paid funeral services or merchandise in Texas (whether or not they are licensed funeral directors) are required to have a permit issued by the Texas Department of Banking and to use a contract form approved by that Department. (VTCS Article 548b, sections 1 and 2.) Neither the pre-need statute nor regulations promulgated by the Department of Banking contain price itemization or disclosure requirements comparable to those of the FTC Funeral Rule.

[43] Document No. XXIII-31, letter dated June 28, 1989, from Larry A. Farrow, Executive Director, TFSC.

[44] Texas Funeral Service Commission, a Staff Report to the Sunset Advisory Commission, December 1980, Document No. XXIV-56, p.54. This report is discussed in detail in section VI.D, *infra*.

explain the reasons for the extra items in writing on this memorandum. VTCS, Article 4582B, section 1.T.

[45] Document No. XXIII-17, letter dated January 25, 1989, from Larry A. Farrow, Executive Director, TFSC.

[46] Document No. XXIV-34, p.4, and No. XXIV-30, p.5.

[47] 16 CFR 453.5(a)(4)(ii)(B).

[48] VTCS, Article 4582b, section 1.S. Both the Texas regulation and the Funeral Rule require the following statement, at the end of the cash advance disclosure, if the funeral provider adds a charge to cash advance items: "We charge you for our services in buying these items." 16 CFR 453.5(a)(4); 22 TAC 203.11(f)(2).

[49] 16 CFR 453.2(b)(4)(iii)(C).

[50] Document No. XXIV-34, p.4.

[51] 16 CFR 453.5(a); VTCS, Article 4582b, section 3.H.11; 22 TAC 203.10 and 203.9(b)(2).

[52] Document No. XXIV-34, p.4.

[53] Compare 16 CFR 453.2(b)(1) with 22 TAC 203.8.

[54] VTCS, Article 4582b, section 3.H.22(D). Document No. XXIII-21[b].

[55] 51 FR at 43748.

[56] VTCS, Article 4582b, section 1.T.

[57] VTCS, Article 4582b, section 4.C.5. A statutory requirement that funeral directors disclose to customers the different colors in which their three least expensive caskets are available, and arrange to provide the customer with a casket in the requested color, was repealed by the Texas legislature after the May 22, 1989, Federal Register notice was published. Document No. XXIII-27 (a) and (b).

[58] VTCS Article 4582b, section 3.H.21.

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4. Funeral directors may not take custody of a body without authorization or refuse to promptly release a body to a person authorized to make funeral arrangements.[56]

5. Casket display rooms must be designed and utilized to allow the pubic to make a private inspection and selection.[57]

6. Any person making funeral arrangements must explain to the customer or prospective customer that a contractual agreement for funeral services of merchandise may not be entered into before the presentation of the retail price list to that person.[58]

7. The TFSC is required to prepare and disseminate to the general public information explaining matters relating to funerals, describing the regulatory functions of the Commission, and describing the Commission's procedure for handling consumer complaints.[59] The TFSC has published such a brochure, attached to the exemption petition as Exhibit K,[60] and Texas funeral establishments are required to have three brochures prominently displayed.[61]

8. Funeral establishments must retain records, including price lists and the written memoranda, for a minimum of two years.[62]

The AARP contended that although these measures were "examples of fair business practices which should be emulated and encouraged," they were not adequate substitutes for specific requirements of the FTC Funeral Rule.[63] On the other hand, the Texas Funeral Directors Association, and others who commented on behalf of the industry, pointed to some of these provisions of law as evidence that Texas affords greater protection to consumers than the FTC Funeral Rule.[64]

[56] VTCS, Article 4582b, section 3.H.11.

[57] 22 TAC 203.10.

[58] VTCS, Article 4582b, section 3.H.22.

[59] VTCS, Article 4582b, section 6F; 22 TAC 201.8(a).

[60] This brochure explains what must be done when a death occurs, the available methods of disposition, embalming and the fact that embalming is not required by Texas law, organ donation, ways of selecting a funeral director, how one may obtain information regarding funeral costs, state law with respect to advertising and solicitation by funeral directors, pre-need funeral contracts, and complaint procedures. It makes no mention of the FTC Funeral Rule.

[61] 22 TAC 201.9(c).

[62] VTCS, Article 4582b, section 3.H.25; 22 TAC 203.30 and 203.21(b)(2). The FTC record keeping requirement is only one year. 16 CFR 453.6.

[63] Document No. XXIV–46, p.11.

[64] Document Nos. XXIV–42 and 44.

VI. Administration and Enforcement of Law in Texas

A. The Texas Funeral Service Commission

The TFSC is composed of nine commissioners appointed by the Governor and confirmed by the Senate. The term of office is six years. Five of the nine commissioners must be licensed funeral directors and/or embalmers and must have five consecutive years of experience immediately preceding their appointment. The remaining four members of the commission represent the public interest and may not be subject to the regulatory authority of the commission. [65]

1. Staffing

The commission employs a full-time staff of eight, including an executive director, a deputy director/chief investigator, a director of licensing and administration, a staff attorney, two field inspectors, an administrative technician/secretary, and an administrative clerk. In addition, the commission contracts with outside legal counsel, a financial consultant, and a licensed private investigator who investigates a minimum of two consumer complaints each month.[66]

2. Funding

The commission is funded by the Texas legislature through general appropriations. Funding for the commission for the past three years has been as follows: FY 1987, $222,871; FY 1988, $321,565; and FY 1989, $321,004. The additional funding for FY 1988 and 1989 was requested for increased law enforcement positions and activities.[67]

3. Enforcement Procedures

The commission both initiates and receives complaints against licensees. The commission is required to inspect each licensed funeral establishment once each year.[68] According to the petition, establishments revealing serious deficiencies are usually reinspected within 30–90 days. Formal charges are filed against repeat offenders and the commission normally will assess an administrative penalty of $250 or more against the license of the establishment or the license of the funeral director in charge.[69]

[65] VTCS, Article 4582b, section 2.A.

[66] Exhibit G of the Texas exemption petition. See also, letter dated June 26, 1989 from Larry A. Farrow, Executive Director of the TFSC, Document No. XXIII–20.

[67] *Id.*

[68] VTCS, Article 4582b, section 4.G.

[69] Exhibit G of the Texas exemption petition.

According to the petition, all complaints are personally reviewed by the executive director. Those which allege a violation of the statute or rules are assigned either to the chief investigator or the contract investigator. Complaints are investigated through a combination of telephone inquiries; travel by the investigator to the location of the complaint; interviews with the complainant, funeral home employees, and other witnesses; and investigation of funeral home files.[70]

When an investigation has been completed, it is brought to the Complaint Review Committee, comprised of the commission chairman, the executive director, the outside legal counsel, and the chief investigator. This committee reviews the case and makes one of the following recommendations: (1) Request further investigation; (2) close the case for insufficient evidence; (3) recommend that an agreed order be negotiated; (4) recommend that an administrative penalty be assessed; or (5) recommend that formal charges be filed and a formal hearing scheduled. The commission may accept or reject any of these recommendations. Final action on complaints must be taken in an open meeting.[71]

The TFSC has authority to cancel, revoke, suspend, place on probation and/or assess an administrative penalty against any licensee subject to its regulatory authority.[72] Administrative penalties may be in an amount not less than $100 or more than $5,000 for each violation of the statute or regulations promulgated pursuant to the statute.[73] The TFSC is further authorized to sue a funeral director or funeral establishment for appropriate injunctive relief.[74]

B. Enforcement History in Texas

In September 1984, after the filing of the first Texas exemption petition, the Commission received from Mr. Grady Baskin, Jr., then a consumer member of the State Board of Morticians, the results of an investigation in which he had personally surveyed funeral homes in the Dallas and Houston areas to check for compliance with state law price disclosure requirements.[75] The

[70] Exhibit G of the Texas exemption petition; January 25, 1989 letter from Larry A. Farrow, Document No. XXIII–17.

[71] Exhibit G of the Texas exemption petition.

[72] VTCS, Article 4582b, sections 2.H, 4.D.2(c), 6 and 6G.

[73] VTCS, Article 4582b, sections 6G(b).

[74] VTCS, Article 4582b, section 7.

[75] This document was placed on the public record as Document No. XXIII–10. Mr. Baskin's comments,

Continued

survey had been conducted between June and August 1984, and was undertaken with the approval of the Texas Attorney General's office. Posing as a consumer who anticipated the need to make funeral arrangements for a family member in the near future, Mr. Baskin visited 24 funeral homes to request retail price lists and other price information. He was able to discuss funeral arrangements at 18 of these funeral homes. Only one funeral home was found by Mr. Baskin to be in full compliance with state law. No enforcement actions or investigations were brought by the State Board as a result of the Baskin survey.[76]

The FTC's Dallas Regional Office has brought six enforcement actions resulting from independent investigations of some of the funeral homes surveyed by Mr. Baskin. Five of these cases have resulted in consent agreements with civil penalties ranging from $10,000 to $30,000.[77] In the one litigated matter, the U.S. District Court for the Northern District of Texas, Dallas Division, granted the FTC's motion for summary judgment, awarding a permanent injunction and a civil penalty of $80,000.[78]

At the time the first Texas exemption petition was denied, the Texas State Board of Morticians did not have authority to assess civil penalties for violation of its regulations. However, the newly constituted Texas Funeral Service Commission was given this authority in September 1987.[79] This new authority is reflected in the enforcement summary appended to the exemption petition.

Exhibit H of the exemption petition is a statistical summary, for fiscal years 1986–88, of funeral establishment inspections, complaints received or initiated by the TFSC, and actions taken by the TFSC. Exhibit I summarizes the complaints received or initiated by the TFSC during fiscal years 1987 and 1988.

There were 60 complaint summaries for fiscal year 1987. Eighteen of the 60 appeared to involve allegations of conduct that would also constitute violations of the FTC Funeral Rule.[80] Three of these matters resulted in formal hearings, and in one case (the subject of two complaints) the license was revoked. The other two hearings resulted in dismissal.[81] One case was closed after an informal hearing.[82] One case was resolved by agency arbitration, and another by an agreed order with the funeral home imposing license suspension with probation. Two cases were closed with a warning letter to the funeral home. Five were closed because of insufficient evidence, witness refusal to testify, or lack of substantiation for the complaints.[83] One case was closed because the establishment was no longer in business. In the remaining cases, the allegations were disproved by the investigation.

There were 161 complaint summaries for 1988, the first full year in which the TFSC had civil penalty authority. Of these complaints, 21 contained allegations that appeared to involve violations of the Funeral Rule as well as of Texas law. Three of the complaints were the result of TFSC inspections; the remainder were consumer complaints. Seventeen of these case files were provided to FTC staff upon request.[84] Fines were assessed in eight cases (four for $250, three for $500, and one for $10,000); in addition there were agreed orders in four instances. Six matters were closed because of insufficient evidence of lack of substantiation, and in one instance the complaint was withdrawn by the complainant. In one case there was an agreed order and a 6-month license suspension with probation. In the last case, a formal hearing resulted in a license suspension. However, the case had been appealed to state district court, which had remanded the matter to the TFSC to dismiss or prepare revised findings of fact and conclusions of law. The court's remand letter stated that it was impossible to determine the basis for the agency's action, and concluded that the requirements of the Texas Administrative Procedures Act had not been met.[85]

In addition to TFSC enforcement, it appears that the Texas Attorney General's Office has authority to enforce the requirements of the FTC Funeral Rule as a state law action under section 17.46(c)(1) of the Texas Deceptive Trade Practices Act. At least three such actions have been filed by the Attorney Generals' Office.[86] In its comments on the first Texas petition, the Consumer Protection Division of the Texas Attorney General's Office stated that granting the exemption would raise an issue as to whether the Attorney General's Office could continue to enforce Funeral Rule requirements under state law.[87]

opposing the first Texas exemption petition, are on the public record as Document Nos. XXIV–35, 36, and 37. The Texas price disclosure requirements that were the subject of this compliance check had gone into effect September 1, 1983. Of course, the FTC Funeral Rule, effective April 30, 1984, was also in force at the time of Mr. Baskin's investigation.

[76] Document No. XXIV–35. See also, letter of January 25, 1989, from Larry A. Farrow, Executive Director, TFSC, Document No. XXIII–17.

Mr. Baskin stated that he was informed by the Attorney General's office that as a Board member, he could not testify in any Board proceeding. Document No. XXIV–36. However, there appears to be no reason why the Board could not have conducted an independent investigation of the funeral homes visited by Mr. Baskin.

[77] *U.S.* v. *Troy Suggs Funeral Home*, No. CA3–87–1258–G (N.D. Tex. May 20, 1987) (civil penalty of $20,000); *FTC* v. *Crane Rhoton Services Corporation*, No. CA3–87–1545–T (N.D. Tex. June 13, 1988) (civil penalty of $30,000); *U.S.* v. *Ware Crest, Inc., No. CA4–88–437–K* (N.D. Tex. July 11, 1988) (civil penalty of $10,000); *U.S.* v. *Funeral Corporation Texas*, No. CA4–8829 E (N.D. Tex. January 11, 1989) (civil penalty of $20,000); and *FTC* v. *Nitday Funeral Home, Inc.*, No. H–88–2808 (S.D. Tex. November 1, 1988) (civil penalty of $25,000).

[78] *FTC* v. *Dudley M. Hughes Funeral Co.*, 710 F. Supp. 1524 (N.D. Tex. 1989), *appeal dismissed*, 891 F.2d 889 (5th Cir. 1990). The TFSC also brought an action against the Dudley M. Hughes Funeral Company based upon a consumer complaint alleging that Hughes had caused the embalming of a deceased person against the wishes of the family. The Hughes funeral establishment license was suspended for two years, with the two year period fully "probated". Mr. Hughes' personal license was suspend for one year, with only the last six months "probated." (A licensee is able to continue working, under probation, for the "probated" period of time.) Administrative penalties totalling $10,000 were also imposed. Document No. XXIV–39. Subsequently, Mr. Hughes was found to be in violation of probation; his personal license was revoked and the establishment license suspended without probation. Both orders were stayed pending appeal. Mr. Hughes has since filed for bankruptcy.

[79] VTCS Article 4582b, sections 3.H, 4.D.2(c), and 6G.

[80] Sixteen of these case files were requested by FTC staff and have been placed on the public record. Document No. XXIII–17.

[81] Reasons for the dismissal were not given.

[82] Again, no reason for the action was given. In this case the funeral home admitted that it did not have or use a written general price list. The closing letter stated that the firm would be re-inspected within 60 days and that a financial penalty would be recommended if compliance with the law was not found at that time. Document No. XXIII–17, case number 87–51.

[83] In one of these cases, which involved a pre-need contract, there is a letter to the State Board of Morticians from the Texas Department of Banking which states "it appears that violations of both mortuary law and Federal Trade Commission rules have occurred" Document No. XXIII–17, case no. 87–27.

[84] These case files have been placed on the public record as Document Nos. XXIII–17 and 21(d).

[85] Document No. XXIII–21(d), case number 88–78.

[86] One action was filed in state court against a funeral director who was, at that time, a Commissioner of the TFSC. The Attorney General's Office requested and received FTC staff assistance in reviewing evidence in this case. (Document No. XXVIII–304.) The Texas court entered a directed verdict for the defendant, and the Attorney General's office did not appeal. *State of Texas* v. *Henry Thomas*, No. 86–133–C (197th Dist. Ct., Cameron County, Tex., Aug. 17, 1987.) Two actions were settled by consent agreements. *State of Texas* v. *Goldie Wilson, d/b/a Wilsons' Funeral Directors*, No. 400,074 (299th Dist. Ct., Travis County, Tex., July 3, 1986) (permanent injunction; $6,000 civil penalty and costs); *State of Texas* v. *Santos De Leon, d/b/a De Leon Funeral Home*, No. C–170–86–B (93rd Dist. Ct., Hidalgo County, Tex., May 13, 1987) (permanent injunction; $3,000 costs).

[87] The Chief of the Consumer Protection Division of the Attorney General's Office opposed the first

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C. Public Comments on Enforcement of Texas Law

The AARP, Consumers Union, the Gray Panthers, and Mr. Baskin all commented upon this issue, asserting that enforcement of state law by the TFSC is inadequate. The AARP noted that the majority of administrative penalties assessed by the TFSC were levied for failure to disclose to customers the different colors in which the three least expensive caskets are available, failure to include the name, address and telephone number of the TFSC on the sales contract, and/or failure to display five or more adult caskets.[89] Consumers Union also believes that enforcement efforts have been concentrated too heavily on these technical violations.[89]

The AARP, Consumers Union, and the Gray Panthers contended that the enforcement record has been poor with regard to consumer generated complaints. Both AARP and Consumers Union noted that a majority of consumer initiated complaints in 1988 were dismissed with no action because of insufficient evidence, unsubstantiated charges, or similar reasons. They further noted that in many cases involving license suspension or revocation, and some cases involving a monetary penalty, all or most of the penalty was probated.[90]

Mr. Baskin, former member of the Texas State Board of Morticians, characterized administration and enforcement in Texas as "dismal." He referred to his own prior survey of Texas funeral homes, commenting that the FTC should not have had to conduct independent investigations and enforcement actions against funeral homes surveyed by a Texas board member.[91] Mr. Baskin acknowledged that State enforcement efforts have improved in recent years. However, he does not believe that they have improved sufficiently that Texas should be granted an exemption from the FTC Funeral Rule.

Among those who favor granting the exemption petition, two representatives of the Texas Funeral Directors Association stated that the TFSC and its staff "have a proven record of inspections, investigations and positive enforcement actions, when necessary." They further asserted that the consumer who registers a complaint "can get quicker resolution of any problem dealing with a smaller specialized state agency than with the Federal Trade Commission."[92] The other industry representatives who commented in favor of the exemption petition also asserted that state regulation is effective and preferable to federal regulation. Some also believe that having dual regulation by state and federal government creates confusion in the industry.[93]

D. Staff Report to the Texas Sunset Advisory Commission

The TFSC and its enabling legislation are subject to sunset as of September 1, 1991.[94] Therefore, the TFSC recently underwent review by the Texas Sunset Advisory Commission was published in December 1990.[95] The Sunset Advisory Commission staff recommended to the Sunset Advisory Commission that the TFSC statute be repealed and the agency abolished, based upon its conclusion that state licensure for funeral directing and embalming is no longer necessary or justified to protect the public health and safety. However, the Staff Report recommended that the consumer protection portions of the TFSC statute be retained and enforced through the courts, and that TFSC regulations patterned after the FTC Funeral Rule be incorporated into state law. (Presumably enforcement would be handled by the Attorney General's Office.)

The Staff Report noted that 47 percent of agency-initiated complaints in 1988 were "exclusively for the minor violation of failure to post information on each casket in the display room and/or failure to include the agency's address on forms used by the funeral establishment." Since the former requirement was rescinded by statute in 1989, the Staff Report concluded that the volume of agency-initiated complaints will be greatly reduced in the future, unless the TFSC changes its current approach to identifying violations. With regard to TFSC handling of consumer complaints, the Staff Report stated that the actions taken by the board to resolve the complaints it receives are "minimal and ineffective." It noted that only a small number of cases resulted in any enforcement action, and that fines were imposed in only a few cases. In other cases, probation was the only sanction.[96] In this connection, the Staff Report criticized the TFSC for failure to monitor licensees placed on probation to determine if the conditions of probation have been met.[97] With regard to TFSC funeral home inspections, the Staff Report noted numerous errors in inspection reports and a failure to make timely re-inspection of establishments cited for severe violations or multiple discrepancies.[98]

The Staff Report also cited the existence of the FTC Funeral Rule as a reason for abolishing the state agency. With regard to FTC enforcement actions against several Texas funeral homes, the Report stated: "This level of enforcement appears to serve as a significant deterrent against deceptive practices."[99]

As an alternative to abolishment of the TFSC, the Staff Report recommended transfer of its functions to the Texas Department of Health, where a centralized licensing structure is already in place for other professions. Other recommendations set forth in the Staff Report could be implemented whether the TFSC was continued in its present form or its functions transferred to another agency. The proposals most relevant to this petition included: Changing the composition of the board so that the majority of its members are public members; a requirement that the government designate the chair of the commission; statutory amendment to clarify that the TFSC has authority to take action against licensees for failure to make required disclosures in pre-need transactions; statutory amendment to require that the disclosures and information currently required to be given to consumers in at-need funeral transactions also be provided in all pre-need sales; replacement of annual funeral establishment inspection with biennial inspection and a requirement that rules be developed for reinspection of violators; development of a system for tracking violations uncovered during inspection, sending warning letters to violators and requiring that violators document corrective action within a certain time; and a requirement that the commission monitor licensees placed on probation during the probationary period.

On February 19 and 20, 1990, the Texas Sunset Advisory Commission met to vote on the recommendations contained in the Staff Report on the TFSC. The Sunset Advisory Commission did not adopt the recommendation that the TFSC be abolished or the recommendation that the functions of the agency be transferred to the Texas Department of Health. However, the Sunset Commission did adopt all of the Staff Report's alternative recommendations.[100] The Sunset Commission staff has incorporated these decisions into draft legislation to be offered at the 1991 session of the Texas legislature.

VII. Conclusions

A. Level of Protection

Texas has made a number of improvements to its laws and regulations since the denial of the last petition. These improvements make it a closer question whether Texas law provides the same overall protection as the Funeral Rule. However, there remain a number of areas where Texas law either fails to address transactions covered by the Rule or provides significantly less protection.[101] For this reason, as well as the enforcement concerns discussed below, the Commission concludes that the petition must be denied.

The threshold test for a state exemption petition is that there is a state requirement in effect which applies to any transaction to which the Federal Rule applies. That requirement has been met. There is a state requirement in effect in Texas which applies to some (although not all) transactions to which the Funeral Rule applies.[102] However, the petitioner must also demonstrate that its requirements afford "an overall level of protection to consumers which is *as great as, or greater than*, the protection afforded by (the FTC) Rule" (emphasis added).

The primary focus of the FTC Funeral Rule is the early disclosure of information to consumers. This includes information concerning the availability and prices of various funeral goods and services, and the presence or absence of legal or other requirements that might affect the consumer's selection of such goods and services. Other provisions of the Rule are designed to maximize consumer choice with regard to funeral arrangements by preventing funeral providers from bundling goods and services and otherwise requiring unnecessary purchases. A petition should be granted where state law provides its consumers the same (or greater) quantity and quality of information and choice as the FTC regulation, provided the state can demonstrate effective administration and enforcement of its laws.

Since the denial of the first Texas exemption petition, Texas has taken some steps to change those three aspects of its law that the Commission had discussed to illustrate its previous conclusion that state law provided less protection than the Funeral Rule. In two of those areas, the definition of "prospective customer" and the charge for services for funeral director and staff, Texas has made its laws and regulations more closely parallel to the requirements of the FTC Funeral Rule. Some of the commenting parties believe that the Texas requirements are still ambiguous and thus fail to offer protection comparable to that of the Funeral Rule. While the language of these amendments in fact may be less clear than comparable provisions of the Funeral Rule, the changes appear to meet the basic concerns expressed by the Commission in its denial of the first Texas petition.

With regard to the timing of presentation of the general price list, however, it is clear that the FTC requirement is more stringent than the Texas requirement. Under the Funeral Rule, the information must be presented at the beginning of the arrangements discussion. Under Texas regulations, the funeral provider need only offer the information at the conclusion of this discussion where the consumer is ready to select services and merchandise. This difference in timing can be critical.

The very premise of the Funeral Rule is that consumers are in an unequal bargaining position with the funeral provider. Consumers are generally unfamiliar with this transaction, and often must make their decisions under significant time pressure and emotional stress. The goods and services purchased also can be costly. It is for these reasons that the Commission concluded that the price lists and their disclosures should "be present for consultation while the consumers were considering what to purchase."[103] The general price list provides information concerning the range of options available in funeral services, legal requirements (or the absence thereof) that may affect consumer choice, and prices. This information obviously is not helpful to the consumer at the outset of the arrangements conference, when the consumer may have little idea of the options available, legal requirements, or the financial consequences of the choices to be made.[104]

Under the Texas requirement, this information need not be made available during the discussion and might be offered at the conclusion of the conference, where final decisions are about to be made and a contractual agreement completed. The testimony of the TFSC Chairman at the Funeral Rule review hearings suggests that the language differences between the two regulations are more than semantic, instead reflecting a fundamental policy difference between the TFSC and the FTC. The TFSC disagrees with the FTC requirement that the price list should be offered at the beginning of the arrangements discussion and wishes to place greater discretion with the funeral provider to determine when it should be introduced. Given the importance the Commission attaches to the provision of price information and disclosures early in the arrangements conference, it

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Texas exemption petition for that reason, among others. He stated that "by granting the requested exemption, the FTC might deprive Texas consumers of significant local enforcement resources." (Document No. XXIV–34). He further stated that the Attorney General's Office could not enforce their state mortuary laws unless the laws were amended. The Texas Attorney General's Office did not submit comments on the second exemption petition. The only input of the Texas Attorney General's Office into this proceeding is found in Exhibit A of the exemption petition, wherein the Attorney General sets forth the TFSC's statutory authority as required by the exemption guidelines. (50 FR at 12328.) This letter, addressed to the Executive Director of the TFSC, states that the TFSC has the authority to enforce the state mortuary law, VTCS, Article 4582b, and to promulgate and enforce regulations pursuant to that statute. It further states that the requirements of these statutes are equal to or greater than federal requirements.

[89] Document No. XXIV–48, pp. 13–15. Of the 161 complaint summaries listed for 1988 in Exhibit I to the exemption petition, 65 involved one or more of these violations. Fifty-two color card violations were listed, and administrative penalties were assessed in most of those cases. However, this provision of the Texas statute subsequently was repealed in 1989. See footnote 54, above.

[90] Document No. XXIV–50, pp. 6–7.

[91] Document No. XXIV–48, pp. 13–14, and Document No. XXIV–50, pp. 6–7. AARP stated that it verified with the TFSC that probating a license suspension means that the licensee is able to continue working, under probation, for the "probated" period of time.

[92] Document No. XXIV–34, pp. 5–6.

[93] Document Nos. XXIV–42 and 44.

[94] Document Nos. XXIV–43, 45, 46, 47 and 52.

[95] VTCS, Article 4582b, section 2.N.

[96] *Texas Funeral Service Commission*, a Staff Report to the Sunset Advisory Commission, December 1989. This report has been placed on the public record as Document No. XXIV–56.

[97] Document No. XXIV–56, p. 17.

[98] *Id.* at 73–74.

[99] *Id.* at 68.

[100] *Id.* at 76.

[100] *Sunset Advisory Commission Decisions on: Texas Funeral Service Commission*, February 19 & 20, 1990. Document No. XXIV–61.

[101] There is no issue of conflict between state law and the FTC Rule. A funeral provider in compliance with the Funeral Rule would also be in compliance with the relevant provisions of state law, provided that the additional disclosures set forth in footnote 36 are added to the price list and itemized statement

[102] As discussed above, the jurisdiction of the TFSC is limited to licensed funeral establishments, licensed funeral directors, and licensed embalmers. VTCS, Article 4582b, Section 1.A, B and G and section 3.H; 22 TAC 203.15(d). Thus, its regulations do not extend to other types of pre-need sellers of funeral goods and services that would be subject to the FTC Funeral Rule. 16 CFR 453.1(j).

[103] 47 FR at 42272.

[104] In comments opposing the first Texas exemption petition, the Chief of the Consumer Protection Division of the Texas Attorney General's Office asserted that the beneficial effect of the required disclosures might be lost if the information were not provided during the arrangements discussion. Document No. XXIV–34.

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cannot conclude that Texas affords protection as great as that afforded by the Rule when it permits essential information to be provided in a less timely manner.

There remain other differences between the Funeral Rule and Texas requirements that have not been addressed or changed since the denial of the first exemption petition. One relates to the growing area of pre-need sales of funeral goods and services. Pre-need sellers who are not licensed funeral providers are covered by the FTC Funeral Rule but would not be subject to the jurisdiction of the TFSC.[105] These sellers are regulated by the Department of Banking, which does not impose requirements similar to those of the Funeral Rule. In addition, the Texas Sunset Advisory Commission has raised doubts about the legal authority of the TFSC to enforce price disclosure requirements even with respect to pre-need sales by licensed funeral directors.[106]

In addition, important disclosures concerning the charge for embalming and the mandatory professional services fee are missing from Texas requirements. The FTC Rule requires a disclosure on the itemized statement, contract, or final bill concerning the charge for embalming. This disclosure alerts the consumer that in some situations, if the embalming was performed without prior approval, he or she may decline to pay for it. Texas law lacks any comparable disclosure. In addition, Texas does not require a written explanation of the reason for embalming where a charge has been imposed. While the Texas disclosure regarding embalming that appears on the general price list informs consumers that the procedure generally is not legally required and that they may select funeral arrangements where it is not needed, it does not inform them that approval is needed before the procedure is performed. Nor does it state that they may be able to decline payment if approval was not obtained. The FTC has given consumers a right, as well as information about that right, that they are not given under Texas law. In this instance, the Commission cannot conclude that Texas law affords protection as great as that provided under the Funeral Rule.

Also missing from Texas law is the disclosure that must appear in conjunction with the non-declinable professional services fee on the general price list. This disclosure alerts the consumer that this fee is the one item on the general price list that is fixed, regardless of other selections. In addition, it informs the consumer that such a fee has already been included in the package services of direct cremation, immediate burial, and forwarding or receiving remains, and will not be added to the package price if one of these services is selected. The only information Texas would require concerning the non-declinable professional services fee is the sentence: "However, any funeral arrangements you select will include a charge for our services."[107] This sentence alone does not inform the consumer which fee on the price list is required or how this fee is handled if one of the package services is selected. Moreover, in Texas the ambiguity may be compounded by the fact that the non-declinable services fee is not specifically identified as such, but is contained under a somewhat amorphous category of "other itemized services provided by the funeral home staff."[108] The Commission considers it important that a general price list make a clear distinction between the items that are declinable and the fee that will be assessed in every transaction. Texas provides consumers with less information in this regard.

The above differences between state law and the Funeral Rule mean that under Texas law consumers would receive less information and less timely information than they are now provided under the Rule. The Commission recognizes there are additional provisions of Texas law that have no counterpart in the Funeral Rule and must be considered in determining whether Texas law provides the same "overall protection" as the Rule. However, these provisions, though offering tangible benefits to consumers, are tangential to the Rule's basic objectives or were rejected by the Commission in favor of a more effective remedial approach.[109] By contrast, the deficiencies in state law discussed above go to the heart of the Rule. Given these remaining differences, the Commission cannot conclude that Texas consumers would be provided with protection as great as they now enjoy, if the petition for exemption were granted.[110]

B. Administration and Enforcement of Texas Law

Section 453.9 of the Funeral Rule specifies that an exemption petition meeting the comparable-law test may be granted only "for as long as the state administers and enforces effectively the state requirement." In denying the first Texas petition, the Commission noted that there were criticisms of state enforcement, but it declined to reach that issue. The Commission acknowledged that it would have to make a finding of effective administration and enforcement of state law before an exemption petition could be granted.[111]

Since the denial of the first petition, Texas has made some commendable improvements in its enforcement efforts. For example, the TFSC's statutory authority to assess administrative penalties came into effect on September 1, 1987.[112] Nevertheless, it appears that

[105] This difference in coverage of the two bodies of law was one of the reasons cited by the Chief of the Consumer Protection Division of the Texas Attorney General's Office in his comments opposing the first Texas petition.

[106] The Commission recognizes that the pre-need issue, absent other deficiencies in state law, could be addressed by granting a partial exemption that would leave the FTC Rule in force as to pre-need sellers. However, the Commission's determination with regard to state enforcement, and other deficiencies in Texas law, precludes the partial-exemption approach.

Moreover, the Commission notes that during the mandatory rulemaking review proceeding (described in note 17, *supra*), the issue of whether the Funeral Rule should continue to cover pre-need arrangements has been addressed. (Final Staff Report to the Federal Trade Commission, June 1990, pp. 223–28.) Several of the Commission's Funeral Rule enforcement actions to date (including all of the Texas cases cited in notes 77 and 78, *supra*) have included evidence of violations that occurred during pre-need arrangements. However, if the Commission, at some future time, were to decide that the Rule's requirements should not extend to pre-need transactions, this area of difference between state law and the FTC regulation would cease to exist.

[107] Under both Texas regulations (22 TAC 203.11(b)(2)(A)(i)) and the FTC Rule (16 CFR 453.4(b)(2)(i)(A)) this sentence must be inserted into the general price list introductory disclosure which alerts consumers to their right to select only the items they desire.

[108] See section IV.B, *supra*. It is not clear how this aspect of the Texas regulation would be implemented in the absence of the FTC Rule. However, if this "other" services category were permitted to include both declinable and non-declinable items, the need for a disclosure specifically identifying the non-declinable fee would become even more important.

[109] Some of these additional provisions of Texas law were considered and rejected by the Commission when it adopted the Funeral Rule. An example is the requirement in Texas law that funeral providers display their least expensive caskets in the same general manner as other caskets are displayed. The Commission concluded that "reliance on rule provisions designed to stimulate information disclosure is the most effective way to ensure that consumers have a *bona fide* opportunity to purchase low-cost caskets and other merchandise if they so desire." 47 FR at 42260.

[110] The other remaining differences between the state law and the FTC Rule, such as the fact that Texas requires less itemization on its general price list and requires no descriptive information on the casket and outer burial container price lists, would not, in themselves, necessarily warrant denial of an exemption petition.

[111] 51 FR at 42747.

[112] Document No. XXIII-18, letter dated February 27, 1988, from Larry A. Farrow, Executive Director, TFSC, amending footnote 4 to Exhibit H of the exemption petition.

significant compliance problems remain. The present petition comes at the very time that the Texas Sunset Advisory Commission has recommended substantial changes to the current Texas enforcement scheme, based upon a staff report characterizing state enforcement as "minimal and ineffective." For this reason, and because there is insufficient evidence to the contrary, the Commission cannot conclude at this time that state enforcement is sufficient to warrant granting an exemption from the Funeral Rule.

In December 1989, the staff of the Texas Sunset Advisory Commission, the state agency responsible for evaluating the laws and regulations enforced by the TFSC and the TFSC's performance, issued a report that was highly critical of TFSC enforcement. The Sunset Advisory Commission Staff Report stated that TFSC enforcement efforts have been too heavily concentrated on minor and technical violations. It noted that in 1988, 47 percent of agency-initiated complaints involved only one or both of two minor violations. One of those requirements was subsequently repealed by statute and the report concluded that the volume of agency-initiated complaints would be greatly reduced in the future unless the TFSC changed its approach to identifying law violations. Agency efforts to resolve consumer complaints were characterized as "minimal and ineffective." In addition, the report criticized the TFSC for failure to track and monitor identified violators of its regulations. It recommended that the majority of TFSC commissioners be appointed from the general public rather than the funeral industry and made other recommendations to improve consumer protection in the funeral services area. In February 1990, the Sunset Commission, though not supporting staff's recommendations that the agency be abolished and its functions transferred to the Department of Health, adopted the staff's other recommendations for improving the TFSC's consumer protection enforcement.

The conclusions of the Sunset Advisory Commission Staff Report are not outweighed by any substantial evidence to the contrary. It is difficult to assess the effectiveness of any agency's enforcement record based on the number of inspections, complaints, and formal and informal proceedings. States, like the FTC, have limited resources and cannot be expected to demonstrate perfect industry compliance with its laws as a precondition of being granted an exemption. States also should be free to employ different means to achieve the same enforcement objectives.[113] At the same time, however there is reason to require clear evidence on the enforcement question, and to maintain a dual federal-state enforcement scheme where it appears that consumers would have less protection under state enforcement alone.

The FTC has brought six Funeral Rule enforcement actions in the state of Texas between 1987 and 1989 and has obtained total civil penalties of $185,000. In these six cases, the FTC alleged substantial Funeral Rule violations regarding significant Rule provisions. Investigation of Texas funeral homes for noncompliance with the Funeral Rule continues at the present time by the FTC's Dallas Regional Office. In light of the evidence indicating that Texas state enforcement may not be providing a level of protection equivalent to that of the FTC, particularly with regard to certain significant Funeral Rule provisions, the Commission is reluctant to deny consumers the benefit of its deterrent presence at this time.

C. Conclusion

The Commission concludes that despite changes in Texas law since denial of the first Texas exemption petition, Texas law does not afford consumers protection as great as, or greater than, that afforded by the FTC Funeral Rule. Moreover, the Commission cannot conclude that Texas law enforcement is sufficient to warrant the grant of an exemption at this time.

The Commission therefore concludes that the Texas petition for exemption from the Funeral Rule should be denied.

List of Subjects in 16 CFR Part 453

Funeral, Funeral homes, Price disclosures, Trade practices.

[113] What is revealed by examination of the case files submitted by the TFSC is a very different pattern of enforcement submitted by the TFSC is a very different pattern of enforcement from that undertaken by the FTC. TFSC investigations are focused only on the facts of the particular complaint that triggered the investigation. During a Federal Trade Commission investigation, on the other hand, FTC staff looks for a pattern of illegal conduct. This is done by examining funeral home records for a period of months or years and surveying past customers to determine whether they received a general price list and other documents in accordance with the Rule. In most cases there also has been a substantial difference in civil penalty amounts imposed as a result of FTC enforcement actions and state enforcement actions.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-15069 Filed 6-24-91; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL-706-88]

RIN 1545-AM63

Civil Cause of Action for Failure To Release a Lien

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance relating to the civil cause of action under section 7432 of the Internal Revenue Code of 1986 (the "Code") for the knowing or negligent failure to release a lien under section 6325 of the Code. The cause of action for the failure to release a lien was created by section 6240 of the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations define certain key terms in the underlying statute, provide procedures for a taxpayer to notify the Internal Revenue Service of the failure to release a lien and create an administrative remedy that must be exhausted prior to the filing of a cause of action.

DATES: Written comments and requests for a public hearing must be received by August 9, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (GL-706-88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 535-9682 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 7432 of the Internal Revenue Code. The proposed regulations reflect the amendment of section 7432 by section 6240 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

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Explanation of Provisions

Section 6240 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342) redesignated section 7432 of the Code as section 7433 and added a new section 7432. New section 7432 gives taxpayers the right to bring an action for damages in federal district court if any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release, in accordance with section 6325 of the Code, a federal tax lien on property of the taxpayer. The taxpayer has a duty to mitigate damages, and the total amount of damages recoverable under section 7432 is the sum of (i) the actual, direct economic damages sustained by the taxpayer which, but for the actions of the officer or the employee of the Internal Revenue Service, would not have been sustained, and (ii) costs of the action. No action for damages may be filed in federal district court until the taxpayer exhausts administrative remedies available within the Internal Revenue Service.

Section 6325 requires the Secretary to release a lien not later than 30 days after the day on which: (1) The Secretary finds that the underlying liability has been fully satisfied or has become legally unenforceable; or (2) the Secretary accepts a bond that is conditioned upon full payment of the underlying liability.

The proposed regulations provide that, for purposes of section 7432, a finding that the underlying liability has been fully satisfied or has become legally unenforceable is treated as made on the earlier of (1) the date the district director finds full satisfaction or legal unenforceability or (2) the date the district director receives a request for a certificate of release under § 401.6325-1(f) of the Income Tax Regulations, together with any information which is reasonably necessary for the district director to conclude that the lien has been fully satisfied or is legally unenforceable.

The proposed regulations define actual, direct economic damages as actual pecuniary damages sustained by the taxpayer that would not have sustained but for an officer's or employee's failure to release, in accordance with section 6325, a lien on property of the taxpayer. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual, pecuniary damages. Litigation and administrative costs incurred in seeking relief, through litigation or administrative processes, from the failure to release a lien are not recoverable under this section as actual, direct economic damages.

The proposed regulations define costs of the action recoverable as damages under section 7432(b)(2) as: (1) Fees of the clerk and marshall; (2) fees of the court reported for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court-appointed experts and interpreters. Costs of the action do not include any costs other than those costs specifically enumerated in the proposed regulations.

Reasonable litigation costs, including attorneys fees (generally limited to $75 per hour) not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorneys fees and other reasonable litigation costs not recoverable under section 7432.

Administrative costs, including attorney's fees incurred pursuing an administrative claim for damages under section 7432, are not recoverable under section 7430. Section 7430(c)(2) provides that recoverable administrative costs include only those costs incurred on or after the earlier of (1) the date of the receipt by the taxpayer of the notice of a decision by the Internal Revenue Service Office of Appeals, and (2) the date of the notice of deficiency. The legislative history of the Technical and Miscellaneous Revenue Act of 1988 indicates that this limitation is intended to prevent recovery of administrative costs incurred in a collection action. H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 228 (1988). An action under section 7432 is a collection action for these purposes.

The proposed regulations provide that an action may not be maintained in federal district court under this section unless the taxpayer first files an administrative claim for damages with the Internal Revenue Service. The claim must be made in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the taxpayer currently resides or the district in which the notice of federal tax lien was filed. The claim must include: (1) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim; (2) a copy of the notice of lien affecting the taxpayer's property, if available; (3) a copy of the request for release of lien under section 401.6325-1(f), if applicable; (4) the grounds for the claim; (5) a description of the damages incurred by the taxpayer; (6) the dollar amount of the claim, including an estimate of damages that have not yet been incurred, but that are reasonably foreseeable; and (7) the signature of the taxpayer or duly authorized representative. A taxpayer is precluded from maintaining a civil action for an amount greater than the amount (already incurred and estimated) specified in the administrative claim, except where the increasd amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of claim.

The proposed regulations provide that, after an administrative claim has been filed, an action may not be filed in federal district court until the earlier of (1) the time a decisions is rendered on the claim or (2) 30 days from the date the administrative claim is filed. A taxpayer, however, must file an action with the federal disteict court within two years after the cause of action accures. Thus, if an administrtative claim is filed in the last 30 days before the two-year limitation period expires, a taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the two-year limitation period. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

For purposes of the recovery of litigation costs under section 7430, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within 30 days after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that Internal Revenue Service did not violate section 7432(a).

Effective Date

These proposed regulations would be effective for actions filed after the date final regulations are published in the Federal Register.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is nor required. It also has been determind that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, thesefore, an initial Regulatory Flexibility Analysis is nor required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Kevin B. Connelly, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is proposed to be as amended follow.

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * * § 301.7432 also issued under 26 U.S.C. 7432(e).

Par. 2. Section 301.7432-1 is added under the heading "Proceedings by Taxpayers and Third Parties" to read as follows:

§ 301.7432-1 Civil cause of action of failure to release a lien.

(a) *In general.* If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien on property of the taxpayer in accordance with section 6325 of the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The total amount of damages recoverable is the sum of:

(1) The actual, direct economic damages sustained by the taxpayer which, but for the officer's or the employee's knowing or negligent failure to release the lien under section 6325, would not have been sustained; and

(2) Costs of the action.

The amount of actual, direct economic damages that are recoverable is reduced to the extent such damages reasonably could have been mitigated by the plaintiff. An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (f) of this section and has waited the period required under paragraph (e) of this section.

(b) *Finding of satisfaction or unenforceability.* For purposes of this section, a finding under section 6325(a)(1) that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable is treated as made on the earlier of:

(1) The date on which the district director of the district in which the taxpayer currently resides or the district in which the lien was filed finds full satisfaction or legal unenforceability; or

(2) The date on which such district director receives a request for a certificate of release of lien in accordance with § 401.6325-1(f), together with any information which is reasonably necessary for the district director to conclude that the lien has been fully satisfied or is legally unenforceable.

(c) *Actual, direct economic damages*—(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer that would not have been sustained but for an officer's or an employee's failure to release a lien in accordance with section 6325 of the Internal Revenue Code. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

(2) *Litigation costs and administrative costs not recoverable.* Litigation costs and administrative costs described in this paragraph are not recoverable as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (see paragraph (j) of this section) or, solely to the extent described in paragraph (d) of this section, as costs of the action.

(i) *Litigation costs.* For purposes of this paragraph, litigation costs are any costs incurred pursuing litigation for relief from the failure to release a lien, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. Litigation costs include the following:

(A) Court costs;

(B) Expenses of expert witnesses in connection with a court proceeding;

(C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and

(D) Fees paid or incurred for the service of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) *Administrative costs.* For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the failure to release a lien, including costs incurred pursuing an administrative claim for damages under paragraph (f) of this section. The term administrative costs includes:

(A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and

(B) Expenses, costs, and fees described in paragraph (c)(2)(i) of this section incurred in pursuing administrative relief.

(d) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the following costs:

(1) Fees of the clerk and marshall;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

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(4) Fees for exemplification and copies of paper necessarily obtained for use in the case;

(5) Docket fees; and

(6) Compensation of court appointed experts and interpreters.

(e) *No civil action in federal district court prior to filing an administrative claim*—(1) Except as provided in paragraph (e)(2) of this section, no action under paragraph (a) of this section shall be maintained in any federal district court before the earlier of the following dates:

(i) The date a decision is rendered on a claim filed in accordance with paragraph (f) of this section; or

(ii) The date 30 days after the date an administrative claim is filed in accordance with paragraph (f) of this section.

(2) If an administrative claim is filed in accordance with paragraph (f) of this section during the last 30 days of the period of limitations described in paragraph (i) of this section, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the period of limitations, without waiting for 30 days to expire or for a decision to be rendered on the claim.

(f) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for actual, direct economic damages as defined in paragraph (c) of this section shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) in the district in which the taxpayer currently resides or the district in which the notice of federal tax lien was filed.

(2) *Form.* The administrative claim shall include:

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) A copy of the notice of federal tax lien affecting the taxpayer's property, if available;

(iii) A copy of the request for release of lien made in accordance with § 401.6325–1(f) of the Code of Federal Regulations, if applicable;

(iv) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(v) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(vi) The dollar amount of the claim, including any damages that have not yet been incurred but that are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(vii) The signature of the taxpayer or duly authorized representative.

For purposes of this paragraph, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(g) *Notice of failure to release lien.* An administrative claim under paragraph (f) of this section shall be considered a notice of failure to release a lien.

(h) *No action in federal district court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section shall be instituted in federal district court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (f) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(i) *Period of limitations*—(1) *Time of filing.* A civil action under paragraph (a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

(2) *Cause of action accrues.* A cause of action accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(j) *Recovery of costs under section 7430.* Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within 30 days after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (f) of this section, are not recoverable under section 7430.

(k) *Effective date.* This section applies with respect to civil actions under section 7432 filed in federal district court after June 25, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–14911 Filed 6–24–91; 8:45 am]

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26 CFR Part 301

[GL–707–88]

RIN 1545–AM75

Civil Cause of Action for Unauthorized Collection Actions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance relating to the civil cause of action under section 7433 of the Internal Revenue Code of 1986 (the "Code") for certain unauthorized collection actions. The cause of action for unauthorized collection actions was created by section 6241 of the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations define certain key terms in the underlying statute and create an administrative remedy that must be exhausted prior to the filing of a cause of action. The proposed regulations are needed to provide taxpayers with guidance and to create an administrative remedy in connection with this cause of action.

DATES: Written comments and requests for a public hearing must be received by August 9, 1991.

ADDRESSES: Send coments and requests for a public hearing to: Internal Revenue Service P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (GL–707–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202–535–9682 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 7433 of the Internal Revenue Code. The proposed regulations reflect the addition of section 7433 to the Internal Revenue Code by section 6241 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647).

Explanation of Provisions

Section 6241 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647, 102 Stat. 3342) added section 7433 to the Code. Section 7433 gives taxpayers the right to bring an action for damages in federal district court if, in connection with the collection of a federal tax, any officer or employee of the Internal Revenue Service recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code. The taxpayer has a duty to mitigate damages, and the total amount of damages recoverable under section 7433 is the lesser of $100,000, or the sum (i) the actual, direct economic damages sustained as a proximate result of the internal revenue officer's or employee's wrongful conduct, and (ii) costs of the action. No action may be filed in federal district court until the taxpayer exhausts administrative remedies available within the Internal Revenue Service.

The proposed regulations define actual, direct economic damages as actual pecuniary damages sustained by a taxpayer as a proximate results of reckless or intentional actions of an internal revenue officer or employee. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages. Litigation and administrative costs are not recoverable under this section as actual, direct economic damages.

The proposed regulations define costs of the action recoverable as damages under section 7433(b)(2) as: (1) Fees of the clerk and marshall; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters. Costs of the action do not include any costs other than those costs specifically enumerated in the proposed regulations.

Reasonable litigation costs, including attorney's fees (generally limited to $75 per hour) not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7433(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under section 7433.

Administrative costs, including attorney's fees incurred pursuing an administrative claim for damages under section 7433, are not recoverable under section 7430. Section 7430(c)(2) provides that recoverable administrative costs include only those costs incurred on or after the earlier of (1) the date of the receipt by the taxpayer of the notice of a decision by the Internal Revenue Service Office of Appeals, and (2) the date of the notice of deficiency. The legislative history to the Technical and Miscellaneous Revenue Act of 1988 indicates that this limitation is intended to prevent recovery of administrative costs incurred in a collection action. H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 226 (1988).

The proposed regulations provide that an action may not be maintained in federal district court under this section unless the taxpayer first files an administrative claim for damages with the Internal Revenue Service. The claim must be made in writing to the district director (marked for the attention of Chief, Special Procedures Function) of the district in which the taxpayer currently resides. The claim must include: (1) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim; (2) the grounds, in detail, for the claim; (3) a description of the damages incurred by the taxpayer; (4) the dollar amount of the claim, including an estimate of damages that have not yet been incurred, but that are reasonably foreseeable; and (5) the signature of the taxpayer or duly authorized representative. A taxpayer is precluded from maintaining a civil action for an amount greater than the amount (already incurred and estimated) specified in the administrative claim, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

The proposed regulations provide that after an administrative claim has been filed, an action may not be filed in federal district court until the earlier of (1) the time a decision is rendered on the claim or (2) six months from the date the administrative claim is filed. A taxpayer, however, must file an action in federal district court within two years after a cause of action accrues. Thus, if an administrative claim is filed in the last six months before the two-year limitation period expires, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the two-year limitation period. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

For purposes of the recovery of litigation costs under section 7430, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that Internal Revenue Service did not violate section 7433(a).

Effective Date

These proposed regulations would be effective with respect to actions filed after the date final regulations are published in the **Federal Register.**

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted

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to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is proposed to be amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805.

Par. 2. Section 301.7433–1 is added under the heaing "Proceedings by Taxpayers and Third Parties" to read as follows:

§ 301.7433–1 Civil cause of action for certain unauthorized collection actions.

(a) *In general.* If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or an employee of the Internal Revenue Service recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable is the lesser of $100,000, or the sum of:

(1) The actual, direct economic damages sustained as a proximate result of the reckless or intentional actions of the officer or employee; and

(2) Costs of the action.

An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (e) of this section, and has waited for the period required under paragraph (d) of this section.

(b) *Actual, direct economic damages*—(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer as the proximate result of the reckless or intentional actions of an officer or an employee of the Internal Revenue Service. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

(2) *Litigation costs and administrative costs not recoverable.* Litigation costs and administrative costs are not recoverable as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (see paragraph (h) of this section) or, solely to the extent described in paragraph (c) of this section, as costs of the action.

(i) *Litigation costs.* For purposes of this paragraph, litigation costs are any costs incurred pursuing litigation for relief from the action taken by the officer or employee of the Internal Revenue Service, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. The term litigation costs includes the following:

(A) Court costs;

(B) Expenses of expert witnesses in connection with a court proceeding;

(C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and

(D) Fees paid or incurred for the services of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) *Administrative costs.* For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the action taken by an officer or employee of the Internal Revenue Service, including costs incurred pursuing an administrative claim for damages under paragraph (e) of this section. The term administrative costs includes:

(A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and

(B) Expenses, costs, and fees described in paragraph (b)(2)(i) of this section incurred pursuing administrative relief.

(c) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the following costs:

(1) Fees of the clerk and marshall;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of paper necessarily obtained for use in the case;

(5) Docket fees; and

(6) Compensation of court appointed experts and interpreters.

(d) *No civil action in federal district court prior to filing an administrative claim*—(1) Except as provided in paragraph (d)(2) of this section, no action under paragraph (a) of this section shall be maintained in any federal district court before the earlier of the following dates:

(i) The date the decision is rendered on a claim filed in accordance with paragraph (e) of this section; or

(ii) The date six months after the date an administrative claim is filed in accordance with paragraph (e) of this section.

(2) If an administrative claim is filed in accordance with paragraph (e) of this section during the last six months of the period of limitations described in paragraph (g) of this section, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $100,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the taxpayer currently resides.

(2) *Form.* The administrative claim shall include:

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (including copies of any available substantiating documentation or evidence); and

(v) The signature of the taxpayer or duly authorized representative.

For purposes of this paragraph, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(f) *No action in federal district court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section shall be instituted in federal district court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) *Period of limitations*—(1) *Time for filing.* A civil action under paragraph (a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of costs under section 7430.* Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the ground that the International Revenue Service did not violate section 7433(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the claim on the grounds that the Internal Revenue Service did not violate section 7432(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (f) of this section, are not recoverable under section 7430.

(i) *Effective date.* This section applies with respect to civil action under section 7433 filed after June 25, 1991.

Fred T. Goldberg Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–14912 Filed 6–24–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 223

[DoD Directive 5210.bb]

Department of Defense Unclassified Controlled Nuclear Information (DoD UCNI)

AGENCY: Office of the Secretary. DoD.

ACTION: Proposed rule.

SUMMARY: This part implements Public Law 100–180, section 123, pertaining to the protection and prevention of the unauthorized dissemination of Department of Defense Unclassified Controlled Nuclear Information (DoD UCNI) to distinguish it from a similar Department of Energy program. This part prescribes DoD policy for the identification and control of DoD UCNI and outlines procedures for document handling and marking, dissemination and transmission methods, safeguarding requirements, and criteria for withholding DoD UCNI from public release under the provisions of the Freedom of Information Act. This part also contains a topical guide describing types of information to be considered for control as DoD UCNI.

DATES: Written comments must be received by July 25, 1991.

ADDRESSES: Forward comments to the Office of the Deputy Under Secretary of Defense for Security Policy, room 3C285, the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Colonel R.E. Pike, 703–697–5568.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 223

Classified information; Security measures.

Accordingly, title 32, chapter I, subchapter M is proposed to be amended to add part 223 to read as follows:

PART 223—DEPARTMENT OF DEFENSE UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (DOD UCNI)

Sec.

223.1 Purpose.
223.2 Applicability and scope.
223.3 Definitions.
223.4 Policy.
223.5 Responsibilities.
223.6 Procedures.
223.7 Information requirements.
Appendix A to part 223—Procedures for Identifying and Controlling DoD UCNI
Appendix B to part 223—Guidelines for the Determination of DoD UCNI

Authority: 10 U.S.C. 128 and 5 U.S.C. 552(b)(3).

§ 223.1 Purpose.

This part implements 10 U.S.C. 128 by establishing policy, assigning responsibilities, and prescribing procedures for identifying, controlling, and limiting the dissemination of unclassified information on the physical protection of DoD special nuclear material (SNM), vital equipment, and facilities. That information shall be referred to as "the Department of Defense Unclassified Controlled Nuclear Information (DoD UCNI)," to distinguish it from a similar Department of Energy (DoE) program.

§ 223.2 Applicability and scope.

This part: (a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

(b) Implements 10 U.S.C. 128, which is the statutory basis for controlling the DoD UCNI in the Department of Defense. Title 10, United Staets Code, Section 128 also constitutes the

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authority for invoking 32 CFR part 286 to prohibit mandatory disclosure to DoD UCNI under the "Freedom of Information Act (FOIA)" in 5 U.S.C. 552.

(c) Supplements the security classification guidance contained in CG-W-5 [1] and CG-SS-1 [2] and DoD Instruction 5210.67 [3] by establishing procedures for identifying, controlling, and limiting the dissemination of unclassified information on the physical protection of DoD SNM.

(d) Applies to all SNM, regardless of form, in reactor cores or to other items under the direct control of the DoD Components.

(e) Applies equally to DoD UCNI under DoD control, except the statute applicable to DoE UCNI (42 U.S.C. 2011 *et seq.*) must be used with the concurrence of the DoE as the basis for invoking the FOIA (section 552 of 10 U.S.C.).

§ 223.3 Definitions.

(a) *Atomic energy defense programs.* Activities, equipment, and facilities of the Department of Defense used or engaged in support of the following:

(1) Development, production, testing, sampling, maintenance, repair, modification, assembly, utilization, transportation, or retirement of nuclear weapons or nuclear weapon components.

(2) Production, utilization, or transportation of DoD SNM for military applications.

(3) Safeguarding of activities, equipment, or facilities that support the functions in definitions (a) (1) and (2) of this section, including the protection of nuclear weapons, nuclear weapon components, or DoD SNM for military applications at a fixed facility or in transit.

(b) *Safeguards.* An integrated system of physical protection, material accounting, and material control measures designed to deter, prevent, detect, and respond to unauthorized possession, use, or sabotage of DoD SNM. Safeguards include the timely indication of possible diversion and credible assurance that no diversion has occurred.

(c) *Sensitive facility.* A DoD SNM facility that performs a sensitive function (see definition (d) of this section).

(d) *Sensitive function.* A function in support of atomic energy defense programs whose disruption could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security (see definition (a) of this section).

(e) *Special nuclear material (SNM).* Plutonium, uranium enriched in the isotope-233 or in the isotope-235, except source material or any material artificially enriched by any of the foregoing.

(f) *Vital equipment.* Equipment, systems, or components whose failure or destruction would cause an impact on safeguarding DoD SNM resulting in an unacceptable interruption to a national security program or an unacceptable impact on the health and safety of the public.

§ 223.4 Policy.

It is DoD policy:

(a) To prohibit the unauthorized dissemination of unclassified information on security measures for the physical protection of DoD SNM, vital equipment, and facilities.

(b) That the decision to protect unclassified information as DoD UCNI shall be based on a determination that its disclosure or dissemination might reasonably result in compromising security measures for protecting DoD SNM and that such compromise could reasonably be expected to have an adverse effect on, or risk to, the health and safety of the public or the common defense and security by significantly increasing the probability of illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, vital equipment, and facilities.

(c) That DoD personnel shall not use that authority to withhold information from the appropriate committees of the Congress.

§ 223.5 Responsibilities.

(a) The Under Secretary of Defense for Policy shall:

(1) Administer the DoD program for controlling DoD UCNI.

(2) Coordinate DoD compliance with the DoE program for controlling DoE UCNI.

(3) Prepare and maintain the reports required by 10 U.S.C. 128. Those reports shall have the following information:

(i) Identification of the type of information to be controlled as DoD UCNI. It is not necessary to report each document or numbers of documents.

(ii) Justification for identifying the type of information to be controlled as DoD UCNI.

(iii) Certification that only the minimal information necessary to protect the health and safety of the public or the common defense and security is being controlled as DoD UCNI.

(b) The Assistant Secretary of Defense (Public Affairs) shall provide guidance to the Under Secretary of Defense for Policy (USD(P)), other elements of the OSD, and the Heads of the DoD Components on the FOIA (5 U.S.C. 552), as implemented in 32 CFR part 286, as it applies to the DoD UCNI Program.

(c) The Heads of the DoD Components shall:

(1) Implement this part in their DoD Components.

(2) Advise the USD(P) of the following, when information not in the guidelines in appendix B to this part 223, is determined to be DoD UCNI:

(i) Identification of the type of information to be controlled as DoD UCNI. It is not necessary to report each document or numbers of documents.

(ii) Justification for identifying the type of information as DoD UCNI, based on the guidelines in Appendix B to this part 223 and prudent application of the adverse effects test.

§ 223.6 Procedures.

Appendix A to this part 223 outlines the procedures for controlling DoD UCNI. Appendix B to this part 223 provides general and topical guidelines for identifying information that may qualify for protection as DoD UCNI. The procedures and guidelines in appendices A and B to this part 223 complement the DoD Component programs to protect other DoD-sensitive unclassified information and may be used with them.

§ 223.7 Information requirements.

(a) Section 128 of 10 U.S.C. requires that the Secretary of Defense prepare on a quarterly basis a report to be made available on the request of any interested person. The report does not require the collection and collation of detailed statistical data or identification of specific documents protected under the statute. The intent of the report is to identify types or categories of information being protected under the statute and to provide the justification for protecting the information. Newly identified types of information determined to be DoD UCNI by the Heads of the DoD Components shall be submitted to the USD(P) for review and inclusion in the DoD UCNI guidelines in appendix B to this part 223.

[1] Controlled document. Not releasable to the public.

[2] Requests may be forwarded to U.S. Department of Energy (Forrestal Building), 1000 Independence Avenue SW., Attention: Distribution Office of DOE Publications, Washington, DC 20585.

[3] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(b) The report is exempt from licensing in accordance with DoD 7750.5-M, [4] paragraph E.4.e.

Appendix A to Part 223—Procedures for Identifying and Controlling DoD UCNI

A. General

1. These procedures for identifying and controlling DoD UCNI are provided as guidance for the Heads of the DoD Components to implement the Secretary of Defense's authority for controlling and limiting the disclosure and dissemination of unclassified information about the physical protection of DoD SNM, vital equipment, or facilities.

2. The decision to protect unclassified information as DoD UCNI shall be based on a determination that its disclosure or dissemination could reasonably result in compromising security measures for protecting DoD SNM and that such compromise could reasonably be expected to have an adverse effect on, or risk to, the health and safety of the public or the common defense and security by significantly increasing the probability of illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities.

3. DoD UCNI shall be identified, controlled, marked, transmitted, and safeguarded in the DoD Components, the North Atlantic Treaty Organization (NATO), and among DoD contractors, consultants, and grantees authorized to conduct official business for the Department of Defense. Contracts requiring the preparation of unclassified information that could be DoD UCNI shall have the requirements for identifying and controlling the DoD UCNI.

4. DoE G5-2 [1] and DoE Orders 5635.4 [2] and 5635.5 [3] provide background on implementation of the UCNI Program in the DoE. The DoD Components maintaining custody of DoE UCNI should refer to those documents for its identification and control.

B. General Criteria

1. The Secretary of Defense's authority for prohibiting the unauthorized disclosure and dissemination of DoD UCNI may be exercised by the Heads of the DoD Components and by the officials to whom such authority is specifically delegated by the Heads of the DoD Components. The disclosure and dissemination of DoD UCNI may be prohibited, if the disclosure or dissemination could reasonably be expected to have a significant adverse impact on, or risk to, the health and safety of the public or the common defense and security by significantly increasing the probability of illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities.

2. DoD personnel, in making a determination to protect unclassified information as DoD UCNI, shall consider the probability of an illegal production, theft, diversion, or sabotage if the information proposed for protection were made available for public disclosure and dissemination. The determination to protect specific documents or information is not related to the ability of DoD UCNI to be obtained by other sources. The degree to which, if any, that information has been publicly disseminated shall not be considered before determining that a document or information is DoD UCNI.

3. For determining the control of DoD UCNI, the cognizant official should consider how the unauthorized disclosure or dissemination of such information could assist a potential adversary in the following:

a. Selecting a target for an act of theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities (e.g., relative importance of a facility or the location, form, and quantity of DoD SNM). Information that can be obtained by observation from public areas outside controlled locations should not be considered as DoD UCNI.

b. Planning or committing an act of theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities (e.g., design of security systems; building plans; methods and procedures for transfer, accountability, and handling of DoD SNM; or security plans, procedures, and capabilities).

c. Measuring the success of an act of theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities (e.g., actual or hypothetical consequences of the sabotage of specific vital equipment or facilities).

d. Illegally producing a nuclear explosive device (e.g., unclassified nuclear weapon design information useful in designing a primitive nuclear device; location of unique DoD SNM needed to fabricate such a device; or location of a nuclear weapon).

e. Dispersing DoD SNM in the environment (e.g., location, form, and quantity of DoD SNM).

C. Identifying DoD UCNI

1. To be considered for protection as DoD UCNI, the information must:

a. Be unclassified.

b. Pertain to security measures, including plans, procedures, and equipment, for the physical protection of DoD SNM, vital equipment, or facilities.

c. Meet the adverse effects test; i.e., that the disclosure or dissemination of the information could result in compromising security measures for protecting DoD SNM and that such compromise could reasonably be expected to have an adverse effect on, or risk to, the health and safety of the public or the common defense and security by significantly increasing the probability of illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, vital equipment, or facilities.

2. Information, in the categories in section C. of Appendix B to this part 223, about DoD SNM should be considered for protection as DoD UCNI.

3. Material originated before the effective date of these procedures, which is found in the normal course of business to have DoD UCNI, shall be protected as DoD UCNI. There is no requirement to conduct detailed file searches to retroactively identify and control DoD UCNI. As existing documents or materials are withdrawn from file, they should be reviewed to determine if they meet the criteria for protection as DoD UCNI and marked and controlled, accordingly.

D. Markings

1. An unclassified document with DoD UCNI shall be marked "DoD Unclassified Controlled Nuclear Information" at the bottom on the outside of the front cover, if any, and on the outside of the back cover, if any.

2. In an unclassified document, an individual page that has DoD UCNI shall be marked "DoD Unclassified Controlled Information" at the bottom of the page.

3. In a classified document, an individual page that has both DoD UCNI and classified information shall be marked at the top and bottom of the page with the highest security classification of information appearing on that page. In marking sections, parts, paragraphs, or similar portions, the parenthetical term "(DoD UCNI)" shall be used for those portions with DoD UCNI. In a classified document, an individual page that has DoD UCNI, but no classified information, shall be marked "DoD Unclassified Controlled Information" at the bottom of the page. The DoD UCNI marking may be combined with other markings, if all relevant statutory and regulatory citations are included.

4. Other material (e.g., photographs, films, tapes, or slides) shall be marked "DoD Unclassified Controlled Nuclear Information" to ensure that a recipient or viewer is aware of the status of the information.

E. Dissemination and Transmission

1. DoD UCNI may be disseminated in the DoD Components, the NATO, and among the DoD contractors, consultants, and grantees on a need-to-know basis to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means to preclude unauthorized disclosure or dissemination. Contracts that shall require access to DoD UCNI shall require compliance with this part and the DoD Component regulations and have the requirements for the marking, handling, and safeguarding of DoD UCNI.

2. DoD holders of DoD UCNI are authorized to convey such information to officials in other Departments or Agencies on a need-to-know basis to fulfill a Government function. Transmittal documents shall call attention to the presence of DoD UCNI attachments using an appropriate statement in the text, or marking at the bottom of the transmittal document, that "The attached document contains DoD Unclassified Controlled Nuclear Information (DoD UCNI)." Similarly, documents transmitted shall be marked, as prescribed in section D of this appendix.

3. DoD UCNI transmitted outside the Department of Defense requires application

[4] See footnote 2 to § 223.1(c).
[1] See footnote 2 to § 223.1(c).
[2] See footnote 2 to § 223.1(c).
[3] See footnote 2 to § 223.1(c).

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of an expanded marking to explain the significance of the DoD UCNI marking. That may be accomplished by typing or stamping the following statement on the document before transfer:

DEPARTMENT OF DEFENSE
UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION EXEMPT FROM MANDATORY DISCLOSURE

(5 U.S.C. 552(b)(3), as authorized by 10 U.S.C. 128)

4. Documents with DoD UCNI shall be transported so to preclude unauthorized disclosure. When not commingled with classified information, DoD UCNI may be sent by first-class mail in a single, opaque envelope or wrapping.

5. DoD UCNI may only be discussed or transmitted over an unprotected telephone or telecommunications circuit (to include facsimile transmissions) in an emergency. More secure means of communications shall be used, when practical.

6. Each part of electronically transmitted messages with DoD UCNI shall be marked appropriately. Unclassified messages with DoD UCNI shall have the abbreviation "DoD UCNI" before the beginning of the text.

7. DoD UCNI may be processed, stored, or produced on stand-alone personal computers, or shared-logic word processing systems, if protection from unauthorized disclosure or dissemination, in accordance with the procedures in section F of this Appendix 2 can be ensured.

8. A document marked as having DoD UCNI may be reproduced minimally without permission of the originator and consistent with the need to carry out official business.

F. Safeguarding DoD UCNI

1. During normal working hours, documents determined to have DoD UCNI shall be placed in an out-of-sight location, or otherwise controlled, if the work area is accessible to unescorted personnel.

2. At the close of business, DoD UCNI material shall be stored so to preclude disclosure. Storage of such material with other unclassified documents in unlocked receptacles; i.e., file cabinets, desks, or bookcases, is adequate, when normal Government or Government-contractor internal building security is provided during nonduty hours. When such internal building security is not provided, locked rooms or buildings normally provide adequate after-hours protection. If such protection is not considered adequate, DoD UCNI shall be stored in locked receptacles; i.e., file cabinets, desks, or bookcases.

3. Nonrecord copies of DoD UCNI materials must be destroyed by tearing each copy into pieces to reasonably preclude reconstruction and placing the pieces in regular trash containers. If the sensitivity or volume of the information justifies it, DoD UCNI material may be destroyed in the same manner as classified material rather than by tearing. Record copies of DoD UCNI documents shall be disposed of, in accordance with the DoD Components' record management regulations. DoD UCNI on magnetic storage media shall be disposed of by overwriting to preclude its reconstruction.

4. The unauthorized disclosure of DoD UCNI material does not constitute disclosure of DoD information that is classified for security purposes. Such disclosure justifies investigative and administrative actions to determine cause, assess impact, and fix responsibility. The DoD Component that originated the DoD UCNI information shall be informed of its unauthorized disclosure and the outcome of the investigative and administrative actions.

G. Requests for Public Release of DoD UCNI

Title 32, Code of Federal Regulations, part 286 applies. Information that qualifies as DoD UCNI, under 10 U.S.C. 128, is exempt from mandatory disclosure under 5 U.S.C. 552. Consequently, requests for the public release of DoD UCNI shall be denied under section 552(b)(3), citing 10 U.S.C. 128 as authority.

Appendix B to Part 223—Guidelines for the Determination of DoD UCNI

A. Use Of Determination Of DoD UCNI Guidelines

1. These guidelines for determining DoD UCNI are the bases for determining what unclassified information about the physical protection of DoD SNM, vital equipment, or facilities in a given technical or programmatic subject area is DoD UCNI.

2. The decision to protect unclassified information as DoD UCNI shall be based upon a determination that its disclosure or dissemination might reasonably result in compromising security measure for protecting DoD SNM and that such compromise might reasonably be expected to have an adverse effect on, or risk to, the health and safety of the public or the common defense and security by significantly increasing the probability of illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, vital equipment, and facilities.

B. General

1. The policy for protecting unclassified information about the physical protection of DoD SNM, vital equipment, or facilities is to protect the public's interest by controlling certain unclassified Government information so to prevent the adverse effects described in §223.4 of this part and in appendix A to this part, without unduly restricting public availability of information that would not result in those adverse effects.

2. In controlling DoD SNM infomation, only the minimum restrictions needed to protect the health and safety of the public or the common defense and security shall be applied to prohibit the disclosure and dissemination of DoD UCNI.

3. Any material that has been, or is, widely and irretrievably disseminated into the public domain and whose dissemination was not, or is not, under Government control is exempt from control under these guidelines. However, the fact that information is in the public domain is not a sufficient basis for determining that similar or updated Government-owned and-controlled information in another document or material is not, or is no longer, DoD UCNI; case-by-case determinations are required.

C. Topical Guidance

The following elements of information shall be considered by the DoD Components during the preparation of unclassified information about the physical protection of DoD SNM to determine if it qualifies for control as DoD UCNI

1. Vulnerability Assessments

a. General vulnerabilities that could be associated with specific DoD SNM, vital equipment, or facility locations.

b. The fact that DoD SNM facility security-related projects or upgrades are planned or in progress.

c. Identification and description of security system components intended to mitigate the consequences of an accident or act of sabotage at a DoD SNM facility.

2. Material Control and Accountability

a. Total quantity or categories of DoD SNM at a facility.

b. Control and accountability plans or procedures.

c. Receipts that, cumulatively, would reval quantities and categories of DoD SNM of potential interest to an adversary.

d. Measured discards, decay losses, or losses due to fission and transmutation for a reporting period.

e. Frequency and schedule of DoD SNM inventories.

3. Facility Description

a. Maps, conceputual design, and construction drawings of a DoD SNM facility showing construction characteristics of building and associated electrical systems, barriers, and back-up power systems not observable from a public area.

b. Maps, plans, photographs, or drawings of man-made or natural features in a DoD SNM facility not observable from a public area; i.e., tunnels, storm or waste sewers, water intake and discharge conduits, or other features having the potential for concealing surreptitious movement.

4. Intrusion Detection and Security Alarm Systems

a. Information on the layout or design of security and alarm systems at a specific DoD SNM facility, if the information is not observable from a public area.

b. The fact that a particular system made or model has been installed at a specific DoD SNM facility, if the information is not observable from a public area.

c. Performance characteristics of installed systems.

5. Keys, Locks Combinations, and Tamper-Indicating Devices

a. Types and models of keys, locks, and combinations of locks used in DoD SNM facilities and during shipment.

b. Method of application of tamper-indicating devices.

c. Vulnerability information available from unclassified vendor specifications.

6. Threat Response Capability and Procedures

a. Information about arrangements with local, State, and Federal law enforcement

Agencies of potential interest to an adversary.

b. Information in "nonhostile" contingency plans of potential value to an adversary to defeat a security measure; i.e. fire, safety, nuclear accident, radiological release, or other administrative plans.

c. Required response time of security forces.

7. Physical Security Evaluations

a. Method of evaluating physical security measures not observable from public areas.

b. Procedures for inspecting and testing communications and security systems.

8. In-Transit Security

a. Fact that a shipment is going to take place.

b. Specific means of protecting shipments.

c. Number and size of packages.

d. Mobile operating and communications procedures that could be exploited by an adversary.

e. Information on mode, routing, protection, communications, and operations that must be shared with law enforcement or other civil agencies, but not visible to the public.

f. Description and specifications of transport vehicle compartments or security systems not visible to the public.

9. Information on Nuclear Weapon Stockpile and Storage Requirements, Nuclear Weapon Destruction and Disablement Systems, and Nuclear Weapon Physical Characteristics.

Refer to CG-W-5 for guidence about the physical protection of information on nuclear weapon stockpile and storage requirments, nuclear weapon destruction and disablement systems, and nuclear weapon physical characteristics that may, under certain circumstances, be unclassified. Such information meeting the adverse effects test shall be protected as DoD UCNI.

Dated: June 19, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-15056 Filed 6-24-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF95

Adjudication; Pension, Compensation, and Dependency and Indemnity Compensation Renouncement

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations to establish a specific effective date of discontinuance when compensation, pension, or dependency and indemnity compensation benefits are renounced. This change is necessary because variations in workload between regional offices may cause some claims to be processed less expeditiously than others, resulting, under current rules referring to termination as of date of last payment, in different termination dates. The intended effect of this amendment is to establish a uniform termination date when monetary benefits are renounced.

DATES: Comments must be received on or before July 25, 1991. This change is proposed to be effective thirty days after the date of publication of the final rule. Comments will be available for inspection until August 4, 1991.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays), until August 4, 1991.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Title 38, United States Code, section 3106 requires that, upon the filing of a written renouncement, payment of monetary benefits shall be terminated. Currently, 38 CFR 3.500(q) provides that the effective date of discontinuance when benefits are renounced will be the date of last payment. Because of differences in workload among regional offices, as well as fluctuations within the same office, some renouncements might be processed less expeditiously than others, and claims received by VA on the same date could result in benefits being terminated on different dates. A later effective date might not be advantageous to some beneficiaries who, for whatever reason, wish to terminate VA benefits without delay. We proposed to establish the date for the discontinuance of monetary benefits as the last day of the month in which the renouncement is received by amending 38 CFR 3.500(q).

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: April 11, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3, subpart A is proposed to be amended as set forth below.

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

§ 3.500 [Amended]

2. In § 3.500(q), remove the words "Date of last payment." and add, in their place, the words "Last day of the month in which the renouncement is received."

[FR Doc. 91-15022 Filed 6-24-91; 8:45 am]

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POSTAL RATE COMMISSION

39 CFR Part 3001

Rules of Practice and Procedure

[Docket No. RM91-1]

AGENCY: Postal Rate Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking solicits suggestions from interested persons for improvements in the Commission's rules of practice. These suggestions could lead to a further notice containing specific proposed rule changes to increase the fairness, comprehensiveness, and expedition of our proceedings.

DATES: Comments responding to this advance notice must be submitted on or before August 26, 1991.

ADDRESSES: Comments and correspondence should be sent to Charles L. Clapp, Secretary of the Commission, suite 300, 1333 H Street NW., Washington, DC 20268-0001 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, suite 300, 1333 H Street NW., Washington, DC 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION:

Periodically the Commission conducts a general review of its rules of practice to determine whether, where, and how the procedures by which we carry out our statutory responsibilities could be improved. Since this was last undertaken, changes to particular rules have been made as the need became apparent.

We are issuing this advance notice of proposed rulemaking in the hope of ascertaining from all interested persons what areas appear to them to remain in need of attention, after a substantial period of experience with the current configuration of the rules. Our inquiry, as is appropriate in procedural rulemaking, is not to elicit suggestions for possible change in the statutory process provided for by 39 U.S.C. 3624 et seq., but to identify opportunities to improve the way that process is carried out in actual practice.

In preparing this advance notice, however, we have not restricted our view to the phases of the process that take place in the hearing room. Other aspects of the process may offer the chance for improvements contributing, even if less directly, to the fair, economical, and expeditious decision of chapter 36 cases.

Without wishing to limit the scope of contributions, we would find it particularly helpful to have comments focused on these aspects of our process:

1. Information the Postal Service files periodically with the Commission (see 39 CFR part 3001, subpart G).
2. The process of public notice and provision for intervention at the outset of a ch. 36 case (see 39 CFR 3001.17-3001.20b).
3. The forms of public participation (i.e., intervention, limited participation, the "commenter rule"—see 39 CFR 3001.19-3001.20b).
4. Prehearing conferences (see 39 CFR 3001.24).
5. Discovery and incorporation of discovery responses as written cross-examination (see 39 CFR 3001.25-3001.28, 3001.31a, 3001.33).
6. Oral cross examination (see 39 CFR 3001.30).
7. Briefing and oral argument (see 39 CFR 3001.34, 3001.36-3001.37).
8. Motion practice (see 39 CFR 3001.21-3001.22).

We would welcome comments identifying aspects of the process that are particularly valuable to participants; those that are of less value; those that, while valuable, impose particularly substantial time and expense burdens; or those that are neither especially valuable nor free from substantial burdens.

Other areas in which comments would be especially helpful include:

1. Would participants be aided by an arrangement under which the Postal Service provided advance notice and some additional information before it actually made a 39 U.S.C. ch. 36 filing? If so, could the process of familiarization with the issues begin before the statutory time (in a case subject to 39 U.S.C. 3622) began to run—thereby allowing the Commission to begin the actual hearing process earlier? What would be the countervailing costs of such an arrangement? What sorts of additional "pre-filing" information would be useful? readily available? not unduly prejudicial to the Service's ability to litigate its case? [1]

2. Should the Commission use substantive rulemaking to avoid relitigation of technical issues already extensively explored in litigated proceedings? Would such a shift in technique produce net benefits by reducing the time and expense consumed by individual cases? Net detriments by decreasing the flexibility of the parties to suggest and the Commission to adopt novel approaches and techniques?

Following consideration of the comments solicited herein, the Commission will determine what further rulemaking proceedings are warranted and will give notice of its determination in the **Federal Register**.

Issued by the Commission on June 14, 1991.

Charles L. Clapp,

Secretary.

[FR Doc. 91-14686 Filed 6-24-91; 8:45 am]

BILLING CODE 7710-FW-M

[1] This set of questions is cast in terms of Postal Service filings alone because only the Postal Service may initiate a rate case or a classification case that involves changing rates [39 U.S.C. 3622(a)]; and only these cases are subject to a statutory time limit.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5460 and 5470

[WO-230-02-6310-24 1A]

RIN 1004-AB56

Sales Administration: Contract Modification—Extension—Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This rule would amend provisions of existing regulations in 43 CFR Part 5470—Contract Administration—Modification—Assignment. It is necessary to amend the existing regulations to provide more flexibility in granting timber sale contract extensions when unusual circumstances beyond the control of a purchaser prevent completion of the contract by the expiration date. The proposed rule would provide the contracting officer authority to extend the time for cutting and removal on timber sale contracts without reappraisal in some specific situations.

DATES: Comments must be received on or before July 5, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653-6864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on timber sale contract extensions are not flexible enough to deal with certain situations. The average length of timber sale contracts has decreased and the average size of timber sales has increased. Also, there any many seasonal restrictions put into timber sale contracts that tend to limit the length of operating seasons. These factors have caused some problems with our existing extension policy, and the industry has asked the Bureau of Land Management (BLM) to re-examine the requirement for reappraisal of timber sale contracts before granting an extension.

The BLM published a proposed rule on July 3, 1990 (55 FR 27477). Since the proposed rule was published, the northern spotted owl has been listed under the Endangered Species Act. This listing has made it necessary for the BLM to stop or delay operations on many timber sale contracts that had been executed while conferences on the sales were held with the Fish and Wildlife Service (FWS) to determine the impact these sales might have on the spotted owl. These delays will in some cases make it impossible for the purchaser to complete cutting and removal in the time specified in the timber sale contract. Under the current regulations, the BLM cannot extend the time for cutting and removal of these contracts without reappraisal. There has been a rapidly rising market for stumpage in the last two years. Therefore, reappraisal of these timber sale contracts would cause the price for the timber to increase significantly. In effect, the purchaser would be penalized for not completing the contracts on time when he was prevented from doing so by the Government. This is not a fair way to deal with our timber sale purchasers. To pursue such a course would likely result in much litigation between the BLM and timber sale purchasers.

For the reasons stated above, and because the proposed rule did not contain a redesignation found to be necessary, the BLM is issuing a reproposed rule at this time in order to allow the public to comment on the necessary changes from the original proposed rule. We are limiting the comment period to 10 days because some timber contracts are scheduled to expire in early July, 1991, and performance has been impossible through no fault of these purchasers. Comments are requested on the changes made from the proposed rule to determine whether this proposed rule needs to be amended before final promulgation.

Two letters containing a number of comments were received on the proposed rule, one from an industry association and one from a BLM field office. Both letters supported the proposed rule and favored expanding the scope of the rule to cover some additional situations.

One comment suggested changing the terminology to deal with adjustment of the contract termination date rather than attempting to provide authority to keep a contract in force for up to 30 days beyond the termination date. The BLM timber sale contracts do not have a "termination date." The contract has a date upon which rights to cut and remove timber expire. A contract is not terminated until all the requirements of the contract have been fulfilled, including cutting, removal, and site preparation. This comment is not consistent with BLM procedures and was not adopted for inclusion in the reproposed rule.

One comment suggested that the provision for a 30-day window for adjustment should include some standard for measuring or earning a postponement of the deadline for cutting and removal so that a BLM field representative would not have to "play God" in deciding if the contract holder does or does not qualify for an extension. The contracting officer (this title has been changed from "authorized officer" referred to in the proposed rule in order to conform to the contract form employed by the BLM) will follow a rule of reasonableness and consider the amount of time lost for any valid reason, both in making a decision of whether to grant an extension, and in determining the length of such extension. This is a part of the normal decisionmaking process. It is not necessary to spell out in the regulations each possible factor that might justify an extension or to include that amount of detail in the regulations. The comment was not adopted.

Two comments were received that suggested that the rule be expanded to cover delays in operations of the contract due to such things as: court actions delaying the operations of the sale, unusual natural/catastrophic events either on BLM land or other forest land, the loss of a manufacturing facility due to fire or other unanticipated causes, loss of access to the sale, unanticipated developments involving threatened or endangered species listings, archaeological finds, and so forth. The other comment suggested that the rule be expanded to cover delays in operation under the contract due to consultation with the FWS for timber sale contracts in spotted owl habitat, additional contract requirements incorporated in contract modifications requested by the Government, reviews for cultural resource values, or court injunctions obtained by persons not party to the contract. These comments have merit and have been partially adopted for inclusion in the reproposed rule. Delays caused by government agency intervention, whether State or Federal, and by court injunctions brought by third parties, would justify extension without reappraisal under the new proposed rule, but delays occasioned by causes beyond the purchaser's control, and also beyond the control of the United States, would not. Such causes would be considered risks of doing business.

One comment suggested language to clarify proposed § 5473.1(a) and (b). This comment has merit. However, in considering amendatory language, it was determined that § 5463.2 Extension of time., which is closely related to § 5473.1(b) of the original proposed rule, was improperly located in part 5463 on Expiration of Time for Cutting and Removal. In this proposed rule, therefore, this section has been relocated in part 5470 and adapted to address the concerns expressed in the original proposed rule and in the comment.

The proposed rule published today incorporates the changes suggested in and adopted from the comments received on the original proposed rule, and revisions to make the regulations more clear. It would provide that an extension may be granted for time lost as a result of: (1) Additional requirements incorporated in contract modifications requested by the Government; (2) delays necessitated by the requirements for consultation with the FWS under the Endangered Species Act; (3) reviews for cultural resource values; (4) court injunctions obtained by parties outside the contract; or (5) fire closures imposed by State agencies. The extensions would provide additional time, during the operating season, equal to time lost as a result of these reasons. The extensions referred to above would be granted without reappraisal.

The rule also would provide that short extensions of up to 30 days of operating time may be granted without reappraisal, if the reason for delay in cutting or removal was a cause beyond the control of the purchaser and was without his fault or negligence. The rationale for this provision is that if the contract can be finished in this short

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period of time the purchaser has shown substantial compliance and will be allowed the short extension to complete the contract without penalty.

The principal author of this proposed rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule will not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR

Part 5460

Forests and forest products, Government contracts, Public lands.

Part 5470

Forests and forest products, Government contracts, Public lands.

Under the authorities cited below, parts 5460 and 5470 of group 5000, subchapter E, chapter II of title 43 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 5460—SALES ADMINISTRATION—[AMENDED]

1. The authority citation for part 5460 is revised to read:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e, 50 U.S.C. 601 *et seq.*

§ 5463.1 [Removed]

2. Section 5463.1 is amended by removing the phrase "§§ 5463.2 and 5473.1" at the end of the section and replacing it with the term "Subpart 5478".

§ 5463.2 [Removed]

3. Section 5463.2 is removed.

PART 5470—CONTRACT MODIFICATION—EXTENSION ASSIGNMENT

4. The authority citation for part 5470 continues to read:

Authority: Sec. 5, Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 30 U.S.C. 601 et seq.; 43 U.S.C. 1181e, unless otherwise noted.

5. Section 5473.1 is revised to read as follows:

§ 5473.1 Application.

In order to be considered, written requests for extension shall be delivered to the appropriate BLM office prior to the expiration of the time for cutting and removal.

6. Section 5473.4 is revised to read as follows:

§ 5473.4 Approval of request.

(a) If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence, the contracting officer may grant an extension of time, upon written request of the purchaser. Such extension will not to exceed one year, and will require an appraisal, if the delay was not imposed by the United States or any State government agency under paragraph (c) of this section. Market fluctuations are not cause for consideration of contract extensions. Additional extensions may be granted upon written request of the purchaser.

(b) The contracting officer may grant an extension of time without reappraisal, not to exceed 30 days of operating time, if the conditions of paragraph (a) of this section are met. No additional extensions may be granted without reappraisal.

(d) On a showing satisfactory to the contracting officer that a good faith effort was made to fulfill the contract prior to any delaying event listed in this paragraph, the contracting officer may grant, without reappraisal, an extension of time not to exceed that necessary to provide an additional amount of operating time equal to operating time lost as a result of:

(1) Additional contract requirements incorporated in contract modifications requested by the Government;

(2) Delays necessitated by the requirements for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act;

(3) Reviews for cultural resources values;

(4) Court injunctions obtained by parties outside the contract; or

(5) Closure of operations by State fire protection agencies due to fire danger.

(d) For purposes of this provision, "operating time" means a period of time during the operating season, and "operating season" means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

(e) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest as salvage from Federal lands timber that has been damaged by fire or other natural or man-made disaster. The duration of the extension shall not exceed the time necessary to meet the salvage objectives. The State Director may also waive reappraisal for such extension.

8. Section 5473.4-1 is amended by revising paragraph (a) to read as follows:

§ 5473.4-1 Reappraisal.

(a) If an extension is granted under § 5473.4(a), reappraisal by the contracting officer of the material sold will be in accordance with this section.

* * * * *

Dated: February 5, 1991.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR DOC. 91-15184 Filed 6-21-91; 11:17 am]

BILLING CODE 4310-84-M

Notices

Federal Register
Vol. 56, No. 122
Tuesday, June 25, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Nutrition Guidance for Child Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of public comment.

SUMMARY: The U.S. Department of Agriculture announces the request for public comment on the publication, Nutrition Guidance for Child Nutrition Programs.

DATES: Written comments on the Draft Guidance must be postmarked no later than August 9, 1991.

ADDRESSES: Written comments on the Draft Guidance should be sent to: Cynthia Ford, Nutrition and Technical Services Division USDA, FNS, 3101 Park Center Drive, room 608, Alexandria, Virginia 22302, (703) 756–3556.

FOR FURTHER INFORMATION CONTACT: (1) For a copy of the Draft Guidance: Write to Lorie Conneen (USDA) at 3101 Park Center Drive, room 608, Alexandria, Va. 22302 or phone (703) 756–3556. (2) For other information: Cynthia Ford (USDA) at (703) 756–3556 or Rachel Ballard-Barbash (DHHS) at (202) 472–5370.

SUPPLEMENTARY INFORMATION: The Child Nutrition and WIC Reauthorization Act of 1989 requires the Secretary of Agriculture and the Secretary of Health and Human Services to jointly develop a publication to be entitled, Nutrition Guidance for Child Nutrition Programs. This publication is to be developed by November 1991 and disseminated within 6 months of that date to all school food service authorities, institutions, and organizations participating in the Child Nutrition Programs.

The target audience, approximately 275,000 program cooperators, varies from food service directors of large multi-unit school systems to family day care providers in a home setting.

This nutrition guidance, developed jointly by the U.S. Departments of Agriculture and Health and Human Services, gives nutrition advice to those responsible for preparing meals for children under the Child Nutrition Programs. This guidance is based on Nutrition and Your Health: Dietary Guidelines for Americans, the third edition, 1990, which provides advice for healthy Americans ages 2 and over—not for younger children and infants, whose dietary needs differ. Congressional report language states that the guidance is not to be quantitative in nature and that specific standards are not to be set.

The Nutrition Guidance for Child Nutrition Programs is the first step in a series of revised technical assistance efforts to help food service personnel and other persons responsible for feeding children improve children's health by offering meals that reflect current dietary guidelines. Future USDA plans are to review the meal patterns for all the Child Nutrition Programs, revise the menu planning guides, update publications describing the nutrient value and usage of USDA commodities and provide a wall chart which displays the information in an easy-to-use manner. Additional long range efforts are under consideration.

For those persons interested in commenting on the draft publication, written comments may be submitted to the above address. To be assured of consideration, comments must be postmarked no later than August 9, 1991.

Dated: June 13, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service, U.S. Department of Agriculture.

[FR Doc. 91–15066 Filed 6–24–91; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Management Guidelines for the Northern Goshawk in the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Adoption of interim policy.

SUMMARY: Because of concern for the habitat needs of the northern goshawk (*Accipiter gentilis*) the Regional Forester, Southwestern Region of the U.S. Forest Service, is issuing interim management guidelines to provide protection for the northern goshawk, while allowing for continued, but modified, multiple-use activities within suitable northern goshawk habitat, including limited timber harvest. These guidelines are being issued as interim policy in the Forest Service Manual while the Southwestern Region collects more information on this sensitive species to provide a better understanding of their habitat preferences and other characteristics of the population.

Concern about the habitat needs and population viability of the northern goshawk led the Regional Forester, Southwestern Region, to classify it as a sensitive species on all National Forest System lands in Arizona and New Mexico in 1982. The northern goshawk is not being considered for listing under the Endangered Species Act by the U.S. Fish and Wildlife Service at this time.

These interim management guidelines provide direction for Southwestern Region forests to use when northern goshawk nest sites or other evidence of reproductive activities are found on National Forest System lands. The guidelines call for a northern goshawk post-fledging family area (PFA) to be established whenever and wherever a northern goshawk nest site is located or evidence of reproductive activity (such as the presence of courtship behavior or young birds) is discovered. The guidelines also provide standard definitions and methodology to use when establishing and managing northern goshawk nest sites, replacement nest sites and PFAs.

The guidelines were developed based on information assembled and recommended by the Goshawk Scientific Committee. The scientific committee was composed of Forest Service management and research biologists and silviculturists. The scientific committee worked with the Goshawk Task Force Group, an informal group with representatives from Federal and State agencies, environmental groups, concerned citizens, and the timber industry. The task force provided recommendations to the Regional Forester, Southwestern Region on northern goshawk management.

This interim policy is being published under Forest Service regulations at 36 CFR 216, Involving the Public in the Formulation of Forest Service

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Directives. It is being published in advance of giving the public an opportunity to comment because of the immediate need to protect occupied northern goshawk habitat while gathering additional data about the northern goshawk during this field season. However, the Forest Service encourages and welcomes comments on this interim policy. Comments received on this interim policy will be used by the Forest Service when making future revisions to the management guidelines.

EFFECTIVE DATE: June 6, 1991. Comments on the guidelines should be received on or before September 6, 1991 to ensure use in the next policy revision.

ADDRESSES: Direct comments to: David F. Jolly, Regional Forester, 2670, Southwestern Region, USDA Forest Service, 517 Gold Avenue SW., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Director, Wildlife and Fisheries or Sandra Knight Assistant Threatened, Endangered and Sensitive Species Program Manager, (505) 842-3280 or 842-3288.

SUPPLEMENTARY INFORMATION:

Background and Need for Guidelines

The Southern Region has been concerned with the viability of the northern goshawk for the last decade. In 1982 the goshawk was placed on the Regional Forester's sensitive species list. Goshawk inventories and monitoring began in the early 1970's on the Kaibab National Forest, which had the Region's highest known density of goshawk nests. This work started because of concern over possible population declines. The monitoring effort was intensified in 1986 in cooperation with the Arizona Game and Fish Department to provide information for an extensive data base on goshawk nesting activity and reproductive success on the Kaibab Plateau.

In 1984, a joint Forest Service-New Mexico Game and Fish study was initiated which included the first telemetry (radio tracking) data collected on the goshawk in North America. In 1990 the Southwest Region of the Forest Service awarded a contract to develop a standard scientific protocol for surveying and monitoring northern goshawks. This protocol is now in draft form, undergoing continued scientific review, and has been provided to Region's forests for optional use this field season.

The goshawk is on the Forest Service sensitive species list. It is not on the Federal threatened and endangered species list nor is it presently under consideration for listing. It is a candidate for the State of Arizona's list of threatened native wildlife species. It is not on the State of New Mexico's list, which was recently revised and expanded.

In February, 1990 Regional Forester David F. Jolly received a letter signed by a number of Arizona and New Mexico environmental groups. The letter expressed concern over goshawk population viability based partially on the requirements of the implenting regulations for the National Forest Management Act.

In March of 1990, the Regional Forester decided to review the status of the goshawk. This internal review of goshawk data for Arizona and New Mexico, conducted from March to August, resulted in the decision in August, 1990, to establish a Goshawk Scientific Committee and a Goshawk Task Force Group to review goshawk management needs for the Southwest Region.

The Scientific Committee, composed of Forest Service management and research biologists and silviculturists, began meeting in October, 1990. They consulted with other top experts on goshawk biology and reviewed all available information on goshawk populations in the Southwest and northern goshawk habitat requirements and biology in general. They provided, and will continue to provide, scientific information on goshawk requirements to the Regional Forester and the Goshawk Task Force Group.

The Goshawk Task Force Group was made up of environmental groups, concerned citizens, and timber industry representation, as well as members from the U.S. Fish and Wildlife Service, the Arizona Game and Fish Department, the New Mexico Game and Fish Department and the Forest Service. Task Force Group meetings began early in January, 1990. The Goshawk Task Force Group will continue to review the findings of current studies being conducted by the Southwestern Region and the comments received by the Region concerning these guidelines when providing recommendations to the Regional Forester during future revisions of these guidelines. The Scientific Committee and the Goshawk Task Force Group continued to meet periodically since their inception.

The scientific committee approached goshawk management needs by describing desired conditions for nest sites, replacement nest sites, post-family fledging areas (PFAs) and foraging areas from published and unpublished research information. Nest sites are small areas (30 acres average) and include the nest tree and the area surrounding the nest tree that contain perches and roosts. They may contain one or more alternate nests. Replacement nest sites are areas with similar characteristics to the nest site that can be used sometime in the future.

PFAs represent an area of concentrated use by the goshawk family after the young leave the nest and until they are no longer dependent on the adults for food. The PFA provides the young hawks with the necessary hiding cover and prey and include the nest sites and replacement nest sites. A PFA is 600 acres in size.

Foraging areas (averaging about 6,000 acres in size) are more difficult to describe because of the larger size of the area and the variety of habitat requirements of goshawk prey species. The Scientific Committee is presently reviewing all available information on northern goshawk prey species. The habitat needs of the goshawk's principal prey species in the Southwest will be used to identify the necessary conditions for the foraging area. The final recommendations of the Scientific Committee are expected later this year.

The Scientific Committee's current recommendations for nest sites, replacement nest sites and PFAs serve as the basis for this interim management direction.

To improve our information base about this species, the Southwestern Region is increasing the survey effort to inventory suitable habitat and conduct studies on the northern goshawk. In 1991, the Region will spend over $600,000 in work related to the goshawk.

National Environmental Policy Act Compliance

Preliminary analysis by the Forest Service indicates a likely reduction in the amount of timber offered for harvest or under contract dung the 1 year life of this interim directive in the Region. The effects of these guidelines will be documented and disclosed to the public in compliance with the requirements of the National Environmental Policy Act (NEPA) on a case-by-case basis. Use of these guidelines, along with deviations from them, will be considered during the NEPA analyses done to implement specific projects called for in Forest Plans. These guidelines will not preclude other activities described in Forest Plans.

Northern Goshawk Interim Directive

These management guidelines issued through an interim directive in Forest Service Manual 2676.3, are in keeping with the provisions of the Forest Service Sensitive Species policy and the viable

population requirement of the National Forest Management Act implementing regulations.

Forest Service Manual

Albuquerque, New Mexico

Interim Directive No. 2670-91-1.
Effective Date: June 6, 1991.
Expiration Date: June 6, 1992.
Chapter: 2670—Threatened, Endangered, and Sensitive Plants and Animals.
Posting Notice: Last ID was No. 2, dated 6/28/90 to chapter 70.

This interim directive requires northern goshawk nest sites and post-fledging family areas be established and managed whenever a nest site is located.

David F. Jolly,
Regional Forester.

2670—Specific Direction on Individual Species

2670.3—Northern Goshawk

Concern about the habitat needs and population viability of the northern goshawk (*Accipiter gentilis*) resulted in the species being identified as "sensitive" by the Regional Forester in 1982.

1. Authority

This interim policy provides guidelines for carrying out active conservation programs to maintain viability of the northern goshawk, as directed in the implementing regulations for the National Forest Management Act, and FSM 2670.1.

2. Objectives

a. Search for goshawk nest sites in suitable northern goshawk habitat prior to management activities.

b. Identify general areas where replacement nest sites and post-fledging family areas (PFA) will be placed.

c. Provide for multiple use consistent with maintaining northern goshawk population viability.

d. Manage habitats to ensure continued existence of a well distributed northern goshawk population.

e. Specify guidelines for the management of desired habitat conditions to maintain reproductive pairs.

3. Policy

a. Conduct surveys of suitable habitat to locate northern goshawk nest sites. The location of the nest site(s) is the means of consistently identifying northern goshawk habitat.

b. Implement the Management Direction section of this interim policy whenever northern goshawk habitat has been identified by the location of known goshawk nest sites or other evidence of reproduction.

4. Responsibility

a. Regional Northern Goshawk Program Coordinator

The Regional Forester shall appoint a Regional Northern Goshawk Program Coordinator who shall:

(1) Assist Forest, District and Zone Wildlife Biologists in locating nest sites and PFA boundaries.

(2) Provide assistance to Forest and District personnel on implementation of northern goshawk management guidelines.

(3) Coordinate northern goshawk studies within the Region.

(4) Serve as chairperson on the Northern Goshawk Scientific committee and Northern Goshawk Task Force.

(5) Coordinate northern goshawk management and research with appropriate State and Federal agencies.

(6) Manage the Regional Northern Goshawk Program, providing budget and staffing advice along with data management.

(7) Provide guidance and assistance to Forests to evaluate effects of activities on the northern goshawk in biological evaluations.

b. Forest Supervisor

In addition to responsibilities listed at FSM 2670.45, Forest Supervisors shall ensure timely implementation of Regional direction concerning northern goshawk through specific procedures and actions including northern goshawk survey, monitoring, nest site and post-fledging family area selection, and identification.

(1) Review PFA and nest site boundaries submitted by the District Ranger where appropriate.

(2) Consult with Regional Northern Goshawk Program Manager on the locations of any northern goshawk PFA or nest site boundaries where there is uncertainty about where the boundary should be located.

(3) Coordinate the northern goshawk program at the Forest level with appropriate State and Federal agencies and research.

(4) Coordinate northern goshawk sites available for show-me trips with Districts.

(5) Ensure that release of information conforms with Forest Service policy identified in FSM 2671.2.

(6) Coordinate the selection of sites for monitoring with District Rangers.

(7) Review written documentation for road and trail location exemptions as appropriate.

(8) Provide guidance, assistance and quality control to ensure the biological evaluations adequately address potential adverse effects from management activities on goshawks.

(9) Review inventory and monitoring procedures used by Districts to ensure quality control and appropriateness.

c. District Ranger

In addition to responsibilities listed in FSM 2670.46, District Rangers shall:

(1) Ensure implementation of Forest Supervisor's direction, including necessary survey and monitoring, concerning northern goshawk through specific actions and procedures.

(2) Ensure all multiple-use objectives proposed within a northern goshawk PFA are consistent with northern goshawk habitat management through the Integrated Resource Management (IRM) process.

(3) Ensure that northern goshawk surveys and monitoring are conducted on their District using appropriate methodology.

(4) Locate nest sites, replacement nest sites and PFA area boundaries best meeting Regional requirements. Submit for review by the Forest Supervisor as appropriate.

(5) Locate, approve and document calling routes used during northern goshawk surveys.

(6) Identify District survey needs and assist Forest Supervisor in determining Forest priorities.

(7) Manage and conduct show-me trips as appropriate in coordination with the Forest Supervisor.

5. Definitions

Use this list of standard terms and definitions when referring to northern goshawk habitat management to reduce potential misunderstandings and provide greater consistency in the language used throughout the Region. Definitions are taken from several sources.

a. Active Nest. A nest known to have contained incubated eggs. A nest need not be successful to be considered active.

b. Adverse Management Activity. Any activity that could adversely modify goshawk habitat characteristics or adversely affect goshawk reproductive efforts.

c. Alternate Nest. Goshawk territories may contain three or more nests, only one of which will be active in a given year. Alternate nests can be in adjacent trees or as far away as 1 mile.

d. Breeding Season. That time period from March 1 through September 30

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which includes courtship, nestling, and fledgling-dependency periods.

e. Clumpiness. The occurrence of trees in patches or groups generally with interlocking crowns.

f. Deferred Habitat. That portion of the PFA where management activities will not occur for some designated period of time.

g. Dominant Trees. Trees that by means of their numbers, coverage, or size, exert the greatest influence on the stand.

h. Down Logs. Fallen trees or portions of fallen trees that are at least 12" in diameter and 8 feet long.

i. Fledgling. A young hawk that has left the nest but is unable to completely care for itself. Usually identifiable by the presence of down.

j. Foraging Area. A large area used by the goshawk for hunting in order to meet their food and energy requirements.

k. Group Selection. A modification of the selection system in which trees are removed in small groups at a time.

l. Historic Site. Any reproductive site where northern goshawk were identified or observed prior to development of this directive.

m. Home Range. The entire area that an animal habitually uses for foraging, resting, watering, and so forth. Nesting home range size for goshawk pairs average about 6,000 acres. Adjacent pairs of goshawks have overlapping home ranges, they are not exclusive areas. A home range may contain one to several nest sites or alternate nests and the post-fledging family area.

n. Intermediate Treatment. The treatment (removal) of trees from a stand between the time of its formation and the regeneration cut. Removal is generally taken to include cleaning, thinning, liberation, improvement, salvage, and sanitation cuttings. Treatments other than removal are pruning, fertilization, and prescribed burning.

o. Lop and Scatter. A method to disperse logging debris by reducing limbs and tops from logging activities to a specific height (usually 2 to 3 feet) above the ground and scattered across an area.

p. Mesic. Habitats that are more moist and cooler than surrounding areas such as along drainages, base of slopes, and/or on north exposures.

q. Multi-storied Stands. Horizontal stratum (such as layers) of vegetation formed by a plant community, in forests essentially their canopy layers. The forest may have one or more such strata and hence be single-storied, two-storied, or multi-storied.

r. Nest. The slightly cupped platform of sticks in which the eggs are laid. Most nests of goshawks are placed within the lower two-thirds of tree crowns, often against the trunk but occasionally on a limb up to 10 feet from the trunk.

s. Nest Attempt. An attempt to nest as evidenced by observed courtship behavior within a nest site or new nest construction or reconstruction of an old nest (addition of new sticks or greenery).

t. Nest Site. The nest, nest tree, and area surrounding the nest that includes the stand of trees containing prey handling areas, perches, and roosts and may contain one or more alternate nests.

u. Nest Tree. The tree containing the nest.

v. Opening. In forest cover types, an area with less than 10 percent canopy coverage.

w. Plucking Post. A perch used by a goshawk to tear apart and feed on prey species. The remains of mammalian and avian prey can be located on the ground under the perch which can be a standing live tree, a snag or a fallen tree.

x. Post-fledging Family Area. An area within the goshawk home range, including nest sites, of concentrated use by the goshawk family after the young leave the nest.

y. Predator. A raptor that preys on northern goshawk or their young.

z. Protocol. Refers to a formalized methodology for monitoring and inventory.

aa. Replacement Nest Site. Sites with similar characteristics to the nest site that are potentially occupiable either now or sometime in the future and are approximately 30 acres in size.

bb. Reserve Trees. Dominant or codominant trees retained in the area in perpetuity within a goshawk foraging area. The trees are well distributed and occur in clumps of at least five trees with interlocking crowns.

cc. Seral Species. Plant species that will be replaced over time until a relatively stable forest community becomes established.

dd. Silvicultural System. A process which follows accepted silvicultural principles, whereby the tree crops are tended to produce crops of a desired form, harvested, and replaced.

ee. Single Storied Stands. Stands of trees having a single canopy layer, see multi-storied stands.

ff. Snag. A standing dead tree. Ponderosa pine and fir are at least 20" dbh and aspen at least 10" dbh.

gg. Stand. A community of trees possessing sufficient uniformity as regards composition, age, spatial arrangement, or condition to be distinguishable from adjacent communities.

hh. Successful Nest. A nest from which at least one young is fledged.

ii. Successional Stage. A stage or recognizable condition of a plant community which occurs during its development from bare ground to climax.

jj. Suitable Habitat. Habitat that is currently usable for nesting, roosting, and feeding by northern goshawk. It includes the nest sites, post-fledgling family area, and foraging area. Habitat need not be occupied to be considered suitable.

kk. Survey Area. Area around the proposed management activity in which a northern goshawk survey or inventory will be conducted.

ll. Territory. Any defended area (such as an exclusive area). An active nest is not an essential element of a territory, pairs defend nest sites before and during nest construction and sometimes will continue to defend after failure.

mm. Unsuitable Habitat. Habitat that is not occupied by northern goshawk, and does not have the capability of attaining the characteristics of suitable habitat at any time in the future through standard, prescribed management treatments or natural processes.

nn. Vegetation Structural Stage. Describes the forest successional stage, canopy coverage, and stories.

6. Survey and Inventory

a. Each Forest modify, develop and/or identify the protocol used this field season.

b. Inventory suitable habitat for projects meeting the adverse management activity definition. Use the following approach:

(1) Use existing survey data for all sales already under contract and sales with signed decision notices.

(2) Determine the level of survey needed to prepare a biological evaluation for FY 1991 sales in IRM phases 1 through 9 and accomplish this level.

(3) Complete at least 1 year of survey for sales to be sold in FY 1992.

7. Establishing Goshawk Management Areas

The District, Zone, or Forest Biologist/Wildlife Staff establish nest site and PFA boundaries. Use the following information to establish nest sites and PFA's. Refer to the definitions where appropriate.

a. Nest Sites. Suitable nest sites are critical in the reproductive biology of goshawks. They contain the nest tree and may contain alternate nest trees. Nest sites are occupied during the breeding season which generally begins in early March and ends by late September. Nest sites are frequently used more than 1 year. Alternate nest sites are often used intermittently for decades.

Nest sites are a forest stand (average of 30 acres) that contains the nest(s), the structural features of the vegetation (for example tree density, canopy closure) and landform (for example slope, aspect) within the area used by a pair of goshawks during the nesting season until the young fledge. Goshawk nest sites have a relatively high canopy closure and high density of large trees (see exhibit 1).

Establish a nest site, using best professional judgment, within the identified suitable habitat which incorporates the known nest tree. Plot the location of all nest site(s) and alternate nest sites identified on U.S.G.S. 2.5" Quad Maps.

Identify replacement nest sites based on professional judgment. Design and locate to ensure future nest site needs in the home range. Located in mesic areas or other area that reflect the landform attributes of existing nest sites.

b. Post-fledging Family Area (PFA). The PFA corresponds to a defended territory based on radio telemetry studies. Designation of the PFA is a management attempt to approximate the biological territory. It represents an area of concentrated use by the goshawk family after the young leave the nest and until they are no longer dependent on the adults for food. The PFA provides the young hawks with the necessary hiding cover from both nocturnal and diurnal predators and sufficient prey populations to develop hunting skills.

The desired stand conditions for PFA's include moderately closed overstory and understory canopies for hiding cover and habitat elements critical in the life-histories of the prey species such as large snags, nest-trees, large down logs, and food resources. The intent is to develop a management prescription for each PFA so that over time about 50 percent of the PFA is maintained in mature forest (15" dbh +) with scattered small openings.

Because the PFA is considerably larger (up to 600 acres in size) than nest sites, PFA's may include a mosaic of forest conditions. The PFA surrounds the nest tree(s), nest site(s), alternate and replacement nest sites.

Establish a PFA whenever a nest site is located. Location and shape of the PFA are at the discretion of the District, Zone, or Forest Biologist but must be based on habitat conditions and professional judgment. Where possible make PFA boundaries consistent with stand boundaries. Prior to establishing a PFA around a historical site, conduct surveys and inventories necessary to determine occupancy and habitat condition in the vicinity of historical nests. If a historical site is unoccupied but suitable habitat remains, a PFA may be established if there is evidence of recent (about the last 10 to 15 years) reproductive activity. If the site is unoccupied and little or no suitable habitat remains, establishment of a PFA is not required at this time.

The nest sites may take on several spatial distributions based on the current location of nests and topography with regards to suitable goshawk nesting habitat. The distribution of nest sites and replacement nest sites may all be centrally located within the PFA or take on a more linear distribution if sites are located within pine stringers or drainage/canyon situations. Once the nest sites and replacement nest sites (totaling 180 acres) have been established, the configuration of the 420 acres in the PFA should be considered. Though the PFA need not necessarily be circular in its delineation, an adequate buffer for all of the nest sites and replacement nest sites must be provided. The PFA provides particular or specialized needs to the goshawk family, as well as, buffering nesting activities from project disturbances occurring within the foraging areas.

Exclude areas to be managed as permanent openings within the PFA where possible and appropriate. Permanent openings (for example meadows, rocky outcrops, roads) should not be included in the PFA acreage. Increase the 600 acres needed in the PFA by the amount of acres in permanent openings.

c. Foraging Areas. The northern goshawk is a predator of larger birds and mammals. Goshawks must hunt for their prey over large areas in order to meet their food and energy requirements. These hunting or foraging areas average about 6,000 acres in size, including the PFA. The intent is to manage these areas to provide quality habitat for goshawk prey species.

8. Monitoring

Use systematic protocol to monitor goshawk activities.

9. Management Direction

Apply this management direction to all management activities proposed in suitable habitat. Include all activities that meet the adverse management activities definition in item 5.b.

a. Nest sites and replacement nest sites.

(1) Manage a total of six nest sites (3 suitable and 3 replacement) within a PFA. If no activities are scheduled to occur in the PFA this year, then it may not be necessary to delineate replacement nest sites.

(2) Maintain all known nest sites within the PFA. If fewer than three are known, designate potentially acceptable nest sites based on suitable habitat, stand structure, and topography.

(3) Manage for future development of up to three replacement nest sites.

(4) Designate approximately 30 acres for each nest site and replacement nest site. Nest sites are to be in a mature forest condition (see exhibit 1 for suggested guidelines).

(5) Cluster replacement nest sites in the center of the PFA. Locate within an approximate 0.5 mile radius.

(6) Allow no adverse management activities (see 5.b.) in active nest sites during the breeding season. Use an appropriate survey or monitoring method to determine goshawk activity.

(7) Allow approved activities in inactive nest sites after June 30. Use an appropriate monitoring method to determine goshawk inactivity.

b. Post-fledging family area.

(1) Establish a minimum of a 600-acre PFA around all known goshawk nest sites in the Region including ones located in planned and sold sales. Include alternate nest sites and replacement nest sites for a pair within the PFA.

(2) Establish a PFA for all nests located during sale administration or other activities in sold or planned sales.

(3) A PFA may be established when there is strong evidence that reproductive activity is occurring but no nest has been located. Consider a combination of factors such as the number of sightings, time of year of the sightings, courtship behavior, presence of juvenile birds, presence of plucking posts, and territorial behavior when evaluating the need to establish a PFA where no nest is known. Provide written documentation for establishment.

(4) Guide the exact location and shape of the PFA by the existing landscape, taking into account the biological needs of the goshawk. Include the known nests sites and replacement nest sites. Place the PFA so known or replacement nest sites are generally centered in the PFA, whenever possible and biologically appropriate.

(5) Manage the PFA over the long term in a manner so that approximately 10 percent of the area is in small openings of ⅛ to ¼ acre at any one time. Consider an opening to be forested vegetation types with less than 10 percent canopy coverage. Do not consider permanent openings (such as

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meadows) as part of the 600-acre PFA. Use the group-selection silvicultural system with openings of ¼ acre in ponderosa pine and ⅓ acre in mixed conifer and spruce fir whenever possible.

(6) Sales under contract and FY 1991 sales in IRM phases 1 through 9 may implement thinnings from below (intermediate treatment) only if they are determined to meet the intent (as determined by a wildlife biologist and silviculturist) of PFA management. Specific guidelines will be issued at a later date on how intermediate treatments will be used to meet desired future stand conditions. The intent is to reduce the number of changes to existing or planned sales without having adverse effects on goshawks.

(7) Use lop and scatter to dispose of slash whenever possible.

(8) Allow no adverse management activities (see 5.b.) in PFA's with active nest sites during the breeding season. Use an appropriate survey or monitoring method to determine goshawk activity.

(9) Allow approved activities in PFA's with inactive nest sites after June 30. Use an appropriate monitoring method to determine goshawk inactivity.

(10) Within the PFA allow new road construction only if no other routes are reasonably available. If routes are selected that go through a PFA, written approval by the Forest Supervisor is required.

(11) Allow new trail constuction no closer than ¼ mile from nest sites except when no other routes are reasonably available. If routes are selected that are closer, written approval by the Forest Supervisor is required.

(12) If it is not legally (valid existing rights) possible to restrict adverse activities from occurring in the PFA, seek cooperation from those conducting the activity. If necessary restrict the season of use to outside the breeding season. Keep ground disturbing activities to the minimum necessary to accomplish the objective for entering the PFA.

c. Foraging area. No specific Region-wide guidelines for management of the foraging area (6,000 acres minus 600 acres is the foreaging area) are provided in this directive.

d. Incorporation of non-National Forest System (NFS) lands for 1991 planning:

(1) When the nest sites are located on NFS lands, place the PFA on NFS lands.

(2) When the nest site is located on private land, establish the PFA on a biological basis regardless of land ownership. Where appropriate, additional land may be protected on NFS lands.

e. Include northern goshawk habitat that meets Forest Plan old-growth requirements in the Forest old-growth allocation when it is appropriate and desirable to do so.

f. Where northern goshawk home ranges outside of PFA's overlap with Mexican spotted owl territories, implement spotted owl guidelines. Where PFA's overlap with Mexican spotted owl territories, implement management of PFA's according to these guidelines.

10. Biological Evaluation.

Use the biological evaluation process (FSM 2672.4) to evaluate the effects of all Forest Service programs and activities on the northern goshawk when they occur in suitable habitat. Include all known past, current, and proposed activities when analyzing cumulative effects. Use the biological evaluation process to determine possible needs for additional timing restraints or other mitigation measures not addressed by this interim directive.

11. Show-me Trips.

Show-me trips are not recommended, however they may benefit northern goshawk management by increasing awareness of the species and its habitat. It is important to manage and coordinate show-me trips to minimize disturbance and avoid possible adverse impacts to goshawks. Consolidate show-me trips to minimize the number of trips taken and incorporate with other inventory or monitoring activities whenever possible. Encourage the media to utilize existing footage and/or photographs in order to reduce show-me trips. Other considerations for show-me trip management include the number of visits per site and other activities at/near the site.

2676.3—Exhibit 1—Minimum Structural Attributes for Suitable Goshawk Nest Sites (Habitat)*

Forest cover type, name	Pinyon-juniper	Cotton-wood-willow	Interior ponderosa pine		Mixed-species		Aspen	Engelmann spruce-subalpine fir
Forest cover type, SAF code	239	235	237		209, 210, 211, 216, 219		217	206
Site capability potential break	N.A.	N.A.	Ponderosa pine 55		Douglas-fir 50		N.A.	N.A.
Potential			Low	High	Low	High		
1. Live Trees in Main Canopy:								
Trees/Acre	60–100	(1)	40	30	45	35	20	35
DBH/DRC	12"	(1)	16"	22"	15"	20"	16"	20"
Age (years)	200+	(1)	200+	200+	200+	200+	60+	150+
2. Total BA, Square Feet/Acre	60	(1)	120	140	110	130	50	140
3. Total Canopy Cover, Percent	60	(1)	50	60	60	60	60	70
4. Vegetation Structural Stages	4B–5	(1)	4B–5	4B–5	4B–5	4B–5	4A–5	4B–5

[1] Historically this forest cover type was used as nesting habitat only rarely.

Forest Cover Type—A descriptive classification of forestland based on present occupancy of an area by tree species (Eyre 1980). Forest cover types are named after predominant tree species. Predominance is determined by basal area and the name is confined to one (ponderosa pine and aspen) or two species (pinyon-juniper, cottonwood-willow, and Engelmann spruce-corkbark fir). The mixed-species conifer forest cover type per se is not a forest cover type but includes several cover types. Mixed-species includes the bristlecone pine, Interior Douglas-fir, white fir, blue spruce, and limber pine forest cover types. Most often mixed-species stands have a rich tree species diversity, including three or four different species, sometimes more.

Site Capability Potential—The capability of the soil or site to produce biomass (trees). Soil capability is determined by measuring the age and height of several dominant and codominant good growing trees and comparing the measurements with the appropriate site index table. This procedure is commonly referred to as determining the site index. The ponderosa pine site curves (Minor 1964) are used for the ponderosa pine forest cover type and Douglas-fir site index curves (Edminster and Jump, 1978) are used to determine site capability for the mixed-species. The break number indicates the separation between low and high site capability potential.

The structural attributes are the minimum requirements for suitable goshawk nest sites. The attributes are intended to permit inventory by individual forest cover types. The attributes are defined and measured as follows:

1. Live Trees—Trees with some or many visible living, green leaves or needles that are present some time during a year.

Main Canopy—The largest tree (overstory trees) in a stand that are more or less the continuous cover of branches and foliage formed collectively by the crowns of adjacent trees.

Trees per Acre—An average number of trees in a stand on a per acre basis.

DBH—(Diameter Breast Height) The outside bark diameter of a timber species tree measured at breast height. Breast height is 4.5 feet above the forest floor on the uphill side of the tree (USFS 1989).

DRC—(Diameter Root Crown) The outside bark diameter of a woodland tree measured slightly (2 inches) above the break between root collar and the normal-taper of the stem. Root collar is the region where root and stem merge. If the tree is multistemmed, the EDRC (equivalent diameter root crown) is calculated and the tree represents one tree.

Age—The mean age of the large live trees (main canopy) in the stand. Age is measured in years by boring a tree at DBH (timber species) or DRC (woodland, other tree species).

2. Total BA—(Basal Area) The cross section area of a tree or trees in a stand, generally expressed as square feet per acre (USFS 1989). Basal area is the cross section at DBH or DRC.

3. Total Canopy Cover—The percentage of a fixed area (stand) covered by the crowns delimited by the vertical projection of the outermost perimeter of the natural spread of the foliage for all live trees; small openings in the crown are included (USFS 1989).

4. Vegetation Structural Stages—A method of describing a stand of live trees that considers tree size, number of trees, and crown canopy cover.

* This table may change as a result of the Scientific Committee final report and will be updated at that time.

Dated: June 18, 1991.

David F. Jolly,

Regional Forester.

[FR Doc. 91–15029 Filed 6–24–91; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Powell Creek Watershed Plan Supplement, AL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Powell Creek Watershed Plan Supplement, Marengo and Hale Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830, Telephone (205) 887–4536.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This project concerns a plan for watershed protection and flood prevention to reduce erosion problems and flood damages.

The plan supplement includes the installation of three floodwater retarding structures and relocation of two others that were previously planned. Approximately 14.5 miles of stream channelization are deleted from the plan. Flood protection will be provided to 8,570 acres.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under (10,904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials).

Dated: June 10, 1991.

Ernest V. Todd,

State Conservationist.

[FR Doc. 91–15031 Filed 6–24–91; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Shipper's Export Declaration.

Form Number(s): 7525–V–Alternate.

Alternate Approval Number: 0607–0152.

Type of Request: Prompt review—Revision to the Reporting Requirements for the Shipper's Export Declaration.

Burden: 529,700 hours.

Number of Respondents: 100,000.

Avg Hours Per Response: 1 hour for exporters subject to this new requirement.

Needs and Uses: The Forest Resources Conservation and Shortage Relief Act of 1990 requires that the Department of Commerce, in conjunction with the Departments of Agriculture and Interior, conduct a two-year study beginning 1/1/90 of exports from the United States of unprocessed hardwoods harvested from Federal or public lands east of the 100th meridian. The Act also requires exporters to declare on Shipper's Export Declarations (SEDs) the State in which this timber was grown and harvested. This submission requests prompt review from OMB to modify instructions for completing SEDs.

Affected Public: Individuals or households; farms; businesses or other for-profit organizations; non-profit institutions; and small businesses or organizations.

Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 20, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

BILLING CODE 3510-07-M

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U.S. DEPARTMENT OF COMMERCE — BUREAU OF THE CENSUS — INTERNATIONAL TRADE ADMINISTRATION

FORM 7525-V-ALT.(Intermodal) (1-1-88) **SHIPPER'S EXPORT DECLARATION**

CONFIDENTIAL — For use solely for official purposes authorized by the Secretary of Commerce (13 U.S.C. 301(g)).

OMB No. 0607-0152

DO NOT USE THIS AREA

2. EXPORTER *(Principal or seller-licensee and address including ZIP Code)*

ZIP CODE

5. DOCUMENT NUMBER

5a. B/L OR AWB NUMBER

6. EXPORT REFERENCES

AUTHENTICATION *(When required)*

29. THE UNDERSIGNED HEREBY AUTHORIZES

TO ACT AS FORWARDING AGENT FOR EXPORT CONTROL AND CUSTOMS PURPOSES.

EXPORTER

(BY DULY AUTHORIZED OFFICER OR EMPLOYEE)

3. CONSIGNED TO

7. FORWARDING AGENT *(Name and address — references)*

30. METHOD OF TRANSPORTATION *(Mark one)*

☐ Vessel ☐ Other — Specify

☐ Air

8. POINT (STATE) OF ORIGIN OR FTZ NUMBER

4. NOTIFY PARTY/INTERMEDIATE CONSIGNEE *(Name and address)*

9. DOMESTIC ROUTING/EXPORT INSTRUCTIONS

31. ULTIMATE CONSIGNEE *(Give name and address if this party is not shown in item 3.)*

32. DATE OF EXPORTATION *(Not required for vessel shipments)*

33. COUNTRY OF ULTIMATE DESTINATION

12. PRE-CARRIAGE BY

13. PLACE OF RECEIPT BY PRE-CARRIER

34. EXPORTER'S EIN (IRS) NUMBER

14. EXPORTING CARRIER

15. PORT OF LOADING/EXPORT

10. LOADING PIER/TERMINAL

35. PARTIES TO TRANSACTION

☐ Related ☐ Non-related

16. FOREIGN PORT OF UNLOADING *(Vessel and air only)*

17. PLACE OF DELIVERY BY ON-CARRIER

11. TYPE OF MOVE

11a. CONTAINERIZED *(Vessel only)*

☐ Yes ☐ No

Export shipments are subject to inspection by U.S. Customs Service and/or the Office of Export Enforcement.

MARKS AND NUMBERS (18)	NUMBER OF PACKAGES (19)	DESCRIPTION OF COMMODITIES *in Schedule B detail* (20)	GROSS WEIGHT *(Kilos)* (21)	MEASUREMENT (22)	D OR F (23)

CD — Check digit

Value — Selling price or cost if not sold (U.S. dollars, omit cents)

Quantity — Schedule B unit(s) (Nearest whole unit)

24. SCHEDULE B NO. | CD

25a. QUANTITY 1 | 25b. QUANTITY 2

26. VALUE

24. SCHEDULE B NO. | CD

25a. QUANTITY 1 | 25b. QUANTITY 2

26. VALUE

24. SCHEDULE B NO. | CD

25a. QUANTITY 1 | 25b. QUANTITY 2

26. VALUE

27. VALIDATED LICENSE NO./GENERAL LICENSE SYMBOL

28. ECCN *(When required)*

36. I certify that all statements made and all information contained herein are true and correct and that I have read and understand the instructions for preparation of this document, set forth in the "Correct Way to Fill Out the Shipper's Export Declaration." I understand that civil and criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements herein, failing to provide the requested information, or for violation of U.S. laws on exportation (13 U.S.C. Sec. 305; 22 U.S.C. Sec. 401; 18 U.S.C. Sec. 1001; and 50 U.S.C. App. 2410).

(Signature) (Title) (Date)

This form must be privately printed. Sample copies may be obtained from the Bureau of the Census, Washington, D.C. 20233, and local Customs District Directors. The "Correct Way to Fill Out the Shipper's Export Declaration" is available from the Bureau of the Census, Washington, D.C. 20233

[FR Doc. 91-15084 Filed 6-24-91; 8:45 am]

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Foreign-Trade Zones Board

[Docket 35-91]

Foreign-Trade Zone 123—Denver, CO; Application for Subzone, Storage Technology Corporation Information Storage Equipment Plant Boulder County, CO

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City and County of Denver, Colorado, grantee of FTZ 123, requesting special-purpose subzone status for the information storage equipment manufacturing facilities of Storage Technology Corporation (StorageTek) located in Boulder County, Colorado, some 25 miles northwest of Denver. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 12, 1991.

StoregeTek is an international producer of large capacity electronic data storage and retrieval systems, impact printers and related data management software. It has plants in the U.S. and the U.K., and annual sales of $1 billion.

The proposed subzone would include the company's Boulder County, Colorado, production and distribution operations (5,000 employees): Site 1 (360 acres)—2270 South 88th St., Louisville; Site 2 (153 acres)—2345 Clover Basin Drive, Longmont; Site 3 (58,000 sq. ft.)—1351 S. Sunset Street, Longmont; Site 4 (92,000 sq. ft.)—520 Burbank Street, Broomfield.

StorageTek's Colorado facilities are used to manufacture large capacity electronic information storage and retrieval subsystems for data processing applications involving reel and cartridge tape devices, automatic cartridge library systems, solid-state disk subsystems, cached and non-cached disk control units, rotating magnetic disk subsystems, impact printers, and associated software. Some 10 percent of its components are sourced abroad, including hard and floppy disk drive units, table and rack mounted storage devices, printed circuit assemblies, high capacity output units, laser printers, power supplies, and related ADP parts and accessories, as well as electric motors, generators, transformers, capacitors, resistors, switches, photosensitive semiconductor devices, bearings, wire and cable, lenses, measuring instruments, air and vacuum pumps, and certain articles of rubber and ceramic. Currently, 40 percent of the finished products are exported.

Zone procedures would exempt StorageTek from Customs duty payments on the foreign components used in equipment produced for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (0.0–4.2 percent). The duty rates on most components range from 0.0 to 16.0 percent. The application indicates that zone savings will help improve StorageTek's international competitiveness and increase export sales.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Donald W. Myhre, District Director, U.S. Customs Service, North Central Region, 300 Second Avenue South, Great Falls, Montana 59401; and Colonel Stewart Bornhoft, District Engineer, U.S. Army Engineer District Omaha, 25 North 17th Street, Omaha, Nebraska 68102–4978.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 9, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, suite 600, 1625 Broadway, Denver, CO 80202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: June 18, 1991.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 91–15078 Filed 6–24–91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 34-91]

Foreign-Trade Zone 136—Brevard County, FL; Application for Subzone, American Digital Switching Telecommunications and Computer Products Plant, Melbourne, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Canaveral Port Authority, grantee of Foreign-Trade Zone 136, requesting subzone status for the telecommunications and computer products manufacturing and repair facility of American Digital Switching, Inc. (ADS), in Melbourne, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 11, 1991.

The ADS plant (5.08 acres, 27 employees) is located at 4255 Dow Road, Melbourne, Brevard County, Florida. The facility, established in 1989, is used to manufacture central office digital switches for telephone systems and custom-made personal computers. It is also used to repair and refurbish computers, printed boards, and related products. Certain components for the switches are sourced abroad, such as printed circuit boards, cables, frames, and transistors. Components for the assembly of the personal computers that are sourced from abroad include printed circuit boards, disk drives, monitors, keyboards, and power supplies. The repair operation uses a wide range of merchandise sourced from abroad, including the items listed above as well as microprocessor and memory integrated circuits, transformers, fans, oscillators, and other electronic components. Some of the products are re-exported.

Zone procedures would exempt ADS from Customs duty payments on foreign items used in manufacturing and repair operations for export. On manufacturing and repair operations for the domestic market, the company would be able to choose the duty rates for finished computers (3.9%) and printed circuit boards (5.3%). The duty rate for telephone system switches is 8.5 percent. Components have duty rates ranging from 0.0 to 5.3 percent. The application indicates that the zone savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Regional Director for Inspection and Control, U.S. Customs Service, Southeast Region, 909 SE. First Avenue, Miami, FL 33131; and Colonel Bruce A. Malson, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, FL 32232-0019.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 9, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Customs Service, Port Director's Office, 120 George King Blvd., P.O. Box 513, Cape Canaveral, Florida 32920.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 17, 1991.

John J. Da Ponte, Jr.,
Executive Secretary

[FR Doc. 91–15079 Filed 6–24–91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-557-701]

Carbon Steel Wire Rod from Malaysia; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) has terminated the administrative review requested on the countervailing duty order on carbon steel wire rod from Malaysia, initiated on May 21, 1991, for the period January 1, 1990 through December 31, 1990.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Chalecki or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: On April 25, 1991, Armco, Inc., Georgetown Steel Corp., and Raritan River Steel Co., petitioners in this case, requested a countervailing duty administrative review of the order on carbon steel wire rod from Malaysia for the period January 1, 1990 through December 31, 1990. No other interested parties requested reviews. On May 21, 1991, the Department initiated the administrative review for that period (56 FR 23271).

On May 10, 1991, the petitioners withdrew their request for review. As a result, the Department has determined to terminate the review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: June 18, 1991.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.

[FR Doc. 91–15077 Filed 6–25–91; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-504]

Carbon Steel Wire Rod From New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 16, 1990, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on carbon steel wire rod from New Zealand. We have now completed that review and determine that there were no shipments of the subject merchandise to the United States during the period January 1, 1987 through September 30, 1987. However, because of program-wide changes resulting in the termination of two programs found countervailable in the final determination, we are changing the cash deposit of estimated countervailing duties to zero.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1990, the Department of Commerce (the Department) published in the Federal Register (54 FR 33750) the preliminary results of its administrative review of the countervailing duty order on carbon steel wire rod from New Zealand (51 FR 7971; March 7, 1986). The Department has now completed that administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments from New Zealand of coiled, semi-finished, hot-rolled carbon steel wire rod of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. During the review period, such merchandise was classifiable under items 607.1400, 607.1710, 607.1720, 607.1730, 607.2260 and 607.2300 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under items 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00 and 7213.50.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through September 30, 1987, one known manufacturer/exporter of this merchandise, Pacific Steel Limited, and 14 programs:

A. Export Performance Taxation Incentive (EPTI);
B. Export Market Development Taxation Incentive (EMDTI);
C. Sales Tax Exemptions or Refunds on Imported Capital Equipment and Machinery (STERICEM);
D. Crown Loans;
E. Technical Assistance from the Building Research Association of New Zealand;
F. Export Marketing Assistance from the Department of Trade and Industry;
G. Preferential Treatment of Exporters in Granting Import Licenses;
H. Research and Development Incentives;
I. Export Credits and Development Financing from the Development Finance Corporation;
J. Export Suspensory Loan Scheme;
K. Export Programme Suspensory Loan Scheme;
L. Export Marketing Assistance from the New Zealand Export-Import Corporation;
M. Technical Assistance from the Standards Association of New Zealand; and
N. Technical Help to Exporters.

There were no shipments of the subject merchandise to the United States during the review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the respondent, Pacific Steel Limited (PSL), and the petitioners, Atlantic Steel Company, Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company.

Comment 1: PSL argues that the Department should adjust the cash deposit rate on all future entries of the the subject merchandise because of the

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Government of New Zealand's (GNZ) termination of the EPTI program. PSL further argues that in Steel Wire from New Zealand; Preliminary Results of Countervailing Duty Administrative Review (53 FR 28428; July 28, 1988) and Lamb Meat from New Zealand; Final Results of Countervailing Duty Administrative Review (54 FR 10590; May 8, 1989), the Department confirmed that the GNZ had terminated this program. PSL argues that, unlike an antidumping duty administrative review where the absence of sales provides no means of determining whether the margin of dumping has actually changed, the absence of entries or exports during the review period is not a valid reason for declining to revise the cash deposit rate in a countervailing duty administrative review. The Department knows that, with or without sales, the EPTI program is not available to any New Zealand exporters.

Petitioners, on the other hand, urge the Department to terminate the current administrative review and to maintain the cash deposit rate at its current level of 25.69 percent *ad valorem*. Citing 19 CFR 355.22, *PQ Corp* v. *United States*, 652 F. Supp. (CIT 1987), Carbon Steel Wire Rod from Argentina, 54 FR 49322 (1989) (antidumping review), and Certain In-Shell Pistachio Nuts from Iran, (rejection or request to initiate countervailing duty administrative review), petitioners contend that neither section 751(a) nor section 751(b) of the Tariff Act authorizes the Department to conduct an administrative review of a countervailing duty order in the absence of actual entries, sales, imports, or exports. Specifically petitioners contend that the Department must examine actual entries to determine: (1) Whether the program has been terminated with respect to PSL, (2) whether the allegedly terminated program confers residual benefits upon PSL, and (3) whether PSL has received benefits from any new programs. Petitioners distinguish Steel Wire from New Zealand and Lamb Meat from New Zealand by emphasizing that at least one of the respondents subject to those reviews had entries that the Department could review.

Department's Position: Section 751(a) of the Tariff Act authorizes the Department, in the absence of any entries, shipments, or exports, to conduct an administrative review of a countervailing duty order to adjust the cash deposit rate when a foreign government has instituted a program-wide change (*e.g.*, elimination or creation of a program). This conclusion follows from the statutory language of section 751(a) which provides in relevant part that "[a]t least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order * * * [the Department], if a request for such a review has been received * * *, shall * * * review and determine the amount of any net subsidy * * * and shall publish the results of such review, together with notice of any duty to be assessed, *estimated duty to be deposited*, or investigation to be resumed in the **Federal Register**." 19 U.S.C. 1675(a) (emphasis added).

A program-wide change, such as the government's elimination of a program, necessarily can trigger a review pursuant to section 751(a) even in the absence of entries, shipments, or exports, because such an event may result in a change to "the amount of any net subsidy". 19 U.S.C. 1675(a)(1)(A). Furthermore, the express language of the statute demonstrates that a section 751(a) administrative review has several purposes, one of which is to adjust any "estimated duty to be deposited."

In an investigation that preceded the preliminary results of this review, the Department confirmed that the GNZ had eliminated two programs—EPTI and STERICEM—found to confer countervailable benefits during the period of investigation in this proceeding. See Certain Steel Wire Nails from New Zealand; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (52 FR 37196; October 5, 1987). Because the GNZ's elimination of these government programs has reduced "the amount of the net subsidy" found in the final determination to a *de minimis* level of 0.02 percent *ad valorem* for the subject merchandise, and because section 751(a) authorizes the Department to conduct a review for the limited purpose of adjusting the cash deposit rate even in the absence of any entries, shipments, or exports, we are revising our preliminary results. Specifically, we are reducing the cash deposit rate to zero for all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results.

We disagree with petitioners' contention that the Department must examine actual entries or exports of the subject merchandise to determine whether PSL is receiving any residual benefits from the terminated programs or any benefits from any new subsidy programs for purposes of adjusting the cash deposit rate. Because we have established that the EPTI and STERICEM programs were terminated in 1987 and 1986, respectively, and because the benefits bestowed by these programs were of a type that conferred immediate benefits and were expensed in the year of receipt, there is no basis to assume that any residual benefits remain. Furthermore petitioners' reliance upon 19 CFR 355.22 for the proposition that the Department does not possess the legal authority to conduct a countervailing duty administrative review in the absence of entries or exports is misplaced. Petitioners ignore the express language of § 355.22(b)(1) which provides in relevant part that "an administrative review * * * *normally* will cover entries or exports of the merchandise * * *." (emphasis added). This language does not preclude the Department from conducting a countervailing duty administrative review in the absence of entries in all cases. As explained above, the Department is still able to calculate "the amount of any net subsidy" in the absence of entries when a foreign government institutes a program-wide change. See, e.g., Certain Electrical Conductor Aluminum Redraw Rod from Venezuela; Final Results of Countervailing Duty Administrative Review, (56 FR 14232; April 8, 1991) (where Department conducted a review and changed the cash deposit rate as a result of a program-wide change despite no entries or exports).

Petitioners' reliance upon Pistachio Nuts from Iran is similarly misplaced, because the Department was not confronted with the elimination of any government programs or any other program-wide change in that case. The Department declined to conduct a countervailing duty administrative review in the absence of entries in Pistachio Nuts because the review would have had absolutely no effect upon "the amount of any net subsidy."

In contrast to Pistachio Nuts the subject administrative review involves a program-wide change (i.e., elimination of a government program) that has resulted in a change to "the amount of any net subsidy". Therefore, the Department correctly conducted the subject review and adjusted the cash deposit even though there were no entries during the review period. See, e.g., Aluminum Redraw Rod from Venezuela, supra; but see, e.g., Wool From Argentina; Final Results of Countervailing Duty Administrative Review, (56 FR 21661: May 10, 1991) (where Department did not change the cash deposit rate because there were no entries and no program-wide changes).

Finally, in citing PQ Corp and Carbon Steel Wire Rod from Argentina, two antidumping cases, petitioners miss the essential distinction between antidumping and countervailing duty administrative reviews. An antidumping review necessarily requires that actual entries, sales, or shipments be made during the review period, so that the Department can determine whether a respondent has increased its U.S. prices relative to its home market prices. In order words, the dumping calculation itself is tied to, or contingent upon, an entry or sale of the subject merchandise.

A countervailing duty administrative review, by contrast, does not necessarily require that actual entries or exports be made during the review period to allow the Department to calculate "the amount of any net subsidy." As explained above, the Department is able to calculate the net subsidy in the absence of entries or exports when a foreign government has undertaken a program-wide change, such as the elimination of a subsidy program.

Thus, the calculation of the net subsidy under these circumstances is not tied to, or contingent upon, an entry or exportation of the subject merchandise; rather, the calculation is dependent upon the Department's examination of the statutes, decrees, or regulations that have eliminated the government program. Therefore, the Department's practice with respect to the initiation of antidumping reviews in the absence of entries or sales does not govern the initiation of countervailing duty reviews under identical circumstances.

Comment 2: Petitioners contend that, if the Department adjusts the cash deposit rate in this administrative review, the Department would be promulgating a "new rule of general applicability" in violation of the Administrative Procedure Act (the APA) (5 U.S.C. 553), because the Department failed to provide petitioners with adequate notice of, and an opportunity to comment upon, its change in practice.

Department's Position: Our determination with respect to the cash deposit issue falls outside the purview of the APA for two reasons. First, contrary to petitioners' assertions, this determination does not constitute a "new rule of general applicability." Rather, our determination with respect to the cash deposit issue represents a continuation of our administrative practice. See, e.g., Aluminum Redraw Rod From Venezuela, supra.

Second, even if our determination were considered a "rule" within the meaning of the APA, such a "rule" would necessarily be an interpretative rule—that is, an interpretation of section 751(a) of the Tariff Act. See *Timken Co.* v. *U.S.*, 673 F. Supp. 495, 514 (CIT 1987) (*quoting Gibson Wine Co.* v. *Snyder*, 194 F.2d 329, 331 (D.C. Cir. 1952) ("Interpretative rules are 'statements as to what the administrative officer thinks the statute or regulation means.' "). It is well settled that interpretative rules fall within an exception to the rulemaking requirements of APA. See *id.*; 5 U.S.C. 553(b)(3)(A). Therefore, our determination in this review—in particular, our decision to change the cash deposit rate despite the absence of entries—was not subject to the notice and comment requirements of the APA.

Comment 3: Petitioners allege that in March 1988, prior to the review period, the GNZ provided an equity infusion on terms inconsistent with commercial considerations to New Zealand Steel (NZS) by assuming NZ $1.14 billion of NZS's debt in exchange for 61 percent of NZS's stock. Petitioners further allege that subsequent to the review period, in October 1987, the GNZ sold its NZS stock to another holding company, Equiticorp, for less than NZ $300 million and, thereby, conferred a domestic subsidy upon NZS. Petitioners then allege that NZS passed this subsidy onto PSL by selling steel billets, the main input used in the production of carbon steel wire rod, to PSL at subsidized prices. For these reasons, petitioners urge the Department to initiate an upstream subsidy investigation with respect to the production of steel billets.

PSL contends, by contrast, that petitioners failed to provide the Department with "reasonable grounds to believe or suspect" that NZS provided an upstream subsidy to PSL. Therefore, the Department correctly declined to initiate an upstream subsidy investigation in this administrative review. Specifically, PSL contends that NZS and PSL were not related during the review period, and that the petitioners failed to demonstrate that transactions between NZS and PSL were not at arm's length, that steel billets were not available at comparable prices from other sources during the review period, or that NZS undercut the prices charged by other suppliers of billets during that period.

Department's Position: Section 701(c) of the Tariff Act sets forth the legal standard that governs the initiation of an upstream subsidy investigation:

> Whenever the [Department] has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 1671(a)(1) of this title *[i.e.*, domestic subsidy], is being paid or bestowed, [the Department] shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 1671(a)(3) of this title.
>
> 19 U.S.C. 1671(c) (emphasis added).

Congress has explained that this "reasonable grounds to believe or suspect" standard is extremely rigorous. Compare H.R. Rep. No. 98-725, 98th Cong., 2d Sess. 80 (1984) with 130 Cong. Rec. H11,577 (daily ed. Oct. 5, 1984) and H.R. Rep. No. 98-1156, 98th Cong., 2d. Sess. 171 (1984); see also 130 Cong. Rec. S13,970 (daily ed.) (Oct. 9, 1984) (explanation by Senator Dole). Furthermore, the U.S. Court of International Trade (CIT) has ruled that the "reasonable grounds to believe or suspect" standard in the context of a cost-of-production investigation in an antidumping proceeding requires a petitioner to set forth "*specific* and *objective*" evidence in its allegation to trigger a cost-of-production investigation. *Al Tech Specialty Steel Corp.* v. *United States*, 575 F. Supp. 1277, 1282 (CIT 1983), *aff'd on other grounds*, 745 F.2d 682 (Fed. Cir. 1984) (emphasis supplied in original).

In this administrative review, petitioners' upstream subsidy allegation failed to provide the Department with "reasonable grounds to believe or suspect" that the GNZ conferred an upstream subsidy upon the manufacture or production of steel billets. Specifically, petitioners failed to provide sufficient evidence demonstrating that the GNZ's initial assumption of NZS's debt and subsequent sale of NZS's stock to Equiticorp constitute a countervailable domestic subsidy. As conceded by petitioners, "[w]e have been unable to obtain sufficient evidence regarding whether a market price existed for the stock of NZS following the GNZ's acquisition, and whether the GNZ's per-share acquisition price was above the market price." Petitioners' Submission at 4 (June 9, 1988).

In fact, petitioners themselves merely speculate that the transactions at issue might constitute a countervailable domestic subsidy. See Petitioners' Submission at 7 (June 9, 1988) ("[T]he original debt assumption may constitute a 'traditional' equity infusion, while the subsequent sale of shares to Equiticorp may be viewed as a 'bargain' sale conferring a subsidy on NZS) (emphasis added). Significantly, the petitioners acknowledge that the evidence upon which their allegation is based is unreliable: "Information on the transactions described herein was derived from publically-available periodicals and newswires. These publications contained certain

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discrepancies and inconsistencies." Petitioners' Submission at 2, n.1 (June 9, 1988) (emphasis supplied). For these reasons, the Department correctly declined to initiate an upstream subsidy investigation in the subject administrative review.

Comment 4: Petitioners contend that NZS is subject to the outstanding countervailing duty order covering the subject merchandise, because NZS failed to make a timely request during the initial investigation pursuant to 19 CFR 355.38 (1988) to warrant an exclusion from the outstanding order. DOC Position: We disagree. In Carbon Steel Wire Rod from New Zealand; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (51 FR 7971; March 7, 1986), the Department determined that NZS received *de minimis* countervailable benefits. Therefore, the Department correctly excluded NZS from the countervailing duty order. Because petitioners failed to contest the Department's exclusion of NZS from the order within 30 days from the date of publication of the order, petitioners are barred from raising this challenge in this administrative review. See 19 U.S.C. 1516a.

Moreover, petitioners' reliance upon 19 CFR 355.38 (1988) is misplaced, because this regulation, contrary to the interpretation advanced by petitioners, provides a mechanism pursuant to which a foreign exporter that is neither a respondent named in the petition nor a respondent subject to the investigation can be excluded from a potential countervailing duty order. This regulation does not govern a participating respondent that has demonstrated to the satisfaction of the Department that it received *de minimis* benefits during the period of investigation.

Final Results of Review

As a result of our review, we determine that there were no shipments of the subject merchandise during the period January 1, 1987 through September 30, 1987. After considering all of the comments received, we determine that program-wide changes have eliminated the benefit from two programs, reducing the benefit to 0.02 percent *ad valorem*.

In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Accordingly, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 17, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-15076 Filed 6-24-91; 8:45 am]

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[C-517-501]

Carbon Steel Wire Rod From Saudi Arabia; Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has conducted administrative reviews of the countervailing duty order on carbon steel wire rod from Saudi Arabia. We preliminarily determine the total bounty or grant to be 0.13 percent *ad valorem* for the period January 1, 1988 through December 31, 1988. We also preliminarily determine the total bounty or grant to be 0.49 percent *ad valorem* for the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1989 and February 9, 1990, the Department of Commerce (the Department) published in the **Federal Register** notices of "Opportunity to Request Administrative Review" (54 FR 5102 and 55 FR 4646) of the countervailing duty order on carbon steel wire rod from Saudi Arabia. During February 1989 and February 1990, Georgetown Steel Corporation, Northstar Steel Texas, Inc., Raritan River Steel Company and Atlantic Steel Company, petitioners in this proceeding, and the Saudi Iron and Steel Company (HADEED), the respondent, requested administrative reviews covering the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989. We initiated the reviews on April 6, 1989 (54 FR 13913) and March 22, 1990 (55 FR 10642), respectively. The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by these reviews are shipments of Saudi carbon steel wire rod. Carbon steel wire rod is a coiled semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. During the 1988 review period, such merchandise was classifiable under item numbers 607.1400, 607.1710, 607.1720, 607.1730, 607.2200 and 607.2300 of the Tariff Schedules of the United States Annotated (TSUSA). During the 1989 review period, such merchandise was classifiable under item numbers 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7313.41.60, 7213.49.00 and 7213.50.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and eight programs. During the review period, there was only one Saudi producer and/or exporter of the subject merchandise, the Saudi Iron and Steel Company (HADEED).

Analysis of Programs

(1) Public Investment Fund Loan to HADEED

The Public Investment Fund (PIF) was established in 1971 as one of five specialized credit institutions set up by the Government of Saudi Arabia. The other specialized credit institutions are the Saudi Industrial Development Fund (SIDF), the Saudi Agricultural Bank, the Saudi Credit Bank and the Real Estate Development Fund. These specialized credit institutions are funded completely by the Saudi government and were the only sources of long-term financing in Saudi Arabia during the review period.

The PIF was established in 1971 to provide financing to large-scale, commercially productive projects that have some equity participation of the Saudi government. PIF by-laws exclude firms or projects without Saudi government equity from applying to the PIF for financing. From 1973 through the end of the review period, the PIF has provided loans to 18 firms. Of these, 12 (including HADEED) are at least 50 percent-owned by the Saudi Basic Industries Corporation (SABIC). Of the remaining six borrowers, three are 50 percent-owned by PETROMIN, and three are unrelated: Saudia Airlines, a utility company and a real estate investment fund. Firms receiving PIF financing represent less than one-half of all large scale firms, and only a very small portion of all industrial enterprises, in the Kingdom.

Because the application of the government equity participation requirement limited benefits under this program to a small number of enterprises, we therefore preliminarily determine that PIF loans are provided to a specific group of enterprises in Saudi Arabia, and that the PIF loan to HADEED is countervailable to the extent that it is given on terms inconsistent with commercial considerations.

The loan contract between the PIF and HADEED requires that HADEED pay a variable commission, or interest, on the outstanding balance based on its profitability in a given fiscal year. During 1988 and 1989, HADEED made repayments of loan principal and commission on its PIF loan.

Using the two sources for medium- to long-term industrial financing available in Saudi Arabia, private commercial banks and the SIDF, we have constructed composite interest rate benchmarks for each review period to determine whether the PIF loan to HADEED was on terms inconsistent with commercial considerations. Since the PIF loan covered 60 percent of HADEED's total project costs, for our benchmark we assumed that HADEED could have financed 50 percent of its total project costs with a SIDF loan (the maximum eligibility for a company with at least 50 percent Saudi ownership) and the remaining 10 percent of project costs with a Saudi commercial bank loan. The SIDF loan portion of the benchmark was used because, of all the specialized credit institutions, it is the only fund besides the PIF which lends to industrial or manufacturing projects and, thus, is most representative of what HADEED would otherwise have to pay for long-term loans in Saudi Arabia. We used the 1.9 percent flat rate of interest applied to SIDF loans through 1988 and 1989. The commercial bank portion of the benchmark was based on the average Jeddah Interbank Offering Rate (JIBOR) for 1988 and 1989, plus a one percent spread. Because the composite benchmarks for 1988 and 1989 are less than the actual commission, or interest rates, that HADEED paid on its PIF loan in 1988 and 1989, we preliminary determine that the PIF loan was not preferential for the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989.

(2) SABIC's Transfer of SULB Shares to HADEED

SABIC was established in 1976 by the Government of Saudi Arabia as an industrial development corporation. SABIC has been the majority shareholder in HADEED since the steel company's inception in 1979. In 1982, SABIC acquired all of the remaining shares in the Steel Rolling Company (SULB), a Saudi producer of steel reinforcing bars of which SABIC had been the majority shareholder since 1979. In December 1982, SABIC decided to transfer its shares in SULB to HADEED in return for new HADEED stock. Through the stock transfer, SULB became a wholly-owned subsidiary of HADEED.

In Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia, (51 FR 4206; February 3, 1986), we determined that HADEED was unequityworthy in December 1982 and that the transfer of SABIC's shares in SULB to HADEED in exchange for additional shares in HADEED was inconsistent with commercial considerations.

To determine the benefit to HADEED from the acquisition of SULB, we used our rate of return shortfall methodology. We determined the amount of the equity infusion to be the net book value of SULB's equity at the time of the transfer. As best information available on the national average rate of return on equity in Saudi Arabia, we used the 1988 and 1989 annual average rates of return on U.S. direct investment in Saudi Arabia. Based on the most recent data available from the U.S. Commerce Department's Bureau of Economic Analysis, the 1988 and 1989 average rates of return on equity were 23.85 percent and 16.13 percent, respectively. We computed the rate of return shortfall by taking the difference between this figure and the 1988 and 1989 rates of return on equity in HADEED. Because HADEED's rates of return on equity in 1988 and 1989 were greater than average rates of return on U.S. direct investment in Saudi Arabia in 1988 and 1989, respectively, the rate of return shortfall for each review period is zero. On this basis, we preliminarily determine the benefit from this equity infusion to be zero for the period January 1, 1988 through December 31, 1988, and zero for the period January 1, 1989 through December 31, 1989.

(3) Preferential Provision of Equipment to HADEED

Under a lease/purchase arrangement, the Royal Commission for Jubail and Yanbu built for HADEED two bulk ship unloaders at the Jubail industrial port for unloading iron ore, and constructed a conveyor belt system for transporting iron ore from the pier to HADEED's plant in the Jubail Industrial Estate. When construction of these facilities was completed in 1982, the Commission transferred custody to HADEED under a lease/purchase agreement.

As originally planned, the bulk ship unloader and conveyor system was built to serve both HADEED and an adjacent plant in the Jubail Industrial Estate. The second plant was not built, however, leaving HADEED as the sole user of this equipment. The terms of the lease/purchase agreement require that HADEED must repay the equipment and construction costs plus a two-percent fee for the cost of money in 20 annual installments. The annual payments are stepped, with the lowest payment levels occurring at the beginning and the highest payment levels occurring at the end of the 20-year period.

In the *Saudi Wire Rod* (*op. cit.*), we found that the two-percent cost-of-money fee is the Commission's standard charge for recovery of costs on other facilities in the Jubail Industrial Estate. Of the projects examined, a urea berthside handling system built for the exclusive use of another company located in the Estate was the most comparable to HADEED ship unloader and conveyor system. Therefore, we compared the repayment schedule for HADEED's ship unloader and conveyor system to the repayment schedule for a berthside handling system. Although both agreements carried the standard cost-of-money fee, we found that HADEED's end-loaded, stepped repayment schedule was more advantageous than the annuity-style repayment schedule on the berthside handling system. Therefore, we determine that HADEED's ship unloader and conveyor system was provided on preferential terms. Moreover, because

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the equipment is used exclusively by HADEED, we find that it is provided to a specific enterprise and, thus, confers a bounty or grant.

To calculate the benefit, we compare the principal and fees being paid in each year by HADEED to the principal and fees that would be paid under the repayment schedule used for the berthside handling system. We allocated the sum of the present values of the differences in the two repayment schedules over 20 years, using a two-percent discount rate. The resulting benefits for 1988 and 1989 were then divided by the value of HADEED's sales during 1988 and 1989, respectively. On this basis, we preliminarily determine the benefit from the preferential provision of the unloader and conveyor system to be 0.01 percent *ad valorem* for the period January 1, 1988 through December 31, 1988, and 0.01 percent *ad valorem* for the period January 1, 1989 through December 31, 1989.

(4) Income Tax Holiday for Saudi Joint Venture Projects

Under Article 7 of the Foreign Capital Investment Code of January 1, 1979, a 10-year income tax holiday may be granted for economic development projects. The following three conditions must be fulfilled to obtain approval by the Saudi Foreign Investment Committee: (1) Saudi participation is not less than 25 percent of total capital; (2) the foreign capital shall be invested in nontraditional development projects which, for the purposes of the Foreign Capital Investment Code, do not include petroleum related and/or mineral extraction projects; and (3) the investment shall be accompanied by foreign technical know-how and expertise. This tax holiday applies only to income taxes that are owed by the foreign share of the enterprise.

Because the application of these three requirements limited benefits under this program to a small number of enterprises, we therefore determine that it is specific and countervailable. In tax returns filed in 1988 and 1989, HADEED reported profits for fiscal 1987 and 1988, respectively. Thus, DEG, HADEED's foreign partner, would have been liable for income tax during the review periods had it not still been eligible for the income tax holiday.

To calculate the benefit from the tax holiday, we divided the amount of tax DEG would have paid in 1988 and 1989 absent the tax holiday by HADEED's total sales for 1988 and 1989, respectively. On this basis, we preliminarily determine the bounty or grant from the income tax holiday to be 0.12 percent *ad valorem* for the period January 1, 1988 through December 31, 1988, and 0.48 percent *ad valorem* for the period January 1, 1989 through December 31, 1989.

(5) Other Programs

We also examined the following programs and preliminarily determine that HADEED did not benefit from them during the 1988 and 1989 review periods:

1. SABIC loan guarantees;
2. Preferential provision of services by SABIC;
3. Government procurement preferences; and
4. Issuance of preferential government bonds.

Preliminary Results of Review

As a result of the review, we preliminarily determine the total bounty or grant to be 0.13 percent *ad valorem* for the period January 1, 1988 through December 31, 1988, and 0.49 percent *ad valorem* for the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1988 and exported on or before December 31, 1989.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Traffic Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 20, 1991.

Eric I. Garfinkel

Assistant Secretary for Import Administration.

[FR Doc. 91-15075 Filed 6-24-91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

June 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 351/651 is being increased by application of special shift, decreasing the limit for Categories 341/641 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 46236, published on November 2, 1990; and 56 FR 8748, published on March 1, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 20, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 29, 1990, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on October 1, 1990 and extends through September 30, 1991.

Effective on June 27, 1991, you are directed to amend further the directive dated October 29, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Mauritius:

Category	Adjusted twelve-month limit [1]
341/641	273,887 dozen.
351/651	149,520 dozen.

[1] The limits have not been adjusted to account for any imports exported after September 30, 1990.

For the import period October 1, 1990 through February 27, 1991, you are directed to charge 52,991 dozen to Category 351 for the current restraint period. There are no charges for Category 651 for the October 1, 1990 through February 27, 1991 import period.

Also, you are directed to deduct 35,087 dozen from the charges made to Categories 351/651 for the period October 1, 1990 through September 30, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-15068 Filed 6-24-91; 8:45 am]

BILLING CODE 3510-DR-F

List of Exempt Traditional Folklore Textile Products from Pakistan

June 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs replacing the existing list of traditional folklore textile products.

EFFECTIVE DATE: June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, the Governments of the United States and Pakistan, reached agreement, effected by exchange of letters dated May 23 and 28, 1991, to replace the existing list of exempt traditional folklore textile products. A list of the newly agreed items is published as an enclosure to the letter to the Commissioner of Customs.

See **Federal Register** notices 48 FR 25257, published on June 6, 1983; and 52 FR 21611, published on June 8, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 20, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive, as amended, establishes export visa and exempt certification requirements for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan.

Effective on June 27, 1991, you are directed to substitute the enclosed list of "Pakistan Items" for the existing list of Pakistan folklore textile products. "Pakistan items" are exempt from the limits of the bilateral agreement with Pakistan when properly certified by the Government of Pakistan prior to exportation.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Pakistan Folklore Items

"Pakistan Items" are those items that are uniquely and historically traditional Pakistani products. They are limited to the products enumerated below.

1. *Shisha Embroidered Dress:* A dress which is knee length or longer with at least the front area above the waist covered with an overlay. The overlay contains embroidery and mirrors which are attached to the overlay by embroidery. This dress has a partial back opening fastened by hooks, buttons, or snaps, but not by zippers or velcro.
   ●The mirrors and embroidery must cover the front area above the waist, however, there are no restraints on other sections being covered by mirrors and embroidery.
2. *Kurta:* A pullover tunic which is fingertip or knee length with a partial opening in front which may be fastened by hooks, buttons, or snaps, but not by zippers or velcro. The tunic may be collarless or have a stand-up collar, but may not have an out-turned shirt-type collar or out-turned shirt-type cuffs. A Kurta has no front pockets, but may have side-slit pocket(s), and must have sleeves that are a quarter length or longer. The fabric of the Kurta may be solid colored, striped, printed, crocheted, embroidered and/or patchworked with side slits of at least 2 inches on both sides.
3. *Gharara:* Pants/trousers with a drawstring waist with colored and/or metallic embroidery work. Each pant leg measures at least 36 inches across the bottom and closes at the ankle by a drawstring.
   ●Imported as a set with the Kurta.
4. *Multani Choli:* A tight fitting collarless top which is waist length or shorter and that has quarter or half length sleeves. The Multani Choli has a full front or back opening fastened by snaps, buttons, or hooks, but not by a zipper or velcro. This top may or may not be embroidered.
5. *Burqa:* A solid colored, loose fitting, and untapered gown which is ankle length with a full front opening from neck to ankle, fastened by snaps, buttons, or hooks, but not by a zipper or velcro. A head covering is imported with the Burqa which may or may not be attached to the gown.
6. *Baluchi/Peshawari Vest:* A sleeveless and loose fitting vest which may close with snaps, buttons, or hooks, but not by a zipper or velcro. The Baluchi/Peshawari vest extends to approximately waist length and is covered by substantial embroidery and mirrors which are at least on the front.
7. *Ghagra:* An extremely loose fitting, full, ankle length skirt which gathers at the waist by either a drawstring or hooks, but not by a zipper or velcro. The circumference of the skirt at the bottom is at least 5 yards.
8. *Bahee:* A drawstring pouch or string bag as described below.

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Pakistan Folklore Items—Continued

a. Drawstring Pouch—A small pouch which is no more than 7 inches across when laid flat and is covered at least on one side with sequins, metallic string and other decorative material. A drawstring is used to close the opening.

b. String Bag—A small bag which is no more than 7 inches across and 6 inches in height when laid flat. The bag is covered with embroidery and mirrors at least on the front flap and is held by a twisted yarn shoulder strap.

9. *Sind Jutebo:* A loose fitting, ankle length dress, with or without a partial closure in the front or back fastened by snaps, buttons, or hooks, but not by a zipper or velcro. The dress may have side slits or side pockets and must have half length sleeves.
10. *Izarband:* A non-woven (knit) narrow fabric with two braided ends which results in loose fringe at both ends used as a drawstring.
11. *Bakashi Kameez:* A loose fitting tunic with an opening on one shoulder seam fastened by hooks, buttons, or snaps, but not by a zipper or velcro. The tunic has 3/4 length sleeves or longer and has matching embroidery work at least on the yoke and cuffs. The tunic is always longer than waist length, flares out near the bottom, and does not have side slits.
12. *Kaftan:* A women's loose fitting pullover full or ankle length garment with partial front or back opening fastened by hooks, buttons, snaps or string but not by a zipper or velcro. The fabric of the kaftan may be solid colored, striped, printed, crocheted, embroidered and/or patchworked. The kaftan has side slits or a back slit for walking.
13. *Ghilaf:* A cushion cover which is oblong, square, round, or of other shapes, covered with a combination of mirrors, embroidery, and other decorative material.
14. *Dupatta:* A scarf which is at least two meters or more in length and one meter or more in width. The scarf must be hemmed at both ends and constructed from thin, lightweight fabric.
15. *Shalwar:* Straight (men) or gathered (women) pants with a drawstring waist and either drawstring leg openings (no elastic) or cuffs. The men's shalwar has less stitching on the bottom of each leg than the women's shalwar.
16. *Pyjama:* Men's or women's pants without a waistband, but with a drawstring waist. The pant leg may either be straight or tapered with or without a small side slit. The garment may have pockets but has no front opening.
17. *Punjabi Kameez:* A loose fitting tunic with an out-turned collar and shirt type cuffs and a partial front opening fastened by hooks, buttons, or snaps, but not by a zipper or velcro. A tunic has side slits at least 2 inches or more on both sides. It has front pockets and side slit pockets. The fabric of Punjabi Kameez is solid colored, striped, printed, embroidered or patchworked.

[FR Doc. 91-15067 Filed 6-24-91; 8:45 am]
BILLING CODE 3510-DR-F

Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States: Changes to the 1991 Correlation

June 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Changes to the 1991 Correlation.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202)377-3400.

The Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (1991) presents the Harmonized Tariff Schedule numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The following list includes some Harmonized Tariff Schedule numbers that will be published in the first supplement to the Harmonized Tariff Schedule of the United States (1991). The Correlation should be amended to reflect the changes indicated below:

Category	Changes to the 1991 Correlation
229	Delete 5608.19.2000. Add 5608.19.2090—definition remains unchanged.
339	Delete 6104.29.2046. Add 6104.29.2042—definition remains unchanged.
341	Delete 6204.29.4046. Add 6204.29.4070—definition remains unchanged.
345	Delete 6104.29.2056. Add 6104.29.2065—definition remains unchanged.
347	Delete 6113.00.0035. Add 6113.00.0038—modify definition to include "trousers, breeches and shorts." Delete 6210.40.2030. Add 6210.40.2035—modify definition to include "trousers, breeches and shorts."
348	Delete 6113.00.0040. Add 6113.00.0042—modify definition to include "trousers, breeches and shorts." Delete 6210.50.2030. Add 6210.50.2036—modify definition to include "trousers, breeches and shorts."
359	Delete 6104.29.2074. Add 6104.29.2051—definition remains unchanged. Delete 6113.00.0075. Add 6113.00.0074—definition remains unchanged. Delete 6113.00.0060. Add 6113.00.0062—definition remains unchanged. Delete 6204.29.4058. Add 6204.29.4082—definition remains unchanged. Delete 6210.40.2060. Add 6210.40.2055—definition remains unchanged. Delete 6210.50.2060. Add 6210.50.2055—definition remains unchanged.
432	Add 6115.93.1010—socks of synthetic fibers, containing lace or net, containing 23 percent or more by weight of wool or fine animal hair. Add 6115.93.2010—socks, of synthetic fiber, other than containing lace or net, containing 23 percent or more by weight of wool or fine animal hair. Add 6115.99.1410—socks of artificial fibers, other than containing lace or net, containing 23 percent or more by weight of wool or fine animal hair.
435	Delete 6117.90.0034. Add 6117.90.0033—modify definition to include "fine animal hair."
438	Delete 6104.29.2048. Add 6104.29.2051—definition remains unchanged. Delete 6117.90.0024. Add 6117.90.0023—modify definition to include "fine animal hair."
440	Delete 6294.29.4048. Add 6294.29.4072—definition remains unchanged.
446	Delete 6104.29.2058. Add 6104.29.2067—definition remains unchanged. Delete 6117.90.0012. Add 6117.90.0013—modify definition to include "fine animal hair."
448	Delete 6117.90.0044. Add 6117.90.0043—modify definition to include "fine animal hair."
459	Delete 6104.29.2076. Add 6104.29.2063—definition remains unchanged. Add 6114.30.3042—men's and boys' coveralls, jumpsuits and similar apparel, knitted or crocheted, containing 23 percent or more by weight of wool or fine animal hair. Add 6114.30.3052—women's or girls' coveralls, jumpsuits and similar apparel, knitted or crocheted, containing 23 percent or more by weight of wool or fine animal hair. Delete 6117.20.0020. Add 6117.20.0019—modify definition to include "fine animal hair." Delete 6117.90.0020. Add 6117.90.0019—modify definition to include "fine animal hair." Delete 6117.90.0054. Add 6117.90.0955—modify definition to include "fine animal hair." Delete 6204.29.4060. Add 6294.29.4064—definition remains unchanged. Delete 6208.29.0010. Add 6208.29.0010—modify definition to include "fine animal hair." Add 6505.90.9045—hats and other headgear, knitted or crocheted, other than of MMF, other than containing 70 percent or more by weight of silk or silk waste, of fine animal hair.
604	Delete 5509.41.0060. Add 5509.41.0010—single yarn, containing 85 percent or more by weight of synthetic staple fibers, of polyvinyl alcohol (PVA) fibers. Add 5509.41.0060—single yarn, containing 85 percent or more by weight of synthetic staple fibers, other than of polyvinyl alcohol (PVA) fibers. Delete 5509.42.0008.

Category	Changes to the 1991 Correlation
	Add 5509.42.0010—multiple (folded) or cabled yarn, containing 85 percent or more by weight of synthetic staple fibers, of polyvinyl alcohol (PVA) fibers. Add 5509.42.0060—multiple (folded) or cabled yarn, containing 85 percent or more by weight of synthetic staple fibers, other than of polyvinyl alcohol (PVA) fibers.
632	Delete 6115.93.1000. Add 6115.93.1020—socks containing lace or net, of synthetic fibers, other than containing 23 percent or more by weight of wool or fine animal hair. Delete 6115.93.2000. Add 6115.93.2020—socks of synthetic fiber, other than containing lace or net, other than containing 23 percent or more by weight of wool or fine animal hair. Delete 6115.99.1400. Add 6115.99.1420—socks of other textile materials, of artificial fibers, other than containing 23 percent or more by weight of wool or fine animal hair. Delete 6115.99.1800. Add 6115.99.1820—socks, of other textile materials, of artificial fibers, other than containing lace or net, other than containing 23 percent or more by weight of wool or fine animal hair.
639	Delete 6104.29.2050. Add 6104.29.2055—definition remains unchanged.
641	Delete 6204.29.4050. Add 6204.29.4074—definition remains unchanged.
646	Delete 6104.29.2060. Add 6104.29.2069—definition remains unchanged.
647	Delete 6113.00.0045. Add 6113.00.0044—modify definition to include "trousers, breeches and shorts." Delete 6219.40.1030. Add 6210.40.1035—modify definition to include "trousers, breeches and shorts."
648	Delete 6113.00.0050. Add 6113.00.0052—modify definition to include "trousers, breeches and shorts." Delete 6210.50.1830. Add 6210.50.1035—modify definition to include "trousers, breeches and shorts."
659	Delete 6104.29.2076. Add 6104.29.2085—definition remains unchanged. Delete 6113.00.0065. Add 6113.00.0064—definition remains unchanged. Delete 6113.00.0090. Add 6113.00.0086—definition remains unchanged. Delete 6114.30.3040. Add 6114.30.3044—men's and boys' coveralls, jumpsuits and similar apparel, knitted or crocheted, of man-made fibers. Delete 6114.30.3050. Add 6114.30.3054—women's or girls' coveralls, jumpsuits and similar apparel, knitted or crocheted, of man-made fibers. Delete 6204.29.4052. Add 6204.29.4066—definition remains unchanged. Delete 6219.40.1050. Add 6210.40.1055—definition remains unchanged.
	Delete 6210.50.1050. Add 6210.50.1055—definition remains unchanged.
835	Delete 6117.90.0040. Add 6117.90.0041—definition remains unchanged.
838	Delete 6104.29.2053. Add 6104.29.2061—definition remains unchanged. Delete 6104.29.2054. Add 6104.29.2063—definition remains unchanged. Delete 6117.90.0030. Add 6117.90.0031—definition remains unchanged.
840	Delete 6204.29.4054. Add 6204.29.4075—definition remains unchanged. Delete 6204.29.4056. Add 6204.29.4060—definition remains unchanged.
845	Delete 6104.29.2070. Add 6104.29.2077—definition remains unchanged. Delete 6104.29.2072. Add 6104.29.2079—definition remains unchanged. Delete 6117.90.0020. Add 6117.90.0021—definition remains unchanged.
846	Delete 6104.29.2066. Add 6104.29.2075—definition remains unchanged. Delete 6104.29.2064. Add 6104.29.2073—definition remains unchanged.
847	Delete 6103.29.2042. Add 6103.29.2044—men's or boys' trousers and breeches of other textile materials, other than containing 70 percent or more by weight of silk or silk waste. Add 6103.29.2045—men's or boys' shorts of other textile materials, other than containing 70 percent or more by weight of silk or silk waste. Delete 6103.49.3016. Add 6103.49.3017—men's or boys' trousers and breeches of other textile materials, of silk, other than of 70 percent or more by weight of silk or silk waste. Add 6103.49.3019—men's or boys' shorts of other textile materials, of silk, other than of 70 percent or more by weight of silk or silk waste. Delete 6103.49.3020. Add 6103.49.3024—men's or boys' trousers and breeches of other textile materials, other than of artificial materials, other than of silk. Add 6103.49.3026—men's or boys' shorts, of other textile materials, other than of artificial materials, other than of silk. Delete 6104.29.2042. Add 6104.29.2041—women's or girls' trousers and breeches of other textile materials, other than of artificial fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste. Add 6104.29.2043—women's or girls' shorts of other textile materials, other than of artificial fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste.
	Add 6104.29.2047—women's or girls' shorts, of other textile materials, other than of artificial fibers, other than of silk. Delete 6104.69.3030. Add 6104.69.3034—women's or girls' trousers and breeches of other textile materials, other than of artificial fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste. Add 6104.69.3036—women's or girls' shorts of other textile materials, other than of artificial fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste. Delete 6104.69.3032. Add 6104.69.3036—women's or girls' trousers and breeches of other textile materials, other than of artificial fibers, other than of silk. Add 6104.69.3040—women's or girls' shorts of other textile materials, other than of artificial fibers, other than of silk. Delete 6117.90.0050. Add 6117.90.0051—definition remains unchanged. Delete 6203.29.3040. Add 6203.29.3046—men's or boys' trousers and breeches, of other textile materials, other than of artificial fibers, other than containing 70 percent or more by weight of silk or silk waste. Add 6203.29.3048—men's or boys' shorts, of other textile materials, other than of artificial fibers, other than containing 70 percent or more by weight of silk or silk waste. Delete 6204.29.4042. Add 6204.29.4041—women's or girls' trousers and breeches of other textile materials, other than of synthetic fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste. Add 6204.29.4043—women's or girls' shorts of other textile materials, other than of synthetic fibers, of silk, other than containing 70 percent or more by weight of silk or silk waste. Delete 6204.29.4044. Add 6204.29.4047—women's or girls' trousers and breeches of other textile materials, other than of artificial fibers, other than of silk. Add 6204.29.4049—women's or girls' shorts of other textile materials, other than artificial fibers, other than of silk. Delete 6204.69.3050. Add 6204.69.3052—women's or girls' trousers and breeches of other textile materials, other than containing 70 percent or more by weight of silk or silk waste. Add 6204.69.3054—women's or girls' shorts of other textile materials, other than containing 70 percent or more by weight of silk or silk waste. Delete 6204.69.9040. Add 6204.69.9044—women's or girls' trousers and breeches of other textile materials, other than of silk or silk waste. Add 6204.69.9046—women's or girls' shorts of other textile materials, other than of silk or silk waste.
851	Delete 6208.29.0030. Add 6208.29.0031—definition remains unchanged.
858	Delete 6117.20.0060.

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Category	Changes to the 1991 Correlation
	Add 6117.20.0070—definition remains unchanged.
859	Delete 6104.29.2082.
	Add 6104.29.2087—definition remains unchanged.
	Delete 6117.80.0060.
	Add 6117.80.0070—definition remains unchanged.
	Delete 6117.90.0060.
	Add 6117.90.0061—definition remains unchanged.
	Delete 6204.29.4066.
	Add 6204.29.4090—definition remains unchanged.
	Delete 6204.29.4068.
	Add 6204.29.4092—definition remains unchanged.
	Delete 6505.90.9060.
	Add 6505.90.9090—Hats and other headgear, knitted or crocheted, other than of MMF, other than of fine animal hair.
869	Delete 6303.99.0020.
	Add 6303.99.0060—definition remains unchanged.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 91-15088 Filed 6-24-91; 8:45 am]
BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Request for Visit Authorization, OMB Number 0704-0221.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 12 minutes.

Responses Per Respondent: 714.

Number of Respondents: 84.

Annual Burden Hours: 11,995.

Annual Responses: 59,976.

Needs and Uses: This information is collected to ascertain the persons who are visiting, and the place, time, and purpose of the visit. The information is used to coordinate the visit with the place to be visited and the release of information to satisfy the visit purpose.

Affected Public: Foreign embassies in the United States, International organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: June 19, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-15053 Filed 6-24-91; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary

Defense Base Closure and Realignment Commission; Meetings

ACTION: Announcement of public deliberation meetings of the Defense Base Closure and Realignment Commission.

SUMMARY: Additional open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC in accordance with the following dates and times, and at the specific meeting locations shown: As previously published in the **Federal Register**, June 17, 1991, public meetings have been scheduled on June 28, 29 and 30, 9:30 a.m., Washington, DC to conduct deliberations on base closures and realignments; this announcement should be amended to include an additional day of public meetings on June 27, 1991, 9:30 a.m. and to delete the public meeting scheduled for June 29, 1991. The public meeting scheduled for June 27, 1991 will be held in room 2167 Rayburn House Office Building, Washington, DC and the public meetings scheduled for June 28 and 30 will be held in room 1100 Longworth House Office Building, Washington, DC.

Less than 15 days notice is being given in some instances due to the difficulties in confirming appropriate locations in the Washington, DC area to accommodate large public hearings.

FOR FURTHER INFORMATION CONTACT: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, (202) 653-0823.

Dated: June 21, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-15166 Filed 6-21-91; 11:55 am]
BILLING CODE 3810-01-M

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: July 26, 1991, 9 a.m. to 4:30 p.m. and July 27, 1991, 9 a.m. to 3 p.m..

ADDRESSES: July 26, The Pentagon, room 3E869, Washington, DC; July 27, Embassy Suites Hotel, Adams Morgan Room, 1402 Eads Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Witcher, Public Affairs Officer, DoD Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia, 22331-1100, Telephone: 703-325-0867.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95-561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)-(5), of Public Law 99-145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes discussions about the national goals for education, academic achievement encouragement, minority options in college recruitment, education of handicapped dependents, communications throughout the system, increased parental involvement, and responses to the recommendations made by the Council during its January meeting.

Dated: June 19, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-15050 Filed 6-24-91; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary of Defense

Education Benefits Board of Actuaries; Meeting

AGENCY: Department of Defense Education Benefits Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of chapter 101, title 10, United States Code (10 U.S.C. 2006 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the G.I. Bill. Persons desiring to (1) attend the DoD Education Benefits Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Lashonda Winston at (703) 696-6336 by July 12, 1991. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: July 17, 1991, 9:30 a.m. to 1 p.m.

ADDRESSES: Room 1E801 #7.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209-2593, (703) 696-5869.

Dated: June 19, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-15049 Filed 6-24-91; 8:45 am]
BILLING CODE 3810-01-M

Retirement Board of Actuaries; Meeting

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of chapter 74, title 10, United States Code (10 U.S.C. 1464 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to (1) attend the DoD Retirement Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Lashonda Winston at (703) 696-6336 by July 12, 1991. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: July 16, 1991, 1 p.m. to 5 p.m.

ADDRESSES: Room 1E801 #7.

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209-2593, (703) 696-5869.

Dated: June 19, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-15048 Filed 6-24-91; 8:45 am]
BILLING CODE 3810-01-M

Defense Intelligence Agency

Membership of the DIA Performance Review Committee

AGENCY: Defense Intelligence Agency (DoD).

ACTION: Notice of membership of the Defense Intelligence Agency Performance Review Committee.

SUMMARY: This notice announces the appointment of the Performance Review Committee (PRC) of the Defense Intelligence Agency (DIA). The PRC's jurisdiction includes the entire Defense Intelligence Executive Service (DISES). Publication of the PRC membership is required by 10 U.S.C. 1501(a)(4).

The PRC provides fair and impartial review of DISES performance appraisals and makes recommendations regarding performance awards to the Director, DIA. Additionally, the PRC makes recommendations on DISES recertification to the Director, DIA.

EFFECTIVE DATE: July 1, 1991.

PRIMARY MEMBERS: Mr. Dennis M. Nagy, Executive Director (Chairman), Mr. Walter P. Lang, Defense Intelligence Officer for Middle East and South Asia, Mr. Michael F. Munson, Deputy Director for Resources, Mr. Charles W. Roades, Vice Deputy Director for Attaches and Operations, Mr. Steven T. Schanzer, Deputy Director for Information Systems, Maj Gen Richard E. Carr, USAF, Deputy Director for Foreign Intelligence.

ALTERNATE MEMBERS: Mr. A. Denis Clift, Deputy Director for External Affairs, Mr. Joseph J. Romano, Vice Deputy Director for Foreign Intelligence, Brig Gen Walter C. Heraman, USAF, Deputy Director for Command Support and Plans.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Carrides, Human Resources Manager, Policy and Program Division, Directorate for Human Resources, Defense Intelligence Agency (RHR-5), 3100 Clarendon Boulevard, Arlington, VA 22201-5322, 703-284-1341.

Dated: June 19, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-15052 Filed 6-24-91; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 25, 1991.

ADDRESSES: Written coments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information

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collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: June 19, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: The Chapter 1 Implementation Study School Survey.
Frequency: One time.
Affected Public: State or local governments.

Reporting Burden

Responses: 4,000.
Burden Hours: 2,500.

Recordkeeping Burden

Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will provide descriptive information about program operations at the school level in the third year of implementation of the Hawkins-Stafford Amendments. The Department will use the information to evaluate the effectiveness of chapter 1 programs, the educators carrying out chapter 1 or similar programs, and evaluators and program managers charged with monitoring and improving the program's operations.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Application for Grants under the National Diffusion Network Program.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions.

Reporting Burden

Responses: 50.
Burden Hours: 1,200.

Recordkeeping Burden

Recordkeepers: 113.
Burden Hours: 1,356.
Abstract: This form will be used by State Educational Agencies (SEAs), state or local governments and non-profit institutions to apply for funding under the National Diffusion Network Program. The Department uses the information to make grant awards.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: A Study of Satisfactory Progress Rules and the Grades of Students.
Frequency: One time.
Affected Public: Non-profit Institutions.

Reporting Burden

Responses: 225.
Burden Hours: 225.

Recordkeeping Burden

Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will collect data from postsecondary institutions regarding the legislative definition of satisfactory academic progress required for Federal Student Aid. The Department will use this data for program assessment and to report to Congress.

[FR Doc. 91-15014 Filed 6-24-91; 8:45 am]
BILLING CODE 4000-01-M

Office of Postsecondary Education

College Work-Study—Community Service Learning Program

AGENCY: Department of Education.

ACTION: Notice of Closing date for filing the campus-based reallocation form to receive supplemental allocations for the College Work-Study—Community Service Learning (CWS–CSL) program.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for supplemental 1992–92 allocations under the CWS–CSL program. The Secretary is authorized under section 442(e) of the Higher Education Act of 1965, as amended (HEA), to reallocate unexpended College Work-Study (CWS) funds that institutions received for expenditures during the 1990–91 award year (July 1, 1990 through June 30, 1991) as supplemental allocations for the 1991–92 award year (July 1, 1991 through June 30, 1992). Supplemental allocations will be issued this fall in accordance with reallocation procedures contained in 34 CFR 675.3 and 675.4.

Section 442(e)(2) of the HEA requires the Secretary to use an amount not in excess of 25 percent of those CWS funds available for reallocation each year to issue supplemental CWS–CSL allocations to eligible institutions for the purpose of initiating, improving and expanding programs of community service learning. CWS–CSL supplemental allocations may be used only for administrative expenses related to the development of work-study programs involving the employment of CWS-eligible students in community service learning activities.

The CWS-CSL program is authorized by section 447 of title IV of the HEA. (42 U.S.C. 2756a).

Closing Date: An instititution must apply for 1991–92 supplemental allocations for the CWS–CSL program by submitting the completed data cells on the Campus-Based Reallocation Form (ED Form E40–4P; OMB No. 1840–0559).

To ensure consideration for the 1991–92 funds, the Campus-Based Reallocation Form must be mailed or hand-delivered by July 26, 1991.

Campus-Based Reallocation Forms Delivered by Mail: A Campus-Based Reallocation Form that is delivered by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, Division of Programs Operations and Systems, Campus-Based Programs Branch, 400 Maryland Avenue, SW., (room 4621, Regional Office Building 3), Washington, DC 20202–5452.

An institution must show proof of mailing consisting of one of the following: (1) A legible mail with the date of mailing stamped by the U.S. Postal Service; (2) a legibly dated U.S. Postal Service postmark; (3) A dated shipping label invoice; or receipt from a commercial carrier; or (4) Any other proof of mailing acceptable to the Secretary of Education.

If a Campus-Based Reallocation Form is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

Campus-Based Reallocation Forms Delivered by Hand: A Campus-Based Reallocation Form that is delivered by hand must be taken to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations and Systems, Campus-Based Programs Branch, 7th and D Streets, SW., room 4621, Regional Office Building 3, Washington, DC. Hand-delivered Campus-Based Reallocation Forms will be accepted between 8 a.m. and 4:30 p.m. (Washington, DC. time) daily, except Saturdays, Sundays and Federal holidays. A Campus-Based Reallocation Form that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Campus-Based Reallocation Form and Information Package: Campus-Based Reallocation Forms and a CWS–CSL program information package will be mailed to all participating institutions by the Campus-Based Programs Branch in June. Each institution applying for 1991–92 supplemental allocations must submit the form in accordance with the instructions included in the package.

The CWS–CSL program information package is intended to aid applicants in applying for assistance under the CWS–CSL program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantees performance requirements beyond those specifically imposed under the statute and regulations governing the program.

Applicable Regulations: Applicable regulations are 34 CFR part 675 (College Work-Study and Job Location and Development Programs), 34 CFR part 668 (Student Assistance General Provisions), 34 CFR part 82 (New Restrictions on Lobbying), 34 CFR part 85 (Government-Wide Debarement and Suspension (Nonprocurement and Government-Wide Requirements for Drug-Free Workplace (Grants)), and 34 CFR part 86 (Drug-Free Schools and Campuses).

FOR FURTHER INFORMATION CONTACT: For further information or to request a Campus-Based Reallocation Form, contact Ms. Gloria Easter, Chief, Financial Management Section, Division of Program Operations and Systems, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4621, ROB–3), Washington, DC 20202–5452. Telephone (202) 708–7741. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–377–8339. (In the Washington, DC 202 area code, telephone 708–9300 between a.m. and p.m., Eastern time.)

Progam Authority: 42 U.S.C. Sections 2751–2756a.

(Catalog of Federal Domestic Assistance No. 84.033, College Work-Study Program)

Dated: June 17, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Educations.

[FR Doc. 91-15013 Filed 6-24-91; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-25-NG]

Cascade Natural Gas Corp.; Order Granting Blanket Authorization to Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Cascade Natural Gas Corporation to import up to 56 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery after June 18, 1991.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 18, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-15044 Filed 6-24-91; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 91-28-NG]

Energy Marketing Exchange, Inc.; Application to Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on April 8, 1991, of an application filed by Energy Marketing Exchange, Inc. (EME), requesting blanket authorization to export up to 73.1 Bcf of natural gas to Canada and up to 73.1 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. EME intends to use existing U.S. pipeline facilities which are interconnected with Canadian and Mexican pipeline facilities at various points on the U.S./Canadian and U.S./Mexican borders. EME states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, July 25, 1991.

ADDRESSES: Office of Fuels Programs, Fossile Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office fo Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: EME, a New Jersey corporation with its principal place of business in Edison, New Jersey, is a wholly-owned subsidiary of KCS Group, Inc., a Delaware corporation. EME has marketed gas to industrial end-users including electric utility companies and cogeneration facilities and to local distribution companies since early 1984. Affiliates of EME are engaged in the exploration for production, gathering, processing of natural gas in New Mexico, Texas, Louisiana, and New York.

EME anticipates that it will sell the requested natural gas volumes on a short-term or spot basis and that the contractual arrangements will be the product of arms-length negotiations with an emphasis on competitive prices and contract flexibility. EME requests authorization to export natural gas for its own account and for the accounts of

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its U.S. suppliers and Canadian and Mexican purchasers.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EME's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 14, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–15045 Filed 6–24–91; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance: Cooperative Agreement with BP Research

AGENCY: Department of Energy.

ACTION: Notice of intent to negotiate a Cooperative Agreement with BP Research for Membrane/Distillation Hybrid Process Research & Development for Propane/Propene Separation at Reduced Energy Costs.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR.14 (e) it plans to award a Cooperative Agreement to BP Research. This is a new award for membrane/distillation hybrid process research and development for propane/propene separation at reduced energy costs. The BP Research application was submitted in response to a notice of Program Interest (NOPI) published in the Federal Register on July 26, 1990, and in the Commerce Business Daily on August 6, 1990. This unsolicited application has been accepted by DOE in accordance with DOE Financial Assistance Rules 10 CFR 600.14(e)(1)(i) and (ii). The Cooperative Agreement will have a three year project period for a cost of $7,449,850 with a DOE share of $2,099,850. The application is for the development of a unique facilitated transport membrane to selectively allow permeation of propylene molecules with retaining propane molecules. The BP proposal to develop molybdenum dimmers as facilitator for the membrane is a totally new approach to facilitated transport and is highly innovative. The application was evaluated and considered meritorious as the proposed concept has superior applicability and commercial potential to the U.S. petrochemical industry and the degree of industrial interest was found to be high. BP Research operates an excellent research laboratory and has a Pilot Plant suitable for onstream testing of the development process. The principal investigator, and co-principal investigator and the research team are highly qualified for the proposed research.

Contact: Department of Energy, Idaho Operations Office, attn: Ginger Sandwina, Contracts Management Division, 785 DOE Place, Idaho Falls, ID 83402–1129 (208) 526–8696.

Dated: June 17, 1991.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR DOC. 91–15042 Filed 6–24–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Basic Energy Sciences Advisory Committee Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC)

Date and Time: July 8, 1991—8 a.m.–5 p.m.; July 9, 1991—9 a.m.–12 noon

Place: Lawrence Berkeley Laboratory, One Cyclotron Road, Berkeley, California 94720, Building 50A, room 5132.

Contact: James S. Coleman, Department of Energy, Office of Basic Energy Sciences (ER–15), Office of Energy Research, Washington, DC 20585, Telephone: 301–353–3822.

Purpose of the Committee: To provide advice on the continuing basis to the Department of Energy (DOE) on the many complex scientific and technical issues that arise in the planning, management, and implementation of the research program for the Office of Basic Energy Sciences (BES).

Tentative Agenda: Briefings and discussions of:

July 8, 1991

- Report of Subcommittee on Combustion Research
- Other Subcommittee Reports
- Discussion of Letter to DOE
- Public Comment (10 Minute Rule)

July 9, 1991

- Further Discussion of Letter to DOE
- Other BESAC Business
- Public Comment (10 Minute Rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: James S. Coleman at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 20, 1991.

Edwin F. Ings,

Deputy Advisory Committee Management Officer.

[FR Doc. 91–15043 Filed 6–24–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP91–2087–000; et al.]

Questar Pipeline Co., et al.; Natural gas certificate filings

June 18, 1991.

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Co.

[Docket No. CP91–2087–000]

Take notice that on May 23, 1991, Questar Pipeline Company (Questar), pursuant to section 7(c) of the Natural Gas Act, filed an application requesting permanent certificate authority to use the Texota Federal L No. 1 injection/withdrawal well in conjunction with the operation of Questar's Chalk Creek Underground Storage Reservior (Chalk Creek).

The Texota Federal L No. 1 well had previously been granted a limited certificate for a two year term in Docket No. CP89–1515–000. In the event that the requested authorizations are not in place prior to the expiration of the limited term certificate, Questar requests the Commission issue temporary authorization to provide for the use of the Texota well for Chalk Creek's upcoming 1991–1992 heating season.

Comment date: July 9, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Co.

[Docket Nos. CP91–2280–000, CP91–2281–000, CP91–2282–000, CP91–2283–000]

Take notice that on June 14, 1991, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86–239–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Columbia Gulf and is summarized in the attached appendix.

Comment date: August 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–2280–000 (6–14–91)	Philbro Energy, Inc. (Marketer).	5,000 4,000 1,460,000	LA	LA	4–1–91, FTS–2, Firm.	ST91–8733–000 5–1–91
CP91–2281–000 (6–14–91)	Aquila Energy Marketing Corporation (Marketer).	13,400 10,720 3,912,800	LA	LA	5–1–91, FTS–2, Firm.	ST91–8737–000 5–1–91
CP91–2282–000 (6–14–91)	Appalachian Gas Sales (Marketer).	50,000 40,000 14,600,000	TX, LA, OLA	TX, LA, OLA	3–1–91, ITS–2, Interruptible.	ST91–8735–000 5–1–91
CP91–2283–000 (6–14–91)	American Central Gas Marketing Company (Marketer).	40,000 20,000 7,300,000	LA, OL	LA	2–1–91, ITS–2, Interruptible.	ST91–8734–000 5–1–91

[1] Offsore Louisiana is shown as OLA.

3. Mojave Pipeline Co., Kern River Gas Transmission Co.

[Docket No.'s CP89–1–007, CP89–2048–005]

Take notice that on June 10, 1991, Mojave Pipeline Company (Mojave), 4520 California Avenue, suite 200, Bakersfield, CA. 93309, filed in Docket No. CP89–1–000, and Kern River Gas Transmission Company, P.O. Box 2511, Houston, TX 77252–2511, filed in Docket No. CP89–2048, (collectively known as applicants), pursuant to section 7(c) of the Natural Gas Act and subpart A of the regulations of the Federal Energy Regulatory Commission (Commission)

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hereunder, for an amendment to the certificates of public convenience and necessity issued to Mojave and Kern River on January 24, 1990. Mojave Pipeline Co., 50 FERC 61,060. Applicant seeks to amend these certificates, as more fully set forth in the amendment to its application which is on file with the Commission and is open to public inspection.

Applicant seeks authorization to change a small section of the route along which it will construct its pipeline. Two segments of the proposed reroute, located near Bakersfield, California and totaling 1.3 miles in length, may not be within the corridors studied in the Mojave-Kern River-El Dorado Environmental Impact Statement (EIS). Applicant states that it wishes to undertake the reroute in order to comply with environmental mitigation measures mandated by the Commission and with the wishes of the City of Bakersfield. Applicant therefore seeks Commission authorization to construct its facilities in the area not studied in the EIS.

Comment date: July 9, 1991, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15015 Filed 6-24-91; 8:45am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2206-000, et al.]

Tennessee Gas Pipeline Co., et al; Natural gas certificate filings

June 17, 1991.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP91-2206-000]

Take notice that on June 7, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application in Docket No. CP91-2206-000, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to transport, on a firm basis, an aggregate maximum quantity of 71,610 Dt daily on behalf of four shippers and to construct and operate pipeline facilities necessary to provide this service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Tennessee proposes to provide an aggregate firm transportation service of 71,610 Dt per day on behalf of Lockport Energy Associates, L.P. (Lockport), Dartmouth Power Associates Limited Partnership (Dartmouth), Pepperell Power Associates Limited Partnership (Pepperell), and Boston Edison Company (Boston Edison). The shippers, quantities, receipt points, and delivery point are as follows:

Shipper	Maximum daily quantity (Dth per day)	Receipt point	Delivery point
Lockport	28,000	Gulf Coast	Lockport, NY.
Dartmouth	14,010	Wright, NY	Mendon, MA.
Pepperell	9,600	Niagara, NY	Tewksbury, MA.
Boston Edison	20,000	Gulf Coast	Mendon, MA.

Tennessee intends to commence service to Lockport, Dartmouth, and Pepperell on November 1, 1992. Service to Boston Edison is scheduled to commence on November 1, 1993.

In order to perform the contemplated transportation services, Tennessee intends to construct and operate facilities in two stages. For the service scheduled to commence in 1992, Tennessee proposes to construct and operate 18.25 miles of 30-inch mainline looping, 11.08 miles of 36-inch mainline looping, and a total addition of 3,100 horsepower of compression at two existing compressor stations. For the 1993 service, Tennessee proposes to construct and operate 9.59 miles of 30-inch mainline looping, 11.22 miles of 36-inch mainline looping, and an addition of 1,000 horsepower of compression at an existing compressor station. The estimated cost of these facilities is $72,702,000. Tennessee plans to initially finance these facilities with funds on hand, funds generated internally, borrowings under revolving credit agreements, or short-term financing which will be rolled into permanent financing.

Tennessee intends to provide the proposed transportation services under Rate Schedule NET-EU, which contains a single-part demand charge. The proposed demand charge is derived from the incremental cost of service associated with providing the transportation service to the four new shippers.

Comment date: July 8, 1991, in accordance with Standard Paragraph F at the end of the notice.

2. Northwest Pipeline Corporation

[Docket No. CP91-2246-000]

Take notice that on June 10, 1991, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158-0900, filed in Docket No. CP91-2246-000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a proposed delivery meter, and for approval to reallocate a portion of Northwest Natural Gas Company (Northwest Natural) existing firm maximum daily delivery quantities under its blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that Northwest Natural has requested Northwest to establish a new meter station, the Samon Creek Meter Station, to be located in Clark County, Washington. Northwest indicates that the new meter station would be used for firm gas sales service to Northwest Natural under Northwest's Rate Schedule ODL-1 and/or for transportation deliveries for the account of shippers for whom Northwest is, or will be, authorized to transport gas. The estimated cost of the Salmon Creek Meter Station is approximately $250,000.

Northwest states that to facilitate deliveries to the proposed Salmon Creek Meter Station, Northwest and Northwest Natural have revised the Exhibit A of the May 15, 1980 ODL-1 Service Agreement to add the new Salmon Creek delivery point and to reflect the proposed reallocation of 50,640 therms of maximum daily delivery quantities from the existing Camas delivery point located in Clark County, Washington to the proposed Salmon Creek delivery point.

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Green Canyon Pipe Line Co., Viking Gas Transmission Co., Viking Gas Transmission Co., Natural Gas Pipeline Co., of America, Natural Gas Pipeline Co., of America, Natural Gas Pipeline Co., of America

[Docket Nos. CP91-2254-000,[1] CP91-2255-000, CP91-2256-000, CP91-2257-000, CP91-2258-000, CP91-2259-000]

[1] These prior notice requests are not consolidated.

Take notice that on June 11 and 12, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (dated filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of[2] receipt	Points of[2] delivery	Start up date, rate schedule	Related[3] dockets
CP91-2254-000 (6-11-91)	Green Canyon Pipe Line Company, P.O. Box 1396, Houston, TX 77251.	Superior Natural Gas Corporation.	25,000Dt 25,000Dt 9,125,000Dt	OLA	OLA	5-1-91, IT-GC	CP89-515-000, ST91-8668-000.
CP91-2255-000 (6-12-91)	Viking Gas Transmission Company, P.O. Box 2511, Houston, TX 77252.	Enron Gas Marketing, Inc.	200,000Dt 200,000Dt 73,000,000Dt	MN, ND, WI	MN, ND, WI	4-24-91, IT-2	CP90-273-000, ST91-8694-000.
CP91-2256-000 (6-12-91)	Viking Gas Transmission Company.	Poco Petroleums Ltd.	207,450Dt 207,450Dt 75,719,250Dt	MN, ND, WI	MN, ND, WI	3-1-91, IT-2	CP90-273-000, ST91-8695-000.
CP91-2257-000 (3-25-91)	Natural Gas Pipeline Company of America, 701 E. 22nd St., Lombard, IL 60148.	Bridgegas U.S.A. Inc.	200,000 75,000 27,375,000	AK, CO, IA, IL, KS, LA, MO, NE, NM, OK, TX, OLA, OTX.	CO, IA, IL, LA, NM, OK, OLA, OTX, TX.	4-6-91, ITS	CP86-582-000, ST91-8573-000.
CP91-2258-000 (3-25-91)	National Gas Pipeline Company of America.	Kerr-McGee Corporation.	50,000 35,000 12,775,000	AK, CO, IA, IL, KS, LA, MO, NE, NM, OK, TX, OLA, OTX.	AK, CO, IA, IL, LA, NM, OK, OLA, OTX, TX.	4-5-91, ITS	CP86-582-000, ST91-8566-000.

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Docket No. (dated filed)	Applicant	Shipper name	Peak day,[1] avg, annual	Points of [2] receipt	Points of [2] delivery	Start up date, rate schedule	Related[3] dockets
CP91-2258-000 (3-25-91)	Natural Gas Pipeline Company of America.	Williams Gas Marketing Company.	25,000 15,000 5,475,000	AK, CO, IA, IL, KS, LA, MO, NE, NM, OK, TX, OLA, OTX.	CO, IA, IL, LA, NE, NM, OK, OLA, OTX, TX.	4-10-91, ITS	CP86-582-000, ST91-8630-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Northwest Pipeline Corporation

[Docket No. CP91-2252-000]

Take notice that on June 11, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91-2252-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to partially abandon metering facilities at the existing Ritzville Meter Station (Ritzville) in Adams County, Washington, and to construct and operate upgraded metering facilities at Ritzville to replace those being abandoned, under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

Specifically, Northwest proposes to abandon the existing meter and to replace it with a meter with greater capacity. It is stated that the increase in capacity is needed to accomodate the increased needs of the Washington Water Power Company, for which Northwest provides firm sales and transportation services. It is explained that the existing facilities were installed by Pacific Northwest Pipeline Corporation, a predecessor of Northwest, in 1957 under Commission authorization in Docket No. G-12828. It is asserted that the proposed meter will provide a maximum station design capacity of 2,688 dt equivalent of natural gas per day. It is estimated that the cost of installing the new meter would be $24,795, which includes the $1,700 cost of removing the existing meter.

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP91-2250-000]

Take notice that on June 11, 1991, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP91-2250-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to add and delete delivery points used to serve existing customers in Warrick County, Indiana, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

Specifically, Texas Gas proposes to add delivery points to two existing customers, Boonville Natural Gas Corporation (Boonville) and Chandler Natural Gas Corporation (Chandler) and to delete the respective delivery points from a third existing customer, Ohio Valley Gas, Inc. (Ohio Valley). Texas Gas states that it would provide service to Boonville and Chandler pursuant to separate service agreements dated November 1, 1990. It is estimated that the Boonville delivery point would serve 6 residential customers receiving 6 MMBtu equivalent on a peak day and 870 MMBtu equivalent annually and that the Chandler delivery point would serve 76 customers receiving approximately 35 MMBtu equivalent on a peak day and 7,530 MMBtu equivalent annually.

It is asserted that the reason for the proposal is that both Boonville and Chandler have entered into sales agreements with Ohio Valley, dated October 25, 1990. It is explained that the delivery points would be deleted from Texas Gas' service agreement with Ohio Valley and would be added to Texas Gas' service agreements with Boonville and Chandler. It is stated that the proposed deliveries to Boonville and Chandler would be within their respective contract demands and that the service could be accomplished without detriment to Texas Gas' other existing customers.

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. South Georgia Natural Gas Co.; Southern Natural Gas Co.

[Docket Nos. CP91-2272-002; CP91-2273-000]

Take[3] notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notices requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg., annual	Points of [2] Receipt	Points of [2] Delivery	Start up date, rate schedule	Related [3] dockets
CP91-2272-000 (6-13-91)	South Georgia Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563.	Waverly Mineral Gas Products Company.	2,800 1,369 500,000	AL	GA	04-06-91, IT	ST91-8595-000, CP90-2125-000.
CP91-2273-000 (6-13-91)	Southern Natural Gas Company, P.O. Box 2563 Birmingham, Alabama 35202-2563.	Consolidated Fuel Corporation.	10,000 10,000 3,650,000	LA, OLA, TX, OTX, MS, AL.	AL	04-12-91, IT	ST91-8590-000, CP88-316-000.

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX, respectively.
[3] The CP and RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. Columbia Gas Transmission Corporation

[Docket No. CP91-2253-000]

Take notice that on June 11, 1991, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP91-2253-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon a point of delivery to Mountaineer Gas Company (MGC), located on a non-jurisdictional production pipeline in the Rocky Fork Production Field, Kanawha County, West Virginia pursuant to United's blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to abandon a point of delivery to MGC for a tap consumer served directly from an existing gathering facility owned by Viking Energy, Inc, which is being abandoned due to the deteriorating condition of the line. Due to the condition of the line, Columbia states that the consumer is currently being provided alternative service from an existing MGC distribution line, located approximately 500 feet from the existing pipeline to be abandoned. It is stated that the proposed abandonment will not result in any abandonment of service to the consumer since MGC is responsible for providing and maintaining all necessary gas supplies and deliveries to the consumer.

Comment date: August 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15016 Filed 6-24-91; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

[Rate Order No. WAPA 49]

Rate Order—Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a Rate Order for the Boulder Canyon Project power rates.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA-49 and Rate Schedule BCP-F3 placing increased power rates in effect on an interim basis. The rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them in effect on a final basis for a 5-year period or until they are replaced by other rates.

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COMPARISON OF EXISTING AND PROPOSED RATES

[Boulder Canyon Project]

Rate schedules	Existing BCP–F1	Proposed BCP–F3 [1]
Capacity Charge	$0.75/kW-month	$1.05/kW-month.
Energy Charge	3.410 mills/kWh	5.11 mills/kWh.
Composite Rate	6.813 mills/kWh	10.21 mills/kWh.

[1] Rate schedule BCP–F2 was never implemented.

The capacity component and the energy component of the rate reflect the Base Charge identified in 10 CFR part 904, Western Area Power Administration's (Western) General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, 51 FR 43124, November 28, 1986 (Western's 1986 General Regulations), which provides the basic revenue requirements for the Boulder Canyon Project (BCP).

The Lower Basin Development Fund Contribution Charge identified in Western's 1986 General Regulations, which provides for the contributions to the Lower Colorado River Basin Development Fund, consists of an additional energy rate of 4.5 mills per kilowatthour (kWh) to purchase in Arizona and 2.5 mills per kWh to purchasers in California and Nevada.

The Base Charge increase reflects significant increases in overall costs associated with future replacements and operation and maintenance (O&M) expenses.

EFFECTIVE DATE: In order to ensure sufficient cash balances in the Colorado River Dam Fund, the new rates will become effective on the first day of the first full billing period after 6/10/91, and will continue in effect pending the FERC's approval of them or substitute rates on a final basis for a 5-year period, or until superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–2453, (602) 352–2453.

Mr. Robert C. Fullerton, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1545.

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions, the Secretary of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an intreim basis to the Deputy Secretary of DOE; (3) and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to FERC.

The proceeding for the proposed power rates and the associated customer consultation and comment period were initiated on October 25, 1990, with a notice in the **Federal Register** (55 FR 43026).

The October 25 notice announced a public information forum for November 15, 1990, and a public comment forum on November 30, 1990, with the consultation and comment to end January 28, 1991.

Western, in the "Notice of Proposed Power Rate Adjustment, Boulder Canyon Project," (55 FR 43026) October 25, 1990, because of projected cash-flow deficiencies in early future years, presented two rate proposals for consideration. One proposal set a level rate for the entire study period while the other proposal set a lower level rate for the entire study period with an additional revenue component for each of the fiscal years (FY) 1991–95. The BCP customers were asked to indicate which proposal they preferred, and the first rate proposal was identified.

During the comment period, Western received 10 comment letters on the BCP rate adjustment. At the November 30, 1990, public comment forum, six persons representing customers commented orally. Five major issues and several miscellaneous issues were raised. All public comments were considered in the preparation of the rate order. Western has concluded that the BCP rate adjustment is needed to meet cost-recovery criteria.

Some of the BCP customers have expressed concern about how project rates are currently determined. On February 20, 1991, at a customer's request, a meeting was held with customer representatives for the express purpose of considering how future project rate adjustments should be prepared and processed. Initially, the BCP customers, along with Western and the Bureau of Reclamation, will review the principles of ratesetting for the BCP. Subsequently, specific action will be proposed for incorporation in BCP ratesetting methodology, and Western will review and consider those proposals. Changes in policy and regulation will be considered in the overall process. Western will include in the next BCP rate adjustment any of the proposals that it has accepted at that time.

A power repayment study (PRS) is prepared annually in accordance with DOE Order RA 6120.2, Power Marketing Administration Financial Reporting. The existing power rates for BCP are based on the FY 1986 PRS. The FY 1990 Current PRS indicates that the existing rates do not yield sufficient revenue to staisfy the cost-recovery criteria through the study period.

In Rate Order No. WAPA–40, results of the proposed FY 1990 PRS are being compared to the FY 1986 PRS, which was the basis for the existing BCP rates. The comparison shows the following differences:

1. The projected O&M expenses for the 5-year budget period (FY 1991–95) have increased about $9.0 million per year, which reflects inflation and more appropriately considers the age and associated replacement requirements of the BCP.

2. Project replacement for the 5-year budget period (FY 1991–95) has increased about $32.5 million. This large increase reflects in part the difference in reporting methodology between the two PRS's, as well as the more recent recognitions of needed replacements.

3. The cost of the visitor facilities increased $38.1 million, reflecting the impact of inflation and some changes in features.

Rate Order No. WAPA–40, confirming and approving the BCP rate adjustment on an interim basis, is issued, and Rate Schedule BCP–F3 will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued in Washington, DC, June 10, 1991.

W. Hanson Moore,

Deputy Secretary.

Order Confirming, Approving, and Placing Boulder Canyon Project Power Rates in Effect on an Interim Basis.

June 10, 1991.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation), under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments,and particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485(c), and acts and regulations specifically applicable to the Boulder Canyon Project, were transferred to and vested in the Secretary of Energy.

By Delegation Order No. 0204–108, effective Decembeer 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions, the Secretary of Eneregy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary of DOE (Deputy Secretry); (3) and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate order is issued pursuant to the delegation to the Administrator and the Deputy Secretary and the rate adjustment procedures at 10 CFR part 903, published in the **Federal Register** on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Adjustment Act	Boulder Canyon Project Adjustment Act, July 19, 1940, (43 U.S.C. 618, *et seq.*).
Annual Uprating Program Payments	Uprating Program contributions which were provided by various Boulder Canyon Project (BCP) contractors in accordance with the 1984 Act and are to be repaid with interest to those contractors by fiscal year (FY) 2017.
Base Charge	Charges made up of an energy component and a capacity component according to Western's 1986 General Regulations, § 904.7.
BCP	Boulder Canyon Project.
Capacity Component	Shown in power repayment study (PRS) as a dollar per kilowatt (kW) per year charge. Billed on a dollar per kW per month basis. Applied each billing period to each kW of rated output to which each contractor is entitled by contract.
Colorado River Basin Project Act	The Colorado River Basin Project Act, September 30, 1968 (43 U.S.C. 1501, *et seq.*).
Colorado River Dam Fund	A fund established by section 2 of the Boulder Canyon Project Act of 1928 which is to be used only for the purposes specified in the Boulder Canyon Project Adjustment Act of 1940, The Colorado River Basin Project Act of 1968, and the Hoover Power Plant Act of 1984.
Contribution Charge	Lower Basin Development Fund Contribution Charge is part of the rate schedule and is expressed in mills per kilowatthour (kWh), required by law to be included in the BCP rates.
Conformed Criteria	Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50582, December 28, 1984) beginning on June 1, 1987.
DOE Order RA 6120.2	Power Marketing Administration Financial Reporting guidelines.
Energy Component	Expressed in mills per kWh. Applied to each kWh made available to each contractor.
1941 General Regulations	General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act.
Hoover Dam	The dam on the Colorado River which forms Lake Mead.
1984 Act	Hoover Power Plant Act of 1984, August 17, 1984 (43 U.S.C. 619, *et seq.*).
LCRBDF	Lower Colorado River Basin Development Fund—a fund established by the Colorado River Basin Project Act of 1968.
Pinch-point	The FY in which the level of the rate is set as dictated by a revenue requirement in some future year to meet relatively large annual costs or to repay investments which come due.
Project Act	Boulder Canyon Project Act, December 21, 1928 (43 U.S.C. 617, *et seq.*).
Proposed PRS	Establishes the revenues to be collected through a rate that the Administrator submits to the Deputy Secretary. Charges for capacity and energy rates will provide sufficient revenue to pay all annual costs plus required debt service.
PRS	Power repayment study.
Rate Brochure	Western Area Power Administration, Boulder Canyon Project, Proposed Power Rate Adjustment Brochure, Phoenix Area Office, October 1990. A document prepared for public distribution explaining the background of Western's rate proposal.
Reclamation	Bureau of Reclamation of the Department of the Interior.
Reclamation's 1986 General Regualtions	General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada, 43 CFR part 431, (51 FR 23980, July 1, 1986).
Western's 1986 General Regualtions	General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, 10 CFR part 904, (51 FR 43154, November 28, 1986).
Treasury	Secretary of the Department of the Treasury.
Uprating Program	Non Federally financed work to increase the capacity of the existing generating and associated electrical equipment at the BCP.
WAPA–40	Western Area Power Administration Rate Order No. WAPA–40 for BCP based on the FY 1990 PRS. WAPA–40 is the basis for the provisional rates.

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Effective Date

The new rates will become effective on an interim basis on the first day of the first full billing period after June 10, 1991, and will be in effect pending the FERC's approval of them or substitute rates on a final basis for a 5-year period, or until superseded.

Public Notice and Comment

1. On October 25, 1990, a formal 95-day customer consultation and comment period was initiated with an announcement of the proposed rate adjustment published in the Federal Register at 55 FR 43020. That notice also announced a public information forum conducted November 15, 1990, and a public comment forum conducted November 30, 1990. Several informal meetings of BCP contractor representatives were held prior to the initiation of the formal rate proceeding. At those meetings PRS data and methodology to be utilized in the ratesetting process were closely reviewed.

2. A document entitled Western Area Power Administration, Boulder Canyon Project, Proposed Power Rate Adjustment, Brochure, October 1990, Phoenix Area Office (Rate Brochure), which provided information about the BCP rate adjustment, was handed out at the November 15, 1990, public information forum. By letter of November 20, 1990, the Rate Brochure was mailed to BCP customers and interested parties.

3. At the information forum held on November 15, 1990, Western representatives explained the need for the rate increase and answered questions.

4. The comment forum was conducted on November 30, 1990, to give the public an opportunity to comment for the record. Six persons representing customers made oral presentations. Ten comment letters were received during the 95-day comment period ending January 28, 1991. Formally submitted comments have been addressed in this rate order. Western has responded to the comments and has included the responses as part of the record.

Project History

The BCP was authorized for construction by the Boulder Canyon Project Act (Project Act) on December 21, 1928 (43 U.S.C. 617, *et seq.*). The Project Act provided for a dam to be built in the Black Canyon located on the Colorado River adjacent to the Arizona/Nevada border. The dam was built for the expressed purposes of (1) controlling the flooding in the lower regions of the Colorado River drainage system, (2) improving navigation of the Colorado River and its tributaries, (3) regulating the Colorado River, while providing storage and delivery of the stored water for the reclamation of public lands, and (4) generating electrical energy as a means of making the BCP a self-supporting and financially solvent undertaking. Congress authorized the Secretary of the Department of the Treasury (Treasury) to advance up to $165 million to the Secretary of the Interior to provide for the construction of the dam, powerplant, and related features; $25 million of the $165 million was allocated to flood control.

Construction of a dam in the Black Canyon of the Colorado River began in 1930, and the first generating unit of the powerplant went into service in 1937. Upon completion of the BCP facilities, power sales commenced, in accordance with the provisions of the Project Act, to contractors in the States of Arizona, California, and Nevada.

The Project Act was modified in 1940 by the Boulder Canyon Project Adjustment Act, July 19, 1940 (Adjustment Act), (43 U.S.C. 618 *et seq.*). The Adjustment Act, among other things, authorized the Secretary of the Interior to promulgate and to put into effect power rates based upon a repayment period from June 1, 1937, to May 31, 1987 (amended by the Hoover Powerplant Act of 1984 (1984 Act), August 17, 1984 (43 U.S.C. 619, *et seq.*)); to reduce the interest rate from 4 percent to 3 percent per annum on unpaid Treasury advances; to require annual payments to the States of Arizona and Nevada in lieu of taxes levied; and to defer without interest until June 1, 1987, the repayment of the $25 million allocated to flood control.

Subsequent and pursuant to the Adjustment Act, the Secretary of the Interior published and implemented the May 20, 1941, General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act (1941 General Regulations) for the period ending May 31, 1987.

As the end of the 50-year term of the original contracts approached, controversy developed among the BCP contractors over renewal rights to BCP power, and litigation resulted. Compromises were reached and embodied in the 1984 Act.

The 1984 Act authorized an increase to the capacity of the existing generating and associated electrical equipment at the BCP. The work to accomplish this increase, referred to as the Uprating Program, was to be funded initially by advances from certain BCP contractors to Reclamation. Funds advanced would be returned to these contractors through credits on their monthly power bills. The 1984 Act also provided for advances from the Treasury for the improvement of visitor facilities at the BCP. The 1984 Act also requires that an additional charge of 4.5 mills/kWh be assessed on energy sales to Arizona and an additional charge of 2.5 mills/kWh be assessed on energy sales to California and Nevada; all revenue resulting from the additional charge (Lower Basin Development Fund Contribution Charge (Contribution Charge)) is to be transferred to the Lower Colorado River Basin Development Fund (LCRBDF). The Contribution Charge is not part of the PRS, but is included in the rate schedule.

Under the 1984 Act, the BCP's power was sold to 15 customers located in the States of Arizona, California, and Nevada in accordance with the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Conformed Criteria) (49 FR 50582, December 28, 1984), beginning on June 1, 1987.

Due to the numerous requirements set out in the 1984 Act and the earlier separation of the Federal responsibilities relating to Hoover Dam between Reclamation and Western, both agencies published new regulations governing their respective responsibilities at the BCP after June 1, 1987. Reclamation adopted 43 CFR part 431, General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (Reclamation's 1986 General Regulations) (51 FR 23990, July 1, 1986). Western adopted 10 CFR part 904, General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project (Western's 1986 General Regulations) (51 FR 43154, November 28, 1986). These regulations supersede the 1941 General Regulations, which terminated on May 31, 1987.

Power Repayment Study

In accordance with Western's 1986 General Regulations, Western and Reclamation developed the data utilized in the PRS. The purpose of the PRS is to project a level of annual revenues sufficient to repay all costs and obligations of the BCP during the repayment period in accordance with applicable laws, regulations, policies, and directives.

The BCP FY 1990 PRS on which the proposed rates are based was prepared following the Conformed Criteria, the 1984 Act, Power Marketing and Financial Reporting guidelines (DOE Order RA 6120.2) and the guidelines set out in Western's 1986 General Regulations. Western's 1986 General Regulations provided for a Base Charge for BCP power, made up of an energy component and a capacity component.

The energy component of the Base Charge is expressed in mills per kWh. This component is applied to each kWh made available to each contractor as provided for by contract, except for the energy purchased by Western at the request of a contractor to meet that contractor's deficiency in energy entitlement (pursuant to section 105(a)(2) of the 1984 Act and section F of the Conformed Criteria) and/or to reduce that contractor's Uprating Program credit carry forward as provided by contract.

The capacity component of the Base Charge is shown in the PRS as a dollar-per-kW-per-year charge. This is billed on a dollar-per-kW-per-month basis. The capacity component of the Base Charge is applied each billing period to each kW of rated output to which each contractor is entitled by contract. In addition, as required by the 1984 Act, Western's 1986 General Regulations provided for the Contribution Charge.

The Base Charge capacity and energy rates developed from the PRS are necessary to recover the costs associated with the BCP. The Contribution Charge as provided by the rate schedule is necessary to collect the revenues required by section 1543(c)(2) of the Colorado River Basin Project Act, September 30, 1968 (43 U.S.C. 1501, *et seq.*).

Existing and Proposed Rates for the Boulder Canyon Project

The existing power rates and the proposed power rates necessary to meet the revenue requirements for the BCP are listed below. These proposed rates will be in place for 5 years and are to become effective on an interim basis on the first day of the first full billing period after June 10, 1991.

COMPARISON OF EXISTING AND PROPOSED RATES, BOULDER CANYON PROJECT

	Existing	Proposed
Rate schedules	BCP-F1	BCP-F3
Capacity charge	$0.75/kW-month.	$1.05/kW-month
Energy charge	3.410 mills/kWh.	5.11 mills/kWh
Composite rate	6.813 mills/kWh.	10.21 mills/kWh

Certification of Rate

The Administrator of Western has certified that the BCP power rates are the lowest possible consistent with sound business principles. The rates have been developed in accordance with administrative policies, regulations, and applicable laws.

Discussion

The BCP is considered a single entity for financial and repayment purposes and the power generated by the BCP is marketed in the States of Arizona, California, and Nevada.

The rate adjustment would increase annual power revenues by $13.4 when FY 1990 is compared to FY 1992. The increase is necessary to satisfy the cost-recovery criteria as set forth in DOE Order No. RA 6120.2.

The existing and proposed revenue requirements for the BCP are as follows:

TOTAL POWER REVENUE

	Existing (FY 1990)	Proposed (FY 1992)
BCP power revenue	$31,232,765	$50,232,396

Note: Revenue for FY 1991 reflects a mixture of existing and proposed rates.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the proposed rate-approval period.

COMPARISON OF 5-YEAR RATE PERIOD, REVENUES AND EXPENSES ($1,000)

	FY 1990 Rate Study 1991-95	FY 1986 Rate Study 1991-95	Difference
Total revenues	$244,314	$177,423	$66,891
Expenses:			
Operation and maintenance	99,562	54,760	44,802
Payments to States	3,000	3,000	0
Other	3,378	0	3,378
Annual uprating payments	[1] 76,946	[1] 88,157	(11,211)
Annual replacement payments	34,854	[1] 2,204	32,460
Interest	24,671	16,854	8,017
Total expense	242,221	164,775	77,446

[1] Not treated as an expense in FY 1986 rate study.
[2] Includes principal and interest.

Basis for Rate Development

The basis for charges for capacity and energy, generated and sold from the BCP, is set out in Western's 1986 General Regulations which provides for a Base Charge made up of an energy component and a capacity component.

Primary Issues—Public Comments

During the 95-day comment period, Western received 10 comment letters on the BCP rate adjustment, one of which included comments of two entities. At the November 30, 1990, public comment forum, six persons representing customers commented orally.

Written comments were received from the following sources:

Arizona Power Authority (Arizona)
Basic Management Incorporated (Nevada)
The City of Boulder City, Nevada (Nevada)
Colorado River Commission of Nevada (Nevada)
Lincoln County Power District No. 1 (Nevada)
Department of Water and Power of the City of Los Angeles (California)
Metropolitan Water District of Southern California (California)
Overton Power District No. 5 (Nevada)
Pioneer Chlor Alkali Company, Inc. (Nevada)
Southern California Edison Company (California)
Valley Electric Association, Inc. (Nevada)

Representatives of the following organizations made oral comments:

Arizona Power Authority (Arizona)
California cities of Anaheim, Azusa, Banning, Colton, and Riverside (California)

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Colorado River Commission of Nevada (Nevada)
Department of Water and Power of the City of Los Angeles (California)*
Southern California Edison Company (California)

Most of the comments received at the public meetings and in correspondence throughout the 95-day customer consultation and comment period addressed the use of the pinch-point concept by the PRS and the associated future year surpluses, the cost of the visitor facilities, the treatment of replacements, perceived policy violations, and the function of a BCP engineering and oversight committee.

The comments and responses, at times paraphrased for brevity and consistency and at times quoted for essence, are discussed below.

Issue 1: Several contractors asked for implementation of the provisions of §§ 431.5 and 431.6 of Reclamation's 1986 General Regulations. Section 431.5 states, in part:

> Reclamation shall submit annually on or before April 15th to Western and Contractors, cost data, including one year of actual costs for the last completed fiscal year and estimated costs for the next 5 fiscal years, for operation, maintenance, replacements, additions and betterments, non-Federal funds advanced for the uprating program by non-Federal purchasers, and interest on and amortization of the Federal investment.

Section 431.6 states, in part:

> Reclamation shall submit annually on or before April 15th to Western and Contractors, an estimated annual operation schedule for the Hoover Powerplant showing estimated power generation and estimated maintenance outages * * *.

Also, there is the contention that § 431.5 cost data submitted by Reclamation should not be freely revised as to the costs subsequent to April 15.

Response: By April 15 of each year, Reclamation submits cost data to all Hoover contractors and Western, including 1 year of actual costs for the last completed fiscal year and estimates based on budget estimates for the next 5 fiscal years as required by Reclamation's 1986 General Regulations, § 431.5, and an estimated annual operation schedule showing estimated power generation and estimated maintenance outages as required by § 431.6.

Frequent revisions of costs have been made to reflect current costs and conditions. Often this was done as a result of concerns expressed by one or more BCP contractors. Limiting cost revision, while providing perceived consistency, would hinder the flow of information among the various parties interested in BCP financial activities.

Western expects the frequency of revisions of cost estimates to be discussed in the future by all concerned parties and agreement reached as to the need for and frequency of revisions.

Issue 2: It was pointed out that the budget on which the PRS is based lags behind, by up to 2 years, the time the rate determined by the PRS is placed in effect.

Response: There definitely is a lag between budget implementation and implementation of the rate adjustment. The sequence of events that creates the lag between budget formulation, budget implementation, and its use in the ratesetting PRS is as follows.

The FY 1990 PRS is prepared in December 1990. It utilizes the FY 1991 budget document, which is the most recent approved congressional budget (CB). The 1991 budget document is for the 5 years, FY 1991–95. Initial formulation of the FY 1991 budget took place in January 1989. The time elapsed from initial FY 1991 budget formulation and its use in the FY 1990 PRS is 24 months. The time elapsed between the preparation of the FY 1990 PRS and the implementation of a rate based on that PRS is about 12 months. The total time elapsed between the formulation of the FY 1991 budget and rate implementation is about 3 years. It should be recognized that from the budget's formulation in January of 1989 until its approval by Congress in March 1990, the budget was subject to change, thus the reason for using the most recent CB.

Issue 3: Concern was expressed about the need for documentation of the costs associated with the visitor facilities.

Response: The estimated cost for the visitor facilities at Hoover Dam, based upon 1983 prices, was $32,000,000. The facilities included two parking structures to accommodate 420 cars, 20 tour buses, and 80 recreational vehicles, two 50-passenger elevators, the road realignment, transmission tower relocations, and a visitor center. The current estimate based upon October 1991 prices is $69,000,000, or an increase of $37,000,000. The facilities as currently designed include only one multi level parking structure in lieu of the two structures originally conceived plus the addition of the interpretive materials (such as visual displays), an additional adit to a new penstock platform, a ventilation shaft, and a utility bore hole. It should be noted that the 1983 estimate includes the visitor center and parking structure as a single cost, whereas in the 1991 estimate the parking structure and visitor center, which includes the interpretive costs, are separated.

The noncontract costs associated with investigation, design and specifications, and construction supervision have increased from $6,468,000 in the 1983 estimate to $11,197,000 in the 1991 estimate, or a total of $4,797,000. For estimating purposes noncontract costs are computed based upon historical data as a percentage of the construction costs. The 1983 noncontract costs were estimated at 25 percent of the construction costs. The 1991 noncontract costs are currently estimated at approximately 20 percent of the construction costs.

Minor contracts, as listed in the 1991 estimate, are to cover contracts under $50,000 face value and contingencies on the major contracts. The 1983 estimated costs included the contingencies in the feature item. The estimated construction costs for each feature in the 1991 estimate were arrived at from actual contract costs, historical costs, or the estimated construction costs as provided by an architectural and engineering firm. Therefore, the $4,859,000 in minor contracts in the 1991 estimated cost are to cover unanticipated claims on ongoing contracts and/or cost overruns on unawarded contracts and other contracts under $50,000.

Issue 4: The ratesetting methodology, known as pinch-point, utilized by Western results in surplus revenue in some years. The pinch-point methodology should be clearly stated. Also, the use of pinch-point methodology and the resulting surplus revenue in the PRS is inconsistent with Western's 1986 Regulations, and Western's 1986 Regulations should be amended.

Response: The level of the rate is normally dictated by a revenue requirement in some future year to meet relatively large annual costs or to repay investments which come due. Such ratesetting future year is known as the PRS pinch-point, and will likely be greater than the rate necessary to meet revenue requirements of the years that follow. This is consistent with paragraph 10c of DOE Order RA 6120.2 which states in part that, "Revenue and cost estimates for the remaining years of the power system's repayment period should reflect price levels, rate levels, and contractual commitments consistent with conditions anticipated during the cost evaluation period." Often this results in the prepayment of debt and the accumulation of large amounts of surplus revenues by the end of the power system's repayment period. However, DOE Order RA 6120.2 also requires that Western review the adequacy of the current rates through the annual preparation of a PRS. Rates will then be adjusted, either upward or downward, as necessary and as administratively feasible, to insure that the revenue level satisfies all the criteria specified in Western's 1986 General Regulations.

The provisions of Western's 1986 General Regulations do not preclude the existence of surplus revenues. Section 904.5(a) of those regulations states in part that, "Western shall collect all electric service revenues from the project in accordance with applicable statutes and regulations and deposit such revenues into the Colorado River Dam Fund. All receipts from the project shall be available for payment of the costs and financial obligations associated with the Project."

Pinch-point methodology, even though it may result in surplus revenue in some future years, is a supportable approach for setting BCP rates. Western recognizes that such methodology is a concern of some of the BCP customers. Consequently, Western met with BCP customers on February 20, 1991, to discuss future ratesetting procedures and assumptions for the BCP. The February 20 meeting resulted in the formation of a customer/Western/Reclamation group to identify the principles of BCP ratesetting. Any change in BCP ratesetting will be reviewed for consistency with policy and regulation.

Issue 5: Various changes to the PRS were suggested as follows: The PRS should show subtotals at the end of the budget period and at the end of the contract period. The PRS columns should be reordered with revenue requirements shown, then resources, and finally rates. Western's PRS computer program needs to be changed with respect to the computation of column 25. The PRS should be modified to accommodate display of the carry-over balance in the revolving fund.

Response: The response to the above issues are in the order that the issues are presented.

Subtotals, if shown, in the PRS at the end of the budget period and at the end of the contract period would not be of value since they would include historical, as well as future, data. Consequently, Western has elected not to show any additional subtotals.

The PRS columns, as displayed, are similar to and consistent with the display for other Western projects, and there does not seem to be any overriding reason to change. Rates that might be shown annually would have no significance to the purpose of the PRS since the study sets rates on a long-term basis.

Western agrees that the data in column 25 is misleading for some years, as is the total after the last study year. However, the column 25 display does not impact the results of the PRS. Western will correct the display of column 25 before the next rate adjustment.

The suggestion that the PRS should be modified to accommodate display of the carry-over balance in the revolving fund will be considered by Western for implementation, but at this time the PRS has not been changed since this has policy implications for other revolving fund projects which should be coordinated and considered.

Issue 6: It was suggested that there was significant variation in operation and maintenance (O&M) cost from year to year for the BCP, and that these variations should be explained and documented. Also, it was suggested that O&M should incorporate an inflation factor for the entire period of the PRS.

Response: Year to year variation in O&M expense is not unusual and should, in fact, be expected. It should be recognized that O&M does not necessarily reflect a cost index, such as the consumer price index, but more so represents the wear and tear on equipment.

O&M expenses have been discussed in detail from time to time at the various customer meetings that preceded the formal rate adjustment activities. During the consultation and comment period, detailed O&M data was available at locations specified in the Federal Register that initiated the BCP rate adjustment.

Looking at the ratesetting PRS, the percent changes in total O&M from year to year vary from a high of 16.2 percent (1988 to 1989) to a low of minus 12.1 percent (1995 to 1996 and beyond). These variations seem to be well within what might be expected on a project as large and dynamic as Boulder Canyon.

Reclamation's budget guidelines do not presently allow for inflation to be factored into its budget documents. Western uses a 4-percent inflation factor for its budget. These budget documents are used for the first 5 future years in the PRS. Estimating the economic climate beyond 5 years is generally unreliable and, therefore, inflation is not applied to the out years of the PRS.

Issue 7: Several BCP contractors asked that the annual decreases of carry-over revenue shown in the column 47 of the PRS be explained. Also, several contractors requested an explanation of the difference between the carry-over in the PRS and the cash balance as indicated by Reclamation.

Response: The PRS indicates, in column 47 labeled "Cumulative Earned Surplus," a revolving fund carry-over balance at the end of FY 1988. These funds are available, and are used, to assist in meeting the future annual obligation of the project. During FY 1989 the total income to the project was not sufficient to pay all the annual expenses. A portion of the FY 1988 revolving fund carry-over was used to pay for the remaining annual expenses in FY 1989. The revolving fund carry-over balance at the end of FY 1989 was therefore reduced by the amount of the insufficiency. Again in FY 1990, the total income to the project was not sufficient to pay all of the annual expenses and the revolving fund was reduced by the amount of the FY 1990 insufficiency. The projected revenue and costs data for FY 1991 indicates that in addition to the total income, all of the remaining carry-over balance in the revolving fund at the end of FY 1990 will be needed to meet FY 1991 annual expenses.

It should be noted that the funds shown as year-end revolving fund carry-over balances were, for the most part, created by deferring, when permissible, all principal and interest payments on the project's investments. This procedure has been necessary to assure that sufficient funds would be available at the end of FY 1990 to prevent the project from becoming deficit during FY 1991.

The revolving fund carry-over balance at the end of FY 1990 reconciles to Reclamation's "cash" balance at the end of FY 1990. The PRS carry-over balance may be reconciled to Reclamation's cash balance by considering the difference between power sales and cash received and the difference between actual dollars expended and dollars obligated. The revenues shown in the PRS are reflective of actual power sales made during FY 1990, not "cash" received during FY 1990. Power sold during a month is billed the tenth of the following month, with payment due 20 days later.

Western then transfers this revenue to Reclamation. This results in about a 2-month lag between the actual sale of power as shown in the PRS and the receipt by Reclamation of the revenue associated with the sale. The PRS shows actual FY 1990 costs for completed activities, while Reclamation is required to reduce the "cash" available in the revolving fund by all obligations which have been incurred, including items such as undelivered orders and stores.

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* Two representatives made oral comments, and one of them also commented, along with another person, for Southern California Edison Company.

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Undelivered orders and store costs were not included in the PRS. To the extent practicable these costs will be included in the future studies.

Issue 8: Replacements Issues:

Issue: Replacements should not be annualized (i.e., expensed in the PRS). Such expensing of replacements is in violation of DOE Order RA 6120.2, paragraph 10.1, and inconsistent with section 5 of the Adjustment Act.

Paragraph 10.1 of DOE RA 6120.2 states:

> Future replacement costs will be included in repayment studies by adding the estimated capital cost of replacement to the unpaid Federal investment in the year each replacement is estimated to go into service, and adding it to the allowable unamortized investment. The capital cost of each replacement is determined by estimating the cost at current price levels of the new unit of property, less salvage, if any, at the end of the service life of the unit replaced. The allowable unamortized investment is developed by adding each year's investment as it goes into service and then deducting each increment of investment at the end of its allowable repayment period. Replacements should be accounted for separately from the original investment.

Section 5 of the Adjustment Act states:

> If at any time there shall be insufficient sums in the Colorado River Dam Fund to meet the cost of replacements, however necessitated, in addition to meeting the other requirements of this Act, or of regulations authorized hereby and promulgated by the Secretary, the Secretary of the Treasury, upon request of the Secretary of the Interior, shall readvance to the said fund, in amounts not exceeding, in the aggregate, moneys repaid to the Treasury pursuant to section 2(b) hereof, the amount required for replacements, however necessitated, in excess of the amount currently available therefore in said Colorado River Dam Fund. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums, not exceeding said aggregate amount, as may be necessary to permit the Secretary of the Treasury to make such readvances. All such readvances shall bear interest.

Response: While DOE Order RA 6120.2 allows for the capitalization of replacements, it also allows for replacements to be treated as an annual expense. DOE Order RA 6120.2 provides for including the cost of a replacement in the year it is placed in service, and adding such cost to the allowable unamortized investment. Where replacements are expensed, the replacement is recognized as a cost in the year it is placed in service, and paid for in that year. Further, the allowable unamortized investment of an expensed replacement would normally be zero.

The FERC, in its May 18, 1988, Order approving the rate study upon which Rate Schedule BCP–F1 was based, did not find fault with essentially expensing replacements at that time. Western does not feel that the FERC will change its position with this filing and find the expensing of replacements in violation of paragraph 10.1 of DOE Order RA 6120.2.

The above-cited statutory provision of section 5 of the Adjustment Act cited above does not require that all funds required for replacement work be readvanced from the Treasury; rather, the provisions allow for such readvancement from the Treasury where "* * * there shall be insufficient sums * * * to meet the cost of replacements * * *" (emphasis added). If Congress would have intended all replacement work to be funded by readvances from the Treasury, whether or not sufficient funds were available in the Colorado River Dam Fund, it could have easily provided for such a result. However, Congress did not require readvances for all replacement work, and Western declines to adopt such a position. The rates as set forth in this rate order will provide the necessary revenues to pay for the projected replacement work. Therefore, at this time it is not anticipated that a readvance is necessary.

Section 2 of the Adjustment Act clearly provides for the expensing of replacements for the BCP. The amendment of section 2 of the Adjustment Act, by the 1984 Act, significantly changed the financial treatment of the BCP by requiring that sufficient revenues be collected anually to pay for operation, maintenance, and replacements. Section 2, as amended by the 1984 Act, reads in part as follows:

> All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available, without further appropriation, for:
>
> (a) Defraying the costs of operation (including purchase of supplemental energy to meet temporary deficiencies in firm energy which the Secretary of Energy is obligated by contract to supply), maintenance and replacements of, and emergency expenditures for, all facilities of the project, within such separate limitations as may be included in annual appropriations Acts * * *.

Comparing section 2 and section 5 of the Adjustment Act, it is apparent that section 2 provides for normal BCP financial operation utilizing revolving fund authority while section 5 deals with the special situation of an unusual or emergency deficiency in available funds.

The Deputy Secretary, by virtue of approval of these rates, recognizes that even if replacements are normally to be capitalized as a matter of policy, a deviation in this instance is justified as allowed in paragraph 1. of DOE Order RA 6120.2. Further, as described above, there are statutes that govern the issue, which is also recognized in the departmental order.

Issue: It was suggested that PRS should not include replacements after the end of the contract period (FY 2017) and that the cost of replacements with life extending beyond the end of the contract period should be prorated.

Response: DOE Order R.A. 6120.2, paragraph 10(1) begins, "Future replacement costs will be included in the repayment studies * * *." The FERC in its May 4, 1990, Order (Docket No. EF 89–5041–000) relating to the filing of proposed rates for Western's Parker-Davis Project, clearly interprets the above cited paragraph 10.1. to mean that replacement costs are to be included for the entire repayment study period. The United States has the responsibility to maintain BCP in a safe manner and in sound operating condition. Sound operation was expected during its first 50 years of operation and should likewise be expected during all future years. The plant's power resource is contracted from customer to customer over its life, even though the contracting entities may or may not remain the same from one contracting period to another. It would be unreasonable to expect that a new group of customers would receive a lesser facility than their predecessors. For these reasons, Western does not feel that not including replacements after the end of the contract period (2017) or prorating replacements with lives beyond the end of the contract period is acceptable.

Issue: By subsequently reducing the original level of replacements, there was acknowledgment of unwarranted replacements. In effect, this constituted a deviation on the intent of the Reclamation Act of 1939. Section 9(c) of the Reclamation Act of 1939 states, in part:

> Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed 40 years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than three per centum per annum, and such other fixed charges as the Secretary deems proper * * *.

Response: It is true that replacement costs were reduced significantly as a result of interface among the various parties interested in the replacement program of the BCP. It is not unusual to take a close look at costs immediately prior to expending funds or when considering a rate adjustment. The close scrutiny that might result in a reduction in estimated costs does not constitute an acknowledgment of previous unwarranted costs or a deviation from the intent of the Reclamation Act of 1939 but rather reflects professional judgment and current project condition. Future costs are adjusted from time to time in order to accomplish optimization of the BCP within the confines of budget constraints and the various laws and regulations.

Issue: Replacements should not be made because of obsolescence or to maintain state-of-the-art status.

Response: The general concept is correct. Replacements that may appear to be made because of obsolescence or to maintain state-of-the-art status are usually made because of a lack of reliability and/or unavailability of spare parts. BCP replacements will continue to be closely monitored to ensure they are necessary and not made solely because of age or to maintain state-of-the-art status.

Issue: Repacement costs appears to be excessive.

Response: Prior to development of the proposed rate, replacement costs were closely scrutinized in a joint effort by Western, Reclamation, and the BCP contractors. For the first 5 future years of the PRS, replacements are projected to total about $34.7 million. Considering current dollars and the age of the project, the replacement cost over the next 5 years is well within expectations. The replacements included in the PRS are considered to be required to maintain project integrity and, therefore, are consistent with the operational responsibility of Reclamation and Western.

Issue 9: It was suggested that to help eliminate any cash-flow deficiency for the BCP, the repayment (inclusive of interest) at the current interest rate should be deferred for the air slots and the visitor facilities.

Response: The BCP is expected to be able to get through FY 1991 without experiencing a cash-flow deficiency. This has been achieved by deferring interest payments on the investments associated with the Dam and Appurtenant Works, Air Slots, and Flood Control, and to the extent practicable curtailing all nonessential activities. The PRS presented in the Rate Brochure deferred interest costs at the interest rate associated with the individual investment. However, in the Provisional Rate PRS the deferred interest costs are at the current Treasury interest rate in effect at the time the deferment occurs. This is consistent with Western's ratesetting policy.

Issue 10: It was suggested that a current audit should be performed for the BCP.

Response: At this time, neither Western nor Reclamation is contemplating having an audit of the BCP performed. It is felt that the accounting for the project is in accordance with Western and Reclamation instructions and regulations. However, the BCP will be part of the Western-wide audits that will be conducted periodically. The initiation of a new process, in FY 1987, has required significant adjustments in Western, Reclamation, and customer interface. The extent of public involvement and the complexities of the work demand that new processes be developed. Accordingly, all of these parties have agreed to cooperate in a effort to resolve the various concerns regarding the accounting and ratesetting of the BCP.

Issue 11: It was suggested that the BCP's Engineering and Oversight (E&O) Committee's role be defined and that part of its role would be to have the authority to participate in budget formulation for the BCP. Also, it was suggested that the role of the E&O Committee should be formalized in a letter agreement. Further, the E&O Committee should act as a facilitator of communications.

Response: Prior to this time, the E&O Committee functioned somewhat informally. Likewise, the role of the E&O Committee is not the subject of formal agreement. Western feels that the E&O Committee's work to date has been beneficial to all parties involved with the BCP rate adjustment. It seems appropriate to formalize the existence and role of such committee. It should be recognized that the involvement of Reclamation with the E&O Committee would likely be even greater than that of Western. Consequently, Reclamation would be expected to take the lead in any E&O Committee activity. While Western feels that the E&O Committee could facilitate communications and assure thorough coordination of issues, among all parties, Reclamation and Western have the ultimate decision making authority in budget formulation for the BCP.

Issue 12: It was proposed that Western's policy regarding the use of forced payments should be clearly established, and that forced payments are beneficial and should be documented for each power repayment study in which they are applied.

Response: Western's policy is to utilize forced payments to the extent they result in a rate that is the lowest possible consistent with sound business principles. Documentation of forced payments does occur within the PRS and is part of the supporting and analytical printout of the study. Consequently, Western does not believe there is a need for additional identification of forced payments in the PRS.

Issue 13: The treatment of the cost of pressure relief valve repair as an extraordinary expense was questioned.

Response: All expenditures for the BCP are broken down into O&M, replacements, additions, or extraordinary maintenance. Anything that requires a considerable amount of money to repair or renovate, but is not being replaced, is categorized as extraordinary maintenance. Pressure relief valves are included in this category since each valve will require up to $200,000 to rebuild, using large amounts of labor and material to repair cavitation and replacement of necessary removable parts. Work is planned on two valves (one in each wing of the powerplant) each year in connection with necessary turbine work.

Issue 14: It was suggested that certain data required by the FERC's filing requirements (18 CFR 300, specifically sections 11(b)(3)[vi], 11(b)(5)(ii) and 11(b)(5)(iii)) be provided to the customers during the consultation and comment period.

Response: These sections are part of the required technical support for the rate schedule that is made up of statements A through F. Statements A through F are not prepared until after the close of the consultation and comment period. The source of these statements, except F, is the PRS. While the statements are not available to interested parties during the consultation and comment period, the PRS is available. The information that appears in the sections mentioned in this issue can be readily developed by a user of that PRS. As stated later in this Rate Order under Availability of Information, the entire record of this rate adjustment, including statements A–F, is available for public review.

Issue 15: It has been proposed that there be immediate establishment of a BCP rate for 1 year in lieu of the usual implemention of a long-term rate in accordance with standard procedures. Further, during that year, issues associated with the BCP rate process and financial management would be

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resolved leading to the implementation of a long-term rate.

Response: If there was a pressing need for the immediate implementation of a rate for a short term, Western feels that such rate implementation could and would be accomplished. However, at the present time there is no need to utilize a rate for a short term, and BCP rate implementation is following the normal process.

Issue 16: Two contractors felt that their requests for information were not responded to. The requestors and the dates of request are Colorado River Commission of Nevada, November 6, 1990; and Lincoln County Power District No. 1, January 9, 1991.

Response: A November 6, 1990, letter from the Colorado River Commission was a "Request for copies of Phoenix Area Project's budget and financial data" for purposes of the "analysis of the cost of service for the Federal power resources." The request did not mention in its subject line or within the letter the proposed power rate adjustment for the BCP. Since the Colorado River Commission did not indicate that its request for data was focusing on the BCP rate adjustment, Western did not treat it as part of the rate activity and responded to the request by letter of January 28, 1991.

Lincoln County Power District's (District) request of January 9, 1991, specifically referenced the BCP rate adjustment and asked that the response be provided by January 24, 1991, to their consultant.

Western's response was by faxogram on January 24, 1991, sent to the District's consultant as had been specified by the January 9, 1991, letter.

Western feels it has properly and adequately responded to both requests of information. The record of decision for the BCP Rate Adjustment, as required by § 300.10(f)(2) of 18 CFR 300, does not include letters related to Colorado River Commission's request of November 6, 1991, since that request was not related to the BCP rate adjustment. However, the District's request of January 9, 1991, and related documents are included because it was BCP rate adjustment related.

It should be recognized that the Notice of Proposed Power Rate Adjustment, Boulder Canyon Project, (55 FR 43026) October 25, 1990, states under Availability of Information that, "All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rate are and will be available for inspection and copying at the Boulder City Office, located at the address noted above."

Western, to the extent that it is able to do so, willingly provides rate adjustment documents and data in response to oral or written requests.

Issue 17: A plan was proposed which would require each contractor to deposit its pro rata share of a stated annual contribution in a replacement escrow account in the contractor's name, to be invested "* * * and to be available for requisition by Reclamation for replacements, all in a manner similar to requisitions from escrow accounts for investments in the uprating program. The amounts so collected would be excluded from revenue requirements to be met by rates."

Response: Western agrees that this proposal might be a viable alternative approach to providing funds that could be applied to BCP replacements. Such an approach could, at some future date, be considered for incorporation in the financial management of the BCP.

Issue 18: It was recommended that joint agency procedures should be agreed to between Western and Reclamation detailing the financial forecasting/rate development process. These procedures should establish specific requirements and time tables for accomplishment of the requirements by both Western and Reclamation. Also, a concern was expressed that there is a lack of coordination of data flow between Reclamation and Western.

Response: Since the creation of Western, there has been close coordination between Western and Reclamation. While there exists no specific written procedures for such coordination for the BCP, aside from §§ 431.5 and 431.6 of Reclamation's 1986 General Regulations and the agreement dated March 28, 1980, between Reclamation and Western, the flow of information between the two agencies has been freely and willingly exchanged.

Western is open to further discussions with regard to the possible formalization of procedures with Reclamation.

Issue 19: Western can and should utilize a shorter ratesetting period, while still forecasting revenue requirements over the total 55-year planning period. A shorter period for establishing rates is consistent with DOE Order RA 6120.2, which requires the annual preparation of power repayment studies, and FERC filing requirements, § 300.1(b)(6) of 18 CFR 300, which limits the confirmation and approval period by FERC of Western's rates to 5 years.

Response: Paragraph 10a of DOE Order RA 6120.2 does provide for publication annually of a PRS. However, the annual publication is for the purpose of determining the need for a rate adjustment rather than being a vehicle for setting rates for a short period of time.

While § 300.1(b)(6) of 18 CFR 300 states that the rate approval period must not exceed 5 years, the apparent purpose is to provide a period of time that would limit the use of any one rate without reevaluation.

Further, an annual rate adjustment would add to project cost and would be exceedingly time consuming.

For these reasons, Western does not feel that a shorter ratesetting period, while still forecasting revenue requirements over the life of the study, is supported by either DOE Order RA 6120.2 or 18 CFR 300.

Issue 20: It is felt that Reclamation and Western have duplicated costs when going from historical costs to budget costs. In explanation, one comment was:

> Certain contracts issued in FY 1989 were not completed by fiscal year end. Since the work was not complete, the 1990 budget included the same work not completed in 1989, even though the funds for such projects were obligated in 1989. Thus, amounts shown as expenditures in the 1990 budget will not actually be spent. Their duplication of amounts causes the FY 1990 estimated costs to be overstated.

Further, it was stated that both Reclamation and Western need to take responsibility for seeing to it that actual expenditures conform to the budget.

Response: Funds available for a specific contract may be totally obligated in a particular fiscal year and only partially expended due to slippage in contractor scheduling or other reasons. An unliquidated obligation would then be carried forward into the next fiscal year for the unexpended portion of the obligation. These unliquidated obligations are then available until expended. However, the PRS does reflect the use of funds until that year in which the associated facility is completed. Therefore, there is no duplication and costs are not overstated.

The timing factor mentioned above also impacts the relationship between actual expenditures and budgeted amounts. However, the desirability of having a close match of actual dollars to those budgeted is fully recognized and is a goal that both Western and Reclamation continously strive to achieve.

Issue 21: It was stated that "One of the major items making up extraordinary maintenance is office remodeling. Out of a total of $6.9 million to be spent between 1991 and 1995, almost half is for office remodeling * * *"

Response: The $6.9 million of extraordinary maintenance, with almost half for office remodeling, is an amount that has been revised. Presently, for the BCP there is about $400,000 in office remodeling out of approximately $5,000,000 of total extraordinary maintenance expense from FY 1991 through FY 1995.

Issue 22: Certain law, policy, and regulation related to the setting of rates for the BCP were cited as not being appropriately considered and/or applied. Those cited were: DOE Order R.A.6120.2, paragraphs 6a, 8, 10a, and 10f; the Adjustment Act, section 5; Reclamation's 1986 General Regulations, §§ 431.5 and 431.6; Western's 1986 General Regulations, FERC's filing requirements, 18 CFR 300; the 1984 Act; and the Reclamation Act of 1939, section 9(c).

Response: Law, policy, and regulation listed in this issue have been specifically addressed in responding to the various other issues of this rate order. However, any continuing perceived infractions will be further reviewed and discussed with the BCP contractors and other interested parties.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500 through 1508), and DOE guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662), Western conducts and environmental evaluation of proposed rate adjustments.

Western prepared an environmental assessment (EA) for the proposed rate adjustment. The EA documented only economic impacts for the proposed action, and found no significant impacts to the human environment as defined by the CEQ. Based on the information included in the EA, DOE issued a finding of no significant impact on May 3, 1991.

Executive Order 12291

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that order, and therefore will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including studies, comments, letters, memorandum, and other documents made or kept by Western for the purpose of developing the power rates is available for public review at the Phoenix Area Office, Western Area Power Administration, Division of Power Rates and Statistics, 615 43d Avenue, Phoenix, Arizona 85009–5313, telephone: (602) 352–2525; Division of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401–3398; and the Office of the Assistant Adminstrator for Washington Liaison, Western Area Power Administration, room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmaiton and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective the first day of the first full billing period after June 10, 1991, Rate Schedule BCP–F3. This rate schedule shall remain in effect on an interim basis pending the FERC confirmation and approval of them or substitute rates on a final basis for a period of 5 years, or until it is superseded.

Issued At Washington, DC, June 10, 1991.

W. Henson Moore,

Deputy Secretary.

[Rate Schedule BCP–F3, Supersedes Rate Schedule BCP–F1 and Rate Schedule BCP–F2 which was not implemented]

Schedule of Rates for Power Service

Effective

On the first day of the first full billing period after June 10, 1991.

Available

In the marketing area served by the Boulder Canyon Project.

Appplicable

To power customers served by the Boulder Canyon Project supplied through one meter at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Capacity Charge: The Base Charge capacity rate is $1.05/kW-month for each kW of rated capacity to which each contractor is entitled by contract during the billing period.

Energy Charge: The Base Charge energy rate is 5.11 mills/kWh for each kWh measured or scheduled at the point of delivery during the billing period, except for purchased power.

Lower Basin Development Fund Contribution Charge

The Lower Basin Development Fund Contribution Charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser, except for purchased power.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overruns shall be billed at 10 times the above base charge capacity and energy rates. The Lower Basin Development Fund Contribution Charge shall be applied also to each kWh of overrun.

Adjustments

None.

[Fr Doc. 91–14979 Filed 6–24–91; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–398–4]

Fossil Fuel-Fired Utility Steam Generating Units; Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice is to inform the public and affected utility units that EPA has prepared guidance and a submittal form for elections under section 406 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990. Section 406(a) provides that Governors may elect "bonus" allowances for fossil fuel-fired utility steam generating units within "clean" states, which are in lieu of any other bonus allowances that an eligible unit would receive under section 405. EPA has sent this guidance to the Governors of each state most likely to be affected by section 406. These states are Arizona, Arkansas, California, Colorado, Louisiana, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, Vermont, and Wyoming, based on the

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most recent draft of the National Allowance Data Base (NADB).

DATES: Governors must notify the Administrator by sending the appropriate submittal form (or sufficient information as outlined in the submittal form) to EPA by June 30, 1991. The Governor's notification may either declare an election of bonus allowances or may defer the election of bonus allowances until publication of the final database. Governors that do elect at this time will have an opportunity to revise their elections upon publication of the final National Allowance Data Base in December, 1991.

Failure to provide the necessary notification (either an election or affirmative deferral) to EPA by June 30, 1991 will result in EPA determining the choice most beneficial to all the fossil fuel-fired steam generating units in the State.

ADDRESSES: Copies of the guidance and submittal forms are available upon request at the following location: U.S. Environmental Protection Agency, Acid Rain Division, ANR-445, 401 M Street, SW., Washington, DC 20460, Attention: Clean States.

Completd forms (signed by the Governor) may be sent to the same location.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, Acid Rain Division, at the above address; telephone (202) 382-3677, (FTS) 382-3877.

SUPPLEMENTARY INFORMATION: Acid rain occurs when sulfur dioxide and nitrogen oxide emissions are transformed in the atmosphere and return to earth in rain, fog or snow. Approximately 17 million tons of $SO2$ were emitted in 1985 by electric utilities. Acid rain damages lakes, harms forests and buildings, contributes to reduced visibility, and is suspected of damaging health.

The Acid Rain control program adopted in title IV of the Clean Air Act Amendments of 1990 (Pub. L. 101-549) will result in a permanent 10 million ton reduction in sulfur dioxide (SO_2) emissions from 1980 levels. The centerpiece of the acid rain control program is an innovative market approach in which emission allowances are transferable, allowing market forces to govern their ultimate use. To be in compliance with the Act, affected sources (mainly electrical utilities) are required to hold an amount of emission allowances at least equal to their annual emissions. Existing sources, and some other sources as provided in the amendments, will receive an initial allowance allocation. If a source reduces it emissions more than required, it will have left-over allowances that it can sell to another source. This would allow the other source to emit more then otherwise allowed under title IV while remaining in compliance. Such allowance transactions will achieve total emissions reductions in the most cost-effective way.

Title IV is implemented in two phases. Phase I runs from 1995 to 2000 and affects 261 units which are specifically listed in the Act. Phase II begins in 2000 and is permanent. It affects most utility units that emit SO_2. Also, units not explicitly affected by Phase II requirements may opt into the allowance system.

Section 406 of the Act provides bonus allowances for "clean" states at the election of such states' Governors. States which, in 1985, had a state-wide average sulfur dioxide emission rate for all fossil fuel-fired utility units of 0.8 pounds per million British Thermal Unit (lb/mmBtu) or less are considered clean states. EPA has not yet determined which states are eligible because the National Allowance Data Base (NADB), which will support such a determination, is not final. However, from the draft database and assuming that states which had an average 1985 emission rate of less than 0.8 lb/mmBtu may be eligible under section 406 in the final database, the following states are most likely to be eligible: Arizona, Arkansas, California, Colorado, Louisiana, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, Vermont, Wyoming.

The bonus allowances in section 406 are in lieu of other bonus allowances provided under section 405. If the Governor of an eligible state does not make an election to choose calculations under sections 405 and 406 (that is, if the Governor does not notify EPA of a choice by June 30, or if the Governor does not make the election following publication of the final database in December when that Governor has, as of June 30, affirmatively deferred the election until publication of the final database), then, as provided by section 403(a)(1) of the Act, EPA will determine which of sections 405 and 406 provides more allowances for the State Determinations by the Administrator regarding State eligibility for this election, unit eligibility for bonus allowances under section 406, and, in the absence of a Governor's election, the elections that would provide the greatest benefit to units in the State will be proposed in December, 1991. Because the database upon which the Governors' decisions are based is not yet complete, EPA will allow Governors to affirmatively defer their elections until publication of the final database or to change their elections based upon the final database, which will be available in December, 1991, if the Governors' decisions would be significantly affected by changes in the database.

To ensure adequate notice to all potentially eligible units, EPA has chosen to provide this notice.

The guidance and submittal form provided today are designed to further the requirements of the Paperwork Reduction Act by reducing the burden upon Governors in responding to section 408 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990. Also, the submittal form does not go beyond the necessary notification required by the Act. Submittal of notification to EPA by June 30, 1991 is mandated under the Clean Air Act Amendments of 1990.

Dated: June 19, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-15054 Filed 6-24-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3967-6]

Clean Air Act Advisory Committee; Open Meetings

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR, 46993, No. 217). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES: Notice is hereby given that the Clean Air Act Advisory Committee will hold an open meeting on July 25, 1991 from 8:30 a.m. to 4 p.m., at the Washington Hilton Hotel, 1919 Connecticut Avenue, NW., Washington, DC. Seating will be available on a first come, first served basis but should be fully adequate for all members of the public interested in attending.

The meeting will include a discussion of the status of Clean Air Act implementation efforts, the role of voluntary air pollution reduction and pollution prevention opportunities in the Clean Air Act.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket No. A-90-39 in room 1500 of EPA Headquarters 401 M Street, SW., Washington, DC. Hours of inspections are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m. Monday through Friday.

ADDITIONAL MEETING DATES: The next scheduled meeting dates for the CAAC are: October 24, 1991 and January 16, 1992. These meetings will also be held at the Washington Hilton Hotel.

FOR FURTHER INFORMATION CONTACT: Concerning the CAAAC or its activities please contact Mr. Paul Rasmussen, Designated Federal Official to the Committee at (202) 382-7430, FAX (202) 245-4185, or by mail at U.S. EPA, Office of Program Management Operations (ANR-443), Office of Air and Radiation, Washington, DC 20460.

Dated: June 18, 1991.

Jerry Kurtzweg,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 91-15059 Filed 6-24-91; 8:45 am]

BILLING CODE 6560-50-M

Science Advisory Board; Ecological Processes and Effects Committee and Environmental Engineering Committee; Open Meetings; July 16-18, 1991

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that two meetings of the Science Advisory Board will be held in tandem at the U.S. EPA Environmental Research Laboratory, 200 SW 35th St., Corvallis, OR 97333. The first meeting will be a review of Wetlands Research by the Wetlands Research Subcommittee of the Ecological Processes and Effects Committee. This meeting will start at 8:30 a.m. on July 16, and will adjourn no later than 2 p.m. July 17. The second meeting will be a review of research for constructed wetlands by the Constructed Wetlands Subcommittee of the Environmental Engineering Committee. This meeting will begin at 3 p.m. on July 17 and will adjourn no later than 5 p.m. on July 18, 1991. Both meetings are open to the public. Seating will be on a first come basis.

The main purpose of the first meeting is to review a Five Year Research Plan for Wetlands Research that has been developed by the Agency's Office of Research and Development. This research is intended to support the on-going needs of the regulatory programs within the Office of Water. Copies of the relevant EPA documents pertaining to the wetlands research review are available from Dr. Eric Preston at the EPA Corvallis Laboratory, (503) 757-4601.

The main purpose of the second meeting is to review the Agency's research plan for constructed wetlands and to provide advice on the broad spectrum of engineering, ecological and environmental issues which play a role in constructed wetlands activities. Copies of the relevant EPA documents pertaining to the constructed wetlands review are available from Mr. Donald Brown at the EPA Cincinnati, Ohio Laboratory (513) 569-7630.

Agendas for both meetings are available from Mrs. Marcy Jolly, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington DC 20460 (202-382-2552). Members of the public desiring additional information should contact either Dr. Edward S. Bender, Designated Federal Official, Ecological Processes and Effects Committee, or Dr. K. Jack Kooyoomjian, Designated Federal Official, Environmental Engineering Committee by telephone at the number noted above or by mail to the Science Advisory Board (A101F), 401 M Street, SW., Washington, DC 20460 no later than c.o.b. July 8, 1991. Anyone wishing to make a presentation at the meeting should forward a written statement to the appropriate Designated Federal Official by the date noted above. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: June 11, 1991.

Sam R. Rodenberg,

Acting Director, Science Advisory Board.

[FR Doc. 91-15055 Filed 6-24-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3968-2]

Science Advisory Board; Environmental Health Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Environmental Health Committee of the Science Advisory Board will be held on July 17-18, 1991 at the One Washington Circle Hotel, One Washington Circle NW., Washington DC 20037. The hotel telephone number is (202) 872-1680.

The meeting will start at 9 a.m. on July 17, and will adjourn no later than 5 p.m. July 18, and is open to the public. The main purpose of this meeting is to review the draft document "Formaldehyde Risk Assessment Update," developed by the Agency's Office of Toxic Substances (The review will address several issues, including the weight-of-evidence support for classifying formaldehyde as a probable human carcinogen (Category B 1), the use of DNA protein cross-link data in the risk assessment of formaldehyde, and the use of the available epidemiological data). Copies of the formaldehyde document, and technical information on this topic may be obtained from Dr. Mary Henry (CTS 796) U.S. EPA, Office of Toxic Substances, 401 M St., SW., Washington DC 20460 (Telephone number 202-382-4301). This document is not available from the Science Advisory Board.

On day two of the meeting (July 18), the Committee will discuss plans and subjects for reviews to be carried out during Fiscal Year 1992, and will consider what specific skills and disciplines might be added to the Committee membership to support the planned reviews.

An Agenda for the meeting is available from Mary Winston, Staff Secretary, Science Advisory Board (A101F), U.S. Environment Protection Agency, Washington DC 20460 (202-382-2552). Members of the public desiring additional information about the conduct of the meeting should contact Mr. Samuel Rondberg, Executive Secretary and Designated Federal Official, Environmental Health Committee, by telephone at the number noted above or by mail to the Science Advisory Board (A101F), U.S. EPA, 401 M Street, SW., Washington, DC 20460. Anyone wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg by July 8, 1991. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: June 18, 1991.

Sam Rondberg,

Acting Staff Director, Science Advisory Board.

[FR Doc. 91-15056 Filed 6-24-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44572; FRL 3930-9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

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ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 1,1,1-trichloroethane (CAS No.71–55–6), submitted pursuant to a consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 544–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submission

Test data for 1,1,1-trichloroethane were submitted by the Halogenated Solvents Industry Alliance pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on May 28, 1991. The submission describes the neurotoxicologic examination of rats exposed to 1,1,1-trichloroethane vapor for 13 weeks. Health effects testing is required by this test rule. This chemical is used as a cleaning stabilizer.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44572). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays in the TSCA Public Docket Office, rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 18, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91–15004 Filed 6–24–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Port Authority of New York and New Jersey; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003930–004.

Title: Port Authority of New York & New Jersey/Universal Maritime Services Corp. Terminal Agreement.

Parties: Port Authority of New York & New Jersey, Universal Maritime Services Corp. (UMS).

Synopsis: The Agreement, filed June 17, 1991, amends the basic agreement to provide the terms for UMS' construction of a certain facility at the Red Hook Container Terminal and to revise the parties' termination rights.

Dated: June 20, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15085 Filed 6–24–91; 8:45 am]

BILLING CODE 6730–01–M

American Transport Lines, Inc., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010386–017.

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., Companhia de Navegacao Lloyd Brasileiro, Van Nievelt, Goudriaan & Co., (Holland Pan American Line), Reefer Express Lines Pty., Ltd., Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment would delete Van Nievelt, Goudriaan & Co. (Holland Pan American Line) and Reefer Express Lines Pty., Ltd. as parties to the agreement. It would also adjust pool shares among the remaining parties as required by the withdrawal provisions of the Agreement.

Agreement No.: 212–010386–018.

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., Companhia de Navegacao Lloyd Brasileiro, Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment would provide criteria for crediting a party's sailing obligations when carrying cargo under space charter, and it would clarify that charter revenue earned from space charter will not be subject to the pool.

Agreement No.: 212–010386–019.

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., Companhia de Navegacao Lloyd Brasileiro, Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment would delete provisions of the Agreement which conflict with the Commission's rules concerning the notice and waiting period required prior to the effectiveness of agreement modifications.

Agreement No.: 212–010386–020.

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A Bottacchi S.A. de Navegacion C.F.I.I., Companhia de Navegacao Lloyd Brasileiro, Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment would provide additional detail with respect to the procedure (and liability) for chartering space as permitted under the authority of the agreement and require semi-annual reporting to the Commission on the space chartering activity undertaken pursuant to this authority. The proposed amendment would also permit the parties to agree upon the deployment, scheduling and utilization of their vessels subject to this Agreement, and to cooperate with respect to shoreside services.

By Order of the Federal Maritime Commission.

Dated: June 19, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15002 Filed 6–24–91; 8:45 am]

BILLING CODE 6730–01–M

The Board of Commissioners of New Orleans, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments one each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224–200533.

Title: The Board of Commissioners of the Port of New Orleans/Dupuy Storage & Forwarding Corporation.

Parties: The Board of Commissioners of the Port of New Orleans (Board); Dupuy Storage & Forwarding Corporation (Dupuy).

Filing Party: Ms. Julie Ann Berrone; Staff Attorney, Port of New Orleans, P.O. Box 60046, New Orleans, LA 70160.

Synopsis: The Agreement, filed June 17, 1991, provides for the Board to lease to Dupuy 60,800 square feet or the Perry Street Wharf facility for a period of two years. Dupuy shall use the facility for the loading and unloading of cargo from vessels, barges, and other watercraft, warehousing, stevedoring and related purposes; and pay the Board a base rent of $91,200.00 for the first year with a five percent increase beginning the second year. All applicable charges except for demurrage and shedddage charges shall be paid in accordance with the Board's Dock Department Tariff.

By Order of the Federal Maritime Commission.

Dated: June 19, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15060 Filed 6–24–91; 8:45 am]

BILLING CODE 6730–01–M

The Port of Palm Beach District, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200534.

Title: The Port of Palm Beach District/Grundstad Terminals, Inc. Terminal Agreement.

Parties: The Port of Palm Beach District (Port); Grundstad Terminals, Inc. (GT).

Synopsis: The Agreement, filed June 17, 1991, provides for: (1) GT to lease two spaces in a building, a 1,510 square feet finished space, and a 1,585 square feet unfinished space; (2) GT to pay the Port a total annual base rental of $36,915 for each fiscal year of the lease, subject to an annual increase based on the Cost of Living Index; and (3) GT to pay its proportionate share of all the operating expenses, including utility costs, of the building. The term of the Agreement expires on September 30, 1999.

By Order of the Federal Maritime Commission.

Dated: June 19, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15001 Filed 6–24–91; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

B & A Brokers, Inc.
150 Grossman Drive, suite 203
Brainfree, MA 02184
Officers: Brenda L. Madden, President, Anne E. Kerr, Secretary

Customs Services, Inc
1358 Northwest 78th Ave.
Miami, FL 33166
Officers: James J. Smith, Jr., President, Samuel Gonzalez, President/Director

ABcom International Transportation & Trading Co.
15272 Bolsa Chica Road
Huntington Beach, CA 92649
Officers: John H. Tillotson, President/Chairman, Haydee Tillotson, Vice President/Director, Sharlene Jacobsen, Secretary

ETA Import & Export Ltd.
248–06 Rockaway Blvd.
Jamaica, NY 11422
Officers: Sheldon Stowe, President, Arthur Stein, Vice President/Secretary, Benjamin Vitale, Vice President

Transport Express Corporation
5613 Leesburg Pike #29
Alexandria, VA 22312
Officers: Ahmad T. Solaiman, President, Daad M. Solaiman, Secretary/Treasurer

Southside Shipping, Ltd.
345 Leffert Avenue
Brooklyn, NY 11225
Officers: Augnacious Wharton, President/Director/Stockholder, Anna West, Secretary

Respond Cargo Services Corporation

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757 Kenrick, suite 106
Houston, TX 77060
Officers: Benjamin Charles Bengert, President/CEO Director, T.L. Hicks, Vice President/Director
Export Trade Service
104 Brook Way
Dalton, GA 30720
Patricia Ann Walls, Sole Proprietor
Rachel Ashley International
9412 E. 65th St., #1910
Tulsa, OK 74133
John R. Soares, Sole Proprietor
Acts Custom Brokers
18500 Lee Road, suite J
Humble, TX 77338
Lavone W. McClellan, Sole Proprietor
Banks Air Freight Service, Inc.
P.O. Box 6750
BWI Airport, MD 21240
Officers: Judith M. Banks, President, Charles W. Banks, Jr., Vice President/Secretary, Michelle Sauerhoff, Treasurer
"J.I.F." Jet International Forwarding, Inc.
4420 NW 73rd Avenue
Miami, FL 33166
Officers: Francisco D. Ferrey, President, Maria A. Ferrey, Secretary, Christina Santana, Vice President

Dated: June 19, 1991.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-15003 Filed 6-24-91; 8:45 am]

BILLING CODE 6730-01-M

Tariffs of Certain Common Carriers by Water; Suspension

This is to give Notice that the Commission is suspending the tariffs (listed in the attachment) of certain common carriers by water operating in the United States trades for twelve months effective June 19, 1991.

On May 20, 1991, the Commission issued an Order adopting, and remanding in part the Initial Decision in Docket No. 89-27, *Martyn Merritt, AMG Services, Inc. d/b/a Ariel Maritime Group and Ariel Maritime, Oasis Express Line, Javelin Line, Trans Africa Line, Coast Container Line, Buccaneer Line, and Union Exportadora Lines-Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984.* That Order directed that the tariffs of Oasis Express Line, Javelin Line, Coast Container Line*, Trans AfricaLine, Buccaneer Line*, and Union Exportadora Lines* be suspended for a period of twelve months. This suspension is effective June 19, 1991. The Commission also ordered that no respondent, officer, employee, agent, subsidiary, division or successor of any respondent in Docket No. 89-27 may file any tariff to provide transportation of cargo by water between the United States and any foreign country for a period of twelve months.

Finally, the Commission directed that any tariff which is found to provide any continuation of services offered by any respondent, subsidiary, division or successor to any respondent shall likewise be suspended during the twelve month period.

For further information concerning this matter contact Bryant L. VanBrakle, Acting Director, Bureau of Domestic Regulation at (202) 523-5796.

Joseph C. Polking,

Secretary.

Tariffs To Be Suspended*

Maritimo Comercio Empresa S.A.
dba Oasis Express Line
FMC-4
Maritimo Comercio Empresa S.A.
dba Oasis Express Line
FMC-5
Maritimo Comercio Empresa S.A.
dba Javelin Line
FMC-6
Maritimo Comercio Empresa S.A.**
dba Javelin Lines
FMC-7
Maritimo Comercio Empresa S.A.**
dba Trans Africa Line
FMC-1
Maritimo Comercio Empresa S.A.**
dba Trans Africa Line
FMC*

[FR Doc. 91-15004 Filed 6-24-91; 8:45 am]

BILLING CODE 6730-01-M

*Certain tariffs published by Sterling Maritime Ltd. dba Coast Container Line (FMC-1 & 3), Sterling Maritime Ltd. dba Union Exportadora Lines (FMC-5) and Charles Klaus and Co. Ltd. dba Buccaneer Line (FMC-1) were voluntarily cancelled in April, 1991.

*Since certain tariffs published by Sterling Maritime Ltd. dba Coast Container Line (FMC-1 & 3), Sterling Maritime Ltd. dba Union Exportadora Lines (FMC-5), and Charles Klaus and Co. Ltd. dba Buccaneer Lines (FMC-) were voluntarily cancelled, they are not included in this list.

**There are slight differences between the carrier names on the two Maritimo Comercio Empresa S.A. dba Javelin Line tariffs as well as on the two tariffs of Maritimo Comercio Empresa S.A. dba Trans Africa Line. The title page of Javelin FMC-6 indicates that Javelin Line is the trade name, while on FMC-7 Javelin Lines is shown as the trade name. The title page of Trans Africa FMC-1 shows Commercio being spelled with one "m," while Commercio appears with two "mm's" on the title page of FMC-2.

FEDERAL TRADE COMMISSION

[File No. 911-0046]

Alpha Acquisition Corp., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, RWE, a corporation based in Germany, to grant the required technology license, and establish other required agreements, subject to prior Commission approval, within six months of the date of the final order, or else consent to the appointment of a trustee to effectuate these requirements. In addition, for ten years, RWE would be required to obtain prior FTC approval before acquiring any entity that manufactures, distributes, or sells high-purity alumina, with sales in the U.S. of 125,000 pounds or more in any six-month period.

DATES: Comments must be received on or before August 26, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Marc Schildkraut, FTC/S-3302, Washington, DC 20580. (202) 326-2622.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(i) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition by Alpha Acquisition Corp., a wholly-owned subsidiary of RWE-DEA Aktiengesellschaft fur Mineraloel und Chemie, which in turn is a partially-owned subsidiary of RWE Aktiengesellschaft (hereinafter collectively "RWE"), of all of the issued and outstanding common stock of Vista Chemical Company (hereinafter "Vista"), which acquisition is more fully described at paragraph 6 below, and RWE and Vista having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge RWE and Vista with violations of the Clayton Act and Federal Trade Commission Act, and it now appearing that RWE and Vista are willing to enter into an agreement containing an order to make available through license certain patents, technology, and knowhow, to cease and desist from certain acts and providing for other relief:

It is hereby agreed by and between RWE, by its duly authorized officers, and counsel for the Commission and by and between Vista, by its duly authorized officers, and counsel for the Commission that:

1. Proposed respondent Alpha Acquisition Corp. is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at Uberseering 40, 2000 Hamburg 60, Federal Republic of Germany.

2. Proposed respondent RWE-DEA Aktiengesellschaft fur Mineraloel und Chemie is a corporation organized and existing under the laws of Germany, with its principal office and place of business at Uberseering 40, 2000 Hamburg 60, Federal Republic of Germany.

3. Proposed respondent RWE Aktiengesellschaft is a corporation organized under the laws of Germany, with its principal office and place of business at Kruppstrasse 5, 4300 Essen 1, Federal Republic of Germany.

4. Proposed respondent Vista Chemical Company is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 900 Threadneedle, Houston, Texas 77224.

5. RWE and Vista admit all the jurisdictional facts set forth in the attached draft of complaint. This admission is solely for the purposes of this agreement, the order contemplated by this agreement, any modification of the order or other proceeding related to the order, any action relating to a possible violation of this agreement or the order contemplated by this agreement, or any action relating to a possible violation of any law administered or enforced by or on behalf of the Commission in connection with the Acquisition (as hereinafter defined).

6. On December 13, 1990, RWE and Vista entered into an Agreement and Plan of Merger whereby RWE would make a tender offer to purchase all of the issued and outstanding shares of Common Stock of Vista (hereinafter the "Acquisition").

7. RWE and Vista each waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

8. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify RWE and Vista, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

9. This agreement is for settlement purposes only and does not constitute an admission by RWE or Vista that the law has been violated as alleged in the draft of complaint hereto attached.

10. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to RWE and Vista, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following Order to cease and desist, which also provides for the licensing of certain technology and other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to RWE counsel, and to Vista's address as stated in this agreement shall constitute service. RWE and Vista each waives any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

11. RWE and Vista have each read the draft of complaint and Order contemplated hereby. RWE and Vista each understands that once the Order has been issued, each will be required to file one or more compliance reports showing that each has fully complied with the Order. RWE and Vista each further understands that each may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

(A) *Acquisition* means the agreement and Plan of Merger entered into on December 13, 1990, by which RWE agreed to make a tender offer for all of the issued and outstanding shares of Vista common stock.

(B) *Alumina Joint Venture* means the joint venture established pursuant to either paragraphs IV or VI of this Order, between RWE and the Licensee.

(C) *Automotive Emissions Control Catalysts* means catalysts that are employed to provide a catalytic process to control the release of emissions in automotive systems.

(D) *Chemical Catalysts* means catalysts that are useful in chemical synthesis processes, excluding catalysts used solely for petroleum refining applications other than (1) catalytic reforming catalysts, (2) isomerization catalysts, and (3) any other petroleum refining catalyst applications which Vista internally delineates as chemical catalyst applications for purposes of alumina pricing.

(E) *Commission* means the Federal Trade Commission.

(F) *Construct* includes the building of a new facility or modifying of an existing facility.

(G) *High-Purity Alumina* means all grades and types of alumina produced or sold by Vista as of the date that this

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Order is accepted by the Commission for public comment.

(H) *Hold Separate Agreement* means the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I.

(I) *Joint Venture Alumina* means all grades and types of Catapal B and Catapal CF, other grades of Vista alumina used in Chemical Catalysts and Automotive Emission Control Catalysts, and alumina slurry which the joint venture may use, directly or indirectly, exclusively for the production of Sol Gel Abrasives, in each case manufactured by Vista at its Lake Charles plant as of the date of this Order is accepted by the Commission for public comment.

(J) *Lake Charles Plant* means Vista's alcohol-alumina co-production facility located at Vista's Lake Charles Chemical Plant, Old Spanish Trail Road, Westlake, Louisiana.

(K) *Licensee* means the person licensed pursuant to paragraphs II, III, or VI of this Order.

(L) *License Agreements* means the Vista Agreement and RWE License Agreement.

(M) *North America* means the United States and its territories and possessions.

(N) *On-purpose* refers to a plant the principal output of which is alumina or alumina alkoxide.

(O) *Or* includes "any" and may have either disjunctive or conjunctive meaning; provided, however, that in sentences where "or" is preceded by "either," "or" has only disjunctive meaning.

(P) *Precipitated Alumina* means alumina obtained generally by precipitating dissolved aluminum trihydrate (also known as "gibbsite"), then usually followed by filtering, washing and spray-drying the resulting alumina.

(Q) *RWE* means RWE Aktiengesellschaft, RWE–DEA Aktiengesellschaft fur Mineraloel und Chemie, and Alpha Acquisition Corp., their predecessors, subsidiaries, divisions, groups and affiliates controlled by RWE Aktiengesellschaft, RWE–DEA Aktiengesellschaft fur Mineraloel und Chemie, and Alpha Acquisition Corp., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(R) *RWE License Agreement* means a License Agreement pursuant to which RWE Technology and RWE Patent Rights are licensed to the Licensee in accordance with paragraphs II, III, or VI of this Order.

(S) *RWE Patents Rights* means any patent existing or patent application pending, in each case as of the date that this Order is accepted by the Commission for public comment, in the United States relating to RWE's process for On-purpose production of aluminum alkoxide for use in High-Purity Alumina, or similar aluminas. For the purposes of this definition, RWE excludes Vista.

(T) *RWE Tecnology* means all general and specific information known to RWE prior to the date this Order is accepted by the Commission for public comment, relating to: (1) Design, construction, and operation of an On-purpose aluminum alkoxide production facility and (2) production of aluminum alkoxide at an On-purpose facility producing High-Purity Alumina or similar alumina, in each case including (but not limited to) all technical information, data, specifications, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operation manuals, and formulations. For purposes of of this definition, RWE excludes Vista.

(U) *Sol Gel Abrasives* means the class of abrasives or abrasive grains that employ high dispersible alumina as a raw material, and are used in certain industrial processing applications.

(V) *Vista* means Vista Chemical Company, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Vista and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(W) *Vista License Agreement* means a License Agreement pursuant to which Vista Technology and Vista Patent Rights are licensed to the Licensee in accordance with paragraphs II, III, or VI of this Order.

(X) *Vista Patent Rights* means any Vista patent or patent application pending, in each case, as of the date that this Order is accepted by the Commission for public comment, in the United States relating to the production of or applications for Vista's High-Purity Alumina except thickeners, ceramics (excluding Sol Gel Abrasives), and aluminas not produced in commercial quantities (excluding Sol Gel Abrasives).

(Y) *Vista Technology* means all general and specific information known the Vista prior to the date this Order is accepted by the Commission for public comment relating to: (1) Design, construction, and operation of an On-purpose High-Purity Alumina production facility, (2) production at an On-purpose High-Purity Alumina production facility of High-Purity Alumina, except thickeners and ceramics (excluding Sol Gel Abrasives), and aluminas not produced in commercial quantities (excluding Sol Gel Abrasives), and (3) the processing of aluminum alkoxide or alumina slurry into all grades of alumina powder, alumina sol or colloidal alumina for use in all applications except thickeners, ceramics (excluding Sol Gel Abrasives), and aluminas not produced in commercial quantities (excluding Sol Gel Abrasives). Such technology shall include, but shall not be limited to, all technical information, data, specifications, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operating manuals, and formulations.

II

It is ordered That not later than six (6) months after the date this Order becomes final, RWE shall, absolutely and in good faith, grant a perpetual license of Vista Technology, Vista Patent Rights, RWE Technology, and RWE Patent Rights for the purposes of producing in North America and marketing High-Purity Alumina or similar aluminas to a person that obtains the prior approval of the Commission and only in a manner and pursuant to License Agreements that receive the prior approval of the Commission. Such License Agreements shall permit the Licensee to (1) design, construct or operate one On-purpose-alumina production facility utilizing the RWE Technology or RWE Patent Rights and one or more alumina production facilities utilizing the Vista Technology or Vista Patent Rights and (2) enter into a joint venture or other arrangement controlled by the Licensee with any partners for the purpose of designing, constructing, financing or operating alumina production facilities; provided, however, if at any time after three (3) years from the date of the formation of the Alumina Joint Venture the Licensee has not commenced construction of an alumina production facility, then the Licensee may (i) sublicense to a third party (the "Minority Partner") the right to design, construct, or operate one alumina production facility and (ii) enter into a joint venture or other arrangement controlled by the Licensee with the Minority Partner for the exclusive purpose of selling and marketing all or substantially all the alumina produced by the alumina production facility designed, constructed, or operated by the Minority Partner pursuant to such sublicense, subject, in each case, to the approval of RWE, which approval shall not be unreasonably withheld; provided, further, that RWE need not approve such sublicense unless the Licensee enters into a joint venture or other arrangement pursuant to clause (ii) above and agrees to forgo the construction of any alumina production facility during the term of the Alumina Joint Venture unless the sublicense is terminated prior to the construction or operation of the Minority Partner's alumina production facility. The purpose of granting such License Agreements is to establish the licensee as a viable competitor in the market for High-Purity Alumina or similar aluminas and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. Nothing in this Order shall prohibit the License Agreements from containing the following provisions:

(A) A provision prohibiting assignment before construction of an alumina production facility; provided, however, that the Licensee may assign all of its rights under both License Agreements (1) to any person who is under the control of the owners of such Licenses and, if the Alumina Joint Venture has not been terminated prior to such assignment, to the managing partner of the Alumina Joint Venture, or (2) to any party, approved by RWE, which approval shall not be unreasonably withheld, to whom the Licensee shall also sell its interest in the Alumina Joint Venture pursuant to paragraph IV. (G) of this Order. The party so approved for the assignment shall thereafter be the "Licensee" pursuant to this Order.

(B) A provision prohibiting assignment of the License Agreements after the construction of one or more alumina production facilities described in paragraph II of this Order except by the Licensee to (1) any person who is under the control of the owners of such Licenses or (2) any owners of each such alumina production facility; provided, however, that in no event may any License Agreement be assigned to a person who does not own an alumina production facility utilizing applicable technology and patent rights licensed under such License Agreement in accordance with paragraph II of this Order.

(C) A provision prohibiting the Licensee from disclosing Vista Technology, Vista Patent Rights, RWE Technology or RWE Patent Rights to any non-licensee, except if such non-licensee needs to know, and agrees to restrict the use of, such information for the purpose of designing, constructing, financing the construction of, or operating one or more alumina production facilities.

It is Further Ordered That, in the event the first Licensee who has held the Licenses for four (4) years either does not, within four (4) years of the date of the grant of the licenses set out in paragraph II of this Order, commence construction of an alumina production facility utilizing RWE Technology, RWE Patent Rights, Vista Technology or Vista Patent Rights, or does not complete construction within six (6) years of the date of the grant of the licenses set out in paragraph II of this Order, or the Alumina Joint Venture terminates for any reason other than those set out in paragraph IV.(A) of this Order ("failure dates"), RWE shall grant new licenses, or shall cause the granting of new licenses, to a new Licensee within six (6) months of the first such failure date, under the terms and conditions set out in paragraph II of this Order and may terminate the perpetual licenses granted under paragraph II of this Order.

IV.

It is Further Ordered That at the same time it grants the licenses under paragraph II of this Order, RWE shall absolutely and in good faith, enter into an Alumina Joint Venture and an agreement to supply Joint Venture Alumina consistent with paragraphs IV. (A) through IV.(M) of this Order with a Licensee that obtains the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purposes of the Alumina Joint Venture and supply agreement are to impart the practical, technological and business skills the Licensee may need to produce and sell High-Purity Alumina or similar aluminas, to establish the Licensee as a viable competitor in the market for High-Purity Alumina or similar aluminas, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(A) The initial term of the Alumina Joint Venture shall be four (4) years; provided, however, the Alumina Joint Venture term shall be extended at the request of the Licensee for two (2) additional years if the Licensee has started construction of a High-Purity Alumina or similar alumina manufacturing facility within the first four (4) years; provided, further, the Alumina Joint Venture shall in all events terminate no later than sixty (60) days after the Licensee has finished construction and commenced commercial operation of either (1) an alumina production facility utilizing the Vista Technology, Vista Patent Rights, RWE Technology or RWE Patent Rights or (2) a Precipitated Alumina production facility.

(B) Upon thirty (30) days prior notice to the Commission, RWE also may terminate the Alumina Joint Venture agreement, the supply agreement, or the License Agreements due to the bankruptcy, insolvency or receivership of the Licensee or the Alumina Joint Venture or material breach of any such agreement by the Licensee. If the Alumina Joint Venture terminates for any reason other than those set out in paragraph IV. (A) of this Order, RWE shall, within six (6) months of the termination of the Alumina Joint Venture, either cause the Licensee to assign its rights, title and interest in the Alumina Joint Venture to a new Licensee with the prior approval of the Commission, or shall form a new Alumina Joint Venture with a new Licensee under the terms and conditions of paragraphs II–IV of this Order.

(C) Any material breach of the License Agreements, the Alumina Joint Venture agreement, or supply agreement by RWE shall constitute a violation of this Order. In the event that the Alumina Joint Venture terminates due to the breach of RWE, then within six (6) months of the termination, RWE shall form a new Alumina Joint Venture with a Licensee under the terms and conditions of paragraphs II–IV of this Order.

(D) The Licensee either shall be the managing partner of the Alumina Joint Venture, or otherwise have the managing responsibility for day-to-day administrative control of the Alumina Joint Venture and with the authority to make all marketing, pricing and other decisions not specifically delegated to the management committee or subject to the approval of the limited or minority partner as set out in the Alumina Joint Venture agreement that receives the prior approval of the Commission. The Licensee shall be reimbursed by the Alumina Joint Venture for all accounting, tax and other administrative services it provides.

(E) Alumina Joint Venture may have a management committee. The Licensee shall designate a majority of the members of the management committee. The management committee may consider and decide issues concerning substantial borrowing, contractual obligations, capital expenditures, disposition of assets, incurring of administrative expenses, incurring of research and development expenses, incurring working capital obligations, and the maintenance of reserves.

(F) The Licensee shall own a 51% interest in the Alumina Joint Venture. That interest shall increase to the extent the Licensee makes disproportionate capital contributions to the Alumina Joint Venture.

(G) The Licensee may sell its interest in the Alumina Joint Venture only to a party approved by RWE, which approval shall not be unreasonably withheld, with the prior approval of the Commission; provided, however, that the License Agreements are assigned to such party.

(H) RWE shall make available to the Alumina Joint Venture all Vista customer-specific marketing information, including copies of Vista customer files, as of the date that this Order is accepted by the Commission for public comment, relating to Chemical Catalysts, Automotive Emissions Control Catalysts, and Sol Gel Abrasives (including prospective North American customer files relating to such abrasives), except to the extent that a customer prohibits disclosure of information provided to Vista pursuant to a confidentiality agreement, or that a customer prohibits disclosure of information provided to Vista on the basis that such information constitutes such customer's trade secrets. RWE shall use its best efforts to secure authority from customers to provide such information to the Licensee. The Licensee may disclose any information made available by RWE to the Alumina Joint Venture pursuant to this paragraph IV.(H) (other than information independently known to Licensee on a non-confidential basis from sources other than RWE) only to a person who needs to know, and agrees to use, such information for the purpose of designing, constructing, financing the construction of, or operating one or more alumina manufacturing facilities in a manner consistent with paragraph II of this Order. At the request of the Licensee, RWE shall provide engineering services and customer technical services, from its North American operations, during the term of the Alumina Joint Venture. In addition, RWE shall provide to the Alumina Joint Venture, at the request of the Licensee, marketing, logistics and distribution personnel, from its North American operations, for no more than six months after the establishment of the Alumina Joint Venture. RWE shall be reimbursed by the Alumina Joint Venture for the services and personnel it provides. If, at the end of Alumina Joint Venture term, the Licensee has employed the license to construct a facility for the manufacture of High-Purity Alumina or similar alumina, the file and information provided to or generated by the Alumina Joint Venture pursuant to this Paragraph shall become the property of the Licensee.

(I) RWE shall supply the Alumina Joint Venture with grades and types of Joint Venture Alumina in the quantities the Licensee specifies. In the initial year of the Alumina Joint Venture, RWE shall supply up to [the specified volume] of Joint Venture Alumina. Thereafter, until the expiration of the Alumina Joint Venture, RWE's supply obligation shall increase by [the specified number of] pounds per year, but in all events, its total obligation shall not exceed [the specified volume] of Joint Venture Alumina. RWE is not required to provide more than ten (10) percent of the supply obligation in the form of alumina slurry. The quality of the alumina slurry supplied shall be comparable to that used by Vista, on or before the date this Order is accepted by the Commission for public comment, to produce test quantities of alumina for Sol Gel Abrasive applications. There shall be no limitations on the applications for which the Alumina Joint Venture may sell Joint Venture Alumina, except as provided in paragraph I.(I) of this Order.

(J) In connection with the formation of the Alumina Joint Venture, RWE shall, on an expedited basis, use its best efforts to assign to the Alumina Joint Venture all Vista customers and contracts, as of the date that this Order is accepted by the Commission for public comment, pertaining to Joint Venture Alumina used in Chemical Catalysts and Automotive Emissions Control Catalysts. Without the consent of the Licensee, RWE shall not supply customers assigned to the Alumina Joint Venture with any Joint Venture Alumina manufactured in North America, other than alumina for Sol Gel Abrasives.

(K) The base price of the alumina or alumina slurry supplied to the Alumina Joint Venture shall be [the specified price]; provided, however, that the pricing formula may contain reasonable adjustments for inflation.

(L) No RWE employee on the management committee or assigned to the Alumina Joint Venture on a temporary basis shall disclose to RWE "material confidential information" relating to the Alumina Joint Venture's assets and businesses not in the public domain, except as such information would be available to RWE in the normal course of business. "Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to RWE from sources other than the Alumina Joint Venture, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets. If upon dissolution of the Alumina Joint Venture, the Licensee is not operating or is not in control of a joint venture or other arrangement that is operating an alumina production facility pursuant to a License Agreement (or is not in control of a joint venture or other arrangement that will market and sell the output of an alumina production facility that has been constructed pursuant to a sublicense permitted by paragraph II of this Order), all marketing, research and development and technical services files created by the Alumina Joint Venture or transferred pursuant to paragraph IV.(H) of this Order will become the exclusive property of RWE.

(M) RWE shall neither restrict nor limit the ability of the Alumina Joint Venture or the Licensee to hire personnel employed by Vista as of the date this Order is accepted by the Commission for public comment or thereafter; provided, however, RWE may enforce existing confidentiality agreements covering information outside the scope of Vista Technology and Vista Patent Rights, and the RWE Technology and RWE Patent Rights.

V

It is Further Ordered That:

(A) RWE shall not, without prior approval of the Commission, make or agree to any modifications to the License Agreements, Alumina Joint Venture agreement, or agreement to supply Joint Venture Alumina or any other instruments approved by the Commission pursuant to this Order, other than those modifications permitted by the License Agreements, Alumina Joint Venture agreement, or agreement to supply Joint Venture Alumina or any other instruments approved by the Commission pursuant to this Order.

(B) RWE shall provide to the Commission, as promptly as possible and in any event no later than thirty (30) days after either their receipt or transmittal, copies of all communications between RWE and the Licensee or Alumina Joint Venture regarding breaches of the License Agreements, Alumina Joint Venture agreement, or agreement to supply Joint Venture Alumina or any other instruments approved by the Commission pursuant to this Order.

VI

It Is Further Ordered That:

(A) If RWE has not licensed the RWE Technology, RWE Patent Rights, Vista Technology and Vista Patent Rights absolutely and in good faith and with the Commission's approval as set out in paragraphs II and III of this Order, and established the Alumina Joint Venture and supply agreement as set out in paragraph IV of this Order, within six (6) months of the date this Order becomes final, or within six months of the first to occur of a failure date as set out in paragraph III of this Order, or within six (6) months of the date the Alumina Joint Venture terminates as set out in paragraph IV.(B) or IV.(C), (i) RWE shall consent to the appointment by the Commission of a trustee or (ii) in the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, RWE shall consent to the appointment of a trustee in such action. In each case, the trustee shall be authorized to license the Vista Technology, Vista Patent Rights, the RWE Technology, and RWE Patent Rights, consistent with the provisions of Paragraph II of this Order, and, unless the Alumina Joint Venture has terminated pursuant to paragraph IV.(A) of this Order, establish an Alumina Joint Venture and supply agreement consistent with the provisions of paragraph IV of this Order. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by RWE to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to paragraph VI.(A) of this Order, RWE shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of RWE, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions, diverstitures and licensing agreements.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to license the Vista Technology, Vista Patent Rights, RWE Technology and RWE Patent Rights, on terms and conditions consistent with paragraph II of this Order and such license shall contain the provisions contained in paragraphs II.(A), II.(B) and II.(C) of this Order.

3. If applicable, the trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to establish the Alumina Joint Venture and supply agreement on terms and conditions consistent with paragraph IV of this Order. The Alumina Joint Venture agreement shall provide that without the consent of the limited or minority partner neither the managing partner nor the management committee may take any of the following actions: (a) Enter into contracts with, or in favor of, Licensee or any of its respective affiliates; (b) transfer, sell or dispose of any of the Alumina Joint Venture's assets (other than the sale of alumina in the ordinary course of business) or merge the Alumina Joint Venture with another entity; (c) require the limited partner to make any capital contribution (net of aggregate cash distributions to the limited partner) in excess of $500,000; (d) admit any other person as a partner; (e) execute or deliver any general assignment for the benefit of creditors of the Alumina Joint Venture or file a voluntary petition in bankruptcy on behalf of the Alumina Joint Venture or fail to contest the filing of any involuntary petition in bankruptcy against the Alumina Joint Venture (or involving a substantial portion of its assets) within a reasonable time.

4. The trustee shall have twelve (12) months from the date of appointment to license the Vista Technology, Vista Patent Rights, RWE Technology and RWE Patent Rights, and, if applicable, establish the Alumina Joint Venture and supply agreement. If, however, at the end of the twelve-month period the trustee has submitted a plan to accomplish these objectives, or believes that they can be accomplished within a reasonable time, the Commission may extend the period.

5. The trustee shall have full and complete access to the personnel, books, records and facilities necessary to fulfill the trustee's obligations. RWE shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. RWE shall take no action to interfere with or impede the trustee's licensing of the technology and, if applicable, the establishment of the Alumina Joint Venture and supply agreement. Any delays caused by RWE shall extend the time under this pagraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

6. Consistent with RWE's absolute and unconditional obligations under paragraph II and paragraph IV of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with the Licensee, consistent with the provisions of paragraph II and paragraph IV of this Order and the trustee's obligations under paragaph VI of this Order.

7. The trustee shall serve, without bond or other security, at the cost and expense of RWE, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of RWE, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived or received from the new Licensee and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of RWE and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's accomplishing the objectives set out in paragraph VI.(A) of the Order.

8. RWE shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph VI.(A) of this Order.

10. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, RWE either shall execute a trust agreement or shall cause the execution of a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to license the Vista Technology, Vista Patent Rights, RWE Technology, and RWE Patent Rights and, if applicable, establish the Alumina Joint Venture and supply agreement required by this Order.

11. The Commission and, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions not inconsistent with paragraphs II, IV, or VI of this Order as may be necessary or appropriate to license the Vista Technology, Vista Patent Rights, RWE Technology, and RWE Patent Rights and, if applicable, set up the Alumina

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Joint Venture and supply agreement required by this Order.

12. The trustee shall report in writing to RWE and to the Commission every sixty (60) days concerning the trustee's efforts to license the Vista Technology, Vista Patent Rights, RWE Technology, and RWE Patent Rights and, if applicable, set up the Alumina Joint Venture and supply agreement.

VII

It is Further Ordered That:

(1) within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until RWE has received the prior approvals of the Commission pursuant to paragraphs II and IV of this Order and (2) within sixty (60) days after the date any obligation of RWE arises under paragraphs III, IV. (B), or IV.(C) of this Order and every sixty (60) days thereafter until RWE has received the prior approvals required by paragraphs II and IV, RWE shall submit to the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying and has complied with the Order. RWE shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations concerning licensing the technology or establishing the Alumina Joint Venture and supply agreement, including the identity of all parties contacted. RWE also shall include in its compliance reports copies of all written communications to and from such parties, memorializations of all oral communications, all internal memoranda, and reports and recommendations concerning licensing, joint ventures or supply agreements.

(B) One year from the date this Order becomes final and annually for the period of the Alumina Joint Venture and supply agreement, as set out in paragraph IV of this Order, RWE shall file a verified written report setting forth in detail the manner and form in which it is complying with the requirements of paragraph IV. RWE shall include in its reports a full description of the Alumina Joint Venture and its own participation, including its ownership share of the Alumina Joint Venture, the profits it has obtained from the Alumina Joint Venture, and any financial or other information that RWE has obtained from the Alumina Joint Venture. RWE shall also include in its reports a full description of the volumes of High-Purity Alumina or similar alumina specified by the Licensee on behalf of the Alumina Joint Venture, the pricing of alumina to the Alumina Joint Venture (including any price change and the reasons for), and any product performance deficiencies identified by the managing partner. RWE shall further include in its reports copies of all written correspondence between itself and the Alumina Joint Venture or the managing partner and the minutes of management committee meetings.

VIII

It is Further Ordered That, for a period commencing on the date this Order becomes final and continuing for ten (10) years, RWE shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets located anywhere in the world used for the production, distribution or sale of High-Purity Alumina or similar alumina in or into North America in an amount exceeding 125,000 pounds in any six (6) month period in the 36 months prior to the application. RWE also shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, any interest in, or the stock or share capital of any entity that owns or operates assets located anywhere in the world engaged in the production, distribution or sale of High-Purity Alumina or similar alumina that were consumed in North America in any six (6) month period in the 36 months prior to the application; provided, however, these prohibitions shall not relate to the construction of new facilities., One year from the date this Order become final and annually for none years thereafter, RWE shall file with the Commission a verified written report of its compliance with this paragraph.

IX

It is Further Ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to RWE as practicable, made to its principal office, RWE shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of RWE, as applicable, relating to any matters contained in this Order; and

(B) Upon five days' notice to RWE, as applicable, and without restraint or interference from RWE, to interview officers or employees of RWE, who may have counsel present, regarding such matters.

X

It is Further Ordered That, RWE shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in any respondent such as dissolution, assignment or sale resulting in the emergency of a successor corporation, the creation, dissolution or sale of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

XI

It is Further Order That RWE shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as appendix I.

Appendix I

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among Alpha Acquisition Corp., a Delaware corporation, ("Alpha Acquisition"), RWE–DEA Aktiengesellschaft fur Mineraloel und Chemie ("TWE–DEA"), a German corporation, RWE Aktiengesellschaft ("RWE") a German corporation (collectively the "Acquiring Parties"), Vista Chemical Company ("Vista"), a Delaware corporation, and the Federal Trade Commission (the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41 *et seq.* (collectively, "the Parties").

Whereas, Alpha Acquisition, a wholly-owned subsidiary of RWE–DEA, over 99 percent of whose voting securities are currently held by RWE, commenced a tender offer on December 18, 1990, for all of the issued and outstanding shares of Vista, with the intent of effecting a merger of Vista into Alpha Acquisition, pursuant to which Vista would become a subsidiary of RWE–DEA, all as contemplated by and provided for in that certain Agreement And Plan Of Merger entered into among Alpha Acquisition, RWE–DEA and Vista as of December 13, 1990; and

Whereas, the Commission is now investigating the transaction to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of section 2.34 of the Commission's Rules; and

Whereas, the Consent Order provides for the disposition by RWE and Vista of the RWE Patent Rights, the RWE Technology, the Vista Patent Rights, and the Vista Technology to a Licensee approved by the Commission and further provides for the formation of an Alumina Joint Venture with such Licensee and an arrangement to supply the Alumina Joint Venture with Joint Venture Alumina (such patent, technology and contract rights collectively the "Subject Assets"); and

Whereas, RWE has submitted to the Commission an application for the approval of Discovery Aluminas, Inc., a Louisiana Corporation ("Discovery") pursuant to paragraphs II and IV of the Consent Order; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the viability and independence of the Subject Assets during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), relief resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require effective relief and the Commission's right to seek to establish a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to preserve an independent competitor pending the license of technology as required by the Consent Order, in order to remedy any anticompetitive effects of the Acquisition; and

Whereas, the Acquiring Parties' entering into this Agreement shall in no way be construed as an admission by them that the acquisition is illegal; and

Whereas, the Acquiring Parties understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, Therefore, The Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the Acquiring Parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the Subject Assets have not been transferred to a License approved by the Commission, to seek the transfer of such assets as are held separate pursuant to this Agreement, as follows:

1. The Acquiring Parties agree to execute and be bound by the attached Consent Order.

2. In the event the Acquiring Parties or Vista fail to comply with the terms of this Agreement, the Parties agree that the Commission or the Attorney General may seek, in addition to any other remedies that may be available, any remedies, including civil penalties, that would be available pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, as if this Agreement were a final order of the Commission.

3. Upon the execution by the Parties of this Agreement, Vista will enter into the Alumina Joint Venture agreement, supply agreement and License Agreement annexed as exhibits to the Application of Discovery; and RWE will enter into the License Agreement and transfer agreement annexed as exhibits to the Application of Discovery. The Alumina Joint Venture agreement, supply agreement and License Agreements shall be consistent with, except for the duration of such agreements and the provisions requiring Commission prior approval (each of which shall be governed by this Agreement), by the provisions of paragraphs II and IV of the Agreement Containing Consent Order. Any material breach of the License Agreements, the Alumina Joint Venture agreement, or the supply agreement executed as part of the Alumina Joint Venture by RWE shall constitute a breach of this Agreement.

4. If within one hundred fifty (150) days of the date the Application of Discovery goes on the public record (i) Discovery becomes bankrupt or goes into receivership before the Application is approved by the Commission, (ii) the Alumina Joint Venture agreement, supply agreement and License Agreements annexed as exhibits to the Application of Discovery terminate for any reason, or (iii) the Commission rejects the Discovery application, the Acquiring Parties shall, as soon as practicable but in any event within thirty (30) days of the occurrence of either (i), (ii), or (iii) cause to be created a new corporation ("Newco") on the following terms and conditions:

a. Newco shall be incorporated under the laws of Delaware and shall have its principal place of business either in Texas or Louisiana. Newco's Certificate of Incorporation and By-Laws shall be substantially in the form of Exhibits A and B attached hereto.

b. The purposes of Newco shall be to purchase from Discovery its interest in the Subject Assets pursuant to the Transfer Agreement, to hold and exploit such interest and to maintain a competitive presence in the production and marketing of High Purity Alumina until such time as RWE has complied with paragraphs II and IV of the Agreement Containing Consent Order or a trustee has complied with paragraph VI of the Consent Order.

c. In connection with the formation of Newco, the Acquiring Parties shall purchase from Newco all its authorized common stock for $1.8 million pursuant to a subscription agreement substantially in the form of Exhibit C attached hereto.

d. The Board of Directors of Newco shall consist of at least three members, no more than one of which shall be an officer or director of, or otherwise affiliated with, the Acquiring Parties.

e. RWE shall cause Newco to employ or shall otherwise furnish to Newco suitable and sufficient personnel to carry out the purposes of Newco; such personnel shall have appropriate skills, experience and abilities to carry out the duties for which they have been employed.

5. The Acquiring Parties agree that, in the event Newco is created pursuant to paragraph 4, the Acquiring Parties shall hold all of Newco's assets and business operations separate and apart on the following terms and conditions:

a. The Newco assets and businesses shall be operated independently of the Acquiring Parties and independently of any other Parties owned in whole or in part by any of the Acquiring Parties, except to the extent that RWE must exercise discretion and control over any Newco assets to assure compliance with this Agreement or the Consent Order.

b. RWE shall not exercise direction or control over, or influence directly or indirectly, any of Newco's assets and businesses.

c. Except for the single RWE director, officer, employee, or agent serving on the "New Board" [as defined in subparagraph 5.h), RWE shall not permit any director, officer, employee, or agent of RWE to also be a director, officer or employee of Newco.

d. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, or by virtue of RWE's or Vista's participation in the Alumina Joint Venture pursuant to the Alumina Joint Venture agreement, defending investigations or litigation, obtaining legal advice, or acting to assure compliance with this Agreement or the Consent Order, RWE shall not receive or have access to, or the use of, any "material confidential information" relating to Newco's assets and businesses not in the public domain, except as such information would be available to the Acquiring Parties in the normal course of business as if RWE and Newco were separate and unrelated entities. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. "Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to the Acquiring Parties from sources other than Newco, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.

e. The Acquiring Parties shall not change the composition of the management of Newco except that the directors serving on the "New Board" (as defined in paragraph 5.h), excluding the director who is an officer, partner, employee or agent of RWE, shall have the power to remove employees for cause and fill any vacancies which may arise.

f. RWE shall do nothing to diminish the viability and marketability of Newco and shall not sell, transfer, encumber, or otherwise impair the marketability or viability of its assets (other than in the normal course of business or as provided herein).

g. All material transactions out of the ordinary course of business and not otherwise precluded shall be subject to a majority vote of the New Board (as defined in paragraph 5.h).

h. RWE may cause Newco to adopt new Articles of Incorporation and By-laws, provided that they are not inconsistent with other provisions of this Agreement, and may cause the election of a new board of directors of Newco ("New Board"). RWE may elect the directors to the New Board. Except as

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permitted by this Agreement, the director of Newco who is also a partner, officer, employee or agent of RWE shall not receive in his capacity as director of Newco material confidential information relating to Newco's business in high-purity alumina, and shall not disclose any such information received under this Agreement to RWE or to any company owned in whole or in part by RWE. Nor shall such director use such information to obtain any advantage for RWE or for any company owned in whole or in part by RWE. Said director of Newco shall enter into a confidentiality agreement prohibiting disclosure of confidential information relating to Newco's business in high-purity alumina. Such director may participate in matters that come before the New Board that do not concern Newco's business in high-purity alumina. Such director may participate in matters that come before the New Board concerning carrying out RWE's and Vista's responsibility to complete the technology license, establish a joint venture and make a supply agreement. Except as permitted by this Agreement, such director shall not participate in, or attempt to influence the vote of any other director with respect to, any matters that would involve a conflict of interest if RWE and Newco were separate and independent entities. Meetings of the Board during the term of this Agreement shall be stenographically transcribed and the transcripts shall be retained for two (2) years after the termination of this Agreement.

i. All earnings and profits of Newco shall be accounted for and retained separately in Newco.

j. Should the Commission seek in any proceeding to compel RWE to divest itself of the shares of stock or assets of Vista or Newco, or to compel RWE to divest any assets or businesses they may hold, or to seek any other injunctive or equitable relief, RWE shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted Vista stock to be acquired. RWE also waives all rights to contest the validity of this Agreement.

k. Newco shall provide the Commission and RWE with quarterly financial statements in the same form and content as Newco would be required to file periodically with the Securities and Exchange Commission and the New York Stock Exchange if Newco were a publicly-held company whose stock were listed and traded on the New York Stock Exchange.

6. If the Commission disapproves the Consent Order after public comment, then within six (6) months of the closing date of the transfer of Discovery's interests in the Subject Assets to Newco (the "Closing Date"), RWE shall submit for Commission approval a plan to divest all the stock or assets of Newco. RWE shall have an absolute and unconditional obligation to divest all the stock or assets and assign all licensing and other agreements of Newco in accordance with such plan within six (6) months of approval of such plan by the Commission. If within eighteen (18) months of the Closing Date the Commission has not approved a plan submitted by RWE, RWE shall consent to the appointment by the Commission of a trustee who shall be authorized to sell and make assignments, consistent with the provisions of paragraph VI of the Consent Order, all the stock or assets of Newco. Provided, however, that the duration of each agreement shall be extended by the amount of time that Newco is owned by RWE, less the time between the submission of such plan to, and approval of such plan by, the Commission.

7. This Agreement, except paragraph 2, shall terminate if any of the following four events occurs:

a. The Commission approves the Application of Discovery;

b. If RWE has become obligated to create Newco pursuant to paragraph 4 above, on the date on which RWE has performed the acts set forth in paragraphs II and IV of the Agreement Containing Consent Order, whether or not the Consent Order has received final approval of the Commission;

c. If RWE has become obligated to create Newco pursuant to paragraph 4 above, on the date on which the trustee pursuant to paragraph VI of the Consent Order has satisfied paragraphs II and IV of the Consent Order;

d. In the event the Commission has not acted upon the Application of Discovery within one hundred fifty (150) days of the date the Application of Discovery goes on the public record, the Acquiring Parties may, at their option, terminate this Agreement by delivering written notice of termination to the Commission, which termination shall be effective no earlier than ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b).

Termination of this Agreement shall in no way operate to terminate the Agreement Containing Consent Order to Cease and Desist that the Acquiring Parties have entered into in this matter.

8. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to the Acquiring Parties made to their offices, RWE shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of RWE or Newco and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of RWE and Newco relating to compliance with this Agreement; and

b. Upon five (5) days notice to RWE or Newco, and without restraint or interference from them, to interview partners, officers, directors or employees of RWE or Newco, who may have counsel present, regarding any such matters.

9. This Agreement shall not be binding until approved by the Commission.

Certificate of Incorporation of (Newco)

Article First

The name of the corporation is (NEWCO) (the "Corporation").

Article Second

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

Article Third

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "GCL").

Article Fourth

The total number of shares of stock which the Corporation shall have authority to issue is 1,000 shares of the par value of $.01 per share. All such shares shall be of one class and shall be designated "Common Stock".

Article Fifth

The name and mailing address of the sole incorporator is as follows:

Name	Address
(Name)	(Address)

Article Sixth

For the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders, it is further provided that:

(1) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors;

(2) The directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the By-Laws of the Corporation;

(3) The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws so provide;

(4) No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to section 174 of the GCL or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article Sixth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification;

(5) Any director or any officer elected or appointed by the stockholders or by the Board of Directors of the Corporation, or any committee thereof, may be removed at any time by a unanimous written consent of the stockholders of the Corporation or in such other manner as shall be provided in the By-Laws of the Corporation; and

(6) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the GCL, this Certificate of Incorporation, and any By-Laws adopted by the stockholders; *provided, however,* That no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

Article Seventh

The Corporation shall, to the full extent permitted by section 145 of the GCL as presently in effect or as it may hereafter be amended, indemnify all persons whom it may indemnify pursuant thereto and advance expenses of litigation to directors and officers when so requested.

Article Eighth

Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the GCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

Article Ninth

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

In Witness Whereof, I (NAME), the sole incorporator of (NEWCO), have executed this Certificate of Incorporation on this ___ day of _____, 1991, and DO HEREBY CERTIFY under the penalties of perjury that the facts stated in this Certificate of Incorporation are true.

(Name) _____
Sole Incorporator

BY–LAWS OF NEWCO (a Delaware corporation)

Adopted _____, 1991

Article I

Offices

Section 1. Registered Office. The registered office of (NECO) (the "Corporation") in the State of Delaware shall be in the City of Wilmington, County of New Castle, and the registered agent in charge thereof shall be The Corporation Trust Company.

Section 2. Other Offices. The Corporation may have such other offices in such places, either within or without the State of Delaware, as the Board of Directors (the "Board" or the "Board of Directors") may from time to time determine or the business of the Corporation may require.

Article II

Meetings of Stockholders

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual Meetings. The annual meetings of stockholders of the Corporation (the "Annual Meetings") shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which meetings the stockholders shall elect by a plurality vote a Board of Directors, and transact such other business as may properly be brought before the meeting. Written notice of the Annual Meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

Section 3. Special Meetings. Unless otherwise prescribed by law or by the Certificate of Incorporation, special meetings of stockholders of the Corporation ("Special Meetings") for any purpose or purposes, may be called by either (i) the Chairman, if there be one, or (ii) the President, (iii) any vice President, if there be one, (iv) the Secretary or (v) any Assistant Secretary, if there be one, and shall be called by any such officer at the request in writing of a majority of the Board of Directors or at the request in writing of stockholders owning a majority of the capital stock of the Corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. Written notice of a Special Meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than sixty days before the date of such meeting to each stockholder entitled to vote at such meeting.

Section 4. Quorum. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the capital stock issued and outstanding and entitled to be voted at the meeting, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjournment meeting shall be given to each stockholder entitled to vote at the meeting.

Section 5. Voting. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, any question brought before any meeting of stockholders shall be decided by the vote of the holders of a majority of the stock represented and entitled to vote at the meeting. Each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote at the meeting held by such stockholder. Such votes shall be cast in person or by proxy but no proxy shall be voted on or after three years from its date, unless such proxy provides for a longer period. The Board of Directors, in its discretion, or the office of the Corporation presiding at a meeting of stockholders, in his discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 6. Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the certificate of incorporation, any action required or permitted to be taken, by the laws of the State of Delaware, at any Annual or Special Meeting may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 7. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of the Corporation who is present.

Section 8. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by section 7 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

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Article III

Board of Directors

Section 1. General Powers. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation directed or required to be exercised or done by the stockholders.

Section 2. Number and Election of Directors. The Board of Directors shall consist of not less than one nor more than fifteen members, the exact number of which shall initially be fixed by the Incorporator and thereafter from time to time by the Board of Directors. Except as provided in Section 5 of this Article, directors shall be elected by a plurality of the votes cast at Annual Meetings, and each director so elected shall hold office until the next Annual Meeting and until his successor is duly elected and qualified, or until his earlier resignation or removal. Any director may resign at any time upon notice to the Corporation. Directors need not be stockholders of the Corporation.

Section 3. Organization and Order of Business. At each meeting of the Board, the President, if the President shall be a director, shall act as chairman of the meeting and preside thereat. In the case of the absence of the President, or if the President shall not be a director, any director chosen by a majority of the directors present at the meeting shall act as chairman of the meeting and preside at the meeting. The Secretary of the Corporation or, in the case of his absence, any person (who shall be an Assistant Secretary, if an Assistant Secretary shall be present at the meeting) whom the chairman shall appoint, shall act as secretary of such meeting and keep the minutes thereof.

Section 4. Removal of Directors. Any director or the entire Board may be removed, with or without cause, at any time by the holders of a majority of the shares then entitled to vote at an election of directors.

Section 5. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and qualified, or until their earlier resignation or removal.

Section 6. Duties and Powers. The business of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

Section 7. Meetings. The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman, if there be one, the President, or any director. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight hours before the date of the meeting, by telephone or telegram on twenty-four hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 8. Quorum. Except as may be otherwise specifically provided by law, the Certificate of Incorporation or these By-Laws, at all meetings of the Board of Directors, one third of the total number of directors constituting the Board of Driectors shall constitute a quorum for the transaction of business, except that if one director constitutes the Board of Directors, then one director shall constitute a quorum, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. Actions of Board by Written Consent. Unless otherwise provided by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 10. Meetings by Means of Conference Telephone. Unless otherwise provided by the Certificate of Incorporation or these By-Laws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by menas of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this section 10 shall constitute presence in person at such meeting.

Section 11. Committees. The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent allowed by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 12. Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 13. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if (i) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Article IV

Officers

Section 1. General. The officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, may choose one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. The Board of Directors, in its discretion, also may choose a Chairman of the Board of Directors and any Vice Chairman of the Board of Directors (who must be directors). Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman or Vice Chairman of the Board of Directors, need such officers be directors of the Corporation.

Section 2. Election. The Board of Directors at its first meeting held after each Annual Meeting shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chairman of the Board of Directors. The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. He shall be the Chief Executive Officer of the Corporation, and except where by law the signature of the President is required, the Chairman of the Board of Directors shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. During the absence or disability of the President, the Chairman of the Board of Directors shall exercise all the powers and discharge all the duties of the President. The Chairman of the Board of Directors shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him by these By-Laws or by the Board of Directors.

Section 5. Vice Chairmen of the Board of Directors. Each Vice Chairman of the Board of Directors, if any, shall be a member thereof and shall perform such duties and have such powers as from time to time may be assigned by the Board of Directors.

Section 6. President. The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall have the power alone or with any other authorized officer to execute all bonds, mortgages, contracts and any other instruments of the Corporation, under the seal of the Corporation or otherwise (as shall the other officers of the Corporation when so authorized by these By-Laws, the Board of Directors or the President). In the absence or disability of the Chairman of the Board of Directors, or if there be none, the President shall preside at all meetings of the stockholders and the Board of Directors. If there be no Chairman of the Board of Directors, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him by these By-Laws or by the Board of Directors.

Section 7. Vice Presidents. At the request of the President or in his absence or in the event of his inability or refusal to act (and if there be no Chairman of the Board of Directors), the Vice President or the Vice Presidents if there are more than one (in the order designated by the Board of Directors) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall have the power alone or with any other authorized officer to execute all bonds, mortgages, contracts and any other instruments of the Corporation, under the seal of the Corporation or otherwise (as shall the other officers of the Corporation when so authorized by these By-Laws, the Board of Directors or the President). Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Chairman of the Board of Directors and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 8. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings at the meeting in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and Special Meetings, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 9. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He shall have the power alone or with any other authorized officer to execute all bonds, mortgages, contracts and any other instruments of these Corporation, under the seal of the Corporation or otherwise (as shall the other officers of the Corporation when so authorized by these By-Laws, the Board of Directors or the President). The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 10. Assistant Secretaries. Except as may be otherwise provided in these By-Laws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of his disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 11. Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer,

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and in the absence of the Treasurer or in the event of his disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 12. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

Article V

Stock

Section 1. Form of Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed, in the name of the Corporation (i) by the Chairman of the Board of Directors, the President or a Vice President and (ii) by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by him in the Corporation.

Section 2. Signatures. Where a certificate is countersigned by (i) a transfer agent other than the Corporation or its employee, or (ii) a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by his attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be cancelled before a new certificate shall be issued.

Section 5. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* That the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. Beneficial Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

Article VI

Notices

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telex or cable.

Section 2. Waivers of Notice. Whenever any notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed, by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Article VII

General Provisions

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, and may be paid in cash, in property, or in shares of the capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 5. Amendments. These By-Laws may be amended or repealed, or new By-Laws may be adopted, by the Board of Directors at any meeting thereof (or by action by written consent as provided under section 141(f) of the Delaware General Corporation Law); *provided* that By-Laws adopted by the Board may be amended or repealed by the stockholders.

Article VIII

Indemnification

Section 1. Power to Indemnify in Actions, Suits or Proceedings Other Than Those by or in the Right of the Corporation. Subject to section 3 of this Article VIII, the Corporation shall indemnify any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to section 3 of this Article VIII, the Corporation shall indemnify any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Authorization of Indemnification. Any indemnifiction under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in section 1 or section 2 of this Article VIII, as the case may be. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders. To the extent, however, that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, without the necessity of authorization in the specific case.

Section 4. Good Faith Defined. For purposes of any determination under section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner he reasonbly believed to be in or not opposed to the best interests of the Conporation, or with respect to any criminal ation or proceeding, to have had no reasonable cause to believe his conduct was unlawful, if his action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to him by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this section 4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in sections 1 or 2 of this Article VIII, as the case may be.

Section 5. Indemnification by a Court. Notwithstanding any contrary determination in the specific case under section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any director, officer, employee or agent may apply to any court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under sections 1 and 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standards of conduct set forth in section 1 or 2 of this Article VIII, as the case may be. Neither a contrary determination in the specific case under section 3 of this Article VIII not the absense of any determination thereunder shall be a defense to such application or create a presumption that the director, officer, employee or agent seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this section 5 shall be given to the Corporation promptly upon the filing or such application. If successful, in whole or in part, the director, officer, employee or agent seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 6. Expenses Payable in Advance. Expenses incurred by a director or officer in defending or investigating a threatened or pending action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

Section 7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by or granted pursuant to this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-Law, agreement, contract, vote of stockholders or disinterested directors or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in section 1 and 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in section 1 or 2 of this Article VIII but whom the Corporation has the power or obligation to indemnify under the provisions of the General Corporation Law of the State of Delaware, or otherwise.

Section 8. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power or the obligation to indemnify him against such liability under the provisions of this Article VIII.

Section 9. Certain Definitions. For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was a director of officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an

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employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in Article VIII.

Section 10. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11. Limitation of Indemnification. Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by section 5 hereof), the Corporation shall not be obligated to indemnify any director, officer, employee or agent in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors.

Section 12. Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to directors and officers of the Corporation.

Exhibit C

RWE-DEA Aktiengesellschaft Für Mineraloel Und Chemie

———, 1991

(NEWCO)
In care of The Corporation Trust Company
1209 Orange Street
Wilmington, Delaware 19801

Dear Sirs: The undersigned, RWE-DEA Aktiengesellschaft für Mineraloel und Chemie, hereby offers to subscribe and pay for 1,000 shares of Common Stock, par value $.01 per share, of (NEWCO), a Delaware corporation, at a price of $1,600 per share.

Very truly yours,

REW-DEA AKTIENGESELLSCHAFT FÜR MINERALOEL UND CHEMIE

by———
Name:
Title:

Name:
Title:

Accepted:
(NEWCO)
by———
Name:
Title:

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from RWE Aktiengesellschaft, RWE–DEA Aktiengesellschaft fur Mineraloel und Chemie, Alpha Acquisition Corporation (collectively "RWE") and Vista Chemical Company ("Vista") an agreement containing consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerns the proposed acquisition by RWE of all of the issued and outstanding common stock of Vista. RWE and Vista are producers of high-purity alumina, and both companies employ a similar production process that also obtains synthetic linear alcohols as a co-product. This production process is unique to RWE and Vista. The alumina that the companies produce is used in manufacturing diverse products such catalysts for petroleum refineries, chemical manufacturing, and automobile emissions control, abrasive grains, for industrial finishing applications, and anti-skid agents, for the paper industry.

RWE manufactures high purity alcohol process alumina for these applications at its plants in Germany, and exports it throughout the world. RWE has substantial sales of this alumina in the United States. Vista manufactures high purity alcohol process alumina at its plant in the United States, and also exports it throughout the world. Most of Vista's sales are in the United States.

The agreement containing consent order would, if issued by the Commission, settle the complaint that alleges an anticompetitive effect in the world market for high purity alcohol process alumina.

The Commission has reason to believe that the acquisition would have an anticompetitive effect in the world market for high purity alcohol process alumina and would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates the anticompetitive effect.

The proposed order accepted for public comment contains provisions requiring the licensing of: (1) Certain RWE production technology for high-purity alcohol process alumina; (2) certain Vista production technology for high-purity alcohol process alumina; and (3) certain Vista processing technology for high-purity alcohol process alumina. The licensed technology includes both patent rights, trade secrets, and other company know-how. The processing technology excludes processing technology relating to aluminas used for thickeners and most ceramics applications.

The purpose of these provisions is to provide a new company with the technology required to build a plant and establish itself as a producer of high-purity alcohol process alumina comparable to either Vista or RWE.

In addition, the proposed order contains provisions by which RWE would participate in an alumina joint venture with the technology licensee, and would supply the joint venture with alumina. The volume of alumina that RWE would be obligated to supply has been made a part of the proposed order, but because of the sensitive nature of this information, has not been included in the publicly available order.

The licensee would operate the joint venture; RWE would have a minority ownership share that would decline to the extent of disproportionate capital investments by the licensee. RWE would have a limited role in the management of the venture, and would have access only to limited information. The joint venture would have an initial term of four years that could be extended for another two years if the licensee has commenced construction of facilities necessary to produce high-purity alumina, and would terminate within sixty days of the date that the plant begins commercial production.

RWE would provide specified types and volumes of alumina to the joint venture. In particular, the joint venture could specify that RWE supply, from the Vista Lake Charles alumina plant, any grades and types of Vista's Catapal® B and Catapal® CF, or any other grades of Vista alumina that are used in chemical catalysts or automotive emissions control catalysts, which it would be free to market to any application. The joint venture could also specify that RWE supply alumina slurry of a quality that is suitable for use in sol gel abrasives, for marketing to that application.

The price of alumina to the joint venture has been made a part of the proposed order, but because of the sensitive nature of this information, has not been included in the publicly available order. The purpose of including in the proposed order an explicit price term is to provide that the alumina joint venture obtains a price that will enable it to compete effectively in marketing alumina.

The proposed order further provides that RWE should provide the licensee with specific customer information relating to certain applications for high-purity alumina; Chemical catalysts; automotive emissions control catalysts; and abrasives. In addition, the proposed order provides that RWE assign to the joint venture any current Vista contracts relating to these applications.

The purpose of the joint venture is to provide the licensee with marketing experience, so as to facilitate this successful utilization of the technology licenses ultimately to construct new facilities (or modify existing facilities) to produce high-purity alumina.

If the licensee does not commence construction of the necessary facilities within four years of the execution of the licensing agreement, does not complete construction within six years, or if the original license terminates due to termination of the joint venture by reason of financial failure or material breach of the joint venture agreement by the licensee, the proposed order further provides that RWE license the technology to some other person. The purpose of this provision is provide an additional opportunity for use of the license to bring onstream new production of the relevant product.

Under the terms of the proposed order, RWE must complete the required technology license and establish the other necessary agreements within six months of the date the proposed order becomes final. If RWE fails to complete the required licensing within the six-month period, RWE shall consent to the appointment of a trustee, who would have twelve additional months to license the technology, establish the joint venture, and make the necessary supply agreement. In either case, the proposed licensing agreement must be approved by the Federal Trade Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons.

For a period of ten years from its effective date, the proposed order would also prohibit RWE from acquiring, without prior Commission approval, assets or any interest in any company throughout the world that is engaged in the manufacture, distribution or sale of high-purity alumina, and that has had, during the last three years, sales of at least 125,000 pounds of high-purity alumina in the United States in any six-month period.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

Donald S. Clark,
Secretary.

[FR Doc. 91–15088 Filed 6–24–91; 8:45]

BILLING CODE 6750–01–M

[File No. 901 0025]

Medical Staff of Broward General Medical Center; and Medical Staff of Holy Cross Hospital; Proposed Consent Agreements With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the two consent agreements, accepted subject to final Commission approval, would prohibit, among other things, the two medical staffs from entering, or attempting to enter, into any agreement which would prevent or restrict the offering or delivery of health care services by Holy Cross Hospital, Broward General Hospital, Cleveland Clinic Florida (CFF), and CFF physician, or any other provider of health care services.

DATES: Comments must be received on or before August 26, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S–3115, Washington, DC 20580. (202) 326–2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Medical Staff of Broward General Medical Center and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It Is Hereby Agreed by and between the proposed respondent and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Medical Staff of Broward General Medical Center is an unincorporated association, organized and existing under the laws of the State of Florida, with its mailing address at 1600 South Andrews Avenue, Fort Lauderdale, FL 33316.

2. The proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint here attached.

3. The proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the attached complaint, will be placed on the public record for a period of sixty (60) days and information with respect thereto will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of the complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of §2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information

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public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the order to the proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The representatives and counsel of proposed respondent Broward General Medical Staff have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, the Broward General Medical Staff will be required to file compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is Ordered that for purposes of this order, the following definitions shall apply:

A. *Medical Staff* means the Medical Staff of Broward General Medical Center, its successors, assigns, officers, directors, committees, agents, employees, and representatives.

B. *NBHD* means the North Broward Hospital District, a tax supported entity with its principal offices located at 1625 Southeast Third Avenue, Fort Lauderdale, FL 33316, the hospitals that are owned by the North Broward Hospital District, and its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

C. *Broward General* means the Broward General Medical Center, one of the hospitals of the North Broward Hospital District, located at 1600 South Andrews Avenue, Fort Lauderdale, FL 33316, its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

D. *CCF* means Cleveland Clinic Florida, a nonprofit corporation organized under Florida law, located at 3000 West Cypress Creek Road, Ft. Lauderdale, FL 33309, its parent foundation (Cleveland Clinic Foundation, which is located at 9500 Euclid Avenue, Cleveland, OH 44195), any entity located in Florida that is owned, controlled or under the management of Cleveland Clinic Florida or Cleveland Clinic Foundation, and the officers, directors, committees, agents, employees, and representatives of Cleveland Clinic Florida or Cleveland Clinic Foundation.

E. *Corrective action* means action taken pursuant to and in conformance with the Medical Staff's bylaws against any person with hospital privileges at Broward General whose activities or professional conduct is reasonably believed to be detrimental to patient safety or the delivery of quality patient care.

II.

It Is Further Ordered that the Medical Staff directly or indirectly, or through any device, in connection with activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, express or implied, between or among its members or with other physicians, providers of health care services, medical societies, hospitals, or medical staffs, for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by the NBHD, Broward General, CCF, any CCF physician, or any other provider of health care services, including any agreement to:

A. Refuse to deal or threaten to refuse to deal with the NBHD, Broward General, CCF, any CCF physician, or any other provider of health care services, including, but not limited to, any agreement or combination to refuse or threaten to refuse to:

1. Participate in any Medical Staff or NBHD committee, admit any patient to any NBHD hospital, fulfill any Medical Staff obligation imposed or recognized under any provisions of the Florida statutes, the Code of the NBHD, the By-Laws or Rules and Regulations of the Medical Staff, or fulfill any other function customarily performed by the Medical Staff;

2. Refer patients to, accept patient referrals from, provide back-up for, or consult in the treatment of any patient with, any CCF physician; or

3. Associate with NBHD or CCF as an employee or independent contractor or otherwise deal with NBHD, CCF or any CCF physician.

B. Deny, impede, or refuse to consider any application for hospital privileges or for changes in hospital privileges by any person solely because of his or her affiliation with CCF.

C. Deny or recommend to deny, limit, or otherwise restrict hospital privileges for any CCF physician without a reasonable basis for concluding that the denial, limitation, or restriction serves the interests of the hospital in providing for the efficient and competent delivery of health care services.

D. Discriminate, or threaten to discriminate, against any CCF physician with hospital privileges at Broward General with respect to the rights accorded to a member of the Medical Staff.

E. Encourage, advise, pressure, induce, or attempt to induce any person to engage in any action prohibited by this order.

III.

A. It Is Further Ordered that this order shall not be construed to prohibit the respondent Medical Staff or its members from engaging, pursuant to the Medical Staff's bylaws, in credentialing, corrective action, utilization review, quality assurance, or peer review at Broward General, where such conduct neither constitutes nor is part of any agreement, combination or conspiracy the purpose, effect, or likely effect of which is to impede competition unreasonably.

B. It Is Further Ordered that this order shall not be construed to prohibit any individual member of the Medical Staff from entering into an agreement or combination with any other physician or health care practitioner with whom the individual Medical Staff member practices in partnership or in a professional corporation, or who is employed by the same person.

IV.

It Is Further Ordered that the Medical Staff shall:

A. Within thirty (30) days after the date this order becomes final:

1. Mail a copy of this order, the accompanying complaint, and the attached Announcement to: (a) Each Commissioner on the NBHD Board of Commissioners; (b) the Chief Executive Officers of Cleveland Clinic Florida and Cleveland Clinic Foundation; and (c) each member of the Medical Staff as of the date this order becomes final; and

2. Retract in writing the Medical Staff's September 20, 1985, resolution opposing any affiliation between CCF and the NBHD.

B. For a period of three (3) years after the date this order becomes final:

1. Report to the Federal Trade Commission any adverse recommendation by the Medical Staff concerning any application for hospital privileges, or changes in existing hospital privileges, of any CCF physician or other CCF health care practitioner, within thirty (30) days after final action upon the Medical Staff's recommendation;

2. Distribute to each new member of the Medical Staff a copy of this order, the accompanying complaint, and the attached Announcement within 30 days after he or she is officially admitted to the Medical Staff; and

3. Maintain records adequate to describe in detail any action taken in connection with the activities covered by this order and, upon reasonable notice, make such records available to the Federal Trade Commission staff for inspection and copying.

C. Within sixty (60) days after the date this order becomes final, annually for three (3) years on the anniversary date of the initial report, and at such other times as the Federal Trade Commission may by written notice require, file with the Federal Trade Commission a report setting forth in detail the manner and form in which it has complied with and intends to continue complying with this order.

D. Notify the Federal Trade Commission of any proposed change in its organization that may affect compliance obligations arising out of this order at least thirty (30) days prior to the effective date of any such proposed change.

Appendix A—Announcement

As you may be aware, on [date] the Federal Trade Commission issued a complaint and a final consent order against the Broward General Medical Staff.

The order generally prohibits the Medical Staff from collectively refusing to deal with the North Broward Hospital District, Broward General ("Broward General"), Cleveland Clinic Florida ("CCF"), or CCF physicians. The order also prohibits the Medical Staff from refusing to evaluate applications for hospital privileges of any person because of his or her affiliation with CCF, or recommending the denial of hospital privileges for any CCF physician without a reasonable basis for concluding that the denial is reasonably related to the efficient operation and competent delivery of health care services at Broward General.

In addition, the order prohibits the Medical Staff from discriminating or threatening to discriminate against any CCF physician with privileges at Broward General, regarding the rights accorded to a member of the Medical Staff. Finally, the Medical Staff is also prohibited from encouraging any person or organization to take actions that the order prohibits the Medical Staff from taking.

Under the order, the Medical Staff retracted its September 20, 1985, resolution, which the complaint alleges was a threat to boycott Broward General to discourage the Hospital from affiliating with CCF.

The agreement between the Federal Trade Commission and the Broward General Medical Staff is for settlement purposes only and does not constitute an admission by the Medical Staff that the law has been violated as alleged in the complaint. The order does not prohibit the members of the Medical Staff from lawfully carrying on their medical practices and from providing patient care at Broward General and does not otherwise prohibit the Medical Staff, its officers and committees from engaging in lawful peer review and quality assurance at Broward General.

For more specific information, you should refer to the FTC complaint and order. The civil penalty for violation of the order is $10,000 per day for each order violation. A copy of the order is enclosed.

(Vice Chief of Staff)
Broward General Medical Staff.

Medical Staff of Broward General Medical Center Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, the agreement of the Medical Staff of Broward General Medical Center ("respondent Medical Staff"), Fort Lauderdale, Florida, to a proposed consent order. The agreement would settle charges by the Federal Trade Commission that the respondent Medical Staff violated section 5 of the Federal Trade Commission Act by conspiring to prevent, delay and limit competition from the Cleveland Clinic Foundation ("Cleveland Clinic" or "the Clinic"), through the use of boycott threats and other anticompetitive practices.

The proposed consent order has been placed on the public record for sixty days for reception of comments by interested persons. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint, prepared for issuance by the Commission with the proposed order, alleges that the Cleveland Clinic, located in Cleveland, Ohio, is a provider of health care services to patients requiring complex medical care. According to the complaint, the Clinic is organized and operated as a multispecialty group medical practice and, as such, provides consumers an alternative to traditional individual and single specialty group forms of practice. Under the Clinic's multispecialty group practice format, patients often can obtain all necessary specialized medical care and ancillary services from employees of the Clinic, including salaried physicians.

The complaint alleges that the Cleveland Clinic sought to establish a regional branch in Northern Broward County, Florida. According to the complaint, in 1985 the North Broward Hospital District ("NBHD"), which owns and operates Broward General Medical Center ("the Hospital"), and the Cleveland Clinic sought to negotiate an affiliation pursuant to which the Hospital's facilities would be utilized in the development of the Clinic's Northern Broward County branch, known as Cleveland Clinic Florida ("CCF"). NBHD officials proposed developing an affiliation at Broward General under which physicians on the Hospital's Medical Staff would be invited to participate in a joint venture with NBHD and CCF.

The complaint further alleges that respondent Medical Staff considered the proposed affiliation to be a competitive threat to the individual and small group fee-for-service form of medical practice existing in Northern Broward County. Respondent Medical Staff was concerned that consumers would find CCF's alternative form of practice sufficiently attractive to disrupt existing patterns of patient referrals among individual physicians and small single specialty groups, thereby reducing revenues of existing physicians and physician groups.

The complaint alleges that in an effort to eliminate the competitive threat from CCF, respondent Medical Staff conspired with at least some of its members and others, to prevent, delay and limit competition from CCF through the use of boycott threats directed at Broward General, as well as other anticompetitive practices. The complaint alleges that at various times during and in furtherance of the combination and conspiracy, respondent Medical Staff and others have:

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A. Agreed to boycott and threatened to boycott Broward General in order to coerce NBHD and Broward General:

(i) To refuse to affiliate with the Clinic, and

(ii) To prevent CCF physicians from becoming members of the respondent Medical Staff;

B. Refused to deal with Cleveland Clinic except on collectively determined terms;

C. Induced NBHD, through pretextual justifications, to deny hospital privileges to CCF physicians; and

D. Refused to process applications for privileges by CCF physicians.

The complaint further alleges that respondent Medical Staff's actions have injured consumers in the Nothern Broward County, by, among other things, depriving consumers of the price and quality benefits of competition between CCF's integrated multispecialty group practice and independent fee-for-service practitioners, and hindering CCF's ability to offer health care services to consumers by raising its costs, reducing its efficiency, and delaying or preventing CCF from offering specialty and subspecialty services.

The Proposed Consent Order

The proposed consent order would prohibit respondent Medical Staff from entering or attempting to enter into any agreement or combination to refuse to deal or threaten to refuse to deal with Broward General, CCF, any CCF physician, or any other provider of health care services, for the purpose or with the effect of preventing or restricting the offering or delivery of health care services.

The consent order specifically would prohibit any agreement or combination for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by the NBHD, Broward General, CCF, any CCF physician, or any other provider of health care services including any agreement to: (1) Refuse or threaten to refuse to provide, or delay unreasonably in providing, an application for medical staff privileges to any CCF physician who submits a written request for the same; (2) deny, impede, or refuse to consider any application for hospital privileges or for changes in hospital privileges by any person solely because of his or her affiliation with CCF; (3) deny or recommend to deny, limit, or otherwise restrict hospital privileges for any CCF physician without a reasonable basis for concluding that the denial, limitation, or restriction serves the interests of the hospital in providing for the efficient and competent delivery of health care services; (4) discriminate, or threaten to discriminate, against any CCF physician with hospital privileges at Broward General with respect to the rights accorded to a member of the Medical Staff; and (5) encourage, advise, pressure, induce, or attempt to induce any person to engage in any action prohibited by the order.

The proposed order would not prohibit the respondent Medical Staff from engaging, pursuant to the Medical Staff's bylaws, in credentialing, corrective action, utilization review, quality assurance, or peer review at the Hospital, where such conduct is not part of any agreement to impede competition unreasonably. This provision makes clear that respondent Medical Staff can engage in its customary activities so long as they are not aimed at impeding competition. The proposed order further would not prohibit respondent Medical Staff's members from entering into agreements with physicians with whom they may practice as partners, in professional corporations, or as employees of the same person.

The order also would require respondent Medical Staff to mail copies to the complaint and order to NBHD and CCF officials. Further, the order would require respondent Medical Staff to retract in writing the Medical Staff's September 20, 1985, resolution opposing any affiliation between CCF and the NBHD.

Finally the order requires that the respondent Medical Staff: (1) File compliance reports with the Commission; (2) report any adverse recommendation by the Medical Staff concerning any application for hospital privileges, or change in existing hospital privileges, or any CCF physician; (3) distribute to each new member of the Medical Staff a copy of the order, the accompanying complaint, and the attached Announcement; and (4) notify the Federal Trade Commission of any proposed change in its organization that may effect compliance obligations arising out of this order.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order to modify its terms in any way.

The proposed order was entered into for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the complaint.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Medical Staff of Holy Cross Hospital, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of acts and practices being investigated,

It Is Hereby Agreed by and between the proposed respondent and its counsel, and counsel for the Federal Trade Commission that:

1. Proposed respondent Medical Staff of Holy Cross Hospital is an unincorporated association, organized and existing under the laws of the State of Florida, with its mailing address at 4725 N. Federal Highway, Ft. Lauderdale, FL 33308.

2. The proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint here attached.

3. The proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the attached complaint, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreeent is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of the complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the order to the proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent's representatives and its counsel have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, the Medical Staff of Holy Cross Hospital will be required to file compliance reports showing that the Medical Staff of Holy Cross Hospital has complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It Is Ordered that for purposes of this order, the following definitions shall apply:

1. *Medical Staff* means the Medical Staff of Holy Cross Hospital, its successors, assigns, officers, directors, committees, agents, employees, and representatives.

2. *Holy Cross Hospital* means Holy Cross Hospital, Inc., a not-for-profit corporation with its principal officers located at 4725 N. Federal Highway, Ft. Lauderdale, FL 33308, its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

3. *CCF* means Cleveland Clinic Florida, a nonprofit corporation organized under Florida law, located at 3000 West Cypress Creek Road, Ft. Lauderdale, FL 33309, its parent foundation (Cleveland Clinic Foundation, which is located at 9500 Euclid Avenue, Cleveland, OH 44195), any entity located in Florida that its owned, controlled, or under the management of Cleveland Clinic Florida or Cleveland Clinic Foundation, and the officers, directors, committees, agents, employees, and representatives of Cleveland Clinic Florida or Cleveland Clinic Foundation.

4. *Corrective action* means action taken pursuant to and in conformance with the Medical Staff's bylaws against any person with hospital privileges at Holy Cross Hospital whose activities or professional conduct is reasonably believed to be determental to patient safety or the delivery of quality patient care.

II.

It Is Ordered that the Medical Staff, directly or indirectly, or through any device, in connection with activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, express or implied, between or among its members or with other physicians, providers of health care services, medical societies, hospitals, or medical staffs, for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by Holy Cross Hospital, CCF, and CCF physician, or any other provider of health services, including any agreement to:

A. Refuse to deal or threaten to refuse to deal with Holy Cross Hospital, CCF, and CCF physician, or any other provider of health care services, including, but not limited to, any agreement or combination to refuse or threaten to refuse to:

1. Admit any patient to Holy Cross Hospital, fulfill any Medical Staff obligation imposed or recognized under any provision of the Florida statutes, the By-laws or Rules and Regulations of the Medical Staff, or fulfill any other function customarily performed by the Medical Staff;

2. Refer patients to, accept patient referrals from, provide back-up for, or consult in the treatment of any patient with, any CCF physician; or

3. Associate with Holy Cross Hospital or CCF as an employee or independent contractor, or otherwise deal with Holy Cross Hospital, CCF or any CCF physician.

B. Refuse or threaten to refuse to provide, or delay unreasonably in providing, an application for medical staff privileges to any CCF physician who submits a written request for the same.

C. Deny, impede, or refuse to consider any application for hospital privileges or for changes in hospital privileges by any person solely because of his or her affiliation with CCF.

D. (i) Deny or recommend to deny, limit, or otherwise restrict hospital privileges for any CCF physician, or (ii) close or recommend to close any portion of the Medical Staff without a reasonable basis for concluding that such action or recommendation serves the interests of the hospital in providing for the efficient and competent delivery of health care services.

E. Discriminate, or threaten to discriminate, against any CCF physician with hospital privileges to Holy Cross Hospital with respect to the rights accorded to a member of the Medical Staff.

F. Encourage, advise, pressure, induce, or attempt to induce any person to engage in any action prohibited by this order.

III.

A. *It Is Further Ordered* that this order shall not be construed to prohibit the respondent Medical Staff or its members from engaging, pursuant to the Medical Staff's bylaws, in credentialing, corrective action, utilization review, quality assurance, or peer review at Holy Cross Hospital, where such conduct neither constitutes nor is part of any agreement, combination, or conspiracy the purpose, effect, or likely effect of which is to impede competition unreasonably.

B. *It Is Further Ordered* that this order shall not be construed to prohibit any individual member of the Medical Staff from entering into an agreement or combination with any other physician or health care practitioner with whom the individual Medical Staff member practices in partnership or in a professional corporation, or who is employed by the same person as said Medical Staff member.

IV.

It Is Further Ordered that the Medical Staff shall:

A. Within thirty (30) days after the date this order becomes final:

1. Mail a copy of this order, the accompanying complaint, and the attached Announcement to: (a) Each member of the Board of Trustees of the Holy Cross Hospital; (b) the Chief Executive Officer of Holy Cross Hospital; (c) the Administrator of Holy Cross Hospital; (d) the Chief Executive Officers of Cleveland Clinic Florida and Cleveland Clinic Foundation; and (e) each memer of the Medical Staff; and

2. Revise the Medical Staff privilege application form by deleting any

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question relating to whether an applicant is an employee of a corporation and any request for a copy of any employment agreement between an applicant and any other person or corporation. A copy of such revised application form shall be provided to the Federal Trade Commission within thirty (30) days after being adopted by vote of the Medical Staff as provided in the Medical Staff bylaws.

B. For a period of three (3) years after the date this order becomes final:

1. Report to the Federal Trade Commission any adverse recommendation by the Medical Staff concerning any application for hospital privileges, or change in existing hospital privileges, of any CCF physician or other CCF health care practitioner, within thirty (30) days after final action upon the Medical Staff's recommendation;

2. Distribute to each new member of the Medical Staff a copy of this order, the accompanying complaint, and the attached Announcement within 30 days after he or she is officially admitted to the Medical Staff; and

3. Maintain records adequate to describe in detail any action taken in connection with the activities covered by this order and, upon reasonable notice, make such records available to the Federal Trade Commission staff for inspection and copying.

C. Within sixty (60) days after the date this order becomes final, annually for three (3) years on the anniversary date of the initial report, and at such other times as the Federal Trade Commission may by written notice require, file with the Federal Trade Commission a report setting forth in detail the manner and form in which it has complied with and intends to continue complying with this order.

D. Notify the Federal Trade Commission of any proposed change in its organization that may affect compliance obligations arising out of this order at least thirty (30) days prior to the effective date of any such proposed change.

Appendix A—Announcement

As you may be aware, on (date) the Federal Trade Commission issued a complaint and a final consent order against the Holy Cross Hospital Medical Staff.

The order generally prohibits the Medical Staff from collectively refusing to deal with Holy Cross Hospital, Cleveland Clinic Florida ("CCF") or CCF physicians. The order also prohibits the Medical Staff from refusing to evaluate applications for hospital privileges of any person because of his or her affiliation with CCF, or recommending the denial of hospital privileges for any CCF physician without a reasonable basis for concluding that the denial is reasonably related to the efficient operation of and competent delivery of health services at Holy Cross Hospital.

In addition, the order prohibits the Medical Staff from discrimination or threatening to discriminate against any CCF physician with privileges of Holy Cross Hospital, regarding the rights accorded to a member of the Medical Staff. Finally, the Medical Staff is also prohibited from encouraging any person or organization to take actions that the order prohibits the Medical Staff from taking.

Under the order, the Medical Staff removed from the hospital privilege application form the inquiry whether an applicant is an employee of a corporation, which the complaint alleges was added to the application form as a means of discriminating against applications filed by physician employees of CCF.

For more specific information, you should refer to the FTC complaint and order. The civil penalty for violation of the order is $10,000 per day for each order violation. A copy of the order is enclosed.

(President),
Holy Cross Hospital Medical Staff.

Medical Staff of Holy Cross Hospital Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, the agreement of the Medical Staff of Holy Cross Hospital ("respondent Medical Staff"), Fort Lauderdale, Florida, to a proposed consent order. The agreement would settle charges by the Federal Trade Commission that the respondent Medical Staff violated section 5 of the Federal Trade Commission Act by conspiring to prevent, delay and limit competition from the Cleveland Clinic Foundation ("Cleveland Clinic" or "the Clinic"), through the use of boycott threats and other anticompetitive practices.

The proposed consent order has been placed on the public record for sixty days for reception of comments by interested persons. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint, prepared for issuance by the Commission with the proposed order, alleges that the Cleveland Clinic, located in Cleveland, Ohio, is a provider of health care services to patients requiring complex medical care. According to the complaint, the Clinic is organized and operated as a multispecialty group medical practice, and, as such, provides consumers an alternative to traditional individual and single specialty group forms of practice. Under the Clinic's multispecialty group format, patients often can obtain all necessary specialized medical care and ancillary services from employees of the Clinic, including salaried physicians.

The complaint alleges that the Cleveland Clinic sought to establish a regional branch in Northern Broward County, Florida. According to the complaint, Holy Cross Hospital ("the Hospital") and the Cleveland Clinic sought in 1986 to negotiate an affiliation pursuant to which the Hospital's facilities would be utilized in the development of the clinic's Northern Broward County branch, known as Cleveland Clinic Florida ("CCF"). The proposed affiliation provided that CCF would lease unused hospital beds and purchase ancillary hospital-based services from Holy Cross Hospital.

The complaint further alleges that respondent Medical Staff considered the proposed affiliation to be a competitive threat to the individual and small group fee-for-service form of medical practice existing in Northern Broward County. Respondent Medical Staff was concerned that consumers would find CCF's alternative form of practice sufficiently attractive to disrupt existing patterns of patient referrals among individual physicians and small single specialty groups, thereby reducing revenues of existing physicians and physician groups.

The complaint alleges that in an effort to eliminate the competitive threat from CCF, respondent Medical Staff conspired with at least some of its members and others, to prevent, delay and limit competition from CCF through the use of boycott threats directed at Holy Cross Hospital, as well as other anticompetitive practices. The complaint alleges that at various times during and in furtherance of the combination and conspiracy, respondent Medical Staff and others have:

A. Agreed to boycott and threatened to boycott Holy Cross Hospital in order to coerce the Hospital:

(i) To refuse to affiliate with the Clinic, and

(ii) To prevent CCF physicians from becoming members of the Medical Staff;

B. Refused to deal with Cleveland Clinic except on collectively determined terms;

C. Induced Holy Cross Hospital, through pretextual justifications, to deny hospital privileges to CCF physicians; and

D. Refused to process applications for privileges by CCF physicians.

The complaint further alleges that respondent Medical Staff's actions have injured consumers in Northern Broward County, by, among other things, depriving consumers of the price and quality benefits of competition between CCF's integrated multispecialty group practice and independent fee-for-service practitioners, and hindering CCF's ability to offer health care services to consumers by raising its costs, reducing its efficiency, and delaying or preventing CCF from offering specialty and subspecialty services.

The Proposed Consent Order

The proposed consent order would prohibit respondent Medical Staff from entering or attempting to enter into any agreement or combination to refuse to deal or threaten to refuse to deal with Holy Cross Hospital, CCF, any CCF physician, or any other provider of health care services for the purpose or with the effect of preventing or restricting the offering or delivery of health care services.

The consent order specifically would prohibit any agreement or combination for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by Holy Cross Hospital, CCF, any CCF physician, or any other provider of health services, including any agreement to: (1) Refuse or threaten to refuse to provide, or delay unreasonably in providing, an application for medical staff privileges to any CCF physician who submits a written request for the same; (2) deny, impede, or refuse to consider any application for hospital privileges or for changes in hospital privileges by any person solely because of his or her affiliation with CCF; (3) deny or recommend to (i) deny, limit, or otherwise restrict hospital privileges for any CCF physician, or (ii) close any portion of the Medical Staff without a reasonable basis for concluding that such decision or recommendation serves the interests of the hospital in providing for the efficient and competent delivery of health care services; (4) discriminate, or threaten to discriminate, against any CCF physician with hospital privileges at Holy Cross Hospital with respect to the rights accorded to a member of the Medical Staff; and (5) encourage, advise, pressure, induce, or attempt to induce any person to engage in any action prohibited by the order.

The proposed order would not prohibit the respondent Medical Staff from engaging, pursuant to the Medical Staff's bylaws, in credentialing, corrective action, utilization review, quality assurance, or peer review at Holy Cross Hospital, where such conduct is not part of any agreement to impede competition unreasonably. This provision makes clear that respondent Medical Staff can engage in its customary activities so long as they are not aimed at impeding competition. The proposed order further would not prohibit respondent Medical Staff's members from entering into agreements with physicians with whom they may practice as partners, in professional corporations, or as employees of the same person.

The order also would require respondent Medical Staff to mail copies of the complaint and order to Holy Cross Hospital and CCF officials. Further, the order would require respondent Medical Staff to revise its Medical Staff privilege application form by deleting the question whether an applicant is an employee of a corporation, and the associated request for a copy of any employment agreement between an applicant and any other person or corporation.

Finally the order requires that the respondent Medical Staff: (1) File compliance reports with the Commission; (2) report any adverse recommendation by the Medical Staff concerning any application for hospital privileges, or change in existing hospital privileges, of any CCF physician; (3) distribute to each new member of the Medical Staff a copy of the order, the accompanying complaint, and the attached Announcement; and (4) notify the Federal Trade Commission of any proposed change in its organization that may affect compliance obligations arising out of this order.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

The proposed order was entered into for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the complaint.

Donald S. Clark,
Secretary.

[FR Doc. 91-15087 Filed 6-24-91; 8:45 am]
BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Report to Congress on the Costs of Operating Privately Owned Vehicles

The law (5 U.S.C. 5707(b)) requires the Administrator of General Services to periodically investigate the cost to Government employees of operating privately owned vehicles (automobiles, motorcycles, and airplanes) while on official business, to report the results of the investigations to Congress, and to publish the report in the Federal Register. This report is being published to comply with the requirements of the law.

Dated: June 12, 1991.
Richard G. Austin,
Administrator of General Services.

Report to Congress

The Travel Expense Amendments Act of 1975 (5 U.S.C. 5707(b)(1)) requires that the Administrator of General Services, in consultation with the Comptroller General of the United States, the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of operating privately owned vehicles (automobiles, motorcycles, and airplanes) to Government employees while on official business and report the results to the Congress at least once a year. The law further requires that a determination of the average, actual cost per mile be made based on the results of the investigation. Such figures must be reported to the Congress within 5 working days after the determinations have been made.

Pursuant to the requirements of 5 U.S.C. 5707(b)(1), the General Services Administration (GSA) conducted an investigation of the 1989 costs of operating privately owned motorcycles, automobiles, and airplanes and consulted with representatives of employee organizations, the General Accounting Office, and the Departments of Defense and Transportation on the results. As required, GSA is reporting the results of the investigation and the cost per mile determinations. GSA's cost studies show per-mile operating costs of 21.0 cents for motorcycles, 25.5 cents for automobiles, and 72.0 cents for airplanes.

I will issue a regulation to increase the current 24-cent for automobiles to 25 cents per mile, the maximum reimbursement allowance under existing law (5 U.S.C. 5704). The law also provides reimbursement ceilings of 20 and 45 cents per mile for motorcycles

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and airplanes, respectively. GSA is considering alternative approaches to establishing reimbursement allowances for Federal employee use of privately owned vehicles while on official Government business.

This report on the cost of operating privately owned vehicles will be published in the Federal Register.

[FR Doc. 91-14971 Filed 6-24-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), (49 FR 35347, dated September 6, 1984) is amended to include the Secretary's delegation to the Administrator, HCFA, of the authority to conduct various demonstration projects under the provisions of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, and the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203.

The specific changes to part F. are described below:

Section F.30., Delegations of Authority, is amended by adding paragraphs GG. through OO. The new delegations of authority read as follows:

GG. The authority under section 9305(k) of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, and as may hereafter be amended, to conduct at least four projects on prior and concurrent authorization for post-hospital extended care and home health services furnished under part A or part B of title XVIII of the Social Security Act. The demonstration projects authorized under section 9305(k) of Public Law 99-509 must be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, physicians, skilled nursing facilities, home health agencies, long-term care providers, fiscal intermediaries, and Medicare beneficiaries.

HH. The authority under section 9342 of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, as amended by section 4104(a)(2) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, and as may hereafter be amended, to conduct at least 5 but not more than 10, 4-year demonstration projects to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under title XVIII of the Social Security Act, who are victims of Alzheimer's disease or related disorders.

II. The authority under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, as amended by section 4118(g) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, and section 4744(a) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, and as may hereafter be amended, to conduct a frail elderly demonstration which includes the authority to grant waivers of certain requirements of titles XVIII and XIX of the Social Security Act to not more than 15 public or nonprofit private community-based organizations to enable such organizations to provide comprehensive health care services on a capitated basis to frail elderly patients at risk of institutionalization. In order to receive a waiver under section 9412(b) of Public Law 99-509, an organization must be awarded a grant from the Robert Wood Johnson Foundation.

JJ. The authority under section 9414 of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, as amended by section 4118(o) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, and as may hereafter be amended, to enter into an agreement with the State of New Jersey for the purpose of conducting a pilot project under title XIX of the Social Security Act for providing respite care services for elderly and disabled individuals in order to determine the extent to which (1) the provision of necessary respite care services to individuals at risk of institutionalization will delay or avert the need for institutional care, and (2) respite care services enhance and sustain the role of the family in providing long-term care services for elderly and disabled individuals at risk of institutionalization.

KK. The authority under section 4007(c) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, as amended by section 411(b)(6)(C) of the Medicare Catastrophic Coverage Act of 1988, Public Law 100-360, and as may hereafter be amended, to conduct a demonstration project to develop and determine the costs and benefits of establishing a uniform system for the reporting by Medicare participating hospitals of balance sheet and information described in section 4007(c)(2) of Public Law 100-203. The demonstration must be conducted with hospitals in at least two States, one of which maintains a uniform hospital reporting system, to report such information based on standard information established by the Secretary.

LL. The authority under section 4015(a) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, and as may hereafter be amended, to conduct no more than three capitation demonstration projects with an entity which is either an eligible organization with a contract under section 1876 of the Social Security Act or which meets the restrictions and requirements of section 4015(a) of Public Law 100-203. No project may be authorized under section 4015(a) of Public Law 100-203 unless the entity offering the project has the necessary financial reserves to pay for any liability for benefits under the project including those liabilities for health benefits under Medicare and any supplemental benefits.

MM. The authority under section 4015(b) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, to conduct demonstration projects for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act (the Act) including: (1) Computing adjustments to the average per capita cost under section 1876 of the Act on the basis of health status or prior utilization of services, and (2) accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under section 1876 of the Act which differs from payments currently provided on a county-by-county basis. No project may be authorized under section 4015(b) of Public Law 100-203 unless an entity is an eligible organization as defined in section 1876(b) of the Act and all the requirements of subsections (c) and (i)(3) of section 1876 of the Act are met.

NN. The authority under section 4027 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, as amended by section 411(d) of the Medicare Catastrophic Coverage Act of 1988, Public Law 100-360, and as may hereafter be amended, to conduct a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for services furnished under the Medicare and Medicaid programs.

OO. The authority under section 4079 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, and as may hereafter be amended, to enter into an agreement with not fewer than four eligible organizations submitting applications under section 4079 of Public Law 100-203 to conduct demonstration projects to provide payment on a prepaid, capitated basis for community nursing and ambulatory care furnished to any individual entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act (other than an individual medically determined to have end-stage renal disease) who resides in the geographic area served by the organization and enrolls with such organization in accordance with section 4079(c)(2) of Public Law 100-203. No agreements may be entered into with an eligible organization to conduct a demonstration project under section 4079 of Public Law 100-203 unless the organization meets the requirements of subsections (c) and (d) of section 4079 with respect to members enrolled with the organization.

Reservation of Authority

The authority to make reports to Congress has been reserved by the Secretary and is not included in the delegations described in paragraphs GG. through OO. above.

The authorities herein delegated may be further redelegated. The delegation of these authorities is effective immediately. In addition, I hereby affirm and ratify any actions taken by the Administrator or other Health Care Financing Administration officials which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: June 12, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 91-15028 Filed 6-24-91; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Program Announcement and Proposed Funding Priority for Grants for Area Health Education Centers Special Initiatives

The Health Resources and Services Administration (HRSA) announces the acceptance of applications for fiscal year (FY) 1992 for Grants for Area Health Education Centers Special Initiatives under the authority of section 781(a)(2) of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100-607. Comments are invited on the proposed funding priority. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds.

The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 781(a)(2) authorizes Federal project assistance to medical and osteopathic schools which have previously received Federal financial assistance for an area health education centers (AHEC) program under either section 802 of Public law 96-484 in FY 1979 or under section 781(a)(1). In addition, section 781(a)(2) authorizes medical and osteopathic schools currently receiving Federal support for an AHEC program to apply for project assistance on behalf of an area health education center that is no longer federally funded as part of that program.

Section 781(a)(2) applications will be for projects to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system; to encourage regionalization of educational responsibilities of the health professions schools; or to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps Scholarship program (section 338-A of the PHS Act) to effectively provide health services in health professional shortage areas (section 332 of the PHS Act). Public Law 101-597, enacted November 16, 1990, changed the term 'Health Manpower Shortage Area' to read 'Health Professional Shortage Area.'

To receive support, programs must meet the requirements of regulations set forth in 42 CFR part 57, subpart MM. The period for Federal support shall not exceed two years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Area Health Education Centers Special Initiatives Program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported eduction and service programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The relative merit of the proposed project; and

2. The relative cost-efficiency of the proposed project.

In addition, the following mechanisms will be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

The following funding preference was established in FY 1988 after public comment and the Administration is extending this preference in FY 1992.

Funding Preference

In making awards under section 781 for FY 1992, a funding preference will be given to approved competing continuation applications as authorized by section 781(a)(1).

The following funding priorities were established in FY 1991 after public comment and the Administration is extending these priorities in FY 1992.

Funding Priorities

In determining the order of funding of approved applications the following priorities will be given to:

1. Applications which demonstrate substantial clinical training in one or more PHS Act section 332 Health Professional Shortage Area(s) and/or a

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PHS Act section 329 Migrant Health Center, PHS Act section 330 Community Health Center, or State-designated clinic/center serving an underserved population. Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 330 authorizes support for community health care services to medically underserved populations.

2. Applications proposing centers (projects) that will serve Health Professional Shortage Areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks, and/or Hispanics than exists in the general population in the United States.

Proposed Funding Priority for Fiscal Year 1992

Additionally, the following funding priority is proposed: Applications which are innovative in their health professions educational approaches to infant mortality prevention, HIV/AIDS, substance abuse or geriatrics. Innovation may be demonstrated by the concept/methodology to be used, by the establishment of a new educational relationship with a health care delivery system, by the population to be served within the center area, or by the subject or disease for the educational intervention, as opposed to the continuation of an existing effort.

These curricular areas are combined in a single funding priority to reduce the total number of funding priorities and to place an emphasis in all the program areas on innovation. Substance abuse was added because of its critical importance as a health care problem and the general perception that many health care providers do not effectively assist patients through prevention counseling, diagnosis or treatment.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the FY 1992 award cycle, the comment period has been reduced to 30 days. All comments received on or before July 25, 1991 will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priority will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Requests for application materials and questions regarding grants policy and business management aspects should be addressed to: Grants Management Officer (U–76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be forwarded to the Grants Management Officer at the above address.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and Supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is August 5, 1991. Applications shall be considered as meeting the deadline if they are either: (1) *Received on* or before the deadline date, or (2) *Postmarked on* or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

If additional programmatic information is needed, please contact: Division of Medicine, Multidisciplinary Centers and Programs Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6950.

This program is listed at 93.924 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 16, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–14099 Filed 6–24–91; 8:45 am]

BILLING CODE 4160–15–M

Centers for Disease Control

Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 55 FR 22101, May 31, 1990) is amended to reflect the following title changes: (1) Center for Chronic Disease Prevention and Health Promotion to National Center for Chronic Disease Prevention and Health Promotion, (2) Center for Environmental Health and Injury Control to National Center of Environmental Health and Injury Control, (3) Center for Infectious Diseases to National Center for Infectious Diseases, and (4) Center for Prevention Services to National Center for Prevention Services.

Section HC–B, Organization and Functions, is hereby amended as follows:

Delete the title for the *Center for Chronic Disease Prevention and Health Promotion (HCL)* and substitute the following title: *National Center for Chronic Disease Prevention and Health Promotion (HCL).*

Delete the title for the Center *for Environmental Health and Injury Control (HCN)* and substitute the following title: *National Center for Environmental Health and Injury Control (HCN).*

Delete the title for the *Center for Infectious Diseases (HCR)* and substitute the following title: *National Center for Infectious Diseases (HCR).*

Delete the title for the *Center for Prevention Services* (HCM) and substitute the following title: *National Center for Prevention Services (HCM)*

Dated: June 12, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–15027 Filed 6–24–91; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Social Security Ruling SSR 91–4; Relationship—Validity of a Haitian Divorce—Estoppel—Texas

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 91–4. This Ruling, which is based on an opinion of the Office of the General Counsel, concerns whether Texas would recognize the validity of a Haitian divorce and whether a claimant for widow's insurance benefits who was a party to such a divorce would be estopped from denying its validity.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

In accordance with 20 CFR 422.418, all references to individuals or specific businesses involved have been deleted from the Ruling so as not to disclose confidential information, unless this information is already a matter of public record.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income.)

Dated: June 3, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Sections 202(e)(1), 216(c), and 216(d)(2) of the Social Security Act (42 U.S.C. 402(e)(1), 416(c), and 416(d)(2)) Relationship—Validity of a Haitian Divorce—Estoppel—Texas

20 CFR 404.335, 404.336(a)(2), and 404.345

The claimant and the worker were married in Connecticut on April 30, 1972, and both parties were domiciled in Texas when the worker divorced the claimant in Haiti on December 29, 1976. The worker died in Texas in 1979. On March 12, 1987, the claimant applied for widow's insurance benefits on the deceased worker's earnings record. Because the claimant and the worker were domiciled in Texas rather than Haiti when the divorce decree was entered, a Texas court could refuse to recognize the Haitian divorce as valid. The evidence of record, however, showed that the claimant consented fully to the divorce, submitted freely to the jurisdiction of the Haitian court, was represented by counsel in the proceeding, and received property pursuant to a settlement agreement which was incorporated into the divorce decree. The evidence also showed that the claimant allowed the divorce to go unchallenged for more than 10 years and that she acted in full recognition of its validity by filing separate tax returns under her maiden name from 1976 through 1979 and by having her last name legally changed from her married name to her maiden name in 1977. Further, the evidence showed that, when the claimant changed her name, she specifically cited the Haitian divorce decree and its failure to restore her maiden name as a reason for making the change. *Held*, in view of the foregoing, the claimant was estopped from denying the validity of her divorce from the worker and, thus, was not entitled to widow's insurance benefits on his earnings record. Moreover, the claimant was not entitled to benefits as the worker's surviving divorced spouse because, under 42 U.S.C. 416(d)(1), she had not been married to him for at least 10 years.

A question has been raised regarding the validity of a Haitian divorce. Specifically at issue is whether Texas would recognize such a divorce and whether a claimant who was a party to the divorce would be estopped from denying its validity. In this particular case, the Social Security Administration (SSA) believes that whether or not a Texas court would recognize the Haitian divorce, the claimant would be estopped from challenging its validity.

The worker and the claimant were married on April 30, 1972, in Madison, Connecticut. The worker flew to Haiti on December 29, 1976, to obtain a divorce and remained there for several days. On December 23, 1976, before the divorce was granted, the claimant signed a notarized statement acknowledging the divorce, submitting herself to the jurisdiction of the Haitian court, and appointing an attorney to appear on her behalf. On that same date, the parties signed a property settlement agreement which was incorporated into the divorce decree. The divorce decree was rendered in Haiti on December 29, 1976, though both parties were residents of Texas. On July 11, 1977, the claimant was granted a court order changing her last name from her married name to her maiden name. She also filed separate tax returns under her maiden name from 1976 through 1979. The worker died in Texas in 1979. On March 12, 1987, the claimant applied for widow's insurance benefits on the worker's earnings record.

To be eligible to receive widow's insurance benefits, a claimant must meet the requirements set out in section 202(e)(1) of the Social Security Act (the Act). According to that section of the Act, "the widow (as defined in section 216(c)) and every surviving divorced wife (as defined in section 216(d)) of an individual who died a fully insured individual * * * shall be entitled to a widow's insurance benefit * * *." To be eligible as a widow as defined in section 216(c), a woman must be the surviving wife of the decedent. To be eligible as a surviving divorced wife under section 216(d)(2), a woman must have been married to the deceased worker for a period of 10 years immediately before the date the divorce became effective. Because the claimant and the worker were married in 1972 and divorced in 1976 in Haiti, the claimant would not qualify for benefits as a surviving divorced wife if this Haitian divorce were recognized as valid, since the duration of the marriage did not meet the 10-year requirement. If the divorce were not recognized, the claimant would be deemed to have been married to the worker until the time of his death and would therefore be eligible to receive benefits as a widow unless she is estopped from denying the validity of her divorce. The determination of whether the claimant would be entitled

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to survivor benefits thus depends initially upon the law in Texas as it pertains both to the recognition of foreign divorce decrees and to the applicability of estoppel.

Article 4, section 1 of the United States Constitution, the "full faith and credit" clause, requires each State of the union to enforce the acts, records, or judicial proceedings "of every other state." This clause does not, however, require States to enforce decrees of foreign countries. *Schacht* v. *Schacht*, 435 S.W. 2d 197 (Tex. Civ. app.—Dallas 1968). Should a State decide to enforce such a decree, the decision would be based on the doctrine of comity. This doctine allows a State court to give full effect to a decision of another jurisdiction based on the mutual interests of respect and justice. Therefore, while a Texas court could give effect to a Haitian divorce decree, it is not bound to do so.

A key factor which a Texas court would consider in determining whether to give full faith and credit to a foreign divorce is whether the parties to the divorce were domiciled in the foreign country when the decree was entered. *Schacht, supra.* According to the U.S. Supreme Court, "(u)nder our system of law, judicial power to grant a divorce—jurisdiction strictly speaking—is founded on domicile * * *. Domicile implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance." *Williams* v. *North Carolina*, 325 U.S. 226, 65 S. Ct. 1092, 89 LE 1577 at 1581 (1944). Thus, if the parties to a foreign divorce were not domiciled in the particular foreign country, the courts will rarely recognize the validity of the divorce, even where the country had no such domicile requirement. *Turman* v. *Turman*, 99 S.W. 2d 947 (Tex. Civ. App.—Ft. Worth 1936), cert. denied 301 U.S. 698; 13 ALR 3d 1419; 24 AM. Jur. 2d section 1106.

In Texas, when determining the validity of a foreign divorce, a court will assume the divorce law of the foreign country is the same as the divorce law of Texas in the absence of proof to the contrary. *Tallant* v. *State*, 656 S.W. 2d 828 (Tex. Civ. App.—Ft. Worth, 1983); *Webb* v. *Webb*, 461 S.W. 2d 204 (Tex. Civ. App.—San Antonio, 1970). Texas law requires that one of the parties have residence in the State for 6 months and in the county where the divorce is sought for 90 days before the court in the county can assert jurisdiction over the parties. TEX. FAM. CODE ANN. section 321 (Vernon 1986). Because neither the worker nor the claimant was domiciled in Haiti at the time of their divorce, as evidenced by the divorce decree which lists their hometown as Houston, Texas, a Texas court could refuse to recognize the divorce as valid based on jurisdictional grounds.

Even though a Texas court could decline to recognize the claimant's and the worker's Haitian divorce, however, it is SSA's opinion that the claimant would nonetheless be estopped from denying the validity of the divorce. This opinion is based on several grounds.

First, Texas courts have generally held that, where the parties to a foreign divorce have consented to the divorce and have submitted to the jurisdiction of the foreign court, they will be estopped from collaterally attacking the judgment. *Dunn* v. *Tiernan*, 284 S.W. 2d 754 (Tex. Civ. App.—El Paso, 1955, writ ref. n.r.e.) (a husband who obtained bilateral divorce in a Mexican court was estopped from later collaterally attacking the decree). See also *Webb* v. *Webb, supra* (one who has consented to and participated in a foreign divorce is estopped from collaterally attacking the divorce and thus, the issue of whether the parties so participated is one of fact for the jury); *Moody* v. *Moody*, 465 S.W. 2d 836 (Tex. Civ. App.—Corpus Christi, 1971, writ ref. n.r.e.) (a party who participated in a divorce suit, without objecting to the jurisdiction of the court, may not thereafter assail the decree in a collateral proceeding on the theory that one or more of the parties were nonresidents). Additionally, the Fifth Circuit Court of Appeals has recognized and applied this principle of Texas law. In *Diehl* v. *U.S.*, 438 F.2d 705, 708 (5th Cir. 1971), the court stated that as a result of *Dunn* v. *Tiernan*, "it was settled in Texas that a party who seeks and obtains a Mexican divorce is thereafter estopped to deny its validity."

In the situation presented here, even though the claimant was not physically present in Haiti when the divorce decree was rendered, she signed a notarized settlement agreement 6 days before the date of the divorce by which she gave her full and total consent to the divorce. In addition, on that same day, she signed a notarized waiver submitting herself to the jurisdiction of the Haitian court and appointing an attorney to appear on her behalf, which he did. In the absence of some evidence that the claimant was subject to duress or coercion when she signed, it is SSA's opinion that such evidence of consent would be sufficient to allow a Texas court to estop the claimant from challenging the validity of the divorce based on the decisions in *Dunn, Webb,* and *Moody, supra.* No allegations of duress or coercion have been made.

SSA's second basis for concluding that the claimant would be estopped from denying the validity of the divorce is that, in Texas, courts have held that, where a party to an invalid divorce has received money or property pursuant to that divorce, that party will be estopped from later attacking the decree. *Morehouse* v. *Morehouse*, 111 S.W. 2d 831 (Tex. Civ. App.—San Antonio, 1938). Similarly, a Texas court has ruled that when a party has received property pursuant to an annulment decree, the party is estopped from later asserting the invalidity of the decree. *Lunt* v. *Lunt*, 121 S.W. 2d 445 (Tex. Civ. App.—El Paso, 1938).

The evidence of record clearly indicates that the claimant and the worker entered into and signed a property settlement agreement which stipulated that the parties desired a divorce and that the settlement agreement was to be determinative of the disposition of all of the property owned by the parties. This agreement was incorporated into the Haitian divorce decree which ordered the provisions of the agreement to be carried out. Pursuant to the agreement, the worker relinquished any rights he had in the home belonging to the claimant in Boulder, Colorado, and in addition, the claimant was to receive her share of personal and community property. Thus, it appears from the evidence that the claimant did receive property pursuant to the divorce and could therefore be stopped from challenging the divorce on that basis.

A third factor which would weigh against the claimant if she asserted the invalidity of the divorce is the length of time which has expired since the divorce was rendered. Because more than 10 years elapsed between the date of the divorce and the date the claimant applied for benefits, a court could apply laches against the claimant.[1] In Texas jurisprudence, there is support for the proposition that for laches to apply, a mere lapse of time is insufficient; there must also be a resulting disadvantage to another. *Simpson* v. *Simpson*, 380 S.W. 2d 855 (Tex. Civ. App.—Dallas, 1964, writ ref. n.r.e.). Here, there is nothing in the record to indicate that this 10-year lapse has caused a hardship to anyone (e.g., no party has remarried in the intervening 10 years), and therefore SSA does not believe that laches would be an independent ground for estoppel against the claimant. However, it should be noted that the court in *Dunn* indicated that a delay of 22½ months in attacking a foreign divorce decree would subject the delaying party to a charge of laches and, thus, weighed this factor against the attacking party. SSA believes, therefore, that a delay of 10 years in challenging this decree would be weighed heavily against the claimant in a court's decision on whether to allow such a challenge.

[1] Laches is an equitable doctrine which is defined as a failure to do something which should be done or to claim or enforce a right at a proper time. Black's Law Dictionary (5th Ed. 1979). The effect of laches is to prevent one from bringing a claim after the proper time for bringing the claim has elapsed.

Finally, it should be strongly emphasized that the court's decision on whether to allow the claimant to attack the Haitian divorce decree would be based on principles of equity. As the court stated in *Dunn:*

> Estoppel being an equitable matter and divorce itself being an equitable matter, the principles of equity must apply. This being true it would not be equitable for he who was a party to the fraud and who had benefitted therefrom, to now cry fraud to his own advantage * * *.

284 S.W. 2d at 767. In the instant case, the claimant fully agreed to the divorce, submitted herself freely to the jurisdiction of the Haitian court, was represented by counsel in the proceeding, and recieved property pursuant to a settlement agreement incorporated into the divorce decree. She then acted in full recognition of the decree as valid by having her last name changed in July of 1977 from her married name to her maiden name, citing the Haitian divorce decree and its failure to restore her maiden name as a reason for making the change. Further, she began filing separate tax returns under her maiden name. The claimant enjoyed whatever benefits she sought from her divorce during the 10-year period that the divorce remained unchallenged. To now find that the divorce was invalid so that the claimant could collect benefits as the deceased worker's widow, in SSA's view, would appear to a court to be clearly inequitable, and SSA therefore concludes that a Texas court would estop the claimant from challenging the divorce.

SSA notes that its operating instructions comport with this conclusion. GN 00305.465 of the Program Operations Manual System (POMS) lists five grounds upon which a party may be estopped from denying the validity of a divorce. Three of these gounds appear to be applicable to this situation. First, GN 00305.465B of the POMS states that a party may be estopped where he or she was the defendant in a divorce action and accepted the court's jurisdiction. As stated above, the claimant gave her full consent and submitted to the jurisdiction of the Haitian court. Next, GN 00305.465D of the POMS states that estoppel may be found where a party has accepted property or money or a property settlement on this basis of the divorce decree. The claimant agreed to the property settlement incorporated into the Haitian divorce and received a home and personal property pursuant to the settlement. Finally, GN 00305.465 E of the POMS notes that estoppel may lie where the party otherwise accepted or acted in recognition of the decree as valid (e.g., knew of the divorce and allowed it to stand unchallenged for a long time). The claimant in this case let her divorce go unchallenged for more than 10 years, and when she had her name changed, she specifically cited the Haitian divorce as one of her reasons for making the change.

In conclusion, the law and facts in this case indicate that, because the worker and the claimant were domiciled in Texas rather than Haiti when the divorce decree was entered, a Texas court could refuse to recognize the Haitian divorce as valid. The claimant, however, is the only person with standing to challenge the decree. Because she submitted to the jurisdiction of the Haitian court, agreed to a property settlement, and then subsequently acted in recognition of the divorce as valid, SSA believes that she would be estopped from denying the validity of the divorce. Therefore, SSA concludes that the divorce would stand as valid, making the claimant ineligible to receive widow's benefits under section 202(e) (1) of the Act. Moreover, because the claimant was married only 4 years prior to the divorce rather than 10 years as required by section 216(d)(1) of the Act, she would also be ineligible as a surviving divorced spouse.

[FR Doc. 91-14980 Filed 6-24-91; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-010-91-7122-09-1101]

Termination of Environmental Impact Statement for Thousand Springs Power Plant Project, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of Thousand Springs Power Plant EIS.

SUMMARY: The Bureau of Land Management, Elko District Office, has received notification from Sierra Pacific Resources, legal representative for Thousand Springs Generating Company, to cease all project activities relative to the Thousand Springs Power Plant Environmental Impact Statement (EIS).

The Draft EIS for the proposal was released to the public in January of 1990. The document was analyzing the environmental impacts that would result from a land exchange and the subsequent construction and operation of an eight-unit, 2,000 megawatt, coal-fired power plant and alternatives.

Since August 1990, the project proponents had placed the completion of the Final EIS in suspension. Project termination has now been confirmed, and therefore, a Final Environmental Impact Statement will not be prepared.

Dated: June 14, 1991.

Rodney Harris,

District Manager.

[FR Doc. 91-15008 Filed 6-24-91; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Register of Historic Places

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 15, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by July 10, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pima County

Matus, Antonio, House and Property, 856 W. Calle Santa Ana., Tucson, 91000900

FLORIDA

Charlotte County

Smith, H.H., Building [Punta Gorda MPS], 121 E. Marion Ave., Punta Gorda, 91000894

Duval County

Little Theatre, 2032 San Marco Blvd., Jacksonville, 91000895

Hardee County

Carlton, Albert, Estate, 302 E. Bay St., Wauchula, 91000893

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MICHIGAN

Mecosta County

Wisconsin Land and Lumber Company Office Building, N5551 River St., Meyer Township, Hermansville, 91000901

MINNESOTA

St. Louis County

Wirth Building, 13 W. Superior St., Duluth, 91000898

Stearns County

Church of the Sacred Heart (Catholic), 110 3rd Ave., NE., Freeport, 91000906

NEW JERSEY

Monmouth County

Manasquan Friends Meetinghouse and Burying Ground, NJ 35 at Manasquan Cir., Wall Township, Manasquan, 91000902

PENNSYLVANIA

Butler County

Butler Armony (Pennsylvania National Guard Armories MPS), 216 N. Washington St., Butler, 91000903

Montgomery Country

Stewart, Gen. Thomas J., Memorial Armory (Pennsylvania National Guard Armories MPS), 340 Harding Blvd., Norristown, 91000904

Northumberland County

Milton Armory (Pennsylvania National Guard Armories MPS), 133 Ridge Ave., Milton, 91000905

TENNESSEE

Marion County

Putnam—Cumberland Historic District of Richard City (Cement Construction in Richard City MPS), 1805–1810 Cumberland and 1805—1812 Putnam Aves., South Pittsburg, 91000898

Townsite Historic District of Richard City (Cement Construction in Richard City MPS), 402–512 Dixie, 102–108 Lee Hunt and 2207 Cumberland Aves., South Pittsburg, 91000897

WISCONSIN

Eau Claire County

US Post Office and Courthouse, 500 S. Barstom Commons, Eau Caire, 91000899

A proposed move is being considered for the following property:

MAINE

Penobscot County

Maine Experiment Station Barn, University of Maine Campus, Orono 90001463

The commenting period has been waived for the following property:

NEW YORK

Kings County

Cyclone Rollercoaster, 834 Surf Ave. at W. 10th St., Brooklyn

[FR Doc. 91–15010 Filed 6–24–91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 3)]

Intrastate Rail Rate Authority

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Colorado to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective July 25, 1991 and will expire July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359.

Decided: June 18, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–15038 Filed 6–24–91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–1 (Sub-No. 236X)]

Chicago and North Western Transportation Co.—Abandonment Exemption—Between Crawford, NE, and Crandall, WY

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: Chicago and North Western Transportation Company (CNW) on June 14, 1991 amended a petition for exemption filed on June 4, 1991 under 49 U.S.C. 10505 to abandon a line of railroad in Nebraska and Wyoming so that it now seeks to abandon only the 42.9-mile line between Crawford, NE and Crandall, WY. We believe that the comments from members of the public, particularly those located in the areas affected by the proposed abandonment, should be sought and considered as part of our consideration of this petition, as amended. In addition, we will hold one or more public hearings in the affected area, at a time and place to be announced, to hear testimony from interested persons about the proposed abandonment.

The CNW will have 10 days to reply to any comments. We will publish notice of this decision in the Federal Register. Interested parties will have 20 days following publication to file comments. An original and 10 copies of all comments must be filed with the Secretary of the Commission and copies of all comments must be served on the CNW.

DATES: Comments are due July 15, 1991. CNW replies are due July 25, 1991.

ADDRESSES: Send comments (an original and 10 copies) referring to AB–1 (Sub-No. 236X) to: Office of the Secretary, Interstate Commerce Commission, Case Control Branch, Washington, DC 20423. Send one copy to: Stuart F. Gassner, Esq., Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

Decided: July 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–15039 Filed 6–24–91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89–52]

Maryanne Marsilli Isaac, R.Ph., d/b/a Bell Apothecary; Granting of Registration

On October 17, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Maryanne Marsilli Isaac, R.Ph. (Respondent), d/b/a Bell Apothecary, 2045 Fairview Avenue, Easton, Pennsylvania 18042, proposing to deny her application for registration executed on November 1, 1988. The Order to Show Cause alleged that Respondent's registration is inconsistent with the public interest as the term is defined in 21 U.S.C. 823(f).

By letter dated November 15, 1989, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania on

May 15 and 16, 1990. The case was subsequently transferred to Administrative Law Judge Mary Ellen Bittner.

On January 31, 1991, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On February 21, 1991, Respondent filed exceptions to Judge Bittner's recommended ruling pursuant to 21 CFR 1316.66. On March 1, 1991, the administrative law judge transmitted the record of these proceedings, including Respondent's exceptions, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent has been a licensed pharmacist since 1961 and is currently licensed in the States of Pennsylvania, New Jersey, and Delaware. On June 6, 1986, Respondent purchased Bell Apothecary from Mr. Richard Rosenberg, who continued to work at Bell as a registered pharmacist for a few months after the sale to Respondent. Mr. Wakeem Isaac (Respondent's husband) also worked as a registered pharmacist at Bell until May 1988.

On February 26, 1988, the Pennsylvania Commonwealth's Attorney's Office conducted an audit of Boro Pharmacy. Mr. Wakeem Isaac owned and operated Boro Pharmacy, in which Respondent worked on a part-time basis from 1980 to 1986. The results of the audit indicated excessive and unexplained shortages of Schedule III and IV controlled substances. The audit also revealed numerous recordkeeping violations. Following the audit of his pharmacy, Mr. Isaac was arrested and convicted of five misdemeanor counts of violating Pennsylvania controlled substances recordkeeping requirements. Also he was ordered not to dispense any Schedule II controlled substances for a period of six months from the sentencing date.

On August 11, 1988, Investigators from the Drug Enforcement Administration conducted an audit of Bell Pharmacy that covered the period of June 6, 1986 to August 11, 1988. The audit disclosed overages of 42.72 percent of Dexedrine 5 mg. tablets, 65.63 percent of Dexedrine 10 mg. tablets, and 23.07 percent of Dexedrine 15 mg. tablets; and shortages of 6.68 percent of Percodan tablets and 2.23 percent of Tylox, all Schedule II substances. Two months later, Mr. Isaac supplied the DEA Investigator with additional records from Bell Pharmacy. The Investigator recalculated the audit which, as amended, showed shortages and overages of no more than five percent for any substance audited.

The investigation also revealed that Mr. Isaac had filled at least 50 prescriptions for Schedule II controlled substances during the audit period, notwithstanding the court's order that he not dispense any Schedule II controlled substances until August 28, 1988. Additionally, the investigation revealed that more than 830 dosage units of Percocet, a Schedule II substance, were dispensed to a patient named Jane Morrow, between June 28, 1988 and August 25, 1988. The investigation also revealed that Mr. Isaac dispensed 100 dosage units of Percocet to Ms. Morrow pursuant to an oral prescription, and that no written prescription was ever furnished. Written prescriptions are required for all Schedule II pharmaceuticals.

An Order to Show Cause proposing to revoke the DEA registrations of both pharmacies, Boro and Bell, was issued in December 1988. On April 27, 1988, the then-Administrator, adopting the opinion of the administrative law judge, revoked both registrations. In that case, the Administrator concluded that both Respondent and Mr. Isaac demonstrated their inability to properly operate a pharmacy.

The administrative law judge also found that the Pennsylvania Board of Pharmacy held a hearing pursuant to an administrative complaint issued against Mr. Isaac. The Board concluded that Mr. Isaac failed to properly supervise an unlicensed employee and restrict that employee's access to controlled substances. The Board also concluded that Mr. Isaac had failed to comply with state recordkeeping practices. The Board fined Mr. Isaac $1,000.00 and suspended his license to practice pharmacy for a five-year period beginning November 17, 1988. The first year of the suspension was to be active and the remaining four years probationary. Mr. Isaac was prohibited form working in or around the Boro and Bell pharmacies.

At the hearing in this matter, Respondent offered the testimony of several character witnesses, the witnesses stated that they have seen Respondent operate in a very professional manner and that Respondent has an excellent reputation and is well-respected in the community. Respondent also testified on her own behalf. Respondent asserted that she needs a DEA registration so that she can maintain a complete "patient profile," in order to have a central record of all the medications each customer takes. Respondent testified that her inability to maintain complete customer profiles in her computer records poses safety hazards and that she needs to keep track of all possible contraindications and medical conditions. Respondent also testified that she takes thirty credits of continuing education every two years although she admits that none of the programs she has taken were related to controlled substances.

The administrative law judge further found that Respondent has not been disciplined by the state licensing authorities or convicted of any criminal conduct. There is no contention that Ms. Isaac personally filled prescriptions improperly or for no legitimate medical purposes.

The administrative law judge concluded that the registration of Respondent would not be in the public interest. It is clear that recordkeeping violations occurred at Boro Pharmacy during the time Respondent was working there, and that Respondent failed to detect the serious overages and shortages at the pharmacy. Respondent also permitted her husband to fill prescriptions for Schedule II controlled substances, in violation of the conditions of his February 1986 sentence. Additionally, Respondent permitted her husband to fill prescriptions for excessive amounts of Percocet for one patient. The administrative law judge recommended the denial of Respondent's application for DEA registration.

Respondent filed exceptions to the findings of the administrative law judge, stating essentially that Respondent is being held accountable for the "sins" of her husband. Respondent also states that Mr. Isaac has had no involvement whatsoever in the operation of Bell Apothecary since 1988. Respondent also asserted that the Government has presented no evidence of wrongdoing since the issuance of the 1988 Final Order.

After considering all of the evidence, including the opinion and recommended ruling of the administrative law judge, the Administrator has decided not to deny Respondent's application. The Administrator concludes that there is sufficient evidence in the record to believe that Respondent, given the opportunity, will utilize a DEA registration in a responsible manner.

The Administrator does impose the following restrictions upon the DEA registration to be issued to Respondent:

1. Mr. Isaac shall have no involvement whatsoever with Bell Apothecary in any role including ownership, management, or as an employee.

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2. For at least two years from the date on which the registration herein is issued, Respondent shall submit a log of all purchases of controlled substances made during the previous calendar quarter to the Special Agent in Charge of the DEA Philadelphia Field Division or his designee.

3. Respondent shall, by acceptance of a registration, consent to unannounced inspections of Bell Apothecary without an administrative inspection warrant. Such inspections shall be for the purpose of determining Respondent's compliance with both the terms of this order and all pertinent requirements of the Controlled Substance Act and the regulations thereunder.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 CFR 0.100(b), hereby ordered that the application for DEA registration submitted by Maryanne Marsilli Isaac, R.Ph., d/b/a Bell Apothecary, on November 1, 1988, for registration under the Controlled Substances Act be, and it hereby is, granted, subject to the conditions enumerated above. This order is effective June 25, 1991.

Dated: June 17, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-14998 Filed 6-24-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 91-10]

D-Tek Enterprises; Revocation of Registration

On February 21, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to D-Tek Enterprises, Inc., (Respondent), 20602 Ramita Trail, Boca Raton, Florida 33433. The Order to Show Cause proposed to revoke Respondent's DEA Certificates of Registration. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest as set forth in 21 U.S.C. 823(f) and 824(a). The specific grounds for that contention included Respondent's failure to meet the controlled substances recordkeeping, accountability and security requirements set forth in title 21, Code of Federal Regulations, parts 1301, 1304 and 1305, Respondent's failure to report a loss of controlled substances, and Respondent's false representation of its employees' authority to handle controlled substances.

On March 5, 1991, in response to the Order to Show Cause, Respondent, through its owner and president, Roy K. Slingo, submitted a written statement, together with supporting documents, which consisted of advertisements and letters of support written by representatives of some of the schools that worked with the Respondent company. In this statement, Mr. Slingo set forth objections to the allegations in the Order to Show Cause, and also stated that he submitted the statement in lieu of a request for a hearing, since be believed that it could "more clearly and thoroughly describe the details of the situation." However, Mr. Slingo also stated that he would be "willing" to attend a hearing should the administrative law judge presiding over the matter have "further questions" after reading the statement.

By letter dated March 15, 1991, the administrative law judge informed Mr. Slingo that under 21 CFR 1301.54, and as specified in the Order to Show Cause, the Respondent may file a written statement of position or request a hearing. The judge advised Mr. Slingo that if he did not intend to request a hearing, his statement with the attached documents and the agency investigative file, which formed the basis of the Order to Show Cause, would be forwarded to the Administrator, who, based on his review of these documents, would issue his final order. The administrative law judge directed Mr. Slingo to specifically request a hearing, if he so desired, on or before April 1, 1991. Otherwise, the judge would assume that Mr. Slingo had waived his opportunity for a hearing, and the investigative file and the statement submitted on behalf of Respondent would be forwarded to the Administrator for his consideration. See 21 CFR 1301.54 (d), (e).

No request for a hearing was filed on behalf of Respondent by Mr. Slingo or by any other person. By notice dated April 5, 1991, the administrative law judge subsequently assigned to the matter stated that Mr. Slingo had submitted a written statement in lieu of a request for a hearing under 21 CFR 1301.54(c), said statement to be considered in the entry of a final order in this matter.

The Administrator has considered the record in its entirety, including the investigative file and the written statement and documents submitted by Mr. Slingo. Pursuant to 21 CFR 1316.67, the Administrator hereby enters his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that Respondent holds two DEA researcher registrations, one for Schedule I and the other for Schedules II-V. Under the authority of these registrations, Respondent trains dogs to detect controlled substances such as marijuana and cocaine. Respondent also operates a private drug deterrent program in which he contracts with local public school administrations to have dogs attempt to detect the presence of illicit drugs on school property. Mr. Slingo states that Respondent also educates students with respect to the dangers of drug abuse.

On October 20, 1989, DEA Investigators served a Notice of Inspection at the premises of the Respondent corporation. Mr. Slingo voluntarily signed the consent for inspection. The Investigators were provided Respondent's DEA order forms and distribution records of controlled substances to employees. A review of the order forms showed that Respondent had failed to record the number of packages of controlled substances received and the dates they were received, in violation of 21 CFR 1305.09(e). Further, the Investigators discovered that Respondent had failed to record all purchases of marijuana, a Schedule I controlled substance, on DEA order forms, in violation of 21 U.S.C. 827, 828, and 21 CFR 1305.03, which requires that all purchases of Schedules I and II controlled substances be so recorded. Additionally, Respondent had purchased marijuana from the Dade County School Board, which is not registered with the DEA to handle controlled substances. Under 21 CFR 1305.08, only a properly registered entity may fill order forms for Schedule I and II controlled substances.

The Investigators also observed during their inspection that both marijuana and cocaine were stored in an unlocked refrigerator. 21 CFR 1301.75 requires that all Schedule I and II controlled substances be kept in a securely locked, substantially constructed cabinet. Furthermore, Mr. Slingo admitted to the Investigators that Respondent's employees stored controlled substances in their homes, none of which were registered locations, in violation of 21 CFR 1301.23.

The Investigators also found that Respondent maintained no inventory of controlled substances, either initial or biannual, as required under 21 CFR 1304.12 and 1304.13. They also discovered that one of Respondent's employees had lost approximately two grams of cocaine, a Schedule II controlled substance, which Respondent failed to report to the DEA. 21 CFR 1301.74(c) requires a registrant to notify the DEA of any theft or significant loss of any controlled substance upon discovery of such theft or loss.

Finally, it was revealed to the Investigators that Mr. Slingo had issued employment identification cards to Respondent's employees which falsely represented their authority to handle controlled substances. These cards stated that Respondent's registration "entitles officially registered employees to confiscate, possess, hold and dispose of all schedules of drugs declared to be contraband and otherwise controlled by [the] Federal Controlled Substances Act." The Investigators advised Mr. Slingo during the inspection that Respondent's employees were not registrants under the Controlled Substances Act, and that Respondent's registration as a dog handler did not allow its employees to possess controlled substances other than to train dogs in drug detection.

During the inspection, Mr. Slingo stated to the Investigators that no one had ever explained to him or his wife, the vice-president of the Respondent corporation, the pertinent recordkeeping requirements under the Controlled Substances Act. However, on three separate occasions, in October and November of 1988, and in September of 1986, three different DEA Investigators had explained to Mr. and Mrs. Slingo the pertinent recordkeeping, accountability and security requirements, appropriate drug destruction procedures, and the reporting requirements for the theft or loss of controlled substances under the Controlled Substances Act. During the inspection on October 20, 1989, the DEA Investigators again explained these requirements to Mr. Slingo.

In his written statement, Mr. Slingo maintains that he was never "given instructions" regarding recordkeeping requirements, which ostensibly accounted for Respondent's noncompliance with these requirements. Additionally, he states that Respondent failed to keep records reflecting purchases of marijuana because Respondent did not in fact purchase marijuana; it was "given" to them by security personnel of the schools which hired Respondent. He also claims that he was never instructed regarding the reporting requirements of any significant theft or loss of controlled substances; thus, the employee's loss of controlled substances was not reported to the DEA. Mr. Slingo also admits that controlled substances were kept in a refrigerator on Respondent's premises, but that they were "subsequently removed and placed in the safe." Finally, Mr. Slingo states that he did not falsely represent his employees' authority to handle controlled substances, since it was "obvious" that Respondent's employees would be "carrying off these drugs off office premises." Indeed, Mr. Slingo believed the identification cards to be a "good idea."

Having duly considered the investigative file and Mr. Slingo's statement as well as the attachments in support of his statement, the Administrator finds that in light of Respondent's numerous recordkeeping, accountability, and security violations, the failure to properly report the significant loss of a controlled substance, and the false representation of the employees' authority to handle controlled substances as reflected in the identification cards, its continued registration is contrary to the public interest. Registrants always bear the responsibility to comply with all requirements under the Controlled Substances Act, and professed ignorance of these requirements is no defense. Even if it were, DEA reports show that DEA Investigators informed both Mr. Slingo and his wife of pertinent requirements under the Controlled Substances Act on three separate occasions, despite Mr. Slingo's statements to the contrary.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration, PD0229244 and PD0228242, previously issued to D-Tek Corporation be, and they are hereby, revoked. It is further ordered that any pending applications for renewal of those applications be, and they are hereby, denied.

This order is effective July 25, 1991.

Dated: June 17, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-14999 Filed 6-24-91; 8:45 am]

BILLING CODE 4410-09-M

Joseph H. Kennedy, III, M.D.; Revocation of Registration

On March 11, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joseph H. Kennedy, III, M.D. (Respondent), 2904 Fox Run Court, Mobile, Alabama 36619, proposing to revoke his DEA Registration, AK2766676, issued to him at 492 Dixie Street, Sparta, Georgia 31087, and to deny any pending applications for renewal of such registration as a practitioner. The statutory basis for seeking the revocation of Respondent's DEA Certificate of Registration was that Dr. Kennedy lacked state authorization to practice medicine and that his continued registration was inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

The Order to Show Cause was sent to Dr. Kennedy by registered mail, return receipt requested. The return receipt indicates that the Order to Show Cause was received on March 14, 1991. More than thirty days have elapsed since the Order to Show Cause was received, and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Kennedy is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that on or about April 6, 1987, Respondent had his privileges at the Lyster Army Hospital, Fort Rucker, Alabama summarily terminated for inappropriate behavior toward a female patient. On October 27, 1988, Respondent's medical license in the State of Kentucky was revoked. This decision was based on Respondent's unprofessional conduct, professional imcompetence and malpractice. Respondent also had his license to practice medicine in the State of Illinois suspended for an indefinite period for unprofessional conduct, professional incompetence and malpractice. Further, on July 28, 1988, the Hancock Memorial Hospital of Sparta, Georgia denied Respondent medical staff membership for misstatements and omissions on Respondent's application for privileges there.

The Administrator also finds that Respondent was charged with the felony offense of performing illegal abortions and engaging in the practice of medicine without a medical license. On April 26, 1989, he pled guilty to the misdemeanor offense of conspiracy to perform abortions without a medical license in the State of Tennessee.

Further, the Administrator finds that on April 16, 1990, Respondent's license to practice medicine in the State of New York was revoked for professional misconduct involving inappropriate sexual advances to three female patients and that his medical license in the State of Georgia was revoked in January, 1991. Therefore, Respondent is without authority to practice medicine in the State of Kentucky, Illinois, New

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York and Georgia, the state in which he was last found.

State authorization to dispense controlled substances is a prerequisite of a practitioner under the Federal Controlled Substances Act. 21 U.S.C. 823(f). DEA has consistently held that when an applicant is without authority to handle controlled substances under the laws of the State in which he practices, or proposes to practice, DEA is without authority to issue a Federal registration. See, Emerson Emory, M.D., Docket No. 85-46, 51 FR 9543 (1986); Michael Alva Marshall, M.D., Docket No. 85-16, 51 FR 8046 (1986); Dennis Howard Harris, M.D., Docket No. 84-19, 49 FR 39930 (1984).

The Administrator concludes that since Dr. Kennedy is not authorized to practice medicine in Georgia, there is a lawful basis for the revocation of his DEA Certificate of Registration. Accordingly, the Administrator of the Drug Enforcement Adminsitration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AK2766876, previously issued to Joseph H. Kennedy, III, M.D., be and it hereby is, revoked. Any pending application for renewal of such registration shall be, and hereby is, denied. This order is effective July 25, 1991.

Dated: June 17, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-14997 Filed 6-24-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information: The Agency of the Deparmtent issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions:

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment Standards Administration.

Work Day Report.

1215-0168; ESA 92.

Quarterly.

Individuals or households; State or local governments; farms; businesses or other for profit; Federal agencies or employees; small businesses or other organizations.

52,000 respondents, 21,028 total hours; 26 minutes per response; 1 form.

Section 210A of the Immigration and Nationality Act requires employers of reportable workers in seasonal agricultural services through September 30, 1992, to certify such workers employment to the Federal Government. This information is used to determine the number of workers to be admitted to the U.S. to meet any shortage.

Work Experience and Career Exploration Programs.

1215-0121.

Biennially.

Individuals or households; State or local governments.

7 respondents; 13 recordkeepers; 129 total hours; 1 hour per response State educational agencies are required to file applications for approval of Work Experience and Career Exploration Programs which provide exceptions to the child labor regulations issued under the Fair Labor Standards Act. State educational agencies are also required to maintain certain records with respect to approved WECEP programs.

Employment and Training Administration.

Employment Service Program Reporting System.

1205-0240; ETA 9002A-C, VETS A&B, VETS 300.

Employment Service Program Reporting System is to provide data on State public employment service agency program activity and expenditures, including services to veterans, for use at the Federal level by the U.S. Employment Service and the Veterans Employment and Training Service in program administration and to provide reports to the President and Congress.

Extension

Employment Standards Administration.

Request for Medical Reports.

1215-0106; LS-158, LS-415; LS-525.

On occasion.

Businesses or other for profit; small businesses or organizations.

2,250 respondents; 1,280 total hours; ½ hour per response; 3 forms.

Medical reports are used by the Longshore and Harbor Workers' Compensation Act Program to support injured workers claims for compensation benefits under section 7 of the Longshore Act (33 U.S.C. 901 *et seq.*) as amended and extended.

Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services.

1215-0169; 29 CFR part 502.

Recordkeeping.

Individuals or households; State or local governments; farms; businesses or other for profit; Federal agencies or employees; small businesses or organizations.

52,000 recordkeepers; 52,000 total hours; 1 hour per recordkeeper.

Section 210A of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act (IRCA) requires any employer to report information about the quantity of work performed by a special agricultural worker employed in seasonal agricultural services. This information is submitted in certificate form to the Federal Government and to any individual replenishment agricultural worker.

Signed at Washington, DC this 20th day of June, 1991.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 91-15074 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-27-M

Form #	Affected public	Respondents	Frequency	Average time per response
ETA 9002A-C (Operation)	States	54	Quarterly	5 hours.
ETA 9002A-C (Programming)	States	54	One-time	30 minutes.
Recordkeeping	States	54	One-time	12 hours.
VETS 200A	States	54	One-tim	45 minutes.
VETS 200B	States	54	Quarterly	45 minutes.
VETS 300	States	54	Quarterly	1 hour.
1,864 total hours.				

Employment and Training Administration

[TA-W-25,523 TA-W-25,523A TA-W-25,523B]

Asarco Wallace, ID; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 3, 1991, applicable to all workers of Asarco-Coeur Unit, Wallace, Idaho. The notice was published in the **Federal Register** on May 21, 1991 (56 FR 23302).

At the request of the State Agency, the Department reviewed its certification for workers of Asarco's Coeur Unit in Wallace, Idaho. Investigation findings show that Asarco's Assay Office and the Morning Shop were integrated with the production at the Coeur Unit and that a substantial amount of their activities was performed for the Coeur Unit of Asarco. Accordingly, when the Coeur Unit ceased operations, a reduction in activity and employment occurred at the Assay Office and the Morning Shop.

The notice applicable to TA-W-25,523 is hereby issued as follows: All workers of Asarco-Coeur Unit, Wallace, Idaho, who became totally or partially separated from employment on or after February 27, 1990 and all workers of the Assay Office, Wallace, Idaho and the Morning Shop, Wallace, Idaho who became totally or partially separated from employment on or after February 27, 1990 and before June 22, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-15072 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 363,TA-W-25, 364]

Robesonia, PA; Revised Determination on Reconsideration

On June 7, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of Gloray Knitting Mills, Inc., and Gloray Knitting Mills Retail Outlet in Robesonia, Pennsylvania.

The Gloray Knitting Mills plant produced men's sweaters. The plant had declining sales and production in 1990 and ceased operations in early 1991 along with the retail outlet. The retail outlet handled only domestic production.

Findings on reconsideration show that a major customer was not included in the survey. The customer, another manufacturer, accounted for a substantial portion of Gloray Knitting Mills' 1990 sales decline and was recently certified for trade adjustment assistance. In 1990 the men's sweater industry's imports to shipments ratio was over 300 percent. Also, in 1990, the International Trade Commission found injury to the domestic sweater industry because of dumping from Hong Kong, Korea and Taiwan.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with men's sweaters produced at Gloray Knitting Mills, Inc., Robesonia, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers at Gloray Knitting Mills, Robesonia, Pennsylvania. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Gloray Knitting Mills, Inc., Robesonia, Pennsylvania and Gloray Knitting Mills Retail Outlet, Robesonia, Pennsylvania who became totally or partially separated from employment on or after January 24, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of June 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-15071 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 554]

Irwin Automotive/Takata, Inc., Dandridge, IN; Revised Determination on Reconsideration

On June 5, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Irwin Automotive/Takata, Inc., Dandridge, Tennessee.

The Dandridge plant produces automobile seat trim—headrests,

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armrests, jump seats etc. The plant had declining sales and production in fiscal year (FY) 1991 compared to FY 1990.

In 1990, Dandridge's production of armrests and headrests was moved to Mexico and imported back into the U.S. Also, jump seat production at Dandridge in 1990 was transferred to Mexico and is currently being imported into the U.S. The loss of this production accounted for a substantial portion of total production at Dandridge.

Further, all remaining production at Dandridge is scheduled to be transferred to Mexico and imported back into the U.S.

Substantial worker separations resulted from the loss of the armrest/headrest and the jump seat orders in 1990.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with automotive trim produced at Irwin Automotive/Takata, Inc., Dandridge, Tennessee contributed importantly to the decline in sales or production and to the total or partial separation of workers at Irwin Automotive/Takata, Inc., Dandridge, Tennessee. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Irwin Automotive/Takata, Inc., Dandridge, Tennessee who became totally or partially separated from employment on or after March 6, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of June 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-15073 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,375]

Sun Plywood, Inc., North Bend, OR; Revised Determination on Reconsideration

On May 31, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of Sun Plywood, Inc., North Bend, Oregon.

The North Bend facility produced mainly plywood. The plant closed on July 17, 1990. Nearly all workers were laid off by August 1990.

No customer survey was conducted during the initial investigation since aggregate U.S. imports of softwood plywood and veneer were negligible during the period relevant to the petition.

New findings on reconsideration, however, show that Sun Plywood had two main customers that import products (wafer board and stand board) which compete with the plywood produced at Sun Plywood. Both customers reduced their purchases from Sun Plywood in 1990 and increased their imports. The worker group of one of the customers is currently under certification.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with the plywood produced at Sun Plywood, Inc., North Bend, Oregon contributed importantly to the decline in sales or production and to the total or partial separation of workers at Sun Plywood, Inc., North Bend, Oregon. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Sun Plywood, Inc., North Bend, Oregon who became totally or partially separated from employment on or after January 24, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of June 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-15070 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, July 11, 1991, in suite N-4437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Sixty-Eighth meeting of the Secretary's ERISA Advisory Council which will begin at 9:30 a.m., is to review and provide input as to the desired scope and agenda being prepared by each of the Council's work group i.e., Enforcement; Retiree Medical Benefits; Small Business, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before July 8, 1991 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 8, 1991.

Signed at Washington, DC this 19 day of June, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-14992 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Small Business of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m. Wednesday, July 10, 1991, in room S-4215 C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Small Business Working Group was formed by the Advisory Council to study issues relating to Small Business for employee benefit plans covered by ERISA.

The purpose of the July 10 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before July 5, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 5, 1991.

Signed at Washington, DC this 19 day of June, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-14993 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Retiree Medical Benefits of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1 p.m. Wednesday, July 10, 1991, in room S-4215 C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Retiree Medical Benefits Working Group was formed by the Advisory Council to study issues relating to Retiree Medical Benefits for employee benefit plans covered by ERISA.

The purpose of the July 10 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before July 5, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 5, 1991.

Signed at Washington, DC this 19 day of June, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-14994 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 11 a.m. Wednesday, July 10, 1991, in rooms S-4215 C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Enforcement Working Group was formed by the Advisory Council to study issues relating to Enforcement for employee benefit plans covered by ERISA.

The purpose of the July 10 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before July 5, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 5, 1991.

Signed at Washington, DC this 19 day of June, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-14995 Filed 6-24-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee; Meeting

A meeting of the Telecommunications Service Priority System Oversight Committee will be held on Tuesday, July 9, 1991, from 9 a.m. to 2 p.m. The meeting will be held at the MITRE-Hayes Building, 7525 Colshire Dr., McLean, VA 27006. The agenda is as follows:

A. Committee Administration
B. Selection of Chair
C. Review/Discussion of By Laws
D. TSP Program Office Update
E. Review of Quarterly Report
F. Discussion of Future TSP Issues/ Scheduling of Next Meeting

The meeting will be open to the public. Any person desiring information about the meeting may telephone (703) 692-9274 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22204-2199.

Dennis I. Parsons,

Captain, USN, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 91-15030 Filed 6-24-91; 8:45 am]

BILLING CODE 3510-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Advancement Phase One Review Committee Section) to the National Council on the Arts will be held on July 10-11, 1991 from 9 a.m. – 5:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on July 10 from 9 a.m. – 10 a.m. and July 11 from 4:30 p.m. – 5:30 p.m. The topics will be opening remarks

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and introductions, overview of Advancement, and policy discussion.

The remaining portions of this meeting on July 10 from 10 a.m. – 5:30 p.m. and July 11 from 9 a.m. – 4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Robbie McEwen,

Acting Advisory Committee Management Officer, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–15034 Filed 6–24–91; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel, Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on July 12, 1991 from 9 a.m.-5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.-10 a.m. and 4:30 p.m.-5:30 p.m. The topics will be opening remarks and introductions, overview of Challenge III, and policy discussion.

The remaining portion of this meeting from 10 a.m.-4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for this Arts, Washington, DC 20506, or call (202) 682-5433.

Robbie McEwen

Acting Advisory Committee Management Officer, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 91-15035 Filed 6-24-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR part 150—Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under section 274.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Reports are required as occasioned by the occurrence of specified events, such as the receipt or transfer of licensed radioactive material, or actual or attempted theft of licensed material. An annual statement of source material inventory is required.

5. Who will be required or asked to report: Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts.

6. An estimate of the number of responses: 63.

7. An estimate of the total number of hours needed to complete the requirement or request: 2.38 hours per response, for a total of 150 hours annually.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: 10 CFR part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States over which NRC regulatory authority continues, including certain information collection requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0032), Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 13th day of June 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 91–15095 Filed 6–24–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–390 and 50–391]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of the latest construction completion dates specified in Construction Permit Nos. CPPR–91 and CPPR–92 issued to Tennessee Valley Authority (permittee) for the Watts Bar Nuclear Plant, Units 1 and 2. The facility is located at the permittee's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPPR–91 to December 31, 1993 and the latest construction completion date of Construction Permit No. CPPR–92 to June 30, 1997. The proposed action is in response to the permittee's request dated May 16, 1991.

The Need for the Proposed Action

The proposed action is needed because the construction of the facility is not yet fully completed. The permittee states that completion of Unit 1 will continue to be delayed pending review and implementation of a comprehensive plan consisting of corrective action programs (CAPs), special projects (SPs), inspections, audits, and walkdowns to provide assurance that WBN Unit 1 is designed and constructed in accordance with regulatory requirements and TVA commitments. Since the time of the last extension request, TVA has been engaged in extensive efforts to resolve problems which this comprehensive program was designed to address as well as problems which were discovered in the course of implementing the plan. These efforts include inspections, document reviews, and where necessary, redesign and/or modification of affected structures, systems, and components.

In addition to the significant amount of work associated with these efforts, TVA has also recently halted Unit 1 construction activities in order to improve work control practices. The delays associated with the above efforts to ensure that WBN meets regulatory requirements and licensing commitments make it necessary for TVA to request an extension of the expiration date for Construction Permit No. CPPR–91 until December 31, 1993.

With regard to Unit 2, TVA is committed to applying lessons learned from the Unit 1 corrective programs to the Unit 2 completion of construction and startup efforts and appropriately staging construction activities. Given the activities described above and the resulting delays at WBN Unit 1, TVA requests an extension of the expiration date for Construction Permit No. CPPR–92 (Unit 2) until June 30, 1997.

Environmental Impacts of the Proposed Action

The environmental impacts associated with the construction of the facility have been previously discussed and evaluated in the staff's Final Environmental Statement (FES) issued on November 9, 1972 for the construction permit stage which covered construction of both units. The FES issued in December 1978 for the operating license stage addressed the environmental impacts of construction activities not addressed previously. These activities included: (1) Construction of the new transmission route for the Watts Bar—Volunteer 500 kV line, (2) construction of the settling pond for siltation control for construction runoff at a different location from that originally proposed in the Final Environmental Statement—Construction Permit (FES–CP), and (3) the relocation of the blowdown diffuser from the originally proposed site indicated in the FES–CP. The staff addressed the terrestrial and aquatic environmental impacts in the Final Environmental Statement—Operating License (FES–OL) and concluded that the assessment presented in the FES–CP remains valid.

The construction of Unit 1 is essentially 100 percent complete and Unit 2 is approximately 75 percent complete; therefore, most of the construction impacts discussed in the FES have already occurred. Since this action would only extend the period of construction as described in the FES, it does not involve any different impacts as described and analyzed in the original environmental impact statement. The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The extension will merely grant the permittee more time to complete construction in accordance with the previously approved construction permit. The activities related to the various corrective activities will result in additional workforce, being primarily engineering and technical personnel rather than construction workforce. At the present time, this workforce is basically dedicated to the completion of Unit 1. This increase will be temporary and will decline as the corrective activities are completed and Unit 1 approaches fuel loading. A large percentage of the additional workforce are contractors and consultants who do not live in the area and use only temporary quarters. While the current workforce level has caused a temporary, increased demand for services in the community and increased traffic on local roads, there are no major impacts due to the arrival of workers' families and due to demands for services necessary to support permanent residents (for example, housing and schools).

Based on the foregoing, the NRC staff has concluded that the proposed action would have no significant environmental impact. Since this action would only extend the period of construction activities described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement. Consequently, an environmental impact statement addressing the proposed action is not required.

Alternatives Considered

A possible alternative to the proposed action would be to deny the request. Under this alternative, the permittee would not be able to complete construction of the facility. This would result in denial of the benefit of power production. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore some small areas to their natural states. This would be a slight environmental benefit, but much

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outweighed by the economic losses from denial of use of a facility that is nearly completed. Therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES for Watts Bar.

Agencies and Persons Contacted

The NRC staff reviewed the permittee's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated May 16, 1991 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Local Public Document Room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland this 18th day of June, 1991.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Acting Director, Project Directorate II–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–15097 Filed 6–24–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–454, STN 50–455, STN 50–456, AND STN 50–457]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulation Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66, issued to Commonwealth Edison Company (the licensee), for operation of the Byron Station, Units 1 and 2, located in Ogle County, Illinois, and Facility Operating License Nos. NPF–72 and 77, issued to the licensee for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

By letter dated March 17, 1989, the licensee proposed to amend Technical Specification (TS) 4.5.2. to modify the existing surveillance requirements for venting of Emergency Core Cooling System (ECCS) discharge piping. A Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing on that request was published in the Federal Register on April 21, 1989 (54 FR 16177). By letter dated March 12, 1990, the licensee supplemented the amendment request by stating that only the ECCS pump casings and the discharge piping high points outside of containment will be vented at least once per 31 days.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 25, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity reequirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard J. Barrett: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 17, 1989 (published in the Federal Register on April 21, 1989 (54 FR 16177)) as supplemented on March 12, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 17th day of June 1991.

For the Nuclear Regulatory Commission.

Richard J. Barrett,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–15093 Filed 6–24–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–278]

Philadelphia Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–56, issued to Philadelphia Electric Company (the licensee), for operation of the Peach Bottom Atomic Power Station, Unit 3 located in Delta, York County, Pennsylvania.

The amendment would change sections 3.3.B.1 and 4.3.B.1 of the Peach Bottom Unit 3 Technical Specifications to allow operation with control rod 38–23 not coupled to its drive for the remainder of cycle 8, which is to be completed before October 30, 1991. During the repositioning of this rod, which is presently fully inserted and electrically disarmed, it would modify the surveillance requirements to require rod position verification by use of neutron instrumentation.

The amendment is being proposed on an exigent basis in accordance with 10 CFR 50.91(a)(6). The exigent circumstances are that the unit is presently restricted in power by approximately 4 percent of the electrical output due to restrictions associated with operation with control rod No. 38–23 being declared inoperable. This unit derating results in the need for replacement power during the summer months when electrical demand is at its highest. During May 1991, the Pennsylvania-New Jersey-Maryland Interconnection (PJM) electrical grid was placed in a maximum emergency generating situation on two consecutive days because of high regional temperatures. The potential for this emergency electrical generating situation to occur again during the remainder of the units' operating cycle is considered to be high. Therefore, the ability to return the unit to full generating capacity would provide additional assurance of power production availability on the PJM grid.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

a. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. This amendment incorporates compensatory actions in the Technical Specifications to assure that even with an uncoupled rod the rod position is known, that no other uncoupled rods are withdrawn, and that scram performance remains intact.

b. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The compensatory measures included in the Technical Specification changes assure that no new or different kind of accident is possible.

c. The proposed amendment does not involve a significant reduction in the margin of safety as the limiting event is the [control rod drop accident] CRDA and all fuel limits stipulated in that analysis will be met when the compensatory measures included in Technical Specification changes are implemented.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination

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unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 25, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition with requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiratioin of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commisson, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commisson, Washington, DC 20555, and to J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, S26-1, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respct to this action, see the application for amendment dated June 14, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 19th day of June 1991.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Project Manager, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-15094 Filed 6-24-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-460]

Washington Public Power Supply System Nuclear Project No. 1; Order Extending Construction Completion Date

Washington Public Power Supply System is the current holder of Construction Permit No. CPPR-134, issued by the Nuclear Regulatory Commission on December 23, 1975, for construction of WPPSS Nuclear Project No. 1 (WNP-1). On June 16, 1983, the construction completion date for WNP-1 was extended from January 1, 1982 to June 1, 1991. The facility is presently in a deferred construction status at the applicant's site on the Department of Energy's Hanford Reservation in Benton County, Washington, approximately eight miles north of Richland, Washington.

On April 18, 1991, as supplemented on May 22, 1991, the Washington Public Power Supply System (WPPSS or applicant) filed a request for another extension of the completion date. This extension has been requested because construction has been delayed by the following events and conditions:

1. The temporary lack of demand for the energy to be produced by WNP-1 (WNP-1 is presently included in the list of potential power resources necessary to meet the projected electrical demand growth in the Pacific Northwest in coming years);

2. The Bonneville Power Administration (BPA) request that WNP-1 be placed in a preserved condition for future potential power resource needs;

3. Regional power planning projections indicate that the earliest resumption of engineering, construction activities may be July 1993; and

4. The allowance of a 72-month construction period to complete WNP-1 and a margin of uncertainties such as those associated with regional load growth or time to start-up the project to full construction making a revised construction completion date of June 1, 2001.

WNP-1 is being maintained by WPPSS as a deferred plant pursuant to the Commission's Policy Statement on Deferred Plants, 52 FR 38077, October 14, 1987. Accordingly, the NRC staff has determined that WNP-1 is a deferred plant as defined by the Commission in the policy and that it is, therefore, subject to any applicable provisions of the policy set forth there.

Good cause has been shown for the delays; the causes were beyond the control of the applicant; and the requested extension is for a reasonable period, the bases for which are set forth above, and in the staff's evaluation of the request for extension.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment (56 FR 27547 on June 14, 1991).

The NRC staff's safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

It Is Hereby Ordered That the latest completion date for Construction Permit No. CPPR-134 is extended from June 1, 1991 to June 1, 2001.

Date of Issuance: June 18, 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-14961 Filed 6-24-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29316; File No. SR-NYSE-89-02]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Containing Proposals Recommended by the Market Regulation Review Committee of the New York Stock Exchange

I. Introduction

On February 24, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change containing proposals recommended by its Market Regulation Review Committee. On March 12, 1990 the Exchange filed Amendment No. 1 [3] to the proposed rule change. On December 21, 1990, the Exchange filed Amendment No. 2 to the proposed rule change.[4]

Noticed of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 27941, April 24, 1990), and by publication in the **Federal Register** (55 FR 18206, May 1, 1990). The Commission received two comments on the proposed rule change.[5]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] Amendment No. 1 to File No. SR-NYSE-89-02 withdrew certain provisions of the Exchange's original rule filing and resubmitted them in a separate rule filing in order to expedite the Commission's consideration of the Committee's recommendations. See File No. SR-NYSE-90-10. See also letter from Howard Kramer, Assistant Director, Division of Market Regulation, SEC, to Brian McNamara, Managing Director, Market Surveillance, NYSE, dated June 28, 1989.

[4] See letter from Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated December 21, 1990. Amendment No. 2 to File No. SR-NYSE-89-02 makes several technical and conforming changes to the Exchange's original proposal, as well as deletes the proposed changes to NYSE rules 123A.65, .71, and .72. See also letter from Brian McNamara to Mary Revell, dated January 31, 1991, which made a minor editorial change to the NYSE's proposed booth wire policy.

[5] See infra note 7 and accompanying text. In an Information Memo dated August 24, 1987, the

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This order approves the proposed rule change.

II. Discussion

A. Introduction

In December 1965, the NYSE's Board of Directors established the Market Regulation Review Committee ("Committee") to examine the structure of market trading regulation. The Committee was charged with reviewing existing regulations to enable the Exchange, in a manner consistent with maintaining market integrity and protecting investors, to compete more effectively with its current and future competitors, to provide additional intra-market trading opportunities for all Exchange market participants, and to eliminate requirements that may no longer serve a meaningful regulatory response.

The proposed rule change reflects the recommendations of the Committee.[6] The specific proposals fall within four broad categories, namely, "general auction market rules," "trading rules applicable to specialists," and "member proprietary and on-floor trading." In addition, the Exchange has proposed two new rules: an "exchange automated order routing systems rule (rule 123B)" and a "specialist booth wire policy."

The Commission received comment letters on the proposed rule change from two NYSE specialist firms, Corroon, Lichtenstein & Co. and Equitrade Partners.[7] The specialist commentators argued in favor of Commission approval of the proposed rule change. Specifically, Corroon, Lichtenstein & Co. and Equitrade Partners argued in favor of Commission approval of proposed amendments to NYSE Rules 104, 116, and 440B. These proposed amendments have been withdrawn by the Exchange and resubmitted in File No. SR–NYSE–90–10, however, which is still under Commission review.[8] Accordingly, these comments will be considered during the Commission's review of File No. SR–NYSE–90–10.

B. Commission Findings

The Commission has reviewed carefully the NYSE's proposed rule change and concludes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with sections 6(b)(5), 6(b)(8), 11(b), and 11A(a)(1) of the Act.[9] The Commission supports the NYSE's efforts to continue to review the structure of market trading regulation in response to changes in market structure. The Commission believes it important to market quality that the Exchange have a regulatory program that is tailored to the current market structure, especially in light of the significant role played by the NYSE as the largest securities market in the U.S.. The Commission agrees with the NYSE that the proposed rule change will be helpful in updating the NYSE market structure and trading rules and will further the purposes of the Act. The Commission's detailed discussion regarding the significant changes proposed by the NYSE follows:

C. General Auction Market Rules

1. Rule 61: Recognized Quotations

The Exchange proposes to amend NYSE Rule 61, which governs "recognized quotations," to clarify that bids or offers for oddlots (*i.e., for an amount less than 100 shares*) have no standing as recognized quotations in the trading crowd at a specialist post. The Exchange also proposes a second amendment to rule 61 that would change the execution procedures for an order that includes one or more trading units and an odd-lot.[10] The proposal would require the odd-lot portion of the order to be processed and executed by the Exchange's rule 124 odd-lot pricing system,[11] and would preclude it from being printed on the tape.

A third amendment to rule 61 would clarify that special offerings, exchange distributions and secondary distributions as specified in rules 391, 392 and 393,[12] and the printing of such transactions on the Tape, are not precluded by this rule. This amount recognizes that special distributions, due to their generally larger size and consequently greater market impact, require special handling and are often arranged outside of the regular market.

Because rule 55 establishes the standard unit of trading in stocks on the Exchange as 100 shares, the Commission believes it is logical to conform rule 61 to operate consistent with both the trading unit definition contained in rule 55 and to clarify that an order that includes an odd-lot can be sent to the specialist, but will be executed by the Exchange's odd-lot system. The Commission also believes that the amendment to rule 61 governing special distributions should dispel any potential confusion as to rule 61's application to the execution procedures codified in rules 391, 392, and 393, and should make it clear that such transactions may be effected and printed on the tape.

2. Rule 70: Below Bid—Above Best Offer

Rule 70 is a basic auction market rule which provides that when a bid is clearly established, no lower bid shall be made and conversely, when an offer is clearly established, no higher offer shall be made. The proposed change to this rule would retain this basic principle, while clarifying that any bid or offer that is accepted results in a binding trade.[13]

The proposed rule change also would clarify the long-standing Exchange policy that a bid which is at or above an offer results in a trade in an amount equal to the bid or the offer, whichever is the smaller amount. The same principle would apply when an offer is made at or below a bid.[14] The Exchange believes that this concept is necessary to the orderly functioning of the auction market because the absence of such a provision could create "locked markets."

The Commission believes that these revisions are appropriate clarifications to the traditional auction market principle, currently codified in rule 70, that only the highest bid and lowest offer shall have standing as recognized quotations. The Commission agrees with the Exchange that the revisions should operate to prevent the potential for "locked markets" that otherwise may occur in the absence of an explicit provision mandating automatic executions when bids and offers are crossed.

3. Rule 75: Disputes as to Bids and Offers

Rule 75 currently provides that disputes regarding bids or offers should be settled by the parties to the dispute, or if practicable by a vote of other members with knowledge of the transaction, or, if not settled by these means, then such disputes shall be settled by a Floor Official. This rule currently contains a presumption that disputes regarding the amount traded shall be settled by a Floor Official in favor of the smaller amount, with due allowance for the Floor Official to consider whether the member claiming the smaller amount actually had an order or orders totalling a larger amount.

The proposed rule change amends rule 75 to clarify that disputes as to bids and offers are to be settled by a Floor Official, if not settled by the parties to the dispute, and to clarify that disputes should not necessarily be settled in favor of the smaller amount. The rule also would be revised to provide that in settling a dispute, a Floor Official would rely primarily on the statements of any member who was not a party to the transaction, but would also take into account the size of the orders held by the parties to the disputed transaction, as well as such other facts as he deems relevant.

The Commission believes that the proposal to delete the current presumption in favor of the smaller sized bid or offer should provide for a more efficient resolution of trade disputes by removing an unnecessary presumption that may actually operate as an impediment to resolution of trade disputes. The Commission also believes that the amendment appropriately increases the level of oversight brought to the resolution of trade disputes by removing the membership voting procedure and replacing it with specified factors for Floor Official consideration.

4. Rule 76: "Crossing" Orders

Rule 76 provides that when a member is holding both a buy and a sell order in the same security, he must publicly bid and offer on behalf of both orders before he may cross the orders against each other to effect a trade. The purpose of this rule is to ensure that all orders are exposed to the trading Crowd, in order that members in the Crowd may have the opportunity to provide a better price to one side or the other of the proposed cross transaction. The Exchange believes that the principle of this rule is fundamental to the auction market and has reinforced it by clarifying that bids and offers must be clearly articulated in the trading Crowd before stock is crossed.

The Commission agrees with the Exchange that it is appropriate to require cross transactions to be clearly articulated prior to their execution so that orders represented in the trading Crowd are afforded sufficient opportunity to participate in the proposed cross transaction at prices better to one or both sides of the proposed trade. The Commission believes that the proposed amendment to rule 76 will operate to enhance order exposure and interaction in the Exchange's auction market, as well as increase pricing efficiency and opportunities for best execution of customer orders.

5. Rule 79A.10: Request to Make Better Bid or Offer

Rule 79A.10 currently requires that a floor broker, who is requested by his principal to bid or offer at the limit price of an order when that price is better than the current quotation, must do so or return the order. The proposed amendment would extend the coverage of the rule's bid/offer procedures to all members, including specialists, and would clarify that a member must bid or offer on behalf of an order when requested to do so. The provision that a member may return an order if he refuses, upon request, to make a bid or offer is proposed to be deleted. Accordingly, the proposed rule change would require any member when requested by his principal to bid or offer at the limit price of an order when that price is better than the current quotation to do so without discretion.

The Commission believes that the expansion of the rule's order handling procedures to include all Exchange members acting on behalf of a principal reflects appropriately the important agency function performed by specialists in handling limit orders on their books. The Commission further believes that the rule's expanded coverage over specialists should enhance the price discovery and execution mechanisms of the Exchange's auction market by increasing the opportunities for brokered limit orders to be executed between the current quotation. To the extent that more limit orders are executed between the current bid-ask spread, the amendment should enhance order interaction, market depth and liquidity and pricing efficiences, as well as benefit execution of public orders and promote competition among exchanges and other competing market centers.

D. Trading/Order Handling Rules Applicable to All Members Generally

1. Rule 13: Definition of Orders

The proposed rule change would clarify the Rule 13 definitions of an "at-the-opening-only" order and a "not held" order.[15] Additionally, the proposed rule change adds new rule 13.10 that would clarify that a specialist must accept all types of orders, except "not held" orders, unless Floor Official approval is obtained to decline to accept a particular type of order. If such approval were obtained, the specialist would be required to obtain cancellations of all other orders of that type that he had previously accepted. The Exchange believes that this clarification would help ensure that specialists fulfill their obligation to execute effectively all orders entrusted to them. The Exchange states that the requirement that a specialist must return all other orders of the same type previously accepted is intended to ensure that such orders do not disrupt the market and that they do not receive more favorable treatment than the subsequent orders of that type that are being returned.

Furthermore, the proposed rule change adds new rule 13.20, which is designed to clarify that, unless otherwise specified in the Rule, all members shall exercise "reasonable diligence" in the handling of any order entrusted them. The Exchange intends to reinforce the obligation of all members to handle each order entrusted to them according to the reasonable diligence standard. The Exchange recognizes, however, the difficulties members often encounter when handling a "switch order-

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Exchange summarized the recommendations of the Market Regulation Review Committee, and requested its members and member organizations to comment on them. The Exchange states that no written comments were received in response to this Information Memo with regard to any rule change that is the subject of this order.

[6] The texts of the actual Exchange rules to be amended and complete descriptions of the proposed amendments are set forth in the Exchange's original filing and in Amendments No. 1 and 2 thereto, both of which are available for inspection at the Commission and at the principal office of the NYSE.

[7] See letter from George A. Corroon, Jr., Partner, Corroon, Lichtenstein & Co., to Jonathan G. Katz, Secretary, SEC, dated May 31, 1990, and letter from Robert M. Newman, Jr., Partner, Equitrade Partners, to Jonathan G. Katz, Secretary, SEC, dated June 11, 1990. The Corroon, Lichtenstein & Co. and Equitrade Partners comment letters also addressed File No. SR–NYSE–90–10. See *supra* note 3.

[8] See *supra* note 3.

[9] 15 U.S.C. 78f(b)(5), 78f(b)(8), 78k(b), and 78k–1(a)(1) (1988).

[10] The normal unit of trading in stocks is 100 shares. See NYSE rule 55.

[11] See Securities Exchange Act Release No. 27821 (May 2, 1990), 55 FR 27861 (order approving File No. SR–NYSE–90–08, amending Rule 124), and Securities Exchange Act Release No. 29037 (January 28, 1991), 56 FR 4680 (order approving File No. SR–NYSE–91–3, implementing a program that eliminates odd-lot differentials and floor brokerage charges).

[12] NYSE rules 391, 392, and 393 provide special order handling procedures designed to facilitate the execution of large blocks of stock which cannot be absorbed or supplied in the regular auction market within a reasonable time and at a reasonable price or prices.

[13] The same concept also is contained in rule 79, which states that all bids and offers which are made and accepted in accordance with rules 65 to 80 shall be binding. Accordingly, the rule change would delete rule 79 and consolidate it with this rule in order to clarify and simplify Exchange rules.

[14] For example, assuming that the market for a stock is 20 bid for 500 shares, with 500 shares offered at 20 and one-quarter. A member making a bid of 20 and one-quarter for 200 shares would be effecting a trade at that price for 200 shares.

[15] A "not held" order is defined under NYSE rule 13 as "a market or limited price order marked 'not held,' 'disregard tape,' 'take time,' or which bears any such qualifying notation." More generally, the instruction "not held" indicates that the customer has given the floor broker time and price discretion in executing the best possible trade but will not hold the broker responsible if the best deal is not obtained. Because sections 11 (a) and (b) of the Act, 15 U.S.C. 78k (a) and (b), and the rules adopted thereunder, generally restrict the exercise of investment discretion over agency orders by specialists, a specialist may not accept a not held order.

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contingent order," which involves the simultaneous execution of orders in different securities at a stipulated price difference. Accordingly, the definition of a "switch order-contingent order" in rule 13 has been revised to provide that a member executing such an order may handle the order on a "best efforts" basis.

The Commission agrees with the Exchange that the clarifications to the definition of "at-the-opening-only" orders should help remove any misconceptions about when such orders are eligible for execution. Accordingly, the proposed rule change clarifies that while an "at-the-opening-only" order is eligible to be executed only on an opening trade, such an order is not cancelled if the stock opens with a quotation rather than a trade.

The Commission also agrees with the Exchange that "buy or sell on print" orders are appropriately classified as "not held" orders because brokers cannot guarantee execution at the designated "print" price. Classifying such orders as "not held" orders should serve to put customers on notice that they bear the price risk of an execution at a price other than the "print" price.

Similarly, the Commission believes that new rule 13.10 is an appropriate codification of the obligation of specialists to accept all types of orders, except "not held" orders, unless Floor Official approval is obtained to decline to accept a particular type of order. The Commission also believes that the requirement that the specialist obtain cancellations of all other orders [16] of a type that he had previously accepted if such approval were obtained, provides an equitable method for treating such orders and allows the specialist to maintain fair and orderly markets and attempt to keep his stock open for trading in violatile markets when the alternative of triggering large numbers of, for example, "stop" orders, could have a potentially "cascading" effect, especially in rapidly reclining markets. The additional requirement that a specialist notify all brokers who had previously entered "similarly defined" orders that their orders are no longer in effect and obtain cancellations ensures that market participants are aware that their orders may be cancelled, while preserving their access to the market through the alternative of limit orders placed on the specialist's book.

[16] The Exchange states that the rule's coverage is limited to stop orders, stop limit orders, and percentage orders as defined in rule 13. Accordingly, specialists will not be able to utilize new rule 13.10 to obtain relief from their continuing obligation to excute market and marketable limit orders.

The Commission believes that the proposed rule change's addition of new rule 13.20, which clarifies that, unless otherwise specified in the Rule, all members must exercise "reasonable diligence" in the handling of any order entrusted them is consistent with the fiduciary duties to which members are held when handling orders on an agency basis, including the duty to achieve a best execution for customer orders.[17] In addition, the Commission agrees with the Exchange that because of the difficulties members may encounter when handling a "switch order-contingent order," which involves the simultaneous execution of orders in different securities at a stipulated price difference, such orders are appropriately identified as orders that deserve to be handled on a "best efforts" basis.

2. Rule 60: Firm Quote Rule

The proposed rule change deletes the Exchange's existing Rule 60 in its entirety and replaces it with a new rule.[18] The proposal makes a number of wholesale changes to the rule, including reducing from four to two the number of quotation needs.

Among these is the proposal that, when quotes are disseminated and are firm, the specialist shall be deemed to be the responsible broker-dealer with respect to any bid or offer made available by the Exchange to quotation vendors. The Exchange believes that this amendment is appropriate because the specialist stands at the center of the auction market, and is therefore in the best position to be responsible for any quotation disseminated from the Floor. The Exchange states that the specialist's designation as the Exchange's responsible broker-dealer for NYSE-disseminated quotations would not relieve a member who had made the bid or offer being disseminated from the risk of any transaction effected upon such bid or offer.

The Exchange also is proposing to reduce the time period during which a quotation can be in the non-firm mode from 60 minutes to 30 minutes. Continuation of the non-firm mode for longer than 30 minutes would require a confirmation by the Floor Governor (or two Floor Officials, if a Floor Governor is not available) who made the initial determination that a non-firm mode was appropriate. The Exchange believes that the reduction of the time period during which a quotation may be non-firm is appropriate in order to help ensure that "firm" quotations can again be disseminated in as reasonable time as market conditions will allow.

The proposed rule change also makes other related changes to the Exchange's "firm quote rule." For example, the Exchange is proposing to amend rule 60 to codify policies regarding the specialist's responsibility to honor erroneous quotations that have been displayed for six minutes or more, subject to several exceptions as specified in the rule.

The Commission agrees with the Exchange that a reduced number of modes will be less confusing to market participants, while still accurately reflecting the condition of NYSE quotations. The Commission also agrees with the Exchange that the related reduction in the time period during which a quotation can be in the non-firm mode provides a more reasonable time period to ensure that "firm" quotations can again be disseminated as market conditions permit. The Commission believes these changes should more accurately reflect buying and selling interest on the Exchange, thereby improving market information. Accordingly, the Commission finds that the reduced number of modes and the reduced time period during which a quotation is in the non-firm mode are consistent with rule 11Ac1–1(b)(3) under the Act.[19]

The Commission further agrees with the Exchange that new Rule 60's requirement that the specialist be the responsible broker-dealer with respect to any bid or offer made available by the Exchange to quotation vendors appropriately designates the specialist as the responsible broker or dealer for reporting purposes for securities in which he is registered. Because the Exchange is continuing to hold the relevant member at risk for his or her

[17] For a description of a brokerage firm's best execution obligation, see SEC, Second Report on Bank Securities Activities: Comparative Regulatory Framework Regarding Brokerage-Type Services 97–98, 98 n.233 (February 3, 1977), as reprinted in Senate Comm. on Banking, Housing & Urb. Affrs., 95th Cong., 1st Sess., Report on Bank Securities Activities of the SEC 145, 251–52, 252 n.233 (Comm. Print 1977). See also SEC Advisory Committee on the Implementation of a Central Market System, Summary Report 13–14 (July 17, 1975); SEC, Status Report on the Development of National Market System, Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360 [citing Restatement (Second) of Agency section 424 (1957)].

[18] Rule 60 is the Exchange's codification of the Commission's "firm quote rule," rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1, which requires national securities exchanges and associations to establish procedures for collecting from their members bids, offers and quotation sizes with respect to reported securities, and for making such bids, offers and sizes available to quotation vendors. Rule 60 was adopted in 1978. See Securities Exchange Act Release No. 14931 (July 5, 1978), 43 FR 29073 [order approving File No. SR–NYSE–78–27].

[19] 17 CFR 240.11Ac1–1(b)(3) (1980).

disseminated quotations, the Commission finds rule 60's amended reporting obligations consistent with rule 11Ac1–1(b) (1) and (2) under the Act, [20] which establishes the general firm quote obligation. Additionally, the Commission finds that the Exchange's proposal to codify its policies regarding the specialist's responsibility to honor erroneous quotations that have been displayed for six minutes or more, subject to the rule's enumerated exceptions, is likewise consistent with the limited exceptions to rule 11Ac1–1(c)(3) under the Act [21] governing erroneous quotations.[22]

3. Rule 91: Taking or Supplying Securities Named in Order

Rule 91, reflecting a fundamental principle of agency law, provides that, except under specified conditions, a member cannot trade as principal with a customer's order. Rule 91.40 currently provides a procedure whereby a member organization may reject a trade with respect to an order that had been entered into the Exchange's DOT system and executed by the specialist if the specialist has an interest in the account. The proposed amendment to rule 91.40 would simply extend the rule's agency law principles to any NYSE electronic order routing system.

Because the rule currently applies only to orders routed through the Exchange's DOT system, the Commission believes it is important to extend rule 91's agency law principles to cover any NYSE electronic order routing system. The Commission finds that extending the rule's customer protections to all systematized orders will ensure that customers are not denied the benefits of this basic agency law principle because of its limitation to any one order processing system.

4. Rule 95: Discretionary Transactions; Rule 120: Discretion to Employees—Forbidden; Rule 123A: Miscellaneous Order Requirements

The Exchange is proposing three additional technical changes to the trading and order handling rules generally applicable to all members. First, the Exchange is proposing to delete rule 95's exceptions applicable to certain discretionary accounts, as well as make certain "housekeeping" changes to the rule. Rule 95 is intended to prevent members from exercising discretion over customer orders while on the trading Floor as to stock, price, volume or whether to buy or sell. Rule 95(b) currently contains two exceptions for other than joint accounts: If the discretionary transaction is executed by a member for a bona fide cash investment account, or for the account of any person who is unable to effect transactions for his own account due to illness, absence or similar circumstances. The Exchange believes that such exceptions are not appropriate in today's markets and is proposing to delete these two exceptions. Rule 95.10, which requires the reporting of any discretionary transaction effected pursuant to either of these two exceptions, would also be deleted. The Commission believes that deletion of the rule 95(b) exceptions serve to strengthen the rule by further limiting the authority of members to execute discretionary orders. The Commission also believes that the deletion of rule 95.10, as well as the change to rule 95.20, are appropriate "housekeeping" amendments that will cleanup the rule after the deletion of the two exceptions noted above.

Second, the Exchange is proposing to eliminate Rule 120 as unnecessary. Because Exchange Rule 54 contains the prohibition contained in rule 120, the Commission agrees with the Exchange that rule 120 is unnecessary.

Third, the Exchange is proposing certain technical changes that would update and streamline rule 123A's miscellaneous order handling provisions. The following proposed changes are largely of a "housekeeping" nature and would simply update and streamline the rule: (1) The odd-lot order routing provisions of rule 123A.22 would be revised to reflect the 9:30 a.m. opening of trading and to provide flexibility to the rule; (2) rule 123A.46, which details the procedures for executing orders in a group received by a specalist via the SuperDOT System, would be deleted and replaced by principles to be incorporated in new rule 123B, which is discussed below; (3) rule 123A.47, which pertains to the so-called "half point error guarantee," would be transposed to new rule 123B; (4) rules 123A .50 and .55, which are concerned with the confirmation of "good-till-cancelled" ("GTC") orders, would be deleted; (5) the order transmission and reporting provisions of rule 123A.60 would be deleted; and (6) rules 123A .75 and .80 would be combined into new section .75, which would authorize a broader format for orders and cancellations that would provide flexibility for further systems enhancements. The Commission likewise agrees with the Exchange that the proposed changes will update and streamline rule 123A. The Commission does not believe that any of the proposed changes should detract from the quality of the Exchange's auction markets.

5. Rule 128A: Publication of Transactions; Rule 128B: Publication of Changes, Corrections, Cancellations or Omissions and Verification of Transactions

The Exchange is proposing two changes to the rules governing the publication and correction of transactions. First, the Exchange is replacing rule 128A's current requirement that a seller most notify an Exchange "reporter" of a transaction with a modified requirement that a seller must report a sale "in such manner as to facilitate the printing of the trade on the Tape." The Commission agrees with the Exchange that the rule's modification is necessary to accommodate electronic books and other possible technology advances.

Second, the amendment to rule 128B.10 would require agreement of both the buyer and seller and Floor Official approval prior to publishing corrections on the Tape.[23] Rule 128B.12 also would be modified slightly to reflect that errors may arise from problems with systems, as well as mechanical and clerical problems. The Commission believes that the amended trade error procedures will bring an increased level of oversight to the correction of trade errors for publication on the Tape—regardless of the source of the problem.

E. Trading Rules Applicable to Specialists

1. Rule 94: Specialists' or Odd-Lot Dealers' Interest in Joint Accounts; Rule 104.16: Associate Specialists; Rule 104A.40: Short Sales; Rule 104A .50: LIFO Transactions

The Exchange also has proposed technical changes to several of its rules that govern specialist trading. For example, the Exchange is proposing to delete rule 104.16, regarding associate specialist, because such a category of membership no longer exists. An another example, the Exchange is proposing to eliminate rule 104A.40's cross-reference to rule 10a–1 under the Act [24] as unnecessary. The Commission

[20] 17 CFR 240.11Ac1–1(b) (1) and (2) (1990).

[21] 17 CFR 240.11Ac1–1(b)(3) (1990).

[22] The Commission intends to continue to discuss with the NYSE, however, whether six minutes, or some shorter period, is an appropriate standard.

[23] In a related change, the Exchange is proposing to delete rule 128B.11 in its entirety. A memorandum will be prepared by the Exchange indicating the exact procedures to be followed in reporting a change to the Tape. Such procedures may need to be filed with the Commission under section 19(b) of the Act.

[24] 17 CFR 240.10a–1 (1990).

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agrees with the Exchange that these technical, non-substantive changes streamline the Exchange's rules and are consistent with the Exchange's charge of maintaining the integrity of its market.

2. Rule 104.17: Temporary Specialists

Rule 104.17 provides for the appointment of temporary specialists by a Floor Offical in the event of an emergency. The amendment to rule 104.17 would require Floor Governor approval, rather than Floor Official approval, to authorize the appointment of a temporary specialist. Because the appointment of temporary specialists is not a routine occurrence, the Commission believes that the proposed amendment to rule 104.17 brings an appropriate level of heightened oversight to such appointments.

3. Rule 115: Disclosure of Specialists' Orders Prohibited

As a general matter, rule 115 prohibits the disclosure of information by a specialist in regard to the orders on his book, except in certain limited circumstances. The Exchange is proposing to modify rule 115 to provide that a specialist may provide information about buying or selling interest in the market at or near the prevailing quotation in response to a market "probe" by a member acting in the normal course of business on the Floor, as well as to any other member who inquires, but may not disclose the identity of any buyer or seller unless expressly authorized to do so. At the same time, specialists would be prohibited from initiating the disclosure of such information, and thus could not favor certain Exchange members over others. In all other respects, the specialist would be required to maintain the confidentiality of the book. Accordingly, because the modification to rule 115 would permit the specialist to provide such information to all members of the Exchange, the Commission finds that the proposed amendment to rule 115 is consistent with section 11(b) of the Act [25] because it provides a mechanism for the fair and impartial disclosure of information by the specialist in a manner that is neither anti-competitive nor discriminatory.

F. Member Proprietary and On-Floor Trading

1. Rule 97: Limitation on Members' Trading Because of Block Positioning

Rule 97 is an anti-manipulative rule designed to limit member firms' trading for their own accounts for the remainder of a trading day during which they have positioned a block of stock. These limitations currently apply to a block transaction worth $200,000 or more. The Exchange is proposing to amend the rule's definition of "block" to provide that a block shall be a quantity of stock having a market value of $500,000 or more. The Exchange believes that the proposed revised market value is more relevant to block positioning/customer facilitation activity in today's markets.

The Commission notes that the current definition of a block was adopted in 1972, when the overall volume and size of block transactions were considerably smaller than they are today. The Commission agrees with the Exchange that the rule's higher dollar threshold is more relevant in today's markets, and that the current level is unnecessarily restrictive in this context.[26]

2. Rule 112.10: Orders Initiated "Off the Floor"

Rule 112.10(a) requires that proprietary orders of a member organization or any member, allied member, or approved person in such organization or officer or employee thereof must be sent to the Floor through a clearing firm's order room or other facilities regularly used for transmission of public customers' orders to the Floor. Rule 112.10(b) provides that after one of the persons specified in rule 112.10(a) learns about a trade of 5,000 shares or more, no off-Floor order for the account of a person specified in rule 112.10(a) may be sent to the Floor for two minutes following the print of the trade on the Tape. Rule 112.10(b) also contains a number of exceptions to the requirements of both rules 112.10(a) and 112.10(b).

The Exchange is proposing to amend rule 112.10(b) to eliminate the prohibition noted above against sending an off-Floor order to the Floor for two minutes following a print of 5,000 shares or more on the Tape. In the Exchange's view, the regulatory concerns that rule 112.10(b) purports to address are more properly addressed in today's markets by the Exchange's front-running policies, which reflect a consensus among the self-regulatory organizations regarding trading to take advantage of material non-public information regarding impending market transactions. A specific reference to the front-running policies is proposed to be added to rule 112.20, which is discussed below.

The Commission notes that this provision in rule 112.10(b) was adopted prior to the adoption of the Exchange's policies prohibiting "front-running" in specified contexts.[27] The Commission believes that the Exchange's front-running policies are the proper mechanism to address concerns regarding member trading to take advantage of material non-public information regarding impending market transactions. Accordingly, the Commission finds that the amendment to rule 112.10(b) (and member reliance on the Exchange's existing front-running policies) promotes conduct consistent with just and equitable principles of trade, and will not in any way detract from the Exchange's ability to detect and prosecute front-running violations or otherwise fraudulent or manipulative conduct.

3. Rule 112.20: "on the Floor" and "Off the Floor"

NYSE rule 112.20 establishes certain order routing prohibitions, and, as a general matter, rule 112.20(a) defines "on Floor" as meaning the trading Floor and specified adjacent premises. Rule 112.20(b) currently provides that certain transactions shall be deemed to be "on Floor" transactions, and therefore subject to the restrictions imposed on Competitive Traders. The transactions specified in rule 112.20(b) principally relate to entry of orders off the Floor following a conversation with a member on the Floor. Rule 112.20(b) also specifies that a transaction initiated off the Floor by a Competitive Trader who had been on the Floor earlier that day will be deemed to be an on-Floor order.

The Exchange is proposing to amend rule 112.20's definitions and order routing prohibitions by rescinding current rule 112.20(b), and replacing it with new rules 112.20 (b), (c), and (d). The Exchange believes that the critical determination as to whether an order is to be deemed "on Floor" or "off Floor" is whether an order is transmitted to the Floor through an order room or other facility regularly used for the transmission of public orders to the Floor, where a time-stamped record of the order is maintained. In the Exchange's view, an order that is so transmitted should be deemed to be an off-Floor order, even if that order is entered following a conversation with a member on the Floor. New rule 112.20(b) provides that a member on the Floor will be deemed to be initiating an off-Floor order if the order is transmitted from the Floor and routed through a clearing firm's order room, where a time-stamped record of the order is maintained, before the order is re-transmitted to the Floor.[28] Proposed rule 112.10(b) also would transpose from current rule 112.20(a) the principle that an off-Floor order for an account in which a member has an interest is to be treated as an on-Floor order if it is executed by the member who initiated it.

The Exchange believes that proposed rule 112.20(b) provides a practical means for a member on the Floor to enter an order for his own account without having to physically leave the Floor to do so, which is presently the case. The Exchange does not believe it would be appropriate for an order entered pursuant to proposed rule 112.20(b) to be deemed an "on Floor" order because the member initiating the order is not seizing an immediate trading opportunity available to him by virtue of his presence on the Floor, but rather must arrange for the order to be routed through a clearing firm's order room and then re-transmitted to another member on the Floor for execution. The Exchange believes, therefore, that such an order should be most appropriately viewed as an off-Floor order.

New rule 112.20(c) provides that any order entered by a member organization following a conversation with a member on the Floor for any account in which it, or any member, allied member, or approved person in such organization or officer or employee thereof, is directly or indirectly interested, or for any discretionary account serviced by the member organization, would be deemed to be an off-Floor order, provided the order is transmitted to the Floor through an order room or other facility regularly used for the transmission of public orders to the Floor, where a time-stamped record of the order would be maintained. The order also would be deemed to be an off-Floor order if an exception from the order room transmission requirement is available under rule 112.10(b). The Exchange exects that proposed new rule 112.20(c) will facilitate routine market "probe" conversations between a member on the Floor and an "upstairs" organization, but will not result in increasing a member organization's trading advantages over non-members.

Finally, new rule 112.20(d) states that members shall not trade in contravention of any Exchange policy against the frontrunning of block transactions.[29]

The Commission finds that the amendments to rule 112.20 (b) and (c) are consistent with the Act in that they reflect more accurately the status of on and off-floor orders. The Commission agrees with the NYSE that, in today's market environment of rapid dissemination of market information, it makes little sense to force a member to walk off the floor to route an order "upstairs" so it can be considered an off-floor to route an order "upstairs" so it can be considered an off-floor order. Indeed, under current NYSE rules, a non-member customer can have direct telephone access to a member's floor booth. The proposed NYSE requirement—that of routing an on-floor order upstairs and then back down to the floor—will continue to prevent any undue advantage of floor immediacy from accruing to orders designated as off-floor.[30]

Finally, the Commission also believes that the amendment to NYSE rule 112.20(d) promotes conduct consistent with just and equitable principles of trade by explicitly incorporating the frontrunning policy into rules governing competitive trader conduct.

G. Exchange Automated Order Routing Systems Rule—Rule 123B

The Exchange is proposing to adopt new rule 123B to codify all the policies and procedures applicable to Exchange trading systems under one umbrella rule. The majority of these policies and procedures are already in place and have been separately filed with the Commission over the years as policies of the Exchange.

First, new rule 123B(a) describes the general features of the Exchange's SuperDOT System, and generally authorizes the Exchange to establish the size and types of orders eligible for transmission through SuperDOT.[31] Second, subject to order size parameters established by the Exchange, NYSE rule 123B(b) establishes the Exchange's policies governing eight separate aspects of systematized orders on the Exchange.[32] Third, rule 123B(c) authorizes the Exchange to establish reporting and comparison procedures utilizing universal contra designations

Fourth, rule 123B(d) would provide that a specialist is required to execute all orders he receives by means of Exchange automated order routing systems in accordance with NYSE auction market procedures, unless the Rule itself specifies other procedures, unless the Rule itself specifies other procedures. Rule 123B(d) also would make clear that the specialist must expose systematized orders to the trading Crowd, and must follow Exchange "crossing" procedures before buying or selling stock for his own account. Additionally, rule 123B(d) makes clear that all systematized orders, regardless of size, that are routed to a specialist are "held" orders, and that a specialist may be deemed to have "missed the market" if any such order is not executed against prevailing contra side interest in the market at the time he receives the order.

In the Exchange's view, the commitment to traditional auction market principles stated in proposed

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[25] Section 11(b) of the Act provides in pertinent part: "It shall be unlawful for a specialist or an official of an exchange to disclose information in regard to orders placed with such specialist which is not available to all members of the exchange, to any person other than an official of the exchange, a representative of the Commission, or a specialist who may be acting for such specialist: Provided, however, that the Commission, by rule, may require disclosure to all members of the exchange of all orders placed with specialists, under such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. 78k(b) (1988).

[26] The NYSE reports that the average size of a block traded on the Exchange in the first quarter of 1990 was 23,600 shares. The average share traded on the NYSE was valued at $35.24 during the same time period. This translates into an average dollar value of $831,864 per block trade. The Commission believes that rule 97's amended $500,000 threshold will more than adequately capture the block trades within the rule's proscriptions without unnecessarily burdening the cutomer facilitation market.

[27] See Securities Exchange Act Release No. 25233 (December 30, 1987) 53 FR 296 (immediate effectiveness of File No. SR–NYSE–87–36), and Securities Exchange Act Release No. 27047 (July 19, 1989), 54 FR 31131 (order approving File No. SR–NYSE–88–34).

[28] Under the proposed rule change, however, an off-Floor order for an account in which a member has an interest is to be treated as an on-Floor order if it is executed by the member who initiated it. NYSE rule 112.20(b).

[29] See supra note 25 and accompanying text.

[30] The interpretation of "off the floor" contained in the amendments to rule 112.20 only applies to rule 112 and does not govern or control the meaning of "off the floor" for purposes of Exchange Act rule 11a2–2(T) (the "effect versus execute" rule).

[31] New rule 123B(a) also establishes the Exchange's authority to modify the operational aspects of SuperDOT. The Commission notes that in its exercise of this authority, the Exchange must comply with section 19 of the Act, 15 U.S.C. 78s.

[32] More specifically, rule 123B(b)(1) codifies the Exchange's commission policy with respect to specialist floor brokerage functions. Rule 123B(b)(2) merely incorporates the existing "half point error guarantee" provisions of current rule 123A.47. Rule 123B(b)(3) governs specialist responsibilities with respect to the reporting of stopped stock. Rule 123B(b)(4) regulates member booth support systems located on the Floor of the Exchange. Rule 123B(b)(5) publishes the standards governing when the Exchange's Individual Investor Express Delivery Service ("IIED Service") will be activated, as well as eligibility for this service. Rule 123B(b)(6) governs specialist responsibilities with respect to request status reporting. Rules 123B(b)(7) establishes a requirement for the immediate reporting of eligible market orders where the Exchange displays the best quotation of the Intermarket Trading System and where the quotation is the minimum variation of trading. Finally, rule 123B(b)(8) publishes the Exchange's so-called "active stock feature" order handling procedures for systematized orders.

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rule 123B(d) reflects a more appropriate means than those currently specified in rule 123A.46 for the pricing of orders received by the specialist in a group, as well as for the pricing of all systematized orders generally. The Exchange believes that the pricing procedures stated in current rule 123A.46 are somewhat arbitrary and cumbersome in practical application, and that auction market order exposure will likely result in executions at prices that accurately reflect prevailing market conditions when orders, including orders in a group, are received by the specialist.

Finally, new rule 123B(e) would codify an Exchange policy, rooted in article II, section 6 of the Exchange's Constitution, that the Exchange shall not be liable for any loss sustained by a member or member organization resulting from the use of an NYSE automated order routing system. Rule 123B(e) also would codify a general principle that any loss sustained by an entering member organization pertaining to an order, that does not appear on the SuperDOT system's "Merged Order and Report Log" will be absorbed by that member organization. If an order does appear on the "Merged Order and Report Log" and was designated for a particular specialists's post, any loss pertaining to that order will be absorbed by the specialist. The Exchange believes that proposed rule 123B(e) provides appropriate guidance to members and member organizations as to apportionment of any losses that may be sustained as to orders entered into the NYSE's automated order routing systems.

Given the increasing proliferation of automated order processing systems at the Exchange, the Commission believes it is proper for the Exchange to articulate in published standards the fundamental operational aspects of those systems, especially in the area of order executions. Moreover, the Commission finds it beneficial that the Exchange clarify specialist responsibilities with respect to handling orders via automated systems. In addition, the Commission believes it important to the quality of customer executions for the Exchange's automated order processing systems to preserve the opportunity for obtaining a superior execution at a price between displayed quotations. The Commission believes the Exchange's rule accomplishes this, and, accordingly, the Commission finds that adoption of the Exchange's "umbrella" automated order processing rule is consistent with brokers' fiduciary duties to obtain a best execution for customer orders and the protection of investors and the maintenance of fair and orderly markets on national securities exchanges.

Additionally, the Commission finds that the procedures contained in rule 123B (b) and (c), which clarify member responsibilities in the areas of specialist commissions, errors in trade reporting, the reporting of transactions in "stopped" stock, member booth support systems located on the Floor of the Exchange, operation of the Exchange's IIED Service, request status reporting, and other reporting and order handling features of Exchange automated order processing systems, should enable the Exchange to operate these systems more efficiently. Accordingly, the Commission finds the adoption of rules 123B (b) and (c) are consistent with section 11A of the Act,[53] because they encourage the use of new data processing and communication techniques to facilitate economically efficient executions of securities transactions.

Furthermore, the Commission notes that the Exchange's liability disclaimer for member losses resulting from the use of an NYSE automated order routing system, and its related policy governing the apportionment of losses among members and member organizations for member losses sustained for orders entered into NYSE's automated order processing systems, are both limited in their scope to losses sustained by members and member organizations. Accordingly, because these rules do not extend to customer related losses, the Commission finds the liability disclaimer and loss apportionment provisions of new rule 123B(e) are consistent with sections 6(b)(5) and 11A of the Act,[54] because these liability rules generally protect investors and the public interest and encourage the use of new data processing and communication techniques to facilitate economically efficient executions of securities transactions.

H. Specialist Booth Wire Policy

Current NYSE rules permit a specialist unit to have a telephone line installed at its stock trading post to permit it to communicate with its off-floor office or clearing firm (a "post wire"). The post wire may not be used, however, to transmit orders to the floor for the purchase or sale of securities.[55] Current NYSE rules also permit a member or a member organization to maintain a telephone line at its floor booth location to permit it to communicate from the Exchange floor with non-member customers located off the floor (a "booth wire").[56] The Exchange, however, has never adopted a formal policy with respect to specialists' use of booth wires maintained by members or member organizations.

The Exchange is proposing to adopt such a policy, which will provide standards governing the use of specialists of booth wires located on the trading floor. Specialists would be allowed to use a booth wire in the following two situations. First, under the proposed specialist booth wire policy, a specialist member organization would be authorized to have its own booth wire only if it does a public business in a non-speciality stock, in which case a booth wire could be used for such business. Second, a specialist unit that does not have public customers would not be permitted to have its own booth wire, but would be permitted to use a booth wire assigned to a member organization in order to communicate with that member organization's upstairs trading desk.

The specialist booth wire policy states specifically the conditions under which a specialist may communicate by means of his or her own booth wire or a booth wire assigned to another member or member organization.[57] A specialist would not be permitted to accept a specialty stock order, or a modification to an order already in his or her possession, over his or her own booth wire or the booth wire of another member. Further, a specialist would not be permitted to initiate a booth wire conversation with a particular member organization if he or she does not have an order in his or her possession from that organization. A specialist may initiate booth wire communications, or respond to request for a conversation, with a particular member organization if he or she has an order in his or her possession from that organization; he or she may not initiate such a conversation, however, if he or she has ordered on the same side of the market from more than one member organization. A specialist would be permitted to engage in a conversation with an upstairs trading desk of another member organization over that organization's booth wire only for the purpose of discussing general market conditions or known buying and selling interest in a particular stock or stocks. A specialist may not favor any member or member organization in engaging in both wire conversations, and must make himself or herself available to respond to requests for booth wire conversations as impartially as possible. A specialist who does not act impartially in responding to requests for booth wire communications will be deemed to be acting in contravention of just and equitable principles of trade.

The Exchange believes that the proposed policy strikes an appropriate balance between, on the one hand, the interest of "upstairs" employees of a member organization in occasionally discussing with a specialist general market conditions relating to an order they have left with him or her, and, on the other hand, concerns that specialists act in a fair and impartial manner at all times to all member organizations without favoring any particular member organization in discussing market conditions that may affect the execution of orders.

The Commission believes that approval of the NYSE's booth wire policy strikes an appropriate balance between the competing concerns of specialists discussing with employees of "upstairs" member organizations market conditions related to orders placed with specialists and the fair and impartial execution of such orders. The Commission believes that it is reasonable to permit specialist units to communicate from the Exchange Floor with the upstairs trading desks of member organizations. By allowing such communications links, the Exchange enables specialists to perform their important market making functions more effectively on the NYSE Floor. At the same time, the Commission believes that the NYSE's prohibition against the use of such communication links to transmit to the floor orders for the purchase or sale of their specialty stocks is reasonable in view of the crucial role specialists have in maintaining the stability of the market. In this connection, the Commission believes that the NYSE's general prohibition against specialists initiating conversations with upstairs members and the related requirement that specialists act fairly and impartially in all communications carried over a booth wire ensures that specialist booth wire communications are not conducted inequitably. Accordingly, the Commission finds that the Exchange's specialist booth wire policy is consistent with sections 6(b)(5), 6(b)(8), and 11A(a)(1)(C)(ii),[58] which respectively require the rules of a national securities exchange to promote just and equitable principles of trade, to remove impediments to a free and open market, to protect investors and the public interest, to not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and to assure fair competition among brokers and dealers.

III. Conclusion

The Commission has reviewed carefully the Exchange's proposed rule change and concludes, for the above stated reasons, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes that the proposals developed by the Exchange's Market Regulation Review Committee balance appropriately the competing concerns of various Exchange constituencies in a manner consistent with just and equitable principles of trade. Given the significant role played by the NYSE as a primary market and the dynamic nature of competitive forces shaping the national market system, the Commission supports strongly the NYSE's important efforts to review the structure of market trading regulation in order to have an efficient and meaningful regulatory program in effect.

Accordingly, based upon the aforementioned factors, the Commission finds that the Exchange's proposed rule change relating to recommendations by its Market Regulation Review Committee is consistent with sections 6(b)(5), 6(b)(8), 11(b), and 11A(a)(1) of the Act [59] and the rules and regulations thereunder applicable to a national securities exchange.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[60] that the proposed rule change (File No. SR-NYSE-89-02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[61]

Dated: June 17, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15062 Filed 6-24-91; 8:45 am]

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[53] 15 U.S.C. 78k-1 (1988)

[54] 15 U.S.C. 78f(b)(5), 78k-1 (1988).

[55] See Securities Exchange Act Release No. 25652 (June 23, 1988), 53 FR 24539 (order approving File No. SR-NYSE-87-48) ("Release No. 25652"); NYSE rule 36.30.

[56] See Release No. 25652; NYSE rule 36.30.

[57] See letter from Brian McNamara, Managing Director, Market Surveillance, NYSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated January 31, 1991.

[58] 15 U.S.C. 78f(b)(5), 78f(b)(8), and 78k-1(a)(1)(C)(ii) (1988).

[59] 15 U.S.C. 78f(b)(5), 78f(b)(8), 78k(b), and 78k-1(a)(1) (1988).

[60] 15 U.S.C. 78s(b)(2) (1988).

[61] See 17 CFR 200.30-3(a)(12) (1990).

[File No. 1-9201]

Issuer Delisting; Application to Withdraw From Listing and Registration (Dense-Pac Microsystems, Inc., Common Stock, No Par Value)

June 19, 1991.

Dense-Pac Microsystems, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the Boston Stock Exchange ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The company desires to voluntarily withdraw its Common Stock from listing on the BSE because there has been limited trading of its Common Stock on such Exchange and because the Company does not want to continue to incur the costs to maintain the listing. The Company's Common Stock is currently quoted by National Association of Securities Dealers Automated Quotations System ("NASDAQ") and is traded in the over-the-counter market.

Any interested person may, on or before July 11, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-15011 Filed 6-24-91; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Expedited Review by the Office of Management and Budget.

AGENCY: Tennessee Valley Authority.

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ACTION: Notice of request for expedited review by the Office of Management and Budget [OMB] of information collection.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99-591.

Expedited review by OMB has been requested as described below. Because of the time frame in which OMB has been asked to act on this submission, any comments and recommendations for the proposed information collection should be provided directly to the OMB Desk Officer, Mr. Ron Minsk, by telephone at (202) 395-3084 or by FAX at telephone (202) 395-7285.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (EB 4B), Chattanooga, TN 37402-2801; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Recreational Benefits of Navigation Locks.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 700.

Estimated Total Annual Burden Hours: 233.

Estimated Average Burden Hours Per Response: .33.

Need For and Use of Information: The Recreational Benefits of Navigation Locks survey will obtain information required for completion of a benefit/cost study to be used in evaluating the economic feasibility of constructing newer, larger locks at Watts Bar and Chickamauga Dams on the Tennessee River.

Additional Information: It is essential that information be obtained on recreational use of the current navigation locks at Watts Bar and Chickamauga Dams. The locks, which were designed and constructed in the 1930s and which are operated by the U.S. Army Corps of Engineers, are scheduled for maintenance and will be closed to commercial and recreational use for the period from July 15, 1991 through August 23, 1991.

Because this closure will affect traffic on the river for six (6) weeks of the summer, the season of the most intensive recreational use of the reservoirs, postponing the survey until the 1992 recreation season will increase the cost of the survey and will delay completion of the benefit/cost study. The benefit/cost study is currently scheduled for completion in the spring of 1992. By May 1992 the project is planned to be reviewed and evaluated to determine the feasibility of constructing new locks at Chickamauga and Watts Bar dams. Delaying the recreational benefits survey until 1992 will result in a delay of up to one (1) year in completing the benefit/cost study and the subsequent project review and evaluation.

Therefore, OMB has been requested to review and approve this information collection on an expedited basis. OMB approval has been requested by no later than July 5, 1991. We are also publishing with this notice a copy of the Standard Form 83 (Request for OMB Review), the supporting statement, and the proposed survey instrument.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

OMB SUPPORTING STATEMENT RECREATION ECONOMIC IMPACTS ASSOCIATED WITH NEW LOCKS AT WATTS BAR AND CHICKAMAUGA DAMS

Section A. Justification

A1. Circumstances that Make the Collection of Information Necessary

The provision of a system for navigation was a responsibility established for the Tennessee Valley Authority (TVA) by an Act of Congress in 1933 (16 U.S.C. 831j). In discharging that responsibility TVA has constructed a series of locks and dams encompassing approximately 650 miles of the Tennessee River and its tributaries. Newer, larger locks have been constructed in the lower part of the system and recently an effort has begun to evaluate the need for new locks in the upper part of the river system. In particular the locks at Watts Bar and Chickamauga Dams are being evaluated to determine the economic feasibility of constructing new locks. The current locks were designed and constructed in the 1930s.

As a part of evaluating the economic feasibility of new locks at Watts Bar and Chickamauga Dams, TVA is conducting a benefit/cost study according to procedures from the 1983 Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies published by the U.S. Water Resources Council. The document states that the preferred method of estimating recreation benefits is by contingent valuation or travel cost. The proposed questionnaire will provide us information to determine values using both methods and compare the results.

The locks, which are operated by the U.S. Army Corps of Engineers, are scheduled for maintenance and will be closed to commercial and recreational users for the period from July 15, 1991 through August 23, 1991. Because this closure will affect traffic on the river for six (6) weeks of the summer, the season of the most intensive recreational use of the reservoirs, postponing the survey until the 1992 recreation season will increase the cost of the survey and will delay completion of the benefit/cost study.

The benefit/cost study is currently scheduled for completion in the spring of 1992. By May 1992 the project is planned to be reviewed and evaluated to determine the feasibility of constructing new locks at Chickamauga and Watts Bar dams. Delaying the recreational benefits survey until 1992 will result in a delay of up to one (1) year in completing the benefit/cost study and the subsequent project review and evaluation. Because the locks will be closed to the public beginning July 15 sampling needs to start no later than mid June and continue through July 14.

A2. Use and Users of the Information

The specific objective of Watts Bar and Chickamauga locks survey is to determine the economic benefits attributable to the recreation users of the locks under current and future conditions in an effort to assign recreation benefits to the new lock system. This will allow TVA staff to accurately evaluate a portion of the benefits to the new locks and to gain knowledge on the importance of locks for recreation navigation.

Survey data will be collected through personal interview of one (1) person in each pleasure boat utilizing the lock at the survey site. Data will be computerized and analyzed during July through August and the final report is due November 30. Travel cost will be calculated using the Rocky Mountain Station Travel Cost Model developed by the U.S. Forest Service. The model includes correlation analysis of the most promising variables as well as tests for collinearity. The contingent valuation method is a mean net willingness to pay value and includes analysis of variance.

A3. Use of Information Technology To Reduce Burden

The responses will be recorded on the survey instrument by the interviewer.

This method imposes the least burden on the respondents.

A4. Efforts To Identify Duplication

The U.S. Army Corps of Engineers (USACE) from the Nashville District and the national Waterways Experiment Station were contacted to determine if this type of study had been conducted by USACE. To their knowledge, recreation benefits of locks have not been studied. This type of study has never been conducted on any of the TVA reservoirs.

A5. Why Similar Information Cannot Be Used

As described above, no similar information is available.

A6. Efforts to Minimize the Burden on Small Businesses

The respondents to this survey will be individuals using the waterway for recreational purposes.

A7. Consequences of Less Frequent Data Collection

This information collection is a one-time activity.

A8. Circumstances that Require Data Collection Procedures Inconsistent with 5 CFR 1320.6

This information collection will be conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

A9. Efforts to Consult with Persons Outside of TVA on the Data Collection

We spoke with Scott Jackson, Recreation Researcher, USACE Waterways Experiment Station, Vicksburg, Mississippi ((601) 634-2105), and Cliff Reinert, USACE Nashville District ((615) 736-5026) to determine if they had done studies of recreation benefits of locks.

A10. Assurances of Confidentiality

The responses to this survey are voluntary. Respondents will not be asked to provide their names during the course of the interview. Although the completed survey instruments will be used only by program personnel, disclosures of information may be made as required by law.

A11. Justification for Questions of a Sensitive Nature

There are no questions of a sensitive nature.

A12. Estimate of the Annual Cost of the Data Collection

The cost to collect, analyze, and report the data is $50,340 as estimated by 3D/Environmental Services, Inc. (3D/ESI), the company awarded the contract. It is estimated there is an additional cost to TVA of about $6,000 to write and publish the Request for Proposals and to coordinate with 3D/ESI. These costs include all applicable overheads and travel.

A13. Estimates of the Burden of Information Collection

The total estimated burden hours is 233 hours. This is based on surveying approximately 500 lock users and 200 nonlock users. It is estimated by 3D/ESI that the administration of the questionnaire will average 20 minutes per interview. This is based on previous experience using a questionnaire of similar length.

According to USACE records, the population of boating parties at both locks is about 7800 per year. The population of nonlock users is undefined but assumed to be larger that the population of lock users. Random exit surveys will be conducted at marinas in the surrounding area until 200 nonlock users are interviewed. The nonlock users will be asked questions from the same questionnaire as the lock users. However, this population is being sampled only to make general comparisons to the lock user population and not to make statistical inferences between the two populations.

A14. Changes in Burden

This is a new information collection and is a one-time activity. There is no change in the burden.

A15. Publication of Results for Statistical Use

There are no plans to publish the results of this information collection for statistical purposes.

Section B—Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.

Draft

Survey Instrument

Starting Time _____ _____
Interviewer _____ _____
Date _____ _____
Location _____ _____

Excuse me. I'm from _____, and I'm doing a study on the needs of boaters on the lakes of the Tennessee River. The T.V.A. wants to know how they can improve your boating experiences, and it's extremely important that we get your personal feelings about boating in this area.

Required Burden Estimate Statement (Pursuant to 5 CFR 1320.21)

Public reporting burden for this collection of information is estimated to average 20 minutes per interview. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, please send them to the agency clearance officer, Tennessee Valley Authority, 1101 Market Street (EB 4B), Chattanooga, TN 37402; and to the Office of Management and Budget, Paperwork Reduction Project (3316-____), Washington, DC 20503.

Can I take a few minutes of your time to ask you some questions? (If they refuse, respond appropriately—see handout. If they still refuse, be sure to record it on the refusal sheet.)

Thank you!

First, I want to tell you that any information I collect will be kept completely confidential. That means that we'll use the data as a group and won't be reporting anyone's questionnaire by itself. There will be no way that anyone will be able to find out what you answered on the questionnaire.

1. How many people including yourself are on your boat today? ____ people.

2. What activities, for example skiing, fishing, or sightseeing, etc., are you participating in today?

_____

3. Which of these activities is the most important? (Circle one above.)

4. At what Marina or ramp did you put your boat in the water?

_____

5. How many miles did you drive to get from your home to that put in point? _____ miles

6. How long did the drive take you? _____ hours

7. Was coming to the river the main reason you took this trip away from home?
___ yes ___ no

8. Have you visited or are you going to visit any other lakes on this trip?
___ no ___ yes—which ones
_____
_____

9. How many days will you be away from home on this trip? _____ days

10. How much of this time will you spend boating? _____ days/hours (circle)

11. In the last 12 months, how many trips have you taken to this area to go boating?
_____ trips

The next few questions concern the amount of money that will be your share of the total amount spent on this trip.

12. About how much will you personally spend on transportation for this trip?
$_____

13. About how much will you personally spend on food for this trip? $_____

14. About how much will you personally spend on boat fuel and other recreation supplies, such as film, suntan lotion, or fishing tackle, etc., for this trip? $_____

15. About how much will you personally spend on overnight accommodations for this trip? $_____

Add 4 items above. ***$_____ *** total cost.

I now want to ask you some questions about the locks here on the Tennessee River.

16. Was the presence of this lock a positive factor, negative factor, or not a factor, in your

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decision to come to this part of the Tennessee River?
___ not a factor
___ positive—in what way?
___
___ negative—in what way?
___

17. Has the presence of the lock affected the type of boat or other recreational equipment you've purchased?
___ no
___ yes—in what way?
___

18. How many times will you pass through a lock on this boating trip? (Can pass through same lock more than once.) ___ lockages

19. Have you been through these locks before?
___ no
___ yes—In the past, on average, how long have you been delayed each day waiting at the locks? ___ hours/minutes (circle)

20. How long do you think you'll have to wait today to get through all the locks? ___ hours/minutes (circle)

Next, I'd like to ask you some hypothetical questions about your trip and the effects of lock use on it. Assume the trip you are on now became more expensive. Perhaps due to increased travel costs or something, but lock conditions were unchanged. You said your share of the total cost of this trip was $_____ *** total cost from above ***

21. If it would have cost you $_____ (20% of cost) more, would you have come on this trip?
___ Protest—will not answer. Record why?
___
___ Yes (go to 21a.)
___ No—work between 0 and 20% to find the highest acceptable value. Split the difference in half until you reach the nearest $1 (less than $10) or the nearest $5 (greater than $10). $___

21a. If it would have cost you $___ (50% of cost) more, would you have come on this trip?
___ Yes (Go to 21b.)
___ No—work between 20 and 50% to find the highest acceptable value. Split the difference in half until you reach the nearest $1 (less than $10) or the nearest $5 (greater than $10). $___

21b. If it would have cost you $_____ (100% of cost) more, would you have come on this trip?
___ Yes (Go to 21c.)
___ No—work between 50 and 100% to find the highest acceptable value. Split the difference in half until you reach the nearest $1 (less than $10) or the nearest $5 (greater than $10). $_____

21c. Keep going until you receive a negative answer. Use 100% increments. Work between last 2 bids to find highest acceptable value. $_____
After last bid.

22. So adding this to your current trip expenses means that $_____ *** total cost + last bid *** is the highest amount that you personally would pay to come on this trip?
___ No—repeat bids for personal value
___ Yes

23. Now, suppose you had a schedule of locking times so that you could plan for, or avoid delays. How much, if any, more than *** total cost + last bid *** would you pay to come on this trip? $_____

24. Now suppose you knew you'd only have to wait ½ as long as you do now to go through the locks on this trip. How much, if any, more than *** total cost + last bid *** would you pay to come on this trip?
$_____

25. Now suppose you could be guaranteed of never having to wait to enter the locks. How much, if any, more than *** total cost + last bid *** would you pay to come on this trip? $_____

26. Now suppose that you knew you would have to wait twice as long to enter the locks. How much, if any, less than *** total cost + last bid *** would you pay to come on this trip? $_____

Lastly, may I get some general information about you?

27. Observe gender. ___ male ___ female

28. What is your age? ___ years old

29. What town or city do you live in? (Prompt for complete information.)
City
___
County
___
State
___
Zip Code
___

30. Do you live inside or outside of town?
___ inside ___ outside

31. What do you do for a living?
___
___

32. Can you tell me how many years of school you completed? ___ years

33. Would you please give a ballpark figure of your annual family income before taxes?
$_____

That's all the questions I have. Thank you very much for your participation.

Ending time _____

Type of boat
___ Runabout
___ Cabin cruiser
___ Houseboat
___ Bass boat
___ Pontoon boat
___ Sail boat

Comments

BILLING CODE 3120-08-M

Standard Form 83 (Rev. September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request
Tennessee Valley Authority
Resource Group, Operations and Maintenance/Public Use Department
Recreation

2. Agency code
3 3 1 6

3. Name of person who can best answer questions regarding this request
George M. Humphrey

Telephone number
(615) 632-1606

4. Title of information collection or rulemaking
Recreational Benefits of Navigation Locks

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*
16 USC 831-831dd , or TVA Act of 1933

6. Affected public *(check all that apply)*
1 ☒ Individuals or households
2 ☐ State or local governments
3 ☐ Farms
4 ☐ Businesses or other for-profit
5 ☐ Federal agencies or employees
6 ☐ Non-profit institutions
7 ☐ Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)
___ ___ ___ ___ — ___ ___ ___ ___. or. None assigned ☐

8. Type of submission *(check one in each category)*

Classification
1 ☐ Major
2 ☐ Nonmajor

Stage of development
1 ☐ Proposed or draft
2 ☐ Final or interim final, with prior proposal
3 ☐ Final or interim final, without prior proposal

Type of review requested
1 ☐ Standard
2 ☐ Pending
3 ☐ Emergency
4 ☐ Statutory or judicial deadline

9. CFR section affected
_____CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? 1 ☐ Yes 2 ☐ No
If "No," and OMB waive the analysis? 3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official	Date
Signature of authorized regulatory contact	Date

12. *(OMB use only)*

Previous editions obsolete
NSN 7540-00-634-4034

83-108

Standard Form 83 (Rev. 9-83)
Prescribed by OMB
5 CFR 1320 and E.O. 12291

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PART II.—Complete This Part Only If the Request Is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less "Recreation, inland waterways, water resources development" To determine the potential recreation benefits and economic impacts associated with new navigation locks in fulfillment of the criteria in Economic and Environmental Principles for Water and Related Land Resources Implementation Studies. This will be accomplished using both the contingency valuation and travel cost methods.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 ☒ Regular submission
2 ☐ Emergency submission *(certification attached)*

Information collections contained in rules

3 ☐ Existing regulation *(no change proposed)*
4 ☐ Notice of proposed rulemaking (NPRM)
5 ☐ Final, NPRM was previously published
6 Final or interim final without prior NPRM
A ☐ Regular submission
B ☐ Emergency submission *(certification attached)*

7. Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: _____

15. Type of review requested *(check only one)*

1 ☒ New collection
2 ☐ Revision of a currently approved collection
3 ☐ Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 ☐ Reinstatement of a previously approved collection for which approval has expired
5 ☐ Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

17. Annual reporting or disclosure burden

1 Number of respondents	700
2 Number of responses per respondent	1
3 Total annual responses *(line 1 times line 2)*	700
4 Hours per response	0.33
5 Total hours *(line 3 times line 4)*	233

18. Annual recordkeeping burden

1 Number of recordkeepers	NA
2 Annual hours per recordkeeper	NA
3 Total recordkeeping hours *(line 1 times line 2)*	NA
4 Recordkeeping retention period	NA years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	233
2 In current OMB inventory	0
3 Difference *(line 1 less line 2)*	233
Explanation of difference	
4 Program change	233
5 Adjustment	

20. Current *(most recent)* OMB control number or comment number

21. Requested expiration date
September 15, 1991

22. Purpose of information collection *(check as many as apply)*

1 ☐ Application for benefits
2 ☒ Program evaluation
3 ☐ General purpose statistics
4 ☐ Regulatory or compliance
5 ☒ Program planning or management
6 ☐ Research
7 ☐ Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 ☐ Recordkeeping
Reporting
2 ☒ On occasion
3 ☐ Weekly
4 ☐ Monthly
5 ☐ Quarterly
6 ☐ Semi-annually
7 ☐ Annually
8 ☐ Biennially
9 ☐ Other *(describe)*

24. Respondents' obligation to comply *(check the strongest obligation that applies)*

1 ☒ Voluntary
2 ☐ Required to obtain or retain a benefit
3 ☐ Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? ☐ Yes ☒ No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? ☐ Yes ☒ No

27. Regulatory authority for the information collection

_____ CFR _____ ; or _____ FR _____ ; or, Other *(specify)*: _____

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official	Date
Original signed by Robert A. Marker	5/28/91
Signature of agency head, the senior official or an authorized representative Mark R. Winter Mark R. Winter, Agency Clearance Officer	Date 6/6/91

[FR Doc. 91-14650 Filed 6-24-91; 8:45 am]
BILLING CODE 6120-00-C

* GPO : 1984 O - 453-776

Environmental Assessment; Phosphate Development Works, AC

AGENCY: Tennessee Valley Authority.

ACTION: Environmental Assessment for demolition of Phosphate Development Works [PDW].

SUMMARY: The Tennessee Valley Authority (TVA) and the U.S. Army are proposing the demolition of the Phosphate Development Works (PDW) located on the TVA Reservation in Muscle Shoals, Alabama. The facility is currently owned by the Army, but the land will be returned to TVA. An Environmental Assessment (EA), in accordance with the National Environmental Policy Act, has been prepared.

DATES: TVA will consider all relevant comments received by July 25, 1991 before a final decision is made on the proposal.

ADDRESSES: Any comments on this proposal should be addressed to M. Paul Schmierbach, Manager, Environmental Quality, Tennessee Valley Authority, 400 W. Summit Hill Drive, SPB 2P, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: For additional information on this action or for a copy of the EA, call Sam H. Calhoun, Manager of Environmental Services, Tennessee Valley Authority, (205) 386–2010 in Muscle Shoals, Alabama.

SUPPLEMENTARY INFORMATION: The PDW was authorized by the Secretary of the Army in 1950 to produce methyldichlorophosphineoxide (DC), an intermediate chemical used in the production of the nerve agent GB. In July 1951, limited production began and continued intermittently for several years. The PDW has been in layaway from 1963 until the present except that in 1987, several railcars of DC from the Rocky Mountain Arsenal in Colorado were purified in a small temporary purification plant onsite and shipped to another Army facility. The Army has no further plans for the PDW. The PDW consists of a 63-acre site with various-sized buildings and associated storage tanks and piping.

The present condition of the PDW facility is poor, with buildings and equipment in a deteriorated state. Considerable expense would be required to rehabilitate the plant to a useful condition.

TVA's and the Army's plan is to clean up the site, demolish and sell for salvage unneeded facilities, and return areas to grass, trees, and other vegetation so the site would be suitable for a variety of future uses. All asbestos will be removed in accordance with regulatory requirements and sent to a permitted landfill. Other solid wastes will be sent to a local landfill.

Dated: June 17, 1991.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 91–15037 Filed 6–24–91; 8:45 am]
BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–91–24]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 5, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. 26587, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 20, 1991.

Annette Pitts,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26587.
Petitioner: World Jet Aircraft International.
Sections of the FAR Affected: Section 9309(b) of the Nonaddition Rule under the Airport Noise and Capacity Act of 1990.
Description of Relief Sought: To allow petitioner to transport a Boeing 707 from Israel to Shermon Clinton Airport, in Burnsflat, Oklahoma, with a maintenance stop in Ft. Lauderdale, FL, where the aircraft will be used in developing Stage 3 hushkits for Boeing 707.

[FR Doc. 91–15033 Filed 6–24–91; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 18, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Teasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0120.
Form Number: IRS Form 1099–G.
Type of Review: Extension.
Title: Certain Government Payments.
Description: Form 1099–G is used by governments (primarily State and local) to report to the IRS (and notify recipients of) certain payments (e.g.,

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unemployment compensation and income tax refunds). We use the information to insure that the income is being properly reported by the recipients on their returns.

Respondents: State and local governments, Federal agencies or employees.

Estimated Number of Respondents: 4,717.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 8,769,877 hours.

OMB Number: 1545-0184.

Form Number: IRS Form 4797.

Type of Review: Revision.

Title: Sales of business property.

Description: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets, other than capital assets, and involuntary conversations of capital assets held more than one year. It is also used to compute ordinary income from recapture and the recapture of prior year section 1231 losses.

Respondents: Individuals or households, farms, businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,398,388.

Estimated Burden Hours Per Respondent/Recordkeepers:

Recordkeeping 30 hrs., 51 min.

Learning about the law or the form 11 hrs., 22 min.

Preparing the form 17 hrs., 2 min.

Copying, assembling, and sending the form to IRS 1 hr., 20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 84,621,113 hours.

OMB Number: 1545-1081.

Form Number: IRS Form 8809.

Type of Review: Revision.

Title: Request for Extension of Time to File Information Returns.

Description: Form 8809 is used to request an extension of time to file certain information returns. It will be used by IRS to process requests expeditiously and to track from year-to-year those who repeatedly ask for an extension.

Respondents: Individuals or households, State and local governments, farms, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 45,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping 36 min.

Learning about the law or the form 14 min.

Preparing the form 48 min.

Copying, assembling, and sending the form to the IRS 28 min.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 93,600 hours.

OMB Number: 1545-1091.

Form Number: IRS Form 8810.

Type of Review: Revision.

Title: Corporate Passive Activity Loss and Credit Limitations.

Description: Under section 469, losses and credits from passive activities, to the extent they exceed passive income (or in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

Respondents: Businesses and other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping 25 hrs., 21 min.

Learning about the law or the form 5 hrs., 22 min.

Preparing and sending the form to IRS 6 hrs., 1 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 3,673,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-15017 Filed 6-24-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

June 19, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0010.

Form Number: FC-2.

Type of Review: Extension.

Title: Weekly Consolidated Foreign Currency Report on Foreign Branches and Subsidiaries of United States Banks.

Description: This report is required by title II of Public Law 93-110 (31 U.S.C. 5315) and used by Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate data in Treasury Bulletin quarterly. Affects large multinational non-banking firms.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 57.

Estimated Burden Hours Per Response: 1 hour, 43 minutes.

Frequency of Response: Weekly.

Estimated Total Reporting Burden: 5,068 hours.

OMB Number: 1505-0012.

Form Number: FC-1.

Type of Review: Extension.

Title: Weekly Foreign Currency Report on Banks in the United States.

Description: This report is required by title II of Public Law 93-110 (31 U.S.C. 5315) and used by Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate data in Treasury Bulletin quarterly. Affects large multinational non-banking firms, subsidiaries of U.S. banks and other firms.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 103.

Estimated Burden Hours Per Response: 51 minutes.

Frequency of Response: Weekly.

Estimated Total Reporting Burden: 4,553 hours.

OMB Number: 1505-0013.

Form Number: FC-4.

Type of Review: Extension.

Title: Quarterly Consolidated Report of Assets, Liabilities, and Positions in Specified Currencies of Foreign Branches and Subsidiaries of Firms in the United States.

Description: This report is required by title II of Public Law 93-110 (31 U.S.C. 5315) and used by Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate data in Treasury Bulletin quarterly. Affects large multinational non-banking firms.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 154.

Estimated Burden Hours Per Response: 2 hours, 39 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 1,632 hours.

OMB Number: 1505-0014.

Form Number: FC-3.

Type of Review: Extension.

Title: Monthly Report of Assets, Liabilities, and Positions in Specified Foreign Currencies of Firms in the United States.

Description: This report is required by title II of Public Law 93-110 (31 U.S.C. 5315) and used by Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate data in Treasury Bulletin quarterly. Affects large multinational non-banking firms.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 54.

Estimated Burden Hours Per Response: 1 hour, 56 minutes.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 1,250 hours.

Clearance Officer: Dale A. Morgan (202) 566-2093, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-15018 Filed 6-24-91; 8:45 am]

BILLING CODE 4810-25-M

Secret Service

Appointment of Performance Review Board (PRB) Members

AGENCY: Secret Service, Treasury.

ACTION: Appointment of Performance Review Board Members.

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1990 and ending June 30, 1991. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title

Guy P. Caputo—Deputy Director, U.S. Secret Service.

Hubert T. Bell—Assistant Director, Protective Operations (USSS).

George J. Opfer—Assistant Director, Inspection (USSS).

David C. Lee—Assistant Director, Administration (USSS).

Robert R. Snow—Assistant Director, Government Liaison & Public Affairs (USSS).

Don A. Edwards—Assistant Director, Training (USSS).

H. Terrence Samway—Assistant Director, Protective Research (USSS).

Raymond A. Shaddick—Assistant Director, Investigations (USSS).

John J. Kelleher—Chief Counsel, U.S. Secret Service.

FOR ADDITIONAL INFORMATION, CONTACT: Susan T. Tracey, Chief, Personnel Division, room 901, 1800 G Street, NW., Washington, DC 20223, telephone no. 202-535-5635.

John R. Simpson,

Director.

[FR DOC. 91-15007 Filed 6-24-91; 8:45 am]

BILLING CODE 4810-42-M

VOL 56 ISS 122 JE 25 1991 UMI

Sunshine Act Meetings

Federal Register
Vol. 56, No. 122
Tuesday, June 25, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 26186.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, June 25, 1991.

CHANGE IN THE AGENDA: The Commodity Futures Trading Commission has cancelled the discussion of the Proposed revision to Registration Requirements, Part 3.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-15159 Filed 6-21-91; 2:44 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 26, 1991.

PLACE: 2033 K. St., NW., Washington, DC, 6th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-15160 Filed 6-21-91; 2:44 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 19, 1991.

PLACE: 2033 K St. NW., Washington, DC, 6th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-15161 Filed 6-21-91; 2:44 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 12, 1991.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 5, 1991.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-15163 Filed 6-21-91; 2:44 pm]
BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

(June 19, 1991)

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 26, 1991, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 946th Meeting—June 26, 1991, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 11116-001, Town of Moreau, New York

CAH-2.
Project No. 2438-002, New York State Electric & Gas Company

CAH-3.
Docket No. RM89-7-001, Regulations Governing the Submittal of Proposed Hydropower License Conditions and Other Matters

CAH-4.
Project Nos. 4685-005, 10457-001 and 10470-002, Long Lake Energy Corporation

CAH-5.
Project Nos. 7726-012, 013 and 014, Robley Point Hydro Partners Limited Partnership

CAH-6.
Project No. 7004-006, City of Rock Falls, Illinois

CAH-7.
Project No. 8747-005, Power Resources Development Corp.

CAH-8.
Docket No. UL88-23-004, City of Seattle, Washington

CAH-9.
Docket No. RM83-56-001, Application for License, Permit, and Exemption from Licensing for Water Power Projects

CAH-10.
Project No. 8263-004, Summit Hydropower

CAH-11.
Project No. 3701-001, Yakima Teton Irrigation District

CAH-12.
Omitted

CAH-13.
Project Nos. 1984-021, 023, 025, 026, 027, 028, 029, 030, 033, 037, 039, 043 and 044, Wisconsin River Power Company

Consent Agenda—Electric

CAE-1.
Docket No. ER91-360-000, Pennsylvania Power & Light Company

CAE-2.
Docket No. ER91-20-000, Pennsylvania-New Jersey-Maryland Interconnection

CAE-3.
Docket No. ER91-401-000, Wallkill Generating Company, L.P.

CAE-4.
Docket No. ER91-379-001, UNITIL Power Corp.

CAE-5.
Docket No. ER91-195-001, Western Systems Power Pool

CAE-6.
Docket Nos. ER90-269-001, *et al.*, and ER90-504-000, Indiana Michigan Power Company

Docket No. EL90-37-000, Indiana and Michigan Municipal Distributors Association and the City of Auburn, Indiana v. Indiana Michigan Power Company

CAE-7.
Docket No. EL90-43-000, Oklahoma Municipal Power Authority v. Public Service Company of Oklahoma

CAE-8.
Docket Nos. EC91-6-000, EL91-22-000 and ES91-21-000, UtiliCorp United Inc. and Centel Corporation

CAE-9.
Docket No. EC89-5-000, Southern California Edison Company and San Diego Gas & Electric Company

CAE-10.
Docket No. ER84-75-000, Southern California Edison Company

CAE-11.
Docket No. ER89-63-000, Blue Ridge Power Agency, Central Virginia Electric Cooperative, Inc. and Craig-Botetourt Electric Cooperative, Inc. v. Appalachian Power Company Docket Nos. ER90-132-000 and ER90-133-000, Appalachian Power Company

CAE-12.
Docket No. ID-2524-000, John E. Bryson
Docket No. ID-2417-000, Walter B. Gerken

CAE-13.
Docket No. RM82-11-000, Nornev Demonstration Geothermal Company

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP91-166-000, Northwest Pipeline Corporation

CAG-2.
Docket No. RP91-165-000, Panhandle Eastern Pipe Line Company

CAG-3.
Docket No. RP91-164-000, Granite State Gas Transmission, Inc.

CAG-4.
Docket Nos. RP91-163-000, Louisiana-Nevada Transit Company

CAG-5.
Docket No. RP91-160-000, Columbia Gulf Transmission Company
Docket No. RP91-161-000, Columbia Gas Transmission Corporation

CAG-6.
Docket Nos. RP91-109-002 and 003, Transwestern Pipeline Company

CAG-7.
Docket No. RP88-1281-011, Natural Gas Pipeline Company of America

CAG-8.
Docket No. RP91-167-000, Tennessee Gas Pipeline Company

CAG-9.
Docket No. RP91-162-000, El Paso Natural Gas Company

CAG-10.
Docket No. RP91-158-000, Florida Gas Transmission Company

CAG-11.
Docket Nos. RP91-163-000, 001, 002 and 003, Alabama-Tennessee Natural Gas Company

CAG-12.
Docket No. TA91-1-8-000, South Georgia Natural Gas Company

CAG-13.
Docket No. TM91-2-29-000, Transcontinental Gas Pipe Line Corporation

CAG-14.
Docket No. TM91-7-17-000, Texas Eastern Transmission Corporation

CAG-15.
Docket Nos. TM91-8-37-000, Northwest Pipeline Corporation

CAG-16.
Docket Nos. TQ91-3-1-000, and 001, Alabama-Tennessee Natural Gas Company

CAG-17.
Docket Nos. TQ91-6-59-000, and 001, Northern Natural Gas Company

CAG-18.
Docket Nos. RP89-35-002, 003, RP90-36-001, 002 and RP88-33-011, Midwestern Gas Transmission Company

CAG-19.
Docket Nos. RP90-82-000 and RP91-36-001, Northern Natural Gas Company

CAG-20.
Docket Nos. RP85-209-019, RP88-27-008, 010, RP88-284-002, RP89-138-003, RP89-147-008, 009, 010 and RP90-91-002, United Gas Pipe Line Company

CAG-21.
Omitted.

CAG-22.
Docket No. TA88-3-27-001, Southern Natural Gas Company

CAG-23.
Docket Nos. RP91-109-001, CP90-2026-001, RP90-136-002, RP91-104-002 and RP91-106-002, Transwestern Pipeline Company

CAG-24.
Docket No. RP91-61-005, *et al.*, CNG Transmission Corporation

CAG-25.
Docket Nos. RP91-61-004, and 000, *et. al.*, Columbia Gas Transmission Corporation

CAG-26.
Docket No. RP91-123-002, Canyon Creek Compression Company

CAG-27.
Docket No. RP91-79-005, East Tennessee Natural Gas Company

CAG-28.
Docket No. RP91-132-001, Colorado Interstate Gas Company

CAG-29.
Docket No. RP91-129-001, Viking Gas Transmission Company

CAG-30.
Docket Nos. RP91-126-002, CP91-1669-001, CP91-1670-001, CP91-1671-001, CP91-1672-001 and CP91-1673-001, United Gas Pipe Line Company

CAG-31.
Docket Nos. TA91-1-21-001 and TM91-6-21-001, Columbia Gas Transmission Corporation

CAG-32.
Docket Nos. TM90-3-42-005, RP90-49-003, CP86-99-014, TM90-5-42-002, RP86-128-007 and RP90-43-002, Transwestern Pipeline Company

CAG-33.
Docket Nos. IS85-9-001, OR85-1-001 and OR90-1-001, Kuparuk Transportation Company

CAG-34.
Docket No. RP91-66-005, Penn-York Energy Coproration

CAG-35.
Docket No. RP90-22-012, Algonquin Gas Transmission Company

CAG-36.
Docket No. RP90-66-006, Colorado Interstate Gas Company

CAG-37.
Docket Nos. RP88-115-015, CP89-31-002, CP88-616-002 and CP89-59-003, Texas Gas Transmission Corporation

CAG-38.
Docket Nos. TM90-10-28-001, TM90-11-28-001, TM91-2-28-003 and TM91-3-28-003, Panhandle Eastern Pipe Line Company

CAG-39.
Docket No. TA91-1-31-003, Arkla Energy Resources, a Division of Arkla, Inc.

CAG-40.
Docket Nos. TA91-1-9-000, 001, TM91-1-9-001, TM91-2-9-00 and RP91-16-000, Tennessee Gas Pipeline Company

CAG-41.
Docket No. FA91-50—001, Natural Gas Pipeline Company of America

CAG-42.
Docket No. CP88-250-003, Ozark Gas Transmission System

CAG-43.
Omitted

CAG-44.
Docket No. RP86-46-000, Minnesota Public Utilities Commission and Department of Public Service, Iowa State Commerce Commission and Peoples Natural Gas Company, Division of UtiliCorp United Inc. v. Northern Natural Gas Company

CAG-45.
Docket No. FA89—001, Williston Basin Interstate Pipeline Company

CAG-46.
Docket No. GP90-10—000, Elf Aquitaine Operating, Inc.

CAG-47.
Docket No. GP90-15-001, El Paso Natural Gas Company v. Kaneb Energy Company and Kaneb Operating Company, Ltd.

CAG-48.
Docket Nos. CI86-440-000, CI86-441-000, CI86-446-000 and CI86-507-000, United Gas Pipe Line Company

CAG-49.
Docket No. CP90-843-001, Algonquin Gas Transmission Company

CAG-50.
Docket Nos. CP90-1014-001, Panhandle Eastern Pipe Line Company and Pan Gas Storage Company, d.b.a., Southwest Gas Storage Company

CAG-51.
Docket No. CP91-60-001, Sumas Energy, Inc.

CAG-52.
Docket No. CP85-825-002, Northwest Pipeline Corporation

CAG-53.
Docket Nos. CP88-780-003 and 006, Transcontinental Gas Pipe Line Corporation

CAG-54.
Docket Nos. CP90-2296-000 and 001, Transwestern Pipeline Company

CAG-55.
Docket No. CP91-969-001, CNG Transmission Corporation

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CAG-66.
Docket No. CP90-66-001, Tennessee Gas Pipeline Company
CAG-67.
Omitted
CAG-68.
Docket No. CP91-346-000, Transcontinental Gas Pipe Line Corporation
CAG-69.
Docket Nos. CP82-487-014 and 034, Williston Basin Interstate Pipeline Company
CAG-60.
Docket Nos. CP90-1111-0000 and 001, East Tennessee Natural Gas Company
Docket Nos. CP91-432-000 and 001, Tennessee Gas Pipeline Company
CAG-61.
Docket No. CP91-228-000, Natural Gas Pipeline Company of America
CAG-62.
Docket No. CP91-1111-000, Algonquin Gas Transmission Company
CAG-63.
Docket No. CP88-2101-000, Algonquin Gas Transmission Company
CAG-64.
Docket No. CP90-870-000, Northwest Pipeline Corporation
CAG-65.
Docket No. CP90-2214-000, El Paso Natural Gas Company
CAG-66.
Docket No. CP91-1110-000, Colorado Interstate Gas Company
CAG-67.
Docket No. CP91-780-000, Northwest Pipeline Corporation
CAG-68.
Docket Nos. CP89-1571-000 and 001, Niagara Mohawk Power Corporation
CAG-69.
Docket No. CP89-484-000, Transcontinental Gas Pipe Line Corporation
CAG-70.
Docket No. CP91-1910-000, Southwestern Public Service Company v. Red River Pipeline Company
CAG-71.
Docket No. CP91-1927-000, Midwestern Gas Transmission Company
CAG-72.
Docket No. CP91-665-001 and CP91-669-001, Columbia Gulf Transmission Company
CAG-73.
Docket No. CP90-2314-000, Tennessee Gas Pipeline Company
CAG-74.
Docket No. CP88-666-002, Texas Gas Transmission Corporation
CAG-75.
Docket No. CP90-1301-001, Arcadian Corporation
CAG-76.
Docket No. CP90-2155-001, Southern Natural Gas Company
CAG-77.
Docket No. CP83-140-007, K N Energy, Inc.
CAG-78.
Docket No. CP91-1276-001, Pittsburgh Corning Corporation

Hydro Agenda

H-1.
Project No. 1417-032, Central Nebraska Public Power and Irrigation District. Application to amend license.

Electric Agenda

E-1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1(A).
Docket No. RP87-15-010, Trunkline Gas Company. Order on initial decision.
PR-1(B).
Docket No. RP87-15-001, Trunkline Gas Company. Order on rehearing.
PR-1(C).
Docket No. RP87-15-027, (Phase I), Trunkline Gas Company. Order on remand.
PR-1(D).
Docket Nos. RP87-15-026 and 028, Trunkline Gas Company. Order on rehearing.

II. PF-1.

Reserved

III. Pipeline Certificate Matters

PC-1.
Docket Nos. CP89-480-000, 001, 003, 006, 007 and CP90-1-001, Pacific Gas Transmission Company. Order on certificate application.
PC-2.
Docket Nos. CP90-1372-000, 001, CP90-1373-000, 001, CP90-1374-000, 001, CP90-1375-000 and 001, Altamont Gas Transmission Company. Order on certificate application.
PC-3.
Docket No. CP91-1884-000, Great Lakes Gas Transmission Limited Partnership. Order on certificate application.
PC-4.
Docket No. CP90-1389-000, Great Lakes Gas Transmission Company. Order on certificate application.
PC-5.
Docket Nos. CP90-316-000 and 001, Empire State Pipeline
Docket Nos. CP90-854-000, 001, CP90-920-000, CP90-967-000 and CP90-968-000, National Fuel Gas Supply Corporation
Docket Nos. CP90-1989-000 and 001, CNG Transmission Corporation
Docket No. CP91-724-000, Tennessee Gas Pipeline Company. Order on certificate application.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15124 Filed 6-20-91; 4:37 pm]

BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Matters To Be Added and Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be added to the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, June 25, 1991, in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC:

Memorandum and resolution re: FDIC Appointment of FDIC as Receiver of Insured State Depository Institutions.

At that same meeting, the following matter will be withdrawn from consideration:

Memorandum re: Changes to the Section 19 Policy Statement and Guidelines.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: June 20, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-15158 Filed 6-21-91; 2:44 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 20, 1991

TIME AND DATE: 2:00 p.m., Thursday, June 27, 1991.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Lanham Coal Company, Inc.*, Docket No. KENT 89-186. (Issues include whether the judge erred in finding that Lanham violated 30 CFR § 77.1710(g) and that the Secretary did not abuse her discretion by citing Lanham rather than an independent contractor for the alleged violation).
2. *Lang Brothers, Inc.*, Docket No. WEVA 90-58. (Issues include whether the judge erred in finding that the gas well cleaning and plugging operation of Lang Brothers is subject to the jurisdiction of the Mine Act and that Lang Brothers is an independent contractor-operator under the Mine Act, 30 USC § 801 *et seq.*).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION Jean Ellen (202) 653-5629/ (202) 708-9300 for TDD Relay, 1-800-877-8339 for toll free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91-15160 Filed 6-21-91; 2:45 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, June 28, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposal to modify and clarify the Federal Reserve Board's risk-based capital guidelines. (Proposed earlier for public comment; Docket No. R-0700)

Discussion Agenda

2. Proposed 1992 Federal Reserve Board budget guideline.
3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 91-15165 Filed 6-21-91; 2:45 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Friday, June 28, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-15166 Filed 6-21-91; 2:45 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 noon, Monday, July 1, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-15255 Filed 6-21-91; 3:37 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

OFFICE OF THE INSPECTOR GENERAL OVERSIGHT COMMITTEE NOTICE

TIME AND DATE: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on July 9, 1991. The meeting will commence at 9:30 a.m.

PLACE: Hyatt Regency Washington, 525 New Jersey Avenue, NW., The Bryce Room, Washington, DC 20001, (202) 737-1234.

STATUS OF MEETING: Open [A portion of the meeting will be closed, pursuant to the following vote by a majority of the Board of Directors, to discuss personnel-related and personal matters as authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. 552b(c) (2) and (6)], and the corresponding regulations of the Legal Services Corporation [45 C.F.R. Sections 1622.5 (a) and (e)].

Board Member, Vote

Howard Dana, Jr.—Yes
J. Blakeley Hall—Yes
Jo Betts Love—Yes
Penny L. Pullen—Yes
Thomas D. Rath—Yes
Basile Uddo—Yes
George W. Wittgraf—Yes
Jeanine E. Wolbeck—Yes

A portion of the meeting will be closed to preserve the applicants' personal privacy and to discuss strictly internal personnel rules and practices. Specifically, the Committee will interview candidates for the position of Inspector General in the closed session. Additionally, the Committee may resolve to recommend certain candidates interviewed by the Committee to the Board of Directors for further consideration by the Board of Directors for the position of Inspector General.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of June 3, 1991 Meeting.

Closed Session:

3. Interview of Applicants for the Position of Inspector General of the Legal Services Corporation and Consider and/or Settle on Possible Recommendation to the Board of Directors Regarding Applicants to be Considered by the Board of Directors for Position of Inspector General.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863-1839.

Date issued: June 21, 1991.

Patricia D. Batie,

Corporate Secretary.

AGDAOIG.7991/

[FR Doc. 91-15217 Filed 6-21-91; 2:45 pm]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 24, July 1, 8, and 15, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

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Week of June 24

Friday, June 28

8:15 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Staff Evaluation and Recommendation on Maintenance Rulemaking (Tentative)
b. Nuclear Power Plant License Renewal (Tentative)
c. Proposed Amendments to 10 CFR Part 21, "Reporting of Defects and Noncompliance" and 10 CFR 50.55(e), "Conditions of Construction Permits" (Tentative)
d. Emergency Response Data System (Tentative)

Week of July 1—Tentative

Wednesday, July 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 8—Tentative

Thursday, July 11

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 15—Tentative

Tuesday, July 16

10:00 a.m.
Periodic Briefing on REO Program (Public Meeting)

Friday, July 19

10:00 a.m.
Briefing on Generic Environmental Impact Statement for License Renewal and Proposed Part 51 Rule (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 3–0 on June 20 (Commissioner Rogers not present), the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Motion to Quash Subpoena Issued by the NRC Staff to Richard E. Dow" (Public Meeting), be held on June 20, and on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,
Office of the Secretary.

[FR Doc. 91-15239 Filed 6-21-91; 2:37 pm]
BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 56, No. 122
Tuesday, June 25, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Student Financial Aid Programs In Which Race, Color or National Origin is a Factor

Correction

In notice document 91-12719 beginning on page 24383, in the issue of Thursday, May 30, 1991, in the second column, in the **SUMMARY**, in the ninth line "200d" should read "2000d".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2283-004-Maine]

Central Maine Power Co.; Availability of Environmental Assessment

Correction

In notice document 91-14660 beginning on page 28377 in the issue of Thursday, June 14, 1991, make the following correction:

On page 28377, in the first column, the project number should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3965-4]

General Preamble for Title I of the Clean Air Act Amendments of 1990

Correction

In notice document 91-14203 beginning on page 27257, in the issue of Thursday, June 13, 1991, in the second column, under "**DATES**", in the second line, "to 3 p.m." should read "to 5 p.m. and June 26 from 9 a.m. to 3:30 p.m.".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3962-7]

Coastal Nonpoint Source Pollution Management Measures Guidance

Correction

In notice document 91-13534 beginning on page 27618, in the issue of Friday, June 14, 1991, in the first column, under **ADDRESSES**, in the last line "August 2, 1991." should read "July 5, 1991.".

BILLING CODE 1505-01-D

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[Docket Nos. RM 90-2 and 89-1]

Refund of Excess Fees; Berne Implementation Act Technical Amendments

Correction

In rule document 91-14029 beginning on page 27196, in the issue of Thursday, June 13, 1991, make the following correction:

On page 27197, in the first column, under **PART 201—[CORRECTED]**, in the first paragraph, in the third line "§ 210.19" should read "§ 201.19", and in the fifth line "§ 201.19" should read "§ 210.19".

BILLING CODE 1505-01-D

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federal register

Tuesday
June 25, 1991

Part II

Securities and Exchange Commission

17 CFR Parts 229, 239, and 240
Limited Partnership Roll-Up Transactions; Proposed Rule

17 CFR Parts 231 and 241
Limited Partnership Reorganizations and Public Offerings of Limited Partnership Interests; Interpretive Release

17 CFR Part 240
Securityholder Communications Regulation; Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 239 and 240

[Release Nos. 33-6900; 34-29315; File No. S7-21-91]

RIN: 3235-AE45

Limited Partnership Roll-Up Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposed rules intended to enhance the quality and readability of information provided to investors in connection with limited partnership roll-up transactions. The proposals would heighten the disclosure requirements with respect to, among other matters, conflicts of interest and fairness of a roll-up transaction, similar to those governing going private transactions. Enhanced disclosure regarding the reasons for proposing the roll-up, alternatives considered by the general partner, valuation methods used and pro forma financial information also would be called for. Information relating to security holders' appraisal and dissenters' rights, changes in voting rights, and rights to a limited partnership list would be required as well. Because a roll-up transaction often has different effects and risks as between investors in the subject limited partnerships, the proposed rules would require delivery of individual partnership prospectus supplements setting forth partnership specific information along with the proxy statement/prospectus to investors in each such partnership. Technical amendments to the business combination registration statements under the Securities Act of 1933, Forms S-4 and F-4, also are being proposed.

Further, the Commission proposes to establish a minimum proxy solicitation period of 60-calendar days prior to a limited partners' meeting at which a roll-up transaction will be submitted to a vote, or 60-calendar days prior to the earliest date on which partnership action could be taken by consent. If, under applicable state law, the maximum period permitted for giving notice is less than 60 calendar days, the state law maximum notice period would apply. A 60-calendar day offering period also is proposed for roll-ups structured as exchange offers subject to the Williams Act.

Additionally, the Commission is concurrently publishing a companion release [1] that sets forth the Commission's interpretive views of existing disclosure requirements applicable to both limited partnership roll-up transactions and initial public offerings of limited partnership units.

DATES: Comments should be received on or before August 9, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Mail Stop 6-10, Washington, DC 20549. Comment letters should refer to File No. S7-21-91. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael L. Hermsen or Meredith B. Cross at (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed new subpart 900 of Regulation S-K [2] and technical revisions to Forms S-4 and F-4 under the Securities Act of 1933 ("Securities Act"), [3] the registration forms generally used in roll-up transactions. These proposals would be applicable to registration forms filed with the Commission in connection with limited partnership roll-up transactions, as defined in the rule proposals. The Commission also is proposing a minimum 60-calendar day solicitation or offering period for roll-up transactions.

I. Executive Summary

Roll-ups have created considerable controversy. Critics have questioned the abuses which have occurred in roll-up transactions and the fundamental fairness of the transactions. [4] Some of the more serious questions raised deal with the methods used to value the securities issuable in exchange for investors' limited partnership interests, the use of differential fees paid to broker-dealers in the solicitation process, [5] and the general partner's fiduciary duties to the limited partners, including its potential conflicts of interest and lack of independence in structuring and negotiating the terms of a transaction. Critics have questioned the potential overreaching by the general partners inherent in the increased benefits accruing to them in most roll-up transactions, including payments for general partnership interests and changes in compensation arrangements. These criticisms have been voiced in investor complaints to the Commission and Congressional hearings on roll-ups of limited partnerships. [6]

When a roll-up is proposed, investors are concerned that because of a limited resale market, a limited partner may find itself forced to exchange its limited partnership interest for a significantly different security in an entirely new entity. Changes in the new entity's borrowing policies, business plan, investment objectives, term of existence and the voting rights of investors frequently result in the investor holding a fundamentally different investment. Limited partners objecting to a roll-up transaction have especially criticized the absence of any legal or equitable alternative to the transaction and the "cram down" effect on objecting partners.

In light of these significant criticisms, the Commission has been re-examining the adequacy of the rules and regulations applicable to roll-ups. A number of specific suggestions made by investors and commenters to improve the quality of the information provided to investors require new rules. [7]

One main criticism not addressed under the current rules and regulations is that the requirements do not address the complexities involved in combining a number of different entities. Uncertainties arise when combinations of entities, other than those contemplated in the pro forma financial statements or the fairness opinions for example, are permitted to consummate the transaction. Valuation problems arise when trying to allocate interests among two or more entities. Investors in one partnership may not have sufficient historical information concerning the business plan or other historical aspects of all partnerships subject to a roll-up to make an informed investment decision. Another criticism is that the disclosure does not adequately and clearly address the changed terms of an investment and the different, material detriments, benefits and effects to be felt by the investors, both limited partners and general partners, in each of the various partnerships subject to a roll-up. The combined effect of all of these changes may substantially increase the risks of the investment.

The rules and amendments proposed today are intended to enhance the substance of the information provided to investors to allow them to assess both the merits of the proposed transaction and the general partner's compliance with its fiduciary duties to the limited partners. These proposals include new disclosure requirements and codify interpretive positions of existing disclosure requirements. The Commission invites suggestions on the appropriateness and necessity of the rules as proposed and also on whether there are actions that the Commission should take to assure that limited partners are provided full, fair and comprehensible disclosure sufficient to make an informed decision as to the merits of the roll-up transaction and the consistency of the transaction with the general partner's duties under state law.

II. Proposed Disclosure Requirements for Roll-up Transactions

A. Introduction

The proposed rules generally apply to roll-up transactions that are subject to registration under the Securities Act. The Commission is not proposing a new registration form or disclosure schedule for roll-up transactions. Instead, the applicable registration forms [8] would be amended to require roll-up transaction documents to include the information set forth in the new rules in addition to the information otherwise required. To the extent the disclosure requirements of the registration forms or disclosure schedules and the proposed rules address the same subject, the specific requirements applicable to roll-ups would control.

B. Definitions

1. "Roll-up Transaction"

"Roll-up transaction" [9] is defined broadly to include a variety of transactions involving the combination or reorganization of limited partnerships or similar entities and the issuance of new securities. While the definition does not include an "effects" test, these transactions usually change significantly the character of an investment in a limited partnership or similar entity, such as a real estate investment trust. The definition includes a "typical" roll-up transaction such as a merger of two or more finite-life limited partnerships into a new partnership, corporation or real estate investment trust in which limited partners will receive a new security in a successor entity that has different compensation arrangements with the general partner and different investment and/or distribution policies. These policy differences often include, for example, changing from a finite to an infinite-life entity, allowing proceeds to be reinvested in the partnership rather than distributing such proceeds to investors, or changing substantially the stated investment objectives of a partnership. The reorganization of a single partnership into corporate form also would constitute a roll-up transaction under the proposed definition since this restructuring, similar to a "typical" roll-up, involves the issuance of new securities having substantially different rights and investment risks as compared to the subject partnership.

Further, as proposed, compliance with the enhanced disclosure would be required whether or not objecting investors have the ability to "opt out" of the transaction either because the securities of either the entity subject to the transaction or the resultant entity are publicly traded or because such investors 'have dissenters' or appraisal rights to receive the fair value for their investment. Comment is requested on whether the definition should be narrowed to exclude transactions where:

(1) The subject limited partnership interests are listed on a national exchange or traded in the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ");

(2) The limited partner is entitled to dissenters' or appraisal rights, by law, under the terms of the partnership agreement, or the roll-up;

(3) The limited partner does not have an exchange or NASDAQ traded security and is not being offered an exchange or NASDAQ traded security;

(4) The successor issuer has substantially the same business plan, and investment and/or distribution policies and offers limited partners of the subject partnership a security with substantially the same rights as their current security; or

(5) The transaction relates solely to a single partnership reorganization.

Alternatively, comment is requested on the appropriateness of a limited exclusion from some but not all of the proposed disclosure requirements. Commenters favoring this approach should specifically identify which disclosure requirements would be within this limited exclusion and fully discuss the bases for their position.

Commenters also should address the appropriateness of broadening the proposed definition to include other types of transactions that involve one or more amendments to the partnership's governing instruments but not the issuance of a new security. These amendments may include (a) a change in voting rights to increase the percentage needed to approve a proposal, such as requiring 66⅔% vote to remove the general partner; and (b) a material change in the partnership's liquidation policy to permit the reinvestment of proceeds received from the sale or refinancing of assets rather than distributing such proceeds to limited partners.

2. Other Defined Terms

Other terms defined in the new rules include "general partner," [10]

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[1] See Securities Act Release No. 33-6900 (June 17, 1991).

[2] 17 CFR part 229.

[3] 17 CFR 239.25 and 17 CFR 239.34; 15 U.S.C. 77a *et seq.*

[4] See, e.g., Written Testimony of Richard G. Wollack, Chairman of Liquidity Fund Management, Inc. Before the Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs, United States Senate ("Senate Subcommittee") at 10 (February 27, 1991) and Written Testimony of Michael Joseph Connolly, Secretary of State, Commonwealth of Massachusetts. Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, United States House of Representatives ("House Subcommittee") at 1 (April 23, 1991).

[5] A National Association of Securities Dealers, Inc. ("NASD") rule proposal to prohibit payments to brokers and investment advisers for "yes" votes, was published for comment in Securities Exchange Act Release No. 29228 (May 23, 1991) 56 FR 24456 (May 30, 1991). The comment period ends June 14, 1991. Prior to adoption of the rule, prominent disclosure is required of such arrangements, as well as the potential conflicts of interest inherent in this fee structure.

[6] October 3, 1990, March 21, 1991 and April 23, 1991 Before the House Subcommittee; and February 27, 1991 Before the Senate Subcommittee. See also, What's Wrong With Roll-Ups?, Financial Planning, May 1990 at 46; Partnership 'Roll-Ups' Spark A Backlash, Wall Street Journal, October 3, 1990 at C1; How One Investor Lost Her Fight Against a Roll-Up, Barron's, February 4, 1991 at 58; When Limited Partnerships Get Lumped Together, Business Week, February 11, 1991 at 88; and, Partnership 'Rollups' Leave Some Investors Down, Washington Post, February 18, 1991 at F1.

[7] *See* Written Testimony of Richard G. Wollack, Chairman of Liquidity Fund, Inc., Before the House Subcommittee at Appendix E (October 3, 1990); Written Testimony of Cesar M. Froelich, Shefsky & Froelich, Before the House Subcommittee at 10-11 (October 3, 1990); Written Testimony of Christopher L. Davis, President, Investment Partnership Association Before the House Subcommittee at 5-6 (October 3, 1990); and Written Testimony of John Freeman Blake, Chairman, American Association of Limited Partners, Before the House Subcommittee at 18-20 (March 21, 1991).

[8] Forms S-4 and F-4.

[9] Proposed Item 901(c).

[10] Proposed Item 901(a).

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"sponsor," [11] "partnership" [12] and "successor." [13] These definitions are designed to simplify the text of the disclosure items while requiring information about all relevant parties. For example, the term "sponsor" would refer to the person proposing a roll-up transaction whereas "general partner" refers to the person responsible under state law for managing the business and affairs of a limited partnership subject to the transaction. While the sponsor and general partner may be the same person in affiliated roll-up transactions, this would not be the case in third-party transactions.

The roll-up transaction rules would apply to the specified transactions if any of the entities proposed to be rolled-up is a "partnership" as defined in the rules. Roll-up transactions generally have involved entities formed for specific limited purposes that under federal tax laws are not taxed at the entity level and pass through income or loss to their investors. Because these attributes, especially the entity's federal income tax status, are not solely dependent on its legal form under state law, the proposed definition of "partnership" is intentionally broad. As proposed, the term would include any partnership, trust, real estate investment trust ("REIT"), [14] or any other similar entity that is not an association taxed as a corporation under federal tax law. [15] Commenters are specifically requested to address whether the definition covers all entities, regardless of their legal form, having attributes similar to a limited partnership that should be subject to the enhanced roll-up disclosure requirements. Comment also is requested as to whether certain entities encompassed within the definition should be excluded; if so, the basis for such view should be provided.

The proposed rules define "successor" to mean the partnership, corporation, real estate investment trust or other entity that exists after completion of a roll-up transaction. Under this definition, the successor would be the issuer of the securities being offered to investors in the roll-up transaction.

[11] Proposed Item 901(d).

[12] Proposed Item 901(b).

[13] Proposed Item 901(e).

[14] The term "real estate investment trust" is defined in I.R.C. section 856.

[15] For example, in a combination of REITs to form a new corporation, the REITs would be deemed to be "partnerships" (whether in corporate, partnership or trust form) and subject to the heightened roll-up disclosure requirements.

C. Proposed Additional Disclosure Requirements

1. General

The proposed disclosure for roll-up transactions will be in addition to that currently required under the Commission's existing rules and regulations. Issuers engaged in a roll-up transaction must comply with the proposed disclosure items discussed below as well as the instructions and disclosure items set forth in the business combination registration forms.

In many instances, the disclosure required under the proposed rules also would be required under existing rules. The proposed rules are intended to codify existing interpretations and make clear the specific information that must be provided in a roll-up transaction to assure that investors are able to understand the disclosure document and evaluate the merits of the transaction.

The proposed disclosure items do not change the existing rules regarding the circumstances under which information about the issuer and subject partnership may be incorporated by reference into the registration statement. Therefore, for example, if the subject partnership is a real estate entity, property information may continue to be incorporated by reference to the extent permitted by the applicable registration form. [16]

2. Individual Partnership Supplements

In most roll-up transactions, two or more partnerships will be combined to form a new partnership, corporation, real estate investment trust or other entity. Depending upon the circumstances of each partnership, the roll-up transaction may have significantly different effects on investors in the partnerships. [17] However, investors may not fully appreciate the important differences when the effects of the roll-up transaction are described for all partnerships together in one disclosure document.

To address these concerns and facilitate an investor's ability to judge the merits of a roll-up transaction, the disclosure documents consist of two parts. The basic disclosure document continues to contain a detailed discussion of all information material to the roll-up transaction. The proposed rules require a separate disclosure supplement for each partnership. [18] The supplement does not serve as a summary of the roll-up transaction for investors in the partnership but, rather, highlights the most significant effects of the roll-up to investors in each partnership. The proposed supplement also is not a substitute for clear disclosure in the basic disclosure document of differing effects on particular partnerships otherwise required under the existing and proposed rules. [19] Under the proposal, the investor would receive the basic disclosure document, plus the supplement applicable to his specific partnership. The investor would not receive the supplements prepared with respect to other partnerships.

The supplement describes any material risks, adverse effects or benefits of the roll-up transaction that may affect investors in the partnership differently from investors in other partnerships. [20] The supplement also would be required to include a discussion of whether the sponsor reasonably believes the roll-up transaction is fair or unfair to investors in the particular partnership. [21] In order

[16] See General Instruction C.2. to Form S-4 and F-4.

[17] Examples of roll-up transactions that would have different effects on investors include: (i) Combining partnerships that do not use debt to purchase assets with partnerships that do use debt; (ii) combining partnerships that invest in different types of assets (*e.g.*, commercial office buildings and residential apartment buildings); (iii) combining partnerships that hold significant cash or other liquid assets with partnerships that have little or no liquid assets; (iv) combining partnerships that are making cash distributions to limited partners with partnerships that are not making distributions; and (v) combining partnerships that are classified as "publicly traded partnerships" under 7704 of the Internal Revenue Code with partnerships that are not so classified.

[18] Proposed Item 902.

[19] See proposed Item 904.

[20] Proposed Item 904, "Effects of the Roll-Up Transaction," requires the principal disclosure document to include a discussion of the effects of the roll-up transaction on investors in each partnership, including the potential risks, adverse effects and benefits of the roll-up transaction. See section II.C.4. *infra* for a discussion of the disclosure required by proposed Item 904. The supplement required by Item 902 would highlight those effects discussed in response to Item 904 that may be different for investors in the partnership covered by the supplement.

[21] Proposed Item 909 requires the principal disclosure document to include a discussion of the sponsor's views concerning the fairness or unfairness of the roll-up transaction for investors in each partnership. See section II.C.8. *infra* for a discussion of the disclosure required by proposed Item 909. Proposed Item 902 requires the supplement to include a statement of the sponsor's reasonable belief as to the fairness of the roll-up transaction for investors in the particular partnership and a discussion of any material differences in the overall fairness analysis applicable to the partnership. The supplement would refer investors to the appropriate section in the principal disclosure document for the complete Item 909 discussion.

to illustrate the financial statement effects of the roll-up transaction on the particular partnership, the supplement includes pro forma financial statements based upon a combination of partnerships that produces the lowest amount of cash flow from operations, [22] further adjusted to include the partnership. [23] These pro forma financial statements would be accompanied by a brief discussion of the material changes to such statements caused by the inclusion of the partnership therein.

In addition, when two or more partnerships are to be combined, interests in the successor typically are allocated among investors in the various partnerships according to a dollar value assigned to each partnership. While the basic disclosure document explains the method of allocating the interests and shows the value assigned to each partnership, the level of detail that would be necessary in a combined presentation to enable investors in each individual partnership to thoroughly understand and evaluate the methods used to value their partnership, would further complicate an already unwieldy document. Therefore, the value assigned to the partnership for purposes of allocating interests in the successor is explained narratively in the supplement and illustrated in a table showing each principal component of the calculation of the partnership's value.

The Commission requests comment on whether other information should be required to be included in the supplement, such as financial statements of the partnership or additional information concerning the business of the partnership. The Commission also requests comment on whether it may be appropriate in some cases to permit more than one partnership to be included in a supplement, such as when the effects of a roll-up transaction would be substantially the same for groups of partnerships proposed to be included. Finally, the Commission proposes that the supplement be provided as an attachment to the disclosure document only to investors in the partnership covered by the particular supplement.

[22] Proposed Item 915, "Pro Forma Financial Statements; Selected Financial Data," requires pro forma financial statements (before adjustments to include the partnership covered by the supplement) to be included in the principal disclosure document. See section II.C.10. *infra* for a discussion of the information required by proposed Item 915.

[23] This requirement would apply only if (i) the roll-up transaction may be completed with a combination of partnerships other than all partnerships proposed to be included and (ii) the partnership covered by the supplement is not already included in the pro forma financial statements required by proposed Item 915. However, the Commission requests comment on whether each supplement should be provided to investors in all partnerships proposed to be included in the roll-up transaction so that investors may compare the effects of the transaction on the various partnerships.

3. Summary

In response to concerns raised about the readability of roll-up transaction disclosure documents, the proposed rules include a specific requirement to provide a clear, concise and comprehensible summary of the roll-up transaction. Although such a summary currently is required under the existing rules, [24] the new rules are intended to improve the summary disclosure provided to investors by requiring specific items to be addressed in the summary. In general, the summary must present a "snapshot" description of the most significant aspects of a roll-up transaction. Under the proposed rules, [25] the summary must contain a summary description of the material terms of the roll-up transaction. The summary also must describe each of the following items and the effects thereof arising in connection with the roll-up transaction, as well as any other material terms or consequences of the roll-up transaction:

- Changes in limited partner voting rights;
- Changes in the successor's business plans or investment policies;
- Changes in management compensation;
- Changes in the form of ownership interest of management in the successor;
- Conflicts of interest of the general partner;
- Likely trading market discount of securities to be received in the roll-up transaction;
- Valuation methods used to allocate securities in the successor to investors in the partnerships;
- The general partner's beliefs concerning whether the transaction is fair or unfair to investors in each partnership;
- Any "fairness" opinion concerning the roll-up transaction, including whether the opinion covers all possible combinations of partnerships, and whether any firm declined to provide a "fairness" opinion;
- Alternatives to the roll-up transaction considered by the general partner, as well as the alternatives to continue or liquidate the partnerships whether or not considered by the general partner;
- Investors' rights to exercise dissenters' or appraisal rights;
- Investors' rights to obtain a list of limited partners; and
- If affiliates of the general partner or the sponsor may participate in the successor's business or receive compensation from the successor, an organizational chart showing the relationships between such persons.

[24] See rule 421(b) of Regulation C (17 CFR 230.421(b)) and Item 503(a) of Regulation S-K (17 CFR 229.503(a)).

[25] Proposed Item 903.

Comment is requested as to whether other information in addition to or in lieu of that required by the proposed rule should be included in the summary. Commenters should specifically describe any suggested additional disclosure requirements and/or any items believed unnecessary, as well as the reasons therefor.

4. Effects of the Roll-up Transaction

a. *General requirements.* Because roll-up transactions typically involve important risks and adverse effects for investors and benefits for sponsors, the disclosure document must contain a clear description of the effects of the transaction. Although under the current disclosure rules roll-up transaction disclosure documents include a description of the effects of the transaction, concerns have been raised about the adequacy of such disclosure. In order to clarify and make more specific the disclosure requirements in this area, the proposed rules include specific disclosure requirements concerning the effects of the roll-up transaction. [26]

The proposed rules would require both a brief description of each material effect of the roll-up transaction on investors in each partnership, including, without limitation, the potential risks, adverse effects and benefits of the transaction, and a complete description of each material change affected by the transaction. These changes include such matters as the compensation and cash distribution arrangements, limited partner voting rights and fiduciary duties of the general partner. If any effect would be different for investors in any of the partnerships, such differences would be discussed. As more fully discussed below, specific effects that must be described are included in the proposed rules. The proposed rules would require each effect to be quantified to the extent possible. For example, under the proposed rules, if cost savings resulting from combined partnership administration is described as a potential benefit of the roll-up transaction, the disclosure would include the amount of the cost savings and a comparison of the amount to the costs of the roll-up transaction. The proposed rules also require a description of each potential benefit for the sponsor arising from the roll-up transaction.

b. *Changes in general partner compensation and distribution*

[26] Proposed Item 904.

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arrangements. A principal concern raised by commenters about roll-up transactions is a lack of adequate disclosure concerning the compensation to be paid to the sponsor and its affiliates after the roll-up transaction. Commenters are concerned that investors are unable to understand the nature of the compensation to be paid, the conflicts of interest presented by the compensation and the changes in the compensation brought about by the roll-up transaction. The proposed rules would address this concern by requiring specific information about the compensation payable to the sponsor (or others) after the roll-up transaction and a comparison of the compensation to that paid before the transaction.[27]

The proposed rules first would require a description of each item of compensation (including reimbursement of expenses and cash distributions) payable by the successor after the roll-up transaction to the sponsor and its affiliates or to any other person that will be an affiliate of the successor.[28] Also, the material conflicts of interest presented by the proposed compensation and cash distribution structure, and the steps proposed by the sponsor to resolve such conflicts would be identified by the sponsor.[29]

Second, a comparison of the compensation paid by each partnership before the roll-up transaction and proposed to be paid by the successor after the roll-up transaction would be required. The narrative discussion would be illustrated in a table that shows the actual amounts of compensation paid to the sponsor or its affiliates by the partnerships for the last three fiscal years and the amounts that would have been paid if the new compensation structure had been in effect.[30] If any proposed changes in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid from that shown in the table, any such changes and the effects thereof would be described.

The Commission proposes that the comparative compensation table be presented in the principal disclosure document on a combined basis for all partnerships proposed to be included. Individual partnership comparative compensation information would be included in the separate partnership supplements. However, comment is requested concerning whether other comparative compensation information should be required such as information for different combinations of partnerships.

c. *Changes in voting and other rights of and duties owed to investors.* Roll-up transactions often involve important changes in the rights of investors and the duties owed by the sponsor to investors. For example, in many roll-up transactions, the governing instruments of the successor require a greater vote to remove the sponsor than would be required under the partnership agreements of the partnerships to be included in the roll-up transaction. Commenters have expressed concerns that the disclosure contained in roll-up transaction documents does not adequately inform investors about these important changes.

In response to these concerns, the proposed rules specifically require a description of each material difference between the rights of investors and the duties owed to investors before and after the roll-up transaction. The comparison would discuss the provisions of the relevant governing instruments and applicable state law.[31] To the extent practicable, this information should be illustrated in a table.

d. *Changes in investment policies and business plan.* Critics have complained that the effects of changes in significant investment policies, such as permitting the reinvestment of proceeds received from asset sales or refinancings or permitting leverage, are not adequately described in roll-up disclosure documents. The new rules address this concern by requiring a description of each material change in the investment policies and business plans of the successor and the effects on investors of such changes.[32]

In many roll-up transactions, the sponsors state that in the future the successor may sell assets owned by the partnerships and purchase new assets with the proceeds. Such asset sales and purchases often are identified as a potential benefit of the roll-up transaction because they may result in growth of the assets of the partnership. However, disclosure documents for roll-up transactions frequently do not provide specific disclosure about such proposed sales and purchases.

Under the proposed rules, specific disclosure would be required about the plans of the sponsor (or other person that will control the successor) with respect to material asset sales or purchases, borrowings or other extraordinary transactions involving the assets and/or liabilities of the partnerships or the successor.[33] The proposed rules would require a statement as to whether or not specific assets have been identified for sale, financing, refinancing or purchase and, if so, a description of the proposed transaction.[34]

e. *Changes in limited partner cash distribution policies.* In order to enhance an investor's understanding of the effects of a roll-up, the proposed rules require a description of the cash distribution policies of the successor and a comparison of such policies to those of the partnerships to be rolled-up This description would cover cash distributions from operations and from capital transactions, such as sales or refinancings of properties.[35]

f. *Trading market discount of securities.* A principal concern raised by investors relates to the significant discount at which securities received in roll-up transactions trade in the secondary markets. The proposed rules would require the disclosure document to make clear the likelihood of such a discount. In addition, the effects on investors of this trading discount in relation to changes in the successor's cash distribution policies would be highlighted.[36] Comment is requested on whether disclosure of historical trading prices of securities issued in other roll-up transactions would provide helpful information or whether such information likely would confuse or mislead investors.

5. Background, Reasons and Alternatives

a. *Background of the partnerships.* In roll-up transactions that involve bringing together two or more partnerships, investors may have no previous knowledge of the other partnerships that are proposed to be joined with their partnership. In order to provide investors with a more complete understanding of the partnerships that might be included in the roll-up

[27] Proposed Item 904(c).

[28] Proposed Item 904(c). Compensation payable by the successor to a previously unaffiliated general partner would be included in the disclosure required by this proposed Item.

[29] Proposed Item 904(c). For example, if the sponsor would receive compensation from an asset sale only if made before a specified date, the sponsor's interest in selling the asset at a time that may not be in the best interests of the investors would be described.

[30] Proposed Item 904(c).

[31] Proposed Item 904(b).

[32] Proposed Item 904(e).

[33] Proposed Item 904(e). The disclosure required by this proposed Item is comparable to that required by Item 5 of Schedule 13E-3 (17 CFR 240.13e-100).

[34] Proposed Item 904(e).

[35] Proposed Item 904(d).

[36] Proposed Item 904(f).

transaction, the proposed rules require a brief description of the background of each of the partnerships.[37] For example, the disclosure document would provide information about the partnerships' original investment objective(s), the amount of capital raised from investors and whether all funds raised had been invested as originally planned. Further, the document would state for each partnership whether the partnership has achieved its original investment objective(s). Finally, disclosure regarding defaults on mortgage debt and property foreclosures would be required.

b. *Background of, reasons for and alternatives to the transaction.* Roll-up transactions may include significant benefits for the general partner or sponsor. Concerns have been raised that the disclosure provided may not enable investors to assess the reasons for the roll-up transaction or alternatives considered by the sponsor or available to investors. The proposed rules require more detailed disclosure of this background information.

First, the proposed rules require information about any discussions that the sponsor has had in the past two years with any other persons about an extraordinary transaction involving the partnerships.[38] This disclosure should assist investors in evaluating whether other opportunities that might have been beneficial to investors had been presented to the general partner or may otherwise be available. Comment is requested on whether the two year period should be longer, such as five years or shorter, such as one year.

Second, the proposed rules require the sponsor to explain its reasons for proposing the roll-up transaction generally, and, specifically, its reasons for choosing the particular structure of the transaction and the successor.[39] Under this disclosure item, information would be provided, for example, about why the transaction is structured as an exchange offer, merger or other transaction; why the successor is structured as a partnership, corporation or other entity; or why a holding company structure is used.[40] Disclosure of this type of information is intended to provide investors with a basis upon which to evaluate the sponsor's reasons for proposing and structuring the roll-up transaction. If the roll-up transaction is proposed by someone other than the general partner or its affiliates, the proposed rules require the general partner to state whether it recommends the transaction and its reasons therefor.[41] In this situation, the disclosure concerning the reasons for the structure of the transaction and the successor would be provided by the sponsor proposing the roll-up transaction.

Third, under the proposed rules, each alternative to the roll-up transaction would be described.[42] This disclosure would include a description of each alternative considered by the general partner and liquidation or continuation of the partnership even if not considered by the general partner. The general partner would be required to state why it rejected each alternative considered by it. If no consideration was given to liquidation or continuation of the partnership, the general partner would be required to explain why it did not consider those alternatives.

6. Fairness of the Roll-up Transaction

As previously discussed, a roll-up transaction often provides significant benefits to a general partner and/or sponsor. Since a general partner typically negotiates the transaction on behalf of itself as well as the limited partners, roll-ups give rise to serious conflicts between the interests of the general partner and those of investors. Investors in turn may find it difficult to evaluate whether the general partner has reasonably considered their interests. This difficulty may be more pronounced in multiple partnership roll-up transactions because the transaction may have different effects on investors in different partnerships or may be completed with many different combinations of partnerships.[43]

As more fully described below, the proposed rules address these concerns by requiring (i) a complete description of each potential conflict of interest presented by the roll-up transaction, (ii) a statement by the general partner as to whether or not it reasonably believes the roll-up transaction is fair or unfair to investors in each partnership, specifically addressing each possible combination of partnerships, and (iii) a discussion of the bases for the sponsor's beliefs, including a comparison of the roll-up transaction to alternatives.[44]

a. *Conflicts of interest.* With respect to conflicts of interest, the proposed rules require a description of the terms of the transaction that present a potential for a material conflict between the general partner's interests and the interests of investors.[45] Under this proposed rule, the disclosure would specifically describe the terms of the transaction that present the potential conflict and nature of the conflict.[46] Additionally, the disclosure document must include a description of the general partner's fiduciary duties and a statement as to whether the general partner reasonably believes it has satisfied such duties.

Second, the proposed rules require the general partner to state whether or not a representative has been retained to represent the investors in the negotiations of the roll-up transaction.[47] If no such representative has been engaged, a description of the reasons for not engaging such a representative and the risks to investors arising from such lack of representation would be called for. If a representative has been retained, the proposed rules require specific information about the representative's qualifications, the terms of its engagement, its experience in transactions similar to the roll-up transaction and its past dealings with the general partner, sponsor or their affiliates.[48] Finally, the proposed rules require the actions taken by the representative on behalf of investors in each of the partnerships to be described. Comment is requested on the adequacy of the proposed requirement to fully inform investors as to the potential

[37] Proposed Item 908 (b) and (c).

[38] Proposed Item 908(a). The disclosure required by this proposed Item would be comparable to that required by Item 3(a)(2) of Schedule 13E-3.

[39] Proposed Item 907.

[40] For example, if the sponsor considered the level of control granted to the general partner of a limited partnership under state law in deciding to structure the successor as a limited partnership, that should be noted in response to proposed Item 907.

[41] Proposed Item 907(a).

[42] Proposed Item 907 (b)(2) and (b)(3).

[43] Moreover, even though "fairness" opinions often are obtained from investment bankers in roll-up transactions, such opinions may not cover all possible combinations of partnerships. See section II.C.7. *infra* for a discussion of the disclosure required by proposed Item 910.

[44] Proposed Item 909.

[45] Proposed Item 908.

[46] For example, if the general partner will receive a cash payment as a result of the roll-up transaction that it would not receive without the roll-up transaction, the disclosure would identify the amount of the payment and indicate that the general partner has an interest in proposing the roll-up transaction because it will receive the cash payment only if the roll-up transaction is completed.

[47] Proposed Item 908(b)(1).

[48] The information required by proposed Item 908(b)(2) would be comparable to that required about third parties providing reports, opinions and appraisals under Item 9(b) (1)–(4) of Schedule 13E-3. However, the proposed Item requires specific additional information, such as: (i) A brief description of any other transaction similar to the roll-up transaction in which the representative has served in a similar capacity within the past five years; (ii) a statement as to whether or not investors were consulted in the selection of the representative; and (iii) a description of the terms of the engagement of the representative, including, but not limited to, who will be responsible for paying its fees and whether the fees are contingent upon the outcome of the roll-up transaction.

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conflicts of interest. Commenters also should address whether there are additional or different requirements that should be included.

b. *Fairness.* The proposed rules require the general partner to state whether or not it reasonably believes the roll-up transaction is fair or unfair to investors in each partnership.[49] This requirement parallels the disclosure required by those engaging in going private transactions subject to Rule 13e–3. If the roll-up transaction may be completed with different combinations of partnerships, this statement would address the fairness or unfairness of the various possible combinations.

Second, the general partner would be required to discuss the weight given to specific terms of the roll-up transaction listed in the proposed rules as well as any other material terms of the transaction.[50] The specific terms required to be discussed would include: (i) The form and amount of consideration to be received by investors and the sponsor in the roll-up transaction, (ii) the methods used to determine such consideration, and (iii) the compensation to be paid to the sponsor in the future.

Third, the general partner would be required to discuss the weight given in its determination to each alternative considered by it.[51] This proposed rule also specifically requires a comparison of the consideration to be received by investors in the roll-up transaction to the consideration that would be received by investors in each partnership as a result of a liquidation of the partnership. In addition, the proposed rule requires the general partner to discuss the weight given to continuing the partnership in its present form.

The comparisons required by the proposed rules may involve significant uncertainties with respect to both the value assigned to the consideration to be received in the roll-up transaction and the value that might be obtained pursuant to the various alternatives. Accordingly, the proposed rules require a discussion of any material uncertainties involved in the values used in the comparisons.[52] For example, if the securities received in the roll-up transaction may trade at a price substantially below the value assigned in the transaction, the disclosure would note this and indicate what value the general partner has assigned to the securities for purposes of the comparison.[53] Similarly, if the general partner based the possible liquidation value upon values assigned to the assets of the partnerships by appraisers, and the general partner believes that in a liquidation the assets would sell for substantially less than the appraised values, this should be disclosed.

The Commission is proposing the requirement to compare the consideration to be received in the roll-up transaction to the consideration that might be received pursuant to alternatives (particularly liquidation) in response to specific concerns raised by commenters. The Commission specifically requests comment as to whether such comparisons would provide helpful disclosure and whether any additional standards should govern such comparisons.[54] Commenters also should address whether a comparison of the exchange value, liquidation value and trading price may prove misleading or confusing. Comment also is requested on alternative valuation disclosure that should be required.

Fourth, under the proposed rules, the general partner would be required to state whether its beliefs as to the fairness of the roll-up transaction are based, in whole or in part, on any report, opinion or appraisal obtained from a third party.[55] If the general partner has relied on any of those documents, the proposed rules would call for a description of any material uncertainties known to the general partner which has affected or is reasonably likely to affect the conclusions in such reports, opinions or appraisals. For example, in a multiple partnership roll-up transaction, a "fairness" opinion obtained from an investment banker may not address the fairness of all possible combinations of partnerships or the fairness to investors in each partnership. If a general partner's beliefs as to fairness are based upon such an opinion, the disclosure under the proposed rules would specifically note those material items not addressed in the fairness opinion. Similarly, if appraisals of assets are relied on and the general partner is aware that the bases for the appraisals have changed materially subsequent to the date of the appraisals, the general partner would be required to describe such changes and their possible effects on the conclusions of the appraisers.[56]

7. Reports, Opinions and Appraisals

Under the current rules, information concerning reports, opinions and appraisals obtained from outside parties that are materially related to the roll-up transaction is not specifically required to be included in the disclosure document (except in certain "going private transactions")[57] unless the report, opinion or appraisal otherwise is referred to in the disclosure document.[58] If the disclosure document refers to such a report, opinion or appraisal, then specific information must be provided.[59]

In light of the concerns raised about a general partner's conflicts of interest and the valuation methods used in roll-up transactions, the proposed rules require the disclosure document for a roll-up transaction to identify each report, opinion or appraisal obtained from an outside party that is materially related to the transaction.[60] Such reports, opinions and appraisals would include those relied upon by the sponsor or others in the roll-up transaction, as well as any other material reports, opinions or appraisals not relied upon, such as reports prepared by investment bankers concerning alternatives to the roll-up transaction that were not pursued by the sponsor.

The proposed rules require specific information about the reports, opinions or appraisals. Such information generally would include that currently required for all reports, opinions or appraisals referenced in a disclosure document,[61] as well as specific additional information.

[49] Proposed Item 909 (a) and (b)(2).
[50] Instructions 3 and 4 to Proposed Item 909.
[51] Proposed Item 909(b)(1).
[52] Proposed Item 909(b).

[53] If the sponsor believes that the securities will trade at a substantial discount, the sponsor should consider whether it reasonably should use the value assigned to the securities in the roll-up transaction for purposes of comparing such value to the value that might be obtained from alternatives, or instead should use the expected discounted value of the securities for the comparison. If in that situation the sponsor does not use a discounted value, the effect of the likely discount on the comparison should be disclosed.

[54] As proposed, Item 909 does not mandate specific valuation methods. For example, liquidation value may be determined in any manner selected by the sponsor provided the method and any material uncertainties concerning the method are clearly explained.

[55] Proposed Item 909(e). All reports, opinion or appraisals obtained in connection with the roll-up transaction would be described in accordance with the disclosure requirements of proposed Item 910. See section II.C.7. *infra* for a discussion of the disclosures required by proposed Item 910.

[56] For example, in a real estate transaction, if market conditions in a relevant real estate market have changed since the date of the real estate appraisals in a manner that may affect the value of a property, proposed Item 909(e) would require disclosure of such changes and their possible effect on the appraised value of the relevant properties.

[57] See Item 9 of Schedule 13E–3.

[58] See Item 4(b) of Form S–4.

[59] *Id.*

[60] Proposed Item 910(a).

[61] Item 4(b) of Form S–4 requires registrants to furnish the information required by Item 9(b) (1) through (6) of Schedule 13E–3 with respect to all reports, opinions or appraisals referred to in the prospectus. Such information generally consists of: (i) The identity and qualifications of the outside

Continued

For fairness opinions, specific information would be required[62] as to whether or not the opinion addresses: (i) The fairness to investors in each partnership, and (ii) the fairness of each possible combination of partnerships. If all combinations of partnerships are not addressed in the fairness opinion, the proposed rules would require a list of all combinations that are not covered by the opinion. In addition, in that situation, the disclosure document would identify the person that determined which combinations would be considered and include a description of that person's reasons for the selection of combinations. When all combinations of partnerships are not covered by the fairness opinion, the proposed rules require a clear statement in the disclosure document to alert investors that if the roll-up transaction is completed with a combination of partnerships not covered by the opinion, no fairness opinion will apply to the roll-up transaction.

In order to assist investors in considering any fairness opinion obtained in the roll-up transaction, the proposed rules also require the sponsor or the general partner to describe any contacts with investment banks or financial advisers who declined to provide an opinion concerning the fairness of the roll-up transaction.[63] Such disclosure would include the identity of the firm, the actions taken by it, its conclusions and its reasons for not providing an opinion. Comment is requested on whether an exception to this disclosure requirement should be provided for such matters as preliminary contacts in connection with retaining a firm to provide a fairness opinion and, if so, the standards that would govern such an exception.

For appraisals of assets, the proposed rules[64] would require the following specific information:

- A description of the valuation approaches considered and used by the appraiser, and the reasons the particular valuation approaches were used;
- A tabular presentation of the value of each separately appraised asset under each valuation approach considered by the appraiser, identifying the appraised value assigned by the appraiser;
- An identification of all material assumptions used by the appraiser. If different assumptions were used for different assets, the differences would be identified and the reasons therefor described;
- The date as of which the appraisals were prepared, and a statement as to whether or not the appraisals will be updated in the event that there are material changes in the conditions upon which the appraisals were based or if the roll-up transaction is not completed a specified period of time; and
- If the appraisals will not be updated, a description of any events that have occurred or conditions that have changed that the sponsor reasonably believes may have caused a material change in the value of any of the assets since the date of the appraisals.

These proposed specific information requirements for appraisals are intended to provide investors all relevant information for purposes of evaluating the methods used and the conclusions reached by the appraisers. The Commission requests comment as to whether these or other specific information requirements would elicit useful information for investors.

Under the proposed rules, "summaries" of appraisals prepared by the appraisers would not be included in the disclosure document provided to investors.[65] Instead, the information required by the proposed rules is intended to include all relevant information ordinarily included in such summaries. Both the "summaries" and the complete appraisals would be filed as an exhibit with the Commission.

Finally, for all reports, opinions or appraisals described under the proposed rules, the general partner would be required to state in the disclosure document that upon request the general partner will promptly transmit the report, opinion or appraisal to a limited partner or his representative.[66] As proposed, these documents would be made available without charge to the investors. All such reports, opinions and appraisals used in a roll-up transaction registered under the Securities Act would be filed with the Commission as an exhibit.

8. Federal Income Tax Consequences

Roll-up transactions usually involve important federal income tax consequences for investors. The tax consequences arise both in connection with the roll-up transaction itself and in an ongoing investment in the successor. Moreover, in multiple partnership roll-up transactions, the tax consequences may be different for investors in the different partnerships. However, disclosure documents for roll-up transactions often include long, complex discussions of the potential tax consequences that may not be understandable for investors. Such discussions often consist of a repetition of the entire legal opinion provided by tax counsel.

In order to provide more useful disclosure for investors, the proposed rules would require a clear and concise summary description of each material federal income tax consequence of (i) the roll-up transaction for investors in each partnership and (ii) an investment in the successor.[67] If investors in any of the partnerships are expected to have materially different tax consequences, the differences would be noted briefly, and the investor would be referred to the individual partnership supplement for a complete description of the differences. To the extent that investors in one or more of the partnerships are expected to incur federal income tax liabilities as a result of the roll-up transaction, the amount of the expected liabilities for investors in each partnership would be set forth in a table.

Inclusion of the "long-form" tax opinion in the disclosure document would not be responsive to these disclosure requirements. Under the proposed approach, the roll-up document would include only a clear, concise and understandable description of the material federal income tax consequences. The "long-form" tax opinion would be filed as an exhibit to the registration statement and made available to investors upon request or included as an appendix to the prospectus. Comment is requested on whether there are alternative approaches that would provide investors with understandable tax disclosure.

9. Summary Information Concerning Partnership Properties

Partnerships involved in roll-up transactions ordinarily own one or more

party; (ii) the method of selection of the outside party; (iii) past or proposed relationships between the outside party and the sponsor and its affiliates; (iv) if the opinion relates to the fairness of the consideration, whether the issuer or affiliate determined the amount of the consideration, or whether the outside party recommended such amount; and (v) a summary of the report, opinion or appraisal including the procedures followed, the findings and recommendations, instructions received from the issuer or affiliate and any limitations imposed by the issuer or affiliate on the scope of the investigation.

[62] Proposed Item 910(b)(1).
[63] Proposed Item 910(a).
[64] Proposed Item 915(b)(2).

[65] See Instruction 3 to proposed Item 910. In roll-up transactions, "summaries" of the appraisals, which are prepared by the appraisers, often are included as an appendix to the disclosure document provided to investors. However, the summaries may not provide the sort of information about the appraisals (in a manner understandable for investors) that is helpful to an evaluation of the appraisals. The elimination of the "summaries" of the appraisals from the disclosure documents may reduce significantly the length of such documents.

[66] Proposed Item 910(d).

[67] Proposed Item 916. As stated in the Interpretive Release, if there are material federal income tax consequences with respect to which counsel is unable to opine, each such consequence must be prominently disclosed.

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specific properties that comprise the material business of such partnerships. Under the current rules, disclosure documents for roll-up transactions are required to include specific detailed information concerning the properties owned by each of the partnerships.[69] In order to provide a more readable presentation of property information in roll-up transactions, the proposed rules require specific summary information concerning the properties and other assets owned by each partnership.[69] This information would be in addition to that otherwise required to be included or incorporated by reference in the registration statement.

The proposed item includes specific information requirements concerning properties owned by partnerships engaged in real estate or oil and gas operations. For example, for real estate partnerships, summary descriptions of each partnership's properties would include occupancy, lease and mortgage financing information. The summary information required for oil and gas partnerships would include such matters as a description of each property and the nature of the partnership's interest, productive wells expressed separately for oil and gas, and production history of the properties, including average sales prices and average production costs. For partnerships engaged in other businesses, information comparable to that proposed to be required for real estate or oil and gas partnerships would be required. Comment is requested concerning whether the summary information proposed to be required would be useful to investors in evaluating the properties owned by the partnerships subject to a roll-up. Commenters favoring other or additional summary information requirements should specifically describe the information that should be included.

10. Financial Information

Investors considering a roll-up transaction may have little, if any, information about other partnerships participating in the transaction. The proposed rules require that specified financial information, including financial statements of the successor, summary financial information for each partnership participating in the transaction, and pro forma financial information be provided to investors.[70]

Under existing requirements, the disclosure document must contain audited financial statements prepared in accordance with Regulation S-X.[71] The proposals do not change this requirement.

In addition to the usual selected financial data [72] for each partnership participating in the transaction, the proposed rule specifies other financial information that must be provided for each partnership. This information includes, among other items, net increase or decrease in cash and cash equivalents, net cash provided by operating activities, cash distributions; and per unit data for net income, book value, appraised value and distributions. Comment is requested on the specific disclosure items and whether there are additional items which should be required to be disclosed.

In addition to historical financial information, the rule sets forth two new pro forma financial information requirements. First, information would be provided under at least two different sets of assumptions: (i) Participation in the roll-up by all partnerships and (ii) participation in the roll-up by those partnerships that on a combined basis have the lowest combined net cash provided by operating activities [73] (called "worst case participation"). Second, a pro forma statement of cash flows would be required. After a roll-up, the value of the successor's securities is based on the trading market for securities of entities operating in the same industry. This value generally is based on a multiple of operating cash flow and a factor for the market's expectations of the likelihood of the continuation of that cash flow. Comment is requested on whether the proposed pro forma financial statements would provide useful information to investors in evaluating roll-ups.

11. Other Information

In addition to the proposed disclosure requirements discussed above, the proposed rules also would require more detailed disclosure regarding the expenses of the roll-up, including identifying the persons responsible for paying the expenses.[74] If the expenses are to be allocated among the partnerships subject to the transaction, additional disclosure about the allocation method will be required.

Disclosure regarding the sources and dollar amount of funds to finance the transaction will be required.[75] If the partnerships subject to the transaction will finance the roll-up, either with available cash, asset sales or mortgaging of assets, detailed disclosure will be required to fully inform investors of this fact.

III. Proposed Establishment of a Minimum Roll-Up Solicitation or Tender Offer Period

Questions have been raised as to whether the Commission's rules operate to deny limited partners sufficient time to fully consider the information provided in roll-up disclosure documents. A bill has been introduced in the U.S. House of Representatives that would fix a 60-day minimum period for roll-up related proxy and tender offer solicitations.[76] Congressional sponsors and other advocates of this initiative contend that general partners or their affiliates often file non-public preliminary proxy materials with the Commission before announcing to investors that a roll-up is contemplated. Investors complain that, once they do receive the frequently voluminous roll-up documents following staff review,[77] they have little or no opportunity to read and arrive at an understanding of the complex disclosure contained therein.[78]

In light of the importance of Congressional and investor concerns, the Commission is proposing to require that roll-up disclosure documents be distributed to investors at least 60 calendar days in advance of a meeting, or the earliest date of partnership action by consent.[79] If, under applicable state law, the maximum period permitted for giving notice is less than 60 calendar days, the state law maximum notice period would apply. A 60-calendar day offering period also is proposed with respect to a roll-up transaction structured as an exchange offer and subject to the tender offer regulatory provisions.

Whether or not investors have sufficient notice of an impending roll-up currently is a function of overlapping federal and state regulation of the solicitation process, with timing requirements dictated in the first instance by the states and, in some cases, by the markets. Roll-up proxy material generally is mailed to securityholders at least 20 days before the vote in accordance with the partnership agreement and any applicable state law governing notice of the meeting to which the proxy material relates.[80] Minimum time periods thus established vary, depending on the type of meeting called and the manner in which the proxy materials are transmitted.

Federal securities law also affects the length of the roll-up solicitation period. Under some circumstances, a combined proxy statement and prospectus must be mailed within a fixed number of days before the securityholders' meeting.[81] If the roll-up is a going private transaction under Rule 13e-3 under the Exchange Act, the disclosure documents must be mailed at least 20 calendar days before the vote is taken.[82] Comment is sought on whether a 60-day period is necessary or appropriate to enable limited partners to evaluate fully a roll-up transaction disclosure document in connection with both contested and uncontested roll-up solicitations. If commenters believe this period should be longer, such as 90 days, or shorter, such as 45 days, a clear and concise explanation should be provided. Comment also is requested on whether the minimum period should apply to the proxy statements of other persons and whether the minimum period should apply to additional solicitation materials.

IV. Cost-Benefit Analysis

While some additional costs to registrants may result from the proposals, such costs may be outweighed by the benefits resulting from the amended disclosure requirements which are intended to enhance the ability of securityholders to analyze limited partnership roll-up transactions. The proposals have been formulated against the template of evolving state partnership law and would not subject additional persons to filing requirements. To evaluate the benefits and costs associated with the proposed amendments of Forms S-4 and F-4, Rule 14a-6, Rule 14c-2 and Rule 14e-1, and proposed new subpart 900 of Regulation S-K, the Commission requests commenters to provide views and data as to the costs and benefits associated with amending the disclosure requirements.

V. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed subpart 900 of Regulation S-K and the amendments to Form S-4 and F-4 and Rules 14a-6, 14c-2 and 14e-1. The IRFA indicates that the proposed amendments and rules could impose some additional costs on small registrants, but would affect small registrants in the same manner as other registrants. The proposed amendments and rules, however, are designed to minimize these costs to the greatest extent possible while enhancing the ability of securityholders to analyze limited partnership roll-up transactions. A copy of the IRFA may be obtained from Michael L. Hermsen, Special Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7-6, Washington, D.C. 20549, (202) 272-2573.

VI. General Request for Comments

Any interested persons wishing to submit written comments on the proposed rules that are the subject of this release, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals contained herein, are requested to do so. Commenters are requested to address both whether the proposals will enhance the quality and readability of roll-up disclosure documents in providing protection to investors and whether the proposals are practicable for registrants. The Commission further requests comment on any competitive burdens that might result from adoption of the proposed rules. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 19(a) of the Securities Act and section 23(a) of the Exchange Act.[83]

VII. Statutory Bases

The amendments to Regulation S-K and Forms S-4 and F-4 are being proposed pursuant to sections 6, 7, 8, 10 and 19 of the Securities Act of 1933, as amended (15 U.S.C. 77f, 77g, 77h, 77j, 77s).

The amendments to Rule 14a-6, Rule 14c-2 and Rule 14e-1 are being proposed pursuant to sections 14(a), 14(c), 14(e) and 23(a) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78n(a), 78n(c), 78n(e), 78w(a)).

List of Subjects in 17 CFR Parts 229, 230 and 240

Reporting and recordkeeping requirements, Securities.

VIII. Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K.

1. The authority citation for part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a-8, 80a-30, 80a-37, 80b-11, unless otherwise noted.

2. By amending part 229 to add a new subpart 229.900 to read as follows:

Subpart 229.900—Roll-up Transactions

Sec.

229.901 (Item 901) Definitions.
229.902 (Item 902) Individual partnership supplements.
229.903 (Item 903) Summary.
229.904 (Item 904) Effects of the roll-up transaction.
229.905 (Item 905) Allocation of roll-up consideration.

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[69] See General Instruction C.2. to Form S-4 and F-4.

[69] Proposed Item 914.

[69] Proposed Item 915

[70] Proposed Item 911.

[71] 17 CFR part 210.

[72] See Item 301 of Regulation S-K (17 CFR 229.301).

[73] Cash flow data should be calculated based on the Statement of Cash Flows prepared in accordance with Financial Accounting Standard Board Statement of Financial Accounting Standards No. 95 Statement of Cash Flows.

[74] Proposed Item 912.

[75] Section 2(a) of H.R. 1865, introduced April 17, 1991.

[76] Because roll-ups generally entail the issuance of a new security in connection with a merger or other business combination, registrants must comply with the registration provisions of the Securities Act as well as the proxy rules. Many registrants utilize a "wrap-around" procedure whereby a combined proxy statement/prospectus is filed in preliminary form on a non-public basis under Rule 14a-6(f) (17 CFR 240.14a-6(f)) under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*), with the understanding that a registration statement will be filed, or "wrapped around," this document once staff review is completed. See Written Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Before the Senate Subcommittee at 3-3, 32-33 (February 27, 1991).

[77] See, *e.g.*, Written Testimony of Richard G. Wollack, Chairman, Liquidity Fund, Inc., Before the House Subcommittee at 5-7 (October 3, 1990).

[78] See proposed General Instruction I.2 to Form S-4, proposed General Instruction G.3 to Form F-4, proposed rule 14a-6(m), proposed rule 14c-2(c) and proposed revisions to rule 14e-1(a).

[79] See Written Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Before the House Subcommittee at 16 (April 23, 1991).

[80] See Instruction A.2 to Form S-4 (requiring such mailing at least 20 business days before the meeting where information regarding the successor or partnerships is incorporated in the combined proxy/prospectus by reference to other filings); Rule 14a-1(a) (17 CFR 240.14a-1(a)) (where a roll-up is effected by a tender offer subject to the Williams Act, the offer must remain open for a minimum of 20 business days); and Rule 14c-2(b) (17 CFR 240.14c-2(b)) (where action may be taken by consent and the issuer is not soliciting proxies, an information statement on Schedule 14C must be delivered no less than 20 calendar days before the vote).

[81] See Rule 13e-3(f).

[82] 15 U.S.C. 77s(a) and 15 U.S.C. 78w(a).

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Sec.
229.906 (Item 906) Background of the roll-up transaction.
229.907 (Item 907) Reasons for and alternatives to the roll-up transaction.
229.908 (Item 908) Conflicts of interest.
229.909 (Item 909) Fairness of the transaction.
229.910 (Item 910) Reports, opinions and appraisals.
229.911 (Item 911) Source and amount of funds.
229.912 (Item 912) Transactional expenses.
229.913 (Item 913) Other provisions of the transaction.
229.914 (Item 914) Summary information concerning partnership properties and other assets.
229.915 (Item 915) Pro forma financial statements; selected financial data.
229.916 (Item 916) Federal income tax consequences.

Subpart 229.900—Roll-up Transactions

Notes: A. This subpart imposes disclosure requirements in addition to the disclosure requirements otherwise applicable to any filing with the Commission in connection with the transaction. To the extent that the disclosure requirements of this subpart are inconsistent with the disclosure requirements of any such forms or schedules, the requirements of this subpart are controlling.

B. If a material change occurs in the information required by this subpart prior to consummation of the transaction, the registrant shall file with the Commission in accordance with applicable rules and disseminate promptly disclosure of such change in a manner reasonably calculated to inform security holders of such change and to permit them to consider the information.

§ 229.901 (Item 901) Definitions.

For the purposes of this subpart 229.900:

(a) *General partner* means the person responsible under state law for managing or directing the management of the business and affairs of a partnership that is the subject of a roll-up transaction including, but not limited to, a general partner, board of directors, board of trustees, or other person having a fiduciary duty to such partnership.

(b) *Partnership* means any:

(1) Partnership;

(2) Trust;

(3) Real estate investment trust as defined in I.R.C. § 856; or

(4) Other similar entity that is not an association taxed as a corporation under subchapter C of the I.R.C.

(c) *Roll-up transaction* means any transaction or series of transactions that directly or indirectly involves the combination or reorganization of one or more partnerships into a new entity and either:

(1) The offer or sale of securities by the new or acquiring entity to one or more limited partners of the partnerships to be combined or reorganized; or

(2) The acquisition of the new or acquiring entity's securities by the partnerships being combined or reorganized.

(d) *Sponsor* means the person proposing the roll-up transaction.

(e) *Successor* means the surviving entity after completion of the roll-up transaction.

§ 229.902 (Item 902) Individual partnership supplements.

Notes: (1) If two or more partnerships are proposed to be included in the roll-up transaction, provide the information specified in this Item (§ 229.902) in a separate supplement to the disclosure document for each partnership. Such separate supplement shall be filed as part of the registration statement. Further, the separate supplement shall be attached to and delivered with the prospectus.

(2) The purpose of the separate supplement is to highlight in one place the important differences in the effects of the roll-up transaction for investors in the particular partnership. The supplement required by this Item (§ 229.902) should not include a summary of all important information about the roll-up transaction, which must be included in the principal disclosure document in response to Item 903 of this subpart (§ 229.903). In addition, notwithstanding the requirements of this Item (§ 229.902), the description of the effects of the roll-up transaction included in the principal disclosure document pursuant to Item 904 of this subpart (§ 229.904) must identify clearly any effects that may be different for investors in any of the partnerships proposed to be included in the roll-up transaction.

(a) The separate supplement required by this Item (§ 229.902), which shall be filed as part of the registration or proxy statement, shall include the following:

(1) A description of each material effect of the roll-up transaction, including federal income tax consequences, that may affect investors in the partnership differently from investors in other partnerships, with appropriate cross references to the discussion of effects of the roll-up transaction required in the principal disclosure document pursuant Items 904 and 916 of this subpart (§ 229.904 and § 229.916).

(2) A statement concerning whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in the partnership, with appropriate cross references to the discussion of the fairness of the roll-up transaction required in the principal disclosure document pursuant to Item 909 of this subpart (§ 229.909). If there are material differences between the fairness analysis for the partnership and for the other partnerships, such differences should be described in the supplement.

(3) A narrative description of the method of calculating the value of the partnership and allocating interests in the successor to the partnership, and a table showing such calculation and allocation. Such table shall include:

(i) The appraised value of each separately appraised asset held by the partnership, or, if no appraisals were obtained, the value assigned to each material asset for purposes of the valuation of the partnership;

(ii) Any liabilities to which each of such assets is subject;

(iii) Cash and cash equivalent assets held by the partnership;

(iv) Other assets held by the partnership;

(v) Other liabilities of the partnership;

(vi) The value assigned to the partnership;

(vii) The value assigned to the partnership per interest held by holders of interests in the partnership (on an equivalent interest basis, such as per $1,000 original investment);

(viii) The aggregate number of interests in the successor to be allocated to the partnership and the percentage of the total interests of the successor;

(ix) The number of interests in the successor to be allocated to investors in the partnership for each interest held by such investors (on an equivalent interest basis, such as per $1,000 original investment); and

(x) The value assigned to the general partner's interest in the partnership, and the number of interests in the successor or other consideration to be allocated in the roll-up transaction to the general partner for such general partnership interest.

(4) A description of any components of the calculation of the value of the partnership for purposes of allocating interests in the roll-up transaction that may be more or less favorable for investors in the partnership than for investors in other partnerships.

(5) The amounts of compensation paid to the general partner and its affiliates by the partnership for the last three fiscal years and the amounts that would have been paid if the compensation structure to be in effect after the roll-up transaction had been in effect during such period.

(6)(i) The "worst case" participation pro forma financial statements included in the principal disclosure document in response to Item 915(c)(ii) of this subpart (§ 229.915(c)(ii)), further adjusted to include the partnership, unless the partnership is included in such financial statements. If the partnership is so included, briefly describe the contents of such statements and provide a cross reference to the appropriate section in the disclosure document.

(ii) A narrative discussion of the material items in such pro forma financial statements, addressing specifically any material changes to the pro forma financial statements resulting from the addition of the partnership to the combination of partnerships covered thereby.

(7) An appropriate cross reference to selected financial information concerning the partnership included in the principal disclosure document in response to Item 915 of this subpart (§ 229.915).

§ 229.903 (Item 903) Summary.

(a) Provide in the forepart of the disclosure document a clear, concise and comprehensible summary of the roll-up transaction.

(b) The summary required by paragraph (a) of this Item (§ 229.903) shall include a summary description of each of the following items, as well as any other material terms or consequences of the roll-up transaction necessary to an understanding of such transaction:

(1) Each material risk and effect on investors, including, but not limited to:

(i) Changes in the business plan, voting rights, form of ownership interest or management compensation;

(ii) The general partner's conflicts of interest in connection with the roll-up transaction and in connection with the successor's future operations; and

(iii) The likelihood that securities received by investors in the roll-up transaction will trade at prices substantially below the value assigned to such securities in the roll-up transaction;

(2) The material terms of the roll-up transaction, including the valuation method used to allocate securities in the successor to investors in the partnerships;

(3) Whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in each partnership, including a brief discussion of the bases for such belief;

(4) Any opinion from an outside party concerning the fairness of the roll-up transaction, including whether the opinion addresses the fairness of all possible combinations of partnerships, and whether any outside party declined to provide an opinion concerning the fairness of the roll-up transaction;

(5) Any material effects of the roll-up transaction that may be different for investors in any of the partnerships;

(6) Alternatives to the roll-up transaction considered by the general partner, as well as the alternatives to liquidate or continue the partnerships whether or not considered by the general partner;

(7) Rights of investors to exercise dissenters' or appraisal rights or similar rights and to obtain a list of investors in the partnership in which the investor holds an interest; and

(8) If any affiliates of the general partner or the sponsor may participate in the business of the successor or receive compensation from the successor, an organizational chart showing the relationships between the general partner, the sponsor and their affiliates.

Instruction to Item 903. The description of the material risks of the roll-up transaction required by paragraph (b)(1) of this Item (§ 229.903) must be presented first in the summary.

§ 229.904 (Item 904) Effects of the roll-up transaction.

(a) *General requirements*—(1) *Brief description of effects.* Provide a brief description of each material effect of the roll-up transaction on investors in each partnership, including, but not limited to, the potential risks, adverse effects and benefits of the roll-up transaction for investors and for the general partner. State whether any of such effects may be different for investors in any partnership and, if so, identify the partnership(s) for which the effect may be different and describe such differences. Each effect shall be quantified to the extent practicable. Such description shall address all material effects of the roll-up transaction including, but not limited to, each of the effects described in response to paragraphs (b), (c), (d), (e) and (f) of this Item (§ 229.904), and shall be included in the forepart of the disclosure document immediately following the summary required pursuant to Item 903 of the subpart (§ 229.903).

(2) *Complete description of effects.* Provide a complete description of each material effect of the roll-up transaction under appropriate captions in the disclosure document. The effects required to be described include, but are not limited to, each of the items set forth in paragraphs (b), (c), (d), (e) and (f) of this Item (§ 229.904).

(b) *Changes in voting and other limited partner rights; changes in duties owed by the general partner.* (1) Describe each material difference in the voting and other rights of investors in each partnership subject to the transaction and the voting and other rights of investors in the successor under the partnerships' and the successor's governing instruments and under applicable law.

(2) Describe each material difference in the duties owed by the general partner in each partnership and the duties owed by the general partner of the successor to investors in the successor under the partnerships' and the successors' governing instruments and under applicable law.

(c) *Changes in general partner compensation and distribution arrangements.* (1)(i) Describe each item of compensation (including reimbursement of expenses) payable by the successor after the roll-up transaction to the general partner and its affiliates or to any affiliate of the successor. Compare such compensation to the compensation currently payable to the general partner and its affiliates by each partnership and describe the effects of the change(s) in compensation arrangements.

(ii) Describe each instance in which cash or other distributions may be made by the successor to the general partner and its affiliates or to any affiliate of the successor. Compare such distributions to the distributions currently paid or payable to the general partner and its affiliates by each partnership and describe the effects of the change(s) in distribution arrangements. If distributions similar to those currently paid or payable by any partnership to the general partner or its affiliates will not be made by the successor, state whether or not other compensation arrangements with the successor described in response to paragraph (c)(1)(i) of this Item (§ 229.904) (e.g., incentive fees payable upon sale of a property) will, in effect, replace such distributions.

(2) Describe the material conflicts that may arise between the interests of the sponsor or general partner and the interests of investors in the successor as a result of the compensation and distribution arrangements described in response to paragraph (c)(1) of this Item (§ 229.904) and describe any steps that will be taken to resolve any such conflicts.

(3) Provide a table demonstrating the changes in compensation and distributions setting forth among other things:

(i) The actual amounts of compensation and distributions paid by the partnerships on a combined basis to the general partner and its affiliates for the partnerships' last three fiscal years

and most recently ended interim periods; and

(ii) The amounts of compensation and distributions that would have been paid if the compensation and distributions structure to be in effect after the roll-up transaction had been in effect during such period.

(4) If any proposed change(s) in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid by the successor from that shown in the table in response to paragraph (c)(3)(ii) of this Item (§ 229.904) (e.g., if properties will be sold after the roll-up transaction and no properties were sold during the period covered by the table), describe such changes and the effects thereof on the compensation and distributions to be paid by the successor.

(d) *Changes in limited partner cash distribution policies.* Describe any provisions in the governing instruments of the successor and any policies of the general partner of the successor relating to distributions to investors of cash from operations or from the sale, financing or refinancing of assets. Compare such provisions and policies to those of each of the partnerships and describe the effects of any change(s) in such provisions or policies.

(e) *Changes in investment policies and business plan.* (1) Describe each material investment policy of the successor. Compare such investment policies to the investment policies of each of the partnerships and describe the effects of any change(s) in such policies.

(2) Describe any plans of the general partner, sponsor or of any person who will be an affiliate of the successor with respect to:

(i) A sale of any material assets of the partnerships;

(ii) A purchase of any material assets;

(iii) Borrowings; and

(iv) Any extraordinary transaction involving the assets and/or liabilities of the partnerships or the successor.

(3)(i) State whether or not specific assets have been identified for sale, financing, refinancing or purchase following the roll-up transaction.

(ii) If specific assets have been so identified, describe the assets and the proposed transaction.

(f) *Trading market discount of securities.* (1) Describe the likelihood that securities of the successor received by investors in the roll-up transaction will trade in the securities markets at a price substantially below the value assigned to such securities in the roll-up transaction and the value of the assets of the successor.

(2) Describe the effects on investors of the trading market discount described in response to paragraph (f)(1) of this Item (§ 229.904), including the effect of such discount in relation to any change in the successor's investment policies to permit the reinvestment of proceeds from the sale of assets rather than distributing such proceeds to investors.

Instructions to Item 904. (1) The requirement to quantify the effects of the roll-up transaction shall include, but not be limited to:

(i) If cost savings resulting from combined administration of the partnerships is identified as a potential benefit of the roll-up transaction, the amount of cost savings and a comparison of such amount to the costs of the roll-up transaction; and

(ii) If there may be a material conflict of interest of the sponsor or general partner arising from its receipt of significant payments or other consideration as a result of the roll-up transaction, the amount of such payments and other consideration to be obtained in the roll-up transaction and a comparison of such amounts to the amounts to which the sponsor or general partner would be entitled without the roll-up transaction.

(2) To the extent practicable, the effects described in response to this Item (§ 229.904) should be illustrated in tables or other readily understandable forms. For example, the benefits to the general partner may be illustrated in a table that compares on a before and after basis, the fees and compensation payable to the sponsor or the general partner, the rights of investors to remove the sponsor or the general partner and the duties owed to investors by the sponsor or the general partner.

§ 229.906 (Item 905) Allocation of roll-up consideration.

(a) Describe in detail the method used to allocate interests in the successor to investors in the partnerships and the reasons why such method was used.

(b) Provide a table showing the calculation of the valuation of each partnership and the allocation of interests in the successor to investors. Such table shall include for each partnership:

(1) The value assigned to each significant type of asset of the partnership (e.g., real estate net of mortgage debt, cash and cash equivalents, and net other assets) and the total value assigned to the partnership;

(2) The total value assigned to all partnerships;

(3) The aggregate amount of interests in the successor to be allocated to each partnership and the percentage of the total amount of all such interests represented thereby; and

(4) The amount of interests of the successor to be issued to investors per interest held in each partnership (on an equivalent interest basis, such as per $1,000 invested).

(c) If interests in the successor will be allocated to the general partner in exchange for its general partner interest or otherwise or if the general partner will receive other consideration in connection with the roll-up transaction, describe in detail the method used to allocate interests in the successor to the general partner or to determine the amount of consideration payable to the general partner and the reasons such method(s) was used.

§ 229.908 (Item 906) Background of the roll-up transaction.

(a) Provide a summary of the background of the transaction. The summary should address those matters material to investors including a description of any contacts or negotiations that have occurred within the past two years between the general partner and any other person concerning the acquisition of interests in the partnerships (including, but not limited to, interests owned by the general partner or sponsor), a combination of the partnerships or any other extraordinary transaction involving the partnerships.

(b) Provide a brief description of the background of each partnership, including, but not limited to, the following:

(1) The extent to which net proceeds from the original offering of interests have been invested, including the amount not yet invested; and

(2) The partnership's investment objectives, and whether the partnership has achieved its investment objectives.

(c) Discuss whether the general partner (including any affiliated person materially dependent on the general partner's compensation arrangement with the partnership) or any partnership during the past 12 months has experienced or is likely to experience any material adverse financial developments. If so, describe such developments and the effect of the transaction on such matters.

§ 229.907 (Item 907) Reasons for and alternatives to the roll-up transaction.

(a)(1) Describe the reasons for proposing the roll-up transaction and whether the general partner initiated the roll-up transaction.

(2) State whether the general partner recommends the roll-up transaction, and briefly describe the reasons for such recommendation, if different from the reasons discussed in Item 909 of this subpart (§ 229.909).

(3) Describe the reasons for the structure of the transaction and for undertaking the transaction at this time.

(b)(1) Describe each alternative to the roll-up transaction considered by the sponsor or general partner and the reasons for proposing the roll-up transaction rather than any of the alternatives considered.

(2) If not described in response to paragraph (b)(1) of this Item (§ 229.907), describe the following potential alternatives to the roll-up transaction:

(i) Liquidation of the partnerships; and

(ii) Continuation of the partnerships.

(3) With respect to liquidation of the partnerships, describe the procedures required to accomplish liquidation, the effects of liquidation and the material risks and benefits that likely would arise in connection with liquidation.

(4) If the general partner did not consider liquidation or continuation of the partnerships as possible alternatives to the roll-up transaction, provide a statement to that effect and describe the reasons such alternatives were not considered.

§ 229.909 (Item 909) Conflicts of interests.

(a)(1) Describe the general partner's fiduciary duties to each partnership subject to the roll-up transaction and each actual or potential material conflict of interest between the general partner and the investors relating to the roll-up transaction.

(2) State whether the general partner reasonably believes it has satisfied such fiduciary duties.

(b)(1) State whether the general partner has retained any person to represent the investors in negotiating the terms of the roll-up transaction. If no such representative has been retained, describe the reasons therefor and any conflicts of interest and risks arising from the absence of separate representation.

(2) If a person has been retained to represent the investors, provide the following information:

(i) The name of the representative;

(ii) A brief description of the representative's qualifications, including a brief description of any other transaction similar to the roll-up transaction in which the representative has served in a similar capacity within the past five years;

(iii) A description of the method used to select the representative, including a statement as to whether or not any investors were consulted in the selection of the representative and, if so, the names of such investors;

(iv) A description of the scope and terms of the engagement of the representative, including, but not limited to, who will be responsible for paying the representative's fees and whether the fees are contingent upon the outcome of the roll-up transaction;

(v) A description of any material relationship that has existed within the past two years or is mutually understood to be contemplated between the representative and the general partner, sponsor, any affiliate of the general partner or sponsor, and any other person having a material interest in the roll-up transaction. If the relationship is with the general partner, sponsor, or any of their affiliates, describe any compensation received or to be received as a result of such relationship;

(vi) A description of actions taken by the representative on behalf of investors; and

(vii) A description of the fiduciary duties or other legal obligations of the representative to investors in each of the partnerships.

§ 229.909 (Item 909) Fairness of the transaction.

(a) State whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors.

(b) Provide a detailed discussion of the reasons for the general partner's belief disclosed in response to paragraph (a) of this Item (§ 229.909), and, to the extent practicable, the weight assigned to each such reason. This discussion must:

(1) Compare the roll-up transaction to each of the alternatives identified in response to Item 907 of this subpart (§ 229.907), including liquidation and continuation of the partnership; and

(2) Highlight any material differences among the partnerships (e.g., different types of assets or different investment objectives) relating to the fairness of the transaction.

(c) The belief stated in response to paragraph (a) of this Item (§ 229.909) must address the fairness of the roll-up transaction to investors in each of the partnerships and as a whole. If the roll-up transaction may be completed with a combination of partnerships consisting of less than all partnerships, the belief stated in response to paragraph (a) of this Item (§ 229.909) must address each possible combination of partnerships.

(d) Describe any factors known to the general partner that may affect materially the value of the consideration to be received by investors in the roll-up transaction, the values assigned to the partnerships for purposes of the comparisons to alternatives required by paragraph (b) of this Item (§ 229.909) and the fairness of the transaction to investors.

(e) State whether the general partner's statements in response to paragraphs (a) and (b) of this Item (§ 229.909) are based, in whole or in part, on any report, opinion or appraisal described in response to Item 910 of this Subpart (§ 229.910). If so, describe any material uncertainties known to the general partner that relate to the conclusions in any such report, opinion or appraisal including, but not limited to, developments or trends that have affected or are reasonably likely to affect materially such conclusions.

Instructions to Item 909. (1) Conclusory statements will not be considered sufficient disclosure in response to this Item (§ 229.909).

(2) Consideration should be given to presenting comparative numerical data as to the value of the consideration being received by investors, liquidation value and other values in a tabular format.

(3) The reasons which are important in determining the fairness of a transaction to security holders and the weight, if any, which should be given to them in a particular context will vary. Such reasons will include, among others, whether the consideration offered to investors constitutes fair value in relation to:

(i) current market prices, if any;

(ii) historical market prices, if any;

(iii) going concern value;

(iv) liquidation value; and

(v) any report, opinion or appraisal described in Item 910 of this subpart (§ 229.910).

(4) The discussion concerning fairness should specifically address material terms of the transaction including whether the consideration offered to investors constitutes fair value in relation to:

(i) The form and amount of consideration to be received by investors and the sponsor in the roll-up transaction;

(ii) The methods used to determine such consideration; and

(iii) The compensation to be paid to the sponsor in the future.

§ 229.910 (Item 910) Reports, opinions and appraisals.

(a) *All material reports, opinions or appraisals.* Identify and summarize each report, opinion or appraisal from an outside party which is materially related to the roll-up transaction.

(b)(1) *Fairness opinions.* If the report, opinion or appraisal relates to the fairness of the roll-up transaction to investors in the partnerships;

(i) State whether or not the report, opinion or appraisal addresses the fairness of the roll-up transaction as a whole and to investors in each partnership;

(ii) State whether or not the report, opinion or appraisal addresses the fairness of all possible combinations of partnerships in the roll-up transaction. If

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all possible combinations are not addressed:

(A) Identify the combinations that are not addressed;

(B) Identify the person that determined which combinations would be addressed and state the reasons for the selection of the combinations; and

(C) State that if the roll-up transaction is completed with a combination of partnerships not addressed, no report, opinion or appraisal concerning the fairness of the roll-up transaction will have been obtained.

(2) *Appraisals.* If the report, opinion or appraisal consists of an appraisal of the assets of the partnerships:

(i) Set forth in tabular form the appraised value of each asset separately appraised by the appraiser.

(ii) If the appraiser considered different valuation approaches in preparing its appraisals, briefly describe each of the valuation approaches and the reasons the particular valuation approach was selected. Set forth in tabular form the value of each asset under each valuation approach considered by the appraiser, identifying the valuation approach used by the appraiser in determining the appraised value.

(iii) Identify all material assumptions used by the appraiser in preparing the appraisals. If different assumptions were used for different assets, identify such differences and briefly describe the reasons therefor and the effects thereof.

(iv) Identify the date as of which the appraisals were prepared and state whether the appraisals will be updated in the event that there are material changes in the conditions upon which the appraisals were based and/or if the roll-up transaction is not completed within a specified period of time.

(v) Describe any events that have occurred or conditions that have changed since the date of the appraisals that may have caused a material change in the value of any of the assets appraised and the effects thereof.

(c) *All material reports, opinions or appraisals.* With respect to each report, opinion or appraisal identified in response to paragraph (a) of this Item (§ 229.910):

(i) Identify the person who prepared the report, opinion or appraisal;

(ii) Briefly describe the qualifications of such person;

(iii) Describe the method of selection of such person;

(iv) Describe any material relationships between:

(A) Such person and its affiliates, and

(B) The general partner, sponsor, the successor or any of their affiliates, which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship.

(v) If such report, opinion or appraisal relates to the fairness of the consideration, state whether the general partner, sponsor or any of their affiliates determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid; and

(vi) Describe the procedures followed, the findings and recommendations, any instructions received from the general partner, the sponsor, the successor or any of their affiliates, and any limitation imposed by the general partner, the sponsor,the successor or any of their affiliates on the scope of the investigation.

(d) *All material reports, opinions or appraisals.* Provide a statement to the effect that upon receipt of a written or oral request a copy of any such report, opinion or appraisal shall be promptly transmitted without charge to each investor in a partnership subject to the transaction or a representative of such investor who has been so designated in writing. The statement also must include the name, address and telephone number of the person to whom investors should make their request.

(e)(1) *Fairness opinions.* Describe any contacts in connection with the roll-up transaction between the sponsor or the general partner and any outside party with respect to the preparation by such party of an opinion concerning the fairness of the roll-up transaction; provided, however, that no description is required pursuant to this paragraph of contacts with respect to opinions described in response to paragraph (b)(1) of this Item (§ 229.910(b)(1)).

(2) The description of contacts with any outside party required by paragraph (e)(1) of this Item (§ 229.910) shall include the following:

(i) The identity of each such party;

(ii) Any actions taken by such party in connection with its preparation of an opinion concerning the fairness of the roll-up transaction;

(iii) Any conclusions reached by such party concerning the fairness of the roll-up transaction; and

(iv) Any reasons such party did not render an opinion concerning the fairness of the roll-up transaction.

Instructions to Item 910. (1) The reports, opinions and appraisals required to be identified in response to paragraph (a) of this Item (§ 229.910) include any reports, opinions and appraisals which materially relate to the roll-up transaction whether or not relied upon, such as reports or opinions regarding alternatives to the roll-up transaction whether or not the alternatives were rejected.

(2) The information called for by paragraph (c) of this Item (§ 229.910) should be given with respect to the firm which provides the report, opinion or appraisal rather than the employees of such firm who prepared it.

(3) With respect to appraisals, a summary prepared by the appraisers should not be included in lieu of the description of the appraisals required by paragraph (b)(2) of this Item (§ 229.910). A clear and concise summary description of the appraisals is required.

§ 229.911 (Item 911) Source and amount of funds.

(a)(1) State the source and total amount of funds or other consideration to be used by the sponsor or successor in the transaction.

(2) If all or any of the consideration to be used by the sponsor or successor in the transaction is expected to be, directly or indirectly, provided by any partnership, state the amount to be provided by each partnership and the sources of capital to finance such amount; or

(3) If all or any of the consideration to be used by the sponsor or successor in the transaction is expected to be, directly or indirectly borrowed:

(i) Provide a summary of each loan agreement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions; and

(ii) Briefly describe any plans or arrangements to finance or repay such borrowings, or, if no plans or arrangements have been made, make a statement to that effect.

Instruction to Item 911. If the source of all or any part of the funds is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Securities Exchange Act of 1934 and section 13(d) or 14(d) of the Securities Exchange Act of 1934 is applicable to the transaction, the name of such bank shall not be available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Commission.

§ 229.912 (Item 912) Transactional expenses.

Provide an itemized statement of all material expenses incurred or estimated to be incurred in connection with the transaction, including, but not limited to, filing fees, legal, financial advisory, accounting, and appraisal fees, solicitation expenses, and printing costs. Identify the persons responsible for paying any or all of such expenses. State whether or not any partnership subject to the transaction will be directly or indirectly responsible for any or all of such expenses, and, if so, whether the partnership will be responsible whether or not it participates in the transaction. If more than one partnership is subject to the transaction, describe the method to be used in allocating the expenses among the partnerships.

§ 229.913 (Item 913) Other provisions of the transaction.

(a) State whether or not appraisal rights are provided under applicable state law or under the partnership's governing instruments or will be voluntarily accorded by the successor (or affiliated persons) or the general partner of the partnership (or any affiliate of the general partner) in connection with the transaction, and, if so, summarize such appraisal rights. If appraisal rights will not be available to objecting security holders, briefly describe any similar rights which may be available.

(b) If any provision has been made by the successor (or affiliated persons) or the general partner of the partnership (or any affiliate of the general partner) to allow security holders to obtain access to the books and records of the partnership or affiliate or to obtain counsel or appraisal services at the expense of the successor, the general partner, the partnership or any affiliate of such persons, describe such provision.

(c) Discuss the security holders' rights under federal and state law to obtain a partnership's list of security holders.

§ 229.914 (Item 914) Summary information concerning partnership properties and other assets.

(a) If any partnership is a real estate entity of the type described in General Instruction A to Form S–11 (17 CFR 239.18), provide summary information concerning each property owned by each such partnership, including, but not limited to, the following:

(1) A description of the property, including the date of construction and the date of any material improvements, and a description of any known environmental problems involving the property;

(2) The occupancy percentage as of the end of the most recently completed fiscal quarter;

(3) The identity of each tenant occupying more than ten percent of gross leasable area, the amount of area leased by each such tenant, the percentage of the total gross leasable area leased by each such tenant, the current base annual rent of each such tenant and the expiration date of the lease of each such tenant; and

(4) A description of any indebtedness to which the property is subject, including the interest rate, maturity date and principal balance as of the end of the most recently completed fiscal quarter.

(b) If any partnership is engaged in oil and gas operations as defined in Rule 4–10(a)(1) of Regulation S–X (17 CFR 210.4–10(a)(1)), provide summary information concerning the properties owned by each such partnership (and on a pro forma basis when appropriate) in accordance with Item 102 of Regulation S–K (§ 229.102) and data about its oil and gas operations in accordance with Industry Guide 2 (§ 229.801(b)) under the Securities Act of 1933, including, but not limited to, the following:

(1) A description of the partnership's property including its location and the nature of the partnership's interests.

(2) The total number of productive wells expressed separately for oil and gas (as gross and net oil wells and gross and net gas wells) and the total gross and net developed acreage assigned to productive sells. Undeveloped acreage owned, if any, should be described separately.

(3) The production history of the properties should be described including recent data on the average sales prices of oil and gas and the average production (lifting) costs per unit of production of the properties.

Note: Other information required by Industry Guide 2 (§ 229.801(b)), such as drilling activity, present activities, and delivery commitments should be provided where appropriate. Further, the exemption of limited partnerships from the provisions of Industry Guide 2, set out in the preamble to Guide 2, is inapplicable in the case of roll-up transactions or other business combinations.

(c) If any partnership is engaged in a business other than those described in paragraphs (a) and (b) of this Item (§ 229.914), provide summary information concerning each material asset of each such partnership comparable to that required by paragraphs (a) and (b) of this Item (§ 229.914).

§ 229.915 (Item 915) Pro forma financial statements; selected financial data.

(a) Include audited and interim financial statements of the successor meeting the requirements of Regulation S–X (17 CFR 210), as well as financial information prepared in accordance with Rule 3–05 (17 CFR 210.3–05) and Article 11 of Regulation S–X (17 CFR 210.11) with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(b) In addition to the information required by Item 301 Regulation S–K, Selected Financial Data (§ 229.301), and Item 302 of Regulation S–K, Supplementary Financial Information (§ 229.302), for each partnership participating in a roll-up transaction provide: Ratio of earnings to fixed charges, cash, assets at both book value and appraised value, other assets, other liabilities, general and limited partners' equity, net increase (decrease) in cash and cash equivalents, net cash provided by operating activities, distributions; and per unit data for net income (loss), book value, appraised value, and distributions. Additional information should be provided if material to an understanding of each partnership participating in a roll-up transaction.

(c) Provide pro forma financial information (including oil and gas reserves and cash flow disclosure, if appropriate), assuming:

(1) All partnerships participate in the roll-up transaction; and

(2) "Worst case" participation as defined paragraph (d) of this Item (§ 229.915).

Such pro forma financial statements shall disclose the effect of the roll-up transaction on the successor's:

(i) Balance sheet as of the most recent fiscal year end and the latest interim balance sheet;

(ii) Statement of income (with separate line items to reflect income (loss) before and after the roll-up expenses and payments), earnings per share amounts, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period;

(iii) Statement of cash flows for the most recent fiscal year and the latest interim period; and

(iv) Book value per share as of the most recent fiscal year end and as of the latest interim balance sheet date.

(d) For purposes of this subpart (§ 229.900), the term "worst case" participation means the participation in a roll-up transaction of those partnerships that on a combined basis have the lowest combined net cash provided by operating activities for the last fiscal year of such partnerships, *provided* participation by such partnerships satisfies any conditions to consummation of the roll-up transaction. If the combination of all partnerships proposed to be included in a roll-up transaction results in such lowest combined net cash provided by operating activities, this shall be noted and no separate "worst case" participation pro forma financial statements are required.

Instruction to Item 915. Notwithstanding the provisions of this Item (§ 229.915), any or all of the information required by paragraph (c) of this Item (§ 229.915) that is not material

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for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted.

§ 229.916 (Item 916) Federal income tax consequences.

(a) Provide a brief, clear and understandable summary of counsel's opinion of the material federal income tax consequences of the roll-up transaction and an investment in the successor. Such summary must address the consequences with respect to which counsel has opined, has not been asked to opine or is unable to opine. If any of the material federal income tax consequences are not expected to be the same for investors in all partnerships, the differences shall be noted, with a cross-reference to the description of such differences in the supplement required by Item 902 of this subpart (§ 229.902).

(b) State that the opinion of counsel has been filed with the Commission either as an appendix to the prospectus or as an exhibit to the registration statement. If filed as an exhibit to the registration statement, include a statement that the general partner or sponsor will provide upon written or oral request, without charge to each person to whom a prospectus is delivered, a copy of the opinion of counsel. The opinion of counsel may be provided to the representative of a security holder who has been so designated in writing.

(c) If investors in any partnership are expected to incur federal income tax liabilities as a result of the roll-up transaction, present in a table the amount of such expected liabilities for investors in each partnership (on an equivalent interest basis, such as per $1,000 invested).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted. * * *

§ 239.25 [Amended]

4. By amending Form S–4 (17 CFR 239.25) by adding General Instruction I to read as follows:

Note: Form S–4 does not appear in the Code of Federal Regulations.

Form S–4

* * * * *

General Instructions

* * * * *

I. *Roll-Up Transactions.*

1. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), then the disclosure provisions of subpart 229.900 of Regulation S–K (17 CFR 229.900) shall apply to the transaction in addition to the provisions of this Form.

2. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), the prospectus must be distributed to investors no later than the lesser of 60 calendar days prior to the date on which action is to be taken or the maximum number of days permitted for giving notice under applicable state law.

§ 239.34 [Amended]

5. By amending Form F–4 (17 CFR 239.34) by adding General Instruction G to read as follows:

Note: Form F–4 does not appear in the Code of Federal Regulations.

Form F–4

* * * * *

General Instructions

* * * * *

G. *Roll-Up Transactions.*

1. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), then the disclosure provisions of subpart 229.900 of Regulation S–K (17 CFR 229.900) shall apply to the transaction in addition to the provisions of this Form.

2. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), the prospectus must be distributed to investors no later than the lesser of 60 calendar days prior to the date on which action is to be taken or the maximum number of days permitted for giving notice under applicable state law.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

7. By amending § 240.14a–6 (17 CFR 240.14a–6) by adding new paragraph (m) to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(m) *Roll-up transactions.* If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and is registered on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the proxy statement of the sponsor or the general partner as defined in Item 901(d) and Item 901(a), respectively, of Regulation S–K (17 CFR 229.901) must be distributed to investors no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

8. By amending § 240.14c–2 (17 CFR 240.14c–2) by adding new paragraph (c) to read as follows:

§ 240.14c–2 Distribution of information statement.

* * * * *

(c) If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and is registered on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the information statement must be distributed to investors no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

9. By amending § 240.14e–1 (17 CFR 240.14e–1) by revising paragraph (a) to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(a) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent to security holders; provided, however, that if the tender offer involves a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and the securities being offered are registered on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the offer shall not be open for less than sixty calendar days from the date the tender offer is first published or sent to security holders;

* * * * *

Dated: June 17, 1991.
By the Commission.
Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91–14789 Filed 6–24–91; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231 and 241

[Release Nos. 33–6900; 34–29314]

Limited Partnership Reorganizations and Public Offerings of Limited Partnership Interests

AGENCY: Securities and Exchange Commission.

ACTION: Interpretive release.

SUMMARY: The Commission today is announcing the publication of a release setting forth its views concerning existing disclosure requirements applicable to limited partnership roll-up transactions and initial public offerings of limited partnership units and other similar securities. These interpretations are necessary in order to address the concerns that have been expressed recently by investors, Congress and other interested parties. The intended effect of this release is that registrants will provide investors with clear, concise and understandable disclosure of material information about these transactions and offerings.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Michael L. Hermsen, Amy S. Bowerman, or Meredith B. Cross at (202) 272–2573, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Serious concerns have been expressed about the complexity and length of prospectuses, proxy statements and other disclosure documents used in connection with roll-ups of limited partnerships. This interpretive release addresses the application of current requirements to roll-ups and offerings of limited partnership interests and the companion release proposes rule revisions.[1] Together, these releases are intended to improve the overall quality and readability of disclosure documents used in roll-up transactions. This release also sets forth the Commission's views on the application of existing disclosure requirements to initial offerings of limited partnership interests. This release emphasizes the risks of investing in a limited partnership and the restrictions that state partnership laws and limited partnership agreements place on investor rights in an effort to assure that investors are apprised of the risks and limited rights often associated with an investment in a limited partnership. Finally, this release sets forth the Commission's views as to the application of disclosure requirements to registration statements of real estate investment trusts as well as non-real estate limited partnership offerings.

I. Background

Since January 1, 1985, 68 roll-ups involving two or more entities have been registered with the Commission. These roll-ups have involved approximately 1,600 entities, 1.2 million investors and an aggregate exchange value of $7.1 billion.

In a roll-up transaction, a sponsor consolidates two or more public or private limited partnerships or other pass-through investment vehicles into a single entity, or reorganizes a single partnership. In most cases, the roll-up transaction results in a conversion of a limited partner's interest from a finite-life to an infinite-life interest.

While roll-up transactions can be structured in different ways, these transactions typically are accomplished through a merger of the existing entities into a successor entity.[2] Investors in the existing entities receive an interest, usually equity, in the successor entity. The successor generally is either a newly formed corporation or limited partnership. Before a sponsor may proceed with a roll-up/merger, it must receive approval of the transaction from a requisite number of limited partners in each limited partnership, most often the holders of a majority of the outstanding limited partnership interests. Whereas the securities of the existing entities for the most part are thinly traded in the pink sheet secondary markets or not traded at all, the securities of the successor entity often are listed on the New York Stock Exchange, the American Stock Exchange or traded on the National Association of Securities Dealers' ("NASD's") Automated Quotation system.

Roll-ups have created considerable controversy and have generated a variety of criticisms, many of which were highlighted in a series of Congressional hearings on limited partnership roll-ups. Criticisms have focused primarily on issues relating to the fairness of the transactions and the general partners' conflicts of interest, as well as the inadequacy of the disclosure. The fairness of the methods used to value the securities issuable in exchange for investors' limited partnership interests has been questioned. Another area of concern has been the significant discount at which the price of the security received in the roll-up trades in the secondary market.

Serious issues have been raised with respect to general partners' fiduciary duties to the limited partners, including their potential conflicts of interest and lack of independence in structuring and negotiating the terms of a transaction. Critics have questioned the potential overreaching by the general partners inherent in the increased benefits, in terms of compensation, ownership interests and dilution of investors' voting rights, accruing to them in most roll-up transactions. These increased benefits typically include payments for general partnership interests and changes in compensation arrangements.

Additional complaints have been raised with respect to fundamental changes that a roll-up may bring about in the future operations of the successor entity. These changes frequently relate to the entity's borrowing policies, business plan, investment objectives, intended term of existence and voting rights of investors. Limited partners objecting to a roll-up transaction have especially criticized the absence of any legal or equitable alternative to the transaction. The "cram down" effect on objecting partners is perceived as unfair.

Investors may have acquired limited partnership interests for several reasons. A principal reason may have been the expectation of the pass-through of tax benefits,[3] accompanied by the safety of limited liability. When a roll-up is proposed, investors, despite the disclosures in the original offering document, have been surprised to discover how limited their rights are under state laws and the partnership agreements. Many of the state law protections afforded corporate shareholders are not provided to limited partners.

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[1] The companion release publishes for comment proposed rules applicable to limited partnership roll-up transactions and is being issued concurrently by the Commission. See Securities Act Release No. 33–6900 (June 17, 1991).

[2] A roll-up may also be effected through an exchange offer. Unlike a merger, an exchange offer will not compel a limited partner to give up his original investment, even if a majority of the other limited partners in the partnership choose to participate in the roll-up. Approximately 11% of the roll-ups have been conducted as exchange offers, less so in more recent years.

[3] Prior to major revisions to the federal tax code beginning in 1984, limited partnerships afforded individual investors the opportunity to invest and to receive substantially the same tax treatment and cash distributions as a direct investment in the asset itself would have provided.

Various changes in the tax code since 1984 have reduced or eliminated the tax shelter and other tax benefits of an investment in a limited partnership. At the same time, industries that have principally relied on the partnership format for raising capital, such as oil and gas and real estate, have suffered substantially. As a result, many limited partnership interests have lost much of their value.

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Investors also have complained about the comprehensibility and sufficiency of the disclosure provided in connection with roll-ups. The Commission has undertaken three initiatives to address the perceived problems. First, the Division of Corporation Finance ("Division") has incorporated into its review and comment process a number of disclosure suggestions made by commenters and participants in these transactions.[4]

Second, the Commission is, in this release, setting forth its views of existing disclosure requirements applicable to limited partnership roll-up transactions and initial public offerings of limited partnership units. This release is intended to assist registrants in assuring that investors are provided clear, concise and understandable disclosure about these transactions and offerings.

Third, the Commission is proposing amendments to its rules to enhance the clarity, as well as the substance, of the disclosures provided to investors in connection with roll-ups. The Commission also is reviewing its requirements applicable to partnership offerings to assess the need for any amendments.

The NASD recently has proposed to amend its rules to prohibit member brokers and investment advisers from receiving differential compensation in connection with roll-up transactions.[5] Pending public comment on and Commission approval of the NASD's proposed rule change, prominent disclosure is required of such arrangements, as well as the potential conflicts of interest inherent in this fee structure.[6]

[4] In December 1989, one participant, Liquidity Fund, provided to the staff a number of helpful suggestions to provide clearer disclosures about the material effects to investors that will result if the transaction is approved. These suggestions focused on the disclosure of the material differences in the legal rights, obligations and duties of the parties to the roll-up and the impact of the changes in investment objectives on the limited partners.

[5] Securities Exchange Act Release No. 28236 (May 23, 1991), 56 FR 24436 (May 30, 1991). The comment period ends June 14, 1991.

[6] Recommendations by broker-dealers to their customers in connection with securities to be issued in roll-up transactions also have raised concerns involving customer suitability. The receipt of fees tied to the number of "yes" votes obtained may conflict with the duty of broker-dealers, in recommending to customers the purchase, sale, or exchange of securities, to have a reasonable basis to believe that the recommendation is suitable for each customer based on his or her security holdings and financial situation and needs. [See NASD Rules of Fair Practice, Art. III, Section 2, NASD Manual (CCH) ¶2152]. Moreover, a broker-dealer's failure specifically to disclose to customers the existence of this conflict may violate the general antifraud provisions of the federal securities laws, particularly where the firm has a preexisting customer relationship with the investors it solicits.

[7] See Rule 421 of Regulation C (17 CFR 230.421). Registrants also are reminded that effectiveness of a registration statement may be denied or a stop order issued when there has not been a bona fide effort to present information in a reasonably clear, concise and readable manner. See Rule 461(b)(1) of Regulation C (17 CFR 230.461(b)(1)); see also, In the Matter of Franchard Corporation, 42 S.E.C. 163 (1964).

II. Interpretive Guidance

A. Presentation of Information

1. Readability

The primary purpose of the disclosure requirements of the federal securities laws is to provide the investing public with clear, comprehensible and complete information regarding the issuer, security, offering transaction and the risks of the investment. In view of the complexity of roll-up transactions and the risks of a limited partnership investment, meticulous care should be taken to assure that investors are provided with clear, concise and understandable disclosure as required by the rules of the Commission.[7] Legalistic, overly complex presentation and inattention to understandability often make the substance of the disclosure difficult to understand. Further, documents frequently contain vague "boiler plate" explanations that are imprecise and readily subject to differing interpretations. Disclosure of complex matters, such as compensation arrangements and partnership distributions, frequently is copied directly from the partnership and other agreements without any clear and concise explanation of the provisions. Disclosures are often repeated in different sections of the document. Such repetition often increases the sheer size of the prospectus, overwhelming the reader, without enhancing the quality of the information.

While these problems are troublesome in connection with any disclosure document, they are particularly acute in offerings directed primarily towards retail investors. Registrants are advised that where partnership and roll-up transactions are filed and they have not undertaken to present the required information in a clear, comprehensible manner, the staff will advise the registrant that the document cannot be processed until it is so written.

To address these problems, registrants are reminded that information should be presented in clear, concise paragraphs and sentences. To the extent practicable, information should be presented in short explanatory sentences and "bullet" lists.

Consistent with existing requirements, important terms should be defined in a glossary section located in the back of the prospectus. Frequent reliance on defined terms as a primary means of explaining information in the body of the prospectus should be avoided. Rather, defined terms should be used in conjunction with a simple and clearly understandable textual description of their meaning in order for the reader to easily grasp the information being conveyed. For example, when the defined term Net Cash from Operations is used in a prospectus, it should be accompanied by a simple explanation such as "which is defined in the Partnership Agreement to mean generally the partnership's cash flow from operations." This allows the detailed definition to remain in the glossary but provides sufficient information for a reader to more easily understand the disclosure being presented.

Legal and business terminology should be avoided. Registrants should not presume that the investor understands the import of terms such as "best-efforts," "minimum-maximum offering," "dissenters' or appraisal rights." These terms, when used, should be clearly explained.

2. Captions and Headings

Caption and subheading titles should be descriptive of the substance of the disclosure included in the section.[8] For example, the title of the risk factor discussing the limited market for the securities should reflect the lack of liquidity or the inability to resell, rather than simply being titled Liquidity or Secondary Market.

3. Format of Prospectus [9]

There should be a uniform and systematic structure to a prospectus. The headings used in the summary section should correspond to the headings of the various sections in the body of the prospectus. The table of contents should contain these major headings as well as subheadings.

a. Cover Page.[10] Prospectus cover pages now contain significant amounts of text that result in obscuring the information intended to be highlighted by being placed on the cover page. As a result, it has become difficult to understand at the outset what the offering or transaction is about.[11] The cover page should be in plain English and contain a brief description of the purpose of the offering or the transaction. The most significant adverse effects should be highlighted through the use of a concise list of bullet-type statements. For example, in the case of an offering that presented risks because of a lack of control, substantial fees, leverage, limited voting rights, lack of a secondary market and lack of diversification, the cover page could include a list indicating:

- Total Reliance on General Partner
- Authorization of Substantial Fees to the General Partner and its Affiliates
- Leverage
- Limited Voting Rights of Investors
- Inability to Resell or Dispose of the Units Except at a Substantial Discount From the Per Unit Price
- Lack of Asset Diversification

A practice has developed in limited partnership offerings of setting arbitrary offering amount goals that bear no relationship to the number of securities that ultimately will be sold. Specifically, an offering frequently has a very low minimum goal to break escrow and two significantly higher maximum amounts. This practice may cause confusion in evaluating the current offering and the success of the sponsor's prior offerings. Therefore, the offering terms should refer only to the minimum amount to break escrow and the maximum amount to be offered.

In addition, prospective investors may not fully appreciate the different investment risks that will result from the amount actually raised. Therefore, the offering amount set forth on the top of the cover page should be the minimum amount needed to break escrow. The risk factor disclosure also should be based on the minimum amount. If the minimum amount is met and escrow is broken, the offering amount and other disclosures should be updated to reflect any material changes including investment and business risks that are presented by the offering at that point in time. This will enable an investor to appreciate fully the nature of an investment in the particular partnership at the time that his or her investment decision is made.

b. Table of Contents. A "reasonably detailed table of contents" with specific page references is currently required in all prospectuses.[12] The headings that appear in the table of contents should be consistent and correspond to those used in the body of the prospectus. The table of contents should follow the cover page of the prospectus.

c. Summary.[13] In light of the complex nature of disclosure documents for roll-up transactions and limited partnership offerings, a summary is required.

The summary section should provide investors with a clear, concise and coherent "snapshot" description of the most significant aspects of a roll-up transaction or a partnership offering. However, more often than not, summaries randomly repeat the text of prospectuses. This protracted and confusing structure fails to provide the intended brief overview of the salient aspects of the transaction.

The information that should be included in the summary will vary with each transaction or offering. Issuers should carefully consider and identify the aspects of an offering that are the most significant and determine how best to highlight those points in a clear, concise and understandable manner. The summary for a roll-up transaction generally should include: the name and a description of the entities proposed to be included in the roll-up transaction; a brief description of the roll-up transaction; investor voting rights and the most significant changes in the voting rights, such as the addition of a supermajority provision to remove the general partner; changes in the business plan, the form of ownership interest or management compensation; the general partner's conflicts of interest; the likelihood that the securities received in the roll-up transaction will trade at a substantial discount to the exchange value; the material terms of the roll-up transaction, including the valuation method used to allocate securities in the successor; dissenters' or appraisal rights; investor rights to a limited partner list; any report, opinion or appraisal referred to in the prospectus; the background and reasons for the transaction; risk factors and adverse effects of the roll-up transaction; and, intended benefits of the roll-up transaction. While readers should be cross referenced to the more detailed discussion on the matters covered in the summary, cross references without a short descriptive discussion of the matter should be avoided.

d. Risk Factors.[14] The discussion of investment and business risks associated with the roll-up transaction or limited partnership offering should be short and concise and organized in a careful and logical fashion. Risks of a similar nature should be grouped together so they may be understood in context. For example, risks associated with the business in which the partnership intends to engage should be discussed together. These risks would include, if applicable, risks associated with particular properties, the lack of regulatory approval and the existence of environmental problems. Likewise, investment risks generally should be grouped. These risks would include, if applicable, the lack of liquidity of an investment, limitations on the rights of the limited partners and an enumeration of the rights of the general partner. The risks should be explained clearly, and where one risk is heightened by the nature of the investment, this should be clearly stated. For example, in an initial offering of limited partnership interests where there is not expected to be a liquid secondary market, and where the limited partners may be bound by a vote of a majority of other partners to a substantially changed investment (through merger, the partnership agreement or in other ways), that should be disclosed. In the case of a roll-up that increases the vote necessary to remove the general partner, and thereby substantially changes the business plan of the entity or permits the general partner wide discretion in selecting properties and taking on leverage, clear disclosures should be provided of the enhanced risks introduced by the broader discretion given to the general partner and the reduced ability to remove the general partner.

The risks should appear in order of their materiality to an investor. The most significant risks may warrant bullet disclosure on the cover page of the prospectus. While readers should be cross referenced to the more detailed discussion on the matters determined to be risks, cross references without a short description of the risks should be avoided.

[8] See Rule 421(b) of Regulation C (17 CFR 230.421(b)).

[9] See Industry Guide 5, Item 801(c) of Regulation S-K (17 CFR 229.801(c)) and Industry Guide 6, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[10] See Item 501(c) of Regulation S-K (17 CFR 229.501(c)), Item 1 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 1 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[11] Industry Guide 4 requires specific information to be included on the cover page of a prospectus relating to the offering of interests in oil and gas programs. This release is not meant to change the disclosure requirements as they relate to these offerings. Rather, it is intended to enhance the requirements by providing guidance concerning the presentation of information on the cover page and in the prospectus.

[12] Item 502(g) of Regulation S-K (17 CFR 229.502(g)).

[13] See Item 503(a) of Regulation S-K (17 CFR 229.503(a)) and Item 3 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)).

[14] See Item 503(c) of Regulation S-K (17 CFR 229.503(c)) and Item 7 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 2 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

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In a roll-up transaction, the risks posed by the particular transaction generally should be discussed before the risks that are inherent in an investment in a partnership or other generic risks.

e. Income Tax Considerations.[16] The use of a long form tax opinion filed as an exhibit to the registration statement is encouraged. Whether a long form opinion is filed as an exhibit or is included as an appendix, the prospectus should prominently set forth a brief, clear and understandable summary of the material income tax aspects of the roll-up transaction or partnership offering. This section should disclose the material tax aspects upon which counsel is unable to opine. Where counsel is unable to opine on material tax aspects, the prospectus should include a risk factor. If a roll-up transaction is taxable to an investor, risk factor treatment should be afforded.

f. Prior Performance.[16] In an initial offering of limited partnership units, the sponsor must provide prior performance information in a narrative and tabular format. The sponsor must present this information in a clear and concise format easily understood by the intended reader. This information must accurately reflect the general partner's ability to offer and manage this program.

In preparing a prospectus, a sponsor should not take line headings from the guide if they are inapplicable or do not accurately reflect the nature of the information. Line entries that are not self-explanatory should be clarified. For example, use of the caption "other" is inappropriate if the entry consists of only a single category of information. When possible, the table should use more descriptive headings (*i.e.*, return of capital). Also, if the line item contains more than one category of information, the presentation should be broken down into various components to the extent material.

B. Quality of Disclosure

The following discussion sets forth the Commission's interpretive views of existing substantive disclosure requirements. The discussion separately presents interpretive views that are applicable to roll-up transactions, interpretive views applicable to both roll-up transactions and limited partnership offerings and interpretive views applicable solely to limited partnerships offerings. These interpretations are intended to result in a clearer presentation of the benefits and detriments of a roll-up transaction or an investment in a particular limited partnership. In each instance, the items may be of such material significance to an investment decision as to warrant summary treatment in the forepart of the prospectus.

1. Roll-Up Transactions

a. *Effects on Different Partnerships.*[17] Roll-up transactions frequently involve combining two or more partnerships that may be affected quite differently by the transaction. Investors in each partnership must be provided information from which to evaluate the potential risks, adverse effects and merits of the roll-up transaction for their particular partnership interests. This disclosure should highlight the materially different effects for their partnership vis-a-vis the other entities involved. Disclosure of different effects should not be "buried" in parenthetical references. For example, it would not be considered adequate to describe a benefit in the following format: "Investors in the partnerships (except Partnership A) should benefit from the ability to sell their interests." When different effects are noted, the name of each partnership that may experience the effect should be included.

b. *Effects of Participation in a Roll-Up by Less Than All Partnerships.*[18] Another feature of roll-up transactions is that, even if one or more partnerships do not consent, the transactions often may be completed with the partnerships that do consent. In a transaction in which numerous partnerships are asked to participate, it is possible that the successor may be formed through many different combinations of partnerships. This creates serious uncertainties about the possible business prospects and financial condition of the successor. In that situation, these uncertainties about the effects of the roll-up transaction should be addressed in the disclosure document.

In addition, if a "fairness opinion" is obtained, the description of the opinion should make clear what partnership combinations it addresses. The description also should disclose whether the opinion addresses whether the transaction is fair to investors in each of the partnerships and, if it does not, why not. If (i) no fairness opinion is obtained, (ii) the fairness opinion does not address all possible combinations, or (iii) the fairness opinion does not reach the fairness of the transaction to the limited partners of each partnership, clear and prominent disclosure of the lack of a fairness opinion on all, or a part, of the transactions in question should be made. Particularly in the case where a fairness opinion on some part of the transaction is obtained, the disclosure should be clear as to those aspects of the transaction, and those partnership interests not covered by the fairness opinion.

c. *Allocation of Interests in the Successor.*[19] A roll-up transaction includes the issuance of interests in the successor to the limited partners and general partner of the partnerships. Accordingly, the method used to allocate the interests is a critical term of the transaction and must be thoroughly explained and illustrated in an understandable manner. This disclosure should include the reasons why this method was selected, what other methods were considered, why they were rejected and a complete description of how assets of the partnerships and the interests of the general partner were valued for purposes of the allocation, including any material assumptions, limitations or qualifications. For example, if the general partner will receive interests in the successor in exchange for previously "subordinated" rights to payments from the partnerships, the method used to determine the value of such rights should be explained. If the method differs among partnerships, the reason and effects of the method used to allocate interests in the successor on the different partnerships also should be highlighted and described.

d. Trading Market. In light of the history of a substantial difference between trading value of the securities issued in roll-up transactions and the exchange value, roll-up transaction disclosure documents should include prominent disclosure of the likelihood that the securities will trade at a price substantially below the value assigned in the transaction. This information should be presented on the cover page and in the risk factors section. The effect on the trading price of the payment of previously subordinated fees or expenses to the general partner should also be discussed. Other factors, such as the successor entity's cash distribution policy, that likely will affect the trading price should be discussed as well.

[16] See Item 4(a)(6) to Form S-4 (17 CFR 239.25), Item 12 and Appendix I to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 14 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[17] See Item 5 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 13 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[17] See Item 4 to Form S-4 (17 CFR 239.25).

[18] See Item 4 to Form S-4 (17 CFR 239.25).

[19] *Id.*

e. Reports, Opinions and Appraisals.[20] If a report, opinion or appraisal is referred to in a roll-up proxy statement/prospectus, Form S-4 requires that the information requested by Item 9(b) (1) through (8) of Schedule 13E-3 be provided. Also, the complete, and not summary, report, opinion or appraisal must be filed as an exhibit to the registration statement.

If a negative opinion was rendered by an investment banker or financial advisor concerning the fairness of the roll-up, or an investment banker or financial advisor refused to render a favorable opinion, this must be disclosed. Failure to provide adequate disclosure of this information would constitute a material omission under the anti-fraud provisions of the securities laws.[21]

2. Roll-Up Transactions and Limited Partnership Offerings

a. Application of Guide 5.[22] While Industry Guide 5 ("Guide") by its terms applies only to the "Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships," the requirements contained in the Guide should be considered, as appropriate, in the preparation of registration statements for real estate investment trusts and for all other limited partnership offerings. The Guide addresses disclosure concerns that are applicable to all offerings of limited partnership units, e.g., conflicts of interest, risk factors, compensation and summary of limited partnership agreement.

The requirements contained in the Guide that are relevant to all limited partnership offerings also should be considered, as appropriate, in the preparation of disclosure documents for roll-up transactions. Many of the disclosure concerns, such as conflicts of interest, investment objectives and fiduciary responsibilities, are pertinent to roll-up transactions.

b. Compensation to General Partner and its Affiliates.[23] The description of compensation and fee arrangements in primary offerings by limited partnerships frequently is complicated and obscure. The use of tables as a means of simplifying the disclosure is encouraged. The description of compensation arrangements between the partnership, general partner and its affiliates should give investors a clear understanding of the nature and amount of compensation that may be paid. Commonly, there are categories of compensation to be earned by the general partner. The disclosure document should make clear the distinctions among categories, including the level of potential compensation. The extent to which a general partner may affect the nature of the compensation by undertaking different transactions should be made clear. For example, a general partner might receive a given percentage of operating income (i.e., from rents, etc.) and a different percentage for sales of properties or refinancings. The distinction should be made clear, as well as the potential for the general partner to affect the categories of compensation. Both a narrative and tabular presentation of this information is recommended.

In the narrative presentation, the maximum amount that may be paid in each category of fees or compensation should be prominently disclosed. The tabular numeric presentation of this information should be based on this maximum amount.

Where an issuer states that there are ceilings on certain categories of fees or expenses, the issuer should also state whether the fees or expenses may be recovered by reclassifying them under a different category.

In addition, in a roll-up transaction, the issuer should compare the nature and level of compensation to be paid by the new entity to that paid by the old. To provide for clearer disclosure, registrants should present changes in the structure of fees and other compensation payable to the general partner in a tabular format, and should include specific quantification of such changes, where practicable. Further, the disclosure documents should include textual and numerical disclosure of the fees and other expenses payable to the general partner, affiliates and others solely because of the roll-up transaction.

A pro forma presentation of the compensation and fees proposed to be paid in the new entity should be presented using the historical pro forma financial statements. Where changes in the business plan may result in higher compensation than that shown in the pro forma presentation based on historical activities, the disclosure should address the potential for greater fees than shown in the pro formas and outline the potential differences. Where a compensation ceiling is fixed for a specified time period, the issuer also should set forth a pro forma presentation of the compensation and fees without giving effect to the ceiling.

c. Conflicts of Interest.[24] Many of these transactions or offerings are complicated by the number of affiliated entities involved in the transaction or in the business operations of the entities. Where affiliates of the general partner may participate in the offering or the issuer's business activities, an organizational chart showing the relationship between the general partner and its affiliates in the forepart of the prospectus should facilitate investor understanding of the relationships among such entities.

Registrants should describe concisely the potential conflicts of interest that are present and should identify clearly the transactions and relationships that give rise to such conflicts. The description should address the benefits and detriments that may be realized by the limited partners, the general partner and its affiliates, and any other parties that are subject to a conflict. A description of the procedures used or to be used to minimize the potential conflicts should be provided.

d. Fiduciary Responsibility of the General Partner.[25] Prospectuses are required to identify and explain the nature of the general partner's fiduciary duties to the limited partners. Where the partnership agreement modifies the state-law fiduciary duty standards, the registration statement should compare the state-law fiduciary duty standards with the standards as modified by the partnership agreement. The disclosure also should address the reasons for modifying the duties and the specific benefits and detriments to both the general partner and limited partners from each modification. A tabular presentation of this information should facilitate investor understanding.

A clear description of the limited partners' legal rights and remedies should be provided. Similarly, a clear explanation of defenses available to the general partner, such as the business judgment rule, also should be set forth.

In a roll-up transaction, the issuer also should provide a comparison of the general partner's fiduciary duty standards in the new entity to those in the existing entities. This comparison would describe the fiduciary duty standards in the existing entities, the new entity and, where the new entity is

[20] See Items 4(b) and 21(c) to Form S-4 (17 CFR 239.25).

[21] See 15 U.S.C. 77q(a); 15 U.S.C. 78j(b).

[22] 17 CFR 228.801(e).

[23] See Item 4 to Form S-4 (17 CFR 239.25), Item 4 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 10 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[24] See Items 4 and 18(a) to Form S-4 (17 CFR 239.25), Item 5 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 12 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[25] See Item 6 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)).

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formed under a different jurisdiction, the material differences between the fiduciary duty standards in the old and new jurisdictions.

e. Management.[36] Information about management's business experience is material to an investor's evaluation of an offering and determination of whether to invest in the issuer. While this is true in any offering, it is especially significant when investors must rely largely on the individual expertise and business acumen of the general partner or other adviser to select and operate the properties to be acquired, and realize the stated investment objectives. Where the history of the officers and directors either individually or as a whole is inconsistent with the express or implied assertion that the partnership will benefit from their management, additional disclosure in support of this assertion should be provided. In the discussion of the business experience of officers and directors, where job titles do not indicate clearly the nature of the person's former duties or where job titles may give a misleading impression of the individual's experience, additional disclosure should be provided in order to clarify the nature of the individual's duties.

f. Investment Objectives and Policies.[37] The investment objective of an offering should be clearly and concisely set forth. This discussion must be consistent with other disclosures. For example, where a document describes the possible use of high leverage and an income investment objective, the disclosure would have to address how the business plan relying on high leverage would still permit an income objective.

Further, there must be a reasonable basis to support a stated objective. In this regard, consideration must be given to the effect that conditions or trends in the economy, such as the recent conditions in the real estate industry, may have on the likelihood that a stated investment objective will be realized within the stated anticipated term of the partnership.

Where a general partner may amend the investment objectives of the partnership without the vote of the limited partners, the disclosure document should make clear that, in essence, the investment objectives are those defined by the general partner from time to time. In such cases, lengthy descriptions of a partnership's investment objectives may obscure the fact that the investor is, in essence, buying an interest in an entity with unlimited investment objectives. The document should disclose the general partner's present plans while making clear that these may be totally recast. The document should set forth a description of the factors to be considered by the general partner in making such a change.

Where a partnership agreement permits the partnership to engage in joint ventures, disclosure should be made of those activities that the partnership may engage in through a joint venture that it could not otherwise undertake. For example, where the partnership agreement precludes the purchase of properties under construction, the ability of the partnership to purchase such properties through a joint venture should be disclosed. In such case, the risks and business implications of such activities should be clearly stated.

Recently, several issuers have disclosed in their prospectuses that the general partner, as part of its analysis of prospective property acquisitions, "will retain a national accounting firm to perform certain agreed-upon procedures related to the general partner's financial forecast with respect to each property acquisition" and that "[s]uch procedures will not constitute an examination of the forecast in accordance with standards established by the American Institute of Certified Public Accountants." Disclosure of an independent accountant's involvement with prospective financial statements or forecasts should be limited to circumstances in which the accountant has performed, in accordance with standards issued by the American Institute of Certified Public Accountants, an "examination" of prospective statements that are presented in the prospectus. Disclosure of "agreed-upon procedures" performed or to be performed by an accountant is inappropriate under all circumstances.[38]

In a roll-up transaction, the material effects flowing from the changed investment objectives and policies should be disclosed clearly. For example, most limited partnerships, before a roll-up, are expected to have a finite life, at the end of which they will dissolve and distribute their assets. After a roll-up, the surviving entity will be operated as an ongoing business with no obligation to make distributions or to dissolve. Therefore, while an investor was expecting annual cash distributions and proceeds from the sale of assets and the dissolution of the partnership after a seven to ten year period, the investor will receive dividends when declared by the successor and will be dependent upon the securities markets in order to liquidate his investment.

In addition, most limited partnerships before a roll-up are not publicly traded, so the value of the investment is extremely difficult to determine. After a roll-up, the value of the investment is based on the market for securities of entities operating in a specific industry. This value generally is based on a multiple of operating cash flow and a factor for the market's expectation of the likelihood of the continuation of that cash flow, rather than the appraised value of the underlying assets.

g. Summary of Partnership Agreement.[39] The issuer should identify and discuss the voting and other material rights of the limited partners under the partnership agreement. This discussion should include, but not be limited to, the right to call meetings, vote upon extraordinary transactions such as mergers and consolidations, obtain a copy of the list of partners, receive appraisal or dissenter's rights, inspect partnership books and records, remove and replace the general partner, compel dissolution or liquidation or amend the partnership agreement.

The voting rights of limited partners should be specifically set forth in this section. Such description should include the rights limited partners have to vote on any matter, the vote of limited partners necessary to approve any proposal and the rights of limited partners to submit a proposal to the vote of limited partners.

Any limitations or conditions (including those under state law) that the general partner may place on the exercise of these rights should be explained. If limited partners are not afforded the foregoing rights or if the partnership agreement restricts the rights that limited partners otherwise would have enjoyed under state law, this information should be disclosed. In addition, the issuer should characterize the extent of discretion retained by the general partner with regard to the operations of the partnership.

In addition to the foregoing, the issuer in a roll-up transaction should clearly compare the rights of the limited partners under the new partnership agreement or governing instruments with the rights of the limited partners under the existing partnership agreements. If limited partners will be affected differently depending on the partnership entity in which they have invested in, a partnership by partnership comparison must be made. If the new entity will be formed in a different jurisdiction, the differences in the rights under the respective state laws should also be described. A similar comparison of the actions that the general partner may take under the new partnership agreement with the actions that the general partner may take under the existing partnership agreements should also be provided.

h. Distributions and Allocations.[40] This section is often too complex for the investor to understand. In order to enhance investor understanding of this section, the narrative text should include shortened definitions of terms that are fully defined in the glossary. This will enable readers to gain a general understanding of the nature of the distributions and allocations without having to refer constantly to the glossary.

It is often unclear whether the distributions represent a return of investors' capital or a return on investors' capital. Whenever cash distributions are discussed on a historical basis, the disclosure should make clear the nature of the distribution. When distributions are discussed on a prospective basis, the disclosure also should make clear, to the extent known, the nature of the distribution.

Limited partnership prospectuses often disclose that limited partners will have a "priority" or "preferred" return on distributions made by the partnership. These descriptive terms should not be used if the right of limited partners to receive their distributions is in any way contingent. More often than not, even though limited partners are purportedly given a "preferred right" to a specified percentage of cash distributions, this right may only be invoked after substantial operating fees and expenses have been paid to the general partner. The disclosure should make clear that, if true, the "priority" or "preferred" distribution follows and does not preclude payments to the general partner. The disclosure should give a sense of the size of such payments to the general partner as well. In the rare circumstance where the right is not contingent and limited partners are guaranteed a priority return, consideration should be given as to whether a separate security exists.[41]

i. Sales Literature.[42] Registrants are reminded of the obligation, in Item 19D of the Guide, to submit all sales literature to the staff of the Commission supplementally prior to its use. This obligation is not extinguished once a registration statement is declared effective. Registrants must continue to submit all sales literature to the staff. Sales literature includes all material used in connection with the sale of the units, whether or not it is prepared by the general partner or its affiliates.

Registrants are also reminded that sales material should present a balanced discussion of both risk and reward and the contents of the literature should be consistent with the prospectus.

3. Limited Partnership Offerings

a. Estimated Use of Proceeds.[43] A principal problem with the presentation of the issuer's estimated use of proceeds in a limited partnership offering is the lack of prominent disclosure concerning the amount that will actually be invested in the business of the partnership. It is often the case in limited partnership offerings that a substantial percentage of the original investment will pay the expenses of the offering and fees to the general partner and its affiliates. The difference between the amounts provided by investors and the amounts expected to be actually invested in assets is of obvious significance to potential investors.

Accordingly, prominent disclosure should be made of the percentage of an investment that will actually be available for investment after the deduction of all front-end fees, commissions, expenses and compensation. This information should be presented in the narrative disclosure before the estimated use of proceeds table. Additionally, it is suggested that the bottom line of the use of proceeds table should reflect this amount. Cover page disclosure of this percentage should also be made in order to place the amount offered in its proper context.

b. Prior Performance.[44] In partnership offerings, the general partner is required to discuss the "track record" or prior performance of other programs sponsored by the general partner. A problem arising with greater frequency is what information is necessary when a general partner was a sponsor of a prior program, but has been removed from that program. Prior performance information should be provided for the period during which that person was the general partner. If the results (*i.e.* final sales of properties) for such a program did not meet expectations or the original investment objectives of the program, a person who was a general partner for any part of the operating period should provide information concerning the adverse developments experienced by that prior program.

The prior performance tabular information should reflect whether prior programs have been able to achieve their stated objectives. Adverse developments contained in the tables should be addressed in detail in the narrative section. The narrative section should be updated whenever the tabular information is updated.

Tabular information should be provided for all programs which have had a closing or have closed within the time period specified by the applicable table. If a program has had a closing and has begun operations, prior performance information should be provided for that program.

With regard to Table III of the Guide, the amount of cash generated from operations should be calculated based on the definition of operating cash flow from the Statement of Cash Flows prepared in accordance with Financial Accounting Standard ("FAS") 95. If the amount in the table differs from the amount that would be reflected in the Statement of Cash Flows, a footnote should be included reconciling the difference. Also with regard to Table III, a footnote should be included that explains how those programs experiencing operating deficiencies are being funded. Typically such deficiencies are built into the program during its first years of operations. However, continuing deficiencies can represent an adverse development that requires additional disclosure. Finally, if a program was designed to provide tax credits to investors, specific line items should be included in both parts of the table that disclose the amount of tax

[36] See Item 401 of Regulation S-K (17 CFR 228.401), Item 9 of Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 11 to Industry Guide 4, Item 601(d) of Regulation S-K (17 CFR 229.801(d)).

[37] See Item 4 to Form S-4 (17 CFR 239.25), Item 10 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 7 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[38] See AICPA, Guide For Prospective Financial Statements (1986).

[39] See Item 4(a)(4) to Form S-4 (17 CFR 239.25), Item 14 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 15 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[40] See Item 9 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d))

[41] A guaranty may be a separate security under section 2(1) of the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77b(1); 15 U.S.C. 77a *et seq.*).

[42] See Item 19 to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)).

[43] See Item 504 of Regulation S-K (17 CFR 229.504), Item 3B to Industry Guide 5, Item 801(e) of Regulation S-K (17 CFR 229.801(e)) and Item 8 to Industry Guide 4, Item 801(d) of Regulation S-K (17 CFR 229.801(d)).

[44] See *supra* note 16.

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credits that have been provided to investors.

III. UPDATING OF INFORMATION [35]

Issuers engaged in real estate offerings traditionally have updated prospectuses by means of supplements attached to the basic prospectus. This practice may result in a confusing, disjointed and lengthy disclosure document. In these circumstances, it often is left to the investor to discern not only which information has or has not been modified or superceded, but the substance of the change as well. Material information that ordinarily would appear in the forepart of a prospectus may be spread out in different documents. Moreover, other information in the initial prospectus, such a risk factors or investment objectives, may not be updated in a clear and concise manner. Therefore, just as in the case of non-real estate offering documents, when the document becomes confusing, a post-effective amendment containing a reprinted prospectus will be required. Where a supplement is used, consideration should be given to including an updated summary section as part of the supplement.

IV. MATCHING SERVICES AND CROSSING ARRANGEMENTS

There appears to have been a recent increase in the number of limited partnerships or real estate investment trusts attempting to create an alternative secondary market for their security interests. The most common method used has been a form of matching service, crossing arrangement or some other such liquidity enhancement plan through which a person wishing to sell an equity interest will be matched with someone who is seeking to buy an equity interest. This service often is created to supplement or work in conjunction with a dividend reinvestment plan. Usually, the general partner, advisor or one of their affiliates structures the arrangement and facilitates the matching of potential buyers and sellers. In certain circumstances, services provided by affiliated entities or their associated persons pursuant to a matching service or crossing arrangement could subject such persons to the broker-dealer registration requirement of Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"). [36]

If the general partner, advisor or one of their affiliates is involved in the crossing arrangement, the sale of securities through the arrangement is an offer or sale by the issuer for purposes of section 2(3) [37] and section 5 [38] of the Securities Act. Therefore, the issuer must register under section 5 of that Act a good faith estimate of the number of shares expected to be purchased through the arrangement. The issuer also must undertake to keep the registration statement "evergreen" during the existence of the arrangement. This treatment is similar to that accorded employee stock purchase plans and dividend reinvestment plans for determining whether registration is required under the Securities Act. [39]

List of Subjects in 17 CFR Parts 231 and 241

Reporting and recordkeeping requirements, Securities.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Parts 231 and 241 of title 17, chapter II of the Code of Federal Regulations are amended by adding each of the following Release Nos. and the release date of June 17, 1991, to the list of interpretive releases in each part: 33-6900, 34-28314.

By the Commission.

Dated: June 17, 1991

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 91-14770 Filed 6-24-91; 8:45 am]

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[35] See Item 20 to Industry Guide 5, Item 801(c) of Regulation S-K (17 CFR 229.801(c)).

[36] 15 U.S.C. 78o(b); see Rule 3a4-1 under the Exchange Act [17 CFR 240.3a4-1] and Securities Exchange Act Release No. 22172 (June 27, 1985); see also Tri-State Livestock Credit Corporation, letter issued October 18, 1989 and CNB Corporation, letter issued June 9, 1989.

[37] See 15 U.S.C. 77b(3).

[38] See 15 U.S.C. 77e.

[39] See Securities Act Release Nos. 4790 (July 13, 1965), 5515 (August 6, 1974) and 6188 (February 1, 1980); see also Sierra Capital Realty Trust VI Co. and Sierra Capital Realty Trust VII Co., letter issued July 5, 1990.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Number 34-29315; IC-18201 [File No. S7-22-91]]

RIN 3235-AD63

Regulation of Securityholder Communications

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission is proposing several amendments to its proxy rules under section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") [1] that would facilitate securityholder communications in furtherance of the goal of informed proxy voting, and would reduce the costs of compliance with the proxy rules for all persons engaged in a proxy solicitation. These proposals constitute the first in a series of possible rulemaking initiatives relating to the proxy solicitation process that are expected to arise from the Commission's ongoing proxy review.

First, the Commission is proposing a new exemption from all proxy rules but the antifraud provisions that would cover solicitations by any "disinterested" person, to be defined as a person who wishes to solicit in regard to any matter subject to action by securityholders, but who has no material economic interest in that matter and who is not seeking authority to act as a proxy for securityholders.

Second, the Commission is proposing to amend the proxy rules to limit the types of proxy soliciting material that would be required to be filed in preliminary form to the proxy statement and form of proxy.

Third, the proposed amendments would provide that all proxy material, whether in preliminary or definitive form, would be public upon filing with the Commission.

Fourth, amendments to Rule 14a-7 [2] are being proposed to add information to the securityholder list that currently must be provided by the registrant to a requesting securityholder, and to shift the election of whether to provide the list or to mail from the registrant to that securityholder. Comment is sought on the proposed alternative of leaving the election with the registrant, on the condition that it bear the costs of mailing the requestor's soliciting materials to securityholders if it chooses to mail rather than to provide the list.

DATES: Comments should be received on or before August 9, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-XX-91. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Catherine Dixon, Division of Corporation Finance, at (202) 272-3097, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

I. Executive Summary

In recent years, securityholders have sought a more active participatory role in the governance of public issuers. Prompted by actions of management, state legislatures, and courts having the intent or effect of limiting securityholder voting rights, as well as governmentally imposed fiduciary voting obligations and the practical difficulties attendant to divestiture of sometimes substantial portfolio securities holdings, individual and institutional investors alike have focused increasingly on their rights and obligations to cast informed proxy votes. Both institutional and individual securityholders have undertaken to influence issuer decisionmaking through a variety of means in the proxy solicitation context, including discussion with other securityholders and direct dialogue with boards of directors and management. As securityholders' awareness of the rights and responsibilities of ownership has heightened, there has been a growing public focus on the Commission's proxy rules and their impact upon the process of inter-securityholder communication, in particular on the ability of securityholders to take issue with management through the proxy voting process.

During its review of limited partnership "roll-up" transactions,[3] the Commission has learned of substantial investor concern regarding the restraints and costs imposed by the proxy rules on collective action by individual investors in limited partnerships who wish to respond to what they perceive as unfair transactions.[4] Among the principal impediments investors have cited are the need to comply with the entire panoply of proxy disclosure and filing requirements simply to communicate lawfully any objections to a proposed roll-up to more than 10 other limited partners;[5] the difficulty limited partners encounter in obtaining a list of securityholders from the general partner to facilitate such communications;[6] and the lack of sufficient time to enable investors to evaluate and comprehend the often complex roll-up disclosure documents.[7]

For more than a year,[8] the Commission has been engaged in a

[1] 15 U.S.C. 78n(a).

[2] 17 CFR 240.14a-7.

[3] "Roll-up" transactions typically involve the reorganization of two or more public or private limited partnerships or real estate investment trusts ("REITs") into a new, publicly traded entity, generally a corporation, limited partnership, or business trust or other entity to be taxed as a REIT. See Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Before the Securities Subcommittee of the Committee on Banking, Housing and Urban Affairs, United States Senate (Feb. 27, 1991) ("Commission Senate Testimony"). Investors in the predecessor entities receive an interest in the surviving entity, usually in the form of an equity security but in some instances a debt security or some combination of debt, equity or cash. *Id.* at 10.

[4] See Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Before the Telecommunications and Finance Subcommittee of the Committee on Energy and Commerce, U.S. House of Representatives (April 23, 1991) ("Commission House Testimony"); see also Commission Senate Testimony.

[5] See, e.g., Testimony of John F. Blake, Chairman, American Association of Limited Partners, Oversight Hearings on the Reorganization of Limited Partnerships, Before the Telecommunications and Finance Subcommittee of the Committee on Energy and Commerce, U.S. House of Representatives, at 14-15 (March 21, 1991) ("Blake Testimony"); Testimony of Richard G. Wollack, Chairman, Liquidity Fund Management, Inc., Oversight Hearing on Limited Partnership Reorganizations, or "Rollups," Before the Subcommittee on Securities of the Committee on Banking, Housing and Urban Affairs, U.S. Senate, at 5-6, 9, 13 (Feb. 27, 1991) ("Wollack Testimony").

[6] See, e.g., Blake Testimony, supra, at 15; Testimony of Glen Bigelow, President, Bigelow Management, Inc., Oversight Hearings on the Reorganization of Limited Partnerships, Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, U.S. House of Representatives, at 4 (March 21, 1991) ("Bigelow Testimony"); Wollack Testimony, supra, at 5, 13.

[7] See, e.g., Blake Testimony, supra, at 15-16; Bigelow Testimony, supra, at 7; Wollack Testimony, supra, at 5-6, 13.

[8] Chairman Richard C. Breeden formally announced the commencement of the Commission's proxy review project in a speech to the Council of Institutional Investors in April 1990. See Remarks of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Council of Institutional Investors Annual Meeting (Wash., DC, April 2, 1990).

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comprehensive review of the current efficacy of the federal proxy rules as applied to all registrants in light of such recent developments as the significant change in securityholder demographics resulting in a concentration of institutional equity ownership and voting power, and increasing securityholder activism with respect to matters of corporate or partnership governance. This review encompasses, but is not limited to, the significant number of letters received by the Commission that either propose or oppose revision of the existing proxy system.[9]

Proposals for change in the current proxy regulatory scheme, submitted to the Commission by the California Public Employees Retirement System ("CalPERS"), the United Shareholders Association ("USA"), and other shareholder organizations, as well as by individuals such as Elmer Johnson, a former corporate general counsel, manifest a strong concern that the Commission's proxy filing and disclosure requirements function to restrict unduly securityholder communications not only with one another, but also with the issuer's management and board of directors as well as third-party sources of proxy voting information unaffiliated with any person participating in a particular solicitation.[10] Such diverse entities or persons as the American Bar Association's Subcommittee on Tender Offers and Proxy Solicitations, the United Mineworkers of America, and the American Corporate Counsel Association to varying degrees share this concern. Conversely, organizations such as The Business Roundtable, the American Society of Corporate Secretaries and the Business Council of New York object to modification of the proxy rules to address these concerns, arguing that the recent success of securityholders in achieving their corporate governance goals through the proxy system attests to the adequacy of the federal proxy rules in protecting securityholder voting rights.

Recognizing the fundamental importance of the securityholder franchise, Congress granted the Commission very broad authority to regulate proxy solicitations pursuant to section 14(a) of the Exchange Act:

> It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title.

This sweeping grant of regulatory authority was based on a strong Congressional belief that:

> (F)air corporate suffrage is an important right that should attach to every equity security bought on a public exchange." * * * For this reason, the proposed bill (resulting in section 14(a)) gives the Commission * * * the power to control the conditions under which proxies may be solicited with a view to preventing the recurrence of abuses which have frustrated the free exercise of the voting rights of stockholders."[11]

The Commission's review of its proxy rules and the voting process those rules overlay is focused principally on three basic questions:

(1) Do the rules unnecessarily restrict or interfere with the ability of securityholders to communicate among themselves, or with management?

(2) Do the rules impose unnecessary costs on the registrant and soliciting persons?

(3) Are there securityholder interests that are not adequately addressed under the current rules?

The issues being considered within this review are diverse and wide-ranging. Some raise substantial policy questions, whereas others are quite technical in nature and focus on the efficiency of the proxy and voting processes. The proposals made today are intended to facilitate securityholder communications, and to reduce the costs of compliance with the proxy rules for all persons engaged in a solicitation, registrants as well as securityholders, consistent with the protection of investors. If adopted, these proposals would reduce substantially the costs and restraints cited by limited partners as impairing their ability effectively to express opposition to roll-up transactions they consider to be unfair.

A new exemption from the proxy filing and disclosure requirements is proposed that would cover a "disinterested" person's communication with, or other form of solicitation of, securityholders with respect to a matter to be acted upon by such securityholders pursuant to a solicitation of proxies, consents or authorizations. A "disinterested" person would be defined as a securityholder or other person who has no material economic interest (other than as a securityholder) in the matter subject to securityholder action, provided that no form of proxy, consent or authorization is sought either by such person or on its behalf. Thus, for example, a limited partner who receives a proxy statement and form of proxy from a general partner soliciting a proxy to approve a roll-up may communicate his or her objections freely to other limited partners without having to comply with the proxy filing and disclosure

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[9] All but two of the more than 40 submissions to the Commission are in the form of letters addressed to the Commission or staff of the Division of Corporation Finance. These submissions have been made available to the public in File No. 4-353. Two of the submissions are cast as formal rulemaking petitions pursuant to Commission Rule of Practice 4 (17 CFR 201.4): The Petition of the United Shareholders Association, dated and filed March 20, 1990 ("USA Petition"), and a letter from Fidelity Management & Research Co. to Linda C. Quinn, dated July 16, 1990, and filed July 25, 1990 ("Fidelity Letter"). More than 500 letters have been submitted by individual USA members in support of the organization's petition. The Commission also has considered, in the course of its review, various legislative proposals for revision of the proxy system introduced during the present and previous sessions of Congress, as well as ideas for proxy reform propounded by members of the academic and legal communities.

[10] See Commission Public File No. 4-353.

[11] H.R. Rep. No. 1383, 73d Cong., 2d Sess. 13-14 (1934). See also S. Rep. No. 1455, 73d Cong., 2d Sess. 77 (1934) (emphasis added) (mindful that securityholders are entitled to information and a voice in the "major policy decisions" made pursuant to the proxy voting process, "the committee recommends that the solicitation and issuance of proxies be left to regulation by the Commission"). See *Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375, 381 (1970); *J.I. Case* v. *Borak*, 377 U.S. 426, 431-32 (1964). Other federal courts have construed expansively the Commission's Section 14(a) authority. See, e.g., *SEC* v. *Transamerica*, 163 F.2d 511, 516 (3d Cir. 1947)("(I)t was the intent of Congress to require fair opportunity for the operation of corporate suffrage. The control of great corporations by a very few persons was the abuse at which Congress struck in enacting Section 14(a)."), cert. denied, 332 U.S. 847 (1968); *Greater Iowa Corp.* v. *McLendon*, 378 F.2d 783, 787 (8th Cir. 1967) (in construing scope of Section 14(a), the court opined that "(w)e are aware that historically it is extremely difficult to oust entrenched management or even to challenge directors to account for their managerial responsibilities. We think dissenting securityholders have (an) absolute right to challenge entrenched management and to question entrenched management's stewardship (through the proxy process). No arbitrary blocks or barriers should be raised by the courts in exercising this phase of corporate suffrage."). Indeed, as the Court of Appeals for the D.C. Circuit emphasized, the "clear import of the language, legislative history and administration of section 14(a) is that its overriding purpose is to assure to corporate shareholders the ability to exercise their right—some would say their duty—to control the important decisions which affect them in their capacity as stockholders and owners of the corporation." *Medical Comm. for Human Rights* v. *SEC*, 432 F.2d 659, 680-81 (DC Cir. 1970), vacated as moot, 404 U.S. 403 (1971). Almost 20 years later, this court clearly recognized the statutory authority vested in the Commission to regulate the proxy solicitation process, and Congress's intention that this authority encompass the power to regulate disclosure and the conditions under which proxies are solicited. See *SEC* v. *The Business Roundtable*, 905 F.2d 406 (D.C. Cir. 1990)(holding, however, that this section 14(a) authority could not support Commission Rule 19c-4 (17 CFR 240.19c-4)).

requirements. Consistent with the investor protection goal of section 14(a), however, this exemption would not insulate any solicitation from the antifraud prohibitions of Rule 14a-9.[12] Comment is sought on alternatives to facilitate securityholder communications while maintaining a public record of the otherwise exempted solicitation effort.

The Commission in addition is proposing to amend its proxy rules to extend the type of solicitation material not subject to a preliminary filing requirement to encompass all proxy soliciting materials, other than those proxy statements and forms of proxy not already permitted to be filed solely in definitive form. The proposed amendments also would provide that all proxy materials, whether in preliminary or definitive form, would be public upon filing. These proposed changes are intended to provide greater ease of communication with securityholders by registrants and soliciting securityholders alike, and to reduce compliance and timing costs for both.

Finally, the Commission proposes today to amend Rule 14a-7 to permit the person making a request for a securityholder list under the rule, rather than the registrant, to elect whether, at his or her own expense, to obtain the list subject to prescribed limitations on the scope of its use, or to have the registrant mail the requestor's soliciting materials. The proposed amendments to Rule 14a-7 further would expand the required stockholder list information to include both the number of securities held by identified holders, and certain specified information regarding beneficial ownership to the extent such information is reasonably available to the registrant. Comment is solicited on an alternative version of the proposed amendment that, while leaving the election with the registrant, would impose the cost of mailing on the registrant.

A. The Existing Proxy Regulatory Framework

Any solicitation of proxies in respect of securities registered pursuant to section 12 of the Exchange Act [13] or issued by an investment company registered under the Investment Company Act of 1940 [14] is subject to the filing and disclosure requirements of the Commission's proxy rules.[15] As defined by the Commission, the term "solicitation" encompasses not only a request that a shareholder execute a proxy, but also "(t)he furnishing of a form of proxy or other communication to securityholders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy." [16] Thus, the proxy rules apply to any person seeking to influence the voting of proxies, regardless of whether the person is seeking authorization to act as a proxy. Both the courts and the Commission have construed this necessarily fact-intensive test broadly to bring within the ambit of the proxy rules any communication that, under the totality of relevant circumstances, is considered "part of a continuous plan ending in a solicitation and which prepare(s) the way for its success." [17]

Rule 14a-3(a) [18] bars commencement of any solicitation covered by the proxy rules until shareholders receive a written proxy statement containing the information prescribed by Schedule 14A.[19] Except with respect to proxy statements filed on behalf of registrants that address only specified routine, or "plain vanilla," matters,[20] Rule 14a-6(a) requires that the proxy statement, together with the form of proxy and any other soliciting material to be furnished concurrently to shareholders, be filed in preliminary form with the Commission at least ten days before transmittal to shareholders. In recognition of the timing problems presented by these filing and dissemination requirements where there are opposing solicitations or other third-party actions that could affect the outcome of a solicitation, Rules 14a-11(d) [21] and 14a-12 [22] authorize solicitations before proxy statement delivery in connection with contested election and other, non-election solicitations, respectively. These solicitations nevertheless remain subject to a five-business day preliminary filing requirement.[23]

Exemptions from application of the filing and disclosure requirements of the proxy rules, but not from the antifraud provisions of Rule 14a-9, have been adopted by the Commission for non-issuer solicitations directed to 10 or fewer persons,[24] and for proxy voting advice rendered in the ordinary course of business by financial advisers to persons with whom the adviser has a prior business relationship.[25] Other exemptions have been promulgated for solicitations of beneficial owners by record owners, solicitations by beneficial owners with regard to their securities, solicitations in a public offering (other than Rule 145

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[12] 17 CFR 240.14a-9.

[13] 15 U.S.C. 78l.

[14] 15 U.S.C. 80a-1 et seq. See Rule 20a-1 under the Investment Company Act of 1940 (17 CFR 270.20a-1).

[15] See section 14(a) of the Exchange Act (15 U.S.C. 78n(a)), and Rules 14a-1 and 14a-2(b)(1) thereunder (17 CFR 240.14a-1 and 240.14a-3(b)(1)). Even where no proxies or consents are solicited by a registrant, an information statement containing disclosure comparable to that required in the proxy statement on Schedule 14A (17 CFR 240.14a-101) must be provided to securityholders where a meeting of securityholders is to be held or shareholders are asked to act by consent. See section 14(c) of the Exchange Act (15 U.S.C. 78n(c)), and Regulation 14C thereunder (17 CFR 240.14c-1 *et seq.*). It is important to note that issuers with securities listed on a national stock exchange or quoted on the National Association of Securities Dealers, Inc.'s National Market System are required to solicit proxies from securityholders under specified circumstances. See, *e.g.*, New York Stock Exchange Listed Company Manual Section 901.01; American Stock Exchange Company Guide Sections 710-713; NASD Manual, NASD Bylaws, Schedule D, part III § 5(g).

[16] Rule 14a-1(*l*) (17 CFR 240.14a-1(*l*)). Pursuant to Rule 14a-1(*l*)(2), the term "solicitation" does not include the furnishing of a form of proxy to a shareholder upon the latter's unsolicited request, the issuer's performance of acts mandated by Rule 14a-7 (17 CFR 240.14a-7) (securityholder list requirement), or ministerial acts performed by any person on behalf of the soliciting party.

[17] *SEC* v. *Okin*, 132 F.2d 784, 786 (2d Cir. 1943) (Hand, J.). See *Long Island Lighting Co.* v. *Barbash*, 779 F.2d 793, 796 (2d Cir. 1985) and Brief of the Securities and Exchange Commission, *Amicus Curiae*, at 8, filed therein ("Lilco Brief"); *Sargent* v. *Geneseo, Inc.*, 492 F.2d 750, 766-68 (5th Cir. 1974); *Trans World Corp.* v. *Odyssey Partners*, 561 F. Supp. 1315, 1330 (S.D.N.Y. 1983); *Canadian Javelin, Ltd.* v. *Brooks*, 402 F. Supp. 190, 194 (S.D.N.Y. 1975).

[18] 17 CFR 240.14a-3.

[19] 17 CFR 240.14a-101. A prospectus filed as part of a registration statement on Form S-4, Form F-4, or Form N-14 under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), may be used in lieu of a Schedule 14A proxy statement.

[20] See Rule 14a-6(a) (17 CFR 240.14a-6(a)); Exchange Act Release No. 28869 at n. 244 (Feb. 8, 1991) (56 FR 7242) (certain solicitations of proxies in respect of section 12 registered securities or securities of registered investment companies involving the election of directors, the election, approval or ratification of independent auditors, or a securityholder proposal included in the registrant's proxy statement, as well as a proposal for amendment of an employee benefit plan; and, in the case of investment companies, solicitations involving proposals to renew, without change, any investment advisory or other contract that previously has been the subject of a proxy solicitation for which proxy materials were filed with the Commission; or to increase the number of open-end investment company shares authorized to be issued).

[21] 17 CFR 240.14a-11(d).

[22] 17 CFR 240.14a-12.

[23] Rule 14a-11(e) (17 CFR 240.14a-11(e)); Rule 14a-12(b) (17 CFR 240.14a-12(b)). Additional soliciting materials must be filed in preliminary form two business days prior to their use. Rule 14a-6(b) (17 CFR 240.14a-6(b)). Personal soliciting material and instructions must be on file five days prior to their use. Rule 14a-6(d) (17 CFR 240.14a-6(d)). Speeches, scripts and press releases, however, need only be filed in definitive form upon their use. Rule 14a-6(h) (17 CFR 240.14a-6(h)).

[24] Rule 14a-2(b)(1) (17 CFR 240.14a-2(b)(1)).

[25] Rule 14a-2(b)(2), 17 CFR 240.14a-2(b)(2).

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transactions), solicitations subject to the Bankruptcy Code or Public Utility Holding Company Act of 1935,[26] and certain "tombstone" advertisements as to the availability of a proxy statement.[27]

The proxy rules do not impose a filing obligation on securityholders who simply communicate mutual concerns regarding the issuer's affairs prior to a formal proxy solicitation, so long as the communications are not reasonably calculated to "prepar(e) the way" for a solicitation.[28] However, the uncertainty generated by expansive judicial and administrative interpretations of the term "solicitation" and the perceived narrowness of the regulatory exceptions to that definition are believed by many to deter constructive information-sharing, both among securityholders and between registrants and their securityholders.[29] Critics cite by way of example the difficulty of assessing potential proxy liability stemming from inter-investor discussions of opposition to management proposals, particularly in the context of an impending partnership roll-up, or support for Rule 14a–8 [30] proposals presented by other securityholders in the registrant's proxy statement.[31]

II. Proposed New Rules and Amendments

Some have urged the Commission to address concerns regarding the broad scope of the present "solicitation" definition by promulgating a more precise regulatory standard that would define regulated soliciting activity by reference to such criteria as the timing, purpose and subject matter of a particular securityholder communication, and the communicator's relationship to a participant. However, the Commission and the courts traditionally have weighed these factors in what is necessarily a case-by-case analysis that does not lend itself well to a bright-line test.[32] Whether a particular communication should be deemed part of a solicitation turns on "the purpose for which the communication was published—*i.e.*, whether the purpose was to influence the shareholders' decisions," as evidenced by the substance of the communications and the circumstances under which they were transmitted.[33] This determination can be made only in light of such objective factors as the content of the communication itself, the audience to which it is directed, its timing with respect to a proxy solicitation, and the connection or common interest, if any, between the communicators and the soliciting parties.[34]

The Commission is proposing a new exemption that would promote the communication of material information to securityholders through removal of the prescribed proxy filing and disclosure obligations, while retaining the antifraud protections of Rule 14a–9, for those who wish to solicit on any matter subject to action by securityholders, but who do not seek the authorization to act as a proxy for, or obtain a consent or authorization from, such securityholders. All proxy disclosure and filing requirements would continue to apply to solicitations by the registrant and other persons seeking the power to act by proxy, consent or authorization, or who otherwise have a material economic interest in the outcome of a solicitation other than merely as a securityholder of the registrant.

To streamline the solicitation process, reduce costs and minimize timing concerns consistent with the protection of securityholders, the proposals in addition would eliminate the preliminary filing requirements for soliciting materials, other than the required written proxy statement and any form of proxy. All soliciting material would continue to be filed with the Commission in definitive form. The current exemption from filing proxy statements in preliminary form for "plain vanilla" registrant proxy statements would remain unchanged.

Also proposed as a means of facilitating securityholder communication in furtherance of the Commission's statutory duty to assure informed proxy voting decisions is an amendment to Rule 14a–7 that would render more meaningful the securityholder information contained in securityholder lists, and would make such lists more readily accessible to soliciting securityholders.

A. *"Disinterested Person" Exemption*

The new exemption to be embodied in proposed Rule 14a–2(b)(1) would apply to a "disinterested" person's communications with, or other forms of solicitation of, securityholders with respect to any matter subject to securityholder action pursuant to a solicitation of securityholder proxies, consents or authorizations. To qualify as "disinterested" within the meaning of the proposed exemption, a person must not: (1) Have a "material economic interest" in the outcome of the solicitation; (2) seek the power, either directly or indirectly, to act as a proxy on behalf of a securityholder; or (3) furnish or otherwise request a consent or authorization of a securityholder for delivery to the registrant. Any person acting on behalf of a person who does not meet the requirements of proposed Rule 14a–2(b)(1) likewise would not be entitled to claim disinterested status.

Examples of relationships that would give rise to a presumption that a disqualifying "material economic interest" exists would be outlined in a note to proposed Rule 14a–2(b)(1). Securities ownership in any person engaged in the solicitation of proxies, consents or authorizations alone would not constitute such an interest, unless the amount of securities owned gave rise to affiliate status.[35] Nor would mere employment by the registrant or by any person soliciting in opposition to a registrant's management, other than in the capacity of officer or director, ordinarily establish the requisite interest. On the other hand, a material economic interest would be imputed under the proposed rule to persons proposing an alternative transaction who solicit against a merger or other extraordinary transaction approved by the registrant's board of directors.[36] Similarly, a person who receives any commission, fee or other form of remuneration for preparation or transmission of a communication from any person involved or otherwise interested in the outcome of a matter subject to securityholder action, except a recipient of such communication, would be ineligible to rely upon the proposed exemption.[37] To illustrate, this exemption would not apply to a money manager or broker-dealer who is directly or indirectly induced by any person soliciting proxies, consents or authorizations, whether it be the registrant or an insurgent, to express support for a particular position to beneficial owners of the registrant's securities in exchange for the award or withdrawal of business. Nor would it apply to a person deemed to have a material economic interest in an investment company, such as the fund's investment adviser.[38]

In addition to not having a material economic interest, a person claiming "disinterested" status under the proposed exemption could not seek directly the power to act for a securityholder of the registrant, whether through a request for that holder's proxy to vote its securities, or the provision of the securityholder's consent or authorization for delivery to the registrant. Nor would a person be considered disinterested within the meaning of the proposed exemption if he sought to evade proxy filing and disclosure requirements by soliciting indirectly through another person the power to act on behalf of a securityholder. Moreover, any person who purports to engage in an exempt solicitation with respect to a particular meeting or subject matter of securityholder action pursuant to proposed Rule 14a–2(b)(1) could not continue to rely on the proposed exemption through the assertion of a change in purpose or intent should he subsequently solicit authority to act on behalf of securityholders concerning the same meeting or subject matter. Because the earlier solicitation would not qualify for exempt treatment under such circumstances, any failure to comply with the full panoply of the proxy rules as to that solicitation would be deemed a proxy violation.

As proposed, the amended rule would permit a securityholder that has procured the inclusion of a proposal in the registrant's proxy statement pursuant to Rule 14a–8 to rely on the disinterested person exemption, provided this securityholder was not soliciting its own form of proxy and had no material economic interest in the outcome of the vote. Inclusion of the securityholder's proposal in the registrant's form of proxy would not constitute a solicitation by the proponent of the power to act for other securityholders. The Commission requests comment on whether a securityholder whose Rule 14a–8 proposal is carried in the registrant's proxy statement should fall outside the ambit of the proposed exemption and be required to comply fully with all proxy filing and disclosure requirements.

Like the solicitations exempted by the existing provisions of Rule 14a–2(b), solicitations exempt from the proxy disclosure and filing provisions under the proposed rule would be subject to the Rule 14a–9 requirement that the communications in question not be materially false or misleading. This proposed exemption otherwise would not restrict in any manner either the medium [39] or content of a communication with securityholders.

Along with "disinterested" securityholders, there would be other categories of persons or entities eligible to rely on the proposed exemption. One such category would encompass organizations or associations comprised of securityholders or issuers that exchange information with members regarding such matters of common concern as proxy voting positions or views on corporate governance policy. Another category would be providers of shareholder advisory services,[40] including organizations offering proxy voting information or recommendations, to the extent these providers do not receive a fee, commission or other form of consideration from any client conditional upon the disposition of the vote. Comment is requested on the appropriateness of coverage of each of the above categories, indicating whether and under what circumstances the interest of one member in a solicitation should disqualify the group from relying on the exemption. In particular, comment is requested as to whether the proposed exemption should be available only to securityholders.

Proposed Rule 14a–2(b)(1) is intended to achieve an appropriate balance between securityholders' interest in gaining access to reliable, truthful information that would facilitate voting decisionmaking, and the countervailing need to ensure that all materials disseminated to securityholders that may influence their vote will be free of fraud. Commenters are requested to address whether the proposed exemption would strike the desired balance. What activities that would be exempted by the new rule should be subject to some or all of the Commission's proxy rules, and why? Are there alternative, more appropriate means of facilitating securityholder communications?

Some have contended that all securityholders, including those not directly solicited, should be aware of and have access to the soliciting statements of any person engaged in a solicitation. Both securityholders and registrants, they argue, would be better served by requiring all soliciting efforts to be disclosed to the public, thereby providing more information to the securityholder body and permitting the substance of the solicitations to be reviewed by and responded to by the other persons involved in the solicitations.

Under the current proxy rules, a person engaged in a solicitation is not required to solicit all securityholders.[41]

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[26] 15 U.S.C. 79a *et seq.*

[27] Rule 14a–2(a) (17 CFR 240.14a–2(a)).

[28] *Studebaker Corp.* v. *Gittlin*, 360 F.2d 692, 696 (2d Cir. 1966).

[29] *See, e.g.*, Blake Testimony, *supra*, at 14–15; Letter from the ABA's Subcommittee on Proxy Solicitations and Tender Offers, Federal Regulation of Securities Committee, Section of Business Law, to Linda C. Quinn, Director, Division of Corporation Finance, dated April 27, 1990, at 6–7 ("ABA Letter"); Letter from CalPERS to Linda C. Quinn, Director, Division of Corporation Finance, Securities and Exchange Commission, dated Nov. 3, 1989, at 9–10 ("CalPERS Letter"); Letter from the American Corporate Counsel Association to Linda C. Quinn, Director, Division of Corporation Finance, dated July 25, 1990, at 16–18; USA Petition, *supra*, at 35–38; Fidelity Letter, *supra*, at 2–3. Accord Roe, A Political Theory of American Corporate Finance, 91 Col. L. Rev. 10, 28 (1991); Black, Shareholder Passivity Reexamined, 89 Mich. L. Rev. 520, 536–45 (1990) ("Black"); Sommer, Corporate Governance in the Nineties: Managers v. Institutions, 90 U. Cinn. L. Rev. 357, 360 (1990) ("Sommer"); Dent, Toward Unifying Ownership and Control in the Public Corporation, 1989 Wis. L. Rev. 881, 904–05.

[30] 17 CFR 240.14a–8.

[31] *See, e.g.*, Gilson & Kraakman, Reinventing the Outside Director: An Agenda for Institutional Investors, 43 Stan. L. Rev. 861, 433 (1991); Coffee, SEC 'Overregulation' of Proxy Contests, N.Y.L.J., Jan. 31, 1991, at 5, 7; Taylor, Can Big Owners Make a Difference?, 68 Harv. Bus. Rev. 70, 75–78 (Sept.–Oct. 1990).

[32] *See Lilco Brief*, *supra*, at 8; *see, e.g.*, *supra* n. 17 and *infra* n. 34 (citing cases).

[33] Lilco Brief, *supra*, at 8. See E. Aranow & H. Einhorn, Proxy Contests for Corporate Control 103–104 (2d ed. 1968) ("Aranow").

[34] See *id.*; Mobil Corp. (no-action letter avail. March 3, 1986); Strigano & Baltz, Simultaneous Proxy Contests and Tender Offers, 3 Insights 3, 7 (1989). *Accord Long Island Lighting Co.* v. *Barbash*, 779 F.2d 793 (2d Cir. 1985). Judicial decisions have demonstrated that, even though the flexible "solicitation" test is relatively broad, it is not without limit. See, e.g., *Smallwood* v. *Pearl Brewing Co.*, 489 F.2d 579 (5th Cir.), cert. denied, 419 U.S. 873 (1974); *Brown* v. *Chicago Rock Island & Pac. R.R. Co.*, 328 F.2d 122 (7th Cir. 1964); *Calumet Indus.* v. *MacClure*, 494 F. Supp. 19 (N.D. Ill. 1979); *Scott* v. *Multi-Amp. Corp.*, 386 F. Supp. 44 (D. N.J. 1974).

[35] See Examples (a) and (b) to Note, Proposed Rule 14a–2(b)(1).

[36] See Example (b) to Note, Proposed Rule 14a–2(b)(1).

[37] See Example (d) to Note, Proposed Rule 14a–2(b)(1).

[38] Paragraph (c) of the Note to proposed Rule 14a–2(b)(1) would specifically state that an "interested person" of an investment company registered under the Investment Company Act of 1940 ("Investment Company Act") could not claim to be a disinterested person. See section 2(a)(19) of the Investment Company Act (15 U.S.C. 80a–2(a)(19)). Interested persons include, among others, an investment company's investment adviser, principal underwriter, and legal counsel, any broker-dealer, and any "affiliated person" of the investment company, its investment adviser or principal underwriter. See section 2(a)(3) of the Investment Company Act (15 U.S.C 80a–2(a)(3)).

[39] Permissible communication methods under the proposed exemption thus would include, but would not be limited to, direct written communications with shareholders, whether by letter, newspaper advertisements or other print media. Also covered would be scripts of speeches or presentations made to the public at large or specifically to shareholders through broadcast or other electronic media, such as television, radio or video. See Rule 14a–6(h) (17 CFR 240.14a–6(h)).

[40] One such organization is the Investor Responsibility Research Center, a non-profit organization that furnishes analyses of general or specific proxy proposals to clients, but do not render voting advice. For-profit organizations that provide such analyses, as well as proxy voting advice, to clients include Institutional Shareholders Services, Inc. and Analysis Group.

[41] As discussed *supra* at n. 15, even where no proxies are solicited in respect of an annual or other securityholders' meeting, the registrant must file and disseminate an information statement on Schedule 14C with disclosure substantially equivalent to that mandated in Schedule 14A.

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However, the required public filing of all soliciting materials, together with the mandated proxy statement, makes publicly available extensive information concerning the solicitation. Oral solicitations are permitted, and generally are not subject to any filing requirement,[45] except for the mandated proxy statement.

The Commission requests comment on an alternative to proposed Rule 14a–2(b)(1) that would permit disinterested persons, who by definition would not be seeking a proxy, to engage in a solicitation without having to prepare a proxy statement, provided that all written materials used in the solicitation are filed with or submitted to the Commission, or otherwise made publicly available at the time they are first used to solicit. If this approach were followed, should a proxy statement be required to be filed with the Commission for public notice purposes, but not required to be distributed to securityholders? Should a more limited form of notice identifying the person engaged in the solicitation, the size of the solicitation and a brief description of the substance of the solicitation be required? Would such an approach lead to greater reliance on oral rather than written solicitation, and if so, what additional safeguards should be imposed by the rules?

B. Preliminary Filing and Staff Review of Proxy Solicitation Materials

1. Background

As noted, Rule 14a–6 requires, with narrow exceptions for certain registrant "plain vanilla" soliciting materials, that proxy statements and additional proxy soliciting materials relating to contested solicitations be filed in non-public, preliminary form with the Commission prior to delivery to shareholders.[46] Similarly, present Rules 14a–11(e) and 14a–12 require that solicitation materials disseminated in advance of the written proxy statement be filed in preliminary form five business days in advance of dissemination.[47] Additional soliciting material issued after dissemination of a proxy statement, as well as personal soliciting material committed to writing, are subject to two and five business day preliminary filing requirements, respectively.[48] Finally, Schedules 14B, while filed in definitive form, must be on file with the Commission five business days prior to the commencement of an insurgent's solicitation with respect to an election contest.[49] Pursuant to Rule 14a–6(f),[47] all preliminary proxy materials are not available for public inspection until definitive copies are filed.

The Commission is proposing to eliminate preliminary filing requirements with respect to all soliciting materials and Schedules 14B, other than the proxy statement and form of proxy (unless currently permitted to be filed only in definitive form). Instead, all soliciting materials would be filed with, or mailed for filing to, the Commission simultaneously with their use.[50] Moreover, the Commission proposes to eliminate the non-public filing status of the remaining preliminary proxy materials.

The Commission's imposition by rule of a pre-dissemination filing requirement, particularly with respect to election contests, has been challenged as unnecessary to protect shareholders from false or misleading statements and disruptive of the solicitation process. The USA Petition asserts that this requirement violates the First Amendment's guarantee of free speech, even if proxy solicitation material is considered commercial speech, since the regulatory scheme is more extensive than necessary.[51] While the ABA endorses the concept of preliminary staff review of proxy soliciting materials containing relevant financial information, it contends that "soliciting materials relating to election contests may not require preliminary review because they are subject to the adverse party's scrutiny."[52] NL Industries ("NL") likewise advocates elimination of the preliminary filing review procedure, but only in contested situations. Such reform is necessary, in its estimation, to minimize the advantage afforded management by the 1967 amendment to Rule 14a–6 dispensing with preliminary review of certain "plain vanilla" filings.[53] CalPERS has challenged on fairness grounds preliminary staff review of independent securityholder soliciting materials in support of Rule 14a–8 proposals included in management's proxy materials, arguing that registrant materials containing these proposals are not subject to such review.[54]

Finally, the preliminary review process has been the object of considerable debate in Congressional hearings. Witnesses affiliated with management and insurgent groups alike have criticized the process as interfering unduly with effective communication with shareholders.[55]

2. Proposed Amendments

The Commission is proposing to amend Rules 14a–11 and 14a–12 to eliminate the requirement that proxy soliciting materials permitted to be disseminated prior to the furnishing of the proxy statement must be filed in preliminary form five business days before delivery to securityholders; such materials thus would be required to be filed only in definitive form.[56] With respect to contested solicitations relating to the election of directors subject to Rule 14a–11, the Commission is proposing to eliminate the requirement that an insurgent's Schedule 14B be on file prior to commencement of a solicitation subject to the rule. Specifically, the Schedule 14B would be required to be on file within five business days following the commencement of a Rule 14a–11 solicitation or the filing of the preliminary proxy statement, whichever is earlier. As discussed, these amendments are intended to streamline the solicitation process by reducing costs and alleviating timing concerns for all persons engaged in a solicitation, while assuring that full and fair disclosure is made to facilitate informed securityholder voting.

Comment is requested on the costs and benefits of the proposed approach. Should the requirement for filing Schedules 14B be eliminated, with the disclosure called for by that schedule to appear in the proxy statement? Commenters also should discuss whether Rule 14a–12 should be amended to permit its use in connection with any solicitation.

The Commission also is proposing to amend Rule 14a–6 to allow all "additional" soliciting materials, or material used subsequent to dissemination of the written proxy statement,[57] to be filed only in definitive form at the time of dissemination. Personal solicitation materials subject to Rules 14a–6(d) and 14a–6(h) similarly would be required to be filed only in definitive form at the time of their dissemination or other use.[58] Commenters should address whether pre-filing and review of such materials are needed.

The proposed rules would not rescind existing preliminary filing and staff review requirements relating to the written proxy statement and form of proxy. As in the case of roll-ups, proxy statements may be subject to extensive staff review and comment where they involve complex transactions, or transactions that affect substantially the rights of shareholders or limited partners. In addition, the proxy statement and form of proxy are subject to numerous technical and compliance requirements that could affect the validity of the proxy and therefore lead to disenfranchisement of securityholders, particularly with respect to issues arising under Rule 14a–4 or state-law issues as to which the staff would seek additional disclosure during the review and comment process. Where proxy statements are required to disclose financial information, including audited financial statements, the staff often provides detailed accounting comments. The Commission is soliciting comment, however, as to whether there are additional classes of proxy statements that appropriately could be excluded from the preliminary filing and review process. Commenters also are requested to address the fundamental question whether preliminary filing should be required in any case. In the event preliminary filing of proxy statements is not required, what would be the effect on the process of post-dissemination review should the Commission adopt a procedure, similar to the tender offer model, under which the staff comments on materials contemporaneously with the use thereof by registrants or insurgents to solicit securityholder proxies?

Although the proposals would not dispense with preliminary filing of the written proxy statement or form of proxy, the proposed amendments would eliminate the non-public treatment of preliminary proxy statements. Under the proposed approach, preliminary proxy materials would be treated in a manner similar to registration statements required by section 5 of the Securities Act of 1933.[59] Accordingly, the preliminary filing requirement would permit the use of the preliminary form of the proxy statement, but would bar the transmittal or use of the form of proxy during the ten-day period or a shorter period in the case of earlier clearance. The Commission requests comment on the likelihood that soliciting persons would choose to make the general distribution of the proxy statement following staff review and clearance of the form of proxy.

Specific comment is sought with respect to the appropriateness of eliminating preliminary filing and confidential treatment of proxy statements and other soliciting materials, alone or in combination, in the context of the following types of solicitations.

a. *Election Contests and Other Contested Solicitations.* Contested solicitations relating to the election of directors or proposals sponsored by management or shareholders are argued by some to present the most obvious case for elimination of preliminary filing and review requirements, since the adversarial nature of the transaction itself is believed to serve as a policing mechanism. Prompt and effective communication of opposing views is critical to success in such solicitations, and the parties frequently regard the Commission's review processes as favoring one side over the other. Counsel for the competing camps may be in the best position to monitor not only the adequacy and truthfulness of its client's materials, in order to avoid the undesirable consequences of a court or Commission finding that the materials are misleading, but also the opponent's materials. A well-established private right of action under the proxy rules,[60] coupled with the threat of Commission enforcement action, poses a significant deterrent to misconduct given judicial sensitivity to challenges that proxy materials may have been materially false or misleading.[60]

Others have argued, however, that the preliminary review process exerts a beneficial "calming" effect on participants when emotions in a proxy contest become heated, and thus prevents the dissemination of materials that contain objectionable statements. Election contests often present the most difficult issues relating to bona fide nominees, the form of proxy and the scope of discretionary authority permissible under the proxy rules, and thus often engender significant staff comments on these issues. Commenters are invited to address the merits of each of the opposing arguments.

b. *Securityholder Proposals Subject to Rule 14a–8.* The Commission in addition is considering whether non-exempt shareholder soliciting material in support of proposals included in management's proxy materials pursuant to Rule 14a–8 should be subject to

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[45] While there is no obligation to commit oral solicitations or instructions to writing, Rule 14a–6(d) (17 CFR 14a–6(d)) mandates that, if so committed, such written material or instructions be filed at least five calendar days before their delivery to persons who will conduct the personal soliciting program.

[46] Under Rule 14a–6(a) (17 CFR 240.14a–6(a)), proxy statements must be on file 10 calendar days prior to the dissemination of definitive materials, unless the staff by delegated authority accelerates the period. Additional soliciting materials must be on file two business days prior to dissemination pursuant to Rule 14a–6(b) (17 CFR 240.14a–6(b)). No preliminary filings are required with respect to speeches, press releases or scripts. Rule 14a–6(h) (17 CFR 240.14a–6(h)).

[47] Materials disseminated in advance of the proxy statement must be on file five business days prior to dissemination, unless accelerated. Rule 14a–11(e) (17 CFR 240.14a–11(e)) (election contests) and Rule 14a–12(b) (17 CFR 240.14a–12(b)) (other).

[48] Additional soliciting material is any material "relating to the same meeting or subject matter furnished to security holders subsequent to the proxy statement * * *," which material must be filed with the Commission at least two business days prior to dissemination to security holders. Rule 14a–6(b). Personal solicitation material generally consists of written material or instructions that form the basis of a program of personal, typically oral solicitation of securityholders, and must be filed with the Commission at least five calendar days before use. Rule 14a–6(d).

[49] 17 CFR 240.14a–102. While an insurgent's Schedule 14B must be on file five business days prior to dissemination of any contested soliciting material relating to the election of directors, the registrant only need file its Schedules 14B within five business days after a dissemination subject to the rule. See Rule 14a–11(c) (17 CFR 240.14a–11(c)).

[47] 17 CFR 240.14a–6(f).

[50] This is consistent with current filing requirements for definitive materials. See, e.g., Rule 14a–6(c) (17 CFR 240.14a–6(c)).

[51] *USA Petition, supra,* at 30, citing *Central Hudson Gas & Electric Corp.* v. *Public Service Commission,* 447 U.S. 557 (1980).

[52] ABA Letter, supra, at 20.

[53] Letter from NL Industries, Inc., to Linda C. Quinn, Director, Division of Corporation Finance, Securities and Exchange Commission, dated Aug. 8, 1990, at 7. NL cites its proxy contest with Lockheed, where management mailed its proxy statement in definitive form without prefiling merely by omitting reference to NL's announcement of an intention to conduct an opposing solicitation for the election of directors. *Id.* The staff has not objected to that tactic so long as the failure to refer to the opposing solicitation does not render the proxy materials misleading.

[54] CalPERS Letter, *supra,* at 21. Accord Letter from the College Retirement Equities Fund, to Linda C. Quinn, Director, Division of Corporation Finance, Securities and Exchange Commission, dated Nov. 8, 1990, at 8.

[55] See, e.g., Corporate Proxy Voting System. Hearing before the Subcomm. on Telecommunications and Finance of the Comm. on Energy and Commerce, 101st Cong., 1st Sess. at 54–57 (Aug. 2, 1989).

[56] For this purpose, these materials may be filed or mailed for filing on the requisite date as under the existing proxy rules. See *supra* n. 46 and accompanying text.

[57] See Rule 14a–6(b) (17 CFR 240.14a–6(b)).

[58] As discussed *supra* at nn. 42 and 48, personal soliciting materials would include written materials or instructions forming the basis for personal, typically oral solicitations, which materials or instructions must be filed at least five calendar days before their delivery to persons who will conduct such solicitation under present Rule 14a–6(d). Current Rule 14a–6(h) requires the filing or mailing for filing with the Commission of soliciting materials in the form of speeches, press releases and radio or television scripts no later than the date of their use or publication.

[59] 15 U.S.C. 77e.

[60] See *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976); *Mills* v. *Electric Auto Lite Co.,* 396 U.S. 375 (1970); *J.I. Case Co.* v. *Borak,* 377 U.S. 426 (1964).

[60] See, e.g., *International Broadcasting Corporation* v. *Turner,* 734 F. Supp. 383 (D. Minn. 1990); *Kaufman* v. *The Cooper Companies,* 719 F. Supp. 174 (S.D.N.Y. 1989); *The Gillette Company* v. *RB Partners,* 698 F. Supp. 1280 (D. Mass. 1988); *Dynamics Corporation of America* v. *CTS Corporation,* (1988) Fed. Sec. L. Rep. (CCH) ¶ 93,795 (N.D. Ill. 1988).

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preliminary filing and review by the staff regardless of whether the solicitation is opposed by management. One correspondent has pointed to perceived inequities created by the 1987 amendments to Rule 14a–8, which enable an issuer to comment in opposition to a shareholder proposal incorporated in management materials, yet compel any proponent who wishes to solicit independently to file separate soliciting materials in preliminary form and wait 10 days before dissemination.[86] While seeking comment on this issue, the Commission recognizes that solicitations in support of a Rule 14a–8 proposal normally would be exempt under the proposed "disinterested person" exemption unless the securityholder proponent sent out its own proxy. Thus, in light of the proposed disinterested person exemption, solicitations in support of a Rule 14a–8 proposal may be subject to filing requirements in the uncommon situation where a Rule 14a–8 proponent would seek power from other securityholders to act as proxies, or otherwise would have a disqualifying financial interest in the solicitation.

Commenters' views are requested as to the relative costs and benefits of adding proponent soliciting materials to the category of "plain vanilla" filings contained in Rule 14a–6(a). Should a distinction be drawn in this regard between the proponent's proxy statement and any additional soliciting materials that may be circulated?

c. Mergers and Other Extraordinary Transactions. Mergers, acquisitions and other extraordinary transactions submitted to a securityholder vote generally have significant implications for securityholders, as illustrated by limited partnership roll-ups typically characterized by the imposition of supermajority vote requirements for removal of management, management conflicts of interest arising from substantial increases in compensation and other benefits accruing to the roll-up sponsors and their affiliates as a result of the roll-up, and the absence of state-law dissenters' rights. Detailed, understandable proxy disclosure therefore normally is required of the terms of a proposed extraordinary transaction, and its effects on securityholders' rights, coupled with the interest of management in its consummation, to enable securityholders to formulate informed voting decisions. Given the resulting complexity of this disclosure, which often includes historic and in many instances pro forma financial statements along with the extensive information mandated with respect to the rights of securityholders and the interests of management, some have argued that preliminary proxy filing and staff review requirements applicable to solicitations in connection with mergers, acquisitions and other extraordinary transactions involving corporations and limited partnerships, including registered exchange tender offers, would be appropriate. In many cases, these proxy statements are part of a registration statement filed in accordance with section 5 of the Securities Act of 1933.

Comment is sought as to whether there are securityholder interests that would override the benefits attendant to pre-dissemination filing and staff review. Should non-exempt solicitations in opposition to a merger proposal likewise be subject to preliminary filing and staff review requirements?

C. Access to Lists of Securityholders

An important concern raised by holders of corporate equity and limited partnership interests alike is the difficulty often encountered in obtaining access to securityholder lists that would permit the solicitation of fellow investors on matters subject to a securityholder vote. The ability to reach other securityholders is a key factor in effective communication with securityholders by any other securityholder who may wish to engage in a proxy solicitation. The Commission is proposing to amend Rule 14a–7 to eliminate the registrant's existing choice to mail a requesting securityholder's proxy materials rather than produce a securityholder list upon request, and to transfer that choice to the requesting securityholder. Moreover, the proposed amendment would expand the scope of the list to encompass the names, addresses and securities holdings of both record and non-objecting beneficial owners ("NOBOs") or consenting beneficial owners ("COBOs").[91]

By vesting in the registrant discretion to withhold a securityholder list through the exercise of its right to mail, Rule 14a–7 in its present form operates to confer on the registrant's management significant control over the timing and effectiveness of a securityholder's solicitation. Soliciting securityholders generally prefer use of a securityholder list to permit them to control the timing of their solicitation, and to identify and communicate directly with other securityholders. Since the choice of whether to produce a list or mail under current Rule 14a–7 resides exclusively with the registrant, those securityholders who wish to employ the list to conduct a personal solicitation normally must pursue in the courts any state statutory or common-law rights thereto.[92] Added delay and cost typically associated with seeking a state-law judicial remedy under the often significant time constraints of a proxy solicitation undermine the ability of the soliciting person to provide securityholders with information bearing on their proxy voting decision.[93]

[86] CalPERS Letter, *supra*, at 21

[91] Under the Commission's shareholder communications rules, brokers, banks and other recordholders of stock for beneficial owners must compile a NOBO list at an issuer's request. See Rule 14b–1(c) (17 CFR 240.14b–1(c)). Bank recordholders also must include the names of COBOs, or those persons holding securities in bank customer accounts opened before December 28, 1986, who consent to disclosure of their beneficial ownership of the issuer's securities. See Rule 14b–2(a) (17 CFR 240.14b–2(a)). In 1978, the Commission indicated that "the question of non-issuer access to securities position listings * * * is best addressed in the context of the Commission's tender offer and proxy rules rather than in general provisions such as (then) proposed Rule 17Ad–6." Exchange Act Release No. 16448 (Dec. 20, 1979).

[92] CalPERS Letter, *supra*, at 8 (this state pension fund was advised by a portfolio company that the only means of obtaining a list would be through litigation). The likelihood of the issuer's election to mail forces soliciting securityholders to rely principally on state law to secure a list. See *Aranow, supra*, at 8, 26–28; Black, *supra*, at 842; Division of Corporation Finance Proxy Rules Reference Book at 109 (1989).

[93] A significant number of the ABA commenters point out that, while stockholder lists are generally available under state law, they often can be obtained only "after court challenges involving considerable costs and delays * * *." ABA Letter, *supra*, at 23 (citations omitted). See, e.g., *Sadler v. NCR Corp.*, 928 F.2d 48, 49 (2d Cir. 1991) (period of approximately two months elapsed between securityholder demand for list to permit direct communication with securityholders in ongoing joint proxy contest and tender offer, and federal appellate court's resolution of issue on the merits on registrant's appeal from district court's order that list of securityholders, including NOBOs, be provided to requesting securityholders). See *supra* n. 62. Other recent contests for control of public companies have been characterized by litigation, commenced either by the requesting insurgent/offeror or a resistant issuer, arising from issuer refusals to provide a securityholder list to a challenger. See, e.g., *Gramercy Realty Associates v. Firecom, Inc.*, No. 09510/91 (N.Y. Sup. Ct., Order entered June 11, 1991) (court granted insurgents' application for order directing issuer to produce stockholder list and other corporate documents under New York law; action filed on May 8 following issuer's denial of April 29 demand for list and other documents); *Sears, Roebuck & Co. v. Monks*, No. 9975/91 (N.Y. Sup. Ct., Cplt. filed March 13, 1991) (action by issuer for declaratory judgment that insurgent seeking single board seat not entitled to list under New York law; dismissed without prejudice following election of management's slate at annual meeting); *Schneider, S.A. v. Square D Co.*, No. 11988 (Del. Ch., Cplt. filed March 8, 1991) (insurgent/offeror sued for stockholder list and related materials in furtherance of combined proxy solicitation and tender offer; stipulated settlement

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In this regard, little progress appears to have been made since the Commission sought public comment in 1977 on whether it "(s)hould amend the proxy rules to require issuers to furnish shareholders with shareholder lists upon request."[94] Responding in the affirmative to this question, one commentator aptly described securityholders' recurring dilemma in testimony before the Commission:

> Of course, the shareholder has a theoretical right to a shareholder list under state law, but * * * management uses corporate funds to fight these requests routinely. And unless the court is extremely expeditious, by the time you get the shareholder list under state law, you may have lost a lot of valuable time.[95]

Similar concerns prompted the Commission's Tender Offer Advisory Committee to recommend in 1983 that the proxy (and tender offer) rules be amended to compel prompt registrant provision to any person who has announced a proxy contest (or tender offer), at his expense, of a shareholder list and clearinghouse security position listings within five calendar days.[96] In 1984, the Commission endorsed this recommendation in testimony before Congress.[97] Since that time, the increasing prevalence of supermajority voting provisions in the corporate and limited partnership sectors (roll-ups) has made expeditious access to a list of both record and beneficial holders of even greater importance to an insurgent.[98]

Pursuant to its section 14(a) mandate to safeguard the securityholder franchise by assuring its effective exercise through the proxy voting process, the Commission is proposing to permit the requesting securityholder to decide whether it prefers access to a securityholder list or a registrant mailing of the requestor's soliciting materials. More specifically, at the written request of any holder of securities entitled to vote on the subject matter or meeting that forms the basis for an actual or intended solicitation, registrants that are soliciting or intend to solicit proxies with respect to the same subject or meeting would be required under the proposed amendment either to mail the requestor's proxy soliciting materials in accordance with Rule 14a–7(b), or, at the requestor's option, to provide the latter, pursuant to proposed Rule 14a–7(c), within five business days of receipt of such request with a reasonably current list of the names, addresses and, by contrast with the existing rule, security positions of each securityholder thus identified. As under the present rule, the requesting securityholder would be obligated to defray reasonable expenses incurred by the registrant in mailing or furnishing the list.

The proposed amendment would specify that the list could be used solely for the purpose of engaging in a solicitation of securityholders with respect to the subject matter or meeting for which the registrant is soliciting or intends to solicit. The types of permissible solicitations would include those exempt from the filing and disclosure requirements of the proxy rules under Rule 14a–2(b). However, if the registrant has actually commenced a solicitation, a list obtained pursuant to Rule 14a–7 could also be used for the purpose of communicating with other securityholders in response to the solicitation, even though the communication may not constitute a solicitation; for example, to "test the waters" or gauge the interest of other securityholders in determining whether to mount a solicitation in opposition to the registrant's management. The requestor would be required to represent that it will use the information solely for such purposes and will maintain the confidentiality of the information. Failure to abide by either representation would constitute a violation of the proxy rules.

Commenters should discuss the relative costs and benefits to both registrants and securityholders of the proposed change in regulatory approach, particularly with respect to shifting to the requesting securityholder the right to elect a securityholder list and conduct its own mailing, and the requirement that the amount of securities held by each securityholder be disclosed in the list. Does the five-business-day compliance period afford registrants sufficient time to respond to a securityholder's request? Discuss the propriety of limiting a requesting securityholder's use to the stated purpose, and any mechanisms for enforcing any such limitation. Should a minimum share ownership and/or holding period requirement, similar to that set forth in Rule 14a–8, be imposed? Should access to a securityholder list be limited to recordholders, or should it be expanded to cover beneficial owners?

To ensure that the securityholder list is reasonably current, should the list include all updating materials such as daily transfer sheets that are in or come into the possession of the registrant throughout the pendency of a

entered into two days later mandated list production); *Rabinovitz v. Instron Corp.*, MA 91–10039 (D. Mass., Cplt. filed March 28, 1991) (insurgent sued for injunctive relief, alleging violations of Regulation 14A and seeking production of NOBO list under state law; court ordered issuer to commence preparation of list pending decision on merits, list thereafter furnished pursuant to stipulated settlement on April 4, 1991); *Cede & Co. and Calvary Partners, LP v. Dixon Electronics, Inc.*, CA No. 11880 (Del. Ch., Cplt. filed Dec. 7, 1990) (insurgent sued to obtain list in connection with related proxy contest and tender offer; following stipulated settlement and order requiring issuer production of list, insurgent renewed request for injunctive relief on ground that issuer failed to comply with order to turn over NOBO list; pursuant to settlement reached in early January 1991, issuer agreed to adjourn meeting for seven days and to stipulate that all proxies received by insurgent prior to new meeting date would be valid); *First City Diversified, Inc. v. Armstrong World Indus., Inc.*, No. 90–1376 (E.D. Pa., March 7, 1990) (ordering issuer to provide list to insurgents under Pennsylvania law, while enjoining use thereof to communicate with securityholders on proposed charter amendments pending further order), *rev'd*, No. 1138 (3d Cir., April 3, 1990) (overturning lower court's order, finding that erroneous as a matter of law). Limited partners seeking access to a list of limited partners similarly have been compelled to resort to the courts when general partners have refused to supply the list upon request. See Bigelow Testimony, *supra*, at 7 (limited partner testified that "I found that even after I had paid approximately $1,500.00 to receive a list of investors to which we are entitled without any equivocation by the partnership agreement it still took 4 months and a law suit with additional expense to merely get an investor list."); see also *supra* n. 6 and accompanying text.

[94] See Exchange Act Release No. 13901 (Aug. 29, 1977) (42 FR 44660) ("(s)hould the Commission amend its proxy rules to require issuers to provide shareholders with shareholder lists upon request? If so, under what circumstances and subject to what conditions should shareholder lists be provided?").

[95] Testimony of Melvin A. Eisenberg, Professor of Law, UCLA-Berkeley, Public Hearing Before the Securities and Exchange Commission, In re Re-examination of Rules Relating to Shareholder Participation in Corporate Electoral Process and Corporate Governance Generally, at Tr. 1637 (Los Angeles, California, Oct. 14, 1977) (97–693). See Division of Corporation Finance, Securities and Exchange Commission, Staff Report on Corporate Accountability to the Senate Committee on Banking, Housing and Urban Affairs, 96th Cong., 2d Sess. 127–28 (Comm. Print 1980). In this report, the staff suggested that "(i)t may be appropriate * * * to give staff consideration to requiring (shareholder) access to the list, in certain circumstances, as opposed to giving the choice to the issuer. This would address the concerns of others (such as Professor Eisenberg) who thought Rule 14a–7 should be amended to give the shareholder, rather than the issuer, the option of obtaining a list or having management mail the material."). *Id.* at 129–30 (footnote omitted).

[96] U.S. Securities and Exchange Commission, Advisory Committee on Tender Offers, Report of Recommendations, Recommendations 21 and 22 (July 8, 1983), as endorsed in Congressional testimony of the Commission. See Statement of John S.R. Shad, Chairman, Securities and Exchange Commission, Hearing Before the Subcommittee on Telecommunications, Consumer Protection and Finance of the House Energy and Commerce Committee at 18 (March 28, 1984).

[97] See *ibid.*

[98] For example, the Court of Appeals for the Second Circuit highlighted the significant adverse impact of NCR's 80% requirement, which had the effect of treating non-votes as "no" votes. In imposing the requirement that the issuer prepare and turn over a NOBO list to AT&T, the insurgent, the court stated that to deny the insurgent the opportunity to solicit beneficial holders was contrary to the equal access purpose of the New York foreign corporation list statute. *NCR Corp.*, 928 F.2d at 53.

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solicitation? Should a breakdown of all depositary institution lists (CEDE breakdowns) be mandated? Discuss the appropriateness of requiring the registrant to supply the list, upon request, in the form of a magnetic computer tape and any related computer data processing as would be necessary for the requestor to make use of the tape, alone or in conjunction with a printout of the tape for verification purposes.

Unlike current Rule 14a–7, the securityholder list contemplated under the revised rule would include the prescribed identifying information not only for all recordholders, as now required, but also in specified circumstances for all beneficial owners who do not object (or who consent) to disclosure of such information in connection with the preparation for requesting registrants of lists of NOBOs (and/or COBOs) by brokers, dealers and banks in accordance with the Commission's shareholder communications rules.[69] Even though the federal proxy rules and applicable state-law voting requirements operate to require registrants to mail their written proxy statements indirectly to beneficial owners through the medium of the recordholders, rather than directly in reliance upon the NOBO (and/or COBO) list, registrants nevertheless may use this list to engage in personal solicitations of beneficial owners. The proposed amendments would extend to soliciting securityholders the same ability to communicate with beneficial owners.[70]

Under the proposed rules, beneficial ownership information would be mandated upon a securityholder's request where that information is either in the possession of, or reasonably available to, the registrant. As noted, the requesting securityholder would be required to use the beneficial ownership information solely to solicit or communicate with other securityholders and would be required to maintain the confidentiality of the information. If the registrant had not obtained the NOBO and/or COBO list at the time the request is received, the requestor would be required to share the costs of reimbursing brokers, dealers, banks and other recordholders imposed on the registrant by section 14a–12(b)(5).[71]

Comment is requested on the necessity or appropriateness of the proposal to require disclosure of NOBO (and COBO) information in securityholder lists. Is it necessary or appropriate to require a registrant to procure the preparation of a list containing such information if none has been obtained? Under what circumstances is a NOBO list "reasonably obtainable"? [72] Should the securityholder who obtains a list of beneficial owners be required to mail proxy materials though the recordholders, similar to the requirement imposed on the registrant by Rule 14a–13(b)?

The Commission is considering a possible alternative to the proposed revision that would leave vested in the registrant the decision to mail if it bears the cost of mailing a qualified requestor's soliciting materials. Commenters should address the costs and benefits of this alternative.

Like the current rule, the proposed amendment would provide a securityholder the right to a list or a mailing only where the registrant is soliciting or intends to solicit on the same subject matter or for the same meeting. It does not provide a general right to the securityholder list, but seeks to define the conditions for the solicitation of proxies pursuant to section 14(a) of the Exchange Act. The Commission is of the opinion that the Supreme Court's decision in *CTS Corp.* v. *Dynamics Corp. of America*,[73] does not affect the appropriateness of the Commission's proposal to adopt these amendments to Rule 14a–7. The Commission requests commenters' views on the appropriateness of the Commission's proposal.

III. Request for Comment

Any interested persons wishing to submit written comments on the proposed revisions to the Commission's proxy rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[74]

IV. Cost-Benefit Analysis

To evaluate the benefits and cost associated with the proposed amendments to Exchange Act Rules 14a–2(b), 14a–6, 14a–7, 14a–11 and 14a–12, the Commission requests commenters to provide views and data as to the costs and benefits associated with amending the filing requirements for proxy soliciting materials. The proposed "disinterested person" exemption, along with the proposed elimination of requirements to file preliminary proxy statements in specified circumstances should reduce some costs for those soliciting persons who meet the requirements of the proposed amendments.

The Commission also requests that commenters provide views and data concerning the costs and benefits of amending the securityholder list provision embodied in Rule 14a–7. The proposed modification of Rule 14a–7 may impose some additional costs on registrants.

Comments also are requested on the effects of all proposals on the costs to be incurred by small entities.

V. Initial Regulatory Flexibility Act Analysis

The initial regulatory flexibility analysis concerns proposed amendments to Exchange Act Rules 14a–2(b),[75] 14a–6,[76] 14a–7,[77] 14a–11[78] and 14a–12.[79] The analysis has been prepared by the Commission in accordance with The Regulatory Flexibility Act.[80]

A. Reasons for and Objectives of the Proposals

A proposed amendment to Rule 14a–2(b)(1) would create a new exemption for solicitations by persons not seeking authority to act as a proxy for securityholders. The objective of this amendment is to provide an exemption from all proxy rules except the antifraud provision, Rule 14a–9, to "disinterested" persons, or persons who do not have a material economic interest in the outcome of a matter subject to securityholder action pursuant to a solicitation of proxies, consents or authorizations, other than as a securityholder, and who do not seek a form of proxy, consent or authorization from securityholders to vote their shares as proxies.

Proposed amendments to Rules 14a–11 and 14a–12 would eliminate the requirement that pre-proxy statement solicitation materials be filed in preliminary, non-public form five business days in advance of dissemination, and would require only that such soliciting materials be filed with the Commission in definitive form contemporaneously with their dissemination to securityholders, and that the soliciting party simultaneously file a Schedule 14B. The purpose of the amendments is to reduce the costs and other burdens incurred by persons engaged in non-exempt solicitations, subject to the Rule 14a–9 proscriptions against false and misleading statements, in connection with solicitations currently permitted before the written proxy statement and form of proxy are filed with the Commission and disseminated to shareholders.

Currently, all proxy statements and forms of proxy are required to be filed in preliminary, non-public form with the Commission pursuant to Rule 14a–6. The proposed amendments to this rule, if adopted, would reduce the instances in which proxy soliciting material would be required to be filed in preliminary form and further would eliminate the confidential treatment of all proxy materials, whether filed in preliminary or definitive form. The objective of the proposed amendments is to enhance disclosure of material information to securityholders while decreasing burdens on registrants and other soliciting persons associated with the filing of preliminary proxy material. The proposed amendments also are intended to reduce administrative costs incurred by the Commission in processing this material.

A proposed amendment to Rule 14a–7 would require registrants to provide securityholders, upon written request and the satisfaction of certain conditions, copies of its list of securityholder names, addresses and position listings, as well as any list of non-objecting or consenting beneficial owners where reasonably obtainable. At the option of the requesting securityholder, rather than of the registrant as under the current rule, the requestor could direct the registrant to mail its materials to securityholders at the requestor's expense. The purpose of this amendment is to facilitate dissemination of material information to securityholders by reducing the expense and delay requestors typically encounter in obtaining a securityholder list.

B. Legal Basis

The proposed amendments would be promulgated pursuant to Sections 14 [81] and 23(a) [82] of the Exchange Act.

C. Small Entities Subject to the Rules

The proposed amendments would affect proxy filing and other requirements for registrants, including investment companies, and soliciting securityholders. Rule 0–10 [83] under the Exchange Act provides that a "small business," for purposes of the Regulatory Flexibility Act, includes a registrant other than an investment company that had total assets of $5 million or less as of the end of its most recent fiscal year. For purposes of the Regulatory Flexibility Act, an investment company is a "small business" if it has net assets of $50 million or less as of the end of its most recent fiscal year.[84]

The proposed amendments to the proxy rules would apply to proxy solicitations or information statements of issuers with securities either registered pursuant to section 12(g) of the Exchange Act [85] or listed on a national securities exchange pursuant to section 12(b) of that Act,[86] the Commission is aware that some of these exempt small entities that are publicly traded register their securities and are subject to the proxy rules. In addition, fewer than 50 small entities have securities listed on a national securities exchange. The Commission estimates that, in all, between 1,400 and 1,800 of the approximately 10,500 issuers that are registered under section 12 and are subject to the proxy rules have total assets not exceeding $5 million.

The Commission further estimates that the proposed amendments would apply to 3,200 registrants that are management investment companies, of which approximately half have net assets of $50 million or less.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to Rules 14a–2(b), 14a–6, 14a–7, 14a–11 and 14a–12 would not result in any significant increase in reporting, recordkeeping or compliance requirements. The proposed amendments to reduce or eliminate the preliminary filing requirements, and to eliminate non-public filing of all proxy soliciting materials, would result in a net diminution of reporting and other compliance requirements for all entities that qualify for the exclusion.

E. Overlapping or Conflicting Federal Rules

The proposed rules would not duplicate or conflict with any existing rule provisions.

F. Significant Alternatives

The proposed amendments to Rules 14a–6, 14a–7, 14a–11 and 14a–12 are expected to benefit all registrants or other persons subject to the proxy rules, regardless of size, by diminishing filing burdens under certain circumstances. One significant alternative to the proposed amendments could be different or simplified requirements for small entities. Such requirements for small entities could include the elimination of the filing requirements for small entities with respect to additional categories of preliminary proxy material. Alternatively, small entities or other persons could be exempted altogether from all requirements to file preliminary proxy materials. However, such elimination of filing requirements for small entities or exemption of small entities would not be consistent with the Commission's statutory mandate to require adequate disclosure to voting

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[69] In the past, the Commission has considered amending Rule 14a–7 (and 14d–5 with respect to tender offers [17 CFR 240.14d–5]) to provide securityholder access, albeit at the issuer's continued option, to NOBO lists in a proxy or tender offer solicitation context. See Exchange Act Release No. 22533 at n.17 (Oct. 15, 1985) (50 FR 42672); Exchange Act Release No. 20021 at n.16 (July 28, 1983) (48 FR 35082). No rulemaking action was taken.

[70] See Brown, The Shareholder Communication Rules and the Securities and Exchange Commission: An Exercise in Regulatory Utility or Futility?, 13 J. Corp. Law 663, 775–78 (1988) ("Without an effective means of communication [with NOBOs], insurgents may be unable to induce beneficial owners to return proxies. The difficulty could prove outcome determinative. Moreover, denying insurgents the ability to communicate directly not only provides management with an advantage in any contest, but also works to the disadvantage of shareholders by denying them timely information"). Beneficial ownership information may be particularly critical to an insurgent's ability to wage a successful proxy fight in light of the growing phenomenon of corporate and limited partnership (roll-up) supermajority provisions that render of vital importance each beneficial owner's vote. See, e.g., *NCR Corp.*, 928 F.2d at 53.

[71] 17 CFR 240.14a–13(b).

[72] Cf. NCR Corp., 928 F.2d at 52 (in holding that New York law required the registrant to prepare a NOBO list where not otherwise procured by or in the possession of registrant, the Second Circuit noted that compilation of beneficial ownership information is a relatively simple, mechanical task that may take only a few days).

[73] 481 U.S. 69 (1987). *Cf. Sadler* v. *NCR Corp.*, 928 F.2d at 55 (in determining whether New York's foreign corporation list statute was unconstitutional as applied to a Maryland corporation, the court stated that "[a]ccess to stockholder lists is a recognized exception to the internal affairs doctrine as a matter of corporate law and conflicts of law * * *.")

[74] 15 U.S.C. 78w(a).

[75] 17 CFR 240.14a–2(b).

[76] 17 CFR 240.14a–6.

[77] 17 CFR 240.14a–7.

[78] 17 CFR 240.14a–11.

[79] 17 CFR 240.14a–12.

[80] 5 U.S.C. 601 *et seq.*

[81] 15 U.S.C. 78n.

[82] 15 U.S.C. 78w(a).

[83] 17 CFR 240.0–10.

[84] Rule 0–10 under the Investment Company Act of 1940, 17 CFR 270.0–10.

[85] 15 U.S.C. 78l(g).

[86] 15 U.S.C. 78l(b).

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securityholders. Another alternative could be the adoption of performance rather than design standards with respect to the preparation and filing of proxy materials by small entities. The adoption of such performance standards would not be consistent with the Commission's statutory mandate to require adequate disclosure to voting securityholders. With respect to an alternative revision of Rule 14a–7 to those proposed, the Commission has requested and will consider comment on that alternative, which would afford registrants the continued option to mail or provide the list to a requesting securityholder, but would require any registrant that elected to mail the requestor's proxy soliciting materials to bear the costs of mailing.

C. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rule is adopted. Persons wishing to submit written comments should file them with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–2291. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

VI. Statutory Basis

The amendments to the proxy rules are being proposed by the Commission pursuant to sections 14 and 23(a) of the Securities Exchange Act of 1934.

Lists of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

2. By amending § 240.14a–2 to redesignate paragraphs (b)(1) and (b)(2) as paragraphs (b)(2) and (b)(3), respectively, and by adding a new paragraph (b)(1) to read as follows:

§ 240.14a–2 Solicitations to which §§ 240.14a–3 to 240.14a–14 apply.

* * * * *

(b) * * *

(1) Any solicitation by or on behalf of a person who:

(i) Does not have, and is not acting on behalf of a person who has, a material economic interest in the matters to be acted upon, other than as a securityholder of the registrant;

(ii) Does not seek, and is not acting on behalf of a person who seeks, either directly or indirectly through representatives, the power to act as a proxy for a security holder; and

(iii) Does not furnish or otherwise request, and is not acting on behalf of a person who furnishes or requests, a consent or authorization of a security holder for delivery to the registrant.

Note: The following are some examples of persons who will be deemed to have a material economic interest in the matters to be acted upon other than as a security holder of the registrant within the meaning of paragraph (b)(1) of this section, or to be acting on behalf of such a person within the meaning of this paragraph:

(a) The registrant, an affiliate of the registrant, and any officer or director of the registrant or of an affiliate of the registrant, or any persons serving in a similar capacity;

(b) An affiliate of a person who does not qualify for an exemption under this paragraph, any officer or director of such person, or any person serving in a similar capacity;

(c) An "interested person" of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), as that term is defined in section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)); or

(d) Any person who receives compensation from, directly or indirectly, any of the foregoing.

* * * * *

3. By amending § 240.14a–6 to remove paragraphs (b) and (f) and to redesignate paragraphs (c) through (e) and paragraphs (g) through (*l*) as paragraphs (b) through (d) and paragraphs (e) through (j); revise the caption to newly redesignated paragraph (b); revise newly redesignated paragraphs (c), (d), and (f); and in newly redesignated paragraph (i) remove the reference to "paragraph (j)" and replace it with "paragraph (h)" to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(b) *Definitive proxy statement and other soliciting materials* * * *

(c) *Personal solicitation materials.* If the solicitation is to be made in whole or in part by personal solicitation, eight copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is furnished to the persons making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with, or mailed for filing to, the Commission by the person on whose behalf the solicitation is made not later than the date any such material is first sent or given to such individuals.

(d) *Release dates.* All preliminary material filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which definitive copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies thereof have been released to the individual who will make the actual solicitation or if not released, the date on which copies thereof are intended to be released.

* * * * *

(f) *Speeches, press releases and scripts.* Notwithstanding the provisions of paragraph (a) of this section, copies of soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the Commission prior to use or publication. Definitive copies, however, shall be filed with, or mailed for filing to, the Commission as required by paragraph (b) of this section not later than the date such material is used or published. The provisions of paragraph (a) of this section shall apply, however, to any reprints or reproductions of all or any part of such material.

* * * * *

4. By amending § 240.14a–7 to revise paragraph (c) and to add new paragraph (d) to read as follows:

§ 240.14a–7 Mailing communications for security holders.

* * * * *

(c) In lieu of performing the acts specified in paragraphs (a) and (b) of this section, the registrant shall, at the security holder's option, furnish to such security holder in such form requested by the security holder as is available to the registrant without undue burden or expense, a reasonably current list of the names, addresses and security positions of such of the holders of record specified in paragraph (a)(1) of this section as the security holder shall designate, and a list of the names and addresses of such of the bankers, brokers or other persons specified in paragraph (a)(2) of this section as the security holder shall designate, together with a statement of the approximate number of beneficial owners solicited or to be solicited through each such banker, broker or other person and a schedule of the handling and mailing costs of each such banker, broker or other person if such schedule has been supplied to the registrant, as well as any other information relating to the names, addresses and security positions of beneficial owners, including a list specified in § 240.14a–13(b) as requested by the security holder, and is in the possession of or reasonably available to the registrant; *provided, however,* that if the registrant had not already compiled such a list of beneficial owners, the security holder shall reimburse the registrant for one-half or other proportionate amount, depending on the number of requests for such information received by the registrant from security holders, of the costs incurred by the registrant pursuant to § 240.14a–13(b)(5). The foregoing information shall be furnished within five business days of receipt of the request of the security holder or at daily or other reasonable intervals as it becomes reasonably available to the registrant.

(d)(1) The security holder shall not use the information furnished by the registrant pursuant to paragraph (c) of this section for any purpose, other than:

(i) To solicit other security holders with respect to the same subject matter or meeting for which the registrant is soliciting or intends to solicit; or

(ii) To communicate with other security holders with respect to a solicitation commenced by the registrant.

(2) The security holder shall not disclose such information to any person other than an employee or agent to the extent necessary to effectuate the communication or solicitation.

(3) The request referred to in paragraph (c) of this section shall contain a representation that the foregoing information will be used solely for the purposes specified in paragraph (d)(1) of this section and will remain confidential.

5. By amending § 240.14a–11 to remove paragraph (c)(2) and redesignate paragraphs (c)(3) through (c)(6) as paragraphs (c)(2) through (c)(5); revise paragraphs (c)(1), (e) and (g); in newly redesignated paragraph (c)(3) remove the reference to "paragraph (c)(3)"; and remove the last sentence in paragraph (f) to read as follows:

§ 240.14a–11 Special provisions applicable to election contests.

* * * * *

(c) *Filing of information required by Schedule 14B.* (1) No later than five business days following the commencement of a solicitation subject to this section or upon the filing of a preliminary proxy statement pursuant to § 240.14a–6(a) relating to such a solicitation, whichever is earlier, a statement in triplicate containing the information specified by Schedule 14B shall be filed with the Commission and with each national securities exchange upon which any security of the registrant is listed and registered, by and on behalf of each participant in such solicitation, other than the registrant.

* * * * *

(e) *Solicitations prior to furnishing required written proxy statement; filing requirements.* Eight copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by § 240.14a–3(a) shall be filed with, or mailed for filing to, the Commission no later than the date such material is sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered.

* * * * *

(g) *Application of § 240.14a–6.* The provisions of paragraphs (b), (c), (d), and (e) of § 240.14a–6 shall apply to the extent pertinent, to soliciting material subject to paragraphs (e) and (f) of this section.

6. By amending § 240.14a–12 to revise paragraph (b) to read as follows:

§ 240.14a–12 Solicitation Prior to Furnishing Required Proxy Statement.

* * * * *

(b) Eight copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of a written proxy statement required by Rule 14a–3(a) (§ 240.14a–3(a)) shall be filed with, or mailed for filing to, the Commission no later than the date such material is sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered.

Dated: June 17, 1991

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14771 Filed 6–24–91; 8:45 am]

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Part III

Department of State

Office of Protocol

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1990; Notice

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DEPARTMENT OF STATE

Office of Protocol

[Public Notice 1416]

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1990

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1990 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the Federal Register is required by section 7342(f) of Title 5, United States Code, as added by section 515 (a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95-105, August 17, 1977, 91 Stat. 865).

Dated: June 12, 1991.

Jean Selin,

Under Secretary for Management.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Photograph: Album. A leather photograph album, gold-stamped "presented to the President and Mrs. George H. W. Bush by the Diplomatic Corps of Washington, DC Christmas 1990". Archives, Foreign. Recd: Dec. 21, 1990. Est. value: $205.	His Excellency Jose Luis Fernandes Lopes, Ambassador of the Republic of Cape Verde, Cape Verde.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President and First Lady	Multiple items. A wood panel, depicting a circular design of vari-colored woods, 46" Sq. A wooden candy dish with lid, 6" diam. and a wooden beaded necklace. Archives, Foreign Recd: Oct. 25, 1990. Est. value: $1550.	His Excellency General Andre-Dieudonne Kolingba, President of the Central African Republic, Central African Republic.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President and First Lady	Household: crystal. 14 crystal wine goblets, each engraved "GHB," by Moser. Archives, Foreign. recd: Nov. 17, 1990. Est. value: $300.	His Excellency and Mrs. Vaclav Havel, President, Czech and Slovak Federal, Czechoslovakia.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President and First Lady	Book: "Codex Vyssehradensis," an illustrated volume on the Coronation of the First King of Czechoslovakia and the Codex Key; both are reproductions. Archives, Foreign. Recd: Nov. 17, 1990. Est. value: $550.	His Excellency Vaclav Havel, President Czech and Slovak Federal, Czechoslovakia.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President and First Lady	Assortment. 1) Sculpture. Three crystal birds suspended over black base, entitled "Atlantique," edition 950, by Daum France; Approx. 36" high, 16" diam. 2) Porcelainware. A set of 12 Demitasse cups and saucers, a black and gold tree design on blue background with silver trim, by Limoges 1990, in a fitted vinyl case. Archives, Foreign. Recd: July 9, 1990. Est. Value: $7200.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President and First Lady	Consumables: 12 bottles of German Wine, 1977 through 1988 vintage. Accepted by other agency for official use. Recd: Jan. 4, 1990. Est. value: $260.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President and First Lady	Assortment: 1) A reproduction of a letter by President Jefferson addressed to Greek Academic Adamantios Korais, dated Oct. 31, 1823, in a leather folio stamped with Greek Cross. 2) Book, "The Greek Museums," by Ekdotike Athenon, 1975, Athens; inscribed 3) a sterling silver handhammered reproduction of a vessel, 16th Cent. B.C., designed as a duck. Archives, Foreign. Recd: June 6, 1990. Est Value: $450.	His Excellency Constantine Mitsotakis, Prime Minister of Greece and Mrs. Mitsotakis, Greece.	Non-acceptance would cause embarrasement to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Assortment: 1) Painting of two brightly colored birds, oil on masonite, by Geener Armand, 1989; Displayed in bright goldleaf frame; Image: 8" x 10"; overall: 14⅛" x 16⅛"; 2) a Domed wooden box with turtleshell veneer; 7⅛" x 4⅛" x 3". 3) a Large painting of a Haitien house with French-costumed soldiers outside; oil on canvas, by Ely Jecques; Image: 24" x 30"; in gold-distressed wood frame; 29" x 35". Archives, Foreign. Rec'd: May 29, 1990. Est. value: $210.	Her Excellency Ertha Pascal Trouillot, President of the Republic of Haiti, Haiti.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President and First Lady	Household: Porcelain tea service for twelve, made by Herend, bouquet green pattern, Government transfer. Rec'd: Oct. 16, 1990. Est. value: $973.	His Excellency Jozsph Antall, Prime Minister Republic of Hungary, Hungary.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President and First Lady	Artwork: A multicolored striped and diamond patterned wall hanging, red-fringed on one end only. Wool blend. 43" x 75". Archives, Foreign. Rec'd: Dec. 21, 1990. Est. value: $400.	His Excellency and Mrs. Mohamed Bellkhayat, Ambassador of the Kingdom of Morocco.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President and First Lady	Flowers: Large arrangement of lilies, tulips, quince, etc., in reproduction Chinese urn style container; accepted by other agency for official use. Consumables: "Cheese spread and beef stick"; perishable. Household: A leaded crystal footed bowl by Rogaska of Yugoslavia, limited edition titled "Georgian Centrpiece. 11½" H., 12" diam; Achivse, Foreign. Household: Two silk-covered circular boxes (20½" diam.). Archives, Foreign. Rec'd: Jan. 03, 1990. Est. value: $3575.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrasement to donor and U.S. Government
President and First Lady	Assortment: 1) Painting. Portrait of President Bush in Togolaise attire, oil on canvas, by M. Yenu. Elaborate goldleaf frame; 33" x 41"; 2) statuette. Sterling Silver Dove of Peace figure, engraved in French around circular base; 13" H. 9¼" diam; housed in snakeskin covered case; 3) stamp album. black leather album of souvenir Togolaise stamps; gold stamped cover & spine, matching slipcase; 4) gold mask bracelet in snakeskin box. Archives, Foreign. Rec'd. July 31, 1990. Est. value: $5686.	His Excellency; General Gnassingbe Eyadema, President of the Republic of Togo, Togo.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President and First Lady	Medallions. Two bronze medallions lettered in Russian and depicting two birds on reverse; 2¾" diam.; and two related certificates. Archives, foreign. Rec'd: May 14, 1990. Est. value; $40.	His Excellency Yurity V. Dubinin, Ambassador of the Union of Soviet Socialist Republics (Outgoing), Union of Soviet Socialist Republics.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President and First Lady	Samovar Set, a colorfully decorated electric Samovar with matching tray, teapot, bowl, and two glasses; and, a painting of a wooded scene, oil on masonite, 1986, displayed in a gold-painted wood frame; Image: 13 1/2" x 16"; overall: 20" x 23". Archives, Foreign. Recd: May 31, 1990. Est. value: $230.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrasement to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Photograph: A color photograph of President Bush and President Perez, standing on south lawn of the White house; matted under glass in gold-speckled wood frame; 16" x 19"; 26" x 29½" overall; and 17 color matted photographs of Mrs. Bush during visit to Costa Rica; each is 8" x 10"; contained in a black crocodile stamped folio depicting Costa Rican seal. Archives, Foreign. Recd: June 19, 1990. Est. Value: $350.	His Excellency Carlos Andres Perez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	2 wool rugs (runners), black W/gray and beige, fringed two ends; 2 cotton tablecovers; a shawl or serape; a brown and beige vest; two straw hats; two vinyl valeeses, by Delsey. Archives, Foreign. Recd: Jan. 23, 1990. Est. value: $1405.	His Excellency Ali Abdallah Salih, President of the Yemen Arab, Republic, Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Photograph: Black leather album of 120 color photographs of President and Mrs. Bush, President Valdez, et al., taken on occasion of President Valdez's visit to the White House on April 26, 1990; inscribed; contained in matching black and leather slip-case. Archives, Foreign. Recd: Dec. 20, 1990. Est. value: $2700.	His Excellency Carlos Andres Valdez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Multiple items, wooden vase with oriental motif, 17" high, base is 7" diam. in a red velvet box with white satin lining, mirrored wooden plaque, lettered "Republic of Maldives 25th Anniversary of Independence 1965–1990" with engraved inscription, in a red velvet box. book, "Maldives 25 years of independence", inscribed. Small sold gold coin with similar lettering; Archives, Foreign. Consumables: Tuna, Forty-eight 7 oz. cans of "Dolphin Friendly" Maldives tuna, packed in oil. Charity. Recd: Oct. 23, 1990. Est. value: $665.	His Excellency Maumoon Abdul Gayoom, President, Republic of Maldives.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: A vinyl cover containing a "Cook Islands Proof Coin Set 1987"; (Consists of 7 coins ranging in value from 5 cents to 5 dollars); and, a vinyl cover containing 3 paper bills of 20 dollars, 10 dollars, and three dollars in value, titled "The currency of the Cook Islands"; Archives, Foreign. Stamps: A leather book containing a collection of various Cook Islands postage stamps and first day covers of varying denominations; Archives, Foreign. Book: "Images of Polynesia", published by Cook Islands Topographical Services LTD., Rarotonga, Cook Islands. Archives, Foreign. Recd: Apr. 20, 1990. Est. value: $336.	The Honorable Geoffrey Arama Henry, Prime Minister, Cook Islands.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A sterling silver cigarette box with ridged lid. Engraved "Dr. Eduardo A. Duhalde" on inside lid and "Vice President of the Argentine Nation" on outside. 5½" x 4½" x 1½". Displayed in a blue vinyl case; Archives, Foreign. Book: A copy of "Politicians and Drugs" (toward a National Program), by Dr. Eduardo A. Duhalde, inscribed. Leather-bound and gold-stamped, Moire endpapers. Archives, Foreign. Recd: Dec. 06, 1990. Est. value: $450.	Dr. Eduardo Duhalde, President of the Senate, Congress of the Nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Historic artifacts: Bolas. Three silver and enamelled balls attached to a handwoven leather lariat, enclosed in a blue fitted vinyl case. Archives, Foreign. Recd: Dec. 04, 1990. Est. value: $450.	His Excellency Carlos Menem, President of the Argentine Nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Horses. Two pure-bred Argentine stallions. Government Transfer. Recd: Dec. 05, 1990. Est. value: Indeterminable.	His Excellency Carlos Menem, President of the Argentine Nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapons: A sterling silver dagger in a sterling silver sheath. The sheath bears emblems of Argentina and the United States. Contained in a wooden presentation case. Archives, Foreign. Recd: Dec. 05, 1990. Est. value: $435.	His Excellency Carlos Menem, President of the Argentine Nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapons: A facon or gaucho knife, sterling silver and gold handle and scabbard. 19" long overall. Archives, Foreign. Recd: Dec. 05, 1990. Est. value: $950.	His Excellency Alberto Pierri, President of the Chamber of Deputies, Congress of the nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Painting of a boat scene, oil on canvas, by Shamsuddehn, 1969; in gold-painted and fabric-covered wood frame; overall 47" H., 65" L; Archives, Foreign. Household: two Silver filigree pitchers, 11" H. Archives, Foreign. Recd: Feb. 13, 1990. Est. value: $1600.	His Excellency Hussain Muhammad Ershad, President of the People's Republic of Bangladesh, Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk Accesory: A matching set of 18 kt. gold barley solitaire fountain pen and a ball pen, by Mont Blanc; made in Germany; certificate No. 06970. Archives, Foreign. Recd: Apr. 14, 1990. Est. value: $929.	His Excellency John W.D. Swan, Premier of Bermuda, Bermuda.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Painting. An acrylic and gouche modernistic color rendering of two tankards, by Bracher, signed. Matted under glass in brown wood frame. 21⅛" x 29¾". Overall 36" x 42½". Archives, Foreign. Recd: Dec. 04, 1990. Est. value: $3000.	His Excellency Fernando Collor, President of the Federative Republic of Brazil, Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A bronze sculpture, "Dancing Bear," by Paula Salla, 11" x 9½" x 4"; signed limited-edition, 9½" x 15" x 2½". Archives, Foreign. Recd: July, 09, 1990. Est. value: $672.	The Right Honorable and Mrs. Brian Mulroney, Prime Minister of Canada, Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A lapis all-purpose box with engraved silver plaque attached to hinged lid; 5" x 7¼" x 2". Archives, Foreign. Recd: Oct. 02, 1990. Est. value: $350.	His Excellency Patricio Aylwin Azocar, President of the Republic of Chile, Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A sterling silver colonial style two-handled bowl, a cantaro, originally used for carrying water; inscribed. Displayed in a black fitted case. Archives, Foreign. Recd: Dec. 06, 1990. Est. value: $650.	His Excellency Patricio Aylwin Azocar, President of the Republic of Chile, Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: 1) A brass key to the city of Santiago, bearing shield of Santiago, displayed in a blue velvet case with engraved presentation plaque, 2) a framed parchment diploma, 15" x 19", displayed in a velvet-covered case. Archives, Foreign. Recd: Dec. 06, 1990. Est. value: $350.	The Honorable Jaime Ravinet, Mayor of Santiago, Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: A reproduction of a pre-Columbian figure entitled "Salsa", copied from the original made in 400–1600 AD; 24 kt. gold plate; displayed on a wood base; figure is 7" × 4" × 3¼"; overall is 10" × 8" × 6"; included is a booklet entitled "Gold . . .": Archives, Foreign. Stamps: A sheet of commemorative stamps, No. 000047, 130 air mail; and, a "Cumbre Presidential" Cartagena first day cover; President to keep personally. Book: "El Cafe De (The Coffee) from Colombia"; "Sambusa Guadua"; "Rural Colombia"; "Manglares"; and, "A Guide to the National Natural Parks System of Colombia". Archives, Foreign. Recd: Feb. 15, 1990. Est. value: $436.	His Excellency Virgilio Barco Vargas, President of the Republic of Colombia, Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	A sterling silver box for cigars and cigarettes engraved on hinged lid "To His Excellency Mr. George Bush, President of the United States of America" and "Washington, June 5, 1990"; bears facsimile signature of President Barco; 9¾" × 7¾"; enclosed in a blue fabric-covered box; and a copy of book, "Tipos y Costumbres De La Nueva Granada" (types and customs of New Granada), By M. Daes; Pub. 1990 by Fnodo Cultural, Cafetero. Archives, Foreign. Recd: June 05, 1990. Est. value: $490.	His Excellency Virgilio Barco Vargas, President of the Republic of Colombia, Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A 3-legged wood table, 42" x 28½" diam; four wood chairs; a wood bowl w/wooden fruit; and, a solid brass statuette of a woman holding a platter on her head; 25" H.; all wood pieces carved with designs. Archives, foreign. Recd: Feb. 12, 1990. Est. value: $775.	His Excellency; Colonel Denis Sassou-Nguesso, President of the People's Republic of the Congo, Congo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: 15½" diameter shallow cut-crystal bowl, by Bohemia. Archives, Foreign. Recd: Nov. 17, 1990. Est. value: $600.	Czech and Slovak Federal Republic, Government of Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A set of crystal glasses; 12 water; 12 red wine; 12 white wine; 12 liqueur; and, 24 aperslit; by Moser of Czechoslovakia; enclosed in a red chest; residence; for official use/display. Book: "Letters to Olga" (June 1979–September 1982), by Vaclav Havel; inscribed; translated from the Czech by Paul Wilson; published by Henry Holt and Company, New York, 1988; leather-bound and slipcased. Archives, Foreign. Recd: Feb. 20, 1990. Est. value: $14600.	His Excellency Vaclav Havel President of the Czechoslovak Socialist Republic, Czechoslovakia.	Non-acceptance would cause embarrasment to donor and U.S. Government.
Prescent	Assortment: 1) A Wooden carved cabinet or "Barqueno", 11 drawers, veneered w/geometrical drawings, frets of walnut & platuquero & cedar blocks; silver handles represent ears of corn; the two top drawers removed reveal a secret compartment at rear; displayed on a carved wood table stand; 44" H. overall, 20¾" W., 12¾" D.; 2) a woolen cape, beige w/ black piping & a flamestitched design; unlabeled. Archives, Foreign. Recd: July 23, 1990. Est. value: $2060.	His Excellency Rodrigo Borja, President of the Republic of Ecuador, Ecuador.	Non-acceptance would cause embarrasment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Modernistic painting entitled "Gridlas De La Tierra," by Roberto Galicia, signed, 1989; oil on canvas, 33" x 51"; in a black wood frame w/ silvered liner; overall: 38" x 55". Archives, Foreign. Recd: Feb. 07, 1990. Est. value: $3500..	His Excellency Alfredo Cristiani, President of the Republic of El Salvador, El Salvador.	Non-acceptance would cause embarrasment to donor and U.S. Government.
President	Book: "Down to Earth," (Speeches and writings of His Royal Highness Prince Philip Duke of Edinburgh on the relationship of men with his environment); Published by Collins, London, 1988; inscribed; spine only is leather-bound. Archives, Foreign. Recd: May 16, 1990. Est. value: $350.	His Royal Highness Philip Prince; the Duke of Edinburgh, England.	Non-acceptance would cause embarrasment to donor and U.S. Government.
President	Kaya bowl. Mahogony Bowl 20" in diameter and 8 inches in dept; Just braided rope attached with three cowrie shells plaque on bowl lettered: "From the Government & People of the Republic of Fiji." Fijian tapa cloth. 25" × 25", pewter cup. lettered "Fiji islands" with scenes of the islands. Archives, Foreign. Recd: Nov. 05, 1990. Est. value: $375.	The Right Honorable RATU SIR KAMISESE MARA K.B.E., G.C.M.G., Prime Minister of the Republic of Fiji, Fiji.	Non-acceptance would cause embarrasment to donor and U.S. Government.
President	Desk accessory: A Mont Blanc Meisterstuck fountain pen with 18 kt. gold NIB, enclosed in a box labeled 'this pen used to sign "Charter of Paris for a New Europe", November 21, 1990'. Camp David; official use/display. Recd: Nov. 21, 1990. Est. value: $345.	His Excellency Pierre-Henri Desseaux, CSCE Secretariat, France.	Non-acceptance would cause embarrasment to donor and U.S. Government.
President	Fishing rod and reel. A deep sea "President" no. 12/0 rod and reel by Mitchell, made in France; rod is marked "big game 80/100 lb. 37 kg. overseas"; and, an historic book, "treaty for the construction of vessels," by Frederick de Chapman, Chevalier of the order of the King of Sweden; translated from Swedish; this edition printed in 1779. Achives, Foreign. Recd: Apr. 19, 1990. Est. value: $2200.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrasment to donor and U.S. Government.
President	Household: A footed urn style vase, handpainted in a deep blue marbelized design with goldleafed rims, by Chantal Mirabaud, signed. by Limoges, France. 8¼" high, 7½" diam. Across mouth. Archives, Foreign. Recd: Nov. 21, 1990. Est. value: $1500.	His Excellency Francios Matterrand, President of the French Republic, France.	Non-acceptance would cause embarrasment to donor and U.S. Government.
President	Coins: A gold (999) coin commemorating German unification on October 3, 1990. Displayed in a block of lucite and housed inside a red paper-covered case. Archives, Foreign. Recd: Sep. 25, 1990. Est. value: $500.	Dr. Sabine Bergmann-Pohl, Member, People's Chamber of the German Democratic Republic, German Democratic Republic,.	Non-acceptance would cause embarrasment to donor and U.S. Government.
President	Consumables: Four cans of blutwurst; two cans of bratwurst; and, two cans of lebenswurst. Accepted by other agency for official use Recd: Jan. 04, 1990. Est. value: $11.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrasment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Book: A two-volume set of books, "The Complete Angler," (or the contemplative Man's Recreation Being a Discourse of Rivers Fish-Ponds Fish and Fishing), by Izaak Walton & Instructions on how the angle for a trout grayling in a clear stream by Charles Cotton. Published in London by William Pickering, 1836. original leather-bound volumes with goldleafed pages and tooling. Residence; for official use/display. Recd: Nov. 18, 1990. Est. value: $300.	His Excellency Helmut Kohl, Chancellor of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President	Artwork: Figure of a swan. A solid blond-colored wooden swan with gold-painted beak; stamped "Artecasa" on underside; 28" L, 14" H., 11" W; Archives, Foreign. Consumables: Cigars. A box of 20 "Excalibur" cigars handmade in Hondures; No. II English Claro; each cellophane wrapper lettered "Mr. George Bush". Archives, Foreign. Recd: Apr. 17, 1990. Est. value: $221.	His Excellency Rafael Callejas, President of the Republic of Honduras, Honduras.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President	Multiple items. Book, "Bibliotheca Corviniana: The Library of King Matthias Corvinus of Hungary", by Covina Kiado. Two silver coins, appx. 1 oz. each, both have lettering in Hungarian text. One small gold coin depicting lettering in Hungarian. Archives, Foreign. Recd: Oct. 18, 1990. Est. value: $220.	His Excellency Jozsef M. Antall, Prime Minister, Republic of Hungary, Hungary.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President	Artwork: A wood-framed waterford crystal presidential seal, crafted by R. Cunningham, 1990; 27½" diameter. One of a kind; Camp David; official use/display. Artwork: A crystal world globe with engraved inscription, by Caven crystal; 17" high, 13" diam. Archives, Foreign. Recd: Feb. 27, 1990. Est. value: indeterminable.	His Excellency Charles J. Haughey, Prime Minister of Ireland, Ireland.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President	Household: A leaded crystal footed bowl with scalloped edge and traditional Irish harp design, engraved "Happy St. Patrick's Day", by Tipperary; 10¼" high, 10½" diam; wood base included. Archives, Foreign. Recd: Mar. 16, 1990. Est. value: $2000.	His Excellency Brian Lenihen, Minister for Foreign Affairs of Ireland, Ireland.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President	Desk accessory: A sterling silver letter-opener embedded with a 22 kt. gold coin in handle. 9" long. Archives, Foreign. Recd: Mar. 12, 1990. Est. value: $750.	His Excellency Giulio Andreotti, President of the Council of Ministers of the Italian Republic, Italy.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President	Household: Table runner. Silk brocade, fringed on two ends, orange with gold, green, and blue floral design overall: 40" long, 23" wide. Archives, Foreign. Recd: July 18, 1990. Est. value: $225.	His Excellency Toshiki Kaifu, Prime Minister of Japan, Japan.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President	Artwork: Ship model An aluminum model of the turtleship built by Admiral Sun-Shin Yi of Korea, known as the first iron-clad warship in the world, and used by Admiral Yi to defeat the Japanese Armada during the Korean-Japanese War (1592–1598). Ship displayed in a glass case with presentation plaque attached. Ship is 7" × 5" × 5". Case is 11⅛" × 8⅛" × 9½". Ship and case housed in a velvet-covered case. Archives, Foreign. Recd: Nov. 15, 1990. Est. value: $250.	His Excellency Jong Koo Lee, Minister of National Defense of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrasement to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Assortment: 1) A white wool sombrero with silver threaded designs. 2) A pair of short-top black leather boots. 3) An outfit of a white scarf and bow tie, a white dress shirt by "Hugo Boss", a black wool rodeo jacket, trousers, and vest with silver-plated horseshoe design ornamentation. 4) A leather decorated gun holster. 5) A gold and silver medallion commemorating the reunion of Presidents Bush and Salinas; Archives, Foreign. Assortment. 1) A leather saddle embellished with silverwork ($500) including spurs and a lasso. 2) A sword with silver horsehead handle and steel blade. Engraved in Spanish. 30" long. Archives, Foreign. Recd: Nov. 26, 1990. Est. value: $6,435.	His Excellency Carlos Salinas De Gortari, President of the United Mexican States, Mexico.	Non-acceptance would cause embarrasement to donor and U.S. government.
President	Consumables: Approx. 30 lbs. of candied chestnuts; accepted by other agency for official use. Consumables: Approx. six lbs. of chocolates by Duhau of Paris. Accepted by other agency for official use. Recd: Jan. 03, 1990. Est. value: $888.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrasement to donor and U.S. government.
President	Consumables: A wicker basket containing a large assortment of gourmet items, including a tin of glaced apricots; Belgian chocolates; caviar; bottles of hot sauce; Texas style peanuts; etc., and a large arrangement mixed flowers; accepted by other agency for official use. Household: A sterling silver bowl, lined with gold, titled "The Franklin Mint Bicentennial Bowl", produced in 1976, Archives, Foreign. Recd: June 12, 1990. Est. value: $6350.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrasement to donor and U.S. government.
President	Artwork: A wooden carved male figure, approx. 3 feet high; Archives, Foreign. A wooden xylophone with mallets, partially covered with animal hair; 21" x 56"; mallets included. Archives, Foreign. Recd: Mar. 13, 1990. Est. value: $575.	His Excellency Joaquire Alberto Chissano, President of the People's Republic of Mozambique, Mozambique.	Non-acceptance would cause, embarrasement to donor and U.S. Government.
President	Rifle. An AK–47 rifle, captured from the Sandinistas and handed over by Ramon Torres Garcia, a member of the Nicaraguan Resistance on August 5, 1990 at Almendro. Mounted in broken condition in a wooden shadowbox frame attached with two engraved brass presentation plaques. Rifle is 35⅛" Long. Overall: 41¼" × 12¼". Archives, Foreign. Recd: Oct. 01, 1990. Est. value: $400.	Her Excellency Violeta Barrios De Chamorro, President of the Republic of Nicaragua, Nicaragua.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President	Artwork: Framed artwork. A Mola or handstitched framed cloth, depicting in multicolored design the American and Panamanian flags and lettered "Cause, Justa, 20 De Diciembre 1989 Liberacion De Panama"; 12⅛" × 16½"; overall 18" × 21½". Archives, Foreign. Recd: July 23, 1990. Est. value: $300.	The Honerable Alcibiades Alvarado, Member, Christian Democratic Party, Panama.	Non-acceptance would cause embarrasement to donor and U.S. Government.
President	Artwork: A framed Mola picture of jungle foliage, handstitched by Medina; 58" × 36". Archives, Foreign. Recd: Apr. 30, 1990. Est. value: $1200.	His Excellency Guillermo Endara, President of the Republic of Panama, Panama.	Non-acceptance would cause embarrasement to donor and U.S. Government.

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President	Artwork: Two framed woodcarved scenes of the fronts of houses, with the doorways predominating, by P. Ayala, 1988; 21¾" × 27¾" and 32¼" × 36¼". Archives, Foreign. Recd: June 12, 1990. Est. value: $500.	His Excellency Andres Rodriguez, President of the Republic of Paraguay, Paraguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing and accessories: A sluchi belt, 16th to 18th century, multicolored silk stripings, 14" wide, 13 feet long; fringed on two ends. Archives, Foreign. Recd: Mar 21, 1990. Est. value: $6000.	His Excellency Tadeusz Mazowiecki, Prime Minister of the Republic of Poland, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A set of sterling silver nautical astrolabes; reproductions of ones used in 1540, 1555, and 1624 respectively; displayed in a fitted blue case. Archives, Foreign. Recd: Jan. 11, 1990. Est. value: $350.	His Excellency Anibal Caveco Silva, Prime Minister of Portugal, Portugal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment. 1) A figure of two carved dark green jade camels with U.S. and Saudi flags embellished with 18 kt. gold and a gold palm tree, displayed on base with engraved presentation plaque and housed in a hinged chest. Figure is 14" × 10" × 6".2) A pair of 18 kt. gold circular cuff links bearing Saudi script; Archives, Foreign. Weapons: A semi-automatic assault rifle, German design G3A3, brown wood stock, black metal and brass hardware, ammunition clip and certificate in a brown vinyl case. Archives, Foreign. Recd: Nov. 21, 1990. Est. value: $6550.	Fahd Bin Abd Al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom, of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Map. A sterling silver map of the state of Kuwait, washed in gold, displayed in gold-toned wood frame. Map is 6" × 6"; overall: 12¼" sq. Archives, Foreign. Recd: Sep. 28, 1990. Est. value: $230.	His Highness Sheikh Jabir Al-Ahmad Al-Sbah, Amir of the State of Kuwait, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: 1) A maroon leather briefcase with brass locks, by Bally. 2) four videos on Saudi Arabia and the Iraqi invasion of Kuwait. 3) four small publications on Saudi Arabia. 4) three coffee table books, "The Kingdom of Saudi Arabia," "The Art of Bedouin Jewellery," and "The Art of Arabia Culture". 5) A metal and glass model of the TV tower in Riyadh, on marble base, enclosed in vinyl case. 30" H. Archives, Foreign. Recd: Nov. 21, 1990. Est. value: $1070.	His Excellency Ali Hasean Alshaer, Minister of Information of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: An arrangement of talisman roses, yarrow, ivy, etc. in an ivy-covered basket. Accepted by other agency for official use. Recd: June 12, 1990. Est. value: $300.	His Royal Highness Bandar Bin Sultan Bin Abdulaziz, Prince/Ambassador of Saudi Arabia and Princess Haifa, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Athletic equipment: A boron graphite gold-plated golf putter by anvil; engraved "President George Bush from State President F.W. De Klerk"; enclosed in a wood case with brass presentation plaque attached to hinged lid; putter is 36" long; case is 41" long. Archives, Foreign. Recd: Sep. 24, 1990. Est. value: $375.	His Excellency F.W. De Klerk, State President of the Republic of South Africa, South Africa.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: A wool wallhanging depicting President Bush with partial Presidential seal; handwoven in Tunisia; 40" × 52"; Archives, Foreign. Artwork: A sterling silver filigree dove of peace, mounted on gray marble base; dove is 11½" × 7" × 4"; housed in brown leather case 13½" × 9½" × 6"; Residence; for official use/display. Photograph: A color photograph of President Ben Ali, inscribed; displayed in a silver (800) frame with easel backing; 9½" × 12" overall. Resident; for official use/display. Recd: May 15, 1990. Est. value: $2650.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia, Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A new Turkish silk rug, overall multicolored floral design bordered in blue and fringed on two ends; signed Hereke; made in Istanbul area; 36" × 58". Archives, Foreign. Recd: Jan. 18, 1990. Est. value: $4000.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: 1. Plate. A glazed ceramic plate or platter with an overall floral design in blues and greens; hand-made; signed on underside; hanger attached; 15¼" diam. 2. Photograph. A color photograph of President and Mrs. Ozal, inscribed; displayed in sterling silver frame with velvet easel backing; 9½" × 12" overall. Archives, Foreign. Recd: Sep. 25, 1990. Est. value: $295.	His Excellency and Mrs. Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment. A parker ball pen, used by Pres. Gorbachev to sign the historic treaties in the East Rm & then handed to Potus as a personal gift; and a wristwatch, depicting the American & Soviet flags on dial; Camp David; official use/display. Box. A navy blue paper-covered box gold-stamped "Washington, D.C., May 30-June 3, 1990" and depicting the presidential seal and seal of the Soviet Union; 9" × 5½" × 2"; contained the parker ball point pen which Soviet President Gorbachev used to sign the historic East Room Treaties and then handed to President Bush as a personal gift. Archives, Foreign. Recd: May 31, 1990. Est. value: $100.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republic, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Cartoon: A watercolor cartoon of Presidents Bush & Gorbachev as boxers. A figure of the world is holding up their arms in victory following their knockout of a monster labeled "Cold War." Titled "Knockout" (in Russian), 1990; brown frame, 15½" × 19" overall; Camp David; official use/display. Consumables: One 1.75 liter bottle of Stolichnaya Russian vodka. Accepted by other agency for official use. Recd: Sep. 07, 1990. Est. value: $2025.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing and accessories: A medium brown-colored yak hair buttonless coat with stitched design in gray and red around edges and a silk scarf in darker shade with same design on edges. Archives, Foreign. Recd: July 25, 1990. Est. value: $1750.	The Honorable Nursultan A. Nazarbaev, President, Supreme Soviet of Kazakhstan, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Consumables: 1) 3 bottles of vodka (Stolichnaya, Russkaya, and Cantpect); and 2) two 4-oz. jars of caviar; accepted by other agency for official use. Household: A large wooden pedestal style cup, carved in one piece; 18" H. Archives, Foreign. Recd: Apr. 16, 1990. Est. value: $270.	His Excellency Eduard A. Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: A gold coin, depicting a woman with sword, and engraved "Asamblea General, Al Presidente de Los Estados Unidos De America Sr. George Bush 4-12-90". 18 kt. gold. 1¾" diam. enclosed in a blue box bearing assembly seal. Archives, Foreign. Recd: Dec. 07, 1990. Est. value: $450.	General Assembly, The Members of the Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapons: A silver-handled and steel-bladed knife monogrammed "GB" in gold, in a silver and leather sheath; 11⅛" long. Archives, Foreign. Recd: Feb. 05, 1990. Est. value: $300.	Mr. Luis Alberto Lacalle, President-elect of Uruguay, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A display of various nautical knots and other naval memantics. Displayed under glass in a lacquered brown wood frame with brass corners. Engraved presentation plaque attached. 21" × 25"; Kennebunkport; for official use/display. Historic artifacts: A pair of silver and gold antique spurs, probably late 16th or early 19th century, displayed in a blue case with a silver engraved presentation plaque. Archives, Foreign. Recd: Dec. 04, 1990. Est. value: $1150.	His Excellency Luis Alberto Lacalle, President of the Oriental Republic of Uruguay, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government
President	Artwork: Modernistic flat three-dimensional metal sculpture, by Cruz-Diez, August 1988; 65" × 33". Archives, Foreign. Recd: Apr. 26, 1990. Est. value: $25,000.	His Excellency and Mrs. Carlos Andres Perez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	A new Saber enclosed in an early 19th century scabard; hilt and sheath of silver, base metal, and wiello; housed in a wooden case inlaid with mother-of-pearl designs; Saber is 37⅛" long; case is 45⅛" long. Archives, Foreign. Recd: Jan. 23, 1990. Est. value: $1400.	His Excellency Ali Abdallah Salin, President of the Yemen Arab Republic, Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: A white hand-knitted cotton long-sleeve pullover sweater with red, white, and blue trim at neck, cuffs, and bottom, by Linda Laing. Archives, Foreign. Recd: July 9, 1990. Est. Value: $168.	The Right Honorable and Mrs. Brian Mulroney, Prime Minister of Canada, Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: A garnet and gold necklace set in individual star designs; Archives, Foreign. Household: A Bohemian leaded crystal vase in a flower basket design; 9" high; Archives, Foreign. Household: A glass tea set with applied gold decoration and raised floral motifs; includes tea pot, creamer, sugar bowl, six cups and saucers. Archives, Foreign. Rec: Feb. 20, 1990. Est. value: $1500.	His Excellency Vaclav Havel, President of the Czechoslovak Socialist Republic, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: A plaster replica "Unfinished Head of Queen Nefertiti," the original is in the Egyptian Museum, Cairo. Archives, Foreign. Recd: Nov. 30, 1990. Est. value: $250.	His Excellency Fareq Husni, Minister of Culture, Egypt Museum, Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Artwork: A semiglazed prototype Terra Cotta vase by Nabil Darwish; measures approx. 17" tall, 15" wide, made October 1990. Archives, Foreign. Recd: Nov. 30, 1990. Est. value: $500.	Mrs. Suzanne Mubarak (Wife of President Mubarak), Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Silver box made by Gerald Benney. West Wing; for official use/display. Recd: Feb. 22, 1990. Est. value: $300.	His Royal Highness Charles (Windsor), The Prince of Wales, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: A black leather envelope style shoulder bag, by Fendi; 12" long, 8" high, 2" thick at bottom. Archives, Foreign. Recd: Mar. 11, 1990. Est. Value: $350.	Mrs. Livia Andreotti (Wife of the Prime Minister of Italy), Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: A shawl or travelling blanket, punched design fabric in a bottle green color, fur-trimmed; by Fendi. Archives, Foreign. Recd: July 10, 1990. Est. value: $3000.	Mrs. Livia Andreotti (Wife of the Prime Minister of Italy), Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: Oval intaglio (cameo) and gold-framed (750) brooch of a woman's head; 2" diameter. Archives, Foreign. Recd: Apr. 25, 1990. Est. value: $420.	His Excellency Bettino Craxi, Secretary of the Socialist Party of Italy, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A blue print comforter with white crocheted edge. Included are two matching pillow shams and a plain blue print dust ruffle. Archives, Foreign. Recd: Nov. 28, 1990. Est. value: $250.	Mrs. Rosa Jauregui De Canalee (Wife of the Mayor of Aqualegues, Mexico), Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: A sterling silver bracelet with amethysts and turquoise stones and matching earrings. Handmade in Mexico. Archives, Foreign. Recd: Nov. 28, 1990. Est. value: $400.	Mrs. Alma Elisa Reyes De Rizzo (Wife of the Municipal President of Monterrey), Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: A gigantic arrangement of mixed flowers in plastic container; accepted by other agency for official use. Consumables: Nine bottles of French perfum by Annick Goutal (100 ml each bottle), Paris. Contained in a fabric-covered box; Archives, Foreign. Consumables: Assorted chocolates by Lenotre, Paris. Four tins of marrons glaces (cakes) by Hediard. Three lbs. of Melange Madeleine coffee by Hediard. Nine tins of dates by Fauchon of Paris. Tins of caviar and salmon; accepted by other agency for official use. Boxes. Two fabric-covered chests. Archives, Foreign. Recd: June 09, 1990. Est. value: $3065.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: Carved bowl with alligator finial, 14"×8"×14"; and, a wooden carved box with lid; 8"×3"×3". Archives, Foreign. Recd: Mar. 13, 1990. Est. value: $500.	Mrs. Joaquim Alberto Chissano (Wife of the President of the People's Republic of Mozambique), Mozambique.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: 1) a short-sleeve cotton Mola dress, royal blue with colorful stitched designs to simulate rio-rac at top, middle, and bottom; handsewn; 2) a multicolored crocheted purse; Archives, Foreign. Jewelry: A gold stick pin or huaca, filigree design reproducing ancient pre-Colombian artifact unearthed in Panama; 2" long. Archives, Foreign. Recd: Apr. 30, 1990. Est. value: $570.	His Excellency Guillermo Endara, President of the Republic of Panama, Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A cut crystal bowl, 12" diam., 5" high; by Krasno Glassware. Archives, Foreign. Recd: Mar. 21, 1990. Est. value: $75.	His Excellency Tadeusz Mazowiecki, Prime Minister of the Republic of Poland, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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First Lady	Artwork: A quartz clock set with diamond and ruby numerals and housed in a malachite and gold-plated silver case designed as a Saudi edifice. Bears the royal Saudi gold crest and attached with an engraved brass presentation plaque. 9" × 7⅛" × 5⅛" overall. Displayed in a hinged velvet-covered case bearing gold Saudi crest on lid; Archives, Foreign. Book: A copy of "Abha" (Bilad Asir, Southwestern Region of the Kingdom of Saudi Arabia), by Noura Bint Muhammad Al-Saud, Riyadh, 1986; Archives, Foreign. Jewelry: An 18 kt. gold breastplate style necklace with colored stones; Archives, Foreign. Clothing and accessories: A green silk sari-like wrap with gold and silver threaded designs embellished with colored glass stones. 13 feet 2 inches long. Archives, Foreign. Recd: Nov. 21, 1990. Est. value: $10045.	Her Royal Highness Jawhara Ibrahim Al-Ibrahim (wife of the custodian of the two holy mosques King Fahd), Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government
First Lady	Flowers: A large arrangement of peonies, roses, snapdragons, bluebells, etc. in wicker basket. Accepted by other agency for official use. Recd: June 08, 1990. Est. value: $300.	His Royal Highness Bandar Bin Sultan Bin Abdulaziz, Prince/Ambassador of Saudi Arabia and Princess Haifa, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: A black ostrich handbag with separate gold-plated chain handle included, by Cape Cobra, Cape Town. Archives, Foreign. Recd: Sep. 24, 1990. Est. value: $795.	His Excellency F. W. De Klerk, State President of the Republic of South Africa, South Africa.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: A watercolor of Tunisian horsemen, by Victor Sarfati, signed; on paper with white linen matting under glass in gold-painted wood frame with presentation plaque, card, and artist's biographical sketch attached to reverse; image: 21" × 29"; over all: 29" × 37". Camp David; official use display. Recd: May 15, 1990. Est. value: $450.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia, Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A circular wall hung boudoir mirror in a sterling silver repousse frame; 12" diam. Archives, Foreign. Recd: Sep. 27, 1990. Est. value: $450.	Mrs. Semra Ozal (wife of the President of the Republic of Turkey), Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: A black lacquered box depicting an overall fairyland type scene with human figures and a white horse in front of an open gate, made 1985; 6⅛" × 4" × 1⅛". Archives, Foreign. Recd: May 14, 1990. Est. value: $1200.	His Excellency Yuriy V. Dubinin, Ambassador of the Union of Soviet Socialist Republics (Outgoing), Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: A square modern wooden sculpture, by Carlos Medina, signed; 9⅜" diam., 3" thick. Archives, Foreign. Recd: Apr. 26, 1990. Est. value: $1500.	His excellency and Mrs. Carlos Andres Perez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: A necklace, three bracelets, earrings, and a nosepiece, all silver. Archives, Foreign. Recd: Jan. 23, 1990. Est. value: $295.	His Excellency Ali Abdallah Salih, President of the Yemen Arab Republic, Yemen.	Non-acceptance would cause embarrassment to donor and U.S Government.

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Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Paul W. Bateman, Deputy Assistant to the President for Management.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile." Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia." Four video cassette tapes made from the Saudi Arabian news media: "The Europeans", "The Iraqi Invasion . . .", "The Departure of Yemenis . . . and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
D. Allen Bromley, Assistant to President for Science and Technology.	Wall hanging: Green, signed by the artist, appx. 4'×6', Presidential staff; for official use/display. Recd: Dec. 07, 1990. Est. value: $1200.	His Excellency Carlos Perez, President, Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Bruce E. Caughman, the President's Aide.	Sterling silver cuff links depicting the symbol of Saudi Arabia. Books: "The Art of Bedouin Jewellery", and "The Art of Arabian Costume: A Saudi Arabian Profile", "Modernity and Tradition: The Saudi Equation" and "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabian news media: "The Europeans," "The Iraqi Invasion . . . ", "The Departure of Yemenis . . ." and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $690.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sandra L. Charles, Director of Near East, South Asia Affairs, NSC.	Jewelry: Cuff links depicting the symbol of Saudi Arabia, 18 Karat gold. GSA. Recd: Nov. 28, 1990. Est. value: $450.	The Honorable Abdullah Bin Abdulaziz Al Saud, Crown Prince, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
James W. Cicconi, Assistant to the President and Deputy to the Chief of Staff.	Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabian news media "The Europeans" "The Iraqi Invasion..." "The Departure of Yemenis..." and "The Kingdom in Brief". Sterling silver cuff links depicting the symbol of Saudi Arabia; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 15, 1990. est. value: $690.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
David F. Demarest, Jr., Assistant to the President for Communications.	Sterling silver cuff links depicting the symbol of Saudi Arabia. Books: "The Art of Bedouin Jewellery" "The Art of Arabian Costume: A Saudi Arabian Profile", "Modernity and Tradition: The Saudi Equation" and "The Heritage of the Kingdom of Saudi Arabia." Four video cassette tapes made from the Saudi Arabian news media: "The Europeans", "The Iraqi Invasion . . .", "The Departure of Yemenis . . .", and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $690.	His Excellency Ali Hassan Alshaer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Max Martin Fitzwater, Assistant to the President and Press Secretary.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation." Book "The Heritage of the Kingdom of Saudi Arabia". Four video cassettes tapes made from the Saudi Arabian news media "The Europeans", "The Iraqi Invasion . . . ", "The Departure of Yemenis . . . " and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His Excellency Ali Hassan Alsheer, Minister of Information Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert M. Gates, Assistant to the President and Deputy for National Security Affairs.	35 decorative medals enclosed in a red leather box decorated to resemble a book. Medals are steel with gold electroplate. GSA. Recd: Mar. 28, 1990. Est. value: $245.	Le General Mohamed Achahbar, Secretary General De L'Administration De La Defense Nationale.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert M. Gates, Assistant to the President and Deputy for National Security Affairs.	Desk set: Includes desk mat, leather picture frame, leather calendar holder, pen holder with two pens, leather portfolio. GSA. Recd: Dec. 26, 1990. Est. value: $385.	His Excellency Najmuddin A. Shaikh, Ambassador, Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert M. Gates, Assistant to the President and Deputy for National Security Affairs.	Wall hanging: Yellow cloth, appx. 4'×6'. Presidential staff; for official use/display. Recd: Dec. 07, 1990. Est. value: $700.	His Excellency Carlos Perez, President, Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Richard N. Haass, Senior Director, NESA, NSC.	Jewelry: man's sterling silver and 14K gold Rolex watch. Official certification number: 16223. GSA. Recd: May 13, 1990. Est. value: $3654.	Shaikh Isa Bin Sulman Al-Khalifa, Amir, State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Richard N. Haass, Senior Director, NESA, NSC.	18 Karat white and yellow gold cuff links depicting the symbol of Saudi Arabia. Book "The Art of Bedowin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia." Four video cassette tapes made from the Saudi Arabian News Media "The Europeans", "The Iraqi Invasion . . . ", "The Departure of Yemenis . . . " and "The Kingdom in Brief"; Presidential staff; for official use/display. Black leather briefcase, made by Samsonite. Presidential staff; for official use/display. Recd: Nov. 30, 1990. Est. value: $915.	His Excellency Ali Hassan Alsheer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen [illegible]art, Special Assistant to the President and Deputy Press Secretary.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile." Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia." Four video cassette tapes made from the Saudi Arabian News Media "The Europeans", "The Iraqi Invasion . . . " "The Departure of Yemenis . . . " and "The Kingdom in Brief."; GSA. Black leather Samsonite briefcase. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His Excellency Ali Hassan Alsheer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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John G. Keller, Jr., Deputy Assistant to the President.	18 Karat Gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabia News Media "The Europeans," "The Iraqi Invasion . . .", "The Departure of Yemenis . . ." and "The Kingdom in Brief"; GSA. Black leather Samsonite briefcase. GSA. Recd: Nov. 15, 1990. Est. value: $1015.	His Excellency Ali Hassan Alsheer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Herbert D. Kleber, Deputy Director for Demand Reduction, ONDCP.	Small sterling silver artwork depicting a floral arrangement, appx. 5" in length. GSA. Recd: Dec. 06, 1990. Est. value: $250.	Mr. Flaminio Angelini, President, Pontificum Consilium de Apostolatu, The Vatican, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Roman X. Popadiuk, Deputy Assistant to the President and Deputy Press Secretary.	18 Karat Gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabian News Media "The Europeans," "The Iraqi Invasion . . .", "The Departure of Yemenis . . ." and "The Kingdom in Brief"; GSA. Black leather Samsonite briefcase. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His Excellency Ali Hassan Alsheer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Joseph Thomas Ratchford, Associate Director for Policy & Int'l Affairs.	Artistic Sterling silver sculpture of a velocipede bicycle encased in glass display box with wooden base, 7" in length, 6" high. GSA. Recd: Oct. 04, 1990. Est. value: $250.	B.J. Habib, Minister of State, Ministry for Research and Technology, Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government
Edward M. Rogers, Jr., Deputy Assistant to the President.	18 Karat gold cuff links depicting the symbol of Saudi Arabia, Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile." Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabian News Media "The Europeans", "The Iraqi Invasion..." "The Departure of Yemenis..." and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His Excellency Ali Hassan Alsheer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sigmund A. Rogich, Assistant to the President for Public Events and Initiatives.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Book, "The Art of Bedouin Jewellery". Book, "The Art of Arabian Costume: A Saudi Arabian Profile". Book, "Modernity and Tradition: The Saudi Equation". Book, "The Heritage of the Kingdom of Saudi Arabia". Four video cassette tapes made from the Saudi Arabian News Media: "The Europeans", "The Iraqi Invasion...", "The Departure of Yemenis...", and "The Kingdom in Brief"; GSA. Black leather briefcase, made by Samsonite. GSA. Recd: Nov. 30, 1990. Est. value: $1015.	His excellency, Ali Hassan Alsheer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptanoll would cause embarrassment to donor and U.S. Government.

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AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Sigmund A. Rogich, Assistant to the President for Public Events and Initiatives.	Crystal decanter, deeply etched, containg Russian liquor, appx. 8" in Height ad 4" in diameter. Six matching shot glasses, appx. 2¼" in height and 1⅝" in diameter. Three jars of Russian caviar, 2 oz. each. Ten boxes of Russian cigars, each box contains five cigars. GSA. Recd: June 25, 1990. Est. value: $370.	President Mikhail Gorbachev, President, Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrasement to donor and U.S. Government.
Brant Scowcroft, Assistant to the President for National Security Affairs.	1) Hand carved duck: Green wing teal (Hen) #203 by Don Honegger, Chelsea, Quebec. 2) Bronze telephone "Wood Calling Bronze, 1988" on wooden platform from the Canadian Contemporary Sculpture Collection by Art Bronzes Int'l Inc. Presidential staff; for official use/display. Recd: July 19, 1990. Est. value: $1125.	The Right Honorable and Mrs. Brian Mulroney, Prime Minister, Canada, Canada.	Non-acceptance would cause embarrasement to donor and U.S. Government.
Brent Scowcroft, Assistant to the President for National Security Affairs.	Artwork: Mixed media picture featuring chalk and watercolor and acrylic paint, depicting a girl and an oriental scene, matted, in a brown wooden frame, appx. 22" x 25". Presidential staff; for official use/display. Recd: Aug. 23, 1990. Est. value: $350.	His Excellency Kabun Muto, Minister International Trade and Industry, Japan, Japan.	Non-acceptance would cause embarrasement to donor and U.S. Government..
Brent Scowcroft, Assistant to the President for National Security Affairs.	Weapon: Semi-automatic rifle, black metal with brown wood stock and brass, and an ammunition clip and certificate of authenticity enclosed in a brown vinyl case. Presidential staff; for official use/display. Recd. Nov. 21, 1990. Est. value: $650.	His Excellency Fahd Bin Adb Al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrasement to donor and U.S. Government.
Brent Scowcroft, Assistant to the President for National Security Affairs.	Artwork: Stone, reddish in color, with carving depicting a cross in the center. A Commissioned work of natural Armenian stone, referred to as a "Krach'Kar" (Cross of Stone). Presidential staff; for official use/display. Recd: Oct. 04, 1990. Est. value: $5000.	His Excellency Levon Ter-Petrosyan, President/Chairman, Armenian Supreme Soviet Union of Soviet Socialist Republics.	Non-acceptance would cause embarrasement to donor and U.S. Government.
Sichan A. Siv, Deputy Assistant to the President for Public Liaison.	Bhutanese Thanoka, wall hanging of the Tutelarydeity Vajrapan, native handicraft. GSA. Recd: Oct. 20, 1990. Est. value: $250.	His Majesty Jigme Singye Wangchuck, King, Kingdom of Bhutan, Bhutan.	Non-acceptance would cause embarrasement to donor and U.S. Government.
Sichan A. Siv, Deputy Assistant to the President for Public Liaison.	Expended for food, lodging, and transportation. Recd: Nov. 14, 1990. Est. value: Indeterminable.	His Excellency Jigme Singye Wangchuck, King, Kingdom of Bhutan, Bhutan.	Acceptance is appropriate and consistent with the U.S. and permitted by agency.
9050082A—John H. Sununu, Chief of Staff to the President.	Household: Rectangular crystal vase, 8⅛" high with square base 3⅛" X 3⅛" and square neck 3⅛" X 3⅛". Front of vase etched with a tree motif. Made by Cristal De Sevres of France. Presidential staff; for official use/display Recd: May 02, 1990. Est. value: $280.	President Francois Mitterrand, President, French Republic, France.	Non-acceptance would cause embarrasement to donor and U.S. Government.
9042154A—John H. Sununu, Chief of Staff to the President.	Weapon: A semi-automatic rifle, black metal with brown wood stock, and an ammunition clip and certificate of authenticity enclosed in a brown vinyl case. Presidential staff; for official use/display. Recd: Nov. 21, 1990. Est. value: $650.	His Excellency Fahd Bin Abd Al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrasement to donor and U.S. Government.
9042167B—Charles G. Untermeyer, Assistant to the President and Director of Presidential Personnel.	Bhutanese Thanoka, wall hanging of the Tutelarydeity Vajrapan, native handicraft. GSA. Recd: Oct. 20, 1990. Est. value: $250.	His Mageety Jigme Singye Wangchuck, King, Kingdom of Bhutan, Bhutan.	Non-acceptance would cause embarrasement to donor and U.S. Government.
9042263A—Charles G. Untermeyer, Assistant to the President and Director of Presidential Personnel.	Expended for food, lodging, and transportation. Recd: Oct. 14, 1990. Est. value: Indeterminable.	His Excellency Jigme Singye Wangchuck, King, Kingdom of Bhutan, Bhutan.	Acceptance is appropriate and consistent with the U.S. and permitted by agency.
9042266A—Diana K. Untermeyer, Executive Assistant to the Counsel to the President.	Expended for food, lodging, and transportation. Recd: Oct. 14, 1990. Est. value: Indeterminable.	His Excellency Jigme Singye Wangchuck, King, Kingdom of Bhutan, Bhutan.	Acceptance is appropriate and consistent with the U.S. and permitted by agency.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
9042142A—Chriss Winston, Deputy Assistant to the President for Communications.	Jewelry: watch, 18 karat white gold. Face depicts the symbol of Saudi Arabia with a black vinyl wristband, made by Baume and Mercier, Geneve. GSA. Recd: Nov. 30, 1990. Est. value: $2500.	His Excellency, Ali Hassan Alsheer, Minister of Information, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrasement to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE VICE-PRESIDENT

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
9063—Vice President and Mrs. Quayle	Household: Two lead cut crystal vases. Residence; For official use/display. Recd: Feb. 21, 1990. Est. value: $600.	His Excellency and Mrs. Vaclav Havel, President, Czech and Slovak Federal, Czechoslovakia.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90375—Vice President and Mrs. Quayle.	Multiple items: Paperweight with miniature Mosaic scene and Fendi ladies handbag. Archives, Foreign. Recd: Feb. 6, 1990. Est. value: $570.	His Excellency Giulio Andreotti, President of the Council of Ministers of the Italian Republic of Italy.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90575—Vice President and Mrs. Quayle.	Multiple items: Sterling silver serving plate in the shape of a leaf and a key chain. Residence; for official use/display. Recd: May 7, 1990. Est. value: $2,000.	Mrs. Livia Andreotti (wife of the Prime Minister of Italy) Italy.	Non-acceptance would cause embarrasement to donor and U.S. Government.
901178—Vice President and Mrs. Quayle.	Multiple items: Inlaid lacquer box and Celedon vase. Archives, Foreign. Recd: Nov. 13, 1990. Est. value: $400.	His Excellency, Young Hoon Kang, Prime Minister of the Republic of Korea, Korea.	Non-acceptance would cause embarrasement to donor and U.S. Government.
0486—Vice President and Mrs. Quayle.	Multiple items: Enamel box, framed picture and engraved bowl. Residence; for official use/display. Recd: May 7, 1990. Est. value: $450.	The Right Honorable Margaret Thatcher, Prime Minister and First Lord of the Treasury, United Kingdom of Great Britain, England.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90570—Vice President and Mrs. Quayle.	Multiple items: Hand painted quartz clock, amber earrings and pin. Residence; for official use/display. Recd: June 15, 1990. Est. value: $650.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90184—Vice President	Art work: Framed, hand stitched wall hanging, Old Executive Office Building; for official use/display. Recd: Feb. 13, 1990. Est. value: $600.	His Excellency, Hussein Mohammad Ershad, President of the People's Republic of Bangladesh, Bangladesh.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90866—Vice President	Art work: Reproduction of Precolumbian figurine, Archives, Foreign. Recd: Aug. 7, 1990. Est. value: $300.	His Excellency, Cesar Gaviria Trujillo, President of the Republic of Colombia, Colombia.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90867—Vice President	Art work: Framed oil painting of a country scene. OEOB; for official use/display. Recd: Aug. 9, 1990. Est. value: $250.	Her Excellency Ertha Pascal Trouillot, President of the Republic of Haiti, Haiti.	Non-acceptance would cause embarrasement to donor and U.S. Government.
901191—Vice President	Household: Hand painted porcelain plate and stand. Archives, Foreign. Recd: Nov. 26, 1990. Est. value: $300.	The Honorable Shintaro Aba, Member of the Diet of Japan, Japan.	Non-acceptance would cause embarrasement to donor and U.S. Government.
901376—Vice President	Household: A gold washed tea set service with six porcelain cups, Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $1300.	His Highness, Saad Al-Abdullah Al-Salim Al-Sabah, The Crown Prince of the State of Kuwait, Kuwait.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90379—Vice President	Art work: Oil painting titled "Yearnings", Archives, Foreign. Recd: Mar. 15, 1990. Est value: $592.	His Excellency Joaquim Alberto Chissano, President of the People's Republic of Mozambique, Mozambique.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90456—Vice President	Art work: Abstract oil painting by Julio Shebelut Calon, Archives, Foreign. Recd: Jan. 22, 1990. Est. value: $300.	His Excellency Guillermo A. Ford, the Second Vice President of the Republic of Panama, Panama.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90468—Vice President	Household: Etched cobalt crystal bowl and lid. Archives, Foreign. Recd: Mar. 30, 1990. Est. value: $250.	His Excellency Tadeusz Mazowiecki, Prime Minister of the Republic of Poland, Poland.	Non-acceptance would cause embarrasement to donor and U.S. Government.
901375—Vice President	Household: Gold washed tea service. Archives, Foreign. Recd: Dec. 29, 1990. Est. value: $3,000.	His Royal Highness Abdullah Ben Abdulaziz Alsaud, Crown Prince of Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrasement to donor and U.S. Government.
901380—Vice President	Weapon: Ceremonial sword and ornate sheath of 18K gold, inlaid ivory. Archives; Foreign. Recd: Dec. 30, 1990. Est. value: $10,000.	His Royal Highness Fahd Bin Abd Al-Aziz Al Saud Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrasement to donor and U.S. Government.

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AGENCY: EXECUTIVE OFFICE OF THE VICE-PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1990

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
90470—Vice President	Household: Framed photo and a hand crafted wall hanging. Archives, Foreign. Recd: May 23, 1990. Est. value: $1500.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia, Tunisia.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90597—Vice President	Art work: Framed abstract lithograph OEOB, for official use/display. Recd: Mar. 09, 1990. Est. value: $1400.	His Excellency Carlos Andres Perez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90183—Vice President	Multiple items: Two wool rugs, two briefcases, a wall ornament, and an intricate handmade silver prayer necklace. Archives, Foreign. Recd: Feb. 6, 1990. Est. value: $1800.	His Excellency Ali Abdallah Salih, President of the Yemen Arab Republic, Yemen.	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST01—William Kristol, Chief of Staff to the Vice President.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST02—David Beckwith, assistant to the Vice President and Press Secretary.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST03—Carnes Lord, assistant to the Vice President for National Security Affairs.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST04—Jon Glassman, Assistant to the Vice President and Deputy Assistant for National Security Affairs.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST05—Craig Whitney, Assistant Press Secretary.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST06—Steven Purcell, Vice President's Photographer.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST07—Major Michael J. Nash, White House Physician.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST08—Lt. Col. Jeffrey McKitrick, Military Advisor to the Vice President.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST09—Joanne Hilty, Staff Assistant and OVP Security Officer.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST10—Katherine E. Fauster, Special Assistant, National Security Affairs.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST11—Lcdr Brad Goetch, Military Aide to the Vice President.	18 Karat gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $450.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST12—Thomas J. Pernice, Deputy Assistant to the Vice President and Director of Advance.	18 Karat white gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $350.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.
90ST13—Hugh Addington, Vice Presidential Advance, Vice President.	18 Karat white gold cuff links depicting the symbol of Saudi Arabia. Archives, Foreign. Recd: Dec. 31, 1990. Est. value: $350.	Kingdom of Saudi Arabia	Non-acceptance would cause embarrasement to donor and U.S. Government.

UNITED STATES SENATE

Report of Tangible Gifts—Calendar Year 1990

Name and title of persons accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Robert C. Byrd, President Pro Tempore	Decorative plate recd—January 19, 1990. Est. value—$250. Deposited with the Secretary of the Senate.	President Ozal, Government of Turkey	Refusal would likely cause offense or embarrassment
Do	Turkish handicraft rug, recd—Aug. 23, 1990. Est. value $400. Disposition: Display in Senator's Office.	Government of Turkey Foreign Minister Bozer.	Do.
Do	Antatey-made rug, recd—August 29, 1990. Est. value $200. Disposition: Display in Senator's Office.	Government of Turkey Governor Erol Tezcan.	Do
Robert Dole, U.S. Senator	Enamel, copper and glazed metal Bonsai tree and vase, recd—July 26, 1990. Est. value—$120. Disposition: Display in Senator's Office.	K.C. Liu, Legislator-Yuan from Taiwan	Do.
Do	4-Volume set of leather-bound art books, recd—August 1, 1990. Est. value—$120. Disposition: Display in Senator's Office.	Rodrigo Borja, President of Ecuador	Do.
Do	Blue crystal vase, recd—March 28, 1990. Est. value—$800. Disposition: Display in Senator's Office.	Mr. Tadeusz Mazowiecki, Prime Minister of Poland.	Do.
Dennis DeConcini, U.S. Senator	Serigraph by Raul Neel, recd—May 1990. Est. value—$300. Disposition: House Annex 2, Room 237.	Government of Estonia	Do.
Dave Durenberger, U.S. Senator	Canvas oil painting recd—March 15, 1990. Est. value—$148. Disposition: Display in Senator's Office.	Hussain Muhammed Ershad, President of the People's Republic of Bangladesh.	Do.
Peter W. Galbraith, Professional Staff Member, Committee on Foreign Relations.	Woolen Rug, recd—January 29, 1990. Est. value—$250. Disposition: Display in Senator's Office.	Abdeslem Jaidi, Moroccan Ambassador to the United Nations.	Do.
Gordon J. Humphrey, U.S. Senator	Gray Rug, recd—May 1988. Est. value—$300. Deposited with the Secretary of the Senate.	President Zia of Pakistan	Do.
Do	Wooden Chest, recd—May 10, 1988. Est. value—$250. Deposited with the Secretary of the Senate.	Do	Do.
Do	Pakistani Rug, recd—July 22, 1987. Est. value—$400. Deposited with the Secretary of the Senate.	Babar W. Malik, Counselor of Pakistani Embassy.	Do.
Do	16 Books, recd—July 22, 1987. Est. value—$200. Deposited with the Secretary of the Senate.	Zia Al Haq, President of Pakistan	Do.
George J. Mitchell, U.S. Senator	Silver Dish, recd—March 7, 1990. Est. value—$175. Deposited with the Secretary of the Senate.	Giulio Andreotti, Prime Minister of Italy	Do.
Do	Cut glass, blue and white vase, recd—March 19, 1990. Est. value—$600. Deposited with the Secretary of the Senate.	Prime Minister Tadeusz Mazowiecki of Poland.	Do.
Do	4-Volume set of books on art, recd—July 24, 1990. Est. value—$118. Deposited with the Secretary of the Senate.	President Rodrigo Borja of Ecuador	Do.
Do	Silver cigarette box recd—January 11, 1990. Est. value—$350. Deposited with the Secretary of the Senate.	President Barco of Columbia	Do.
John McCain, U.S. Senator	Fresh floral arrangement recd—December 3, 1990. Est. value—$200. Deposited with the Secretary of the Senate.	Prince Bandar Bin Sultan Bin Abdulaziz, Ambassador of Saudi Arabia.	Do.
Daniel Patrick Moynihan, U.S. Senator	Moroccan carpet, recd—January 3, 1990. Est. value—$500. Disposition: Displayed in Senator's Office.	Kingdom of Morocco	Do.

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UNITED STATES SENATE

Report of Travel or Expenses of Travel—Calendar Year 1990

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Mick Anderson, Legislative Assistant, Office of Senator Cranston.	Air transportation from Minsk to Grodno and return, Aug. 21–23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Richard Arenberg, Professional Staff Member, Office of Majority Leader.	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Marsha Berry, Professional Staff Member, Committee on Appropriations.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
James Bond, Professional Staff Member, Subcommittee on Foreign Operations, Committee on Appropriations.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Richard H. Bryan, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Robert C. Byrd, U.S. Senator	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Erma Byrd, Spouse of Senator Byrd	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Thad Cochran, U.S. Senator	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Rose Cochran, Spouse of Senator Cochran.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Alan Cranston, U.S. Senator	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
James M. Cuble, Chief Counsel, Committee on Agriculture, Nutrition and Forestry.	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Al Cumming, Legislative Assistant, Office of Senator Graham.	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
C. Richard D'Amato, Counsel, International and National Security Policy.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Diane Dewhirst, Press Secretary to Majority Leader.	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Jeanine Drysdale-Lowe, Deputy Sergeant At Arms, Office of Sergeant At Arms.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Penny Durenberger, Spouse of Senator Durenberger.	Food, lodging in country, Feb. 13–16, 1990.	Government of Uganda, President and Mrs. Yoweri, Museveni of Uganda, Africa.	Nonacceptance would cause donor embarrassment.
James H. English, Staff Director, Committee on Appropriations.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Carl Feldbaum, Administrative Assistant, Office of Senator Specter.	Food and lodging in country, Jan. 5–7, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Leon S. Fuerth, Jr., Legislative Assistant, Office of Senator Gore.	Food and lodging in country, Aug. 31–September 2, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Leah Gluskster, Secretary to the Delegation, Office of Senator Leahy.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Albert Gore, Jr., U.S. Senator	Food and lodging in country, Aug. 31–September 2, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Do	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Tipper Gore, Spouse of Senator Gore	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Bob Graham, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Do	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Adele Graham, Spouse of Senator Graham.	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Barbara Ann Grassley, Spouse of Senator Grassley.	Food and lodging in country, Feb. 13–16, 1990.	Government of Uganda, President and Mrs. Yoweri, Museveni of Uganda, Africa.	Nonacceptance would cause donor embarrassment.
Scott Harris, Professional Staff Member, Democratic Policy Committee.	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel—Calendar Year 1990

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Charlotte Holt, Executive and Personal Secretary, Office of the President Pro Tempore.	Transportation in country Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Edward M. Kennedy, U.S. Senator	Lodging in country, Mar. 25–27, 1990	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Herb Kohl, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Patrick J. Leahy, U.S. Senator	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Do	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Marcelle Leahy, Spouse of Senator Leahy.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Do	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of Soviet Union	Nonacceptance would cause donor embarrassment.
James P. Lucier, Minority Staff Director, Committee on Foreign Relations.	Air transportation from London, England to Muscat, Oman and return, Nov. 28–Dec. 1, 1990, including food and lodging in Muscat.	Government of Oman	Nonacceptance would cause donor embarrassment.
William J. Lynn, Legislative Assistant, Office of Senator Kennedy.	Lodging in country, Mar. 25–27, 1990	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Barbara A. Mikulski, U.S. Senator	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Ellen McCulloch-Lovell, Chief of Staff, Office of Senator Leahy.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Kevin McDonald, Scheduler, Office of Senator Leahy.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Kathleen McNally, Professional Staff Member, Office of the President Pro Tempore.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
George J. Mitchell, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Eric Newsom, Staff Director, Foreign Operations Subcommittee, Committee on Appropriations.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Jan Paulk, Director of Interparliamentary Services.	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
James Lee Price, Senior Economist, Joint Economic Committee.	Food and lodging in country, Mar. 26–30, 1990.	Government of Sao Paulo, Brazil	Nonacceptance would cause donor embarrassment.
Charles H. Riemenschneider, Majority Staff Director, Committee on Agriculture, Nutrition and Forestry.	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Timothy Rieser, Professional Staff Member, Foreign Operations Subcommittee, Committee on Appropriations.	Transportation in country, Nov. 11–12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Charles S. Robb, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Chris Sarcone, Chief Clerk, Committee on Agriculture, Nutrition and Forestry.	Air transportation from Minsk to Grodno and return, Aug. 21, 23, 1990, including some meals in country, Aug. 19–24, 1990.	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Terrence E. Sauvain, Deputy Staff Director, Committee on Appropriations.	Transportation in country, Aug. 22–30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Sarah Sewall Professional Staff Member, Democratic Policy Committee.	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Richard C. Shelby, U.S. Senator	Food and lodging in country, Jan. 5–7, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Do	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Annette Shelby, Spouse of Senator Shelby.	Food and lodging in country, Jan. 5–7, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Paul Simon, U.S. Senator	Food and lodging in country, Dec. 14–16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Nancy E. Soderberg, Legislative Assistant, Office of Senator Kennedy.	Lodging in country, Mar. 25–27, 1990	Government of the Soviet Union	Nonacceptance would cause donor embarrassment.
Arlen Specter, U.S. Senator	Food and lodging in country, Jan. 5–7, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.

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UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel—Calendar Year 1990

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Joan Specter, Spouse of Senator Specter.	Food and lodging in country, Jan. 5-7, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Walter J. Stewart, Secretary of the Senate.	Transportation in country, Aug. 22-30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.
Do	Lodging and meals in country, Dec. 14-16, 1990.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Sally Walsh, Deputy Director, Office of Interparliamentary Services.	Transportation in country, Nov. 11-12, 1990.	Government of Kenya	Nonacceptance would cause donor embarrassment.
Do	Transportation in country, Aug. 22-30, 1990.	Government of Turkey	Nonacceptance would cause donor embarrassment.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Chester G. Atkins, Member of Congress.	3×5 Pakistani rug and silver bracelet with lapis stone. Rec'd January 16, 1989. Est. value—$250 (rug), $150 (bracelet). Deposited with Clerk of House.	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor.
Chester G. Atkins, Member of Congress.	3×5 Pakistani rug. Rec'd October 3, 1989. Est. value—$250. Deposited with Clerk of House.	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor.
Beverly B. Byron, Member of Congress.	3×5 Persian Knot Pakistani rug. Rec'd March 30, 1990. Est. value—$250. Approved for official display.	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor.
Barbara B. Kennelly, Member of Congress.	3×5 Pakistani rug. Rec'd March 30, 1990. Est. Value—$250. Approved for official display.	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor.
Lynn Martin, Member of Congress	3×5 Pakistani rug. Rec'd March 30, 1989. Est. value—$200. Approved for official display.	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and ocurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Lou Betts Bevill (spouse), Member of Congress.	Food and lodging in Uganda for 4 days at approximately $170 per day.	President and Mrs. Yoweri, Museveni, Uganda.	Fact-finding.
Chuck Douglas, Member of Congress	Food, lodging & transportation in Caracas Venezuela for 5 days.	Petroleos de Venezuela, Republic of Venezuela.	Fact-finding.
Mervyn Dymally, Member of Congress	Lodging at Royal Conference Palace in Saudia Arabia for 2 days.	Kingdom of Saudi Arabia	Fact-finding.
Janet Hall (spouse), Member of Congress.	Food and lodging in Uganda for 4 days at approximately $170 per day.	President and Mrs. Yoweri, Museveni, Uganda.	Fact-finding.
Linda Slattery (spouse), Member of Congress.	Food and lodging in Uganda for 4 days at approximately $170 per day.	President and Mrs. Yoweri, Museveni, Uganda.	Fact-finding.
Michael L. Syner, Member of Congress	Food, lodging & transportation in Caracas Venezuela for 5 days.	Petroleos de Venezuela, Republic of Venezuela.	Fact-finding.
Carolyn Wolf (spouse), Member of Congress.	Food and lodging in Uganda for 4 days at approximately $170 per day.	President and Mrs. Yoweri, Museveni, Uganda.	Fact-finding.
Joel O. Benson, Rep. Tim Johnson	Food, lodging & transportation in People's Republic of China from August 4-18, 1990, to participate in U.S.-China Friendship Program.	People's Republic of China	Mutual Education and Cultural Exchange Act (MECA).
Glenda C. Booth, Rep. Doug Walgren	Food, lodging & transportation in People's Republic of China from April 7 to 21, 1990, to participate in U.S.-Asia Institute.	People's Republic of China	(MECA).

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and ocurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Robert S. Browne, House Banking Comm.	Food, lodging & transportation in People's Republic of China from August 3-19, 1990, to participate in U.S.-Asia Institute.	People's Republic of China	(MECA).
Chuhan Chung, Rep. Jim Bates	Food, lodging & transportation in People's Republic of China from August 4-18, 1990, to participate in U.S.-Asia Institute.	People's Republic of China	(MECA).
James K. Corzelman, Rep. Michael G. Oxley.	Food, lodging & transportation in U.S.S.R. from Feb 2 to 16, 1990.	Komsomol (Soviet Communist Youth League).	Exchange program.
George Crawford, Comm. on Rules	Food, lodging & transportation in People's Republic of China from April 6 to 20, 1990.	People's Republic of China	(MECA).
Elizabeth Fine, Comm. on Judiciary	Food, lodging & transportation in Moscow and Perm, U.S.S.R. for 6 days.	U.S.S.R.	Fact-finding.
Daniel P. Finn, Comm. on Foreign Affairs.	Food, lodging & transportation in Indonesia from August 19-Sept 3, 1990.	House of Representatives (DPR) Jakarta, Indonesia.	Fact-finding.
Matthew R. Fletcher, Comm. on Government Operations.	Food, lodging & transportation in Caracas Venezuela for 5 days.	Petroleos de Venezuela Republic of Venezuela.	Fact-finding.
Sandra Zeune Harris, Comm. on Government Operations.	Food, lodging & transportation in Caracas Venezuela for 5 days.	Petroleos de Venezuela, Republic of Venezuela.	Fact-finding.
John M. Hessley, House Banking Comm.	Food, lodging & transportation from May 5-19, 1990, to participate in European Community's Visitor Programme.	European Parliament and Commission of the European Community.	(MECA).
Theodore J. Jacobs, Comm. on Government Operations.	Food, lodging & transportation in People's Republic of China from April 6-17, 1990 to participate in U.S.-China Friendship Program.	People's Republic of China	(MECA).
Janet L. Lynch, Rep. Peter Kostmayer	Food, lodging & transportation in People's Republic of China from April 7-20, 1990, to participate in U.S.-Asia Institute.	People's Republic of China	(MECA).
David A. Nathan, Rep. Constance Morella.	Food, lodging & transportation in Germany from April 20-May 6, 1990, to participate in U.S. Congress-German Bundestag exchange.	Germany	(MECA).
Douglas R. W. Norell, Rep. Byron Dorgan.	Food, lodging & transportation in People's Republic of China from April 9-17, 1990, to participate in U.S.-Asia Institute.	People's Republic of China	(MECA).
Charles R. O'Regan, Rep Dante Fascell.	Food, lodging & transportation in People's Republic of China to participate in Chinese People's Institute of Foreign Affairs.	People's Republic of China	(MECA).
Franklin C. Phifer, Jr., Ways & Means Comm.	Food, lodging & transportation from May 5-19, 1990, to participate in European Community's Visitor Programme.	European Community	(MECA).
Matthew Pinkus, Comm. on Rules	Food, lodging & transportation in Germany from April 20-May 6, 1990, to participate in U.S. Congress-German Bundestag exchanges.	Federal Republic of Germany	(MECA)
Thomas M. Parkhurst, Rep. Matthew McHugh.	Food, lodging & transportation from May 23 to June 1, 1990, in People's Republic of China.	People's Republic of China	(MECA)
Arthur J. Simonetti, Rep. Dick Shulze	Food, lodging & transportation in Taiwan from Nov 10-16, 1990.	Chinese Culture University, Taipei, Taiwan.	(MECA)
Scott Austin Spear, Rep. E. Clay Shaw	Food, lodging & transportation from Aug 4-19, 1990, in Republic of China.	People's Republic of China	(MECA)
Daniel B. Waggoner, Comm. on Agriculture.	Food, lodging & transportation in Korea from Dec 1-9, 1990.	Korean Institute for International Economic Policy.	(MECA)
Dalene Wright, Rep. Chester Atkins	Food, lodging & transportation from Jan 5-15, 1990 in Malaysia.	Institute of Strategic and International Studies of Malaysia.	(MECA)
Michael R. Wessel, Office of Majority Leader.	Food, lodging & transportation from Dec 9-19, 1990 to participate in European Community's Visitor Programme.	European Community Commission and European Parliament.	(MECA).

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AGENCY: U.S. DEPARTMENT OF AGRICULTURE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Clayton Yeutter	Marano Venetian Glass Hand-Blown Bird. Sculpture of Seagull in various shades of gray, white and black with red beak. Seagull stands on bronze base with two sculptured fish imbedded in the base. Recd—August 28, 1990. Est. value—$250.00. Being stored in Secretary's office.	Raul Gardini Chairman and Chief Executive Officer, Ferruzi Group, Roma, Italy.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: U.S. DEPARTMENT OF THE AIR FORCE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Anne N. Foreman, Under Secretary of the United States Air Force.	Turquoise scarab necklace, bracelet & earrings, Recd—June 17, 1990 Est. Value—$210,00. Approved for official use in the Office of the Under Secretary.	General Abou Taleb, Minister of Defense, Cairo, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Colonel James D. Jones, Jr., Commander, 1962d Communications Group, Kadena Air Base, Japan.	Cannon Autoboy camera, Serial #1865131. Recd—August 1, 1990 Est. Value—$240,00. Delivered to GSA for disposition January 4, 1991.	Hiroshi Ichihara, Executive Vice President of KDD, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Elizabeth J. Keeler, Deputy Under Secretary of the United States Air Force for International Affairs.	Turquoise scarab necklace, bracelet & earrings. Recd—October 16, 1990. Est. Value—$210.00. Approved for official use in the Office of the Deputy Under Secretary.	General Abou Taleb, Minister of Defense, Cairo, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Commander in Chief, Headquarters Pacific Air Forces.	Framed oil painting of Bangladesh boats. Recd—September 1, 1990. Est. Value—$75.00. Delivered to GSA for disposition January 4, 1991.	Air Vice Marshal Mumtaz, Chief of Air Staff of the Bangladesh Air Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Commander in Chief, Headquarters Pacific Air Forces	Ceramic coffee set (25-piece) with Bangladesh crest. Recd—September 1, 1990. Est. Value—$45.00. On official display at Headquarters United States Air Force, CVAP.	Air Vice Marshal Mumtaz, Chief of Air Staff of the Bangladesh Air Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General & Mrs. Merrill A. McPeak, Commander in Chief, Headquarters Pacific Air Forces.	3-strand, 18-inch pink pearl necklace. Recd—September 1, 1990. Est. Value—$15.00. Delivered to GSA for disposition January 4, 1991.	Air Vice Marshal Mumtaz, Chief of Air Staff of the Bangladesh Air Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Commander in Chief, Headquarters Pacific Air Forces.	Muslin embroidered tablecloth with twelve napkins. Recd—September 1, 1990. Est. Value—$15.00. Delivered to GSA for disposition January 4, 1991.	Air Vice Marshal Mumtaz, Chief of Air Staff of the Bangladesh Air Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Commander in Chief, Headquarters Pacific Air Forces.	Jute carpet, 4 x 6, brown & burgundy. Recd—September 1, 1990. Est. Value—$125.00. Delivered to GSA for disposition January 4, 1991.	Air Vice Marshal Mumtaz, Chief of Air Staff of the Bangladesh Air Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Chief of Staff, United States Air Force.	Necklace with detachable pendant, gold plate over silver encrusted with small pearls and pieces of ruby & tourmaline. Recd—November 2, 1990. Est. Value—$165.00. On official display at Quarters 7, Ft Myer, Virginia, official residence of Air Force Chief of Staff.	ACM S. K. Mehra, Chief of Staff, Indian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Chief of Staff, United States Air Force.	Indo Kerman rug, 5'3" by 3'0", basic colors: Blue, Ivory, and Rose. Recd—November 2, 1990. Est. Value—$165.00. On official display at Quarters 7, Ft. Myer, Virginia, official residence of Air Force Chief of Staff, pending disposition from GSA.	ACM S. K. Mehra, Chief of Staff, Indian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Colonel John L. Nidiffer, USCENTCOM/JA.	Oyster Perpetual Rolex watch. Recd—31 August 1987. Est. Value—$1,000.00. On official display in office of USCENTCOM/JA; awaiting disposition by GSA.	Brideadier General Matar, Salim Ahmed of United Arab Emirates.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: U.S. DEPARTMENT OF THE AIR FORCE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donald B. Rice, Secretary of the Air Force.	Two 2" Round silver dishes. Recd—October 19, 1990. Est. Value—$160.00. Approved for official use in the Office of the Secretary.	Major General Shaikh Khalifa, Minister of Defense, Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Silver tea set, 14" round tray, 9" silver stand, 10" tea pot, 10" shaker, six 2" tall cups. Recd—October 19, 1990. Est. Value—$250.00. Approved for official use in the Office of the Secretary.	Major General Shaikh Khalifa, Minister of Defense, Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	1¼" Gold Kartouch. Recd—October 23, 1990. Est. Value—$190.00. Approved for official use in the Office of the Secretary.	Air Marshal Ahmed Nasr, Commander, Egyptian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	8" x 6" Plaque with silver colored Kartouch mounted. Recd—October 23, 1990. Est. Value—$100.00. Approved for official use in the Office of the Secretary.	Air Marshal Ahmed Nasr, Commander, Egyptian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Two 6" high silver candlestick holders. Recd—October 23, 1990. Est. Value—$200.00. Approved for official use in the Office of the Secretary.	Air Marshal Ahmed Nasr, Commander, Egyptian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	¾" Gold Kartouch. Recd—October 23, 1990. Est. Value—$95.00. Approved for official use in the Office of the Secretary.	Major General Mohamed Kamal El-Sawy, Commander, Southern AF Territory, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Silver colored brooch with dangling charms. Recd—October 23, 1990. Est. Value—$75.00. Approved for official use in the Office of the Secretary.	Major General Mohamed Kamal El-Sawy, Commander, Southern AF Territory, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Silver bird on silver chain. Recd—October 23, 1990. Est. Value—$25.00. Approved for official use in the Office of the Secretary.	Major General Mohamed Kamal El-Sawy, Commander, Southern AF Territory, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Key chain with colored crest on front. Recd—October 23, 1990. Est. Value—$20.00. Approved for official use in the Office of the Secretary.	Major General Mohamed Kamal El-Sawy, Commander, Southern AF Territory, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald B. Rice, Secretary of the Air Force.	Colored crest inlayed in a 9" x 7" velvet case. Recd—October 23, 1990. Est. Value—$100.00. Approved for official use in the Office of the Secretary.	Major General Mohamed Kamal El-Sawy, Commander, Southern AF Territory, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Larry D. Welch, Chief of Staff, United States Air Force.	Paki Persian rug, 7'2" by 4'6" panel design, basic colors mauve & blue. Recd—May 25, 1989. Est. Value—$650.00. On official display at Quarters 7, Ft Myer, Virginia, official residence of Air Force Chief of Staff.	Air Chief Marshal Hakimullah, Chief of Staff, Pakistani Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General & Mrs. Larry D. Welch, Chief of Staff, United States Air Force.	Brooch in the shape of pilot wings; gold over silver encrusted with small pieces of diamonds and rubies. Recd—May 15, 1989. Est. Value—$320.00. Located at the Office of the Chief of Staff, USAF, Room 4E925, Pentagon, Washington, DC 20330-5000.	Begum Hakimullah, wife of the Pakistani Air Force, Chief of Staff.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Larry D. Welch, Chief of Staff, United States Air Force.	Paki Persian rug, 5'8" by 4'; colors: gray and tan. Recd—May 25, 1989. Est. Value—$395.00. On official display at Quarters 7, Ft Myer, Virginia, official residence of Air Force Chief of Staff.	Air Chief Marshal Hakimullah, Pakistani Air Force, Chief of Staff.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

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AGENCY: DEPARTMENT OF THE ARMY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
MG W. D. Freeman, Jr., Project Manager, Saudi Arabian National Guard, APO New York 09038.	Baume & Mercier men's gold wristwatch and Baume & Mercier women's silver wristwatch. Recd—June 6, 1990. Est. Value—$5,700.00. Reported to GSA December 31, 1990; pending transfer to GSA.	HRH Prince Mitab bin Abdullah bin Abdul Aziz, Commandant of the King Khalid Military Academy.	Non-acceptance would have caused embarrassment to donor.
BG Robert J. Jellison, Commander, 19th Support Command, APO San Francisco 96212.	One (1) Earthenware jar (Silla Dynasty replica). Recd—June 1990. Est. Value—$220.00. Approved for official use.	Mrs. Ahn, Byung-Hyup, wife of the President of the Dong Hyup Machinery Company, Korea.	Non-acceptance would have caused embarrassment to donor.
BG Robert J. Jellison, Commander, 19th Support Command, APO San Francisco 96212.	One (1) 6-panel oriental-style screen. Recd—June 1990. Est. Value—$220.00. Approved for official use.	Mr. Suh, Bo-Yong, President of the Korean Oriental Art Association.	Non-acceptance would have caused embarrassment to donor.
MG J. M. Rockwell, Vice Director, Defense Communications Agency.	Carved Ivory Tusk & five carved, ivory bust. Recd—September 1978. Est. Value—$700.00. Reported to GSA December 31, 1990; pending transfer to GSA.	BG Kataava Wa-Katalvira, Chief of Staff, Zaire.	Gift delivered to this office July 1990. Non-acceptance would have caused embarrassment to donor.
COL W. Dan Snell, Commander, Seventh Region, U.S. Army Criminal Investigation Command, APO San Francisco 96301.	Korean Ceremonial Saber. Recd—May 16, 1990. Est. Value—$210.00. Reported to GSA; approved for official use.	Superintendent Hong, President of the Korean National Police College.	Non-acceptance would have caused embarrassment to donor.
GEN Carl. W. Stiner, Commander in Chief, U.S. Special Operations Command, MacDill Air Force Base, Florida 33608-6001.	CZ 9mm 75 pistol. Recd—July 17, 1990. Est. Value—$200.00. Reported to GSA; pending transfer to GSA.	LTG Slimak, Chief of the Army General Staff, Czechoslovakia.	Non-acceptance would have caused embarrassment to donor.
Mr. Michael P. W. Stone, Secretary of the Army.	Embroidered silk screen, 2 panels, each 31⅛" × 63" yellow with bird design; Green vase, 12"; and Commemorative plaque, 5¾" × 7⅝". Recd—March 1990. Est. Value—$495.00. Delivered to GSA December 14, 1990.	Lee Sang Moon, Minister of National Defense, ROK.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
GEN Carl E. Vuono, Chief of Staff, U.S. Army, Washington, DC 20310.	Silver dagger. Recd—November 8, 1990. Est. Value—$1,575.00. Reported to GSA; approved for official use.	LTG Dimitrios Skarvelis, Chief, Hellenic Army General Staff.	Non-acceptance would have caused embarrassment to donor.
GEN Carl E. Vuono, Chief, of Staff, U.S. Army, Washington, DC 20310.	Bust of Apollo. Recd—November 8, 1990. Est. Value—$225.00. Reported to GSA; approved for official use.	LTG Dimitrios Skarvelis, Chief, Hellenic Army General Staff.	Non-acceptance would have caused embarrassment to donor.

AGENCY: CENTRAL INTELLIGENCE AGENCY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Indentity of foreign donor and government	Circumstances justifying acceptance
Agency Employee	Oriental mottled green hardstone mountain village on carved wood stand, H: of village 10⅛", L: 16⅛". Estimated value: $250.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor & U.S. Government.
William H. Webster, Director, CIA	German GS 7.62 mm semi-automatic rifle, encased. Estimated value: $750.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor & U.S. Government.
William H. Webster, Director, CIA	Pair 925 sterling figures of fighting cocks; together with cartouche shaped mirrored plateau, L: of plateau 12⅛". Estimated value: $360.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor & U.S. Government.
William H. Webster, Director, CIA	Herend tea set, pattern MHG 613. Consisting of teapot, covered sugar, creamer, six cups and six saucers, encased. Estimated value: $350.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: COMMODITY FUTURES TRADING COMMISSION

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Indentity of foreign donor and government	Circumstances justifying acceptance
Andrea Corcoran, Director, Division of Trading and Markets.	Recd.—May 9–10, 1990. Est. Value—$268.00. Expended for lodging, meals, and transportation.	Department of Trade & Industry, England.	Attendance at the Wilton Park Meeting of International Securities Regulators.
Dennis Klejna, Director, Division of Enforcement.	Recd.—May 9–10, 1990. Est. Value—$268.00. Expended for lodging, meals, and transportation.	Department of Trade & Industry, England.	(Same as above)
Daniel Waters, Assistant Director, Division of Enforcement.	Recd.—May 9–10, 1990. Est. Value—$268.00. Expended for lodging, meals, and transportation.	Department of Trade & Industry, England.	(Same as above).

AGENCY: DEPARTMENT OF DEFENSE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John A. Bettl, Under Secretary of Defense for Acquisition.	Three (3) hand-painted porcelain Italian soldiers, trimmed with gold, approx. 11" high, signed by Carlino Sciacca. Rec'd—October 23, 1990. Est. value—$375. Reported to GSA November 19, 1990; donee requested option to buy the gift. Arrangements are being made with GSA for the sale.	General Luigi Stefani, Secretary General of Defense, and NATO National Armament Director, Italy.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. John A. Bettl, wife of the Under Secretary of Defense for Acquisition.	Black leather handbag by Gucci. Rec'd—November 26, 1990. Est. value—$300. Reported to GSA January 7, 1991; pending transfer to GSA.	General Luigi Stefani, Secretary General of Defense, and NATO National Armament Director, Italy.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Lt. Col. Mark L. Brophy, Near Eastern and South Asian Affairs, Office of the Assistant Secretary of Defense (International Security Affairs).	Men's gold Omega watch, with inscription. Rec'd—January 22, 1990. Est. value—$500. Delivered to GSA June 21, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	R.H. Royal fly fishing rod, single tip, 225cm, #4–5 line, G. Sch, 11–89, bamboo with cork handle, in round case. Rec'd—February 2, 1990. Est. value—$350. Gift was purchased from GSA by donee April 28, 1990.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Swiss wall clock, with mounting shelf, cranberry-colored wood, with floral designs. Rec'd—February 5, 1990. Est. value—$600. Approved for official display in office of donee.	Kaspar Villiger, Chief, Department of Military, and Mrs. Villiger, Switzerland.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Large Oriental wooden screen, with paintings of cranes and greenery, red background and white border, with five panels, approx. 6' tall. Rec'd—February 15, 1990. Est. value—$1100. Stored in the vault; pending official display.	Lee Sang Hoon, Minister of National Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Ladies' earthtone tissot rock watch, Swiss quartz, with tan straps (R150). Rec'd—April 13, 1990. Est. value—$295. Delivered to GSA June 21, 1990.	Mrs. Kaspar Villiger, wife of the Chief, Department of Military, Switzerland.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Cast iron replica of a horse and polo jockey on stand. Rec'd—July 31, 1990. Est. value—$250. Reported to GSA January 18, 1991; pending transfer to GSA.	Humberto Romero, Minister of Defense, Argentina.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

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AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dick Cheney, Secretary of Defense	Large black leather-bound book of Togolaise stamps, "Republique Togolaise, Album Philatelique Souvenir," containing approx. 124 pages of stamps in various denominations, sizes, and shapes commemorating various events. Binder is approx. 13" x 10¼". Rec'd—August 1, 1990. Est. value—$300. Reported by GSA August 29, 1990; pending transfer to GSA.	HE Gnassingbe Eyadema, President of the Republic of Togo.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Full-size Togolaise quilt, made with various flags sewn together, and the letters "OTAN" (French for NATO) sewn on it. Rec'd—August 1, 1990. Est. value—$250. Reported to GSA August 29, 1990; pending transfer to GSA.	HE Gnassingbe Eyadema, President of the Republic of Togo.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Large decorative faience (vase), with lid, Delft blue and white, with certificate of authenticity: "Ceramica de Coimbriga," approx. 12½" high x 10" diameter. Rec'd—September 22, 1990. Est. value—$325. Reported to GSA October 23, 1990; pending transfer to GSA.	Fernando Nogueira, Minister of Defense, and Mrs. Nogueira, of Portugal.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Purse by Loewe, tan suede trimmed with dark brown leather and dark brown leather handles, approx. 12½" x 10". Rec'd—September 23, 1990. Est. value—$275. Reported to GSA October 23, 1990; pending transfer to GSA.	Narcis Serra y Serra, Minister of Defense, and Mrs. Serra, of Spain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Dagger, black and brass, approx. 13¼" long, in small wooden box. Rec'd—October 16, 1990. Est. value—$75. Reported to GSA December 6, 1990; pending transfer to GSA.	Dmitriy Yazov, Minister of Defense, and Mrs. Yazov, of the Soviet Union.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Statue of General Suvorov, black metal, approx. 14" high, in large box. Rec'd—October 16, 1990. Est. value—$350. Reported to GSA December 6, 1990; pending transfer to GSA.	Dmitriy Yazov, Minister of Defense, and Mrs. Yazov, of the Soviet Union.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Small lacquer trinket box with landscape scene painted on the top, approx. 5" x 9". Rec'd—October 17, 1990. Est. value—$150. Reported to GSA December 5, 1990; pending transfer to GSA.	Director Golovkina, State Ballet Academy, Soviet Union.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Necklace of amber beads, approx. 13" long. Rec'd—October 17, 1990. Est. value—$150. Reported to GSA December 5, 1990; pending transfer to GSA.	Director Golovkina, State Ballet Academy, Soviet Union.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dick Cheney, Secretary of Defense	Sword with handle of brass eagle head, approx. 29" long, in long dark green box. Rec'd—December 4, 1990. Est. value—$300. Reported to GSA January 18, 1991; pending transfer to GSA.	RADM Piotr Kolodziejczyk, Minister of National Defense, Republic of Poland.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Arthur Hughes, Deputy Assistant Secretary of Defense (Near Eastern and South Asian Affairs).	Men's Rolex Datejust Oyster Watch, 18K gold and stainless steel, serial 16233, Rec'd—February 3, 1990. Est. value—$2,930. Delivered to GSA June 21, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Arthur Hughes, Deputy Assistant Secretary of Defense (Near Eastern and South Asian Affairs).	Single strand of cultured pearls, approx. 18" long, in large pink velour case. Rec'd—February 3, 1990. Est. value—$350. Delivered to GSA June 21, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
CAPT John J. Hyland, USN, Military Assistant to the Assistant Secretary of Defense (International Security Affairs).	Men's Rolex Datejust Oyster Watch, 18K gold and stainless steel, serial 16233. Rec'd—January 22, 1990. Est. value—$2,920. Reported to GSA June 28, 1990; transferred to IRS October 10, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
CAPT John J. Hyland, USN, Military Assistant to the Assistant Secretary of Defense (International Security Affairs).	Single strand of cultured pearls, approx. 18" long, in large pink velour case. Rec'd—January 22, 1990. Est. value—$350. Reported to GSA June 28, 1990; transferred to IRS October 10, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
H. Diehl McKalip, Director, Security Assistance Operations, Defense Security Assistance Agency.	Men's Rolex Datejust Oyster Watch, 18K gold and stainless steel, serial 16233; and black leather credit card wallet. Rec'd—January 22, 1990. Est. value—$2,947.50. Reported to GSA July 23, 1990; pending transfer to GSA.	The Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
H. Diehl McKalip, Director, Security Assistance Operations, Defense Security Assistance Agency.	Single strand of cultured pearls, approx. 18" long, in large pink velour case. Rec'd—January 22, 1990. Est. value—$350. Reported to GSA July 23, 1990; pending transfer to GSA.	The Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
GEN Colin L. Powell, USA Chairman, Joint Chiefs of Staff.	Sabre with bone handle and brass design, in long wooden box. Rec'd—September 14, 1990. Est. value—$500. Reported to GSA October 18, 1990; pending transfer to GSA.	His Highness Shaikh Hamad Bin-Isa Al Khalifa, Crown Prince and Commander-in-Chief, Bahrain Defense Forces, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
GEN Colin L. Powell, USA Chairman, Joint Chiefs of Staff.	Silver-plated tea service, in red box (10-piece). Rec'd—September 14, 1990. Est. value—$250. Reported to GSA November 9, 1990; pending transfer to GSA.	Major Abdulla Al Khalifa, Commander of Bahrain Amiri Air Force, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
GEN Colin L. Powell, USA Chairman, Joint Chiefs of Staff.	35 caliber revolver (Serial #85023), in black box. Rec'd—October 19, 1990. Est. value—$300. Reported to GSA November 8, 1990; pending transfer to GSA.	LTG Heinz Haester, Chief of the General Staff, Swiss Armed Forces, Switzerland.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
GEN Colin L. Powell, USA Chairman, Joint Chiefs of Staff.	Sabre with brass handle and brass design, in long burgundy case lined with red velvet. Rec'd—December 11, 1990. Est. value—$400. Reported to GSA January 23, 1991; pending transfer to GSA.	Lt. Gen. Kalman Lorincz, Commander, Hungarian Home Defense Forces, Hungary.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Henry S. Rowen, Assistant Secretary of Defense (International Security Affairs).	Men's 18K gold Rolex watch, President Model, Serial 18238, in leather case, with leather notebook and handkerchief. Rec'd—January 22, 1990. Est. value—$11,700. Delivered to GSA June 21, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Henry S. Rowen, Assistant Secretary of Defense (International Security Affairs).	Silver-plated tea service, in red box (10-piece). Rec'd—January 22, 1990. Est. value—$250. Donee purchased gift from GSA July 13, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Henry S. Rowen, Assistant Secretary of Defense (International Security Affairs).	Double-strand, cultured pearl necklace, with gold clasp, approx. 18" long, in pink velour case. Rec'd—January 22, 1990. Est. value—$700. Delivered to GSA June 21, 1990.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Henry S. Rowen, Assistant Secretary of Defense (International Security Affairs).	Framed mosaic, approx. 37" x 25". Rec'd—June 6, 1990. Est. value—$275. Approved for official display in office of donee.	Abdallah Kallel, Minister of National Defense, Tunisia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Henry S. Rowen, Assistant Secretary of Defense (International Security Affairs).	Pakistani carpet, approx. 6' x 9'3", rose, beige, blue and light brown, with fringes. Rec'd—January 28, 1990. Est. value—$1900. Approved for official display in office of donee.	Minister of Defense, Jallani, Pakistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Glenn A. Rudd, Deputy Director, Defense Security Assistance Agency.	Ceremonial bedouin knife, sterling silver and gold-plated, approx. 12" long, in blue velour box. Rec'd—March 22, 1990. Est. value—$300. Approved for official display in office of donee.	His Highness Mohammed Bin Zayed Al Nahyan, Commander, Air Force/Air Defense, United Arab Emirates.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

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AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Paul Wolfowitz, Under Secretary of Defense for Policy.	Black leather Samsonite attache case. Rec'd—December 6, 1990. Est. value—$160. Reported to GSA January 8, 1991; pending transfer to GSA.	'Ali Hasan al-Sha'ir, Minister of Information, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Paul Wolfowitz, Under Secretary of Defense for Policy.	18K gold cuff links, with Saudi Arabian emblem. Rec'd—December 6, 1990. Est. value—$400. Reported to GSA January 8, 1991; pending transfer to GSA.	'Ali Hasan al-Sha'ir, Minister of Information, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Dr. Barbara Yeon, Program Manager, Defense Science Office, Defense Advanced Research Projects Agency.	Japanese currency (200,000 yen). Rec'd—September 2, 1990. Est. value—$1,463. Deposited with the Department of the Treasury October 25, 1990.	A representative of the Japan Technology Transfer Association (an agency sponsored by the Japanese Government).	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: FEDERAL DEPOSIT INSURANCE CORPORATION

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ronald H. Bell, Bank Examination Training Specialist.	Cartier gold styto plume fountain pen. Recd—May 31, 1990. Est. Value—$416. Retained for official display.	Bahrain Monetary Agency, Bahrain (Emirate).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard E. Dunn, Bank Examiner	Cartier gold styto plume fountain pen. Recd—May 31, 1990. Est. Value—$416. Retained for official display.	Bahrain Monetary Agency, Bahrain (Emirate).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William C. Keller, Review Examiner	Cartier gold styto plume fountain pen. Recd—May 31, 1990. Est. Value—$416. Retained for official display.	Bahrain Monetary Agency, Bahrain (Emirate).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Keith B. Nothstein, Bank Examiner	Cartier gold styto plume fountain pen. Recd—May 31, 1990. Est. Value—$416. Retained for official display.	Bahrain Monetary Agency, Bahrain (Emirate).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Robert V. Shumway, Deputy to the Director.	Cartier gold styto plume fountain pen. Recd—May 31, 1990. Est. Value—$416. Retained for official display.	Bahrain Monetary Agency, Bahrain (Emirate).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Robert V. Shumway, Deputy to the Director.	Nigerian face mask. Recd—August 15, 1990. Est. Value $150. Retained for official display.	Nigerian Deposit Insurance Company, Nigeria.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Helen T. West, Secretary to the Deputy to the Director.	Brown leather pocketbook. Recd—August 15, 1990. Est. Value $50. Reported to GSA December 14, 1990; pending transfer to GSA.	Nigerian Deposit Insurance Company, Nigeria.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: U.S. GENERAL ACCOUNTING OFFICE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Kay E. Brown, Senior Evaluator	Ivory necklace and earrings. Recd.—October 20, 1990. Est. Value—$300.00. Seized by U.S. Customs, Washington, DC.	Brigadier General (retired), Abdelrahman Sir al-Khatim, Sudan's Commissioner for Refugees.	Non-acceptance would have caused embarrassment to the governments of Sudan and the United States.

AGENCY: U.S. INFORMATION AGENCY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Bruce Gelb, Director	Externa wrist watch and pearl bracelet. Recd.—Sept. 23, 1990. Est. Value—$700 (watch), $700 (bracelet). Reported to GSA January 16, 1991.	Tariq Almoayed, Minister of Information, Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: U.S. INFORMATION AGENCY—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Philip T. Bellaar, Chief, Planning & Evaluation Branch, Office of Engineering, Voice of America.	Wrist watch. Recd.—Sept. 23, 1990. Estimated Value—$600. Reported to GSA January 16, 1991.	Same as above	Same as above.

AGENCY: THE LIBRARY OF CONGRESS

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
1. James H. Billington, The Librarian of Congress and Mrs. Billington.	Recd.—June 25-July 4, 1990. Est. Value—$6,258. Expended for airfare, hotel and meals.	Library of the Finnish Parliament; Helsinki University Library; Ministry for Foreign Affairs, Finland.	To become acquainted with the Library and the Parliament; to visit Helsinki University Library; to talk about the Library of Congress with Finnish research librarians.
2. James H. Billington, The Librarian of Congress and Thomas K. Billington (son).	Recd.—August 10-17, 1990. Est. Value—$957. Expended for hotel, meals and incidentals.	U.S.S.R. State Education Committee, U.S.S.R.	Honored guest at International Association of Teachers of Russian Language and Literature (MAPRAIL) conference.
James H. Billington, The Librarian of Congress and Thomas K. Billington (son).	Recd.—August 15, 1990. Est. Value—$132. Expended for airfare, meals.	U.S.S.R. Academy of Sciences Library, U.S.S.R.	To review progress made toward fire disaster recovery at Library of Academy of Sciences, Leningrad.
James H. Billington, The Librarian of Congress and Thomas K. Billington (son).	Recd.—August 18-25, 1990. Est. Value—$1,122. Expended for airfare, hotels, meals.	Goskompechat (State Committee for Press), U.S.S.R.	Visit Ural State University, meet with local state deputies, visit U.S.S.R. Academy of Sciences (Ural Branch), visit State University Library in Irkutsk, and meet with top district officials.
James H. Billington, The Librarian of Congress.	Recd.—September 23-27, 1990. Est. Value—$1,000. Expended for hotel, meals.	Australian National Library, Canberra, Australia.	Visit to National Library of Australia; visit to Library of New South Wales.

AGENCY: OFFICE OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dr. Herbert D. Kleber, Deputy Director, Office of Demand Reduction.	Small metal paperweight, shaped like basket of flowers. Recd—November 17, 1990. Est. value—$250. Reported to GSA through White House Gift Office.	Florenzo Angelini, President, Pontificum Consilium de Apostolatu, The Vatican.	Gift was presented to all participants in Vatican-sponsored conference. Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Captain Donald A. Dyer, USN, Deputy Chief of Staff, Plans & Policy, Supreme Allied Commander Atlantic, Norfolk, VA.	Rolex oyster perpetual date just watch. Recd—February 12, 1990. Est. Value—$3,675. Transferred to IRS October 10, 1990.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral William M. Fogarty, USN, Commander Joint Task Force Middle East.	Two silver, hand-crafted Omani Khunjars (daggers). Recd—January 7, 1990. Est. Value—$300. Displayed on board the flagship USS LASALLE (AFG 3).	Commodore Badr, Commander East Fleet, Kingdom of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral William M. Fogarty, USN, Commander Joint Task Force Middle East.	Wooden Model of traditional Gulf dhow (sailing vessel). Recd—November 1, 1989. Est Value—$250. Displayed at Commander, Joint Task Force Middle East.	Al Fattah Al Bader, Chairman Kuwait Oil Tanker Company, Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

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AGENCY: DEPARTMENT OF THE NAVY—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
H. Lawrence Garrett III, Secretary of the Navy.	Silver-plated tea service with tray in a red velvet box. Recd—November 5, 1990. Est. Value—$400. Being held in Office of General Counsel pending transfer to GSA for disposition.	Major General Shaikh Khalifa bin Ahmed Al-Khalifa, Minister of Defense, State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral Grant A. Sharp, USN, Director, Plans and Policy, U.S. Central Command, MacDill AFB, FL.	Rolex oyster perpetual date just watch. Recd—January 21, 1990 Est. Value—$3000. Transferred to FBI May 1, 1990.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral Grant A. Sharp, USN, Director, Plans and Policy, U.S. Central Command, MacDill AFB, FL.	String of pearls. Recd—January 21, 1990. Est. Value—$560. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Captain Louis E. Thomassey, USN, Commanding Officer, USS FORRESTAL (CV 59).	American Eagle $50 gold coin. Recd—February 10, 1990. Est. Value—$500. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	La Banda Di Concobio Band, Paradiso, Lugano, Switzerland.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral C.A.H. Trost, USN, Chief of Naval Operations.	9mm POFMP5 Serial A41745 Automatic weapon in wood case with sling and two magazines. Recd—August 1988. Est. Value—$2500. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Pakistan Chief of Naval Operations	Non-acceptance would have caused embarrassment to donor and U.S Government.
Admiral C.A.H. Trost, USN, Chief of Naval Operations.	Silver plated Automatic 9MM weapon, Serial 0226 in brown leather case with sling and two magazines. Recd—July 1987. Est. Value—$2000. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Pakistan Chief of Naval Operations	Non-acceptance would have caused embarrassment to donor and U.S Government.

AGENCY: PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor or government	Circumstances justifying acceptance
M.J. Brodie, Executive Director	Received—January 9–14, 1990. Estimated value—$1110.00. Expended for airfare, hotel and meals.	Mayor Manuel C. Solis, Mayor: Mexico City.	Mayor Solis requested analysis of three major urban development projects in Mexico City involving historic preservation and new development, in view of lessons of PADC's experiences in Washington, DC.

AGENCY: DEPARTMENT OF STATE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lucy Abbott, Foreign Service Officer	Yves Saint Laurent woman's watch. Recd—10/90. Est. value—$220.00. In Office of Protocol pending delivery to GSA.	Princess: Saudi Arabia	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Book: Rubaiyat of Omar Khayyam. Recd—01/16/90. Est. value—$300.00. In Office of Protocol pending delivery to GSA.	Prince Bandar, Ambassador: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Piece-work double-barrelled sport gun. Recd—02/08/90. Est. value—$450.00. In Office of Protocol pending delivery to GSA.	Eduard Shevardnadze, Foreign Minister: USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker III, Secretary of State	Parka-Camel tan w/blue cover/Boots: Canada. Recd—02/11/90. Est. value—$340.00. In Office of Protocol pending delivery to GSA.	Joe Clark, Foreign Minister: Canada	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Crystal Vase—22". Recd—02/20/90. Est. value—$450.00. In Office of Protocol pending delivery to GSA.	Vaclav Havel, President: Czechoslovakia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Bone carving: Moose on stand. Recd—04/06/90. Est. value—$250.00. In Office of Protocol pending delivery to GSA.	Eduard Shevardnadze Foreign Minister: USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Silver box w/wood inside, picture of "Die Paulskirch In Frankfurt" on front. Recd—05/06/90. Est. value—$375.00. In Office of Protocol pending delivery to GSA.	Hans-Dietrich Genscher, Foreign Minister: Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	6 cups/saucers-commemorative edition, Limoges China Recd—04/19/90. Est. value—$510.00. In Office of Protocol pending delivery to GSA.	Francois Mitterrand, President: France	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Oil painting of vase of flowers 2'x2'. Recd—05/19/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Eduard Sheverdnadze, Foreign Minister: USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Leather frame. Recd—07/10/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Margaret Thatcher, Prime Minister: United Kingdom.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Silver Hermes box. Recd—07/17/90. Est. value—$250.00. In Office of Protocol pending delivery to GSA.	Roland Dumas, Foreign Minister: France.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Silver pen set. Recd—09/15/90. Est. value—$300.00. In Office of Protocol pending delivery to GSA.	Helmut Kohl, Chancellor: Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Tea set: Herend 6-cups/6-saucers/tea pot/creamer/sugar dish. Recd—10/18/90. Est. value—$450.00. In Office of Protocol pending delivery to GSA.	Josef & Mrs. Antall, Prime Minister & Mrs.: Hungary.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Watch-cufflinks: stainless steel & gold Recd—11/05/90. Est. value—$2700.00. In Office of Protocol pending delivery to GSA.	Al Khalifa Isa Bin Salman, Amir: State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Cufflinks: Gold with pearl/JAB initials. Recd—11/05/90. Est. value—$1000.00. In Office of Protocol pending delivery to GSA.	Al Khalifa Khalifa bin Salman, Prime Minister: State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	Briefcase: Leather. Recd—11/30/90. Est. value—$260.00. In Office of Protocol pending delivery to GSA.	Captain John S. Latsis, Co-host for NATO Summit: United Kingdom.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker III, Secretary of State	3 bottles vodka/2 cans caviar/tole tray Recd—12/19/90. Est. value—$325.00. In Office of Protocol pending delivery to GSA.	Alexander & Mrs. Besmertnikyh Ambassador and Mrs.: USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Pearls: graduated double stand W/gold clasp. Recd—11/05/90. Est. value—$1800.00. In Office of Protocol pending delivery to GSA.	Al Khalifa Isa bin Salman, Amir: State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	2 pearls in lacquered oyster shell w/gold trim. Recd—11/04/90. Est. value—$1500.00. In Office of Protocol pending delivery to GSA.	Al Khalifa Khalifa bin Salman, Prime Minister: State of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Parka—Camel tan w/blue cover, scarf, hat. Recd—02/11/90. Est. value—$340.00. In Office of Protocol pending delivery to GSA.	Joe Clark, Foreign Minister: Canada	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Handbag—Fendi black leather. Recd—03/06/90. Est. value—$450.00. In Office of Protocol pending delivery to GSA.	Mrs. Andreotti, Wife of Prime Minister: Italy.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	24kt. orchid brooch w/pearl. Recd—04/26/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Mrs. Perez, Wife of President: Venezuela.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Reginald Bartholomew, Under Secretary for Security Assistance, Science and Technology.	Ceremonial curved knife and scabbard. Recd—03/21/90. Est. value—$275.00 approved for Official Use.	H.H. Sheikh Mohammed: United Arab Emirates.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

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AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Henry Clarke, Charge d'Affaires Romania.	Palekh lacquer plate. Recd—7/89. Est. value—$200.00. In Office of Protocol pending delivery to GSA.	Anatoly Sokolov, Soviet Economist: CMEA Institute.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Jennifer A. Fitzgerald, Deputy Chief of Protocol.	Silver and orange bead necklace. Recd—2/12/90. Est. value—$200.00+. In Office of Protocol pending delivery to GSA.	Saleh, President: Yemen	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Chas. W. Freeman, U.S. Ambassador, Saudi Arabia.	1 pair 18k gold cufflinks with emblem of Saudi Arabia. Recd—12/4/90. Est. value—$400.00. In Office of Protocol pending delivery to GSA.	King Fahd bin Abdul Aziz Al-Saud: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Chas. W. Freeman, U.S. Ambassador, Saudi Arabia.	1 Baume & Mercier man's wrist watch. Recd—12/4/90. Est. value—$1000.00. In Office of Protocol pending delivery to GSA.	King Fahd bin Abdul Aziz Al-Saud: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Chas. W. Freeman, Wife of U.S. Ambassador, Saudi Arabia.	1 Longines woman's 18k gold wrist watch. Recd—12/4/90. Est. value—$4850.00. In Office of Protocol pending delivery to GSA.	King Fahd bin Abdul Aziz Al-Saud: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Milton Frank, American Ambassador, Nepal.	Brass lion mounted on wood w/plaque. Recd—8/89. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Minister of Foreign Affairs: Nepal	Non-acceptance would have caused embarrassment to donor & U.S. Government.
L. Eberaole Gaines, Consul General, Bermuda.	Chopard man's wrist watch. Recd—12/16/90. Est. value—$450.00. In Office of Protocol pending delivery to GSA.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. L. Eberaole Gaines, Wife of U.S. Consul General, Bermuda.	Baume & Mercier woman's wrist watch. Recd—12/19/90. Est. value—$2000.00. In Office of Protocol pending delivery to GSA.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. L. Eberaole Gaines, Wife of U.S. Consul General, Bermuda.	Double strand of graduated pearls. Recd—12/16/90. Est. value—$1800.00. In Office of Protocol pending delivery to GSA.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
John H. Holly, Assistant Secretary of State (VEA).	Clam shell with a Baheiah pearl buckle. Recd—5/14/90. Est. value—$250.00. In Office of Protocol pending delivery to GSA.	Tariq Abd al-Rahman al-Mayyid, Minister of Information: Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
John H. Holly, Assistant Secretary of State (VEA).	Tunisian Carpet—6'×11'—. Recd—05/23/90. Est. value—$360.00. Approved for Official Use.	Zine el Abidine Ben Ali, President: Tunisia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Robert M. Kimmitt, Under Secretary for Political Affairs.	Wool carpet with "lion" design (8'×2.8'). Recd—12/18/89. Est. value—$500.00. In Office of Protocol pending delivery to GSA.	Mohamed Sidiq Al-Mashat, Ambassador to United States: Iraq.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Eugene J. McAllister, Assistant Secretary, Economic and Business Affairs.	Brown Oriental rug (5'×7'). Recd—7/23/89. Est. value—$400.00. Approved for Official Use.	A.G.N. Kazi, Deputy Commissioner of Minister of Planning and Development: Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
John D. Negroponte, U.S. Ambassador, Mexico.	Hand-made boots by Montana. Recd—12/89. Est. value—$1,000.00. In Office of Protocol pending delivery to GSA.	Governor of Guanajuato	Non-acceptance would have caused embarrassment to donor & U.S. Government.
John D. Negroponte, U.S. Ambassador, Mexico.	Hand-made leather jacket with fringe. Recd—12/89. Est. value—$500.00. In Office of Protocol pending delivery to GSA.	Governor of Guanajuato	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. John D. Negroponte, Wife of U.S. Ambassador, Mexico.	Hand-made leather jacket/skirt/vest. Recd—12/89. Est. value—$500.00. In Office of Protocol pending delivery to GSA.	Governor of Guanajuato	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mrs. Christopher Phillips, Wife of U.S. Ambassador, Brunei.	18k gold ruby and diamond earrings and ring. Recd—10/11/89. Est. value—$3,500.00. In Office of Protocol pending delivery to GSA.	Wife of Sultan: Brunei	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Thomas R. Pickering, Ambassador to United Nations.	Baume & Mercier watch. Recd—7/16/89. Est. value—$1,600.00. In Office of Protocol pending delivery to GSA.	The Emir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Joseph Verner Reed, Chief of Protocol	Sterling Silver picture frame (8x10). Recd—2/5/90. Est. value—$100.00. In Office of Protocol pending delivery to GSA.	Takeshita, Prime Minister: Japan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Joseph Verner Reed, Chief of Protocol	18k gold Longines man's wrist watch, 18k gold ring, 18k gold cufflinks. Recd—11/2/89. Est. value—$6,000.00. In Office of Protocol pending delivery to GSA.	General Mohamed Al-Shaikh, Chief of Protocol: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Joseph Verner Reed, Chief of Protocol	18k gold cufflinks and Samsonite black leather briefcase. Recd—11/26/90. Est. value—$900.00. In Office of Protocol pending delivery to GSA.	Ali Hassan Alshaer, Minister of Information: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Teresita C. Schaffer, Deputy Assistant Secretary, NEA.	Ruby bracelet. Recd—4/13/90. Est. value—$1,200.00. In Office of Protocol pending delivery to GSA.	Bhutto, Prime Minister: Pakistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Peter Secchia, U.S. Ambassador, Italy	Sterling silver grape bunch. Recd—6/19/90. Est. value—$1,200.00. Approved for Official Use.	Tea Albini of Assessore Allo Sport—Comune de Firenze.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Matthew D. Smith, Director, White House Liaison.	Sterling silver platter. Recd—11/90. Est. value—$1,200.00. In Office of Protocol pending delivery to GSA.	Sultan of Oman	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Matthew D. Smith, Director, White House Liaison.	Black leather briefcase. Recd—11/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Sultan of Oman	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Abraham D. Sofaer, Legal Advisor	Egyptian silk rug: blue, ivory, rust (142x86 centimeters). Recd—4/20/90. Est. value—$1,000.00. In Office of Protocol pending delivery to GSA.	Osama Elbaz, Advisor to President Hosni Mubarak: Egypt.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Peter Tomsen, Special Envoy	Afghan carpet, blue, burgundy and gold. Recd—5/90. Est. value—$1,800.00. Approved for Official Use.	President S. Mojaddedi, Afghan Interim Government.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Margaret Tutwiler, Assistant Secretary for Public Affairs.	Bohemian candy dish. Recd—2/9/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Jiri Dienstbier, Minister of Foreign Affairs: Czechoslovakia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Margaret Tutwiler, Assistant Secretary for Public Affairs.	Double sided bronze die used as a tool for manufacturing Roman objects. Recd—2/10/90. Est. value—$225.00. In Office of Protocol pending delivery to GSA.	Bulgarian Government	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Margaret Tutwiler, Assistant Secretary for Public Affairs.	Sterling silver business card holder. Recd—5/7/90. Est. value—$483.00. In Office of Protocol pending delivery to GSA.	Hans-Dietrich Genscher, Vice Chancellor of the Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Margaret Tutwiler, Assistant Secretary for public affairs.	18k gold earrings of emblem of Saudi Arabia and 18k gold & silver Baume & Mercier women's wrist watch. Recd—11/30/90. Est. value—$3,700.00. In Office of Protocol pending delivery to GSA.	King Fahd bin Abdul Aziz, Al-Saud: Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Agnes Warfield, Deputy Assistant Chief of Protocol.	Silver and orange bead necklace Recd—2/12/90. Est. value—$200.00+. In Office of Protocol pending delivery to GSA.	Saleh, President: Yemen	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Malcolm R. Wilkey, U.S. Ambassador to Uruguay.	Gold replica coin of 1825 Uruguay 5 peso coin .900 gold. Recd—5/9/90. Est. value—$800.00. In Office of Protocol pending delivery to GSA.	Foreign Minister: Uruguay	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Benedicte Valentiner, General Manager, Blair House.	Green handtooled leather purse, by Loewe. Recd—10/20/89. Est. value—$300.00. In Office of Protocol pending delivery to GSA.	Felipe Gonzales, Prime Minister: Spain	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: USTR

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Carla A. Hills, Ambassador USTR	4/29/90 Japanese Trade Minister Muto gave gold pin with pearls ($300.00) on display in USTR's Conference Room (given along with a doll on a wooden boat).	Japanese Trade Minister	Presented at meeting in Washington, D.C.; accepted to avoid cultural misunderstanding.
Myles R.R. Frechette, Assistant U.S. Trade Representative for Latin America, the Caribbean and Africa	Airfare: October 6–11, 1990; $2,702	Argentine Council on International Relations.	The Council is a non-profit, academic institution. One of its purposes is to promote the study of international relations. It is not subject to the Argentine government or any other government control. There was no conflict of interest.

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AGENCY: DEPARTMENT OF TRANSPORTATION

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Master Chief J.J. Masen, Senior Instructor, U.S. Coast Guard, Heavy Weather Training School.	$7,211 for air travel, meals, lodging and transportation. Received—September 19–October 9, 1990.	Wellington Sea Rescue Service, Inc., New Zealand.	To lecture and attend the 14th Annual Conference of the New Zealand Coast Guard Federation.

AGENCY: DEPARTMENT OF THE TREASURY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor or government	Circumstances justifying acceptance
Nicholas Brady, Secretary	Pen and pencil set. Rec'd—April 3, 1990. Est. value $290. Retained by Treasury for official use.	Otto Stich, Finance Minister, Switzerland.	Non-acceptance embarrasses donor and U.S. Govt.
Nicholas Brady, Secretary	Engraved Lalique Crystal Dove. Rec'd—June 20, 1990. Est. value $1,810. Retained by Treasury for official use.	Francois Mitterand, President, France	Non-acceptance embarrasses donor and U.S. Govt.
Nicholas Brady, Secretary	Bronze Sculpture. Rec'd—July 9, 1990. Est. value $675. Retained by Treasury for official use.	Brian Mulroney, Prime Minister, Canada	Non-acceptance embarrasses donor and U.S. Govt.
Nicholas Brady, Secretary	Venezuelan Carpet. Rec'd—December 7, 1990. Est. value $850. Pending approval for official Treasury use.	Carlos Andres, President, Venezuela	Non-acceptance embarrasses donor and U.S. Govt.
David Mulford, Under Secretary, International Affairs.	Venezuelan Carpet. Rec'd—December 7, 1990. Est. value $850. Pending approval for official Treasury use.	Carlos Andres, President, Venezuela	Non-acceptance embarrasses donor and U.S. Govt.
David Mulford, Under Secretary, International Affairs.	Jaccard Clock. Rec'd—April 12, 1990. Est. value $400. Retained by Treasury for official use.	Jacques Attali, Special Advisor to President Mitterand.	Non-acceptance embarrasses donor and U.S. Govt.
Samuel J. Snyder, Program Analyst, Office of International.	Gent's eighteen (18) karat yellow gold and stainless Omega Constellation day-date watch with leather strap. Rec'd—June 24, 1989. Est. value—$695. Purchased by recipient watch sold for $865. Reported to GSA May 5, 1990.	Sheikh Hamad-Rashid, Director, Saudi Customs, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Samuel J. Snyder, Program Analyst, Office of International.	Ladies eighteen (18) karat yellow gold and stainless Omega Constellation watch leather strap. Est. value—$695. Rec'd—June 24, 1989. Reported to GSA May 5, 1990. Pending transfer to GSA.	Sheikh Hamad Al-Rashudi, Director, Saudi Customs, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

[FR Doc. 91-14603 Filed 6-24-91; 8:45 am]
BILLING CODE 4710-08-M

federal register

Tuesday
June 25 1991

Part IV

Department of State

Office of International Conferences

Participation of Private-Sector Representatives on U.S. Delegations; Notice

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DEPARTMENT OF STATE

Office of International Conferences

[Public Notice 1417]

Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 655 (44 FR 17846), March 23, 1979, the Department is submitting its April 1990 through May 30, 1991 list of U.S. accredited Delegations which included private-sector representatives.

Publication of this list is required by article III(c)(5) of the guidelines published in the Federal Register on March 23, 1979.

Dated: June 6, 1991.

Frank R. Provyn,

Director, Office of International Conferences.

United States Delegation to the Meeting of the Executive Board of the United Nations Children's Fund (UNICEF), New York, April 16–27, 1990

Representative

Peter B. Teeley, United States Representative to UNICEF, Washington, DC

Alternate Representative

The Honorable Jonathan Moore, United States Alternate Representative on the Economic and Social Council of the United Nations, New York

Advisers

Mary Louise Becker, Office of Donor Coordination, Bureau for Program and Policy Coordination, Agency for International Development
Lawrence M. Grossman, United States Mission to the United Nations, New York
Nicholas Hill, United States Mission to the United Nations, New York
Teresa Hobgood, Office of United Nations System Budgets, Bureau of International Organization Affairs, Department of State
A. Gordon MacArthur, United States Mission to the United Nations, New York
Audrey P. Manley, Deputy Assistant Secretary for Health, Department of Health and Human Services
David C. McGaffey, Deputy Director, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State
Sylvia Stanfield, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State
Linda Vogel, Deputy Director, Office of International Health, Public Health Service, Department of Health and Human Services

Private Sector Advisers

Lawrence E. Bruce, Jr., United States Committee for UNICEF, New York
Mary Ann Stewart, (Mrs. Potter Stewart), Washington, DC

United States Delegation to the United Nations General Assembly Special Session Devoted To International Economic Cooperation, New York, April 23–28, 1990

Representative

The Honorable Thomas R. Pickering, Ambassador Extraordinary and Plenipotentiary, United States Permanent Representative to the United Nations, New York

Alternate Representatives

The Honorable Jonathan Moore, United States Alternate Representative on the Economic and Social Council of the United Nations, New York
The Honorable Alexander F. Watson, Ambassador Extraordinary and Plenipotentiary, United States Deputy Permanent Representative to the United Nations, New York

Senior Adviser

The Honorable Edward Marks, Minister-Counselor, Deputy Representative on the Economic and Social Council of the United Nations, New York

Advisers

Frank Buchholz, Deputy Director, Office of International Economic Policy, Bureau of International Organization Affairs, Department of State
Steven Donovan, Office of International Debt Policy, Department of the Treasury
Hugh T. Dugan, United States Mission to the United Nations, New York
Paul Tveit, United States Mission to the United Nations, New York

Private Sector Advisers

Pearl Bailey, Lake Havasu City, Arizona
Barbara Franklin, Washington, DC
Gary MacDougal, New York, New York

United States Delegation to the World Intellectual Property Organization (WIPO), Committee of Experts on Model Provisions for Legislation in the Field of Copyright, Third Session, Geneva, Switzerland, July 2–13, 1990

Representative

Ralph Oman, Register of Copyrights, Copyright Office, Library of Congress

Alternate Representative

Dorothy Schrader, General Counsel, Copyright Office, Library of Congress

Advisers

Lewis Flacks, Policy Planning Adviser, Copyright Office, Library of Congress
Richard Owens, Senior Attorney, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce
Emery Simon, Director for Intellectual Property, Office of the United States Trade Representative, Executive Office of the President

Private Sector Advisers

Jon Baumgarten, Attorney, Proskauer, Rose, Goetz, and Mendelsohn, Washington, DC
Morton David Goldberg, Schwab, Goldbert, Price, and Dannay, New York, New York
Eric H. Smith, General Counsel, International Intellectual Property Alliance, Washington, DC

United States Delegation to The United Nations Commission on International Trade Law (UNCITRAL), Working Group on International Payments, 21st Session, New York, New York, July 9–20, 1990

Representative

Harold S. Burman, Private International Law, Office of the Legal Adviser, Department of State

Alternate Representatives

Thomas Baxter, Associate General Counsel, Federal Reserve Bank of New York, New York, New York
Carl Felsenfeld, Professor of Law, Lincoln Center, Fordham University, New York, New York
Ernest Patrikis, Federal Reserve Bank of New York, New York, New York

Private Sector Adviser

Samuel Newman, Manufacturers Hanover Trust, New York, New York

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XV (Transmission Systems and Equipment) and its Working Parties, Geneva, Switzerland, July 16–27, 1990

Representative

Gary M. Fereno, Senior Telecommunications Policy Specialist, Office of Standards and International Organizations, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

Gary M. Rekstad, National Communications System

Private Sector Advisers

J. Martin Carroll, Manager, Standards, Bell Atlantic, Inc., Arlington, Virginia
James A. Dahl, U.S. West Advanced Technologies, Englewood, Colorado
Francis C. Horn, Bellcore, Red Bank, New Jersey
William T. Kane, Manager, Standards, Corning Incorporated, Corning, New York
Viet Q. Le, MCI, Inc., Reston, Virginia
Michael Onufry, Jr., Associate Division Director, COMSAT Corporation, Clarksburg, Maryland
Richard Schaphorst, President, Delta Information Systems, Horsham, Pennsylvania
Anthony Schiano, AT&T Bedminster, New Jersey
John R. Sergo, Jr., Northern Telecom, Inc., Norcross, Georgia

United States Delegation to the Chemical Committee's First Ad Hoc Meeting on Recycling of Plastics, August 28–29, 1990; and the Second Session of the Study on Rational Use of Water, August 30–31, 1990, of the Economic and Social Council (ECE), Geneva

Representative

Vincent J. Kamenicky, Director, Office of Chemicals, Department of Commerce

Adviser

Appropriate Officer, U.S. Mission, Geneva

Private Sector Adviser

Ronald N. Liesemer, Vice President for Technology, The Council for Solid Waste Solutions, Society of the Plastics Industry, Washington, DC

United States Delegation to the 36th Session of the Subcommittee on Safety of Navigation (NAV), International Maritime Organization (IMO), London, England, September 3–7, 1990

Representative

Captain Leo J. Black, Chief, Short Range Aids to Navigation Division, Office of Navigation, United States Coast Guard, Department of Transportation

Alternate

Edward J. LaRue, Jr., Short Range Aids to Navigation Division, Office of Navigation, United States Coast Guard, Department of Transportation

Advisers

Commander Thomas J. Meyers, Assistant Chief, Short Range Aids to Navigation Division, Office of Navigation, United States Coast Guard, Department of Transportation
Christopher M. Young, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
James E. Ayres, Scientific Advisor for Hydrography, Defense Mapping Agency

Private Sector Adviser

Mortimer Rogoff, President, Digital Directions Corporation, Washington, DC

Committee on Fisheries (COFI), Third Session of the Sub-Committee on Fish Trade of the Food and Agriculture Organization (FAO), Rome, September 4–7, 1990

Representative

Larry L. Snead, Director, Office of Fisheries Affairs, Department of State

Advisers

Steven D. Hill, United States Mission to the United Nations, Agencies for Food and Agriculture, Rome
Bruce Morehead, Chief, Utilization and Research Division, National Marine Fisheries Service, Department of Commerce

United States Delegation to the International Communication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group VIII Telematic Terminals, Geneva, Switzerland, September 5–14, 1990

Representative

Charles D. Bodson, Deputy Director, National Communications Systems

Alternate

Douglas V. Davis, Attorney-Adviser, Federal Communications Commission

Adviser

Stephen Perschau, Standards Engineer, National Communications System

Private Sector Advisers

Bruce DeGrasse, Electronics Engineer, Rockwell Corporation, Dallas, Texas
Eugene Gavenman, RICOH Corporation, San Jose, California
Ralph Grant, Senior Engineer, 3M Company, St. Paul, Minnesota
Henry Marchese, AT&T, Bedminster, New Jersey
Herman Silbiger, Consultant, APPLICOM, Tinton Falls, New Jersey
Cornelius J. Starkey, Vice President, Data Beam Corporation, Lexington, Kentucky
Kamlesh Tewani, Senior Engineer, AT&T Bell Laboratory, Holondel, New Jersey
Charles Touchton, Standards Supervisor, IBM Corporation, Tampa, Florida
Stephen Urban, Senior Engineer, Delta Information Systems, Inc., Horshom, Pennsylvania

United States Delegation to the Commodities: International Rubber Study Group (IRSG), Ottawa, Canada, September 6–14, 1990

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United States Delegation to the International Rubber Study Group (IRSG), Ottawa, September 6–14, 1990

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United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Ad Hoc Group Under Resolution 18, Geneva, Switzerland, September 10–14, 1990

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United States Delegation to the Organization of American States, Inter-American Telecommunication Conference(OAS/CITEL), Permanent Technical Committee (PTC)—Broadcasting and Permanent Technical Committee (PTC)—Radiocommunications, Ottawa, Canada, September 10–14, 1990

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United States Delegation to the Committee on Housing, Building, and Planning, 51st Session, Economic Commission for Europe (ECE)/(UN), Geneva, September 11–14, 1990

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United States Delegation to the 63rd Session of the Legal Committee, International Maritime Organization (IMO) London, England, September 17–21, 1990

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United States Delegation to the 34th Session of the General Conference of the International Atomic Energy Agency (IAEA), Vienna, September 17–21, 1990

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United Stated Delegation to the Executive Board and Council Sessions of the International Coffee Organization (ICO), London, September 17–28, 1990

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United States Delegation to the Working Party on Facilitation of International Trade Procedures, 32nd Session, Economic Commission for Europe (ECE)/(UN), Geneva, September 18–20, 1990

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United States Delegation to the 48th Plenary Meeting of the International Cotton Advisory Committee (ICAC) Montpellier, September 24–28, 1990

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United States Delegation to the CSCE Meeting on the Mediterranean, Palma De Mallorca, Spain, September 24–October 19, 1990

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United States Delegation to the Economic Commission for Europe (ECE), Coal Committee, 68th Session, Geneva, September 25–28, 1990

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United States Delegation to theTwentieth Session of the Subcommittee on Bulk Chemicals, International Maritime Organization (IMO), London, October 1–5, 1990

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United States Delegation to the 30th Session of the International Lead and Zinc Study Group (ILZSG), Geneva, October 11–18, 1990

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United States Delegation to the Steel Committee and Working Party of the Steel Committee, Organization for Economic Cooperation and Development (OECD), Paris, October 17–23, 1990

Representative

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United States Delegation to the Ninth Annual Meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Scientific Committee, Hobart, October 22–November 2, 1990

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United States Delegation to the 13th Regular Meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT), Madrid, October 29–November 10, 1990

Commissioners

The Honorable Carmen J. Blondin (Head of Delegation), U.S. Commissioner, Deputy Assistant Secretary for International Affairs, National Oceanic & Atmospheric Administration, Department of Commerce
The Honorable Michael B. Montgomery, San Marino, California
The Honorable Leon J. Weddig, Executive Vice President, National Fisheries Institute, Arlington, Virginia

Member of Congress

The Honorable Gerry E. Studds, U.S. House of Representatives

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United States Delegation to the Meeting on the Rules of Procedure for the United Nations Liner Code Review Conference and the Group B Coordinating Meeting, United Nations Conference on Trade and Development (UNCTAD), Geneva, October 30–November 1, 1990

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United States Delegation to the Sixteenth Assembly of Parties of the International Telecommunication Satellite Organization (INTELSAT), Lisbon, Portugal, October 30–November 2, 1990

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United States Delegation to the Study Group I (Services) Meeting of the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Geneva, Switzerland, October 30–November 9, 1990

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United States Delegation to the Plan Committee for Asia and Oceania of the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Bangkok, Thailand, October 31–November 7, 1990

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United States Delegation to the First Meeting of the Technical Group of the Spaw Protocol Under the Cartagena Convention, November 5–8, 1990, Martinique

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United States Delegation to the Chemicals Group and Management Committee, 18th Joint Meeting, Organization for Economic Cooperation and Development (OECD), Paris, November 6–8, 1990

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United States Delegation to the International Natural Rubber Organization Council and Committees on Buffer Stock Operations, Statistics, and Other Measures, Kuala Lumpur, Malaysia, November 9–14, 1990

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United States Delegation to the 30th Session of the Marine Environment Protection Committee (MEPC), International Maritime Organization (IMO), London, November 12–16, 1990

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United States Delegation to the Third Meeting of Study Group VII (Data Networks) of the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Geneva, Switzerland, November 12–22, 1990

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United States Delegation to the Meeting of Study Group III (Tariff and Accounting Principles) of the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Geneva, Switzerland, November 19–21, 1990

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United States Delegation to the International Tropical Timber Organization, 9th Session, Yokohama, Japan, November 19–23, 1990

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United States Delegation to the Group of Experts on the Transport of Perishable Foodstuffs, 48th Session, Economic Commission for Europe (ECE), Geneva, November 12–23, 1990

Representative

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David Patterson, United States Mission, Geneva

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United States Delegation to the International Conference on Cooperation on Oil Pollution Preparedness and Response (OPPR), International Maritime Organization (IMO), London, November 19–30, 1990

Representative

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Sidney A. Wallace, Rear Admiral, United States Coast Guard (Ret.), Chairman, Marine Board, National Academy of Science

Private Sector Advisers

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John Tucker, National Steel and Shipbuilding Company

United States Delegation to the Study Group XVIII and its Working Parties Meeting of the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Matsuyama, Japan, November 26–December 7, 1990

Representative

William F. Utlaut, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

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Melvin Woinsky Manager, Technology Planning, Northern Telecom Incorporated, Morristown, New Jersey

United States Delegation to the Working Group on Statistics, 18th Session, November 19, 1990; Joint Working Group on Insurance Services, November 20–21, 1990; and Insurance Committee, 49th Session, November 22–23, 1990; Organization for Economic Cooperation and Development (OECD), Paris, France

Representative

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Appropriate USOECD, Mission Officer, Paris

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David Walsh, Director, Department of Insurance, State of Alaska, Juneau, Alaska

United States Delegation to the 22nd Session of the Working Group on International Payments of the United Nations Commission on International Trade Law (UNCITRAL), Vienna, Austria, November 27–December 7, 1990

Representative

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United States Delegation to the African Regional Telecommunications Development Conference of the International Telecommunications Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Harare, Zimbabwe, December 9–11, 1990

Representative

The Honorable Bradley P. Holmes, United States Coordinator and Director, Bureau of International Communications and Information Policy, Department of State

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Alan Parker, President, Orbital Communication Corporation, Fairfax, Virginia
Noah Samara, President, Afrispace, Incorporated, Washington, DC

United States Delegation to the Committee on Tungsten, 22nd Session, United Nations Conference on Trade and Development (UNCTAD), Geneva, December 10–14, 1990

Representative

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Adviser

Gerald Smith, Physical Scientist, Bureau of Mines, Department of the Interior

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United States Delegation to the 31st Session of the Subcommittee on Containers and Cargoes, International Maritime Organization (IMO), London, January 7–11, 1991

Representative

Joseph J. Angelo, Assistant Chief, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation

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S. Fraser Sammis, President, National Cargo Bureau, New York, NY

Susan Wingfield, President, Mississippi Valley Coal Exporters Council, New Orleans, Louisiana

United States Delegation to the Fourth Session of the Joint World Meteorological Organization (WMO) and UN Educational, Scientific and Cultural Organization (UNESCO), Intergovernmental Oceanographic Commission (IOC), Intergovernmental Board on the Tropical Ocean and Global Atmosphere (TOGA), Geneva, January 8–11, 1991

Representative

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United States Delegation to the Fourth Session of the Joint World Meteorological Organization (WMO) and UN Educational, Scientific and Cultural Organization (UNESCO), Intergovernmental Oceanographic Commission (IOC), Intergovernmental Board on the Tropical Ocean and Global Atmosphere (TOGA), Geneva, January 8–11, 1991

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United States Delegation to the First Meeting of the Automatic Dependent Surveillance Panel (ADSP), International Civil Aviation Organizations, Montreal, January 14–25, 1991

Representative

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Peter Masseglia, Research and Development Service, Federal Aviation Administration, Department of Transportation

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Amado Colberg, International Procedures Specialist, Federal Aviation Administration, Department of Transportation

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United States Delegation to the Meeting on Peaceful Settlement of Disputes, Conference on Security and Cooperation in Europe (CSCE), Valletta, Malta, January 15–February 8, 1991

Head of Delegation

Michael K. Young, Deputy Legal Adviser, Office of the Legal Adviser, Department of State

Vice-Chairmen of Delegation

The Honorable Steny H. Hoyer, United States House of Representatives

The Honorable Sally J. Novetzke, Ambassador, United States Embassy, Valletta

Deputy Head of Delegation

John M. Evans, CSCE Coordinator, Office of European Security and Political Affairs, Bureau of European and Canadian Affairs, Department of State

Executive Secretary

Joan A. Wadelton, Office of European Security and Political Affairs, Bureau of European and Canadian Affairs, Department of State

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Erika Schlager, Staff Member, Commission on Security and Cooperation in Europe

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Charles Nicholas Rostow, Special Assistant to the President and Legal Adviser, National Security Council

Bruce C. Rashkow, Assistant Legal Adviser, United Nations Affairs, Department of State

Miriam Sapiro, European and Canadian Affairs, Office of the Legal Adviser, Department of State

Public Members

Professor Richard Bilder, University of Wisconsin, School of Law, Madison, Wisconsin

Professor Jack Greenberg, Dean, Columbia College, New York, New York

Professor Louis Sohn, University of Georgia School of Law, Athens, Georgia

United States Delegation to the Committee on Gas—37th Session, Economic Commission for Europe (ECE), Geneva, January 21–24, 1991

Representative

Jeffrey P. Hardy, Office of International Affairs, Department of Energy

Alternate Representative,

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Robert E. Ebel, Vice President, International Affairs, Enserch Corporation, Washington, DC

Stewart B. Kean, President, Utility Propane, Elizabeth, New Jersey

United States Delegation to the 22nd Session of the Subcommittee on Standards of Training and Watchkeeping, International Maritime Organization (IMO), London, January 21 to 25, 1991

Representative

Charles F. Guldenschuh, Commander; Chief, Vessel Manning Branch, Merchant Vessel Personnel Division, United States Coast Guard, Department of Transportation

Alternate Representative

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United States Delegation to the Group of Rapporteurs on Pollution and Energy, 22nd Session, Economic Council of Europe (ECE), Geneva, January 23–25, 1991

Representative

Thomas Baines, Senior Project Director, Office of Mobile Sources, Environmental Protection Agency, Ann Arbor, Michigan

Private Sector Adviser

Louis Broering, Cummings Engine Company, Columbus, Indiana

United States Delegation to the Twenty-Seventh Meeting of the Pan American Institute of Geography and History (PAIGH) of the Organization of American States, Aguascalientes, Mexico, January 23–26, 1991

Representative

Clarence W. Minkel, President, PAIGH, Chairman, U.S. National Section of PAIGH, University of Tennessee, Knoxville, Tennessee

Alternate Representatives

Peter F. Bermel, Vice-Chairman, U.S. National Section of PAIGH, United States Geological Survey, Department of the Interior

Richard Sanchez, Executive Secretary, U.S. National Section of PAIGH, United States Geological Survey, Department of the Interior

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Paul Peeler, U.S. National Section of PAIGH, Commission on Cartography, Defense Mapping Agency

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Dr. Frank Hadsell, U.S. National Section of PAIGH, Commission on Geophysics, Colorado School of Mines,

United States Delegation to the 35th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessel Safety, International Maritime Organization (IMO), London, February 4–8, 1991

Representative

Harry P. Cojeen, Acting Chief, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

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United States Delegation to the 22nd Session of the Subcommittee on Lifesaving, Search and Rescue (LSR), International Maritime Organization (IMO), London, February 18–22, 1991

Representative

Robert L. Markle, Jr., Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation

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James Karl Nelson, Jr., Associate Professor and Program Director, Clemson University, Master of Engineering Program at the Citadel, Charleston, South Carolina

United States Delegation to the Meeting of Study Group III (Tariff and Accounting Principles) of the International Telegraph and Telephone Consultative Committee (CCITT), International Telecommunication Union (ITU), Geneva, Switzerland, March 6–15, 1991

Representative

Earl S. Barbely, Director, Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

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William Kirsch, Deputy Assistant Bureau Chief/International, Common Carrier Bureau, Federal Communications Commission

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United States Delegation to the Diplomatic Conference for the Revision of the International Conference for the Protection of New Varieties of Plants, International Union for the Protection of New Varieties of Plants (UPOV), Geneva, March 4–19, 1991

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H. Dieter Hoinkes, Office of Legislation and International Affairs, Patent and Trademark Office, United States Department of Commerce

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United States Delegation to the Diplomatic Conference for the Revision of the International Conference for the Protection of New Varieties of Plants, International Union for the Protection of New Varieties of Plants (UPOV), Geneva, March 4–19, 1991

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United States Delegation to the Meeting of Study Group II (Network Operations and ISDN), International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Geneva, March 13–22, 1991

Representative

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United States Delegation to the 64th Session of the Legal Committee, International Maritime Organization, March 18–22, 1991

Representative

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Michael P. Walls, Assistant General Counsel, Chemical Manufacturers Association, Washington, DC

United States Delegation to the Meeting of Study Group III (Tariff and Accounting Principles) of the International Telegraph and Telephone Consultative Committee (CCITT), International Telecommunication Union (ITU), London, England, March 18–22, 1991

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United States Delegation to the Study Group VIII Telematic Terminal Equipment Meeting of the International Telegraph and Telephone Consultative Committee (CCITT), International Telecommunication Union (ITU), Geneva, Switzerland, March 18–27, 1991

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United States Delegation to the Conference on Food Standards Chemicals in Food and Food Trade; Food and Agricultural Organization (FAO) and World Health Organization (WHO), Rome, March 18–27, 1991

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Bruce Jager, Health Effects Division, Environmental Protection Agency
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Anne Lindsay, Office of Pesticide Programs, Environmental Protection Agency
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Eddie Kimbrell, Consultant, Holland and Knight, Washington, DC
Rod Leonard, Community Nutrition Institute, Washington, DC
James Serafino, Director, Regulatory Affairs, Nestle Foods Corporation, Purchase, New York

United States Delegation to the Preparatory Meeting for the 18th Antarctic Treaty Consultative Meeting, April 15–18, 1991

Representative

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Brian Muehling, Office of International Activities, Environmental Protection Agency
Jack Talmadge, Division of Polar Programs, National Science Foundation

Public Sector Adviser

William Martin, Wilderness Society, Washington, DC

United States Delegation to the 2nd Meeting of the Future Air Navigation Special Committee, International Civil Aviation Organization (ICAO), Montreal, April 29–May 17, 1991

Representative

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United States Delegation to the 44th World Health Assembly, World Health Organization (WHO), Geneva, May 6–17, 1991

Delegates

The Honorable Louis W. Sullivan, M.D. (Chief Delegate), Secretary of Health and Human Services
James O. Mason, M.D. (Deputy Chief Delegate), Assistant Secretary for Health, Public Health Service, Department of Health and Human Services
Antonia C. Novello, M.D., Surgeon General, Public Health Service, Department of Health and Human Services

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The Honorable John R. Bolton, Assistant Secretary of State for International Organization Affairs, Department of State
The Honorable Morris Abram, United States Permanent Representative to the United Nations Office and the Other International Organizations at Geneva
Neil A. Boyer, Director, Health and Transportation Programs, Bureau of International Organization Affairs, Department of State
James Sarn, M.D., Chief, Health, Population and Nutrition, Agency for International Development Mission, Cairo

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Paula Feeney, United States Mission, Geneva
Dennis O. Johnsen, International Health and Science Attache, United States Mission, Geneva
Anne W. Patterson, Counsellor for Political Affairs, United States Mission, Geneva
Nancy Pielemeier—(attending May 6–10), Deputy Director, Office of Health, Bureau for Science and Technology, Agency for International Development
Philip Schambra, Ph.D.—(attending May 6–10), Director, Fogarty International Center, National Institutes of Health, Public Health Service, Department of Health and Human Services
Roxann Van Dusen—(attending May 13–17), Director, Office of Health, Bureau for Science and Technology, Agency for International Development
Dr. Karl Western—(attending May 13–17), National Institute of Allergy and Infectious Diseases, Department of Health and Human Services

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Charles Johnson, M.D., President, National Medical Association, Washington, DC
William Walsh, M.D., Director, Project Hope, Washington, DC

United States Delegation to the Special Group on International Organizations, 43rd Meeting of the Maritime Transport Committee, Organization for Economic Cooperation and Development (OECD), May 13–18, 1991

Representative

Joseph P. Richardson, Deputy Director, Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Adviser

Tom Carter, United States Mission, Geneva

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Peter D. Prowitt Director, Government Affairs, American President Lines, Ltd., Washington, DC

United States Delegation to the Working Group on Insurance Statistics, 18th Session, (May 13); the Joint Working Group of the Committee on Capital Movements and Invisible Transactions (CMIT), and the Insurance Committee on Insurance Services (May 14–15); and the Insurance Committee, 47th Session (May 16–17); Organization for Economic Cooperation and Development (OECD), Paris, May 13–17, 1991

Representative

Bruce McAdam, Office of Service Industries, Department of Commerce

Adviser

Barbara Geiser, United States Mission to the Organization for Economic Cooperation and Development, Paris

Private Sector Advisers

Janet Belkin, Chairperson, International Committee, American Council of Life Insurance, Merrick, NY
Hans Miller, Hartford International Insurance Co. SA–NV, Brussels, Belgium
David Walsh, Director, Insurance Division, Department of Commerce

United States Delegation to the Ad Hoc Meeting on Bauxite, United Nations Conference on Trade and Development (UNCTAD), Geneva, MAY 13–17, 1991

Representative

Robert C. Reiley, Director, Office of Metals, Minerals, and Commodities, Department of Commerce

Alternate Representative

David Cannarota, Industry Specialist, Department of Commerce

Adviser

Appropriate USTR/Mission Officer, Geneva

Private Sector Adviser

David Harris, The Aluminum Association Washington, DC

United States Delegation to the International Natural Rubber Organization Council and Committees on Buffer Stock Operations/Statistics, and Other Measures, Kuala Lumpur, Malaysia, May 13–24, 1991

INRO Council and Committees on Buffer Stock Operations, Statistics, and Other Measures

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Private Sector Advisers

Stanley Malcolm Schultz, Purchasing Director, Bridgestone and Firestone Inc., Singapore
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Committee on Administration

Representative

Patricia Nelson-Douvelis, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Adviser

David Miller, United States Embassy, Kuala Lumpur

United States Delegation to the International Sugar Organization (ISO), Market Evaluation and Statistics Committee, May 14; Executive Committee, May 15; and the Council of the International Sugar Organization, May 16; London, May 14–16, 1991

Representative

William Weingarten, Director, Office of Food Policy, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Robert Windsor, United States Embassy, London

Adviser

William Kuhn, Office of Food Policy, Bureau of Economic and Business Affairs, Department of State

Private Sector Adviser

Robert M. Black III, Commodities Analyst, M&M/Mars, Mt. Olive, NJ

United States Delegation to the 43rd Annual Meeting of the International Whaling Commission, Reykjavik, May 22–31, 1991

Representative

John Knauss, United States Commissioner and Under Secretary of Commerce for Oceans and Atmosphere, Department of Commerce

Alternate Representative

Sylvia Earle, Deputy United States Commissioner and Chief Scientist, National Oceanic and Atmospheric Administration, Department of Commerce

Advisers

James Brennan, Deputy General Counsel, National Oceanic and Atmospheric Administration,Department of Commerce
Kevin Chu, Office of Oceans Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Melinda Chandler, Office of Legal Affairs, Department of State
Anne Crichton, Office of the Solicitor, Department of the Interior
Becky Rootes, Office of International Affairs, National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce
Michael Tillman, Deputy Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

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Nancy Devos, Animal Protection Institute of America, Washington DC
William E. Evans, Dean, Texas A&M University, Galveston, Texas
John Prescott, American Association of Zoological Parks and Aquariums, Boston, Massachusetts
Burton Rexford, Chairman, Alaska Eskimo Whaling Commission

United States Delegation to the Chemicals Group and Management Committee, 16th Joint Meeting, Organization for Economic Cooperation and Development (OECD), Paris, May 28–30, 1991

Representative

Linda J. Fisher, Assistant Administrator for Pesticides and Toxic Substances, Environmental Protection Agency

Alternate Representative

Breck Milroy, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Charles Auer, Existing Chemicals Assessment Division, Office of Toxic Substances, Environmental Protection Agency
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Tuesday
June 25, 1991

Part V

Department of Health and Human Services

Family Support Administration

45 CFR Parts 255 and 257

Aid to Families with Dependent Children At-Risk Child Care Program; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Parts 255 and 257

RIN 0970–AA90

Aid to Families with Dependent Children At-Risk Child Care Program

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 5081 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), Public Law 101–508, which adds section 402(i) to the Social Security Act (the Act) to create a child care program for low-income, working families, who are not receiving Aid to Families with Dependent Children (AFDC).

This optional program permits States to provide child care to low-income families who are not receiving AFDC, need child care in order to work, and would otherwise be at risk of becoming eligible for AFDC.

This proposed rule also amends § 255.4(c)(2) to clarify that for the purpose of child care provided under section 402(g) of the Act applicable standards of State and local law are standards that are generally applicable to care of a particular type in the State or local jurisdiction regardless of the source of payment for the care.

DATES: Interested persons and agencies are invited to submit written comments concerning these proposed regulations no later than 60 days from date of publication in the **Federal Register**.

ADDRESSES: Comments should be submitted in writing (facsimile transmissions will not be accepted) to the Assistant Secretary for Children and Families, Attention: Mary Ann Higgins, OFA/JTF, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, or delivered to the Administration For Children and Families, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mary Ann Higgins, Administration For Children and Families, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9294.

SUPPLEMENTARY INFORMATION:

Background

As a result of the growing needs of children and families, on April 15, 1991 the Secretary of Health and Human Services Louis W. Sullivan, M.D., announced the merger of three operating divisions within the Department of Health and Human Services. The merger combines the programs and resources of the Family Support Administration, the Office of Human Development Services and the Maternal and Child Health Block Grant. The consolidation of these agencies formed the Administration for Children and Families (ACF). Under the direction of Assistant Secretary Jo Anne B. Barnhart, ACF will become a single agency to effectively coordinate programs for children and families. ACF will also provide the States, communities and the Congress a single agency, at the federal level, to contact for concerns or issues pertaining to welfare of children and families.

The child care needs of low-income families are addressed by a number of programs administered by the Administration For Children and Families (ACF). In the past three years, the scope of ACF-administered child care programs has broadened to address the child care needs of increasingly larger segments of the population. ACF's programs reflect a growing awareness of the needs of, and commitment to, the family.

Child care needs were first addressed for working families who receive AFDC benefits. A portion of the child care expenses was deducted from the family's earnings when calculating the amount of the family's AFDC grant. Later, the Family Support Act of 1988 guaranteed necessary child care for working AFDC recipients and for AFDC recipients in approved education or training activities (including the Job Opportunities and Basic Skills Training (JOBS) Program). In addition to recognizing the need for child care during training activities to obtain employment, the Family Support Act of 1988 addressed the need for child care during a 12-month transition period following the end of eligibility for AFDC. These child care measures were primarily designed for families already welfare dependent.

In OBRA 90, Congress established two new child care programs: Child care for low-income working families in need of such care and otherwise at risk of becoming eligible for AFDC (the At-Risk Child Care program) and the Child Care and Development Block Grant program. Congress also amended the Earned Income Credit to assist the working poor in caring for their children.

At-Risk Child Care

In enacting the At-Risk Child Care program, Congress recognized that providing child care to low-income working families could enable such families to avoid welfare dependency. A State could also use the At-Risk Child Care program if it decides that the transition to economic independence and self-sufficiency for former AFDC families takes longer than provided for under the Transitional Child Care provisions in the Family Support Act. The State could also use the program for some categories of needy families who are not eligible for the Transitional Child Care program.

States will be able to provide care directly, by use of purchase of service contracts or vouchers, by providing cash or vouchers directly to the family, by reimbursing the family, and using other arrangements as the State agency deems appropriate.

The President signed OBRA 90 into law on November 5, 1990. However, the provisions regarding At-Risk Child Care were effective October 1, 1990. The Family Support Administration (FSA) issued guidance (Action Transmittal CC–FSA–AT–90–1 dated December 19, 1990) to States on how to apply to operate an At-Risk Child Care program prior to the issuance of final regulations. As of April 1, 1991, 19 States have applied to operate At-Risk Child Care programs.

Child Care and Development Block Grant

The other child care program authorized by OBRA 90, the Child Care and Development Block Grant (CCDBG), is intended to provide child care services for low-income families and to increase the availability, affordability, and quality of child care and development services. A total of $2.5 billion is authorized for that block grant for fiscal years 1991–1993, and such sums as may be necessary for fiscal years 1994 and 1995. Funding in the amount of $732 million will become available in September, 1991. Regulations will be issued for the CCDBG program.

Earned Income Credit

Although the Earned Income Credit (EIC) program is not administered by the Administration for Children and Families, it is an additional program to assist the working poor that needs to be considered as an important step toward increasing family self-sufficiency. It was created by Congress in 1975 and greatly expanded in OBRA 90. The EIC is a refundable tax credit provided to low-income families with children in which a parent works. In 1991, families are eligible if their incomes are below $20,264, an amount that is indexed to inflation each year. Even families earning too little to pay taxes receive the credit if they file a federal income tax return. The EIC can help families make the transition from welfare to work by boosting their work-related income. It serves as an important resource for families that receive public assistance while working at low wage jobs. For families that have worked their way off welfare, the EIC can make the family's take-home pay compare more favorably with the welfare check it once received. Families can also receive EIC throughout the year in their regular paychecks by filing a W–5 form with their employer. In this way, families can use the money to meet ongoing needs of their children. Changes to the EIC enacted in OBRA 90 guarantee that EIC benefits will not count as income when eligibility and benefit levels are determined for many other federally supported programs, making the advantage to working families still receiving benefits even greater.

A major goal in developing regulations for At-Risk Child Care is to provide policies that are consistent with other child care administered by ACF whenever possible.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

—Has an annual effect on the national economy of $100 million or more;

—Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region; or

—Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because this program will have an annual effect on the economy of $100 million or more, per discussion with the Office of Management and Budget (OMB), the regulation is considered a major rule. The analysis required by Executive Order 12291 will be included in the final rule.

Paperwork Reduction Act

Certain sections of these proposed regulations contain information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Description of Respondents: State agencies.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
45 CFR 257.21:				
Existing	XXX	XXX	XXX	XXX
Proposed	54	.5	50	1,350
45 CFR 257.50:				
Existing	XXX	XXX	XXX	XXX
Proposed	54	1	50	2,700
45 CFR 257.60:				
Existing	XXX	XXX	XXX	XXX
Proposed	54	4	1.125	243

Total Existing Burden Hours: XXX
Total Proposed Burden Hours: 4293
Total Difference: +4293

As required by section 3504(h) of the Paperwork Reduction Act of 1980, ACF has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspect of the information collection requirements, including suggestions for reducing the burdens, should direct them to the Administration for Children and Families, Office of Family Assistance, (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for ACF.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by Public Law 96–354, the Regulatory Flexibility Act, that this regulation, if promulgated, will not result in a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Certain small entities, such as providers of child care services, could receive a positive benefit from this program, but regulatory flexibility analyses are required for adverse impacts only.

Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required. This regulation is issued under the authority of section 1102 of the Social Security Act.

Federalism and Family Effects

Following is the assessment of this action using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12612 on Federalism

If a policy leads to Federal control over traditional State responsibilities or decreases the ability of States to make policy decisions with respect to its own functions, that policy is determined to have a significant federalism effect.

Section 5081 of OBRA 90 provides States with the option of providing a program of child care for low income working families who are at risk of becoming eligible for AFDC. The proposed regulations give States broad

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flexibility in defining who is eligible for the program, in choosing methods of providing care, and in establishing sliding fee scales.

Child care provided under section 402(i) of the Act must meet applicable standards of State and local law. This language is the same as in section 402(g) of the Act which provides child care for AFDC recipients who are working or in approved training or education and former recipients eligible for Transitional Child Care. In these regulations we clarify that applicable standards are licensing or regulatory requirements that are generally applicable to care of a particular type regardless of the source of funding for the care. This means that for child care under title IV–A a State may not reject a parent's choice of child care provider because that provider does not meet licensing or regulatory standards for that particular type of care if those standards are not generally applicable to care of that type.

This policy does not decrease a State's ability to set standards for child care in general. It does not set national standards. As described above it does limit a State's ability to deny a parent's choice of provider in those limited cases where the State has set separate standards for publicly-funded child care. However, rather than substituting Federal policymaking for State policymaking, we propose to empower parents with decisionmaking over who should care for their children. This is consistent with another principle enunciated in Executive Order 12812 which says that "Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort."

Therefore, on balance, we do not believe this regulation has a significant federalism effect.

Analysis Required by Executive Order 12606 on the Family

The At-Risk Child Care Program is expected to have an overall beneficial family impact. This analysis discusses that impact in terms of the criteria in Executive Order 12606.

(a) The objective of the At-Risk Child Care Program is to provide child care to low-income families who are not currently AFDC recipients, who need care to accept or maintain employment, and who are at risk of becoming AFDC-eligible. The goals of economic independence and prevention of welfare dependency are promoted through continued employment resulting in more secure families.

The At-Risk Child Care program may provide financial aid to both the single parent and the two-parent family, if such care is necessary for employment, and thus self-sufficiency. This increase in self-sufficiency will help strengthen families and ameliorate the erosive effects of poverty.

(b) The At-Risk Child Care program provides significant support for parents' authority and right to nurture and supervise their children in affordable child care settings, which will enable parents to continue to work to achieve self-sufficiency.

Parents will continue to have maximum control and supervision of their children as they would have in any working family. The choice of child care providers is with the parent. Non-family providers are subject to State or local requirements of registration, certification, or licensing. However, this will not affect parents' ability to choose the kind of care with which they are most comfortable.

(c) At-Risk Child Care does not substitute governmental activity for any of the functions of the family. Parental responsibility for the support of children is fostered by the At-Risk Child Care program because it assures parental choice of caregivers and the parents' ability to work and provide for the family. Furthermore the family will contribute to the cost of care based on the family's ability to pay, in accordance with a sliding fee scale formula established by the State IV–A agency.

(d) The At-Risk Child Care program is not specifically designed to increase or decrease the family's earnings. However, since child care provided with At-Risk Child Care funds will permit families to accept or maintain employment, we expect the overall effect will be to increase family earnings by increasing employment opportunities.

(e) The At-Risk Child Care program shall be made available through non-Federal levels of government, i.e., States and localities. The Federal Government will not intrude upon family autonomy or decisions.

(f) The At-Risk Child Care program reinforces the notion that the strength of the American family is important to the Nation's economy. Targeting families, who would otherwise be at risk of becoming welfare dependent, with financial assistance for child care, sends the message that families attempting to maintain economic independence from welfare is a concern for all levels of the government.

(g) The emphasis on self-sufficiency in the At-Risk Child Care program will send a positive message to young people. The message is that those striving to maintain economic independence from welfare can get help from society to do so.

The preamble discussion generally follows the sequence of the proposed regulations, with the exception that the description of conforming changes to the existing regulations is last, whereas the conforming changes precede the At-Risk Child Care sections in the proposed regulations.

PART 257—AT-RISK CHILD CARE PROGRAM

Purpose (§ 257.0 of the Proposed Regulations)

This section describes the purposes of the At-Risk Child Care program. States may provide child care to low income families in accordance with the regulations in this part to allow such families to work and thereby avoid receiving AFDC.

State IV–A Agency Administration (§ 257.10 of the Proposed Regulations)

Section 5081 of OBRA 90 amends the Act to add the At-Risk Child Care program at section 402(i). As part of title IV–A of the Act, the "State agency" referred to in section 402(i) is the single State agency as provided at section 402(a)(3) of the Act. Under longstanding Federal policy regarding the concept of "single State agency," the State IV–A agency must maintain overall responsibility for the design and operation of the program and may not delegate to other than its own officials functions involving discretion in overall administration or supervision of the program (see 45 CFR 205.100).

For child care provided under section 402(g) of the Act, this has meant that, operationally, a State IV–A agency could have another entity perform such non-discretionary functions as providing information to individuals seeking child care, issuing the payment to the child care provider, and collecting fees in accordance with the sliding fee schedule established by the State IV–A agency.

However, eligibility determinations must be made by the IV–A agency. Child care under section 402(g) of the Act is guaranteed to those meeting the statutory requirements, i.e., to employed AFDC recipients, to AFDC recipients in approved education or training programs, and to former AFDC recipients who are working and meet the requirements at section 402(g). Therefore, because such care is a guarantee and eligibility for child care under section 402(g) is inextricably linked to either current or past receipt of AFDC, the determination of eligibility for child care under section 402(g) remains a discretionary decision with the State IV–A agency.

One of the goals of child care provided under section 402(i) is to prevent families from needing AFDC by providing child care so that they can work. Child care is not guaranteed, and eligible families will not be AFDC recipients, although it is possible that they might be former recipients. Therefore, questions have arisen about whether the State IV–A agency could have another entity determine eligibility for At-Risk Child Care.

At § 257.10(c) we propose to allow the State IV–A agency to enter into contracts or agreements with other entities to perform administrative functions, including the determination of eligibility, and provide services under the At-Risk Child Care programs.

We believe that there are significant differences in child care provided under section 402(i) which distinguish it from the other programs under title IV–A. First, as cited above, eligible individuals are not AFDC recipients by definition. Therefore, there is not an immediate connection to the State IV–A agency. In fact, many eligible individuals might not avail themselves of child care services under section 402(i) if it meant going to the welfare office. If preventing the need for welfare is one of the goals of this program, requiring a family to go to the welfare office to obtain services might be counterproductive. Second, At-Risk Child Care is not guaranteed, and, therefore, the protections that must be afforded by the State IV–A agency do not apply. Third, it would be consistent with the statement of the OBRA 90 conferees that "States will have maximum flexibility in determining how these new grant funds are used." H.R. Rep. No. 964, 101st Cong., 2nd Sess. 822, reprinted in 1990 U.S. Code Cong. & Admin. News 2374, 2627.

The proposal to allow the State IV–A agency to contract or enter into an agreement with another entity for certain functions related to the At-Risk Child Care Program does not relieve the State IV–A agency of its overall responsibility for administering the program. Therefore, the proposed regulations at § 257.10(b) enumerate the functions that the State IV–A agency must perform. Chief among these is the issuance of all policies, rules, and regulations, including the criteria for eligibility, governing the program. An entity performing functions related to the At-Risk Child Care program must do so in accordance with the policies, rules, and regulations issued by the State IV–A agency.

A principal purpose of the single State agency provision is to assure that there is a central point of responsibility in the State, i.e., the State IV–A agency, with adequate legal authority, to which the Federal Government can look to account for the expenditure of Federal funds under the program. Therefore, while we have proposed broad contracting authority for State IV–A agencies in carrying out the At-Risk Child Care program, it should be clear that the Administration For Children and Families will hold the State IV–A agency responsible for the proper and efficient administration of the program and will take any necessary compliance or disallowance actions against the State IV–A agency.

Requirement For A State At-Risk Child Care Plan (§ 257.20 of the Proposed Regulations)

The At-Risk Child Care program is authorized under a new section of the Social Security Act, 402(i), and therefore is not part of the title IV–A (AFDC) plan which is covered in section 402(a) of the Act. Although section 402(i) does not specifically address whether a plan is needed regarding the At-Risk Child Care program, we propose that At-Risk Child Care be covered by a plan for two reasons. First, child care is matchable under section 403 of the Act which provides that payments are made to States under approved plans. Secondly, we do not believe the Secretary could fulfill his statutory obligations unless a State plan which specified how the State would meet the requirements of section 402(i) of the Act is required. Section 1102 of the Act requires that the Secretary establish rules "necessary to the efficient administration of the functions" with which the Secretary is charged under the Act.

We propose to have the At-Risk Child Care Plan submitted as an amendment to the State Supportive Services Plan under parts 255 and 256. We believe that this approach will lessen the administrative burden on the States for several reasons. The State Supportive Services Plan is the plan under which a State provides supportive services for JOBS participants and child care for employed AFDC recipients, for participants in approved education and training activities (including JOBS), and for individuals who lose eligibility for AFDC due to employment (i.e., Transitional Child Care). The State IV–A agency is responsible for administering child care provided under both sections 402(g) and 402(i) of the Act and is, therefore, responsible for submitting both plans. Several of the provisions in the two sections of the Act are the same. These include the methods of payment that States may adopt, the requirement to establish local market rates and to define sliding fee scales, and to coordinate with other child care programs. These provisions would have to be incorporated into both State Plans.

We intend to develop a State plan preprint for the At-Risk Child Care program which will be submitted for approval to the Office of Management and Budget. To the extent possible, we plan to do this by modifying the existing State preprint for Supportive Services to reflect the provisions of At-Risk Child Care.

By considering the At-Risk Child Care program to be part of the State Supportive Services Plan, there will be some additional burden on the States. This arises from the requirement that biennial updates of the State Supportive Services Plan must be submitted to HHS. However, we believe that this slight burden is justified by two points. First, States must update local market rates under the provisions of § 255.1(i) which will result in updating local market rates for child care under section 402(i) also since we have defined local market rates at § 257.63 the same as the provisions under § 255.4. The revised plan will provide a vehicle for doing this. Second, after an initial three-year plan, State Plans under the Child Care and Development Block Grant Act of 1990 must also all be submitted biennially. This means that, beginning in FY 1995, State Supportive Services plans and Child Care and Development Block Grant plans will be on the same schedule for submission to HHS. Incorporating the provisions of At-Risk Child Care into the existing State Supportive Services Plan so that all plans revised and submitted simultaneously will thus facilitate coordination of child care within States.

Submission of the At-Risk Child Care Plan

The At-Risk Child Care program provisions under section 5081 were effective October 1, 1990. In order to provide initial guidance to States so that they could begin to provide At-Risk Child Care promptly if they so chose, FSA issued an Action Transmittal (CC–FSA–AT–90–1 dated December 19, 1990) describing how States could apply for FY 1991 funds. Applications for FY 1991 funds are approved on an interim basis pending issuance of final regulations. An approved interim application will remain in effect until the Secretary acts on a State's plan that is submitted on

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the approved preprint. At § 257.20(c) we propose to require States operating an At-Risk Child Care program under an approved interim application to submit an amendment during the quarter following the quarter in which the preprint is issued. We recognize that States may have to make some operational modifications as a result of the final regulations and are giving States some flexibility as to exactly when they submit the plan to conform to the final regulations. Since we are considering the At-Risk Child Care Plan to be an amendment to the State Supportive Services Plan, the effective date of the amendment may not be earlier than the first day of the quarter in which it is submitted.

For States that are not operating an At-Risk Child Care program at the time the final regulations are published, we propose the following. The State may submit an amendment to the State Supportive Services Plan at any time to implement a program. As an amendment to the State Supportive Services Plan, the effective date may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted. However, a State is entitled to its "maximum grant" (as defined at § 257.60(c)) for the year. For example, suppose a State's limitation for FY 1992 is $1 million, and for FY 1993 is $1.5 million. It submits an amendment on March 1, 1993, to begin operating an At-Risk Child Care program. The effective date of the amendment may not be earlier than January 1, 1993. The State is entitled to its maximum grant of $2.5 million dollars upon approval of the plan; however, it may not claim expenditures for any period prior to January 1, 1993.

State Plan Content (§ 257.21 of the Proposed Regulation)

The regulation at § 257.21 lists the information that we propose to require in the At-Risk Child Care Plan, which will be part of the State Supportive Services plan described at § 257.20. We will provide preprint pages that will be part of the State Supportive Services Plan. The preprint will guide States in submitting the At-Risk Child Care Plan and will expedite review. It will also provide a basis for comparison of State programs.

In general, the proposed content of the At-Risk Child Care Plan reflects provisions that are described in other parts of this proposed regulation, and, therefore, it is not necessary to describe them here. For example, § 257.21(b)(2) of the proposed plan regulation requires the State to define "low income," which is described in the proposed regulation at § 257.30(a)(1) and discussed in the preamble to that section. However, there are a few additional provisions that we elaborate on here.

The first is the requirement at § 257.21(d) of the proposed regulations that the State describe its priorities for providing At-Risk Child Care. This requirement is based on the statutory provision at section 402(i)(6)(B)(ii) of the Act that the State submit as part of its annual report "the criteria applied in determining eligibility or priority for receiving services." We believe that a State cannot report on its priorities in the annual report if it has not established priorities, and that this is so fundamental to the operation of the program that it should be incorporated in the State At-Risk Child Care Plan. However, as we discuss more fully in the preamble to § 257.50 on Reporting Requirements, we will consider the State to have reported on this provision by submitting the State's priorities in the State Plan, and will not require this information in the Annual Report.

The second is the proposed regulation at § 257.21(f) that a State list the political subdivisions in which the At-Risk Child Care program is offered, if not available statewide. Unlike the provisions of sections 402(a) and 402(g) of the Act which must be available statewide, the At-Risk Child Care program under section 402(i) of the Act is optional to the State, allows the State to set priorities for services, and is subject to a cap on the amount of Federal funds available to reimburse the State for its expenditure. We, therefore, believe that a State need not offer the program statewide. However, the State must list in its State Plan where it will be available.

Eligibility (§ 257.30 of the Proposed Regulations)

Section 402(i)(1) of the Act provides, "Each State agency may, to the extent that it determines that resources are available, provide child care * * * to any low-income family that the State determines is not receiving aid under the State plan approved under this part; needs such care in order to work; and would be at risk of becoming eligible for aid under the State plan approved under this part if such care were not provided."

Low Income

The proposed regulations at § 257.30(a)(1) give States the flexibility to define the low income requirement of the program. States may wish to consider developing (or adopting) an income test that not only allows for variations in family size or the number of children in the family needing care, but also serves as a common standard for other child care services the State may provide.

A number of Federal programs, including the Community Services Block Grant and Head Start, use the HHS poverty income guidelines, or a percentage of them, as eligibility criteria. As they are commonly understood indicators of low-income, States may wish to consider using them for the At-Risk Child Care program.

The 1991 poverty income guideline for the 50 States and the District of Columbia for a family of 2 is $8,680; for each additional member, it adds $2,280. The 1991 poverty guideline for Alaska for a family of 2 is $11,110; for each additional member, it adds $2,820. The 1991 poverty guideline for Hawaii for a family of 2 is $10,210; for each additional member, it adds $2,600. These guidelines were published in the **Federal Register** on February 20, 1991 (56 FR 6859), and States are referred to the **Federal Register** for additional information about the guidelines.

Another possibility is to adopt the standard for eligible families established by the State for the Child Care and Development Block Grant. Section 658P(4)(B) of the Child Care and Development Block Grant Act of 1990 provides that the State's standard for income of an eligible family cannot exceed 75 percent of the State median income for a family of the same size.

A State's definition of low income must be provided in its At-Risk Child Care Plan, as required at § 257.21(b)(2).

At risk of Becoming Eligible for AFDC

Besides having low income, a family must be "at risk" of becoming eligible for AFDC. While some have argued that "low income" is synonymous with being "at risk" of becoming eligible for AFDC, and that, therefore, there should be no additional condition of eligibility, we believe that Congress intended to establish another test for eligibility. First, the construction of OBRA 90 suggests that from the broad category of "any low income family," the State must make a further determination that the individual meets three criteria: (1) Not receiving AFDC; (2) needs the care in order to work; and (3) at risk of becoming eligible for AFDC if such care were not provided. Furthermore, we believe that requiring the State to define "at risk" other than in terms of income alone is appropriate because of the additional language in the Act at section 402(i)(6)(B)(ii) on the annual report which requires the State to include "the criteria applied in determining eligibility or priority for receiving services, * * *" A State's definition of "at risk" could be used as a basis for establishing such criteria.

However, in keeping with our goal of State flexibility, we propose to allow States to define "at risk" in their State At-Risk Child Care Plan. The following definitions of "at risk" are offered only as examples that States may want to consider: (1) A family not eligible for Transitional Child Care because it was not receiving AFDC three of the previous six months; (2) a family whose eligibility for Transitional Child Care has expired because of the 12-month limit; (3) a family not receiving AFDC because the State has a time-limited Unemployed Parent (AFDC–UP) program and the family obtains employment during the period of non-receipt of aid; or (4) a family who is eligible for, but elects not to receive AFDC, because its earnings would have resulted in only a minimum payment.

We propose not to require States to limit eligibility for At-Risk Child Care to only those families who otherwise would qualify for AFDC, but for the receipt of At-Risk Child Care. We do this because we believe that it is in keeping with the purpose of At-Risk Child Care to avoid welfare dependence whenever possible. For example, requiring a family to meet the AFDC resource limit (such as the $1000 limitation on resources) might make a family ineligible for At-Risk Child Care.

We also considered whether there were any factors that were so fundamental to receiving AFDC that a family could not be "at risk" of receiving AFDC if it did not meet them. For example, we considered whether there would have to be a child meeting the definition of "dependent child" in section 406 of the Act. While there clearly must be a child in the family who needs care, in keeping with our goal of State flexibility, we propose allowing the State to decide if it will require that the child meet the definition of "dependent child."

Thus, a State may adopt any or all of the eligibility criteria for AFDC if it so specifies in its State At-Risk Child Care Plan. For example, it could require that there be at least one "dependent child," or it could require a family to meet the limits on resources.

In Order to Work

We propose to define "in order to work" as "to accept employment or remain employed." This is consistent with section 402(g)(1)(A)(i)(I) of the Act and the implementing regulations at § 255.2. This definition clarifies that child care under section 402(i) is related to actual employment and not to education or training activities that would be necessary in order for an individual to work at some future point in time. In contrast, section 658P(4) of the Child Care and Development Block Grant Act of 1990 specifically provides that child care is available so that a parent or parents can work or attend a job training or educational program.

The proposed regulations at § 257.30(c) allow States the flexibility to provide child care under this section for up to two weeks for families in which an individual has a bona fide job offer but is waiting to begin the employment if child care arrangements would otherwise be lost. Additionally, States may provide child care for up to one month when an individual is between jobs and child care arrangements would otherwise be lost. For example, if an individual accepts a new job and there is a break between the end of the previous employment and the beginning of the subsequent job, and child care arrangements would be lost if the child were taken out during this break, the State may pay for care for up to one month. These provisions are included to ensure that child care is not lost, and continuity of care is provided, so that a family can continue to be self-sufficient. The State must describe its policies on providing care before and during gaps in employment in its State At-Risk Child Care Plan, as provided at § 257.21(l).

Age of an Eligible Child

Under the proposed regulations at § 257.30(b) the State may provide care to any child who is under the age of 13. The State may also provide care to a child who is age 13 or above and is physically or mentally incapable of self-care or who is under court supervision. Age thirteen is consistent with the limits for child care under section 402(g) of the Act as established in the regulations at § 255.2 and § 256.2. It is also consistent with the limit established for the Dependent Care Tax Credit as amended by section 703(a) of the Family Support Act and the limit for child care under section 658P of the Child Care and Development Block Grant Act of 1990.

For children who are eligible for At-Risk Child Care because they are physically incapable of caring for themselves or are under court supervision, we propose at § 257.30(b) to use the upper age limit as defined for a dependent child at section 2.2B of the State IV–A plan (i.e., under age 18 or up to age 19). This proposal is also consistent with the upper age limit for such child care provided under section 402(g), because eligibility for child care under section 402(g) is limited to dependent children requiring such care, or in the case of Transitional Child Care, children who, if needy, would be dependent.

Fee Requirement (§ 257.31 of the Proposed Regulations)

Section 402(i)(3)(A) of the Act requires the State agency to establish a sliding fee formula for the purpose of calculating a family's contribution for At-Risk Child Care. The proposed regulations at § 257.31 provide States with flexibility in determining the formula for calculating these fees.

For example, as these statutory requirements are the same as the statutory requirements for a sliding fee scale for transitional child care under section 402(g) of the Act, the State may elect to adopt its existing Transitional Child Care scale. As an alternative, it could modify the existing sliding fee scale for Transitional Child Care to provide for a higher income cutoff. This might also be an opportunity for a State that has had the same sliding fee scale in place since the implementation of Transitional Child Care to review the existing scale to determine its effectiveness.

As with Transitional Child Care, we propose at § 257.31(b) to require that all recipients of benefits under this Part make some contribution. In establishing this requirement for individuals just getting off AFDC under Transitional Child Care, we recognized that the contribution from those with the lowest income levels might be no more than a token amount. However, we considered it essential to establish the transitional nature of the benefits and to develop recipient responsibility for self-support.

We believe that the reasons for having a copayment requirement for At-Risk Child Care are the same. Making a copayment, even a token amount, reinforces the sense of responsibility in parents for the care and support of their children. Assuming the cost of child care by increments will enable the family to achieve self-sufficiency gradually.

Section 402(i)(4)(B) of the Act provides that the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for the care) may not be claimed as an employment-related expense for purposes of the credit under section 21 of the Internal Revenue Code of 1986. However, contributions made by a family toward the cost of care pursuant to the State's sliding fee scale may be eligible for the Dependent Care Tax Credit under section 21 of the Internal Revenue Code of 1986.

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Methods of Providing Child Care (§ 257.40 of the Proposed Regulations)

Section 402(i)(2) of the Act provides States with a number of methods to provide child care. These are the same methods that are provided in section 402(g) of the Act for child care for AFDC recipients and former AFDC recipients eligible for Transitional Child Care. Specifically, the State IV–A agency may:

(1) Provide the care itself;

(2) Arrange care through public or private providers by use of purchase of service contracts or vouchers;

(3) Provide cash or vouchers in advance to the caretaker relative so that the child care costs may be prepaid;

(4) Reimburse the caretaker relative for child care expenses incurred; or

(5) Adopt such other arrangements as the State IV–A agency deems appropriate.

The fundamental principle of the right of the parent to choose appropriate child care is discussed in the preamble to the proposed regulations at § 257.41 concerning applicable standards of State and local law.

To insure that each parent does have choice, we propose in § 257.40(b) to require that the State have at least one method of payment by which self-arranged child care can be paid. This requirement is consistent with requirements under parts 255 and 256. Of the four methods specified in § 257.40(a) we believe that two can most effectively be used to ensure parental choice, and we strongly urge that States adopt at least one of these methods. These are providing the parents with cash or vouchers in advance or reimbursing the caretaker relative for child expenses incurred. We elaborate on these below.

Vouchers

Many States are using some form of a voucher/certificate system for child care delivery. This system can encourage parental choice regarding the selection of a provider, while ensuring that the selected provider receives the child care payment from the State IV–A agency (or its agent). In the case of transitional child care or At-Risk child care, the parent's contribution must still be paid by the parent. Vouchers/certificates can increase the parents' responsibility and choice compared to methods in which the State IV–A agency (or its agent) makes payments directly to the child care provider through purchase of service or a contractual arrangement. In order for the voucher/certificate method to afford such choice, it must be possible for the parent to easily obtain it, for the provider to receive timely payment for services rendered, and for the parent to use it with any provider.

By October 1, 1992, any State which receives funds under the Child Care and Development Block Grant Act of 1990 must have procedures in place to provide parents with certificates with which they can arrange for child care. We expect that States will actively explore ways in which a certificate system could be used for At-Risk Child Care as well.

Direct Payments to the Caretaker Relative

The State IV–A agency (or its agent) may pay the caretaker relative directly either by providing payment in advance or through reimbursement. This method of payment maximizes parental choice and responsibility for child care.

Coordination

Section 5081(d) of the OBRA 1990 amends section 402(g) of the Act to provide that activities under section 402(i) must be coordinated with existing early childhood education programs in the State, including Head Start programs and preschool programs funded under chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for disabled children).

We believe that coordination in planning and delivery of services is essential to prevent duplication, to assure that child care services are available to the maximum number of eligible families, and to provide a viable range of child care options for parents.

One goal of a coordinated service delivery system is to create a fabric of seamless service. Seamless service means providing eligible parents access to and payment for child care services and programs which bridge and supplement the parents' child care needs, even as eligibility changes over time; this is done without the necessity of changing the child care provider. In addition, such a coordinated service delivery system could create a complete day of service for an eligible child when programs do not last for the entire day (e.g., child care services before and after a Head Start class).

Definitions, administrative procedures, and provider eligibility rules which are as consistent as possible should ease the administrative burden on the State and local organizations. They should also enable smooth transitions for families as their situations change over time.

Since States will be required to submit biennial updates of their plans, we expect the coordination specified in this section to be carried out on an ongoing, rather than a one-time, basis.

The proposed regulation at § 257.40(d) contains the requirement to coordinate. In addition to the agencies listed in section 402(g) of the Act, we have added existing child care resource and referral agencies based on the regulations at § 255.9(b). We believe that, as with AFDC child care and Transitional Child Care, this will assist the State IV–A agency to identify potential resources and minimize duplication of effort.

Child Care Standards (§ 257.41 of the Proposed Regulations)

Section 402(i)(5)(E) of the Act provides that Federal financial participation (FFP) is only available for child care that meets applicable standards of State and local law. In the proposed regulations at § 257.41(a)(1), we have added Tribal law because child care may be provided on an Indian reservation, and if Tribal standards exist, they are the applicable standards. In the absence of Tribal standards, State standards would apply unless Tribal areas are excepted under State law.

Applicable Standards

We propose to add a provision at § 257.41(a)(2) to define applicable standards as standards that are generally applicable to care of a particular type in a State, local area, or Indian reservation, regardless of the source of payment for the care. As a similar definition is proposed for addition to the existing regulations at § 256.4(c)(2), this definition of applicable standards applies to all child care funded under title IV–A.

Child care for which there are no applicable standards, i.e., no licensing or regulatory requirements set by the State or locality that specifically regulates child care, is legal care. Under section 402(i) of the Act, such care is available for use by low income working families who need care in order to work and are at risk of becoming eligible for AFDC. For example, if a State does not regulate family day care providers caring for less than three children, such care is legal, and, if the caretaker relative selects that provider, the State must pay for the care. In addition, if a provider is exempt from child care licensing requirements for reasons other than the source of payment, e.g., a sectarian child care center, such care would be legal because there are no applicable standards. Child care for which there are no standards will not be affected by this proposed regulation.

In addition, child care standards that are generally applicable are unaffected by this proposed regulation. Child care provided under section 402(i) is subject to any standard mandated in any law or regulation of the State or locality that generally applies to care of the same type in the State or locality, e.g. center care, group family day care, family day care, and in-home care. For example, we know that all States have child care licensure laws that include standards which address health and safety conditions and other aspects of care provided at child care centers. Since these are standards that have general applicability, they apply to title IV–A child care.

However, some States impose child care standards and regulations on publicly-funded child care that are not applicable to privately purchased care. The question has arisen whether, under title IV–A, a State may deny payment for child care which violates no general child care requirements in the State, but which does not meet an additional set of requirements which apply only to publicly-funded care. The proposed regulation at § 257.41 precludes this. For child care funded under title IV–A, applicable standards include only those that are generally applicable to care of a particular type. A State may not set separate standards which apply only to title IV–A-funded care. If a State has standards which affect only publicly-funded care, and a caregiver of that type of care does not meet them, for title IV–A purposes (under both sections 402 (g) and (i)) that care is still "legal," and the State must pay for that care.

In proposing this policy, we believe that "parental choice" must be a paramount consideration. Just as it is crucial for JOBS participants who attend mandatory work and training activities and former recipients who are eligible for Transitional Child Care to have choice and control over who will take care of their children when the parents must be away from them, it is crucial for families eligible for the At-Risk Child Care program to have choice also. By definition, these families need the care in order to work, or otherwise they would likely become eligible for AFDC. Therefore, it is appropriate that they have the same access to the care provider of their choice that we propose families receiving child care under 402(g) have. Furthermore, it would be antithetical to our overall goal of supporting the family in its quest to remain independent and self-sufficient to interfere in so personal and critical a decision as who will take care of one's children.

Registration

Under section 402(i)(5)(c) of the Act, FFP is available for payments made to a provider (other than an individual caring for members of his/her own family) only if the child care provider is licensed, regulated, or registered. The proposed regulations at § 257.41(a), as discussed previously, address child care licensing and regulatory requirements. Section 257.41(b) of the proposed regulations addresses the requirement for registration.

Although there is no discussion in the legislative history, we think Congress intended the At-Risk Child Care registration requirement to be an alternative to child care licensing and regulatory standards, not another form of them. To interpret the provision otherwise would mean Congress was mandating that States set licensing and regulatory standards for all child care. It is unlikely Congress would do this without an explicit provision. We see the registration requirement as being similar to the registration requirement in section 658E(c)(2)(E) of the Child Care and Development Block Grant Act of 1990. In that provision, the requirement is intended to provide the State with basic information about unlicensed providers so that the State can pay the provider and can furnish the provider with information on training, technical assistance, regulatory requirements, and other topics.

Therefore, in § 257.41(b)(2) we propose that registration procedures must (1) only collect information necessary for the State to pay providers or furnish information to providers; (2) facilitate appropriate and prompt payment to providers; (3) allow providers to register with the State or locality after selection by the parent; (4) be simple and timely; and (5) not exclude or have the effect of excluding any categories of child care providers.

In keeping with our goal of State flexibility, we do not propose to define exactly what constitutes registration. We expect that registration of providers for the At-Risk Child Care program to be a simple process, such as giving the State or locality the provider's name and mailing address. States or localities may also require providers to supply additional information, such as birth date or other identifying data needed to facilitate appropriate payment to the provider, and to allow the State or locality to disseminate information to the provider.

If States wish to require providers to meet standards, such standards must be set as part of the State's licensing and regulatory standards rather than as part of the At-Risk Child Care registration process which is intended only for information exchange with unlicensed and unregulated providers. Some States already have "registration" procedures, either on a mandatory or a voluntary basis. Such procedures may meet the requirements for registration that apply to At-Risk Child Care as described in § 257.41(b) if they are designed only to collect or exchange basic information. However, if a State's registration requirements include standards, they are considered licensing and regulatory requirements, and they do not meet the requirements of § 257.41(b). The State will have to adopt modified registration procedures for unlicensed or unregulated care provided under section 402(i) of the Act.

We propose at § 257.41(b)(1) to require registration before any payment under the At-Risk Child Care program is made. This proposal makes registration under the At-Risk Child Care program consistent with the registration requirement in the Child Care and Development Block Grant of 1990 and will allow States to design compatible procedures. As previously discussed, we expect registration of providers to be a simple process which will facilitate appropriate and prompt payments. Payments must be timely so that providers are not effectively discouraged from offering child care services. Although we are not regulating a time frame between request for registration and payment, States must ensure that it is a reasonable period. Section 257.21(h) of the proposed regulations requires States to specify this time frame in their At-Risk Child Care plans.

We propose to ask States to describe their registration procedures in the State At-Risk Child Care plan at § 257.21(h).

Parental Access

Section 402(i)(5)(C)(ii) of the Act provides that FFP is only available for amounts paid for child care to the extent that the provider of the care allows parental access. We propose to incorporate this provision at § 257.41(c).

We believe that parental access to children within the care setting enhances parental choice and involvement. Parents are concerned about health, safety, and quality of care their children receive; parental access allows them to identify problems and safeguard their children. Moreover, parental access promotes continuity of care between home and the provider.

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Reporting Requirements (§ 257.50 of the Proposed Regulations)

Section 402(i)(6) of the Act requires that, beginning with fiscal year (FY) 1993, each State prepare and transmit to the Secretary an annual report on the activities of the State carried out with funds made available under section 403(n) of the Act. Section 402(i)(6)(B) describes the content of the report. It is to contain information on: (1) The number of children served and the average cost, by type of service; (2) the State's licensing and regulatory (including registration) requirements; and, (3) its enforcement policies and practices in effect which apply to child care providers. Section 257.50(a) of the proposed regulations contains the State reporting requirements.

Section 402(i)(6)(B)(ii) of the Act requires information about the criteria applied in determining eligibility or priority for receiving services, and sliding fee schedules. However, as described in § 257.21, we propose to collect that information as part of the State At-Risk Child Care Plan that the State submits in order to provide services. We believe that such information is so fundamental to the way in which the State operates its program that it should be contained in the State Plan. Since we propose to require such information in the State Plan, we do not propose to collect it again in the annual report submitted by the State. This will not affect the ability of the Secretary to report to Congress because the Administration For Children and Families will have copies of the approved State Plans from which to gather the information. Furthermore, it will not affect public review of the information or requests for such information by any interested public agency, because the State Supportive Services Plan is also a public document which can be accessed. We further believe that such an approach is consistent with the statutory provision at section 402(i)(6)(C) of the Act that the Secretary ensure that compliance with the reporting requirements not be unduly burdensome on the States.

Section 402(i)(6)(A)(iii) of the Act requires that the Secretary annually compile and submit to Congress the State reports. In order for the Secretary to comply with this provision, we propose to require States to submit their reports to the Secretary no later than 90 days after the end of the Federal fiscal year for which they are reporting. This provision is contained in § 257.50(b).

Section 402(i)(6)(A)(ii) of the Act requires that the State make available for public inspection within the State copies of each report and provide a copy of each report, on request, to any interested public agency. The proposed regulations at § 257.50(c) contain this provision.

Section 402(i)(6)(C) of the Act requires the Secretary to issue uniform reporting requirements within twelve months after the date of the enactment of the subsection, or by November 5, 1991, for use by States in preparing the information required. To insure that compliance with the statutory requirements is not unduly burdensome on the States, the Department intends to look at existing reporting requirements for child care provided under section 402(g) of the Act and the requirements for reporting under the new Child Care and Development Block Grant in developing these uniform reporting requirements.

Availability of Funding (§ 257.60 of the Proposed Regulations)

Section 403(n)(2)(B) of the Act establishes an annual limitation on the amount of funds appropriated for title IV–A that may be paid to States for expenditures made under the At-Risk Child Care program. Federal funding is available for the allowable expenditures of the program. The term expenditures, which we define as actual cash disbursements, has the same meaning and application as for child care expenditures made under parts 255 and 256. States receive funds for expenditures only. Unliquidated obligations must not be reported.

All 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa may operate an At-Risk Child Care program. Because American Samoa does not have an AFDC program, families cannot be at risk of becoming AFDC dependent. Therefore, in the case of American Samoa, implementation of an AFDC program must occur prior to or simultaneous with implementation of the At-Risk Child Care program.

State's Limitation

For purposes of clarification, we will use the term "limitation" to mean a State's portion of funds based on the formula provided in sections 403(n)(2)(A) and (B) of the Act.

Section 403(n)(2)(A) of the Act provides that a State's limitation is equal to a percentage of the total available funds for a fiscal year that represents the ratio of children in the State to the national total number of children. We propose at § 257.60(b) to use the number of children under age 13 as the basis for calculating each State's limitation. We believe this is a reasonable approach since it is consistent with the age limits on eligibility established at § 257.30.

The Act provides that the data on the number of children for determining each year's limitation shall be based on data available for the second preceding fiscal year, i.e., FY 1989 data shall be used in determining funds available for FY 1991. For determining FY 91 limitations, the numbers of children under 13 for the 50 States and the District of Columbia were taken from the Bureau of the Census estimates for 1989.

Annual estimates for Puerto Rico, the Virgin Islands, Guam and American Samoa are not published by the Bureau of the Census. Thus, actual numbers of children under 13 from the previous decennial census report were used. In the future, we will use similar data, or better data, if available, for determining fiscal year limitations.

Maximum Grant

Section 403(n)(2)(C) of the Act provides that the amount not paid to a State in a fiscal year, i.e., the amount representing the difference between the limitation for that year and the total of grant awards made in that year, may be added to a State's limitation for the next fiscal year. For purposes of clarification, the amount available for a fiscal year that represents the State's limitation for that year plus the unpaid amount added from the prior year will be referred to as a State's "maximum grant." An unpaid amount added from a prior year may be added to the State's limitation for the next successive fiscal year only; it cannot be added to a fiscal year beyond the next successive fiscal year.

For example:

State A's limitation for year 1 is $100. It may request grant awards for the fiscal year which in total do not exceed $100. The State, however, requests a total of $80 for year 1. Prior to the beginning of year 2, State A is informed that its limitation for that year is $110. For year 2, the State's maximum grant is $130, i.e., $110 plus the $20 not paid from the previous year. If the total amount paid in year 2 is less than $110, the difference between the amount paid in year 2 and $110 (the year 2 limitation) will be added to the State's year 3 limitation to determine the maximum grant for the third year. If the total amount paid in year 2 is more than $110, no amount from year 2 can be added to the State's year 3 limitation.

Funding for the program is provided under title IV–A of the Social Security Act. Thus, for Puerto Rico, Guam, the Virgin Islands, and American Samoa, funding is subject to the limitations in section 1108 of the Social Security Act.

Grant Awards (§ 257.61 of the Proposed Regulations)

We considered several methods of awarding grants for At-Risk Child Care. For ease of operation, we propose to follow the grant process in effect for child care under Parts 255 and 256, with some modification to reflect statutory differences in funding.

Prior to the beginning of a fiscal year (year 1), a State will be informed of its limitation. We will request that each State supply an estimate of expenditures for each quarter, as funds will be issued through quarterly grant awards. States will report actual expenditures on the quarterly expenditure report. We will adjust subsequent quarters' grant awards to reflect over- or under-estimates in prior quarters' expenditures.

Prior to the beginning of the following fiscal year (year 2), the State will be informed of its limitation for year 2. The amount unpaid for year 1 and the limitation for year 2, will constitute the maximum grant for year 2 in accordance with § 257.60. Quarterly estimates and grant awards for year 2 may not exceed the maximum grant for year 2.

The regulations applicable to title IV–A regarding the availability of funds, e.g., the timely filing requirements at part 95, subpart A, and the method for submitting estimates and making adjustments at § 201.5, will apply to the At-Risk Child Care program.

Matching Requirements (§ 257.62 of the Proposed Regulations)

Section 403(n)(1)(A) of the Act provides that expenditures made under the program are available for matching at the Federal Medical Assistance Percentage (FMAP) rate. This provision pertains to both child care services payments and administrative expenditures made in providing these services. The regulations at § 257.62(b) propose that expenditures made in a fiscal year will be matched at the FMAP rate in effect for that fiscal year.

Use of Donated Funds as Match

Current Administration For Children and Families policy provides, that for the purposes of the AFDC and JOBS programs, donated funds may be used as the State share of expenditures. Regulations at § 235.66 and § 250.73 provide conditions under which donated funds may be used as the State share of expenditures for AFDC training activities and JOBS program activities, respectively. Section G–4000 of part V of the Handbook of Public Assistance provides that donated funds may be recognized as State funds subject to Federal financial participation in administrative expenditures under the State IV–A Plan.

We propose at § 257.62(c) to allow public and private funds to be used as a State's share of matching costs as follows. For public funds, the funds must be appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control or certified by the contributing public agency as representing expenditures eligible for FFP. They must not be used to match other Federal funds, and may not be Federal funds, unless such funds are authorized by Federal law to be used to match other Federal funds.

For private funds, the funds must be transferred to the State or local agency and under its administrative control. They must be donated without any restriction which would require their use for assisting a particular individual or organization or at particular facilities or institutions, and not revert to the donor's facility or use either directly or indirectly.

We also propose to add § 257.62(c)(3) which provides that any funds received by the State which do not meet the conditions set forth in the regulation but which are used for allowable expenditures of the program must be deducted from the State's total expenditure claims subject to FFP.

In-kind Contributions

The Act does not address the use of third party in-kind contributions as the non-Federal share of expenditures made under the program. We believe that the policy applicable to child care programs under parts 255 and 256 should apply to this program. This has also been longstanding policy under title IV–A. Therefore, the proposed regulation at § 257.62(c)(3) prohibits the use of third party in-kind contributions for use as the State share of expenditures for this program.

Waiver for Insular Areas

The regulation at § 257.62(d) proposes that the waiver provision of 48 U.S.C. 1469a(d) apply to the matching requirement for the Territories of Guam, the Virgin Islands, and American Samoa. Under this provision, the first $200,000 in expenditures made each fiscal year need not be matched. We considered applying the $200,000 waiver in matching requirements to title IV–A expenditures in the aggregate, i.e., for all expenditures under § 403 rather than permitting the waiver to be applied separately to the At-Risk Child Care program. However, since the plan amendment for the At-Risk Child Care program is not included in the title IV–A plan, the program is viewed as distinct from AFDC. Given this distinction and the fact that Congress did not increase the ceilings for Territories as set forth in section 1108 of the Act, we propose to apply the waiver of the matching requirement for the first $200,000 to the At-Risk Child Care program separately.

Allowable Expenditures (§ 257.63 of the Proposed Regulations)

Federal financial participation (FFP) is available only for allowable expenditures of the program. Section 402(i)(3)(B) of the Act provides that the payment for child care shall be in "an amount that is the lesser of (i) the actual cost of such care; and (ii) the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary)."

Applicable Local Market Rates

We propose to make the regulations at § 256.4 (a)(2) and (a)(3) on local market rates applicable to the At-Risk Child Care program. Under these regulations, the following basic principles apply: Each State IV–A agency must establish local market rates based on a representative sample of providers, obtained in a survey by the State IV–A agency or under an outside survey. Local market rates must be set at the 75th percentile of the rate for the type of care. Finally, local market rates must be determined by type of care such as center care, group family day care, family day care, and in-home care. Rates should be differentiated by care for infants, toddlers, preschool, and school children and whether there are different rates for full-time and part-time care.

We believe that adopting the same provisions for At-Risk Child Care that apply to child care provided under section 402(g) of the Act is appropriate for several reasons. It reduces the administrative burden on the State since it has already established local market rates for AFDC and Transitional Child Care. Further, we believe that since the terminology used in section 402(g) and section (i) are exactly the same, it was Congress' intent that the rates be the same. This is also supported by the conference report which agrees to follow the Senate amendment which provides that rules relating to Federal matching rates, reimbursement, standards, and fee schedules would remain the same as in current law. H.R. Rep. No. 964, 101 Cong., 2nd Session 921, as reprinted in 1990 U.S. Code Cong. and Admin. News 2374, 2626. Finally, we

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continue to believe that the 75th percentile represents a reasonable definition of market rate and a reasonable balance between concerns about fiscal accountability and access to child care.

We are aware that there are a number of misunderstandings regarding our policy that the local market rate is to be set at the 75th percentile. As we are using the same definition for local market rate for At-Risk Child Care, we want to reexplain the policy. When we first considered the requirement in connection with IV–A child care, it seemed obvious that if actual cost was to be paid only up to the local market rate, the actual charged costs for some child care would be more than the local market rate. It also seemed logical that in referring to a "market rate", Congress was intending to maintain fiscal responsibility and limit payments to amounts generally charged because of competition in the marketplace. This is the common understanding of a "market rate". Thus in defining the local market rate it was necessary to develop a method for distinguishing between the amounts generally charged for child care and amounts which exceeded what was generally charged. In other words, we wanted to develop a method which would allow States to pay the amount generally charged for child care, so that most caregivers would be included, without allowing or requiring them to pay for care which was much more expensive.

In developing this method, we first considered using the average cost of child care in an area. However, the average cost, by definition, would be in the "middle" of what is charged or around the 50th percentile. Because it is in the "middle", we realized that setting the local market rate at the average cost could have eliminated many child care providers, possibly even up to half of those in an area, including many who charged only slightly more than the average cost. We did not want to restrict the supply of providers in this fashion as we wished to allow States more flexibility in who they could pay and we wished to allow parents a real choice in providers. We decided to set the "local market rate" at the 75th percentile as it would include most providers in any given area but would prevent the inefficient use of public funds by restricting payment to those providers charging the more expensive or excessive amounts. A discussion of how the 75th percentile is calculated can be found in the preamble to the final JOBS and Supportive Services regulation at 54 FR 42228–29.

States are reminded that it is a violation of Federal appropriations law to supplement above the 75th percentile with Federal funds. Such supplementation would contravene the Federal funding limits provided in the Act.

Statewide Limit

Section 402(i) of the Act does not require the State to establish a statewide limit as section 402(g)(1)(C) of the Act does for child care under the Family Support Act. We propose at § 257.63(b) to allow States to adopt a Statewide limit (or limits) for At-Risk Child Care. We believe that giving States this flexibility is consistent with Congressional intent. It give States budgetary and planning control in an optional program with limited funding. It may also allow them to provide services very similar to those provided under section 402(g).

The Statewide limit can be the same as the limit(s) established by the State for AFDC and transitional child care. It can be differentiated based on age or special needs. There actually could be as many as three Statewide limits since there could be different limits for children over age two, those under age two, and those having special needs.

We propose to have States so choosing to provide their Statewide limit(s) in the At-Risk Child Care Plan, as described at § 257.21(j).

Administrative Costs

FFP is also available for the general supervision and management of the program. It is clear from the language of the Act that the purpose of the program is to provide child care services to those families who are at risk of becoming AFDC dependent unless child care is made available, permitting the parent(s) to work. Although there is no restriction regarding the amount of funds available for administrative expenditures, there must be a correlation between the child care services payments claimed and the administrative expenditures claimed. Such administrative expenditures claimed must be reasonable and necessary expenditures of the program. It would be improper for a State to use all or most of the funds available for a project period to cover administrative expenditures. We will monitor States' performance in this area.

For child care under parts 255 and 256, the final regulations provide that FFP is not available for expenditures related to the recruitment and training of child care providers, resource development, and licensing activities. The proposed regulation at § 257.73(b) applies these restrictions for At-Risk Child Care. We believe that expenditures for these activities should not be funded through this program because funding for these activities is provided through Child Care Improvement (Licensing) grants, originally authorized by the Family Support Act of 1988, and the Child Care and Development Block Grant, authorized by OBRA 1990.

Non-supplantation (§ 257.64 of the Proposed Regulations)

Section 402(i)(5)(D) of the Act provides that amounts paid by the State IV–A agency for child care cannot "be used to supplant any other Federal or State funds used for child care services." Although there is no explanation of this provision in the legislative history, we assume that Congress intended to ensure that new Federal monies being made available for child care are not simply used to replace existing expenditures, but to increase the availability of services. We note that a similar (though not identical) provision is contained in the Child Care and Development Block Grant Act of 1990, which was passed at the same time.

Since the provision prohibits supplantation for child care services generally, a State cannot replace any current Federal or State funding for child care services with section 402(i) grant money. However, it is possible for a State to use current funding (including continuation funding) as the State match for section 402(i) care. The following example may help clarify the principle.

If a State had been spending $1 million in title XX block grant funds, $4 million in IV–A funds and $6 million in State funds ($4 million in IV–A match and $2 million in supplemental State funds) on child care services, this level of funding must continue from non-section 402(i) sources to avoid supplantation. The State could not reduce its State spending to $5 million and use $1 million to match $1 million in section 402(i) funds to achieve the previous level since that would replace State funds with section 402(i) funds in violation of the provision. However, the State could use the $2 million in current supplemental State funds as its match for the section 402(i) funds, and thus increase child care services by $2 million without having to increase State funding.

In order for the Administration For Children and Families to determine that the requirement of non-supplantation is met, the proposed regulation at § 257.64(b) requires the State to establish a dollar value for child care services for a base period. Expenditures will be compared with expenditures during the base period to determine whether supplantation has occurred. The base period should include all Federal and State funding for child care services. The requirement is limited to public funds.

We propose to define the base period to be a twelve-month period (e.g., the State fiscal year) which includes the month one year prior to the first month in which the State implements the At-Risk Child Care program. For example, States which have approved interim plans that were effective October 1, 1990 must, in defining their initial base period, include the month of September 1989. Thus the State might use calendar year 1989 or their State fiscal year beginning July 1, 1990.

In determining the level of expenditures during the base periods, the State must consider Federal and State programs. Differing fiscal or program years may add to the level of difficulty in establishing an amount for the base period. However, the flexibility provided in the proposed regulations in setting the base period should accommodate this difficulty.

General Administrative Requirements (§ 257.65 of the Proposed Regulations)

OMB Circular A–102, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," is currently incorporated in the Department's regulations at 45 CFR parts 74 and 92. The child care programs subject to parts 255 and 256 are subject to the regulations at part 74. This is because they are funded under section 403 of the Act as open-ended entitlement grants. However, while there is a limitation of total funds available for Federal obligation each fiscal year for At-Risk Child Care, At-Risk Child Care is funded under the section 403 appropriation. For that reason and for administrative simplicity, we believe that At-Risk Child Care should be subject to the requirements of part 74, instead of part 92. The proposed regulation would therefore apply part 74 to the program. Consistent, however, with the regulations at § 201.5, subparts G (Matching and Cost Sharing) and I (Financial Reporting Requirements) of part 74 shall not be applicable to the program. Rather, the specific requirements of this regulation apply.

Financial Reporting (§ 257.66 of the Proposed Regulations)

The proposed regulation at § 257.66 establishes the financial reporting requirements for the program. We are proposing that estimates and expenditures for At-Risk Child Care program be reported in the same manner that estimates and expenditures for child care under parts 255 and 256 are reported. We expect to add a new section to the current financial reporting form used for expenditures made under title IV–A, the FSA–231, for estimates and expenditures for this program. Further guidance will be issued to States.

Financial reports are distinct from the annual report required by section 402(i)(6)(A)(i) of the Act. Our authority to require financial reports is found in section 1102 of the Act which permits the Secretary to establish rules that are necessary for the efficient administration of the program.

Pursuant to § 257.31, a family receiving At-Risk Child Care is required to make a contribution toward the cost of care. A contribution paid directly to the State IV–A agency which has made a full payment to the provider is considered program income. Consistent with longstanding policy, the proposed regulation at § 257.66(b) provides that State IV–A agency must use the deduction alternative at § 74.42(c) when reporting such income. Thus, such contributions will be used to offset expenditures when claiming FFP for child care services payments.

Cost Allocation (§ 257.67 of the Proposed Regulations)

The regulation proposes that in accordance with the cost allocation requirements of part 95, subpart E, a State shall amend its cost allocation plan to account for expenditures made under the At-Risk Child Care program. The regulation at § 95.519 provides that if a State has failed to submit an amended cost allocation plan, the costs claimed will be disallowed.

Disallowance Procedures (§ 257.68 of the Proposed Regulations)

FFP for expenditures claimed under At-Risk Child Care that are not made in accordance with these regulations and the State Plan will be disallowed. The proposed regulations provide that the deferral and disallowance regulations at § 201.15 are applicable to the At-Risk Child Care. Moreover, we propose that the procedures for the taking of disallowances and the managing of appeals applicable to the AFDC program and child care programs at parts 255 and 256, be applicable to this program. This is consistent with our intent to administer these programs in a similar manner.

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION AND TRAINING

Applicable Standards (§ 255.4(c)(2) of the Proposed Regulations)

We propose to amend § 255.4(c)(2) to clarify that applicable standards of State and local law are standards which are generally applicable to care of a particular type in the State or local jurisdiction regardless of the source of payment for the care.

Background

Under the Family Support Act of 1988, States must guarantee child care to AFDC families when needed for employment or to enable participation in approved education and training activities (including participation in JOBS). This provision was effective in each State on the date of JOBS implementation, but not later than October 1, 1990. Effective April 1, 1990, States also have to guarantee child care for up to 12 months for former AFDC recipients who lose AFDC eligibility for an employment-related reason and need child care to accept or maintain employment. Final regulations implementing these provisions were published October 13, 1989. (54 FR 42148) Section 255.4(c)(2), which provides that child care must meet applicable standards of State and local law, applies to all child care provided under the Family Support Act.

A key principle guiding the Administration For Children and Families in writing these regulations was the concept of "parental choice." It is first articulated in the introductory section on the "Objectives of the Family Support Act and These Regulations" at 54 FR 42149 where we said "That consistent with individual responsibility is choice, and * * * parents (should) be given a wide range of options for child care while participating in the program." We further said in the preamble at 54 FR 42225 that "parents should be able to make informed choices about who provides care for their children." The regulations at § § 255.3(c) and 255.3(d) reflected this principle by allowing the caretaker relative to choose the type of child care (center, group family day care, family day care, or in-home care), if more than one type is available, and by requiring the State to have at least one payment mechanism by which self-arranged child care could be paid.

We believe that "parental choice" must be a paramount consideration. It is crucial for JOBS participants because

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they may be required by the IV–A agency to leave their children in child care arrangements while they attend mandatory work and training activities. But it is also important in protecting the guaranteed nature of transitional child care benefits. Employed families could well lose access to child care services of their choice and the guarantee would be substantially reduced if special standards were allowed. Furthermore, it would be antithetical to our overall goal of supporting the family in its quest for independence and self-sufficiency to interfere in so personal and critical a decision as who will take care of one's children while one must be away from them.

Applicable Standards

Section 402(g)(3)(B)(ii) of the Social Security Act limits federal financial participation (FFP) for child care provided to eligible AFDC recipients and former AFDC recipients to child care which meets "applicable standards of State and local law." This provision is contained in the final regulations at § 255.4(c)(2) which also included "Tribal law, where applicable." Questions have arisen about the meaning of this provision; the purpose of the proposed regulation is to clarify the meaning of applicable standards.

Child care for which there are no applicable standards, i.e., no licensing or regulatory requirements set by the State or locality that specifically regulates child care, is legal care. Under the Family Support Act, such care is available for use by AFDC recipients and former recipients eligible for transitional child care. For example, if a State does not regulate family day care providers caring for less than three children, such care is legal, and, if the caretaker relative selects that provider, the State must pay for the care. In addition, if a provider is exempt from child care licensing requirements for reasons other than the source of payment, e.g., a sectarian child care center, such care would be legal because there are no applicable standards. Child care for which there are no standards will not be affected by this proposed regulation.

In addition, child care standards that are generally applicable are unaffected by this proposed regulation. Child care provided under section 402(g) has always been subject to any standard which is mandated in any law or regulation of the State or locality which generally applies to care of the same type in the State or locality, e.g., center care, group family day care, family day care, and in-home care. For example, we know that all States have child care licensure laws that include standards which address health and safety conditions and other aspects of care provided at child care centers. Since these are standards that have general applicability, they apply to title IV–A child care.

However, some States impose child care standards and regulations on publicly-funded child care that are not applicable to privately purchased care. The question has arisen whether, under title IV–A, a State may deny payment for child care which violates no general child care requirements in the State, but which does not meet an additional set of requirements which apply only to publicly-funded care. The proposed regulation at § 255.4(c)(2) precludes this. For child care funded under title IV–A, applicable standards include only those that are generally applicable to care of a particular type. A State may not set separate standards which apply only to title IV–A subsidized care. If a State has standards which affect only publicly-funded care, and a caregiver of that type of care does not meet them, for title IV–A purposes that care is still "legal," and the State must still pay for that care.

While we recognize that some States will be concerned that our proposed regulation will affect their role as stewards of public funds and their ability to protect children in publicly-funded child care, we believe that this impact is limited for the following reasons:

(1) Child care provided under section 402(g) has always been subject to any standard which is mandated in general law or regulation for child care of a particular type. A State which currently has health and safety standards that apply only to publicly-funded care could extend such standards to protect all children. Funding to assist States to do so is available through the licensing and monitoring grant under section 402(g)(6) of the Act and the Child Care and Development Block Grant Act of 1990.

(2) The proposed regulation does not require States to develop standards nor does it require that standards that States do have be uniform across all types of care.

(3) States have been paying for care, including informal care, that does not meet State standards for publicly-funded care, for years through the AFDC disregard.

(Catalog of Federal Domestic Assistance Programs; 93.021 Job Opportunities and Basic Skills Training, 93.036 At-Risk Child Care)

List of Subjects in 45 CFR

Part 255

Aid to Families with Dependent Children, Grant programs—social programs, Employment, education and training, Day care.

Part 257

Day care, Grant programs—social programs, reporting and recordkeeping requirements.

Dated: April 12, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Family Support.

Approved: April 25, 1991.

Louis W. Sullivan, M.D.,

Secretary, Department of Health and Human Services.

Accordingly, chapter II, title 45, Code of Federal Regulations is amended as set forth below:

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

1. The authority citation for part 255 continues to read as follows:

Authority: Secs. 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

2. Section 255.4 is amended by revising paragraph (c)(2) to read as follows:

§ 255.4 Allowable costs and matching rates.

* * * * *

(c) * * *

(2) The care meets applicable standards of State and local law, and/or Tribal law, where applicable. Applicable standards are licensing or regulatory requirements which apply to care of a particular type in the State, local area, or Indian reservation regardless of the source of payment for the care.

* * * * *

3. A new part 257 is added to read as follows:

PART 257—AT-RISK CHILD CARE PROGRAM

Sec.

257.0 Purpose.
257.10 State IV–A agency administration.
257.20 Requirement for a State At-Risk Child Care plan.
257.21 State plan content.
257.30 Eligibility.
257.31 Fee requirements.
257.40 Methods of providing child care.
257.41 Child care standards.
257.50 Reporting requirements.
257.60 Availability of funding.
257.61 Grant awards.
257.62 Matching requirements.
257.63 Allowable expenditures.
257.64 Non-supplantation.
257.65 General administrative requirements.
257.66 Financial reporting.
257.67 Cost allocation.
257.68 Disallowance procedures.

Authority: Secs. 402, 403, and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603, and 1302).

§ 257.0 Purpose.

This part pertains to the At-Risk Child Care program which permits States to provide assistance to low-income working families who need child care in order to work and are otherwise at risk of becoming eligible for AFDC.

§ 257.10 State IV–A agency administration.

(a) The State agency responsible for administering or supervising the State's title IV–A Plan is responsible for administering the At-Risk Child Care program.

(b) The following functions must be performed by the State IV–A agency:

(1) Planning for and design of the At-Risk Child Care program, including submission of the State Plan to the Secretary;

(2) Establishing eligibility criteria;

(3) Setting local market rates and the sliding fee scale;

(4) Issuing policies, rules, and regulations governing the program;

(5) Submitting reports required by the Secretary as specified at § 257.50;

(6) Submitting quarterly estimates and expenditure reports pursuant to § 257.61; and

(7) Submitting Standard Form LLL (SF–LLL) which assures that funds will not be used for political lobbying purposes, pursuant to Part 93 of this title, prior to the beginning of each fiscal year.

(c) Except for functions described in paragraph (b) of this section, the State IV–A agency may carry out the At-Risk Child Care program through arrangements or under contracts with other State or local administrative entities, or other public or private organizations.

(1) In doing so, the entity or organization must follow the policies, rules, and regulations of the State IV–A agency and must not have the authority to review, change, or disapprove any State IV–A agency administrative decision. Neither shall the entity or organization substitute its judgment for that of the State IV–A agency in the application of policies, rules and regulations promulgated by the State IV–A agency.

(2) Other entities or organizations may determine individual eligibility for the At-Risk Child Care program in accordance with rules established by the State IV–A agency.

§ 257.20 Requirement for a State At-Risk Child Care Plan.

(a) The State IV–A agency must submit the At-Risk Child Care Plan to the Secretary for approval.

(b)(1) The At-Risk Child Care Plan shall be submitted as an amendment to the State Supportive Services Plan which is defined at § 255.1.

(2) An At-Risk Child Care Plan may be submitted at any time during the quarter in which the State intends it to be effective. Upon its approval, the plan will be effective not earlier than the first day of the calendar quarter in which it is submitted.

(3) A State shall be entitled to its maximum grant, as defined at § 257.60(c), for any fiscal year in which it has an approved At-Risk Child Care Plan; however, it may not claim expenditures for any period prior to the effective date of the State Plan.

(c)(1) States operating an At-Risk Child Care program under an interim application approved prior to the issuance of At-Risk Child Care preprints shall submit a new At-Risk Child Care plan as an amendment to its Supportive Services Plan to the Secretary for approval after issuance of the preprint.

(2) The amendment required under paragraph (c)(1) of this section must be submitted in the quarter following the quarter in which the preprint is issued, to be effective not earlier than the first date of the calendar quarter in which it is submitted.

(3) A State with an approved interim application with a start date of October 1, 1990 may claim for expenditures for the period beginning October 1, 1990.

(d) A State that submits a plan to provide for At-Risk Child Care that is not approvable will be given the opportunity to make revisions before final disapproval; upon formal disapproval, a State may request a hearing pursuant to the process set forth in § 201.4 and part 213 of this chapter.

§ 257.21 State plan content.

A State's At-Risk Child Care plan must include the following:

(a) Assurances that:

(1) The State IV–A agency will, upon approval of the plan, administer the At-Risk Child Care Program in accordance with the requirements of sections 402(i) and 403(n) of the Act and the regulations under this part;

(2) Child care meets applicable standards of State and local law in accordance with § 257.41;

(3) All child care providers, except those giving care solely to members of their family, are licensed, regulated, or registered by the State or locality in which the care is provided in accordance with § 257.41;

(4) Any provider of child care must allow parental access, in accordance with § 257.41;

(5) Amounts expended by the State for child care under section 403(n) of the Act do not supplant any other Federal or State funds used for child care services;

(6) Child care provided or claimed for reimbursement is reasonably related to the hours of employment;

(7) Individuals are not discriminated against on the basis of race, sex, national origin, religion, or handicapping condition in access to the At-Risk Child Care program.

(b) Definitions of the following terms:

(1) At-Risk of being eligible for AFDC;

(2) Low income, as it will be used to determine eligibility for the program; and

(c) Any other eligibility criteria that the State adopts, pursuant to § 257.30;

(d) A description of the State's priorities for providing At-Risk Child Care;

(e) A description of the administrative structure, including what entity determines eligibility, as provided in § 257.10;

(f) If not provided statewide, a list of political subdivisions where the At-Risk Child Care program is offered;

(g) Methods the State agency will use to provide child care in accordance with § 257.40;

(h) A description of the State's registration process for unlicensed and uncertified providers including time frames for payment, in accordance with § 257.41(b);

(i) Local market rates, in accordance with § 257.63(a) and § 255.4(a) of this chapter;

(j) The statewide limit(s), if any, in accordance with § 257.63(b);

(k) The sliding fee scale under which families will contribute to the cost of care, in accordance with § 257.31. This includes the income rules used to calculate the family's contribution to the cost of care, in accordance with § 257.31;

(l) A description of the State's policy on providing child care during gaps in employment, in accordance with § 257.30(c);

(m) A description of coordination of At-Risk Child Care with existing IV–A child care programs, with other

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Federally-funded child care programs, and with child care provided through other State, public, and private agencies; and

(n) The base period and the amount established for the base period, as provided in § 257.64.

§ 257.30 Eligibility.

(a) A family is eligible for child care under this part provided the family:

(1) Is low income, as defined in the approved State At-Risk Child Care Plan;

(2) Is not receiving AFDC;

(3) Is at risk of becoming eligible for AFDC, as defined in the approved At-Risk Child Care Plan;

(4) Needs such child care in order to accept employment or remain employed; and

(5) Meets such other conditions as the State may describe in its approved At-Risk Child Care Plan.

(b) The State may provide child care for any child in the family who needs such care and who:

(1) Is under age 13; or

(2) Is under age 19 (or under age 20, if the State so provides in its definition of dependent child in its State IV–A plan), and

(i) Is physically or mentally incapable of caring for himself or herself, as verified by the State based on a determination of a physician or a licensed or certified psychologist; or

(ii) Is under court supervision.

(c) A State IV–A agency may provide child care if child care arrangements would otherwise be lost:

(1) For up to two weeks prior to the start of employment; or

(2) For up to one month during a break in employment if subsequent employment is scheduled to begin within that period.

§ 257.31 Fee requirement.

(a) The State IV–A agency must require each family receiving At-Risk Child Care to contribute toward the payment for such care based on the family's ability to pay.

(b) Each State IV–A agency shall establish a sliding fee scale which will provide for some level of contribution by all recipients.

(c) The State IV–A agency may vary the period of collection for different fee levels.

(d) The State IV–A agency may establish whether fees are paid to the providers or to the State agency.

§ 257.40 Methods of providing child care.

(a) A State may use any of the following methods:

(1) Providing the care directly;

(2) Arranging the care through public or private providers by use of purchase of service contracts or vouchers;

(3) Providing cash or vouchers in advance to the caretaker relative so that the child care costs may be prepaid;

(4) Reimbursing the caretaker relative for child care expenses incurred; or

(5) Adopting such other arrangements as the agency deems appropriate, including certificates.

(b) If more than one type of child care is available, e.g., center, group family care or family day care, the caretaker relative must be provided an opportunity to choose the arrangement.

(c)(1) The State IV–A agency may select the method of payment under paragraph (a) of this section.

(2) The State IV–A agency must establish at least one method by which self-arranged child care can be paid.

(d) The State IV–A agency must coordinate its child care activities under this part with existing child care resource and referral agencies and with early childhood education programs in the State, including Head Start programs, preschool programs funded under chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for disabled children).

§ 257.41 Child care standards.

(a)(1) Child care provided with funds under this part must meet applicable standards of State and local law, and/or Tribal law.

(2) Applicable standards are licensing or regulatory requirements which apply to care of a particular type in the State, local area, or Indian reservation, regardless of the source of payment for the care.

(b)(1) All providers of care who are not required to meet applicable standards as provided in paragraph (a) of this section and who are not individuals providing care solely to members of the individual's family, must be registered by the State or locality in which the care is provided prior to receiving payment.

(2) Registration procedures must:

(i) Collect only such information about providers required to register, pursuant to paragraph (b)(1) of this section as is necessary for the State to make payment to the provider or furnish information to the provider;

(ii) Facilitate appropriate and prompt payments;

(iii) Allow providers to register with the State or locality after selection by the parent(s);

(iv) Be simple and timely;

(v) Not exclude or have the effect of excluding any categories of child care providers.

(c) Child care providers receiving At-Risk Child Care funding must afford parents unlimited access to their children, including written records concerning their children, and to providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider.

§ 257.50 Reporting requirements.

(a) Beginning with FY 1993, the State IV–A agency shall prepare and submit an annual report to the Secretary that contains the following:

(1) The number of children receiving services and the average cost of such services separately by type of care, including center-based, group home, family, and relative care;

(2) The child care licensing and regulatory (including registration) requirements in effect in the State with respect to each type of care; and

(3) The enforcement policies and practices in effect in the State which apply to licensed and regulated child care providers (including providers required to register).

(b) The State IV–A agency shall submit its report to the Secretary no later than 90 days after the end of the federal fiscal year.

(c) The State IV–A agency shall make the report available for public inspection within the State and shall provide a copy of each report, on request, to any interested public agency.

§ 257.60 Availability of funding.

(a) A State agency is entitled to payments if it has an approved State At-Risk Child Care Plan. The payments are available only for the allowable expenditures of the program.

(b)(1) A State's limitation, i.e., share, from the national total of available funds for a fiscal year is based on the same ratio as the number of children under 13 residing in the State is to the national total of children under 13.

(2) The number of children under 13 for the States is derived from the best data available to the Secretary for the second preceding fiscal year, or for the Territories, the best data available for the closest fiscal year prior to the second fiscal year.

(c) The difference between the amount not paid to a State in a fiscal year and the State's limitation as described in paragraph (b) of this section for that same fiscal year may be added to a State's limitation for the following fiscal year. The total amount available in a fiscal year is referred to as a State's maximum grant for that year.

(d) For American Samoa, Guam, Puerto Rico, and the Virgin Islands, funding under this part is subject to the funding restrictions established under Section 1108 of the Social Security Act.

§ 257.61 Grant awards.

(a) States are required to submit estimates and report expenditures on a quarterly basis. Adjustments in subsequent quarters' grant awards will be made to reflect over- and under-estimates in prior quarters' expenditures.

(b) The total amount paid to a State in a fiscal year may not exceed the State's limitation or maximum grant for the fiscal year, whichever is appropriate.

(c) The regulations pertaining to State estimates and expenditures at § 201.5 of this chapter and the timely filing of claims at part 95, subpart A of this title apply to expenditures under this part.

§ 257.62 Matching requirments.

(a) Payments for child care services provided under this part and for the costs of administering them are available at the Federal Medical Assistance Percentage (FMAP) rate.

(b) Expenditures for the program will be matched at the FMAP rate applicable for the fiscal year in which expenditures are made.

(c) A State's share of expenditures must be in cash and may include public and private funds.

(1) Public funds may be considered as the State's share in claiming FFP when the funds are:

(i) Appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control or certified by the contributing public agency as representing expenditures eligible for FFP;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(2) Funds donated from private sources may be considered as the State's share in claiming FFP when the funds:

(i) Are transferred to the State or local agency and under its administrative control;

(ii) Are donated without any restriction which would require their use for assisting a particular individual or organization or at particular facilities or institutions; and

(iii) Do not revert to the donor's facility or use either directly or indirectly.

(3) An amount equal to any funds received which do not meet the conditions of paragraphs (c) (1) and (2) of this section must be deducted from the State's expenditure claims subject to Federal matching.

(4) Third-party in-kind contributions may not be used.

(d) For American Samoa, Guam, and the Virgin Islands, the matching requirement for the first $200,000 in expenditures made in a fiscal year is waived.

§ 257.63 Allowable expenditures.

(a) FFP is available for the actual cost of child care, but not for more than the applicable local market rate.

(1) The applicable local market rate must be determined in accordance with the provisions of § 255.4 (a)(2) and (a)(3) of this chapter.

(b) The State agency may establish a statewide limit.

(1) The statewide limit may be the same as the statewide limits established at § 255.4(a)(1) of this chapter or may be a higher or lower amount;

(2) The State may specify a higher statewide limit for children with special needs.

(c) FFP is available for expenditures made in administering the provision of child care services under this part. FFP is not available for costs associated with the recruitment or training of child care providers, resource development, or licensing activities.

§ 257.64 Non-supplantation.

(a) Amounts expended by the State IV–A agency for child care under this Part shall not be used to supplant any other Federal or State funds used for child care services.

(b)(1) The State must determine the total amount of Federal and State funds expended during a base period (as defined in paragraph (b)(2) of this section) for child care services. States must assure that the amount of funding from other sources is maintained at the amount established for the base period.

(2) The base period will be a twelve-month period (e.g., the State fiscal year) which includes the month one year prior to the first month in which the State implements the At-Risk Child Care program.

(3) The amount established for the base period will be included in the State's At-Risk Child Care Plan.

§ 257.65 General administrative requirements.

The provisions of part 74 of this title (with the exception of subpart G, Matching and Cost Sharing, and subpart I, Financial Reporting Requirement) establishing uniform administrative requirements and cost principles shall apply to this program.

§ 257.66 Financial reporting.

(a) State estimates and expenditures will be reported on the financial reporting form for expenditures made under title IV–A.

(b) Contributions made by families for the cost of care where the State has made a full payment to the provider will be reported as program income and will be used to offset expenditures claimed as child care services payments. The requirements at § 74.42(c), subpart F of this title apply.

§ 257.67 Cost allocation.

A State agency shall amend its cost allocation plan to include the costs of the program, in accordance with the regulations at part 95, subpart E of this title.

§ 257.68 Disallowance procedures.

(a) Expenditures under this plan that do not meet the requirements of this part or the State At-Risk Child Care Plan are unallowable.

(b) The deferral and disallowances regulations of § 201.15 shall apply to this program. If the State IV–A agency disagrees with the decision to disallow FFP, it can appeal under existing title IV–A procedures, including review of the Departmental Appeals Board, in accordance with part 16 of this title.

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Part VI

Postal Service

39 CFR Part 111
Zip+4 and Zip+4 Barcoded Rate Presort Requirements; Proposed Rule

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POSTAL SERVICE

39 CFR Part 111

Zip+4 and Zip+4 Barcoded Rate Presort Requirements

AGENCY: Postal Service.

ACTION: Proposed rule; solicitation of suggestions.

SUMMARY: This proposal would amend the Domestic Mail Manual (DMM), with a proposed effective date of September 20, 1992, to require that nonbarcoded mailpieces within Zip+4 Barcoded rate mailings maintain a barcode clear zone.

This proposal would also amend the DMM, with a proposed effective date of September 15, 1991, to correct an error in the terminology used to describe the required relationship between the reflectance of the background of the mailpiece and the reflectance of the ink in the barcode.

This proposal would amend the weight requirements for automation-based rate mailings to provide that the maximum weight limit for any mailpiece within a Zip+4 barcoded rate mailing will remain at the current 3.0 ounces.

This proposal would also amend existing Zip+4 rate sortation requirements in DMM chapter 5 and, add new sortation options for ZIP+4 Barcoded rate categories to DMM chapter 5. If adopted, the new sortation options would become effective upon publication of a final rule, expected to be no later than September 15, 1991.

In addition, the Postal Service seeks preliminary comments on its plan to make the sortation options in DMM chapter 5 mandatory for all automation-based rate mailings of letter-size pieces effective in March 1992. Under this plan, current sortation requirements in DMM sections 364, 365, and 366, for First-Class Mail; 424.5, 424.6, and 447, for second-class mail; and 628 and 647 for third-class mail, would be eliminated. Only the sortation options in chapter 5, as currently stated and as proposed in this rulemaking, could be used to qualify for presorted Zip+4 and Zip+4 Barcoded rates.

The Postal Service anticipates that mailers will need some time to make such a transition. Accordingly, in addition to comments on the proposed preparation requirements in chapter 5, the Postal Service hereby requests mailers to provide comments on the concept of eliminating the current automation-compatible mail provisions in chapters 3, 4, and 6, and to provide information regarding the length of transition time they would need to change their mailing operations to meet the requirements of the chapter 5 preparation options. The Postal Service will use this information in formulating a possible future proposed rule to make chapter 5 preparation options the only permissible sortation options for obtaining presorted Zip+4 Barcoded rates.

DATES: Comments must be received on or before August 9, 1991.

ADDRESSES: All written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, room 8430, 475 L'Enfant Plaza, SW., Washington, DC 20260–5903. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday, in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Arvonio (202) 268–5164, or Mrs. Lynn M. Martin (202) 268–5176, for information concerning the chapter 5 preparation requirements and the maximum weight requirements for Zip+4 Barcoded rate mailings.

Ms. Evelyn Stein, (202) 268–5175, for information concerning the proposed changes to the barcode clear zone requirements and the print contrast/print reflectance difference requirements.

SUPPLEMENTARY INFORMATION:

A. Barcode Clear Zone Reflectance Requirements for Non-Barcoded Pieces in ZIP+4 Barcoded Rate Mailings

In order to process large volumes of mail quickly and accurately the Postal Service must be able to apply barcodes to nonbarcoded letter-size mail. The mailpiece must provide a relatively clear zone for barcode application (i.e., one that meets certain reflectance requirements) for the barcode to be clearly distinguishable from the background upon which it is printed. DMM section 551.4 establishes "barcode clear zone" reflectance criteria for ZIP+4 Barcode rate mail and for all mail included in ZIP+4 mailings.

Current regulations do not require nonbarcoded mailpieces (pieces not bearing a ZIP+4 or delivery point barcode) that are included in a ZIP+4 Barcoded rate mailing to have a clear zone meeting the reflectance requirements of DMM 551.4. However, a clear zone meeting these reflectance criteria on nonbarcoded pieces is necessary to allow the Postal Service to apply a ZIP+4 barcode wherever possible to mailpieces that the mailer was unable to barcode with a ZIP+4 or delivery point barcode, but which have been included as part of an automation-based rate mailing. Adding this requirement for nonbarcoded pieces in mailings barcoded in either the lower right corner or in the address block will provide the USPS an opportunity to automate the sortation of all letter-size mail which has been entered into the automated mailstream as part of a barcoded rate mailing, thereby enhancing the Postal Service's ability to process increased volumes on the more efficient automated equipment.

Accordingly, the Postal Service proposes to require that all nonbarcoded mailpieces in any barcoded mailing have a barcode clear zone that produces a background reflectance of at least 50 percent in the red and 45 percent in the green portions of the optical spectrum, as specified by DMM 551.4, and that meets the opacity, dark fiber, and background pattern criteria of 551.4.

Under this proposed change, mailers who barcode in the address block must either maintain a clear zone in the lower right portion of the envelope of non-barcoded pieces or present those non-barcoded pieces in a separate, non-automation-compatible mailing.

To allow the mailing industry time to use up existing supplies of paper or envelope stock, and to plan for the change, the Postal Service proposes to delay implementation of this requirement, if adopted, until September 20, 1992. Comments are invited on both the time frame and the proposed regulation itself.

B. Required Relationship Between the Reflectance of the Background of the Mailpiece and the Reflectance of the Ink in the Barcode

In the final rule on Eligibility Requirements for Automated Rate Categories (56 FR 2598) published January 23, 1991, the term "print contrast ratio" (PCR) was incorrectly used in DMM 551.42. The proper term is "print reflectance difference" (PRD). Since USPS barcode reader electronics use a direct measurement of ink and background, the print reflectance difference is a more relevant measurement of the information evaluated for barcode scanning. Print reflectance difference is the reflectance of the background of the mailpiece minus the reflectance of the ink used to print the barcode on the mailpiece. This result is multiplied by 100 and is expressed as a percentage. A print reflectance difference of 30 percent is necessary for successful processing of barcoded mail on USPS barcode sorting equipment. Unlike USPS OCR electronics, barcode sorters do not perform a thresholding function to compensate for background reflectance and, therefore, the print contrast ratio requirement is not appropriate for barcodes, but only addresses.

Accordingly, the Postal Service proposes to correct this error in terminology effective September 15, 1991, to change the PCR requirement of 30 percent in current DMM 551.42 to a requirement for a 30 percent "print reflectance difference." It is anticipated that correction of this error in terminology will not have a significant impact on mailers' ability to qualify for automation rates, although some adjustment may be required. This proposed change restores the correct term ("print reflectance difference") that had appeared in the DMM prior to February 24, 1991. Until September 15, either a PCR or a PRD of 30 percent will be accepted.

C. Relaxing the 2.5-Ounce Maximum Weight Requirement for ZIP+4 Barcoded Rate Mailings

In order to encourage more mailers to prepare ZIP+4 Barcoded rate mail, and thereby allow the Postal Service to achieve the cost savings and efficiencies associated with processing customer barcoded mailings, the Postal Service proposes to allow mailers to continue to include mailpieces that weigh up to 3.0 ounces within ZIP+4 Barcoded rate mailings.

An evaluation of the Postal Service's earlier decision to impose a 2.5 ounce weight limit on all automation-based rate mailings has established that a distinction should be made between mail prepared for processing On Optical Character Reading (OCR) equipment and ZIP+4 barcoded mail ready for immediate processing on barcode sorters. Mail which is prebarcoded bypasses the OCR, which can eliminate a step in processing thereby making the lower throughput associated with heavier pieces less of a problem.

A similar change is not being proposed to the ZIP+4 rate weight requirements because ZIP+4 mail must still undergo this two-step sortation process. Therefore the maximum weight for pieces in ZIP+4 rate mailings will be reduced to 2.5 ounces on September 15, 1991, as provided in DMM 521.3.

D. Revisions to Chapter 5 Sortation Requirements

Some mailers have advised the Postal Service that they are unable to prepare mailings at the ZIP+4 Barcoded rates because of the current requirement to document pieces by the type of tray or sack in which they are placed. These requirements are necessary under the current preparation requirements because different presort levels of tray or sack qualify for different rates. This documentation is necessary to allow the Postal Service to verify the mailer's preparation of the mail and, therefore, its eligibility for the rates claimed. However, many mailers are apparently unable to take advantage of ZIP+4 Barcoded rates because their mailing operations do not allow them either to predict the level of tray or sack into which the piece or package will be placed, or to efficiently determine this information following mail preparation. This appears to be a particular problem for mailers using multi-line OCRs to barcode and sort a wide mix of mailpieces having different sizes and weights. Other mailers have indicated that they are unwilling to convert to chapter 5 tray-based preparation because if they choose to prepare ZIP+4 Barcoded mail under the current requirements in chapter 5, they will not qualify as many pieces for the 5-digit and 3-digit ZIP+4 Barcoded rates as they could under the current presort options available in DMM chapters 3, 4, and 6. For example, in a third-class 5-digit ZIP+4 Barcoded rate mailing prepared in sacks as described in DMM 626, as few as 125 pieces in a 5-digit sack are eligible for 5-digit level rates, as well as 5-digit packages in 3-digit sacks of 125 or more pieces. By contrast, in a mailing of any class prepared in accordance with current DMM 563, a full tray of mail is required to qualify barcoded pieces for the 5-digit ZIP+4 Barcoded rates. Similarly, First-Class sortation in DMM 364.2 allows ZIP+4 barcoded pieces in packages containing as few as 10 pieces to a 5-digit ZIP Code area to qualify for the 5-digit ZIP+4 Barcoded rate when placed within 5-digit, unique 3-digit, and SCF trays, whereas a full tray of mail to the 5-digit area is required by DMM 563 in order to qualify ZIP+4 barcoded pieces for the 5-digit ZIP+4 Barcoded rates.

In response to this situation and particularly in light of the Postal Service's future intent to eliminate the ZIP+4 and ZIP+4 Barcoded rate sortation options in DMM chapters 3, 4, and 6 (as noted in subsection E below), the Postal Service is proposing to add new alternative package-based preparation options to the DMM as sections 563.2, 563.3, and 563.4. The 5-digit mailing option in 563.2 would allow mailers to qualify for 5-digit ZIP+4 Barcoded rates where there are 10 or more ZIP+4 barcoded pieces for a 5-digit ZIP Code area provided all pieces (100%) in the mailing bear a ZIP+4 barcode or delivery point barcode. Pieces in groups of 10 or more for 5-digit areas will be eligible for the 5-digit ZIP+4 Barcoded rate regardless of the level of presort of the tray in which they are placed. Only full 5-digit, full 3-digit, and SCF trays of any volume will be permitted in 5-digit ZIP+4 Barcoded rate mailings.

Similarly, in 3-digit Barcoded rate mailings prepared under § 563.3 barcoded pieces within groups of 50 or more pieces to the same 3-digit ZIP Code area will qualify for the 3-digit ZIP+4 Barcoded rate. Full three-digit trays and SCF trays as well as less than full SCF trays may be prepared.

New section 563.4 will provide an option for combining mail prepared under 563.2 and mail prepared under 563.3 into a single mailing.

These new sortation options should help more mailers qualify for the ZIP+4 Barcoded rates under chapter 5 provisions. Furthermore, since qualification for the rate levels is not dependent upon the level of tray in which a piece is placed, the documentation required to accompany 3-digit Barcoded rate mailings need not show the level of tray or the number of pieces in a tray. (No documentation is required for 5-digit ZIP+4 Barcoded rate mailings since 100 percent of the pieces in the mailing must be ZIP+4 barcoded or delivery point barcoded.) This change should alleviate the documentation problems experienced by first- and third-class mailers under current chapters 3 and 6 preparation as well as under the current chapter 5 preparation.

The current ZIP+4 rate preparation requirements in chapter 5 will also be revised to allow more pieces to qualify for the presorted ZIP+4 rates. Although the ZIP+4 rate preparation requirements in chapter 5 will remain tray-based, less than full SCF trays will be permitted for all three classes of mail (previously this was allowed for second-class mail only). The mail within the less-than-full SCF trays must be packaged and labeled. This will allow third-class mailers to prepare such mailings in one mailstream (the current chapter 5 regulations require pieces not filling trays to be submitted as a separate mailing), as well as allow more pieces of first- and third-class to qualify for presorted ZIP+4 rates. As explained in part E below, the adoption of consolidated presortation requirements is not being extended to the ZIP+4 rate preparation portion of chapter 5 at this time.

The existing tray-based method of preparing ZIP+4 Barcoded rate mail under DMM 563 (renumbered in this proposed rule as 563.1) will remain with some changes described later in this summary.

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The following specific changes are proposed to chapter 5:

(1) Current DMM 561 is amended to provide for a new subsection that explains the various options that mailers have to prepare presorted ZIP+4 and ZIP+4 Barcoded rate mailings. Specifically, it explains that, in addition to chapters 3, 4, and 6 sortation, there is one tray-based ZIP+4 option in 562, and both a tray-based (563.1) and package-based sortation options (563.2 through 563.4) for ZIP+4 Barcoded rate mailings.

(2) The definition of what constitutes a full tray is clarified for all chapter 5 sortation options from "3/4 full of mail when its contents are reasonably compressed" to "3/4 full of mail when the bottom of the tray is placed at an approximately 90 degree angle to a level horizontal surface and the contents of the tray are compressed by their own weight." This will eliminate the possibility of inconsistent interpretations of the term "reasonably compressed" as well as any need to further define procedures for verifying it.

(3) The current requirement in chapter 5 that use of trays is mandatory for all classes of mail is extended to the new sortation options. Trays are the most effective container to maintain the automation compatibility of the mail. As explained in subsection E of this proposal, the completion of chapter 5 requirements will also result in the elimination of existing preparation rules in chapters 3, 4, and 6 for automation-based rate mailings. Through that process it will become a requirement that trays be used exclusively for ZIP+4 and ZIP+4 Barcoded rate mailings, and the use of sacks for second- and third-class mailings at those rates will be eliminated.

(4) The current requirement in chapter 5 for sleeving and banding trays that travel beyond the office of mailing is extended to the new sortation options. Unsleeved trays run the risk of having their contents fall out of the trays during transportation and handling within the postal system. To ensure that the trays and their contents remain intact during transportation, sleeves that are banded with a plastic strap at least once around the length of the tray are necessary.

(5) A requirement to face all the mail in the same direction within trays is added to all chapter 5 sortation options. This is a basic requirement for all presort categories of mail that is being restated in chapter 5. Having mail faced in the same direction is necessary for processing pieces on automated equipment.

(6) The current tray-based presorted ZIP+4 rate preparation requirements in DMM 562 are replaced with new tray-based regulations that:

(a) Allow less than full SCF trays to qualify for First-Class ZIP+4 Presort rates and second- and third-class basic ZIP+4 rates. For First-Class Mailings, there must be at least 50 pieces per 3-digit area in SCF trays. There is no minimum number of pieces in SCF trays for second- and third-class mail. Allowing less than full SCF trays will allow mailers to qualify all ZIP+4 coded pieces in a mailing for a ZIP+4 rate, and allow mailers of third-class matter to avoid having to prepare pieces that could not be placed in full trays as a separate mailing. (Second-class mailers can currently prepare less than full SCF trays.)

(b) Add a requirement to prepare pieces in less-than-full SCF trays in 3-digit packages that are labeled. Packages must be prepared with rubber bands. Packaging of pieces in less-than-full trays is necessary to maintain the orientation of the pieces in the trays. Labeling the packages gives the Postal Service additional flexibility when determining the best way to process the pieces in a tray.

(c) Revise the regulations for overflow trays to show that they pertain only to 5-digit and 3-digit trays, and that the required packages in these less-than-full trays must be labeled. Since SCF trays may now be less than full there is no need for regulations governing overflow SCF trays. The current regulations already require that pieces in less-than-full overflow trays be packaged. The requirement to label the packages is added to give the Postal Service additional flexibility when determining the best way to process the pieces in the tray. These packages must also be prepared with rubber bands.

(d) Clarify that documentation must separately show the number of pieces in 3-digit trays and the number of pieces in SCF trays. This requirement is needed because different second- and third-class ZIP+4 rates apply to mail in 3-digit trays than apply to mail in SCF trays.

(e) Add a requirement to include First-Class residual mail in the required documentation. This is necessary to establish that mailers have met the 85 percent ZIP+4 code requirement for the entire mailing and to determine what additional postage is owed the Postal Service for the residual pieces.

(f) Add a requirement to place mail in First-Class residual trays in 3-digit ZIP Code sequence to facilitate verification against the required documentation. A requirement is also added to package pieces in less-than-full residual trays by 3-digit ZIP Code area and to label the packages. The packaging is necessary to maintain the orientation of the pieces in the trays. The packages must be secured with rubber bands. Labeling the packages gives the Postal Service more flexibility when determining the best way to process the pieces in the tray. An alternative method of preparing residual is described in 6-g below.

(g) Add a new physical separation method of preparing and documenting residual mail as an alternative option for mailers who cannot sequence residual mail by 3-digit ZIP Code area as described above. Under this option, ZIP+4 coded mail pieces are place in separate trays from those that are not ZIP+4 coded. The pieces in all residual trays must be further separated into groups of 100 pieces. The counts from these trays must be included in the summary portion of the documentation.

(h) Clarify tray label requirements. The requirements for labeling 3-digit trays are made consistent with the new sections in 560. The proposed regulations also specify that trays of all classes of mail must show the name of the mailer and the mailer location on Line 3 of the tray label, rather than the post office of origin. The descriptive prefix "FR" (meaning "from") that appears in front of the name of the mailer is omitted. With new destination rates and use of the plant-verified drop shipment procedures by mailers, the name of the mailer and the mailer location are more descriptive of where the mail originated.

(i) Add a statement clarifying that only standard size 2-foot trays may be used to prepare presorted ZIP+4 mail.

(7) The current tray-based Zip+4 barcoded regulations are renumbered in section 563.1, and are amended as follows:

(a) A requirement that pieces in 5-digit trays be 100 percent Zip+4 or delivery point barcoded is added. When processed at General Mail Facilities (GMFs), mail presorted to 5-digit levels is run on the barcode sorters as one of the last steps in processing the mail. Therefore, non-Zip+4 barcoded pieces rejected by barcode sorters when running 5-digit mail will not be identified until late in the processing windows, generally too late to allow a run of the rejects on an OCR (to add a barcode) and re-run them through the barcode sorters and still meet delivery service schedules. Furthermore, to reduce facilities costs and to increase processing efficiency, the Postal Service is beginning to deploy barcode sorers which will sort 5-digit presorted mail at Associate Offices and delivery offices that are non-OCR sites. Non-barcoded mail rejected by barcode sorter at these locations will either have to be worked manually, or rerouted back to the SCF or GMF for further processing through OCRs or MPLSMs, at additional expense to the Postal Service. In the latter case service delays will also result. For these reasons, the Postal Service does not believe it is operationally sound to continue to accept up to 15 percent non-Zip+4 barcoded or non-delivery point barcoded pieces sorted to 5-digit levels as part of a barcoded rate mailing. Although extra processing will also ensue when mail presorted to 3-digit levels is rejected by barcode sorters, these pieces are identified earlier in the processing system and in time to be rerun through OCRs or MPLSMs and still meet service standards. Furthermore, these pieces will generally be processed at GMFs or SCFs. Accordingly, although mailers and the Postal Service would benefit if all mailer barcoded mailings were required to be 100 % Zip+4 barcoded or delivery point barcoded, at the present time the Postal Service proposes to impose this requirement only on mail qualifying for 5-digit Zip+4 barcoded rates.

(b) A requirement to label packaged mail in overflow trays is added. These trays are less than full by definition, and the pieces in these trays are currently required to be packaged to maintain their orientation. The added requirement to label the packages will give the Postal Service additional flexibility when determining the best way to process the pieces in the tray. The packages must be prepared with rubber bands.

(c) A requirement is added to document residual mail. This is needed to determine that the 85% barcoded piece requirement for the entire mailing has been met and to determine the proper postage owed the Postal Service for the residual pieces.

(d) A requirement is added to place mail in residual trays in 3-digit Zip Code sequence to facilitate verification to package and lable pieces in less-than-full residual trays. The packages must be prepared with rubber bands. The packaging is necessary to maintain the orientation of the pieces in the trays. Labeling the packages gives the Postal Service more flexibility when determining the best way to process the pieces in the tray. An alternative method of preparing residual pieces if described in D-7-e below.

(e) A new physical separation method of preparing and documenting residual mail is added as an alternative option for mailers who cannot sequence residual mail by 3-digit Zip Code area as described above. Under this option, Zip+4 and delivery point barcoded mail pieces are placed in separate trays from those that are not Zip+4 or delivery point barcoded. If mailers wish to claim Zip+4 rates on pieces that do not bear a barcode, but bear a correct numeric Zip+4 code, the residual pieces that are not Zip+4 barcoded or delivery point barcoded may be further separated into trays that contain only pieces with numeric Zip+4 codes and trays that contain only pieces with numeric 5-digit Zip Codes. The pieces in all residual trays must be further separated into groups of 100 pieces. The information from thee physical counts must be included in the summary portion of the required documentation.

(f) Tray label requirements are clarified. The requirements for labeling 3-digit trays are made consistent with the new sections in 560. The proposed regulations also specify that trays of all classes of mail must show the name of the mailer and the mailer location on line 3 of the tray label rather than the post office of origin. The descriptive prefix "FR" (meaning "from") that appears in front of the name of the mailer is omitted. With new destination rates and use of the plant-verified drop shipment procedures by mailers, the name of the mailer and the mailer location are more descriptive of where the mail originated.

(g) A statement is added to clarify that only standard-size 2-foot trays may be used to prepare presorted Zip+4 Barcoded rate mail under this option

Note: As explained in part E below, the adoption of consolidated presortation requirements is not being extended to the tray based Zip+4 Barcoded rate preparation portion of chapter 5 at this time.

(8) A new preparation option for 5-digit Zip+4 barcoded rate mailings is added as 563.2. A summary of the requirements of this new preparation option follows:

(a) Only Zip+4 barcoded or delivery point barcoded pieces may be included in the mailing. That is, 5-digit Zip+4 Barcoded rate mailings prepared under this option must consist of 100 percent Zip+4 barcoded or delivery point barcoded pieces. Pieces that do not bear a Zip+4 barcode or a delivery point barcode cannot be submitted as part of a 5-digit barcoded rate mailing under DMM 563.2. Such pieces must be submitted in a separate mailing. The reasons for requiring 100% barcoded pieces were set forth in section D-7-a above.

(b) This package-based sortation option will allow a package of 10 or more pieces for any 5-digit Zip Code area to obtain the 5-digit Zip+4 Barcode rate. As explained in part E below, pieces that cannot be placed in a group of 10 or more Zip+4 barcoded or delivery point barcoded pieces for a 5-digit Zip Code area cannot be included in the mailing.

(c) Groups of 10 or more pieces for a 5-digit Zip Code area must be placed in full 5-digit or full 3-digit trays, or in SCF trays. Only SCF trays may be less than full. To limit the number of less-than-full trays in the system, overflow trays (which are less than full by definition) to 5-digit and 3-digit destinations are not permitted. It is not as efficient on a cost per piece basis to transport less-than full trays, since a less-than-full tray occupies the same amount of space as a full tray in a truck or airplane. Because all pieces in the mailing are eligible for the same rate regardless of the sortation level of the tray in which they are placed, the prohibition against less-than-full 5-digit and 3-digit trays should not adversely affect mailers.

(d) Groups of 10 or more pieces for the same 5-digit ZIP Code area must be delineated by separator cards when placed in full 3-digit and full SCF trays. This will allow the Postal Service the option of consolidating the small groups for various 5-digit areas into full trays to 5-digit areas. The use of separator cards as opposed to rubber bands in full trays allows for easier postal handling of the mail and is not as likely to bend the mailpieces as packaging is.

(e) Pieces in less-than-full SCF trays must be packaged by 5-digit ZIP Code area and labeled. Packaging is necessary to maintain the orientation of the pieces in the trays and labeling the packages gives the Postal Service more flexibility when determining the best way to process the pieces in the tray. The packages must be secured with rubber bands.

(f) Many mailers have indicated a desire to use 1-foot trays. The Postal Service has determined to permit mailers to use 1-foot trays (half-trays) to prepare 5-digit trays in the mailing on the condition that the mailer provides the 1-foot trays and their sleeves. The trays and sleeves must meet postal specifications. The Postal Service will not undertake the provision of 1-foot trays to mailers. The cost of these smaller trays is nearly equal to the cost of procuring standard 2-foot trays. Procuring 1-foot trays in sufficient quantity to allow the Postal Service to provide them to any mailer wishing to use them, as well as developing storage, distribution, and inventory systems that would assure that the trays were available at all the locations needed by mailers is not economical for the Postal Service. In order to limit the demands of

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handling the 1-foot trays on our current storage and inventory systems for these trays, the Postal Service proposes to limit mailer use of these trays in 5-digit ZIP+4 Barcoded rate mailings to 5-digit trays. As supplemental information for those wishing to make specific comments concerning the specifications for constructing 1-foot trays and their sleeves, specifications can be obtained, during this notice and comment period, by requesting in writing or in person (between 9 a.m. and 4 p.m.), at the following address: Director, Office of Classification and Rates Administration, United States Postal Service, 475 L'Enfant Plaza, SW., room 8430, Washington, DC 20260–5903. This address is different from the address shown in the body of the regulations for obtaining this information in the future.

(g) All pieces in the mailing qualify for the 5-digit ZIP+4 barcoded rates.

(h) There are no documentation requirements.

(9) New section 563.3 adds a package-based sortation option for mailings at the 3-digit ZIP+4 Barcoded and basic ZIP+4 Barcoded (or First-Class nonpresorted) rates. The major provisions of this section are as follows:

(a) Pieces that do not bear ZIP+4 barcodes or delivery point barcodes will be permitted in such mailings if at least 85 percent of the pieces in the mailing are properly ZIP+4 barcoded or delivery point barcoded.

(b) This sortation option will allow ZIP+4 barcoded and delivery point barcoded pieces in full 3-digit trays containing at least 50 pieces, as well as any group of 50 or more pieces for a 3-digit area that is placed within an SCF tray, to qualify for the 3-digit ZIP+4 Barcoded rate. Only SCF trays may be less than full. Overflow trays to 3-digit ZIP Code areas (overflow trays are less than full by definition) are not permitted, to limit the number of less-than-full trays in the system. (Less-than-full trays can adversely affect transportation costs as described in D–8–c above.) Because a group of 50 or more pieces for a 3-digit ZIP Code area may qualify for the 3-digit Barcoded rate regardless of whether it is placed in a 3-digit tray or an SCF tray, the prohibition against less-than-full 3-digit trays should not adversely affect mailers.

(c) Pieces that cannot be placed in a group of 50 or more pieces for a 3-digit ZIP Code area are residual pieces. Residual pieces that are ZIP+4 barcoded or delivery point barcoded will qualify for the First-Class nonpresorted ZIP+4 Barcoded rate for cards or, if other than cards, the nonpresorted ZIP+4 rates; the second-class Level A/G/J1 ZIP+4 Barcoded rates; or the third-class basic ZIP+4 Barcoded rates.

(d) Mailers may use 1-foot trays only for 3-digit tray sortation. As noted previously in section D–8–f, mailers must provide the 1-foot trays and their sleeves and the trays and sleeves must meet postal specifications for their construction.

(e) Residual mail (mail that cannot be placed in a group of 50 or more pieces for a 3-digit area) can be packaged, placed in SCF trays, and listed by 3-digit area by rate category on documentation. An alternative is to separately tray residual mail by rate category. That is, place ZIP+4 barcoded or delivery point barcoded pieces in separate trays from nonbarcoded pieces. Mailers wishing to claim ZIP+4 rates on pieces that are not barcoded but that bear a correct numeric ZIP+4 code, must further separate nonbarcoded residual pieces into trays containing pieces with numeric ZIP+4 codes and trays containing pieces with 5-digit ZIP Codes. The pieces in each category of residual tray must then be separated into groups of 100 pieces. The summary portion of documentation must include the residual pieces separated and counted in this manner.

(f) Except for residual mail, packaging is prohibited in full trays. In full SCF trays the qualifying mail to each 3-digit ZIP Code area in the tray must be grouped together and residual pieces must be packaged and labeled by 3-digit area. All mail in less than full SCF trays (both qualifying groups of 50 or more pieces to a 3-digit ZIP Code area and residual) must be packaged and labeled by 3-digit area. The packages must be secured with rubber bands. The grouping and packaging requirements allow the Postal Service more flexibility when determining the best way to process pieces in a tray.

(10) A new section 563.4 is added that allows mailers to prepare as one mailing having two portions (the 5-digit portion of the mailing prepared under 563.2 and the 3-digit portion of the mailing prepared under 563.3) for purposes of meeting minimum quantity requirements for mailing and for meeting the overall 85% ZIP+4 barcoded or delivery point barcoded piece requirement for the 3-digit Barcoded rates. Additional documentation requirements are necessary for the 5-digit portion of the mailing when this option is used.

E. Postal Service's Intent to Eliminate the Preparation Options In Chapters, 3, 4, and 6

Since regulations for ZIP+4 First-Class Mail were first implemented in 1983, they have been amended to allow combined ZIP+4 Presort and Presorted First-Class mailings (in 1985), and optional mailings exclusively for 3-digit automated site service areas (in 1988). In 1988, new rates were offered, and implementing regulations were adopted, for ZIP+4 third-class mail, and for ZIP+4 barcoded First- and third class mail. In 1991, a nonpresorted ZIP+4 Barcoded First-Class card rate was introduced, ZIP+4 and ZIP+4 Barcoded rates were extended to letter-size second-class mail, and the automated site preparation option was further offered in second- and third-class.

Before 1981, the regulations for each rate were generally self-contained, i.e., each rate's regulations presented relatively complete and separate (but relatively parallel) requirements for the physical mailpiece, for technical preparation of the ZIP+4 code or barcode, and or presortation and documentation of the mailing.

In late 1980, the Postal Service proposed to establish more specific and comprehensive standards for mail being processed over automated equipment (automation-compatible mail) and claimed at the ZIP+4 or ZIP+4 Barcoded (automation-based) rates. The final rule implementing these standards was published on January 23, 1991 (56 FR 2598–2631).

At this time, the Postal Service was preparing to implement a wide range of automation-based rates adopted as part of the recent postal rate case (PRC Docket No. R90–1), and was preparing the regulations necessary to support eligibility for those rates.

It became apparent at that time that continued development of separate requirements for the several automation-based rates in chapters 3,4, and 6 (for First-, second-, and third-class mail, respectively) would not only be inefficient, but needlessly redundant and difficult to maintain in a consistent manner. Logically, since the technical mailpiece preparation requirements to automation-compatible mail were identical regardless of class, the Postal Service concluded that long-term regulatory simplicity, consistency, and efficiency necessitated consolidation of both new revised requirements for physical mailpiece characteristics, address quality, address readability, and ZIP+4 barcode readability into one place, and that was determined to be the then-vacant chapter 5.

Through publication of the final rule for automation-compatible mail (noted above) and the final rule implementing the Docket No. R90–1 rate changes (56 FR 3616–3728, January 30, 1991), the Postal Service relocated and consolidated its mailpiece preparation requirements for automation-based rates (not including presort and documentation requirements) into chapter 5. Sections 510 through 550, and 570 through 590, became mandatory on February 24, 1991, and the sections of chapters 3, 4, and 6 that had contained the corresponding information were deleted.

The Postal Service also concluded that the same reasons justified centralization of the mail preparation (presort and documentation) requirements for automation-based rates into chapter 5, but, given the physical demands of that task and the short time available, it could not be completed in time for implementation on February 24, 1991. Therefore, the Postal Service elected to leave the applicable portions of chapters 3, 4, and 6 in place until such time as the necessary consolidated regulations could be developed, evaluated, and published for comment. Instead, the Postal Service implemented the mail preparation requirements in current section 560 (full-tray makeup) as an option for those mailers whose operational and mailing list characteristics made those options economically desirable for presorting and documenting ZIP+4 and ZIP+4 Barcoded rate mailings. Concurrently, the Postal Service began to make customers aware that, over the ensuring 12–24 months, it planned to finish the consolidation of the eligibility regulations for ZIP+4 and ZIP+4 Barcoded rates into chapter 5 by undertaking further rulemakings to complete the centralization effort.

This proposed rule continues the process of consolidation of the mail preparation requirements for automation-based rates, and focuses that consolidation on the new ZIP+4 Barcoded rate options introduced in this proposal.

Currently, the presortation regulations for First-, second- and third-class automation mailings are contained in chapters 3, 4 and 6 respectively. The presortation requirements, which were developed independently prior to the establishment of the applicable automation-based rate categories for those classes, vary substantially from class to class. The application of these requirements to automation mail has produced a confusing array of rules for both the Postal Service and the mailers to apply. For example, the presortation rules for First-Class Mail call for a minimum of 10 pieces to a 5-digit area and 50 pieces to a 3-digit area to qualify for presorted automation rates. Second-class has a 6 pieces per package minimum. Third-class has a 10-piece per package minimum for both 5-digit and 3-digit mail. These rules are further complicated by additional tray or sack preparation rules. For example, in second-class, a minimum of four 6-piece packages is necessary to make up a 5-digit sack. In some situations a minimum of 125 pieces of third-class mail is required to make up a qualifying sack. Moreover, until recently, sack preparation was required for second- and third-class mail, while tray preparation was required for First-Class Mail.

The Postal Service has determined that this complex array of different, and sometimes contradictory, mail preparation rules is counterproductive to the efficient preparation, acceptance and processing of automation-compatible mail. —

Regardless of class of mail in which it is entered, automation-compatible mail needs to be "compatible" with the Postal Service automated mail processing equipment and needs to be presented to the Postal Service in a manner that most efficiently aids that automated processing.

As noted above, the Postal Service has already revised its regulations to prescribe consolidated mailpiece preparation rules for all ZIP+4 rate mail and for all ZIP+4 Barcoded rate mail. With this proposed rule, the Postal Service is extending that approach to the mail preparation rules for ZIP+4 Barcoded rate mail in order to eliminate the current confused and complicated procedures, ease the Postal Service's administration of the automated mail program, make the Postal Service's regulations clearer and easier to use and facilitate mailer preparation of barcoded mail. The two most significant changes that would occur from the adoption of the presently proposed mail preparation options for the new barcoded mail procedures in chapter 5 would be the required use of trays and the establishment of a single set of presortation requirements for similar rate categories of barcoded mail.

The Postal Service has determined that the use of trays, sleeved and banded where appropriate, is the best method for handling and transporting groups of automation-compatible mailpieces so that they retain their orientation and do not become bent or torn. The use of trays will ensure that this mail retains the physical characteristics necessary to maximize its successful processing on the automated equipment.

In examining the current mail presortation methods applicable to barcoded rate mail, the Postal Service has determined to adopt the provisions that apply to First-Class for all ZIP+4 Barcoded rate mail. First, these rules (10 pieces to a 5-digit area, 50 pieces to a 3-digit area) currently apply to by far the largest volume of automation rate mail. Second, the First-Class rules were designed to apply primarily to letter-size mail, the type of mail to which the chapter 5 preparation requirements apply. The sortation rules for second- and third-class mail were designed for a much more diverse mail base that was not predominately letter-size.

Third, of the existing sortation rules, requiring a minimum of 10 pieces to qualify for a 5-digit presort rate and 50 pieces to qualify for a 3-digit presort rate makes the most sense in light of the Postal Service's automation program. A certain minimum number of pieces is necessary before the Postal Service can efficiently handle a group of barcoded mail presorted to a 5-digit area and transfer that group from a 3-digit or SCF tray to a consolidated tray for barcoded mail destined to the same 5-digit area. If the number of pieces in the group is too low, it would be more efficient for the Postal Service to handle that mail as part of a larger 3-digit group and sort it to 5-digit areas using a barcode sorter. The Postal Service believes that 10 pieces is the absolute minimum number that should be handled as a separate 5-digit presorted group of barcoded letter mail. Similarly, a substantial group of 3-digit presorted pieces is necessary before a presortation discount can be justified for a 3-digit barcoded mail makeup. The Postal Service believes that 50 pieces is an appropriate number to justify maintaining this mail as a separate group for transportation to a destinating mail processing facility instead of consolidating this mail with all other barcoded mail as part of the outgoing mail processing operation.

With the addition of the new sortation options proposed in this rulemaking, elimination of all non-chapter 5 ZIP+4 rate and ZIP+4 barcoded rate mail preparation provisions is not expected to create a rate qualification hardship for most mailers. Second-class mailers that can currently qualify for 3-digit ZIP+4 Barcoded rates (levels B3/H3/J3) with as few as 24 pieces (four packages of 6 pieces each to an optional city or unique 3-digit area) in an optional city or unique 3-digit sack (see DMM 424.53) could be affected. Chapter 5 (563.3) preparation will require at least 50 pieces of mail to qualify for a 3-digit Barcoded rate. However, under chapter 5 preparation, a group of 50 pieces to any 3-digit area (not just unique 3-digit

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areas as required in chapter 4) may qualify for the 3-digit ZIP+4 Barcoded rate. Furthermore, in order for second-class mailers to qualify for the 5-digit ZIP+4 Barcoded rates (levels B5/H5/J5) the uniform package requirement of 10 pieces will apply in chapter 5 as opposed to the chapter 4 requirement for 6-piece packages. However, 424.532 currently requires that a 6-piece package must be in a 5-digit sack with at least 3 other 6-piece packages, or in an optional city or unique 3-digit sack that contains at least four 6-piece packages. Under the chapter 5 requirements for second-class mail, as few as 10 ZIP+4 barcoded pieces to a 5-digit ZIP Code area within an SCF tray may qualify for 5-digit ZIP+4 Barcoded rates.

Third-class mailers would also be affected. In place of the current 10-piece sortation minimum for preparing 3-digit packages, chapter 5 would require a 50-piece minimum for 3-digit ZIP+4 Barcoded rates. However, 50 pieces to a 3-digit area would receive the 3-digit ZIP+4 Barcoded rate. Under current rules in chapter 6, to qualify for the 3-digit Zip+4 barcoded rates a mailing would have to have at least 125 pieces of 3-digit mail (both 5-digit and 3-digit packages) to make up a 3-digit sack in which the 3-digit packages could qualify for the 3-digit ZIP+4 Barcoded rate. (The 5-digit packages in this sack would qualify for the 5-digit ZIP+4 Barcoded rate.)

Because of these types of trade-offs, the Postal Service believes that most mailers may find their overall rate qualification levels under proposed chapter 5 preparation to be similar to or better than under current chapters 3, 4, and 6 preparation.

The Postal Service has not proposed the extension of these consolidated presortation requirements to ZIP+4 mail presented under chapter 5. To do so might have adversely affected current mailers who would be required to adjust their mail preparation in a short time frame. In addition, the Postal Service believes that the introduction of address block barcoding on June 10, 1991, will eliminate the primary barrier that has prevented ZIP+4 mailers from applying barcodes to their mail and qualifying for the lower ZIP+4 Barcoded rates. The Postal Service expects a large proportion of ZIP+4 mailers to convert to barcoding in the near future and does not want to add another adjustment to that process at this time. However, the Postal Service does expect to propose revisions to the chapter 5 ZIP+4 preparation requirements at the time it proposes to eliminate the automation rate provisions of chapters 3, 4, and 6.

A similar situation applies to the current tray-based option for ZIP+4 barcoded mail in chapter 5. Although some changes are being proposed at this time, as discussed above in part D, the Postal Service is not proposing the extension of the 10/50 piece presortation rules to this option at this time. First, this option already has full tray requirement for 5-digit presorted mail. Second, the application of a 50-piece 3-digit requirement would be a hardship on second-class and third-class mailers who currently prepare full SCF trays under this option. However, the Postal Service does intend to look toward possible consolidation of the "tray-based" option with the proposed "package based" option in the future as part of the long-term effort to consolidate all automation rate provisions in chapter 5.

The estimated completion of the transition to exclusive use of chapter 5 is March, 1992. At that time chapter 5 would contain the sole set of presort and documentation regulations for automation-based rate mailings; existing provisions of chapters 3, 4, and 6 would be eliminated. As stated in the Summary above, mailers are invited to comment on the proposed concept of eliminating the current automation-compatible mail provisions in chapters 3, 4, and 6 and on the proposed effective date of this transition.

F. Miscellaneous Changes

1. The postage payment requirements in DMM 380 and DMM 661 are amended to indicate how postage should be applied to the new sortation options added to chapter 5, and to correct some errors in 661.

2. The sentence "If material on which the barcode is to appear is printed in a "halftone screen," it must not contain fewer than 200 lines per inch (dot size) or be printed with more than a 20 percent screen." is omitted from section 551.44. DMM 551.44 contains reflectance requirements for dark fibers and background patterns on the material upon which barcodes will be printed. Although the stated requirements for halftone screens are necessary for character recognition by USPS OCR equipment, they are not necessary for recognition of barcodes by USPS barcode sorters. Accordingly, the language concerning halftone screens is omitted in 551.44. This language remains in 543.35 which states reflectance requirements for OCR readability.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 533 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 320—PAYMENT OF POSTAGE

2. Revise section 362 of part 320 to read as follows:

362 Carrier Route First-Class, Presorted First-Class, Nonpresorted ZIP+4, Nonpresorted ZIP+4 Barcoded, ZIP+4 Presort, 5-Digit ZIP+4 barcoded, and 3-Digit ZIP+4 Barcoded Rates

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362.2 Exact Postage on Each Piece

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362.232 **National Mailings Prepared Under Chapter 5**

a. Mailings Prepared under 563.1. [Insert current 382.232. Delete the phrase "precanceled postage or" from the first sentence. Change the phrase "chapter 5" to "563.1." Add the following note:

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. See 382.31d(2)(a) or 382.33b(2)(a) for procedures to follow when a non-denominated precanceled stamp is used.

b. Mailings Prepared Under 563.2. When meter stamps are used, each piece in national mailings prepared in accordance with 563.2 must have postage affixed at the 5-digit ZIP+4 Barcoded rate.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. See 382.31d(2)(b) or 382.33b(2)(b) for procedures to follow when a non-denominated precanceled stamp is used.

c. Mailings Prepared Under 563.3. When meter stamps are used, pieces in national mailings prepared in accordance with 563.3 must have postage affixed at the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, or the Presorted First-Class rate as appropriate in the qualifying portion of the mailing; and postage affixed at the Nonpresorted ZIP+4 Barcoded rate (if eligible for the card rates), the Nonpresorted ZIP+4 rate, or the single piece rate if in the residual portion of the mailing.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. See 382.31d(2)(c) or 382.33b(2)(c) for procedures to follow when a non-denominated precanceled stamp is used.

d. Mailings Prepared Under 563.4. When meter stamps are used, pieces in national mailings prepared in accordance with 563.4 must have postage affixed at the 5-digit ZIP+4 Barcoded rate in the 5-digit portion of the mailing (sorted in accordance with 563.2); at the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, or the Presorted First-Class rate as appropriate in the qualifying portion of the mailing (sorted in accordance with 563.3); and at the Nonpresorted ZIP+4 Barcoded rate (if eligible for the card rates), the Nonpresorted ZIP+4 rate, or the single piece rate if in the residual portion of the mailing (prepared in accordance with 563.3).

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. See 382.31d(2)(d) or 382.33b(2)(d) for procedures to follow when a non-denominated precanceled stamp is used.

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382.3 Postage at Lowest Rate in Mailing Affixed to All Pieces in the Mailing

382.31 **Identical Pieces**

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d. ZIP+4 Barcoded Presort Rate Mailings

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(2) National Mailings Prepared Under Chapter 5

(a) Mailings Prepared Under 563.1. Insert current 382.31d(2). Change the phrase "or precanceled postage" to "and." Change the reference to "chapter 5" to "563.1."Add the following note:

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.142. The additional postage may be paid in the same manner as for metered mailings.

(b) Mailings Prepared under 563.2. When all pieces in a ZIP+4 Barcoded national mailing prepared in accordance with 563.2 are paid by meter stamps and are of identical size and weight, the entire mailing must have postage affixed at the 5-Digit ZIP+4 Barcoded rate.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.342 or 563.343. The additional postage may be paid in the same manner as for metered mailings.

(c) Mailings Prepared Under 563.3. When all pieces in a ZIP+4 Barcoded national mailing prepared in accordance with 563.3 are paid by meter stamps and are of identical size and weight, the entire mailing may have postage affixed at the 3-digit ZIP+4 Barcoded rate, provided the applicable documentation requirements in 563.34 are met. Additional postage in the amount documented in accordance with 563.34 for pieces subject to other rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, 524.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.342 or 563.343. The additional postage may be paid in the same manner as for metered mailings.

(d) Mailings Prepared Under 563.4. When all pieces in a ZIP+4 Barcoded national mailing prepared in accordance with 563.4 are paid by meter stamps and are of identical size and weight, the entire mailing may have postage affixed at the 5-digit ZIP+4 barcoded rate if the documentation requirements in 563.45 are met. Additional postage in the amount documented in accordance with 563.45 for pieces subject to the 3-digit ZIP+4 Barcoded, ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

Note: Currently, there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.452. The additional postage may be paid in the same manner as for metered mailings.

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382.33 **Nonidentical Pieces at All ZIP+4 Presort and ZIP+4 Barcoded Rates**

a. ZIP+4 Presort Mailings. [Change the reference "365.33" to "365.33, 366.3, or 562.5".]

b. ZIP+4 Barcoded Presort Mailings

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(2) National Mailings Prepared Under Chapter 5

(a) Mailings prepared Under 563.1. Insert current 382.33b(2), change the reference to "Chapter 5" to "563.1". Add the following note:

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.142. The additional postage may be paid in the same manner as for metered mailings.

(b) Mailings prepared Under 563.2. 5-digit ZIP+4 Barcoded rate mailings of non-identical weight pieces, prepared in accordance with 563.2, must have postage affixed to each piece at the 5-digit ZIP+4 Barcoded rate.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Therefore, non-identical weight pieces prepared under 563.2 must not be prepared with precanceled stamps.

(c) Mailings prepared Under 563.3. ZIP+4 Barcoded mailings of non-identical weight pieces, prepared in accordance with 563.3, may have postage affixed to each piece at the 3-digit ZIP+4 Barcoded rate if the applicable documentation requirements in 563.34 are met. Additional postage in the amount documented in accordance with 563.34 for pieces subject to other rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, 524.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 563.342 or 563.343. The additional postage may be paid in the same manner as for metered mailings.

(d) Mailings prepared Under 563.4. ZIP+4 Barcoded mailings of non-identical weight pieces, prepared in accordance with 563.4, may have postage affixed to each piece at the 5-digit ZIP+4 Barcoded rate if the documentation requirements in 563.45

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are met. Additional postage in the amount documented in accordance with 503.45 for pieces subject to the 3-digit ZIP+4 Barcoded, ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

Note: Currently there are no precanceled stamps available at First-Class ZIP+4 Barcoded rate denominations. Mailers may affix a non-denominated precanceled stamp to each piece in the mailing and pay additional postage in the amount documented in accordance with 503.462. The additional postage may be paid in the same manner as for metered mailings.

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382.4 Neither Lowest Rate Nor Correct Postage Affixed to Each Piece

A. General. Add the following to the end of this section:

Exception: Any 5-digit ZIP+4 Barcoded rate mailings prepared with meters under 503.2 must have postage affixed to each piece in the mailing at the 5-digit ZIP+4 Barcoded rate, unless refund for postage added procedures are followed as described in 147.42, or if precanceled stamps of the same denomination are used for identical weight mailings.

3. Revise the title of chapter 5 to read as follows:

CHAPTER 5—AUTOMATION COMPATIBLE MAIL—REQUIREMENTS FOR ZIP+4 AND ZIP+4 BARCODED RATE MAILINGS

PART 510—GENERAL

4. Revise section 512 in part 510 to read as follows.

512 Applicability

512.1 General Eligibility Requirements

[Insert current 512.1.]

512.2 Specific Eligibility Requirements

[Insert current 512.2.] Add the following note:

Note: The alternative preparation requirements of section 560 (see 513 below) provide an alternative to some of the specific eligibility requirements in chapters 3, 4, and 6."]

513 Alternative, Presort, and Documentation Requirements

[Insert the first sentence of current 513. Add the following: "Mailers may submit mailings in accordance with the requirements of 560 rather than the corresponding presort, and documentation requirements in chapters 3, 4, and 6. The Postal Service intends to eliminate the presort and documentation requirements currently set forth in chapters 3, 4, and 6 in the future and provide only the preparation options in 560 to qualify for presorted ZIP+4 and ZIP+4 Barcoded rates. The effective date for this change will take into account recommendations from the mailing industry to allow a sufficient transition period and will be set through a rulemaking process noted in the Federal Register and the Postal Bulletin.

Note: To the extent that rate eligibility is dependent upon presort, 560 offers different rate eligibility options to those in chapters 3, 4, and 6."]

PART 520—GENERAL REQUIREMENTS FOR ALL AUTOMATION—COMPATIBLE MAILPIECES

5. In part 520, revise 521.3 to read as follows:

521.3 Weight

521.31 ZIP+4 Rate Mailings

The weight of each mailpiece in a ZIP+4 rate mailing must not exceed 2.5 ounces.

521.32 ZIP+4 Barcoded Rate Mailings

The weight of each mailpiece in a ZIP+4 Barcoded rate mailing must not exceed 3.0 ounces.

PART 550—REQUIREMENTS FOR BARCODED PIECES

6. In part 550, revise 551.4 to read as follows.

551.4 Reflectance

551.41 Background Reflectance

551.411 Pieces Barcoded in the Lower Right Corner

a. Barcode Clear Zone—Pieces Bearing ZIP+4 or Delivery Point Barcodes. The material (envelope, card, insert material, or outermost sheet) in the barcode clear zone (see 551.22) must produce a background reflectance of at least 50 percent in the red and 45 percent in the green portions of the optical spectrum when measured with a USPS or USPS—licensed envelope reflectance meter. White and pastel colors generally satisfy this requirement.

b. Barcode Clear Zone—Pieces Not Bearing a ZIP+4 or Delivery Point Barcode. It is strongly recommended that pieces included in any ZIP+4 Barcoded rate mailing that do not bear a ZIP+4 or delivery point barcode include a barcode clear zone in the lower right corner of the address side of the mailpiece as described in 551.22 that meets the background reflectance requirements of 551.411a. Effective September 20, 1992, all pieces in ZIP+4 Barcoded rate mailings that do not bear a ZIP+4 or delivery point barcode must contain a barcode clear zone as specified in 551.22 that meets the background reflectance requirements of 551.411a.

551.412 Pieces Barcoded in the Address Block

a. Pieces Bearing ZIP+4 or Delivery Point Barcodes. If the barcode is placed in the address block, the background reflectance of the area surrounding the address block barcode, and within ⅛ inch of the left- and right-most bars and ⅛s inch above and below the barcode, must produce a background reflectance of at least 50% in the red and 45% in the green spectrum.

b. Barcode Clear Zone—Pieces Not Bearing a ZIP+4 or Delivery Point Barcode. It is strongly recommended that pieces included in address block barcoded ZIP+4 Barcoded rate mailings that do not bear a ZIP+4 or delivery point barcode in the address block include a barcode clear zone in the lower right corner of the address side of the mailpiece as specified in 551.22, that meets the background reflectance requirements of 551.411a. Effective September 20, 1992, all pieces in ZIP+4 Barcoded rate mailings that do not bear a ZIP+4 or delivery point barcode must contain a barcode clear zone as specified in 551.22 that meets the reflectance requirements of 551.411a.

551.42 Print Reflectance Difference

A print reflectance difference (PRD) of at least 30 percent is required between the background material of the mailpiece and the barcode in both the red and the green spectrums. This requirement is generally satisfied by using black or dark blue ink on a white or pastel background. Other color combinations should be measured to ensure compliance with the minimum print reflectance difference. The PRD expressed as a percentage equals the reflectance of the background minus the reflectance of the ink, multiplied by 100. Reflectance measurements must be made with a USPS or USPS licensed envelope reflectance meter.

551.43 [Insert text of existing 551.43.]

551.44 Dark Fibers and Background Patterns

551.441 ZIP+4 or Delivery Point Barcoded Pieces

[Insert text of existing 551.44; delete the last sentence.]

551.442 Pieces Not Bearing a ZIP+4 or Delivery Point Barcode

It is strongly recommended that all pieces within a ZIP+4 Barcoded rate mailing that do not bear a ZIP+4 or delivery point barcode include a barcode clear zone as specified in 551.22 that meets the requirements for dark fibers and background patterns in 551.441. Effective September 20, 1992, all non-ZIP+4 or delivery point barcoded pieces in a ZIP+4 Barcoded rate mailing must include a barcode clear zone (see 551.22) that meets the requirements of 551.441.

7. In part 560, revise the title to read as follows:

560 Rate Eligibility, Presort, and Documentation Requirements

8. Revise 561 to read as follows:

561 General

561.1 Explanation of Options

561.11 Preparation in Accordance with Other DMM Chapters

At the present time, mailers may prepare mailings in accordance with the rate eligibility, presort, and documentation requirements for ZIP+4 and ZIP+4 Barcoded rates set forth in chapter 3 for First-Class Mail, chapter 4 for second-class mail, or Chapter 6 for third-class mail. However, the Postal Service intends to eliminate these options in the future and provide only the preparation options in this chapter (chapter 5) to qualify for presorted ZIP+4 and ZIP+4 Barcoded rates. The effective date for this change will take into account recommendations from the mailing industry to allow a sufficient transition period and will be set through a rule making process noted in the Federal Register and the Postal Bulletin.

561.12 Preparation in Accordance with this Chapter (Chapter 5)

There is only one method of preparation (tray-based) for presorted ZIP+4 rated mailings (see 562). For ZIP+4 Barcoded rate mailings, there are two major methods of preparation: tray-based (see 563.1), and package-based (see 563.2, 563.3, and 563.4).

561.2 Trays

561.21 Tray Usage

All mailings prepared under chapter 5 must be prepared in trays.

561.22 Definition of "Full" Tray

For purposes of section 560, a "full" tray is one that is at least ¾ full of mail when the bottom of the tray is placed at an approximately 90 degree angle to a level horizontal surface and the contents of the tray are compressed by their own weight.

561.23 Sleeving and Banding

[Insert text of existing 561.24.]

561.24 Tray Labels

Insert the text of existing 561.25 with the following revision: In the last sentence, change the phrase "except that the second (contents) line on tray labels bears the information specified in 562.3 and 563.3" to read "except that the second (contents) line and the third (mailer, mailer location) line on tray labels shows the information specified in 562.324, 562.42, 563.132d, 563.132e, 563.232e, 563.332d, and 563.332e."

PART 562—PRESORTED ZIP+4 MAIL

9. Revise 562 to read as follows:

562 Presorted ZIP+4 Mail

562.1 Eighty-Five Percent Requirement

At least 85% of the total pieces in a ZIP+4 rate mailing must bear the correct ZIP+4 code (see 530 and 540). All remaining pieces must bear a 5-digit ZIP Code. If the correct ZIP+4 barcode or delivery point barcode (prepared as required by 530 and 550) is used to satisfy the requirement for a ZIP+4 code, the correct numeric ZIP+4 code as 5-digit ZIP Code must also appear in the address.

562.2 Rate Eligibility

562.21 First-Class Mail

562.211 5-Digit, 3-Digit, and SCF Trays

ZIP+4 coded pieces in 5-digit, 3-digit, and SCF trays may qualify for the ZIP+4 Presort rate. Other pieces in these trays may qualify for the Presorted First-Class rate. 5-digit and 3-digit trays must be full trays (see 561.22) or overflow trays (see 562.322). In SCF trays, there must be at least 50 pieces for each 3-digit ZIP Code area.

562.212 Residual Trays

Residual pieces (pieces remaining after preparing full and overflow 5-digit and 3-digit trays, and SCF trays with at least 50 pieces per 3-digit ZIP Code area) may qualify for the nonpresorted ZIP+4 rate (if ZIP+4 coded) or the single-piece First-Class rate.

562.22 Second-Class Mail

562.221 5-digit and 3-digit Trays

ZIP+4 coded pieces in 5-digit and 3-digit trays may qualify for the level B5/H5/J5 and B3/H3/J3 ZIP+4 rates respectively. Other pieces in these trays may qualify for the level B/H/J rates. These trays must be full trays (see 561.22) or overflow trays (see 562.322).

562.222 SCF Trays

ZIP+4 coded pieces in SCF trays may qualify for the level A/G/J1 ZIP+4 rates. Other pieces in SCF trays may qualify for the level A/G/J rates. There is no minimum quantity for SCF trays. All pieces in second-class ZIP+4 mailings must be sorted to at least the SCF level.

Note: Less than full trays that contain mail for only one 3-digit area must be labeled in accordance with the requirements for 5-digit trays (see 562.324b and 562.324c). However, such a tray is considered an SCF tray for rate purposes, except when it is an overflow tray. A less than full tray for a particular 3-digit destination can be considered an overflow tray only when there is at least one other full tray in the mailing for that same 3-digit destination (see 562.322). Overflow trays must also be separately documented as required in 562.322.

562.23 Third-Class Mail

562.231 5-Digit and 3-Digit Trays

ZIP+4 coded pieces in 5-digit and 3-digit trays may qualify for the 3/5 ZIP+4 rates. Other pieces in these trays may qualify for the 3/5 presort rates. These trays must be full trays (see 561.22) or overflow trays (see 562.322).

562.232 SCF Trays

ZIP+4 coded pieces in SCF trays may qualify for the basic ZIP+4 rate. Other pieces in SCF trays may qualify for the basic presort rate. There is no minimum quantity for SCF trays. All pieces in third-class ZIP+4 mailings must be sorted to at least the SCF level.

Note: Less than full trays that contain mail for only one 3-digit area must be labeled in accordance with the requirements for 3-digit trays (see 562.324b and 562.324c). However, such a tray is considered an SCF tray for rate purposes, except when it is an overflow tray. A less than full tray for a particular 3-digit destination can be considered an overflow tray only when there is at least one other full tray in the mailing for that same 3-digit destination (see 562.322). Overflow trays must also be separately documented as required in 562.322.

10. Replace existing sections 562.3 through 563.6 with the following:

562.3 Sortation Requirements

562.31 Facing, ZIP-Code Grouping, and Packaging of Pieces in Trays

562.311 Facing

All the pieces in each tray in the mailing must be faced in the same direction. The pieces must be placed in the tray so that the address is right-side up and facing the front (labeled end) of the tray.

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562.312 ZIP Code Grouping and Packaging Requirements

a. Five-Digit and 3-Digit Trays

(1) Full Trays. There are no ZIP Code grouping requirements in 5-digit and 3-digit trays. Packaging is not permitted in full 5-digit and 3-digit trays.

Note: 5-digit and 3-digit trays are required to be full (see 562.324a and 562.324b) except that less than full overflow trays are permitted as described in 562.322.

(2) Overflow Trays. The pieces in overflow trays to 5-digit and 3-digit destinations as provided in 562.322 (overflow trays are less than full by definition) must be packaged to preserve their orientation. All packages must be labeled as either 5-digit packages or 3-digit packages as appropriate. See 562.312d for further requirements on securing and labeling packages.

b. SCF Trays

(1) First-Class Mailings. There must be at least 50 pieces for each 3-digit ZIP Code area within SCF trays. Within SCF trays for SCFs serving more than one 3-digit ZIP Code area, pieces for the same 3-digit ZIP Code area must be grouped together. In less than full trays to any SCF, the pieces for each 3-digit ZIP Code area must be rubber-banded together into packages to maintain their orientation in the tray and labeled. See 562.312d for further requirements on securing and labeling packages.

(2) Second- and Third-Class Mailings. There are no minimum quantity requirements per 3-digit ZIP Code area in SCF trays of second-and third-class mail. Within SCF trays for SCFs serving more than one 3-digit ZIP Code area, pieces for the same 3-digit ZIP Code area must be grouped together. In less than full trays to any SCF, the pieces should be secured together into packages to maintain their orientation in the tray. Packages must contain mail for only one 3-digit ZIP Code area and be labeled as 3-digit packages. See 562.312d for further requirements on securing and labeling packages.

c. Residual Trays (First-Class Mail Only). See 562.42.

d. General Requirements for Securing and Labeling Packages.

(1) Securing Packages. Packages should measure approximately 4 inches in thickness. The maximum permissible thickness is 6 inches. Rubber bands must be used to secure packages of all classes of mail. Packages up to 1 inch thick must be secured with at least one rubber band around the girth. Packages thicker than 1 inch must be secured with at least two rubber bands. The first rubber band should always be placed around the length and the second, around the girth so that it crosses over the first. Rubber bands used to secure packages of mail should be positioned as near as possible to the center of the mailpiece to provide the greatest stability during transit and handling. More than two bands may be used to secure a package, but banding material must never lie along the outer 1 inch of any edge.

(2) Labeling Packages. The top piece in each package must bear the red "D" (for 5-digit packages in 5-digit overflow trays) or the green "3" (for 3-digit packages in 3-digit overflow trays, less than full SCF trays, and First-Class residual trays prepared in accordance with 562.42a) pressure sensitive package label in the lower left corner of the address side. Alternatively, the applicable 5-digit or 3-digit optional endorsement package label line may be used as specified in 369, 441.232, or 642.3.

562.2 Traying Requirements

562.321 General

The requirements in 561.2 must be met.

562.322 Volume per Tray and Preparation of Overflow Trays

Mailers should balance the volume in trays when more than one is prepared for the same destination to ensure that all 5-digit and 3-digit trays are full (at least ¾ full of mail when the bottom of the tray is placed at an approximately 90 degree angle to a level horizontal surface and the contents of the tray are compressed by their own weight). If after this step, the remaining pieces for a 5-digit or 3-digit destination are not enough to generate an additional full tray, they may be placed in an overflow tray that is less than full, provided the pieces in the overflow tray are packaged and labeled (see 562.312a(2) and 562.312d), and only one such tray for a particular 5-digit or 3-digit destination is prepared in the mailing. To allow accurate verification of the mailing by postal acceptance personnel, the mailer must provide a listing of all such trays prepared in addition to the documentation required by 562.5.

562.323 Size and Availability of Trays

Only standard 2-foot trays may be used to prepare presorted ZIP+4 rate mailings. The Postal Service will provide mailers with the trays.

562.324 Tray Sortation

a. Five-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray, a 5-digit tray must be prepared for that destination. Trays that are not full are prohibited, except that one overflow tray per 5-digit ZIP Code area is permitted as provided in 562.322. Trays must be labeled as follows:

Line 1: City, two-letter state abbreviation, and 5-digit ZIP code.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words, "ZIP+4 PRESORT".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

DETROIT MI 48235
FCM ZIP+4 PRESORT
NB COMPANY UNION SC

b. Three-Digit Trays. If, after preparing all possible full 5-digit trays (and, at the mailer's option, overflow 5-digit trays), there are sufficient pieces remaining to fill a tray for a 3-digit ZIP Code destination, a 3-digit trays must be prepared. Trays that are not full are prohibited, except that one overflow tray per 3-digit ZIP Code area is permitted as provided in 562.322. Trays must be labeled as follows:

(1) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "ZIP+4 PRESORT".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

PHILADELPHIA PA 191
3C ZIP+4 PRESORT
XYZ CORP ROCHESTER NY

(2) Other 3-digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces in the tray (see Exhibit 122.63c or Exhibit 122.63d for the name of the SCF serving the 3-digit ZIP Code area).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "ZIP+4 PRESORT".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

NORTHERN VIRGINIA VA 221
NEWS ZIP+4 PRESORT
ACE CNSTR CO ROCHESTER NY

c. SCF Trays

(1) Trays for SCFs Serving a Single 3-Digit Area. If, after preparing all possible full 5-digit and full 3-digit trays (and, at the mailer's option, overflow 5-digit and 3-digit trays), there are pieces remaining for a single 3-digit SCF listed in Exhibit 122.63c that are not sufficient to fill a tray, they must be placed in a single 3-digit SCF tray. The pieces in the tray must be rubber-banded or otherwise secured into packages as described in 562.312b and 562.312d. There is no minimum quantity for single 3-digit SCF trays, except for those in First-Class mailings which must contain at least 50 pieces for the single 3-digit ZIP Code area. Trays must be labeled as follows:

Line 1: Name of the SCF, two-letter state abbreviation, followed by the 3-digit ZIP Code prefix of the pieces in the tray (see Exhibit 122.63c).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "ZIP+4 PRESORT".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

MID-FLORIDA FL 327
FCM ZIP+4 PRESORT
FIRST BIOMDCL FAIRFAX VA

(2) Trays for SCFs Serving Multiple 3-Digit Areas. If, after preparing all possible full 5-digit and full 3-digit trays (and, at the mailer's option, overflow 5-digit and 3-digit trays), there are sufficient pieces remaining to fill a tray for one of the SCFs that serve more than one 3-digit area (listed in Exhibit 122.63d), an SCF tray must be prepared. Trays that are less than full may also be prepared. There is no minimum quantity for these SCF trays, except for those in First-Class mailings which must contain at least 50 pieces for each 3-digit ZIP Code area contained in the tray. Pieces must be grouped by 3-digit area within the tray. When there is less than a full tray, the pieces in the tray must be secured into packages as described in 562.312b and 562.312d. Packages must contain mail for only one 3-digit ZIP Code area. If the tray contains pieces for only one 3-digit ZIP code area served by the SCF, the tray must be labeled as a 3-digit tray in accordance with 562.324b. Trays containing multiple 3-digit areas must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit SCF Code shown in Exhibit 122.63d.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "ZIP+4 PRESORT".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

SCF SAN ANTONIO TX 780
3C ZIP+4 PRESORT
DR PATERNO BIGFOOT TX

562.4 Residual Mail

562.41 General

There is no residual mail for second- and third-class mailings. Residual mail for First-Class mailings consists of those pieces that cannot be placed into full 5-digit or 3-digit trays, are not placed in overflow trays, and are not of sufficient quantity to be part of a group of 50 or more pieces to a 3-digit ZIP Code area within an SCF tray.

562.42 Preparation of First-Class Residual Pieces

Residual pieces must be placed in trays that are separate from trays of qualifying pieces. The pieces in residual trays in First-Class mailings must be prepared in one of the following two ways:

a. ZIP Code Sequence and Listing Option. Residual pieces must be placed in residual trays in 3-digit ZIP Code sequence. When a tray is less than full, the pieces in the tray must be packaged by 3-digit area and labeled as described in 562.312d. Mailers must provide a listing by 3-digit area of the pieces with and without a ZIP+4 Code as described in 562.5. Trays must be labeled as follows:

Line 1: Word "RESIDUAL" followed by the 3-digit ZIP Code range of the pieces in the tray.
Line 2: Words "FCM ZIP+4".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL 010–590
FCM ZIP+4
XYZ CORP BIGFOOT TX

b. Physical Separation Option. Residual pieces bearing ZIP+4 Codes must be separately trayed from residual pieces bearing 5-digit ZIP Codes. Within each tray, the pieces must be separated into groups of 100 pieces. Groups of 100 must be separated by separator cards. When the tray is full, no further preparation is required. When the tray is less than full, pieces must also be rubber-banded into packages approximately 4 inches thick within the group 100 separations. When there are less than 100 pieces in a group at the end of the last tray for either of the two types of trays (those containing pieces with correct ZIP+4 Codes and those containing pieces with correct 5-digit ZIP Codes) the actual number of pieces in the group must be written on the separator card. The total number of residual pieces bearing ZIP+4 Codes and the total number of pieces bearing 5-digit ZIP Codes must be added to the summary portion of the documentation required in 562.521c or 562.522c. Residual trays must be labeled as follows:

(1) *Trays Containing ZIP+4 Coded Pieces*

Line 1: The word "RESIDUAL".
Line 2: FCM ZIP+4.
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM ZIP+4
XYZ CORP BIGFOOT TX

(2) *Trays Containing Pieces Not ZIP+4 Coded*

Line 1: The word "RESIDUAL".
Line 2: FCM.
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM
XYZ CORP BIGFOOT TX

562.5 Documentation

562.51 When Not Required

[Insert current text of 562.61.]

562.52 Information Required

562.521 Tray Label Option

a. Sequence. [Insert the existing text of 562.621a. Replace the last sentence of existing 562.621a with the following: "In the 5-digit portion, the contents of each tray must be detailed by 5-digit ZIP Code, and, in both the 3-digit portion and the SCF portion, by 3-digit ZIP Code prefix. For First-Class mailings having residual pieces prepared in accordance with 562.42a, the documentation must also show a residual section that is listed by unique tray number or the exact top line of the tray label and the contents of residual trays must be detailed by 3-digit ZIP Code prefix."]

b. Information. [Insert the existing text of 562.621b. In the second sentence of this section change the phrase "For 3-digit and SCF trays," to "For 3-digit and SCF trays (and for First-Class residual trays prepared in accordance with 562.42a),".]

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c. Summary. [Insert the existing text of 552.621c; change the reference "561.23" to "563.132".]

d. Tray Preparation. [Insert existing text of 552.621d.]

552.622 ZIP Code Option

a. Sequence. [Insert the existing text of 552.22a; replace the last sentence with the following: "In the 5-digit portion, the entries must be listed by 5-digit ZIP Code, and in both the 3-digit portion and the SCF portion, by 3-digit ZIP Code prefix. For First Class mailings having residual pieces prepared in accordance with 562.42a, the documentation must also show a residual level of sortation. The contents of First-Class residual trays must be listed by 3-digit ZIP Code prefix."]

b. Information. [Insert existing text of 562.622b.]

c. Summary. [Insert existing text of 562.622c; change the reference "561.23" to "562.322".]

d. Tray Preparation. [Insert existing text of 562.622d.]

PART 563—PRESORTED ZIP+4 BARCODED MAIL

11. Delete current 563 and insert new 563.1 to read as follows:

563 Presorted ZIP+4 Barcoded Mail

563.1 Tray-Based Preparation Requirements

563.11 Required Percentage of ZIP+4 Barcoded Pieces

563.111 Eighty-Five Percent Requirement for the Entire Mailing

At least 85 percent of the total number of pieces in a tray-based ZIP+4 Barcoded rate mailing must bear the correct ZIP+4 barcode or correct delivery point (11-digit) barcode prepared as required by 530 and 550. All pieces must also bear the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

563.112 One-Hundred Percent Requirement for the Pieces in 5-Digit Trays

Each piece placed in a 5-digit tray must bear the correct ZIP+4 barcode or correct delivery point (11-digit) barcode prepared as required by 530 and 550. Each piece must also bear either the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

Note: 5-digit trays are optional, and need be prepared only if the mailer wishes to qualify pieces for the 5-digit ZIP+4 Barcoded rates.

563.12 Rate Eligibility

563.121 First-Class Mail

a. Five-Digit Trays. In 5-digit trays, each piece may qualify for the 5-digit ZIP+4 Barcoded rate. 5-digit trays must be full trays (see 561.22) or overflow trays (see 563.132b) and must be 100 percent ZIP+4 barcoded or delivery point barcoded in accordance with the requirements of 551.

b. 3-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in 3-digit and SCF trays may qualify for the 3-digit ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the ZIP+4 Presort rate if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the Presorted First-Class rate if they bear a correct 5-digit numeric ZIP Code in the address. In SCF trays, there must be at least 50 pieces for each 3-digit ZIP Code destination. Three-digit and SCF trays must be full trays (see 561.22) or overflow trays (see 563.132b).

c. Residual Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in residual trays may qualify for the nonpresorted ZIP+4 Barcoded rate if the pieces are eligible for the card rates, or the nonpresorted ZIP+4 rates if the pieces are other than cards. Residual pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the nonpresorted ZIP+4 rate if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the single piece First-Class rate if they bear a correct numeric 5-digit ZIP Code in the address.

563.122 Second-Class Mail

a. Five-Digit Trays. In 5-digit trays, each piece may qualify for the level B5/H5/J5 ZIP+4 Barcoded rates. 5-digit trays must be full trays (see 561.22) or overflow trays (see 563.132b) and must be 100 percent ZIP+4 barcoded or delivery point barcoded.

b. Three-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in 3-digit and SCF trays may qualify for the level B3/H3/J3 ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the level B3/H3/J3 ZIP+4 rates if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the level B/H/J presort rates if they bear a correct 5-digit numeric Zip Code in the address. Three-digit and SCF trays must be full trays (see 561.22) or overflow trays (see 563.132b).

c. Residual Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in residual trays may qualify for the level A/G/J: ZIP+4 Barcoded rates. Residual pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the level A/G/J: ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the level A/G/J presort rates if they bear a correct numeric 5-digit ZIP Code in the address.

563.123 Third-Class Mail

a. Five-Digit Trays. In 5-digit trays, each piece may qualify for the 5-digit ZIP+4 Barcoded rates. 5-digit trays must be full trays (see 561.22) or overflow trays (see 563.132b) and must be 100 percent ZIP+4 barcoded or delivery point barcoded.

b. Three-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in 3-digit and SCF trays may qualify for the 3-digit ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the 3/5 ZIP+4 rates if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the 3/5 presort rates if they bear a correct 5-digit numeric ZIP Code in the address. Three-digit and SCF trays must be full trays (see 561.22) or overflow trays (see 563.132b).

c. Residual Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode in residual trays may qualify for the basic ZIP+4 Barcoded rates. Residual pieces that do not bear a ZIP+4 barcode or delivery point barcode may qualify for the basic ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the basic presort rates if they bear a correct numeric 5-digit ZIP Code in the address.

563.13 Sortation Requirements

563.131 Facing, ZIP Code Grouping, and Packaging of Pieces in Trays

a. Facing. All the pieces in each tray in the mailing must be faced in the same direction. The pieces must be placed in the tray so that the address is right-side up and facing the front (labeled end) of the tray.

b. ZIP Code Grouping and Packaging

(1) Five-Digit and 3-Digit Trays

(a) Full Trays. There are no ZIP Code grouping requirements in 5-digit and 3-digit trays. Packaging is not permitted in full 5-digit and 3-digit trays.

Note: Five-digit and 3-digit trays are required to be full (see 563.132d(1) and 563.132d(2)) except that less than full overflow trays are permitted as described in 563.132b.

(b) Overflow Trays. The pieces in overflow trays to 5-digit and 3-digit destinations as provided in 563.132b (overflow trays are less than full by definition) must be packaged to preserve their orientation, and labeled as either 5-digit packages or 3-digit packages as appropriate. See 563.131b(4) for further requirements on securing and labeling packages.

(2) SCF Trays

(a) First-Class Mailings

(i) Full Trays. There must be at least 50 pieces for each 3-digit ZIP Code area within SCF trays. The pieces for each 3-digit ZIP Code area within the tray must be grouped together. Packaging is not permitted in full SCF trays. SCF trays must be full (see 563.132d(3)) except for overflow trays as provided in 563.132b.

(ii) Overflow Trays. The pieces in First-Class SCF overflow trays (overflow trays are less than full by definition) must be packaged to preserve their orientation. Such packages must contain mail for only one 3-digit ZIP Code area and must be labeled as a 3-digit package. See 563.131b(4) for further requirements on securing and labeling packages.

(b) Second- and Third-Class Mailings

(i) Full Trays. There is no minimum quantity requirement for individual 3-digit ZIP Code areas in SCF trays of second- and third-class mail. However, SCF trays must be full (except for overflow trays as provided in 563.132b.) Pieces for each 3-digit ZIP Code area contained within the tray must be grouped together. Packaging is not permitted in full SCF trays.

(ii) Overflow Trays. The pieces in second- and third-class SCF overflow trays (overflow trays are less than full by definition) must be packaged to preserve their orientation in the tray. Such packages must contain mail for only one 3-digit ZIP Code area and must be labeled as a 3-digit package. See 563.131b(4) for further requirements on securing and labeling packages.

(3) Residual Trays

(a) Prepared in Accordance with Option 1: ZIP Code Sequencing and Listing. Residual pieces that are prepared in accordance with 563.132e(1) (Option 1: ZIP Code Sequencing and Listing) must be placed in residual trays in 3-digit ZIP Code sequence. Pieces in less than full residual trays must be packaged to preserve their orientation. Such packages must contain mail for only one 3-digit ZIP Code area and be labeled as a 3-digit package. See 563.131b(4) for further requirements on securing and labeling packages.

(b) Prepared in Accordance with Option 2: Physical Separation. Residual pieces that are separately trayed as provided in 563.132e(2), (Option 2, Physical Separation) must be separated or packaged into groups of 100 pieces as described in 563.132e(2) and need not be sequenced and labeled by 3-digit ZIP Code area.

(4) General Requirements for Securing and Labeling Packages.

(a) Securing Packages. Packages should measure approximately 4 inches in thickness. The maximum permissible thickness is 6 inches. Rubber bands must be used to secure packages of all classes of mail. Packages up to 1 inch thick must be secured with at least one rubber band around the girth. Packages thicker than 1 inch must be secured with at least two rubber bands. The first rubber band should always be placed around the length and the second, around the girth so that it crosses over the first. Rubber bands used to secure packages of mail should be positioned as near as possible to the center of the mailpiece to provide the greatest stability during transit and handling. More than two bands may be used to secure a package, but banding material must never lie along the outer 1 inch of any edge.

(b) Labeling Packages. The top piece in each package must bear the red "D" (for 5-digit packages in 5-digit overflow trays) or the green "3" (for 3-digit packages in 3-digit and SCF overflow trays, and in residual trays) pressure sensitive package label in the lower left corner of the address side. Alternatively, the applicable 5-digit or 3-digit optional endorsement package label line may be used as specified in 369, 441.232, or 642.3.

563.132 Traying Requirements

a. General. The requirements in 561.2 must be met.

b. Volume per Tray and Preparation of Overflow Trays. Mailers should balance the volume in trays when more than one is prepared for the same destination to ensure that all are full (at least 3/4 full of mail when the bottom of the tray is placed at an approximately 90 degree angle to a level horizontal surface and the contents of the tray are compressed by their own weight). If after this step, the remaining pieces for that destination are not enough to generate an additional full tray, they may be placed in an overflow tray that is less than full, provided the pieces in the overflow tray are packaged and labeled, and only one such tray for that destination is prepared in the mailing. (See 563.131b(4) for further requirements concerning packaging and labeling.) To allow accurate verification of the mailing by postal acceptance personnel, the mailer must provide a listing of all such trays prepared in addition to the documentation required by 563.14.

c. Size and Availability of Trays. Only standard 2-foot trays may be used to prepare tray-based ZIP+4 Barcoded rate mailings. The Postal Service will provide mailers with the trays.

d. Tray Sortation—Qualifying Pieces.

(1) Five-Digit Trays. [Insert existing text of 563.411; change the reference "561.23" to "563.132b". Change the tray label information to read as shown below:]

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "Z+4 BARCODED" or "Z+4 B/C".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

DETROIT MI 48235
FCM Z+4 BARCODED
NB COMPANY UNION SC

(2) Three-Digit Trays. [Insert existing text of 563.412; change the reference "561.23" to "563.132b." Change the tray label information to read as shown below.]

(a) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "Z+4 BARCODED" or "Z+4 B/C.".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

PHILADELPHIA PA 191
3C Z+4 BARCODED
ROCKET CO ROCHESTER NY

(b) Other 3-digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces in the tray (see Exhibit 122.63c or Exhibit 122.63d for the name of the SCF serving the 3-digit ZIP Code area).

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "Z+4 BARCODED" or "Z+4 B/C".

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Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

NORTHERN VIRGINIA VA 221
NEWS Z+4 BARCODED
ABC MAILING CO ROCHESTER NY

(3) SCF Trays. [Insert existing text of 563.63b; change the reference "561.23" to "563.132b." Change the tray label information to read as shown below.]

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit ZIP Code prefix for the SCF shown in Exhibit 122.63d.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "Z+4 BARCODED" or "Z+4 B/C".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

SCF SAN ANTONIO TX 780
3C Z+4 B/C
DR PATERNO BIGFOOT TX

e. Tray Sortation—Residual Pieces. Residual pieces are those that cannot be trayed as required by 563.132d. Residual pieces must be placed in trays in one of the following ways:

(1) Option 1: ZIP Code Sequencing and Listing. Residual pieces must be placed in residual trays in 3-digit ZIP Code sequence. Pieces in less than full residual trays must be packaged by 3-digit area and labeled as described in 563.131b(3)(a) and 563.131b(4). Mailers must provide a listing by 3-digit area of the various rate qualification categories as described in 563.142. Trays must be labeled as follows:

Line 1: Word "Residual" followed by the 3-digit ZIP Code range of the pieces in the tray.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C LTRS as appropriate) followed by the words "ZIP+4 BARCODED".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL 010–590
FCM ZIP+4 BARCODED
XYZ CORP BIGFOOT TX

(2) Option 2: Physical Separation. Residual pieces bearing ZIP+4 barcodes must be separately trayed from those residual pieces that do not. Pieces that do not bear ZIP+4 barcodes or delivery point barcodes must be further separated so that pieces bearing a correct numeric ZIP+4 code in the address are separately trayed from those pieces bearing a correct 5-digit ZIP Code in the address. Within each of the resulting trays, the pieces must be separated into groups of 100 pieces. The groups of 100 must be delineated by separator tabs. When the tray is full, nothing further is required. When the tray is less than full, pieces must also be rubber-banded into packages approximately 4 inches thick, within the group-100 separations. When there are less than 100 pieces in a group at the end of the last tray for any of the three types of trays (those containing the ZIP+4 barcoded or delivery point barcoded pieces, those containing the pieces with correct numeric ZIP+4 codes, and those containing pieces with correct 5-digit ZIP Codes) the actual number of pieces in the group must be written on the separator card. The total number of residual pieces in each rate category must be added to the summary portion of the documentation required in 563.142. Option 2 Residual trays must be labeled as follows:

(a) Trays Containing ZIP+4 or Delivery Point Barcoded Mail

Line 1: The word "RESIDUAL".

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C LTRS as appropriate) followed by the words "ZIP+4 BARCODED".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM ZIP+4 BARCODED
XYZ CORP AUSTIN TX

(b) Trays Containing Pieces That Are NOT ZIP+4 or Delivery Point Barcoded and Bear a Correct Numeric ZIP+4 Code in the Address.

Line 1: The word "RESIDUAL".

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, OR 3C LTRS) followed by the words "ZIP+4".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM ZIP+4
XYZ CORP AUSTIN TX

(c) Trays Containing Pieces That Are NOT ZIP+4 or Delivery Point Barcoded and Bear a Correct Numeric 5-Digit ZIP Code in the Address.

Line 1: The word "RESIDUAL".

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, OR 3C LTRS).

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM
XYZ CORP AUSTIN TX

563.14 Documentation

563.141 When Not Required.

[Insert text of existing 563.61; change the reference "561.23" to "563.132b".]

563.142 Information Required

a. Tray Label Option

(1) Sequence. [Insert text of existing 563.621a and add the following sentence at the end: "When residual mail is prepared in accordance with Option 1, ZIP Code Sequencing and Listing, set forth in 563.132e(1), the documentation must also show a residual section that is listed by unique tray number or the exact top line of the tray label and the contents of residual trays must be detailed by 3-digit ZIP Code prefix."]

(2) Information. [Insert text of existing 563.622b. In the second sentence, change the phrase "number of pieces with a ZIP+4 code" to "number of pieces with a ZIP+4 barcode". Add the following sentence at the end of this section: "For residual mail prepared in accordance with Option 1, ZIP Code Sequence and Listing, set forth in 563.132e(1), the documentation must show a subtotal for the number of pieces at each rate category, the number of pieces with a ZIP+4 barcode and the total number of pieces in the tray.]

(3) Summary. [Insert text of existing 563.622c; change the reference "561.23" to "563.132b". Add the following as the second sentence of this section: "When Option 2, Physical Separation, in 563.132e(2), is used to prepare residual mail, the summary must also include the number of residual pieces in each rate category, and the number of residual pieces prepared with a ZIP+4 barcode from the hand-counted residual portion of the mailing."]

(4) Tray Preparation. [Insert text of existing 563.621d.]

b. ZIP Code Option

(1) Sequence. [Insert text of existing 563.622a and add the following sentence at the end: "When residual mail is prepared in accordance with Option 1, ZIP Code Sequencing and Listing, set forth in 563.132e(1), the documentation must also show a residual level of sortation. The contents of residual trays must be detailed by 3-digit ZIP Code prefix."]

(2) Information. [Insert text of existing 563.622b.]

(3) Summary. [Insert text of existing 563.622c. Add the following as the second sentence of this section: "When Option 2, Physical Separation, in 563.132e(2) is used to prepare residual mail, the summary must also include the number of residual pieces in each rate category, and the number of residual pieces prepared with a ZIP+4 barcode from the hand-counted residual portion of the mailing.]

(4) Tray Preparation. [Insert text of existing 563.622d.]

PART 563.2—PACKAGE-BASED PREPARATION REQUIREMENTS—5-DIGIT ZIP+4 BARCODED RATE MAILINGS

11. Add new part 563.2 as follows:

563.2 Package-Based Preparation Requirements—5-Digit ZIP+4 Barcoded Rate Mailings

563.21 One-Hundred Percent ZIP+4 Barcoded Requirement

All pieces in a 5-digit ZIP+4 Barcoded rate mailing prepared in accordance with 563.2 must bear a correct ZIP+4 barcode or delivery point (11-digit) barcode prepared as required by 530 and 550. In addition, each piece in the mailing must bear either the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

563.22 Rate Eligibility

.221 First-Class Mailings

All pieces within the mailing may qualify for the 5-digit ZIP+4 Barcoded rate. (Only pieces containing a ZIP+4 barcode that are part of a group of 10 or more pieces for the same 5-digit ZIP Code area may be contained in the mailing.)

.222 Second-Class Mailings

All pieces within the mailing may qualify for the level B5/H5/J5 ZIP+4 Barcoded rates. (Only pieces containing a ZIP+4 barcode that are part of a group of 10 or more pieces for the same 5-digit ZIP Code area may be contained in the mailing.)

.223 Third-Class Mailings

All pieces within the mailing may qualify for the 5-digit ZIP+4 Barcoded rate. (Only pieces containing a ZIP+4 barcode that are part of a group of 10 or more pieces for the same 5-digit ZIP Code area may be contained in the mailing.)

563.23 Sortation Requirements

563.231 Facing, Minimum Quantity Per 5-Digit Area, Grouping and Packaging Requirements

a. Facing. All pieces in each tray in the mailing must be faced in the same direction. The pieces must be placed in the tray so that the address is right-side up and facing the front (labeled end) of the tray.

b. Minimum Quantity Per 5-Digit Area Requirements. There must be at least 10 pieces for each 5-digit ZIP Code area contained in the mailing. When there are fewer than 10 pieces for a 5-digit ZIP Code area, the pieces for that 5-digit area are not permitted within the mailing.◄

c. Grouping and Packaging Requirements.

(1) Full 5-Digit Trays. None.

(2) Full 3-digit and SCF Trays. Within full 3-digit and full SCF trays, the groups of pieces for each 5-digit ZIP Code area contained in the tray must be delineated by separator cards.

(3) Less Than Full SCF Trays. Within less than full SCF trays, the groups of pieces for each 5-digit ZIP Code area contained in the tray must be secured together into 5-digit packages. There must be at least 10 pieces for a 5-digit ZIP Code area in each package.

(a) Securing Packages. Packages should measure approximately 4 inches in thickness. The maximum permissible thickness is 6 inches. Rubber bands must be used to secure packages of all classes of mail. Packages up to 1 inch thick must be secured with at least one rubber band around the girth. Packages thicker than 1 inch must be secured with at least two rubber bands. The first rubber band should always be placed around the length and the second, around the girth so that it crosses over the first. Rubber bands used to secure packages of mail should be positioned as near as possible to the center of the mailpiece to provide the greatest stability during transit and handling. More than two bands may be used to secure a package, but banding material must never lie along the outer 1 inch of any edge.

(b) Labeling Packages. The top piece in each package must bear a red "D" pressure sensitive package label in the lower left corner of the address side, or the 5-digit optional endorsement package label line must be used to label the packages in accordance with 369, 441.232, or 642.3. Package labels are not required for 5-digit groups in full trays that are delineated by separator cards.

563.232 Traying Requirements

a. General. The requirements in 561.2 must be met.

b. Volume per Tray.

(1) Five-Digit and 3-Digit Trays. 5-digit and 3-digit trays must be full as described in 561.22.

(2) SCF Trays. SCF trays may be less than full. There is no minimum quantity other than the requirement that there be at least 10 pieces per 5-digit ZIP Code area as described in 563.231b.

c. Size and Availability of Trays. Two sizes of trays, 1-foot trays and standard 2-foot trays, may be used in package-based 5-digit ZIP+4 Barcoded rate mailings. The Postal Service provides mailers with standard 2-foot trays, which may be used for any presort level of tray in the mailing. One-foot trays (half-trays) may be used only for 5-digit trays and must be supplied by the mailer. One-foot (half-trays) must not be used for 3-digit or SCF trays. In order to meet Postal Service transportation and storage needs, the 1-foot trays and their sleeves must meet Postal Service specifications (see 563.232d for information on how to obtain the specifications).

d. Physical Specifications for 1-Foot Trays and Sleeves. Mailers may obtain copies of the specification for small letter tray and sleeve construction by writing to: Container & Material Handling Division, Engineering and Development Center, United States Postal Service, 8403 Lee Highway, Merrifield, VA 22082–8142, and by requesting the most recent specifications and drawings for DL–256874—Small Letter Tray, Model SMM and DL–256875—Sleeve, Small Letter Tray, Model SMMS.

e. Tray Sortation.

(1) Five-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray, a 5-digit tray must be prepared for that destination. Trays that are not full are prohibited. Full 1-foot trays (half-trays) meeting Postal Service specifications (see 563.232c and 563.232d) may be used by mailers. Trays must be labeled as follows:

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code.

Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "5DG Z+4 BARCODED" or "5DG Z+4 B/C".

Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

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Example:

DETROIT MI 48235
FCM 5DG Z+4 BARCODED
NB COMPANY UNION SC

(2) Three-Digit Trays. If, after preparing all possible full 5-digit trays, there are sufficient pieces remaining to fill a tray for a 3-digit ZIP Code destination, a 3-digit tray must be prepared. Only standard 2-foot trays may be used. Use of 1-foot trays (half-trays) is prohibited. Pieces for each 5-digit ZIP Code area within the tray must be delineated by separator tabs as set forth in 563.231c(2). Trays that are not full are prohibited. Trays must be labeled as follows:

(a) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "5DG Z+4 BARCODED" or "5DG Z+4 B/C."
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

PHILADELPHIA PA 191
3C 5DG Z+4 BARCODED
ROCKET CO ROCHESTER NY

(b) Other 3-digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces in the tray (see Exhibit 122.63c or Exhibit 122.63d for the name of the SCF serving the 3-digit ZIP Code area).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "5DG Z+4 BARCODED" or "5DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

NORTHERN VIRGINA VA 221
NEWS 5DG Z+4 BARCODED
ABC MAILING CO ROCHESTER NY

(3) SCF Trays

(a) Trays for SCFs Serving a Single 3-Digit Area. If, after preparing all possible full 5-digit and full 3-digit trays, there are pieces remaining for an SCF that serves a single 3-digit area listed in Exhibit 122.63c, which are not sufficient to fill a tray, they must be placed in a single 3-digit SCF tray. Only standard 2-foot trays may be used. Use of 1-foot trays (half-trays) is prohibited. The minimum quantity of mail for a single 3-digit SCF tray is 10 pieces for a 5-digit ZIP Code area (see 563.231b). The pieces in the tray must be secured into packages for 5-digit areas as described in 563.231c(3). Trays must be labeled as follows:

Line 1: Name of the SCF, two-letter state abbreviation, followed by the 3-digit ZIP Code prefix of the pieces in the tray (see Exhibit 122.63c).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "5DG Z+4 BARCODED" or "5DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation to the mailer's location.

Example:

MID-FLORIDA FL 327
2C 5DG Z+4 BARCODED
BAKERSFIELD CA

(b) Trays for SCFs Serving Multiple 3-Digit Areas. If, after preparing all possible full 5-digit and full 3-digit trays, there are sufficient pieces remaining to fill a tray for one of the SCFs that serve more than one 3-digit area in Exhibit 122.63d, an SCF tray must be prepared. Only standard 2-foot trays may be used. Use of 1-foot trays (half-trays) is prohibited. Trays that are less than full may be prepared. The minimum quantity of mail for SCF trays is 10 pieces for a 5-digit ZIP Code area (see 563.231b). Groups of 10 or more pieces per 5-digit ZIP Code area within SCF trays must be delineated by separator cards in full trays, and packaged in less than full trays as described in 563.231c(3). If the tray contains pieces for only one 3-digit ZIP code area served by the SCF, the tray must be labeled as a 3-digit tray in accordance with 563.232e(2). If the tray contains pieces for only one 5-digit ZIP Code area served by the SCF, the tray must be labeled as a 5-digit tray in accordance with 563.232e(1). Trays containing pieces for multiple 3-digit areas served by the SCF must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit ZIP Code prefix for the SCF shown in Exhibit 122.63d.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "5DG Z+4 BARCODED" or "5DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

SCF SAN ANTONIO TX 780
3C 5DG Z+4 B/C
DR PATERNO BIGFOOT TX

563.24 Documentation Requirements

None.

PART 563.3—PACKAGE-BASED PREPARATION REQUIREMENTS—3-DIGIT AND BASIC (OR NONPRESORTED FIRST-CLASS) ZIP+4 BARCODED RATE MAILINGS

12. Add new part 563.3 as follows:

563.3 Package-Based Preparation Requirements—3-Digit and Basic (or Nonpresorted First-Class) ZIP+4 Barcoded Rate Mailings

563.31 Eighty-Five Percent requirement

At least 85% of the total number of pieces in a 3-digit and basic ZIP+4 Barcoded rate mailing must bear the correct ZIP+4 barcode or correct delivery point (11-digit) barcode prepared as required by 530 and 550. All pieces must also bear either the correct numeric ZIP+4 code or correct numeric 5-digit ZIP Code in the address.

563.32 Rate Eligibility

563.321 First-Class Mail

a. Qualifying Groups of 50 or More Pieces Per 3-Digit Area in 3-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode, are within a group of 50 or more pieces for a 3-digit ZIP Code area, and are placed in a 3-digit tray or in an SCF tray, may qualify for the 3-Digit ZIP+4 Barcoded rate. Pieces that do not bear a ZIP+4 barcode or delivery point barcode, but that are within a group of 50 or more pieces for a 3-digit ZIP Code area and are placed in a 3-digit tray or an SCF tray, may qualify for the ZIP+4 Presort rate if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the Presorted First-Class rate if they bear a correct 5-digit numeric ZIP Code in the address. Three-digit trays must be full trays as defined in 561.22 and must contain at least 50 pieces.

b. Residual Pieces. Residual pieces are those that cannot be placed in a group of 50 or more pieces for a 3-digit ZIP Code area. Residual pieces prepared with correct ZIP+4 barcodes or correct delivery point barcodes may qualify for the nonpresorted ZIP+4 Barcoded rates if they meet the requirements for the card rates (see 311.11, 322, and 328), otherwise they may qualify for the nonpresorted ZIP+4 rate. Residual pieces that do not bear ZIP+4 barcodes or delivery point barcodes may qualify for the nonpresorted ZIP+4 rate if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the single-piece First-Class rates if they bear a correct 5-digit numeric ZIP Code in the address. Residual pieces must be either packaged and placed in SCF trays with qualifying pieces as described in 563.331c(2)(a) and 563.332e(1), or separately trayed as described in 563.331c(2)(b) and 563.332e(2).

563.322 Second-Class Mail

a. Qualifying Groups of 50 or More Pieces Per 3-Digit Area in 3-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode, are within a group of 50 or more pieces for a 3-digit ZIP Code area, and are placed in a 3-digit tray or an SCF tray, may qualify for the level B3/H3/J3 ZIP+4 Barcoded rates. Pieces that do not bear a ZIP+4 barcode or a delivery point barcode, but that are within a group of 50 or more pieces for a 3-digit ZIP Code area placed in a 3-digit tray or an SCF tray, may qualify for the level B3/H3/J3 ZIP+4 rates if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the level B/H/J presort rates if they bear the correct 5-digit ZIP Code in the address. Three digit trays must be full trays as defined in 561.22 and must contain at least 50 pieces.

b. Residual (Basic Rate) Pieces. Residual pieces are those that cannot be placed in a group of 50 or more pieces for a 3-digit ZIP Code area. Residual pieces prepared with correct ZIP+4 barcodes or correct delivery point barcodes may qualify for the level A/G/J1 ZIP+4 Barcoded rates. Residual pieces that do not bear ZIP+4 barcodes or delivery point barcodes may qualify for the level A/G/J1 ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the level A/G/J presort rates if they bear a 5-digit numeric ZIP+4 code in the address. Residual pieces must be either packaged and placed in SCF trays with qualifying pieces as described in 563.331c(2)(a) and 563.332e(1), or separately trayed as described in 563.331c(2)(b) and 563.332e(2).

563.323 Third-Class Mail

a. Qualifying Groups of 50 or More Pieces Per 3-Digit Area in 3-Digit and SCF Trays. Pieces that bear the correct ZIP+4 barcode or correct delivery point barcode, are within a group of 50 or more pieces for a 3-digit ZIP Code area, and are placed in a 3-digit tray or an SCF tray, may qualify for the 3-digit ZIP+4 Barcoded rate. Pieces that do not bear the correct ZIP+4 barcode or delivery point barcode, but that are within a group of 50 or more pieces for a 3-digit ZIP Code area and are placed in a 3-digit tray or an SCF tray, may qualify for the 3/5 ZIP+4 rates if they bear the correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the 3/5 Presort rates if they bear the correct 5-digit ZIP Code in the address. Three digit trays must be full trays as defined in 561.22 and must contain at least 50 pieces.

b. Residual (Basic Rate) Pieces. Residual pieces are those that cannot be placed in a group of 50 or more pieces for a 3-digit ZIP Code area. Residual pieces prepared with correct ZIP+4 barcodes or correct delivery point barcodes may qualify for the Basic ZIP+4 Barcoded rates. Residual pieces that do not bear ZIP+4 barcodes or delivery point barcodes may qualify for the basic ZIP+4 rates if they bear a correct numeric ZIP+4 code in the address and meet the requirements of 540, and may qualify for the basic presort rates if they bear a correct numeric 5-digit ZIP Code in the address. Residual pieces must be either packaged and placed in SCF trays with qualifying pieces as described in 563.331c(2)(a) and 563.332e(1), or separately trayed as described in 563.331c(2)(b) and 563.332e(2).

563.33 Sortation Requirements (3-Digit and Basic ZIP+4 Barcoded Rates—Package Based Preparation)

563.331 Facing, Minimum Quantity Per 3-Digit Area, Grouping and Packaging Requirements.

a. Facing Requirements. The pieces in all trays must be faced in the same direction. The pieces must be placed in the tray so that the address is right-side up and facing the front (labeled end) of the tray.

b. Grouping and Packaging Requirements for 3-Digit Trays. There are no grouping or packaging requirements. However there must be at least 50 pieces for each 3-digit ZIP Code area and trays must be full as required in 561.22 and 563.332d(1).

c. Grouping and Packaging Requirements for SCF Trays.

(1) Qualifying Groups of 50 or More Pieces Per 3-Digit ZIP Code Area. In full SCF trays, the pieces in each group of 50 or more pieces per 3-digit ZIP Code area must be grouped together. In less than full SCF trays, each group of 50 or more pieces to a 3-digit ZIP Code area must be secured together as a package and labeled. See 563.331d for further requirements on securing the labeling packages.

(2) Residual Pieces Prepared under Option 1: Trayed With Qualifying Mail. Residual pieces (those that cannot be placed in a group of 50 or more pieces for the same 3-digit ZIP Code area) that are placed in SCF trays as described in 563.332e(1) must also be packaged by 3-digit ZIP Code area and labeled as 3-digit packages. See 563.331d for further requirements on securing the labeling packages.

Note: Residual pieces that are separately trayed as provided in 563.332e(2). (Option 2, Physical Separation) must be separated or packaged into groups of 100 pieces as described in 563.332e(2) and need not be grouped and labeled by 3-digit ZIP Code area.

d. General Requirements for Securing and Labeling Packages.

(1) Securing Packages. Each package must contain mail for the same 3-digit ZIP Code area. Packages should measure approximately 4 inches in thickness. The maximum permissible thickness is 6 inches. Rubber bands must be used to secure packages of all classes of mail. Packages up to 1 inch thick must be secured with at least one rubber band around the girth. Packages thicker than 1 inch must be secured with at least two rubber bands. The first rubber band should always be placed around the length and the second, around the girth so that it crosses over the first. Rubber bands used to secure packages of mail should be positioned as near as possible to the center of the mailpiece to provide the greatest stability during transit and handling. More than two bands may be used to secure a package, but banding material must never lie along the outer 1 inch of any edge.

(2) Labeling Packages. The top piece in each package of qualifying or residual mail within less than full SCF trays must bear the green "3" sensitive package label in the lower left corner of the address side, or the applicable optional endorsement package label line as specified in 369, 441.232, or 642.3.

563.332 Traying Requirements

a. General. The requirements in 561.2 must be met.

b. Volume Per Tray.

(1) Three-Digit Trays. Three-digit trays must be full as described in 561.22 and 563.332d(1). They must also contain a minimum of 50 pieces.

(2) SCF Trays. SCF trays may be less than full. They may contain as little as one piece of mail if the tray contains only residual pieces (see 563.322d(2)). However, trays containing qualifying pieces must contain at least 50 pieces for a 3-digit ZIP Code area (see 563.32 and 563.322d(2)).

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c. Size and Availability of Trays. Two sizes of trays, 1-foot trays and standard 2-foot trays, may be used in packaged-based 3-digit and basic ZIP+4 Barcoded rate mailings. The Postal Service provides mailers with standard 2-foot trays, which may be used for any presort level of tray in the mailing. One-foot trays (half-trays) may be used only for 3-digit trays and must be supplied by the mailer. One-foot trays must not be used for SCF trays. In order to meet Postal Service transportation and storage needs, the 1-foot trays and their sleeves must meet Postal Service specifications (see 563.232d for information on how to obtain the specifications).

d. Tray Sortation for the Qualifying Portion.

(1) Three-Digit Trays. When there are sufficient pieces for the same 3-digit ZIP Code area to fill a tray, a 3-digit tray must be prepared. Each 3-digit tray must contain at least 50 pieces. Trays that are not full are prohibited. Full 1-foot trays meeting and requirements of 563.332c and 563.232d may be used by mailers. Trays must be labeled as follows:

(a) Unique 3-Digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix listed in Exhibit 122.63b.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "3DG Z+4 BARCODED" or "3DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

PHILADELPHIA PA 191
3C 3DG Z+4 BARCODED
ABC CO ROCHESTER NY

(b) Other 3-digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of the SCF, followed by the 3-digit prefix of the pieces in the tray (see Exhibit 122.63c or Exhibit 122.63d for the name of the SCF serving the 3-digit ZIP Code area).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "3DG Z+4 BARCODED" or "3DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

NORTHERN VIRGINIA VA 221
NEWS 3DG Z+4 BARCODED
ABC MAILING CO ROCHESTER NY

(2) SCF Trays

(a) SCF Trays for SCFs Serving a Single 3-Digit Area. If, after preparing all possible full 3-digit trays, there are pieces remaining for an SCF that serves a single 3-digit area listed in Exhibit 122.63c, that are not sufficient to fill a tray, they must be placed in a single 3-digit SCF tray. Only standard 2-foot trays may be used. Use of 1-foot trays (half-trays) is prohibited. The minimum quantity of mail for a single 3-digit SCF tray is 50 pieces (see 563.331c(1)), except that single 3-digit SCF trays containing only residual (basic rated) pieces may contain fewer than 50 pieces—see 563.332a(1)). The pieces in the tray must be secured into packages for 3-digit areas and labeled as described in 563.331c and 563.331d. Single 3-digit SCF trays must be labeled as follows:

Line 1: Name of the SCF, two-letter state abbreviation, followed by the 3-digit ZIP Code prefix of the pieces in the tray (see Exhibit 122.63c).
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "3DG Z+4 BARCODED" or "3DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

MID-FLORIDA FL 327
2C 3DG Z+4 BARCODED
NBT CO BAKERSFIELD CA

(b) SCF Trays for SCFs Serving Multiple 3-Digit Areas. If, after preparing all possible full 3-digit trays, there are sufficient pieces remaining to fill a tray for one of the SCFs listed in Exhibit 122.63d, that serve more than one 3-digit area, an SCF tray must be prepared. Only standard 2-foot trays may be used. Use of 1-foot trays (half-trays) is prohibited. Trays that are less than full may be prepared. The minimum quantity of mail for an SCF tray is 50 pieces (see 563.331c(1)), except that SCF trays containing only residual (nonpresorted First-Class or basic rated second- and third-class) pieces may contain fewer than 50 pieces (see 563.332e(1)). Groups of 50 or more pieces per 3-digit ZIP Code area must be grouped together in full trays; and packaged and labeled in less than full trays as specified in 563.331c(1) and 563.331d. If the tray contains pieces for only one 3-digit ZIP code areas served by the SCF, the tray must be labeled as if it were a 3-digit tray as specified in 563.332d(1). Trays containing pieces for multiple 3-digit area served by the SCF must be labeled as follows:

Line 1: Letters "SCF," followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit ZIP Code prefix for the SCF shown in Exhibit 122.63d.
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C) followed by the words "3DG Z+4 BARCODED" or "3DG Z+4 B/C".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

SCF SAN ANTONIO TX 780
FCM 3DG Z+4 BARCODED
ABC CO PHILADELPHIA PA

e. Tray Sortation Requirements for the Residual (Basic-Rated) Portion. Mailers must prepare residual pieces in one of the following two ways.

(1) Option 1: Trayed With Qualifying Mail. Residual pieces (those that cannot be placed in a full 3-digit tray and are not part of a group of 50 or more pieces for a 3-digit area) must be packaged and labeled by a 3-digit ZIP Code area (see 563.331c(2) and 563.331d) and placed in an SCF tray. Residual 3-digit packages must be placed in SCF trays containing qualifying 3-digit pieces (groups of 50 or more pieces per 3-digit ZIP Code area) wherever possible. Where there is no SCF tray containing qualifying 3-digit mail, and SCF tray containing only a residual piece, package, or packages must be prepared. Residual SCF trays must be prepared and labeled in the same way as trays containing qualifying 3-digit mail as described in 563.332d(1).

(2) Option 2: Physical Separation. Residual pieces bearing ZIP+4 barcodes or delivery point barcodes must be separately trayed from those residual pieces that do not. Pieces that do not bear ZIP+4 barcodes or delivery point barcodes must be further separated so that pieces bearing a correct numeric ZIP+4 code in the address are separately trayed from those pieces bearing a correct 5-digit ZIP Code in the address. Within each of the resulting trays, the pieces must be separated into groups of 100 pieces. The groups of 100 must be delinated by separator tabs. When the tray is full, nothing further is required. When the tray is less than full, pieces must also be secured into packages approximately 4 inches thick, within the group-100 separations. When there are less than 100 pieces in a group at the end of the last tray for any of the three types of trays (those containing the ZIP+4 barcoded or delivery point barcoded pieces, those containing the pieces with correct numeric ZIP+4 codes, and those containing pieces with

correct 5-digit ZIP Codes) the actual number of pieces in the group must be written on the separator card. The total number of residual pieces in each rate category must be added to the summary portion of the documentation required in 563.343. Option 2 Residual trays must be labeled as follows:

(a) Trays containing ZIP+4 or Delivery Point Barcoded Mail.
Line 1: The word "RESIDUAL".
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C LTRS as appropriate) followed by the words "ZIP+4 BARCODED".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM ZIP+4 BARCODED
XYZ CORP AUSTIN TX

(b) Trays Containing Pieces That Are NOT ZIP+4 or Delivery Point Barcoded and Bear a Correct Numeric ZIP+4 Code in the Address.
Line 1: The word "RESIDUAL".
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, or 3C LTRS) followed by the words "ZIP+4".
Line 3: Name of the mailer and the city and two-letter state abbreviation of the mailer's location.

Example.

RESIDUAL
FCM ZIP+4
XYZ CORP AUSTIN TX

(c) Trays Containing Pieces That Are NOT ZIP+4 or Delivery Point Barcoded and Bear a Correct Numeric 5-Digit ZIP Code in the Address.
Line 1: The word "RESIDUAL".
Line 2: Appropriate class or contents designation (FCM, 2C, NEWS, OR 3C LTRS).
Line 3: Name of the mailer and the city and tow-letter state abbreviation of the mailer's location.

Example:

RESIDUAL
FCM
XYZ CORP AUSTIN TX

563.34 Documentation Requirements

563.341 When Not Required

Documentation is not required when every piece in the mailing bears the correct ZIP+4 barcode or correct delivery point barcode and each piece in the mailing has postage affixed at the exact rate of postage for which it qualifies.

563.342 Mailings Utilizing Option 1–SCF Trays, for Residual (Basic Rated) Pieces

a. Listing. Mailers must list by 3-digit ZIP Code:

(1) The number of ZIP+4 barcoded pieces or delivery point barcoded pieces that qualify for the First-Class 3-digit ZIP+4 Barcoded rates, the second-class level B3/H3/J3 ZIP+4 Barcoded rates, or the third-class 3-digit ZIP+4 Barcoded rates. (This is the number of ZIP+4 or delivery point barcoded pieces that are in a group of at least 50 pieces for the same 3-digit ZIP Code area within 3-digit and SCF trays.)

(2) The number of ZIP+4 barcoded or delivery point barcoded pieces that qualify for the First-Class Nonpresorted Barcoded rate (if qualified for the card rate) or the Nonpresorted ZIP+4 rates (if other than a card), the second-class level A/G/J1 ZIP+4 Barcoded rates, or the third-class basic ZIP+4 Barcoded rates. (This is the number of ZIP+4 barcoded or delivery point barcoded pieces within residual packages.

(3) The number of pieces not bearing a ZIP+4 barcode or delivery point barcode that qualify for the First-Class ZIP+4 Presort Rate, the second-class level B3/H3/J3 ZIP+4 rates; or the third-class 3/5 ZIP+4 rates. (The number of pieces in groups of 50 or more pieces in 3-digit and SCF trays, that do not bear a ZIP+4 barcode or a delivery point barcode but contain a numeric ZIP+4 code in the address.)

(4) The number of pieces not bearing a ZIP+4 barcode or delivery point barcode that qualify for the Presorted First-Class rates, the second-class B/H/J presort rates, or the third-class 3/5 Presort rates. (This is the number of pieces without a ZIP+4 or delivery point barcode, bearing a 5-digit numeric ZIP Code in the address, that are in a group of at least 50 pieces for a 3-digit ZIP code area within 3-digit and SCF trays.)

(5) The number of pieces not bearing a ZIP+4 barcode or delivery point barcode that qualify for the First-Class Nonpresorted ZIP+4 rates; the second-class level A/G/J1 ZIP+4 rates, or the third-class basic ZIP+4 rates. (This is the number of pieces without a ZIP+4 barcode or delivery point barcode, containing a correct numeric ZIP+4 code in the address, that are in residual packages.)

(6) The number of pieces not bearing a ZIP+4 barcode or delivery point barcode that qualify for the First-Class single piece rates, the second-class A/G/J rates, or the third-class basic presort rates. (This is the number of pieces without a ZIP+4 or delivery point barcode, bearing a 5-digit numeric ZIP+4 code in the address that are in residual packages.)

(7) A cumulative total. This is the total of all pieces listed in (1) through (6) for the particular 3-digit area plus all the pieces listed for preceding 3-digit areas.

b. Totals. The total number of pieces in each of rate category listings 563.342a(1) through 563.342a(6) must be shown following the entries for the last 3-digit ZIP area in the mailing.

c. Summary. (1) Second-Class Mailings and Permit Imprint Mailings. Mailers must show the total number of pieces in each rate category in the mailing. For each rate category, compute the postage charges at the applicable rate by multiplying the total number of pieces by the applicable rate of postage. Add the total amounts of postage charges for each rate category to show the total amount of postage to be deducted from either the second-class account or the third-class permit imprint account. Also summarize for the entire mailing, the total number of pieces that bear a properly prepared ZIP+4 barcode or delivery point barcode and the total number of pieces that do not. Show the percentage of ZIP+4 or delivery point barcoded pieces in the mailing.

(2) First- and Third-Class Metered and Precanceled Stamp Mailings. Mailers must show the total number of pieces in each rate category in the mailing. For each rate category, multiply the total number of pieces by the additional postage due per piece for that rate category. This will show the total postage due for each rate category in the mailing. Add the total amounts of postage due for each rate category to show the total amount of postage due. Also summarize, for the entire mailing, the total number of pieces that bear a properly prepared ZIP+4 barcode and the total number of pieces that do not. Show the percentage of ZIP+4 barcoded pieces in the mailing.

563.343 Documentation for Mailings Utilizing Option 2-Physical Separation, for Residual (Nonpresort Rated or Basic Rated) Pieces

a. Listing. Mailers must list by 3-digit ZIP Code:

(1) The number of ZIP+4 or delivery point barcoded pieces that qualify for the First-Class 3-digit ZIP+4 Barcoded rate, the second-class level B3/H3/J3 ZIP+4 Barcoded rates, or the third-class 3-digit ZIP+4 Barcoded rate. (This is the number of ZIP+4 or delivery point barcoded pieces that are in a group of at least 50 pieces for the same 3-digit ZIP Code area within 3-digit and SCF trays.)

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(2) The number of pieces not bearing a ZIP+4 barcode or delivery point barcode that qualify for the First-Class ZIP+4 Presort rate, the second-class level B3/H3/J3 ZIP+4 rates, or the third-class 3/5 ZIP+4 rates. (This is the number of pieces in groups of 50 or more pieces in 3-digit and SCF trays, that do not bear a ZIP+4 barcode or a delivery point barcode, but contain a correct numeric ZIP+4 code in the address.)

(3) The number of pieces not bearing a ZIP+4 or delivery point barcode that qualify for the First-Class Presorted First-Class rates, the second-class level B/H/J presort rates, or the third-class 3/5 Presort rates. (This is the number of pieces in a group of at least 50 pieces for a 3-digit ZIP Code area within 3-digit and SCF trays that do not bear a ZIP+4 or delivery point barcode but contain a correct 5-digit numeric ZIP Code in the address.)

(4) A cumulative total. This is the total of all pieces listed for the particular 3-digit area plus all the pieces listed for preceding 3-digit areas.

b. Totals. The total number of pieces in each of the rate category listings in 563.343a(1) through 563.343a(3) must be shown following the entries for the last 3-digit ZIP Code area in the mailing.

c. Summary. (1) Second-Class Mailings and Permit Imprint Mailings. Mailers must show the total number of pieces in each rate category in the mailings as follows: The total number of ZIP+4 or delivery point barcoded pieces from the 3-digit listing; the total number of pieces without a ZIP+4 or delivery point barcode that contain a correct numeric ZIP+4 code from the 3-digit listing; the total number of pieces without a ZIP+4 or delivery point barcode that contain a correct numeric 5-digit ZIP Code from the 3-digit listing; the total number of pieces that contain a ZIP+4 or delivery point barcode from the residual portion of the mailing (563.332e(2)(a)); the total number of pieces that do not contain a ZIP+4 barcode or delivery point barcode and bear a numeric ZIP+4 code from the residual portion of the mailing (563.332e(2)(b)); and the total number of residual pieces that do not contain a ZIP+4 or delivery point barcode but bear a numeric 5-digit ZIP Code from the residual portion of the mailing (563.332e(2)(c)).

For each rate category listed above, compute the postage charges at the applicable rate by multiplying the total number of pieces by the applicable rate of postage. Add the total amounts of postage charges for each rate category to show the total amount of postage to be deducted from the second-class account or the permit imprint account. Also summarize for the entire mailing, the total number of pieces that bear a properly prepared ZIP+4 barcode or delivery point barcode and the total number of pieces that do not. Show the percentage of ZIP+4 barcode or delivery point barcoded pieces in the mailing.

(2) First- and Third-Class Metered and Precanceled Stamp Mailings. Mailers must show the total number of pieces in each rate category in the mailing as follows: The total number of ZIP+4 or delivery point barcoded pieces from the 3-digit listing; the total number of pieces without a ZIP+4 or delivery point barcode that contain a correct numeric ZIP+4 code from the 3-digit listing; the total number of pieces without a ZIP+4 or delivery point barcode that contain a correct numeric 5-digit ZIP Code from the 3-digit listing; the total number of pieces that contain a ZIP+4 or delivery point barcode from the residual portion of the mailing (563.332e(2)(a)); the total number of pieces that do not contain a ZIP+4 barcode or delivery point barcode and bear a numeric ZIP+4 code from the residual portion of the mailing (563.332e(2)(b)); and the total number of residual pieces that do not contain a ZIP+4 or delivery point barcode but bear a numeric 5-digit ZIP Code from the residual portion of the mailing (563.332e(2)(c)).

For each rate category listed above, multiply the total number of pieces by the additional postage due per piece for that rate category. This will show the total postage due for each rate category in the mailing. Add the total amounts of postage due for each rate category to show the total amount of postage due. Also summarize, for the entire mailing, the total number of pieces that bear a properly prepared ZIP+4 barcode or delivery point barcode and the total number of piece that do not. Show the percentage of ZIP+4 barcoded or delivery point barcoded pieces in the mailing.

13. Add a new part 563.4 as follows.

563.4 Package-Based Preparation Requirements—Single Mailings Containing Pieces Qualifying for Both 5-Digit and 3-Digit ZIP+4 Barcoded Rates

563.41 General

Mailers may submit mail prepared in accordance with 563.2 and 563.3 at the same time as one mailing provided all the provisions of 563.42 through 563.45 are met.

563.42 Minimum Quantity For Mailing Requirement

For First-Class Mail only one minimum quantity requirement (500 pieces) need be met for the entire mailing (both the 5-digit and 3-digit ZIP+4 Barcoded rate portions together). For third-class mail only one minimum quantity requirement of 200 pieces or 50 pounds of mail need be met for the entire mailing (both the 5-digit and 3-digit ZIP+4 Barcoded rate portions together).

Note: Second-Class is unaffected as there is no minimum quantity per mailing requirement for second-class

563.42 Percentage of Barcoded Pieces

All pieces in the 5-digit Barcoded rate portion of the mailing prepared in accordance with 563.2 must bear the correct ZIP+4 barcode or delivery point barcode as required in 563.21. For purposes of meeting the 85% ZIP+4 barcoded or delivery point barcoded requirements of 563.31, for the 3-digit Barcoded rate portion of the mailing, the total number of pieces in the 5-digit Barcoded rate portion of the mailing prepared in accordance with 563.2 may be counted towards the total number of ZIP+4 barcoded or delivery point barcoded pieces in the mailing, provided the additional documentation requirements of 563.45 are met.

563.43 Rate Eligibility

Pieces in the 5-digit Barcoded rate portion of the mailing will qualify for postage rates as described in 563.22 and pieces in the 3-digit Barcoded rate portion of the mailing will qualify for postage rates as described in 563.32.

563.44 Sortation Requirements

Pieces in the 5-digit Barcoded rate portion of the mailing must be sorted in accordance with 563.23 and pieces in the 3-digit Barcoded rate portion of the mailing must be sorted in accordance with 563.33.

563.45 Documentation Requirements

563.451 When Documentation is Not Required

Documentation is not required when every piece in the mailing bears the correct ZIP+4 barcode or correct delivery point barcode and each piece in the mailing has postage affixed at the exact rate of postage for which it qualifies.

563.452 When Documentation is Required

Mailers must provide the following information with each mailing.

a. Information Required for 5-Digit Portion Sorted in Accordance with 563.23. (1) Mailings of Identical Weight Pieces. Mailers must physically separate the trays containing mail sorted to 5-digits in accordance with 563.23 from trays containing mail sorted in accordance with 563.33 when presented to the post office for acceptance, so that the number of pieces reported on the mailing statement at the 5-digit Barcoded rate may be verified by weighing. Alternatively, the listing in 563.452a(2) below may be provided.

(2) Mailings of Non-identical Weight Pieces. Mailers must list by 5-digit ZIP Code the number of pieces that qualify for the First-Class 5-digit ZIP+4 Barcoded rates, the second-class level B5/H5/J5 ZIP+4 Barcoded rates, or the third-class 5-digit ZIP+4 Barcoded rates.

b. Information Required for 3-digit and Basic (or Nonpresorted First-Class) Portion Sorted in Accordance with 563.33. The portion of the mailing sorted in accordance with 563.33 must be listed and totaled in accordance with 563.342a and 563.342b, or in accordance with 563.343a and 563.343b, as applicable for the method used to document residual pieces.

c. Summary. The total number of ZIP+4 barcoded or delivery point barcoded pieces in the 5-digit portion of the mailing must be included in the summary portion of the documentation that is required by 563.342c or 563.343c as applicable for the method used to document residual pieces.

563.46 Mailing Statement

One mailing statement may be submitted reflecting pieces paid in both the 5-digit and 3-digit portions of the mailing.

14. Revise 580 to read as follows:

580 Postage Payment

[Insert existing text of 580. Add the following sentence: Mailers must annotate the mailing statement required to be submitted with each mailing with the appropriate Chapter 5 section number under which the mailing was prepared (562, 563.1, 563.2, 563.3, or 563.4 as appropriate). This section number must be written in the upper right corner of the front side of the mailing statement.

PART 660—PAYMENT OF POSTAGE

15. Revise 660 as follows:

661 Method of Payment

* * * * *

661.3 Bulk Mailings at ZIP+4 and ZIP+4 Barcoded Rates

661.31 Permit Imprint

See 145.

661.311 Identical-Weight Pieces

Identical-weight mailings may have postage paid by means of permit imprint. Mailings at the 3/5 ZIP+4, basic ZIP+4, 5-digit ZIP+4 barcoded, 3-digit ZIP+4 barcoded, and basic ZIP+4 barcoded must be accompanied by the documentation required in 624.446, 624.546, and 624.645, or, if Chapter 5 preparation is used by 562.5, 563.14, 563.24, 563.34, or 563.45.

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661.32 Meter Stamps

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661.322 Correct Postage Affixed to Each Piece

a. 3/5 ZIP+4 and Basic ZIP+4 Mailings. Pieces qualifying for the 3/5 ZIP+4 rate, the 3/5 presort rate, the basic ZIP+4 rate, and basic presort rate are each metered at the rate for which they qualify: See 624.24, 628.13 and 628.24, for documentation requirements, or if chapter 5 is used, 562.5.

b. ZIP+4 Barcoded Mailings. Pieces qualifying for the 5-digit ZIP+4 Barcoded rate, the 3-digit ZIP+4 Barcoded rate, the basic ZIP+4 Barcoded rate, the 3/5 ZIP+4 rate, the 3/5 presort rate, the basic ZIP+4 rate, and the basic presort rate are each metered at the rate for which they qualify. (See 624.24, 628.13, and 628.34, for documentation requirements, or if chapter 5 is used, 563.14, 563.24, 563.34, or 563.45.)

Note: Only pieces eligible for the 5-digit ZIP+4 Barcoded rate are permitted in mailings under 563.2.

661.323 Lowest Rate in the Mailing Affixed to Each Piece

a. 3/5 ZIP+4 and Basic ZIP+4 Mailings. All pieces may have metered postage affixed at the 3/5 ZIP+4 rate. Additional postage for pieces subject to the basic presort rate must be determined from the documentation required to be submitted with each mailing as specified in 624.24, 628.13, 628.24, or if chapter 5 is used, 562.5. The total additional postage must be paid by a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F-1, Post Office Accounting Procedures, 524.

b. ZIP+4 Barcoded Mailings. (1) Mailings Prepared in Accordance With 628.1, 628.3, 563.1, or 563.4. All pieces may have metered postage affixed at the 5-digit ZIP+4 Barcoded rate. Additional postage for pieces subject to the 3-digit Barcoded rate, Basic Barcoded rate, 3/5 ZIP+4 rate, 3/5 presort rate, Basic ZIP+4 rate, and basic presort rate, must be determined from the documentation required to be submitted with each mailing as specified in 624.24, 628.13, and 628.34, or as specified in 563.14 or 563.45. The total additional postage must be paid by a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F-1, Post Office Accounting Procedures, 524.

(2) 5-Digit ZIP+4 Barcoded Mailings Prepared in Accordance With 563.2. Each piece in the mailing must have postage affixed at the 5-digit ZIP+4 Barcoded rate.

(3) 3-Digit and Basic ZIP+4 Barcoded Mailings Prepared in Accordance With 563.3. All pieces may have metered postage affixed at the 3-digit ZIP+4 Barcoded rate. Additional postage for pieces subject to the 3/5 ZIP+4 rate, 3/5 presort rate, Basic Barcoded rate, Basic ZIP+4 rate, and basic presort rate, must be determined from the documentation required to be submitted with each mailing as specified in 563.34. The total additional postage must be paid by a meter strip affixed to the back of the mailing statement that must accompany the mailing, or through an advance deposit account as provided in Handbook F-1, Post Office Accounting Procedures, 524.

661.324 Neither Lowest Rate Nor Correct Postage Affixed to Each Piece

a. General. [Add the following to the end of this section:]

Exception: 5-digit ZIP+4 Barcoded rate mailings prepared with meters under 563.2 must have postage affixed to each piece in the mailing at the 5-digit ZIP+4 Barcoded rate, unless refund for postage added procedures are followed as described in 147.42, or if precanceled stamps of the same denomination are used for identical weight mailings.

661.33 Precanceled Stamps or Precanceled Stamped Envelopes

[Insert text of existing 661.33. Add the following note.]

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Note: Precanceled stamp mailings at the 5-digit ZIP+4 barcoded rate prepared in accordance with 363.2 may have less than the 5-digit ZIP+4 Barcoded rate postage affixed (i.e., at the applicable rate of postage shown on the non-denominated precanceled stamp), provided each piece in the mailing is of identical weight.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

J. Fred Eggleston,
Deputy General Counsel.

[FR Doc. 91-14908 Filed 6-24-91; 8:45 am]
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federal register

Tuesday
June 25, 1991

Part VII

Department of Education

Inviting Applications for New Awards Under the Research in Education of Individuals With Disabilities Program for Fiscal Year 1991; Notice

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DEPARTMENT OF EDUCATION

(CFDA No.: 84.023)

Inviting Applications for New Awards Under the Research in Education of Individuals With Disabilities Program for Fiscal Year 1991

Purpose: To advance and improve the knowledge base and improve the practice of professionals, parents, and other providing early intervention, special education, and related services, including professionals who work with children and youth with disabilities in regular education environments, to provide those children effective instruction and enable them to successfully learn.

Awards under this competition are to provide support for one or more centers designed to organize, synthesize, and disseminate current knowledge relating to children with attention deficit disorder (ADD) as required by the Education of the Handicapped Act Amendments of 1990.

Eligible Applicants: Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Deadline for Transmittal of Applications. July 31, 1991.

Applications Available: June 27, 1991.

Available Funds: $600,000.

Estimated Average Size of Award: $150,000.

Estimated Number of Awards: 4.

Project Period: up to 18 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 324.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priority as published in the **Federal Register** on April 9, 1991 (56 FR 14432), because the Department's authority to obligate these funds will expire on September 30, 1991.

The public comment period for the notice of proposed priority ended on June 10, 1991. Four parties responded to the notice. The first commenter was strongly supportive of the proposed priority as written. The other three commenters, although generally supportive, included in their comments concerns or suggestions. The second commenter was concerned that these projects not "reinvent the wheel" given the limited amount of funding available, and the current existence of informatioin on ADD and its relation to public education. The Secretary agrees with the commenter that a significant body of information is currently available. The intent of the centers is to make that information accessible to the public, parents, and teachers involved with children and youth with ADD. These centers are designed to disseminate existing knowledge consistent with the commenters concern not to "reinvent the wheel."

The third commenter raised two issues. The first issue addressed by the commenter was a concern that most of the available "research" knowledge of ADD and "researchers" are in psychology and medicine, and not in education in general nor special education in particular. The commenter felt that research has mainly been done from the "perspective of clinical treatments and medical regimes", and not from an educational perspective. The commenter suggested that, in order to reinforce the educational perspective, the priority should use the terms "field educators and educational researchers" instead of "educators and researchers," and that perhaps some of the centers should focus on educational research or that some of the centers' directors should be educational researchers. The Secretary believes that to limit project staff and/or personnel according to their disciplinary training or professional affiliation would be overly prescriptive, and not supported by either the statute or the regulations. In addition, the selection criteria that will be used to evaluate applications under this competition provide for the peer reviewers to evaluate the "quality of key personnel" proposed by the project. This selection criterion requires reviewers to consider experience and training in fields related to the objectives of the project, as well as other evidence the applicant provides.

The second issue raised by this commenter concerned the percsived order of activities as outlined by the proposed priority. The commenter felt that educators, researchers, and parents needed to provide input on specific information needs before the identification of critical issues. As written, the priority provides that "Identifying and prioritizing critical issues must be based on those having the greatest promise for assisting educators, researchers, and parents to respond to the needs of children with ADD" (emphasis added).

The fourth commenter made several suggestions. With respect to the assessment centers, the commenters advised that they include the integration of newly proposed assessment criteria for the ADD population, and a critical review of the empirical data supporting various assessment instruments. The commenter stated that there are no pathognomonic or highly specific tests that can be used alone to establish the diagnosis of ADD. The Secretary notes that the intent of the priority is to synthesize current knowledge on assessment which includes classification and criteria techniques and systems, and reliable and valid instrumentation. The psychometric priorities of assessment instruments will be addressed in the synthesis.

The second suggestion regarding assessment centers was that the outcome of this effort should be to integrate current and future assessment tools into a comprehensive evaluation model that could be used in school settings. The Secretary believes that the priority as proposed provides for capturing existing knowledge and review of current assessment instruments that will assist and provide direction for future improvements.

The third suggestion made by this commenter regarding intervention centers was for an emphasis to be placed on integrating the family, educational, and medical perspectives so that comprehensive multi-modality forms of treatment are considered. The Department, in addition to these centers, is funding separate synthesis activities through a contract that will involve these centers in integrating these family, educational, and medical perspectives.

The final suggestion made by this commenter concerned examining the accuracy of data reported by school nurses and teachers, particularly in regard to medical interventions, and the exploration of academic and non-academic interventions. The Secretary believes that the priority, as written, provides for the centers to look at the full range of interventions being used to meet the needs of students with ADD.

Based on the comments received, no changes are expected in the final priority. However, because the Department's authority to obligate these funds will expire on September 30, 1991 cooperative agreements will no longer be specified as the type of award. Applicants are advised to submit their applications based on the priority as proposed. If changes are made in the final priority, applicants will be provided the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3524 –M/S 2640), Washington, DC 20202. Telephone: (202) 732–1099. (TDD: (202) 732–6153.)

Program Authority: 20 U.S.C. 1441–1443.

Dated: June 19, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–15012 Filed 6–24–91; 8:45 am]

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Part VIII

Department of Housing and Urban Development

24 CFR Part 24, et al.

Mortgagee Approval Reform and Direct Endorsement Expansion; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 24, 25, 200, 202, 203, 207, 213, 234

[Docket No. R-91-1606; FR 2654-P-01]

RIN 2501-AB16

Mortgagee Approval Reform and Direct Endorsement Expansion

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a comprehensive revision of the Department's regulations that prescribe the standards by which mortgagees are approved to participate in the HUD mortgage insurance programs, and by which approved mortgagees maintain their approval status. The proposed rule also would reorganize and update the Department's Direct Endorsement program requirements. The reforms proposed by this rule include increasing the net worth requirements of approved mortgagees, and improving the Secretary's ability to monitor the performance of approved mortgagees and to determine whether continued participation should be allowed. The purpose of the rule is to ensure that only responsible and soundly capitalized mortgagees are program participants. The specific revisions made by the proposed rule are more fully discussed in the Supplementary Information portion of this proposed rule.

DATES: Comment Due Date: August 26, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying on weekdays between 7:30 a.m. to 5:30 p.m. at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile (FAX) machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Docket Clerk at (202) 708-2084. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: William M. Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, room 9146, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1824. Hearing- or speech-impaired individuals may call the Office of Housing's TDD number (202) 708-4594. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention HUD Desk Officer, room 3001, Washington, DC 20503.

Introduction

The National Housing Act requires that applications for HUD/FHA mortgage insurance be accepted only from approved mortgagees. It is essential to the strength and viability of the HUD mortgage insurance programs that approved mortgagees be responsible and adequately capitalized entities. The reforms proposed by this rule are directed toward this goal of ensuring that only responsible and adequately capitalized mortgagees are program participants.

A number of the proposed amendments concern the financial strength of the mortgagee. The Department believes that sound capitalization is a critical requirement for mortgagee approval. The Department's experience has demonstrated that an acceptable level of financial net worth generally assures an acceptable level of financial responsibility. The capital and liquidity levels proposed by this rule were developed after extensive analysis by the Department of the mortgage lending industry and of individual HUD approved mortgagees.

Review of the capital and liquidity requirements of private mortgage insurers, and other participants involved in the mortgage loan business, such as the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), indicate that these institutions generally have higher capital requirements than HUD. The capital and liquidity requirements for mortgagees as proposed by this rule are consistent with existing industry standards.

In order to determine the potential impact that the proposed net worth requirements may have on approved mortgagees, the Department analyzed the net worth of a random sample of 311 approved mortgagees which originated a minimum volume of 25 million dollars in loans (approximately 400 loans per mortgagee) during fiscal year (FY) 1989. The sample included 162 nonsupervised mortgagees and 149 supervised mortgagees. The Department also analyzed the current net worth of 200 loan correspondents randomly selected from a universe of 2,261 loan correspondents approved to originate loans in various HUD field offices. Of the nonsupervised mortgagees sampled, 60 percent (130 mortgagees) had a net worth of $500,000 or more. Under the proposed rule, lenders may adjust their net worth during the proposed two year phase-in period for the new net worth requirements or continue to participate as loan correspondents. With respect to supervised mortgagees, the proposed increase in net worth should not have any impact on their ability to maintain HUD approval. The average net worth of these mortgagee is approximately $2 million, far above the requirements of this proposed rule. The sample of loan correspondents disclosed that over 50 percent (102 mortgagees) have a net worth of $40,000 or more. Of these 102 mortgagees, 75 percent have a net worth in excess of $50,000 (76 mortgagees).

From a market share standpoint, the impact also should be minimal, as 93 percent of all HUD insured mortgages currently are processed under the Direct Endorsement program, which requires mortgagees to maintain a net worth of not less than $250,000.

The remaining amendments proposed by this rule are directed toward ensuring responsible performance by approved mortgagees, and strengthening the Department's ability to monitor such performance. The Department believes that the revisions proposed by this rule will raise the quality of performance by mortgagees participating in the HUD mortgage insurance programs, without excluding program participants who have performed well in the past.

The proposed rule also would reorganize and expand the regulations governing the single family Direct Endorsement program. Under the current Direct Endorsement program, approved mortgagees are authorized to underwrite and close mortgages without prior HUD review or approval. Over 90 percent of mortgages insured under the HUD mortgage insurance programs are processed under the Direct Endorsement program. The Department proposes to expand the Direct Endorsement program to virtually all of its single family insurance programs. The existing structure and organization of the Direct Endorsement regulations, as contained in part 200, would become too cumbersome under the proposed expansion of the Direct Endorsement program. Accordingly, the proposed rule would simplify the existing Direct Endorsement regulations by cross-referencing program requirements rather than restating them and by removing redundant language.

Approval Requirements

The Department proposes to revise part 202 to incorporate both (1) the approval requirements for title I lending institutions in a new subpart A; and (2) the approval requirements for single family and multifamily mortgagees in a new subpart B.

The new subpart A, which contains the revised approval requirements for title I lending institutions, is part of a separate proposed rule that was published for public comment on January 29, 1991 (56 FR 3302). The revised title I lender approval regulations and the revised mortgagee approval regulations proposed here are very close in both form and substance. In any final version of each regulation, the Department may make further changes to conform them, including making changes in one regulation which was specifically proposed only in the other regulation. For example, type 2 supervised mortgagees might also be eliminated for title I in the manner proposed here since there is no special aspect of the title I program which makes type 2 supervised mortgagees more appropriate for that program than for other insurance programs. The Department would retain differences specifically based on differences between the title I program and other insurance programs, e.g., the differences in proposed net worth requirements and the different treatment of loan correspondents. Commenters are generally requested to comment on any specific differences between the two proposed regulations which should be retained, due to differences in the program, with an explanation of how the regulations differences are related to program differences.

The proposed new subpart B is based largely on the existing mortgagee approval requirements set forth in §§ 203.1 through 203.8, with several changes. Generally, the changes proposed to these sections would strengthen the approval requirements, reflect current administrative approval practices, and parallel certain requirements and procedures introduced in the title I Reform proposed rule.

The major regulatory changes proposed by this rule include:

(1) An increase in the net worth requirement, which would be applicable to all classes of mortgagees, and which would be phased in over a two year period;

(2) An approval agreement between the Department and the mortgagee that would provide the Department with the authority to limit the participation of mortgagees with excessive default and claim rates;

(3) A requirement that mortgagees be in compliance with State licensing requirements; and

(4) A requirement that mortgagees maintain 20 percent of their net worth in liquid assets.

The following section-by-section analysis discusses the substantive changes that would be made to part 202, by the addition of a new subpart B. As noted above, subpart B largely would consist of the regulations governing mortgagee approval, currently found in part 203 (§§ 203.1-203.8), with modifications made to several of these regulations. These modifications are highlighted in the section-by-section analysis. Those regulations in part 203 that would be transferred to part 202, without substantive change, are not discussed. The chart at the end of the section-by-section analysis lists the existing part 203 section citations, and their proposed redesignated part 202 section numbers.

Section-by-Section Analysis of Part 202

Section 202.10 Definitions

A definition of "mortgage" is proposed to be added. Since the approval requirements for title II insured mortgage programs and loan programs would be combined in subpart B, the definition would clarify that the use of the term "mortgage" applies to both mortgages and loans in the title II insurance programs.

The term "mortgagee" would be defined to include all categories of mortgage lenders eligible to participate in title II programs. Where the regulations apply only to certain categories of approved mortgagees (e.g. loan correspondents or investing mortgagees), the regulations will identify that category instead of using the broad term mortgagee.

Section 202.11 Approval, Recertification, Withdrawal of Approval and Termination of Approval Agreement

Section 202.11(a) would provide for an approval agreement between the Secretary and the mortgagee. The agreement shall set forth the terms governing the mortgagee's continued approval. Section 202.11(a)(5) provides for approval of authorized agents in areas which are otherwise under served by the mortgage market. Section 202.17(d) also provides for use of authorized agents by governmental institutions, Public Housing Agencies and State Housing Agencies. The role of authorized agents in the HUD mortgage insurance programs is addressed in the discussion of proposed new § 202.13(c).

Section 202.11(b) would clarify that there is an annual recertification procedure for approved mortgagees. This section would also state that currently approved mortgagees would enter into the approval agreement required under proposed § 202.11(a) at the time of recertification.

Section 202.11(d) would authorize the Secretary to terminate an approval agreement when the mortgagee has had excessive defaults and claims on insured mortgages originated by the mortgagee. There is currently no mechanism by which the Department may terminate its relationship with an approved mortgagee that has demonstrated unsatisfactory performance and, consequently, poses an unacceptable risk to the insurance funds, other than through formal administrative action by the Mortgagee

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Review Board. The Mortgagee Review Board's primary function, however, is to sanction lenders found to have committed serious violations of program requirements, or to have engaged in fraudulent activity with respect to the mortgage programs. Where the Mortgagee Review Board withdraws a mortgagee's approval the mortgagee cannot reapply for at least one year. The proposed rule would establish a relationship between a mortgagee and the Department which is terminable on the basis of failure to meet a single performance standard measured in terms of the rate of defaults and claims, regardless of whether any specific program requirements were violated.

The proposed rule would provide that each quarter the Department will review mortgages originated in the Federal fiscal year by each mortgagee. A mortgagee whose annual claim and default rate for the area served by a HUD field office is 200 percent of the HUD office average rate for the same year ("normal rate") will have its approval agreement terminated upon 30 days notice (provided that the mortgagee's claim/default rate is above the national average).

In determining the rate of defaults and claims which would constitute an unacceptable risk to the Department, HUD compiled the individual claim and default rates of all approved mortgagees in each HUD field office and analyzed this data in conjunction with mortgage insurance premium collections and foreclosure costs. Based on these and other operating expenses of HUD, it was determined that mortgagees which have twice the default and claim rate of the field office normal rate have demonstrated unsatisfactory performance and pose an unacceptable risk to the insurance funds. However, the Department recognizes that a mortgagee which lends in under served areas may experience unusually high default rates. For this reason, before termination the Department also will take into account census tract data to assure the availability of mortgage credit in under served areas. The Department does not intend to penalize mortgagees for satisfying its obligations under the Home Mortgage Disclosure Act and the Community Reinvestment Act. Mortgagees which have received a termination notice may request an informal conference with the Deputy Assistant Secretary for Single Family Housing or his or her designee before the termination is instituted. The Department will take into consideration all relevant factors and reasons for the excessive default rates before the termination is made final. The proposed rule grants mortgagees the right to apply for a new approval agreement after termination. The Department will consider all relevant factors, including statements and documents provided by the mortgagee, in determining whether the causes for termination have been remedied. If a mortgagee's approval agreement is terminated it may continue to service mortgages in its own portfolio. If the approval agreement of an approved servicer is terminated, the servicer will be required to transfer its servicing obligations to another HUD approved mortgagee-servicer within 60 days of receipt of the termination notice and will not be permitted to continue involvement in the servicing of insured mortgages.

A mortgagee whose claim and default rate is between 150 percent and 200 percent of the HUD office average will be placed on a "credit watch" provided that the Department's review of the census tract data warrants such action. All mortgages originated during the six month period following the credit watch notice (the tracking period) will be reviewed one year after the end of the tracking period. A mortgagee on credit watch may have its approval agreement terminated upon 30 days notice if the claim and default rate on mortgages originated by the mortgagee, during the tracking period is above 150 percent of the HUD office average. If a mortgagee's claim and default rate for the tracking period drops below the 150 percent level, the credit watch will end. A mortgagee which has received notice that its approval agreement is to be terminated subsequent to the credit watch may also request an informal conference as discussed above.

The Department will make available to all approved mortgagees, on a quarterly basis, data showing their respective claim and default rates in comparison to HUD office and national rates. This will enable each mortgagee to evaluate its performance and take appropriate corrective action where warranted. In addition, the data will provide mortgagees with a means to detect potential problems with their origination practices.

The approval agreement, permitting termination based on performance, would be established between the mortgagee (including all of its HUD-approved branch offices) and the Department. In reviewing a mortgagee's performance, the Department will analyze the mortgagee's overall claim and default rate, as well as that of each of its branch offices. Where a branch office exceeds the claim and default threshold, branch approval may be terminated or the branch office may be subject to a credit watch.

Section 202.12 General Requirements

Section 202.12(a) would remove trusts from the type of businesses that may be approved as mortgagee participants in the HUD mortgage insurance programs, and would add additional types of partnerships. The difficulty of separating the roles of the mortgagee, as holder of its own mortgages, from that of a trustee for mortgage trust assets, greatly complicates the mortgagee approval process and the supervision required for trusts, as compared to corporations or partnerships. The Department expects no disadvantage to mortgagees or the public from the exclusion of trusts as approved mortgagees, for two reasons. First, proposed § 202.12(d) is equivalent to existing § 203.3(e), which permits supervised mortgagees to hold insured mortgages in a fiduciary capacity. Insured mortgages may still be trust assets under this arrangement. Second, since trusts were added as eligible mortgagees in 1960, very few trusts have applied for mortgagee approval. No trust has applied for mortgagee approval in the last seven years. Trusts which currently are approved mortgagees would be allowed to continue its mortgagee approval as a trust, but new applicants would be required to qualify under the revised rule. Excluding trusts as approved lenders participants also was proposed in the title I Reform proposed rule. The Department specifically solicits comments on the proposal to not approve trusts.

The Department proposes to include all general and limited partnerships in the list of eligible mortgagees. The Department's long-established standards governing mortgagee approval require that a mortgagee be a chartered institution, or a permanent organization having succession. On July 30, 1980 (45 FR 50560), the regulations at § 203.2(a) were expanded to permit certain limited partnerships to be approved mortgagees, provided that the partnership agreement contained certain provisions to assure that it was a permanent organization having succession. Since including limited partnerships as eligible approved mortgagees, the Department has considered the approval requests of other limited partnerships and general partnerships, on a case-by-case basis. In doing so, the Department has applied criteria similar to those currently in the regulations to ascertain whether the partnership is a permanent organization having succession. In order to facilitate processing approval requests from

partnerships, the Department proposes to codify the criteria for the approval of partnerships as mortgagee program participants.

The proposed rule would provide that all general partners of a partnership must be corporations. Additionally, partnerships must have one managing general partner, which has as its principal activity the management of the partnership, and which deals directly with the Department in regard to the partnership's insured mortgages. If the managing general partner withdraws or is removed from the partnership, HUD must be immediately notified of the new managing general partner.

The partnership agreement must provide for the partnership to continue if any partner withdraws. The partnership agreement also shall provide for the partnership to exist for a term of years, which indicates that the partnership is a permanent organization. The majority of partnership agreements that have been reviewed by the Department indicate that it is typical in the market place to have a partnership term of 15 to 30 years. The Department proposes to issue handbook guidelines stating that a term under 5 years would not be satisfactory, because it indicates that the partnership is being organized for an isolated project rather than for a permanent business. The Department has found that partnerships organized for a single purpose tend not to have long term financial stability, and pose a threat to the security of the insurance funds. The inclusion of partnerships as eligible lenders is also under consideration in the title I Reform proposed rule. If the partnership provision in this proposed § 202.12(a) is adopted, it also may be adopted in the context of title I lender approval.

Section 202.12(d) would incorporate as a general requirement for all mortgagees the current escrow requirements for non-supervised mortgagees at § 200.(4)(b)(3). The proposed rule would require that mortgagees segregate escrow funds, including mortgage insurance premiums owed to the Department, in a federally insured account.

Section 202.12(h) would add three reporting requirements to the reporting requirement in existing § 203.3(b). First, the proposed rule would establish the requirement that a mortgagee, at the time it applies for approval and annually thereafter, the mortgagee must submit evidence of compliance with any State licensing requirements. The mortgagee would be required to (1) submit a copy of the license with its application for approval (or certify that there are no licensing requirements), and (2) certify in its annual approval verification that it is in compliance with all State licensing requirements. This certification requirement will provide for additional monitoring of approved mortgagees, without increased cost to the Department and minimal cost to mortgagees.

Second, no requirement currently is imposed on mortgagees to report on their financial condition, other than the submission of an annual audited financial statement. The proposed rule would require each approved mortgagee to file a quarterly financial statement with the Department for each quarter in which it experiences an operating loss of 20 percent or more of its net worth in one quarter of a fiscal year. This reporting requirement will provide an early warning system for detecting financially troubled mortgagees, and will allow the Department to take appropriate action to protect its interests. The Department will review the quarterly reports to ensure that the mortgagee continues to meet the Department's net worth requirements. The quarterly reports will no longer be required when the mortgagee demonstrates an operating profit for two consecutive quarters or until the next recertification, which ever is longer.

Third, the proposed rule would require that within 30 days of the commencement of bankruptcy or similar proceedings the mortgagee must demonstrate to the Department that it is still in compliance with the net worth requirements. This reporting requirement will assure the Department that mortgagees continue to maintain the appropriate net worth at all times, as required by the regulations.

Section 202.12(m) would expand the permitted use of branch offices, for the submission of applications for mortgage insurance, to all classes of approved mortgagees. This proposed expansion is based on the Department's positive experience with the branch offices in the HUD mortgage insurance programs, and on an absence of reasons to prohibit mortgagees from using branch offices in this capacity.

Section 202.12(n) would increase the current net worth requirements. Net worth would continue to be comprised of the assets acceptable under the Generally Accepted Accounting Practices (GAAP), excepting those assets listed in Handbook 4060.1, appendix 2. The existing regulation requires: (1) A net worth of $100,000 for nonsupervised mortgagees and for supervised mortgagees covered by § 203.3(b)(2); and (2) a net worth of $25,000 for loan correspondents. Nonsupervised mortgagees that participate in the Direct Endorsement program are required to have a net worth of $250,000.

The proposed rule first would expand the net worth requirement to all supervised mortgagees. The proposed rule also would establish net worth requirements based on the volume of loans originated or the outstanding balance of loans serviced by approved mortgagees, except loan correspondents and sponsors. Mortgagees with $25 million or less in annual insured mortgage originations or servicing portfolios would be required to have a net worth of $250,000. Mortgagees with $50 million or less in annual insured mortgage originations or servicing portfolios would be required to have a net worth of $500,000. Mortgagees with more than $50 million, but less than $100 million in annual insured mortgage originations or servicing portfolios, would be required to have a net worth of $750,000. Mortgagees that originate or service more than $100 million in insured mortgages would need a net worth of $2,000,000.

Loan correspondents would be required to have a net worth of $50,000, with additional net worth required for each branch office. All mortgagees who act as sponsors for loan correspondents, or who both originate and service insured mortgages, would be required to have a net worth of $1,000,000.

Section 202.12(o) would provide a two year phase-in period for all currently approved mortgagees, except loan correspondents, to meet the new net worth requirements. Loan correspondents would be required to meet the new net worth requirements by the effective date of the rule. Newly approved mortgagees would be required to have a net worth of $250,000 for the first year of approval. Thereafter, the net worth requirement would be based on the mortgagee's actual volume of originations or servicing. If the proposed net worth requirements were in place during fiscal year 1990, almost 50 percent of the loan origination activity would have been from mortgagees with a net worth above $750,000. The Department believes that the proposed net worth requirements will encourage financial responsibility and commitment, enhance mortgagees' independent quality control programs, and conform to standards set by other agencies and entities involved in the mortgage loan business, and by the marketplace. Any mortgagee unable to meet the higher net worth requirements may choose to seek approval under the loan correspondent provisions.

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Section 202.12(q) would establish a liquidity requirement for approved mortgagees. There is currently no requirement for approved mortgagees to maintain liquid assets. Liquid assets would be comprised of cash in banks and on hand, and other cash assets not set aside for specific purposes other than the payment of a current liability or a readily marketable investment. The lack of liquidity has resulted in cases of misuse of trust funds by mortgagees, such as mortgage insurance premiums, for operating purposes. The proposed rule would establish the requirement that approved mortgagees maintain, at all times, liquid assets (cash or its equivalent) of 20 percent of their net worth up to a maximum amount of $100,000.

Section 202.12(r) would establish the requirement that all mortgagees maintain a fidelity bond. The Department will require fidelity bonds with a base coverage of $300,000 covering the mortgagee's employees and agents. Such coverage would provide a source of indemnification to the Department and to borrowers for errors and omissions committed by the mortgagee's employees or agents. The fidelity bond also would provide mortgagees with a backstop for various claims that are typically covered by such bonds. The requirement that approved mortgagees have a fidelity bond in effect at all times is consistent with the requirements of other agencies and entities involved in the mortgage business, including FNMA, GNMA and FHLMC. Since most approved mortgagees also are participants in the FNMA, GNMA or FHLMC programs, this market driven requirement will not affect most approved lenders as they already have bond coverage.

Section 202.13 Supervised Mortgagees

Section 202.13(a) would delete "type 2" supervised mortgagees, provided for in existing § 203.3(b)(2), as a category of approved mortgagee. Under § 203.3(b)(2), a type 2 mortgagee is typically a subsidiary or affiliate of a bank or savings and loan association which is subject to periodic examinations by a Federal or state agency. The experience of the Department is that the periodic examinations of these mortgagees conducted by other agencies do not provide adequate assurance that mortgagees are performing according to HUD financial and program standards. This proposed change will permit the Department to fulfill its statutory obligation to protect the insurance funds by monitoring the financial condition of these mortgagees which are extending the credit of the Federal government.

There currently are approximately 1,700 approved type 2 mortgagees. The mortgagees in this category would be converted to approved nonsupervised mortgagees, under proposed § 202.14. The major difference in the requirements between a nonsupervised mortgagee and a type 2 supervised mortgagee is that a nonsupervised mortgagee must submit an annual audited financial statement to the Department. Since all type 2 mortgagees are ongoing business entities, these mortgagees currently prepare financial statements. The Department does not expect that compliance with this requirement will impose an undue burden on mortgagees.

Section 202.13(c) is based on existing § 203.3(b), except that the net worth requirement of § 203.3(b)(2)(ii) would be deleted. The net worth requirements in proposed new § 202.12(n) would apply to all mortgagees. Similarly, the net worth requirements for branch offices at § 203.3(c) would be republished at proposed new § 202.12(m), and made applicable to all mortgagees.

Supervised mortgagees are permitted by existing § 203.2(d) to designate authorized agents for the purpose of submitting mortgage applications to the Department. Due to the difficulty in supervising authorized agents, the Department proposes to limit the applicability of authorized agents without prior approval to governmental agencies, as defined in proposed new § 202.17. The Department recognizes that mortgagees may need to use authorized agents to meet the lending demand in rural areas and inner cities. Proposed § 202.11(a)(5), discussed above, would permit the use of authorized agents to reach underserved areas upon approval by the Secretary.

Section 202.14 Nonsupervised Mortgagees

Section 202.14(c) would incorporate the requirements for nonsupervised mortgagees, currently set forth in existing § 203.4(b), with two changes. First, the net worth requirements of § 203.4(b)(1) would be transferred to proposed new § 202.12(n), as discussed above. Second, the current warehouse line of credit requirement at existing § 203.4(b)(2) would be increased to $3 million, and transferred to proposed new § 202.14(c)(1). The Department requests comments on the proposed change to the warehouse line of credit requirement.

The present $250,000 warehouse line of credit requirement is inadequate to assure that mortgagees have sufficient sources of credit to fund their loan production. This has caused misuse of mortgage insurance premiums and escrow accounts for the purpose of funding mortgages. Based on an average single family mortgage amount of approximately $65,000, the requirement to maintain a $3 million warehouse line of credit will provide for the funding and closing of two to three months of production for most mortgagees. The proposed warehouse line of credit would ensure that nonsupervised mortgagees have the ability to fund loans.

Under § 202.15(c)(3), which is discussed below, loan correspondents would not be required to maintain a separate warehouse line of credit, but they would be required to have an acceptable funding program with their sponsor.

Currently, existing § 203.4(c) exempts mortgagees that originate 100 or fewer insured single family mortgages from filing compliance test reports under § 203.4(b)(4)(ii). In order for the Department to maintain better quality control and conduct better monitoring of mortgagees, this section would be removed.

Section 202.15 Loan Correspondents.

Section 202.15(a) would define the terms "loan correspondent" and "sponsor" without substantive change from the use of those terms at § 203.5 of the current regulations.

Section 202.15(c) would be based on the eligibility requirements for loan correspondents, currently found at existing § 203.5(b), with two substantive changes. First, § 202.15(c)(6) would expressly state that sponsors and loan correspondents have a principal-agent relationship. The Department proposes to hold the mortgagees to the general agency standards imposed under State law. The general rule of agency law is that the principal (i.e., the sponsor) is liable for the acts of the agent (i.e., the loan correspondent) committed within the reasonable scope of the agent's authority. The principal generally is jointly and severally liable with the agent for deficiencies in the agent's performance. Application of the general rule of agency to approved mortgagees would mean that both the sponsor and the loan correspondent would be liable to indemnify the Department for claim losses on mortgages originated by the loan correspondent. The Department believes that this amendment to the mortgagee approval regulations would (1) increase the responsibilities of the sponsor for the quality of insured mortgages originated by the loan correspondent; and (2) result in greater industry self-regulation and greater quality control in the origination of insured mortgages. In addition, sponsors will be more selective about the loan correspondents from whom they purchase insured mortgages. Second, as discussed in this preamble under § 202.14(c), the warehouse line of credit requirement would be increased to $3 million, unless a sponsor agrees to fund mortgages originated by the loan correspondent.

Section 202.16 Investing Mortgagees

Section 202.16 would incorporate the existing requirements for investing mortgagees, currently found at § 203.6, except that new § 202.16 would remove trust funds from the definition of investing mortgagees in order to parallel the changes at proposed § 202.12(a). [The reasons for excluding trusts as eligible mortgagees is addressed in this preamble under the discussion of § 202.12(a).]

Section 202.17 Governmental Institutions

No substantive changes are proposed to existing § 203.7, which addresses governmental institutions as approved mortgagees. Section 203.7 would be redesignated as § 202.17, with minor conforming changes. Sections 203.7 (b) and (c) would be combined, because the coinsurance program provided in § 203.7(c) has been discontinued.

Section 202.18 Approval for Servicing

There is currently no HUD requirement that a mortgagee use an approved mortgagee to service insured mortgages. The proposed rule would add new §§ 202.18 and 207.253, and amend § 203.502, to establish the requirement that only approved mortgagees may service insured single family and multifamily mortgages. The Department would require that subservicers be approved mortgagees. The requirement would increase the quality of insured mortgage servicing, because only approved mortgagees that demonstrate servicing capability would be authorized to service insured mortgages.

This proposed requirement also would bring HUD approval standards into conformity with market practices. Currently, GNMA and FHLMC require that servicers of pooled mortgages must be HUD approved mortgagees. Consequently, most servicers of insured mortgages are already approved mortgagees. These servicers would merely have to inform the Department that they service insured mortgages and that they are approved mortgagees. Servicers which are not approved mortgagees would have to meet the approval requirements of proposed part 202 and apply for approval. The Department recognizes that most mortgagees are obligated under servicing contracts, and therefore proposes to make this provision effective one year after the effective date of the final rule.

The new § 207.253 will clarify that a mortgagee may contract for servicing for fully insured multifamily mortgages under the same conditions applicable to single family mortgages. Although all multifamily mortgagees are subject to the current § 203.2(i) which references the single family servicing rules, this reference was ambiguous since some of these rules are clearly inapplicable for multifamily mortgages. The new section is intended to eliminate the ambiguity. For existing multifamily coinsured mortgages, the servicing provisions in the applicable coinsured regulations remain in effect.

Section 202.19 Report Requirements

Existing § 203.8, which sets forth reporting requirements, would be redesignated as § 202.19, with minor amendments to incorporate technical and conforming changes.

Mortgagee Approval Citations Chart

The following chart lists (1) the current mortgagee approval regulations of part 203, and (2) the corresponding redesignated citation at proposed new subpart B of part 202. The chart indicates whether the proposed new regulations would revise substantially the Department's requirements and policy as codified in the current regulations.

Current	Proposed	Substantial revision
None	202.10	No.
203.1(a)(1)	202.11(a)(1)	Yes.
203.1(a)(2)	202.11(a), (2) and (4).	Yes.
203.1(a)(3)	203.11(a)(3)	No.
None	202.11(b)	No.
203.1(b)	203.12(a)	No.
203.1(c)	202.11(c)	No.
None	202.11(d)	Yes.
None	202.11(e)	Yes.
203.2 (intro)	202.12 (intro)	No.
203.2(a)	202.12(a)	Yes.
203.2(b)	202.12(b)	No.
203.2(c)	202.12(c)	No.
203.2(d)	202.12(d)	Yes.
203.2(e)	202.12(e)	No.
203.2(f)	202.12(f)	No.
203.2(g)	202.12(g)	No.
203.2(h)	202.12(h)	Yes.
203.2(i)	202.12(i)	No.
203.2(j)	202.12(j)	No.
203.2(k)	202.12(k)	No.
203.2(l)	202.12(l)	No.
None	202.12(o)	Yes.
None	202.12(p)	Yes.

Current	Proposed	Substantial revision
None	202.12(q)	Yes.
203.3(a)	202.13(a)	No.
203.3(b)(1) (2)	202.13(b)	No.
203.3(b)(3)(i)	202.13(c)	No.
203.3(b)(2)(ii)	202.12(n)	Yes.
203.3(c)	202.12(m)	No.
203.3(d)	202.11(a)(5)	Yes.
203.3(e)	202.13(d)	No.
203.4(a)	202.14(a)	No.
203.4(b)	202.14(a)	No.
203.4(b)(1)	202.12(n)	Yes.
203.4(b)(2)	202.14(c)	Yes.
203.4(b)(3)	202.12(o)	No.
203.4(b)(4)	202.14(c)(3)	No.
203.4(c)	None	No.
203.4(d)	202.12(m)	No.
203.5(a)	202.15(a), (b) & (c)(1).	No.
203.5(b)	202.15(c)(4) & (c)(5).	No.
203.5(b)(1)	202.15(c)(2)	No.
203.5(b)(2)	202.15(c)(3)	Yes.
203.5(b)(3)	202.15(b)	Yes.
203.5(b)(4)	202.12(m) & (n)(5).	Yes.
203.5(b)(5)	202.15(c)(4)	No.
203.6	202.16	No.
203.7	202.17	No.
None	202.18	Yes.
203.8	202.19	No.

Administrative Sanctions

Limited Denial of Participation

The existing regulations at § 24.700 authorize a HUD office to issue a limited denial of participation (LDP) against employees, officers, directors or principals of a mortgagee, as well as builders, brokers and real estate agents who participate in HUD's programs, and who fail to comply with the Department's requirements or who engage in fraudulent conduct. An LDP action may not be taken against an FHA-approved mortgagee. Section 24.710(a)(3) provides that an LDP is a local action limited to the jurisdiction of a particular HUD office, and to the program under which the violations occurred. The Department has found that in some instances there has been a lack of consistency and timeliness in the manner in which LDP actions are initiated by the various HUD offices.

The proposed amendments to §§ 24.700 and 24.710(a)(3) would provide the Deputy Assistant Secretary for Single Family Housing with the authority, concurrent to that of the HUD offices, to impose LDP actions within one geographic area or nationwide. The proposal for both centralized and local LDP authority will improve the Department's organizational efficiency. Such action would be taken in accordance with existing requirements governing LDP's.

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Mortgagee Review Board

The grounds for administrative action at § 25.9 would be expanded to include violation of the liquidity and warehouse line of credit requirements set forth in proposed new §§ 202.12(q), 202.14(c)(1), 202.1o(c)(3), and 202.16(b)(2).

Direct Endorsement Program—Expansion of Program and Reorganization of Regulations

The regulations at § 200.163 and § 200.164 establish the requirements for the Direct Endorsement program, and the criteria for approval of Direct Endorsement mortgagees, respectively. In connection with the changes proposed in the Direct Endorsement program, the Department proposes to reorganize, edit and move the Direct Endorsement regulations to part 203. A section-by-section analysis of the substantive changes made to the Direct Endorsement regulations follows. Sections which have been renumbered or which contain only technical or clarifying changes are listed in the chart at the end of the section-by-section analysis.

Section-by-Section Analysis of Part 203

Section 203.1 Underwriting Procedures

The Department proposes to expand the Direct Endorsement Program to virtually all single family programs, and to require mortgagees to process and underwrite mortgages under the Direct Endorsement Program in all cases permitted by the Department. Since loan correspondents do not have Direct Endorsement authority, they would be required to process mortgages through a Direct Endorsement sponsor. This regulatory change would limit the availability of the current procedures which permit mortgagees to submit mortgages for processing to HUD offices.

The Department expects the proposal to improve the overall quality of insured mortgages, and to reduce the risk of loss to the HUD mortgage insurance funds. The Department's analysis of insured mortgages indicates that mortgages not processed under the Direct Endorsement program have a claim and default rate which is significantly higher than that of Direct Endorsement mortgages. This proposed change is not expected to have a significant impact on mortgagees or mortgagors, because less than 8 percent of all endorsed mortgages are processed by the HUD offices annually. This proposal would enhance the ability of HUD offices to perform reviews of Direct Endorsement mortgagees, rather than underwriting individual mortgages. The Department specifically requests public comments on the proposal to expand Direct Endorsement.

Section 203.3 Approval of Mortgagees for Direct Endorsement

Section 203.3 would republish the regulations governing approval of Direct Endorsement mortgagees, currently contained in § 200.164, in a simplified form, and with two substantive changes.

First, § 203.3(c) would provide that Direct Endorsement underwriters would be approved by the HUD Central Office on a nationwide basis. The proposed rule would still permit a HUD local office to approve underwriters which operate in that jurisdiction. The underwriter's national approval would only be terminated by HUD Central Office. Each HUD office could terminate an underwriter's approval in that particular field office's jurisdiction when it is determined by the HUD office that such termination is appropriate. The authority of the HUD office is in addition to the sanctions that the Department may currently impose against underwriters pursuant to 24 CFR part 24.

This proposal would allow the HUD office to continue to monitor underwriters, based on direct assessment of the underwriter's performance. Additionally, this proposal would give mortgagees significant ability to operate in more than one locale, and should make it more practical for mortgagees to participate in the HUD mortgage insurance programs. Previously, mortgagees were subjected to an underwriter approval system, which was often unnecessarily complicated and cumbersome.

Second, the proposed rule would authorize the HUD Central Office to terminate Direct Endorsement approval granted on a nationwide basis. The proposed rule would continue to permit a local HUD office to terminate a mortgagee's Direct Endorsement approval within the office's jurisdiction. As under current policy, a termination decision by the local HUD office would apply only to the mortgagee's office that was found to be in violation of the Department's requirements. The addition of HUD Central Office termination authority would provide consistency and timeliness in taking termination actions nationwide. Termination actions by the HUD Central Office will be taken in accordance with existing regulations and handbook requirements governing the Direct Endorsement program. The local HUD offices will continue to impose lesser sanctions on Direct Endorsement mortgagees (i.e., probation, and placing a mortgagee in pre-approval status).

This rule would continue the current approval system whereby general mortgagee approval is distinct from Direct Endorsement approval. The termination of a mortgagee's Direct Endorsement approval only would limit the mortgagee's approval to underwrite insured mortgages and would not affect its basic mortgagee approval agreement with the Department. A mortgagee which has had its Direct Endorsement approval terminated may continue to close insured mortgages by entering into a loan correspondent relationship with an approved mortgagee who will underwrite the mortgages as a sponsor. The Department would permit such a mortgagee to continue to hold and service loans in its portfolio at the time its Direct Endorsement approval was terminated. If a branch office loses its Direct Endorsement approval, it may submit loans to another branch, regional or central office of the mortgagee for Direct Endorsement processing. In contrast, the concept of an approval agreement, as discussed in earlier in this preamble, provides the Department with a mechanism to terminate its relationship with a mortgagee demonstrating unsatisfactory performance, as reflected in its claim and default rate for FHA insured mortgages. Termination of a mortgagee's approval agreement or termination of approval of a mortgagee's branch office that has failed to meet acceptable performance standards, precludes the mortgagee or its branches from originating any insured mortgages.

Section 203.5 Direct Endorsement Process

Section 203.5 would incorporate the regulations governing the Direct Endorsement process, currently set forth in § 200.163 (a) and (b)(1–4), in a simplified form. The programs which would become eligible for Direct Endorsement processing are § 203.43c, §§ 203.43g–203.43i, § 203.44, part 206, subpart C of part 213, § 221.65, part 226, subpart C of part 227, Subpart A of part 233, § 234.70 and part 237 and section 235(r) of the National Housing Act.

Section 202(e) of the National Housing Act, requiring mortgagees to use a licensed or certified appraiser, and section 322 of the Cranston-Gonzalez National Affordable Housing Act of 1990, pertaining to mortgagee selected appraisers, has not been incorporated into this rulemaking. Due to the comprehensive nature of this proposed rule and the broad implications of the change in the appraiser requirements, the Department is initiating a separate rulemaking procedure to address the

issue of HUD approved and mortgagee selected appraisers. Because of the pending rulemaking, this proposed rule does not reproduce the current language on appraisers in the Direct Endorsement regulation.

Section 203.7 Commitment Process

Section 203.7 retains the current explanation of the mortgage commitment process at existing § 200.13(a), for those insurance programs for which Direct Endorsement would not be applicable under the proposed rule.

Section 203.255 Insurance of Mortgage

Section 203.255 would be revised to reflect that the majority of single family insurance programs would be limited to Direct Endorsement processing. Section 203.255(a) would continue to provide for the issuance of a Mortgage Insurance Certificate for those mortgages not eligible to be originated under Direct Endorsement.

Section 203.255(b) is based largely on the current Direct Endorsement processing rules at § 200.163(b)(5) and (c). Section § 203.255(b) would delete the current list of specific mortgagee certifications at § 200.163(b)(5)(xi) (A)–(I), and the specific underwriter certifications at § 200.163(c) (1)–(11). The requirement that mortgagees and underwriters certify that the loan complies with specific program requirements would be retained. However, specific program regulations subject to certification would be listed in the Direct Endorsement Handbook, and not in the regulation. The expansion of Direct Endorsement processing would make it extremely cumbersome to include all regulatory requirements for all insurance programs in the test of the regulations. The proposed handbook certifications would not introduce new requirements, but only would cover requirements which either are currently in regulations, or in mortgagee letters and handbooks, which have been distributed to all approved mortgagees.

The current Direct Endorsement regulation merely lists the program regulations to which the mortgagee must certify compliance, while the current handbook attempts to set out the certification in a textual form. However, the items in the handbook do not correspond exactly with the list of certifications required by the rule. The duplicate coverage of specific certification items in the regulations and the handbook would be eliminated, and the Department would have greater flexibility to update certifications in a clear manner, while still ensuring that all affected mortgagees had knowledge of required certifications.

As a conforming change, the Department proposes to delete § 200.163(f). Since all mortgages, except those mortgage programs expressly excluded, would be processed under Direct Endorsement there would be no need for regulatory procedures to expand the mortgage types eligible for Direct Endorsement. Additionally, all Direct Endorsement certifications would be published in the handbook and distributed to all mortgagees. Accordingly, a **Federal Register** notice of supplementary certifications would be duplicative. The list of required documents, other than certifications, would be retained in the rule, but § 203.255(b)(10) would differ from the current § 200.163(b)(5)(xi)(10), since the current provision does not clearly state program requirements. The proposed rule would also require the mortgagee to submit "such other documents as the secretary may require" to acknowledge the full list of documents required in the current Direct Endorsement handbook and to provide room for future development of the Direct Endorsement program.

Section 203.255(b)(9) would include conforming changes. The current reference to proposed construction, at § 200.163(b)(5)(ix) regarding health authority approval letters for individual water or sewer systems, is not consistent with Departmental policy. Handbook 4905.1 requires water and sewer approval letters also for existing construction. Therefore, the reference to proposed construction is proposed to be deleted. This section would also include a cross reference to the water supply construction requirements at § 200.926d(f).

Section 203.255(c) is based largely on the current Direct Endorsement processing rules at § 200.163(d). Section 203.255(c) would eliminate the reference to interest rates, which is unnecessary due to the 1983 deregulation of interest rates for insured mortgages. This section also would expand upon existing § 200.163(d) by making explicit two items of pre–endorsement review, which only are implied in the current regulations.

First, HUD would need to determine before endorsement that required up-front mortgage insurance premium (MIP), as well as any late charge and interest, has been paid. HUD procedures throughout the life of the Direct Endorsement program have prohibited HUD offices from endorsing mortgages with unpaid up-front MIP. Payment is a "condition of endorsement" under § 203.280. This change would merely conform the Direct Endorsement regulations to existing procedures.

Second, HUD would review the documents for information indicating incomplete, false, or misleading documents, or fraud or misrepresentation on the part of any party, or other reasons the mortgage is ineligible for insurance. The Direct Endorsement program is designed to provide assurance of endorsement for mortgages which meet all program requirements. On the other hand, HUD has never delegated to Direct Endorsement mortgagees the power to endorse mortgages. Accordingly, HUD's ultimate responsibility to determine whether or not to endorse a mortgage must be based on all available information concerning compliance with program requirements. If HUD is aware of noncompliance with program requirements, it has no power to endorse a mortgage for insurance. This proposed change would expressly add to the regulations HUD's interpretation of its current regulations as stated in Mortgagee Letter 88–35.

Section 203.255(d) also is based on Mortgagee Letter 88–35. This section would clarify that an assignee of the originating mortgagee may submit a mortgage in the name of the originating mortgagee for pre-endorsement review, and may pay the up-front MIP.

Direct Endorsement Citation Chart

The following chart lists the (1) current Direct Endorsement regulations and other regulations concerning mortgage insurance application processing, and (2) the corresponding proposed citation of the new proposed regulation. The chart indicates whether the proposed regulation would revise substantially the corresponding current regulation. Related changes would be made in parts 213 and 234.

Current	Proposed	Substantial revision
203.10	203.7	Yes.
203.11	203.7	Yes.
203.13(a)	203.7	No.
203.13(b)	203.5(a)	No.
203.255(a)	203.255(a)	No.
203.255(b)	203.255(b)	Yes.
200.163(a)(1) & (2).	203.5(a) & (b)	Yes.
200.163(a)(3)	203.255(b)(5) & (11).	No.
200.163(b)(1)	203.5(c)	No.
200.163(b)(3)	none; separate rule will be done.	No.
200.163(b)(4)	203.5(d)	No.
200.163(b)(5)	203.255(b)	No.
200.163(b)(5)(i)–(x).	203.255(b)(1)–(11).	No.

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Current	Proposed	Substantive revision
200.163(b)(5)(d)(A)–(f).	None	No.
200.163(c)	203.255(c)(2)	No.
200.163(c)(1)–(11).	None	No.
200.163(d)	203.255(c)	No.
None	203.255(d)	No.
200.163(e)	203.255(e)	No.
200.163(f)	None	No.
200.164(a)(1)	202.3(a)	No.
200.163(b)(5)	203.255(f)	No.
200.164(b)	203.3(a)	No.
200.164(c)(1)	203.3(b)(1)	No.
200.164(c)(2)	None	Yes.
200.164(d)	203.3(b)(2)	No.
200.164(e)	202.12(j)	No.
200.164(f)	203.3(b)(3)	No.
200.164(g)	203.3(b)(4)	No.
None	203.3(c)	Yes.
200.164(h)	203.3(d)	No.
200.164(i)	203.3(b)(5)	No.
200.164a	203.248	No.

Conforming Changes

The following regulations would be amended to conform with the Department's proposal to expand the Direct Endorsement program.

Section 203.14 Builders Warranty

The current reference to commitments in the first line of § 203.14 is proposed to be deleted because this rule would make Direct Endorsement the primary insurance processing program thereby eliminating the use of commitments in virtually all programs.

Section 203.17 Mortgage Provisions

Section 203.17(d) would be revised to delete reference to mortgages with 35 year terms. Currently, the Department does not endorse mortgages which have a 35-year term under the Direct Endorsement program. Since this rule would expand the Direct Endorsement program, section 203(b) single family mortgages would be required to have a term of no longer than 30 years. Additionally, there has been little use of this regulatory provision for non-Direct Endorsement cases, because generally only mortgages with 30-year terms are eligible for purchase on the secondary market. If this proposed change is adopted in the final rule, changes would be made to any other single family program regulations which permit mortgage terms in excess of 30 years (ie. §§ 213.510(a), 221.30, 227.545, 234.25(c)(2)).

Section 203.27 Charges, Fees or Discounts

Section 203.27 would clarify that the Department would continue its post-endorsement review of fees under § 203.255 for all mortgages directly endorsed.

References to Mortgagee Approval Regulations

As a result of the proposed relocation of the mortgagee approval regulations, numerous cross-references in other program regulations would be inaccurate or obsolete. If a final rule is published with the mortgagee approval regulations relocated in part 202 as contemplated by this proposed rule, the final rule also would modify or delete the following sections of title 24: §§ 25.9 (h) and (u), 204.2(a), 204.5, 204.400, 208.9, 208.125(g)(3), 208.125(d)(2)(i), 207.22, 213.30, 213.532, 220.565, 221.528, 221.800, 227.1(a), 227.501(a), 234.5, 241.40, 241.1040, 242.35, and 244.25.

References to Direct Endorsement Regulations

The proposed reorganization of, and revisions to the Direct Endorsement eligibility and processing requirements at §§ 200.163 and 200.164 would result in numerous cross-references in other regulations being inaccurate or obsolete. If a final rule is published with the Direct Endorsement regulations in part 203, the final rule also would modify or delete the following sections of title 24: §§ 200.141(b), 200.145(b), 200.146(a), 200.147, 200.148(a)(2), 200.150(b), 200.152(b), 200.610, 200.928(a)(2)(iv), 203.13(b), 203.27(a)(3)(v), 203.51, 203.255(b), 203.389 (a) and (b), 204.1, 204.3(b), 221.770, 233.5(a)(6), 234.12(b), 237.5.

Handbook Changes

Management Experience

The proposed rule at § 202.12(b) would republish the current regulation at § 203.2(b) which requires approved mortgagees to employ trained personnel, competent to perform their assigned responsibilities. The policy implementing this provision currently requires that a senior corporate officer of the mortgagee have a minimum of one year of acceptable experience in the mortgage business. Too often this has proven to be inadequate to provide the Department with assurance of prudent lending practices by the mortgagee, or to lessen the risk to the Department's insurance funds. If the proposed rule is adopted, HUD would amend its mortgagee approval handbook to require that a senior corporate officer, with authority over loan production or servicing, have three years experience in the mortgage business or the functional equivalent experience or training. The Department requests public comments on the types of experience which it should consider as equivalent to three years of mortgage lending. The new requirement would increase significantly the level of management experience and would, therefore, increase the lender's ability to originate quality insured mortgages, and ensure sound loan servicing practices. Additionally, proposed § 203.3(b)(1) retains the current requirement of five years experience for mortgagees which seek Direct Endorsement approval due to increased responsibilities associated with that program.

Increased Application and Recertification Fees

Under the existing regulation and proposed new § 202.12(k), the Department may set application and annual fees. Currently mortgagees are required to pay a $300 application fee for mortgagee approval, and a $100 fee for each branch office. In addition, mortgagees pay an annual recertification fee of $200 and $100 for each branch office. The Department proposes to establish a $1,000 application fee and $300 branch application fee. In addition, the annual recertification fee would be raised to $500 for the mortgagee, and $200 for each branch office. The Department has not increased these fees since 1983, while the operating costs of processing mortgagee applications and supervising mortgagees has increased. The proposed application fee also will be consistent with the fees charged by FNMA and FHLMC for approving mortgagees to participate in their programs.

Other Matters

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The eligibility and performance requirements proposed by this rule are consistent with requirements already established by other government agencies for lender eligibility. Accordingly, the economic impact of this rule would be minimal, and it is expected to affect small and large entities equally.

Environmental Impact.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332) The Finding of No Significant Impact is available for public inspection and copying Monday through Friday, 7:30 a.m. until 6 p.m. in the office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Agenda.

This rule was listed as sequence number 1223 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17630, 17371), under Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule is limited to imposing additional eligibility and performance requirements on private lenders. No programmatic or policy changes result from its promulgation which would affect existing relationship between the Federal government and State and local governments.

Executive Order 12606, the Family.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance and general well-being, and, thus is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies related to family concerns, will result from promulgation of this rule.

Public Reporting Burden

The information collection requirements contained in this proposed rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each collection of information in the proposed rule.

Description of inform collec.	No. of respondents	×	No. of responses per respondents	=	Total responses	Hours per response	=	Total hours
1. HUD–92001 202.11(a)(1) Application for Approval as Mortgagee for Superv./Non-Superv.	440		1		440	1.00		440
2. HUD–92001E 202.11(a)(1) Application for use by Loan Correspondent Mtgee	660		1		660	1.00		660
3. HUD–92001V 202.12(n)	* 8800		1		8800	25		2200
4. 203.4(b)(4) 202.14(c)(3) Audited Fin Statement (Only Non-Super and Loan Corres Mtgee)	2890		1		2890	16.00		** 46240
Totals	9900		1		9900			3300

Note: The above estimates for the use of these application forms were determined over a period of one (1) year. (Summary Report Number F51FLCM–N, dated 12–14–90)

*This number for the yearly verification report was based on the current mortgagee total in the same report previously noted.

**These respondents and hours were not included in the totals because other associations, etc., such as GNMA and FNMA, also require financial statements from applications for approval and annually thereafter to remain in an active status.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance program numbers are: 14.103, 14.108, 14.110, 14.112, 14.116, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.124, 14.128, 14.127, 14.128, 14.129, 14.130, 14.132, 14.133, 14.134, 14.135, 14.138, 14.139, 14.140, 14.141, 14.142, 14.149, 14.151, 14.155, 14.156, 14.157, 14.159, 14.162, 14.163, 14.164, 14.165, 14.166, 14.167, 14.168, 14.169, 14.170, 14.171, 14.172, 14.173, 14.174, 14.175, 14.177, 14.179 and 14.180.

List of Subjects

24 CFR part 24

Administrative practice and procedure, Government contracts, Grant programs, Government procurement, Loan programs, Drug abuse, Reporting and Recordkeeping requirements.

24 CFR part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

24 CFR part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social security.

24 CFR part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 24, 25, 200, 202, 203, 207, 213, and 234 would be amended as follows:

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PART 24—GOVERNMENT DEBARMENT AND SUSPENSION AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for 24 CFR part 24 would continue to read as follows:

Authority: Executive Order 12549, secs. 5151–5160, Drug-Free Workplace Act of 1988, Pub. L. 100–690, title V, subtitle D (41 U.S.C. 701 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 24.700, the first sentence would be revised to read as follows:

§ 24.700 General.

Officials who may order a limited denial of participation. A Regional Administrator, Office Manager, Director of an Office of Indian Programs or the Deputy Assistant Secretary for Single Family Housing is authorized to order a limited denial of participation affecting any participant or contractor and its affiliates except HUD–FHA approved mortgagees. • • •

3. In § 24.710, introductory text of paragraph (a) would be republished and paragraph (a)(3) would be revised to read as follows:

§ 24.710 Period and scope of a limited denial of participation.

(a) The scope of a limited denial of participation shall be as follows:

• • • • •

(3) The sanction may be imposed for a period not to exceed 12 months, is limited to specific HUD programs, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by the Deputy Assistant Secretary for Single Family Housing in which case the sanction may be imposed on a nationwide basis or a more restricted basis.

• • • • •

PART 25—MORTGAGEE REVIEW BOARD

4. The authority citation for 24 CFR part 25 would continue to read as follows:

Authority: Secs. 202 (c) and (d), 203(s), 211 and 536 of the National Housing Act (12 U.S.C. 1706 (c) and (d), 1709(s), 1715b and 1734f–14); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 25.9, paragraphs (h) and (u) would be revised to read as follows:

§ 25.9 Grounds for an administrative action.

• • • • •

(h) Failure of an approved mortgagee to meet or maintain the applicable net worth, liquidity or warehouse line of credit requirements of 24 CFR part 202;

• • • • •

(u) Failure to pay the application and annual fees required by 24 CFR part 202;

• • • • •

PART 200—INTRODUCTION

6. The authority citation for 24 CFR part 200 would continue to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. In § 200.152, paragraph (a) would be revised to read as follows:

§ 200.152 Endorsement for insurance.

(a) When it has been determined that the terms and conditions of the commitment have been fully complied with, the Secretary insures the mortgage and evidences the insurance by the issuance of a Mortgage Insurance Certificate for single family mortgages or by the signature of the Secretary's authorized agent in the endorsement panel on the mortgage for multifamily mortgages. After the mortgage is insured, the mortgagee is entitled to the benefits of insurance subject to compliance with the administrative regulations which are a part of the insurance contract.

• • • • •

§§ 200.163—200.164a [Removed]

8. Sections 200.163, 200.164 and 200.164a would be removed.

PART 202—APPROVAL OF LENDERS AND MORTGAGEES

9. 24 CFR part 202 would be amended by revising the heading of part 202 as set forth above; by redesignating current §§ 202.1—202.6 as with the heading of subpart A reading "Subpart A—Approval of title I Lending Institutions"; by adding a new subpart B; and by revising the authority citation to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); title I, sec. 2, National Housing Act (12 U.S.C. 1703); title II, secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715, 1715b).

10. Part 202 would be amended by adding a new subpart B to read as follows:

Subpart B—Approval of Mortgagees

Sec.
202.10 Definitions.
202.11 Approval, recertification, withdrawal of approval and termination of approval agreement.
202.12 General approval requirements.
202.13 Supervised mortgagees.
202.14 Nonsupervised mortgagees.
202.15 Loan correspondents.
202.16 Investing mortgagees.
202.17 Governmental institutions, national mortgage associations, public housing agencies and state housing agencies.
202.18 Approval for servicing.
202.19 Reporting requirements.

§ 202.10 Definitions.

As used in this subpart:

(a) *Mortgage* means a mortgage as defined in § 203.17(a)(1), 203.43c(b)(1), 207.251(c) or § 234.1(d) of this chapter, or a loan authorized for insurance under the National Housing Act;

(b) *Mortgagee* means a mortgage lender which meets the definition of either a supervised mortgagee at § 202.13, a nonsupervised mortgagee at § 202.14, a loan correspondent at § 202.15, an investing mortgagee at § 202.16, or a governmental institution at § 202.17.

§ 202.11 Approval, recertification, withdrawal of approval and termination of approval agreement.

(a) *Approval.* (1) A mortgagee may be approved for participation in the mortgage insurance programs authorized by the National Housing Act, except title I of the Act, upon filing a request for approval on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary to support the request for approval. Approval of the application by the Secretary shall constitute an approval agreement between the mortgagee and the Secretary which includes:

(i) The mortgagee's agreement to comply at all times with the general approval requirements of § 202.12, and the special requirements for the class of mortgagee, at §§ 202.13, 202.14, 202.15, 202.16 or § 202.17, for which it was approved; and

(ii) The mortgagee's agreement that approval may be terminated as provided in § 202.11(d), in addition to any actions of the Mortgagee Review Board authorized by 24 CFR part 25.

(2) Approval may be restricted to participation in the home mortgage insurance programs or the multifamily mortgage insurance programs.

(3) Separate approval is required under subpart A of this part for participation in the title I Program, and additional approval is required for participation in the title II Direct Endorsement program or for the Coinsurance Program as provided in § 203.3 of this chapter or 24 CFR part 204.

(4) Approval of mortgagees may be restricted to geographic areas designated by the Secretary or may be approved to operate on a nationwide basis.

(5) Approval to use authorized agents may be granted to a mortgagee which originates mortgages in areas determined by the Secretary to be under served or in accordance with § 202.17(d) of this part.

(b) *Recertification of approval.* On each anniversary of the approval of a mortgagee, the Secretary shall undertake a recertification procedure to determine whether continued approval is appropriate. The Secretary shall review the yearly verification report required by § 202.12(h)(3) and other pertinent documents, determine whether all application and annual fees which are due have been paid, and request any additional information needed to make a determination regarding continuation of approval. For each mortgagee which is approved before [effective date of this rule], the recertification procedure on the first anniversary of approval occurring after [effective date of this rule] shall include an approval agreement between the Secretary and the mortgagee in compliance with paragraph (a)(1) of this section.

(c) *Withdrawal and suspension of approval.* Mortgagee approval may be suspended or withdrawn by the Mortgagee Review Board as provided in 24 CFR part 25.

(d) *Termination of approval agreement.—(1) Definitions.* For purposes of this paragraph (d):

Normal rate for defaults and claims means the rate of defaults and claims on HUD insured or coinsured mortgages for the geographic area served by a HUD field office, or other area designated by the Secretary, in which the mortgagee originates mortgages.

Defaults means insured mortgages in default for 90 or more days.

Claims means insured mortgages for which the mortgagee submits insurance claims to the Secretary.

(2) *Review of defaults and claims.* Every three months, the Secretary shall review the number of defaults and claims on mortgages originated by each mortgagee in the geographic area served by a HUD field office. The Secretary may also review the performance of a mortgagee's branch offices individually and may impose the sanctions provided for in this section on a branch as well as on a mortgagee as a whole.

(3) *Termination.* (i) If a mortgagee has a rate of defaults and claims on insured mortgages originated in an area during the Federal fiscal year which was in excess of 200 percent of the normal rate, and in excess of the national default and claim rate for insured mortgages, the Secretary shall notify the mortgagee that its approval agreement shall be terminated 30 days after notice was given, without action by the Mortgagee Review Board, except as provided in paragraph (d)(3) (ii) or (iii) of this section.

(ii) Before the Secretary sends the termination notice the Secretary shall review the census tract area concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in under served areas the Secretary may determine not to terminate the approval agreement.

(iii) Prior to termination the mortgagee may request an informal conference with the Deputy Assistant Secretary for Single Family Housing or his or her designee. After considering relevant reasons and factors beyond the mortgagee's control that contributed to the excessive default and claim rates, the Deputy Assistant Secretary for Single Family Housing or designee may withdraw the termination notice and may place the mortgagee on credit watch status.

(4) *Credit watch status.* If a mortgagee has a rate of defaults and claims on insured mortgages originated in an area during a Federal fiscal year which was greater than 150 percent but equal to or less than 200 percent of the normal rate, the Secretary shall notify the mortgagee that it is being placed on credit watch status. Before the credit watch notice is sent the Secretary shall review the census tract area concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in under served areas the Secretary may determine not to place the mortgagee on credit watch status.

(5) *Effect of credit watch.* Insured mortgages originated during a six month period from the date of the credit watch notice will be reviewed for excessive default rates. A mortgagee will be removed from credit watch status if the rate of defaults and claims for the six month tracking period decreases to 150 percent or less one year after that six month tracking period. The approval agreement for a mortgagee subject to credit watch may be terminated if the mortgagee's rate of defaults and claims on insured mortgages originated in an area during the six month tracking period is more than 150 percent of the normal rate one year after that six month tracking period. The Secretary shall provide 30 days notice and an opportunity for an informal conference as required by § 202.11(d)(3) to a mortgagee which will have its approval agreement terminated subsequent to a credit watch.

(e) *Effects of termination.* Termination of the approval agreement shall not affect:

(1) The Secretary's ability to insure eligible mortgages, absent fraud or misrepresentation, if the mortgagor and all terms and conditions of the mortgage were approved before the termination by the Direct Endorsement mortgagee or by a firm commitment issued by the Secretary.

(2) A mortgagee's obligation to continue to pay insurance premiums and meet all other obligations associated with insured mortgages; or

(3) A mortgagee's right to apply for a new approval agreement provided that the general approval requirements at § 202.12 and the specific requirements of the § 202.13 through § 202.19 are met, and the Secretary determines that the underlying causes for termination have been satisfactorily remedied.

§ 202.12 General approval requirements.

To be approved for participation in the mortgage insurance programs authorized by the National Housing Act, except Title I of the Act, and to maintain approval, a mortgagee shall meet the general requirements of this section (except as provided in § 202.17(b)) and the specific requirements of § 202.13 through § 202.18, as appropriate.

(a) *Business form.* It shall be a corporation or other chartered institution, a permanent organization having succession or a partnership. All partnerships must meet the requirements of paragraphs (a)(1) through (a)(4) of this section, and the managing general partner shall comply with the requirements of paragraphs (b), (c) and (g) of this section.

(1) Each general partner must be a corporation or other chartered institution.

(2) One general partner must be designated as the managing general partner, have as its principal activity the management of the partnership and have exclusive authority to deal directly with the Secretary on the partnership's behalf. Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from

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the partnership for any reason, a new managing general partner shall be substituted, and the Secretary shall be immediately notified of the substitution.

(3) The partnership agreement shall specify that the partnership shall exist for the minimum term of years required by the Secretary. All insured mortgages held by the partnership shall be transferred to a HUD approved mortgagee prior to the termination of the partnership. The partnership shall specifically be authorized to continue its existence in the event that a partner withdraws.

(4) The Secretary must be notified immediately of any amendments to the partnership agreement which would affect the partnership's actions under any mortgage insurance program administered by the Secretary.

(b) *Employees.* It shall employ competent personnel trained to perform their assigned responsibilities, including origination, servicing and collection activities, and adequate staff and facilities to originate and service mortgages in accordance with applicable regulations, to the extent the mortgagee engages in such activities.

(c) *Officers.* All employees who will sign applications for mortgage insurance on behalf of the mortgagee shall be corporate officers or shall otherwise be authorized to bind the mortgagee in matters involving the origination of mortgage loans.

(d) *Escrows.* It shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under insured mortgages on account of ground rents, taxes, assessments, and insurance premiums, and shall deposit such funds in a special account or accounts with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(e) *Related laws.* It shall comply with the provisions of the Fair Housing Act, Executive Order 11063, Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act of 1974, and all other Federal laws relating to the lending or investing of funds in real estate mortgages.

(f) *Servicing.* It shall comply with the servicing responsibilities contained in subpart C of part 203 and in part 207 of this chapter, and with all other applicable regulations contained in this title 24, and with such additional conditions and requirements as the Secretary may impose.

(g) *Business changes.* It shall provide prompt notification, on a form prescribed by the Secretary, of all changes in its legal structure, including, but not limited to, mergers, terminations, name, location, control of ownership, and character of business.

(h) *Reports.* It shall file the following reports, records and documentation:

(1) Upon application for approval, a copy of the mortgagee's license to operate as a mortgage lender in the State or States in which it will originate insured mortgages, if there are applicable licensing requirements, or a certification that there are no applicable licensing requirements;

(2) An annual certification that the mortgagee is in compliance with State licensing requirements, if any;

(3) A yearly verification report on a form prescribed by the Secretary;

(4) An audited or unaudited financial statement, within 30 days of the end of each fiscal quarter in which the mortgagee experiences an operating loss of 20 percent of its net worth, and until the mortgagee demonstrates an operating profit for two consecutive quarters or until the next recertification, which ever is the longer period; and

(5) A statement of net worth within 30 days of the commencement of voluntary or involuntary bankruptcy, conservatorship, receivership or any transfer of control to a Federal or State supervisory agency.

(i) *Financial statements.* It shall, upon request by the Secretary, submit a copy of its latest financial statement, submit such information as the Secretary may request, and submit to an examination of that portion of its records which relates to its insured mortgage activities.

(j) *Quality control plan.* It shall implement a written Quality Control Plan, acceptable to the Secretary, that assures compliance with the regulations and other issuances of the Secretary regarding mortgage origination and servicing.

(k) *Fees.* A mortgagee, other than one meeting the requirements of § 202.17, shall pay an application fee and annual fees, including additional fees for each branch office authorized to submit applications for mortgage insurance, in such amounts and at such times the Secretary may require.

(l) *Ineligibility.* At the time of application and at all times while approved as a mortgagee, neither the applicant mortgagee nor any officer, partner, director, principal or employee of the applicant mortgagee shall:

(1) Be suspended, debarred or otherwise restricted under part 24 or part 25 of this title, or under similar procedures of any other Federal agency;

(2) Be indicted for, or have been convicted of, an offense which reflects upon the responsibility, integrity or ability of the mortgagee to be an approved mortgagee;

(3) Be subject to unresolved findings as a result of HUD or other governmental audits or investigations; or

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent lenders or that demonstrate irresponsibility.

(m) *Branch offices.* It may, only upon approval by the Secretary, maintain branch offices for the submission of applications for mortgage insurance. The mortgagee shall remain fully responsible to the Secretary for the actions of its branch offices.

(n) *Net worth.* Except for investing mortgagees under § 202.16 and governmental agencies under § 202.17, it shall have and maintain a net worth, in assets acceptable to the Secretary, of the following amounts. The net worth of a mortgagee (excluding loan correspondents and sponsors) which originates but does not service insured mortgages shall be based on the volume of insured mortgages originated by the mortgagee during the mortgagee's previous fiscal year. The net worth of a mortgagee (excluding loan correspondents and sponsors) which services but does not originate insured mortgages shall be based on the average outstanding balance of insured mortgages serviced by the mortgagee during its preceding fiscal year. The net worth of a mortgagee (excluding loan correspondents and sponsors) which both originates and services insured mortgages shall be $1,000,000.

(1) $250,000 net worth, if the volume of insured mortgages was less than or equal to 25 million in one year;

(2) $500,000 net worth, if the volume of insured mortgages was more than $25 million, but not more than $50 million in one year;

(3) $750,000 net worth, if the volume of insured mortgages was more than $50 million, but not more than $100 million in one year; and

(4) $1,600,000 net worth, if the volume of insured mortgages was more than $100 million in one year; or

(5) $1,000,000 net worth, if the mortgagee is a sponsor for one or more loan correspondents under § 202.15; or

(6) $50,000 net worth, if the mortgagee is a loan correspondent, and an additional $25,000 net worth for each branch office of the loan correspondent up to a maximum of $250,000.

(o) *Effective date.* All mortgagees approved after [the effective date of this rule] shall be required to have a net worth of $250,000 for the first year of

approval. All loan correspondents approved before [the effective date of this rule] must comply with the net worth requirements in paragraph (n) of this section on [the effective date of this rule]. All mortgagees (other than loan correspondents) approved before [the effective date of this rule] must meet the net worth requirement of paragraph (n) of this section by [*two years from effective date of this rule*].

(p) *Conflict of interest.* A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person or entity if such person or entity has received any other consideration from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that consideration as may be approved by the Secretary may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization.

(q) *Liquid assets.* It shall maintain liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20 percent of its net worth, up to a maximum liquidity requirement of $100,000.

(r) *Fidelity bond.* Except for loan correspondents, the mortgagee shall maintain, for the benefit of the Secretary and the mortgagor, fidelity bond coverage acceptable to the Secretary and in an amount required by the Secretary, that assures the faithful performance of the fiduciary responsibilities of the mortgagee.

§ 202.13 Supervised mortgagees.

(a) *Definition.* A supervised mortgagee is a financial institution which is a member of the Federal Reserve System or an institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(b) *General functions.* A supervised mortgagee may originate mortgages, submit applications for mortgage insurance, and may purchase, hold, service or sell insured mortgages.

(c) *Special requirement.* In addition to the general approval requirements in § 202.12, a supervised mortgagee shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency.

(d) *Trust companies.* Approval of a banking institution or a trust company as a supervised mortgagee shall constitute approval of such institution or company when lawfully acting in a fiduciary capacity in investing fiduciary funds which are under its individual or joint control. Upon termination of such fiduciary relationship, any insured mortgages held in the fiduciary estate shall be transferred to a mortgagee approved under this section and the fiduciary relationship must be such as to permit such transfer.

§ 202.14 Nonsupervised mortgagees.

(a) *Definition.* A nonsupervised mortgagee is a financial institution that has as its principal activity the lending or investment of funds in real estate mortgages, and which is not approved under §§ 202.13, 202.15, 202.16, or 202.17.

(b) *General functions.* A nonsupervised mortgagee may submit applications for the insurance of mortgages and may purchase, hold, service or sell insured mortgages.

(c) *Special requirements.* In addition to the general approval requirements in § 202.12, a non-supervised mortgagee shall meet the following requirements:

(1) It shall have and maintain a warehouse line of credit in an amount of not less than $3 million, available for use in the origination of mortgages or other mortgage funding programs acceptable to the Secretary.

(2) It shall file an audit report with the Secretary within 90 days of the close of its fiscal year (or within an extended time if an extension is granted in the sole discretion of the Secretary), and at such other times as may be requested. Audit reports shall be based on audits performed by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(i) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, and analysis of the mortgagee's net worth, adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds;

(ii) A report on compliance tests prescribed by the Secretary; and

(iii) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

§ 202.15 Loan correspondents.

(a) *Definitions.* A *loan correspondent* is a mortgagee approved by the Secretary to originate mortgages for sale or transfer to a sponsor or sponsors.

A *sponsor* is a mortgagee which holds a valid approval agreement, is approved to participate in the Direct Endorsement program, and meets the $1 million net worth requirement at § 203.12(n)(4) of this chapter.

(b) *General functions.* A loan correspondent may submit applications for the insurance of mortgages. A loan correspondent may not sell insured mortgages to any mortgagee other than its sponsor or sponsors without the prior approval of the Secretary, nor may it hold, purchase or service insured mortgages in its own portfolio.

(c) *Special requirements.* In addition to the general approval requirements in § 202.12, a loan correspondent shall meet the following requirements, as applicable:

(1) A loan correspondent shall close all mortgages in its own name. For mortgages not processed through Direct Endorsement under § 203.7 and § 203.255(a) of this chapter, the mortgages must be both underwritten and closed in the loan correspondent's own name. For mortgages processed through Direct Endorsement under § 203.5 and § 203.255(b) of this chapter, underwriting shall be the responsibility of the Direct Endorsement sponsor.

(2) Its approval must be requested by one or more sponsors that are approved mortgagees under § 202.13, § 202.14, or § 202.17.

(3) It shall comply with the warehouse line of credit requirements of § 202.14(c)(1), unless there is a written agreement by a sponsor to fund all mortgages originated by the loan correspondent.

(4) A loan correspondent and its sponsor or sponsors shall promptly notify the Secretary upon termination of any loan correspondent agreement.

(5) It shall file audit reports in accordance with § 202.14(c)(3).

(6) A sponsor and a loan correspondent shall have a principal-agent relationship.

§ 202.16 Investing mortgagees.

(a) *Definition and general functions.* An investing mortgagee is an organization, including a charitable or nonprofit institution or pension fund, that is not approved under other sections of this part. It may purchase, hold or sell insured mortgages, but may not submit applications for the insurance of mortgages. An investing mortgagee may not service insured mortgages without prior approval of the Secretary.

(b) *Special requirements.* In addition to the general approval requirements of § 202.12, an investing mortgagee shall meet the following special requirements:

(1) It has lawful authority to purchase insured mortgages in its own name.

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(2) It has, or has arranged for, funds sufficient to support a projected investment in real estate mortgages of at least $1 million.

§ 202.17 Governmental institutions, national mortgage associations, public housing agencies and state housing agencies.

(a) *Definition and general functions.* Subject to the general approval requirements of § 202.12, a Federal, State or municipal governmental agency a Federal Reserve Bank, a Federal Home Loan Bank, Federal Home Loan Mortgage Corporation, or Federal National Mortgage Association may be an approved mortgagee and may originate, purchase, service or sell insured mortgages to the extent authorized by applicable Federal, State or local law.

(b) *Public Housing Authorities and State Housing Agencies.* Under such terms and conditions as the Secretary may prescribe, Public Housing Agencies or their instrumentalities, and State Housing agencies may be approved as mortgagees for the purpose of originating and holding insured multifamily mortgages funded by issuance of tax exempt obligations by the agency.

(c) *Audit requirements.* Since the insuring of mortgages under the National Housing Act constitutes "financial assistance" for purposes of audit requirements set out in 24 CFR part 44, State and local governments (as defined in § 44.2) that receive mortgage insurance as mortgagees shall conduct audits in accordance with HUD audit requirements at 24 CFR part 44.

(d) *Authorized agents.* A mortgagee approved under this section may, with the approval of the Secretary, designate another approved mortgagee as Authorized Agent for the purpose of submitting applications for mortgage insurance in its name and on its behalf.

§ 202.18 Approval for servicing.

Mortgagees approved under § 202.13 (supervised mortgagees), § 202.14 (non-supervised mortgagees), and § 202.17 (governmental institutions) may service insured mortgages only if approved for servicing by the Secretary.

11. Section 203.8 would be redesignated as a new § 202.19, and all references to "Commissioner" in the newly redesignated § 202.19 would be changed to "Secretary," and § 202.19(a)(1) would be revised to read as follows:

§ 202.19 Report requirements.

(a) *Definitions.* For the purpose of this section:

(1) *Normal rate* for early serious defaults and early claims means the rate of defaults and claims on HUD insured or coinsured mortgages for the geographic area served by a HUD field office, or other area designated by the Secretary, in which the mortgagee originates mortgages.

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

12. The authority citation for 24 CFR part 203 would continue to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

13. 24 CFR part 203 would be amended by revising the part heading as set forth above; by revising the heading of subpart A to read "Subpart A—Eligibility Requirements and Underwriting Procedures"; by revising the first center heading under subpart A entitled "Approval of Mortgagees" to read "Direct Endorsement Process"; by revising the second center heading under subpart A entitled "Application and Commitment" to read "Miscellaneous Regulations"; by revising §§ 203.1, 203.3, 203.5, and 203.7; and by removing and reserving §§ 203.2, 203.4, 203.6, 203.9, 203.10, 203.11, and 203.13; to read as follows:

§ 203.1 Underwriting procedures.

The principal underwriting procedure for single family mortgages is the Direct Endorsement procedure described in § 203.5. Processing through HUD offices as described in § 203.7, with issuance of commitments, is available only for mortgages which are not eligible for Direct Endorsement processing under § 203.5(b), or to the extent required by § 203.3(b)(5), § 203.3(d)(1), or as determined by the Secretary.

§ 203.3 Approval of mortgagees for Direct Endorsement.

(a) *Direct Endorsement approval.* To participate in the Direct Endorsement program set forth in § 203.5, a mortgagee must be an approved mortgagee meeting the requirements of §§ 202.13, 202.14 or 202.17 of this chapter and this section. A mortgagee shall submit an application to each HUD office in whose jurisdiction the mortgagee seeks to process mortgages pursuant to § 203.5.

(b) *Special requirements.* The mortgagee must establish that it meets the following qualifications.

(1) The mortgagee has five years of experience in the origination of single family mortgages. The Secretary will approve a mortgagee with less than five years experience in the origination of single family mortgages if a principal officer has had a minimum of five years of managerial experience in the origination of single family mortgages.

(2) The mortgagee has on its permanent staff an underwriter approved by the Secretary, and authorized by the mortgagee to bind the mortgagee on matters involving the origination of mortgages through the Direct Endorsement procedures. The technical staff utilized by the mortgagee, including appraisers, construction analysts, inspectors, architects and engineers, must also be approved by the Secretary. The technical staff may be employees of the mortgagee or may be hired on a fee basis from a panel approved by the Secretary, except that an independent appraiser or appraisal firm may be used as authorized by § 203.5(e).

(3) The mortgagee's underwriter and technical staff shall satisfactorily complete a training program on HUD underwriting requirements.

(4) The mortgagee must submit initially 15 mortgages, processed in accordance with the requirements set forth under § 203.5 and § 203.255. The documents required by § 203.255 will be reviewed by the Secretary and, if acceptable, commitments will be issued prior to endorsement of the loans for insurance. If the underwriting and processing of these 15 mortgages is satisfactory, then the mortgagee may be approved to close subsequent mortgages and submit them directly for endorsement for insurance in accordance with the process set forth in § 203.255. Unsatisfactory performance by the mortgagee at this stage constitutes grounds for denial of participation in the program, or for continued pre-endorsement review of a mortgagee's submissions. If participation in the program is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in paragraph (d)(2) of this section.

(5) The mortgagee shall promptly notify those HUD offices which have granted approval under this section of any changes that affect qualifications under this section.

(c) *Approval of underwriters.* An underwriter may be approved by the Secretary to underwrite Direct Endorsement mortgages nationwide. An underwriter also may be approved by each HUD office in whose jurisdiction the underwriter seeks to conduct business.

(d) *Mortgagee sanctions.* Depending upon the nature and extent of the noncompliance with the requirements applicable to the Direct Endorsement process, as determined by the Secretary, the Secretary may take any of following actions:

(1) *Probation.* The Secretary may place a mortgagee on Direct Endorsement probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the Direct Endorsement procedure. Such probation is distinct from probation imposed by the Mortgagee Review Board under 24 CFR part 25. During the probation period specified by this section, the mortgagee may continue to process Direct Endorsement mortgages, subject to conditions required by the Secretary. The Secretary may require the mortgagee to:

(i) Process mortgages in accordance with paragraph (b)(4) of this section;

(ii) Submit to additional training;

(iii) Make changes in the Quality Control Plan required by § 202.12(j) of this chapter; and

(iv) Take other actions, which may include, but are not limited to, periodic reporting to the Secretary, and submission to the Secretary of internal audits.

(2) *Termination of approval of Direct Endorsement mortgagees.* (i) A mortgagee's approval to participate in the Direct Endorsement program may be terminated in a particular jurisdiction by the local HUD office or on a nationwide basis by HUD Central Office. The HUD office instituting the termination action shall provide the mortgagee with written notice of the grounds for the action and of the right to an informal hearing before the office initiating the termination action. Such hearing shall be expeditiously arranged, and the mortgagee may be represented by counsel. Any termination instituted under this section is distinct from withdrawal of mortgagee approval by the Mortgagee Review Board under 24 CFR part 25.

(ii) After consideration of the materials presented, the decision maker shall advise the mortgagee in writing whether the termination is rescinded, modified or affirmed.

(iii) The mortgagee may appeal such decision to the Deputy Assistant Secretary for Housing or his or her designee. A decision by the Deputy Assistant Secretary or designee shall constitute final agency action.

§ 203.5 Direct Endorsement process.

(a) *General.* Under the Direct Endorsement program, the Secretary does not review applications for mortgage insurance or issue conditional or firm commitments, except to the extent required by § 203.3(b)(4) or § 203.3(d)(1). Under this program, the mortgagee determines that the proposed mortgage is eligible for insurance under the applicable program regulations, and submits the required documents to the Secretary in accordance with the procedures set forth in § 203.255. This subpart provides that certain functions shall be performed by the Secretary (or Commissioner), but the Secretary may specify that a Direct Endorsement mortgagee shall perform such an action without specific involvement or approval by the Secretary, subject to statutory limitations. In each case, the Direct Endorsement mortgagee's performance is subject to pre-endorsement and post-endorsement review by the Secretary under §§ 203.255 (c) and (e).

(b) *Eligible programs.* All single family mortgages authorized for insurance under the National Housing Act shall be originated through the Direct Endorsement program, except mortgages authorized under sections 203(n), 203(p), 213, 221 (i) or (j), 225, 233, 237, 247, 248, 255, 809 or 810 of the National Housing Act, and any other insurance programs announced by Federal Register notice. The provision contained in 24 CFR 221.55 regarding deferred sales to displaced families is not available in the Direct Endorsement program.

(c) *Underwriter due diligence.* A Direct Endorsement mortgagee shall exercise the same level of care which it would exercise in obtaining and verifying information for a loan in which the mortgagee would be entirely dependent on the property as security to protect its investment. Mortgagee procedures that evidence such due diligence shall be incorporated as part of the Quality Control Plan required under § 202.12(j) of this chapter. The Secretary shall publish guidelines for Direct Endorsement underwriting procedures in a handbook, which shall be provided to all mortgagees approved for the Direct Endorsement procedure. Compliance with these guidelines is deemed to be the minimum standard of due diligence in underwriting mortgages.

(d) *Mortgagor's income.* The mortgagee shall evaluate the mortgagor's credit characteristics, adequacy and stability of income to meet the periodic payments under the mortgage and all other obligations, and the adequacy of the mortgagor's available assets to close the transaction, and render an underwriting decision in accordance with applicable regulations, policies and procedures.

§ 203.7 Commitment process.

For single family mortgage programs which are not eligible for Direct Endorsement processing under § 203.5, the mortgagee shall submit an application for mortgage insurance on a form prescribed by the Secretary, prior to making the mortgage. If (a) a mortgage for a specified property has been accepted for insurance through issuance of a conditional commitment by the Secretary or a certificate of reasonable value by the Secretary of Veterans Affairs, and (b) a specified mortgagor and all other proposed terms and conditions of the mortgage meet the eligibility requirements for insurance as determined by the Secretary, the Secretary shall approve the application for insurance by issuing a firm commitment setting forth the terms and conditions of insurance will be issued upon a form prescribed by the Secretary.

§ 203.8 [Redesignated as § 202.19]

13a. Section 203.8 would be redesignated as § 202.19.

14. Section 203.14 would be revised to read as follows:

§ 203.14 Builders' warranty.

Applications relating to proposed construction must be accompanied by an agreement in form satisfactory to the Secretary, executed by the seller or builder or such other person as the Secretary may require, and agreeing that in the event of any sale or conveyance of the dwelling, within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property a warranty in form satisfactory to the Secretary warranting that the dwelling is constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by the Secretary) on which the Secretary has based his valuation of the dwelling. Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish the Secretary with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

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15. Section 203.17(d) would be revised to read as follows:

§ 203.17 Mortgage provisions.

* * * * *

(d) *Maturity.* The mortgage shall have a term of not more than 30 years from the date of the beginning of amortization.

* * * * *

16. Section 203.27(d) would be revised to read as follows:

§ 203.27 Charges, fees or discounts.

* * * * *

(d) Before the insurance of any mortgage, the mortgagee shall furnish to the Secretary a signed statement in a form satisfactory to the Secretary listing any charge, fee or discount collected by the mortgagee from the mortgagor. All charges, fees or discounts are subject to review by the Secretary both before and after endorsement under § 203.255.

* * * * *

17. Section 203.248 would be revised to read as follows:

§ 203.248 Waivers.

On a case-by-case basis, the Secretary may waive any requirement of this subpart not required by statute, if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds for forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing-Federal Housing Commissioner, but shall not be redelegated.

18. Section 203.249 would be revised to read as follows:

§ 203.249 Effect of amendments.

The regulations in this subpart may be amended by the Secretary at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage or loan already insured, and shall not adversely affect the interest of a mortgagee on any mortgage or loan to be insured on which either the Direct Endorsement mortgagee has approved the mortgagor and all terms and conditions of the loan or the Secretary has issued a firm commitment. In addition, such amendment shall not adversely affect the eligibility of specific property if such property is covered by a conditional commitment issued by the Secretary, a certificate of reasonable value issued by the Secretary of Veterans Affairs, or an appraised report approved by a Direct Endorsement underwriter.

19. Section 203.255 would be revised to read as follows:

§ 203.255 Insurance of mortgage.

(a) *Endorsement without Direct Endorsement processing.* For applications for insurance involving mortgages not eligible to be originated under the Direct Endorsement program under § 203.5, the Secretary will endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate, provided that the mortgagee is in compliance with the firm commitment.

(b) *Endorsement with Direct Endorsement processing.* For applications for insurance involving mortgages originated under the single family Direct Endorsement program under § 203.5, the mortgagee shall submit to the Secretary, within 30 days after the date of closing of the loan or such additional time as permitted by the Secretary, the documentation and certifications listed in this paragraph (b):

(1) Property appraisal upon a form prescribed by the Secretary (or for proposed construction, a HUD conditional commitment or the Department of Veterans Affairs certificate of reasonable value) and all accompanying documents required by the Secretary;

(2) An application for insurance of the mortgage upon a form prescribed by the Secretary;

(3) A certified copy of the mortgage and note executed upon forms which meet the requirements of the Secretary;

(4) A warranty of completion, on a form prescribed by the Secretary, for proposed construction cases;

(5) An underwriter certification, on a form prescribed by the Secretary, stating that the underwriter has personally reviewed the appraisal report and credit application (including the analysis performed on the worksheets) and that the proposed mortgage complies with HUD underwriting requirements, and incorporating each of the underwriter certification items which apply to the mortgage submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees;

(6) Where applicable, a certificate under oath and contract regarding use of the dwelling for transient or hotel purposes;

(7) Where applicable, a certificate of intent to occupy by military personnel;

(8) Where a mortgage for an existing property is to be insured under section 221(d)(2) of the National Housing Act, a letter from the appropriate local government official that the property meets applicable code requirements;

(9) Where an individual water or sewer system is being used, an approval letter from the local health authority indicating approval of the system in accordance with 24 CFR 200.926d(d);

(10) For proposed construction if the mortgage (excluding financed mortgage insurance premium) exceeds a 90 percent loan to value ratio, evidence that the mortgagee qualifies for a higher ratio loan under one of the applicable provisions in the appropriate regulations;

(11) A mortgagee certification on a form prescribed by the Secretary, stating that the authorized representative of the mortgagee (or loan correspondent sponsored by the mortgagee) who is making the certification has personally reviewed the mortgage documents and the application for insurance endorsement, and certifying that the mortgage complies with the requirements of this paragraph (b). The certification shall incorporate each of the mortgagee certification items which apply to the mortgage loan submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees; and

(12) Such other documents as the Secretary may require.

(c) *Pre-endorsement review for Direct Endorsement.* Upon submission by an approved mortgagee of the documents required by paragraph (b) of this section, the Secretary will review the documents to determine:

(1) That the mortgage is executed on a form which meets the requirements of the Secretary;

(2) That the mortgage maturity meets the requirements of the applicable program;

(3) That the stated mortgage amount does not exceed the maximum mortgage amounts as most recently published in the Federal Register;

(4) That all documents required by paragraph (b) of this section are submitted;

(5) That all necessary certifications are made in accordance with paragraph (b) of this section;

(6) That there is no mortgage insurance premium, late charges or interest due to the Secretary; and

(7) That there is no information known to the Secretary indicating that:

(i) Any certification or other required document is incomplete, false, misleading, or constitutes fraud or misrepresentation on the part of any party; or

(ii) The mortgage is otherwise ineligible for insurance.

If, following this review, the mortgage is determined to be eligible, the Secretary will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Secretary will inform the mortgagee in writing of this fact, and include the reasons thereof and any corrective actions that may be taken.

(d) *Submission by mortgagee other than originating mortgagee.* If the originating mortgagee assigns the mortgage to another approved mortgagee before pre-endorsement review under paragraph (c), the assignee may submit the required documents for pre-endorsement review in the name of the originating mortgagee. All certifications must be executed by the originating mortgagee (or its underwriter, if appropriate). The purchasing mortgagee may pay any required mortgage insurance premium, late charge and interest.

(e) *Post-Endorsement review for Direct Endorsement.* Following endorsement for insurance, the Secretary may review all documents required by paragraph (b) of this section. If, following this review, the Secretary determines that the mortgage does not satisfy the requirements of the Direct Endorsement program, the Secretary may place the mortgagee on Direct Endorsement probation, or terminate the authority of the mortgagee to participate in the Direct Endorsement program pursuant to § 203.3(d), or refer the matter to the Mortgagee Review Board for action pursuant to 24 CFR part 25.

20. Section 203.502(a) would be revised to read as follows:

§ 203.502 Responsibility for servicing.

(a) After [one year from effective date of final rule], servicing of insured mortgages must be performed by a mortgagee that is approved by HUD to service insured mortgages. The servicer must fully discharge the servicing responsibilities of the mortgagee as outlined in this part. The mortgagee shall remain fully responsible to the Secretary for proper servicing, and the actions of its servicer shall be considered to be the actions of the mortgagee. The servicer also shall be fully responsible to the Secretary for its actions as a servicer.

* * * * *

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

21. The authority citation for 24 CFR part 207 would continue to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Sections 207.258 and 207.258b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(e)).

22. A new § 207.263 would be added to read as follows:

§ 207.263 Responsibility for servicing.

After [one year after effective date of this rule] servicing of insured mortgages must be performed by a mortgagee which is approved by HUD to service insured mortgages.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

23. The authority citation for 24 CFR part 213 would continue to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 213.503, 213.504 and 213.505 [Removed]

24. The center heading under subpart C, entitled "Application and Commitment", and §§ 213.503, 213.504 and 213.505 would be removed and reserved.

25. The center heading under subpart C entitled "Approval of Mortgagees" and § 213.502 would be revised to read as follows:

Application for Insurance

§ 213.502 Processing for insurance.

Mortgages under this part 213 shall be processed by approved mortgagees and insured by the Secretary through the Direct Endorsement procedure at part 203 of this chapter, unless otherwise determined by the Secretary.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

26. The authority citation for 24 CFR part 234 would continue to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Section 234.520(a)(2)(ii) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

§§ 234.11 and 234.12 [Removed]

27. Sections 234.11 and 234.12 would be removed and reserved, and the center heading under Subpart A entitled "Application and Commitment" and § 234.10 would be revised to read as follows:

Application for Insurance

§ 234.10 Processing for insurance.

Mortgages under this part 234 shall be processed by approved mortgagees and insured by the Secretary through the Direct Endorsement procedure at 24 CFR part 203, unless otherwise determined by the Secretary.

Dated: May 10, 1991.

Alfred A. DelliBovi,

Deputy Secretary.

[FR Doc. 91–14961 Filed 6–24–91; 8:45 am]
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Part IX

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 575
Iraqi Sanctions Regulations; Final Rule

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 575

Iraqi Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments to the list of specially designated nationals of the Government of Iraq.

SUMMARY: The Iraq Sanctions Regulations, 31 CFR part 575 (56 FR 2112, Jan. 18, 1991—the "Regulations"), are being amended to add seven names to and remove two names from appendix A, the list of individuals and Organizations Determined to be Within the Term "Government of Iraq" (Specially Designated Nationals of Iraq). Appendix A contains the names of companies and individuals which the Director of the Office of Foreign Assets Control has determined are owned or controlled by or acting or purporting to act directly or indirectly for the Government of Iraq. This list may be expanded at any time.

EFFECTIVE DATE: June 25, 1991.

ADDRESSES: Copies of this list are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Section, Office of Foreign Assets Control, Tel.: (202) 566–5021.

SUPPLEMENTARY INFORMATION: The Regulations were issued by the Treasury Department to implement Executive Orders No. 12722 and 12724 of August 2 and August 9, 1990, in which the President declared a national emergency with respect to Iraq, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the United Nations Participation Act (22 U.S.C. 287c), and ordering specific measures against the Government of Iraq. An amendment to the regulations (56 FR 13584, Apr. 3, 1991) added a new appendix A, the list of Individuals and Organizations Determined to be Within the Term "Government of Iraq" (Specially Designated Nationals of Iraq), and a new appendix B, the list of Merchant Vessels Registered, Owned, or Controlled by the Government of Iraq or by Persons Acting Directly or Indirectly on Behalf of the Government of Iraq.

Section 575.306 of the Regulations defines the term "Government of Iraq" to include

(a) The state and the Government of Iraq, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iraq;

(b) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any other person or organization determined by the Director of the Office of Foreign Assets Control to be included within this section.

Determinations that persons fall within this definition are effective upon the date of determination by the Director, Office of Foreign Assets Control ("FAC"). Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

This rule adds seven names to and removes two names from appendix A to part 575 to provide public notice of a list of persons, known as "specially designated nationals" of the Government of Iraq. The list consists of companies and individuals which the Director of the Office of Foreign Assets Control has determined to be owned or controlled by or to be acting or purporting to act directly or indirectly for the Government of Iraq, and which thus fall within the definition of the "Government of Iraq" contained in § 575.306 of the Regulations. The persons included in appendix A are subject to all prohibitions applicable to other components of the Government of Iraq. All unlicensed transactions with such persons, or in property in which they have an interest, are prohibited.

The list of specially designated nationals is a partial one, since FAC may not be aware of all the persons that might be owned or controlled by the Government of Iraq or acting as officers, agents, or front organizations for Iraq, and which thus qualify as specially designated nationals of the Government of Iraq. Therefore, persons engaging in transactions may not rely on the fact that any particular person is not on the specially designated nationals list as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly for, the Government of Iraq. The Treasury Department regards it as incumbent upon all U.S. persons to take reasonable steps to ascertain for themselves whether persons they enter into transactions with are owned or controlled by the Government of Iraq or are acting or purporting to act on its behalf, or on behalf of other countries subject to blocking or transportation-related restrictions (at present, Cambodia, Cuba, Libya, North Korea, and Vietnam).

Section 586E of the Iraq Sanctions Act of 1990, Public Law 101–513, 104 Stat. 2049, provides for civil penalties not to exceed $250,000 for violations of the Regulations and fines of up to $1,000,000 and imprisonment for up to 12 years for willful violations of the Regulations. In addition, section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b)) provides for the forfeiture of any property involved in a violation of the Regulations.

Pursuant to the Regulations, PMK/QUDOS (Liverpool Polytechnic), England, United Kingdom, and Sollatek, England, United Kingdom, were included in appendix A to the Regulations, published in the Federal Register on April 3, 1991 (56 FR 13584) as specially designated nationals of the Government of Iraq. Following a review of additional information and extensive consultations with the British Government, it has been determined that PMK/QUDOS (Liverpool Polytechnic) and Sollatek are not within the scope of the definition of the "Government of Iraq" as defined in § 575.306 of the Regulations; and, therefore, are removed from the list of specially designated nationals of the Government of Iraq.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 575

Administrative practice and procedure, Banks, Banking, Blocking of assets, Foreign trade, Iraq, Penalties, Reporting and recordkeeping requirements, Securities, Specially designated nationals, Travel restrictions.

PART 575—IRAQI SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 575 is amended as set forth below:

1. The Authority citation for part 575 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–55 (Nov. 5, 1990); 3 U.S.C. 301; E.O. 12722, 55 FR 31803 (Aug. 3, 1990); E.O. 12724, 55 FR 33089 (Aug. 13, 1990).

Appendix A—Individuals and Organizations Determined to be Specially Designated Nationals of the Government of Iraq

2. Appendix A to part 575 is amended by removing the numerical designations from the list of companies and the list of individuals.

3. Appendix A to part 575 is amended by removing the following names from the list of companies:

PMK/QUDOS (Liverpool Polytechnic), England, United Kingdom.
Sollatek, England, United Kingdom.

4. Appendix A to part 575 is amended by adding the following names in their proper alphabetical positions to the list of individuals:

Al-Majid, Ali Hassan, Baghdad, Iraq
Al-Majid, Hussein Kamel Hassan, Baghdad, Iraq
Al-Takriti, Barzan Ibrahim Hassan, Geneva, Switzerland
Al-Takriti, Sabawi Ibrahim Hassan, Baghdad, Iraq
Al-Takriti, Watban, Baghdad, Iraq
Hussein, Udai Saddam, Baghdad, Iraq
Jasim, Latif Nusayyif, Baghdad, Iraq

Dated: May 17, 1991.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: May 22, 1991.

Nancy L. Worthington,
Acting Assistant Secretary (Enforcement).

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Part X

Department of Defense
General Services
Administration
National Aeronautics and
Space Administration

48 CFR Part 6, et al.
Federal Acquisition Regulation;
Miscellaneous Amendments; Final Rules
and Interim Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 39, and 52

[Federal Acquisition Circular 90-5]

Federal Acquisition Regulation; Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rules and interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are issuing Federal Acquisition Circular (FAC) 90-5 to amend the Federal Acquisition Regulation (FAR)—

I. To add 6.302-1(c) and revise 10.004(b)(2) to emphasize that the use of "brand name description" specifications in procurements is a restriction on "full and open" competition under the Competition in Contracting Act (CICA).

II. To provide procedural guidance for contracting officers to follow when they receive a bid from a firm on the List of Parties Excluded from Procurement Programs;

III. To amend 20.302(a) to clarify that the use of Labor Surplus Area clauses is not appropriate in acquisitions for petroleum and petroleum products because there is no likelihood of labor surplus area subcontracting under such contracts.

IV. To set forth a new rule on the allowability of postretirement benefits other than pensions (PRB) on U.S. Government contracts.

V. To clarify the definition of Architect-Engineer (A–E) Services;

VI. To require prime contractors to require each first tier subcontractor to disclose, to the prime contractor, whether the subcontractor is or is not debarred, suspended, or proposed for debarment by the Federal Government.

VII. To provide an information item regarding procurement integrity and to perform several technical amendments to the FAR.

DATES: *Effective Date:* July 25, 1991, except for § 52.209-6 (interim rule, Item VI) which is effective June 25, 1991.

Comment Date: Comments on the interim rule (Item VI, FAR case 91-16) should be submitted to the FAR Secretariat at the address shown below on or before August 26, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAC 90-5 and the FAR case number in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-5.

SUPPLEMENTARY INFORMATION:

LIST OF ITEMS

Item	Subject	FAR Case	DAR Case	Analyst
I	Brand Name Description Procurements	91-24	90-35	O'Neill.
II	Effect of Debarment/Suspension on Bids/Offers	90-27	90-418	Loeb.
III	Utilization of LSA Concerns	90-44	90-421B	Scott.
IV	Postretirement Benefits Other Than Pensions	89-70	89-07	Olson.
V	Definition of Architect-Engineer Services	89-25	86-316	O'Neill.
VI	Disclosure Requirement Relating to Subcontractors	91-16	90-311	Loeb.

A. Background

I. Brand Name Description Procurements (FAR Case 91-24)

The addition of 6.302-1(c) and revision of 10.004(b)(2) result from a recommendation made by the General Accounting Office in two reports on Federal agencies' efforts to implement the Competition in Contracting Act (CICA) (GAO/NSIAD-87-145, August 1987, and GAO/NSIAD-90-104, May 1990). The rule is published as a final rule without publication as a proposed rule because it clarifies existing coverage.

For further information pertaining to this case, contact Mr. Jack O'Neill at (202) 501-3856.

II. Effect of Debarment/Suspension on Bid/Offers (FAR Case 90-27)

The FAR at 9.405 did not provide a uniform approach for handling bids/offers submitted by contractors debarred, suspended, proposed for debarment or declared ineligible from award of Government contracts. The councils believed that a consistent policy should be adopted. This change to the FAR does so. The proposed rule was published in the Federal Register (55 FR 22294) on May 31, 1990.

For further information pertaining to this case, contact Mr. Edward Loeb at (202) 501-4547.

III. Utilization of LSA Concerns (FAR Case 90-44)

The FAR at 20.302 requires inclusion of Labor Surplus Area clauses in solicitations and contracts. The Councils believe that inclusion of those clauses in acquisitions for petroleum and petroleum products is not appropriate since any subcontracting would normally be in the locale of the refinery. The proposed rule was published in the Federal Register (55 FR 38790) on September 20, 1990. There are no substantive differences between the proposed rule and the final rule.

For further information pertaining to this case, contact Ms. Shirley Scott at (202) 501-0168.

IV. Post-Retirement Benefits Other Than Pensions (FAR Case 89-70)

A proposed rule was published in the Federal Register on November 9, 1989 (54 FR 47182), to set forth criteria for the allowability of the costs of postretirement benefits other than pensions (PRB) under Government contracts. The rule results from a new Financial Accounting Standards Board financial reporting requirement that retiree health and other PRB costs be recognized during employees' active working lives. The purpose of the FAR rule is to establish a clear requirement that contractor accruals of PRB costs must be funded to be allowable.

The final rule differs from the proposed rule in that PRB coverage in FAR 31.205-6(m) has been moved to a new paragraph 31.205-6(o) which more clearly defines the benefits covered. PRB calculations must be performed in accordance with principles and practices promulgated by the Actuarial Standards Board (31.205-6(o)(2)). Any PRB costs assigned to the current year, but not funded or liquidated by tax return time, are unallowable in any future period (31.205-6(o)(2)), and increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which the costs are assignable are unallowable (31.205-6(o)(3)).

For further information pertaining to this case, contact Mr. Jeremy Olson at (202) 501-3221.

V. Definition of Architect-Engineer Services (FAR Case 89-25)

The Brooks Act (Pub. L. 92-582), passed in 1972, established as Federal Government policy that all requirements for architect-engineer (A–E) services must be publicly announced and that contracts for those services would be negotiated on the basis of demonstrated competence and qualification for the type of professional services required, at fair and reasonable prices. Since passage of the Brooks Act, various change were made, both by legislation and by Comptroller General decisions, that caused inconsistent interpretations of the definition of A–E services. Finally, on November 17, 1988, the Congress enacted the OFPP Act Amendments of 1988 (Pub. L. 100-679), which clarified the definition of A–E services in the Brooks Act. An interim rule was published in the Federal Register (54 FR 13332, March 31, 1989) amending FAR part 36 to implement the OFPP Act Amendments. Public comments were received and considered in drafting this final rule.

For further information pertaining to this case, contact Mr. Jack O'Neill at (202) 501-3856.

VI. Disclosure Requirement Relating to Subcontractors (FAR Case 91-16)

Section 813 of the Fiscal Year 1991 Defense Authorization Act (Pub. L. 101-510) required the Department of Defense to prescribe rules to require each prime contractor to require each subcontractor to whom it awards a contract, in excess of the small purchase limitation, to disclose to the contractor whether the subcontractor is or is not, as of the date of award of the subcontract, debarred or suspended by the Federal Government from Government contracting or subcontracting. The change to 52.209-6 is issued as an interim rule because the statutory requirement was effective upon signing of the Defense Authorization Act, November 5, 1990. The change is being applied Governmentwide in an attempt to keep debarment and suspension rules and procedures uniform to the extent practicable.

For further information pertaining to this case, contact Mr. Edward Loeb at (202) 501-4547.

B. Regulatory Flexibility Act

(FAR Case 91-24)

The amendment to 6.302-1 and revision to 10.004(b)(2) will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule does not constitute a significant FAR revision within the meaning of FAR 1.501. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities will be considered in accordance with 5 U.S.C. 601 of the Act. Such comments must be submitted separately and cite FAR Case 91-24 (FAC 90-5) in correspondence.

(FAR Case 90-27)

The amendments to FAR 9.405, 9.405-2, and 14.404-2 will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely provides procedural and policy guidance to contracting officers, and imposes no requirements of any kind upon small entities.

(FAR Case 90-44)

The amendments to FAR 20.302 concerning the use of labor surplus area subcontracting clauses in solicitations and contracts for petroleum and petroleum products, and the introductory text of the clause at 52.220-3 are not expected to have a significant impact on a substantial number of small entities because there is no likelihood of labor surplus area subcontracting in such contracts. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. However, public comments were solicited on September 20, 1990 (55 FR 38790). No comments were received that took issue with the Regulatory Flexibility Act statement.

(FAR Case 89-70)

The amendments to the postretirement benefits coverage levies no additional requirements on contractors. The amendments clarify a condition of allowability of costs, namely funding or payment, upon contractors who wish to be reimbursed under Government contracts. Therefore, this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because most contracts awarded to small businesses are awarded on a competitive, fixed-price basis and the cost principles do not apply.

(FAR Case 89-25)

The amendments to FARs 36.102 and 36.601 implement a statutory amendment that Congress has stated is intended to clarify, rather than expand, the statutory definition of architect-engineer services. Accordingly, the amendments are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The change imposes no requirements of any kind upon small entities.

(FAR Case 91-16)

The revision of 52.209-6 is not expected to have a significant cost or administrative impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely requires prime contractors to obtain from subcontractors a disclosure as to whether or not they are debarred, suspended, or proposed for debarment.

C. Paperwork Reduction Act

(FAR Case 91-24)

The amendment to 6.302-1 and revision to 10.004(b)(2) do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 90-27)

The amendments to FAR 9.405, 9.405-2, and 14.404-2 do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 90-44)

The amendments to FAR 20.302 and the clause at 52.220-3 do not involve any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

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(FAR Case 89-78)

The amendments to the PRB coverage do not impose any reporting or recordkeeping requirements which require approval of OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 89-25)

The changes made to clarify the definition of architect-engineer services do not impose any reporting or recordkeeping requirements which require approval of OMB under 44 U.S.C. 3501, *et seq.*

(FAR Case 91-16)

The revision of 52.209-6 does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

(FAR Case 91-16)

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in FAR case 91-16, item VI of FAC 90-6, as an interim rule. This action is necessary as a result of section 813 of the *Fiscal Year 1991 Defense* Authorization Act (Pub. L. 101-510), which requires DOD to prescribe regulations requiring that DOD contractors must require subcontractors to disclose whether or not they are debarred or suspended from Federal Government contracting or subcontracting. The date of enactment was November 5, 1990. As a matter of policy, the regulation is being applied to all executive agencies. It is determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 39, and 52

Government procurement.

Dated: June 17, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-6 is effective July 25, 1991.

Dated: June 11, 1991.

D.S. Parry,

Captain, USN Acting Director of Defense Procurement.

Dated: June 17, 1991.

Richard H. Hopf,

Associate Administrator for Acquisition Policy, GSA.

Dated: June 7, 1991.

Don G. Bush,

Acting Assistant Administrator for Procurement.

Federal Acquisition Circular (FAC) 90-5 amends the Federal Acquisition Regulation as specified below.

I—Brand Name Description Procurements (FAR Case 91-24)

Section 6.302-1 is amended by adding a new paragraph (c) to emphasize that the use of "brand name description" specifications in procurements is a restriction on full and open competition under the Competition in Contracting Act (CICA) and requires a justification and Approval (J&A). Two changes are made to 10.004(b)(2) to clarify existing coverage on "brand name description" procurements. The first adds the term "brand name description" to tie that term, as defined in 10.001, to the restrictions specified in 10.004(b)(2). The second includes a reference to 6.302-1 to clarify that the determination "in accordance with agency procedures" in 10.004(b)(2) is a J&A under 6.302-1.

II—Effect of Debarment/Suspension on Bids/Offers (FAR Case 90-27)

Section 9.405 is amended to provide procedural guidance by adding paragraph (d) for contracting officers to follow when they receive a bid from a firm on the List of Parties Excluded from Procurement Programs. A conforming change to 14.404-2 is also being made.

III—Labor Surplus Area Concerns (FAR Case 90-44)

FAR 20.302 is amended to clarify that the use of Labor Surplus Area clauses is not appropriate in acquisitions for petroleum and petroleum products. FAR 52.220-3, Utilization of Labor Surplus Area Concerns, is amended to delete the prescription for use of the clause.

IV—Postretirement Benefits Other Than Pensions (FAR Case 89-70)

Sections 15.804-8, 31.205-6, 52.216-7 and 52.232-16 are amended and 52.215-39 is added to establish funding as a required condition of cost allowability for accruals of postretirement benefits other than pensions (PRB). The final rule also provides for the Government to recover an equitable share of any previously reimbursed PRB costs which revert or inure to the contractor because of a plan change or termination.

V—Definition of Architect-Engineer Services (FAR Case 89-25)

FAR § 36.102 is amended and subpart 36.6 is revised to clarify which services are to be procured using Brooks Act procedures.

VI—Disclosure Requirement Relating to Subcontractors (FAR Case 91-16)

The revision of 52.209-6 is issued as an interim rule because the statutory requirement was effective upon signing of the Defense Authorization Act, November 5, 1990, and is being applied Governmentwide in an attempt to keep debarment and suspension rules and procedures uniform to the extent practicable.

VII—Technical Amendments

Procurement Integrity

A number of otherwise successful bidders have been rejected as nonresponsive for failing to sign the Procurement Integrity certifications in the clauses at 52.203-8 and 52.203-9. The GAO has upheld these rejections. This FAC incorporates a technical amendment which adds lines to the blank spaces at the end of those certification forms to emphasize that a signature is required to be placed at the end of the certification statements.

Miscellaneous Amendments

Technical amendments have also been made to FAR §§ 6.405-1, 9.405-2, 31.205-10, 32.810, 32.813, 32.814-1, 32.910, 30.002, 52.219-19, 52.219-21, and 52.220-1 to update references and amounts, to replace inaccurate terms, and to add an appendix A to part 30 of the FAR.

Editorial Note

In the looseleaf edition, part III of the appendix to part 30 was inadvertently placed at the end of part 30 preceding parts I and II of the appendix. The FAR Secretariat will issue corrected pages at a later date.

Therefore, 48 CFR parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 39, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 6, 8, 9, 10, 14, 15, 20, 31, 32, 36, 39 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

2. Section 6.302-1 is amended by redesignating existing paragraph (c) as (d) and adding new paragraph (c) to read as follows:

6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

* * * * *

(c) *Application for brand name descriptions.* An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It shall be justified and approved in accordance with FAR 6.303 and 6.304. The justification should indicate that the use of such descriptions in the acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company. (Brand-name or equal descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand name, provide for full and open competition and do not require justifications and approvals to support their use.)

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.405-1 [Amended]

3. Section 8.405-1 is amended in the fourth sentence of paragraph (a) by correcting the reference "13.106(c)" to read "13.106".

PART 9—CONTRACTOR QUALIFICATIONS

4. Section 9.405 is amended by adding paragraph (d) to read as follows:

9.405 Effect of listing.

* * * * *

(d) (1) After the opening of bids or receipt of proposals, the contracting officer shall review the List of Parties Excluded from Procurement Programs.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the acquiring agency's head or designee determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the acquiring agency's head or designee determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review the List to ensure that no award is made to a listed contractor.

5. Section 9.405-2 is amended by revising the second sentence of the introductory text of paragraph (b) to read as follows:

9.405-2 Restrictions on subcontracting.

* * * * *

(b) * * * Contractors shall not enter into any subcontract in excess of the small purchase limitation at 13.000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. * * *

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

6. Section 10.004 is amended by revising paragraph (b)(2) to read as follows:

10.004 Selecting specifications or descriptions for use.

* * * * *

(b) * * *

(2) Purchase descriptions shall not be written so as to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(i) The particular brand name, product, or feature is essential to the Government's requirements, and that other companies' similar products, or products lacking the particular feature, would not meet the minimum requirements for the item; and

(ii) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302-1).

* * * * *

PART 14—SEALED BIDDING

7. Section 14.404-2 is amended by revising paragraph (h) to read as follows:

14.404-2 Rejection of individual bids.

* * * * *

(h) Bids received from any person or concern that is suspended, debarred, proposed for debarment, or declared ineligible as of the bid opening date shall be rejected unless a compelling reason determination is made (see subpart 9.4).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

8. Section 15.804-8 is amended by adding paragraph (f) to read as follows:

15.804-8 Contract clauses.

* * * * *

(f) *Postretirement benefit funds.* The contracting officer shall insert the clause at 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to subpart 32.2.

PART 20—LABOR SURPLUS AREA CONCERNS

9. Section 20.302 is amended by removing the word "and" from the end of paragraph (a)(1); removing the period from the end of paragraph (a)(2) and inserting the punctuation and word "; and" in its place; and adding paragraph (a)(3) to read as follows:

20.302 Contract clauses.

(a) * * *

(3) Contracts with the petroleum and petroleum products industry.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

10. Section 31.205-6 is amended by removing from the third sentence of paragraph (m)(1) the word "elsewhere" and inserting in its place "otherwise"; and adding paragraph (o) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(o) *Postretirement benefits other than pensions (PRB).* (1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care;

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life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition, to be allowable in the current year, PRB costs must be paid either to (i) an insurer, provider, or other recipient as current year benefits or premiums, or (ii) an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The costs in paragraph (o)(2)(ii) of this subsection must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board, and be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.

(3) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(4) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which certified cost or pricing data were required or which were subject to subpart 31.2.

31.205-10 [Amended]

11. Section 31.205-10 is amended in paragraph (a)(1)(ii)(C) by removing the reference "50 U.S.C. App. 1215(b)(2)" and inserting in its place "Public Law 92-41".

PART 32—CONTRACT FINANCING

32.610, 32.613, and 32.614-1 [Amended]

12. The FAR is amended by removing the reference "50 U.S.C. App. 1215(b)(2)" and inserting "Public Law 92-41" in its place in the following sections:

(a) Section 32.610, paragraph (b)(2);

(b) Section 32.613, paragraph (l); and

(c) Section 32.614-1, paragraph (c).

32.616 [Amended]

13. Section 32.616 is amended in the first sentence by removing the amount "$20,000" and inserting in its place "$100,000".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

14. Section 36.102 is amended by revising the definition of "Architect-Engineer Services" to read as follows:

36.102 Definitions.

Architect-engineer services, as defined in 40 U.S.C. 541, means:

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

* * * * *

15. The table of contents under subpart 36.6 is amended to add the following entries following section 36.601:

Subpart 36.6—Architect-Engineer Services

Sec.
36.601-1 Public announcement.
36.601-2 Competition.
36.601-3 Applicable contracting procedures.
36.601-4 Implementation.

36.601 [Amended]

16a. Section 36.601 is amended by removing the text.

16b. Sections 36.601-1, 36.601-2, 36.601-3, and 36.601-4 are added to read as follows:

36.601-1 Public announcement.

The Government shall publicly announce all requirements for architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices. (See Pub. L. 92-582, as amended; 40 U.S.C. 541-544.)

36.601-2 Competition.

Acquisition of architect-engineer services in accordance with the procedures in this subpart will constitute a competitive procedure. (See 6.102(d)(1).)

36.601-3 Applicable contracting procedures.

(a) Sources for contracts for architect-engineer services shall be selected in accordance with the procedures in this subpart rather than the solicitation or source selection procedures prescribed in parts 13, 14, and 15 of this regulation.

(b) When the contract statement of work includes both architect-engineer services and other services, the contracting officer shall follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer. If the statement of work does not specify such performance or approval, the contracting officer shall follow the procedures in parts 13, 14, or 15.

(c) Other than "incidental services" as specified in the definition of architect-engineer services in Section 36.102 and in Section 36.601-4(a)(3), services that do not require performance by a registered or licensed architect or engineer, notwithstanding the fact that architect-engineers also may perform those services, should be acquired pursuant to parts 13, 14, and 15.

36.601-4 Implementation.

(a) Contracting officers should consider the following services to be "architect-engineer services" subject to the procedures of this subpart:

(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer.

(2) Professional services of an architectural or engineering nature associated with design or construction of real property.

(3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

(4) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to § 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to § 36.601. However, mapping services such as those typically performed by the Defense Mapping Agency that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in parts 13, 14, and 15.

(b) Contracting officers may award contracts for architect-engineer services to any firm permitted by law to practice the professions of architecture or engineering.

PART 39—ACQUISITION OF INFORMATION RESOURCES

17a. The "Note" appearing at the beginning of part 39 is removed.

17b. Section 39.002 is amended by designating the existing paragraph as (a); removing from the last sentence the reference "201-23" and inserting in its place "201-39"; and adding paragraph (b) to read as follows:

39.002 Delegations of procurement authority.

* * * * *

(b) The FIRMR part 201-39 is reprinted as FAR appendix A to part 39 as an aid to contracting officials operating under a delegation of procurement authority from GSA. Whenever a change is made to FIRMR part 39, that change will be reflected in FAR appendix A to part 39.

17c. A new appendix A is added to FAR part 39 to read as follows:

Editorial Note: Appendix A to part 39 is a reprint of FIRMR part 201-39 appearing in title 41 of the Code of Federal Regulations.

Appendix A to Part 39

Subchapter D—Acquisition of Federal Information Processing (FIP) Resources by Contracting

PART 201-39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

Sec.
201-39.000 Scope of part.
201-39.001 General.

Subpart 201-39.1—Federal Information Resources Management Regulation (FIRMR) System
201-39.100 Scope of subpart.
201-39.101 Purpose, authority, applicability, and issuance.
201-39.101-1 Purpose.
201-39.101-2 Authority.
201-39.101-3 Applicability.
201-39.101-4 [Reserved].
201-39.101-5 Arrangement of part.
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Subpart 201-39.53—[Reserved]

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201-39.000 Scope of part.

This part sets forth the unique rules that apply Government-wide to the acquisition of Federal information processing (FIP) resources by contracting.

§ 201-39.001 General.

(a) In addition to this part 201-39, contracting officers should review and be familiar with the policies and procedures contained in the complete FIRMR.

(b) To assist Federal agencies in preparing solicitations for FIP resources, the General Services Administration (GSA) makes available standard solicitations and other guidance. Federal agencies can obtain copies of these materials by contacting: General Services Administration, Regulations Branch (KMPR), 18th and F Streets, NW., Washington, DC 20405.

Subpart 201-39.1—Federal Information Resources Management Regulation (FIRMR) System

§ 201-39.100 Scope of subpart.

This subpart sets forth basic policies and general information pertaining to part 201-39 of the Federal Information Resources Management Regulation (FIRMR).

§ 201-39.101 Purpose, authority, applicability, and issuance.

§ 201-39.101-1 Purpose.

This part 201-39 sets forth FIRMR contracting policies and procedures in a single part organized for consistency with the Federal Acquisition Regulation (FAR). This part contains only those contracting policies and procedures that are unique to FIP resources.

§ 201-39.101-2 Authority.

This part 201-39 is prepared, issued, and maintained by the Administrator of General Services under the Federal Property and Administrative Services Act of 1949, as amended.

§ 201-39.101-3 Applicability.

(a) *Policies.* The FIRMR applies to—

(1) The acquisition, management, and use of FIP resources by Federal agencies.

(2) Any Federal agency solicitation or contract when either paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) applies:

(i) The solicitation or contract requires the delivery of FIP resources for use by a Federal agency or users designated by the agency.

(ii) The solicitation or contract explicitly requires the use by the contractor of FIP resources that are not incidental to the performance of the contract. FIP resources acquired by a contractor are incidental to the performance of a contract when: (A) None of the principal tasks of the contract depend directly on the use of the FIP resources; or

(B) The requirements of the contract do not have the effect of substantially restricting the contractor's discretion in the acquisition and management of FIP resources, whether the use of FIP resources is or is not specifically stated in the contract.

(iii) The solicitation or contract requires the performance of a service or the furnishing of a product that is performed or produced making significant use of FIP resources that are not incidental to the performance of the contract. Significant use of FIP resources means:

(A) The service or product of the contract could not reasonably be produced or performed without the use of FIP resources; and

(B) The dollar value of FIP resources expended by the contractor to perform the service or furnish the product is expected to exceed $500,000 or 20 percent of the estimated cost of the contract, whichever amount is lower.

(3) The creation, maintenance, and use of records by Federal agencies.

(b) *Exceptions.* (1) The FIRMR does not apply to the procurement of FIP resources—

(i) By the Central Intelligence Agency (CIA).

(ii) By the Department of Defense when the function, operation, or use of such resources—

(A) Involves intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(B) Is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include FIP resources used for routine administrative and business applications such as payroll, finance, logistics, and personnel management.

(2) The FIRMR does not apply to radar, sonar, radio, or television equipment, except that the FIRMR is used by GSA to implement Federal Telecommunications Standards for radio equipment.

(3) When both FIP and other resources are being acquired under the same solicitation or contract and the FIRMR applies to the solicitation or contract, the FIRMR applies only to the FIP resources.

(4) While the FIRMR may require an agency to include in Federal solicitations and contracts provisions and clauses that control the contractor's acquisition of FIP resources, the FIRMR does not apply to FIP resources acquired by a Federal contractor that are incidental to the performance of a contract.

(5) The FIRMR does not apply to the acquisition, management, and use of products containing embedded FIP equipment when:

(i) The embedded FIP equipment would need to be substantially modified to be used other than as an integral part of the product; or (ii) The dollar value of the embedded FIP equipment is less than $500,000 or less than 20 percent of the value of the product, whichever amount is lower. Embedded FIP equipment is FIP equipment that is an integral part of the product, where the principal function of the product is not the "automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information."

(c) *Contract clause.* The contracting officer should consider inserting a clause in solicitations and contracts substantially the same as the clause at § 201-39.5202-1, FIRMR Applicability, when the agency determines that part 201-39 does not apply to an acquisition for FIP resources.

§ 201-39.101-4 [Reserved]

§ 201-39.101-5 Arrangement of part.

For consistency with the FAR, part 201-39 is divided into 53 subparts consisting of sections and subsections. In the same manner in which each FAR part deals with a separate aspect of acquisition, the corresponding subpart of part 201-39 deals with that aspect of acquisition as it relates to FIP resources. For example, since FAR part 6 deals with general competition requirements, FIRMR subpart 201-39.6 sets forth unique policies and procedures applicable to competition requirements for FIP resources. If there is no need to supplement a particular FAR part, the

corresponding subpart of part 201-39 is reserved.

§ 201-39.101-6 Copies.

(a) Copies of the complete FIRMR in looseleaf or annual bound versions may be purchased from: Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

(b) Contracting officers should contact the GPO, their agency liaison officer, or GSA (KMPR) for ordering information.

§ 201-39.102 Relationship of acquisition regulations.

(a) This part 201-39 sets forth Governmentwide policies and procedures unique to the acquisition of FIP resources by contracting. It relies on the FAR for general policies and procedures to be used in acquiring these resources. The policies and procedures of this part 201-39 are in addition to, not in lieu of, the FAR policies and procedures, except when the FIRMR specifically requires its policies and procedures, and not those of the FAR, to be followed.

(b) Notwithstanding the fact that the FAR is for the use of executive agencies in the acquisition of supplies and services, Federal agencies not otherwise subject to the FAR shall use the FAR in conjunction with the FIRMR when acquiring FIP resources.

§ 201-39.103 [Reserved]

§ 201-39.104 Deviations.

§ 201-39.104-1 Deviations from the FIRMR.

(a) *Policy.* Unless precluded by law, executive order, or regulation, GSA may grant deviations, as defined in subpart 201-39.2, from part 201-39 when necessary to meet the specific needs and requirements of each agency. Class deviations (affecting more than one contract action) and individual deviations (affecting only one contract action) may be authorized by—

(1) The Commissioner, Information Resources Management Service, or

(2) The officials designated by the Commissioner for that purpose.

(b) *Procedures.* (1) The agency head (or a designee) shall prescribe procedures for processing deviation requests.

(2) Each request for deviation shall explain the nature of and the reasons for the deviation.

(3) Agencies shall forward requests for deviations to: General Services Administration, Policy and Regulations Division (KMP), 18th & F Streets, NW., Washington, DC 20405.

§ 201-39.104-2 Deviations from the FAR.

Deviations from the FAR shall be accomplished in accordance with FAR subpart 1.4.

§ 201-39.105 [Reserved]

§ 201-39.106 Contracting authority and responsibilities.

§ 201-39.106-1 General.

(a) Notwithstanding FAR 1.601, authority and responsibility to contract for FIP resources is vested in the Administrator of General Services unless an exception in 40 U.S.C. 759(a)(3) applies. The Administrator of General Services, or a designee, authorizes agencies to contract for FIP resources by granting a delegation of procurement authority (DPA) to the agency designated senior official (DSO) when GSA determines that the DSO is sufficiently independent of program responsibility and has sufficient experience, resources, and ability to fairly and effectively carry out procurements under GSA's authority. Such delegations are granted by one of the following methods:

(1) The regulatory delegation of GSA's exclusive procurement authority which allows Federal agencies to contract for certain types of FIP resources up to specified dollar amounts without obtaining a specific DPA;

(2) A specific agency delegation of GSA's exclusive procurement authority whereby the GSA Commissioner for Information Resources Management or a designee may authorize changes in the regulatory DPA for individual Federal agencies (or components thereof) on the basis of their ability to acquire, manage, and use FIP resources in accordance with FIRMR policies and procedures; or

(3) A specific acquisition delegation of GSA's exclusive procurement authority provided to the agency as a result of the submission of an agency procurement request (APR) to GSA when acquisitions are not covered by either the regulatory or a specific agency DPA.

(b) The agency's DSO may redelegate GSA's exclusive authorities for FIP resources to qualified officials. However, such redelegation does not relieve the DSO of the responsibilities under 44 U.S.C. 3506 for the conduct of and accountability for acquisitions of FIP resources made under a DPA from GSA.

(c) Only a contracting officer may enter into and sign a contract on behalf of the Government. A DPA from GSA does not make the DSO a contracting officer. Contracting officers are appointed under procedures established by agency heads under FAR subpart 1.6.

(d) Additional policies and procedures related to delegations of procurement authority are addressed in part 201-30.

§ 201-39.106-2 Policy.

Before contracting for FIP resources, the contracting officer shall ensure that the agency's DSO has redelegated GSA's procurement authority to the contracting officer.

§ 201-39.106-3 Procedures.

The contracting officer shall consider this § 201-39.106, agency directives, and written instructions to the contracting officer issued under FAR 1.603-1 to ensure that the contracting officer is authorized to make the award.

§ 201-39.106-4 Contract clause.

(a) All solicitations and contracts for FIP resources subject to the FIRMR shall contain a clause identifying whether the contracting action is being conducted under the regulatory DPA, a specific agency DPA, or a specific acquisition DPA.

(b) If the contracting action is being conducted under a specific agency or specific acquisition DPA, the contract clause shall also include the GSA case number of the specific DPA.

(c) Accordingly, the contracting officer shall—

(1) Insert a clause substantially the same as the clause at § 201-39.5202-3, Procurement Authority, in each solicitation and contract for FIP resources; and

(2) Promptly issue an amendment to the solicitation modifying this clause if any of the facts set forth in it change prior to contract award.

Subpart 201-39.2—Definitions of Words and Terms

§ 201-39.200 Scope of subpart.

This subpart defines words and terms used in part 201-39.

§ 201-39.201 Definitions.

Designated senior official (DSO) means—

(a) The senior official designated by executive agencies pursuant to the Paperwork Reduction Act to be responsible for carrying out the agency's IRM functions (see 44 U.S.C. 3506); or

(b) The senior IRM official designated by the agency head for Federal agencies not subject to the Paperwork Reduction Act to be responsible for acquisitions of FIP resources made pursuant to a DPA.

Deviation means any one or a combination of the following:

(a) The issuance or use of a policy, procedure, practice, solicitation provision, contract clause, or method pertaining to the acquisition, management or use of Federal information processing resources that is inconsistent with the FIRMR.

(b) The omission or modification of any policy, procedure, practice, solicitation provision or contract clause required by the FIRMR.

(c) The authorization of lesser or greater limitations on the delegation, use, or application of any policy, procedure, solicitation provision, or contract clause prescribed by the FIRMR, except that this does not preclude an agency from setting delegation thresholds at more restrictive levels than those established by the FIRMR.

Federal information processing (FIP) resources means automatic data processing equipment (ADPE) as defined in Public Law 99-500 (40 U.S.C. 759(a)(2)), and set out in paragraphs (a) and (b) of this definition.

(a) Any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange,

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transmission, or reception, of data or information—

(1) By a Federal agency, or

(2) Under a contract with a Federal agency which—

(i) Requires the use of such equipment, or

(ii) Requires the performance of a service or the furnishing of a product which is performed or produced making significant use of such equipment.

(b) Such term includes—

(1) Computers;

(2) Ancillary equipment;

(3) Software, firmware, and similar procedures;

(4) Services, including support services; and

(5) Related resources as defined by regulations issued by the Administrator for General Services.

(c) The term, FIP resources, includes FIP equipment, software, services, support services, maintenance, related supplies, and systems. These terms are limited by paragraphs (a) and (b) of the definition of FIP resources and are defined as follows:

(d) *FIP equipment* means any equipment or interconnected system or subsystems of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(e) *FIP maintenance* means those examination, testing, repair, or part replacement functions performed on FIP equipment or software.

(f) *FIP related supplies* means any consumable item designed specifically for use with FIP equipment, software, services, or support services.

(g) *FIP services* means any service, other than FIP support services, performed or furnished by using FIP equipment or software.

(h) *FIP software* means any software, including firmware, specifically designed to make use of and extend the capabilities of FIP equipment.

(i) *FIP support services* means any commercial nonpersonal services, including FIP maintenance, used in support of FIP equipment, software or services.

(j) *FIP system* means any organized combination of FIP equipment, software, services, support services, or related supplies.

Lowest overall cost means the least expenditure of funds over the system life, price and other factors considered, including, but not necessarily limited to—

(a) Prices for the FIP resources;

(b) The present value adjustment, if used; and

(c) The identifiable and quantifiable costs—

(1) Directly related to the acquisition and use of the FIP resources;

(2) Of conducting the contract action; and

(3) Of other administrative efforts directly related to the acquisition process.

Most advantageous alternative means the alternative that provides the greatest value to the Government over the system life in terms of price or cost, quality, performance, and any other relevant factors.

Outdated FIP equipment means any FIP equipment over eight years old, based on the initial commercial installation date of that model of equipment, and that is no longer in current production.

Radar equipment means any radio detection device that provides information on range, azimuth, or elevation of objects.

Radio equipment means any equipment or interconnected system or subsystem of equipment (both transmission and reception) that is used to communicate over a distance by modulating and radiating electromagnetic waves in space without artificial guide. This does not include such items as microwave, satellite, or cellular telephone equipment.

Sonar equipment means an apparatus that detects the presence and location of a submerged object by means of sonic, subsonic, or supersonic waves reflected back to it from the object.

Specific make and model specification means a description of the Government's requirement for FIP resources that is so restrictive that only a particular manufacturer's products will satisfy the Government's needs, regardless of the number of suppliers that may be able to furnish that manufacturer's products.

System life means a projection of the time period that begins with the installation of the FIP resource and ends when the agency's need for that resource has terminated.

Television equipment means any equipment (both transmission and reception) used for the conversion of transient visual images into electrical signals that can be transmitted by radio or wire to distant receivers where the signals can be reconverted to the original visual images. This does not include such items as monitors for computers or computer terminals or video conferencing equipment.

Subparts 201-39.3 and 201-39.4—[Reserved]

Subpart 201-39.5—Publicizing Contract Actions

§ 201-39.500 Scope of subpart.

This subpart prescribes the unique policies and procedures for publicizing contract actions when acquiring FIP resources using the GSA nonmandatory schedule contracts.

§ 201-39.501 Synopses of proposed contract actions.

§ 201-39.501-1 Policies.

(a) The contracting officer shall publicize the intent to place an order against a GSA nonmandatory contract by following the procedures of § 201-39.501-3 and FAR subpart 5.2.

(b) The contracting officer shall not use the exception to synopsizing set forth at FAR 5.202(a)(11) when using GSA nonmandatory schedule contracts to acquire FIP resources.

§ 201-39.501-2 Exceptions.

(a) The contracting officer need not publicize the intent to place an order against a GSA nonmandatory contract when—

(1) The total value of the order is $50,000 or less; or

(2) The order is for FIP resources that were previously specifically synopsized on a system life basis in a Commerce Business Daily (CBD) notice of intent in accordance with § 201-39.501-3 and FAR subpart 5.2.

(b) The contracting officer is not required to publish a second notice of a proposed contract action in accordance with FAR 5.203(a) when—

(1) A solicitation is being issued in accordance with § 201-39.502-3(b)(2)(iii); and

(2) The requirement was the subject of a previous CBD synopsis of intent accomplished in accordance with the procedures set forth in § 201-39.501-3 and FAR subpart 5.2.

§ 201-39.501-3 Procedures.

The contracting officer shall use the following procedures when publicizing the intent to place an order against a GSA nonmandatory schedule contract:

(a) Before placing an order for FIP resources against a GSA nonmandatory schedule contract, the contracting officer shall furnish a synopsis to the CBD in accordance with FAR 5.207 and this § 201-39.501.

(b) Notwithstanding FAR 5.203(c), the synopsis shall be published in the CBD at least 15 calendar days before placing the order. In calculating the 15 calendar days for synopsizing, the first day shall be the actual date the synopsis appears in the CBD.

(c) Format Item 17 (DESCRIPTION) of the standard synopsis format in FAR 5.207 shall contain a description of the intended contract action to the extent necessary to obtain information to permit the analysis required by § 201-39.803. As a minimum, Format Item 17 shall contain the following information:

(1) An identification of the specific nonmandatory schedule contract intended to be used.

(2) A description of the resources to be ordered, including, as applicable—

(i) The make and model of any FIP equipment to be ordered or maintained;

(ii) The name, functional description, and operating environment of any FIP software to be ordered;

(iii) The quantities, dates required, and period of performance;

(iv) The system life; and

(v) The type of support to be ordered.

(3) A request for pricing data.

(4) The following statement: "All responses from responsible sources will be fully considered. As a result of analyzing responses to this synopsis of intent, the contracting officer may determine that a solicitation will be issued. If a solicitation is issued, no additional synopsis will be published. Any such solicitation will be issued to the intended schedule vendor and all firms that respond to this synopsis of intent or otherwise request a copy of the solicitation."

Subpart 201-39.6—Competition Requirements

§ 201-39.600 Scope of subpart.

This subpart prescribes policies and procedures applicable to—

(a) The acquisition of FIP resources using specific make and model specifications; and

(b) The use of follow-on contracts to perpetuate outdated FIP equipment.

§ 201-39.601 Specific make and model specifications.

§ 201-39.601-1 Policy.

An acquisition that uses a specific make and model specification does not provide for full and open competition and must be justified and approved in accordance with FAR 6.303 and 6.304.

§ 201-39.601-2 Exception.

Subsection 201-39.601-1 does not apply when an order for FIP resources is placed against a GSA nonmandatory schedule contract and—

(a) The statement of work or requirements documentation prepared by the technical and requirements personnel describes the requirements with other than a specific make and model specification, notwithstanding the fact that when the synopsis appears in the Commerce Business Daily (CBD) and the order is placed, a specific make and model is cited; and

(b) The procedures of § 201-39.603 regarding use of GSA nonmandatory schedule contracts are followed.

§ 201-39.601-3 Authority.

When the FIP resources required to meet the needs of an agency can be satisfied only through the use of a specific make and model specification, the statutory authority to be cited in FAR 6.303-2(a)(4), in lieu of any statutory authority cited in accordance with FAR 6.302, is: 40 U.S.C. 759(g), as amended.

§ 201-39.602 Outdated FIP equipment.

§ 201-39.602-1 Policy.

The justification requirements of FAR 6.302-1(a)(2)(ii) shall not be used to perpetuate any contract for outdated FIP equipment or for FIP equipment to be used with FIP software that requires general redesign to satisfy mission needs.

§ 201-39.602-2 Exception.

An exception to § 201-39.602-1 may be invoked if the agency's DSO determines that such action will be in the Government's best interest.

Subpart 201-39.7—[Reserved]

Subpart 201-39.8—Required Sources of Supplies and Services

§ 201-39.800 Scope of subpart.

This subpart prescribes the policies and procedures applicable to the acquisition of FIP resources using GSA mandatory and nonmandatory sources of supply.

§ 201-39.801 Ordering FIP resources from Federal Supply Schedules.

§ 201-39.801-1 General.

GSA directs and manages both the Federal Supply Schedules program and the GSA nonmandatory schedule contracts for FIP resources. While most FIP resources available under these programs are covered by the GSA nonmandatory schedule contracts for FIP resources, the Federal Supply Schedules also contain some resources that fall within the definition of FIP resources. Use of the Federal Supply Schedules program is covered by FAR 8.4 and use of the GSA nonmandatory schedule contracts for FIP resources is covered by this subpart 201-39.8.

§ 201-39.801-2 Policy.

The procedures of FAR 8.4 shall be followed when an order for FIP resources is placed against a GSA Federal Supply Schedule.

§ 201-39.802 Purchase of telephones and services (POTS) contracts.

§ 201-39.802-1 General.

(a) GSA has established POTS contracts to provide telecommunications supplies and services, including purchase, installation, maintenance, repair, deinstallation, and relocation of both contractor-provided and Government-owned telephone equipment, at locations throughout the country.

(b) Use of the POTS contracts is mandatory for supplies and services within the scope of the POTS contract at some locations (buildings or building complexes) where GSA operates or manages the telecommunications system or service.

(c) Federal agencies may obtain information and assistance concerning the use of POTS contracts from: General Services Administration, Technical Contract Management Division (KVT), 18th and F Streets, NW., Washington, DC 20405.

§ 201-39.802-2 Policies.

(a) Federal agencies at locations where a POTS contract is mandatory shall use the POTS contract to acquire supplies and services that are within the scope of the contract.

(b) Federal agencies at locations where POTS contracts are not mandatory may use POTS contracts to satisfy requirements when—

(1) The requirements are within the scope of the POTS contract; and

(2) The contracting officer determines that placing an order under the POTS contract is the most advanatageous alternative.

(c) Use of the POTS contracts is a competitive procedure when—

(1) It results in the most advanatageous alternative to meet the needs of the Government; and

(2) The procedures of this section are followed.

§ 201-39.802-3 Procedures.

(a) The contracting officer shall determine whether mandatory use of the POTS contracts applies by contacting GSA at the address shown in §201-39.802-1(c).

(b) The contracting officer's determination required by § 201-39.802-2(b) shall, as a minimum, be supported by an analysis of prices or an examination of the market. The GSA nonmandatory schedule contracts for FIP resources should be included in this analysis process.

(c) The requirements of subpart 201-39.5 and FAR part 5 do not apply when an order is issued under a POTS contract and the procedures of this section are followed.

§ 201-39.803 GSA nonmandatory schedule contracts for FIP resources.

§ 201-39.803-1 General.

(a) GSA nonmandatory schedule contracts for FIP resources, managed by GSA's Information Resources Management Service, provide Federal agencies with a simplified process for obtaining these resources. GSA awards such contracts to many different vendors and each contract establishes terms, conditions, and prices for stated periods of time. These contracts are not part of the Federal Supply Service (FSS) Schedule program covered in FAR support 8.4 and they are not mandatory sources of supply.

(b) Agencies should use GSA nonmandatory schedule contracts for FIP resources when the contracting officer determines that placing an order under a GSA nonmandatory schedule contract would result in a lower overall cost than other contracting methods, such as issuing a solicitation, using small purchase procedures, using a nonmandatory agency contract, or using other nonmandatory GSA programs.

§ 201-39.803-2 Policy.

Use of GSA nonmandatory schedule contracts is a competitive procedure when—

(a) It results in the lowest overall cost alternative to meet the needs of the Government; and

(b) The procedures of this section are followed.

§ 201-39.803-3 Procedures.

(a) Prior to selecting a GSA nonmandatory schedule contract and placing an order or, if applicable, publishing a synopsis of intent to place an order, the agency shall—

(1) Justify any restrictive requirement (e.g., an "all or none" requirement or a requirement for "only new" equipment); and

(2) Consider the offerings of a reasonable number of nonmandatory schedule contractors.

(b) The contracting officer shall consider all responses received as a result of the CBD notice and then determine whether to order from a GSA nonmandatory schedule contract or issue a solicitation. Accordingly, the contracting officer shall take one of the following actions:

(1) When no responses are received, document the contract file with the results of the CBD synopsis and an analysis indicating that an order placed against the synopsized nonmandatory schedule contract provides the lowest overall cost alternative to meet the Government's needs.

(2) When a response to the CBD notice is received from either a responsible vendor that does not have a GSA nonmandatory schedule contract or a GSA nonmandatory schedule contractor (expressing an interest either on or off schedule) for items that may meet the user's requirement, the contracting officer shall take one of the following actions:

(i) Document the contract file with an analysis indicating that the respondent's items would not meet the requirements o. that the synopsized GSA nonmandatory schedule contract items provides the lowest overall cost alternative to meet the

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Government's needs and place an order against the synopsized GSA nonmandatory schedule contract;

(ii) Document the contract file with an analysis indicating that a responding contractor's GSA nonmandatory schedule contract offering provides the lowest overall cost alternative to meet the Government's needs and place an order against that GSA nonmandatory schedule contract; or

(iii) Document the contract file with an analysis indicating that ordering from a GSA nonmandatory schedule contract may not result in the lowest overall cost alternative to meet the Government's needs. In this case, the contracting officer may elect to issue a solicitation. In such cases, the contracting officer shall take the following actions:

(A) Ensure that the solicitation contains terms and conditions substantially the same as those of the GSA solicitation for nonmandatory schedule contracts that resulted in the synopsized schedule contract; and

(B) Provide the solicitation to those potential offerors responding to the CBD synopsis of intent; the vendor whose GSA nonmandatory schedule contract was the subject of the synopsis; and any other potential offerors that specifically express an interest.

(c) If the contracting officer places an order in accordance with § 201–39.603–3(b)(2)(i) or (b)(2)(ii), the contracting officer shall promptly provide written notification of award to the synopsized schedule vendor and to all parties responding in writing to the CBD notice.

(d) Requirements or orders shall not be fragmented in order to circumvent the applicable MOL.

§ 201–39.804 Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program.

§ 201–39.804–1 General.

(a) The Office of Management and Budget (OMB) has established a Governmentwide financial management systems software program. To help agencies implement this program, GSA has established the mandatory FMSS MAS contracts program.

(b) Federal agencies may obtain information and assistance concerning the use of the FMSS MAS contracts program from: General Services Administration, ADP Systems Procurement Branch (KECP), FMSS Contracting Officer, 18th and F Streets, NW., Washington, DC 20405.

(c) OMB Circular No. A–127, "Financial Management Systems," provides further policy direction regarding the FMSS program.

§ 201–39.804–2 Policy.

Executive agencies shall use the FMSS MAS contracts program for the acquisition of commercial software for primary accounting systems and for the acquisition of services and support related to the implementation of such software.

§ 201–39.804–3 Exceptions.

(a) If an executive agency holds a licensing agreement for a software package that is available on the FMSS MAS contracts, and the package was obtained under a contract awarded before the award of the FMSS MAS contracts, the agency's use of the FMSS MAS contracts program is optional for the acquisition of services and support related to the implementation of that package until the previous non-MAS contract expires.

(b) Use of the FMSS MAS contracts program by Federal agencies that are not executive agencies is optional and is subject to the FMSS contractor accepting the order.

(c) An executive agency shall obtain a waiver from GSA if it determines that its requirements for financial management systems software cannot be satisfied through use of the FMSS MAS contracts program.

(1) The request for a waiver shall contain the following information:

(i) A description of the agency's requirements;

(ii) The reasons the FMSS MAS contracts program does not satisfy the requirements; and

(iii) A description of how the agency proposes to satisfy its needs for financial management system software.

(2) Agencies shall send waiver requests to GSA at the address in § 201–39.804–1(b).

(3) If a waiver is obtained from GSA, a deviation from the FIRMR is not required.

§ 201–39.804–4 Procedures.

(a) The contracting officer shall announce the agency's requirements in a letter of interest (LOI) to all contractors participating in the FMSS MAS contracts program.

(b) At the time of issuance, the contracting officer shall provide a copy of the LOI to GSA at the address in § 201–39.804–1(b) and to OMB at the following address: Office of Management and Budget, Chief Financial Officer, 725 17th Street, NW., room 10235, Washington, DC 20503.

(c) The LOI shall—

(1) Contain sufficient information to enable a competitive acquisition under the FMSS MAS contracts program;

(2) Include instructions to the FMSS MAS contractors for responding to the LOI; and

(3) Include evaluation and award factors.

(d) The agency shall conduct an analysis of the offerings of the FMSS MAS contractors and issue a delivery order to the contractor that provides the most advantageous alternative to the Government.

(e) The contracting officer may issue single or multiple delivery orders to satisfy the total requirement.

(f) The contracting officer shall provide a copy of each delivery order, or modification thereto, to OMB at the address shown in subparagraph (b) of this section and to GSA at the address in § 201–39.804–1(b).

Subpart 201–39.9—[Reserved]

Subpart 201–39.10—Specifications, Standards, and other Purchase Descriptions

§ 201–39.1000 Scope of subpart.

This subpart prescribes policies and procedures for using specifications, standards, and other purchase descriptions in acquiring FIP resources.

§ 201–39.1001 Security and privacy specifications.

§ 201–39.1001–1 Security specifications.

Specifications for security of FIP resources shall include, as appropriate:

(a) Agency rules of conduct that a contractor shall be required to follow.

(b) A list of anticipated threats and hazards that the contractor must guard against.

(c) A description of the safeguards that the contractor must specifically provide.

(d) The security standards applicable to the contract.

(e) A description of the test methods, procedures, criteria, and inspection system necessary to verify and monitor the operation of the safeguards during contract performance and to discover and counter any new threats or hazards.

(f) A description of the procedures for periodically assessing the security risks involved.

(g) A description of the personnel security requirements.

(h) Consistent with the guidelines for Federal computer security training issued by the National Institute of Standards and Technology (NIST) and regulations issued by the Office of Personnel Management (OPM), a description of the security training that the contractor is required to provide to its employees.

(i) Consistent with the guidelines issued by the Office of Management and Budget (OMB) in OMB Bulletin 88–16, a description of the plan the contractor must develop or follow to provide for the security and privacy of FIP resources the contractor is required to operate.

§ 201–39.1001–2 Privacy specifications.

(a) *Applicability.* This subsection is applicable to executive agencies that are subject to the Privacy Act of 1974 (5 U.S.C. 552a).

(b) *Procedures.* Specifications for the design, development, or operation of a system of records using commercial FIP services or support services shall include the following:

(1) Agency rules of conduct that the contractor and the contractor's employees shall be required to follow.

(2) A list of the anticipated threats and hazards that the contractor must guard against.

(3) A description of the safeguards that the contractor must specifically provide.

(4) Requirements for a program of Government inspection during performance of the contract that will ensure the continued efficacy and efficiency of safeguards and the discovery and countering of new threats and hazards.

§ 201–39.1001–3 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at § 201–39.5205–5, Privacy or Security Safeguards, in solicitations and contracts—

(a) Requiring security of FIP resources.

(b) For the design, development, or operation of a system of records using commercial FIP services or support services.

§ 201–39.1002 Federal standards.

§ 201–39.1002–1 General.

GSA publishes a handbook titled "Federal ADP and Telecommunications Standards Index" providing guidance to agencies on the use of Federal standards. The index also provides optional terminology that may be used to incorporate standards in solicitations and a "Standards Checklist" that can be included in the solicitation to incorporate applicable Federal standards. Copies of the index can be purchased from: U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

§ 201–39.1002–2 Policy.

The contracting officer shall include in solicitations terminology to incorporate each standard that is applicable to the FIP resources being acquired.

§ 201–39.1002–3 Procedures.

The contracting officer shall use one or a combination of the following methods to implement standards in solicitations:

(a) Include in the solicitation the full text of the terminology contained in the index for each applicable standard.

(b) Incorporate in the solicitation the applicable terminology by reference to the index.

(c) For each applicable standard, include the full text of the terminology as developed by the agency.

§ 201–39.1002–4 Solicitation provision.

If any of the terminology to incorporate standards in solicitations is incorporated by reference, the contracting officer shall insert in the solicitation the provision at § 201–39.5203–2, Availability of the "Federal ADP and Telecommunications Standards Index."

§ 201–39.1003 Specifications for outdated FIP equipment.

The contracting officer shall not include specifications for outdated FIP equipment in a solicitation unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in accordance with § 201–39.002.

Subparts 201–39.11 and 201–39.12—[Reserved]

Subpart 201–39.13—Small Purchase and Other Simplified Purchase Procedures

§ 201–39.1300 Scope of subpart.

This subpart prescribes policies and procedures for acquiring from commercial sources FIP resources whose aggregate amount does not exceed the small purchase threshold of FAR part 13.

§ 201–39.1301 Policy.

When requirements for FIP resources are to be satisfied through the use of GSA sources of supply as set forth in subpart 201–39.8, the policies and procedures of FAR part 13 do not apply.

Subpart 201–39.14—Sealed Bidding

§ 201–39.1400 Scope of subpart.

This subpart prescribes policies and procedures governing contracting for FIP resources by sealed bidding.

§ 201–39.1401 General.

This subpart requires the contracting officer to select the bid that is most advantageous to the Government considering options, acquisition methods, present value discount factors, and other price-related factors. Therefore, contracting officers should consider the factors associated with each acquisition of FIP resources in order to select the method of contracting that will best accommodate this requirement.

§ 201–39.1402 Price-related factors.

§ 201–39.1402–1 Policies.

(a) In addition to the bid price for the basic and all optional quantities and contract periods and optional FIP resources, and the price-related factors set forth in FAR 14.201–8, sealed bid solicitations for FIP resources shall be structured to require consideration of the following factors, as applicable, in order to determine which bid is most advantageous to the Government.

(1) Support and in-house costs over the system life for installing, operating, and disposing, where quantifiable and when these costs may differ based on offers received.

(2) Any costs of conversion that can be stated in dollars, as well as other costs directly related to converting from installed to augmentation or replacement FIP resources. However, the costs associated with the following shall not be included:

(i) Conversion of existing software and data bases that are to be redesigned regardless of whether or not augmentation or replacement FIP resources are acquired.

(ii) Purging duplicate or obsolete software, data bases, and files.

(iii) Development of documentation for existing application software.

(iv) Improvements in management and operating procedures.

(b) When the timing of payments is expected to vary among the alternatives being considered, all prices and costs shall be adjusted to present value, and the results shall be applied in determining the bid most advantageous to the Government. Agencies should follow the guidance in OMB Circular A–104 regarding present value calculations.

§ 201–39.1402–2 Exception.

Agencies are permitted to award on the basis of the lowest offered purchase price when—

(a) The only acquisition method to be used is purchase;

(b) The purchase price of each item being acquired does not exceed $25,000; and

(c) The total purchase price of all the FIP resources to be included in the contract does not exceed $300,000.

§ 201–39.1403 Solicitation.

(a) The solicitation shall state the means of evaluating all acquisition methods included in the solicitation.

(b) If a present-value adjustment is to be used, the solicitation shall state the methodology and discount rate that will be applied in the evaluation process.

§ 201–39.1404 Award.

The contracting officer shall not award a contract providing for the delivery of outdated FIP equipment unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in accordance with § 201–39.602 or § 201–39.1003.

Subpart 201–39.15—Contracting By Negotiation

§ 201–39.1500 Scope of subpart.

This subpart prescribes policies and procedures governing contracting for FIP resources by negotiation.

§ 201.39–1501 Evaluation factors.

§ 201–39.1501–1 Policies.

(a) In addition to the factors set forth in FAR 15.605, the contracting officer shall evaluate total cost, including the following factors:

(1) All prices for FIP resources including the basic and optional quantities, basic and optional contract periods, and optional FIP resources.

(2) Other support and in-house costs over the system life for installing, operating, and disposing, where quantifiable and when these costs may differ based on offers received.

(3) Any costs of conversion that can be stated in dollars, as well as other costs directly related to converting from installed to augmentation or replacement FIP resources. However, the costs associated with the following shall not be included:

(i) Conversion of existing software and data bases that are to be redesigned regardless of whether or not augmentation or replacement FIP resources are acquired.

(ii) Purging duplicate or obsolete software, data bases, and files.

(iii) Development of documentation for existing application software.

(iv) Improvements in management and operating procedures.

(b) When the timing of payments is expected to vary among the alternatives being considered, agencies shall adjust all prices and costs to present value and apply the results in source selection. Agencies should follow the guidance in OMB Circular A–104 regarding present value calculations.

§ 201–39.1501–2 Exception.

Agencies are permitted to award on the basis of the lowest offered purchase price when—

(a) The only acquisition method being solicited is purchase;

(b) The purchase price of each item being acquired does not exceed $25,000; and

(c) The total purchase price of all of the FIP resources to be included in the contract does not exceed $300,000.

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§ 201-39.1502 Solicitation.

(a) The solicitation shall state the means of evaluating all acquisition methods included in the solicitation.

(b) If a present-value adjustment is to be used, the solicitation shall state the methodology and discount rate that will be applied in the evaluation process.

§ 201-39.1503 Award.

The contracting officer shall not award a contract providing for the delivery of outdated FIP equipment unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in accordance with § 201-39.602 or § 201-39.1003.

Subpart 201-39.16—[Reserved]

Subpart 201-39.17—Special Contracting Methods

§ 201-39.1700 Scope of subpart.

This subpart prescribes policies aand procedures for using options in acquiring FIP resources.

§ 201-39.1701 Options.

§ 201-39.1701-1 General.

The use of options may be appropriate in FIP resources acquisitions because—

(a) The FIRMR requires agencies to determine a system life for each FIP resource requirement and to evaluate costs over the system life;

(b) Funding is normally not available at the time of award for the entire system life; and

(c) Soliciting and evaluating optional quantities, optional contract periods, and optional FIP resources can be an effective method to achieve competition for the options and to prevent the possibility of a contractor "buying-in."

§ 201-39.1701-2 Applicability.

Except as set forth below, the policies and procedures of FAR subpart 17.2 shall apply to the acquisition of FIP resources, notwithstanding the language in FAR 17.200.

§ 201-39.1701-3 Policy.

Notwithstanding the language in FAR 17.202, a contract for FIP resources with options to extend the contract period of performance, or to acquire additional quantities or optional FIP resources may be used when—

(a) The Government has requirements for the acquistion of FIP resources extending beyond the basic contract period;

(b) Funds are not available for the entire system life, but a reasonable certainty exists that they will be available in the future; or

(c) Competition for the additional periods, quantities or optional FIP resources is impracticable once the contract is awarded.

§ 201-39.1701-4 Contracts.

Notwithstanding the language in FAR 17.204(e), the total of the basic and option periods for contracts not subject to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), as amended, may exceed 5 years (see FAR 22.10). However, statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

§ 201-39.1701-5 Documentation.

Any justifications and approvals or determinations and findings required by subpart 201-39.6 or FAR part 6 shall specify both the basic requirement and all options.

§ 201-39.1701-6 Evaluation.

Notwithstanding the language in FAR 17.206, the contracting officer shall consider all options in the award evaluation.

§ 201-39.1701-7 [Reserved]

§ 201-39.1701-8 Solicitation provision and contract clauses.

In lieu of the solicitation provisions and contract clauses prescriptions set forth in FAR 17.208, the contracting officer shall insert the following in solicitations and contracts for FIP resources that contain options—

(a) A provision substantially the same as the provision at § 201-39.5204-4, Evaluation of Options-FIP Resources, in the solicitation;

(b) A clause substantially the same as the clause at FAR 52.217-6, Option for Increased Quantity, in the solicitation and contract; and

(c) A clause substantially the same as the clause at FAR 52.217-9, Option to Extend the Term of the Contract, in the solicitation and contract.

Subparts 201-39.18 through 201-39.32—[Reserved]

Subpart 201-39.33—Protests, Disputes, and Appeals

§ 201-39.3300 Scope of subpart.

This subpart prescribes policies and procedures applicable to protests concerning FIP resource acquisitions filed with the GSA Board of Contract Appeals (GSBCA).

§ 201-39.3301 General.

Under Public Law 98-369, as amended (40 U.S.C. 759(f)), the GSBCA is authorized to hear and decide protests by interested parties involving acquisitions of FIP resources by Federal agencies subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759), including acquisitions subject to GSA delegations of procurement authority.

§ 201-39.3302 Applicability.

This subpart is applicable to all Federal agencies.

§ 201-39.3303 Policy.

All Federal agencies shall follow the GSBCA "Rules of Procedure" in 48 CFR chapter 61.

§ 201-39.3304 Procedures.

§ 201-39.3304-1 Protest notice.

Within 1 working day after receiving a copy of the protest, the contracting officer shall give oral or written notice of the protest to: General Services Administration, Acquisition Evaluation and Analysis Branch (KMAD), 18th and F Streets NW., Washington, DC 20405, telephone (202) 501-4305 or FTS 241-4305.

§ 201-39.3304-2 GSA participation.

In delegating procurement authority for FIP resources to Federal agencies, GSA has the right to intervention in any protest case involving any Federal agency.

Subparts 201-39.34 through 201-39.43—[Reserved]

Subpart 201-39.44—Subcontracting Policies and Procedures

§ 201-39.4400 Scope of subpart.

This subpart prescribes policies and procedures applicable when subcontracting includes FIP resources.

§ 201-39.4401 Policy.

In addition to the policies and procedures set forth in FAR 44.202-2, the contracting officer responsible for consent shall make a written determination for the file that competition was obtained for FIP resources or that the absence of competition is properly justified.

Subpart 201-39.45—Government Property

§ 201-39.4500 Scope of subpart.

This subpart prescribes policies and procedures for providing Government FIP resources to contractors.

§ 201-39.4501 Dedicated FIP equipment or software in FIP services contracts.

§ 201-39.4501-1 General.

When an offeror proposes the dedicated use of FIP equipment or software in performing a FIP service, it means that the offeror is proposing to use that resource exclusively in providing that service. When this is the case, it can sometimes be more advantageous to the Government to provide the FIP equipment or software to the offeror as Government-furnished property.

§ 201-39.4501-2 Policy.

When a solicitation requires or allows an offeror to propose the dedicated use of FIP equipment or software in performing a FIP service, the contracting officer shall ensure that the solicitation—

(a) Reserves the right for the Government to furnish the dedicated items to the offeror;

(b) Requires the offeror to price the use of the dedicated items on a specific line-item basis; and

(c) Requires the offeror to specify the interface requirements between the offeror's system and the dedicated items.

Subpart 201-39.46—Quality Assurance

§ 201-39.4600 Scope of subpart.

This subpart prescribes the use of a contract clause for limiting contractor liability for loss of or damage to property of the Government.

§ 201-39.4601 Contract clause.

The contracting officer shall insert the clause at § 201-39.5202-6, Warranty Exclusion and Limitation of Damages, in solicitations and contracts for FIP resources, unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

Subparts 201-39.47 through 201-39.51—[Reserved]

Subpart 201-39.52—Solicitation Provisions and Contract Clauses

§ 201-39.5200 Scope of subpart.

This subpart—

(a) Gives instructions for using provisions and clauses in solicitations and contracts for FIP resources; and

(b) Sets forth the solicitation provisions and contract clauses prescribed by this part 201-39.

§ 201-39.5201 [Reserved]

§ 201-39.5202 Texts of provisions and clauses.

§ 201-39.5202-1 FIRMR Applicability.

As prescribed in § 201-39.101-3(c), insert a clause substantially the same as the following in solicitations and contracts:

FIRMR Applicability (Oct 90 FIRMR)

This solicitation/contract requires the use or delivery of Federal information processing resources but the agency has determined that FIRMR part 201-39 does not apply based on the exception set forth in § 201-39.101-3(b)*

(End of clause)

*Insert the specific sub-paragraph number(s) of the applicable exception.

§ 201-39.5202-2 Availability of the "Federal ADP and Telecommunications Standards Index."

As prescribed in § 201-39.1002-4, insert the following provision in the solicitation:

Availability of the "Federal ADP and Telecommunications Standards Index" (Oct 90 FIRMR)

Copies of the "Federal ADP and Telecommunications Standards Index" can be purchased from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

(End of provision)

§ 201-39.5202-3 Procurement authority.

As prescribed in § 201-39.106-4, insert a clause substantially the same as the following in solicitations and contracts:

Procurement Authority (Oct 90 FIRMR)

This acquisition is being conducted under *delegation of GSA's exclusive procurement authority for FIP resources.

The specific GSA DPA case number is**

(End of provision)

*Insert one of the following phrases:
(1) "the regulatory;"
(2) "a specific agency;"
(3) "a specific acquisition."

**Insert one of the following:

(1) If the acquisition is being conducted under the regulatory delegation, insert "not applicable."

(2) If the acquisition is being conducted under a specific agency delegation or a specific acquisition delegation, insert the case number as provided in GSA's letter delegating the specific procurement authority (e.g., KMA-88-0000).

§ 201-39.5202-4 Evaluation of options—FIP resources.

As prescribed in § 201-39.1701-8(a), insert a provision substantially the same as the following in the solicitation:

Evaluation of Options—FIP Resources (Oct 90 FIRMR)

(a) The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. These prices will be adjusted by the applicable discount factors shown in* of the solicitation. Evaluation of options will not obligate the Government to exercise the options. Offers containing any changes for failure to exercise any option will be rejected.

(b) Selection of an offer will be made on the basis of the most advantageous alternative to the Government provided that the contract prices reasonably represent the value of bona fide requirements for each fiscal year. This determination with respect to contract prices will be made after consideration of such factors as commercial or catalog prices for short-term leases, offeror system startup expenses, multiyear price protection, assured system life availability of equipment, software, and vendor support. If a determination is made that an offer does not meet the criteria, that offer cannot be accepted for award.

(End of provision)

*Insert one of the following:

(1) If a present-value adjustment is being used, indicate the location in the solicitation where any applicable discount factors and contemplated payment schedule are specified; or

(2) If a present-value adjustment is not being used, insert "Not Applicable."

§ 201-39.5202-5 Privacy or security safeguards.

As prescribed in § 201-39.1001-3, insert a clause substantially the same as the following clause in solicitations and contracts:

Privacy or Security Safeguards (Oct 90 FIRMR)

(a) The details of any safeguards the contractor may design or develop under this contract are the property of the Government and shall not be published or disclosed in any manner without the contracting officer's express written consent.

(b) The details of any safeguards that may be revealed to the contractor by the Government in the course of performance under this contract shall not be published or disclosed in any manner without the contracting officer's express written consent.

(c) The Government shall be afforded full, free, and uninhibited access to all facilities, installations, technical capabilities, operations, documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

(d) If new or unanticipated threats or hazards are discovered by either the Government or the contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. Mutual agreement shall then be reached on changes or corrections to existing safeguards or institution of new safeguards, with final determination of appropriateness being made by the Government. The Government's liability is limited to an equitable adjustment of cost for such changes or corrections, and the Government shall not be liable for claims of loss of business, damage to reputation, or damages of any other kind arising from discovery of new or unanticipated threats or hazards, or any public or private disclosure thereof.

(End of clause)

§ 201-39.5202-6 Warranty exclusion and limitation of damages.

As prescribed in § 201-39.4601, insert the following clause in solicitations and contracts.

Warranty Exclusion and Limitation of Damages (Oct 90 FIRMR)

Except as expressly set forth in writing in this agreement and except for the implied warranty of merchantability, there are no warranties expressed or implied.

In no event will the contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, section 2-715, in effect in the District of Columbia as of January 1, 1973, i.e.—

Consequential damages resulting from the seller's breach include—

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)

Subpart 201-39.53—[Reserved]

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203-8 [Amended]

18. Section 52.203-8 is amended following paragraph (b)(4) of the clause by inserting blank lines for the signature and name requested by the bracketed text.

52.203-9 [Amended]

19. Section 52.203-9 is amended following paragraph (c)(3) of the clause

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by inserting blank lines for the signature and name requested by the bracketed text.

20. Section 52.209–6 is revised to read as follows:

52.209–6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

As prescribed in 9.409(b), insert the following clause:

PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 1991)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 with a Contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed the small purchase limitation at FAR 13.000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of Clause)

21. Section 52.215–39 is added to read as follows:

52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).

As prescribed in 15.804–8(f), insert the following clause:

REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS OTHER THAN PENSIONS (PRB) (JUL 1991)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205–6(o)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804–8(f). The resulting adjustment to prior years' PRB costs will be determined and applied in accordance with FAR 31.205–6(o).

(End of clause)

22. Section 52.216–7 is amended by revising the date in the heading of the clause and the first sentence in paragraph (b)(2) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

ALLOWABLE COST AND PAYMENT (JUL 1991)

(b) * * *

(2) Contractor contributions to any pension or other postretirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes: *Provided*, That the Contractor pays the contribution to the fund within 30 days after the close of the period covered. * * *

* * * * *

52.219–19 [Amended]

23. Section 52.219–19 is amended in the clause title by removing the words "(JAN 1991)" and inserting in their place "(JUL 1991)"; in paragraph (b) by removing the word "clause" and inserting in its place "provision".

52.219–21 [Amended]

24. Section 52.219–21 is amended in the clause title by removing the words "(JAN 1991)" and inserting in their place "(JUL 1991)"; in the parenthetical of the first paragraph by removing the word "clause" and inserting in its place "provision"; and in the table, in the second column, in the third entry, in the clause removing the amount "$2,000,002" and inserting in its place "$2,000,001".

52.220–1 [Amended]

25. Section 52.220–1 is amended in the first line of the paragraph by removing the word "clause" and inserting in its place "provision"; at the end of the clause by removing the words "(End of clause)" and inserting in their place "(End of provision)"; and removing the derivation line following "(End of provision)".

52.220–3 [Amended]

26. Section 52.220–3 is amended in the introductory paragraph by inserting a colon after the word "clause" and removing the remainder of the sentence.

27. Section 52.232–16 is amended by removing from the clause heading the date "(AUG 1987)" and inserting in its place "(JUL 1991)" and revising the introductory text of paragraph (a)(2)(iii) of the clause to read as follows:

52.232–16 Progress Payments.

* * * * *

PROGRESS PAYMENTS (JUL 1991)

* * * * *

(a) * * *

(2) * * *

(iii) Accrued costs of Contractor contributions under employee pension or other postretirement benefit, profit sharing, and stock ownership plans shall be excluded until actually paid unless—

* * * * *

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Tuesday
June 25, 1991

Part XI

Environmental Protection Agency

40 CFR Parts 795, 798, and 799
Brominated Flame Retardants (Group I); Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795, 798 and 799

[OPTS-42116, FRL 3795-7]

RIN NO. 2070-AD67

Brominated Flame Retardants (Group I); Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is issuing a proposed test rule under section 4(a) of the Toxic Substances Control Act (TSCA) in response to the Interagency Testing Committee (ITC) designation of the following five brominated flame retardants (BFRs) for health and environmental effects and chemical fate testing: (1) pentabromodiphenyl ether (PBDPE; CAS. No. 32534-81-9), (2) octabromodiphenyl ether (OBDPE; CAS. No. 32536-52-0), (3) decabromodiphenyl ether (DBDPE; CAS No. 1163-19-5), (4) 1,2,bis(2,4,6-tribromophenoxy)ethane (BTBPE; CAS. No. 37853-59-1), and (5) hexabromocyclododecane (HBCD; CAS. No. 3194-55-6). EPA has concluded that activities involving these BFRs may pose an unreasonable risk of injury to human health or the environment as suggested by certain preliminary data; existing data are inadequate to assess the risks to human health and the environment posed by exposure to these substances, and testing of each of the five BFRs is necessary to develop such data.

DATES: Submit written comments on or before August 26, 1991. If persons request an opportunity to submit oral comment by August 9, 1991, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting see Unit VIII of this preamble.

ADDRESSES: Submit written comments, identified by the document control number (OPTS-42116), in triplicate to: TSCA Public Reading Room (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, rm. NE-G004, 401 M St., SW., Washington, DC, 20460.

A public version of the administrative record supporting this action, without confidential business information is available for inspection at the above address from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: This document proposes a test rule to require certain health, environmental, and chemical fate tests for the following five brominated flame retardants:

chemical substance	CAS No.	Docket No.
pentabromodiphenyl ether (PBDPE)	32534-81-9	42115/42145
octabromodiphenyl ether (OBDPE)	32536-52-0	42115/42146
decabromodiphenyl ether (DBDPE)	1163-19-5	42115/42147
1,2,bis(2,4,6-tribromophenoxy)ethane (BTBPE)	37853-59-1	42115/42148
hexabromocyclododecane (HBCD)	3194-55-6	42115/42149

The proposed health effects testing consists of tiered mutagenicity testing (all), subchronic toxicity testing (HBCD), neurotoxicity testing (all), reproductive effects testing (all), developmental toxicity testing (all), chronic toxicity testing (PBDPE, OBDPE and BTBPE), and oncogenicity testing (PBDPE, OBDPE, BTBPE, and HBCD).

The proposed environmental effects testing consists of the algal assay (all), fish early life stage toxicity testing (all), aquatic invertebrate chronic toxicity testing (all), benthic organism toxicity testing (all), mallard reproduction testing (all), laboratory earthworm testing (all), terrestrial plant testing (all), immunotoxicity testing (all), and bioconcentration testing (all).

The proposed chemical fate testing consists of testing to determine vapor pressure (all), water solubility (all), log octanol/water partition coefficient (PBDPE, OBDPE, and DBDPE), direct and indirect photolysis (all), biodegradation testing in water/sediment (all), sediment and soil adsorption (all), and anaerobic biodegradation (all). Testing is conditional for all environmental testing and the biodegradation testing in water/sediment for two BFRs (OBDPE and DBDPE) based on results from PBDPE.

I. Introduction

A. ITC Recommendation

The ITC designated the chemical category "brominated flame retardants" for chemical fate, health and environmental effects testing. The reasons for this designation are discussed in the Federal Register of December 12, 1989 (54 FR 51114).

B. Test Rule Development Under TSCA

EPA has evaluated the ITC's testing recommendations for the BFRs, relying heavily on the Information Review (Ref. 1) developed by the ITC, as well as the supplemental information developed by EPA. On the basis of this evaluation, EPA is proposing chemical fate, health effects and environmental effects testing for the BFRs under TSCA section 4(a)(1)(A). A discussion of the TSCA section 4 findings was provided in the Federal Register of July 18, 1990 (45 FR [illegible]). EPA is not now making findings under section 4(a)(1)(B) because EPA is developing its response to the court that remanded a test rule promulgated under TSCA section 4(a)(1)(B) for cumene (In *Chemical Manufacturers Association et al. v. Environmental Protection Agency* [illegible] F.2d 344 (5th Cir. 1990)). EPA reserves the right to make findings for BFRs under TSCA section 4(a)(1)(B) in the future.

This action constitutes EPA's response to the ITC as required by TSCA section 4.

II. Review of Available Data

A. Profile

The ITC (Ref. 1) designated five BFRs for priority testing. Three, PBDPE, OBDPE, and DBDPE, are structurally similar and are placed in a single category for some testing purposes. BTBPE and HBCD, while sharing similar uses with the three diphenyl ethers, are structurally dissimilar to them and to each other, and therefore are considered individually with respect to testing. All of these BFRs are solids at room temperature and have relatively low water solubility (Ref. 1).

B. Production and Use

Specific production volumes of each BFR have been claimed as confidential business information (CBI).

The BFRs are used mainly as additives to various plastic resins to impart resistance to burning. BFRs are primarily used in polystyrene, ABS resins, and epoxies. HBCD is used in polystyrene foam, and BTBPE in ABS resins and unsaturated polyester (Ref. 2).

C. Exposure and Release

Environmental releases and exposures of humans are anticipated from manufacturing and processing and from packaging and cleaning operations associated with the production and use of these BFRs (Ref. 1). EPA estimates that 100 to 2,200 workers may be exposed to the 3 diphenyl ethers through the inhalation and dermal routes (Ref. 10). No estimates were available for BTBPE or HBCD. PBDPE, DBDPE, and BTBPE were detected in air and soil near two U.S. production facilities and PBDPE has also been detected in fish, marine mammals, and birds in Sweden and in mussels and river sediment in Japan (Ref. 1). These detections are relevant to general population and environmental exposures. DBDPE was also found in shellfish and sediments in Japan (Ref. 1). BFRs, including PBDPE, have recently been detected in Atlantic bottle-nosed dolphins on the U.S. East Coast (Refs. 1 and 3). Although EPA is not aware of any reports that OBDPE and HBCD have been detected in the environment, they have uses similar to the other three BFRs and can reasonably be anticipated to be similarly released to the environment.

In an analysis of human adipose tissue from the fiscal year (FY) 1987 National Human Adipose Tissue Survey specimen repository, nearly all of the adipose tissue extracts analyzed contained hexa- through octabrominated diphenyl ethers (Ref. 4). The analytic methodology did not permit brominated diphenyl ethers with fewer than six bromines to be detected. Exact tissue levels were also difficult to measure, but approximate levels, from 5 to 8,000 picograms/gram (pg/g), were measurable from the composite samples. The National Human Adipose Tissue Survey Specimen repository represents a more or less random sampling of the general population. These data indicate exposure to the BFRs is widespread, and may also indicate that these substances have potential to bioaccumulate (i.e., the uptake and subsequent accumulation of a substance in an organism's tissues either through direct (e.g., respiration) or indirect (e.g., food consumption) means) in the human population.

D. Health Effects

1. *Metabolism and pharmacokinetics.* In a metabolism study in male rats with radiolabelled DBDPE, administered at 250 to 50,000 ppm in the diet, the majority of the compound was, after 9 to 11 days, excreted in the feces (82 to 100 percent) with a small amount (< 0.012 percent) excreted in the urine (Ref. 1). Most of the compound was excreted unchanged, with small amounts of three unidentified metabolites also detected. When administered as a single dose by gavage, similar results were obtained.

BTBPE also appears to be poorly absorbed through the gut. When radioactive BTBPE was administered to rats, 80 percent was recovered in the feces, and 5 percent was recovered in the urine within 4 days of dosing (Ref. 1).

2. *Acute and subchronic effects.* All of these BFRs are of low acute toxicity. The oral LD50 in rats for PBDPE was 7,400 mg/kg males and 5,800 mg/kg for females. LD50 values were not determined for OBDPE or DBDPE, but would exceed the 5,000 mg/kg administered (Ref. 1). Similarly, 10,000 mg/kg administered as an acute oral dose was insufficient to provide an LD50 value for BTBPE and HBCD (Ref. 1).

Subchronic studies have yielded a lowest observed adverse effect level (LOAEL) of 10 mg/kg/day for OBDPE (90-day dietary study), and liver effects were also seen at all doses tested (100, 1,000, and 10,000 ppm) in a 90-day oral gavage study for OBDPE. Similarly, in a 14-day study (inhalation of OBDPE as a dust) hepatocellular enlargements and necrosis were observed at all doses tested, 12, 120, and 1,200 mg/m³ (Refs. 1 and 5). A no observable adverse effect level (NOAEL) of 8 mg/kg/day was obtained for DBDPE in a 30-day dietary study (Ref. 1). PBDPE, tested in a 90-day dietary study in rats with a subsequent 24-week follow-up period, caused irreversible liver hyperplasia at 2 and 100 mg/kg/day; a NOAEL was not established. Reversible thyroid hyperplasia was also observed (Refs. 1 and 5). In another 90-day study in rats a LOAEL of 10 percent of the diet (about 5,000 mg/kg/day) and a NOAEL of 1 percent in the diet were established for BTBPE (Refs. 1 and 5).

Liver effects, including enlarged liver cells and/or hepatocellular lesions were common to all of these chemicals (Refs. 1 and 5). Furthermore, the diphenyl ether compounds all showed thyroid hyperplasia (Refs. 1 and 5). In the acute studies with PBDPE, tremors and reduced activity immediately after exposure were also observed (Ref. 1).

3. *Chronic effects.* Chronic data were developed for DBDPE in two separate studies. In a 2-year feeding study done by the National Toxicology Program (NTP), the NOAEL was >2,240 mg/kg/day in rats, the highest dose tested. In mice, there was a dose-related thyroid hyperplasia observed at the 3,200 and 6,400 mg/kg/day dose (Refs. 1 and 6). A 2-year feeding study in rats conducted by Kociba et al. (1975) at much lower doses saw no effect at 1 mg/kg/day, the highest dose tested (Refs. 1 and 7).

4. *Oncogenicity.* Only DBDPE has been examined for oncogenic potential. DBDPE administered to rats at doses of 0.01, 0.1, or 1.0 mg/kg/day for 2 years showed no evidence of oncogenicity (Ref. 1). However, another bioassay performed by NTP, which was specifically designed to determine oncogenic potential, found oncogenicity expressed in both male and female rats. There was also some evidence of oncogenicity in male mice, but no evidence in female mice (Ref. 7). Dose levels in the NTP study were targeted at 25,000 and 50,000 ppm in the diet (approximately 1,250 and 2,500 mg/kg/day). Specific lesions in the form of neoplastic nodules were noted in the liver of the male and female rats and hepatocellular carcinomas or adenomas in male mice. DBDPE has, as a result of this study, been classified as a possible human carcinogen, class C (Ref. 5).

5. *Mutagenicity.* As reported by the ITC, mutagenicity testing performed to date has been negative for all five of these substances. Ames *Salmonella* testing was completed, with and without activation, for all five substances. A *Saccharomyces* assay for OBDPE was

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also done (Ref. 1). Beyond this, additional testing has been done only for DBDPE, consisting of an *in vitro* cytogenetic assay in Chinese hamster ovary (CHO) cells, an *in vitro* sister chromatid exchange assay, a mouse lymphoma assay, and an *in vivo* study in rats, examining rat bone marrow cells. DBDPE gave no evidence of mutagenicity in these tests (Ref. 1).

6. *Developmental toxicity.* OBDPE was administered by gavage to 10 rats per dose group at doses of 2.5, 10, 15, 25, or 50 mg/kg on days 6 through 15 of gestation. The results were reduced ossification, a decrease in mean fetal weight, and an increase in post-implantation losses in the high-dose group. The NOAEL was 2.5 mg/kg/day, while the LOAEL was 10 mg/kg/day, based on decreased fetal weight (Refs. 1 and 5). The observed toxic effect on the offspring was attributed by the study investigators to maternal toxicity, which was observed at the high dose level.

DBDPE when administered to rats at doses of 10, 100, or 1,000 mg/kg showed no statistically significant developmental toxicity. However, there was an increase in subcutaneous edema and delayed ossification in the fetuses, with effects seen even at the lowest dose (10 mg/kg) tested (Refs. 1 and 5).The ITC also reported that BTBPE, tested at doses from 30 mg/kg to 10,000 mg/kg in rats, and HBCD administered to rats at 0.01, 0.1, or 1 percent of the diet (high dose approximately 500 mg/kg) during days 0 to 20 of gestation, showed no developmental effects (Ref. 1).

7. *Reproductive effects.* Only DBDPE, of these five substances, has been tested for reproductive effects. In a single-generation study, DBDPE was administered to rats at doses of 3, 30, or 100 mg/kg for 90 days prior to mating and through lactation. DBDPE had no effects on the offspring of these rats (Ref. 1).

8. *Neurotoxicity.* No neurotoxicity testing has been performed for any of these substances. However, acute studies on PBDPE saw diminished motor activity in rats during 1-hour exposures by inhalation to concentrations up to 200 mg/L (about 4.8 mg/kg). In another PBDPE study in rats, forelimb tremors and reduced motor activity were observed at an oral dose ≥ 4,000 mg/kg, but not at the lower doses (Ref. 1).

E. Environmental Effects

1. *Acute and short-term effects.* Acute toxicity is usually determined by exposing test organisms for a relatively short period (e.g., 48 or 96 hours). To see the measured effect (usually lethality) the doses used must normally be much higher than those required to exert an often more subtle effect (e.g., decreased reproduction or growth) looked for in a longer-term, chronic test. For these BFRs, determining their acute toxicity is problematic. Limited aquatic toxicity data indicate that their acute toxicity values exceed their (very low) water solubility, obfuscating interpretation of the results. The EC50 of DBDPE to algae was >1 mg/L (Ref. 1). This value greatly exceeded DBDPE's water solubility, determined by Norris (1974) to be between 0.02 and 0.09 mg/L (Refs. 1 and 8). As reported by the ITC, BTBPE LC50 values for bluegill, rainbow trout, and killifish were 1,531, 1,410 and 230 mg/L, respectively (Ref. 1). An algal study with HBCD by Walsh et al. (1987) gave an EC50 between 0.01 and 0.14 mg/L, indicating high toxicity to algae but still exceeding HBCD's reported water solubility of 0.006 mg/L (Refs. 1 and 9). The highest treatment concentration of a toxicity study should not exceed the aqueous solubility limit of the chemical. Ambient concentrations of chemicals rarely, if ever, exceed the aqueous solubility limits.

2. *Chronic toxicity and bioconcentration studies.* No chronic studies were found for any of these BFRs. Bioconcentration factors (BCFs) were determined for PBDPE and OBDPE by exposing carp to each of these chemicals for 6 weeks. The BCFs were 5,380 for carp exposed to PBDPE at 105 µg/L, and 11,700 when the water concentration was 9.7 µg/L. Using the same methodology, the BCF for OBDPE was ≤ 3.6 (Ref. 1). In a nonstandard bioconcentration test, Norris et al. (1974) found that when rainbow trout were exposed to 20 µg/L DBDPE for 48 hours, the fish contained only 6 µg/L at the end of the test period, which may indicate slow uptake (Refs. 1 and 8).

Carp were also exposed to 0.27 or 0.028 mg/L BTBPE for 6 weeks. For these two exposure concentrations, the respective bioconcentration factors in carp were 27 and 43 (Ref.1).

No elimination half-lives were reported for any of these bioconcentration studies.

F. Chemical Fate

Limited chemical fate information was available for the BFRs. Water solubility values estimated or determined for these BFRs are 0.8 ppb (PBDPE), 20 to 30 ppb (OBDPE and DBDPE), 300 ppb (BTBPE), and 6 ppb (HBCD) (Ref. 1). Octanol/water partition (Log K_{ow}) coefficients, which are negatively correlated with water solubility, are given as 7.8 (PBDPE), 5.5 (OBDPE), 5.24 (DBDPE), 3.14 (BTBPE), and 5.81 (HBCD) (Ref. 1). The ITC also reported that for the three biphenyl ether compounds vapor pressures are estimated to be less than 10^{-6} mm Hg (Ref. 1). BTBPE and HBCD should have similarly low vapor pressures. From these factors, low water solubility, high Log K_{ow} values and low vapor pressure, the ITC anticipated that the BFRs are likely to partition to soil, sediments, and biota (Ref. 1). However, even though these compounds may have low vapor pressures, their very low water solubility means that they may volatilize from water and soil/sediments and hence also partition to the atmosphere.

There is little other fate information. Shake-flask biodegradation of BTBPE showed that BTBPE is degraded, although indicating slow rates; and an aerobic study showed that HBCD might be degraded under certain conditions (Ref. 1). Norris et al. (1974) found that DBDPE could be degraded by photolysis, although no rates of photolysis were reported. Similarly, BTBPE was degraded when exposed to ultraviolet (UV) light (Refs. 1 and 8).

III. Findings

EPA is basing its proposed testing of PBDPE, OBDPE, DBDPE, BTBPE, and HBCD on the authority of section 4(a)(1)(A) of TSCA. EPA considers these findings to be sufficient for the testing proposed in this rule. However, as noted in Unit I.B. of this preamble, EPA reserves its right to also make findings under TSCA section 4(a)(1)(B) in the future for these BFRs.

Under TSCA 4(a)(1)(A), EPA finds that the manufacturing, processing, distribution in commerce, use, or disposal of BFRs may present an unreasonable risk of injury to health and to the environment.

Although there were mixed results, available data indicate that these BFRs may have the potential to exert developmental toxicity effects as described in Unit II.D.6. of this preamble. EPA also believes that these BFRs may have the potential to bioaccumulate in animal tissues, in which case the full expression of their general toxicity may be missed in a test less than a full chronic assay.

Available data further indicate that DBDPE is a potential human carcinogen, as shown by positive oncogenicity results in rats and mice in a 2-year bioassay performed by the NTP (Ref.1). EPA also notes that PBDPE and OBDPE are structurally similar to DBDPE and may, therefore, also be potential human oncogens. Furthermore, the three diphenyl ethers and BTBPE are similar in structure to certain polychlorinated dibenzo-*p*-dioxins (PCDDs), polychlorinated biphenyls (PCBs), and polybrominated biphenyls (PBBs) that have been found to be carcinogenic in animal testing. One chemical which EPA finds structurally similar to the BFRs, tetrachlorobenzo-*p*-dioxin (TCDD), is also a potent immunosuppressor in several species of mammals (Ref. 11). Immunosuppression may be a mechanism enhancing tumor development (Ref. 11).

Immunosuppression is also an important toxicological endpoint in itself, leading to decreased disease resistance. In recent years major dolphin kills have occurred in the United States and Europe. Many of the dolphins found dead or dying were marked by the presence of BFRs, including PBDPE, in their tissues. Suppressed immune function was also seen. Although the putative cause of these deaths is toxic algal blooms ("red tide"), which may also cause immune suppression (Ref. 13), this finding is not certain and other possible causes, such as immune system damage due to toxic pollutants, are still being investigated (Refs. 12 through 16).

As emphasized by the ITC, PBDPE, DBDPE, and BTBPE have been detected in the environment (Ref. 1). PBDPE and DBDPE were found in air, soil, and sediments, and BTBPE was found in air and soil near two U.S. production facilities (Ref. 1). PBDPE has also been detected in dolphins found dead along the U.S. East Coast (Refs. 1 and 3). The ITC has cited several foreign references detailing PBDPE's presence in fish, marine mammals, and birds in Sweden, and in mussels and river sediment in Japan (Refs. 1). DBDPE was also detected in shellfish and sediments in Japan (Ref. 1).

DBDPE is on the list of toxic chemicals for the Toxics Release Inventory (TRI) established under section 313 of the Emergency Planning and Community Right-to-Know Act (Pub. L. 99-499, "EPCRA"). Facilities that manufacture, process or use DBDPE are required to annually report their DBDPE environmental releases to EPA. For the 1987 reporting year, the reported releases were over 155,000 pounds to air, over 20,000 pounds to water, and over 16,000 pounds to land (Ref. 1). While the other BFRs in this proposal are not on the TRI list, similar releases (adjusted for production volume) are likely because of their similarities in structure, manufacturing, processing, and use (Ref. 1).

Considering this evidence, EPA finds that the manufacturing, processing, distribution, use and/or disposal of these BFRs may pose an unreasonable risk of injury to health or to the environment due to developmental, chronic, oncogenic, or immunosuppressant effects. EPA also finds, based on information provided to EPA by the ITC and data EPA possesses, that for all of the proposed testing, insufficient data exist about the health or environmental effects of these BFRs to reasonably determine or predict the impacts of their manufacture, processing, distribution, use and/or disposal; and that testing is needed to develop such data (Refs. 1, 3, and 5).

IV. Proposed Rule and Test Standards

EPA is proposing that health and environmental effects and chemical fate testing be conducted on the BFRs in accordance with specific test guidelines set forth in Title 40 of the Code of Federal Regulations (CFR) as enumerated below in this document, except that the earthworm toxicity, chironomid toxicity, and revised combined chronic toxicity/oncogenicity test guidelines are proposed as written in this notice, and the immunotoxicity and biodegradation in water/sediment test guidelines are incorporated by reference in this notice.

A. Proposed Health Effects Testing and Test Standards

1. *Subchronic and chronic effects.* EPA is proposing subchronic toxicity testing for HBCD as specified in 40 CFR 798.2650.

2. *Neurotoxicity.* EPA is proposing neurotoxicity testing, including neuropathology, motor activity, and a functional observational battery for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 798.6400, 798.6200, and 798.6050.

3. *Reproductive effects.* EPA is proposing reproductive effects testing for PBDPE, OBDPE, BTBPE, and HBCD as specified in 40 CFR 798.4700. EPA finds the existing reproductive effects data available for DBDPE are inadequate (EPA believes that a 2-generation study is necessary for adequacy) and is therefore proposing reproductive effects testing for DBDPE, also. If this testing on PBDPE and DBDPE, which EPA is proposing to be performed prior to testing OBDPE, indicates to EPA that lack of reproductive effects cannot be reasonably predicted for OBDPE (i.e., if either PBDPE or DBDPE elicit reproductive effects), then EPA would require the initiation of testing on OBDPE by certified letter to the test sponsor(s).

4. *Developmental toxicity.* EPA is proposing developmental toxicity testing for PBDPE, as specified in 40 CFR 798.4900, in two mammalian species, a rat and a non-rodent. EPA is also proposing developmental effects studies in two species for OBDPE and HBCD. A developmental effects study in rats submitted to EPA for HBCD is inadequate due to incomplete reporting and to too few animals sampled in the study. A study in rats submitted for OBDPE is also not considered adequate by EPA because of too few animals used in the study (EPA requires 20 animals per dose group versus the 10 used). For DBDPE and BTBPE, EPA is proposing developmental effects testing in a non-rodent species only. Studies in rats submitted for DBDPE and BTBPE are adequate.

5. *Mutagenicity.* EPA is proposing tiered mutagenicity testing for each of the BFRs. For PBDPE, OBDPE and BTBPE, the available (negative) *Salmonella*/Ames data are adequate. For HBCD, the available *Salmonella* data (weakly positive) are also adequate. However, the *Salmonella* data on OBDPE are inconclusive, and, therefore, inadequate. Consequently, EPA is proposing *Salmonella* testing as specified in 40 CFR 798.5265 for OBDPE.

EPA is also proposing an *in vitro* gene mutation assay for PBDPE, OBDPE, BTBPE, and HBCD as specified in 40 CFR 798.5300. Available data on DBDPE are adequate for this effect. EPA is further proposing an *in vivo* cytogenetic assay, either as specified in 40 CFR 798.5385 (bone marrow aberrations) or 40 CFR 798.5395 (bone marrow micronucleus) for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD. An available *in vivo* bone marrow assay, presented no data in support of the conclusion that DBDPE does not induce chromosomal aberrations (Ref. 17). Therefore, EPA considers this study inadequate to address the concern for *in vivo* gene mutation effects for DBDPE.

EPA is also proposing that, for any of these substances, if either the proposed *Salmonella* or *in vitro* gene mutation testing yields positive mutagenicity results, then a sex-linked recessive lethal (SLRL) test in *Drosophila melanogaster* shall be conducted for that substance in accordance with 40 CFR 798.5275. If the SLRL test in *Drosophila melanogaster* is positive for any of these substances, then either a mouse visible or mouse biochemical specific locus test (MVSL or MBSL) shall also be conducted for that substance as specified in 40 CFR 798.5200 (MVSL) or 40 CFR 798.5195 (MBSL).

EPA is further proposing that, for any of these substances, if the proposed *in vivo* cytogenetics assay yields positive results, then a dominant lethal assay shall be conducted for that substance as specified in 40 CFR 798.5450. If the

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dominant lethal assay is positive for any of these substances then a heritable translocation assay would also be conducted for that substance in accordance with 40 CFR 798.5460.

6. *Oncogenicity and chronic toxicity.* EPA is proposing oncogenicity testing for PBDPE, OBDPE, BTBPE in mice as specified in 40 CFR 798.3300; EPA is further proposing that chronic effects and oncogenicity testing in rats be combined as specified in 40 CFR 798.3320 (which is modified in this proposed rule).

For HBCD, EPA is proposing oncogenicity testing in both rats and mice as specified in 40 CFR 798.3300 if positive mutagenicity results are obtained in either the gene mutation cells in culture assay, the sex-linked recessive lethal assay in *Drosophila melanogaster*, or the *in vivo* cytogenetics assay.

B. Proposed Environmental Effects Testing and Test Standards

For the following proposed environmental effects testing of the three diphenyl ethers, EPA is proposing that testing first be conducted on PBDPE. Only if testing on PBDPE yields a specified effect, would testing of OBDPE and DBDPE be required. EPA believes a tiered approach to testing the three diphenyl ethers for environmental effects is reasonable, given their similar structures and the possibility of limited toxicity or bioconcentration being expressed because of the large molecular size and low water solubility of these BFRs (Ref. 1). The alkyl phthalates consent order (54 FR 618, January 9, 1989) employed a similar approach.

EPA does not believe it can apply the results for PBDPE to BTBPE or HBCD and therefore testing of BTBPE and HBCD would proceed independently of the PBDPE testing.

EPA also believes, given the anticipated chemical and physical properties of the BFRs, that before testing for environmental effects begins, basic chemical fate data are needed on water solubility, vapor pressure, and degradation rates. The results of the chemical fate tests would identify upper levels for aquatic test concentrations and indicate potential testing problems. EPA is therefore proposing that this testing, with a reporting deadline of 6 months, be performed prior to initiating the environmental effects testing.

1. *Algal testing.* EPA is proposing that an algal assay be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 797.1050. Data on HBCD are inadequate for this effect due to questionable test substance purity. The analytical standard for measuring treatment concentrations was also not reported. Testing for OBDPE and DBDPE would be conditioned on obtaining from the algal testing of PBDPE an EC50 of $\leq$ 10 μg/L.

2. *Fish chronic toxicity.* EPA is proposing that chronic toxicity to fish be evaluated by conducting fish early life stage toxicity testing for rainbow trout and sheepshead minnow for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 797.1600. Testing for OBDPE and DBDPE for both fish species would be conditioned on obtaining from the early life stage testing of PBDPE a geometric mean maximum acceptable toxicant concentration (MATC) value of $\leq$ 10 μg/L.

3. *Invertebrate chronic toxicity.* EPA is proposing that aquatic invertebrate toxicity testing be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 797.1330, for *daphnids*, and 40 CFR 797.1950, for mysid shrimp. Tests for OBDPE and DBDPE, for both organisms, would be conditioned on obtaining from either of the invertebrate chronic tests of PBDPE a geometric mean MATC value of $\leq$ 10 μg/L.

4. *Benthic organism toxicity.* EPA believes that, because of the expected tendency of these BFRs to partition into aquatic sediments, chronic testing on benthic organisms should be conducted with the midge (*Chironomus tetans* or *C. riparius*) for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as proposed in a new 40 CFR 795.135. Testing for OBDPE and DBDPE would be conditioned on obtaining from the benthic organism testing a geometric mean MATC value of $\leq$ 100 mg PBDPE/kg dry weight of sediment.

5. *Terrestrial organism toxicity.* EPA is proposing that toxicity to terrestrial organisms be evaluated for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by conducting mallard reproduction testing as specified in 40 CFR 797.2150, and earthworm toxicity testing as proposed in a new 40 CFR 795.150. Mallard reproduction testing for OBDPE and DBDPE would be conditioned on obtaining from the mallard testing of PBDPE a NOEL of $\leq$ 500 ppm; and earthworm toxicity testing for OBDPE and DBDPE would be conditioned on obtaining from the earthworm testing of PBDPE an EC50 of $\leq$ 100 mg PBDPE/kg dry weight of soil.

6. *Terrestrial plant toxicity.* EPA is proposing that toxicity to terrestrial plants be evaluated for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by conducting seed germination/root elongation toxicity testing as specified in 40 CFR 797.2750 and early seedling growth toxicity testing as specified in 40 CFR 797.2800. Both tests for OBDPE and DBDPE would be conditioned on obtaining an EC50 of $\leq$ 100 mg PBDPE/kg dry weight of soil in either test.

7. *Immunotoxicity.* EPA is proposing that immunotoxicity testing be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD using the Jerne Plaque Assay, which is proposed to be incorporated by reference. Immunotoxicity testing for OBDPE and DBDPE would be conditioned on obtaining from the immunotoxicity testing of PBDPE a NOEL of $\leq$ 500 ppm.

8. *Bioconcentration.* EPA is proposing that bioconcentration testing be conducted in an acceptable fish species (fathead minnow, *Pimephales promelas*) for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 797.1520 (but modified to extend the exposure period to 91 days). Bioconcentration testing for OBDPE, and DBDPE would be conditioned on obtaining a bioconcentration factor of $\geq$ 1,000 with PBDPE.

C. Proposed Chemical Fate Testing and Test Standards

1. *Water solubility.* EPA is proposing that water solubility be determined using the generator column method for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 796.1860. EPA is also proposing that BFRs, which may have a water solubility of 10 ppb or less, be analyzed utilizing an electron-capture detector. Since an accurate measurement technique for the BFRs is available, these water solubilities shall be determined and reported, even if they are less than 10 ppb. Although EPA has water solubility figures for these substances, they are only estimates in the case of PBDPE, and were determined by inappropriate methodology in the case of OBDPE and DBDPE. Although the ITC did not recommend water solubility testing for BTBPE and HBCD, EPA believes a more rigorous procedure is warranted for these low water soluble compounds. Specifically, EPA is proposing that water solubility be determined not only in pure water, but also in dilution water. This is because water solubility as it is normally determined (in distilled water) may differ from what is obtained in the (dilution) water used for the aquatic toxicity tests. An accurate determination in dilution water at the salinity and temperature to be used in the toxicity tests is necessary to select the maximum concentration of test chemical in these tests.

2. *Octanol/water partitioning.* EPA is proposing that octanol/water partition coefficients (K_{ow} values) be determined using the generator column method for PBDPE, OBDPE, and DBDPE, as specified in 40 CFR 796.1720. EPA finds present K_{ow} values inadequate because of inappropriate test methodologies.

3. *Vapor pressure.* EPA is proposing that vapor pressure be determined for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 796.1950.

4. *Sediment and soil adsorption.* EPA is proposing that sediment and soil adsorption testing be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 796.2750.

5. *Direct and indirect photolysis.* EPA is proposing that direct and indirect photolysis testing be conducted on the pure compounds; i.e., congenerically pure PBDPE, OBDPE, DBDPE, BTBPE and HBCD (see Unit IV.D. of this preamble), as specified in 40 CFR 796.3780, 796.3800 and 796.3700.

6. *Aerobic biodegradation in water/sediment.* EPA is proposing that aerobic biodegradation in water/sediment be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD using the ecocore system described by A.W. Bourquin, which is proposed to be incorporated by reference. EPA has examined the method described in A.W. Bourquin and has developed a sample matrix, available in the public record, for conducting preliminary and definitive core-chamber biodegradation tests using this method (Ref. 16). Testing for OBDPE and DBDPE would be conditioned on obtaining mineralization to CO_2 greater than 10 percent for PBDPE.

7. *Anaerobic biodegradation.* EPA is proposing that anaerobic biodegradation testing be conducted for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in 40 CFR 796.3140. The ITC noted, and EPA anticipates, that these substances may undergo reductive debromination. Therefore, this anaerobic biodegradation testing on OBDPE and DBDPE is not conditioned on the results for PBDPE.

D. Test Substances

EPA is proposing testing of PBDPE, OBDPE, DBDPE, BTBPE, and HBCD of at least 98 percent purity as the test substances. EPA recognizes that the three diphenyl ethers are not pure congeneric forms, with each having a single level of bromination (i.e., purely "penta," "octa" or "deca" brominated forms). EPA also recognizes that they are not pure isomers (i.e., brominated not only at a specific level, but also at specific positions on the diphenyl ether molecule). Instead, they are a complex composition of diphenyl ether compounds brominated to different degrees and at different positions (Ref. 16). For example, PBDPE is composed of primarily tetra-, penta-, and hexabrominated diphenyl ethers but with even higher and lower brominated forms present in commercial PBDPE.

EPA is proposing that the test substance reflect the composition of the commercial substance in terms of the mix of the individual brominated congeners present in the commercial substance. The purity specifications proposed above pertain to reducing the amount of chemicals other than brominated diphenyl ethers present in the test substance. EPA is further proposing that the test substance being used in each test be analyzed to determine the percent composition of the different brominated congeners present.

EPA has specified relatively pure substances for testing because EPA is interested in evaluating the effects attributed to the subject substances themselves. This increases the likelihood that any toxic effects observed are related to the subject BFRs and not to any impurities. Potential test sponsors for the three diphenyl ethers and for BTBPE should also be aware of EPA's concern that these BFRs may be contaminated with halogenated dibenzodioxins (HDDs)/dibenzofurans (HDFs) as set forth in 40 CFR part 766. Given the known toxicity of these impurities, test sponsors should take special care to eliminate or minimize any possible contamination with HDDs/HDFs, where they believe these contaminants may be present.

EPA solicits comments on the test substance composition. (see Unit V of this preamble).

E. Persons Required to Test

Because of the findings in Unit III of this preamble, EPA is proposing that persons who manufacture (including import) and/or process, or who intend to manufacture and/or process PBDPE, OBDPE, DBDPE, BTBPE and/or HBCD, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period, be subject to the testing requirements. Byproduct manufacturers and importers of PBDPE, OBDPE, DBDPE, BTBPE, and/or HBCD are considered manufacturers under this rule. As explained in 40 CFR part 790, manufacturers but not small quantity manufacturers, processors, or research and development manufacturers of PBDPE, OBDPE, DBDPE, BTBPE, and/or HBCD would be required to submit letters of intent or exemption applications.

EPA has specified relatively pure substances for testing. EPA would not require submission of equivalence data as a condition for exemption from testing since EPA is interested in evaluating the effects attributable to PBDPE, OBDPE, DBDPE, BTBPE, and/or HBCD.

F. Reporting Requirements

Data developed under the final rule would be reported in accordance with TSCA Good Laboratory Practice (GLP) Standards, 40 CFR part 792.

As required by section 4(b)(1)(C) of TSCA, EPA is proposing specific reporting requirements for each of the proposed tests for PBDPE, OBDPE, DBDPE, BTBPE, and HBCD as specified in the following Table 1.

TABLE 1.—PROPOSED HEALTH AND ENVIRONMENTAL EFFECTS AND CHEMICAL FATE TESTING AND REPORTING REQUIREMENTS FOR THE BFRS

Test Standard in 40 CFR	Test substances	Reporting deadline for final report(months)[1]	Number interim (6 month) reports required[1]
A. Health Effects:			
Subchronic toxicity[2] (§ 798.2650)	HBCD	18	2
Combined chronic toxicity/oncogenicity (§ 798.3320)	PBDPE, OBDPE, BTBPE	53	8
Oncogenicity (§ 798.3300)	PBDPE, OBDPE, BTBPE, HBCD	53	8

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TABLE 1.—PROPOSED HEALTH AND ENVIRONMENTAL EFFECTS AND CHEMICAL FATE TESTING AND REPORTING REQUIREMENTS[1] FOR THE BFRS—Continued

Test Standard in 40 CFR	Test substances	Reporting deadline for final report(months)[1]	Number interim[2] monthly reports required[1]
Neurotoxicity (§ 798.6065, 798.6200, 798.6400)	PBDPE, OBDPE, DBDPE, BTBPE,HBCD	21	3
Reproductive toxicity[3] (§ 798.4700)	PBDPE, OBDPE, BTBPE, HBCD, DBDPE	29	4
Developmental toxicity (§ 798.4900)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	12	1
Salmonella assay (§ 798.5265)	OBDPE	9	1
In vitro gene mutation assay (§ 798.5300)	PBDPE, OBDPE, BTBPE, HBCD	10	1
In vivo cytogenetics assay (§ 798.5385 or 798.5395)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	14	2
Drosophila sex-linked recessive lethal test[3] (§ 798.5275)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	22	1
Mouse specific locus test[3] (§ 798.5200 or 798.5195)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	51	8
Rodent dominant lethal test[3] (§ 798.5450)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	36	3
Heritable translocation test[3] (§ 798.5460)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	25	4
B. Environmental Effects:			
Algal test[3] (§ 797.1050)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	15 [3]24	1 1
Rainbow trout life stage test[3] (§ 797.1600)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Sheepshead minnow life stage test[3] (§ 797.1600)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Daphnid chronic test[3] (§ 797.1330)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Mysid shrimp chronic test[3] (§ 797.1950)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	15 [3]24	1 1
Chironomid sediment toxicity test[3] (§ 795.135)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Mallard reproduction test[3] (§ 797.2150)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Earthworm toxicity test[3] (§ 795.150)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	18 [3]30	1 1
Seed germination/root elongation test[3] (§ 797.2750)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	15 [3]24	1 1
Early seedling growth test[3] (§ 797.2800)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	15 [3]24	1 1
Immunotoxicity test[3]	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	15 [3]24	1 1
Bioconcentration[3] (§ 797.1520)	PBDPE, OBDPE, DBDPE, BTBPE, HBCE	18 [3]30	1 1
C. Chemical Fate:			
Water solubility (§ 796.1860)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	6	0
Log octanol/water partition testing (§ 796.1720)	PBDPE, OBDPE, DBDPE	6	0
Vapor pressure testing (§ 796.1950)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	6	0
Sediment and soil adsorption testing (§ 796.2750)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	6	0
Direct and indirect photolysis testing (§ 796.3780, 796.3800, 796.3700)	PBDPE, OBDPE, DBDPE, BTBPE,HBCD	6	0
Biodegradation testing in water/sediment[3]	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	12 [3]24	1 1
Anaerobic biodegradation testing (§ 796.3140)	PBDPE, OBDPE, DBDPE, BTBPE, HBCD	6	0

[1] Figure indicates the reporting deadline in months calculated from the effective date of the final rule or from the date of test sponsor notification by certified letter to initiate test where such notification is specified.
[2] For one or more of these test substances, this test requirement is conditional as described in Unit IV of this preamble.
[3] This figure is the reporting deadline for testing on OBDPE and DBDPE, which is conditioned on results from testing PBDPE.

V. Issues for Comment

EPA welcomes comment on this proposed testing. In particular, EPA solicits comment in the following four areas:

- Test substance composition.
- Categorization for testing purposes.
- New test guidelines.
- Route of test substance administration.

A. Test Substance Composition

EPA is proposing that the test substance used in the testing should represent, with some purity specifications, what is actually manufactured, rather than attempting to test a single congeneric substance (i.e., a "pure but representative composition" of 4-, 5-, and 6-brominated compounds, which typifies commercial PBDPE is proposed to be tested instead of a composition confined to pentabrominated isomers). On the other hand, EPA also believes that it could be beneficial to use a congenerically pure substance to reduce the number of potentially confounding variables in any future hazard or risk assessment activities for these substances. However, EPA recognizes the potential difficulty in isolating congenerically pure substances of this type, and EPA is also concerned that if congenerically pure substances were used then these test substances would not fairly represent what humans are actually exposed to or what is actually released to the environment (i.e., the commercial mixture). For these reasons, EPA is proposing to require testing of representative test substances composed of differing congeners, similar to what is sold commercially. Nonetheless, EPA is also considering that testing for any or all of the proposed tests may be of congenerically pure substances, if comments and/or data received prior to promulgation convince EPA that these would provide the most useful or interpretable data. For example, EPA is proposing that congenerically pure substances be used in the direct and indirect photolysis testing. EPA believes that the technical limitations inherent in this testing require that congenerically pure substances be used to obtain useful results.

For meaningful interpretation of results, EPA needs to know what is present in the test substance, and EPA is therefore proposing that the test substances be analyzed to determine overall purity and the percentage of each congener present in the mixture. Further, EPA is proposing that, when tested as a commercially representative substance, PBDPE contain not less than 58 percent pentabrominated diphenyl ethers, that OBDPE contain not less than 30 percent octabrominated diphenyl ethers, and that DBDPE contain not less than 98 percent decabrominated diphenyl ethers, and also that BTBPE should contain not less than 98 percent pure 1,2-bis(2,4,6-tribromophenoxy)ethane, and HBCD should contain not less than 98 percent pure hexabromocyclododecane.

For the photolysis tests and any others in which PBDPE, OBDPE, and DBDPE are tested as congenerically pure substances, EPA is proposing that the respective penta-, octa-, and decabrominated isomers make up not less than 98 percent of these substances. EPA is specifically soliciting comments on testing these BFRs in forms representative of what is produced commercially or, instead, as pure congeneric forms; and also on the proposed purity standards and chemical analyses.

B. Chemical Categorization

EPA has concluded that the three diphenyl ethers, PBDPE, OBDPE, and DBDPE, are similar enough in structure to be considered a single category for certain testing purposes. For example, EPA is proposing that reproductive effects testing for OBDPE be conditioned on receiving a positive response with PBDPE or DBDPE. EPA is also proposing to condition the environmental effects testing and one chemical fate test for OBDPE and DBDPE on the results obtained from PBDPE.

EPA is soliciting comment on the scientific appropriateness of conditioning testing in this way for these BFR substances, and also on whether the categorization proposed in this notice is too limited or too broad in the context of each test.

C. Test Guidelines

EPA is proposing three guidelines which are either new or modified, and is also proposing methodologies for two additional tests, which are incorporated by reference.

Both the Chironomid Test and the Earthworm Toxicity Test standards are based on new EPA test guidelines. EPA believes that these tests are necessary, and will help to evaluate the potential risk to benthic aquatic and terrestrial organisms, respectively, from exposure to the BFRs.

The Combined Oncogenicity/Chronic Toxicity guideline, 40 CFR 798.3320, has never been promulgated as a test standard in any test rule. EPA is proposing that certain aspects of the Combined Oncogenicity/Chronic Toxicity guideline be made "shall" rather than "should" testing requirements to make these parts of the guideline enforceable. EPA considers a "shall" requirement to be an essential aspect of the test methodology. Violation of a "shall" requirement is considered a serious breach of test performance and may result in penalties and/or non-acceptance of the test results by EPA.

A fourth test, the Jerne Plaque Assay, is being proposed for BFRs. The Jerne Plaque Assay would be incorporated by reference in the final test rule. The Jerne Plaque Assay evaluates immunotoxicity in mice and is a standard test for this effect. Although this test is a surrogate human health effects test, EPA believes that this test is also adequate for evaluating the risk of possible immunotoxicity effects in environmental species, especially mammals.

Finally, EPA is proposing an aerobic biodegradation test in water/sediment (also known as the ecocore test system) using the methodology of A.W. Bourquin, which would be incorporated by reference in the final test rule. EPA has required the ecocore test system in previous EPA test rules (e.g., in the final test rule for tetrabromobisphenol A, 52 FR 25219, July 6, 1987).

EPA solicits comment on these five protocols.

D. Route of Test Substance Administration

Although a major route of exposure of humans to the BFRs is by inhalation, it is difficult in toxicity testing to maintain consistent, reliable exposures of powdery solid test substances like the BFRs using the inhalation route of administration. Therefore, EPA is proposing that the health effects testing be conducted by the oral route. Specifically, EPA is proposing testing by gavage, because it believes that this route will provide a consistent, reliable dose and reliable results. EPA does not believe, in this case, that the toxicology of the BFRs using the oral route will be significantly different from the inhalation route. Previous testing done on the BFRs by the oral route has shown effects on the liver consistent with those of a 14-day inhalation study. Furthermore, the only positive oncogenicity assay (with DBDPE) was also performed using an oral (dietary) route of administration. However, EPA is soliciting comments on this issue, and if comments indicate that the inhalation (or other route) should be used, in any or all testing, then EPA may require that route of administration.

VI. Economic Analysis of the Proposed Rule

EPA prepared an economic analysis that evaluates the potential for significant economic impacts as a result of the proposed testing. (Ref. 2). Total testing costs are estimated to range from $11.6 to $19.1 million. These costs have been annualized and compared with annual revenue as an indication of potential impact. These annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year.

The annualized test costs, using a 7 percent cost of capital over a period of

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15 years, are as follows: DBDPE — $102,000 to $154,000; HBCD — $254,000 to $427,000; BPDPE and BTBPE -$308,000 to 504,000; and OBDPE — $308,000 to $505,000. The production volume and price information have been claimed confidential and are contained in the economic analysis, which is being treated as CBI.

VII. Availability of Test Facilities and Personnel

EPA has determined that test facilities and personnel are available to perform the testing specified in this proposed rule. (Ref. 19).

VIII. Public Meeting

If requests for oral comments are submitted, EPA will hold a public meeting in Washington, DC after the close of the public comment period. Persons who wish to attend or to present comments at the meeting should call Mary Louise Hewlett, Chemical Testing Branch (202) 475–8162 by August 9, 1991. The meeting will be open to the public, but active participation will be limited to those who requested to comment and EPA representatives. Participants are requested to submit copies of their statements by the meeting date. These statements and a transcript of the meeting will become part of EPA's rulemaking record.

IX. Comments Containing Confidential Business Information

All comments will be placed in the public file unless they are clearly labeled as Confidential Business Information (CBI) when they are submitted. While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all CBI comments should be submitted, if possible, to EPA for the public file.

It is the responsibility of the commenter to comply with 40 CFR part 2 in order that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that CBI is included, and marking "CONFIDENTIAL", "TSCA CBI" or similar designation on the face of each document or attachment in the comment which contains CBI. Should information be put into the public file because of failure to clearly designate its confidential status on the face of the comment, EPA will presume any such information which has been in the public file for more than 30 days to be in the public domain.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS–42115). This record contains the basic information considered by EPA in developing this proposal and appropriate Federal Register notices. EPA will supplement this record as necessary.

A public version of the record, from which all CBI has been deleted, is available for inspection in the TSCA Public Reading Room, G–004, NE Mall, 401 M St., SW., Washington, DC 20460, from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The record includes the following information:

A. Supporting Documentation

(1) Notice containing the ITC designation.

(2) Federal Register notices pertaining to this rule consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (54 FR 34034; August 17, 1989).

(b) Notice of final rule on data reimbursement policy and procedures (48 FR 31786, July 11, 1983).

(3) TSCA test guidelines cited as test standards for this rule.

(4) Communications consisting of:

(a) Written letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

B. References

(1) USEPA. U.S. Environmental Protection Agency. "Twenty-fifth Report of the Interagency Testing Committee to the Administrator; receipt of report and request for comments regarding priority list of chemicals." (December 12, 1990, 54 FR 51114).

(2) Szarek, P. "Economic analysis of proposed test rule for five brominated flame retardants non-CBI version". Memorandum from Pat Szarek to John Schaeffer, USEPA, Office of Pesticides and Toxic Substances, Washington DC (October, 1990).

(3) USEPA. Environmental Research Laboratory, Duluth MN. "Brominated chemicals as marine contaminants." Memorandum from Steven J. Broderius to Maurice Zeeman, Washington, DC, Office of Toxic Substances, USEPA (February 14, 1990).

(4) MRI. Midwest Research Institute "Mass spectral confirmation of chlorinated and brominated diphenyl ethers in human adipose tissues." Final Report for USEPA, Exposure Evaluation Division, Office of Toxic Substances, EPA Contract No. 68–02–4252. (June, 1990).

(5) USEPA. "Brominated flame retardants–post-RM 1 meeting revision of HERD testing recommendations". Memorandum from Mark W. Townsend to Gary E. Timm, Washington, DC, Office of Pesticides and Toxic Substances, USEPA (June 18, 1990).

(6) NTP. National Toxicology Program. "Toxicology and carcinogenesis studies of decabromodiphenyl oxide (CAS No. 1163–19–5) in F344/N rats and B6C3F1 mice (feed studies)." *NTP Technical Report Series No. 309*, U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health (1989).

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(10) Wong, K.F. "Production/exposure profile for brominated diphenyl oxide." USEPA, Office of Toxic Substances, Chemical Engineering Branch (January 7, 1988).

(11) USEPA. "Twenty-fifth ITC report comments on the oncogenicity testing recommendations for five brominated flame retardants." Memorandum from Ann Clevenger to Carol A. Bellizzi, Washington, DC, Office of Pesticides and Toxic Substances, USEPA (February 2, 1990).

(12) Times Wire Service. "Dolphin deaths traced to 'red tide'." *Los Angeles Times*, Section 1, page 2 (February 1, 1990).

(13) Hilts, P.J., and Loff, L. "Toxic algae killed dolphins; marine mammal catastrophe blamed on poisonous 'red tide'." *The Washington Post*, Metro section, page D-01 (February 2, 1990).

(14) Jones, J.L. "Navy asked to help ill dolphins", *Los Angeles Times*, Orange County Edition, Metro section, page 3 (November 17, 1988).

(15) Lancaster, J. "New surge in dolphin deaths triggers probe; more than 300 bottlenoses have washed ashore from Gulf of Mexico since January." *The Washington Post*, Section A, page A 21 (May 11, 1990).

(16) Carlson, G.P. "Induction of xenobiotic metabolism in rats by short-term administration of brominated diphenyl ethers." *Toxicology Letters*. 3:19–25 (1989).

(17) Norris, J.M., Kociba, R.J., Schwetz, B.A., Rose, J.Q., Humiston, C.G., Jewett, G.L., Gehring, P.J., and Mailhes, J.B. "Toxicology of Octabromobiphenyl and Decabromodiphenyl Oxide." *Environmental Health Perspectives*. 11:135–141 (1975).

(18) USEPA. "Matrix for conducting preliminary and definitive core-chamber biodegradation tests." Draft paper by John D. Walker, Washington, DC, Office of Toxic Substances, USEPA (May 11, 1988).

(19) Booz, Allen, Hamilton, Inc., Bethesda, MD. "EPA census of the toxicological testing industry." Prepared for the Office of Policy Analysis OTS, USEPA, Washington, DC (June 1990).

XI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that if promulgated, this proposed test rule would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it would not have an annual effect on the economy of at least $100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of U. S. enterprises to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) They would not be expected to perform testing themselves, or to participate in the organization of the testing effort; (2) they would experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB Control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 68,800 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total public reporting burden is estimated to be 206,400 hours for all responses.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 795, 796 and 799

Chemicals, Chemical export, Chemical fate, Environmental effects, Environmental protection, Hazardous substances, Health effects, Incorporation by reference, Laboratories, Reporting and recordkeeping requirements, Testing.

Dated: June 17, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I, subchapter R, be amended as follows:

1. In part 795

PART 795 — [AMENDED]

a. By revising the authority citation for part 795 to read as follows:

Authority: 15 U.S.C. 2601, 2603

b. By adding § 795.135 to read as follows:

§ 795.135 Chironomid sediment toxicity test.

(a) *Purpose.* This guideline may be used to develop data on the toxicity and bioavailability of chemical substances and mixtures ("chemicals") in sediments subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469,90 Stat. 2003, 15 U.S.C. 2601 et. seq.). This guideline prescribes tests to be used to develop data on the toxicity of chemicals present in sediments to chironomid larvae (midges). The U.S. Environmental Protection Agency (EPA) will use data from these tests in assessing the hazard of a chemical to the environment.

(b) *Definitions.* The definitions in section 3 of TSCA and 40 CFR part 792, Good Laboratory Practice Standards (GLPS), apply to this test guideline. In addition, the following definitions also apply:

Bioconcentration Factor (BCF) is the quotient of the concentration of a test substance in tissues of the chironomids at or over a specific time period of exposure divided by the concentration of test substance in the overlying water, interstitial water, or in the sediments at or during the same time period.

Cation exchange capacity (CEC) means the sum total of exchangable cations that a sediment can absorb. The CEC is expressed in milliequivalents of negative charge per 100 grams (meg/100g) or milliequivalents of negative charge per gram (meq/g) of sediment (dry weight).

EC50 means an experimentally-derived concentration of test substance in the sediment that is calculated to affect 50 percent of a test population during continuous exposure over a specified period of time.

Flow-through means a continuous or intermittent passage of dilution water through a test chamber or culture tank with no recycling of water.

Geometric mean MATC is the calculated mean between the highest test concentration with no statistically significant effects and the lowest concentration showing significant effects.

Interstitial water is liquid which is found in or directly adjacent to sediments and can be extracted from these sediments by several processes.

Loading means the ratio of chironomid biomass (grams wet weight) to the volume (liters) of test solution in a test chamber at a point in time or passing through the test chamber during a specific interval.

Lowest observed effect concentration (LOEC) means the lowest treatment (i.e., test concentration) of a test substance that is statistically different in adverse effect on a specific population of test organisms from that observed in controls.

MATC (Maximum Acceptable Toxicant Concentration) means the maximum concentration at which a chemical may be present and not be toxic to the test organism.

No observed effect concentration (NOEC) means the highest treatment (i.e., test concentration) of a test substance that shows no statistical difference in adverse effect on a specific population of test organisms from that observed in controls.

Overlying water is liquid which is found above or placed over sediments. For purposes of this guideline, overlying water is equivalent to the term "water column".

Partial life-cycle toxicity test is one which uses a sensitive portion of the life of a test organism (second instar of midges) to assess the effects of test substances.

Redox potential (E_h) means the oxidizing or reducing intensity or condition of a solution expressed as a current, referenced against a hydrogen electrode. Within wet sediments

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reducing conditions prevail such that zero or negative E_h values may be present.

Sediment is matter which settles to the bottom of a liquid in natural situations or a substrate prepared from a combination of natural sediments and artificial components. "Sediment" is equivalent to the term "solid-phase sediments" in this guideline.

Sediment partition coefficient is the ratio of the concentration of test substance on the sediment to the concentration in the overlying water. For the purposes of this guideline, this term is identical to "soil-water partition coefficient."

Spiking is the addition of a test substance to a negative control and/or reference sediment so that the toxicity of a known quantity of test substance can be determined in a known nontoxic sediment. Often a solvent carrier is needed for low-water soluble test substances.

Subchronic toxicity test means a method used to determine the concentration of a test substance in water and for sediment which produces an adverse effect on chironomids over a partially extended period of time. In this guideline, mortality and growth (expressed as change in wet weight of midges) are the criteria of toxicity.

(c) *Test procedures* — (1) *Summary of test.* (i) This flow-through test consists of three parts. First is a 14-day aqueous exposure test, with minimal sediments, with food, and with the test substance added to the overlying water. Second is a 14-day sediment exposure test, with one or more sediments (4 to 8 cm in thickness) which may have varying amounts of organic carbon, with food, and with the test substance added to sediment(s). Third is a 14-day interstitial exposure test, with one or more sediments (4 to 8 cm in thickness) which may have varying amounts of organic carbon, with food, and with the test substance added to overlying water. The flow-through test is illustrated in the following Table 1.

TABLE 1.—EXPERIMENTAL DESIGN FOR THE CHIRONOMID SEDIMENT FLOW-THROUGH TOXICITY TEST

Test system	Test substance concentrations [2 reps ea] [a]	Number of sediments [2 reps ea]	Number of Samples Analyzed (2 reps ea)			
			Overlying water P/C [b]	Interstitial water P/C [b]	Sediments	Midges [c]
1. 14-Day Aqueous Exposure	5[10]	NA [d]	5[10]	NA	NA	5[10]
Control (2 reps)	NA	NA	1[2]	NA	NA	1[2]
Solvent Control (2 reps)	NA	NA	1[2]	NA	NA	1[2]
2. 14-Day Sediment Exposure	5[10]	1-3 [e]	(2-6)	5[10]	NA	5[10]
Control (2 reps)	NA	1[2]	1[2]	NA	1[2]	1[2]
Solvent Control (2 reps)	NA	1[2]	1[2]	NA	1[2]	1[2]
3. 14-Day Interstitial Water/Sediment Exposure	5[10]	1-3 [e]	(2-6)	5[10]	5[10]	5[10]
Control (2 reps)	NA	1[2]	1[2]	1[2]	1[2]	1[2]
Solvent Control (2 reps)	NA	1[2]	1[2]	1[2]	1[2]	1[2]

[a] Test substance concentration in all replicates measured at days 0 and 14. Reps = replicates
[b] P/C = physical chemical measurements (dissolved oxygen, temperature (°C), and pH) on days 0, 4, 7, 10, and 14.
[c] Midges are observed throughout the test, dead chironomids recorded, removed and weighed on days 4, 7, and 10. At end of each test, remaining midges from each replicate are removed, counted, and weighed.
[d] NA = not applicable
[e] Number of sediment types tested will depend on range of TOC content tested; 1 to 3 types (low, medium, and high TOC levels) are recommended.

(ii) The day before the test is to be started, sediments (in treatments, and reference and negative controls) shall be screened to remove large particles and endemic animals (especially midge predators) added to the test chambers. The amount of sediments to be added to each test chamber will depend on the experimental design and test species. Only a minimum amount (2mm) shall be added in the aqueous exposure portion of the test. Each replicate test chamber should contain the same amount of sediments. Overlying water shall then be added to each test chamber.

(iii) In this flow–through test, the flow of dilution water through each chamber is begun and then adjusted to the rate desired. The test substance shall be introduced into each test chamber. The addition of test substance in the flow-through system shall be done at a rate which is sufficient to establish and maintain the desired concentration of test substance in the test chamber.

(iv) At the initiation of the test, chironomids which have been cultured or acclimated in accordance with the test design, are randomly placed into the test chambers. Midges in the test chambers are observed periodically during the test. Immobile or dead larvae shall be counted, removed, and weighed, and the findings are recorded. "Floating" larvae are nonviable and shall be replaced. Dissolved oxygen (DO) concentration, pH, temperature, the concentration (measured) of test substance, and other water quality parameters are measured at specified intervals in selected test chambers, during all three parts of this test (See Table 1 in paragraph (c)(1)(i) of this section). Data shall be collected during the test to determine any significant differences ($P \leq 0.05$) in mortality and growth as compared to the controls. BCFs shall be calculated at the end of the test, based on route of exposure.

(2) [Reserved]

(3) *Range-finding test.* (i) A range-finding test should be conducted prior to beginning each of the three parts of the test to establish test solution concentrations for the three definitive parts of the test.

(ii) The chironomids should be exposed to a series of widely spaced concentrations of the test substance (e.g., 1, 10, 100 mg/L).

(iii) A minimum of 10 chironomids should be exposed to each concentration of test substance for a period of time which allows estimation of appropriate test concentrations. No replicates are required and nominal concentrations of the chemical are acceptable.

(4) *Definitive test.* (i) The purpose of the definitive portion of the test is to determine concentration-response curves, EC50 values, effects of a chemical on mortality and growth, and the determination of BCFs during subchronic exposure.

(ii) A minimum of 30 midges per concentration (15 midges per replicate test chamber) should be exposed, in each part of the test, to 5 or more concentrations of the test substance chosen in a geometric series in which the ratio is between 1.5 and 2.0 mg/L (e.g., 2, 4, 8, 16, 32, 64 mg/L). An equal number of chironomids should be placed in two replicates. The concentration ranges should be selected to determine the concentration-response curves, EC50 values, and MATC. Solutions should be analyzed for chemical concentration prior to use and at designated times during the test.

(iii) Each test shall include controls consisting of the same dilution water, sediments, conditions, procedures, and midges from the same population (same egg mass in culture container), except that none of the test substance is added.

(iv) The test duration is 14 days for each of the three parts of the test. The test is unacceptable if more than 20 percent of the control organisms are dead, stressed or diseased during the test. For high log K_{ow} chemicals, a test period longer than 14 days may be necessary.

(v) The number of dead chironomids in each test chamber shall be recorded on days 4, 7, 10, and 14 of the test. At the end of the test, surviving midges are removed from the test chambers and weighed after blotting dry. Concentration-response curves, EC50 values, and associated 95 percent confidence limits for mortality shall be determined for days 4, 7, 10, and 14 in the aqueous exposure portion of the test. Also, an MATC, as well as NOEC and LOEC values shall be determined for midge survival and growth.

(vi) In addition to survival and growth, any abnormal behavior or appearance of the chironomids should be reported.

(vii) Distribution of midges among the test chambers shall be randomized. In addition, test chambers within the testing area are positioned in a random manner or in a way in which appropriate statistical analyses can be used to determine the variation due to placement.

(viii) A control sediment and/or a reference sediment shall be used in each part of this test. Use of these controls/references will help determine if the test is acceptable, serve to monitor the health of the chironomids used in the testing, monitor the quality and suitability of test conditions, parameters and procedures, and aid in analyzing data obtained from this test. A negative control shall be run in the test, and this is to be a sediment known to be non-toxic to the midges. Also, in addition to, or in place of the negative control, a reference sediment can be run in the test. The reference sediment is obtained from an area that is known to have low levels of chemical contamination and which is similar to or identical to the test sediments (in physical and chemical characteristics).

(ix) In the first part of this test, the aqueous exposure, a minimal amount of sediments ($\leq$ 2mm) is placed in the test chambers. Sediments are necessary to reduce stress to the chironomids, cannibalism, and to allow the midges to construct tubes.

(x) BCFs shall be calculated at the end of each part of the test.

(5) [Reserved]

(6) *Analytical measurements* — (i) *Water quality analysis.* (A) The hardness, acidity, alkalinity, conductivity, total organic carbon (TOC) or chemical oxygen demand (COD), and particulate matter of the dilution water serving as the source of overlying water shall be measured on days 0 and 14. The month-to-month variation of these values should be less than 10 percent and the pH should vary less than 0.4 units.

(B) During all three parts of the flow-through test, DO, temperature, and pH shall be measured in each chamber on days 0, 4, 7, 10, and 14.

(ii) *Measurement of test substance.* (A) Deionized water should be used in making stock solutions of the test substance. Standard analytical methods should be used whenever available in performing the analyses of water and sediments. Radiolabeling of the test substance (e.g., by use of ^{14}C) may be necessary in order to accurately measure quantities present in the sediments. The analytical method used to measure the amount of test substance in the sample shall be validated by appropriate laboratory practices before beginning the test. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interference which cannot be systematically identified and corrected mathematically. When radiolabeled test substances are used, total radioactivity shall be measured in all samples. At the end of the test, water, sediments, and tissue samples should be analyzed using appropriate methodology to identify and estimate any major (at least 10 percent of the parent compound) degradation products or metabolites that may be present.

(B) For all three aqueous exposure parts of this test, the overlying water shall be sampled on days 0, 7, and 14 from each test chamber, for the test substance.

(C) For the non-aqueous exposure parts of the test, the interstitial water shall be sampled for the test substance on days 0, 7, and 14 from each test chamber. Interstitial water can be sampled by using a variety of methods, such as removal of overlying water and centrifugation, filtration of sediments, pressing the sediments, or using an interstitial water sampler. Care should be taken during these measurements to prevent the biodegradation, transformation, or volatilization of the test substance.

(D) For the non-aqueous exposure portion of the test, the sediments shall be sampled for the test substance on days 0, 7, and 14 from each test chamber.

(E) The sediment partition coefficient or soil-water partition coefficient is determined by dividing the average test substance sediment concentration by the respective average water column concentration. Concentrations of test substance in the sediments to be used in this test can be chosen by measuring these partition coefficients. This sediment partition coefficient should be determined in triplicate by placing a quantity of a sediment with a known TOC content spiked with the radiolabeled test substance into a quantity of dilution water. The ratio of sediment to dilution water should simulate the ratio present in the test. The sediment/dilution water mixture is periodically shaken, and the radiolabeled test substance is measured. This shaking and sampling procedure is repeated until equilibrium is reached, as defined by the stage of the desorption curve.

(F) Overlying water samples should be filtered through a 0.45 micron filter to determine the concentration of dissolved test substance.

(G) BCFs shall be calculated by determining the amount of test substance in the midge tissue divided by concentrations of test substance in the water column, interstitial water, and sediments. At test termination, the midges remaining in each test concentration are analyzed for test substance. Suitable methods are available, such as radiolabeling (^{14}C) the test substance, combusting the midges, and trapping and counting the resulting radioactivity, if other methods are unavailable. The BCF can then be calculated. If insufficient chironomid biomass is present at the conclusion of the test, then replicates may be pooled, if necessary. If this pooling still results in insufficient biomass or if the accumulated test substance concentration is lower than the

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detection limit for the test substance, BCFs cannot be calculated.

(iii) *Numerical.* (A) The number of dead midge second instars shall be counted during each definitive test. Appropriate statistical analyses should provide a goodness-of-fit determination for mortality concentration-response curves calculated on days 4, 7, 10, and 14. A 4–, 7–, 10–, and 14–day LC50 value based on second instar mortality, and with corresponding 95 percent confidence intervals, shall be calculated. The methods recommended for calculating EC50's include probit, logit, binomial, and moving average.

(B) Appropriate statistical tests (e.g., analysis of variance and mean separation tests) should be used to test for significant chemical effects on growth (measured as wet weights) on days 4, 7, and 14. An MATC shall be calculated using these test criteria.

(C) In no case should any analytical measurements be pooled except when calculating BCFs and there is insufficient biomass available for individual measurements.

(d) *Test conditions*—(1) *Test species* — (i) *Selection.* (A) The midge, *Chironomus tentans* or *C. riparius* shall be used in this test. Both species are widely distributed throughout the United States, and the larvae and adult flies can be cultured in the laboratory. The larval portion of both species' life cycles is spent in a tunnel or case within the upper layers of benthic sediments of lakes, rivers, and estuaries. Feeding habits of both species include both filter feeding and ingesting sediment particles.

(B) Second instar chironomids (≤ 10 days) of the same age and size are to be used in this test. Third and fourth instar are less desirable, as some evidence indicates they are less sensitive, at least to copper. Each instar is 4 to 7 days in duration.

(ii) *Acquisition.* (A) Chironomids to be used in this test should be cultured at the test facility. Adult flies are collected from the chironomid cultures and allowed to mate and lay egg masses. Two egg masses are collected and allowed to hatch. The larvae are fed daily. When the second instar stage (about 10 days after hatching) is reached, larvae are removed and placed in the test chambers. Records should be kept regarding the source of the initial stock and culturing techniques. All organisms used for a particular test shall have originated from the same population (culture container) and be the same in age and size.

(B) Chironomids shall not be used in a test if:

(*1*) During the final 48 hours of midge holding, obvious mortality is observed.

(*2*) The larvae are not in the second instar.

(iii) *Feeding.* (A) During the test, the chironomids should be fed the same diet and with the same frequency as that used for culturing and acclimation. All treatments and control(s) should receive, as near as reasonably possible, the same amount of food on a per-animal basis.

(B) The food concentration depends on the type used and the nutritional requirements of the midges. The latter in turn is dependent upon the stage of their development.

(iv) *Loading.* The number of test organisms placed in a test chamber should not affect the test results. Loading should not exceed 30 chironomids per liter per 24 hours in the flow-through test. Loading should not effect test concentrations or cause the DO concentration to fall below the recommended level.

(v) *Care and handling of test organisms.* (A) Chironomids should be cultured in dilution water under similar environmental conditions as those in the test. Food such as Tetra® Conditioning Food has been demonstrated to be adequate for chironomid cultures.

(B) Organisms should be handled as little as possible. When handling is necessary, it should be done as gently, carefully, and as quickly as possible. During culturing and acclimation, midges should be observed for any signs of stress, physical damage, and mortality. Dead and abnormal individuals shall be discarded. Organisms that are damaged or dropped during handling shall be discarded.

(C) Wide-bore, smooth glass tubes or pipets equipped with a rubber bulb can be used for transferring midges.

(vi) *Acclimation.* (A) Midges shall be maintained in 100 percent dilution water at the test temperature for at least 4 days prior to the start of the test. This is easily accomplished by culturing them in the dilution water at the test temperature. Chironomids shall be fed the same food during the test as is used for culturing and acclimation.

(B) During culturing and acclimation to the dilution water, midges should be maintained in facilities similar to those of the testing area.

(2) *Facilities*—(i) *General.* (A) Facilities needed to perform this test include:

(*1*) Containers for culturing and acclimating the chironomids;

(*2*) A mechanism for controlling and maintaining the water temperature during the culturing, acclimation, and test periods;

(*3*) Apparatus for straining particulate matter, removing gas bubbles, or aerating the water as necessary to ensure that the test solution flows regularly into and out of the container. Test chambers can be small aquaria capable of holding 3 liters of water or test solution, 5.7 liter clear glass battery jars, or 1 liter beakers made of borosilicate glass. Each chamber should be equipped with screened overflow holes, standpipes, or u-shaped notches covered with Nitex screen. Construction materials and commercially purchased equipment that may contact dilution water should not contain substances that can be leaked or dissolved into aqueous solutions in quantities that can alter the test results. Materials and equipment that contact test solutions should be chosen to minimize sorption of test substances; and

(*4*) Test chambers should be loosely covered to reduce the loss of test solution or dilution water by evaporation, and to minimize the entry of dust or other particulates into the solutions.

(ii) *Test substance delivery system.* (A) In the flow-through test, proportional diluters, metering pump systems or other suitable systems should be used to deliver the test substance to the test chambers.

(B) The test substance delivery system used shall be calibrated before and after each test. Calibration includes determining the flow rate through each chamber and the concentration of the test substance in each chamber. The general operation of the test substance delivery system shall be checked twice daily during the test. The 24–hour flow rate through a test chamber shall be equal to at least five times the volume of the test chamber. During a test, the flow rates should not vary more than 10 percent from any one test chamber to another or from one time to any other.

(iii) *Dilution water.* (A) Surface or ground water, reconstituted water, or dechlorinated tap water are acceptable as dilution water if chironomids will survive in it for the duration of the culturing, acclimation, and testing periods without showing signs of stress. The quality of the dilution water should be constant and should meet the specifications in the following Table 2:

TABLE 2.—SPECIFICATIONS FOR DILUTION WATER

Substance	Maximum Concentration
Particulate matter	20 mg/L
Total organic carbon (TOC) or chemical oxygen demand (COD).	2 mg/L or 5 mg/L, respectively

TABLE 2.—SPECIFICATIONS FOR DILUTION WATER—Continued

Substance	Maximum Concentration
Boron, fluoride	100 µg/L
Un-ionized ammonia	10 µg/L
Aluminum, arsenic, chromium, cobalt, copper, iron, lead, nickel, zinc.	1 µg/L
Residual chlorine	3 µg/L
Cadmium, mercury, silver	100 ng/L
Total organophosphorus pesticides.	50 ng/L
Total organochlorine pesticides and polychlorinated biphenyls (PCBs) or Organic chlorine.	50 ng/L or 25 ng/L, respectively

(B) The water quality characteristics listed in Table 2 of paragraph (b)(2)(iii)(A) of this section shall be measured at least twice a year or when it is suspected that these characteristics may have changed significantly. If dechlorinated tap water is used, daily chlorine analysis shall be performed.

(C) If the diluent water is from a ground or surface water source, conductivity, hardness, alkalinity, pH, acidity, particulate matter, TOC or COD, and particulate matter shall be measured. Reconstituted water can be made by adding specific amounts of reagent-grade chemicals to deionized or distilled water. Glass distilled or carbon filtered deionized water with conductivity of less than 1 microohm/cm is acceptable as the diluent for making reconstituted water.

(D) If the test substance is not soluble in water, an appropriate carrier such as triethylene glycol (CAS No. 112–27–6), dimethylformamide (CAS No. 68–12–2), or acetone (CAS No. 67–64–1) should be used. The concentration of such carriers should not exceed 0.1 mL/L.

(iv) *Cleaning of test system.* All test equipment and test chambers shall be cleaned before each test following standard laboratory procedures. Cleaning of test chambers may be necessary during the testing period.

(v) *Sediments.* (A) Sediments used in this test may contain low (< 1 percent) to high (>15 percent) amounts of organic carbon because they are derived from variable natural sediments. Prior to use, the sediments should be sieved to remove larger particles. They should be characterized for particle size distribution (sand, silt, clay percentages), percent water holding capacity, total organic and inorganic carbon, total volatile solids, COD, BOD, cation exchange capacity, redox potential (E_h), oils and greases, petroleum hydrocarbons, organophosphate pesticide concentrations, organochlorine pesticide [and polychlorinated biphenyl (PCB)] concentrations, toxic metal concentrations, and pH.

(B) The source of the sediments used in this test shall be known and the characteristics in paragraph (d)(2)(v)(A) of this section should be measured every time additional sediments are obtained. The sediments should not contain any endemic organisms, as these may be chironomid predators.

(C) Sediments should not be resuspended during the test.

(vi) *Sediment partition coefficient.* (A) The sediment or soil-water partition coefficient (K_s) is described as the ratio of the concentration of the test substance in the sediment (C_s) to the concentration in the water or interstitial water (C_w). This is expressed by the formula:

$$K_s = \frac{C_s}{C_w}$$

The resulting K_s values for the sediment or sediments tested are used to select test substance concentrations for the sediment test.

(B) The K_s value is equivalent or related to the sediment organic carbon sorption coefficient multiplied by the percent organic carbon content of the sediment.

(C) The sediment partition coefficient should be determined in triplicate for each sediment type at equilibrium by spiking with the radiolabeled test substance and shaking. Periodically, the test substance concentration in the water is measured radiometrically. The shaking and sampling is repeated until an equilibrium, as defined by the shape of the plotted desorption curve, is reached.

(vii) *Bioconcentration Factors.* BCFs shall be calculated for each part of the test. These values are computed as the amount of test substance present in the midge tissues divided by test substance concentrations in the water column, interstitial water, and sediments. At test termination, the chironomids remaining in each test concentration are analyzed for radiolabeled test substance.

(3) *Test parameters.* (i) Environmental conditions of the water contained in test chambers should be maintained as specified below:

(A) Temperature of 20 ± 1 °C for *C. tentans* and 22 ± 1 °C for *C. riparius.*

(B) DO concentration of the dilution water should be 90 percent of saturation or greater. The DO concentrations of the test solutions shall be 60 percent or greater of saturation, throughout the test. Aeration may be necessary, and if this is done, all treatment and control chambers should be given the same aeration treatment.

(C) A photoperiod of 16 hours light and 8 hours darkness with a 15 to 30 minute transition period.

(ii) Additional measurements include:

(A) The concentration of dissolved test substance (that which passes through a 0.45 micron filter) in the chambers should be measured during the test.

(B) At a minimum, the concentration of test substance should be measured as follows:

(*1*) In each chamber before the test.

(*2*) In each chamber on days 7 and 14 of the test.

(*3*) In at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system.

(C) Among replicate test chambers of a treatment concentration, the measured concentration of the test substance shall not vary by more than 20 percent at any time or 30 percent during the test.

(D) The dissolved oxygen concentration, temperature and pH shall be measured at the beginning of the test and on days 7 and 14 in each chamber.

(e) *Reporting.* The sponsor shall submit to the USEPA all data developed by the test that are suggestive and predictive of toxicity and all associated toxicologic manifestations. In addition to the reporting requirements prescribed in the GLPS (40 CFR part 792), the reporting of test data shall include the following:

(1) The name of the test, sponsor, testing laboratory, study director, principal investigator, and dates of testing.

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(2) A detailed description of the test substance including its source, lot number, composition (identity and concentration of major ingredients and major impurities), known physical and chemical properties, and any carriers or other additives used and their concentrations.

(3) The source of the dilution water, its chemical characteristics (e.g., conductivity, hardness, pH, TOC or COD, and particulate matter) and a description of any pretreatment.

(4) The source of the sediment, its physical and chemical characteristics (e.g., particle size distribution, TOC, pesticide and metal concentrations), and a description of any pretreatment.

(5) Detailed information about the chironomids used as a stock, including the scientific name and method of verification, age, source, treatments, feeding history, acclimation procedures, and culture methods. The age (in days) and instar stage of the midges used in the test shall be reported.

(6) A description of the test chambers, the volume of solution in the chambers, and the way the test was begun (e.g., conditioning and test substance additions). The number of test organisms per test chamber, the number of replicates per treatment, the lighting, the test substance delivery system, flow rates expressed as volume additions per 24 hours for the flow-through sub-chronic test, the method of feeding (manual or continuous), and type and amount of food.

(7) The concentration of the test substance in the water, interstitial water, and sediments in test chambers at times designated in the flow-through tests.

(8) The number and percentage of organisms that show any adverse effect in each test chamber at each observation period, and wet weights of midges in each test chamber at days 7 and 14.

(9) BCFs for all three parts of the test (i.e., overlying water or water column, sediment, and interstitial water modes of exposure).

(10) All chemical analyses of water quality and test substance concentrations, including methods, method validations and reagent blanks.

(11) The data records of the culture, acclimation, and test temperatures. Information relating to calculation of sediment (or soil-water) partition coefficients (K_p).

(12) Any deviation from this test guideline, and anything unusual about the test (e.g., diluter failure and temperature fluctuations).

(13) An LC50 value based on mortality and an EC50 value based on adverse effects on growth (wet weights), with corresponding 95 percent confidence limits, when sufficient data are present for days 4, 7, and 14. These calculations should be made using the average measured concentration of the test substance.

(14) Concentration-response curves utilizing the average measured test substance concentration should be fitted to both number of midges that show adverse effects (mortality) and effects on growth or wet weights of midges at days 4, 7 and 14. A statistical test of goodness-of-fit should be performed and the results reported.

(15) The MATC to be reported is calculated as the geometric mean between the lowest measured test substance concentration that had significant ($P < 0.05$) effect and the highest measured test substance concentration that had no significant ($P > 0.05$) effect on days 4, 7, and 14 of the test. The criterion selected for MATC computation is the one which exhibits an effect (a statistically significant difference between treatment and control groups; $P < 0.05$) at the lowest test substance concentration for the shortest period of exposure. Appropriate statistical tests (analysis of variance and mean separation tests) should be used to test for significant test substance effects. The statistical tests employed and the results of these tests should be reported.

(f) *References.* For further background information on this test guideline the following references should be consulted:

(1) Adams, W. J., Kimerle, R. A., Mosher, R. G. "Aquatic safety assessment of chemicals sorbed to sediments." R. D. Cardwell, R. Purdy, and R. C. Bahner, eds. In: *Aquatic Toxicology and Hazard Assessment.* ASTM STP 854. American Society for Testing and Materials. (1985).

(2) Nebeker, A. V., Cairns, M. A., Wise, C. M. "Relative sensitivity of *Chironomus tentans* life stages to copper." *Environmental Toxicology and Chemistry* 3:151 158. (1984).

(3) Nebeker, A. V., Cairns, M. A., Gakstatter, J. H., Malueg, K. W., Schuytema, G. S., Krawczyk, D. F. "Biological methods for determining toxicity of contaminated freshwater sediments to invertebrates." *Environmental Toxicology and Chemistry* 3:617-630. (1984).

c. By adding § 795.150 to read as follows:

§ 795.150 Earthworm toxicity test.

(a) *Purpose.* This guideline is intended for use in developing data on the toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2003, 15 U.S.C. 2601 et seq.). The guideline sets forth the procedures and conditions for conducting this toxicity test. The U.S. Environmental Protection Agency (EPA) will use data from this test in assessing the hazard of a chemical to earthworms in the soil environment.

(b) *Definitions.* The definitions in section 3 of TSCA and the definitions in "Good Laboratory Practice Standards" (GLPS) (40 CFR part 792) apply to this guideline. The following definitions also apply:

Artificial soil means a defined dry weight mixture of 68 percent of No. 70 mesh silica sand, 20 percent kaolin clay, 10 percent sphagnum peat moss, and 2 percent calcium carbonate. These ingredients are weighed and mixed in the above proportions and moistened to 35 percent (by weight) with deionized/distilled water.

Behavioral symptoms are indicators of toxicity to earthworms such that a distinct difference in position in the test container can be identified, e.g., below surface or on the surface; writhing on the surface; stiffened and shortened on the surface or elongated and pulsing; or inactive below surface in a ball.

Clitellum means a glandular portion of the anterior epidermis, appearing as saddle-shaped or annular, usually differentiated externally by color.

Culture means the animals which are raised on-site or maintained under controlled conditions to produce test organisms through reproduction.

EC50 means that test substance concentration calculated from experimentally-derived growth or sublethal effects data that has affected 50 percent of a test population during continuous exposure over a specified period of time.

LC50 means that experimentally derived concentration of test substance that is estimated to kill 50 percent of a test population during continuous exposure over a specified period of time.

Lowest observed effect concentration (LOEC) means the lowest treatment (i.e., test concentration) of a test substance that is statistically different in adverse effect on a specific population of test organisms from that observed in controls.

Mature or adult worms means a condition of the worm exhibiting a clitellum in the anterior 1/3 of the body.

Mortality means the lack of movement by the test organism in response to a definite tactile stimulus to the anterior end. Also, because earthworms tend to disintegrate rapidly after death, the absence of organisms in the enclosed soil test container is considered to mean death has occurred

No observed effect concentration (NOEC) means the highest treatment (i.e., test concentration) of a test substance that shows no statistical difference in adverse effect on a specific population of test organisms from that observed in controls.

Pathological symptoms means toxic effects, such as surface lesions and mid-segmental swellings or general ulcerated areas on the surface of the earthworm.

Test mixture means the test substance/artificial soil mixtures which the earthworms are exposed to during the test.

Test substance means any compound used in artificial soils spiked for laboratory testing of toxicity.

(c) *Test procedures*—(1) *Summary of the test.* (i) Test chambers are filled with appropriate amounts of test mixtures.

(ii) This toxicity test may be done by placing earthworms in test chambers containing test mixtures and allowing earthworms to ingest this test mixture soil ad libitum.

(iii) Acclimated earthworms are introduced into the test and control chambers by stratified random assignment.

(iv) Earthworms in the test and control chambers shall be observed every 7 days and the findings shall be recorded and dead earthworms removed.

(v) The pH, temperature, and the concentration of the test mixtures shall be measured at 7 day intervals in each test chamber.

(vi) Initial weight of earthworm shall be between 300 to 600 grams per container.

(vii) Concentration-response curves, LC50, EC50, LOEC, NOEC values, and 95 percent confidence intervals for the test substance are developed from the data collected during the test.

(2) [Reserved]

(3) *Range-finding test.* (i) If the toxicity of the test substance is not already known, a range-finding test should be performed to determine the range of concentrations to be used in the definitive test.

(ii) The earthworms should be exposed (for at least 28 days) to a range of concentrations of the test substance (e. g., 0.1, 1.0, 10, 100, 1,000 mg/kg dry weight artificial soil).

(iii) Nominal concentrations are acceptable and no replication is required. If the LC50 value is > 1,000 mg test substance (100 percent active ingredient) per kiligram dry weight of artificial soil, the definitive test does not have to be done.

(4) *Definitive test.* (i) This test is designed to determine a concentration-mortality curve at 28 days and estimate the respective LC50, EC50, LOEC, NOEC values and 95 percent confidence intervals.

(ii) If data permit, the concentration-response curves, LC50, EC50, LOEC, NOEC values, and 95 percent confidence interval also should be determined for 7, 14, and 21 days.

(iii) This toxicity test uses earthworms which are maintained in direct contact with an artificial soil allowing earthworms to ingest contaminated soil ad libitum.

(iv) A minimum of 30 earthworms exposed to each of 5 or more test concentrations and a control shall be tested.

(v) Test concentrations should be chosen in a geometric series in which the ratio is between 1.5 and 2.0 mg/kg (e.g., 2, 4, 8, 16, 32, and 64 mg/kg). All test concentrations shall be based on milligram of test chemical (100 percent active ingredient) per kiligram of artificial soil (air-dry weight).

(vi) Ten earthworms per container of 200 g (dry weight) artificial soil shall be placed in three replicates for each concentration and control. The distribution of individual earthworms among the test chambers shall be randomized. Test concentrations in artificial soil shall be analyzed for test chemical concentrations prior to the start of the test and at days 7, 14, 21, and 28 as a minimum.

(vii) The living earthworms should be placed on the surface of the medium and the jar capped and secured without making an airtight seal.

(viii) Any changes in soil temperature should not exceed 3 °C per day or 1 °C per hour. Earthworms should be held for a minimum of 7 days at the test temperature prior to testing.

(ix) Every test shall include a negative control consisting of uncontaminated artificial soil, conditions, procedures, and earthworms from the same group used in the definitive test as shown, except that none of the test substance is added.

(x) The test duration is 28 days.

(5) *Test results.* (i) Death is the primary criterion used in this test guideline to evaluate the toxicity of the test substance.

(ii) In addition to death, weight loss, behavioral symptoms and pathological symptoms shall be recorded.

(iii) Each test and control chamber shall be checked for dead or affected earthworms and observations recorded 7, 14, 21, and 28 days after the beginning of the test or within 1 hour of the designated times. Missing earthworms shall be considered to have died.

(iv) Mortality is assessed by emptying the test medium on a glass or other inert surface, sorting earthworms from the test mixture and testing their reaction to a gentle mechanical stimulus. Any adverse effects (e.g., weight loss, behavioral or pathological symptoms) are noted and shall be reported. The medium is returned to each container.

(v) The 28-day test result shall be unacceptable if:

(A) More than 20 percent of control organisms die; or

(B) The total mean weight of the earthworms in the control containers declines significantly during the test (i.e, by 30 percent).

(vi) Mortality is checked and recorded at days 7, 14, 21, and 28.

(vii) The mortality data shall be used to calculate LC50 values and their 95 percent confidence limits, and to plot concentration-response curves at days 7, 14, 21, and 28.

(viii) The sublethal effects and growth (i.e., fresh weight) data shall be used to plot concentration-response curves, calculate EC50 values, and determine LOEC and NOEC values. Appropriate statistical methods (e.g., one-way analysis of variance and multiple comparison test) should be used to test for significant differences between treatment means and determine LOEC and NOEC.

(6) *Analytical measurements*— (i) *Artificial soil analysis.* During the test, the temperature and pH shall be measured in the artificial soil at the beginning of the test (0-hour), and every 7 days thereafter.

(ii) *Measurement of test substance.* (A) The concentration of test substance in artificial soil shall be measured at a minimum in each test chamber at the beginning (0-hour, before earthworms are added) and every 7 days thereafter.

(B) The analytical methods used to measure the amount of test substance in a sample should be validated before beginning the test. The accuracy of a method should be verified by a method such as using known additions. This involves adding a known amount of the test substance to three samples of artificial soil taken from the test chamber and the same number of earthworms as are used in the test. The measured concentration of the test substance in those samples should span the concentration range to be used in the test. Validation of the analytical method should be performed on at least two separate days prior to starting the test.

(C) An analytical method is not acceptable if likely degradation products of the test substance give positive or negative interferences, unless it is shown that such degradation

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products are not present in the test chambers during the test.

(D) In addition to analyzing samples of artificial soil, at least one reagent blank, containing all reagents used, should also be analyzed.

(E) The measured concentration of the test substance in artificial soil in any chamber during the test should not vary more than 50 percent from the measured concentration prior to initiation of the test; concentration measurements should be as described by Neuhauser et al., in paragraphs (f)(3) and (f)(6) of this section, or an equivalent method.

(F) The mean measured concentration of test substance in artificial soil (dry weight) should be used to plot all concentration-response curves and to calculate all LC50, EC50, LOEC, and NOEC values.

(G) The total carbon (TC) shall be determined as measured by the method of Plumb described in paragraph (f)(7) of this section, or an equivalent method.

(iii) *Numerical.* The statistical methods recommended for use in calculating the LC50 and EC50 values include probit, logit, moving average, and binomial.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* The test species for this test is the earthworm *Eisenia fetida andrei* (Bouche). The species identity of the test organism should be verified using appropriate taxonomic keys as described by Fender in paragraph (f)(2) of this section, or an equivalent method.

(ii) *Age and condition of earthworms.* (A) Adult earthworms, 300–600 mg, are to be used to start the test.

(B) Earthworms used in toxicity tests should be purchased from a commercial source that can verify the species. Once verified, cultures should be maintained at the test facility. Records should be kept regarding the source of the initial stock and culturing techniques. All organisms used for a particular test should have originated from the same population (culture).

(C) All newly acquired earthworms should be quarantined and observed for at least 14 days prior to use in a test.

(D) Earthworms should not be used if they have been under stress from too much or a lack of moisture as described by Reinecke and Venter in paragraph (f)(8) of this section, or an equivalent method; excessive or inadequate food or temperature as described by Tomlin and Miller in paragraph (f)(11) of this section, or an equivalent method; pH variation as described by Satchell and Dottie in paragraph (f)(9) of this section, or an equivalent method; or crowding. Any of these conditions will produce earthworms that may not be healthy.

(iii) *Preparation.* Sufficient numbers of earthworms should be harvested and sorted to insure that healthy individuals are used for the test. Any animals that appear to be injured shall not be used in the test and must be discarded.

(iv) *Acclimation of test earthworms.* Adult earthworms should be handled with care. Earthworms should be held for a minimum of 7 days in uncontaminated soil at the test temperature prior to testing.

(v) *Feeding.* (A) Substrate food for culturing *Eisenia fetida andrei* should be saturated (water) alfalfa (*Medicago sativa*) pellets.

(B) The earthworms are not fed during the test period.

(2) *Facilities*—(i) *General.* Facilities needed to perform this test include:

(A) Apparatus for providing continuous lighting.

(B) Chambers for exposing test earthworms to the test substance.

(C) A mechanism for controlling and maintaining the artificial soil temperature and relative humidity during the holding, acclimation, and test periods.

(ii) *Construction materials.* (A) Construction materials and equipment that contact test mixtures shall not contain substances that can be leached or dissolved into artificial soil in quantities that can affect the test results. Material and equipment that contact test mixtures shall be chosen to minimize sorption of test substances. Hard glass jars are preferable and should be heated in an ashing oven between tests; soft glass jars shall be used only once.

(B) Polyethylene containers (rectangular dish pans measuring 32.5 X 27.5 X 12.5 cm) for culturing earthworms, a mechanism (e.g., environmental chamber) for maintaining temperature and relative humidity of the cultures during culturing, and separate facilities for testing are required.

(C) Testing containers (eg. 1 pint glass canning jars) and lids, and suitable balances to measure soil mixtures and sample weights shall also be used.

(D) Relative humidity should be maintained above 85 percent. An open pan of water can be used for this purpose to prevent moisture loss from the containers.

(iii) *Test chambers.* (A) One-pint (1-pt) glass canning jars or their equivalent should be used for testing.

(B) The lids should be reversed (i.e., turned upside down), loosely capped and secured without making an airtight seal to reduce evaporation and permit air exchange.

(iv) *Cleaning of test system.* The test chambers should be cleaned before each test following standard laboratory procedures. If soft glass is to be used it must only be used once and then thrown away.

(v) *Medium preparation.* (A) For each concentration tested and controls, enough artificial soil must be prepared by recipe to yield 270 g of artificial soil (wet weight) per replicate. A dry weight mixture of 69 percent of No. 70 mesh silica sand, 20 percent kaolin clay, and 10 percent sphagnum peat moss are mixed until evenly distributed.

(B) Up to 2 percent pulverized calcium carbonate may be added to adjust the soil pH to 6.5 ± 0.5.

(C) An appropriate amount of high purity water (e.g., 70 g per 200 g of dry soil) is added to the artificial soil and mixed with the artificial soil to raise the artificial soil moisture level to 35 percent by weight to yield a total weight of 810 g artificial soil at 35 percent moisture.

(D) Appropriate portions of the artificial soil are mixed thoroughly with appropriate amounts of test substance to yield three replicates for each test concentration. Each test mixture is divided into three equal quantities of about 270 g as determined by weight. Each portion is placed into a separate 1 pint jar and represents one replicate for exposing 10 earthworms at the same concentration. Three replicates for negative and, if necessary, solvent controls are prepared from untreated portions of the artificial soil mixture.

(E) If a solvent is used, the opened chambers are placed in a hood for 24 hours to evaporate the solvent prior to adding the earthworms.

(F) Prior to the addition of earthworms, a 10-g sample shall be removed from each replicate to measure pH and test concentrations.

(3) *Test parameters*— (i) *Loading.* The number of earthworms placed in a test chamber should not be so great as to affect the results of the test. The weight of the individual earthworms should be between 300 mg and 600 mg each. The earthworms are selected from the culture randomly into groups of 10. These groups are then randomly assigned to the test containers and then weighed such that they do not differ more than ± 10 percent among the replicates.

(ii) *Temperature.* (A) The test soil temperature shall be 22 ± 2 °C. as described by Edwards in paragraph (f, (1) of this section, or using an equivalent method.

(B) Temperature shall be measured and reported at the beginning of the test and on days 7, 14, 21, and 28. The temperature should be measured at least hourly in one test container.

(iii) *Light.* (A) Replicates shall be illuminated continuously with incandescent or fluorescent lights as described by Edwards in paragraph (f)(1) of this section, or using an equivalent method.

(B) Light intensity shall be about 400 lux measured at the artificial soil surface.

(C) Light intensity shall be measured at least once during the test at the surface of the container and checked weekly in the test chambers.

(e) *Reporting.* (1) The sponsor shall submit all data developed by the test that are suggestive or predictive of toxicity and all concomitant gross toxicological manifestations. The reporting of test data shall include the following information:

(i) Test Background including the name of the sponsor, testing laboratory, principal investigator, and dates of testing.

(ii) A detailed description of the test chemical including its chemical identification (CAS No., trade name, common name,) source, lot number, composition (identity and concentration or major ingredients and major impurities), known physical and chemical properties, empirical formula, water solubility, vapor pressure, manufacturer, method of application, and any carriers or other additives used and their concentrations. The volume or mass of any carriers should be reported. An exact description of how the test substance has been mixed into the artificial soil.

(iii) Detailed information about the earthworms used as brood stock, including the scientific name and method of verification, age, source, treatments, feeding history, and culture method.

(iv) A description of the test situation, especially if there was a deviation from this test guideline as described above in soil preparation (paragraph (d)(2)(v)(A) of this section), addition of the chemical, culturing of the test species, lighting, pH, temperature, replicates, or the number of organisms per container.

(v) A description of the test container used, its size, volume and weight of soil used in each container, number of test organisms per container, number of test containers per concentration, conditioning of the test container, description of the method of test chemical introduction into the test medium (e.g., as a powder), stock solution used or not, and time between mixing of the stock solution and introduction of the earthworms.

(vi) The concentrations in artificial soil at the beginning of the test and the actual concentrations of the test chemical (if measured) in the soil before (day 0), during (day 7, 14, 21) and upon the conclusion of the test (day 28) and the dates the analyses were performed.

(vii) The total organic carbon (TOC) of the soil mixture.

(2) The reported results shall include:

(i) The number and percentage of organisms that were killed or showed any adverse effects at each test concentration, including controls, in each test jar at each observation period.

(ii) Concentration response curves fitted to mortality data at 7, 14, 21, and 28-day periods. A statistical test of goodness-of-fit shall be performed and reported.

(iii) The LC50/EC50 values and the 95 percent confidence limits using the mean measured test concentration and the methods used to calculate both the LC50/EC50; also the LOEC and NOEC values and the confidence intervals by the Trimmed Spearman-Karber method as described by Hamilton et al., in paragraph (f)(3) of this section, or an equivalent method. The probit technique should follow the methods described by Weber et al., in paragraph (f) (12) of this section, or an equivalent method. Appropriate statistical methods (e.g., one-way analysis of variance and multiple comparison test) should be used to test for significant differences between treatment and determine the LOEC and NOEC.

(iv) All chemical analyses of test material including methods, method validations, and reagent blanks.

(v) The data records for the culture and lighting.

(vi) Moisture content for the test mixture at start of test.

(vii) The pH and temperature values at start of test and on days 7, 14, 21, and 28 of the test.

(viii) Any deviation from this test guideline and anything unusual about the test (e.g., equipment failure, fluctuations in temperature, pH, or other environmental conditions).

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Edwards, C. A. "Report of the second stage in development of a standardized laboratory method for assessing the toxicity of chemical substances to earthworms," The Artificial Soil Test. DG X1/AL/82/43, Revision 4 (1984).

(2) Fender, W. M. "Earthworms of the Western United States," Part 1. Lumbricidae, *Megadrilogica*, 4: 93–129 (1985).

(3) Hamilton, M. A., Russo, R. C., and Thurston, R. V. "Trimmed Spearman-Karber method for estimating median lethal concentrations in toxicity bioassays," *Environmental Science and Toxicology* 11 (7): 714–717 (1977). Correction: Ibid 12: 417 (1978).

(4) Hartenstein, R., Neuhauser, E. F., and Kaplan, D. L. "Reproductive potential of the earthworm *Eisenia foetida*.", 43: *Oecologia*, 329–340 (1979).

(5) Neuhauser, E. F., Loehr, R. C., and Malecki, M. R. "Contact and artificial soil tests using earthworms to evaluate the impact of wastes in soils," In: Hazardous and Industrial Solid Waste Testing: Fourth Symposium, ASTM STP 886. J.K. Petros, Jr. and R. A. Conway, eds., (American Society for Testing and Materials. Philadelphia, PA. 1986) pp. 192–203.

(6) Neuhauser, E. F., Loehr, R. C., Malecki, M. R., Milligan, D. L., Durkin, P. R. "The toxicity of selected organic chemicals to the earthworm *Eisenia fetida*." *Journal of Environmental Quality*, 14: 383–388 (1985).

(7) Plumb, R.H., Jr. Procedures for handling and chemical analysis of sediment and water samples. Technical Report EPA/CE–81–1, prepared by Great Lakes Labroratory, State University College at Buffalo, Buffalo, NY., for the U.S. Environmental Protection Agency/ Corp of Engineers Technical Committee on Criteria for Dredged and Fill Material. U.S. Army Engineer Waterways Experiment Station, CE, Vicksburg, MS. (1981)

(8) Reinecke, A.J. and Venter, J. M. "Moisture preferences, growth and reproduction of the compost worm *Eisenia fetida* (Oligochaeta)," *Biology of Fertilty Soils*, 3: 135–141 (1987).

(9) Satchell, J.E. and Dottie, D. J. "Factors affecting the longevity of earthworms stored in peat," *Journal of Applied Ecology*, 21: 285–291 (1984).

(10) Stafford, E. A. and Edwards, C. A. "Comparison of heavy metal uptake by *Eisenia foetida* with that of other common earthworms", Final Technical Report. Entomology Department, Rothamsted Experiment Station, Harpenten, Herts. AL5 2JQ, U.K. U.S. Army Contract DAJA 45–84–0027 (1985).

(11) Tomlin, A. D. and Miller, J. J. "Development and fecundity of the manure worm, *Eisenia foetida* (Annelida:Lumbricidae), under laboratory conditions." In: D.L.Dindal (ed.), "Soil Biology as Related to Land Use Practices." Proc. 7th Internat. Soil Zool. Coll. of ISSS. EPA, Washington, DC., pp 673–678 (1980).

(12) Weber, C. I., Horning, W. B., II, Klemm, D. J., Neiheisel, T. W., Lewis, P. A., Robinson, E. L., Menkedick, J. R., Kessler, F. A. "Short-term methods for estimating the chronic toxicity of effluents and surface waters to marine

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and freshwater organisms," 2nd Edition, Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, OH (600/4-87/028) (1988).

2. In part 798

PART 798 — [AMENDED]

a. By revising the authority citation for part 798 to read as follows:

Authority: 15 U.S.C. 2601, 2603

b. By revising § 798.3320 to read as follows:

§ 798.3320 Combined chronic toxicity/oncogenicity.

(a) *Purpose.* The objective of a combined chronic toxicity/oncogenicity study is to determine the effects of a substance in a mammalian species following prolonged and repeated exposure. The application of this guideline shall generate data which identify the majority of chronic and oncogenic effects and determine dose-response relationships. The design and conduct shall allow for the detection of neoplastic effects and a determination of oncogenic potential as well as general toxicity, including neurological, physiological, biochemical, and hematological effects and exposure-related morphological (pathology) effects.

(b) *Test procedures)*—(1) *Animal selection*—(i) *Species and strain.* Preliminary studies providing data on acute, subchronic, and metabolic responses shall have been carried out to permit an appropriate choice of animals (species and strain). As discussed in other guidelines, the mouse and rat have been most widely used for assessment of oncogenic potential, while the rat and dog have been most often studied for chronic toxicity. The rat is the species of choice for combined chronic toxicity and oncogenicity studies. The provisions of this guideline are designed primarily for use with the rat as the test species. If other species are used, the tester shall provide justification/reasoning for their selection. The strain selected shall be susceptible to the oncogenic or toxic effect of the class of substances being tested, if known, and provided it does not have a spontaneous background too high for meaningful assessment. Commonly used laboratory strains shall be employed.

(ii) *Age.* (A) Dosing of rats shall begin as soon as possible after weaning, ideally before the rats are 6 weeks old, but in no case more than 8 weeks old.

(B) At commencement of the study, the weight variation of animals used shall not exceed ± 20 percent of the mean weight for each sex.

(C) Studies using prenatal or neonatal animals may be recommended under special conditions.

(iii) *Sex.* (A) Equal numbers of animals of each sex shall be used at each dose level.

(B) The females shall be nulliparous and nonpregnant.

(iv) *Numbers.* (A) At least 100 rodents (50 females and 50 males) shall be used at each dose level and concurrent control for those groups not intended for early sacrifice. At least 40 rodents (20 females and 20 males) shall be used for satellite dose group(s) and the satellite control group. The purpose of the satellite group is to allow for the evaluation of pathology other than neoplasia.

(B) If interim sacrifices are planned, the number of animals shall be increased by the number of animals scheduled to be sacrificed during the course of the study.

(C) The number of animals at the termination of each phase of the study should be adequate for a meaningful and valid statistical evaluation of long term exposure. For a valid interpretation of negative results, it is essential that survival in all groups not fall below 50 percent at the time of termination.

(2) *Control groups.* (i) A concurrent control group (50 females and 50 males) and a satellite control group (20 females and 20 males) are recommended. These groups shall be untreated or sham treated control groups or, if a vehicle is used in administering the test substance, vehicle control groups. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are recommended. Animals in the satellite control group shall be sacrificed at the same time the satellite test group is terminated.

(ii) In special circumstances such as inhalation studies involving aerosols or the use of an emulsifier of uncharacterized biological activity in oral studies, a concurrent negative control group shall be utilized. The negative control group shall be treated in the same manner as all other test animals, except that this control group shall not be exposed to the test substance or any vehicle.

(iii) The use of historical control data (i.e., the incidence of tumors and other suspect lesions normally occurring under the same laboratory conditions and in the same strain of animals employed in the test) is desirable for assessing the significance of changes observed in exposed animals.

(3) *Dose levels and dose selection.* (i) For risk assessment purposes, at least three dose levels shall be used, in addition to the concurrent control group. Dose levels should be spaced to produce a gradation of effects.

(ii) The highest dose level in rodents should elicit signs of toxicity without substantially altering the normal life span by effects other than tumors.

(iii) The lowest dose level should produce no evidence of toxicity. However, where there is a usable estimation of human exposure, the lowest dose level should exceed this even though this dose level may result in some signs of toxicity.

(iv) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose is used the dose levels should be spaced to produce a gradation of toxic effects.

(v) For [illegible] the incidence of fatalities and intermediate dose groups and in the controls should be low to permit a meaningful evaluation of the results.

(vi) For chronic toxicological assessment, a high dose treated satellite and a concurrent control satellite group shall be included in the study design. The highest dose for satellite animals should be chosen so as to produce frank toxicity, but not excessive lethality, in order to elucidate a chronic toxicological profile of the test substance. If more than one dose level is selected for satellite dose groups, the doses should be spaced to produce a gradation of toxic effects.

(4) *Exposure conditions.* The animals are dosed with the test substance ideally on a 7 day per week basis over a period of at least 24 months for rats, and 18 months for mice and hamsters, except for the animals in the satellite groups which shall be dosed for 12 months.

(5) *Observation period.* It is necessary that the duration of the oncogenicity test comprise the majority of the normal life span of the animals to be used. It has been suggested that the duration of the study should be for the entire lifetime of all animals. However, a few animals may greatly exceed the average lifetime and the duration of the study may be unnecessarily extended and complicate the conduct and evaluation of the study. Rather, a finite period covering the majority of the expected life span of the strain is preferred since the probability is high that, for the great majority of chemicals, any induced tumors will occur within such an observation period. The following guidelines are recommended:

(i) Generally, the termination of the study shall be at 18 months for mice and hamsters and 24 months for rats; however, for certain strains of animals with greater longevity and/or low spontaneous tumor rate, termination shall be at 24 months for mice and hamsters and at 30 months for rats. For longer time periods, and where any other species are used, consultation with the Agency in regard to duration of the test is advised.

(ii) However, termination of the study is acceptable when the number of survivors of the lower doses or of the control group reaches 25 percent. In the case where only the high dose group dies prematurely for obvious reasons of toxicity, this shall not trigger termination of the study.

(iii) The satellite groups and the concurrent satellite control group shall be retained in the study for at least 12 months. These groups shall be scheduled for sacrifice for an estimation of test-substance-related pathology uncomplicated by geriatric changes.

(6) *Administration of the test substance.* The three main routes of administration are oral, dermal, and inhalation. The choice of the route of administration depends upon the physical and chemical characteristics of the test substance and the form typifying exposure in humans.

(i) *Oral studies.* (A) The animals shall receive the test substance in their diet, dissolved in drinking water, or given by gavage or capsule for a period of at least 24 months for rats and 18 months for mice and hamsters.

(B) If the test substance is administered in the drinking water, or mixed in the diet, exposure shall be continuous.

(C) For a diet mixture, the highest concentration should not exceed 5 percent.

(ii) *Dermal studies.* (A) The animals are treated by topical application with the test substance, ideally for at least 6 hours per day.

(B) Fur should be clipped from the dorsal area of the trunk of the test animals. Care should be taken to avoid abrading the skin which could alter its permeability.

(C) The test substance shall be applied uniformly over a shaved area which is approximately 10 percent of the total body surface area. With highly toxic substances, the surface area covered may be less, but as much of the area as possible shall be covered with as thin and uniform a film as possible.

(D) During the exposure period, the test substance may be held, if necessary, in contact with the skin with a porous gauze dressing and nonirritating tape. The test site should be further covered in a suitable manner to retain the gauze dressing and test substance and ensure that the animals cannot ingest the test substance.

(iii) *Inhalation studies.* (A) The animals shall be tested with inhalation equipment designed to sustain a dynamic air flow of 12 to 15 air changes per hour and to ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the test animals and maximize their exposure to the test substance. This is best accomplished by individual caging. As a general rule, to ensure stability of a chamber atmosphere, the total "volume" of the test animals shall not exceed 5 percent of the volume of the test chamber. Alternatively, oronasal, head only, or whole body individual chamber exposure may be used.

(B) The temperature at which the test is performed should be maintained at 22 °C (± 2°). Ideally, the relative humidity should be maintained between 40 to 60 percent, but in certain instances (e.g., tests of aerosols, use of water vehicle) this may not be practicable.

(C) Food and water shall be withheld during each daily 6-hour exposure period.

(D) A dynamic inhalation system with a suitable analytical concentration control system shall be used. The rate of air flow shall be adjusted to ensure that conditions throughout the equipment are essentially the same. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding areas.

(7) *Observation of animals.* (i) Each animal shall be handled and its physical condition appraised at least once each day.

(ii) Additional observations shall be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Clinical signs and mortality should be recorded for all animals. Special attention shall be paid to tumor development. The time of onset, location, dimensions, appearance and progression of each grossly visible or palpable tumor shall be recorded.

(iv) Body weights shall be recorded individually for all animals once a week during the first 13 weeks of the test period and at least once every 4 weeks thereafter, unless signs of clinical toxicity suggest more frequent weighings to facilitate monitoring of health status.

(v) When the test substance is administered in the food or drinking water, measurements of food or water consumption, respectively, shall be determined weekly during the first 13 weeks of the study and then at approximately monthly intervals unless health status or body weight changes dictate otherwise.

(vi) At the end of the study period, all survivors are sacrificed. Moribund animals shall be removed and sacrificed when noticed.

(8) *Physical measurements.* For inhalation studies, measurements or monitoring should be made of the following:

(i) The rate of airflow shall be monitored continuously, but shall be recorded at intervals of at least once every 30 minutes.

(ii) During each exposure period the actual concentrations of the test substance shall be held as constant as practicable, monitored continuously and recorded at least three times during the test period: At the beginning, at an intermediate time and at the end of the period.

(iii) During the development of the generating system, particle size analysis shall be performed to establish the stability of aerosol concentrations. During exposure, analyses shall be conducted as often as necessary to determine the consistency of particle size distribution and homogeneity of the exposure stream.

(iv) Temperature and humidity shall be monitored continuously, but should be recorded at intervals of at least once every 30 minutes.

(9) *Clinical examinations.* (i) The following examinations shall be made on at least 20 rodents of each sex per dose level:

(A) Certain hematology determinations (e.g., hemoglobin content, packed cell volume, total red blood cells, total white blood cells; platelets, or other measures of clotting potential) shall be performed at termination and shall be performed at 3 months, 6 months and at approximately 6 month intervals thereafter (for those groups on test for longer than 12 months) on blood samples collected from 20 rodents per sex of all groups. These collections shall be from the same animals at each interval. If clinical observations suggest a deterioration in health of the animals during the study, a differential blood count of the affected animals shall be performed. A differential blood count shall be performed on samples from animals in the highest dosage group and the controls. Differential blood counts shall be performed for the next lower group(s) if there is a major discrepancy between the highest group and the controls. If hematological effects were noted in the

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subchronic test, hematological testing shall be performed at 3, 6, 12, 18 and 24 months for a two-year study.

(B) Certain clinical biochemistry determinations on blood shall be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), near the middle and at the end of the test period. Blood samples shall be drawn for clinical measurements from at least 10 rodents per sex of all groups; if possible, these shall be from the same rodents at each time interval. Test areas which are considered appropriate to all studies: electrolyte balance, carbohydrate metabolism and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance and signs of clinical toxicity. Suggested chemical determinations: Calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, blood urea nitrogen, albumen, creatinine phosphokinase, total cholesterol, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include analyses of lipids, hormones, acid/base balance, methemoglobin and cholinesterase activity. Additional clinical biochemistry may be employed where necessary to extend the investigation of observed effects.

(ii) The following shall be performed on at least 10 rodents of each sex per dose level:

(A) Urine samples from the same rodents at the same intervals as the hematological examination in paragraph (c)(9)(i)(A) of this section, shall be collected for analysis. The following determinations shall be made from either individual animals or on a pooled sample/sex/group for rodents: appearance (volume and specific gravity), protein, glucose, ketones, bilirubin, occult blood (semi-quantitatively) and microscopy of sediment (semi-quantitatively).

(B) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, shall be made prior to the administration of the test substance and at the termination of the study. If changes in the eyes are detected, all animals shall be examined.

(10) *Gross necropsy.* (i) A complete gross examination shall be performed on all animals, including those which died during the experiment or were killed in moribund conditions.

(ii) The liver, kidneys, adrenals, brain and gonads shall be weighed wet, as soon as possible after dissection to avoid drying. For these organs, at least 10 rodents per sex per group shall be weighed.

(iii) The following organs and tissues, or representative samples thereof, shall be preserved in a suitable medium for possible future histopathological examination: All gross lesions and tumors; brain—including sections of medulla/pons, cerebellar cortex, and cerebral cortex; pituitary; thyroid/parathyroid; thymus; lungs; trachea; heart; sternum and/or femur with bone marrow; salivary glands; liver; spleen; kidneys, adrenal; esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph nodes; pancreas; gonads; uterus; accessory genital organs (epididymis, prostate, and if present, seminal vesicles); female mammary gland; aorta; gall bladder (if present); skin; musculature; peripheral nerve; spinal cord at three levels—cervical, midthoracic, and lumbar; and eyes. In inhalation studies, the entire respiratory tract, including nose, pharynx, larynx and paranasal sinuses shall be examined and preserved. In dermal studies, skin from sites of skin painting shall be examined and preserved.

(iv) Inflation of lungs and urinary bladder with a fixative is the optimal method for preservation of these tissues. The proper inflation and fixation of the lungs in inhalation studies is considered essential for appropriate and valid histopathological examination.

(v) If other clinical examinations are carried out, the information obtained from these procedures shall be available before microscopic examination, since they may provide significant guidance to the pathologist.

(11) *Histopathology.* (i) The following histopathology shall be performed:

(A) Full histopathology on the organs and tissues, listed in paragraph (b)(10)(i) through (b)(10)(iii) of this section, of all non-rodents, of all rodents in the control and high dose groups and of all rodents that died or were killed during the study.

(B) All gross lesions in all animals.

(C) Target organs in all animals.

(D) Lungs, liver and kidneys of all animals. Special attention to examination of the lungs of rodents shall be made for evidence of infection since this provides an assessment of the state of health of the animals.

(ii) If excessive early deaths or other problems occur in the high dose group compromising the significance of the data, the next dose level shall be examined for complete histopathology.

(iii) In case the results of the experiment give evidence of substantial alteration of the animals' normal longevity or the induction of effects that might affect a toxic response, the next lower dose level shall be examined for complete histopathology.

(iv) An attempt shall be made to correlate gross observations with microscopic findings.

(c) *Data and reporting*—(1) *Treatment of results.* (i) Data shall be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions and the percentage of animals displaying each type of lesion.

(ii) All observed results, quantitative and incidental, shall be evaluated by an appropriate statistical method. Any generally accepted statistical methods may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of study results.* (i) The findings of a combined chronic toxicity/oncogenicity study shall be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects, the necropsy and histopathological findings. The evaluation will include the relationship between the dose of the test substance and the presence, incidence and severity of abnormalities (including behavioral and clinical abnormalities), gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects.

(ii) In any study which demonstrates an absence of toxic effects, further investigation to establish absorption and bioavailability of the test substance should be considered.

(iii) For a negative test to be acceptable, it shall meet the following criteria: No more than 10 percent of any group is lost due to autolysis, cannibalism, or management problems; and survival in each group is no less than 50 percent at 18 months for mice and hamsters and at 24 months for rats.

(3) *Test report.* (i) In addition to the reporting requirements as specified under 40 CFR part 792, subpart J, the following specific information shall be reported:

(A) *Group animal data.* Tabulation of toxic response data by species, strain, sex and exposure level for:

(*1*) Number of animals dying.

(*2*) Number of animals showing signs of toxicity.

(*3*) Number of animals exposed.

(B) *Individual animal data.* (*1*) Time of death during the study or whether animals survived to termination.

(*2*) Time of observation of each abnormal sign and its subsequent course.

(*3*) Body weight data.

(*4*) Food and water consumption data, when collected.

(*5*) Results of ophthalmological examination, when performed.

(*6*) Hematological tests employed and all results.

(*7*) Clinical biochemistry tests employed and all results.

(*8*) Necropsy findings.

(*9*) Detailed description of all histopathological findings.

(*10*) Statistical treatment of results where appropriate.

(*11*) Historical control data, if taken into account.

(ii) In addition, for inhalation studies the following shall be reported:

(A) *Test conditions.* (*1*) Description of exposure apparatus including design, type, dimensions, source of air, system for generating particulates and aerosols, method of conditioning air, treatment of exhaust air and the method of housing the animals in a test chamber.

(*2*) The equipment for measuring temperature, humidity, and particulate aerosol concentrations and size shall be described.

(B) *Exposure data.* These shall be tabulated and presented with mean values and a measure of variability (e.g., standard deviation) and shall include:

(*1*) Airflow rates through the inhalation equipment.

(*2*) Temperature and humidity of air.

(*3*) Nominal concentration (total amount of test substance fed into the inhalation equipment divided by volume of air).

(*4*) Actual concentration in test breathing zone.

(*5*) Particle size distribution (e.g., median aerodynamic diameter of particles with standard deviation from the mean).

(d) *References.* For additional background information on this test guideline the following references should be consulted.

(1) D'Agostino, W. "Drug Safety Evaluation—Pre-Clinical Considerations," *Industrial Pharmacology: Neuroleptics.* Vol. I, S. Fielding and H. Lal, eds. Mt. Kisco, New York: Futura Publishing Co., pp. 317–332 (1976).

(2) Department of Health and Welfare. "The Testing of Chemicals for Carcinogenicity, Mutagenicity, Teratogenicity." Minister of Health and Welfare. Canada: Department of Health and Welfare (1975).

(3) Food and Drug Administration Advisory Committee on Protocols for Safety Evaluation: Panel on Carcinogenesis. "Report on Cancer Testing in the Safety of Food Additives and Pesticides," *Toxicology and Applied Pharmacology.* 20:419–438 (1971).

(4) International Union Against Cancer. "Carcinogenicity Testing," IUCC Technical Report Series Vol. 2, Ed. I. Berenblum. Geneva: International Union Against Cancer (1969).

(5) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances", A report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(6) National Cancer Institute. "Report of the Subtask Group on Carcinogen Testing to the Interagency Collaborative Group on Environmental Carcinogenesis." Bethesda, MD: United States National Cancer Institute (1976).

(7) National Center for Toxicological Research. "Report of Chronic Studies Task Force Research Committee. Appendix B", Rockville, MD: National Center for Toxicological Research (1972).

(8) Page, N.P. "Chronic Toxicity and Carcinogenicity Guidelines," *Journal Environmental Pathology and Toxicology.* 1:161–182 (1977).

(9) Page, N.P. "Concepts of a Bioassay Program in Environmental Carcinogenesis", *Advances in Modern Toxicology* Vol. 3, ed. Kraybill and Mehlman. Washington, D.C.: Hemisphere Publishing Corp., p. 67–171 (1977).

(10) World Health Organization. "Principles for the Testing and Evaluation of Drugs for Carcinogenicity", WHO Technical Report Series No. 426. Geneva: World Health Organization (1969).

(11) World Health Organization. "Guidelines for Evaluation of Drugs for Use in Man", WHO Technical Report Series No. 563. Geneva: World Health Organization (1975).

(12) World Health Organization. "Part I. Environmental Health Criteria 6", *Principles and Methods for Evaluating the Toxicity of Chemicals.* Geneva: World Health Organization (1978).

(13) World Health Organization. "Principles for Pre-Clinical Testing of Drug Safety", WHO Technical Report Series No. 341. Geneva: World Health Organization (1966).

3. In part 799:

PART 799 — [AMENDED]

a. By revising the authority citation for part 799 to read as follows:

Authority: 15 U.S.C. 2601, 2603, 2611, 2625.

b. By adding § 799.5110 to read as follows:

§ 799.5110 Brominated flame retardants.

(a) *Identification of test substances.* (1) Pentabromodiphenyl ether [PBDPE; CAS No. 32534–81–9), octabromodiphenyl ether [OBDPE; CAS No. 32536–52–0), decabromodiphenyl ether (DBDPE; CAS No. 1163–19–5), 1,2-bis(2,4,6-tribromophenoxy)ethane (BTBPE; CAS No. 37853–59–1), and hexabromocyclododecane (HBCD; CAS No. 3194–55–6) shall be tested in accordance with this section.

(2) PBDPE, OBDPE, DBDPE, BTBPE, and HBCD of at least 98 percent purity shall be used as the test substance. For the three diphenyl ethers, "purity" refers to freedom from substances that do not fit the description "brominated diphenyl ethers."

(3) PBDPE as the test substance shall contain at least 58 percent pentabromodiphenyl ether isomers, not more than 25 percent tetrabromodiphenyl ether isomers, and not more than 25 percent hexabromodiphenyl ether isomers. In addition, PBDPE shall not contain more than 10 percent tri- (or lower) brominated diphenyl ether isomers, and also not more than 10 percent hexa(or higher) brominated diphenyl ether isomers.

(4) OBDPE as the test substance shall contain at least 30 percent octabromodiphenyl ether isomers, not more than 45 percent heptabromodiphenyl ether isomers, and not more than 15 percent nonabromodiphenyl ether isomers. In addition, OBDPE shall not contain more than 15 percent hexa- (or lower) brominated diphenyl ether isomers, and also not more than 5 percent deca- (or higher) brominated diphenyl ether isomers.

(5) DBDPE as the test substance shall contain at least 98 percent decabromodiphenyl ether.

(6) Congenerically pure PBDPE shall contain at least 98 percent pentabromodiphenyl ether isomers.

(7) Congenerically pure OBDPE shall contain at least 98 percent octabromodiphenyl ether isomers.

(b) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture (including import) or process or intend to manufacture or process PBDPE, OBDPE, DBDPE, BTBPE, or HBCD, other than as an impurity, after (insert date 44 days after date of publication of the final test rule in the Federal Register) to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in this section, subpart A of this part and parts 790 and 792 of this chapter for single-phase rulemaking, for the substances they manufacture.

(c) *Health effects testing*—(1) *Mutagenic effects—gene mutation*—(i)

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Required testing. (A) Gene mutation assays in the *Salmonella typhimurium* histidine reversion system shall be conducted with OBDPE in accordance with § 798.5265 of this chapter.

(B) Gene mutation assays in somatic cells in culture shall be conducted with PBDPE, OBDPE, BTBPE, and HBCD in accordance with § 798.5300 of this chapter.

(C) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE or HBCD in accordance with § 798.5275 of this chapter for any of these substances that produces a positive result in either the *Salmonella* assay conducted on OBDPE, DBDPE, and HBCD pursuant to paragraph (c)(2)(i)(A) of this section or the somatic cells in culture assay conducted on PBDPE, OBDPE, DBDPE, BTBPE, and HBCD pursuant to paragraph (c)(2)(i)(B) of this section.

(D) A mouse visible specific locus test (MVSL) or a mouse biochemical specific locus (MBSL) test shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, or HBCD in accordance with § 798.5200 or § 798.5195, respectively, for whichever of these substances produces a positive result in the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(2)(i)(C) of this section.

(ii) *Reporting requirements.* (A) Mutagenic effects - gene mutation tests shall be conducted and the final reports submitted to EPA as follows:

(*1*) Gene mutation in *Salmonella*, 9 months after the effective date.

(*2*) Gene mutation in somatic cells in culture, 10 months after the effective date.

(*3*) *Drosophila* sex-linked recessive lethal, 22 months after the effective date.

(*4*) Mouse specific locus, within 51 months of the date of EPA's notification of the test sponsor by certified letter that testing shall be initiated.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date for the gene mutation tests in *Salmonella* and gene mutation tests in somatic cells in culture; for the *Drosophila* test, beginning 6 months after the date the final report is submitted for the gene mutation in somatic cells in culture test; and for the mouse specific locus test, beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated.

(2) *Mutagenic effects—chromosomal aberrations* — (i) *Required testing.* (A) *In vivo* cytogenetic assays shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § § 798.5385 or 798.5395 of this chapter.

(B) A dominant lethal assay shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, or HBCD in accordance with § 798.5450 of this chapter, for any of these substances that produces a positive result in the *in vivo* cytogenetic assay conducted pursuant to paragraph (c)(2)(i)(A) of this section.

(C) A heritable translocation assay shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, or HBCD in accordance with § 798.5460 of this chapter, for any of these substances that produces a positive result in the dominant lethal assay conducted pursuant to paragraph (c)(3)(i)(B) of this section.

(ii) *Reporting requirements.* (A) Mutagenic effects-chromosomal aberration testing shall be completed and the final reports submitted to EPA as follows:

(*1*) *In vivo* cytogenetics, within 14 months after the effective date; and dominant lethal assay, within 36 months after the effective date.

(*2*) Heritable translocation assay, within 25 months of the date of EPA's notification of the test sponsor by certified letter that testing shall be initiated.

(B) Progress reports shall be submitted to EPA every 6 months beginning as follows:

(*1*) For the *in vivo* cytogenetics assay, 6 months after the effective date.

(*2*) For the dominant lethal assay, beginning 6 months after the date the final report is submitted for the *in vitro* cytogenetics test.

(*3*) For the heritable translocation assay, beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated.

(3) *Subchronic toxicity* — (i) *Required testing.* Subchronic toxicity testing shall be conducted by gavage with HBCD in accordance with § 798.2650 of this chapter.

(ii) *Reporting requirements.* (A) The required subchronic toxicity test shall be completed and the final reports submitted to EPA within 18 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date until the final report is submitted.

(4) *Neurotoxicity*—(i) *Required testing*—(A) *Functional observational battery. (1)* A functional observational battery test shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), and (d)(6) of § 798.6050.

(*2*) For the purpose of this section the following provisions also apply:

(*i*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects or no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and frequency of exposure.* For the acute testing, animals shall be treated once. For the subchronic testing, animals shall be treated 5 consecutive days per week for a 90-day period.

(*iii*) *Route of exposure.* Animals shall be exposed to PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by gavage administration.

(B) *Motor activity.* (*1*) Motor activity testing shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 798.6200 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), and (d)(6) of § 798.6200.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects or no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and freguency of exposure.* For the acute testing, animals shall be treated once. For the subchronic testing animals shall be treated 5 consecutive days per week for a 90-day period.

(*iii*) *Route of exposure.* Animals shall be exposed to PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by gavage administration.

(C) *Neuropathology.* (*1*) Neuropathology testing shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD administered by gavage in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), (d)(6) and (d)(8)(iv)(C) of § 798.6400.

(*2*) For the purpose of paragraph (c)(6)(i)(C) of this section, the following provisions also apply:

(*i*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects or no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and freguency of exposure.* For the acute testing, animals shall be treated once. For the subchronic testing animals shall be treated 5 consecutive days per week for a 90-day period.

(*iii*) *Route of exposure.* Animals shall be exposed to PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by gavage administration.

(*iv*) *Clearing and embedding.* After dehydration, tissue specimens shall be cleared with xylene and embedded in wax or plastic medium except for the sural nerve which should be embedded in plastic. Multiple tissue specimens (e.g. brain, cord, ganglia) may be embedded together in one single block for sectioning. All tissue blocks shall be labelled to provide unequivocal identification. Plastic embedding should follow the method described by Spencer, et al., in paragraph (f) of this section, or an equivalent method.

(ii) *Reporting requirements.* (A) The functional observational battery, motor activity, and neuropathology testing with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD shall be completed and the final reports submitted to EPA within 21 months of the effective date.

(B) Progress reports shall be submitted every 6 months beginning 6 months after the effective date until the final report is submitted.

(5) *Reproductive toxicity*—(i) *Required testing.* A reproductive toxicity test shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD by gavage in accordance with § 798.4700 of this chapter.

(ii) *Reporting requirements.* (A) The reproductive toxicity test for PBDPE, DBDPE, BTBPE, and HBCD shall be completed and the final reports submitted to EPA within 29 months of the effective date. The reproductive toxicity test for OBDPE shall be completed and the final report submitted to EPA within 29 months of the test sponsor's receipt of a certified letter from EPA specifying that a reproductive toxicity test for OBDPE be initiated.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date for PBDPE, DBDPE, BTBPE, HBCD, and, for OBDPE, beginning 6 months after the test sponsor's receipt of a certified letter specifying that a reproductive toxicity test be initiated until the final report is submitted.

(6) *Developmental toxicity*—(i) *Required testing.* (A) Developmental toxicity testing in two species, a rat and nonrodent, shall be conducted with PBDPE, OBDPE, and HBCD by gavage in accordance with § 798.4900 of this chapter.

(B) Developmental toxicity testing in one non-rodent species shall be conducted with DBDPE and BTBPE by gavage in accordance with § 798.4900 of this chapter.

(ii) *Reporting requirements.* (A) The developmental toxicity testing shall be completed and the final reports submitted to EPA within 12 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date until the final report is submitted.

(7) *Oncogenicity*—(i) *Required testing.* (A) Oncogenicity testing shall be conducted in mice with PBDPE, OBDPE, and BTBPE by gavage in accordance with § 798.3300 of this chapter.

(B) Oncogenicity testing shall also be conducted in both rats and mice with HBCD by gavage in accordance with § 798.3300 of this chapter if a positive result is obtained in any one of the following mutagenicity tests and EPA notifies the sponsor by certified letter that testing shall be initiated:

(*1*) The gene mutation somatic cells in culture assay conducted pursuant to paragraph (c)(1)(i)(B) of this section.

(*2*) The sex-linked recessive lethal assay in *Drosophila melanogaster* conducted pursuant to paragraph (c)(1)(i)(C) of this section.

(*3*) The *in vivo* cytogenetics assay conducted pursuant to paragraph (c)(2)(i)(A) of this section.

(C) Criteria for positive test results are established in 40 CFR 798.5395, 798.5385, 798.5300, and 798.5275 of this chapter, respectively.

(ii) *Reporting requirements.* (A) The oncogenicity testing for PBDPE, OBDPE, and BTBPE shall be completed and the final reports submitted to EPA within 53 months of the effective date. The oncogenicity testing for HBCD, if required, shall be completed and final results submitted to EPA within 53 months of the test sponsor's receipt of a certified letter from EPA specifying that an oncogenicity test for HBCD be initiated.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date for PBDPE; OBDPE, and BTBPE and, for HBCD, beginning 6 months after the test sponsor's receipt of a certified letter specifying that an oncogenicity test be initiated until the final report is submitted.

(8) *Combined chronic toxicity/ oncogenicity*—(i) *Required testing.* Combined chronic toxicity/oncogenicity tests shall be conducted in rats with PBDPE, OBDPE, and BTBPE by gavage, in accordance with § 798.3320 of this chapter.

(ii) *Reporting requirements.* (A) The combined chronic toxicity/oncogenicity testing shall be completed and the final reports submitted to EPA within 53 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date until the final report is submitted.

(d) *Environmental effects testing*—(1) *Algal testing* — (i) *Required testing.* Algal toxicity testing shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.1050 of this chapter. Algal toxicity testing shall be conducted with OBDPE and DBDPE in accordance with § 797.1050 of this chapter if an EC50 of $\leq$ 10 µg/L is obtained with PBDPE in this assay or, if that test concentration (EC50) is unattainable, at or below the limit of water solubility as determined by the water solubility testing conducted pursuant to paragraph (e)(1)(i) of this section.

(ii) *Reporting requirements.* (A) The algal toxicity test for PBDPE, BTBPE, and HBCD shall be completed and the final reports submitted to EPA within 15 months of the effective date. The algal toxicity test for OBDPE and DBDPE, if required, shall be completed and final results submitted to EPA within 24 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE and BTBPE, and beginning 21 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(2) *Fish chronic toxicity testing*—(i) *Required testing.* Fish early life stage toxicity tests shall be conducted with rainbow trout and sheepshead minnows with PBDPE, BTBPE, and HBCD in accordance with § 797.1600 of this chapter. Fish early life stage toxicity tests shall be conducted with rainbow trout and sheepshead minnows with OBDPE and DBDPE in accordance with § 797.1600 of this chapter if a geometric mean MATC value of $<$ 10 µg/L is obtained with PBDPE in this test with either fish species or, if that test concentration (geometric mean MATC value) is unattainable, at or below the limit of water solubility as determined by the water solubility testing conducted pursuant to paragraph (e)(1)(i) of this section.

(ii) *Reporting requirements.* (A) The fish early life stage toxicity tests for PBDPE, BTBPE, and HBCD shall be completed and the final reports submitted to EPA within 18 months of the effective date. The fish early life stage toxicity test for OBDPE and DBDPE, if required, shall be completed and the final reports submitted to EPA within 30 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD, and beginning 24 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(3) *Invertebrate chronic toxicity testing* —(i) *Required testing.* (A) Daphnid chronic toxicity tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.1330 of this chapter. A daphnid chronic toxicity

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test with OBDPE and DBDPE shall also be conducted in accordance with § 797.1330 of this chapter if a geometric mean MATC of ≤ 10 µg/L is obtained with PBDPE in either this test or the mysid shrimp chronic toxicity tests conducted pursuant to paragraph (d)(3)(i)(B) of this section or, if that test concentration (geometric mean MATC) is unattainable, at or below the limit of water solubility as determined by the water solubility testing conducted pursuant to paragraph (e)(1)(i) of this section.

(B) Mysid shrimp chronic toxicity test shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.1950 of this chapter. Mysid shrimp chronic toxicity tests with OBDPE and DBDPE shall also be conducted in accordance with § 797.1950 of this chapter, if a geometric mean MATC of ≤ 10 µg/L is obtained with PBDPE in either this test or the daphnid chronic toxicity test conducted pursuant to paragraph (d)(3)(i)(A) of this section or, if that test concentration (geometric mean MATC value) is unattainable, at or below the limit of water solubility as determined by the water solubility testing conducted pursuant to paragraph (e)(1)(i) of this section.

(ii) *Reporting requirements.* (A) Invertebrate chronic toxicity testing shall be conducted and the final reports submitted to EPA as follows:

(*1*) Daphnid chronic toxicity with PBDPE, BTBPE, and HBCD, 18 months after the effective date and, if required with OBDPE and DBDPE, 30 months after the effective date.

(*2*) Mysid shrimp chronic toxicity with PBDPE, BTBPE, and HBCD, 15 months after the effective date and, if required with OBDPE and DBDPE, 24 months after the effective date.

(B) Progress reports shall be as submitted to EPA as follows:

(*1*) For daphnid chronic toxicity, every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD and, if required, beginning 24 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(*2*) For mysid shrimp chronic toxicity, every 6 months beginning 9 months after the effective date for PBDPE, BTBPE, and HBCD, and if required, beginning 21 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(4) *Benthic organism chronic toxicity testing*—(i) *Required testing.* Chironomid sediment toxicity tests shall be conducted with PBDPE, BTBPE, and HBCD as specified in § 795.135 of this chapter. Chironomid sediment toxicity tests shall be conducted with OBDPE and DBDPE in accordance with § 795.135 of this chapter if a geometric mean MATC of ≤ 100 mg PBDPE/kg dry weight of sediment is obtained with PBDPE in this test.

(ii) *Reporting requirements.* (A) Chironomid sediment toxicity testing for PBDPE, BTBPE, and HBCD shall be completed and the final reports submitted to EPA within 18 months of the effective date. Chironomid sediment toxicity testing for OBDPE and DBDPE, if required, shall be completed and the final reports submitted to EPA within 30 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD and, if required, beginning 24 months after the effective date for OBDPE and DBDPE until a final report is submitted.

(5) *Terrestrial organism testing*—(i) *Required testing.* (A) Mallard reproduction tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.2150 of this chapter. This test shall also be conducted with OBDPE and DBDPE in accordance with § 797.2150 of this chapter if a no-observed-effect-level (NOEL) ≤ 500 ppm is obtained with PBDPE in this test.

(B) Earthworm soil subchronic toxicity tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 795.150 of this chapter. This test shall also be conducted with OBDPE and DBDPE in accordance with § 795.150 of this chapter if an EC50 of ≤ 100 mg PBDPE/kg dry weight of sediment is obtained with PBDPE in this test.

(ii) *Reporting requirements.* (A) Terrestrial organism testing shall be conducted and the final reports submitted to EPA as follows:

(*1*) Mallard reproduction testing with PBDPE, BTBPE, and HBCD and, if required with OBDPE and DBDPE, 30 months after the effective date.

(*2*) Earthworm toxicity testing with PBDPE, BTBPE, and HBCD, 18 months after the effective date and with OBDPE and DBDPE, 30 months after the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD and, if required, beginning 24 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(6) *Terrestrial plant testing*—(i) *Required testing.* (A) Seed germination/root elongation toxicity tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.2750 of this chapter. Seed germination/root elongation toxicity tests shall be conducted with OBDPE and DBDPE in accordance with § 797.2750 of this chapter if an EC50 of ≤ 100 mg PBDPE/kg dry weight of soil is obtained with PBDPE in either this test or the early seedling growth toxicity test conducted pursuant to paragraph (d)(6)(i)(B) of this section.

(B) Early seedling growth toxicity tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.2800 of this chapter. Early seedling growth toxicity tests shall be conducted with OBDPE and DBDPE in accordance with § 797.2800 of this chapter if an EC50 of ≤ 100 mg PBDPE/kg dry weight of soil is obtained with PBDPE in either this test or the seed germination/root elongation toxicity test is conducted pursuant to paragraph (d)(6)(i)(A) of this section.

(ii) *Reporting requirements.* (A) Terrestrial plant testing shall be conducted and the final reports submitted to EPA as follows:

(*1*) Seed germination/root elongation toxicity test with PBDPE, BTBPE, and HBCD, 15 months after effective date and, if required with OBDPE and DBDPE, 24 months after effective date;

(*2*) Early seedling growth toxicity test with PBDPE, BTBPE, and HBCD, 15 months after effective date and, if required with OBDPE and DBDPE, 24 months after effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD and, if required, every 6 months beginning 21 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(7) *Immunotoxicity*—(i) *Required testing.* (A) Immunotoxicity tests shall be conducted with PBDPE, BTDPE, and HBCD.

(B) The testing shall be conducted in accordance with the test procedure specified in an article by N.K. Jerne, et. al., entitled "Plaque Forming Cells: Methodology and Theory—I. The Standard Theory", published in *Transplant Reviews* 18:130–191 (1974), and in an article by M.E. Luster et. al., entitled "Methods Evaluation-Development of a Testing Battery to Assess Chemical-Induced Immunotoxicity: National Toxicology Program's Guidelines for Immunotoxicity Evaluation in Mice", published in *Fundamental and Applied Toxicology*, Vol. 10, pp. 2–19. (1988), which are incorporated by reference. Copies of these materials are available in the TSCA Public Reading Room, Rm. NE-G004, 401 M St., SW., Washington, DC 20460. These materials are also available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC 20408. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These methods are incorporated as they exist on the effective date of this rule and a notice of any changes to the methods will be published in the Federal Register.

(C) Immunotoxicity tests shall also be conducted with OBDPE and DBDPE in accordance with the methodology incorporated by reference in paragraph (d)(7)(i)(B) of this section, if a no observed effect level of ≤ 500 ppm is obtained with PBDPE in this test.

(ii) *Reporting requirements.* (A) Immunotoxicity tests for PBDPE, BTBPE, and HBCD shall be conducted and the final reports submitted to EPA within 15 months of the effective date. Immunotoxicity testing for OBDPE and DBDPE, if required, shall be completed and the final results submitted to EPA within 24 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD and, if required, beginning 18 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(8) *Bioconcentration*—(i) *Required testing.* Fish bioconcentration tests shall be conducted with PBDPE, BTBPE, and HBCD in accordance with § 797.1520 of this chapter except for the provisions in paragraphs (c)(1)(i), (c)(1)(iii), (c)(4)(ii)(A), (c)(4)(iii)(A), (c)(4)(iii)(B)(2), (c)(4)(iii)(C), (c)(4)(viii)(A), (c)(5)(i)(C), (c)(5)(i)(D), and (c)(5)(ii)(A). Fish bioconcentration tests shall be conducted with OBDPE and DBDPE in accordance with § 797.1520, except for the provisions in paragraphs (c)(1)(i), (c)(1)(iii), (c)(4)(ii)(A), (c)(4)(iii)(A), (c)(4)(iii)(B)(2), (c)(4)(iii)(C), (c)(4)(viii)(A), (c)(5)(i)(C), (c)(5)(i)(D), and (c)(5)(ii)(A), if a bioconcentration factor of ≥ 1000 is obtained with PBDPE with this test.

(A) For purposes of this section, the following also applies:

(*1*) *Test procedures*—(*i*) *Summary of the test.* Fish are continuously exposed to at least two constant sublethal concentrations of a test substance under flow-through conditions for a maximum of 91 days. During this time, test solutions and fish are periodically sampled and analyzed using appropriate methods to quantify the test substance concentrations. The maximum depuration period is 56 days.

(*ii*) If steady-state is not reached during 91 days of uptake, the steady-state BCF is calculated using non-linear parameter estimation methods.

(*2*) *Definitive test.* (*i*) At least two concentrations should be tested to assess the propensity of the compound to bioconcentrate. The concentrations selected should not stress or adversely affect the fish. The highest concentration should be less than the limit of water solubility. The lowest concentration should be one-tenth of the higher concentration, as long as that concentration is greater than three times the limit of quantification. The limiting factor for how low one can test is based on the detection limit of the analytical methods. The lower concentration of the test material in the test solution should be at least three times greater than the detection limit in water.

(*ii*) An estimate of the length of the uptake and depuration phases should be made prior to testing. This will allow the most effective sampling schedule to be determined. The uptake phase should continue for 91 days.

(*iii*) The following sampling schedule should be used to generate the appropriate data.

SAMPLING SCHEDULE (DAYS)

Sampling	Treatment	Controls
Exposure	1	1
	7	7
	14	–
	28	28
	56	–
	91	91
Depuration	7	7
	14	14
	28	–
	56	56

(*iv*) The depuration phase shall continue until at least 95 percent of the accumulated test substance and metabolites have been eliminated, but no longer than 56 days.

(*v*) At each of the designated sampling times, triplicate water samples and enough fish should be collected from the exposure chamber(s) to allow for at least three fish tissue analyses. A similar number of control fish should also be collected at each sample point, but only fish collected at the first sampling period and on days 1, 7, 28, and 91 for exposure treatment samples, and on days 7, 14, and 56 of depuration treatment samples should be analyzed. Triplicate control water samples will be collected at the time of test initiation and weekly thereafter. Test solution samples should be removed from the approximate center of the water column.

(*vi*) If steady-state was not reached during the 91 day uptake period, the maximum BCF should be calculated using the mean tissue concentration from that day and the mean water concentration from that and the previous sampling day. An uptake rate constant should then be calculated using appropriate techniques, such as the BIOFAC program developed by Blau and Agin (1978). This rate constant will allow the estimation of a steady-state BCF and the estimated time to steady-state.

(*vii*) If 95 percent elimination has not been observed after 56 days depuration, then a depuration rate constant should be calculated. This rate constant will allow estimation of the time to 95 percent elimination.

(*viii*) All samples shall be analyzed using gas chromatography coupled to a mass spectrometer (GC/MS) to quantitate each polybrominated biphenyl ether (PBBE) isomer present. All tests shall be conducted at aqueous concentrations below the measured water solubility of the specific mixture being tested. All tests shall be performed using samples from the identical commercial mixture. The specific methodology used shall be validated before the test is initiated. The accuracy of the method should be measured by the method of known additions. This involves adding a known amount of the test substance to three water samples taken from an aquarium containing dilution water and a number of fish equal to that to be used in the test. The nominal concentration of these samples shall be the same as the concentration to be used in the test. Samples taken on two separate days shall be analyzed: The accuracy and precision of GC/MS analytical method should be verified using reference samples or split samples or suitable corroborative methods of analysis. The accuracy of the standard solution should be checked against other standard solutions whenever possible.

(B) [Reserved]

(ii) *Reporting requirements.* (A) Fish bioconcentration tests for PBDPE, BTBPE, and HBCD shall be conducted and the final reports submitted to EPA within 18 months of the effective date. Fish bioconcentration tests for OBDPE and DBDPE, if required, shall be completed and the final reports submitted to EPA within 30 months of the effective date.

(B) Progress reports shall be submitted to EPA every 6 months beginning 12 months after the effective date for PBDPE, BTBPE, and HBCD, and, if required, beginning 24 months after the effective date for OBDPE and DBDPE until the final report is submitted.

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(e) *Chemical fate testing*—(1) *Water solubility*—(i) *Required testing.* (A) Water solubility tests shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 796.1860 of this chapter except for the provisions in paragraph (c)(1)(iii).

(B) For the purposes of this section the following provisions also apply:

(*1*) *Performance of the test.* (*i*) Determine the water solubility of the test compound in dilution water at the salinity and temperature specified for the algal toxicity test conducted pursuant to paragraph (d)(1)(i) of this section, for the fish early life stage toxicity tests conducted pursuant to paragraph (d)(2)(i) of this section, for the invertebrate chronic toxicity tests conducted pursuant to paragraphs (d)(3)(i)(A) and (d)(3)(i)(B) of this section, and for the benthic organism toxicity testing conducted pursuant to paragraph (d)(4)(i) of this section.

(*ii*) Water solubility shall be analyzed utilizing an electron capture detector.

(*2*) [Reserved]

(ii) *Reporting requirements.* The water solubility tests shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(2) *Octanol/water partitioning*—(i) *Required testing.* Log octanol/water partition coefficient tests shall be conducted with PBDPE, OBDPE, and DBDPE in accordance with § 796.1720 of this chapter.

(ii) *Reporting requirements.* The log octanol/water partition coefficient tests shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(3) *Vapor pressure*—(i) *Required testing.* Vapor pressure tests shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 796.1950 of this chapter.

(ii) *Reporting requirements.* The vapor pressure tests shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(4) *Sediment and soil adsorption*—(i) *Required testing.* Sediment and soil adsorption tests shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 796.2750 of this chapter.

(ii) *Reporting requirements.* The sediment and soil adsorption tests shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(5) *Photolysis*—(i) *Required testing.* Direct and indirect photolysis tests shall be conducted on congenerically pure PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with §§ 796.3780, 796.3900 and 796.3700 of this chapter.

(ii) *Reporting requirements.* The direct and indirect photolysis tests shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(6) *Aerobic biodegradation*—(i) *Required testing.* (A) For each respective test substance, biodegradation testing in sediment/water shall be conducted with PBDPE, BTBPE, and HBCD.

(B) The testing shall be conducted using clean, freshwater sediments in accordance with the method described in an A.W. Bourquin article entitled "An Artificial Microbial Ecosystem for Determining Effects and Fate of Toxicants in a Salt-Marsh Environment", published in *Developments in Industrial Microbiology*, Vol. 18, Chapter 11, 1977, which is incorporated by reference. Copies of this material incorporated by reference are available in the TSCA Public Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460. These materials are also available for inspection at the Office of the Federal Register, Rm 8401, 1100 L St., NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This method is incorporated as it exists on the effective date of this rule and notice of any change to the method will be published in the **Federal Register.**

(C) Biodegradation testing in sediment/water shall also be conducted with OBDPE and DBDPE in accordance with the methodology incorporated by reference in paragraph (e)(6)(i)(B) of this section, if mineralization to CO_2 greater than 10 percent is obtained with PBDPE in this test.

(ii) *Reporting requirements.* (A) Biodegradation testing in sediment/water shall be completed and the final reports submitted to EPA within 12 months of the effective date for PBDPE, BTBPE, and HBCD, and, if required, within 24 months of the effective date for OBDPE and DBDPE.

(B) Progress reports for biodegradation testing in sediment/water shall be submitted to EPA every 6 months beginning 6 months after the effective date for PBDPE, BTBPE, and HBCD, and, if required, every 6 months, beginning 18 months after the effective date for OBDPE and DBDPE until the final report is submitted.

(7) *Anaerobic biodegradation*—(i) *Required testing.* Anaerobic biodegradation testing shall be conducted with PBDPE, OBDPE, DBDPE, BTBPE, and HBCD in accordance with § 796.3140 of this chapter.

(ii) *Reporting requirements.* The anaerobic biodegradation test shall be completed and the final reports submitted to EPA within 6 months of the effective date.

(f) *Reference(s).* For additional background information, the following reference(s) should be consulted.

(1) Spenser, P.S., Bischoff, M.C., and Schaumburg, H.H. "Neuropathological methods for the detection of neurotoxic disease." In: *Experimental and Clinical Neurotoxicology*. P.S. Spenser and H.H. Schaumburg, eds. Baltimore, MD; Williams and Wilkins, pub. pp 743–757 (1980).

(2) [Reserved]

(g) *Effective date.* This section is effective (44 days after publication of the final rule in the **Federal Register**). (Information collection requirements have been approved by the Office of Management and Budget under OMB Control Number 2070–0033.)

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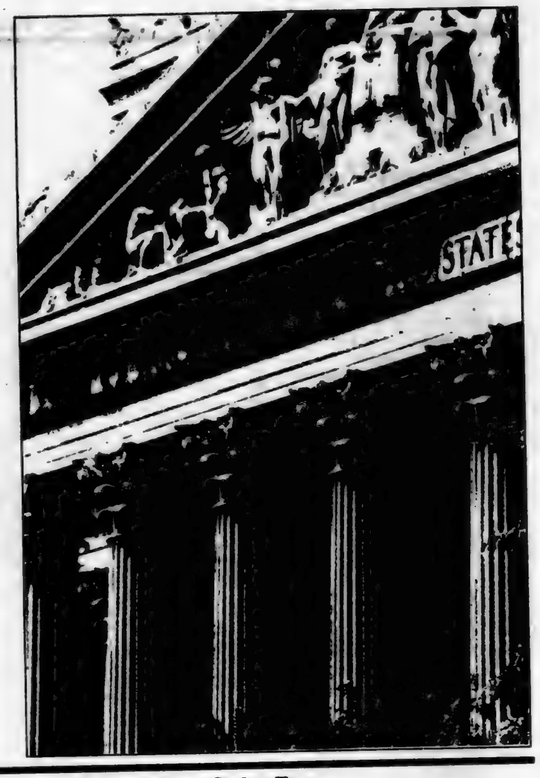
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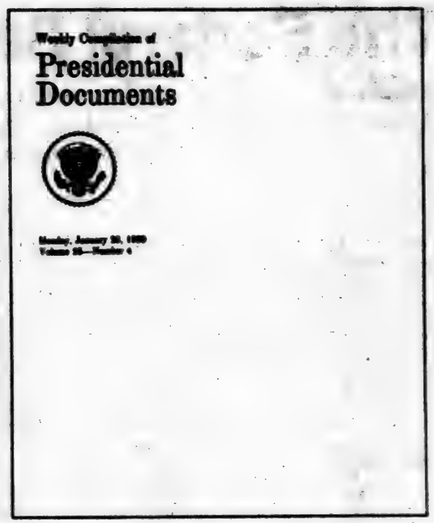
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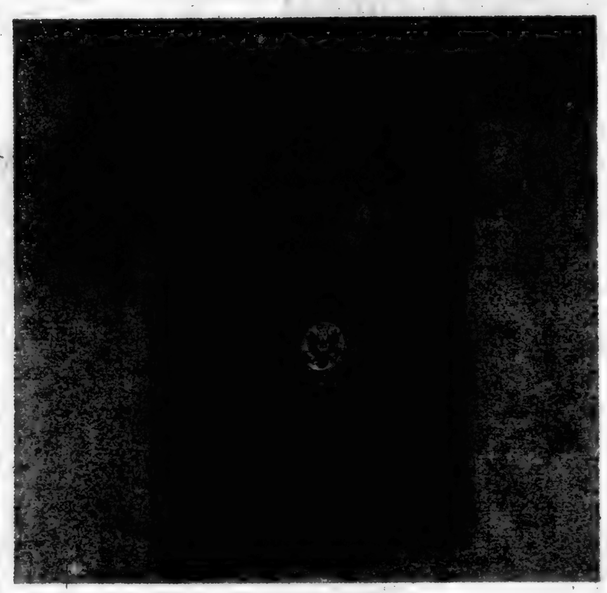
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Rules and Regulations

Federal Register
Vol. 56, No. 123
Wednesday, June 26, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1924

Planning and Performing Construction and Other Development

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations to add approved providers of warranty plans for the new construction of single family homes financed by FmHA. The intended effect of this action is to notify the public that FmHA will accept 10-Year Warranty Plans that are provided by certain companies.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Reginald Rountree, Senior Loan Specialist, Single Family Housing Processing Division, FmHA USDA, room 5348, South Agriculture Building, Washington, DC 20250. Telephone: (202) 382–1484.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it involves only internal agency management, making publication for comment unnecessary

Programs Affected

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410 Low-Income Housing Loans (section 502 Rural Housing Loans). For the reasons set forth in the final rule and related notice(s) to 7 CER part 3015, subpart V, this activity affects the following programs that are included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials: 10.405 Farm Labor Housing and Grants; 10.406 Farm Operating Loans; 10.413 Recreation Facility Loans; 10.415 Rural Rental Housing Loans; and 10.416 Soil and Water Loans.

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not needed.

Background

In recent years, numerous third-party home warranty plans have been developed offering new home owners varying degrees of protection against builder default and/or major structural defects in their home. FmHA has established criteria and procedures by which a warranty plan is found acceptable for new construction of single family homes financed by FmHA. Upon reviewing the warranty plans submitted by Manufactured Housing Warranty Corporation and Residential Warranty Corporation, FmHA found they are acceptable and therefore, available to FmHA borrowers.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan program—Agriculture, Low- and moderate-income housing.

Accordingly, part 1924, chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. Authority citation for part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1960; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10 Pub. L. 93–357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

Exhibit L to Subpart A [Amended]

2. Attachment 1 of Exhibit L to Subpart A is revised to read as follows:

* * * * *

Attachment 1—Acceptable Warranty Companies

The warranty companies listed below claim authority to act as a risk retention group under the Products Liability Risk Retention Act of 1981 and as such, to operate in all States to provide 10-year home warranties. This authority remains subject to future challenges by any State insurance commissioner or regulatory agency; however, until such challenge is made, FmHA accepts their warranty.

Name and address	Area of operation
Home Owners Warranty Corporation/HOW Insurance Company, 11 North Globe Road, Arlington, Virginia 22201, (703) 516–4100.	All States.
Home Buyers Warranty, 89 Liberty Street, Asheville, North Carolina 22801, Telephone: (704) 254–4478.	All States.
Residential Warranty Corporation, P.O. Box 641, Harrisburg, Pennsylvania 17108–0641, Telephone: 1–800–247–1812.	All States.
Manufactured Housing Warranty Corporation, P.O. Box 641, Harrisburg, Pennsylvania 17108–0641, Telephone: 1–800–247–1812.	All States.

Dated: May 24, 1991.

LaVerne Ausman,
Administrator, Farmers Home Administration.

[FR Doc. 91–15188 Filed 6–25–91; 8:45 am]
BILLING CODE 3410–07–M

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7 CFR Part 1942

Community Facility Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations on Community Facility Loans. This action is necessary to correct a problem relating to the scheduling of loan payments, to make another revision for consistency purposes and to make minor corrections. The revisions will rectify the problem, allow loan processing to proceed more smoothly and clarify a related paragraph.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Donna H. Roderick, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 382-9589.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental review

This program is listed in the Catalog of Federal Domestic Assistance under numbers 10.423, Community Facilities Loans, and 10.418, Water and Waste Disposal Systems for Rural Communities, and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The Administrator of Farmers Home Administration has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect a small number of entities for which the changes will make debt instruments less complex to prepare.

Background

This action amends FmHA's regulations to require semiannual or annual payment bonds in cases where State law requires principal plus interest type bonds and to clarify the maximum loan repayment period. This action is necessary because loan payments may currently be scheduled more frequently than annually or semiannually and if principal plus interest bonds are required under State law, this causes debt instruments to be unreasonably complex, causes accounting of payments to be burdensome and is otherwise impractical. This action is also necessary to revise the maximum loan repayment period language for consistency with other parts of the regulation and to make minor corrections.

On January 29, 1991, a proposed rule was published in the **Federal Register** (56 FR 3225) for a 30-day review and comment period. No comments were received from the public review process.

Lists of Subjects in 7 CFR Part 1942

Community Development, Community Facilities, Loan Programs—housing and community development, Rural Areas, Waste treatment and disposal—domestic, Water supply—domestic, Loan security.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. Section 1942.17 is amended by revising the introductory text of paragraph (f)(7) and paragraph (f)(7)(ii) to read as follows:

§ 1942.17 Rates and terms.

* * * * *

(f) * * *

(7) *Repayment terms.* The loan repayment period shall not exceed the useful life of the facility, State statute or 40 years from the date of the note(s) or bond(s), whichever is less. Where FmHA grant funds are used in connection with an FmHA loan, the loan will be for the maximum term permitted by this subpart, State statute, or the useful life of the facility, whichever is less, unless there is an exceptional case where circumstances justify making an FmHA loan for less than the maximum term permitted. In such cases, the reasons must be fully documented. In all cases, including those in which the FmHA is jointly financing with another lender, the FmHA payments of principal and interest should approximate amortized installments.

* * * * *

(ii) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months, respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

* * * * *

3. Section 1942.19 is amended by revising paragraph (h)(5) to read as follows:

§ 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.

* * * * *

(h) * * *

(5) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual P&I bonds will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months, respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

* * * * *

§ 1942.19 [Amended]

4. In § 1942.19(h)(10)(iv), the name of Form FmHA 1942-9 is changed from "Loan Resolution (Security Agreement)" to "Loan Resolution Security Agreement."

Dated: May 17, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-15167 Filed 6-25-91; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Part 1980

Community Programs Guaranteed Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding guaranteed loans for Community Programs which was authorized by Public Law 101-161, enacted November 21, 1989. This action is necessary to provide the public, lending institutions and FmHA personnel with expanded and clearer instructions on Community Programs guaranteed loans. The intended effect is to make our regulations more responsive and to further the prudent development of guaranteed Community Programs lending in rural America.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Shirley P. Stroud, Senior Loan Officer, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, room 6310, South Agriculture Building, Washington, DC 20250, telephone (202) 382-1496.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be major, because it will result in an annual effect on the economy of $100 million or more.

Memorandum of Law

The Acting General Counsel has reviewed the regulations which the Farmers Home Administration (FmHA) is publishing as a final rule and has found that these regulations comply with applicable statutes and that FmHA has the authority to propose such regulations pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

J. Robert Franks,

Acting General Counsel.

Summary of FRIA

This action establishes regulations to implement a guaranteed community loan program. Providing for a loan guarantee program presents an opportunity to involve the private sector in making loans for community projects and to reduce the Government's role as a source of credit. The Final Regulatory Impact Analysis provides an estimate of the economic impact of shifting from a direct to a guaranteed loan program. The analysis discusses whether the additional cost associated with a loan guarantee program will impair the financial feasibility of some of the projects otherwise financed solely by FmHA. The FRIA concludes that:

1. A shift from direct to guaranteed loans reduces FmHA exposure and Government outlays immediately, due to a decrease in the amount of loan funds disbursed;

2. The additional interest cost associated with a guaranteed loan program will not have a significant effect on the entities that qualify for the program; and

3. Providing a loan guarantee permits the continuation of assistance to entities needing only minimal assistance in attracting private financing while providing more direct loan assistance to entities serving lower income population.

The Interim Regulatory Impact Analysis (IRIA) for this document was summarized in the interim rule published on March 27, 1990 (55 FR 11133). The summary is incorporated into this document.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under Numbers 10.423, Community Facilities Loans, and 10.418, Water and Waste Disposal Systems Loans, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instructions 1901-H and 1940-J.

Environmental Impact

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." FmHA has determined this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Discussion of Interim Rule

An interim rule was published on March 27, 1990, (55 FR 11133), and invited comments for 30 days ending April 26, 1990. It authorized and implemented a program for guaranteed Community Facility program loans by adapting the regulations in effect to govern the Agency's Business and Industry guaranteed loan program for use in this similar program, newly funded by Public Law 101-161.

Discussion of Comments

Part 1940—General

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

No comments were received on changes in this subpart published in the interim rule. The interim rule is adopted as final.

Part 1980—General

Subpart A—General

No comments were received on changes in this subpart published in the interim rule. The interim rule is adopted as final.

Subpart E—Business and Industry Loans

No comments were received on changes in this subpart published in the interim rule. The interim rule is adopted as final.

Subpart I—Community Programs Guaranteed Loans

Seventeen comments were received from the public and have been carefully considered. Comments were received from small towns, investment banking firms, attorneys, banks, FmHA employees, and the Office of Inspector General.

Comments were received from four small towns and a planning district commission. They were all under the impression FmHA was proposing to eliminate direct loans and shift totally to guaranteed loans. This is not the intent of the regulation since the direct loan regulations are being left intact.

Some respondents objected to the prohibition on the guarantee of tax-exempt bonds. The Agency appreciates these comments but will continue to follow the Government's policy as set forth in OMB Circular A-70, which states "Federal guarantees of debt

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obligations, the interest on which is exempt from Federal tax, are an inefficient means of allocating Federal credit because the tax revenue loss to the Federal Government is greater than the interest savings to the borrower."

Three respondents, potential lenders, requested the rule be amended to specifically authorize them as eligible lenders. The Agency has reviewed the regulation governing the guaranteed loan program and agrees one of these lenders should be listed as eligible. As a result, FmHA opts to modify the interim rule permitting other Farm Credit System institutions with direct lending authority to be shown as eligible lenders.

Two respondents requested the interim rule be clarified in its application to investor financing. Specific paragraphs were cited with recommended changes to allow organizations other than traditional institutional lenders to be approved as eligible lenders. The Agency is still reviewing these comments and exploring the possibility of additions and revisions to the regulations which allow for the more broad concept needed to incorporate investment bankers as eligible lenders.

One respondent stated it would not be appropriate for CP to send an applicant to be tested by other commercial credit when B&I guarantees do not require this action. The test for other credit is a statutory requirement; therefore, no change will be made to this section.

One respondent stated there should be no differentiation made between the audit requirements for insured loans and guaranteed loans to the same type of entities served. The Agency agrees and has changed the terminology to reflect the suggestion.

One respondent pointed out there is no provision for OGC reviews during loan processing. The Agency never intended for this to be left out of the regulation and this provision is being added.

The Office of Inspector General stated the interim rule is in material noncompliance with OMB Circulars A-70 and A-129 regarding numerous rescreening items required by the Circulars. The Agency has reviewed all sections and has modified the language in some sections accordingly. Other items cited such as the requirement to suspend processing of an application when an applicant is found to be delinquent on a Federal debt requires additional study by the Agency. Uniform standards and parameters need to be established for all loan programs with proper notification to the public before this and similar changes can be effected.

Comments Regarding Specific Sections

Section 1980.823(b)

One respondent stated the use of "percent" could be misleading or misinterpreted as the rule presently reads: "The interest rate should not be adjusted more than 5% during the life of the loan." The Agency agrees that the language could be misinterpreted and has modified the section.

Section 1980.842

This section references a similar section of FmHA Instruction 1942-A. The respondent feels a reference should also be made to FmHA Instruction 1942-C for fire and rescue type loans. The Agency agrees and has revised the section to also reference economic feasibility requirements for fire and rescue loans.

Section 1980.844

One respondent believes this section requiring an appraisal for *all* essential community facility loans is too restrictive. The Agency agrees and has modified this section to require appraisals for all real estate related transactions only.

Section 1980.851(a)

One respondent questioned the need for a preapplication for fire and rescue type loans. The Agency has reviewed this section and finds the use of an SF-424 in the guaranteed program is needed to meet several prescreening requirements of OMB Circular A-129. Therefore, no change is made to this requirement.

Section 1980.856(c)

One respondent feels the State Director should have the authority to change the conditions for the guarantee. The Agency has modified language in this section to reflect that changes to the Form FmHA 449-14 can be approved by the State Director.

Section 1980.856(e)

One respondent stated this section is somewhat confusing in that it appears to require a title opinion on all rights-of-way. The Agency has modified language in this section to reflect that it is not necessary to require a title report on all rights-of-way.

Other changes are made to incorporate administrative requirements which were inadvertently left out of the regulation as well as minor changes in wording for clarity and correcting of typographical errors.

List of Subjects in 7 CFR Part 1980

Loan programs—Community programs—Rural development assistance.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended by adopting the interim rule published on March 27, 1990 (5 FR 11133) as a final rule with the following amendments:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart I—Community Programs Guaranteed Loans

2. Section 1980.806 is revised to read as follows:

§ 1980.806 Availability of credit from other sources.

To be eligible for a guaranteed loan under this subpart, the borrower must be unable to obtain the required credit without the CP loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and period of time. The borrower must certify in writing and FmHA shall determine the credit is not available from other sources at reasonable rates and terms without the CP loan guarantee. The lender also must certify that it would not make the loan without the guarantee. These certifications shall become a part of the FmHA case file.

§ 1980.812 [Amended]

3. Section 1980.812 is amended by changing the word "loan" to "loans."

§ 1980.813 [Amended]

4. Section 1980.813 is amended by redesignating current paragraph (a)(2)(vii) as paragraph (a)(2)(viii) and adding new paragraph (a)(2)(vii) to read as follows:

(a) * * *

(2) * * *

(vii) Natural gas distribution systems; and

* * * * *

5. Section 1980.814 is amended by revising paragraph (d) to read as follows:

§ 1980.814 Ineligible loan purposes.

* * * * *

(d) Electric generation or transmission facilities or telephone systems, except as provided in § 1980.813 (a)(2)(v) or (a)(2)(vi) of this subpart; or extensions to serve a particular essential community facility as provided in § 1980.823 [b][1] or [b][2] of this subpart.

* * * * *

6. Section 1980.815 is amended by revising paragraph (a) to read as follows:

§ 1980.815 Transactions which will not be guaranteed.

(a) Loans made by any Federal or State agencies. This does not preclude guaranteeing loans made by the Bank for Cooperatives or Federal Land Bank.

* * * * *

7. Section 1980.818 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 1980.818 Eligible lenders.

(a) * * *

(3) Farm Credit Bank of the Federal Land Bank Association or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this subpart.

(4) An insurance company regulated by a State or National insurance regulatory agency, and

* * * * *

8. Section 1980.819 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 1980.819 Loan guarantee limits.

* * * * *

(a) Normally, guarantees will not exceed 80 percent unless extraordinary circumstances exist. The State Director will document these circumstances in the case file. National Office concurrence is required when the requested guarantee exceeds 80 percent. The maximum allowable guarantee will be 90 percent.

(b) * * *

(4) Lender's exposure (retain a minimum of 5% of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another.)

* * * * *

§ 1980.819 [Amended]

9. Section 1980.819(b) is amended in the second sentence by removing form title, "Conditional Commitment for Guarantee."

10. Section 1980.823 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1980.823 Interest rates.

(a) Rates will be negotiated between the lender and the borrower. They may be either fixed or variable rates as long as they are legal. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval. FmHA will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(b) A variable interest rate must be tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. Notice of any interest rate change proposed by the lender should allow a sufficient time period for the borrower to obtain any required state or other regulatory approval and to implement any user rate adjustments necessary as a result of the interest rate change. The interest rate will not be raised more than one percent per year. The intervals between interest rate adjustments will be specified in the loan agreement but not more often than annually. During the life of the loan, the interest rate will not be increased more than 5 percentage points over the interest rate at loan closing. The lender must incorporate within the variable rate promissory note or bond at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(c) Any change in the interest rate between the date of issuance of the Form FmHA 449-14 and before the issuance of the Loan Note Guarantee (Form FmHA 449-34) must be approved by the State Director. Approval of such change will be shown on an amendment to Form FmHA 449-14.

* * * * *

§ 1980.824 [Amended]

11. Section 1980.824(c) is amended by removing the word "or" between the words "bond" and "promissory" and adding a comma after the word "bond."

12. Section 1980.842 is revised to read as follows:

§ 1980.842 Economic feasibility requirements.

The economic feasibility requirements for this subpart are set out at § 1942.17(h) of subpart A and/or at § 1942.110 of subpart C of part 1942 of this chapter.

13. Section 1980.844 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 1980.844 Appraisal reports

(a) * * *

(1) Appraisal reports prepared by independent third party qualified fee appraisers will be required for all real estate transactions. For loans of $1 million or less, the State Director may modify this requirement by permitting the appraisal to be made by a qualified appraiser on the lender's staff with experience appraising the type of security involved. The appraisers will give their opinion regarding the current market value of the security and the purpose for which the appraisal will be used. The lender will be responsible for assuring that appropriate appraisals are made, and for determining that prices paid for construction, equipment, and other project development are reasonable and fair.

(2) The lender will require that appraisals be conducted at a minimum in accordance with generally accepted appraisal standards as reflected in the "Uniform Standards of Professional Appraisals Practices" as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

* * * * *

14. Section 1980.851 is amended by redesignating current paragraphs (b)(2)(ii) through (b)(2)(xii) as paragraphs (b)(2)(iii) through (b)(2)(xiii), respectively; by adding new paragraph (b)(2)(ii); and by revising the introductory text of paragraph (a)(1), paragraphs (a)(1)(v), (b)(1), the introductory heading of paragraph (b)(2), and new redesignated paragraphs (b)(2)(iv) and (b)(2)(vii) to read as follows:

§ 1980.851 Processing applications.

(a) *Preapplications.* (1) The County Office may handle initial inquiries and provide basic information about the program. They are to provide Standard Form (SF) 424.1 or 424.2, "Application for Federal Assistance." The County Supervisor will assist borrowers as needed in completing SF-424 and in filing written notice of intent and request for priority recommendations with the appropriate clearinghouse (except Federally recognized Indian tribes which will be dealt with in accordance with § 1940.453(c) of subpart J of part 1940 of this chapter). The County Supervisor will inform the borrower that if credit for the project is available from commercial sources without the guarantee at reasonable rates and terms, the borrower is not eligible for a loan guaranteed by FmHA. Preapplications filed in the County Office will be forwarded immediately to the District Office. The applicant/

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borrower will be informed that further processing will be handled by the District Office. An information folder will be established and maintained by the County Office once a preapplication is received. In the event the preapplication is filed in the District Office, the District Director may assist the borrower in completing the preapplication requirements. The District Director will meet with the borrower/applicant, whenever appropriate, to discuss FmHA preapplication processing. The appropriate information to set up the County Office information file will be sent to the County Supervisor by the District Director. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is properly completed and fully reviewed. The District Director will then forward the preapplication package to the State Director. The preapplication package will contain:

* * * * *

(v) Supporting documentation necessary to make an eligibility determination, such as financial statements, audits, or copies of organizational documents or existing debt instruments. The District Director will advise borrowers/applicants on what documents are necessary. Borrowers should not be required to expend significant amounts of money or time developing supporting documentation at the preapplication stage.

* * * * *

(b) * * *

(1) *Application conference.* When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant and borrower to provide copies of appropriate appendices and forms, and furnish guidance necessary for orderly application processing. The District Director will confirm decisions made at this conference by letter to the applicant and borrower. As the application is being processed, and the need develops for additional conference, the District Director will arrange with the applicant for such conferences.

(2) *Content of application package.*

* * *

(ii) Form FmHA 1910–11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts."

* * * * *

(iv) Preliminary architectural or engineering report as appropriate, in accordance with Guides 6, 7, and 8 of subpart A of part 1942 (available in any FmHA office).

* * * * *

(vii) Credit reports obtained by the lender or FmHA on the borrower.

* * * * *

15. Section 1980.852 is revised to read as follows:

§ 1980.852 FmHA evaluation of application.

(a) FmHA will complete Form FmHA 1942–45, "Project Summary—Water and Waste Disposal and other Utility-type Projects," or Form FmHA 1942–43, "Project Summary Community Facilities (Other Than Utility-type Projects)," as appropriate. The application will be evaluated and a determination made as to whether the borrower is eligible, the proposed loan is for an eligible purpose, and there is reasonable assurance of repayment ability, sufficient collateral and equity, the proposed loan complies with all applicable statutes and regulations, and adequate funds are available. The FmHA Architect/Engineer will review the Preliminary Architect/Engineer reports and provide technical analysis and recommendations on the appropriate Project Summary. If FmHA determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee. If FmHA conditionally commits to guaranteeing the loan after the receipt of a completed application in accordance with § 1980.47 of subpart A of this part, it will provide the lender and the borrower with Form FmHA 449–14, listing all conditions for such guarantees. FmHA will include in the requirements of the Conditional Commitment for Guarantee a full description of the approved use of guaranteed loan funds as reflected in the Form FmHA 1980–10.

(b) Within 30 days after the Form FmHA 449–14 has been accepted, the State Director will send to the National Office, Attention: Community Facilities Division or Water and Waste Disposal Division, as appropriate, the following documents:

(1) A copy of Form FmHA 1942–43 or FmHA 1943–45.

(2) A copy of Form FmHA 449–14 (with attachments) as accepted by the lender and borrower.

(3) A copy of the proposed loan agreement between the lender and the borrower.

(4) A copy of Form FmHA 1980–10.

The cover memorandum should indicate whether the Form FmHA 449–34 has been issued. If the Loan Note Guarantee has been issued, enclose a copy of the Lender Certification required by § 1980.60(a) of subpart A of this part, and, if not, a proposed date for issuance of the Form FmHA 449–34.

§ 1980.853 [Amended]

16. In § 1980.853, the introductory text is amended in the first sentence by adding after the words, "Form FmHA 1940–3" the title, "Request for Obligation of Funds—Guaranteed Loans."

§ 1980.854 [Amended]

17. Section 1980.854 is amended by removing paragraph (a)(5).

§ 1980.856 [Amended]

18. In § 1980.856, the introductory text is amended at the end of the paragraph by changing the period "." to a colon ":", and paragraph (a) is amended in the last sentence by removing the word "paragraph" preceding "§ 1980.818(b)."

19. Section 1980.856 is amended by revising paragraphs (c) and (e)(1) and adding paragraphs (g) and (h), to read as follows:

§ 1980.856 Conditions precedent to issuance of the Loan Note Guarantee (Form FmHA 449–34).

* * * * *

(c) *Changes in terms and conditions in Form FmHA 449–14.* Once Form FmHA 449–14 is issued and accepted by the lender and borrower, the Commitment shall not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds, or terms and conditions. Only minor changes will be considered, unless otherwise provided for in this subpart.

* * * * *

(e) * * *

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a facility. Ordinarily, an opinion of counsel relative to rights-of-way similar to Form FmHA 442–22, "Opinion of Counsel Relative to Right-of-Way," is sufficient documentation for rights-of-way.

* * * * *

(g) *Review by OGC.* After the conditional commitment for guarantee has been issued and proposed closing documents prepared by the lender and forwarded to FmHA with the lender's legal counsel's opinion but prior to issuing the loan note guarantee, the State Director will forward the loan docket to the Regional Attorney for review. After an administrative review, the State Director will include with the docket a letter with recommendations indicating any special items, documents or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. Copies of the following documents should be submitted for OGC review:

(1) Letter from FmHA National Office authorizing loan guarantee containing conditions (if applicable);

(2) Form FmHA 449–14, including any amendments;

(3) Loan agreement;

(4) Promissory notes and/or bond transcript;

(5) Security documents—real estate mortgage, security agreement, financing statements, and leases (if applicable);

(6) Proposed Forms FmHA 449–34, 449–35, "Lender's Agreement," and 449–36 "Assignment Guarantee Agreement," if any;

(7) Proposed lender's certification (§ 1980.60 of Subpart A of this part); and

(8) Opinion of lender's counsel in form prescribed by OGC.

(h) *OGC advice.* The Regional Attorney will review the docket for legal sufficiency and furnish advice to FmHA. Such advice is for the benefit of FmHA only and does not relieve the lender of its responsibilities under FmHA regulations. Upon receipt of the Regional Attorney's advice, the State Director will correct or cause to be corrected any noted deficiencies before issuing the Loan Note Guarantee.

20. Section 1980.870(a) is amended by revising the last sentence to read as follows:

§ 1980.870 Loan servicing.

* * * * *

(a) * * * The State Director may waive the audit requirement for financial statements for borrowers with gross annual income of less than $100,000.

* * * * *

§§ 1980.871–1980.881 [Redesignated as §§ 1980.872–1980.882]

21. Current §§ 1980.871 through 1980.881 are redesignated as §§ 1980.872 through 1980.882, respectively and a new § 1980.871 is added to read as follows:

§ 1980.871 Loan classification.

All CP guaranteed loans will be classified by FmHA at loan closing and again whenever there is a change in the loan which would impact on the original classification. The loans will be classified as set out at § 1904.104 of subpart C of part 1904 of this chapter.

22. Newly redesignated § 1980.872 (a), (b), (d), and (e) are revised to read as follows:

§ 1980.872 Defaults by borrower.

(a) In case of any monetary or significant non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with the District Director or designated representative and borrower to resolve the problem. A memorandum of the meeting listing the individuals in attendance and summarizing the problem and proposed solution will be prepared by the FmHA representative and retained in the loan file. When the District Director receives a notice of default on a loan, he/she will immediately notify the State Office in writing of the details. The District Director will notify the lender and borrower of any decision reached by FmHA.

(b) In considering servicing options, some of which are identified in paragraph X. A of Form FmHA 449–35, the prospects for providing a permanent cure without adversely affecting the risks to FmHA and the lender must become the paramount objective. Within the State Director's authority, temporary curative actions such as payment deferments or collateral subordination, must strengthen the loan and be in the best interest of the lender and FmHA. Some of these actions may require concurrence of the holder(s).

* * * * *

(d) When the State Office determines it is necessary on individual cases, due to some special servicing requirements, it may, at its option, assume the servicing responsibility.

(e) The State Director will report all deliquent and problem loans quarterly to the appropriate National Office program division by the 20th day of January, April, July, and October.

* * * * *

§ 1980.877 [Amended]

23. Newly redesignated § 1980.877(c) is amended in the first sentence by adding the words "to ineligible borrowers" between the words "Transfers" and "are."

24. Newly redesignated § 1980.877 is amended by redesignating current paragraphs (e)(5) and (e)(7) as paragraphs (e)(7) and (e)(5), respectively, and by amending newly redesignated paragraph (e)(7) in the second sentence by removing the words "Add, Delete, or Change, Guaranteed Loan Borrower Information" following the words "Form FmHA 1980–50."

§ 1980.878 [Amended]

25. Newly redesignated § 1980.878(b) is amended by revising the title "Distinguishing transfers from assumptions" to read "Distinguishing mergers from transfers and assumptions."

§ 1980.879 [Amended]

26. Newly redesignated § 1980.879(e) is amended by revising the heading "Method of liquidation" to read "Methods of liquidation," and current paragraphs (e)(4), (e)(4)(i), (e)(4)(ii), (e)(4)(ii)(A), (e)(4)(ii)(B), (e)(4)(ii)(C) and (e)(4)(iii) are redesignated as paragraphs (f), (f)(1), (f)(2), (f)(2)(i), (f)(2)(ii), (f)(2)(iii) and (f)(3), respectively.

* * * * *

Dated: April 2, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91–15188 Filed 6–25–91; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–15–AD; Amendment 39–7055; AD 91–14–14]

Airworthiness Directives; Beech Model 76 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Beech Model 76 airplanes. This action requires inspections of the main landing gear "A" frames for cracks. There have been reports of fatigue cracks developing on the main landing gear "A" frame assembly of Beech Model 76 airplanes. These cracks, if not detected and corrected, would cause the main landing gear to collapse. The actions specified by this AD are intended to prevent collapse and/or malfunction of the main landing gear.

DATES: Effective September 1, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1991.

ADDRESSES: Beech Service Bulletin No. 2361, dated February 1991 that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the FAA, Central Region,

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Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to Beech Model 76 airplanes was published in the **Federal Register** on March 22, 1991 (56 FR 12129). The action proposed inspections of the main landing gear "A" frame assemblies and, if found cracked, repair in accordance with the instructions in Beech SB No. 2361, dated February 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 437 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,070.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91-14-14 Beech: Amendment 39-7055; Docket No. 91-CE-15-AD. Applicability: Model 76 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 100 hours TIS.

To prevent collapse and/or malfunction of the main landing gear, accomplish the following:

(a) Conduct both a visual inspection and dye penetrant inspection of the main landing gear "A" frame assembly (part number 105-810023-67 or P/N 105-810023-68) in accordance with the instructions in Beech Service Bulletin (SB) 2361, dated February 1991.

Note: During the inspection required by paragraph (a) of this AD, particular attention should be given to the tips of the gussets and the small corrosion treatment hole adjacent to the gusset.

(b) If cracks are found during the inspections specified in paragraph (a) of this AD, prior to further flight, replace the assembly with a serviceable part in accordance with Beech SB 2361, dated February 1991, and continue the 100-hour TIS inspection intervals.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(e) The inspections and replacements required by this AD shall be done in accordance with Beech Service Bulletin No. 2361, dated February 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on September 1, 1991.

Issued in Kansas City, Missouri, on June 17, 1991.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR DOC: 91-15155 Filed 6-25-91; 8:45 am]

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14 CFR Part 39

[Docket No. 91-NM-25-AD; Amendment 39-7041; AD 91-13-10]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with Pratt and Whitney PW4000 Engines; and Model 767 Series Airplanes Equipped with Pratt and Whitney PW4000 or General Electric CF6-80C2-B6F Engines

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 and 767 series airplanes, which currently requires a limitation in the Airplane Flight Manual (AFM) that requires that the Engine Indication and Crew Alerting System (EICAS) Status Page be read, with all engines running, prior to each airplane departure. This procedures was prompted by the discovery that the "Engine Controls" advisory message does not function as intended. This condition, if not corrected, could result in overspeed or uncommanded shutdown of the affected engine or engines. This amendment requires the installation of new EICAS computers to provide proper message function and allow removal of the limitation from the AFM.

DATES: Effective August 12, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2686. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-10-06, Amendment 39-6210 (54 FR 19875, May 9, 1989), applicable to certain Boeing Model 747 and 767 series airplanes, to require installation of new EICAS computers to provide proper message function and allow removal of a limitation from the AFM, was published in the **Federal Register** on March 18, 1991 (56 FR 11380).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the proposal rule.

Since issuance of the NPRM, Boeing has issued Revision 1 of Service Bulletin 767-31-0033, which adds two airplanes to the effectivity of the service bulletin. The applicability statement of the final rule has been revised to reference this later revision. Both of these airplanes are operated by foreign operators under foreign registry and, therefore, are not directly affected by this action. Nevertheless, this revision is necessary to advise the cognizant foreign authorities that the subject unsafe condition may exist on these airplanes.

Paragraph D. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 24 Model 767 and 19 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 2 Model 767 and 10 Model 747 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Replacement parts would be provided at no cost by the manufacturer. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,980.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administratiaon amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6210 and by adding the following new airworthiness directive:

91-13-10. Boeing: Amendment 39-7041. Docket 91-NM-25-AD. Supersedes AD 89-10-06.

Applicability: Model 747 series airplanes equipped with Pratt and Whitney PW4000 engines, and Model 767 series airplanes equipped with either Pratt and Whitney PW 4000 or General Electric CF6-80C2-B6F engines; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent overspeed or uncommanded shutdown of an engine, accomplish the following:

A. Within the next 3 days after May 22, 1989 (the effective date of Amendment 39-6210), add the following to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM: "Prior to each departure, with all engines running, refer to the EICAS status page and determine the dispatch capability of the aircraft."

B. Within the next 24 months after the effective date of this AD, replace the EICAS computers in accordance with the appropriate service bulletin listed below. After replacement of the EICAS computers in accordance with the specified service bulletins, the AFM limitation required by paragraph A. of this AD may be removed.

1. For Model 747 series airplanes listed in Boeing Service Bulletin 747-31-2151, dated March 29, 1990.

2. For Model 767 series airplanes equipped with Pratt and Whitney PW4000 engines listed in Boeing Service Bulletin 767-31-0033, Revision 1, dated September 27, 1990.

3. For Model 767 series airplanes equipped with General Electric CF6-80C2-B6F engines listed in Boeing Service Bulletin 767-31-0036, dated April 12, 1990.

C. For airplanes not subject to paragraph B of this AD, within the next 30 days after the effective date of this AD, remove the AFM limitation required by paragraph A. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

F. The replacement requirements shall be done in accordance with the following Boeing Service Bulletins, which incorporate the following list of affected pages:

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Service bulletin	Revision level	Date	Pages
747-61-2161.	Original	March 29,1990.	1-10
767-31-0033.	1	September 27, 1990.	1, 2, 4, 5
	Original	May 31, 1990.	3, 6, 7, 8, 9, 10
767-31-0038.	Original	April 12, 1990.	1-8

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment supersedes Amendment 39-6210, AD 89-10-09.

This amendment (39-7041, AD 91-13-10) becomes effective August 12, 1991.

Issued in Renton, Washington, on June 5, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-15151 Filed 6-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-61-AD; Amendment 39-7056; AD 91-14-15]

Airworthiness Directives; Hoffmann Aircraft, Ltd., Model H-36 (Dimona) Motor Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Hoffmann Aircraft, Ltd., Model H-36 (Dimona) motor gliders. This action requires the replacement of any nonmetallic fuel tank with an aluminum tank. Service experience has shown that a nonmetallic fuel tank will develop a softened interior coating. This condition, if not corrected, leads to solid or rubber-like gelcoat fuel deposits, which obstruct the fuel from flowing to the engine on these motor gliders. The actions specified by this AD are intended to prevent these fuel deposits that could result in engine shutdown.

EFFECTIVE DATE: August 12, 1991.

ADDRESSES: Information that is related to this AD may be obtained from the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Brussels Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, 1000 Brussels; telephone (322) 513.38.30; facsimile (322) 230.68.99; or Mr. Herman Belderok, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri; telephone (816) 426-6932; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Hoffmann Aircraft, Ltd., Model H-36 (Dimona) motor gliders was published in the Federal Register on February 27, 1991 (56 FR 8160). The action proposed the replacement of any glass fiber-reinforced plastic (GFRP) or fiber-reinforced plastic (FRP) fuel tank with an aluminum tank in accordance with the instructions in Hoffmann Aircraft, Ltd., Service Bulletin 13/1, dated October 23, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. The FAA has subsequently determined that this AD action would be clearer and more understandable if the proposed service bulletin requirements were incorporated into the actual AD.

In addition, the economic analysis paragraph presented below has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis and the addition of the service bulletin requirements into the AD. These minor changes will not alter the meaning of the AD nor add any additional burden upon the public than was already proposed.

The compliance time for this AD is reflected in both hours time-in-service (TIS) and calendar months. The FAA has determined that the unsafe condition should be corrected within the next 50 hours TIS; however, FAA records indicate that the yearly operational rates of the affected gliders vary immensely within the fleet. One operator may operate the glider 50 hours in six months, while another might not operate the glider 50 hours in one year. The condition of a nonmetallic fuel tank is not necessarily affected by actual operation of the motor glider since fuel deposits or soft spots could form in a fuel tank of any glider containing fuel. To avoid inadvertent grounding of the affected motor gliders and to assure that the unsafe condition is corrected on the affected motor gliders, compliance time is reflected in both hours TIS and calendar months.

It is estimated that 9 motor gliders in the U.S. registry will be affected by this AD, that it will take approximately 8.5 hours per motor glider to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,650 per motor glider. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,057.50.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91-14-15 Hoffmann Aircraft, Ltd.: Amendment 39-7056; Docket No. 90-CE-51-AD.

Applicability: Model H-36 Dimona motor gliders (serial numbers 3501 through 36143) that were supplied or equipped with a fuel tank made of glass fiber reinforced plastic (GFRP) or fiber reinforced plastic (FRP), certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To avoid engine shutdown caused by solid or rubber-like gelcoat fuel deposits, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) or within the next 6 calendar months, whichever occurs first, accomplish the following:

(1) Statically ground the glider and the fuel system.

(2) Empty the fuel tank through a drainer, ventilate the tank, and then remove the tank.

(3) Remove the gasoline filter and inspect the filter and the fuel lines for solid or rubber-like deposits. Remove any solid or rubber-like deposits and thoroughly clean the filter.

(4) Replace the GFRP or FRP fuel tank with an aluminum tank, Part Number 620.5.12 S3a, and reinstall the gasoline filter and reconnect the fuel lines.

(5) Using pen and ink, correct the glider weight and balance data sheet as follows:

(i) Decrease the empty weight by 2.2 pounds (1 kg).

(ii) Show a forward shift of 0.06 inches (1.5mm) of the empty weight center of gravity value.

(6) Using pen and ink, change the Maintenance and Inspection checklist, page 36 of the maintenance manual, by adding the following notations:

(i) "14. Check fuel lines and tank assembly for security and leaks."

(ii) Enter the symbol "0" in columns marked "100 hours" and "500 hours".

(b) If the aluminum tank required by paragraph (a)(4) of this AD has been ordered, but is not available, within the next 50 hours TIS or 6 calendar months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or 12 calendar months, whichever occurs first, accomplish the following interim actions:

(1) Statically ground the glider and the fuel system.

(2) Empty the fuel tank through a drainer, ventilate the tank, and then remove the tank.

(3) Remove the gasoline filter and inspect the filter and the fuel lines for solid or rubber-like deposits. Remove any solid or rubber-like deposits and thoroughly clean the filter.

(4) Remove the finger filter and inspect it for solid or gelatinous deposits, remove any solid or gelatinous deposits, and thoroughly clean the filter.

(5) Perform the following inspections on the inner side of the fuel tank:

(i) Inspect for deposits through the filler hole with a mirror and light.

(ii) Inspect for softened spots in the gelcoat with a wood spatula.

(A) If no deposits or soft spots are found in the fuel tank as a result of these inspections, the glider may be operated until the fuel tank specified in paragraph (a)(4) of this AD becomes available.

(B) If any deposits or soft spots are found in the tank as a result of these inspections, prior to further flight, replace the fuel tank in accordance with the instructions of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, 15, Rue de la Loi, B-1040 Brussels, Belgium, c/o American Embassy APO, New York, New York 09667. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) Information that is related to this AD may be obtained from the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri. This amendment becomes effective on August 12, 1991.

Issued in Kansas City, Missouri, on June 18, 1991.

J. Robert Ball,

Acting Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 91-15156 Filed 6-25-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 85N-0331]

Cardiovascular Devices; Effective Date of Requirement for Premarket Approval; Replacement Heart Valve Allograft

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of applicability of a final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice to clarify that replacement heart valve allografts, devices, are subject to a final rule that was issued by FDA on May 13, 1987, requiring the filing of a premarket approval application (PMA) for all preamendment replacement heart valves, and those substantially equivalent to replacement heart valves. PMA's or investigational device exemptions (IDE's) will be required as described herein.

EFFECTIVE DATE: An approved PMA or IDE is required to be in effect on or before August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth Palmer, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1200.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 12, 1986 (51 FR 5296), FDA published a proposed rule to require the filing, under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)), of a PMA for the replacement heart valve. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and the benefits to the public from the use of the device (51 FR 5296 and 5297). The agency also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's proposed findings. Under section 515(b)(2)(B) of the act, FDA provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification.

FDA did not receive any petitions requesting a change in the classification of the generic type of the device identified as the replacement heart valve. The agency, however, received one comment in response to the February 12, 1986, proposed rule. The comment did not challenge the proposed rule, but instead made inquiry regarding the testing of replacement heart valves. Accordingly, in the Federal Register of May 13, 1987 (52 FR 18182), FDA issued a final rule requiring premarket approval for preamendment replacement heart valves, post amendment replacement heart valves that were found to be substantially equivalent to a preamendment heart valve before December 9, 1987, and any other replacement heart valve first intended for commercial distribution after December 9, 1987.

The classification of replacement heart valves describes the generic type of the device as follows:

A replacement heart valve is a device intended to perform the function of any of the heart's natural valves. This device includes valves constructed of prosthetic materials, biologic valves (e.g., porcine valves), or valves constructed of a combination of prosthetic and biologic materials (21 CFR 870.3925(a)).

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Replacement heart valve allografts squarely fit within the agency's classification regulation and, thus, must be subject to the premarket approval requirement of § 870.3925(b).

Specifically, a replacement heart valve allograft is intended to perform the function of any of the recipient's natural heart valves. Replacement heart valve allografts, by definition, are constructed of biologic materials in that they are human heart valves which are processed to assure shelf life and suitability for implantation in a recipient. There can be little question that the classification regulation for replacement heart valves, when construed to achieve the act's purpose of protecting the public health, must include replacement heart valve allografts.

Both the classification regulation and the regulation requiring premarket approval applications clearly demonstrate FDA's intent to subject all replacement heart valves to the agency's premarket approval process. The classification regulation § 870.3925(a), generally defines the function of a replacement heart valve and broadly identifies the materials from which a replacement heart valve may be constructed.

The regulation requiring premarket approval for replacement heart valves (§ 870.3925(a)) expressly covers preamendment valves; those which have been found to be substantially equivalent to a preamendment valve, prior to December 9, 1987 (the filing date for PMA's required by the regulation); and "[a]ny other replacement heart valve * * *." Simply put, FDA chose to protect the public health by subjecting devices constructed of virtually any material which are "intended to perform the function of any of the heart's natural valves" (§ 870.3925(a)), to premarket approval before permitting the use, or continuing the availability, of replacement heart valves.

FDA, consistent with its view of the regulation, considers replacement valve allografts to be substantially equivalent to preamendment replacement heart valves. FDA has not found any evidence of the preamendment interstate commercial distribution of the valve to consider it a preamendment product. (See section 513(f)(1) of the act.) However, if such evidence existed, the valve, as discussed above, would be within the classification regulation for preamendment heart valves. This is so because replacement heart valves, although differing in some respects, are all intended for the same use and raise similar safety, effectiveness, and regulatory concerns. Because devices are classified by generic type, all replacement heart valves are grouped together.

Some persons argue that FDA should not include replacement heart allografts within the classification for preamendment replacement heart valves. However, if valves derived from humans are considered unique devices first marketed after May 28, 1976, then the valves would require an approved PMA before marketing, and their regulatory status would be no different than if it were included within the classification for replacement heart valves.

If, however, the valves were considered apart from the existing classification regulation, and shown to be a preamendment device, then they would not be subject to FDA's assessment of safety and effectiveness for years. This view could only be based on a stilted, unrealistic reading of the classification regulation, and would be inconsistent with FDA's public health mission.

Because preamendment devices are not subject to FDA's premarket approval process until they are classified into class III after notice and comment rulemaking (see section 513 (b) through (d) of the act), and then, in a separate rulemaking subjected to premarket approval requirements (see section 515(b) of the act), if the valves were viewed as a unique preamendment device, replacement heart allografts legally would not in the interim be subject to any greater regulatory oversight than devices with little or no risk. This result is clearly inadequate to regulate a device that can raise signficant safety concerns, including causing the transmission of the acquired immunodeficiency syndrome virus.

FDA is mindful of the pediatric use of replacement valve allografts and their use in pregnant women. As a result, the agency has given manufacturers and processors of replacement value allografts substantial warning of the manner in which the agency would regulate the device. For example, in the fall of 1989 the Center for Devices and Radiological Health (CDRH) actively participated in a daylong workshop concerning human heart valves sponsored by the American Association of Tissue Banks. In June 1990, human heart valve processors were invited to meet with agency personnel to assist in the development of a heart valve allograft guidance document defining the content of premarket approval application submissions.

Additionally, at a July 1990 meeting of the Food and Drug Law Institute, CDRH's Dr. Gordon Johnson, stated FDA's general approach to the regulation of devices made of human tissue, including the agency's intention to regulate heart valve allografts as replacement heart valves, as described and classified in 1980. In August 1990, CDRH held a meeting of the Circulatory System Devices Advisory Panel to discuss the regulation of human heart valves. It has been clear for some time that FDA intended to regulate human heart valves as replacement heart valves, subject to the agency's 1987 PMA requirement.

To ensure that patients are protected, FDA believes that distribution of unapproved replacement valve allografts must be under an investigational device exemption. FDA's application of its regulatory controls should not diminish the availability of the valve. FDA's intent is to enforce the law, and provide persons who receive human heart valves adequate informed consent while requiring the systematic collection of device performance data. FDA believes that appropriate investigation of the device may occur without diminishing the availability of human heart valves.

The agency intends to review IDE applications in a phased manner. The critical first submission will, at a minimum, require a demonstration that the device is sufficiently safe to permit its continued use. FDA will provide written guidance regarding the content of an acceptable IDE and will work closely with IDE applicants to ensure the continued availability of the device. If information shows that a manufacturer's human tissue heart valve is unsafe, or that an applicant either is uncooperative in providing FDA necessary information or is unable to satisfy the agency's safety concerns, only then will that manufacturer's device be removed from distribution.

Accordingly, if a PMA for a replacement heart valve allograft is not approved on or before August 28, 1991, continued distribution of the device after this date will violate the act in that the device is deemed to be adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)). The device may, however, be distributed for investigational use if the requirements of the IDE regulations (21 CFR part 812) are met.

FDA has concluded that investigational replacement heart valve allografts are significant risk devices as defined in § 812.3(m) and advises that the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of a replacement heart valve allograft. For any such investigational device, therefore, an IDE application submitted to FDA under § 812.20 is required to be in effect under § 812.330 before an investigation may be initiated or continued. FDA advises all persons who currently sponsor or intend to sponsor clinical investigations involving the device to submit an IDE application to FDA no later than July 26, 1991, to avoid the interruption in the distribution and investigation of the device.

Sponsors of ongoing clinical investigations should submit an IDE application in accordance with FDA's "Investigational Device Exemption (IDE) Manual." A PMA for a replacement heart valve allograft should be prepared and submitted in accordance with FDA's "Premarket Approval (PMA) Manual." Both publications are available upon request from the Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800–638–1041, or 301–443–6597 in Maryland. All PMA's shall contain the information required by 21 CFR 814.20.

A new guidance detailing the in vitro testing, processing, characterization, validation, and clinical data information to be included in a PMA for a replacement heart valve allograft, is now available. This guidance is based upon comments received from members of the Circulatory System Devices Panel and the tissue banking industry at the August 20, 1990, Circulatory System Device Panel meeting. FDA will distribute this guidance to the tissue banks that are known to process replacement heart valve allografts. Copies are available upon request from the Center for Devices and Radiological Health (HFZ–220) at the above address and phone number. A copy may also be transferred by computer modem from the FDA Center for Devices and Radiological Health Electronic Bulletin Board Service. This bulletin board can be accessed by phone at 301–443–7496 and uses the following operating parameters: 1,200 baud, no parity, 8 data bits, 1 stop bit, and X modem protocol.

The document is issued under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs.

Dated: June 18, 1991.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 91–15216 Filed 6–25–91; 8:45 am]

BILLING CODE 4160–01–M

PANAMA CANAL COMMISSION

35 CFR Part 9

RIN 3207–AA 27

Predisclosure Notification Procedures for Confidential Commercial Information

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This rule adopts as final the interim rule implementing Executive Order 12600 which requires Federal agencies to establish predisclosure notification procedures applicable to Freedom of Information Act requests for the release of records containing commercial or financial information that is privileged or confidential if the disclosure of these records can reasonably be expected to result in substantial competitive harm to the person who submitted the information. The procedures substantially conform to Executive Order 12600, 52 FR 23781 (June 23, 1987) (3 CFR, 1987 Comp., p. 235).

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, Telephone: 202–634–6441 or Mrs. Carolyn H. Twohy, Chief, Administrative Services Division, Agency Records Officer, Telephone in Balboa Heights, Republic of Panama: 011–507–52–7757.

SUPPLEMENTARY INFORMATION: On March 18, 1991, the Panama Canal Commission published in the **Federal Register** at 56 FR 11373 an interim rule promulgating predisclosure notification procedures under the Freedom of Information Act for confidential commercial information, pursuant to Executive Order 12600 of June 23, 1987. The public was provided a 60-day comment period which ended on May 17, 1991. No comments were received during this period.

This rule is not a major rule for the purposes of Executive Order 12291 and it will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act. This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et. seq.

The publication of this notice is made in accordance with the Administrative Procedure Act, 5 U.S.C. 551, et. seq.

List of Subjects in 35 CFR Part 9

Confidential business information, Freedom of information, Organization and functions (Government agencies), Panama Canal, Statistics.

Accordingly, the interim rule amending 35 CFR part 9 published at 56 FR 11373, March 18, 1991, is adopted as a final rule without change.

Dated: June 7, 1991.

Joseph J. Wood,

Director, Office of Executive Administration.

[FR Doc. 91–15099 Filed 6–25–91; 8:45 am]

BILLING CODE 3640–04–M

35 CFR Part 255

RIN 3207–AA16

Employee Responsibilities and Conduct

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission is removing and reserving part 255 of its regulations pending the finalization and approval of a revised agency ethics regulation. The Panama Canal Commission Code of Conduct passed by the Commission's Board of Directors pursuant to 22 U.S.C. 3622, and part 255, will be replaced upon the approval of the future part 255. Said Code of Conduct remains in effect.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara A. Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, 2000 L Street, NW., suite 550, Washington, DC 20036–4996 (202) 634–6441 or Mr. Theodore Lucas, General Attorney, Office of General Counsel, Panama Canal Commission, APO Miami 34011–5000 (telephone: 011–570–52–7511).

SUPPLEMENTARY INFORMATION: Since this action pertains to personnel of the Panama Canal Commission only, it is not necessary to issue a notice of proposed rulemaking under 5 U.S.C. 553. This regulation is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. Further, the Administrator of the Commission certifies pursuant to 5 U.S.C. 605(b) that the regulation does not have an impact on small entities and is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 35 CFR Part 255

Standards of conduct and ethics.

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PART 255—[REMOVED AND RESERVED]

For the reasons set forth in the summary, under authority 22 U.S.C. 3622, part 255 of title 35 of the Code of Federal Regulations is removed and reserved.

Dated: June 19, 1991.

Joseph J. Wood,

Director, Office of Executive Administration.

[FR Doc. 91-15098 Filed 6-25-91; 8:45 am]

BILLING CODE 3640-04-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 200

RIN 0596-AA24

Organization, Functions, and Procedures; Land Status Records System

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations establish the Forest Service Land Status Records System as the official repository for all realty records and land title documents for National Forest System lands. The records include an accurate account of acreage, condition of title, administrative jurisdiction, rights held by the United States, administrative and legal use restrictions, encumbrances, and access rights on land or interests in land in the National Forest System. The intended effect of the rule is to expedite the process of authenticating records in court proceedings and to provide adequate notice to the public of the content and availability of the records.

EFFECTIVE DATE: This rule is effective June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Paul Haarala or Dennis Moonier, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 (202) 453-8353.

SUPPLEMENTARY INFORMATION: The Transfer Act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472), the Weeks Act of March 1, 1911 (36 Stat. 963; 16 U.S.C. 521), and title III of the Bankhead-Jones Farm Tenant Act and acts supplemental to and amendatory thereof impose a duty upon the Secretary of Agriculture to execute the laws affecting lands permanently reserved, held, and administered as National Forests or for National Forest purposes. The National Forest Management Act of 1976 (90 Stat. 2949; 16 U.S.C. 1600) requires that the Secretary of Agriculture develop and maintain an appropriately detailed inventory of all National Forest System lands and resources.

The Land Status Records System was developed and is protected and maintained to be responsive to requests for land status, such as title condition, acreage, use restrictions, encumbrances, and so forth, for varying geographic National Forest areas, in response to Forest Service program needs and other Federal, State, and private inquiries. The system also provides land status information for recurring reports such as the annual National Forest System Land Areas Report, Payments-in-Lieu-of-Taxes report, and the 25 percent fund receipts distributed to States and counties report and for responding to special Congressional inquiries and other requests and studies.

For years, the Forest Service has established its land status records policies and procedures through the Agency's internal directive system. However, because of the legal status and value of these permanent records, there is a need to establish at a higher level of policy than internal Agency directive the minimum requirements governing Forest Service recordation, custody, maintenance, display, and use of official land status records. For instance, at present, the government has to authenticate the validity of its records in each court proceeding. This regulation will expedite this process.

Therefore, this rule establishes and gives public notice that the Land Status Records System contains the official records evidencing the landownership title, status, and jurisdiction for all National Forest System lands. The rule also establishes the broad components of the system and requirements for display, maintenance, and custody of these official land status and title records.

The Land Status Records System contains, but is not limited to, the following information:

1. The jurisdiction over and condition of title to lands administered as part of the National Forest System;
2. All encumbrances on National Forest System lands;
3. All partial interests administered by the Forest Service as part of the National Forest System;
4. All use restrictions on National Forest System lands; and
5. The acreage of National Forest System lands, including riparian lands.

Information in the Land Status Records System is updated on a regular basis to reflect changes that affect identification of National Forest System lands such as changes in congressional district boundaries; changes in administrative units (i.e. National Forests and Ranger Districts); changes in county and other governmental units (i.e., townships, boroughs, etc.), and corrections reflecting more accurate land surveys.

Each National Forest System unit maintains a Land Status Atlas for that forest which contains base maps keyed to tabular summaries and narrative records available for use and inspection by other Federal, State, and private entities.

This rule is of a technical nature. The rule establishes administrative procedures to be used by Forest Service employees and has no effect on the public or on the manner in which the public conducts business with the Agency. The Land Status Records System has been in existence for decades. The information in the records system and the manner in which it is collected, recorded, displayed, and maintained are, of necessity, determined by the Agency to meet its statutory responsibilities for management of the National Forest System.

The objective of the rule is (1) to simplify reference to, and recognition of, the land status records information in legal proceedings, (2) to assure proper authentication, custody, maintenance, and display of these records by Forest Service employees, and (3) to provide notice to the public of the content and availability of the records for public use at each National Forest System unit and each Forest Service headquarters office (36 CFR 200.2).

Environmental Impact

Based on both experience and environmental analysis, this final rule will have no significant effect on the human environment, individually or cumulatively. The rule involves routine administrative procedures of the Agency, and therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4; 7 CFR part 1b).

Controlling Paperwork Burdens on the Public

This rule does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and therefore imposes no paperwork burden on the public. The burden of maintaining the records established by this rule rests solely on the Forest Service.

Regulatory Impact

This final rule is a technical rule related solely to internal Agency management and as such is not subject to review under USDA procedures and Executive Order 12291 on Federal Regulations.

Moreover, this rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities. The rule imposes no requirements on the public.

Further, because this rule relates to internal agency management, it is, pursuant to 5 U.S.C. 553, not necessary to provide prior notice and opportunity to comment, and this rule may, therefore, be made effective less than 30 days from publication in the **Federal Register**.

List of Subjects in 36 CFR Part 200

Administrative practice and procedure, Freedom of information, and Organization and functions (Government agencies).

Therefore, for the reasons set forth in the preamble, part 200 of chapter II of title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 200—[AMENDED]

1. The authority citation for part 200 is revised to read as follows:

Authority: 5 U.S.C. 552; 16 U.S.C. 472i, 521, and 1603.

2. Add a new § 200.12 to read as follows:

§ 200.12 Land status and title records.

(a) *Land Status records System.* The Land Status Records System is the official, permanent repository for all realty records and land title documents for national Forest System lands. It includes an automated database which contains an accurate account of: Acreage, condition of title, administrative jurisdiction, rights held by the United States, administrative and legal use restrictions, encumbrances, and access rights on land or interests in land in the National Forest System.

(1) *Components.* The system shall include, but is not limited to, the following components:

(i) A current and accurate Land Status Atlas for each National Forest, National Grassland, and other proclaimed or designated administrative unit, which shall graphically portray on maps keyed to a tabular summary the following categories of information:

(A) Jurisdiction of and condition of title to lands administered as part of the National Forest System.

(B) All encumbrances on National Forest System lands.

(C) All partial interests administered by the Forest Service on other lands.

(D) All use restrictions, withdrawals, and special designated areas on National Forest System lands.

(E) The acreage of National Forest System lands, including riparian lands.

(ii) A master Land Status File, from which the data for the Atlas is derived and which includes the following:

(A) Discrete title files of each landownership adjustment.

(B) The original authorizing documents establishing or adjusting National Forest System lands and interests therein.

(C) Withdrawals, use restrictions, and special designated areas on National Forest System lands.

(D) Other information as deemed necessary.

(iii) Such reporting systems as are needed to provide title or status reports.

(2) *Display of Information.* Information in the system may be collected and maintained in narrative, graphic, tabular, or other form and may be entered into and maintained in automated systems as well as produced in paper form in accordance with such administrative direction as the Chief of the Forest Service or Regional Foresters may establish.

(b) *Availability.* A Land Status Atlas shall be maintained at each National Forest administrative unit or subunit, such as Ranger Districts or National Recreation Area offices. Each Regional Office shall maintain copies of the Atlas for all National Forests within that Region. Related land title and realty records for each National Forest System unit shall be maintained at the administrative headquarters of that unit. The Land Status Atlas and such title and realty records as are held at an administrative unit shall be available for public inspection.

Dated: June 13, 1991.

James R. Moseley,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 91-15199 Filed 6-25-91; 8:45 am]

BILLING CODE 3410-01-M

36 CFR Part 262

Reward for Information Leading to the Arrest and Conviction of Any Person Charged with Damaging or Stealing Any Portion of the Pacific Yew Tree

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the amount of reward that may be offered for information leading to the arrest and conviction of any person charged with damaging or stealing the Pacific yew tree, *Taxus brevifolia*, or any portion thereof, including but not limited to bark, twigs, needles and other foliage. The intended effect is to provide additional management and procedures for the protection of a national forest product that is vital to cancer research.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: F. Dale Robertson, Chief (2400), Forest Service, USDA, PO Box 96090, Washington, DC 20090-6090.

SUPPLEMENTARY INFORMATION: Each year approximately 12,000 women in the United States die of ovarian cancer. Taxol, an anticancer drug currently derived from Pacific yew tree bark, has proven to be an effective treatment for many patients in clinical trials conducted by the National Cancer Institute (NCI). It also shows promise in treatment of breast, lung and colon cancers. Taxol is in critical shortage, both for treatment and research. The medical community is very concerned about an adequate supply of yew bark to meet critical health care needs of citizens of the United States.

Pacific yew occurs on all major ownerships in the Northwest, with a major portion of the trees large enough to provide bark being located in the National Forests along the west-side of the Cascade Mountains in Oregon and Washington. Smaller amounts are located in eastern Oregon and Washington, and in Idaho, Montana, and northern California. Government efforts to provide materials effective in the treatment of cancer are being hampered by theft of Pacific yew bark from the National Forest System.

Recently, damage to and theft of Pacific yew trees and bark have occurred on three different national forests in three different states. The Secretary of Agriculture is authorized to "pay rewards from appropriations available for the protection and management of the national forests * * * for information leading to the arrest and conviction * * * for the unlawful taking of, or injury to, Government property." 16 U.S.C. 559a. Under current regulations at 36 CFR 262.1(a)(3) the reward that may be offered for information leading to the arrest and conviction of any person charged with destroying or stealing property of the United States cannot

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exceed $5,000. Based on the need to protect this important resource located on national forests, this rule increases the maximum amount of reward to $10,000 that may be offered for information leading to the arrest and conviction of any person charged with damaging or stealing the Pacific yew tree, *Taxus brevifolia*, or any portion thereof, including but not limited to bark, twigs, needles and other foliage.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined in Public Law No. 96-354, the Regulatory Flexibility Act, that is subject to the provisions of that Act. This rule involves internal agency management and procedures and has no impact on the quality of the human environment, individually or cumulatively. Therefore, documentation of the effects of the rule in an environmental assessment or an environmental impact statement is not required. This rule also does not contain new recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no additional paperwork burden on the public.

List of Subjects in 36 CFR Part 262

Law enforcement, National forests.

Therefore, for the reasons set forth in the preamble, part 262 of title 36 of the Code of Federal Regulations is amended as follows:

PART 262—LAW ENFORCEMENT SUPPORT ACTIVITIES

1. The authority citation for part 262 continues to read as follows:

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); 50 Stat. 559, as amended (7 U.S.C. 1011(f); 58 Stat. 788 (16 U.S.C. 590q).

Subpart A—Rewards and Payments

2. Amend § 262.1 by adding paragraph (a)(4) to read as follows:

§ 262.1 Rewards in connection with fire or property prosecutions.

* * * * *

(a) * * *

(4) Not exceeding $10,000 for information leading to the arrest and conviction of any person charged with damaging or stealing the Pacific yew tree, *Taxus brevifolia*, or any portion thereof, including but not limited to bark, twigs, needles and other foliage.

* * * * *

Signed in Washington, DC, on June 18, 1991.

Edward E. Madigan,

Secretary of Agriculture.

[FR Doc. 91-15200 Filed 6-25-91; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL-3965-6]

New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); Delegation of Authority to the State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This document announces an extension of the delegation of authority agreement by EPA to the state of Nebraska. Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of EPA to delegate to a state government authority to implement and enforce the air pollution standards promulgated by EPA under 40 CFR parts 60 and 61. This delegation gives Nebraska that authority.

EFFECTIVE DATE: June 28, 1991.

ADDRESSES: All requests, reports, applications, submittals, and such other communications required to be submitted under 40 CFR parts 60 and 61, including notifications required to be submitted under subpart A or the regulations, for affected facilities or activities in Nebraska should be sent to Chief, Air Quality Division, Nebraska Department of Environmental Control, P.O. Box 98922, Statehouse Station, Lincoln, Nebraska 68509. A copy of all notices required by Subpart A also must be sent to Director, Air and Toxics Division, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley, Air Planning and Development Section, Air Branch, Environmental Protection Agency, Region VII, at the above address or by calling (913) 551-7020 (FTS 276-7020).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of the EPA to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR parts 60 and 61. EPA retains concurrent authority to implement and enforce the delegated standards. The delegation shifts the primary responsibility for implementation and enforcement of the standards from EPA to the state government.

On August 7, 1984, EPA and the state of Nebraska entered into a delegation of authority agreement whereby Nebraska automatically receives authority to implement and enforce federal NSPS and NESHAP standards upon the adoption of the standards by the state government. (See 50 FR 963.)

Nebraska revised its rules to adopt, by reference, the NSPS standards for 40 CFR part 60, subparts Dc, III, NNN, QQQ, SSS, TTT, and VVV and the NESHAPS for 40 CFR part 61, subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, and FF. The adoption action and regulation changes became effective on February 20, 1991. The Nebraska Department of Environmental Control informed EPA of the adoption action in a letter dated March 6, 1991. EPA subsequently acknowledged the adoption and the corresponding delegation of authority in a letter to NDEC on May 13, 1991. The delegation occurred under the terms of the above mentioned August 7, 1984, automatic delegation of authority agreement.

EPA hereby notifies interested individuals that, effective February 20, 1991, EPA delegated the authorization to implement and enforce the federally established standards for 40 CFR parts 60 and 61, subparts identified above, to the state of Nebraska.

This notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: May 23, 1991.

Morris Kay,

Regional Administrator.

[FR Doc. 91-14340 Filed 6-25-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 180 and 185

[OPP-300226A; FRL-3962-3]

RIN 2070-AB78

Dichlorvos; Revocation of Tolerance and Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerance for residues of the pesticide dichlorvos (2,2-dichlorovinyl dimethyl phosphate), also known as DDVP, in or on figs and the food additive regulation for dried figs. EPA is initiating this action because there are no remaining domestic registrations for the use of DDVP on figs.

EFFECTIVE DATE: This regulation becomes effective June 26, 1991.

ADDRESSES: Written objections, identified by the document control number, (OPP-300226A), may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Sepehr Haddad, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, rm. 2N5, Westfield Building, 3rd Floor, 2805 Jefferson Davis Hwy., Arlington, VA (703)-308-8027.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 13, 1991 (56 FR 5788), EPA issued a proposed rule to revoke the tolerance in or on figs, and the food additive regulation for dried figs, under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), for the pesticide dichlorvos (2,2-dichlorovinyl dimethyl phosphate), also known as DDVP. This revocation was proposed because DDVP is no longer registered for use on figs, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use. Tolerances for residues of DDVP, expressed as parts per million (ppm) in or on raw agricultural commodities, are codified in 40 CFR 180.235. A tolerance of 0.1 ppm is set for residues of DDVP in or on figs. A food additive tolerance of 0.5 ppm for residues of DDVP in or on dried figs is codified in 40 CFR 185.1900.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the revocations will protect the public health. Therefore, the regulations are amended as set forth below.

Any person adversely affected by this regulation revoking the tolerance may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue.

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

This rule has been reviewed by the Office of Management and Budget as required under section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 11, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR parts 180 and 185 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for 40 CFR part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.235 [Amended]

b. Section 180.235 *2,2-Dichlorovinyl dimethyl phosphate*, is amended in paragraph (a) by removing from the table therein the entry for figs.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346.

b. Section 185.1900 is revised to read as follows:

§ 185.1900 2,2-Dichlorovinyl dimethyl phosphate.

The food additive 2,2-dichlorovinyl dimethyl phosphate may be present as a residue from application as an insecticide on packaged or bagged nonperishable processed food (see: 21 CFR 170.3(j)) in an amount in such food not in excess of 0.5 part per million (ppm). To assure safe use of the insecticide, its label and labeling shall conform to the label and labeling registered by the U.S. Environmental Protection Agency, and the usage employed shall conform with such label or labeling.

[FR Doc. 91-14957 Filed 6-25-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 372

[OPTS-42064A; FRL-3961-2]

Toxic Chemical Release Reporting; Community Right-To-Know; Sunset Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final regulation pertaining to the "sunset" provision of 40 CFR 372.30(e), the rule that implements section 313 of the Emergency Planning and Community Right-to-Know Act. Sunset provisions are deliberately designed to lapse after a certain period of time, unless explicitly extended. The range reporting option on the section 313 reporting form—allowing releases of less than 1,000 pounds of section 313 chemicals to be reported within specified ranges (e.g., 0 to 499 pounds) rather than as a specific number—would lapse after the 1990 reporting year if no action is taken. This final rule retains range reporting with only minor modifications. The preamble to the section 313 final rule also committed EPA to review the benefits of optional reporting on pollution prevention. The form that implements section 313 reporting for 1990 retains this optional section. Finally, this rule also replaces EPA Form R and Instructions in the Code of Federal Regulations (CFR) with a Notice of Availability and a listing of reportable data elements.

EFFECTIVE DATE: The rule becomes effective June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Sunset Project Manager, Office of Toxic Substances (TS-779), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone (202) 475-7449 or, The Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail stop OS-120, 401 M St, SW., Washington, DC 20460,

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Toll free: 800-535-0202, In Northern Virginia, and Alaska, 703-920-9877.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This rulemaking is issued under section 313 of The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023).

B. Background

The final rule that implemented the toxic chemical release reporting form (EPA Form R) under section 313 (40 CFR part 372) and the reporting instructions contained a range reporting provision that would lapse after 1989 reporting unless EPA took specific action to retain it.

The range reporting option (40 CFR 372.30(e)) provided an alternative means of reporting relatively small quantities of chemical releases. Releases to the environment or off-site transfers of less than 1,000 pounds were reported in ranges (0 pounds, 1 to 499 pounds, 500 to 999 pounds) rather than as specific estimates. Specifically, part III, questions 5.1 to 5.5 on EPA Form R provided range reporting options for environmental releases of less than 1,000 pounds, while questions 6.1 and 6.2 allowed range reporting for transfers to publicly-owned treatment works and other off-site locations.

The sunset provision was included to insure Agency review of the utility of the range reporting option. In addition, the Agency also committed to reviewing another provision of Form R, the collection of optional pollution prevention data. Submitters of Form R may supply data on the impacts of their pollution prevention practices as they affect releases reported on the toxic chemical release reporting form. The optional question 8 on Form R allows submitters to indicate the type of pollution prevention modification undertaken, the amount of change (in pounds or as a percent) in waste quantity, a production index, and the reason for taking pollution prevention actions.

II. Range Reporting

Range reporting provided an option for reporting releases of less than 1,000 pounds per year to be reported as a check-off in one of three columns, 0 pounds, 1 to 499 pounds, and 500 to 999 pounds, rather than as a specific estimate for the release amount.

In the **Federal Register** of January 11, 1991 (56 FR 1154), EPA proposed to retain range reporting with a minor modification to provide for a low-end range (1 to 10 pounds) and to eliminate 0 as a range value. The Agency received comments from the National Association of State Title III Program Officials (NASTTPO), the State of Minnesota's Department of Public Safety, and a total of 16 comments from industry on this proposed rulemaking.

Thirteen commenters supported the Agency in its proposal to retain, but slightly modify the range reporting. For example, one commenter agreed that for purposes of reporting under EPCRA a "...range will adequately address the release reporting requirement while minimizing the burden of collecting data or performing time-consuming calculations." Another commenter said that dropping the zero from range reporting and simply stating there are zero emissions is a positive change.

Five commenters wanted to retain the range reporting as it is now with no modifications. One felt that modifying the ranges would make it difficult to compare data generated before and after the change. Another commented that a range of 1 to 10 could cause misunderstandings as to data precision and that if a facility can differentiate releases of 1 to 10 pounds that facility could simply list the specific pounds on the Form R. Another commenter suggested extending the low-end range to 1 to 99 pounds, on the grounds that a 1 to 10 pound range might reveal confidential business information on process and product information.

The Agency believes that the minor modification to the range reporting will have little impact on historical comparisons and will be more representative of low-end releases. The low-end range representative of minor releases is based on the recommendation of industry. The commenter that suggested the 1 to 10 pound range might compromise the confidentiality of product formulations, provided no information as to why a 1 to 99 pound range would be more protective of such confidentiality.

Commenters had only minor objections to the proposed modifications to the reporting scheme, and there was general agreement that the changes would increase the accuracy of reporting without significantly increasing the reporting burden. Accordingly, after reviewing these comments EPA has decided to retain range reporting with the one modification as proposed. A range of 1 to 10 has been added to the range reporting to capture small releases without the implication that they may be as large as 499 pounds. The options for range reporting are therefore: 1 to 10 pounds, 11 to 499 pounds, and 500 to 999 pounds. The "zero" has been dropped as a "range". Facilities that are confident that they have zero emissions would report them specifically as a "0". If, for any given release line item there is no possibility of release of that chemical to that environmental media, the facility may enter "NA".

III. Optional Pollution Prevention Reporting

Another provision discussed in the preamble of the proposed rule was the option to report waste minimization data as a means of documenting the pollution prevention practices at a facility. This optional question includes data on the degree of waste minimization (either pounds reduced or percent reduction) as well as information on the type of pollution prevention activity, the reason for undertaking it, and changes in production levels that might account for increases or decreases in chemical releases.

The Agency requested comments on whether the optional pollution prevention question should be retained. The Agency also asked for comment on how this data is being used, the value to the user, what can be learned from the data, and the least burdensome way to collect the information. Eleven of the 16 commenters addressed the pollution prevention reporting issue. Six supported the Agency's proposal and four supported it as long as the question remained optional, but would object if such reporting were required in future Toxic Release Inventory (TRI) reports. One commenter wanted the pollution prevention question eliminated entirely, and was concerned that should the information be required the costs of responding would be burdensome and duplicative. Other commenters suggested eliminating the optional question to avoid overlap with the new source reduction and recycling questions mandated by section 7 of the Pollution Prevention Act of 1990 (PPA).

Industry response on how pollution prevention data was used was limited. However, one commenter did say the Agency would not be able to use the data submitted under TRI because submission of the data is voluntary and limited in scope and as a result sampling is skewed and insufficient to identify industry trends. The commenter suggested the Agency develop an alternative reporting mechanism for collecting pollution prevention data that would include all waste streams and not limit reporting to only section 313 chemicals (which gives an incomplete picture of a facility's waste reduction efforts).

EPA does believe the retention of optional data for the 1990 reporting year will still be useful to identify pollution prevention actions on a company and chemical-specific basis. However, PPA section 7 mandates that specific data elements be gathered on source reduction and recycling activities beginning with the 1991 reporting year. The Agency intends to publish a proposed rule in the near future to add the new mandatory reporting requirements to Form R. This expanded set of questions will replace the optional section 8 of Form R.

IV. Removal of EPA Form R and Instructions from the CFR

Finally, EPA proposed a technical modification to the regulation that would remove EPA Form 9350-1 (Form R) and instructions from the CFR. They would be replaced by a listing of reportable data elements plus a Notice of Availability of the most current version of the form and instructions. Seven commenters concurred with the Agency's proposal, as a cost saving move and because this action would be consistent with removal of forms and instructions for other programs from the CFR. One commenter objected to this change stating that this proposal presents a serious due process problem. "Specifically, facilities submitting Form Rs could be subject to changing Agency interpretation of what constitutes a correct Form R response, with virtually no notice." As stated in the proposal, it has become standard practice for the Agency to replace form and instruction documents in the CFR with a notice of availability and a listing of reportable elements. EPA believes that this does not represent a serious due process problem because any substantive addition or deletion of form elements will always be subject to notice and comment rulemaking. Therefore, the Agency is amending the rule by substituting a Notice of Availability of the most current form and reporting instructions plus a listing of reportable data elements. Note that from proposal to final rulemaking some minor revisions have occurred in the regulatory text. These changes are either for clarification or were inadvertent omissions relative to required reporting elements.

V. Rulemaking Record

The record supporting this rule is contained in docket control number OPTS-400046A. All documents are available to the public in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, rm. NE-G004, 401 M St., SW., Washington, DC 20460.

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of $100 million or more.

This rule has no significant impact on the section 313 reporting requirements for covered facilities since it essentially retains the status quo with only minor changes to the range reporting option. Therefore, this is a minor rule under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the proposed rule retains the status quo, the Agency certifies that small entities will not be significantly affected by the rule.

C. Paperwork Reduction Act

This rule retains reporting provisions cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. under control number 2070-0093.

List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Pollution prevention, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 11, 1991.

William K. Reilly,

Administrator.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

2. Section 372.30 is amended by revising paragraphs (a), (b)(3)(i), (b)(3)(iv), and removing paragraph (e) to read as follows:

§ 372.30 Reporting requirements and schedule for reporting.

(a) For each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25 at its covered facility described in § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1) in accordance with the instructions referred to in subpart E of this part.

(b) * * *

(3) * * *

(i) If the owner or operator knows the specific chemical identity of the toxic chemical and the specific concentration at which it is present in the mixture or trade name product, the owner or operator shall determine the weight of the chemical imported, processed, or otherwise used as part of the mixture or trade name product at the facility and shall combine that with the weight of the toxic chemical manufactured (including imported), processed, or otherwise used at the facility other than as part of the mixture or trade name product. After combining these amounts, if the owner or operator determines that the toxic chemical was manufactured, processed, or otherwise used in excess of an applicable threshold in § 372.25, the owner or operator shall report the specific chemical identity and all releases of the toxic chemical on EPA Form R in accordance with the instructions referred to in subpart E of this part.

* * * * *

(iv) If the owner or operator has been told that a mixture or trade name product contains a toxic chemical, does not know the specific chemical identity of the chemical and knows the specific concentration at which it is present in the mixture or trade name product, the owner or operator shall determine the weight of the chemical imported, processed, or otherwise used as part of the mixture or trade name product at the facility. Since the owner or operator does not know the specific identity of the toxic chemical, the owner or operator shall make the threshold determination only for the weight of the toxic chemical in the mixture or trade name product. If the owner or operator determines that the toxic chemical was imported, processed, or otherwise used as part of the mixture or trade name product in excess of an applicable threshold in § 372.25, the owner or operator shall report the generic chemical name of the toxic chemical, or a trade name if the generic chemical name is not known, and all releases of the toxic chemical on EPA Form R in

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accordance with the instructions referred to in subpart E of this part.

* * * * *

3. Section 372.65 is revised to read as follows:

§ 372.65 Toxic chemical release reporting form and instructions.

(a) *Availability of reporting form and instructions.* The most current version of EPA Form R (EPA Form 9350-1 and subsequent revisions) and the instructions for completing this form may be obtained by writing to the Section 313 Document Distribution Center, P.O. Box 12505, Cincinnati, OH 45212. EPA also encourages facilities subject to this part to submit the required information to EPA by using magnetic media (computer disk or tape) in lieu of Form R. Instructions for submitting and using magnetic media may also be obtained from the address given in this paragraph.

(b) *Form elements.* Information elements reportable on EPA Form R or equivalent magnetic media format include the following:

(1) An indication of whether the report:

(i) Claims chemical identity as trade secret.

(ii) Covers the entire facility or part of a facility.

(2) Signature of a senior management official certifying the following: "I hereby certify that I have reviewed the attached documents and, to the best of my knowledge and belief, the submitted information is true and complete and that amounts and values in this report are accurate based upon reasonable estimates using data available to the preparer of the report."

(3) Facility name and address including the toxic chemical release inventory facility identification number if known.

(4) Name and telephone number for both a technical contact and a public contact.

(5) The four-digit SIC code(s) for the facility or establishments in the facility.

(6) Latitude and longitude coordinates for the facility.

(7) The following facility identifiers:

(i) Dun and Bradstreet identification number.

(ii) EPA identification number (RCRA I.D. Number).

(iii) NPDES permit number.

(iv) Underground Injection Well Code (UIC) identification number.

(8) The name(s) of receiving stream(s) or water body to which the chemical is released.

(9) Name of the facility's parent company and its Dun and Bradstreet identification number.

(10) Name and CAS number (if applicable) of the chemical reported.

(11) If the chemical identity is claimed trade secret, a generic name for the chemical.

(12) A mixture component identity if the chemical identity is not known.

(13) An indication of the activities and uses of the chemical at the facility.

(14) An indication of the maximum amount of the chemical on site at any point in time during the reporting year.

(15) Information on releases of the chemical to the environment as follows:

(i) An estimate of total releases in pounds per year (releases of less than 1,000 pounds per year may be indicated in ranges) from the facility plus an indication of the basis of estimate for the following:

(A) Fugitive or non-point air emissions.

(B) Stack or point air emissions.

(C) Discharges to receiving streams or water bodies including an indication of the percent of releases due to stormwater.

(D) Underground injection on site.

(E) Releases to land on site.

(ii) [Reserved]

(16) Information on transfers of the chemical in wastes to off-site locations as follows:

(i) For transfers to Publicly Owned Treatment Works (POTW):

(A) The name and address (including county) of each POTW to which the chemical is transferred.

(B) An estimate of the amount of the chemical transferred in pounds per year (transfers of less than 1,000 pounds per year may be indicated as a range) and an indication of the basis of the estimate.

(ii) For transfers to other off-site locations:

(A) The name, address (including county), and EPA identification number (RCRA I.D. Number) of each off-site location, including an indication of whether the location is owned or controlled by the reporting facility or its parent company.

(B) An estimate of the amount of the chemical in waste transferred in pounds per year (transfers of less than 1,000 pounds may be indicated in ranges) to each off-site location, and an indication of the basis for the estimate and an indication of the type of treatment or disposal used.

(17) The following information relative to waste treatment:

(i) An indication of the general type of wastestream containing the reported chemical.

(ii) The treatment method applied to the wastestream.

(iii) An indication of the concentration of the chemical in the wastestream prior to treatment.

(iv) An estimate in percent of the efficiency of the treatment plus an indication of whether the estimate is based upon operating data.

(v) An indication (use is optional) of whether treatments listed are part of a treatment sequence.

(18) Pollution prevention data (reporting is optional) which includes the type of pollution prevention modification, quantity of the chemical in the wastes prior to treatment and disposal (for both the current and prior reporting year), a production index, and the reason for the pollution prevention action. This optional reporting expires after the 1990 reporting year.

[FR Doc. 91-15063 Filed 6-25-91; 8:45 am]

BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-21 and 201-22

Implementation of the FIRMR Improvement Project; Correction

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule; correction.

SUMMARY: This document implements technical corrections to a final rule regarding republication of the Federal Information Resources Management Regulation (FIRMR), 41 CFR chapter 201, that began on page 53386 in the **Federal Register** of Friday, December 28, 1990, (55 FR 53386).

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr., GSA, Office of Information Resources Management Policy, telephone (202) 501-3194 or FTS 241-3194 (v) or (202) 501-0657 or FTS 241-0657 (tdd).

In 41 CFR chapter 201 Implementation of the FIRMR Improvement Project; Final Rule, Republication of Chapter (FR Doc. 90-30137), beginning on page 53386 in the issue of Friday, December 28, 1990, make the following corrections.

PART 201-21—[CORRECTED]

§ 201-21.603 [Corrected]

1. On page 53405, in the third first column, in § 201-21.603(d)(4)(iii) is corrected to read "No recording of identification of public callers;".

2. On page 53405, in the first column, in § 201-21.603(e) the third line should read "21.603(c) (2), (3), and (4) of this section.".

PART 201-22—[CORRECTED]

§ 201-22.100 [Corrected]

3. On page 53405, in the third column, in § 201-22.100, the seventh line is corrected to add "in executive agencies" after resources.

Dated: June 19, 1991.

Margaret Trumbich,

Chief, Regulations Branch.

[FR Doc. 91-15109 Filed 6-25-91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 4, 59a, and 64

RIN 0905-AA66

National Library of Medicine Programs

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: These regulations govern the programs of the National Library of Medicine (NLM). The regulations permit the Regional Medical Libraries to recover part or all of the costs of providing photocopies of biomedical materials; improve readability of the regulations; and update references to statutory authorities and uniform administrative requirements.

EFFECTIVE DATE: These regulations are effective June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Migliore on (301) 496-4606.

SUPPLEMENTARY INFORMATION: These regulations, which pertain to the National Library of Medicine in whole or in part, were proposed for revision as part of the Department's effort to simplify and update its regulations. The notice of proposed rulemaking was published in the **Federal Register** on February 11, 1985. The public was given 60 days in which to comment on the proposed regulations.

No public comments were received and these regulations are the same as the proposed regulations, except for minor editorial changes. However, the enactment of the Health Research Extension Act of 1985 (Pub. L. 99-158) on November 20, 1985, caused renumbering and revision of the provisions of the Public Health Service Act (PHS Act) that authorize the NLM programs. The new PHS Act section numbers are included in this final rule. In addition, certain provisions of Public Law 99-158 provided the Directors of the national research institutes of the National Institutes of Health with new traineeship authority (section 405(b)(1)(C) of the PHS Act) that resulted in the decision to revise the existing regulations in 42 CFR part 63, rather than revoke as originally planned. Revisions to part 63 will be published in a new notice of proposed rulemaking at a future date.

Finally, the regulations that comprise this final rule are clarified and condensed as a result of the elimination of regulatory provisions that are obsolete, or that are already set forth in the HHS uniform requirements for the administration of financial assistance in 45 CFR part 74.

Information Collection Requirements

This final rule contains information collections which have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned control number 0925-0276. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: National Library of Medicine Programs, 42 CFR part 4.

Description: These regulations govern access to the National Library of Medicine's facilities and library collections and the availability of its bibliographic, reproduction, reference, and related services.

Description of Respondents: Individuals, State or local governments, businesses or other for-profit organizations, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Title: National Library of Medicine Grants, 42 CFR part 59a, Subpart A, Establishing, Expanding, and Improving Basic Resources.

Description: This subpart applies to grants of funds, materials, or both, for establishing, expanding, and improving basic medical library resources.

Description of Respondents: State or local governments, non-profit institutions.

Title: National Library of Medicine Grants, 42 CFR part 59a, Subpart B, Establishment of Regional Medical Libraries.

Description: This subpart applies to grants, contracts and cooperative agreements awarded for the establishment, expansion, and improvement of basic medical library resources.

Description of Respondents: State or local governments, non-profit institutions.

Title: National Library of Medicine Training Grants, 42 CFR part 64.

Description: These regulations apply to grants under section 472 of the Public Health Service Act to public and private non-profit institutions to assist in developing, expanding, and improving training programs in library science and the field of communications of information pertaining to sciences relating to health.

Description of Respondents: State or local governments, non-profit institutions.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden for response	Annual burden hours
4.5 (NLM Reader Service Document Requests) Uses NIH 1665-1	25,000	On occasion	0.03	9,000
59a.4, 59a.14, 64.4 & 64.7 (Library Expansion Grants and Training Grants) Uses PHS 398 and 2271	164	1	15.00	2,460
64.7 (Report on Individual Trainees)	10	1	.15	1.5
Total				11,461

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We received no public comments on the estimated public reporting burden.

Regulatory Impact and Regulatory Flexibility Analysis

These regulations are revised to improve readability, remove obsolete provisions, and permit certain fees to be recovered. The economic impact of this is expected to be minor. For these reasons, the Secretary has determined that this rule is not a "major rule" under Executive Order No. 12291 and a regulatory impact analysis is not required. Further, these regulations will not have a significant economic impact on a substantial number of small entities and, therefore, do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6).

Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance number* program affected by this final rule is: 13.879 Medical Library Assistance.

List of Subjects in 42 CFR Parts 4, 59a, and 64

Educational study programs, Grant programs—Education, Grant programs—Health, Libraries, Manpower training programs, Medical research.

Accordingly, parts 4, 59a, and 64 of title 42 of the Code of Federal Regulations are revised to read as set forth below.

Dated: November 9, 1990.

James O. Mason,

Assistant Secretary for Health.

Approved: April 3, 1991.

Louis A. Sullivan,

Secretary.

PART 4—NATIONAL LIBRARY OF MEDICINE

Sec.

4.1 Programs to which these regulations apply.
4.2 Definitions.
4.3 Purpose of the Library.
4.4 Use of Library facilities.
4.5 Use of materials from the collections.
4.6 Reference, bibliographic, reproduction, and consultation services.
4.7 Fees.
4.8 Publications of the Library and information about the Library.

Authority: 42 U.S.C. 216, 286.

§ 4.1 Programs to which these regulations apply.

(a) The regulations of this part govern access to the National Library of Medicine's facilities and library collections and the availability of its bibliographic, reproduction, reference, and related services. These functions are performed by the Library directly for the benefit of the general public and health-sciences professionals as required by sections 465(b) (3)–(6) of the Act (42 U.S.C. 286(b) (3)–(6)).

(b) The regulations of this part do not apply to:

(1) The Library's internal functions relating to the acquisition and preservation of materials and the organization of these materials as required by sections 465(b) (1) and (2) of the Act (42 U.S.C. 286(b) (1) and (2)).

(2) The availability of "records" under the Freedom of Information Act or the Privacy Act of 1974 (5 U.S.C. 552, 552a). These matters are covered in 45 CFR parts 5 and 5b.

(3) Federal assistance for medical libraries and other purposes which are authorized by sections 469–477 of the Act (42 U.S.C. 286b to 286b–6). (See parts 59a, 61 and 64 of this chapter.)

(4) The availability of facilities, collections, and related services of Regional Medical Libraries established or maintained under the authority in section 475 of the Act (42 U.S.C. 286b–6). (See part 59a, subpart B of this chapter.)

§ 4.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

Collections means all books, periodicals, prints, audiovisual materials, films, videotapes, recordings, manuscripts, and other resource materials of the library. It does not include data processing tapes or programs used solely for internal processing activities to generate reference materials, nor does it include "records" of the Library as defined in 45 CFR 5.5. Records of the Library are available in accordance with the regulations under the Freedom of Information Act and Privacy Act of 1974. (See 45 CFR parts 5 and 5b.)

Director means the Director of the National Library of Medicine or the Director's delegate.

Health-sciences professional means any person engaged in: (1) The administration of health activities; (2) the provision of health services; or (3) research, teaching, or education concerned with the advancement of medicine or other sciences related to health or improvement of the public health.

Historical collection means: (1) Materials in the collections published or printed prior to 1914; (2) manuscripts and prints; (3) the archival film collection; and (4) other materials of the collections which, because of age, or unique or unusual value, require special handling, storage, or protection for their preservation, as determined by the Director.

Library means the National Library of Medicine, established by section 465 of the Act (42 U.S.C. 286).

Regional Medical Library means a medical library established or maintained as a regional medical library under section 475 of the Act (42 U.S.C. 286b–6).

§ 4.3 Purpose of the Library.

The purpose of the Library is to assist the advancement of medical and related sciences and aid the dissemination and exchange of scientific and other information important to the progress of medicine and the public health. The Library acquires and maintains library materials pertinent to medicine, including audiovisual materials; compiles, publishes, and disseminates catalogs, indices, and bibliographies of these materials, as appropriate; makes available materials, through loan or otherwise; provides reference and other assistance to research; and engages in other activities in furtherance of this purpose.

§ 4.4 Use of Library facilities.

(a) *General.* The Library facilities are available to any person seeking to make use of the collections. The Director may prescribe reasonable rules to assure the most effective use of facilities by health-sciences professionals and to protect the collections from misuse or damage. These rules must be consistent with the regulations in this part and applicable Department regulations and policies on nondiscrimination.

(b) *Reading rooms.* Public reading rooms are available for obtaining and reading materials from the collections. The Director may prescribe reasonable rules designed to provide adequate reading space and orderly conditions and procedures.

(c) *Study rooms.* Upon request a limited number of study rooms may be made available to individuals requiring extensive use of Library materials. Requests for study rooms shall be addressed in writing to the Director. The Director shall give priority, in the following order, for study room use to:

(1) Persons engaged in "special scientific projects" under section 473 of the Act (42 U.S.C. 286b–4),

(2) Health-sciences professionals, and

(3) The general public.

§ 4.5 Use of materials from the collections.

(a) *Unrestricted materials.* Except as otherwise provided in this section, materials from the collections are generally available to any interested person only in facilities provided by the Library for this purpose. The Director may prescribe additional reasonable rules to assure the most effective use of the Library's resources by health-sciences professionals and to protect the collections from misuse or damage. The rules must be consistent with the regulations in this part and applicable Department regulations and policies on nondiscrimination. Materials in the collections are available upon each request which assures, to the Director's satisfaction, that the materials will be safeguarded from misuse, damage, loss, or misappropriation, and will be returned promptly after use or upon request of the Library.

(b) *Restricted materials*—(1) *Historical collection.* Materials from the historical collection are available only as the Director may permit to assure their maximum preservation and protection. Copies of these materials may be made available in the form of microfilm and other copies, for which reasonable fees may be charged.

(2) *Gifts.* Materials in the collections are available only in accordance with any limitations imposed as a condition of the acquisition of those materials, whether the acquisition was by gift or purchase.

(c) *Loans*—(1) *General.* Requests for loans of materials must assure the Library that (i) the materials will be safeguarded from misuse, damage, loss, or misappropriation and (ii) the materials will be returned promptly after use or upon request of the Library. The Library may provide copies in lieu of original materials, which need not be returned unless otherwise stated at the time of the loan.

(2) *Loans of audiovisual materials.* Audiovisual materials are available for loan under the same general terms as printed materials.

(3) *Loans to other libraries.* Upon request materials or copies are available for use through libraries of public or private agencies or institutions. The requesting library must assure that it has first exhausted its own collection resources, those of other local libraries in the geographic area, and those of the Regional Medical Library network (including Regional and Resource Libraries) before making a request for a loan.

(4) *Loans to health-sciences professionals.* The Director may make loans of materials directly to health-sciences professionals. An individual wishing a loan of library materials must assure to the satisfaction of the Director that the individual is geographically isolated, in terms of distance or available transportation, from medical literature resources likely to contain the desired material.

(Approved by the Office of Management and Budget—Control Number 0925–0276)

§ 4.6 Reference, bibliographic, reproduction, and consultation services.

(a) *General.* To the extent resources permit, the Library will make available, upon request, reference, bibliographic, reproduction, and consultation services. Priority will be given to requests from health-sciences professionals for services not reasonably available through local or regional libraries.

(b) *Specialized bibliographic services.* The Director may provide bibliographies on individually selected medical or scientific topics upon request where it is consistent with the Library's purpose. The Director may publish and make available for general distribution by the Library, bibliographic searches determined to be of general interest. The Library may also produce and distribute a limited number of bibliographies on topics of general interest to public or nonprofit health-related professional societies, research organizations, and other group users. These bibliographies may be produced on a regularly recurring or intermittent basis under contract between the Library and public or nonprofit agencies, when determined in each case by the Director to be necessary to assure more effective distribution of the bibliographic information.

(c) *Information retrieval system computer tapes.* To the extent Library resources permit and in order to further the Library's purpose, the Director may make available upon request by agencies, organizations, and institutions copies of all or part of the Library's magnetic tapes.

§ 4.7 Fees.

The Director may charge reasonable fees for any service provided by the Library under this part, in accordance with a schedule available at the Library upon request, which are designed to recover all or a portion of the cost to the Library of providing the service.

§ 4.8 Publication of the Library and information about the Library.

Lists of bibliographies, Library publications sold by the Government Printing Office, necessary application forms, and other information concerning the organization, operation, functions, and services of the Library, are available from the National Library of Medicine, Bethesda, Maryland 20894.

PART 59A—NATIONAL LIBRARY OF MEDICINE GRANTS

Subpart A—Grants for Establishing, Expanding, and Improving Basic Resources

Sec.

59a.1 Programs to which these regulations apply.
59a.2 Definitions.
59a.3 Who is eligible for a grant?
59a.4 How are grant applications evaluated?
59a.5 Awards.
59a.6 How may funds or materials be used?
59a.7 Other HHS regulations that apply.

Subpart B—Establishment of Regional Medical Libraries

59a.11 Programs to which these regulations apply.
59a.12 Definitions.
59a.13 Who is eligible for a grant?
59a.14 How to apply.
59a.15 Awards.
59a.16 What other conditions apply?
59a.17 Other HHS regulations that apply.

Subpart A—Grants for Establishing, Expanding, and Improving Basic Resources

Authority: 42 U.S.C. 286b–2, 286b–5.

§ 59a.1 Programs to which these regulations apply.

(a) The regulations of this subpart apply to grants of funds, materials, or both, for establishing, expanding, and improving basic medical library resources as authorized by section 474 of the Act (42 U.S.C. 286b–5).

(b) This subpart also applies to cooperative agreements awarded for this purpose. In these circumstances, references to "grant(s)" shall include "cooperative agreements(s)."

§ 59a.2 Definitions.

Undefined terms have the same meaning as provided in the Act. As used in this subpart:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

Project period—See § 59a.5(c).

Related instrumentality means a public or private institution, organization, or agency, other than a medical library, whose primary function is the acquisition, preservation, dissemination, and/or processing of information relating to the health sciences.

Secretary means the Secretary of Health and Human Services and any other official of the Department of Health and Human Services to whom the authority involved is delegated.

§ 59a.3 Who is eligible for a grant?

Except as otherwise prohibited by law, any public or private nonprofit institution, organization, or agency authorized or qualified to carry on the functions of a medical library, and any

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public or private related instrumentality, is eligible for a grant under this subpart.

§ 59a.4 How are grant applications evaluated?

The Secretary shall evaluate grant applications using the officers and employees, and experts, consultants, or groups engaged by the Secretary for that purpose. The Secretary's evaluation shall consider the scope of library or related services for the population and purposes served by the applicant. This evaluation shall include consideration of the following information which must be set forth in the grant application and such other information the Secretary considers pertinent:

(a) Evidence of the applicant's efficiency in providing services,

(b) Amount of available equipment and other resources on hand to satisfy the needs of the area served by the facility,

(c) Extent of coordination with other libraries and related facilities, and

(d) Potential for testing or demonstration of new or improved techniques in health-sciences informational services.

(Approved by the Office of Management and Budget—Control Number 0925–0276)

§ 59a.5 Awards.

(a) *General.* Within the limits of funds available, the Secretary may award grants to those applicants whose proposals for establishments, expansion, or improvement will, in the Secretary's judgment, best promote the purposes of section 474 of the Act (42 U.S.C. 286b–5).

(b) *Determination of award amount.* An award may not exceed $750,000 or other amount established by law for any fiscal year. Subject to these limits, the Secretary shall determine the amount of any award on the basis of:

(1) The scope of medical-library or related services provided by the applicant for the population and purposes it serves considering:

(i) The number of graduate and undergraduate students, and physicians and other practitioners in health-related sciences making use of the applicant's library resources;

(ii) The type and availability of library support staff;

(iii) The type, size, and qualifications of the faculty of any school with which the applicant is affiliated;

(iv) The staff of any hospitals or clinics with which the applicant's library is affiliated;

(v) The geographic area served and, within that area, the medical-library or related services otherwise available; and

(2) The amount adequate to insure continuing financial support from non-Federal sources of the applicant's proposed activity during and after the period of award. The Secretary shall consider the level of non-Federal support for the proposed activity for periods prior to the fiscal year in which a grant is made. The Secretary shall require the applicant's assurance that non-Federal support will not be diminished as a result of the award and that adequate support for this activity will be continued during and after the period of Federal assistance.

(c) *Project period.* (1) the notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for one to five years.

(2) Generally, the grant will initially be for one year at a time and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(3) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award for any approved application or portion of an approved application.

§ 59a.6 How may funds or materials be used?

The grantee shall expend funds or use materials provided by a grant under this subpart solely for the purposes for which the funds or materials were granted, in accordance with the pertinent provisions of the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles in subpart Q of 45 CFR part 74.

§ 59a.7 Other HHS regulations that apply.

Several other regulations apply to grants under this subpart. These include, but are not necessarily limited to:

42 CFR part 50, subpart D—Public Health Service grant appeals procedure
45 CFR parts 6 and 8—Inventions and patents
45 CFR part 16—Procedures of the Departmental Grant Appeals Board
45 CFR part 74—Administration of grants
45 CFR part 75—Informal grant appeals procedures
45 CFR part 76 subparts A–F—Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace (grants)
45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964
45 CFR part 81—Practice and procedure for hearings under part 80 of this title
45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to state and local governments

Subpart B—Establishment of Regional Medical Libraries

Authority: 42 U.S.C. 286b–2, 286b–6.

§ 59a.11 Programs to which these regulations apply.

(a) This subpart applies to grants made under section 475 of the Act (42 U.S.C. 286b–6). Grants are awarded to medical libraries to enable them to serve as regional medical libraries for their geographic areas. The purpose of the program is to develop a national system of regional medical libraries, each of which would have sufficient facilities to supplement the services of other medical libraries in its region.

(b) The purpose of the program may also be supported by contracts. Since the primary purpose of these contracts is to assist regional libraries and is not for the purpose of acquiring supplies or services for use of the Federal Government, the provisions of the Federal Acquisition Regulation (48 CFR chapter 1) do not apply. Any contract awarded pursuant to section 475 of the Act shall be subject to the applicable provisions of this subpart.

§ 59a.12 Definitions.

Underfined terms have the same meaning as provided in the Act.

As used in this subpart:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

Annual operating expenses means the average annual operating expenses for the actual years of operation or an estimated amount based on the expenses of libraries or institutions of similar size and function.

Board means the Board of Regents of the National Library of Medicine established by section 465 of the Act (42 U.S.C. 286e).

Geographic area means an area that forms an academically and professionally integrated region. Factors considered are location and extent of communication facilities and systems, presence and distribution of educational and medical and health facilities and programs and other activities which, in the Secretary's opinion, justify the establishment and operation of a regional medical library.

Modify and increase means the use of Federal funds or materials to supplement rather than supplant non-Federal funds available for library resources and services.

Project period—See § 59a.15(b).

Secretary means the Secretary of Health and Human Services and any other official of the Department of Health and Human Services to whom the authority involved is delegated.

§ 59a.13 Who is eligible for a grant?

Except as otherwise prohibited by law, any public or private nonprofit organization which is authorized and qualified to operate a medical library is eligible for a grant under this subpart.

§ 59a.14 How to apply.

In addition to any other pertinent information which the Secretary may require, the applicant shall submit a grant application containing a detailed description of a program to provide health-sciences informational services for the geographic area in which it is located. The description shall include:

(a) The need for services;

(b) The adequacy of the applicant's existing or proposed facilities and resources to attain the purposes stated in the application;

(c) The size and nature of the population to be served;

(d) The region to be served;

(e) Cooperative arrangements in effect, or proposed, with other qualified organizations; and

(f) The justification for the funds requested.

(Approved by the Office of Management and Budget—Control Number 0925–0276)

§ 59a.15 Awards.

(a) *General.* The Secretary, with the advice of the Board in each case, shall award grants to those applicants whose arrangements and proposed services will, in the Secretary's judgment, have the greatest potential for fulfilling the need for a regional medical library. The Secretary, in determining the priority assigned an applicant, must consider:

(1) The adequacy of the applicant's library in terms of collections, personnel, equipment, and other facilities; and

(2) The size and nature of the population to be served in the applicant's region.

(b) *Project period.* (1) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for one to five years.

(2) Generally, the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(3) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award for any approved application or portion of an approved application.

§ 59a.16 What other conditions apply?

Although the Secretary may approve exceptions which are consistent with program purposes, in addition to other terms, conditions, and assurances required by law, each grantee must meet the following requirements:

(a) *Use of funds.* Any funds granted under this subpart shall be expended solely for the purpose for which the funds were granted in accordance with the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles in subpart Q of 45 CFR part 74.

(b) *Library resources*—(1) *Provision of services.* The grantee shall modify and increase its library resources to provide supportive services to other health-sciences informational activities.

(2) *Access to and fees for services.* The grantee shall provide free loan services to qualified users or, in lieu of loans, make available photoduplicated or facsimile copies of biomedical materials which qualified requesters may retain. Reasonable fees may be charged for copies or other services (other than free loan services) provided by a grantee under this subpart: *Provided,* That equal access to the health-information resources of the region or of the national network is assured. These fees shall be designed to recover expenses. The grantee's access policies shall determine the qualifications of individuals or organizations for access to the services provided under the grant, so long as those policies are consistent with the mandatory service undertakings of the program. The Secretary may review the grantee's access policies to assure compliance with this requirement.

(Approved by the Office of Management and Budget—Control Number 0925–0276)

§ 59a.17 Other HHS regulations that apply.

Several other regulations apply to grants under this subpart. These include, but are not necessarily limited to:

42 CFR part 50, subpart A—Responsibilities of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science
42 CFR part 50, subpart D—Public Health Service grant appeals procedure
45 CFR parts 6 and 8—Inventions and patents
45 CFR part 16—Procedures of the Departmental Grant Appeals Board
45 CFR part 74—Administration of grants
45 CFR part 75—Informal grant appeals procedures
45 CFR part 76, subparts A–F—Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace (grants)
45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964
45 CFR part 81—Practice and procedure for hearings under part 80 of this title
45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to state and local governments

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PART 64—NATIONAL LIBRARY OF MEDICINE TRAINING GRANTS

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64.9 Other HHS regulations that apply.

Authority: 42 U.S.C. 216, 286b–3.

§ 64.1 Programs to which these regulations apply.

(a) The regulations of this part apply to grants under section 472 of the Public Health Service Act (42 U.S.C. 286b–3) to public and private nonprofit institutions to assist in developing, expanding, and improving training programs (excluding training in a biomedical specialty and residency training) in library science and the field of communications of information pertaining to sciences relating to health.

(b) The regulations of this part also apply to cooperative agreements awarded for these purposes. References to "grant(s)" shall include "cooperative agreement(s)."

(c) The regulations of this part do not apply to research training support under the National Research Service Awards Program (see part 66 of this chapter).

§ 64.2 Definitions.

As used in this part:

HHS means the Department of Health and Human Services.

Nonprofit private entity means an agency, organization, institution, or other entity which may not lawfully hold or use any part of its net earnings to the benefit of any private shareholder or individual which does not hold or use its net earnings for that purpose.

Other trainee costs means those costs other than stipends, such as tuition, fees, and trainee travel, which are directly associated with and necessary for the training of individuals receiving stipends and which are incurred within the period of training.

Project director means the single individual named by the grantee in the grant application and approved by the Secretary, who is responsible for the management and conduct of the project.

Project period. See § 64.6(b).

Secretary means the Secretary of Health and Human Services and any other official of HHS to whom the authority involved is delegated.

Stipend means a payment to an individual that is intended to help meet that individual's subsistence expenses during training.

Training grant means an award of funds to an eligible entity for a project authorized under § 64.1(a).

§ 64.3 Who is eligible for a grant?

Except as otherwise prohibited by law, any public or private nonprofit entity is eligible for a training grant.

§ 64.4 How to apply for a grant.

Applications for grants must include the following information:

(a) *Required information on the proposed project.* (1) The nature, duration, and purpose of the training for which the application is filed.

(2) The name and qualifications of the project director and any key personnel responsible for the proposed project.

(3) A description of the facilities, staff, support services, and other organizational resources available to carry out the project.

(4) The intended number of trainees and the minimum qualifications and criteria for their selection.

(5) A description of the plan for evaluating the proposed project.

(6) Other pertinent information the Secretary may require to evaluate the proposed project.

(b) *Required information on costs.* (1) A budget for the proposed project and a justification of the amount of grant funds requested.

(2) If institutional expenses are requested, a separate statement of the amounts requested for personal services, equipment, supplies, or other non-personal services.

(3) If stipend costs are requested, a statement for each grant year of the estimated number of individuals to whom stipends will be provided and the length of time for which the stipend support will be provided. If other trainee costs are requested, they must be separately stated and justified.

(Approved by the Office of Management and Budget—Control Number 0925–0276)

§ 64.5 How are grant applications evaluated?

The Secretary shall evaluate applications through the officers and employees, experts, consultants, or groups engaged by the Secretary for that purpose. The Secretary's evaluation will be for technical merit and shall take into account, among other pertinent factors, the significance of the project, the qualifications and competency of the project director and proposed staff, the adequacy of selection criteria for trainees for the project, the adequacy of the applicant's resources available for the project, and the amount of grant funds necessary for completion of its objectives.

§ 64.6 Awards.

(a) *Criteria.* Within the limits of available funds, the Secretary may award training grants to carry out those projects which:

(1) Are determined by the Secretary to be technically meritorious; and

(2) In the judgment of the Secretary best promote the purpose of the grant program as authorized by section 472 of the Act (42 U.S.C. 286b–3), the regulations of this part (see § 64.1), and address program priorities.

(b) *Project period.* (1) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for one to five years.

(2) Generally, the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(3) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

(4) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for that period, the Secretary may adjust the amounts awarded by withdrawing the excess.

§ 64.7 What other conditions apply?

(a) Grants awarded under this part are subject to the following conditions:

(1) The grantee may not materially change the quality, nature, or duration of the project unless the written approval of the Secretary is obtained prior to the change.

(2) The grantee must submit to the Secretary, in the manner prescribed by the Secretary, the name and other pertinent information regarding each individual who is awarded a stipend under a grant.

(b) The Secretary may impose additional conditions prior to the award of any grant under this part if it is determined by the Secretary that the conditions are necessary to carry out the purpose of the grant.

(Approved by the Office of Management and Budget—Control Number 0925–0276)

§ 64.8 How may funds be used?

A grantee shall expend funds it receives under this part solely in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the grant award, and the applicable cost principles in subpart Q of 45 CFR part 74. The funds may not be expended for:

(a) Compensation for employment or for the performance of personal services by individuals receiving training and instruction; or

(b) Payments to any individual who does not meet the minimum qualifications for training and instruction established by the grantee and approved by the Secretary or who has failed to demonstrate satisfactory participation in the training in accordance with the usual standards and procedures of the grantee.

§ 64.9 Other HHS regulations that apply.

Several other regulations apply to grants under this part. These include, but are not necessarily limited to:

42 CFR part 50, subpart D.	Public Health Service grant appeals procedure.
45 CFR part 16	Procedures of the Departmental Grant Appeals Board.
45 CFR part 74	Administration of grants.
45 CFR part 75	Informal grant appeals procedures.
45 CFR part 78 subparts A–F	Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace (grants).
45 CFR part 80	Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964.
45 CFR part 81	Practice and procedure for hearings under 45 CFR part 80 of this title.
45 CFR part 86	Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.
45 CFR part 86	Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.
45 CFR part 91	Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.
45 CFR part 92	Uniform administrative requirements for grants and cooperative agreements to state and local governments.

[FR Doc. 91–15185 Filed 6–25–91; 8:45 a.m.]
BILLING CODE 4140–01–M

42 CFR Part 57

RIN 0925–AD36

Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This final rule amends the existing regulations governing the program for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry authorized by section 789(b) of the Public Health Service Act (the Act) to clarify the definition of "fellowship program" and to revise a project requirement to provide a waiver provision of the number of entering fellows enrolled in each training program. The program supports projects which provide training for physicians and dentists who plan to teach geriatric medicine or geriatric dentistry.

DATES: This final rule is effective June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301–443–6190.

SUPPLEMENTARY INFORMATION: On September 12, 1990, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published in the **Federal Register** (55 FR 37476) final regulations governing programs administered under section 789(b) of the Act. Grants are awarded to accredited public or private nonprofit schools of medicine or osteopathic medicine, teaching hospitals and graduate medical education programs to provide support for projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry. Programs supported by these grants will emphasize the principles of primary care as demonstrated through continuity, ambulatory, preventive, and psychosocial aspects of the practice of geriatric medicine and dentistry. Grant funds may be requested for support of a 1-year retraining program in geriatrics and/or a 1-year or 2-year fellowship program in internal medicine or family medicine with emphasis in geriatrics.

The Department intends to clarify the level of prerequisite training requirements for physicians and dentists who wish to participate in a fellowship program. The statutory requirement for physicians is completion of a graduate medical education program in internal medicine, family medicine, psychiatry, neurology, gynecology, or rehabilitation medicine and, for dentists, completion of a postdoctoral dental education program. In § 57.4102 Definitions, the term "fellowship program" states, after paragraph (2) in the concluding text of the section, that "The minimal acceptable level of postdoctoral preparation for allopathic medical primary care disciplines is 3 years of formal training or board certification, and, for dentists, completion of at least 1 year of formal training in a postdoctoral dental education program." This could lead to some confusion since graduate medical education programs in psychiatry, neurology, gynecology, and rehabilitation medicine are more than 3 years in length and postdoctoral dental education programs can be more than 1 year in duration. Dental residents participating in these programs do not satisfy the statutory requirement after 1 year of training but rather after completion of the training program. Therefore, the Department is amending the definition of "fellowship program" by deleting the concluding text of the section.

The second amendment is to ease a restriction in paragraph (j), of § 57.4105 Project requirements. The current provision states that—

> Effective in the second year of grant support, a minimum of three entering fellows, including at least one physician and one dentist, must be enrolled in each training program for which grant support is received.

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A new sentence is added to paragraph (j) to incorporate a waiver provision to read as follows:

The Secretary may suspend this requirement if the Secretary determines that a grantee has made a good faith effort to comply with the requirement and has met the other requirements stated in this section but is unable to have the required number of fellows in the program due to circumstances beyond its control.

The Department has found that the pool of applicants interested in pursuing fellowship training in geriatric medicine or geriatric dentistry is limited, making recruitment of well-qualified and interested physicians and dentists difficult. Therefore, a waiver provision has been added to allow for greater flexibility in the administration of this grant program. Grantees are to demonstrate that they have made a good faith effort to comply with this requirement through the various recruitment endeavors available in their institutions and at the national level.

Justification for Omitting Notice of Proposed Rulemaking

The first amendment described above is merely a clarification of the definition of "fellowship program," and does not substantially change the regulations. The second change will afford greater flexibility to both the Secretary and potential grantees in the administration of the grant program, in recognition of the difficulty faced by these training programs in recruiting qualified physicians and dentists. Accordingly, the Secretary has determined, pursuant to 5 U.S.C. 553, that it would be unnecessary and contrary to the public interest to obtain public comment on these amendments or to delay their effective date.

Paperwork Reduction Act of 1980

These amendments do not affect the recordkeeping or reporting requirements in the existing regulations for the Grants for Faculty Training Projects in Geriatric Medicine and Dentistry. However, for §§ 57.4110, 57.4112, and 57.4115, the Department is revising the parenthetical statement at the end of the section text to reflect a change in the OMB approval number.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Student aid.

(*Catalog of Federal Domestic Assistance, No. 93.158*, Grants for Faculty Training Projects in Geriatric Medicine and Dentistry)

Dated: March 22, 1991.

James O. Mason,

Assistant Secretary for Health.

Approved: June 7, 1991.

Louis W. Sullivan,

Secretary.

Accordingly, 42 CFR part 57, subpart PP is amended as set forth below:

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

1. The authority citation for 42 CFR part 57, subpart PP continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 789(b) of the Public Health Service Act, as amended by Pub. L. 100-607, 102 Stat. 3136-3138 (42 U.S.C. 295g-9(b)).

§ 57.4102 [Amended]

2. Section 57.4102 is amended by revising the word "retaining" to read "retraining" in the definition of "Fellow"; and by removing the concluding text following paragraph (2) in the definition of "Fellowship program".

3. Section 57.4105 is amended by revising paragraph (j) to read as follows:

§ 57.4105 Project requirements.

* * * * *

(j) Effective in the second year of grant support, a minimum of three entering fellows, including at least one physician and one dentist, must be enrolled in each training program for which grant support is received. The Secretary may suspend this requirement if the Secretary determines that a grantee has made a good faith effort to comply with this requirement through the various recruitment means available in its institution and at the national level, and has met the other requirements stated in this section but is unable to have the required number of fellows in the program due to circumstances beyond its control.

§ 57.4106 [Amended]

4. Section 57.4106 is amended by revising the word "promoted" to read "promote" in the introductory text of paragraph (a).

5. Section 57.4110 is amended by revising the parenthetical statement at the end of the section text to read as follows:

§ 57.4110 What are the requirements for fellowships and the appointment of fellows?

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0060)

6. Section 57.4112 is amended by revising the parenthetical statement at the end of the section text to read as follows:

§ 57.4112 Termination of fellowships.

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0060)

7. Section 57.4115 is amended by revising the parenthetical statement at the end of the section text to read as follows:

§ 57.4115 What other audit and inspection requirements apply to grantees?

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0060)

[FR Doc. 91-15184 Filed 6-25-91; 8:45 am]

BILLING CODE 4160-15-M

Proposed Rules

Federal Register

Vol. 56, No. 123

Wednesday, June 26, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV-91-292PR]

Expenses and Assessment Rate for the Marketing Order Covering Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1991-92 fiscal year (July 1-June 30) under Marketing Order No. 928. The proposed expenditures and assessment rate are needed by the Papaya Administrative Committee (PAC) established under this order to pay its expenses and collect assessments from handlers to pay those expenses. The proposed action would enable the PAC to perform its duties and the marketing order to operate.

DATES: Comments must be received by July 8, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 928 (7 CFR part 928) regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 120 handlers of Hawaiian papayas subject to regulation under the marketing order covering papayas grown in Hawaii and about 345 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable papayas handled from the beginning of such year. An annual budget of expenses is prepared by the PAC and submitted to the Department for approval. PAC members are handlers and producers of Hawaiian papayas. They are familiar with the PAC's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the PAC is derived by dividing anticipated expenses by the expected pounds of assessable papayas shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the PAC's expected expenses. The annual budget and assessment rate are usually acted upon by the PAC shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the PAC will have funds to pay its expenses.

The PAC met on May 2, 1991, and recommended a 1991-92 budget with expenditures of $746,650 and an assessment rate of $0.0085 per pound of assessable papayas shipped. The vote on the 1991-92 budget was nine in favor and two opposed. The two members who voted against the proposal did so because they wanted a lower budget and assessment rate.

The 1991-92 budget of $746,650 is generally similar in size and scope to the 1990-91 approved budget of $827,837, except for reductions of $50,000 research and $20,000 in travel. The 1991-92 assessment rate was $0.0065.

The proposed 1991-92 budget contains $336,650 for program administration, $400,000 for advertising and promotion, and $10,000 for research and development. Budgeted expenditures for 1990-91 were $367,837 for program administration, $400,000 for advertising and promotion, and $60,000 for research and development. The 1991-92 advertising, promotion, and research projects will be submitted for approval as soon as the 1991-92 budget is approved.

PAC income for 1991-92 is expected to amount to $746,650. Assessment income is estimated at $467,500, based on projected shipments of 55,000,000 pounds of assessable papayas. Other income includes $200,000 in promotional grants from the Hawaii Department of Agriculture, $63,360 from the USDA's Foreign Agricultural Service, $7,600 from the Japan Inspection Program, and $10,000 from miscellaneous sources including interest. Projected 1991-92

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income over expenses ($2,010) would be placed in the PAC's operating reserve. The operating reserve, which is projected to amount to $49,235 on July 1, 1991, is well within the amount authorized under the marketing order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of 10 days is deemed appropriate for this action, because approval of the expenses and assessments rates may be expedited. This marketing order's fiscal begins on July 1, 1991, and the PAC needs sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 928 be amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 part 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 928.221 is added to read as follows:

§ 928.221 Expenses and assessment rate.

Expenses of $746,650 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.0085 per pound of assessable papayas is established for the fiscal year ending June 30, 1992. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: June 20, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–15192 Filed 6–25–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 948

[Docket No. FV–91–293]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 948 for the 1991–92 fiscal period. Authorization of this budget would permit the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by July 8, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Post Office Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Post Office Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Order No.948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be anduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 68 handlers and approximately 265 producers of potatoes in Colorado Area 2. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Colorado Area 2 potato producers and handlers may be classified as small entities.

The committee unanimously voted at its May 16, 1991, meeting to recommend its 1991–92 budget and assessment rate to the Secretary of Agriculture for consideration.

The committee, which is the agency responsible for local administration of the order, consists of producers and handlers of Colorado Area 2 potatoes. These producers and handlers are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed at a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The recommended assessment rate was derived by dividing anticipated expenses by expected shipments of fresh Colorado Area 2 potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts, and expenses are incurred on a continuous basis.

The recommended budget for the 1991–92 fiscal year of $54,270 is $3,505 more than the previous year due to increases in salaries, employees' benefits, and office expenses. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. Administrative expenses that are shared are divided so that 50 percent is paid under the State and 50 percent under the Federal order

All promotion and advertising expenses are financed under the State order.

The 1990–91 recommended assessment rate of $0.004 per hundredweight of potatoes is the same as last year. This rate, when applied to anticipated fresh market shipments of 12,000,000 hundredweight, would yield $48,000 in assessment revenue. An additional $6,270 from the committee's authorized reserve would result in total funds of $54,270, which would be adequate to cover budgeted expenses. The projected reserve for the end of the 1991–92 fiscal period is estimated at $38,700, which would be carried over into the next fiscal year. This amount is within the maximum permitted by the order of two fiscal years' expenses.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. Therefore, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1991–92 fiscal period for the program begins on September 1, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Colorado Area 2 potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate becuase the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 948.207 is added to read as follows:

§ 948.207 Expenses and assessment rate.

Expenses of $54,270 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) are authorized, and an assessment rate of $0.004 per hundredweight of assessable potatoes is established for the fiscal period ending August 31,1992. Unexpended funds may be carried over as a reserve.

Dated: June 20, 1991.

William J. Doyle.

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–15191 Filed 6–25–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–ASW–48]

Airworthiness Directives; Bell Helicopter Textron Inc. (BHT) Model 206A, 206B, 206BIII, 206L, 206L–1 and 206L–3 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the removal from service and replacement of certain main transmission sungears and mating spur gears on certain BHT Model 206 series helicopters. The proposed AD is needed to prevent premature wear of the sungear teeth and mating parts which, if uncorrected, could result in transmission failure and loss of control of the helicopter.

DATES: Comments must be received on or before August 12, 1991.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Rules Docket, Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193–0007, Docket Number 90–ASW–48, or delivered in duplicate to room 158 of the Rules Docket, 4400 Blue Mound Road, Building 3B, Fort Worth, Texas. Comments delivered must be marked: Docket No. 90–ASW–48. Comments may be inspected at the above location in room 158, Building 3B, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

The applicable service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Forth Worth, Texas 76101, or may be examined in the Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Donovan C. Duncan, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, FAA, Southwest Region, Fort Worth, Texas 76193–0170, telephone (817) 624–5315.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket Number 90–ASW–48. The postcard will be date/time stamped and returned to the commenter.

The FAA has received a report that manufacturing discrepancies exist on certain main transmission sungears, part number (P/N) 206–040–662–101, used on Bell Model 206A, 206B, 206BIII, 206L, 206L–1 and 206L–3 helicopters. The discrepancies are attributed to the insufficient tooth tip relief or improper tooth profile of the sun gear during machining. These parts were inadvertently delivered as serviceable parts. The discrepancies could result in the premature wear of the sungear teeth and the mating spur gears, potentially reducing the service life and resulting in premature failure of the transmission. Since this condition is likely to exist on

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other helicopters of the same type design, the proposed AD would require the removal and replacement of these sungears and certain mating parts on Bell Model 206A, 206B, 206BIII, 206L, 206L–1 and 206L–3 helicopters.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves 31 helicopters at a cost of approximately $3,430 per helicopter for a total fleet cost of $106,330. No additional costs will be incurred by the owner/operator as the AD will be carried out in conjunction with the scheduled sungear inspection. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[Amended]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Bell Helicopter Textron, Inc. (BHTI): Docket No. 90–ASW–48.

Applicability: All Bell Model 206A, 206B, 206L, 206L–1 and 206L–3 helicopters, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent premature wear of the sungear and mating spur gears which could result in transmission failure, accomplish the following:

(a) At the next inspection interval for the main transmission sungear, P/N 206–040–662–101, but no later than 1,500 hours' time in service after the effective date of this AD, remove and replace sungears which have the following serial numbers: SD–0005, SD–0010, SD–0020, SD–0022, SD–0023, SD–0024, SD–0025, SD–0026, SD–0027, SD–0031, SD–0033, SD–0034, SD–0035, SD–0036, SD–0037, SD–0039, SD–0040, SD–0043, SD–0044, SD–0046, SD–0054, SD–0055, SD–0057, SD–0060, SD–0062, SD–0065, SD–0066, SD–0067, SD–0068, SD–0069, SD–0071.

(b) In conjunction with (a), inspect the pinion spur gears which mate with the above listed sungears for micro pitting or hardlines in the gear teeth due to the insufficient tip relief or improper tooth profile of the sungear. Determine if wear or damage is within specified limits according to the applicable BHTI maintenance, repair and overhaul manuals.

(c) If the wear or damage exceeds the specified limits, remove and replace the affected spur gears with serviceable parts before further flight.

(d) An alternate method of compliance or adjustment of the compliance times which provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, ASW–170, Rotorcraft Directorate, FAA, Fort Worth, Texas.

(e) Bell Helicopter Textron, Inc., Alert Service Bulletins No. 206–90–56, Rev. A, dated 1/15/91 or 206L–90–69, Rev. A, dated 1/15/91, as applicable, provide an acceptable, alternate means of compliance with this AD.

Issued in Forth Worth, Texas, on June 4, 1991.

Elizabeth Yoest,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91–15153 Filed 6–25–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–CE–35–AD]

Airworthiness Directives; Eiravion Models PIK–20 and PIK–20B Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Eiravion Models PIK–20 and PIK–20B sailplanes that are equipped with lead mass balance strips on the flaps and ailerons. This proposed action would require inspections of the lead mass balance strips on the flaps and ailerons for cracks, and replacement if cracks are found. The flap mass balance weight cracked on two of the affected sailplanes and separated from one of the affected sailplanes, which caused in-flight aileron control system restrictions. The actions specified in this proposed AD are intended to prevent loss of control of the sailplane because of interference to the ailerons.

DATES: Comments must be received on or before August 23, 1991.

ADDRESSES: Information that is related to this AD may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–35–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Program Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–35–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The National Board of Aviation (NBA), which is the airworthiness authority for Finland, recently notified the FAA that an unsafe condition may exist on Eiravion Models PIK–20 and PIK–20B sailplanes that are equipped with lead mass balance strips on the flaps and ailerons. The NBA advises that the flap mass balance weight cracked on two of the affected sailplanes, and separated from one, which caused in-flight aileron control system restrictions. The NBA issued Finnish AD M 1479/87, Revision 1, in order to assure the airworthiness of these sailplanes in Finland. The sailplanes are manufactured in Finland and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, the NBA has kept the FAA totally informed of the above situation.

The FAA has examined the findings of the NBA, reviewed all available information and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Since this condition could exist or develop in other Eiravion Models PIK–20 and PIK–20B sailplanes of the same type design that are equipped with lead mass balance strips on the flaps and ailerons, the proposed AD would require inspections of the lead mass balance strips on the flaps and ailerons for cracks, and replacement if cracks are found.

It is estimated that 61 sailplanes in the U.S. registry would be affected by this proposed AD, that it will take approximately 4 hours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $13,420.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Eiravion: Docket No. 91–CE–35–AD.

Applicability: Models PIK–20 and PIK–20B sailplanes (all serial numbers) that are equipped with lead mass balance strips on the flaps and ailerons, certificated in any category.

Compliance: Required within the next 25 hours time-in-service (TIS), unless already accomplished, and thereafter at intervals not to exceed 500 hours TIS.

To prevent interference to the ailerons that could result in loss of control of the sailplane, accomplish the following:

(a) Remove the flaps and ailerons and inspect the lead mass balance strips for cracks using a 10-power magnifying glass.

Note 1: Particular attention should be given to the attachment rivets during the inspections specified in paragraph (a) of this AD.

Note 2: If the sailplane is not equipped with mass balance strips on the flaps and ailerons, no further action is required by this AD.

(b) If cracking is detected in accordance with the inspections required by paragraph (a) of this AD, prior to further flight, fabricate and replace the mass balance strips in accordance with the following:

(1) Utilize strips made of malleable lead (not brittle or granular) that are the same weight and length.

(2) Attach the strips at the same rivet holes as the cracked one and bond the lead in place with epoxy resin.

(3) Keep the counter bore holes to the minimum depth in accordance with the applicable service manual.

(4) Install washers to the rivets on the glass-reinforced plastic face.

(5) Do not increase the diameter of any rivet.

(6) Ensure that the final mass balance of each flap and aileron complies with the applicable service manual.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

(e) All persons affected by this directive may obtain copies of information that is related to this AD upon request to the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Issued in Kansas City, Missouri, on June 4, 1991.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certificate Service.

[FR Doc. 91–15157 Filed 6–25–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–ASW–11]

Airworthiness Directives; Schweizer Aircraft Corporation (Hughes Helicopters, Inc.) Model 269A, 269A–1, 269B(Including Military Model TH–55A) Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD) applicable to Schweizer Aircraft Corporation (Hughes Helicopters, Inc.) Model 269A, 269A–1, 269B (including military TH–55A) helicopters, which currently requires a one-time dye penetrant inspection and repetitive visual inspections of the tailboom center attachment (saddle) fitting for cracks, corrosion, fretting, or looseness. This notice proposes

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retaining the present initial and repetitive visual inspections but would adopt new repetitive dye penetrant inspections. The proposed AD is needed to prevent fatigue failure of the tailboom center attachment (saddle) fitting which, in turn, could cause loss of the tailboom, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 12, 1991.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007, Docket No. 91-ASW-11, or delivered in duplicate to Building 3B, room 158, of the Rules Docket, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked: Docket No. 91-ASW-11. Comments may be inspected at the above location in building 3B, room 158, between 8 a.m. and 4:30 p.m. except Federal holidays.

The applicable service information may be obtained from: Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902, or may be examined in the Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe Branch, ANE-172, New England Region, 181 S. Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the FAA before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, and the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-ASW-11". The postcard will be date/time stamped and returned to the commenter.

On February 25, 1980, the FAA issued AD 80-05-05, Amendment 39-3707 (45 FR 14540, March 6, 1980), to require within 25 hours time in service a one time dye penetrant inspection for cracks on the tailboom center attachment (saddle) magnesium fittings, part number (P/N) 269A2324-7, and a 100-hour interval repetitive visual inspection for cracks, corrosion, gretting, and looseness of the attachment fitting. Fittings with improper lug thickness were also required to be removed from service as prescribed. That action was prompted by reports of cracking of the tailboom fitting and fretting corrosion between the tailboom assembly and the center attachment fitting.

Since issuance of that AD, the manufacturer has received additional reports of cracking of the tailboom center attachment fitting which indicate that timely detection of cracks solely by visual inspections is not assured. The manufacturer recommends the addition of a repetitive dye penetrant inspection to maintain the airworthiness of the fitting installation instead of relying solely on the repetitive visual inspection presently prescribed. As a consequence, the FAA approved Schweizer Aircraft Corporation, Service Bulletin B-238, dated October 8, 1990, which provides inspection procedures for an initial dye penetrant inspection and repetitive visual and dye penetrant inspection for cracks of the tailboom center attachment magnesium fitting, P/N 269A2324-7, installed on Model 269A, 269A-1, 269B, and military Model TH-55A helicopters. Since the condition described is likely to exist or develop on other helicopters of the same type design, a new AD is proposed which would supersede AD 80-05-05, Amendment 39-3707 (45 FR 14540, March 6, 1,980). The proposal would retain the initial dye penetrant inspection for cracks of the tailboom center attachment magnesium fitting and would also retain the fitting and tailboom visual inspection at 100 hours' time in service intervals. It would, however, add a repetitive dye penetrant inspection of the fitting at 200 hours' time in service intervals. The proposed AD would not apply to tailbooms equipped with aluminum fittings, such as P/N 269A2324-11 or -13. The original design tailboom center attachment fitting, P/N 269A2324 (BSC), and other components, if installed, are subject to mandatory inspections as prescribed in AD 76-18-01, Amendment 38-2707 (41 FR 37093, September 2, 1976).

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels fo government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves 512 helicopters of U.S. registry, that it would take approximately 16 manhours per helicopter to accomplish the required actions, and that the average labor cost would be $55 per manhour. Parts are estimated to cost an additional $44,304. The total cost impact of the AD on U.S. operators for inspections and replacement of fittings is estimated to be no more than $551,184 each year. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); an (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria for the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 80-05-05, Amendment 39-3703 (46 FR 14540, March 6, 1980) and adding the following AD:

Schweizer Aircraft Corporation (Hughes Helicopters, Inc.) Docket No. 91-ASW-11.

Applicability: All Models 269A, 269A-1, 269B (including military model TH-55A), series helicopters, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent fatigue failure of the magnesium tailboom center attachment (saddle) fittings which could result in loss of the tailboom of the helicopter, accomplish the following:

(a) For helicopters with a magnesium tailboom center attachment fitting, P/N 269A2324-7, perform the following in accordance with the 269 Series Basic Handbook of Maintenance Information, as revised by Temporary Revision No. R-42, dated Octobver 8, 1990 (HMI):

(1) Within 25 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceedd 200 hours' time in service from the last inspection, inspect the magnesium tailboom center attachment fitting using a dye penetrant or equivalent inspection method in accordance with the HMI.

(2) Within 25 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' time in service from the last inspection, inspect the magnesium tailboom visually using a 10-power or higher magnifying glass, in accordance with the HMI.

(b) If cracks are found in the fitting or the fitting is otherwise unserviceable as a result of the inspections of (a) (1) or (2) above, replace the tailboom center attachment fitting, with a new aluminum fitting, P/N 269A2324-11 (undrilled) or -11T, or -13 as appropriate before further flight, as prescribed by the HMI referenced in paragraph (a).

Note: Schweizer Service Bulletin B-238, dated October 8, 1990, pertains to this AD.

(c) As an option, any uncracked tailboom center magnesium fitting, may be replaced with a new aluminum fitting, P/N 269A2324-11 (undrilled) or -11T or -13, as appropriate. Installation of an aluminum fitting constitutes terminating action for paragraph (a) of this AD.

(d) Aircraft may be ferried in accordance with the provisions of FAR §§ 21.197 and 21.199 to a base where the requirements of this AD can be accomplished.

(e) Alternate inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

Issue in Forth Worth, Texas, on June 4, 1991.

Elizabeth Yoest,

Acting Manager, Rotocraft Directorate, Aircraft Certification Service.

[FR Doc. 91-15180 Filed 6-25-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, 71, 72, 75, and 90

RIN 1219-AA48

Air Quality, Chemical Substances, and Respiratory Protection Standards; Close of Record

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; close of record.

SUMMARY: The Mine Safety and Health Administration (MSHA), is extending the comment period on the Agency's proposed rule revising existing standards for air quality, chemical substances and respiratory protection in mining. This extension will allow the public additional time to examine the comments and the background information on file at the Agency. The record will close on August 20, 1991.

DATES: Comments on the proposed rule must be received on or before August 30, 1991.

ADDRESSES: Send comments to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION: On August 29, 1989, MSHA published a proposed rule to revise its standards for air quality, chemical substances, and respiratory protection for coal, metal, and nonmetal mines (54 FR 35760). The Agency initially scheduled the written comment period for the proposed rule to close on November 27, 1989. On October 19, 1989, MSHA extended the comment period to March 2, 1990 (54 FR 43026) in response to requests from the mining community. On January 25, 1990 (55 FR 2535) the Agency set three separate comment periods for different provisions in the proposals and announced its intent to hold public hearings. The comment period for the first group of provisions closed on March 2, 1990, and hearings were held on June 4 and 7, 1990. The comment period for the second group of provisions closed on June 29, 1990, and hearings were held on October 12 and 18, 1990. The comment period for the third group of provisions closed on December 14, 1990, and hearings were held on March 19, 26, and 27, 1991.

The original date for the close of the record was June 7, 1991 (56 FR 6188). Members of the mining community have requested more time in which to examine comments and background information on file at the Agency. In response, MSHA will now leave the rulemaking record open until August 30, 1991. All comments must be submitted prior to that date.

Dated: June 17, 1991.

Edward C. Hugler,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-15100 Filed 6-25-91; 8:45 am]

BILLING CODE 4510-43-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503, 532, 552, and 570

[GSAR Notice 5-313]

General Services Administration Acquisition Regulation; Real Property Leasing Clauses

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) (APD 2800.12A), Chapter 5, that would make a number of revisions to the provisions and clauses prescribed for use in contracts for the acquisition of leasehold interests in real property to improve the leasing program. The matrix at 552.370 is updated to reflect changes contained in the provisions and clauses; however, the matrixes are not published in this document and do not appear in the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets NW., Washington, DC 20405.

DATES: Comments are due in writing on or before July 26, 1991.

ADDRESSES: Comments should be addressed to Marjorie Ashby, Office of GSA Acquisition Policy (VP), 18th & F Streets NW., room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy (202) 501-1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from

Executive Order 12291. The exemption applies to this proposed rule. The proposed revisions regarding the use of various clauses and revisions and the requirements of them are not expected to have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. The Paperwork Reduction Act does not apply because this rule does not require any reporting requirements or collection information from offerors, contractors, or members of the public that require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 503, 532, 552, and 570

Government procurement.

Accordingly, part 503, 532, 552 and 570 are amended to read as follows:

1. The authority citation for 48 CFR parts 503, 532, 552 and 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 503.104–10 is amended by revising paragraph (a) to read as follows:

503.104–10 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.203–71, prohibited Conduct, in solicitations for the acquisition of leasehold interests in real property involving 10,000 square feet or more or for more than 6 months.

* * * * *

3. Section 503.404 is amended by revising paragraph (a) to read as follows:

503.404 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 552.203–4, Contingent Fee Representation and Agreement, in solicitations and contracts for the acquisition of leasehold interests in real property involving 10,000 square feet or more or for more than 6 months.

* * * * *

PART 532—CONTRACT FINANCING

4. Section 532.908 is amended by revising paragraph (c) to read as follows:

532.908 Contract clause.

* * * * *

(c) The contracting officer shall insert the clause at 553.232–73, Electronic Funds Transfer Payment, in solicitations and contracts for acquisitions of leasehold interests in real property involving 10,000 square feet or more or for more than 6 months if payment may be made by electronic funds transfer.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 552.270–10 is revised to read as follows:

552.270–10 Definitions.

As prescribed in 570.702–1, insert the following clause:

Definitions (XXX 1991)

The following terms and phrases (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this lease shall have the respective meanings hereinafter specified:

(a) *Commencement Date* means the first day of the term.

(b) *Contract* and *Contractor* means "Lease" and "Lessor", respectively.

(c) *Contracting Officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) *Delivery Date* means the date specified in or determined pursuant to the provisions of this lease for delivery of the premises to the Government, improved in accordance with the provisions of this lease and ready for Government occupancy, as such date may be modified in accordance with the provisions of this lease.

(e) *Delivery Time* means the number of days provided by this lease for delivery of the premises to the Government, as such number may be modified in accordance with the provisions of this lease.

(f) *Excusable Delays* means delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation, (1) acts of God or of the public enemy, (2) acts of the United States of America in either its sovereign or contractual capacity, (3) acts of another contractor in the performance of a contract with the Government, (4) fires, (5) floods, (6) epidemics, (7) Guarantine restrictions, (8) strikes, (9) freight embargoes, (10) unusually severe weather, or (11) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.

(g) *Lessor* means the sub-lessor if this lease is a sublease.

(h) *Lessor shall provide* means the Lessor shall furnish and install at Lessor's expense.

(i) *Notice* means written notice sent by certified or registered mail, Express Mail or comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refuses.

(j) *Premises* means the space described on the Standard Form 2, U.S. Government Lease for Real Property, of this lease.

(k) *Substantially complete* and *substantial completion* means that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

(l) *Work* means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Government as specified in this lease.

(End of Clause)

6. Section 552.270–11 is retitled and revised to read as follows:

552.270–11 Subletting and assignment.

As prescribed in 570.702–2, insert the following clause:

Subletting and Assignment (XXX 1991)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reasons of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, therefore accrued.

(End of Clause)

7. Section 552.270–12 is retitled and the text of the clause is revised to read as follows:

552.270–12 Maintenance of building and premises—Right of entry.

As prescribed in 570.702–3, insert the following clause:

Maintenance of Building and Premises—Right of Entry (XXX 1991)

Except in case of damage arising out of the willful act or negligence of a Government employee, Lessor shall maintain the premises in good repair and condition so that it is suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupany, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge.

(End of Clause)

8. Section 552.270–13 is retitled and revised to read as follows:

552.270–13 Fire and casualty damage.

As prescribed in 570.702–4, insert the following clause:

Fire and Casualty Damage (XXX 1991)

If the premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days thereafter; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

(End of Clause)

552.270–14 [Removed and Reserved]

9. Section 552.270–14 is removed and reserved.

10. Section 552.270–15 is retitled and revised to read as follows:

552.270–15 Compliance with applicable law.

As prescribed in 570.702–6, insert the following clause:

Compliance with Applicable Law (XXX 1991)

Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. Government will comply with all Federal, state and local laws applicable to and enforceable against it as a tenant under this lease; provided, nothing in this lease shall be construed as a waiver of any sovereign immunity of the Government. This lease shall be governed by Federal law.

(End of Clause)

11. Section 552.270–16 is retitled and revised to read as follows:

552.270–16 Inspection—Right of entry.

As prescribed in 570.702–7, insert the following clause:

Inspection—Right of Entry (XXX 1991)

(a) At any time and from time to time after receipt of an offer (until the same has been duly withdrawn or rejected), after acceptance thereof and during the term, the agents, employees and contractors of the Government may, upon reasonable prior notice to Offeror or Lessor, enter upon the offered premises or the premises, and all other areas of the building access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the solicitation or this lease, which purposes shall include, but not be limited to: (1) Inspection, sampling and analysis of suspected asbestos-containing materials; (2) air monitoring for asbestos fibers; (3) inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances (e.g., PCB's); and (4) inspecting for any current or past hazardous waste operators, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State and local law.

(b) Nothing in this clause shall be construed to create a Government duty to inspect for toxic materials or to impose a higher standard of care on the Government. The purpose of this clause is to promote the ease with which the Government may inspect the building. Nothing in this clause shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.

(End of Clause)

12. Section 552.270–17 is revised to read as follows:

552.270–17 Failure in performance.

As prescribed in 570.702–8, insert the following clause:

Failure in Performance (XXX 1991)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are interdependent. In the event of any failure by the Lessor to provide any service, utility, maintenance, repair or replacement required under this lease the Government may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this lease, then or thereafter due, the resulting cost to the Government, including all administrative costs. Should the Government elect to perform any such requirement, the Government and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Government may so deduct the estimated cost (including administrative costs) to the Government of performing such requirement, as determined by the Contracting Officer. No deduction from rent pursuant to this clause shall constitute a default under this lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this lease or at law.

(End of Clause)

13. Section 552.270–18 is retitled and revised to read as follows:

552.270–18 Successors Bound.

As prescribed in 570.702–9, insert the following clause:

Successors Bound (XXX 1991)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

(End of Clause)

14. Section 552.270–21 is revised to read as follows:

552.270–21 Changes.

As prescribed in 570.702–12, insert the following clause:

Changes (XXX 1991)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications (including drawings and designs);

(2) Work or services; or

(3) Facilities or space layout.

(b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this lease, whether or not changed by the order, the Contracting Officer shall modify this lease to provide for one or more of the following:

(1) A modification of the delivery date;

(2) An equitable adjustment in the rental rate;

(3) A lump sum equitable adjustment; or

(4) An equitable adjustment of the annual operating costs per square foot specified in this lease.

(c) The Lessor shall submit proposals for adjustment.

(d) Absent such written change order, the Government shall not be liable to Lessor under this clause.

(End of Clause)

552.270–26 [Removed and Reserved]

15. Section 552.270–26 is removed and reserved.

16. Section 552.270–27 is revised to read as follows:

552.270–27 Delivery and Condition.

As prescribed in 570.702–18, insert the following clause:

Delivery and Condition (XXX 1991)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is ready to occupy.

(b) If the premises do not in every respect comply with the provisions of this lease the Contracting Officer may, in accordance with the Failure in Performance clause of this lease, elect to reduce the rent payments.

(End of Clause)

17. Section 552.270–28 is retitled and revised to read as follows:

552.270–28 Default in delivery—Time extensions.

As prescribed in 570.702–19, insert the following clause:

Default in Delivery—Time Extensions (XXX 1991)

(a) With respect to Lessor's obligation to deliver the substantially completed premises by the delivery date (as such date may be modified pursuant to this lease), time is of the essence. If the Lessor fails to prosecute the work with the diligence that will insure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Government may by notice to the Lessor terminate this lease, which termination shall be effective when received

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by Lessor. The Lessor and the Lessor's sureties, if any, shall be jointly and severally liable for any damages to the Government resulting from such termination, as provided in this clause. The Government shall be entitled to the following damages:

(1) The Government's aggregate rent and estimated real estate tax and operating cost adjustments for the firm term and all option terms of its replacement lease or leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term: *Provided*, If the Government procures replacement premises for a term (including all option terms) in excess of the term, the Lessor shall not be liable for excess Government rent or adjustments during such excess part of such term;

(2) All administrative and other costs borne by the Government in procuring a replacement lease or leases;

(3) Such other, additional relief as may be provided for in this lease, at law or in equity.

(4) Damages to which the Government may be entitled under this clause shall be due and payable thirty (30) days next following the date Lessor receives notice from the Contracting Officer specifying such damages.

(b) Delivery by Lessor of less than the minimum square footage required by this lease shall in no event be construed as substantial completion, except as permitted by the Contracting Officer.

(c) Except as provided in paragraph (a) of this clause, this lease shall not be terminated under this clause nor the Lessor charged with damages under this clause, if (1) the delay in substantially completing the work arises from excusable delays and (2) the Lessor within 10 days from the beginning of any such delay (unless extended in writing by the Contracting Officer) provides notice to the Contracting Officer of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If the facts warrant such action, the delivery date shall be extended, by the Contracting Officer, to the extent of such delay at no additional costs to the Government. A time extension is the sole remedy of the Lessor.

(End of Clause)

552.270-29 [Removed and Reserved]

18. Section 552.270-29 is removed and reserved.

19. Section 552.270-31 is added to read as follows:

552.270-31 Measurement for payment.

As prescribed in 570.702-22, insert the following clause:

Measurement for Payment (XXX 1991)

When space is offered and accepted, the space will be mutualy measured upon delivery. Payment will be made on the basis of actual measurement; however, payment will not be made for delivered space which is in excess of the maximum square footage solicited. The annual rent will be calculated by multiplying the annual square foot rate times square footage.

(End of Clause)

20. Section 552.270-32 is added to read as follows:

552.270-32 Effect of acceptance and occupancy.

As prescribed in 570.702-23, insert the following clause:

Effect of Acceptance and Occupancy (XXX 1991)

Neither the Government's acceptance of the Premises for occupancy, nor the Government's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Government under this Lease, or as otherwise prejudicing the Government with respect to any such requirement or right.

(End of Clause)

21. Section 552.270-33 is added to read as follows:

552.270-33 Default by Lessor during the term.

As prescribed in 570.702-24, insert the following clause:

Default by Lessor During the Term (XXX 1991)

Each of the following shall constitute a default by Lessor under this lease:

(a) Failure to maintain, repair, operate or service the premises as and when specified in this lease, or failure to perform any other requirement of this lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days next following Lessor's receipt of notice thereof from the Contracting Officer;

(b) Repeated and unexcused failure by Lessor to comply with one or more requirements of this lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause;

(c) If a default occurs, the Government may, by notice to Lessor, terminate this lease for default and if so terminated, the Goverment shall be entitled to the damages specified in the Default in Delivery Clause.

(End of Clause)

22. Section 552.270-34 is added to read as follows:

552.270-34 Subordination, non-disturbance and attornment.

As perscribed in 570.702-25, insert the following clause:

Subordination, Non-disturbance and Attornment (XXX 1991)

(a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension therof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to effect adversely any right of the Government under this lease so long as the Goverment is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(End of Clause)

23. Section 552.270-35 is added to read as follows:

552.270-35 Statement of lessor.

As prescribed in 570.702-26, insert the following clause:

Statement of Lessor (XXX 1991)

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the lease is in full force and effect; (2) the date to whch the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of a latent defect in or condition of the premises or building of which the Contracting Officer has no actual knowledge, nor for any defect in or condition of the premises or building discoverable upon reasonable prepurchase or precommitment inspection by an architect, engineer or other qualified consultant acting on behalf of the Lessor, prospective lender or purchaser;

(3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and

(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

(End of Clause)

24. Section 552.270-36 is added to read as follows:

552.270-36 Substitution of Tenant agency.

As prescribed in 570.702-27, insert the following clause:

Substitution of Tenant Agency (XXX 1991).

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the solicitation.

(End of Clause)

25. Section 552.270-37 is added to read as follows:

552.270-37 No waiver.

As prescribed in 570.702-28, insert the following clause:

No Waiver (XXX 1991)

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

(End of Clause)

28. Section 552.270-38 is added to read as follows:

552.270-38 Integrated agreement.

As prescribed in 570.702-29, insert the following clause:

Integrated Agreement (XXX 1991)

This Lease upon execution contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissable to contradict the provisions of the Lease.

(End of Clause)

27. Section 552.270.39 is added to read as follows:

552.270-39 Mutality of obligation.

As prescribed in 570.702-30, insert the following clause:

Mutuality of Obligation (XXX 1991)

The obligations and covenants of the Lessor, and the Government's obligation to pay Rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

(End of Clause)

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

28. Section 570.503 is revised to read as follows:

570.503 Expansion requests.

(a) When expansion space is needed, the contracting officer must determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to satisfy the requirement by relocation. A market survey must be conducted to determine whether suitable alternative locations are available. If the market survey reveals alternate locations that can satisfy the total requirement, a cost benefit analysis must be performed to determine whether it is in the Government's best interest to relocate. This analysis may include—

(1) The cost of the alternate space compared to the cost of expanding at the existing location;

(2) The cost of moving;

(3) The cost of duplicating existing improvements; and

(4) The cost of the unexpired portion of the firm term lease (unless a termination is possible, in which case the actural cost of such an action should be used).

(b) If no suitable alternative location is available and the cost of the space exceeds $25,000, a justification may be prepared for approval in accordance with FAR subpart 6.3 and subpart 506.3 in order to negotiate a Supplemental Lease Agreement to provide expansion space, provided the original lease term is not extended. When the cost is $25,000 or less, the contracting officer must prepare the justification for inclusion in the file.

29. Sections 570.701-1, 570.701-2, 570.701-3, 570.701-4, 570.701-5, 570.701-6, 570.702-1, 570.702-2, 570.702-3, 570.702-4, 570.702-6, 570.702-7,570.702-8, 570.702-9, 570.702-10, 570.702-11, 570.701-12 are revised and section 570.702-5 is removed and reserved to read as follows:

570.701-1 Preparation of offers.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-1, Preparation of Offers, in solicitations for leasehold interests in real property involving 10,000 square feet or more or for more than 6 months.

570.701-2 Explanation to prospective offerors.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-2, Explanation to Prospective Offerors, in solicitations for leasehold interests in real property in solicitations for leasehold interests in real property involving 10,000 square feet or more or for more than 6 months.

570.701-3 Late submissions, modifications, and withdrawals of offers.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-3, Late Submissions, Modifications, and Withdrawals of Offers, in solicitations for leasehold interests in real property involving 10,000 square feet or more or for more than 6 months.

570.701-4 Historic preference.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-4, Historic Preference, in solicitations for leasehold interests in real property involving 10,000 square feet or more or for more than 6 months. When the market survey indicated that space is available in both historic and non-historic buildings.

570.701-5 Lease award.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-5, Lease Award, in solicitations for leasehold interests in real property involving 10,000 square feet or more or for more than 6 months.

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570.704-6 Parties to execute lease.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-6, Parties to Execute Lease, in solicitations for leasehold interests in real property involving 10,000 square feet or more or for more than 6 months.

570.702-1 Definitions.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-16, Definitions, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-2 Subletting and assignment.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-21, subletting and assignment, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-3 Maintenance of building and premises—right of entry.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-12, Maintenance of building and premises—Right of Entry, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-4 Fire and casualty damage.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-13, Fire and Casualty Damage, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-5 [Reserved]

570.702-6 Compliance with applicable law.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-15, Compliance with Applicable Law, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-7 Inspection—right of entry.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-16, Inspection—Right of Entry, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-8 Failure in performance.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-17, Failure in Performance, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-9 Successors bound.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-18, Successors Bound, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-10 Alterations.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-19, Alterations, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-11 Proposals for adjustment.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-20, Proposals for Adjustment, in solicitations and contracts for leasehold interests in real property. If the lease is for more than 10,000 square feet and is for a period of more than 6 months, use the clause with its Alternate I.

570.702-12 Changes.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-21, Changes, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

31. Section 570.702-14 is revised to read as follows:

570.702-14 Operating costs.

If the operating cost escalation is necessary the contracting officer may use the clause at 552.270-23, Operating Costs, or develop a different clause for acquisitions of leasehold interests in real property. Because of the variations in circumstances and need to modify clause wording that may arise, no standard clause is prescribed. However, any clause develop by the contracting officer must provide for a base to be established, provide for upward and downward adjustment, and specify the timeframe for and method of payment.

32. Section 570.702-15 is revised to read as follows:

570.702-15 Tax adjustment.

If tax escalation is necessary the contracting officer may use the clause at 552.270-24, Tax Adjustment, or develop a different clause for acquisitions of leasehold interests in real property. Because of the variations in circumstances and need to modify clause wording that may arise, no standard clause is prescribed. However, any clause developed by the contracting officer must provide for a base to be established, provide for upward and downward adjustment, and specify the timeframes for and method of payment.

33. Sections 570.702-16, 570.702-18, 570.702-23 are revised, and sections 570.702-27 and 570.702-29 are removed and reserved to read as follows:

570.702-16 Adjustment for vacant premises.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-25, Adjustment for Vacant Premises, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-17 [Reserved]

570.702-18 Delivery and condition.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-27, Delivery and Condition, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-19 Default in delivery—time extensions.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-28, Default in Delivery—Time Extensions, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-20 [Reserved]

570.702-21 Progressive occupancy.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-30, Progressive Occupancy, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

34. Sections 570.702-22, 570.702-23, 570.702-24, 570.702-25, 570.702-26, 570.702-27, 570.702-28, 570.702-29, and 270.702-30 are added to read as follows:

570.702-22 Measurement for payment.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-31, Measurement for Payment, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-23 Effect of acceptance and occupancy.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-32, Effect of Acceptance and Occupancy, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-24 Default by lessor during the term.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-33, Default by Lessor During the Term, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-25 Subordination, nondisturbance and attornment.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-34, Subordination, NonDisturbance and Attornment, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-26 Statement of lease.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-35, Statement of Lease, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-27 Substitution of tenant agency.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-36, Substitution of Tenant Agency, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-28 No waiver.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-37, No Waiver, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-29 Intigrated agreement.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-38, Intigrated Agreement, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

570.702-30 Mutuality of obligation.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-39, Mutuality of Obligation, in solicitations and contracts for leasehold interests in real property if the lease is for more than 10,000 square feet and is for a period of more than 6 months. Use of the clause is optional in leases for 10,000 square feet or less or for a period of less than 6 months.

Dated: June 14, 1991.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91-15173 Filed 6-25-91; 8:45 am]

BILLING CODE 6820-61-M

48 CFR Parts 516, 528, 536, 543, 548, 549, and 552

[GSAR Notice 5-303]

General Services Administration Acquisition Regulation; Provisions and Clauses (Design-Build Service Contracts)

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise certain GSAR provisions to accommodate the Public Buildings Service (PBS) plans to combine requirements for design, construction and operation and maintenance of a building or facility in a single solicitation and contract using a design-build concept; incorporate the substance of a class deviation from certain Federal Acquisition Regulation (FAR) provisions approved for use by PBS contracting activities; and add a matrix to outline the solicitation provisions and contract clauses that apply to contracts for design-build services. The matrixes are not published in this document and do not appear in the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets NW., Washington, DC 20405.

DATES: Comments are due in writing on or before July 26, 1991.

ADDRESSES: Comments should be submitted to Marjorie Ashby, Office of GSA Acquisition Policy (VP), 18th and F Streets NW., room 4026, Washington, DC 20405.

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FOR FURTHER INFORMATION CONTACT:
Ida M. Ustad, Office of GSA Acquisition Policy (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated September 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

B. Regulatory Flexibility Act

The proposed rule does not appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it simply modifies certain FAR clauses as necessary to accommodate a contract that combines requirements for design, construction, and operation and maintenance of a building or facility in a single solicitation and contract under a design-build concept. Therefore, an initial regulatory flexibility analysis has not been performed. Comments from small entities concerning the affected GSAR sections will be considered in accordance with section 610 of the Act.

C. Paperwork Reduction Act

This proposed rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 516, 528, 536, 543, 548, 549, and 552

Government procurement.

Accordingly, it is proposed to amend 48 CFR parts 516, 528, 536, 543, 548, 549, and 552 as follows:

1. The authority citation for 48 CFR parts 516, 528, 536, 543, 549 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 516—TYPES OF CONTRACTS

2. Section 516.405 is revised to read as follows:

516.405 Contract clauses.

(a) Award fee clauses developed by contracting officers, under FAR 16.405(e), shall be prepared with the advice and assistance of counsel and be approved by the contracting director.

(b) The contracting officer may insert the clause at 552.216-16, Incentive Price Revision, in solicitations and contracts for design/build construction services instead of the clause at FAR 52.216-16 when a fixed price incentive contract is contemplated.

PART 528—BONDS AND INSURANCE

3. Section 528.101-3 is amended by revising paragraph (a) to read as follows:

528.101-3 Contract clause.

(a) The contracting officer shall insert a clause substantially the same as the clause at 552.228-70, Bid Guarantee and Bonds, in solicitations and contracts when a construction contract or a contract for dismantling, demolition, or removal of improvements is contemplated and a bid guarantee and bond requirement is to be included. The contracting officer may make minor changes in the wording of the clause when the bonding requirement only applies to a portion of the work required by the contract.

* * * * *

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4. Sections 536.303-70, 536.303-71, 536.303-72 and 536.370 are redesignated as §§ 536.270, 536.270.1, 536.270-2 and 536.270-3 respectively, and moved to subpart 536.2, and revised to read as follows:

536.270 Offers that include alternates and/or options.

536.270-1 Offers that include alternates.

(a) The base offer must include all features that are essential to a sound and adequate building design. However, if it appears that funds available for a project may be insufficient to include all desired features in the base offer, the contracting officer may issue a solicitation for a base offer and include one or more alternates in the order of priority. Alternates may be used only when they are clearly justified and should involve substantial amounts of work in relation to the base offer. Their use must be limited and should involve only "add" alternates.

(b) The language used in soliciting alternates must be approved in writing by counsel.

(c) All solicitations requiring a base offer and alternates must include the Alternate II provision at 552.236-73, Basis of Award—Construction Contract, which prescribes the method for evaluating offers.

(d) Before opening bids that include alternates, the contracting officer shall determine and record in the contract file the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening and must be the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid plus the combination of alternate items do not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid and the same combination of alternate items.

536.270-2 Offers that include options.

(a) Subject to the limitations in paragraph (c) of this section, the contracting officer may include options in contracts when it is in the Government's interest.

(b) The appropriate use of options may include, but is not limited to, the following:

(1) When additional work is anticipated but funds are not expected to be available at the time of award, and it would not be practicable to award a separate contract or to permit an additional contractor to work on the same site.

(2) When fixed building equipment, e.g., elevators, escalators, etc., will be installed under the construction contract and it is advantageous to have the installer of the equipment maintain and service the equipment during the warranty period.

(c) The contracting officer shall not employ options if:

(1) The prospective option represents known firm requirements for which funds are available unless competition for the option quantity is impracticable once the initial contract is awarded; or

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable.

(d) Solicitations containing option provisions must state the period within which the options may be exercised.

(e) The solicitations must state whether the basis of award is inclusive or exclusive of the options. Before a solicitation that includes evaluated options is issued, the contracting officer shall make a determination that there is reasonably certainty that funds will be made available to permit exercise of the option.

(f) The language of all solicitation provisions for options must be approved, in writing, by counsel.

(g) All solicitations requiring a base offer and options must include the Alternate I provision at 552.236-73, Basis of Award—Construction Contract, which prescribes the method of evaluation of offers.

536.270-3 Offers that include alternates and options.

(a) Solicitations may include alternates and options when the conditions in 536.270-1, Offers that include alternates, and 536.270-2, Offers that include options, are satisfied. In such solicitations, the low offeror for purposes of award is the responsible offeror submitting the lowest aggregate price for the basic requirement plus those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening when using sealed bidding or award when negotiating, plus all options designated to be evaluated.

(b) In the case of options associated with alternates, the basis of award may require the evaluation of such options if the related alternate is selected.

(c) All solicitations requiring a base offer, alternates and options must include the Alternate III provision at 552.236.73, Basis of Award—Construction Contract, which prescribes the method of evaluation of offers.

(d) When using sealed bid procedures before opening bids that include alternates and options, the contracting officer shall determine and record in the contract file the amount of funds available for the project (i.e., for the base offer and alternate work). The amount recorded must be announced at the beginning of the bid opening. This amount may be increased later when determining the alternate items to be awarded to the low offeror, provided that the award amount of the base offer and evaluated options plus such a combination of alternate items do not exceed the amount offered by any other responsible offeror whose offer conforms to the solicitation for the base offer, the evaluated options, and the same combination of alternate items.

4a. Section 536.271 is added to read as follows:

536.271 Exercise of options.

(a) When exercising an option, the contracting officer shall notify the contractor in writing, within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining that:

(1) Funds are available;

(2) The requirement covered by the option fulfills an existing Government need; and

(3) The exercise of the options is the most advantageous methods fulfilling the Government's need, price and other factor considered.

(c) Before exercising an option, the contracting officer shall determine that such action is in accordance with the terms of the option and the requirements of this section. The written determination must be included in the contract file.

(d) The contract modification or other written document which notifies the contractor of the exercise of the option must cite the option clause as authority. In addition, when exercising an unpriced and/or unevaluated option cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302 and 517.207).

5. Section 536.570-4 is amended by revising paragraph (a) and the last paragraph to read a follows:

536.570-4 Basis of award—construction contract.

* * * * *

(a) The solicitation requires the submission of a lump sum offer only;

* * * * *

If the solicitation requests the submission of a base offer and unit prices, the contracting officer shall use the basic provision. If the solicitation requests the submission of a base offer and options the contracting officer shall use the provision with its Alternate I. If the solitation requests the submission of a base offer and alternates, the contracting officer shall use the provision with its Alternate II. If the solicitation requests the submission of a base offer alternates, and options, the contracting officer shall use the provisions with its Alternate III.

PART 543—CONTRACT MODIFICATION

6. Section 543.205 is amended by adding paragraph (c) to read as follows:

543.205 Contract clauses.

* * * * *

(c) Contracting officers in the Public Buildings Service have been authorized to deviate from the FAR clause at 52.243-4, Changes, in solicitations and contracts for design/build construction services by modifying subparagraph (a)(2) to read as follows: "(2) In the method, description, time of performance (i.e., hours of the day, days of the week, etc.), or manner of performance of the work or services."

PART 548—VALUE ENGINEERING

6a. The authority citation for part 548 is added to read as follows:

Authority: 40 U.S.C. 486(c).

7. Subpart 548.2 is added to read as follows:

Subpart 548.2—Contract Clauses

548.202 Clause for construction contracts.

Contracting officers in the Public Buildings Service have been authorized to deviate from the FAR by using the FAR Value Engineering clause for architect-engineer contracts instead of the clause at FAR 52.248-3, Value Engineering—Construction, when soliciting and awarding design/build construction contracts.

PART 549—TERMINATION OF CONTRACTS

8. Section 549.502 is revised to read as follows:

549.502 Termination for convenience of the Government.

(a) The contracting officer shall insert the clause at 552.249-70, Termination for Convenience of the Government (Fixed-Price), in all solicitations and contracts for the acquisition and maintenance of telephone systems to be funded through the Information Technology Fund (IT). This clause should be used with the FAR clauses at 52.249-1 or 52.249-2 and 52.249-4.

(b) Contracting officers in the Public Buildings Service have been authorized to deviate from the FAR clause at 52.249-2, Termination for Convenience of the Government (Fixed-Price) (Alt I) by: (1) Inserting the words "or services" in the first sentence of paragraph (a) of the clause immediately after "work," (2) deleting the phrase "exclusive of costs shown in subparagraph (f)(3) below" in the third sentence of paragraph (e), and (3) substituting the following subparagraph as (2) in paragraph (f):

(2)(i) For services performed under the operation and maintenance option, the contract price for completed supplies or services accepted by the government (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges, the total of—

(A) The costs incurred in the performance of the operation and maintenance service terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(B) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (A) above; and

(C) A sum, as profit on subdivision (A) above, determined by the contracting officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however,

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if it appears that the contractor would have sustained a loss on the entire contract had it been completed, the contracting officer shall allow no profit under this subdivision (C) and shall reduce the settlement to reflect the indicated rate of loss.

(ii) For all work or services the reasonable costs of settlement of the work terminated, including—

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

9. Section 549.504 is added to read as follows:

549.504 Termination of fixed-price contracts for default.

The contracting officer shall insert the clause at 552.249–72, Termination for Default, in all solicitations and contracts for design/build construction services. This clause should be used with the FAR clauses at 52.249–8 and 52.249–10.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 552.216–16 is added to read as follows:

552.216–16 Incentive price revision.

As prescribed in 516.405(b), insert the following clause:

Incentive Price Revision (XXX 1991) (Deviation FAR 52.216–16)

(a) *General.* The construction services identified in section 3 of Attachment A to Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair) of this contract are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these services exceed the ceiling price of .....dollars ($.....). Any construction services that are to be (1) ordered separately under or otherwise added to this contract and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this contract.

(b) *Definition.* "Costs," as used in this clause, mean allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within .....[Contracting Officer insert number of days] days after the Contractor has completed all of the services specified in paragraph (a) above, the Contractor shall submit:

(i) A copy of the executed subcontracts and all modifications thereto;

(ii) Evidence of all payments, including final payment, to subcontractors;

(iii) Evidence of all allocable credits received from subcontractors; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) above within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price revision.* Upon the Contracting Officer's receipt of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly establish the total final price of the construction services specified in (a) above by adjusting the final negotiated cost as follows:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, the parties shall aggregate the cost of subcontracts for competed work to determine the total final negotiated cost incurred for construction services performed and accepted by the Government and which are subject to price revision under this clause. The cost associated with correcting any errors attributable to the Contractor shall not be included when determining the total final negotiated cost.

(2) The total final price shall be established as follows:

(i) If the total final negotiated cost is equal to or greater than the ceiling price, the ceiling price is the total final price. In no event shall the Government pay the Contractor any amount in excess of the ceiling price.

(ii) If the total final negotiated cost is less than the ceiling price, the total final price shall be the total final negotiated cost plus (percentage amount to be inserted by the Contracting Officer) the difference between the ceiling price and the total final negotiated cost.

(e) *Contract modification.* The total final price of the construction services specified in paragraph (a) above shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that:

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(f) *Adjusting limitation on progress payments.* (1) Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices in accordance with the payment terms of this contract; provided, that the total of progress payments for the construction services specified in paragraph (a) above shall not exceed eighty-five (85) percent of the ceiling price in paragraph (a) above unless the Contractor submits evidence that costs actually incurred for subcontracts exceeded eighty-five (85) percent of the ceiling price and the contract is modified to increase the limitation on progress payments.

(2) Any adjustment in the eighty-five (85) percent limitation in subparagraph (1) above shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices shall be adjusted to reflect the total final price and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Subcontracts.* The term "subcontracts," as used in this clause, includes construction services specified in paragraph (a) above, which are performed by the Contractor. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall solicit competitive proposals for the performance of all construction services specified in paragraph (a) above and award subcontracts to the offeror submitting the lowest offer. The Contractor may compete to perform such services itself. Proposals shall be obtained from at least two independent sources. The Contracting Officer or an authorized representative shall have access to and the right to examine any documents pertinent to the competition of construction services in order to verify that at least two independent sources were solicited and that the award was made to the lowest offeror. Subcontracts shall be awarded as firm-fixed-price contracts.

(h) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(i) *Termination.* If this contract is terminated before the total price is established, prices of construction services subject to price revision shall be established in accordance with this clause for (1) completed construction services accepted by the Government and (2) those construction services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(j) *Equitable adjustment under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the ceiling price. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(k) *Exclusion from total final price.* If any clause of the contract provides that the contract price does not or will not include an amount for a specific purpose, then the total final price will not include any amount for that purpose.

(l) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in the total final price, but shall be reimbursed separately.

(m) *Taxes.* As used in the Federal, State and Local Taxes clause or in other clauses that provides for certain taxes or duties to be included in or excluded from the contract price, the term "contract price" includes the ceiling price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the ceiling price or, if it has been established, in the total final price.

(End of Clause)

11. Section 552.236–73 is revised to read as follows:

552.236–73 Basis of Award—Construction Contract.

As prescribed in 536.570–4, insert the following provision or the appropriate Alternate:

Basis of Award—Construction Contract (XXX 1991)

(a) The price for evaluation purposes is the price for the basic requirements (consisting of the lump sum offer and any associated unit prices extended by the applicable number of units shown on the solicitation, offer and award form). See Standard Form 1442, Solicitation, Offer, and Award.

(b) An offer may be rejected if the offer is materially unbalanced as to offered prices. An offer is unbalanced when the offer is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of Provision)

Alternate I

If the solicitation includes the basic requirements and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraph (a) substantially as follows:

(a) The price for evaluation purposes is the aggregate price for (1) the basic requirements (consisting of the lump sum offer and any associated unit prices extended by the applicable number of units shown on the solicitation, offer and award form) plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options. See Standard Form 1442, Solicitation, Offer, and Award.

Alternate II

If the solicitation includes the basic requirements and alternates, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low price for evaluation purposes is the aggregate price for (1) the basic requirements (consisting of the lump sum offer and any associated unit prices extended by the applicable number of units shown on the Solicitation, Offer, and Award form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening when the procurement is made using sealed bidding procedures or at award when the procurement is made using the negotiated method of procurement.

(c) Alternates will be added to the basic requirements in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, and Award). If the addition of an alternate would make all offers exceed the funds available at bid opening or award, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of basic requirements and the selected alternates do not exceed the funds available at bid opening when sealed bidding or award when negotiating. For example, when the amount available is $100,000 and an offeror's price for the basic requirements is $85,000, with its separate prices on four successive alternates being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the offer for purposes of selecting the alternates would be $99,000 (basic requirements plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the basic requirements and alternates to exceed the $100,000 amount available when considered with the first alternate.

(d) After the price has been evaluated in accordance with paragraph (a), an award may be made on the basic requirements plus any combination of alternates for which funds are available at the time of bid opening or award, as applicable, provided all offers are evaluated on the basis of the same alternates.

Alternate III

If the solicitation includes basic requirements, alternates, and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The price for evaluation purposes is the aggregate price for (1) the basic requirements (consisting of the lump sum offer unit prices extended by the applicable number of units shown on the Solicitation, Offer, and Award form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening or award as applicable plus (3) all options designated to be evaluated except those options associated with alternates that are skipped during the evaluation process outlined in paragraph (c) below. The evaluation of options will not obligate the Government to exercise the options.

(c) Alternates will be added to the basic requirements in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, and Award). If the addition of an alternate would make all offers exceed the funds available at bid opening or award, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of basic requirements and the selected alternates do not exceed the funds available when sealed bidding or award when negotiating. For example, when the amount available is $100,000 and an offeror's basic requirement is $85,000, with its separate prices on four successive alternates being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the offer for purposes of selecting the alternates would be $99,000 (basic requirements plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the basic requirements and alternates to exceed the $100,000 amount available when considered with the first alternate.

(d) After the price has been evaluated in accordance with paragraph (a), award may be made on the basic requirement and evaluated options plus any combination of alternates for which funds are available at the time of bid opening or award, as applicable, provided all offers shall be evaluated on the basis of the same alternates.

12. Section 552.249–72 is added to read as follows:

552.249–72 Terminations for Default.

As prescribed in 549.504, insert the following clause:

Termination for Default (XXX 1991) (Deviation FAR 52.249–8 and 52.249–10)

(a) The Government's right to terminate the design and construction portion of this contract for default shall be determined under the basic FAR clause 52.249–10.

(b) The Government's right to terminate the services under the operation and maintenance portion of this contract for default shall be determined under the basic FAR clause 52.249–8.

(End of Clause)

Dated: June 4, 1991.

Richard H. Hopf,

Associate Administrator for Acquisition Policy.

[FR Doc. 91–15104 Filed 6–25–91; 8:45 am]

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VOL 56 ISS 123 JE 26 1991 UMI

Notices

Federal Register
Vol. 56, No. 123
Wednesday, June 26, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: This is a notification that the decision to implement the Upper Copper Creek Salvage timber Sale Project on the Helena National Forest is exempted from appeal. This is in conformance with the provisions of 36 CFR 217.4(a)(11).

EFFECTIVE DATE: Effective on issuance of the Decision Notice for the Upper Copper Creek Salvage Timber Sale.

FOR FURTHER INFORMATION CONTACT: Ernest R. Nunn, Forest Supervisor, Helena National Forest, 301 S. Park, Drawer 10014, Federal Building, Room 334, Helena, Montana 59626.

Background

During February of 1989, an unseasonably warm week was followed by a severe and rapid drop in temperature which caused foliage freeze and dessication (commonly referred to as "Red Belt") and stressed, severely damaged and/or killed timber on approximately 7,300 acres within the Lincoln Ranger District. The degree of damage varied from a few trees per acre to near total mortality to both the overstory and understory vegetation. Within the immediate area of the proposed Upper Copper Creek Salvage Timber Sale an estimated 1800 acres were affected to some degree.

The Helena National Forest identified the need to quickly salvage the timber before it became unmerchantable and promptly reforest these areas. Removal of the dead and severely damaged timber will accelerate the rehabilitation of the affected areas by: Eliminating the probability of delayed reforestation and reduction of future timber yield on lands allocated as suitable timber lands in the Helena National Forest Land and Resoruce Management Plan (Helena Forest LRMP); re-establishing wildlife cover more quickly; reducing the potential for wildlife in the damaged stands; and increasing restocking of the site through natural reforestation processes by scarifying the site and opening the canopy. Current estimates suggest that as much as 25–50 percent of the merchantable volume has already been lost in the standing dead trees because of the failure to salvage timber in 1990. Unless the dead material is salvaged soon the opportunities to sell the material and initiate long-term site recovery will be foregone due to insect activity and decay. Failure to take action may necessitate an amendment or revision of the Helena Forest LRMP.

Analysis conducted by a Forest Service interdisciplinary team determined that stands with less than 25 percent of the trees damaged do not require treatment. Application of this criterion led to a proposal to salvage timber resources through timber harvest and rehabilitate damaged timber stands on approximately 716 acres. An Environmental Assessment evaluating this proposed action, including alternatives to the proposed action, was prepared during early 1990 which culminated in a Decision Notice signed in June of 1990. The decision was appealed and the Lincoln District Ranger withdrew his decision on November 26, 1990.

The Lincoln District Ranger has revised the Environmental Assessment to address the environmental issues brought up in the appeal. Additional comments were solicited from the public during the second analysis. This information is documented in the revised Decision Notice/Environmental Assessment and project file located at the Lincoln Ranger District, P.O. Box 219, Lincoln, Montana.

The four alternatives evaluated in the Environmental Assessment range from "No Action" to the treatment of 781 acres. The minimum action alternative considers treatment of 214 acres. Salvage volumes estimated from the action alternatives range from 1.2 to 5.4 MMBF.

Planned Actions

The planned restoration project includes recovery of the killed and heavily damaged trees which are still merchantable and rehabilitation of the stands through natural regeneration. The alternative selected for implementation proposes the treatment of 214 acres in 14 individual harvest units recovering 1.2 MMBF of damaged or dead timber. Natural regeneration will be relied upon to supplement stocking of existing timber stands on the 214 acres treated. Further delay in removal of the dead trees will render them unmerchantable as sawtimber, and lack of followup treatment to the sites will result in unacceptable regeneration delays affecting long-term timber yields and wildlife use of the area. Due to the length of time it has taken to develop an acceptable rehabilitation project and salvage program and to properly evalute its effects, the time remaining for accomplishment has become critical. Any additional delays will result in further damage to presently undamaged resources and could result in a complete loss of the salvageable resources as well.

To expedite this sale project and the initiative of long-term vegetative recovery of the treated stands, the process according to 36 CFR 217.4(a)(11) is being followed. Under this Regulation the following are exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildlife . . . when the Regional Forester . . . determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Upper Copper Creek Salvage Timber Sale Environmental Assessment and the Lincoln District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: June 14, 1991.

John M. Hughes,
Deputy Regional Forester, Northern Region.

[FR Doc. 91–14636 Filed 6–25–91; 8:45 am]
BILLING CODE 3410–11–M

Russian River Angler Trail Reconstruction and Bank Stabilization Project; Intent

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for the Russian River Angler Trail Reconstruction and Bank Stabilization Project. The project is located on the Seward Ranger District, Chugach National Forest, Kenai Peninsula Borough, Alaska. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by August 20, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Duane Harp, District Ranger, Seward Ranger District, Chugach National Forest, P.O. Box 390, Seward, AK 99664.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Mr. Harp at the above address or phone Mr. Harp or Mr. Richard Borden at (907) 224–3374.

SUPPLEMENTARY INFORMATION: The Chugach National Forest Land and Resources Management Plan, Final Environmental Impact Statement and Record of Decision have been issued. These documents identify the management direction for the project area, and permit, under certain conditions, the project.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives. One of these will be continuing present management (the No Project Alternative).

Duane Harp, District Ranger, Seward Ranger District, Chugach National Forest, Seward, Alaska, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The DEIS is expected to be filed with Environmental Protection Agency (EPA) and to be available for public review by December 1991. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in this proposal participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by July 1992. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: June 14, 1991.

Duane H. Harp,
District Ranger.

[FR Doc. 91–15172 Filed 6–25–91; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

Brooke County Critical Area Drainage and Land Treatment RC&D Measure Plan, West Virginia

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Brooke County Park and Recreation Commission Critical Area Treatment and Land Drainage RC&D Measure Plan, Brooke County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin M. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Notice of a Finding of No Significant Impact

The purpose of the measure is critical area treatment and land drainage. The measure is designed to stabilize by regarding, shaping, and revegetating approximately 1.5 acres of land at three

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sites that has an average erosion rate of 20 tons per acre per year. Conservation practices include a drop box, culvert, drain tile, and seeding.

Brooks County Park and Recreation Critical Area Treatment and Land Drainage RC&D Measure Plan, Brooks County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resources Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: June 17, 1991.

Rollin N. Swank,

State Conservationist.

[FR Doc. 91-15182 Filed 6-25-91; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, notice is hereby given that the meeting of the Michigan Advisory Committee to the Commission, previously announced in the Federal Register on June 18, 1991 (56 FR 27943), FR Doc. 91-14383, to convene at 8:30 a.m. and adjourn at 5 p.m. on Thursday, July 11, 1991, at the OMNI Hotel, 333 E. Jefferson, Detroit, MI 48226, has been rescheduled to convene at 9 a.m. and adjourn at 5 p.m. on Thursday, July 18, 1991, at the same location. The purpose of the meeting is to conduct a community forum on the rise of hate crimes in Michigan.

Persons desiring additional information should contact Committee Chairperson Dennis Gibson at (313) 864-9394 or Constance Davis, Director of the Midwestern Regional Office at (312) 353-8311. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 20, 1991.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 91-15110 Filed 6-25-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, notice is hereby given that the meeting of the Michigan Advisory Committee to the Commission, previously announced in the Federal Register on June 18, 1991 (56 FR 27943), FR Doc. 91-14382, to convene at 6 p.m. until 9 p.m. on Wednesday, July 10, 1991, at the OMNI Hotel, 333 E. Jefferson, Detroit, MI 48226, has been rescheduled to convene at 6 p.m. and adjourn at 9 p.m. on Wednesday, July 17, 1991, at the same location. The purpose of the meeting is to discuss current issues, orient members, and plan future activities.

Persons desiring additional information should contact Committee Chairperson Dennis Gibson at (313) 864-9394 or Constance Davis, Director of the Midwestern Regional Office at (312) 353-8311. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 20, 1991.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 91-15111 Filed 6-25-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees of the American Indian and Alaska Native Populations for the 1990 Census, Asian and Pacific Islander Populations for the 1990 Census, Black Population for the 1990 Census, and Hispanic Population for the 1990 Census; Reestablishment

In accordance with the provisions of the Federal Advisory Act, 5 U.S.C. app. (1976), and Office of Management and Budget Circular A-63 of March 1974, and after consultation with GSA, the Secretary of Commerce has determined that the reestablishment of the Census Advisory Committees on the American Indian and Alaska Native Populations for the 1990 Census, Asian and Pacific Islander Populations for the 1990 Census, Black Population for the 1990 Census, and Hispanic Population for the 1990 Census is in the public interest in connection with the performance of duties imposed on the Department by law.

These committees were originally established in 1985. The Department of Commerce last renewed each committee on June 15, 1989.

The committees will continue to provide advice to the Director, Bureau of the Census, during the evaluation phase of the 1990 census cycle while focusing on the year 2000 census. Interchange is expected in evaluating the Census Bureau's programs as a whole and in their various parts; in making recommendations about the research and developmental work that is done for the year 2000 census; and is expected to improve the usefulness of statistics on racial and Hispanic origin populations generally.

The committees will each have a balanced representation of 12 members. The committees will continue to report and be responsible to the Director, Bureau of the Census, and will function solely as an advisory body in compliance with the Federal Advisory Committee Act.

The Department of Commerce will file copies of the committees' revised charters with appropriate committees in Congress.

You may address inquiries or comments to Mrs. Phyllis Van Tassel, Committee Liaison Officer, Bureau of the Census, room 2423-3, Washington, DC 20233, telephone (301) 763-5410, or Ms. Jan Jivatode, Committee Management Analyst, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-4115.

Dated: June 20, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91-15239 Filed 6-25-91; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-570-002]

Chloropicrin From the People's Republic of China; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on chloropicrin from the People's Republic of China.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1131.

SUPPLEMENTARY INFORMATION: On March 4, 1991, the Department of Commerce ("the Department") published in the Federal Register (56 FR 8983) its intent to revoke the antidumping duty order on chloropicrin from the People's Republic of China (49 FR 10691; March 22, 1984). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties. We had not received a request for an administrative review of the order for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)).

On March 29, 1991, Niklor Chemical Co., Trinity Manufacturing, Inc., Hanlin Group, Inc., and LinChem, Inc., U.S. producers of chloropicrin, objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

Dated: June 20, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-15221 Filed 6-25-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-605]

Color Picture Tubes From the Republic of Korea; Amendment to the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Carole Showers, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0167 or 377-3217, respectively.

AMENDMENT TO THE FINAL RESULTS: In accordance with section 751 of the Tariff Act of 1930, on April 25, 1991, the Department completed the administrative review of CPTs from Korea for the period January 1, 1989, through December 31, 1989 (56 FR 19084). On April 30, 1991, we received a letter from counsel for Goldstar alleging that the Department made a ministerial error. Goldstar stated that the "record of the Korean color picture tube proceeding clearly establishes that Goldstar (i) had no shipments of the subject merchandise during the period of review and (ii) had no shipments of the subject merchandise during the fair value investigation." Therefore, Goldstar contends that it should have been assigned the "new shipper" rate, *i.e.*, the *de minimis* rate, instead of the "all-other" rate from the LTFV investigation.

Goldstar's contention is correct. Because Goldstar has been investigated and reviewed, and both times found not to have shipped the subject merchandise, we have no basis to establish an antidumping duty rate for this company. Therefore, the company should be treated as a new shipper if it begins exporting the subject merchandise to the United States. Accordingly, if Goldstar begins to ship the merchandise subject to this order, the "new shipper" rate, which is zero, will apply. Accordingly, pursuant to section 751(f) of the Act, we are correcting the ministerial error in the final results of this administrative review.

Therefore, if Goldstar begins to ship the merchandise subject to this review, the "new shipper" rate, which is zero, will apply. The cash deposit requirements for manufacturers/exporters other than Goldstar specified in the final results of this administrative review remain unaffected by this amendment.

This notice is published pursuant to sections 751(f) of the Act and § 353.28 of the Department's regulations.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-15226 Filed 6-25-91; 8:45 am]

BILLING CODE 3510-DS-M

Termination of Antidumping Administrative Review on Trichloro Isocyanuric Acid and Termination, in Part, on Dichloro Isocyanurates From Japan

[A-588-019]

AGENCY: International Trade Administration/Import Administration/Department of Commerce.

ACTION: Notice of termination of antidumping administrative review on Trichloro Isocyanuric Acid and termination, in part, on Dichloro Isocyanurates from Japan.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Kristal A. Eldredge or Rick Herring, Office of Countervailing Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-0631 or 377-3530, respectively.

TERMINATION OF REVIEW: On June 1, 1990, we published the notice initiating the administrative review of the antidumping duty order on Cyanuric Acid and its Chlorinated Derivatives from Japan (55 FR 22366). That notice stated that we would review Nissan Chemical Industries, Ltd., and Shikoku Chemicals Corp., Ltd., for the period April 1, 1989 through March 31, 1990.

We subsequently published a notice of "Final Results of Antidumping Administrative Reviews and Revocation on Trichloro Isocyanuric Acid, and Revocation, in Part, on Dichloro Isocyanurates" (56 FR 19338 (April 26, 1991)). The revocation was effective November 21, 1988. As a result, we are terminating the review for all companies with respect to trichloro isocyanuric acid and Nissan Chemical Industries for dichloro isocyanurates for the period November 22, 1988 through March 31, 1990.

This termination of review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and 19 CFR 353.25.

Dated: June 18, 1991.

Francis J. Sailer,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 91-15223 Filed 6-25-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-302]

Large Power Transformers From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 20, 1990, the Department of Commerce published the

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preliminary results of its administrative review of the antidumping finding on large power transformers from Japan. These final results of review cover three manufacturers/exporters of this merchandise to the United States and generally the period from September 1, 1975, through May 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of clerical errors, we have changed the margins from those presented in our preliminary results.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 1990, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding (37 FR 11773, June 14, 1972) on large power transformers from Japan in the **Federal Register** (55 FR 48265). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of large power transformers; that is, all types of transformers rated 10,000 kVA (kilovolt/amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. During the review period, covered merchandise was classifiable under item numbers 682.0765, 682.0765, and 682.0775 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers three manufacturers/exporters of large power transformers, Fuji Electric Corporation (Fuji), Toshiba Corporation, and Hitachi Electric Corporation, and various periods from September 1, 1975, through May 31, 1987.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of the petitioner, ABB Power T&D Company, Inc., and Fuji, we held a hearing on January 30, 1991. We received case and rebuttal briefs from Fuji and the petitioner. Due to the nature of the comments, we have separated them into two sections. We begin by addressing the comments regarding dumping methodology. Then we address the technical issues concerning the calculations of the Westinghouse Price Rules (WPR) methodology.

Comments on Dumping Methodology

Comment 1: Petitioner argues that the Department's use of home market unit AN16200T1 for comparison to both U.S. sales in the 1986/87 review is inappropriate for use as the basis for foreign market value (FMV). This home market sale involved highly unusual circumstances of sale which distort the Department's price comparisons. Petitioner maintains that Fuji failed to provide information in a timely manner regarding these special circumstances of sale. Specifically, petitioner asserts that the transportation costs of the unit, which were included in the price of the unit, are so great as to distort the adjusted price which the Department used as foreign market value in its preliminary results of review.

Petitioner urges the Department to base FMV on a home market unit which does not have such unusual circumstances of sale as the Tokyo unit. Alternatively, petitioner suggests that the Department use constructed value in its analysis of both U.S. sales in the 1986/87 review.

Department's Position: Section 773(a) of the Tariff Act directs the Department to base FMV on sales of such or similar merchandise in the home market. Due to the nature of the custom-made transformers subject to the antidumping finding, determination of FMV on the basis of "such" merchandise would be very rare. Therefore, we base FMV on similar merchandise that is sold in the home market. In this case, we examined the technical specifications of the transformers Fuji sold in both markets and requested recommendations from Fuji and from petitioner. All parties agreed that the home market unit AN16200T1 was the most similar unit for comparison to both sales in the 1986/87 period. Furthermore, petitioner did not provide any arguments that physical differences between the merchandise made this comparison inappropriate. Therefore, petitioner has given us no basis for concluding that unit AN16200T1 is not similar within the meaning of section 771(16) of the Tariff Act.

In order to make a comparison between U.S. price and FMV, the statute directs the Department to adjust FMV for differences in circumstances of sale (section 773(a)(4)(B) of the Tariff Act). This is separate from the determination of such or similar merchandise. Thus, even assuming that petitioner is correct that transportation costs are extraordinarily high, this would not invalidate our determination that this unit is "similar."

Therefore, because home market unit AN16200T1 is not only similar, but is the most similar comparison unit in terms of physical characteristics to the 1986/87 U.S. units under review, we have used this unit, not constructed value, as the basis of FMV in the final results of review.

Comment 2: Petitioner alleges that home market unit AN16200T1 is inappropriate for use in determining FMV because Fuji made this sale at a price below the cost of production. Section 773(b) of the Tariff Act requires the Department to disregard home market sales which have been made at prices below the cost of production.

Department's Position: We initiated this review on July 17, 1987 (52 FR 27036). We received a response to our antidumping questionnaire in October 1987 and conducted verification in December 1987. Although petitioner has participated in the review from the outset, petitioner made its first allegation of below-cost sales after issuance of our November 20, 1990, preliminary results of review. We believe that the petitioner had sufficient information prior to the preliminary results of review to allow the filing of a timely allegation that Fuji sold home market unit AN16200T1 at a price below the cost of production. Because we have determined that this allegation was untimely, we have not proceeded with an investigation to determine whether this was a below-cost sale.

Comment 3: Petitioner argues that the Department's verification of home market unit AN16200T1 was inadequate. Given the highly unusual circumstances of the sale, the Department should have required additional documentation that would satisfactorily demonstrate that Fuji had not issued amendments to the contract or separate invoices to cover the extraordinary costs. Petitioner notes that such amendments and separate invoices reflect the general practice in the industry, and, had the verification been more thorough, the Department would have found that the home market customer made additional payments to Fuji, especially considering the unusual circumstances of this home market sale.

Department's Position: Our verification of Fuji's response was thorough and followed general procedures. Verification of an antidumping response is not an audit of a respondent's entire financial records; rather, its purpose is to determine the accuracy of the information submitted by a respondent during an investigation or review (see, e.g., *Light-Walled Rectangular Carbon Steel Tubing from Argentina*, 54 FR 13913 (April 6, 1989)). We are satisfied that Fuji provided and we reviewed all appropriate payment information at verification.

Comment 4: Petitioner argues that the Department should make an adjustment for inflation to ensure that the price of each U.S. sale is comparable to a contemporaneous FMV. Petitioner notes that the Department has acknowledged this necessity in previous reviews of this finding and in reviews of the Italian and French findings. Petitioner asserts that any inflation adjustment must be made on the increase in the costs of producing the later-shipped unit.

Department's Position: In previous reviews of the antidumping findings on Italian and French transformers, we have adjusted U.S. and home market price to reflect the amount paid pursuant to the terms of the escalation clauses of the contracts. Such clauses are included in transformer contracts to allow the manufacturer to be compensated by the customer for inflationary increases in the costs of producing the merchandise, since transformers may be produced several months, if not years, after the date of sale.

We did not make an adjustment for escalation in these reviews, however, since none of the contracts included escalation clauses.

Comment 5: Petitioner asserts that the Department departed from its usual practice in its deduction of credit expenses on the sale to the Central California Power Agency (CCPA). According to petitioner, the Department's preliminary calculations did not accurately reflect the time for which payment was outstanding. Although one of the two units was sent back to Japan for repair, the Department used the time from the second shipment date to calculate Fuji's credit cost. Petitioner argues that use of the original shipment date is appropriate, because that represents the actual credit expenses attributable to the sale.

Department's Position: We agree and have changed our calculations for the final results.

Comment 6: Petitioner notes that the Department's preliminary calculation for home market unit AN16200T1 included a deduction for insurance which reflected the cost of insuring two units. Because FMV is based on single-unit prices, only half of the insurance amount should be deducted from FMV.

Department's Position: We agree and have changed our calculations for the final results.

Comment 7: Petitioner notes that the Department neglected to make an adjustment to the price of the Grand Haven unit AZ8809T1 to account for Fuji's inland freight insurance.

Department's Position: We agree and have made the adjustment.

Comment 8: Petitioner asserts that the Department neglected to deduct the cost of oil from the price of the one of the units Fuji sold to Noranda (AB8833T3). Since the Department has made this adjustment to other U.S. units when oil has been included in the contract, yet supplied after importation into the United States, a deduction from the U.S. price is appropriate.

Department's Position: Fuji made this sale to Nissho-Iwai, the unrelated trading company from which Noranda purchased the units. The contract documents which we received at verification indicate that provision of oil was Nissho-Iwai's responsibility. Accordingly, Fuji's price to Nissho-Iwai did not include oil. Therefore, we have made no adjustment to the actual price for the cost of oil.

Comment 9: Petitioner notes two errors with respect to the Department's calculation of FMV for the sale to Nippon Kokan. First, the Department deducted an amount for supervisory expenses which exceeds the amount the Department calculated from the verification exhibits. Second, the Department deducted an amount for credit which is greater than that which Fuji claimed.

Department's Position: We have corrected the adjustment for supervisory expenses. However, Fuji's original claims for credit expenses were based on the difference in time between commissioning of the units and payment. The Department's practice is to calculate credit using the time between shipment and payment. Because commissioning occurs after shipment, we have increased Fuji's credit adjustment to reflect shipment date (see *Large Power Transformers from Italy*, 52 FR 46806 (December 10, 1987)).

Comment 10: Petitioner disagrees with the Department's calculation of credit for the sale to Ube. The Department deducted an amount for credit which is greater than that which Fuji claimed.

Department's Position: We disagree. See our response to comment 9.

Comment 11: Fuji disagrees with the Department's decision in the preliminary results to disallow the profit and overhead portions of the claimed movement and circumstance of sale expenses in calculating FMV and U.S. price. Fuji asserts that the Department verified that Fuji's records incorporate the overhead costs into the cost records of each transformer. These cost records identify expenses pertinent to the transformer. In addition, Fuji asserts that the exclusion of the overhead costs from the adjustments contributed to the dumping margins which the Department calculated.

Fuji also disagrees with the Department's decision to attribute all of the profit of each sale to the transformer portion of the sale. Fuji argues that the Department's methodology does not recognize that Fuji sells transformers and the transportation and installation of the units. Fuji asserts that the Department artificially increased the price of each transformer by assigning the overhead and profit of the entire sale just to the sale of the transformer.

Fuji acknowledges that such adjustments are not part of the Department's usual practice. However, Fuji argues that the WPR methodology which the Department uses in its analysis of the sales subject to the antidumping finding is unusual. In addition, the WPR methodology does not account for all aspects of the contracts Fuji established with its customers. Therefore, Fuji requests that the Department make adjustments to the home market and U.S. sales prices according to the response which Fuji submitted.

Department's Position: We have continued to disallow the profit and overhead portions of Fuji's claimed adjustments to home market price and U.S. price in our final results of review. The application of the WPR methodology does not affect our adjustments for differences in circumstances of sale, such as installation, transportation, and spare parts. Rather, the WPR methodology allows us to make an adjustment for differences in merchandise in these

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complex, custom-made units. Therefore, circumstances of sale adjustments are governed solely by the statute and the Department's regulations.

Because Fuji has allocated its profit across the entire sale without identifying the portion of profit attributable to each part of the sale, we have adjusted only for the costs incurred in completing the sale. In addition, the overhead figure Fuji used in its claims for circumstance of sale adjustments reflects the entire experience of the factory, which produces merchandise not subject to the antidumping finding on transformers. Fuji has not demonstrated how the factory's gross overhead ratio bears a direct relationship to the sale, as required by 19 CFR 353.56(a). Therefore, we have disallowed the profit and overhead portions of Fuji's claims for circumstance of sale adjustments for sales in both markets.

Comment 12: Fuji notes that the Department used the FMV of the incorrect home market sale in its preliminary calculation for the unit sold to BPA (AD69062T1). Although the memorandum to the file indicates that the comparison unit is the Tokyo (Akishima) unit (AJ15130T1), the preliminary calculations reflect figures for the Hokkaido (AC50850T1) sale. Fuji requests that the Department correct this error.

Department's Position: We agree and have compared the BPA unit to the Tokyo (Akishima) unit for the final results of review.

Comment 13: Fuji notes that the figures used in the preliminary calculations for the sale to Tacoma (AE69053T1), compared to the home market unit sold the Hokkaido (AC50850T1), are incorrect. The home market unit adjustments for oil and credit are those of a different home market unit. Fuji requests that the Department correct this error for the final results.

Department's Position: For the preliminary results, we applied the credit figure for the Hokkaido unit which reflects the period between shipment and final payment. We have used this same figure for the final results (see our response to comment 9). However, we have made no adjustment to FMV for the cost of oil, as we discuss in response to comment 15.

Comment 14: Fuji asserts that the Department did not appropriately deduct from FMV or U.S. price the value of the spare and additional parts which were part of the customers' contracts, yet are not covered by the WPR. Fuji argues that allocation of the overhead and profit, attributable to those spare parts to the transformers, overstates the price of the transformers. Rather, the Department should deduct the full value of the additional items, including the overhead and profit amounts Fuji demonstrated were applicable to those items.

Department's Position: The WPR methodology has been established to allow the Department to make comparisons between complex, custom-made units. However, the items at issue here are not specified in the WPR. Therefore, we make an adjustment for physical difference by adjusting FMV for the items' costs. Our authority for making these adjustments is governed by 19 CFR 353.57. Fuji's figures reflect fixed and variable overhead costs, as well as profit allocated over the entire sale. In adjusting the price for these differences in physical characteristics, however, the Department limits the adjustment to the variable costs of providing these items (see *Certain Electric Motors from Japan* (49 FR 32627, August 15, 1984)). Therefore, in our transformer comparisons, the additional adjustment for non-WPR items reflects the direct cost of manufacture.

Comment 15: Fuji disagrees with the Department's methodology of accounting for the difference in oil provisions of U.S. and home market contracts. Fuji maintains that, due to the nature of the WPR methodology, the results are inequitable because the Department reduces the U.S. price by the amount of the actual oil expenses and reduces the WPR theoretical price by the 1968 figure of $0.22. However, when determining FMV, the Department makes no adjustment to FMV or to the WPR theoretical price for the cost of oil. Such inequitable treatment results in artificial dumping margins.

Department's Position: We did not include the cost of oil in any of Fuji's U.S. sales, since either the oil was added after importation of the transformer or the oil was not included in the relevant contract price.

On the other hand, with respect to most of the sales used for the purpose of FMV, the terms of the sale include the provision of oil. Therefore, oil is included in the FMV. It is unnecessary to make any difference in merchandise adjustment between the U.S. price and FMV because the WPR ratio already accounts for this. The WPR provides an adjustment for $0.22 per gallon, which we make to the theoretical price. This is consistent with our practice in previous reviews of antidumping findings on large power transformers (see, e.g., 52 FR 46800, December 10, 1987).

Comment 16: Fuji asserts that the appropriate home market price to use in the efficiency adjustment calculation is the home market price less all movement and circumstance-of-sale expenses. For the preliminary results, the Department used the home market price less only movement expenses in its calculation. Because the efficiency adjustment measures the efficiency of the transformer itself, Fuji argues that the price the Department applies in the calculation should not include other items, such as spare parts, supervision expenses, commissions, credit, and home market packing.

Department's Position: We agree that the efficiency adjustment should only reflect the value of the transformer which the customer received. Therefore, we have made this calculation for each transformer using the ex-factory home market price, net of all appropriate circumstance of sale adjustments.

Comments on Technical Calculations

Comment 17: Petitioner asserts that the Department neglected to include a 1 percent adder for the extended warranty of unit AZ69009T1, which Fuji sold to Grand Haven.

Department's Position: Our preliminary calculations included this adjustment.

Comment 18: Petitioner argues that the Department should include a 3 percent adder for the 36-month extended warranties of the additional units Fuji sold to Grand Haven, units AZ69009T2 and AZ69009T3.

Department's Position: We agree and have changed our calculations for the final results.

Comment 19: Petitioner argues that the WPR calculation of the DWR unit, AZ69024T1, should include a 3 percent adder for the 36-month warranty, a 2 percent adder for the in/out warranty, a 3.5 percent adder to account for manufacture of the unit further than 3500 miles from its destination, and a 5 percent adder for the special seismic reinforcement requirement of the bid specifications. In addition, the WPR calculations should include dollar adders for 9 low voltage bushing current transformers (BCTs), 1 high-voltage BCT, the special paint finish, and spare parts.

Department's Position: We disagree. An adder of 1 percent is the maximum extended warranty provided in the WPR for a transformer of this size. We have included this adder. Regarding the in/out warranty, we find no information on the record which indicates that an in/out warranty was included in the sale.

The contract states that the price will be lowered by 3.5 percent if the unit is manufactured at a site further than 3500 miles from its destination. This is not a technical specifications item for which we should consider an adjustment to the WPR price. Rather, we have considered whether this contractual requirement affects the actual price of the transformer. Because we are satisfied that the price we have used in our calculations reflects the final price of the transformer, which may or may not have included the 3.5 percent adder at the end of negotiations, we have not adjusted the U.S. price by 3.5 percent.

We have examined the appropriateness of a special seismic reinforcement adjustment in the WPR price methodology we use in these proceedings. We have taken into account the fact that transformers in the United States are frequently transported by rail and the bracing required for such transportation is comparable to the special seismic reinforcement which some foreign and U.S. customers require. Since the bracing requirement is part of standard transformer design, we have not included a special adder to the WPR price for special seismic reinforcement.

We have included an amount for the BCTs in our calculations. According to our review of the documentation, the paint requirements for this unit are standard. Therefore, we have not added an amount to the theoretical price for special paint. Finally, because the spare parts are not covered by the WPR, we have adjusted the actual price for the inclusion of spare parts in the contract.

Comment 20: Petitioner asserts that the Department miscalculated the pricing kVA of unit AE69183T1, which Fuji sold to TAMCO.

Department's Position: We disagree. In the WPR applicable to this transformer, step 1.3. addresses no-load-tap-changing equipment. Use of step 1.3.A. is appropriate if the unit has no-load-tap-changing equipment. Use of step 1.3.B. is appropriate if the unit does not have no-load-tap-changing equipment. Because the TAMCO unit does not have no-load-tap-changing equipment, we have calculated the kVA using step 1.3.B.

Comment 21: Petitioner asserts that the WPR calculations for the DOW unit, AC69110T1, should include a 1 percent adder for the FOB destination of the sale, a 1 percent adder for the 18-month warranty, and an adder for the impulse test required by the bid specifications.

Department's Position: We disagree with petitioner. There is no adder in WPR 48–620 for FOB destination terms. We agree that the adders for the 18-month warranty and impulse test are appropriate.

Comment 22: Petitioner asserts that the WPR calculation of unit AD69061T1, which Fuji sold to the DWR Edmonston plant, should include a 2 percent adder for the in/out warranty, a 3 percent adder for the extended warranty, and a 5 percent adder for the special seismic shock reinforcement requirement. In addition, the calculations should include a dollar adder for the cost of spare parts.

Department's Position: We disagree. We see no requirement in the record that an in/out warranty was part of this sale. Because the maximum warranty provision in WPR 48–620 is for 1 percent, we have limited our addition to 1 percent for the warranty. See our response to comment 19 regarding an adder for special seismic reinforcement. Finally, because the spare parts are not covered by the WPR, we have adjusted the actual price for the inclusion of spare parts in the contract.

Comment 23: Petitioner argues that the WPR calculation for the BPA unit, AD69062T1, should include a 5 percent adder for the two warranties and the FOB destination term of sale.

Department's Position: We disagree. There is no indication that the specifications required an in/out warranty or an extended warranty. There is a one-year warranty specified in the contract. Because the WPR assumes a one-year warranty in its figures, we have not included an adder for any warranty requirements. Regarding petitioner's assertion regarding FOB terms, please see our response to comment 21.

Comment 24: Petitioner argues that the WPR calculation for the Tacoma unit, AE69053T1, should include a 5 percent adder for the extended and in/out warranties.

Department's Position: We disagree. We see no requirement in the record that an in/out warranty was part of this sale. Because the maximum warranty provision in WPR 48–620 is for 1 percent, we have limited our addition to 1 percent for the extended warranty.

Comment 25: Petitioner argues that the WPR calculation for the BOR unit, AJ69085T1, should include a 2 percent adder for the in/out warranty, a 3 percent adder for the five-year extended warranty, and a dollar adder for the special paint finish.

Department's Position: We agree that the 2 percent adder for the in/out warranty is appropriate for the BOR unit. However, the maximum warranty provision in WPR 48–620 is for 1 percent, so we have limited our addition to 1 percent for the extended warranty.

According to our review of the documentation, the paint requirements for this unit are standard. Therefore, we have not added an amount to the theoretical price for special paint.

Comment 26: Petitioner argues that the WPR calculations for the home market units Fuji sold to Nippon Kokan, Idemitsu, Ube, and Tokyo (Akishima) should not include the 2 or 3 percent adders for special charges, since these special charges are not identified in the specification sheets for these units.

Department's Position: We disagree. Provisions for special charges are specified in Rules 53 and 54 of WPR 48–620. Because Fuji's detailed specification sheets indicate that there were such additional charges in the contract for the special warranty and extended warranty, we have made an adjustment to the WPR price.

Comment 27: Petitioner asserts that the Department miscalculated the pricing kVA of the Itoh Seitetsu unit. As an example, petitioner notes that the special impedance should have an adder of 3 percent, not 14 percent as the Department calculated. In addition, the Department included an adder for special charges without justification.

Department's Position: We disagree. Because this transformer does not have no-load-tap-changing equipment, the correct kVA pricing calculation in WPR 45–520 for this transformer is at step 1.3.B., not step 1.3.A., as petitioner proposes (see our position in response to comment 20).

We note that the adder for impedance is separate from the calculation of the kVA price. Because the Japanese and U.S. standards regarding temperature rise vary, and this affects our theoretical WPR price, we must correct the transfomer's guaranteed impedance for the difference in the two standards (the 1968 WPR assumes the U.S. standard of 55°C temperature rise and the Japanese standard assumes 50°C temperature rise). After adjusting for these differences in temperature rise, we apply Rule 5 as the adder for impedance.

Our addition of 2 percent for special charges accounted for the in/out warranty provision of the contract.

Comment 28: Petitioner disagrees with the Department's inclusion of a 2 percent adder for special charges or a dollar adder for special paint finish in the WPR calculation of the unit Fuji sold to Hokkaido.

Department's Position: The transformer had special paint for salt exposure, which we have included in the WPR price. We have accounted for the contract's requirement of an in/out warranty by applying the 2 percent adder for special charges.

Comment 29: Fuji asserts that the Department's WPR price for the two

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DWR units, AZ69024T1 and AZ69024T2, requires several corrections. First, the amount for additional taps should be 0.5, not 5.5 as listed in the preliminary calculations. Second, Fuji does not agree with the Department's adder of $4467 for winding temperature equipment. Fuji calculates an amount of $866. Third, although lightning arresters were required in the original contract, the verification documents demonstrate that the contract was amended to remove the lightning arresters. Finally, Fuji questions the adder for bushings. Since the DWR units required standard bushings for the appropriate current levels, no adder is necessary.

Department's Position: The WPR requires an adder of 0.5 percent for one additional tap and 5 percent under Rule 17 for winding complications. Therefore, the total adder is 5.5 percent, which is what we used in our preliminary calculations. Our review of Fuji's documentation indicates that the adder of $4467 for winding temperature equipment is correct. We have removed the adder for lightning arresters. We note that the bushing standards are by voltage of the transformers, not by the current. Therefore, our calculation reflects the voltage characteristics of the units.

Comment 30: Fuji argues that the Department used the incorrect WPR to calculate the theoretical price of the Noranda unit, AE69633T3. Since the capacity of the Noranda unit is 130,000 kVA and the comparable unit (Volta, AE69700T1) is 83,200 kVA, the large power transformer WPR should have been used, not the medium power transformer WPR. In addition, the calculation of kVA is correct, yet the wrong kVA was used in the complete calculations. In addition, the adder for bushings is incorrect.

Regarding the Volta unit, Fuji asserts that the Department's WPR theoretical price does not include an adder for a temperature rise test or the adder for the automatic control. Finally, Fuji requests that the Department account for the oil purifier and insulation oil in its calculations.

Department's Position: We have used WPR 45–421, which is for Furnace and Rectifier Transformer Voltage Control Equipment. The Noranda and Volta units are regulating autotransformers and fall within this WPR, which covers a range of 500–150,000 kVA with a primary voltage to 69 kV.

There is no evidence on the record that Fuji conducted a temperature rise test on a thermally duplicate transformer. Therefore, we have included one temperature rise test in the WPR price of the transformer.

Similar to our response to comment 29, the bushing standards are by voltage of the transformers, not by the current. Therefore, our calculation reflects the voltage characteristics of the unit.

None of the technical documentation on the record indicates that the Volta unit had an oil purifier as an accessory to the load tap changer. Therefore, we have made no adjustment to the theoretical WPR price or FMV for this kind of equipment. We have amended the theoretical WPR to reflect the adder for an automatic control for the load tap changer.

We have not made an adjustment for oil inclusion, as we discuss in response to comment 15.

Comment 31: Fuji argues that the Department should make an adjustment to the WPR prices of various home market and U.S. units for which additional seismic reinforcement was necessary to meet the customers' requirements. The bracing necessary to meet those requirements far exceeds the strength of the units which the WPR calculation assumes.

Department's Position: We disagree. See our response to comment 19.

Final Results of Review

As a result of the comments received and the correction of certain clerical errors, we determine that the following margins exist:

Manufacturer/exporter	Period	Margin (percent)
Fuji Electric Corp	9/1/75–5/31/85	4.22
	6/1/85–5/31/86	*4.22
	6/1/86–5/31/87	0.0
Hitachi Electric Corp	6/1/86–5/31/87	*9.8
Toshiba Corp	6/1/86–5/31/87	*9.39

*No shipments; margins from last administrative review in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on entries of this merchandise from these firms. For Fuji, the cash deposit rate will be zero percent, based on the most recent review of its entries. For any future entries of this merchandise from an exporter not covered in this or in any prior reviews, whose first shipments occurred after May 31, 1987, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of zero percent shall be required. These deposit requirements are effective for all shipments of Japanese large power transformers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 17, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–15224 Filed 6–25–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–505]

Malleable Cast Iron Pipe Fittings From Brazil; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on malleable cast iron pipe fittings from Brazil.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FGR 20193) its intent to revoke the antidumping duty order on missiles cast iron pipe fittings from Brazil (51 FR 16640, May 21, 1986). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties. We did not receive a request for administrative review of the order for the last four consecutive annual anniversary months and, therefore, published a notice of intent to revoke the order pursuant to 19 CFR 353.25(d)(4).

On May 30, 1991, the Cast Iron Pipe Fittings Committee, an interested party, objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

Dated: June 18, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–15222 Filed 6–25–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–820]

Initiation of Antidumping Duty Investigation: New Minivans From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: David Binder, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1779.

Initiation

Petition

On May 31, 1991, Chrysler Corporation, Ford Motor Company, and General Motors Corporation filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of the United States industry producing minivans. In accordance with 19 CFR 353.12, the petitioners allege that imports of new minivans from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threatening material injury to, a U.S. industry. The petitioners supplemented the petition on June 17, 1991.

The petitioners have stated that they have standing to file the petition because they are interested parties, as defined in 19 CFR 353.2(k), and because they have filed the petition on behalf of the U.S. industry producing minivans. If any interested party, as described in 19 CFR 353.2(k) (3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

Petitioners base their estimates of United States price (USP) on published dealer prices for Toyota and Mazda minivans. Petitioners have based USP on exporter's sales price because both Toyota and Mazda sell their minivans through their U.S. subsidiaries. Petitioners adjusted USP, as appropriate, for foreign inland freight and handling, ocean freight, marine insurance, pipeline financing, advertising, U.S. selling and administrative expenses, import duties, and sales incentives.

Petitioners base their estimates of Foreign Market Value (FMV) on published dealer retail prices for Toyota and Mazda minivans. Petitioners adjusted FMV for dealer discounts, inland freight, pipeline financing, advertising, selling and administrative expenses, and differences in merchandise.

Petitioners allege dumping margins ranging from 5.4 to 30.5 percent.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition probably alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on new minivans from Japan and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of new minivans from Japan are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b), we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The products covered by this investigation are new minivans. Minivans are on-highway motor vehicles, with a gross vehicle weight that is generally less than 6,000 pounds, a height that is generally between 62 and 75 inches, having a single, box-like structure that envelopes both the space for the driver and front-seat passenger and the rear space (which has flat or nearly flat floors and is usable for carrying passengers and cargo), a hood that is generally sloping and a short distance from the cowl to the front bumper relative to the overall length of the vehicle, a seat configuration that permits passengers to walk from the front area to the rear area of the vehicle, and a rear side access door (or doors) and a rear door (or doors) that provide wide and level access to the rear area. During this investigation, we will continue to consider this definition of the scope and will refine it if necessary. Minivans are currently classified under either subheading 8703 or subheading 8704 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by ITC

The ITC will determine by July 15, 1991 whether there is a reasonable indication that imports of new minivans from Japan are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before November 7, 1991, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

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This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 19, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-15225 Filed 6-25-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-501]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order or certain circular welded carbon steel pipes and tubes from Thailand for the period January 1, 1988 through December 31, 1988. We preliminarily determine the total bounty or grant to be 0.90 percent *ad valorem* for Saha Thai and 7.18 percent *ad valorem* for all other exporters. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1989, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (54 FR 32365) of the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand (50 FR 32751; August 14, 1985). On August 31, 1989, the petitioners, the standard pipe subcommittee of the Committee on Pipe and Tube Imports and its individual producer members, requested an administrative review of the order. We initiated the review, covering the period January 1, 1988 through December 31, 1988, on September 20, 1989 (54 FR 38712). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of circular welded carbon steel pipes and tubes, with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A-120, A-53 and A-135. During the review period, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 73.04.1010, 73.04.2050, 73.04.2070, 73.04.3100, 73.04.3900, 73.04.9050, 73.05.1010, 73.05.1110, 73.05.1210, 73.05.1910, 73.05.3140, 73.05.3910, 73.05.9010, 73.05.2060, 73.06.9010 of the Harmonized Tariff Schedule. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1988, and nine programs. Six producers of the Thai pipes and tubes exported the subject merchandise to the United States during the review period. Only one exporter, Saha Thai, responded to the Department's questionnaire.

Analysis of Programs

(1) Tax Certificates for Exports

Under the Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act of 1981 (Tax and Duty Act), the Royal Thai Government (RTG) issues tax certificates to the exporter of record to rebate indirect taxes and import duties on inputs used to produce exports. The rebate rates are computed on the basis of an input/output (I/O) study initially published in 1980 based on 1975 data, and updated in 1985 using 1989 data.

The Thai Ministry of Finance uses the I/O study to compute the value of total inputs (both imports and local purchases) used in a discrete range of sector-specific products at ex-factory prices. The Ministry then calculates the import duties and indirect taxes on each input, and two rebate rates. The "A" rate rebates import duties and indirect domestic taxes. The "B" rate rebates only business taxes. The "B" rate is used by exporters that receive duty drawback, import duty exemptions on raw materials, or that do not use imported raw materials in their production process. The "A" or "B" rate is then applied to the total f.o.b. value of the export to determine the amount of the rebate.

The rebates are paid to companies by tax certificates which can be used to pay various tax liabilities, transferred or sold to other companies. The rebate rates in effect during the review period were set forth in the "Notification of the Committee on Tax Rebates, No. Or. 2/2529," effective February 5, 1986. The calculation of these rates was based on the updated I/O study published in 1985. The "A" rate for secondary steel products (sector I/O 106), which includes circular welded carbon steel pipes and tubes, is 8.11 percent, and the "B" rate is 4.98 percent.

In Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Apparel from Thailand, 50 FR 9818 (March 12, 1985), we examined Thailand's rebate system under the Tax and Duty Act. We found that the program was intended to rebate indirect taxes and import duties and that the rebate rates had been reasonably calculated. In subsequent investigations involving products from Thailand, including the investigation in this proceeding, we reaffirmed this determination. See, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Butt-Weld Pipe Fittings from Thailand, 55 FR 1695 (January 18, 1990) (*Butt-Weld Pipe Fittings*). Because this program is available only to exporters, it is countervailable to the extent that it confers a rebate in excess of the Department's calculated allowable rebate of import duties and indirect taxes.

To calculate the rate of allowable rebate, the Department must first determine the f.o.b. value of exports. The value of all domestically-produced finished goods, as shown in the I/O tables, is an ex-factory value. Because the rebate is applied to the f.o.b. value of export, we adjusted the ex-factory value to reflect an f.o.b. value. The I/O tables do not separate wholesale margin and transportation costs applicable solely to domestically-produced finished goods. Therefore, we divided the wholesale margin and transportation costs for all finished goods in the I/O 106 sector, including imports, by the ex-factory value of imported and domestically-produced finished goods in the sector. We then multiplied the ex-factory value of all domestically-produced finished goods in the sector by this ratio. We added the result to the ex-factory value of domestically-produced finished goods in order to obtain f.o.b. adjusted value.

Consistent with Butt-Weld Pipe Fittings, we divided the import duties and tax incidence on all items physically incorporate into I/O 106 sector products by the f.o.b. adjusted value of all domestically produced finished goods in the sector to obtain the allowable rebate rates. We then compared the authorized rebate rate of 8.11 percent, which is based on both physically and non-physically incorporated inputs, to the allowable rebate rate and found that there is an excessive remission of import duties and indirect taxes to exporters of pipes and tubes. The difference between the "A" rate and the allowable rebate is 0.81 percent. To calculate the overrebate of the "B" rate, we followed the same procedure outlined above, except that we divided the domestic taxes by the f.o.b. adjusted value and compared the result to the authorized rebate rate of 4.98 percent. The difference between the "B" rate and the allowable rebate is 0.51 percent.

Saha Thai only used the "B" rate. For the exporters that did not respond to our questionnaire, we used the best information available ("BIA"), in accordance with section 776(c) of the Tariff Act. As BIA, we assumed that the nonresponding exporters used only the "A" rate. On this basis, we preliminarily determine the benefit from this program to be 0.51 percent *ad valorem* for Saha Thai and 0.81 percent *ad valorem* for all other exporters.

(2) Export Packing Credits

Export packing credits (EPCs) are short-term pre-shipment and post-shipment export loans. Exporters apply to commercial banks for EPCs and the commercial banks, in turn, submit the applications to the Bank of Thailand (BOT) for approval. Under the "Regulations Governing the Purchase of Promissory Notes Arising from Exports" (B.E.2528), effective January 2, 1986, the BOT repurchases promissory notes issued by creditworthy exporters through commercial banks. To qualify for the repurchase arrangement, promissory notes must be supported by a letter of credit, sales contract, purchase order, usance bill or warehouse receipt. The notes are available for a maximum of 180 days and interest is payable on the due date of the loan.

The BOT charges the commercial bank account for the principal amount plus five percent interest per annum on repurchased packing credits issued in connection with exports in categories one and two of the "Notification of the Board of Investment No. 40/2521." If the terms of the loan are not met, the BOT charges the commercial bank a penalty, retroactive to the first day of the loan, at an eight percent interest rate. The commercial bank then charges the exporter's account for the principal amount plus seven percent interest on the due date of the loan. If the exporter has not met the terms of the loan, the commercial bank passes on the additional eight percent penalty charge over the term of the loan.

If the exporter can prove that shipment of the goods took place within 60 days after the due date (in the case of pre-shipment loans), or the foreign currency was received within 60 days after the due date (in the case of post-shipment loans), the penalty is refunded to the commercial bank by the BOT. If only a portion of the goods was shipped or only a portion of the foreign currency was received by the due date, the exporter receives only a partial refund, proportional to the value of the goods shipped or the foreign currency received. The purpose of the penalty charge is to ensure that companies are using the EPCs to finance export sales.

On October 1, 1988, the RTG issued new regulations that coexisted with the prior regulations until December 31, 1988. Effective October 1, 1988, all first time applicants for EPCs had to apply under the new regulations. EPCs received under the previous regulations, but still outstanding as of January 1, 1989, continued under those regulations until their expiration dates.

Under the new regulations, only pre-shipment financing is permitted. The maximum rate commercial banks can charge exporters was increased from 7 to 10 percent. In addition, commercial banks can lend up to 100 percent of the shipment value, but can only rediscount up to 50 percent of the loan amount with the BOT. Under the previous regulations, the commercial banks could only lend up to 80 percent of the shipment value and the BOT rediscounted 100 percent of the loan amount. Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

For our benchmark interest rate, we used the weighted-average interest rate charged by commercial banks on domestic loans, bills, and overdrafts. We have used the data on these rates as the basis for our benchmark in all previous Thai cases. See, e.g., Butt-Weld Pipe Fittings. For this review, we used a benchmark rate of 9.57 percent.

To calculate the benefit from the EPC loans on which interest was paid during 1988, we compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. For Saha Thai, we divided the company's benefit by its total exports of the subject merchandise to the United States.

For the exporters that did not respond to our questionnaire, we used, as BIA, the highest company EPC rate calculated in the last administrative review. On this basis, we preliminarily determine the benefit from this program to be 0.39 percent *ad valorem* for Saha Thai and 1.60 percent *ad valorem* for all other exporters.

(3) Electricity Discounts for Exporters

The three electricity generating authorities of Thailand, the Electricity Generating Authority (EGAT), the Metropolitan Electricity Authority (MEA), and the Provincial Electrical Authority (PEA), provide discounts on electricity rates charged to producers of export products. All exporters that are eligible to receive tax certificates qualify for the electricity discounts.

Once the export transaction has been completed, the exporter may apply for the discount by presenting to the electricity authority from which it receives its electricity bill the appropriate documents to verify that an export shipment has been made. The discount is calculated based on the rebate rate in effect and consumption by the company, and the discount is credited on a subsequent electricity bill.

Because electricity discounts are available only to exporters, we preliminarily determine that they are countervailable. Saha Thai did not apply for or receive electricity discounts during the review period. For the exporters that did not respond to our questionnaire, we used, as BIA, the highest company electricity discount benefit calculated in our last administrative review. On this basis, we preliminarily determine the benefit from this program to be zero for Saha Thai and 2.88 percent *ad valorem* for all other exporters.

(4) Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act

The Investment Promotion Act (IPA) of 1977 provides incentives for investment to promote development of the Thai economy. The IPA authorizes, among other incentives, the exemption of import duties and domestic taxes with respect to qualifying projects. Section 28 of the IPA provides an exemption from payment of import duties and business taxes on machinery

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used to produce promoted products. Because benefits under this program are contingent upon export performance, and cover capital equipment (*i.e.*, machinery) that is not physically incorporated in the subject merchandise, we preliminarily determine that the benefits provided under this program are countervailable. See Butt-Weld Pipe Fittings.

Saha Thai did not apply for or receive any benefits under the IPA program during the review period. For the exporters that did not respond to our questionnaire, we used, as BIA, the benefit calculated in Butt-Weld Pipe Fittings for this program in the 1988 review period of 1.89 percent *ad valorem*. On this basis, we preliminarily determine the benefit from this program to be zero for Saha Thai and 1.89 percent *ad valorem* for all other exporters.

(5) Other Programs

We also examined the following programs and preliminarily determine that the exporters of the subject merchandise did not use them during the review period.

A. Repurchase of Industrial Bills.

B. Export Processing Zones.

C. International Trade Promotion Fund.

D. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries.

E. Additional Incentives under the IPA.

- Income tax exemption.
- Goodwill and royalties tax exemption.
- Tax deduction of foreign marketing expenses and foreign taxes.
- Exemption of sales tax for promoted industries.
- Exemption on export duties and business taxes on products produced or assembled by promoted firms.
- Deduction from assessable income of an amount equal to 5 percent of the increase over the previous year of income derived from exports.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant for the period January 1, 1988 through December 31, 1988 to be 0.90 percent *ad valorem* for Saha Thai and 7.18 percent *ad valorem* for all other exporters.

The Department intends to instruct the Customs Service to assess countervailing duties of 0.90 percent of the f.o.b. invoice price on shipments form Saha Thai and 7.18 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1988 and on or before December 31, 1988.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.90 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Saha Thai and 7.18 percent from all other firms from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Commerce regulations.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 355.22).

Dated: June 20, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-15227 Filed 6-25-91; 8:45 am]

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[C-122-404]

Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on live swine from Canada for the period April 1, 1989 through March 31, 1990. We preliminarily determine the net subsidy to be Can$0.0051/lb. for sows and boars, and Can$0.0937/lb. for all other live swine. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Britt Doughtie or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 32280) of the countervailing duty order on live swine from Canada (50 FR 32880; August 15, 1985). On August 17, 1990, the National Pork Producers Council requested an administrative review of the order. We initiated the review, covering the period April 1, 1989 through March 31, 1990, on September 24, 1990 (55 FR 39032). The Department has now conducted that administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of live swine from Canada. Such merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1989 through March 31, 1990 and 39 programs.

Analysis of Programs

I. Federal Programs

1. Feed Freight Assistance Program

The Feed Freight Assistance (FFA) Program is administered by the Livestock Feed Board of Canada (the Board) under the Livestock Feed Assistance Act of 1966 (LFA). The Board acts to ensure: (1) The availability of feed grain to meet the needs of livestock feeders; (2) the availability of adequate storage space in Eastern Canada to meet the needs of livestock feeders; (3) reasonable stability in the price of feed grain in Eastern Canada to meet the needs of livestock feeders; and (4) equalisation of feed grain prices to livestock feeders in Eastern Canada, British Columbia, the Yukon Territory or the Northwest Territories. Although this program is clearly designed to benefit livestock feeders, FFA payments are also made to feed mills that transform the feed grain into livestock feed, when these feed mills are the first purchasers of this grain. The Board makes payments related to the cost of feed grain storage in Eastern Canada, and payments related to the cost of feed grain transportation to, or for the benefit of, livestock feeders in Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories, in accordance with the regulations of the LFA.

Because this program benefits only a specific group of enterprises or industries, namely livestock feeders and grain millers, in specific areas, namely Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories, we preliminarily determine that the program is countervailable. During the review period, payments were made to feed grain users for transportation assistance.

The Board calculated that 3.25 percent of the total transportation expenditures for feed grain users receiving assistance under this program in FY 1989/90 benefited live swine producers in the designated areas of Canada. Therefore, we divided the amount of feed transportation expenditures attributable to live swine producers by the total weight of live swine produced in Eastern Canada (including ⅘ of Ontario, all of Quebec, and the Maritime Provinces), and British Columbia during the review period. We then weight-averaged the benefit by these areas' share of total Canadian exports of live swine, including sows and boars, to the United States. On this basis, we preliminarily determine the benefits from this program during the review period for both sows and boars, and other live swine, to be significantly less than Can$0.0001/lb., which is effectively zero.

II. Federal/Provincial Programs

1. National Tripartite Stabilization Scheme for Hogs

On June 27, 1985, the House of Commons passed Bill C-25, which authorized an amendment to the Agricultural Stabilization Act (ASA), namely section 10.1. This amendment provided for the introduction of cost-sharing tripartite or bipartite stabilization schemes involving the producer, the federal government and the provinces. Pursuant to section 10.1 of the ASA, federal and provincial ministers have signed agreements covering: (1) Apples; (2) beans (including kidney/cranberry, white pea, and other colored beans); (3) beef (including cow-calf, feeder cattle, and slaughter cattle); (4) hogs; (5) sugar beets; (6) lambs (including ewe flock and home-raised); (7) onions; and (8) honey. The onion and honey agreements were signed during this review period.

Signatories to the National Tripartite Stabilization Scheme for Hogs include the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan.

The general terms of the Tripartite scheme for hogs are as follows: All hog producers in participating pronvinces receive the same level of support per unit; the cost of the scheme is shared equally between the federal government, the province, and the producers; producer participation in the scheme is voluntary; the provinces may not offer separate stabilization plans or other *ad hoc* assistance for hogs (with the exception of Quebec); and the federal government may not offer compensation to swine producers in a province not a party to an agreement. The scheme must operate at a level that limits losses but does not stimulate over-production.

The Tripartite Agreements provide for a five year phase-in period to adjust for differences between the Tripartite scheme and the provincial programs still in effect. Most existing provincial stabilization programs are to be completely phased out by 1991. During the review period, five provincial stabilization programs remained in effect, with programs in effect in three provinces that exported live swine to the United States during the review period (see Section III).

Hogs eligible for stabilization payments under the Tripartite scheme must index 80 or above. Sows and boars are not eligible for benefits because they are not indexed. Stabilization payments are made when the market price falls below the support price. The difference between the support price and the average market price is the amount of the stabilization payment.

Section 10.1 of the ASA does not act in law to limit the number of commodities that may be covered under agreements. Therefore, it is necessary to consider whether there is *de facto* specificity. To determine whether a program is limited to a specific enterprise or industry, or group of enterprises or industries, we consider: (1) Whether the law of the foreign government acts to limit the availability of a program; (2) the number of industries or groups thereof that actually use a program; (3) whether there are dominant users of a program, or whether certain industries or groups thereof receive disproportionately large benefits under a program; and (4) the extent to which a government exercises discretion in conferring benefits under a program (see e.g., Preliminary Results of Countervailing Duty Administrative Reviews; Carbon Steel Wire Rod from Malaysia (56 FR 14827; April 12, 1991); see also "Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments", section 355.43(b)(2), (54 FR 23379; May 31, 1989).

The Tripartite program was limited to only eleven commodities in eight agreements during FY 1989/90. Hog producers were the dominant users of the program, accounting for over 81 percent of the total payouts made in all agreements in FY 1989/90, and 72 percent of total payouts in all schemes since the inception of the Tripartite program. Furthermore, there are no explicit or standard procedures or criteria for evaluating Tripartite Agreement requests. Tripartite Agreements were rejected for asparagus, and producers of sour cherries and corn requested but did not obtain agreements (see Final Affirmative Countervailing Duty Determination; Fresh, Chilled and Frozen Pork from Canada; 54 FR 30777; July 24, 1989). For the foregoing reasons, in accordance with section 771(5)(B), we preliminarily determine that the Tripartite program is countervailable because it is limited to a specific group of enterprises or industries.

During the review period, payouts for hogs were made under the Tripartite Agreements in each of the nine signatory provinces. Six of these provinces exported to the United States during the review period. To calculate the benefit, we first divided two-thirds (representing the federal and provincial portions) of the payments made in FY 1989/90 to producers in each province by the total weight of live swine (minus sows and boars) produced in that province in FY 1989/90, and calculated a benefit per pound on a province-by-province basis. We then weight-averaged each exporting province's per-pound benefit by that province's share of total Candian exports of live swine (minus sows and boars) to the United States to calculate the average benefit per pound. On this basis, we

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preliminarily determine the benefit to be zero for sows and boars, and Can$0.0674/lb. for all other live swine during the review period.

III. Provincial Price Stabilization Programs

1. British Columbia Farm Income Insurance Act—Swine Producer's Farm Income Stabilization Program (FIP)

The FIP was established in 1979 in accordance with the Farm Income Insurance Act of 1973 (the Farm Act), in order to assure income for farmers when commodity market prices fluctuate below basic costs of production. Under the Farm Act, individual commodity programs have been established for the following commodities: (1) Beef; (2) tree fruits; (3) blueberries; (4) hogs; (5) processing vegetables; (6) processing strawberries; (7) lambs; and (8) potatoes. Guidelines for the receipt of benefits by each commodity program are delineated in Schedule B of the Farm Act. Schedule B4 contains the guidelines for swine producers.

The program is administered by the provincial Ministry of Agriculture and Food and the British Columbia Federation of Agriculture, and is funded equally by producers and the provincial government. Premiums are paid in all quarters regardless of market results.

FIP payments are calculated quarterly based on the difference between costs of production and market returns. Participating producers receive FIP payments for calendar quarters during which costs of production exceed market returns. The basic costs of production and market returns are calculated quarterly according to a cost-of-production model described in the Farm Act. The same per unit cost-of-production model is used for all products receiving benefits. Sows and boars are not eligible for payments.

Because FIP is only available to farmers producing commodities specified in the Schedule B guidelines, we preliminarily determine that this program is countervailable because payments were limited to a specific group of enterprises or industries.

To calculate the benefit, we divided half of the province's stabilization payments (representing the provincial government's share) during FY 1989/90 by the total weight of live swine (minus sows and boars) produced in British Columbia. We then weight-averaged the benefit by British Columbia's share of total Canadian exports of live swine (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and significantly less than Can$0.0001/lb., which is effectively zero, for other live swine during the review period.

2. Quebec Farm Income Stabilization Insurance Programs (FISI)

The FISI was established in 1976 under the "Loi sur l'assurance-stabilisation des revenus agricoles." The program is administered by the Regie des Assurances Agricoles du Quebec (the Regie). The purpose of the program is to guarantee a positive net annual income to participants whose income is lower than the stabilized net annual income. The stabilized net annual income is calculated according to a cost-of-production model that includes an adjustment for the difference between the average wage of farm workers and the average wage of all other workers in Quebec. When the annual average farm worker income is lower than the stabilized net annual income, the Regie makes a payment to the participant at the end of the year.

Two-thirds of the funding for the program is provided by the provincial government and one-third by producer assessments. Participation in a stabilization scheme is voluntary. However, once a producer enrolls in a program, he must make a five-year commitment. The maximum number of feeder hogs eligible to be insured is 5,000 per farmer, and a maximum of 400 sows per farmer may also be insured. Whenever the balance in the FISI account is insufficient to make payments to participants, the provincial government lends the needed funds to the program at market rates. The principal and interest on these loans are repaid by the Regie using the producer and provincial contributions.

Since Quebec joined the federal government's Tripartite Price Stabilization Scheme for hogs in February 1989, the FISI scheme for hogs operates by covering only the difference between payments made under the Tripartite scheme and what FISI payments would have been in absence of the Tripartite scheme. While some farmers have opted for single coverage under the Tripartite scheme, all producers who have maintained enrollment with FISI are also enrolled in the Tripartite scheme.

FISI benefits are provided through 11 schemes covering fifteen different producer groups, including: (1) Feeder calves; (2) feeder cattle; (3) slaughter cattle; (4) grain-fed calves; (5) milk-fed calves; (6) piglets; (7) feeder hogs; (8) lambs; (9) potatoes; (10) grain corn; (11) wheat; (12) barley; (13) oats and mixed grains; (14) sugar beets; and (15) soybeans. Soybean producers enrolled in FISI during the review period. Several major agricultural commodities, such as eggs, dairy products, and poultry, which make up a large portion of Quebec's total agricultural production, are not covered under this program. Since 1981, soybeans are the only new commodity to be enrolled in FISI. Because this program has been consistently providing benefits to the same group of commodities (with the exception of the addition of soybeans during the review period) over the last nine years, representing the majority of the program's life, we determine that it is limited to a specific group of enterprises or industries and is therefore countervailable.

To calculate the benefit, we multiplied the total payments made under both the piglet and feeder hog programs during the review period by two-thirds (representing the provincial portion). We divided this amount by the total weight of live swine (including sows) produced in Quebec to get the average benefit per pound. However, because no sows were exported to the U.S. during the review period, we then weight-averaged the benefit by Quebec's share of total Canadian exports of live swine (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for boars and Can$0.0001/lb. for sows and other live swine during the review period.

3. Saskatchewan Hog Assured Returns Program (SHARP)

SHARP was established in 1976 pursuant to the Saskatchewan Agricultural Returns Stabilization Act. Under this act, the provincial government may establish a stabilization plan for any agricultural commodity. However, only hogs and cattle have such plans. SHARP provides stabilization payments to hog producers in Saskatchewan at times when market prices fall below a designated "floor price." The program is administered by the Saskatchewan Pork Producers' Marketing Board (the Board) on behalf of the provincial Department of Agriculture. Participation is voluntary and is open to all hog producers in the province. Coverage is limited to 1,500 indexed hogs per producer each quarter.

In accordance with the Tripartite Agreement, SHARP was scheduled to have been terminated by March 31, 1991. No producers have been allowed to join SHARP since December 31, 1985.

The program is funded by levies on the sale of hogs covered by the program. Levies from participating producers range from 1.5 to 4.5 percent of market returns on the sale of hogs and are matched by the province. After the Tripartite Agreement was implemented on July 1, 1988, SHARP payments were reduced by the amount of Tripartite scheme payments. Whenever the balance in the SHARP account is insufficient to make payments to participants, the provincial government lends the needed funds to the program at terms consistent with commercial considerations. The principal and interest on these loans are repaid by the Board using the producer and provincial contributions.

The floor price for this program is calculated quarterly, and stabilization payments are made when the market price is below the floor price. Payments were made to indexed hog producers in each quarter of the review period. Sows and boars were not eligible for payments.

Because payments from this program were provided to indexed hogs and cattle only, we preliminarily determine that the program is limited to a specific group of enterprises or industries and is therefore countervailable.

To calculate the benefit, we divided half of the province's stabilization payments (representing the provincial government's portion of the payments) during FY 1989/90 by the total weight of live swine (minus sows and boars) produced in Saskatchewan. We then weight-averaged the benefit by Saskatchewan's share of total Canadian exports of live swine (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0005/lb. for other live swine during the review period.

IV. Other Provincial Programs

1. Alberta Crow Benefit Offset Program

The purpose of this program, which is administered by the Alberta Department of Agriculture, is to eliminate market distortions in feed grain prices created by the federal government's policy on grain transportation. Assistance is provided on feed grain produced in Alberta, feed grain produced outside Alberta but sold in Alberta, and feed grain produced in Alberta to be fed to livestock on the same farm. The government provides certificates to registered feed grain users and registered feed grain merchants, which can be used as partial payments for grains purchased from grain producers. Feed grain producers who feed their own grain to their own livestock submit a claim directly to the government for payment.

Hog producers receive benefits in one of three ways. Hog producers who do not grow any of their own feed grain receive certificates which are used to cover part of the cost of purchasing grain. Second, hog producers who grow all of their own grain submit a claim to the government of Alberta for direct payment. Finally, hog producers who grow part of their own grain but also purchase grain receive both certificates and direct payments.

Because this program is limited to feed grain users, we preliminarily determine that it is limited to a specific group of enterprises or industries, and is therefore countervailable.

The payment from this program during the review period was Can$13 per ton through August 31, 1989, and Can$10 per ton from September 1, 1989 through the end of the review period. To determine the benefit to swine producers from this program, we first calculated a hog grain consumption-to-weight-gain ratio, using information from Economic Indicators of the Farm Sector, Costs of Production—Livestock and Dairy, 1989, a U.S. Department of Agriculture publication. From this document, we determined that 3.483 pounds of grain are required to grow 1 pound of swine. Because sows and boars also benefit from this program, we use the generally accepted weight of 225 pounds as the average weight of hogs, including both market hogs and sows and boars. Weanlings weigh on average 40 pounds at the time they begin eating grains. Swine therefore increase in weight 185 pounds on average prior to sale for slaughter. We calculated that each hog consumes approximately 644 pounds of grain by multiplying this 185 pound weight gain by the 3.483 ratio.

Using figures from the Alberta Supply and Disposition Tables, we estimated the total metric tons of grain consumed by livestock in Alberta during the review period. For swine production figures, we used the Supply-Disposition Balance Sheets of Statistics Canada. We multiplied this number by the average grain consumption per hog and divided the result by total grain used to feed livestock animals. We thus calculated live swine's percentage of total livestock consumption of grain in Alberta to be 14.68 percent. We then multiplied this percentage by the total value of certificates and payments received during the review period to calculate the benefit to swine producers from this program. We then weight-averaged the benefit by Alberta's share of total Canadian exports of live swine, including sows and boars, to the United States. On this basis, we preliminarily determine the benefit to be Can$0.0045/lb. for both sows and boars and other live swine during the review period.

2. Alberta Livestock and Beeyard Compensation Program (Livestock Predator Compensation Sub-program)

This program compensates Alberta livestock producers for loss of food-producing livestock, including cattle, sheep, hogs, goats, rabbits and poultry, to predators. The Alberta Departemt of Agriculture administers this program, and provides assistance in the form of grants. The amount of the grants represents a partial payment of up to 50 percent of the value of the killed livestock.

Because this program provides payments that are limited to livestock producers, we preliminarily determine that the program is limited to a specific group of enterprises or industries and is therefore countervailable. To calculate the benefit, we divided the total payment to hog producers under this program by the total weight of live swine produced in Alberta during the review period. We then weight-averaged the result by Alberta's share of Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period for both sows and boars, and other live swine, to be significantly less than Can$0.0001/lb., which is effectively zero.

3. Alberta Farm Water Grant program.

This program, operated under the Department of Alberta Transportation and Utilities Act, Utilities Grants Regulation, provides financial assistance, in the form of grants, to all Alberta farmers and ranchers planning to construct water transmission facilities to overcome drought conditions. The program is available to all Alberta farmers and ranchers. Because this program is not limited to a particular enterprise or industry, we preliminarily determine that this program is not countervailable.

4. British Columbia (B.C.) Feed Grain Market Development Program

This program was initiated on August 1, 1987, and was terminated at the end of the 1988 crop year, with the last payments being issued in February 1990. It was designed to address two issues: (1) The cash-flow problem for the grain producers in the Peace River area of Northern British Columbia, and (2) the drain of livestock into Alberta for feeding and slaughter (primarily for cattle) due to the Alberta Crow Benefit

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Offset Program. The program provided Can$15/ton to the grain producers when the grain was sold in British Columbia. Livestock producers purchasing this grain were paid in Can$11/ton of feed grain purchased. The payments provided an incentive for the grain users to purchase the more expensive (due to transportation costs) B.C. grain, and an incentive for the B.C. grain producers to sell in B.C., rather than exporting the grain.

Because this program is limited to grain producers and grain users in B.C., we preliminarily determine that it is limited to a specific group of enterprises or industries and is therefore countervailable.

To calculate the benefit, we divided the amount paid to swine producers by the total weight of live swine produced in British Columbia during the review period. We then weight-averaged the result by British Columbia's share of total exports of live swine, including sows and boars, to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period for both sows and boars, and other live swine, to be significantly less than Can$0.0001/lb., which is effectively zero.

5. Ontario Farm Tax Reduction Program

This program replaced the Ontario Farm Tax Reduction Program. Eligible farmers receive a rebate of up to 100 percent of property taxes levied on farm properties for municipal and school purposes; levied for local improvements under the Local Improvement Act; levied under the Provincial Land Tax Act or the Local Roads Boards Act; and imposed under the Local Services Boards Act, with rebate reductions for off-farm income above set levels. Farm property includes farm lands and outbuildings. Eligible properties include farms that produce food, fish, breeding horses and donkeys, pregnant mare's urine, fur-bearing animals, tobacco, flowers, nursery stock, sod or ornamentals.

Any resident of Ontario may receive a rebate if he/she owns and pays taxes on eligible properties. Residents of Southern and Western Ontario must produce farm products with a gross value of at least Can$6,000 and resident of Northern and Eastern Ontario must produce products with a gross value of at least Can$5,000. Because the eligibility criteria vary depending on the region of Ontario in which the farm is located, we preliminarily determine that this program is countervailable.

To calculate the benefit, we divided total rebates to swine producers in Eastern and Northern Ontario with sales within the Can$5,000 to Can$6,000 range by the total weight of live swine produced in Ontario during the review period. We then weight-averaged the result by Ontario's share of Canadian exports of live swine, including sows and boars, to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period for both sows and boars, and other live swine, to be significantly less than Can$0.001/lb., which is effectively zero.

6. Ontario Pork Industry Improvement Plan (OPIIP)

This five-year plan commenced on April 1, 1986, and was to be terminated on March 31, 1991. The plan provides grants to Ontario swine producers to enable them to improve their productivity, profitability and competitive position by increasing their efficiency. To be eligible for the plan, producers must be residents of Ontario, own or lease facilities in Ontario for swine production and have at least 20 sow equivalents. One sow equivalent is equal to one sow or 15 market weight hogs marketed annually. Ten types of grants are available to swine producers under this plan. These grants are for the following: Swine production analysis, enterprise analysis, swine ventilation, productivity and quality improvement, artificial insemination, rodent control, private veterinary herd health program, education, feed analysis, and herd health improvement. During the review period, Ontario swine producers received grants under each of these programs.

Because the OPIIP provides grants only to swine producers, we preliminarily determine that it is limited to a specific enterprise or industry and is therefore countervailable.

To calculate the benefit, we divided the total value of all grants provided to swine producers during the review period by the total weight of live swine produced in Ontario during this period. We then weight-averaged the result by Ontario's share of total Canadian exports of live swine, including sows and boars, to the United States during the review period. On this basis, we preliminarily determine the benefits from this program to be Can$0.002/lb. for both sows and boars and other live swine during the review period.

7. Ontario Dog Licensing and Livestock and Poultry Compensation Program

This program, administered by the Farm Assistance Branch of the Ontario Ministry of Agriculture and Food, provides assistance in the form of grants to compensate livestock and poultry producers when a dog or wolf kills or injures livestock or poultry. Swine producers apply for and receive compensation through the local municipal government office. The municipality determines the value and cause of the damage and then compensates the livestock or poultry producer for the damage. The Ontario Ministry of Agriculture and Food reimburses the municipality if the damage was caused by wolves.

Because this program provides payments that are limited to livestock and poultry producers, we preliminary determine that it is limited to a specific group of enterprises or industries and is therefore countervailable. To calculate the benefit, we divided the total payment to hog producers under this program by the total weight of live swine produced in Ontario during the review period. We then weight-averaged the result by Ontario's share of Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period for both sows and boars, and other live swine, to be significantly less than Can$0.0001/lb., which is effectively zero.

7. Ontario Rabies Indemnification Program

This program, administered by the Farm Assistance Branch of the Ontario Ministry of Agriculture and Food, provides assistance in the form of grants to compensate livestock producers, including producers of cattle, horses, sheep, swine, and goats, for damage caused by rabies. Producers apply for compensation through a federal inspector, who determines that the animal is suffering from rabies and orders the animal to be destroyed. A maximum of Can$100 may be paid by the province of Ontario per hog under this program, with the Ontario Ministry of Agriculture (OMAF) reimbursing the province for 40 percent of the total amount paid.

Because this program provides payments that are limited to producers of cattle, horses, sheep, swine, and goats, we preliminarily determine that this program is limited to a specific group of enterprises or industries and is therefore countervailable. To calculate the benefit, we divided the total payment to swine producers under this program by the total weight of live swine produced in Ontario during the review period. On this basis, we preliminarily determine the benefits from this program during the review period for both sows and boars, and other live swine, to be significantly less than Can$0.0001/lb., which is effectively zero.

9. Ontario Soil Conservation and Environmental Protection Assistance Program (Manure Storage Subprogram)

This program, administered by the Soil and Water Management Branch of the Ontario Ministry of Agriculture and Food, provides assistance in the form of grants to contribute to Ontario farmers' costs of soil conservation and environmental protection facilities, as well as providing assistance to various Ontario conservation authorities and soil and crop improvement associations. To meet eligibility requirements, an Ontario farmer must produce, in normal production years, agricultural products having a gross value of at least Can$12,000. The manure storage subprogram falls under the category of environmental protection projects, with other subprograms encompassing milkhouse/parlor washwater disposal and pesticide-handling facilities.

Because the manure storage program provides payments that are limited to livestock producers with a specified income level, we preliminarily determine that the program is limited to a specific group of enterprises or industries and is therefore countervailable. To calculate the benefit, we divided the total payment to swine producers under this program by the total weight of live swine produced in Ontario during the review period. We then weight-averaged the result by Ontario's share of Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period for both sows and boars, and other live swine, to be significantly less than Can$0.0001/lb., which is effectively zero.

10. Quebec Productivity Improvement and Consolidation of Livestock Production Program

This program was established in April 1987 to provide financial assistance to livestock producers for the diversification and consolidation of farm operations. The program is limited to producers with small farming operations and is divided into eight subprograms. Swine producers are eligible only for the Farm Building Improvements Subprogram. This subprogram provides grants for changes to existing piggeries in order to consolidate single-purpose operations into farrow-to-finish operations. The grants cover up to 30 percent of the actual cost of the conversion as well as the purchase and installation of special equipment.

To be eligible for assistance, applicants must be recognized farm producers according to the Farm Producers' Act and be registered with the Bureau de Renseignements Agricoles. Producers operating farrowing facilities must maintain between 40 and 80 sows, and finishing farms must maintain between 500 and 1,000 hogs. The maximum assistance provided is Can$200 per sow and Can$25 per hog, with a amximum of Can$15,000 per farm operation for the duration of the program.

Because this program is limited to livestock producers, we preliminarily determine that it is limited to a specific group of enterprises or industries and is therefore countervailable.

To calculate the benefit, we divided the total payment to swine producers by the total weight of live swine produced in Quebec during the review period. We then weight-averaged the result by Quebec's share of total Canadian exports of swine, including sows and boars to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period for both sows and boars, and other live swine, to be significantly less than Can$0.0001/lb., which is effectively zero.

11. Saskatchewan Livestock Investment Tax Credit

Saskatchewan's 1984 Livestock Tax Credit Act provides tax credits to individuals, partnerships, cooperatives and corporations who owned and fed livestock marketed or slaughtered by December 31, 1989. Claimants must be residents of Saskatchewan and pay Saskatchewan income taxes. Eligible claimants receive credits of Can$25 for each bull, steer or heifer, Can$2 for each lamb and Can$3 for each hog, and the tax credits may be carried forward for up to seven years. The credit is available to hogs indexing 80 or higher; sows and boars are not eligible for this program.

Because this program is limited to livestock producers, we preliminarily determine that it is limited to a specific group of enterprises or industries and is therefore countervailable.

To calculate the benefit, we divided the total amount of hog credits used by the total weight of live swine (minus sows and boars) produced in Saskatchewan. We then weight-averaged the result by Saskatchewan's share of total exports of live swine (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit from this program to be zero for sows and boars and Can$0.0005/lb. for all other live swine during the review period.

12. Saskatchewan Livestock Facilities Tax Credit Program

This program was implemented on January 1, 1986 and provides tax credits to livestock producers applying before December 31, 1989, for investment in livestock production facilities. The credit may only be used to offset provincial taxes. Applications for tax credits must be received by the Saskatchewan Ministry of Agriculture no later than six months after the project is completed.

Livestock covered by this program can be raised for either breeding or slaughter. Eligible livestock include cattle, horses, sheep, swine, goats, poultry, bees, fur-bearing animals raised in captivity, or any other designated animals. Investments covered under the program include new buildings, improvements to existing livestock facilities, and any stationary equipment related to livestock facilities.

The program pays 15 percent of 95 percent of project costs, or 14.25 percent of total costs, in order not to overlap with the Business Investment Tax Credit Program, a federal program. Participants may carry forward any unused credit for up to seven years. Because this program is limited to livestock producers, we preliminarily determine that it is limited to a specific group of enterprises or industries and is therefore countervailable.

To calculate the benefit, we divided the tax credits used by hog producers during the review period by the total weight of live swine produced in Saskatchewan during the review period. We then weight-averaged the result by Saskatchewan's share of total exports of live swine, including sows and boars, to the United States during the review period. On this basis, we preliminarily determine the benefits from this program during the review period for both sows and boars, and other live swine, to be Can$0.0002/lb.

Other Programs

We examined the following programs and preliminary determine that exporters of live swine from Canada to the United States did not use them during the review period: (1) New Brunswick Livestock Incentives Program; (2) New Brunswick Agricultural Development Act—Swine Assistance Program; (3) New Brunswick Hog Marketing Program; (4) New

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Brunswick Swine Industry Financial Restructing Program; (5) Ontario Boar Damage to Livestock Compensation Program; (6) Newfoundland Weanling Bonus Incentive Policy; (7) Newfoundland Hog Price Stabilization Program; (8) Nova Scotia Swine Herd Health Policy; (9) Nova Scotia Improved Sire Policy; (10) Prince Edward Island Hog Price Stabilization Program; (11) Prince Edward Island Swine Development Program; (12) Prince Edward Island Interest Payments on Assembly Yard Loan; (13) Ontario Export Sales Aid; (14) Western Diversification Program; (15) Federal Atlantic Livestock Feed Initiative; (16) Canada-Saskatchewan Agri-Food Development Agreement; (17) Canada-Manito Agri-Food Development Agreement; (18) Agricultural Products Board Program; (19) Canada-Ontario Canadian Western Agribition Livestock Transportation Assistance Program; (20) Prince Edward Island Swine Incentive Policy; (21) New Brunswick Swine Assistance Policy on Boars; and (22) Agricultural Stabilization Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy for the period April 1, 1989 through March 31, 1990 to be Can$0.0051/lb for sows and boars and Can$0.0937/lb. for all other live swine.

The Department intends to instruct the Customs Service to assess countervailing duties of Can$0.0051/lb. on shipments of sows and boars and Can$0.0937/lb. on shipments of all other live swine exported on or after April 1, 1989 and on or before March 31, 1990.

As provided by section 751(a)(1) of the Tariff Act, the Department also intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties of Can$0.0051/lb. on shipments of sows and boars, and Can$0.0937/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 17, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-15228 Filed 6-25-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination; Certain Steel Rail

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain steel rail.

SHORT-SUPPLY REVIEW NUMBER: 51.

SUMMARY: The Secretary of Commerce hereby grants a short-supply request for 10,000 metric tons of certain rail for September-December of 1991 under Paragraph 8 of the U.S.-Japan steel arrangement.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mark B. Brechtl or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 37-1386 or 377-0159.

SUPPLEMENTARY INFORMATION: On May 20, 1991, the Secretary of Commerce ("Secretary") received an adequate petition from Burlington Northern Railroad ("BN") requesting a short supply allowance for 10,000 metric tons of certain damage resistant steel rail for September-December 1991 under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products. BN is requesting short supply for this material because the potential foreign supplier has no regular export licenses available to ship this product, and potential domestic producers are unable to meet the required specifications. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) (the "Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures. (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

The requested rail meets the following specifications:

Section of Rail: AREA136RN.

Type of Rail: High Strength Damage Resistant Rail.

Standard Length: 80 feet and 39 feet.

Manufacturing: The steel shall be cast by a continuous casting process and the bloom shall be free from injurious segregation and pipe.

Chemical Composition: Carbon: 0.72-0.82 Percent; Manganese: 0.80-1.05 Percent; Phosphorus: 0.030 Percent; Sulphur: 0.020 Percent; Silicon: 0.10-0.35 Percent.

Mechanical Properties: 0.2 Percent Proof Stress: Min 60 KGF/MM2. Tensile Strength: Min 120 KGF/MM2. Elongation: Min 10 Percent.

Surface Hardness: (Brinell Hardness)—350-388 at rail head corner/shoulder and head side portions.

(Brinell Hardness)—300-340 at rail head center portion.

Workmanship: Rails shall be straightened cold in a press or roller machine to remove twist, waves and kinks until they meet the surface and line requirements specified below. Cold straightening shall be effected by means of gradual pressure without impact. Rail straightened by roller machine shall be straightened only once in each straightening plane.

Surface Upsweep: Maximum 0.10 inch per foot with maximum of 0.06 inch or rail in excess of 80 feet. Maximum 0.10 inch in 5 feet from the rail ends provided it shall not occur at a point closer than 30 inches from the rail ends.

Surface Downsweep: Rail with surface downsweep and droop shall be accepted.

Uniform Sidesweep: Maximum 0.10 inch per foot with a maximum of 0.80 inch for rail in excess of 80 feet. Maximum 0.25 inch in 5 feet at the rail ends provided it shall not occur at a point closer than 30 inches from the rail ends.

Vertical Deviation: Sharp deviations from uniform vertical line of the rail in either direction will not be acceptable

deviations in the vertical line of the rail and shall not exceed:

—maximum ordinate of 0.020 inch as measured with a 3 foot straight edge.

—maximum vertical peak measurement 0.040 inch as measured with a 3 foot straight edge.

Horizontal Deviation: Sharp deviations from uniform horizontal line of the rail in either direction of the rail shall not exceed an ordinate of 0.020 inch in the horizontal plane as measured with a 3 foot straight edge.

Periodic Waviness: The entire rail shall not present a periodic waviness with an amplitude in the vertical greater than 0.020 inch and not greater than 0.020 inch in the horizontal plane as measured with a 3 foot straight edge.

Twist: Rail that exhibits twist that exceeds 0.001 inch in one foot will be rejected (i.e. 0.039 inch over 39 feet, 0.080 inch over 80 feet).

On May 20, 1991, the Secretary established an official record for this short-supply request (Case Number 51) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. On June 3, 1991, the Secretary published a notice in the Federal Register announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than June 10, 1991, and interested parties were invited to file replies to any comments no later than five days after that date. In order to determine whether this product could be supplied by U.S. producers for September-December 1991, the Secretary sent questionnaires to the two domestic steel rail producers, Bethlehem Steel Corporation ("Bethlehem") and CF&I Steel Corporation ("CF&I"). The Secretary received timely questionnaire responses from both companies, and BN submitted rebuttal comments to CF&I's response.

Questionnaire Responses

Bethlehem stated in its questionnaire response that it is unable to supply BN with the requested quantity of rail during the indicated time period. CF&I's questionnaire response indicated that it does not currently produce the requested product. CF&I did state, however, that it can supply 5,000 metric tons of what it considered to be a "substitute" rail, an ingot cast product meeting the specifications for premium head hardened rail. CF&I also noted that it supplied BN with 110 net tons of premium rail in 1986 that was made with ingot cast steel.

On June 13, 1991, BN submitted rebuttal comments to CF&I's questionnaire response. BN reemphasized that it only uses continuous cast steel rail and that its purchase of ingot cast steel from CF&I was only for testing purposes. BN claimed that CF&I's rail does not reduce spalling and requires more frequent maintenance. BN states that its "short-supply request is for a new product, DR rail. DR rail differs from head hardened premium rail because it was designed to overcome the problems of head hardened rail in certain high tonnage applications. To overcome these problems, a varying head hardness is required and CF&I's product lacks this attribute."

Analysis

The major issue in this short-supply review is whether the specifications for the requested product are reasonable. BN has emphasized two characteristics, continuous cast steel and variable head hardness, as significant.

Concerning the reasonableness of the variable head hardness specification, BN claims that DR rail is a new product designed specifically to overcome the types of problems that occurred with its predecessor, head hardened rail, such as spalling and cracking. Although one domestic rail producer, CF&I, offered what it considered a substitute product, head hardened rail, CF&I did not dispute any of the claims made by BN as to the advantage of the newly developed DR rail. In fact, no domestic rail producer disputes the potential advantages of the DR rail, or that the DR rail represents a product advancement from head hardened rail.

BN claims that its past purchase history of continuous cast premium head hardened rail supports the reasonableness of its continuous cast specification. It cites the House Report to the Steel Trade Liberalization Program Implementation Act to support its claim. H.R. No. 263, 101st Cong., 1st sess. at 14. However, BN states in its petition that DR rail is a new product. Therefore, the purchase history of continuous cast head hardened rail is not relevant to the specifications of DR rail.

Conclusion

Because no domestic steel rail manufacturer is capable of producing the requested product meeting the above noted specifications or has provided evidence that the petitioner's specifications are unreasonable, and because the petitioner's potential Japanese supplier does not have available quota, the Secretary finds that a condition of short-supply exists for the requested product. Therefore, the Secretary grants, pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Procedures, the short-supply request for 10,000 metric tons of the requested damage resistant steel rail for September-December 1991 under the U.S.-Japan steel arrangement.

Dated: June 19, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-15229 Filed 6-25-91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

June 21, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 359-C is being increased by application of swing and carryforward. The current limit for Category 333 is being reduced to account for the swing being applied. As a result of the increase, the limit for Category 359-C, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990). Also

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see 55 FR 46208, published on November 20, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 21, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on June 26, 1991, you are directed to amend further the directive dated November 14, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not subject to a group	
359-C [2]	516,753 kilograms.
333	72,375 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-15219 Filed 6-25-91; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits and Amendment of Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Democratic Socialist Republic of Sri Lanka

June 21, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year and amending visa requirements.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the new agreement period beginning on July 1, 1991 and extending through June 30, 1992 and to amend the existing visa arrangement to include coverage of Categories 347-T/348-T/847-T. In addition, the second installment of 187,500 dozen referred to in the exchange of letters dated April 13 and 16, 1990 is being charged to the 1991-1992 limit for Categories 347/348/847.

A copy of the current bilateral agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647-1899.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 21, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated May 23 and 24, 1988, as amended, between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on July 1, 1991 and extending through June 30, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	202,473 dozen.
331/631	1,581,805 dozen pairs.
333/633	36,113 dozen.
334	267,979 dozen.
335/835	196,518 dozen.
336	90,517 dozen.
338/339	893,262 dozen of which not more than 744,385 dozen shall be in Categories 338-S/339-S [1].
340	702,699 dozen of which not more than 238,203 dozen shall be in Category 340-Y [2].
341	702,699 dozen of which not more than 297,754 dozen shall be in Category 341-Y [3].
342/642/842	464,496 dozen.
345/845	120,293 dozen.
347/348/847	929,862 dozen of which not more than 557,395 dozen shall be in Categories 347-T/348-T/847-T [4].
350/650	63,371 dozen.
351/651	196,561 dozen.
352/652	952,513 dozen.
359-C/659-C [5]	610,354 kilograms.
363	8,834,886 numbers.
369-D [6]	648,263 kilograms.
369-S [7]	540,235 kilograms.
434	3,091 dozen.
435	6,897 dozen.
442	14,092 dozen.
445/446	97,879 dozen.
448	6,182 dozen.
634	178,052 dozen.
635	262,024 dozen.
636/836	203,864 dozen.
638/639/838	613,373 dozen.
640	148,877 dozen.
641	702,699 dozen.
644	357,305 numbers.
645/646	142,922 dozen.
647/648	736,430 dozen.

[1] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 338-S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[2] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060.

[3] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] Category 347-T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0038, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0042, 6117.90.0042, 6204.12.0030, 6204.19.9030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.3010, 6211.42.0030 and 6217.90.0050; Category 847-T: only HTS numbers 6103.29.2044, 6103.49.3017, 6103.49.3024, 6104.29.2041, 6104.29.2045, 6104.69.3034, 6104.69.3038, 6112.19.2080, 6112.19.2090, 6117.90.0051, 6203.29.3046, 6203.49.3040, 6203.49.3045, 6204.29.4041, 6204.29.4047, 6204.69.3052, 6204.69.9044, 6211.20.3640, 6211.20.6040, 6211.39.0040, 6211.49.0040 and 6217.90.0070.

[5] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[6] Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[7] Category 369-S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period July 1, 1990 through June 30, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka.

You are directed to charge 187,500 dozen to the limit established in this directive for Categories 347/348/847.

For visa purposes, effective on July 1, 1991, you are directed to amend further the directive of September 1, 1988 to include coverage of Categories 347-T/348-T/847-T. Merchandise in Categories 347-T/348-T/847-T, produced or manufactured in Sri Lanka and exported from Sri Lanka on and after July 1, 1991, must be accompanied by the correct merged part category or the correct part category corresponding to the actual shipment. Shipments other than Categories 347-T/348-T/847-T should be visaed as 347/348/847 or the correct merged category.

Merchandise in Categories 347-T/348-T and 347/348 (excluding long pants and slacks) which is exported from Sri Lanka prior to July 1, 1991 shall continue to require a 347-T/348-T or 347/348 (excluding long pants and slacks) visa or a correct category visa.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-15218 Filed 6-25-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 18 July 1991 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: June 20, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-15171 Filed 6-25-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Intent to Prepare an Environmental Impact Statement (EIS) for Military Joint Readiness Exercises in Alaska

AGENCY: Headquarters, Department of the Army, DOD.

SUMMARY: The Army will prepare a programmatic EIS, in cooperation with the U.S. Air Force and U.S. Navy, for Joint Readiness Exercises in Alaska which may occur during all seasons of the year. This action expands the scope of a Notice of Intent, that was published in the **Federal Register** on January 30, 1990. A separate environmental analysis was prepared to support a winter exercise in 1991. (55FR-3083).

Headquarters, Alaskan Command proposes to conduct joint exercises throughout the year that would involve a maximum of about 40 thousand military personnel in Alaska and additional shipboard personnel in the adjacent North Pacific waters. Exercising units would include active and reserve components of the Army, Navy, Air Force, Marines and foreign military units. The exercises are required to maintain combat readiness of units with assigned and contingency missions in Alaska.

The exercises would use various sites in Alaska for transportation and supply and for a variety of training missions including simulations of remote site defense, search and rescue, amphibious landings, harbor defense, and air defense. Ground exercises in remote sites generally would be by small units on foot, in boats, and on snow machines. Non-military land may be used in some locations provided that landowner permission could be obtained. Some exercises on military lands would use heavier vehicles and may require site preparation by earth moving equipment. A full range of alternative sites, equipment, operations planning, and mitigative measures for non-military land will be considered in the EIS. The alternative will include the no action alternative. The draft EIS is expected to be released to the public in the late summer of 1992. The impact of present and proposed activities on U.S. Army installations in Alaska will be assessed in a separate EIS, which will be available for public review. References will be made to on-going EIS actions by other agencies.

Scoping: Scoping meetings will be held to discuss significant issues related to the conduct of Joint Readiness Exercises in Alaska during any season of the year. Notification of specific meeting sites and times will be made in

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local and regional newspapers. Scoping meetings will be scheduled in Fairbanks and Anchorage and may be held anywhere else there is significant interest.

Persons with questions or comments may telephone Mr. Guy McConnel at (907) 753–2614 or may call (toll-free in Alaska) 1–800–478–2712 to leave an address or telephone number where they can be reached. Callers should state their interest in military training exercises. Questions and comments may also be submitted by letter to: U.S. Army Engineer District, Alaska, P.O. Box 898, Anchorage, Alaska 99506–0898, attn: EN–PL–ER.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 91–15147 Filed 6–25–91; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Notice of proposed information collection request.

SUMMARY: The Acting Director, Office of Information Resources Management, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

DATES: An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by June 24, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State of Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an emergency review is requested, the additional information to be requested in this collection is included in the section on "Additional Information" in this notice.

Dated: June 20, 1991.

Mary P. Liggett,

Acting Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Emergency.

Title: Section 361.68—Payments from Allotments from Vocational Rehabilitation Services.

Abstract: A State must request in writing a waiver or modification, including supporting justification, if it determines that an exceptional or uncontrollable circumstance will prevent it from meeting its required expenditures from non-Federal sources (the Maintenance of Effort level). The Secretary, beginning in FY '91, will use the information to grant waivers from or modifications to the State's Maintenance of Effort level requirement.

Additional Information: An emergency clearance is requested for this collection of information. An emergency approval will allow time for States to request a waiver from or a modification to their Maintenance of Effort level requirement in FY '91.

Frequency: On occasion.

Affected Public: State or local Governments.

Reporting Burden: Responses—1; *Burden Hours*—1.

Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.

[FR Doc. 91–15112 Filed 6–25–91; 8:45 am]

BILLING CODE 4000–1–M

National Council on Vocational Education; Meeting

AGENCY: National Council on Vocational Education, Education.

ACTION: Notice of public meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. This notice describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES AND TIME: July 15, 1991. 9 a.m. to 4 p.m.

ADDRESSES: Sheraton City Center Hotel (Georgetown Room) 1143 New Hampshire Ave., NW., Washington, DC 20037, (202) 775–0800.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street SW., MES—suite 4060, Washington, DC 20202–7580 (202) 732–1884.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 431 of the Carl D. Perkins Vocational Education Act Public Law 98–524, 5 U.S.C.A appendix 2.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation for vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(c) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

The meeting of the Council is open to the Public. The proposed agenda includes discussion on the following: Large School District Seminars on Implementing the Carl Perkins Act, Occupational Competencies, Annual Report, Budget, Executive Director's Report, America 2000 Report, SCANS Commission Report. Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9 a.m. to 4 p.m.

Dated: June 19, 1991.

Joyce Winterton,

Executive Director.

[FR Doc. 91–15106 Filed 6–25–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for the Proposed Remedial Investigation of the 300–FF–5 Operable Unit Hanford Site, Richland, WA

AGENCY: Department of Energy (DOE).

ACTION: Floodplain statement of findings.

STATEMENT: This is a Statement of Findings prepared pursuant to Executive Orders 11988 and 11990, and 10 CFR part 1022, Compliance with Floodplain-Wetlands Environmental Review Requirements. The DOE has determined that some activities associated with the Remedial Investigation/Feasibility Study (RI/FS) of the 300–FF–5 Operable Unit will occur within the 100-year floodplain of the Columbia River. On the basis of the Floodplain/Wetlands Assessment for the proposed remedial investigation, prepared pursuant to 10 CFR 1022.12, the DOE has determined that there will be no adverse effect to the floodplain, that there is no practicable alternative to the proposed action and that the proposed action has been designed to minimize potential harm to or within the floodplain of the Columbia River.

The proposed action is to perform the RI/FS for the 300–FF–5 ground-water operable unit on the Hanford Site, Richland, Washington (Figure 1). The RI/FS is necessary to meet requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended, to determine the nature and extent of the threat posed by a release of hazardous substances to the environment and to evaluate proposed remedies for such a release. The RI/FS activities are preliminary steps in developing plans and alternatives for clean-up of the operable unit. The work is described in detail in Remedial Investigation/Feasibility Study Work Plan for the 300–FF–5 Operable Unit, Hanford Site, Richland, Washington. The work is also necessary to comply with the Hanford Federal Facility Agreement and Consent Order, and in particular, supports milestones M–12–00, M–12–04, and M–15–00.

BILLING CODE 6450–1–M

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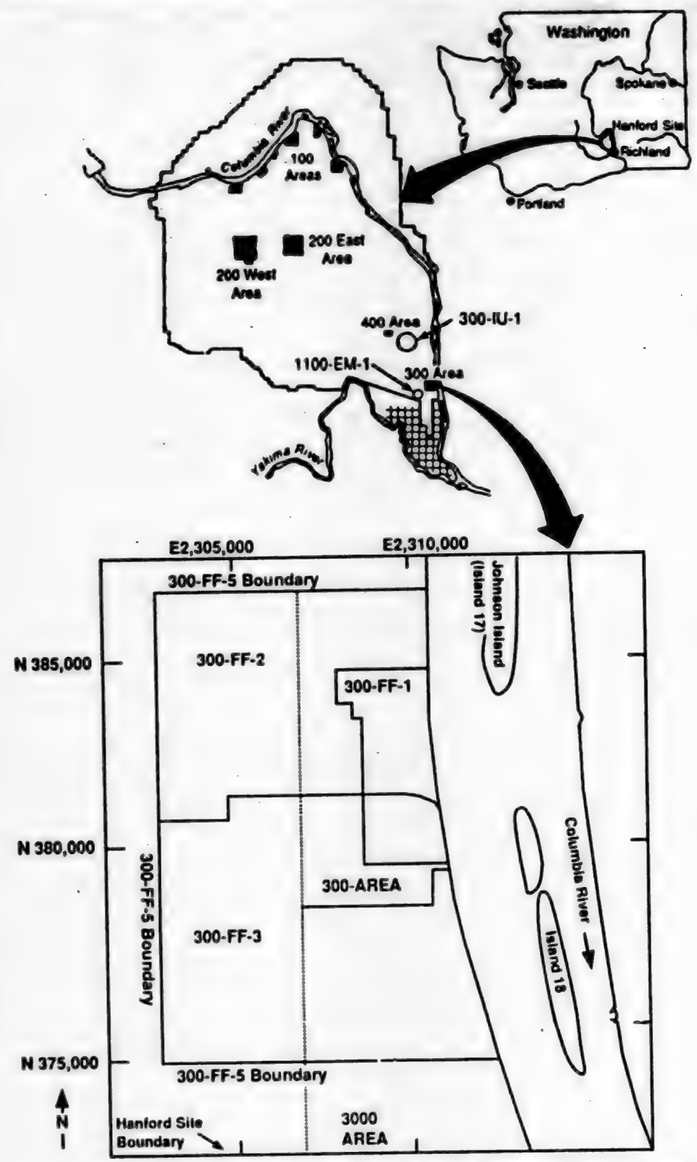


Figure 1. Location of the 300-FF-5 Operable Unit on the Hanford Site.

The specific activities that may occur within the 100-year floodplain include geophysical surveys, hydrostratigraphy studies, surface water and sediment investigations, and biota investigations. The following briefly describes these activities.

• Geophysical Surveys—These studies will be performed to determine the existence and location of a suspected paleochannel along with Columbia River, and will utilize ground-penetrating radar, electromagnetic induction, and acoustic refraction techniques. The survey area will be approximately 2 miles long, and will encompass a 500-foot-wide band along the Columbia River.

• Hydrostratigraphy Studies—These studies will include drilling ground-water characterization wells to determine the continuity of hydrostratigraphic units across the Columbia River from the Hanford Site, and under the Columbia River. Wells will be drilled on islands in the Columbia River, across the river in Franklin County, and possibly in the river bottom. The need for these wells will be carefully considered after preliminary phases of data collection and interpretation have been completed. Drilling and disposal activities will be performed in accordance with all applicable state and federal regulations and guidelines. Specific methodologies for drilling wells in the river bed and on islands are currently being developed.

• Surface-water and Sediment Investigations—These activities will consist of: (1) Collection of water and sediment samples from the active springs or seepage areas along the river; collection of water and sediment samples from the river at nearshore locations adjacent to active seeps and along the contaminated ground-water plume as identified or projected in the ground-water investigation; (2) collection of water samples from Columbia River cross sections; and (3) monitoring of the river stages in the 300–FF–5 area.

• Biotic Investigations—These investigations will include collection of aquatic and riparian zone biota to identify possible biotic contaminant transport pathways, and to determine the existing concentrations of contaminants in biota associated with the 300–FF–5 operable unit.

The goal of each task is to characterize the extent of known areas of contamination and to identify and characterize unknown areas of contamination that may exist. None of the tasks require major construction activities. The hydrostratigraphy studies may require the drilling of wells in the floodplain; however, if preceding studies provide sufficient data, drilling will not be conducted. Disturbances to the floodplain and wetlands adjacent to the Columbia River primarily will be limited to pedestrian traffic necessary to collect samples, monitor water levels, and to carry out surveys with nonintrusive instruments. Following completion of the characterization, remedial action strategies and alternatives will be prepared for the removal and remediation of the contamination from the operable unit. Alternatives to the proposed action are limited because of the need to carefully characterize contaminated areas on the Hanford Site prior to commencement of remediation activities.

• Relocation of the activities to another area cannot be considered as a viable alternative because of the need to collect samples that are representative of the contamination as it exists in the operable unit. Remediation activities and strategies will be based upon data obtained from these samples, which must be indicative of the extent of contamination.

• The no action alternative, where no RI/FS activities are performed in the field or in the floodplain, is not viable, as this alternative would not be in accordance with the requirements of CERCLA, the Hanford Federal facility Agreement and Consent Order, as well as current U.S. Environmental Protection Agency requirements to characterize the operable unit prior to remediation.

• Alternative methods of collecting some samples are being considered through the RI/FS process. Specifically, the need for drilling of ground-water monitoring wells is presently under consideration, and will be further evaluated during the initial phases of the RI/FS. If well construction is necessary, disturbances to vegetation and the shoreline will kept to a minimum by limiting access to the area, and by utilizing stabilization devices such as berms, riprap, etc. to minimize erosion. The well construction will be in accordance with State and Federal guidelines, rules, and regulations.

The proposed action has been designed to conform to applicable Federal and State regulations. Federal, State or local permits are not required under § 300.400(e) of the National Contingency Plan for on-site actions conducted pursuant to CERCLA, however, DOE will ensure that the actions conform with all substantive requirements of any permits.

The proposed actions in the Columbia River floodplain must be taken as soon as possible because of binding agreements between DOE, the U.S. Environmental Protection Agency and the Washington State Department of Ecology. Therefore, further public review is waived prior to implementation of the proposed floodplain action, as provided by 10 CFR 1022.18 (a) and (c).

AVAILABILITY OF THE FLOODPLAIN/WETLANDS ASSESSMENT: Single copies of the Floodplain/Wetlands Assessment are available from Mr. K. Michael Thompson, 300–FF–5 Operable Unit Manager, DOE-Richland Operations Office, Richland, Washington 99352 (509) 376–6421.

FURTHER INFORMATION: For further information contact Ms. Julie Erickson, U.S. Department of Energy, Richland Operations Office, Richland, Washington 99352 (509) 376–3603.

Leo P. Duffy,

Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 91–14975 Filed 6–25–91; 8:45 am]

BILLING CODE 6450–01–M

Future Directions in Advanced Extraction and Process Technology

AGENCY: Bartlesville Project Office, U.S. Department of Energy.

ACTION: Notice of non-competitive financial assistance (grant) award with the National Academy of Sciences.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) Criteria (D), it intends to make a non-competitive Financial Assistance (Grant) award through the Pittsburgh Energy Technology Center to National Academy of Sciences.

SCOPE: The United States Department of Energy (DOE) recognizes the need and opportunity to assist in the development of a comprehensive study on the Advanced Extraction and Process Technology. The objective of this proposed activity is to provide financial assistance to the National Academy of Sciences by means of a research grant, which will allow the National Academy of Sciences to develop and advance new concepts and technology in the Advanced Extraction and Process Technology Program. The purpose of this research grant is to request the assistance of the National Academy of Sciences in conducting a four-phase study of the future directions in advanced extraction and process technology. This study will involve a comprehensive examination of research needs of the Advanced Extraction and Process Technology Program.

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The cooperative research program extends a unique opportunity to complete research with well-recognized institute research personnel which can have a major impact on the projects for assessing and identifying future direction in advanced extraction and process technology and has a very high probability of success.

The transaction of this project will benefit the public such that it will facilitate the cooperation between DOE personnel and the Academy for solutions to future directions in advanced extraction and process technology, and it will provide for the fruitful exchange of ideas between various members of the scientific community.

This grant to the National Academy of Sciences is considered suitable for noncompetitive financial assistance based on 10 CFR 600.7(b)(2)(i) Criteria (D).

Consistent with 41 U.S.C. 253, the National Academy of Sciences is a uniquely qualified (external) organization chartered by Congress in 1863 to conduct studies in the sciences and arts when called upon by a department of the Government.

The term of the grant is twelve (12) months at a total estimated value of $150,000,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Cynthia Y. Mitchell, telephone: AC 412/892–4862.

Dated: June 12, 1991.

Carroll A. Lambton,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91–15215 Filed 6–25–91; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to Nu-Bore Systems

AGENCY: Department of Energy.

ACTION: Notice of unsolicited application financial assistant award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Nu-Bore Systems under Grant Number DE–FG01–91CE15497. The proposed grant will provide funding in the estimated amount of $99,910 for the purpose of completing the development leading to commercialization of an advanced downhole casing repair system for gas and oil wells, which is a highly promising new system that is potentially less expensive, faster, and more reliable than current casing repair methods, and one also with environmental benefits.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Nu-Bore Systems is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The invention is using a technique for which a patent is pending for developing the needed system that would repair well casings at lower cost. This would limit the practice of the rapid shut down of stripper wells, resulting in increased oil production. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR–322.2, 1000 Independence Ave. SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–15214 Filed 6–25–91; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to Welding Consultants, Inc.

AGENCY: Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A) it is making a financial assistance award under Grant Number DE–FG01–91CE15078 to the Welding Consultants, Inc., (WCI) for purposes of preparing welding samples and performing scanning electronic microscopic (SEM) analysis of welds made with the Meta-Lax method. This grant is necessary for the completion of the project begun in 1989, entitled The Meta-Lax Method of Stress Reduction in Welds. This phase of the project which will prepare samples and analyze welds which show unexpected high performance, could identify the cause for this superior performance, and this may facilitate the implementation of this technology. The anticipated objective of this supplemental proposal is for WCI to prepare previously welded samples for SEM studies, perform the studies, and have the resulting photomicrographs fractographically analyzed by a recognized expert, who perhaps can find weld characteristics which could account for their superior performance. Once the inventor has these test results, it is entirely possible that increased sales will be obtained for this patented technology which will achieve the anticipated energy savings. Funding in an estimated amount of $14,065.54 is to be provided by the Department of Energy (DOE).

The application was deemed meritorious for the DOE Energy Related Invention Program (ERIP) based on its careful evaluation and the uniqueness of the patented design that promises energy savings estimated at 65 precent of the 220 billion cubic feet of natural gas used annually in the thermal stress relief process. A competitive solicitation would be inappropriate.

In accordance with 10 CFR 600.7(b)(2)(i)(A), it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on completion of the activity. The anticipated term of the proposed grant shall be twelve months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR–322.2, 1000 Independence Ave. SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–15213 Filed 6–25–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER91–488–000, et al.]

PacifiCorp Electric Operations, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 19, 1991.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp Electric Operations

[Docket No. ER91–488–000]

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on June 13, 1991, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Revision Nos. 4 and 5 to exhibit A, Contract No. 14–06–400–3978, Weber Basin Project, for Water Exchange and Transmission Service, between PacifiCorp and Western Area Power Administration (WAPA), PacifiCorp's Rate Schedule FERC No. 286. Exhibit A specifies Points of Delivery of power and energy received by PacifiCorp at Points of Connection with WAPA's Weber Basin Project. PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of May 25, 1990 be assigned to exhibit A, Revision No. 4 and an effective date of February 15, 1991 be assigned to exhibit A, Reivsion No. 5, these dates being consistent with the effective dates of the respective revisions.

Copies of this filing were supplied to WAPA, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: July 5, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. United States Department of Energy—Western Area Power Administration

[Docket No. EF91–5091–000]

Take notice that on June 12, 1991, the Deputy Secretary of the Department of Energy tendered for filing, on behalf of the Western Area Power Administration, a rate schedule [BCP–F3) for power from the Boulder Canyon Project. Confirmation and approval of this rate schedule, on a final basis, is sought by filing. The Deputy Secretary had previously given interim approval to the rate schedule by Rate Order No. WAPA–49.

Comment date: July 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. ER91–491–000]

Take notice that on June 17, 1991, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on November 8, 1990, by the respective parties:

Edison-SDG&E, 1995 Power Sale Agreement Between Southern California Edison Co. (Edison) and San Diego Gas & Electric Co. (SDG&E)

The Agreement establishes the terms and conditions whereby Edison shall provide 230 megawatts of capacity and associated energy to SDG&E from June 1, 1995 through May 31, 1996 or May 31, 1997, to be determined by SDG&E.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Co.

[Docket No. ER91–365–000]

Take notice that on June 14, 1991, Florida Power & Light Company submitted an amended filing in the above-referenced docket. The amended filing provides additional information requested by the Commission Staff.

Comment date: July 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power Co.

[Docket No. ER91–405–000]

Take notice that on June 3, 1991, Washington, Water Power Company, tendered for filing an Amendment to its original filing of a Capacity and Energy Sales Agreement between The Washington Water Power Company and Public Utility District No. 1 to Pend Oreille County. This Amendment 1 provides additional information requested by Commission staff.

A copy of the filing was served upon Public Utility District No. 1 of Pend Oreille County.

Comment date: July 3, 1991, in accordance with Standard Paragraph E end of this notice.

6. Gulf States Utilities Co.

[Docket No. ER90–583–001]

Take notice that on June 7, 1991, Gulf States Utilities Company (Gulf States) tendered for filing a revised rate sheet for supplemental service under Service Schedule EP in the above referenced docket.

Comment date: July 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Philadelphia Electric Co. The Susquehanna Electric Co.

[Docket No. ER91–478–000]

Take notice that Philadelphia Electric Company and The Susquehanna Electric Company on June 5, 1991, ("the Companies") tendered for filing proposed changes in their FERC Electric Service Tariffs, No. 36 and No. 2 respectively, applicable for service to Conowingo Power Company. The proposed changes would increase revenues from jurisdictional sales and service by $14,845,000 or 38.5% based on the 12 month period ending December 31, 1991. Additionally, the Company is proposing amendments to its fuel adjustment clause to (1) clarify the specific costs that are properly included, (2) include spent nuclear fuel expense recovery, and (3) synchronize realization of revenue and expense.

In the June 5, 1991 filing, page 94 of Philadelphia Electric Company Exhibit No. 2 (ABC/RAC), Statement BK was inadvertently omitted. On June 14, 1991, the filing was amended to include page 94 of Statement BK.

The primary reason for the increase is to enable the Company to earn fair return or its investment. Current rates do not reflect the cost of owning and operating Philadelphia Electric Company's Limerick Generating Station. The changes to the fuel adjustment are for clarity and to better match revenue and expense.

Copies of the filing were served upon the public utility's jurisdictional customers. The Maryland Public Service Commission, the Maryland People's Counsel, and the Pennsylvania Public Utility Commission.

Comment date: July 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Co. of New Mexico

[Docket No. EC91–16–000]

Take notice that, pursuant to section 203 of the Federal Power Act, on June 14, 1991, Public Service Company of New Mexico (PNM) filed an application seeking an Order or other appropriate determination approving the sale by PNM to the City of Farmington, New Mexico (City) of a 115 kV electric transmission line (the UW Line) running between the Shiprock Substation and the Colorado-New Mexico border.

The UW Line is no longer needed by PNM and will be used by the City to add transfer capability to its transmission system to serve the City's load. Copies

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of this filing have been served upon the City and the New Mexico Public Service Commission.

Comment date: July 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Co.

[Docket No. ER91-489-000]

Take notice that on June 14, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing changes to a rate schedule covering services rendered by PG&E under the agreements entitled, (1) "Power Plant Operation Agreement Between Pacific Gas and Electric Company and Central California Power Agency No. 1 For the Coldwater Creek Geothermal Power Plant", dated March 2, 1988 (CCPA Agreement) and (2) 115 kV Interconnection and Energy Sale Agreement between PG&E and Pacific Power and Light Company, dated July 31, 1984 (PP&L Agreement). The CCPA Agreement was initially filed under FERC Docket No. ER88-484-000 and was assigned Rate Schedule FERC No. 119. The PP&L Agreement was initially filed under FERC Docket No. ER90-236-000 and was assigned Rate Schedule FPC No. 29.

The filing seeks to revise the mothly Cost of Ownership rates under the CCPA Agreement, which are tied to PG&E's Electric rule 2 as filed with the California Public Utilities Commission (CPUC), to reflect revised rates instituted by the CPUC effective August 24, 1988 and January 21, 1991. In addition, this filing requests automatic rate adjustments to both the CCPA Agreement and the PP&L Agreement when future changes to PG&E's Electric rule 2 occur pursuant to CPUC approval.

Copies of this filing have been served upon CCPA, PP&L and the CPUC.

Comment date: July 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power Co.

[Docket No. ER91-388-000]

Take notice that on June 3, 1991, Washington, Water Power Company, tendered for filing an Amendment to its original filing of a Firm and Non-firm Energy Sales Agreement between the Washington Water Power Company and Los Angeles Department of Water & Power. This Amendment 1 provides additional information requested by Commission staff.

A copy of the filing was served upon Los Angeles Department of Water & Power.

Comment date: July 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Co.

[Docket No. ER91-490-000]

Take notice that on June 17, 1991, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on September 10, 1990, by the respective parties:

Edison-SDG&E, Power Sale Agreement Between Southern California Edison Co. (Edison) and San Diego Gas & Electric Co. (SDG&E)

The Agreement establishes the terms and conditions whereby Edison shall provide 140 megawatts of capacity and associated energy to SDG&E from June 1, 1993, until the earlier of: (1) The date when SDG&E's Clean Air Demonstration Project is completed; or (2) May 31, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp Electric Operations

[Docket No. ER91-487-000]

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on June 13, 1991, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Revised Exhibit 2, dated April 10, 1991, of Amendment of Agreements ("Amendment") between PacifiCorp and Moon Lake Electric Association ("Moon Lake") (PacifiCorp's Rate Schedule FERC No. 302).

Copies of this filing were supplied to Moon Lake Electric Association, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: July 5, 1991, in accordance with Standard Paragraph E end of this notice.

13. Commonwealth Edison Co.

[Docket No. ER91-485-000]

Take notice that on June 13, 1991, Commonwealth Edison Company ("Edison") tendered for filing proposed changes in its FERC Electric Tariff, Rates 26, 27, and 28. The proposed changes add a supplement to the Electric Service Contracts between Edison and the Cities of Batavia, Illinois ("Batavia"), Naperville, Illinois ("Naperville"), and St. Charles, Illinois ("St. Charles"). These supplements provide a kilowatthour rate for the sixth contract year.

A copy of the filing has been served upon the Cities of Batavia, Naperville, and St. Charles and the Illinois Commerce Commission.

Comment date: July 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15125 Filed 6-25-91; 8:45 am]

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[Project No. 2354-014 Georgia]

Georgia Power Co.; Availability of Environmental Assessment

June 20, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application to amend the license for the North Georgia Project to relocate and restore a historic jail for use as a museum/interpretative center for the public. The project is located on Tallulah Falls Lake, in Rabun County, Georgia. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's

Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15129 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2290-000, et al.]

Mississippi River Transmission Corporation, et al.; Natural gas certificate filings

June 19, 1991.

Take notice that the following filings have been made with the Commission

1. Mississippi River Transmission Corp.

[Docket No. CP91-2290-000]

Take notice that on June 17, 1991, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP91-2290-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service of behalf of Boyd Rosene and Associates, Inc. (Boyd), under MRT's blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT requests authorization to transport, on an interruptible basis, up to a maximum of 25,000 MMBtu of natural gas per day for Boyd from a receipt point located in Oklahoma to a delivery point located in Oklahoma. MRT anticipates transporting 2,778 MMBtu of natural gas on an average day and an annual volume of 1,013,889 MMBtu.

MRT states that the transportation of natural gas for Boyd commenced April 27, 1991, as reported in Docket No. ST91-6861-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to MRT in Docket No. CP89-1121-000.

Comment date: August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. High Island Offshore System

[Docket No. CP91-2279-000]

Take notice that on June 14, 1991, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-2279-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Diamond Shamrock Offshore Partners Limited Partnership, a producer, under the blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

HIOS states that, pursuant to an agreement dated April 1, 1990, under its Rate Schedule IT, it proposes to transport up to 27,100 Mcf per day of natural gas. HIOS indicates that the gas would be transported from Offshore Louisiana, and Offshore Texas, and would be redelivered in Offshore Louisiana, and Offshore Texas. HIOS further indicates that it would transport 27,100 Mcf on an average day and 9,891,500 Mcf annually.

HIOS advises that service under § 284.223(a) commenced April 10, 1991, as reported in Docket No. ST91-8405-000.

Comment date: August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Mississippi River Transmission Corp.

[Docket No. CP91-2289-000]

Take notice that on June 17, 1991, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP91-2289-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to add a delivery point to serve Arkansas Louisiana Gas Company (ALG), under its blanket certificate issued in Docket No. CP82-489-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT requests authorization to construct and operate facilities necessary to provide an additional point of delivery for ALG, an existing firm sales customer served under MRT's Rate Schedule CD-1. It is stated that such facilities will include a 2-inch tap and appurtenant facilities, including a meter and regulating station located on MRT's existing right-of-way. It is stated that the proposed facility will be connected with ALG's facilities which will be located on right-of-way already owned, or to be acquired, by ALG.

MRT states that the Rye, Arkansas, delivery point will serve residential and commercial customers in and around the community of Rye, Arkansas. It is stated that the delivery point will supply an estimated 600 Mcf of natural gas on a peak day and an estimated 22,015 Mcf of natural gas on an annual basis. It is further stated that the delivery point will not result in an increase in the total daily or annual quantities MRT is authorized to deliver to ALG.

MRT estimates the cost of the facilities to be $41,922 which will be reimbursed by ALG, as well as the application filing fee.

Comment date: August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. National Fuel Gas Supply Corp.

[Docket Nos. CP91-2229-000, CP91-2230-000, CP91-2231-000, CP91-2232-000, CP91-2233-000]

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

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Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg. annual	Points of receipt	Points of delivery	Start up date rate schedule	Related [2] dockets
CP91-2229-000 6-10-91	National Fuel Gas Supply Corporation 10 Lafayette Square Buffalo, NY 14203.	Brooklyn Interstate Natural Gas Corp.	50,000 50,000 18,250,000	NY, PA	NY, PA	4-5-91, IT	CP89-1582-000, ST91-8463-000.
CP91-2230-000 6-10-91	National Fuel Gas Supply Corporation 10 Lafayette Square Buffalo, NY 14203.	Poco Petroleums Ltd. Corp.	100,000 100,000 36,500,000	NY, PA	NY, PA	4-1-91, IT	CP89-1582-000, ST91-8460-000.
CP91-2231-000 6-10-91	National Fuel Gas Supply Corporation 10 Lafayette Square Buffalo, NY 14203.	United Refining Company.	1,300 1,300 474,500	NY, PA	NY, PA	4-1-91, IT	CP89-1582-000, ST91-8467-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg. annual	Point of receipt	Point of delivery	2Start up date rate schedule	Related [2] dockets
CP91-2232-000 6-10-91	National Fuel Gas Supply Corporation 10 Lafayette Square Buffalo, NY 14203.	Meridian Marketing & Transmission Corp.	1,000 1,000 365,000	NY, PA	NY, PA	4-1-91, IT	CP89-1582-000, ST91-8477-000.
CP91-2233-000 6-10-91	National Fuel Gas Supply Corporation 10 Lafayette Square Buffalo, NY 14203.	Tennessee Corporation.	150,000 150,000 54,750,000	NY, PA	NY, PA	4-2-91, IT	CP89-1582-000, ST91-8511-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Texas Gas Transmission Corp., Williston Basin Interstate Pipeline Co., Trunkline Gas Co., Trunkline Gas Co., Trunkline Gas Co., Northern Natural Gas Co.

[CP91-2260-000,[3] CP91-2261-000, CP91-2262-000, CP91-2263-000, CP91-2264-000, CP91-2265-000]

Take notice that on June 12, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under their respective blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper; the date of the transportation service agreement between the Applicant and the respective shipper; if applicable, the reference number of the transportation service agreement and the function of the shipper, i.e., shipper, marketer, interstate pipeline, etc.; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants allege that they would provide the proposed service for each shipper under an executed transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules. The Applicants contend that construction of facilities is not required with each of the Applicants using existing facilities to provide the proposed transportation service.

Comment date: August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. trans. agree. (Ref. No.)	Applicant	Shipper name (ship. funt.)	Peak day [1] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule service type	Related [2] dockets
CP91-2260-000)-22-91	Texas Gas Transmission Corporation, 3800 Frederica St., Owensboro, KY 42301.	Exxon Corporation.	100,00 50,500 18,250,000	Various	Various	5-11-91, IT, Interruptible.	CP88-686-000, ST91-8634-000.
CP91-2261-000 5-2-91	Williston Interstate P/L Co., Suite 200, 304 East Roeser Ave., Bismarck, ND 58501.	Koch Hydrocarbon Company (Marketer).	61,600 Dkt 61,600 Dkt 22,484,00 Dkt	ND & WY	WY	5-3-91, IT-1, Interruptible.	CP89-1116-000, ST91-8892-000.
CP91-2262-000 12-14-90 (T-PLT-2803)	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Eastex Hydrocarbons (Marketer).	100,000 Mcf 100,000 Mcf 36,500,000 Mcf	Various	IL	5-14-91, PT, Interruptible.	CP86-586-000, ST91-8758-000.
CP91-2263-000 4-24-91 (T-PLT-3066)	Trunkline Gas Company.	Bishop P/L Company (Intrastate).	20,000 Mcf 20,000 Mcf 7,300,500 Mcf	Various	IL	5-1-91, PT, Interruptible.	CP89-586-000, ST91-8754-000.
CP91-2264-000 5-3-91 (T-PLT-3009)	Trunkline Gas Company.	Transco Energy Marketing Co. (Marketer).	10,000 Mcf 10,000 Mcf 3,650,000 Mcf	Off LA.	LA	5-1-91, PT, Interruptible.	CP86-586-000 ST91-8759-000
CP91-2265-000 5-4-91 (5972)	Northern Natural Gas Company, P.O. Box 1188, Houston, TX 77251-1188.	Howard Energy Company, Inc. (Marketer).	100,000 75,000 36,500,000	Various	Various	5-4-91, IT-1, Interruptible.	CP86-435-000 ST91-8796-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP Docket number corresponds to the Applicants' blanket transportation certificate. The ST docket indicates that 120-day transportation service was initiated under § 284.223(a) of the Commission's Regulations.

6. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP91-2288-000]

Take notice that on June 17, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP91-2288-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate certain sales tap facilities in Arkansas, Louisiana and Texas, under its blanket certificate issued in Docket No. CP82-384-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER requests authorization to construct and operate one sales tap and related facilities; to operate four existing taps for delivery of gas for resale to consumers other than the right-of-way grantors for whom the taps were originally installed; and to upgrade six existing meter stations for increased deliveries, all for the delivery of gas to Arkansas Louisiana Gas Company for resale to domestic, commercial and industrial consumers in Arkansas, Louisiana and Texas. AER states that the gas will be delivered from its general system supply, which is adequate to provide the service.

Comment date: August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 91-15126 Filed 6-25-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-211-014]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 19, 1991

Take notice that CNG Transmission Corporation ("CNG"), on June 14, 1991, filed the tariff sheets listed on the attachments to this notice to be effective July 1, 1991. The tariff sheets are tendered to complete implementation of a Stipulation and Agreement ("Stipulation") the Commission approved on May 7, 1991 ("Order").

As noted in the compliance filing made June 6, 1991, CNG reserves the right to withdraw its filings based on a review of any applications for rehearing.

CNG's tendered tariff sheets include a new FERC Gas Tariff, Original Volume No. 1A, which specifies the facilities where the Stipulation's gathering and products extraction charges will apply. CNG also tenders to First Revised Volume No. 1, tariff sheets setting forth the transportation assignment notice for CTAP, a Form of Service Agreement for Rate Schedule UTAP and subsitute sheets to replace those originally filed on June 6, 1991, to reflect the changes made in this filing and to correct typographical errors.

CNG states that copies of the filing was served upon the parties to the proceeding, CNG's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or

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before June 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15130 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT90-5-002]

Canyon Creek Compression Co.; Changes in FERC Gas Tariff

June 19, 1991.

Take notice that on June 14, 1991, Canyon Creek Compression Company (Canyon) tendered for filing First Revised Sheet No. 18, Original Sheet No. 18A, First Revised Sheet No. 39 and First Revised Sheet No. 40 to be a part of its FERC Gas Tariff, First Revised Volume No. 1A, to be effective July 14, 1991.

Canyon states that the tariff sheets are submitted in compliance with Ordering Paragraph (B)(10) of the Commission's Order issued May 23, 1991 at Docket No. MT90-5-000 (Algonquin, *et al.*, Docket Nos. MT88-1-000, *et al.*). The tariff sheets incorporate the language requirements of Sections 250.16(b)(2) (v) and (xiv) of the Commission's Regulations.

Canyon requested waiver of the Commission's Regulations to the extent necesary to permit the tariff sheets to become effective july 14, 1991.

Canyon states that a copy of the filing is being served to Canyon's jurisdictional customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. MT90-5-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15136 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT91-3-000]

East Tennessee Natural Gas Co.; Tariff Filing

June 19, 1991.

Take notice that on June 12, 1991, East Tennessee Natural Gas Company (East Tennessee) tendered for filing the following tariff sheet to First Revised Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1991:

Second Revised Sheet No. 122.

Second Revised Sheet No. 122 sets forth East Tennessee's procedures for resolving complaints by adding a requirement that East Tennessee respond initially to a complaint within 48 hours, and in writing within 30 days of receipt. This change is in compliance with 18 CFR 250.16(b)(1)(iii).

East Tennessee states that copies of the filing is have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15140 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-145-001]

Florida Gas Transmission Co.; Compliance Filing

June 20, 1991.

Take notice that on June 14, 1991, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to become part of its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute First Revised Sheet No. 102, Substitute Original Sheet No. 249A.

FGT states that by Commission order issued May 31, 1991 in the above-referenced docket, the Commission accepted, subject to certain conditions tariff sheets reflecting changes in the procedures for both submitting a valid request for firm service and for maintaining an existing position on FGT/s Firm Natural Gas Service Log to be effective June 1, 1991.

FGT states that it is submitting the above-referenced tariff sheets to incorporate the revisions as required by the Commission's May 31 order.

FGT states that a copy of the filing was mailed to all holders of FGT's FERC Gas Tariff, Second Revised Volume No. 1 and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15127 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-164-001]

Granite State Gas Transmission, Inc.; Revised Changes in Rates

June 20, 1991.

Take notice that on June 17, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed substitute revised tariff sheets in its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 2, containing changes in rates for effectiveness on July 1, 1991. According to Granite State, its filing in this matter was initially submitted on May 31, 1991. It is stated Granite State has reduced the cost of service claimed in the May 31st filing and corrected the pagination of the revised tariff sheets submitted with the May 31st filing.

According to Granite State, the tariff sheets listed below are substitutes for those submitted with the filing on May 31, 1991.

As designated in the May 31st filing	As corrected
Second Revised Volume No. 1:	
Seventh Revised Sheet No. 21.	Substitute Seventh Revised Sheet No. 21
First Revised Sheet No. 36.	Second Revised Sheet No. 36
First Revised Sheet No. 123.	Second Revised Sheet No. 123
First Revised Volume No. 2:	
First Revised Sheet No. 28.	Second revised Sheet No. 28

It is further stated that the above listed revised tariff sheets reflect the reduced proposed rates for effectiveness on July 1, 1991 based on the revised cost of service accompanying the filing.

Granite State states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts and the Public Advocate of the State of Maine.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15127 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-46-004]

Kentucky West Virginia Gas Co., Report of Refunds

June 19, 1991.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on June 14, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its 3rd Substitute 27th Revised Sheet No. 41 in compliance with the Commission's Order issued on May 17, 1991, accepting Kentucky West's Annual Purchased Gas Filing.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15142 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-143-002]

Great Lakes Gas Transmission Limited Partnership; Compliance Filing

June 19, 1991.

Take notice that on June 14, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), filed Revised Tariff sheets listed on apprendix A attached to the filing, with a proposed effective date of June 1, 1991, to comply with Ordering Paragraph (C) of the Commission's order issued May 31, 1991.

Great Lakes states that a copy of the filing is being served on each of Great Lakes' customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15137 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT90-4-002]

Moraine Pipeline Co.; Changes in FERC Gas Tariff

June 19, 1991.

Take notice that on June 14, 1991, Moraine Pipeline Company (Moraine) tendered for filing Fourth Revised Sheet No. 11, First Revised Sheet No. 11A and Fourth Revised Sheet No. 22 to be a part of its FERC Gas Tariff, Original Volume No. 1, to be effective July 14, 1991.

Moraine states that the tariff sheets are submitted in compliance with Ordering Paragraphs (B)(8) and (B)(14) of the Commission's Order issued May 23, 1991 at Docket No. MT90-4-000 (Algonquin, et al., Docket Nos. MT88-1-000, et al.). The tariff sheets incorporate the language requirements of § 250.16(b)(2) (iii), (iv) and (x) of the Commission's Regulations.

Moraine requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective July 14, 1991.

A copy of the filing is being mailed to Moraine's jurisdictional customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. MT90-4-000.

Moraine states that a copy of the filing is being served to Moraine's jurisdictional customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. MT90-4-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211.

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All such protests should be filed on or before June 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15133 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-33-005]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

June 19, 1991.

Take notice that on June 14, 1991, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, the below listed tariff sheets to be effective July 14, 1991:

Fourth Revised Sheet No. 35.
Second Revised Sheet No. 35.1.
First Revised Sheet No. 35.2.
Third Revised Sheet No. 54.
First Revised Sheet No. 54A.

Natural states the purpose of this filing is to comply with the Commission's Order on Order Nos. 497 and 497-A Compliance Filings issued May 23, 1991 (see *Algonquin, et al.*, Docket Nos. MT88-1-000 *et al.*). The Order required Natural to file revised tariff sheets to include information in Natural's transportation request forms that is required by the Commission's Regulations.

Natural has requested waiver of the Commission's Order and Regulations to the extent necessary to permit the approval of these required changes in its tariff.

Natural states that a copy of the filing is being served to Natural's jurisdictional customers, interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this mater. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15131 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-150-001]

Northwest Pipeline Corp.; Compliance

June 20, 1991.

Take notice that on June 14, 1991, Northwest Pipeline Corporation (Northwest), tendered for filing the following tariff sheets to become part of its FERC Gas Tariff, First Revised Volume No. 1-A, with a proposed effective date of June 2, 1991:

Substitute First Revised Sheet No. 415.
Substitute First Revised Sheet No. 416.
Substitute First Revised Sheet No. 417.

Northwest states that the revised tariff sheets are being filed to comply with the Commission's May 31, 1991 letter order directing Northwest to revise and refile First Revised Sheet Nos. 415, 416, and 417 included in Northwest's Volume No. 1-A Tariff.

Northwest states that a copy of the filing is being mailed to each person listed on the Commission's official service list in the above referenced docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15128 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT90-6-002]

Stingray Pipeline Co.; Changes in FERC Gas Tariff

June 19, 1991.

Take notice that on June 14, 1991, Stingray Pipeline Company (Stingray), tendered for filing Second Revised Sheet No. 93 and Second Revised Sheet No. 131 to be a part of its FERC Gas Tariff, Original Volume No. 1, to be effective July 14, 1991.

Stingray states that the tariff sheets are submitted in compliance with Ordering Paragraph (B)(12) of the Commission's Order issued May 23, 1991 at Docket No. MT90-6-000 (*Algonquin, et al.*, Docket Nos. MT88-1-000, *et al.*). The tariff sheets incorporate the language requirements of § 250.16(b)(2)(vi) of the Commission's Regulations.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective July 14, 1991.

Stingray states that a copy of the filing is being served to Stingray's jurisdictional customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. MT90-6-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15138 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-16-004]

Superior Offshore Pipeline; Proposed Changes in FERC Gas Tariff

June 19, 1991.

Take notice that on June 7, 1991, Superior Offshore Pipeline Company ("SOPCO") tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1:

1. Fifth Revised Sheet No. 40;
2. Fifth Revised Sheet No. 41;
3. Fourth Revised Sheet No. 42;
4. Fourth Revised Sheet No. 43; and
5. Original Sheet No. 43a;

The above-referenced tariff sheets are filed in compliance with the findings and conditions set forth in the Commission's May 23, 1991 "Order" issued in the above-captioned proceeding,[1] part 161 of the Commission's Regulations concerning Standards of Conduct for Interstate Pipelines With Market Affiliates and Order Nos. 497 and 497-A.

SOPCO requested waiver of the 30-day notice requirement and proposed that the above-referenced tariff sheets be made effective July 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15134 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-175-000]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 20, 1991.

Take notice that on June 17, 1991, Tennessee Gas Pipeline Company (Tennessee) submits for filing the following tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff, effective July 16, 1991:

First Revised Sheet No. 27
First Revised Sheet Nos. 28 through 31 (reserved for future use)
First Revised Sheet No. 143
First Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 146
First Revised Sheet No. 147
First Revised Sheet No. 148
First Revised Sheet No. 149
First Revised Sheet No. 150
First Revised Sheet No. 151
First Revised Sheet No. 152
First Revised Sheet No. 153 through 219 (reserved for future use)

Tennessee states that the purpose of the instant filing is to enable Tennessee to implement the provisions of capacity brokering programs authorized on the High Island Offshore System (HIOS) and U-T Offshore System (UTOS).

Tennessee states that a copy of the filing has been served on all of its jurisdictional customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15130 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT90-3-002]

Trailblazer Pipeline Co.; Changes in FERC Gas Tariff

June 19, 1991.

Take notice that on June 14, 1991, Trailblazer Pipeline Company (Trailblazer) tendered for filing First Revised Sheet No. 18A and First Revised Sheet No. 37A to be a part of its FERC Gas Tariff, First Revised Volume No. 1A, to be effective July 14, 1991.

Trailblazer states that the tariff sheets are submitted in compliance with Ordering Paragraph (B)(11) of the Commission's Order issued May 23, 1991 at Docket No. MT90-3-000 (Algonquin, et al., Docket Nos. MT88-1-000, et al.). The tariff sheets incorporate the language requirements of § 250.16(b)(2)(v) of the Commission's Regulations.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effectively July 14, 1991.

Trailblazer states that a copy of the filing is being served to Trailblazer's jurisdictional customers, interested State regulatory agencies and all parties set out on the official service list at Docket No. MT90-3-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15135 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-49-003]

Williston Basin Interstate Pipeline Co.; Annual Take-or-Pay Reconciliation Filing

June 20, 1991

Take notice that on June 7, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing its corrected Annual Take-or-Pay Reconciliation Filing pursuant to Sections 32 and 33 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. More specifically, Williston Basin filed the following Primary tariff sheets:

First Revised Volume No. 1

Substitute First Revised Thirty-fourth Revised Sheet No. 10
Substitute Third Revised Sheet No. 122
Substitute First Revised Sheet No. 123I

Original Volume No. 1-A

Substitute First Revised Twenty-seventh Revised Sheet No. 11
Substitute First Revised Thirty-third Revised Sheet No. 12

Original Volume No. 1-B

Substitute First Revised Twenty-second Revised Sheet No. 10
Substitute First Revised Twenty-second Revised Sheet No. 11

Original Volume No. 2

Substitute First Revised Thirty-fifth Revised Sheet No. 10
Substitute First Revised Twenty-eighth Revised Sheet No. 11B

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[1] Superior Offshore Pipeline Company, 55 FERC 61,289 (1991).

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Williston Basin has requested that the Commission substitute the corrected sheets for the sheets filed on May 31, 1991, and accept this filing to become effective July 1, 1991.

Williston Basin has determined that certain mathematical errors were made in the calculations underlying the May 31, 1991 filing. Correction of these errors results in a decrease in the throughput surcharge as compared to the May 31, 1991 filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15132 Filed 6-25-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Suspension of a Laboratory Which No Longer Meets Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services routinely publishes in the **Federal Register** a list of laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. This notice informs the public that, effective June 21, 1991, the following laboratory's certification is suspended: Environmental Health Research & Testing, Inc., 1075 South 13th Street, Birmingham, AL 35205-6998, 205-934-0985.

FOR FURTHER INFORMATION CONTACT: Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, Telephone: 301-443-6014, 5600 Fishers Lane, Rockville, Maryland 20857.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91-15332 Filed 6-24-91; 8:45 am]

BILLING CODE 4160-20-M

Health Care Financing Administration

[OCC-021-N]

Medicare Program; HMO Qualification Determinations and Compliance Actions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the names, addresses, dates of qualification, and service areas, or expanded services areas or modified service areas of entities determined to be Federally qualified health maintenance organizations (HMOs) during the period December 1989 through October 1990. Additionally, this notice sets forth compliance actions taken by the Office of Compliance, Office of Prepaid Health Care Operations and Oversight for the period January 1990 through September 1990.

FOR FURTHER INFORMATION CONTACT: For information on qualification determinations: Maxine Palmore, Office of Qualification, Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, room 4336 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201 (202) 619-2174

For information on compliance actions: Tony Mazzarella, Office of Compliance, Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, room 4336 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201 (202) 619-3555.

SUPPLEMENTARY INFORMATION:

A. Office of Qualification Determinations

Regulations at 42 CFR 417.144(e) and 42 CFR 417.163 (c) and (d), promulgated under title XIII of the Public Health Service Act (the Act) (42 U.S.C. 300e), require publication of certain determinations relating to the Federal qualification of health maintenance organizations (HMOs). There are three categories of qualified HMOs: Operational, transitionally qualified, and pre-operational (see 42 CFR 417.161 for definitons of these terms).

The Office of Prepaid Health Care Operations and Oversight, HCFA, has determined that the following entities are operational qualified HMO's under section 1310(d) of the Act (42 U.S.C 300e-9(d)):

1. *Harris Methodist Health Plan (HMHP)* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 1325 Pennsylvania Avenue, Fort Worth, Texas 76104. HMHP's Federally qualified service area for Fort Worth includes Bosque, Comanche, Denton, Erath, Hamilton, Hill, Hood, Johnson, Limestone, Somervell, Tarrant, and Wise counties, and the following zip codes in Ellis, Montague, Parker, and Western Dallas counties:

Ellis

76084 76065

Montague

76230 76251
76239 76270

Parker

76008 76074 76088
76060 76078 76090
76066 76082

Western Dallas

75006 75137 75220
75019 75141 75224
75038 75146 75225
75039 75172 75229
75050 thru 75052 75201 thru 75203 75230
75060 thru 75063 75208 75232 thru 75237
75080 75209 75240
75104 75211 75241
75115 75212 75244
75116 75216 75247 thru 75249
75134 75219 75261

Date of qualification: April 26, 1990.

2. *Community Health Network of Louisiana, Inc. (CHN)* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 2431 South Acadian Throughway, Baton Rouge, Louisiana 70808. The Federally qualified service area of CHN in Baton Rouge includes the zip codes in the following counties:

Ascension

70346 70725 70759
70376 70728 70774
70707 70734 70778
70716 70737

Assumption

70339 70390 70787
70341 70391
70372 70393

East Baton Rouge

70704 70739 70791
70714 70770 70801 thru 70899

East Feliciana

70722 70748 70777
70730 70761 70788

Iberville

70716 70757 70778
70721 70764 70780
70740 70765 70788
70746 70772

Livingston

70449 70727 70765
70462 70739 70785
70711 70744
70725 70754

Point Coupee

70715 70749 70762
70717 70751 thru 70753 70773
70732 70755 thru 70757 70781
70736 70759 70783
70747 70760

St. Helena

70441 70453

Tangipahoa

70422 thru 70444

West Baton Rouge

70710 70729 70764
70719 70739 70767

West Feliciana

70712 70742 70782
70713 70775 70784

Date of qualification for regional component: June 14, 1990.

3. *Healthsource South Carolina, Inc. (HSC)* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 215 East Bay Street, Charleston, South Carolina 29403. HSC's Federally qualified service area for South Carolina includes Berkeley, Charleston and Dorchester counties.

Date of qualification: June 20, 1990.

4. *Hospital Health Plan, Inc. (HHP)* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 400 South Wells Avenue, Reno Nevada 89502. HHP's Federally qualified service area for Reno includes the zip codes in the following counties:

Carson

89701 thru 89703
89710 thru 89714

Churchill

89406

Douglas

89410 89413 89445
89411 89423 89449

Elko

89801 89828 89883
89821 thru 89825 89830 thru 89835

Eureka

89316

Humboldt

89404 89425 89445
89414 89426
89421 89438

Lander

89310
89820

Lyon

89403 89429 89447
89408 89430
89428 89444

Mineral

89415 89420 89427
89422

Pershing

89010
89418

Storey

89428 89440 89419

Washoe

89402 89424 89442
89405 89431 thru 89434 89450
89412 89430 89501 thru 89509

Date of qualification: June 27, 1990.

5. *M.D. IPA* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 451 Hungerford Drive, Rockville, Maryland 20850. M.D. IPA's previously Federally qualified service area has been expanded into the following Maryland and Virginia counties and cities:

Maryland	*Virginia*
Calvert	Accomack
Caroline	Loudoun
Cecil	Northhampton
Charles	Prince William
Dorchester	Stafford
Harford	City of Fredericksburg
Kent	
Queen Annes	
Somerset	
Talbot	
Washington	
Wicomico	
Worcester	
City of Baltimore	

Date of qualification for the service area expansion: July 10, 1990.

6. *Physicians Association of Clackamas County (PACC)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 12901 SE. 97th Avenue, Clackamas, Oregon 97015. PACC's previously Federally qualified service area has been expanded into the following counties: Benton, Clatsop, Columbia, Hood River, Lane, Lincoln, Linn, Marion, Polk, Tillamook, and Wasco.

Date of qualification for the service area expansion: July 24, 1990.

7. *Travelers Health Network of Austin, Inc. (THNA)* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 9442 Capital of Texas Highway, Austin, Texas 78759. THNA's previously Federally qualified service area has been expanded into the following counties: Bastrop, Bell, Blanco, Burnett, Caldwell, Comal, Guadalupe, Lee, and Milam.

Date of qualification for the service area expansion: October 26, 1990.

8. *FHP, Inc. (FHP)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 9900 Talbert Avenue, Fountain Valley, California 92708. FHP's previously Federally qualified service area in San Diego has been expanded into the following zip codes:

Inland North

92883 92086
92025 thru 92028 92120 thru 92129
92059 thru 92061 92131
92064 thru 92066 92145
92069 92302
92878 92390
92082 thru 92084 92395

Metro West/Metro East

92001 92071
92016 92077
92019 thru 92021 92078
92031 92101 thru 92111
92035 92113
92037 92115 thru 92120
92040 thru 92042 92122 thru 92125
92045 92133
92048 92135
92052 92140

Date of qualification for the service area expansion: October 29, 1990.

9. *Fallon Community Health Plan, Inc. (FCHP)* (Group Model, see section 1301(b)(1) of the Act), 100 Hartwell Street, Boylston, Massachusetts 01583-2250. FCHP's previous Federally service areas has been expanded into the zip codes of the following counties:

Hampden

01010 01057 01081
01081 01089

Hampshire

01062

Norfolk

02019 02053 thru 02054 02070
02038 02056 02283

Date of qualification for the service area expansion: October 31, 1990.

10. *Group Health, Inc., (GHI)* (Group Model, see section 1310(b)(1) of the Act), 2829 University Avenue, SE, Minneapolis, Minnesota 55414. At the request of the HMO, we eliminated regional component designations for Minneapolis and St. Cloud. The service areas of Group Health, Inc. now includes the entire geographic areas previously approved for both the Minneapolis and St. Cloud regions.

Effective date for the elimination of regional component designations: October 12, 1990.

B. Compliance Actions

Title XIII of the Public Health Service Act (the Act) (42 U.S.C. 300e), section 1312(b)(1) and implementing regulations

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at 42 CFR 417.163(c)(1) and 417.163(d)(1) require publication in the **Federal Register** of noncompliance determinations and revocations of qualification of HMOs. The Office of Compliance, Office of Prepaid Health Care Operations and Oversight gives notice of the following actions taken involving Federally qualified HMOs:

1. Letter of non-compliance:

Compercare Health Care Services Inc. (CHCS), Aurora, Co. On August 16, 1990, we issued a letter of non-compliance to CHCS. We initiated non-compliance because of CHCS' continued lack of adequate arrangements to protect its members in the event of insolvency. The Office of Compliance approved the corrective action plan on September 14, 1990. CHCS has initiated this plan, which when completed, should lead to restoration of compliance

2. Notices of revocation:

Organization	Date issued	Reason
Best Care, Inc., Portland, OR.	02/19/90	Voluntary relinquishment.
Health Plus, Seattle, WA.	03/22/90	Voluntary relinquishment.
Samaritan Health Plan, Milwaukee, WI.	07/03/90	Voluntary relinquishment Kenosha and Racine counties (regional component).
Omnicare/the hmo, Vineland, NJ.	09/17/90	HMO liquidated (effective 09/27/90).

These constitute all the reportable actions for the period January 1, 1990 through September 30, 1990.

C. Availability of Additional Information

A cumulative list and additional information about federally qualified HMOs may be obtained by writing to the following address: Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, Room 4360 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

The list also may be obtained by visiting that office between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday, except for Federal holidays. Interested persons should contact John Lowe for an appointment, telephone (202) 619-0845.

Authority: (42 U.S.C. 300e) Title XIII of the Public Health Service Act.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; 93.774, Medicare-Supplementary Medical Insurance)

Dated: April 30, 1991.

Gail R. Wilensky,

Financing Administration.

[FR Doc. 91-15102 Filed 6-25-91; 8:45 am]

BILLING CODE 4120-01-M

Medicare Program; Meetings of the Advisory Committee on Medicare-Physician Relationships

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces meetings of the Advisory Committee on Medicare-Physician Relationships on July 11 and July 12, 1991.

DATES: The meetings will be open to the public on July 11, 1991 from 9 a.m. until 3 p.m.; on July 12, 1991 from 8 a.m. until 11 a.m.

Portions of the committee meetings will be held in Executive Session (closed to the public) July 11 and July 12 pursuant to section 552b(c)(9)(B) of title 5, U.S. Code, for discussion and preparation of comments the Committee wishes to submit to the Secretary.

ADDRESSES: The meetings will be held in the Main Auditorium, Lobby Level, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Matthew Crow, Executive Director, Advisory Committee on Medicare-Physician Relationships, room 425-Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Telephone (202) 245-7874.

SUPPLEMENTARY INFORMATION: In accordance with The Federal Advisory Committee Act, the Secretary of Health and Human Services established the Advisory Committee on Medicare-Physician Relationships. The Committee advises the Secretary on the existing Medicare policies and procedures that directly relate to physicians' provision of services to Medicare's beneficiaries, and on Peer Review Organizaton (PRO) and carrier policies and procedures. The Advisory Committee looks at the methods to improve Medicare carrier services, responsiveness to physicians. This Committee does not consider payment issues.

The Committee consists of the Senior Medical Advisor of the Health Care Financing Administration (HCFA) as chair, and seven members selected by the Secretary who are practicing physicians representing the primary care, internal medicine, and surgical disciplines. Members are invited to serve for the duration of the Committee. The members are: Lanny R. Copeland, M.D., Ulton G. Hodgin, Jr., M.D., Edward A. Rankin, M.D., Barbara Ann P. Rockett, M.D., Mark C. Rogers, M.D., Richard B. Tompkins, M.D., and Susan L. Turney, M.D. The chairperson is Nancy E. Gary, M.D.

The agenda for the July 11 meeting will include discussions of Peer Review Organizations (PRO), requirements for PRO Reviewers, matching Reviewers by specialty and practice setting, paperwork burden, attestation, documentation, length of time for process and the appeals process.

The agenda for the July 12 meeting will include discussion of the following issues: PRO communications and sharing of data, consistency of carrier and PRO directives, Super PRO and HCFA oversight.

Those individuals or organizations who wish to make 10-minute oral presentations on the topics listed above must contact the Executive Director to be scheduled. For the name, address, and telephone number of the Executive Director, see the **"FOR FURTHER INFORMATION CONTACT"** section at the beginning of this notice. A written copy of the oral remarks must be presented to the Executive Director at the time of the presentation. Anyone who is not scheduled to speak may submit written comments to the Executive Director. Written submissions on topics covered at the May 16-17 and June 6-7, 1991 meetings will not be taken by the Executive Director after July 31, 1991.

The Committee is to report to the Secretary through the Administrator, HCFA, not later than December 31, 1991

Authority: Federal Advisory Committee Act (Pub. L. 92-463, (5 U.S.C. app. 2)); 45 CFR 11.

Dated: June 20, 1991.

Nancy E. Gary,

Chairperson, Advisory Committee on Medicare-Physician Relationships.

[FR Doc. 91-15174 Filed 6-25-91; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

"Transition" Program Priority, Special Projects of National Significance; Ryan White Comprehensive AIDS Resources Emergency (C.A.R.E.) Act of 1990

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of the Administrator, Associate Administrator for AIDS, Health Resources and Services Administration (HRSA), announces the availability of up to $1,406,461 from Fiscal Year (FY) 1991 funds for grants to States and Territories under the Ryan White Comprehensive AIDS Resources Emergency (C.A.R.E.) Act of 1990, Public Law 101-381. The purpose of these grants is to enable States and Territories to accomplish a smooth transition from AIDS programs authorized prior to the enactment of, and now replaced by, the C.A.R.E. Act. The grants will be made under the authority of section 2618(a) of the Public Health Service Act, as added by title II of the C.A.R.E. Act, and in accordance with language in the Department's FY 1991 Appropriation Act. These funds are in addition to the funds identified and described in the Notice published in the **Federal Register** on May 31, 1991 (56 FR 24825), entitled "Special Projects of National Significance; Ryan White Comprehensive AIDS Resources Emergency (C.A.R.E.) Act of 1990."

HEALTHY PEOPLE 2000 OBJECTIVES: The Public Health Service (PHS) urges applicants to submit work plans that address a specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

DATES: To receive consideration for funding, grant applications must be received by the Grants Management Officer by July 5, 1991. Applicants shall be considered as meeting the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Gilda Martoglio, Office of the Associate Administrator for AIDS, Health Resources and Services Administration, 5600 Fishers Lane, room 14A-21, Rockville, MD 20857, (301) 443-9976. Grant applications (Form PHS 5161-1), with revised face sheet HHS Form 424 and Program Narrative approved under OMB No. 0937-0189), accompanying guidance materials, and additional information regarding business management or fiscal issues related to the awarding of grants under this notice may be requested from the Grants Management Officer, Ms. Glenna Wilcom; Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 13A-38, Rockville, MD 20857, (301) 443-2280.

SUPPLEMENTARY INFORMATION: In the Health Resources and Services Administration provision of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1991 (Pub. L. 101-517), Congress appropriated $226,000,000 to carry out title XXVI of the Public Health Service (PHS) Act, which was added by the C.A.R.E. Act. In doing so, Congress added the following proviso:

Provided, That the Secretary shall retain and distribute from the total provided for Title XXVI of the Act such amounts as may be necessary to ensure the continuation of health care services through September 30, 1991, provided by grantees whose project periods extend through that date [.]

104 Stat. 2197.

The legislative history of the quoted language makes clear that its purpose, as articulated by its authors, was to assure that States and Territories which otherwise might suffer a decrease in Federally-derived AIDS health service funds as a result of the enactment of the C.A.R.E. Act and the replacement of several specific AIDS project grant programs by the formula grants to States and Territories authorized under title II of that Act would, to the extent possible, be "held harmless" against such losses. The authors also stated that the funds to accomplish this purpose were to come from funds set aside to carry out the program of Special Projects of National Significance, section 2618(a) of the PHS Act. See 143 Cong. Rec. H10794 (daily ed. Oct. 20, 1990).

The Specific AIDS project grant programs replaced by the title II formula grant are: (1) The HIV/AIDS Services Demonstration Program, (2) the AIDS Drug Reimbursement Program; (3) the Subacute Care Demonstration Program; and (4) the Home and Community-Based Program. HRSA has determined that, through the subsumption of these four programs by Title II formula grants, AIDS services supported under the formula in 20 States and one Territory stand to receive less Federal funds in FY 1991 that they received in FY 1990.

Accordingly, for fiscal year 1991 only, and only in competition for funds up to the amount of the shortfall for each State or Territory, a funding priority will be afforded under section 2618 (a) to agencies that have received formula grants under title II of the C.A.R.E. Act (1) from those States or Territory that would otherwise experience such shortfalls and (2) which propose to use the funds for any of the four purposes described in the preceding paragraph. A total of $1,406,461 has been set aside for this purpose, representing the cumulative shortfalls of the 20 States and one Territory mentioned above, as follows:

Eligible Applicants

Alaska	$15,000
Arizona	55,289
Colorado	395,212
District of Columbia	60,466
Delaware	7,564
Idaho	15,000
Iowa	16,625
Massachusetts	7,826
Maryland	146,882
Maine	9,569
Michigan	303,649
Montana	15,000
North Dakota	15,000
Nebraska	19,453
New Hampshire	17,046
New Jersey	45,613
Vermont	15,000
Washington	216,352
West Virginia	1,156
Wyoming	15,000
Guam	13,523

The amounts listed above have been calculated as one half of the difference between the amount of the awards under the four programs identified above that were received by grantees in each of the listed States or Territory in FY 1990 and the amount of the FY 1991 title II formula grant for that State or Territory. The budget periods for these awards will be from October 1, 1991, through March 31, 1992.

Availability of funds

As noted above, these funds are in addition to the approximately $4.0 million made by the previously published **Federal Register** Notice (56 FR24865; May 31, 1991) for Special Projects of national Significance. To the

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extent that the State or Territorial agencies do not apply for these funds, the remaining funds that are the subject of this Notice will be added to that $4 million and will be awarded in accordance with the previous Notice.

Review Criteria

Applications received will be evaluated in accordance with an objective review procedure. The criteria to be used for the review will include the following:

1. Conformance to the SPNS "Transition" priority program guidelines;

2. Clearly defined, attainable, and measurable project goals and objectives that specifically relate to the relevant, previously funded HRSA AIDS grant program(s);

3. A clear, feasible, and appropriate methodology that includes a specific and realistic timeframe for implementing the program; and,

4. A budget justification.

Other Grant Information

Allowable Costs: The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 92. This regulation implements OMB circular A-87 which prescribes the cost principles for State and local governments.

Reporting and Other Requirements: A successful applicant under this notice will submit reports in accordance with 45 CFR part 92, subpart C.

Executive Order 12372: This program is not subject to the requirements of Executive Order 12372.

Catalog of Federal Domestic Assistance: The *OMB Catalog of Federal Domestic Assistance* number for the "Transitional" grants for Special Projects of National Significance is 93.928.

Dated: May 28, 1991.

Robert G. Harmon

Administrator.

[FR Doc. 91-15152 Filed 6-25-91; 8:45 am]

BILLING CODE 4160-15-M

Program Announcement for Cooperative Agreements for Area Health Education Center Programs (Second Cycle)

The Health Resources and Services Administration (HRSA) announces that applications are being accepted for a second cycle for fiscal year 1991 for Cooperative Agreements for the Area Health Education Centers (AHEC) Program under the authority of section 781(a)(1) of the Public Health Service Act, as amended by Public Law 100-607.

Approximately $800,000 will be available in FY 1991 for a second cycle which would include new and supplemental awards. Approximately three new awards averaging $265,000 each will be made.

Section 781(a)(1) authorizes Federal assistance to schools of medicine and osteopathic medicine which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. To be eligible to receive support for an Area Health Education Center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathic medicine or consortium of such schools, or the parent institution on behalf of such school(s). New applications submitted under this authority will be accepted from medicine or osteopathic schools for the purpose of planning, developing and operating new area health education center programs. Applicants may request up to 3 years of support with the expectation that AHECs planned and developed in years 1 and 2 would be operational no later than the 3rd year. The period of Federal support should not exceed 5 years.

The Health Professions Reauthorization Act of 1988 (title VII of Pub. L. 100-607) amended the authority for the Area Health Education Centers program by:

1. Providing for a waiver, under specified circumstances, of the provision now contained in section 781(a)(2)(C) prohibiting an AHEC from being a school of medicine or osteopathic medicine, the parent institution of such a school, or a branch campus or other subunit of a school of medicine or osteopathic medicine or its parent institution, or a consortium of such entities. The waiver of this provision applies to an AHEC having, at the time of initial application for support, an operating program supported by appropriations of a State legislature as well as local resources;

2. Reducing the minimum number of individuals enrolled in first-year positions in a rotating osteopathic internship or a medical residency training program in family medicine, general internal medicine, or general pediatrics from six individuals to four; and

3. Revising the requirement that each AHEC shall "conduct interdisciplinary training and practice involving physicians and other health personnel including, where practicable, physician assistants and nurse practitioners" to add "and nurse midwives."

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR part 57, subpart MM.

The Bureau of Health Professions, within the Health Resources and Services Administration has substantial programmatic involvement in the planning, development, and administration of the AHEC projects by:

1. Reviewing and approving plans upon which continuation of the cooperative agreement is contingent in order to permit appropriate direction and redirection of activities;

2. Reviewing and approving all contracts and agreements among recipient medical or osteopathic schools, other health professions schools and community-based centers;

3. Participating with project staff in the development of funding projections;

4. Developing, with project staff, individual project data collection systems and procedures; and

5. Participating with project staff in the design of project evaluation protocols and methodologies.

Section 781(a)(2) of the Act requires that not more than 75 percent of total operating funds of a program in any year shall be provided by the Secretary.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Cooperative Agreements for Area Health Education Centers Program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education and service programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in 42 CFR 57.3804;

2. The capability of the applicant to carry out the proposed project; and

3. The extent of the need of the area to be served by the AHECs.

In addition, certain preferential actions may apply in the implementation of this grant program. These categories of actions are defined below:

Funding Preferences

Funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

Funding Priorities

Favorable adjustment of aggregate review scores when applications meet specified objective criteria.

Special Consideration

Enhancement of priority scores by merit reviewers based on extent to which applicants address special areas of concern.

The following funding preference, funding priorities and special consideration were established in FY 1990 after public comment and are being extended by the Administration in FY 1991.

Funding Preference for Fiscal Year 1991

In making awards for Fiscal Year 1991, a funding preference will be given to competing continuation applications.

Funding Priorities for Fiscal Year 1991

Additionally, funding priorities will be given to the following:

1. Applications proposing centers in which substantial training experience is in a PHA Act, section 332 Health Professional Shortage Area and/or a PHS Act, section 329 Migrant Health Center, PHS Act, section 330 Community Health Center or State designated clinic/center serving an underserved population. Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 30 authorizes support for community health care services to medically underserved populations.

2. Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

3. Applications demonstrating a commitment to geriatrics through development of innovative educational ways to provide improved and more effective care for the elderly.

4. Applications which are innovative in their educational approaches to quality assurance/risk management activities: monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

Special Consideration for Fiscal Year 1991

A special consideration will be given to applications proposing centers that will serve Health Professional Shortage Areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks, and/or Hispanics than exists in the general population in the United States.

The following priority was established in FY 1991 and published on November 23, 1990 (55 FR 48908) after public comment.

Final Additional Funding Priority for Fiscal Year 1991

A funding priority will be given to applications demonstrating a commitment to reducing infant mortality through the development of innovative educational ways to provide improved and more effective maternal and child health care: for example, the development and implementation of undergraduate, graduate and/or continuing education curricula/courses to enhance the delivery of maternal and child health care to low-income populations; or the provision of clinical training experiences to undergraduate students, graduate students or residents in areas where the infant mortality rate is higher than the State or national average.

Questions regarding programmatic information should be directed to: Ms. Cherry Tsutsumida, Chief, Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C-05, Rockville, Maryland 20857, Telephone: (301) 443-6950.

Requests for application materials and questions regarding grants policy and business management aspects should be directed to: Mrs. Frances Briscoe (U76), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C-26, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed application materials should be returned to the Grants Management Officer at the above address.

The standard application form PHS 6025-1 HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The application deadline date is August 9, 1991. Applications will be considered as meeting the deadline if they are either:

1. *Received on* or before the deadline date, or

2. *Postmarked on* or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The Catalog of Federal Domestic Assistance number assigned to this program has been changed from 13.824 to 93.824. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 13, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-15083 Filed 6-25-91; 8:45 am]

BILLING CODE 4160-15-M

Program Announcement and Proposed Funding Priorities for Grants for Faculty Development in Family Medicine

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1992 Grants for Faculty Development in Family Medicine are being accepted under the authority of section 786(a), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100-607. Comments are invited on the proposed funding priorities. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative

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authority and to the appropriation of funds.

The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 780(a) of the PHS Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathic medicine, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 788(a) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q.

The period of Federal support will not exceed 5 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy *People* 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy *People* 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education and service programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 788(a) of the Act;

(2) The degree to which the proposed project provides for the project requirements and guidelines;

(3) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

(4) The potential of the project to continue on a self-sustaining basis after the period of grant support.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

(1) Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

(2) Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Proposed Funding Priorities

In determining the order of funding of approved applications, it is proposed that a funding priority be given to:

1. Applicants that currently have or propose to develop projects to provide instruction in teaching clinical pedagogical skills (may also include other critical academic skills) to medical staff of: Community Health Centers supported under PHS Act, section 330; Migrant Health Centers supported under PHS Act, section 329; Homeless Health Centers supported under PHS Act, section 340; facilities that have formal arrangements to provide primary health services to public housing communities; or hospitals and/or health care facilities of the Indian Health Service; and/or health care centers that serve a substantial number of patients from (1) a Health Professional Shortage Area (HPSA), section 332 of the PHS Act, or (2) a Medically Underserved Area (MUA) designated under provisions of PHS Act, section 330(b)(3).

Section 330 authorizes support for community health care services to medically underserved populations.

Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers.

Section 340 authorizes Health Care for the Homeless Program, as used here, means a community-based program of comprehensive primary health care and substance abuse services brought to the homeless population.

Public Housing Communities means the residents of low income public projects that receive Federal assistance, usually through a local public housing agency, under the provisions of the U.S. Housing Act of 1937.

Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas.

Section 332(b)(3) establishes Medically Underserved Areas which are areas designated by the PHS, based on four criteria:

(1) Infant mortality rate;

(2) Percentage of the population below the poverty level;

(3) Percentage of the population over age 65; and

(4) Number of practicing primary care physicians per 1,000 population.

This priority is consistent with a HRSA strategy to enhance the teaching capabilities in the above areas and to provide training experiences with underserved populations.

2. Applications from existing faculty development programs which:

a. Can demonstrate an enrollment of underrepresented minorities (i.e., Black, Hispanic, and American Indian/Alaskan Native) in the academic year 1991–92 which exceeds 12 percent, or

b. Can document an increase in the number of underrepresented minorities from the academic year 1990–91 to 1991–92, or

c. Can demonstrate that the average over the current year (1991–92) plus the 2 preceding years exceeds 12 percent.

Applicants that propose new faculty development programs can meet this funding priority by providing evidence that the first cohort of trainees will include underrepresented minorities in excess of 12 percent. This funding priority is a refinement of a similar priority applied in FY 1991. It is intended to encourage enrollment of minorities typically underrepresented in medicine by increasing the number of minority faculty role models.

Special Consideration

Special consideration will be given to applications demonstrating a commitment to family medicine.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the FY 1992 award cycle, the comment period has been reduced to 30 days. All comments received on or before July 26, 1991 will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published indicating whether the proposed funding priorities will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for FY 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants, and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately 6 months from the first deadline.

The deadline date for receipt of applications for FY 1992 is August 6, 1991. Applications shall be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline date, or

(2) *Postmarked on* or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

Requests for application materials and questions regarding business management issues and grants policy should be directed to: Mrs. Judy Bowen, Grants Management Specialist, Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–20, Rockville, Maryland 20857, Telephone: (301) 443–6880.

Completed applications should be returned to the Grants Management Officer at the above address.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and Supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Should additional programmatic information be required please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Rockville, Maryland 20857, Telephone: (301) 443–3614.

This program is listed at 93.895 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 8, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–15062 Filed 6–25–91; 8:45 am]

BILLING CODE 4160–15–M

Availability of Funds for Grants for Health Services for Residents of Public Housing

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $3.4 million in fiscal year (FY) 1991 for grants to be awarded under section 340A of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 256a. The purpose of the grants will be to provide primary health care services as defined in section 330(b)(1) of the PHS Act, including health screening, and health counseling and education services to residents of public housing. Emphasis will be placed on the provision of perinatal and infant health services in areas of high infant mortality need which are innovative and creative in bringing women at high risk for poor birth outcomes into the health services delivery system. Approximately 3 to 6 grants will be made, ranging from $500,000 to $1 million. All awards are for one year, with projects periods of up to three years. The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This program announcement is related to the priority area of improving access to health services in underserved areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC, 20402–9325 (Telephone 202–783–3238).

ADDRESSES: The PHS Regional Grants Management Officers (RGMOs), whose names and addresses are provided in the appendix to this document, are responsible for distributing application kits and guidance (Form PHS 5161–1 with revised face sheets DHHS Form 424, as approved by the OMB under control number 0937–0189), and completed applications must be submitted to them. Application kits contain guidance information which outlines program requirements indicated in the authorizing legislation. Potential applicants should contact the appropriate RGMO. The RGMO can also provide assistance on business management issues. For further program information and technical assistance contact Joan Holloway, Director, Division of Special Populations Program Development, Bureau of Health Care Delivery and Assistance, telephone (301) 443–8134.

DUE DATE: To receive consideration, grant applications must be received by the appropriate Grants Management Officer by July 26, 1991. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Applications received after the announced closing date will not be considered for funding and will be returned to the applicant.

ELIGIBLE APPLICANTS: To be eligible, an applicant must be a public or non-profit private entity and have the capacity to effectively administer a grant.

SUPPLEMENTARY INFORMATION: Section 340A of the PHS Act authorizes the Secretary to award grants to enable grantees, directly or through contracts, to provide for the delivery of primary health care services, including health screening, and health counseling and education services to residents of public housing. This effort is one of several initiatives designed to improve the health status of disadvantaged minorities, especially at risk pregnant women and infants, as intended in Public Law 101–527, the Disadvantaged Minority Health Improvement Act of 1990.

In an area where a certified resident management corporation is in existence with a public entity providing primary health care services or an entity

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receiving funds under section 330 or 340 of the PHS Act, the organizations are encouraged to submit only one application demonstrating collaboration between the organizations.

Grantees or providers acting under an agreement with the grantee must be a participating and qualified provider under the Medicaid plan approved under title XIX of the Social Security Act, and must maximize payment for services available from private insurance, Medicare, other Federal programs, and other third party sources. Grantees entering into contracts for services shall be entitled to a waiver of this requirement, if the organization with which they contract does not impose a charge or accept payment available from any third-party payor, including payment under any insurance policy or under any Federal or State health benefits program (including Medicaid).

The Secretary may not make a grant to an applicant unless the applicant signs an agreement indicating that, whether the services are provided directly or through contract, services under the grant will be provided without regard to ability to pay for the services, and if a charge is imposed it will be, (1) made according to a schedule of charges that is made available to the public, (2) will not be imposed on any resident of public housing with an income less than the official poverty level, and (3) will be adjusted to reflect the income and resources of the resident of the public housing involved.

For applicants which are public entities, e.g. State or local health departments, the Secretary may not award a grant unless the public entity signs an agreement that, with respect to the costs to be incurred by such entity in carrying out the purpose of the grant (providing primary health care services, including health screening, and health counseling and education services to residents of public housing), the entity will make available non-Federal contributions in cash toward such costs in the amount equal to not less than $1.00 for each $1.00 of Federal funds provided in the grant. In-kind contributions, such as space or personnel, will not constitute acceptable contributions and funds provided either directly or indirectly by the Federal Government may not be included in determining the amount of the non-Federal contributions.

Project Requirements

The following services are required by section 340A and must be provided either directly or through contract:

a. Primary health care services, including health screening, and health counseling and education services for all residents of public housing along with specialty medical services for pregnant residents and their infants, on the premises of public housing projects or at other locations immediately accessible to residents of public housing;

b. Referral of residents, as appropriate, to qualified facilities and practitioners for necessary follow-up services;

c. Outreach services to inform residents of the availability of such services, especially at risk women of child-bearing age;

d. Aid to residents in establishing eligibility for entitlement programs (i.e., WIC, AFDC) and in obtaining services under Federal, State and local programs providing related health services, mental health services or social services.

In addition, applicants may also provide the following optional services:

a. Training to residents of public housing to provide health screenings and to provide educational services, and

b. Health services to individuals who are not residents of public housing if those services will be provided to such individuals under the same terms and conditions as such services are provided to residents.

Use of Funds

The following restrictions apply to the use of grant funds awarded for the purpose of providing health services for residents of public housing:

a. The applicant may not expend more than ten percent of the federal grants funds for the purpose of administering the grant;

b. Grant funds may not be used to pay for inpatient services;

c. Grant funds may not be used to make cash payments to intended recipients of primary health services, or health counseling and education services;

d. Grant funds may not be used to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment or motor vehicles.

However, upon request by the applicant demonstrating that the purposes of the project cannot otherwise be carried out, the Secretary may waive the restriction in paragraph (d).

Criteria for Evaluating Applications

An objective review of applications for grant support will consider the extent to which an applicant submits documentation of compliance with the statutory requirements:

1. Consultation with residents of the designated public housing development in preparation for submission of the application and the development of an on-going process for consultation with the residents regarding the planning and administration of the proposed program;

2. Appropriate leadership and management structures to ensure delivery of health services efficiently and effectively;

3. Procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant;

4. An ongoing program of quality assurance with respect to the services provided under the grant;

5. Procedures to ensure the confidentiality of records maintained on residents of public housing that are receiving such services;

6. With respect to providing services to any population of such residents a substantial portion of which has a limited ability to speak the English language, a plan to provide services through individuals who can communicate with the population; and has designated at least one person, fluent in both English and the appropriate language, to carry out the plan, and

7. A process whereby an annual report will be submitted to the Secretary describing the use and costs of services under the grant.

Each application will also be evaluated on the extent to which it addresses or provides the following:

1. A description of the health status and demographic characteristics of the target population and documentation of the need for primary care and perinatal services in public housing facilities, especially for pregnant residents and their infants, in terms of barriers to access (e.g. lack of availability of health care services, limited accessibility, location of providers, inability to pay for services).

2. The appropriateness of proposed services to meet the needs of the community, espcially the unmet need for perinatal and infant services; the degree of increased access to perinatal and infant health services, and the strength of the health services delivery system.

3. Current or proposed clinical staffing pattern which is expected to include an adequate number of full-time, qualified providers so that services are accessible, comprehensive, continuous and coordinated.

4. The level of community commitment to reducing infant mortality, as well as the amount of local/state government and private sector involvement.

5. The ability to effectively administer the grant, as evidenced by appropriateness of governing board (applicable to section 330 applicants), and a budget and budget justification including estimates of expenditures for revenues from the services proposed in the description of purpose; estimates of the average cost of providing services to each recipient and a plan to identify, monitor and control costs (accounting structure) related to the provision of primary care and health education to residents of public housing.

6. Project activities, such as the actual service delivery system, including health screenings, diagnostics, treatment (provided on-site or through contract), entitlement eligibility assistance, and the optional activities of training public housing residents or providing the required health services to nonresidents, as well as proposed linkages with other community-based programs (e.g. social service, education and State sponsored programs) and outreach initiatives to be supported under the grant must be clearly defined. This includes special activities designed to provide outreach to at risk pregnant women and address the prenatal, delivery and postpartum needs of residents and their infants.

7. The degree of coordination and integration with existing public and private health care providers and related social service agencies.

In evaluating applications, preference will be given to: (1) Entities receiving funds under either section 330 (Community Health Centers) that provide comprehensive perinatal services, or section 340 (Health Care for the Homeless Programs) of the PHS Act, (2) qualified applicants that are certified resident management corporations as defined under section 20 of the U.S. Housing Act of 1937, (3) applicants identified above which demonstrate the provision of a comprehensive package of outreach and case-managed prenatal, delivery, post-partum and infant care services, and (4) serve populations which experience high rates of infant mortality and a significant number of infant deaths.

Other Award Information

The program is subject to the provisions of Executive Order 12372 concerning Intergovernmental Review of Federal Programs and 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit will contain a listing of States which have chosen to set up a review system and will identify a point of contact (SPOC) in each State for the review. Applicants (other than Federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Regional Grants Management Officer.

Grants will be administered in accordance with Department of Health and Human Services Regulations in 45 CFR part 92 for State and local governments or 45 CFR part 74 for other grantees and are subject to the provisions of the Public Health Services Grants Policy Statement.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.927.

Dated: April 20, 1991.

Robert G. Harmon,

Administrator.

Appendix

Region I (CT, ME, MA, NH, RI, VT)

Mary O'Brien, Grants Management Officer, PHS Office of Grants Management, John F. Kennedy Federal Bldg. #1400, Boston, Massachusetts 02203, (617) 565-1452

Region II (NJ, NY, PR, VI)

Steven Wong, Grants Management Officer, PHS Office of Grants Management, 26 Federal Plaza #3337, New York, New York 10278, (212) 264-4498

Region III (DE, DC, MD, PA, VA, WV)

Finbarr O'Connell, Grants Management Officer, PHS Office of Grants Management, 3535 Market Street #10-140, Philadelphia, Pennsylvania 19101, (215) 596-6863

Region IV (AL, FL, GA, KY, MS, NC, SC, TN)

Wayne Cutchens, Grants Management Officer, PHS Office of Grants Management, 101 Marietta Tower, Suite 1121, Atlanta, Georgia 30323, (404) 331-2567

Region V (IL, IN, MI, MN, OH, WI)

Lawrence Poole, Grants Management Officer, PHS Office of Grants Management, 105 West Adams, 17th Floor, Chicago, Illinois 60603, (312) 353-6700

Region VI (AR, LA, NM, OK, TX)

Frank Cantu, Grants Management Officer, PHS Office of Grants Management, 1200 Main Tower Bldg. #1600, Dallas, Texas 75202, (214) 767-3665

Region VII (IA, KS, MO, NE)

Hollis Hensley, Grants Management Officer, PHS Office of Grants Management, 601 East 12th Street #501, Kansas City, Missouri 64106, (816) 426-5841

Region VIII (MT, ND, SD, WY, UT, CO)

Jerry F. Wheeler, Grants Management Officer, PHS Office of Grants Management, 1961 Stout Street, Fed. Bldg. #482, Denver, Colorado 80294, (303) 844-4461

Region IX (AS, AZ, CA, GU, HI, NV, TT)

Linda Gosh, Grants Management Officer, PHS Office of Grants Management, 50 United Nations Plaza #331, San Francisco, California 94102, (415) 556-2565

Region X (AK, ID, OR, WA)

James Tipton, Grants Management Officer, PHS Office of Grants Management, 2201 6th Avenue, #710, Seattle, Washington 98121, (206) 442-7857

[FR Doc. 91-15080 Filed 6-25-91; 8:45 am]
BILLING CODE 4160-15-M

Program Announcement and Proposed Funding Priority for Grants for Preventive Medicine Residency Training Programs

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1992 Grants for Preventive Medicine Residency Training Programs are being accepted under the authority of section 788(c), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100-607. Comments are invited on the proposed funding priority described below. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds.

The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 788(c) authorizes the award of grants to accredited schools of medicine,

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osteopathic medicine and public health to meet the costs of projects to:

(1) Plan and develop new residency training programs and to maintain or improve existing residency training programs in preventive medicine; and

(2) Provide financial assistance to residency trainees enrolled in such programs.

To receive support, applicants must meet the requirements of 42 CFR part 57, subpart EE.

The period of Federal support should not exceed 3 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. The Preventive Medicine Residency Training Program is related to the priority area of Clinical Preventive Services. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education and service programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the training purposes of section 788(c) of the PHS Act;

2. The extent of responsiveness to the project requirements;

3. The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

4. The degree to which the proposed training program emphasizes health promotion and disease prevention;

5. The degree to which the applicant demonstrates institutional commitment to the proposed program; and

6. The history of the program including number of residents who successfully completed the program.

In addition, the following mechanism may be applied in determining the funding of approved applications.

Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

Established Funding Priorities

In order to emphasize the initiative of health promotion/disease prevention and to encourage improvement of the quality of residency training experiences, the following funding priorities are established. In the funding of approved applications, a funding priority will be given to projects which will:

1. Conduct residency training in areas of general preventive medicine or public health.

2. Enroll at least four residents in the academic year and at least four residents in the field year with evidence provided that the projected number can be realized from a current or projected applicant pool.

These funding priorities were established in FY 1989, after public comment and are being extended in FY 1992.

Proposed Funding Priority

In addition, for FY 1992, it is proposed that funding priority be given to:

Applicants that propose to provide educational experiences to demonstrate to residents the provision of primary care/preventive services for underserved populations. These experiences must include substantial training in a local health department, PHS Act section 329 Migrant Health Center, PHS Act section 330 Community Health Center and/or State-designated clinic/center serving an underserved population. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 330 authorizes support for community health care services to medically underserved popualtions.

This priority is consistent with a HRSA strategy to train physicians to serve community needs, including underserved areas or populations.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the FY 1992 award cycle, the comment period has been reduced to 30 days. All comments received on or before July 26, 1991 will be considered before the final funding priority is established. No funds will be allocated or final selections made until a final notice is published stating whether the funding priority will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays, (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

The application deadline date for FY 1992 is July 30, 1991. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to an independent review group. A legibly dated rceipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

Requests for application materials and questions regarding grants policy and business management aspects should be directed to: Grants Management Officer (D33), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–6002.

Completed applications should be submitted to the Grants Management Officer at the above address.

The standard application form PHS 6025–1, HRSA Competing Training Grant Applications, General Instruction and Supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number 0915–0060.

If additional programmatic information is needed, please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–04, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6820.

This program is listed at 93.117 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Program (as implemented through 45 CFR part 100).

Dated: May 16, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–15061 Filed 6–25–91; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–068–7123–54–6479]

Closure for Public Lands Surrounding the El Mirage Cooperative Management Area, San Bernardino Co., CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure notice for public land contained within 49 sections of land in the Barstow Resource Area of San Bernardino County.

SUMMARY: This closure notice, which became effective June 25, 1990, is hereby extended for a period of one year. The reasons for extending this closure for an additional year are outlined in paragraph two of this notice and are consistent with the original reasons for initiating this closure. This closure notice affects public land contained within all part of 49 sections of land surrounding the El Mirage Cooperative Management Area, San Bernardino County, California under the administrative responsibility of the Barstow Resource Area, California Desert District. The following is a description of the public lands affected by this closure order:

T.6N., R.5W., Section 6; T.7N., R.5W., Sections 6, 8, 19, 20, 30 and 31; T.8N., R.5W., Sections 30, 31 and 32; T.7N., R.6W., Sections 6, 7, 8 and those parts of Sections 18 and 20 that are north of the ridgeline in the Shadow Mountains; T.8N., R.6W., Sections 27, 28, 30, 31, 32, 34 and 35; T.6N., R.7W., Sections 6, 8, 13, 18, 19 and 20; T.7N., R.7W., Sections 2, 4, 15, 18, 19, 20, 29 and 31; T.8N., R.7W., Sections 26, 27, 28, 32, 34 and 35; T.6N., R.8W., Section 1; T.7N., R.8W., Sections 11, 12, 14, 24 and 25, San Bernardino Meridian.

The public land contained within the previously described 49 sections of land are closed to all motor vehicles under the authority of 43 CFR 8364.1 in order to protect soil, vegetation, wildlife, wildlife habitat and adjacent private land, property and landowners. This closure does not apply to the operation of vehicles, licensed pursuant to California Vehicle Code section 4000(a), upon "open routes" that are marked with a sign on the ground that reads "open route". A flyer showing the open routes is available upon request.

This closure order shall remain in effect for one year. This action is being taken as an interim measure until the aforementioned problems are resolved and/or the routes of travel on the public land within the 49 sections of land are designated through the Desert District's route designation process.

The closed area is posted with "closed area" signs and the open access routes are posted with "open route" and "street licensed vehicles only" signs.

Specifically authorized persons will be allowed access into the closed area only with written authorization.

Any person who fails to comply with this closure order may be subject to a fine of up to $1000.00 or imprisonment of up to 12 months, or both, under 43 CFR 8360.0–7.

EFFECTIVE DATE: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mark H. Davis, El Mirage Project Manager or Steve Martin, BLM Ranger, 150 Coolwater Lane, Barstow, California 92311 or phone (619) 256–2729.

Dated: June 18, 1991.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 91–15108 Filed 6–25–91; 8:45 am]

BILLING CODE 4310–40–M

[ES–030–1–4212–18; MIES–041320, MIES–041324, and MIES–041328]

Sale of Public Lands in Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Michigan Public Lands Improvement Act of 1988 (102 Stat. 2711, Pub. L. 100–537) (The Act), Bureau of Land Management does hereby give notice of its intent to offer the following described lands for sale to the following persons, to wit:

MIES–041320

To Howard Lambrix, as Trustee acting on behalf of 35 applicants;

T. 6S., R. 10E., Sec. 8, Lot 1; Sec. 9, Lot 9; Michigan Meridian, Monroe County, Michigan, and containing 71.08 acres more or less;

MIES–041324

To Timothy H. Lentner, as Trustee acting on behalf of 38 applicants;

T. 5S., R. 8E., Sec. 32 Lot 5, Michigan Meridian, Monroe County, Michigan, and containing 62.818 acres more or less; and

MIES–041328

To Jerry Alderman, as Trustee acting on behalf of 6 applicants;

T. 7S., R. 6E., Sec. 14, Lot 1, Michigan Meridian, Monroe County, Michigan, and containing 0.43 acres more or less.

The public land will not be offered for sale until at least 30 days after the date of publication of this notice in the **Federal Register.**

DATES: On or before July 26, 1991, persons claiming the land adversely may file their objections to the District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. Comments are also invited from any other person having information that should be considered by the United States before making this proposed sale.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Realty Specialist, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631; telephone number (414) 297–4429 or (FTS) 362–4429.

SUPPLEMENTARY INFORMATION: The following public land has been found suitable for direct sale under section 3 of The Act, at fair market value, less equities presented by an applicant for such conveyance and less the value of any improvements that the applicant or the applicant's predecessors in interest have placed on the land. Such equities may include (but are not limited to):

(1) The amount paid for the land by the applicant;

(2) Longevity of applicant's claim;

(3) Taxes paid on the land; and

(4) Other equities as the Secretary of the Interior may determine relevant.

The Act was passed by Congress because it recognized that there were long standing title claims against public land in Michigan that could not be resolved by existing Federal authorities. Therefore, Congress authorized the Secretary of the Interior to resolve these title claims and to recognize the equities of the claimants in such lands.

Gary D. Bauer,

District Manager.

[FR Doc. 91–15170 Filed 6–25–91; 8:45 am]

BILLING CODE 4310–GJ–M

[UT–942–01–5700–11; UTU–65023]

Exchange of Public Lands in Carbon Co., UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of local land-use

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planning decisions based upon public input, resource considerations, regulations, and Bureau policies, has been found to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Salt Lake Meridian, Utah

T. 23 S., R. 13 E.,
Section 26, S2SW4NE4, E2NE4SW4, SE4W4, W2SE4.

Encompassing 220.00 acres, more or less.

In exchange for these lands, the United States would acquire private lands from Sunoco Energy Development Company described as follows:

Salt Lake Meridian, Utah

T. 14 S., R. 11 E.,
Section 13, S2SW4, NE4SW4,
Section 24, NE4NW4.

Encompassing 160.00 acres, more or less.

The exchange involves surface estate interests only. The purpose of this exchange is to acquire critical riparian habitat. The public interest would be well served by making the exchange. The value of the lands to be exchanged are approximately equal and the acreage will be adjusted or money will be used to equalize values upon completion of the final appraisal of the lands.

The public lands will be conveyed to the following terms and conditions:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

2. A right-of-way will be reserved for ditches and canals constructed under authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

The patent would be subject to the following rights of record:

3. The conveyance of the lands will be subject to all valid existing rights, reservations, and privileges of record which include, but are not limited to the following:

a. Road right-of-way UTU-62044 to Carbon County;

b. Federal oil and gas lease UTU-66733.

The private lands will be acquired subject to the following terms and conditions:

1. A reservation of all minerals;

2. Subject to all valid existing rights. Publication of this notice in the Federal Register segregates the public lands described above from the operation of the public land laws, and the mining laws, excepting the excepting the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

COMMENTS: For a period of Forty-five (45) days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning this action may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501 (801) 637-4584, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532 (801) 259-6111.

Dated: June 17, 1991.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 91-15107 Filed 6-25-91; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Arkansas Fatmucket (Lampsilis powelli), for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Arkansas fatmucket mussel (*Lampsilis powelli*). This species occurs in the Ouachita, South Fork Ouachita, Caddo and Saline Rivers and headwater tributaries of the latter. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 26, 1991, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy of contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Stewart at the above address (601/965-4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the Arkansas fatmucket mussel (*Lampsilis powelli*). The area of emphasis for recovery actions is the Ouachita, South Fork Ouachita, and Saline Rivers and headwater streams of the latter. All known populations of this species are in Arkansas. The historic range within this system has been adversely impacted by impoundment, water pollution and channel modification. Habitat restoration and protection, reestablishing populations and management are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 14, 1991.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 91-15181 Filed 6-25-91; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-311]

Certain Air Impact Wrenches; Commission Decision Not To Review an Initial Determination of No Violation of Section 337 of the Tariff Act of 1930; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) finding no violation of section 337 in the above-captioned investigation, thereby terminating the investigation.

FOR FURTHER INFORMATION CONTACT: Scott Andersen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1099. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in 19 U.S.C. 1337 and 19 CFR 210.53.

On May 7, 1991, the presiding ALJ issued on ID finding that there is no violation of section 337 in the investigation. On May 16, 1991, a petition for review of the ID was filed by complainant Ingersoll-Rand Company. On May 23, 1991, respondents Astro Pneumatic Tool Co. and Kuan-I Gear Co. and the Commission investigative attorney filed oppositions to the petition for review. No government agency comments were received.

On June 18, 1991, the Commission determined not to review the ID. By virtue of the Commission's decision not to review the ID, the ID has become the final Commission determination in this investigation. 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000.

Issued: June 18, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-15208 Filed 6-25-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-518 (Preliminary)]

Aspherical Ophthalmoscopy Lenses From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of aspherical opthalmoscopy lenses,[2] provided for the subheading 9018.50.00 of the Harmonized Tariff Schedule of the United States (HTS), that alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 30, 1991, a petition was filed with the Commission and the Department of Commerce by Volk Optical, Inc., Mentor, Ohio, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of aspherical opthalmoscopy lenses from Japan. Accordingly, effective April 30, 1991, the Commission instituted preliminary antidumping No. 731-TA-518 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publising the notice in the Federal Register of May 7, 1991 (56 FR 21173). The conference was held in Washington, DC, on May 21, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 14, 1991. The views of the Commission are contained in USITC publication 2396 (June 1991), entitled Aspherical Ophthalmoscopy Lenses from Japan: Determination of the Commission in Investigation No. 731-TA-518 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation.

Issued: June 17, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-15209 Filed 6-25-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-473 (Final)]

Certain Electric Fans From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-252-1188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: On May 31, 1991, the Commission instituted the subject investigation and established a schedule for its conduct (56 FR 18170). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from August 12, 1991, to October 16, 1991. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than October 18, 1991; the prehearing conference will be held at the U.S. International Trade

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f).

[2] For purposes of this investigation, aspheric ophthalmoscopy lenses are single element non-contact ophthalmoscopic lenses, whether mounted or unmounted, framed or unframed, of which one of both surfaces are aspherical in shape.

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Commission Building on October 21, 1991; the prehearing staff report will be placed in the nonpublic record on October 11, 1991; the deadline for filing prehearing briefs is October 22, 1991; the hearing will be held at the U.S. International Trade Commission Building on October 29, 1991; and the deadline for filing posthearing briefs is November 5, 1991.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: June 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-15210 Filed 6-25-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-303]

Certain Polymer Geogrid Products and Processes Therefor; Decision To Dismiss Investigation for Mootness and Vacate Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to dismiss the above-captioned investigation for mootness and to vacate the presiding administrative law judge's (ALJ) final initial determination.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone 202-252-1104. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On August 10, 1989, Tensar Corporation Filed a complaint under section 337 alleging infringement of two U.S. patents exclusively licensed to Tensar covering polymer geogrid products and a process for making such products. The Commission instituted an investigation of the complaint and issued a notice of investigation which was published in the Federal Register on September 20, 1989 (54 FR 38752). On July 11, 1990, the Commission determined not to review an ID designating the investigation more complicated and extending the statutory deadline for completion of the investigation by six months.

On September 20, 1990, the presiding ALJ issued her final ID finding no violation of section 337 in the investigation. On October 4, 1990, in response to a joint request by complainant and respondents, the Commission suspended its investigation in order to allow the private parties to borrow exhibits from the Commission's record for use in a jury trial in concurrent litigation between the same parties, *Tenax Corp.* versus *The Tensar Corp.*, Civil Action No. H-89-426, in the U.S. District Court for the District of Maryland. 55 FR 41394 (October 11, 1990).

On November 23, 1990, the jury trial concluded with a verdict of patent infringement in favor of Tensar. The parties returned the exhibits to the Commission on December 19, 1990. Since several post-trial motions were pending before the district court, the Commission determined, on December 31, 1990, to continue its suspension until the final judgment of the district court. 56 FR 873-874 (Jan. 9, 1991). On April 16, 1991, the district court issued a final judgment.

On May 6, 1991, the Commission lifted its suspension of the investigation. On May 10, 1991, complainant filed a motion to terminate the investigation as moot because it had received all possible relief from the district court in concurrent litigation. (The district court had ruled that complainant's patent was valid and infringed by the same firms that are the respondents in the Commission investigation. The court awarded damages and issued an injunction against respondents.) In the alternative, complainant moved to withdraw its complaint and to dismiss the investigation without prejudice. Complainant also requested that the ID be vacated.

Copies of the Commission order, its opinion in support of the order, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: 202-252-1000.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 and Commission interim rule § 210.51(a), 19 CFR 210.51(a).

Issued: June 14, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-15211 Filed 6-25-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-336]

Commission Determination not to Review an Initial Determination Granting in Part a Motion for Summary Determination on the Issue of Domestic Industry; Certain Static Random Access Memories & Integrated Circuit Devices, etc.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the matter of Certain Static Random Access Memories and Integrated Circuit Devices Containing Same, Processes for Making Same, Components Thereof, and Products Containing Same.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) granting in part a motion for summary determination on the existence of a domestic industry in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1098.

SUPPLEMENTARY INFORMATION: On March 29, 1991, complainant filed a motion for summary determination on the issue of the existence of a domestic industry. Respondents and the Commission investigative attorneys opposed the motion. On May 14, 1991, the presiding ALJ issued an ID (Order No. 9) granting the motion in part. The ID found that a domestic industry exists with respect to U.S. Letters Patent 4,125,854. Respondents petitioned for review of the ID. Complainant and the Commission investigative attorneys opposed respondents' petition for review. No agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule § 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: June 17, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-15212 Filed 6-25-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31660]

Eastern Illinois Railroad Co.—Operation Exemption—Line of Railroad of NRG, Inc., in Edgar, Coles, Cumberland, and Douglas Counties, IL

Eastern Illinois Railroad Company (EIRC), a noncarrier, filed a notice of exemption to operate a 52.95-mile line of railroad in Edgar, Coles, Cumberland, and Douglas Counties, IL.[1] The line, owned by NRG, Inc. (NRG), extends between Metcalf and Neoga, IL, where it connects with Illinois Central Railroad.[2] EIRC will become a class III rail carrier.

Any comments must be filed with the Commission and served on Jon R. Roy, P.O. Box 1132, Charleston, IL 62920.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 20, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-15202 Filed 6-25-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-350X]

Ferdinand & Huntingburg Railroad Co.—Abandonment Exemption—in Dubois County, IN

AGENCY: Interstate Commerce Commission.

ACTION: Exemption.

SUMMARY: The Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-10904, the abandonment and discontinuance by Ferdinand & Huntingburg Railroad Company of 6.4 miles of rail line and approximately 1 mile of trackage rights in Dubois County, IN.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 26, 1991. Formal expressions of intent to file an offer of financial assistance [1] under 49 CFR 1152.27(c)(2) must be filed by July 8, 1991, petitions to stay must be filed by July 11, 1991, and petitions for reconsideration must be filed by July 22, 1991. Requests for a public use condition must be filed by July 8, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-350X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: William H. Davis, 102 North Capitol Avenue, Corydon, IN 47112.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamics Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD Services (202) 275-1721.)

Decided: June 18, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 91-15203 Filed 6-25-91; 8:45 am]

BILLING CODE 7035-01-M

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[1] The Railway Labor Executives' Association and the United Transportation Union (collectively Rail Labor) filed letters seeking imposition of labor protective conditions, to which EIRC replied, objecting to the relief sought. The Commission has determined that it would not impose such conditions on this class of transaction unless exceptional circumstances were shown. See Ex. Parte No. 392 (Sub-No. 1), *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810, 814 (1986), *aff'd sub nom. Illinois Commerce Commission* v. *I.C.C.*, 817 F.2d 145 (D.C. Cir. 1987). Rail Labor does not allege that exceptional circumstances are involved. Accordingly, labor protective conditions will not be imposed.

[2] The line had been abandoned by its previous owner, the Norfolk and Western Railway Company, Docket No. AB-10 (Sub-No. 42), *Norfolk and Western Railway Company—Abandonment and Discontinuance of Service—Between Linden, IN, and Coffeen, IL* (not printed), served June 9, 1987. NRG purchased the line in April 1988.

EIRC indicates that Indiana Hi-Rail Corporation (IHRC) has been operating on the line since 1988, but that IHRC informed NRG in January 1991 that, effective March 31, 1991, it intended to cease operations. It is unclear under what authority IHRC had been operating the line or whether IHRC sought approval for discontinuing its operations.

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Joint Newspaper Operating Agreement

Notice is hereby given that the Attorney General has granted the motion of the Antitrust Division to file an amended report concerning the application by the Manteca News and Manteca Bulletin for approval of a joint newspaper operating agreement pursuant to the Newspaper Preservation Act, 15 U.S.C. 1801-1804.

Any person wishing to do so may submit a written reply to the amended report by mailing or delivering five copies to the Assistant Attorney General for Administration, Justice Management Division, Washington, DC 20530. Replies must be received no later than July 18, 1991.

Dated: June 18, 1991.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 91-15177 Filed 6-25-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act and with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on June 12, 1991, a proposed Consent Decree in *United States* v. *Beazer East, Inc.*, Civil Action No. CIV-F-91-767 (LKK-JFM) was lodged with the United States District Court for the Eastern District of California. The proposed Consent Decree concerns the clean-up of the Koppers Superfund Site ("Site"), which is located in Butte County, California. The proposed Consent Decree requires the Defendant Beazer East, Inc. ("Beazer") to fully implement the remedy selected by EPA for the Site, as

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set forth in the Record of Decision (ROD), and to reimburse the United States for all costs incurred and to be incurred at the Site. The remedy requires Beazer to implement several technologies for the cleanup of soils, including soil washing, bioremediation and an extensive pump and treat system for area groundwater. The Consent Decree further provides for graduated stipulated penalties for Beazer's failure to comply with the terms of the Consent Decree. Termination of the Consent Decree is effected upon EPA's certification that Beazer has satisfactorily completed all remedial activities as set forth in the Consent Decree. However, termination of the Consent Decree shall not affect the Covenant Not to Sue, Retention of Records, Reservation of Rights, Periodic Review to Assure Protection of Human Health and the Environment, and Reimbursement of Costs provisions in the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Beazer East, Inc.* (Koppers Superfund Site) D.O.J. 90-11-3-421.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of California, United States Courthouse, Sacramento, California, and at the Region IX, Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $47.50 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Richard B. Stewart,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-15179 Filed 6-25-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* versus *Rasmussen*, Civil Action No. 88CV40010FL, was lodged on June 13, 1991 with the United States District Court for the Eastern District of Michigan. The Consent Decree settles the liability of one defendant, Alfred E. Pearson, regarding certain past and future costs of the United States related to the Rasmussen Dump Site, located in Green Oak Township, Livingston County, Michigan.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Rasmussen*, D.J. reference #90-11-3-281.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Michigan, 113 Federal Building, 600 Church Street, Flint, Michigan 48502; the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-15180 Filed 6-25-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Bankruptcy Settlement Stipulation

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on June 13, 1991, a proposed Stipulation and Agreement to Settle in *In re: DeMenno/Kerdoon*, was lodged with the Bankruptcy Court for the Central District of California. The settlement is in connection with claims of the Environmental Protection Agency in DeMenno/Kerdoon's chapter 11 bankruptcy proceedings.

The proposed settlement stipulation resolves civil claims of the United States regarding the liability of DeMenno/Kerdoon for disposal of hazardous substances at the Operating Industries, Inc. landfill, located in Monterey Park, California. The settlement provides that DeMenno/Kerdoon shall pay $200,000 towards EPA costs that were incurred up to June 1, 1988, and shall pay 0.512% of all costs incurred and to be incurred at the Operating Industries site since that date, up to an additional total payment of $600,000.

The Department of Justice will receive comments relating to the proposed settlement stipulation for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *In re: DeMenno/Kerdoon*, D.J. Ref. 90-11-2-156B.

The proposed settlement stipulation may be examined at the office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012, at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. A copy of the proposed settlement stipulation may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave. Building, NW., Washington, DC 20044 (202-347-2072). A copy of the proposed settlement stipulation may be obtained in person or by mail from the Environment Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $3.50 (25 cents per page reproduction costs) payable to "Consent Decree Library."

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-15178 Filed 6-25-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunication Standards 1080, "Telecommunications: Video Coder/Decoder for Audiovisual Services at 56 to 1,920 Kbit/s"; 1081, "Telecommunications: Frame Structure for a 56 to 1920 Kbit/s Channel in Audiovisual Teleservices"; 1082, "Telecommunications: System for Establishing Communication Between Audiovisual Terminals Using Digital Channels up to 2 Mbit/s"; 1083, "Frame-Synchronous Control and Indication Signals for Audiovisual System"; and 1084, "Telecommunications: Narrow-Band Visual Telephone Systems and Terminal Equipment."

DATES: Comments are due on September 24, 1991.

ADDRESSES: Send comments to the National Communications System, Office of Technology and Standards, 701 S. Court House Road, Arlington, VA 22204-2199.

FOR FURTHER INFORMATION CONTACT: National Communications System, Office of Technology and Standards, 701 S. Court House Road, Arlington, VA 22204-2199, Mr. Gary Rekstad, telephone (703) 692-2124.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface. GSA's authority to publish Federal Telecommunication Standards is dependent on the definition of automatic data processing equipment as specified in 40 U.S.C. 759.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the draft proposed FED-STDS 1080, 1081, 1082, 1083, and 1084 should be directed to the National Communications System, Office of Technology and Standards, 701 S. Court House Road, Arlington, VA 22204-2199.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

[FR Doc. 91-15175 Filed 6-25-91; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Public Comment: Interested persons are invited to submit written data, views or arguments to: Herman G. Fleming, Reports Clearance Officer, rm. 208, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, and to: Office of Management and Budget, Attn: Dan Chenok, Desk Officer, Paperwork Reduction Project, Washington, DC, 20503, by July 19, 1991. All comments will be available for public inspection in rm. 208, at the above NSF address between the hours of 9 a.m. and 4 p.m.

Title: Survey of Doctorate Recipients.

Affected Public: Individuals.

Responses/Burden Hours: 19,750 respondents/14 minutes per response.

Abstract: This survey will collect demographic and labor force data on Ph.D scientists, engineers, and humanists. This information will be used in policy & planning activities by government agencies, educational institutions and private industry.

Dated: June 19, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-15143 Filed 6-25-91; 8:45 am]

BILLING CODE 7555-01-M

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Public Comment: Interested persons are invited to submit written data, views or arguments to: Herman G. Fleming, Reports Clearance Officer, rm. 208, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, and to: Office of Management and Budget, Attn: Dan Chenok, Desk Officer, Paperwork Reduction Project, Washington, DC, 20503, by July 19, 1991. All comments will be available for public inspection in rm. 208, at the above NSF address between the hours of 9 a.m. and 4 p.m.

Title: Requests for Proposals.

Affected Public: Individuals, State or local governments, Business or other for-profit, Non-profit institutions, and Small Businesses or organizations.

Responses/Burden Hours: 280 respondents, 120 hours per response.

Abstract: Requests for proposals used to competitively solicit proposals in response to NSF need for services. Impact will be on those individuals or organizations who elect to submit proposals in response to the RFP. Information gathered will be evaluated in light of NSF procurement requirements to determine who will be awarded a contract.

Dated: June 19, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-15144 Filed 6-25-91; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Renewals

The Assistant Directors having responsibility for the Advisory Committees listed below have determined that renewal of these groups is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for these Advisory Committees will expire on June 30, 1993, unless they are renewed.

Biological, Behavioral, And Social Sciences Directorate

Advisory Committee for Biological, Behavioral, and Social Science

Division of Behavioral, and Neural Sciences

1. Advisory Panel for Animal Learning and Behavior
2. Advisory Panel for Archaeology
3. Advisory Panel for Archaeometry and Systematic Anthropological Collections
4. Advisory Panel for Cellular Neuroscience
5. Advisory Panel for Cultural Anthropology
6. Advisory Panel for Developmental Neuroscience
7. Advisory Panel for Human Cognition and Perception
8. Advisory Panel for Linguistics
9. Advisory Panel for Neural Mechanisms of Behavior

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10. Advisory Panel for Physical Anthropology
11. Advisory Panel for Sensory Systems
12. Advisory Panel for Social Psychology

Division of Biotic Systems and Resources

1. Advisory Panel for Ecology
2. Advisory Panel for Ecosystem Studies
3. Advisory Panel for Population Biology and Physiological Ecology
4. Advisory Panel for Systematic Biology

Division of Cellular Biosciences

1. Advisory Panel for Cell Biology
2. Advisory Panel for Cellular Biochemistry
3. Advisory Panel for Developmental Biology
4. Advisory Panel for Physiological Processes

Division of Instrumentation and Resources

1. Advisory Panel for Equipment & Facilities for Research at Biological Field Stations and Marine Laboratories
2. Advisory Panel for Ethics and Values Studies
3. Advisory Panel for History and Philosophy of Science
4. Advisory Panel for Instrumentation and Instrument Development
5. Advisory Panel for Instrumentation Facilities for the Biological and Behavioral Sciences
6. Advisory Panel for BBS Research Training Groups

Division of Molecular Biosciences

1. Advisory Panel for Biochemistry
2. Advisory Panel for Biophysics
3. Advisory Panel for Genetic Biology

Division of Social and Economic Science

1. Advisory Panel for Decision, Risk, and Management Science
2. Advisory Panel for Economics
3. Advisory Panel for Geography and Regional Science
4. Advisory Panel for Law and Social Sciences
5. Advisory Panel for Political Science
6. Advisory Panel for Sociology

Computer and Information Science and Engineering Directorate

1. Program Advisory Panel for Advanced Scientific Computing
2. Advisory Committee for Computer and Computation Research
3. Advisory Committee for Networking & Communications Research & Infrastructure

Education and Human Resources Directorate

Advisory Committee for Education and Human Resources

Engineering Directorate

1. Advisory Committee for Engineering
2. Advisory Committee for Biological and Critical Systems
3. Advisory Committee for Chemical and Thermal Systems
4. Advisory Committee for Design and Manufacturing Systems
5. Advisory Committee for Electrical and Communications Systems
6. Advisory Committee for Mechanical and Structural Systems

Geosciences Directorate

1 Advisory Committee for Atmospheric Sciences
2. Advisory Committee for Earth Sciences
3. Advisory Committee for Ocean Sciences
4. Advisory Committee for Polar Programs
5. Ocean Sciences Review Panel
6. Earth Sciences Proposal Review Panel

Mathematical and Physical Sciences Directorate

1. Advisory Committee for Astronomical Sciences
2. Advisory Committee for Chemistry
3. Materials Research Advisory Committee
4. Advisory Committee for Mathematical Sciences
5. Advisory Committee for Physics

Office of the Director

Alan T. Waterman Award Committee

Scientific, Technological, and International Affairs Directorate

1. Advisory Committee for Scientific, Technological, and International Affairs
2. Advisory Committee for International Programs
3. Advisory Committee for Industrial Science and Technological Innovation
4. Advisory Committee for Data and Policy Analysis

Dated: June 20, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-15146 Filed 6-25-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel for Division of Cellular Biosciences: Committee of Visitors; Meetings

The National Science Foundation announces the following four Committee of Visitors meetings:

Committee of Visitors will review the following programs within the Division of Cellular Biosciences. All meetings will be held at the National Science Foundation in the rooms listed, from 8:30 a.m. to 5 p.m. All meetings are closed.

July 8–10, 1991—Cellular Biochemistry; room 1242.

July 15–17, 1991—Cell Biology; room 1242.

July 23–24, 1991—Physiological Processes; room 1242.

July 29–31, 1991—Developmental Biology; room 1242.

CONTACT PERSON: Dr. Bruce Umminger, Division Director (telephone 202/357–7905).

AGENDA: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

REASON FOR CLOSING: The meetings are closed to the public because the Committee of Visitors will be reviewing proposal actions that include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: June 20, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–15145 Filed 6–25–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Extreme External Phenomena; Meeting

The ACRS Subcommittee on Extreme External Phenomena will hold a meeting on July 10, 1991, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

Most of the meeting will be open to public attendance. A portion of this meeting may be closed as necessary to discuss Proprietary Information (5 U.S.C. 552b(c)(4)).

The agenda for the subject meeting shall be as follows:

Wednesday, July 10, 1991—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the NUMARC/EPRI Fire Vulnerabilities Evaluation (FIVE) Methodology for the IPEEE.

Oral statements may be presented by members of the public with the

concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the nuclear industry, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 18, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–15006 Filed 6–25–91; 8:45 am]

BILLING CODE 7555-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 3, 1991 through June 14, 1991. The last biweekly notice was published on June 12, 1991 (56 FR 27036).

Notice of Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 26, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise

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statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 58-528, Palo Verde Nuclear Generating Station, Unit 2, Maricopa County, Arizona

Date of amendment request: May 29, 1991

Description of amendment request: Technical Specification 3/4.7.9 requires that hydraulic snubber functional testing be completed once every 18 months. The proposed amendment seeks to extend the testing frequency for Unit 2 hydraulic snubbers by allowing a one time extension to the current 18 month surveillance requirement plus the additional 25% allowed by Section 4.0.2. This proposed change would allow functional testing for the snubbers, currently due no later than September 25, 1991, to be deferred until the next refueling outage, scheduled for October 17, 1991, but no later than December 17, 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1.Involve a significant increase in the probability or consequences of an accident previously evaluated.

The snubbers for which this amendment request pertains, are located only on the Reactor Coolant Pumps (RCPs) and Steam Generators (SGs).

There are 8 snubbers per unit located on the RCPs and 4 snubbers per unit on the SGs, for a unit total of 12 hydraulic snubbers.

. . .

The surveillance history for Unit 2 hydraulic snubbers has shown that the snubbers tested at the first and second refueling (noted above) have successfully satisfied the functional test acceptance criteria from Surveillance Requirement 4.7.9f as follows:

The snubber functional test verifies that:

1)Activation (restraining action) is achieved within the specified range in both tension and compression;

2)Snubber bleed, or release rate where required, is present in both tension and compression, within the specified range;

3)For mechanical snubbers, the force required to initiate or maintain motion of the snubber is within the specified range in both directions of travel; and

4) For snubbers specifically required not to displace under continuous load, the ability of the snubber to withstand load without displacement.

Units 1 and 3 have also met this criteria in previous functional tests. Therefore, it can be stated that there have been no problems with hydraulic snubbers at Palo Verde.

In addition, the extension of time sought in this amendment request (approximately three months if functional testing is performed at the end of the requested extension) is not considered a sufficient duration of time to incur significant degradation or expose the snubbers to other hazards or conditions for which the snubber could not function or for which the snubbers could be degraded. The snubber function is to maintain structural integrity of systems and thus mitigate the effects of any seismic event or accident described in Chapter 15 of PVNGS UFSAR. The extension of time sought in this amendment request will not degrade this capability.

Therefore, based on the discussion provided above, the proposed amendment request will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new different kind of accident from any accident previously evaluated.

The snubbers alone have no function pertaining directly to plant operation and thus cannot be an accident initiator. The snubbers ensure that the structural integrity of the reactor coolant system and other safety related systems is maintained during and following a seismic or other event initiating dynamic loads. The proposed amendment will not alter the current design of the facility nor is the extension of time significant enough to create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in the margin of safety at PVNGS because the extension of time sought for snubber testing does not involve a change to safety limits, setpoints, or design margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: James E. Dyer

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: May 24, 1991

Description of amendments request: The proposed amendment would revise the Technical Specification (TS) for both Units 1 and 2 to allow the use of the Mass Point method for conducting containment integrated leak rate tests and revise the required schedule for conducting such tests in accordance with 10 CFR Part 50, Appendix J. The schedule change takes into account the current 24-month fuel cycles. The initial schedules specified in the current TS are based on the previous 18-month fuel cycles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Surveillance Requirement 4.6.1.2 will only delete reference to ASNI N45.4-1972. Conformance with Appendix J to 10 CFR Part 50 will still be required. Appendix J presently allows Containment Integrated Leakage Rate Test (CILRT) analysis methods in accordance with ANSI N45.4-1972, as well as the Mass Point method described in ANSI/ANS 56.8-1987 (when used with at least a 24-hour duration).

The proposed change allows the use of an improved alternative method of evaluating CILRT data. The Mass Point method is recognized to be a more reliable method of verifying that the leakage from the containment is maintained within acceptable limits. Therefore, the assessment of containment integrity through integrated leak rate testing is enhanced. As such, the consequences of previously evaluated accidents are not impacted. Since the change would only affect the allowed techniques for surveillance testing, there will be no increase in the probability of accidents previously evaluated.

The proposed change to the schedule provides only flexibility in meeting the same requirement for three tests in ten years. The additional flexibility is needed due to the 24-month fuel cycle currently being used. Since the testing type and bases are not changed, the probability and consequences of previously evaluated accidents are not significantly increased.

(2) Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The technique used to calculate leakage rates in itself is not considered to be an initiator of any accidents, transients, incidents or events. The proposed change to the schedule only provides flexibility in meeting the same requirement for three tests in ten years. The testing type and bases are not changed. Therefore, these proposed changes will not create the possibility of a new or different type of accident from any previously evaluated.

(3) Would not involve a significant reduction in a margin of safety.

Should use of the Mass Point method be allowed, an enhanced determination of containment leakage through CILRT is available. As such, the confidence level of containment integrity would also be enhanced. The Technical Specification Bases indicated only that "the surveillance testing for measuring leakage rates are consistent with the requirements of Appendix J to 10 CFR [Part] 50." The proposed change to the schedule only provides flexibility in meeting the same requirement for three tests in ten years. The testing type and bases are not changed. Both changes would continue to provide for testing that is consistent with the requirement of Appendix J. Therefore, this change does not adversely impact the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

NRC Project Director: Robert A. Capra

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: May 24, 1991

Description of amendments request: The proposed amendment would revise the Technical Specifications (TS) for both Units 1 and 2 to allow the removal of the schedules for the withdrawal of reactor vessel material specimens. Section II.B.3 of Appendix H to 10 CFR Part 50 requires the submittal to, and approval by, the Nuclear Regulatory Commission (NRC) of a proposed withdrawal schedule for material specimens before implementation. Hence, the placement of these schedules in the Technical Specifications duplicates the control on changes to these schedules that have been established by Appendix H. The NRC recognized this duplication and issued guidance for deleting the withdrawal schedules from TS in Generic Letter (GL) 91-01. The licensee has used the guidance in GL 91-01 in this proposed revision to the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal from the Technical Specification of the schedule for the withdrawal of reactor vessel material surveillance specimens will not result in any loss of regulatory control because changes to this schedule are controlled by the requirements of Appendix H to 10 CFR Part 50 which require NRC approval and are maintained in the Updated Final Safety Analysis Report. In addition, the surveillance requirements on pressure and temperature indicate that the specimens must be removed and examined to determine changes in their material properties, and these results must be used to update the pressure and temperature limits. Therefore, no actual change in the required actions would occur and the change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Would not create the possibility of a new or different type of accident from any accident previously evaluated.

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The requested change would not result in any change to the plant design, hardware or procedures for operation. Therefore, the requested change would not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) Would not involve a significant reduction in a margin of safety.

The requested change would neither result in fewer nor less frequent removal and examination of the reactor vessel material irradiation surveillance specimens, nor would it result in any change to the required use of the results of the examinations. Therefore, the pressure and temperature requirements for the reactor coolant system would be maintained in the same manner and the change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

NRC Project Director: Robert A. Capra

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: May 24, 1991

Description of amendments request: The proposed amendment would revise the Technical Specifications for both units to provide required snubber visual inspection intervals based on the number of inoperable snubbers found during the previous inspection in proportion to the size of the various snubber populations and categories. This requested change is based on the approach for determining visual inspection intervals developed in the Nuclear Regulatory Commission's Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990. In addition, the amendment would make various editorial revisions for consistency between Units 1 and 2 and remove unnecessary wording or notes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would not involve a significant increase in the probability or consequences of an accident evaluated.

The proposed method for determining the snubber visual inspection interval is equivalent to the previous method with regard to assuring the capability of the system which it supports. The proposed interval increase does not significantly change the failure rate and provides an equivalent assurance of operability. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Would not create the possibility of a new or different type of accident from any accident previously evaluated.

This revision will continue to assure the ability of the equipment to provide dynamic load support during a seismic event. Therefore, the proposed method for determining the snubber visual inspection intervals does not create a possibility of a new or different type of accident from any accident previously evaluated.

(3) Would not involve a significant reduction in a margin of safety.

The proposed method for determining the snubber visual inspection interval is equivalent to the previous method with regard to assuring the capability of the system which it supports. The functional testing continues to provide incentive for proper maintenance and assurance of the capability of the snubbers. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

NRC Project Director: Robert A. Capra

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: May 15, 1991

Description of amendment request: The amendment request is being made to address commitments made by the licensee in response to NRC Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power Operated Relief Valve and Block Valve Reliability' and Generic Issue 94 'Additional Low-Temperature Overpressure Protection for Light Water Reactors' pursuant to 10 CFR 50.54(f)." The proposed changes to Technical Specifications (TS), Section 3/4.4.4 are as follows:

1. Revise the mode applicability to MODES 1, 2, and 3 to be consistent with the guidance of Generic Letter 90-06.

2. Revise the Limiting Conditions for Operation (LCO) Action Statement wording to more clearly specify that power be maintained to a block valve which is closed due to its associated power operated relief valve (PORV) being inoperable due to excessive seat leakage.

3. Revise the shutdown requirement from COLD SHUTDOWN to HOT SHUTDOWN to be consistent with the mode applicability requirements.

4. Wording changes necessary to reflect the plant design which includes two safety grade PORVs and one non-safety grade PORV.

5. Eliminate the option of continued operation for periods of greater than 72 hours with an inoperable safety grade PORV if the PORV is inoperable for reasons other than excessive seat leakage.

6. Clarify the 18-month Surveillance Requirement for the PORVs to clearly identify the surveillance test requirements including the requirement for testing in MODES 3 or 4 prior to cooldown below 325 degrees Fahrenheit.

7. Revise the Surveillance Requirements for the backup Air/Nitrogen supply which operates the PORVs to clearly indicate that this backup supply is the accumulator.

8. Revise the associated TS Bases to reflect the proposed changes and to better define the basis for operability of the PORVs and block valves.

The proposed change to TS 3/4.4.2.4 is as follows:

1. Add a new Action Statement that reduces the allowed outage time from 7 days to 24 hours for an inoperable PORV in MODES 1 or 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: The change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The PORVs are used by operators for recovery from postulated accidents such as a Steam Generator Tube Rupture. Automatic actuation of the PORVs is needed for Low Temperature Overpressure Protection (LTOP) of the Reactor Coolant System. The proposed changes to the TS increase the availability and reliability of the PORVs for these functions. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TS increase the availability and reliability of the PORVs. The requested TS changes do not involve any physical changes to the plant and, in particular, the PORVs and block valves. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes to the TS increase the availability and reliability of the PORVs. The proposed TS changes do not involve any changes to actuation setpoints of the PORVs or LTOP system. There is no impact of the proposed changes on any safety analysis assumptions. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the 50.92(c) licensee's analysis; and, based on this review, it appears that the three standards are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Acting Project Director: Anthony J. Mendiola

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant,

Unit No. 1, Lake County, Ohio

Date of amendment request: September 13, 1990, as supplemented October 16, 1990.

Description of amendment request: The proposed amendment would revise the Perry Nuclear Power Plant (PNPP) Technical Specifications (TSs) to make several administrative corrections related to previous amendments, to apply certain existing surveillance requirements to all appropriate operational conditions and to make changes to the Administrative Controls Section to reflect recent organizational changes. Other minor editorial corrections to the TSs and the Bases are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated since this amendment request proposes changes to PNPP Technical Specifications which either (1) constitute an additional limitation, restriction or control not presently included in PNPP Technical Specifications, or (2) constitute purely administrative changes designed to achieve consistency throughout PNPP Technical Specifications, provide clarification, correct existing errors, delete material no longer applicable to PNPP Technical Specifications, or reflect minor changes in CEI organizational structure or title. The technical qualifications necessary to operate PNPP continue to be provided by the CEI nuclear organization, and well-defined lines of authority, responsibility, and communication continue to exist for all activities affecting the safety of the plant. Each of the proposed changes have been reviewed, and determined to result in no change to plant systems or have any affect [sic] on accident conditions or assumptions. They also do not affect possible initiating events for accidents previously evaluated, or any system functional requirements.

The proposed amendment does not create the possibility of a new or different kind of accident. As stated above, the proposed changes are either administrative in nature which do not create the possibility of any new or different kind of accident or constitute additional limitations, restrictions, or control not presently included in PNPP Technical Specifications. The proposed changes do not create the possibility of a new or different kind of accident since they do not affect the reactor coolant pressure boundary, or other plant systems or structures in such a manner that could initiate any new or different kind of accident. In addition, the proposed changes do not adversely affect any system functional requirements nor plant maintenance or operability requirements in such a manner that could initiate any new or different kind of accident.

The proposed amendment does not involve a significant reduction in the margin of safety since it is administrative in nature, and does not affect any USAR design or accident assumptions. And, except for the correction of errors, the proposed changes do not affect any Technical Specification Bases.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 8, 1991

Description of amendment request: The amendments would revise the carbon adsorber test method and methyl iodide penetration criteria along with other administrative changes to the Annulus Ventilation and Control Room Area Ventilation Systems, the Containment Purge System, the Fuel Handling Ventilation Exhaust System and the Auxiliary Building Filtered Exhaust System.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed TS amendment will not increase the probability or consequences of an accident which has been previously evaluated. No physical changes will be made to the plant, therefore, there is no increased probability of an accident. As discussed in the Technical Justification [of the licensee's April 8, 1991 application], the decontamination efficiencies of the filters remain unchanged using the new test method and penetration acceptance criteria. The changes in the bypass leakage for the Annulus Ventilation System, the Auxiliary Building Filtered Exhaust System, and the Fuel Handling Ventilation Exhaust System which apply to Unit 2, will have no effect on the decontamination efficiencies, because a 95% decontamination efficiency was assumed originally, and this assumption accounts for a 1% bypass leakage. Because of this, the offsite dose and Control Room dose calculation results are unaffected. In addition to requiring the carbon adsorber to meet Design Basis decontamination efficiencies at 95% relative humidity, additional margin, for which no credit is taken, will be provided by the heaters. For the reasons stated above, there will be no increase in the consequences of an accident previously evaluated.

This proposed amendment to the TS does not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed TS change will not cause any physical changes to the plant or changes to operating procedures. Because the plant will continue to operate the same way it does now, this proposed amendment does not create the possibility of any new or different accident from any previously evaluated.

This proposed TS change will not cause a significant reduction in the margin of safety The new test method is more restrictive than the previous test methods, and, based on limited testing, Duke Power expects to have to change out carbon more frequently. The change in the allowed methyl iodide penetration, which was made to support the

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change in test method, does not represent a significant decrease in the margin of safety. It represents the requirement of the test standard to pre-saturate the carbon adsorber. This presaturation causes a higher penetration during testing, and is conservative with respect to Design Basis Events. The test method D3803-89 is expected to provide a penetration value during testing which is higher than what would be expected during a Design Basis Event. These conservative results reflect the fact that the new test conditions are more harsh than expected plant conditions during a Design Basis Event. As an added conservatism, no credit is taken for the heaters. However the heaters will be tested and maintained, therefore, the relative humidity of air entering the carbon adsorber is never expected to reach 95%.

The addition of "at a nominal voltage of 600 VAC" to the heater SR [surveillance requirement] is administrative, and clarifies that the purpose of the requirement is to detect heater degradation. This change involves no significant hazards consideration.

Footnotes and statements related to the footnotes in the Fuel Handling Ventilation Exhaust System TS which expire on August 26, 1991 have been removed. This change is administrative, and involves no significant hazards consideration.

The change to SR 4.6.1.8.d.2 for the Annulus Ventilation System corrects an error in the SR. The system actually starts on a safety injection signal. This change does not reflect an actual change to the plant, it reflects a correction to an error in the Specifications. This change involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 5, 1991

Description of amendment request: The requested Technical Specification (TS) amendment is a one time change to defer an ice weighing surveillance requirement (TS 4.6.5.1.b.2) for McGuire Unit 2 until the next refueling outage which is presently scheduled for January 16, 1992.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Power has evaluated the proposed TS change and has determined that it does not represent a significant hazards consideration based upon the criteria established in 10 CFR 50.92(c). Operation of McGuire Nuclear Station in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Duke proposes to modify the McGuire Nuclear Station Unit 2 Technical Specifications to revise Surveillance requirement 4.6.5.1(b)(2) to allow a one time extension of the 9 month ice weighing interval to the following refueling outage. The Ice Condenser System serves as an accident mitigation system and an extension to confirm actual ice weight is not an accident initiator.

The Ice Condenser is provided to absorb the thermal energy release following a LOCA [Loss of Coolant Accident] or steam line break inside Containment and thereby limiting the peak Containment pressure. The current design analysis is based upon a minimum average ice weight of 973... lbs. per basket (total ice bed weight of 1,890,000... lbs.). Calculations using historical Ice Condenser sublimation data with consevatism [sic] of 150%, indicate that the total ice bed weight will remain well above that value assumed in the safety analysis. Therefore, the consequences of an accident previously analyzed is not increased.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

Duke Power's request for a one time extension of the Unit 2 ice weighing interval will not result in a new or different kind of accident from that previously analyzed in McGuire's Final Safety Analysis Report (FSAR). A one time extension of the surveillance interval for this accident mitigation system is not considered to be an accident initiator. The TS ice weights derived from the safety analysis weight plus additional allowances of 10% for sublimation and 1.1% for weighing errors will ensure that the ice bed will not decrease below the design bases weight over the proposed surveillance interval. Therefore, the peak Containment pressure assumed in the safety analysis is still valid. This amendment involves no equipment changes or how the Ice Condenser system is operated.

(3) Involve a significant reduction in the margin of safety.

The Ice Condenser is designed to limit the Containment pressure below the design pressure for all reactor coolant pipe break sizes up to and including a double-ended severance. With a multiplier of 150% for additional conservatism, the worst case ice weight remains approximately 16% above the ice basket safety margin weight of 963 lbs. Because the minimum required ice weight assumed in the safety analysis is not being altered, the margin of safety as described in the Peak Containment Pressure Transient is not impacted.

The Ice Condenser also serves as a Containment air purification and cleanup system by absorbing molecular iodine from the containment atmosphere following a LOCA. The required boron concentration of the stored ice is not affected by this TS change request. Therefore, the air purification aspects of the Ice Condenser remain unchanged by this submittal and the margin of safety is not adversely impacted.

The Commission's staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: May 7, 1991, as supplemented May 13, 1991

Description of amendment request: The proposed amendments would delete the cycle dependent core operating limits from the Technical Specifications (TSs) to allow 10 CFR 50.59 reviews for future core reloads for all Oconee units. These limits will be relocated in a Core Operating Limits Report (COLR) in accordance with the guidance provided in NRC Generic Letter 88-16. Also, proposed TS 5.3.1.2 would establish new dimensional requirements for active fuel height to accommodate a new fuel design for the Unit 1, Cycle 14 reload and future reloads for all three Oconee units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) This amendment request removes the cycle specific core operating limits from the Technical Specifications and is consistent with the guidance provided in Generic Letter 88-16 in that the proposed Technical Specifications reference a formal report, COLR, which contains the cycle specific core operating limits. In addition, the associated

reporting requirements are already included in Administrative Controls section, Section 6.9, and finally the COLR is referenced in place of the limits removed from the Technical Specifications.

The removal of cycle dependent variables from the Technical Specifications has no impact upon plant operation or safety, or on the probability of a Design Basis Accident (DBA) occurrence. The Technical Specifications will continue to require operation within the core operational limits for each cycle reload calculated by the approved reload design methodologies. Appropriate actions to be taken if limits are violated will also remain in the Technical Specifications.

Each accident analysis addressed in the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to changes in cycle specific parameters, and the new active fuel height in Technical Specification 5.3.2.1, in accordance with the approved reload methodologies to ensure that the transient evaluation for Unit 1, Cycle 14 reload with the new parameters is bounded by previously accepted analysis... Future reloads will be evaluated per the requirements of 10 CFR 50.59 to assure that these reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) As stated earlier, the removal of the cycle specific variables has no influence, impact nor does it contribute in any way to the probability or consequences of an accident. The cycle specific variables are calculated using the NRC approved methods. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken if limits are exceeded. The revised Technical Specification 5.3.2.1 includes a new active fuel height which is in support of the new fuel assembly design implemented for the Unit 1, Cycle 14 reload. This new fuel design which will also be utilized in future reloads has been analyzed in accordance with the NRC approved reload methodologies...

The proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The margin of safety is not affected by the removal of cycle specific core operating limits from the Technical Specifications nor by the change in the height of the active fuel in the proposed Technical Specification 5.3.2.1. The margin of safety presently provided by current Technical Specifications remains unchanged. The proposed amendment still requires operation within the core limits as obtained from the NRC approved reload design methodologies and appropriate actions to be taken when or if limits are violated remain unchanged.

The development of the limits for future reloads will continue to conform to those methods described in NRC approved documentation. In addition, each future reload will involve a Part 50.59 safety review to assure that operation of the unit within the cycle specific limits will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 19, 1989 as revised May 21 and December 7, 1990, and as supplemented February 7, March 4, and April 10, 1991.

Description of amendment request: The amendment would change the Technical Specification (TS) and associated Bases for the standby liquid control system by specifying an acceptable range of sodium pentaborate solution temperature (75 - 120 degrees F), concentration (13.6 - 15.2 weight percent) and (volume 4261 - 5086 gallons) for normal operation in lieu of the presently specified range of solution temperature (75 - 130 degrees F), concentration (13.6 - 28.5 weight percent), minimum volume (4530 gallons) and minimum weight (5900 pounds). An additional action statement would allow the solution concentration to be as high as 28.5 weight percent for 72 hours provided the solution temperature is above the saturation temperature as measured each 4 hours. An additional surveillance requirement would be the daily determination of the operability of heat tracing on pump suction piping by determining that power is available to at least one of the two redundant circuits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. The standby liquid control system (SLCS) safety design basis is to deliver sufficient neutron absorber solution to the reactor vessel to assure reactor shutdown in the unlikely event of a failure of the primary reactivity control system or anticipated transient without scram (ATWS). Because SLCS is completely independent of the normal means of shutting down the reactor (control rod drive system), changes to the SLCS will not affect the control rod drive system. Since the control rod drive system will remain unaffected, the probability of failure of the control rod drive system (e.g., ATWS event) will not change. Therefore, the probability of an ATWS remains unchanged by the proposed amendment.

b. The revised sodium pentaborate solution and pump suction piping temperature requirements prevent precipitation of the sodium pentaborate out of solution.

c. The revised sodium pentaborate solution volume and concentration requirements ensure SLCS has adequate neutron absorber solution for reactor shutdown from the most reactive state will allowance for solution leakage and imperfect mixing.

d. The change in surveillance requirements for the SLCS will not significantly affect the reliability of the system. The revised surveillance requirement to verify pump suction piping temperature as well as power availability to the heat tracing circuitry will not result in a decrease in the assurance that the sodium pentaborate solution is maintained above its saturation temperature. The revised surveillance requirements do not decrease the frequency of testing. The inservice inspection and functional testing of the SLCS is not affected by this change. The deletion of the requirement to determine the available weight of sodium pentaborate has no effect because all the points specified in the new Figure 3.1.5-1 in the acceptable region meet the minimum acceptable weight necessary. Therefore, the requirement to determine the weight is redundant since as long as the concentration and volume of the tank are within the acceptable operation region, minimum weight requirements are satisfied.

e. The design and operation of the SLCS remains within the existing design basis for the system. The ability of the system to deliver at least the design minimum weight of sodium pentaborate to the reactor vessel at design flow rates is not affected by this change.

f. Therefore, the probability or consequences of previously analyzed accidents are not increased.

2. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

a. This change does not involve a physical change in any system's configuration.

b. No new mode of operation is introduced by this change. This change maintains SLCS operable at all times when it is possible to make the reactor critical.

c. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. This change would not involve a significant reduction in the margin of safety.

a. The sodium pentaborate solution volume requirements satisfy the design bases for the system. The solution and pump suction piping temperature limits and the solution concentration levels are more restrictive than currently allowed. The current TS could have resulted in system temperatures below the saturation temperature. The proposed change increases the margin of safety between the saturation temperature and the operating temperature since the operating temperature

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has been raised. The margin of safety for the boron concentration remains unchanged since the minimum concentration of 13.6% is unaltered by the proposed change.

b. This change does not affect the ability of the SLCS to assure reactor shutdown independent of control rod insertion. This change is in accordance with the requirements of 10 CFR 50.62.

c. Therefore, this change will not involve a significant reduction in the margin of safety. Therefore, based on the above evaluation, operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 8, 1991

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) by adding additional provisions to protect against Low Temperature Overpressure Protection (LTOP) of the primary system. This amendment is in response to Generic Letter (GL) 90-06 dated June 25, 1990.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

During startup and shutdown conditions at low temperature without protection, particularly when water-solid, RCS pressure might exceed reactor vessel pressure-temperature limitations established for protection against brittle fracture. A major overpressurization transient at low temperature, if combined with a critical crack in the reactor pressure vessel welds or plate material could result in a brittle fracture of the pressure vessel. Failure of the pressure vessel could hinder the ability to provide adequate coolant to the reactor core resulting in major core damage or a core melt accident. The design based overpressurization case for LTOP is the simultaneous, inadvertent operation of all three charging and HPSI [high pressure safety injections] pumps with the pressurizer backup heater in operation at low temperature. Each LTOP relief valve is sized to provide sufficient overpressurization protection during such an accident.

Changes suggested by GL 90-06 and included in the proposed amendment either simplify and clarify TS 3.4.6.3 (Overpressure Protection Systems) or add additional TS restrictions for periods of degraded LTOP System performance. There is no change to the physical plant, to the operation of the plant, or to the existing safety analyses. The proposed changes improve LTOP System availability and do not change the safety-related function of the system or its operation. As such, the operation of Waterford 3 in accordance with these proposed changes does not increase the consequence of any accident previously evaluated.

The proposed TS changes are made in strict accordance with instructions provided in GL 90-06. As described above, these changes either simplify or clarify TSs (which do not change the intent of the TS) or add restrictions for periods of degraded LTOP performance. This corresponds to improved availability or overpressurization protection at low temperature. Additional information contained in the existing TS but not addressed by the GL is retained in the proposed amendment. This is compatible with the intent of the GL. By retaining this in the amendment, existing protection is not compromised. The net effect is improved availability of LTOP.

This amendment meets the objective of the GL by proposing TS changes to improve availability of the LTOP System during vulnerable periods of operation. Improved availability of the LTOP System corresponds to a decreased probability of an accident involving the loss of LTOP. The probability of all other accidents remains unaffected by the proposed amendment. Therefore, operation of Waterford 3 in accordance with these proposed changes does not increase the probability of any accident previously evaluated.

A new kind of failure path would have to be introduced by these proposed changes to introduce a new or different kind of accident from those already analyzed. As previously identified, most of these changes merely provide clarification, simplification, or more conservative restrictions. Operation of the plant will remain unaltered. There are no plant design modifications necessary to implement these changes. Consequently, a new failure path cannot exist as a result of the proposed amendment. Since the only resulting change is an improvement in LTOP availability, the current plant safety analyses remain complete and accurate in addressing licensing basis events and analyzing plant response. Therefore, the proposed amendment cannot create the possibility of a new and different kind of accident than previously evaluated.

Each LTOP relief valve has been sized for transients due to simultaneous, inadvertent operation of all three HPSI pumps and all three charging pumps with the pressurizer backup heater in operation. Since the safety injection actuation signal starts only two HPSI pumps, a 20% design margin is recognized for each relief valve. The proposed amendment does not affect any of these design related issues or the performance of the system. All technical content of the safety analyses will be preserved. There will be no change to the physical design or operation of the plant. Consequently, operation of Waterford 3 in accordance with these proposed changes does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., N.W., Washington, D.C. 20037

NRC Project Director: Theodore R. Quay

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 8, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to 1) change the required volume of fuel oil in the diesel oil feed tanks and the separate fuel oil storage tanks, 2) change the minimum value for fuel oil specific gravity and the maximum value for API gravity, 3) clarify that the surveillance is to verify fuel transfer from the fuel storage tank in each train to the oil feed tank of the opposite train via the installed cross connection line, and 4) change the test schedule frequency for diesel generators. The proposed change is partially in response to draft Regulatory Guide 1.9.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Previously analyzed accidents that are potentially affected by this change are those that postulate the loss of offsite power (LOOP) concurrent with the accident (e.g., a loss of coolant accident with a LOOP). To significantly increase the probability or consequence of such an accident, this change would have to negatively impact the reliability or performance of the EDGs.

The first revision changes the minimum volumes for the diesel oil feed tanks and storage tanks. Slightly increasing the minimum feed tank volume affects the length of time the EDGs can run before the fuel oil transfer pumps are required. This slight increase is conservative with respect to the existing capacity and therefore has no impact.

The reduction of the minimum volume required for the storage tank (from 38,760 to 34,000 gallons) reduces the reserve from a seven day supply to five. If the diesel generator is to be run continuously, there are several sources of diesel oil suppliers within the area. Waterford 3 has purchase agreements with several local suppliers that provide delivery approximately twenty-four hours from the time of request.

These suppliers have more than sufficient quantities in inventory for Waterford 3 purposes. It is improbable that additional fuel oil could not be secured and delivered within five days, even under the most severe weather conditions. Primarily, diesel oil is brought in by truck. Under extremely unfavorable environmental conditions, it is possible to deliver the diesel oil by railroad. Also, it is possible to bring the diesel oil in barges and unload them at the barge loading facility next door at Waterford 1 and 2. As such, interruption of EDG operation following any limiting design basis event or accident is highly unlikely. The reliability and performance of the EDGs are unaffected.

The second revision increases the required minimum specific gravity and conversely reduces the required maximum API gravity for a sample taken from the storage tank. As stated, this more conservative requirement for specific gravity (and API gravity) increases the energy content in a given volume of fuel increasing the EDG run-times. It will not adversely affect the reliability or performance of the EDGs.

The third revision clarifies the description of the surveillance of the flow-paths for the EDG fuel supply. This is requested such that surveillances providing redundant information are not required. Since the revised surveillance assures all possible flow-paths are available (either directly, or by implication) between the EDG fuel storage and feed tanks and does not reduce the intended scope of the surveillance, it will not adversely affect the reliability or performance of the EDGs.

The fourth change redefines surveillance frequencies applicable to the EDGs. It is our understanding that this change is consistent with the NRC's resolution of GI B-58 - Diesel Generator Reliability. Although the intent is to establish a defined level of reliability for a problem EDG before returning its test to a standard frequency, the actual test itself does not affect reliability, nor does it improve EDG performance. However, excessive testing may harm the hardware adversely affecting reliability and performance. Since this change represents a potential reduction in the number of challenges to the system, if anything, there will be an increase in reliability of the EDG and potential improvement in performance.

Based on the above information, these revisions to the TSs will not adversely affect the reliability or performance of the EDGs. Consequently, operation of Waterford 3 in accordance with the proposed changes does not involve a significant increase in the probability or consequence of any accident previously evaluated.

To create a new or different kind of accident, these changes will have to introduce a new failure path. In this regard, these revisions are benign since they do not alter the system or its operation. Redefining the minimum tank volumes does not impact the fuel supply since the reduction is either conservative (in the case of the feed tank) or does not undermine the capability to obtain additional feed supplies in a timely manner. Increasing the restriction on the specific gravity of the fuel oil improves EDG performance without introducing any changes to the system or its operation. The text change to the flow-path surveillance does not diminish the intended scope of the existing surveillance and therefore, does not reduce its effectiveness. The revision to Table 4.8-1, Diesel Generator Test Schedule, to the best or our knowledge is consistent with the next revision of RG 1.9. Again, the scope of this surveillance remains unchanged by the revision to the table; hence, its effectiveness is preserved.

Based on the above information, these changes do not introduce a new failure path and therefore, will not create a new, unevaluated sequence of events. The current plant safety analyses are bounding and this revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

An adjustment increasing the value for the minimum feed tank volume is insignificant and will not affect operability of the EDGs. However, the changes to the minimum storage tank volume and the restriction on specific gravity (and API gravity) may affect the length of time an EDG can operate without replacement fuel. The gravity requirement is altered to be more conservative, and therefore, will not negatively impact the run time. Decreasing the minimum required volume for the storage tank represents a reduction in fuel oil supply from a seven day reserve to five. This does not impact the availability of the EDGs following any limiting design basis event or accident since this reserve provides adequate time for local suppliers to replenish fuel without interrupting operation of the diesels. As indicated, the text changes to the flow-path surveillance and Table 4.8-1 do not diminish the intended scope of the existing surveillances and therefore, do not impact the intended capability of each EDG to be fueled from the alternate storage tank. The change to the flow-path surveillance provides clarification without altering the intent. In the proposed text it will assure operability of the fuel transfer system by requiring verification of specific paths. The reduction in test frequencies will still provide sufficient determination of reliability with fewer potentially harsh challenges made to the system.

The proposed amendment does not affect any design related issues or the performance of the system. All technical content of the safety analyses are retained and no analysis-based safety margins are affected. There are no changes to the physical design of the plant. Based on this information, operation of Waterford 3 in accordance with the proposed changes does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., N.W., Washington, D.C. 20037

NRC Project Director: Theodore R. Quay

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: April 12, 1991

Description of amendment request: The proposed amendments would revise the Hatch Nuclear Plant, Units 1 and 2, Technical Specifications (TSs) as follows. Proposed Change 1 to Unit 2 would revise TS 3/4.4.3, "Reactor Coolant System Leakage," to incorporate the requirements of an NRC Confirmatory Order dated July 8, 1983, and an NRC Safety Evaluation Report (SER) dated February 16, 1990. Proposed Change 2 to Unit 1 would revise TS 3.6.G, "Reactor Coolant Leakage," to reflect NRC's recommendations stated in the February 16, 1990 SER. Proposed Change 3 would revise Unit 1 TS 4.6.K, "Structural Integrity," and Unit 2 TS 4.0.5 to include a paragraph stating the Inservice Inspection (ISI) Program for piping, covered by the scope of Generic Letter (GL) 88-01, is in conformance with the NRC staff position related to schedule, methods and personnel, and sample expansion, except where specific written relief has been granted by the NRC. Also, obsolete material in Unit 2 TS 4.0.5 referencing ASME Section XI requirements prior to the start of commercial operation has been removed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

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consideration, which is presented below:

Proposed Change 1

1. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated. This change, which was made at the NRC's request, does not involve any physical modifications to the plant and does not affect the operation, maintenance, or testing of the plant. Revising the RCS leakage monitoring interval or reducing the averaging period for checking conformance to limits will not fundamentally change the method, or the fact that RCS leakage is checked on a frequent basis. For these reasons, this change does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated. Plant Hatch is analyzed for large, unisolatable leaks in the RCS; leakage is carefully monitored to reduce the probability of this occurring. Since no change is being made to the design, operation, maintenance, or testing of the plant, a new mode of failure is not created. Therefore, a new or different kind of accident will not occur as the result of this change.

3. The proposed change does not significantly reduce a margin of safety. Safety analysis assumptions and equipment performance are not changed, as reflected in the NRC SER dated February 16, 1990. RCS leakage will continue to be carefully monitored.

Proposed Change 2

1. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated. This change, which was made at the NRC's request, does not involve any physical modifications to the plant and does not affect the operation, maintenance, or testing of the plant. Revising the RCS leakage monitoring interval or reducing the averaging period for checking conformance to limits will not fundamentally change the method, or the fact that RCS leakage is checked on a frequent basis. For these reasons, this change does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated. Plant Hatch is analyzed for large, unisolatable leaks in the RCS; leakage is carefully monitored to reduce the probability of this occurring. Since no change is being made to the design, operation, maintenance, or testing of the plant, a new mode of failure is not created. Therefore, a new or different kind of accident will not occur as the result of this change.

3. The proposed change does not significantly reduce a margin of safety. Safety analysis assumptions and equipment performance are not changed, as reflected in the NRC SER dated February 16, 1990.

RCS leakage will continue to be carefully monitored.

Proposed Change 3

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. This change, which was made at the NRC's request, simply restates the wording of GL 88-01 relative to ISI. No changes to Plant Hatch ISI practices or methods are being made. This change does not involve any physical modifications to the plant and does not affect the operation, maintenance, and testing of the plant. Deleting the portion of existing Unit 2 TS 4.0.5, which reflected inservice inspection and testing requirements prior to commercial operation, will have no impact, since both units have been operating for several years and follow the applicable 10 CFR 50.55e(g) requirements. For these reasons, the response of the plant to previously evaluated accidents will remain unchanged.

2. The proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated. Since no change is being made to the design, operation, maintenance, or testing of the plant, a new mode of failure is not created. Therefore, a new or different kind of accident will not occur as the result of this change.

3. The proposed change does not significantly reduce a margin of safety. Safety analysis assumptions and equipment performance are not changed, as reflected in the NRC SER dated February 16, 1990.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: June 13, 1991

Description of amendment request: The proposed amendments would revise Hatch Units 1 and 2 Technical Specifications (TSs) as follows. Proposed Change 1 would revise (a) Unit 1 TS 3.10.D, Unit 2 TS 3/4.9.10 and their associated bases to require at least 21 feet of water above irradiated fuel assemblies seated in the spent fuel pool (SFP) fuel storage racks; and (b) Unit 1 TS 4.10.D to require surveillance of the SFP water level every 7 days consistent with Unit 2 TSs and the BWR-4 Standard TSs. Proposed Change 2 would revise Unit 1 TS Tables 3.2-11 and 4.2-11 to require that the post-LOCA radiation monitors be calibrated at least once every 18 months. Proposed Change 3 would correct administrative errors in Unit 2 TS Tables 3.3.2-1 and 3.8.2.6-1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff review is presented below.

Proposed Change 1

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee's calculation of exposures at the exclusion area and low population zone boundaries determined that the thyroid doses would be .358 and .370 rem, respectively, when 21 feet of water covers the top of the upper tie plates of irradiated fuel seated in the SFP storage racks. This compares to .256 and .264 rem, respectively, when the water depth is 23 feet. Thus, there is only a slight increase in the calculated radiological consequences of the fuel handling accident. However, these exposures are still far below the NRC acceptance criteria for thyroid dose of 75 rems.

Changing the Unit 1 surveillance requirement for determining the SFP water level from daily to weekly will not significantly reduce the margin of safety because the radiological consequences of a fuel handling accident in the SFP will not exceed the acceptance limit for that event even when the pool level is as low as its low level alarm.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The TS revision does not change the physical configuration of the plant or alter the mode of operation or setpoints of any equipment in the plant nor will it result in any changes to the plant procedures except the Unit 1 surveillance interval (for determining the SFP water level) from once per day to once per week.

3. The proposed change does not involve a significant reduction in a margin of safety. Based on the discussion in items 1 and 2 above, the decrease in the margin of safety is very slight.

Proposed Change 2

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed revision to Unit 1 TSs to require that the radiation monitor be calibrated at least once every 18 months would maintain consistency with Unit 2 TSs and the NRC BWR-4 STS. The licensee has reviewed field data of these monitors over two successive 18-month calibrations and found that they did not drift outside their acceptance range.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The post-LOCA radiation monitors are considered a passive portion of radiation control because they do not actively handle or control radiation hazards but only provide alarm capability.

3. The proposed change does not involve a significant reduction in a margin of safety.

Based on the discussion in items 1 and 2 above, the decrease in the margin of safety is very slight.

Proposed Change 3

The proposed change would correct administrative errors in Unit 2 TS Tables 3.3.2-1 and 3.8.2.6-1. This correction does not affect the Final Safety Analysis Report analyses or plant operation. Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not significantly reduce a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: May 3, 1991

Description of amendment request: The proposed amendments would add a footnote to Technical Specification (TS) 3.6.3, "Containment Isolation Valves," stating that isolation valves associated with the containment hydrogen monitors may be opened on an intermittent basis under administrative control.

Basis for proposed no significant hazards consideration determination: Technical Specification 3.6.3 does not permit containment isolation valves to be opened while the plant is in Modes 1, 2, 3, or 4. The effect of the proposed change would be to permit containment isolation valves in the suction and discharge lines of the containment hydrogen monitors to be opened on an intermittent basis under administrative control. This would facilitate periodic operability tests of the hydrogen monitors required by TS 4.6.4.1. Opening the valves to perform these tests allows verification of the flowpath as well as the flowrate delivered by the hydrogen monitor pump. The proposed TS change would also permit testing of the post-accident sampling system (PASS) regarding sampling of the containment atmosphere.

The Westinghouse Standard TSs contain a footnote permitting certain valves to be opened periodically under administrative control. The licensee notes that this provision was inadvertantly omitted during preparation of the Vogtle TSs.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Opening of the containment isolation valves associated with the containment hydrogen monitors on an intermittent basis under administrative control does not significantly increase the probability or consequences of accidents previously evaluated. The hydrogen monitoring system is designed as a Class 1E, Seismic Category 1 system, and is designed to retain its integrity under all conditions following a DBA [Design Basis Accident]. In addition, the essential portions of the PASS are designed to Seismic Category 1 requirements and the PASS is designed to function under post-accident conditions. Opening of the subject valves will be administratively controlled, consistent with the intent of the Westinghouse Standard Technical Specifications. The post-accident processing system, which includes the containment hydrogen monitoring system and the PASS, is subject to regular leakage assessment in accordance with Technical Specifications 6.7.4.a.5 to reduce leakage from those portions of systems outside containment that could contain highly radioactive fluids during serious transients or accidents. Accordingly, the radiological consequences for any accident previously reviewed and approved associated with the plant licensing basis are not significantly increased by the proposed change. Therefore, this change will not significantly increase the probability or consequences of accidents previously evaluated.

The opening of the containment isolation valves associated with the containment hydrogen monitors, as well as the PASS, on an intermittent basis under administrative control will not create the possibility of a new or different kind of accident from any previously evaluated. New failure modes have not been defined for any system or component important to safety nor has any new limiting single failure been identified as a result of the proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident [from those] previously evaluated in the FSAR [Final Safety Analysis Report].

The margin of safety provided in the bases to any Technical Specification is not significantly reduced because the post-accident processing system, which includes the containment hydrogen monitors and the PASS, has been demonstrated to be capable of withstanding the post-accident environment inside containment. Therefore, containment integrity will not be adversely impacted. Opening of the containment isolation valves associated with the containment hydrogen monitors on an intermittent basis under administrative control is consistent with the intent of the Westinghouse Standard Technical Specifications. Therefore, the current level of safety associated with containment integrity and with the containment hydrogen monitors will not be diminished by the proposed Technical Specification revision.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: June 3, 1991

Description of amendment request: The proposed amendments would modify Technical Specification (TS) 5.3.1 which specifies that "The core shall contain 193 fuel assemblies with each

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fuel assembly containing 204 fuel rods clad with Zircaloy-4". This sentence would be supplemented by adding, "except for two fuel assemblies which may each contain up to twelve (12) fuel rods clad with ZIRLO™."

Basis for proposed no significant hazards consideration determination:

The proposed change would allow the use of two fuel assemblies, each containing up to 12 fuel rods clad with ZIRLO™ rather than Zircaloy-4, to test the cladding's improved corrosion-resistant performance under Vogtle-specific reactor conditions. As part of its long-term fuel management strategy, the licensee plans to load the two fuel assemblies containing selected fuel rods clad with ZIRLO™ during the refueling outage for Vogtle Unit 1's fuel cycle 4, which is scheduled during the fourth quarter of 1991. The two fuel assemblies will be of the VANTAGE-5 variety manufactured by Westinghouse. The licensee's proposed changes and plans to use VANTAGE-5 fuel were discussed in a previous Federal Register notice (56 FR 20037, dated May 1, 1991) and are outside the scope of this notice.

ZIRLO™ is the trademark for an advanced zirconium alloy cladding material. It is chemically similar to Zircaloy-4 but contains slightly reduced amounts of tin, iron, chromium, and zirconium and includes the addition of one percent niobium to improve waterside corrosion and hydriding properties. Test assemblies of fuel rods clad with ZIRLO™ have shown improved corrosion and hydriding, and lower clad irradiation growth and creepdown compared to Zircaloy-4 cladding. Two demonstration fuel assemblies with ZIRLO™ fuel clad rods began irradiation in the North Anna Unit 1 reactor in June 1987. As reflected in Westinghouse Report WCAP-12610 dated June 1990, evaluations have been performed with an NRC approved fuel rod performance code (WCAP-10851-P-A, August 1988) to verify that the fuel rod design bases and design criteria are met for assemblies containing ZIRLO™ cladding.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The probability or consequences of an accident previously evaluated are not significantly increased. The two VANTAGE-5 fuel assemblies containing selected ZIRLO™ clad fuel rods meet the same fuel assembly and fuel rod design bases ... as other VANTAGE-5 fuel assemblies in the same fuel region. In addition, the 10 CFR 50.46 criteria will be applied to the ZIRLO™ clad fuel rods. The use of these two fuel assemblies will not result in a change in the proposed Vogtle VANTAGE-5 reload design and safety analysis limits ... Since the original design criteria is being met, the ZIRLO™ clad fuel rods will not be an initiator for any new accident. The ZIRLO™ clad material is similar in chemical composition and has similar physical and mechanical properties as that of Zircaloy-4. Thus, the cladding integrity is maintained and the structural integrity of the fuel assembly is not effected. The ZIRLO™ clad fuel rod improves corrosion performance and dimensional stability. No concerns have been identified with respect to the use of an assembly containing a combination of both Zircaloy-4 and selected ZIRLO™ clad fuel rods. Since the dose predictions in the Vogtle safety analyses are not sensitive to the fuel rod cladding material used, the radiological consequences of accidents previously evaluated in the Vogtle safety analyses remain valid. Therefore, the probability or consequences of an accident previously evaluated are not significantly increased.

The possibility of a new or different kind of accident from any accident previously evaluated is not created since the two VANTAGE-5 fuel assemblies containing selected ZIRLO™ clad fuel rods will satisfy the same design bases ... as that used for other VANTAGE-5 fuel assemblies in the same fuel region. All design and performance criteria will continue to be met and no new single failure mechanisms have been defined. In addition, the use of the two fuel assemblies does not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

The margin of safety is not significantly reduced, since the two VANTAGE-5 fuel assemblies containing selected ZIRLO™ clad fuel rods do not change the proposed Vogtle VANTAGE-5 reload design and safety analysis limits ... The use of the two fuel assemblies will take into consideration the normal core operating conditions allowed for in the Technical Specifications. For each cycle reload core, the two fuel assemblies will be specifically evaluated using standard reload design methods ... and approved fuel rod design models and methods ... This will include consideration of the core physics analysis peaking factors and core average linear heat rate effects. Therefore, the margin of safety as defined in the bases to the Vogtle Technical Specifications and VANTAGE-5 Licensing Amendment Request [i.e., the licensee's letter of November 29, 1990] ... is not significantly reduced.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 6, 1991

Description of amendment request: The proposed amendment would change Millstone Unit 3 Technical Specification (TS) 3/4.6.4.2, "Electric Hydrogen Recombiners" to replace TS Figure 3.6.2, "Hydrogen Recombiner Acceptance Criteria Flow vs. Containment Pressure" with a series of equations to be incorporated in plant procedures. In addition, the hydrogen recombiner temperature and flow requirements, currently addressed in TS 4.6.4.2.b.4, would be addressed in proposed TS 4.6.4.2.b.4 and 4.6.4.2.b.5, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The new proposed Section 4.6.4.2.b.5 will continue to verify the capability of the hydrogen recombiner to meet design basis analysis assumptions. The appropriate plant procedures are in place to ensure that the hydrogen recombiners are placed in service within 24 hours of a LOCA. Therefore, it is concluded that the LOCA and its consequences as analyzed remain valid. Since no physical modifications are proposed, the probability of a LOCA is not affected. The surveillance requirement related to verification of the gas temperature (Section 4.6.4.2.b.4) has been separated from the flow rate verification and this change does not reduce the effectiveness of the technical specifications. The change to the Technical Specification Index has no impact on the consequences or the probability of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to Sections 4.6.4.2.b.4 and 4.6.4.2.b.5 and the Technical Specification Index do not impact the plant response to a LOCA.

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created, and no new failure modes are introduced.

3. Involve a significant reduction in the margin of safety.

The proposed changes do not increase the consequences of any accidents as the hydrogen concentration is maintained below 4 percent. Also, none of the protective boundaries are affected. The performance level of the hydrogen recombiners assured by the proposed surveillance requirements along with the appropriate plant procedures maintain the margin of safety as defined in the existing and proposed technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: June 7, 1991

Description of amendment request: This license change application proposes new surveillance values for emergency core cooling system pumps flow rates. The proposed changes are consistent with accident analysis and pump performance requirements, and allow margin for measurement uncertainty. Also, new surveillance requirements are added to ensure that the accident analyses assumptions are met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1.Does the proposed license change involve a significant increase in the probability or consequences of an accident previously evaluated?

The change to ECCS flow rate does not affect parameters related to the initiation of an accident, hence the probability of an accident is not increased. The consequences of an accident previously evaluated are not increased because the input to dose calculations are not adversely affected by the proposed changes to the ECCS surveillance test ranges as demonstrated by the accident analysis results. The effect of the proposed change on the FSAR accident analysis results has been evaluated and it is shown that the effect of the change is bounded by previously reported results.

The 9GTR transient does not adversely affect the possibility of steam generator overfill. The open miniflow configuration will decrease the injected flow and decrease reactor coolant flow out of the ruptured tube.

The proposed lower limit of the ECCS surveillance flow testing has been demonstrated by analysis to provide adequate ECCS flow to cool the core.

The Containment response evaluation shows that the Containment pressure does not exceed its design limit and Containment integrity is not challenged.

Therefore, the probability of occurrence and the consequences of any previously evaluated accidents that credit the ECCS are not increased.

2. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously analyzed?

The proposed changes in ECCS surveillance test flow requirements do not introduce new features into the Plant such that a new or different type of accident or malfunction is created. The results of the previously analyzed FSAR Chapter 6 and 15 accidents and transients envelope the conditions and loads which could arise due to operation of CCP or SIP systems consistent with the proposed Technical Specification changes. No new failure mode or limiting single failure is created as a result of these changes. Therefore, this change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does the proposed license change involve a significant reduction in a margin of safety?

The changes do not adversely affect the margin of safety as defined in the Bases of the TTS. The change to the maximum SIP flowrate is not a reduction to the margin of safety since the maximum flow is within vendor recommended limits. In summary, the margin of safety with respect to Plant safety as potentially affected by the proposed increase in the Technical Specification ECCS surveillance test range is provided, in part, by the safety factors included in the design of the pumps and by the conservatism inherent in the accident analysis acceptance criteria (peak clad temperature, minimum DNBR, etc.).

With respect to FSAR Section 6.2, the Containment integrity analyses considered in the licensing basis, the conclusion derived from the evaluation is that the acceptance criteria continue to be met with the revised ECCS performance characteristics.

Therefore, the margin of safety as defined in the basis of any Technical Specification is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: James E. Dyer

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 30, 1990 and supplemented on April 18, 1991.

Description of amendment request: The proposed amendment would update two tables to reflect the installation of new post-accident monitoring instrumentation. Instruments installed to satisfy the requirements of Regulatory Guide 1.97 would be added to Table 3.2-8, "Accident Monitoring Instrumentation," and to Table 4.2-8, "Minimum Test and Calibration Frequency for Accident Monitoring Instrumentation." In addition, Table 3.2-6, "Surveillance Instrumentation," Table 4.2-6, "Minimum Test and Calibration Frequency for Surveillance Instrumentation," and Table 4.7-1, "Minimum Test and Calibration Frequency for Containment Monitoring Systems," would be deleted, since the function and requirements of the old instrumentation are effectively superseded by the new, more qualified instrumentation included in the revised Tables 3.2-8 and 4.2-8. Deletion of these tables would also result in deletion of Specifications 3.2.F and 4.2.F which refer to Tables 3.2-6 and 4.2-6, respectively. Three Table 3.2-6 plant parameters will continue to be monitored in the revised Table 3.2-8. These parameters are narrow range torus water level, drywell-torus differential pressure, and safety/relief valve (SRV) position indication. Narrow range torus water level instrumentation is used to meet the water level requirements of Specifications 3.7.A.1.a and b and the surveillance requirement of Specification 4.7.A.1. Since this instrumentation does not monitor a Regulatory Guide (RG) 1.97 Category A variable, a reference is made to the new note "C." This instrument, although not a "post-accident monitoring" instrument, is being retained because it is part of the "Mark I Containment Short Term Improvement" instrumentation. Drywell-Torus differential pressure (dp) instrumentation is used to meet the dp requirement of Specification 3.7.A.7 and

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the surveillance requirement of Specification 4.7.A.7. Since this instrumentation does not monitor a RG 1.97 Category A variable, a reference is made to the new note "G." This instrument is also being retained because it is part of the "Mark I Containment Short Term Improvement" instrumentation. The SRV position indication instrumentation was added to Tables 3.2-6 and 4.2-6 in Amendment No. 57 to the Technical Specifications (TSs) to incorporate certain of the TMI-2 "Lessons Learned Category 'A'" requirements of NUREG-0578. Therefore, this item and its associated notes and surveillance requirements will be retained and relocated to the revised Tables 3.2-6 and 4.2-6.

Three Table 3.2-6 plant parameters will not be monitored in the revised Table 3.2-6. These parameters, narrow range reactor water level, control rod position indication, and neutron monitoring have alternate requirements which will assure that the instrumentation remains operable. Narrow range reactor water level instrumentation is used during plant operations for proper operation of the feedwater control system. Reactor water level indication is also provided by the overlapping range of the RG 1.97 wide range reactor water level instrumentation as required by Table 3.2-6. Control rod position indication is required by TS 3.3.A.2.d as a condition for control rod operability. This instrument check is being retained in a new TS 4.3.A.2.f. The frequency of this surveillance is being changed to once/day to be consistent with the Standard Technical Specifications. Neutron monitoring instrumentation operability requirements are specified in Table 3.1-1, Table 3.2-3, and TS 3.3.B.4.

One of the existing Table 3.2-6 plant parameters will be removed from the revised table. This parameter, drywell water level, is not a RG 1.97 Category A variable and, therefore, should not be included in Table 3.2-6.

The applicable instrument ranges are no longer included in TS Table 3.2-6. Commitments made by the licensee with regard to implementation of RG 1.97 and Generic Letter 83-36 assure that the Table 3.2-6 plant parameters will continue to be measured and indicated in the control room to the full range as reviewed and approved by the NRC. This change is consistent with the Standard Technical Specifications.

The proposed change would also modify Action A of Table 3.2-6 to no longer permit the use of alternate monitoring methods when the number of operable instrument channels are less than the required minimum. Other proposed changes are administrative in nature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes reflect the installation of new control room instrumentation. This new instrumentation has no automatic control functions and cannot initiate any type of plant transient or accident. This instrumentation provides a highly reliable and environmentally qualified source of vital plant information in the control room. The changes ensure that instrumentation that would be necessary to mitigate accident conditions will be available in the control room. Requirements for instrument operability and surveillance cannot increase in the probability or consequences of a previously evaluated accident.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed changes reflect the installation of new control room instrumentation which have no automatic control functions. This modification to the plant cannot initiate or contribute to any new or different kind of accident from any accident previously evaluated.

3. involve a significant reduction in a margin of safety.

The proposed change provides operability and surveillance requirements for instrumentation qualified for post-accident seismic and environmental conditions. This provides a greater assurance that control room operators will have access to vital plant information under accident conditions. This represents an increase in the level of protection provided by the FitzPatrick plant. The operability and surveillance requirements for the new instrumentation are consistent with those previously approved for post-accident instrumentation at the FitzPatrick plant. Instrumentation deleted as part of these changes have other Technical Specification requirements which assure their operability or do not fulfill a safety-related function. The proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: June 3, 1991

Description of amendment request: The proposed change would relocate the procedural details of the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM) and relocate the procedural details for solid radioactive wastes to the Process Control Program (PCP). This request is in accordance with Generic Letter 89-01.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

The licensee has determined that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated because no plant equipment has been changed. The proposed [Technical Specification] TS change does not reduce the level of radiological effluent control. It will provide programmatic controls for RETS consistent with regulatory requirements and allow relocation of the procedural details of the current RETS to the ODCM and PCP. These procedural details are not required to be in the TS by 10CFR50.36a. Future changes to these procedural details will be controlled by the ODCM and PCP Administrative Controls sections of the TS.

Records of reviews performed for changes made to the ODCM and PCP will be documented and retained for the duration of the operating license. Therefore, it is concluded that operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated. This proposed amendment does not modify the configuration of the facility or its mode of operation. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously identified.

3. Involve a significant reduction in a margin of safety. The proposed change does not affect the operation of the facility nor modify any method of radiological effluent monitoring or analysis. Therefore, it is concluded that operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis; and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Acting Project Director: Anthony J. Mendiola

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: May 24, 1991 (TS 91-04)

Description of amendment request: The proposed amendment would lower the steam generator low-low water level trip setpoints associated with the Reactor Trip System and the Engineered Safety Features Actuation System specified in the Technical Specifications (TS) for the Sequoyah Nuclear Plant, Unit 1. The proposed setpoint changes reflect the improved instrument accuracy resulting from replacement of the present unmodified Barton level transmitters with modified level transmitters. This improved accuracy results from modifications made to them by the manufacturer which eliminates errors associated with environmental heatup and subsequent cooling of the reference legs. This change will occur during the 1991 refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c).

Operation of Sequoyah Nuclear Plant in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The modified transmitters are the same model as the existing transmitters but have been modified to provide increased accuracy under thermal heatup and cooldown evolutions to improve repeatability. They perform the same function in the same manner with only the accuracy being improved to ensure identification of an accident condition with the revised setpoints. This will provide accident mitigation initiations at the appropriate time to limit the consequences of the event as assumed in the safety analysis. These transmitters are not a device that could create an accident, but instead identify conditions associated with an accident to initiate logic for accident migitation. Therefore, the installation of the modified steam generator level transmitters and revision of the steam generator lo-lo level trip setpoints will not increase the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The steam generator level transmitters and associated trip setpoints are not a source for any accident. They provide actuation of mitigation logic for specific accident parameters. Therefore, this change cannot create any new or different kind of accident.

3. Involve a significant reduction in a margin of safety.

The reduction in the steam generator lo-lo level trip setpoints is the result of the improved accuracy of the modified steam generator level transmitters. This improved accuracy allows the use of a lower setpoint and still maintains the same level of confidence of accident condition identification without reducing the existing margin of safety. This is accomplished by only reducing the instrument inaccuracy values and not the margin of safety limits to allow the lower setpoints. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 24, 1991 (TS 91-06)

Description of amendment request: The proposed amendment would revise the visual snubber inspection schedule described in the Technical Specifications (TS) for Sequoyah Nuclear Plant, Units 1 and 2, in accordance with Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," issued December 11, 1990; delete the 50 percent drag force limits from the acceptance criteria for snubber functional tests in Specification 4.7.9.e.3; delete the requirement in the Bases Section relating to Plant Operations Review Committee approval of changes to the snubber accessibility list; and incorporate certain other related terminology changes related to this issue.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

TVA has evaluated the proposed technical specification (TS) changes and has determined that they do not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed wording changes to [Surveillance Requirement] SR 4.7.9.e resulted from a need for clearer definition of the snubber visual and functional testing program. The proposed change to SR 4.7.9.e.3 does not involve a significant increase in the probability or consequences of an accident previously evaluated. This SR addresses the operability of a snubber. During the functional test, the mechanical snubber may display an increase of 50 percent or more in drag force and still remain within its design limits. This increase in drag force for mechanical snubbers displays a trend. This trending is addressed in SR 4.7.9.i where the approach to "end of service life" is required to be tabulated and reviewed.

The proposed schedule for visual inspection of snubbers was developed by NRC and published in Generic Letter (GL) 90-09, "Alternative Requirements For Snubber Visual Inspection Intervals and Corrective Actions." The operability of snubbers is predominately determined by functional testing for which SQN has an approved program. Based upon the Brookhaven National Laboratory report reviewed by NRC, very few snubbers were found inoperable because of the visual inspection; and accordingly, NRC justified a revised schedule for visual inspections. Since the testing program and inspection still provide the appropriate confidence level of operability, there is no significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Based upon GL 90-09, NRC has addressed these proposed changes to the visual inspection program, and the confidence level for operability remains the same.

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Additionally, the other changes in the SRs do not affect operability. These changes do not alter any plant operations, maintenance requirement, or system design or functions. Therefore, no new or different accidents are created from the proposed change.

3. Involve a significant reduction in a margin of safety.

The proposed change in the visual inspection program for snubbers does not make modifications to the plant or revise its mode of operation or the present safety analysis. As previously described with the proposed changes to the SRs, the confidence level for snubber operability remains the same; therefore, there is no significant reduction in any safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: May 31, 1991

Description of amendment request: The amendment would revise Technical Specification 5.3.1, "Fuel Assemblies," to allow the removal of defective fuel rods or the replacement of defective fuel rods with stainless steel or zircaloy filler rods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated because approved methodologies will be used to determine core performance and accident response. Core performance and accident response will be bounded by the cycle-specific reload analysis which will assure that there is no significant increase in the radiological consequences of previously evaluated accidents.

2.The proposed change will not create the possibility of a new or different kind of accident from any previously evaluated accident because fuel performance parameters are not being changed, and because Technical Specifications concerning the nuclear heat flux hot channel factor, the nuclear enthalpy rise hot channel factor, the quadrant power tilt, and the departure from nucleate boiling parameters are not being changed.

3.The proposed change will not involve a significant reduction in a margin of safety because the removal or replacement of defective fuel rods will be bounded by cycle specific reload analysis using approved methodologies. Therefore, conformance to existing design criteria and safety analysis limits will be confirmed for modified fuel assemblies.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: June 4, 1991

Description of amendment request: The amendment would remove from Technical Specifications operability requirements for decay heat isolation valve interlock channels and pressurizer heater interlock channels in Modes 4 (hot shutdown) and 5 (cold shutdown).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison had reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the same level of protection is being provided as before.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the plant response to an overpressure condition will be unchanged.

2a. Not create the possibility of a new kind of accident from an accident previously evaluated because no new failure modes are introduced, and therefore, no new accident scenarios can be postulated.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because there are no different accidents postulated from those previously evaluated.

3. Not involve a significant reduction in a margin of safety since the overpressure protection of the DHR system and the RCS will be preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: July 31, 1990

Description of amendments request: The licensee proposed amending Technical Specification 15.4.1, OPERATIONAL SAFETY REVIEW, by revising Table 15.4.1-1, Minimum Frequencies for Checks, Calibrations, and Test of Instrument Channels. Specifically the requirements for Channel Number 11, Steam Generator Level, would be changed by adding a remark that the requirement includes a monthly test of logic for high steam generator level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change is limited to adding a testing requirement to an instrument channel. The testing of the instrument channels does not enter into the postulation of accident scenarios.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated because, again, the change is limited to adding a testing requirement and the testing requirements do not enter into the postulation of accident scenarios.

The proposed change does not involve a significant reduction in a margin of safety because the addition of the test to the Technical Specifications increases the reliability of the instrumentation channel. The licensee has stated that its existing testing program includes the logic test. However it acknowledges that including the requirement in the Technical Specifications adds assurance that the testing will be done.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: September 7, 1990, as supplemented May 10, 1991.

Description of amendments request: The licensee proposes amending Technical Specification Section 15.3.7, AUXILIARY ELECTRICAL SYSTEMS, to incorporate reference to a fifth station battery which is being added. The amendments would require that under normal conditions four of the five safety-related station batteries be operable in lieu of the existing requirement that all four batteries be operable before a reactor is made critical. The amendments would also require that all four of the main DC distribution systems be operable in lieu of the more general existing requirement that the DC systems associated with the four batteries be operable. The licensee would make similar revisions to the requirements for making one reactor critical under abnormal conditions.

The amendments would add specific reference to the four DC main distribution buses D01, D02, D03, and D04. They would eliminate reference to black plant startup as a specific example of an abnormal condition since the inclusion of an example is superfluous and the example is not well defined.

The proposed amendments would allow one of the four connected safety-related batteries to be inoperable for 24 hours under specified conditions in lieu of existing provisions for having one battery inoperable.

The licensee would also amend Technical Specification 15.4.6, EMERGENCY POWER SYSTEM PERIODIC TESTS, by changing the testing requirements for safety-related station batteries. Extensive testing requirements would be added. The testing provisions would only apply to safety-related station batteries.

The corresponding bases sections of the Technical Specifications would be revised to incorporate the revised configuration of the station batteries.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because four safety-related batteries were already part of the plant design. The changes are the result of the decision to add one more safety-related battery. The number of batteries required to be operable will not change. Furthermore, the licensee has indicated its intention to add a nonsafety-related battery which would carry the nonsafety-related loads currently being carried by the safety-related batteries. The nonsafety loads do not enter into the postulation of accident scenarios. The nonsafety-related battery would not be subject to the same operability and testing requirements as the safety-related battery.

The revisions to the testing program do not affect accidents previously evaluated because testing procedures do not enter into the postulation of accident scenarios.

Similarly, the changes to the basis and the deletion of the reference to black plant startup do not have any bearing on accidents or on margins of safety.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because the underlying design basis of the auxiliary electrical system has not effectively changed. Four safety-related batteries are still required. The proposed amendments provide some flexibility in implementing the design basis.

The proposed changes do not involve a significant reduction in a margin of safety but instead "... the addition of the new fifth battery will actually increase margins of safety by providing additional stored electrical energy for operation of plant DC electrical loads in the event of loss of normal and emergency AC electrical service."

The more stringent testing requirements being added should also contribute to an increase in the margin of safety because the testing should increase the reliability of the battery system.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon.

Previously Published Notices of Consideration of Issuance of Amendments To Operating Licenses and Proposed No Sifnificant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and

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page cited. This notice does not extend the notice period of the original notice.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 26, 1990; as supplemented January 29 and March 6, 1991; and as revised March 29, 1991

Description of amendment request: The proposed amendments would change the Technical Specifications (TSs) to reflect a planned modification to the method of measuring reactor coolant system (RCS) delta temperature (DT). The current method uses resistance temperature detectors (RTDs) located in a bypass manifold to provide signals for the Overtemperature DT and Overpower DT reactor trip instrumentation. The modification would eliminate the bypass manifold and locate fast-response RTDs in thermowells directly in the hot and cold legs of the RCS loops to provide these signals.

Specifically, the definition of DT in Notes 1 (Overtemperature DT) and 3 (Overpower DT) of TS Table 2.2-1 would be revised to delete the phrase "by RTD Manifold Instrumentation." Additionally, footnote 12 of TS Table 4.3-1, which states that channel calibration of Overtemperature DT instrumentation shall include the RTD bypass loops flow rate, would be deleted. Because Vogtle Units 1 and 2 share a common TS document and the planned modifications are to occur at different times, the TS changes would be expressed both before and after the modification and annotated as needed for each Vogtle unit based upon modification status.

Other changes in the licensee's amendment requests have been previously noticed and are outside the scope of this notice. Date of publication of individual notice in **Federal Register:** May 28, 1991 (56 FR 24101)

Expiration date of individual notice: June 27, 1991

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Iowa Electric Light and Power Company, et al., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: December 14, 1990

Brief description of amendment request: The amendment would revise the Technical Specifications (TSs) to eliminate conditional surveillances for the Emergency Core Cooling (ECCS), Reactor Core Isolation Cooling, (RCIC), Standby Liquid Control, (SLCS) and Standby Gas Treatment Systems (SGTS). Alternate methods of verifying operability of redundant trains of these systems would be included in revised surveillance requirements, consistent with Standard Technical Specifications. The proposed changes would also add new surveillance requirements for some plant instrumentation and would clarify the operability requirements for containment spray. Date of individual notice in **Federal Register:** June 13, 1991 (56 FR 27275)

Expiration date of individual notice: July 15, 1991

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Notice of Issuance of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: June 10, 1988, as supplemented on December 4, 1988.

Brief description of amendments: The amendments provide two changes to the Technical Specifications (TSs). TSs 4.6.2.1.a.2, which requires verificaton that the valves in the Containment Spray System flow path are positioned to take suction from the refueling water tank upon receipt of a containment pressure high test signal, is changed. The change excludes those valves in the flow path which are locked, sealed, or otherwise secured in position from the verification requirement. The second change is TSs 4.7.11.1.2.c which provides surveillance requirements to demonstrate the operability of the fire pump diesel engine. The change removes the requirement to perform the surveillance when the reactors are shut down, thus allowing the surveillance to be performed in the specified time interval regardless of the operating status of the reactor units.

Date of issuance: June 10, 1991

Effective date: June 10, 1991

Amendment Nos.: 154 and 134

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2431) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated June 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: February 11, 1991 as supplemented on May 10, 1991.

Brief Description of amendments: The amendments change the Technical Specifications (TS) to (1) consolidate the Shift Operating Supervisor (SOS) and the Shift Supervisor positions as a single Senior Reactor Operator (SRO) entry in the TS table 6.2.2-1 and replaces TS references to SOS with references to the Shift Supervisor; increase the number of SROs in TS table 6.2.2-1 from one to two to reflect the consolidation of the SOS and Shift Supervisor positions; add references for the new positions of the Operations Manager - Unit 1 and Operations Manager - Unit 2, and (2) add the requirement that the Manager-Operations hold, or have held, an SRO license for either the Brunswick Plant or a similar unit, and (3) add a one-time, 18 month exception to the requirement for the Manager-Operations to hold, or have held, an SRO license for either the Brunswick Plant or a similar unit.

Date of issuance: June 13, 1991.

Effective date: June 13, 1991.

Amendment Nos.: 153 and 183

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13659). The May 10, 1991, letter renamed the Shift Foreman to the new title Shift Supervisor with functional responsibilities and reporting relationships remaining unchanged, provided clarifying information and a typographical correction that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: October 1, 1990, as supplemented January 31, 1991.

Brief description of amendment: The amendment adds an action statement to Technical Specification Section 3.1.3.1, "Movable Control Assemblies, Bank Height" to address the situation where there is a failure in the rod control system causing more than one control rod to be inoperable, but all the control rods remain trippable.

Date of Issuance: June 12, 1991

Effective date: June 12, 1991

Amendment No.: 137

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6870) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 12, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: January 9, 1991

Brief description of amendments: The amendments revise the Technical Specifications to reflect fuel reloading for Catawba Unit 1's Cycle 6 operation with fuel manufactured by the B&W Fuel Company and to continue to reflect the previously existing Technical Specifications for Unit 2 fuel.

Date of issuance: May 31, 1991

Effective date: May 31, 1991

Amendment Nos.: 86, 80

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20031) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: February 5, 1991

Brief description of amendments: The amendments modify the operating licenses to allow an extension of time for resolution of the accumulator tank instrumentation issue.

Date of issuance: June 4, 1991

Effective date: June 4, 1991

Amendment Nos.: 87, 81

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised conditions to the facility operating licenses.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20033) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 4, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: February 7, 1990, as supplemented May 7, 1990.

Brief description of amendments: The amendments respond to NRC Generic Letter 89-01 by relocating the Radiological Effluent Technical Specifications to therespective sections of Chapter 16 of the Final Safety Analysis Report, "Selected Licensee Commitment (SLC) Manual."

Date of issuance: May 22, 1991

Effective date: May 22, 1991

Amendment Nos.: 119, 101

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34367) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 22, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 4, 1990 and supplemented by letters dated February 13, 1991, April 11, 1991, and May 2, 1991.

Brief description of amendment: The amendment revised Technical Specifications 4.0.5, 3.4.3.1, and 3.4.3.2 regarding inservice inspection, leak detection, and actions to be taken when leakage limits are exceeded. The changes are based on guidance provided in Generic Letter 88-01, "NRC Position on IGSCC in BWR Austenitic Stainless

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Steel Piping." Additionally, two editorial changes were made which deleted references to the first refueling outage which has already been completed.

Date of issuance: May 31, 1991

Effective date: May 31, 1991, to be implemented within 60 days of issuance.

Amendment No: 57

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 3, 1991 (56 FR 13664). The April 11, 1991, and May 2, 1991, submittals provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evalnation of the amendment is contained in a Safety Evaluation dated May 31, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: March 12, 1991

Brief description of amendment: The amendment adds an action to Technical Specification 3.6.2.3 which permits plant personnel to enter the drywell for maintenance work with the plant in Operational Condition 3 rather than cold shutdown when one of the drywell air lock door seals is inoperable. Entry into the drywell requires that the operable air lock door be open for approximately three minutes as personnel enter and exit, allowing the leakage through the inoperable seals to bypass the drywell. The amendment also stipulates that the operable door be locked closed after each entry and exit and that a designated person ensure that both doors in the air lock are not open simultaneously.

Date of issuance: June 3, 1991

Effective date: June 3, 1991

Amendment No.:

Amendment No. 58

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 1, 1991 (56 FR 20040) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Niagara Mohawk Power Corporation, Docket Nos. 50-220, and 50-410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Oswego County, New York

Dates of applications for amendments: March 13, 1991

Brief description of amendments: The amendments revise Technical Specification Section 6.0, Administrative Controls, to reflect changes which replace the current Manager Health Physics by a Manager Radiation Protection for each unit. These changes are consistent with the management changes approved in License Amendments Nos. 120 and 25 issued on December 31, 1990, which approved unitized management organizations for each of the Nine Mile Point units.

Date of issuance: June 6, 1991

Effective date: June 6, 1991

Amendment Nos.: 124 and 32

Facility Operating License Nos. DPR-63 and NPF-69: Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: May 1, 1991 (56 FR 20041) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: May 26, 1989, as amended January 5, 1990.

Brief description of amendment: The amendment revises Technical Specification Figure 3.4.1 to correct errors of omission in the labeling of the graph on the figure. The revisions to Figure 3.4.1 clarify that Reactor building pressures specified thereon are actually differential pressures.

Date of issuance: June 10, 1991

Effective date: June 10, 1991

Amendment No.: 125

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 1, 1991 (56 FR 20041) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: November 19, 1990 and January 24, 1991, as supplemented March 1, 1991.

Brief description of amendment: The amendment changes the Millstone Unit 1 Technical Specifications (TS) as follows:

- A change to the Minimum Critical Power Ratio (MCPR) Safety Limit from 1.04 to 1.07.
- Addition of a definition for LIMITING CONTROL ROD PATTERN.
- Redefinition of the applicability of Thermal Limits and associated action.
- Revision of Section 3/4.11, "Power Distribution Limits".
- Inclusion of the limiting value of linear heat generation rate (LHGR) in the TS.
- Revision to K_f curves in TS Figure 3.11.1.

Date of issuance: June 11, 1991

Effective date: June 11, 1991

Amendment No.: 54

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6878) The March 1, 1991 submittal provided additional clarifying information and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application amendments: July 17, 1990

Brief description of amendments: These amendments revise the combined Technical Specifications for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to increase the surveillance test intervals, allowed outage times, and channel bypass times for certain of the

instrumentation in the Reactor Trip System and Engineered Safety Features Actuation System. The changes are based on generic analyses performed as part of a Westinghouse Owners Group program.

Date of issuance: May 23, 1991

Effective date: May 23, 1991

Amendment Nos.: 61 and 60

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 14, 1990 (55 FR 47573) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 23, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: January 18, 1991

Brief description of amendments: The amendments revised technical specification 4.1.4.1 such that while in Operational Condition 1 when reducing Thermal Power the selection error for an out-of-sequence control rod is demonstrated within one hour after reaching the low power setpoint (LPSP). Other changes included in the amendments are editorial in nature to provide a clear format and to clarify that "RWM automatic initiation" is defined to be that point in time when the LPSP [low power setpoint] is reached.

Date of issuance: June 6, 1991

Effective date: 30 days after date of issuance

Amendment Nos.: 109 and 78

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 3, 1991 (56 FR 13668) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 3, 1987, as supplemented August 10, 1990, August 21, 1990, and May 22, 1991.

Brief description of amendments: These amendments extend the expiration date for the Salem Unit 1 Operating License from September 25, 2008 to August 13, 2016 and for the Salem Unit 2 Operating License from September 25, 2008 to April 18, 2020. The original date is 40 years from the date of issuance of the Construction Permit. The revised date is 40 years from the date of issuance of the Operating License.

Date of issuance: June 5, 1991

Effective date: As of the date of issuance.

Amendment Nos. 125 and 104

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the License.

Date of initial notice in Federal Register: December 27, 1989 (54 FR 53210) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 5, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: February 15, 1991.

Brief description of amendment: This amendment revises the technical specifications to renumber the radiation monitor from R-20 to R-20A, to add radiation monitor R-20B to Tables 3.5-5 and 4.1-5 as item l.g, and to add a triple asterik (***) to R-14A to indicate that Table 3.5-6 is also applicable.

Date of issuance: June 4, 1991

Effective date: June 4, 1991

Amendment No.: 43

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 1, 1991 (56 FR 20044). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: February 4, 1991, as supplemented March 27, 1991.

Brief description of amendment: The amendment changes the Technical Specifications to separate the loes of offsite power (LOOP) test from the 24-hour load test in order to obtain more flexible outage scheduling and to avoid unnecessary cycling of the emergency diesel generator (EDG). The hot restart capability of the EDG would still be demonstrated by bringing the EDG to a full-load stabilized operating temperature before initiating the LOOP test.

Date of issuance: June 5, 1991

Effective date: June 5, 1991

Amendment No.: 99

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: March 6, 1991 (56 FR 9385) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: April 8, 1991

Brief description of amendments: The amendments revise Surveillance Requirement 4.6.1.2.a and the associated Bases to permit the third Type A test of each 10-year inservice interval to be conducted during a separate plant outage from the 10-year plant Inservice Inspection.

Date of issuance: June 3, 1991

Effective date: June 3, 1991

Amendment Nos.: Unit 2, 93, Unit 3, 83

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 1, 1991 (56 FR 20045) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 3, 1991.

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No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: April 8, 1991

Brief description of amendments: These amendments provide NRC staff approval to revise the Updated Final Safety Analysis Report to allow the shutdown cooling (SDC) system to be used as a primary means of cooling the spent fuel pool. This changes the use of the SDC system as a credited backup system when available, to an alternate means of spent fuel pool cooling. This change is needed to allow systems that normally provide cooling for the spent fuel pool to be removed from service for maintenance activities. The shutdown cooling system will not be used as the primary means of spent fuel pool cooling when Technical Specifications require the shutdown cooling system to be operable for cooling the reactor core.

Date of issuance: June 3, 1991

Effective date: June 3, 1991

Amendment Nos.: Unit 2: 94; Unit 3: 84

Facility Operating License Nos. NPF-10 and NPF-15: Amendments provides NRC staff approval of a proposed revision of the Updated Final Safety Analysis Report description to allow the shutdown cooling system to be used as an alternate means of cooling the spent fuel pool. The amendment does not involve a change to the Technical Specifications or License Conditions.

Date of initial notice in Federal Register: May 1, 1991 (56 FR 20045) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 3, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: November 30, 1990, and December 19, 1990

Brief description of amendment: The amendment revised the main steam low pressure block permit setpoint and the steam pressure setpoint where the block permit is automatically removed.

Date of issuance: June 4, 1991

Effective date: June 4, 1991

Amendment No. 157

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 6, 1991 (56 FR 9367) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 18, 1991

Brief description of amendments: The amendments revise the NA-1&2 TS by correcting certain administrative errors.

Date of issuance: June 4, 1991

Effective date: June 4, 1991

Amendment Nos.: 145, 129

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 17, 1991 (56 FR 15645) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 4, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application amendment: February 28, 1991, as supplemented by letters dated March 21, 1991 and April 26, 1991.

Brief description of amendment: The amendment modifies the facility minimum critical power ratio safety limit and associated bases to reflect cycle specific safety analyses resulting from use of a new reload methodology and effects of channel box bow phenomena.

Date of issuance: June 3, 1991

Effective date: June 3, 1991

Amendment No.: 92

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 3, 1991 (56 FR 13671) Letters dated March 21, 1991 and April 26, 1991, provide supplemental information which did not alter the staff's initial determination of no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1991.

No significant hazards consideration comments requested: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application amendment: August 2, 1990 and as amended by letters dated February 25, April 19, May 6 and May 20, 1991.

Brief description of amendment: The amendment removes values for cycle specific parameter limits which change with each core reload from the Technical Specifications as discussed in Generic Letter 88-16, "Removal of Cycle Specific Parameter Limits from Technical Specifications," and transfers the cycle specific parameter limits to the Core Operating Limits Report (COLR). The COLR will be developed for each operating cycle.

Date of issuance: June 4, 1991

Effective date: June 4, 1991

Amendment No.: 94

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 20, 1991 (56 FR 6883) The February 25, April 19, May 6 and May 20, 1991, letters provided clarifying information that did not change the scope of the proposed amendment and did not affect the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 1991.

No significant hazards consideration comments requested: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 5, 1991

Brief description of amendment: The amendment revises Technical Specification 4.7.8 to incorporate an alternative snubber visual inspection schedule as provided by Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions." This line item improvement is consistent with the Commission's Policy Statement on technical specification improvements.

Date of Issuance: May 31, 1991

Effective date: May 31, 1991

Amendment No: 44

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 3, 1991 (56 FR 13672) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1991

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity For Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 26, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene.

Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to

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which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Alabama Power Company, Docket No. 50-348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, Alabama.

Date of application for amendment: May 17, 1991.

Brief description of amendment: The amendment revises Technical Specification Table 3.3-5, "Engineered Safety Features Response Times." The change increases the engineered safety features response time for steam line isolation on high steam flow in two steam lines coincident with T-average low-low from the current value of less than or equal to 9 seconds to less than or equal to 11 seconds.

Date of issuance: June 4, 1991

Effective date: June 4, 1991

Amendment No. 89

Facility Operating License No. NPF-2: Amendment revises the Technical Specifications. Public comments requested as to proposed no significant hazard consideration: No. The Commission's related evaluation of the amendment finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated June 4, 1991.

Attorney for licensee: Mr. James H. Miller, III, Esq., Balch and Bingham, P.O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

NRC Acting Project Director: Anthony J. Mendiola

Dated at Rockville, Maryland, this 28th day of June, 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-15091 Filed 6-25-91; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-324]

Carolina Power & Light Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its March 26, 1991, application for proposed amendment to Facility Operating License No. DPR-62 for the Brunswick Steam Electric Plant, Unit 2, located in Brunswick County, North Carolina.

The amendment would have revised the Technical Specifications (TS) to allow a one-time only extension of the 18-month interval for certain surveillance requirements associated with the emergency core cooling system actuation instrumentation and service water system.

For further details with respect to this action, see the application for amendment dated March 26, 1991, and the licensee's letter dated April 8, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Rockville, Maryland this 17th day of June, 1991.

For the Nuclear Regulatory Commission.

Ngoc B. Le,

Project Manager, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-15193 Filed 6-25-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-324]

Carolina Power & Light Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its February 19, 1991, applications for proposed amendment to Facility Operating License No DPR-62 for the Brunswick Steam Electric Plant, Unit 2, located in Brunswick County, North Carolina.

The amendment would have revised the Technical Specifications (TS) pertaining to the surveillance intervals for the 125 volt batteries and chargers to allow a one-time only extension of the surveillances associated with TS 4.8.2.3.2.c and 4.8.2.3.2.d to the end of the Reload 9 outage.

The Commission had previoously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 20, 1991, (56 FR 11773). However, by letter dated April 8, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 19, 1991, and the licensee's letter dated April 8, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Rockville, Maryland this 17th day of June 1991.

For the Nuclear Regulatory Commission.

Ngoc B. Le,

Project Manager, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-15194 Filed 6-25-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-324]

Carolina Power & Light Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its March 18, 1991, application for proposed amendment to Facility Operating License No. DPR-62 for the Brunswick Steam Electric Plant, Unit 2, located in Brunswick County, North Carolina.

The proposed amendment would have revised the Technical Specifications (TS) to allow a one-time only extension of the surveillance interval associated with TS 4.8.1.1.2.d until October 31, 1991. Subsequently, by letter dated May 31, 1991, the amendment request was withdrawn.

For further details with respect to this action, see the application for amendment dated March 18, 1991, and the licensee's letter dated May 31, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Rockville, Maryland this 17th day of June, 1991.

For the Nuclear Regulatory Commission.

Ngoc B. Le,

Project Manager, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-15195 Filed 6-25-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 55-09015-SC; ASLBP No. 91-646-02-SC]

David M. Manning; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

David M. Manning, Senior Reactor Operator License No. SOP-10561-1, EA 91-054.

This Board is being established pursuant to the request by Mr. David M. Manning, the Licensee, for a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, dated May 2, 1991, entitled "Order Suspending License (Effective Immediately) and Order to Show Cause Why License Should Not Be Revoked." (56 FR 22020, May 13, 1991)

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Harry Rein, M.D., 1877 Wingfield Drive, Longwood, Florida 32779.

Issued at Bethesda, Maryland, this 18th day of June, 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-15196 Filed 6-25-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333-OM; ASLBP No. 91-645-02-OM]

New York Power Authority; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commisison's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

New York Power Authority, James A. FitzPatrick Nuclear Power Plant, Facility Operating License No. DPR-59, EA 91-053.

This Board is being established pursuant to the request by New York Power Authority (Licensee) tha the NRC rescind an Order issued by the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, dated May 2, 1991, entitled "Order Modifying License (Effective Immediately)." (56 FR 22022, May 13, 1991) The Order modified License No. DPR-59 by adding the condition that Mr. David M. Manning shall not participate in any licensed activity under License No. DPR-59 without prior written approval of the Regional Administrator.

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region I. Licensee has requested a hearing on the Order if the NRC denies Licensee's request that the Order be rescinded.

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents, and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Harry Rein, M.D., 1677 Wingfield Drive, Longwood, Florida 32779.

Issued at Bethesda, Maryland, this 18th day of June, 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-15197 Filed 6-25-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-440-A, 50-346-A, (Suspension of Antitrust Conditions); ASLBP No. 91-644-01-A]

Ohio Edison Co., et al; Memorandum and Order (Prehearing Conference)

June 19, 1991.

In the matter of Ohio Edison Company, (Perry Nuclear Power Plant, Unit 1 Facility Operating License No. NPF-58), The Cleveland Electric Illuminating Company, and the Toledo Edison Company, (Perry Nuclear Power Plant, Unit 1, Facility Operating License No. NPF-58) (Davis-Besse Nuclear Power Station, Unit 1, Facility Operating License No. NPF-3).

This proceeding involves applications to amend the operating licenses of the Perry Nuclear Power Plant, Unit 1, and the Davis-Besse Nuclear Power Station, Unit 1, to suspend the antitrust conditions in those licenses. Pending before this Licensing Board are various requests for a hearing and petitions for leave to intervene.

As we previously notified all parties and petitioners by telephone, a prehearing conference is hereby scheduled for Thursday, July 25, 1991, beginning at 10 a.m., in the NRC Hearing Room, 5th floor, 4350 East West Highway, Bethesda, Maryland. To the extent necessary, the conference will continue on Friday, July 26, 1991, beginning at 9:30 a.m., at the same location.

At the conference, the Board will consider the various requests for a hearing and petitions for leave to intervene (including the standing of the petitioners for intervention), schedules, discovery (in the event a hearing is authorized) and other matters boering on the proceeding.

The Licensing Board hereby acknowledges receipt of copies of Ohio Edison's application to amend the Perry Operating License. The Board hereby requests that it be provided by the Applicants, at their earliest convenience, with copies of the Cleveland Electric Illuminating Co./Toledo Edison application to amend the Perry and Davis-Besse facility licenses. In addition, the Board requests the NRC Staff to provide it copies of the following letters referenced in the Notice of Opportunity for Hearing:

1. The Department of Justice letter to the NRC, dated June 13, 1990.

2. The Commission's letter to the Licensees, dated April 24, 1991.

It is so ordered.

Bethesda, Maryland
June 19, 1991.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Administrative Judge.

[FR Doc. 91-15198 Filed 6-25-91; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 886; Docket No. A91-7]

Weston, Michigan 49289 (Irene M. Robinson, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued June 20, 1991.

Name of Affected Post Office: Weston, Michigan 49289.

Name(s) of Petitioner(s): Irene M. Robinson, et al.

Type of Determination: Closing.

Date of Filing of Appeal Papers: June 17, 1991.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)];

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)];

3. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders:

(A) The record in this appeal shall be filed on or before July 2, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

June 17, 1991	Filing of Petition.
June 20, 1991	Notice and Order of Filing of Appeal.
July 12, 1991	Last day for filing of petitions to intervene (see 39 CFR 3001.111(b)).
July 22, 1991	Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b)).
August 12, 1991	Postal Service Answering Brief (see 39 CFR 3001.115(c)).
August 27, 1991	Petitioner's Reply Brief should petitioner choose to file one (see 39 CFR 3001.115(d)).
September 3, 1991	Deadline for motins by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
October 15, 1991	Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 91-15122 Filed 6-25-91; 8:45 am]

BILLING CODE 7710-FW-M

RESOLUTION TRUST CORPORATION

Disclosure of Asset-Related Information

AGENCY: Resolution Trust Corporation.

ACTION: Extension of comment period.

SUMMARY: On May 22, 1991 56 FR 23602, the Resolution Trust Corporation ("RTC"), published a notice that the RTC was seeking comments from the public on certain issues regarding the disclosure of information related to the sale of assets owned or controlled by the RTC. The purpose of the comments is to assist the RTC in the development of a policy statement regarding disclosure of such information. The comment period ended on June 21, 1991. The RTC is now extending this comment period for an additional thirty days.

DATES: Comments must be received by July 22, 1991.

ADDRESSES: Comments should be sent to John M. Buckley, Jr., Executive Secretary, Resolution Trust Corporation, 801 17th Street NW., Washington, DC 20434. Comments may be hand delivered to room 314 at the same address between the hours of 9 a.m. and 5 p.m. on business days. Comments will be available for inspection and photocopying in the Public Reading Room, 801 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John C. Binkley, Special Assistant to the Executive Secretary, at (202) 416-7450.

Dated at Washington, DC, this 21st day of June, 1991.

John M. Buckley, Jr.,

Executive Secretary, Resolution Trust Corporation.

[FR Doc. 91-15205 Filed 6-25-91; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-29341; File No. SR-CBOE-91-16]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Extension of a Fee for Delayed Trade Match Submissions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend the effectiveness of its fee for delayed trade match submissions for a period of six months until January 22, 1992. In general, under the proposal, market makers and their clearing firms will be charged an additional fee when they submit trade information two hours or more after the time of execution for a specified percentage of their transactions. The fee applies only to market maker trades executed in person.[1]

The trade matching process at the Exchange traditionally has been performed by making computer runs in the evening hours after trading for the day has ceased. In April 1990, however, the Exchange instituted an intraday trade matching service on an Exchange-wide basis. As a result, the Exchange is now making data comparison computer runs during each trading day instead of starting that process after the close of trading. The purpose of the fee for delayed trade match submissions is to encourage timely submission of trade information data, thus leading to greater realization of the benefits offered by intraday trade matching (*i.e.*, more timely and accurate trade matching).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

On January 22, 1991, the Commission approved a CBOE proposal establishing a fee for delayed trade match submissions for a period of six months until July 22, 1991.[2] The purpose of the fee for delayed trade match submissions is to encourage market-makers and market-maker clearing firms to submit trading data to the CBOE in a timely manner and to help offset the additional burden created by delayed submissions in conjunction with the Exchange's implementation of its intraday trade match system. When approving the fee structure, however, the Commission determined that the proposal could not be permanently approved until the CBOE submitted and received approval for its intraday trade match system. Accordingly, in order to give the CBOE time to prepare and file the intraday trade match system and the Commission time to review the proposal, while simultaneously allowing the CBOE to begin charging fees to improve the effectiveness of that system, the Commission approved the fee proposal for an initial six-month period.

Concurrent with this proposal, but as a separate filing (SR-CBOE-91-16), the Exchange is submitting with the Commission a description of the intraday trade match system. Nevertheless, due to the uncertainty of that proposal's approval before July 22, 1991, the CBOE proposes to extend the Commission's approval of the fee for delayed trade match submissions for an additional six months until January 22, 1992. This would avoid the imposition of an undue hardship and burden on the Exchange, which plans to begin the fee program on July 1 that would be caused by the interruption or discontinuation of the fee program three weeks after it was first implemented.

(2) Basis

The Exchange believes that an extension of the fee for delayed trade match submissions prior to permanent approval of the CBOE's intraday trade match system is consistent with the requirements of the Act and the rules and regulations thereunder in general, and, in particular, section 6(B)(4) because it provides for the equitable allocation of reasonable fees among its members and section 6(b)(5) because it is designed to foster cooperation and coordination with persons engaged in clearing transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[1] For a more detailed description of the fee charged for delayed trade match submissions, see Securities Exchange Act Release No. 28807 (January 22, 1991), 56 FR 3127.

[2] *Id.*

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III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act. The Commission finds that the proposed rule change to extend the effectiveness of the fee for delayed trade match submissions for six months until January 22, 1992 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b) (4) and (5) thereunder. In particular, the Commission believes that the proposal will continue to encourage market makers and their clearing members to make timely submissions of trade information, which will foster more efficient clearing of options transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register because of the importance of allowing the fee program to be implemented and remain in effect without interruption. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.[2]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-91-16 and should be submitted by July 17, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a period of six months ending January 22, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15115 Filed 6-25-91; 8:45 am]

BILLING CODE 8010-01-M

[2] The Commission incorporates in this order the analysis contained in its order of January 22, 1991, approving the delayed trade match submissions fee for a period of six months. See, Securities Exchange Act Release No. 28807 (January 22, 1991), 56 FR 3127.

[Release No. 34-29322; File No. SR-CBOE-91-16]

Self-Regulatory Organization; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Exchange's Intraday Trade Match System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to establish procedures for its intraday trade match system. The text of the proposed rule change is attached as exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The CBOE has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

On January 22, 1991, the Commission approved a CBOE proposal establishing a fee for delayed trade match submissions for a period of six months from January 22, 1991.[1] The purpose of the fee is to encourage market-makers and market-maker clearing firms to submit trading data to the CBOE in a timely manner and to help offset the additional burden created by delayed submissions in conjunction with the Exchange's implementation of its intraday trade match system. When approving the fee structure, however, the Commission determined that the proposal could not be permanently approved until the CBOE submitted and received approval for its intraday trade match system. Accordingly, in order to give the CBOE time to prepare and file the intraday trade match system and the Commission time to review the proposal, while simultaneously allowing the CBOE to begin charging fees to improve the effectiveness of its intraday trade match system, the Commission approved the fee proposal for an initial six-month period.

Pursuant to the Commission's request when approving the fee for delayed trade match submissions, the present proposal contains a description of the intraday trade match system. In addition, concurrent with this proposal, the Exchange is submitting to the Commission a proposal to extend the effectiveness of the fee for delayed trade match submissions for a period of six months until January 22, 1992. The extension would enable the Exchange to assess the fee program without interruption while the Commission considers the present proposal.

(b) Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder in general, and, in particular, the proposal is consistent with and furthers the objectives of section 6(b)(5) in that it is designed to foster cooperation and coordination with persons engaged in clearing transactions in securities.

[1] See Securities Exchange Act Release No. 28807 (January 22, 1991), 56 FR 3127.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of the notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-91-16 and should be submitted by July 17, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 17, 1991.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Chicago Board Options Exchange, Incorporated Trade Match System

This circular describes the procedures of the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") with respect to its trade match process and, in particular its intraday trade match ("ITM") system, including applicable timetables.

General Background

Prior to October 30, 1989, when ITM was first introduced in one trading station involving four classes of option contracts, the Exchange's trade match process began after the close of trading. Specifically, there were three timeframes during which trade input comparison occurred: The first trade input comparison, "First Pass", occurred no earlier than 6 p.m. The second trade input comparison, "Second Pass", occurred at approximately 10 p.m. The third trade input comparison, "Third Pass", occurred at 12 p.m. the next trading day to deal with unmatched trades "as-of" the prior trading day.

In order to resolve unmatched trades sooner, thereby reducing the market risk of overnight outtrades as well as reducing the costs inherent in a more protracted trade match process, the Exchange began trade match comparison during the trading day in October 1989. Substantial improvements in the trade match process led to ITM's expansion to include all equity options by February 23, 1990. In February 1990, ITM also expanded to expiration Saturday processing by providing two matching passes. This enabled clearing members to eliminate outtrades in expiring series thereby greatly reducing time and costs associated with expiration processing. The Exchange completed its floor-wide implementation of ITM by expanding to the OEX trading crowd on April 24, 1990. As a result of ITM, the evening trade match workloads decreased. Consequently, on July 1, 1990, the evening's first pass time was moved up one half hour while the time allotted for night trade checking was compressed. Further reductions in outtrades led to the elimination of the "as-of" matching pass, Third Pass, on November 19, 1990 and all "as-of" activity was processed by ITM. Further, in order to encourage timely submission of trade input and thereby lead to greater realization of the benefits offered by ITM, the Exchange filed with the Securities and Exchange Commission ("Commission") proposed trade match delayed submission fees rules. On January 22, 1991, the Commission approved the proposal for a six-month period. (See SR-CBOE-90-05)

Trade Submission

Presently, the trade match process begins by the submission of trade information to the CBOE trade match system. Trade input to CBOE's trade match system commences as soon as trading begins. Trade match input is received via three methods: (1) Real-Time sources such as the CBOE Order Routing System ("ORS"), CBOE's RAES system and member firm order match systems, (2) Batch transmissions from member firm bookkeeping systems, and (3) Terminal entries via the Terminal Network.

Currently, the Exchange's trade match process consists of three intraday trade match passes and two evening trade match passes as described below.

First Intraday Trade Match Pass

At 11 a.m. the Exchange performs the first intraday trade match pass ("First ITM Pass"). First ITM Pass means the computer processing run prepared by the Exchange in which trade match records (trade information required by Rule 6.51) submitted by all clearing members are combined in order to provide feedback as to unmatched trades. From this run the Exchange produces matched and unmatched trade reports. The matched trade report consists of all trades that match on firms, brokers, contract, price and quantity. The Exchange distributes the matched and unmatched trade reports to the clearing members by 11:30 a.m. at the Exchange's Trade Processing Window. Member firm representatives pick up the reports and compare the information thereon with the firm's internal reports and other relevant records. Where appropriate, corrections are made and submitted to the Exchange via one of the three methods described in the trade submission section above prior to the second intraday trade match pass. By the First ITM Pass, 25% of the day's trades have been submitted for trade matching. Upon completion of the First ITM Pass, 15% of the day's trades have been matched.

Second Intraday Trade Match Pass

At 1 p.m., the Exchange performs the second intraday trade match pass ("Second ITM Pass"). Second ITM Pass means the second time during the trading day that a computer processing run is prepared by the Exchange in which trade match records submitted by all clearing members are combined in order to provide feedback as to unmatched trades. The Second Pass produces matched and unmatched trade reports by 1:40 p.m. which are distributed via the Exchange's Trade Processing Window. Member firm representatives review these reports in preparation for a face to face trade checking session that takes place on the second floor Trade Checking Area of the Exchange at 2 p.m. At this session, member firm representatives discuss the unmatched trades and attempt to resolve them. If necessary or appropriate, market-makers and floor brokers are contacted in order to resolve unmatched trades. Trade correction input is submitted via one of the aforementioned three methods prior to the last intraday trade match pass. By the Second ITM Pass, 50% of the day's trades have been submitted for trade matching. Upon completion of the Second ITM Pass, 30% of the day's trades have been matched.

Third Intraday Trade Match Pass

At 3 p.m., the Exchange performs the last intraday trade match pass ("Third ITM Pass"). Third ITM Pass means the third time during the trading day the Exchange prepares a computer run in which trade match records

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submitted by all clearing members are combined in order to provide feedback as to unmatched trades. From this run the Exchange produces matched and unmatched trade reports which are distributed to the clearing firms via the Trade Processing Windows at 3:40 p.m. Member firm representatives review the unmatched trades for errors. Corrections are submitted continuously via one of the aforementioned three methods until the first evening trade match pass begins. The matched and unmatched reports that are produced during the Third ITM Pass provide member firms with a preview of the evening workload, allowing the firms to allocate their personnel more effectively. By the Third ITM Pass, 70% of the day's trades have been submitted. Upon completion, 50% of the day's trade have been matched.

Evening Trade Match Process

While the Exchange has always had an evening trade match process, the entire evening process has been shortened due to the reduced number of unmatched trades being dealt with during the evening trade match process. Previously, the evening trade match process accounted for the bulk of the trade comparison work. With the advent and success of the intraday trade match process, the evening workload has eased significantly, allowing member firms to reduce their evening staff or move evening staff to the trading day thereby decreasing overall costs.

First Evening Trade Match Pass

As early as 5:30 p.m., the first evening pass is performed. A computer processing run is prepared by the Exchange in which trade match records submitted by all clearing members are combined in order to provide feedback as to the remaining unmatched trades. From this run the Exchange produces matched an unmatched trade reports. These reports are distributed electronically, directly to the clearing member's back office, or on hard copy by way of the Exchange's Trade Processing Window. Member firm representatives review the unmatched reports in an effort to match all remaining outtrades. Upon completion of the first evening trade match pass, 91% of all trades effected during the trading day are matched.

Second (And Final) Evening Trade Match Pass

Once all corrections to the first evening pass are received by the Exchange, the final trade matching pass of the day is performed. Generally, the final trade match pass occurs at 8:45 p.m. This pass produces a final electronic file of all compared, matched trades for submission to the Options Clearing Corporation. This file contains approximately 97.5% of the trading day's activity. Only slightly more than 2.5% of the trades remain unmatched. These remaining outtrades are reconciled the next morning prior to the opening of trading.

[FR Doc. 91-15119 Filed 6-25-01; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29307; File No. SR-DGOC-91-02]

June 14, 1991.

Self-Regulatory Organizations; Delta Government Options Corporation; Notice of Proposed Rule Change Relating to the Definition of Options Expiration Date

Pursuant to section 19(b) of the Securities Exchange Act of 1934,[1] notice is hereby given that on May 24, 1991, Delta Government Options Corporation ("DGOC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

DGOC's proposed rule change will modify its definition of "expiration date" in article I of its Rules. Specifically, the proposal will: (1) Provide that the expiration date may have duration of not longer than two years from the writing of the option; and (2) permit any Friday of the expiration month to serve as an expiration date, rather than only the first or last Friday of the month as provided under existing rules.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The SRO has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to respond to requests by DGOC participants to afford to them the opportunity to select expiration dates which match more precisely the tenor of other financial contracts developed in the over-the-counter market and other trading environments. By affording participants a larger spectrum of expiration dates, DGOC will be able to permit its participants to gravitate naturally toward those expiration dates that each participant deems the most suited to its trading needs. The proposed rule change is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder applicable to Delta because the proposed rule change will permit more utilization of the Over-the-Counter Options Trading System by those participants who prefer to trade in options for hedging purposes or speculation.

In particular, the tailoring of the options expiration on the basis proposed by DGOC will afford participants additional flexibility to adjust option duration in relation to their overall treasury security portfolios. The proposal, moreover, will enable participants to submit, for processing at DGOC, over-the-counter Treasury option trades that, prior to this proposal, could not be submitted because their stated expiration date was other than previously available through DGOC. DGOC's proposal, therefore, will allow for the automated clearance and settlement of securities transactions that, otherwise, would be cleared via a decentralized, inefficient and labor-intensive process.

(B) SRO's Statement on Burden on Competition

Delta does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Delta neither requested nor received any comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the data of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the SRO consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] 15 U.S.C. 78s(b).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned SRO. All submissions should refer to File No. SR-DGOC-91-02 and should be submitted July 17, 1991.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[2]

Jonathan G. Katz,
Secretary.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-15121 Filed 6-25-91; 8:45 am]

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[Release No. 34-29281 File No. SR-NASD-91-12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to OTC Bulletin Board Service

On February 28, 1991, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-NASD-91-12), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] to amend the OTC Bulletin Board Service ("Service") to require that quotations for non-foreign issues entered into the system be firm. The proposed rule change was noticed in the Federal Register for public comment.[2] No comments were received in response to the solicitation. This order approves the proposed rule change.

On May 1, 1990, the Commission issued an order approving the operation of the NASD's OTC Bulletin Board Service for a pilot term of one year.[3] The Service provides an electronic quotation medium for NASD members to enter and display quotations in non-NASDAQ OTC securities in which they are registered as market makers. Individual market makers are permitted to update their displayed quotations in foreign securities and ADRs twice daily, once between 8:30 and 9:30 a.m. e.s.t. and once between noon and 12:30 p.m. e.s.t. Domestic securities quoted in the Service are not subject to this update restriction.

The purpose of the proposed rule change is to require that all priced bids and offers on domestic securities entered by registered market makers be firm for one unit of trading. This requirement will apply exclusively to priced quotations for domestic, non-NASDAQ securities quoted in the Service because foreign securities are subject to the twice-daily update limitation. Market makers in these securities will retain the options of entering: (1) Bid wanted/offer wanted indications; (2) quotations consisting solely of the firm's name and telephone number; and (3) indications of unsolicited customer interest.

Currently, market makers in these securities can elect to enter firm or non-firm priced bids/offers. Since the Service's inception, the NASD stated that it has found that firm prices—in the form of one and two-sided quotations—have been predominant among Service market makers in domestic issues.[4] Because these issues are not subject to any update limitation, many market makers actively compete for order flow by entering and updating firm quotations in domestic securities during the Service's business hours.

In addition, the NASD noted that some market makers have attempted to attract business by entering non-firm bids slightly better than the highest firm bid. When contacted about trading at the apparently "superior" price, the market maker expressed a willingness to transact at the highest firm bid rather than the indicative price. Because the superior price was not firm, the market maker could not be held to the bid he had entered. This practice may result in some diversion of order flow away from other market makers entering competitive, firm prices in the same security. More importantly, it detracts from the overall reliability of priced quotations being displayed in the Service for domestic issues. The NASD, therefore, decided to eliminate a market maker's option of displaying non-firm priced bids/offers in the Service for any domestic, non-NASDAQ security.

On October 15, 1990, the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act") was singed into law.[5] Among other things, the Reform Act amended the Securities Exchange Act of 1934 by adding new Section 17B, which requires the Commission to facilitate the development of one or more automated quotation systems for the collection and dissemination of information for all penny stocks. The findings in Section 17B note the lack of reliable and accurate quotation and last sale information for investors in "penny stocks."[6] That section also states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to improve significantly the information available with respect to quotations for and transactions in penny stocks. Finally, Congress found that a fully implemented automated quotation system would meet the information needs of investors and market participants and would add visibility to the penny stock market, as well as provide regulatory and surveillance data.

Section 17B, therefore, directs the Commission to "facilitate the widespread dissemination of reliable and accurate last sale and quotation information * * * with a view toward establishing, at the earliest feasible time, one or more automated quotation systems that will collect and

[2] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] See Securities Exchange Act Release No. 28940 (March 6, 1991), 56 FR 10602.

[3] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19134. On May 3, 1991, the NASD submitted a proposed rule change to obtain authorization for an interim extension of the Service through November 30, 1991. See File No. SR-NASD-91-21.

[4] For example, the months of December 1990, and January 1991, revealed that firm prices (consisting of one and two-sided entries) were associated with 71.4% and 77% of total market maker positions, respectively.

[5] Securities Enforcement Remedies and Penny Stock Reform Act of 1990, signed October 15, 1990, Public Law 101-429, 15 U.S.C. 78q-2 (1990).

[6] "Penny stock" is defined in the legislation, subject to rules to be written by the Commission, as generally encompassing any stock other than: (a) Securities listed on an exchange that meet Commission criteria; (b) securities quoted on NASDAQ that meet Commission criteria; (c) registered investment companies; and (d) securities excluded by the Commission on the basis of a minimum price, net tangible assets or other criteria. The Commission proposed rules to implement the legislation on April 17, 1991. See Securities Exchange Act Release No. 29093.

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disseminate information regarding all penny stocks." [7] Paragraph (b)(2)(C) of Section 17B provides that such a system collect and disseminate quotation and transaction information and provide firm bid and ask quotations of participating brokers and dealers. Paragraph (b)(2)(D) of this Section further states that an automated quotation system should also provide for the reporting of the volume of penny stock transactions, including last sale reporting when the volume reaches a certain level as specified by the Commission.

Congress also recognized that the NASD already had taken steps to increase the availability of trade and quotation data for surveillance purposes and to improve the quality of the market for these securities. Most notably, Congress acknowledged the development of the NASD's OTC Bulletin Board.[8]

The Commission has determined that it is appropriate to approve the NASD's proposed rule change because the Commission believes it is consistent with sections 15A(b) (6) and (11) of the Act.[9] Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to promote just and equitable principles of trade, to facilitate transactions in securities, and to protect investors and the public interest. Section 15A(b)(11) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter. Such rules should produce fair and informative quotations, prevent misleading quotations, and promote orderly procedures for collecting and disseminating quotations.

By requiring that all quotations for domestic issues entered into the system be firm, the NASD is furthering the execution of customer orders at the best available price and fair dealing among the Service market makers. This capability should enhance the efficiency of pricing and will assist market makers in negotiating the execution of customer orders at the best available price. The Commission also notes that the requirement that participants enter firm bid and ask prices makes the Bulletin Board closer to the automated quotation system envisioned by Section 17B of the Act.[10]

In light of these factors, the Commission believes that it is appropriate to approve the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2), of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: May 31, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15113 Filed 6-25-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29344; File No. SR-NASD-91-20]

Self-Regulatory Organization; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Forwarding of Material on the Issuer's Behalf to Beneficial Owner of NASDAQ Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 29, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change. The NASD subsequently filed an amendment thereto on June 11, 1991.[1] The proposed rule change is described in items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed rule change amends the Interpretation of the Board of Governors—Forwarding of Proxy and Other Materials, Article III, section 1 of the NASD Rules of Fair Practice to create a uniform standard of duty among NASD members to forward material to beneficial owners furnished by the NASDAQ company that is the issuer of the securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The NASD has become aware that a disparity exists among different NASD members regarding their duty to forward beneficial owners the proxy and other material furnished by the NASDAQ company that is the issuer of the securities. The current Interpretation of the NASD Board of Governors—Forwarding of Proxy and Other Materials to Article III, section 1 of the Rules of Fair Practice ("Interpretation") limits the duty of a member to forward material furnished to it by the issuer of the securities to "all proxy material, annual reports, information statements and other material required by law to be sent to stockholders periodically." Currently, NASD members who are members of the New York Stock Exchange ("NYSE") are held to a broader standard under NYSE Rule 465 that requires a member organization to forward "copies of interim reports of earnings and other material being sent to stockholders." NYSE Rule 465 does not reference underlying requirements of law as a prerequisite of the NYSE member's duty to forward material. Under section 10 to the Supplementary Material to NYSE Rule 465, the duty of the NYSE member applies to forwarding material for both listed and unlisted companies.[2]

A NASDAQ company requesting that material be forwarded to its beneficial owners may receive different levels of service from certain NASD members resulting from the application of NYSE Rule 465 to NASD members that are NYSE-affiliated and the NASD standard of duty imposed on NASD members that are not affiliated with the NYSE. To eliminate the potential disparity of service to NASDAQ companies, the NASD is proposing to amend the Introduction to the Interpretation to reflect the same standard as the NYSE.

Currently, NASD members are reimbursed for expenses incurred in forwarding other material pursuant to section 4 of the Interpretation. The NASD proposes to amend section 4 and the appendix to the Interpretation to clarify the application of the reimbursement rate to the additional material required to be forwarded under this proposed amendment.

Finally, the NASD is proposing two minor changes to the language of the Introduction to the Interpretation that would add a comma and delete the word "therefore."

(b) The proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires, among other things, that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: June 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15120 Filed 6-25-91; 8:45 am]

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[Release No. 34-29339; File No. SR-NASD-91-26]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Preferencing Orders in the Small Order Execution System

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 1991, the National Association of Securities Dealers, Inc. ("NASD" or Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the Rules of Practice and Procedure of the Small Order Execution System ("SOES") to allow market makers to decline preferencing by order entry firms.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing to amend the Rules of Practice and Procedure for the Small Order Execution System to permit preferencing of orders to market makers only when those market makers agree to be preferenced. SOES is designed to improve the efficiency of executing small-sized customer orders in NASDAQ securities by offering an alternative to traditional telephone negotiation with market makers.[2] SOES provides automated execution of small customer orders with NASDAQ market makers at the best available market price in one of two ways—a preferenced order may be routed to a particular market maker in the stock and will be executed at the best posted bid or offer in the system (the inside quote), or an unpreferenced order will be executed against any market maker at the price in the security.

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[1] 15 U.S.C. 78-2 (1990).

[8] H.R. 5325, 101st Cong., 2nd Sess. (1990), ("House Report").

[9] 15 U.S.C. 78o-3 (1982).

[10] Because, the Reform Act directs the Commission to facilitate the dissemination of quotation and last sale information through one or more automated quotation systems, the Commission staff has requested that the NASD ascertain what other steps it will take to conform the Bulletin Board to the requirements for penny stock quotation systems in Section 17B. Specifically, the Commission staff has recommended that the NASD consider making available certain transaction information reported pursuant to Schedule H of the NASD By-Laws.

[11] 17 CFR 200.30-3(a)(12).

[1] See letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Katherine A. England, Branch Chief, SEC, dated June 11, 1991.

[2] See also NYSE Rule 451 which contains a broader standard for forwarding proxy information than that required by the NASD's Rules of Fair Practice. The NASD has agreed to take this issue to the appropriate NASD committees for discussion.

[1] On April 18, 1991, the NASD filed a proposed rule change in File No. SR-NASD-91-18 which would, among other things, clarify that if a market maker declines preferencing, and order preferenced to that market maker shall be executed on an unpreferenced basis (*i.e.*, in rotation against other market makers, if any). See Securities Exchange Act Release No. 29182 (May 9, 1991), 56 FR 22498 (May 15, 1991). The instant proposed rule change, if approved, would amend the proposed rule in File No. SR-NASD-91-18 by clarifying that an order received by a market maker from an order entry firm from which it has not agreed to accept preferencing will be executed at the inside market on an unpreferenced basis.

[2] The NASD has recently filed three proposed rule changes that attempt to remedy alleged abuses of SOES. See, NASD-90-88, Securities Exchange Act Release No. 28709 (December 19, 1990), 55 FR 53224 (December 27, 1990); NASD-91-17, Securities Exchange Act Release No. 29181 (May 9, 1991), 56 FR 22495 (May 15, 1991); and NASD-91-18, Securities Exchange Act Release No. 29182 (May 9, 1991), 56 FR 22498 (May 15, 1991).

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Preferencing orders to specific market makers was originally permitted in SOES to accommodate the established order routing practices in the market, so that order entry firms and market makers could continue their order routing arrangements using SOES. Because any order entered into SOES is assured the "best" market price for execution, preferenced orders are executed at the inside bid and or offer regardless of the price being quoted by the market maker receiving the order. This assurance of "price protection" to all orders entered into SOES was and is a key element in the operation of the system.

Currently, market makers may decide to accept preferencing on a stock-by-stock basis, but if a market maker elects to accept preferencing in a stock, it is required to accept all orders preferenced to it from all order entry firms and must execute any such preferenced order at the inside quotation. Abuses occur in SOES when one market maker is slow in updating a quotation and preferenced market makers are forced to execute trades at the quotation of the market maker that is not monitoring the market. This occurs in fast moving markets, where the market maker's quote that has not been updated establishes an inside quotation not truly reflective of the changing market or of the other market makers' updated quotations. An order sent to a preferenced market maker must be executed at this inside quotation, notwithstanding the fact that the market maker may have changed its quotes in a timely manner.

The NASD has received reports that some order entry firms may preference market makers purposefully and opportunistically to cause executions at the untimely inside quotation, thus abusing the original intent of the preferencing allowances. To remedy this situation the NASD is recommending that market makers be provided the same flexibility to accept preferenced executions on a firm-by-firm basis as is now provided with the stock-by-stock criteria currently in place. With this enhanced flexibility, market makers would execute preferenced orders at the inside quotation from order entry firms that they have agreed to acknowledge, and the system would treat all other preferenced orders on an unpreferenced basis.

This modification to the system would have no impact on the orders being executed within SOES—orders entered would receive the same quality execution as they do in the system today. To summarize:

- Execution of orders preferenced to market makers by order entry firms is required only when mutually agreed upon by both parties to the transaction; and
- Preferenced orders to market makers that have not agreed to accept preferencing from the particular order entry firm will be executed in SOES as if unpreferenced, that is, on a rotational basis against market makers at the best posted bid or offer in the system.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." SOES operates to facilitate automated executions of customer orders and the NASD believes the proposed amendment will curb misuse of the system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: June 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15117 Filed 6-25-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28326; File No. SR-PSE-91-20]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing and order Granting accelerated Approval to Proposed Rule Change Extending Effectiveness of Ten-Up Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") on June 4, 1991, filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to extend the Exchange's Trading Crowd Firm Disseminated Market Quote ("ten-up Rule) pilot program through November 15, 1991.[3]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The Exchange's ten-up Rule requires PSE trading crowds to provide a depth of ten contracts for all

Continued

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In May 1990, the Commission approved the exchange's ten-up Rule on a one-year basis.[4] The PSE is now requesting a six-month extension of the current program through November 15, 1991, in order to fully assess the effectiveness of the program. Upon completion of its evaluation, the PSE will submit a proposal requesting permanent approval of the rule.

The PSE reports that, since its inception, the ten-up Rule has enhanced the Exchange's marketplace in several ways. First, the implementation and enforcement of the rule has resulted in the protection of public investors through better guaranteed executions for their orders. Second, the program, by promoting public interest, has aided the Exchange in maintaining its competitiveness as a marketplace.

The PSE believes the proposed rule change is consistent with section 6(b)(5) of the Act, in that it promotes just and equitable principles of trade and protects the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulation thereunder, and, in particular, the requirements of section 6, 11(b), and 11A thereunder, in that it will result in improved quality of PSE options markets and better market maker performances. The ten-up Rule provides public customers with the assurance of order execution to a minimum depth of ten contracts at the best disseminated bid or offer. This results in better executions of small customer orders by ensuring greater depth to the PSE options markets.[5]

Before seeking permanent approval of the ten-up Rule, the Commission expects that the Exchange will study the operation of the ten-up Rule and its effect, if any, on the PSE's options market. Specifically, the Exchange should study the effect of the ten-up Rule on the speed of execution of trades, its impact on average bid ask spreads and any increase or decrease in market depth. The Commission also expects that the Exchange will provide a report to the Commission of its findings on these matters, along with any violations of the ten-up Rule and any complaints about its operations, prior to filing a proposal for the permanent approval of the ten-up Rule.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register because of the importance that the Ten-Up pilot program continue uninterrupted. A six-month extension of the pilot also will provide the PSE with additional time to study the effectiveness of the ten-up Rule in improving the quality of PSE options markets and market maker performance. The PSE's study would be a significant factor in the commission's analysis of any PSE filing proposing permanent approval of the ten-up Rule. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-91-20 and should be submitted by July 17, 1991.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR-PSE-91-20) is approved until November 15, 1991, on an accelerated basis.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.

Dated: June 17, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15118 Filed 6-25-91; 8:45 am]

BILLING CODE 8010-01-M

[Docket No. 34-29343; File No. SR-PHLX-91-09]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Fines for Violations of Order and Decorum Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 9, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Regulation 4—Order, an order and decorum regulation enacted under PHLX Rule 60, to impose a $50 fine for the first occurrence of disorderly conduct, a $1,000.00 fine for abuse of the Exchange's paging system, a $250.00 fine for inciting physical abuse, a $500.00 fine for minor acts of physical abuse (*e.g.*, pushing) and a $1,000.00 fine majors act of physical abuse (*e.g.*, pushing).

non-broker/dealer customer orders, at the disseminated market quote at the time such orders are announced or displayed at a trading post. See Securities Exchange Act Release No 28021 (May 18, 1990), 55 FR 21131 (Ten-Up Approval Order).

[4] *Id.*

[5] *Id.*

[6] 15 U.S.C. 78s(b)(2) (1982).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHLX Regulation 4—Order, an order and decorum regulation enacted under PHLX Rule 60,[1] currently imposes a $1,000.00 fine for carrying firearms on the trading floor and a $1,000.00 fine for each occurance of fighting or other physical abuse. PHLX Rule 60 also establishes a schedule of fines imposed for acting in a disorderly manner. The PHLX proposes to amend Regulation 4 to impose a $50.00 fine for the first occurrence of disorderly conduct, a $1,000.00 fine for abuse of the Exchange's paging system, a $250.00 fine for inciting an incident of physical abuse, a $500.00 fine for minor acts of physical abuse (*e.g.*, pushing) and a $1,000.00 fine for major acts of physical abuse (*e.g.*, pushing). Specifically, with respect to actual fighting, each abusive incident will be classified as constituting either a minor or major incident of physical abuse. Pushing, for example, is a minor act of physical abuse, and will carry a fine of $500; punching is a major act of physical abuse, and will carry a fine of $1,000.00. Under the proposal, a Floor Official will determine whether an incident constitutes a major or minor act of physical abuse. The PHLX will endorse Regulation 4 by issuing a fine for a single fight, not for each blow dealt in the fight.[2] Where an act of physical abuse is deemed particularly egregious, or where an individual has established a pattern of Order violations, two Floor Officials may refer the matter to the Business Conduct Committee, which may impose additional fines and sanctions. The PHLX seeks to expand the application of Regulation 4 to better maintain order on the Exchange's trading floor, including the safety, health and security of all persons present on the trading floor.

In addition, the proposal provides several additions to expand the scope of Regulation 4, including a $1,000.00 fine for abuse of the paging system on the trading floor. The paging system is accessible from most floor post locations by telephone, connecting the speaker to a public address system audible throughout the equity options trading floor and contiguous areas. The PHLX believes that abusing the system prevents its intended use as a means of communicating with Exchange participants for Exchange related purposes and also disrupts ordinary floor operations by distracting and disturbing those present on the floor.

In order to deter fighting, the PHLX also proposes a fine of $250.00 for inciting physical abuse. The PHLX believes that thwarting fights by punishing the participants afterward is insufficient; the deterrence also should begin at the provocation stage. For example, if X provokes B into fighting with A, X has violated the proposed rule and shall incur a fine of $250, whether or not A and B actually fight.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and futhers the objectives of Section 6(b)(5), in particular, in that it is designated to promote just and equitable principles of trade and to maintain a fair and orderly market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5) and (6) thereunder because the proposal provides appropriate sanctions for members who violate the rules of the Exchange and because the proposal is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. The Commission believes that the addition of fines for abuse of the Exchange's paging system, for inciting physical violence, and for the first occurrence of disorderly conduct provides a reasonable means by which the Exchange may prevent disruptive conduct and maintain order and safety on its trading floor. By preventing disruptive conduct, the proposal should enhance the ability of PHLX members to engage in transactions in securities, thereby contributing to fair and orderly markets and the efficient execution of transactions. In addition, the classification of physical violence into major and minor incidents of abuse, which carry fines of $1,000.00 and $500.00 per occurrence, respectively, will provide appropriate sanctions for different levels of misconduct. Because the proposal defines the scope of prohibited conduct, provides notice to members, and is tailored to serve a legitimate Exchange regulatory interest, the proposal provides fair and reasonable procedures for the regulation of trading floor conduct.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice thereof in the Federal Register because of the importance of maintaining order on the Exchange's trading floor. The Exchange must provide an orderly trading floor in order to maintain the quality of its markets. The proposed rule change is designed to prevent disruptive conduct on the trading floor, and is vital to ensuring the orderly operation of the Exchange. Accordingly, the Commission believes that good cause exists to approve the rule filing on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1991.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[3] that the proposed rule change (SR-PHLX-91-09) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-1514 Filed 6-25-91; 8:45 am]

BILLING CODE 8010-01-M

[1] PHLX Rule 60 authorizes Floor Officials and Exchange Officials to impose on members and member organizations assessments of up to $1,000.00 per occurrence for breaches of regulations relating to order, decorum, health, safety and welfare on the Exchange. In addition, PHLX Rule 60 allows two Floor Officials to refer a matter to the Business Conduct Committee, which may impose additional fines and sanctions.

[2] See letter from Edith Helman, Law Clerk, PHLX, to Thomas Gira, Branch Chief, Options Regulation, SEC, dated June 10, 1991.

[3] 15 U.S.C. 78s(b)(2) 1988.

[Release No. 34-29324; File No. SR-PHLX-91-16]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc., Relating to Options Floor Procedure Advice A-13—Auto Execution Engagement/Disengagement Responsibility

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX") or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to adopt new Options Floor Procedure Advice ("OFPA") A-13, entitled "Auto Execution Engagement/Disengagement Responsibility," which will require options specialists to activate the Automatic Execution ("Auto-X") feature of the Exchange's Automated Options Market ("AUTOM") system [1] within three minutes of concluding an opening or reopening rotation of an options class and provide that options specialists may only disengage Auto-X under extraordinary circumstances with the prior approval of two Floor Officials. The text of the proposed rule change is available at the Office of the Secretary, PHLX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to adopt new OFPA A-13 to govern the engagement and disengagement of Auto-X. Currently, floor operations personnel activate Auto-X, and each specialist must contact this staff in order to activate or deactivate Auto-X. In the future, the PHLX intends to implement a mechanism which will allow each specialist to activate Auto-X from each trading post on the floor. Under proposed OFPA A-13, each option specialist will be required to engage Auto-X for an assigned option within three minutes of completing the opening or reopening rotatation of that option. This three-minute time frame corresponds to the period when the duty to provide ten-up markets begins.

In addition, the proposal provides that a specialist may be exempted from receiving orders through Auto-X under extraordinary circumstances, and may disengage the system upon approval by two Floor officials.

Proposed OFPA A-13 provides the following schedule of fines and sanctions for failure to engage Auto-X: (1) A warning for the first occurrence; (2) fines in the amount of $100.00, $250.00, and $500.00, respectively, for the second, third and fourth occurrences; and (3) a sanction discretionary with the Business Conduct Committee for the fifth occurrence and subsequent violations. The proposal also imposes a $500.00 fine for the first failure to disengage Auto-X without prior approval, and a sanction discretionary with the Business Conduct Committee for subsequent violations.

The PHLX states that the purpose of the proposed rule change is to maximize floor-wide use of the Auto-X feature of AUTOM so that the system's benefits may be extended to more PHLX member firms and customers. The PHLX represents the AUTOM and Auto-X increase the speed and efficiency of routing and executing orders on the PHLX. Thus, the PHLX maintains that the proposed rule change is consistent with the Act, and, in particular, with section 6(b)(5), because it is designed to foster coordination among those facilitating transactions in and processing information regarding securities and because it is designed to prevent fraudulent and manipulative acts and practices by providing a uniform standard for options specialists to activate and deactivate Auto-X.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

[1] AUTOM is an electronic system that allows delivery of small options orders from member firms directly to the PHLX trading floor and also provides automatic execution for certain options orders.

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(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number of the caption above and should be submitted by July 17, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 17, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15116 Filed 6-25-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2511 and #2512]

Kentucky (With Contiguous Counties in Tennessee); Declaration of Disaster Loan Area

Logan County and the contiguous counties of Butler, Muhlenberg, Simpson, Todd, and Warren in the State of Kentucky and Robertson County in the State of Tennessee constitute a disaster area as a result of damages caused by tornadoes, severe storms, torrential rains, and flooding which occurred between March 22 and April 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 12, 1991 and for economic injury until the close of business on March 12, 1992 at the address listed below: Disaster Area 2 Office, Small Business Administration, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Business and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small Agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 251112 for Kentucky and 251212 for Tennessee. For economic injury the numbers are 733000 for Kentucky and 733100 for Tennessee.

(Catolog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated June 12, 1991.

June M. Nichols,

Acting Administrator.

[FR Doc. 91-15233 Filed 6-25-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2508, #2509, #2510]

South Dakota (With Contiguous Counties in Minnesota & Iowa); Declaration of Disaster Loan Area

Minnehaha County and the contiguous counties of Lake, Lincoln, McCook, Moody, and Turner in the State of South Dakota; Pipestone and Rock Counties in the State of Minnesota; and Lyon County in the State of Iowa constitute a disaster area as a result of damages caused by a fire which occurred in the Hanson Office Building in the City of Sioux Falls on May 25, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 12, 1991 and for economic injury until the close of business on March 12, 1992 at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 250805 for South Dakota; for Minnesota; and 251005 for Iowa. For economic injury the numbers are 732300 for South Dakota; 732400 for Minnesota and 732500 for Iowa.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 12, 1991.

June M. Nichols,

Acting Administrator.

[FR Doc. 91-15231 Filed 6-25-91; 8:45 am]

BILLING CODE 8025-01-M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is 9⅛ percent for the fiscal quarter beginning July 1, 1991.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-1(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the July-September quarter of FY 91, this rate will be 8⅛ percent.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 91-15232 Filed 6-25-91; 8:45 am]

BILLING CODE 8025-01-M

National Advisory Council Public Meeting

The U.S. Small Business Administration, National Advisory Council, will hold a public meeting from 6 p.m. on Wednesday, July 10, to 12 noon

on Friday, July 12, 1991, at the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, Office of Advisory Councils, U.S. Small Business Administration 409 3rd Street, SW, Washington, DC 20416, telephone (202) 205-6434.

Dated: June 20, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-15230 Filed 6-25-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[BS-AP-NO. 3041]

Consolidated Rail Corp.; Public Hearing

The Consolidated Rail Corporation has petitioned the Federal Railroad Administration (FRA) seeking approval of the following: The proposed discontinuance and removal of the traffic control system on the single main track from Hornell, New York, Case Street Interlocking, milepost 331.0, to Salamanca, New York, "WC" Interlocking, milepost 414.0, on the Meadville Line of the Albany Division; classify the main track as a secondary track; and operate under manual block signal system rules with block limit stations at Wells, milepost 358.5, Cuba, milepost 383.8, and Sal, milepost 410.7. This proceeding is identified as FRA Block Signal Application Number 3041.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Thursday, August 22, 1991, in room 165 of the New York State Office Building located at 107 Broadway Street in Hornell, New York. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on June 18, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91-15090 Filed 6-25-91; 8:45 am]

BILLING CODE 4910-06-M

[BS-AP-NO. 3068, 3071, and 3072]

Wheeling and Lake Erie Railway Co. Public Hearing

The Wheeling & Lake Erie (W&LE) Railway Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the following: the proposed discontinuance and removal of the traffic control system on the railroad formerly known as the Pittsburgh and West Virginia, from Pittsburgh Junction, Ohio, milepost C-111.20 to Cesnellsville, Pennsylvania, milepost C-0.00, including the Mifflin Branch (3.5 miles) and the Clairton branch (5.8 miles); the proposed discontinuance and removal of the traffic control system from Richville, Ohio, milepost CZ 65.9, to Run Junction, Ohio, milepost CZ 72.1, on the Canton District of the W&LE Railway Company; and the proposed discontinuance and removal of the traffic control system from Adena, Ohio, milepost T-182.9 to Rexford, Ohio, milepost T-184.1 on the Valley Branch, Pittsburgh Division. These proceedings are identified as FRA Block Signal Application Numbers 3068, 3071, and 3072 respectively.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Tuesday, August 20, 1991, in room 2212 of the William S. Moorhead Federal Building located at 1000 Liberty Avenue in Pittsburgh, Pennsylvania. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one, and will be conducted in accordance with rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on June 18, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91-15089 Filed 6-25-91; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

Change of Name and Removal From Roster of Approved Trustees

Notice is hereby given pursuant to 46 CFR part 221 that on October 1, 1990, First Pennsylvania Bank, N.A., SE. Corner, 15th and Chestnut Streets, Philadelphia, Pennsylvania, merged with and into the entity previously named the Philadelphia National Bank, Broad and Chestnut Streets, Philadelphia, Pennsylvania. As the survivor of said merger, the Philadelphia National Bank changed its name to CoreStates Bank, N.A., and continues on the Roster of Approved Trustees under its new name. Therefore, the old entity named First Pennsylvania Bank, N.A., is removed from the Roster of Approved Trusteers, pursuant to Public Law 100-710 and 46 CFR 221.55 (successor to Public Law 89-346 and 46 CFR 221.221.30).

Dated: June 20, 1991.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 91-15202 Filed 6-25-91; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966 (the Act), as amended (15 U.S.C. 1381 *et seq.*)

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The Center for Auto Safety (CAS) submitted a petition dated February 19, 1991, requesting NHTSA to investigate the automatic shoulder belts of 1988 Sterling 825 SL vehicles. As the basis for the petition, CAS submitted two similar reports of chronic automatic shoulder belt failures on these vehicles.

On May 14, 1991, NHTSA received a safety defect information report from Sterling Motor Cars (Sterling) stating that Sterling would conduct a safety-related defect remedy campaign covering all Sterling 825 SL vehicles, model years 1987 and 1988, equipped with automatic shoulder belts (NHTSA Recall No. 91V-077). Through an upgrade campaign (referred to as Action Code F750 by Sterling) which started in December 29, 1988, Sterling replaced the belts on 65 percent and 72 percent of model year 1987 and 1988 vehicles, respectively, with the belts used in 1989 and later model year vehicles. Therefore, Sterling will notify only the remaining owners of these vehicles to replace the belts with the belts useds in 1989 and later model year vehicles. Because the manufacturer has taken action to remedy all model year 1987 and 1988 vehicles, including a recall action under the requirements of the Act, CAS's petition was denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8

Issued on: June 13, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91-15103 Filed 6-25-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 238]

Delegation of Authority in the Actuarial Resolutions Program

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Delegation Order No. 238 permits authority to be delegated to EP/EO Division Chiefs to enter into Closing Agreements relating to Internal Revenue Liability in cases under the Actuarial Resolutions Program. The authority delegated extends to the penalties and excise taxes arising out of or relating to the pension deductions at issue. The agreements may address to total tax liability of the person for the years at issue. The Chief, EP/EO Division is authorized to redelegate his authority to EP/EO Management Officials not below grade GM-13. The text of the delegation order appears below.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Monty Wolf, E:O:E, room 2238, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 566-6361 (not a toll free call).

[Order No. 238]

Effective Date: July 1, 1991.

Delegation of Authority in the Actuarial Resolutions Program

The authority vested in the Commissioner of the Internal Revenue by 26 CFR 301.6020-1, 26 CFR 301.7121-1(a), 26 CFR 301.7701-9, and Treasury Order No. 150-7, Treasury Order No. 150-9, and Treasury Order No. 150-10, as revised, authorizes the execution of closing agreements with taxpayers on EP actuarial cases with respect to the tax liability resulting from adjustments to the pension deduction (Actuarial Resolutions Program), and is hereby delegated as follows:

1. The Assistant Commissioner (EP/EO), the Assistant Regional Commissioners (Examination), and District Directors are hereby authorized in cases under their jurisdiction to enter into and approve a written agreement with any person or persons relating to the Internal Revenue liability of such person or persons (or of the person or persons or estate for whom he/she acts) to close cases under the Actuarial Resolutions Program. The authority delegated herein extends to the penalties and excise taxes arising out of or relating to the pension deductions at issue. The agreements may address the total tax liability of the person for the years at issue. The agreements will be Agreements as to Specific Matters and as to Final Determinations of Tax Liability.

2. The Assistant Regional Commissioners (Examination) and the District Directors may redelegate their authority over these cases (including TEFRA Partnership Key cases and the related Investor cases) to the Chief, EP/EO Division, in the Key District Office in their region/district. The Chief, EP/EO Division, is authorized to further redelegate his/her authority to EP/EO Management Officials not below grade GM-13.

3. This delegation order will remain in effect until such time as the Actuarial Resolutions Program is withdrawn by the Internal Revenue Service.

Dated: June 14, 1991.

David G. Blattner,

Chief Operations Officer.

[FR Doc. 91-15149 Filed 6-25-91; 8:45 am]

BILLING CODE 4830-01-M

Performance Review Board

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective June 2, 1991.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 566-4633 (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives other than Regional Commissioners, Assistant Commissioners and executives in Inspection and the Office of the Commissioner are as follows:

Michael J. Murphy, Deputy Commissioner, Chairperson.
Elmer Keltke, Regional Commissioner, Midwest Region.
Leon Moore, Regional Commissioner, Central Region.
Helen L. White, Assistant to the Commissioner (Equal Opportunity).
Robert T. Johnson, Assistant Commissioner (Human Resources and Support).
Walter A. Hutton, Jr., Assistant Commissioner (Information Systems Management).
Inar Morics, Assistant Commissioner (Criminal Ivestigation).

This document does not meet the criteria for significant regulations set forth in paragraph 6 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978 (43 FR 52122).

Frederick T. Goldberg, Jr.,

Commissioner.

[FR Doc. 91-15148 Filed 6-25-91; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 123
Wednesday, June 26, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 24, 1991.

A closed meeting will be held on Tuesday, June 25, 1991, at 2:30 p.m. An open meeting will be held on Thursday, June 27, 1991, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 25, 1991, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Formal order of investigation.
Withdrawal of injunctive action.

The subject matter of the open meeting scheduled for Thursday, June 27, 1991, at 10:00 a.m., will be:

The Commission will hear oral argument on appeals from the decision of an administrative law judge by Donald T. Sheldon, president of both Donald Sheldon & Co., Inc., a registered broker-dealer, and Donald Sheldon Government Securities, Inc., a dealer in U.S. Government-backed securities; Bruce W. Reid, branch manager of the firms' Houston office; and the Commission's Division of Enforcement. For further information, please contact Kermit B. Kennedy at (202) 272-7400.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jonathan Gottlieb at (202) 272-2200.

Jonathan G. Katz,

Secretary.

Dated: June 14, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15331 Filed 6-24-91; 2:20 pm]

BILLING CODE 8010-01-M

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Corrections

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Vol. 56, No. 26
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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-91-330]

RIN 0581-AA19

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products Regulations Governing Inspection and Certification

Correction

In rule document 91-11458 beginning on page 27898 in the issue of Tuesday, June 18, 1991, make the following correction:

§ 52.51 [Corrected]

On page 27899, in § 52.51(d)(1), "$35.50" should read "$34.50".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[AT556-37]

Availability of Final Toxicological Profiles

Correction

In notice document 91-14176 beginning on page 27261, in the issue of Thursday, June 13, 1991, make the following correction:

On page 27262, in the second column of the table, in the sixth line from the bottom, "PB/91/18180468/AS" should read "PB/91/180468/AS".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-940-4214-10; NMNM 86060]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

Correction

In notice document 91-13465 appearing on page 26436, in the issue of Friday, June 7, 1991, in the second column, in land description New Mexico Principal Meridian, in the third line "50" should read "40".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 570

Kuwaiti Assets Control Regulations

Correction

In rule document 91-13521 beginning on page 26034 in the issue of Thursday, June 6, 1991, make the following correction:

§ 570.603 [Corrected]

On page 26035, in the second column, in amendatory instruction 3, "570.602" should read "570.603".

BILLING CODE 1505-01-D

federal register

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Part II

Department of Agriculture
Forest Service
36 CFR Part 242

Department of the Interior
Fish and Wildlife Service
50 CFR Part 100

1991-1992 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska; Final Temporary Rule

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

1991-1992 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska, Final Temporary Rule

AGENCY: Forest Service, USDA. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the Temporary Subsistence Management Regulations for Public Lands in Alaska implementing the subsistence priority for rural residents of Alaska under title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 by making limited changes to subpart D to provide for the seasons and bag limits for the 1991-92 regulatory year, and by simplifying previous language. The changes are necessary because the Temporary Regulations were specific to conditions and biological knowledge that existed previously, the situation with regard to this program is changing rapidly, and opportunities exist to reduce public confusion relative to the program. This action clarifies the regulations and makes them more attuned to the subsistence user relative to the present status of wildlife populations, while still providing adequate protection for the fish and wildlife populations on public lands. Subpart D must be used in conjunction with subparts A, B and C.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3447. For questions specific to National Forest System lands, contact Norman Howse, Assistant Director, Subsistence, USDA—Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802; telephone (907) 586-8890.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3128) requires the Secretary of the Interior and the Secretary of Agriculture (Secretaries) to implement a joint program to grant a preference in favor of subsistence uses of fish and wildlife resources on public lands unless the State of Alaska enacts and implements laws of general applicability consistent with ANILCA's requirements for the definition, preference and participation specified in sections 803, 804 and 805. The State implemented such a program which the Department of the Interior previously found to be consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result of that decision, the Department of the Interior and the Department of Agriculture (Departments) were required to take over the implementation of title VIII of ANILCA on Federal public lands on July 1, 1990. On June 29, 1990 the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the Federal Register (55 FR 27114). This program is administered by a Federal Subsistence Board (Board) made up of representatives of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs and USDA-Forest Service. These five agencies within the Federal Government are responsible for management of lands covered by title VIII of ANILCA. All agencies cooperatively developed these regulations. All Board members have reviewed this rule and concur in its implementation. Because these regulations relate to lands managed by agencies in both the Departments of Agriculture and the Interior, identical text is hereby incorporated into 36 CFR part 242 and 50 CFR part 100.

These season and bag limit changes will impact the subsistence uses of fish and wildlife resources on Federal public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, USDA-Forest Service, Bureau of Indian Affairs, Air Force, Army and various other Federal land managing agencies.

The Board has realized that changes were needed in the seasons and bag limits in subpart D, to protect various wildlife populations, recognize changes in population status, better meet the needs of the subsistence users, and to simplify the earlier regulations. Because of these problems, the Board issued on December 15, 1990, a notice calling for proposed changes to the seasons and bag limits for the regulatory period beginning July 1, 1991. The closing date for these proposals was January 15, 1991. The Board received 162 proposals which were then examined by an interagency Staff Committee. A number of those proposals were beyond the scope of regulation changes for the 1991-92 season. These included proposals to change the structure of Federal subsistence management, proposals dealing with the advisory council system, proposals addressing navigable waters, and proposals which address customary and traditional determination issues. There were 104 such proposals, which the Board referred to the environmental impact statement team and other members of the subsistence staff preparing final regulations and reviewing public comment on these specific subjects.

The remainder of the proposals were closely examined by the Board during a public meeting conducted March 4-7, 1991. At that time, comments were solicited on each proposal and the Board took formal action to propose regulations. The Proposed Regulations were published in the Federal Register (56 FR 15402) on April 16, 1991, and a public hearing to receive comments was conducted in Anchorage on April 24, 1991. Because of the short time available, the opportunity for public review and comment after publishing in the Federal Register was limited.

An extension of the effective date of the Temporary Federal Subsistence Management Regulations would provide adequate time for a detailed public review period during the development of permanent regulations and preparation of an environmental impact statement, and to align the regulations with the traditional regulatory year within the State of Alaska. A separate rulemaking to extend the Temporary Regulations will be pursued soon. Consequently the seasons and bag limits herein reflect a complete regulatory year although they presently will expire on December 1, 1991. During the public comment period for the Temporary Regulations, numerous entities were concerned about the short review period and requested more review time during the development of the final regulations. Historically, the regulatory year for hunting and fishing regulations begins on July 1 of each year. A six month extension will align the regulations to what has been customary and provide for ample public review of the final regulations and impact statement during their development.

Although the changes herein are quite lengthy, much of the material is merely a reformatting of prior regulations to make the rules more readable and understandable by the user. The new format organizes the regulations geographically by Game Management Unit and then by species within each unit. This new format will allow a user to easily determine the regulation that affects him or her by reading under the Game Management Unit in which he or she may be hunting.

Subpart D continues to adopt extensively existing State regulations dealing with methods and means of take. The State regulations are codified in title 5 of the Alaska Administrative Code. In many cases the language is verbatim from the State regulations. In other cases minor modifications have been made to make the regulation specific to this Federal program or Federal public lands. Subpart D must be used in conjunction with subparts A-C which remain valid. These temporary regulations attempt throughout to limit change from the State regulations to that necessary to fulfill the Secretaries' responsibilities pursuant to title VIII.

Summary of Comments

There were 8 persons who offered oral comments at the meeting, and the Board received an additional 21 written comments from the public.

Analysis of Comments

(a) Alaska National Interest Lands Conservation Act

Several people commented that they felt the ANILCA subsistence preference for rural residents of Alaska was unconstitutional and objected to the establishment of these regulations which allow for rural subsistence priority. Several comments called for an amendment to ANILCA.

ANILCA mandates a priority for subsistence uses by rural residents on public lands. The Departments of the Interior and Agriculture have no authority to make any other interpretation since the rural priority is a provision of Federal law. Until such time as the law is changed, the Federal government must provide a subsistence priority to rural Alaskan residents for use of fish and wildlife resources on public lands.

(b) Definition of Public Lands

There were comments on the exclusion of navigable waters from the definition of public lands. There was a great deal of concern that the exclusion of navigable waters eliminated the majority of subsistence fishing, critical to the well being of rural communities. Some concerns here expressed also that the sport take of migratory species on State lands affects their numbers for subsistence purposes on public lands.

The United States generally does not hold title to navigable waters and thus navigable waters generally are not included within the definition of public lands. Navigable waters are those waters used or susceptible of being used in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

The scope of these regulations is limited by the definition of public lands in section 102 of ANILCA. Lands validly selected by the State or Native corporations are therefore excluded from this public lands definition.

(c) Adoption of State Regulations

There were comments on both sides of the issue of adopting State regulations for Federal subsistence management. A number of commenters said the Federal government should not automatically adopt the State regulations, while others advocated working closely with the State and adopting existing regulations.

In view of the uncertainty over the resumption of State management of subsistence, a major objective of the Federal program has been to minimize disruption to Alaskans and the State's continuing fish and game management, yet still fulfill the requirements of title VIII. These regulations use existing State of Alaska regulations relevant to subsistence management as much as possible. The majority of seasons and bag limits and methods and means of harvest regulations in subpart D are very similar or identical to the current State regulations. State regulations promulgated prior to the effective date of the McDowell decision are presumed to fulfill the title VIII requirements since the State's program was considered to meet the general applicability requirements of section 805(d) of ANILCA. The relatively few changes made were to adapt the State regulations to address public lands or to conform to legal requirements, such as direction received from recent court rulings. Some changes were made in subsistence bag limits or seasons after a review revealed that existing State regulations may not provide adequate opportunity for subsistence use on public lands by rural residents.

(d) Public Involvement

One comment was received that the comment period was much too short. Certainly more public involvement would have been desirable and valuable, and under normal circumstances would have occurred; but the time frame to develop the 1991-92 seasons and bag limits was very limited. During the development of these regulations, initial proposals were solicited from December 15, 1990, through January 15, 1991. After that, a summary of the proposals was sent out for review and the Board held a public meeting March 4-7, 1991, during which public testimony was accepted. Based on that testimony, the Board published a formal proposal (56 FR 15402) with a final comment period. These periods totaled in excess of 75 days in which the public could provide comments.

(e) Community Season and Bag Limits

There were a number of comments advocating that the Federal government should establish community bag limits for subsistence take rather than adopt the State's program of having only individual bag limits.

The issue of community season and bag limits is an important issue. To address this issue requires more time, public involvement and information than was available during the development of these regulations. Community season and bag limits and ceremonial uses, e.g., funeral potlatches, will be addressed during development of programmatic regulations and subsequent annual adjustments to subsistence use regulations. In addition, the Federal Government does not believe that the McDowell decision eliminated the State's ability to provide fish and wildlife for funeral potlatches.

(f) Customary and Traditional Issue

Comments were received that the proposed regulations should follow customary and traditional harvest seasons and patterns with those being designed to match as closely as possible the customary and traditional lifestyles of rural Alaskans, including accommodation of any religious use of fish and wildlife. Some commented more specifically that certain communities or areas should be determined to have customary and traditional uses of specific fish and wildlife populations on public lands.

As noted previously, the intent of these temporary regulations is to provide for the subsistence priority for rural Alaskans as required by AN-ILCA. Given the short time frame to prepare and implement these regulations existing State determinations of customary and traditional use were adopted. The State's customary and traditional determinations will be reviewed, as necessary, by the Board. This review could include consideration of prior cultural patterns wherein

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traditional harvest seasons and patterns would be evaluated for possible changes to recent State seasons or bag limits. Also, any issues concerning customary and traditional religious use of fish and wildlife would be relevant for formal consideration, as would a wide range of other potential issues. Overall, the intent of the Federal program is to be sensitive to the customary and traditional patterns for subsistence use of fish and wildlife by rural Alaskans, meaning that Federal decisions related to this matter would try to reasonably accommodate any such use patterns.

(g) Closures

Some comments were received expressing concern that the temporary regulations do not allow for emergency closures to protect wildlife populations.

These regulations do allow for such closures. Section _____.17(b) states, "In an emergency situation, the Board may direct immediate closure of public lands to any or all hunting or fishing, including subsistence take." The word "any" in this section allows the Board to close an area to sport and/or commercial harvest while allowing subsistence harvest to continue.

(h) Permits/Licenses

A number of commenters opposed the requirement for any kind of permit system, especially requiring individuals to obtain permits to use fish and wildlife resources. Commenters also objected to the requirement for State permits and licenses for subsistence take on public lands.

The intent of these regulations is to minimize Federal permit requirements. Where State and Federal season and bag limit regulations vary, Federal permits may be required to ensure that adequate subsistence opportunity is provided to rural residents while ensuring healthy fish and wildlife populations.

(i) Navigable Waters

Ever since publication of the Temporary regulations, there has been confusion over the statement about "navigable waters generally are not included * * *."

These regulations still generally do not apply to navigable waters. However, clarification is being made for the benefit of the public, in those cases where withdrawals of Federal lands and waters were made prior to statehood and the Federal government continues to exercise control. It is not the intent of the Board to establish any season, bag limit or method of take different from that imposed by State regulations on navigable waters.

The introductory language to the specific regulations for each of the thirteen Fishery Management Areas describes the intended extent of Federal regulatory jurisdiction over subsistence fishing. This introductory language describes any exceptions to the general rule that Federal regulatory authority does not extend to navigable or marine waters. The introductory description of regulatory authority for each Fishery Management Area will control over any other specific provisions in the regulations for that Area.

(j) Other Comments

Several general comments were expressed on a limited basis by a few people. These comments included such topics as wording clarifications, editorial corrections, the need for maps of Federal lands, addresses and locations of all management offices; the need for more conservation, education, and so forth.

The Federal Government appreciates these comments, will make the corrections where appropriate, and will consider them in the development of a public information document describing these regulations.

(k) Unit or Species Specific Comments

(1) Numerous comments sought to restrict either seasons or bag limits of various species either without adequate justification or based on the assumption that the population might be particularly vulnerable during one part of the year.

The Board's primary functions are to protect both the wildlife resources and the subsistence opportunity. In order to do so, the Board will only make decisions based on substantial evidence.

(2) In three cases a commenter requested that a season be opened to coincide with a new State season.

The Board amended the proposed regulations to provide for similar subsistence seasons to allow adequate opportunity for subsistence harvest.

(3) In a few cases commenters requested more flexibility in the establishment of season to take into account vagaries in the weather that might restrict subsistence opportunities.

The Board amended the proposed regulations in those places to provide for a season to be opened through announcement.

Programmatic Regulations

The Temporary Regulations expire on December 31, 1991. The Federal government is now beginning development of programmatic regulations in the event that the State of Alaska is unable to resume subsistence management on Federal public lands. Some 56 public meetings have already been held in the affected areas to solicit comments on a long-term program. The Federal government is preparing an Environmental Impact Statement on this program and will then publish proposed programmatic regulations. In response to public comments and agency and legislative mandates, those will be revised and published as final regulations within the effective period of the Temporary Regulations. Once implemented, these programmatic regulations will remain in effect permanently or until the State of Alaska brings its subsistence program back into compliance with ANILCA.

Conformance with Statutory and Regulatory Authorities

The impact of these regulations on subsistence uses has been evaluated under section 810 of ANILCA, even though it is not clear that this is an action subject to section 810. Subsistence use and access is expected to differ little from that previously allowed under State management. If change occurs it is expected to be beneficial to subsistence users. The regulations are consistent with the purposes and intent of section 810 and present no significant possibility of a significant restriction on subsistence activities.

Properly regulated and managed subsistence use is consistent with the purposes for which the various public lands in Alaska were established.

National Environmental Policy Act Compliance

The Federal assumption of subsistence management will generally maintain the status quo from the user's perspective. Changes in environmental effects will be negligible. Therefore, the implementation of reformatted regulations and minor season and bag limit changes in the Temporary Subsistence Management Regulations for Public Lands in Alaska is determined to be a categorical exclusion as detailed in the USDI Departmental Manual (516 DM 6, appendix 1), USDA regulations at 7 CFR 16.3, USDA Forest Service Manual 1960, I.D. 2 and 17, and USDA Forest Service Handbook 1909.15, I.D. 2 and 17.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 *et seq.* They apply to subsistence users of Federal public lands in Alaska.

The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018-0075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0075), Washington, DC 20503. Additionally, information collection requirements may be imposed if the councils and committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

Executive Order 12291, Federal Regulation, of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Departments of the Interior and Agriculture have determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certify that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of Federal public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain Federal lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

William Knauer, Subsistence Office, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska, is the primary author of this rulemaking document, working under the direction of Richard S. Pospahala and the Federal Subsistence Board, Curtis V. McVee, Chairman.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, chapter I, subchapter H of title 50 and chapter II of title 36 of the Code of Federal Regulations are amended in an identical fashion in 36 CFR part 242 and 50 CFR part 100 as follows:

1. The authority citation for 50 CFR part 100 and 36 CFR part 242 continues to read as follows:

Authority: 16 U.S.C. 472, 551, 668dd *et seq.*, 3101 *et seq.*; 16 U.S.C. 7, 3559, 3571; 43 U.S.C. 1733.

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

§ ____.14 [Amended]

2. Section _____.14(a) is revised to read as follows:

§ ____.14 Relationship to State procedures and regulations.

(a) State of Alaska fish and wildlife regulations apply to Federal public lands unless the Board finds it necessary to promulgate regulations which augment or supercede State regulations in order to ensure the priority for subsistence use of fish or wildlife on Federal public lands.

* * * * *

3. Subpart D—Subsistence Hunting, Trapping, and Fishing is revised to read as follows:

Subpart D—Subsistence Hunting, Trapping, and Fishing [1]

Sec.

_____.23 Subsistence hunting and trapping.
_____.24 Subsistence fishing.
_____.25 Shellfish.

Subpart D—Subsistence Hunting, Trapping, and Fishing

§ _____.23 Subsistence hunting and trapping.

(a) Definitions—The following definitions shall apply to all regulations contained in this subpart:

ADF&G means the Alaska Department of Fish and Game.

Aircraft means a fixed-wing machine or device that is used or intended to be used to carry persons or objects through the air, including airplanes and gliders.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Bag limit means the number of any one species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed. In no case may the total or cumulative bag for one person or designated group exceed the limit set for the unit or portion of a unit in which the additional animals are taken. A subsistence bag limit and a general bag limit for the same species are not cumulative.

Big game means black bear, brown and grizzly bear, bison, caribou, deer, elk, mountain goat, moose, musk oxen, Dall sheep, wolf and wolverine.

Bow means long bow, recurve bow, or compound bow, but not crossbow.

Broadhead means an arrowhead with two or more steel cutting edges having minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

[1] Subpart D closely follows existing State Fish and Game regulations which are codified in title 5 of the Alaska Administrative Code. In many cases the language is identical to state regulation or modified so it applies only to this Federal program on public lands. The regulations note particular State of Alaska provisions from which they were derived.

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Bull moose means any male moose.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Dire emergency means a situation in which a person:

(i) Is in a remote area;

(ii) is involuntarily experiencing an absence of food required for sustenance;

(iii) will be unable to perform the functions necessary for survival, leading to a high risk of death or serious and permanent health problems if wild game food is not immediately taken and consumed; and

(iv) cannot expect to obtain alternative food sources in time to avoid the consequences described in paragraph (iii) of this definition.

Full curl horn means the horn of a male Dall sheep, the tip of at least one of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken or that the sheep is at least eight (8) years of age as determined by horn growth annuli.

Fur animal means coyote, arctic fox, red fox, lynx, or red squirrel, except domestically raised fur animals; "fur animals" is a classification of animals subject to taking with a hunting license.

Furbearer means beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, marmot, wolf or wolverine; "fur bearers" is a classification of animals subject to taking with a trapping license.

Highway means the drivable surface of any constructed road.

Household means that group of people domiciled in the same residence.

Hunting area for a species means that portion of a game management unit where a subsistence season and a bag limit for that species are set.

Motorized vehicle means a motor-driven land, air, or water conveyance.

Open season means the time when wildlife may be taken; each period prescribed as an open season includes the first and last days of the period prescribed.

Permit hunt means a hunt for which State or Federal permits are issued by drawing, registration or other means.

Poison means any substance which is toxic or poisonous upon contact or ingestion.

Registration permit means a hunting permit issued to a person who agrees to the conditions specified for each hunt; permits are issued in the order applications are received, and are issued:

(i) Beginning on a date announced and continuing throughout the open season, or until the season is closed by emergency order when a harvested quota is reached; or

(ii) Beginning on a date announced and continuing until a predetermined number of permits has been issued.

Sealing means placing a mark or tag on a portion of an animal by an authorized representative of the ADF&G; "sealing" includes collecting and recording information concerning the conditions under which the animal was harvested and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a Dall sheep, the tip of which has grown through seven-eighths of a circle (315 degrees), described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide and pelt are all the same thing, and mean any tanned or untanned external covering of an animal's body; skin, hide, or pelt of a bear shall mean the entire external covering with claws attached.

Small game means all species of grouse, hares, rabbits, ptarmigan, waterfowl, cranes and Wilson or jacksnipe.

Tine or antler point refers to any point on an antler whose length is at least one inch, and is greater in length than in width, measured one inch or more from the tip.

Transport means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

Unclassified game means all species of game not otherwise classified in the definitions.

Unit means one of the 26 geographical areas listed under game management units in the ADF&G's codified hunting regulations and the Game Management Unit Map of Alaska.

Year means calendar year unless another year is specified.

(b) Small game and unclassified game, fur animals, furbearers, and big game may be taken for subsistence by any method, unless prohibited below or by other Federal statute.

(1) The following methods of taking game are prohibited:

(i) By shooting from, on, or across a highway;

(ii) With the use of any poison;

(iii) Knowingly, or with reason to know, with the use of a helicopter in any manner, including transportation to or from the field of any unprocessed game or parts of game, any hunter or hunting gear, or any equipment used in the pursuit or retrieval of game; this paragraph does not apply to transportation of a hunter, hunting gear, or game during an emergency rescue operation in a life-threatening situation;

(iv) Unless otherwise provided in this chapter, from a mechanical vehicle, or from a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased, except that a motor-driven boat or snowmachine may be used to take caribou in Game Management Unit 23;

(v) With the use of an aircraft, snowmachine, motor-driven boat, or other motorized vehicle for the purpose of driving, herding, or molesting game;

(vi) With the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) With the aid of a pit, fire, artificial light (except that coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights), radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, or a conventional steel trap with a jaw spread over nine inches; however, the "conibear" style trap with a jaw spread of less than 11 inches may be used;

(viii) With a snare, except for taking unclassified game, furbearer, grouse, hare, or ptarmigan;

(ix) By intentionally feeding a bear, wolf, fox, or wolverine, or intentionally leaving human food or garbage in a manner that attracts these animals. This does not apply to bait used for trapping furbearers or hunting black bears.

(2) The following methods and means of taking big game for subsistence are prohibited in addition to the prohibitions in paragraph (b)(1) of this section:

(i) With the use of a firearm other than a shotgun, muzzle-loaded rifle without scope, or rifle or pistol using a center-firing cartridge, except that:

(A) In Unit 23, swimming caribou may be taken with a firearm using rimfire cartridges; (B) The use of a muzzleloading rifle is prohibited for brown bear, black bear, moose, musk ox and mountain goat unless such a firearm is .54 caliber or larger, or at least .45 caliber and a 250 grain or larger elongated slug is used;

(ii) With a crossbow in any area restricted to hunting by bow and arrow only;

(iii) With a longbow, recurve bow, or compound bow unless the bow is capable of casting a broadhead-tipped arrow at least 175 yards horizontally, the arrow is tipped with a broadhead of at least 7/8" width, and arrow and broadhead together weigh at least one ounce (437.5 grains), and the broadhead is not barbed;

(iv) With the use of bait; except that black bears may be taken with the use of bait in Units 14 (A) (B) between April 15 and May 31; in Units 1 (A) (B) (D), 2, 3, 5, 6, 7 (except Resurrection Creek and its tributaries), 11, 13 and 16 (except Denali State Park) 15 and 17 between April 15 and June 15; and in Units 12, 19–21, 24, and 25 between April 15 and June 30. Baiting of black bears is subject to the following restrictions:

(A) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and game may be used for bait;

(B) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(C) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed recreational facility;

(D) A hunter using bait shall clearly mark the site with a sign reading "black bear bait station" that also displays the person's hunting license number and ADF&G assigned number;

(E) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(F) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(G) No person may have more than two bait stations established (bait present) at any one time;

(H) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(v) With the aid or use of a dog, except that a dog may be used to hunt black bear by permit issued at the discretion of the ADF&G;

(vi) With the use of a trap or snare;

(vii) While a big game animal is swimming, except that a swimming caribou may be taken in Unit 23;

(viii) No person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence uses a big game animal in a National Preserve until 3:00 a.m. following the day in which the flying occurred.

(ix) No person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take or assist in taking for subsistence purposes a big game animal until after 3:00 a.m. following the day in which the flying occurred; however, this paragraph does not apply to subsistence taking of deer, or to subsistence taking of wolves during August 10–March 31 in the portions of Units 9, 11, 12, 13 except 13 (E) west of the Parks Highway, 17, 19, 20, 21, 24, 25(B), 25(C), and 25(D) that are not in a national preserve (National Parks, Monuments, and Preserves are closed to same-day-airborne Wolf Hunting); additionally with respect to wolves:

(A) No person may take a wolf without first obtaining from ADF&G, a numbered registration permit and numbered, nontransferable locking tags;

(B) Shotguns may not be used to take wolves;

(C) A person taking a wolf shall immediately affix one of the tags to the skin of the wolf until the skin is sealed according to ADF&G procedures;

(x) From a boat in Units 1–5, except by the physically disabled.

(3) The following methods and means of taking fur animals for subsistence under a hunting license are prohibited, in addition to the prohibitions in paragraph (b)(1) of this section:

(i) By using a dog, trap, snare, net, or fish trap;

(ii) By disturbing or destroying a den;

(iii) By having been airborne and using a firearm to take or assist in taking an arctic or red fox until after 3 a.m. on the day following the day in which the flying occurred.

(4) The following methods and means of taking furbearers for subsistence under a trapping license are prohibited, in addition to the prohibitions in paragraph (b)(1) of this section:

(i) By disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) By disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that a firearm may be used to take beaver in Unit 18 from April 1 through June 10, and in Units 8, 22, and 23 throughout the seasons established herein;

(iv) Taking land otter with a steel trap having a jaw spread of less than five and seven-eights inches during any closed mink and marten season in the same game management unit;

(v) Using a dog, net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation or by landing within one mile of a beaver trap or set used by the person transported;

(vii) Taking a wolf in Units 12 and 20 (E) during March, April or October with a steel trap, or with a snare smaller than 3X;

(viii) Having been airborne and using a firearm to take or assist in taking an arctic fox, red fox, wolf, or wolverine until after 3 a.m. on the day following the day in which the flying occurred; this paragraph does not apply to a trapper using a firearm to dispatch a fox, wolf, or wolverine caught in a trap or snare;

(ix) Taking a red fox in Unit 15 by any means other than a steel trap or snare.

(c) Possession and Transportation of Wildlife. (1) Unless otherwise provided, no person may take a species of game in any unit or portion of a unit if that person's total statewide take of that species already equals or exceeds the bag limit for that species in that unit or portion of a unit except as specified in paragraph (c)(3) of this Section.

(2) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State season for the same species are not separate and distinct. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional animals of that species under any other bag limit specified for a State season.

(3) The bag limit specified for a trapping season for a species and the bag limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a bag limit for a particular species under a trapping season may take additional animals under the bag limit specified for a hunting season or vice versa.

(4) A bear taken in any unit having a one bear per regulatory year limit does not count against the one bear every four regulatory years bag limit in other units; however, no more than one bear may be taken in any regulatory year.

(5) A bag limit applies to a regulatory year unless another time period is specified in the bag limit.

(6) Any person who gives or receives wildlife shall furnish upon request of a Federal agent a signed statement describing the following: names and addresses of persons who gave and received wildlife, when and where the wildlife was taken, and what wildlife was transferred.

(7) No person may possess, transport, or give, receive or barter wildlife that the person knows or should know were taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(8) Evidence of sex and identity. (i) No person may possess or transport a Dall sheep unless both horns accompany the animal if the subsistence take is restricted to a single sex.

(ii) If the subsistence taking of a big game animal, except sheep, is restricted to one sex, no person may possess or

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transport the carcass of an animal unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this section does not apply to the carcass of a big game animal that has been cut and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose bag limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, this subsection does not apply to a moose carcass or its parts that have been cut and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(iv) Until the hide has been sealed by a representative of the ADF&G, no person may possess or transport the hide of a brown bear taken in Unit 4 which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or other agency, if identified on the collar or marker, when and where the animal was killed. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required, and in all cases any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls. (1) As used in this section:

Bear means brown bears in all units, and black bears of all color phases taken in Units 1–7, 11–16, and 20;

Sealing certificate means a form used by the ADF&G for recording information when sealing a bear.

Temporary sealing form means a form available at ADF&G offices for providing information regarding date and location of a bear kill, species of bear, name and address of the hunter, name of the guide, and other information requested by the ADF&G on the form;

(2) No person may possess, transport, or export from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of the ADF&G within 30 days after the taking, or a lesser time if requested by the ADF&G. The seal must remain on the skin until the tanning process has commenced. A brown bear taken in Unit 8 may not be transported from that unit until it has been sealed. A brown bear taken in Unit 20(E) may not be transported from that unit, except to Tok, until it has been sealed.

(3) Except as provided in paragraph (c) of this Section, a person who kills a bear must personally present the skin and the skull to an authorized representative of the ADF&G for sealing within 30 days after the taking, or a shorter time if requested by the ADF&G, and must sign the sealing certificate at the time of sealing.

(4) A person who takes a bear but is unable to present the skin and skull in person must complete and sign a temporary sealing form and ensure that the completed temporary sealing form, along with the bear skin and skull, are presented to an authorized representative of the ADF&G for sealing within 30 days after the taking.

(5) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin. The ADF&G may require that the skull of the bear be skinned and that the skin and skull not be frozen at the time of sealing.

(6) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G.

(f) Sealing of Marten, Lynx, Beaver, Otter, Wolf, and Wolverine. (1) No person may possess, transport, or export from the state the untanned skin of a marten taken in Units 1–5, 7, and 15, or the untanned skin of a lynx, beaver, land otter, wolf, or wolverine, whether taken inside or outside the state, unless the ADF&G has sealed the skin. The seal must remain on the skin until the tanning process has commenced or the skin has been transported from the state; however, the seal may be removed from the skin of a marten taken in Units 1–5 when the skin has been prepared for shipment from the state.

(2) The sealing of marten, lynx, beaver, land otter, wolf, or wolverine must be accomplished as follows:

(i) Wolf (in Unit 15(A)) taken by hunting or trapping must be sealed on or before the 5th day after the date of taking;

(ii) Wolf (except in Unit 15(A)), wolverine, and lynx taken by hunting must be sealed on or before the 30th day after the date of taking;

(iii) Marten (Units 1–5, 7, and 15 only), wolf (except in Unit 15(A)), wolverine, lynx, beaver, and otter taken by trapping must be sealed on or before the 30th day after the close of the season in the unit where taken.

(3) The sealing periods described in paragraph (f)(2) of this Section may be temporarily reduced by an authorized employee of the ADF&G.

(4) A person who takes a species listed in paragraph (f) of this section must bring the skin for sealing to an authorized representative of the ADF&G and must complete a report on a form provided by the ADF&G.

(g) Utilization of Game. (1) The following definitions shall apply to this paragraph:

Edible meat means, in the case of big game animals, the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; in the case of wild fowl, the Meat of the breast; however, *edible meat* of big game or wild fowl does not include: meat of the head; meat that has been damaged and made inedible by the method of taking bones, sinew and incidental meat reasonably lost as a result of boning or a close trimming of the bones; or viscera.

Wild fowl means species of wild bird for which seasons or bag limits have been established by State or Federal law.

(2) No person may use game as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of game;

(ii) The skinned carcass of a furbearer or fur animal;

(iii) Red squirrels and small game; however, the breast meat of small game birds may not be used as animal food or bait;

(iv) Legally taken unclassified game.

(3) A person taking game for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel and land otter, and the hide or meat of a beaver or muskrat;

(ii) The hide, skull and edible meat of a brown bear;

(iii) The hide, skull and edible meat of a black bear.

(4) A person who takes a big game animal or a species of wild fowl may not intentionally, knowingly, recklessly, or with criminal negligence fail to salvage for human consumption the edible meat of the animal or fowl.

(5) Failure to salvage or possess the edible meat may not be a violation if due to circumstances beyond the control of a person, including theft of the animal or fowl, unanticipated weather conditions or other acts of God, or unavoidable loss in the field to another wild animal.

(6) If a person is convicted of violating this section and in the course of that violation failed to salvage from a big game animal at least the hindquarters as far as the distal joint of the tibia-fibula (hock), the court shall impose a sentence of imprisonment of not less than seven consecutive days and a fine of not less that $2,500.

(7) It is unlawful for a person to possess the horns or antlers of a big game animal that was killed after the opening of the current or most recent lawful season for the animal unless the person also possesses the edible meat of the animal. However, this does not apply to the acquisition of the horns or antlers as a gift after the edible meat of the big game animal was salvaged, or the edible meat is no longer present due to personal consumption or lawful transfer.

(h) Taking wildlife in defense of life & property. (1) Nothing in this subpart prohibits a person from taking wildlife in defense of life or property if:

(i) The necessity for the taking is not brought about by harassment or provocation of the animal or an unreasonable invasion of the animal's habitat;

(ii) The necessity for the taking is not brought about by the improper disposal of garbage or a similar attractive nuisance; and

(iii) All other practicable means to protect life and property are exhausted before the animal is taken.

(2) Wildlife taken in defense of life or property is the property of the State and is not a subsistence taking. A person taking such wildlife is required to salvage immediately the meat, or, in the case of a black bear, wolf, wolverine, or coyote, the hide and surrender it to the State immediately. All bear hides surrendered (brown or black) must include claws. In the case of brown or grizzly bear, the hide and skull must be salvaged and surrendered to the State immediately. The person taking the wildlife must notify the ADF&G of the taking immediately and must submit a written report of the circumstances of the taking of wildlife in defense of life or property to the ADF&G within 15 days of the taking.

(3) As used in this section, "property" is limited to:

(i) A dwelling, permanent or temporary.

(ii) An aircraft, boat, automobile, or other means of conveyance;

(iii) A domesticated animal.

(iv) Other property of substantial value necessary for the livelihood or survival of the owner. Game taken by hunters is not "property" in the sense of this regulation.

(i) Subsistence harvest of migratory birds, including waterfowl, will conform to provisions of the Migratory Bird Treaty Act, as amended, and its implementing regulations.

(j) Subsistence harvest of Endangered or Threatened species will conform to provisions of the Endangered Species Act, as amended, and its implementing regulations.

(k) Subsistence harvest of Marine Mammals will conform to the provisions of the Marine Mammal Protection Act, as amended, and its implementing regulations.

(l) There may be additional requirements for eligibility to hunt in National Parks. Contact your local National Park Service office for details.

(m) Ineligible rural or non-rural residents or sport hunters not specifically prohibited from hunting on Federal lands in an area may hunt there in accordance with the appropriate State regulations.

(n) Game Management Units and Specific Regulations. (1) GMU 1 Game Management Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Camano Point and all islands in Stephens Passage and Lynn Canal north of Taku Inlet;

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal and excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw, including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock, including Berner's Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, and excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) Public lands within Glacier Bay National Park are closed to all subsistence take.

(B) Unit 1(A). (*1*) In the Ketchikan area, a strip one-fourth mile wide on each side of the Tongass Highway system, including the Ward, Connel, and Harriet Hunt Lake Roads, is closed to the taking of big game;

(*2*) in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bears;

(C) Unit 1(B)—the Anan Creek drainage is closed to the taking of black bears;

(D) Unit 1(C). (*1*) in the Juneau area, that area between the coast and a line one-fourth mile inland of the following road systems is closed to the taking of big game: Glacier Highway from Mile 0 to Mile 24 at Peterson Creek, Douglas Highway from the Douglas city limits to Milepost 7 on the North Douglas Highway, Mendenhall Loop Road, and Thane Road;

(*2*) the area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(*3*) the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(*4*) Mt. Juneau drainage, bounded by the Glacier Highway, Salmon Creek and its reservoir, a line from the head of the Salmon Creek drainage to the head of Granite Creek, and down Granite Creek and Gold Creek to the Glacier Highway, is closed to the taking of mountain goat;

(E) Unit 1(D)—a strip one-fourth mile wide on each side of the Lutak Road between Mile 7 and Chilkoot Lake, and from the Chilkoot River bridge to the end of the Lutak Road spur at the head of Lutak Inlet, is closed to the taking of big game;

(vi) The following areas are closed to the trapping of furbearers for subsistence as indicated:

(A) Glacier Bay National Park;

(B) Unit 1(C) (Juneau area):

(*1*) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(*2*) Auke Lake and the area within one-quarter mile of Auke Lake;

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(*j*) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(*k*) A strip within one-quarter mile of the Douglas Island coast along the entire length of the Douglas Highway and a strip within one-quarter mile of the Eaglecrest Road;

(*l*) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area; (6) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and the Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.
—"No open season" means no Federal subsistence season.
—"No determination" indicates open to Alaska rural residents.

(vii)

Eligibility determination	Bag limits	Open season
Black Bear:		
GMU 1—Unit 1(C)— Rural residents of Unit 1(C), and Haines, Gustavus, Klukwan, and Hoonah.	Unit 1—2 bears, not more than one of which may be a blue or glacier bear.	Sept. 1–June 30.
GMU 1—Unit 1 (A), (B), (D)—No determination		
Brown Bear:		
GMU 1—No subsistence for residents of Wrangell, Klukwan, Haines and Skagway. All others—No determination.	Unit 1—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31 and Mar. 15–May 31.
Deer:		
GMU 1—Unit 1(A)—Rural residents of Units 1(A) and 2	Unit 1(A)—4 antlered deer	Aug. 1–Dec. 31.
GMU 1—Unit 1(B)—Rural residents of Unit 1(A), residents of 1(B), 2 and 3.	Unit 1(B)—2 antlered deer	Aug. 1–Dec. 31.
GMU 1—Unit 1(C)—Rural residents of Units 1(C), 1(D) and residents of Hoonah and Gustavus.	Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31.	Aug. 1–Dec. 31.
GMU 1—Unit 1(C)—No subsistence	Unit 1(D)	No open season.
Goat:		
GMU 1—Unit 1(A)—No determination	Unit 1(A)—Revillagigedo	No open season.
GMU 1—Unit 1(B)—No determination, except no subsistence for residents of Petersburg, Kupreanof, and outlying areas.	Unit 1(B)—that portion between Muddy River and LeConte Bay including the drainages into the North side of LeConte Bay—1 goat by State registration permit only; however, the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
	Remainder of Unit 1(A) and Unit 1(B)—2 goats by State registration permit only.	Aug. 1–Dec. 31.
GMU 1—Unit 1(C)—Residents of Haines, Klukwan, and Hoonah.	Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier.	Oct. 1–Nov. 30.
	Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by State registration permit only.	Oct. 1–Nov. 30.
	Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River.	No open season.
	Remainder of Unit 1(C)—1 goat by State registration permit only	Aug. 1–Nov. 30.
GMU 1—Unit 1(D)—No determination	Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad.	No open season.
	Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines Highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
	Remainder of Unit 1(D)—1 goat by State registration permit only	Aug. 1–Dec. 31.
Moose:		
GMU 1— Unit 1(A)—No determination	Unit 1(A) and 1(B) south of LeConte Glacier—1 bull	Sept. 15–Oct. 15.
GMU 1—Unit 1(B)—The Stikine River drainage only, residents of Wrangell.		
GMU 1—Unit 1(B)—North of the LeConte Glacier and 1(C) Berners Bay—No subsistence.	Remainder of Unit 1(C)—1 bull by State registration permit only	Sept. 15–Oct. 15.
GMU 1—Remainder of Unit 1(C)—No determination		
GMU 1—Unit 1(D)—Residents of Unit 1(D)	Unit 1(D)	No open season.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 1—No determination	No limit	July 1–June 30.
Beaver: GMU 1—No determination	Trapping—Unit 1 (A), (B), (C)—No limit	Dec. 1–May 15.
	Unit 1(D)	No open season.
Coyote: GMU 1—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): GMU 1—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Dec. 1–Feb. 15.
Hares (Snowshoe and Arctic): GMU 1—No determination	Hunting—5 per day	Sept. 1–Apr. 30.
Lynx: GMU 1—No determination	Hunting—2 Lynx	Dec. 1–Feb. 15.
	Trapping—No limit	Dec. 1–Feb. 15.
Marten: GMU 1—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Mink and Weasel: GMU—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Muskrat: GMU 1—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Otter (land only): GMU 1—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Squirrel (Red, Ground and Flying): GMU 1—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 1—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	Nov. 10–Apr. 30.
Wolverine: GMU 1—No determination	Hunting—1 Wolverine	Nov. 10–Feb. 15.
	Trapping—No limit	Nov. 10–Apr. 30.
Crow: GMU 1—No determination	Hunting—40 per day	Sept. 1–Nov. 17.
		Mar. 1–Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 1—No determination.	Hunting—5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow and White-tailed): GMU 1—No determination.	Hunting—20 per day, 40 in possession	Aug. 1–May 15.

(2) GMU 2. (i) Game Management Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the westernmost point on Warren Island;

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.
—"No open season" means no Federal subsistence season.
—"No determination" indicates open to Alaska rural residents.

(ii)

Eligibility determination	Bag limits	Open season
Black Bear: GMU 2—No determination	Unit 2—2 bears, not more than one of which may be a blue or glacier bear.	Sept. 1–June 30.
Deer: GMU 2—Rural residents of Unit 1(A), and residents of Units 2 and 3.	Unit 2—4 antlered deer	Aug. 1–Dec. 31.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 2—No determination	No limit	July 1–June 30.
Beaver: GMU 2—No determination	Trapping—No limit	Dec. 1–May 15.
Coyote: GMU 2—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Dec. 1–Feb. 15.
Fox, Red, (including Cross, Black and Silver Phases): GMU 2—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Dec. 1–Feb. 15.
Hares (Snowshoe and Arctic): GMU 2—No determination	Hunting—5 per day	Sept. 1–Apr. 30.
Lynx: GMU 2—No determination	Hunting—2 Lynx	Dec. 1–Feb. 15.
	Trapping—No limit	Dec. 1–Feb. 15.
Marten: GMU 2—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Mink and Weasel: GMU 2—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Muskrat: GMU 2—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Otter (land only): GMU 2—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Squirrel (Red, Ground and Flying): GMU 2—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 2—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	Nov. 10–Apr. 30.
Wolverine: GMU 2—No determination	Hunting—1 Wolverine	Nov. 10–Feb. 15.
	Trapping—No limit	Nov. 10–Apr. 30.
Crow: GMU 2—No determination	Hunting—40 per day	Sept. 1–Nov. 17 and March 1–Apr. 15.
Grouse, (Spruce, Blue, Ruffed and Sharp-tailed): GMU 2—No determination	Hunting—5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow and White-tailed): GMU 2—No determination	Hunting—20 per day, 40 in possession	Aug. 1–May 15.

(3) GMU 3. (i) Game Management Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait, including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands; (ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) A strip one-fourth mile wide on each side of the Stikine (Zimovia) Highway from the Wrangell city limits to Milepost 9 is closed to the taking of big game;

(B) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to the Crystal Lake campground is closed to the taking of big game, except wolves;

(C) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(D) Blind Slough, draining into Wrangell Narrows, and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting;

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—"No open season" means no Federal subsistence season.
—"No determination" indicates open to Alaska rural residents.

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Eligibility determination	Bag limits	Open season
Black Bear: GMU 3—No determination	Unit 3—2 bears, not more than one of which may be a blue or glacier bear.	Sept. 1–June 30.
Deer: GMU 3—Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.	Unit 3—that portion south of Sumner Strait and Decision Passage, including the Vank Island group, but not including Level, Conclusion, and Channel Islands—2 antlered deer.	Aug. 1—Nov. 30.
	Unit 3—that portion of Mitkof Island, south of city limits of Petersburg only; Woewodski and Butterworth Islands—one antlered deer by State registration permit only.	Oct. 15–Oct. 31.
Moose: GMU 3—No determination	Remainder of Unit 3	No open season.
	Unit 3—Mitkof and Wrangell Islands—1 bull with spikefork or 50-inch antler.	Oct. 1–Oct. 15.
	Unit 3—Remainder	No open season.
Bat, Shrew, Rat, Mouse, and Porcupine: GMU 3—No determination	No limit	July 1–June 30.
Beaver: GMU 3—No determination	Trapping—Unit 3—Mitkof Island—No limit	Dec. 1–Apr. 15.
	Trapping—Unit 3 (except Mitkof Island)—No limit	Dec. 1–May 15.
Coyote: GMU 3—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): GMU 3—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Dec. 1–Feb. 15.
Hares (Snowshoe and Arctic): GMU 3—No determination	Hunting—5 per day	Sept. 1–Apr. 30.
Lynx: GMU 3—No determination	Hunting—2 Lynx	Dec. 1–Feb. 15.
	Trapping—No limit	Dec. 1–Feb. 15.
Marten: GMU 3—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Mink and Weasel: GMU 3—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Muskrat: GMU 3—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Otter (land only): GMU 3—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Squirrel (Red, Ground and Flying): GMU 3—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 3—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	Nov. 10–Apr. 30.
Wolverine: GMU 3—No determination	Hunting—1 Wolverine	Nov. 10–Feb. 15.
	Trapping—No limit	Nov. 10–Apr. 30.
Crow: GMU 3—No determination	Hunting—40 per day	Sept. 1–Nov. 17 and Mar. 1–Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 3—No determination.	Hunting—5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow and White-tailed): GMU 3—No determination.	Hunting—20 per day, 40 in possession	Aug. 1–May 15.

(4) GMU 4. (i) Game Management Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3, including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands; (ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) In the Sitka area, a strip one-fourth mile wide on each side of all State highways is closed to the taking of big game;

(B) the Seymour Canal Closed Area (Admiralty Island), including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay, and including Swan and Windfall Islands, is closed to the taking of bears;

(C) the Salt Lake Bay Closed Area (Admiralty Island), including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(D) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(E) Northeast Chichagof Controlled Use Area, consisting of that portion of Unit 4 on Chichagof Island north of Tenakee Inlet and east of Port Frederick, is closed to the use of any motorized land vehicle for brown bear hunting or for the taking of marten, mink, or weasel;

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Eligibility determination	Bag limits	Open season
Brown Bear: GMU 4—Residents of Unit 4 and Kake	Unit 4—Chicagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21' W. long.), to Rodgers Point (57°35' N. lat., 135°33' W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nitement Point (57°34' N. lat., 135°25' W. long.), to the entrance of Gut Bay (56°44' N. lat. 134°38' W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31, Mar. 15–May 31.
	Unit 4—that portion in the Northeast Chicagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15–May 20.
	Remainder of Unit 4—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31, Mar. 15–May 20.

Eligibility determination	Bag limits	Open season
Deer: GMU 4—Residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, and Wrangell.	Unit 4—6 deer; however, antlerless deer may be taken only from Sept. 15—Jan. 31.	Aug. 1–Jan.31.
Goat: GMU 4—No determination	1 goat by State registration permit only	Aug. 1–Dec. 31.
Bat, Shrew, Rat, Mouse, and Porcupine: GMU 4—No determination	No limit	July 1–June 30.
Beaver: GMU 4—No determination	Trapping—Unit 4 (that portion east of Chatham Strait)—No limit	Dec. 1–May 15.
	Unit 4 (that portion west of Chatham Strait)	No open season.
Coyote: GMU 4—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): GMU 4—No determination	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Dec. 1–Feb. 15.
Hares (Snowshoe and Arctic): GMU 4—No determination	Hunting—5 per day	Sept. 1–Apr. 30.
Lynx: GMU 4—No determination	Hunting—2 Lynx	Dec. 1–Feb. 15.
	Trapping—No limit	Dec. 1–Feb. 15.
Marten: GMU 4—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Mink and Weasel: GMU 4—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Muskrat: GMU 4—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Otter (land only): GMU 4—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Squirrel (Red, Ground and Flying): GMU 4—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 4—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	Nov. 10–Apr. 30.
Wolverine: GMU 4—No determination	Hunting—1 Wolverine	Nov. 10–Feb. 15.
	Trapping—No limit	Nov. 10–Apr. 30.
Crow: GMU 4—No determination	Hunting—40 per day	Sept. 1–Nov. 17 and Mar. 1–Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 4—No determination.	Hunting—5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow and White-tailed): GMU 4—No determination.	Hunting—20 per day, 40 in possession	Aug. 1–May 15.

(5) GMU 5. (i) Game Management Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills;

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5; (ii) Public lands within Glacier Bay National Park are closed to subsistence hunting and trapping.

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Eligibility determination	Bag limits	Open season
Black Bear: GMU 5—No determination	Unit 5—2 bears, not more than 1 of which may be a blue or glacier bear.	Sept. 1–June 30.
Brown Bear: GMU 5—Residents of Yakutat	1 bear every four regulatory years	Sept. 1–May 31.
Deer: GMU 5—Residents of Yakutat	Unit 5(A)—1 buck	Nov. 1–Nov. 30.
	Unit 5—Remainder	No open season.
Goat: GMU 5—No determination	1 goat by State registration permit only	Aug. 1–Dec. 31.
Moose: GMU 5—Residents of Yakutat	Unit 5(A), except Nunatak Bench—1 bull by State registration permit only. The season will be closed when 60 bulls have been taken from the unit. The season will be closed in that portion west of the Dangerous River when 30 bulls have been taken in that area. From Oct. 15–21 Federal public lands will be closed to moose hunting, except for residents of Yakutat.	Oct. 15–Nov. 15.
	Unit 5(A)—Nunatak Bench	No open season.
	Unit 5(B)—1 bull by State registration permit only	Sept. 1–Nov. 15.
Bat, Shrew, Rat, Mouse, and Porcupine: GMU 5—No determination.	No limit	July 1–June 30.
Beaver: GMU 5—No determination	Trapping—No limit	Nov. 10–May 15.
Coyote: GMU 5—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): GMU 5—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Dec. 1–Feb. 15.
Hares (Snowshoe and Arctic): GMU 5—No determination	Hunting—5 per day	Sept. 1–Apr. 30.
Lynx: GMU 5—No determination	Hunting—2 Lynx	Dec. 1–Feb. 15.
	Trapping—No limit	Dec. 1–Feb. 15.
Marten: GMU 5—No determination	Trapping—No limit	Nov. 10–Feb. 15.
Mink and Weasel: GMU 5—No determination	Trapping—No limit	Nov. 10–Feb 15.
Muskrat: GMU 5—No determination	Trapping—No limit	Dec. 1–Feb. 15.
Otter (land only): GMU 5—No determination	Trapping—No limit	Nov. 10–Feb. 15.
Squirrel (Red, Ground and Flying): GMU 5—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.

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Eligibility determination	Bag limits	Open season
Wolf: GMU 6—No determination	Hunting—No limit	July 1–June 30.
Wolverine: GMU 5—No determination	Trapping—No limit	Nov. 10–Apr. 30.
Crow: GMU 6—No determination	Hunting—1 Wolverine	Nov. 10–Feb. 15.
	Trapping—No limit	Nov. 10–Apr. 30.
	Hunting—40 per day	Sept. 1–Nov. 17 and Mar. 1–Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 5—No determination.	Hunting—5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow and White-tailed): GMU 5—No determination.	Hunting—20 per day, 40 in possession	Aug. 1–May 15.

(6) GMU 6. Game Management Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield, including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages;

(i) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla, including Kanak, Wingham, and Kayak Islands;

(ii) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(iii) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(iv) Unit 6(D) consists of the remainder of Unit 6;

(v) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified: (A) The Goat Mountain goat observation area, which consists of that portion of Unit 6 bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat;

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(vi)

Eligibility determination	Bag limits	Open season
Black Bear:		
GMU 6—Unit 6(A)—Residents of Yakutat	Unit 6(A)—1 bear	Sept. 1–June 30.
GMU 6—Unit 6 (B) and (C)—Residents of Unit 6 (B) and (C), except Cordova.	Unit 6 (B), (C)—1 bear	Sept. 1–June 30.
GMU 6—Unit 6(D)—Residents of Chenega Bay and Tatitlek	Unit 6(D)—1 bear	Sept. 1–June 30.
Brown Bear: GMU 6—No subsistence		No open season.
Deer: GMU 6—No determination	Unit 6—4 deer; however, antlerless deer may be taken only from Nov. 1–Dec. 31.	Aug. 1–Dec. 31.
Moose: GMU 6—No subsistence		No open season.
Goats:		
GMU 6—Unit 6 (A) and (B)—No determination	Unit 6 (A), (B)—1 goat by State registration permit only	Aug. 20–Jan. 31.
GMU 6—Unit 6 (C), and (D)—Rural residents of Unit 6 (C) and (D).	GMU 6 (D) (subareas 622, 623, 624, 626, 879 only)—1 goat by Federal registration permit only. The taking of goats on Federal public land in GMU 6(D), subareas 623 and 624, is closed except to rural residents of GMU 6(C) and 6(D). The season in Subareas 629 and 630 may be opened by emergency order. The season will be closed when harvest limits are reached.	Aug. 20–Jan. 31.
	Unit 6(C) and remainder of Unit 6(D)	No open season.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 6—No determination.	No limit	July 1–June 30.
Beaver: GMU 6—No determination	Trapping—20 person season	Feb. 1–Mar. 31.
Coyote: GMU 6—No determination	Unit 6 (A), (D)—Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Unit 6(A)—Trapping—No limit	Nov. 10–Mar. 31.
	Unit 6(B)—Hunting—No limit	July 1–June 30.
	Unit 6(B)—Trapping—No limit	Nov. 10–Mar. 31.
	Unit 6(C)—South of the Copper River Highway and east of the Heney Range—Hunting—No limit.	July 1–June 30.
	Trapping—No limit	Nov. 10–Apr. 30.
	Unit 6(C)—Remainder—Hunting—No limit	July 1–June 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): GMU 6—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 10–Feb. 28.
Hares (Snowshoe and Arctic): GMU 6—No determination	Hunting—No limit	July 1–June 30.
Lynx: GMU 6—No determination	Hunting—2 Lynx	Dec. 15–Jan. 15.
	Trapping—No limit	Dec. 15–Jan. 15.
Marten: GMU 6—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Mink and Weasel: GMU 6—No determination	Trapping—No limit	Nov. 10–Jan. 31.

Eligibility determination	Bag limits	Open season
Muskrat: GMU 6—No determination	Trapping—No limit	Nov. 10–June 10.
Otter (land only): GMU 6—No determination	Trapping—No limit	Nov. 10–Mar. 31.
Squirrel (Red, Ground, Flying): GMU 6—No determination	Hunting—No Limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 6—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—2 Wolves	Aug. 10–Apr. 30.
Wolverine: GMU 6—No determination	Trapping—No limit	Nov. 10–Mar. 31.
	Hunting—1 Wolverine	Sept. 1–Mar. 31.
Crow: GMU 6—No determination	Trapping—No limit	Nov. 10–Feb. 28.
	Hunting—40 per day	Sept. 1–Nov. 17 and Mar. 1–Apr. 15
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 6—No determination.	Hunting—5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow and White-tailed): GMU 6—No determination.	Hunting—20 per day, 40 in possession	Aug. 1–May 15.

(7) GMU 7. (i) Game Management Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield, including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, migratory birds and small game may be hunted with shotguns after September 1;

(B) The Exit Glacier Closed Area in Unit 7, which consists of the south side drainages of the Resurrection River downstream from the mouth of Redman Creek, and Resurrection Bay drainages between the mouth of the Resurrection River and the mouth of Lowell Creek, is closed to the taking of big game; Kenai Fjords National Park is closed to all subsistence uses;

(C) The Cooper Landing Closed Area, which consists of that portion of Units 7 and 15 bounded by a line from the junction of the Sterling Highway and the Chugach National Forest boundary, then along the national forest boundary to Thurman Creek, then southeasterly along Thurman Creek and the northeast side of Trout Lake, then to the confluence of Juneau Creek and Falls Creek, then easterly along Falls Creek and the North Fork of Falls Creek and over the connecting saddle to Devils Creek, then southeasterly along Devils Creek to its confluence with Quartz Creek, then southwesterly along Quartz Creek to the Sterling Highway and then to the point of beginning, is closed to the taking of Dall sheep and mountain goat;

(D) The Resurrection Creek Closed Area, which consists of the drainage of Resurrection Creek downstream from the including the drainage of Rimrock and Highlands Creeks, (and including Palmer Creek), is closed to the taking of moose;

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(iii)

Eligibility determination	Bag limits	Open season
Black Bear: GMU 7—No determination	Unit 7—3 bears	July 1–June 30.
Brown Bear: GMU 7—No subsistence		No open season.
Caribou: GMU 7—No subsistence		No open season.
Moose: GMU 7—No subsistence		No open season.
Bat, Shrew, Rat, Mouse, and Porcupine: GMU 7—No determination.	No limit	July 1–June 30.
Beaver: GMU 7—No determination	Trapping—20 per season	Feb.1–Mar. 31.
Coyote: GMU 7—No determination	Hunting—No limit	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): GMU 7—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—1 Fox	Nov. 10–Feb. 28
Hares (Snowshoe and Arctic): GMU 7—No determination	Hunting—No limit	July 1–June 30.
Marten: GMU 7—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Mink and Weasel: GMU 7—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Muskrat: GMU 7—No determination	Trapping—No limit	Nov. 10–May 15.
Otter (land only): GMU 7—No determination	Trapping—No limit	Nov. 10–Feb. 28.
Squirrel (Red, Ground, Flying): GMU 7—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 7—No determination	Hunting—1 Wolf	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 10–Feb. 28.
Wolverine: GMU 7—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 10–Feb. 28.
Crow: GMU 7—No determination	Hunting—40 per day	Sept. 1–Nov. 17 and Mar. 1–Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 7—No determination.	Hunting—15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow and White-tailed): GMU 7—No determination.	Hunting—20 per day, 40 in possession	Aug. 10–Mar. 31.

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(5) GMU 8. [i] Game Management Unit 8 consists of all islands southeast of the centerline of Shelikof Strait, including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands;

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(ii)

Eligibility determination	Bag limits	Open season
Caribou: GMU 8—No determination	No limit	July 1–June 30.
Deer: GMU 8—Residents of Unit 8	Unit 8, that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52' N. lat., 152° 58' W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to Crag Point, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1–Oct. 31.
	Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south western-most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1—Dec. 31.	Aug. 1–Dec. 31.
	Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1—Nov. 30.	Aug. 1–Dec. 31.
Bat, Shrew, Rat, Mouse, and Porcupine: GMU 8—No determination.	No limit	July 1–June 30.
Beaver: GMU 8—No determination	Trapping—30 Beaver per season	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): GMU 8—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
Hares (Snowshoe and Arctic): GMU 8—No determination	Hunting—No limit	Nov. 10–Mar. 31.
Marten: GMU 8—No determination	Trapping—No limit	July 1–June 30.
Mink and Weasel: GMU 8—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Muskrat: GMU 8—No determination	Trapping—No limit	Nov. 10–Dec. 31.
Otter (land only): GMU 8—No determination	Trapping—No limit	Nov. 10–June 10.
Squirrel (Red, Ground and Flying): GMU 8—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Crow: GMU 8—No determination	Hunting—No limit	July 1–June 30.
Ptarmigan (Rock, Willow and White): GMU 8—No determination	Trapping—No limit	June 1–June 30.
	Hunting—40 per day	Sept. 1–Nov. 17 and Mar. 1–Apr. 15.
	80 per day, 40 in possession	Aug. 10–Apr. 30.

(9) GMU 9. Game Management Unit 9 consists of the Alaska Peninsula and adjacent islands, including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage, drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands;

(i) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(ii) Unit 9(B) consists of the Kvichak River drainage;

(iii) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(iv) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay, including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(v) Unit 9(E) consists of the remainder of Unit 9;

(vi) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) In Unit 9 in the McNeil River State Game Sanctuary, the McNeil River drainage, Mikfik Creek drainage, and all drainages into McNeil Cove from Akjemguiga Cove to McNeil Head, are closed to hunting, and the remainder of the McNeil River State Game Sanctuary and contiguous tidelands are closed to brown bear hunting; access to the sanctuary is by permit only issued by the State of Alaska;

(B) That portion of Unit 9 extending south and east of McNeil River State Game Sanctuary to the boundary of Katmai National Park and Preserve, and including any State land within the boundaries of Katmai National Park and Preserve, is closed to brown bear hunting;

(vii) The following areas are closed to the trapping of furbearers for subsistence as indicated: The drainages of McNeil River, Mikfik Creek and all other drainages into McNeil Cove which extends from Akjemguiga Cove on the north to McNeil Head on the south, located at the head of Kamishak Bay, in the lower Cook Inlet are closed to trapping; access to the McNeil River State Game Sanctuary is by permit only;

(viii) Katmai National Park is closed to all subsistence uses;

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.
—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

(ix)

Eligibility determination	Bag limits	Open season
Black Bear: GMU 9—No determination	Unit 9—3 bears	July 1–June 30.
Brown Bear: GMU 9—Unit 9 (A), (C), and (D)—No subsistence	Unit 9(B)—1 bear every four regulatory years	Oct. 1–Oct. 21 (odd years only).
GMU 9—Unit 9(B)—Residents of Unit 9(B)	May 10–May 25 (even years only).	May 10–May 25 (even years only).
GMU 9—Unit 9(E)—Residents of Chignik Lake, Ivanof Bay and Perryville.	Unit 9(E)—1 bear (Federal registration permit is required May 10–May 25 (odd years only) and Oct. 7–Oct. 21 (even years only).	Oct. 7–Oct. 21, and May 10–May 25.
	Remainder of Unit 9	No open season.
Caribou: GMU 9—Unit 9 (A) and (B)—Residents of Units 9 (B), (C), and 17.	Units 9 (A), (B) and (C)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Aug. 31 and no more than 1 caribou may be taken Sept. 1–Nov. 30.	Aug. 10–Mar. 31.
GMU 9—Unit 9(C)—Residents of Units 9 (B), (C), 17 and residents of Egegik.	Unit 9(E)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Nov. 30. A Federal registration permit is required Sept. 1–Nov. 30.	Aug. 10–Mar. 31.
GMU 9—Unit 9(D)—Residents of Unit 9(D) and residents of False Pass.		
GMU 9—Unit 9(E)—Residents of Units 9 (B), (C), (E), 17, Nelson Lagoon and Sand Point.	Unit 9(D)—1 bull (Federal lands are closed to the hunting of caribou except by rural Alaska residents of Unit 9(D) and False Pass.	Aug. 10–Sept. 30, and Dec. 1–Mar. 31.
Sheep: GMU–9—No determination	Unit 9—1 ram with ⅛ curl horn	Aug. 10–Sept. 20.
Moose: GMU–9—Unit 9 (A), (B), (C), (E)—Residents of Unit 9 (A), (B), (C), (E).	Unit 9(A)—1 bull	Sept. 1–Sept. 15.
	Unit 9(B)—1 bull	Sept. 1–Sept. 15, and Dec. 1–Dec. 31.
	Unit 9(C)—that portion draining into the Naknek River—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; a State registration permit is required for the December hunt.	Sept. 1–Sept. 15, and Dec. 1–Dec. 31.
	Unit 9(C)—Remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31.	Sept. 1–Sept. 15, and Dec. 1–Dec. 31.
GMU 9—Unit 9(D)—No subsistence	Unit 9(D)	No open season.
	Unit 9(E)—1 bull	Sept. 1–Sept. 15, and Dec. 1–Dec. 31.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 9—No determination.	No limit	July 1–June 30.
Beaver: GMU 9—No determination	Trapping—40 Beavers per season	Jan. 1–Mar. 31.
Coyote: GMU 9—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White): GMU 9—No determination	Hunting—No limit	Dec. 1–Mar. 15.
	Trapping—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): GMU 9—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 10–Feb. 28.
Hares (Snowshoe and Arctic): GMU 9—No determination	Hunting—No limit	July 1–June 30.
Lynx: GMU 9—No determination	Hunting—2 Lynx	Nov. 10–Feb. 28.
	Trapping—No limit	Nov. 10–Feb. 28.
Marten: GMU 9—No determination	Trapping—No limit	Nov. 10–Feb. 28.
Mink and Weasel: GMU 9—No determination	Trapping—No limit	Nov. 10–Feb. 28.
Muskrat: GMU 9—No determination	Trapping—No limit	Nov. 10–June 10.
Otter (land only): GMU 9—No determination	Trapping—No limit	Nov. 10–Mar. 31.
Squirrel (Red, Ground and Flying): GMU 9—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 9—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—10 Wolves	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Wolverine: GMU 9—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 10–Feb. 28.
Crow: GMU 9—No determination	Hunting—40 per day	Sept. 1–Nov. 17, and Mar. 1–Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 9—No determination.	Hunting—15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow and White-tailed): GMU 9—No determination.	Hunting—20 per day, 40 in possession	Aug. 10–Apr. 30.

(10) GMU 10 Game Management Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands;

(i) Public lands within the following area are closed to subsistence take or subsistence take is restricted as specified. Otter Island in the Pribilof Islands is closed to hunting;

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.
—"No open season" means no Federal subsistence season.
—"No determination" indicates open to Alaska rural residents.

(ii)

Eligibility determination	Bag limits	Open season
Caribou: GMU 10—Unit 10 Unimak Island—Residents of False Pass	Unit 10—Unimak Island only—1 bull (Federal lands are closed to the hunting of caribou except by rural Alaska residents of False Pass.	Aug. 10–Sept. 30, and Dec. 1–Mar. 31.

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Eligibility determination	Bag limits	Open season
GMU 10—Remainder of Unit 10—No determination	Unit 10—Unimak and Adak Islands only	No open season.
	Unit 10—Remainder—No limit	July 1–June 30.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 10—No determination.	No limit	July 1–June 30.
Coyote: GMU 10—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): GMU 10—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): GMU 10—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 10–Feb. 28.
Hares (Snowshoe and Arctic): GMU 10—No determination	Hunting—No limit	July 1–June 30.
Mink and Weasel: GMU 10—No determination	Trapping—No limit	Nov. 10–Feb. 28.
Muskrat: GMU 10—No determination	Trapping—No limit	Nov. 10–June 10.
Otter (land only): GMU 10—No determination	Trapping—No limit	Nov. 10–Mar. 31.
Squirrel (Red, Ground and Flying): GMU 10—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 10—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—2 Wolves	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Wolverine: GMU 10—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 10–Feb. 28.
Cormorant: GMU 10—No determination	No limit	July 1–June 30.
Ptarmigan (Rock, Willow and White-tailed): GMU 10—No determination.	20 per day, 40 in possession	Aug. 10–Apr. 30.

(11) GMU 11. (i) Game Management Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier;

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware or private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

(ii)

Eligibility determination	Bag limits	Open season
Black Bear: GMU 11—No determination	Unit 11—3 bears	July 1–June 30.
Caribou: GMU 11—Mentasta Herd—Residents of Units 11, 12 (along Nabesna Road), and 13 (A)–(D).	Unit 11—1 bull by Federal registration permit only. Up to 30 bulls may be taken in Unit 11 (Source of permits—Wrangell-St. Elias National Park, mile 106.5 Old Richardson Highway, Copper Center; or the Slana District Station, Slana).	Aug. 10–Sept. 30.
Sheep: GMU 11—Residents of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, McCarthy Road, Mentasta Lake, Mentasta Pass (milepost 79–110), Nabesna Road, Slana, McCarthy/South Wrangell/South Park, Tanana, and Tonsina, however, No subsistence for Cantwell, and Glenn Highway (milepost 110–180), and to milepost 14 on the Lake Louise Road, Homestead North, Homestead South, Lake Louise, Paxson, Sourdough, Tanacross, Tok, and west Glenn Highway (milepost 79–110).	Unit 11—1 sheep	Aug. 10–Sept. 30.
Moose: GMU 11—Residents of Unit 11, Residents of Unit 12 (along Nabesna Road), and GMU 13 (A)–(D).	Unit 11—1 bull	Sept. 1–Sept. 20
Bat, Shrew, Rat, Mouse, and Porcupine: GMU 11—No determination.	No limit	July 1–June 30.
Beaver: GMU 11—No determination	Trapping—30 Beaver per season	Nov. 10–Apr. 30.
Coyote: GMU 11—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phase): GMU 11—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 10–Feb. 28.
Hares (Snowshoe and Arctic) GMU 11—No determination	Hunting—No limit	July 1–June 30.
Lynx: GMU 11—No determination	Hunting—2 Lynx	Dec. 15–Jan. 15.
	Trapping—No limit	Dec. 15–Jan. 15.
Marten: GMU 11—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Mink and Weasel: GMU 11—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Muskrat: GMU 11—No determination	Trapping—No limit	Nov. 10–June 10.
Otter (land only): GMU 11—No determination	Trapping—No limit	Nov. 10–Mar. 31.
Squirrel (Red, Ground, Flying): GMU 11—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 11—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—10 wolves	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Wolverine: GMU 11—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 10–Feb. 28.

Eligibility determination	Bag limits	Open season
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 11—Residents of Units 11, 13, 15, 16, 20(D), 22, and 23. Ptarmigan (Rock, Willow and White-tailed): GMU 11—Residents of Units 11, 13, 15, 16, 20(D), 22, and 23.	15 per day, 30 in possession	Aug. 10–Mar. 31.
	20 per day, 40 in possession	Aug. 10–Mar. 31.

(12) GMU 12. (i) Game Management Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage;

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—"No open season" means no Federal subsistence season.

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(ii)

Eligibility determination	Bag limits	Open season
Black Bear: GMU 12—No determination	Unit 12—2 bears	July 1–June 30.
Caribou:		
GMU 12—Mentasta Herd—No Determination	Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek and Totschunda Creek—1 bull by Federal registration permit only; Up to 30 bulls total may be taken in Units 11 and 12 fall and winter hunts combined (Source of permits-Wrangell-St. Elias National Park, mile 105.5 Old Richardson Highway, Copper Center; or the Slana District Station, Slana).	Aug. 10–Sept. 20.
GMU 12—Chisana Herd—No Determination	Remainder of Unit 12—1 bull	Sept. 1–Sept. 20.
GMU 12—40 mile Herd—Residents of GMU 12 north of Wrangell Park Preserve and rural residents of GMU 20 (D) and (E).	1 caribou of either sex may be taken by a Federal registration permit during a winter season to be announced for the residents of Tetlin and Northway only.	To be announced.
GMU 12—Nelchina Herd—Residents of Northway and Tetlin		
Moose:		
GMU 12—Unit 12 south of a line from Hayes Mountain, southeast of the confluence of Totschunda Creek to Nabesna River—Residents of Unit 11 north of 62nd parallel and excluding BLM parcels of north and south Slana; and residents of Units 12, 13 (A)–(D) and residents of Dot Lake.	Unit 12—that portion drained by the Tanana, Nabesna and Chisana Rivers east of the Tetlin Reservation boundary and north of the winter trail from Pickerel Lake to the Canadian border—1 bull.	Sept. 1–Sept. 15 and Nov. 20–Nov. 30.
GMU 12—Unit 12 west of the Nabesna River, south of the winter trail from Pickerel Lake to the Canadian Border—Residents of Unit 12.	Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 bull.	Sept. 1–Sept. 30.
GMU 12—Remainder of Unit 12—Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.	Unit 12—Remainder—1 bull	Sept. 1–Sept. 15.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 12—No determination.	No limit	July 1–June 30.
Beaver: GMU 12—No determination	Trapping—15 Beaver per season	Nov. 1–Apr. 15.
Coyote: GMU 12—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Feb. 28.
Fox, Red (including Cross, Black and Silver Phase): GMU 12—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 1–Feb. 28.
Hares (Snowshoe and Arctic): GMU 12—No determination	No limit	July 1–June 30.
Lynx: GMU 12—No determination	Hunting—2 Lynx	Nov. 1–Jan. 31.
	Trapping—No limit	Nov. 1–Jan. 31.
Marten: GMU 12—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Mink and Weasel: GMU 12—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Muskrat: GMU 12—No determination	Trapping—No limit	Sept. 20–June 10.
Otter (Land only): GMU 12—No determination	Trapping—No limit	Nov. 1–Apr. 15.
Squirrel (Red, Ground and Flying): GMU 12—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 12—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—10 Wolves	Aug. 10–Apr. 30.
	Trapping—No limit	Oct. 1–Apr. 30.
Wolverine: GMU 12—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 1–Feb. 28.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 12—No determination.	15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow and White-tailed): GMU 12—No determination.	20 per day, 40 in possession	Aug. 10–Apr. 30.

(13) GMU 13. (i) Game Management Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the

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east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River;

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Denali National Preserve and lands added to Denali National Park on December 2, 1980 are open to subsistence.

(B) Delta Controlled Use Area:

(*1*) The area consists of the drainages of the Tanana River south of the Alaska Highway, from the west bank of the Johnson River to and including drainages of the Delta River north of the north bank of Miller Creek and Canwell Glacier in Units 13(B), 20(A), and 20(D);

(*2*) The area is closed to the use of any motorized vehicle or pack animal for hunting, from August 5 through August 25; however, this does not prohibit motorized access to the area for hunting, or transportation of game on the Richardson Highway;

(C) The Paxson Closed Area in Unit 13(B), which consists of the eastern drainage of the Gulkana River lying west of the Richardson Highway and the western drainage of the Gulkana River between the Denali Highway and the north end of Paxson Lake where the Gulkana River enters Paxson Lake, is closed to the taking of big game;

(D) The Sheep Mountain Closed Area which lies along the Glenn Highway in Unit 13(A) and is bounded by a line from Caribou Creek, Milepost 107 Glenn Highway, then easterly along the Glenn Highway to Milepost 123, then north to Squaw Creek, then downstream to Caribou Creek, then down Caribou Creek to the point of beginning, is closed to the taking of mountain goat and Dall sheep;

(E) The Sourdough Controlled Use Area:

(*1*) The area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning;

(*2*) The area is closed to the use of any motorized vehicle for hunting; however, this does not prohibit motorized access or transportation of game on the Richardson Highway, Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Alaska Department of Fish and Game;

(F) The Clearwater Creek Controlled Use Area:

(*1*) The area consists of that portion of Unit 13(B) north of the Denali Highway, west of and including the MacLaren River drainage, east of and including the eastern bank drainages of the Middle Fork of the Susitna River downstream from and including the Susitna Glacier, and the eastern bank drainages of the Susitna River downstream from its confluence with the Middle Fork;

(*2*) The area is closed to the use of any motorized vehicle for hunting; however, this does not prohibit motorized access, or transportation of game, on the Denali Highway;

(G) The Tonsina Controlled Use Area:

(*1*) The area consists of that portion of Unit 13(D) bounded on the west by the Richardson Highway from the Tiekel River to the Tonsina River at Tonsina, on the north along the south bank of the Tonsina River to where the Edgerton Highway crosses the Tonsina River, then along the Edgerton Highway to Chitina, on the east by the Copper River from Chitina to the Tiekel River, and on the south by the north bank of the Tiekel River;

(*2*) The area is closed to the use of any motorized vehicle or pack animal for hunting, from August 5 to September 30;

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—"No open season" means no Federal subsistence season.

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(iii)

Eligibility determination	Bag limits	Open season
Black Bear: GMU 13—No determination	Unit 13—3 bears	July 1–June 30.
Caribou: GMU 13—Nelchina Herd—Residents of Units 11, 13, and 12 (along the Nabesna Road).	Unit 13—2 caribou by Federal registration permit only. Hunting within the Trans Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 20 and Jan. 5–Mar. 31.
Sheep:		
GMU 13—Tok Management Area—No subsistence	Unit 13—excluding Unit 13(D) and the Tok and Delta Management Areas—1 Ram with 7/8 curl horn.	Aug. 10–Sept. 20.
GMU 13—Delta management Area—No subsistence		
GMU 13—Unit 13(D)—No subsistence		
GMU 13—Remainder of Unit 13—No determination		
Goats: GMU 13—Unit 13(D)—No subsistence		No open season.
Moose: GMU 13—Residents of Unit 13	Unit 13—1 bull moose by Federal registration permit only; only 1 permit will be issued per household. Source of permits—Bureau of Land Management, Glennallen District Office, Glennallen AK.	Aug. 25–Sept. 20.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 13—No determination.	No limit	July 1–June 30.
Beaver: GMU 13—No determination	Trapping—30 Beaver per season	Nov. 10–Apr. 30.
Coyote: GMU 13—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): GMU 13—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 10–Feb. 28.
Hares (Snowshoe and Arctic): GMU 13—No determination	No limit	July 1–June 30.
Lynx: GMU 13—No determination	Hunting—2 Lynx	Dec. 15–Jan. 15.
	Trapping—No limit	Dec. 15–Jan. 15.
Marten: GMU 13—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Mink and Weasel: GMU 13—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Muskrat: GMU 13—No determination	Trapping—No limit	Nov. 10–June 10.
Otter (land only): GMU 13—No determination	Trapping—No limit	Nov. 10–Mar. 31.
Squirrel (Red, Ground and Flying): GMU 13—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 13—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—10 Wolves	Aug. 10–Apr. 30.
Wolverine: GMU 13—No determination	Trapping—No limit	Nov. 10–Mar. 31.
	Hunting—1 Wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 13—Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.	Trapping—No limit	Nov. 10–Feb. 28.
Ptarmigan (Rock, Willow and White-tailed): GMU 13—Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.	15 per day, 30 in possession	Aug. 10–Mar. 31.
	30 per day, 60 in possession	Aug. 10–Mar. 31.

(14) GMU 14. (i) Game Management Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River;

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A);

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) The Fort Richardson Management Area, consisting of the Fort Richardson Military Reservation, is open to the taking of big game by permit only;

(B) The Eagle River Management Area, consisting of the Eagle River drainage upstream from the Glenn Highway in Unit 14(C) is closed to hunting, except sheep hunting by permit;

(C) The Anchorage Management Area:

(*1*) The area consists of all Cook Inlet drainages south of the Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek, but excluding the Anchorage Coastal Wildlife Refuge;

(*2*) The Anchorage Management Area is closed to hunting, except that moose hunting is allowed by State of Alaska permit only; and small game and waterfowl may be taken by falconry, except that waterfowl may not be taken in the Ship Creek drainage west of Post Road;

(D) The Eklutna Lake Management Area:

(*1*) The area consists of the drainages of Eklutna River and Eklutna Lake in Unit 14(C) upstream from the Glenn Highway, excluding those drainages flowing into the East Fork of Eklutna River upstream from the bridge above the Lake and Thunderbird Creek;

(*2*) The area is closed to hunting, except that:

(*i*) Small game may be taken by bow and arrow only, from the day after Labor Day through April 30;

(*ii*) Moose hunting is allowed by permit with bow and arrow only;

(*iii*) Black bear may be taken by bow and arrow only, from the day after Labor Day to May 20, for one bear only;

(*iv*) Sheep may be taken by permit, and by bow and arrow only, from the day after Labor Day through September 30;

(E) The Peters Creek Management Area:

(*1*) The area consists of all lands bounded on the south and west by Eagle River and the Fort Richardson Military Reservation, on the east by the old Glen Highway, and on the north by Peters Creek;

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(2) The area is closed to hunting except that:

(i) Small game may be taken by shotgun or bow and arrow only, north and west of the Alaska Railroad;

(ii) Moose hunting is allowed by drawing permit, by bow and arrow only.

(ii) The following areas in Unit 14(C) (Anchorage Area) are closed to the trapping of furbearers for subsistence as indicated:

(A) The drainages into Eklutna River and Eklutna Lake, excluding those drainages flowing into the East Fork of the Eklutna River, upstream from the bridge above the lake, within the Chugach State Park except Thunderbird Creek;

(B) Eagle River and all drainages into Eagle River;

(C) That portion of Chugach State Park outside of the Eagle River, Anchorage, and Eklutna Management areas is open to trapping under Unit 14(C) seasons and bag limits, except no trapping of wolf, wolverine, land otter, or beaver is allowed;

(D) All land and water within the Anchorage Management Area as described in the preceding subsection;

(E) In the Anchorage Coastal Wildlife Refuge in Unit 14(C), described in Alaska Statute 16.20.031: all land and water south and west of and adjacent to the toe of the bluff that extends from Point Woronzof southeasterly to Potter Creek.

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.

—"No open season" means no Federal subsistence season.

—"No determination" indicates open to Alaska rural residents.

Eligibility department	Bag limits	Open season
Black Bear: GMU 14—Units 14 (A) and (C)—No determination	Unit 14 (A), (C)—1 bear	July 1–June 30.
Brown Bear: GMU 14—Unit 14(A)—No determination	Unit 14(A)—1 bear every four regulatory years	Sept. 1–Oct. 10.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 14—No determination.	No limit	July 1–June 30.
Beaver: GMU 14—No determination	Trapping—Unit 14(A)—30 Beaver per season	Nov. 10–Apr. 30.
	Trapping—Unit 14(C)—That portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, and the Twentymile River—20 per season.	Feb. 1–Mar. 31.
	Unit 14(C)—Remainder	No Open Season.
Coyote: GMU 14—No determination	Hunting—Unit 14 (A) and (C)—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—Unit 14(A)—No limit	Nov. 10–Mar. 31.
	Trapping—Unit 14(C)—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): GMU 14—No determination.	Hunting—Unit 14—2 Foxes	Nov. 1–Feb. 15.
	Trapping—Unit 14(A)—No limit	Nov. 10—Feb. 28.
	Trapping—Unit 14(C)—1 Fox	Nov. 10—Feb. 28.
Hares (Snowshoe and Arctic): GMU 14—No determination	Hunting—Unit 14(A)—5 Hares per day	July 1–June 30.
	Hunting—Unit 14(C)—5 Hares per day	Day after Labor Day–Apr. 30.
Lynx: GMU 14—No determination	Hunting—2 Lynx	Dec. 15–Jan. 15.
	Trapping—No limit	Dec. 15–Jan. 15.
Marten: GMU 14—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Mink and Weasel: GMU 14—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Muskrat: GMU 14—No determination	Trapping—No limit	Nov. 10–May 15.
Otter (land only): GMU 14—No determination	Trapping—Unit 14(a)—No limit	Nov. 10–Mar. 31.
	Trapping—Unit 14(C)—No limit	Nov. 10–Feb. 28.
Squirrel (Red, Ground and Flying): GMU 14—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 14—No determination	Hunting—Unit 14(A)—4 Wolves	Aug. 10–Apr. 30.
	Trapping—No Limit	Nov. 10–Mar. 31.
	Hunting—Unit 14(C)—1 Wolf	Aug. 10–Apr. 30.
	Trapping—No Limit	Nov. 10–Feb. 28.
Wolverine: GMU 14—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 10–Feb. 28.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 14—No determination.	Unit 14(A)—15 per day, 30 in possession	Aug. 10–Mar. 31.
	Unit 14(C)—5 per day, 10 in possession	Day after Labor Day–Mar. 31.
Ptarmigan (Rock, Willow and White-tailed): GMU 14—No determination.	Unit 14(A)—10 per day, 20 in possession	Aug. 10–Mar. 31.
	Unit 14(C)—10 per day, 20 in possession	Day after Labor Day–Mar 31.

(15) GMU 15. (i) Game Management Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00' W. crosses the coast line of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00' W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary;

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) The Kenai Controlled Use Area, consisting of that portion of Unit 15(A) north of the Sterling Highway, is closed during moose-hunting season to the use of aircraft for hunting moose, including transportation of a moose hunter or moose part; however, this does not apply after 12:01 a.m., September 11, and does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area or from a publicly owned airport within the area to points outside of the area;

(B) The Lower Kenai Controlled Use Area, consisting of Unit 15(C), is closed to the use of any motorized vehicle except an aircraft or boat for hunting moose from September 11 through September 20, including transportation of a moose hunter or moose part; however this does not apply to a motorized vehicle on a State- or Borough-maintained highway;

(C) the Skilak Loop Management Area; consisting of that portion of Unit 15(A) bounded by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its westernmost junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning; is closed to hunting and trapping except that small game may be taken only from October 1 through March 1 by bow and arrow only, and antlerless moose may be taken by permit only.

(iii) The following areas are closed to the trapping of furbearers for subsistence as indicated:

(A) Within the city limits of Homer (Unit 15) as those limits existed in November 1987;

(B) The Skilak Loop Wildlife Management Area;

(C) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.

—"No open season" means no Federal subsistence season.

—"No determination" indicates open to Alaska rural residents.

Eligibility determination	Bag limits	Open season
Black Bear: GMU 15—No determination	Unit 15—3 bears	July 1–June 30.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 15—No determination.	No limit	July 1–June 30.
Beaver: GMU 15—No determination	Trapping—20 Beaver per season	Feb. 1–Mar. 31.
Coyote: GMU 15—No determination	Hunting—No limit	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phase): GMU 15—No determination.	Trapping—1 Fox	Nov. 10–Feb. 28.
	Hunting—No limit	July 1–June 30.
Hares (Snowshoe and Arctic): GMU 15—No determination	Trapping—Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier.	No open season.
Marten: GMU 15—No determination	Unit 15—Remander—No limit	Nov. 10–Jan. 31.
Mink and Weasel: GMU 15—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Muskrat: GMU 15—No determination	Trapping—No limit	Nov. 10–May 15.
Otter (land only): GMU 15—No determination	Trapping—Unit 15(A), (B)—No limit	Nov. 10–Jan. 31.
	Trapping—Unit 15(C)—No limit	Nov. 10–Feb. 28.
Squirrel (Red, Ground and Flying): GMU 15—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 15—No determination	Hunting—1 Wolf	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 10–Feb. 28.
Wolverine: GMU 15—No determination	Hunting—Unit 15—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—Unit 15(A)	No open season.
	Trapping—Unit 15(B), (C)—No limit	Nov. 10–Feb. 28.
Crow: GMU 15—No determination	40 per day	Sept. 1–Nov. 17 and Mar. 1–Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 15—Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.	15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow and White-tailed): GMU 15—Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.	Unit 15(A), (B)—20 per day, 40 in possession	Aug. 10–Mar 31.
	Unit 15(C)—20 per day, 40 in possession	Aug. 10–Dec. 31.
	5 per day, 10 in possession	Jan. 1–Mar. 31.

(16) GMU 16. (i) Game Management Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its junction with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kanitula Glacier;

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16;

(ii) Public Lands within the following areas are closed to subsistence take or subsistence take is restricted as specified. (A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Denali National Preserve and lands added to Denali National Park on December 2, 1980 are open to subsistence.

(B) [Reserved]

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users.

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Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257-2573).

Eligibility determination	Bag limits	Open season
Black Bear: GMU 16—No determination	Unit 16—3 bears	July 1–June 30.
Caribou: GMU 16—No determination	Unit 16—1 caribou	Aug. 10–Oct. 31.
Moose:		
GMU 16-Unit 16(A)—No subsistence	Unit 16(A)—Kalgin Island—No Federal land	No open season.
GMU 16-Unit 16(B)— Residents of Unit 16(B)	Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 bull.	Sept. 1–Sept. 15.
	Unit 16(B)—Remainder—1 moose, however antlerless moose may be taken only from Sept. 20–Sept. 30 and from Dec. 1 to Feb. 28 by Federal registration permit only.	Sept. 1–Sept. 30 and Dec. 1–Feb. 28.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 16—No determination	No limit	July 1–June 30.
Beaver: GMU 16—No determination	Trapping—30 Beaver per season	Nov. 10–Apr. 30.
Coyote: GMU 17-No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases); GMU 16—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 10–Feb. 28.
Hares (Snowshoe and Arctic); GMU 16—No determination	Hunting-No limit	July 1–June 30.
LYNX: GMU 16—No determination	Hunting—2	Dec. 15–Jan. 15.
	Trapping—No limit	Dec. 15–Jan. 15.
Marten: GMU 16—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Mink and Weasel: GMU 16—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Muskrat: GMU 16—No determination	Trapping—No limit	Nov. 10–June 10.
Otter (land only): GMU 16—No determination	Trapping—Not limit	Nov. 10–Mar. 31.
Squirrel (Red, Ground and Flying): GMU 16—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 16—Residents of Units 6, 9, 10 (Unimak Island Only), 11–13, and 16–26.	Hunting—4 Wolves	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Wolverine: GMU 16—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 10–Feb. 28.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed); GMU 16—Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.	15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock Willow and White-tailed); GMU 16—Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.	20 per day, 40 in possession	Aug. 10–Mar. 31.

(17) GMU 17. (i) Game Management Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points, including Hagemeister Island and the Walrus Islands;

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) All islands and adjacent waters within one-half mile of each island in the Walrus Islands State Game Sanctuary, as described in Alaska Statute 16.20.110, except for those islands known as the Twins and their adjacent waters are closed to hunting;

(B) The Upper Mulchatna Controlled Use Area consisting of Unit 17(B), is closed to the use of any motorized vehicle, except aircraft and boats and in legally permitted hunting camps, for hunting big game from August 1 to November 1, including transportation of big game hunters and parts of big game.

(iii) The following areas are closed to the trapping of furbearers for subsistence as indicated: all islands within the Walrus Islands State Game Sanctuary as described in Alaska Statute 16.20.110.

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—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257-2573).

(iv)

Eligibility determination	Bag limits	Open season
Black Bear: GMU 17—No determination	Unit 17—3 bears	July 1–June 30.
Brown Bear:		
GMU 17— Unit 17(A)—Residents of Unit 17, Goodnews Bay and Platinum.	Unit 17(A), (C)—1 bear every four regulatory years	Sept. 10–Oct. 10 and April 10–May 25.
GMU 17—Unit 17 (B) and (C)—Residents of Unit 17	Unit 17(B)—1 bear every four regulatory years	Sept. 10–Oct. 10 and May 10–May 25.

Eligibility determination	Bag limits	Open season
GMU 17—Unit 17 (A) and (B)—those portions north and west of a line beginning from the GMU 18 boundary at the northwest end of Nenevok Lake, to the southern point of Upper Togiak Lake, and northeast to the northern point of Nuyaluk Lake, north-east to the point where the GMU 17 boundary intersects the Shotgun Hills—Residents of Kwethluk		
Caribou:		
GMU 17—Residents of Unit 9(B), 17, and residents of Lime Village and Stony River.	Unit 17(A), and (C)—that portion of Unit 17(C) west of Nushagak River.	No open season.
GMU 17—Unit 17 (A) and (B) portions as described above—Residents of Kwethluk.	Unit 17(B), and (C)—that portion of 17(C) east of the Nushagak River—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Aug. 31, and no more than 1 caribou may be taken Sept. 1–Nov. 30.	Aug. 10–Mar. 31.
Sheep: GMU 17—Unit 17—No determination	Unit 17—1 ram with full curl horn or larger	Aug. 10—Sept. 20.
Moose:		
GMU 17—Unit 17(A)—Residents of Unit 17 and residents of Goodnews Bay and Platinum.	Unit 17(A)	No open season.
GMU 17—Unit 17 (B), (C)—Residents of Unit 17, Nondalton, Levelock, Goodnews Bay and Platinum.	Unit 17(B)—that portion that incudes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull.	Sept. 1–Sept. 20.
GMU 17—Unit 17 (A) and (B) portions as described above—Residents of Kwethluk.	Unit 17(B)—Remainder—1 bull	Aug. 20–Sept. 15 and Dec. 1–Dec. 31.
	Unit 17(C)—that portion that includes the lowithia drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull.	Aug. 20–Sept. 15.
	Unit 17(C)—Remainder—1 bull	Aug. 20–Sept. 15 and Dec. 1–Dec. 31.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 17—No determination	No limit	July 1–June 30.
Beaver: GMU 17—No determination	Trapping—Unit 17(A)—20 Beavers per season	Jan. 1–Jan. 31.
	Trapping—Unit 17(B), (C)—20 Beavers per season	Jan. 1–Feb. 28.
Coyote: GMU 17—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 10–Mar 31.
Fox, Arctic (Blue and White Phase): GMU 17—No determination	Hunting—No limit	Dec. 1–Mar. 15.
	Trapping—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): GMU 17—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 10–Feb. 28.
Hares (Snowshoe and Arctic): GMU 17—No determination	Hunting—No limit	July 1–June 30.
Lynx: GMU 17—No determination	Hunting—2 Lynx	Nov. 10–Feb. 28.
	Trapping—No limit	Nov. 10–Feb. 28.
Marten: GMU 17—No determination	Trapping—No limit	Nov. 10–Feb. 28.
Mink and Weasel: GMU 17—No determination	Trapping—No limit	Nov. 10–Feb. 28.
Muskrat: No determination	Trapping—No limit	Nov. 10–June 10.
Otter (land only): GMU 17—No determination	Trapping—No limit	Nov. 10–Mar. 31.
Squirrel (Red, Ground and Flying): GMU 17—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 17—Residents of Units, 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—10 Wolves	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Wolverine: GMU 17—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 10–Feb. 28.
Cormorant: GMU 17—No determination	No limit	July 1–June 30.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 17—No determination.	15 per day; 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow and White-tailed): GMU 17—No determination.	20 per day, 40 in possession	Aug. 10–Apr. 30.
Snowy Owl: GMU 17—No determination	No limit	July 1–June 30.

(18) GMU 18. (i) Game Management Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthews, and adjacent islands between Cape Newenham and the Pastolik River;

(ii) Public lands within the following area are closed to subsistence take or subsistence take is restricted as specified. The Kalskag Controlled Use Area consisting of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting big game, including transportation of any big game hunter and big game part; however, this does not apply to transportation of a big game hunter or big game part by aircraft between publicly owned airports in the controlled use area or from a publicly owned airport within the area to points outside the area;

Note. There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.

—"No open season" means no Federal subsistence season.

—"No determination" indicates open to Alaska rural residents.

(iii)

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Eligibility determination	Bag limits	Open season
Black Bear: GMU 18—No determination	Unit 18—3 bears	July 1–June 30.
Brown Bear: GMU 18—Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum Quinhagak, St. Mary's, and Tuluksak.	Unit 18—Residents domiciled in Kwethluk—1 bear	Sept. 10–Oct. 10. Apr. 10–May 25.
	All others—1 bear every four regulatory years	
Caribou: GMU 18—Residents of Kwethluk	Unit 18—north of the Yukon River—1 caribou	Feb. 1–Mar. 31.
	Unit 18—Remainder	No open season.
Moose: GMU 18—Residents of GMU 18 and Upper Kalskag	Unit 18—that portion north and west of a line from Cape Romanof to Kuzilvak Mountain, and then to Mountain Village, and west of (but not including) the Andreasky River drainage; and those portions contained in the Kanektok and Goodnews drainages.	No open season (Closed to all moose hunting).
	Unit 18—Remainder—1 antlered moose. A 10 day hunt falling sometime between Dec. 1 and Feb. 28 shall also be opened by announcement of the Federal Subsistence Board. Federal lands in Unit 18 are closed to the hunting of moose except by rural Alaska residents of Unit 18 and Upper Kalskag.	Sept. 1–Sept. 30 (Winter season to be announced).
Bat, Shrew, Rat, Mouse, and Porcupine: GMU 18—No determination	No limit	July 1–June 30.
Beaver: GMU 18—No determination	Trapping—No limit	Nov. 1–June 10.
Coyote: GMU 18—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): GMU 18—No determination	Hunting—2 Foxes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): GMU 18—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 10–Mar. 31.
Hares (Snowshoe and Arctic): GMU 18—No determination	No limit	July 1–June 30.
Lynx: GMU 18—No determination	Hunting—2 Lynx	Nov. 10–Mar. 31.
	Trapping—No limit	Nov. 10–Mar. 31.
Marten: GMU 18—No determination	Trapping—No limit	Nov. 10–Mar. 31.
Mink and Weasel: GMU 18—No determination	Trapping—No limit	Nov. 10–Jan. 31.
Muskrat: GMU 18—No determination	Trapping—No limit	Nov. 10–June 10.
Otter (land only): GMU 18—No determination	Trapping—No limit	Nov. 10–Mar. 31.
Squirrel (Red, Ground and Flying): GMU 18—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 18—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—4 Wolves	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 10–Mar. 31.
Wolverine: GMU 18—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 10–Mar. 31.
Cormorant: GMU 18—No determination	No limit	July 1–June 30.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 18—No determination.	15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow and White-tailed): GMU 18—No determination.	20 per day, 40 in possession	Aug. 10–Apr. 30.
Snowy Owl: GMU 18—No determination	No limit	July 1–June 30.

(19) GMU 19. (i) Game Management Unit 19 consists of the Kuskokwim River drainage upstream from Lower Kalskag;

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Denali National Preserve and lands added to Denali National Park on December 2, 1980 are open to subsistence.

(B) The Upper Kuskokwim Controlled Use Area consisting of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152° 50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,010, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area or from a publicly owned airport within the area to points outside the area;

(C) The Lime Village Management Area consists of that portion of Unit 19(A) drained by the Stony River from the mouth of the Stink River, including the Stink River drainage, upstream to

but not including the Can Creek drainage.

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

Eligibility determination	Bag limits	Open season.
Black Bear: GMU 19—No determination	Unit 19—3 bears	July 1–June 30.
Brown Bear:		
GMU 19—Unit 19(A)—Residents of Unit 19(A), (D), Tuluksak, Lower Kalskag and Kwethluk.	Unit 19(A), (D)—1 bear every four regulatory years	Sept. 1–May 31.
GMU 19—Unit 19(B)—Residents of Kwethluk	Unit 19(B)—1 bear every four regulatory years	Sept. 10–May 25.
GMU 19—Unit 19(D)—Residents of Unit 19(A), (D), Tuluksak and Lower Kalskag.		
GMU 19—Unit 19(C)—No subsistence	Unit 19(C)	No open season.
Caribou:		
GMU 19—Unit 19(A), (B)—(fall season) Residents of Unit 19(A), (B) and Kwethluk; (winter season) Residents of Unit 18 in Kuskokwim Drainage and Bay, residents of 19(A), (B) and Kwethluk.	Unit 19(A) north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30 and Nov. 1–Feb. 28
	Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding residents of Lime Village)—4 caribou.	Aug. 10–Mar. 31.
GMU 19—Unit 19(C)—Residents of Unit 19(C), Lime Village, McGrath, Nikolai, and Telida.	Unit 19(C)—1 caribou	Aug. 10–Oct. 10.
GMU 19—Unit 19(D)—Residents of Unit 19(D), Lime Village, Stebbins, and Stony River.	Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou.	Aug. 10–Sept. 30 and Nov. 1–Jan. 31.
	Unit 19(D)—Remainder—1 caribou	Aug. 10–Sept. 30.
	Unit 19—Lime Village Management Area—Residents domiciled in Lime Village only; no individual bag limit but a village harvest quota of 100 caribou; cows and calves may not be taken from Apr. 1–Aug. 9.	July 1–June 30.
Sheep: GMU 19—No determination	Unit 19—1 ram with ¾ curl	Aug. 10–Sept. 20.
Moose:		
GMU 19—Unit 19(A), (B)—Residents of Unit 19 within Kuskokwim River drainage upstream from and including the Johnson River and Unit 19.	Unit 19—Lime Village Management Area—Residents of Lime Village only—No individual bag limit but a village harvest quota of 30 moose; either sex.	July 1–June 30.
	Unit 19(A)—1 moose; however, antlerless moose may be taken only from Nov. 20–Nov. 30 and Feb. 1–Feb. 10.	Sept. 1–Sept. 20; Nov. 20–Nov. 30; Feb. 1–Feb. 10.
GMU 19—Unit 19(C)—Residents of Unit 19	Unit 19(B)—1 bull	Sept. 1–Sept. 30.
GMU 19—Unit 19(D)—Residents of Unit 19 and residents of Lake Minchumina.	Unit 19(C)—1 bull	Sept. 1–Oct. 10.
	Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 bull.	Sept. 1–Sept. 30.
	Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull.	Sept. 1–Sept. 30 and Dec. 1–Feb. 28.
	Unit 19(D)—Remainder—1 bull	Sept. 1–Sept. 30 and Dec. 1–Dec. 15.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 19—No determination	No limit	July 1–June 30.
Beaver: GMU 19—No determination	Trapping—50 Beaver per season	Nov. 1–Apr. 15.
Coyote: GMU 19—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): GMU 19—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 1–Mar. 31.
Hares (Snowshoe and Arctic): GMU 19—No determination	No limit	July 1–June 30.
Lynx: GMU 19—No determination	Hunting—2 Lynx	Nov. 1–Feb. 28.
	Trapping—No limit	Nov. 1–Feb. 28.
Marten: GMU 19—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Mink and Weasel: GMU 19—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Muskrat: GMU 19—No determination	Trapping—No limit	Nov. 1–June 10.
Otter (land only): GMU 19—No determination	Trapping—No limit	Nov. 1–Apr. 15.
Raccoon: GMU 19—No determination	No limit	July 1–June 30.
Squirrel (Red, Ground and Flying): GMU 19—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 19—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—10 Wolves	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 1–Mar. 31.
Wolverine: GMU 19—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 19—No determination.	15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow and White-tailed): GMU 19—No determination.	20 per day, 40 in possession	Aug. 10–Apr. 30.

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(20) GMU 20. (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River;

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding, the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20.

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Denali National Preserve and lands added to Denali National Park on December 2, 1980 are open to subsistence.

(B) Delta Controlled Use Area consisting of the drainages of the Tanana River south of the Alaska Highway, from the west bank of the Johnson River to and including drainages of the Delta River north of the north bank of Miller Creek and Canwell Glacier in Units 13(B), 20(A), and 20(D) is closed to the use of any motorized vehicle or pack animal for hunting from August 5 through August 25; however, this does not prohibit motorized access to the area for hunting, or transportation of game on the Richardson Highway;

(C) The Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to hunting; however, big game and small game may be taken in the area by bow and arrow only; no motorized vehicle, except aircraft, boats, and licensed highway vehicles, may be used to transport game or hunters within the Dalton Highway Corridor Management Area;

(D) Birch Lake and the area within one-half mile of Birch Lake (Mile 56 Richardson Highway) is closed to the taking of big game;

(E) Harding Lake and the area within one-half mile of Harding Lake (Mile 44 Richardson Highway) is closed to the taking of big game;

(F) Lost Lake and the area within one-half mile of Lost Lake (Mile 56 Richardson Highway) is closed to the taking of big game with firearms and crossbows;

(G) The Delta Junction Closed Area (Unit 20(D) near Delta Junction), which consists of that portion of Unit 20(D) bounded by a line beginning at the confluence of Donnelly Creek and the Delta River, then up Donnelly Creek to the Richardson Highway (Mile 238), then north along the east side of the highway to the "12 mile crossing trail" (Mile 252.4), then east along the south side of the "12 mile crossing trail" and across Jarvis Creek to the 33-Mile Loop Road then northeast along the 33-Mile Loop Road to the intersection with the Alaska Highway (Mile 1414), then southeast along the north side of the Alaska Highway to the bridge at Sawmill Creek (Mile 1403.9), then down the west bank of Sawmill Creek to its confluence with Clearwater Creek and down the south bank of Clearwater Creek to its confluence with the Tanana River, then down the Tanana River to its confluence with the Delta River, and upstream along the east bank of the Delta River to the point of beginning at Donnelly Creek, is closed to the taking of moose;

(H) The Glacier Mountain Controlled Use Area consisting of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway is closed to the use of any motorized vehicle for hunting, from August 5 to September 20; however, this does not prohibit motorized access via, or transportation of game on, the Taylor Highway or any airport;

(I) The Wood River Controlled Use Area consisting of that portion of Unit 20(A) bounded on the north by the south side of the Rex Trail beginning at its intersection with the Totatlanika River then easterly along the Rex Trail to Gold King airstrip, then from Gold King airstrip along the trail's extension along the north side of Japan Hills to the Wood River; on the east by the Wood River, including the Wood River drainage upstream from and including the Snow Mountain Gulch Creek drainage; on the south by the divide separating the Yanert River drainage from the drainages of Healy Creek, Moody Creek, Montana Creek and the Wood River; and on the west by the east bank of the Nenana River from the divide separating the drainage of the Yanert River and Montana Creek north to Healy Creek, then easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters, then along a straight line to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, and then down the east bank of the Totatlanika River to the Rex Trail is closed to the use of any motorized vehicle except aircraft for big game hunting and transportation of any big game part from August 1 through September 30;

(J) The Macomb Plateau Controlled Use Area, consisting of that portion of Unit 20(D) south of the Alaska Highway, draining into the south side of the Tanana River between the east bank of the Johnson River upstream to Prospect Creek, and the east bank of Bear Creek (Mile 1357.3), is closed to the use of any motorized vehicle, except a floatplane on Fish Lake, for hunting or transportation of any game part, from August 10 through September 30;

(K) The Yanert Controlled Use Area, consisting of that portion of Unit 20(A) drained by the Nenana River upstream from and including the Yanert Fork drainage, is closed to the use of any motorized vehicle, except aircraft, for big game hunting and transportation of any big game part; however, this does not prohibit motorized access via, and transportation of game on, the Parks Highway;

(L) The Minto Flats Management Area consisting of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 98, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(M) The Fairbanks Management Area consists of the Goldstream subdivision (SE¼SE¼ section 28 and section 33, Township 2 North, Range 1 West, and Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning is open to moose hunting by bow and arrow only;

(N) The Ferry Trail Management Area consisting of that portion of Unit 20(A) bounded on the north by the Rex Trail; on the west by the east bank of the Nenana River from its intersection with the Rex Trail south to the divide forming the north boundary of the Lignite Creek drainage; on the south by that divide easterly and southerly to the headwaters of Sanderson Creek at Usibelli Peak, then along a southwesterly line to the confluence of Healy Creek and Coal Creek, then upstream easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters; on the east by a straight line from the headwaters of Healy Creek to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, then down the east bank of the Totatlanika River to the Rex Trail is open to caribou hunting by permit only;

(o) The Healy-Lignite Management Area consisting of that portion of Unit 20 (A) that includes the entire Lignite Creek drainage, and that portion of the Nenana River drainage south of the Lignite Creek drainage and north of a boundary beginning at the confluence of the Nenana River and Healy Creek, then easterly along the south bank of Healy Creek to its confluence with Coal Creek then northeasterly to the headwaters of Sanderson Creek at Usibelli Peak is open to hunting by bow and arrow only.

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

Eligibility determination	Bag limits	Open season
Black bear: GMU 20—No determination	Unit 20—3 bears	July 1–June 30.
Brown bear: GMU 20—Unit 20 (A), (B), (C), (D), and (F)—No determination.	Unit 20.—except Unit 20(E)—1 bear every four regulatory years	Sept. 1–May 31.
GMU 20—Unit 20(E)—No subsistence	Unit 20 (E)	No open season.
Caribou: GMU 20—Unit 20(A), (C) (Delta, Yanert, and 20(C) herds), (D)—No determination except no subsistence for residents of McKinley Village, the area along the Parks Highway between milepost 216 and 239 and households of the Denali National Parks Headquarters.	Units 20(A), (B), (C) and (D)	No open season.
GMU 20—Unit 20(D) and (E) 40-Mile Herd—Residents of Unit 12 north of Wrangell Park-Preserve, rural residents of 20(D) and residents of 20(E).	Unit 20(E)—that portion drained by the Yukon River downstream from and including the Seventy-mile and Charley Rivers, the North Fork Fortymile River upstream from and including Independence Creek, the Middle Fork Fortymile River upstream from Fish Creek, and the Mosquito Fork Fortymile River upstream from and including Ketchumstuck Creek—1 caribou.	Aug. 10–Sept. 30 and Dec. 1–Feb. 28.
GMU 20—Unit 20(B) and (F)—No determination	Unit 20(E)—Remainder of Unit 20(E) accessible by the Taylor Highway and associated trails, as described in the permit—1 caribou by State registration permit only; however, only bulls may be taken prior to Dec. 1.	Aug. 10–Sept. 30 and Dec. 1–Feb. 28.
	Unit 20(F)—South of the Yukon River and west of the Dalton Highway—1 bull.	Aug. 10–Sept. 20.
	Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30.	Aug. 10–Sept. 30, Nov. 26–Dec. 10 and Mar. 1–Mar. 15.
	Unit 20(F)—Remainder—1 bull	Aug. 10–Sept. 30.
Moose: GMU 20—Unit 20(A)—Residents of Cantwell, Minto, and Nenana.	Unit 20(A)—the Ferry Trail Management Area and the Yanert Controlled Use Area—1 bull with a spike-fork or 50-inch antlers.	Sept. 1–Sept. 20.
GMU 20—Unit 20(A) and (C)—No subsistence for residents of McKinley Village, the area along the Parks Highway between milepost 216 and 239 and households of the Denali National Park Headquarters.	Unit 20(A)—Remainder 1 bull	Sept. 1–Sept. 30.

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Eligibility determination	Bag limits	Open season
GMU 20—Unit 20(B) Minto Flats Management Area—Residents of Minto and Nenana.	Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only (Source of permits—Yukon Flats National Wildlife Refuge, Fairbanks AK).	Sept. 1–Sept. 20 and Jan. 10–Feb. 28.
GMU 20—Remainder of Unit 20(B)—Rural residents of GMU 20(B) Nenana and Tanana.	Unit 20(B)—the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek—1 bull.	Sept. 1–Sept. 20.
	Unit 20(B)—Remainder—(except the Fairbanks Management Area; no subsistence)—1 bull.	Sept. 1–Sept. 20.
GMU 20—Unit 20(C)—Rural residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, and Tetlin.	Unit 20(C)—1 bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	
GMU 20—Unit 20(E)—No determination	Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 146 Taylor Highway, including the Boundary Cutoff Road—1 bull.	Sept. 1–Sept. 10.
	Unit 20(E)—Remainder—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 bull.	Sept. 5–Sept. 25.
GMU 20—Unit 20(F)—Residents of Unit 20(F), Manley, Minto, and Stevens Village.	Unit 20(F)—1 bull	Sept. 1–Sept. 25.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 20—No determination.	No limit	July 1–June 30.
Beaver: GMU 20—No determination	Trapping—Unit 20(A)—25 Beaver per season	Feb. 1–Apr. 15.
	Trapping—Unit 20(B)—that portion of the Chena River downstream from its confluence with the Little Chena River, and Badger (Pleadriver) Slough downstream from Plack Road.	No open season.
	Trapping—Unit 20(B)—Remainder of Unit 20(B) and Unit 20(C), (E), and that portion of 20(D) draining into the north bank of the Tanana River, including the islands in the Tanana River—25 Beaver per season.	Nov. 1–Apr. 15.
	Trapping—Unit 20(D)—Remainder—15 Beaver per season	Feb. 1–Apr. 15.
	Trapping—Unit 20(F)—50 Beaver per season	Nov. 1–Apr. 15.
Coyote: GMU 20—No determination	Hunting—Unit 20—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—Unit 20(E)—No limit	Nov. 1–Feb. 28.
	Trapping—Unit 20—Remainder (except 20(D))—No limit	Nov. 1–Mar. 31.
Fox, red (including Cross, Black and Silver Phases): GMU 20—No determination.	Unit 20(D)	No open season.
	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 1–Feb. 28.
Hares (Snowshoe and Arctic): GMU 20—No determination	No limit	July 1–June 30.
Lynx: GMU 20—No determination	Hunting—Unit 20(E)—2 Lynx	Nov. 1–Jan. 31.
	Trapping—Unit 20(E)—No limit	Nov. 1–Jan. 31.
	Hunting—Unit 20—Remainder (except (D))—2 Lynx	Dec. 1–Jan. 31.
	Trapping—Unit 20—Remainder (except (D))—No limit	Dec. 1–Jan. 31.
Marten: GMU 20—No determination	Unit 20(D)	No open season.
Mink and weasel: GMU 20—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Muskrat: GMU 20—No determination	Trapping—No limit	Nov. 1–Feb. 28.
	Trapping—Unit 20(E)—No limit	Sept. 20–June 10.
Otter (land only): GMU 20—No determination	Trapping—Unit 20—Remainder (except (D))—No limit	Nov. 1–June 10.
Squirrel (Red, Ground and Flying): GMU 20—No determination	Unit 20(D)	No open season.
	Trapping—No limit	Nov. 1–Apr. 15.
Wolf: GMU 20—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
	Hunting—Unit 20—10 Wolves per season	Aug. 10–Apr. 30.
Wolverine: GMU 20—No determination	Trapping—Unit 20(E)—No limit	Oct. 1–Apr. 30.
	Trapping—Unit 20—Remainder (except (D))—No limit	Nov. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 20(D)—Residents of Units 11, 13, 15, 16, 20(D), 22, and 23.	Unit 20(D)	No open season.
	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 1–Feb. 28.
GMU 20—Remainder—No determination	Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 per day are sharp-tailed grouse.	Aug. 25–Mar. 31.
Ptarmigan (Rock, Willow and White-tailed): GMU 20(D)—Residents of Units 11, 13, 15, 16, 20(D), 22, and 23.	Unit 20—Remainder—15 per day, 30 in possession	Aug. 10–Mar. 31.
	Unit 20(D)—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
GMU 20—Remainder—No determination	Unit 20—Remainder—20 per day, 40 in possession	Aug. 10–Apr 30.

(21) GMU 21. (i) Game Management Unit 21 consists of drainages into the Yukon River upstream from Paimiut to but not including the Tozitna River drainage on the north bank and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River upstream to and including the Dulbi River drainage;

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the

Tozinta River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage;

(ii) Public Lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) The Koyukuk Controlled Use Area consisting of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or from a publicly owned airport within the area to points outside the area; all hunters on the Koyukuk River passing the Department of Fish and Game operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to department personnel at the check station;

(B) Paradise Controlled Use Area consisting of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or from a publicly owned airport within the area to points outside the area;

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.
—"No open season" means no Federal subsistence season.
—"No determinatin" indicates open to Alaska rural residents.

Eligibility determination	Bag limits	Open season
Black Bear: GMU 21—No determination	Unit 21—3 bears	July 1–June 30.
Brown Bear: GMU 21—Rural residents of Unit 21 and 23	Unit 21—1 bear every four regulatory years	Sept. 1–May 31.
Caribou: GMU 21—Unit 21(A) and (E)—Residents of Unit 21(A) and Aniak, Chuathbaluk, Crooked Creek, Grayling, Holy Cross, McGrath, Shageluk, and Takotna.	Unit 21(A), (B), (C), (E)—1 caribou	Aug. 10–Sept. 30.
GMU 21—Unit 21 (Western Arctic Caribou Herd only)—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, 22(A), (B), 23, and 26(A).	Unit 21(D) North of the Yukon River and east of the Koyukuk River—1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30, Winter season to be announced.
GMU 21—Units 21 (C) and (D)—(Galena Mountains Herd)—No Determination.	Unit 21(D)—Remainder (Western Arctic Caribou herd)—5 caribou per day, however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Moose: GMU 21—Unit 21(A)—Residents of Unit 21(A), (E), Takotna, McGrath, Aniak, and Crooked Creek.	Unit 21(A)—1 bull	Sept. 5–Sept. 30 and Nov. 1–Nov. 30.
GMU 21—Unit 21(B) and (C)—Residents of Unit 21(B), (C), Tanana and Galena.	Unit 21(B) and (C)—1 bull	Sept. 5–Sept. 25.
GMU 21—Unit 21(D)—Residents of 21(D), Huslia and Ruby	Unit 21(D)—1 moose; antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 5–Sept. 25 and Feb 1–Feb. 5.
GMU 21—Unit 21(E)—Residents of Unit 21(E) and Russian Mission.	Unit 21(E)—1 moose; however, only bulls may be taken from Sept. 5–Sept. 25.	Sept. 5–Sept. 25 and Feb. 1–Feb. 10.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 21—No determination.	No limit	July 1–June 30.
Beaver: GMU 21—No determination	Trapping—50 Beaver per season	Nov. 1–Apr. 15.
Coyote: GMU 21—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): GMU 21—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
Hares (Snowshoe and Arctic) GMU 21—No determination	Trapping—No Limit	Nov. 1–Feb. 28.
Lynx: GMU 21—No determination	No limit	July 1–June 30.
	Hunting—2 Lynx	Nov. 1–Feb. 28.
Marten: GMU 21—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Mink and Weasel: GMU 21—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Muskrat: GMU 21—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Otter (land only): GMU 21—No determination	Trapping—No limit	Nov. 1–June 10.
Squirrel (Red, Ground and Flying): GMU 21—No determination	Trapping—No limit	Nov. 1–Apr. 15.
	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.

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Eligibility determination	Bag limits	Open season
Wolf: GMU 21—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—10 Wolves	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 1–Mar. 31.
Wolverine: GMU 21—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 21—No determination.	15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow and White-tailed): GMU 21—No determination	20 per day, 40 in possession	Aug. 10–Apr. 30.

(22) GMU 22. (i) Game Management Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers;

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ugalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of but not including the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock;

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

(ii)

Eligibility determination	Bag limits	Open season
Black Bear: GMU 22—No determination	Unit 22—3 bears	July 1–June 30.
Brown Bear: GMU 22—Residents of Unit 22	Unit 22(A)—1 bear every four regulatory years	Sept. 1–Oct. 31 and Apr. 15–May 25.
	Unit 22(C)—1 bear every four regulatory years	Sept. 1–Oct. 31 and May 10–May 25.
	Unit 22—Remainder—1 bear every four regulatory years	Sept. 1–Oct. 31 and Apr. 15–May 25.
Caribou: GMU 22—Unit 22 (Western Arctic Caribou Herd)—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (A), (B), 23, and 26(A).	Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
	Unit 22 (C), (D) and (E)	No open season.
Moose: GMU 22—Residents of Unit 22	Unit 22(A)—1 bull	Aug. 1–Sept. 30 and Dec. 1–Dec. 31.
	Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31—no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
	Unit 22(C)—1 bull	Sept. 1–Sept. 14.
	Unit 22(D)—1 moose; however, antlerless moose may be taken only from Aug. 1–Dec. 31—no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
	Unit 22(E)—1 moose; No person may take a cow accompanied by a calf.	Aug. 1–Mar. 31.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 22—No determination	No limit	July 1–June 30.
Beaver: GMU 22—No determination	Trapping—Unit 22 (A) and (B)—50 Beaver per season	Nov. 1–June 10.
	Trapping—Unit 22 (C), (D) and (E)—50 Beaver per season	Nov. 1–Apr. 15.
Coyote: GMU 22—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phases): GMU 22—No determination	Hunting—2 Foxes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): GMU 22—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 1–Apr. 15.
Hares (Snowshoe and Arctic): GMU 22—No determination	No limit	July 1–June 30.
Lynx: GMU 22—No determination	Hunting—2 Lynx	Nov. 1–Apr. 15.
	Trapping—No limit	Nov. 1–Apr. 15.
Marten: GMU 22—No determination	Trapping—No limit	Nov. 1–Apr. 15.
Mink and Weasel: GMU 22—No determination	Trapping—No limit	Nov. 1–Jan. 31.
Muskrat: GMU 22—No determination	Trapping—No limit	Nov. 1–June 10.
Otter (land only): GMU 22—No determination	Trapping—No limit	Nov. 1–Apr. 15.
Squirrel (Red, Ground and Flying): GMU 22—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 22—Residents Units 6, 9, 10 (Unimak Island only), 11–13, 16–26.	Hunting—No limit	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 1–Apr. 15.

Eligibility determination	Bag limits	Open season
Wolverine: GMU 22—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 1–Apr. 15.
Cormorant: GMU 22—No determination	No limit	July 1–June 30.
Grouse (Spruce, Blue Ruffed and Sharp-tailed): GMU 22—Residents of Units 11, 13, 15, 16, 20(D), 22, and 23.	15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow and White-tailed): GMU 22—Residents of Units 11, 13, 15, 16, 20(D), 22, and 23.	20 per day, 40 in possession	Aug. 10–Apr. 30.
Snowy Owl: GMU 22—No determination	No limit	July 1–June 30.

(23) GMU 23. (i) Game Management Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne;

(ii) Public lands within the following area are closed to subsistence take or subsistence take is restricted as specified: The Noatak Controlled Use Area, consisting of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Kugururok River, and extending easterly along the Noatak River to the mouth of Sapun Creek, is closed for the period August 20–September 20 to the use of aircraft in any manner for big game hunting, including transportation of big game hunters or game.

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—"No open season" means no Federal subsistence season.

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(iii)

Eligibility determination	Bag limits	Open season
Black Bear: GMU 23—No determination	Unit 23—3 bears	July 1–June 30.
Brown Bear: GMU 23—Rural residents of Units 21 and 23	Unit 23—1 bear every four regulatory years	Sept. 1–Oct. 10 and Apr. 15–May 25.
Caribou: GMU 23—Unit 23 (Western Arctic Caribou Herd)—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (A), (B), 23, and 26(A).	Unit 23—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Sheep: GMU 23—Residents of Unit 23 north of the Arctic Circle	Unit 23—1 ram with ½ curl horn or larger. In that portion of Unit 23 south and east of the Noatak River (excluding Gates of the Arctic National Park), a State registration permit is required. A harvest quota will be announced before the permit hunt.	Aug. 10–Sept. 20.
	Unit 23—1 sheep. In that portion of Unit 23 south and east of the Noatak River (excluding Gates of the Arctic National Park), the hunt will be closed when 30 sheep have been taken. From Oct. 1–Apr. 30, Federal public lands will be closed to sheep hunting, except by residents of Unit 23 living north of the Arctic Circle.	Oct. 1–Apr. 30.
Moose: GMU 23—Residents of Unit 23	Unit 23—that portion north and west of and including the Kivalina River drainage—1 moose; however, antlerless moose may be taken only from Sept. 1–Mar. 31; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
	Unit 23—Remainder—1 moose; however, antlerless moose may be taken only from Sept. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Mar. 31.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 23—No determination	No limit	July 1–June 30.
Beaver: GMU 23—No determination	Trapping—Unit 23—the Kobuk and Selawik River drainages—50 Beaver per season.	Nov. 1–June 10.
	Trapping—Unit 23—Remainder—30 Beaver per season	Nov. 1–June 10.
Coyote: GMU 23—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phases): GMU 23—No determination	Hunting—2 Foxes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): GMU 23—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 1–Apr. 15.
Hares (Snowshoe and Arctic): GMU 23—No determination	Hunting—No limit	July 1–June 30.
Lynx: GMU 23—No determination	Hunting—2 Lynx	Dec. 1–Jan. 15.
	Trapping—3 Lynx	Dec. 1–Jan. 15.
Marten: GMU 23—No determination	Trapping—No limit	Nov. 1–Apr. 15.
Mink and Weasel: GMU 23—No determination	Trapping—No limit	Nov. 1–Jan. 31.
Muskrat: GMU 23—No determination	Trapping—No limit	Nov. 1–June 10.
Otter (land only): GMU 23—No determination	Trapping—No limit	Nov. 1–Apr. 15.
Squirrel (Red, Ground and Flying): GMU 23—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 23—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—10 Wolves	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 1–Apr. 15.
Wolverine: GMU 23—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 1–Apr. 15.
Cormorant: GMU 23—No determination	No limit	July 1–June 30.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 23—Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.	15 per day, 30 in possession	Aug. 10–Apr. 30.

Eligibility determination	Bag limits	Open season
Ptarmigan (Rock, Willow and White-tailed): GMU 29—Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.	20 per day, 40 in possession	Aug. 10–Apr. 30.
Snowy Owl: GMU 23—No determination	No limit	July 1–June 30.

(24) GMU 24. (i) Game Management Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified. (A) The Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to hunting; however, big game and small game may be taken in the area by bow and arrow only; no motorized vehicle, except aircraft, boats, and licensed highway vehicles, may be used to transport game or hunters within the Dalton Highway Corridor Management Area;

(B) The Kanuti Controlled Use Area, consisting of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or from a publicly owned airport within the area to points outside the area;

(C) The Koyukuk Controlled Use Area consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57' N. Lat., 156°41' W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning. The area is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or form a publicly owned airport within the area to points outside the area; all hunters on the Koyukuk River passing the Department of Fish and Game operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to department personnel at the check station.

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572.

(iii)

Eligibility determination	Bag limits	Open season
Black Bear: GMU 24—No determination	Unit 24–3 Bears	July 1–June 30.
Brown Bear: GMU 24—Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Corridor.	Unit 24—that portion of the Koyukuk River drainage upstream from, and including the Alatna River drainage.: (Residents of Anaktuvuk Pass 1 bear every regulatory year) All other subsistence hunters—1 bear every four regulatory years.	Sept. 1–May 31.
	Unit 24—Remainder—1 bear every four regulatory years	Sept. 1–May 31.
Caribou: GMU 24—No determination	Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10–Sept. 30.
	Unit 24—Remainder—5 caribou per day; however, cow caribou may not be taken May 16—June 30.	July 1–June 30.
Sheep: GMU 24—Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, and Anaktuvuk Pass.	Unit 24—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
	Unit 24—Remainder—1 ram with ½ curl horn or larger	Aug. 10–Sept. 20.
Moose: GMU 24—Residents of Unit 24, Anaktuvuk Pass, Koyukuk and Galena.	Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 5–Sept. 25, Dec. 1–Dec. 10 and Mar. 1–Mar. 10.
	Unit 24—that portion that includes the John River drainage upstream from but excluding the Hunt Fork drainage—1 moose.	Aug. 1–Dec. 31.
	Unit 24—the Alatna River drainage upstream from and including Helpmejack Creek drainage, the John River drainage upstream from and including the Malemute Fork drainage and downstream from and including the Hunt Fork drainage, the Wild River drainage upstream from and including the Michigan Creek drainage, and the North Fork Koyukuk River drainage north of the Bettles/Coldfoot winter trail—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25 and Mar. 1–Mar. 10.
	Unit 24—Remainder—1 bull	Aug. 25–Sept. 25.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 24—No determination	No limit	July 1–June 30.
Beaver: GMU 24—No determination	Trapping—80 Beaver per season	Nov. 1–Apr. 15.
Coyote: GMU 24—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Mar. 31.

Eligibility determination	Bag limits	Open season
Fox, Red (including Cross, Black and Silver Phases): GMU 24—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 1–Feb. 28.
Hares (Snowshoe and Arctic): GMU 24—No determination	Hunting—No Limit	July 1–June 30.
Lynx: GMU 24—No determination	Hunting—2 Lynx	Nov. 1–Feb. 28.
	Trapping—No limit	Nov. 1–Feb. 28.
Marten: GMU 24—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Mink and Weasel: GMU 24—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Muskrat: GMU 24—No determination	Trapping—No limit	Nov. 1–June 10.
Otter (land only): GMU 24—No determination	Trapping—No limit	Nov. 1–Apr. 15.
Squirrel (Red, Ground, Flying): GMU 24—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 24—Residents of Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—10 Wolves	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 1–Mar. 31.
Wolverine: GMU 24—No determination	Hunting—1 wolverine	Sept. 1–Mar. 31.
	Trapping—No limit	Nov. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 24—No determination.	15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow and White-tailed): GMU 24—No determination.	20 per day, 40 in possession	Aug. 10–Apr. 30.

(25) GMU 25. (i) Game Management Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River;

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjek Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified: (A) The Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25 and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to hunting; however, big game and small game may be taken in the area by bow and arrow only; no motorized vehicle, except aircraft, boats, and licensed highway vehicles, may be used to transport game or hunters within the Dalton Highway Corridor Management Area;

(B) The Arctic Village Sheep Management Area encompasses approximately 567,680 acres north and west of Arctic Village. The area consists of that portion of State Game Management Unit 25(A) which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Cane Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary located directly south of Little Njoo Mountain. The boundary leaves the river and continues upstream along this unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages. The boundary follows the eastern most fork, proceeding almost due north to the headwaters and intersects the Continental Divide. The boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 20 miles along the most southerly major fork of the headwaters of Cane Creek. From this peak the boundary continues due south 1.5 miles to the high point of a saddle, then down the headwaters tributary to Cane Creek and down the creek to the confluence of Cane Creek and the East Fork Chandalar. Sheep hunting in this area is restricted to residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik. A map showing the Arctic Village Sheep Management Area may be obtained by contacting the U.S. Fish and Wildlife Service, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, Alaska 99503.

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

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Eligibility determination	Bag limits	Open season
Black Bear: GMU 25—No determination	Unit 25—3 Bears	July 1–June 30.
Caribou: GMU 25—No determination	Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1–Apr. 30.
	Unit 25(D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull.	Aug. 10–Sept. 30.
Sheep:		
GMU 25—Unit 25(A)—Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik, and Venetie.	Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Federal public lands are closed to sheep hunting except by residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.	Aug. 10–Apr. 30.
GMU 25—Units 25(B) and (C)—No subsistence	Unit 25(A)—Remainder—3 sheep per year; the Aug. 10–Sept. 20 season is restricted to 1 ram with ⅛ curl horn or larger. A State registration permit is required for the Oct. 1–Apr. 30 season.	Oct. 1–Apr. 30 and Aug. 10–Sept. 20.
Moose:		
GMU 25—Unit 25(A)—Residents of Unit 25(A) and residents of Venetie only.	Unit 25(A)—1 bull	Aug. 25–Sept. 25 and Dec. 1–Dec. 10.
GMU 25—Unit 25(B) and (C)—No determination	Unit 25(B)—that portion within the Porcupine River drainage upstream from but excluding the Colsen River drainage—1 bull.	Aug. 25–Sept. 25 and Dec. 1–Dec. 10.
	Unit 25(B)—that portion within the Yukon River drainage upstream from and including the Kandik River drainage—1 bull.	Sept. 5–Sept. 25 and Dec. 1–Dec. 10.
	Unit 25(B)—Remainder—1 bull	Aug. 25–Sept. 25 and Dec. 1–Dec. 10.
	Unit 25(C)—1 bull	Sept. 1–Sept. 15.
GMU 25—Unit 25(D) (West)—Residents of Beaver, Birch Creek, and Stevens Village.	Unit 25(D) (West)—that portion of Unit 25(D) lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by permit only.	Aug. 25–Sept. 25, Dec. 1–Dec. 10 and Feb. 18–Feb. 28.
GMU 25—Unit 25(D)—Remainder—Residents of "Remainder of Unit 25".	Unit 25(D)—Remainder—1 bull	Aug. 25–Sept. 25 and Dec. 1–Dec. 20.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 25—No determination	No limit	July 1–June 30.
Beaver: GMU 25—No determination	Trapping—Unit 25—Remainder—50 Beaver per season	Nov. 1–Apr. 15.
	Trapping—Unit 25(C)—25 Beaver per season	Nov. 1–Apr. 15.
Coyote: GMU 25—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases: GMU 25—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 1–Feb. 28.
Hares (Snowshoe and Arctic): GMU 25—No determination	Hunting—No limit	July 1–June 30.
Lynx: GMU 25—No determination	Hunting—Unit 25(C)—2 Lynx	Dec. 1–Jan. 31.
	Trapping—Unit 25(C)—No limit	Dec. 1–Jan. 31.
	Hunting—Unit 25—Remainder—2 Lynx	Nov. 1–Feb. 28.
	Trapping—Unit 25—Remainder—No limit	Nov. 1–Feb. 28.
Marten: GMU 25—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Mink and Weasel: GMU 25—No determination	Trapping—No limit	Nov. 1–Feb. 28.
Muskrat: GMU 25—No determination	Trapping—No limit	Nov. 1–June 10.
Otter (land only): GMU 25—No determination	Trapping—No limit	Nov. 1–Apr. 15.
Squirrel (Red, Ground and Flying): GMU 25—No determination	Hunting—No limit	July 1–June 30.
	Trapping—No limit	July 1–June 30.
Wolf: GMU 25—Residents Units 6, 9, 10 (Unimak Island only), 11–13, and 16–26.	Hunting—Unit 25(A)—No limit	Aug. 10–Apr. 30.
	Trapping—No limit	Nov. 1–Mar. 31.
	Hunting—Unit 25—Remainder—10 Wolves	Aug. 10–Apr.30.
	Trapping—No limit	Nov. 1–Mar. 31.
Wolverine: GMU 25—Unit 25(C)—No determination	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—Unit 25(C)—No limit	Nov. 1–Feb. 28.
	Hunting—1 Wolverine	Sept. 1–Mar. 31.
	Trapping—Unit 25—Remainder—No limit	Nov. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 25—No determination.	Unit 25(C)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow and White-tailed): GMU 25—No determination.	Unit 25(C)—Remainder—15 per day, 30 in possession	Aug. 10–Apr. 30
	Unit 25(C)—those portions within 5 miles of Alaska Route 6 (Steese Highway) and Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary), and that portion of Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
	Unit 25—Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.

(28) GMU 28. (i) Game Management Unit 28 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border, including the Firth River drainage within Alaska.

(A) Unit 28(A) consists of that portion of Unit 28 lying west of the Itkillik River drainage, and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 28(B) consists of that portion of Unit 28 east of Unit 28(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 28(C) consists of the remainder of Unit 28.

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified. (A) The GMU 28(A) Controlled Use Area, consisting of Unit 28(A), from August 1 through August 31 is closed to the use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose. No hunter may take or transport a moose, or part of a moose in GMU 28(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports.

(B) The Prudhoe Bay Closed Area is closed to the taking of big game; this closed area consists of the area bounded by a line beginning at 70° 22' N. lat., 148° W. long., then running south approximately 14 miles to a point at 70° 10' N. lat., 148° W. long., then west approximately 15 miles to a point at 70° 10' N. lat., 149° 40' W. long., then north approximately two miles to a point at 70° 12' N. lat., 146° 40' W. long., then west approximately eight miles to a point at 70° 12' N. lat., 148° 50' W. long., then north approximately two miles to a point at 70° 15' N. lat., 148° 56' W. long., then west approximately 12 miles to a point at 70° 15' N. lat., 149° 28' W. long., then north approximately 12 miles to a point at 70° 26' N. lat., 149° 28' W. long., then east approximately 14 miles to a point at 70° 26' N. lat., 148° 52' W. long., then south approximately 2 miles to a point at 70° 24' N. lat., 148° 52' W. long., then east approximately 16 miles to a point at 70° 24' N. lat., 148° 11' W. long., then south approximately 2 miles to a point at 70° 24' N. lat., 148° 11' W. long., then east approximately 6 miles to the point of beginning.

(C) The Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to hunting; however, big game and small game may be taken in the area by bow and arrow only; no motorized vehicle, except aircraft, boats, and licensed highway vehicles, may be used to transport game or hunters within the Dalton Highway Corridor Management Area;

Note: There are private land areas within many Federal land units. These regulations apply only to Federal lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

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Eligibility Determination	Bag Limits	Open Season
Black Bear: GMU 26—No determination	Unit 26—3 Bears	July 1–June 30.
Brown Bear: GMU 26—Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.	Unit 26(A)—east of 150° W. long. (residents of Anaktuvuk Pass)—1 bear every regulatory year.	Sept. 1–May 31.
	Unit 26(A)—Other subsistence hunters—1 bear every four regulatory years.	Sept. 1–May 31.
	Unit 26—Remainder—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:		
GMU 26—(Western Arctic Caribou Herd only)—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22(A), (B), 23, and 26(A).	Unit 26(A)—5 caribou per day; however, cow caribou may not be taken May 16—June 30.	July 1–June 30.
GMU 26—Unit 26(B) (Central Arctic Herd)—Residents of Anaktuvuk Pass, Kaktovik, Nuiqsut, and Wiseman.	Unit 26(B)—5 caribou; however, cow caribou may be taken only from Oct. 1—Apr. 30.	July 1–Apr. 30.
GMU 26—Unit 26(C) (Porcupine Herd)—No Determination	Unit 26(C)—10 caribou; however, not more than 5 caribou may be transported from Unit 26 per regulatory year.	July 1–Apr. 30.
Sheep:		
GMU 26—Unit 26(A) and (B)—Residents of Anaktuvuk Pass, Kaktovik, Nuiqsut, and Wiseman.	Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
	Unit 26(A) and (B)—including the Gates of the Arctic National Preserve—1 ram with ½ curl horn or larger.	Aug. 10–Sept. 30.
GMU 26—Unit 26(C)—Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik, and Venetie.	Unit 26(C)—3 sheep per year; the Aug. 10–Sept. 20 season is restricted to 1 ram with ½ curl horn or larger. A State registration permit is required for the Oct. 1–Apr. 30 season.	Oct. 1–Apr. 30, Aug. 10–Sept. 20.
Moose: GMU 26—Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.	Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf.	Aug. 1–Dec. 31.
	Unit 26(B)—that portion within two miles of the Dalton Highway—	No open season.
	Unit 26(B) Remainder and (C)—1 moose	Aug. 1–Dec. 31.
Musk Oxen: GMU 26—Unit 26(B) and (C)—Residents of Kaktovik	Unit 26(B) and (C)—1 bull by Federal registration permit only	Oct. 1–Oct. 31, Mar. 1–Mar. 31.
Bat, Shrew, Rat, Mouse and Porcupine: GMU 26—No determination	No limit	July 1–June 30.
Coyote: GMU 26—No determination	Hunting—2 Coyotes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): GMU 26—No determination	Hunting—2 Foxes	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): GMU 26—No determination.	Hunting—2 Foxes	Nov. 1–Feb. 15.
	Trapping—No limit	Nov. 1–Apr. 15.
Hares (Snowshoe and Arctic): GMU 26—No determination	No limit	July 1–June 30.
Lynx: GMU 26—No determination	Hunting—2 Lynx	Sept. 1–Apr. 30.
	Trapping—No limit	Nov. 1–Apr. 15.
Marten: GMU 26—No determination	Trapping—No limit	Nov. 1–Apr. 15.
Mink and Weasel: GMU 26—No determination	Trapping—No limit	Nov. 1–Apr. 15.
Muskrat: GMU 26—No determination	Trapping—No limit	Nov. 1–Jan. 31.
Otter (land only): GMU 26—No determination	Trapping—No limit	Nov. 1–June 15.
Squirrel (Red, Ground and Flying): GMU 26—No determination	Trapping—No limit	Nov. 1–Apr. 15.
	Hunting—No limit	July 1–June 30.
Wolf: GMU 26—Residents of Units 6, 9, 10 (Unimak Island only), 11-13, and 16-26.	Trapping—No limit	July 1–June 30.
	Hunting—No limit	Aug. 10–Apr. 30.
Wolverine: GMU 26—No determination	Trapping—1 Wolverine	Nov. 1–Apr. 15.
	Trapping—No limit	Sept. 1–Mar. 31.
		Nov. 1–Apr. 15.

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Eligibility Determination	Bag Limits	Open Season
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): GMU 26—No determination.	15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow and White-tailed): GMU 26—No determination.	20 per day, 40 in possession	Aug. 10–Apr. 30.
Snowy Owl: No determination	No limit	July 1–June 30.

§ ____.24 Subsistence fishing

(a) Regulations in this section apply to subsistence fishing for salmon, herring, pike, bottomfish, smelt, and other types of finfish or their parts except halibut, and aquatic plants only on public lands in Alaska. At this time Federal Subsistence Fishing Regulations only apply to non-navigable waters on Federal lands unless a specific exception is noted for a specific area. All subsistence harvest of fish in navigable waters is under the regulations of the State of Alaska unless specifically excepted.

(b) Aquatic plants and finfish other than salmon may be taken for subsistence purposes at any time on any public lands in the State of Alaska by any method unless restricted by the subsistence fishing regulations in this section. Salmon may be taken for subsistence purposes only as provided in this section.

(c) The following definitions shall apply to all regulations contained in this document.

Abalone Iron –is a flat device used for taking abalone and which is more than one inch (24mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth.

Anchor is a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor or being secured to another vessel or net that is anchored.

Bag Limit means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

Beach seine is a floating net designed to surround fish which is set from and hauled to the beach.

Crab means the following species: *Paralithodes camshatica* (red king crab); *Paralithodes platypus* (blue king crab); *Lithodes couesi; Lithodes aequispina* (brown king crab); all species of the genus Chionoecetes (tanner or snow crab); *Cancer magister* (Dungeness crab).

Dip net is a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear is any type of hard hat or skin diving equipment, including SCUBA equipment.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

Drift gill net is a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

Fishwheel is a fixed, rotating device for catching fish which is driven by river current or other means of power.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net is a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gill net is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water.

Grappling hook is a hooked device with flukes or claws and attached to a line and operated by hand.

Groundfish—Bottomfish means any marine finfish except halibut, osmerids, herring and salmonids.

Hand purse seine is a floating net designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Hand troll gear consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment.

Herring pound is an enclosure used primarily to retain herring alive over extended periods of time.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Inclusive season dates means whenever the doing of an act between certain dates or from one date to another is allowed or prohibited, the period of time thereby indicated includes both dates specified; the first date specified designates the first day of the period, and the second date specified designates the last day of the period.

Lead is a length of net employed for guiding fish into a seine or set gill net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district or section.

Long line is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached.

Net gear site means the in-water location of stationary net gear.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried or otherwise preserved so as to be fit for human consumption after a 15-day period.

Pot is a portable structure designed and constructed to capture and retain fish and shellfish alive in the water.

Purse seine is a floating net designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net is a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be non-rigid and collapsible so that when fishing it does not prohibit free movement of fish or shellfish across the top of the net.

Rockfish means all species of the genus *Sebastes*.

Salmon stream means any stream used by salmon for spawning or for travelling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Set gill net is a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel is a hand-operated implement for digging clams or cockles.

Stretched measure means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet after use, the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by the means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under the five-pound weight, except as otherwise provided.

To operate fishing gear means the deployment of gear in the waters of Alaska, the removal of gear from the waters of Alaska, the removal of fish or shellfish from the gear during an open season or period, or possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl is a bag-shaped net towed through the water to capture fish or shellfish.

(d) Methods, Means, and General Restrictions. (1) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional fish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this chapter, the following are legal types of gear for subsistence fishing:

(i) gear specified in definitions in subsection c.

(ii) jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and are drawn through the water by hand;

(iii) a spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and is operated by hand;

(iv) a lead which is a length of net employed for guiding fish into a seine or a length of net or fencing employed for guiding fish into a fishwheel, fyke net or dip net.

(3) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by the regulations in particular areas set forth in this section.

(4) It is prohibited to buy or sell subsistence-taken fish, their parts, or their eggs, unless otherwise specified in this section or unless, prior to the sale, the prospective buyer or seller obtains a determination from the Board that the sale constitutes customary trade.

(5) Fishing for, taking or molesting any fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(6) The use of explosives and chemicals is prohibited.

(7) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(8) Each person subsistence fishing shall plainly and legibly inscribe his/her first initial, last name, and address on his/her fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(9) All pots used to take fish must contain an opening in the webbing of a side wall of the pot which has been laced, sewn or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(10) Persons licensed by the State of Alaska under Alaska Statutes to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence taken salmon or their parts. Further restrictions on the bartering of subsistence taken salmon or their parts may be implemented by the Federal Subsistence Board if necessary.

(11) Gill net web must contain at least 30 filaments and all filaments must be of equal diameter, or the web must contain at least six filaments, each of which must be at least 0.20 millimeter in diameter.

(12) Except as provided elsewhere in this regulation, the taking of rainbow trout and steelhead is prohibited.

(13) Fish taken for subsistence use or under subsistence fishing regulations may not be subsequently used as bait for commercial and sport fishing purposes.

(14) The use of live non-indigenous fish as bait is prohibited.

(e) Unlawful Possession of Subsistence Finfish—No person may possess, transport, give, receive or barter subsistence-taken fish or their parts that the person knows or should know were taken in violation of Federal or State statute or a regulation promulgated thereunder.

(f) For detailed descriptions of Fishery Management Areas and Pertinent Restrictions-for defined descriptions of Fishery Management Areas, see Alaska Fishing Regulations. (1) Kotzebue-Northern Area—At this time, the Federal Government is exerting its control only on subsistence fishing in non-navigable fresh waters on Federal lands in the Kotzebue-Northern Area. (i) Allowed gear and specifications:

(A) Salmon may be taken only by gill nets or beach seines.

(B) Fish other than salmon may be taken by set gill net, drift gill net, beach seine, fishwheel, pot, long line, fyke net, dip net, jigging gear, spear, and lead.

(C) A gill net may obstruct not more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(D) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(E) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(F) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(G) Fish may be taken at any time except that during the weekly fishing closures of the commercial salmon fishing season in the Kotzebue District commercial fishermen may not fish for subsistence purposes.

(ii) Northern District. Only those residents domiciled in the Northern District, except for those domiciled in State of Alaska Game Management Unit 26–B, may take fish in that district.

(iii) Kotzebue District. (A) In the Kotzebue District, kegs or buoys attached to subsistence gill nets may be any color except red.

(B) In the Kotzebue District, gill nets used to take sheefish may not be more than 50 fathoms in aggregate length nor 12 meshes in depth, nor have a mesh size larger than seven inches.

(C) Only those residents domiciled in the Kotzebue District may take

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subsistence salmon, shellfish, and other in the district.

(2) Norton Sound-Port Clarence Area. At this time, the Federal Government is exerting its control only on subsistence fishing in non-navigable fresh waters on the Federal lands in the Norton Sound-Port Clarence Area. (i) General Area Regulations. (A) Salmon may only be taken by gill net, beach seine, or fishwheel.

(B) Fish other than salmon may be taken by set gill net, drift net, beach seine, fishwheel, pot, long line, lure set, jigging gear, spear, and lead.

(C) A gill net may not obstruct more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(D) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(E) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(F) Except as provided in this subsection, fish may be taken for subsistence purposes without a subsistence fishing permit. A subsistence fishing permit is required as follows:

(1) In the Port Clarence District: Pilgrim River drainage including Salmon Lake;

(2) In the Norton Sound District: for net fishing in all waters from Cape Douglas to Rocky Point.

(G) Only one subsistence fishing permit will be issued to each household per year.

(H) Only those residents domiciled in the Norton Sound-Port Clarence Area may take salmon in that area.

(I) Only those residents domiciled within 20 miles of the coast between Point Romanof and Cape Prince of Wales and on the St. Lawrence Island may take herring and herring roe in those locations.

(ii) The Norton Sound District. (A) In the Norton Sound District, fish may be taken at any time except as follows:

(B) In Subdistrict 1 from June 15 through August 31, salmon may be taken only from 6 p.m. Monday until 6 p.m. Wednesday and from 6 p.m. Thursday until 6 p.m. Saturday.

(C) In Subdistricts 2 through 6, commercial fishermen may net fish for subsistence purposes during the weekly closures of the commercial salmon fishing season, [except that from July 15 through August 7, commercial fishermen may take salmon for subsistence purposes seven days per week in the Unalakleet and Shaktoolik River drainages with gill nets which have a mesh size that does not exceed 6½ inches, and with beach seines.]

(D) In the Unalakleet River from June 1 through July 15, salmon may be taken from 6 a.m. Monday until 6 p.m. Saturday.

(E) In the Norton Sound District, buoys or buoys attached to subsistence gill nets may be any color except red.

(F) In the Unalakleet River from June 1 through July 15, no person may operate more than 25 fathoms of gill net in the aggregate.

(G) Gill nets with a mesh size of less than four and one-half inches and beach seines may not be used in the Sinuk River upstream of Alaska Department of Fish and Game regulatory markers placed two miles above the mouth, in the Nome River, and in the Solomon River upstream from Alaska Department of Fish and Game regulatory markers places near the village of Solomon.

(H) In the Nome River, no person may operate more than 50 feet of gill net in the aggregate.

(I) The Nome River, from its terminus upstream for a distance of 300 yards and upstream from an Alaska Department of Fish and Game regulatory marker located near Osborn, is closed to the taking of fish.

(iii) The Port Clarence District. (A) In the Port Clarence District, fish may be taken at any time except that during the period July 1 through August 15, salmon may only be taken from 6 p.m. Thursday until 6 p.m. Tuesday.

(B) In the Port Clarence District, Salmon Lake, its tributaries, and within 300 feet of the Alaska Department of Fish and Game regulatory markers placed at the outlet of Salmon Lake, are closed to subsistence fishing from July 15 through August 31.

(3) Yukon Area. Federal subsistence regulations for the subsistence harvest of fish are in effect for all waters (navigable and non-navigable) in the area north of 61° north latitude, south of 51°21'north latitude, west of 163°48' longitude and east of the Bering Sea shoreline including Hooper Bay. In the remainder of the Yukon Area Federal subsistence fishing regulations only apply to non-navigable waters on Federal lands.

(i) Unless otherwise restricted, salmon may be taken in the Yukon Area at any time.

(ii) Salmon may only be taken by gill net, beach seine, or fishwheel subject to the restrictions set forth in this section.

(iii) Unless otherwise specified in this section, fish other than salmon may be taken only by set gill net, drift gill net, beach seine, fishwheel, long line, lure set, dip net, jigging gear, spear, or hand, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, a commercial fisherman may not operate more than one type of gear at a time, for commercial and subsistence purposes, except that in Subdistrict 6–A, upstream from the mouth of Sinuk Creek, a commercial fisherman may, at any time, assist subsistence fishermen in the operation of subsistence fishing gear;

(B) The aggregate length of set gill net in use by an individual may not exceed 150 fathoms and each drift gill net inuse by an individual may not exceed 50 fathoms in length;

(C) In Subdistricts 4, 5 and 6, it is unlawful to set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear;

(D) A gill net may obstruct not more than one-half the width of any fish stream; a stationary fishing device may obstruct not more than one-half width of any salmon stream.

(iv) Salmon may be taken only by set gill net or fishwheel. No person may operate a gill net having a mesh size larger than six inches after a date specified by emergency order issued between July 5 through July 25.

(v) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(vi) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(vii) In Districts 1, 2, and 3, commercial fishermen may not take salmon for subsistence purposes by gill nets larger than six-inch mesh during periods established by emergency order.

(viii) In Districts 4, 5 and 6, salmon may not be taken for subsistence purposes by drift gill nets, except as follows:

(A) In Subdistrict 4–A, upstream from the mouth of Sinuk Creek king salmon may be taken by drift gill nets from June 21 through July 14, and chum salmon may be taken by drift gill nets after August 2;

(B) No person may operate a drift gill net that is more than 150 feet in length during the seasons described in this section.

(ix) Except as provided in this section, fish may be taken for subsistence purposes without a subsistence fishing permit.

(x) A subsistence fishing permit is required as follows:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from Alaska Department of Fish and Game regulatory markers placed near the upstream mouth of 22 Mile Slough upstream to the U.S.—Canada border;

(C) For the Tanana River drainage above the mouth of the Wood River;

(D) For whitefish and suckers in the waters listed;

(E) For the taking of pike in waters of the Tolovana River drainage upstream of its confluence with the Tanana River;

(F) For the taking of salmon in Subdistricts 6–A and 6–B.

(xi) Except as otherwise provided, and except as may be provided by the terms of a subsistence fishing permit, there is no closed season on fish other than salmon.

(xii) In addition to the subsistence fishing permit conditions, permits issued for fish other than salmon may also designate restrictive measures for the conservation of salmon.

(xiii) Only one subsistence fishing permit will be issued to each household per year.

(xiv) Only those residents domiciled within 20 miles of the coast between the terminus of the Black River and the westernmost point of the Naskonat Peninsula may take herring and herring roe in that location.

(xv) Only those residents domiciled in rural locations in the Yukon Area, as determined by the Federal Subsistence Board, including the community of Stebbins, may take salmon in the Yukon Area.

(xvi) Only those residents domiciled in rural locations in the Yukon River drainage, as determined by the Federal Subsistence Board including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak may take Yukon River Fall chum salmon for subsistence purposes.

(xvii) Only those residents domiciled in rural locations in the Yukon Area, as determined by the Federal Subsistence Board, may take freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish, in the Yukon Area.

(xviii) The following locations in the upper Yukon River drainage are closed to subsistence fishing, except that whitefish and suckers may be taken under the authority of a subsistence fishing permit designating measures for the protection of other fish: the following streams and within 500 feet of their mouths: Birth Creek; Dall River, June 10 through September 10;

(xix) The following drainages located north of the main Yukon River are closed to subsistence fishing:

(A) Kanuti River, upstream from a point five miles downstream of the State highway crossing;

(B) Fish Creek, upstream from the mouth of Bonanza Creek;

(C) Bonanza Creek;

(D) Jim River, including Prospect Creek and Douglas Creek;

(E) South Fork of the Koyukuk River system upstream from the mouth of Jim River;

(F) Middle Fork of the Koyukuk River system upstream from the mouth of the North Fork;

(G) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(xx) The main Tanana River and its adjoining sloughs are closed to subsistence fishing between the mouth of the Salcha River and the mouth of the Gerstle River, except that salmon may be taken in the area upstream of the Richardson Highway bridge to the mouth of Clearwater Creek after November 20.

(xxi) Waters of the Tanana River drainage are closed to the subsistence taking of pike between the mouth of the Kantishna River and Delta River at Black Rapids on the Richardson Highway and Cathedral Rapids on the Alaska Highway, except that pike may be taken for subsistence purposes in the Tolovana River drainage upstream from its confluence with the Tanana River.

(xxii) The Delta River is closed to subsistence fishing, except that salmon may be taken after November 20.

(xxiii) The following locations are closed to subsistence fishing:

(A) The following rivers and creeks and within 500 feet of their mouths: Delta Clearwater River (Clearwater Creek at 64° 08' N.lat., 145° 34' W. long), Richardson Clearwater Creek (Clear Creek at 64° 14' N. lat., 146° 16' W. long), Goodpaster River, Chena River, Little Chena River, Little Salcha River, Blue Creek, Big Salt River, Shaw Creek, Bear Creek, McDonald Creek, Moose Creek, Hess Creek, and Beaver Creek;

(B) Ray River and Salcha River upstream of a line between Alaska Department of Fish and Game regulatory markers located at the mouth of the rivers;

(C) Deadman, Jan, Boleo, Birch, Lost, Harding, Craig, Fielding, Two-Mile, Quartz, and Little Harding lakes;

(D) Piledriver and Badger (Chena) sloughs.

(xxiv) The following waters are closed to the taking of chum salmon from August 15 through December 31:

(A) Toklat River.

(B) Kantishna River from the mouth of the Toklat River to its confluence with the Tanana River.

(xxv) Salmon may be taken only by set gill nets in those locations described in below after July 19:

(A) Waters of the Black River including waters within one nautical mile of its terminus;

(B) Waters of Kwikluak Pass downstream of Agmulegut and the waters of Kwemeluk Pass;

(C) Waters of Alakanuk Pass downstream from the mouth of Kuiukpak Slough;

(D) Waters of Kwiguk Pass downstream to the mouth of Kawokhawik Slough;

(E) Waters of Kawanak Pass downstream from Sea Gull Point;

(F) Waters of Apoon Pass downstream from the mouth of the Kotlik River and waters of Okwega Pass downstream from its confluence with Apoon Pass;

(G) Waters within one nautical mile seaward from any grassland bank in District 1.

(xxvi) In the following locations, salmon may be taken only during the open weekly fishing periods of the commercial salmon fishing season and may not be taken for 24 hours before the opening and 24 hours after the closure of the commercial salmon fishing season except:

(A) Through July 19 in Districts 1 and 2 subsistence fishing periods will be established by emergency order every other weekend during commercial salmon fishing closures;

(B) After July 19 in District 1, except for the set net only locations, and in District 2, a 24 hour subsistence fishing period will be established by emergency order each weekend during commercial salmon fishing closures;

(C) In Subdistrict 4–A from June 15 through August 1, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(D) In Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(E) District 5, excluding the Toxitna River drainage and Subdistrict 5–D;

(F) District 6, excluding (1) The Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River;

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(2) Subdistrict 6–B: from the downstream end of Crescent Island to three miles upstream of the mouth of the Totchaket Slough, where salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(xxvii) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–B, salmon may not be taken from 6 pm. Sunday until 6 pm. Tuesday;

(C) In Subdistrict 6–A and 6–B, excluding the Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River, salmon may not be taken from 6 p.m. Wednesday until 6 p.m. Friday.

(xxviii) In Subdistrict 6–C and that portion of the Tanana River drainage upstream to the mouth of the Salcha River, salmon may not be taken following the closure of the commercial salmon fishing season from 6 p.m. Monday until 6 pm. Friday.

(xxix) Adjustments may have to be made to the subsistence salmon fishing seasons and fishing periods to protect healthy populations.

(xxx) Pike may not be taken with gill nets in the waters of the Tolovana River drainage from October 15 through April 14.

(xxxi) An Alaska Commercial Fisheries Entry Commission salmon permit holder registered for the set net only locations may not use drift gill nets for the subsistence taking of salmon in Districts 1, 2, and 3.

(xxxii) Commercial salmon fishermen who is registered for Districts 1, 2, or 3 may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(xxxiii) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(xxxiv) In District 4, commercial fishermen may not take salmon for subsistence purposes during the commercial salmon fishing season by gill nets larger than six inch mesh after a date specified by emergency order issued between July 10 and July 31.

(xxxv) In Districts 4, 5 and 6, salmon may not be taken for subsistence purposes by drift gill nets, except as follows:

(A) In Subdistrict 6–A, upstream from the mouth of Shish Creek king salmon may be taken by drift gill nets from June 21 through July 14, and chum salmon may be taken by drift gill nets after August 2;

(B) No person may operate a drift gill net that is more than 150 feet in length during the seasons described in this section.

(xxxvi) In Subdistricts 5–A, 5–B, 5–C, and that portion of Subdistrict 5–D downstream from Long Point, no person may possess salmon taken for subsistence purposes during a commercial fishing period unless the dorsal fin has been immediately removed from the salmon. A person may not sell or purchase salmon from which the dorsal fin has been removed.

(xxxvii) In addition to the subsistence fishing permit conditions, permits issued for the taking of salmon in Subdistricts 6–A and 6–B must also contain the following requirements:

(A) Salmon may be taken only by set gill net or fishwheel. No household may operate more than one fishwheel.

(B) Each person subsistence fishing shall keep accurate daily records of his/her catch, the number of fish taken by species, location and date of the catch, and other information that the Alaska Department of Fish and Game may require for management or conservation purposes.

(C) In that portion of Subdistrict 6–B three miles or more upstream of the mouth of Totchaket Slough, each permittee shall report the number of salmon taken to the Alaska Department of Fish and Game once each week, or as specified on the permit. In the remainder of Subdistrict 6–B and in Subdistrict 6–A, each permittee shall report the total number of salmon taken to the Alaska Department of Fish and Game no later than October 31.

(xxxviii) Subsistence fishermen taking salmon in Subdistrict 6–C shall report their salmon catches at designated Alaska Department of Fish and Game check stations by the end of each weekly fishing period. Immediately after salmon have been taken, catches must be recorded on a harvest form provided by the department.

(xxxix) The annual possession limit for the holder of a Subdistrict 6–C subsistence salmon fishing permit is 10 king salmon and 75 chum salmon for periods through August 15 and 75 chum and coho salmon for periods after August 15.

(xl) Subsistence salmon harvest limits in Subdistrict 6–C are 750 king salmon and 5,000 chum salmon taken through August 15 and 5,200 chum and coho salmon combined taken after August 15. When either the king or chum salmon harvest limit for periods before August 15 has been taken, the subsistence salmon fishing season in Subdistrict 6–C will close. A later season will open after August 15 to allow the taking of the harvest limit for periods after August 15. If the chum salmon harvest limit has not been obtained through August 15, the remaining harvest will not be added to the chum salmon harvest level for periods after August 15.

(xli) Subsistence salmon fishing seasons and weekly fishing periods for Subdistrict 6–C are as follows:

(A) Salmon may be taken at any time except salmon may not be taken for 24 hours before the opening and after the closing of the commercial salmon fishing seasons and during closed weekly commercial salmon fishing periods;

(B) Weekly subsistence salmon fishing periods that follow closures of the commercial salmon fishing seasons will be established by emergency order;

(C) The annual harvest limit for the holder of a Subdistrict 6–A or 6–B subsistence salmon fishing permit is 60 chinook salmon and 500 chum salmon for the period through August 15 of a year, and 2,000 chum and coho salmon combined for the period after August 15. Upon request, permits for additional salmon may be issued by the department.

(D) Unless otherwise provided, from June 20 through September 30, open subsistence salmon fishing periods are concurrent with open commercial salmon fishing periods. During closures of the commercial salmon fishery, open subsistence salmon fishing periods are as specified in 5 Alaska Administrative Code 05.367.

(E) In the Kantishna River drainage, the open subsistence salmon fishing periods are seven days per week.

(F) In Subdistrict 6–B from the downstream end of Crescent Island to a line three miles upstream from the mouth of the Totchaket Slough, the open subsistence salmon fishing periods are from 6 p.m. Friday through 6 p.m. Wednesday.

(4) Kuskokwim Area. Federal subsistence regulations for the subsistence harvest of fish are in effect for all waters on Nunivak Island and within one mile of its shoreline and all waters within the Old Kuskokwim Wildlife Refuge as defined by boundaries established prior to 1980. In the remainder of the Kuskokwim area Federal subsistence fishing regulations only apply to non-navigable waters on Federal lands.

(i) Unless otherwise restricted, salmon may be taken in the Kuskokwim area at any time.

(ii) Except as otherwise provided, there is no closed season on fish other than salmon.

(iii) Salmon may only be taken by gill net, beach seine, or fishwheel subject to the restrictions set forth in this chapter, except that salmon may also be taken by spear in the Holitna River drainage.

(iv) The aggregate length of set gill nets or drift gill nets in use by any individual for taking salmon may not exceed 50 fathoms.

(v) Fish other than salmon may only be taken by set gill net, drift gill net, beach seine, fishwheel, pot, long line, fyke net, dip net, jigging gear, spear, or lead.

(vi) Each subsistence gill net operated in tributaries of the Kuskokwim River must be attached to the bank, fished substantially perpendicular to the bank and in a substantially straight line.

(vii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(viii) Only those residents domiciled in the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB, may take salmon for subsistence purposes in the Kuskokwim Area.

(ix) Only those residents domiciled in the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak may take for subsistence purposes Pacific cod in the Kuskokwim area.

(x) Only those residents domiciled within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island may take for subsistence purposes herring and herring roe in those locations.

(xi) A gill net may obstruct not more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(xii) Kegs or buoys attached to subsistence gill nets may be any color except red during any open weekly commercial salmon fishing period.

(xiii) The maximum depth of gill nets is as follows:

(A) Gill nets with six-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gill nets with greater than six-inch mesh may not be more than 35 meshes in depth;

(xiv) In addition to the previously stated requirements,

(A) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river;

(B) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(xv) In that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakof River, no part of a set gill net located within a tributary to the Kuskokwim River may be set or operated within 150 feet of any part of another set gill net.

(xvi) The Goodnews River is closed to the subsistence taking of fish by nets east of a line between Alaska Department of Fish and Game regulatory markers placed near the mouth of the Ufigag River and Alaska Department of Fish and Game regulatory marker placed near the mouth of the Tunulik River 24 hours before, during, and six hours after each open commercial salmon fishing period.

(xvii) The Kanektok River is closed to the subsistence taking of fish by nets upstream of Alaska Department of Fish and Game regulatory markers placed near the mouth 24 hours before, during and six hours after each open commercial salmon fishing period.

(xviii) The Arolik River is closed to the subsistence taking of fish by nets upstream of Alaska Department of Fish and Game regulatory markers placed near the mouth 24 hours before, during, and six hours after each open commercial salmon fishing period.

(xix) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, salmon may be taken at any time except salmon may not be taken for 16 hours before, during and for six hours after, each open commercial salmon fishing period for District 1.

(xx) In District 1, Kuskokuak Slough only, salmon may be taken at any time except:

(A) From June 1 through July 31, salmon may not be taken for 24 hours before and during each open commercial salmon fishing period in the district.

(B) From August 1 through August 31, salmon may not be taken for 15 hours before and during each open commercial salmon fishing period in the district.

(xxi) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, salmon may be taken at any time, except that from June 1 through September 8 salmon may not be taken for 24 hours before, during, and six hours after each open commercial salmon fishing period in the district.

(xxii) In Districts 4 and 5, salmon may be taken at any time except from June 1 through September 8, salmon may not be taken for 24 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(5) Bristol Bay Area. At this time the Federal Government is only exerting its control on subsistence fishing in non-navigable fresh waters on Federal lands.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Bristol Bay Area.

(ii) Within the waters of a district open during the commercial salmon fishing season, salmon may be taken only during open commercial salmon fishing periods.

(iii) The total annual possession limit for a subsistence salmon fishing permit issued under this section is 200 sockeye salmon.

(iv) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(v) Only one subsistence fishing permit may be issued to each household per year.

(vi) No set gill net may obstruct more than one-half the width of a stream.

(vii) Each set gill net must be staked and buoyed.

(viii) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(ix) Fish, other than salmon, herring and capelin may be taken by gear previously listed unless restricted under the terms of a subsistence fishing permit.

(x) Within any district, salmon, herring, and capelin may only be taken by drift and set gill nets.

(xi) Outside the boundaries of any district, salmon may only be taken by set gill net, except that salmon may also be taken by spear in the Togiak River excluding its tributaries.

(xii) The maximum lengths for set gill nets used to take salmon are as follows:

(A) In the Naknek, Egegik and Ugashik Rivers, in the Nushegak District, and in Naknek Lake, set gill nets may not exceed 10 fathoms in length;

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(B) In the remaining waters of the area, set gill nets may not exceed 25 fathoms in length.

(xiii) In the Naknek, Egegik, and Ugashik Rivers from 9 a.m. June 23 through 9 a.m. July 17, salmon may be taken only from 9 a.m. Tuesday to 9 a.m. Wednesday and 9 a.m. Saturday to 9 a.m. Sunday.

(xiv) Except for the western shore of the Newhalen River, waters used by salmon are closed to the subsistence taking of fish within 300 feet of a stream mouth.

(xv) Nushagak District. (A) In the open waters of the Nushagak District, provision shall be made for subsistence salmon fishing by emergency order whenever there are commercial salmon fishing closures of five or more days. During these emergency order openings, (*1*) set gill nets may not be more than 10 fathoms in length;

(*2*) No set gill net may be set or operated within 450 feet of another set gill net, and

(*3*) Catches during the emergency order openings must be reported to the Dillingham Alaska Department of Fish and Game office within 24 hours after the closure.

(B) In the Nushagak District from an Alaska Department of Fish and Game regulatory marker located two statute miles south of Bradford Point to an Alaska Department of Fish and Game regulatory marker located at Red Bluff on the west shore of the Wood River, from 9 a.m. June 16 through 9 a.m. July 17, salmon may be taken only from 9 a.m. Monday to 9 a.m. Tuesday, 9 a.m. Wednesday to 9 a.m. Thursday, and 9 a.m. Friday to 9 a.m. Saturday.

(C) Only those residents domiciled in the Nushagak District and freshwater drainage flowing into the district may take salmon in the district and those drainage.

(xvi) Naknek-Kvichak District. (A) From October 1 through December 31, sockeye salmon may be taken along a 100 yard length of the west shore of Naknek Lake near the outlet to the Naknek River as marked by Alaska Department of Fish and Game regulatory markers.

(B) Subsistence salmon fishing permits for the Naknek River drainage will be issued only through the Alaska Department of Fish and Game King Salmon office.

(C) Only those residents domiciled in the Naknek and Kvichak River drainage may take salmon in the Naknek River drainage.

(D) Only those residents domiciled in the Iliamna-Lake Clark drainage may take salmon in the Iliamna-Lake Clark drainage.

(E) Subsistence fishing with nets is prohibited in the following waters and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14: Lower Talarik Creek, Roadhouse Creek, Nick G. Creek, Middle Talarik Creek, Alexi Creek, Copper River, Upper Talarik Creek, Tazimina River, Kakhonak River, Pete Andrew Creek, Young's Creek, Gibralter River, Zacker Creek, Chekok Creek, Dennis Creek, Newhalen River, Tomokok Creek, Belinda Creek

(xvii) Togiak District. (A) After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River Section and the Togiak River drainage unless the head has been immediately removed from the salmon. It is unlawful to purchase or sell coho salmon from which the head has been removed.

(B) Only those residents domiciled in the Togiak District, freshwater drainage flowing into the district, and the community of Manokotak may take salmon and freshwater fish species in the district and those drainages.

(C) Gill nets are prohibited in that portion of the Naknek River upstream from Sovonaski;

(6) Aleutian Islands Area. Federal subsistence regulations for the subsistence harvest of fish are in effect for all fresh waters on Federal lands west of the easternmost tip of Ugamak Island to the terminus of the Aleutian Islands, except the area between Akutan Pass and Samalga Island. In the remainder of the Aleutian Island area Federal subsistence fishing regulations only apply to non-navigible waters on Federal lands. (i) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(ii) Fish other than salmon may be taken by gear previously, unless restricted under the terms of a subsistence fishing permit.

(iii) The waters of Unalaska Lake (at Unalaska Village), its drainage and the outlet stream, and within 500 yards of its terminus are closed to subsistence fishing.

(iv) The Adak District is closed to the taking of salmon.

(v) Salmon, trout and char may be taken only under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak and Adak Districts. Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(7) Alaska Peninsula Area. Federal Subsistence regulations for the subsistence harvest of fish are in effect for all waters on and within one mile of Simeonof Island. In the remainder of the Alaska Peninsula Area Federal subsistence fishing regulations only apply to non-navigable waters on Federal lands. (i) Salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50 mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(ii) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(iii) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(iv) Fish other than salmon may be taken by gear previously listed, unless restricted under the terms of a subsistence fishing permit.

(v) No set gill net may exceed 100 fathoms in length.

(vi) The following waters are closed to subsistence fishing for salmon:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth;

(C) Inshore of a line from the Pacific Pearl dock to Black Point, including the inlet and Humboldt Creek.

(vii) Salmon, trout and char may be taken only under the authority of a subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(8) Chignik Area. Federal subsistence regulations for the subsistence harvest of fish are in effect for all waters on and within one mile of each of the Semidi Islands. In the remainder of the Chignik Area Federal regulations only apply to non-navigable waters on Federal lands. (i) Salmon may be taken by seines and gill nets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, salmon may not be taken with purse seines.

(ii) Fish other than salmon may be taken by gear previously listed, unless

restricted under the terms of a subsistence fishing permit.

(iii) Salmon may not be taken in the Chignik River, upstream from the Alaska Department of Fish and Game weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iv) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(v) From June 10 through September 30, commercial fishing license holders may not substitute fish for salmon.

(9) Kodiak Area. (i) At this time, the Federal Government is only exerting its control over subsistence fishing in the following waters:

(A) All fresh waters within the boundary of the Kodiak National Wildlife Refuge and all non-navigable waters on Federal lands on Kodiak and surrounding islands.

(B) All saltwater enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line one-half mile on either side of the mouth of Karluk River, and extending seaward 3000 feet. The mouth of the river is closed to fishing.

(C) All saltwater enclosed by the boundaries of the shoreline of Afognak Island and a line 1500 feet seaward of the shoreline.

(D) All navigable and non-navigable fresh waters on Afognak Island enclosed by the National Wildlife Refuge Boundaries.

(ii) Salmon may be taken for subsistence purposes from 6 a.m. until 9 p.m. from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, salmon seine vessels may not be used to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1 through September 15, purse seine vessels may be used to take salmon only with gill nets and no other type of salmon gear may be on board the vessel.

(iii) Fish other than salmon may be taken at any time unless restricted by the terms of a subsistence fishing permit.

(iv) Unless restricted by this section or under the terms of a subsistence fishing permit, fish may be taken by gear previously listed.

(v) Salmon may be taken only by gill net and seine.

(vi) Subsistence fishermen must be physically present at the net at all times the net is being fished.

(vii) The following locations are closed to the subsistence taking of salmon:

(A) All waters of Mill Bay and all those waters bounded by a line from Spruce Cape to the northernmost point of Woody Island, then to the northernmost point of Holiday Island, then to a point on Near Island opposite the Kodiak small boat harbor entrance and then to the small boat harbor entrance;

(B) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay;

(C) All water closed to commercial salmon fishing in the Barbara Cove, Chiniak Bay, Saltery Cove, Pasagshak Bay, Monashka Bay and Anton Larsen Bay, and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Las Point to the tip of River Mouth Point of Afognak Bay;

(D) All waters 300 yards seaward of the terminus of Monks Creek;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island;

(G) All waters of Ouzinkie Harbor north of a line from 57°55'10" N. lat., 152°36'W. long. to 57°55'09" N. lat., 152°29'20" W. long.

(viii) A subsistence fishing permit is required for taking salmon, trout and char for subsistence purposes. A subsistence fishing permit is required for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from May 1 through June 30. All subsistence fishermen shall keep a record of the number of subsistence fish taken each year. The number of subsistence fish shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game by February 1 of the year following the year the permit was issued.

(ix) Only those residents domiciled in the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base, may take salmon in the Kodiak Area. This restriction does not apply to the Mainland District, all waters along the southside of the Alaska Peninsula bounded by the latitude of Cape Douglas [58°52' North latitude] mid-stream Shelikof Strait, and west of the longitude of the southern entrance of Kmuya Bay near Kilokak Rocks (57°11'22" North latitude, 156°20'30" West longitude.)

(10) Cook Inlet Area. (i) At this time, the Federal Government is only exerting its control over subsistence fishing in the following waters:

(A) All waters within the boundaries of the Kenai National Wildlife Refuge.

(B) All non-navigable waters on Federal lands within the Cook Inlet Area.

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Cook Inlet area.

(iii) Unless otherwise restricted or under the terms of a subsistence fishing permit, fish may be taken by listed gear.

(iv) All salt water is closed to the taking of finfish except:

(A) The Tyonek and Port Graham Subdistricts;

(B) Salmon may be taken in the Koyuktolik Subdistrict.

(v) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(vi) Bottomfish may be taken by legal gear for commercial bottomfish in the area.

(vii) Smelt and herring may be taken only with gill nets and dip nets. Gill nets used to take smelt may not exceed 50 feet in length and two inches in mesh size.

(viii) Whitefish may be taken only in the Tyonek River drainage and only under the authority of a permit issued by the department.

(ix) Gill nets may not be used in fresh water, except for the taking of whitefish in the Tyonek River drainage.

(x) Trout, grayling, char, and burbot may not be taken in fresh water, except that dolly varden may be taken in fresh water in the Port Graham Subdistrict.

(xi) Dolly varden may be taken in fresh water only under the authority of a subsistence fishing permit issued by the department; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily dolly varden catches on forms provided by the department.

(xii) Dolly varden may be taking in fresh water for subsistence purposes in the Port Graham Subdistrict only from April 1 through May 31.

(xiii) Only those residents domiciled in Port Graham and English Bay may take salmon in the Port Graham and Koyuktolik Subdistricts and dolly varden in fresh water in the Port Graham Subdistrict.

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(xiv) Dolly varden may be taken in fresh water only by beach seines not exceeding 10 fathoms in length.

(xv) Salmon may be taken only under the authority of a subsistence fishing permit issued by the Alaska Department of Fish and Game; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily salmon catches on forms provided by the department.

(xvi) No person may operate or assist in the operation of subsistence salmon net gear on the same day that person operates or assists in the operation of commercial salmon gear.

(xvii) Only those residents domiciled in the village of Tyonek may take salmon in the Tyonek Subdistrict.

(xviii) Salmon may be taken only as follows:

(A) In the Tyonek subdistrict by set gill nets not exceeding 10 fathoms in length, six inches in mesh size and 45 meshes in depth;

(B) In the Port Graham and Koyuktolik Subdistricts by set gill nets not exceeding 35 fathoms in length, six inches in mesh size and 45 meshes in depth;

(C) No part of a set gill net may be set or operated within 600 feet of any part of another set gill net.

(xix) Salmon may be taken for subsistence purposes only as follows:

(A) In the Tyonek subdistrict;

(*1*) From May 15 through June 15 from 4 a.m. to 8 p.m. on Tuesdays, Thursdays and Fridays (this season shall close by emergency order when 4,200 king salmon are taken);

(*2*) From June 16 through October 15 from 6 a.m. to 6 p.m. on Saturdays (shall not open until July 1 if 4,200 king salmon are taken before June 16.)

(B) In the Port Graham and Koyuktolik Subdistricts from April 1 through September 30 from 6 a.m. Monday until 6 a.m. Wednesday and from 6:00 a.m. Thursday until 6 a.m. Saturday.

(xx) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(xxi) It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed.

(xxii) The total annual possession limit for each subsistence salmon permit is as follows:

(A) There is no total annual possession limit for holders of Port Graham and Koyuktolik Subdistrict subsistence salmon fishing permits;

(B) 25 salmon for the head of household and 10 salmon for each dependent of the permit holder.

(C) In addition to the limits in (b) of this subsection; the holder of a Tyonek subdistrict subsistence salmon fishing permit may take 70 king salmon; no more than 4,200 king salmon may be taken in the Tyonek subdistrict during the period May 15 through June 30.

(11) Prince William Sound Area. At this time Federal subsistence fishing regulations only apply to non-navigable waters on Federal lands in the Prince William Sound area. (i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound Area.

(ii) Fish may be taken by gear previously listed unless restricted in this section or under the term of a subsistence fishing permit.

(iii) Salmon may be taken only by the following types of gear:

(A) In the Glennallen Subdistrict by fishwheels or dip nets;

(B) The Chitina Subdistrict is closed to subsistence salmon fishing;

(iv) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fishwheels must be removed from the water at the end of the permit period. Each permittee may operate only one fishwheel at any one time. No person may set or operate a fishwheel within 75 feet of another fishwheel. No fishwheel may have more than two baskets.

(v) The permit holder must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred except as permitted by Alaska regulations.

(vi) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address are plainly visible.

(vii) Except as provided in this section, fish other than salmon and freshwater fish species may be taken for subsistence purposes with a subsistence fishing permit.

(viii) Salmon and freshwater fish species may be taken only under the authority of a subsistence fishing permit.

(ix) Only one subsistence fishing permit will be issued to each household per year.

(x) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(xi) In locations open to commercial salmon fishing and in conformance with commercial salmon fishing regulations, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons;

(C) 10 salmon for each additional person in a household over two;

(D) no more than five king salmon may be taken per permit.

(xii) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(xiii) A subsistence salmon fishing permit for the Upper Copper River District will be issued only to residents of the State of Alaska. The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) Only one permit per year may be issued to a household;

(C) Permits must be returned to the Alaska Department of Fish and Game no later than October 31, or a permit for the following year may be denied.

(D) During closed fishing periods, the Alaska Department of Fish and Game's Chitina permit issuing station may be closed or operated at reduced hours to reduce costs.

(E) A household may not be issued both a Copper River Subsistence Salmon Fishing Permit and a Chitna Subdistrict Personal Use Salmon Fishing Permit.

(xiv) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(A) 30 salmon for a household with one person;

(B) 60 salmon for a household with two persons;

(C) 10 salmon for each additional person in a household over two;

(D) Upon request, permits for additional salmon will be issued with the following limits:

(*1*) No more than a total of 200 salmon for a permit issued to a household with one person.

(*2*) No more than a total of 500 salmon for a permit issued to a household with two or more persons.

(xv) Salmon may be taken in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) The Chitina subdistrict is closed to subsistence salmon fishing;

(C) When the Copper River subsistence fishery is closed or restricted because of an inadequate escapement of sockeye or chinook salmon, the fishery may be reopened September 1 for the taking of coho salmon, which constitute the majority of the salmon at that time.

(D) No person may possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless the dorsal fin has been immediately removed from the salmon.

(xvi) Salmon may not be taken in the Chitina Subdistrict, or in any portion of the subdistrict, when those waters are closed to subsistence salmon fishing.

(xvii) Crosswind Lake is closed to all subsistence fishing.

(xviii) Subsistence salmon fishing permits for the Southwestern District and Green Island may be issued only to those residents domiciled in the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield and all waters surrounding Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands. Salmon may be taken for subsistence purposes in those waters only as follows:

(A) Salmon may be taken only in the Southwestern District, as described in above, and along the northwestern shore of Green Island from the westernmost tip of the island to the northernmost tip;

(B) Salmon may be taken only by gill nets up to 150 fathoms in length, except that pink salmon may be taken in fresh water by dipnets only;

(C) Salmon may be taken only from May 15 through September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven day per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) No fishing is allowed within the closed waters areas for commercial salmon fisheries; only pink salmon may be taken in fresh water;

(F) There are no bag and possession limits for this fishery;

(G) Permits may be issued only at Chenega Bay village.

(xix) Salmon, other than chinook salmon, may be taken in the vicinity of the former native village of Batzulnetas under the following conditions:

(A) Salmon may be taken only under the authority of a Batzulnetas subsistence salmon fishing permit issued by ADF&G;

(B) Salmon may be taken only in those waters of the Copper River between Alaska Department of Fish and Game regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between Alaska Department of Fish and Game regulatory markers identifying the open waters of the creek;

(C) Fishwheels and dipnets only may be used on the Copper River; dipnets and spears only may be used in Tanada Creek;

(D) Salmon may be taken only from June 1 through September 1 or until the season is closed by emergency order; fishing periods are to be established by emergency order and are two days per week during the month of June and 3.5 days per week for the remainder of the season;

(E) Chinook salmon taken must be released to the water unharmed; fish wheels must be equipped with a live box or be monitored at all times;

(F) The permit must be returned to the Alaska Department of Fish and Game's Glennallen office no later than September 30 of each year.

(xx) Subsistence salmon fishing permits for those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, may be issued only to those residents domiciled in the villages of Tatitlek and Ellamar. Salmon may be taken for subsistence purposes in those waters only as follows:

(A) Salmon may be taken only in those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point;

(B) Salmon may be taken only by gill nets up to 150 fathoms in length, with a maximum mesh size of 6.25 inches, except that pink salmon may be taken in fresh water by dipnets only;

(C) Salmon may be taken only from May 15 through September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) No fishing is allowed within the closed waters areas for commercial salmon fisheries; only pink salmon may be taken in fresh water;

(F) There are no bag and possession limits for this fishery;

(G) Permits may be issued only at Tatitlek village.

(12) Yakutat Area. (i) At this time, Federal government is only exerting its control over subsistence fishing in the following waters:

(A) All waters within the boundaries of Glacier Bay National Preserve.

(B) All non-navigable waters on Federal lands in the Yakutat area, with the exception of such waters within Glacier Bay National Park, which is closed to subsistence uses.

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Yakutat area.

(iii) Salmon may not be taken during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(iv) When the length of the weekly commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6:00 am. to 6:00 p.m. on Saturday in that location.

(v) Only those residents domiciled east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island may take

(A) Salmon in freshwater upstream from the terminus of streams and rivers of the Yakutat area from the Doame River to the Tsiu River, in waters of Yakutat Bay and Russell Fiord inside a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape, and in waters of Icy Bay inside a line from the westernmost tip of Point Riou to Icy Cape Light;

(B) Dolly varden char, steelhead trout, and smelt in freshwater upstream from the terminus of streams and rivers of the Yakutat area from the Doame River to Point Manby, and in waters of Yakutat Bay and Russell Fiord inside a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape.

(vi) Fish may be taken by gear previously listed, unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) Salmon, trout and char may be taken only under authority of a subsistence fishing permit.

(viii) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(ix) Subsistence fishermen must remove the dorsal fin from subsistence caught salmon when taken.

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(18) Southeastern Alaska Area. At this time Federal subsistence fishing regulations only apply to non-navigable waters on Federal lands in the Southeastern Alaska Area, with the exception of Glacier Bay National Park which is closed to the subsistence uses.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, fish may be taken in the Southeastern Alaska Area at any time.

(ii) Salmon, trout, char and herring spawn on kelp may be taken only under authority of a subsistence fishing permit.

(iii) No person may possess subsistence-taken and sport-taken salmon on the same day.

(iv) The Alaska Department of Fish and Game shall not issue a permit for the taking of steelhead trout, but steelhead trout taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any steelhead trout taken in this manner on his or her permit calendar.

(v) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(vi) Subsistence fishermen shall immediately remove the dorsal fin of all salmon when taken.

(vii) Coho salmon may be taken from Salt Lake and Mitchell Bay from August 1 through October 31.

(viii) Fish may be taken by gear previously listed except as may be restricted under the terms of a subsistence fishing permit and except as follows:

(A) In District 13, Redoubt Bay, gillnet or seine gear may not be used to take salmon in any waters of the bay closed to commercial salmon fishing;

(B) Set gill nets may not be used to take salmon except in the mainstream and side channels, but not the tributaries, of the Chilkat River from the terminus to one mile upstream of Wells Bridge;

(C) Beach seines and gaffs only may be used to take coho salmon during the season and including coho salmon which may be taken from Salt Lake and Mitchell Bay from August 1 through October 31.

(ix) The following waters are closed to subsistence salmon fishing: in District 15, saltwaters of Lynn Canal including Chilkat, Chilkoot and Lutak Inlets, during the closed period of the commercial salmon net fishery in the district, except that salmon may be taken in saltwaters of Lutak Inlet on the Saturday before any period that the commercial salmon net fishery is open in the inlet to the terminus of the Chilkoot River.

(x) Permits will not be issued for taking chinook or coho salmon, except for coho salmon as provided in Salt Lake and Mitchell Bay from August 1 through October 31, but chinook or coho salmon taken incidentally by gear operated under terms of a subsistence permit for other salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon fishing permit must report any chinook or coho salmon taken in this manner on his or her permit calendar.

(xi) From July 7 through July 31, sockeye salmon may be taken in the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, the Klawock River, and Klawock Lake only from 6 a.m. Monday until 5 p.m. Friday.

(xii) In the Chilkat River, the subsistence fishing permit holder shall be physically present at the net while it is fishing.

(xiii) Before July 4, subsistence salmon fishing permits may be operated in Sitkoh Bay only by residents of Angoon. On and after July 4, subsistence salmon fishing permits may be operated in Sitkoh Bay by residents of both Angoon and Sitka.

(xiv) Subsistence salmon fishing permits for the fishery provided for Salt Lake and Mitchell Bay will be issued only to those persons domiciled in Angoon and only one permit will be issued for a household. The number of coho salmon that may be taken on a permit will be specified by the Alaska Department of Fish and Game after it has assessed the level of effort that will be involved in that fishery.

(xv) In the waters of the Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, no person may subsistence salmon fish from a vessel that is powered by a motor of greater than 35 horsepower.

(xvi) Finfish may be taken for subsistence purposes only as provided in this section:

(A) Klukwan. Only those residents domiciled west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River may take herring, herring spawn, and bottomfish in waters of Section 15–A; and salmon and smelt in all waters of the Chilkat River and Chilkat Inlet north of the latitude of Glacier Point, and in the Chilkoot River, Lutak Inlet, and Chilkoot Inlet north of the latitude of Battery Point, excluding waters of Taiya Inlet south of the latitude of the tip of Taiya Point.

(B) Haines. Only those residents domiciled in the City and Borough of Haines, excluding residents domiciled in the village of Klukwan and in the drainage of Lutak Inlet, may take herring, herring spawn, and bottomfish in waters of Section 15–A; and salmon and smelt in all waters of the Chilkat River and Chilkat Inlet north of the latitude of Glacier Point, and in the Chilkoot River, Lutak Inlet, and Chilkoot Inlet north of the latitude of Battery Point, excluding waters of Taiya Inlet north of the latitude of the tip of Taiya Point.

(C) Hoonah. Only those residents domiciled in the City of Hoonah and in Chichagof Island drainage on the eastern shore of Port Frederick from Gartina Creek to Point Sophia may take herring, herring spawn, and bottomfish in waters of District 14 east of the longitude of Point Dundas; and salmon, smelt, and dolly varden char in waters of section 14–B and 14–C, in District 12 in waters along the western shore of Yakobi Island east of a line from Cape Spencer Light to Surge Bay Light, and in District 12 in waters of Basket Bay inside a line from 57°30'30" N. lat., 134°53'12" W. long. to 57°36'17" N. lat., 134°53'53" W. long.

(D) Angoon. Only those residents domiciled in the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' W. long., including Killisnoo Island, may take herring, herring spawn, and bottomfish in waters of District 12 between the latitude of Parker Point and the latitude of Point Caution, and in Section 13–C east of the longitude of Point Elizabeth; and salmon and dolly varden char in waters of District 12 south of a line from Fishery Point to South Passage Point and north of the latitude of Point Caution and in waters of Section 13–C east of the longitude of Point Elizabeth.

(E) Sitka. Only those residents of the City and Borough of Sitka domiciled in drainage which empty into Section 13–B north of the latitude of Dorothy Narrows, except those domiciled in the U.S. Coast Guard base on Japonski Island, may take herring and herring spawn in waters of Section 13–B north of the latitude of Aspid Cape; and sockeye salmon in waters of Section 13–A south of the latitude of Cape Edward, in waters of Section 13–B north of the latitude of Redfish Cape, and in waters of Section 13–C.

(F) Kake. Only those residents domiciled in the City of Kake and in Kupreanof Island drainage into Keku Strait south of Point White and north of the Portage Bay boat harbor may take herring, herring spawn, and bottomfish in waters of Section 9–B north of the latitude of Point Ellis, in waters of District 10 west of a line from Pinta Point to Point Pybus, and in waters of District 5 north of 56°40" N. lat.; and salmon and dolly varden char in Section 9–A and 9–B in waters north of the latitude of Swain Point, in waters of District 10 west of a line from Pinta Point to False Point Pybus, and in waters of District 5 north of a line from Point Barrie to Boulder Point.

(G) Saxman. Only those residents domiciled in the City of Saxman may take herring and herring spawn in waters of Section 1–F between Point Sykes and Foggy Point to a distance of 2 nautical miles from shore; bottomfish in waters of Section 1–F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra, and in waters of Section 1–E south of the latitude of Grant Island light; and salmon and dolly varden char in waters of Section 1–C in Checats Cove east of the longitude of Edith Point, in waters of Section 1–D in Yes Bay north of a line from Syble Point to Bluff Point, in Section 1–E in waters of Helm Bay north of the latitude of Helm Point and in waters of the Naha River and Roosevelt Lagoon, and in Section 1–F in waters of George Inlet north of 55°26' N. lat. and in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.

(H) Kasaan. Only those residents domiciled in the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20' W. long. and east of 132°25' W. long. may take herring and herring spawn in waters of District 2 north of the latitude of the northernmost tip of Chasina Point and west of a line from the northernmost tip of Chasina Point to the easternmost tip of Grindall Island to the easternmost tip of the Kasaan Peninsula, and in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20' W. long.; and salmon, dolly varden char, and bottomfish in waters of District 2 north of the latitude of the northernmost tip of Chasina Point and west of a line from the northernmost tip of Chasina Point to the easternmost tip of Grindall Island to the easternmost tip of the Kasaan Peninsula.

(I) Klawock. Only those residents domiciled in the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989 may take herring and herring spawn in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20' W. long., and in waters of Section 3–A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point; bottomfish in waters of Section 3–B; and salmon, dolly varden char, and steelhead trout in Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point and in waters of Warm Chuck Inlet north of a line from a point on Hecata Island at 55°44' N. lat., 133°25' W. long. to Bay Point, and in Section 3–C in waters of Karheen Passage north of 55°48' N. lat. and east of 133°20' W. long. and in waters of Sarkar Cove and Sarkar Lakes.

(J) Craig. Only those residents domiciled in the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989 may take herring and herring spawn in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20' W. long., and in waters of Section 3–A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point; bottomfish in waters of Section 3–B; and salmon, dolly varden char, and steelhead trout in Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point and in waters of Warm Chuck Inlet north of a line from a point on Hecata Island at 55°44' N. lat., 133°25' W. long. to Bay Point, and in Section 3–C in waters of Karheen Passage north of 55°48' N. lat. and east of 133°20' W. long. and in waters of Sarkar Cove and Sarkar Lakes.

(K) Hydaburg. Only those residents domiciled in the townsite of Hydaburg may take herring and herring spawn in waters of Section 3–A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point, and in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20' W. long.; bottomfish in waters of Section 3–A, and in waters of Section 3–B south of the latitude of Bocas Point, excluding Port Refugio; and salmon and dolly varden char in waters of Section 3–A and in waters of District 2 in Nichols Bay north of 54°42'07" N. lat.

§ ____.25 Shellfish.

(a) Regulations in this section apply to subsistence fishing on Federal public lands for dungeness crab, king crab, tanner crab, shrimp, clams, abalone and other types of shellfish or their parts.

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of this section or the preceding subsistence fishing section.

(c) Methods, Means, and General Restrictions. (1) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional shellfish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this section, the following are legal types of gear for subsistence fishing:

(i) Gear specified under subsistence fishing regulations.

(ii) Jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and which are drawn through the water by hand;

(iii) A spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and which is operated by hand;

(iv) A lead which is a length of net employed for guiding fish into a seine or a length of net or fending employed for guiding fish into a fishwheel, fyke net, or dip net;

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified in this section.

(4) The use of explosives and chemicals is prohibited, except that chemical baits or lures may be used to attract shellfish.

(5) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Bering Sea area.

(6) Each subsistence fisherman shall plainly and legibly inscribe their first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent Alaska Department of Fish and Game vessel license number.

(7) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab

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and shrimp pots may have the pot lid tiedown straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(8) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(9) In addition to the marking requirements in paragraph (c)(6) of this section, kags or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(10) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in paragraph (f) of this section.

(11) In the subsistence taking of shrimp in the Southeastern Alaska-Yakutat and Prince William Sound Areas, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Southeastern Alaska-Yakutat Area, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) Subsistence Take by Commercial Vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered.

(e) Unlawful Possession of Subsistence Shellfish. No person may possess, transport, give, receive or barter subsistence taken shellfish or their parts that the person knows or should know were taken in violation of a Federal or State statute or a regulation promulgated thereunder.

(f) Subsistence Shellfish Areas and Pertinent Restrictions. (1) Southeastern Alaska-Yakutat Area. At this time the Federal Government is only exerting its control over the waters of Glacier Bay National Park in the Southeastern Alaska-Yakutat Area. Glacier Bay National Park is closed to subsistence uses.

(2) Prince William Sound Area. At this time there are no locations within this area on which the Federal Government is regulating the subsistence harvest of shellfish. All shellfish harvest in this area is therefore under the regulation of the State of Alaska.

(3) Cook Inlet Area. At this time the Federal Government is only exerting its control over the subsistence harvest of shellfish in the following waters in the Cook Inlet Area: all waters within the boundaries of the Kenai National Wildlife Refuge. This area is closed to the taking of shellfish for subsistence purposes.

(4) Kodiak Area. (i) At this time, the Federal Government is only exerting its control over the subsistence harvest of shellfish in the following waters in the Kodiak area:

(A) All saltwater enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line one-half mile on either side of the mouth of Karluk River, and extending seaward 3000 feet. The mouth of the river is closed to fishing.

(B) All saltwater enclosed by the boundaries of the shoreline of Afognak Island and a line 1500 feet seaward of the shoreline.

(C) All navigable and non-navigable fresh waters on Afognak Island enclosed by the National Wildlife Refuge Boundaries.

(ii) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) The daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(v) In the subsistence taking of king crab:

(A) The daily bag and possession limit is six crab per person and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) No more than five crab pots may be used to take king crab;

(D) King crab may be taken only from June 1 through January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or tanner crab in the location;

(E) Only those residents domiciled in the Kodiak Island Borough, may take king crab in the Kodiak Area. This restriction does not apply to the Semidi Island, the North Mainland, and the South Mainland Sections.

(vi) In the subsistence taking of tanner crab:

(A) No more than five crab pots may be used to take tanner crab;

(B) From July 25 through February 10, the subsistence taking of tanner crab is prohibited in waters 25 fathoms or greater in depth, unless the commercial tanner crab fishing season is open in the location;

(C) The daily bag and possession limit is 12 crab per person and only male crab may be taken.

(5) Alaska Peninsula-Aleutian Islands Area. (i) At this time the Federal Government is only exerting its control over the subsistence harvest of shellfish found in all waters within one mile of Simeonof Island and the waters west of the easternmost tip of Ugamak Island to the terminus of the Aleutian Islands, except the area between Akutan Pass and Samalga Island.

(ii) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) The daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(v) In the subsistence taking of king crab:

(A) The daily bag and possession limit is six crab per person and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) Crab may be taken only from June 1 through January 31.

(vi) The daily bag and possession limit is 12 tanner crab per person. Only male crab may be taken.

(6) Bering Sea Area. (i) At this time the Federal Government is only exerting its control over the subsistence harvest of shellfish waters within Nunivak Islands shoreline to a distance one mile offshore, and waters within the Old Kuskokwim Wildlife Refuge as defined by boundaries established prior to 1959.

(ii) In waters South of 60° North latitude, shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net.

(iv) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(v) In waters south of 600° North latitude, the daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(vi) In the subsistence taking of king crab:

(A) In waters south of 60° North latitude, the daily bag and possession limit is six crab per person, and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In the Norton Sound Section of the Northern District, a subsistence fishing permit is required and may be obtained from a local representative of the Alaska Department of Fish and Game;

(D) In waters south of 60° North latitude, crab may be taken only from June 1 through January 31.

(vii) In waters south of 60° North latitude, the daily bag and possession limit is 12 tanner crab, and only males may be taken.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

Michael A. Barton,

Regional Forester, USDA-Forest Service.

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Part III

Environmental Protection Agency

Existing Stocks of Pesticide Products; Statement of Policy; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-38506; FRL-3946-4]

Existing Stocks of Pesticide Products; Statement of Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; statement of policy.

SUMMARY: This Statement summarizes the policies that will generally guide EPA in making individual decisions concerning whether, and under what conditions, the Agency will permit the continued sale, distribution, and use of existing stocks of pesticide products whose registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) are amended, cancelled, or suspended. Although most of the policies reflected in this Statement have already been applied by the Agency on a case-by-case basis, EPA now intends to formalize these policies and is soliciting comments from interested persons. If, after reviewing any comments, EPA determines that changes to this Statement are warranted, the Agency will issue a revised Statement of Policy in the Federal Register.

DATES: The policies announced in this Statement are currently in effect. The Agency will review any comments on these policies received by the Agency on or before August 26, 1991. After reviewing such comments, the Agency may issue a revised Statement of Policy.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. In person, deliver comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Martha Lamont, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location and telephone number: Special Review Branch, rm. 31L3, Crystal Station 1, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8033.

SUPPLEMENTARY INFORMATION: The general statement of policy on existing stocks of pesticide products whose registrations under FIFRA are amended, cancelled, or suspended follows.

GENERAL STATEMENT OF POLICY

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I. Application

This Statement of Policy applies to determinations the Agency will make concerning existing stocks of pesticide products whose registrations have been amended, cancelled, or suspended pursuant to sections 3, 4, or 6 of the Federal Insecticide, Fungicide and Rodenticide Act as amended (FIFRA). This Statement also applies to existing stocks of products sold or distributed under a supplemental distributor agreement. It is the responsibility of the registrant to notify such distributors of any applicable existing stock provisions.

For purposes of this Statement, existing stocks are defined as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the action.

This Statement establishes general principles which the Agency generally will apply in determining whether and under what conditions to allow the sale and use of existing stocks. In general, if there are significant risk concerns associated with a cancelled pesticide, the Agency will make a case-by-case determination as to whether to allow the continued sale or use of existing stocks of the pesticide. The Agency will not allow continued sale, distribution, or use of such a pesticide unless the benefits associated with such sale, distribution, or use exceed the risks.

Where there are no significant risk concerns associated with the cancellation of a pesticide, the Agency will generally allow unlimited use of existing stocks, and unlimited sale by persons other than the registrant. A registrant will generally be allowed to continue to sell existing stocks for 1 year after the date cancellation is requested, or 1 year after the date the registrant has ceased to comply with the responsibilities that are placed upon registrants, whichever date is sooner.

This policy will be implemented on the date of publication of this notice. Because registrants were unaware of the policies contained in this notice, the Agency has decided to provide a 6-month "grace period" before certain aspects of this Policy become fully effective. Specifically, in cases where the Agency has not identified any significant risk concerns, the Agency will allow registrants of products cancelled on or before December 26, 1991 to continue to sell or distribute existing stocks at least until December 26, 1991, notwithstanding the fact that application of the policies set forth in this statement might result in a shorter existing stocks period or an outright prohibition against the sale or distribution by the registrant of any existing stocks.

II. Applicable Statutory Provisions

Under FIFRA section 3, a pesticide product must be registered with EPA before it may be sold or distributed in commerce. EPA may not register a pesticide unless, among other things, it first determines that the product and its use will not cause unreasonable adverse effects on the environment. Once a pesticide product is registered, FIFRA provides a number of different mechanisms for changing the status of a registration. These mechanisms can be grouped into three categories: Changes requested by a registrant; changes imposed by EPA for failure to comply with various obligations imposed upon registrants; and changes imposed by EPA because of a determination by the Agency that use of the pesticide product results in unreasonable adverse effects to man or the environment.

A registrant may request at any time, for any reason, to voluntarily cancel a registration (FIFRA section 6(f)) or to amend the terms and conditions of the registration, most frequently by amending the pesticide product label (FIFRA sections 3(f) and 6(f)). Voluntary amendments to registration can include, among other things, adding or deleting uses, increasing or decreasing application rates, changing the formulation of a pesticide, or changing the label language (such as changing directions for use, warning statements, etc.).

Other changes in registration status are the result of Agency action because of the failure of a registrant to fulfill certain responsibilities adequately. Each registrant has a continuing obligation to ensure that its registered products comply with the standards for registration. Note that the the term "registration" includes reregistration (see FIFRA section 2(z)). As part of this obligation, a registrant may be required to submit to EPA additional information which the Agency considers necessary to support continued registration. See FIFRA section 3(c)(2)(B). Failure to submit information required by the Agency pursuant to section 3(c)(2)(B) may result in the suspension of a registration until the information is provided.

In addition, registrants of pesticide products containing active ingredients first registered before November 1, 1984, must demonstrate, under FIFRA section 4, that their products meet the current standards for registration and should be reregistered. Failure to comply with certain provisions of section 4 can result in the cancellation or suspension of pesticide registrations. For example, registrations may be cancelled if a registrant fails to pay fees mandated by section 4(i) or fails to provide EPA with certain information during the early stages of the reregistration process (see FIFRA sections 4(d)(5), 4(e)(3) and 4(i)(7)(C)). Failure by registrants to supply other information required during reregistration may result in the suspension of registrations until the required information is provided to EPA (see, e.g., FIFRA sections 4(d)(6) and 4(f)(3)).

If a registration is a conditional registration, the Agency may also take action to cancel the registration pursuant to FIFRA section 6(e) if the registrant fails to meet any of the conditions imposed upon the product at the time of registration.

Finally, changes in the status of a registration may be mandated by EPA to assure that the product or its use does not result in unreasonable adverse effects on the environment. The Agency may reevaluate a pesticide at any time. If EPA determines that a pesticide product (without change in its terms of registration) no longer meets the standard for registration, the Agency may propose cancellation of the product under FIFRA section 6(b) or propose to classify the product for restricted use. Such Agency proposals may at times allow changes in the terms of registration (such as the deletion of particular uses or addition of specified protective measures) as alternatives to cancellation or change in classification. If the Agency determines that use may result not only in unreasonable adverse effects but in an "imminent hazard," EPA may initiate action to suspend the pesticide registration during the pendency of cancellation proceedings (FIFRA section 6(c)).

It is a violation of FIFRA section 12(a)(1)(A) to sell or distribute any pesticide that has been cancelled or suspended, except to the extent that sale or distribution is authorized by EPA. It is also a violation of FIFRA section 12(a)(2)(J) and (K) to violate the terms of a suspension or cancellation order. Thus, unless expressly permitted by the Agency, distribution or sale of existing stocks of cancelled or suspended pesticides is unlawful. Use of such existing stocks, on the other hand, is not unlawful unless specifically prohibited by the Agency in a cancellation or suspension order.

If a pesticide is cancelled under section 6(b) or section 6(e), FIFRA provides in section 6(a)(1) and (e) that the Administrator may permit the continued sale and use of existing stocks of the cancelled pesticide "to such extent, under such conditions, and for such uses as he may specify if he determines that such sale or use is not inconsistent with the purposes of (FIFRA) and will not have unreasonable adverse effects on the environment." FIFRA section 2(bb) defines "unreasonable adverse effects" as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." Thus, in determining whether to permit distribution, sale, or use of existing stocks of pesticides cancelled under sections 6(b) or 6(e), EPA must apply the same risk/benefit considerations that are applicable to other Agency actions under FIFRA (except that such considerations would be limited to the context of allowing distribution, sale, or use of existing stocks).

FIFRA does not specify a standard for the Agency to apply in determining whether to allow the distribution, sale, and use of existing stocks of pesticide products cancelled voluntarily pursuant to FIFRA section 6(f) or for failure of the registrant to comply with the requirements of section 4. The Agency has decided to make existing stocks determinations with respect to products cancelled under sections 4 and 6(f) based upon whether distribution, sale, or use of existing stocks would be consistent with the purposes of FIFRA. In determining whether such distribution, sale, or use would be consistent with the purposes of FIFRA, the Agency will first determine whether there are any significant risk concerns associated with the cancelled product. If there are such risk concerns, the Agency will generally require a risk/benefit analysis before allowing the sale, distribution, or use of existing stocks. If there are no significant risk concerns, the Agency will generally not require a risk/benefit analysis before making an existing stocks determination.

In the case of suspension of pesticide registrations for failure to submit data, FIFRA has explicitly provided the Agency with broad discretion in the area of existing stocks. Section 3(c)(2)(B) provides that the Administrator may make such provisions for the sale and use of existing stocks of a pesticide whose registration is suspended for failure to submit data as EPA "deems appropriate."

As to existing stocks of pesticides that have had their registrations amended, the Agency generally considers sale or distribution of a pesticide bearing a label or containing a formula other than the label or formula currently approved by the Agency to be a violation of FIFRA section 12(a)(1)(B), (C), or (E). The Agency has, however, established regulations (at 40 CFR 152.130) which provide for the continued sale of a product bearing previously approved labeling for certain periods of time depending upon the nature of the amendment. These regulations do not apply to changes in composition. The Agency will treat sale and distribution of products containing a previously accepted formula that is different from the currently accepted formula in the manner described in unit III.C (Amendments of Registration) of this Policy Statement.

III. General Policies Applicable to All Existing Stocks

This Policy Statement contains the general policies that the Agency intends to apply in making determinations concerning the sale or use of existing stocks of pesticides, as defined in unit I (Application) of this statement. In any individual case, the Agency will consider additional factors if appropriate. To the extent that a particular action or cancellation can fit into more than one category discussed below, EPA will generally select the most restrictive existing stocks provision that may apply. Whenever an existing stocks provision is issued, the Agency reserves the right to amend that provision on its own initiative or at the request of any interested person (either by allowing additional time to sell or use stocks or by placing additional restrictions on the sale or use of existing

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stocks) if later circumstances warrant. Finally, unless an existing stocks provision stipulates otherwise, any sale or use of existing stocks must be in accordance with the previously approved label and labeling on, or accompanying, the product.

A. Cancelled Pesticides

In determining what existing stocks provision is appropriate with respect to a pesticide whose registration has been cancelled, the Agency generally will base its determination on the total circumstances affecting the cancelled registration. The actual mechanism triggering cancellation will not always be the controlling factor. Instead, the Agency generally will focus on three factors: (1) Whether there are significant potential risks which raise a question as to whether the use of the cancelled pesticide results in unreasonable adverse effects on man or the environment (this category consists primarily of cancellations where the registration is the subject of a notice of intent to cancel issued pursuant to section 6(b) or a special review initiated pursuant to 40 CFR part 154); (2) whether the registrant of the cancelled pesticide has failed to meet an obligation of registration (such as payment of fees under section 4, or submission of data required under section 3(c)(2)(B), 3(c)(7), or (4); and (3) whether the Agency has taken some regulatory position with respect to the cancelled registration (such as issuance of a Registration Standard, Label Improvement Program, or a document describing the reregistration status of a pesticide or active ingredient). Consideration of these factors in a particular case may suggest differing provisions for the sale, distribution, or use of existing stocks. In such situations, the Agency generally will apply the most restrictive existing stocks provision to the cancelled product.

1. *Cancellations where the Agency has identified particular risk concerns.* Whenever a pesticide registration is cancelled, the Agency will determine whether there are significant potential risk concerns associated with the use of the pesticide. If there are such concerns, the Agency generally will make a case-by-case determination as to whether to allow continued distribution, sale, or use of existing stocks of the cancelled pesticide. This likely will be the case whether a product is cancelled by Agency mandate after issuance of a risk-based notice of intent to cancel, whether the product is cancelled because of the registrant's failure to comply with the reregistration requirements of section 4, or whether the cancellation was requested voluntarily by the registrant.

In most cases, the Agency will not permit continued distribution, sale, or use of existing stocks of a cancelled pesticide raising risk concerns unless it can be demonstrated that the social, economic, and environmental benefits associated with such distribution, sale, or use exceed the social, economic, and environmental risks. A risk/benefit analysis for existing stocks purposes is somewhat different from the analysis that is performed by the Agency in determining whether or not to cancel a registration. In making existing stocks determinations, the Agency may consider any or all of the following criteria, to the extent that information is provided or available:

a. The quantity of existing stocks at each level of the market (i.e., in possession of registrants, distributors, retailers, end-users, etc.)

b. The risks resulting from the use of such stocks. The examination of risk may take into account the limited nature of use of existing stocks where relevant (such as where limited use might result in a level of exposure that may not result in much risk). In many cases, however, it may turn out that the risks posed by use of existing stocks will be similar or identical to the risks posed by continued registration (such as, for example, where the risk is primarily an acute risk from single exposure). In assessing the risks posed by use of existing stocks, the Agency will, to the extent possible, also consider the risks posed by likely alternatives (if any).

c. The benefits resulting from the use of such stocks. In considering the benefits of existing stocks, the Agency may consider the short-term problems (if any) in switching to alternatives, including the length of time before which such alternatives could be available to retailers and users and any hardships that might be presented to users before alternatives are available. The consideration of benefits may also include (insofar as it affects existing stocks) the type of analysis of benefits that the Agency performs in its other risk/benefit analyses (i.e., whether alternatives are available, how any such alternatives compare in terms of cost and efficacy, and what the economic effects to the user will be if the cancelled product is unavailable).

d. The dollar amount users and others have already spent on existing stocks (which would be lost if distribution, sale, or use were not permitted).

e. The risks and costs of disposal or alternative disposition of the pesticide if distribution, sale, or use are not permitted. The Agency may assess whether existing stocks could be used for other purposes. If disposal appears likely, the Agency may consider relevant aspects of disposal, including the nature, feasibility, and cost of proper disposal of the cancelled product.

f. The practicality of implementing restrictions on distribution, sale, or use of existing stocks. For instance, it may be that in some circumstances the Agency would allow continued use of a product because the product could not, as a practical matter, be retrieved.

In addition to the factors listed above, the Agency may consider any other information relevant to either the risks posed by, or the benefits resulting from, the sale and use of existing stocks.

In performing a risk/benefit analysis the Agency will consider all information and/or comments from registrants and interested persons regarding existing stocks that are received in response to public documents that the Agency issues in the course of its regulatory process. For example, where an active ingredient is in special review, the Agency will often issue a Preliminary Determination (position document (PD) 2/3) and request public comment on all proposed regulatory actions. Where a registrant's request for voluntary cancellation is received prior to initiation of special review, but while one is under consideration, the Agency will publish a notice in the Federal Register acknowledging receipt of the request and may solicit public comments regarding existing stocks provisions.

If registrants or others indicate that there is an interest in the continued sale or use of existing stocks of cancelled pesticides raising risk concerns, and if information is provided to the Agency to support such distribution, sale, or use, the Agency will generally conduct an analysis of the risks and benefits of the distribution, sale, and use of existing stocks. If information is not provided to the Agency or no interest in continued sale, distribution, or use is expressed to the Agency, the Agency will generally not conduct a risk/benefit analysis and will not permit any sale, distribution, or use of existing stocks.

While a risk/benefit analysis will be an important factor in the Agency's determination of whether or not to allow distribution, sale, and use of existing stocks of cancelled pesticides raising risk concerns, the Agency must also determine that further distribution, sale, or use would be consistent with the purposes of FIFRA. There may be unusual circumstances where the Agency will place restrictions on the distribution, sale, and use of existing stocks beyond those limits otherwise identified in a risk/benefit analysis (e.g., to prevent stockpiling by distributors and users).

In addition, in determining whether distribution, sale, or use of existing stocks would be consistent with the purposes of the Act, the Agency will generally look at the circumstances surrounding the cancellation. If a cancellation is the result of a final Agency action after a special review and a hearing pursuant to section 6(b), the Agency is unlikely to allow continued sale or distribution (and quite possibly, use) of the cancelled pesticide. In such circumstances, registrants, other distributors, and users of the pesticide have had ample notice of the Agency's intentions and sufficient time to take appropriate steps accordingly (such as to procure alternatives, not stockpile large quantities of the pesticide involved, use up stocks already on hand, etc.). On the other hand, where a voluntary cancellation occurs well before the Agency could take final action (i.e., prior to the completion of a special review or in lieu of a hearing under section 6(b)), the Agency may take into consideration the shorter period of notice sellers and users may have had before cancellation, the degree to which the registrant's actions accelerated the removal of the pesticide from the market, and whether the cancellation would have occurred at all without an existing stocks provision.

In a special review situation, the Agency will publish its final determination on whether to allow any sale, distribution, or use of existing stocks of cancelled pesticides, and if so, what conditions to place on such sale, distribution, or use, as part of the Final Determination (PD 4) and any other documents the Agency may issue either with or subsequent to the issuance of the PD 4 (such as notices of intent to cancel, cancellation orders, etc.). If a chemical raising a risk concern is cancelled without issuance of a Notice of Final Determination at the conclusion of a special review, the Agency will include a final existing stocks determination in a cancellation order. Existing stocks determinations contained in cancellation orders will be enforced under section 12(a)(2)(K) or 12(a)(1)(A) of FIFRA.

The Agency may allow the continued sale, distribution, and use of existing stocks of a voluntarily cancelled product raising risk concerns without performing a risk/benefit analysis if similar products with substantial share of the market remain on the market. For example, if a registration raising risk concerns is cancelled voluntarily, the Agency may examine whether the cancelled registration comprises a significant share of the market for the particular active ingredient and use pattern, and the circumstances surrounding the cancellation. If the cancelled registration does not comprise a significant share of the market, a prohibition on existing stocks would not be likely to significantly reduce environmental risks, because similar products would continue to be sold and used. Further, the Agency believes that it makes sense to encourage the early, voluntary cancellation of registrations when risk concerns arise.

If such an early cancellation is truly voluntary (i.e., the registration is not facing imminent cancellation or suspension), the Agency may allow the registrant to sell and distribute existing stocks for 1 year without performing a detailed risk/benefit analysis, and may allow other persons to distribute, sell, and use existing stocks until the stocks are exhausted. The Agency does not believe it should penalize registrants, distributors, or users in cases where a registrant voluntarily cancels a registration before other registrants are compelled to do so. Moreover, it is unlikely that a detailed risk/benefit analysis would yield a different result; so long as similar registrations comprising a predominant share of the market remain, it is unlikely that distribution, sale, or use of existing stocks of a relatively small volume of cancelled product would significantly (if at all) increase the risk of any unreasonable adverse effect on the environment.

On the other hand, if registrations constituting a dominant share of the market are cancelled, and the Agency does not believe that the remaining registrants can fill the previous demand for the product, the Agency will generally not allow continued sale, distribution, or use of existing stocks unless a risk/benefit analysis supporting such sale, distribution, or use is performed.

In cases where the Agency allows continued sale and use of existing stocks of cancelled products raising risk concerns because of the continuing nature of other registrations, it should be understood that the existing stocks allowance may be amended if the conditions concerning the registrations of the remaining products change. (The Agency in all cases reserves the right to amend existing stocks provisions where appropriate.) If other registrations are cancelled or amended during an existing stocks period for a voluntarily cancelled product, and the Agency establishes restrictions on existing stocks of these other registrations or requires relabeling of product made prior to the amendment, the Agency will likely impose similar restrictions on the existing stocks of the earlier voluntarily cancelled registration.

2. *Cancellations where a registrant has failed to comply with an obligation of registration.* This category consists of cancellations where the Agency does not have significant risk concerns with respect to the cancelled pesticide, but where the registrant has failed to respond appropriately to an obligation of registration. In these situations, the Agency has no particular reason to believe that continued distribution, sale, or use of the cancelled product would result in unreasonable adverse effects on the environment.

If a cancellation is not triggered by section 6(b) or 6(e) of FIFRA, the Agency is not required to perform a risk/benefit analysis before determining whether to allow continued sale, distribution, or use of existing stocks. Unless there are significant risk concerns associated with the cancelled pesticide, the Agency generally does not intend to perform such an analysis. Even where a cancellation is triggered by section 6(b) or 6(e), the Agency generally intends to make existing stocks decisions for cancelled products without performing a detailed risk/benefit analysis if there are no significant risk concerns associated with the cancelled pesticide. EPA believes it would be a poor use of resources to perform such an analysis when the Agency is not aware of any risk/benefit considerations that would serve as a basis for cancelling a registration. The Agency believes it highly unlikely that any analysis of risks and benefits of products not raising significant risk concerns would result in prohibition of distribution, sale, or use of existing stocks.

EPA does, however, believe that where registrants of cancelled products have failed to comply with requirements of registration, the nature of noncompliance with the particular obligation involved should be taken into account in determining whether distribution, sale, or use of existing stocks would be consistent with the purposes of FIFRA. Since such noncompliance does not itself raise concerns of unreasonable adverse effects on the environment, EPA will generally allow persons other than the registrant to continue to distribute, sell, or use stocks of cancelled products in this category until such stocks are exhausted (although the Agency may

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place some restrictions on sale or use if inventories are not exhausted in a reasonable period of time). In the case of the noncompliant registrant, however, EPA will generally apply the policies set forth below in determining whether to allow continued sale and distribution. Those policies would generally prohibit a registrant from selling or distributing existing stocks more than 1 year from the date the registrant first failed to comply with an obligation of registration.

In any given case, multiple existing stocks dates might apply if a registrant has failed to comply with more than one obligation of registration. In such circumstances, the most restrictive date will generally apply, regardless of the triggering mechanism for cancellation. For example, if a registrant of a cancelled product failed to pay a maintenance fee due on March 1, 1990, and a reregistration fee due on June 1, 1990, the registrant would likely not be allowed to sell or distribute any existing stocks of the product after March 1, 1991 (regardless of whether the product was actually cancelled for failure to pay maintenance fees or reregistration fees).

a. *Failure to pay maintenance fees.* FIFRA section 4(i)(5) requires all registrants to pay annually by March 1st certain maintenance fees for registrations. Failure to pay such fees may result in the cancellation of a registration by order without a hearing (although the cancellation itself does not become effective until the Agency issues the cancellation order). If a maintenance fee is not paid for any given year, the Agency will generally not allow a registrant to continue to sell or distribute existing stock of a cancelled product for more than 1 year after the date when payment to support the cancelled registration was due, regardless of when the actual cancellation occurs. For example, if a registrant fails to pay a maintenance fee due March 1, 1991, to support a particular registration, and the registration is later cancelled, the Agency will generally not allow that registrant to sell or distribute existing stocks of the pesticide after March 1, 1992.

b. *Failure to pay reregistration fees.* FIFRA section 4(i) also requires some registrants to pay a reregistration fee (either in one or two deposits). This fee is to be apportioned among the applicable registrants on the basis of market share information that registrants are required to submit to the Agency. Failure to submit market share information or to pay an appropriate fee can lead to cancellation of a registration by order without a hearing (FIFRA section 4(i)(7)(C)). If a registrant fails to pay the appropriate reregistration fee or submit the required market share information, and an applicable product is later cancelled, a registrant will generally not be allowed to sell or distribute existing stocks of the cancelled product more than 1 year after the date the market share data or fee were due.

c. *Failure to file information during reregistration.* FIFRA section 4 establishes a five-phased process for reregistration activities. If a registrant elects to pursue reregistration, a registrant may have to commit to supply, and then supply, information to the Agency during Phases 2, 3, 4, and 5 (sections 4(d), (e), (f), and (g)). Failure to provide appropriate commitments or information can result in suspension or cancellation of a registration. If a registrant fails to comply fully with any particular phase of reregistration, and an affected product is later cancelled, the Agency will generally not allow a registrant to sell or distribute existing stocks of the cancelled product more than 1 year after the date that a registrant commitment for that particular product was due. For example, if an initial Phase 3 response is due from a registrant on July 24, 1991, the registrant fails to submit an adequate response, and the product is later cancelled, the Agency will generally not allow the registrant to sell existing stocks of the product after July 24, 1992.

Registrants will not be penalized for voluntarily cancelling a product at the beginning of any particular phase of reregistration (i.e., a registrant who cancels as of the commitment date will have a full year from the commitment date to sell or distribute existing stocks). Noncompliance in any phase, however, will generally be treated as if the registrant had requested voluntary cancellation at the beginning of the phase.

Agency policy with respect to existing stocks of suspended products that failed to comply with the requirements of reregistration are discussed later in this document.

d. *Failure to comply with the terms of a conditional registration.* FIFRA section 3(c)(7) allows the Agency to issue registrations before all applicable supporting data are provided. Such registrations, however, are conditional upon submission of the missing data in a timely manner (and upon compliance with any other conditions contained in the registration at the time of issuance). Failure to comply with the terms of a conditional registration can lead to issuance of a notice of intent to cancel under section 6(e).

Where a conditional registration is cancelled (and the Agency has not identified significant risk concerns), the Agency will base its existing stocks decision on the nature of any conditions that have not been met by the registrant. For purposes of this analysis, conditions of registration can be categorized as "general" conditions or "specific" conditions. A general condition, frequently applied to conditional registrations issued pursuant to FIFRA section 3(c)(7)(A) (i.e., registrations issued to products that are identical or substantially similar in chemical composition and use to one or more existing registered products), requires a registrant to submit required data when all other registrants of the similar product are required to do so. Such a general condition neither establishes specific data requirements nor specific dates; the condition is generally triggered by issuance of a data call-in notice. On the other hand, some conditional registrations, particularly those issued pursuant to FIFRA section 3(c)(7)(B) and (C) (i.e., conditional registrations of products containing new chemicals or bearing significant new uses), contain conditions requiring the submission of specified studies or information by specified dates. Where data requirements and submission dates are specifically identified in the conditional registration, such requirements are considered "specific" conditions.

The Agency will treat the failure to comply with a general condition of a conditional registration in the same manner as a failure by a registrant to comply with the terms of any other data call-in. If a registrant of a conditional registration with a general condition to submit data upon request does not thereafter submit data after issuance of a data call-in, and the registration is cancelled for any reason, the registrant would generally be allowed to continue to sell or distribute existing stocks for 1 year after either the day the 90-day response to the data call-in was due or the date at which the registrant ceased to remain in compliance with the terms of the data call-in, whichever date is later. (See unit III.A.3 below).

On the other hand, if a registrant of a conditional registration fails to comply with a specific condition identified at the time the registration was issued, the Agency does not believe it is generally appropriate to allow any sale and use of existing stocks if the registration is cancelled. Accordingly, the Agency does not anticipate allowing a registrant to sell or distribute existing stocks of cancelled products that were conditionally registered if the registrant fails to demonstrate compliance with any specific requirements set forth in the conditional registration.

3. *Cancellation of products while subject to data call-in notices under section 3(c)(2)(B).* Section 3(c)(2)(B) allows the Agency to require data from registrants. Registrants are required to make an initial response to data call-in notices in 90 days, and thereafter to submit the required data in accordance with the schedule established by the Agency. Failure to respond appropriately can result in the suspension of any registration subject to the data call-in.

Similar to reregistration, data call-in notices require a commitment from a registrant to supply data, and the timely submission of data, to maintain an active registration. Accordingly, the Agency will generally not allow registrants to sell existing stocks of cancelled products more than 1 year after the date a 90-day response to a data call-in notice is due unless the registrant remains in compliance with the terms of the notice. For example, if a registrant commits to submit a 3-year study and the product registration is thereafter cancelled upon request by the registrant pursuant to section 6(f) 9 months after the 90-day response date, sale and distribution of existing stocks by the registrant will be permitted for no more than 3 months (1 year from the 90-day response date). However, if a product subject to a data call-in is cancelled and the registrant can demonstrate full compliance with the requirements of the data call-in up to a certain date, the Agency will likely allow the registrant to continue to sell and distribute existing stocks for 1 year from the date that compliance ended. For example, if the registrant had contracted with a lab to perform a 3-year study, the lab had commenced work, and the registrant instructed the lab to cease work 6 months later, the registrant would generally be allowed to sell and distribute existing stocks of cancelled products for 1 year from the date the lab was asked to cease work on the required study. The Agency will generally allow persons other than the registrant to continue to distribute, sell, or use stocks of cancelled products in this category until such stocks are exhausted (although the Agency may place restrictions if such stocks are not exhausted in a reasonable time).

The preceding discussion assumes that data generated under the data call-in have not disclosed significant potential risks associated with the product. Registrants should be advised that voluntary cancellation of a product during a data call-in response period does not excuse the registrant from compliance with the requirements of FIFRA section 6(a)(2) to report to the Administrator any information regarding unreasonable adverse effects on the environment.

4. *Cancellation of registrations subject to reregistration requirements and label improvement programs.* In the case of a registration subject to a Label Improvement Program (LIP) or determination resulting from decisions made during reregistration, the Agency has determined that the registration of the product may continue, provided that certain changes are made to the terms of registration (generally involving the product label). If a product subject to an LIP or reregistration requirement is cancelled, whether voluntarily or upon action by the Agency (e.g., for failure to pay fees), the Agency will generally not allow a registrant or any other person to sell or distribute existing stocks unless such sale or distribution is consistent with the terms of the LIP or reregistration determination.

For example, if an LIP states that registrants may not sell or distribute a product after January 1, 1992, without a certain label change and states that other persons may not sell or distribute product without the new label after January 1, 1994, and a product subject to the LIP is voluntarily cancelled on July 1, 1991, the registrant of the cancelled product will not be allowed to sell or distribute existing stocks of the cancelled product after January 1, 1992, unless the existing stocks are relabeled to be in compliance with the LIP. Similarly, no other persons would likely be allowed to sell or distribute existing stocks of the cancelled product after January 1, 1994, unless the stocks were in compliance with the terms of the LIP.

5. *Other voluntary cancellations.* If a registrant requests to voluntarily cancel a registration where the Agency has identified no particular risk concerns, the registrant has complied with all applicable conditions of reregistration, conditional registration, and data call-ins, and the registration is not subject to a Registration Standard, Label Improvement Program, or reregistration decision, the Agency will generally permit a registrant to sell or distribute existing stocks for 1 year after the cancellation request was received. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted.

B. Suspended Pesticides

FIFRA provides for two different types of suspension. Under section 6(c), EPA may suspend a pesticide registration if use of the pesticide results in an imminent hazard. Under section 3(c)(2)(B), EPA may suspend a registration if a registrant fails to submit required data to the Agency in a timely fashion. Section 4(d)(6) and 4(f)(3) provide for suspensions pursuant to section 3(c)(2)(B) if registrants fail to make timely progress of data development to meet commitments for data submission, tests are not initiated within 1 year after issuance of a Phase 4 data call-in notice, or data are not submitted by the due date.

Where a pesticide is suspended because of an imminent hazard, EPA will apply the policies applicable to cancellations where the Agency has identified significant risk concerns. The Agency is highly unlikely to allow significant sale, distribution, or use of pesticides suspended because of imminent hazard concerns.

Where a pesticide is suspended because of failure to comply with the provisions of a data call-in or reregistration requirement, the Agency will generally not allow the registrant to sell or distribute any existing stocks during the pendency of the suspension. Registrants who sell or distribute a pesticide which has been suspended under FIFRA section 3(c)(2)(B) will be in violation of FIFRA section 12(a)(2)(J). Unlike imminent hazard suspensions, the Agency does not anticipate generally placing restrictions on the sale, distribution, or use of existing stocks by persons other than the registrant where a pesticide is suspended because of failure to comply with the provisions of a data call-in or reregistration requirement unless risk concerns were identified.

C. Amendments of Registrations

The Agency has promulgated regulations (at 40 CFR 152.130) dealing with the sale or distribution of products bearing labeling other than the labeling currently approved by the Agency. Section 152.130(c) of the CFR states that the Agency will "normally" allow registrants to sell products bearing old labeling for 18 months after Agency approval of a revised label and allow others to sell products bearing the old label until all such products are sold, if the product labeling is amended "on the initiative of the registrant." Section 152.130(d) goes on to say that if a

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revision is the result of a Registration Standard, Label Improvement Program, or notice concluding a Special Review, the Agency may establish alternate dates after which product sold by a registrant, or sold by others, must bear currently approved labeling.

The regulations do not address the issue of time periods for sale of products bearing a different composition or packaging from that currently approved by the Agency. The Agency believes that if the composition or packaging is required to be changed by the Agency, the policies expressed below concerning label changes should apply. However, if the composition or packaging of a product is changed by a registrant voluntarily, the Agency will generally allow registrants to sell or distribute product for 18 months after the Agency approves the change; other persons will generally be allowed to sell product using the old composition or packaging until all such product is sold.

Changes in labeling made at the behest of the Agency are covered by paragraph (d) rather than paragraph (c) of 40 CFR 152.130. Thus, if label changes are imposed in a document issued during Phase 5 of reregistration (under FIFRA section 4(g)(2)(A)) or if label revisions (or other changes) are in part attributable to concerns that the product may pose unreasonable adverse effects without the change, the Agency may impose appropriate restrictions on the sale or distribution of products not only by the registrant but by others in the distribution chain as well ("channels of trade" dates).

The Agency believes that, although such channels of trade dates may be relatively lengthy, they are necessary to effective enforcement, serving as a form of "closure" on old labeling. In the Agency's enforcement experience, products bearing old labels can be found in channels of trade far longer than foreseen. Besides enforcement difficulties, lack of an absolute cutoff point for needed label changes prolongs inconsistency among similar products, leading to confusion among users as to what label instructions are correct. More importantly, the lack of a channels of trade date creates uncertainty that product labels actually represent current and protective standards. Under FIFRA, the assurance of risk reduction depends heavily on expectations that labeling instructions will be followed. Uncertainty that such compliance is occurring and inconsistency among labels can frustrate efforts by both the Agency and registrants to effect real and consistent risk reduction. Accordingly, in each label change either imposed by the Agency, or attributed in part to risk concerns under review by the Agency, EPA intends to impose both a date for introduction of new labeling into channels of trade (a registrant sale and distribution date), and a date for removing old labeling from channels of trade. Except in the case of labeling changes imposed through Special Review, EPA is unlikely to impose restrictions upon use of product bearing old labeling.

The exact restrictions that the Agency may impose will, of course, depend upon the particular circumstances involved. Nonetheless, the Agency can identify certain principles it generally will apply to label changes directed by the Agency. Label changes directed by the Agency are currently imposed under three specific activities:

1. *The Special Review Process.* Special reviews often culminate in an Agency determination that use of the pesticide without labeling changes would cause unreasonable adverse effects. Also, registrants of pesticides in special review may propose label changes prior to the conclusion of a special review to reduce the risks that are the focus of the review. When label changes are approved in such situations, existing stocks provisions will be determined on a case-by-case basis. In determining what provisions are appropriate, the Agency may consider any or all of the following factors:

a. The nature of the risk posed by the pesticide.

b. The nature of the labeling change required.

c. Whether an amendment to effect the labeling change was submitted in a timely manner.

d. The potential adverse effects associated with continued sale of product not bearing the revised labeling.

e. The volume and location of affected products in the distribution chain.

f. The feasibility, expense, and effectiveness of either requiring relabeling of existing stocks, or of restricting sale and distribution of product not bearing the revised labeling.

2. *Reregistration of current products.* Under FIFRA section 4(g), Phase 5 of the reregistration scheme requires that products containing active ingredients first registered before November 1, 1984, be reregistered. The Agency anticipates that labeling changes (amendments) will likely be required upon issuance of a document stating the Agency's determination of the reregistrability of an active ingredient under FIFRA section 4(g)(2)(A). This Reregistration Eligibility Document (RED) will ask for label changes to be submitted within one of two timeframes—normal or expedited.

In the first instance, the reregistration process envisioned in Phase 5 will normally encompass changes in labeling, composition, or packaging. These changes will be of a more routine nature, or will depend upon the development of product-specific data, such as acute toxicity or efficacy data. Dates for submission of labeling, timeframes for Agency review of labeling changes, and existing stocks provisions will be specified in the RED. Generally, submission of labeling changes will be required 8 months from the date of submission of the RED, and Agency review will be completed 6 months following submission. Registrants will generally be permitted to sell or distribute products bearing old labeling (or composition or packaging) for 1 year after the timeframe established in the RED for Agency approval, and persons other than registrants will generally be permitted to sell or distribute those products for an additional 24 months. Thus, existing stocks dates for sale and distribution of products bearing old labeling will generally be 26 months from the date of issuance of the RED for registrants and 50 months from the date of issuance of the RED for persons other than registrants.

In the second instance, the Agency may require expedited labeling changes if it has significant concerns about the risks of the active ingredient that do not warrant placing it into the Special Review process, but that labeling changes could mitigate. Although EPA believes this situation will be rare, nonetheless the significance of Agency concerns will dictate early submission and review of labeling, and relatively short existing stocks provisions. Existing stocks timeframes will be established case-by-case, depending on the number of products involved, the number of label changes needed, and other factors.

3. *The Label Improvement Program (LIP).* An LIP provides a framework for upgrading labeling that is unconnected with reregistration, and can be initiated at any time that circumstances warrant. The LIP was established to provide a mechanism for the Agency to target a particular labeling problem or a group of products having a common label element and to implement a labeling solution uniformly for all affected products. In that respect it should be viewed as neither active ingredient-specific nor product-specific, but rather "problem-specific." Fundamental to this approach is that the program does not depend upon the development or interpretation of data, such as is required for reregistration. With such a cross-cutting but focussed approach, the LIP generally endeavors to impose labeling requirements that can be specified exactly or with a minimum of variability. Although labeling may be required to be submitted and reviewed in a LIP, EPA's preferred approach is to obtain agreement via certification that registrants will make the changes. Thus, registrants can rapidly begin implementing the changes in products they distribute and sell. EPA anticipates that any submission of labeling or certification would be required in a comparatively short time after issuance of the LIP. Unless the LIP is a singularly complex one or involves large numbers of products or registrants, submissions of labeling or certifications will normally be required within 3 months. Registrants will generally be allowed to sell or distribute products bearing old labeling for 1 year after issuance of the LIP and persons other than registrants for 3 years after issuance of the LIP.

The Agency acknowledges the impact multiple and frequent required label changes have in escalating registrant costs, potentially disrupting the distribution chain, and creating user confusion. EPA will make every effort to consolidate labeling efforts resulting from reregistration with those that may be under way from LIPs or from parallel regulatory activities.

Interested persons are invited to sumbit written comments on this notice of statement of policy on or before December 26, 1991. Comments must bear a notation indicating the document control number, [OPP-38509]. Written comments should be addressed to the Public Docket and Freedom of Information Section, Field Operations Division, at the address given above.

Dated: June 17, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

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Part IV

Federal Election Commission

11 CFR Parts 9034, 9036, and 9037
Matching Fund Submission and Certification Procedures for Presidential Primary Candidates; Proposed Rulemaking

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FEDERAL ELECTION COMMISSION

[Notice 1991-10]

11 CFR Parts 9034, 9036, and 9037

Matching Fund Submission and Certification Procedures for Presidential Primary Candidates

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on proposed revisions to its regulations setting forth procedures for matching fund submissions by Presidential primary candidates. 11 CFR 9034.1, 9034.5, 9036.2, 9036.4, 9036.5, 9036.6, 9037.1 and 9037.2. The proposed changes are necessitated by the Department of the Treasury's recent promulgation of new rules regarding payments to candidates, which were adopted to address the possible shortage in the Presidential Election Campaign Fund. See 26 CFR parts 701 and 702, 56 FR 21598 (May 10, 1991). No final decisions have been made by the Commission on the proposed revisions set forth in this Notice, except that the Commission has previously adopted a new policy of rejecting submissions with high rates of nonmatchable contributions. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before July 10, 1991.

ADDRESSES: Comments must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: In response to a projected shortfall in the amount of federal funds in the Presidential Election Campaign Fund for the 1992 Presidential election cycle, the Department of the Treasury has recently issued new rules regarding payments from the Fund. See 26 CFR Parts 701 and 702, 56 FR 21598 (May 10, 1991). The priorities established by the public financing statutes indicate that any shortfall will affect the availability of matching funds for primary candidates before it affects the financing of general election candidates or nominating conventions. See 26 U.S.C. 9008(c), 9008(a) and 9037. Accordingly, the new Treasury Department rules set aside funds for the nominating conventions and general election candidates prior to depositing funds in the Presidential Primary Matching Payment Account. 26 CFR 701.9008-1 and 701.9037-1. If a shortage of primary funds occurs in a particular month, the Treasury Department regulations set forth a formula for determining the amount each candidate will receive as partial payment and the amount that will be treated as certified for the next month. 26 CFR 702.9037-2. In addition, the new Treasury Department rules change the dates on which Federal payments will be made to primary election candidates. For 1992 Presidential primaries, candidates will receive federal payments on a once-a-month basis. 26 CFR 702.9037-2. All candidates will be paid on the same day each month. In previous election cycles, payments were made several times each month.

The changes in the timing of matching fund payments have led the Commission to propose changing its certification procedures so that all certifications are made on the same date each month after the beginning of the matching payment period. Given the need for adequate time to review matching fund submissions prior to certification, the Commission anticipates setting monthly deadlines for receipt of matching fund submissions near the beginning of each month. In addition, the Commission recently decided to reject matching fund submissions where the initial sampling indicates a projected dollar value of nonmatchable contributions of more than 15% of the amount requested. Accordingly, the Commission is now proposing the changes discussed below to its rules setting forth matching fund submission and certification procedures.

In the event that the projected shortfall does not occur, the Commission is seeking clarification of whether the Treasury Department will return to its previous practice of making payments throughout the month as matching fund certifications are received. If the Treasury Department does switch back to the previous payment system either before or during the matching payment period, comments are requested as to whether the Commission should, in turn, use its previous matching fund submission and certification procedures, and on the feasibility for campaigns to make this switch.

1. Submission Procedures

In previous election cycles, the Commission scheduled candidates to make matching fund submissions on the second and fourth Monday of each month after the beginning of the matching payment period. Resubmissions were scheduled for the first and third Monday. The Commission is not proposing to change the submission schedule so that all candidates would make once-a-month submissions and resubmissions on the same date. For the last two submission dates in the year before the election year and for each submission date after the beginning of the matching payment period, the candidate would be limited to making one submission, and either one resubmission under § 9036.5 or one corrected submission under § 9036.2(c) or (d)(2). The Commission would publish the list of the monthly submission dates and notify the candidates. Please note that the new monthly submission dates would not affect threshold submissions, which candidates could still make at any time. The monthly submission dates also would not apply to resubmissions made within the five day period for correcting a submission that either failed to meet the good order requirements or that had a high rate of nonmatchable contributions. See proposed 11 CFR 9036.4(a), as discussed below.

One consequence of establishing a single submission date each month is that all nonthreshold submissions would need to be full submissions. Thus, 11 CFR 9036.2(b)(2) would be revised to delete the current letter request procedures. In the event of a shortage, this would help to ensure that candidates are paid only the amount to which they are entitled. In addition, 11 CFR 9036.6 would be revised to indicate that the last date for first-time submissions for all candidates would be the first Monday in March of the year following the election year. In the past, a candidate's last submission date was either the last Monday in February or the second Monday in March, depending on the candidate's submission schedule.

2. Certification Procedures and Holdback Procedures

The proposed rules which follow would also change the timing of the Commission's certification of additional payments. Currently, 11 CFR 9036.2(c)(1) indicates that during the Presidential election year, the Commission will certify an amount within 5 business days using a holdback procedure. Any additional amount would then be certified in either 20 or 25 business days, depending upon the projected dollar value of nonmatchable contributions. These provisions would be revised by eliminating the 5, 20, and 25 day periods, and also by eliminating the use of holdback procedures to determine the amount to be certified to the Secretary of the Treasury. See Federal Election Commission's Guideline for Presentation In Good Order. If a shortfall occurs, the elimination of the holdback procedures would help to ensure that the amount certified does not exceed the candidate's entitlement, as determined under the Commission's review procedures.

Under the proposed rules which follow, certifications based on additional submissions after the beginning of the matching payment period would be made at least once a month on the same day for all candidates. The once-a-month certification dates would also apply to submissions after the candidate's date of ineligibility under the proposed revisions to 11 CFR 9036.2(c)(2). Certifications of all resubmitted contributions will also be made on the same monthly certification dates under the draft amendments to § 9036.5(d). Currently, the Commission certifies resubmitted contributions within 15 business days. However, these changes would not affect the timing of certifications of additional submissions that were filed in the year before the Presidential election year under 11 CFR 9036.2(d).

3. Commission Review of Submissions

The proposed rules at 11 CFR 9036.4 contemplate the continuation of the Commission's previous procedures for reviewing matching fund submissions, with the following modifications. First, committees would be granted five business days, instead of three, to correct submissions that have been rejected from review because they failed to meet the Commission's good order requirements. Section 9036.4(a) would also be revised to indicate that if the matching fund submission is corrected in the five day time period, it would be processed before the next regularly scheduled submission date, and the Commission's certification would be made on the certification date for the original submission. However, if a corrected submission is made after the five day period, it would be reviewed after the next regularly scheduled submission date, and the certification would not take place until the next regularly scheduled certification date.

4. High Error Rates

Recently, the Commission decided to institute a new procedure of rejecting matching fund submissions from review in cases where the projected dollar value of the nonmatchable contributions exceeded 15% of the amount requested. Please note, however, that the new rejection policy does not apply to submissions made on the last submission date in the year preceding the Presidential election year, or to submissions made during the Presidential election year before the candidate's date of ineligibility. See Audit Division Comments on Draft Explanation and Justification of Public Financing of Presidential Primary and General Election Candidates, Agenda Doc. #91-38A, May 2, 1991. At other times when the new policy is in operation, the entire submission will be returned to the committee for corrective action before any amount is certified for payment. If the committee is able to correct the submission and resubmit it within five business days, it will be reviewed before the next regularly scheduled submission date and an amount will be certified on the certification date for the original submission. However, if the resubmission is made after the five day period, it will be reviewed after the next regularly scheduled submission date, and an amount will be certified on the next regularly scheduled certification date. Corrected submissions may not contain new or additional contributions that were not previously submitted for matching. Similarly, under 11 CFR 9036.5(c)(5), resubmissions may not contain new or additional contributions that were not previously submitted. Submissions would not be considered to be corrected until the projected dollar value of nonmatchable contributions has been reduced to 15% of the amount requested or less. The new policy is reflected in proposed 11 CFR 9036.2 (c) and (d), and 9036.4(a) which follow. Please note that the order of paragraphs (c) and (d) in § 9036.2 would also be reversed to follow a more logical chronological format.

5. Treasury Department Regulations

The proposed rules which follow would also add to §§ 9034.1(a), 9037.1 and 9037.2 cross-references to the new Treasury Department regulations to alert the reader to the possibility that a matching fund certification may not result in full payment by the Treasury Department in the event of a shortage of funds in the Presidential Primary Matching Payment Account. The Treasury Department has established a formula to determine the amount each candidate will receive as a partial payment and the amount that will be treated as certified for payment in the following month.

6. Revised Certifications

The potential shortfall in the matching payment account presents another new issue. In the event of a shortfall, one consequence of the new Treasury Department regulations could be over a month's delay between certification and payment of all certified matching funds. After a candidate's date of ineligibility, the current regulations require the candidate to have net outstanding campaign obligations as of the date of payment. 11 CFR 9034.1(b). The 1963 Explanation and Justification of this provision indicates that if "the candidate's financial position changed between the date of his or her submission for matching funds and the date of payment, reducing the candidate's net outstanding campaign obligations, that candidate's entitlement would be reduced accordingly." Explanation and Justification of Presidential Primary Matching Fund Rules, 48 FR 5227 (Feb. 4, 1983). In a shortfall situation where there is a longer time period between submission date and payment date, the financial status of a candidate's committee may change significantly. For example, the candidate may wish to raise additional private contributions to pay the debts listed on the NOCO statement more promptly, thereby reducing or possibly eliminating the amount of qualified debt remaining. Consequently, the Commission is seeking comments on proposed language at 11 CFR 9034.5(f) that would require all candidates who have not been paid the full amount certified after their dates of ineligibility to submit updated NOCO statements shortly before the next payment date so that the Commission may revise the previous certifications, when necessary. The candidates and the Secretary of the Treasury would be promptly notified of any revised certifications under proposed 11 CFR 9036.4(c)(2).

The Commission welcomes comments on the foregoing proposed amendments to the rules governing matching fund submissions and certifications and the issues raised in this Notice. No final decision has been made by the Commission concerning the proposals contained in the Notice, except for the new policy regarding submissions with high error rates.

List of Subjects

11 CFR Part 9034

Campaign funds, Elections, Political candidates.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9037

Campaign funds, Political candidates.

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Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

These proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these rules.

For the reasons set out in the preamble, it is proposed to amend subchapter F, chapter I of title 11 of the Code of Federal Regulations as follows:

PART 9034—ENTITLEMENTS

1. The authority citation for part 9034 would continue to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

2. 11 CFR part 9034 would be amended by revising paragraph (a) of § 9034.1 to read as follows:

§ 9034.1 Candidate entitlements.

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments under 26 U.S.C. 9037 and 11 CFR part 9037 in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5. See also 26 CFR parts 701 and 702 regarding payments by the Department of the Treasury.

* * * * *

3. 11 CFR part 9034 would be amended by revising paragraph (f) of § 9034.5 to read as follows:

§ 9034.5 Net outstanding campaign obligations.

* * * * *

(f)(1) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching fund payments filed after the candidate's date of ineligibility. The revised statement shall reflect the financial status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(2) After the candidate's date of ineligibility, if the candidate does not receive the entire amount of matching funds on a regularly scheduled payment date due to a shortfall in the matching payment account, the candidate shall also submit a revised statement of net outstanding campaign obligations. The revised statement shall be filed on a date to be determined and published by the Commission which will be before the next regularly scheduled payment date.

* * * * *

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

4. The authority citation for part 9036 would continue to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

5. 11 CFR part 9036 would be amended by revising § 9036.2 to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

(a) *Time for submission of additional submissions.* The candidate may submit additional submissions for payments to the Commission on dates to be determined and published by the Commission. On the last two submission dates in the year prior to the election year and on each submission date after the beginning of the matching payment period, the candidate may not make more than one additional submission, and either one resubmission under 11 CFR 9036.5 or one corrected submission under 11 CFR 9036.2(c) or (d)(2), as appropriate.

(b) *Format for additional submissions.* The candidate may obtain additional matching fund payments subsequent to the Commission's threshold certification and payment of primary matching funds to the candidate by filing an additional submission for payment. Add additional submissions for payments filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(1) The first submission for matching funds following the candidate's threshold submission shall contain all the matchable contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The Candidate is required to submit a listing, in alphabetical order by contributor, of all contributions refunded to the contributor but not segregated by State as required in the threshold submission.

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under 11 CFR 9036.2(b)(1), candidates may request additional matching funds on dates prescribed by the Commission by making a full submission as required under 11 CFR 9036.2(b)(1). The amount requested for matching may include contributions received up to the last business day preceding the date of the request.

(c) *Additional submissions submitted in non-Presidential election year.* The candidate may submit additional contributions for review during the year preceding the presidential election year; however, the amount of each submission made during this period must exceed $50,000. Additional submissions filed by a candidate in a non-Presidential election year will not result in payment of matching funds to the candidate until after January 1 of the Presidential election year. If the projected dollar value of the nonmatchable contributions exceeds 15% of the amount requested, the procedures described in 11 CFR 9036.2(d)(2) shall apply, unless the submission was made on the last submission date in December of the year before the Presidential election year.

(d) *Certification of additional payments by Commission.* (1) When a candidate who is eligible under 11 CFR 9033.4 submits an additional submission for payment in the Presidential election year, and before the candidate's date of ineligibility, the Commission will review the additional submission and will certify to the Secretary at least once a month on dates to be determined and published by the Commission, an amount to which the candidate is entitled in accordance with 11 CFR 9034.1(b). See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission will review each additional submission and resubmission, and will certify to the Secretary, at least once a month on dates to be determined and published by the Commission, an amount to which the ineligible candidate is entitled in accordance with 11 CFR 9034.1(b), unless the projected dollar value of the nonmatchable contributions contained in the submission or resubmission exceeds 15% of the amount requested. In the latter case, the Commission will return the additional submission or resubmission to the candidate and request that it be corrected, unless the resubmission was made on the last date for resubmissions in September of the year following the Presidential election year. Corrected submissions and resubmissions will be reviewed by the Commission in accordance with 11 CFR 9036.4 and 9036.5. Submissions and resubmissions will not be considered to be corrected unless the projected dollar value of nonmatchable contributions has been reduced to no more than 15% of the amount requested.

6. 11 CFR part 9036 would be amended by revising § 9036.4 to read as follows:

§ 9036.4 Commission review of submissions.

(a) *Non-acceptance of submission for review of matchability.* (1) The Commission will make an initial review of each submission made under 11 CFR Part 9036 to determine if it substantially meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order. If the Commission determines that a submission does not substantially meet these requirements, it will not review the matchability of the contributions contained therein.

(2) For submissions made in the year before the Presidential election year (other than submissions made on the last submission date in that year), and submissions made after the candidate's date of ineligibility, the Commission will stop reviewing the submission once the projected dollar value of nonmatchable contributions exceeds 15% of the amount requested, as provided in 11 CFR 9036.2 (c) or (d), as applicable.

(3) Under either paragraph (a)(1) or (a)(2), the Commission will return the submission to the candidate and request that it be corrected in accordance with the applicable requirements. If the candidate makes a corrected submission within 5 business days after the Commission's return of the original, the Commission will review the corrected submission prior to the next regularly scheduled submission date, and will certify to the Secretary the amount to which the candidate is entitled on the regularly scheduled certification date for the original submission. Corrected submissions made after this five-day period will be reviewed subsequent to the next regularly scheduled submission date, and the Commission will certify to the Secretary the amount to which the candidate is entitled on the next regularly scheduled certification date. Each corrected submission shall only contain contributions previously submitted for matching in the returned submission and no new or additional contributions.

(b) *Acceptance of submission for review of matchability.* If the Commission determines that a submission made under 11 CFR part 9036 satisfies the requirements of 11 CFR 9036.1(b) and 9036.2 (b), (c) and (d), and the Federal Election Commission's Guideline for Presentation in Good Order, it will review the matchability of the contributions contained therein. The Commission, in conducting its review, may utilize statistical sampling techniques. Based on the results of its review, the Commission may calculate a matchable amount for the submission which is less than the amount requested by the candidate. If the Commission certifies for payment to the Secretary an amount that is less than the amount requested by the candidate in a particular submission, or reduces the amount of a subsequent certification to the Secretary by adjusting a previous certification made under 11 CFR 9036.2(c)(1), the Commission will notify the candidate in writing of the following:

(1) The amount of the difference between the amount requested and the amount to be certified by the Commission;

(2) The amount of each contribution and the corresponding contributor's name for each contribution that the Commission has rejected as nonmatchable and the reason that it is not matchable; or if statistical sampling is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions that have been determined to be matchable and that the Commission will certify to the Secretary for payment; and

(4) A statement that the candidate may supply the Commission with additional documentation or other information in the resubmission of any rejected contribution under 11 CFR 9036.5 in order to show that a rejected contribution is matchable under 11 CFR 9034.2.

(c) *Adjustment of amount to be certified by Commission.* (1) The candidate shall notify the Commission as soon as possible if the candidate or the candidate's authorized committee(s) has knowledge that a contribution submitted for matching does not qualify under 11 CFR 9034.2 as a matchable contribution, such as a check returned to the committee for insufficient funds or a contribution that has been refunded, so that the Commission may properly adjust the amount to be certified for payment.

(2) After the candidate's date of ineligibility, if the candidate does not receive the entire amount of matching funds on a regularly scheduled payment date due to a shortfall in the matching payment account, prior to each subsequent payment date on which the candidate receives payments from any previous certification, the Commission may revise the amount previously certified for payment pursuant to 11 CFR 9034.5(f). The Commission will promptly notify the Secretary and the candidate of any revision to the amount certified.

(d) *Commission audit of submissions.* The Commission may determine, for the reasons stated in 11 CFR part 9039, that an audit and examination of contributions submitted for matching payment is warranted. The audit and examination shall be conducted in accordance with the procedures of 11 CFR part 9039.

7. 11 CFR part 9036 would be amended by revising paragraph (d) of § 9036.5 to read as follows:

§ 9036.5 Resubmissions.

* * * * *

(d) *Certification of resubmitted contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary at least once a month on dates to be determined and published by the Commission. If the candidate chooses to request the specific contributions rejected for matching pursuant to 11 CFR 9036.5(a)(2), the amount certified shall equal only the matchable amount of the particular contribution that meets the standards on resubmission, rather than

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the amount projected as being nonmatchable based on that contribution due to the sampling techniques used in reviewing the original submission.

* * * * *

8. 11 CFR part 9036 would be amended by revising § 9036.6 to read as follows:

§ 9036.6 Continuation of certification.

Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit additional submissions for payment to the Commission on dates specified in the Federal Election Commission's Guideline for Presentation in Good Order. The last date for first-time submissions will be the first Monday in March of the year following the election. No contribution will be matched if it is submitted after the last submission date, regardless of the date the contribution was deposited.

PART 9037—PAYMENTS

9. The authority citation for part 9037 would continue to read as follows:

Authority: 26 U.S.C. 9037 and 9039(b).

10. 11 CFR part 9037 would be amended by revising § 9037.1 to read as follows:

§ 9037.1 Payments of Presidential primary matching funds.

Upon receipt of a written certification from the Commission, but not before the beginning of the matching payment period, the Secretary will promptly transfer the amount certified from the matching payment account to the candidate. A matching fund certification may not result in full payment by the Secretary in the case of a shortfall in the matching payment account. See 26 CFR 702.9037–1 and 702.9037–2.

11. 11 CFR part 9037 would be amended by revising § 9037.2 to read as follows:

§ 9037.2 Equitable distribution of funds.

In making such transfers to candidates of the same political party, the Secretary will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary will take into account, in seeking to achieve an equitable distribution of funds available in the matching payment account, the sequence in which such certifications are received. See 26 CFR 702.9037–2(c) regarding partial payments to candidates in the case of a shortfall in the matching payment account.

Dated: June 21, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91–15167 Filed 6–25–91; 8:45 am]

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Part V

Department of Commerce

International Trade Administration

Consortia of American Businesses in Eastern Europe; Notice

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DEPARTMENT OF COMMERCE

International Trade Administration

Docket No. 910637-1137

Consortia of American Businesses in Eastern Europe

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a New Business Consortia Grant Program to Assist U.S. Firms Establishing a Commercial Presence in Eastern Europe.

SUMMARY: A pilot program has been designed to assist U.S. firms in establishing a commercial presence in Eastern Europe through the formation of Consortia of American Businesses in Eastern Europe (CABEE). CABEEs are private and public non-profit organizations which will be formed to promote U.S. goods and services in Eastern Europe. The participants in these consortia will be for-profit U.S. firms interested in trade with Eastern Europe. CABEEs will establish offices and staff in Eastern Europe to provide a broad range of services for their member firms, including market research, sales promotion, and other trade facilitation services. Grant funds will be awarded as seed money to pay the start-up costs of establishing and operating CABEE offices in Eastern Europe. CABEEs can be organized along a single industry line or represent more than one business sector. There is no limitation on the number of for-profit firms that a consortium may represent.

SUPPLEMENTARY INFORMATION:

Program Objectives

CABEEs are intended to strengthen the U.S. business presence in Eastern Europe. They will provide direct trade facilitation support for their member firms, stimulating increased U.S. exports, joint ventures, and U.S. direct investment in Eastern Europe. CABEEs will promote two-way trade and will be expected to support development of counterpart host country trade associations and/or other organizations that can respond to the business opportunities represented through the consortia.

Funding Availability

Pursuant to the provision headed section (a)(8) under the heading "Assistance for Eastern Europe" of Title II of the Foreign Operations, Export Financing and Related Programs Appropriation Act, 1991, Public Law 101-513 and section 632(a) of the Foreign Assistance Act of 1961, as amended, funding for the program will come from the Agency for International Development. Commerce will administer the program on a pilot basis pursuant to the authority contained in section 635(b) of the Foreign Assistance Act of 1961, as amended. The total amount of grant funds available for the pilot program is $2.5 million.

Funding Instrument and Project Duration

The Federal grant contribution will not exceed 50 percent of proposed eligible project costs with a maximum grant amount of $500,000 per consortium. Applicants are expected to provide the remaining share, preferably in cash. Federal funding will be a one-time injection with a grant period not to exceed three years. Assistance will be available for the period of time required to complete the scope of work but not to exceed three years from the date of the grant offer.

Request for Applications

Competitive Application Kits (Application Kits) #180-0028-1 will be available from Commerce starting June 28, 1991.

To obtain a copy of the Application Kit #180-0028-1, please send a written request with two self-addressed mailing labels to Mr. George Muller, Director, Office of Export Trading Company Affairs, room 1800 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. Only written requests will be honored; telephone, fax, or walk-in requests will not be accepted. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. Applications (Standard Form 424 (Rev. 4-88)) are to be received at the address designated in the Application Kit no later than 3 p.m., e.d.t., August 13, 1991. Subject to the availability of funds, awards will be made prior to the end of 1991.

Eligibility

Eligible applicants for the Business Consortia Grant Program will be private and public non-profit U.S. organizations including non-profit corporations, associations and public sector entities. Within the industry or industries represented by the consortium, membership in a consortium must be available on a non-discriminatory basis. For example, membership in a trade association cannot be a requirement for membership in a consortium. Only applicants proposing to open an office in one or more of the following East European countries are eligible for this program: Poland, Hungary, Czechoslovakia, Bulgaria, Romania, and Yugoslavia. Each application will receive an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the program. Applications will be evaluated on a competitive basis in accordance with the selection criteria set below.

Selection Criteria

Priority consideration will be given to those CABEE proposals which:

1. Focus on Poland, Hungary, and Czechoslovakia as the geographic target of commercial activities.
2. Involve or relate to the following industries: environment, energy, telecommunications, agriculture and agribusiness, and housing. Marketability of the products and/or services in the applicable East European countries will be taken into account in evaluating applications.
3. Are proposed by applicants with the capacity, qualifications and staff necessary to successfully undertake the intended activities.
4. Demonstrate the capability and intent of enlisting small and mid-sized U.S. firms as CABEE members.
5. Provide a reasonable assurance that the proposed project can be continued on a self-sustained basis after expiration of the Federal grant.
6. Contain a commitment to encourage, support and assist development of indigenous counterpart organizations (e.g. trade associations) and a well reasoned explanation as to how that will be accomplished.
7. Present a realistic work plan detailing the services it will provide to the CABEE members.
8. Present a reasonable, itemized budget for the proposed activities.

Selection criteria 1-3 will be weighted equally but will be accorded a greater degree of importance than the remaining criteria. Selection criteria 4-8 will be weighted equally.

Notifications

All applicants are advised of the following:

1. Applicants that have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.
2. 15 CFR part 28 prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or cooperative agreement. A "Certification Regarding Lobbying" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required for awards exceeding $100,000.
3. Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.
4. A false statement on the application may be grounds for denial or termination of funds.
5. Awards under this program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.
6. All recipients are advised of the applicability of Executive Order 12372, "Intergovernmental Review of Federal Programs."
7. The Standard Form 424 (Rev. 4-88) mentioned in this Notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348-0006.

Dated: June 21, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-15176 Filed 6-25-91; 8:45 am]

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Part VI

Department of Education

Educational Research Grant Program: Researcher Training Project; Notice Inviting Applications for New Awards for FY 1991

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.117H]

Educational Research Grant Program: Researcher Training Project; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Educational Research Grant Program (ERGP) supports scientific inquiry designed to advance educational theory and practice.

Eligible Applicants: The following are eligible for awards under the Educational Research Grant Programs: (a) Institutions of higher education; (b) Public and private organizations, institutions, and agencies; and (c) Individuals.

Deadline for Transmittal of Applications: July 31, 1991.

Available Funds: $150,000.

Estimated Range of Awards: $150,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)), part 86 (Drug-Free Schools and Campuses); and (b) The regulations for this program in 34 CFR part 700.

Eligible Activity: Under 34 CFR 700.3 (a) and (b), the Secretary restricts applications under this competition to those proposing the following activity: training of individuals in educational research. Only applications proposing to conduct this activity will be considered under this competition.

Invitational Priority: The Secretary is particularly interested in applications that propose to conduct educational research training projects that involve (1) mentored internships in research institutions such as the Research and Development Centers and Regional Educational Laboratories supported by the Department's Office of Educational Research and Improvement; and (2) opportunities for participants to engage in original research and scholarly writing. The Secretary encourages projects that make special efforts to recruit minority individuals through, among other activities, collaboration with institutions and organizations where minority individuals who are potential educational research candidates may be found, such as historically Black colleges and universities, other colleges and universities that prepare minority educators, or professional associations. A grantee may not, however, limit eligibility to participate in the project on the basis of minority status. See Nondiscrimination in Federally Assisted Programs; title VI of the Civil Rights Act of 1964; Policy Interpretation, 44 FR 58509 (October 10, 1979). Copies can be obtained from the address listed in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications that do not meet the invitational priority.

Selection Criteria

(a)(1) In evaluating applications for new grants under this competition, the Secretary uses the selection criteria in 34 CFR 700.22.

(2) The program regulations in 34 CFR 700.20(b)(2) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 25 points distributed in accordance with 34 CFR 700.20(b)(4).

(3) For this competition the Secretary distributes the 25 points as follows:

(i) Plan of operation (34 CFR 700.22(a)). Ten points are added to this criterion for a total of 20 points.

(ii) Evaluation plan (34 CFR 700.22(d)). Five points are added to this criterion for a total of 10 points.

(iii) Significance (34 CFR 700.22(f)). Five points are added to this criterion for a total of 20 points.

(iv) Technical soundness (34 CFR 700.22(g)). Five points are added to this criterion for a total of 20 points.

(4) The maximum score for each criterion is indicated in parentheses.

(b) (1) *Plan of operation* (20 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(ii) The quality of the applicant's plans to use its resources and personnel to achieve each objective of the project; and

(iii) The extent to which the applicant will equitably address the educational needs of students and educators in both public and private educational institutions.

(2) *Quality of key personnel* (20 points).

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the principal investigator;

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(2)(i) (A) and (B) will commit to the project; and

(ii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(2)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(3) *Budget and cost-effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives, design, and potential significance of the project.

(4) *Evaluation plan* (10 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

(6) *Significance* (20 points).

(i) The Secretary reviews each application to determine the significance of the proposed project.

(ii) The Secretary determines the project's potential to make a significant contribution to American education, as measured by factors such as—

(A) Importance of the proposed project from the standpoint of basic knowledge or of problems in American education;

(B) The likely magnitude of the addition that will be made to knowledge or educational practices if the project is successful, including the extent to which the proposed outcomes can be broadly applied;

(C) The extent to which the project involves creative or innovative approaches that complement or are alternatives to existing approaches to the project's problem area; and

(D) The extent to which the project is designed to yield products and outcomes that can be disseminated and utilized in other settings, such as information, materials, processes, or techniques.

(7) *Technical soundness* (20 points).

(i) The Secretary reviews each application to determine the technical soundness of the proposed activities.

(ii) The Secretary determines—

(A) The adequacy of the project's design, methodology, instrumentation, and data analysis plan, as applicable;

(B) The extent to which the application exhibits a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activity; and

(C) The extent to which, where appropriate, the perspectives of a variety of disciplines are used.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.117H) Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.117H), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from commerical carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–0494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Cheryl Garnette, U.S. Department of Education, 555 New Jersey Avenue NW., room 510B Capitol Place, Washington, DC 20208–5644. Telephone: 202–219–2287. FAX: 202–219–2106. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 703–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e.

Dated: June 21, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

Appendix

BILLING CODE 4000–01–M

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es). ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 1 7H

TITLE Educational Research Grant Program: Researcher Training Project

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

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BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal granter agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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Part III—Application Narrative

A. *Application Instructions for New Awards—*

1. Information on who is eligible to apply for a grant award can be found in section 700.2 of the Final Regulations for the program.

2. In order to be considered for funding you must submit an original and two copies (and in order to expedite the review and award process, it is strongly suggested that you voluntarily submit three additional copies).

B. *Instructions for Proposal Narrative—*

1. Research Priorities

Applicants are invited to address the priority published in the Federal Register Notice Inviting Applications contained in this application package.

2. Proposal Narrative

a. Applicants must provide a proposal narrative not to exceed 80–100 double spaced typed pages (normal sized type, no smaller than 10 point pica). The narrative must address each of the following criteria contained in 34 CFR 700.22:

(1) Plan of operation
(2) Quality of key personnel
(3) Budget and cost-effectiveness
(4) Evaluation plan
(5) Adequacy of resources
(6) Significance
(7) Technical soundness

Under the discussion of technical soundness, applicants should describe in detail and justify the procedures that will be used to carry out the proposed work.

b. Applicants are encouraged to provide a summary of the program project (not to exceed 500 words).

3. Budget Information

Applicants must provide a detailed budget for each project and activity to support the request in the budget information from (SF 424A). The cost categories for the detailed budget for each project must be consistent with the cost categories in the summary budget information form. (Instructions are included.)

Provide (at line 21 and attached sheets) a breakdown detailing individual units or activities and amount for each "object class category." For example, for "personnel," show salaries and wages for each staff member by position or name; for "contractual," show consultants, sub-contractual services, materials.

4. Technical Assistance

Any questions regarding a competition should be addressed to the contact person named in the notice inviting applications contained in this package.

5. Reporting Requirements

Each applicant should consider reporting requirements in developing the plan of operation. Performance of financial reports are required at the completion of each project period. Additional guidance will be given prior to the time that the grant is awarded.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 27 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of infomation. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850–0651, Washington, DC 20503.

(Information collection approved under OMB control number 1850–0651. Expiration date: November 30, 1993)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

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Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV 12/88), which is obsolete)

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*
(attach Continuation Sheet(s) SF-LLL-A, if necessary)	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

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DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

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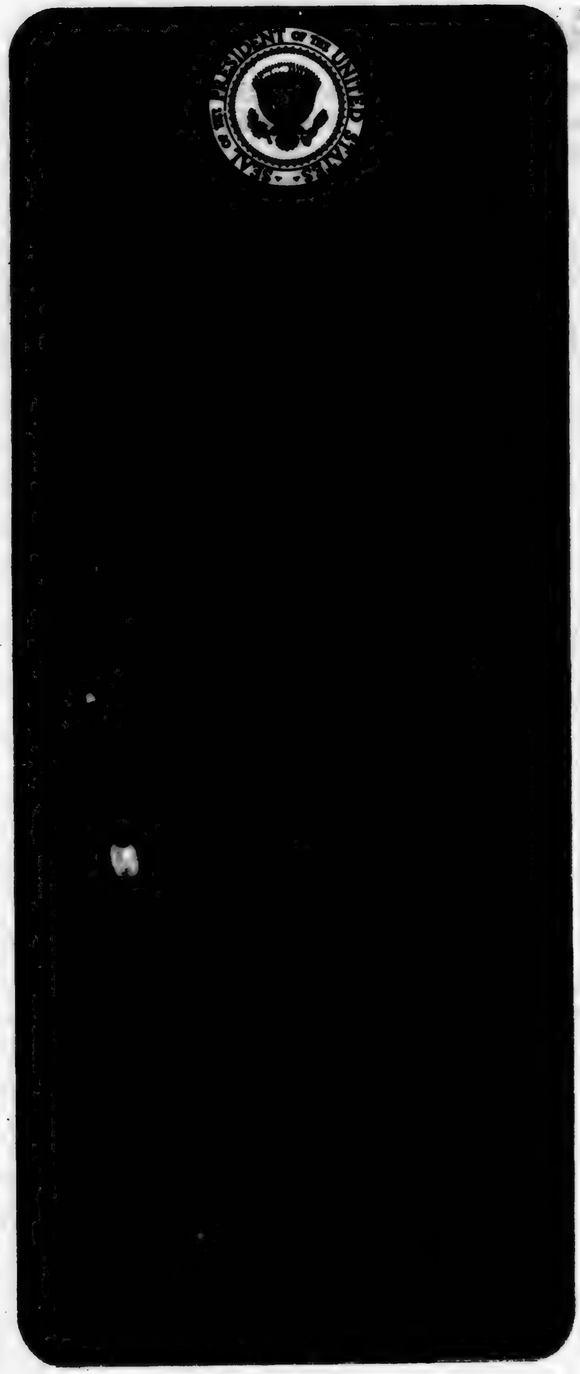
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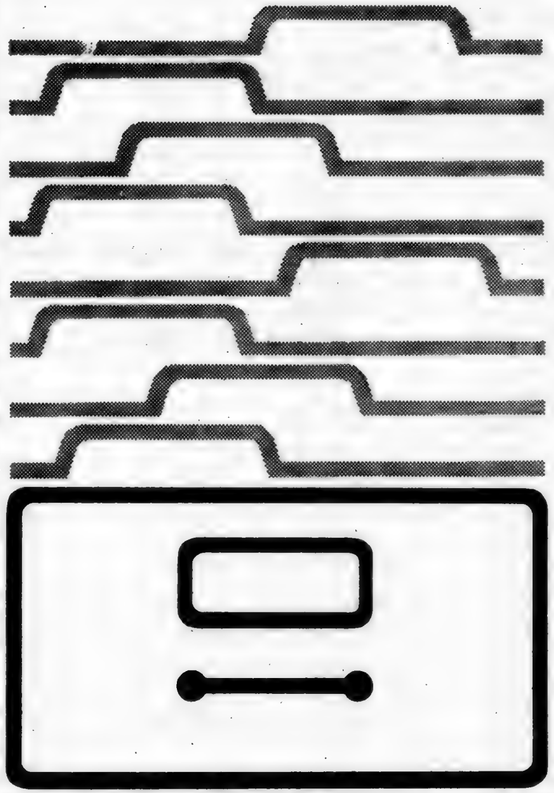
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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Rules and Regulations

Federal Register
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Thursday, June 27, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[WRPA Docket No. 1; FV-91-253]

Watermelon Research and Promotion Plan; Amendments to Rules and Regulations

AGENCY: Agricultural Marketing Service (USDA).
ACTION: Interim final rule.

SUMMARY: This interim final rule amends rules and regulations issued under the Watermelon Research and Promotion Plan to clarify when the 90-day refund period begins for assessments paid by producers and handlers and specifies that, when requesting a refund, handlers must submit copies of a specified report, and producers must submit receipts or copies of receipts received from handlers on the date the producer's watermelons were handled.

DATES: Effective June 27, 1991. Comments which are received by July 29, 1991 will be considered prior to the issuance of any final rule.

ADDRESSES: Interested persons may submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference docket number FV-91-253 and the date and page number of this issue of the **Federal Register**. A copy of comments received will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-South, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 447-4140.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Watermelon Research and Promotion Plan (Plan) (7 CFR part 1210). The Plan is effective under the Watermelon Research and Promotion Act (7 U.S.C. 4901-4916), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation No. 1512-1 and the criteria contained in Executive Order 12291 and has been detemined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Act and Plan provide that all producers (not including persons engaged in the growing of less than five acres of watermelons) and handlers of watermelons are subject to regulation under the Plan for watermelons produced in the contiguous 48 States. The Act and Plan provide that watermelon producers and handlers pay equal assessments for operating the program. The Act and Plan further provide that handlers are responsible for collecting and submitting both producer and handler assessments to the National Watermelon Promotion Board (Board), reporting their handling of watermelons, and for maintaining records necessary to verify their reportings.

There are approximately 750 watermelon handlers and 5,000 watermelon producers subject to regulation under the Plan. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $3,500,000 and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of watermelon handlers and producers may be classified as small entities.

This action would not have a significant economic impact on small handlers or producers. This action would benefit both producers and handlers by clarifying when the refund period starts and what documentation is acceptable for proving payment of assessments.

Section 1647(b)(2) of the Act (7 U.S.C. 4906(b)(2)) and § 1210.327(b) (7 CFR 1210.327(b)) of the Plan authorize the Board to recommend to the Secretary such rules and regulations as are necessary to effectuate the terms and conditions of the Plan. Section 1210.520 of the current regulations (7 CFR 1210.520) specifies the procedures for requesting refunds of assessments.

Based on the exeperience of its first year of operation, the Board believes that the wording in § 1210.520 is confusing and open to misinterpretation by watermelon producers and handlers. The Board believes that replacement of the word "payable" with the word "due" in the first sentence of § 1210.520 will clarify that the section is referring to the end for the month the watermelons were actually handled. The industry considers the payable date as being the thirtieth day following the month the watermelons were handled, which is the date by which handlers must remit their assessments to the Board.

Also, the Board recommended revision of § 1210.520(b) to clarify when the 90-day period begins for the submission of a refund application, by both producers and handlers. The Board believes that the current provision could be interpreted as meaning that the 90-day period begins on the actual day of handling; on the last day of the month of handling; on the handler's due date for paying assessments, following the month of handling; or on some other date. The Board wants to clarify the provision establishing when the refund period begins by specifying that the refund period begins for both producers and handlers on the last day of the month of handling.

While no refunds, in part or total, have been denied because of a misunderstanding regarding the beginning of the 90-day refund period, the Board believes this revision should eliminate the potential for refunds being denied because of misunderstandings of when the refund period begins. This revision is consistent with the requirements of the Act which provide that both producers and handlers be

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given not less than 90 days to request a refund of assessments paid.

Also, the Board recommends that § 1210.520 be revised to specify what documents must be submitted by producers and handlers as evidence of payment of assessments when requesting a refund. As revised, this provision specifies that producers must submit a receipt, or copy thereof, received from the handler on the date the watermelons were handled. It further specifies that handlers must submit a copy of the handler's report which they submitted to the Board when they paid the assessments.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35) and section 3504(h) of the PRA, the information collection requirements and refund application forms used under the provisions of § 1210.520 have been previously approved by the OMB under OMB No. 0581-0158. This action places no new recordkeeping or reporting requirements on producers or handlers.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Upon the basis of the evidence provided by the Board, it is found that this action, and all of its terms and conditions as set forth, will tend to effectuate the declared policy of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action clarifies the provisions of § 1210.520 by specifying when the 90-day refund period begins; (2) specifying what documents need to accompany refund applications as evidence of the payment of the assessments; and (3) the 1991 crop year began in early April 1991 and any amended rules and regulations should be in place as soon as possible. All written comments received in response to this publication by the date specified herein will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, chapter XI of title 7 is amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901-4916.

2. Section 1210.520 is amended by revising the introductory text, paragraph (b) introductory text, and paragraph (c) to read as follows:

§ 1210.520 Refunds.

Each watermelon producer or handler against whose watermelons an assessment became due and was paid pursuant to this subpart may obtain a refund of the assessment amount paid for any calendar month by following the procedures prescribed in this section.

* * * * *

(b) *Submission of refund application to the Board.* A handler or producer may request a refund of their assessments paid by submitting a refund application within a 90 day period beginning the last day of the month the watermelons were actually handled. The refund application shall show the following:

* * * * *

(c) *Proof of payment of assessment.* Evidence of payment of assessments satisfactory to the Board shall accompany the producer's or handler's refund application. Producers must submit a receipt, or a copy thereof, received from a handler on the date the watermelons were handled. Handlers must submit a copy of the handler's report filed when the handler paid the assessments. Evidence submitted with refund applications shall not be returned to the applicant.

* * * * *

Dated: June 21, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-15189 Filed 6-26-91; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1951 and 1955

Certain Leaseback/Buyback and Disposal of Farm Inventory Property Provisions of the Food, Agriculture, Conservation, and Trade Act of 1990

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with a request for comments.

SUMMARY: The Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624), hereinafter referred to as the "1990 Farm Bill," amends provisions of the Agricultural Credit Act of 1987 and therefore removes and revises certain provisions of the leaseback/buyback program as well as the procedure by which FmHA manages and disposes of suitable farm inventory property. The FmHA amends its regulations to conform to certain provisions of section 1813, "Disposition of Suitable Property," of the 1990 Farm Bill.

The intended effect is to facilitate keeping borrowers on their farm and ranch property, enhance the Agency's efforts to sell suitable farm property to family size farm operators, provide more guidance to the FmHA field staff, and implement the provisions of the 1990 Farm Bill.

DATES: Interim rule effective June 27, 1991. Comments must be submitted on or before July 29, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Roger Witt, Branch Chief, Farmers Programs, Farmers Home Administration, USDA, room 5446, Washington, DC 20250, telephone (202) 382-1948.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of 100 million dollars or more.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.404—Emergency Loans.
10.406—Farm Operating Loans.
10.407—Farm Ownership.
10.407—Low Income Housing Loans.
(Section 502 Rural Housing Loans)
10.416—Soil and Water Loans.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to notice 7 CFR 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of the nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91-190), An Environmental Impact Statement is not required.

Background

This document amends the interim rule published in the **Federal Register** (53 FR 35638-35798) on September 14, 1988, which implemented certain provisions of the Agricultural Credit Act of 1987. The 1990 Farm Bill amends the Agricultural Credit Act of 1987 and related statutes as it pertains to the leaseback/buyback program and the manner by which the Agency disposes of suitable farm inventory property. In accordance with the provisions of section 1813, "Disposition of Suitable Inventory Property," of the 1990 Farm Bill, the Agency is amending its regulations to be in compliance with the 1990 Farm Bill. Several of the changes required by section 1813 are as follows:

1. Paragraph (b), "Random Selection Among Equally Qualified Applicants." This provision provides that the County Committee will randomly select the purchaser of suitable farm property when there are two or more applicants that meet the loan eligibility criteria and deletes the requirement that the selection will be based on majority vote.

2. Paragraph (c), "Property Subject to Borrower Purchase or Lease Option." The Agricultural Credit Act of 1987 provided that the leaseback/buyback property consisted of all real property. The 1990 Farm Bill limits the leaseback/buyback property to that of real farm and ranch property, including the principal residence of the borrower.

3. Paragraph (g), "Offering Price." This provision deletes the conflicting provisions of the Food Security Act of 1985 that required farmland be sold at its capitalization value while the Agricultural Credit Act of 1987 required suitable farm property be sold at its market value. To resolve these conflicting provisions, the Agency offered farm property for sale at the lower of its capitalization value or market value. The 1990 Farm Bill deletes the capitalization value price. This provision removes the conflict in the statute and provides that suitable farm property will be offered for a value not greater than that which reflects the appraised market value of such farmland.

In the interim rule date September 14, 1988, FmHA implemented the leaseback/buyback provisions of the Agriculture Credit Act of 1987 by providing that the former owner had the first priority to purchase the real property that FmHA acquired from the former owner. In the event the former borrower was not the same individual as the former owner, FmHA would give a priority to the former owner to purchase the property, not the former borrower. If the borrower was the operator of the farm, the operator would have a priority to purchase the farm, if the former owner or the former owner's spouse and children did not exercise their leaseback/buyback rights. To implement the provisions of paragraph (c) of the 1990 Farm Bill and to ensure that the farm or ranch property will continue to have a residence for the operator of farm or ranch property, we have amended the definition of leaseback/buyback property to provide that the leaseback/buyback property consists of real farm and ranch property of the former owner, including any principal residence of the operator of the farm or ranch. This definition in the 1990 Farm Bill limits the scope of the property that the former owner will have a priority right to acquire from FmHA. In the event that the former owner's residence is acquired by FmHA, such residence is not a part of the farm or ranch property, and the former owner was not the operator of the farm, the former owner's residence would not be a part of the leaseback/buyback property. Likewise, if the former borrower's residence is acquired by FmHA; such residence is not part of the farm and ranch property, and the former borrower was not the operator of the farm or ranch property, the former borrower's residence would not be a part of the leaseback/buyback property. The leaseback/buyback property, however, would consist of any principal residence of the operator, if owned by the same individual that owned the real farm and ranch property. In most situations, the former owner is the former borrower as well as the operator of the farm. However, in the event the former owner, former borrower, and the operator are different individuals, and each reside in a separate residence which are all owned by the same owner, and no residence is considered a part of the farm or ranch property, only the principal residence of the operator would be considered as leaseback/buyback property. With this definition of leaseback/buyback property, it needs to be recognized that there may be a small number of cases where the former owner's residence is located on a nonfarm tract, is not considered a part of the farm or ranch property, and such owner is not the operator of the farm or ranch property. In such case, the former owner will not have a priority to purchase the property under FmHA's leaseback/buyback program; however, in the event the former owner is also the former borrower, such individual would have an opportunity, under FmHA's homestead protection program, to lease with an option to purchase the former borrower's residence and up to ten acres.

The Agency has temporarily suspended the lease and sale of certain real farm and ranch inventory property pending implementation of the 1990 Farm Bill. This document is being published as an interim rule with a 30-day comment period in order that the Agency can resume leaseback/buyback transactions where wetlands are not involved. Many of the farm properties in FmHA inventory will be leased or sold to the former owner and the former owner's family members. In order that the Agency can assist the former owner and the former owner's family members to remain on the farm and continue with their farming operations, for the 1991 crop year and beyond, it is important that FmHA has rules and regulations in place to expedite the lease or sale, in accordance with the provisions of the 1990 Farm Bill.

There are other provisions of section 1813 of the 1990 Farm Bill that require revisions to FmHA regulations but will be addressed in separate issuances of the regulations.

List of Subjects

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan

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programs—Housing and Community development, Low and Moderate income housing loans—Servicing, Debt restructuring.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70

Subpart S—Farmer Programs Account Servicing Policies

2. Section 1951.906 is amended by removing the definition of "inventory property" and adding, in alphabetical order, the definition of "Leaseback/Buyback Property" to read as follows:

§ 1951.906 Definitions.

* * * * *

Leaseback/Buyback Property. Real farm and ranch property and any off the farm principal residence(s) of the operator(s) which secured a Farmer Programs loan. Any off farm principal residence(s) of the former borrower(s) and/or owner(s), who are not the operator(s) of the farm or ranch property, are not considered leaseback/buyback property.

* * * * *

3. Section 1951.911 is amended by removing the first two sentences and adding three new sentences to the beginning of the introductory text of paragraph (a), removing the first two sentences and adding two new sentences to the beginning of paragraph (a)(1)(ii) and revising paragraph (a)(2)(ii) to read as follows:

§ 1951.911 Preservation loan service programs.

(a) *Leaseback/Buyback.* This section contains the policies and procedures pertaining to the Farmer Programs Leaseback/Buyback Program. The Farmer Programs Leaseback/Buyback Program will permit the previous owner of real farm and ranch property, including any off the farm principal residence of the former operator, which was security for a Farmer Programs loan(s), to have the first opportunity to lease or purchase the leaseback/buyback property from FmHA. Any off the farm residence(s) of the former borrower(s) and/or owner(s), who are not the operator(s) of the farm or ranch property are not considered leaseback/buyback property, unless such residence(s) are a part of the farm or ranch property. * * *

(1) * * *

(ii) When FmHA acquires real farm and ranch property, including the principal residence of the former operator, which collateralized a Farmer Programs loan, the former owner will be sent exhibit O of this subpart within 30 days. The former owner has 180 days from the date FmHA acquired the real farm and ranch property, including any off the farm principal residence of the former operator, to apply for leaseback/buyback, unless State laws provide for a longer period. * * *

* * * * *

(2) * * *

(ii) Within each of the foregoing priorities, if there is more than one individual eligible for leaseback/buyback in any category who has indicated an intention, in writing, to the County Supervisor to participate in the leaseback/buyback program (e.g., one individual wants to purchase and the other individual wants to rent), priority within the category will be given to an individual who wants to purchase the leaseback/buyback property, either for cash or by credit sale. There is no preference for a cash sale over a credit sale. If there are two or more individuals in the same priority category who are eligible for leaseback/buyback who both want to purchase (or to lease if no one wants to purchase), the County Committee will make the selection of the lessee and/or purchaser by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn offer will be held as back-up offers pending sale to the successful offeror. The random selection of the County Committee is not an appealable item for those individuals that are not the successful lessee and/or purchaser.

* * * * *

PART 1955—PROPERTY MANAGEMENT

4. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

5. Section 1955.3 is amended by revising the definition of "Leaseback/Buyback Property" to read as follows:

§ 1955.3 Definitions.

* * * * *

Leaseback/Buyback Property. Real farm and ranch property and any off the farm principal residence(s) of the operator(s) which secured a Farmer Programs loan. Any off farm principal residence(s) of the former borrower(s) and/or owner(s), who are not the operator(s) of the farm or ranch property, are not considered leaseback/buyback property.

* * * * *

6. Section 1955.18 is amended by revising paragraph (i) to read as follows:

§ 1955.18 Actions required after acquisition of property.

* * * * *

(i) *Leaseback/buyback.* The County Supervisor will notify the immediate previous owner of leaseback/buyback rights by sending exhibit O of subpart S of 1951 of this chapter, to the immediate previous owner, certified mail, return receipt requested, immediately after FmHA acquires real farm and ranch property, including any off the farm principal residence of the former operator, that secured an FP loan. The County Supervisor will notify the immediate previous operator of leaseback/buyback rights in accordance with § 1951.911(a)(1)(iii) of subpart S of part 1951 of this chapter by sending exhibit P of subpart S of part 1951 of this chapter to the immediate previous operator, certified mail, return receipt requested, immediately after FmHA acquires real farm and ranch property, including the principal residence of the former operator, that secured an FP loan.

* * * * *

Subpart B—Management of Property

7. Section 1955.53 is amended by adding, in alphabetical order, a new definition of "Leaseback/Buyback Property" to read as follows:

§ 1955.53 Definitions.

* * * * *

Leaseback/Buyback Property. Real farm and ranch property and any off the farm principal residence(s) of the operator(s) which secured a Farmer Programs loan. Any off farm principal residence(s) of the former borrower(s) and/or owner(s), who are not the operator(s) of the farm or ranch property, are not considered leaseback/buyback property.

* * * * *

8. Section 1955.66 is amended by revising paragraph (h) to read as follows:

§ 1955.66 Lease of real property.

* * * * *

(h) *Lease of farm property with option to purchase.* Except for property that was pledged to secure a loan to an organization (as defined in § 1955.53 of this subpart), a lessee may be given the option to purchase farm property.

Terms of the option will be set forth as part of the lease as a special stipulation in accordance with the FMI for form FmHA 1955–20.

(1) The lease payments will not be applied toward the purchase price.

(2) The purchase price (option price) will be the appraised market value of the property. For farm property, the purchase price (option price) will be the market value of the property, as of the date the option is exercised, as set forth in subpart A of part 1809 of this chapter (FmHA Instruction 422.1).

(3) A lease with option to purchase to individuals with leaseback/buyback rights will be for a term not to exceed 5 years. For Preservation Loan Service Programs, refer to subpart S of part 1951 of this chapter. For those individuals that do not have leaseback/buyback rights, a lease with option to purchase farm property will normally not exceed 1 year but may be, in justifiable cases, for a period not longer than 3 years.

(4) If there is more than one prospective lessee that wishes to lease the property with an option to purchase, the County Committee will select the lessee/purchaser in accordance with § 1955.107 of subpart C of part 1955 of this chapter.

(5) Indian tribes or tribal corporations which utilize the Indian Land Acquisition Program will be allowed to purchase the property for its market value less the contributory value of the buildings, in accordance with subpart N of part 1823 of this chapter (FmHA Instruction 442.11).

(6) Denials of applications for or disputes over terms and conditions of a lease are appealable, pursuant to subpart B of part 1900 of this chapter.

* * * * *

Subpart C—Disposal of Inventory Property

9. Section 1955.103 is amended by adding, in alphabetical order, a definition for "Leaseback/Buyback Property" to read as follows:

§ 1955.103 Definitions.

* * * * *

Leaseback/Buyback Property. Real farm and ranch property and any off the farm principal residence(s) of the operator(s) which secured a Farmer Programs loan. Any off farm principal residence(s) of the former borrower(s) and/or owner(s), who are not the operator(s) of the farm or ranch property, are not considered leaseback/buyback property.

* * * * *

10. Section 1955.107 is amended by revising paragraph (c) to read as follows:

§ 1955.107 Sale of suitable property (CONACT).

* * * * *

(c) *Price.* Property will be offered or listed for its appraised market value based on the condition of the property at the time it is made available for sale. For farm property, the market value will be determined by an appraisal made in accordance with subpart A of part 1809 of this chapter (FmHA Instruction 422.1).

* * * * *

Dated: April 16, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–15281 Filed 6–26–91; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 0, 1 and 2

RIN 3150–AD73

Procedures for Direct Commission Review of Decisions of Presiding Officers

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its rules of procedure to establish a new system for agency appellate review of decisions and actions of presiding officers in all formal and informal agency adjudications.[1] The Commission's prior decision to abolish the Atomic Safety and Licensing Appeal Panel which had provided mandatory administrative appellate review of initial decisions of presiding officers in agency adjudications necessitates the establishment of a new system. The new system provides for discretionary review by the Commissioners of the NRC of most partial and final initial decisions, referred rulings and certifications of questions.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: E. Neil Jensen, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492–1634.

SUPPLEMENTARY INFORMATION: This final rule (1) sets forth procedures for petitioning for Commission review of decisions and actions for which review is permitted; (2) establishes a standard which the Commission will employ in determining whether to take review; (3) codifies the existing case law standard for interlocutory review in revised § 2.786(g) and provides that this standard must be met for interlocutory appeals under §§ 2.718(i) and 2.730(f); (4) retains the Commission's current immediate effectiveness review procedure whereby designated licensing board decisions do not become effective until the Commission so determines; (5) makes clear that for all orders subject to judicial review a petition for Commission review is an available remedy for a disappointed party; and (6) incorporates the provisions of present § 2.762 into § 2.1015(c) (relating to licensing of a high level waste repository) which is otherwise unaltered by this rulemaking. In addition, this final rule deletes reference to the Appeal Panel or to appeal boards from NRC regulations. Finally, the NRC's regulations describing internal agency organization are amended to reflect the creation of a new Office of Commission Appellate Adjudication whose function is to assist the Commission in exercising its adjudicatory responsibilities.

This rule includes an additional amendment to 10 CFR part 2. This amendment adds a new § 2.8 entitled, "Information collection requirements: OMB approval." This section provides the OMB clearance approval authority for the existing information collection requirements in 10 CFR part 2, appendix B. The new § 2.8 is included in 10 CFR part 2 solely to correct a technical oversight in the regulations.

[1] For simplicity, these initial decisions will be referred to as licensing board decisions; however, all initial adjudicatory decisions are covered by this final rulemaking.

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Background

On October 24, 1990 (55 FR 42947), the Commission published a notice of proposed rulemaking announcing its proposal to establish a new system for providing agency appellate review of initial decisions in all formal and informal agency adjudications to replace the system of mandatory review of initial decisions by appeal boards followed by discretionary review of appeal board decisions by the Commission. The Commission's need to formulate a new system was created by its earlier decision to abolish the Appeal Panel. The Commission proposed to adopt a system providing for direct discretionary review of licensing board decisions by the Commission and further proposed to adopt a broad review standard like that which applied when the Atomic Safety and Licensing Board was established in 1962, rather than the more narrow standard that the Commission has applied in determining whether to take review of appeal board decisions.

The Commission invited public comment on its choices and on necessary or desirable procedural changes incident to either system as well as on whether the Commission should make use of an existing organization or establish a separate office to assist it in performing its adjudicatory function. The comment period expired December 10, 1990. Seven comments were received: four from electric utilities or their counsel, one from an industry organization (Nuclear Management and Resources Council (NUMARC)), one from a public interest group (Ohio Citizens for Responsible Energy (OCRE)) and one from the Department of Energy. Copies of all comments received are available for public inspection, and copying for a fee, at the NRC Public Document Room at 2120 L Street, NW. (lower level), Washington, DC.

Summary of Public Comments

A. General

All industry commenters and the Department of Energy supported the Commission's proposals to adopt a discretionary review system and a broad standard of review. These commenters noted that this system would give the Commission the flexibility to involve itself only in cases requiring special Commission attention, such as cases involving novel, complex, or precedent-setting issues. This would enhance the Commission's ability to determine how best to allocate its resources to carry out its public health and safety functions. One industry commenter, while supportive of discretionary review in most cases, urged that review be mandatory in those cases where a licensing board and the NRC Staff hold conflicting views with respect to the issuance of certain types of authorizations because an internal conflict, in the view of the commenter, requires resolution by the Commission. This commenter also suggested that the Commission's immediate effectiveness rule be supplanted with a different procedure which would provide a definite time limit to the automatic stay now provided for licensing board decisions affected by this rule to help streamline the licensing process. OCRE objected to the Commission's decision to abolish the Appeal Panel and, absent reconsideration of that decision, favored mandatory review by the Commission. In OCRE's view, a mandatory review system would be the best means of securing direct Commission involvement in agency adjudications and would also be more fair to potential appellants in that all parties dissatisfied with licensing board decisions would be assured an equal degree of agency appellate review.

B. Commission Responses to Specific Comments

1. Abolition of the Appeal Panel

OCRE objects to the Commission's decision to abolish the Appeal Panel and asserts that this decision should not have been made without advance notice and solicitation of public comments. In addition, OCRE notes that Congress, in transferring the functions of the Appeal Panel to the Commission at the time it enacted the Energy Reorganization Act of 1974, required the Commission to notify Congress in advance of any decision to abolish the Appeal Panel. OCRE believes that the Appeal Panel served an important "separation of powers" function because it did not have the potential conflict of interest inherent in the Commission's dual function of being both an adjudicatory body and the supervisor of the NRC Staff which is frequently a party in adjudications before the Commission. OCRE states that it prefers the system of review by appeal boards where opportunity for oral argument is available to the parties.

The Commission's decision to abolish the Appeal Panel was an internal management decision concerning which agency organization would conduct administrative appellate review. In adopting interim procedures for conducting appellate review itself, the Commission explicitly stated that it intended to follow existing procedures and thus the existing right of the parties to a merits review of an initial decision would not be affected. (October 24, 1990; 55 FR 42944). Given these facts, the Commission was under no legal duty to provide notice and opportunity for public comment with respect to its decision to abolish the Appeal Panel. See 5 U.S.C. 553(b)(A). In any event, we have considered OCRE's view and do not find it persuasive.

The present rulemaking proceeding, which substitutes a discretionary system of review for a mandatory system and changes certain procedures by which review is conducted, does affect the procedural rights of prospective appellants and, for this reason, has been made the subject of a notice and comment rulemaking proceeding. In response to OCRE's comments concerning NRC's obligations to Congress, we note that Congress was notified of the Commission's plan to abolish the Appeal Panel by letters dated July 3, 1990, from the Chairman of the Commission to the President of the Senate and the Speaker of the House. In response to OCRE's concern that the Commission will be subject to a conflict of interest in conducting appellate review, we note that OCRE's objection is applicable to all agencies with both adjudicatory and staff supervisory functions and is not ground for retaining the Appeal Panel. Moreover the Commission's rules governing ex parte communication and separation of functions (10 CFR 2.780 and 2.781) have long and successfully protected the integrity of adjudicatory proceedings" from potential conflicts of the sort complained of here. There is no reason to suppose that these regulations will not continue to serve their function of assuring the impartiality of the Commission and its adjudicatory employees in agency adjudications. Finally, the availability of oral argument in agency appellate review has always been, and will continue to be, a matter of agency discretion. See 10 CFR 2.763.

2. Mandatory vs. Discretionary Review

As noted above, all commenters except OCRE supported adoption of a discretionary review system. Reasons given emphasized the administrative efficiency which will result from the Commission having the flexibility to involve itself only in appeals warranting Commission attention, such as cases involving particularly novel, complex, or precedent-setting issues or important legal, policy, or public health and safety questions. In the view of one industry commenter, a discretionary system, by giving the Commission the opportunity

to focus its attention only on the truly significant cases, will provide more meaningful access to the Commission than would a mandatory system requiring that all cases, including the routine or insignificant, come before the Commission for review. OCRE, on the other hand, favors a mandatory review system. OCRE believes that a mandatory system will serve to increase the Commission's direct involvement in agency adjudications which was one of the reasons given for the decision to abolish the Appeal panel. Further, in OCRE's view, mandatory review will be more fair to all parties in NRC adjudicatory proceedings because all parties will be assured of a thorough agency review of licensing board decisions without the need to incur the expense and delay of judicial review. OCRE mentions the filing fee, the costs of printing and binding the briefs and appendix, and the need for legal counsel as expenses necessitated by a decision to seek judicial review of an initial decision.

The Commission believes that a discretionary review system will be administratively more efficient than a mandatory system for the reasons suggested by the commenters and will also achieve appropriate involvement of the Commission in agency adjudications. While OCRE is technically correct that a mandatory system would bring greater direct involvement of the Commission, the desirability of direct involvement must be balanced against a sensible use of the Commission's time and resources. Even in a discretionary system, the Commission will examine all licensing board decisions to determine whether to take review *sua sponte*. Where review is not taken, a discretionary system will have the benefit of expeditiously bringing the adjudication to an end and enabling a disappointed party to seek judicial review at an earlier point. The direct involvement of the Commission in those cases where review is taken will be more meaningful because the significance of the case will be highlighted by the very fact that the Commission has taken review.

The Commission does not agree with OCRE that is somehow inequitable to provide review of licensing board decisions in some cases but to deny review in others and thus leave some parties with the sole recourse of seeking an initial merits review in the courts. Many disappointed litigants may lose again on appeal. Thus such a party would be saddled with the expense and delay of an appeal before the Commission as well as an appeal in court. Moreover, the expenses of an appeal to the Commission and an appeal to a court would be much the same unless, as contemplated by OCRE, the appellants appear *pro se* before the Commission but retain counsel in court. Even in such an unusual case, however, it may be possible for the appellants to argue *pro se* in court as well. In short, a potential appellant of an initial decision is at least as likely to save on expenses by being able to go to court if a petition for Commission review is rejected as by having to incur the expenses of an appeal before the Commission before judicial review becomes available.

3. Mandatory Review of Licensing Board—NRC Staff Conflicts

One industry commenter, while agreeing that the discretionary review system is appropriate for most cases, suggested that the Commission provide for mandatory review in a proceeding where the licensing board disagrees with the staff's findings and recommendations as to issuance of a site permit, design approval, construction authorization, operating license, combined license, or license amendment. This is because such a situation would create an intra-agency conflict that the commenter believes would warrant mandatory Commission review.

The Commission agrees that the circumstance envisioned is one that might likely merit Commission review. However, to make review mandatory in such a situation might create the appearance that the staff is a party more equal than others in the adjudicatory proceeding before the licensing board and might tend to unduly focus the proceeding on the findings and recommendations of the staff as opposed to those of the applicant on whom the burden of proof has traditionally rested at least in initial licensing cases. Thus the Commission believes that an exception to the discretionary review system need not be carved out to deal with this potential circumstance.

4. Standard for Granting Review

All commenters addressing the issue supported the Commission's proposed adoption of a standard of review similar to that employed by the Commission at the time the Atomic Safety and Licensing Board was established in 1962. That standard states:

> The petition for review may be granted in the discretion of the Commission, giving due weight to the existence of a substantial question with respect to such considerations as the following:
>
> (1) A finding of a material fact is clearly erroneous;
>
> (2) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
>
> (3) A substantial and important question of law, policy or discretion has been raised;
>
> (4) The conduct of the proceeding involved a prejudicial procedural error; or
>
> (5) Any other consideration which the Commission may deem to be in the public interest. (January 13, 1962; 27 FR 377)

An industry commenter urged adoption of an additional factor:

> A conflict in licensing board decisions on a controlling question of law or matter of fact necessary for decision.

Commission review of conflicting interpretations of law by different licensing boards and reconciliation of those interpretations, it is argued, would contribute to a more consistent body of NRC precedent. Similarly, the commenter contends that review where there are conflicts in material factual findings (such as the adequacy of a particular design used at different reactors) would enable the Commission to reconcile differences between licensing boards and would also carry over the policy embodied in present 10 CFR 2.786(b)(4)(ii), wherein the Commission may take review of an appeal board decision if it appears that the appeal board has resolved a factual issue necessary for decision in a clearly erroneous manner contrary to resolution of that same issue by the licensing board.

The Commission adopts this suggestion in part. The potential conflict between licensing boards as to issues of material fact is not explicitly comprised within the review standard but it is clearly a reason for the Commission to take review. Thus the Commission has incorporated this part of the commenter's suggestion into § 2.786(b)(4) of the final rule. On the other hand, a potential conflicting interpretation of law between licensing boards is already a matter comprised within the second or third factor of the January 13, 1962 (27 FR 377) rule. Thus the Commission believes that adding another factor to address this circumstance would be redundant.

The same commenter also suggested that the language of the Commission's present standard for taking review of appeal board decisions be added, perhaps as a footnote, to the standard of review to emphasize that issues presented for review must be significant and thus discourage frivolous appeals. That regulation states:

> A petition for review of matters of law or policy will not ordinarily be granted unless it

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appears the case involves an important matter that could significantly affect the environment, the public health and safety, or the common defense and security, constitutes an important antitrust question, involves an important procedural issue, or otherwise raises important questions of public policy.

10 CFR 2.786(b)(4)(i) (1989). The Commission does not agree that this additional language is necessary to discourage frivolous appeals. The standard already provides that the Commission, in determining whether to take review, will give due weight to the existence of a substantial question with respect to, among other things, a substantial and important question of law, policy or discretion. This language should be sufficient to warn potential appellants that issues presented for review must be significant. Moreover, coupling the more restrictive language of the standard the Commission has used to determine whether to take review of appeal board decisions with the more flexible language of the January 13, 1982 (27 FR 377) standard could lead to confusion as to what standard is really being applied. Thus the Commission has not adopted this suggestion.

5. Immediate Effectiveness Rule Amendment

The Commission's notice of proposed rulemaking noted one potential problem with adopting a discretionary review system: The possibility that a licensing board's decision might be appealed to a court without any petition for review having been submitted to the agency altering the agency to potential problems with the decision and giving the agency an opportunity to correct these problems. However, the Commission expressed the view that one way of avoiding this problem would be to continue the Commission's immediate effectiveness regulation (10 CFR 2.764) which provides an automatic stay of effectiveness of designated licensing board decisions until the Commission has reviewed the decision to determine whether it should be allowed to become effective pending any appellate review of the merits of the decision.

Two industry commenters addressed this matter. One favored continuation of the present immediate effectiveness rule; the other urged that the immediate effectiveness rule be replaced with an alternative procedure whereby the Commission would have a brief time limit (10 days was suggested) within which to decide whether to review a licensing board decision authorizing issuance of a construction permit or operating license for a nuclear power reactor. During the period, a party would be able to request a stay of the decision pending any merits review by the Commission. The stay motion would be governed by the factors specified in 10 CFR 2.788(e). If both a stay and review were granted, the licensing action authorized by the decision would not become effective and the decision would not become final agency action. If review were granted but a stay denied, the licensing action authorized by the decision would be effective but there would be no final agency action as to the merits of the licensing board decision. A court could review the Commission's stay decision, but not the merits of the licensing board decision. The advantage of this alternative procedure, in the commenter's view, is that it would help streamline the licensing process in that there would no longer be an automatic stay of indefinite length before the licensing board's decision is allowed to take effect.

The Commission does not believe that it would be feasible to set a regulatory time limit on its decision whether to take review of a licensing board decision of the brevity suggested by the commenter due to the wide variety of cases, including cases presenting multiple complex technical or legal issues where the record is voluminous, that come before the board. The time suggested is not adequate for petitions for review, and responses thereto, to be filed and considered. The Commission's present rule governing petitions for review of appeal board decisions (which will be retained and applied to licensing board decisions) provides a thirty-day period for a decision on whether to take review (10 CFR 2.786(b)(5)). The Commission is establishing a separate Office of Commission Appellate Adjudication with the function of assisting the Commission in the exercise of its appellate review functions. The Commission believes that it will be able to reach a decision on whether to take review in an expeditious fashion but that to impose a severe regulatory time limit for this decision could interfere with its duty to make sure that no public health or safety problems are unresolved before a decision is allowed to become final. Thus the Commission has not adopted this suggestion.

These amendments will take effect thirty days after publication in the Federal Register. The amendments apply to any licensing board decision or action issued on or after the effective date of these rules. Appeals presently pending before an appeal board in the Seabrook operating license proceeding, Advanced Medical Systems (Suspension Order) and Wrangler Laboratories enforcement proceedings, and the Turkey Point (OLA-4) and Turkey Point (OLA-5) license amendment proceedings will be governed by the rules in effect prior to October 24, 1990. Licensing board decisions or actions issued before the date these amendments become effective are governed by the rules in effect prior to October 24, 1990, except that the Commission will take the place of appeal boards under those rules and except that the Commission will not entertain a petition for review of its own decision.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et. seq.).

Regulatory Analysis

The Commission's prior decision to abolish the Appeal Panel which had provided administrative appellate review of initial decisions of presiding officers in agency adjudications necessitates the establishment of a new system wherein the Commission itself will review initial decisions. On October 24, 1990 (55 FR 42944), the Commission put in place interim procedures for conducting this review. In this rulemaking, the Commission adopts a discretionary review system, including a standard whereby the Commission will exercise its discretion whether to take review of a licensing board decision. This system replaces the system of mandatory appellate review formerly provided by appeal boards. The cost of the new discretionary review system is likely to be less in all cases where review is not taken the Commission and the parties will not need to expend further time and resources before a final agency decision is reached. Thus the cost entailed in the promulgation and application of this final rule is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. Many applicants, licensees and intervenors fall within the definition of small businesses found in section 34 of the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121, or the NRC's size standards published December 9, 1985 (50 FR 50241). In a discretionary review system, the procedural requirements on licensees or intervenors may be reduced because they will not need to fully brief errors of fact or law that they may perceive in a presiding officer's decision prior to seeking judicial review unless the Commission first determines to take review of the decision. Licensees and intervenors will, however, need to file petitions for discretionary review with the Commission if they perceive errors in the presiding officer's decision and intend to seek judicial review.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would improve backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 0

Conflict of interest, Criminal penalty.

10 CFR Part 1

Organization and functions (Government agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Nuclear Regulatory Commission is adopting the following amendments to 10 CFR parts 0, 1, and 2.

PART 0—CONDUCT OF EMPLOYEES

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 25, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2035, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 11222, 30 FR 6469, 3 CFR 1964–1965 COMP., p. 306; 5 CFR 735.104.

Sections 0.735–21 and 0.735–29 also issued under 5 U.S.C. 552, 553. Section 0.735–26 also issued under secs. 501, 502, Pub. L. 95–521, 92 Stat. 1864, 1867, as amended by secs. 1, 2, Pub. L. 99–28, 99 Stat. 78, 77, (18 U.S.C. 207).

2. In 10 CFR part 0, all references to "the Atomic Safety and Licensing Appeal Panel" or "ASLAP" are removed, and where the word "or" precedes either of these terms, it is moved to the appropriate location in the text.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

3. The authority citation for part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

4. In § 1.11, paragraph (c) is revised to read as follows:

§ 1.11 The Commission.

* * * * *

(c) The following staff units and officials report directly to the Commission: Atomic Safety and Licensing Board Panel, Office of the General Counsel, Office of the Secretary, Office of Commission Appellate Adjudication, Office of the LSS Administrator, Office of Governmental and Public Affairs, and other committees and boards which are authorized or established specifically by the Act. The Advisory Committee on Reactor Safeguards also reports directly to the Commission.

* * * * *

§ 1.17 [Removed]

5. Part 1 is amended by removing § 1.17.

6. In § 1.23, paragraph (b) is revised to read as follows:

§ 1.23 Office of the General Counsel.

* * * * *

(b) Reviews and prepares appropriate draft Commission decisions on public petitions seeking direct Commission action and rulemaking proceedings involving hearings, monitors cases pending before presiding officers and reviews draft Commission decisions on Atomic Safety and Licensing Board decisions and rulings;

* * * * *

7. A new § 1.24 is added to read as follows:

§ 1.24 Office of Commission Appellate Adjudication.

The Office of Commission Appellate Adjudication—

(a) Monitors cases pending before presiding officers;

(b) Provides the Commission with an analysis of any adjudicatory matter requiring a Commission decision (e.g., petitions for review, certified questions, stay requests) including available options;

(c) Drafts any necessary decisions pursuant to the Commission's guidance after presentation of options; and

(d) Consults with the Office of the General Counsel in identifying the options to be presented to the Commission and in drafting the final decision to be presented to the Commission.

§ 1.1 [Amended]

8. In 10 CFR 1.1 the words "and the Atomic Safety and Licensing Appeal Panel" are removed.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

9. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat.

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955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 90-340, 90 Stat. 1842 (42 U.S.C. 2021b et seq.).

10. In the definition of *Commission adjudicatory employee* in § 2.4, paragraph (2) is revised to read as follows:

§ 2.4 Definitions.

* * * * *

Commission adjudicatory employee means—

* * * * *

(2) The employees of the Office of Commission Appellate Adjudication;

* * * * *

11. A new § 2.8 is added preceding subpart A to read as follows:

§ 2.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) OMB has approved the information collection requirements contained in this part under control number 3150-0136.

(b) The approved information collection requirements contained in this part appear in appendix B.

12. In § 2.704, paragraph (d)(2) is revised to read as follows:

§ 2.704 Designation of presiding officer, disqualification, unavailability.

* * * * *

(d) * * *

(2) The Commission may direct that the record be certified to it for decision; or

* * * * *

13. Section 2.714a(a) is revised to read as follows:

§ 2.714a Petitions for review of certain rulings on petitions for leave to intervene and/or requests for hearing.

(a) Notwithstanding the provisions of § 2.730(f), an order of the presiding officer or the atomic safety and licensing board designated to rule on petitions for leave to intervene and/or requests for hearing may be appealed, in accordance with the provisions of this section, to the Commission within ten (10) days after service of the order. The appeal shall be asserted by the filing of a notice of appeal and accompanying supporting brief. Any other party may file a brief in support of or in opposition to the appeal within ten (10) days after service of the appeal. No other appeals from rulings on petitions and/or requests for hearing shall be allowed.

* * * * *

§ 2.713 [Amended]

13A. In § 2.713(c)(4), the reference to "2.788(b) (1), (2) and (4)" is revised to read "§ 2.788(b) (1), (2), and (3)."

§ 2.715 [Amended]

13B. In § 2.715(d), the words "by the Appeal Board on appeal or sua sponte or" are removed.

§ 2.721 [Amended]

14. In § 2.721, paragraph (c) is removed and paragraph (d) is redesignated as paragraph (c).

15. In § 2.760, paragraphs (a), (b)(1), and (c)(4) are revised to read as follows:

§ 2.760 Initial decision and its effect.

(a) After hearing, the presiding officer will render an initial decision which will constitute the final action of the Commission forty (40) days after its date unless any party petitions for Commission review in accordance with § 2.786 or the Commission takes review sua sponte or the decision is subject to the provisions of § 2.764.

(b) * * *

(1) Prepare its own decision which will become final unless the Commission grants a petition for reconsideration pursuant to § 2.771; or

* * * * *

(c) * * *

(4) The time within which a petition for review of the decision may be filed, the time within which answers in support of or in opposition to a petition for review filed by another party may be filed and, in the case of an initial decision which may become final in accordance with paragraph (a) of this section, the date when it may become final.

16. In § 2.761, paragraphs (a)(1) and (c)(1) are revised to read as follows:

§ 2.761 Expedited decisional procedure.

(a) * * *

(1) All parties stipulate that the initial decision may be omitted and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

* * * * *

(c) * * *

(1) All parties stipulate that the initial decision may be made effective immediately and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

* * * * *

§ 2.762 [Removed]

17. Part 2 is amended by removing § 2.762.

18. Section 2.763 is revised to read as follows:

§ 2.763 Oral argument.

In its discretion the Commission may allow oral argument upon the request of a party made in a petition for review or brief on review, or upon its own initiative.

§ 2.764 [Amended]

18a. In § 2.764, paragraph (e)(1)(i), the words "Appeal Board and" are removed, and the reference to "paragraphs (e)(2) and (e)(3)" is revised to read "paragraph (e)(2)".

19. In § 2.764, paragraph (e)(3) is removed and paragraphs (a), (b), (e)(2), (f)(2)(iv), and (g) are revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

(a) Except as provided in paragraphs (c) through (f) of this section, or as otherwise ordered by the Commission in special circumstances, an initial decision directing the issuance or amendment of a construction permit, a construction authorization, or an operating license shall be effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to review thereof and further decision by the Commission upon petition for review filed by any party pursuant to § 2.786 or upon its own motion.

(b) Except as provided in paragraphs (c) through (f) of this section, or as otherwise ordered by the Commission in special circumstances, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing or granting of a petition for review, shall issue a construction permit, a construction authorization, or an operating license, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

* * * * *

(e) * * *

(2) Commission. Within sixty days of the service of any Licensing Board decision that would otherwise authorize issuance of a construction permit, the Commission will seek to issue a decision on any stay motions that are timely filed. Such motions shall be filed as provided by 10 CFR 2.786. For the purpose of this policy, a "stay" motion is one that seeks to defer the effectiveness of a Licensing Board decision beyond the period necessary for the Commission action described herein. If no stay papers are filed, the Commission will, within the same time period (or earlier if possible), analyze the record and construction permit decision below on its own motion and will seek to issue a decision on whether a stay is warranted. It shall not, however, decide that a stay is warranted without giving the affected parties an opportunity to be heard. The initial decision will be considered stayed pending the Commission's decision. In deciding these stay questions, the Commission shall employ the procedures set out in 10 CFR 2.788.

(f) * * *

(2) * * *

(iv) In announcing a stay decision, the Commission may allow the proceeding to run its ordinary course or give instructions as to the future handling of the proceeding. Furthermore, the Commission may in a particular case determine that compliance with existing regulations and policies may no longer be sufficient to warrant approval of a license application and may alter those regulations and policies.

(g) The Commission's effectiveness determination is entirely without prejudice to proceedings under § 2.786 or § 2.788.

20. In § 2.770, paragraph (a) is revised to read as follows:

§ 2.770 Final decision.

(a) The Commission will ordinarily consider the whole record on review, but may limit the issues to be reviewed to those identified in an order taking review.

* * * * *

21. In § 2.771, paragraph (a) is revised to read as follo

§ 2.771 Petition for reconsideration.

(a) A petition for reconsideration of a final decision may be filed by a party within ten (10) days after the date of the decision.

* * * * *

22. In § 2.780, paragraph (e)(2) is revised to read as follows:

§ 2.780 Ex parte communication.

* * * * *

(e) * * *

(2) The prohibitions of this section cease to apply to ex parte communications relevant to the merits of a full or partial initial decision when, in accordance with § 2.786, the time has expired for Commission review of the decision.

* * * * *

23. In § 2.781, paragraphs (d)(2) and (f) are revised to read as follows:

§ 2.781 Separation of functions.

* * * * *

(d) * * *

(2) The prohibitions of this section will cease to apply to the disputed issues pertinent to a full or partial initial decision when, in accordance with § 2.786, the time has expired for Commission review of the decision.

* * * * *

(f) If an initial or final decision is stated to rest in whole or in part on fact or opinion obtained as a result of a communication authorized by this section, the substance of the communication must be specified in the record of the proceeding and every party must be afforded an opportunity to controvert the fact or opinion. If the parties have not had an opportunity to controvert the fact or opinion prior to the filing of the decision, a party may controvert the fact or opinion by filing a petition for review of an initial decision, or a petition for reconsideration of a final decision that clearly and concisely sets forth the information or argument relied on to show the contrary. If appropriate, a party may be afforded the opportunity for cross-examination or to present rebuttal evidence.

§ 2.785 [Removed]

24. Part 2 is amended by removing § 2.785.

25. Section 2.786 is revised to read as follows:

§ 2.786 Review of decisions and actions of a presiding officer.

(a) Within forty (40) days after the date of a decision or action by a presiding officer, or within thirty (30) days after a petition for review of the decision or action has been filed under paragraph (b) of this section, whichever is greater, the Commission may review the decision or action on its own motion, unless the Commission, in its discretion, extends the time for its review.

(b)(1) Within fifteen (15) days after service of a full or partial initial decision by a presiding officer, and within fifteen (15) days after service of any other decision or action by a presiding officer with respect to which a petition for review is authorized by this part, a party may file a petition for review with the Commission on the grounds specified in paragraph (b)(4) of this section. The filing of a petition for review is mandatory for a party to exhaust its administrative remedies before seeking judicial review.

(2) A petition for review under this paragraph must be no longer than ten (10) pages, and must contain the following:

(i) A concise summary of the decision or action of which review is sought;

(ii) A statement (including record citation) where the matters of fact or law raised in the petition for review were previously raised before the presiding officer and, if they were not why they could not have been raised;

(iii) A concise statement why in the petitioner's view the decision or action is erroneous; and

(iv) A concise statement why Commission review should be exercised.

(3) Any other party to the proceeding may, within ten (10) days after service of a petition for review, file an answer supporting or opposing Commission review. This answer must be no longer than ten (10) pages and should concisely address the matters in paragraph (b)(2) of this section to the extent appropriate. The petitioning party shall have no right to reply, except as permitted by the Commission.

(4) The petition for review may be granted in the discretion of the Commission, giving due weight to the existence of a substantial question with respect to the following considerations:

(i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;

(iii) A substantial and important question of law, policy or discretion has been raised;

(iv) The conduct of the proceeding involved a prejudicial procedural error; or

(v) Any other consideration which the Commission may deem to be in the public interest.

(5) A petition for review will not be granted to the extent that it relies on matters that could have been but were not raised before the presiding officer. A matter raised sua sponte by a presiding officer has been raised before the presiding officer for the purpose of this section.

(6) A petition for review will not be granted as to issues raised before the presiding officer on a pending motion for reconsideration.

(c) If within thirty (30) days after the filing of a petition for review the Commission does not grant the petition, in whole or in part, the petition shall be

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deemed denied, unless the Commission in its discretion extends the time for its consideration of the petition and any answers thereto.

(d) If a petition for review is granted, the Commission will issue an order specifying the issues to be reviewed and designating the parties to the review proceeding and direct that appropriate briefs be filed, oral argument be held, or both.

(e) Petitions for reconsideration of Commission decisions granting or denying review in whole or in part will not be entertained. A petition for reconsideration of a Commission decision after review may be filed within ten (10) days, but is not necessary for exhaustion of administrative remedies. However, if a petition for reconsideration is filed, the Commission decision is not final until the petition is decided.

(f) Neither the filing nor the granting of a petition for review will stay the effect of the decision or action of the presiding officer, unless otherwise ordered by the Commission.

(g) Certified questions and referred rulings. A question certified to the Commission under § 2.718(i) or a ruling referred under § 2.730(f) must meet one of the alternative standards in this subsection to merit Commission review. A certified question or referred ruling will be reviewed if it either—

(1) Threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; or

(2) Affects the basic structure of the proceeding in a pervasive or unusual manner.

§ 2.787 [Removed]

26. Part 2 is amended by removing § 2.787.

27. Section 2.788 is revised to read as follows:

§ 2.788 Stays of decisions of presiding officers pending review.

(a) Within ten (10) days after service of a decision or action of a presiding officer any party to the proceeding may file an application for a stay of the effectiveness of the decision or action pending filing of and a decision on a petition for review. This application may be filed with the Commission or the presiding officer, but not both at the same time.

(b) An application for a stay must be no longer than ten (10) pages, exclusive of affidavits, and must contain the following:

(1) A concise summary of the decision or action which is requested to be stayed;

(2) A concise statement of the grounds for stay, with reference to the factors specified in paragraph (e) of this section; and

(3) To the extent that an application for a stay relies on facts subject to dispute, appropriate references to the record or affidavits by knowledgeable persons.

(c) Service of an application for a stay on the other parties shall be by the same method, e.g., telecopier message, mail, as the method for filing the application with the Commission or the presiding officer.

(d) Within ten (10) days after service of an application for a stay under this section, any party may file an answer supporting or opposing the granting of a stay. This answer must be no longer than ten (10) pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section to the extent appropriate. No further replies to answers will be entertained. Filing of and service of an answer on the other parties must be by the same method, e.g., telecopier message, mail, as the method for filing the application for the stay.

(e) In determining whether to grant or deny an application for a stay, the Commission or presiding officer will consider:

(1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;

(2) Whether the party will be irreparably injured unless a stay is granted;

(3) Whether the granting of a stay would harm other parties; and

(4) Where the public interest lies.

(f) In extraordinary cases, where prompt application is made under this section, the Commission or presiding officer may grant a temporary stay to preserve the status quo without waiting for filing of any answer. The application may be made orally provided the application is promptly confirmed by telecopier message. Any party applying under this paragraph shall make all reasonable efforts to inform the other parties of the application, orally if made orally.

28. Section 2.1000 is revised to read as follows:

§ 2.1000 Scope of subpart.

The rules in this subpart govern the procedure for applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area noticed pursuant to § 2.101(f)(8) or § 2.105(a)(5) of this part. The procedures in this subpart take precedence over the 10 CFR part 2, subpart G, rules of general applicability, except for the following provisions: §§ 2.702, 2.703, 2.704, 2.707, 2.709, 2.711, 2.713, 2.715, 2.715a, 2.717, 2.718, 2.720, 2.721, 2.722, 2.732, 2.733, 2.734, 2.742, 2.743, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.763, 2.770, 2.771, 2.772, 2.780, 2.781, 2.786, 2.788, and 2.790.

29. In § 2.1015, paragraph (c) is revised to read as follows:

§ 2.1015 Appeals.

* * * * *

(c) Appeals from a Presiding Officer initial decision or partial initial decision must be filed and briefed before the Commission in accordance with the following requirements.

(1) *Notice of appeal.* Within ten (10) days after service of an initial decision, any party may take an appeal to the Commission by filing a notice of appeal. The notice shall specify:

(i) The party taking the appeal; and

(ii) The decision being appealed.

(2) *Filing appellant's brief.* Each appellant shall file a brief supporting its position on appeal within thirty (30) days (40 days if Commission staff is the appellant) after the filing of notice required by paragraph (a) of this section.

(3) *Filing responsive brief.* Any party who is not an appellant may file a brief in support of or in opposition to the appeal within thirty (30) days after the period has expired for the filing and service of the brief of all appellants. Commission staff may file a responsive brief within forty (40) days after the period has expired for the filing and service of the briefs of all appellants. A responding party shall file a single responsive brief regardless of the number of appellants' briefs filed.

(4) *Brief content.* A brief in excess of ten (10) pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited.

(i) An appellant's brief must clearly identify the errors of fact or law that are the subject of the appeal. An intervenor-appellant's brief must be confined to issues which the intervenor-appellant placed in controversy or sought to place in controversy in the proceeding. For each issue appealed, the precise portion of the record relied upon in support of the assertion of error must also be provided.

(ii) Each responsive brief must contain a reference to the precise portion of the record which supports each factual assertion made.

(5) *Brief length.* A party shall not file a brief in excess of seventy (70) pages in length, exclusive of pages containing the table of contents, table of citations and any addendum containing statutes, rules, regulations, etc. A party may request an increase of this page limit for good cause. Such a request shall be made by motion submitted at least seven (7) days before the date upon which the brief is due for filing and shall specify the enlargement requested.

(6) *Certificate of service.* All documents filed under this section must be accompanied by a certificate reflecting service upon all other parties to the proceeding.

(7) *Failure to comply.* A brief which in form or content is not in substantial compliance with the provisions of this section may be stricken, either on motion of a party or by the Commission on its own initiative.

* * * * *

30. In § 2.1209, paragraph (d) is revised to read as follows:

§ 2.1209 Power of presiding officer.

* * * * *

(d) Certify questions to the Commission for determination, either in the presiding officer's discretion or on direction of the Commission;

* * * * *

31. Section 2.1241 is revised to read as follows:

§ 2.1241 Settlement of proceedings.

The fair and reasonable settlement of proceedings subject to this subpart is encouraged. A settlement must be approved by the presiding officer or the Commission as appropriate in order to be binding in the proceeding.

32. In § 2.1251, paragraphs (a), (c)(3) and (f) are revised to read as follows:

§ 2.1251 Initial decision and its effect.

(a) Unless the Commission directs that the record be certified to it in accordance with paragraph (b) of this section, the presiding officer shall render an initial decision after completion of an informal hearing under this subpart. That initial decision constitutes the final action of the Commission thirty (30) days after the date of issuance, unless any party petitions for Commission review in accordance with § 2.786 or the Commission takes review of the decision sua sponte.

* * * * *

(c) * * *

(3) The time within which a petition for review may be filed, the time within which any answer to a petition for review may be filed, and the date when the decision becomes final in the absence of the Commission taking review of the decision.

* * * * *

(f) Following an initial decision resolving all issues in favor of the licensing action as specified in paragraph (e) of this section, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing of a petition for review or pendency of any review taken by the Commission pursuant to § 2.786, shall take the appropriate licensing action upon making the appropriate licensing findings promptly, except as may be provided pursuant to paragraph (e)(1) or (2) of this section.

33. Section 2.1253 is revised to read as follows:

§ 2.1253 Petitions for review of initial decisions.

Parties and § 2.1211(b) participants may petition for review of an initial decision under this subpart in accordance with the procedures set out in § § 2.786 and 2.763 or the Commission may review the decision on its own motion. Commission review will be conducted in accordance with those procedures the Commission deems appropriate. The filing of a petition for review is mandatory for a party to exhaust its administrative remedies before seeking judicial review.

§ 2.1255 [Removed]

34. Part 2 is amended by removing § 2.1255.

§ 2.1257 [Removed]

35. Part 2 is amended by removing § 2.1257.

36. In part 2, appendix A, section IX is removed and section I(b) is revised to read as follows:

Appendix A—Statement of General Policy and Procedure: Conduct of Proceedings for the Issuance of Construction Permits and Operating Licenses for Production and Utilization Facilities for Which a Hearing Is Required Under Section 189a of the Atomic Energy Act of 1954, as Amended

* * * * *

I. Preliminary Matters

* * * * *

(b) In fixing the time and place of any conference, including prehearing conferences, or of any adjourned session of the evidentiary hearing, due regard shall be had for the convenience and necessity of the parties, petitioners for leave to intervene, or the representatives of such persons, as well as of the Board members, the nature of such conference or adjourned session, and the public interest. Adjourned sessions of hearings may be held in the Washington, DC area if all parties so stipulate. If the parties disagree, and any party considers that there are valid reasons for holding such session in the Washington, DC area, the matter should be referred to the Commission for resolution.

* * * * *

36A. In part 2, appendix a, section I(c)(1), the reference to "§§ 2.760 and 2.762" is revised to read "§ 2.760".

37. In 10 CFR part 2, all further references to the "Atomic Safety and Licensing Appeal Panel," "Atomic Safety and Licensing Appeal Board" and "Appeal Board" are removed and the following instructions apply:

A. In cases where there are two references, and the word "or" precedes or follows one of the listed terms, it is removed with the term.

B. In cases were there are two references and the words "as appropriate" appear in the same sentence with the listed term, they are also removed.

C. If the words "and" or "and/or" precede one of the terms listed, it is removed with the term.

D. The words "the", "a", or "an" preceding one of the listed terms is removed with the term if there are no other remaining terms to which the word applies.

Dated at Rockville, MD this 19th day of June , 1991.

For the Nuclear Regulatory Commission,

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-15092 Filed 6-26-91; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No. R-0713]

Rules Regarding Availability Of Information; Freedom of Information Reform Act

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Final Rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the "Board") has adopted as a final rule, without change, the amendment to its Rules Regarding Availability of Information that was adopted by interim rule effective January 2, 1991 (55 FR 49876, December 3, 1990). The interim rule reflected changes in the direct costs to the Board to conduct searches, review documents, and copy documents in

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response to requests made under the Freedom of Information Act ("FOIA") by adding an "appendix A" to 12 CFR 2610.10—Freedom of Information Fee Schedule. "Appendix A" amended the Board's previous fee schedule established in 1987 (52 FR 15299, April 28, 1987). Appendix A will remain the same as that adopted in the interim rule.

EFFECTIVE DATE: June 27, 1991

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Attorney, Legal Division (202/452-2418); or Susanne K. Mitchell, Manager, Freedom of Information Office (202/452-3684); or for the hearing impaired *only*, Telecommunications Device for the Deaf ("TDD"), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) ("FOI Reform Act") requires each federal agency to "promulgate regulation, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests" under the Freedom of Information Act. These regulations must conform to guidelines issued by the Office of Management and Budget ("OMB") (52 FR 10018, March 27, 1987). The FOI Reform Act requires that the fees charged provide only for the recovery of the direct costs of search, review, and duplication (5 U.S.C. 552(a)(4)(A)(iv)).

The Board's current fee schedule, which was established by the interim rule, amended the fee schedule that had been in effect since May 1987 (52 FR 15299, April 28, 1987). The Board issued the current fee schedule as an interim rule; and the Board invited comments regarding the interim fee schedule prior to adoption of the final rule (55 FR 49676 December 3, 1990).

The comment period has expired and the Board has received no comments regarding this matter. Accordingly, the Board has adopted as a final rule the increase in its fees applicable to FOIA requests set out in the interim rule. Neither the interim rule nor this final rule makes any change in the definition of services or direct or actual costs, or in the treatment of various categories of requesters.

Pursuant to 5 U.S.C. 553(d), the Board finds that good cause exists to make this final rule effective immediately. The interim rules provided a 30-day comment period, and no comments were received during or after the comment period. The interim rule and the final rule are identical, and the interim rule remains in force until the final rule becomes effective. Therefore, no useful purpose would be served by having this rule take effect after 30 days instead of immediately.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The amendment confirms a change in agency fees applicable to FOIA requests and will not have any particular impact on small entities subject to the regulation.

List of Subjects in 12 CFR Part 261

Confidential business information, Federal Reserve System, Freedom of Information.

For the reasons set forth in this document, and pursuant to the Board's authority under the Freedom of Information Reform Act of 1986 (Pub. L. 99-570, 5 U.S.C. 552(a)(4)(A)(i)) to promulgate rules implementing the FOI Reform Act, the Board confirms its amendment of 12 CFR part 261.

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

Accordingly, the interim rule amending 12 CFR part 261 which was published at 55 FR 49676 on December 3, 1990, is adopted as a final rule without change.

By order of the Board of Governors of the Federal Reserve System, June 21, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-15297 Filed 6-26-91; 8:45 am]

BILLING CODE 6210-01-F

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 620, and 621

RIN 3052-AB20

Organization; Disclosure to Shareholders; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board, adopts final regulations that amend 12 CFR parts 611, 620, and 621, that were published as proposed regulations on January 24, 1991 (56 FR 2715). These final regulations implement changes made necessary as a result of the amendment of the Farm Credit Act of 1971 (1971 Act), as amended by the Agricultural Credit Act of 1987 (1987 Act) (Pub. L. 100-233). The final regulations require disclosure of enforcement actions and additional disclosure related to capital, obligations of the Farm Credit System Financial Assistance Corporation, obligations insured by the Farm Credit System Insurance Corporation (FCSIC), and the establishment of the Federal Agricultural Mortgage Corporation (Farmer Mac); and new authorities to participate in Farmer Mac programs. Other amendments clarify the existing disclosure and accounting and reporting requirements; reflect changes to generally accepted accounting principles; and modify existing requirements for preparing, distributing, and filing reports. The final regulations also include technical amendments necessary to recognize the structural changes in Farm Credit System (System) institutions and changes in lending authority required or authorized by the 1987 Act.

EFFECTIVE DATE: These regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On January 24, 1991, the Farm Credit Administration (FCA) published for public comment (56 FR 2715) proposed amendments to 12 CFR parts 611, 620, and 621 relating to Farm Credit System (System) institutions' disclosure to shareholders. The proposed amendments also reflected changes in the Farm Credit Act of 1971, as amended by the Agricultural Credit Act of 1987 (1987 Act) (Pub. L. 100-233). The proposed amendments were divided into three categories. In the first category were proposed technical amendments to the regulations addressing changes in the structure and lending authority of System institutions. The second category comprised proposed amendments requiring disclosure related

to capital, obligations insured by the Farm Credit System Insurance Corporation (FCSIC), obligations issued by the Farm Credit System Financial Assistance Corporation, purchases and sales of loans, participation in secondary market activities, and enforcement actions. The third category comprised other proposed procedural, technical, and conforming changes. Clarifications to the existing regulations regarding disclosure and accounting and reporting requirements were also proposed. The comment period for these proposed amendments closed on February 25, 1991.

The FCA received two letters commenting on the proposed regulations. One letter was submitted by the Farm Credit Council (FCC) on behalf of its membership and the Farm Credit Banks Funding Corporation (Funding Corporation). The other letter was submitted by the Farm Credit Bank (FCB) of Springfield and the Springfield Bank for Cooperatives endorsing the comments contained in the FCC letter. The FCC letter represented a summary of the consolidated comments of its membership and the Funding Corporation.

The FCC comment letter incorporated by reference two attachments containing a list of issues regarding the disclosure regulations identified by the System Financial Reporting/Disclosure Workgroup on which the System workgroup sought interpretations and expressed concerns. The issues were submitted by the System workgroup in August 1990. Some of these issues are addressed by the final regulations and others were addressed in a February 1991 FCA staff response that clarified existing provisions. The FCC requested that the final regulations address those requested interpretations and concerns and that clarifications be included as supplemental information to the final rule.

The FCA believes the final rule clarifies those points that need to be clarified and does not believe that it is necessary or appropriate to include the full text of the February response as supplemental information to the final regulations. However, the final regulations make no change to § 620.3(i)(2) of the existing regulations to increase the minimum reporting level of compensation to senior officers from $50,000 to $60,000 as requested. The issue of raising the compensation minimum reporting level for senior officers was included in the System workgroup's list of concerns. In adopting the proposed amendments to the existing regulations, the FCA considered the issue and believed that raising the minimum reporting level would not ensure Farm Credit institutions' full disclosure to shareholders. The FCA determined that an amendment in the proposed rule to raise the compensation minimum reporting level for senior officers was not appropriate and the final rule confirms the FCA's determination to make no changes to redesignated § 620.5(i)(2). The basis for establishing the existing minimum reporting level can be found at 51 FR 21336, June 12, 1986.

In addition, the FCA has not adopted the suggestion that a number of significant items of § 620.5 be relegated to a supplemental report that is available to shareholders only upon request. Because the annual and quarterly reports required by part 620 are used both as a prospectus and a shareholder report, the FCA believes it would not be appropriate to relegate essential disclosures to such supplemental reports. The FCA continues to believe that the nature of the information suggested to be included in a supplemental report is the information about an institution's operations that is needed by shareholders to make informed decisions and to hold management accountable for its actions. The FCA further believes that requiring shareholders to request essential disclosures constitutes an undue burden on shareholders and could preclude the receipt of data by shareholders on a timely basis.

The following discussion summarizes comments received and the FCA's response to the comments. The discussion is presented by section in the order the sections appear in the final regulations. It includes an explanation of the proposed amendments to the existing regulations, comments on the proposed amendments, the FCA response to the comments, significant supplementary information contained in the proposed rule necessary to clarify the final regulations, and an explanation of significant changes made to the proposed regulations in adopting the final regulations.

I. Part 611—Organization

Subparts L, M, and N of the existing regulations were proposed to be revised to reflect changes to the citations to part 620 that would be required by the proposed amendments. These are conforming changes only and are adopted with minor technical revisions.

II. Part 620—Disclosure to Shareholders

The FCC requested that the FCA clarify how the proposed regulations would apply to associations that have become long-term direct lenders but have not purchased the bank's existing loan portfolio. In response to this comment, the FCA notes that the term "direct lender", as defined in § 619.9135, includes agricultural credit associations (ACAs) and Federal land credit associations (FLCAs) that are authorized to lend to eligible borrowers. Thus, any association having such authority is a direct lender association for the purposes of the disclosure regulations. Accordingly, each association having direct lending authority must comply with the disclosure requirements for direct lenders, whether or not the association has purchased the existing bank loan portfolio.

A. Subpart A—General

The amended disclosure regulations contain many procedural and technical changes to part 620. A new subpart A has been added, and the existing subparts of part 620 have been redesignated accordingly. New "Subpart A—General" contains definitions and general provisions that are applicable to all disclosure statements required by all subparts of part 620. Specific requirements pertaining to individual reports remain in the applicable subparts.

1. Section 620.1—Definitions

To reflect the structural and capitalization changes in System institutions as a result of the 1987 Act, the final regulation incorporates new definitions as part 619 for "association," "bank," and "direct lender association" and new definitions in part 615 for "permanent capital" and "protected borrower capital." In addition, the final regulation adds a new definition of "significant event." The final regulation also adds new definitions, "related association" and "related bank," to replace the previous references to "district bank" and "association in the district"; updates the definition of "loan" to reflect the Federal Agricultural Mortgage Corporation (Farmer Mac) secondary market activities and purchases and sales of loans; and clarifies the definition of "normal risk of collectibility" in which loans having a greater than normal risk of collectibility may include loans other than nonperforming loans.

The FCC commented on several definitions contained in the proposed amendments. The first comment was on the proposed definition of "loan" in § 620.1(g). The FCC stated that the definition as drafted could be construed

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to have a much broader meaning. They further stated that the statement "that is recorded as an asset" contained in the first sentence of the definition should be repeated in the second sentence to subject all items listed in the second sentence to the same condition. The FCA notes that the first sentence of the definition provides a general definition that requires an item to be recorded as an asset in order to be considered a loan. The second sentence clarifies the general definition with specific examples that normally fall within the meaning of the general definition. Therefore, the repetition of the condition in the second sentence would be unnecessary. However, to ensure clarity, the FCA believes that it is necessary to include "lease financings" in the second sentence to support the general definition "extension of * * * lease" stated in the first sentence. The FCC also suggested that the definition of "loan" in parts 620 and 621 should be consistent. When it reviews part 621, the FCA will consider this specific comment as well as other comments made by the FCC relating to part 621 in that review.

The FCC further commented that the term "net worth" is unnecessary and possibly confusing. They believe that the term "capital" continues to be a suitable descriptive term to include all equity accounts. The FCA has considered the FCC's comment and concluded that the terms"capital" and "net worth" are generally interchangeable in the industry. However, the FCA has revised the final regulation to include the term "capital" in place of the proposed term "net worth." The FCA believes that capital that is protected by the 1987 Act must be separated from capital that is at risk on the face of the financial statements. This distinction is critical to readers' understanding of the financial statements and necessary for full disclosure regarding an institution's capital structure. Accordingly, the final regulation specifies what elements of "capital" are to be used in the calculation of certain financial ratios and in matters relating to the disclosure of capital.

Regarding the definition of "normal risk of collectibility," the FCC stated that the proposed amendment would result in an open-ended set of criteria. They believe that the "other high risk" classification in § 621.2(a)(18) would adequately cover any "miscellaneous" circumstances where a loan has more than the normal risk of collectibility and that the definition in part 620 is unnecessary and should be eliminated. The existing definition of "normal risk of collectibility" provides that "* * *. Any loans properly identifiable as 'nonperforming loans' * * * shall be deemed to have more than a normal risk of collectibility." This has been misinterpreted to mean that only nonperforming loans involve more than normal risk of collectibility. The FCA wishes to clarify that while all loans identified as nonperforming in accordance with § 621.2(a)(17) are determined to have more than a normal risk of collectibility, other loans may also be considered to have more than a normal risk of collectibility even though they may not be classified as nonperforming loans. The amendment is intended to emphasize that management is required to exercise judgment to determine whether a loan involves more than a normal risk of collectibility and such determination should be made independent from the classification of the loan as nonperforming. When it reviews part 621, the FCA will consider the definition of "other high risk loans" in its review. The FCA adopts the clarification of "normal risk of collectibility" as proposed.

Moreover, the FCC commented that "permanent capital" is not a term used in general-purpose financial statements and that the use of a permanent capital concept should be limited to certain regulatory calculations. They further commented that the amount of permanent capital disclosed on the balance sheet may differ from the permanent capital used in the computation of the permanent capital ratio (PCR) due to double-counted capital eliminations and the use of average daily balances. The FCA believes that "permanent capital" is an important and relevant term to shareholders because the ability of the institution to distribute earnings depends upon the level of permanent capital. The regulation does not contemplate that the term "permanent capital" be used on the face of the financial statements. The proposed regulations required disclosure of the amount of permanent capital in the selected financial data section, not in the financial statements. In order to clarify what amount of permanent capital is required under the selected financial data section, the FCA has revised the proposed heading "Permanent capital" in § 620.5(f) to "At-risk capital." The reporting institution should also disclose that, for the purpose of computing the PCR, adjustments in accordance with regulatory requirements are necessary.

Another comment stated that the proposed definition of "protected borrower stock" in § 620.1(k) is not sufficiently comprehensive and suggested using the term "protected borrower capital" to include any protected allocated surplus to make it clear to readers that more than stock is included. The FCA believed that the term "protected borrower stock" included protected allocated surplus because it references § 615.5200 and corresponds with the 1987 Act in which "borrower stock" includes stock, participation certificates, and allocated equities. However, in order to clarify this regulation, the FCA has no objection to using the suggested term "protected borrower capital" in place of "protected borrower stock," and has adopted the term in the final regulations.

Lastly, regarding the definition of "significant event" in § 620.1(q), the FCC asserted that a bank's execution of a financial assistance agreement with a small association may not represent a material risk to the bank, and the probability of activation of such an agreement may not be likely. The FCC requested clarification as to whether the financial assistance agreement in such circumstance would constitute a significant event. In order to clarify the requirements, the FCA notes that items listed in the proposed definition, i.e., actual or probable noncompliance with the regulatory minimum permanent capital standards or capital adequacy requirements, stock impairment, the imposition of or entering into enforcement actions, execution of financial assistance agreements with other institutions, collateral deficiencies that impact a bank's ability to obtain loan funds, and defaults of debt obligations, are deemed by the FCA to be significant events and are not subject to any evaluation or judgment as to their materiality or likelihood.

The FCC also asserted that the definition of "significant event" should include a reasonable future time period within which such events must occur in order to be considered significant and suggested 12 months to be a reasonable period of time in which to forecast significant events. The FCA disagrees with the FCC and believes that any significant event that is likely to have a material impact on the reporting institution should be disclosed, if known, without regard to the expectation of when such event will occur. However, it is recognized that the extent of the disclosure may vary depending on the institution's knowledge of the significance of the event at the time of the reporting.

2. Section 620.2—Preparing and Filing the Reports

Section 620.2 of the final regulations clarifies that reports sent to the FCA may be filed with offices designated by the Chief Examiner and specifies that the reports must be filed on or before the date required by the regulation. The section also contains a new requirement that reports be available for public inspection at the issuing institution. In addition, the reports must include a statement that the shareholders' investment in an association is materially affected by the financial condition of the related bank. The reports must also include the address and telephone number where an association shareholder can obtain copies of bank quarterly reports for quarters in which the bank does not distribute such information. The regulation also requires that the bank reports be provided to the requesting shareholder free of charge.

The FCC provided several comments on this section. First, it was suggested that proposed § 620.2(a) be clarified to state that each institution is required to file three copies of material actually provided to stockholders with the FCA. The FCA intends to prescribe the minimum requirements for filing of periodic reports with the FCA in § 620.2(a). The FCA has determined that the regulation as written is clear but also agrees that an institution would satisfy this regulatory requirement if it files with the FCA copies of material actually provided to stockholders. Therefore, no change to the regulation is necessary.

Secondly, the FCC recognized that a bank and its related associations continue to be financially and operationally interdependent and that they should continue to report on a combined basis. However, the FCC suggested that because facts and circumstances may change, the regulation should provide for greater flexibility by requiring that the reporting entity comply with Generally Accepted Accounting Principles (GAAP) rather than requiring combined reporting.

The FCA recognizes that the need for reporting on a combined bank and association basis may at some point change due to structural changes in the System, new capital requirements, and the prospect of increased autonomy and financial independence of associations. However, until conditions in the System change, the FCA continues to believe that combined bank and association reports provide shareholders with needed information to assess the impact that the bank and its related associations have on the financial condition of a particular association and its ability to obtain loan funds. Further, the FCA is monitoring developments of the Financial Accounting Standards Board in the area of consolidated reporting for the purpose of evaluating whether adjustments to the regulations are needed. The disclosure regulations can be amended at a later date to conform to any changes that may occur. Thus, the FCA has determined that no changes to the proposed regulations are needed at this time.

In addition, the FCC requested the FCA to develop in the context of the accounting and reporting regulations, a meaningful and usable presentation of the allowance for loan losses and provision for loan losses for the users of financial statements of production credit associations (PCAs). The FCC further suggested that the regulation should provide for the balance sheet and the statement of income to be prepared in accordance with GAAP and allow the impact of the statutory requirements to be disclosed in notes to the financial statements. The FCC believes that this would result in the most meaningful presentation to shareholders and would eliminate the "unnecessary and complex Management Discussion and Analysis" which currently must explain and disclose statutory requirements that have no impact on the operations of the PCAs.

The FCA will consider these comments in its review of part 621 in the light of any legislative changes to section 2.3(b) of the 1971 Act that may have occurred at that time.

The FCC further suggested that the regulations use the term "district report" to reference the report prepared on a combined basis for a bank and its related associations and the term "bank only" to reference the report of a bank standing alone. Moreover, they requested that redesignated § 620.2(g) be revised to clarify that bank-only financial statements may be in summary form and to include additional language concerning disclosure for a bank for cooperatives (BC).

In response to these comments, the FCA has revised the last sentence of § 620.2(g) to clearly reflect that the bank-only statements that are included in the annual and quarterly bank reports may be provided in summary form. However, the combination requirement in paragraph (g) only applies when a bank has related associations. Since BCs do not have related associations, the requirement for combined financial statements does not apply.

Lastly, the FCC states that proposed § 620.2(i) appeared to require that two reports be sent to requesting shareholders—one from the association and one from its related bank—and requested that the FCA clarify what is intended by the paragraph. To clarify the requirement of § 620.2(i), the FCA has revised the final regulations to require the institution receiving the request to provide the requesting shareholder with a bank quarterly report.

3. Section 620.3—Prohibition Against Incomplete, Inaccurate, or Misleading Disclosure

The FCA proposed a new § 620.3 that expands the prohibition against incomplete, inaccurate, or misleading disclosures in connection with an election to apply to any disclosure made by a Farm Credit institution or its officers, directors, or employees to the general public concerning any matter required by part 620. Section 620.3 also requires an institution or person to make additional or corrective disclosure when a disclosure is made that is, in the judgment of the FCA, incomplete, inaccurate, or misleading.

The FCC commented that the term "incomplete" is too vague to provide appropriate guidance as to when a disclosure is, in fact, "complete." The FCC suggested using language similar to that used by the Federal Deposit Insurance Corporation (FDIC) in regulations relating to shareholder meetings. The FDIC regulation at 12 CFR 335.206 includes the phrase "omits to state any material fact necessary in order to make the statement therein not false or misleading." The FCC believes this phrase to be a more precise standard and more capable of uniform application by System banks and associations. The FCC also commented that its review of comparable Federal banking regulations failed to disclose any similar requirement for corrective statements when judged necessary by the regulator.

In response to these comments, the FCA believes that shareholders of System institutions are entitled to full and fair disclosure relating to the financial condition and operations of such institutions. The regulations in part 620 are intended to provide the minimum information necessary to constitute full and fair disclosure. Therefore, if a portion of the required information were not disclosed in the annual and quarterly reports, such as a description of material pending legal proceedings, the reports would not present full disclosure to the

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shareholders. The application of the terms "incomplete," "inaccurate," and "misleading" would include situations in which a reporting institution omitted a material fact necessary in order to make the other statements made not false or misleading. However, the FCA also wishes to ensure that the prohibition covers situations in which required disclosure items are omitted that do not make other disclosures false or misleading but would result in a shareholder's receiving less than full disclosure of the financial condition and operations of the institution.

Regarding the requirement that an institution or person make additional or corrective disclosure, the FCA believes corrective disclosure is an appropriate remedy in instances where shareholders or the general public have been provided with information that does not represent full and fair disclosure. For these reasons, the FCA has determined not to make any of the suggested changes to § 620.3.

B. Subpart B—Annual Report to Shareholders

1. Section 620.4—Preparing and Distributing the Annual Report

Section 620.4 sets forth specific requirements for filing of the annual report. The section consists of the requirements contained in § 620.2 (a), (b), and (c) of the existing regulations with necessary adjustments to reflect structural changes of Farm Credit institutions. The section requires that the entire bank report (which includes financial statements of the bank and combined financial statements of the bank and its related associations as well as management's discussion and analysis (MD&A)) be distributed to association shareholders. It also includes a new statement to clarify that a bank shall coordinate its distribution of an annual report with its related associations.

2. Section 620.5—Contents of the Annual Report to Shareholders

Section 620.3 of the existing regulations has been redesignated as § 620.5. Redesignated § 620.5 requires disclosure to reflect statutory and regulatory changes regarding capital adequacy, lending authority, insurance of certain Systemwide debt obligations, participation in the Farmer Mac secondary market program, and other activities authorized or mandated by the 1987 Act. The section also requires disclosure of enforcement actions, presentation of a statement of cash flows, and a statement of changes in protected borrower capital and at-risk capital.

The FCC's letter contained a number of specific comments on this section. The FCA's responses to these comments are discussed below by paragraph.

(a) Description of business. Redesignated § 620.5(a)(3) sets forth the requirement for disclosure of the types of lending activities engaged in and financial services offered by the reporting institutions. Section 620.5(a)(3) also requires a bank to include disclosure for services offered by its related associations. Section 620.5(a)(3) of the proposed regulations referred to a bank's related associations as "associations that are its shareholders." The FCC questioned whether a bank's disclosure should include a description for an association that has terminated its System status but continues to be a shareholder of the bank. The FCA did not intend to require a bank to disclose business of a non-System institution. Although the association continues to be a shareholder of the bank, disclosure of an institution that has ceased its System status is not required. To clarify the intent of the regulation, the FCA has revised the above reference in paragraph (a)(3) by substituting the defined term "related associations" for "associations that are its shareholders." The FCC also expressed its concern on the provision requiring only banks to disclose services offered by a service organization. The FCC indicated that at some future time associations may also own service organizations to engage in Farmer Mac secondary market activities as proposed in 55 FR 9136, March 12, 1990. In response to this comment, the FCC has expanded the provision to apply to associations. Also, the requirement for a disclosure of the institution's participation in the Farmer Mac program and origination of loans for resale in § 620.5(a)(3) has been relocated to § 620.5(g)(1)(iii)(A).

Moreover, the FCC suggested that both § 620.5 (a)(3) and (a)(9), concerning a description of the business of and relationship with its related System institutions, be revised to subject these requirements to a materiality judgment. The FCA notes that the disclosure required under paragraphs (a)(3) and (a)(9) is a general description of the activities and services offered by the reporting entity and its related organizations and a brief description of the reporting entity's relationship with its related organizations. The extent of the description of the required disclosure is subject to management's materiality judgment. However, the disclosure required by these paragraphs is not subject to a materiality judgment.

Though the FCA did not propose any change to the provision, the FCC suggested that paragraph (a)(4) be amended to reduce the period to be covered in the discussion of significant business developments from 5 years to 3 years. The FCA believes that a 5-year period is necessary to show the trend of business movements and makes no change in this provision.

(b) Description of property. Redesignated § 620.5(b) includes a new statement to clarify the existing term "principal offices" as "major facilities where the institution makes and services its loans." The FCC suggested that the FCA revise the proposed clarification by using a minimum standard relating to the book value of the facility as compared to the institution's capital, or a standard relating to a minimum percentage of total loan volume to provide more precise guidance as to which facilities qualify as "principal offices." The FCA notes that disclosure in § 620.5(b) is intended to identify major office locations where the reporting institution makes and services its loans. Therefore, any measurement relative to the value of the facilities is irrelevant to why an office location must be included. Each reporting institution must exercise judgment to determine whether an office constitutes a "major facility."

(c) Legal proceedings and enforcement actions. Redesignated § 620.5(c)(2) was proposed to require disclosure of enforcement actions. The FCC suggested that the proposed requirement for disclosure of the "nature" of enforcement actions be revised to require disclosure of the "type" of enforcement actions. Paragraph (c)(2) was intended to require a reporting institution to provide a general description of the condition or circumstances giving rise to the enforcement action. The institution should always identify the type of enforcement action when disclosing the existence of such action. To clarify what is to be disclosed, the FCA has revised paragraph (c)(2) to require a disclosure of the "type of and reason for each enforcement action in effect." The language in the final regulation has also been clarified to include disclosure of prohibitions from further participation in the conduct of the affairs of the institutions as well as removals of officers and directors. In addition, in reviewing comments received on the proposed regulations, the FCA considered the requirement to disclose suspensions of officers and directors.

Due to the effect the disclosure of a suspension could have on a director or officer personally, the FCA has deleted the mandatory requirement for disclosure of suspensions in the final rule. Consequently, the determination of whether or not suspensions are to be disclosed will be made by management on a case-by-case basis depending upon the materiality of the impact of a suspension on the reporting institution. Section 620.5(c)(2) as revised is similar to the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

(d) Description of capital structure. Redesignated § 620.5(d) reflects statutory and regulatory requirements with respect to capitalization of Farm Credit institutions. Institutions are required to state the regulatory permanent capital standards; the institutions' capital adequacy requirements and minimum stock purchase requirements; statutory and regulatory restrictions on the distribution of earnings and retirement of stock when capital standards are not met; the regulatory requirement that banks for cooperatives add annual amounts to unallocated surplus until the unallocated surplus reaches half of the institutions' minimum permanent capital requirements; and whether the reporting institutions are currently subject to any such restrictions or requirements or know of any reason they will be subject to such requirements during the fiscal year subsequent to the fiscal year just ended.

The FCC commented that a simple statement regarding each item would be adequate and that guidance as to the nature and extent of the expected disclosure for capital-related matters is necessary. The FCA concurs with the FCC's view that a simple statement that effectively describes each of the subject matters is adequate. The FCA recognizes that the regulatory permanent capital standard is only a minimum standard, and an institution may nevertheless need more permanent capital to provide for the growth necessary to meet the needs of its borrowers and offset the risks inherent in that institution. As a result, the FCA believes that it is necessary to distinguish the regulatory minimum permanent capital standards from an institution's capital adequacy needs. Accordingly, a new § 620.5(d)(4) has been added to require a separate disclosure of the institution's capital adequacy requirements, and proposed § 620.5(d)(2) has been revised to require a description of regulatory minimum permanent capital standards and the disclosure of the institution's compliance with such standards. The final regulations also require banks to disclose the compliance of their related associations with the standards.

(e) Description of liabilities. Redesignated § 620.5(e) contains amendments to reflect the establishment of the FCSIC and the Farm Credit System Financial Assistance Corporation. The FCC contended that the requirement in § 620.5(e)(1) for a separate disclosure of insured versus uninsured debt is unnecessary and that disclosure of insured and uninsured debt would be made in accordance with GAAP if material. The FCA believes that shareholders are entitled to accurate information about the different nature and magnitude of insured and uninsured debt obligations issued by the reporting institution. Therefore, the FCA has concluded that the amounts of outstanding insured and uninsured debt are relevant and material to readers of financial statements, regardless of the quantitative materiality of the individual items.

The FCC also commented that any disclosure relative to other System institutions' responsibilities to repay obligations issued by the Farm Credit System Financial Assistance Corporation under paragraph (e)(4) would be unnecessarily complex and of no practical value to shareholders. The FCC further stated that disclosure in accordance with GAAP would meet the objective for meaningful disclosure to shareholders. The intent of § 620.5(e)(4) is to require a reporting institution to describe in general the System institutions' responsibility, as a whole, for repayment of such debt obligations. Section 620.5(e)(4) does not require a reporting institution to disclose specific repayment obligations of other System institutions. When the repayment obligation of the reporting institution is estimable, disclosure in accordance with GAAP would be required. Thus, no changes to paragraph (e)(4) are needed.

(f) Selected financial data. Redesignated § 620.5(f) is amended to conform to statutory and regulatory changes in the structure and capitalization of Farm Credit institutions. It also contains other technical changes, including the disclosure of extraordinary items and the deletion of the requirement to disclose the debt-to-capital ratio. In the final regulations, each selected item has been designated with a paragraph number for reference.

The FCC suggested that the FCA clarify whether the order and captions of the items in paragraph (f) may be altered or expanded by management to ensure the most appropriate and meaningful disclosure consistent with the other financial statements and schedules included in the annual report. The introductory paragraph of redesignated § 620.5 states that "The report shall contain the following items in substantially the same order * * *." This provision requires that discussions relating to the major caption of each paragraph that appeared in lower-case alphabetical order under § 620.5 be presented in the annual report in substantially the same order as prescribed in the regulations. However, this requirement does not apply to subissues prescribed within each of those paragraphs of § 620.5 that appeared in numerical order, Roman numeral sequence, or any other sequence. Accordingly, except for the major captions, management may expand the list under "Selected Financial Data" of § 620.5(f) and present the items prescribed thereunder in any logical order that would enhance readers' understanding of the report. In addition, the FCA does not object to System institutions' presentation of financial highlights in the form of condensed financial statements: *Provided*, That all items required are presented, and the presentation does not divert readers' attention away from significant financial indicators.

The FCC submitted two comments regarding disclosure of the permanent capital ratio (PCR). The FCC stated that the PCR of a combined entity is less meaningful than the bank-only PCR and requested the FCA to clarify that the 5-year disclosure requirement does not apply to the PCR for the years prior to the enactment of the 1987 Act. The FCA concurs with the first comment that the PCR of a combined entity is less meaningful and has modified proposed § 620.5(f) to specify that banks present the bank-only PCR. However, the FCA believes that a specific provision in the regulation to clarify that the 5-year PCR disclosure requirement does not apply to the years prior to the enactment of the 1987 Act is not necessary. It is presumed that each reporting institution is required to comply with the regulations for the years that are applicable to such institution. Therefore, disclosure of the PCR for the years prior to 1988 is not required.

The FCC further suggested that the term "allocated equities" be replaced by the term "allocated surplus." Because the suggested term "allocated surplus" is also an appropriate term for presentation of equity accounts in the financial statements, the FCA has

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adopted the suggested term in the final rule.

Lastly, the FCC suggested that the FCA insert in § 620.5(f) a provision permitting the combination of insignificant items and require only material items to be disclosed similar to provisions governing quarterly reports. In response to this comment, the FCA notes that the selected financial data should be distinguished from the condensed financial statements, where the combination of insignificant items is necessary in order to make a condensed balance sheet or income statement balance. The 5-year selected financial data required is data that is relevant in the analysis of the System institutions. Such disclosure is intended to allow readers of the financial statements to analyze the institution's performance based on trends over a period of years in the items presented. In presenting the required selected data, materiality is not relevant. Because the data selected are single elements within the major financial statement captions, the totaling of individual selected items is not required. Therefore, it is unnecessary to include a provision in paragraph (f) to allow the combination of insignificant data. However, a reporting institution may omit a selected item that is not applicable to the institution.

With respect to condensed financial statements, the rules for condensation for quarterly reports are intended to allow an institution to prepare a less detailed financial report than the annual report while ensuring that any major increases or decreases since the end of the preceding fiscal year are disclosed. This takes into consideration materiality and also presumes that the users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year. Because of the difference in purpose of the quarterly reports and the 5-year selected data, the criteria for presentation of the data and the application of materiality are also different.

(g) Management's discussion and analysis of financial condition and results of operations. The amendments to redesignated § 620.5(g) reflect changes resulting from the 1987 Act and require additional disclosure in the MD&A for capital, sales and purchases of loans, and secondary market activities of the reporting institution. In view of the focus on the statutory and regulatory requirements of permanent capital and capital adequacy, the amended regulations delete the concept of "risk funds." The provision requiring banks to disclose agricultural production loans by major subcategory is also deleted. Each institution is required to discuss the adequacy of its permanent capital position and any trends, commitments, contingencies, or events that are reasonably likely to have a materially adverse effect on the institution's capital adequacy or its ability to meet minimum permanent capital standards. It also requires disclosure of any foreseeable material change in its capital plan adopted pursuant to § 615.5200 that may have an effect on the institution's minimum stock purchase requirement or its ability to retire stock and distribute earnings. In addition, in order to make the association's report more complete, each association is required to disclose its relationship with its related bank, as well as any events affecting the bank, if known, that would also materially affect the association.

Some institutions have misinterpreted the existing regulations to require that the quarterly report contain a management's discussion and analysis (MD&A) repeating much of the same information included in its annual report. The regulation only requires discussion of any material changes that have occurred since the end of the last fiscal year to be presented in an easily understandable format. For presentation of financial statements, § 620.11(b)(4) of the existing regulations states that "* * * footnote disclosure that would substantially duplicate the disclosure contained in the most recent audited financial statements (such as a statement of significant accounting policies and practices), and details of accounts that have not changed significantly in amount or composition since the end of the most recent completed fiscal year may be omitted." With respect to the MD&A, § 620.3(c) of the existing regulations states that "Discuss material changes, if any, to the information provided to shareholders pursuant to § 620.3(g) that have occurred during the periods specified * * *."

Management of each institution is responsible for ensuring that quarterly reports include an appropriate discussion regarding an institution's financial health. It need not be voluminous to comply with the disclosure regulations. As the FCA has noted in the past, institutions that include information not required by the regulations may not necessarily be making the most meaningful disclosure to shareholders. Disclosure of a large volume of information without clarity and focus does not constitute meaningful disclosure. The quarterly report should contain a concise but meaningful discussion of material changes presented in an easily understandable format. Disclosure by an institution to its shareholders of information that is not organized in an easily understandable format or is presented in a manner that is misleading would constitute a reporting deficiency pursuant to redesignated § 620.11(a).

The FCC submitted three comments on § 620.5(g). The first comment was on proposed § 620.5(g)(1)(iii), which requires disclosure of the amount of purchased loans, loans sold with recourse, retained subordinated interests in loans sold, and interest in pools of subordinated interests that are held in lieu of retaining a subordinated participation interest in the loans sold. The FCC believed that paragraph (g)(1)(iii) as proposed would potentially require extensive disclosure and suggested that the provision be amended to require only disclosure of arrangements that are significant to the institution's operation. The FCC further suggested that the FCA clarify whether this requirement is intended to apply to all participations.

The FCA does not intend redesignated § 620.5(g)(1)(iii) to apply to loans sold with no recourse. However, disclosure relating to loans sold into the Farmer Mac program without recourse is required in paragraph (g)(1)(iv)(E) of the same section. The FCA believes that the disclosure required by the proposed regulation is meaningful in that activities relating to the Farmer Mac secondary market and purchases and sales of loans involves different risk exposure than holding loans in an institution's portfolio. Disclosure required by paragraph (g)(1)(iii) is merely the "amount" of the arrangements by type; a detailed discussion of the institution's involvement is not required. However, when such arrangements are material to the institution's operations, additional disclosure of the institution's involvement and risk exposure in the arrangements is required under the provisions of § 620.5(g)(1)(iv)(B) and (E). Section 620.5(g)(1)(iii) of the proposed regulations has been redesignated as § 620.5(g)(1)(iii)(B) of the final rule.

The FCC also commented that any explanation of the basis of the calculation of ratios relating to permanent capital and at-risk capital would be too technical for a meaningful disclosure to shareholders. The FCA believes a general discussion of how the ratios are computed and the adequacy of capital is important to a shareholder's understanding of the restrictions on the distribution of earnings. The FCA intends that the explanation be a general explanation on how the ratios are computed rather than a technical description of the computations.

The FCC also questioned whether the purpose of the proposed amendment of § 620.5(g)(4)(ii) is to require a greater quantification of data or a discussion of trends. The FCA proposed to amend paragraph (g)(4)(ii) to ensure that each institution's disclosure would cover all aspects of capital resources, i.e., protected borrower capital, permanent capital, debt obligations, and any off-balance-sheet financing, and changes thereto. The amended § 620.5(g)(4)(ii) should not be construed as seeking a greater quantification of data.

(j) Transactions with senior officers and directors. This paragraph was proposed to be amended to eliminate the reference to district Federal land banks, which no longer exist as a result of the 1987 Act. The FCC requested that the FCA clarify whether the phrase "the last full fiscal year-to-date" in the paragraph means "the last fiscal year" in the context of the annual report. The FCA clarifies the phrase in the final regulations by removing the hyphens and affirms the FCC's interpretation of the phrase in the context of the annual report.

C. Subpart C—Quarterly Report to Shareholders

1. Section 620.10—Preparing and Distributing the Quarterly Report

The final rule makes substantive changes in the distribution of bank quarterly reports to the shareholders of its related associations. The final regulations require the quarterly reports of the bank to be sent to association shareholders, except for quarters in which no significant events have occurred and no previously disclosed significant events continue to materially affect the bank and the related associations. For periods in which no significant events occur and no previously disclosed significant events continue to materially affect the related associations, bank quarterly reports are required to be made available upon request to association shareholders. Further, the final regulations require the bank to certify to the FCA that no significant events have occurred during the current quarter and no such events that occurred during previous quarters continue to have a material impact on related associations. The certification is required to be signed by the persons who are required to sign the quarterly report filed with the FCA. The regulation further require that bank quarterly reports be routinely distributed to shareholders of Federal land bank associations, which are not direct lender associations.

The FCC made several comments and suggestions regarding amended § 620.10, but was supportive of the changes in the proposed regulations modifying the requirement for routine distribution of bank quarterly reports to shareholders of direct lender associations. Regarding § 620.10(a), the FCC stated that paragraph (a) could be interpreted to exempt a bank from quarterly reporting requirements when all of the related associations in its district have direct lending authority. The FCC seeks clarification as to whether the FCA intends this result. In response to this comment, the FCA notes that the term "direct lender" should be distinguished from the term "retail lender." Farm Credit Banks are direct lenders by virtue of their authority to lend to associations, even if all retail authority has been transferred to the associations. As such, banks are required to prepare and distribute quarterly reports regardless of whether or not they exercise their direct lending authority.

Regarding § 620.10(e) and the definition of "significant event" in § 620.1(q) of the final regulations, the FCC interpreted the language of the proposed regulations as follows: During the quarter in which a bank receives or enters into an enforcement action or executes a financial assistance agreement, the bank's quarterly report would be distributed to association shareholders. In the quarters subsequent to the quarter in which the enforcement action or financial assistance agreement was put in place, the bank would not be required to distribute its quarterly report to association shareholders if no significant events which occurred during preceding quarters continue to materially affect the related associations. Therefore, the bank would be required to conduct an analysis to determine whether the occurrence of the event continued to materially affect the related associations, and, if it did not, the bank would then make the certification to the FCA that no significant events continue to affect related associations.

The FCA confirms that the FCC's interpretation is correct. The regulation is intended to require that, when a significant event described in § 620.10 occurs, the bank must distribute its quarterly report to association shareholders. For the quarters following the initial occurrence of the event, whether or not distribution is required will depend upon the materiality of the subsequent development of the event on its related associations.

The FCC further contended that the requirement of § 620.10(e) of the proposed regulations for each board member to sign the certification that no significant event has occurred is excessive and suggested that it would be sufficient to require the signature of the chairman of the board, the chief executive officer, and the disclosure officer. Due to the financial interdependence of banks and associations and the impact the significant events could have on the associations, the FCA believes that the determination of whether significant events have occurred should be made by the full board. The board must make a reasonable attempt to obtain signatures of all board members. However, the FCA is aware that, at times, an individual required to sign the certification may not sign, but the FCA does not believe that this fact alone should require distribution of bank quarterly reports when they would not otherwise be required to be distributed. Therefore, in the final regulations, the FCA has revised paragraph (e) to require the certification to be signed by the same persons who are required to certify for the filing of the report with the FCA pursuant to redesignated § 620.2(b)(3). If a majority of the board of directors decides that no significant events have occurred or continue to have a material impact on related associations and signs the certification, the report need not be distributed. In such instances, the certification would be sent to the FCA with the names of the individuals who did not sign and a statement as to why they did not sign. However, if a majority of the board of directors is unable or refuses to sign the certification, the bank must distribute its quarterly report to association shareholders.

The FCC also suggested that the certification reference the definition of "significant event" in § 620.1(q). The FCA has revised the certification as suggested and also inserted the qualifier, "that are direct lenders," after "related associations" because a bank is only required to certify for its related direct lender associations.

Lastly, the FCC suggested that it is appropriate for associations to insert a disclosure of the procedures regarding distribution of bank reports only if the associations and bank elect to change their procedures in accordance with the proposed regulations. The FCC also suggested that § 620.10(g) of the proposed regulations state that the disclosure is required to be made after

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the effective date of the "subsection," rather that the effective date of the "amendment." Because the revised procedures for distribution of bank quarterly reports to association shareholders apply to all banks and associations and the revision constitutes a regulatory change, the FCA believes shareholders should be informed of the change even if the banks and associations do not intend to change the routine distribution of bank quarterly reports immediately. Section 620.10(g) has been revised to substitute the "paragraph" for the word "amendment."

2. Section 620.11—Content of Quarterly Report to Shareholders

Amendments were proposed to § 620.11 of the existing regulations to clarify current FCA requirements and to require a statement of cash flows in the disclosure regulations. Amended § 620.11 requires banks to publish the statement of cash flows on a quarterly basis and associations to publish the quarterly statement of cash flows at their option. The FCA believes that the quarterly statement of cash flows is less meaningful for an association than for a bank, since associations obtain funding from their related banks and loan payments received are seasonal.

The FCC requested that proposed § 620.11(d) be further amended to allow banks to prepare the quarterly statement of cash flows at their option. The FCA believes that banks should be required to publish the combined statement of cash flows on a quarterly basis, as the statement provides meaningful information to shareholders and holders of bank obligations. The statement of cash flows is, in part, intended to assess a reporting entity's ability to generate positive future net cash flows to meet its obligations and pay dividends and to assess its needs for external financing. Since Farm Credit banks issue debt obligations to the general public to obtain funding from external sources, this necessitates that banks publish the statement of cash flows on a quarterly basis. The FCC also suggested that the word "required" be changed to "provided" in proposed § 620.11(b). The FCA has made this change in the final regulations.

D. Subpart D—Association Annual Meeting Information Statement and Subpart E—Bank Director Disclosure Requirements

Subparts D and E of part 620 of the existing regulations were proposed to be revised to correctly reference the redesignated sections of part 620. These are conforming changes only and have been adopted as proposed.

III. Part 621—Accounting and Reporting Requirements

A. Subpart A—Accounting Requirements

1. Section 621.2—Definitions

The FCA proposed a technical amendment to the definition of "formally restructured loans" to clarify that the disclosure of formally restructured loans should be made in accordance with GAAP. The FCC made no comment on the proposed amendment but suggested that the supplementary information regarding this change contained in the proposed regulations be included in the final regulations. As stated in the supplementary information of the proposed regulations, existing § 621.2(a)(8) refers to "formally restructured" as defined in Statement of Financial Accounting Standards (SFAS) No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructuring (SFAS No. 15), issued by the Financial Accounting Standards Board. In the second sentence of § 621.2(a)(8), it further states that, "After a loan is classified as 'formally restructured,' it shall continue to be classified as formally restructured until it is fully paid off or otherwise discharged." However, paragraph 40(a) of SFAS No. 15, which describes disclosure requirements for troubled debt restructuring, provides that a "* * * receivable whose terms have been modified need not be included in that disclosure if, subsequent to restructuring, its effective interest rate * * * has been equal to or greater than the rate that the creditor was willing to accept for a new receivable with comparable risk." As a result, some have questioned whether the regulation adequately reflects the possibility that, under SFAS No. 15, a restructured loan would no longer be considered formally restructured if, as a result of fluctuations in the interest rates on new receivables, the effective interest rate on a restructured loan is considered a market rate, i.e., the rate that the creditor was willing to accept for a new receivable with comparable risk. To prevent any further confusion, the FCA has amended § 621.2(a)(8) by deleting the second sentence, which has been interpreted as requiring, without exception, that a loan continue to be disclosed as "formally restructured" until it is fully paid off or otherwise discharged.

It should be noted that this change only addresses the issue of whether or not a loan shall be reported as a restructured loan in an institution's financial statements in accordance with the requirements of SFAS No. 15. For purposes other than reporting the loan in the financial statements in accordance with SFAS No. 15, the loan may still be considered a restructured loan.

List of Subjects in 12 CFR Parts 611, 620 and 621

Accounting, Agriculture, Banks, Banking, Credit, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 620, and 621 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.15, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a–2279f–1; secs. 411 and 412 of Pub. L. 100–233.

Subpart L—Liquidation of Associations

§ 611.1166 [Amended]

2. Section 611.1166 is amended by removing the references, "part 620, subpart A", "§ 620.3", "§ 620.2(e)", and "§ 620.2(f)" and adding in their places, the references, "§ 620.2 and subpart B of part 620", "§ 620.5", "§ 620.2(b)", and "§ 620.2(c)" in the first, second, and third sentences of paragraph (d) introductory text, respectively; by removing the reference, "§ 620.3(c)" and adding in its place, the reference "§ 620.5(c)" in paragraph (d)(2); by removing the reference, "§ 620.3(1)" and adding in its place, the reference "§ 620.5(1)" in paragraph (d)(3); by removing the reference, "subpart B" and adding in its place, the references "§ 620.2 and subpart C" in the first sentence of paragraph (e) introductory text; and by removing the reference, "§ 620.10(d)" and adding in its place, the reference "§ 620.2(b)" in the second sentence of paragraph (e) introductory text.

Subpart M—Liquidation of Banks

§ 611.1175 [Amended]

3. Section 611.1175 is amended by removing the references, "part 620, subpart A", "§ 620.3", "§ 620.2(e)", and "§ 620.2(f)" and adding in their places, the references "§ 620.2 and subpart B of part 620", "§ 620.5", "§ 620.2(b)", and "§ 620.2(c)" in the first, second, and third sentences of paragraph (d)

introductory text, respectively; by removing the reference, "§ 620.3(c)" and adding in its place, the reference, "§ 620.5(c)" in paragraph (d)(2); by removing the reference, "§ 620.3(1)" and adding in its place, the reference "§ 620.5(1)" in paragraph (d)(3); by removing the reference, "subpart B", and adding in its place, the references, "§ 620.2 and subpart C" in the first sentence of paragraph (e) introductory text; and by removing the reference, "§ 620.10(d)" and adding in its place, the reference "§ 620.2(b)" in the second sentence of paragraph (e) introductory text.

Subpart N—Conservators and Conservatorships of Banks and Associations

§ 611.1182 [Amended]

4. Section 611.1182 is amended by removing the references "§§ 620.2(e), 620.3(m) (3), 620.10(d), and 620.20(e) and (f)" and adding in their place, the references "§§ 620.2(b), 620.2(c), and 620.5(m)(2)" in paragraph (d).

PART 620—DISCLOSURE TO SHAREHOLDERS

5. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11; 12 U.S.C. 2252, 2254, 2279aa–11; sec. 424 of Pub. L. 100–233.

Subparts B, C, D, and E [Redesignated as C, D, E, and F]

6. Subparts B, C, D, and E are redesignated as new subparts C, D, E, and F.

6A. A new Subpart B—Annual Report to Shareholders is added.

§ 620.3 [Redesignated as § 620.5]

7. Section 620.3 is redesignated as new § 620.5 in subpart B.

8. Subpart A is amended by revising the heading to read as follows:

Subpart A—General

9. Section 620.1 is amended by adding introductory text; removing existing paragraph (i); redesignating paragraphs (b), (c), (d), (e), (f), (g), (h), and (j) as new paragraphs (o), (e), (f), (g), (h), (i), (n), and (p); adding new paragraphs (b), (c), (d), (j), (k), (l), (m), and (g); and revising newly redesignated paragraphs (g) and (i) to read as follows:

§ 620.1 Definitions.

For the purpose of this part, the following definitions shall apply:

* * * * *

(b) *Association* means any of the associations as described in § 619.9050 of this chapter.

(c) *Bank* means any of the Farm Credit banks as described in § 619.9140 of this chapter.

(d) *Direct lender association* means any association that is a direct lender as described in § 619.9135 of this chapter.

* * * * *

(g) *Loan* means any extension of credit or lease that is recorded as an asset of a reporting institution, whether made directly or purchased from another lender. The term "loan" includes, but is not limited to, loans originated through direct negotiations between the reporting institution and a borrower; purchased loans or interests in loans, including participation interests, retained subordinated participation interests in loans sold, interests in pools of subordinated participation interests that are held in lieu of retaining a subordinated participation interest in loans sold; contracts of sale; notes receivable; and other similar obligations and lease financings.

* * * * *

(i) *Normal risk of collectibility* means the ordinary risk inherent in the lending operation. Loans that are deemed to have more than a normal risk of collectibility include, but are not limited to, any loans properly identifiable as "nonperforming" as defined in § 621.2(a)(17) of this chapter.

(j) *Permanent capital* shall have the same meaning as set forth in § 615.5201(h) of this chapter.

(k) *Protected borrower capital* means eligible borrower stock as defined in § 615.5260 of this chapter.

(l) *Related association* means an association within the reporting bank's chartered territory that generates loans for the bank or whose operations the bank funds.

(m) *Related bank* means a reporting association's funding bank or the bank for which it generates loans.

* * * * *

(q) *Significant event* means any event that is likely to have a material impact on the reporting institution's financial condition, results of operations, cost of funds, or reliability of sources of funds. The term "significant event" includes, but is not limited to, actual or probable noncompliance with the regulatory minimum permanent capital standards or capital adequacy requirements, stock impairment, the imposition of or entering into enforcement actions, execution of financial assistance agreements with other institutions, collateral deficiencies that impact a bank's ability to obtain loan funds, or defaults on debt obligations.

10. Section 620.2 is amended by revising the heading; adding introductory text; redesignating paragraphs (a), (b), and (c) as new § 620.4, paragraphs (a), (b), and (c) in subpart B; removing paragraph (j); redesignating paragraphs (d), (e), (f), (g), (h), (i), and (k) as new paragraphs (a), (b), (c), (d), (e), (f), and (g); adding new paragraphs (h) and (i); removing the reference "paragraph (e)" and adding in its place "paragraph (b)" in newly redesignated paragraph (c); removing the words "this subpart" and adding in their place "subparts B and D" in newly redesignated paragraph (f); and revising newly redesignated paragraphs (a), (b)(3) attestation text, and (g) to read as follows:

§ 620.2 Preparing and filing the reports.

For the purposes of this part, the following shall apply:

(a) Three complete copies of each report or information statement required by this part (for the purpose of this section, referred to as "report" unless otherwise specified), including financial statements and related schedules, exhibits, and all other papers and documents that are part of the report shall be filed with the Chief Examiner, Farm Credit Administration, McLean, Virginia 22102–5090, or with such other Farm Credit Administration offices as the Chief Examiner designates. The report shall be received by the Farm Credit Administration within the period prescribed under applicable sections of individual subparts regarding preparation and distribution of the report. The annual and quarterly reports shall be available for public inspection at the issuing institution and the Farm Credit Administration office with which the reports are filed. Bank reports shall also be available for public inspection at each related association office.

(b) * * *

(3) * * *

The undersigned certify that this report has been prepared in accordance with all applicable statutory and regulatory requirements and that the information contained herein is true, accurate, and complete to the best of his or her knowledge and belief.

* * * * *

(g) Each annual and quarterly report of a bank shall present the financial statements of the bank and its related associations on a combined basis. The report shall also include, at a minimum, the statement of condition and statement of income for the bank only. The bank-only statements may be in summary form and shall disclose the basis of presentation if different from

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the accounting policies of the combined bank and association statements.

(h) Each association shall include a statement in a prominent location within each annual and quarterly report that the shareholders' investment in the association is materially affected by the financial condition and results of operations of the related bank and that a copy of the bank quarterly report is available upon request free of charge.

(i) Each annual and quarterly report shall include addresses and telephone numbers where association shareholders may obtain copies of bank quarterly reports. Upon request, the institution receiving the request shall promptly mail or deliver a bank quarterly report to the requesting shareholder free of charge.

11. A new § 620.3 is added to subpart A to read as follows:

§ 620.3 Prohibition against incomplete, inaccurate, or misleading disclosure.

No institution and no employee, officer, director, or nominee for director of the institution shall make any disclosure to shareholders or the general public concerning any matter required to be disclosed by this part that is incomplete, inaccurate, or misleading. When any such person makes disclosure that, in the judgment of the Farm Credit Administration, is incomplete, inaccurate, or misleading, whether or not such disclosure is made in disclosure statements required by this part, such institution or person shall make such additional or corrective disclosure as is necessary to provide shareholders and the general public with a full and fair disclosure.

12.–13. Newly redesignated § 620.4 is amended by adding a new section heading; revising paragraph (b); and removing the reference to "§ 620.3" and adding in its place "§ 620.5" in paragraph (c) to read as follows:

§ 620.4 Preparing and distributing the annual report.

* * * * *

(b) Each bank shall distribute its annual report to the shareholders of related associations within the period required by paragraph (a) of this section. Each bank shall coordinate such distribution with its related associations.

* * * * *

14. Newly designated § 620.5 is amended by removing the words "mergers or consolidations" and adding in their place "changes in the reporting entity" in paragraph (a)(4); adding the words ", i.e., headquarters, and major facilities where the institution makes and services its loans," after the word "principal offices" in paragraph (b); revising paragraph (c) heading; redesignating existing paragraph (c) text as new paragraph (c)(1); adding new paragraph (c)(2); removing the words "in the institution's judgment" from paragraph (g)(2)(v); revising paragraphs (a)(3), (a)(9), (d), (e)(1), (e)(2), (f), (g) introductory text, (g)(1)(i), (g)(2)(ii), (g)(2)(iii), (g)(4)(ii), (j)(3)(i), and (m)(1); removing paragraph (m)(2); redesignating existing paragraphs (g)(1)(iii), (g)(2)(vi), (g)(4)(v), and (m)(3) as new paragraphs (g)(1)(iv), (g)(2)(vii), (g)(4)(vi), and (m)(2); adding paragraphs (e)(4), (g)(1)(iii), (g)(1)(iv)(E), (g)(2)(vi), (g)(3)(ii)(C), and (g)(4)(v); and revising redesignated paragraph (g)(1)(iv) heading, paragraph (g)(1)(iv)(D), and paragraph (g)(4)(vi) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(a) *Description of business.* * * *

(3) The types of lending activities engaged in and financial services offered. Each bank shall also briefly describe the lending and financial services offered by its related associations, as well as financial services offered to the borrowers in the bank's chartered territory by any service organization in which it has an ownership interest. Each association shall briefly describe the lending and financial services offered by its related organizations or incorporate by reference relevant portions of the related bank's report, if such report is distributed to association shareholders;

* * * * *

(9) A brief description of the business of any related Farm Credit institution, as described in § 619.9146 of this chapter, and the nature of the institution's relationship with such organization.

* * * * *

(c) *Legal proceedings and enforcement actions.* * * *

(2) Describe the type of and reason for each enforcement action in effect, i.e., agreements, cease and desist orders, temporary cease and desist orders, prohibitions and removals of officers or directors, or civil money penalties, if any, imposed or assessed on the institution or its officers or directors and the amount of any civil money penalties assessed.

(d) *Description of capital structure.*

(1) Describe each class of stock and participation certificates the institution is authorized to issue and the rights, duties, and liabilities of each class. The description shall include:

(i) The number of shares of each class outstanding;

(ii) The par or face value;

(iii) The voting and dividend rights;

(iv) The order of priority upon impairment or liquidation;

(v) The institution's retirement policies and restrictions on transfer;

(vi) The statutory requirement that a borrower purchase stock as a condition to obtaining a loan;

(vii) The manner in which the stock is purchased (i.e., promissory note to the issuer, or cash not advanced by issuing institution);

(viii) The statutory authority of the institution to require additional capital contributions, if any; and

(ix) The statutory and regulatory restrictions regarding retirement of stock and distribution of earnings, and for banks for cooperatives, the amount required to be added to the unallocated surplus, pursuant to §§ 615.5215 and 615.5330 of this chapter.

(2) Describe regulatory minimum permanent capital standards, and the institution's compliance with such standards. For banks, also discuss any related associations that are not currently in compliance with the standards.

(3) State whether the institution is currently prohibited from retiring stock or distributing earnings by the statutory and regulatory restrictions described in paragraph (d)(1)(ix) of this section, or knows of any reason such prohibitions may apply during the fiscal year subsequent to the fiscal year just ended.

(4) Describe the institution's capital adequacy requirements and the minimum stock purchase requirement in effect.

(e) *Description of liabilities.* (1) Describe separately the institution's insured and uninsured debt, indicating the type, amount, maturity, and interest rates of each category of obligations outstanding at the end of the fiscal year just ended. Describe the nature of the insurance provided under part E of title V of the Act. Describe any applicable statutory and regulatory restrictions on the institution's ability to incur debt.

(2) Describe fully the institution's rights and obligations under any agreement, formal or informal, between the institution and any other person or entity having to do with capital preservation, loss sharing, or any other form of financial assistance.

* * * * *

(4) Describe the statutory responsibility of Farm Credit System institutions for repayment of obligations issued by the Farm Credit System Financial Assistance Corporation.

(f) *Selected financial data.* Furnish in comparative columnar form for each of the last 5 fiscal years the following financial data:

(1) *For banks and direct lender associations.*

(i) *Balance sheet.*

(A) Total assets.

(B) Investments.

(C) Loans.

(D) Allowance for losses.

(E) Net loans.

(F) Acquired property.

(G) Total liabilities.

(H) Obligations with maturities less than 1 year.

(I) Obligations with maturities longer than 1 year.

(J) Protected borrower capital.

(K) *At-risk capital.*

(*1*) Stock and participation certificates.

(*2*) Allocated surplus.

(*3*) Unallocated surplus.

(ii) *Statement of income.*

(A) Net interest income.

(B) Provision for loan losses.

(C) Extraordinary items.

(D) Net income.

(iii) *Key financial ratios.*

(A) Return on average assets.

(B) Return on average protected borrower capital and at-risk capital.

(C) Net interest margin as a percentage of average earning assets.

(D) Protected and at-risk capital-to-total assets.

(E) Net chargeoffs-to-average loans.

(F) Allowance for loan losses-to-loans.

(iv) *Net income distributed.*

(A) Dividends.

(B) *Patronage refunds.*

(*1*) Cash.

(*2*) Stock.

(*3*) Allocated surplus.

(*2*) *For associations that are not direct lender associations.*

(i) *Balance sheet.*

(A) Total assets.

(B) Accrued obligation under loss-sharing agreement, if any.

(C) Protected borrower capital.

(D) At-risk capital.

(ii) *Statement of income.*

(A) Compensation from related bank.

(B) Total operating expense.

(C) Extraordinary items.

(D) Provision for obligation under capital preservation or loss-sharing agreement, if any.

(E) Net income.

(iii) *Other.*

(A) Loans serviced for related bank.

(B) Dividends paid.

(C) *Patronage refunds paid.*

(*1*) Cash.

(*2*) Stock.

(*3*) Allocated surplus.

(D) Payments under lose-sharing agreement.

(3) *For all institutions.*

(i) Permanent capital ratio (for associations); or

(ii) Bank-only permanent capital ratio (for banks).

(g) *Management's discussion and analysis of financial condition and results of operations.* Fully discuss any material aspects of the institution's financial condition, changes in financial condition, and results of operations during the last 2 fiscal years, identifying favorable and unfavorable trends, and significant events or uncertainties. In addition to the items enumerated below, the discussion shall provide such other information as is necessary to an understanding of the institution's financial condition, changes in financial condition, and results of operations.

(1) *Loan portfolio.* (i) Describe the types of loans in the portfolio by major category (e.g., agricultural real estate mortgage loans, rural home loans, agricultural production loans, processing and marketing loans, farm business loans, and international loans), indicating the approximate percentage of the total dollar portfolio represented by each major category. Associations that make agricultural production loans shall provide the information required for such loans by major subcategory (e.g., cash grains, field crops, livestock, dairy, poultry, and timber). For each category and subcategory, discuss any special features of the loans that may be material to the evaluation of risk and any economic or business conditions that have had or are likely to have a material impact on their collectibility. For banks, also disclose separately the aggregate amount of loans outstanding to related associations and other financial institutions.

* * * * *

(iii) *Purchases and sales of loans.* (A) Describe any participation in the Federal Agricultural Mortgage Corporation program or origination of loans for resale.

(B) Disclose the amount of purchased loans, loans sold with recourse, retained subordinated participation interests in loans sold, and interests in pools of subordinated participation interests that are held in lieu of retaining a subordinated participation interest in the loans sold.

(iv) *Risk exposure.* * * *

(D) For banks, a description in the aggregate of the recent loss experience of related associations that are its shareholders, including the items enumerated in paragraphs (g)(1)(iv) (A), (B), and (C) of this section.

(E) Describe any obligations with respect to loans sold and the amount of any contributions made in connection with loans sold into the secondary market pursuant to § 8.7 of the Act. Further disclose the amount of risk of loss associated with such obligations and the amount included in the allowance for losses to provide for such risk.

(2) *Results of operations.* * * *

(ii) Describe any unusual or infrequent events or transactions or any significant economic changes, including, but not limited to, financial assistance received or paid that materially affected reported income. In each case, indicate the extent to which income was so affected.

(iii) Discuss the factors underlying the material changes, if any, in the return on average assets, the return on average protected borrower capital and at-risk capital, and the permanent capital ratio as determined in accordance with part 615, subpart H of this chapter. An explanation of the basis of the calculation of ratios relating to permanent capital and at-risk capital shall be included.

* * * * *

(vi) For associations, discuss any events affecting a related organization that are likely to have a material impact on the associations' financial condition, results of operations, cost of funds, or reliability of sources of funds.

* * * * *

(3) *Liquidity and funding sources.* * * *

(ii) *Liquidity.* * * *

(C) Discuss the institution's participation in the Federal Agricultural Mortgage Corporation secondary market programs authorized by title VIII of the Act and the origination of loans for resale under other authorities, if any.

* * * * *

(4) *Capital resources.* * * *

(ii) Describe any material trends or changes in the mix and cost of debt and capital resources. The discussion shall consider changes in protected borrower capital, permanent capital, debt, and any off-balance-sheet financing arrangements.

* * * * *

(v) Discuss the adequacy of the current permanent capital position and any material changes in the capital plan adopted pursuant to § 615.5200 of this chapter, to the extent that such changes may have an effect on the institution's minimum stock purchase requirements and its ability to retire stock and distribute earnings.

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(vi) Discuss any trends, commitments, contingencies, or events that are reasonably likely to have a materially adverse effect upon the institution's ability to meet the regulatory minimum permanent capital standards and capital adequacy requirements.

* * * * *

(j) *Transactions with senior officers and directors.* * * *

(3) *Loans to senior officers and directors.* (i) To the extent applicable, state that the institution (or in the case of an association that does not carry loans to its senior officers and directors on its books, its related bank) has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, and any organizations with which such senior officers or directors are affiliated with:

* * * * *

(m) *Financial statements.* (1) Furnish financial statements and related footnotes that have been prepared in accordance with generally accepted accounting principles and instructions and other requirements of the Farm Credit Administration and that have been audited in accordance with generally accepted auditing standards by a qualified public accountant, as defined in § 621.2(a)(21) of this chapter, and an opinion expressed thereon. The statements shall include the following statements and related footnotes for the last 3 fiscal years: balance sheet, statement of income, statement of changes in protected borrower capital and at-risk capital, and statement of cash flows.

* * * * *

Subpart C—Quarterly Report to Shareholders

15. Section 620.10 is revised to read as follows:

§ 620.10 Preparing and distributing the quarterly report.

(a) Each institution that is a direct lender shall prepare and distribute to its shareholders a quarterly report within 45 days after the end of each fiscal quarter, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution.

(b) Except as provided in paragraphs (e) and (f) of this section, each bank shall distribute its quarterly reports to shareholders of related associations within the period required by paragraph (a) of this section. Each bank shall coordinate such distribution with its related associations.

(c) The report shall contain, at a minimum, the information specified in § 620.11 and, in addition, such other material information as is necessary to make the required disclosures, in light of the circumstances under which they are made, not misleading.

(d) Distribution to shareholders may be by mail or by publication in newspapers or periodicals in the trade area of wide enough circulation to be reasonably assured that all of the institution's shareholders are reached on a timely basis.

(e) A bank is not required to distribute its quarterly reports to shareholders of related associations that are direct lender associations for those quarters in which no significant events have occurred or no significant events which occurred during the preceding quarters continue to materially affect the related associations. For each quarter in which no distribution is made, the bank shall certify to the Farm Credit Administration as follows:

> The undersigned certify that for the period between the end of the preceding fiscal quarter and the end of the most recent fiscal quarter, no significant events (as defined in § 620.1(q)) have occurred which are likely to have a material impact on related associations that are direct lenders or no significant events which occurred during the preceding quarters continue to materially affect such related associations.

The certification shall accompany the quarterly report filed with the FCA and shall be dated and signed by:

(1) The person designated by the board of directors to certify the reports of condition and performance in accordance with § 621.12 of this chapter,

(2) The chief executive officer, and

(3) Each member of the board.

The name and position title of each person signing the certification shall be typed or printed beneath his or her signature. If any officer or any member of the board is unable to or refuses to sign the certification, the bank shall disclose the individual's name and position title and the reasons such individual is unable or refuses to sign the report. If a majority of the board of directors is unable to or refuses to sign the certification, the bank must distribute its quarterly report to shareholders of related direct lender associations.

(f) For each quarter in which distribution of bank quarterly reports to association shareholders is not made pursuant to paragraph (e) of this section, copies of bank quarterly reports shall be made available free of charge to shareholders of related associations promptly upon request by the shareholder to the issuing bank or to the association of which the requestor is a shareholder.

(g) Each direct lender association shall include a statement in the first annual and first quarterly reports issued after the effective date of this paragraph explaining the regulatory changes in the distribution of bank quarterly reports and the new procedures under which association shareholders can obtain the bank quarterly reports.

16. Section 620.11 is amended by revising paragraph (a); adding (b) introductory text; removing paragraph (b)(3); redesignating existing paragraphs (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), and (b)(9) as new paragraphs (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), and (b)(8); removing the words ", in the opinion of management," from redesignated paragraph (b)(8); removing the reference "§ 620.3(g)" and adding in its place "§ 620.5(g)" in paragraph (c) introductory text; revising paragraph (d)(3); and adding new paragraph (d)(4) to read as follows:

§ 620.11 Content of quarterly report to shareholders.

(a) *General.* The information required to be included in the quarterly report may be presented in any format deemed suitable by the institution, except as otherwise required by this section. The report must be organized in an easily understandable format and not presented in a manner that is misleading.

(b) *Rules for condensation.* For purposes of this section, major captions to be provided in the financial statements are the same as those provided in the financial statements contained in the institution's annual report to shareholders, except that the financial statements included in the quarterly report may be condensed into major captions in accordance with the rules prescribed under this paragraph and paragraph (f) of this section.

* * * * *

(d) *Financial statements.* * * *

(3) Interim statements of changes in protected borrower capital and at-risk capital for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year.

(4) For banks, interim statements of cash flows for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year. For associations, interim statements of cash flows are optional.

* * * * *

Subpart D—Association Annual Meeting Information Statement

17. Section 620.20 is amended by removing the references "subpart A" and "subpart B" and adding in their place "subpart B" and "subpart C," respectively, in paragraph (c); removing paragraphs (d), (e), (f), (g), and (h); and revising the section heading to read as follows:

§ 620.20 Preparing and distributing the information statement.

§ 620.21 [Amended]

18. Section 620.21 is amended by removing the references "§ 620.3(j)" "§ 620.3(k)", "§ 620.3 (j) and (k)", "§ 620.3 (j) and (k)" and adding in their place the references "§ 620.5(j)", "§ 620.5 (k)", "§ 620.5 (j) and (k)", and § 620.5 (j) and (k)" in paragraph (c)(4), respectively; and by removing the reference "§ 620.3 (j) and (k)" and adding in its place the reference "§ 620.5 (j) and (k)" in the first and second sentences of paragraph (d)(5).

§ 620.22 [Removed]

19. Section 620.22 is removed.

Subpart E—Bank Director Disclosure Requirements

§ 620.32 [Removed]

20. Section 620.32 is removed.

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

21. The authority citation for part 621 continues to read as follows:

Authority: Secs. 5.17, 8.11; 12 U.S.C. 2252, 2279aa–11.

Subpart A—Accounting Requirements

§ 621.2 [Amended]

22. Section 621.2 is amended by removing the second sentence from the introductory text of paragraph (a)(8).

Dated: June 18, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-15023 Filed 6-26-91; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 776, 779, and 799

[Docket No. 910516-1116]

Foreign Policy Controls on Equipment and Technical Data Used in the Development of Nuclear-Capable Missiles; Revisions

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule amends a number of Export Control Commodity Numbers (ECCNs) on the CCL to conform with U.S. foreign policy controls on equipment and technical data related to the design, development, production, or use of nuclear weapons delivery systems described in § 778.18 of the Export Administration Regulations (EAR). These foreign policy controls are maintained by the United States in consultation with other countries that participate in the Missile Technology Control Regime (MTCR).

Specifically, this rule revises certain ECCNs on the CCL to correctly reference which items are subject to U.S. foreign policy controls that are designed to limit the proliferation of nuclear-capable missiles. In certain instances, the addition or removal of a reference to these foreign policy controls, in the Reason for Control paragraph of a particular ECCN, will affect the eligibility of an item for export under General License GCT. When this occurs, the ECCN under which the item is controlled will be revised to reflect this change in eligibility by revising, adding, or removing the Commodities Not Eligible for General License GCT paragraph found in the ECCN.

The changes made by this rule will increase the scope for these foreign policy controls for certain ECCNs. For other ECCNs, these controls will be reduced or will remain unchanged. Accordingly, the net effect of these changes on export licensing will be limited.

EFFECTIVE DATE: This rule is effective June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce maintains foreign policy controls on certain equipment and technical data on the Commodity Control List (CCL) that are related to the design, development, production, or use of nuclear weapons delivery systems described in § 778.18 of the EAR. The items on the CCL that are subject to these foreign policy controls are included in the "Equipment and Technology Annex" (the Annex) maintained by the governments participating in the Missile Technology Control Regime (MTCR). As agreed by all MTCR participating governments, items contained on the Annex are controlled by these governments through the implementation of national export control programs. Annex items are subject to control because of concerns relating to the proliferation of nuclear weapons delivery systems.

This final rule revises certain Export Control Commodity Numbers (ECCNs) on the CCL to conform to the Annex language. These revisions are based on multilateral technical consultations with MTCR countries for the purpose of harmonizing national interpretations of the Annex. Hence, the revisions made by this rule help to ensure that the same items controlled by the United States in meeting its MTCR obligations are similarly controlled by other MTCR participating countries.

This rule revises ECCNs 1548A, 1561A, 1733A, and 1763A to indicate that certain items listed under these entries are subject to U.S. foreign policy controls on the nonproliferation of nuclear weapons delivery systems. ECCN 1564A is revised to indicate that these foreign policy controls apply only to certain analog-to-digital converters having the characteristics described in paragraph (a)(1) or (a)(2) of that entry. New ECCNs 4131B and 4133B are created to clarify that validated license requirements apply to certain pumps and valves usable for nuclear weapons delivery systems. ECCNs 1361A, 1465A, and 1501A are revised to reference the items in each entry that are subject to foreign policy controls on nuclear weapons delivery systems.

This rule removes ECCNs 4529B and 4587B from the CCL since the items under these entries are not included on the MTCR Annex and, thus, are not subject to these foreign policy controls. ECCNs 1516A, 1517A, 1518A, 1533A, and 1715A are revised to remove all references to the application of these foreign policy controls, since none of the items controlled by these entries is included on the MTCR Annex.

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Supplement No. 4 to part 779 is amended as follows: To add new technical data entries for ECCNs 4131B, 4133B, 1548A, 1561A, 1733A, and 1763A; to revise the existing entries for ECCNs 1361A, 1485A, 1501A, and 1564A; and to remove the entries for ECCNs 1516A, 1517A, 1529A, 4529B, 4587B, and 1715A.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007, 0694–0010, 0694–0013, 0694–0015, and 0694–0021.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 776 and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, parts 776, 779, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 776 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 141 (42 U.S.C. 2139(a)); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

2. The authority citation for 15 CFR parts 779, and 799 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

PART 776—[AMENDED]

3. Section 776.18 is amended by revising the section heading and the introductory text to read as follows:

§ 776.18 Equipment and related technical data for the development of missiles capable of delivering nuclear weapons.

In support of U.S. foreign policy to limit the proliferation of missiles that are capable of delivering nuclear weapons, an individual validated license is required to export certain equipment and technical data related to the development and production of such nuclear-capable missiles to Country Groups QSTVWYZ. The specific commodities appear within ECCNs 2018A, 2118A, 4118B, 4131B, 4133B, 4302B, 1357A, 1361A, 1362A, 1385A, 1460A, 1485A, 1501A, 4518B, 1531A, 1548A, 1561A, 1564A, 1565A, 1568A, 4568B, 1595A, 1733A, 1746A, and 1763A.

* * * * *

PART 779—[AMENDED]

Supplement No. 4. to Part 779 [Amended]

4. Supplement No. 4 to part 779 (Additional Specifications for Certain Technical Data Requiring a Validated License to all Destinations Except Canada) is amended:

a. By revising the introductory text of paragraph (4), Technical data;

b. By revising in paragraph (4) the heading of the entry for ECCN 1131A to read "ECCN 4131B" and adding a new entry for ECCN 4133B immediately preceding the entry for ECCN 4302B;

c. By revising in paragraph (4) the entries for ECCN 4302B, ECCN 1361A, ECCN 1362A, ECCN 1460A, and ECCN 1485A;

d. By revising in paragraph (4) the phrase "paragraphs (b) (2) through (5) and (c)" in the entry for ECCN 1501A to read "paragraphs (b)(1), (b)(2), (b)(4), (b)(5), and (c)";

e. By removing in paragraph (4) the entries for ECCN 1516A, ECCN 1517A, ECCN 1529A, and ECCN 4529B;

f. By adding in paragraph (4) a new entry for ECCN 1548A immediately following the entry for ECCN 1531A and a new entry for ECCN 1561A immediately following the new entry for ECCN 1548A;

g. By revising in paragraph (4) the entry for ECCN 1564A;

h. By removing in paragraph (4) the entries for ECCN 4564B, ECCN 4587B, and ECCN 1715A;

i. By adding in paragraph (4) a new entry for ECCN 1733A immediately following the entry for ECCN 1595A; and

j. By adding in paragraph (4) a new entry for ECCN 1763A immediately following the entry for ECCN 1746A and immediately preceding paragraph (5), as follows:

Supplement No. 4—Additional Specifications for Certain Technical Data Requiring a Validated License to All Destinations Except Canada

* * * * *

(4) Technical data and software for the development and production of commodities that are listed below in numerical order by their respective Export Control Commodity Number. The technical data and software for these commodities are controlled for nuclear weapons delivery reasons (see § 776.18 of this subchapter).

* * * * * *

ECCN 4133B: Valves used in propulsion systems and related components as follows: Servo valves designed for flow rates of 24 liters per minute or greater at a pressure of 250 bars, and having flow contact surfaces made of 90 percent or more tantalum, titanium, or zirconium, either separately or combined, and when designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium.

ECCN 4302B: Pyrolitically derived materials formed on a mould, mandrel, or other substrate from precursor gases that decompose in the 1,573 K (1,300 °C) to 3,173 K (2,900 °C) temperature range at pressures of 133.3 Pa to 19.995 kPa and specially designed nozzles for producing these pyrolitically derived materials.

ECCN 1357A: * * *

ECCN 1361A: Wind tunnels not excepted from control by paragraph (a), in the "List of Wind Tunnels Controlled by ECCN 1361A".

ECCN 1362A: Vibration test equipment had high intensity acoustic test equipment described in paragraphs (a) and (b), respectively, in the List of Vibration Test Equipment Controlled by ECCN 1362A.

ECCN 1385A: * * *

ECCN 1460A: Small fuel efficient gas turbine zero engines described in paragraph (c) and specially designed components for these engines described in paragraph (d) of the "List of Nonmilitary Equipment controlled by ECCN 1564A". Small fuel efficient gas turbine aero engines are those engines, uncertified or certified, with 2,000 pounds thrust or less (un-installed) and having a thrust specific fuel consumption (CSFC) for maximum power at sea level static, standard day equal to or less than 0.45 lb./lb./hr.). (See also paragraphs (6)(i), (6)(iii), and (6)(iv) in this Supplement No. 4 to part 779, which describe additional technical data for aircraft and helicopters that are controlled for nuclear weapons delivery reasons.)

ECCN 1485A: Commodities described in paragraphs (b) and (c) and (f) through (j), in the "List of Equipment Controlled by ECCN 1485A".

* * * * * *

ECCN 1531A: * * *

ECCN 1548A: Photosensitive components, including linear and focal plane arrays, and dice and wafers therefor that have any of the characteristics describe in paragraph (d) of the "List of Photosensitive Components Controlled by ECCN 1548A".

ECCN 1561A: Materials specially designed for use as absorbers of electromagnetic waves, as described under the "List of Materials Controlled by ECCN 1561A".

ECCN 1564A: Analog-to-digital converters having all of the following characteristics:

(a) The characteristics described in paragraph (a)(1) or (a)(2) under the "List of Equipment Controlled by ECCN 1564A"; *and*

(b) Both of the following characteristics:

(1) A maximum conversion rate to rated accuracy of more than 50,000 complete conversions per second, *i.e.*, a conversion time to maximum resolution of less than 20 microseconds; *and*

(2) An accuracy of better than ±0.025% of full scale over the specified operating temperature range.

* * * * * *

ECCN 1595A: * * *

ECCN 1733A: Ceramic-ceramic "composite" materials described in paragraph (c) of the "List of Products controlled by ECCN 1733A".

ECCN 1746A: * * *

ECCN 1763A: Fibers prepregs and fiber preforms described in paragraph (c) and "composite" structures, laminates, and manufacturers thereof described in paragraph (d) of the "List of Materials Controlled by ECCN 1763A".

* * * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

5. In Supplement No. 1 to § 799.1 (the Commodity Control List), the entries listed below are amended by revising the parenthetical "(see § 799.4(d)(2))" to read "(see § 799.4(d)(18) of this subchapter)" in the *Technical Data* paragraph under the Controls for ECCN heading for each entry:

A. In Commodity Group 0 (Metal-Working Machinery): ECCN 2018A;

B. In Commodity Group 1 (Chemical and Petroleum Equipment): ECCN 2118A;

C. In Commodity Group 3 (General Industrial Equipment): ECCNs 4302B and 1385A;

D. In Commodity Group 5 (Electronics and Precision Instruments): ECCNs 1531A, 1568A, 4568B, and 1595A; and

E. In Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials): ECCN 1746A.

Supplement No. 1 to § 799.1 [Amended]

6. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), ECCN 4118B is amended under the Controls for ECCN heading by revising the *Technical Data* paragraph, as follows:

4118B Batch mixers specially designed or modified for mixing solid propellants with a working capacity of 30 U.S. gallons (114 liters) or more, according to the manufacturer's technical specifications, or a total (volumetric) capacity of 45 U.S. gallons (170 liters) or more, and specially designed components therefor.

Controls for ECCN 4118B

* * * * * *

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(18) of this subchapter).

* * * * * *

Supplement No. 1 to § 799.1 [Amended]

7. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 4131B is added immediately following ECCN 3131A, as follows:

4131B Pumps (except vacuum pumps) having the characteristics described in paragraph (a) of the list below, and specially designed parts and accessories therefor.

Controls for ECCN 4131B

Unit: Report pumps in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: Foreign policy. Foreign policy controls apply to pumps and related components described in paragraphs (a) and (b), respectively, in the List of this ECCN, for nuclear weapons delivery systems described in § 776.18(a) of this subchapter.

Special Licenses Available: None.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(18) of this subchapter).

List of Pumps Controlled by ECCN 4131B

Pumps, except vacuum pumps, having any of the following characteristics:

(a) Pumps, designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, having all flow contact surfaces made of 90 percent or more tantalum, titanium, or zirconium, either separately or combined, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium; and

(b) Specially designed parts and accessories for pumps described in paragraph (a) of this ECCN.

Supplement No. 1 to § 799.1 [Amended]

8. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 4133B is added immediately following ECCN 4131B and immediately preceding ECCN 1145A, as follows:

4133B Servo valves having the characteristics described in paragraph (a) of the list below, and specially designed parts and accessories therefor.

Controls for ECCN 4133B

Unit: Report valves in "number"; parts and accessories in "$ value."

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Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: Foreign policy. Foreign policy controls apply to valves and related components described in paragraphs (a) and (b), respectively, in the List of this ECCN, for nuclear weapons delivery systems described in § 776.18(a) of this subchapter.

Special License Available: None.

Technical Data: Exports certain related technical data require a validated license to all destinations except Canada (See § 779.4(d)(18) of this subchapter).

List of Valves Controlled by ECCN 4133B

Servo valves having any of the following characteristics:

(a) Servo valves, designed for flow rates of 24 liters per minute or greater at a pressure of 250 bars and designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, having flow contact surfaces made of 90 percent or more tantalum, titanium or zirconium, either separately or combined, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium.

(b) Specially designed parts and accessories for servo valves described in paragraph (a) of this ECCN.

Supplement No. 1 to § 799.1 [Amended]

9. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1361A is amended under the Controls for ECCN heading by revising the *Commodities Not Eligible for General License GCT* paragraph, the *Reason for Control* paragraph, and the *Technical Data* paragraph, as follows:

1361A Test facilities and equipment for the design or development of aircraft or gas turbine aero-engines; and specially designed components, and accessories therefor.

* * * * *

Controls for ECCN 1361A

* * * * *

GLV $ Value Limit: * * *

Commodities Not Eligible for General License GCT: Wind tunnels not excepted from control by paragraph (a), electromagnetic interference and electromagnetic pulse (EMI/EMP) simulators described in paragraph (f), and specially designed test facilities and equipment described in paragraph (g) in the List of this ECCN.

Processing Code: * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to wind tunnels not excepted from control by paragraph (a), in the List of this ECCN 1361A, for nuclear weapons delivery systems described in § 776.18(a) of this subchapter.

Special Licenses Available: * * *

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 799.4(d)(18) of this subchapter).

* * * * *

Supplement No. 1 to § 799.1 [Amended]

10. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1362A is amended by revising the *Commodities Not Eligible for General License GCT* paragraph, the *Reason for Control* paragraph, and the *Technical Data* paragraph under the Controls for ECCN heading and by removing the reference "1531A," where it appears in paragraphs (a)(5), (b)(2), and (c)(2) in the List of the ECCN, as follows:

1362A Vibration test equipment.

Controls for ECCN 1362A

* * * * *

GLV $ Value: * * *

Commodities Not Eligible for General License GCT: Vibration test equipment and high intensity acoustic test equipment described in paragraphs (a) and (b), respectively, in the List of this ECCN.

Processing Code: * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Foreign policy controls apply to vibration test equipment and high intensity acoustic test equipment described in paragraphs (a) and (b), respectively, in the List of this ECCN, for nuclear weapons delivery systems described in § 776.18(a) of this subchapter.

Special Licenses Available: * * *

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(18) of this subchapter.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

11. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1485A is amended by revising the heading of the ECCN and by revising the *Commodities Not Eligible for General License GCT* paragraph, the *Reason for Control* paragraph, and the *Technical Data* paragraph, under the Controls for ECCN heading, as follows:

1485A Inertial navigation systems, inertial equipment, gyroscopes (gyros) and accelerometers, as follows, and specially designed components therefor.

* * * * *

Controls for ECCN 1485A

* * * * *

GLV $ Value Limit: * * *

Commodities Not Eligible for General License GCT: Commodities described in paragraphs (b) and (c), and (f) through (j), in the List of this ECCN.

Processing Code: * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to the equipment described in paragraphs (b) and (c), and (f) through (j), in the List of this ECCN, for nuclear weapons delivery systems described in § 776.18(a) of this subchapter.

Special Licenses Available: * * *

Technical Data: Exports of related technical data require a validated license to all destinations except Canada (see § 779.4 (d)(5) and (d)(18) of this subchapter). The Department of State, Office of Defense Trade Controls, has jurisdiction over certain inertial system technical data (see Interpretation 21 of Supplement No. 1 to § 799.2).

* * * * *

Supplement No. 1 to § 799.1 [Amended]

12. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1501A is amended under the Controls for ECCN heading by revising the *Commodities Not Eligible for General License GCT* paragraph, the *Reason for Control* paragraph, and the *Technical Data* paragraph, as follows:

1501A Navigation, direction finding, radar and airborne communication equipment.

* * * * *

Controls for ECCN 1501A

* * * * *

GLV $ Value Limit: * * *

Commodities Not Eligible for General License GCT: Navigation and direction finding equipment described in paragraphs (b)(1), (b)(2), (b)(4), and (b)(5) and radar equipment described in paragraph (c) in the List of this ECCN.

Processing Code: * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to: 1. Commodities described in paragraphs (a), (b)(1), and (c)(1), in the List of this ECCN, for Libya; 2. Commodities described in paragraph (b)(1), in the List of this ECCN, for nuclear weapons delivery systems described in § 776.18(a) of this subchapter; and 3. Commodities described in paragraphs (b)(2), (b)(4), (b)(5), and (c), in the List of this ECCN, for launch and ground support equipment, including precision tracking systems, for nuclear weapons delivery systems described in § 776.18(a) of this subchapter.

Special Licenses Available: * * *

Technical Data: Exports of related technical data require a validated license to all destinations except Canada (see § 779.4(d)(3), (d)(5), and (d)(18) of this subchapter).

* * * * *

Supplement No. 1 to § 799.1 [Amended]

13. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1516A is amended under the Controls for ECCN heading by removing the *Commodities Not Eligible for General License GCT* paragraph; by revising the *Reason for Control* paragraph; and by removing the *Technical Data* paragraph, as follows:

1516A Receivers, and specially designed components and accessories therefor.

* * * * *

Controls for ECCN 1516A

* * * * *

Reason for Control: National security; foreign policy (crime control). See the *Special Foreign Policy Controls* paragraph below for licensing requirements on crime control and detection instruments and equipment.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

14. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1517A is amended under the Controls for ECCN heading:

a. By removing the *Commodities Not Eligible for General License GCT* paragraph;

b. By revising the *Reason for Control* paragraph;

c. By revising the *Special Licenses Available* paragraph; and

d. By removing the *Technical Data* paragraph, as follows:

1517A Radio transmitters, except radio relay communications equipment (for which see ECCN 1520A), and specially designed components therefor.

Controls for ECCN 1517A

* * * * *

Reason for Control: National security.

Special Licenses Available: See part 773 of this subchapter.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

15. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 4518B is amended under the Controls for ECCN heading by revising the *Technical Data* paragraph, as follows:

4518B Telemetering and telecontrol equipment suitable for use with aircraft (piloted or pilotless) or space vehicles, and test equipment specially designed for such equipment, except equipment specially designed to be used for remote control of toys such as model planes and boats and having electric field strength of not more than 200 microvolts per meter at a distance of 500 meters; and specially designed parts and accessories therefor. (Specify by name and model number.)

Controls for ECCN 4518B

* * * * *

Technical Data: Exports of related technical data require a validated license to all destinations except Canada (see § 779.4 (d)(3), (d)(5), and (d)(18) of this subchapter).

Supplement No. 1 to § 799.1 [Amended]

16. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1519A is amended under the Controls for ECCN heading by revising the *Special Licenses Available* paragraph and by removing the *Technical Data* paragraph, as follows:

1519A "Telecommunication transmission equipment", measuring and test equipment, as follows, and specially designed components and accessories therefor.

* * * * *

Controls for ECCN 1519A

* * * * *

Special Licenses Available: See part 773 of this subchapter.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

17. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended under the Controls for ECCN heading:

a. By removing the *Commodities Not Eligible for General License GCT* paragraph;

b. By revising the *Reason for Control* and *Special Licenses Available* paragraphs; and

c. By removing the *Technical Data* paragraph, as follows:

1529A Electronic equipment for testing, measuring or for microprocessor/microcomputer development, as follows.

* * * * *

Controls for ECCN 1529A

* * * * *

Reason for Control: National security; nuclear nonproliferation.

Special Licenses Available: See part 773 of this subchapter.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

18. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 4529B is removed.

Supplement No. 1 to § 799.1 [Amended]

19. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended:

a. By revising the heading of the ECCN;

b. By removing the *Commodities Not Eligible for General License GCT* paragraph under the Controls for ECCN heading; and

c. By revising the *Reason for Control* paragraph under the Controls for ECCN heading, as follows:

1533A "Signal analyzers" (including spectrum analyzers) and network analyzers, as follows, and specially designed components and accessories therefor.

* * * * *

Controls for ECCN 1533A

* * * * *

Reason for Control: National security.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

20. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1548A is amended under the Controls for ECCN heading:

a. By adding a *Commodities Not Eligible for General License GCT* paragraph immediately following the *GLV $ Value Limit* paragraph;

b. By revising the *Reason for Control* and *Special Licenses Available* paragraphs; and

c. By adding a *Technical Data* paragraph immediately following the *Special Licenses Available* paragraph, as follows:

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1548A Photosensitive components, including linear and focal plane arrays, and dice and wafers therefor.

Controls for ECCN 1548A

* * * * *

GLV $ Value Limit * * *

Commodities Not Eligible for General License GCT: Commodities controlled by this entry that have the characteristics described in paragraph (d) in the List of this ECCN.

Processing Code: * * *

Reason for Control: National Security; foreign policy. Foreign policy controls apply to commodities described in paragraph (d), in the List of this ECCN, for nuclear weapons delivery systems described in § 776.18(a) of this subchapter.

Special Licenses Available: None available for commodities subject to foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c) of this subchapter). See part 773 of this subchapter for other commodities described in ECCN 1548A.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(18) of this subchapter).

* * * * *

Supplement No. 1 to § 799.1 [Amended]

20. In Supplement No. 1 to § 779.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1561A is amended under the **Controls for ECCN** heading:

a. By adding a *Commodities Not Eligible for General License GCT* paragraph immediately following the *GLV $ Value Limit* paragraph;

b. By revising the *Reason for Control* and the *Special Licenses Available* paragraphs; and

c. By adding a *Technical Data* paragraph immediately following the *Special Licenses Available* paragraph, as follows:

1561A Materials specially designed for use as absorbers of electromagnetic waves.

Controls for ECCN 1561A

* * * * *

GLV $ Value Limit: * * *

Commodities Not Eligible for General License GCT: Entire entry.

Processing Code: * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to materials described in the List of this ECCN for nuclear weapons delivery systems described in § 776.18(a) of this subchapter.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c) of this subchapter). See part 773 of this subchapter for other commodities described in ECCN 1561A.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(18) of this subchapter).

* * * * *

Supplement No. 1 to § 799.1 [Amended]

21. In Supplement No. 1 to § 779.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1564A is amended:

a. By adding a *Commodities Not Eligible for General License GCT* paragraph immediately following the *GLV $ Value Limit* paragraph under the Controls for ECCN heading;

b. By revising the *Reason for Control* paragraph and the *Technical Data* paragraph under the Controls for ECCN heading; and

c. By adding a parenthetical phrase immediately following the heading of (Advisory) Note 4, as follows:

1564A Integrated circuits, including packages therefor, "assemblies", "modules", and "substrates".

Controls for ECCN 1564A

* * * * *

GLV $ Value Limit: * * *

Commodities Not Eligible for General License GCT: Analog-to-digital converters having:

(a) The characteristics described in paragraph (a)(1) or (a)(2) in the List of this ECCN 1564A; *and*

(b) Both of the following characteristics:

(1) A maximum conversion rate to rated accuracy of more than 50,000 complete conversions per second, *i.e.*, a conversion time to maximum resolution of less than 20 microseconds; *and*

(2) An accuracy of better than ±0.025% of full scale over the specified operating temperature range.

Special Licenses Available: * * *

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(18) of this subchapter).

List of Equipment Controlled by ECCN 1564A

* * * * *

(Advisory) Note 4: (NOT ELIGIBLE FOR GENERAL LICENSE GFW: analog-to-digital converters described in the *Reason for Control* paragraph of this ECCN 1564A as subject to foreign policy controls for nuclear weapons delivery proposes.) * * *

Supplement No. 1 to § 799.1 [Amended]

22. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCNs 4564B and 4587B are removed.

Supplement No. 1 to § 799.1 [Amended]

23. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1715A is amended:

a. By adding a Note immediately following the heading of the entry;

b. By removing the *Commodities Not Eligible for General License GCT* paragraph under the Controls for ECCN heading;

c. By revising the *Reason for Control* and the *Special Licenses Available* paragraphs; and

d. By removing the *Technical Data* paragraph, as follows:

1715A Boron, as described in this entry.

Note: High energy density fuels such as Boron Slurry are controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130) administered by the Office of Defense Trade Controls, U.S. Department of State.

Controls for ECCN 1715A

* * * * *

Reason for Control: National security; nuclear nonproliferation. Nuclear nonproliferation controls do not apply to commodities described in paragraphs (b)(2) and (b)(3) in the List of this ECCN.

Special Licenses Available: None available for commodities described in paragraphs (a) and (b)(1) in the List of this ECCN. See part 773 of this subchapter for special licenses available for other commodities described in this ECCN 1715A.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

24. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1733A is amended under the **Controls for ECCN** heading:

a. By adding a *Commodities Not Eligible for General License GCT* paragraph immediately following the *GLV $ Value Limit* paragraph;

b. By revising the *Reason for Control* and *Special Licenses Available* paragraphs; and

c. By adding a *Technical Data* paragraph immediately following the *Special Licenses Available* paragraph, as follows:

1733A Base materials, non-"composite" ceramic materials, ceramic-ceramic "composite" materials and precursor materials, as follows, for the manufacture of high temperature fine technical ceramic products.

Controls for ECCN 1733A

* * * * *

GLV $ Value Limit: * * *

Commodities Not Eligible for General License GCT: Ceramic-ceramic "composite" materials described in paragraph (c) in the List of this ECCN.

Processing Code: * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to ceramic-ceramic "composite" materials described in paragraph (c), in the List of this ECCN, for nuclear weapons delivery systems described in § 776.18(a) of this subchapter.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c) of this subchapter). See part 773 of this subchapter for other commodities described in ECCN 1733.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(18) of this subchapter).

* * * * *

Supplement No. 1 to § 799.1 [Amended]

25. In Supplement No. 1 § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1763A is amended by revising the ECCN heading and, under the Controls for ECCN heading, by revising the *Reason for Control* paragraph and by adding a new *Technical Data* paragraph immediately following the *Special Licenses Available* paragraph, as follows:

1763A "Fibrous and filamentary materials" that may be used in organic "matrix", metallic "matrix" or carbon "matrix" "composite" structures or laminates, and such "composite" structures and laminates and "specially designed software" therefor.

* * * * *

Controls for ECCN 1763A

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Foreign policy controls apply to materials described in paragraphs (c) and (d), in the List of this ECCN, for nuclear weapons delivery systems described in § 776.18(a) of this subchapter.

Special Licenses Available: * * *

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(18) of this subchapter).

* * * * *

Dated: June 14, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-14696 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AA90

Wage and Hour Division

29 CFR Part 506

RIN 1215-AA

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports; Correction

AGENCY: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Interim final rule; request for comments; correction.

SUMMARY: The Department of Labor is correction an interim final rule published at 56 FR 24648 (May 30, 1991). In that document, the OMB control number was inadvertently omitted from the common rule; and the appendix to subpart F of the common rule was placed incorrectly and omitted from the various tables of sections headings.

EFFECTIVE DATE: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart F, and 29 CFR part 506, subpart F, contact David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N-4470, 200 Constitution Avenue NW., Washington, DC 20210; Telephone: 202-535-0174 (this is not a toll-free number).

On 20 CFR part 655, subpart G, and 29 CFR part 506, subpart G, contact Mr. Solomon Sugarman, Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210; Telephone: 202-523-7605 (this is not a toll-free number).

Signed at Washington, DC, this 21st day of June, 1991.

Lynn Martin,

Secretary of Labor.

The following corrections are made in FR Doc 91-12718, published in the **Federal Register** at 56 FR 24648 on May 30, 1991:

Appendix 1 to Subpart F [Corrected]

1. "Appendix 1—U.S. Seaports", which appears beginning in the third column on page 24667 and continues through the end of page 24668, is correctly designated as "Appendix 1 to Subpart F—U.S. Seaports" and should have appeared in the first column on page 24660 at the end of the common rule text for subpart F.

2. An entry for "Appendix 1 to Subpart F—U.S. Seaports" is added to the following tables of section headings:

a. On page 24654, in the first column, at the end of the entry for subpart F in the table of section headings for the common rule text;

b. On page 24667, in the first column, at the end of the entry for subpart F in the table of section headings for 20 CFR part 655; and

c. On page 24667, in the second column, at the end of the entry for subpart F in the table of section headings for 29 CFR part 506.

3. The phrase "[Approved by the Office of Management and Budget under Control No. 1205-0309.]" is added to the common rule text at the following locations.

a. On page 24659, in the second column, it is displayed at the end of § ____.510 of the common rule text;

b. On page 24660, in the first column, it is displayed at the end of § ____.520 of the common rule text; and

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c. On page 24660, in the first column, it is displayed at the end of § ——.550 of the common rule text.

[FR Doc. 91-15326 Filed 6-26-91; 8:45 am]

BILLING CODE 4810-10-M and 4810-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8345]

RIN 1545-AP49

Arbitrage Restrictions on Tax Exempt Bonds; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to temporary regulations.

SUMMARY: This document contains corrections to the temporary regulations (T.D. 8345), which were published Thursday, April 25, 1991 (56 FR 19023). The regulations relate to the arbitrage rebate requirements applicable to tax exempt bonds issued by States and local governments under section 103 of the Internal Revenue Code.

EFFECTIVE DATE: April 25, 1991.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo (202) 566-3283 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations amend the Income Tax Regulations (26 CFR part 1) promulgated with respect to sections 103, 148, and 149 of the Internal Revenue Code to simplify, clarify, and expand certain provisions of the temporary and proposed regulations §§ 1.148-0T through 1.148-9T and § 1.149(d)-1T published in the **Federal Register** for May 15, 1989 (54 FR 20787) (1989).

Need for Correction

As published, the temporary regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (T.D. 8345), which was the subject of FR Doc. 91-9559, is corrected as follows:

§ 1.148-0T [Corrected]

Par. 1. On page 19028, second column, in § 1.148-0T, paragraph (b)(2)(ii)(B)(*4*), line 5, the language "1991. See § 1.148-1T(d)(3)" is corrected to read "1991. See § 1.149(d)-1T(d)(3)".

§ 1.149(d)-1T [Corrected]

Par. 2. On page 19037, third column, in § 1.149(d)-1T, paragraph (d)(3)(iii), line seven, the language "section 149(d)(5)" is corrected to read "section 149(d)(5))".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-15154 Filed 6-26-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[T.D. 8352]

RIN 1545-AK26

Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains final regulations relating to the use of certain corporate tax attributes under sections 382 and 383 of the Internal Revenue Code of 1986 ("the Code") that are attributable to the period preceding an ownership change of the corporation. Section 382 was amended by the Tax Reform Act of 1986 (the "1986 Act"), the Revenue Act of 1987 (the "1987 Act"), the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act") and the Revenue Reconciliation Act of 1989 (the "1989 Act"). Section 383 was amended by the 1986 Act and the 1988 Act. The final regulations under section 383 provide guidance relating to the manner and method of absorbing the section 382 limitation with respect to certain capital losses and excess credits after there has been an ownership change of a corporation within the meaning of section 382.

DATES: The regulations are effective as of June 26, 1991, and generally are applicable to any ownership change within the meaning of section 382 occurring after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Lori J. Jones of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (attention: CC:CORP:3) or telephone (202) 566-3422 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-0123. The estimated annual burden per respondent/recordkeeper varies from 6 minutes to 30 minutes, depending on individual circumstances, with an estimated average of 18 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224.

Background

This document contains final regulations to be added to part 1 of title 26 of the Code of Federal Regulations ("CFR") under sections 382 and 383 of the Code. On September 20, 1989, the **Federal Register** published a notice of proposed rulemaking (54 FR 38695) proposing amendments to the Income Tax Regulations (26 CFR part 1) under sections 382 and 383 by cross-reference to temporary regulations published the same day in the **Federal Register** (T.D. 8264; 54 FR 38664). That document also amended temporary regulations under section 382 which were published in the **Federal Register** on August 11, 1987 (T.D. 8149, 52 FR 29668). The temporary regulations published on August 11, 1987, also were proposed to be adopted as final regulations (52 FR 29704).

The only written comments received by the Internal Revenue Service with respect to T.D. 8264 regarded the effect of the amendments to the section 382 temporary regulations on regulated investment companies under section 851 of the Code. These comments, which relate to the method of determining whether a regulated investment company has an ownership change, and not to the manner in which capital losses and excess credits are limited as the result of an ownership change, will be considered in a separate regulations project. Because no other comments were received and no public hearing was requested with respect to the temporary regulations under section 383, the final regulations adopt the temporary regulations under section 383 without any substantive changes other than a clarification of the ordering rule for absorption of general business credits and carryovers and, as discussed below, the addition of a rule coordinating sections 283(h)(6) (relating to the treatment of certain built-in items) and 383. The final regulations under section 383 provide guidance relating to the manner and method of absorbing the section 382 limitation with respect to certain capital losses and excess credits after there has been an ownership change of a corporation within the meaning of section 382.

The document also includes final regulations under section 382 (new § 1.382-2) which contain the definitions of pre-change loss and loss corporation. The definition of pre-change loss was initially included in the temporary and proposed regulations published on August 11, 1987 and was amended by T.D. 8264 published on September 20, 1989. Only one technical comment with respect to the definition of pre-change loss was received; however, after careful consideration, it was determined that the definition in the temporary and proposed regulations is consistent with section 382 and the use of the term in those regulations. No public hearing was requested with respect to the above definition of pre-change loss. Accordingly, the final regulations adopt this definition, as amended by T.D. 8264, without any substantive changes from the temporary regulations.

The definition of a loss corporation was also initially included in the temporary and proposed regulations published on August 11, 1987. Written comments were received in response to the definition of a loss corporation in the 1987 regulations, relating principally to the clarification of the separate accounting of losses and credits of an acquiring corporation and those of the distributor or transferor loss corporation in a section 381 transaction. The definition was amended by T.D. 8264 and additionally proposed to be further amended by a notice of proposed rulemaking published in the **Federal Register** on January 29, 1991 (56 FR 4183). The proposed amendments published on January 29, 1991, also relate to the appropriate scope of the separate accounting rules and are still under consideration. Therefore, although the final regulations adopt the definition of a loss corporation, as published on August 11, 1987, and amended by T.D. 8264, without substantive change, the final regulations may be amended to further reflect the January 29, 1991 proposed amendments. Also, the amendment to § 1.382-2T(a)(2)(ii) made by T.D. 8264, relating to the filing of an information statement, is not adopted as a final regulation in this document, but will be addressed in connection with the temporary regulations published under section 382 on August 11, 1987.

The final regulations under section 383 also adopt a change to § 1.383-1T(g) relating to the coordination of the rules of section 383 with rules and principles of section 382. These regulations provide that to the extent section 382(h)(6) (relating to the treatment of certain built-in items) applies to credits, the principles of section 383 apply to such credits.

Regulations under section 382(h)(6) will address the application of that section to credits. Also, it is expected that separate proposed regulations addressing the allocation of income, loss and credits in the loss corporation's taxable year that includes the change date between pre- and post-change periods will provide additional rules for the application of sections 382 and 383 with respect to the change year.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code (as then in effect), the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comments on their impact on small business.

Drafting Information

The principal author of these regulations is Lori J. Jones of the Office of Assistant Chief Counsel, Corporate, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, on matters of both substance and style.

List of Subjects

26 CFR 1.56-0T through 1.58-9T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.301-1 through 1.383-3

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, parts 1 and 602 of title 26 of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended in part by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.382-2 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 383, and § 1.383-1 and § 1.383-2 also issued under 26 U.S.C. 383.

§ 1.56(g)-1 [Amended]

Par. 2. Section 1.56(g)-1 is amended by removing "§ 1.382-2T(f)(1)" in paragraphs (k)(2) and in (k)(4) in *Example* paragraph (iv) and adding in lieu thereof "§ 1.382-2(a)(1)".

Par. 3. New § 1.382-0 is added to read as follows:

§ 1.382-0 Effective date.

(a) Temporary regulations § 1.382-1T and § 1.382-2T and the final regulations under 382 (other than the regulations described in paragraph (b) of this section) reflect the amendments made to sections 382 and 383 by the Tax Reform Act of 1986. See § 1.382-2T(m) for effective date rules.

(b) Sections 1.382-1A, 1.382-2A, 1.382-3A, and 1.382-4A do not reflect the amendments made to sections 382 and 383 by the Tax Reform Act of 1986.

Par. 4. Sections 1.382(a)-1, 1.382(b)-1, 1.382(c)-1 and 1.382-2 are amended as follows:

§ 1.382(a) [Amended]

1. Section 1.382(a)-1 is redesignated as § 1.382-1A and the section heading is revised to read, "Purchase of a corporation and change in its trade or business (Pre-Tax Reform Act of 1986)".

§ 1.382(b) [Amended]

2. Section 1.382(b)-1 is redesignated as § 1.382-2A and the section heading is revised to read, "Change of ownership as the result of a reorganization (Pre-Tax Reform Act of 1986)".

§ 1.382(c)-1 [Amended]

3. Section 1.382(c)-1 is redesignated as § 1.382-3A and the section heading is revised to read, "Definition of stock (Pre-Tax Reform Act of 1986)".

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§ 1.382-2 [Amended]

4. Section 1.382-2 is redesignated as § 1.382-4A.

Par. 5. An undesignated center heading is added to precede newly designated § 1.382-1A to read as follows:

Regulations Applicable to Taxable Years Prior to Tax Reform Act of 1986

Par. 6. New §§ 1.382-1 is added and reserved and 1.382-2 is added to read as follows:

§ 1.382-1 Limitations on the use of certain tax attributes following an ownership change. [Reserved]

§ 1.382-2 Definition of ownership change under section 382 as amended by the Tax Reform Act of 1986.

(a) *Certain definitions for purposes of sections 382 and 383 and the regulations thereunder.* The following definitions apply for purposes of sections 382 and 383 and the regulations thereunder.

(b) [Reserved]

§ 1.382-1T [Amended]

Par. 7. Section 1.382-1T is amended by removing the entries for paragraphs (a)(2)(iv) and (f)(1) (i), (ii) and (iii).

§ 1.382-2T [Amended]

Par. 8. Section 1.382-2T is amended as follows:

1. By removing the "T" from references to "§ 1.383-1T" wherever it appears in paragraphs (a)(1), (f)(1) (i) and (ii), and (f)(22) (iv) and (v).

2. The fifth sentence of paragraph (a)(1) is amended by removing "paragraphs (f) (1) and (3)" and adding in lieu thereof "§ 1.382-2(a)(1) and paragraph (f)(3)".

3. The last sentence of paragraph (a)(2)(ii) is amended by removing "paragraph (a)(2)(iv) and" and adding in lieu thereof "§ 1.383-1(k) and paragraph".

4. Paragraph (e)(2)(iv) is amended by removing "paragraph (f)(1)(ii)" in *Example 3* and adding in lieu thereof "§ 1.382-2(a)(1)(ii)," and by removing "paragraph (f)(1)(iii)" each place it appears in *Examples 1, 2* and *3* and adding in lieu thereof "§ 1.382-2(a)(1)(iii)".

5. Paragraph (f)(1) is redesignated as § 1.382-2(a)(1) and is amended by—

A. Removing "paragraph (a)(2)(i) of this section" and adding in lieu thereof "§ 1.382-2T(a)(2)(i)" in paragraph (a)(1)(i)(B),

B. Removing "paragraph (f)(1)" and adding in lieu thereof "paragraph (a)(1)" each place it appears, and

C. Removing "paragraph (e)(2)(iv) of this section" and adding in lieu thereof "§ 1.382-2T(e)(2)(iv)" in paragraph (a)(1)(iii).

6. The second sentence of paragraph (f)(18)(ii)(C) is removed.

7. The second sentence of paragraph (f)(18)(iii)(C) is removed.

8. Paragraph (f)(22) is redesignated as § 1.382-2(a)(2).

9. The second sentence of paragraph (h)(4)(ix) is removed.

10. New paragraphs (f)(1) and (f)(22) are added to read as follows:

§ 1.382-2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(f) * * *

(1) *Loss corporation.* See section 382 and § 1.382-2(a)(1) for the definition of a loss corporation.

* * * * *

(22) *Pre-change loss.* See section 382 and § 1.382-2(a)(2) for the definition of pre-change loss.

* * * * *

Par. 9. Section 1.383-0 is added as follows:

§ 1.383-0 Effective date.

(a) The regulations under section 383 (other than the regulations described in paragraph (b) of this section) reflect the amendments made to sections 382 and 383 by the Tax Reform Act of 1986. See § 1.383-1(j) for effective date rules.

(b) Sections 1.383-1A, 1.383-2A, and 1.383-3A do not reflect the amendments made to sections 382 and 383 by the Tax Reform Act of 1986.

§§ 1.383-1, 1.383-2, 1.383-3 [Amended]

Par. 10. Sections 1.383-1, 1.383-2, and 1.383-3 are amended as follows:

1. Section 1.383-1 is redesignated as § 1.383-1A and the section heading is revised to read, "Special limitations on carryovers of unused investment credits, work incentive program credits, foreign taxes and capital losses (Pre-Tax Reform Act of 1986)".

2. Section 1.383-2 is redesignated as § 1.383-2A and the section heading is revised to read, "Purchase of a corporation and change in its trade or business (Pre-Tax Reform Act of 1986)".

3. Section 1.383-3 is redesignated as § 1.393-3A and the section heading is revised to read, "Change in ownership as the result of a reorganization (Pre-Tax Reform Act of 1986)".

4. Section 1.383-1A, as redesignated, is amended by removing "1.383-2 and 1.383-3" and adding in lieu thereof "1.383-2A and 1.383-3A" in the next to the last sentence and by removing "§ 1.382-2" in the last sentence and adding in lieu thereof "§ 1.382-4A".

§ 1.383-1T [Redesignated as § 1.383-1]

Par. 11. Section 1.383-1T is redesignated as § 1.383-1 and is amended as follows:

1. The section heading is revised by removing "(Temporary)".

2. Paragraph (a) is amended by adding at the end of the table of contents, "(k) Transitional rules regarding information statements".

3. Paragraph (c)(2)(ii) is amended by removing "attributable" and adding in lieu thereof "allocable".

4. Paragraphs (c)(3) (i)(B) and (ii)(B) are amended by removing "attributable" and adding in lieu thereof "allocable".

5. Paragraphs (c)(4) and (d)(2)(iii) are amended by removing "§ 1.382.2T(f)(22)" and adding in lieu thereof "§ 1.382-2(a)(2)".

6. Paragraph (e)(4)(i) is amended by removing in the last sentence, "general business credits arising in the taxable year are considered (under section 39) to offset regular tax liability before general business credit carryovers to the taxable year." and, adding in lieu thereof, "general business credit carryovers to the taxable year are considered (under section 39) to offset regular tax liability before general business credits arising in the taxable year."

7. Paragraph (e)(4)(ii) is amended by adding after "section 38(c)(2)," the words "as applicable, taking into account amendments made by section 11813 of the Revenue Reconciliation Act of 1990,".

8. Paragraph (g) is amended by adding a new sentence after the first sentence and adding a new sentence at the end thereof as set forth below.

§ 1.383-1 Special limitations on certain capital losses and excess credits.

* * * * *

(g) *Coordination with section 382 and the regulations thereunder.* * * * To the extent section 382(h)(6) applies to credits, the principles of this section apply to such credits. * * * For example, in applying § 1.382-2T (f)(18)(ii)(C), (f)(18)(iii)(C) and (h)(4)(ix), any pre-change credits, as defined in paragraph (c)(3) of this section, must be converted to a deduction equivalent by dividing the amount of such credits by the maximum effective rate of tax provided for under section 11 (e.g., 0.34 for taxable years beginning in 1989).

* * * * *

§ 1.382-2T [Amended]

Par. 12. A further amendment is made to § 1.382-2T as follows. Paragraph (a)(2)(iv) is redesignated as paragraph (k) of newly designated § 1.383-1 and amended by:

A. Revising the heading of newly redesignated paragraph to read, "Transitional rules regarding information statements",

B. Redesignating paragraphs (a)(2)(iv) (A) and (B) as paragraphs (k)(1) and (k)(2), respectively, of § 1.383-1,

C. Removing "paragraph (a)(2)(ii) of this section" in newly redesignated paragraph (k)(1) and adding in lieu thereof, "§ 1.382-2T(a)(2)(ii)",

D. Removing "§ 1.383-1T(c)(2) (i) and (ii)" each place it appears in newly redesignated paragraph (k) and adding in lieu thereof "paragraphs (c)(2) (i) and (ii) of this section",

E. Removing "§ 1.383-1T(c)(3)" each place it appears in newly redesignated paragraph (k) and adding in lieu thereof "paragraph (c)(3) of this section",

F. Removing "paragraphs (a)(2)(ii) (A) and (B) of this section" in newly redesignated paragraph (k) and adding in lieu thereof "§ 1.382-2T (a)(2)(ii) (A) and (B)",

G. Removing "§ 1.383-1T" in newly redesignated paragraph (k)(2) and adding in lieu thereof "this section", and

H. Removing "subdivision (B)" in the last sentence of newly redesignated paragraph (k)(2) and adding in lieu thereof "paragraph (k)(2)".

§ 1.383-2T [Redesignated as § 1.383-2]

Par. 13. Section 1.383-2T is redesignated as § 1.383-2 and the section heading is amended by removing "(Temporary)".

PART 602—OMB CONTROL NUMBERS UNDER PAPERWORK REDUCTION ACT

Par. 14. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 15. Section 602.101(c) is amended by inserting in the appropriate place in the table "Section 1.383-1 * * * 1545-0123".

Approved: May 16, 1991.

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-15026 Filed 6-26-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-91-19]

Special Local Regulations for Marine Events; Fourth of July Fireworks Display; Parker Island, Little Egg Harbor, Beach Haven, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.514.

SUMMARY: This notice implements 33 CFR 100.514 for the Fourth of July fireworks display launched from Parker Island, Little Egg Harbor, Beach Haven, New Jersey. The regulations in 33 CFR 100.514 are needed to control vessel traffic within the immediate vicinity of this event. The regulations restrict vessel traffic in the area for the safety of the life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.514 are effective from 8:30 p.m. to 11:30 p.m., July 4, 1991. If inclement weather causes the postponement of the event, the regulations are effective from 8:30 p.m. to 11:30 p.m., July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Red, White and Blue Committee, Ltd., Beach Haven, New Jersey submitted an application on April 2, 1991 to hold a fireworks display launched from Parker Island, Little Egg Harbor, Beach Haven, New Jersey. The regulations in 33 CFR 100.514 are needed to control marine traffic on the waters of Little Egg Harbor. In order to protect life and property, Parker Island will be closed. A circle around the island's center with a radius of 1000 feet will be closed to waterborne traffic during the event. Vessels transiting the area will not be inconvenienced since the deep water channel will remain open.

Dated: June 24, 1991.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-15350 Filed 6-26-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 80, 85, 86, 201, 215, 222, 231, 232, 233, 234, 235, 300, 302, 315, 332, 346, 365, 366, 367, 369, 380, 385, 396, 400, 441, 600, 607, 608, 609, 624, 628, 629, 630, 631, 637, 639, 643, 644, 645, 646, 649, 653, 656, 657, 658, 668, 682, 690, 692, 764, 765, 766, 768, 769, 771, 772

Announcement of Effective Dates

AGENCY: Department of Education.

ACTION: Notice of effective dates.

SUMMARY: Section 431(d) of the General Education Provisions Act requires that most Department of Education regulatory documents be published in the **Federal Register** for forty-five (45) calendar days, or longer if Congress takes certain adjournments, before they take effect. Since future congressional adjournments cannot be predicted with certainty when a document is published, the Department cannot announce a specific effective date at the time of publication. This notice announces the effective dates for certain regulatory documents subject to the delayed effective date requirement of section 431(d).

DATES: For effective dates, see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, U.S. Department of Education, 400 Maryland Avenue SW., Room 2131 FOB-6, Washington, DC 20202-2241. Telephone: (202) 401-2887. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The effective date provision for each of the regulatory documents included in this notice stated that the effective date would be announced in a notice published in the **Federal Register.** Accordingly, this notice announces the following effective dates:

1. 34 CFR part 690, final regulations for the Pell Grant Program, published April 5, 1990 (55 FR 12784).

Dates: Effective date: May 20, 1990.

2. 34 CFR part 222, final regulations for Assistance for Local Educational

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Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education, published April 25, 1990 (55 FR 17576).

Dates: Effective date: June 14, 1990.

3. 34 CFR part 85, final regulations for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants), published May 25, 1990 (55 FR 21681).

Dates: Effective date: July 24, 1990.

4. 34 CFR parts 300, 315, 332, 385, 366, 367, 369, 380, 385, 396, 400, 607, 608, 609, 624, 628, 629, 630, 631, 637, 639, 643, 644, 645, 646, 649, 656, 657, 658, and 692, final regulations for Intergovernmental Review of Department of Education Programs and Activities, published May 25, 1990 (55 FR 21712).

Dates: Effective date: July 19, 1990.

5. 34 CFR part 201, final regulations for Chapter 1—Migrant Education Program, published May 30, 1990 (55 FR 22016).

Dates: Effective date: July 19, 1990.

6. 34 CFR parts 768, 769, 771, and 772, final regulations for Library Services and Construction Act Discretionary Grant Programs, published July 16, 1990 (55 FR 28990).

Dates: Effective date: September 2, 1990.

7. 34 CFR parts 600 and 668, final regulations for Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and Student Assistance General Provisions, published August 7, 1990 (55 FR 32180).

Dates: Effective date: September 21, 1990.

8. 34 CFR part 346, final regulations for Technology-Related Assistance for Individuals with Disabilities: Demonstration and Innovation Projects of National Significance, published August 13, 1990 (55 FR 33068).

Dates: Effective date: September 27, 1990.

9. 34 CFR part 86, final regulations for Drug-Free Schools and Campuses, published August 16, 1990 (55 FR 33580).

Dates: Effective date: September 30, 1990.

10. 34 CFR part 302, final regulations for chapter 1 State Operated or Supported Programs for Handicapped Children Program, published August 24, 1990 (55 FR 34842).

Dates: Effective date: October 8, 1990.

11. 34 CFR parts 653 and 682, final regulations for the Paul Douglas Teacher Scholarship Program and the Guaranteed Student Loan and PLUS Programs, published August 27, 1990 (55 FR 35002).

Dates: Effective date: October 11, 1990.

12. 34 CFR part 222, final regulations for Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education, published December 12, 1990 (55 FR 51238).

Dates: Effective date: January 26, 1991.

13. 34 CFR parts 231, 232, 233, 234, 235, 764, 765, and 766, final regulations for the Drug-Free Schools and Communities Program, published December 19, 1990 (55 FR 52146).

Dates: Effective date: February 2, 1991.

14. 34 CFR parts 74 and 80, final regulations for Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, published January 16, 1991 (56 FR 1698).

Dates: Effective date: March 2, 1991.

15. 34 CFR part 690, final regulations for the Pell Grant Program, published January 16, 1991 (56 FR 1700).

Dates: Effective date: March 2, 1991.

16. 34 CFR part 441, final regulations for the Adult Education for the Homeless Program, published April 2, 1991 (56 FR 13522).

Dates: Effective date: May 17, 1991.

17. 34 CFR part 215, final regulations for the Follow Through Program, published April 12, 1991 (56 FR 14980).

Dates: Effective date: June 12, 1991.

(20 U.S.C. 1232(d))

Dated: June 21, 1991.

Steven Y. Winnick,

Acting General Counsel.

[FR Doc. 91-15240 Filed 6-26-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Loan Guaranty: Implementation of Public Law 100-198

AGENCY: Department of Veterans Affairs.

ACTION: Technical amendment.

SUMMARY: VA published a document concerning VA loan charges and fees which appeared in the **Federal Register** on October 4, 1990 (55 FR 40656). The amendment instructions assigned incorrect paragraph designations and created a duplication of paragraphs. This document will correct those problems.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Judith A. Caden, Assistant Director for Loan Policy (264), (202) 233-3042.

SUPPLEMENTARY INFORMATION: In 55 FR 40656, October 4, 1990, item 5, § 36.4312, VA announced incorrect instructions to redesignate paragraph (e)(4) to (e)(5) and to add a new paragraph (e)(4). The redesignation of paragraph (e)(4) created two paragraphs (e)(5): a previous amendment in 55 FR 37476, item 23, September 12, 1990, had established a paragraph (e)(5), which has since become obsolete and is removed by this amendment.

The addition of the new paragraph (e)(4) in 55 FR 40656 created repetitive text in paragraphs (e)(4) and (e)(5). This amendment removes paragraph (e)(5).

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan program—housing and community development, Manufactured homes, Veterans.

Approved: June 18, 1991.

B. Michael Berger,

Director, Records Management Service.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 72 Stat. 1114 (38 U.S.C. 210).

§ 36.4312 [Amended]

2. Section 36.4312 is amended by removing paragraph (e)(5), redesignated by item 23 (55 FR 37476, September 12, 1990), and by removing paragraph (e)(5) redesignated by item 5 (55 FR 40656, October 4, 1990).

[FR Doc. 91-15292 Filed 6-26-91; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3961-3]

Approval and Promulgation of State Implementation Plans; Utah; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is today approving revisions to Utah's State Implementation Plan (SIP) submitted by the Governor on May 2, 1991, which modified the prevention of significant deterioration of air quality (PSD) portion of the SIP, section 8, and the PSD regulations (section R446-1-3 of the Utah Air Conservation Regulations [U.A.C.R.]), to incorporate the nitrogen dioxide (NO_2) increments. The May 2, 1991 submittal also included minor "housekeeping" changes to the Foreward and Definitions (U.A.C.R. R446-1-1), and to the PSD and new source review provisions contained in the Control of Installations (U.A.C.R. R446-1-3). The effect of this action is to make the NO_2 increment revisions to the PSD program, and the "housekeeping" changes, part of the Utah SIP and thus federally enforceable.

EFFECTIVE DATE: This action will become effective on August 26, 1991, unless notice is received by July 29, 1991, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405.

Bureau of Air Quality, Department of Health, 1950 West North Temple, Salt Lake City, Utah 84116.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mindy Mohr, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405, (303) 294-7539, FTS 330-7539.

SUPPLEMENTARY INFORMATION:

NO_2 Increment Revisions:

On October 17, 1988 (53 FR 40656), EPA promulgated ambient air quality increments for NO_2 under the PSD regulations at 40 CFR 51.166 and 40 CFR 52.21. The effective date promulgated for the NO_2 increments in 40 CFR 51.166 is October 17, 1989 and in 40 CFR 52.21, November 19, 1990.

Guidance dated August 17, 1990, from Gary McCutchen, Chief of the New Source Review Section, to NSR Contacts, Region I-X, entitled "Final Guidance on Incorporating the NO_2 Increments Regulations Into State Implementation Plans (SIP's) and Delegation Agreements (DA's)," describes the minimum PSD program elements regarded as necessary for protection of the NO_2 increments. States must confirm that they intend to comply with, as well as explain how they intend to comply with, as well as explain how they intend to satisfy, each of these program elements. Utah's PSD program was originally approved by EPA on February 12, 1982 (47 FR 6427). Since Utah's PSD program is a SIP-approved program, the minimum program elements include:

1. *Regulatory Language*—revised State PSD rules as required by revisions to 40 CFR 51.166.

2. *NO_2 Increment Consumption Analyses by Major Sources*—assurance that air quality modeling analyses prepared for major source permit applications consider minor source emissions (which include minor point sources, area sources and mobile sources) since the minor source baseline date.

3. *NO_2 Increment Consumption Status Review*—periodic reviews of increment status for each section 107 area designated as attainment, summarized in a report for EPA and the public. Additionally, the State is required to prepare an initial report which covers the transition period between February 8, 1988 and the date on which EPA approves the revisions to the SIP for NO_2.

4. *Legal Authority*—certification that the State has the legal authority under State law to administer all of the NO_2 increment provisions of the SIP.

The State's May 2, 1991 submittal, and material submitted by the Utah Bureau of Air Quality on February 26, 1991 in a letter from F. Burnell Cordner, Executive Secretary, Utah Air Conservation Committee to Douglas Skie, EPA, addressed the above items. The submittal of February 26, 1991 contained an official version of the U.A.C.R. with a codification error, since there were two subparagraphs labeled as "(E)" in U.A.C.R. R446-1-3.6.5. Correction of this error was deemed a nonsubstantive change by the Utah Division of Administrative Rules (DAR), and in a letter of May 1, 1991 from Kenneth A. Hansen, Administrative Code Editor of the DAR, to Dave McNeill, Planning Section Manager of the Bureau of Air Quality, the State was notified that this correction had been made, effective May 1, 1991.

In addition to the NO_2 increment revisions, with the May 2, 1991 submittal, the State has also made several "housekeeping" changes in its definitions, and PSD and new source review provisions. The definitions changes include in modifications to, or addition of, the definitions of "fugitive emissions", "source", "incinerator", "owner or operator", "reasonable further progress", and "enforceable". The new sources review and PSD changes include modification to U.A.C.R. R446-1-3.1.10 to add the requirement that the owner or operator of a major new source or major modification which would emit carbon monoxide and impact a carbon monoxide nonattainment area must submit a adequate analysis of alternative sites, sizes, production processes and environmental control techniques; addition of subsection U.A.C.R. R446-1-3.1.11 to correspond to the federal provision at 40 CFR 51.165(a)(5)(ii); modification of the statement on banking of emission offset credits at U.A.C.R. R446-1-3.3.5 to explicitly identify applicable federal requirements; and modifications to the area redesignation provisions at U.A.C.R. R446-1-3.6.2 to include the word "federal" in several places. EPA is approving the revisions to the SIP to incorporate these changes.

Therefore, EPA believes that the State of Utah has adopted the minimum PSD program elements regarded as necessary for protection of the NO_2 increments.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 26, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 26, 1991.

Final Action: EPA is today approving revisions to Utah's SIP, submitted by the Governor on May 2, 1991, which modified the prevention of significant deterioration of air quality (PSD) portion of the SIP, Section 8, and the State's prevention of significant deterioration of air quality (PSD) regulations of the Utah Air Conservation Regulations, to incorporate the nitrogen dioxide (NO_2) increments. EPA is also approving several "housekeeping" modifications to Utah Air Conservation Regulations.

Nothing in this action should be construed as permitting or allowing or

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establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review must be filed in the United States Court of Appeals for the appropriate circuit by August 26, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Nitrogen dioxide.

Note: Incorporation by reference of the State.

Implementation Plan for the State of Utah was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 17, 1991.

James J. Scherer,

Regional Administrator.

40 CFR part 52, subpart TT, is amended as follows:

Subpart TT—UTAH

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2320 is amended by adding (c)(23) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(23) On May 2, 1991 the Governor of Utah submitted revisions to the plan. The revisions include amendments to the prevention of significant deterioration (PSD) portion of the plan to incorporate the nitrogen dioxide (NO_2) increments, and several "housekeeping" changes to definitions, new source review, and PSD regulations.

(i) Incorporation by reference

(A) Revisions to the Utah Air Conservation Regulations, section R446–1–1, Foreword and Definitions, section R446–1–3, Control of Installations, and section R446–2–1, Utah State Implementation Plan Incorporation by Reference, effective January 1, 1991.

(B) Letter dated May 1, 1991, from Kenneth Hansen of the Utah Division of Administrative Rules to Dave McNeill of the Utah Bureau of Air Quality, confirming a codification change to paragraph R446–1–3.6.5, effective May 1, 1991. This letter contains a reprinted version of R446–1–3.6.5.

(ii) Additional material

(A) February 26, 1991, letter from F. Burnell Cordner, Executive Secretary, Utah Air Conservation Committee, to Douglas M. Skie, EPA, transmitting administrative materials for the SIP revision.

(B) May 2, 1991, letter from Norman H. Bangerter, Governor, State of Utah, to James J. Scherer, EPA. Official SIP submittal, transmitting the SIP narrative modifying section 8, Prevention of Significant Deterioration, and other administrative materials.

[FR Doc. 91–14955 Filed 6–26–91; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–68

General Services Administration Property Management Regulations: Common Rule: Drug-Free Workplace Requirements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document transmits editorial corrections to the General Services Administration Property Management Regulations (GSPMR), chapter 105, as a result of a general review of the final rule published in 41 CFR chapter 105–68 (revised as of July 1, 1990).

EFFECTIVE DATE: June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy (VP), (202) 501–1224.

SUPPLEMENTARY INFORMATION:

List of Subjects in 41 CFR Part 105–68

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

In 41 CFR chapter 105–68 (Revised as of July 1, 1990), make the following corrections:

PART 105–68—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUGFREE WORKPLACE (GRANTS)

1. The authority citation for 41 CFR part 105–68 continues to read as follows:

Authority: Title 5, subtitle D; 41 U.S.C. 701 et seq.; 40 U.S.C. 486(c).

§ 105–68.305 [Corrected]

2. Section 105–68.305(c)(5) is corrected by changing "subpart F" in the second line of the paragraph to read "subpart 105–68.6."

§ 105–68.310 [Corrected]

3. Section 105–68.310 is corrected by adding "and 48 CFR subpart 509.4" at the end of the section.

§ 105–68.320 [Corrected]

4. Section 105–68.320(a) (1) and (2) is corrected by changing "subpart F" to "subpart 105–68.6."

§ 105–68.325 [Corrected]

5. Section 105–68.325(b)(3) is corrected by removing the repeated text, "may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement."

§ 105–68.410 [Corrected]

6. Section 105–68.410(b) is corrected by adding "and 48 CFR subpart 509.4" at the end of the paragraph.

§ 105–68.610 [Corrected]

7. Section 105–68.610(c) is corrected by changing "subparts A, B, C, D and E" to read "subparts 105–68.1, 105–68.2, 105–68.3, 105–68.4 and 105–68.5."

§§ 105–68.505, 105–68.510, Appendix A [Amended]

8. Sections 105–68.505(d), 105–68.510 (a) and (b), and appendix A, paragraph 8 are corrected by removing "(Tel. #)" and inserting in its place, "(202) 501–0688" in each paragraph where "(Tel. #)" appears.

Dated: June 12, 1991.

Ida M. Ustad,

Director, Office of GSA Acquisition Policy.

[FR Doc. 91–15380 Filed 6–26–91; 8:45 am]

BILLING CODE 6820–61–M

41 CFR Parts 301–1, 302–5, 302–6, and 302–12

[FTR Amendment 17]

RIN 3090–AE35

Federal Travel Regulation; Pre-Employment Interview Travel Expenses and Relocation Expenses of New Appointees

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in a document amending the Federal Travel Regulation which was published May 23, 1991 (56 FR 23653).

EFFECTIVE DATE: February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

Accordingly, the following corrections are made to FR Doc. 91–12252 in the issue of May 23, 1991.

1. On page 23655, in the third column, under amendatory instruction 18., in the fifth line, the reference "§ 301–1.6(b)" should read "§ 301–1.6(c)", and in the sixth line, the reference "§ 301–1.103(b)" should read "§ 301–1.103(c)".

2. On page 23656, in the first column, the section title "§ 302–5.1 [Amended]" should read "§ 302–6.1 [Amended]".

3. On page 23658, in the first column, under amendatory instruction 50., in the first line, the reference "302–5.1(b)" should read "302–6.1(b)".

4. On page 23658, in the second column, under amendatory instruction 56., in the first line, the reference "302–12.4(a)(1)" should read "302–12.4(a)(2)".

Dated: June 21, 1991.

Donna D. Bennett,

Director, Travel Management Division.

[FR Doc. 91–15339 Filed 6–26–91; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 78–174b]

RIN 2115–AC16

Approval of Inflatable Lifejackets

AGENCY: Coast Guard, DOT.

ACTION: Adoption of interim final rule as final.

SUMMARY: On May 29, 1985 the Coast Guard published a notice of proposed rulemaking in the Federal Register which proposed structural and performance standards and procedures for approval of inflatable lifejackets, as well as requirements for associated manuals, servicing programs, and shore-side service facilities. On December 5, 1989 the Coast Guard published an interim final rule based on these proposals. Because the interim final rule contained several provisions which were not in the NPRM, the Coast Guard extended an opportunity for comment on these sections. This final rule adopts the interim final rule with only minor changes.

EFFECTIVE DATE: This rule becomes effective on July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Wehr, Office of Marine Safety, Security, and Environmental Protection, Attn: G–MVI–3/14, 2100 Second St. SW., Washington, DC 20593–0001, (202) 267–1444.

SUPPLEMENTARY INFORMATION:

Regulatory Background

A notice of proposed rulemaking (NPRM) was published in the Federal Register on May 29, 1985 (50 FR 21662 and 21878). Corrections to the NPRM were published in the Federal Register on June 16, 1985 (50 FR 25274). The comment period on the proposal ended on July 15, 1985.

An interim final rule was published in the December 5, 1989, issue of the Federal Register (54 FR 50316), with an effective date of January 4, 1990. The interim final rule changed the NPRM in several areas due to public comments, International Maritime Organization (IMO) clarifications of the 1983 Amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74/83), and Coast Guard observations. These changes affected § 160.176–13(d)(3) and (4), Static Measurements and Average Requirements; § 160.176–13(g), Lanyard Pull Test; and § 160.176–19, Servicing.

Because these changes were not in the NPRM, the interim final rule invited comments on these sections. That comment period ended on January 19, 1990. Comments were received from three sources, including a lifejacket/personal flotation device (PFD) manufacturer, an independent laboratory, and the developer of a new type of inflation mechanism. All these comments addressed matters in addition to those which were open to comment. These comments are addressed below.

Additionally, the Coast Guard has become aware of the fact that several minor provisions were not entirely consistent with the scope of the interim final rule. These provisions, also discussed below, have therefore been revised.

Hybrid Personal Flotation Devices (PFD's)

The NPRM proposed requirements for both hybrid PFD's and inflatable lifejackets. An interim final rule promulgating hybrid PFD requirements was published in the Federal Register on August 22, 1985 (50 FR 33923). Corrections to this rule were published on February 4, 1986 (51 FR 4349). Comments that addressed concerns relating to the hybrid requirements were analyzed and discussed in that publication. Some of those comments were also relevant to inflatable lifejackets and were discussed in the interim rule for inflatable lifejackets.

Carriage Requirements for Inflatable Lifejackets

Provisions relating to carriage of inflatable lifejackets as substitutes for other required lifejackets on board various types of vessels will be included in regulations being proposed in another rulemaking. That rulemaking is part of a project to update the lifesaving appliances and arrangements for all vessels to implement the 1983 Amendments to SOLAS 1974 (SOLAS 74/83) (Docket CGD 84–069) (new Subchapter W). Advance notice of that related rulemaking was published in the Federal Register of April 29, 1985 (50 FR 17530). A Notice of Proposed Rulemaking was published April 21, 1989 (54 FR 16198). Until that rulemaking is completed, inflatable lifejackets may be accepted for carriage under the equivalency provisions in the various vessel regulations by contacting the Commandant (G–MVI) (46 CFR 30.15, 46 CFR 70.15, 46 CFR 90.15, 46 CFR 108.105, 46 CFR 167.35–1, 46 CFR 169.109, and 46 CFR 175.15). The Coast Guard expects to follow the guidelines in the inflatable PFD NPRM published on May 29, 1985 (50 FR 21878) when granting an acceptance.

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Drafting Information

The principal persons involved in drafting this rule are Mr. Samuel Wehr, Office of Marine Safety, Security, and Environmental Protection, and Lieutenant Ralph Hetzel, Office of Chief Counsel.

Discussion of Comments and Revisions Made

General

Two organizations commented on the interim final rule within the comment period. One was an independent laboratory which had commented previously and the other was a manufacturer of PFDs who had commented on the rules for hybrid PFDs. The laboratory primarily sought clarifications of the approval testing procedures. The PFD manufacturer questioned the reliability of inflation mechanisms.

A late comment from the developer of a new type of inflation mechanism suggested that new technology may become available shortly which could improve reliability of automatic inflation systems. This comment is discussed under the heading Reliability of Inflation Mechanisms.

None of the comments addressed §§ 160.176–13(d) (3) and (4); 160.176–13(g); or 160.176–19 which were the sections of the rule for which comments were requested. The comments did, however, point out typographical errors which have been corrected in this rulemaking. They also suggested clarifying language for a number of sections. Clarifications were adopted in §§ 160.176–5(a)(3)(iii); 160.176–13 (b)(1), (c)(4), (d)(2)(ii), and (j)(1)(ii); and 160.176–15(g)(3)(iii). None of these comments resulted in substantive changes to the rule.

The following comment discussion is divided into three areas:
—Changes made for clarification.
—Correction of errors.
—Additional matters.

Changes Made for Clarification

Section 160.176–5(a)(3)(iii). One comment recommended that some guidelines be established for the range of tolerances that should be allowed for buoyancy and torque as required to be set by this section. Present Coast Guard policy letters and approval practices allow ±10 percent tolerances for such values unless adequate justification is provided for wider tolerances. The Coast Guard also requires the prototype devices tested to tend toward the center of the specified tolerance range, or that the proposed tolerances be adjusted so that the production devices will be similar to the prototypes tested. Since similar types of guidelines are specified for the materials used to make the lifejacket, the Coast Guard agrees that the requested guidelines, reflecting present policy, should be added to this section.

Section 160.176–8 (k) and (m). In keeping with the scope covered in § 160.176–1(c)(2) of the interim final rule, the PFD light requirement has been revised to ensure that a light meeting SOLAS 74/83 is provided with the lifejacket. Also, in keeping with this scope and the SOLAS 74/83 Convention, a requirement has been added to require that a whistle be provided with the lifejacket. These items are required in order for the Coast Guard to issue a "SOLAS 74/83 certificate" for a vessel. The language of this change is essentially the same as the requirements published in the NPRM of April 21, 1989, previously discussed in this preamble.

Section 160.176–13(b)(1). A comment asked whether the donning instructions could be reviewed prior to the donning test. Since the vessel regulations require a briefing/demonstration of the use of the lifesaving equipment on board, the donning instructions may be reviewed prior to the donning attempt. Text has been added to the regulation to make it clear that the instructions may be reviewed.

Section 160.176–13(b)(2). A comment stated that the requirement to inflate the device in the donning time is significant because another inflation test has a 30 second time limit, and the devices have an automatic inflation mechanism. It should be noted that one of the standards referenced (UL 1517) does included inflation in the required 1 minute donning requirement. However, since the time for the device to fully inflate was not intended to be counted and the time limit is shorter, the wording of the preceding paragraph § 160.176–13(b)(1) (which sets the test conditions) has been changed to require the subject to "activate the inflation mechanism" instead of "inflate" the device.

Since the device need not actually inflate for this test, § 160.176–13(b)(1) has also been changed to allow the manual inflation mechanism to be disabled during the test.

Section 160.176–13(c)(4). A comment questioned the need for the oral inflation test of the packed device. This comment indicates that there is some misunderstanding of "packed" and "packaged". The test is intended to determine whether someone, who cannot forcefully exhale, can inflate a device that has "break-away" closures around the inflation chamber while it is worn or in the ready-to-use but uninflated condition. If the device could not comply with this test, the device may be unusable by such people in an emergency. The test is not intended to apply when the device is restricted by some kind of disposable packaging or closure that would be opened before donning or by the action of accessing the oral inflator. Since the text of the interim final rule caused confusion, it has been changed for clarity by explaining, in the introductory text of paragraph (c), that any non-reusable cover is to be removed prior to this test.

Section 160.176–13(d)(2)(ii). One comment suggested that the next to last sentence of this section be changed to clarify that a total of three righting evaluations is all that is required. The text of the regulation stated that "each subject repeats these steps three times". The comment suggested that "three" be changed to "two additional" times. The change has been made.

Correction of Errors

Spelling and Typographical Errors. One comment pointed out several spelling and typographical errors, which have been corrected. The affected sections are: 160.176–8(k), 160.176–13(a)(1), and 160.176–23 (c) and (e).

Rounding Error. One comment suggested that the accuracy of the scales be revised from ±13 grams to ±14 grams to be consistent with other related standards. The Coast Guard agrees. The value published in the Interim Final Rule was rounded off incorrectly and therefore has been revised to correct the error. The affected sections are: 160.176–13(j)(1)(ii) and 160.176–15(g)(3)(iii).

Additional Matters

General. As mentioned previously, none of the comments addressed the specific sections of the rule for which comments were requested. The remaining comments have been analyzed and found not to provide clarification or benefit. The analysis of all but two of these comments has been placed in the docket rather than in this publication because they are not of general interest. The other two comments are discussed under the following heading.

Reliability of Inflation Mechanisms. Two comments questioned the reliability of the automatic inflation mechanisms which will meet the requirements of the subpart, and § 160.176–9(b)(5) in particular. The testing required for approval will demonstrate whether a limited number of automatic inflation mechanisms will work under a variety of environmental conditions. The subpart does not require enough samples to be tested to determine a statistically significant reliability value for the devices. Note, however, that no failures are permitted during the testing. The Coast Guard's position is that this regulation and the SOLAS 74/83 inflatable lifejacket requirements concerning back-up systems and annual servicing provide sufficient reliability that the overall lifesaving potential of the system is not compromised. When more comprehensive reliability information is available, the Coast Guard will consider requiring a demonstrated high reliability in place of, or in addition to, some of the current back-up inflators and servicing requirements. No change has been made at present.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). A regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed above under **ADDRESSES**. Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The evaluation provides a detailed explanation of the estimated costs of these proposed regulations. The total approval costs per design are expected to be approximately $4,000 for inflatable lifejackets. Costs to approve other types of PFD's are approximately $2,000. The additional cost to approve inflatable lifejackets could easily be absorbed in the cost of the units produced. The cost increase per lifejacket would be small considering the number of lifejackets to be produced under authorization of each approval certificate. The Coast Guard anticipates that, within the first year after issuing the final rules, one or two inflatable lifejacket designs would be approved.

Production inspection costs imposed by these regulations will be approximately $1,000 for the largest size lot of inflatable lifejackets permitted. This cost is similar to that incurred for other types of approved PFD's.

The retail cost, per device, is expected to be $100–$200 for inflatable lifejackets. These costs would be optional since carriage is optional. Currently approved PFD's range in price from $7 to $200. Type I devices that could be replaced by inflatable lifejackets have an average cost of about $40.

These regulations provide an alternative to users for whom limited stowage space or other operational considerations make the carriage of conventional inherently buoyant PFD's impractical or inadvisable. For these users, the optional carriage of inflatable lifejackets will meet their specific operational needs and will therefore justify the higher cost relative to inherently buoyant PFD's.

These regulations will have little or no effect on federal, state, or local governments except in their capacities as consumers of PFD's. Coast Guard steps to implement these rules will be done within the scope of ongoing marine safety activities, and there will be no need for additional federal budget commitments.

Regulatory Flexibility Act

Based upon the information in the evaluation, as discussed above, the Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. The reasons for categorical exclusion are (1) the action is to carry out statutory authority in the area of maritime safety and (2) it is an administrative action which clearly has no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 160

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending chapter I of title 46 of the Code of Federal Regulations which was published at 54 FR 50316 on December 5, 1989, is adopted as a final rule with the following changes.

PART 160—LIFESAVING EQUIPMENT

1. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104, and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p 277; 49 CFR 1.46.

2. Section 160.176–5 is amended by revising paragraph (a)(3)(iii) to read as follows:

§ 160.176–5 Approval procedures.

(a) *Modifications to general procedures.* * * *

(3) * * *

(iii) Buoyancy and torque values along with tolerances to be allowed in production. The Coast Guard normally will approve tolerances of up to ±10% unless prototypes are tested at greater extremes or greater tolerances are otherwise justified.

* * * * *

3. Section 160.176–8 is amended by revising paragraph (k) and adding paragraph (l) and (m) to read as follows:

§ 160.176–8 Materials.

* * * * * *

(k) *PFD light.* Each lifejacket must have a PFD light that is approved under subpart 161.012 of this chapter and that meets the requirements of Regulations III/30.2 and III/32.3 of the 1983 Amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74/83). The light must be securely attached to the front shoulder area of the lifejacket. Attachment of the light must not impair lifejacket performance.

(l) [Reserved]

(m) *Whistle.* Each lifejacket must have a whistle of the ball type or multi-tone type and of corrosion-resistant construction. The whistle must be securely attached to the lifejacket by a lanyard. The lanyard must be long enough to permit the whistle to reach the mouth of the wearer. If the lanyard would normally allow the whistle to hang below the waist of the average size wearer, the whistle must be stowed in a pocket on the lifejacket. The attachment of the whistle must not impair lifejacket performance.

4. Section 160.176–13 is amended by revising paragraphs (a)(1), (b)(1), (c) introductory text, (c)(4), (d)(2)(ii), and (j)(1)(ii) to read as follows:

§ 160.176–13 Approval tests.

(a) *General.*

(1) This section contains requirements for approval tests and examinations of inflatable lifejackets. Each test or examination must be conducted or supervised by an independent laboratory. The tests must be done using lifejackets that have been constructed in accordance with the plans and specifications in the application for

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approval. Unless otherwise specified, only one lifejacket, which may or may not have been subjected to other tests, is required to be tested in each test. One or more lifejackets that have been tested as prescribed in paragraph (h) of this section must be used for the tests prescribed in paragraphs (j), (n), (q), and (r) of this section. The tests prescribed in paragraph (y) of this section require one or more lifejackets as specified in that paragraph.

* * * * *

(b) *Donning.*

(1) No second stage donning is allowed in the tests in this paragraph. Test subjects may read the donning instructions to be provided with the device, if any. An uninflated lifejacket with size adjustment at its mid-range is given to each test subject with the instruction: "Please don as quickly as possible, adjust to fit snugly, and inflate." Each subject must, within one minute, don the uninflated lifejacket, adjust it to fit snugly, and then activate the manual inflation mechanism.

Note: For this test the manual inflation mechanism may be disabled.

* * * * *

(c) *Inflation Testing.* No second stage donning is allowed in the tests in this paragraph. A lifejacket with each automatic inflation mechanism disabled must be used for the tests prescribed in paragraphs (c)(1) and (c)(2) of this section. For the tests prescribed in paragraph (c)(4) of this section, remove any non-reusable cover or packaging from the lifejacket, but do not open any cover or closure which is intended to be closed when the lifejacket is worn in the uninflated condition.

* * * * *

(4) Air at a pressure of 4.2 kPa (0.6 psig) is applied separately to each oral inflation mechanism of the lifejacket. In each application the chamber must fully inflate within 1 minute.

* * * * *

(d) *Flotation Stability.* * * *

(2) *Righting Action.* * * *

(ii) Each subject then takes three gentle breast strokes and while still face-down in the water, relaxes completely while slowly exhaling to FRC. Each subject remains in this limp position long enough to determine if the lifejacket will turn the subject from the face-down position to a position in which the subject's breathing is not impaired. The time from the last breast stroke until breathing is not impaired is recorded. Each subject repeats these steps two additional times, and the average time for the three righting actions is calculated. This average time must not exceed 5 seconds.

* * * * *

(j) *Buoyancy and Inflation Medium Retention Test.* * * *

(1) *Equipment.* * * *

(ii) A scale that is sensitive to 14 g (0.5 oz.) and that has an error of less than ±14 g (0.5 oz.).

* * * * *

5. Section 160.176–15 is amended by revising paragraph (g)(3)(iii) to read as follows:

§ 160.176–15 Production tests and inspections.

* * * * *

(g) *Facilities and Equipment.* * * *

(3) *Equipment.* * * *

(iii) *A scale* that has sufficient capacity to weigh a submerged basket for buoyancy tests. The scale must be sensitive to 14 g (0.5 oz.) and must not have an error exceeding ±14 g (0.5 oz.).

* * * * *

§ 160.176–23 [Amended]

6. Section 160.176–23 is amended by removing the paragraph number and heading "(3) *Approved Applications."* *and inserting in its place "(e) Approved Applications.".*

Dated: April 30, 1991.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–15349 Filed 6–26–91; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

[APD 2800.12A CHGE 25]

General Services Administration Acquisition Regulation; Implementation of Public Law 99–506

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is revised to further the policy expressed in section 506 of the Rehabilitation Act of 1973, as amended (Pub. L. 99–506) (29 U.S.C. 794d) by prescribing a clause for inclusion in multiple award schedules for electronic office equipment that encourages offerors to identify those products which provide accessibility for handicapped individuals. The General Services Administration believes that the strictly voluntary participation by vendors will be beneficial not only to schedule users, who will become more aware of the availability of electronic office equipment providing accessibility, but to the vendors, themselves, because the identification of such equipment will serve as a valuable marketing tool.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Background

Section 506 of the Rehabilitation Act of 1973, as amended, mandates that the Administrator of General Services, together with the Secretary of Education and in consultation with the electronics industry, develop and establish guidelines for electronic equipment accessibility designed to ensure that handicapped individuals may use electronic office equipment with or without special peripherals. Furthermore, the Administrator is directed to adopt those guidelines for Federal procurement of electronic equipment. Mandatory coverage regarding office equipment accessibility for all automatic data processing equipment acquisitions is provided in the Federal Information Resources Management Regulation (FIRMR).

B. Determination not to Solicit Public Comment

Under multiple award schedules, contractors currently are required to submit certain marketing information with their offers and to publish and distribute to ordering agencies commercial catalogs and/or pricelists. Because this change merely requests the voluntary identification of certain information currently submitted by contractors, this rule does not constitute a significant revision requiring solicitation of public comment.

C. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated September 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) does not apply to this rule because it is not a "significant revision" as defined in FAR 1.501–1.

E. Paperwork Reduction Act

This regulation contains information collection and/or recordkeeping requirements. GSA believes, however, that the time and financial resources necessary for members of the public to comply with those requirements are limited to those that are ordinarily incurred in the normal course of business activities. Specifically, vendors normally prepare catalogs and pricelists which are furnished to prospective buyers as a means of marketing and advertising the vendor's products. Accordingly, this information collection is approved under OMB Control Number 3090–0250 (expires 11/30/92), "Zero Burden Information Collections." Comments regarding the information collection requirements contained in the proposed rule may be sent to: GSA Desk Officer, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, and to Mr. Paul Linfield, Office of GSA Acquisition Policy, room 4025, 18th & F Streets NW., Washington, DC, 20405.

List of Subjects in 48 CFR Parts 538 and 552

Government procurement.

1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 538—[AMENDED]

2. Section 538.000 is revised to read as follows:

538.000 Scope of part.

Unless otherwise stated, the policies and procedures in this part are prescribed for contracting for supplies and services by the Federal Supply Service (FSS) and the Information Resources Management Service (IRMS) under their respective schedule programs.

3. Section 538.203–71 is revised to read as follows:

538.203–71 Contract clauses.

(a) The contracting officer shall insert the clause at 552.238–72, Contractor's Report of Orders Received, in solicitations issued and contracts awarded under GSA's schedule program. Paragraph (b) of the basic clause may be modified as necessary to meet program requirements. If it is necessary to identify the official responsible for preparing the report, the contracting officer may use the clause with its Alternate I. When the clause is used by IRMS, the contracting officer shall use the clause with its Alternate II.

(b) The contracting officer shall insert the clause at 552.238–70, Identification of Electronic Office Equipment Providing Accessibility for the Handicapped, in solicitations and contracts awarded under the multiple award schedule program when the solicitation includes electronic office equipment.

4. Section 55.238–70 is added to read as follows:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.238–70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.

As prescribed in 538.203–71(b), insert the following clause:

Identification of Electronic Office Equipment Providing Accessibility for the Handicapped (May 1991)

(a) *Definitions.* "Electronic office equipment accessibility" means the application/configuration of electronic office equipment in a manner that accommodates the functional limitations of individuals with disabilities (i.e., handicapped individuals) so as to promote productivity and provide access to work related and/or public information resources.

"Handicapped individuals" means qualified individuals with impairments as cited in 29 CFR 1613.702(f) who can benefit from electronic office equipment accessibility.

"Special peripheral" means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to a handicapped individual.

(b) The offeror is encouraged to identify in its offer, and include in any commercial catalogs and pricelists accepted by the Contracting Officer, office equipment, including any special peripheral, that will facilitate electronic office equipment accessibility for handicapped individuals. Identification should include the type of disability accommodated and how the users with that disability would be helped.

Dated: June 19, 1991.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91–15312 Filed 6–26–91; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184–1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention; request for comments.

SUMMARY: The Regional Director, Alaska Region, NMFS (Director), is prohibiting further retention of the shortraker/rougheye (SRRE) species category by vessels fishing in the Eastern and Central Regulatory areas of the Gulf of Alaska (GOA) and is requiring that SRRE be treated in the same manner as a prohibited species. This action is necessary to prevent overfishing of this species category and is intended to promote optimum use of groundfish stocks.

DATES: *Effective:* 12 noon on June 21, 1991, Alaska local time, through 12 midnight, December 31, 1991. Comments are invited until July 6, 1991.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP) governs the groundfish fishery in the exclusive economic zone in the GOA under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council (Council) and was implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

The Guidelines for Fishery Management Plans (Guidelines), 50 CFR 602.11(c)(1) (July 24, 1989; 54 FR 30834), define overfishing as a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce its maximum sustainable yield on a continuing basis. Furthermore, Amendment 21 to the FMP (January 24, 1991; 56 FR 2700), requires

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that conservation and management measures shall prevent overfishing.

In accordance with § 672.22(a)(2)(i)(A), if the Secretary of Commerce (Secretary) determines that the overfishing of any species or stock of fish may occur, under § 672.22(a)(1), he may issue an inseason adjustment to the groundfish fisheries taking into account all information relevant to one or more of the following factors: (i) The effect of overall fishing effort within a regulatory area; (ii) catch per unit of effort and rate of harvest; (iii) relative abundance of stocks within the area; (iv) the condition of the stock within all or part of a regulatory area; (v) economic impacts on fishing businesses being affected; (vi) or any other factor relevant to the conservation and management of groundfish species for which a total allowable catch (TAC) has been specified.

The FMP describes the maximum fishing mortality rate that defines the amount of harvest that constitutes overfishing for fisheries in that regulatory area. In their report to the Council for the GOA, the Scientific and Statistical Committee (SSC) recommended the allowable biological catch (ABC) for the SRRE group at 2,000 metric tons (mt) and noted that it was equivalent to the definition of overfishing. The Advisory Panel of the Council recommended that the TAC equal the ABC, which was adopted by the Council. The final notice of 1991 initial specifications (March 1, 1991; 56 FR 8723) established an ABC and TAC of 2,000 mt for SRRE in the GOA. It further apportioned the TAC among the three regulatory areas as follows: Western Gulf—100 mt; Central Gulf—1,320 mt; and Eastern Gulf-580 mt.

Under directed fishing standards at § 672.20(g)(3), directed fishing for SRRE is defined as retention of SRRE at any time during a trip in amounts greater than or equal to 20 percent of the amount of all other fish species retained at the same time by the vessel during the same trip. The best available information indicates that ordinarily the amount of SRRE caught incidentally in directed fisheries for other groundfish is less than that amount allowed under the directed fishing standards. However, in consideration of the high value and desirability of this species group (and the potential under § 672.20(g)(3) to harvest the maximum allowable bycatch) the remaining TAC of SRRE may not be large enough to allow sufficient true bycatch needed to continue other target groundfish fisheries in the GOA for the remainder of the year. Therefore, in order to prevent reaching the level of overfishing by take of SRREs, and on the basis of the information summarized below, the Secretary issues this inseason adjustment closing the fishing season for SRRE in the Eastern and Central Regulatory areas of the GOA. After June 21, 1991, fishermen must treat SRRE harvested from the Eastern and Central Regulatory areas as a prohibited species as described in § 672.20(e). The Secretary has determined this is the least restrictive management adjustment necessary to prevent reaching overfishing of SRRE.

Pursuant to § 672.22(a)(3), the Regional Director considered all information relevant to the following factors in making the determination required under paragraph (a)(2) of § 672.22.

1. *The effect of overall fishing effort within a regulatory area*—SRREs are a highly valued fish. Some fishermen are able to target on them and to some extent avoid them, and they occur as incidental catch in other directed fisheries. Currently there are at least eight directed fisheries in the GOA that are likely to take SRRE as incidental catch.

2. *Catch per unit of effort and rate of harvest*—If the SRRE species group in these areas is maintained in the bycatch status, which allows for a retention in amounts less than 20 percent of all other fish species retained on board, the remaining TAC of this species category will be exceeded prior to the end of the fishing year. By prohibiting the retention of SRRE, the Director will remove all incentive to target that species group, thereby reducing the potential for overfishing.

3. *Relative abundance of stocks within an area*—The SSC estimated the exploitable biomass of SRREs at 72,600 mt in the GOA. Prior to 1991, the SRREs were part of the slope rockfish species group. As a group, the slope rockfish have declined substantially in recent years (1991 SAFE Report—GOA).

4. *Economic impacts on fishing businesses being affected*—Should the catch of SRRE exceed the ABC as established by the SSC, the stock would become overfished. Management measures would have to be taken to prevent the catch of SRRE in excess of the ABC, such as the termination of other fisheries in the GOA. The cessation of other fisheries in the GOA would result in a major negative economic impact on fishing businesses.

Classification

This action is taken under 50 CFR 672.22 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent overfishing of SRRE stocks. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. However, interested persons are invited to submit comments in writing to the above address until July 6, 1991.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 21, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-15282 Filed 6-21-91; 4:41 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 124
Thursday, June 27, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN-91-007]

Amendment to the Cotton Research and Promotion Regulations for Cotton Board Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Cotton Research and Promotion regulations regarding Cotton Board membership. This proposal would establish a procedure for determining the number of importer members and alternate members to serve on the Cotton Board based on the annual volume of imported cotton and cotton products. Also, this proposal would provide for participation of importers in nominating importers to serve as members and alternate members on the Cotton Board.

DATES: Written comments concerning the proposed rule must be sent in triplicate and received no later than July 12, 1991.

ADDRESSES: Written comments should be sent to: Craig Shackelford, USDA, AMS, Cotton Division; P.O. Box 96456; room 2641-S; Washington, DC 20090-6456. All comments will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the date and page of the Federal Register publication. In addition, comments concerning the information collection requirements should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford (202) 447-2259.

SUPPLEMENTARY INFORMATION: These amendments to the regulations regarding Cotton Board membership are proposed in accordance with the Cotton Research and Promotion Act Amendments of 1990 (Subtitle G of title XIX of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101-624, November 28, 1990) which amended the Cotton Research and Promotion Act (7 U.S.C. 2101 *et. seq.*). The provisions of the Cotton Research and Promotion Act Amendments of 1990 are to be implemented by an amendment to the Cotton Research and Promotion Order. A proposed Order was issued by the Department of Agriculture and published in the Federal Register, April 10, 1991 (56 FR 14462). Written comments concerning the proposed Order were to be received no later than May 10, 1991. The proposed Order will not become effective unless approved in a referendum to be held in accordance with the requirements of the 1990 Act amendments. Should the proposed Order be approved in the referendum, the proposed amendments to the regulations regarding Cotton Board membership would be necessary.

This proposed rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a non-major rule under Executive Order 12291 since it does not meet the criteria for a major regulatory action contained in that Order.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this proposed action on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There are an estimated 35,000 domestic cotton producers who are presently subject to the regulation regarding Cotton Board membership. There are also an estimated 10,000 importers that would become subject to the regulations. The majority of these producers and importers would be classified as small businesses under the criteria established by the Small Business Administration. The economic impact of this proposal is not expected to be significant. Also, importers who would be selected as members to the Cotton Board would serve without compensation but would be reimbursed for necessary expenses, as approved by the Board, incurred by them in their performance of their duties under the Order. Accordingly, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35) and Section 3504(h) of the PRA, the information collection and recordkeeping requirements for domestic producers and importers contained in this subpart, have been approved and assigned OMB control number 0581-0093. Individual producers and importers nominated to the Board will be required to submit a membership background information sheet previously approved by OMB and assigned OMB control number 0505-0001. The estimated number of producer and importer respondents is 32 per year. The estimated number of importer respondents is 8 per year. Each respondent would submit one response when nominated, with an estimated average reporting burden of 0.5 hour per response.

Comments concerning the information collection requirements contained in this action should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

This proposal establishes procedures for determining how many importer representatives should serve on the Cotton Board and the procedures importers would follow in nominating potential Cotton Board members. The proposal establishes these procedures to reflect procedures already existing for cotton producers.

The volume of baled lint Upland cotton imported and the cotton content of imported products in terms of 480 pound bales would be used to determine in accordance with the provisions of § 1205.322 of the proposed Order how many additional persons above the base number of two should represent importers on the Cotton Board. The proposed Order published in the April 10, 1991, Federal Register (56 14482) provided that membership on the Cotton Board would be for cotton importers by one member for each 1 million bales or

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major fraction (more than one-half) thereof of imported cotton subject to assessments during the period specified in the regulations for determining Board membership. In addition, the proposed Order provided that the number of cotton importers represented on the Cotton Board would in no case be less than two and the percentage of importers represented on the Board would in no case be greater than 20 percent. All importer members appointed would serve out their three-year terms even if the volume of imported cotton should decrease. Each year in approximately July, the Director of the Cotton Division would contact certified importer organizations notifying each of the number of importer vacancies to be filled on the Cotton Board.

The Director will work with the certified importer organizations to determine a time and place for all such importer organizations to caucus for nominating importers to serve on the Cotton Board. Each organization would be entitled to have one representative attend the nominating caucus. The representatives of the importer organizations would jointly nominate two qualified persons for each member and alternate member position vacant. The proposed procedures reflect procedures already established for cotton producer nominations. References to Order section numbers in the proposal reflect the Order section numbers as proposed in the April 10, 1991, **Federal Register** (56 FR 14482). Also, the authority citation for Part 1205 would be amended for clarity.

Written comments are requested from interested persons regarding this proposal. A 15 day comment period is considered appropriate and is necessary so that the U.S. Department of Agriculture and cotton importers may begin planning for importer representation on the Cotton Board that may be adopted as soon as possible. Caucuses for nominating members to the Cotton Board take considerable time to plan. Early establishment of any procedures that may be adopted as a result of this rulemaking would allow importer caucuses to be held as soon as possible, thereby assisting in timely implementation of the Act amendments of 1990.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 is revised to read as follows:

Authority: Cotton Research and Promotion Act, as amended, 7 U.S.C. 2101–2118.

2. Section 1205.402 is revised to read as follows:

§ 1205.402 Determination of Cotton Board membership.

(a) In determining whether any cotton producing state is entitled to be represented by more than one member of the Cotton Board pursuant to § 1205.322, average annual production in terms of 480-pound net weight bales for the five most recent marketing years shall be used as the criteria for determination of such additional members.

(b) In determining whether importers of cotton and products containing cotton are entitled to be represented by more than two members of the Cotton Board pursuant to § 1205.322, average annual imports of cotton and products containing cotton in terms of 480-pound net weight bales for the five most recent calendar years shall be used as the criteria for determination of such additional members.

(c) All members appointed from a state shall be entitled to serve a full three-year term even though it is determined in a subsequent year that a state should have fewer additional members by using the average production of the five most recent marketing years as specified in paragraph (a) of this section.

(d) All members appointed to represent importers shall be entitled to serve a full three-year term even though it is determined in a subsequent year that importers should be represented by fewer additional members by using the average of imports of cotton and products containing cotton of the most recent five calendar years as specified in paragraph (b) of this section.

(e) Each year the Director shall:

(1) Based on the average annual production of Upland cotton in terms of 480-pound net weight bales for the five most recent marketing years, notify all certified cotton producer organizations in each cotton producing state of the number of vacancies to be filled by cotton producers on the Cotton Board; and

(2) Based on the average annual imports of cotton and products containing cotton in terms of 480-pound net weight bales for the five most recent calendar years, notify all certified cotton importer organizations of the number of vacancies to be filled by cotton importers on the Cotton Board.

3. Section 1205.403 "Nomination procedure" is revised to read as follows:

§ 1205.403 Nomination procedure.

(a) The Director shall notify all certified producer organizations within each cotton producing state and all certified importer organizations of the location, date, and time of the caucus of such organizations pursuant to § 1205.324 for the purpose of making nomination for members and alternate members of the Cotton Board. The Director will designate a representative from the Cotton Division to attend the caucus meeting of cotton producer organizations in each state, and of cotton importer organizations. Each eligible cotton producer organization within each cotton producing state and each importer organization shall be entitled to only one representative at the caucus for the purpose of nominating two qualified persons for each member and for each alternate member to be selected. Representatives for cotton producer organization shall be a cotton producer and resident of such state, an officer or member of the Board of Directors of such organization, and duly and unqualifiedly authorized in writing by such organization to make nominations on its behalf. Representatives for importer organizations shall be an importer of cotton and/or products containing cotton, an officer or member of the Board of Directors of such organization, and duly and unqualifiedly authorized in writing by such organization to make nominations on its behalf. The representative of the Director designated to attend the caucus meeting of cotton producer organizations in each state and of cotton importer organizations shall ascertain the qualifications and eligibility of each representative of a cotton producer organization or cotton importer organization to participate in said meeting and to make nominations.

(a) Each caucus shall be conducted as follows:

(1) The representative from the Cotton Division shall act as temporary chairperson and shall explain the procedure for nominations and the duties of the Cotton Board;

(2) The representatives in attendance from the certified organizations shall then select a chairperson and secretary;

(3) At each caucus there shall be presented for nomination and there shall be nominated not less than the number of nominees required under the

provisions of §§ 1205.322, 1205.324, and 1205.402.

Dated: June 21, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–15190 Filed 6–26–91; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1755

General Specifications for Digital, Stored Program Controlled Central Office Equipment

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of correction and extension of the comment period.

SUMMARY: The Rural Electrification Administration (REA) published a proposed rule in the **Federal Register** on Thursday, March 14, 1991, (56 FR 10835) to revise telephone standards and specifications by rescinding REA Bulletin 345–165 (REA Form 522) and issuing a revised version as Bulletin 1753E–001 (522). Due to an error in the proposal, REA is extending the comment period to provide interested persons with additional time in which to prepare comments.

DATES: Written comments must be submitted on or before July 29, 1991. REA requests an original and three copies of all comments.

ADDRESSES: Comments must be mailed to Donald M. Van Bellinger, Director, Telecommunications Staff Division, Rural Electrification Administration, room 2835, South Building, USDA, Washington, DC 20250–1500.

All comments received will be made available for public inspection during regular business hours at the address above (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Joseph A. Baude, Acting Chief, Central Office Equipment Branch, Telecommunications Staff Division, Rural Electrification Administration, room 2832, South Building, USDA, Washington, DC 20250–1500, telephone (202) 382–1443.

SUPPLEMENTARY INFORMATION: The Rural Electrification Administration (REA) published a proposed rule in the **Federal Register** on Thursday, March 14, 1991, (56 FR 10835). Page 10837 of the proposal contains an error which was corrected by the Office of the **Federal Register** (OFR) on Wednesday, April 24, 1991, (56 FR 18878). 15.4.2 d. was corrected to read:

d. In central office switching systems of less than 400 equipped lines, any single nonduplicated power converter failure shall not cause a complete loss of service to more than 25 percent of the total equipped lines.

REA has determined that an extension of time to allow for additional comments would prove beneficial and the comment period is hereby extended until July 29, 1991.

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

Dated: June 19, 1991.

Gary C. Byrne,

Administrator.

[FR Doc. 91–15204 Filed 6–26–91; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program; Revegetation, Nonprime Farmland, Underground Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment (Program Amendment Number 91–6) consists of proposed changes to the Indiana Surface Mining Rule provisions concerning revegetation of nonprime farmland for underground mining operations. The amendment is intended to amend the revegetation success standards for nonprime farmland areas affected by underground mining operations.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on July 29, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on July 22, 1991; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 12, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Telephone (317) 226–6166; (FTS) 331–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated May 23, 1991 (Administrative Record No. IND–0874), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Codes (IAC) 310 IAC 12–5. The proposed amendment would repeal 310 IAC 12–5–65, 310 IAC 12–5–128, and 310 IAC 12–5–129 and add new sections 310 IAC 12–5–128.1, 128.2,

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and 128.3. The added sections would establish standards at underground mine areas for: Revegetation success for nonprime farmlands; revegetation sampling techniques for nonprime farmland; and statistical methodology to evaluate the success of revegetation.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business on July 12, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed above under **"ADDRESSES."** A summary of the meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 19, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-15256 Filed 6-26-91; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 914

Indiana Regulatory Program; Revegetation, Nonprime Farmland

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment (Program Amendment Number 91-4) submitted consists of proposed changes to the Indiana Surface Mining Rule provisions concerning revegetation of nonprime farmland. The amendment is intended to establish revegetation success standards for nonprime farmland areas affected by surface mining operations.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on July 29, 1991, if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on July 22, 1991; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 12, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232-1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Telephone (317) 226-6166; (FTS) 331-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated May 22, 1991, (Administrative Record No. IND-0872), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 12-5-64. The proposed amendment would repeal 310 IAC 12-5-64 and add sections 64.1, 64.2, and 64.3. The added sections would establish standards for: Revegetation success for nonprime farmlands; revegetation sampling techniques for nonprime farmland; and statistical methodology to evaluate the success of revegetation.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business on July 12, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **"ADDRESSES."** A summary of the meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 19, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-15257 Filed 6-26-91; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 914

Indiana Regulatory Program; Prime Farmland Special Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment (Program Amendment Number 91-5) consists of proposed changes to the Indiana Surface Mining Rule provisions concerning prime farmland special performance standards. The amendment is intended to revise the existing prime farmland soil productivity restoration performance standards for revegetation and restoration of soil productivity on prime farmland.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on July 29, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on July 22, 1991; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 12, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232-1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Telephone (317) 226-6166; (FTS) 331-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated May 23, 1991, (Administrative Record No. IND-0873), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 12-5-145 through 310 IAC 12-5-518 The proposed amendment would amend existing 310 IAC 12-5-145, 310 IAC 12-5-146, and 310 IAC 12-5-148 by revising the performance standards for restoring soil productivity. The proposed amendment would repeal 310 IAC 12-5-147. The amendment would also add a new 310 IAC 12-5-148.5 which would create specific standards for

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revegetation and restoration of soil productivity on prime farmland.

The full text of the proposed program amendment submitted by Indian is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business on July 12, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "ADDRESSES." A summary of the meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 19, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-15258 Filed 6-26-91; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-172, RM-7726]

Radio Broadcasting Services; Cushing, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Cavalier Broadcasting proposing the allotment of Channel 245A to Cushing, Texas, as the community's first local FM service. Channel 245A can be allotted to Cushing in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 245A at Cushing are North Latitude 31-48-42 and West Longitude 94-50-30.

DATES: Comments must be filed on or before August 12, 1991, and reply comments on or before August 27, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Shaun Maher, Esq., Blair, Joyce & Silva, 1825 K Street, NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-172, adopted June 13, 1991, and released June 21, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15249 Filed 6-26-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-91, RM-6659]

Radio Broadcasting Services; Billings and Lewistown, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: A Notice of Proposed Rule Making was issued in response to a petition filed by Comanche Enterprises, proposing the reallotment of then vacant TV Channel 13 from Lewistown to Billings, Montana, as that community's seventh TV service. *See* 54 FR 18311, April 28, 1989. Since the release of the Notice, an application has been filed for the channel at Lewistown. It is Commission policy not to reallot a channel in which interest has been expressed, absent a sufficient reason, and we find that petitioner has failed to provide sufficient reasons. Accordingly, the proposal in this proceeding to allot Channel 13 to Billings, Montana, by deleting Channel 13 from Lewistown, Montana, is denied.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-91, adopted June 13, 1991, and released June 21, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036 (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15248 Filed 6-26-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-173, RM-7558]

Radio Broadcasting Services; Jackson, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Teton Broadcasting Limited Partnership, permittee of Station KZJH-FM, Channel 239C, Jackson, Wyoming, requesting the substitute of Channel 237C for Channel 239C at Jackson and modification of its authorization accordingly, in order to alleviate an intermodulation problem with a two way mobile frequency of the Wyoming Highway Department. Coordinate for Channel 237C at Jackson, Wyoming, are 43-27-40 and 110-45-09.

DATES: Comments must be filed on or before August 12, 1991, and reply comments on or before August 27, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Stuart B. Mitchell, Esq., Mitchell, Boyer & Associates, P.C., 5025-C Backlick Road, Annandale, VA 22003.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-173, adopted June 13, 1991, and released June 21, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15247 Filed 6-26-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-13; Notice 1]

RIN 2127-AD65

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 123, Motorcycle controls and displays, currently specifies a transverse (crosswise) or longitudinal (lengthwise) axis of rotation for manual fuel shutoff controls. This notice would continue to require that those controls rotate, but proposes to amend the standard to remove the restriction on the orientation of the axis of rotation. It would also continue to require that the control positions (on, off, and reserve) be separated by 90 degrees of rotation, but proposes to eliminate other current restrictions on the location of those control positions. This action, taken in response to a grant of a petition for rulemaking, would relieve current design restrictions which have been tentatively determined by the agency to be no longer necessary for motor vehicle safety.

DATES: Comments on this proposal must be received by NHTSA no later than August 12, 1991.

If adopted in a final rule, the amendment would take effect 30 days after publication in the Federal Register.

ADDRESSES: Comments should refer to Docket No. 91-13; Notice 1, and be submitted to: Docket Section, room 5109, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. The docket section is open from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Crash Avoidance Division, NRM-11, room 5307, NHTSA, 400 Seventh Street SW, Washington, DC 20590 (202-366-5276).

SUPPLEMENTARY INFORMATION:

Background

Standard No. 123, Motorcycle controls and displays (49 CFR 571.123), specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays, and requirements for motorcycle stands and footrests. Table 1 of Standard No. 123 currently specifies that manual fuel shutoff controls, when provided, have the following identification and modes of operation:

"On"—Control downward; "Off"—Control forward (if control rotates around a transverse axis) or Horizontal—Left or Right (if control rotates around a longitudinal axis); "Reserve On"—(if provided) Control upward.

Thus, the standard requires that the manual fuel shutoff control rotate around a transverse or longitudinal axis.

The current specification is the result of a final rule published on September 7, 1984 (49 FR 35380). The agency determined that motor vehicle safety was best served by retaining the standardization of control position relationships while allowing the manufacturer to place the control so that it may operate in its required positions around either a longitudinal or transverse axis. Although NHTSA stated that it found merit in a comment received in response to the notice of proposed rulemaking (48 FR 40286) that favored allowing rotation around any axis, the agency declined to consider comments that went beyond the rule as proposed.

On November 14, 1990, the Motorcycle Industry Council (MIC) petitioned the

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agency to amend Standard No. 123 to permit the manual fuel shutoff valve controls to rotate around any axis, provided that the relationship of the control positions (on, off, reserve) to each other remains the same as the current standard. MIC stated that the mechanical components on many of today's motorcycles are enclosed in a streamlined body. Since few parts of streamlined bodies follow the longitudinal or transverse axes of the motorcycle, MIC claimed that "special provisions" must be made in the design of the body in order to comply with the standard. This in turn severely restricts freedom of design, MIC asserted. On March 1, 1991, NHTSA granted MIC's petition. This notice is in response to the grant of that petition.

Proposed Rule

NHTSA has tentatively concluded that there is no safety-related justification for restricting the design of manual fuel shutoff controls to a longitudinal or transverse axis. Even though the axis orientation of the manual fuel shutoff control is currently standardized, there is no location requirement for the control itself, or even that the control be provided. Also, the standard does not regulate non-manual valves. Nor does it specify that there be adequate access of the hand to the control. Thus, there does not appear to be any justification for regulating manual fuel shutoff control axis orientation.

However, the agency has tentatively concluded that the requirements for standardization of the relationship between the control positions (on, off, and reserve) are a necessary crash avoidance requirement. Standardization of the control positions enables the operator to use the control without taking his or her eyes off the road.

MIC suggested that the manual fuel shutoff control have the following modes of operation: "Off" would be located midway between "On" and "Reserve"; and "On" located 180 degrees from "Reserve." Although MIC's suggestion recognizes the importance of standardization of the relative position of the control settings, its workability is premised on the existence of a "Reserve" setting. However, such a setting may not be provided since provision of that setting is not required by the standard. If there is no "Reserve" setting, MIC's suggested amendment would not adequately regulate the relative positions of the "On" and "Off" positions. Although the agency is not aware of a shutoff control which lacks a "Reserve" position, the installation of such a control is not required under the standard.

Therefore, the agency is proposing a standardized control position requirement that is not dependent upon the existence of a "Reserve" setting.

Effective Date

Because the proposed amendment relieves restrictions and is optional in nature, the agency has tentatively determined that there is good cause shown that an effective date earlier than 180 days after issuance is in the public interest, and proposes that the effective date be 30 days after publication in the Federal Register.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this proposal and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This proposed amendment would impose no additional requirements but would permit manufacturers greater design flexibility in locating the manual fuel shutoff control. The agency has determined that the economic effects of the proposed amendments are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. As stated above, the proposed action would allow additional design flexibility. Manufacturers of motorcycles, who would be affected by the proposed amendment, are generally not considered small businesses for the purposes of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected since the price of new motorcycles would be minimally impacted. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment nor would it require any increase in materials required in the manufacture of motorcycles.

Procedures for Filing Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Neccasary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.123 [Amended]

2. The operation requirements for the manual fuel shutoff control (item 7) in column 3 of table 1 of Standard No. 123 would be revised to read as follows:

Rotate to operate. "On" and "Off" are separated by 90 degrees of rotation. "Off" and "Reserve" (if provided) are separated by 90 degrees of rotation. Sequence order: "On"-"Off"-"Reserve".

* * * * *

Issued on: June 21, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-15286 Filed 6-26-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition To List the Sonoran Desert Tortoise as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to amend the List of Endangered and Threatened Wildlife and Plants. After review of all available scientific and commercial information available on the Sonoran population of the desert tortoise (*Gopherus* (=*Exerobates*) *agassizii*), the Service has determined that listing the Sonoran desert tortoise as threatened or endangered is not warranted at this time.

DATES: The finding announced in this notice was made on June 20, 1991. Comments and information should be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Spiller, Field Supervisor at the above address or telephone 602/379-4720 or FTS 261-4720.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 1984, the Service received a petition to list the desert tortoise (*Gopherus agassizii*) as an endangered species throughout the remainder of its range in Arizona, California, and Nevada (the Beaver Dam Slope population of the desert tortoise in Utah was listed as threatened with critical habitat in 1980). The desert tortoise also occurs in Sonora and Sinaloa, Mexico.

A 90-day finding that the petition presented substantial information indicating that the requested action may be warranted was made on December 14, 1984, and published on April 2, 1985 (50 FR 13054). On December 5, 1985, the Service published a 12-month finding (50 FR 49863) that the petition to list the desert tortoise throughout its range was warranted, but precluded by other pending proposals of higher priority. On July 1, 1987, after review of additional data, the Service again published a finding of warranted but precluded in the Federal Register (52 FR 24485).

On May 31, 1989, substantial new information on population declines due to Upper Respiratory Disease Syndrome (URDS) was provided, and the Service was petitioned to list the desert tortoise as endangered throughout its range in the United States. As a result of the new information, the Service listed the Mojave population as endangered by emergency rule on August 4, 1989 (54 FR 32326). The Mojave population was designated in the rule as all tortoises north and west of the Colorado River (California, Nevada, the Arizona Strip, and Utah). The emergency rule provided protection under the ESA for 240 days, until April 2, 1990. The Service did not list the Sonoran population (occurring south and east of the Colorado River) under the emergency provisions of the ESA for the following reasons:

1. Historically, desert tortoises in the Sonoran population occur in numerous distinct, small groups in a distribution pattern described as patchy or disjunct and inhabiting steep-sided canyons.

2. The very patchiness of the distribution in the Sonoran population leads the Service to conclude that the URDS affecting other subpopulations will not likely reach the epidemic proportions that it has in locations like the Desert Tortoise Natural Area in California. Although a few instances of respiratory disease have been documented in the Sonoran population, it appears that respiratory disease is: (a) Usually present in tortoise populations to varying degrees, (b) has not shown any evidence of becoming pandemic, (c) has not been shown to be URDS, and (d) is currently being addressed by the Service and the Arizona Game and Fish Department (AGFD), who will continue to gather and evaluate data.

On October 13, 1989, the Service published a proposal (54 FR 42270) to list the Mojave population of the desert tortoise as an endangered species under regular listing procedures.

The reasons for not proposing the Sonoran population as endangered at that time were the same as applied at the time of the emergency listing, plus the fact that the habitat in the Sonoran Desert is less subject to disturbance than is the more level terrain occupied by tortoises in the Mojave Desert. Additionally, the proposed rule stated that a report on the results of studies undertaken on the Sonoran population in 1990 would be available in January 1991. The report would contain information needed to determine whether the Sonoran population of the desert tortoise warranted listing. All available information on distribution, abundance, and threats would be summarized. This summary would include review of published and unpublished information and preparation of maps overlaying tortoise distribution with projected land use patterns. Results of field work to determine population status and trends, with emphasis on reproduction, disease, and mortality, would be available by revisting previously sampled sites.

On April 2, 1990, the Service listed the Mojave population of the desert tortoise as a threatened species (55 FR 12178). The Service stated that it would continue to evaluate the status of the Sonoran population and, in settlement of litigation, agreed that it would determine either that a proposal to list the Sonoran population of desert tortoises as an endangered or threatened species was warranted, as provided in section 4(b)(3)(B)(ii) or the Act, 16 U.S.C. 1533(b)(e)(B)(ii), or that such action is not warranted, as

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provided in section 4(b)(3)(B)(i) of the Act 16 U.S.C. 1533 (b)(3)(B)(i). The October 16, 1990, petition finding stated that the Sonoran Desert population of the desert tortoise would be addressed in a later and separate administrative finding.

Information already in Service files and that obtained in 1990 have been assembled into a document entitled "Status Summary of the Desert Tortoise in the Sonoran Desert." All these best available data show neither a significant decrease in the species' range nor a decline in abundance over a significant portion of the range.

The five factors for listing prescribed by the Act were evaluated in order to make a determination in response to the petition.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

As currently assessed by the AGFD, there are approximately 27,623 km² of potential tortoise habitat in the Sonoran Desert in Arizona. It is projected that approximately 10,061 km² (36 percent) of all tortoise habitat in the Sonoran Desert in Arizona may receive adverse impacts, directly or indirectly, over the next 25 years. Conversely, 64 percent of all tortoise habitat in Arizona is not expected to receive impacts at all over the next 25 years. The levels of the impacts for land uses thought to be potential threats to tortoises and/or their habitat have not been fully assessed, and may range from non-existent to exceedingly severe. The magnitude and extent of the impacts often depends upon land ownership and associated management policies, but overall, will ultimately be determined by Arizona's economic situation.

From a land ownership perspective, Federal and State land management agencies and wildlife agencies have the greatest potential for affecting Sonoran tortoise populations in Arizona. Approximately 48 percent of the Sonoran habitat occupied by tortoises in Arizona is under management jurisdiction of the Bureau of Land Management (BLM) and Forest Service (FS) which manage the majority of their lands for multiple use. These uses may include oil, gas, and mineral exploration; livestock grazing; recreation; and wildlife management. The Service and various Federal, State, and local parks and recreation-oriented agencies manage 9 percent of the habitat in the aggregate. The State of Arizona owns 16 percent of the occupied habitat, and another 12 percent is in private ownership. Both State and private lands are, for the most part, managed for economic benefit. Indian reservations and the military manage 16 percent of the tortoise habitat. There are currently no data by which to determine the quality of habitat or density of tortoise populations managed by each entity.

Although most Federal agencies are currently managing the desert tortoise as a candidate category 2 species, the BLM, National Park Service (NPS), and the Service have specific management policies that provide increased levels of protection for the desert tortoise. The BLM, which manages approximatley 41 percent of the desert tortoise habitat in Arizona, is operating under the "Desert Tortoise Habitat Management on Public Lands: A Range-wide Plan" and the "Strategy for Desert Tortoise Habitat Management on Public Lands in Arizona." These documents provide objectives and management actions for the conservation of desert tortoises on BLM lands.The Service and NPS have management policies for the preservation and protection of natural ecosystems. Additionally, in November of 1990, Congress passed the Arizona Desert Wilderness Act (Act) of 1990. On BLM land, the Act designates 30 wilderness areas containing approximately 2,805 km² of desert tortoise habitat. The act also provides for approximately 1,435 km² of Wilderness containing desert tortoise habitat on four National Wildlife Refuges in Arizona.

From a historical perspective, of over 200 townships reviewed by AGFD, there were only four townships in Arizona where Sonoran tortoise occurrence has not been re-confirmed since 1965. These data indicate that the overall range of the tortoise in Arizona has not been reduced in recent times. However, some populations within the range in metropolitan areas have been severely affected or perhaps eliminated. It appears that the tortoise currently occupies virtually all potential habitat in Arizona.

Desert tortoise populations in the Sonoran Desert occupy discrete mountain ranges. Valleys between these mountains are and have been historically unoccupied by desert tortoises, except for dispersal and movement among preferred habitats. As the human population of Arizona has expanded, the tortoise populations within the mountain ranges may have become further isolated due to agriculture, urbanization, construction of roadways, utility corridors, canals, grazing, and off-highway vehicle activity. These activities have resulted in local changes to vegetative communities, especially the reduction in diversity and cover of shrubs and perennial grasses. These changes have created openings and barren areas in some desert landscapes and may have degraded the quality of habitat for dispersing tortoises in some areas. The effects on dispersal have not been examined.

The impacts of off-highway vehicles (OHV's) on tortoises are well established for the Mojave Desert. In the Mojave Desert, OHV's compact the soil, crush tortoises, crush dens and pallets, and reduce plant abundance, cover, and productivity. Although some OHV traffic occurs year-round in desert tortoise habitat in Arizona, no quantifiable data exist on amount of impact caused by OHV's. Most OHV use occurs in more navigable areas, away from the best tortoise habitat. Sonoran habitats, especially upland shelter sites, are generally less subject to compaction because they are rocky. However, OHV use may affect desert washes where tortoise travel routes often occur and tortoise burrows occasionally are found. Very little OHV impact to tortoises or their habitat occurs in Mexico.

The impacts of livestock grazing to Sonoran tortoises are not well known but seem to be different than those that have been documented in the Mojave Desert. In general, the sites most heavily grazed by livestock in Arizona (i.e., flatlands) do not have tortoise populations and livestock rarely extend up the rocky slopes preferred by Sonoran Tortoises. In the Mojave population, which occurs on more level ground, there has been considerable concern about grazer/tortoise interaction and/or competition. It is unknown whether tortoises and livestock compete for forage or have simple dietary overlaps.

Mexico contains about a third of the desert tortoise's total range and perhaps more than 50 percent of the Sonoran population's range. It appears that potential threats to the tortoise in Mexico may be less severe than in the U.S. due to economics: Slower urban growth and the lack of potable water throughout much of the Sonoran Desert reduces the human-related impacts from development and proximity to habitation. Other Mexican impacts of unknown magnitude to tortoise populations occur from illegal take for pets, consumption, etc., and from habitat alterations due to livestock grazing, including the introduction and propagation of non-native grasses such as buffle grass (*Cenchrus* sp.).

Although there are no data to support or refute any inferences of the relative security of desert tortoise populations in Mexico, a major threat from urban growth is not immediate. Some of the highest densities of tortoise known in the Sonoran Desert occur on Isla Tiburòn in the Sea of Cortez. This island is now protected as a preserve by the Mexican government.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

It is currently estimated that over 100,000 tortoises exist in captivity in the Sonoran and Mojave deserts. Existing tortoise adoption programs, which distribute surplus backyard tortoises and those brought in from permanent habitat modification projects, probably meet most of the demand for pets and for scientific and educational purposes.

Commercial use of tortoises does not appear to be widespread in Arizona, probably because pet store owners are more aware of the pertinent State laws than is the general public. AGFD investigations of the black market pet trade over the past several years have revealed very little tortoise activity.

Human predation of desert tortoises occurred historically and still continues today in some areas. In Mexico, consumption of tortoise appears to be a threat to some tortoise populations. Not only do isolated ranches hunt tortoises for inexpensive meat, but there are reports of tortoise hunters, "tortugueros", who seek out populations and hunt them until they are depleted. Although consumption of tortoises appears to be a more-or-less common practice in rural Mexico, it most likely occurs only in isolated events in the United States.

C. Disease or Predation

URDS is the principal disease threat to Mojave tortoises, where it has reached epidemic proportions in some populations. Although URDS-like signs have been diagnosed from several Arizona localities, there are no veterinary diagnoses which confirm this syndrome in Arizona. The only population of tortoises exhibiting a suite of characteristic signs occurs in the Black Mountains near Bullhead City. Signs of a respiratory disease have been observed in localities near Tucson and in the San Pedro River Valley. There have been no precipitous population declines from URDS in the Sonoran population, as were documented in Mojave populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Arizona currently has no specific law for the protection of endangered species or their habitat and no State environmental policy legislation. The AGFD includes the desert tortoise on its list of Threatened Native Wildlife in Arizona (1988), as a candidate for State endangered or threatened status. This designation has no regulatory mandate vested in law. However, on January 1, 1988, the Arizona Game and Fish Commission prohibited the take of desert tortoises from the wild. The Commission also prohibits the sale of tortoises and the export of tortoises from the State.

Illegal vandalistic shooting and intentional killing of tortoises have been documented in Arizona. The impact of these activities is unknown, but is probably greater to populations near urban centers.

Because state laws do not apply on Indian reservations, prohibition of take can only be enforced through the Lacey Act when a tortoise is taken across reservation boundaries. The Lacey Act also regulates the transport of tortoises across state lines. *Gopherus* spp. are listed in appendix II of the Convention on International Trade in Endangered Species (CITES), which requires a Federal export permit when taking a tortoise out of the United States. Because Mexico has not signed CITES, no CITES export permit is required to transport a tortoise from Mexico to the United States, but a Mexican export permit from the Secretaria de Desarrollo Urbano y Ecologia (SEDUE) is required.

For purposes of regulating commerce and taking of federally listed species, tortoises from the Sonoran Desert found outside their natural range in Arizona (south and east of the Colorado River) and Mexico are considered a threatened species due to similarity of appearance to Mojave tortoises.

In Mexico, the desert tortoise is categorized as endangered in its natural environment. As of August 2, 1985, SEDUE prohibited the take of tortoises from the wild. Regulations state that it is unlawful to hunt, capture, possess, harass, transport, sell, or purchase specimens of or goods made from the desert tortoise. A special permit is required from SEDUE to capture or export the desert tortoise.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

No such factors have been documented or recognized at this time.

After review of all available scientific and commercial information available on the Sonoran population of the desert tortoise, the Service has determined that listing the Sonoran desert tortoise as threatened or endangered is not warranted at this time. This decision is based on scientific information contained in the petition and otherwise available to the Service at the time the 12-month finding was made.

Author

The primary author of this notice is Dr. Richard A. Byles, Endangered Species Division, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103–1306 (505/766–3972 or FTS 474–3972).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1543); unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 20, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–15241 Filed 6–26–91; 8:45 am]
BILLING CODE 4310–55–M

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Notices

Federal Register
Vol. 56, No. 124
Thursday, June 27, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 21, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Extension

• *Agricultural Marketing Service*

Papayas Grown in Hawaii-Marketing Order No. 928.
Recordkeeping; On occasion; Weekly; Monthly; Annually.
Farms; Businesses or other for-profit; Small businesses or organizations; 1,275 responses; 1,082 hours.
Gary Rasmussen (202) 475–3916.

New Collection

• *Rural Electrification Administration*

Rural Economic Development Loan and Grant Program—Addendum 1.
On occasion.
Businesses of other for-profit; Non-profit institutions; Small businesses or organizations; 580 responses; 850 hours.
Paul Marsden (202) 245–5072.

• *Federal Crop Insurance Corporation*

Production and Yield Report.
FCI–19–A (APH).
On occasion.
Individuals or households; Farms; 200,000 responses; 50,000 hours.
Bonnie L. Hart (202) 245–5046.

• *Federal Crop Insurance Corporation*

Pre-Acceptance Perennial Crop Inspection Report.
FCI–12–P.
On occasion.
Individuals or households; Farms; 2,200 responses; 2,200 hours.
Bonnie L. Hart (202) 245–5046.

• *Federal Crop Insurance Corporation*

Power of Attorney.
FCI–532.
On occasion.
Individuals or households; Farms; 500 responses; 125 hours.
Bonnie L. Hart (202) 245–5046.

• *Federal Crop Insurance Corporation*

Underwriting Questionnaire (Container Stock Only); Nursery Container Report; and Nursery Crop Insurnace Inventory Summary.
FCI–544, FCI–545, and FCI–546.
On occasion.
Individuals or households; Farms; 150 responses; 625 hours.
Bonnie L. Hart (202) 245–5046.

• *Federal Crop Insurance Corporation*

Actual Production History Review Report.
FCI–19–A (APH) Review Form.
On occasion.
Individuals or households; Farms; 400 responses; 400 hours.
Bonnie L. Hart (202) 245–5046.

• *Federal Crop Insurance Corporation*

Raisins—Notice of Damage and Inspection; Supplement—Tonnage. Report; and Reconditioning Pool, Production-to-Count.
FCI–63–A, FCI–819, FCI–551.
On occasion.
Individuals or households; Farms; 500 responses; 200 hours.
Bonnie L. Hart (202) 245–5046.

• *Federal Crop Insurance Corporation*

Certification Form.
FCI–73.
On occasion.
Individuals or households; Farms; 1,000 responses; 2,000 hours.
Bonnie L. Hart (202) 245–5046.

Reinstatement

• *Agricultural Stabilization and Conservation Service*

7 CFR part 1421 and 1434—General Regulations Governing Price Support for 1978 and Subsequent Crop Years.
CCC—64, 156, 601, 614, 638, 665, 666, 666(Honey), 662, 677, 678–2, 678–3, 679, 681, 681–1, 685, 686, 687–1, 691, 697, 699, 806, 807, 906, KC–350, UCC–1 & 3.
On occasion; Annually.
Farms; 2,106,050 responses; 466,083 hours.
Alex King (202) 382–9886.

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 91–15335 Filed 6–26–91; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Tolan Creek Timber Sale; Bitterroot National Forest, Ravalli County, MT; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that the Forest Service is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to harvest timber in the Tolan Creek drainage. The drainage is located approximately 35 air miles southwest of Hamilton, Montana, on the Sula Ranger District, Bitterroot National Forest, Ravalli County, Montana, in T1N and T1S, R18W, Principal Meridian Montana.

DATES: A public open house will be held in Hamilton, Montana, on July 25, 1991, and a public field review will give interested individuals an opportunity to visit the Tolan Creek area with Forest Service personnel on July 27, 1991. The meeting dates will be announced in local newspapers and through individual contact with interested local publics. Written comments concerning the scope of the analysis must be received on or before August 12, 1991.

ADDRESSES: Send written comments and suggestions to District Ranger, Sula Ranger District, Sula, Montana 59871.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Stuart Lovejoy, Resource Coordinator, Sula Ranger District, Phone: (406) 821–3201.

SUPPLEMENTARY INFORMATION: These management activities would be administered by the Sula Ranger District of the Bitterroot National Forest in Ravalli County, Montana. This EIS will tier to the Bitterroot National Forest Plan of September 1987 (Forest Plan) which provides the overall guidance (goals, objectives, standards and guidelines, and management area direction) in achieving the desired future condition for all areas of the Bitterroot National Forest. The purpose and goals for the proposed action are:

(1) To maintain or improve forest health, diversity and the future productive potential of the Tolan Creek area.

(2) To reduce the potential for mountain pine beetle infestation and large stand-replacement fires in the Tolan Creek drainage.

(3) To maintain or improve habitat and security for elk.

(4) To supply raw materials to the local timber market.

The process in preparing the Draft EIS will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For most effective use, comments should be sent to the agency within 45 days from the date of this publication in the **Federal Register**. A public meeting will be held in Hamilton, Montana on July 25, 1991, to obtain public input and provide additional information concerning planned management activities. On July 27, 1991, a public field review will give interested individuals an opportunity to visit the Tolan Creek drainage with Forest Service Personnel and to discuss proposed management activities.

The Forest Plan provides the overall guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The potentially affected area is composed of the following management areas:

Management Area 1: Consists of lands designated for timber and forage production. The management goal is to emphasize timber management, livestock and big-game forage production and assure a minimum level of visual quality, old growth, and habitat for other wildlife species. Extensive vegetation manipulation with associated new road construction may occur in this management area within guidelines provided by the Bitterroot Forest Plan.

Management Area 2: Consists of lands designated primarily for winter range habitat for elk. The goal is to optimize winter range habitat using timber and other vegetation management practices while providing moderate levels of visual quality, old-growth habitat for other wildlife species, and livestock forage. Vegetation manipulation and road construction may occur within guidelines set by wildlife objectives.

Management Area 3a: Consists of lands designated primarily for management of visual quality. The goal is to maintain the partial retention visual quality objective and manage timber. Roaded dispersed recreation activities, old growth, and big-game cover are emphasized. Vegetation manipulation with associated road construction may occur provided activities are subordinate to the natural landscape.

Management Area 3b: Consists of lands designated primarily for fisheries riparian area management. The goal is to manage riparian areas to maintain flora, fauna, water quality and water-related recreation activities.

Emphasis is placed upon water and soil protection, dispersed recreation use, visual quality, and old growth. Only limited vegetation manipulation may occur in this management area.

Management Area 8a: Includes lands designated to be managed at minimum level for elk security, old growth, and habitat diversity. Existing uses and facilities are to be maintained.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which all management activities would be deferred. Other alternatives will examine vegetation and woody fuel manipulation using various methods and intensities to meet resources objectives. Some alternatives may consider road construction as a means to facilitate management activities and accomplish resource objectives.

The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. This will include an analysis of the effects of alternatives on the roadless character of the area affected. In addition, this EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation will be important during this analysis. People may visit with Forest Service officials at any time during the analysis period and prior to the decision; however, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process and during the Draft EIS review period (approximately February or March, 1992).

During the scoping process, the Forest Service is seeking information and comments from Federal, State and local agencies, Indian tribes, and other organizations or individuals interested in or affected by the proposed action.

The draft environmental impact statement (DEIS) is expected to be available for public review in February or March, 1992. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service while preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by June, 1992. In the FEIS, the Forest Service will respond to the comments received. The District Ranger of the Sula Ranger District, Bitterroot National Forest, is the responsible official for this EIS and will consider the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies when making a decision regarding this proposal. The decision, and reasons for the decision, will be documented in the Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact

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statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978).) Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. (*Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980).) Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statment or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The responsible official is David M. Campbell, District Ranger of the Sula Ranger District, Bitterroot National Forest.

Dated: June 3, 1991.

David M. Campbell,

District Ranger, Sula Ranger District, Bitterroot National Forest.

[FR Doc. 91-15347 Filed 6-26-91; 8:45 am]

BILLING CODE 3410-11-M

Oil and Gas Leasing; Carbon, Park, Stillwater, and Sweet Grass Counties, MT; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of oil and gas leasing and subsequent reasonably foreseeable exploration, development, and production. The USDI—Bureau of Land Management will cooperatively participate in the preparation of this document. The lands involved include portions of the Beartooth Ranger District, Custer National Forest.

The Custer National Forest Land and Resources Management Plan and Record of Decision (1987) identified lands on the Forest that are administratively available for oil and gas leasing. This EIS, consistent with the Federal Onshore Oil and Gas Leasing Reform Act of 1987, will reaffirm the administratively available decision, identify specific lands the BLM may offer for lease, and develop site-specific lease stipulations designated to reduce impacts to surface resource values. This analysis will evaluate reasonably foreseeable impacts of post-leasing effects. The analysis will tier from the Forest Plan EIS.

DATES: Public meetings will be held to identify issues to be addressed in this analysis. Meetings are planned in Columbus (July 9), Red Lodge (July 10), and Billings, Montana (July 11). Locations will be announced in local newspapers and in scoping documents sent to those on mailing list.

Written comments concerning the scope of the analysis must be received on or before August 26, 1991 or as listed in information mailed to the public.

ADDRESSES: Written comments concerning the analysis should be sent to Curtis W. Bates, Forest Supervisor, Custer National Forest, PO Box 2556, Billings, Montana 59103.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to David Hatfield, Interdisciplinary Team Leader, Beartooth Ranger District. Phone (406) 446-2103

SUPPLEMENTARY INFORMATION:

Purpose and Objectives

This analysis will address oil and gas leasing and the site specific application of lease stipulations on the entire Beartooth Ranger District except for the Pryor Mountains and the Absaroka-Beartooth Wilderness. The decision to be made is whether or not to issue oil and gas leases, and if so, what stipulations are necessary to reduce impacts to surface resource values.

The Bureau of Land Management is responsible for the actual issuance of these leases, but the Forest Service, as the suface management agency must "consent to" the issuance of a lease on Acquired lands under the Mineral Leasing Act of 1947, or "not object to" leasing of Public Domain lands under the Federal Onshore Oil and Gas Leasing Reform Act of 1987. The decision "to consent or not object to" leasing can be conditioned by requiring stipulations attached to the leases.

Analysis Area

The study area will include approximately 183,000 non-wilderness acres reaching from the Wyoming border to the boundary with the Gallatin National Forest north and west of the Meyers Creek Guard Station. Approximately 46,000 acres are currently leased within the study area.

Lands involved in this analysis include portions of the following Townships: T3S—R14–15E; T4S—R14–15E; T5S—R13–16E; T6S—R15–18E; T7S—R15–20E; T8S—R14–15E & R18–20E; T9S—R14–20E.

Forest Plan Standards

The environmental impact statement (EIS) will address the environmental effects of leasing in the various management areas defined by the Custer National Forest Land and Resource Management Plan that was approved June 19, 1987. The scope of the EIS will be confined to issues of oil and gas leasing and will not address the land allocations that were made in the Forest Plan.

Management Areas within the study area include portions of B,C,D,E,F,G,H,M,P,R, and T. Generalized management goals for each management area are as follows:

MA B—To provide for continuation of livestock grazing, implementation of intensive range management systems and the facilitation of minerals and energy development with consideration of other resource needs. In areas not considered key for wildlife, adverse impacts to the wildlife habitat will be mitigated where feasible, but not to the exclusion of range and mineral/energy management and development activities. In key wildlife areas, the habitat may not be adversely impacted from development activities.

MA C—Manage key wildlife habitat areas for the optimum quality and diversity that the land can offer. Other resource activities will be modified to maintain or improve the existing habitat. Key areas for the Beartooth District include the Line Creek Plateau, Meyers Creek, Swamp Creek, and Picket Pin for elk; Palisades for moose; Stillwater for big horn sheep; and Slough Creek for grizzly bear.

MA D—Maintain or improve long-term diversity and quality of habitat for elk, bighorn sheep, black bear, and moose as well as accommodate oil and gas operations, livestock grazing, and timber harvest.

MA E—Encourage and facilitate the exploration, development, and production of mineral and energy resources. Other resources will be considered and impacts will be mitigated to the extent possible through standard operating procedures, and, on a limited basis, through special lease stipulations necessary to manage key surface resources. Energy/mineral development will not be precluded by these resource concerns within legal constraints.

MA F—Provide a spectrum of recreation opportunities and settings in and around developed sites and the access corridors to the sites in the categories of semiprimitive motorized, semiprimitive non-motorized, and roaded natural appearing and rural.

MA G—Manage these areas for the maintenance and improvement of a healthy diverse forest and as a source of wood products for dependent local markets. Silvicultural systems will consider other resource needs such as wildlife habitat, visual impacts, and livestock management.

MA H—Retain the wilderness characteristics of these areas until a Congressional decision is made regarding wilderness classification.

MA M—Protect from conflicting uses in order to provide healthy, self-perpetuating plant and water communities that will have optimum diversity and density of understory and overstory vegetation in riparian areas.

MA P—Provide adequate facilities for forest administration.

MA R—Protect and maintain high quality water for public domestic use.

MA T—Provide facilities, information, and interpretation to Forest visitors regarding the human and natural history of the landscape seen from the Beartooth highway.

Decisions based on this analysis will not address possible future site-specific proposals for exploration or development of the oil and gas resources. When such a proposal is submitted that involves surface disturbance, a separate NEPA analysis will be conducted.

Public Participation, Issues, and Alternatives

Federal, state, and local agencies, potential developers, and other individuals or organizations interested in or affected by the decision are invited to participate in the scoping process. Input to identify issues to be addressed in this analysis will be gathered from the public through mailing of scoping information to all known interested publics and through public meetings.

Based on comments made by the public on past proposals or actions the following list of preliminary issues to be addressed has been identified. This list will be verified, expanded, or modified based on input from the public.

1. The effects of leasing and subsequent actions on critical terrestrial habitat of plants and animals.
2. The effects of leasing and subsequent actions on local and regional economies and social frameworks.
3. The effect of leasing and subsequent actions on the quality of the scenic and natural setting.
4. The effect of leasing and subsequent actions on water quality and aquatic habitat.

Alternatives to be considered in this analysis will depend on the comments received during scoping, but the following have been identified as preliminary alternatives:

(1) No Action (no leasing at this time).

(2) Issue leases with stipulations identified as standards and guidelines in the Forest Plan.

(3) Issue leases with standard lease terms (no additional stipulations).

Release of Draft and Final EIS

The draft environmental impact statement (DEIS) is scheduled for release to the public for comment on or about April 30, 1992 and the final EIS filed on or about December 1, 1992. The comment period on the draft environment impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final enviromental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objection are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering tentative issues and proposed alternatives it is helpful if comments are as specific as possible. (Reviewers may wish to Refer to the Council on Enviornmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The responsible official for this EIS and decision is John W. Mumma, Regional Forester, USDA Forest Service, 200 East Broadway, P.O. Box 7669, Missoula, Montana 59807.

Dated: June 6, 1991.

John W. Mumma,

Regional Forester.

[FR Doc. 91-15338 Filed 6-26-91; 8:45 am]

BILLING CODE 3410-11-M

Oil and Gas Leasing; Custer National Forest; Little Missouri National Grasslands: Billings, Golden Valley and Slope Counties, ND; Cedar River National Grasslands: Sioux and Grant Counties, ND; Grand River National Grasslands: Corson and Perkins Counties, SD; Custer National Forest: Hardin County, SD; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of oil and gas leasing and reasonably foreseeable actions resulting from subsequent exploration and development, as well as interconnected actions on a portion of the Little Missouri National Grassland, involving the Medora Ranger District; the Cedar River and Grand River National Grasslands involving the Grand River Ranger District; and a portion of the Sioux Ranger District, Custer National Forest. The USDI—Bureau of Land Management will cooperatively participate in the preparation of this document.

The Custer National Forest Management Plan and Record of Decision (1987) identified which lands on the Forest are available for oil and gas leasing. This EIS, consistent with the Federal Onshore Oil and Gas Leasing Reform Act of 1987, will reaffirm the administratively available decision,

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identify specific lands the BLM may offer for lease, and develop site-specific lease stipulations designed to reduce impacts to surface resource values. This analysis will evaluate reasonably foreseeable impacts of post-leasing activity. The analysis will tier to the Forest Plan EIS.

DATES: Comments concerning the scoping to identify issues should be received in writing by July 31, 1991.

ADDRESSES: Written comments concerning the analysis should be sent to Curtis W. Bates, Forest Supervisor, Custer National Forest, P.O. Box 2556, Billings, Montana 59103.

FOR FURTHER INFORMATION CONTACT: Margaret Walker, EIS Team Leader, Custer National Forest, Phone (701) 225-5151.

SUPPLEMENTARY INFORMATION: This analysis will address oil and gas leasing and the site specific application of lease stipulations in the following areas:

1. Medora Ranger District—Those lands in North Dakota lying between and including T133N and a portion of T139N, and R99W and R106W, 5th PM. The northern boundary of the analysis area is a line two miles north of the line between T138N and T139N. Land within the analysis area totals approximately 704,000 acres. Forest Service owns approximately 275,000 acres within the analysis area and approximately 93,000 acres are leased.

2. *Grand River Ranger District*—Those lands in North Dakota lying between and including T129N and T130N, and R94W and R90W, 5th PM; and those lands in South Dakota lying between and including T17N and T23N, and R11E and R16E, Black Hills Meridian. Land within the analysis area totals approximately 472,737 acres. Forest Service owns approximately 155,000 acres within the analysis area and approximately 30,000 acres are leased.

3. *Sioux Ranger District.*—Those lands in South Dakota lying between and including T16N and T22N, and R4E and R9E, Black Hills Meridian. The area does not include the East and West Short Pine Hills. Land within the analysis area totals approximately 70,794 acres. Forest Service owns approximately 60,000 acres within the analysis area and approximately 42,000 acres are currently leased.

The area to be included in this analysis is located in the southern portion of the Williston Basin. The environmental impact statement (EIS) will address the environmental effects of leasing in the various management areas defined in the Custer National Forest Land and Resource Management Plan that was approved June 19, 1987. The scope of the EIS will be confined to those issues of oil and gas leasing and will not address the land allocations that were made in the Forest Plan.

The decision to be made is whether or not to issue oil and gas leases, and if so, what stipulations are necessary to protect other resource values. The Bureau of Land Management is responsible for the actual issuance of these leases, but the Forest Service, as the surface management agency must consent to the issuance of a lease on Acquired lands under the Mineral Leasing Act of 1947, or not object to leasing of Public Domain lands under the Federal Onshore Oil and Gas Leasing Reform Act of 1987. This consent or no objection can be conditioned by requiring certain stipulations to be attached to the leases.

This analysis will address oil and gas leasing in the following Management Areas (MA) as described in the Custer Forest Plan:

MA B—The goal of this management area is to provide for the continuation of livestock grazing, implementation of intensive range management systems, and the facilitation of minerals and energy development with consideration of other resource needs.

MA C—The goal of this management area is to manage key wildlife habitat areas for the optimum quality and diversity that the land can offer. Other resource activities will be modified to maintain or improve the existing habitat.

MA D—The goal is to maintain or improve the long-term diversity and quality of habitat for the selected species identified by Ranger District as well as accommodating other resource management activities such as timber harvest, livestock grazing, and oil and gas development.

MA E—The goal is to facilitate and encourage the exploration, development, and production of energy and mineral resources from the National Forest System lands.

MA F—The goal of the management area is to provide a spectrum of recreation opportunities and settings in and around developed sites and the access corridors to the sites in the categories of Semi-primitive Non-motorized/Motorized, Roaded Natural Appearing, and Rural.

MA L—The goal is to provide an opportunity for research, study, observation, and monitoring of natural-occurring ecological processes.

MA M—The goal of this management area is to manage to protect from conflicting uses in order to provide healthy, self-perpetuating plant and water communities that will have optimum diversity and density of understory vegetation.

MA N—The goal is to provide healthy, self-perpetuating plant communities that will have optimum diversity and density of understory and overstory vegetation.

MA O—The goal is to protect the unique geological and scenic features of the National Natural Landmarks and provide a recreation opportunity.

MA P—The goal is to provide adequate facilities for the administration of the Custer National Forest.

Federal, state, and local agencies, potential developers, and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. Input to identify the issues to be addressed in the conducting of this analysis will be gathered from the public through mailing of scoping information to all known interested publics. Similar information will be distributed through the local media. No public meetings are scheduled at this time.

Based on comments made by the public on past proposals or actions the following list of preliminary issues to be addressed has been identified. This list will be verified, expanded, or modified based on public scoping for this proposal.

1. The effects of leasing and subsequent actions on wildlife and wildlife habitat.

2. The effects of leasing and subsequent actions on woody draws, woodlands, and riparian areas.

3. The effect of leasing and subsequent actions on the integrity of Native American cultural and traditional sites.

Alternatives to be considered in this analysis will depend on the comments received during scoping, but the following have been identified as preliminary alternatives: (1) No Action (no leasing at this time), (2) Issue leases with the stipulations identified as standards and guidelines in the Custer Forest Plan, and (3) Issue leases with standard lease terms (no additional stipulations).

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by providing substantive comments at this time so they can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The draft environmental impact statement is scheduled for release to the public for comment on or about April 30, 1992 and the final statement being filed by December 20, 1992.

The responsible official for this EIS and these decisions is John W. Mumma, Regional Forester, USDA Forest Service, 200 East Broadway, P.O. Box 7669, Missoula, Montana 59807.

Dated: June 6, 1991.

John W. Mumma,

Regional Forester.

[FR Doc. 91-15337 Filed 6-26-91; 8:45 am]

BILLING CODE 3410-11-M

Devils Canyon Timber Sale; Tahoe National Forest; Nevada County, CA; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service will prepare an environmental impact statement (EIS) on a proposal to harvest timber on the Nevada City Ranger District of the Tahoe National Forest.

The Proposed Action is to harvest 399 acres in the Devils Canyon Compartment in fiscal year 1992. Harvest would be a combination of sanitation, seed tree and clearcut, using tractor, skyline and helicopter methods. Possible alternatives include; to do nothing, to manage Devils Canyon drainage as a wildlife corridor by deferring harvest on 129 of the 399 total acres; to manage the Devils Canyon and Poorman Creek drainages as a wildlife corridor and California spotted owl habitat by deferring harvest on 253 of the 399 total acres, to minimize harvest impacts by changing harvest type to sanitation on the 399 acres; and to harvest on 399 acres using tractor and skyline systems.

Public comment and internal scoping over the past year and a half have identified the following as the major issues concerning the Devils Canyon drainage: ancient forest values, corridor for furbearing mammals, furbearer habitat, and spotted owl habitat.

The agency gives notice of the full environmental analysis and decision making process that will occur on the Proposed Action so that interested and affected people, along with local, State and other Federal agencies, are aware of how they may participate and contribute to the final decision. The Tahoe National Forest invites written input concerning issues specific to the Proposed Action.

DATES: Input concerning issues with the Proposed Action must be received by Friday, August 2, 1991.

ADDRESSES: Direct written input and questions about the Proposed Action and Environmental Impact Statement to the District Ranger, Nevada City Ranger District, Tahoe National Forest, P.O. Box 6003, Nevada City, CA 95959-6003.

FOR FURTHER INFORMATION CONTACT: Ruth Norman, Project Leader, Nevada City Ranger District, Tahoe National Forest, P.O. Box 6003, Nevada City, CA 95959-6003, telephone (916) 265-4531.

SUPPLEMENTARY INFORMATION: The proposed action is derived from a 1984 environmental assessment (EA), decision notice (DN) and updates (1989 and 1990).

The EIS will tier to the Tahoe National Forest Lands and Resource Management Plan and Forest Plan EIS. The purpose of the Proposed Action is to improve vigor of trees, maintain old-forest structure where important for visual quality and wildlife habitat (travel corridor), help satisfy short-term demands for timber, and increase the ability to control wildland fire.

Public participation for a supplement to the 1984 EA was first solicited in early 1990 and again in 1991. Letters were sent to individuals, organizations, and government agencies. A public field trip and workshop were held in April and May of 1991, at Devils Canyon and Nevada City Ranger District, respectively.

Considerable interest has been shown in retaining the Devils Canyon drainage as an old-growth corridor for wildlife, especially furbearing mammals.

Consultation with the U.S. Fish and Wildlife Service will be initiated with regard to listed species. Letters will be sent to those who received previous mailings. No public meetings are presently scheduled.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (9178). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period on the draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

A draft EIS is expected to be available for agency and public review by October 1991. A final EIS is expected to be completed by March 1992 and documented by a Record of Decision.

The responsible official for this EIS and decision is John H. Skinner, Forest

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Supervisor, Tahoe National Forest, P.O. Box 6003, Nevada City, CA 95959–6003.

Dated: June 19, 1991.

John H. Skinner,

Forest Supervisor.

[FR Doc. 91–15302 Filed 6–26–91; 8:45 am]

BILLING CODE 3410–11–M

Supplement to the Final Environmental Impact Statement for the Land and Resource Management Plan, Tahoe National Forest, Within Nevada, Placer, Plumas, Sierra, and Yuba Counties, CA; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Forest Service will prepare a Supplement to the Final Environmental Impact Statement (FEIS) for the Land and Resource Management Plan (LRMP) for the Tahoe National Forest (TNF) approved June 14, 1990. The supplement will disclose the effects of implementing the direction in the LRMP to develop a program for managing old growth, riparian, and old-forest habitats. This direction is found in several places including the Record of Decision, LRMP Forestwide Standard 23 (Endangered, Threatened, and Sensitive Species Management, pages V–27, and V–28), Forestwide Standard 25 (Diversity, pages V–28 and V–29), and Appendix D (pages D–2 and D–3). Management will be designed to provide suitable habitat for individual species such as pine marten, fisher, and Sierra Nevada red fox as well as the species groups associated with riparian and late seral stage habitats. The Forest Service invites specific written comments and suggestions on the scope of the proposed analysis. In addition, this notice includes an overview of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Specific comments concerning the scope of the analysis should be sumitted by August 30, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to John H. Skinner, Forest Supervisor, Tahoe National Forest, 631 Coyote Street, P.O. Box 6003, Nevada City, California 95959–6003.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to Terry Randolph, Forest Planner, or Bill Baker, Environmental Coordinator, Tahoe National Forest, 631 Coyote Street, P.O. Box 6003, Nevada City, California 95959–6003, phone 916–265–4531.

SUPPLEMENTARY INFORMATION: The LRMP includes direction for developing programs for management of old growth and old-forest habitats. This direction is found in several places including the Record of Decision, LRMP Forestwide Standard 23 (Endangered, Threatened, and Sensitive Species Management, pages V–27 and V–28), Forestwide Standard 25 (Diversity, pages V–28 and V–29), and Appendix D (pages D–2 and D–3). The TNF is initiating this supplement as a continuation of our normal planning process; our schedule is to complete the supplement and amend the LRMP over the next 24 months.

The Issue

The issue of protecting or maintaining "old growth" has commonly represented by various wildlife species including the spotted owl and, specifically, furbearers on the TNF. There is a difference between classically defined "old growth"and habitat requirements for species living or using older forests. Usually, the animals are using and thriving in older forests that may or may not have all the attributes usually associated with true old-growth forests.

Definitions of old growth generally describe these areas as consisting of old trees (200 years and older), little evidence of human activity, more that one three-canopy level, down logs, big trees, and snags.

Much of the Tahoe National Forest was logged during the mining era, about 1850 to 1910, which has resulted in much of the Tahoe supporting thrifty stands of relatively young (80- to 130-year-old) trees. These same stands, however, also support large trees.

Where are We Now

(1) The TNF is currently assessing old growth and habitats for old-forest-associated wildlife through the project-area environmental analysis process until a forestwide program can be developed.

(2) We are currently completing a literature review on topics ranging from old-growth definitions, and ecological values of old-growth forests, to habitat requirements for those species requiring or associated with mature/old-growth forest components. In addition, we are developing an inventory of old-forest stands for use in the analysis.

(3) The Chief has produced a statement on the values of old growth, which is enclosed and will be used as a starting point for determining the value and amount of old growth to be managed on the Forest.

(4) Old growth and older-forest habitats on the TNF will be managed; however, the intensity and direction of that management will vary with objectives based on old-growth and older-forest values and site-specific conditions. Stategies for management may range from old-growth set/aside areas, with monitoring as the only management activity, to areas where regeneration harvest is the management activity.

Where We Want to Be

(1) We want to plan for sustainable old-growth and other late seral stage habitats for the TNF.

(2) We want to have reliable information on the amount and location of older forests on the TNF. In addition, we want to know the amount and distribution of older forests on other lands.

(3) Finally, we would like to reach a consensus with our publics on a program for managing old growth and older-forest habitats. The program would identify the amount and location for old-forest management now and into the future.

Chief's Position Statement on National Forest Old-Growth Values

The Forest Service recognizes the many significant values associated with old-growth forests, such as biological diversity, wildlife and fisheries habitat, recreation, aesthetics, soil productivity, water quality, and industrial raw material. Old growth on the National Forests will be managed to provide the foregoing values for present and future generations. Decisions on managing existing old-growth forests to provide these values will be made in the development and implementation of forest plans.

These plans shall also provide for a succession of young forests into old-growth forests in light of their depletion due to natural events or harvest.

Old-growth forests encompass the late stages of stand development and are distinguished by old trees and related structural attributes. These attributes such as tree size, canopy layers, snags, and down trees, generally defined forests that are in an old-growth condition. The specific attributes vary by forest type. Old-growth definitions are to be developed by forest type or type groups for use in determining the extent and distribution of old-growth forests.

Where goals for providing old-growth values are not compatible with timber harvesting, lands will be classified as unsuitable for timber production. Where these goals can be met by such measures as extending the final harvest age well beyond the normal rotation or by using silvicultural practices that maintain or establish specific old-growth values, lands will be classified as suitable for timber production. In making these determinations, consideration shall be given to the extent and distribution of old growth on National Forest lands that are Congressionally or administratively withdrawn from timber harvest, as well as adjacent ownerships.

Old-growth values shall be considered in designing the dispersion of old growth. This may range from a network of old-growth stands for wildlife habitat to designated areas for public visitation. In general, areas to be managed for old-growth values are to be distributed over individual National Forests with attention given to minimizing the fragmentation of old growth into small isolated areas. Old growth on lands suitable for timber production and not subject to extended rotations is to be scheduled for harvest to establish young stands which more fully utilize potential timber productivity and also meet other resource objectives.

Regions with support with Research shall continue to develop forest type old-growth definitions, conduct old-growth inventories, develop and implement silvicultural practices to maintain or establish desired old-growth values, and explore the concept of ecosystem management on a landscape basis. Where appropriate, land management decisions are to maintain future options so the results from the foregoing efforts can be applied in subsequent decisions. Accordingly, field units are to be innovative in planning and carrying out their activities in managing old-growth forests for their many significant values.

Generic Definition and Description of Old-Growth Forest

Purpose and Scope

The following describes the ecologically important structural features of old-growth ecosystems. Measurable criteria for these attributes will be established in more specific definitions for forest types, habitat types, plant associations or groupings of them. The intent of the generic definition is to guide design of specific definitions and new inventories that include measurement of specific attributes. Although old-growth ecosystems may be distinguished functionally as well as structurally, this definition is restricted primarily to stand-level structural features which are readily measured in forest inventory.

Definition

Old-growth forests are ecosystems distinguished by old trees and related structural attributes. Old growth encompasses the later stages of stand development that typically differ from earlier stages in a variety of characteristics which may include tree size, accumulations of large dead woody material, number of canopy layers, species composition, and ecosystem function.

Description

The age at which old growth develops and the specific structural attributes that characterize old growth will vary widely according to forest type, climate sites, conditions, and disturbance regime. For example, old growth in fire-dependent forest types may not differ from younger forest in the number of canopy layers or accumulations of down woody material. However, old growth is typically distinguished from younger growth by several of the following attributes:

1. Large trees for species and site.
2. Wide variation in tree sizes and spacing.
3. Accumulations of large-size dead standing and fallen trees that are high relative to earlier stages.
4. Decadence in the form of broken or deformed tops or bole and root decay.
5. Multiple canopy layers.
6. Canopy gaps and understory patchiness.

Compositionally, old growth encompasses both older forests dominated by early seral species, such as fire-dependent species, and forests in later successional stages dominated by shade-tolerant species. Rates of change in composition and structure are slow relative to younger forests. Different stages or classes of old growth will be recognizable in many forest types.

Sporadic, low-to-moderate severity disturbances are an integral part of the internal dynamics of many old-growth ecosystems. Canopy openings resulting from the death of overstory trees often give rise to patches of small trees, shrubs, and herbs in the understory.

Old growth is not necessarily "virgin" or "primeval." Old growth could develop following human disturbance.

The structure and function of an old-growth ecosystem will be influenced by its stand size and landscape position and context.

Responsible Official

John H. Skinner, Forest Supervisor, Tahoe National Forest, is the responsible official for the Management Plan and EIS. The analysis is expected to take up to 24 months and the Draft EIS is expected to be available for review and comment by October 1992. The Final EIS is scheduled to be completed by June, 1993.

Dated: June 19, 1991.

John H. Skinner,

Forest Supervisor.

[FR Doc. 91–15303 Filed 6–26–91; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will be held from 1 p.m. until 5 p.m. on Wednesday, July 31, 1991, at the Marc Plaza Hotel, Milwaukee, Wisconsin. The purpose of this meeting is to discuss current issues, orient members, and plan future activities.

Persons desiring additional information should contact Committee Chairperson, James Baughman, at (608) 262–3691 or Constance Davis, Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 17, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–15304 Filed 6–26–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 36–91]

Foreign-Trade Zone 65—Panama City, FL; Request for Manufacturing Authority Wellstream Corp., Flexible Pipe Plant

An application has been submitted to the Foreign-Trade Zones Board (the

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Board) by the Panama City Port Authority, grantee of FTZ 85, on behalf of Wellstream Corporation, requesting authority for the manufacture of flexible pipe under zone procedures within FTZ 85, Panama City, Florida, it was filed on June 14, 1991.

The Wellstream facility (202 employees, 150,000 sq. ft.) is located at 1700 C Avenue within the Panama City Port Complex. The plant is used to produce flexible plastic composite piping, reinforced with steel, primarily for the offshore oil and gas extraction industry. The pipes range from 2 to 12 inches in size (inside diameter) and have burst pressure ratings of up to 20,000 psi. The piping is produced by covering an interlocked steel carcass (carbon or stainless) with viscous nylon or a similar compound. Two layers of flat steel bands are then wrapped to cover the hardened nylon. The final step in the external application of an extruded polymer, protective jacket.

Currently, components are purchased mainly from domestic sources. However, Wellstream wishes to improve its competitiveness in seeking foreign contracts, which may require foreign components. Foreign materials may include natural and synthetic rubber, non-alloy and stainless steel, polymers, nylon, and resins. The firm projects that approximately 60 percent of its annual shipments will be exported.

Zone procedures would exempt Wellstream from Customs duty payments on the foreign components that are used in production for export. On its domestic sales, the company would be able to choose the duty rate that applies to finished plastic piping reinforced with steel (HTS# 3917.31/3917/.39—3.1%). The duty rates on foreign materials range from zero to 11.6 percent. The applicant indicates that zone savings will improve the plant's international competitiveness.

Comments concerning the application are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 12, 1991. Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 21, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-15354 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-122-807]

Fresh, Chilled and Frozen Pork From Canada: Revocation of Countervailing Duty Order and Termination of Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Roy A. Malmrose, Office of Countervailing Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-3530 or 377-5414.

Revocation of Order and Termination of Administrative Review

On July 24, 1989, the Department of Commerce ("Commerce") published notice of its *Final Countervailing Duty Determination: Fresh, Chilled and Frozen Pork from Canada* (54 FR 30774). On September 13, 1989, the International Trade Commission ("Commission") made a determination that the domestic industry was threatened with material injury by reason of the importation of the subject merchandise. As a result, Commerce issued a countervailing duty order with respect to the products subject to investigation (54 FR 39031, September 22, 1989). Subsequent to publication of the order, Canadian respondents appealed both Commerce's and the Commission's determinations to the U.S.-Canada Binational Panel ("Panel"), pursuant to Article 1904 of the United States-Canada Free Trade Agreement ("FTA") and title IV of the United States-Canada Free Trade Implementation Act of 1988, 19 U.S.C. 1516a(g)(2) (1989).

On January 22, 1991, the panel reviewing the Commission's threat of injury determination concluded that the finding was not supported by substantial evidence and remanded to the Commission. Pursuant to this remand, the Commission determined on February 12, 1991 that an industry in the United States was not threatened with material injury by reason of imports of fresh, chilled and frozen pork from Canada. *Fresh, Chilled and Frozen Pork from Canada,* USITC Pub. 2362, Inv. No. 701-TA-298 (Feb. 1991).

On March 27, 1991, an Extraordinary Challenge Committee ("Committee") was requested pursuant to Article 1904.13 and Annex 1904.13 of the FTA to review the January 22, 1991 Panel decision. The Committee has now affirmed the Panel's decision. Memorandum Opinion and Order, ECC-91-1904-01USA (June 14, 1991). As a result, Commerce is revoking the countervailing duty order on fresh, chilled and frozen pork from Canada. The Department will instruct the Customs Service to proceed with liquidation of all unliquidated merchandise without regard to countervailing duties and to refund all cash deposits and release all securities posted to cover estimated countervailing duties.

The Department is also terminating the administrative review initiated for the period of September 13, 1989 through March 31, 1990 (55 FR 43153).

Dated: June 21, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-15355 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Informtion Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-3A016."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 89-00016, issued on February 5, 1990 (55 FR 4647, February 9, 1990). Previous amendments to the Certificate were issued on November 7, 1990 (55 FR 47784, November 15, 1990) and on April 17, 1991 (56 FR 16328, April 22, 1991).

Summary of the Application

Applicant: National Geothermal Association, P.O. Box 1350, Davis, California 95617.

Contact: Arthur John Armstrong, Counsel, Telephone: (202) 452-6972.

Application No.: 89-3A016.

Date Deemed Submitted: June 13, 1991.

The National Geothermal Association seeks to amend its Certificate by:

(1) Adding REEP, Inc. and USGIC Dominica, L.P., both of Bethesda, MD, as "Members" of the Certificate; and

(2) Revising paragraphs 1, 6, 7, and 8 of the Export Trade Activities and Methods of Operation section of the Certificate as follows:

1. Engage in joint selling arrangements for the sale of Products and/or Services in Export Markets, such as joint marketing, negotiations, offering, bidding and financing, and allocate sales resulting from such arrangements.

6. Coordinate the development of projects in Export Markets, such as project identification, project financing, exploration, scientific and/or technical assessment, transportation and/or delivery, installation, construction, operations, servicing, ownership and transfer of project ownership; and establish joint warranty, service, parts warehousing, and training centers related to the foregoing.

7. Engage in joint promotional activities, such as advertising, demonstrations, field trips, and trade shows and trade missions; and bring together, from time to time, groups of Members to plan and discuss how to fulfill technical and commercial Product and Service requirements of specific export customers in order to develop existing or new Export Markets.

8. Establish and operate jointly owned subsidiaries or other joint venture entities owned exclusively by Members for the purposes of engaging in the Export Trade Activities and Methods of Operation herein other than the licensing of associated Technology Rights pursuant to paragraph 15. NGA and/or one or more of its Members may establish and operate joint ventures for operations in Export Markets with non-Members, including (a) public-sector foreign corporations and other foreign governmental entities, and/or (b) private-sector foreign entities such as corporations.

Dated: June 21, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-15293 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-DR-M

[Docket No. 910515-1115]

Foreign Buyer Program; Support for Domestic Trade Shows

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Call for applications for the FY93 Foreign Buyer Program (October 1, 1992, through September 30, 1993).

SUMMARY: This notice sets forth objectives, procedures and application review criteria associated with the U.S. Department of Commerce's Foreign Buyer Program (FBP) to support domestic trade shows.

The FBP was established to bring foreign buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The FBP emphasizes cooperation between the Department and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance to U.S. companies interested in exporting. The assistance provided includes export counseling, market analysis, and overseas promotion of selected shows to potential foreign buyers, end-users, agents and distributors. Shows selected for the Foreign Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets.

DATES: Applications must be received by July 31, 1991.

ADDRESSES: Export Promotion Services/Foreign Buyer Program, U.S. and Foreign Commercial Service (US&FCS), International Trade Administration, U.S. Department of Commerce, room 2118, 14th and Constitution Avenue NW., Washington, DC 20230. Tel. (202) 377-0481 (facsimile applications will not be accepted).

FOR FURTHER INFORMATION CONTACT: Product Manager, Foreign Buyer Program, room 2118, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. Tel. (202) 377-0481 or fax 202/377-0178.

SUPPLEMENTARY INFORMATION: The International Trade Administration of the U.S. Department of Commerce is accepting applications for the Foreign Buyer Program (FBP) for events taking place between October 1, 1992, and September 30, 1993.

Under the FBP, the Department seeks to bring foreign buyers together with U.S. firms by selecting and promoting in foreign markets domestic trade shows in industries with high-export potential. Selection of a trade show is one-time, i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. If the event occurs more than once in the 12 month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Department will select 18 events to support during this 12 month period. If resources permit, additional shows may be added to the schedule of events. The Department will select those events that, in its judgment, most clearly and best meet the Department's objectives as well as satisfy the selection criteria. For this reason, non-selection of an event should not be viewed as a finding that the event will not be successful in promoting U.S. exports.

The collection of the information required in an application is authorized by law (15 U.S.C. 1512 *et seq.*). A trade show will not be considered for the Foreign Buyer Program unless a completed application has been received.

The Office of Management and Budget has approved the information collection requirement contained in this notice under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et*

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seq.) (OMB number 0625-0151 approved for use through September 30, 1991).

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Reports Clearance Officer, International Trade Administration, room 4001, U.S. Department of Commerce, Washington, D.C. 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625-0151), Washington, DC 20503.

General Selection Criteria

Subject to Departmental budget and resource constraints, selection will be granted to those events which, in the judgment of the Department, most clearly and best meet the following criteria:

(a) Export Potential. The products and services to be promoted at the trade show should be from U.S. industries which have high export potential as determined by U.S. Department of Commerce sources, i.e. best prospects lists and U.S. export statistics. (Certain industries are rated as priorities by our domestic and international commercial officers in their annual workplans and country marketing plans.)

(b) International Interest. Trade shows will be selected which meet the needs of a significant number of overseas markets covered by the US&FCS and correspond to marketing opportunities as identified by the posts in their country marketing plans (e.g. best prospects). Previous foreign attendance at the show may be used as an indicator.

(c) Scope of the Show. The event must offer a broad spectrum of U.S. made products and/or services for the subject industry. Trade shows with a majority of U.S. firms will be given preference.

(d) Stature of the Show. The trade show must be clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or techniques in that industry.

(e) Exhibitor Interest. Show Organizer must demonstrate interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand sales into additional foreign markets.

(f) Overseas Marketing. Show Organizer must describe efforts made to market event overseas for prior shows as well as to detail international marketing efforts for the event for which FBP support is being sought.

(g) Logistics The trade show site, facilities, transportation services and availability of accommodations must be in keeping with the stature of an international-class trade show.

(h) Delegation Incentives Show Organizers should list types of incentives to be offered delegations and delegation leaders recruited through US&FCS overseas posts. Examples of incentives include waived or reduced admission fees to the event, competitive travel packages, plant tours, international receptions, complimentary accommodations for delegation leaders, etc.

(i) Cooperation Successful applicants will be required to enter into a Memorandum of Understanding (MOU) which sets forth the specific actions to be performed by the show producer/owner and the USDOC. There must be a willingness on the part of the trade show organizer to cooperate with the US&FCS to further the program's goals, and to adhere to target dates set out in the MOU and the event timetable.

Note: Past experience in the Foreign Buyer Program will be taken into account in evaluating current application to the program.

Department of Commerce Support of Foreign Buyer Program Events

The support provided for selected events may differ depending on the specific needs identified and agreed upon by the Department and the show organizer. Services may include, but are not limited to special overseas marketing efforts by staff of the US&FCS. Such marketing activities include contacting key foreign government and private sales prospects and providing publicity in appropriate Departmental periodicals.

Specific Department Actions

For selected shows the Department of Commerce will: (a) Designate a project manager as central contact to work with the show organizer on all aspects of promotion abroad and foreign buyer assistance at the show. The project manager will work closely with the show organizers' contact to develop an overall promotional timetable to promote the event.

(b) Advise and work closely with all interested U.S. Embassies and Consulates to encourage maximum trade show promotion and exposure for those exhibitors indicating export interest.

(c) Promote industry trade show participation through announcements in publications with overseas distribution. (E.g., regional and embassy commercial newsletters, and *Commercial News USA*).

(d) Provide show organizer with specifications of a DOC-designed hard panel system International Business Center (IBC), including furniture requirements, DOC office, conference rooms, lounge area, storage area, etc.

(e) Provide show organizer with samples of multi-language brochures, U.S. Embassy/Consulate address labels, shipping instructions and quantities required for overseas shipment.

(f) Provide show organizer with promotional articles about the Foreign Buyer Program and the services available to U.S. exhibitors and foreign visitors at the International Business Center. Will send a letter with program flyer to all U.S. exhibitors at least one month before the show to promote the IBC and the benefits of the Program.

(g) Provide a final show report to the show organizer not later than 120 days after the show. This report will include data collected by show organizer in a post show survey reflecting FBP results.

(h) Request US&FCS District Offices in the U.S. to provide export counseling or specific marketing information to those U.S. participants that have indicated a need for such counseling before and during the show.

(i) Review all printed materials bearing the Foreign Buyer Program logo for substantive and legal accuracy of statements regarding the Program or DOC activities and event support.

Commerce Services Provided at Trade Show Site

(a) At least one project manager will provide primary management of the International Business Center (IBC), facilitate matching foreign buyers with exhibiting U.S. companies, and inform U.S. companies about U.S. Department of Commerce products and services and other International Trade Administration programs. At least one Trade Specialist from a US&FCS District Office will be available during the show to provide additional export counseling.

(b) The Department of Commerce will provide export counseling at the International Business Center to exhibitors and assist foreign buyers to meet their purchasing/representation objectives during the show.

(c) US&FCS staff will participate, if appropriate, in special export promotion seminars specifically aimed at new-to-market/new-to-export firms exhibiting at the trade show.

Specific Responsibilities of the Show Organizer

Show organizers selected for the FBP must: (a) Designate an official authorized to work with the US&FCS project manager on all aspects of the show promotion as well as a contact during the show to assist with foreign visitor information and product referral (matchmaking services).

(b) Produce and distribute a multilingual promotional brochure in four or more languages and in the quantities specified by the project manager for overseas distribution. Draft of the brochure must be approved by the project manager prior to printing and include the FBP logo and information on the Program and the services available for the international buyer. These brochures must be printed not less than six months prior to the show.

When mailing the brochures to overseas posts, the show organizer is expected to provide names of attendees to the most recent show (by country and on mailing labels if possible), most recent show directory/exhibits guide, and a press release directed to prospective international attendees. Copies of Commercial News advertisement, promotional video, etc. also may be made available.

(c) Produce a one-page promotional advertisement to be placed in Commercial News/USA. Advertisement must be approved by the project manager, have FBP logo prominently displayed, and refer foreign firms to "the Commercial Section of the nearest U.S. Embassy or Consulate" for information on the show(s).

(d) Coordinate with project manager in developing and promoting delegation incentive program to U.S. Embassies and Consulates. Program may include reduced admission fees, complimentary accommodations for delegation leaders leading delegations of more than 15 foreign buyers, etc., all intended to encourage recruitment of delegations.

(e) Provide overseas posts with hotel information at least 6 months prior to the event. Coordinate hotel reservations arrangements.

(f) With guidance from project manager, prepare and distribute an information letter and survey to U.S. exhibitors to determine interest in exporting and international marketing objectives. Information collected will include products or services that the U.S. exhibitors wish to export, international marketing objectives and geographic areas of interest to the company. Information will be incorporated by the show organizer into the show directory or as a separate Export Interest Directory. If published as an Export Interest Directory, two to three copies will be distributed to all Department of Commerce posts overseas 1-3 months prior to the show. If published in the show directory, copies will be distributed upon completion of the show. Preliminary copies may be distributed overseas prior to the show, if possible.

(g) Establish an International Business Center (IBC) at the show in a prominent location adjacent to the main registration area with conspicious display of signage throughout the show to indicate its location. The IBC will consist of a separate registration area for foreign visitors (see item k), lounge area, 2 to 3 conference rooms, and a business office for USDOC officials. The show organizer will staff the IBC with interpreters covering 5-7 languages and sufficient show organizer personnel to assist the two USDOC officials from Washington and the one District Office trade specialist. USDOC design specifications do not allow for pipe and drape at the IBC. A hard panel system is required. A business service center (photocopying, facsimile service, typing, etc.) for attendees and exhibitors may be located within the IBC.

(h) Provide to the project manager a proposed Convention Center floor layout indicating the location and dimensions of the Intl. Business Center at least six (6) months prior to the event.

(i) Provide all U.S. exhibitors with information about the IBC and Department of Commerce services prior to the show and encourage them to visit the IBC.

(j) Will include a one page advertisement in the show directory/exhibits guide highlight the FBP and the IBC and publish in the Show Daily an article describing the FBP and the services provided at the IBC. The copy will be supplied by the Department of Commerce.

(k) Establish a separate international registration system to ensure Commerce project managers access to all foreign attendees at time of registration and to facilitate distribution of the Export Interest Directory and Importer Profile Cards. This registration area should be located within the IBC or adjacent to it. The Importer Profile should include the product interest and marketing objectives of all foreign buyers interested in meeting with U.S. exhibitors. (Show organizers are encouraged to computerize this information). The Importer Profile will be posted at the International Business Center for the benefit of U.S. exhibitors. U.S. attendees interested in international business and will be disseminated at the conclusion of the event to all U.S. exhibitors and U.S. attendees indicating interest in international business.

Important: The Show Organizer must provide a cashier to process all international registration and seminar fees. DOC employees are not bonded, and therefore, cannot handle currency.

(l) Within 3 months following the show, send the following information to all posts: Results of the selected FBP event and information on the next show, copies of the export interest and show directories, importer profile and printout of the names and addresses of the foreign attendees from the respective countries (Embassy/Consulate mailing labels will be provided by the project manager).

Show organizer will also survey all U.S. exhibitors to determine international business results. Survey will include the number of useful international contacts at the event, number of agent/distributor agreements made or pending, joint venture or licensee type arrangements made or pending, dollar value of overseas orders booked at event, and projected overseas sales as a result of contacts made at the event. This information will be incorporated into the final report to be prepared by the DOC project manager.

(m) Upon notification of acceptance into the Foreign Buyer Program, remit the appropriate contribution. For this recruitment period the contribution is $3,500.

Selection

Selection indicates that the Department has found the event to be a leading international trade show appropriate for participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of success of the show or of the undertaking or obligations of the show organizer. Selection is not an endorsement of the show organizer except as to its Foreign Buyer activities. Each successful applicant will be given copies of an official U.S. Department of Commerce logo and/or logo of the U.S. and Foreign Commercial Service for use in its advertising promotional materials. Further, DOC review is necessary of any materials using these logos.

Exclusions

Trade shows will not be considered that are either first time events or are

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horizontal, that is, not industry specific. Annual trade shows will not be selected more than twice in any three year period (e.g., shows selected for fiscal years 1991 and 1992 are not eligible for inclusion in calendar year 1993, but will be considered in subsequent years).

When, Where and How to Apply for Selection in the 1993 Foreign Buyer Program

Except to the extent required by laws, no information of a proprietary nature reported on this application will be disclosed without the prior written consent of the relevant firm.

Please type the information requested below on company letterhead and mail two (2) complete sets of your application to: Product Manager, Foreign Buyer Program, room 2118, Cooperative Events Division, OEMP/EPS, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

Applications must be received at the above address by July 31, 1991. Facsimile applications will not be accepted. Answer to the questions listed below constitutes the formal application:

(1) Name of show.
(2) Site of show.
(3) Dates of show. Indicate if shoe is held annually, biennially, or other.
(4) Name, address, and phone number of applicant.
(5) Name, address, and phone number of applicant contact.
(6) Name, address, and phone number of show sponsor (trade association, national or state government, etc.)
(7) Basic history or description of show. Applicant must demonstrate that subject event is a leading international trade show for the industry (e.g., what makes this show unique as compared to other U.S. or international shows)? Include copies of previous show promotion materials.
(8) Resume of applicant's show experience.
(9) Number of total exhibitors at the past two shows (show U.S. and foreign separately).
(10) Specify net square feet of paid exhibit space the past two shows. Show U.S. and foreign separately.
(11) Specify the total number of attendees at the past two shows (show U.S. and foreign separately). Also include the number of countries represented at past two shows. Do not include exhibitor attendance in these figures.
(12) State any admission fees for show visitors and indicate if there are or will be reduced or waived fees for international visitors or for members of Embassy delegations.
(13) Give a description of any technical program offered and the cost to attend (if applicable).
(14) State product categories to be displayed.
(15) State the audience profile of potential foreign customers (target countries, industries, profession or technical level).
(16) Describe marketing efforts made to promote event overseas for prior show and proposed marketing plan for event being applied for (e.g. use of overseas trade associations, publications, travel agents, etc.).
(17) Sepcify delegation incentives to be offered to delegations and delegation leaders recruited through U.S. Embassies or Consulates. (Examples include waived or reduced admission fees to the exhibition or conference, competitive travel packages, plant tours, international receptions, complimentary accommodations for delegation leaders, etc.).
(18) Submit two (2) sets of all show promotional literature, including show catalog, for previous show.

Applicant must type the following and submit with the appropriate signature:

The above information is correct and the applicant will abide by the terms set forth in this Notice of Call for Applications for the FY93 Foreign Buyer Program (October 1, 1992, through September 30, 1993).

Applications will be processed by the Cooperative Events Division, Office of Export Marketing Programs, Export Promotion Services, and final selection of events will be made approximately 75 days after publication of this **Federal Register** notice.

Contribution. A contribution of $3,500 is required for shows selected and promoted during the October 1, 1992, through September 30, 1993, period.

ITA has determined that this action is not a major rule within the meaning of section 1(b) of Executive Order 12291. Therefore, a Regulatory Impact Analysis has not nor will be prepared. Because a notice of proposed rulemaking and an opportunity for public comment is not required for this agency action relating to practice and procedure under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, no initial or final Regulatory Flexibility Analysis has to be or will be prepared. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Dated: June 21, 1991

Ann H. Watts,

Director, Cooperative Events Division, Office of Export Marketing Programs, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 91-15294 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-FP-M

Food and Drug Administration, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 90-212. *Applicant:* Food and Drug Administration, Bethesda, MD 20892. *Instrument:* Microvolume Stopped-flow Spectrofluorimeter, SF-17MW. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* See notice at 55 FR 51752, December 17, 1990. *Reasons:* The foreign instrument provides: (1) Sub-millisecond dead times, (2) simultaneous absorbance and fluorescence measurements and (3) sample volumes to 100 µl. *Advice Submitted By:* National Institutes of Health: March 27, 1991.

Docket Number: 90-220. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Stopped-Flow Spectrofluorimeter, Model SHU/13-106. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 11545, March 19, 1991. *Reasons:* The foreign instrument provides: (1) a fluorescence collection efficiency of f/0.4, (2) sub-millisecond dead time and sample size to 100 µl. *Advice Submitted By:* National Institutes of Health, March 27, 1991.

Docket Number: 90-225. *Applicant:* University of Utah, Salt Lake City, UT 84112. *Instrument:* GC/Mass Spectrometer/Data System, Model MAT 95. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 56 FR 1513, January 15, 1991. *Reasons:* The foreign instrument provides: (1) mass range to 17,000, (2) resolution to 60,000, (3) scan rate to 0.1 seconds per decade and (4) FAB ion source. *Advice Submitted By:* National Institutes of Health, March 27, 1991.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-15356 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-DS-M

Metro Health Medical Center, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 90-226. *Applicant:* Metro Health Medical Center, Cleveland, OH 44109. *Instrument:* Rapid Karyotyping System, Model RK1. *Manufacturer:* Image Recognition Systems, United Kingdom. *Intended Use:* See notice at 56 FR 4046, February 1, 1991. *Reasons:* The foreign instrument provides low-light image capture with a resolution of 768 x 575 pixels and computer classification of fluorescent stained chromosomes. *Advice Submitted By:* National Institutes of Health, March 27, 1991.

Docket Number: 90-230. *Applicant:* Harvard University School of Public Health, Boston, MA 02115. *Instrument:* Mass Spectrometer, Model ZAB-VSE. *Manufacturer:* VG Analytical, United Kingdom. *Intended Use:* See notice at 56 FR 4047, February 1, 1991. *Reasons:* The foreign instrument provides: (1) A focal plane ion detector, (2) resolution to 125 000, (3) scan rates to 0.1 seconds per decade and (4) mass range to 15 000. *Advice Submitted By:* National Institutes of Health, March 27, 1991.

Docket Number: 90-028. *Applicant:* The Regents of the University of California, Riverside, CA 92521. *Instrument:* Inductively Coupled Plasma/Mass Spectrometer, Model PlasmaQuad PQ2. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 56 FR 11546, March 19, 1991. *Reasons:* The foreign instrument provides quantitation of element species by mass detection of singly charged ions from an inductively coupled argon plasma with ppt detection limits. *Advice Received By:* National Institutes of Standards and Technology, November 20, 1990.

The National Institutes of Health and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-15357 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-DS-M

University of Arizona; Notice of Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 90-227. *Applicant:* University of Arizona, Tucson, AZ 85721. *Instrument:* Stopped-Flow Spectrofluorimeter. *Manufacturer:* Hi-Tech Scientific, Ldt., United Kingdom. *Intended Use:* See notice at 56 FR 4046, February 1, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides simultaneous absorbance and fluorescence measurements with sub-millisecond dead time over the spectral range of 200 to 900 nm. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-15358 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-DS-M

University of Massachusetts at Amherst; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-016. *Applicant:* University of Massachusetts at Amherst, Amherst, MA 01003. *Instrument:* Modular Stereoscope, Model SB 190. *Manufacturer:* Cartographic Engineering Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 6185, February 27, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) A parallel guidance mechanism for smooth, continuous tracking, (2) independently focusing eye pieces, (3) fixed 4X magnification and (4) variable brilliance control. The National Oceanic and Atmospheric Administration advises in its memorandum dated April 30, 1991 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-15359 Filed 6-26-91; 8:45 am]

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National Institute of Standards and Technology

[Docket No. 910513-1113]

State Technology Access Program

AGENCY: National Institute of Standards and Technology, Technology Administration, Department of Commerce.

ACTION: Availability of funds.

SUMMARY: In cooperation with the Small Business Administration and pursuant to the National Institute of Standards and Technology's (NIST) authority provided in 15 U.S.C. 272 *et seq.*, the Director of NIST invites proposals to establish pilot Technology Access Programs in five States to provide resident small businesses with improved online access to public and private technology, services and expertise, so as to accelerate the transfer of technology and expertise to small businesses and to improve the productivity and economic competitiveness of these small businesses.

Although not required to do so, any State may elect to hire a private contractor to carry out some or all aspects of the technology access program. Part of the Federal funds will be expected to subsidize or defray the cost of small business access to private sector data base vendors and to provide public access nodes for those small businesses lacking computer access. The States will be expected to provide an equal match to the Federal share. At least half of the State match must be in cash from non-Federal sources. The Federal funds must be used for the purpose of demonstration, training, and subsidized computer access by small business. The States will have discretion in proposing how they will apply their matching funds, provided it is consistent with the objective of improving the competitiveness of small business in their State.

CLOSING DATE FOR APPLICATIONS: Proposals for Technology Access Program will be accepted until August 12, 1991. Proposals received by NIST after that date will not be considered unless they are postmarked no later than that date and received within five working days thereafter.

ADDRESSES: Applicants must submit one signed original plus one (1) copy of the proposal along with Standard Form 424 (Rev 4-88) as referenced under the provisions of OMB Circular A-110 to: National Institute of Standards and Technology, Technology Services, Physics Building, room A363, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Donald W. Corrigan, 301-975-4511.

ELIGIBILITY: State Small Business Development Center Directors only shall be eligible to apply for funding on behalf of their State. Each State should submit no more than two proposals for a Technology Access Program.

SUPPLEMENTARY INFORMATION: The Fiscal Year 1991 Appropriation for the Small Business Administration (SBA) (Pub. L. 101-515) authorizes the establishment of pilot technology access programs within five States to provide funding to increase small businesses access to online databases. "The purpose of this program shall be to provide small businesses, in States selected to participate in this demonstration program, with access to public and private technology, services and expertise, so as to accelerate the transfer of technology and expertise to small businesses and to improve the productivity and economic competitiveness of the small business."

The Fiscal Year 1991 Authorization for SBA (Pub. L. 101-574) recommended their consultation with the National Institute of Standards and Technology (NIST) in making the awards to five States. NIST has an existing mandate to "provide technical assistance to State technology programs throughout the United States, in order to help those programs help businesses, particularly small and medium-sized businesses, to enhance their competitiveness through the application of science and technology."

The SBA Authorization also requires that the following selection criteria be included in selecting the five States:

(1) The ability of the State to carry out the purposes described . . . in a manner relevant to the needs of industries in that State;

(2) The ability of the State to integrate the implementation of the Program with existing Federal and State technical and business assistance resources, including Small Business Development Centers; and

(3) The ability of the State to continue the program established pursuant to this section after the termination of the Program.

As a result of a written agreement with SBA, NIST intends to use its existing authority to implement the pilot Technology Access Program on SBA's behalf and in close cooperation with them while, at the same time, furthering NIST's own objective of coordinated statewide programs of technical assistance to small businesses. Accordingly, NIST intends to enter into cooperative agreements with five States to demonstrate the value to small businesses of online access to commercially available computer databases and technical information services.

The Federal funds will have to be used to: (1) Defray all or part of the cost of small business access to database services during the term of the cooperative agreement; (2) actively demonstrate to small businesses the benefits of accessing such databases; and (3) train small business how to make the most effective use of such databases and access to technical information and consultants.

The legislation and legislative history make it clear that the Small Business Development Centers are intended to actively participate in these "Technology Access Programs." Consequently, we expect that the State SBDC Director will assume the lead role for this program in each State. However, the legislation and legislative history also make it clear that other existing technical and business assistance programs in the States are to be integrated into the development and operation of these programs. Careful attention will have to be given to the appropriate integration of all existing small business service programs within the State. Sharing of the funds among the participating State programs is implicit. However, Federal participants would be expected to use their own resources to support their participation.

Subsidized assisted computer searching of a wide range of both local and national technical and business databases is one element of the program. Access to a network of technical consultants available for subsidized initial inquiries is another program element. The legislative history also makes it clear that a desire for improved small business access to Federal technology and Federal expertise was one of the driving motivations for this legislation. Careful consideration will be given to those proposals which include credible plans to improve small businesses' access to Federal technology or technical expertise. However, the absence of such an element will not be counted against any proposal.

Since the long-term objective of the program is to improve the productivity and economic competitiveness within each participating State, it will be important for the participating States to carry out the program in a manner relevant to the needs of industries in that State. One indication of the overall ability of any State to fulfill the requirements of the program would be in their analysis of their most economically significant industries, the nature of the small business segment of those industries, and the technical needs of those small businesses.

Financing Available

A total of $1 million is available for distribution in this fiscal year. Awards to five states are anticipated. Funding up to a maximum of $200,000 is available for each state. A matching contribution (half in non-Federal cash) from each state is required. Future or continued funding will be at the discretion of the National Institute of Standards and Technology based on such factors as satisfactory performance and the availability of funds.

Proposal Format

Proposals should be typewritten and organized in a manner consistent with required content of this notice. They should be no longer than 25 pages, not including appendices, and must convey the information required by this notice. Appendices of relevant supporting information are encouraged, including agreements with prospective private sector vendors. Letters of endorsement or other documents not germane to the evaluation criteria *should not be included.*

Proposal Content

Section 1. An executive summary.

Section 2. A description of the participating technical and business assistance programs within the State, how they will be integrated, their respective network, outreach and technology transfer experience, and the extent of their current computer usage.

Section 3. A description of the State's primary industries, the needs of the small business segments, and the feasibility of applying the Technology Access Program to fulfill their existing needs.

Section 4. A description of the types of services to be made available through the program and by whom.

Section 5. A description of the financial management plan including: the source of matching funds and how they will be used; costs, fees, and discounts provided by private sector vendors; the nature and extent of the computer access subsidy to small business; the planned application of user fees, if any; plans to continue the program after the Federal share ceases.

Section 6. An evaluation plan to enable measurement of the impact of the program.

Evaluation Criteria

Types and quality of services to be offered, including demonstration and training as well as demonstrated ability to establish public accessibility to on-line databases and their small businesses in their use in a manner relevant to the needs of industries in the State. (35 points)

Feasibility of the plan to integrate all relevant programs, including Federal and State technical and business assistance resources, including Small Business Development Centers. (20 points)

Experience of the participating programs in networking, outreach, technology transfer and computer applications to assist small businesses. (20 points)

Demonstrated understanding of the State's industry and its needs. (10 points)

Reasonableness of the plans to continue the program after Federal funds are no longer available. (10 points)

Method for evaluating the success, strengths and weaknesses of the program and responding to lessons learned. (5 points)

Paperwork Reduction Act

The SF-424 mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348-0006, and SF-LLL has been approved under Control No. 0348-0046.

Additional Requirements

All applicants must submit a certification ensuring that employees of the applicant are prohibited from engaging in the unlawful manufacturing, distribution, dispensing, possession or use of a controlled substance at the work site, as required by the regulations implementing the Drug-Free Workplace of 1988, 15 CFR part 26, subpart F. Applicants are subject to the Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required to be submitted with any application. Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipient/applicant who has an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

An evaluation panel of six Federal employees including representatives of both NIST and SBA will evaluate all qualified proposals in accordance with the selection criteria set forth in this notice and selection will be based on their rank ordering. This review process should take approximately 30 days. Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Dated: June 24, 1991.

John W. Lyons,

Director, National Institute of Standards and Technology.

[FR Doc. 91-15295 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Status Review of Endangered Whales

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of status reviews.

SUMMARY: NMFS has completed status reviews for eight species of large whales as required under section 4(c)(2) of the Endangered Species Act of 1973 (ESA). A report summarizing the reviews is available upon request.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Deputy Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, 301/427-2322.

SUPPLEMENTARY INFORMATION: The ESA is administered jointly by the U.S. Fish and Wildlife Service (FWS), Department of the Interior, and NMFS, Department of Commerce. NMFS has jurisdiction over most marine species and, under section 4(a) of the ESA, determines whether species should be listed as endangered or threatened. FWS maintains and publishes the List of Endangered and Threatened Wildlife (List) in 50 CFR part 17 for all species determined by NMFS or FWS to be endangered or threatened. A list of endangered species under the jurisdiction of NMFS is contained in 50 CFR 222.23(a) and threatened species in 50 CFR 227.4.

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Section 4(c)(2) of the ESA requires that, at least once every 5 years, a review of the species on the List be conducted as a basis for determining whether any species should be (1) removed from the List, (2) changed in status from an endangered species to a threatened species, or (3) changed in status from a threatened species to an endangered species. On January 3, 1990, NMFS published a notice in the Federal Register (55 FR 164) advising that status reviews were being conducted for species under its jurisdiction and soliciting comments and information. Status reviews for the following eight endangered whale species have been completed: Blue whale (*Bloenoptera musculus*), Bowhead whale (*Baloena mysticetus*), Fin whale (*Balaenoptera physalus*), Gray whale (*Eschrichtius robustus*), Humpback whale (*Megaptera novaeangliae*), Northern right whale (*Eubalaena glacialis*), Sei whale (*Balaenoptera borealis*), Sperm whale (*Physeter macrocephalus*).

A report Endangered Whales: Status Update summarizing the reviews is available upon request (see **FOR FURTHER INFORMATION CONTACT**). On the basis of this review, NMFS intends to publish a proposed determination in the Federal Register that the listing status of the eastern North Pacific (California) population of gray whale should be changed. The 1988 stock size is at least equal to the estimated initial stock size in 1846, and the stock has been increasing at an average rate of 3.2 percent per year since commercial whaling ended in the early 1960s.

Dated: June 14, 1991.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 91-15252 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7-451,953 entitled, Hepatocellular Oncogene to Triton Diagnostics, Inc. having a place of Business in Alameda, California. The Patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention relates to an oncoprotein specific for hepatocellular carcinomas and to a nucleotide sequence that codes for such a protein. The invention further relates to screening and diagnostic methodologies (and kits based thereon) that make use of the oncoprotein (or antibodies specific for same) and the nucleotide sequence.

The availability of the invention for licensing was published in the Federal Register of July 23, 1990.

A copy of the instant patent application may be purchased from the NTIS sales Desk by telephoning 1-800-553-NTIS or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Property filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 91-15305 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on Air Force Aircraft Jet Engine Manufacturing and Production Processes will meet on 22-23 July 1991 from 8 a.m. to 5 p.m. at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, Virginia.

The purpose of this meeting is to gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 91-15259 Filed 6-26-91; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Development of Bel Marin Keys Unit V, Consisting of a Residential, Commercial, and Recreational Community in Marin County, CA

AGENCY: U.S. Army Corps of Engineers (San Francisco District), Department of Defense.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: The Bel Marin Keys Development Associates have applied for Department of the Army (DA) permit for authorization to discharge dredged and fill material, and to work in navigable waters of the United States in association with the proposed development of Bel Marin Keys Unit V, consisting of a residential, commercial, and recreational community in Marin County, California. The permit application process, scoping process, and preparation of the Draft EIS will be the responsibility of the Regulatory Branch of the San Francisco District.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process, preparation of the draft EIS, and processing of the permit application may be directed to Dr. Susan Ryan at the Corps of Engineers (Telephone (415) 744-3322, ext. 224).

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Corps of Engineers (Corps) has received an application for a Department of the Army permit from the Bel Marin Keys Development Associates to develop Bel Marin Keys Unit V, consisting of a residential, commercial, and recreational community in Marin County, California. The proposed project site is presently farmed and is located just east of Highway 101 and just north of the former Hamilton Air Force Base in Marin County, California. The permit application will be processed by the Regulatory Branch of the San Francisco District, Corps of Engineers, pursuant to the provisions of section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and section 404 of the Clean Water Act. (33 U.S.C. 1344).

The purpose of the proposed project is to construct a multipurpose development community with residential, commercial, and recreational components.

In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) the Corps has determined that the proposed action may have a significant impact on the quality of the human environment and therefore requires the preparation of an Environmental Impact Statement (EIS). A combined EIS/EIR (Environmental Impact Report) will be prepared with the Corps as the Federal lead agency for the EIS, and the County of Marin as the lead agency for the EIR.

2. Alternatives

The project alternatives under consideration are:

a. Proposed Project. The proposed Master Plan/Rezoning would allow for development of 1,190 new residential units, 152,000 square feet of commercial space, a 135 acre golf course, 15 acres of community park and marina, 463 acres of lagoons, 250 acres of seasonal marshland, and 660 acres of wetland habitat on a 1,610-acre site. The project also includes development of a ferry system, light rail system, bus system, and improvements in the local road system.

b. No Action Plan. Under this plan, which is equivalent to permit denial by the Corps, no action could be taken by the Bel Marin Keys Development Associates to develop the Bel Marin Keys Unit V residential, commercial, and recreational community.

c. Status Quo (Current Zoning) Alternate

d. Alternative Residential Development

e. Reduced Size Alternative

f. Alternative Mix/Type of Uses Alternative

g. Mitigated Project Design for Revised or Reconfigured Development Design

h. Higher Density Residential

i. Alternative Site

j. Other Project Proposals That are Identified During the Public Scoping Process

3. Scoping Process

Pursuant to the National Environmental Policy Act, as amended, agency planning for federal or federally permitted projects must include a "scoping" process. Scoping primarily involves determining the scope of issues to be addressed, and identifying the significant issues for in-depth analysis in the draft EIS. The scoping process includes public participation to integrate information regarding public needs and concerns into the environmental document.

The Corps and the County will hold a public scoping meeting on July 24, 1991 at 7 pm at the Bel Marin Keys Community Services District Community Center, #4 Montego Key, Novato, CA 94947. A formal presentation will precede the request for public comment. Representatives from the Corps of Engineers, the County, and the Environmental Science Associates, Inc. (the consultant preparing the joint EIR/EIS), will be available at this meeting to receive comments from the public regarding issues of concern that should be addressed in the environmental document.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the scoping meeting. To be most helpful, the scoping comments should clearly describe specific environmental issues or topics which the commentator believes the document should address. Written statements should be mailed no later than August 7, 1991 to the District Engineer, U.S. Army Corps of Engineers, San Francisco District, 211 Main Street, San Francisco, California 94105.

a. Significant Issues The following issues have been identified as potentially significant and will be evaluated in the draft EIS:

(1) Geologic conditions.
(2) Water quality.
(3) Water supply.
(4) Endangered species.
(5) Wetlands.
(6) Air quality.
(7) Agricultural activity.
(8) Growth inducement.
(9) Traffic and transportation.
(10) Cultural resources.

b. Environmental Requirements Environmental review and other consultation requirements applicable to the proposed action include:

(1) National Environmental Policy Act, as amended.
(2) Clean Water Act, as amended.
(3) Clean Air Act, as amended.
(4) National Historic Preservation Act, as amended.
(5) Fish and Wildlife Coordination Act.
(6) Endangered Species Act, as amended.
(7) Coastal Zone Management Act.
(8) California Environmental Quality Act; and
(9) Council on Environmental Quality Memorandum—Analysis of Impacts on Prime and Unique Agricultural Lands.

4. Availability of EIS

The Draft EIS will be available for public review in December 1991.

Stanley G. Phemambucq,

LTC(P), EN Commanding.

[FR Doc. 91-15300 Filed 6-26-91; 8:45 am]

BILLING CODE 3710-FS-M

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Oakland Harbor, Deep Draft Navigation Improvements, Alameda County, CA

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

1. Summary: *Proposed Action.* The Corps of Engineers, San Francisco District has been authorized by the Water Resources Development Act of 1986, 99th Congress, 2nd Session, Public Law 99-662 to improve the navigation channels at Oakland Harbor in San Francisco Bay. The Port of Oakland is the non-Federal (i.e. local) sponsor of the Federal project. The environmental impacts of these improvements have been previously evaluated in Final Environmental Impact Statements filed with the Environmental Protection Agency in 1981 and 1985 and a Supplemental Environmental Impact Statement in 1988. The proposed Supplemental Draft Environmental Impact Statement will address changes in the authorized project related to dredged material disposal instituted since 1988.

For further information, contact Mr. Rod Chisholm, USAED, San Francisco, 211 Main Street, San Francisco, California 94105-1905; (415) 744-3032.

2. *Supplementary Information:* Construction of the authorized project for Oakland Harbor will generate an estimated 7 million cubic yards of dredged material. Disposal of this dredged material has been the subject of great controversy in the San Francisco Bay Area. As originally authorized, disposal of the dredged material was to be at a contemporary site irlentified by the U.S. Environmental Protection Agency as "SF-11" near Alcatraz Island in Central San Francisco Bay. Due to the mounding of dredged material historically disposed at the Alcatraz Site which was discovered in 1982, and increased public concern about the impact of large scale dredged material disposal events on the resources of San

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Francisco Bay, ocean disposal of Oakland Harbor dredged material was proposed in 1986. A Supplemental EIS was prepared to evaluate the impacts of direct ocean disposal and designate an ocean disposal site under Section 103 of the Marine Protection Research and Sanctuaries Act of 1972. The ocean disposal site designation was given limited approval by EPA. The Record of Decision following the Final Supplemental EIS reduced the dredged material quantity for ocean disposal to 500,000 cubic yards and directed additional environmental documentation be prepared before construction of the remainder of the authorized project. After the Record of Decision was signed, the project was challenged in federal Court by local fisherman, and construction of a reduced project was delayed. The Federal Court decided not to enjoin the project, and the local sponsor, by section 215 agreement (42 USCA sec. 1962d–5a) with the Corps, started construction in May 1988. A few days after this construction began, the project was enjoined in State Court by a suit brought by San Mateo County, and construction was stopped. Both the Federal and state courts retain jurisdiction over the Project.

Authorized deep-draft navigation improvements to the Oakland Harbor would deepen the Outer Harbor and Inner Harbor from −35 feet Mean Low Lower Water (MLLW) to −42 feet MLLW. Approximately 3.4 miles of the Outer Harbor would be deepened and enlarged. Approximately 4.0 miles of the Inner Harbor would be deepened between the Entrance Channel reach and the Howard Terminal. The Entrance Channel, an area at channel mile 3.0, and the upper reach of the Inner Harbor Channel would be widened. An existing turning area in the Outer Harbor would be widened. A new turning basin for the Inner Harbor would be provided in the area of the Clay Street Pier. In addition, all berthing areas served by the project would be deepened by the local sponsor to depths commensurate with the improved Federal channels. All of these improvements will require the removal and disposal of approximately 7 million cubic yards of channel bottom sediments.

3. *Alternatives:* Dredged material disposal alternatives to be considered in the Draft Supplemental Environmental Impact Statement (DSEIS) are land and unconfined aquatic disposal. Dredged material disposal in the San Francisco Bay Area is the subject of intensive study by the Corps of Engineers, the Environmental Protection Agency, and two state regulatory agencies, under the Long-Term Management Strategy for the Disposal of Dredged Material in the San Francisco Bay Region (LTMS). The disposal alternatives to be discussed in the DSEIS reflect the work of the LTMS, but because of the needs of the Oakland Deepening Project, specific sites will be identified and analyzed.

Upland disposal of dredged material will be considered for the disposal of material unsuitable for unconfined aquatic disposal. Other land disposal options will be evaluated as an alternative to unconfined aquatic disposal of suitable material. Potential land sites identified at this time include: Galbraith Golf Course, on the Port of Oakland property in the City of San Leandro; former dry dock slips continguous to San Francisco Bay in the Port of Richmond, the Sonoma Baylands site adjacent to San Pablo Bay in Sonoma County, and other sites that are identified through the LTMS process and compatable with the timing of the Oakland Harbor project.

Open water dredged material disposal alternatives will include locations in both San Francisco Bay and the Pacific Ocean. San Francisco Bay sites to be evaluated include the Alcatraz Disposal Site (SF–11) near Alcatraz Island in central San Francisco Bay, and a proposed new site known as the Bay Farm Island Borrow Area located near the City of Alameda in San Francisco Bay.

The ocean disposal alternative will be limited to disposal at an EPA designated (designation in progress) ocean disposal site offshore of the Golden Gate. All open water disposal alternatives will include discussion of test results conducted under the Dredge Material Testing Manual, EPA–503/8–91/001 (New Greenbook).

4. *Scoping:* The San Francisco District, Corps of Engineers, in association with the non-Federal sponsor, the Port of Oakland, will hold meetings to invite public participation in identifying the important issues and information to be included in the DSEIS. Two scoping meetings are scheduled. The first meeting will be held at 7:30 p.m. at the Bay Model Visitor Center, 2800 Bridgeport Way, Sausalito, California on August 7, 1991. The second meeting will be held at 7:30 p.m. at the Port of Oakland, 530 Water Street, Oakland, California on August 8, 1991.

The District's experience has shown that the significant issues associated with the Oakland Project primarily concern the disposal of the dredged material. The following dredging and disposal impacts will be discussed in the DSEIS:

1. Acute water quality impacts (aquatic disposal).
2. Chronic and sublethal water quality impacts (aquatic disposal).
3. Aquatic resources impacts (aquatic disposal).
4. Water quality impacts (land disposal).
5. Terrestrial impacts (land disposal).
6. Wetland impacts (land disposal).
7. Air quality impacts (land disposal).
8. Contaminated material impacts (land disposal).
9. Disposal site capacity impacts (land and aquatic disposal).
10. Social-Economic impacts (aquatic and land disposal).

The DSEIS will be used as the primary information document to secure concurrence in a Federal Coastal Zone Consistency Determination. In addition, the DSEIS will be used by the local sponsor to meet its responsibilities under the California Environmental Quality Act (CEQA), and may also be used by the San Francisco Bay Regional Water Quality Control Board to meet its responsibilities under the same Act. Other reviews in which the DSEIS may be a secondary source of information are: Fish and Wildlife Coordination Act, Marine Protection, Research and Sanctuaries Act, Endangered Species Act, Clean Water Act, and "trustee agency" reviews by the State of California.

Stanley G. Phernambucq,

LTC(P) EN, Commanding.

[FR Doc. 91–15309 Filed 6–26–91; 8:45 am]

BILLING CODE 3710–EF–M

DELAWARE RIVER BASIN COMMISSION

Amendment to Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Final rule revision.

SUMMARY: At its June 19, 1991 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The amendment revised a rule adopted by the Commission on May 24, 1989 by changing the effective date of Resolution No. 88–2 (Revised) from January 1, 1991 to July 1, 1991 in order to coordinate the effective date of the Commission's rule with amendatory changes at the state and local levels.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: Copies of the Commission's Water Code are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION: The Commission held a public hearing on the proposed amendment on June 19, 1991 as noticed in the May 9, 1991 and June 12, 1991 issues of the **Federal Register** (Vol. 56, No. 90 and Vol. 56, No. 113). Based upon testimony received and further deliberation, the Commission has adopted its proposal and amended its Comprehensive Plan and Water Code of the Delaware River Basin.

Article 2 of the Water Code of the Delaware River Basin, which is referenced in 18 CFR part 410, is amended by the deletion of existing subsections 2.1.5.(1)(b) and 2.1.5(1)(c) and the addition of new subsections 2.1.5(1)(b) and 2.1.5(1)(c) to read as follows:

§ 2.1.5. Water conservation performance standards for plumbing fixtures and fittings.

(1) (a) * * *

(b) Any water conservation performance standards adopted prior to the effective date of this regulation that are not in compliance with the provisions of (a) shall be amended or revised to comply with the provisions of (a) by July 1, 1991.

(c) The Commonwealth of Pennsylvania is encouraged to adopt water conservation performance standards for plumbing fixtures and fittings that comply with the provisions of (a) by July 1, 1991. The Commission shall notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations that comply with the provisions of (a) if Pennsylvania has not adopted such standards. Upon notification by the Commission, municipalities shall have one year to adopt such local regulations.

Delaware River Basin Compact, 75 Stat. 688.

Dated: June 21, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91–15306 Filed 6–26–91; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by July 19, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: June 21, 1991.

Kent H. Hannaman,

Acting Director, Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited.

Title: Application for Grants Under the Program for Children and Youth with Serious Emotional Disturbance.

Abstract: This form will be used by State Educational agencies and non-profit institutions to apply for funding under the Program for Children and Youth with Serious Emotional Disburbance.

Additional Information: An expedited review is requested in order to keep the grant awards under the Program for Children and Youth with Serious Emotional Disburbance in FY 1991. This application contains part I—Standard Form 424 (Application for Federal Assistance), part II—Standard Form 424A (Budget Information—Non-Construction Programs), part III—Application Narative, and part IV—Standard Form 424B (Assurances), Lobbying Certifications, Debarment Certifications, Drug-Free Certifications, and Lobbying Activities Disclosures.

Frequency: Annually.

Affected Public: State or local governments; Non-profit institutions.

Reporting Burden: Responses: 30.

Recordkeeping Burden: Recordkeepers: 0.

Burden Hours: 1,260.

Burden Hours: 0.

BILLING CODE 4000–1–M

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DRAFT

PART III - APPLICATION NARRATIVE AND INSTRUCTIONS

Applications are more likely to receive favorable reviews by panels when they are organized according to the published evaluation criteria. If you prefer to use a different format you may wish to cross-reference the sections of your application to the evaluation criteria to be sure that reviewers are able to find all relevant information. These suggestions should be viewed, however, as advisory only; the scope and complexity of projects is too variable to establish firm limits on length and format.

The project applications include the following features in order listed below:

(a) An abstract of the project;
(b) The importance of the project;
(c) The technical method (soundness);
(d) The plan of operation which the applicant proposes to use to administer the project;
(e) The evaluation plan to evaluate the project;
(f) The key personnel to be used to achieve each objective;
(g) The adequacy of resources available and needed to achieve each objective;
(h) The probable impact of the project;
(i) organizational capability;
(j) The budget necessary to achieve the proposed activity.

[FR Doc. 91-15251 Filed 6-26-91; 8:45 am]
BILLING CODE 4000-1-C

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-20-NG]

Texaco Gas Marketing Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that is has issued an order granting Texaco Gas Marketing Inc. blanket authorization to export to Mexico up to 90 Bcf of natural gas over a two-year period beginning on the date of first delivery

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 21, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 91-15360 Filed 6-26-91; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10570-001 Washington]

Barrish & Sorenson Hydroelectric Co.; Surrender of Preliminary Permit

June 21, 1991.

Take notice that Barrish & Sorenson Hydroelectric Company, Permittee for the Smith Creek Project No. 10570, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10570 was issued November 18, 1988, and would have expired October 31, 1991. The project would have been located on Smith Creek within the Gifford Pinchot National Forest in Lewis County, Washington.

The Permittee filed the request on June 11, 1991, and the preliminary permit for Project No. 10570 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15273 Filed 6-26-91; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 10764-001 Nevada]

Boulder Pumped Storage Power Co., Inc.; Surrender of Preliminary Permit

June 21, 1991.

Take notice that Boulder Pumped Storage Power Company, Inc., Permittee for the Boulder Project No. 10764, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10764 was issued June 29, 1989, and would have expired May 31, 1992. The project would have been located Clark County, Washington.

The Permittee filed the request on June 5, 1991, and the preliminary permit for Project No. 10764 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15270 Filed 6-26-91; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 10757-001 Nevada]

Brown Stone Canyon Pumped Storage Power Co., Inc.; Surrender of Preliminary Permit

June 21, 1991.

Take notice that Brown Stone Canyon Pumped Storage Power Company, Inc., Permittee for the Brown Stone Canyon Project No. 10757, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10757 was issued June 29, 1989, and would have expired May 31, 1991. The project would have been located in Clark County, Washington.

The Permittee filed the request on June 5, 1991, and the preliminary permit for Project No. 10757 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15271 Filed 6-26-91; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 10762-001 Nevada]

Frenchman Mountain Pumped Storage Power Co., Inc.; Surrender of Preliminary Permit

June 21, 1991.

Take notice that Frenchman Mountain Pumped Storage Power Company, Inc., Permittee for the Frenchman Mountain Project No. 10762, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10762 was issued June 29, 1989, and would have expired May 31, 1992. The project would have been located in Clark County, Washington.

The Permittee filed the request on June 5, 1991, and the preliminary permit for Project No. 10762 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15272 Filed 6-26-91; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 10754-001 Nevada]

LaMadre Mountain South Pumped Storage Power Co., Inc.; Surrender of Preliminary Permit

June 21, 1991.

Take notice that LaMadre Mountain South Pumped Storage Power Company, Inc., Permittee for the LaMadre Mountain South Project No. 10754, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10754 was issued June 29, 1989, and would have expired May 31, 1992. The project would have been located in Clark County, Nevada.

The Permittee filed the request on June 5, 1991, and the preliminary permit

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for Project No. 10754 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15274 Filed 6-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-63-003]

Carnegie Natural Gas Co.; Notice of Compliance Filing

June 21, 1991.

Take notice that on June 14, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1:

3 Substitute First Revised Sheet No. 10

The above tariff sheet is proposed to be effective October 1, 1990.

Carnegie states that it is filing the above tariff sheet to comply with the Commission's Letter Order issued on May 30, 1991, in Docket Nos. RP88-127-007, *et al.* Carnegie states that, as directed by the Commission, the revised tariff sheet correctly states Carnegie's ACA charge applicable to its transportation rates as $.0021 per Dth rather than $.0022 per Mcf as previously stated. Carnegie also states that this revised tariff sheet was effectively superseded on June 1, 1991, by Second Revised Sheet No. 10, which implemented new transportation rates, subject to refund, in accordance with the Commission's suspension order issued in Carnegie's Section 4 rate proceeding in Docket No. RP91-37-000, 53 FERC 61,454 (1990).

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such protests should be filed on or before June 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15279 Filed 6-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-024]

Paiute Pipeline Co.; Notice of Compliance Filing

June 21, 1991.

Take notice that on June 18, 1991, Paiute Pipeline Company (Paiute) tendered for filing the following substitute tariff sheets to be part of its FERC Gas Tariff, First Revised Volume No. 1-A:

Substitute Original Sheet No. 57
Substitute Original Sheet No. 58
Second Substitute Original Sheet No. 69

Paiute states that the purpose of its filing is to comply with the Commission's order issued June 3, 1991 in Docket Nos. RP88-227-022, et al. Paiute states that in that order the Commission granted reconsideration of an order issued March 26, 1991 and approved the provisions of a February 13, 1990 settlement offer and related certificate application, as clarified, with respect to the daily allocation for scheduling of transportation capacity on Paiute's system at its interconnection with Northwest Pipeline Corporation (the "Receipt Point"). Paiute states that it was directed to amend its April 25, 1991 compliance filing in Docket No. RP88-227-021 to reflect the conclusions in the June 3, 1991 order. To accomplish this purpose, Paiute indicates that it has revised § 4.2(d) of its General Terms and Conditions, which sets forth its Receipt Point capacity allocation procedure, and has made a conforming change to its annual overrun penalty provisions.

Paiute requests that the proposed tariff sheets be permitted to become effect June 1, 1991, in order to make such tariff sheets effective upon the date that Paiute implemented conversions of firm sales service to firm transportation service on its system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15275 Filed 6-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-475-000]

Montaup Electric Co., Notice of Filing

June 21, 1991.

On June 3, 1991, Montaup Electric Company (Montaup) tendered for filing its Conservation and Load Management Annual Report required under the provisions of its Conservation and Load Management Adjuster Mechanism as authorized under the terms of a Settlement Agreement in Docket No. ER90-247-000. On June 7, 1991, the Secretary issued a notice of the filing which stated that motions to intervene or protests were to be filed on or before June 21, 1991.

The June 7, 1991 notice of filing is hereby clarified to provide that the comment period established for the filing of motions to intervene or protests does not preclude any interested party from exercising rights under the Settlement Agreement including the right to file protests within 90 days in accordance with the terms of the Settlement Agreement.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15276 Filed 6-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-68-006]

Penn-York Energy Corp.; Notice of Proposed Changes in FERC Gas Tariff

June 21, 1991.

Take notice that Penn-York Energy Corporation ("Penn-York"), on June 18, 1991, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective on July 1, 1991.

Second Revised Sheet No. 8
Second Revised Sheet No. 17

Penn-York states that the purpose of this filling is to comply with the Commission's Letter Order and Order Denying Rehearing, issued April 2, and June 3, 1991, respectively, in the above-captioned proceeding.

Penn-York states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commissions of the States of Connecticut, Delaware, Massachusetts, New Hampshire, New York, Pennsylvania, New Jersey, and Rhode Island.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15277 Filed 6-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-40-005]

Raton Gas Transmission Co.; Notice of Compliance

June 21, 1991.

Take notice that on June 10, 1991, Raton Gas Transmission Company (Raton), to comply with the Commission's letter order dated May 31, 1991 filed Fourth Substitute Eighteenth Revised Sheet No. 4 and Third Revised Sheet No. 22 to its FERC Gas Tariff Original Volume No. 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214 and 385.211). All such protests should be filed on or before June 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15278 Filed 6-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6910-000 Wyoming]

Ten Sleep Hydropower, Inc.; Availability of Environmental Assessment

June 21, 1991

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Ten Sleep Creek Project, to be located on Ten Sleep Creek in Washakie County, near Ten Sleep, Wyoming, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15280 Filed 6-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-2314-000]

Zenith Natural Gas Co; Application To Abandon and Petition for Declaratory Order

June 20, 1991.

Take notice that on June 18, 1991, Zenith Natural Gas Company (Zenith), 30 West Sherman, Hutchinson, Kansas 67501, filed an application in Docket No. CP91-2314-000 for permission to abandon jurisdictional sales service to Panhandle Eastern Pipe Line Company (Panhandle) and for an expedited order declaring that Zenith is a gathering company exempt from regulation as a jurisdictional pipeline company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Zenith indicates that effective on July 1, 1991, Panhandle would no longer purchase natural gas from Zenith and is entitled to automatic abandonment of its purchase obligation to Zenith upon expiration of its current contract. Zenith requests the Commission to authorize Zenith to abandon its sales service obligation to Panhandle.

Zenith states that it currently operates a small system located primarily within Barber County, Kansas, with one short six-mile diameter segment extending 2.5 miles into Woods County, Oklahoma. It is indicated that the system gathers gas from 25 wells in three gas fields and consists of well laterals ranging from two to six inches in diameter converging into slightly larger-diameter supply lines. Zenith states that it currently purchases gas at the wellhead and sells gas to Panhandle and the City of Hardtner, Kansas, with approximately 99 percent of the gas being sold to Panhandle. Zenith states that upon the termination of its sales to Panhandle it would be faced with the prospect of discontinuing or substantially reducing operations on July 1, 1991. It is also indicated that the wells from which Zenith purchases its supplies would be forced to be shut in and that service to Hardtner, Kansas would be jeopardized.

Zenith states that consistent with the modified primary function test adopted in the Amerada Hess case, 52 FERC 61,268, that, upon abandonment of its sales to Panhandle, its facilities should be declared to be gathering facilities exempt from regulation under section 1(b) of the Natural Gas Act. In support of this contention, Zenith describes its facilities as small diameter, short-length, and low-pressure.

Zenith also requests to be treated as an independent producer in order to allow Zenith to change its rates under the blanket authority of § 154.94 of the Commission's regulations. Zenith indicates that otherwise it would be unable to adjust its rates for sales to Hardtner without burdensome and repetitive rate filings under the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said petition should on or before July 1, 1991 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

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intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15280 Filed 6-26-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3966-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Milk Cow and Population Survey (EPA No. 1221.03; OMB No. 2060-0017). This ICR is a renewal of an existing information collection.

Abstract: Under 44 U.S.C. 3501(1)(3), the EPA conducts an annual or biennial survey of dairy farms and ranches within a 300 kilometer radius of the Nevada Test Site (NTS). The information collected includes the location of dairy farms and ranches, and the diet and number of milk-producing livestock at these farms and ranches. The EPA compiles this information in a directory that is used, along with other data, to predict radiation exposure levels exposure levels outside of the NTS. The directory may also be used by the EPA to develop a sampling strategy following a release of radioactivity from the NTS.

Burden Statement: Public reporting burden for this collection of information is estimated to average 30 minutes per response including reviewing instructions, searching existing information sources, maintaining records, and completing and reviewing the collection of information.

Respondents: Farms.

Estimated Numbers of Respondents: 505.

Frequency of Collection: Annual.

Estimated Number of Responses Per Respondent: 1.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Ron Minsk, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., N.W., Washington, DC 20503.

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 1432.06; Temporary Final Rule to Implement Title 604 of the Clean Air Act; was approved 06/06/91; OMB # 2060-0170; expires 06/30/92.

EPA ICR # 1285.03; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; was approved 06/07/91; OMB # 2060-0132; expires 06/30/94.

EPA ICR # 1132.03; NSPS for Volatile Organic Liquid Storage Vessels—subpart KB; was approved 06/06/91; OMB # 2060-0074; expires 06/30/94.

EPA ICR # 1072.03; NSPS Recordkeeping and Reporting Requirements for Lead-Acid Battery Manufacturing (NSPS subpart KK); was approved 05/23/91; OMB # 2060-0081; expires 05/31/94.

EPA ICR # 1093.03; NSPS for the Surface Coating of Plastic Parts for Business Machines (Subpart TTT); was approved 05/23/91; OMB # 2060-0162; expires 05/31/94.

EPA ICR # 1160.03; NSPS for Wool Fiberglass Manufacturing (subpart PPP) Information Requirements; was approved 05/23/91; OMB # 2060-0114; expires 05/31/94.

EPA ICR # 1157.03; NSPS for Flexible Vinyl and Urethane Coating and Printing Information Requirements (subpart FFF); was approved 05/23/91; OMB # 2060-0073; expires 05/31/94.

EPA ICR # 0940.07; Ambient Air Quality Networks—Montoring and Quality/Precision Data; was approved 05/23/91; OMB # 2060-0084; expires 05/31/94.

Dated: June 21, 1991.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 91-15342 Filed 6-26-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3965-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS subpart G—Information Requirements for Nitric Acid Plants. (ICR #1056.04; OMB #2060-0019). This is a renewal of a currently approved collection.

Abstract: Owners or operators of nitric acid plants must notify EPA of construction, reconstruction, modification, date of anticipated and actual startup, shutdown, malfunctions and date and results of performance tests. Owners or operators of affected facilities are required to install, calibrate, maintain, and operate a continuous monitoring system (CMS) for the measurement and recording of nitrogen oxides. They must submit semiannual reports of excess emissions measured by CMS that include all 3-hour periods during which the average nitrogen oxides emissions exceeds 1.5 kg per metric ton of nitric acid produced. EPA uses the information to determine compliance with and enforce the new source performance standard.

Burden Statement: The public reporting burden for this collection of information is estimated to average 9.15 hours per response for reporting, and 175 hours per recordkeeper annually. The estimated reporting burden includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners and operators of nitric acid plants.

Estimated No. of Respondents: 36.

Estimated No. of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 6,959 hours.

Frequency of Collection: Once and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 21, 1991.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 91-15343 Filed 6-26-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00107; FRL-3932-4]

Biotechnology Science Advisory Committee; Subcommittee on the Proposed Biotechnology Rule under TSCA; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on the proposed biotechnology rule under TSCA. The meeting will be open to the public. The Subcommittee will review a set of scientific issues being considered by the Agency in connection with a proposed rule under the Toxic Substances Control Act (TSCA) for screening and use of microorganisms subject to TSCA.

DATES: The meeting will be held on Monday, July 22, 1991, starting at 9 a.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held at: The Hyatt-Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460, telephone (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Federal Advisory Committee Act which requires timely notice of each meeting of a Federal Advisory Committee be published in the **Federal Register**. This notice announces such a meeting. Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: June 21, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-15314 Filed 6-24-91; 2:02 pm]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 21, 1991

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Kathy Conley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0051.

Title: Application for Renewal of Ship/Aircraft Radio Station License.

Action: Revision.

Respondents: Individuals, State or local governments, Business (including small business), and Non-profit institutions.

Frequency of Response: On occasion reporting and other: every 5 years

Estimated Annual Burden: 50,000 responses, .166 hours average burden per respondent, 8,300 hours total annual burden.

Needs and Uses: The FCC 405B is a computer generated expiration notice which is sent to Ship and Aircraft Radio Station licensees. By returning this notice to the FCC, the licensees are able to renew their authorization when there are no changes or only minor changes to the existing authorization. Data is used to update the existing database and to issue renewed licenses.

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 21, 1991

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reducation Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Kathy Conley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None.

Title: Application for Renewal of Private Radio Station License.

Action: New Collection.

Respondents: Individuals State or local governments, Business (including small business), and Non-profit institutions.

Frequency of Response: On occasion reporting and other: every 5 years.

Estimated Annual Burden: 2,700 responses, .166 hours average burden per respondent, 448 hours total annual burden.

Needs and Uses: This form is filed by licensees in the Marine Coast and Aviation Ground Radio services for renewal of an existing authorization. The data is used to determine eligibility for renewal, issue a radio station authorization, and used in conjunction with field engineers for enforcement purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-15363 Filed 6-26-91; 8:45 am]

BILLING CODE 6712-01-M

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[Report No. 1849]

Petitions for Reconsideration and Clarification and Motion for Stay of Actions in Rule Making Proceedings

June 20, 1991.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452–1422. Oppositions to these petitions must be filed July 15, 1991. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Maritime Services Rules (part 80) to revise the General Exemption for Small Passenger Vessels Operated on Domestic Voyages. (PR 90–134). Number of Petitions Received: 2.

Subject: Policies and Rules Concerning Operator Service Providers. (CC Docket No. 90–313, RM–6767). Number of Petitions Received: 6.

Motion for Stay

Subject: Policies and Rules Concerning Operator Service Providers. (CC Docket No. 90–313, RM–6767). Number of Petitions Received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–15250 Filed 6–26–91; 8:45 am]

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Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Winona Ear Leasing Associates, Inc.; Winona, MN.	BPH–900509ML	91–155
B. James Ingstad; Winona, MN.	BPH–900514MD	.....
C. Home Broadcast Company; Winona, MN.	BPH–900514MG	.....
D. Winona Radio Company; Winona, MN.	BPH–900514MJ	.....
E. R and B Partnership; Winona, MN.	BPH–900514ML	.....
F. Minnesota Public Radio; Winona, MN.	BPED–900514MA (herein dismissed)	.....

Issue heading and Applicants
1. Air Hazard, A–E
2. Comparative, A–E
3. Ultimate, A–E

II

A. Saga Communications of Illinois, Inc.; Hillsboro, IL.	BPH–891227MH	91–154
B. Benjamin L. Stratemeyer; Hillsboro, IL.	BPH–891228MG	.....
C. Hillsboro Broadcasting Company; Hillsboro, IL.	BPH–891228MN	.....

Issue heading and Applicants
1. Air Hazard, A,C
2. Comparative, A,B,C
3. Ultimate, A,B,C

III

A. Heart of Georgia Broadcasting; Chauncey, GA.	BPH–891204MK	91–153
B. William A. Culpepper; Chauncey, GA.	BPH–891206MF	.....
C. Chauncey Broadcasting, Inc.; Chauncey, GA.	BPH–891206MI	.....

Issue heading and Applicants
1. Air Hazard, A,B
2. Comparative, A,C
3. Ultimate, A,C

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies is set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036 (Telephone No. (202) 452–1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91–15246 Filed 6–26–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Report of Pledged Assets.

Form Number: None.

OMB Number: 3064–0010.

Expiration Date of OMB Clearance: July 31, 1991.

Frequency of Response: On occasion and semiannually.

Respondents: U.S. branches of foreign banks and depositories holding their pledged assets.

Number of Respondents: 51.

Number of Responses Per Respondent: 2.78.

Total Annual Responses: 142.

Average Number of Hours Per Response: 1.

Total Annual Burden Hours: 142.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project (3064–0010), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before August 26, 1991.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Section 5(c) of the Federal Deposit Insurance Act (12 U.S.C. 1815(c)) provides that before any U.S. branch of a foreign bank becomes insured, the bank shall deliver to the FDIC a surety bond, a pledge of assets, or both. The pledged assets are to be lodged at a designated depository. The assets will protect the FDIC against the risks of insuring the domestic deposits of a U.S.-based branch of a foreign bank whose operations are in large part outside the United States. To ensure compliance, the FDIC has placed reporting requirements (initial and semiannual reports) in its regulation regarding Foreign Banks, 12 CFR part 346.

Dated: June 21, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–15283 Filed 6–26–91; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

June 21, 1991.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before July 12, 1991.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Proposal to approve under OMB delegated authority the extension, without revision, of the following report:

1. Report title: Annual Report on Status of Disposition of Assets Acquired in Satisfaction of Debt Previously Contracted.

Agency form number: FR 4006.

OMB Docket Number: 7100–0129.

Frequency: Annual.

Reporters: Bank holding companies.

Annual reporting hours: 3000.

Estimated average hours per response: 5.

Number of respondents: 600.

Significant effect on small business is not expected.

General description of report: This information collection is required by law [12 U.S.C. 1843(c)(2) and 1844(c)]. Certain portions may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)]

Abstract: Bank holding companies that acquire assets in satisfaction of debts previously contracted are required to submit an annual report to the Board on the progress made to dispose of assets or shares that have been held two years beyond the initial date of their acquisition. The report is submitted by letter, does not have required format, and serves to identify potentially unsound situations and to encourage timely compliance with the divestiture requirement as contained in the statutes and regulation.

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: Survey of the Nation's Check-Collection System.

Agency form number: FR 3065.

OMB Docket Number: 7100–0251.

Frequency: One-time.

Reporters: Certain depository institutions.

Annual reporting hours: 40,000.

Estimated average hours per response: 80.

Number of respondents: 500.

Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. 4001 *et seq.*] and individual respondent data from the depository institutions are given confidential treatment [5 U.S.C. 552(b)(4)].

Abstract: The Federal Reserve proposes to participate with the Bank Administration Institute (BAI) in a survey of the nation's check-collection system. The survey would involve a sample of some 500 depository institutions nationwide and is aimed at providing an accurate, up-to-date description of the U.S. check-collection system and clearing patterns at both the national and regional levels, as well as on a bank-size basis. The survey would provide information regarding forward collection and returned check processes, as well as the increasing use of electronic check services.

Board of Governors of the Federal Reserve System, June 21, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–15296 Filed 6–26–91; 8:45 am]

BILLING CODE 6210–01–M

[Docket No. 7100–0126]

Federal Reserve Reporting Form

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim extension of agency form.

BACKGROUND: Notice is hereby given of approval, on an interim basis, by the Board of Governors of the Federal Reserve System ("Board") of the extension of the reporting requirement that is identified below, under authority delegated to the Board by the Office of Management and Budget ("OMB"), as

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per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public). The approval on an interim basis allows for the uninterrupted collection of confidential data by the Federal Reserve System. The extension will allow the Federal Reserve to continue the information collection in its current form until a review of the reporting requirements can be completed in view of the restrictions contained in sections 23A and 23B of the Federal Reserve Act and in other proposed regulations governing intercompany transactions. (All proposed revisions resulting from these efforts would undergo the normal clearance process, including the opportunity for public comment.) The interim extension shall be effective immediately. The Board will consider all public comments and determine, on the basis of those comments, whether this extension as approved on an interim basis should become final.

DATES: Comments must be submitted on or before July 12, 1991.

ADDRESSES: Comments, which should refer to the OMB Docket numbers, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the report form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files upon final approval may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

Questions on the substance of the proposal should be addressed to Steve Lovette, Manager, Policy Implementation Section, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3622).

Interim approval under OMB delegated authority of the one-year extension, without revision, of the following report:

1. Report title: Report of Bank Holding Company Intercompany Transactions and Balances.
Agency form number: FR Y-8.
OMB Docket number: 7100-0126.
Frequency: Semiannual.
Reporters: Bank holding companies.
Annual reporting hours: 10,080.
Estimated average hours per response: 9.
Number of respondents: 550.
Small businesses are not affected.
General description of report: This report is mandatory [12 U.S.C. 1844(c)] and collections data required to supervise bank holding companies and their subsidiary banks. The data gathered on the form is accorded confidential treatment [5 U.S.C. 552b(8)].

Abstract: This report collects data on the transactions between a domestic bank holding company (or its nonbank subsidiaries) and its subsidiary banks. The information collected enables the Federal Reserve to identify categories of intercompany funds flows, internal transactions and balances that may have an adverse impact on the safety and soundness of federally-insured bank subsidiaries of bank holding companies.

A one-year interim extension is proposed to allow sufficient time to review the reporting requirements in view of the restrictions placed on intercompany transactions by sections 23A and 23B of the Federal Reserve Action and other applicable regulations. These modifications have become necessary to address supervisory and regulatory concerns arising from recent significant increases in intercompany transactions.

Board of Governors of the Federal Reserve System, June 21, 1991.
William W. Wiles,
Secretary of the Board.
[FR Doc. 91-15299 Filed 6-26-91; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 55 FR 42655, October 22, 1990) is amended to change the designator for the chapter and all of its sections from HF to HK and to reflect the organization realignment of the Food and Drug Administration. The realignment will establish an overall management and organizational structure that will reduce the FDA Commissioner's span of control to better develop and to implement the Agency's strategic objectives.

Food and Drug Administration

Under chapter HK, list the major sections of the chapter and its statements as:

HK-A Mission
HK-B Organization
HK-C Order of Succession
HK-D Delegations of Authority

Under section HK-A, Mission, substitute the following:

The mission of the Food and Drug Administration (FDA) is to protect the public health of the Nation as it may be impaired by foods, drugs, biological products, cosmetics, medical devices, ionizing and non-ionizing radiation-emitting products and substances, poisons, pesticides, and food additives. FDA's regulatory functions are geared to insure that: Foods are safe, pure and wholesome; drugs, medical devices, and biological products are safe and effective; cosmetics are harmless; all of the above are honestly and informatively packaged; and that exposure to potentially injurious radiation is minimized.

Under section HK-B, Organization, substitute the following:

The Food and Drug Administration is administered by a Commissioner of Food and Drugs under the direction of the Assistant Secretary for Health. The Food and Drug Administration consists of the following major components with functions as indicated.

Under section HK-B, Organization, substitute all titles and functional statements within the Food and Drug Administration with the following:

Office of the Commissioner (HKA). The Commissioner and the Deputy Commissioners are responsible for the efficient and effective implementation of the Food and Drug Administration's (FDA) mission.

The Office of the Commissioner includes the: Office of the Administrative Law Judge (HKA2), Office of Executive Operations (HKA4), Office of Equal Employment and Civil Rights (HKA5).

Office of Operations (HKB). Advises and assists the Commissioner and other key officials on compliance-oriented matters.

Develops and administers all Agency field operations and provides direction and counsel to Regional Food and Drug Directors.

Administers regulation of biological products under the biological product control provisions of the Public Health Service Act and applicable provisions of the Federal Food, Drug, and Cosmetic Act. Works to develop an AIDS vaccine and AIDS diagnostic tests, and conducts other AIDS-related activities.

Develops and administers programs with regard to the safety, effectiveness, and labeling of all drug products for human use.

Develops and administers programs with regard to the safety, composition, quality (including nutrition), and labeling of foods, food additives, colors, and cosmetics.

Develops and administers programs with regard to control of unnecessary exposure of humans to, and assures the safe and efficacious use of, ionizing and non-ionizng radiation-emitting electronic products.

Develops and administers programs with regard to the safety, effectiveness, and labeling of medical devices for human use.

Develops and administers programs with regard to the safety and effectiveness of animal drugs, feeds, feed additives, veterinary medical devices (medical devices for animal use), and other veterinary medical products.

The Office of Operations includes the: Office of Regulatory Affairs (HKBC), Regional Field Offices (HKBR), Center for Biologics Evaluation and Research (HKBB), Center for Drug Evaluation and Research (HKBD), Center for Food Safety and Applied Nutrition (HKBE), Center for Devices and Radiological Health (HKBW), Center for Veterinary Medicine (HKBV).

Office of Policy (HKC). Directs and coordinates the Agency's rulemaking activities and regulations development system. Initiates new and more efficient systems or procedures to accomplish Agency goals in the rulemaking process and plans "regulatory reform" steps.

Serves as the Agency focal point for developing and maintaining communications, policies, and programs with regard to regulations development and international harmonization, including international standard setting and bilateral agreements on inspections.

Office of External Affairs (HKE). Advises and assist the Commissioner concerning legislative needs. Serves as focal point for overall legislative liaison activities.

Advises and assists the Commissioner and other key officials on all public information programs. Acts as the focal points for disseminating news on FDA activities.

Advises and assists the Commissioner on health issues which have an impact on policy, direction, and long-range program goals. Coordinates Agency relations with health professional groups and represents the Agency on issues involving technology assessment and medical insurance coverage decisions regarding FDA-regulated products.

Advises and assists the Commissioner on consumer affairs issues. Serves as the Agency focal point for coordinating information from the appropriate Agency components about significant consumer affairs issues.

Advises and assists the Commissioner and other Agency officials on industry-related issues which have an impact on policy, direction, and goals. Serves as Agency focal point on small business, scientific, and trade affairs.

The Office of External Affairs includes the: Office of Small Business, Scientific, and Trade Affairs (HKEC), Office of Health Affairs (HKEB), Office of Legislative Affairs, (HKED), Office of Consumer Affairs (HKEG), Office of Public Affairs (HKE).

Office of Science (HKH). Advises and assists the Commissioner on scientific biotechnological issues which have an impact on policy, direction, and long-range goals.

Manages the implementation of the provisions of the Orphan Drug Act.

Coordinates the Agency's Acquired Immune Deficiency Syndrome (AIDS) program.

Advises and assists the Commissioner with regard to research programs being conducted to study the biological effects of potentially toxic chemical substances found in the environment to determine the adverse health effects resulting from long-term, low-level exposure to chemical toxicants in animal organisms, to develop improved methodologies and test protocols for evaluating the safety of chemical toxicants, and to develop data to facilitate the extrapolation of toxicological data from laboratory animals to man.

The Office of Science includes the: Office of AIDS Coordination (HKHC), Office of Orphan Products Development (HKHE), Office of Biotechnology (HKHH), National Center for Toxicological Research (HKHT).

Office of Management and Systems (HKJ). Advises and assists the Commissioner regarding the performance of FDA resource planning, development, and evaluation activities.

Develops programs and planning stragegy through analysis and evaluation of issues affecting policies and program performance.

Assures that the conduct of Agency administrative and financial management activies, including budget, finance, personnel, organization, methods, grants and contracts, procurement and property, records, and similar support activities, effectively supports program operations.

Coordinates the integration and development of management information systems.

Advises the Commissioner on management information systems policies.

The Office of Management and Systems includes the: Office of Planning and Evaluation (HKJB), Office of Management (HKJC).

Under Section HK-D, Delegations of Authority, add the following paragraph:

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all relevant delegations in effect prior to the date of this order shall continue in effect among officers, employees, or their successors.

Dated: June 7, 1991.
Louis W. Sullivan,
Secretary.
[FR Doc. 91-15254 Filed 6-26-91; 8:45 am]
BILLING CODE 4160-1-M

Agency for Toxic Substances and Disease Registry

[ATSDR-35]

Environmental Protection Agency; Intent To Revise the Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (DHHS); and Environmental Protection Agency (EPA).

ACTION: Request for Public Comment on the Revised Methodology for Generating the Priority List of Hazardous Substances.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), establishes certain requirements for ATSDR and EPA with regard to

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hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). CERCLA, as amended (42 U.S.C. 9604(i)(2)), requires that the two agencies prepare a list, in order of priority, of at least 100 hazardous substances that are most commonly found at facilities on the NPL and which, in their sole discretion, are determined to pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). CERCLA also requires the agencies to revise the priority list to include 100 or more additional hazardous substances (see 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (see 54 FR 43619, October 26, 1989; 55 FR 42067, October 17, 1990). Each substance on the list of priority hazardous substances becomes the subject of a toxicological profile prepared by ATSDR.

This notice provides notification that the algorithm used to generate the priority list of hazardous substances is being reevaluated and revised to include more current and comprehensive information in the ranking process. With this notice, ATSDR and EPA solicit public comment on this revised approach for evaluating and ranking hazardous substances found at NPL sites. After the agencies consider the comments received, the revised algorithm will be applied to an inventory of candidate substances, as described in section II.A. of this notice, including the 250 previously ranked substances, to generate a new priority list of 275 hazardous substances which will be the subject of toxicological profiles. This new list will be published in the **Federal Register** on or before October 17, 1991, fulfilling the requirements of CERCLA section 104(i), as amended, which mandated the ATSDR to generate a priority list of 275 hazardous substances by that date. The agencies intend to revise the list of hazardous substances annually thereafter to reflect changes and improvements in data collection.

DATES: Comments concerning this notice must be received by July 26, 1991.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR–35, and should be submitted to: ATSDR, Division of Toxicology, Mail Stop E–29, 1600 Clifton Rd. NE., Atlanta, GA 30333.

All comments will be placed in a publicly accessible docket; therefore, please do not submit confidential business information.

FOR FURTHER INFORMATION CONTACT: Quality Assurance Branch, Division of Toxicology, ATSDR, Atlanta, GA, 30333; 404–639–6030 or FTS 236–6030.

SUPPLEMENTARY INFORMATION:

I. Background

Section 104(i) of CERCLA, as amended, requires ATSDR and EPA to: (1) Prepare a list of hazardous substances found at NPL sites (in order of priority), (2) develop toxicological profiles for those substances, and (3) initiate a research program to fill priority data needs identified for the substances.

A priority list of the first 100 substances was published on April 17, 1987 (52 FR 12866), with a short summary of the procedure used by ATSDR and EPA to compile the list. In that notice, the agencies solicited public comment on the approach adopted for evaluating and ranking hazardous substances found at NPL sites and announced the intention to refine the listing process in response to these comments, as well as the ongoing efforts by the agencies to improve the listing process.

A second priority list of 100 additional substances was published on October 20, 1988 (53 FR 41280), and the revised procedure used to prepare the second priority list was summarized. For the most part, the same procedure was used to generate the third and fourth lists of 25 substances each (54 FR 43619, October 26, 1989, and 55 FR 42067, October 17, 1990).

The previous priority lists of hazardous substances were based on the most comprehensive and relevant information available when the lists were developed. More comprehensive sources of information for the frequency of occurrence of substances at NPL sites and the potential for human exposure at these sites have become available since publication of the first priority list in 1987. The approach described in this notice will be used to reevaluate the 250 substances included on the previous priority lists and will be used to identify at least 25 additional substances. A revised priority list of 275 hazardous substances will subsequently be published in the **Federal Register.**

The current approach proposed for use in generating the revised priority list of 275 hazardous substances is summarized below. With this notice, the agencies solicit comments from the public on this approach; such comments should be submitted in accordance with the instructions provided in this notice. The agencies will continue to seek improvements in the listing process as future revisions of the list are prepared. All comments previously received are in the public file. Descriptions of the previous listing methodologies are contained in the **Federal Register** citations provided above and in support documents which have been placed in the public file and are available for review (see section IV of this notice).

II. Methodology for Identifying Substances for the Revised Priority List

A. General Approach Taken by ATSDR and EPA

The approach used by ATSDR and EPA to generate the revised priority list of hazardous substances is a modification of the approaches used for the previous lists. The modifications reflect efforts to: (1) Improve data acquisition for substances on the previous lists, and (2) adapt the method to include data sources that provide a more direct indication of potential exposure to substances found at NPL sites. The hazardous substances to be considered for inclusion in the revised priority list will be drawn from an ATSDR list of at least 700 hazardous substances with documented evidence of occurrence at one or more NPL sites. ATSDR and EPA will establish the priority of these substances based on the following three criteria for determining the degree to which each substance poses a potential human health risk: (1) Frequency of occurrence at NPL sites, (2) toxicity, and (3) potential for human exposure to the substance. These criteria meet the requirements of section 104(i)(2) of CERCLA, as amended, and reflect the general practice of defining human health risk in terms of the toxicity and human exposure potential of a substance.

B. Selection of a Data Source for the Frequency-of-Occurrence Criterion

ATSDR and EPA have selected ATSDR's HAZDAT database as the source of data on frequency of occurrence of substances at NPL hazardous waste sites or facilities. The HAZDAT system is the scientific and administrative database developed by ATSDR as a repository for information on hazardous substances found at NPL and non-NPL waste sites or emergency events and on the potential health effects of hazardous substances on human populations. The sources of HAZDAT site-specific information include ATSDR health assessments, health consultations, and other site-specific documents submitted to ATSDR by EPA, state agencies, and other parties. HAZDAT has information on approximately 1300 sites that have been proposed for, listed on, or delisted from the NPL. Furthermore, the HAZDAT database contains information on substances that have been identified at sites but are currently not included in EPA's Contract Laboratory Program databases. HAZDAT contains information on substances in groundwater, surface water, leachate, soil, sludge, sediment, air, soil gas, biota, human tissues, and waste materials or containers.

C. Determination of the Toxicity Component of the Ranking Methodology

For several reasons, ATSDR and EPA will continue to use the Reportable Quantity (RQ) approach as the toxicity hazard scoring system. It provides the most complete characterization of toxicity of all hazard scoring systems reviewed by the two agencies; other schemes were most limited in either the consideration of different types of toxic effects, severity of effects, or potency. In addition, toxicity data used in the RQ approach are derived from primary peer-reviewed literature, and RQs have already been established for the majority of substances frequently detected at hazardous waste sites. Moreover, the determination of RQ health effect values utilizes weight-of-evidence considerations in the evaluation of data.

The reportable quantity ranking scheme was developed by EPA to set RQs for hazardous substances as required by CERCLA. Under CERCLA section 103(a), any person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center and state and local response authorities of the release. RQs are developed for individual chemicals and waste streams that have already been designated under CERCLA section 101(14) as hazardous substances.

Each CERCLA hazardous substance is assigned to one of five tiered RQ categories (1, 10, 100, 1000, and 5000 pounds) based on chronic toxicity, acute toxicity, carcinogenicity, aquatic toxicity, and ignitability and reactivity. RQs are determined for each criterion separately, and the lowest of these is selected as the RQ for the substance. RQ methodology will be applied for those candidate substances which lack final CERCLA RQs to establish a toxicity score. The RQ scoring scheme is described in several **Federal Register** documents (50 FR 13456, April 4, 1985; 51 FR 34534, September 29, 1986; and 52 FR 8140, March 16, 1987).

D. Determination of the Potential for Human Exposure Component of the Ranking Methodology

In the approach for the revised priority list, ATSDR and EPA have identified the most useful and directly relevant data to assess the potential for human exposure to hazardous substances at NPL sites. The exposure component will be based on the following information.

(1) Concentrations of the Substances in Environmental Media

To provide a means of ranking substances based on concentration data, the following formula for calculating a relative source contribution (SC) will be used:

$$SC = \frac{(C_w A_w) + (C_w A_w) + (C_s A_s)}{RQ}$$

Where C_x = mean concentration of the substance in a particular environmental media (a = air, w = water, s = soil); A_x = standard exposure assumption for the particular environmental media to calculate the potential daily dose to humans (e.g., 2 liters drinking water consumed per day); and RQ = the reportable quantity for the substance. This factor will assist in distinguishing between those substances that occur at low concentrations but are highly toxic and those substances that occur at higher concentrations but are relatively less toxic. The HAZDAT system will be the primary source of the concentration data.

(2) Exposure Status of Populations

Information concerning documented exposure or potential exposure to a particular substance or to environmental media in which a substance is found will be used in the exposure component. HAZDAT provides information on exposure or potential exposure to specific substances and to media, such as drinking water. For substances lacking HAZDAT information, the National Priorities List Technical Database (NPLT) may be used to provide information on exposure to substances or environmental media.

(3) Populations Surrounding NPL Sites

For substances that lack concentration and exposure status data, data on populations surrounding sites at which the substance is found will be used as a factor in the potential for human exposure component. While ATSDR and EPA recognize that this is an indirect indication of the potential for human exposure to a substance, consideration of the size of the population potentially impacted is relevant to the establishment of priority rank. Sources of population data include HAZDAT (estimates of exposed and potentially exposed populations), EPA's NPLT (estimates of populations by site and by media), and EPA's ACCESS (1988 population data by site).

III. Generation of the Revised Priority List

Using the data sources described in this notice, ATSDR and EPA will rank the hazard potential of each candidate substance. A revised priority list of at least 275 substances that will be the subject of toxicological profiles and subsequent identification of priority data needs will then be published in the **Federal Register** on or before October 17, 1991.

IV. Administrative Record

ATSDR and EPA are establishing a single administrative record entitled ATSDR–35 for materials pertaining to this notice. All materials received as a result of this notice will be included in the public file which is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal legal holidays, at the Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia.

Dated: June 11, 1991.

For the Agency for Toxic Substances and Disease Registry.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

Dated: June 11, 1991.

For the Environmental Protection Agency.

Victor J. Kimm,

Deputy Assistant Administrator, Office of Pesticides and Toxic Substances, Environmental Protection Agency.

[FR Doc. 91–15353 Filed 6–26–91; 8:45 am]

BILLING CODE 4160–70–M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in July

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of an agency advisory committee in the month of July 1991.

The meeting of the Extramural Science Advisory Board, NIMH, will

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include a comprehensive overview and discussion of the Institute's extramural research portfolio. The meeting will be open and attendance by the public will be limited to space available.

Notice of this meeting is required under the Federal Advisory Committee Act, Public Law 92-463.

* * * * *

Committee Name: Extramural Science Advisory Board, NIMH.

Meeting Date(s): July 22-23, 1991.

Place: National Institutes of Health Building 31, Conference Room 8 Bethesda, MD.

Open: July 22-23, 8:30 a.m.-5 p.m.

Contact: Tony Pollitt, room 17C-26, Parklawn Building, Telephone (301) 443-3175.

Substantive information, meeting summary, and roster of committee members may be obtained from Ms. Joanna Kieffer, NIMH Committee Management Officer, room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (Telephone 301-443-4333).

Dated: June 21, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-15365 Filed 6-26-91; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

[Program Announcement Number 141]

Identification and Prevention of Air Pollutants and Other Environmental Determinants of Asthma Among Minority Children in Urban Areas; Availability of Fund for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC) announces that cooperative agreement applications are being accepted for a demonstration project dealing with the Identification and Prevention of Air Pollutants and other Environmental Risk Factors for Asthma Among Minority Children in Urban Areas. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health and Diabetes and Chronic Disabling Conditions. (For ordering a copy of Health People 2000, see the Section Where to Obtain Additional Information.)

Authority: This program is authorized under section 317 of the Public Health Service Act, as amended (42 U.S.C. 247b). Program regulations are set forth in Title 42, U.S. Code to Federal Regulations, part 51b.

Eligible Applicants

Eligible applicants are state health departments of other state agencies or departments deemed most appropriate to lead, coordinate, and conduct this demonstration project, and agencies or units of local governments that serve a metropolitan population which includes at least 75,000 black or other minority children under age 15. This eligibility includes health departments or other official organization authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Only one application from an official agency will be accepted from each state. If an agency applying for funds is other than the official state health department, written concurrence by the state health department must be provided.

Eligible applicants may enter into contracts and consortia agreements and understanding as necessary to meet the requirements of the program and strengthen the overall application. Since one objective of this cooperative agreement is to demonstrate agency capability, no more than 20% of the total direct costs can to used for contracts, consortia agreements, or understandings with other parties. The intent to use such mechanisms must be stated in the application and the nature and scope of work of these mechanisms requires the approval of CDC.

Availability of Funds

Approxmately $120,000 is available in Fiscal Year 1991 to fund one demonstration project with a project period of up to three years. The award will begin on or about September 30, 1991, for a 12-month budget period. Funding for future years depends on availability of funds and demonstrated progress. Funding estimates may vary and are subject to change. Successful completion of epidemiologic studies and the design of an intervention program does not assure continued funding for program implementation.

Funds may not be expended for medical care and treatment or environmental remediation of air pollution sources.

Purpose

The purpose of this demonstration project is to identify environmental risk factors for asthma exacerbations which could then form the basis for effective prevention strategies.

Minority children have been targeted because asthma is more common in children than in adults, and hospitalizations from asthma is twice as prevalent among blacks than whites. The specific objectives are:

A. To identify specific environmental risk factors, including air pollutants and other environmental determinants, which may be associated with asthma exacerbations among minority children, estimate exposure to these risk factors, and measure the strength of the associations between these risk factors and asthma morbidity, based on epidemiologic studies. The project could include surveilliance for hospitalizations or emergency room visits, followed by a case-control or cohort study of hypothesized risk factors and asthma occurrence.

B. To establish priorities for education and other prevention efforts aimed at reducing asthma morbidity among urban minority children, based on the results of epidemiologic studies conducted under this project.

C. To design an intervention aimed at reducing exposures to one or more identified risk factors, which shall include air pollutants such as ozone, sulfur dioxide, acid aerosols, particulate, exposures to irritant chemicals resulting from industrial emissions or the use of consumer products, or other environmental factors of interest in the study area.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and CDC will be responsible for conducting activities under B. below.

A. Recipient Activities

1. Identify a study area which is urban and where black or other minority children under age 15 number at least 75,000.

2. Design a protocol and implement an epidemiologic study of children served by one or more major medical facilities (public or private) in the study area, to identify the primary environmental risk factors for asthma.

3. Take baseline measures of exposures to specific environmental risk factors among children with asthma served by these facilities.

4. Develop a trial intervention program (including educational interventions) within the target population to reduce exposure to one or more of the identified risk factors.

5. Develop a time-phased evaluation plan so the progress of the program objectives can be clearly measured.

6. Evaluate the experiences of the project and prepare a final report of the project.

B. Centers for Disease Control Activities

1. Collaborate with the recipient in all stages of the project, including the design of the protocol and data collection instruments, data analysis, interpretation of results, and preparation of written reports.

2. Provide on-site programmatic technical assistance in planning, implementing, and evaluating ongoing and innovative program activities.

3. Participate in improving program performance through consultation based on information and activities of other projects.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Evidence of an Asthma Problem among Urban Minority Children and an Air Pollution Problem (30%)

The applicant's ability to identify populations and communities at potentially high risk of environmentally-related asthma, as defined by census figures, data from local hospitals or other medical facilities, demographic data, environmental data, or other existing information resources.

B. Understanding the Problem (10%)

The quality and consistency of the applicant's proposal with respect to the asthma problem and program needs and purposes of the project. This specifically includes the public health importance of the problem as reflected by reducing the prevalence, severity, and economic burden for asthma.

C. Technical Approach (25%)

The quality of the applicant's plan for conducting program activities and the potential effectiveness of the proposed methods in meeting its objectives. The adequacy of the program design includes the extent to which the evaluation plan can be used to effectively measure progress towards the stated objectives.

D. Program personnel (20%)

The extent to which the proposal has described (a) the qualifications and commitment of the applicant, (b) detailed allocations of time and effort of staff devoted to the project, (c) information on how the applicant will develop, implement and administer the program, and (d) the qualifications of the support staff.

E. Collaboration (15%)

The applicant should demonstrate the ability to collaborate with political subdivisions of the state, agencies with pollution and related environmental data necessary for the conduct of the project, and/or local medical facilities. The degree of commitment and cooperation of collaborating parties (as evidenced by letters detailing the specific nature and extent of the involvement).

In addition, consideration will also be given to the extent that the budget request and proposed use of project funds are appropriate and reasonable.

Other Requirements

Projects involving the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

The intergovernmental review requirements of Executive Order 12372, as implemented by DHHS regulations in 45 CFR 100, are applicable to this program. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations is 30 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to accommodate or explain for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

[The Catalog of Federal Assistance Number is 93.283.]

Application Submission and Deadline

Applicants should follow the guidance provided in PHS form 5161-1 (Revised 01/89) in preparing grant applications. The original and two copies must be submitted on or before August 1, 1991, to Henry S. Cassell, III, Grants Management Officer, Centers for Disease Control, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package, and business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia, 30305, Telephone: (404) 842-6630.

Please refer to Announcement Number 141 when requesting information on this program.

Programmatic technical assistance may be obtained from James Rifenburg, Center for Environmental Health and Injury Control, Division of Environmental Hazards and Health Effects, Air Pollution and Respiratory Health Activity, Centers for Disease Control, 1600 Clifton Road, Mail Stop F-28, Atlanta, Georgia, 30333, Telephone (404) 488-4682 or FTS 236-4682.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone (202) 783-3238).

Dated: June 20, 1991.

Ladene H. Newton,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-15334 Filed 6-26-91; 8:45 am]

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[Announcement Number 139]

Availability of Funds for Fiscal Year 1991 an Investigation to Identify Strategies for Prevention of Childhood Deaths From Diarrhea

Introduction

The Centers for Disease Control (CDC) announces a program for new competitive cooperative agreement applications for Fiscal Year 1991 to provide assistance in examining the possibilities of preventing childhood deaths from diarrhea and for determining interventions most likely to have a positive impact. Surveillance activity will begin with health department death certificate reviews to identify all children who have died from diarrhea over a 3-year period. Investigations will be directed toward identifying where each child died, medical factors and issues relating to delivery of care which influenced the outcome, and any interventions that may have prevented the death. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of maternal and infant health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information).

Authority

This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a), as amended, and section 317(k)(3) of the Public Health Service Act (42 U.S.C. 247b (k)(3)).

Eligible Applicants

Eligible applicants are restricted to the official public health agencies of all states, the District of Columbia, America Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. No other applications will be accepted. This restriction is based on the requirement that applicants must have access to all medical and death records in their state or areas listed above. In addition, sufficient numbers of events during a given time period are necessary for accurate assessment of deaths due to a specific cause. Therefore, eligible applicants must show evidence of either of the following in children of ages 1 months to 5 years based on National Center for Health Statistics data during the years 1979–1987: diarrheal death rate in excess of 3.00 per 100,000 per year or a total of more than 10 diarrheal deaths per year. Collaboration with schools of public health, specifically the Maternal and Child Health programs, is encouraged.

Availability of Funds

Approximately $188,000 will be available in Fiscal Year 1991 to fund 4–6 new cooperative agreements. The average award is expected to be $37,600, ranging from $31,333 to $47,000. It is expected that the average award will begin on or about September 20, 1991, and will usually be for a 12-month budget period within a 1- to 3-year project period. Funding estimates may vary and are subject to change, depending upon the availability of funds. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of these awards is to provide assistance in examining the possibility of preventing deaths from diarrhea and to determine the interventions most likely to have an impact. Surveillance activity will be initiated through eligible public health agencies to identify all children who die from diarrhea. During the project period, each death would be investigated in depth to determine the location of the care which influenced the outcome, and what interventions, if any, might have prevented the death. This project would assist in providing specific recommendations to prevent diarrheal deaths in American children, and would leave in place a surveillance system to monitor their occurrence over time and assess the impact of proposed interventions.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting specified activities under section A. below, and CDC shall be responsible for conducting activities under Section B. The applications should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Demonstrate ability to identify and access target populations.
2. Describe their respective organizational structures and provide organizational charts.
3. Participate in a planning and implementation meeting.
4. Implement methods, techniques, and approaches for dealing with questions surrounding the surveillance of diarrheal deaths in children ages 1 month through 5 years.
5. Develop data collection procedures and forms.
6. Review death certificates as they are received by the state or area and identify death of children under 5 years of age for whom diarrhea, gastroenteritis, or enterocolitis was listed anywhere on the certificate. All deaths occurring from September 1990 to September 1991 will be identified retrospectively and investigated in the fall of 1991. From September 1991 to September 1993, diarrheal deaths should be identified at quarterly intervals and investigated on an ongoing basis. To assure consistency, this review should begin immediately after the award of assistance funds.
7. Perform hospital and clinical chart reviews. Conduct analyses of hospital chart reviews and summarize as case reports.
8. Conduct standardized and open interviews with parents and other caretakers of children who have recently died.
9. Maintain confidentiality of data.
10. Analyze and present findings of data which identify all suspected childhood diarrheal deaths in the age group from 1 month to 5 years occurring in each state and which identify the circumstances of death.

B. CDC Activities

1. In addition to financial support, CDC will collaborate with the recipient in the design and development of project protocols, data collection forms, and data management systems.
2. Conduct a planning meeting of all recipients.
3. Provide coordination among recipients for each project to insure comparability of core data.
4. Aggregate data from recipients and assist in the presentation of findings.

Review and Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. The applicant's understanding of the purpose of the proposed activity and the feasibility of accomplishing the outcomes described.

B. The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support, and ability to access appropriate target populations or study objects.

C. The degree to which the proposed objectives are: consistent with the defined purpose of this program, specific, measurable, and time-phased.

D. The degree to which program plans will be able to achieve the objectives, and the quality of the methods and instruments to be used.

E. The extent to which background information and other data demonstrate the need for this project.

F. The qualifications, including training and experience, of project personnel, and the projected level of effort by each toward accomplishment of the proposed activities.

G. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

H. The ability to maintain confidentiality.

Other Requirements

Projects involving the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations will be 30 days after the application deadline date for new and competing continuation awards. (A waiver for the 60 day requirement has been requested.) If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 225 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 93.283.

Application Submission and Deadline

The original and two copies of the application (Form PHS–5161–1) must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E14, Atlanta, Georgia 30305, on or before August 8, 1991.

A. Deadline

Applications shall be considered as meeting the deadline if they are either: 1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service.) Private metered postmarks will not be accepted as proof of timely mailing.

B. Late applications

Applications which do not meet criteria A.1. or A.2. above are considered late applications. Late applicaitions will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package, and business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, telephone (404) 842–6594 or FTS (404) 236–6594.

Programmatic technical assistance may be obtained from G. William Gary, M.P.H., Dr.P.H., or Caryn Bern, M.D., Division of Viral and Rickettsial Diseases, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road NE, Mailstop G–04, Atlanta, Georgia 30333, telephone (404) 639–3607 or 639–2395, or FTS (404) 236–3607 or 236–2395.

Please refer to Announcement Number 139 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, Telephone (202) 783–3238.

Dated: June 21, 1991.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 91–15291 Filed 6–26–91; 8:45 am]

BILLING CODE 4160–18–M

[Announcement 131]

Tuberculosis (TB)/Human Immunodeficiency Virus (HIV) Risk Factor Data and HIV Serostatus Surveillance

Introduction

The Centers for Disease Control (CDC) announces the availability of cooperative agreement funds in fiscal year 1991 to conduct TB/HIV Risk Factor Data and HIV Serostatus Surveillance.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority: This program is authorized under the Public Health Service Act, section 301(a) (42 U.S.C. 241(a)), as amended; and section 317(k) (42 U.S.C. 247b(k)), as amended.

Eligibility

Eligible applicants for this program are current recipients of Tuberculosis Control or Tuberculosis Human Immunodeficiency Virus cooperative agreements. To ensure statistical significance in identifying factors that are most closely related to co-infection with TB and HIV and due to resource limitations, only areas that have reported 300 or more AIDs cases and at least 100 TB cases for 1989 are eligible.

Availability of Funds

Approximately $450,000 is available for Fiscal Year 1991, to fund approximately 15 projects. Awards are

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expected to range from $20,000 to $75,000. The awards will begin on or about September 1, 1991, for a 12-month budget period within a 4-year project period. Funding estimates may very and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

If TB is to be eliminated in the United States as outlined in the *Department's Strategic Plan for the Elimination of Tubeculosis in the United States*, a concerted effort must be undertaken to find and treat TB cases. Public Law 101–368 authorizes prevention, control, and elimination of tuberculosis.

The purpose of this program is to assist TB programs in improving their surveillance systems for TB in relation to HIV infection. The specific goals are: (A) To identify TB patients co-infected with HIV and ensure that they receive appropriate therapy and case management; (B) to determine and monitor trends in the number and proportion of TB cases with underlying HIV infection; (C) to determine and monitor trends in the descriptive epidemiology and clinical characteristics of persons with TB disease and HIV infection; and (D) to determine the prevalance of substance abuse among TB patients.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A (below), and CDC will be responsible for conducting activities under B (below).

A. Recipient Activities

1. Identify and provide HIV counseling and antibody testing to all patients with suspected or confirmed TB.

2. Monitor trends and refer all infected contacts of TB patients for HIV risk factor evaluation and ensure that HIV counseling and antibody testing is provided for those with behaviors associated with an increased risk of HIV infection. TB/HIV Risks include (A) drug use; (B) alcohol use; (C) sex between two men; (D) hemophilia; (E) receipt of blood or blood products between 1978–85; (F) heterosexual activity with multiple partners; (G) sex with a man who has sex with another man; (H) sex with a drug user; (I) sex with an HIV-infected person; (J) sex with a person with hemophilia; and (K) sex from drugs/money.

3. Collect data on all patients with suspected or confirmed TB. The data will contain demographic and clinical information related to TB and HIV, questions on substance abuse and HIV transmission risk factors, HIV test results, and information on whether the patient is eventually verified to have TB (according to CDC Report of Verified Case of Tuberculosis (RVCT) criteria).

4. Ensure the confidentiality and physical security of HIV-specific information.

5. Analyze, in collaboration with CDC, risk factor information on all patients (without personal identifiers).

B. CDC Activities

1. Collaborate and consult in the development and implementation of strategies and protocols.

2. Provide up to date scientific information regarding methods of risk reduction for HIV transmission and current recommended TB diagnostic and treatment regimens.

3. Assist in data management and analysis.

4. Assist in the transfer of information and methods developed in these projects to other TB elimination programs.

Review and Evaluation Criteria

Applications will be reviewed and evaluated individually according to the following criteria:

A. The ability of the applicant to describe the problem of tuberculosis and HIV infection in its area including:

1. The number of tuberculosis cases reported annually from the area;

2. The number of AIDS cases reported annually from the area; and,

3. The number of persons with tuberculosis who have AIDS. (Maximum 25 points)

B. The quality of the proposed plan to meet the objectives of the project, including:

1. Identifying TB patients co-infected with HIV and ensuring that they recieve appropriate therapy and case management;

2. Determining and monitoring trends in the number and proportion of TRB cases with underlying HIV infection;

3. Determining and monitoring trends in the demographic and clinical characteristics of persons with TB disease and HIV infection; and,

4. Determining the prevalence of substance abuse among TB patients. (Maximum 25 points)

C. The extent to which realistic short-term and long-term objectives are measurable, time-phased, and related to recipient activities. (Maximum 25 points)

D. The overall effectiveness of the applicant's proposed activities and the methods for meeting the stated objectives. (Maximum 15 points)

E. The adequacy of plans to evaluate progress in implementing methods and achieving objectives. (Maximum 10 points)

Consideration will also be given to the extent the budget request is clearly explained, adequately justified, reasonable, consistent with the intended use of funds, and the extent to which the applicant is contributing its own resources to HIV/AIDS and TB prevention activities.

Proposals with budgets larger than can reasonably be funded under this announcement may be returned to the applicant without review.

Other Requirements

Recipients must comply with the document titled Content of Aids-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (January 1991).

Applicants must have in place systems to ensure the confidentiality of all patient records. Assurance of compliance with regulations regarding protection of human subjects will be required.

Projects involving the collection of information from 10 or more respondents and funded by cooperative agreement may be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305 no later than September 1, 1991. The granting agency does not guarantee to accommodate or explain for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

Application Submission and Deadline

The original and two (2) copies of the application (PHS 5161–1) must be submitted to Edwin L. Dixon, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305 on or before August 1, 1991.

A. Deadline. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

B. Late applications which do not meet the criteria in A.1. or A.2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information or application procedures, an application package, and business management technical assistance may be obtained from Victoria Westberg, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, (404) 842–6640, or FTS 236–6640. Please refer to Announcement Number 131 when requesting information and submitting any application on the Request for Assistance.

Programmatic technical assistance may be obtained from Harry Stern and Walter Ihle, Division of Tuberculosis Elimination, Center for Prevention Services, Centers for Disease Control, Atlanta, GA, (404) 639–2501 or FTS 236–2501.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: June 20, 1991.

Ladene H. Newton,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–15336 Filed 6–26–91; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91N–0233]

Drug Export; Multiscreen (HBsAg, HIV–1/HIV–2)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories has filed an application requesting approval for the export of the biological product Multiscreen (HBsAg, HIV–1/HIV–2) to Belgium, Denmark, Finland, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Sweden, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB–124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, Diagnostics Division, Abbott Park, IL 60064, has filed an application requesting approval for the export of the biological product Multiscreen (HBsAg, HIV–1/HIV–2) to Belgium, Denmark, Finland, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Sweden, and The United Kingdom. Abbott Multiscreen is an *In Vitro* Enzyme Immunoassay for the simultaneous detection of Hepatitis B Surface Antigen (HBsAg) and/or Antibodies to Human Immunodeficiency Virus Type 1 and/or Type 2 (HIV–1/HIV–2) in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on April 26, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 8, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: June 18, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91–15384 Filed 6–26–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90F–0311]

Nissin Chemical Industry Co., Ltd.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

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withdrawal, without prejudice to a future filing, of a food additive petition (FAP OB4224) proposing that the food additive regulations be amended to provide for the safe use of vinyl chloride/vinyl acetate/maleic anhydride/glycidyl methacrylate copolymer as a component of coatings for articles that will contact food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 19, 1990 (55 FR 42484), FDA published a notice that it had filed a petition (FAP OB4224) from Nissin Chemical Industry Co., Ltd., c/o 1730 Rhode Island Ave. NW., Washington, DC 20036, that proposed to amend § 175.300 Resinous and polymeric coatings (21 CFR 175.300) to provide for the safe use of vinyl chloride/vinyl acetate/maleic anhydride/glycidyl methacrylate copolymer, as a component of coatings that will contact food. Nissin Chemical Industry Co., Ltd., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 19, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–15296 Filed 6–26–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–4410–06; GP1–267]

Spokane District, WA; West Side State Exchange; Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Comment Period Extension for: Notice of Availability of The Finding of No Significant Impact on the Final Planning Analysis for Spokane District West Side State Exchange.

SUMMARY: Public notice was given in the **Federal Register** on May 29, 1991, Volume 56, No. 103, on page 24200 of the Notice of Availability of the Finding of No Significant Impact on the Final Planning Analysis for Spokane District West Side State Exchange

The comment period on this Planning Analysis that would have closed on June 29, 1991, is hereby extended for 30 days commencing from the publication of this Notice. This extension would allow sufficient time for public review of this action.

FOR FURTHER INFORMATION CONTACT: Joseph K. Buesing, District Manager, Spokane District Office, East 4217 Main Avenue, Spokane. WA 99202.

Or

James F. Fisher, Area Manager, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, WA 98801.

Copies of this Planning Analysis will be made available for review at the following offices and libraries:

U.S. Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, WA 99202.
U.S. Bureau of Land Management, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, WA 98801.
Washington State Library, State Library Building, Olympia, WA 98504.
San Juan County Court House Annex Library, 135 Rhone Street, Friday Harbor, WA 98250.

A limited supply of copies of the Planning Analysis are available upon request to the Spokane District Manager or the Wenatchee Resource Area Manager.

Thank you.

Dated: June 21, 1991.

Pearl E. Lee,

Acting District Manager.

[FR Doc. 91–15315 Filed 6–26–91; 8:45 am]

BILLING CODE 4310–33–M

Coos Bay District; Advisory Council Meeting

[OR120–6310–02: GP1–263]

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and 43 CFR part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Wednesday, August 28, 1991, beginning at 1 p.m. The meeting will be held in the Coos Bay District Office, 1300 Airport Lane, North Bend, OR.

AGENDA: The agenda for the meeting will include:

1. Discussion of the RMP schedule and update of the current status of the planning effort.
2. Discussion of the 1991 and 1992 timber sale plans and conferencing with the U.S. Fish and Wildlife Service.
3. Discussion of Fish & Wildlife 2000 and Recreation 2000 and new initiatives on the Coos Bay District.
4. Arrangements for the next meeting.
5. Discussion of Land and Water Conservation Funds (LWLF).

The meeting is open to the public and news media. Interested persons may make oral statements to the council between 1:30 p.m. and 2 p.m. on Wednesday, August 28, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Wednesday, August 14, 1991 (Telephone 503–756–0100).

ADDRESS: Bureau of Land Management, Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459.

Minutes of the meeting will be maintained at the District office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Dated: June 20, 1991.

Melvin E. Chase,

District Manager.

[FR Doc. 91–15316 Filed 6–26–91; 8:45 am]

BILLING CODE 4310–33–M

[OR–100–00–6310–02; G1–264]

Roseburg District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The District Advisory Council for the Bureau of Land Management, Roseburg District will meet for a tour July 29, 1991, starting from the Roseburg District Office visitors' parking lot at 8 a.m. The itinerary includes a fisheries enhancement project on Wolf Creek and one or more stops to discuss 1991 cone collection activities. The group will stop at the Tyee Recreation Site at approximately 12 p.m. to eat lunch. Afterwards, the Council will be updated on the District timber program and the Bureau's Watchable Wildlife and Back Country Byways initiatives. There will be an opportunity for public comments before the Council at 1 p.m.

ADDRESS: Bureau of Land Management, Roseburg District, 777 NW Garden Valley Blvd., Roseburg, OR 97470.

FOR FURTHER INFORMATION CONTACT: Mel Ingeroi, Public Affairs Specialist (503) 672–4491.

SUPPLEMENTARY INFORMATION: Although transportation will not be provided to the general public, they are welcome to come on the tour. In addition, lunch will be provided only for Council members and BLM employees at a cost to be specified later. Comments for the Council can be mailed to the District Manager prior to the meeting or presented to the Council during the meeting. Summary minutes will be available for public review within 30 days of the meeting.

Dated: June 20, 1991.

Gordon Chenise,

Acting District Manager.

[FR Doc. 91–15317 Filed 6–26–91; 8:45 am]

BILLING CODE 4310–33–M

[CA–010–01–3110–10–B002; CA 28306]

Realty Action Exchange of Public and Private Lands in San Luis Obispo County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—CA 28306.

SUMMARY: The following described public land has been determined to be suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T.29S., R.14E.
Section 35 S½NE¼ 80 acres (parcel #4)
T.29S., R.15E.
Section 31 SE¼NW¼ 40 acres (parcel #7)
T.30S., R.14E.
Section 1 Lots 22 & 23 83.52 acres (parcel #9)

All mineral rights on the subject public land will be exchanged, along with the surface rights. In exchange for this public land, the Bureau of Land Management (BLM) will acquire an equal value of lands from the Nature Conservancy (TNC) in the Carrizo Plain Natural Area. These lands will be purchased by TNC from willing sellers, will be somewhere within the following sections, and will include surface rights only:

Mt. Diablo Meridian, California

T.30S., R.20E.
Sec. 19 to 22, 25 to 31, and 34 to 36
T.30S., R.21E.
Sec. 23 to 36
T.30S., R.22E.
Sec. 31
T.31S., R.20E.
Sec. 1 to 3, 10 to 13, 15, 17, and 20 to 25
T.31S., R.21E.
Sec. 1 to 4, 6, 7, 10 to 25, 27 to 29, and 32 to 36
T.31S., R.22E.
Sec. 3, 6, 7, and 17 to 21
T.32S., R.20E.
Sec. 19, 26, and 27
T.32S., R.21E.
Sec. 1 to 5, and 10 to 13
T.32S., R.22E.
Sec. 6, 7, 16, 19 to 22, 27 to 33, 35, and 36

San Bernardino Meridian, California

T.12N., R.27W.
Sec. 35
T.12N., R.26W.
Sec. 31, and 33 to 36
T.12N., R.25W.
Sec. 31 to 33, and 36
T.11N., R.27W.
Sec. 1 to 4, and 10 to 14
T.11N., R.26W.
Sec. 1 to 18, 20 to 25, and 36
T.11N., R.25W.
Sec. 3, 6, and 7 to 35
T.11N., R.24W.
Sec. 18 to 20 and 29 to 32
T.10N., R.26W.
Sec. 11 and 12
T.10N., R.25W.
Sec. 1 to 3, 7, 8, 12, and 16

SUPPLEMENTARY INFORMATION: Lands transferred from the United States will be offered for purchase to adjacent landowners by The Nature Conservancy. Lands transferred from the United States will reserve a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Publication of this notice in the **Federal Register** segregates the subject public land from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first.

The purpose of the exchange is to acquire a portion of the private lands in the Carrizo Plain Natural Area. This Area will promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna. The ultimate goal for the Natural Area is to acquire approximately 155,000 acres of private land. A secondary purpose of the exchange is to consolidate the BLM lands and reduce the number of scattered, isolated BLM parcels that are difficult to manage. The public interest will be well served by completing the exchange. The exchange will operate under the Cooperative Land Exchange Agreement between BLM and TNC within California, dated August 16, 1990. Under that agreement, BLM and TNC will "pool" offered private land and selected public land throughout California, and convey the lands through exchanges between the BLM and TNC. Values of lands conveyed from the pool will be balanced on a statewide basis at least every two years. Interested parties may submit comments to the Area Manager at the following address until August 12, 1991. For further information contact: Bureau of Land Management, Caliente Resource Area, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, CA 93308; (805) 861–4236.

Dated: June 4, 1991.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 91–14065 Filed 6–26–91; 8:45 am]

BILLING CODE 4310–40–M

[G–040–G1–0405–4212–14; OK NM 82739]

Tulsa District Office; Proposed Direct Sale

AGENCY: United States Department of Interior, Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at not less than the appraised fair market value:

Indian Meridian, Oklahoma

T. 12 N., R. 1 E.,
Sec. 22, lot 6.

Containing a total of 0.98 acres in Oklahoma County.

The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcel has been determined to be $100.00.

Publication of this notice will segregate the above-described land from all appropriation, under the public land laws including the mining laws, but not from sale under the above-cited statute, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The subject lands are part of the remaining public land holdings in Oklahoma scattered throughout the state. The lands are being offered for sale since the Bureau of Land Management (BLM) can not economically or feasibly manage the subject lands. No other federal agency or department was interested in managing these lands. The sale is consistent with the Bureau planning for the lands involved and has been discussed with government units and local officials. Direct sale procedures

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are appropriate because of the parcels' physical location as being incorporated within Horseshoe Lake and suitable for management by the surrounding owner. Use of direct sale procedures will avoid an inappropriate land ownership pattern. The sale is consistent with the Planning Analysis and Decision Document for Central Oklahoma Land Disposal and the public interest would be served by offering these lands for sale.

The parcel is being offered to Oklahoma Gas and Electric Company, using the direct sale procedures authorized under title 43 CFR 2711.3–3. The terms, conditions, and reservations applicable to the sale are as follows:

1. The grantees will be required to submit a deposit of either cash, certified check, cashier's check, bank draft, money order, or any combination thereof for not less than 30 percent of the appraised value. The remainder of the full appraised price must be submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and the forfeiture of the deposit.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document, is available for review at this BLM office.

3. Title will be issued by a patent subject to all prior valid existing rights and reservations of record.

4. Title will be issued by a patent with restrictions under Executive Order 11988 (42 CFR 26951 May 25, 1977), for the protection and management of floodplain on the above-described lands.

DATES: Until August 12, 1991, interested parties may submit comments to the District Manager, BLM, Tulsa District Office, 9522H E. 47th Place, Tulsa, Oklahoma 74145. Any adverse comments will be reviewed by the District Manager, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

For Further Information Contact: Jacqueline Gratton, (405) 704–0624.

Dated: June 20, 1991.

Virgil L. Paull,

Acting District Manager.

[FR Doc. 91–15422 Filed 6–26–91; 8:45 am]

BILLING CODE 4310–FB–M

[WY-940-01-4730-12]

Filing of Plats of Survey: Nebraska/Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Nebraska

T. 24 N., R. 9 E., accepted June 19, 1991
T. 31 N., R. 5 W., accepted June 19, 1991

Sixth Principal Meridan, Wyoming

T. 40 N., R. 70 W., accepted June 19, 1991.
T. 25 N., R. 84 W., accepted June 19, 1991.

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until after disposition of protests(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $2.00 per copy. A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (3) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys and subdivisions.

FOR FUTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: June 19, 1991.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 91–15319 Filed 6–26–91; 8:45 am]

BILLING CODE 4310–33–M

[OR-942-00-4730-12: GP1-257]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 33 S., R. 5 W., accepted June 4, 1991
T. 18 S., R. 6 W., accepted May 24, 1991
T. 19 S., R. 7 W., accepted June 13, 1991
T. 29 S., R. 10 W., accepted May 23, 1991
T. 30 S., R. 14 W., accepted May 24, 1991
T. 15 S., R. 12 E., accepted June 4, 1991
T. 25 S., R. 13 E., accepted May 23, 1991
T. 39 S., R. 14 E., accepted June 12, 1991

Washington

T. 31 N., R. 7 W., accepted May 31, 1991

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 N.E. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30 days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 N.E. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 17, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91–15320 Filed 6–26–91; 8:45 am]

BILLING CODE 4310–33–M

[ID 943–4214–10; IDI–3378]

Termination of Proposed Withdrawal and Reservation of Lands, Correction; Idaho.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice will correct the errors in the land descriptions in a Notice of Termination of Proposed Withdrawal and Reservation of Lands.

The land descriptions in the Notice of Termination of Proposed Withdrawal and Reservation of Lands, Published in 56 FR 69, of April 10, 1991, on page 14532 are hereby corrected as follows:

In the second column, lines 18, 19 and 20, which read:

T. 3 N., R. 43 E.,
sec. 6, lots 22 and 23,
sec. 7, lots 11, 20 and 21
are hereby corrected to read:
T. 3 N., R. 42 E.,
sec. 6, lots 21, 22 and 23,
sec. 7, lots 11, 19, 20 and 21.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 91–15321 Filed 6–26–91; 8:45 am]

BILLING CODE 4310–GG–M

[NM-940-4214-10; OKNM 63446]

Cancellation of Proposed Withdrawal Application; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, has relinquished its application for withdrawal of public land for flood control purposes, and to protect water supply, water quality, recreation, navigation, and fish and wildlife on Kaw Lake and Keystone Lake.

On April 10, 1991, The Department of the Army, Corps of Engineers relinquished its application for withdrawal of public land. The segregation from surface entry automatically terminated on November 20, 1989. Therefore, application for withdrawal, Serial Number OKNM 63446, is hereby cancelled on the following land:

Indian Meridian

T. 29 N., R. 3 E.,
sec. 25, lot 5.
T. 21 N., R. 9 E.,
sec. 32, lot 10.
The acres described aggregate 11.89 acres in Kay and Pawnee Counties.

This order does not otherwise affect the status of the land.

Dated: June 21, 1991.

Monte G. Jordan,

Associate State Director.

[FR Doc. 91–15322 Filed 6–26–91; 8:45 am]

BILLING CODE 4310–FB–M

[OR-943-4214-10; GP1-256; OR-45401]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw an additional 29.58 acres of public lands and 3,703.69 acres of non-Federal lands, which will be acquired for protection of the New River Area of Environmental Concern. Because this notice amends the original petition/application, the two year temporary segregation from surface entry and mining will expire on March 29, 1992. The public land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by September 25, 1991.

ADDRESS: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: On May 31, 1991, a petition was approved allowing the Bureau of Land Management to file an amendment to the original petition/application to withdraw the following described additional lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. Such segregation will automatically attach to the non-Federal lands upon acquisition by the United States:

Willamette Meridian

Public Domain Lands

T. 30 S., R. 15 W.,
Sec. 32, lot 1;
Sec. 33, lot 2.
The area described contains 29.58 acres in Curry County, Oregon.

Willamette Meridian

Non-Federal Lands

T. 30 S., R. 15 W.,
Sec. 2, lots 3 and 4, S½NW¼, and W½SW¼;
Sec. 3, lots 1 and 2;
Sec. 10, lot 6 and E½NE¼;
Sec. 11, W½NW¼, SE¼NW¼, and NW¼SW¼;
Sec. 15, lot 5, SE¼NE¼, SE¼SW¼, and SE¼;
Sec. 21, lot 1;
Sec. 22, E½, E½NW¼, NE¼SW¼, and S½SW¼;
Sec. 27, N½NE¼, SW¼NE¼, W½, and W½SE¼;
Sec. 28, lots 1, 2, 3, and 4, SE¼NE¼, and E½SE¼;
Sec. 33, lots 1, 3 and 4, E½, and E½SW¼.
T. 31 S., R. 15 W.,
Sec. 4, lots 1, 2, 3, and 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, and 4, and E½SE¼;
Sec. 7, lot 1;
Sec. 8, lots 3, 4, 5, and 6, N½NE¼, and SW¼NE¼;
Sec. 9, NW¼NW¼.
The areas described aggregate, including any accretions thereto, approximately 3,703.69 acres in Coos and Curry Counties, Oregon.

The purpose of the proposed withdrawal is to protect the New River area of Critical Environmental Concern which is located adjacent to the Pacific Ocean approximately 30 miles south of the city of Coos Bay.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at

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least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Because this is an amendment to the original petition/application, the two year temporary segregation will expire on March 29, 1992. The lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: June 14, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-15323 Filed 6-26-91; 8:45 am]

BILLING CODE 4310-55-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Pacific Gas and Electric Company, San Ramon, CA, PRT-755945.

The applicant requests a permit to conduct surveys of Shasta crayfish (*Pacifastacus fortis*) in Fall River, Hat Creek and Pit River and tributaries and reservoirs, Shasta County, California, in order to determine the distribution and relative abundance of this species.

Applicant: Dr. Clayton White, Brighan Young University, PRT-758552.

The applicant requests a permit to import 4 male and 5 female peregrine falcons (*Falco peregrinus nesiotes*) removed from the wild on various islands within the Fiji Group, for the purpose of scientific research and enhancement of propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45—4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281)

Dated: June 20, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-15288 Filed 6-26-91; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Environmental Assessment for the Proposed Experimental Release of Red-crowned Cranes in Schoolcraft Co., Upper Peninsula of Michigan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the draft Environmental Assessment on the proposed experimental release of red-crowned cranes (*Grus japonensis*) in Schoolcraft County, Michigan, is available for public review. Comments and suggestions are requested. The Ohio Cooperative Fish and Wildlife Research Unit (OCFWRU) proposes to release approximately 16 isolation-reared, juvenile red-crowned cranes on Seney National Wildlife Refuge in each summer of 1991 and 1992. The purpose of this release is to complete development of a reintroduction technique applicable to a migratory population of the endangered whooping crane (*G. americana*). The proposed release area is within the Great Lakes to Florida migration route traditionally used by the eastern population of greater sandhill cranes (*G. canadensis tabida*). This route is within the recent historical range of the whooping crane. Whooping cranes are not available for use in this experiment, and the red-crowned crane, an endangered species native to eastern Asia, is the only species sufficiently similar to provide a suitable surrogate at this stage of experimentation. Sterilization of males before release and removal of birds from the wild at the conclusion of the experiment would ensure that no population of this exotic species could become established on this migration route.

DATES: Written comments on the draft Environmental Assessment are requested by August 12, 1991.

ADDRESSES: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, Region 3, Federal Building, Fort Snelling, Twin Cities, MN 55111.

FOR FURTHER INFORMATION CONTACT: Richard P. Urbanek, OCFWRI Research Associate, Seney National Wildlife Refuge, Seney, MI 49883, 906/586-9851. Individuals wishing copies of this environmental assessment for review should immediately contact Dr. Urbanek. Copies have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: Richard Urbanek is the primary author of this document. This action is designed to develop a reintroduction technique applicable to the whooping crane by use of the red-crowned crane as an experimental surrogate.

The U.S. Whooping Crane Recovery Plan recommends establishment of two wild populations of at least 25 breeding pairs each in addition to the existing Wood Buffalo/Aransas population before the whooping crane can be downlisted from endangered to threatened status. An experiment in Idaho was unable to confirm cross-fostering (i.e., placing whooping crane eggs in sandhill crane nests) as a reliable reintroduction technique. Releases of captive-reared sandhill cranes in Mississippi and in the Great Lakes Region have been successful in augmenting existing sandhill populations, but these methods have not been tested with whooping cranes or with a more appropriate surrogate species than the sandhill crane. Releases of captive-reared individuals of an introduced species into areas where that species does not currently occur have not been made and evaluated. Proven techniques for establishing additional populations of the whooping crane are, therefore, lacking. Whooping crane eggs are not available for the proposed experiment; therefore, use of an ecologically similar, closely related substitute species is required. Because proven facilities, staff, and a successful sandhill crane research program are currently operating at Seney National Wildlife Refuge, prospects for successful development of an isolation-rearing/gentle release technique using the red-crowned crane as an experimental surrogate are excellent at this time.

This action will result in an increased probability of recovery and a reduced threat of extinction of the whooping crane in North America, the red-crowned crane in Asia, and possibly other endangered or threatened species of cranes if a new reintroduction technique can be developed. No significant adverse consequences of the proposed action have been identified.

The primary study area is Seney National Wildlife Refuge and adjacent areas in the Upper Peninsula of Michigan, including the Hiawatha National Forest and Lake Superior State Forest. Study areas on the migration route include northeastern/east-central Wisconsin, Jasper-Pulaski State Fish and Wildlife Area in Indiana, and wintering areas in southern Georgia and peninsular Florida.

Approximately 16 red-crowned crane chicks will be isolation-reared (i.e., reared in groups of their own species by puppets/costumed humans and without exposure to human features or voices) and gentle-released on Seney National Wildlife Refuge during each summer, 1991 and 1992, according to procedures previously used with sandhill cranes and appropriately modified. Eggs will be surplus obtained from captive propagation. Males will be sterilized by vasectomy, and all birds will be confirmed negative for serious disease before release. Released cranes will be monitored by radiotelemetry and visual observation to assess survival, migration movements, return rate, and social behavior. Removal of birds from the wild will be attempted after monitoring is completed. The initial stage of the project will continue until approximately October 1, 1993. Additional research after that date will depend on survival of released birds, satisfactory progress toward accomplishing project objectives, and continued availability of staff and funding.

The major alternative to performing the experiment is no action. That alternative would reduce available reintroduction options and could jeopardize or delay the recovery of the whooping crane. The development of an effective reintroduction technique is essential to this recovery, and isolation-rearing/gentle release in a migratory situation is certainly one of the better options that needs to be investigated.

More than 30 government agencies or individual biologists were consulted in planning and preparation of the proposal and this environmental assessment. The project was discussed with seven members of the U.S. Whooping Crane Recovery Team in a meeting at Seney National Wildlife Refuge on July 24, 1990. A written response by the Team was complied and transmitted through Region 2, U.S. Fish and Wildlife Service.

All agencies and individuals are urged to provide comments and suggestions for improving this environmental assessment as soon as possible. All comments received by the dates given above will be considered in preparation of the final environmental assessment for this proposed action.

Dated: May 17, 1991.

James C. Gritman,

Regional Director, Fish and Wildlife Service.

[FR Doc. 91-15314 Filed 6-26-91; 8:45 am]

BILLING CODE 4310-55-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0097), Washington, DC, 20503, telephone 202-395-7340.

Title: State Enforcement Activities, 30 CFR part 720.

OMB Approval Number: 1029-0097.

Abstract: Information collected in part 720 is used to monitor State permitting and inspection activities and to provide the Office of Surface Mining Reclamation and Enforcement with necessary information for purposes of conducting Federal mine inspection and enforcement activities under the initial regulatory program.

Bureau Form Number: None.

Frequency: On occasion.

Estimated Completion Time: One hour.

Description of Respondents: State regulatory authorities.

Annual Responses: One.

Annual Burden Hours: One.

Bureau Clearance Officer: Richard L. Wolfe (202) 343-5143.

Dated: May 24, 1991.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 91-15324 Filed 6-26-91; 8:45 am]

BILLING CODE 4310-05-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Paperwork Reduction Project (1029-0098), Washington, DC 20503, telephone 202-395-7340.

Title: Petition Process for Designation of Federal Lands as Unsuitable for All or Certain Types of Surface Coal Mining Operations and for Termination of Previous Designations, 30 CFR 769.

OMB Number: 1029-0098.

Abstract: This Part establishes the minimum procedures and standards for designating Federal lands unsuitable for all or certain types of surface coal mining operations and for terminating designations pursuant to petition. The information requested will aid the regulatory authority in the decision-making process to approve or disapprove a request to designate or terminate an area as unsuitable.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Individuals, Industry, and Environmental Groups.

Annual Responses: 3.

Annual Burden Hours: 210.

Estimated Completion Time: 70 hours.

Bureau clearance officer: Richard L. Wolfe (202) 343-514.

Dated: May 24, 1991.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 91-15325 Filed 6-26-91; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the

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following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875–1573, MS/AS/ISS, room 1209B, SA–14, Washington, DC 20523–1413.

Date Submitted: June 18, 1991.

Submitting Agency: Agency for International Development.

OMB Number: None assigned.

Form Number: In draft.

Type of Submission: New Collection.

Title: The Microenterprise Monitoring System Project (MEMS).

Purpose: The Agency for International Development (A.I.D.) provides funds to various organizations worldwide to carry out activities in support of microentrepreneurs. These activities range from the provision of technical assistance to the creation of credit programs for the very poor. As a part of legislation A.I.D. has been directed to report annually to the Congress on its microenterprise program. It has also been instructed to implement a monitoring system which will enable the Agency to provide very detailed data on the outputs and beneficiaries of the microenterprise programs.

Annual Reporting Burden: Respondents: 485; annual responses: 1; average hours per response: 21.1; burden hours: 10,290.

Reviewer: Marshall Mills (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: June 20, 1991.

Elizabeth Baltimore,

Information Support Services Division.

[FR Doc. 91–15313 Filed 6–26–91; 8:45 am]

BILLING CODE 8116–01–M

DEPARTMENT OF JUSTICE

Lodging of Two Consent Decrees Pursuant to Cercla In United States v. Jessee Roofing and Pointing Co., Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 17, 1991, two proposed Consent Decrees in *United States* v. *Jessee Roofing and Pointing Co., Inc.* Civil Action No. 3–91–80035 were lodged with the United States District Court for the Southern District of Iowa (Davenport Division).

The Complaint in this enforcement action was filed on April 1, 1991, against Jessee Roofing and Pointing Co., Inc., Charles J. Jessee, Dorothy L. Jessee, and Tully Automotive, Ltd. under Section 107 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9607, seeking reimbursement of costs incurred by the United States in responding to the release or threat of release of hazardous substances from the Bettendorf Site located in Bettendorf, Iowa.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the two proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jessee Roofing and Pointing Co., Inc.* (DoJ # 90–11–3–555a).

The two proposed Consent Decrees may be examined at the office of the United States Attorney, Southern District of Iowa, 115 U.S. Courthouse, East 1st & Walnut Sts., Des Moines, Iowa 50309 and the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the two proposed Consent Decrees may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1521, 601 Pennsylvania Avenue, NW., Washington, DC 20004. In requesting a copy please enclose a check in the amount of $ .25 per page payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–15262 Filed 6–26–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—Hydrogen Chloride Joint Venture

Notice is hereby given that, on June 3, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), written notice has been filed by The Drackett Company simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Hydrogen Chloride Joint Venture ("Joint Venture") and (2) the nature and objectives of the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Joint Venture and its general areas of planned activity are given below.

The parties to the Joint Venture are: Amrep, Inc.; A.B.C. Compounding Co., Inc.; Betco Corporation; Canberra Corporation; Carroll Company; Cello/Grow Group; Chemical Specialties Manufacturers Association; Creative Chemicals, Inc.; The Dial Corporation; Diversey Wyandotte Corporation; The Drackett Company; Dymon, Inc.; Flo-Kem, Inc.; Huntington Laboratories; Hysan Corporation; S.C. Johnson Wax; L & F Products Group; Lonza, Inc.; NCH Corporation; Nyco Products Company; Oxford Chemical; Reckitt & Colman Household Products; I. Schneid, Inc.; Scott/Sani-Fresh International; Spartan Chemical Co.; Stepan Company; Theochem Laboratories (Time Products, Inc.); Warsaw Chemical; Zep Manufacturing Company.

The objective of the Joint Venture is to sponsor and conduct toxicological research on the chemical known as hydrogen chloride and to submit the results of this research to the U.S. Environmental Protection Agency ("EPA") in response to the Data Call-In for List D issued by the EPA in January 1990.

Membership in the Joint Venture remains open, and the parties intend to file additional written notification disclosing all changes in membership.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–15261 Filed 6–26–91; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research Act of 1984—Sodium Bisulfate Joint Venture

Notice is hereby given that, on June 3, 1991, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. § 4301 *et seq.* ("the Act"), written notice has been filed by The Drackett Company simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Sodium Bisulfate Joint Venture ("Joint Venture") and (2) the nature and objectives of the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6 (b) of the Act, the identities of the parties to the Joint Venture and its general areas of planned activity are given below.

The parties to the Joint Venture are: Amway Co.; Chemical Specialties Manufacturers Association; The Drackett Co.; L & F Products; and Reckitt & Colman Household Products.

The objective of the Joint Venture is to sponsor and conduct toxicological research on the chemical known as sodium bisulfate and to submit the results of this research to the U.S. Environmental Protection Agency ("EPA") in response to the Data Call-In for List D issued by the EPA in January 1990.

Membership in the Joint Venture remains open, and the parties intend to file additional written notification disclosing any changes in membership.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–15260 Filed 6–26–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Megastar Apparel Group; TA–W–25,565 Lexington Sportswear, Lexington, S.C. TA–W–25,568 Ace Sweater Mill, Union, S.C.; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice deletes the affirmative determinations for workers of the subject firms producing men's and boys' shirts which was erroneously published in the **Federal Register** on May 10, 1991 (56 FR 21690) in FR Document 91–11174.

The workers at Lexington Sportswear, Lexington, S.C. and Ace Sweater Mill, Union, S.C. were already certified under petitions TA–W–24,782 and TA–W–24,728 which were published in the **Federal Register** on November 30, 1990 (55 FR 49719), and November 14, 1990 (55 FR 47550), respectively. Accordingly, the subject certifications TA–W–25,565 and TA–W–25,568 are hereby revoked.

Signed in Washington, D.C., this 20th day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–15289 Filed 6–26–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,579]

New Jersey Tanning Co., Newark, NJ; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice deletes the affirmative determination for workers of the subject firm which was erroneously published in the **Federal Register** on June 5, 1991 (56 FR 25700) in FR Document 91–13220.

The subject workers were already certified under TA–W–25,630 which was published in the **Federal Register** on June 11, 1991 (56 FR 26841). Accordingly, the subject certification TA–W–25,679 is hereby revoked.

Signed in Washington, DC, this 20th day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–15290 File 6–26–91; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Challenge III section) to the National Council on the Arts will be held on July 18, 1991 from 9 am.–5:30 pm. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. –10 am. and 4:30 pm.–5:30 pm. The topics will be opening remarks and introductions, overview of Challenge III, and policy discussion.

The remaining portion of this meeting from 10 a.m.–4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, this session will be closed to the public pursuant to paragraphs (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 19, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–15283 Filed 6–26–91; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–398]

Finding of no Significant Impact and Opportunity for a Hearing Renewal of Special Nuclear Material License No. SNM–362 Department of Commerce National Institute of Standards and Technology Gaithersburg, MD

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Special Nuclear Material License No. SNM–362 for the continued operation of the Department of Commerce, National Institute of Standards and Technology (NIST), located in Gaithersburg, Maryland.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of License SNM–362. Renewal will allow NIST to continue to receive, store, and use unsealed radioactive material and sealed radioactive sources covered by this license. Work performed under this license includes irradiation of material and equiment, preparation of sources, characterization and calibration of sources and instruments, sample assays,

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radiochemistry, and general research and development.

NIST also has three other NRC licenses, two for distribution of radioactive material and one for the operation of the facility's research reactor. These licenses are separate from SNM–362 and are in no way impacted by the proposed action.

The Need For The Proposed Action

NIST provides a variety of services for federal, state, commercial, and international needs. The nuclear power industry sends radioactive sources and instruments to NIST for calibration. Industrial users depend upon NIST-certified sources for radiography. State, national, and international facilities and laboratories interact with NIST in radioactivity and radiation projects. NIST also has miscellaneous research and development projects using licensed material.

Environmental Impacts of the Proposed Action

Assessing the radiological impact to the environment from activities authorized by License SNM–362 is complicated by the operation of the facility's research reactor. Reactor operation produces most of the effluents released from the site, and they are regulated by another NRC license. All waste water from the site is discharged to the sanitary sewer for treatment at the public sewage treatment plant, and NIST holds a current discharge authorization permit from the Washington Suburban Sanitary Commission to discharge to the sanitary sewer. Since no liquid effluents are released to ground or surface waters, there is no dose to people from liquid effluent pathways. The dose to the population is from exposure from the release of radioactive gaseous effluents from the site's 30-meter tall stack. Argon-41 and tritium are the major components of this gaseous effluents.

The environmental monitoring program at NIST is designed to detect any changes in environmental radiation levels as a result of all activities involving radioactive material at the site, including the operation of the research reactor. Sample media collected are grass, soil, and water. Direct radiation levels are measured by the use of thermoluminescent dosimeters (TLDs). NIST's environmental program has been in place for over 25 years. The staff has evaluated the monitoring program and concluded it is adequate to detect any buildup of radionuclides released to the environment as a result of site operations.

Doses were calculated using the effluent data from the site's stack. The maximum values of activity released for argon-41 and tritium for the years 1984 through 1990 were used. For the individual dose, the maximally exposed individual is located in the southwest sector, 450 meters from the site's stack. The major exposure pathway is immersion in a cloud of argon-41. The effective whole body dose to the maximally exposed individual is 2.77 millirem per year. The critical organ is considered to be the whole body. The calculated dose is well below the 10 CFR 20.105(a) limit of 500 mrem per year and the revised 10 CFR 20.1301 limit of 100 mrem per year (published in the **Federal Register**, May 21, 1991). Also, the calculated dose is below the limit in the current 40 CFR 61.102 (25 mrem per year) and the revised 40 CFR 61.02 (10 mrem per year) that has been stayed from implementation.

The dose to the population around the NIST site is estimated to be 86.6 person-rem per year from site activities. This estimate is based on a population of 7,966,000 for a 50-mile radius around the site. This value is also conservative in that the highest activities of argon-41 and tritium released from the stack during the years 1984 through 1990 were used.

Conclusion

The staff concludes the impact to the environment and to human health and safety from work with radioactive materials authorized by License SNM–362 has been minimal. Results from the environmental radiation monitoring program, which has been in place for more than 25 years, have shown that environmental radiation levels have not increased as a result of site operations. Liquid effluents released to the sanitary sewer for treatment contain levels of radioactivity well below regulatory limits. Airborne effluents are at low levels which are difficult to quantify. In the future, the various discharge points will be monitored so the activity of material can be more easily quantified. However, the gaseous effluents released from the stack to the atmosphere will continue to be the major contributor to the dose to the population. The staff concludes that there will be no significant impacts associated with the proposed action.

Alternatives to the Proposed Action

The only alternative to the proposed action would be to deny approval of the license renewal application. Denial would mean NIST would have to cease all work with radioactive material controlled by this license. NIST's license would not be renewed if there were significant problems with human health and safety or with the environment that could not be resolved to the satisfaction of the NRC. Since there is minimal impact to the environment from work done under this license, little benefit would be gained by denying renewal of License SNM–362.

Agencies and Persons Consulted

Staff utilized the application dated March 30, 1990, and additional information dated January 23, 1991, and March 5, 1991. Also, on December 17, 1990, staff toured the NIST site and discussed the renewal application.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License No. SNM–362. On the basis of this assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**, be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (U.S. Department of Commerce, National Institute of Standards and Technology Occupational Health and Safety Division, Gaithersburg, Maryland 20899); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings." These requirements, which the requestor must describe in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 19th day of June, 1991.

For the Nuclear Regulatory Commission.

Jerry J. Swift,

Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 91–15348 Filed 6–26–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Interim Accounting Standards for the Preparation of Financial Statements Presented for Audit by Federal Departments and Agencies

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides a copy of a Memorandum for Heads of Departments and Agencies from the Director of the Office of Management and Budget issuing interim accounting standards for the preparation of financial statements presented for audit by Federal departments and agencies.

FOR FURTHER INFORMATION CONTACT: Wendy Zenker (telephone: 202–395–6911) or Steven Arisumi (telephone: 202–395–3050), Financial Management Division.

SUPPLEMENTARY INFORMATION: This Notice provides a copy of a June 11, 1991, Memorandum for Departments and Agencies from the Director of the Office of Management and Budget issuing interim accounting standards for the preparation of financial statements presented for audit by Federal departments and agencies.

Susan Gaffney,

Acting Assistant Director, Financial Management Division.

Herein follows the text of the Memorandum for Heads of Executive Departments and Agencies from the Director of the Office of Management and Budget:

Memorandum for Heads of Departments and Agencies

June 11, 1991.

From: Richard Darman.

Subject: Interim Accounting Standards.

The purpose of this memorandum is to establish interim accounting standards for the preparation of financial statements presented for audit by Federal departments and agencies. (This memorandum will be published in the Federal Register.)

Background

The Secretary of the Treasury, the Director of the Office of Management and Budget, and the Comptroller General of the United States (the Joint Financial Management Improvement Program (JFMIP) Principals) established the Federal Accounting Standards Advisory Board (FASAB) in October 1990. The FASAB recommends accounting standards and principles for the Federal government.

On April 4, 1991, the FASAB submitted a recommendation on interim accounting standards for Executive departments and agencies to use in preparing financial statements presented for audit. The JFMIP Principals have each adopted the recommendation.

Interim Accounting Standards

The following interim accounting standards shall apply to Executive departments and agencies:

In order to provide a benchmark for preparing financial statements presented for audit, executive agencies shall continue using, on an interim basis, the applicable accounting standards (i.e. those contained in agency accounting policy, procedures' manuals, and/or related guidance) now in effect for the preparation of their financial statements, pending FASAB recommendations and JFMIP Principals' adoption of federal accounting standards.

Where these applicable standards differ from those of Title 2 of The Policy and Procedures Manual For Guidance of Federal Agencies, published by the U.S. General Accounting Office, agencies are directed to make full disclosure of the differences and the alternative accounting basis used in preparing those financial statements.

Agencies are directed to submit to FASAB, on an expedited basis, those title 2 standards that they recommend be reexamined and possibly changed, or any other accounting standards which they propose to be considered for adoption. These submissions will be considered in establishing FASAB's agenda.

Nothing in this action should be construed as prohibiting or inhibiting agencies from improving their accounting policies, standards, or practices before JFMIP Principals' adoption of federal accounting standards.

Conclusion

Departmental and agency recommendations on proposed accounting standards should be submitted to: The Federal Accounting Standards Advisory Board, The National Building Museum, 401 F Street NW., room 302, Washington, DC 20552.

Questions regarding this memorandum may be directed to: Steven Arisumi, Office of Management and Budget, Financial Management Division, New Executive Office Building—room 10235, Washington, DC 20503 (Telephone number (202) 395–3050).

[FR Doc. 91–15362 Filed 6–26–91; 8:45 am]

BILLING CODE 3110–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1991, shall be at the rate of 28½ cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1991, 33.6 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.4 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes colleted under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: June 20, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91–15327 Filed 6–26–91; 8:45 am]

BILLING CODE 7905–01–M

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29351; International Series Release No. 290; File No., SR-ISCC-91-01]

Self-Regulatory Organizations; International Securities Clearing Corporation; Filing of Proposed Rule Change Regarding the Global Clearance Network Service

June 20, 1991.

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 30, 1991, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a rule which will permit qualified ISCC members, utilizing standardized input and output format, to obtain through ISCC, foreign clearing, settlement, and custody services offered by a bank selected by ISCC. Pursuant to the proposed rule change, ISCC would select Citibank, N.A., as one bank through which ISCC members will obtain foreign clearing, settlement, and custody services at reduced prices.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The service will enable members to submit data in a standardized trade format. Transmission of data to ISCC may occur several times throughout the day. Upon receipt, ISCC will validate the data and, if accepted, translate the data into the bank's format. If the data is not accepted, the member will be notified of such, and will be required to resubmit such rejected data. Accepted data will be transmitted to the bank where processing will occur under the bank's normal terms, conditions, and operating framework. If a transaction received by the bank is unacceptable because, for example, the shares in question are not in the member's account, the bank will notify the member directly of such occurrence. Each day the bank will report back to ISCC confirmations and statement and balance position reports. ISCC will translate this data into the universal output format and make it available to members. The service which Members obtain will conform with local market practices, procedures, regulations, and conventions.

ISCC has entered into an agreement with a major bank, Citibank, N.A., pursuant to which qualified ISCC members will be able to obtain foreign clearing, settlement, and custody services available from such bank at reduced prices. In order to obtain these prices, ISCC has guaranteed that a certain number of transactions will be processed over a fixed period of time. In the absence of such volume, ISCC has agreed that the bank will have the right to receive payment for any shortfall. In order to minimize ISCC's exposure from such guarantee, ISCC is requiring members who choose to use the service to guarantee to ISCC a proportionate share of such guarantee.

Each member of ISCC who chooses to participate in the service will have to be approved by the bank, since payment obligations for use of the service, such as fees, settlement amounts, or other funds necessary to conduct the clearance, settlement, and custody of foreign transactions, will remain an obligation between the member and the bank. Although ISCC has assumed no liability to the bank for these payments, ISCC has agreed to collect these fees from members on the bank's behalf, and will be responsible to remit only those funds collected.

ISCC will periodically review the adequacy of the services it receives from the bank under the agreement. ISCC has the right to terminate the arrangement if the bank materially fails to perform its obligations under the agreement.

The proposed rule change will facilitate and centralize the processing of international transactions at a beneficial cost to members. Accordingly, it is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ISCC. All submissions should refer to File No. SR-ISCC-91-01 and should be submitted by July 18, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15235 Filed 6-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29340; File No. SR-NASD-91-29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Expiration of Exemption From Firm Quote Rule

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 30, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one concerned solely with the administration of the self-regulatory organization under section 19 (b)(3)(A)(iii) of the Act, which renders the proposed rule change effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to delete language from part VI of Schedule D to the By-Laws regarding the expiration of an exemption to the firm quote rule for market makers receiving orders from competing market makers.

II. Self-Regulatory Organization's Statement of the Purpose, of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing to delete language from Schedule D to the NASD By-Laws regarding an exemption from the firm quote rule [1] that expires on June 1, 1991. In 1989, the NASD submitted a rule proposal to the SEC to require NASDAQ market makers to display quotation size equal to the maximum order size displayed in the Small Order Execution System ("SOES"). The NASD requested an exemption from the firm quote rule for orders received from competing market makers. The firm quote rule requires broker/dealers to execute any order presented to them at their published quotation size, and the NASD was concerned about the possible financial exposure resulting from the combined effect of mandatory display of size with the requirement to deal with all market makers in a stock. Accordingly, the SEC approved the rule filing effective December 1, 1989 and granted an exemption for six months, expiring June 1, 1991.

The NASD believes the conforming rule change now being proposed is consistent with the SEC's approval order and with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act and subparagraph (e) of rule 19b-4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] Rule 11Ac1-1(c)(2) under the Act. The proposed rule change removes language refesencing a temporary exemption from the firm quote rule to reflect the expiration of the exemption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 18, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: June 20, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15237 Filed 6-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34- 29345; File No. SR-NYSE-91-20]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extraordinary Market Conditions

Pursuant to section 19 (b) (1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 23, 1991, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

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solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to add new rule 758B to provide as follows:

Extraordinary Market Conditions

Rule 758B. In the interest of maintaining a fair and orderly market under unusual trading conditions for one or more classes of options, two Floor Officials shall have the power to determine that the level of trading activity or the existence of unusual market conditions are such that the Exchange is incapable of collecting, processing and making available to quotation vendors bids and offers with respect to one or more classes of options in a manner that accurately reflects the current state of the market on the Floor. Whenever two Floor officials make any such determination, they may declare that a "fast market" exists for these options. They shall immediately notify the Market Surveillance Division of the Exchange upon making any such determination. During the period for which a fast market is in effect, Competitive Options Traders shall be relieved of their obligations under paragraph (b)(i)(C)(1) of rule 758, and options specialists shall be relieved of their obligations under paragraph (e)(i) of rule 750 and under rule 758A, with respect to the maintenance of price continuity and depth. Two Floor Officials shall monitor the activity or condition which formed the basis for the determination that a "fast market" exists and shall immediately notify the Market Surveillance Division when the Exchange is once again capable of collecting, processing and making available to quotation vendors bids and offers with respect to the one or more classes of options in question in a manner that accurately reflects the current state of the market on the Floor. Upon such notification, Competitive Options Traders and options specialists shall once again be obligated as specified in paragraph (b)(i)(C)(1) of rule 750, paragraph (e)(i) of rule 750 and in rule 758A with respect to the maintenance of price continuity and depth.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed-Rule Change

The purpose of the proposed rule change is to establish procedures on the NYSE's options floor for declaring a "fast market" and for relieving Competitive Options Traders and options specialists of their specific obligations under the NYSE's rules regarding the maintenance of price continuity and depth during a fast market. Pursuant to paragraph (b)(i)(C) of rule 758 and paragraph (e) of rule 750, the NYSE will continue to require Competitive Options Traders and options specialists generally to engage in activities in a manner designed to maintain or contribute to the maintenance of a fair and orderly market during a fast market.

By relieving Competitive Options Traders and options specialists of their specific obligations with respect to price continuity and depth during a fast market, the proposed rule change will facilitate the operations of the NYSE's options market during extraordinary market conditions.

The NYSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NYSE has not solicited, and does not intend to solicit, comments on the proposed rule change. The NYSE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the abovementioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 18, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: June 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15236 Filed 6-26-91; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 200.30-3(a) (12) (1990).

[Release No. 34-29350; File No. SR-PSE-91-09]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Arbitration Procedures and Interest on Awards

Pursuant to Section 19(b) (1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 28, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and simultaneously publishing an order granting partial accelerated approval of a portion of the proposed rule change.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The PSE has submitted a proposed rule change to amend Rule 12, Arbitration, of the Rules of the Board of Governors. The text of the proposed rule change is available for inspection and copying at the PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Service of Documents

The changes to rules 12.2 and 12.13 are being made so that the PSE arbitration rule relating to service of documents conforms with the Uniform Code of Arbitration ("Uniform Code").

Currently, the Director of Arbitration serves copies of the Answer, Counterclaim, Third Party Claim, and Reply on all the non-filing parties. This procedure applies to both Simplified Claims, Rule 12.2(d) and (e), and Regular Claims, Rule 12.13 (b) (1), (3) and (4). The Uniform Code provides that it is the Respondent who must serve all parties with their Answer, Counterclaim, Third Party Claim, and, likewise, the Claimant or Third Party Respondent must serve other parties with their responsive pleadings. The Director of Arbitration is not involved in the distribution process of the pleadings, except for the initial Claim. This provision of the Uniform Code has been adopted by the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers ("NASD"). Similarly, the PSE wishes to adopt this procedure. The amendments are based on the language used in the Uniform Code.

Awards

The proposed amendment to rule 12.29(g), Awards, is based on a rule change approved by the Securities Industry Conference on Arbitration ("SICA"). Rule 12.29(g) currently provides that awards are to bear interest from the date of decision until payment. At the SICA meeting in April 1991, members noted the potential unfairness resulting to the paying party who may have to pay interest for delays beyond their control, *e.g.*, delays in processing and mailing the decision between the Exchange and the arbitrators. The proposed rule provides that the award will not bear interest from the date of the decision, (i) where it is paid within 30 days, (ii) where a motion to vacate has been filed and granted, or (iii) where the arbitrator specifies otherwise in the award. The proposed rule is designed (a) to eliminate the unfairness resulting to a party paying the award and (b) to provide an incentive to pay the award within 30 days, while still providing the arbitrators with discretion to award interest.

The proposed rule filing is consistent with Section 6(b) (5) of the Act in that it promotes just and equitable principles of trade by insuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule changes impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change From Members, Participants or Others

Comments have not been received from members. The rule changes have been approved by SICA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE requests that the Commission find good cause for approving the portion of the proposed rule change relating to the service of documents prior to the thirtieth day after publication of the notice in the **Federal Register**. The Exchange states that the proposed amendment to the service of documents provision of the PSE's arbitration rules is based on the SICA Uniform Code of Arbitration. The Exchange also states that this provision has been adopted by the NASD and the NYSE.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, section 6(b)(5) of the Act.[1] Section 6(b)(5) of the Act requires that a national securities exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposal furthers the objectives of section 6(b)(5) because the proposed amendment is designed to save administrative time and costs while continuing to ensure that respondents receive adequate notice of the institution of arbitration proceedings. As a result, the Commission believes that the proposal should improve the efficiency and speed of arbitration proceedings administered by the PSE.

The Commission finds that there is good cause to approve the PSE's proposed rule change with respect to the service of pleadings prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The proposal is substantially identical to the NYSE, NASD, and American Stock Exchange ("Amex") rule filings that were approved by the Commission on May 10, 1989.[2] In addition, the

[1] 15 U.S.C. 78f(b)(5) (1988).

[2] See Securities Exchange Act Release No. 26805 (May 10, 1989), 54 FR 21144 (May 16, 1989) (approving Files No. SR-NYSE-88-08, SR-NYSE-88-29, SR-NASD-88-28, SR-NASD-88-51, SR-NASD-89-19 and SR-Amex-88-29).

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substance of the proposed rule change previously was published for comment in the Federal Register and no comments were received with respect to this portion of the proposed arbitration rules.[3] This notice and order granting partial accelerated approval of the proposed rule change is consistent with the substance of the Commission's May 10, 1989 order approving the NYSE, NASD, and Amex rule filings.

With respect to the proposed amendment relating to the interest on awards, within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-91-09 and should be submitted by July 18, 1991.

It is therefore ordered, Pursuant to section 19(b)(2)[4] of the Act, that the proposed rule change relating to the service of documents is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: June 20, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15295 Filed 6-26-91; 8:45 am]

BILLING CODE 8010-01-M

[3] Id. Although the PSE recently amended its arbitration rules, the PSE, unlike some of the other self-regulatory organizations that administer arbitration programs, chose at that time to continue to act as an intermediary in pleadings administration. See Securities Exchange Act Release No. 29295 (July 5, 1989), 56 FR 32740 (July 12, 1990) (approving File No. SR-PSE-89-19).

[4] 15 U.S.C. § 78s(b) (2) (1988).

[5] 17 CFR 200.30-3(a) (12) (1990).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearings; Philadelphia Stock Exchange, Incorporated

June 21, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Societe Nationale Elf Aquitaine
American Depositary Receipts, Nominal Value F.F. 50 (File No. 7-6999)

Columbia Gas Systems, Inc.
Common Stock, $10 Par Value (File No. 7-7000)

International Specialty Products, Inc.
Common Stock, $.01 Par Value (File No. 7-7001)

Value City Department Stores, Inc.
Common Stock, No Par Value (File No. 7-7002)

Fruehauf Trailer Corporation
Common Stock, $0.01 Par Value (File No. 7-7003)

Nuveen Quality Income Municipal Fund, Incorporated
Common Stock, $0.01 Par Value (File No. 7-7004)

Calgon Carbon Corporation
Common Stock, $0.01 Par Value (File No. 7-7005)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 15, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-15345 Filed 6-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29323; File No. SR-PTC-91-07]

Self-Regulatory Organizations; the Participants Trust Company; Filing of Proposed Rule Change Relating to the Establishment of Margin Levels for Certain GNMAs

June 17, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 22, 1991, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-PTC-91-07) as described in Items I, II, and III below, which items have been prepared by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes the percentages to be deducted from the market value of certain securities for purposes of determining the Applicable Percentage of the securities to be included in a participant's Net Free Equity. The securities and percentages are as follows:

GNMA Project Loan Securities—10%
GNMA Project Note Securities—10%
GNMA Construction Loan Securities—12%
GNMA Mobile Home Securities—20%

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to establish the percentages (*i.e.*, margin) to be deducted from the market value of certain types of GNMAs eligible for deposit at PTC. The securities and percentages are as follows:

GNMA Project Loan Securities—10%
GNMA Project Note Securities—10%
GNMA Construction Loan Securities—12%
GNMA Mobile Home Securities—20%

Under PTC's rules, a certain percentage, as determined by PTC, (referred to in PTC's rules as the "Applicable Percentage") of the market value of securities is included in the computation of participants' Net Free Equity. Net Free Equity of zero or greater is required to be maintained by participants in each of its Agency, Pledgee Transfer, or Proprietary accounts in order for transactions to be processed. PTC has the right to borrow against or liquidate the assets in those accounts in the event that a participant's debit balance at the end of the day is not satisfied. Net Free Equity is calculated as the sum of:

(1) The cash balance;

(2) The Applicable Percentage of the market value of securities in the Account;

(3) The value of Optional Deposits to the Participants Fund which are allocated to that Account; minus

(4) Reserve on Gain.

The Applicable Percentage is determined by deducting certain percentages from the market value of securities held by PTC participants. By including only a portion of the market value of securities in Net Free Equity, PTC attempts to limit the risk caused by fluctuations in market value of these securities held in those accounts.

Currently, PTC deducts 5% from the market value of GNMA single family securities to arrive at the Applicable Percentage. PTC has determined that, due to the relative lower liquidity of the Project, Construction and Mobil Home securities referred to above, a higher margin level is appropriate for those securities. The margin level selected was approved by PTC's Risk Management Committee and by PTC's Board of Directors.

Since the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions, it is consistent with section 17A of the Act and the rules and regulations thereunder applicable to PTC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will have an impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from its participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PTC consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR-PTC-91-07 and should be submitted by July 18, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15234 Filed 6-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29348; File No. SR-PHLX-91-02]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing of Long-Term Options on a Reduced Value, Value Line Composite Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1991, the Philadelphia Stock Exchange ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to modify Exchange rule 1001A, to provide for the listing of long-term options on a reduced value Value Line Composite Index ("VLE"). These long-term options on the reduced value VLE will trade independent of and in addition to regular VLE options traded on the Exchange and will be subject to the same rules that govern the trading of the regular VLE options except that the interval between strike prices will be no less than $2.50 instead of $5.00. As a result of PHLX rounding procedures, however, after dividing the VLE by 10, the reduced value index may vary slightly from one-tenth of the full value index.

The text of the proposed rule change is available at the Office of the Secretary, PHLX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[1] The PHLX amended the proposed rule change on May 30, 1991, to adopt a January Expiration cycle for the reduced value long term Value Line Index options contracts. See letter from Murray L. Ross, Secretary, PHLX, to Howard Kramer, Assistant Director, SEC, dated May 30, 1991.

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statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX has been trading index options on the VLE since 1985. The VLE is an arithmetically averaged, broad-based index composed of 1,000 primarily second-tier stocks.

On February 22, 1991, the Commission approved an Exchange proposal to list long term options having up to 36 months to expiration on any of the Exchange's broad-based indexes.[2] Under the current proposal, the PHLX would be permitted to list long term options on a reduced value index that would be computed at one-tenth the value of the PHLX's current VLE. The proposed reduced value long term VLE options will have expirations of up to 36 months.

The PHLX believes the listing of long term reduced value VLE options will provide retail investors with the opportunity to obtain, at an affordable price, long term portfolio protection over a wider range of securities than is presently obtainable through similar products trading on other options exchanges. The PHLX proposes that the long term reduced value VLE options will trade independently of and in addition to regular VLE options.

The reduced value VLE options will be subject to the same rules that presently govern the trading of regular VLE options, including sales practice rules, margin requirements and floor trading procedures, except that strike price intervals will be fixed at no less than $2.50, instead of $5, and position and exercise limits will be aggregated with regular VLE contracts as set forth below.

The PHLX has determined that because positions in the full size VLE options and those in the proposed reduced value VLE options will be based upon the same underlying stock index, positions in regular VLE options will be aggregated with positions in the reduced value VLE options for determining compliance with Exchange rules on position and exercise limits. However, since one full sized VLE contract is equivalent to ten reduced value VLE contracts, each reduced value VLE contract will be considered one-tenth of a regular VLE contract when regular VLE contracts and reduced value VLE contracts are aggregated for position and exercise limit purposes. Thus, for example, under current VLE position limits of 25,000 contracts (with 15,000 in the near term month), an option holder with no full size VLE contracts would be permitted to hold 250,000 reduced value VLE contracts (150,000 in the near term month).

Similar to regular VLE options, the proposed long term reduced value VLE options would feature European exercise (restricting exercise only to the last day of trading). Further, as is the case for all other indexes, the PHLX will continuously calculate and disseminate the underlying index value for the reduced value VLE in addition to the regular VLE.

The PHLX intends to adopt the following procedure in calculating and rounding the reduced value index: The PHLX will divide the VLE calculated value, as provided by Bridge Data, by ten and round the resulting quotient to the nearest one-hundredth. The PHLX states that the digits one through four will be rounded down to the next number and the digits five through nine will be rounded up to the next number. As a result of the one-tenth reduced value feature of the proposed reduced value VLE and application of PHLX rounding procedures, the reduced value index may vary slightly from one-tenth of the full value index.

Upon Commission approval of this proposed rule change, the PHLX intends to list initial option series on the new reduced value VLE with January 1992 and January 1993 expirations. While the initial series listings would have less than 36 months to expiration, options with 36 month expirations would be introduced at each January expiration thereafter. Accordingly, the PHLX intends to introduce long term reduced value VLE options with a January 1994 expiration after the January 1991 expiration.

The Exchange also proposes to retain some flexibility in the listing of new strike prices at each January expiration. The PHLX intends to list either one or two strike prices near or bracketing the then current index level. The PHLX also intends to list standardized puts and calls for each strike price. However, the Exchange only will list a put or a call if two strike prices are introduced.

The Exchange also proposes to add additional strike prices when the index makes a significant move of approximately 10 to 15 percent. Based upon current index levels, a move in the 10 to 15 percent range would approximate a 28 to 42 point market move as measured by the regular VLE. The Exchange believes this procedure will result in the listing of only a limited number of series for any expiration, thereby eliminating confusion that might otherwise be caused by listing a myriad of strike prices and expirations.

The Exchange expects that its proposed policy of listing strike prices on the reduced value VLE will permit the offering of options at premiums between $2 and $7 ($200 to $700 per contract) based upon current market volatility and other pricing considerations. The Exchange believes that such premiums appear to be in the desired range of prices that investors have favored in trading index warrants. The Exchange further believes that such premiums could not be achieved by using full size VLE options without the listing of strike prices so deeply out of the money and away from the current index value as to offer investors limited ability to participate in the market or protect a portfolio of primarily secondary stocks.

The PHLX believes that the proposed rule change is consistent with section 6(b)(5) of the Exchange Act because the listing of long term options on a reduced value VLE will facilitate transactions in securities and protect investors and the public interest. The Exchange also believes that the proposed rule change is consistent with the requirements under section 6(b)(5) that the rules of the Exchange be designed to promote just and equitable principals of trade and to protect the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose an inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

[2] Securities Exchange Act Release No. 28910 (February 22, 1991) 56 FR 9002 (March 4, 1991).

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[3]

The Commission believes that the Exchange's proposal to list reduced value index options, computed at one-tenth of the value of the VLE, will facilitate transactions in options by providing investors with additional means to hedge equity portfolios against long-term market risk.[4] In particular, the Commission believes that options on a reduced value VLE will serve the needs of retail investors by providing them with the opportunity to use long-term options to protect their portfolios from long-term market moves at a reduced cost. In addition, options on a reduced value VLE may result in options premiums more affordable to retail investors.

The Commission also believes that trading in options on the reduced value VLE will not have an adverse market impact or be susceptible to manipulation. Previously, the Commission has determined that the VLE is a broad-based index. The Commission does not believe that merely changing this index by dividing its value by 10 will change this determination. The reduced value VLE will contain the same stocks with the same weightings as the full value index on which it is based (*i.e.* the VLE) and will be calculated in the same manner as that index (with the exception of being 1/10th its value). In addition, the Commission believes that any potential manipulation concerns raised by options on a reduced value VLE is minimized by the fact that positions in these options will be aggregated with positions in options on the full value VLE for position and exercise limit purposes. Moreover, the Commission notes that the same Exchange surveillance procedures for regular VLE options will be used for the reduced value VLE options.

The Commission also believes that reducing the strike price intervals for the reduced value index options is reasonable given the fact that any changes in the value of the reduced value VLE will occur at a rate which is 1/10th of the rate at which the value of the VLE will change. Finally, the Commission believes that the PHLX's proposed procedures for listing new strike prices is reasonable since it provides the Exchange with some flexibility in listing new strike prices which will, in turn, provide investors with a better opportunity to choose an options contract that meets their investment objectives. The Commission does not believe that the proposal by itself will result in a proliferation of strike prices since the proposal requires the reduced value VLE index to make a significant move of approximately 10 to 15 percent before additional strike prices can be added.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The PHLX's proposal to list options on a reduced value VLE is identical to a proposal by the American Stock Exchange, Inc. ("AMEX") to trade options on a reduced value Major Market Index that was approved on November 14, 1990.[5] The AMEX proposal was subject to the full notice and comment period and did not receive any comments, and the Commission does not find any different regulatory issues arising out of the PHLX proposal. Thus, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis in order to facilitate competition between the exchanges for product services, which, in turn, should benefit public investors. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 18, 1991.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act [6] that the proposed rule change (SR-PHLX-91-07) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: June 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15238 Filed 6-26-91; 8:45 am]

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[3] 15 U.S.C. 78f(b)(5) (1988).

[4] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[5] See Securities Exchange Act Release No. 28813 (November 14, 1990) 55 FR 48207 (November 20, 1990) (order approving SR-AMEX-90-14).

[Release No. 34-29352; File No. SR-Phlx-90-03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Exchange Arbitration Procedures

I. Introduction

On October 1, 1990, the Philadelphia Stock Exchange, Inc. ("Phlx") or ("Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to amend its arbitration rules and procedures. Specifically, the Phlx proposes to delete and replace current Phlx rule 960, which governs arbitration, in its entirety. The Phlx also proposes to amend By-Law article X, section 10-6 which governs its Arbitration Committee. The proposed rule change is designed to address numerous issues regarding the fairness and efficiency of the arbitration process administered by the Phlx as well as to institute new fees applicable to customer and member disputes and to adopt new requirements for the use of predispute arbitration agreements by Exchange members in agreements with customers.

Amendments No. 1, 2 and 4, submitted to the Commission on February 13, 1991, March 18, 1991 and April 25, 1991,

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30-3(a)(12) (1990).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

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respectively, make several technical and conforming changes to the Exchange's arbitration rules under its original rule filing.[3] Amendment No. 3, submitted to the Commission on April 8, 1991, makes a minor technical change to proposed rule 950, section 5 and section 8 with respect to the Exchange's ability to decline to accept jurisdiction over arbitration matters that already are subject to proceedings in another forum.[4]

The Phlx's rule filing is substantially similar to rule filings of the New York Stock Exchange ("NYSE"), the National Association of Securities Dealers ("NASD"), and the American Stock Exchange ("Amex") that were approved by the Commission on May 10, 1989.[5] Similar rule filings submitted by the Chicago Board Options Exchange ("CBOE"), the Midwest Stock Exchange ("MSE"), the Pacific Stock Exchange ("PSE"), and the Cincinnati Stock Exchange ("CSE") also were approved by the Commission on August 2, 1989, August 25, 1989, July 5, 1989, and October 11, 1990, respectively.[6]

[3] Amendments No. 1, 2 and 4 conform the Phlx's proposed rule change to either the Exchange's current arbitration rules or the current Uniform Code of Arbitration as developed through the auspices of the Securities Industry Conference on Arbitration ("SICA").

[4] See letter from Lydia Gavalis, Phlx to Mary Revell, Branch Chief, Commission, dated April 4, 1991 ("April 4 letter"). The Exchange originally sought to include a statement in proposed section 3, Legal Proceedings, which would specify that the Exchange would not accept for arbitration cases that are subject to an outstanding legal proceeding where a court has not authorized the parties to seek an arbitration award. The Phlx explained that this provision was intended to provide parties with notice that the Exchange would not accept jurisdiction under such circumstances and to prevent parties from attempting to file concurrent proceedings in different forums. See letter from Lydia Gavalis to Mary Revell, dated April 2, 1991. The Phlx, however, later determined to amend section 5 to delete that provision and add a commentary referencing proposed section 6(b). Proposed section 6(b) provides that the Director of Arbitration has the right to decline the use of arbitration where the dispute, claim, or controversy is not a proper subject matter for arbitration. The Phlx also determined to amend section 6(b) in order to provide, in a commentary to that section, that the Exchange would decline to accept jurisdiction over arbitration matters that already are subject to proceedings in another forum. See April 4 letter.

[5] Securities Exchange Act Release No. 26805 (May 10, 1989), 54 FR 21144 (May 16, 1989) (Order approving File Nos. SR-NYSE-88-06, SR-NYSE-88-29, SR-NASD-88-29, SR-NASD-88-51, SR-NASD-89-19 and SR-Amex-88-29).

[6] Securities Exchange Act Release No. 27083 (August 2, 1989), 54 FR 32731 (August 9, 1989) (Order approving File No. SR-CBOE-89-06); Securities Exchange Act Release No. 27187 (August 25, 1989), 54 FR 36028 (September 5, 1989) (Order approving File No. SR-MSE-89-1); Securities Exchange Act Release No. 28165 (July 5, 1990), 55 FR 28740 (July 12, 1990) (Order approving File No. SR-PSE-89-19); and Securities Exchange Act Release No. 28532 (October 11, 1990), 55 FR 42662 (October 22, 1990) (Order approving File No. SR-CSE-90-03).

The proposed rule change was noticed in Securities Exchange Act Release No. 28837 (November 21, 1990), 55 FR 49741 (November 30, 1990). No comments were received on this proposal. This Order approves the proposed rule change, as amended.[7]

II. The Proposal

A. Proposed Amendments

1. Service of Pleadings

The Phlx proposes to modify the procedures for service of pleadings. Currently, Phlx rule 950, section 13 requires the Director of Arbitration to serve the Submission Agreement, the Statement of the Claim, the Answer, Counterclaim, Third-Party Claim, Reply or other responsive pleadings on the parties. As the number of arbitrations has increased, using the Director of Arbitration as an intermediary for service of the pleadings has added unnecessarily to delays in processing arbitration hearings and to the cost of operating the arbitration system. The Phlx, in revised rule 950, section 21, proposes to serve only the initial pleadings in a case, the Submission Agreement and the Statement of the Claim, and to require that parties serve all subsequent pleadings directly upon one another. This approach is intended to save administrative time and costs while continuing to ensure that respondents receive adequate notice of the institution of arbitration proceedings.

Under the proposal, parties also will be required to supply the Director of Arbitration with sufficient additional copies of the pleadings for the arbitrator(s).[8] In addition, amended rule 950, section 21 specifies that service by first-class postage prepaid or by overnight mail service is considered to be made on the date of mailing and service by any other means is considered to be made on the date of delivery. The proposal also provides that if a member firm and a person associated with a member firm are named parties to an arbitration proceeding at the time of the filing of the claim, service on the person associated with the member firm may be made on the associated person or the member firm, which would be required to serve the associated person.[9]

[7] The text of the proposed rule change, as amended, is available for inspection at the Phlx and at the Commission.

[8] The Exchange proposes to adopt similar service procedures for arbitration proceedings conducted pursuant to rule 950, section 9 simplified arbitration.

[9] Amended rule 950, section 21 provides that if the member firm does not undertake to represent the associated person, the member firm shall serve the associated person with the Statement of the Claim, advise all parties and the Director of Arbitration of that fact, and provide the associated person's current address.

2. Classification of Arbitrators

The arbitration panels at the SROs for cases involving public customers historically have been composed of a majority of public arbitrators and a minority of industry arbitrators. However, there have not been clear requirements or specifications for who may serve as a public arbitrator. Under the Phlx's proposal, amended rule 950, section 15 would specify who may not serve as a public arbitrator and who may serve as an industry arbitrator.

The Exchange's proposal addresses the potential for real or apparent bias on the part of public arbitrators who may have some professional or personal association with the securities industry. Phlx rule 950, section 15 defines as an industry arbitrator a person who is associated with a member or other broker-dealer, municipal securities dealer, government securities broker or dealer or has been associated with any of the above within the past three years or has retired from any of the above. The rule also deals with the appropriate role in the arbitration system of professionals such as accountants or lawyers who provide services to securities industry clients. The rule would classify as industry arbitrators, rather than public arbitrators, accountants, attorneys, or other professionals who have devoted twenty percent or more of their professional work to securities industry clients within the last two years. In addition, the rule excludes from service as a public arbitrator persons who are spouses or other members of the household of a person associated with a registered broker, dealer, municipal securities dealer, government securities broker or government securities dealer.

The Phlx is proposing disclosure provisions designed to assist parties in assuring that the panel assigned to each case is appropriately balanced. Under proposed rule 950, section 17, the employment histories of the arbitrators for the past ten years as well as the information provided by the arbitrators pursuant to separate disclosure obligations contained in proposed rule 950, section 19 will also be disclosed to the parties.[10]

The amendments regarding the classification of arbitrators are designed to promote impartial knowledgeable decisions in the arbitration of disputes between investors and broker-dealers. The reclassification of securities industry retirees to the industry arbitrator pool and the establishment of a three year period before a former securities industry employee may serve as a public arbitrator should relieve doubts that investors may have had regarding the impartiality of the public arbitrator pool. Similarly, the decision to exclude from the public arbitrator pool lawyers, accountants and other professionals who regularly service the securities industry makes clearer the distinctions between the two arbitrator pools.

[10] For a summary of the section 19 disclosure requirements, see infra section 3 of this Order.

3. Arbitrator Disclosure and Background Information to be Supplied to the Parties

The Phlx also is proposing changes to its rules with regard to what disclosures arbitrators must make and how that disclosure is supplied to the parties. Under current rule 950, section 11, each arbitrator is required to disclose of the Director of Arbitration any circumstances which might preclude the arbitrator from rendering an objective and impartial decision. The Director of Arbitration may remove an arbitrator, prior to the commencement of the first hearing session, who discloses such information. The Director of Arbitration is required to inform the parties of any information disclosed, if the arbitrator who disclosed the information is not removed. In addition, current rule 950, section 9 requires that the Director of Arbitration inform the parties of the names and affiliations of the arbitrators at least eight business days prior to the date of the initial hearing.

The Exchange's proposed rule 950, section 17 would provide to the parties all of the information disclosed by arbitrators pursuant to the amended disclosure rules at the time when the parties are given the arbitrators' names. This change would provide full disclosure of the arbitrators' backgrounds at the earliest possible stage in the process, and should therefore avoid unnecessary postponements of hearings and promote knowledgeable use of challenges. In addition, the Exchange's proposed rule change also would provide guidance to arbitrators about the types of relationships that may create potential conflicts of interest.

Proposed rule 950, section 19(a) establishes specific disclosure obligations of arbitrators. The rule requires that each arbitrator disclose any direct or indirect financial or personal interest in the outcome of the arbitration. The rule also requires that arbitrators disclose any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. These disclosures extend to any relationship the arbitrators may have with any party, or its counsel, or with any individual whom they have been advised will be a witness. The rule requires arbitrators to disclose any such relationship involving members of their families or their current employers, partners, or business associates.

Phlx rule 950, section 19(b) requires prospective arbitrators to make a reasonable effort to inform themselves of any interests or relationships described above. Phlx rule 950, section 19(c) specifically advises arbitrators that the duty to disclose these interests or relationships is an ongoing duty, and that any person who serves as an arbitrator must disclose at any stage of the arbitration proceeding any such interests, relationships, or circumstances that arise, or that are recalled or discovered. Further, the Director of Arbitration will retain the ability to remove an arbitrator, prior to the commencement of the first hearing, based on the information disclosed pursuant to the rule. Parties are to be informed of any information disclosed pursuant to the rule, if the arbitrator has not been removed.[11]

As discussed above, Phlx rule 950, section 17 provides that parties will be informed of the names and business affiliations of the arbitrators for the past ten years, as well as any information disclosed pursuant to rule 950, section 19 at least fifteen business days prior to the date set for the initial hearing. Under this rule, parties also may make further inquiry through the Director of Arbitration concerning the arbitrators' background.

4. Appointment of Replacement Arbitrators on a Panel

The Phlx also is proposing two changes with respect to its ability to appoint a replacement arbitrator on a panel when a vacancy occurs. The first of these changes concerns the ability of the Director of Arbitration to replace an arbitrator who becomes unavailable to serve prior to the first hearing session. Under the proposed amendment, if after appointment and prior to the first hearing session an arbitrator resigns, dies, withdraws, is disqualified or otherwise is unable to perform as an arbitrator, Phlx rule 950, section 17 authorizes the Director of Arbitration to appoint a replacement arbitrator. The rule also explicitly provides that parties are entitled to receive the same disclosure regarding the background of the replacement arbitrator as they receive for the initial arbitrator(s), and have the same right to request more information, and to challenge the arbitrator as provided in the rules, although within a shorter time frame.

The second change concerning the ability to appoint replacement arbitrators addresses situations where an arbitrator resigns, dies, withdraws, is disqualified, or otherwise is unable to perform as an arbitrator after the commencement of the first hearing session but prior to the rendition of the award. Under the Phlx's existing rules, if a vacancy occurs under these circumstances, both parties must consent to either the appointment of a replacement arbitrator or the continuation of the proceedings with the remaining arbitrator(s).

Proposed rule 950, section 20 permits the remaining arbitrators to continue with the hearing and the determination of the controversy. However, under the proposal, if a party objects, a replacement arbitrator would be appointed by the Director of Arbitration, under the same procedures as for the replacement of an arbitrator prior to the first hearing, in the case of public customer controversies. A replacement arbitrator would be appointed by the Director of Arbitration from the next committee member in alphabetical rotation in the case of member controversies.

The rule is designed to permit parties in particular cases to make the decision that makes the most sense for their case. For example, in cases where only peripheral issues have been dealt with and relatively little progress has been made, it may make sense for the parties to request a replacement arbitrator. Conversely, where the hearings have progressed significantly, or are in fact substantially completed, it may make less sense for parties to request a replacement arbitrator, who then would have to learn all that occurred in his or her absence.

In the event that parties do request a replacement arbitrator, the arbitrators will have the authority to require the rehearing of part or all of the case.

[11] Once the arbitration panel is sworn, it controls all of the procedural aspects of the hearing. Accordingly, under the Uniform Code and the Phlx's arbitration rules, the Director of Arbitration may not remove an arbitrator after the hearings have begun. An arbitrator should be alert to the guidelines set out in the American Bar Association/American Arbitration Code of Ethics for Arbitrators in Commercial Disputes ("ABA/AAA Code") and the applicable law with respect to arbitrator bias, and remove himself or herself from the panel when conflicts arise after hearings have begun. See Canon II, E.(2) of the ABA/AAA Code.

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effectively requiring the appointment of another panel, as is appropriate in their judgment. With this rule change, however, a party may no longer delay the resolution of the dispute by insisting on a rehearing whenever an arbitrator unexpectedly is unable to continue in his or her hearing of a case.

5. Availability of Small Claim Procedures and the Number of Arbitrators Required to Hear a Case

The Phlx proposes to amend rule 950 to increase to $10,000 from $5,000 the monetary claim limit for cases to be heard under the simplified procedures developed in the Uniform Code. Under these expedited procedures, a single arbitrator decides a casebased upon the papers submitted by the parties. No oral hearing is held unless requested by the investor, or ordered by the arbitrator. This change is designed to decrease the costs of arbitration.[12]

Phlx rule 950, section 15 would change the number of arbitrators required to compose an arbitration panel. Phlx rule 950, Section 8 currently provides that where the matter in controversy does not exceed $500,000 or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel of no less than three and no more than five arbitrators. Further, the current rule provides that where the amount in controversy is $500,000 or more, the Director of Arbitration shall appoint a panel consisting of five arbitrators, unless the parties agree in writing to a panel of three arbitrators. Amended rule 950, section 15 would require the Director of Arbitration to appoint an arbitration panel that consists of no fewer than three nor more than five arbitrators where the amount in controversy exceeds $10,000. In order to alleviate administrative delays and costs frequently encountered in such cases, the proposed rule would eliminate the requirement of five member panels and allow the Director of Arbitration to exercise discretion in appointing panels of no fewer than three and no more than five arbitrators in cases not heard under the Phlx's simplified arbitration proceedings.

6. Discovery

The Phlx is proposing significant changes to its arbitration discovery rules, which should assist in the early resolution of discovery disputes and encourage the efficient resolution of cases on their merits. Under the current Exchange rules, parties have been expected to exchange documents informally and voluntarily. Parties also may request documents pursuant to a subpoena under the existing rules, but these do not have to be produced until the day of the hearing.

Proposed rule 950, section 28 expands party access to prehearing discovery and provides specific time frames for parties to request information from parties and for responding to such an information request. The rule also establishes a mechanism for prehearing matters where needed. Under the Phlx's proposed rule change, arbitrators also may order depositions when appropriate.

Proposed rule 950, section 28(a) continues the policy established under the existing rules for parties to cooperate to the fullest extent possible in the voluntary exchange of documents and information. In the event that voluntary exchanges are not sufficient, however, the rule establishes a clear framework for document production and information requests.

Proposed rule 950, section 28(b) provides that a party may serve a written request for information or documents 20 business days after the service of the claim or upon the filing of an answer, whichever is earlier. All parties are to receive copies of the request, and parties must attempt to work out disputes regarding the request between themselves before an objection to the request is filed. Unless the requesting party allows more time, information requests must be satisfied or objected to within 30 business days from the date of service. The party who made an information request has 10 business days from the receipt of the objection to respond to the objection.

Under the proposal, a party whose information request had not been satisfied may request in writing that the Director of Arbitration refer the matter to a prehearing conference. Parties may also find that there are other matters in addition to unresolved information requests that require the assistance of a prehearing conference. Proposed rule 950, section 28(d) provides that the Director of Arbitration may appoint someone to preside over the prehearing conference. The prehearing conference may be held either in person or by telephone conference call, and is designed to help the parties to reach agreement on such matters as the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulations of fact, identification and briefing of contested issues, and any other matter which will expedite the arbitration proceedings.

When a prehearing conference is unable to resolve any of these issues, rule 950, section 28(e) provides for the Director of Arbitration to appoint a single arbitrator to decide the issues outstanding. The rule allows the arbitrator to issue subpoenas, direct appearances of witnesses, direct the production of documents, set deadlines for compliance, and issue any other ruling which will expedite the arbitration process and will permit any party to develop its case fully. The rule provides that the single arbitrator appointed to decide prehearing matters involving public customers would be a public arbitrator, except where public customers have requested a majority of securities industry arbitrators for their panel.

Other amendments to the prehearing provisions require the parties to serve on one another, at least eight business days prior to the first hearing, copies of documents in their possession that they intend to present at the hearing and identify witnesses that they intend to present at the hearing. Under proposed rule 950, section 28(c), arbitrators may exclude from the arbitration any documents or witnesses not identified at that time. The provision does not extend to documents or witnesses that parties may use for cross-examination or rebuttal.

The Phlx also is proposing to amend its rules regarding subpoenas. In proposed rule 950, section 29(a), the Phlx proposes to require that all parties be given a copy of a subpoena upon its issuance. In addition, the Phlx proposes to provide in section 29(b) that the arbitrator(s) shall be empowered to direct the appearance of any person employed or associated with any member of the Exchange and/or the production of any records in the possession or control of such persons or members, without resort to the subpoena process. Further, section 29(b) would provide that unless otherwise directed by the arbitrators, the party requesting the appearance of a person or the production of documents under this section would bear all reasonable costs of the appearance and/or production.

7. Preservation of a Record

The Phlx proposes to amend its arbitration rules to assure that adequate records of arbitration proceedings are made and preserved. These records are necessary for court use in conjunction with any judicial review of arbitration proceedings. Proposed rule 950, section 33 would require that a verbatim record by stenographic reporter or tape recording be maintained. The rule would further provide that if a party to a proceeding elects to have the record transcribed, the cost of such transcription shall be borne by that party, unless the arbitrators direct otherwise. The arbitrators also may direct that the record be transcribed. If a record is transcribed at the request of a party, the rule requires that a copy shall be provided to the arbitrators.

8. Content and Public Availability of Arbitration Awards

The Phlx's proposed rule for arbitration awards expands both the content and availability of arbitration awards. Prior to the Commission's May 10, 1989 approval of the amended arbitration rules of the Amex, NASD, and NYSE, the only information generally available to the public regarding SRO arbitration cases was the percentage of investors that received some portion of the amount they claimed against their broker-dealer. No data had been previously available with respect to a particular arbitrator's awards. The Phlx's proposal, like the rules of the other SROs, affords substantially more public access to the results of this process of dispute resolution.

Proposed rule 950, section 37 provides that all awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by applicable law with respect to public controversies. With respect to member controversies, the proposed rule requires that the Chairman of the panel certify the decision of the panel in writing. Proposed rule 950, section 37 also provides that awards shall contain the names of the parties, a summary of the issues in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the dates the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearing(s), the names of the arbitrators and the signatures of the arbitrators concurring in the award. All awards involving public customers and their contents, excluding the names of the arbitrators, are to be made public. The proposed rule further provides that a party to an arbitration involving a public customer may request that the Director of Arbitration provide copies of all awards rendered by the arbitrators chosen to decide his or her case. A party wishing to obtain such information under this section must notify the Director of Arbitration within three business days of receipt of notification of the identity of the person(s) named to the panel.

9. Arbitration Fees for Customer Disputes

The Phlx also proposes to clarify the potential fees to parties of pursuing a case through the arbitration procedures. The arbitration fee proposal represents a significant change in the fees that may be assessed by the arbitrators for particular cases. Proposed rule 950, section 39(a) would establish fees which range from $15 to $1,000 for amounts in dispute ranging from $1,000 or less to more than $500,000. The proposed rule also would provide that where the amount in dispute is $10,000 or less, no additional deposits shall be required despite the number of hearing sessions. Proposed section 39(a), however, would provide that where the amount in dispute is above $10,000 and multiple hearing sessions are required, the arbitrators may require any of the parties to make additional deposits for each additional hearing session.

The Phlx proposes to clarify the definition of a "hearing session" in the proposal. A hearing session under proposed rule 950, section 39 would be any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four hours or less. The current Phlx rules do not define a hearing session.

Proposed rule 950, section 39(d) would raise to $200 from $100 the minimum deposit for cases where no money damages are claimed. Further, section 39(a) would provide that all parties who file claims, such as counterclaims, third party claims, and cross-claims, are required to pay deposits unless the deposit is waived by the Director of Arbitration. Under the Phlx's existing rule, deposits are required only of original claimants.

Proposed rule 950, section 39(c) clarifies that arbitrators, in their awards, may determine the amount chargeable to the parties as forum fees and determine which party shall bear the costs of the arbitration. This section would specify that where the amount in dispute is $10,000 or less, the total fees to the parties shall not exceed the amount deposited. In addition to the forum fees, the section would provide that the arbitrators may determine in their awards the amount of costs incurred for adjournments, subpoenas, transcribing a record, and other costs and expenses contemplated by agreement between the parties or permitted by applicable law.

Proposed rule 950, section 39(e) provides that if a matter is settled or withdrawn prior to the commencement of the first hearing session, the parties are entitled to a refund of all but $100 of the amount deposited with the Exchange. This change is based on the increased expenses associated with arbitration empanelment and hearing arrangements. This section, however, would not apply to claims filed under the Simplified Arbitration procedures proposed by the Exchange.

Proposed rule 950, section 39(f) would provide that any matter submitted and later settled or withdrawn subsequent to the commencement of the first hearing session, may be subject to a refund of deposits, if any, as determined by the panel of presiding arbitrators. Proposed section 39(g) would specify that in the case of any matter settled or withdrawn subsequent to the commencement of the first hearing session, the arbitrators may assess forum fees and costs for adjournments, subpoenas, and transcribing a record.

10. Predispute Arbitration Clauses

The Phlx also proposes to adopt a provision governing the use of predispute arbitration clauses with customers. Revisions to predispute arbitration clauses were designed through the auspices of SICA to improve disclosure to customers in account opening agreements and to restrict the content of the arbitration clauses. Under the proposed rule change, rule 950, section 42 would require broker-dealers that employ predispute arbitration clauses to place immediately before the clause introductory language that would inform customers that they are waiving their right to seek remedies in court, that arbitration is final, that discovery is generally more limited than in court proceedings, that the award is not required to contain factual findings and legal reasoning, and that the arbitration panel typically will include a minority of arbitrators associated with the securities industry.

Proposed rule 950, section 42 would require that the disclosure language be highlighted in four ways. First, large or otherwise distinguishable type must be used. Second, the disclosure language must be set out "in outline form so as to be noticeable to readers. Third, a statement, also highlighted, that provides that the agreement contains a predispute arbitration clause and indicates where that clause is located in the contract, must be inserted into the agreement immediately preceding the signature line. Fourth, a copy of the agreement containing a predispute

[12] Phlx rule 950, section 9(c) would establish filing fees ranging from $15 to $200 in cases where the amount in controversy is $10,000 or less.

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arbitration clause must be given to the customer, who is to acknowledge receipt of the agreement, either in the agreement itself or in a separate document.

In addition, proposed rule 950, section 42 would prohibit SRO members from having agreements with customers that limit or contradict the rules of any SRO, or limit the ability of a party to file any claim in arbitration or limit the ability of the arbitrators to make any award.

11. Controversies Between Members

The Phlx's member-member controversies currently are arbitrated before a quorum of the Exchange's Arbitration Committee, pursuant to Phlx By-Law section 10-8. The Phlx proposes to amend By-Law section 10-8 in order to authorize the implementation of a panel system of Arbitration Committee members for arbitration of member-member controversies.[12] The Phlx states that this rule change is necessary to overcome difficulties in scheduling and conducting hearings and in deliberating the merits of each case. As a result of the proposal, the Phlx believes that arbitration between members will become a more expeditious process because several arbitrations may be scheduled concurrently.

The Phlx also proposes to amend By-Law section 10-8 to clarify the Exchange's jurisdiction in member-member controversies. The proposed amendments would include Exchange jurisdiction over associated persons in their capacity as such and would require that a dispute subject to arbitration arise in connection with the securities business of a member, member organization and/or associated person.

The Phlx proposes to add subsection (c) to section 10-8 to enable the Exchange's Business Conduct Committee to impose penalties for noncompliance with the Arbitration Code. Specifically, subsection (c) would provide that it may be deemed conduct inconsistent with just and equitable principles of trade for a member, member organization, or person associated with a member to fail to submit to arbitration under the By-Law, to fail to provide any document properly requested pursuant to discovery or to fail to honor an award of the arbitration panel.

The Phlx also proposes to amend rule 950 to incorporate procedures for controversies between members in its arbitration rules. Proposed rule 950, section 3 would require that member controversies be heard by a panel of Committee persons composed of on-floor and off-floor persons, appointed to serve on the panels by the Director of Arbitration in alphabetical rotation. This section also would provide that the Committee shall consist of a pool of 25 persons, 15 members or persons associated with an on-floor member and/or participant organizations and 10 members or persons associated with off-floor members or participant organizations. Further, the section would provide that a member controversy panel must consist of not less than five Committee persons when the amount in controversy does not exceed $100,000 and not less than seven Committee persons when the amount in controversy exceeds $100,000.

Proposed rule 950, section 6 would specify the circumstances for required submission of member controversies under the Exchange's arbitration procedures. Proposed rule 950, section 7 would provide that, except as otherwise provided in sections 1 through 6 of the arbitration rules and unless the context otherwise requires, the rules and procedures applicable to public customer arbitrations as set forth in sections 8 through 41 of the Phlx's arbitration rules also would apply to member controversies.

Proposed rule 950, section 41 would establish a schedule of arbitration fees for member and clearing controversies. Section 41(d) would establish a $500 minimum charge for cases where no money damages are claimed. This section also would require the deposit of $500 where the amount in dispute is less than $100,000 and require the deposit of $1,000 where the amount in dispute is above $100,000. In addition, proposed section 41(e) of rule 950 would provide that if a case is settled or withdrawn prior to the commencement of the first hearing session, the parties will be entitled to a refund of all but $125 of the amount deposited with the Exchange. The remaining proposed arbitration fee rules for member and clearing controversies are similar to the rules that the Phlx proposes to adopt for public customer disputes.

12. Miscellaneous

The Phlx's proposed rule change also amends several other of its rules that govern the administration of its arbitration forum. First, the Exchange proposes to adopt section 2 of rule 950 to specify that the Board of Governors shall appoint a Director of Arbitration. This section would provide that the Director of Arbitration shall be directly responsible to the Arbitration Committee and shall report to the Committee at periodic intervals established by the Committee. Second, the Exchange proposes to adopt section 4 of rule 950 in order to provide that the submission of any matter to arbitration does not limit or preclude any right, action or determination by the Exchange which it would otherwise be authorized to adopt, administer or enforce.

Third, the Phlx proposes to adopt section 5 of rule 950 in order to specify that during the arbitration of any matter, a party may not prosecute or commence any suit, action or proceeding against any other party touching upon any of the matters referred to arbitration under the Exchange's procedures. Conversely, the Exchange also proposes to adopt a commentary to proposed rule 950, section 8(b) which would provide that the Exchange shall not accept arbitration matters that already are subject to proceedings in another forum.

Fourth, in arbitrations involving multiple claimants, respondents, and/or third party respondents, proposed rule 950, section 18 provides the claimants, respondents, and third-party respondents with one peremptory challenge each of a proposed arbitrator, and with unlimited challenges for cause. Fifth, proposed rule 950, section 35 provides for amendments to pleadings; however, after an arbitration panel has been appointed, amended pleadings other than responsive pleadings may not be filed unless the panel consents to the amendment. Sixth, proposed rule 950, section 40 provides that when a member firm files a claim against a non-member, the member shall pay a nonrefundable filing fee of $500 in addition to all other fees, deposits, or costs which may be required.

Finally, in addition to the rules discussed above, the Exchange's proposal adopts other rules that substantially replicate their current counterparts in the Phlx rules.[14] Except for technical and conforming changes, these proposed rules do not differ materially from the current rules upon which they are modeled.

B. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act [15] which requires that national securities exchanges have rules that are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, provide for the equitable allocation of fees and, in general, protect investors and the public interest. The Exchange states that the proposed amendments will further the objectives of section 6(b)(5) by making the arbitration process a more efficient, expeditious and inexpensive forum for dispute resolution.

III. Discussion and Conclusions

The Commission has considered carefully the Exchange's proposed rule change, and finds, for the following reasons, that the proposed rule change is consistent with the requirements of section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with the requirements of sections 6(b) (4) and (5) of the Act,[16] which require that national securities exchanges have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to provide for an equitable allocation of fees, and, in general, to protect investors and the public interest. The Commission believes the proposed rule change significantly advances the public interest in Exchange arbitrations and should improve the speed and efficiency of arbitration, while maintaining the traditional qualities of arbitration.

The Phlx developed these changes to its arbitration rules through the auspices of SICA. The securities industry's SROs have worked together over the past twelve years to develop uniform arbitration rules through SICA, which is comprised of a representative from each SRO that administers an arbitration program,[17] a representative of the securities industry, and four representatives of the public.

On September 10, 1987, after a review of securities industry-sponsored arbitration, the Commission sent to SICA a letter that set out its views regarding the need for changes to the Uniform Code of Arbitration ("Uniform Code").[18] The Commission also sent letters to the SROs on July 8, 1988 requesting that the SROs review the issues raised by the current use of mandatory predispute arbitration agreements by their member firms.[19] Since September 1987, SICA and its subcommittees have met regularly to develop proposals in response to the Commission's letters.

The majority of the proposals to amend the Phlx's rules were based on changes in the Uniform Code made by SICA largely in response to the September 1987 and July 1988 Commission letters.[20] The other proposals included in this order were developed to meet concerns that have arisen through the administration of the Exchange's arbitration forum.

As stated above, substantially similar rule filings submitted by the NYSE, Amex and NASD were approved by the Commission on May 10, 1989, and comparable rule filings of the CBOE, MSE, PSE and CSE were subsequently approved by the Commission on August 2, 1989, August 25, 1989, July 5, 1990 and October 11, 1990, respectively. The NYSE's, NASD's and Amex's versions of their respective rules were published for public comment in the **Federal Register**, providing both the public and the broker-dealer community with ample opportunity to comment on the proposed changes that are the subject of this order. All public comments directed at the other SROs' arbitration filings were considered in the context of the review undertaken for the Commission's May 10, 1989 approval order,[21] wherein the Commission addressed fully the significant public dialogue and comment that preceded its action. In light of the Commission's thorough consideration of all comments directed at the SRO arbitration filings that were the subject of the Commission's May 10, 1989 approval order, the substantially similar nature of the Phlx's arbitration proposal, and the benefits that will accrue to investors from the availability of these improved arbitration procedures, the Commission finds that approval of the Phlx's proposed rule change is consistent with the requirements of section 6 of the Act.[22]

The Commission believes that the Phlx's proposed arbitration rules improve the procedures for administering arbitration proceedings. The Commission further believes the proposed rule change appropriately balances the need to strengthen investor confidence in the arbitration systems at the SROs with the need to maintain arbitration as a form of dispute resolution that provides for the equitable and efficient administration of justice. More specifically, the Commission finds that the rule changes affecting the classification of arbitrators, arbitrator disclosure, discovery, the preservation of a record, the form and public availability of awards and guidelines for the use of predispute arbitration clauses significantly advance the efficiency and utility of SRO arbitration for public investors.[23] Likewise, the Commission believes that the Phlx's initiatives with respect to the handling of pleadings, appointment of replacement arbitrators, the use of small claims procedures, and the number of arbitrators should improve the efficiency and speed of arbitration. Because these rules will aid in the just resolution of disputes between investors and broker-dealers as well as the just resolution of disputes between members, the Commission concludes that these rules are designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest consistent with section 6(b)(5) of the Act. The Commission also

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[12] As discussed *infra*, a member-member controversy includes disputes between employees or registered representatives of a member firm and the member firm itself, as well as disputes between member firms.

[13] The Exchange's proposed rules that substantially replicate their current versions are found in rule 950, sections 8 ("Required Submission"); 10 ("Hearing Requirements—Waiver of Hearing"); 11 ("Time Limitation Upon Submission"); 12 ("Dismissal of Proceedings"); 13 ("Settlements"); 14 ("Tolling of Time Limitations for the Institution of Legal Proceedings"); 22 ("Designation of Time and Place of Hearing"); 23 ("Representation by Counsel"); 24 ("Attendance at Hearings"); 25 ("Failure to Appear"); 26 ("Adjournments"); 27 ("Acknowledgement of Pleadings"); 30 ("Evidence"); 31 ("Interpretation of Code"); 32 ("Determinations of Arbitrators"); 34 ("Oath of Arbitrators and Witnesses"); 36 ("Reopening of Hearings"); and 38 ("Miscellaneous").

[14] 15 U.S.C. 78f(b)(5) (1988).

[15] 15 U.S.C. §§ 78f(b)(4) and (5) (1988).

[16] The SROs that administer an arbitration program are the Phlx, CSE, NYSE, NASD, Amex, CBOE, MSE, PSE, Municipal Securities Rulemaking Board ("MSRB") and Boston Stock Exchange.

[17] See letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President, NYSE, dated September 10, 1987. This letter also was addressed separately to each of the other members of SICA.

[18] See letter from David S. Ruder, former Chairman, SEC, to John J. Phelan, Jr., Chairman, NYSE, dated July 8, 1988. This letter also was addressed to the senior executive officers of all other SROs that administer arbitration facilities.

[19] The Exchange's rules developed in response to the Commission's letters are sections 13, 17, 19, 28, 33, 37 and 39(b) of rule 950.

[20] In addition, the Phlx proposal is substantially similar to the CBOE, MSE, PSE and CSE rule filings that were subsequently approved by the Commission. See supra note 5.

[21] Moreover, the Commission finds that approval of the Phlx's proposed rule change is consistent with its May 10, 1989 approval order, and the Commission herein incorporates by reference the relevant portions of its discussions from that order.

[22] The Commission's approval of Phlx rule 950, section 42 and the comparable rules of the NYSE, NASD, Amex, CBOE, MSE, MSRB, PSE and CSE is consistent with the conclusion of the United States Court of Appeals for the Sixth Circuit in *Roney* v. *Goren*, 875 F2d 1216 (6th Cir. 1989) that the Commission has the authority to assure customer choice among SRO arbitration forums.

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finds that the fee increases represented by these changes appear to be reasonable and should provide for an equitable allocation of fees among SRO members and investors using the Phlx's arbitration facilities consistent with section 6(b)(4) of the Act.

It therefore is ordered, Pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Dated: June 20, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15266 Filed 6-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29342; File No. SR-Phlx-91-15]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Options Floor Procedure Advice C-9—Floor Brokers Trading in Their Customer Accounts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1991, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange"), pursuant to rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), proposes to amend PHLX Options Floor Procedure Advice ("OFPA") C-9—Floor Brokers and Clerks Trading in their Customer Accounts. OFPA C-9 prohibits the customer orders of floor brokers and floor brokers employees from being handled by co-employees with an interest in the account. The proposed rule change would extend the prohibition to include handling of such orders by co-employees with knowledge that the order is for the customer account of another employee. A copy of proposed PHLX OFPA C-9 is attached as exhibit A.

[24] 15 U.S.C. 78s(b)(2) (1988).

[25] 17 CFR 200.30-3(a)(12) (1990).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

OFPA C-9 currently regulates trading in PHLX options by member firm floor personnel. In addition to prohibiting all employees of member/participant firms from placing orders for execution in their customer accounts while on the floor, this advice also governs how such orders may be handled when received from off-floor. In this regard, the employee's order must be treated the same as any other customer order, except that it cannot be handled by an employee of the same firm who has a beneficial interest in that customer account.

Proposed OFPA C-9 would extend this prohibition to include any co-employee with knowledge that a customer order is on behalf of another employer of the firm; it is proposed that the non-customer employee with knowledge of such information be prohibited from handling the customer order. Noting that some brokerage firms require their employees to place all personal customer orders with that firm in order to appropriately monitor trading by employees, the PHLX proposes to permit handling of that order by associated persons only when those persons do not know that the customer order is actually on behalf of an associate of the firm.

The PHLX believes that this extension serves to decrease the opportunity for advantages to be afforded to customer orders of floor brokers and their co-employees while at the same time providing added protection to the firms in monitoring the trading activities of their employees. In this regard, the proposed rule change is consistent with and furthers the goals enumerated in section 6(b)(5) of the Act; specifically, the proposal is designed to prevent fraudulent and manipulative acts and practices as well as being intended to protect investors and the public interest. Handling an order knowing it is from a co-worker presents a similar conflict of interest and potential for preferential treatment as handling one's own order or one for an account in which one has a proprietary interest. The proposed version of OFPA C-9 will curtail such potential conflicts or abuses.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by July 18, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Proposed text is italicized.

C-9 Floor Brokers and Clerks Trading in Their Customer Accounts

All persons employed on the trading floor in association with a Member or Participant, other than ROTs and Specialists, are prohibited from initiating trades in PHLX options in their customer accounts while on the floor. A Member or Participant firm which accepts an order for the customer account of such a person must process the order through the channels it normally provides for its other customer orders. When any such order is received by the Member or Participant firm and delivered to the floor for execution, it may not be handled by any person with a beneficial interest in the account, or by any associated person with knowledge that the order is for the account of an associate. Once such a person has placed an order for his/her customer account in an option, that person is prohibited from brokering orders in that option for the remainder of that day or until such order has been executed or cancelled whichever is later. This provision shall not apply to any transaction permissable under section 11(a)(1) of the Securities Exchange Act of 1934.

Fine Schedule

C-9

1st Occurrence: 100.00

2nd Occurrence and Thereafter: Sanction is discretionary with Business Conduct Committee

[FR Doc. 91-15266 Filed 6-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29340; File No. SR-Phlx-91-17]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Options Floor Procedure Advice F-12—Responsibility for Assigning Participation on the Foreign Currency Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1991, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange"), pursuant to rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), proposes to add Options Floor Procedure Advice ("OFPA") F-12—Responsibility for Assigning Participation on the Foreign Currency Floor. Proposed OFPA F-12 would place responsibility on all participants in a trade to take certain steps to ensure that participation is clear. These steps include remaining in the trading crowd until participation is determined, not submitting a ticket when participation is not due, and informing the largest participant the extent of participation. A copy of proposed PHLX Options Floor Procedure Advice F-12 is attached as exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to establish a procedure for determining participation in a trade. As opposed to placing the responsibility for assigning participation solely on one party, such as the specialist or floor broker, proposed OFPA C-9 delineates responsibilities for each participant in the trade. First, each potential participant would be required to immediately express to the largest participant (usually the floor broker who initiated the trade with a customer order) the number of contracts believed to just have been bought or sold. This requirement serves to limit the amount of time that passes between the execution of a trade and a report to the customer, thus reducing the risk of not being able to do the targeted hedge trade due to a delay in confirming the extent of contracts to be hedged. Proposed OFPA F-12 would also require any potential participant to remain in the crowd, not just to notify the largest participant in accordance with the aforementioned requirements, but until the largest participant confirms that indeed this was the correct number of contracts calculated. The PHLX believes that it is both reasonable and necessary to impose such a requirement at least as long as it takes for participants to be clear and in agreement with the largest participant as to the level of participation. It is reasonable because, with but a few exceptions, assignment as to the transacted size of participation is normally confirmed with each participant within seconds of the trade; where it takes longer, it is necessary for all participants to be available to reconstruct what occurred and ascertain levels of participation as quickly as possible. Thus, the proposed rule change aims to achieve quicker reporting of order execution by laying out procedures for assigning participation.

The proposed rule change is consistent with the Act, and in particular, section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 18, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A, F-12 Responsibility for Assigning Participation on the Foreign Currency Floor

(*a*) In each instance where a member/participant effects a transaction on the Foreign Currency floor, he must make reasonable efforts to ensure that a meeting of the minds occurred with the contra-side as to confirming the contra-side's participation in the trade. In trades where more than one contra-side is involved, each contra-side must immediately make known to the largest participant his understanding as to his respective level of participation in the trade.

(*b*) No such contra-side who believes that he may have participated in the trade shall leave the crowd until the level of his participation in the trade has been confirmed by the largest participant.

(*c*) No person in the crowd shall submit a ticket for matching on a trade when that person has or should have grounds to believe that he is not due participation in the trade.

(*d*) Disputes as to participation on a trade shall be resolved by a majority vote of those persons present in the crowd during the relevant time or, if not so settled, then by a floor official.

Fine Schedule

F-12 (a)-(d)
1st Occurrence: $100.00
2nd Occurrence: $250.00
3rd Occurrence: $500.00
4th Occurrence: Sanction is discretionary with Business Conduct Committee

[FR Doc. 91-15267 Filed 6-26-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

June 21, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Societe Nationale Elf Aquitaine
American Depositary Receipts (File No. 7-7008)

Farah, Inc.
Common Stock, $4.00 Par Value (File No. 7-7007)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 15, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-15346 Filed 6-26-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Advisory Commission on Conferences in Ocean Shipping; Open Meeting

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of open meeting of the Advisory Commission on Conferences in Ocean Shipping.

SUMMARY: The commission will be holding its third field hearing in Charleston, SC on July 12, 1991; the hearing will be open to the public. In the morning, the Commission plans to focus on issues related to conference tariff and service contract practices and to conference relations with shippers and intermediaries. In the afternoon, the Commission plans to hear testimony on all issues relating to the shipping Act of 1984 and conferences in the ocean shipping industry.

DATES: Public hearing: Friday, July 12, 1991, 9:30 a.m. to 5 p.m., Edt. Deadline for requests to speak at the public hearing: Friday, July 5, 1991.

ADDRESSES: The address for the public hearing is College of Charleston, Conference Center (Sears Building), room 226, 160 Calhoun Street (between King Street and St. Phillips Street), Charleston, SC 29426.

FOR FURTHER INFORMATION CONTACT: Ruth Dicker, Counsel, or James Reitzes, Economist, Advisory Commission on Conferences in Ocean Shipping, Department of Transportation, 400 Seventh Street, SW., room 5102, Washington, DC 20590; telephone (202) 366-0781; FAX (202) 366-7870.

SUPPLEMENTARY INFORMATION: The Commission was created by the Shipping Act of 1984 to conduct an independent and comprehensive study of conferences in ocean shipping, particularly whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Commission is to provide its report, including recommendations, to the President and the Congress by April 10, 1992. Commission began formal operations on April 10, 1991, at a day-long open meeting in Washington, DC, at which the Commission heard reports from Federal agencies on the impact of the 1984 Act and discussed issues to be studied by the Commission.

As part of its study, the Commission will be holding a series of public hearings around the United States. Its first hearing was held June 3, 1991 in New Orleans, LA. Its second hearing was held on June 21, 1991, in San Francisco, CA. Other places selected for hearings are Portland, OR (August 9, 1991); and New York, NY (September 13, 1991). At each hearing, a part of the day will be dedicated to issues generally raised by the 1984 Act, and part of each hearing will focus on a specific predesignated issue.

The Commission will be holding its third field hearing on July 12, 1991 in Charleston, SC, at the College of Charleston, Conference Center (Sears Building), room 226, 160 Calhoun Street. Attendance is open to the public but limited to space available. The morning session will be devoted to testimony on issues related to conference tariff and service contract practices and to conferences' relations with shippers and intermediaries. The afternoon session will be open to receive testimony on any aspect of the Shipping Act of 1984.

Interested members of the public are invited to address the Commission at the July 12, 1991 hearing. In order to be assured of an opportunity to do so, each person wishing to speak should contact Ruth Dicker or James Reitzes at the address set out above by July 5, 1991. Each such person is also required to provide by July 5, 1991 a brief summary of the matters he/she expects to address at the Commission hearing. Should such person wish to submit a copy of his/her complete statement to be delivered at the Commission hearing, he/she should make every effort to deliver 30 copies of that complete statement to the Advisory Commission staff prior to the hearing date. Persons appearing before the Commission are encouraged to support all opinions with factual information and evidence. To the extent that time permits and that it does not disrupt the orderly process of the meeting and will not be unfair to any person, persons who do not make prior written requests to speak will be given opportunity to do so as part of the afternoon session.

Persons who wish to provide written comments for the Commission's consideration may do so at any time by forwarding them to the address set out above.

Issued in Washington, DC, on June 25, 1991.

Florizelle B. Liser,

Executive Director.

[FR Doc. 91-15445 Filed 6-26-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Docket No.28566]

Environmental Impact Statement; Effects of Changes of Aircraft Flight Patterns Over State of New Jersey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Post-Scoping Document And Invitation to Comment.

SUMMARY: The FAA announces the availability for public comment of the post-scoping document for the Environmental Impact Statement (EIS) required under section 9119 of the Aviation Safety and Capacity Expansion Act of 1990, Public Law 101-508. That statute directs the FAA to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) on the effects of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan (ECP). The post-scoping document identifies the range of alternatives, the environmental issues and concerns, and the potentially significant issues to be addressed in the EIS.

The FAA is taking the unusual and unprecedented step of circulating this document for public comment while the Draft EIS is being prepared, although circulation is not required under NEPA, because of the unique geographic scope of this EIS the entire State of New Jersey. Since this is a statewide EIS, and it was not feasible to hold scoping meetings in every city and town throughout the entire State, there are potentially many individuals who were unable to attend the 5 public scoping meetings or to submit written comments by the deadline of April 26, 1991. Three scoping meetings were held in south, central, and northern N.J. to cover a cross-section of the State. Because of the high degree of public interest in the EIS, the FAA held 2 additional meetings in northern N.J. Circulation of the post-scoping document will afford individuals unable to attend those meetings or to submit written comments another opportunity to be heard. Since the FAA has completed the scoping process, comments received on the post-scoping document will be addressed in preparing the Draft EIS.

FOR FURTHER INFORMATION CONTACT: Any person may obtain a copy of the post-scoping document by submitting a request to the Federal Administration, Office of Public Affairs, attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling FAA's toll-free Consumer Hotline: 1 800-FAA-SURE between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays. The document is also available for review at the following public libraries:

Teaneck Public Library, 840 Teaneck Road, Teaneck, NJ 07666, attention: Lucille Bertram.

Newark Public Library, 5 Washington Street, P.O. Box 630, Newark, NJ 01701 0630, attention: George Hawley.

Parsippany-Troy Hills Free Public Library, P.O. Box 5903, Parsippany, NJ 07054, attention: Dorothy Wanemaker.

Piscataway Township Free Public Library, John F. Kennedy Memorial Library, 500 Hoes Lane, Piscataway, NY 08854, attention: Mary Piekarski.

Cherry Hill Free Public Library, 1100 Kings Highway North, Cherry Hill, NJ 08034, attention: Susan Lyons.

Jersey City Public Library, 472 Jersey Avenue, Jersey City, NJ 07302-3489, attention: Director's Office.

Staten Island, New York Public Library—St. George Library Center, 5 Central Place, Staten Island, NY 10301, attention: Mr. Lee.

Camden Free Public Library, 618 Broadway, Camden, NJ 08103, attention: Theresa Gorman.

Vineland Free Public Library, 1058 E. Landis Avenue, Vineland, NJ 08360, attention: Anthony Agnesino.

Middletown Township Public Library, 55 New Monmouth Road, Middletown, NJ 07748, attention: Barbara Steinberg.

Free Public Library of the City of Trenton, 120 Academy Street, Trenton, NJ 08607-2448, attention: Nan Wright.

Ridgewood Public Library, 125 North Maple Avenue, Ridgewood, NJ 07450-3288, attention: Robert D. Ross.

Free Public Library of Woodbridge, George Frederick Plaza, Woodbridge, NJ 07095, attention: Reference Desk.

Elizabeth Public Library, 11 S. Broad St. Elizabeth, NJ 07201, attention: Carles Bowll.

Paterson Free Public Library, Danforth Memorial Library, 250 Broadway, Paterson, NJ 07501, attention: Steven Welch.

Cranford Public Library, 224 Walnut Avenue, Cranford, NJ 07016, attention. John Malar.

Rochelle Park Public Library, 405 Rochelle Avenue, Rochelle Park, NJ 07662, attention: Mary Boes.

Runnemede Public Library, Broadway & Black Horse Pike, P.O. Box 110, Runnemede, NJ 08078, attention: Joann Strater.

Tinton Falls Public Library, 664 Tinton Avenue, Tinton Falls, NJ 07724, attention: Eleanor Szabo.

New Jersey State Library, Dept. of Education, 185 W. State Street, Trenton, New Jersey 08625-0520, attention: Janet Tuerff.

Joint Free Public Library of Morristown & Morris Township, 1 Miller Road, Morristown, NJ 07960.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1990, Congress passed the Aviation Safety and

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Capacity Expansion Act of 1990, Public Law 101–508. In this statute, Congress directed the FAA to "issue an environmental impact statement pursuant to the National Environmental Policy Act of 1969 on the effects of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan." To facilitate preparation of the EIS, the FAA entered into a contract with the Volpe National Transportation Systems Center (TSC) of the Research and Special Projects Administration of the U.S. Department of Transportation. On February 21, 1991, the FAA published notice in the **Federal Register** of its intention to prepare the EIS and to conduct three public meetings in March 1991, as part of the scoping process. 56 FR 7292. The dates and locations of those meetings were advertised in local newspapers and published in the **Federal Register** on February 26, 1991. 56 FR 8042. The meetings were held in Tinton Falls, Runnemede, and Cranford, N.J. on March 11–12, 20–21, and 26–27, respectively, to cover a cross-section of the entire State.

Because of the high degree of public interest in the EIS, the FAA decided to hold two additional public scoping meetings on April 17 and 18 in Rochelle Park and Parsippany, N.J., respectively. The FAA again advertised the dates, locations, and times of the meetings in local newspapers and published notice in the **Federal Register**, 56 FR 15662. A total of approximately 260 persons testified at, and approximately 1,000 persons attended, these meetings.

The FAA has completed the scoping process. By July 1, 1991, the FAA expects to select a contractor who will assist the FAA in preparing the Draft and Final EIS. The comments received in response to this Notice will be addressed in preparing the Draft EIS. The FAA expects to file the Draft EIS in October 1991. Once the FAA issues the Draft EIS, there will be an additional 45-day period for public comment, during which public hearings will be held, on the Draft EIS.

Written comments on the post-scoping document should be received at the following address, in triplicate, by Headquarters Federal Aviation Administration, Office of the Chief Counsel, attn: Rules Docket (AGC–10), Docket No. 26566, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be delivered or inspected at room 915G in FAA headquarters between 8:30 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays.

Summary of the Post-Scoping Paper

The following is a summary of key portions of the post-scoping document. It is not intended to duplicate or cover every aspect of that document. Substantive comments submitted to the FAA should address the primary document, not this summary.

1. Description of the Action and Alternatives

A. Definition of the Action

The "proposed action" in this EIS is defined as continued implementation of the EECP. That definition is consistent with the statutory mandate which requires an EIS on the EECP and with the fact that this EIS is necessarily being prepared after that implementation.

B. Expanded East Coast Plan

The EECP created standard operating procedures to control air traffic flows over the Eastern United States. The EECP has been continuously evolving to improve its efficiency and alleviate noise since its first phase was implemented in 1987. The final phase of the EECP has been implemented.

To allow consistent analysis of the EECP in this EIS, the EECP must be identified at a fixed period in time. For purposes of this EIS, the term EECP is identified as standard FAA operating procedures for aircraft 3,000 feet above ground level over the State of New Jersey as of a week during the summer of 1991. In addition to routes and operational procedures, the EIS requires identification of en route traffic movements using the EECP routes and operational procedures over New Jersey. The air traffic during a typical week will be identified using automated air traffic control systems (the Automated Radar Terminal System (ARTS) and Advanced Traffic Management Systems (ATMS). Planned noise monitoring will also be conducted during that same week.

C. No-Action Alternative

CEQ regulations require an EIS to examine the no-action alternative. Typically, the no-action alternative consists of not implementing the proposed action, resulting in maintenance of the status quo. Because Congress has directed that the action to be examined in this EIS is the implementation of the EECP (i.e. the status quo), the no-action alternative here is synonymous with the "proposed action."

D. Return to the 1986 Route Procedures with Current and Future Traffic

Given the high level of public interest in the return to pre-EECP conditions, those 1986 routes and procedures will be identified. So that the impacts of the action, the conditions that would exist if the action had not been implemented, can be determined, the baseline conditions for this EIS will be defined as the 1986 route structure with 1991 traffic. By defining the baseline conditions thus, the impacts of the EECP can be analyzed as changes from the conditions that would have existed had it not been implemented. The EIS will also evaluate future impacts of the EECP by comparing the 1986 route structure with 2000 traffic with the EECP route structure and 2000 traffic.

To separate the impacts caused by the EECP from impacts caused by changes in air traffic volumes between 1986 and 1991, the 1991 traffic will be redistributed over the 1986 route network. In this manner, a database of the air traffic can be created that compensates for changes in flight volumes, destinations, etc. that occurred between 1986 and 1991.

E. Oceanic/Military Routing—24 hours per day

This alternative responds to numerous comments suggesting greater use of military/oceanic airspace. This approach would make maximum use of military/oceanic airspace by shifting air routes, as feasible, to that airspace.

F. Oceanic/Military Routing-Nighttime Only

This alternative is similar to the one above except that the routes would only be shifted during nighttime hours (10 p.m.–7 a.m.).

G. Spreading of Air Traffic

This alternative retains the EECP route structure but adds additional routes to increase the area subject to environmental impacts but to lessen the intensity and frequency of such impacts on any one area. Some commenters indicated that the routes appeared to be narrowly concentrated in northern N.J.

2. Assumptions and Limitations

A. Future Increases in Traffic Volumes

To inform the public and decision-maker as to whether the EECP or an alternative air traffic network is environmentally preferable for management of air traffic over New Jersey, the EIS will compare the baseline and current conditions projected for each alternative. Because the air traffic network will not create future air traffic volumes, the projections of future volumes will be the same under all alternatives. Thus, the impacts expected to result from the action and alternatives can be scaled by projections of future volumes to determine future impacts. The EIS will analyze future impacts for the year 2000.

B. Geographic Scope

Because of the interstate nature of air commerce, the EECP has a much larger area of possible impact than the typical Federal project. Many commenters requested that portions of at least four states covering tens of thousands of square miles be included in this EIS. That area goes far beyond the mandate of Congress. The FAA has determined that the geographic scope of the congressional mandate will be followed and the scope of the EIS will be limited to New Jersey, including adjacent coastal waters. However, no FAA action will be taken as a result of this EIS which has potential impacts outside of New Jersey. If any air traffic changes affecting areas other than New Jersey are eventually considered as a result of this study, those changes will not be implemented until appropriate environmental review is conducted.

C. Non-Environmental Effects

To the extent that economic and human safety issues were raised during the scoping process, those issues will be addressed in the Report to Congress required under section 9119(c) of the Aviation Safety and Capacity Act of 1990. Section 9119(c) requires the FAA to submit a report indicating what action, if any, the FAA decides to take with respect to the EECP operating procedures. The effects on air safety of EECP operating procedures over New Jersey will also be addressed in a separate Report required under Section 9119(b) of the Aviation Safety and Capacity Act of 1990.

3. Environmental Factors

A. Noise

1. Description of the Factor. A number of scoping comments cited noise impacts as a severe adverse effect of the EECP. Many comments cited noise caused by the EECP as significantly lowering the quality of life in many communities in New Jersey. They commented on the continuous nature of the noise, the heightened annoyance factor of nighttime and early morning flights, and health effects caused by noise-induced stress.

2. Issues and Concerns. The most frequent comment about the EECP concerned the change in the noise environment. Many commenters stated that prior to the implementation of the EECP their communities were quiet and offered a rural or semi-rural lifestyle. After implementation, they indicated that their lifestyle was altered and their lifestyle was adversely affected. To many residents, the most annoying factor was the constant nature of the noise. It was stated that the noise interrupted conversation, prevented use of backyards and patios, and rattled windows and scared children. It was also stated that nighttime noise awoke residents from sleep or prevented sleep. Commenters also stated that other adverse effects included noise-induced stress and health effects, lowering of property values, and interference with education.

3. Approach and Methodology. The FAA believes that use of the DNL methodology for analyzing aircraft noise is appropriate. The application of the DNL methodology to aircraft flights in the en route airspace above 3,000 feet above ground level over an area as large as the State of New Jersey is without precedent. The FAA will therefore develop an algorithm that uses the ARTS and ATMS data on actual aircraft flights as input and calculates the resulting DNL noise level. The FAA believes that this will be a highly effective analytical technique because an actual data base on flights will be available for the period selected as representative of the EECP and that database will be direct input into the computer model. The resulting output will be calculations of DNL for a grid of points within New Jersey. This analysis will be done for each alternative studied in the EIS. The final result will be both a DNL contour map and grid of locations for the baseline condition and each alternative.

To respond to comments about individual loud overflights, the computer model for analyzing ground-level noise will identify the loudest single events. Using the same grid as for the DNL analysis, the model will report the maximum noise level and for a selected range of single event noise levels, the number of aircraft flyovers by day and night.

Field noise monitoring will also be used, where appropriate. To maximum the usefulness of the monitoring data, the time period for monitoring will coincide with the period of ARTS and EARTS data to be used in conducting the EIS analysis. The EIS will also address the appropriateness of methodologies other than DNL and alternative metrics for assessing noise by examining the technical adequacy of those alternatives.

To quantify the noise impacts of the action and alternatives, the population exposure levels will be determined. The quantities for each alternative will be described in terms of decreases and increases in DNL when compared to the baseline. The affected population will also be classified by type of residential community so as to allow appropriate consideration of the ambient noise environment in determining noise impact.

4. Environmental Consequences. This section will discuss direct and indirect effects of noise in accordance with paragraph 66 of FAA Order 1050.1D. The significant levels defined in in Attachment 2—Environmental Analysis Procedures, Paragraph 1 of FAA Order 1050.1D will be used.

5. Possible Mitigation Measures. The alternatives in the EIS cover a number of mitigation measures for noise effects of the EECP. In addition, the EIS will analyze relocation of air routes to higher altitudes and use of special routes and procedures for specific time periods only.

B. Air Quality

1. Description of Factor. Next to noise, air quality was the most frequently cited impact of the EECP. Participants in the scoping process commented on the amount of air pollutants emitted by jet aircraft and possible health effects from exposure to elevated levels of air pollution. Some residents of New Jersey stated that they could smell the jet exhaust from overhead aircraft and that particulates from jet engines covered their houses and property.

2. Issues and Concerns. The main concern in this area was the health effects of exposure to air pollutants, including fuel dumped from aircraft. A secondary concern was the effects of air pollutants on wildlife, including migrating birds.

3. Approach and Methodology. As an initial step the FAA will consult with both the EPA and the New Jersey Department of Environmental Protection to obtain their concerns and data on air quality. To distinguish between aircraft emissions in general and those caused by the EECP, the cumulative number of miles flown by aircraft over New Jersey under the EECP will be compared with those flown under the 1986 routes with 1991 traffic. If the EECP caused an increase in aircraft mileage, then the increase in air emissions can be calculated using date on aircraft emissions developed by the EPA or the Air Transport Association. The potential impact of an effect on emissions due to a change in altitudes due to the EECP will also be analyzed.

If the initial analysis reveals an increase in criteria pollutants due to the implementation of the EECP, the next step will be to quantify that increase

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and to determine the potential for mixing of aircraft pollutants with air below 3,000 feet. This will require meteorological data for the air basins of New Jersey.

The next step will be to evaluate the incremental contribution of aircraft emissions to maintenance (in areas designated for prevention of significant deterioration) or exceedances of the National Ambient Air Quality Standards [NAAQS] for the baseline condition and each alternative.

A second concern is the effect of nitrogen oxide aircraft emissions on the ozone layer of the upper atmosphere. Because there are no standards for high altitude emissions, the EIS will quantify the increased emissions and summarize available scientific data on ozone-depletion effects.

It is likely that the available scientific data will be inadequate to analyze mixing of high-altitude emissions with the ground level atmosphere and the effect of aircraft NOx emissions on ozone depletion. Therefore, those analyses will be done in accordance § 1502.22 of the CEQ regulations. Because it is unclear why the EECP would affect the amount of fuel dumping by aircraft over New Jersey, the EIS will describe fuel dumping, the situations in which it occurs, and its expected frequency. Available FAA and Air Force data will then be used to determine the level of impact.

4. Environmental Consequences. The threshhold for significant air quality impacts is substantial contribution to exceedance of the NAAQS. The EIS will inventory all air emissions caused by the action and alternatives and determine whether the increased emissions caused by the EECP that can reasonably be expected to mix with the air below 3,000 feet would threaten the NAAQS based on the State Implementation Plan.

5. Mitigation Measures. Effective measures may be identified as the EIS analysis is completed and problems are identified.

C. Water Quality

1. Description of Factor. Several commenters stated that particulates and fuel from aircraft adversely affected lakes and swimming pools.

2. Issues and Concerns. Scoping comments suggested that the impacts on water quality were more of an aesthetic than a health concern. No specific adverse health comments were described.

3. Approach and Methodology. This analysis will follow from the air quality analysis. Based on the size distribution of particulates emitted from jet engines and published data on settling rates of particulate matter, the FAA will determine the likelihood that particulates will settle to the ground.

The potential for water quality impacts due to fuel dumping will also be estimated using Air Force data regarding the likelihood of dumped fuel reaching the ground and data concerning the frequency of fuel dumping.

4. Environmental Consequences. The thresholds for significance, EPA's ambient water quality criteria, are unlikely to be exceeded.

5. Possible Mitigation Measures. None anticipated.

D. Energy Consumption

1. Description of Factor. FAA Order 1050.1D requires an EIS to examine "the energy requirements and conservation potential of various alternatives and mitigation measures."

2. Approach and Methodology. This analysis will be similar to that for air quality. The increase or decrease in energy use by aircraft will be quantified based on additional aircraft mileage and inefficiencies caused by the EECP or alternatives. The absolute change in energy consumption will be compared with the total energy consumption by commercial aircraft flying over New Jersey.

3. Possible Mitigation Measures. None anticipated.

E. Other Issues

1. Biological Resources/Threatened and Endangered Species. The U. S. Fish and Wildlife Service submitted a letter with comments identifying 5 threatened or endangered species and 5 wildlife refuges that it operates in New Jersey. The FAA will consider the likelihood of collisions of aircraft with members the 5 species. The EIS will consider the need to analyze the noise impacts on nesting birds at the wildlife refuges using the DNL contour maps for the EECP and alternatives.

2. Cultural Resources. The FAA will consult the New Jersey State Historic Preservation Officer (SHPO) to obtain an opinion on the potential for noise and vibration to significantly affect historic properties. Any site identified by the SHPO for analysis in the EIS will be considered individually in the EIS. Any determination of adverse effect will be resolved through compliance with the procedures set forth in Section 106 of the National Historic Preservation Act or other appropriate laws.

1. Land Use/Coastal Zone. The compatibility of land use categories with aircraft noise levels calculated for the EECP and alternatives will be analyzed. The EECP and, alternatives will be reviewed for consistency with N.J.'s Federally approved Coastal Zone Management Plan.

4. Section 4(f). The EIS will consider the need to analyze noise impacts on publicly owned parks, recreation areas, and wildlife refuges and sites of national, state, or local significance under Section 4(f) of the Department of Transportation Act.

5. Visual Impacts. The aesthetics of airplanes flying over residential areas and land uses where an aesthetically pleasing vista is important will be described. The effects of aircraft at various elevations on the overall vista will be analyzed.

Issued in Washington, DC on June 21, 1991.

William H. Pollard,

Associate Administrator for Air Traffic.

[FR Doc. 91-15253 Filed 6-26-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Computer Matching Programs

AGENCY: Internal Revenue Service; Treasury Department.

ACTION: Notice.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Public Law 100-508, October 18, 1988, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of computer matches by the Internal Revenue Service (IRS) on behalf of the Department of Veterans Affairs (VA). In accordance with section 6103(l)(7) of the Internal Revenue Code of 1986, as amended by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), November 7, 1988, the IRS will provide VA with tax information from IRS records to assist them in administering the programs and activities described hereafter. The purpose of the matching program is to substantially prevent or reduce fraud and abuse in certain VA programs and facilitate the settlement of government claims while protecting the privacy

interest of the subjects of the match. The records disclosed consist of return information for the current processing year ending June 30, 1991.

EFFECTIVE DATE: July 29, 1991.

ADDRESS: Inquiries may be mailed to Director, Office of Disclosure, Internal Revenue Service, P.O. Box 388, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Earl Klema, Chief, Disclosure Operations Section, Internal Revenue Service, (202) 566-3908.

SUPPLEMENTARY INFORMATION: The nature, purposes, and authority for this IRS computer matching activity are as follows:

Matches conducted pursuant to IRC 6103(l)(7)(D)(viii). Under subsection 6103(l)(7)(B) of the Internal Revenue Code, the Service is required, upon written request, to disclose current information from returns with respect to unearned income to any Federal, State, or local agency administering certain federally assisted needs-based programs. Subsection 6103(l)(7)(D) delineates the programs to which this rule applies. Section 8051 of the Omnibus Budget Reconciliation Act of 1990, amends subsection 6103(l)(7)(D) (by adding subparagraph (viii)) so as to require the IRS to disclose to VA unearned income information for purposes of determining eligibility for VA needs-based pension and parents' dependency and indemnity compensation and VA health-care services.

Return information from returns with respect to unearned income will be disclosed by the Service only for the purpose of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under the aforementioned programs.

The return information will be extracted on a monthly basis from the Internal Revenue Service Wage and Information Returns Processing File (Treas./IRS System 22.061 (IRP)) for the latest processing year. This file contains information returns filed by payers of income such as interest and dividends reported on Forms 1099-INT and 1099-DIV. VA records involved in the match are taken from VA Compensation, Pension, Education and Rehabilitation Records [VA 58 21/22].

Approval of the IRS computer matching programs conducted pursuant to IRC 6103(l)(7) was granted by the Department of the Treasury Data Integrity Board on June 6, 1990.

Fred T. Goldberg,

Commissioner of Internal Revenue.

Approved:

David M. Nummy,

Acting Assistant Secretary of the Treasury (Management).

[FR Doc. 91-15123 Filed 6-26-91; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

Merabank Federal Savings Bank; Appointment of Conservator (Revised)

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for New MeraBank Texas, FSB, El Paso, Texas, on May 31, 1991.

By the Office of Thrift Supervision.

Dated: June 17, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-15287 Filed 6-26-91; 8:45 am]

BILLING CODE 6720-01-M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 124
Thursday, June 27, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF AGRICULTURE

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2:00 p.m., July 2, 1991.

PLACE: Room 104–A Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of Open and Closed Meeting of February 12, 1991.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Docket GCZ–327 re: Research and Development Programs for 1991 and Subsequent Years.
4. Memorandum re: CCC Stocks Available for Increased Availability of Nonfat Dry Milk for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as amended, During Fiscal Year 1991.
5. Memorandum re: Use of Food Security Wheat Reserve Stocks During Fiscal Year 1991.
6. Resolution re: CZ–200, Resolution No. 28, Amendment 2, Ratification of Commodities Available for Public Law 480 During Fiscal Year 1991.
7. Docket CZ–200, Revision 5 re: Disposal of Commodity Credit Corporation Commodities and Materials.
8. Resolution re: Ratifications of Secretary's Authorization of the Market Promotion Program for Fiscal Year 1991.
9. Docket GCX–326 re: Market Promotion Program for Fiscal Year 1992 and Subsequent Years.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, D.C. 20013; telephone (202) 475–5490.

Dated: June 24, 1991.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 91–15451 Filed 6–25–91; 2:15 am]

BILLING CODE 3410–05–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in the Subject Matter of a Previously Announced Open Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matters are expected to be considered at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, June 25, 1991, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington D.C.:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Final amendments to Part 312 of the Corporation's rules and regulations, entitled "Assessment of Fees Upon Entrance to or Exit from the Bank Insuarnce Fund or the Savings Association Insurance Fund," which partially revise the method of computing entrance fees that must be paid by insured depository institutions participating in conversion transactions (transfers between the deposit insurance funds).

Memorandum and resolution re: FDIC appointment of FDIC as Receiver of Insured State Depository Institutions.

All previous announcements of the subject matters to be considered at that meeting are rescinded.

Dated: June 25, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–15419 Filed 6–25–91; 10:38 am]

BILLING CODE 6714–0–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in the Subject Matter of a Previously Announced Open Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matters are expected to be considered at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, June 25, 1991, in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington D.C.:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution: Final amendments to Part 312 of the Corporation's rules and regulations, entitled "Assessment of Fees Upon Entrance to or Exit from the Bank Insurance Fund or the Savings Association Insurance Fund," which partially revise the method of computing entrance fees that must be paid by insured depository institutions participating in conversion transactions (transfers between the deposit insurance funds).

Memorandum re: Policy Statement on Collateralized Letters of Credit and Collateralized Put Obligations.

All previous announcements of the subject matters to be considered at that meeting are rescinded.

Dated: June 24, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–15421 Filed 6–25–91; 10:39 am]

BILLING CODE 6714–0–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 26,851, June 11, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Wednesday, June 19, 1991.

STATUS: Closed.

CHANGES IN THE MEETING: Addition of the following closed items to the meeting:

FHLB Indemnification Agreements.

CRA LEGISLATIVE ACTIVITY.

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board; (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–15529 Filed 6–25–91; 10:40 am]

BILLING CODE 6725–01–M

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Corrections

Federal Register
Vol. 56, No. 124
Thursday, June 27, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN-91-006]

Revisions of User Fees for Cotton Classification, Testing and Standards

Correction

In rule document 91-13047 beginning on page 24671 in the issue of Friday, May 31, 1991, make the following correction:

On page 24672, in the first column, in the fourth complete paragraph, in the fourth line, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 91-14749 beginning on page 28371 in the issue of Thursday, June 20, 1991, make the following corrections:

On page 28372:

a. In the second column, in the third paragraph, in the first line, the *Docket Number* should read "91-083".

b. In the third column, in the first paragraph, in the first line, the *Docket Number* should read "91-084".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905-AD07

Health Professions Student Loan Program

Correction

In the issue of Tuesday, June 4, 1991, on page 25446, in the second column, in the correction of rule document 91-9751, the CFR title should have appeared as set forth above.

BILLING CODE 1505-01-D

federal register

Thursday
June 27, 1991

Part II

Office of Management and Budget

Proposed Revisions to Circular A-21; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Proposed Revisions to Circular A-21

AGENCY: Office of Management and Budget.

ACTION: Proposed revisions to Circular A-21.

SUMMARY: This notice offers interested parties an opportunity to comment on proposed revisions to Office of Management and Budget (OMB) Circular A-21, "Cost Principles for Educational Institutions."

This revision implements the previously stated intent of OMB to revise Circular A-21. On April 22, 1991, Director Richard Darman announced that OMB would move to impose additional new controls on Federal reimbursement to universities. On May 15, 1991, OMB published for comment at 56 FR 22618 the first proposal to amend Circular A-21. This notice contains the second proposed revision to Circular A-21.

In announcing this second proposal, Mr. Darman said: "America's university research enterprise is an indispensable contributor to U.S. competitiveness and to American leadership in science, engineering and technology. The Administration remains committed to funding a fair share of the costs of the research enterprise. But this share must not include excessive administrative costs. Abuses in cost recovery must be stopped. At the same time, since many of these abuses would not occur if there were agreed accounting standards, we must proceed immediately to define those standards."

DATES: Interested parties are invited to comment on these proposed changes. All comments should be received July 29, 1991.

ADDRESSES: Comments should be submitted to the Office of Management and Budget, Financial Management Division, room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Sheehan, Financial Management Division, Office of Management and Budget (telephone: 202-395-3050).

SUPPLEMENTARY INFORMATION: The following explains the major changes proposed to Circular A-21 in this notice.

1. A new section is added to the Circular placing a cap of 26 percent of modified total direct costs as reimbursement for administrative costs. Those at or below the cap will continue to be reimbursed at their current negotiated rate. The cap will apply to sponsored agreements awarded or amended (including continuation and renewal awards) with effective dates beginning after September 30, 1991. Generally, no changes in accounting or cost allocation methods, which would shift costs from indirect to direct or from administrative costs to other indirect costs, are allowed. However, cognizant Federal agencies are authorized to permit changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions. The adjustment of indirect cost rates, where necessary, will be made by the cognizant Federal agency based on information in its files.

2. Circular A-21 is amended to clarify existing requirements and clearly stipulate that the Federal Government will not in any way subsidize indirect costs of non-Federal research.

3. Circular A-21 is amended to provide for the establishment of a dedicated facilities fund to be used only for buildings and equipment supporting organized research.

4. A new section is added to the Circular to establish a consistent policy for adjustment of indirect cost rates based on a proposal(s) subsequently found to have contained unallowable costs.

Executive Order No. 12291

OMB has determined that the proposed revisions to Circular No. A-21 do not qualify as a "major rule" under the criteria in Executive Order No. 12291, "Federal Regulation."

The principal effect of the proposed revisions will be to require that Federal agencies ensure that Federal grant and contract funds are not used for purposes that are contrary to specific legislative prohibitions or that have been determined to be not necessary to carry out the program's objectives. The costs to implement the new revisions would be primarily accounting costs for grantees, contractors, and Federal agencies. These new costs, however, are minimal in both absolute and relative amounts, and, in many instances, the revisions should reduce compliance costs. Furthermore, much of the accounting work that the revision would require is already mandated by other sections of Circular No. A-21.

Susan Gaffney,

Acting Assistant Director, Financial Management Division.

Limitation on Administrative Costs

A new section number 6 is added to section G.

6. *Limitation on reimbursement of administrative costs.*

a. Notwithstanding the provisions of G.1.a, the administrative costs charged to sponsored agreements awarded or amended (including continuation and renewal awards) with effective dates beginning after September 30, 1991, shall be limited to 26% of modified total direct costs (as defined in section G.2) for the total of General Administration and General Expenses, Departmental Administration and Sponsored Projects Administration (including their allocable share of depreciation and/or use allowances, operation and maintenance expenses, and fringe benefit costs as provided by sections F.3.a, f.4.a.(3), and F.5.a).

b. Existing indirect cost rates that affect periods after September 30, 1991, shall be unilaterally amended by the cognizant Federal agency to reflect the cost limitation in subsection a above.

c. Institutions should not change their accounting or cost allocation methods which were in effect on May 1, 1991, if the effect is to: (i) change the charging of a particular type of cost from indirect to direct, or (ii) reclassify costs or increase allocations from the administrative pools identified in subsection a above to the other indirect cost pools or fringe benefits. Cognizant Federal agencies are authorized to permit changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

Research Allocations

A new subsection C is added to section C.4, *Allocable costs.*

c. Any costs allocable to activities sponsored by industry or foreign governments may not be shifted to federally-sponsored agreements.

Section G.1.a is amended by renumbering the existing text G.1.a.(1) and G.1.a.(2) and adding the new subsection G.1.a.(3). This section will now read as follows:

G. *Determination and application of indirect cost rate or rates.*

1. Indirect cost pools.

a. (1) Subject to subsection b, the separate categories of indirect costs allocated to each major function of the institution as prescribed in Section F shall be aggregated and treated as a common pool for that function. The amount in each pool shall be divided by the distribution base described in section G.2 to arrive at a single indirect cost rate for each function.

(2) The rate for each function is used to distribute indirect costs to individual sponsored agreements of that function. Since a common pool is established for each major function of the institution, a separate indirect cost rate would be established for each of the major functions described in section B.1 under which sponsored agreements are carried out.

(3) Each institution's indirect cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect cost pools, as described in sections E.2 and F.1 through F.7, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in section G.2) for each major function (organized research, instruction, etc., as described in section B.1) shall contain all the programs or activities which utilize the indirect costs allocated to that major function. At the time an indirect cost proposal is submitted to a Federal cognizant agency, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

Dedicated Facilities Fund

A new subsection 7 is added to section G.

7. *Depreciation and use allowance rate.* When the cognizant agency determines an indirect cost rate, the portion of that rate which is for depreciation and/or use allowances for buildings and equipment shall be identified for use in determining the portion of Federal indirect cost payments which are to be set aside in accordance with the provisions of section J.9.f.

A new subsection f is added to section J.9.

f. This section applies to the largest college and university recipients of Federal research and development funds as displayed in Attachment A.

(1) The portion of Federal indirect cost payments made for depreciation or use allowances under sponsored agreements, consistent with section G.7, shall be identified and promptly set aside in a separate fund. This fund shall be prudently invested and all earnings credited thereto. This fund shall be used only for: (a) liquidation of debts incurred to acquire assets that are used directly for research activities, or (b) payments to acquire, repair, renovate, or improve buildings or equipment directly related to research. For buildings or equipment not exclusively used for direct research activity, only appropriately proportionate amounts may be expended from the fund.

(2) Reports on fund activity and on compliance with subsection (1) above shall be submitted and certified to (as provided for in section K.2.b) as part of each indirect cost proposal to the cognizant Federal agency. Expenditures from the fund which are inconsistent with subsection (1) shall be disallowed and must be paid to the Federal Government with interest, consistent with the applicable Federal agency regulations.

Adjustment of Indirect Cost Rates

A new subsection 9 is added to section C.

9. *Adjustment of previously negotiated indirect cost rates containing unallowable costs.*

Negotiated indirect cost rates based on a proposal later found to have included costs that are unallowable as specified by law, section J of this Circular, or the terms and conditions of sponsored agreements shall be adjusted, or a refund shall be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

a. For rates covering a future fiscal year of the institution, the unallowable costs will be removed from the indirect cost pools and the rates appropriately adjusted.

b. For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

c. For rates covering the current period, either a rate adjustment or a refund, as described in subsections a and b, shall be required by the cognizant agency. The choice of method shall be at the discretion of the cognizant agency, based on its judgment as to which method would be most practical.

d. The amount of unallowable costs included in each year's rate will be assumed to be the same as the amount in the base year proposal used to establish the rate.

Attachment A—List of Colleges and Universities Subject to Section J.9.F of Circular A-21

1. Johns Hopkins University
2. Stanford University
3. Massachusetts Institute of Technology
4. University of Washington
5. University of California-Los Angeles
6. University of Michigan
7. University of California-San Diego
8. University of California-San Francisco
9. University of Wisconsin-Madison
10. Columbia University
11. Yale University
12. Harvard University
13. Cornell University
14. University of Pennsylvania
15. University of California-Berkeley
16. University of Minnesota
17. Pennsylvania State University
18. University of Southern California
19. Duke University
20. Washington University
21. University of Colorado
22. University of Illinois-Urbana
23. University of Rochester
24. University of North Carolina-Chapel Hill
25. University of Pittsburgh
26. University of Chicago
27. University of Texas-Austin
28. University of Arizona
29. New York University
30. University of Iowa
31. Ohio State University
32. University of Alabama-Birmingham
33. Case Western Reserve
34. Baylor College of Medicine
35. California Institute of Technology
36. Yeshiva University
37. University of Massachusetts
38. Vanderbilt University
39. Purdue University
40. University of Utah
41. Georgia Institute of Technology
42. University of Maryland-College Park
43. University of Miami
44. University of California-Davis
45. Boston University
46. University of Florida
47. Carnegie-Mellon University
48. Northwestern University
49. Indiana University
50. Michigan State University
51. University of Virginia
52. University of Texas-SW Medical Center Dallas
53. University of California-Irvine
54. Princeton University
55. Tulane University of Louisiana
56. Emory University
57. University of Georgia
58. Texas A & M University-campuses
59. New Mexico State University
60. North Carolina State University-Raleigh
61. University of Illinois-Chicago
62. Utah State University
63. Virginia Commonwealth University
64. Oregon State University
65. SUNY-Stony Brook
66. University of Cincinnati
67. CUNY-Mount Sinai School of Medicine
68. University of Connecticut

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69. Louisiana State University
70. Tufts University
71. University of California-Santa Barbara
72. University of Hawaii-Manoa
73. Rutgers State University of New Jersey
74. Colorado State University
75. Rockefeller University
76. University of Maryland-Baltimore
77. Virginia Polytechnic Institute & State University
78. SUNY-Buffalo
79. Brown University
80. University of Medicine & Dentistry of New Jersey
81. University of Texas-Health Science Center San Antonio
82. University of Vermont
83. University of Texas-Health Science Center Houston
84. Florida State University
85. University of Texas-Md Anderson Cancer Center
86. University of Kentucky
87. Wake Forest University
88. Wayne State University
89. Iowa State University of Science & Technology
90. University of New Mexico
91. Georgetown University
92. Dartmouth College
93. University of Kansas
94. Oregon Health Sciences University
95. University of Texas-Medical Branch-Galveston
96. University of Missouri-Columbia
97. Temple University
98. George Washington University
99. University of Dayton

[FR Doc. 91-15361 Filed 6-26-91; 8:45 am]

BILLING CODE 3110-01-M

federal register

Thursday
June 27, 1991

Part III

Department of Commerce

International Trade Administration

Consortia of American Businesses in Eastern Europe Grant Program; Notice

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DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 910637-1137]

Consortia of American Businesses in Eastern Europe

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a new Business Consortia Grant Program to assist U.S. firms establishing a commercial presence in Eastern Europe.

SUMMARY: A pilot program has been designed to assist U.S. firms in establishing a commercial presence in Eastern Europe through the formation of Consortia of American Businesses in Eastern Europe (CABEE). CABEEs are private and public non-profit organizations which will be formed to promote U.S. goods and services in Eastern Europe. The participants in these consortia will be for-profit U.S. firms interested in trade with Eastern Europe. CABEEs will establish offices and staff in Eastern Europe to provide a broad range of services for their member firms, including market research, sales promotion, and other trade facilitation services. Grant funds will be awarded as seed money to pay the start-up costs of establishing and operating CABEE offices in Eastern Europe. CABEEs can be organized along a single industry line or represent more than one business sector. There is no limitation on the number of for-profit firms that a consortium may represent.

SUPPLEMENTARY INFORMATION:

Program Objectives

CABEEs are intended to strengthen the U.S. business presence in Eastern Europe. They will provide direct trade facilitation support for their member firms, stimulating increased U.S. exports, joint ventures, and U.S. direct investment in Eastern Europe. CABEEs will promote two-way trade and will be expected to support development of counterpart host country trade associations and/or other organizations that can respond to the business opportunities represented through the consortia.

Funding Availability

Pursuant to the provision headed section (a)(6) under the heading Assistance for Eastern Europe of title II of the Foreign Operations, Export Financing and Related Programs Appropriation Act, 1991, Public Law 101–513 and section 632(a) of the Foreign Assistance Act of 1961, as amended, funding for the program will come from the Agency for International Development. Commerce will administer the program on a pilot basis pursuant to the authority contained insection 635(b) of the Foreign Assistance Act of 1961, as amended. The total amount of grant funds available for the pilot program is $2.5 million.

Funding Instrument and Project Duration

The Federal grant contribution will not exceed 50 percent of proposed eligible project costs with a maximum grant amount of $500,000 per consortium. Applicants are expected to provide the remaining share, preferably in cash. Federal funding will be a one-time injection with a grant period not to exceed three years. Assistance will be available for the period of time required to complete the scope of work but not to exceed three years from the date of the grant offer.

Request for Applications

Competitive Application kits (Application Kits) #180–0028–1 will be available from Commerce starting June 28, 1991.

To obtain a copy of the Application Kit #180–0028–1, please send a written request with two self-addressed mailing labels to Mr. George Muller, Director, Office of Export Trading Company Affairs, room 1800 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Only written requests will be honored; telephone, fax, or walk-in requests will not be accepted. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. Applications (Standard Form 424 (Rev. 4–88)) are to be received at the address designated in the Application Kit no later than 3 p.m. e.d.t. August 13, 1991. Subject to the availability of funds, awards will be made prior to the end of 1991.

Eligibility

Eligible applicants for the Business Consortia Grant Program will be private and public non-profit U.S. organizations including non-profit corporations, associations and public sector entities. Within the industry or industries represented by the consortium, membership in a consortium must be available on a non-discriminatory basis. For example, membership in a trade association cannot be a requirement for membership in a consortium. Only applicants proposing to open an office in one or more of the following East European countries are eligible for this program: Poland, Hungary, Czechoslovakia, Bulgaria, Romania, and Yugoslavia. Each application will receive an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the program. Applications will be evaluated on a competitive basis in accordance with the selection criteria set below.

Selection Criteria

Priority consideration will be given to those CABEE proposals which:

1. Focus on Poland, Hungary, and Czechoslovakia as the geographic target of commercial activities.
2. Involve or relate to the following industries: Environment, energy, telecommunications, agriculture and agribusiness, and housing. Marketability of the products and/or services in the applicable East European countries will be taken into account in evaluating applications.
3. Are proposed by applicants with the capacity, qualifications and staff necessary to successfully undertake the intended activities.
4. Demonstrate the capability and intent of enlisting small and mid-sized U.S. firms as CABEE members.
5. Provide a reasonable assurance that the proposed project can be continued on a self-sustained basis after expiration of the Federal grant.
6. Contain a commitment to encourage, support and assist development of indigenous counterpart organizations (e.g. trade associations) and a well reasoned explanation as to how that will be accomplished.
7. Present a realistic work plan detailing the services it will provide to the CABEE members.
8. Present a reasonable, itemized budget for the proposed activities.

Selection criteria 1–3 will be weighted equally but will be accorded a greater degree of importance than the remaining criteria. Selection criteria 4–8 will be weighted equally.

Notifications

All applicants are advised of the following:

1. Applicants that have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.
2. 15 CFR part 28 prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or cooperative agreement. A Certification Regarding Lobbying and the SF–LLL, Disclosure of Lobbying Activities (if applicable), is required for awards exceeding $100,000.
3. Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a prior condition to receiving a grant or cooperative agreement.
4. A false statement on the application may be grounds for denial or termination of funds.
5. Awards under this program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.
6. All recipients are advised of the applicability of Executive Order 12372, Intergovernmental Review of Federal Programs.
7. The Standard Form 424 (Rev. 4–88) mentioned in this Notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

Dated: June 24, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-15301 Filed 6-26-91; 8:45 am]

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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52
Federal Acquisition Regulation; Contract Award-Sealed Bidding-Construction; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 91-31]

Federal Acquisition Regulation; Contract Award-Sealed Bidding-Construction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering amending the provision at FAR 52.214-19, Contract Award-Sealed Bidding-Construction, to include the language regarding unbalanced bidding now contained in the provisions at 52.214-10, Contract Award-Sealed Bidding, and 52.215-16, Contract Award. This will make the provision at 52.214-19 consistent with the provisions at 52.214-10 and 52.215-16.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 26, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4041, Washington, DC 20405. Please cite FAR Case 91-31 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 91-31.

SUPPLEMENTARY INFORMATION:

A. Background

A previous amendment to the FAR amended the provisions at 52.214-10 and 52.215-16 to include the concept of unbalanced bidding. At that time, however, the provision at 52.214-19 was not amended. The councils are proposing to add the unbalanced bidding concept to the provision at 52.214-19 in order to provide coverage for those instances where solicitations for construction could result in unbalanced bidding.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the proposed change has already been implemented for other sealed bid and negotiated contracts with no impact on the small business community. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 91-31) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement; Contract Award-Sealed Bidding-Construction.

Dated: June 20, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.214-19 is amended by removing from the provision title the date "(FEB 1988")" and inserting in its place "(DATE)"; and by adding paragraph (d) to the provision to read as follows:

52.214-19 Contract Award-Sealed Bidding-Construction.

* * * * *

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

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Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 227

Endangered and Threatened Species; Proposed Threatened Status for Snake River Spring, Summer, and Fall Chinook Salmon; Proposed Rules

Lower Columbia River Coho Salmon; Notice

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 910647-1147]

Endangered and Threatened Species; Proposed Threatened Status for Snake River Spring and Summer Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS is issuing a proposed determination that the Snake River spring and summer chinook salmon (*Oncorhynchus tshawytscha*) is a "species" under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.* (ESA), because of compelling evidence that Snake River spring/summer chinook salmon are reproductively isolated from Snake River fall chinook salmon and because there is a high probability of substantial gene flow between the spring and summer chinook salmon forms. Further, NMFS proposes to list the Snake River spring/summer chinook salmon as threatened under the ESA. Snake River spring/summer chinook salmon have declined to low numbers of fish that are thinly spread over a large and complex river system. Hydropower development, water withdrawal and diversions, water storage, harvest, inadequate regulatory mechanisms, and artificial propagation are factors contributing to the decline and represent a continued threat to the Snake River spring/summer chinook salmon's existence. Should the proposed listing be made final, protective regulations under the ESA would be put into effect and a recovery program would be implemented.

DATES: Comments from all interested parties must be received by August 26, 1991. Public hearings are scheduled as follows:

1. July 30, 1991, 7 p.m. to 9:30 p.m., Portland, Oregon;
2. July 31, 1991, 7 p.m. to 9:30 p.m., Seattle, Washington;
3. August 1, 1991, 7 p.m. to 9:30 p.m., Richland, Washington;
4. August 7, 1991, 7 p.m. to 9:30 p.m., Boise, Idaho.

ADDRESSES: Comments on this proposed rule should be sent to the Environmental and Technical Services Division, NMFS, Northwest Region, 911 NE. 11th Avenue, suite 620, Portland, OR 97232, or provided at any one of the public hearings. The hearings will be held at the following locations:

1. 1st Floor West Side, Federal Complex, 911 NE. 11th Ave., Portland, Oregon;
2. NOAA, Western Administrative Support Center, Building 9 Auditorium, 7600 Sand Point Way, NE., Seattle, Washington;
3. Richland Federal Building Auditorium, 825 Jadwin Avenue, Richland, Washington;
4. Boise Interagency Fire Center Auditorium, 3905 Vista Ave., Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Tracey Vriens, Environmental and Technical Services Division, NMFS, Portland, Oregon, 503-230-5420 or FTS-429-5420.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1990, NMFS received petitions from Oregon Trout, with co-petitioners Oregon Natural Resources Council, Northwest Environmental Defense Center, American Rivers, and Idaho and Oregon Chapters of American Fisheries Society to list the Snake River spring chinook salmon and the Snake River summer chinook salmon under the ESA. NMFS published a notice on September 11, 1990, (55 FR 37342) announcing that the petitions presented substantial scientific information indicating that the listings may be warranted and requesting information from the public.

NMFS has reviewed all available scientific information pertaining to the status of Snake River spring/summer chinook salmon. To assist in this review, NMFS convened a Technical Committee to provide information and to review and comment on the data in the record. The Technical Committee consists of representatives from Federal and State fisheries agencies, Indian tribes, industries, professional societies, and public interest groups that have technical expertise relevant to Snake River spring/summer chinook salmon.

Status Review for Snake River Spring/Summer Chinook Salmon

The NMFS Northwest Region Biological Review Team prepared a "Status Review for Snake River Spring/Summer Chinook Salmon" (Matthews and Waples 1991) providing more detailed information, discussion and references. This status review is available upon request (see ADDRESSES), and is summarized below.

Ecosystem

The Snake River is the major tributary of the Columbia River, entering the Columbia 324.3 miles (522 kilometers) upstream from the Pacific Ocean. The Snake River contains five principal subbasins that currently produce spring- and/or summer-run chinook (CBFWA 1990). Three of the five subbasins, the Clearwater, Grande Ronde, and Salmon Rivers, are large, complex systems; the other, the Tucannon and Imnaha Rivers, are small systems in which the majority of salmon production is in the mainstream rivers (Matthews and Waples 1991). In addition to the five major subbasins, three small streams, Asotin, Granite, and Sheep Creeks, that enter the Snake River between Lower Granite and Hell's Canyon Dams, provide small spawning and rearing areas (CBFWA 1990).

The habitat occupied by spring/summer chinook salmon in the Snake River in unique to the biological species. Snake River spring/summer chinook salmon spawn at higher elevations, typically about 5,000-7,000 feet (1,500 to 2,133 meters), than any other populations of the species. They also migrate farther from the ocean, 600 to 900 miles (965 to 1,448 km.), than most other chinook salmon populations. Long migrating populations are also found in the Fraser and Yukon Rivers, and perhaps in the Soviet Union, but these populations do not spawn at such high elevations.

Spawning habitat in the Snake River is distinctive in having large areas of open, low relief streams at high elevation. Habitat, particularly in the Salmon River, is among the most productive for the species. The Salmon River (tributary to the Snake River) alone once produced approximately 40 percent of the spring/summer chinook salmon returning to the Columbia River. The Snake River flows through terrain that is warmer and drier on an annual basis than the upper Columbia River Basin or other drainages farther north. Geologically, the land forms are older and much more eroded than most other chinook salmon habitat. Collectively, these environmental factors result in a river that is warmer and more turbid, with higher ph and alkalinity, than most other within the biological species' range.

Life History

Adult chinook salmon migrating upstream past Bonneville Dam from March-May, June-July, and August-October are categorized as spring, summer, and fall run fish, respectively. In general, the habitats utilized for spawning and early juvenile rearing are different among the three forms. Spring chinook salmon tend to use small, higher elevation streams, summer chinook salmon tend to use mid-elevation

streams, and fall chinook salmon use larger, lower elevation mainstem streams. However, in the Snake River, summer chinook salmon inhabit smaller, higher elevation tributaries more typical of spring chinook salmon habitat (Matthews and Waples 1991). In contrast, upper Columbia River summer chinook salmon spawn in larger, lower elevation streams more characteristic of fall chinook salmon habitat. Juvenile behavior also suggests that Snake River summer chinook salmon are more closely related to Snake River spring chinook salmon than to Snake River fall chinook salmon, whereas the juvenile behavior of the upper Columbia River summer chinook salmon is more closely aligned to upper Columbia River fall chinook salmon. Snake River spring and summer chinook and upper Columbia River spring chinook salmon migrate seaward as yearling smolts (Matthews and Waples 1991 *citing* Schaeck *et al.* 1966). Upper Columbia River summer and fall chinook salmon migrate seaward as subyearlings. In addition, genetic analysis indicates that Snake River spring/summer chinook salmon are very similar, but, as a group, are quite distinct from Snake River fall chinook salmon (Matthews and Waples 1991).

The spawning age of Snake River spring/summer chinook salmon varies by stream and by sex, but the data indicate that most return after 2 or 3 years. the fecundity of the Snake River spring/summer chinook salmon varies; for example, in the Tucannon River, there was a mean fecundity of 3,918 and 4,086 eggs per female in 1986 and 1987, respectively (CBFWA 1990) and in the Grande Ronde River, a mean of 3,715 and 3,462 eggs per female in 1983 and 1984, respectively (Howell *et al.* 1985). Egg to smolt survival also varies, and the data are limited. However, in the Tucannon River, the survival rate was 13.0 percent for the 1985 brood year and 14.2 percent for the 1987 brood year (Bugert *et al.* 1990). In the Grande Ronde River, this rate varied from 0.4 to 8 percent from 1985 through 1989 (Howell *et al.* 1985).

There are no data available for smolt to adult survival for individual streams or drainages. However, Raymond (1979) estimated a 0.6-4.4 percent smolt to adult survival rate for wild smolts arriving at Ice Harbor Dam for 1966-1975. These estimates do not take into account any smolt mortality between rearing areas and the uppermost Snake River dam (Ice Harbor Dam 1962; Lower Monumental Dam 1968; Little Goose Dam 1970-1974).

Outmigrating Snake River spring/summer chinook salmon are present at lower Granite Dam (the first major dam encountered by the outmigrants) generally from early April through June.

Consideration as a "Species" Under the ESA

To consider the Snake River spring/summer chinook salmon for listing, they must qualify as a "species" either together or separately, under the ESA. The ESA defines a "species" to include any "distinct population segment of any species of vertebrate. . . which interbreeds when mature." NMFS published an interim policy (March 13, 1991; 56 FR 10542) on how it will apply the ESA species definition in evaluating Pacific salmon. A salmon population will be considered distinct, and hence a species under the ESA, if it represents an evolutionarily significant unit (ESU) of the biological species. The stock must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion is met if the population contributes substantially to the ecological/genetic diversity of the species as a whole. Further guidance on application of this policy is contained in the NMFS paper "Definition of Species under the Endangered Species Act: Application to Pacific Salmon" (Waples 1991).

Spring/summer run fish have traditionally been considered separate runs based on the difference in timing of adult returns to spawning areas. In determining whether Snake River spring/summer chinook salmon should be considered together or separately as a species as defined by the ESA, it is necessary to determine whether fish with different run-time designations are reproductively isolated. Schaeck *et al.* (1966) and Utter *et al.* (1989) suggest that spring-, summer-, and fall-run chinook salmon probably do not represent separate lineages in the Pacific Northwest. They found that, in general, geographic proximity was a more important factor than run-timing in predicting similarities between stocks. This suggests that run-time differences may have evolved independently following colonization of a new area (Matthews and Waples 1991). However, in spite of this general pattern, there are pronounced genetic (Schaeck *et al.* 1966; Utter *et al.* 1989) and life history (Matthews and Waples 1991) differences between spring and fall chinook salmon in the Snake River.

The relationship between spring/summer run fish in the Snake River is not so clear. Even though some spring/summer populations appear to be substantially reproductively isolated, this isolation may be due to geographical separation as much as to temporal differences in spawn timing. Furthermore, reproductive isolation could be as strong (or stronger) between populations with similar run-timing from different drainages.

The key to understanding the evolutionary significance of spring and summer run-timing is the relationship between the two forms in streams where they occur together (Matthews and Waples 1991). Matthews and Waples (1991) discuss two hypotheses that could explain the presence of both forms in the same stream: (1) the two forms arose from a single colonization event by one of the forms or (2) spring and summer-run fish are two independent evolutionary units, and the reason both forms are found in the same stream is that, in these cases, two colonization events occurred. Presently, there is insufficient information to determine which of these hypotheses is true, or whether hypothesis 1 is true in some cases and hypothesis 2 is true in others.

Because of compelling evidence that Snake River fall chinook salmon are reproductively isolated from spring/summer chinook salmon and because there is a probability of substantial levels of gene flow between the spring/summer chinook salmon forms in at least some localities, NMFS is considering Snake River spring/summer chinook salmon as a unit. This decision, however, does not imply that the two forms are not both important; the presence of fish with a spectrum of run and spawn timing is crucial to the long-term health and viability of Snake River chinook salmon.

To determine whether Snake River spring/summer chinook salmon consist of one or multiple ESUs, the criteria of reproductive isolation and substantial contribution to ecological/genetic diversity of the biological species are important. The most compelling evidence of an anadromous salmonid population's reproductive isolation is the ability of individuals to return to their natal streams to reproduce. This is particularly true for upriver populations, such as Snake River spring/summer chinook salmon (Chapman *et al.* 1991). The great distances that these fish must travel (over 324 miles (522 km)) in fresh water to reach their natal streams reduces the likelihood of straying from

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other major river systems outside the Snake River. All available information suggests that if an adult spring or summer chinook salmon enters the Columbia River, it will most likely spawn only in its natal stream (Matthews and Waples 1991).

Recent studies (Schreck 1986; Waples *et al.* 1990) examining the genetic relationships among Columbia River Basin chinook salmon stocks indicate that there is little, if any, genetic exchange between Snake River spring/summer-run chinook salmon and lower and mid-Columbia River spring chinook salmon and upper Columbia River summer chinook salmon (Matthews and Waples 1991).

The available information also indicates that Snake River spring/summer chinook salmon are ecologically/genetically distinct. The fact that juvenile migrational behavior is the same for spring/summer chinook salmon in the Snake River and is different for the same forms in the upper Columbia River, strongly implies ecological/genetic adaptiveness. The precision required to migrate great distances from different natal streams and tributaries and return with high fidelity and exact timing to start the next generation 1 to 3 years later speaks of biological entities that are highly adapted to their particular environments. Protein electrophoresis shows clear differences between Snake River spring/summer chinook salmon and other chinook salmon populations in the Columbia River Basin.

Snake River spring/summer chinook salmon as a group meet both criteria to be considered a "species" under the ESA; they are strongly isolated reproductively from other conspecific population units and they contribute substantially to the ecological/genetic diversity of the biological species. While more than one ESU may exist within the Snake River Basin, the data presently available are not sufficient to clearly demonstrate the existence of multiple ESUs, or to define their boundaries. Thus, NMFS is proposing that the Snake River spring/summer chinook be considered as one ESU of the biological species *O. tshawytscha* under the ESA. NMFS recognizes that there is evidence of important differences between some population segments within the Snake River Basin; therefore, NMFS emphasizes that the proposed ESU's viability is strongly dependent on the continued existence of healthy populations distributed throughout the area of the ESU. As more data become available, smaller ESUs within the Snake River ESU may be defined.

In determining the nature and extent of the ESU for Snake River spring/summer chinook salmon, it is also necessary to consider the effects of artificial propagation and transfers. In general, introduced salmon populations will not be considered for protection under the ESA, and changes caused by artificial propagation or hybridization may also erode qualities by which a population is recognized as distinct (Waples 1991). The extent to which these efforts have altered the genetic makeup of indigenous populations is not understood fully. Hindar *et al.* (in press) found evidence, in some cases, that hatchery-reared fish had interbred with native fish, but they also found cases in which repeated supplementation had no detectable genetic effect on the indigenous population. In the Snake River, there are a number of streams without any recorded history of outplanting, others have been planted with only minimal numbers of nonindigenous fish, and others have had extensive stock transfers and evidence of hybridization (for more detail, see ETSD 1991). Presumably, the native fish in streams with little or no outplanting retain essentially unchanged genetic characteristics of the native populations.

One area for which the evidence of stock transfers and hybridization is overwhelming is the Clearwater River. Indigenous chinook salmon populations were virtually, if not completely eliminated by the Lewiston Dam (1927–1940). Subsequent efforts to restore the runs included transfer of eggs from the Salmon River subbasin and massive outplants of juveniles from hatcheries throughout the Columbia River Basin. Descendants of these fish of mixed, non-native origin are not considered part of the ESU for Snake River spring/summer chinook salmon.

Distribution and Abundance

Historically, it is estimated that 44 percent of the combined Columbia River spring/summer chinook salmon returning adults entered the Salmon River (Fulton 1968). Matthews and Waples (1991) combined a number of estimates (Fulton 1968; Chapman 1986; CBFWA 1990) and concluded that during some years in the late 1800s, the Snake River produced in excess of 1.5 million spring/summer chinook salmon. From 1950 through 1980, the abundance of adult spring/summer chinook salmon had declined to an average of 125,000 per year (Fulton 1968). Since the 1960s, counts at Snake River dams have declined considerably, from an average at Ice Harbor Dam of 58,798 fish during 1962 through 1970, to a low of 11,855 in 1979. Counts gradually increased over the next 9 years, peaking at 42,184 in 1988. However, in 1989 and 1990, counts dropped to 21,244 and 26,524 fish, respectively. These numbers are illustrative of population trends, but are not indicative of wild fish abundance, because adult counts at dams have been confounded by returns of hatchery-reared fish since 1967.

Matthews and Waples (1991) estimated the abundance of wild fish going over the uppermost Snake River dam (1968—Ice Harbor Dam; 1969—Lower Monumental Dam; 1970–74—Little Goose Dam; and 1975–90—Lower Granite Dam) utilizing an expansion factor based on the relationship between adult counts at the uppermost dam and redd counts in index areas prior to hatchery influence. Redd counts are available since 1957 from all Snake River index areas except the Grande Ronde River, for which enumeration began in 1964. Using this method, the estimated number of wild adult spring/summer chinook salmon passing over Lower Granite Dam averaged 9,674 fish from 1980 through 1990, with a low count of 3,343 fish in 1980 and a high count of 21,870 fish in 1988.

Snake River redd counts in index areas provide the best indicator of trends and status of the wild spring/summer chinook salmon population. In 1957, over 13,000 redds were counted in index areas excluding the Grande Ronde River. By 1964, including the counts in Grande Ronde River, the annual count in index areas was 8,542 redds. Over the next 16 years, annual counts in all areas declined steadily, reaching a minimum of 620 redds in 1980. Annual counts increased gradually over the next 8 years, reaching a peak of 3,395 redds in 1988. However, in 1989 and 1990, counts dropped again to 1,008 and 1,224, respectively.

The abundance of wild Snake River spring/summer chinook salmon has declined more at the mouth of the Columbia River than the redd trends indicate (Chapman *et al.* 1991). Prior to curtailment in the mid-1970s, the in-river fisheries in the lower Columbia River below McNary Dam harvested 20 to 88 percent of these fish annually (Raymond 1988). Therefore, any analysis of population decline using redd counts provides a conservative approximation of the actual decline in abundance of adults.

Factors relevant to the determination of whether a "species" is threatened or endangered include current and historical abundance, population trends, the distribution of fish in space and time, and other information indicative of the health of the population. Nearly 95 percent of the total reduction in estimated abundance occurred prior to the mid-1980s. Over the last 30–40 years, the remaining population was further reduced nearly ten-fold. Currently, the abundance of these fish is about 0.5 percent of the estimated historical abundance. Furthermore, the 1990 (1,224) redd count in index areas represents only 14.3 percent of the 1964 count (8,542).

Although the data suggest that several thousand wild spring/summer chinook salmon currently return to the Snake River each year, these fish are thinly spread over a large and complex river system. In cases where significant population subdivision has occurred within the Snake River Basin, the size of some local populations have declined to levels at which risks associated with inbreeding, difficulty of finding spawning mates, and other random factors become important. Short-term projections for Snake River spring/summer chinook salmon are not optimistic. Based upon the lowest return on record of jack (precocious male salmon that return after 1 year of ocean residence) spring/summer chinook salmon return to Lower Granite Dam in 1990 (357 compared to 2,451 in 1989), adult and redd count are expected to drop considerably over the next 2 years. Furthermore, the recent series of drought years severely reduced the number of outmigrating juveniles that must produce returning adults in the next few years.

Summary of Factors Affecting the Species

Section 2(a) of the ESA states that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation. The ESA requires a determination whether a species is threatened or endangered because of any of the five factors identified in section 4(a)(1). These factors, as they apply to Snake River spring/summer chinook salmon, are discussed extensively in the NMFS' "Supplementary Information on Factors Causing Decline for the Notice of Proposed Rulemaking, Snake River Spring/Summer Chinook Salmon" (ETSD 1991). This report is available upon request (see **ADDRESSES**). A brief description of these factors follows.

A. The present or threatened destruction, modification, or curtailment of its habitat or range

Hydropower development has resulted in blockage and inundation of habitat, turbine-related mortality of juvenile fish, increased delay of juvenile migration through the Snake and Columbia Rivers, increased predation on juvenile salmon due to reimpoundments in reservoirs and increased predator populations due to ideal foraging areas created by impoundments, and increased delay of adults on their way to spawning grounds. Water withdrawal and storage, irrigation diversions, siltation and pollution from sewage, farming, grazing, logging, and mining also degraded the Snake River spring/summer chinook salmon's habitat.

B. Overutilization for commercial, recreational, scientific, or educational purposes

Historically, combined ocean and river harvest rates of Snake River spring/summer chinook salmon exceeded 80 and sometimes 90 percent (Ricker 1959). However, current ocean and river harvest levels have been greatly curtailed in the commercial, recreational, and Indian fisheries due to low escapements and efforts to protect these runs. The majority of current harvest occurs in the Columbia River net fisheries. Recreational fishing in the Columbia River is second in significance (Beckman 1991). Columbia River fisheries directed toward other species can also impact significant numbers of spring/summer chinook salmon (ODFW and WDF 1989).

C. Disease or predation

Spring/summer chinook salmon are exposed to numerous bacterial, protozoan, viral, and parasitic organisms; however, these organisms' impacts on Snake River spring/summer chinook salmon are largely unknown.

Predators, particularly northern squawfish, *Ptychocheilus oregonensis*, and avian predator populations have increased due to hydroelectric development that created impoundments providing ideal foraging areas for the predators. Turbulent conditions in turbines, dam bypasses, and spillways have increased predator success by stunning or disorienting passing juvenile salmon migrants.

Marine mammal numbers, especially harbor seals and California sea lions, are increasing on the West Coast and increases in predation by pinnipeds have been noted in all Northwest salmonid fisheries. However, the extent to which predation is a factor causing the decline of spring/summer chinook salmon is unknown.

D. Inadequacy of existing regulatory mechanisms

A wide variety of Federal and state laws and programs have affected the abundance and survival of anadromous fish populations in the Columbia River. However, they have not prevented the decline of Snake River spring/summer chinook salmon. Several of the more pertinent laws are summarized in the Factors Report.

E. Other natural and manmade factors

Drought is the principal natural condition that may have contributed to reduced spring/summer chinook salmon production. Annual mean streamflows for the 1987 water year were generally less than ever recorded for many streams since the late nineteenth century (Columbia River Water Management Group 1988). The 1988 water year became the fourth consecutive year of drought conditions in the Snake River Basin (Columbia River Water Management Group—in press).

Artificial propagation has, in some cases, impacted the Snake River spring/summer chinook salmon. Potential problems associated with hatchery programs include genetic impacts on indigenous wild populations from stock transfers and reduced natural production due to collection of wild adults for hatchery brood stocks. Several hatchery brood stocks were initiated, at least in part, by trapping wild fish, and native returns are still utilized for a portion of their brood stock. In recent years, at least one hatchery has produced less than one adult for each wild fish collected.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range; and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Based on its assessment of the best scientific and commercial information available, NMFS is issuing a proposed determination that the Snake River spring/summer chinook salmon is a "species" under the ESA. This collective evidence does not suggest that the ESU is in danger of extinction throughout a

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significant portion of its range, but the ESU may reach that point in the foreseeable future if corrective measures are not taken. Therefore, NMFS proposes to list the Snake River spring/summer chinook salmon as threatened.

Proposed Protective Regulations

NMFS proposes to adopt protective measures to prohibit, with respect to Snake River spring/summer chinook, taking, interstate commerce, and the other ESA prohibitions applicable to endangered species, with the exceptions provided by the ESA for endangered species. This is the normal course followed by the U.S. Fish and Wildlife Service with respect to threatened listings (see 50 CFR 17.31(a)).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, prohibitions on taking, recovery actions, and Federal agency consultation requirements. Recognition through listing promotes conservation actions by Federal and state agencies and private groups and individuals.

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions resulting in destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with NMFS.

Examples of Federal actions that may be affected by this proposal include authorized purposes of mainstem Columbia River and Snake River hydroelectric and storage projects. Such authorized purposes include hydroelectric power generation, flood control, irrigation, and navigation. Federal actions including COE section 404 permitting activities under the Clean Water Act, COE section 10 permitting activities under the Rivers and Harbors Act, and FERC licenses for non-Federal development and operation of hydropower may also be affected.

Based on information presented in this proposed rule, general conservation measures that could be implemented to help conserve the species are listed below. This list does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA.

(1) Efforts could be made to ensure that adult passage facilities at dams effectively pass migrating salmon upstream.

(2) Flows in the Snake and Columbia Rivers could be regulated to pass downstream migrating juvenile fish through the system more effectively. It is recognized that coordination of hydropower production in the Northwest is a continuous, long-term effort, and that some changes cannot be made on short notice. However, NMFS believes that the parties responsible for flow regulation have sufficient authority and flexibility to improve flow conditions for Snake River spring/summer chinook salmon immediately. Additional provisions could also be incorporated into ongoing planning for system regulation in the spring and early summer of 1992. Beyond these short-term needs, the parties could also begin to address longer term needs through development of improved institutional mechanisms for the definition and treatment of fishery flow requirements in system regulation studies and implementation under the Pacific Northwest Coordination Agreement. Progress could also be made in power planning through greater consideration of resources and strategies that complement, rather than conflict, with the need for increased flows, and thus increase hydroelectric power generation in spring and summer. NMFS encourages efforts such as these during the period between this proposed rule and a final ruling.

(3) All water diversions affecting downstream migrating juvenile spring/summer chinook salmon could be screened. Chinook salmon juveniles migrate downstream from late March through June. Many unscreened diversions and existing screens in need of replacement have been identified, and a thorough review of the impact of irrigation diversions on spring/summer chinook salmon could be conducted.

(4) All irrigation diversion structures could be surveyed and adequate adult fish passage facilities provided.

(5) All water diversions could have adequate headgate and staff gauge structures installed to control and monitor water usage accurately. Water rights should be enforced to prevent irrigators from exceeding the amount of water to which they are legally entitled.

(6) Research could be conducted to evaluate the mortality level associated with the catch of sub-legal (undersize) Snake River spring/summer chinook salmon caught in ocean troll fisheries.

(7) Artificial propagation could be conducted in a manner minimizing impacts upon native populations of chinook salmon.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. To avoid delaying this listing proposal, NMFS will propose critical habitat in a separate rulemaking.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and as effective as possible, NMFS is soliciting comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties. Four public hearings have been scheduled (see **DATES** and **ADDRESSES**). The final decision on this proposal will take into consideration the comments and any additional information received by NMFS, and may differ from this proposed rule.

Classification

The 1982 amendments to the ESA (Pub. L. 97-304) in section 4(b)(1)(A), restricted the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (6th Cir., 1981), NMFS has categorically excluded all endangered species listings from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413, February 6, 1984).

The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species, and that E.O. 12291 economic analysis requirements, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process. Similarly, listing actions are not subject to the requirements of E.O. 12612.

References

The complete citations for the references used in this document can be found in one of the following:

Environmental and Technical Services Division. 1991. Supplementary information on factors causing decline for the notice of proposed rulemaking, Snake River spring/summer chinook salmon. National Marine Fisheries Service. June, 1991.

Matthews, G.M. and R.S. Waples. 1991. Status review for Snake River spring and summer chinook salmon. U.S. Dep. Commer., NOAA Tech. Memo. NMFS F/NWC-200, 75 p.

Waples, R.S. 1991. Definition of "species" under the Endangered Species Act: Application to Pacific salmon. U.S. Dep. Comme., NOAA Tech. Memo. NMFS F/NWC-194. 29 p.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: June 21, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH OR WILDLIFE

1. The authority citation of part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, a new paragraph (g) is added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(g) Snake River spring/summer chinook salmon (*Oncorhynchus tschawytscha*).

3. In subpart C, a new § 227.22 is added to read as follows:

§ 227.22 Snake River spring/summer chinook salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Snake River spring/summer chinook salmon except as provided in paragraph (b) of this section.

(b) *Exceptions.* The exceptions of section 10 of the Act (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, and the provisions of regulations issued under the Act relating to endangered species (such as 50 CFR part 222, subpart C—Endangered Fish or Wildlife Permits), also apply to the Snake River spring/summer chinook salmon. This section supersedes other restrictions on the applicability of 50 CFR part 222, including, but not limited to, the restrictions specified in §§ 222.2(a) and 222.22(a) of this chapter.

[FR Doc. 91-15243 Filed 6-26-91; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 227

[Docket No. 910649-1149]

Endangered and Threatened Species; Proposed Threatened Status for Snake River Fall Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS is issuing a proposed determination that the Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) is a "species" under the endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.* (ESA). Further, NMFS proposes to list the Snake River fall chinook salmon as threatened under the ESA. The Snake River fall chinook salmon has experienced a substantial decline in abundance, and is currently distributed over a fraction of its former range. Hydroelectric development, commercial harvest, water withdrawal, water storage, and inadequate regulatory mechanisms are the primary factors contributing to the "species" decline. Should the proposed listing be made final, protective regulations under the ESA would be put into effect and a recovery program would be implemented.

DATES: Comments from all interested parties must be received by August 26, 1991. Public hearings are scheduled as follows:

1. July 30, 1991, 7 p.m. to 9:30 p.m., Portland, Oregon;

2. July 31, 1991, 7 p.m. to 9:30 p.m., Seattle, Washington;

3. August 1, 1991, 7 p.m. to 9:30 p.m., Richland, Washington;

4. August 7, 1991, 7 p.m. to 9:30 p.m., Boise, Idaho.

ADDRESSES: Comments on this proposed rule should be sent to the Environmental and Technical Services Division, NMFS, Northwest Region, 911 NE 11th Avenue, suite 620, Portland, OR 97232, or provided at any one of the public hearings. The hearings will be held at the following locations:

1. 1st Floor West Side, Federal Complex, 911 NE 11th Ave., Portland, Oregon;

2. NOAA, Western Administrative Support Center, Building 9 Auditorium, 7600 Sand Point Way, NE., Seattle, Washington;

3. Richland Federal Building Auditorium, 825 Jadwin Avenue, Richland, Washington;

4. Bosie Interagency Fire Center Auditorium, 3905 Vista Ave., Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Tracey Vriens, Environmental and Technical Services Division, NMFS, Portland, Oregon, 503-230-5420 or FTS-429-5420.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1990, NMFS received a petition from Oregon Trout, with co-petitioners Oregon Natural Resources Council, the Northwest Environmental Defense Center, American Rivers, and the Idaho and Oregon Chapters of the American Fisheries Society to list Snake River fall chinook salmon and to designate critical habitat under the ESA. NMFS published a notice on September 11, 1990 (55 FR 37342), that the petition presented substantial scientific information indicating that the listing may be warranted and requested information from the public.

NMFS has reviewed available scientific information pertaining to the stautus of Snake River fall chinook salmon. To assist in this review, NMFS convened a Technical Committee to provide information and to review and comment on the data in the record. The Technical Committee consists of representatives from Federal and state agencies, Indian tribes, industry, professional societies and public groups that have expertise relevant to Snake River fall chinook salmon.

Status Review for Snake River Fall Chinook

The NMFS Northwest Region Biological Review Team prepared a "Status Review for Snake River fall chinook salmon" (Waples *et al.* 1991) providing more detailed information, discussion and references. This status review is available upon request (see **ADDRESSES**), and is summarized below.

Ecosystem

The Snake River is the major tributary of the Columbia River, entering the Columbia 324.3 miles (522 kilometers) upstream from the Pacific Ocean. The Snake River Basin includes a range of climatic, geological and vegetative zones and extends into five States (Idaho, Washington, Oregon, Wyoming and Nevada). The habitat occupied by fall chinook salmon in the Snake River appears to be unique to this race of chinook salmon. In contrast to coastal mountains and the Cascade Range, the Snake River drainage is composed of batholithic granite that is prone to erosion, creating relatively turbid water

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with higher mineral content and alkalinity in comparison to the Columbia River and coastal areas. The region is relatively arid with warm summers resulting in higher annual temperatures than in many other salmon production areas in the Pacific Northwest. These characteristics combine to produce a highly productive habitat.

Chapman *et al.* (1991) described ten geologic provinces in the Snake River Basin, each being unique to some degree in the type of habitat it provides for anadromous salmonids, in terms of both geology and climate. Together, these areas form an aquatic ecosystem for chinook salmon that is unique in the Columbia River Basin and, probably, the world. Utter *et al.* (1982) reported that the Snake and Columbia Rivers differ ecologically in a number of ways. Habitat characteristics of the Snake River Basin provide strong evidence of ecological/genetic distinctness of Snake River fall chinook salmon.

Life History

The life history of Snake River fall chinook salmon reflects unique adaptations to the Snake River Basin. Snake River fall chinook salmon adults enter the Columbia River in July, reaching the Snake River from the middle of August through October. Snake River fall chinook salmon historically sustained the longest freshwater migration (960 miles, 1,512 km) of any North American chinook salmon population with a juvenile life history strategy of subyearling migration to the ocean. Although fall chinook salmon are presently restricted to the lower Snake River, genes associated with this lengthy migration may still reside in the population. Given this extended freshwater migration, Snake River fall chinook salmon retain their colocation and flesh quality longer than lower Columbia River fall chinook salmon.

Spawning occurs in October and November (Bugert *et al.* 1990) in the mainstem Snake River from the upper extent of Lower Granite Dam pool to Hells Canyon Dam. Some spawning also occurs in the lower reaches of the Imnaha, Grande Ronde, Clearwater, and Tucannon Rivers, each a major subbasin of the Snake River.

Fall chinook salmon emerge from the gravel in March and April, and downstream migration usually begins with several weeks of emergence (Becker 1970; Allen and Meekin 1973). Water temperatures in the Snake River during summer months can exceed 25 °C (77 °F), and average monthly temperatures are often 6 to 8 °C higher than in the upper Columbia River (Utter *et al.* 1982). Elevated water temperatures are thought to preclude fall chinook salmon from rearing in the Snake River after mid-July (Van Hyning 1968; Chapman *et al.* 1990). Fall chinook salmon subyearlings are present in the Columbia River estuary from June to October (Rich 1922). Dawley *et al.* (1986) found that approximately 80 percent of all juvenile fall chinook salmon enter the estuary from late April through early September. Data specific to juvenile Snake River fall chinook salmon are unavailable.

Consideration as a "Species" Under the ESA

To consider the Snake River fall chinook salmon for listing, it must qualify as a "species" under the ESA. The ESA defines a "species" to include any "distinct population segment of any species of vertebrate . . . which interbreeds when mature." NMFS published an interim policy (March 13, 1991; 56 FR 10542) on how it will apply the ESA species definition in evaluating Pacific salmon. This policy stipulates that a salmon population will be considered distinct, and hence a species under the ESA, if it represents an evolutionarily significant unit (ESU) of the biological species. The population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units; and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion would be met if the population contributed substantially to the ecological/genetic diversity of the species as a whole. Further guidance on the application of this policy is contained in the NMFS paper "Definition of Species under the Endangered Species Act: Application to Pacific Salmon" (Waples 1991).

Determining whether Snake River fall chinook salmon constitute a "species" under the ESA is complicated by the presence of spring/summer chinook salmon in the Snake River, and fall chinook salmon in the upper Columbia River. Based on a previous status review in 1992, NMFS concluded that Snake River and upper Columbia River fall chinook salmon were separate, identifiable, and distinct populations that warrant designation as "species" under the ESA (Utter *et al.* 1992). Available evidence indicates that, through the early 1980s, Snake River fall chinook salmon met both criteria necessary to be an ESU—reproductive isolation and ecological/genetic distinctness.

Based on the first criterion, populations with different migration timing that are reproductively isolated should be considered separately under the ESA. Fish with different migration timing for which reproductive isolation cannot be established should be considered as a unit. Compelling evidence indicates that Snake River fall chinook salmon are reproductively isolated from spring/summer chinook salmon (Matthews and Waples 1991). The very low incidence of natural straying of upper Columbia River fall chinook salmon (McIsaac and Quinn 1988), and consistent genetic differences between upper Columbia River and Snake River fall chinook salmon demonstrate significant, long-term reproductive isolation between these groups.

Available information indicates that Snake River fall chinook salmon satisfy the second criterion, which stipulates that a population must represent an important component in the evolutionary legacy of the biological species to be considered an ESU. Historically, the Columbia River system was the largest producer of chinook salmon in the world. Prior to 1960, the Snake River was the most important production area for fall chinook salmon in the Columbia River system (Bureau of Commercial Fisheries and Bureau of Sport Fisheries and Wildlife 1964). Unique ecological features of the Snake River Basin, characteristic freshwater habitats, contrasting ocean distribution patterns, and genetic differences relative to other chinook salmon, are evidence of the ecological/genetic distinctness of the Snake River fall chinook salmon.

It is noted that, since 1987, hatchery fall chinook salmon with genotypes characteristic of upper Columbia River fall chinook salmon have strayed into the Snake River in increasing numbers, and in 1990 some were recovered on the spawning grounds in the Snake River. However, the degree to which fall chinook salmon strays have produced viable progeny is unknown.

Evidence of introgression of upper Columbia River genes into Lyons Ferry Hatchery fall chinook salmon has prompted concern regarding the status of the Snake River fall chinook salmon ESU. However, because (1) Snake River fall chinook salmon represented an ESU prior to these straying events, (2) significant straying of hatchery reared Upper Columbia River fall chinook salmon has occurred only within the last generation, and (3) direct evidence of genetic change in wild Snake River fall chinook salmon is lacking, NMFS concludes, based on the weight of existing information, that Snake River fall chinook salmon still represent an ESU.

NMFS concludes that the best available information indicates that this population satisfies both criteria necessary to be considered an ESU. Therefore, NMFS is issuing a proposed determination that the Snake River fall chinook salmon is a "species" under the ESA.

Distribution and Abundance

Historically, fall chinook salmon were widely distributed throughout the Snake River and many of its major tributaries from its confluence with the Columbia River near Pasco, Washington, upstream 615 miles (990 km) to Shoshone Falls, Idaho (Columbia Basin Interagency Committee 1957; Haas 1965; Fulton 1968; Van Hyning 1968; Lavier 1976). During the early 1900s, a weir was placed in the Snake River downstream of Swan Falls Dam near Ontario, Oregon, river mile (Rm) 372, river kilometer (Rkm) 599, to collect fall chinook salmon broodstock. Although only a portion of the returning fish were intercepted, more than 20 million eggs (a minimum of 4,000 females) were taken in a single year (Parkhurst 1950). This provides some indication of the distribution and large number of fall chinook salmon migrating into the upper reaches of the Snake River during this period. Historically, the most important spawning grounds for fall chinook salmon in the Snake River were between Huntington, Idaho (Rm 328, Rkm 527) and Auger Falls, Idaho (Rm 607, Rkm 977) (Evermann 1896). Fall chinook salmon production above Rm 456, Rkm 734, was terminated in 1907 by Swan Falls Dam, which obstructed the passage of returning adults (Parkhurst 1950).

Snake River fall chinook salmon abundance remained relatively stable until 1950, but declined substantially thereafter. The estimated mean number of fall chinook salmon returning annually to the Snake River decreased from 72,000 between 1928 and 1949, to 29,000 from 1950 through 1959 (Irving and Bjornn 1981). In spite of this significant decline in abundance, the Snake River remained the most important production area for fall chinook salmon in the Columbia River Basin through the 1950s (Fulton 1968).

The construction of Brownlee at Rm 285, Rkm 459 (1958), Oxbow at Rm 273, Rkm 439 (1961), and Hells Canyon Dams at Rm 247, Rkm 397 (1967), inundated spawning areas and prevented access to the primary production areas of Snake River fall chinook salmon when fish passage facilities at these projects proved to be inadequate (Van Hyning 1968). Snake River fall chinook salmon habitats were further reduced with the construction of Ice Harbor at Rm 10, Rkm 16 (1961), Lower Monumental at Rm 42, Rkm 67 (1969), Little Goose at Rm 70, Rkm 113 (1970), and Lower Granite Dams at Rm 108, Rkm 173 (1975).

For Snake River fall chinook salmon, dam counts represent the best indication of the population's recent abundance. Counts at the uppermost dam affording adult fish passage averaged 12,720 at Ice Harbor from 1969 through 1974, and 610 at Lower Granite from 1975 through 1980 (ODFW 1990; Corps unpublished). Since 1983, dam counts have been confounded by returns of hatchery-reared fish. Adult returns of hatchery-reared fish cannot be visually distinguished from wild Snake River chinook salmon in all cases because only a portion of these fish are marked. Recent efforts have established the number of hatchery-reared fall chinook salmon and wild Snake River fall chinook salmon returning to Lower Granite Dam. Based on these estimates, wild Snake River fall chinook salmon escapement to Lower Granite Dam varied from 428 adults in 1983 to 295 in 1989, and was 78 in 1990 (Washington Department of Fisheries 1991).

Summary of Factors Affecting the Species

Section 2(a) of the ESA states that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation. The ESA requires a determination whether a species is threatened or endangered because of any of the five factors identified in section 4(a)(1). These factors, as they apply to Snake River fall chinook salmon, are discussed extensively in the NMFS' "Supplementary Information on Factors Causing Decline for the Notice of Proposed Rulemaking, Snake River Chinook Salmon" (ETSD 1991). This report is available upon request (see **ADDRESSES**). A brief description of these factors follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Hydropower development has substantially curtailed the range of Snake River fall chinook salmon and inundated large amounts of accessible habitat, contributing significantly to the population's decline. Turbine-related juvenile mortality, delayed juvenile migration through the Snake and Columbia River, juvenile predation from the creation of ideal foraging areas and resulting increases in predator populations, and adult migration delays, have also resulted from hydropower development.

Water withdrawal for agriculture, and water storage to accommodate flood control objectives and increased hydropower production, have increased juvenile mortality and may result in the dessication of spawning areas and mortality of fall chinook salmon fry.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Columbia River chinook salmon harvest rates have exceeded 80 percent, and sometimes 90 percent, since 1926. The total exploitation rate for Lyons Ferry Hatchery fish, which are assumed to have the same distribution as wild Snake River fall chinook salmon, is estimated to be 74 percent. These harvest rates may be higher than Snake River fall chinook salmon can sustain.

C. Disease and Predation

Fall chinook salmon are exposed to numerous bacterial, protozoan, viral, and parasitic organisms. Very little current or historical information exists to quantify changes in infection levels and mortality rates attributable to these diseases for Snake River fall chinook salmon.

Freshwater predators, particularly northern squawfish (*Ptychocheilus oregonensis*), have increased in abundance due to hydroelectric development that created ideal foraging areas. Turbulent conditions associated with turbines, dam bypasses, and spillways have increased predatory success by disorienting juvenile salmon migrants.

Marine mammal abundance, particularly harbor seals and California sea lions, has increased along the Pacific Coast, and increases in marine mammal predation have been noted in Northwest salmon fisheries.

D. Inadequacy of Existing Regulatory Mechanisms

A variety of Federal and state laws and programs are factors in the decline of Snake River fall chinook salmon. Although some progress has occurred, regulatory mechanisms have failed to provide for the conservation of the population.

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E. Other Natural and Manmade Factors

Artificial propagation activities have not been a primary factor in the decline of Snake River fall chinook salmon. However, the taking of Snake River fall chinook salmon for hatchery broodstock has reduced natural escapements, and the recent straying of fall chinook salmon from other areas into the Snake River threatens the genetic integrity of wild Snake River fall chinook salmon.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range; and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that determinations whether any species is threatened or endangered be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Regarding efforts being made to protect Snake River fall chinook salmon, NMFS believes that several measures merit consideration. During the planning of Lower Snake River Compensation Plan (LSRCP) production facilities, an egg bank program was initiated to ensure the conservation of Snake River origin fall chinook salmon. LSRCP efforts to maintain the integrity of Snake River fall chinook salmon were initially successful based on genetic monitoring of broodstock collection in 1977, 1978, 1979, and 1980 (Utter *et al.* 1982).

A review of coded-wire-tag (CWT) data showed that stray hatchery fish of Columbia River origin have been used as broodstock at LSRCP facilities (Lyons Ferry Hatchery) in recent years. These strays are predominantly upper Columbia River stock released as juveniles into the Umatilla River, a tributary of the Columbia River downriver from the confluence with the Snake River. Poor acclimation prior to release of these fish, and inadequate flow for returning adults resulting from the diversion of water from the Umatilla, are factors responsible for this straying. In the years 1964–1980, Columbia River strays made up 5, 11, 3, 4, 18, 39, and 25 percent, respectively, of the adults spawned at Lyons Ferry Hatchery.

Another consideration is the potential effect of stray Columbia River fish on the wild Snake River fall chinook salmon gene pool. Upper Columbia River fall chinook salmon comprised 1 to 2 percent of the adult fall chinook at Lower Granite Dam in 1986–1988, 6 to 9 percent in 1987–1988, and 25 to 29 percent in 1988–1989.

The Washington Department of Fisheries has implemented measures to minimize potential impacts of straying on Lyons Ferry Hatchery (LFH) broodstock (the only Snake River hatchery now producing fall chinook salmon), and wild Snake River fall chinook salmon (Washington Department of Fisheries 1991). All juvenile fall chinook salmon from 1989 LFH broodstock were marked, and will be excluded from use as broodstock upon their return as adults. Only progeny from confirmed LFH adults that returned in 1990 will be used for future broodstock. Commencing in 1991, all LFH fish will be tagged (CWT), and only confirmed LFH fish will be used as broodstock. During the previous 14 years, an average of 31 percent of the wild Snake River fall chinook salmon population is estimated to have been taken annually for broodstock purposes. The exclusive use of known LFH fish in broodstock collection will also allow significantly more wild Snake River fall chinook salmon to reach their spawning grounds beginning in 1991.

In addition to these measures, other efforts are underway to protect Snake River fall chinook salmon. The Oregon Department of Fish and Wildlife has initiated actions to reduce the straying of Umatilla fall chinook salmon into the Snake River by improving the acclimation of juvenile fall chinook salmon released into the Umatilla River, and beginning in 1991, marking all such releases for later identification. Facilities specifically designed to provide additional flow in the Umatilla River and reduce adult straying are under construction by the Bureau of Reclamation.

Prior to 1991, the Pacific Fisheries Management Council (PFMC) did not consider Snake River fall chinook salmon separately from upper Columbia River fall chinook salmon in the management of ocean fisheries. Management measures adopted by the PFMC for 1991 specifically address fishery impacts on Snake River fall chinook salmon and reduce the total ocean exploitation rate of Snake River fall chinook salmon relative to 1990 harvest rates by 20 percent (PFMC 1991).

Mortality of juvenile fall chinook salmon at dams and in reservoirs can be significantly reduced by collecting juveniles and transporting them downriver around the dams by barge and trucks. The Regional Salmon Program for 1991, implemented by the States of Idaho, Oregon, and Washington, Federal agencies, Indian tribes, utilities, and other interests, includes a commitment to provide maximum outmigrant and extend the transportation program through October (Andrus et. al. 1991).

Reductions in Snake River flows by the Hells Canyon Dam Complex have previously resulted in the dessication of spawning areas and mortality of emerging salmon fry. Projected reductions in flow during May 1991 to 5 to 7 kcfs (142 to 198 cubic meters per second) were expected to jeopardize Snake River fall chinook salmon nests (38 documented redds) spawned from October through December of 1990 at flows of approximately 12 kcfs (340 cubic meters per second). To protect these fish, flow augmentation from Brownlee Reservoir was requested (Fish Passage Center 1991) and ultimately provided through the system operation process, a coordinated effort between state and Federal agencies, Indian tribes and system managers.

Based on its assessment of available scientific and commercial information, and after taking into account those efforts being made to protect the species, NMFS is issuing a proposed determination that Snake River fall chinook salmon is a threatened "species" under the ESA. This collective evidence indicates that Snake River fall chinook salmon are likely to become an endangered species within the foreseeable future if corrective measures are not implemented.

Proposed Protective Regulations

NMFS proposes to adopt protective measures to prohibit, with respect to Snake River fall chinook, taking, interstate commerce, and the other ESA prohibitions applicable to endangered species, with the exceptions provided by the ESA. This is the normal course followed by the U.S. Fish and Wildlife Service with respect to threatened listings (see 50 CFR 17.31(a)).

Available Conservation Measures

Conservation measures provided to species listed as threatened or endangered under the ESA include prohibitions on taking, recovery actions, and Federal agency consultation requirements. Recognition through listing promotes conservation actions by Federal and state agencies and private groups and individuals.

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing or an actions resulting in destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or it critical habitat, the responsible Federal agency must enter into formal consultation with NMFS.

Examples of Federal actions that may be affected by this proposal include operations of mainstem Columbia River and Snake River hydroelectric and storage projects. Such operations include hydroelectric power generation, flood control, irrigation, and navigation. Federal actions including COE section 404 permitting activities under the Clean Water Act, COE section 10 permitting activities under the Rivers and Harbors Act, and Federal Energy Regulatory Commission licenses for non-Federal development and operation of hydropower may also be affected.

Based on information presented in this proposed rule, general conservation that could be implemented to help conserve the species are listed below. This list does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA.

(1) Operate adult passage facilities as mainstem Snake and Columbia River dams to pass migrating salmon upstream more effectively.

(2) Regulate flows in the Snake and Columbia Rivers to pass downstream migrating juvenile fish through the system more effectively and protect incubating eggs. NMFS believes that the parties responsible for flow regulation have sufficient authority and flexibility to improve immediately flow conditions for Snake River fall chinook salmon. These parties could also address the definition and treatment of fishery flow requirements in system regulation under the Pacific Northwest Coordination Agreement. Greater consideration of resources and strategies that complement, rather than conflict, with the need for increased flows is necessary in power planning. NMFS encourages the implementation of measures to improve flows during the period between this proposed rule and a final ruling.

(3) Install adequate headgate and staff gauge structures to control and monitor water usage accurately. Enforce water rights at all water diversions to prevent withdrawals exceeding legal entitlement.

(4) Further evaluate mortality associated with the catch of sub-legal (undersize) Snake River fall chinook salmon in ocean troll fisheries.

(5) Conduct artificial propagation to minimize impacts to Snake River fall chinook salmon. Necessary measures include:

(a) Tag all hatchery reared fall chinook salmon released into the Snake River, Umatilla River and into the Columbia River upstream from the confluence with the Snake River.

(b) Remove marked adult fall chinook salmon returning to the Snake River at fish collection facilities to minimize their escapement to spawning areas and potential introgression with wild Snake River fall chinook salmon.

(c) Allow all unmarked adult fall chinook salmon (potentially wild fish) in the Snake River to escape to spawning areas. Exclude Wild Snake River fall chinook salmon from hatchery broodstock collection at this time.

(6) Manage harvest activities specifically to consider and provide Snake River fall chinook salmon escapement necessary to allow the population to recover.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. To avoid delaying this listing proposal, NMFS will propose critical habitat in a separate rulemaking.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and as effective as possible, NMFS is soliciting comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties. Four public hearings have been scheduled (see **DATES** and **ADDRESSES**). The final decision on this proposal will take into consideration the comments and any additional information received by NMFS, and may differ from this proposed rule.

Classification

The 1982 amendments to the ESA (Pub. L. 97–304) in section 4(b)(1)(A), restricted the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (6th Cir., 1981), NMFS has categorically excluded all endangered species listings from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413, February 6, 1984).

The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species, and that E.O. 12291 economic analysis requirements, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process. Similarly, listing actions are not subject to the requirements of E.O. 12612.

References

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Environmental and Technical Services Division. 1991. Supplementary information factors causing decline for the notice of proposed rulemaking, Snake River fall chinook salmon. National Marine Fisheries Service. June, 1991.

Waples, R.S. 1991. Definition of "species" under the Endangered Species Act: Application to Pacific salmon. U.S. Dep. Comme., NOAA Tech. Memo. NMFS F/NWC-194. 29 p.

Waples, R.S., R.P. Jones, Jr., B.R. Beckman, and G.A. Swan. 1991. Status review for Snake River fall chinook salmon. U.S. Dep. Commer., NOAA Tech. Memo. NMFS F/NWC-201. 73 p.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: June 21, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to read as follows:

PART 227—THREATENED FISH OR WILDLIFE

1. The authority citation of part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, a new paragraph (h) is added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(h) Snake River fall chinook salmon (*Oncorhynchus tschawytscha*).

3. In subpart C, a new § 227.23 is added to read as follows:

§ 227.23 Snake River fall chinook salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Snake River fall chinook salmon except as provided in paragraph (b) of this section.

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(b) *Exceptions.* The exceptions of section 10 of the Act (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, and the provisions of regulations issued under the Act relating to endangered species (such as the 50 CFR part 222, subpart C—Endangered Fish or Wildlife Permits), also apply to the Snake River fall chinook salmon. This section supersedes other restrictions on the applicability of 50 CFR part 222, including, but not limited to, the restrictions specified in §§ 222.2(a) and 222.22(a) of this chapter.

[FR Doc. 91-15244 Filed 6-26-91; 8:45 am]
BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 910649-1149]

Endangered and Threatened Species; Lower Columbia River Coho Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination.

SUMMARY: On June 7, 1990, NMFS received a petition from Oregon Trout, with co-petitioners Oregon Natural Resources Council, the Northwest Environmental Defense Center, American Rivers, and the Idaho and Oregon Chapters of the American Fisheries Society, to list lower Columbia River coho salmon and to designate critical habitat under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.* (ESA). NMFS published a notice on September 11, 1990 (55 FR 37342), that the petition presented substantial scientific information indicating that the listing may be warranted. NMFS also announced its intention at that time to conduct a status review of lower Columbia River coho salmon and requested comments from any party having relevant information. A Technical Committee comprised of individuals with expertise relevant to lower Columbia River coho salmon, representing public interest groups, Federal and State agencies, Indian tribes, industry and professional societies was convened by NMFS to provide technical information and comment on data in the administrative record. NMFS has evaluated the status of lower Columbia River coho salmon and concluded that available biological evidence indicates that these fish do not constitute a "species" under the ESA and, therefore, a proposal to list is not warranted at this time.

ADDRESSES: Environmental and Technical Services Division, NMFS, Northwest Region, 911 NE. 11th Avenue, suite 620, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Tracey Vriens, Environmental and Technical Services Division, NMFS, Portland, Oregon, 503-230-5420 or FTS-429-5420.

SUPPLEMENTARY INFORMATION: The NMFS Northwest Region Biological Review Team prepared a "Status Review for Lower Columbia River Coho Salmon" providing more detailed information, discussion and references. The status review is available upon request (see **ADDRESSES**), and is summarized below.

Background

Coho salmon (*Oncorhynchus kisutch*) range throughout the temperate waters of the northern Pacific Ocean. The species was once abundant throughout the Columbia River Basin, with naturally spawning populations exceeding 600,000 fish annually. Two-thirds of the historical Columbia River coho salmon production is thought to have originated in the lower Columbia River (LCR). The LCR, for the purposes of this document, is defined as the Columbia River and its tributaries below Bonneville Dam. Columbia River (upstream from John Day Dam) and Snake River coho salmon were drastically reduced or eliminated prior to the 1950s and are now extinct. LCR coho salmon were reduced to less than 5 percent of historic abundance levels by the late 1950s. Excessive harvest and habitat alteration are the primary factors responsible for this decline of Columbia River coho salmon.

This drastic decline in coho salmon abundance precipitated the development of an extensive hatchery program which restored LCR coho salmon adult returns to historic levels, often exceeding 400,000 fish annually during the last 30 years. Intensive hatchery production and the overharvest of wild coho salmon in mixed stock fisheries resulted in their continued decline. The LCR is managed exclusively for the commercial exploitation of hatchery coho salmon.

Consideration as a "Species" Under the ESA

To consider LCR coho salmon for listing, it must qualify as a "species" under the ESA. The ESA defines a "species" to include any "distinct population segment of any species of vertebrate * * * which interbreeds when mature." NMFS published an interim policy (March 13, 1991; 56 FR 10542) on how it will apply the ESA species definition in evaluating Pacific salmon. This policy provides that a salmon population will be considered distinct, and hence a species under the ESA, if it represents an evolutionary significant unit (ESU) of the biological species. The population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units; and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion would be met if the population contributed substantially to the ecological/genetic diversity of the species as a whole. Further guidance on the application of this policy is contained in the NMFS paper "Definition of Species under the Endangered Species Act: Application to Pacific Salmon" and is available upon request (see **ADDRESSES**).

Regarding the first criterion, available information is not conclusive as to whether LCR coho salmon are reproductively isolated from coastal populations of coho salmon in Washington and Oregon. Available information does not indicate that LCR coho salmon satisfy the second criterion, which stipulates that a population must represent an important component in the evolutionary legacy of the biological species to be considered "distinct" (and hence a "species") for the purposes of the ESA. Information on coho salmon habitat utilization, life-history characteristics, and phenotypic and genetic traits was inconclusive, and did not demonstrate that LCR coho salmon are "distinct" from other wild coho salmon populations.

Special Considerations

The release of hatchery-reared fish into an area inhabited by a wild population, and overharvest, can affect a wild population to such an extent that it does not represent a "distinct" population segment under the ESA. Each of these factors has profoundly affected LCR coho salmon.

Non-indigenous coho salmon stocks have been extensively transferred into the LCR since the 1890s. All of the LCR coho salmon hatchery stocks evaluated exhibited a heritage of coastal or other non-indigenous coho salmon. Although the effect of non-indigenous stock transfers on the genetic character of LCR coho salmon has not been adequately studied, the extent and magnitude of these transfers suggest that significant introgression of non-indigenous stocks has occurred into LCR hatcheries.

Coho salmon have also been extensively transferred from various hatcheries into streams and drainages throughout the LCR. This practice (outplanting) began in the early 1960s and continues today (a period of over ten coho salmon generations) and has resulted in hatchery fish being transferred into practically every accessible stream in the LCR. In 1986, researchers from the Oregon Department of Fish and Wildlife found the density of wild coho salmon in

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streams supplemented with hatchery coho salmon fry was reduced by over 40 percent and that the majority of returning adults from the year of the outplants had run-times representative of the hatchery, rather than of the wild population. Thus, outplanting, combined with the high percentage of coho salmon from hatcheries spawning in the wild, likely resulted in significant hatchery introgression of the indigenous population throughout the LCR.

Overharvest has severely affected wild coho salmon indigenous to the LCR. Ocean and in-river harvest rates for LCR coho salmon increased dramatically during the 1960s, and have stabilized at approximately 90 percent. Conservation measures for wild coho salmon indigenous to the LCR were not incorporated into the operation of hatcheries constructed to mitigate the decline in this population. Increased hatchery production, beginning in the 1960s, allowed harvest rates to remain high, and wild LCR coho salmon, already depressed in abundance, were not afforded an opportunity to recover.

Determination

Section 4(b)(1)(a) of the ESA requires that determinations whether any species is threatened or endangered be based solely on the best scientific and commercial information available after conducting a review of the status of the species. NMFS has evaluated the status of LCR coho salmon and determined that available biological evidence does not indicate that these fish represent a "species" under the ESA; therefore, a proposal to list LCR coho salmon under the ESA is not warranted at this time.

Dated: June 21, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries.

[FR Doc. 91-15245 Filed 6-26-91; 8:45 am]
BILLING CODE 3510-22-M

federal register

Thursday
June 27, 1991

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 7 and 52
Federal Acquisition Regulation; Contractor Versus Government Performance; Proposed Rule

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DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 52

[FAR Case 91-26]

Federal Acquisition Regulation; Contractor versus Government Performance

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering amendments to FAR subpart 7.3 to (a) alert the contracting officer to the possibility of performing a cost comparison for the specific reason that commercial prices were believed to be unreasonable; and (b) make more general the language that pertains to when a cost comparison study must be made, so that future changes to statutes or regulations concerning cost comparisons will not require a change to FAR coverage.

Other changes are made to make the FAR consistent with OMB Circular A-76. Minor technical and editorial changes are also made. In addition, an editorial change is made to the solicitation provision at 52.207-1, and to the prescriptive language for the solicitation provision at 52.207-2. Paragraph (d) of the provision at 52.207-2 is also revised for clarification.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 26, 1991; to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405. Please cite FAR Case 91-26 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 91-26.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Defense directed that the Defense Federal Acquisition Regulation Supplement (DFARS) be streamlined and rewritten as part of the DMR Regulatory Reform initiative. This initiative entails deletion of some DFARS language, consolidation of DFARS language, movement of some DFARS language to the FAR, redefinition of policies and procedures, and editing and rewrite of the entire regulation. This particular change proposes revisions to FAR language to correct inconsistencies between FAR subpart 7.3 and OMB Circular A-76 in the area of Government Versus Contract Performance, which were discovered during review of DFARS coverage on this subject.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it merely brings existing regulatory language in line with OMB Circular A-76, and imposes no requirements of any kind upon small entities. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 91-26) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 7 and 52

Government procurement; Contractor versus Government Performance.

Dated: June 20, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 7 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 7 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.300 is revised to read as follows:

7.300 Scope of subpart.

This subpart prescribes policies and procedures for use in acquisitions of commercial or industrial products and services subject to (a) OMB Circular No. A-76 (Revised) (the Circular), Performance of Commercial Activities, and (b) the Supplement to OMB Circular No. A-76.

3. Section 7.302 is amended by revising paragraph (d) to read as follows:

7.302 General.

* * * * * *

(d) Provide that, ordinarily, agencies should not incur the delay and expense of conducting cost comparisons studies when the full-time equivalent Government employees involved are fewer than those specified in law, the Circular, and implementing agency guidance. Cost comparisons may be conducted in these instances if there is reason to believe that commercial prices are unreasonable.

4. Section 7.303 is amended by revising paragraph (b)(1) and adding paragraph (b)(3) to read as follows:

7.303 Determining availability of private commercial sources.

* * * * *

(b) * * *

(1) Synopsizing the requirement in the Commerce Business Daily until a reasonable number of potential sources are identified. If necessary, synopsis shall be submitted up to three times in a 90-day period with a minimum of 30 days between notices (but, when necessary to meet an urgent requirement, this notification may be limited to a total of two notices in a 30-day period with a minimum of 15 days between them).

* * * * *

(3) If sufficient sources are not identified through synopsis or from subparagraph (b)(2) of this section, a finding that no commercial source is available may be made and the cost comparison canceled.

5. Section 7.304 is amended in the introductory text of paragraph (a) by removing the comma appearing between the words "comprehensive" and "performance"; in paragraph (b)(1) by removing from the first line the hyphen in the words "cost-comparison"; and by revising the first sentence in paragraph (c)(1) to read as follows:

7.304 Procedures.

* * * * *

(c) * * *

(1) The contracting officer shall issue a solicitation based on the performance work statement prepared in accordance with paragraph (a) of this subsection.

* * *

* * * * *

7.306 [Amended]

6a. Section 7.306 is amended by removing the hyphen from the words "cost-comparison" in the following places:

(a)(1)(i) through (a)(1)(iii);
(a)(1)(v);
(a)(2);
(a)(4);
(b) introductory text;
(b)(1)(ii);
(b)(2)(ii); and
(b)(3).

b. Paragraph (b)(3) is also amended in the last sentence by removing the words "subparagraph (1) above" and "subparagraph (2) above" and inserting in their place "subparagraph (b)(1) of this section" and "subparagraph (b)(2) of this section", respectively.

7. Section 7.307 is amended by revising paragraph (a) to read as follows:

7.307 Appeals.

(a) The Circular provides that each agency shall establish an appeals procedure for informal administrative review of the initial cost comparison result. The appeals procedure shall provide for an independent, objective review of the initial result by an official at a higher level than the official who approved that result. The purpose is to protect the rights of affected parties and to ensure that final agency determinations are fair, equitable, and in accordance with established policy.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.207-1 is amended in the clause, in paragraph (b), in the third sentence, by removing the hyphen from the words "cost-comparison" and removing the last sentence; and by revising paragraph (c) to read as follows:

52.207-1 Notice of cost comparison (sealed-bid).

* * * * *

Notice of Cost Comparison (Sealed-Bid) (Date)

* * * * *

(c) The abstract of bids, completed cost comparison form, and detailed data supporting the cost estimate for Government performance will be made available to interested parties for review _____ [*insert a number from 15 to 30, depending on the complexity of the matter (see 7.306(a)(1)(iv)*] working days, beginning with the date the documents are available to interested parties will be provided for this public review. The Government will not make a final determination either for contract or Government performance during this period. During this period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost comparison result under the agency appeals procedure. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to decisions regarding selection of one bidder in preference to another. Agency determinations under the appeals procedure shall be final.

* * * * *

9. Section 52.207-2 is amended in the clause—

a. By removing the hyphen from the words "cost-estimate" and/or "cost-comparison" in paragraph (c) introductory text, first and third sentences; and in the first sentence of paragraphs (c)(1) and (c)(2);

b. By reviewing paragraph (d) to read as follows:

52.207-2 Notice of cost comparison (negotiated).

* * * * *

Notice of Cost Comparison (Negotiated) (Date)

* * * * *

(d) During the public review period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost comparison result under the agency appeals procedure. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to decisions regarding selection of one bidder in preference to another. Agency determinations under the appeals procedure shall be final.

* * * * *

[FR Doc. 91-15310 Filed 6-26-91; 8:45 am]
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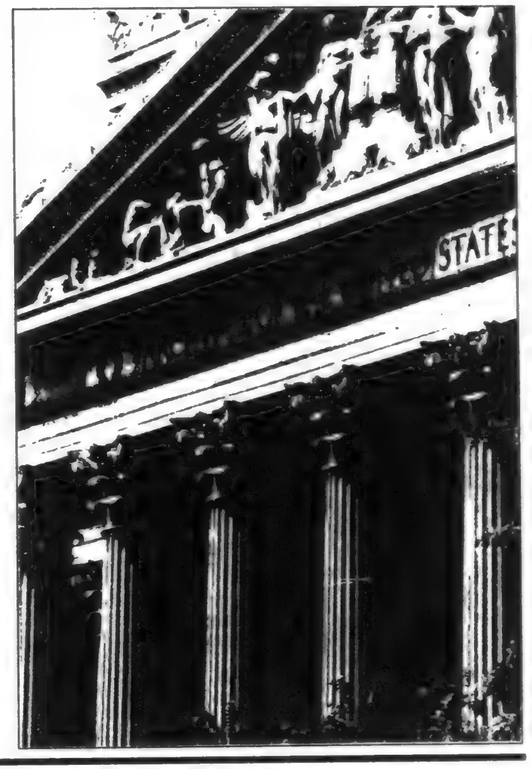
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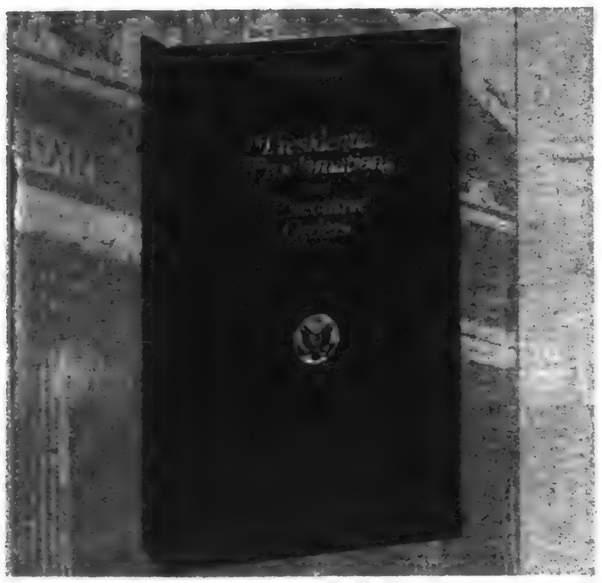
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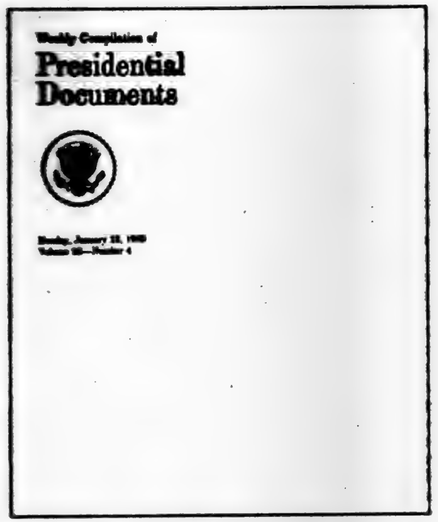
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Friday, June 28, 1991

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[FV-91-290IFR]

Handling of Almonds Grown in California; Third Revision of the Salable and Reserve Percentages for the 1990–91 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on further revision of the salable and reserve percentages for California almonds received by handlers during the 1990–91 crop year. The 1990–91 crop year commenced on July 1, 1990. The Almond Board of California (Board), the agency which locally administers the almond marketing order, unanimously recommended at its May 10, 1991, meeting, the revision of the salable and reserve percentages while keeping the export percentage the same at 0 percent. The salable percentage is increased from 80 to 93 percent, and the reserve percentage is decreased from 20 to 7 percent. This interim final rule is authorized under the marketing order for almonds grown in California. This action is necessary to provide a sufficient quantity of almonds to meet trade demand and carryover needs.

DATES: Effective Date: June 28, 1991. Comments which are received by July 29, 1991 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC, 20090–6456; telephone: (202) 475–5992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the order, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of almonds who are subject to regulation under the order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less that $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action decreases the quantity of California almonds which handlers must withhold from normal, competitive markets to meet their reserve obligations under the order for the 1990–91 crop year. The quantity of almonds which handlers must withhold to meet their reserve obligations is decreased from 20 percent to 7 percent of marketable almonds received by handlers for their own accounts during the 1990–91 crop year. The salable percentage of the crop, which could be sold by handlers in any market, is increased from 80 percent to 93 percent. Therefore, this action relaxes restrictions on California almond handlers and does not impose any additional burden or costs on handlers.

The salable, reserve, and export percentages for the 1990–91 almond crop were established in a final rule published in the Federal Register on September 21, 1990 (55 FR 38793). The initial salable percentage was 65 percent, the reserve percentage was 35 percent, and the export percentage was 0 percent. These percentages were established on the basis of two Board recommendations, on June 27 and July 25, 1990, pursuant to §§ 981.47 and 981.49 of the almond marketing order. The Board based its recommendations on the then current estimates of marketable supply and combined domestic and export trade demand for the 1990–91 crop year.

However, on December 3, 1990, the Board met to review the salable and reserve percentages that had been established for the 1990–91 crop year and the supply and demand estimates from which those percentages were derived. At that meeting, the Board unanimously recommended revising the salable and reserve percentages. Pursuant to § 981.48 of the almond marketing order, the Board arrived at its recommendation for revising the salable and reserve percentages by reviewing its estimates of marketable supply and combined domestic and export trade demand for the 1990–91 crop year. Subsequently, an interim final rule revising the salable percentage from 65 to 70 percent and revising the reserve percentage from 35 to 30 percent was published in the Federal Register on February 11, 1991 (56 FR 5308).

At its February 21, 1991, meeting the Board again reviewed the 1990–91 crop year salable and reserve percentages

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and the supply and demand estimates from which those percentages were derived. At that meeting, pursuant to § 981.48 of the almond marketing order, the Board unanimously recommended to further revise the almond salable and reserve percentages for, the 1990–91 crop year. A second interim final rule, which further revised the salable percentage from 70 to 80 percent and further revised the reserve percentage from 30 to 20 percent, was published in the March 19, 1991 (56 FR 11499) issue of the **Federal Register**. The March 19 interim final rule revised the February 11 interim final rule by further relaxing restrictions on almond handlers. The comments to the February 11 and the March 19 interim final rules were subsequently addressed, and the March 19 interim final rule was adopted, in a final rule published in the **Federal Register** on May 31, 1991 [56 FR 24678].

The Board made its final review of the 1990–91 crop year salable and reserve percentages at its May 10, 1991, meeting. At that meeting, pursuant to § 981.48 of the almond order, the Board unanimously recommended to increase the salable percentage from 80 percent to 93 percent and to decrease the reserve percentage from 20 percent to 7 percent. The purpose of the increase in the salable percentage is to make a larger quantity of California almonds available for normal markets in order to meet higher adjusted trade demand needs during the remainder of the 1990–91, crop year. The 1991–92 crop year has been estimated at 450 million kernelweight pounds by the California Agriculture Statistics Service. In recent years, the almond industry has shipped well over 450 million kernelweight pounds annually. Therefore, the Board has recommended increasing the salable percentage from 80 percent to 93 percent for the 1990–91 crop year to increase the carryover available in meeting 1991–92 trade demand needs. Finally, the Committee's recommendation to revise the salable and reserve percentages will benefit producers by increasing their returns and benefit handlers by relaxing restrictions and not imposing any additional burden or costs on handlers, such as costs of storing reserve almonds.

The estimates used by the Board on May 10 in reviewing the salable and reserve percentages and in arriving at its latest recommendation are shown below. The Board's July 25, 1990, December 3, 1990, and February 21, 1991, estimates are shown as a basis for comparison.

MARKETING POLICY ESTIMATES—1990 CROP

[Kernelweight basis in millions of pounds]

	7/25/90 Initial estimates	12/3/90 Revised estimates	2/21/91 Revised estimates	5/10/91 Revised estimates
Estimated Production:				
1. 1990 Production	655.0	655.0	655.0	655.0
2. Loss and Exempt—4%	26.0	26.0	26.0	26.0
3. Marketable Production	629.0	629.0	629.0	629.0
Estimated Trade Demand:				
4. Domestic	190.0	190.0	205.0	205.0
5. Export	375.0	375.0	410.0	410.0
6. Total	565.0	565.0	615.0	615.0
Inventory Adjustment:				
7. Carryin, 7/1/90	215.0	202.0	202.0	202.0
8. Desirable Carryover, 6/30/91	59.0	77.2	90.1	171.0
9. Adjustment (Item 8 minus item 7)	(156.0)	(124.8)	(111.9)	(31.0)
Salable/Reserve:				
10. Adjusted Trade Demand (Item 6 plus item 9)	409.0	440.2	503.1	584.0
11. Reserver (Item 3 minus item 10)	220.0	188.8	125.9	45.0
12. Salable Percentage (Item 10 divided by item 3×100)	65%	70%	80%	93%
13. Reserve Percentage (100 percent minus item 12)	35%	30%	20%	7%

As the chart above illustrates, the Board increased the desirable carryover from 90.1 million kernelweight pounds to 171.0 million kernelweight pounds. The desirable carryover is the quantity of salable almonds deemed desirable to be carried out on June 30, 1991, for early season shipment during the 1991–92 crop year until the 1991 crop is available for market. Incorporating this change in the trade demand calculations increased the adjusted trade demand from 503.1 million kernelweight pounds to 584.0 million kernelweight pounds, which is 93 percent of the 1990–91 crop.

Therefore, this action releases an additional 13 percent of the crop to the salable category immediately, and the remaining 7 percent (45 million kernelweight pounds) of the marketable production from the 1990–91 crop will be withheld by handlers to meet their reserve obligations. Reserve almonds may be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, and other outlets which the Board finds are noncompetitive with existing normal markets for almonds.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1990–91 crop year, estimated exports are included in the trade demand. Thus, an export percentage of 0 percent was established by the final rule published in the **Federal Register** on September 21, 1990 (55 FR 38793), and reserve almonds are not eligible for export to normal export outlets. However, handlers may ship their salable almonds to export markets. The export percentage is not changed as a result of this action.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the Board's recommendation, and other available information, it is found that the revision of section 981.237 so as to change the salable and reserve percentages for almonds during the crop year which began on July 1, 1990, to 93 percent and 7 percent, respectively, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action increases the quantity of almonds that may be marketed immediately; (2) this action was discussed at a public meeting; (3) some handlers have exhausted their supply of salable almonds and should be apprised as soon as possible of the increased salable percentage as contained in this interim final rule; (4) this action is a relaxation of a regulation; and (5) this action provides for a 30-day comment period.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: This action will not appear in the annual Code of Federal Regulations.

2. Section 981.237 is revised to read as follows:

§ 981.237 Salable, reserve, and export percentages for almonds during the crop year beginning on July 1, 1990.

The salable, reserve, and export percentages during the crop year beginning on July 1, 1990, shall be 93 percent, 7 percent, and 0 percent, respectively.

Dated: June 21, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–15284 Filed 6–27–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 981

[FV–91–291IFR]

Handling of Almonds Grown in California; Extension of Date for Satisfying Inedible Disposition Obligation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the date from July 31, 1991, to August 31, 1991, by which handlers of California almonds must satisfy their 1990–91 crop year inedible disposition obligations. The action was unanimously recommended by the Almond Board of California (Board), the agency responsible for local administration of the federal marketing order for California almonds. This action is based on a unanimous recommendation made by the Board on May 10, 1991, to allow handlers additional time to process almonds which are being released to the salable category under a separate action published on this day in the **Federal Register**.

DATES: Effective Date: June 28, 1991. Comments which are received by July 29, 1991 will be consider prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, Marketing Order Administration Branch, room 2525–S, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–5992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under marketing agreement and Order No. 981 (7 CRR part 981), both as amended, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of California almonds subject to regulation under the marketing order for almonds grown in California during the current season. There are approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CRR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This interim final rule provides handlers of California almonds an additional month to satisfy their 1990–91 crop year inedible disposition obligation. Therefore, this action relaxes restrictions on almond handlers and does not impose any additional burden or costs on handlers.

This interim final rule will revise, for 1991 only, § 981.442 of "Subpart—Administrative Rules and Regulations." The action is based on a unanimous recommendation of the Board and upon other available information.

Section 981.42 of the order provides that handlers are required to deliver a quantity of almond kernels equal to their inedible disposition obligation to the Board or Board accepted crushers, feed manufacturers, or feeders. A handler's inedible disposition obligation is the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State Inspection Service (inspection agency), less any tolerance in effect for the crop year. Section 981.42 also provides that the Board may establish rules and regulations necessary to the administration of these provisions.

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Section 981.442(a)(5) of such rules and regulations provides that each handler's inedible disposition obligation is satisfied when the almond meat content of the material delivered to accepted users equals the inedible disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred. This action extends the July 31, 1991, date to August 31, 1991, for handlers' disposition obligations incurred during the 1990–91 crop year only.

Handlers have withheld almonds from normal markets as reserve throughout the 1990–91 crop year. Often, this reserve product is held in an unprocessed form. On May 10, 1991, the Board unanimously recommended a further revision of the salable percentage, increasing it from 80 to 93 percent and decreasing the reserve percentage from 20 to 7 percent for California almonds received by handlers during the 1990–91 crop year. The additional 13 percent reserve is being released to the salable category under a separate action published on this day in the **Federal Register**. It may not be possible for handlers of California almonds to process these almonds and sort out the inedibles in time to meet the current July 31 deadline. Extending the date by which handlers of California almonds must satisfy their 1990–91 crop year inedible disposition obligations will allow handlers additional time to process their reserve inventory and, thus, satisfy their obligations.

The Board considered not changing the July 31 date for satisfying the inedible disposition obligation, or utilizing a different date. However, the present date may impose difficulties on those almond handlers whose processing capabilities may not allow them to meet the current July 31 deadline, and possibly lead to violations. No specific alternative dates were discussed since the Board concluded that a 30-day extension was adequate to meet the needs of the almond industry.

Therefore, this action changes the date from July 31, 1991, to August 31, 1991, which will allow almond handlers additional time to process their reserve inventory and thus satisfy their 1990–91 crop year inedible disposition obligations.

Based on the above, the Administrator of the AMS has determined that the issuance of this interim final rule will not have significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that the change as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on handlers by extending a July 31, 1991, deadline concerning their inedible disposition obligations; (2) this action should be taken as soon as possible before July 31, 1991, so that handlers may plan their operations accordingly; (3) this action was discussed at a public meeting; and (4) this action provides for a 30-day comment period.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

Note: This amendment to this section will not be published in the annual Code of Federal Regulations.

Revise the last sentence in paragraph (a)(5) of § 981.442 to read as follows:

§ 981.442 Quality control.

(a) * * *

(5) * * * Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred: *Provided*, That for the 1990–91 almond crop year, handlers have until August 31, 1991, to satisfy their inedible disposition obligations.

* * * * *

Dated: June 21, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–15285 Filed 6–27–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 21

[Docket No. 91–6]

Minimum Security Devices and Procedures, Reports of Crimes and Suspected Crimes and Bank Secrecy Compliance

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("OCC"), in conjunction with the other federal banking agencies, has reviewed 12 CFR part 21—Minimum Security Devices and Procedures, Reports of Crimes and Suspected Crimes and Bank Secrecy Compliance and has determined that the regulation should be revised to reflect changes in the technology of security devices and to implement changes required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The OCC published the proposed revisions to part 21 for comment on April 18, 1990 (55 FR 14424). The revisions incorporate the amendments made to the Bank Protection Act of 1968 by FIRREA and provide depository institutions with added flexibility in addressing their security needs. Further, by eliminating numerous technical references to specific security devices, the final rule will avoid the need to periodically revise the regulation to reflect particular advances in security device technology.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Frank R. Carbone, National Bank Examiner, Office of the Chief National Bank Examiner (202) 874–5170; Robert J. Roth or Scott R. Pratt, Attorneys, Legal Advisory Services Division (202) 874–5330, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Bank Protection Act of 1968 ("Act"), Public Law No. 90–389, 82 Stat. 294 (1968), 12 U.S.C. 1881 *et seq.*, requires the Federal banking agencies (the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision) to issue regulations establishing minimum standards for the installation and operation of bank security devices, and to implement procedures to both discourage crimes against depository institutions and assist in the identification of individuals who commit such acts.

On January 16, 1969, the Federal banking agencies adopted a uniform regulation to implement the Act. (34 FR 612). Aside from certain non-substantive amendments over the years, the regulation has remained largely unchanged since its adoption. The OCC, along with the other Federal banking agencies, requested comments on a proposed revision of this regulation last year. (55 FR 14424, April 18, 1990).

The OCC received a total of fourteen comments on the proposed changes to 12 CFR part 21. Six of these comments were received from banks; three were received from manufacturers of security equipment; and five were received from associations connected with banks (*e.g.*, trade associations). In general, commenters were supportive of the proposed revisions. Five commenters supported elimination of appendix A of the regulation, and four commenters supported elimination of appendix B of the regulation. Three commenters opposed the elimination of these appendices. Only one of the equipment manufacturers opposed the changes. The primary objection of those opposing the changes was that the revised standards, while establishing minimum standards, did not provide sufficient guidance to replace the more detailed appendix A and appendix B. One of the trade associations opposed the deletion of these appendices because, in its view, security officers of small institutions depend on these appendices for guidance.

Appendix A sets forth specifications for security devices to be used in banks. The OCC is deleting this appendix because it is too specific and parts of it have become obsolete. The OCC believes that any standards that continue to reference specific security devices are also likely to become obsolete because bank security technology is continuing to advance at a rapid pace. To avoid the necessity of frequently updating any list of required security devices, the revised regulation requires each bank to designate a security officer to administer a written security program. The regulation requires that, at a minimum, four specific security devices be installed. The revised regulation leaves the determination of which specific additional security devices will best meet the needs of the security program to the discretion of the security officer.

This approach allows the security officer to choose the most up-to-date equipment that meets the requirements of the particular bank. Some commenters recommended referring to Underwriters Laboratory ("UL") approval or American Society for Testing and Materials ("ASTM") specifications as a substitute for appendix A. However, because the level of risk varies from institution to institution, the OCC does not believe that it is appropriate to specify any particular security devices as mandatory. Nevertheless, security officers would be expected to identify the level of risk to their particular institution, take into consideration applicable UL and ASTM standards, and adopt an appropriate security program.

Appendix B concerned proper employee conduct after a robbery. Although this appendix has been eliminated, the OCC believes that employee training should be included in a bank's security program and notes that several organizations offer training programs for bank employees and security officers.

Some letters that were generally supportive of the revisions commented that the regulation should be expanded to encompass "white-collar crime" as well. This regulation, however, is promulgated under the Bank Protection Act, which is specifically intended to "discourage robberies, burglaries, and larcenies." Although the OCC agrees that "white-collar crimes" like fraud and embezzlement are problems, the OCC believes that these crimes are covered by other laws outside the scope of this regulation.

The revised regulation establishes a minimum standard by requiring four specified security devices: (1) A secure space for cash; (2) a lighting system for illuminating the vault; (3) an alarm system; and (4) tamper resistant locks on exterior doors and windows. In addition, the revised regulation establishes the contents of a security program, which must include, among other things, procedures for opening and closing for business, for safekeeping of valuables, and for identifying persons committing crimes. These are the minimum procedures that should comprise a bank's security program. To assist banks in establishing their programs, the regulation suggests certain factors to be considered when selecting additional security devices. In making these suggestions, the OCC notes that in the 22 years since the passage of the Bank Protection Act, trade associations and other vendors have produced security manuals and information designed for banks of various sizes.

To ensure that a bank's security program is reviewed on a regular basis for effectiveness, the regulation requires that the security officer make a report to the bank's board of directors at least annually. This report should be reflected in the minutes of the board meeting in which it is given. FIRREA eliminated the previous requirement that reports must be filed periodically with a bank's primary supervisory agency. Nevertheless, annual reports to the board of directors should still include information such as the status of employee training, the number of offenses aginst the bank, and the success of prosecution for such offenses.

Additionally, the Office of Management and Budget control number for § 21.11 is being revised to reflect the current number.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Small entities were already complying with the security standards established in the prior regulation. This revision provides significant flexibility in devising security programs, and should help reduce costs to small entities. Requiring that reports be made to the bank's board of directors, rather than requiring reports be sent to the regulator, should also ease the regulatory burden on small entities.

Executive Order 12291

The OCC has determined that this final rule does not constitute a major rule within the meaning of Executive Order 12291 and, therefore, does not require a Regulatory Impact Analysis. This final rule will not have an annual impact on the economy of $100 million or more; would not result in a major increase in the cost of bank operations or government supervision; and would not have a significant adverse effect on competition, employment, investment, productivity, or innovation. Because national banks are required to maintain minimum security devices and procedures under the existing regulation, it is not anticipated that adhering to the revised regulation will prove burdensome to national banks.

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Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3505(h)) under the control number 1557-0180. The estimated annual burden for maintaining the written security program may vary from several minutes to an hour or more depending on individual circumstances with an estimated average of .25 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing the burden should be directed to the Comptroller of the Currency, Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219, and to the Office of Management and Budget, Paperwork Reduction Project (1557-0180), Washington, DC 20503.

List of Subjects in 12 CFR Part 21

Currency, National banks, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth in the preamble, part 21 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 21—[AMENDED]

1. The authority citation for part 21 continues to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881–1884, 3401–3422.

Subpart A of part 21 is revised to read as follows:

Subpart A—Minimum Security Devices and Procedures

Sec.
21.1 Purpose and scope of subpart A of this part.
21.2 Designation of security officer.
21.3 Security program.
21.4 Report.

Subpart A—Minimum Security Devices and Procedures

§ 21.1 Purpose and scope of subpart A of this part.

(a) This subpart is issued by the Comptroller of the Currency pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882) and is applicable to all national banking associations and all banks located in the District of Columbia subject to the supervision of the Office of the Comptroller of the Currency. It requires each bank to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts.

(b) It is the responsibility of a bank's board of directors to comply with this regulation and ensure that a security program which equals or exceeds the standards prescribed by this part is developed and implemented for the bank's main office and branches (as the term "branch" is used in 12 U.S.C. 36).

§ 21.2 Designation of security officer.

Within 30 days after the opening of a new bank, the Bank's board of directors shall designate a security officer who shall have the authority, subject to the approval of the board of directors, for immediately developing and administering a written security program to protect each banking office from robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts.

(Approval by the Office of Management and Budget under control number 1557-0180).

§ 21.3 Security program.

(a) *Contents of security program.* The security program shall:

(1) Establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(2) Establish procedures that will assist in identifying persons committing crimes against the institution and that will preserve evidence that may aid in their identification or conviction; such procedures may include, but are not limited to:

(i) Using identification devices, such as prerecorded serial-numbered bills, or chemical and electronic devices;

(ii) Maintaining a camera that records activity in the banking office; and

(iii) Retaining a record of any robbery, burglary or larceny committed or attempted against a banking office;

(3) Provide for initial and periodic training of employees in their responsibilities under the security program and in proper employee conduct during and after a robbery; and

(4) Provide for selecting, testing, operating and maintaining appropriate security devices, as specified in paragraph (b) of this section.

(b) *Security devices.* Each national bank shall have, at a minimum, the following security devices:

(1) A means of protecting cash or other liquid assets, such as a vault, safe, or other secure space;

(2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(3) Tamper-resistant locks on exterior doors and exterior windows designed to be opened;

(4) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery, burglary or larceny; and

(5) Such other devices as the security officer determines to be appropriate, taking into consideration:

(i) The incidence of crimes against financial institutions in the area;

(ii) The amount of currency or other valuables exposed to robbery, burglary, or larceny;

(iii) The distance of the banking office from the nearest responsible law enforcement officers and the time required for such law enforcement officers ordinarily to arrive at the banking office;

(iv) The cost of the security devices;

(v) Other security measures in effect at the banking office; and

(vi) The physical characteristics of the banking office structure and its surroundings.

§ 21.4 Report.

The security officer for a national bank shall report at least annually to the bank's board of directors on the effectiveness of the security program. The substance of such report shall be reflected in the minutes of the Board meeting in which it is given.

(Approved by the Office of Management and Budget under control number 1557-0180).

3. In § 21.11, paragraph (f)(1) and the parenthetical at the end of the section are revised to read as follows:

§ 21.11 Reports of crimes and suspected crimes.

* * * * *

(f) *Exemptions.* (1) Banks need not file Criminal Referral Forms for robberies and burglaries committed or attempted at a banking office of a bank if the bank's security program provides for the maintenance of records under § 21.3(a)(2)(iii) documenting any such occurrences.

* * * * *

(Approved by the Office of Management and Budget under control number 1557-0180).

Appendix A and B [Removed]

4. Appendixes A and B to part 21 are removed.

Dated: June 24, 1991.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 91-15509 Filed 6-27-91; 8:45 am]

BILLING CODE 4810-33-M

Office of Thrift Supervision

12 CFR Parts 506, 563 and 568

[No. 91-229]

RIN 1550-AA25

Minimum Security Devices and Procedures

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (the "OTS"), in coordination with the other Federal Financial institution supervisory agencies, has reviewed its regulation concerning minimum security devices and procedures, and determined that it is appropriate to revise the regulation to reflect changes in the technology of security devices, and to implement changes made by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183. The proposed revision was published for comment by the OTS in March 1990 (55 FR 10247 (March 20, 1990)). The revision incorporates amendments made to the Bank Protection Act of 1968 by FIRREA and provides savings associations with the flexibility to avoid the technical obsolescence that occurred with the existing regulation.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Larry A. Clark, Program Manager, Trust, Specialized Programs (202) 906-5628, Office of Thrift Supervision, 1700 G St. NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Bank Protection Act of 1968 (12 U.S.C. 1881-4) requires the Federal financial institution supervisory agencies to establish minimum standards for security devices and procedures to discourage financial institution crime and to assist in the identification of persons who commit such crimes. To implement this statute a uniform regulation was adopted in 1969 by each of the Federal supervisory agencies—Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and the Federal Home Loan Bank Board (predecessor to the OTS). With the exception of minor changes in 1973 and 1981, this regulation has not been modified since it was first adopted. The OTS, along with the other Federal financial institution supervisory agencies, requested comments on a proposed revision to this regulation last year. (55 FR 10247 (March 20, 1990)).

The OTS received a total of twelve comments on the proposed changes to its regulation on minimum security devices and procedures. Eight comments were received from savings associations, two from trade associations, and two from manufacturers of security equipment. The OTS also reviewed and considered comments received on the proposed rule by the other Federal financial institution supervisory agencies. Eleven of the twelve comments expressed overall support for the revisions. The opposing comments from a manufacturer of security equipment, expressed concern that the elimination of minimum security standards could among other things expose associations to unnecessary risks. Within the context of overall support, several comments suggested changes to specific sections or subsections of the regulation, many of which were incorporated in this final rule.

One commenter noted that OTS regulations pertaining to reports of crimes, suspected crimes, and unexplained losses (12 CFR 563.180(d)(2)) do not require that OTS Form 366 be submitted for the types of crimes for which a record must be kept under section 568. Since this final rule provides that retaining such a record is a suggested procedure under § 568.3(a)(2)(iii), § 563.180(d)(2) is being amended in order to be consistent with this rule.

Appendix A of the current rule contains specifications for security devices to be used in savings associations. The OTS is deleting this appendix because it is too specific and has become obsolete. The OTS believes that any standards that continue to reference specific security devices are also likely to become obsolete because technology is continuing to advance at a rapid pace. To avoid the necessity of constantly updating required security devices, the revised regulation requires each savings association to designate a security officer to administer a written security program that would require, at a minimum, that four specific security devices be installed, but would leave to the discretion of the security officer the determination of which additional security devices will best meet the needs of the program. In this way the security officer can choose the most up-to-date equipment that meets the requirements of the particular association.

Some commenters recommended referring to Underwriters Laboratory ("UL") approval or ANSI specifications as a substitute for appendix A. Because the level of risk varies from institution to institution, the OTS does not believe that it is appropriate to specify any particular additional security device(s) as mandatory. Nevertheless, OTS expects security officers to identify the level of risk to their institution and adopt an appropriate security program, taking into consideration applicable ANSI and UL standards.

Appendix B specified proper employee conduct after a robbery.

Although this appendix has been eliminated, the OTS believes that training of employees should be included in an association's security program and notes that several organizations offer training programs for employees of financial institutions and security officers.

Some letters that were generally supportive of the revision commented that the regulation was too narrow and should cover "white-collar crime" as well. The OTS's regulation implements the Bank Protection Act, which is specifically intended to "discourage robberies, burglaries, and larcenies." While the OTS agrees that white-collar crimes such as fraud and embezzlement are problems, these crimes are covered by other laws and regulations outside the scope of part 568.

The revised regulation establishes a minimum standard by requiring four specified security devices: A secure space for cash; a lighting system for illuminating the vault; an alarm system; and tamper resistant locks on exterior doors and windows. In addition, the revised regulation establishes the contents of a security program, e.g., procedures for opening and closing for business, for safekeeping of valuables, and for identifying persons committing crimes. These are the minimum procedures that should comprise an association's security program. To assist associations in establishing their program, the regulation suggests certain factors to be considered when selecting additional security devices. In making these suggestions, the OTS notes that in the 22 years since passage of the Bank Protection Act, trade associations and other vendors have produced security manuals and information designed for institutions of various sizes.

To ensure that an association's security program is reviewed on a regular basis for effectiveness, the regulation requires a report by the security officer to the association's board of directors at least annually. This changes the previous requirement, which was eliminated by FIRREA, that reports must be filed periodically with a financial institution's primary supervisory agency. Nevertheless, the

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annual reports to the board of directors should still contain information such as the status of employee training, the number of offenses against the association, and the success in prosecution for such offenses.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Small entities already were complying with the security standards established in the prior regulation, and this revision provides for more flexibility in devising security programs, which should help minimize the existing costs to the institutions. The amendment also replaces required reports to the government with annual reports to the association's board of directors, which should ease the regulatory burden on small institutions.

Executive Order 12291

The OTS has determined that this final rule does not constitute a major rule and, therefore, does not require a Regulatory Impact Analysis.

Paperwork Reduction Act

The collections of information contained in this final rule were submitted to and approved by the Office of Management and Budget ("OMB") at the proposed rule stage, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). OMB has assigned this collection of information OMB Control No. 1550-0062.

The collections of information referenced in this final rule may be found at 12 CFR 568.2 and 568.4. The OTS requires the submission of this information to ensure that savings associations are in compliance with the statutory and regulatory requirements relating to minimum security devices and procedures.

Comments on the collection of information should reference the aforementioned control number and should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

[illegible]

Penalties, Reporting and recordkeeping requirements, Savings associations, Security measures.

Authority and Issuance

Accordingly, the OTS hereby amends parts 506, 563, and 568, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER A—ORGANIZATIONS AND PROCEDURES

PART 506—[AMENDED]

1. The authority citation for part 506 continues to read as follows:

Authority: Section 2(a), 95 Stat. 2812, as amended (44 U.S.C. 3501 *et seq.*), 5 CFR 1320.7

2. Section 506.1 is amended by adding two new entries to the table in paragraph (b) to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	*
568.2	1550-0062
568.4	1550-0062
* * * * *	*

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—[AMENDED]

3. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

4. Section 563.180 is amended by revising the introductory text to paragraph (d)(2) to read as follows:

§ 563.180 Criminal referrals and other reports or statements.

* * * * *

(d) *Reports of crimes, suspected crimes, and unexplained losses.* * * *

* * * * *

(2) *Filing of reports.* Except as permitted under paragraph (d)(3) of this section, and except where a security program developed under § 568.3(a) of this subchapter provides for the maintenance of a record documenting and robberies, burglaries and non-employee larcenies, a savings association or service corporation shall notify the appropriate law enforcement authorities and the OTS by filing OTS form 366 within 14 business days after discovery of any crime, suspected crime, or unexplained loss suffered by the savings association or service corporation, including:

* * * * *

5. Part 568 is revised to read as follows:

PART 568—SECURITY PROCEDURES

Sec.
568.1 Authority, purpose and scope.
568.2 Designation of security officer.
568.3 Security program.
568.4 Report.

Authority: Secs. 2-6, 82 Stat. 294-296 (12 U.S.C. 1881-1884).

§ 568.1 Authority, purpose, and scope.

(a) This part is issued by the Office of Thrift Supervision (the "OTS") pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882), and is applicable to savings associations. It requires each association to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and prosecution of persons who commit such acts.

(b) It is the responsibility of an association's board of directors to comply with this regulation and ensure that a written security program for the association's main office and branches is developed and implemented.

§ 568.2 Designation of security officer.

Within 30 days after the effective date of insurance of accounts, the board of directors of each savings association shall designate a security officer who shall have the authority, subject to the approval of the board of directors, to develop, within a reasonable time but no later than 180 days, and to administer a written security program for each of the association's offices.

§ 568.3 Security program.

(a) *Contents of security program.* The security program shall:

(1) Establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(2) Establish procedures that will assist in identifying persons committing crimes against the association and that will preserve evidence that may aid in their identification and prosecution. Such procedures may include, but are not limited to:

(i) Maintaining a camera that records activity in the office;

(ii) Using identification devices, such as prerecorded serial-numbered bills, or chemical and electronic devices; and

(iii) Retaining a record of any robbery, burglary, or larceny committed against the association;

(3) Provide for initial and periodic training of officers and employees in their responsibilities under the security program and in proper employee conduct during and after a burglary, robbery, or larceny; and

(4) Provide for selecting, testing, operating and maintaining appropriate security devices, as specified in paragraph (b) of this section.

(b) *Security devices.* Each savings association shall have, at a minimum, the following security devices:

(1) A means of protecting cash and other liquid assets, such as a vault, safe, or other secure space;

(2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the office;

(3) Tamper-resistent locks on exterior doors and exterior windows that may be opened;

(4) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary; and

(5) Such other devices as the security officer determines to be appropriate, taking into consideration:

(i) The incidence of crimes against financial institutions in the area;

(ii) The amount of currency and other valuables exposed to robbery, burglary, or larceny;

(iii) The distance of the office from the nearest responsible law enforcement officers;

(iv) The cost of the security devices;

(v) Other security measures in effect at the office; and

(vi) The physical characteristics of the structure of the office and its surroundings.

§ 568.4 Report.

The security officer for each savings association shall report at least annually to the association's board of directors on the implementation, administration, and effectiveness of the security program.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91-15361 Filed 6-27-91; 8:45 am]

BILLING CODE 6720-01-M

Internal Revenue Service

26 CFR Part 31

[T.D. 8354]

RIN 1545-AP62

Membership in a Retirement System—State and Local Government Employees

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 3121(b)(7)(F) of the Internal Revenue Code. The final regulations contain rules for determining whether an employee of a State or local government entity is a member of a retirement system of that entity for purposes of determining whether the employee's wages are subject to tax under the Federal Insurance Contribution Act (FICA). The final regulations reflect the enactment of section 3121(b)(7)(F) by the Omnibus Budget Reconciliation Act of 1990. The final regulations provide State and local government entities with guidance necessary to comply with the law and will affect State and local government entities, their retirement systems and certain of their employees.

EFFECTIVE DATE: These regulations are effective July 1, 1991, and apply to services performed after July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robin Ehrenberg (202) 377-9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Statutory Authority

This document contains final regulations under section 3121(b)(7)(F) of the Internal Revenue Code of 1986 (Code). The final regulations reflect the enactment of section 3121(b)(7)(F) by section 11332 of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101-508, 104 Stat. 1388 (OBRA 1990). Proposed regulations under section 3121(b)(7)(F) were published in the **Federal Register** on April 10, 1991 (56 FR 14488). A public hearing on the proposed regulations was held May 20, 1991. These regulations are issued under the authority contained in sections 3121 and 7805 of the Code.

Background

Under prior law, service as an employee for a State or local government entity was generally not treated as employment for purposes of the Federal Insurance Contributions Act (FICA), and wages of such an employee were thus generally not subject to FICA tax, unless there was an agreement under section 218 of the Social Security Act in effect between the State and the Secretary of Health and Human Services covering the service. OBRA 1990 amended prior law by adding a new section 3121(b)(7)(F) to the Internal Revenue Code. Section 3121(b)(7)(F) expands the definition of "employment" for FICA tax purposes to include service performed after July 1, 1991, as an employee for a State or local government entity unless the employee is a "member of a retirement system" of such entity. Exceptions are provided for certain emergency workers, election workers, patients in hospitals and other individuals. The rule in section 3121(b)(7)(F) also does not affect prior-law exceptions from employment such as that provided for services performed by certain students employed in public schools, colleges and universities, and certain other groups.

OBRA 1990 made a similar change to corresponding provisions of the Social Security Act. Thus, service by an employee of a State or local government entity who is not a member of a retirement system of such entity after July 1, 1991, will generally be taken into account in determining the employee's eligibility for Social Security and Medicare benefits.

Overview of Regulations

1. Meaning of Retirement System

With the enactment of section 3121(b)(7)(F) and the corresponding provisions of the Social Security Act, the Congress ensured that service by employees of State and local government entities would be covered either under Social Security or under a public retirement system providing meaningful benefits. To facilitate this purpose, the proposed regulations required, as do the final regulations, that in order for service in the employ of a State or local government entity to qualify for the exception from employment under section 3121(b)(7) the employee must be a member of a retirement system that provides at least a minimum level of retirement benefits to that employee.

A defined benefit retirement system maintained by a State or local government entity will generally satisfy

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this minimum retirement benefit requirement with respect to an employee if the employee has a total accrued benefit comparable to the basic retirement benefit the employee would have under Social Security, based on his or her total compensation and periods of service with the entity. Generally, early retirement benefits may not be taken into account in determining whether this requirement is satisfied. Similarly, a defined contribution retirement system will generally satisfy this requirement with respect to an employee for a period within a plan year if an allocation equal to at least 7.5 percent of the employee's compensation for the period is made to his or her account.

Under the final regulations, as under the proposed regulations, generally any retirement system that satisfies this minimum retirement benefit requirement may be treated as a retirement system for purposes of section 3121(b)(7)(F). Thus, for example, the fact that a retirement system is not a qualified plan under the Internal Revenue Code is not relevant. Furthermore, benefits provided through employee contributions are taken into account to the same extent as benefits provided through employer contributions. Thus, under some circumstances a plan may be treated as a retirement system even if it is completely funded through elective or after-tax employee contributions.

Concurrently with the issuance of the final regulations, the Internal Revenue Service is issuing a revenue procedure setting forth a number of safe harbor formulas for defined benefit retirement systems pursuant to the authority granted in such regulations. This revenue procedure was previously issued in proposed form as an announcement.

Many comments were received suggesting modifications to the minimum retirement benefit requirement as that rule was set forth in the proposed regulations and proposed revenue procedure. Many of these suggestions have been adopted.

Several comments were received requesting that the determination of whether an employee has a benefit meeting the minimum retirement benefit requirement be based not upon the benefit provided by that employer, but upon the total benefits and service of an employee under the retirement system in which he or she participates. This is of particular significance in those State and local jurisdictions that contribute to large state-wide programs (e.g., public employees retirement systems) providing portability for employees with service relating to more than one contributing employer. The final regulations generally adopt this suggested approach. Thus, if the employee is a participant in a system that is maintained by more than one political subdivision, then the employee's total benefit under the system may be considered, regardless of the fact that the benefit may relate to service with-other than the current employer. This system-wide approach may be used only if all service under the system is considered in determining the employee's retirement benefit.

Many commentators stated that the definition of compensation contained in the proposed regulation and revenue procedure (generally the FICA contribution base) lacked sufficient flexibility for State and local retirement systems to utilize the safe harbors to meet the minimum retirement benefit requirement. The concerns of the commentators focused on the fact that many retirement systems use definitions of compensation that vary in significant respects from the FICA contribution base. For example, several commentators stated that definitions of compensation often exclude one-time payments, such as cashed-out annual leave, that are not representative of an employee's wage history. In addition, definitions of compensation also commonly exclude such extraordinary payments as overtime or bonus pay. In response to these comments, the final regulations provide that the definition of compensation must be at least as inclusive as the base pay of the employee. In addition, the safe harbors under the revenue procedure have been modified so that an employer may use any less inclusive definition of compensation, provided that the benefit percentage (e.g., the 1.5 percent factor) is adjusted to reflect aggregate differences between the definition of compensation under the regulation and the definition of compensation under the system. Thus, for example, under the final regulations, the safe harbor formulas may be met by a system that limits the compensation considered in determining the retirement benefit to an amount lower than the FICA contribution base (e.g., $30,000), provided the benefit level is increased sufficiently.

The final regulations also provide that service and compensation related to an employee's other than full-time employment may, in some cases, be disregarded in determining the employee's required level of benefit. Thus, for example, if a full-time teacher holds another job position with the school system, then whether the benefit of that teacher meets the minimum retirement benefit requirement may (but is not required to) be determined solely by reference to the service and compensation related to the full-time position.

Several comments were received requesting greater flexibility with respect to the service crediting rules contained in the proposed revenue procedure for part-time, seasonal or temporary employees. In response to these comments, this rule has been modified to permit any reasonable service crediting method to be used, provided it does not result in double proration. Thus, a system may prorate the benefit of a part-time, seasonal or temporary employee either on the basis of full-time compensation or on the basis of full-time service, but may not prorate such benefit based on both compensation and service.

The final regulations retain, with certain modifications, the transition rule of the proposed regulations with respect to defined benefit retirement systems. The transition rule provides that the minimum retirement benefit requirement does not apply to defined benefit retirement systems in existence on November 5, 1990 (the date of enactment of OBRA 1990) for plan years beginning before January 1, 1993, unless benefit levels under the system are materially reduced. Under the proposed regulations, a retirement system also could not utilize this transitional relief if there was a material increase in coverage. In response to comments, this provision is not part of the final regulations. Thus, the fact that new participants are added to the retirement system does not affect the transition relief granted the retirement system with respect to employees who participated in the system on November 5, 1990. This transition relief also extends to new participants hired to fill positions of employment that were covered under the system on that date (whether on a mandatory or elective basis). However, the minimum retirement benefit rule does apply to new participants who are in positions that were not covered under the system on the date of enactment of OBRA 1990.

A number of commentators requested transition relief for defined contribution retirement systems. In response to these requests, the final regulations provide that for plan years beginning before January 1, 1993, a defined contribution retirement system that was in existence on the date of enactment of OBRA 1990, may meet the minimum retirement benefit requirement based upon a 6 percent, rather than the usual 7.5 percent, contribution rate. Conditions similar to those that apply to the defined benefit transition rule apply to this rule as well.

2. Meaning of Member

The final regulations retain the general rule set forth in the proposed regulations that an employee is treated as a member of a retirement system only if he or she actually participates in the system and actually has an accrued benefit or actually receives an allocation sufficient to satisfy the minimum retirement benefit requirement. Allocations or accruals that are conditioned on the satisfaction of service, employee election or other requirements are generally not taken into account for this purpose unless and until the employee has actually satisfied those requirements.

The final regulations retain the alternative lookback method of determining membership to provide certainty at the beginning of a calendar year regarding whether an employee will be treated as a member of a retirement system for that year, and to minimize administrative burdens on employers. Under the alternative lookback method, a reasonable belief test is substituted for the lookback test in an employee's first and last years of participation. Thus, for example, a new employee who is admitted to a system on the day he or she is hired but will not accrue a benefit for the first year of participation unless he or she is still employed on the last day of the plan year may be treated as a member of the retirement system throughout the plan year if it is reasonable to believe that the employee will in fact be present on that last day and will accrue a benefit sufficient to satisfy the minimum retirement benefit requirement.

In response to several comments, the final regulations expand the special rule in the first year of participation to allow for a delay in the imposition of FICA taxes with respect to a new employee, in certain cases, until the first day of the second month of service with the employer. This rule is available only with respect to employees who are not part-time seasonal or temporary employees and is adopted to accommodate those systems that do not allow immediate participation in their retirement system and those elective systems that cannot process elections quickly enough to permit immediate participation. This rule of administrative convenience is available only to those employers maintaining a retirement system in which the employee can actually participate by the first day of the second month of service with the employer.

The final regulations also retain, with modifications, the special transition rules provided in the proposed regulations for the period July 1 through December 31, 1991. Under these rules, an employee may generally be treated as a member of a retirement system if it is reasonable to believe that he or she will become a member by January 1, 1992.

Certain commentators were concerned that the transition period did not grant sufficient relief in those instances in which the legislative body did not convene until late 1992 or 1993. The transition rules have been modified in light of these concerns. Thus, in those instances in which a plan amendment is necessary in order to meet the minimum retirement benefit or other requirements of this section, and such amendment may be effectuated only by the action of a legislative body that does not convene during the period July 1 through December 31, 1991, the end of the reasonable reliance period (i.e., December 31, 1991) is extended to the date that is the last day of the first legislative session commencing after December 31, 1991. For example, an employer that expects to establish a system covering a group of employees who are currently not covered by its retirement system may be able to treat those employees as members of a retirement system until the last day of the first legislative session commencing after December 31, 1991, if establishment of the retirement system requires legislation which cannot be enacted until that legislative session.

Part-time, Seasonal and Temporary Employees

Many comments were received on the rules in the proposed regulations relating to part-time, seasonal and temporary employees. Under the proposed regulations, any benefit that is relied upon to meet the minimum retirement benefit requirement is required to be 100-percent nonforfeitable. The final regulations retain this requirement while making certain significant modifications in response to the concerns of State and local governments.

Several commentators suggested that refundable contributions to a retirement system were a reasonable proxy for the nonforfeitable benefit requirement. These commentators pointed out that adoption of a rule permitting satisfaction of the nonforfeitable benefit requirement through guaranteed distributions to employees upon certain events would enhance parity between defined benefit and defined contribution retirement systems under the regulations. In response to these comments, the final regulations contain a rule under which the benefit of a part-time, seasonal or temporary employee is treated as nonforfeitable if, on account of separation from service or death, such employee is unconditionally entitled to a single-sum distribution from the retirement system equal to 7.5 percent of the employee's compensation over the period of covered service, plus interest. In addition, if the benefit of a part-time seasonal or temporary employee is nonforfeitable by reason of this rule, then the special service crediting rules contained in the revenue procedure relating to such employees do not apply. A distribution is considered available on account of separation from service if it is available when an employee retires or reaches normal retirement age after separation from service. Thus, there is no requirement that the distribution occur at the time the employee separates from service. Under a special transition rule, a plan meets this nonforfeitable benefit safe harbor if an employee is unconditionally entitled to a single-sum distribution equal to 6 percent of compensation, rather than the usual 7.5 percent, for any period of credited service beginning after July 1, 1991 and ending on the last day of the plan year beginning in 1992.

Several commentators were concerned about the possible discriminatory effect of the nonforfeitable benefit rule and the fact that it applied only to a discrete group of covered employees. They questioned whether the rule, or its effect, might cause a retirement system to fail to meet the nondiscrimination requirements of section 401(a)(4). The nonforfeitable benefit requirement and the disparate vesting schedules that may result will not, in and of themselves, cause a retirement system to fail to meet the nondiscrimination rules of section 401(a)(4). Similarly, a retirement system that adopts a special accrual rule with respect to part-time, seasonal or temporary employees in order to meet the minimum retirement benefit requirement will not fail to meet the nondiscrimination requirements of section 401(a)(4) solely by reason of that accrual rule.

Some commentators questioned whether the nonforfeitable benefit requirement is met if, under the system, the benefit of a part-time, seasonal or temporary employee can be cashed out without the employee's consent upon separation from service. In response to these inquiries, the final regulations provide that in determining whether a benefit is nonforfeitable for purposes of the part-time, seasonal or temporary rule, rules apply that are similar to those contained in section 411(a)(11). Thus, a system may retain the right to cash-out

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the benefit of a part-time, seasonal or temporary employee in certain circumstances without the consent of the employee and still meet the nonforfeitable benefit requirement.

Many commentators requested clarification of the definitions of part-time, seasonal and temporary employees for purposes of the nonforfeitable benefit requirement. In response to these comments, the final regulations incorporate several modifications to the definitions. First, many commentators were concerned that the definition of part-time employee (those individuals normally working 20 hours or less per week) did not provide sufficient guidance with respect to certain school teachers whose employment hours were set by hours in the classroom instead of being based upon total hours worked. In response to these comments, the definition of part-time employee is modified in the case of post-secondary school teachers. These employees will not be considered part-time employees if they normally work at least half of the number of classroom hours defined by the post-secondary educational institution as constituting full-time employment.

Several commentators requested that employers be permitted to aggregate an employee's credited service relating to any employer that maintains the same retirement system for purposes of determining whether an employee is a part-time, seasonal or temporary employee. In general, the final regulations adopt this rule.

In the preamble to the proposed regulations, comments were requested on the definition of temporary employee and those instances where possible contract extensions could be considered in determining whether the length of the contractual arrangement between the employer and the employee exceeded two years. Several comments were received expressing the concern that the rule under the proposed regulations would include too many employees with annual contracts but with long histories of service with the employer. In response to these concerns, under the final regulations, one or more possible contract extensions may be considered if there is a significant likelihood that such extensions will occur. Contract extensions are treated as significantly likely to occur if (i) an average of 80 percent of similarly situated employees have been offered an extension in the immediately preceding two years, or (ii) the past contract renewal history of the particular employee, indicates that the employee is not a temporary employee.

3. Re-hired Annuitants

The proposed regulations provide that a re-hired annuitant may be treated as a member of a retirement system even if the annuitant does not actually receive any additional accruals or allocation to his or her account during a year and even if the annuitant does not have a total accrued benefit under the system sufficient to satisfy the minimum retirement benefit requirement. For this purpose, a re-hired annuitant is defined as any former participant of a State or local retirement system who has previously retired from service with the current employer and is either in pay status under a retirement system maintained by this employer or has reached normal retirement age under such retirement system. This rule has been retained in the final regulations and, in response to numerous requests, the definition of re-hired annuitant has been expanded to include an employee who previously retired from service with another employer maintaining the same retirement system, provided that prior service was in a position that was covered under such system.

Coordination with Medicare

Under current law (section 3121(u)), service as an employee of a State or local government entity is generally treated as employment for purposes of the Medicare portion of FICA taxes, despite the general rule in section 3121(b)(7) excluding such service from the definition of employment. This rule applies only in the case of employees hired on or after April 1, 1986. No such grandfather rule exists under new section 3121(b)(7)(F). Thus, service by an employee that is treated as employment by reason of new section 3121(b)(7)(F) must be treated as employment for purposes of both the Social Security and the Medicare portion of FICA taxes, regardless of when the employee was hired. Similarly, if an employee becomes subject to the Medicare portion of FICA taxes solely because of section 3121(b)(7)(F) (i.e., the employee was hired prior to April 1, 1986, but is not a member of a retirement system) and such employee subsequently becomes covered by a retirement system, the employee will cease to be subject to the Medicare portion of FICA taxes.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these proposed regulations is Robin Ehrenberg of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME AT SOURCE

Adoption of Amendments to the regulations

Accordingly, 26 CFR part 31 is amended as follows:

Paragraph 1. The authority citation for part 31 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * sec. 31.3121(b)(7)–2 also issued under 26 U.S.C. 3121(b)(7)(F).

Par. 2. A new § 31.3121(b)(7)–2 is added to read as follows:

§ 31.3121(b)(7)–2 Service by employees who are not members of a public retirement system.

(a) *Table of contents.* This paragraph contains a listing of the major headings of this § 31.3121(b)(7)–2.

§ 31.3121(b)(7)–2 Service by employees who are not members of a public retirement system.

(a) Table of contents.
(b) Introduction.
(c) General rule.
(1) Inclusion in employment of service by employees who are not members of a retirement system.
(2) Treatment of individuals employed in more than one position.
(d) Definition of qualified participant.
(1) General rule.
(2) Special rule for part time, seasonal and temporary employees.
(3) Alternative lookback rule.
(4) Treatment of former participants.

(e) Definition of retirement system.
(1) Requirement that system provide retirement-type benefits.
(2) Requirement that system provide minimum level of benefits.
(f) Transition rules.
(1) Application of qualified participant rules during 1991.
(2) Additional transition rules for plans in existence on November 5, 1990.

(b) *Introduction.* Under section 3121(b)(7)(F), wages of an employee of a State or local government are generally subject to tax under FICA after July 1, 1991, unless the employee is a member of a retirement system maintained by the State or local government entity. This section 31.3121(b)(7)–2 provides rules for determining whether an employee is a "member of a retirement system". These rules generally treat an employee as a member of a retirement system if he or she participates in a system that provides retirement benefits, and has an accrued benefit or receives an allocation under the system that is comparable to the benefits he or she would have or receive under Social Security. In the case of part-time, seasonal and temporary employees, this minimum retirement benefit is required to be nonforfeitable.

(c) *General rule*—(1) *Inclusion in employment of service by employees who are not members of a retirement system.* Except in the case of service described in sections 3121(b)(7)(F) (i) through (v), the exception from employment under section 3121(b)(7) does not apply to service in the employ of a State or any political subdivision thereof, or of any instrumentality of one or more of the foregoing that is wholly owned thereby, after July 1, 1991, unless the employee is a member of a retirement system of such State, political subdivision or instrumentality at the time the service is performed. An employee is not a member of a retirement system at the time service is performed unless at that time he or she is a qualified participant (as defined in paragraph (d) of this section) in a retirement system that meets the requirements of paragraph (e) of this section with respect to that employee.

(2) *Treatment of individuals employed in more than one position.* Under section 3121(b)(7)(F), whether an employee is a member of a retirement system is determined on an entity-by-entity rather than a position-by-position basis. Thus, if an employee is a member of a retirement system with respect to service he or she performs in one position in the employ of a State, political subdivision or instrumentality thereof, the employee is generally treated as a member of a retirement system with respect to all service performed for the same State, political subdivision or instrumentality in any other positions. A State is a separate entity from its political subdivisions, and an instrumentality is a separate entity from the State or political subdivision by which it is owned for purposes of this rule. See paragraph (e)(2) of this section, however, for rules relating to service and compensation required to be taken into account in determining whether an employee is a member of a retirement system for purposes of this section. This rule is illustrated by the following examples:

Example 1. An individual is employed full-time by a county and is a qualified participant (as defined in paragraph (d) of this section) in its retirement plan with regard to such employment. In addition to this full-time employment, the individual is employed part-time in another position with the same county. The part-time position is not covered by the county retirement plan, however, and neither the service nor the compensation in the part-time position is considered in determining the employee's retirement benefit under the county retirement plan. Nevertheless, if the retirement plan meets the requirements of paragraph (e) of this section with respect to the individual, the exclusion from employment under section 3121(b)(7) applies to both the employee's full-time and part-time service with the county.

Example 2. An individual is employed full-time by a State and is a member of its retirement plan. The individual is also employed part-time by a city located in the State, but does not participate in the city's retirement plan. The services of the individual for the city are not excluded from employment under section 3121(b)(7), because the determination of whether services constitute employment for such purposes is made separately with respect to each political subdivision for which services are performed.

(d) *Definition of qualified participant*—(1) *General rule*—(i) *Defined benefit retirement systems.* Whether an employee is a qualified participant in a defined benefit retirement system is determined as services are performed. An employee is a qualified participant in a defined benefit retirement system (within the meaning of paragraph (e)(1) of this section) with respect to services performed on a given day if, on that day, he or she is or ever has been an actual participant in the retirement system and, on that day, he or she actually has a total accrued benefit under the retirement system that meets the minimum retirement benefit requirement of paragraph (e)(2) of this section. An employee may not be treated as an actual participant or as actually having an accrued benefit for this purpose to the extent that such participation or benefit is subject to any conditions (other than vesting), such as a requirement that the employee attain a minimum age, perform a minimum period of service, make an election in order to participate, or be present at the end of the plan year in order to be credited with an accrual, that have not been satisfied. The rules of this paragraph (d)(1)(i) are illustrated by the following examples:

Example 1. A State maintains a defined benefit plan that is a retirement system within the meaning of paragraph (e)(1) of this section. Under the terms of the plan, employees in positions covered by the plan must complete 6 months of service before becoming participants. The exception from employment in section 3121(b)(7) does not apply to services of an employee during the employee's 6 months of service prior to his or her initial entry into the plan. The same result occurs even if, upon the satisfaction of this service requirement, the employee is given credit under the plan for all service with the employer (i.e., if service is credited for the 6-month waiting period). This is true even if the employee makes a required contribution in order to gain the retroactive credit. The same result also occurs if the employee can elect to participate in the plan before the end of the 6-month waiting period, but does not elect to do so.

Example 2. A political subdivision maintains a defined benefit plan that is a retirement system within the meaning of paragraph (e)(1) of this section. Under the terms of the plan, service during a plan year is not credited for accrual purposes unless a participant has at least 1,000 hours of service during the year. Benefits that accrue only upon satisfaction of this 1,000-hour requirement may not be taken into account in determining whether an employee is a qualified participant in the plan before the 1,000-hour requirement is satisfied.

(ii) *Defined contribution retirement systems.* Whether an employee is a qualified participant in a defined contribution retirement system is determined as services are performed. An employee is a qualified participant in a defined contribution or other individual account retirement system (within the meaning of paragraph (e)(1) of this section) with respect to services performed on a given day if, on that day, he or she has satisfied all conditions (other than vesting) for receiving an allocation to his or her account (exclusive of earnings) that meets the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to compensation during any period ending on that day and beginning on or after the beginning of the plan year of the retirement system. This is the case regardless of whether the allocations were made or accrued before the effective date of section

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3121(b)(7)(F). This rule is illustrated by the following examples:

Example 1. A State-owned hospital maintains a nonelective defined contribution plan that is a retirement system within the meaning of paragraph (e)(1) of this section. Under the terms of the plan, employees must be employed on the last day of a plan year in order to receive any allocation for the year. Employees may not be treated as qualified participants in the plan before the last day of the year.

Example 2. Assume the same facts as in *Example 1* except that, under the terms of the plan, an employee who terminates service before the end of a plan year receives a pro rata portion of the allocation he or she would have received at the end of the year, e.g., based on compensation earned since the beginning of the plan year. If the pro rata allocation available on a given day would meet the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to compensation from the beginning of the plan year through that day (or some later day), employees are treated as qualified participants in the plan on that day.

Example 3. A political subdivision maintains an elective defined contribution plan that is a retirement system within the meaning of paragraph (e)(1) of this section. The plan has a calendar year plan year and two open seasons—in December and June—when employees can change their contribution elections. In December, an employee elects not to contribute to the plan. In June, the employee elects (beginning July 1) to contribute a uniform percentage of compensation for each pay period to the plan for the remainder of the plan year. The employee is not a qualified participant in the plan during the period January–June, because no allocations are made to the employee's account with respect to compensation during that time, and it is not certain at that time that any allocations will be made. If the level of contributions during the period July–December meets the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to compensation during that period, however, the employee is treated as a qualified participant during that period.

Example 4. Assume the same facts as in *Example 3*, except that the plan allows participants to cancel their elections in cases of economic hardship. In October, the employee suffers an economic hardship and cancels the election (effective November 1). If the contributions during the period July–October are high enough to meet the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to compensation during that period, the employee is treated as a qualified participant during that period. In addition, if the contributions during the period July–October are high enough to meet the requirements for the entire period July–December, the employee is treated as a qualified participant in the plan throughout the period July–December, even though no allocations are made to the employee's account in the last two months of the year. There is no requirement that the period used to determine whether an employee is a qualified participant on a given day remain the same from day to day, as long as the period begins on or after the beginning of the plan year and ends on the date the determination is being made.

(2) *Special rule for part-time, seasonal and temporary employees*—(i) *In general.* A part-time, seasonal or temporary employee is generally not a qualified participant on a given day unless any benefit relied upon to meet the requirements of paragraph (d)(1) of this section is 100-percent nonforfeitable on that day. This requirement may be applied solely to the portion of an employee's benefit under the retirement system attributable to compensation and service while an employee is a part-time, seasonal or temporary employee, provided that such service is taken into account with respect to the remaining portion of the benefit for vesting purposes. Rules similar to the rules in section 411(a)(11) are applicable in determining whether a benefit is nonforfeitable. Thus, a benefit does not fail to be nonforfeitable solely because it can be immediately distributed upon separation of service without the consent of the employee, provided that the present value of the benefit does not exceed $3,500.

(ii) *Treatment of employees entitled to certain distributions upon death or separation from service.* A part-time, seasonal or temporary employee's benefit under a retirement system is considered nonforfeitable within the meaning of paragraph (d)(2)(i) of this section on a given day if on that day the employee is unconditionally entitled under the retirement system to a single-sum distribution on account of death or separation from service of an amount that is at least equal to 7.5 percent of the participant's compensation (within the meaning of paragraph (e)(2)(iii)(B) of this section) for all periods of credited service taken into account in determining whether the employee's benefit under the retirement system meets the minimum retirement benefit requirement of paragraph (e)(2) of this section. An employee will be considered to be unconditionally entitled to a single-sum distribution notwithstanding the fact that the distribution may be forfeitable (in whole or in part) upon a finding of such employee's criminal misconduct. The participant must be entitled to interest on the distributable amount through the date of distribution, at a rate meeting the requirements of paragraph (e)(2)(iii)(C) of this section, as part of the single sum. See paragraph (f)(2)(i)(C) for a transition rule relating to this nonforfeitable benefit safe harbor. The rule of this paragraph (d)(2)(ii) is illustrated by the following example:

Example. An employee is required to contribute 7.5 percent of his or her compensation to a State's defined benefit plan each year. The contribution is "picked up" by the employer in accordance with section 414(h). Under the plan, these amounts plus interest accrued since the date each amount was contributed are refundable to the employee in all cases upon the employee's death or separation from service with the employer. If the interest rate meets the requirements of paragraph (e)(2)(iii)(C) of this section, then the employee's benefits under the plan are considered nonforfeitable and thus meet the requirement of paragraph (d)(2)(i) of this section. Of course, the benefit under the plan must still meet the minimum retirement benefit requirement for defined benefit plans of paragraph (e)(2)(ii) of this section.

(iii) *Definitions of part-time, seasonal and temporary employee*—(A) *Definition of part-time employee.* For purposes of this section, a part-time employee is any employee who normally works 20 hours or less per week. A teacher employed by a post-secondary educational institution (e.g., a community or junior college, post-secondary vocational school, college, university or graduate school) is not considered a part-time employee for purposes of this section if he or she normally has classroom hours of one-half or more of the number of classroom hours designated by the educational institution as constituting full-time employment, provided that such designation is reasonable under all the facts and circumstances. In addition, elected officials and election workers (otherwise described in section 3121(b)(7)(F)(iv) but paid in excess of $100 annually) are not considered part-time, seasonal or temporary employees for purposes of this section. The rules of this paragraph (d)(2)(iii) are illustrated by the following example:

Example. A community college treats a teacher as a full-time employee if the teacher is assigned to work 15 classroom hours per week. A new teacher is assigned to work 8 classroom hours per week. Because the assigned classroom hours of the teacher are at least one-half of the school's definition of full-time teacher, the teacher is not a part-time employee.

(B) *Definition of seasonal employee* For purposes of this section, a seasonal employee is any employee who normally works on a full-time basis less than 5 months in a year. Thus, for example, individuals who are hired by a political subdivision during the tax return season in order to process incoming returns and work full-time over a 3-month period are seasonal employees.

(C) *Definition of temporary employee.* For purposes of this section, a temporary employee is any employee performing services under a contractual arrangement with the employer of 2 years or less duration. Possible contract extensions may be considered in determining the duration of a contractual arrangement, but only if, under the facts and circumstances, there is a significant likelihood that the employee's contract will be extended. Future contract extensions are considered significantly likely to occur for purposes of this rule if on average 80 percent of similarly situated employees (i.e., those in the same or a similar job classification with expiring employment contracts) have had bona fide offers to renew their contracts in the immediately preceding 2 academic or calendar years. In addition, future contract extensions are considered significantly likely to occur if the employee with respect to whom the determination is being made has a history of contract extensions with respect to his or her current position. An employee is not considered a temporary employee for purposes of this rule solely because he or she is included in a unit of employees covered by a collective bargaining agreement of 2 years or less duration.

(D) *Treatment of employees participating in certain systems.* Whether an employee is a part-time, seasonal or temporary employee with respect to allocations or benefits under a retirement system is generally determined based on service in the position in which the allocations or benefits were earned, and does not take into account service in other positions with the same or different States, political subdivisions or instrumentalities thereof. All of an employee's service in other positions with the same or different States, political subdivisions or instrumentalities thereof may be taken into account for purposes of determining whether an employee is a part-time, seasonal or temporary employee with respect to benefits under the retirement system, however, *Provided that*: The employee's service in the other positions is or was covered by the retirement system; all service aggregated for purposes of determining whether an employee is a part-time, seasonal or temporary employee (and related compensation) is aggregated under the system for all purposes in determining benefits (including vesting); and the employee is treated at least as favorably as a full-time employee under the retirement system for benefit accrual purposes. The rule of this paragraph (d)(2)(iii)(D) is illustrated by the following example:

Example. Assume that an employee works 15 hours per week for a county and 10 hours per week for a municipality, and that both of these political subdivisions contribute to the same state-wide public employee retirement system. Assume further that the employee's service in both positions is aggregated under the system for all purposes in determining benefits (including vesting). If the employee is covered under the retirement system with respect to both positions and is treated for benefit accrual purposes at least as favorably as full-time employees under the retirement system, then the employee is not considered a part-time employee of either the county or the municipality for purposes of the nonforfeitable benefit requirement of paragraph (d)(2)(i) of this section.

(3) *Alternative lookback rule*—(i) *In general.* An employee may be treated as a qualified participant in a retirement system throughout a calendar year if he or she was a qualified participant in such system (within the meaning of paragraphs (d) (1) and (2) of this section) at the end of the plan year of the system ending in the previous calendar year. This rule is illustrated by the following examples:

Example 1. A political subdivision maintains a plan that is a retirement system within the meaning of paragraph (e)(1) of this section. An employee is a qualified participant within the meaning of paragraph (d)(1) of this section in the plan on the last day of the plan year ending on May 31, 1995. If the alternative lookback rule is used to determine FICA liability, no such liability exists with respect to the employee or employer for calendar year 1996 by reason of section 3121(b)(7)(F). The same result would apply if the determination is being made with respect to calendar year 1992 and the lookback year was the plan year ending May 31, 1991, even though that plan year ended before the effective date of section 3121(b)(7)(F).

Example 2. A political subdivision maintains an elective defined contribution plan described in section 457(b) of the Code. An employee is eligible to participate in the plan but does not elect to contribute for a plan year. Under the general rule of paragraph (d)(1) of this section, the employee is not a qualified participant in the plan during the plan year because contributions sufficient to meet the minimum retirement benefit requirement of paragraph (e)(2) of this section are not being made. However, if an employee's status as a qualified participant is being determined under the alternative lookback rule, then the employee is a qualified participant for the calendar year in which the determination is being made if he of she was a qualified participant as of the end of the plan year that ended in the previous calendar year.

(ii) *Application in first year of participation.* If the alternative lookback rule is used, an employee who participates in the retirement system may be treated as a qualified participant on any given day during his or her first plan year of participation in a retirement system (within the meaning of paragraph (e)(1) of this section) if and only if it is reasonable on such day to believe that the employee will be a qualified participant (within the meaning of paragraphs (d)(1) and (2) of this section) on the last day of such plan year. In the case of a defined contribution retirement system, the determination of whether the employee is actually (or is expected to be) a qualified participant at the end of the plan year must take into account all compensation since the commencement of participation. See paragraph (d)(3)(iv) of this section. If this reasonable belief is correct, and the employee is a qualified participant on the last day of his or her first plan year of participation, then the exception from employment in section 3121(b)(7) will apply without regard to section 3121(b)(7)(F) to services of the employee for the balance of the calendar year in which the plan year ends. For purposes of this paragraph (d)(3)(ii), it is not reasonable to assume the establishment of a new plan until such establishment actually occurs. In addition, the rule in this paragraph (d)(3)(ii) may not be used to treat an employee as a qualified participant until the employee actually becomes a participant in the retirement system. In the case of a retirement system that does not permit a new employee to participate until the first day of the first month beginning after the employee's commencement of service, or some earlier date, a new employee who is not a part-time, seasonal or temporary employee may be treated as a qualified participant until such date. This 1-month rule of administrative convenience applies without regard to whether the employer has a reasonable belief that the employee will be a qualified participant. The rules of this paragraph (d)(3)(ii) are illustrated by the following examples:

Example 1. A political subdivision maintains a plan that is a retirement system within the meaning of paragraph (e)(1) of this section and uses the alternative lookback rule of this paragraph (d)(3). Under the terms of the plan, service during a plan year is not credited for accrual purposes unless a participant has at least 1,000 hours of service during the year. Assume that an employee becomes a participant. If it is reasonable to believe that the employee will be credited with 1,000 hours of service by the last day of his or her first year of participation and thereby become a qualified participant by reason of accruing a benefit that meets the minimum retirement benefit requirement of paragraph (e)(2) of this section, the services

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of the employee are not subject to FICA tax from the date of initial participation until the end of that plan year. If the employee is a qualified participant on the last day of his or her first plan year of participation, then the exception from employment for purposes of FICA will apply to services of the employee for the balance of the calendar year in which the plan year ended.

Example 2. Assume the same facts as *Example 1*, except that the employee is a newly hired employee and the plan provides that an employee may not participate until the first day of his or her first full month of employment. Under the 1-month rule of convenience, the employee may be treated as a qualified participant until the first date on which he or she could participate in the plan.

(iii) *Application in last year of participation.* If the alternative lookback rule is used, an employee may be treated as a qualified participant on any given day during his or her last year of participation in a retirement system (within the meaning of paragraph (e)(1) of this section) if and only if it is reasonable to believe on such day that the employee, will be a qualified participant (within the meaning of paragraphs (d)(1) and (2) of this section) on his or her last day of participation. For purposes of this paragraph (d)(3)(iii), an employee's last year of participation means the plan year that the employer reasonably ascertains is the final year of such employee's participation (e.g., where the employee has a scheduled retirement date or where the employer intends to terminate the plan).

(iv) *Special rule for defined contribution retirement systems.* An employee may not be treated as a qualified participant in a defined contribution retirement system under this paragraph (d)(3) if compensation for less than a full plan year or other 12-month period is regularly taken into account in determining allocations to the employee's account for the plan year unless, under all of the facts and circumstances, such arrangement is not a device to avoid the imposition of FICA taxes. For example, an arrangement under which compensation taken into account is limited to the contribution base described in section 3121(x)(1) is not considered a device to avoid FICA taxes by reason of such limitation. See paragraph (e)(2)(iii)(B) of this section for a rule permitting the use of such limitation. This rule is illustrated by the following example:

Example. A political subdivision maintains a defined contribution plan that covers all of its full-time employees and is a retirement system within the meaning of paragraph (e)(1) of this section. Under the plan, a portion of each participant's compensation in the final month of every plan year is allocated to the participant's account. Employees covered under the plan generally may not be treated as qualified participants under the alternative lookback rule for any portion of the calendar year following the year in which such allocation is made.

(v) *Consistency requirement.* Beginning with calendar year 1992, if the alternative lookback rule is used to determine whether an employee is a qualified participant, it must be used consistently from year to year and with respect to all employees of the State, political subdivision or instrumentality thereof making the determination. If a retirement system is sponsored by more than one State, political subdivision or instrumentality, this consistency requirement applies separately to each plan sponsor.

(4) *Treatment of former participants*—(i) *In general.* In general, the rules of this paragraph (d) apply equally to former participants who continue to perform service for the same State, political subdivision or instrumentality thereof or who return after a break in service. Thus, for example, a former employee of a political subdivision with a deferred benefit under a defined benefit retirement system maintained by the political subdivision who is reemployed by the political subdivision but does not resume participation in the retirement system, may continue to be a qualified participant in the system after becoming reemployed if his or her total accrued benefit under the system meets the minimum retirement benefit requirement of paragraph (e)(2) of this section (taking into account all periods of service (including current service) required to be taken into account under that paragraph). See also paragraph (e)(2)(v) of this section for situations in which benefits under a retirement system may be taken into account even though they relate to service for another employer.

(ii) *Treatment of re-hired annuitants.* An employee who is a former participant in a retirement system maintained by a State, political subdivision or instrumentality thereof, who has previously retired from service with the State, political subdivision or instrumentality, and who is either in pay status (i.e., is currently receiving retirement benefits) under the retirement system or has reached nomal retirement age under the retirement system, is deemed to be a qualified participant in the retirement system without regard to whether he or she continues to accrue a benefit or whether the distribution of benefits under the retirement system has been suspended pending cessation of services. This rule also applies in the case of an employee who has retired from service with another State, political subdivision or instrumentality thereof that maintains the same retirement system as the current employer, provided the employee is a former participant in the system by reason of the employee's former employment. Thus, for example, if a teacher retires from service with a school district that participates in a state-wide teachers' retirement system, begins to receive benefits from the system, and later becomes a substitute teacher in another school district that participates in the same state-wide system, the employee is treated as a re-hired annuitant under this paragraph (d)(4)(ii).

(e) *Definition of retirement system*—(1) *Requirement that system provide retirement-type benefits.* For purposes of section 3121(b)(7)(F), a retirement system includes any pension, annuity, retirement or similar fund or system within the meaning of section 218 of the Social Security Act that is maintained by a State, political subdivision or instrumentality thereof to provide retirement benefits to its employees who are participants. Whether a plan is maintained to provide retirement benefits with respect to an employee is determined under the facts and circumstances of each case. For example, a plan providing only retiree health insurance or other deferred welfare benefits is not considered a retirement system for this purpose. The legal form of the system is generally not relevant. Thus, for example, a retirement system may include a plan described in section 401(a), an annuity plan or contract under section 403 or a plan described in section 457(b) or (f) of the Internal Revenue Code. In addition, the Social Security system is not a retirement system for purposes of section 3121(b)(7)(F) and this section. These rules are illustrated by the following examples:

Example 1. Under an employment arrangement, a portion of an employee's compensation is regularly deferred for 5 years. Because a plan that defers the receipt of compensation for a short span of time rather than until retirement is not a plan that provides retirement benefits, this arrangement is not a retirement system for purposes of section 3121(b)(7)(F).

Example 2. An individual holds two positions with the same political subdivision. The wages earned in one position are subject to FICA tax pursuant to an agreement (under section 218 of the Social Security Act) between the Secretary of Health and Human Services and the State in which the political subdivision is located. Because the Social Security system is not a retirement system for purposes of section 3121(b)(7)(F), the exception from employment in section 3121(b)(7) does not apply to service in the other position unless the employee is otherwise a member of a retirement system of such political subdivision.

(2) *Requirement that system provide minimum level of benefits*—(i) *In general.* A pension, annuity, retirement or similar fund or system is not a retirement system with respect to an employee unless it provides a retirement benefit to the employee that is comparable to the benefit provided under the Old-Age portion of the Old-Age, Survivor and Disability Insurance program of Social Security. Whether a retirement system meets this requirement is generally determined on an individual-by-individual basis. Thus, for example, a pension plan that is not a retirement system with respect to an employee may nevertheless be a retirement system with respect to other employees covered by the system.

(ii) *Defined benefit retirement systems.* A defined benefit retirement system maintained by a State, political subdivision or instrumentality thereof meets the requirements of this paragraph (e)(2) with respect to an employee on a given day if and only if, on that day, the employee has an accrued benefit under the system that entitles the employee to an annual benefit commencing on or before his or her Social Security retirement age that is at least equal to the annual Primary Insurance Amount the employee would have under Social Security. For this purpose, the Primary Insurance Amount an individual would have under Social Security is determined as it would be under the Social Security Act if the employee had been covered under Social Security for all periods of service with the State, political subdivision or instrumentality, had never performed service for any other employer, and had been fully insured within the meaning of section 214(a) of the Social Security Act, except that all periods of service with the State, political subdivision or instrumentality must be taken into account (i.e., without reduction for low-earning years).

(iii) *Defined contribution retirement systems*—(A) *In general.* A defined contribution retirement system maintained by a State, political subdivision or instrumentality thereof meets the requirements of paragraph (e)(2)(i) of this section with respect to an employee if and only if allocations to the employee's account (not including earnings) for a period are at least 7.5 percent of the employee's compensation for service for the State, political subdivision or instrumentality during the period. Matching contributions by the employer may be taken into account for this purpose.

(B) *Definition of compensation.* The definition of compensation used in determining whether a defined contribution retirement system meets the minimum retirement benefit requirement must generally be no less inclusive than the definition of the employee's base pay as designated by the employer or the retirement system, provided such designation is reasonable under all the facts and circumstances. Thus, for example, a defined contribution retirement system will not fail to meet this requirement merely because it disregards for all purposes one or more of the following: overtime pay, bonuses, or single-sum amounts received on account of death or separation from service under a bona fide vacation, compensatory time or sick pay plan, or under severance pay plans. Furthermore, any compensation remaining after such amounts are disregarded that is in excess of the contribution base described in section 3121(x)(1) at the beginning of the plan year may also be disregarded. The rules of this paragraph are illustrated by the following example:

Example. A political subdivision maintains an elective defined contribution plan that is a retirement system within the meaning of paragraph (e)(1) of this section. The plan has a calendar year plan year. In 1995, an employee contributes to the plan at a rate of 7.5 percent of base pay. Assume that the employee will reach the maximum contribution base described in section 3121(x)(1) in October of 1995. The employee is a qualified participant in the plan for all of the 1995 plan year without regard to whether the employee ceases to participate at any time after reaching the maximum contribution base.

(C) *Reasonable interest rate requirement.* A defined contribution retirement system does not satisfy this paragraph (e)(2) with respect to an employee unless the employee's account is credited with earnings at a rate that is reasonable under all the facts and circumstances, or employees' accounts are held in a separate trust that is subject to general fiduciary standards and are credited with actual earnings on the trust fund. Whether the interest rate with which an employee's account is credited is reasonable is determined after reducing the rate to adjust for the payment of any administrative expenses. The rule of this paragraph (e)(2)(iii)(C) is illustrated by the following example:

Example. A political subdivision maintains a defined contribution plan described in section 457(b). Under the plan, the accounts of participants are credited annually on the basis of a variable interest rate formula determined as of the beginning of the plan year. The formula requires an interest rate (after adjustment for administrative expense payments) equal to 100 percent of the Applicable Federal Rate for long-term debt instruments. This interest rate constitutes a reasonable rate of interest.

(iv) *Treatment of emloyees employed in more than one position with the same entity.* All service and compensation of an employee with respect to his or her employment with a State, political subdivision or instrumentality thereof must generally be considered in determining whether a benefit meets the requirement of this paragraph (e)(2). However, for individuals employed simultaneously in multiple positions with the same entity, this determination may (but is not required to) be made solely by reference to the service and compensation related to a single position of the employee with the State, political subdivision or instrumentality thereof making the determination, provided that the position is not a part-time, seasonal or temporary position.

(v) *Treatment of employees participating in certain systems.* In general, only compensation from and service for the State, political subdivision or instrumentality thereof that employs the employee (and the allocations or benefits related to such compensation or service) on a given day are considered in determining whether the employee's benefit under the retirement system on that day meets the requirements of this paragraph (e)(2), even if the employee has other allocations or benefits under the same retirement system from service with another State, political subdivision or instrumentality thereof. However, an employee's total allocations or benefits under a retirement system maintained by multiple States, political subdivisions or instrumentalities thereof (including the current employer) may be taken into account if:

(A) The compensation and service on which the additional allocations or benefits are based are also taken into account in determining whether the employee's allocations or benefits satisfy the minimum retirement benefit requirement;

(B) The retirement system takes all service and compensation of the employee in all positions covered by the system into account for all benefit determination purposes; and

(C) If the employee is a part-time, seasonal or temporary employee, he or she is treated under the plan for benefit accrual purposes in as favorable a manner as a full-time employee participating in the system.

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(vi) *Additional testing methods.* Additional testing methods may be designated by the Commissioner in revenue procedures, revenue rulings, notices or other documents of general applicability.

(f) *Transition rules*—(1) *Application of qualified participant rules during 1991*—(i) *In general.* An employee may be treated as a qualified participant in a retirement system (within the meaning of paragraph (e)(1) of this section) on a given day during the period July 1 through December 31, 1991, if it is reasonable on that day to believe that he or she will be a qualified participant under the general rule in paragraphs (d)(1) and (2) of this section by January 1, 1992 (taking into account only service and compensation on or after such date). For purposes of this paragraph (f)(1)(i), given the facts and circumstances of a particular case, it may be reasonable to assume that the terms of a plan will be changed or that a new retirement system will be established by the end of calendar year 1991, as long as affirmative steps have been taken to accomplish this result.

(ii) *Extension of reliance period if legislative action required.* If a plan amendment or other action is necessary in order to treat an employee as a member of a retirement system for purposes of this section, such amendment or other action may only be taken by a legislative body that does not convene during the period July 1, 1991, through December 31, 1991, and the other requirements of paragraph (f)(1)(i) of this section are met, the end of the reasonable reliance period (including the rule that service and compensation prior to that date may be disregarded) provided under paragraph (f)(1)(i) of this section is extended from December 31, 1991, to the date that is the last day of the first legislative session commencing after December 31, 1991. These rules are illustrated by the following examples:

Example 1. A State maintains a defined benefit plan that meets the requirements of paragraph (e) of this section. The plan does not cover a particular class of full-time employees as of July 1, 1991. However, in light of the enactment of section 3121(b)(7)(F), State officials administering the plan for the State intend to request that the legislature amend the State statute to include that class of employees in the existing plan and otherwise to modify the terms of the plan to meet the requirements of section 3121(b)(7)(F) and this section. The State legislature meets from January through March each year, and legislative action is required to expand coverage under the plan. State officials administering the plan have publicized the proposed amendment providing for the addition of these employees to the plan. Under the transition rule for 1991, if it is reasonable to believe that the legislature will pass this bill in the 1992 session, service by the employees who will be covered under the plan by reason of the amendment is not treated as employment by reason of section 3121(b)(7)(F) during the period prior to April 1, 1992. This is true regardless of whether the plan provides retroactive coverage for the period July 1, 1991 through March 31, 1992.

Example 2. Assume the same facts as in *Example 1*, except that legislative action is not required in order to expand coverage under the plan, and that publication of the proposed change to the plan occurs in 1991. Assume further that coverage is expanded under the plan to include the new class of full-time employees as of April 1, 1992. Despite this action, in this situation the service by those employees during the period January 1, 1992 through March 31, 1992 is not excluded from "employment" under section 3121(b)(7)(F), and wages for that period are generally subject to FICA taxes even if the plan provides retroactive coverage for any portion of the period July 1, 1991 to March 31, 1992.

(2) *Additional transition rules for plans in existence on November 5, 1990*—(i) *Application of minimum retirement benefit requirement to defined benefit retirement systems in plan years beginning before 1993*—(A) *In general.* A defined benefit retirement system maintained by a State, political subdivision or instrumentality thereof on November 5, 1990, is not subject to the minimum retirement benefit requirement of paragraph (e)(2) of this section for any plan year beginning before January 1, 1993, with respect to individuals who were actually covered under the system on November 5, 1990. Such a retirement system is also not subject to the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to an employee who becomes a participant after November 5, 1990, if he or she is employed in a position that was covered under the retirement system on November 5, 1990, without regard to whether such coverage was mandatory or elective. A retirement system is not described in this paragraph (f)(2)(i)(A) if there has been a material decrease in the level of retirement benefits under the retirement system pursuant to an amendment adopted subsequent to November 5, 1990. Whether such a material decrease in benefits has occurred is determined under the facts and circumstances of each case. A decrease in benefits is not material to the extent that it does not decrease the benefit payable at normal retirement age. These rules are illustrated by the following examples:

Example 1. The retirement formula under a retirement plan that was in existence on November 5, 1990, is amended to use career average compensation instead of a high 3-year average, without any increase in the benefit formula. This amendment constitutes a material decrease in the level of benefit under the retirement plan. Therefore, the retirement plan is subject to the minimum retirement benefit requirement for the plan year for which the amendment is effective and for all succeeding plan years.

Example 2. A defined benefit retirement plan that was in existence on November 5, 1990, is subsequently amended to include part-time employees. Previously, this class of employees was not covered under the plan either on a mandatory or on an elective basis. The plan is subject to the minimum retirement benefit requirement with respect to the part-time employees because this class of employees was previously excluded from coverage under the retirement plan. Of course, the nonforfeitable benefit rule applies to the benefit relied upon to meet the minimum retirement benefit requirement with respect to any part-time, seasonal or temporary employee covered during this period.

(B) *Treatment in plan years beginning after 1992 of benefits accrued during previous plan years.* The general rule that a defined benefit retirement system meets the minimum retirement benefit requirement on the basis of total benefits and service accrued to date is modified for plans in existence on November 5, 1990. If a defined benefit retirement system in existence on November 5, 1990, does not meet the minimum retirement benefit requirement solely because the benefits accrued for an employee (with respect to whom the system is entitled to relief under paragraph (f)(2)(i)(A) of this section) as of the last day of the last plan year beginning before January 1, 1993, do not meet the minimum retirement benefit requirement of paragraph (e)(2) of this section with respect to service and compensation before that time, then the retirement system will be deemed to comply with the requirements of paragraph (e)(2) of this section if the future service accruals would comply with the requirement of paragraph (e)(2) of this section. If retirement benefits under a retirement system in existence on November 5, 1990 are materially decreased within the meaning of paragraph (f)(2)(i)(A) of this section, then the date the decrease is effective is substituted for January 1, 1993 for purposes of this paragraph. The rule of this paragraph (f)(2)(i)(B) is illustrated by the following example:

Example. A defined benefit plan maintained by a State was in existence on November 5, 1990. It provides a retirement benefit on the last day of the 1992 plan year that is insufficient to meet the requirements of paragraph (e)(2) of this section based on employees' total service and compensation with the State at that time. The plan will nevertheless meet the requirements of paragraph (e)(2) of this section if it is amended to provide benefits sufficient to meet the requirements of paragraph (e)(2) of this section based on employees' service and compensation in plan years beginning after December 31, 1992.

(C) *Treatment of part-time, seasonal or temporary employees.* A defined benefit retirement system is not exempt from the minimum retirement benefit requirement with respect to a part-time, seasonal or temporary employee during the transition period provided in paragraph (f)(2)(i)(A) of this section unless any retirement benefit provided to the employee is 100-percent nonforfeitable within the meaning of paragraph (d)(2) of this section. In determining whether the benefit is nonforfeitable, the special rule in paragraph (d)(2)(ii) of this section is modified in two respects during the transition period: first, the percentage of compensation required to be available for distribution is reduced from 7.5 percent to 6 percent; and second, the period of service with respect to which compensation must be determined is modified to include all periods of participation by the employee in the system since July 1, 1991.

(ii) *Application of minimum retirement benefit requirement to defined contribution retirement systems in plan years beginning before 1993.* A defined contribution retirement system maintained by a State, political subdivision or instrumentality thereof on November 5, 1990, meets the minimum retirement benefit requirement of paragraph (e) (2) of this section with respect to an employee for any plan year beginning before January 1, 1993, if mandatory allocations to the employee's account (not including earnings) for a period are at least 6 percent (rather than 7.5 percent) of the employee's compensation for service to the State, political subdivision or instrumentality during the period, and the plan otherwise meets the requirements of paragraph (e)(2)(iii) of this section. This transition rule is only available with respect to an employee who is actually covered under the system on November 5, 1990, and to an employee who becomes a participant after November 5, 1990, if he or she is employed in a position that was covered under the retirement system on November 5, 1990, without regard to whether such coverage was mandatory or elective. In addition, this transition rule is not available with respect to a part-time, seasonal or temporary employee unless the mandatory allocation required under this paragraph (f)(2)(ii) is 100-percent nonforfeitable within the meaning of paragraph (d)(2) of this section. A retirement system is not described in this paragraph (f)(2)(ii) if there has been a material decrease in the level of retirement benefits under the retirement system pursuant to an amendment adopted subsequent to November 5, 1990. Whether such a material decrease in benefits has occurred is determined under all the facts and circumstances.

(iii) *Application of qualified participant rules.* A participant with respect to whom relief is granted under paragraph (f)(2)(i)(A) of this section may be treated as a qualified participant in the defined benefit retirement system on a given day if, on that day, he or she is actually a participant in the retirement system, and, on that day, it is reasonable to believe that the participant will actually accrue a benefit before the end of the plan year of such retirement system in which the determination is made. A participant is not treated as accruing a benefit for purposes of this rule if his or her accrued benefits increase solely as a result of an increase in compensation. However, an employee is treated as a qualified participant for a plan year if the employee meets all of the applicable conditions for accruing the maximum current benefit for such year but fails to accrue a benefit solely because of a uniformly applicable benefit limit under the plan. In addition, an employee may be treated as a qualified participant in the system on a given day if the employee is a re-hired annuitant within the meaning of paragraph (d)(4)(ii) of this section. This rule is illustrated by the following example:

Example. A political subdivision maintains a defined benefit plan that is a retirement system within the meaning of paragraph (e)(1) of this section but does not meet the requirements of paragraph (e)(2) of this section. If the plan is not subject to the minimum retirement benefit requirement, an employee who is a participant in the retirement plan as of the end of a plan year beginning before January 1, 1993, and may reasonably be expected to accrue a benefit under the plan by the end of such plan year may be treated as a qualified participant in the plan throughout the plan year regardless of the actual amount of the accrual.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved June 13, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-15380 Filed 6-27-91; 8:45 am]

BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1610

Availability of Records

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) is revising its Freedom of Information Act (FOIA) regulations to include procedures for obtaining records maintained under the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, and predisclosure notification procedures for confidential commercial information. The Commission also is making several nonsubstantive administrative changes.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Acting Associate Legal Counsel, Kathy Oram, Senior Attorney, or Maia Caplan, Attorney, (202) 663-4669 (voice) or (202) 663-7026 (TDD).

Copies of this final rule are available in the following alternate formats: Large print; braille; electronic file on computer disk; and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663-4395 (voice) or (202) 663-4399 (TDD).

SUPPLEMENTARY INFORMATION: The Commission published a notice of proposed rulemaking on March 14, 1991, proposing to revise its regulations under the Freedom of Information Act, 5 U.S.C. 552. 56 FR 10847. The proposed rule amended the regulation to encompass records maintained pursuant to the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.*, added a new § 1610.19 on predisclosure notification procedures for confidential commercial information, and made a number of other clarifying changes. The Commission received one comment on the proposed amendments. In response to concerns voiced by the commenter, § 1610.19, as initially proposed, is hereby modified in two respects. Instead of uniformly requiring certification of confidentiality, the regulations seek certification "whenever possible." Additionally, the section now provides the Commission with discretion to select, on a case-by-case basis, deadlines for submitters to respond to Commission notices of requests for confidential commercial information; this will allow designation of response dates in light of the quantity of

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documents to be reviewed and any other relevant circumstances.

We have also made minor editorial changes to increase clarity and to insure consistency, clarified two statutory citations and changed three office addresses. In all other respects, the Commission is adopting the proposed amendments to part 1610 as a final rule.

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

Accordingly, 29 CFR part 1610 is amended as follows.

1. The authority citation for 29 CFR part 1610 is revised to read as follows:

Authority: 42 U.S.C. 2000e–12(a), 5 U.S.C. 552, as amended by Pub. L. 93–502 and Pub. L. 99–570; for § 1610.15, nonsearch or copy portions are issued under 31 U.S.C. 9701.

2. Section 1610.4 is amended by revising paragraph (c) to read as follows:

§ 1610.4 Public reference facilities and current index.

* * * * *

(c) The Commission's field offices are:

Albuquerque Area Office (Phoenix District), Western Bank Building, suite 1105, 505 Marquette NW., Albuquerque, New Mexico 87102–2189

Atlanta District Office, Citizens Trust Bank Building, Suite 1100, 75 Piedmont Avenue NE., Atlanta, Georgia 30335

Baltimore District Office, 111 Market Place, suite 4000, Baltimore, Maryland 21202

Birmingham District Office, 1900 3rd Avenue, North, suite 101, Birmingham, Alabama 35203–2397

Boston Area Office (New York District) 1 Congress Street, suite 100, Boston, Massachusetts 02114

Buffalo Local Office (New York District), 28 Church Street, room 310, Buffalo, New York 14202

Charlotte District Office, 5500 Central Avenue, Charlotte, North Carolina 28212

Chicago District Office, Federal Building, room 930A, 536 South Clark Street, Chicago, Illinois 60605

Cincinnati Area Office (Cleveland District), 550 Main Street, room 7015, Cincinnati, Ohio 45202

Cleveland District Office, 1375 Euclid Avenue, room 600, Cleveland, Ohio 44115

Dallas District Office, 8303 Elmbrook Drive, Dallas, Texas 75247

Denver District Office, 1845 Sherman Street, 2nd Floor, Denver, Colorado 80203

Detroit District Office, 477 Michigan Avenue, room 1540, Detroit, Michigan 48226

El Paso Area Office (San Antonio District), The Commons, Building C, suite 100, 4171 North Mesa Street, El Paso, Texas 77902

Fresno Local Office (San Francisco District), 1313 P Street, suite 103, Fresno, California 93721

Greensboro Local Office (Charlotte District), 324 West Market, room B–27, P.O. Box 3363 Greensboro, North Carolina 27402

Greenville Local Office (Charlotte District), 300 East Washington Street, suite B41, Greenville, South Carolina 29601

Honolulu Local Office (San Francisco District), 677 Ala Moana Boulevard, suite 404, P.O. Box 50082, Honolulu, Hawaii 96813

Houston District Office, 1919 Smith Street, 7th Floor, Houston, Texas 77002

Indianapolis District Office, 46 East Ohio Street, room 456, Indianapolis, Indiana 46204

Jackson Area Office (Birmingham District), 207 West Amite Street, Jackson, Mississippi 39201

Kansas City Area Office (St. Louis District), 911 Walnut Street, 10th Floor, Kansas City, Missouri 64106

Little Rock Area Office (Memphis District), 320 West Capitol Avenue, suite 621, Little Rock, Arkansas 72201

Los Angeles District Office, 3660 Wilshire Boulevard, 5th Floor, Los Angeles, California 90010

Louisville Area Office (Indianapolis District), 600 Martin Luther King Jr. Place, suite 272, Louisville, Kentucky 40202

Memphis District Office, 1407 Union Avenue, suite 621, Memphis, Tennessee 38104

Miami District Office, 1 Northeast First Street, 6th Floor, Miami, Florida 33132

Milwaukee District Office, 310 West Wisconsin Avenue, suite 800, Milwaukee, Wisconsin 53203

Minneapolis Local Office (Milwaukee District), 220 Second Street South, room 108, Minneapolis, Minnesota 55401–2141

Nashville Area Office (Memphis District), 50 Vantage Way, suite 202, Nashville, Tennessee 37228

Newark Area Office (Philadelphia District), 60 Park Place, room 301, Newark, New Jersey 07102

New Orleans District Office, 701 Loyola Avenue, suite 600, New Orleans, Louisiana 70113

New York District Office, 90 Church Street, room 1501, New York, New York 10007

Norfolk Area Office (Baltimore District), Systems Management of America (SMA) Building, 252 Monticello Avenue, 1st Floor, Norfolk, Virginia 23510

Oakland Local Office (San Francisco District), 1333 Broadway, room 430, Oakland, California 94612

Oklahoma Area Office (Dallas District), 531 Couch Drive, Oklahoma City, Oklahoma 73102

Philadelphia District Office, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 19102

Phoenix District Office, 4520 North Central Avenue, suite 300, Phoenix, Arizona 85012–1848

Pittsburgh Area Office (Philadelphia District), 1000 Liberty Avenue, room 2038–A, Pittsburgh, Pennsylvania 15222

Raleigh Area Office (Charlotte District), 1309 Annapolis Drive, Raleigh, North Carolina 27608–2129

Richmond Area Office (Baltimore District), 3600 West Broad Street, room 229, Richmond, Virginia 23230

San Antonio District Office, 5410 Fredericksburg Road, suite 200, San Antonio, Texas 78229

San Diego Local Office (Los Angeles District), 880 Front Street, room 4S–21, San Diego, California 92188

San Francisco District Office, 901 Market Street, suite 500, San Francisco, California 94103,

San Jose Local Office (San Francisco District), 96 North 3rd Street, San Jose, California 95112,

Savannah Local Office, 10 Whitaker Street, suite B, Savannah, Georgia 31401,

Seattle District Office, 2815 Second Avenue, suite 500, Seattle, Washington 98121,

St. Louis District Office, 625 North Euclid Street, 5th Floor, St. Louis, Missouri 63018,

Tampa Area Office (Miami District), 501 East Polk Street, 10th Floor, Tampa, Florida 33602,

Washington Field Office, 1400 L Street NW., suite 200, Washington, DC. suite 20005.

§ 1610.5 [Amended]

3. Section 1610.5 is amended by removing paragraph (d).

4. Section 1610.7 is amended by revising (a) to read as follows:

§ 1610.7 Where to make request; form.

(a) Requests for the following types of records shall be submitted to the regional attorney for the pertinent district, area or local office, at the district office address listed in § 1610.4(c) or, in the case of the Washington Field Office, shall be submitted to the regional attorney in the Baltimore District Office at the address listed in § 1610.4(c):

(1) Information about current or former employees of a field office;

(2) Existing non-confidential statistical data related to the case processing of a field office;

(3) Agreements between the Commission and state or local fair employment agencies operating within the jurisdiction of a field office; or

(4) Materials in field office investigative files related to charges under: Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq*); the Equal Pay Act (29 U.S.C. 206(d)); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*); or, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

* * * * *

§§ 1610.7—1610.9, 1610.13 and 1610.14 [Amended]

5. Sections 1610.7, 1610.8, 1610.9, 1610.13, and 1610.14 are amended by removing the words "Deputy Legal Counsel" and adding, in their place, the words "Legal Counsel."

6. Section 1610.10 is amended by revising paragraphs (a) and (b) as follows:

§ 1610.10 Responses: form and content.

(a) Once a requested record is identified and available, the requester will be notified of when and where the record will be made available and the cost assessed for processing the request. Fees for processing requests will be determined in accordance with the schedule set forth in § 1610.15. Checks shall be made payable to the Treasurer of the United States.

(b) A reply denying a written request for a record shall be in writing, signed by the Legal Counsel's designee, or the appropriate regional attorney, and shall include:

(1) His or her name and title;

(2) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed under § 1610.9(a), and that the denial will be reconsidered as soon as the search or examination is complete; and

(3) A statement that the denial may be appealed to the Legal Counsel within 30 days of receipt of the denial or partial denial.

* * * * *

§§ 1610.8, 1610.9 and 1610.11 [Amended]

7. Section 1610.8, 1610.9 and 1610.11 are amended by removing the words "Deputy Legal Counsel or designee" and replacing them with "Legal Counsel's designee."

8. Section 1610.11 is amended by revising the title and adding a new paragraph (f) as follows:

§ 1610.11 Appeals to the Legal Counsel from initial denials.

* * * * *

(f) In the event that the Commission terminates its proceedings on a charge after the regional attorney denies a request for the charge file but during consideration of the requester's appeal from that denial, the request may be remanded to the appropriate Regional Attorney for redetermination. The requester retains a right to appeal to the Legal Counsel from the decision on remand.

9. Section 1610.17 is amended as follows:

(a) Paragraphs (f) and (g) are redesignated as paragraphs (g) and (h).

(b) Paragraph (f) is added to read as follows:

§ 1610.17 Exemptions.

* * * * *

(f) Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) explicitly adopts the powers, remedies, and procedures set forth in sections 706 and 709 of title VII. Accordingly, the prohibitions on disclosure contained in section 706 and 709 of title VII as outlined in paragraph (b), (c), (d), and (e) of this section, apply with equal force to requests for information related to charges and executed statistical reporting forms filed with the Commission under the Americans with Disabilities Act.

* * * * *

10. Section 1610.18 is revised to read as follows:

§ 1610.18 Information to be disclosed.

The Commission will provide the following information to the public:

(a) The Commission will make available for inspection and copying certain tabulations of aggregate industry, area, and other statistics derived from the Commission's reporting programs authorized by section 709(c) of title VII, provide that such tabulations: Were perviously compiled by the Commission and are available in documentary form; comprise an aggregation of data from not less than three responding entities; and, do not reveal the identity of an individual or dominant entity in a particular industry or area;

(b) All blank forms used by the Commission;

(c) Subject to the restrictions and procedures set forth in § 1610.19, all signed contracts, final bids on all signed contracts, and agreements between the Commission and state or local agencies charged with the administration of state or local fair employment practices laws;

(d) All final reports that do not contain statutorily confidential material in a recognizable form;

(e) All agency correspondence to members of the public, Members of Congress, or other persons not government employees or special government employees, except those containing information that would produce an invasion of privacy if made public;

(f) All administrative staff manuals and instructions to staff that affect members of the public unless the materials are promptly published and copies offered for sale; and

(g) All final votes of each Commissioner, for every Commission meeting, except for votes pertaining to filing suit against respondents until such litigation is commenced.

§ 1610.21 [Redesignate from § 1610.20]

11. Section 1610.20 is redesignated § 1610.21.

§ 1610.20 [Redesignated from § 1610.19]

12. Section 1610.19 is redesignated § 1610.20.

13. Section 1610.19 is added to read as follows:

§ 1610.19 Predisclosure Notification Procedures for Confidential Commercial Information.

(a) *In general.* Commercial information provided to the Commission shall not be disclosed except in accordance with this section. For the purposes of this section, the following definitions apply:

(1) "Confidential commercial information" refers to records provided by a submitter containing information that is arguably exempt from disclosure under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" refers to any person or entity who provides confidential commercial information to the government. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitter.* Except as provided in paragraph (g) of this section, the Commission shall provide a submitter with explicit notice of a FOIA request for confidential commercial records whenever:

(1) The Commission reasonably believes that disclosure could cause substantial competitive harm to the submitter;

(2) The information was submitted prior to January 1, 1988, the records are less than 10 years old, and the submitter designated them as commercially sensitive; or

(3) The information was submitted after January 1, 1988, and the submitter previously, in good faith, designated the records as confidential commercial information. Such designations shall:

(i) Whenever possible, include a statement or certification from an officer or authorized representative of the company that the information is in fact confidential commercial information and has not been disclosed to the public; and

(ii) Expire ten years from the date of submission unless otherwise justified.

(c) *Notice to requester.* When notice is given to a submitter under this section, the requester shall be notified that notice and opportunity to comment are being provided to the submitter.

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(d) *Opportunity of submitter to object.* When notification is made pursuant to paragraph (b) of this section, the Commission shall afford the submitter a minimum of five working days to provide it with a detailed statement of objections to disclosure. Such statement shall provide precise identification of the exempted information, and the basis for claiming it as a trade secret or as confidential information pursuant to 5 U.S.C. 552(b)(4), the disclosure of which is likely to cause substantial harm to the submitter's competitive position.

(e) *Notice of intent to disclose.* (1) The Commission shall consider carefully the objections of a submitter provided pursuant to paragraph (d) of this section. When the Commission decides to disclose information despite such objections, it shall provide the submitter with a written statement briefly explaining why the objections were not sustained. Such statement shall be provided a minimum of three working days prior to the specified disclosure date, in order that the submitter may seek a court injunction to prevent release of the records if it so chooses.

(2) When a submitter is notified pursuant to paragraph (e)(1) of this section, notice of the Commission's final disclosure determination and proposed release date shall also be provided to the requester.

(f) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Commission shall promptly notify the submitter of the legal action.

(g) *Exceptions to the notice requirement.* The notice requirements of this section shall not apply if:

(1) The Commission determines that the information shall not be disclosed;

(2) The information is published or otherwise officially available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

[FR Doc. 91-15386 Filed 6-27-91; 8:45 am]
BILLING CODE 6570-06-M

29 CFR Part 1611

Privacy Act of 1974

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is revising its regulations at 29 CFR part 1611, which implement the Privacy Act of 1974. These regulations set forth the procedures whereby individuals can request information about, access to, or amendments of records pertaining to them that are contained in a system of records established or maintained by the Commission. They also set forth the procedures to be followed in processing those requests. The amendments update the regulations, delegate authority, clarify the appeal process and exempt two EEOC systems of records from some of the Act's requirements.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Acting Associate Legal Counsel, Thomas J. Schlageter, Acting Assistant Legal Counsel or Kathleen Oram, Senior Attorney, at (202) 663-4670 (voice) or (202) 663-7026 (TDD).

Copies of this final rule are available in the following alternate formats: Large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663-4395 (voice) or (202) 663-4399 (TDD).

SUPPLEMENTARY INFORMATION: Pursuant to section (f) of the Privacy Act of 1974, 5 U.S.C. 552a(f), each agency that maintains a system of records must promulgate rules in accordance with the Administrative Procedure Act, 5 U.S.C. 553, establishing procedures and requirements for carrying out the provisions of the Privacy Act. The Commission published a notice of proposed rulemaking on March 14, 1991, proposing to amend its Privacy Act regulations to update them and to make other administrative and editorial changes. 56 FR 10850.

The Commission proposed to exempt government-wide system EEOC/GOVT-1 from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act and to expand the existing exemption for system EEOC-1 to include exemption from sections (e)(4)(G) and (e)(4)(I) of the Privacy Act in order to parallel the exemption for system EEOC-8. It also proposed to delegate authority for processing appeals under the Privacy Act from the Chairman of the Commission to the Legal Counsel or the Legal Counsel's designee; to clarify the procedures for requests and appeals pertaining to records maintained in system EEOC/GOVT-1, EEOC's only government-wide system of records; to add the locations of EEOC maintained records covered by General Services Administration, Merit Systems Protection Board, Office of Government Ethics and Department of Labor government-wide systems and provide information regarding how and where to appeal denials under those systems; and to change the charge for copying of documents from $.05 per page to $.15 per page to conform with the Commission's Freedom of Information Act regulation, 29 CFR 1610.15.

We did not receive any comments on the proposed changes. This final rule, therefore, adopts the amendments proposed in the notice of proposed rulemaking without change.

List of Subjects in 29 CFR Part 1611

Privacy Act.

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

Accordingly, 29 CFR part 1611 is amended as follows:

PART 1611—PRIVACY ACT REGULATIONS

1. The citation authority for part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1611.1 is revised to read as follows:

§ 1611.1 Purpose and scope.

This part contains the regulations of the Equal Employment Opportunity Commission (the Commission) implementing the Privacy Act of 1974, 5 U.S.C. 552a. It sets forth the basic responsibilities of the Commission under the Privacy Act (the Act) and offers guidance to members of the public who wish to exercise any of the rights established by the Act with regard to records maintained by the Commission. All records contained in system EEOC/GOVT-1, including those maintained by other agencies, are subject to the Commission's Privacy Act regulations. Requests for access to, an accounting of disclosures for, or amendment of records in EEOC/GOVT-1 must be processed by agency personnel in accordance with this part. Commission records that are contained in a government-wide system of records established by the U.S. Office of Personnel Management (OPM), the General Services Administration (GSA), the Merit Systems Protection Board (MSPB), the Office of Government Ethics (OGE) or the Department of Labor (DOL) for which those agencies have published systems notices are subject to the publishing agency's Privacy Act regulations. Where the government-wide systems notices permit access to these records through the employing agency, an individual should submit requests for access to, for amendment of or for an accounting of disclosures to the Commission offices as indicated in § 1611.3(b).

3. Section 1611.3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1611.3 Procedures for requests pertaining to individual records in a record system.

(a) Any person who wishes to be notified if a system of records maintained by the Commission contains any record pertaining to him or her, or to request access to such record or to request an accounting of disclosures made of such record, shall submit a written request, either in person or by mail, in accordance with the instructions set forth in the system notice published in the **Federal Register**. The request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records (as set forth in the system notice to which the request relates);

(3) Any other information specified in the system notice; and

(4) When the request is for access to records, a statement indicating whether the requester desires to make a personal inspection of the records or be supplied with copies by mail.

(b) Requests pertaining to records contained in a system of records established by the Commission and for which the Commission has published a system notice should be submitted to the person or office indicated in the system notice. Requests pertaining to Commission records contained in the government-wide systems of records listed below should be submitted as follows:

(1) For systems OPM/GOVT-1 (General Personnel Records), OPM/GOVT-2 (Employee Performance File System Records), OPM/GOVT-3 (Records of Adverse Actions and Actions Based on Unacceptable Performance), OPM/GOVT-5 (Recruiting, Examining and Placement Records), OPM/GOVT-6 (Personnel Research and Test Validation Records), OPM/GOVT-9 (Files on Position Classification Appeals, Job Grading Appeals and Retained Grade or Pay Appeals), OPM/GOVT-10 (Employee Medical File System Records) and DOL/ESA-13 (Office of Workers' Compensation Programs, Federal Employees' Compensation File), to the Director of Personnel Management Services, EEOC, 1801 L Street, NW., Washington, DC 20507;

(2) For systems OGE/GOVT-1 (Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records), OGE/GOVT-2 (Confidential Statements of Employment and Financial Interests) and MSPB/GOVT-1 (Appeal and Case Records), to the Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507;

(3) For system OPM/GOVT-7 (Applicant Race, Sex, National Origin, and Disability Status Records), to the Director of the Office of Equal Employment Opportunity, EEOC, 1801 L Street, NW., Washington, DC 20507;

(4) For systems GSA/GOVT-3 (Travel Charge Card Program) and GSA/GOVT-4 (Contracted Travel Services Program) to the Director of Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington, DC 20507.

* * * * *

4. Section 1611.5 is amended as follows:

(a) Paragraph (a)(5) is amended by removing the words "or § 1611.14."

(b) Paragraphs (c) and (d) are revised to read as follows:

§ 1611.5 Disclosure of requested information to individuals.

* * * * *

(c) If a request for access to records is denied pursuant to paragraph (a) or (b) of this section, the determination shall specify the reasons for the denial and advise the individual how to appeal the denial. If the request pertains to a system of records for which the Commission has published a system notice, any appeal must be submitted in writing to the Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507. If the request pertains to a government-wide system of records any appeal should be in writing, identified as a Privacy Act appeal and submitted as follows:

(1) For systems established by OPM and for which OPM has published a system notice, to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, OPM, 1900 E Street, NW., Washington, DC 20415. The OPM Privacy Act regulations, 5 CFR 297.207, shall govern such appeals.

(2) For systems established by OGE and for which OGE has published a system notice, to the Privacy Act Officer, Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005-3917. The OGE Privacy Act regulations, 5 CFR part 2606, shall govern such appeals.

(3) For the system established by MSPB and for which MSPB has published a system notice, to the Deputy Executive Director for Management, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. The MSPB Privacy Act regulations, 5 CFR part 1205, shall govern such appeals.

(4) For systems established by GSA and for which GSA has published a system notice, to GSA Privacy Act Officer, General Services Administration (ATRAI), Washington, DC 20405. The GSA Privacy Act regulations, 41 CFR 105-64.301-5, shall govern such appeals.

(5) For the system established by DOL and for which DOL has published a system notice, to the Solicitor of Labor, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The DOL Privacy Act regulations, 29 CFR 70a.9, shall govern such appeals.

(d) In the event that access to a record is denied on appeal by the Legal Counsel or the Legal Counsel's designee, the requestor shall be advised of his or her right to bring a civil action in federal district court for review of the denial in accordance with 5 U.S.C. 552a(g).

* * * * *

6. Section 1611.7(c) is amended to remove the words "Civil Service Commission's" and add, in their place, the word "OPM's".

7. Section 1611.8 is amended as follows:

(a) Paragraph (a)(2) is amended by removing the word "Chairman" and adding, in its place, the words "Legal Counsel".

(b) Paragraphs (d) and (e) are revised to read as follows:

§ 1611.8 Agency review of request for correction or amendment to record.

* * * * *

(d) In the event that the Commission receives a notice of correction or amendment from another agency that pertains to records maintained by the Commission, the Commission shall make the appropriate correction or amendment to its records and comply with paragraph (a)(1)(iii) of this section.

(e) Requests for amendment or correction of records maintained in the government-wide systems of records listed in § 1611.5(c) shall be governed by the appropriate agency's regulations cited in that paragraph. Requests for amendment or correction of records maintained by other agencies in system EEOC/GOVT-1 shall be governed by the Commission's regulations in this part.

9. Section 1611.9 is revised to read as follows:

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§ 1611.9 Appeal of initial adverse agency determination on correction or amendment.

(a) If a request for correction or amendment of a record in a system of records established by EEOC is denied, the requester may appeal the determination in writing to the Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507. If the request pertains to a record that is contained in the government-wide systems of records listed in § 1611.5(c), an appeal must be made in accordance with the appropriate agency's regulations cited in that paragraph.

(b) The Legal Counsel or the Legal Counsel's designee shall make a final determination with regard to an appeal submitted under paragraph (a) of this section not later than 30 working days from the date on which the individual requests a review, unless for good cause shown, this 30-day period is extended and the requester is notified of the reasons for the extension and of the estimated date on which a final determination will be made. Such extensions will be used only in exceptional circumstances and will not normally exceed 30 working days.

(c) In conducting the review of an appeal submitted under paragraph (a) of this section, the Legal Counsel or the Legal Counsel's designee shall be guided by the requirements of 5 U.S.C. 552a(e).

(d) If the Legal Counsel or the Legal Counsel's designee determines to grant all or any portion of a request on an appeal submitted under paragraph (a) of this section, he or she shall so inform the requester, and the appropriate Commission official shall comply with the procedures set forth in § 1611.8(a)(1)(ii) and (iii).

(e) If the Legal Counsel or the Legal Counsel's designee determines in accordance with paragraphs (b) and (c) of this section not to grant all or any portion of a request on an appeal submitted under paragraph (a) of this section, he or she shall inform the requester:

(1) Of this determination and the reasons for it;

(2) Of the requester's right to file a concise statement of reasons for disagreement with the determination of the Legal Counsel or the Legal Counsel's designee;

(3) That such statements of disagreement will be made available to anyone to whom the record is subsequently disclosed, together with (if the Legal Counsel or Legal Counsel's designee deems it appropriate) a brief statement summarizing the Legal Counsel or Legal Counsel's designee's reasons for refusing to amend the record;

(4) That prior recipients of the disputed record will be provided with a copy of the statement of disagreement together with (if the Legal Counsel or Legal Counsel's designee deems it appropriate) a brief statement of the Legal Counsel or Legal Counsel's designee's reasons for refusing to amend the record, to the extent that an accounting of disclosure is maintained under 5 U.S.C. 552a(c); and

(5) Of the requester's right to file a civil action in federal district court to seek a review of the determination of the Legal Counsel or the Legal Counsel's designee in accordance with 5 U.S.C. 552a(g).

(f) The Legal Counsel or the Legal Counsel's designee shall ensure that any statements of disagreement submitted by a requestor are made available or distributed in accordance with paragraphs (e) (3) and (4) of this section.

§ 1611.11 [Amended]

10. Section 1611.11(a)(1) is amended to remove the words "copies made by photocopy device or otherwise [per page), $.05." and add, in their place, the words "photocopies (per page), $.15."

§ 1611.13 [Removed]

11. Section 1611.13 is removed.

12. Section 1611.14 is redesignated as § 1611.13 and revised to read as follows:

§ 1611.13 Specific exemptions.

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (Title VII and Americans With Disabilities Act Discrimination Case Files) and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other federal agencies in the course of investigations of charges and complaints that violations of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans With Disabilities Act and the Rehabilitation Act have occurred. In some instances, agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the Commission and other agencies for these provisions of the Act to apply to such records.

(b) The subject individuals of the files in these systems know that the Commission or their employing agencies are maintaining a file on their charge or complaint, and the general nature of the information contained in it.

(c) Subject individuals of the files in each of these systems have been provided a means of access to their records by the Freedom of Information Act. Subject individuals of the charge files in system EEOC–3 have also been provided a means of access to their records by section 83 of the Commission's Compliance Manual. Subject individuals of the case files in system EEOC/GOVT–1 have also been provided a means of access to their records by the Commission's Equal Employment Opportunity in the Federal Government regulation, 29 CFR 1613.220.

(d) Many of the records contained in system EEOC/GOVT–1 are obtained from other systems of records. If such records are incorrect, it would be more appropriate for an individual to seek to amend or correct those records in their primary filing location so that notice of the correction can be given to all recipients of that information.

(e) Subject individuals of the files in each of these systems have access to relevant information provided by the allegedly discriminating employer as part of the investigatory process and are given the opportunity to explain or contradict such information and to submit any responsive evidence of their own. To allow such individuals the additional right to amend or correct the records submitted by the allegedly discriminating employer would undermine the investigatory process and destroy the integrity of the administrative record.

(f) The Commission has determined that the exemption of these three systems from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act is necessary for the agency's law enforcement efforts.

[FR Doc. 91–15397 Filed 6–28–91; 8:45 am]
BILLING CODE 6570–01–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

Privacy Act of 1974; Implementation

AGENCY: Office, Director of Information Systems for command, Control, Communications and Computers, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending its rule for administering the Privacy Act by permitting Access and Amendment Refusal Authorities to delegate their responsibilities.

DATES: Effective on June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Walker, Policy Division, Office of the Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army, Washington, DC 20310–0107.

SUPPLEMENTARY INFORMATION: This amendment permits Access and Amendment Refusal Authorities to delegate their authority to an office or subordinate commander in the grade of GS/GM 15 and Colonel (0–6). The rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The Department of the Army certifies that this document will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq). Therefore, no regulatory flexibility analysis has been prepared. The rule has no collection of information requirements and therefore does not require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 32 CFR Part 505

Information, Archives and records, Privacy, Freedom of information.

PART 505—[AMENDED]

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: 5 U.S.C. 52a; DOD Directive 5400.11, June 9, 1982; and DOD Regulation 5400.11R, August 31, 1983.

2. 32 CFR § 505.1 [Amended] 505.1 is amended by revising the introductory text of paragraph (g) as follows:

* * * * *

(g) *Access and Amendment Refusal Authority (AARA).* Each Access and Amendment Refusal Authority is responsible for action on requests for access to or amendment of, records referred to them under this regulation. The officials listed below and their designees are the only Access and Amendment Refusal Authorities for records in their authority to an office or subordinate commander. All delegations must be in writing. If an AARA's delegate denies access or amendment, the delegate must clearly state that he or she is acting on behalf of the AARA and identify the AARA by name and position in the written response to the requester. Denial of access or amendment by an AARA's delegate must have appropriate legal review. Delegations will not be made below the colonel (06) or GS/GM 15 level. Such delegations must not slow Privacy actions. AARA's will send the names, offices and telephone numbers of their delegates to the Director of Information Systems for Command, Central, Communications and Computers, HQDA, ATTN: SAIS-PDD Washington, DC 20310-0107.

* * * * *

John O. Roach,
Department of the Army, Liaison Officer With the Federal Register.

[FR Doc. 91–15417 Filed 6–27–91; 8:45 am]
BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

36 CFR Part 327

Shoreline Management Fees at Civil Works Projects

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: This fee schedule complies with the Office of Management and Budget Circular A–25, User Charges. This rule provides policy and guidance to implement the fee schedule for shoreline management at Civil Works water resource projects. This action incorporates changes deemed necessary to meet new and changing conditions.

EFFECTIVE DATE: October 1, 1991.

ADDRESSES: Office of the Chief of Engineers, Attn: CECW–ON, 20 Massachusetts Avenue, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis (202) 272–0247.

SUPPLEMENTARY INFORMATION: 36 CFR 327.30 Lakeshore Management at Civil Works Projects, published in the Federal Register in December 1974, stated in part "* * * As permits become eligible for renewal after July 1, 1976, a charge of $10 for each new permit and a $5 annual fee for inspection of floating facilities will be made. There will be no annual inspection fee for permits for vegetation modification of lakeshore areas. In all cases, the total administrative charge will be collected initially at the time of permit issuance rather than on a piecemeal annual bases." The cost of a five year permit was $30.

On June 8, 1988, a proposed rule was published in the Federal Register (53 FR 21495) which called for the Fee Schedule for Shoreline Management permits to be published separately from 36 CFR 327.30. A final rule was published in the Federal Register on July 27, 1990 (55 FR 30690).

Office of Management and Budget Circular A–25 requires that when a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed to recover the full cost to the Federal Government for providing the special benefits.

The fee schedule will appear in § 327.31, a new section. Permits will be issued for a five year period to reduce costs to the permittee. To reduce the governments administrative workload, permits may be issued for a term less than five years. The new fees will not be assessed until the expiration of a current valid permit.

As stated in § 327.30 appendix A(2)(a), fees shall be paid prior to issuing the permit.

When an applicant receives a permit that covers more than one activity and/or facility, only a single permit covering the activities/facilities will be issued. A one time fee will be charged for all permit activities/facilities which are simultaneously authorized as if the permit was for a single activity/facility. If both a moorage facility and vegetation modification are authorized concurrently under one permit, only the fee for a moorage facility will be charged. This will apply to permit renewals as well as new facilities/activities.

Similarly, if multiple activities/facilities are authorized, under a single permit renewal, only one periodic fee will be charged for each year of the permit as if the permit was for a single activity/facility.

If one or more activity/facility modifications are authorized, on a permit which contains multiple activities/facilities, a one time activity/facility modification will apply. No periodic inspection fees will be charged for activity/facility modifications.

This fee schedule does not affect the fees charged for real estate instruments. These fees are established by a separate regulation.

The fees for Shoreline Management permits issued in accordance with 36 CFR 327.30, are as follows:

New facility—A one time fee of $400 plus $15 per year periodic inspection fee (payable in advance for 5 year increments).

New owner—A one time fee of $200 plus $15 per year periodic inspection fee

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(payable in advance for 5 year increments).

Facility modifications—A one time fee of $100 for each modification request.

Facility renewal—A $15 per year periodic inspection fee (payable in advance in 5 year increments).

Vegetation modification—new permit—A one time fee of $200 plus $15 periodic inspection fee (payable in advance for 5 year increments).

Vegetation modification—change—A one time fee of $100.

Vegetation modification—new adjacent land owner—A one time fee of $100 plus $15 periodic inspection fee (payable in advance in 5 year increments).

Vegetation modification—permit renewal—A $15 per year periodic inspection fee (payable in advance in 5 year increments).

Fees will not be assessed for erosion control permits when the government, the public, and the permittee all benefit directly or indirectly from the construction of erosion control structures. However, they are still subject to section 404 and section 10 permit requirements.

No refunds will be made for any unused portions of permits terminated by the permittee before the permit expiration date. A refund may be issued if the permit is terminated by the government.

Classification

The Secretary of the Army has determined that this revision is not a "major" rule within the meaning of Executive Order (E.O.) 12291. This is because the revision will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governmental agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprise in domestic or export markets.

The purpose and effect of this revision is to incorporate changes deemed necessary to meet new and changing conditions. The revision is consistent with the regulation and strengthens the regulation for more effective management of Corps of Engineers water resource development projects. This rule is also intended to make the regulation consistent with legislative actions. No increased administrative or paperwork burden is imposed by this revision.

This revision was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

Background

On August 10, 1990, a notice of proposed Shoreline Management Fees at Civil Works Projects, was published in the **Federal Register** (55 FR 32944). A 45 day period for public review was provided. During this period, 276 letters of comment were received from a broad spectrum of interests including individuals, businesses, local and national associations and state, local and federal agencies. The number of responses to the proposed fee schedule change were less than 1% of the existing shoreline management permits nationwide. The majority of the comments received were opposed to a fee increase. Other comments agreed with the increase but called for a smaller percentage of increase. The Army has considered and evaluated all the comments and recognizes that the new fee schedule is a substantial increase over the existing schedule. Since there has not been an increase to the fee schedule since 1974 the new schedule better enables the government to recover a greater percentage of the cost incurred in administering the shoreline management program. It should be noted that many of the comments were almost identical in their content. The following discusses the issues raised and the Army's response. Copies of all written comments are available for public inspection at the Office of the Chief of Engineers, room 6223, 20 Massachusetts Avenue NW., Washington, DC. Copies of the final rule are also available upon request.

Comments

Comment: Fee increases should be phased in over several years.

Response: Phasing the fee schedule in over several years would not be cost effective. Delaying the implementation of the new fees would increase the overall cost of administering the shoreline management program.

Comment: Shoreline Management fees should be more reasonable.

Response: Office of Management and Budget Circular A–25, requires that when a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed to recover the full cost to the Federal Government for providing the special benefits." 36 CFR part 327 Fees reflect a greater portion of the administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies. The fees were determined by dividing the nationwide administrative costs by the number of permits issued. There are currently over 38,000 shoreline management permits with an average term of 3.81 years. The current annual revenue from shoreline management permits is approximately $245,000 and the total annual cost of administering this program is approximately $3,600,000. It is estimated that the new fee schedule will produce an annual revenue of $1,310,575.

Comment: Present fees are more than adequate.

Response: The new fee schedule reflects a portion of the administrative costs to manage the program, and includes base labor, fringe benefits, overhead, equipment, materials and supplies. The new fee schedule enables the government to recover a greater portion of the cost of administering the program.

Comment: Increased fees penalize people for upgrading facility.

Response: The new fee schedule is not a penalty, it simply insures that those individuals or groups deriving the most benefit from shoreline management are paying the administrative cost of the program. The new fee schedule will also enable the government to recover a greater portion of the cost of the program.

Comment: Increased fees will jeopardize property values, and hurt the economy.

Response: The Corps has determined this rule will not have a significant adverse economic effect on consumers, individuals, geographic regions, or federal, state or local governmental agencies.

Comment: Advanced payments are a way to accrue additional monies by questionable ethics.

Response: Advanced payments will help to reduce the government's cost in administering this program by reducing the administrative workload.

Comment: There is no provision for the return of advanced payments if an owner moves.

Response: Advanced payments will not be refunded. The administrative cost associated with issuing refunds would increase the overall program cost. Refunds may be granted if the government terminates the permit.

Comment: The cost of a new facility should be identical to Facility-Renewal periodic inspection fees.

Response: The cost of administering a new permit is significantly higher than a renewal. Initial site visits and meetings with property owners make processing a new permit more expensive than reviewing facility renewals.

Comment: The fee schedule should be commensurate with the use of property by the owner.

Response: The fee schedule reflects a portion of the cost accrued to the government in administering the shoreline management program. The extent of use is not a factor.

Comment: Shoreline Management fee increases will deter development, and affect business on the lake.

Response: The Corps believes this rule will not have significant adverse economic effect on business or development and will not effect productivity, competition, investment, or employment.

Comment: The Corps is using cost as a way to prevent new docks.

Response: Fees reflect the administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies. Shoreline permit holders are deriving the most benefit from this program and should pay the cost. The focus of the Corps Shoreline Management program will continue to allow development in limited development areas and strike a balance between permitted private use and resource protection for general public use.

Comment: A new owner has already paid for his property.

Response: The issuance of a shoreline management permit does not convey any real estate or personal property rights or exclusive use rights to the permit holder. Consistent with 36 CFR 327.30 appendix C, Shoreline Use Permits Conditions (20), permits are not transferable, "upon the sale or other transfer of the permitted facility or the death of the permittee and his/her legal spouse, this permit is null and void".

Comment: Charge non-compliance dock owners for return inspections.

Response: The cost of non-compliance will not be recovered under this rule. Any non-compliance will be handled through 36 CFR 327.19. Methods and procedures for enforcing non-compliance will be set forth in individual project Shoreline Management Plans. Permit holders who allow a permit to expire will be charged the "New Facility" fee if and when they desire to obtain a new permit.

Comment: The new fees pose an unfair burden on current and future property owners.

Response: The cost of the shoreline management program will be paid by those individuals who are deriving the most benefit, i.e., shoreline management permit holders.

Comment: Vegetation modifications fees should be prorated based on the area covered by the permit.

Response: The government's cost to administer a permit for 1,000 sq. ft. of mowed area is the same as for 10,000 sq. ft. of mowed area. The proration of fees is not a reasonable method of recovering administrative cost.

Comment: Allow adjacent property owners to take care of the shoreline at a reasonable cost.

Response: The new fees are reasonable and reflect a portion of the government's administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies. The new fee schedule will allow the government to recover a greater portion of the cost of administering the program.

Comment: Since people do the work fees should stay the same.

Response: The shoreline maintenance work done by adjacent property owners is generally for their benefit. The new fees reflect a portion of the governments administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies.

Comment: I do not feel we should pay to mow grass or clean the beach for the U.S. government.

Response: Mowing the cleaning the beach are not requirements of the Corps of Engineers nor are they requirements for obtaining/issuing a vegetation modification permit. Shoreline clean up is generally for the benefit of the adjoining private property owner. There is no fee associated with removing trash or debris from public lands.

Comment: Lot owners clean up the mess left by boaters and others.

Response: The Corps recognizes that not all persons who use the Corps lakes and lands practice good stewardship. Through programs such as Take Pride In America the Corps of Engineers sponsors events and activities that attempt to instill a respect for public property. Participation in these events by adjacent property owners is encouraged.

Comment: We do not want weeds or poison ivy growing next to our house.

Response: It is not the intent of the Corps of Engineers to have their neighbors put up with noxious weeds next to their houses. In many cases our neighbors have located their homes close to the Corps boundary line so that they can get a better view of the lake. The fee schedule allows the government to recover a greater portion of the administrative cost associated with issuing vegetation modification permits.

Comment: Opposed to paying for clearing a walk to the lake.

Response: Vegetation modification is an authorized activity that requires significant government expenditure to administer. The cost of administering these permits should be paid by those deriving the greatest benefit, i.e. shoreline permit holders.

Comment: Hold public hearing before fee implementation.

Response: The proposed rule, published in the **Federal Register** August 10, 1990, provided a 45 day public review period. The purpose of this comment period was to provide ample opportunity for the public to make their views and positions known.

Comment: The fee schedule should have been mailed to all permit holders.

Response: The proposed rule, published in the **Federal Register** August 10, 1990, provided a 45 day public review period. The purpose of this comment period was to provide ample opportunity for the public to make their views and positions known. The proposed fee schedule was also published in newspapers, public notices and was available for public review at the project Resource Managers office.

Comment: Inadequate advance on notice of rate increase.

Response: Federal regulation requires that the proposed fee schedule be published in the **Federal Register**. The proposed fee schedule was published in the **Federal Register** August 10, 1990. There was a 45 day period available for public comment. This review period has proven to be sufficient to receive public comment. Press releases were also made available to media sources on a nationwide basis.

Comment: Corps should sell land and eliminate problems.

Response: Joint Acquisition regulations require the Corps to retain sufficient land for authorized project purposes. The shoreline management program enables the Corps to effectively manage those lands it is required to maintain.

Comment: Do shoreline management permit inspections in-house instead of by contract.

Response: The Corps is required to administer the shoreline management program with the most cost effective methods possible. In some locations the most cost effective method is contracting.

Comment: With local tax increases this amounts to a double tax.

Response: The fee schedule is not a tax. It simply enables the government to

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recover a greater portion of the cost that it incurs in administering the shoreline management program.

Comment: Costs should be passed on to all who use the lake.

Response: The cost of limited private exclusive use should be paid by those individuals gaining the most benefit, i.e. shoreline management permit holders.

Comment: If we pay increased fees, we should have authority on how property is used.

Response: Shoreline management permits convey only the privilege to use public property under the conditions of the permit and do not convey any ownership or special privilege beyond what is conveyed in the permit.

Comment: Make charges based on actual costs.

Response: Fees reflect a portion of the administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies.

Comment: Increases have no relationship to Cost of Living increases.

Response: There has been no increase to the fee schedule since 1974. The new fee schedule reflects a greater portion of the cost accrued to the government in administering the program. No attempt has been made to link these fees to any cost of living increase.

Comment: There appears to be no increase for marinas, restaurants, etc.

Response: The objective of the fee schedule is to assess fees for private users more commensurate with the cost of administering the program. Commercial development activities are covered by lease, license or other legal real estate instruments and pay rental fees based on fair market values.

Comment: Dock and mowing fees are a bonus to the government.

Response: Shoreline management fees reflect a portion of the administrative costs to manage the program, and include base labor, fringe benefits, overhead, equipment, materials and supplies.

Comment: Power generation profits should offset project costs.

Response: Power generation fees from customers are sent directly to power market agencies (such as Bonneville or Western Power Administrations), and from them directly to the U.S. Treasury. There are not current plans to change this process.

Comment: The money received from shoreline management fees will do little to improve the environment.

Response: Shoreline management fees are intended to recover a portion of the administrative costs of managing the program. It was never the intent of the Corps to use these fees for environmental improvement projects.

Comment: Give 50% discount to senior citizens.

Response: A 50% discount is given to seniors through the Golden Age and Golden Access Programs by all Federal land management agencies. These discounts apply only to entrance and special use fees such as camping. 16 U.S.C. 4601 does not allow for a reduction of shoreline management fees.

Comment: Do not penalize the land owners for keeping the shoreline clean.

Response: The fee schedule was not developed to penalize property owners. It enables the government to recover a portion of the cost of administering the shoreline management program.

Comment: The Corps should encourage shoreline management.

Response: 36 CFR 327.30 provides the policy and guidance for shoreline management at Civil Works projects. The objective of all management actions is to achieve a balance between permitted private use and resource protection for general public use.

Comment: I just renewed my five year permit last year. When will I have to pay the new fees?

Response: The new renewal fee will be charged when your present permit expires. If, for some reason, you modify your facility you would be charged the appropriate facility modification fee after October 1, 1991.

Comment: Do not charge a one time fee.

Response: The one time fee is necessary to recover a portion of the cost associated with the initial administration of new permits, permit modifications and new owner permit reassignments. Charging an annual fee would increase the cost of administering the program and increase the level of fees accordingly.

Comment: Will the expiration date of a Shoreline Management Permit be adjusted when a Facility Modification Permit is issued?

Response: A Facility Modification Permit fee of $100 will be charged each time a facility is modified. Payment of the Facility Modification Fee will not change the expiration date of the Shoreline Management Permit.

Comment: Will the issuance of a Facility Modification Permit require payment of additional inspection fees?

Response: No. A Facility Modification Permit will only be issued to a current holder of a Shoreline Management Permit. Therefore, a periodic fee of $75 ($15×5 years) for inspections had already been paid.

Comment: Retain one year Vegetation Modification Permits instead of increasing them to a five year permit because mowed areas need to be inspected once a year. Many Vegetative Permit holders are renters who may not stay five years.

Response: The increase of Vegetation Permits to five year periods does not suggest abandoning periodic inspections of these properties.

Comment: Combining vegetative modification and floating facilities into one permit is acceptable, but there should be a separate fee for each activity/facility.

Response: The one time fee will be charged as if the permit was for a single activity. In all cases the highest fee will be charged.

Comment: A one time fee (say $30) should be assessed for all permit renewals and "new owner" permits.

Response: The cost associated with issuing New Facility or New Owner permits is significantly higher than permit renewals. Renewals will not require a one time fee. New owner permits will be assessed a one time fee of $200 and the $75 periodic fee ($15×5 years).

Comment: Some of the proposed fees are higher than forfeiture schedule requirements for violation of affected sections of title 36 (i.e. 327.14(a)

Response: The fee schedule is designed to recover a portion of the expense that the government incurs when administering the shoreline management program and includes base labor, fringe benefits, overhead, equipment, materials and supplies. The title 36 forfeiture schedules are determined by Federal Magistrates, not the Corps.

Comment: Expand the term "new owner" to "new owner/new permittee".

Response: A new owner has been defined as any reassignment of an existing permit other than a single permittee of a multi-slip community dock.

Comment: Limited mowing and underbrushing permits (such as along boundary lines, within corporate limits, to meet fire and health codes) should continue to be issued free of charge.

Response: The issuance of non-shoreline management permits to meet health and safety codes and commitments consistent with local project policy may be issued free of charge and will be evaluated on a case by case basis and approved by the project Resource Manager.

Comment: The draft schedule does not allow for multi-slip/multi-owner facilities where the most common transaction would be a change to one individual who is part of that community dock. Perhaps a separate section is needed for community docks.

Response: There is no separate fee for community docks. In the case of multi-owner facilities any reassignment of an individual owner would be done free of charge.

Comment: Will additional "periodic fees" be charged when a Facility Modification Permit is issued?

Response: No additional "periodic fees" will be charged when a Facility Modification Permit is issued. The fee schedule has been changed to reflect this suggestion.

Comment: Will "one time fees" be applied every time that an applicant proposes a specific activity/facility?

Response: The "one time fees" will be required every time a separate application is made for a specific activity/facility.

Comment: What fee is assessed to a co-permittee of an existing permit?

Response: In the case of a single facility, the assigning of co-permittees, other than husband and wife, is not allowed.

Comment: Please define New Owner, New Facility, Vegetation Modification—New Permit & New Owner, Facility Modification, Permit Renewal, and Vegetation Modification Change.

Response: Based on comments, these definitions were developed to clarify the Fee Schedule terminology. Vegetation Modification Change and Permit Renewal were added in response to comments received.

New Facility—A facility for which a permit has expired or where no facility has existed previously.

New Owner—The reassignment of an existing permit (other than single permit holder in a multi-slip community dock) to a different person.

Vegetation Modification—New Permit—A vegetation modification for which a permit has expired or where no vegetation modification has previously existed.

Vegetation Modification—New owner—An existing permit for a new adjacent land owner or reassignment of an existing permit to a different adjacent landowner.

Vegetation Modification—Change—Any substantial change as defined by the project Shoreline Management Plan, to an existing vegetation modification permit.

Facility Modification—Any substantial change, as defined by the project Shoreline Management Plan, to an existing permit or replacement of an existing facility.

Permit Renewal—The term of an existing permit has expired and the activity/facility is being reauthorized, without change, under a new permit.

List of Subjects in 36 CFR Part 327

Penalties, Recreation, and Recreation areas, Water resources.

Compliance With Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Army has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

For the reasons set out in the preamble, the U.S. Army Corps of Engineers amends 36 CFR part 327 as set forth below.

PART 327—[AMENDED]

1. The authority citation for part 327 continues to read as follows:

Authority: The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C. 1).

2. Section 327.30 is amended by revising the last sentence of paragraph (k) as follows:

§ 327.30 Shoreline management on civil works projects.

* * * * *

(k) * * * The Fee Schedule is published in 327.31.

3. Section 327.31 is added as follows:

§ 327.31 Shoreline Management fee schedule.

(a) *Applicability.* This fee schedule is applicable to all permits issued in accordance with § 327.30, Shoreline Management at Civil Works Projects.

(b) *General.* (1) Permits will be issued for a five year period to reduce costs to the permittee. To reduce administrative workload, projects may elect to issue a permit for a term less than five years. The new fees will not be assessed until the expiration of a valid permit.

(2) When an applicant receives a permit that covers more than one activity and/or facility, only a single permit covering the activities/facilities will be issued. A one time fee will be charged for all permit activities/facilities which are simultaneously authorized as if the permit was for a single activity/facility. If both a moorage facility and vegetation modification are authorized concurrently under one permit, only the fee for a moorage facility will be charged. This will apply to permit renewals as well as new activities/facilities.

(3) Similarly, if multiple activities/facilities are authorized under a single permit renewal, only one periodic fee will be charged for each year of the permit as if the permit was for a single activity/facility.

(4) If one or more activity/facility modifications are authorized, on a permit which contains multiple activities/facilities, a one time activity/facility modification will apply. No periodic inspection fees will be charged for activity/facility modifications.

(5) No periodic inspection fee will be charged for facility modifications.

(6) This fee schedule does not affect the fees charged for real estate instruments. Those fees are established by a separate regulation.

(7) This fee schedule reflects a portion of the administrative costs to manage the program, and includes base labor, fringe benefits, overhead, equipment, materials and supplies. This fee schedule enables the government to recover a greater portion of the cost of administering the shoreline management program.

(8) This fee schedule insures that those individuals or groups deriving the most benefit from shoreline management are paying a larger portion of the administrative cost of the program.

(9) The one time fee is necessary to recover a portion of the cost associated with the initial administration of new permits, permit modifications and new owner permit reassignments.

(10) Payment of the Facility Modification Fee will not change the expiration date of the Shoreline Management Permit.

(11) A Facility Modification Permit will only be issued to a current holder of a Shoreline Management Permit. Current permit holders have already paid a periodic fee, therefore no additional periodic fees will be paid for the duration of the permit.

(12) There is no separate fee for community docks. In the case of multi-owner facilities any reassignment of an individual owner will be done free of charge.

(13) Fees will not be assessed for erosion control permits because the government, the public, and the permittee all benefit directly or indirectly from the construction of erosion control structures.

(14) No refunds will be made for any unused portions of permits terminated by the permittee before the permit expiration date. A refund may be issued if the permit is terminated by the government.

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(15) The 50% fee reduction to senior citizens available through the Golden Age and Golden Access programs does not apply to shoreline management fees.

(16) The "one time fees" will be required each time an application is made for a specific activity/facility.

(17) Co-permit holders, other than husband and wife, are not allowed.

(18) Definitions:

New facility—A facility for which a permit has expired or where no facility has previously existed.

New owner—The reassignment of an existing permit (other than single permit holder in a multi-slip community dock) to a different person.

Vegetation modification new permit—A vegetation modification for which a permit has expired or where no vegetation modification has previously existed.

Vegetation modification—New owner—An existing permit for a new adjacent land owner or reassignment of an existing permit to a different adjacent landowner.

Vegetation modification—Change—Any substantial change as defined by the project Shoreline Management Plan, to an existing vegetation modification permit.

Facility modification—Any substantial change, as defined by the project Shoreline Management Plan, to an existing permit or, replacement of an existing facility.

Permit renewal—The term of an existing permit has expired and the activity/facility is being reauthorized, without change, under a new permit.

(c) *Fee schedule.* The fee schedule is as follows:

Type of permit	One time fee	Periodic fee*	Total 5 year fee
Facilities:			
New facility	$400	$15/year	$475
New owner	200	15/year	275
Facility mod.	100	0	100
Permit renewal	0	15/year	75
Vegetation modification:			
New permit	200	15/year	275
New owner	100	15/year	175
Permit renewal	0	15/year	75
Change	100	0	100
Erosion control	0	0	0

*Periodic fees (inspection fees) are set at $15 per year and are payable in advance for 5 year increments.

Approved.

Robert L. Herndon,

Colonel, Corps of Engineers, Chief of Staff.

[FR Doc. 91-15418 Filed 6-27-91; 8:45 am]

BILLING CODE 3710-69-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 91-9]

Cable Compulsory and Satellite Carrier Statutory Licenses: Electronic Payment of Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office amends the regulations for statements of account and filing requirements for sections 111 and 119 of title 17, United States Code. Those sections provide, respectively, a compulsory license for the secondary transmission by cable systems of broadcast signals, and a statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners.

Such transmissions by cable systems and satellite carriers require payment to copyright owners of royalties, which, under existing regulations, are remitted to the Copyright Office by certified or cashier's checks, or by money order. 37 CFR 201.11 (f) and (h); § 201.17(i) and (j) (1990).

The new regulation provides the additional option of electronic payment by electronic funds transfer, which should facilitate payment by cable systems and satellite carriers, and lessen the administrative burden of the Copyright Office.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION: Under the cable compulsory license of section 111 of the Copyright Act, title 17 of the United States Code, and the satellite carrier statutory license of section 119 of the Act, secondary transmissions by cable systems of broadcast signals and certain secondary transmissions by satellite carriers to home dish owners are subject to payment of royalties. The royalty payments are remitted to the Copyright Office semi-annually. The Copyright Office invests the royalties in United States Treasury securities, pending ultimate distribution of the royalties to entitled copyright owners by the Copyright Royalty Tribunal.

The current Copyright Office regulations permit cable systems and satellite carriers to pay royalty fees by certified or cashier's checks, or by money orders. 37 CFR 201.11 (f), (g) and (h); § 201.17 (i) and (j) (1990). The Copyright Office is amending the existing regulations to provide cable systems and satellite carriers with the additional option of paying royalties by electronic funds transfer.

Electronic payment allows cable systems and satellite carriers to preauthorize their financial institutions to debit their accounts, instead of having to factor in mail or other delivery time. Cable systems and satellite carriers will have the ability to transfer funds until the due date without incurring interest assessments. Royalties will go directly to the Department of Treasury, streamlining the current process of sending checks to the Copyright Office to be sent later to Treasury. The royalties will be invested in a more timely manner, earning additional funds for copyright owners. Finally, electronic payment will lessen the Copyright Office's administrative workload, reducing paperwork and related administrative costs, and improving reporting and audit control of cable and satellite royalty payments.

By these technical amendments to the regulations, we simply make it possible for cable systems and satellite carriers to effect electronic payment of royalties. The United States Treasury Department specifies the governing procedures. The Licensing Division of the Copyright Office should be contacted for further details about electronic payment of royalties. Treasury regulations are subject to change, but they generally establish minimum amounts for electronic transfer of funds.

Regulatory Flexibility Act Statement

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only to areas specified by section

Continued

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation, which establishes an optional procedure, will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Cable compulsory license, Satellite carrier license.

Final Regulations

In consideration of the foregoing, part 201 of 37 CFR is amended in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 702, 90 Stat 2541, 17 U.S.C. 702; § 201.7 is also issued under 17 U.S.C. 408, 409, and 410; § 201.16 is also issued under 17 U.S.C. 116.

§ 201.11 [Amended]

2. In § 201.11 paragraph (f) is revised to read as follows:

* * * * *

(f) *Royalty fee payment.* All royalty fees may be paid by electronic transfer of funds, provided the payment is received In the designated United States Federal Reserve Bank by the filing deadline for the relevant accounting period. Except in the case of an electronic payment, the royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or a money order, payable to: Register of Copyrights; or a United States Treasury electronic payment.

* * * * *

§ 201.11 [Amended]

3. Section 201.11(g)(3)(iv)(B) is amended by removing the period and adding a semi-colon after the word "Copyrights" and inserting the phrase "or electronic payment.".

3a. In § 201.11(h)(1) the third sentence is amended by removing the words "or money order" and replacing them with the words "money order, or electronic payment."

701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits"). (17 U.S.C. 708(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

§ 201.17 [Amended]

4. In § 201.17 paragraph (i)(1) is revised to read as follows:

* * * * *

(i) *Royalty fee payment.* (1) All royalty fees may be paid by electronic transfer of funds, provided the payment is received in the designated United States Federal Reserve Bank by the filing deadline for the relevant accounting period. Except in the case of an electronic payment, the royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or a money order, payable to: Register of Copyrights; or a United States Treasury electronic payment.

* * * * *

5. In § 201.17(i)(2) the third sentence is amended by removing the words "or money order" and replacing them with the words "money order, or electronic payment."

6. Section 201.17(j)(3)(iv)(B) is amended by deleting the period and adding a semi-colon after the word "Copyrights" and inserting the phrase "or an electronic payment.".

Dated: June 14, 1991.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-15206 Filed 6-27-91; 8:45 am]

BILLING CODE 1410-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3969-2]

Mississippi; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Mississippi has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Mississippi's revision consists of the Toxicity Characteristic Leaching Procedure (TCLP) Rule, a component of HSWA Cluster II. The Environmental Protection Agency (EPA) has reviewed Mississippi's application and has made a decision, subject to public review and comment, that Mississippi's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Mississippi's hazardous waste program revision. Mississippi's application for the TCLP program revision is available for public review and comment.

DATES: Final authorization for Mississippi's program revision shall be effective August 27, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Mississippi's program revision application must be received by the close of business, July 29, 1991.

ADDRESSES: Copies of Mississippi's program revision application are available during 8 a.m. to 4 p.m. at the following addresses for inspection and copying: Mississippi Department of Environmental Quality, 2380 Highway 80 West, Post Office Box 10385, Jackson, Mississippi 39209: (601) 961-5062; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460; 202/382-5926; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; 404/347-4216. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347-2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

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Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–268 and 124 and 270.

B. Mississippi

Mississippi initially received final authorization for its base RCRA program effective on June 27, 1984. Mississippi received authorization for revisions to its program on October 17, 1988, October 9, 1990, and March 29, 1991. On February 6, 1991, Mississippi submitted a program revision application for additional program approval. Today, Mississippi is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Mississippi's application and has made an immediate final decision that Mississippi's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modification to Mississippi. The public may submit written comments on EPA's immediate final decision up until July 29, 1991.

Mississippi's application for this program revision is available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

On the effective date of final authorization, Mississippi will be authorized to carry out, in lieu of the Federal Program, the TCLP provisions of the State's program which are analogous to the Toxicity Characteristic Revisions promulgated by EPA on March 29, 1990 (55 FR 11798–1877).

Mississippi incorporates the Federal regulations by reference. The TCLP Rule was adopted on November 26, 1990 by the Mississippi Commission on Environmental Quality and became effective December 26, 1990. A copy of these regulations are available at the Mississippi Department of Environmental Quality as indicated in the "ADDRESSES" section of this notice.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Mississippi is not authorized to operate the Federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

Approval of Mississippi's program revision shall become effective in 60 days, unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

C. Decision

I conclude that Mississippi's application for this program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted final authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Mississippi's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: June 21, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 91–15471 Filed 6–27–91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6864

[Docket No. CO–932–4214–10; C–015944]

Opening of Land Subject to the Provisions of Section 24 of the Federal Power Act in Power Project No. 400; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, 15.48 acres of National Forest System lands withdrawn by Power Project No. 400. This action will permit consummation of a pending Forest Service land exchange, but will not authorize any nonproject use without the consent of the Federal Energy Regulatory Commission or the Project Licensee. The lands continue to be open to mineral leasing, but remain closed to all other uses.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Doris Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818, and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–535, it is ordered as follows:

1. At 9 a.m. on June 28, 1991, the lands in Power Project No. 400 being 50 feet either side of the flowline of an underground pipeline, within the following described areas, will be opened to disposal by land exchange subject to the provisions of section 24 of the Federal Power Act, 16 U.S.C. 818, and that any use of the lands not authorized by the Federal Energy Regulatory Commission license for Project 400 without the consent of the Federal Energy Regulatory Commission or the Project Licensee is prohibited. This action is subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

New Mexico Principal Meridian

T. 30 N., R. 8 W.,

Sec. 13, S½N½NE¼, W½W½SE¼NE¼, and W½SE¼;
Sec. 28, Lot 2, W½NE¼, E½E½N E¼NW¼, and E½SE¼NW¼;
Sec. 25, lots 3 and 9.

The lands described aggregate approximately 15.48 acres in La Plata and San Juan Counties.

Dated: June 24, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–15458 Filed 6–27–91; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 78

RIN 0905–AD32

Conditions for Waiver of Denial of Federal Benefits

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends title 45 of the Code of Federal Regulations by adding a part 78 to provide definitions to assist Federal and State courts to implement section 5301 of Public Law 100–690, the Anti-Drug Abuse Act of 1988, 21 U.S.C. 853a, relating to the denial of Federal benefits to convicted drug traffickers and possessors. Among other things, this rule establishes definitions by which an individual may have his or her denial of Federal benefits waived under section 5301. The Department suggests that this rule be read in conjunction with the Department of Justice Guidelines, Denial of Federal Benefits for Certain Drug Offenders, published in the Federal Register (55 FR 37424) on September 11, 1990.

EFFECTIVE DATE: This regulation is effective July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Sullivan, Associate Administrator for Policy Coordination, Alcohol, Drug Abuse, and Mental Health Administration, room 12C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443–4111.

SUPPLEMENTARY INFORMATION: On September 11, 1990, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published in the Federal Register (55 FR 37430), a Notice of Proposed Rulemaking (NPRM) to add a new part 78 to title 45 of the Code of Federal Regulations. The rule proposed definitions and procedures to assist Federal and State courts in their determination whether to deny Federal benefits to persons convicted of drug trafficking or drug possession. The public comment period on the proposed regulations closed on October 11, 1990, and comments were received from one Federal agency. This document considers those comments, makes minor changes to the NPRM, and adopts a final rule.

Response to Comments

The respondent's principal comment related to the Department's definition of "deemed to be rehabilitated" provided in § 78.2(a). That term, in relevant part, means "an individual has abstained from the illicit use of a controlled substance for the period of at least 180 days immediately prior to the date of sentencing * * *." According to 21 U.S.C. 853a (a)(2) and (b)(2), certain Federal benefits of drug traffickers and drug possessors will not be denied if the sentencing court determines that the individuals are "deemed to be rehabilitated."

The respondent requests modifications of the definition of "deemed to be rehabilitated" so that it can be applied consistently with the related term "has otherwise been rehabilitated" provided in 21 U.S.C. 853a(c)(B). Section 853a(c)(B) deals with the suspension of the period of ineligibility for Federal benefits, which occurs following the court's original decision to deny such benefits, and provides that the period of ineligibility will, among other things, be suspended if the individual "has otherwise been rehabilitated."

Respondent is concerned that a court at a hearing for suspension of the period of ineligibility may wish to apply the definition of "deemed to be rehabilitated" to the term "has otherwise been rehabilitated," but will find itself unable to do so. This inability would result because the proposed definition of "deemed to be rehabilitated" requires the court to find that the individual was drug-free for 180 days prior to sentencing. Since the determination whether to suspend the period of ineligibility under section 853a(c)(B) occurs after sentencing, this means that the definition of "deemed to be rehabilitated" could not literally be applied in that situation.

While the Department recognizes the reasonableness of having consistent definitions for the court to follow for these two closely related terms, it is unable to make the change requested because its authority to issue rules is limited to sections 853a (a)(2) and (b)(2); thus, it cannot explicitly extend its definition to the term "has otherwise been rehabilitated." Nevertheless, we believe a court may use the Department's definition of "deemed to be rehabilitated" as guidance and accomplish the same result, simply by requiring that an individual be drug-free for the 180 day period preceding the date on which the court finds that he or she had "otherwise been rehabilitated."

This approach is consistent with the Department of Justice Guidelines (55 FR 37434) which defines the term "has otherwise been rehabilitated" to mean, among other things, that an "individual has abstained from the illegal use of a controlled substance for a period of at least 180 days * * *." The Department of Justice Guidelines do not limit the 180 consecutive drug-free days to the date of sentencing; rather the individual must have abstained from drug use "for a period of at least 180 days." Thus, under the Department of Justice Guidelines and consistent with these regulations, a court can apply the 180 day drug-free period prior to the date of suspension of ineligibility of Federal benefits, rather than prior to sentencing.

The Department has also made some minor corrections and changes in the rule. In § 78.2(a), the reference to section 853a(a)(1) was changed to 853a(a)(2), and in § 78.2(a)(1), the reference to § 78.2(c) was changed to § 78.2(b). In § 78.3(b), the reference to section 853a(b)(1) was changed to 853a(b)(2). The words "and including" were also added to § 78.2(a) to clarify that an individual may be "deemed to be rehabilitated" only if he or she were drug-free for at least 180 days immediately prior to and including the date of sentencing. This clarifies that the individual must be drug-free on the date of sentencing as well as the period preceding.

Regulatory Flexibility Act and Executive Order 12291

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities and that therefore a regulatory flexibility analysis need not be prepared.

The Secretary has determined that this rule does not meet the criteria for a

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major rule under Executive Order 12291 and therefore a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

This notice of final rulemaking does not contain any requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

List of Subjects in 45 CFR Part 78

Drug abuse.

Accordingly, the Department of Health and Human Services is adding 45 CFR part 78 as set forth below:

Dated: May 17, 1991.

James O. Mason,

Assistant Secretary for Health.

Approved: June 12, 1991.

Louis W. Sullivan,

Secretary.

PART 78—CONDITIONS FOR WAIVER OF DENIAL OF FEDERAL BENEFITS

Sec.
78.1 Applicability.
78.2 Definitions.
78.3 Benefits not denied to rehabilitated offenders.

Authority: Section 5301 of Pub. L. 100-690, the Anti-Drug Abuse Act of 1988, 102 Stat. 4310, 21 U.S.C. 853a.

§ 78.1 Applicability.

This part is applicable to any decision to deny Federal benefits, under authority of 21 U.S.C. 853a, to an individual convicted of a Federal or State offense involving distribution or possession of a controlled substance as defined by the Controlled Substances Act, 21 U.S.C. 802.

§ 78.2 Definitions.

For the purposes of denying Federal benefits under 21 U.S.C. 853a:

(a) *Deemed to be rehabilitated* means that an individual has abstained from the illicit use of a controlled substance for the period of at least 180 days immediately prior to and including the date of sentencing provided that such abstinence is documented by the results of periodic urine drug testing conducted during that period; and provided further that such drug testing is conducted using an immunoassay test approved by the Food and Drug Administration for commercial distribution or, in the case of a State offense, either using an immunoassay test approved by the Food and Drug Administration for commercial distribution or pursuant to standards approved by the State.

(b) *Long-term treatment program or long-term drug treatment program* means any drug abuse treatment program of 180 days or more where the provider has been accredited by the Joint Commission on Accreditation of Health Organizations, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Services for Families and Children, or licensed or otherwise approved by the State to provide drug abuse treatment.

§ 78.3 Benefits not denied to rehabilitated offenders.

(a) No individual convicted of any Federal or State offense involving the distribution of controlled substances shall be denied Federal benefits relating to long-term drug treatment programs for addiction under 21 U.S.C. 853a(a)(2) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(b), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court, deemed to be rehabilitated as defined by § 78.2(a).

(b) No individual convicted of any Federal or State offense involving the possession of controlled substances shall be denied any Federal benefit, or otherwise subject to penalties and conditions, under 21 U.S.C. 853a(b)(2) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(b), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court, deemed to be rehabilitated as defined by § 78.2(a).

[FR Doc. 91-15433 Filed 6-27-91; 8:45 am]

BILLING CODE 4160-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-485; RM-7433]

Radio Broadcasting Services; Bolivar and Nixa, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 290C2 from Bolivar to Nixa, Missouri, and modifies the construction permit for Station KGBX-FM to specify Nixa as the community of license for Channel 290C2, in response to a petition filed by Sunburst II, Inc. See 55 FR 46960, November 8, 1990. The coordinates for Channel 290C2 at Nixa are 37-17-10 and 93-10-15. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 90-485, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 72.202(b), the Table of FM Allotment under Missouri, is amended by removing Channel 290C2, Bolivar, and adding Channel 290C2, Nixa.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15500 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-120; RM-7218]

Radio Broadcasting Services; Taos, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Taos Communications Corp., substitutes Channel 268C1 for Channel 268C2 at Taos, New Mexico, and modifies its license for station KTAO(FM) to specify the higher powered channel. See 55 FR 9930, March 16, 1990. Channel 268C1 can be allotted to Taos in compliance with the Commission's minimum distance separation requirements at the transmitter site specified in Station KTAO(FM)'s outstanding construction permit, at coordinates 36-14-46 and 105-39-25. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-120, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 268C2 and adding Channel 268C1 at Taos.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15501 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-57; RM-7233]

Radio Broadcasting Services; Marathon and Stevens Point, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 285C3 for Channel 285A, reallots the channel from Stevens Point to Marathon, Wisconsin, and modifies the license for Station WMGU(FM) to specify Marathon as the community of license for Channel 285C3. This action is taken in response to a petition filed by Eagle of Wisconsin, Inc. See 55 FR 9149, March 12, 1990. The coordinates for Channel 285C3 at Marathon are 44-49-40 and 89-45-33. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 90-57, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 285A, Stevens Point and adding Channel 285C3, Marathon.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15502 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

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Proposed Rules

Federal Register
Vol. 56, No. 125
Friday, June 28, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 278

[Amdt. No. 335]

Food Stamp Program: Miscellaneous Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act and food Stamp Certification Policy

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend Food Stamp Program regulations as a result of certain provisions of the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101-624, Title XVII), the Omnibus Budget Reconciliation Act of 1990 Pub. L. 101-508), and additional certification policy questions. The following proposals are being made to implement Public Law 101-624: (1) Providing supplemental security income (SSI) applicants or recipients with the same information at the social security office as social security applicants or recipients receive, (2) expanding the type of group homes not considered institutions in Guam and the Virgin Islands, (3) increasing the minimum benefit for one- and two-person households, and (4) clarifying the method for State agencies to follow in offering eligible households a deduction for certain recurring medical expenses. As a result of section 5040 of Public Law 101-508, references to a single application for SSI and food stamps will be removed. In addition to these provisons, the Department is taking this opportunity to propose changes which were called to our attention through policy questions or our experience. The changes are: (1) Elderly or disabled aliens with temporary status would be eligible for food stamps, and (2) a technical correction to clarify which allowances received under the Job Training Partnership Act would be counted as income for food stamp purposes.

DATES: Comments on this proposed rulemaking must be received on or before July 29, 1991 in order to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 or FAX (703) 756-4354. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) in room 720 at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Seymour, at the above address or, by telephone at (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This proposed rule has been reviewed by the Assistant Secretary of Food and Consumer Services under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on completion, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and 48 FR 29112, June 24, 1983.)

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Betty Jo Nelsen, the Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Background

On November 28, 1990, the President signed Public Law 101-624, which included the Mickey Leland Memorial Domestic Hunger Relief Act. The new law made a number of changes to food stamp policy, some of which are discussed in this proposed regulation. In addition to the changes resulting from Public Law 102-624, three other changes to program regulations are being proposed.

Inform All SSI Households of Food Stamp Program at Social Security Offices (7 CFR 273.2(k)(1)(i)(H) and 273.2(m))

Under current regulations at 7 CFR 273.2(k)(1)(i), if all members of a household receive SSI, then the household may apply for food stamps at the Social Security Administration (SSA) office (social security office). If only some household members receive SSI, then the SSA office does not take a food stamp application from the household.

The processing requirements are different for applicants or recipients of social security benefits under title II of the Social Security Act (42 U.S.C. 401). Under 7 CFR 273.2(l), an individual who is applying for or receiving social security benefits must be told about the Food Stamp Program and also told that a simple food stamp application form is available at the social security office.

Section 1741 of Public Law 101-624 extended these requirements to all persons applying for or receiving *SSI.* This is a straightforward change in the law to make the program more uniformly accessible to applicants for or recipients of SSI.

Accordingly, a new § 273.2(m) is proposed to be added to extend the same informational benefits to individuals who are applying for or receiving SSI as those who are applying for or receiving social security already receive. Also, 7 CFR 273.2(k)(1)(i)(H) is proposed to be amended to make a conforming change to delete the requirement that SSI applicants or recipients be referred to the food stamp office to find out about the program and receive an application.

Expanding of Types of Group Homes Not Considered Institutions (7 CFR 271.2, 273.1(e)(iii), and 278.1(f)

Under section 3(i) of the Food Stamp Act of 1977 (7 U.S.C. 2021(i)), as amended, persons who live in institutions or boarding houses cannot receive food stamps, unless certain criteria are met. (These criteria are set forth in section 3(i) of the Act and in the definition of "Group living arrangement" in 7 CFR 271.2 of the regulations.) As relates to elderly, blind, and disabled individuals, these criteria require that: (1) *The meals* must be prepared and served by a group living arrangement facility to no more than sixteen residents who are *blind* or *disabled* recipients of benefits under title II (Old-Age, Survivors, and Disability Insurance Benefits—social security), or title XVI (Supplemental Security Income for the Aged, Blind, or Disabled) of the Social Security Act (see definition of "eligible foods" at 7 CFR 271.2), (2) the institution must meet criteria defined under regulations issued under section 1616(e) of the Social Security Act (see definition of "group living arrangement" at 7 CFR 271.2), and (3) individuals must meet criteria designating them as disabled or blind persons receiving social security or SSI (see 7 CFR 273.1(e)(1)(iii)).

Guam and the Virgin Islands do not have an SSI program. Instead, they have Old Age Assistance, Aid to the Permanently and Totally Disabled, and Aid to the Blind—programs which SSI replaced elsewhere. Because they have no SSI program, blind and disabled citizens who live in group homes in Guam and the Virgin Islands are considered residents of institutions and therefore ineligible for the Food Stamp Program.

Section 1712 of Public Law 101-624 amended sections 3(g) and 3(i) of the Food Stamp Act (7 U.S.C. 2012(g) and (i)) to extend the same food stamp benefits to blind and disabled residents of Guam and the Virgin Islands as they would receive in the 50 States and D.C. Thus, they would no longer be considered "residents of institutions" for food stamp purposes, their residences would qualify to be considered group living arrangements, and their meals would be considered eligible food.

In order to implement this provision, 7 CFR 271.2, 273.1(e)(iii), and 278.1(f) are proposed to be amended to: (1) Change the definition of "eligible foods" to add meals prepared and served under titles I (Old Age Assistance), II (Social Security), X (Aid to the Blind), and XIV (Aid to the Permanently and Totally Disabled) of the Social Security Act, (2) change the definition of group living arrangements to include institutions in Guam and the Virgin Islands, and (3) clarify that residents of group living arrangements which are certified under standards determined by the Secretary to be comparable to standards under the Social Security Act are eligible for food stamps.

Minimum Benefit (7 CFR 271.2 and 271.2)

Under section 8(a) of the Food Stamp Act (7 U.S.C. 2017(a)) and 7 CFR 273.10(e)(2)(ii)(C), one- and two-person households are entitled to a minimum monthly food stamp allotment of $10.

Under section 1730 of Public Law 101-624, section 8(a) of the Act was amended to provide that the minimum benefit be adjusted based on annual changes in the Thrifty Food Plan (TFP) rounded to the nearest $5. (The TFP is a model food plan which households can use to purchase a low-cost, nutritionally adequate diet. Food stamp allotments are based upon 103 percent of the TFP for a particular month for a family of four. The cost of the TFP is updated each month based upon certain changes in food costs determined by the Bureau of Labor Statistics (BLS).)

In order to implement this provision, the Department is proposing that future adjustments in the minimum benefit be made as follows:

(1) Each year, the percentage change in the TFP from the preceding June to the current June (prior to rounding) will be calculated. For example, the June 1990 TFP (prior to rounding) was $342.25, and the June 1989 TFP was $324.55 for a percentage increase of 5.45 percent.

(2) This percentage change would be multiplied by the previous "unrounded" minimum benefit to obtain a new unrounded minimum benefit. The new unrounded minimum benefit would be rounded to the nearest $5 in accordance with the statute. The current minimum benefit of $10 would be considered the unrounded minimum benefit for the first year. Thus, for the current year, the minimum benefit of $10 would be multiplied by the percentage increase of 5.45 percent and a new unrounded minimum benefit of $10.55 would be obtained. This unrounded minimum benefit would be rounded to the nearest $5, resulting in no change from the current $10 minimum benefit. For fiscal year 1992 (the fiscal year beginning October 1, 1991), the percentage increase in the TFP from June 1990 to June 1991 will be multiplied by the fiscal year 1991 unrounded minimum benefit of $10.55 to obtain a new unrounded minimum benefit.

(3) Each year's unrounded and rounded minimum benefit numbers would be announced in the same manner as the other food stamp cost-of-living adjustments. (Because of the statutory rounding to the nearest $5, it will take some time before the unrounded minimum benefit will result in an increase in the minimum benefit to $15.)

Accordingly, 7 CFR 271.2 is proposed to be amended to reflect a new definition for minimum benefit. In addition, 7 CFR 271.7 (b) and (d) and 273.10(e)(2) (ii)(C) and (vi)(B) and 273.18(g)(3) are being amended to make conforming changes to remove references to the $10 minimum benefit.

Verification of Recurring Anticipated Medical Expenses/Excess Medical Deduction (7 CFR 273.10(d)(8) and 273.21(i)(1))

Under current regulations at 7 CFR 273.2(f)(1), new applicants must have certain information verified before they are certified. Since medical expenses which exceed $35 a month may be deducted for household members who are elderly or disabled as defined in 7 CFR 271.2, the information which must be verified includes the amount of any medical expenses deductible under 7 CFR 273.9(d)(3).

There are special rules for households whose medical expenses change during the certification period. For households not on monthly reporting, 7 CFR 273.12(a)(1)(vi) provides that changes greater than $25 in the total amount of allowable medical expenses must be reported. If the change is reported at recertification, previously unreported medical expenses and total recurring medical expenses which have changed by more than $25 must be verified prior to recertification, and changes of $25 or less must be verified only if they are questionable (7 CFR 273.2(f)(8)).

For monthly reporting/retrospective budgeting households, the household must choose one of two options under 7 CFR 273.21(i). It must: (1) Report all allowable medical expenses each month and verify expenses which have changed or are questionable, or (2)

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report and verify only changes of more than $25 in total allowable medical expenses. If the household does not verify its monthly allowable medical expenses in accordance with whichever option it has chosen, it will not receive the medical deduction in accordance with 7 CFR 273.21(j)(5)(iii) (C) and (D). Thus, the regulations require some monthly reporting households to report and verify their medical expenses monthly.

Section 1717 of Public Law 101-624 amended section 5(e) of the Food Stamp Act (7 U.S.C. 2014(e)) to take into account situations where certain reasonably anticipated recurring medical expenses are expected to change. According to the language of the statute, the method: (1) Must "rely on reasonable estimates of the (household) member's expected medical expenses for the certification period (including changes that can be reasonably anticipated based on available information about the (household) member's medical condition, public or private medical insurance coverage, and the current verified medical expenses incurred by the member)" and (2) must "not require further reporting or verification of a change in medical expenses if" that change had "been anticipated for the certification period". Since section 1717 reflects current policy, food stamp regulations do not need to be revised.

Prerelease/Single-Application Requirement (7 CFR 273.2(c)(1), 273.2(i)(3)(i), and 273.2(k)(1)(i)(D))

Section 11006 of the Anti-Drug Abuse Act of 1988 (Pub. L. 99-570, enacted October 27, 1988), allows individuals in institutions applying for SSI and food stamp benefits to complete a single application for SSI and food stamps before they are released from the institution. On January 30, 1989, the Department published final regulations at 54 FR 4249 concerning this provision. At that time, the Social Security Administration (SSA) accepted SSI applications from individuals not yet discharged from an institution under their Prerelease Program for the Institutionalized. However, there were no similar procedures in Food Stamp Program regulations for processing food stamp applications for residents of public institutions prior to their release from the institution. Consequently, residents of institutions had to wait until they were released before they could apply for food stamp benefits.

As a result of the Anti-Drug Abuse Act of 1988, SSA and FNS began development of a single combined application form which would be accepted at the institution under SSA's Prerelease Program for the Institutionalized. The combined application form would be forwarded by SSA to the food stamp office. Since development of the single application has still not been completed, State agencies have not been required to implement the single application provision. Instead, current food stamp regulations at 7 CFR 273.1(e)(2) specify that certain residents of public institutions are permitted to apply for food stamps at the same time as they apply for SSI.

On November 5, 1990, section 5040 of the Social Security Act was amended by Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, to provide that, instead of a single joint application form, the Secretaries of the Departments of Health and Human Services and Agriculture would be required to establish procedures under which an individual could apply for food stamps at the same time he/she applies for SSI. Since this is the procedure currently being followed, no substantive change in food stamp regulations is necessary. However, in order to clarify that a single application is no longer required, the regulations are proposed to be amended to remove references to a single application.

Accordingly, 7 CFR 273.2(c)(1), 273.2(i)(3)(i), and 273.2(k)(1)(i)(D) are proposed to be amended to clarify that there will not be a separate joint application form for food stamps and SSI.

Elderly/Disabled Aliens With Temporary Status (7 CFR 273.4(a)(12))

Section 6(f) of the Food Stamp Act (7 U.S.C. 2015(f)) provides that in order to be eligible for food stamp assistance, applicants must be residents of the U.S. and either U.S. citizens or certain types of aliens. The Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, dated November 6, 1986 (8 U.S.C. 1255c), established a number of new categories of legal aliens, some of which were eligible to participate in the Food Stamp Program. Current regulations at 7 CFR 273.4(a)(2)-(11) specify the types of aliens which are eligible for food stamps and set forth the circumstances under which aliens admitted to the U.S. as a result of the Immigration and Nationality Act (INA) can receive food stamps. Under 7 CFR 273.4(a), aliens lawfully admitted for permanent residence pursuant to section 245A of the INA must be aged, blind, or disabled (as defined in section 1614(a)(1) of the Social Security Act) and they must meet one of two criteria established by the Department in order to be eligible to receive food stamps. These are that they must be either: (1) Lawfully admitted for permanent residence, or (2) have received their lawful temporary resident status at least five years prior to applying for food stamps and they must have subsequently gained lawful permanent resident status pursuant to section 245A(b)(1) of the INA. Thus, under the Department's interpretations at 7 CFR 273.4(a), aged, blind, or disabled aliens who were originally admitted for temporary residence must wait five years prior to receiving food stamps, while aged, blind, or disabled aliens who were originally admitted for permanent residence were entitled to receive food stamps immediately.

The five-year ban on receiving food stamps related to a general provision under section 201(h) of IRCA that there would be a five-year ban on the participation of lawful temporary residents in certain federal assistance programs, one of which was the Food Stamp Program. However, section 245A(h) of IRCA specified that there would be two exceptions to this general ban. The first exception was Cuban and Haitian entrants [as defined in paragraph (1) or (2)(A) of section 501(c) of Pub. L. 96-422], and the second exception was for aged, blind, or disabled individuals [as defined in section 1614(a)(1) of the Social Security Act].

Since Cuban and Haitian entrants were already eligible to participate in the Food Stamp Program, the eligibility of Cubans and Haitians was not affected by the IRCA.

With regard to the second exception, the Department's original interpretation was set forth at 52 FR 20055, dated May 29, 1987. That is, in accordance with section 6(f) of the Food Stamp Act, these aged, blind, or disabled aliens must be in permanent resident status in order to receive food stamps. However, a question was raised about the Department's interpretation, causing the Department to reconsider its original interpretation. The Department now believes that the exception set forth in IRCA was meant to apply to aged, blind, or disabled individuals regardless of whether they were admitted for permanent residence or for temporary residence. The Department implemented this new interpretation in Indexed Policy Memo 3-90-35 dated August 22, 1990. It is also proposing that the regulations be revised to reflect this new interpretation. In accordance with current rules at 7 CFR 273.17, up to 12 months of restored benefits should be given upon request to any aged, blind, or disabled person who was denied benefits because he or she was admitted for temporary residence under section 245A of the INA.

Accordingly, 7 CFR 273.4(a)(8) is proposed to be amended to broaden the categories of aged, blind, or disabled aliens who may receive food stamps.

Technical Correction Concerning Certain Allowances Under the Job Training Partnership Act (JTPA) (7 CFR 273.9(b)(1)(iii) and 273.9(c))

Under 7 CFR 273.9(b), certain income and training allowances are considered to be earned income for food stamp purposes. As a result, this income must be counted toward a household's food stamp gross income, although under 7 CFR 273.9(d)(2), a deduction for 20 percent of gross earned income can be taken in calculating net income. Under 7 CFR 273.9(b)(1)(iii), allowances received through programs authorized by the JTPA would not be considered earned income. This is an oversight in the regulations, which arose because of a change in the JTPA which was never incorporated into the food stamp regulations (see 54 FR 12169, dated March 24, 1989).

The salient history is that income allowances, earnings, and payments to individuals participating in job training programs under the JTPA were originally excluded from consideration as income by the JTPA (Pub. L. 97-300, 96 Stat 22, October 13, 1981). That law was amended by section 1509(c) of the Food Security Act of 1985 (Pub. L. 99-198, December 23, 1985) to include most JTPA payments or allowances as food stamp income (except for earnings to individuals under age 19 participating in training programs under section 204(5) of Pub. L. 97-300).

Accordingly, 7 CFR 273.9(b)(1)(iii) and 273.9(c) are being amended to insure that most JTPA allowances are counted as income and that JTPA allowances under section 204(5) of the JTPA will be excluded.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant program-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 278

Administrative practice and procedure, Food stamps, Groceries-retail, Groceries, general line-wholesaler, Penalties.

Accordingly, 7 CFR parts 271, 272, 273, and 278 are proposed to be amended as follows:

1. The authority citation for parts 271, 272, 273, and 278 continues to read as follows:

Authority: 7 U.S.C. 2011-2031.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

2. In § 271.2,

a. In the definition of "Eligible foods," paragraph (5) is amended by adding the words "Title I," before the words "title II, and by adding the words ", Title X, Title XIV," after the words "title II";

b. In the definition for "Group living arrangement," the first sentence is amended by adding the words "or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act" at the end of the sentence before the period and the second sentence is amended by adding the words "Title I," before the words "title II" and by adding the words ", Title X, Title XIV," after the words "title II"; and

c. A new definition for "Minimum benefit" is added.

The addition reads as follows:

§ 271.2 Definitions.

* * * * *

Minimum benefit means the minimum monthly amount of food stamps that one- and two-person households receive. The amount of the minimum benefit will be reviewed annually and adjusted to the nearest $5 each October 1 based upon the percentage change in the Thrifty Food Plan for the twelve month period ending the preceding June.

* * * * *

§ 271.7 [Amended]

3. In § 271.7,

a. Paragraph (b) is amended by removing the words "a minimum benefit of $10" in the last sentence and adding the words "the minimum benefit" in their place;

b. Paragraph (d)(1)(ii) is amended by removing the words "a minimum benefit of $10" in the third sentence and adding the words "the minimum benefit" in their place;

c. Paragraph (d)(2)(i) is amended by removing the words "a $10 minimum benefit level' in the second sentence and adding the words "the minimum benefit" in their place; and

d. Paragraph (d)(3) is amended by removing the words "$10 shall receive a minimum benefit of $10" in the second sentence and adding the words "the minimum benefit shall receive the minimum benefit" in their place.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

4. In § 273.1, paragraph (e)(1)(iii) is amended by adding the words "Title I," before the words "title II" and by adding the words ", title X, Title XIV," after the words "title II";

5. In § 273.2,

a. In paragraph (i)(3)(i) the second sentence is amended by adding the words "food stamp" before "applicaiton";

b. In paragraph (k)(1)(i)(D) the second sentence is removed;

c. In paragraph (k)(1)(i)(H) the first sentence is revised; and

d. Paragraph (m) is added.

The revision and addition read as follows:

§ 273.2 Application processing.

* * * * *

(k) *SSI households.* * * *

(1) *Initial application and eligibility determination.* * * *

(i) * * *

(H) The SSA shall refer non-SSI households to the correct food stamp office. * * *

* * * * *

(m) *Households where not all members are applying for or receiving SSI.* An applicant for or recipient of SSI shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a food stamp application at the SSA office. The SSA office is not required to accept applications or to conduct interviews for SSI applicants or recipients who are not members of households in which all are SSI applicants or recipients unless the State agency has chosen to outstation eligibility workers at the SSA office. In this case, processing shall be in accordance with § 273.2(k)(1)(ii).

§ 273.4 [Amended]

6. In § 273.4, paragraph (a)(8) is amended by adding the words "temporary or" after the word "for" and before the word "permanent".

7. In § 273.9:

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a. Paragraph (b)(1)(iii) is amended by removing the words ", except for allowance received through programs authorized by the Job Training Partnership Act"; and

b. Paragraph (c)(15) is added to read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) *Income exclusions.* * * *

(15) Earnings to individuals who are participating in on-the-job training programs under section 204(5), title II, of the Job Training Partnership Act (Pub. L. 97-300), provided that these individuals are under age 19 and are under the parental control of another adult member of the household.

* * * * *

8. In § 273.10,

a. Paragraph (e)(2)(ii)(C) is amended by removing the words "of $10" and adding the words, "equal to the minimum benefit" in their place;

b. Paragraph (e)(2)(vi)(B) is revised;

c. Paragraph (e)(2)(vi)(D) is amended by removing the words "a $10" and replacing them with the word "the";

The revision reads as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) *Calculating net income and benefit levels*—* * *

(2) * * *

(vi) * * *

(B) Except as provided in paragraphs (a)(1), (e)(2)(ii)(B), and (e)(2)(vi)(C) of this section, one- and two-person households shall be provided with at least the minimum benefit.

* * * * *

§ 273.18 [Amended]

9. In § 273.18, paragraph (g)(4) is amended by removing the words "a $10 minimum benefit level" and adding the words "the minimum benefit" in their place.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

§ 278.1 [Amended]

10. In § 278.1, the second sentence of paragraph (f) is amended by adding the words "or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act" at the end of the sentence, before the period.

Dated: June 24, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-15409 Filed 6-27-91; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Parts 1200, 1204, and 1205

[Docket No. 81-12, Notice 7]

RIN 2127-AD66

Uniform Procedures for State Highway Safety Programs

AGENCY: Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes the establishment of uniform procedures governing approval, implementation, and management of State highway safety programs. It would implement the Department's rule concerning the administration of grants with State and local governments as it applies to highway safety programs, update and codify existing procedures, and delete obsolete provisions.

DATES: Comments must be received on or before August 12, 1991. The proposed rule would be effective for fiscal year 1992 highway safety programs.

ADDRESSES: Comments must identify the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Hand-delivered copies should be taken to room 5111. The Docket is open from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: In NHTSA, Brian McLaughlin, Regional Coordinator, NHTSA, 202-366-2121. In FHWA, Thomas A. Hall, Chief, Safety Management Division, Federal Highway Administration, 202-366-2171.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1966, the Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*) was enacted into law. Section 402 of the Act establishes a formula grant program to improve highway safety in the States. As a condition of the grant, the States must meet certain requirements. Section 402(a) of the Act requires each State to have a highway safety program approved by the Secretary of Transportation, which is designed to reduce traffic accidents and the deaths, injuries, and property damage resulting from those accidents. Section 402(b) of the Act sets forth the minimum requirements with which the State's highway safety program must comply. For example, the Secretary may not approve a program unless it provides that the Governor of the State is responsible for its administration, through a State highway safety agency which has adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary. Additionally, the program must authorize political subdivisions of the State to carry out local highway safety programs and provide a certain minimum level of funding for these local programs each fiscal year. The enforcement of these and other requirements is entrusted to the Secretary.

The Secretary's authority under section 402 of the Act has been delegated to the Administrators of the National Highway Traffic Safety Administration and the Federal Highway Administration ("the agencies") for highway safety programs within their respective jurisdictions. In carrying out their delegated duties, the agencies have, over time, issued regulations, order, program manuals, and guidance memoranda implementing the requirements of section 402 and establishing procedures for the administration of State highway safety programs. The issuance of guidance materials has continued as the concept of the State highway safety program has evolved, with the result that guidance or procedures governing the section 402 program appear in a variety of different documents, many of which are now obsolete. The continuing presence of potentially conflicting guidance has led to confusion among some States as to current procedures.

On March 11, 1988, Federal grant-making agencies issued a common rule requiring consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local, and Federally recognized Indian tribal governments. The Department of Transportation's codification of that rule, with specific exceptions applicable to its programs (49 CFR part 18, "the Common Rule"), became effective, in part on March 12, 1989, and in full on October 1, 1989.

The Common Rule directed some fundamental changes in the administration of grants and cooperative agreements with State, local, and Indian tribal governments. Embodying the principles of federalism, it provided that in the areas of financial management, equipment, procurement, and administration of subgrants, States would expend and account for grant funds in accordance with their own laws and procedures. On July 14, 1988, a Departmental Order directed each of the modal administrations to implement the Common Rule, as it applies to agency grant programs (DOT Order 4600.9C).

The agencies appointed a task force to explore options for achieving greater regional uniformity in the procedural implementation of the program. The task force also considered the effects of the Common Rule on the agencies' then current program management procedures and determined that some changes in those procedures would be necessary. The task force recommended that uniform procedures for the approval, procedural implementation, and administration of the section 402 program, consistent with both section 402 of the Act and the provisions of the Common Rule, be codified in a rule and that inconsistent or obsolete materials be rescinded.

Proposal

A. General

The agencies propose to adopt, in a rule, uniform procedures governing State highway safety programs. The rule would include procedures for the submission, content, and approval of the State highway safety plan ("the HSP") (the document in which the State describes its proposed highway safety program and applies for Federal funds), and general requirements for implementation of the program. All duplicative, inconsistent, or obsolete guidance would no longer have effect. To that end, the agencies propose simultaneously to delete supplements A through I to 23 CFR 1204.4, which contain inconsistent and outdated information. The guidance contained in these supplements would be superceded by the applicable provisions of the proposed rule. The rescinding of inconsistent or outdated agency orders, program manuals, and other materials would be accomplished separately by notice or memorandum following the publication of a final rule.

It should be noted that while this Notice would also amend 23 CFR part 1205, Highway Safety Programs; Determinations of Effectiveness, it would not delete or amend the following sections of the Code of Federal Regulations: 23 CFR part 1200, Rules of Procedure for Invoking Sanctions Under the Highway Safety Act of 1966; 23 CFR part 1208, National Minimum Drinking Age; 23 CFR part 1230, Highway Safety Program Standards—Applicability to Federally Administered Areas; 23 CFR part 1250, Political Subdivision Participation in State Highway Safety Programs; 23 CFR part 1251, State Highway Safety Agency and 23 CFR part 1252, State Matching of Planning and Administration Costs.

In accordance with the Department's July 14, 1988 Order, the agencies also propose to implement formally the provisions of the Common Rule, as it applies to the administration of the section 402 program. The proposed implementation would clarify the application of some of its sections to the unique requirements of the section 402 program, while leaving essentially unchanged the Common Rule's requirements.

The proposed action would combine or reference, in title 23, chapter II of the Code of Federal Regulations, the major requirements which apply to State highway safety programs. While a significant goal of this proposal action is to achieve uniformity in the procedural implementation of the section 402 program, it does not impose procedures which vary significantly from those which are currently being followed by the States and the agencies' field offices. Interested parties are encouraged to submit comments on any aspect of this proposed action. States are especially encouraged to comment on those portions that would implement the Federalism provisions of the Common Rule.

B. Highlighted Provisions

Three-year HSP. Current procedures involve the submission of an annual HSP. As a result of the favorable response to NHTSA's pilot program testing a 3-year HSP, the proposed rule would authorize the submission of a 3-year HSP by any State, with advance notice to the approving official in each agency. The preparation and program approval of a 3-year HSP would assist both the States and the approving officials in long-range highway safety planning efforts. Administrative requirements for a 3-year HSP would continue to be imposed on a fiscal year basis. The obligation of funds would remain an annual requirement because funds for the section 402 program are appropriated by Congress on a fiscal year basis. Similarly, liquidation of obligations would occur annually, as provided by the Common Rule. The annual reporting requirement would be retained for a 3-year HSP to assist the planning process in general, to provide timely notice of problems or concerns meriting further attention in the HSP, and because the scope and complexity of a single report covering a 3-year period would place undue strain on State resources.

Agency Decisions. Review and approval of the HSP, authorization of changes, and time-extensions for an HSP, which appear in §§ 1200.11, 1200.13, and 1200.31, respectively, are currently delegated to the Regional Administrators of both agencies. For FHWA, the authority has been redelegated to the FHWA Division Administrator in each state. This proposal refers to NHTSA Regional Administrators and FHWA Division Administrators as "approving officials".

NHTSA Appeals. A new provision is proposed which allows appeals of all important decisions by a NHTSA approving official in these and other sections of the proposed rule. The appeal would be to the Deputy Administrator of NHTSA.

Obligation of Federal Funds. In the past, States have expressed concern that delays in the appropriation process at the start of a fiscal year might result in a concomitant delay in authorization to incur expenses under a new HSP. Because the Agencies possess contract authority with respect to authorized section 402 funds, the continuity of the program is unaffected by appropriation delays. Agency obligation procedures would be clarified to alleviate this concern.

Changes. Section 1200.13 lists requirements imposed by the Common Rule under which permission must be sought for budget or programmatic changes. These requirements have been listed in terms which clarify their application to the section 402 program. Requirements which appear in the Common Rule but are irrelevant to the program are not included. The submission of the identified standardized forms for both changes requiring prior approval and those which do not require approval is necessary so that Federal accounting records may be adjusted to accurately reflect the status of funds.

Equipment. The proposed rule's requirements covering items identified in the Common Rule as "equipment" and "supplies" are identical in effect to the requirements of the Common Rule. However, the terms "major equipment" and "non-major equipment" would be substituted for the Common Rule's terms "equipment" and "supplies."

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respectively, because the former terms more closely convey the terminology used in the section 402 program. This purely semantic distinction is made in recognition of the fact that many items common to the section 402 program that would be treated by the Common Rule as supplies (e.g., breathalizers, radar detectors) are not usually characterized by State program officials as supplies, but rather as types of equipment. These program officials are generally not the officials responsible for overall property control in the State, and they sometimes characterize property items in a manner which is inconsistent with the State categories. This has led to some confusion concerning the proper implementation of the Common Rule for the Section 402 program. Moreover, the Common Rule's requirement concerning disposition of supplies speaks only to "a residual inventory of unused supplies," leaving unaddressed the disposition of used non-expendable personal property, also falling within its definition of supplies. As a practical matter, unused supplies requiring disposition are not a prominent feature of the section 402 program (because of the program's continuing nature), but used items are commonplace and require guidance concerning disposition. The proposed rule would address these concerns by identifying two types of tangible personal property: Major Equipment and Non-Major Equipment. The definition of major equipment would be identical in effect to the definition of equipment in the Common Rule. A State could elect, in writing, to use its own definition of major equipment under the conditions stated in the proposed rule, which mirror the provisions governing equipment in the Common Rule. The management and disposition of major equipment would be in accordance with State laws and procedures, as provided by the Common Rule. Under major equipment, the proposed rule also restates the Common Rule's procedures covering the right of the Government to transfer title and those covering Federally furnished property. Non-major equipment would be defined as all tangible personal property not meeting the definition of major equipment, including supplies. This definition is equivalent to the definition of supplies in the Common Rule. Under the proposed rule, States would manage and dispose of all non-major equipment in accordance with State laws and procedures, except as otherwise provided by the Common Rule. All equipment, major and non-major, would be required to be used for the originally authorized grant purposes for as long as the program need exists. Previous Inspector General audit reports have cited instances where grant-acquired property has been inadequately tracked or diverted to uses other than those authorized under the agency's statutory grant authority. Notable examples include a 1988 report citing twelve vehicles, one airplane, and various ancillary equipment with a total value of approximately $80,000, a 1989 report citing unspecified nonexpendable personal property purchased by a State office of highway safety with Federal funds, "but not used by that office," and a 1990 report citing a printer, a specialized radio, video equipment, and ten other items with a total value in excess of $15,000. Responding to the criticisms contained in these reports, the proposed rule would make it clear that diverting section 402 grant-acquired property away from highway safety related activities while a need still exists is not permissible. This is consistent with the large body of Federal grant law requiring that grantees use grant funds only for authorized grant purposes and only in accordance with the terms and conditions of the grant. The restriction on use would have no effect on the State's management of grant-acquired property or on their disposition of such property after the program need is fulfilled.

Program Income. The Common Rule provides that program income shall ordinarily be deducted from total allowable costs to determine net allowable costs, but provides for the use of identified alternative methods by regulation. Since the section 402 program is a formula grant program, a State is entitled to the full amount of its apportioned funds, with rare exceptions. Hence, use of the deduction method to reduce claimed costs would not result in a credit to the Government, as the State's entitlement to these funds would remain unaffected. The ultimate effect of using the deduction method in the section 402 program would be to add the full amount of reduced costs back into the program for the State's use. This result is equivalent to the one which would be achieved under the addition method identified in the Common Rule. For this reason, the agencies have proposed the addition method as the standard method for treatment of program income and, as provided by the Common Rule, the option to use the cost sharing or matching method only with the prior approval of the approving official.

Closeout. In accordance with the grant rule, the agencies propose that the evaluation report be submitted within 90 days after the end of each fiscal year, include to closeout. Prior practices allowed the report to be submitted in June. The requirement to submit statistical evidence of recent trends in fatal, injury, and property damage crashes would be deleted in order to decrease the burden to the States, in view of the shortened timeframe. The requirement that States provide recent statistical trend data in the HSP as part of their problem identification would remain, however.

Disposition of Unexpended Balances. States have been required to identify the amount of unexpended funds remaining at the end of each fiscal year by program area. In addition, the use of MHTSA funds during the following fiscal year, after reprogramming, has been limited to program areas which existed in the HSP from which the funds were reprogrammed. The requirement to make such scope determinations in the course of reprogramming funds has limited the States' flexibility to direct resources to the most critical problem areas and is being eliminated. The proposed rule would retain the requirement that States identify by program area, on a one-time basis at the end of each fiscal year, all unexpended balances. However, the requirement to restrict the use of NHTSA funds in the subsequent fiscal year would be deleted.

Section 1205.4 Amendments. Proposed revisions to § 1205.4 would not affect existing procedures. The deleted provisions would be reorganized and appear instead as requirements in the sections of proposed part 1200 concerning submission and approval of the HSP and the Annual Evaluation Report.

Impact Analyses

A. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

Highway safety is a national concern, and for this reason, Congress directed the Secretary of Transportation to ensure the implementation of effective State highway safety programs. In this proposed rule, we increase the flexibility of the States by implementing the procedures of a common rule for the administration of grants to State and local governments which has as its basis the principles of federalism. That rule recognizes that States possess unique constitutional authority, resources, and competence to administer national grant programs, and provides for the application of State laws and procedures to many aspects of grant administration.

B. Economic Impacts

The agencies have analyzed the effect of this proposed action and determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The rulemaking will not affect the level of funding available in the highway safety program, or otherwise have a significant economic impact, so that neither a Regulatory Impact Analysis nor a full Regulatory Evaluation is required.

C. Impacts on Small Entities

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this proposed action on small entities. Based on the evaluation, we certify that this action will not have a significant economic impact on a substantial number of small entities. States will be the recipients of any funds awarded under the regualtion and, accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

D. Environmental Impacts

The agencies have analyzed this proposed action for the purpose of compliance with the National Environmental Policy Act and have determined that it will not have a significant effect on the human environment.

E. Paperwork Reduction Act

The requirement relating to this proposal, that each State must submit a Highway Safety Plan and related forms to receive section 402 grant funds, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, this information collection requirement has been submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, et seq.) The requirement has been approved through April 30, 1992; OMB No. 2127–0003.

F. Comments to the Docket

The agencies are providing a 45-day comment period for interested parties to present data, views, and arguments on the proposed action. The agencies invite comments on the issues raised in this notice and any other issues commenters believe are relevant to this action. All comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. Necessary attachments may be appended to these submissions without regard to the 15-page limit.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule, if one is issued, will be considered as suggestions for further rulemaking action. The agencies will continue to file relevant information in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified of receipt of their comments by the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 23 CFR Parts 1200, 1204, and 1205

Grant programs—transportation, Highway safety.

For the reasons set out in the preamble, title 23, chapter II of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The heading for subchapter A is added to read as follows:

SUBCHAPTER A—PROCEDURES FOR STATE HIGHWAY SAFETY PROGRAMS

2. In subchapter A, part 1200 is added to read as follows:

PART 1200—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY PROGRAMS

Subpart A—General

Sec.
1200.1 Purpose.
1200.2 Applicability.
1200.3 Definitions.

Subpart B—The Highway Safety Plan
1200.10 Preparation and submission.
1200.11 Review and approval.
1200.12 Apportionment and obligation of Federal funds.
1200.13 Changes.

Subpart C—Implementation and Management of the Highway Safety Program
1200.20 General.
1200.21 Equipment.
1200.22 Vouchers and project agreements.
1200.23 Program income.
1200.24 Compliance.
1200.25 NHTSA appeals.

Subpart D—Closeout
1200.30 Expiration of the HSP.
1200.31 Extension of the HSP.
1200.32 Final voucher and project reports.
1200.33 Annual evaluation report.
1200.34 Disposition of unexpended balances.
1200.35 Post-grant adjustments.
1200.36 Continuing requirements.

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

Subpart A—General

§ 1200.1 Purpose.

This part establishes the requirements governing submission and approval of State Highway Safety Plans and prescribes uniform procedures for the implementation and management of State highway safety programs.

§ 1200.2 Applicability.

The provisions of this part apply to States conducting highway safety programs in accordance with 23 U.S.C. 402, beginning with Highway Safety Plans submitted for Fiscal Year 1992.

§ 1200.3 Definitions.

As used in this subchapter—

Annual Evaluation Report means the report submitted each year by each State which describes the accomplishments of its highway safety program for the preceding fiscal year.

Approving Official means a Regional Administrator of the National Highway Traffic Safety Administration for issues concerning NHTSA funds or program areas and a Division Administrator of the Federal Highway Administration for issues concerning FHWA funds for program areas.

Carry-forward Funds means those funds which a State has obligated but not expended in the fiscal year in which they were apportioned, that are being reprogrammed to complete ongoing activities.

Contract authority means the statutory language which authorizes the agencies to enter into an obligation without the need for a prior appropriation or further authorization from Congress. When exercised, contract authority creates a binding obligation on the United States for which Congress must make subsequent appropriations in order to liquidate the

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obligations incurred pursuant to this authority.

Contractor means the recipient of a contract or subcontract under the HSP.

FHWA means the Federal Highway Administration.

Fiscal year means the Federal fiscal year, consisting of twelve months beginning each October 1 and ending the following September 30.

Governor means the Governor of any of the fifty States, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Mayor of the District of Columbia, or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), the Secretary of the Interior.

Governor's Representative means the Governor's Representative for Highway Safety, the official appointed by the Governor to implement the State's highway safety program or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), an official of the Bureau of Indian Affairs who is duly designated by the Secretary of the Interior to implement the Indian highway safety program.

Highway Safety Plan or *HSP* means the Section 402 grant application document consisting of the plan submitted by a State describing the State's highway safety problems and detailing the projects the State plans to undertake to implement a highway safety program addressing those problems.

Highway safety program includes all of the projects planned or undertaken by a State or its subgrantees or contractors to address highway safety problems in the State.

Major equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit, or such other definition as a State may elect in accordance with the procedures in § 1200.21(b)(1) of this part.

National Priority Program Area means a program area identified in § 1205.3 of this chapter as eligible for Federal funding pursuant to 23 U.S.C. 402 because it encompasses a major highway safety problem which is of national concern and for which effective countermeasures have been identified.

NHTSA means the National Highway Traffic Safety Administration.

Non-major equipment means all tangible, personal property which does not meet the definition of major equipment, including supplies.

Program area means any area, including but not limited to a National Priority Program Area, which is eligible or approved for Federal funding pursuant to 23 U.S.C. 402.

Program income means gross income received by the State or any of its subgrantees or contractors which is directly or indirectly generated by a Federally-supported project during the project performance period.

Project means any of the activities proposed or implemented under an HSP to address discrete or localized highway safety problems falling within one or more program areas.

Reprogramming means applying carry-forward funds to projects in a fiscal year subsequent to the one for which the funds were originally apportioned to the State.

"Section 402" means section 402 of title 23 of the United States Code.

State means any of the fifty States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), the Secretary of the Interior.

Subgrantee means a recipient of an award of financial assistance by a State in the form of money, or equipment in lieu of money, under an HSP.

Subpart B—The Highway Safety Plan

§ 1200.10 Preparation and submission

(a) *Time period covered by the HSP.* (1) Except as provided in paragraph (a)(2) of this section, a State shall submit an HSP for each fiscal year. The time period for which the State shall identify activities to address highway safety problems under each such HSP shall be one fiscal year, unless extended in accordance with the provisions of § 1200.31 of this part.

(2) A State may elect to submit an HSP once every three fiscal years, provided advance notice is given to the approving officials. The time period for which the State shall identify activities to address highway safety problems under each such HSP shall be three consecutive fiscal years, unless extended in accordance with the provisions of § 1200.31 of this part. Obligation of Federal funds and authority to incur costs, however, shall be based on each fiscal year.

(b) *Content of the HSP.* Each State's HSP shall contain the following elements:

(1) *Certifications and assurances.* A statement containing certifications and assurances shall be signed by the Governor's Representative and shall satisfy the requirements of 49 CFR part 18 and other applicable law. A sample statement, which may from time to time be amended to reflect changes in applicable law, shall be made available by each approving official.

(2) *Problem identification summary.* The problem identification summary will highlight highway safety problems throughout the State and briefly describe the countermeasures the State will employ to address these problems.

(3) *Description of and justification for program areas to be funded.* A State may identify and seek funding for projects, and related equipment purchases, within any National Priority Program Area or any other program area. National Priority Areas are identified in § 1205.3 of this chapter. Other program areas may, from time to time, be identified by statute, by rule, or by a State. For each program area for which Federal funding is sought, the following procedures shall apply:

(i) For National Priority Program Areas, the funding procedures at § 1205.4 of this chapter.

(ii) For program areas identified by statute, the funding procedures prescribed by the statute and implementing regulations or, in the absence of prescribed procedures, the funding procedures at § 1205.4 of this chapter.

(iii) For program areas identified by a State and not falling within paragraphs (b)(3)(i) or (b)(3)(ii) of this section, the funding procedures at § 1205.5 of this chapter.

(4) *Discussion of planning and administration needs.* Planning and administration needs shall be discussed in sufficient detail to justify proposed expenditures. Proposed and actual expenditures shall comply with the Federal contribution and State matching requirements of part 1252 of this chapter.

(5) *Description of training needs.* Training needed to support or further the objectives of the HSP should be described in adequate detail to justify proposed expenditures. Only training that supports or furthers the objectives of the HSP shall be eligible for funding.

(6) *Supporting financial documentation.* Financial documentation supporting the HSP shall include the Highway Safety Program Cost Summary, Standard Form HS–217, reflecting the State's proposed allocation of funds among program areas and for planning and administration needs, completed in accordance with the form's written instructions, and such other financial documentation as may be required by law.

(c) *Special funding conditions.* The planning and contents of an HSP shall reflect the following funding requirements:

(1) *Political subdivision participation.* Proposed expenditures under the HSP shall comply with the requirements for political subdivision participation contained in part 1250 of this chapter.

(2) *NHTSA project length.* NHTSA funding support for a specific project under an HSP shall ordinarily not exceed three years. However, a funding extension beyond three years may be approved in writing by the NHTSA approving official on a year-by-year basis, provided the project has demonstrated great merit or the potential for significant long-range benefits and includes a cost assumption plan requiring, at a minimum, 35 percent non-Federal support for the fourth year and 50 percent non-Federal support for the fifth and sixth years. Under no circumstances will a project be funded beyond six years. A denial of a project funding extension shall be in writing by the NHTSA approving official and shall be subject to the appeal procedures of § 1200.25 of this part. The project length requirements are not applicable to planning and administration activities; program management (e.g., program area coordinators' or managers' oversight of the continuing development, implementation and evaluation of 402 or related State/locally supported activities); mandatory (earmarked) programs; training projects which support activities within an identified program area; or other activities which are required by statute.

(d) *Due date.* The completed HSP must be received by the approving officials no later than August 1 preceding the fiscal year for which it applies or, in the case of a 3-year HSP, no later than August 1 preceding the first fiscal year for which it applies. For a State operating under a 3-year HSP, any updates for the second and third years which the State elects to submit must be received by the approving officials no later than August 1 preceding the fiscal year for which the updates apply. The State shall furnish three copies of its HSP, or updated HSP for a State operating under a 3-year HSP, to the NHTSA and FHWA approving officials. Failure to meet these deadlines may result in delayed approvals.

§ 1200.11 Review and approval.

(a) *Review.* (1) Each approving official shall verify that each HSP complies with the basic requirements of § 1200.10(b)–(c) of this part. Where an HSP is found not in compliance, the approving official will advise the State to take such action as necessary to bring the HSP into compliance.

(2) An HSP determined to satisfy the basic requirements of paragraph (a)(1) of this section shall be further reviewed to ensure that the State has proposed a highway safety program which justifies the commitment of Federal funds. Each approving official shall have the discretion to require further clarification or amendment of any portion of an HSP which does not adequately establish the existence of a bona fide highway safety problem, the selection of countermeasures reasonably calculated to address the problem, and the efficient proposed use of Federal funds.

(3) Each approving official shall provide States with reasonable notice and opportunity to amend portions of HSPs which are found inadequate. Such notice and opportunity to amend shall facilitate the informal resolution of problems in the HSP, to the maximum extent practicable, prior to the time by which the approving official must render a written decision in accordance with paragraph (b) of this section.

(b) *Approval/Conditional Approval/Disapproval.* (1) If after reasonable notice and opportunity to amend pursuant to paragraph (a)(3) of this section, the approving official determines that a State has provided information in the HSP which is inadequate to justify a proposed use of Federal funds, or has failed to comply with other requirements of this part or applicable law, the approving official shall conditionally approve or disapprove the relevant portion(s) of the HSP, as appropriate. Otherwise, the approving official shall approve the HSP, except that in no case shall the approving official approve an HSP which is submitted without the statement required by § 1200.10(b)(1) of this part until receipt of such statement.

(2) Approval, conditional approval, or disapproval of the HSP, in whole or in part, shall be in writing, dated, and signed by the approving official, and shall be sent to the Governor, with a copy to the Governor's Representative, within 30 days of receipt of the HSP by the agency, unless extended by mutual agreement of the approving official and the Governor's Representative.

(3) For any portion of the HSP which is conditionally approved or disapproved, a detailed explanation of conditions or reasons for disapproval shall be provided in writing by the approving official to the Governor's Representative. Conditional approval may include a requirement for project by project approval of Federally funded activities.

(4) All approvals and conditional approvals sent to the Governor's Representative shall state the total dollar amount of the program approved or conditionally approved and shall contain the following statement:

By this letter, _____'s (State) fiscal year 19____ Highway Safety Plan, as submitted on _____(Date), is hereby approved, subject to any conditions or limitations set forth below. Authorization to incur costs is subject to the availability of funds during fiscal year 19____ (including carry-forward funds available for reprogramming), and in no event permits the State to be reimbursed for expenses in excess of amounts authorized by law. Reimbursement is contingent upon the submission of Standard Forms HS–62 and HS–217 within 60 days after either the beginning of Fiscal Year 19____ or the date of this letter, whichever is later.

§ 1200.12 Apportionment and obligation of Federal funds.

(a) Except as provided in paragraph (b) of this section, on October 1 of each fiscal year covered by an HSP, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, distribute funds available for obligation under section 402 to the States and provide a statement of any conditions or limitations imposed by law on the use of the funds.

(b) In the event that authorizations exist but no applicable appropriation act has been enacted by October 1 of a fiscal year covered by an HSP, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, distribute a part of the funds authorized under section 402 contract authority to ensure program continuity and shall provide a statement of any conditions or limitations imposed by law on the use of the funds. Upon appropriation of section 402 funds, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, promptly adjust the apportionment, in accordance with law.

(c) The Federal share of expenses incurred by a State against any funds distributed under paragraphs (a) or (b) of this section shall constitute an obligation of the Federal Government, subject to any conditions or limitations identified in the distributing document and not exceeding the total dollar amount of the approved program identified in § 1200.11(c)(4) of this part. No reimbursement of State expenses shall be made until the State submits and the approving official approves Forms HS–62 and HS–217.

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§ 1200.10 Changes.

(a) *Changes requiring prior approval.* Each State shall obtain the written approval of the approving official prior to implementing or allowing subgrantees or contractors to implement any of the following changes:

(1) Any revision which would result in the need for additional Federal funding beyond that which is already apportioned or distributed to the State;

(2) Any request to extend the period during which costs may be incurred, as provided in § 1200.31 of this part;

(3) Contracting out, subgranting, or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the HSP, but not including the procurement of major and non-major equipment and general support services approved under the HSP;

(4) Changes in key persons specified in the HSP; or

(5) Any change in the scope of objectives of a project. For the purposes of this paragraph, each of the following shall be considered a change in scope of objectives:

(i) Any transfer of funds into or out of a program area which, either singly or in combination with past movements of funds, exceeds ten percent of the approved funding for the program area (for the purposes of determining when the ten percent threshold is reached, amounts are cumulated additively regardless of whether the funds are transferred into or out of the program area; e.g., +6 percent −5 percent=11 percent, and not 1 percent; the plus represents moving funds into and the minus represents moving funds out of a program area);

(ii) Any transfer of funds allotted for training allowances which exceeds 10 percent of the approved funding for the program area (i.e., from direct payments to trainees to other expense categories);

(iii) Any redirection of the goals or of the effort devoted to accomplishing the goals of a project approved under the HSP.

(b) *Approval procedures.* (1) States shall request prior approval for changes by submitting a written request to the approving officials, accompanied by Forms HS-62 and HS-217 and/or such other information as is necessary to explain the proposed change.

(2) The approving official shall indicate approval in writing, and provide a signed Form HS-62 if applicable, to the Governor's representative normally within 10 working days after receipt of the request.

(3) Subject to the appeal provisions of § 1200.25 of this part, the approving official may disapprove a change in writing, with a brief explanation of the reasons therefor. Any such disapproval shall normally be made within 10 working days after receipt of the request.

(c) *Procedures for changes not requiring prior approval.* States shall provide documentary evidence of changes not requiring prior approval to the approving official by submitting amended Forms HS-62 and HS-217, and such other information as is necessary to explain the change.

Subpart C—Implementation and Management of the Highway Safety Program

§ 1200.20 General.

Except as otherwise provided in this subpart and subject to the provisions herein, the requirement of 49 CFR part 18 and applicable cost principles govern the implementation and management of State highway safety programs carried out under 23 U.S.C. 402.

§ 1200.21 Equipment.

(a) *All equipment*—(1) *Title.* Except as provided in paragraphs (b)(3) and (b)(4) of this section, title to equipment acquired under the HSP will vest upon acquisition in the State or its subgrantee, as appropriate.

(2) *Use.* All equipment shall be used for the originally authorized grant purposes for as long as needed for those purposes, and neither the State nor any of its subgrantees or contractors shall encumber the title or interest while such need exists.

(b) *Major equipment*—(1) *Choice of definition.* A State may elect to use its own definition of major equipment, provided such definition would at least include all items captured by the definition appearing in § 1200.3(1) of this part. Such election shall be made in writing by the Governor's Representative to the approving official, in the absence of which the definition in § 1200.3(1) of this part shall apply.

(2) *Management and disposition.* Subject to the requirements of paragraphs (a)(2), (b)(3), and (b)(4) of this section, States and their subgrantees and contractors shall manage and dispose of major equipment acquired under the HSP in accordance with State laws and procedures.

(3) *Federally-owned major equipment.* In the event a State or its subgrantee is provided federally-owned major equipment:

(i) Title shall remain vested in the Federal Government;

(ii) Management shall be in accordance with Federal rules and procedures, and an annual inventory listing shall be submitted;

(iii) The State or its subgrantee shall request disposition instructions from NHTSA or FHWA, as appropriate, when the item is no longer needed in the program.

(4) *Right to transfer title.* NHTSA or FHWA may reserve the right to transfer title to major equipment acquired under the HSP to the Federal Government or to a third party when such third party is otherwise eligible under existing statutes. Any such transfer shall be subject to the following requirements:

(i) The property shall be identified in the grant or otherwise made known to the State in writing;

(ii) NHTSA or FHWA, as applicable, shall issue disposition instructions within 120 calendar days after the end of the project for which the property was acquired, in the absence of which the State shall follow the applicable procedures in 49 CFR part 18.

(c) *Non-major equipment.* Subject to the requirements of paragraph (a)(2) of this section and except as otherwise provided in 49 CFR part 18, States and their subgrantees and contractors shall manage and dispose of non-major equipment acquired under the HSP in accordance with State laws and procedures.

§ 1200.22 Vouchers and project agreements.

Each State shall submit to the approving official vouchers documenting all expenses incurred, regardless of whether the State receives advance payments or is reimbursed for expenditures under the HSP. Each voucher shall be accompanied by a copy of the project agreement(s), and any amendments thereto, under which expenses have been incurred, unless a copy of such agreement(s) (or amendments, if applicable) has been previously provided.

(a) *Content of vouchers.* At a minimum, each voucher shall provide the following information for expenses claimed in each program area:

(1) Program Area/Project Number;

(2) Federal funds obligated;

(3) Amount of Federal funds allocated to local benefit (provided bi-annually only—March 31 and September 30 of each calendar year);

(4) Cumulative Total Cost to Date;

(5) Cumulative Federal Funds Expended;

(6) Previous Amount Claimed;

(7) Amount Claimed this Period;

(8) Special matching rate (i.e., sliding scale rate) authorized under 23 U.S.C. 120(a), if used, determined in accordance with the applicable NHTSA Order.

(b) *Submission requirements.* At a minimum, vouchers and supporting project agreements shall be submitted to the approving official on a quarterly basis, no later than 15 working days after the end of each quarter, except that where a state receives funds by letter of credit or electronic transfer at an annualized rate of one million dollars or more, the vouchers and agreements shall be submitted on a monthly basis, no later than 15 working days after the end of each month. Failure to meet these deadlines may result in delayed reimbursement.

§ 1200.23 Program income.

(a) *Inclusions.* Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds.

(b) *Exclusions.* Program income does not include interest on grant funds, rebates, credits, discounts, refunds, taxes, special assessments, levies, fines, proceeds from the sale of real property or equipment, income from royalties and license fees for copyrighted material, patents, and inventions, or interest on any of these.

(c) *Use of program income*—(1) *Addition.* Program income shall ordinarily be added to the funds committed to the HSP. Such program income shall be used to further the objectives of the project under which it was generated.

(2) *Cost sharing or matching.* Program income may be used to meet cost sharing or matching requirements only upon written approval of the approving official. Such use shall not increase the commitment of Federal funds.

§ 1200.24 Compliance.

Where a State is found to be in noncompliance with the terms of the HSP or applicable law, the approving official may apply the special conditions for high-risk grantees or the enforcement procedures of 49 CFR part 18, as appropriate and in accordance with their terms.

§ 1200.25 NHTSA appeals.

Review of any written decision by the NHTSA approving official under this part, including a disapproval or conditional approval of any part of an HSP under § 1200.1(b) of this part, a disapproval of a request for a changed under § 1200.13(b)(3) of this part, a decision to impose special conditions or restrictions or to seek remedies under § 1200.24 of this part, and a denial of a funding extension under § 1200.10(c)(2) of this part, may be obtained by submitting a written appeal of such decision, signed by the Governor's Representative, to the NHTSA approving official. Such appeal shall be forwarded promptly to the NHTSA Deputy Administrator through the NHTSA Regional Coordinator. The decision of the Deputy Administrator shall be final and shall be transmitted to the Governor's Representative through the approving official.

Subpart D—Closeout

§ 1200.30 Expiration of the HSP.

Unless extended in accordance with the provisions of § 1200.31 of this part, a one-year HSP shall expire on the last day of the fiscal year to which it pertains and a three-year HSP shall expire on the last day of the third fiscal year to which it pertains. The State and its subgrantees and contractors may not incur costs past the expiration date.

§ 1200.31 Extension of the HSP.

Upon written request by the State, specifying the reasons therefor, the approving official may extend the expiration date for some portion of an HSP by a maximum of 90 days. The approval of any such request for extension shall be in writing, shall specify the new expiration date, and shall be signed by the approving official. If an extension is granted, the State and its subgrantees and contractors may continue to incur costs under the HSP until the new expiration date, and the due dates for other submissions covered by this section shall be based upon the new expiration date. However, in no case shall any extension be deemed to authorize the obligation of additional Federal funds beyond those already obligated to the State by the Federal Government, nor shall any extension be applicable to the submission of the Annual Evaluation Report. Only one extension shall be allowed for each HSP.

§ 1200.32 Final voucher and project reports.

Each State shall submit a final voucher which satisfies the requirements of § 1200.22(a) of this part and copies of project reports for all projects approved under the HSP within 90 days after the expiration of each fiscal year, unless extended in accordance with the provisions of § 1200.31 of this part. The final voucher constitutes the final request for payment for each HSP.

§ 1200.33 Annual evaluation report.

Within 90 days after the expiration of the fiscal year, each State shall submit to the approving official an Annual Evaluation Report describing the accomplishments of the highway safety program under the HSP for the fiscal year. The report shall include the following information.

(a) *Statewide overview.* A three to five page overview of statewide accomplishments in highway safety, regardless of funding source;

(b) *Report by program area.* For each funded program area, an evaluation of actual program accomplishments and costs compared to those set forth in the HSP, noteworthy projects underway or completed, and successes, innovative solutions, problems, and failures;

(c) *Legislative and administrative accomplishments.* A discussion of significant administrative and legislative accomplishments which promoted the goals of highway safety; and

(d) *Status of remedial actions.* An evaluation of the progress the State is making in correcting deficiencies identified through program and financial management reviews conducted by the approving officials or by the State.

§ 1200.34 Disposition of unexpended balances.

Any funds which remain unexpended after payment of the final voucher shall be carried forward, credited to the State's highway safety account for the new fiscal year, and be made immediately available for reprogramming under a new HSP or under the next year of a continuing three-year HSP, subject to the approval requirements of § 1200.11(b) of this part.

§ 1200.35 Post-grant adjustments.

The closeout of an HSP does not affect the ability of NHTSA or FHWA to disallow costs and recover funds on the basis of a later audit or other review or the State's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

§ 1200.36 Continuing requirements.

The following provisions shall have continuing applicability, notwithstanding the closeout of an HSP:

(a) The requirement to use all equipment for the originally authorized grant purposes for as long as needed for those purposes, as provided in § 1200.21(a)(2) of this part;

(b) The management and disposition requirements for major equipment, as provided in § 1200.21(b)(2) of this part;

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(c) The audit requirements and records retention and access requirements of 49 CFR part 18.

PART 1204—UNIFORM GUIDELINES FOR STATE HIGHWAY SAFETY PROGRAMS

3. The authority citation for part 1204 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

§ 1204.4 [Amended]

4. In § 1204.4, supplements A through I, are removed.

PART 1205—HIGHWAY SAFETY PROGRAMS; DETERMINATIONS OF EFFECTIVENESS

5. The authority citation for part 1205 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

6. In § 1205.4, the introductory text and paragraph (a) are revised, paragraphs (c) and (e) are removed, and paragraph (d) is redesignated as paragraph (c) and revised to read as follows:

§ 1205.4 Funding Procedures for National Priority Program Areas.

A State planning to use funds under 23 U.S.C. 402 to support a program that is within a National Highway Safety Priority Program Area shall be subject to the following procedures:

(a) The State shall describe each highway safety problem within such Priority Area and any countermeasure proposed to decrease or stabilize the problem, and provide recent statistical trend data concerning injury, fatal, and property damage crashes to support the problem and countermeasure identifications.

* * * * *

(c) NHTSA and/or FHWA, as applicable, shall review the information provided under paragraphs (a) and (b) of this section in accordance with the procedures of § 1200.11 of this chapter.

Issued on: June 24, 1991.

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

[FR Doc. 91-15306 Filed 6-25-91; 3:25 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the North Dakota permanent regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Part of the proposed amendment is in response to changes requested by OSM through its 30 CFR part 732 state program amendment process and part is discretionary changes initiated by the North Dakota Legislature.

OSM notified North Dakota of the required changes to their program by letters dated: November 17, 1989; and February 7, 1990 (Administrative Record Nos. ND–J–01; and ND–K–01, respectively). The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations and improve operational efficiency.

This notice sets forth the times and locations that the North Dakota program and proposed amendment to that program are available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., mdt, July 29, 1991. If requested, a public hearing on the proposed amendment will be held on July 23, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., mdt, on July 15, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett, Director of the Casper Field Office, at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

Edward J. Englerth, Director, Reclamation Division, Public Service Commission, Capitol Building, Bismarck, ND 58505–0165, Telephone: (701) 224–4096.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office, on telephone number (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior approved the North Dakota program. General background information on the North Dakota program including the Secretary's findings and the disposition of comments can be found in the December 15, 1980 **Federal Register** (45 FR 82246). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, and 934.14, 934.15, 934.16 and 934.30.

II. Proposed Amendment

By letter dated June 12, 1991 (Administrative Record No. ND–M–01), North Dakota submitted a proposed amendment to its program pursuant to SMCRA. North Dakota submitted the proposed amendment to the North Dakota Century code (NDCC) and the North Dakota Administrative Code (NDAC) in response to OSM's 30 CFR 732.17 notifications of November 17, 1989; and February 7, 1990 (Administrative Record Nos. ND–J–01 and ND–k–01, respectively)

The sections of the program that North Dakota proposes to add or amend that are subject to review are: NDCC 38–12.1 Exploration Data; NDAC 43–02–01 Coal Exploration; NDAC 38–14.1 Surface Mining and Reclamation Operations; and NDAC 69–05.2 Termination of Jurisdiction.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.d.t. on July 15, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, a hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES**". A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 21, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-15277 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 946

Virginia Regulatory Program; Regulatory Reform Review III and Incidental Coal Extraction Exemption

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: On May 23, 1991 (56 FR 23664), OSM announced receipt of revisions to a previously proposed amendment to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated April 18, 1991 (Administrative Record No. VA–783), Virginia had submitted additional information to both support and modify its proposed amendment dated October 1, 1990 (Administrative Record No. VA–768), which responded to two 30 CFR 732.17(f)(1) notifications (Administrative Record Nos. VA–743 and VA–749). The proposed amendment includes changes in Virginia's program relating to revegetation standards for success, siltation structures and impoundments, termination of jurisdiction, roads and support facilities, coal exploration, probable hydrologic consequences determinations, and permitting obligations relative to reclamation. Also included are changes to the regulations relative to the exemption for coal extraction incidental to the extraction of other minerals removed for purposes of commercial use or sale, and regulations concerning prime farmland and coal preparation plants that are not located within the permit area of a mine. In connection with the revision submitted by Virginia on April 18, 1991, OSM reopened and extended the public comment period on Virginia's October 1, 1990, proposed amendment. In announcing the revisions to the State's original proposed amendment, OSM failed to identify revisions to the State program at VR 480–03–19.773.18(c)(4)(ii) and (c)(7). Therefore, OSM is reopening and extending the comment period. OSM will consider the new information, the existing proposed amendment, and any previous comments when making a final decision on the proposed amendment.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection and the comment period during which interested parties may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4 p.m. on July 15, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523–8100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A Penn, Director, Big Stone Gap Field Office, Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Amendments

By letter dated October 1, 1990 (Administrative Record No. VA–768), Virginia submitted a proposed amendment to its program pursuant to SMCRA. OSM announced in the October 31, 1990, **Federal Register** (55 FR 45811–45814) receipt of the amendment and invited public comment. By letter dated March 20, 1991 (Administrative Record No. VA–782), OSM notified Virginia of 25 items contained in the amendment that required either clarification or revision. By letter dated

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April 18, 1991 (Administrative Record No. VA–793), Virginia submitted clarifications and revisions to the proposed amendment. OSM announced in the May 23, 1991, **Federal Register** (56 FR 23664) receipt of the clarifications and revisions and invited public comment. However, OSM failed to discuss two revisions which are described below.

Virginia has revised VR 480–03–19.773.16 (c)(4)(ii) and (c)(7) by deleting reference to spillway design storm criteria in order to be consistent with VR 480–03.19.816/817.49(b)(7).

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, and Underground mining.

Dated: June 21, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–15378 Filed 6–27–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 100

RIN 0905–AD25

Vaccine Injury Compensation: Calculation of Cost of Health Insurance

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: Subtitle 2 of title XXI of the Public Health Service ACt (PHS), as enacted by the National Childhood Vaccine Injury Act of 1986, and as amended, governs the National Vaccine Injury Compensation (NVIC) Program. The NVIC Program, administered by the Secretary, provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition with the United States Claims Court. In some cases, the injured individual may receive compensation for future lost earnings, less appropriate taxes and the "average cost of a health insurance policy, as determined by the Secretary." It is the purpose of this proposed rule to set out the amount to be deducted from the award of compensation which would reflect the average cost of a health insurance policy.

DATES: Comments must be submitted on or before August 27, 1991.

ADDRESSES: Written comments should be addressed to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, room 8A–55, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Balbier, Director, Division of Vaccine Injury Compensation, 6001 Montrose Road, room 702, Rockville, Maryland 20852; telephone number: 301 443–6593.

SUPPLEMENTARY INFORMATION: Under the National Vaccine Injury Compensation Program, 42 U.S.C. 300aa-10 *et seq*, as amended, an individual may file petition in the United States Claims Court for compensation for vaccine-related injuries or death. The Secretary is named by the Act as Respondent in these proceedings and carries out other functions under the Act. The Secretary's authorities under the Program established by the Act have been delegated to the Health Resources and Services Administration.

The elements of compensation to be awarded to a successful petitioner are set out in section 2115 of the Public Health Service Act, 42 U.S.C. 300aa-15. Subsection (a)(3)(B) provides specifically for compensation for lost earnings for a person who has sustained a vaccine-related injury before attaining the age of 18, and whose earning capacity is or has been impaired sufficiently to anticipate that such person is likely to suffer impaired earning capacity at age 18 and beyond. The injured person would be eligible to receive compensation for loss of earnings, after the age of 18, which are calculated on the basis of the average gross weekly earnings of workers in the private, non-farm sector, less appropriate taxes and the "average cost of a health insurance policy, as determined by the Secretary." The wage data are taken from the Employment and Earnings survey done by the Department of Labor, Bureau of Labor Statistics. (Subsection (a)(3)(A) provides specifically for payment of lost earnings for individuals injured after reaching age 18 and does not include deductions for taxes and the cost of health insurance.)

The Department is proposing to set out the amount to be deducted from the award of compensation which would reflect the average cost of a health insurance policy. Based on data from a 1989 survey by The Health Insurance Association of America (HIAA), the average monthly premium cost for individuals covered under employment-related group insurance was estimated to be $117.00 in 1989. The survey reported the average costs of seven kinds of coverage: Conventional plans, both managed and unmanaged; nonpreferred provider and preferred provider; and health maintenance organizations, including individual practice association, staff/group, and hybrid arrangements. One hundred seventeen ($117) dollars is a weighted average of these costs. The results of the survey were published in the journal of Health Affairs, Vol. 9, No. 3, Fall 1990. The Department is proposing to use this survey to establish a baseline figure based upon its being the most accurate and complete analysis available.

It is proposed that this figure be indexed periodically by the medical care component of the Consumer Price Index (CPI) (All Urban Consumers, U.S. City Average) published by the United States Bureau of Labor Statistics. This index will be used because it reflects changes in the cost of medical care which underlie health insurance. The period covered by the Health Affairs survey ended on July 1, 1989. Accordingly, the Department has applied the 13.8 percent change in the index covering the period July 1, 1989, until December 31, 1990, to the baseline figure of $117.00, resulting in a preliminary figure for 1990 of $133.00. When this rule is published in the **Federal Register** in final form, the Department will update that figure as appropriate. Thereafter, the Department will file updated figures with the United States Claims Court and will list the changes in the index by publishing a notice in the **Federal Register** from time to time as determined by the Secretary.

If, over time, the average cost of health insurance, as calculated by the method described above, significantly differs from subsequent HIAA survey results or other authoritative sources than available, the Secretary will consider appropriate revisions to this rule.

A second approach is also being considered. Comments on this alternate method are also welcome. The Department recognizes that the medical component of the CPI only reflects changes in the cost of health care services. Other factors, which affect the cost of health insurance, such as higher utilization of health care services, the added expense of certain medical technological advances, and coverage decisions by insurers, are not fully taken into account by the CPI. Limited data available to the Department suggest that in recent years increases in the cost of health insurance have outpaced increases in the medical component of the CPI by approximately 2 percent per year.

Therefore, the second method being considered would inflate the baseline figure not only by the medical component of the CPI but also by the additional 2 percent that reflects the increases associated with higher utilization, technological advances and coverage decisions. Using this method against the baseline figure of $117.00 results in an estimate for 1990 of $137.00.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this regulation does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980, the Department prepares and publishes an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, this proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined that this proposed rule does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. Consequently, the Department has concluded that an initial regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

This proposed rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Compensation, Health insurance, Immunizations.

Accordingly, it is proposed to amend title 42 of the Code of Federal Regulations by adding a new Part 100, "Vaccine Injury Compensation," as set forth below.

Dated: January 29, 1991.

James O. Mason,

Assistant Secretary for Health.

Approved: May 9, 1991.

Louis W. Sullivan,

Secretary.

PART 100—VACCINE INJURY COMPENSATION

Sec.

100.1 Applicability.

100.2 Average cost of a health insurance policy.

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act, 100 Stat. 3767, as amended (42 U.S.C. 300aa-15).

§ 100.1 Applicability.

This regulation applies to the National Vaccine Injury Compensation (NVIC) Program under subtitle 2 of title XXI of the Public Health Service (PHS) Act.

§ 100.2 Average cost of a health insurance policy.

For purposes of determining the amount of compensation under the NVIC Program, section 2115(a)(3)(B) of the PHS Act, 42 U.S.C. 300aa-15(a)(3)(B), provides that certain individuals are entitled to receive an amount reflecting lost earnings, less certain deductions. One of the deductions is the average cost of a health insurance policy, as determined by the Secretary of Health and Human Services. The Secretary has determined that the average cost of a health insurance policy is $ _____.00 per month. (As of December 31, 1990, the correct figure would have been either $133.00 or $137.00, depending on which of the approaches outlined in the preamble is finally adopted; when a final rule is published, the operative figure at the time, using whatever approach is finally adopted, will be inserted here.) This amount will be revised to reflect the changes in the medical care component of the Consumer Price Index (All Urban Consumers, U.S. City Average), published by the United States Bureau of Labor Statistics. The revised amounts will be effective upon their delivery by the Secretary to the United States Claims Court, and the amount will be published in a notice in the **Federal Register** from time to time as determined by the Secretary.

[FR Doc. 91–15434 Filed 6–27–91; 8:45 am]

BILLING CODE 4160–15–M

Health Care Financing Administration

42 CFR Part 424

[BPD–709–P

RIN 0938–AF01

Medicare Program; Allowing Certifications and Recertifications by Nurse Practitioners and Clinical Nurse Specialists for Certain Services

AGENCY: Health Care Financing Administration (HFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 6028 of the Omnibus Budget Reconciliation Act of 1989, which authorizes nurse practitioners and clinical nurse specialists working in collaboration with a physician to certify and recertify that extended care services are needed or continue to be needed.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on August 27, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, attention: BPD–709–P, P.O. Box 26676, Baltimore, Maryland 21207.

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If you prefer, you may deliver your comments to one of the followng addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rrise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to:

Office of Management and Budget, Office of Information and Regulatory Affairs, room 3208, New Executive Office Building, Washington, DC 20503, attention: Allison Herron.

In commenting, please refer to file code BPD–709–P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Thomas Hoyer (303) 966–4607.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1814(a) of the Social Security Act (the Act) requires specific certifications in order for Medicare payments to be made for certain services. Prior to the enactment of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), section 1814(a)(2)(B) of the Act required that, in the case of extended care services, a physician certify that the services are or were required to be given because the individual needs or needed, on a daily basis, skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services which, as a practical matter, can only be provided in skilled nursing facility (SNF) on an inpatient basis.

The physician certification requirements were included in the law to ensure that patients require a level of care which is covered by the program and because the physician is a key figure in determining utilization of health services.

Section 2183 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), allowed physician assistants and nurse practitioners under the general supervision of a physician to do recertification (but not certifications) of certain services for Medicaid eligibles. Section 6028 of Public Law 101–239 amended section 1814(a)(2) of the Act to allow, in the case of extended care services, a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility, but is working in collaboration with a physician, to certify and recertify that extended care services are needed to continue to be needed.

Current regulations located at 42 CFR part 424, concerning conditions for Medicare payments, specify that a physican must certify and recertify the need for services. Regulations located at § 424.20 provide Medicare Part A coverage for posthospital SNF care furnished by a SNF or a hospital with a swing-bed approval only if a physician certifies and recertifies the need for services. Section 424.20(a)(2) contains certification requirements for certain swing bed patients under which a physician must certify that transfer is not medically appropriate. Also, § 424.20(e) provides that certification and recertification statements may be signed by the physician responsible for the case or, with is or her authorization, by a physician on the SNF staff or a physician who is available in case of an emergency and has knowledge of the case.

II. Provisions of the Regulations

In accordance with section 1814(a)(2)(B) of the Act, we would amend 42 CFR part 424, which pertains to conditions for Medicare payments. We propose to revise §§ 424.1(b)(1) and 424.5(a)(4) pertaining to the general provisions of part 424 by deleting the statement that only a physician can certify and recertify the need for extended care services. We propose to revise § 424.10(a), which specifies that certifications and recertifications must be made only by a physician, to permit a nurse practitioner or clinical nurse specialist to certify and recertify the need for services.

We propose to revise § 424.11(b), which specifies procedures for obtaining certifications and recertifications, to remove the requirement that only a physician can certify and recertify the need for services. We would add a new § 424.11(e)(4) to specify that a nurse practitioner or clinical nurse specialist could certify and recertify that extended care services are needed or continue to be needed.

We propose to revise § 424.20(e), which pertains to the requirements for posthospital SNF care, by adding a new provision to specify that the signer of the certification and recertification may be a nurse practitioner or clinical nurse specialist, neither of whom has a direct or indirect employment relationship with the facility, but is working in collaboration with a physician. In this section we also propose to explain that "collaboration" means a process whereby a nurse practitioner or clinical nurse specialist works with a doctor of medicine or osteopathy to deliver health care services. The services must be delivered within the scope of the practitioner's professional expertise as defined and as licenced by the State, with medical direction and appropriate supervision as provided for in guidelines jointly developed between the practitioner and the physician or other mechanisms defined by Federal regulations and the law of the State in which the services are performed.

Public Law 101–239 did not amend section 1883(d)(2)(A) of the Act, which requires that for swing bed hospitals with more than 49 beds that are approved after March 31, 1988, the extended care patient's physician has 5 days, beginning on the availability date, to certify that the transfer of the extended care patient is not medically appropriate. Therefore, we are not proposing to make any changes to § 424.20(b)(2), which reflects this section of the Act. However, we are revising the authority citations for part 424 to include § 1883(d)(2) of the Act, since that section contains the authority for § 424.20(b)(2).

III. Response to Comments

Because of the large number of items of correspondence we normally receive on proposed regulations, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this proposed rule, and, if we proceed with a final rule, we will respond to the comments in the final rule.

IV. Information Collection Requirements

Section 424.20 of this proposed rule contains information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) The information collection requirements concern signatures for certification and recertification statements for extended care services. The respondents who would be responsible are physicians, nurse practitioners or clinical nurse specialists working in collaboration with a physician. Public reporting burden for this collection of information is estimated to be (estimated to be provided before final publication) minutes/hours per response. A notice will be published in the **Federal Register** after approval is obtained.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

V. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, physicians are considered to be small entities. We also consider nurses who work on a consulting basis or who are self-employed to be small entities. Individuals are not considered as small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

The committee report to section 6028 of Public Law 101–239 did not provide any specific rationale for expanding the requirement for physician certification and recertification to include nurse practitioners and clinical nurse specialists. However, in the past Congress has looked at Medicare and Medicaid certification and recertification requirements and chosen to amend only certain parts of them under the Medicaid program. For instance, section 2183 of Public Law 97–35 amended section 1903(g)(1)(A) of the Act to allow physician assistants and nurse practitioners to recertify the continued need for inpatient (hospital, SNF and ICF) services. According to the legislative report which accompanied this law, (H.R. Rep. No. 97–158, 97th Cong., 1st Sess., (1981)), Congress found physician assistants and nurse practitioners, under the supervision of physicians, were well qualified to perform a recertification of a patient's need for continued inpatient care. We believe that Congress, since they passed the legislation, would also find nurse practitioners and clinical nurse specialists qualified to certify and recertify that extended care services are needed or continue to be needed.

The proposed rule states that in order for nurse practitioners and clinical nurse specialists to certify or recertify that extended care services are needed or continue to be needed, they cannot have a direct or indirect employment relationship with the facility. However, we believe that since the nurse practitioner or clinical nurse specialist must work in collaboration with a physician, as defined in the preamble and regulations text (proposed § 424.20(e)(2)), and have knowledge of the case, the nurse practitioner or clinical nurse specialist would be familiar with the procedures necessary to certify or recertify. The implementation of the provision to allow nurse practitioners and clinical nurse specialists to certify and recertify would be beneficial to physicians since this would free physicians to perform other procedures that require the full skill of his or her profession.

We have determined that this proposed rule, in itself, would not produce any effects that would meet any of the criteria of E.O. 12291; therefore, a regulatory impact analysis under E.O. 12291 is not required. For the same reasons, we have determined and the Secretary certifies that this proposed rule would not have a significant effect on a substantial number of small entities or have any adverse effects on small rural hospitals. Thus, a regulatory flexibility analysis under the RFA and rural impact analysis under section 1102(b) of the Act are not required.

V. List of Subjects in 42 CFR 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

42 CFR part 424 would be amended as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 is revised to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870(e) and (f), 1871, 1872 and 1883(d)(2) of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg(e) and (f), 1395hh, 1395ll and 1395tt(d)(2)).

Subpart A—General Provisions

2. Subpart A is amended as follows:

a. In § 424.1, the introductory language for paragraph (b) is republished and paragraph (b)(1) is revised to read as follows:

§ 424.1 Basis and scope.

* * * * *

(b) *Scope.* This part sets forth certain specific conditions and limitations applicable to Medicare payments and cites other conditions and limitations set forth elsewhere in this chapter. This Subpart A provides a general overview. Other subparts deal specifically with—

(1) The requirement that the need for services be certified and that a physician establish a plan of treatment (Subpart B);

* * * * *

b. In § 424.5, the introductory language for paragraph (a) is republished and paragraph (a)(4) is revised to read as follows:

§ 424.5 Basic conditions.

(a) As a basis for Medicare payment, the following conditions must be met:

* * * * *

(4) *Certification of need for services.* When required, the provider must obtain certification and recertification of the need for the services in accordance with Subpart B of this part.

* * * * *

Subpart B—Physician Certification and Plan of Treatment Requirements

3. Subpart B is amended as follows:

a. The title for Subpart B is revised to read: Subpart B—Certification and Plan of Treatment Requirements.

b. Section 424.10(a), is revised to read as follows:

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§ 424.10 Purpose and scope.

(a) *Purpose.* The physician has a major role in determining utilization of health services furnished by providers. The physician decides upon admissions, orders tests, drugs, and treatments, and determines the length of stay. Accordingly, sections 1814(a)(2) and 1835(a)(2) of the Act establish as a condition for Medicare payment that a physician certify the necessity of the services and, in some instances, recertify the continued need for those services.

Section 1814(a)(2) of the Act also permits nurse practitioners or clinical nurse specialists to certify and recertify the need for post-hospital extended care services.

* * * * *

c. In section 424.11, paragraph (b) is revised, the introductory language for paragraph (e) is revised, and a new paragraph (e)(4) is added to read as follows:

§ 424.11 General procedures.

* * * * *

(b) *Obtaining the certification and recertification statements.* No specific procedures or forms are required for certification and recertification statements. The provider may adopt any method that permits verification. The certification and recertification statements may be entered on forms, notes, or records that the appropriate individual signs, or on a special separate form. Except as provided in paragraph (d) of this section for delayed certifications, there must be a separate signed statement for each certification or recertification.

* * * * *

(e) *Limitation on authorization to sign statements.* A certification or recertification statement may be signed only by one of the following:

* * * * *

(4) A nurse practitioner or clinical nurse specialist, as defined and licensed by the State, in the circumstances specified in § 424.20(e).

d. In § 424.20, the introductory language and paragraph (e) are revised to read as follows:

§ 424.20 Requirements for posthospital SNF care.

Medicare Part A pays for posthospital SNF care furnished by a SNF or a hospital with a swing-bed approval only if the certification and recertification for services are consistent with the content of paragraph (a) or (c) of this section, as appropriate.

* * * * *

(e) *Signature.* Certification and recertification statements may be signed by—

(1) The physician responsible for the case or, with his or her authorization, by a physician on the SNF staff or a physician who is available in case of an emergency and has knowledge of the case; or

(2) A nurse practitioner or clinical nurse specialist, neither of whom has a direct or indirect employment relationship with the facility but who is working in collaboration with a physician. For purposes of this section, "collaboration" means a process whereby a nurse practitioner or clinical nurse specialist works with a doctor of medicine or osteopathy to deliver health care services. The services are delivered within the scope of the practitioner's professional expertise, with medical direction and appropriate supervision as provided for in guidelines jointly developed between the practitioner and the physician or other mechanisms defined by Federal regulations and the law of the State in which the services are performed.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 16, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: April 4, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-15431 Filed 6-27-91; 8:45 am]

BILLING CODE 4120-01-M

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42 CFR Part 433

[MB-35-P]

RIN: 0938-AE26

Medicaid Program; Medicaid Management Information System (MMIS) Performance Review: Notification Procedures for Changes in Requirements, Performance Standards, and Reapproval Conditions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to eliminate the requirement in the Medicaid regulations that HCFA meet certain Federal Register notification requirements for any changes in performance standards and other conditions for reapproval of State Medicaid Management Information Systems (MMISs), even if such Federal Register notice would not otherwise be required. An independent regulatory Federal Register publication requirement would remain in place with respect to changes in system requirements and other conditions for approval of MMISs.

We believe that a revised process for notifying States and other concerned parties of changes in performance standards and other conditions of reapproval is appropriate and will facilitate the efficient issuance of revised MMIS review requirements and methodologies each year.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 29, 1991.

ADDRESS: Mail comments to the following:

Health Care Financing Administration, Department of Health and Human Services, Attention: MB-35-P, PO Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code MB-35-P. Comments will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Rick Friedman, (301) 966-3292.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of section 1903(a)(3) of the Social Security Act (the Act), HCFA requires most States with a Medicaid program to operate an approved mechanized claims processing and information retrieval system. The mechanized claims processing and information retrieval system (referred to as the Medicaid Management Information System (MMIS) is a system of software and hardware used to process Medicaid claims, and to retrieve and produce utilization data and management information about Medicaid recipients and services. These data and information are required by the Medicaid agency and by the Federal Government for administrative and audit purposes.

Federal financial participation (FFP) is available at the 75 percent rate for operation of an approved MMIS. Section 1903(r)(4)(A) of the Act requires reviews of each MMIS at least once every 3 years to determine whether it meets performance standards, system requirements, and other conditions and continues to qualify for FFP. Other limited or full reviews also may be conducted. Sections 1903(r)(1)(C) and 1903(r)(4)(B) of the Act require reductions in FFP otherwise due a State under secton 1903(a) if a State fails to meet certain deadlines for operating the system or if the system fails to meet certain conditions for approval or reapproval.

On June 30, 1981, we published in the Federal Register (46 FR 33653) a notice containing the initial performance standards used to evaluate State MMISs. In that notice, we indicated that the standards would be published in the Federal Register but the detailed supporting procedures concerning the application of the standards (sampling, scoring, evaluation methodologies, etc.) would be published in the State Medical Manual and issued to all MMIS States. We also provide the detailed instructions and supporting procedures, including the sampling, scoring, and evaluation methodologies that will be used to review each State's MMIS, as part of the System Performance Review (SPR) Guide issued to every State by June 30 of each year preceding the review period that begins October 1.

Section 1903(r)(6)(F) of the Act requires HCFA to periodically update the performance standards, systems requirements, review criteria, and other requirements, when appropriate, that are used in conducting reviews for reapproval of the MMIS. While the performance standards for reapproval of MMISs have remained mostly unchanged, the supporting procedures described earlier generally have been updated from year to year.

Although not required by statute, in July 1985 (50 FR 30848) we promulgated a regulation at § 433.123 which requires publication of a Federal Register notice describing proposed revisions to system requirements, standards, or other conditions for approval or reapproval without regard to whether such Federal Register publication is required under the Administrative Procedure Act. In that regulation, we specified that we would issue a subsequent notice responding to public comments on any proposed revisions and issue the new or modified standards or conditions in the State Medicaid Manual. Section 433.123(b) specifies that HCFA will allow a reasonable period of time before the applicable review period for States to meet changes in systems requirements and conditions for approval. Section 443.123(c) specifies that HCFA will notify Medicaid agencies at least one calendar quarter before the applicable review period for new or modified standards or conditions of reapproval.

In accordance with § 433.123, we have published the standards in the Federal Register, but we have not published all of the factors, methods of evaluation, and supporting procedures. This is consistent with the intent specified in the June 30, 181 Federal Register notice. As we indicated earlier, we issue, generally annually, the detailed factors, methods of evaluation, and supporting procedures for conducting MMIS reviews for reapprovals as part of the SPR Guide. (For informational purposes, we repeat the standards in the guide.)

State Involvement in Developing Updated Measures

Section 1903(r)(6)(E) of the Act requires us to notify all States of any revision in procedures, standards, and other requirements at least one quarter before they are to be used for conducting reviews for MMIS reapprovals. It does not mandate the form or the content of the notification. Since 1981, we have developed acceptable performance levels and specific methodologies for conducting reviews and evaluating State MMIS operations each fiscal year and issued them in the SPR Guide after consultation with and opportunity to comment by States through established HCFA administrative procedures. We have involved State representatives in this development, including the Systems Technical Advisory Group (S-TAG). The S-TAG is a component of the State Medicaid Directors Association (SMDA)). The SMDA is an organization affiliated with the American Public Welfare Association (APWA). The existing S-TAG consists of seven State representatives and a representative from the APWA who provide technical assistance to HCFA on the systems operations of the Medicaid program, especially the MMIS. HCFA holds meetings or teleconferences, or both, with the S-TAG to obtain their advice on proposed changes to the existing procedures and conditions of reapproval in the SPR Guide. In addition, HCFA frequently sends copies of the draft SPR Guide to the States and the S-TAG for further comment and input. This is done before the final distribution of the guide on or before June 30 preceding each fiscal year review period that begins on October 1. HCFA central office staff monitor this process and coordinate the changes from the States. As a result of this administrative process, the final SPR Guide that HCFA issues each year incorporates the States' input and addresses their concerns.

Based on our past experience, we believe that the opportunity offered to States by this administrative process to make recommendations and changes concerning the systems performance review requirements and to comment on specific proposals has proven to be an effective, efficient, and expeditious process in view of the frequency (at least once a year) with which we update and reissue the SPR Guide. We believe that this process of distributing the SPR Guide to all States by June 30 of each year preceding the review period that begins October 1 meets the requirements of section 1903(r)(6)(E) of the Act for notice of States.

Notice Changes

Since the inception of the MMIS program, HCFA has published in the Federal Register only one set of standards for reviewing the performance of the States' MMISs for reapprovals. In the June 30, 1981 notice cited earlier, standards and elements were specified; factors were included for illustrative purposes only. On September 5, 1990, we published in the Federal Register (55 FR 36319) a final notice to eliminate the use of elements in the SPR Guide. We further indicated that the factors would not be directly associated with any particular standard; that is, passing a given standard would not depend on meeting the requirements of a given grouping of factors. We made these changes because, based on our experience, the prior SPR Guide had a number of shortcomings. In some instances, specific activities we wanted to measure as indicative of the performance of the MMIS could not be logically classified under the standards or elements as they were formatted, or could arguably be placed under more than one of the standards and elements. In other instances, we felt it inappropriate to review activities under

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a particular standard or element because shifting program emphasis indicated that priorities be placed in other areas.

On the basis of our experience in overseeing the administration of the MMIS and conducting the required performance reviews since 1981, we have concluded that the Federal Register notice requirements of § 433.123 concerning the performance standards and conditions of reapproval are constrictive, inflexible, and unnecessary. We have in place the previously discussed flexible and efficient procedures for making changes to the factors, methods of evaluation, and supporting materials, which provide ample notice to the States, allow for appropriate input by the States, and conform with provisions of the Act. Publication of revisions in the Federal Register generally requires a minimum lead time of 18 to 24 months. This lead time takes into account the approximate time for developing and clearing appropriate changes within HCFA and the Department, the process of publishing a proposed notice, a period of time for public comments, and issuance of a subsequent notice. As a result, we believe that the assessment data gathered from the reviews conducted under this lengthy publication process of changes would no longer be timely or relevant to current MMIS concerns.

We also believe that our notification process through issuance of the SPR Guide following consultation and cooperative development with the States and the S-TAG satisfy the requirement for appropriate notice in section 1903(r)(6)(E) of the Act. That requirement concerns the changes to the performance standards and other conditions used for the reapproval of State MMISs.

As indicated earlier, we obtain States' input and respond to their comments. In addition, the advance release time of the SPR Guide at least one quarter before the date that it will be used for reapproval reviews meets the notification period required in the Act. As also discussed earlier, all of the standards, factors, methods of evaluation, and scoring and sampling methodologies are included in the guide and issued to States 3 months before the affected review period (by June 30 before the October 1 implementation date). Therefore, we have concluded that publication of a notice of proposed changes, a final notice addressing public comments in the Federal Register, and a subsequent administrative issuance as a prerequisite for issuing final changes in the conditions for reapproval is not the most appropriate, efficient mechanism for notifying MMIS States of proposed changes and allowing them opportunity for comment. We will use a more expeditious means of providing States with notice of changes and opportunity for comment through the SPR Guide.

We are proposing to delete those provisions of § 433.123 which specify that notification of changes concerning performance standards and/or other conditions of reapproval must take place through publication of a proposed notice, a subsequent notice addressing public comments in the Federal Register, and publication in the State Medicaid Manual. In place of that language, we are proposing to revise § 433.123 to reflect the notice requirements in section 1903(r)(6)(E) of the Act; that is, we will notify Medicaid agencies directly at least one calendar quarter before the review period to which the new or modified performance standards or conditions of reapproval apply. As a result, HCFA will be able to develop or modify more effective reapproval requirements. HCFA also will be able to conduct system performance reviews of MMISs under a performance review mechanism that is more timely, easier to work with, and more reflective of the current concerns in MMIS State operations with more relevant and timely assessment data being derived from the reviews as well.

Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble and will respond to the comments in the preamble of the final rule issued following this proposed rule.

Paperwork Burden

Section 433.123 does not contain information collection requirements that are subject to review by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Regulatory Impact Statement

1. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

This proposed rule would delete the requirements from § 433.123 of the regulations that we publish the performance standards and other conditions for reapproval of MMISs in the Federal Register. These requirements are not dictated by statute and are considered unnecessary at this time. Under current requirements of the regulations, flexibility and efficiency for making changes are greatly limited. For example, publication and final change in the Federal Register in accordance with § 433.123 ordinarily requires a minimum lead time of 18 to 24 months.

The objective of this proposed rule is to increase efficiency in implementing needed changes in MMIS operations and administration by eliminating the need for publication in the Federal Register as a prerequisite for our making changes to the SPR Guide. States would continue to receive notice and an opportunity to comment. Therefore, any effect on States due to this proposed regulation would be minimal.

We do not expect this proposed rule to meet any of the criteria for a major rule under E.O. 12291. Therefore, we are not including an initial regulatory impact analysis.

2. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider States to be small entities.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if a proposed regulation may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Since States are not considered small entities, we have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on a substantial number of small entities. As discussed above, States would still be given notice and an opportunity to comment on proposed changes. In addition, this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared analyses for either the RFA or section 1102(b) of the Act.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR part 433 would be amended as follows:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 continues to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), and 1396k, unless otherwise noted.

2. Section 433.123 is revised to read as follows:

§ 433.123 Notification of changes in system requirements, performance standards or other conditions for approval or reapproval.

(a) Whenever HCFA modifies system requirements or other conditions for approval under § 433.112 or § 433.116, HCFA will—

(1) Publish a notice in the Federal Register making available the proposed changes for public comment;

(2) Respond in a subsequent Federal Register notice to comments received; and

(3) Issue the new or modified requirements or conditions in the State Medicaid Manual.

(b) For changes in system requirements or other conditions for approval, HCFA will allow an appropriate period for Medicaid agencies to meet the requirement determining this period on the basis of the requirement's complexity and other relevant factors.

(c) Whenever HCFA modifies performance standards and other conditions for reapproval under § 433.119, HCFA will notify Medicaid agencies at least one calendar quarter before the review period to which the new or modified standards or conditions apply.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Programs)

Dated: November 12, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-15432 Filed 6-27-91; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-177, RM-7737]

Radio Broadcasting Services; Orland, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Edward E. Abramson, permittee of Station KXHM(FM), Channel 293A, Orland, California, seeking the substitution of FM Channel 294B1 for Channel 293A and modification of his construction permit accordingly. Coordinates for this proposal are 39-45-40 and 122-22-20.

Petitioner's modification proposal complies with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 294B1 at Orland, California, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before August 16, 1991, and reply comments on or before September 3, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Eric S. Kravetz, Esq., Brown, Finn & Nietert, 1920 N. Street, NW., suite 660, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-177, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15504 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 91-176, RM-7738]

Radio Broadcasting Services; Fortuna and Rohnerville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by North Star Communications, permittee of Station KQEX(FM), Channel 263A, Rohnerville, California, seeking to change the designation of its community of license to specify Fortuna, and to modify its permit for Station KQEX(FM) to specify operation on Channel 262C2. Petitioner's proposal is premised on a desire to provide a first local, wide area coverage FM transmission service to Fortuna, the community to which Rohnerville is annexed. Coordinates for this proposal are the presently authorized site for

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Station KQEX(FM) at 40-30-03 and 124-17-10.

Petitioner's modification proposal is considered pursuant to the provisions of § 1.420 (g) and (i) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 282C2 at Fortuna, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before August 16, 1991, and reply comments on or before September 3, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: North Star Communications, Radio Station KQEX(FM), P.O. Box 291, Fortuna, CA 95540.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-176, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15503 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-178, RM-7141]

Radio Broadcasting Services; Miami Beach, Florida

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Gilmore Broadcasting Corporation, licensee of Station WLVE(FM), Channel 230C1, Miami Beach, Florida proposing the substitution of Channel 230C for Channel 230C1 at Miami Beach, Florida, and modification of its license to specify the higher class co-channel. Channel 230C can be allotted to Miami Beach in compliance with the Commission's minimum distance separation requirements without a site restriction at coordinates North Latitude 25-47-18 and West Longitude 80-07-48. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before August 16, 1991, and reply comments on or before September 3, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John C. Quale, Edward A. Yorkgitis, Jr., Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006 (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-178, adopted June 17, 1991, and released June 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15505 Filed 6-27-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 56, No. 125
Friday, June 28, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1991-1992 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of determination.

SUMMARY: This notice sets forth the determination of the 1991-1992 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Sarah J. Matthews, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013 (202) 447-4318.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprised in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Discussion

Section 314 of the Agricultural Adjustment Act of 1938, as amended, provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year.

For all kinds of tobacco subject to marketing quotas, except Puerto Rico (type 46) Tobacco, The Agricultural Statistics Board, National Agricultural Statistical Service (NASS), U.S. Department of Agriculture determines and announces annually the average market prices for each type of tobacco. The penalty rates are determined on the basis of this information.

The National Marketing Quota for Puerto Rican (type-46) Tobacco for the immediately preceding marketing year was "0" pounds. There is no record of any such tobacco being marketed. Consequently, the penalty rate for the 1991-1992 marketing year cannot be determined based on seventy-five (75) percent of the average market price for the immediately preceding year. Therefore, the penalty rate for Puerto Rican (type-46) Tobacco for the 1991-1992 marketing year shall be the same as the penalty rate determined for the 1989-1990 marketing year, the last year in which marketing information is available.

Since the determination of the 1991-1992 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Accordingly, it has been determined the 1991-1992 marketing year rates of penalty of kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY

(1991-1992 Marketing Year)

Kinds of tobacco	Cent per pound
Flue-Cured	125
Burley	131
Fired-Cured (Type 21)	120
Fired-Cured (Types 22, and 23)	148
Dark Air-Cured (Types 35, and 36)	140
Virginia Sun-Cured (Type 37)	109
Cigar-Filler and Binder (Types 42, 43, 44, 54, and 55)	113
Puerto Rican Cigar Filler (Type 46)	57

Signed at Washington, DC on June 24, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-15450 Filed 6-27-91; 8:45 am]

BILLING CODE 3410-05-M

Food Safety and Inspection Service

[Docket No. 91-024N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods, will be held on Tuesday and Wednesday, July 16-17, 1991, in Denver, Colorado, from 8:30 a.m. to 4:30 p.m., at the Doubletree Hotel, 13696 East Iliff Place at I-225, (Aurora, Colorado) 80014, telephone (303) 337-2800.

In addition, this notice announces that the Seafood Working Group of the Advisory Committee on Microbiological Criteria for Foods will hold a working group meeting on July 15, 1991, from 1 p.m. to 4 p.m., also being held at the Doubletree Hotel, Denver, (Aurora) Colorado.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can

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be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

The following topics are scheduled for discussion:

(1) Presentation on *Campylobacter* by Dr. Morris Potter, Centers for Disease Control, Atlanta, Georgia.

(2) *Listeria monocytogenes* document as prepared and presented by the *Listeria monocytogenes* Working Group.

(3) Read Meat and Poultry Hazard Analysis and Critical Control Points Plans as prepared and presented by the Meat and Poultry Working Group.

(4) Microbiological Safety of Raw Molluscan Shellfish as prepared and presented by the Seafood Working Group.

This notice also announces the appointment to the committee of Dr. Sterling S. Thompson of Hershey Foods Corporation, Hershey, Pennsylvania, and the reappointment for 1 year of Dr. Mitchell Cohen, Centers for Disease Control, Atlanta, Georgia.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to the meeting and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. When submitting comments, please reference Docket Number 91-024N. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447-9150.

Done at Washington, DC, on: June 24, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-15452 Filed 6-27-91; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Copper Basin Land Exchange and Mine Plan Proposal; Prescott National Forest and Phoenix District (BLM) Yavapai County, AZ; Environmental Impact Statement Cancellation Notice

Phelps Dodge Corporation of Phoenix, Arizona, has withdrawn its proposals for a land exchange and mining in the Copper Basin area of Yavapai County, Arizona.

The Notices of Intent, published in the **Federal Register** of August 4, 1988, and as revised in the **Federal Register** of January 19, 1989, are thereby rescinded: (FR Documents are, respectively, 88-17561 and 89-1213).

FOR FURTHER INFORMATION CONTACT: Ray Thompson, Copper Basin Interdisciplinary Team Leader, Prescott National Forest, 344 S. Cortez St., Prescott, AZ 86303; telephone (602) 445-1762 or FTS 762-4820.

Dated: June 20, 1991.

Coy G. Jemmett,

Forest Supervisor.

[FR Doc. 91-15371 Filed 6-27-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held July 25, 1991, at 9:30 a.m., in the Herbert C. Hoover Building, room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the notice of determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202-377-4959.

Dated: June 24, 1991.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 91-15420 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-428-801, A-427-801, A-475-801, A-588-804, A-485-801, A-559-801, A-401-801, A-549-801, A-412-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Initiation of Antidumping Administrative Reviews

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of antidumping duty orders concerning Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom. In accordance with the Commerce Regulations, we are initiating those administrative reviews for the period May 1, 1990, through April 30, 1991.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Director, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with section 353(a), (2), and (3) of the Department's regulations, for administrative reviews of antidumping duty orders covering antifriction bearings (other than tapered roller bearings) and parts thereof. The orders cover three classes or kinds of merchandise: ball bearings, cylindrical roller bearings (cylindrical), and spherical plain bearings (spherical).

Initiation of Reviews

In accordance with § 353.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping duty orders. We intend to issue the final results of these reviews no later than May 31, 1992.

Antidumping duty proceedings and firms	Class or kind
Federal Republic of Germany	
A-428-801:	
Aerospatiale Division Helicopteres.	All.
Durbal GmbH.& Co.	Ball & Spherical.
FAG Kugelfischer George Schaefer KGaA.	All.
FiatAvio S.p.A.	Ball & Cylindrical.
Fichtel & Sachs AG.	Ball
Georg Meuller Nurnberg, AG. (GMN).	All.
Heidelberg Druckmaschinen, AG.	All.
INA Walzlager Schaeffler KG.	All.
Messerschmitt-Boelkow-Blohm GmbH. (MBB).	All.
Neuweg Fertigung GmbH. (NWG).	Ball.
NTN Kugellagerfabrik (Deutschland) GmbH.	All.
Pratt & Whitney Canada, Inc.	Ball & Cylindrical.
Rieter Machine Works, Ltd. (located in the United Kingdom).	All.
Rieter-Scragg Ltd. (located in Switzerland).	All.
Schubert & Salzer Maschinenfabrik AG.	All
SKF GmbH. (including all relevant affiliates).	All.
Zahnradfabrik Friedrichshafen AG.	All.
France	
A-427-801:	
Aerospatiale Division Helicopteres.	All.
Dassault Industries (including all relevant affiliates).	All.
FiatAvio S.p.A.	Ball & Cylindrical.
INA Roulements S.A.	All.
Messerschmitt-Boelkow-Blohm (MBB).	All.
Messier Bugatti	All.
Pratt & Whitney Canada, Inc.	Ball & Cylindrical.
Rieter Machine Works, Ltd.	All.
Rieter-Scragg Ltd.	All.
Schubert & Salzer Maschinenfabrik AG.	All
SKF France (including all relevant affiliates).	All.
SNFA	Ball & Cylindrical.
SNR Roulements S.A.	Ball & Cylindrical.
Societe Nationale d'Etude et de Construction de Moteurs d'Aviation (SNECMA).	Ball & Cylindrical.
Turbomeca	All.
Italy	
A-475-801:	
Aerospatiale Division Helicopteres.	Ball & Cylindrical.
FAG Italy	Ball & Cylindrical.
FiatAvio S.p.A.	Ball & Cylindrical.
Messerschmitt-Boelkow-Blohm, GmbH. (MBB).	Ball & Cylindrical.
Meter, S.p.A.	Ball & Cylindrical.
SKF-Industrie S.p.A. (including all relevant affiliates).	Ball & Cylindrical.
Rieter Machine Works, Ltd.	Ball.

Antidumping duty proceedings and firms	Class or kind
Rieter-Scragg Ltd.	Ball.
Rolls Royce	Ball & Cylindrical.
Schubert & Salzer Maschinenfabrik AG.	Ball.
Societe Nationale d'Etude et de Constructin de Moteurs d'Aviation (SNECMA).	Ball & Cylindrical.
Japan	
A-588-804:	
Asahi Seiko Co., Ltd.	Ball.
C. Itoh and Co.	Ball & Cylindrical.
FiatAvio S.p.A.	Ball & Cylindrical.
Fujino Iron Works Co., Ltd.	Ball.
HIC Corporation	Ball.
Honda Motor Co., Ltd.	All.
Inoue Jikuuke Kogyo Co., Ltd.	Ball & Cylindrical.
Izumoto Seiko Co., Ltd.	Ball.
Koyo Seiko Company, Ltd.	All.
Kuroe Industries Co.	Spherical.
Maehara Ironworks Co., Ltd.	Spherical.
Mazda Motor Corp.	Ball & Cylindrical.
Messerschmitt-Boelkow-Blohm, GmbH. (MBB).	All.
Minebea Co., Ltd.	All.
Nachi-Fujikoshi Corporation	Ball & Cylindrical.
Nakai Bearing Co., Ltd.	Ball.
Nankai Seiko Co., Ltd.	Ball.
Nippon Pillow Block Sales Company, Ltd.	All.
Nippon Seiko K.K.	All.
NTN Corp.	All.
Osaka Pump Co., Ltd.	Ball.
Peer International Japan	Ball.
Rieter Machine Works, Ltd.	All.
Rieter-Scragg Ltd.	All.
Schubert & Salzer Maschinenfabrik AG.	All.
Showa Pillow Block Mfg., Ltd.	Ball.
Sumitomo Corp.	Ball & Cylindrical
Takeshita Seiko Co.	Ball.
Tottori Yamakai Bearing Seisakusho Ltd.	Ball.
Uchiyama Manufacturing Corp.	Ball.
Wada Seiko Company, Ltd.	Ball
Yamaha Motor Company	All.
Romania	
A-485-801:	
Tehnoimportexport	Ball.
Singapore	
A-559-801:	
NMB Singapore/Pelmec Ind.	Ball.
Sweden	
A-401-801:	
Rieter Machine Works, Ltd.	Ball.
Rieter-Scragg Ltd.	Ball.
Schubert & Salzer Maschinenfabrik AG.	Ball.
SKF Sverige (including all relevant affiliates).	Ball & Cylindrical.
Thailand	
A-549-801:	
NMB Thai/Pelmec Thai Ltd.	Ball.
Rieter Machine Works, Ltd.	Ball.
Rieter-Scragg Ltd.	Ball.
Schubert & Salzer Maschinenfabrik AG.	Ball.
United Kingdom	
A-412-801:	
Aerospatiale Division Helicopteres.	Ball & Cylindrical.
Barden Corporation	Ball & Cylindrical.
Cooper Bearings Ltd.	Cylindrical.
FAG UK	Ball & Cylindrical.
FiatAvio S.p.A.	Ball & Cylindrical.
INA Bearing Co., Ltd.	Ball & Cylindrical.
Pratt & Whitney Canada, Inc.	Ball & Cylindrical.
Rieter Machine Works, Ltd.	Ball.
Rieter-Scragg Ltd.	Ball.
RHP Bearings Ltd.	Ball & Cylindrical.
Rolls Royce	Ball & Cylindrical.
Schubert & Salzer Maschinenfabrik AG.	Ball.
SKF (UK) Ltd. (including all relevant affiliates).	Ball & Cylindrical.

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989).

Dated: June 21, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-15484 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-801]

Brass Sheet and Strip From Sweden; preliminary results of antidumping duty administrative reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by the respondent, Outokumpu Copper Rolled Products AB (OAB) (formerly Metallverken AB), the Department of Commerce has conducted two administrative reviews of the antidumping duty order on brass sheet and strip from Sweden. The reviews cover one exporter and two consecutive periods from March 1, 1988 through February 28, 1990.

As a result of the reviews, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Linda L. Pasden,

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Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department of Commerce ("the Department") published in the **Federal Register** an antidumping duty order on brass sheet and strip from Sweden (52 FR 6998). On March 1, 1989 and March 30, 1990, respectively, OAB requested that we conduct administrative reviews for the two periods from March 1, 1988 through February 28, 1990. We published notices of initiation of the antidumping administrative reviews on April 28, 1989 (54 FR 18320) and April 27, 1990 (55 FR 17792). The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

The products covered by this review are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Sweden. The chemical composition of the products under investigation is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this investigation. Until January 1, 1989, such merchandise was classifiable in the Tariff Schedules of the United States Annotated ("TSUSA") under item numbers 612.3900, 621.3982, and 621.3986. Since that date, the merchandise has been classifiable under the Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.20. The TSUSA and HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover one manufacturer/exporter, OAB, and the two annual periods from March 1, 1988 through February 28, 1990.

United States Price

In calculating the United States price, the Department used purchase price and exporter's sales price as defined in sect' .n 772 of the Act. For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. For sales made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as a basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements: (1) The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent; (2) this was a customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer. Final Determination of Sales at Less Than Fair Value: Color Picture Tubes From Japan, 52 FR 44171 (1987).

Where all of the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. *Id.* Whether these functions are performed in the United States or abroad does not change the substance of the transactions or the functions themselves. *Id.* Where the merchandise was further processed in the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act. The calculation of United States price is detailed below.

Purchase price was based on the delivered price to unrelated purchasers prior to importation into the United States. For purchase price, where applicable, we made deductions for U.S. customs duty, U.S. brokerage and handling, ocean freight and insurance. For exporter's sales price sales, where applicable, we made deductions for credit, U.S. customs duty, ocean freight and insurance, warranty, U.S. brokerage and handling, early payment discounts, U.S. inland freight, value added for further processing, commissions, and indirect selling expenses.

For the one U.S. customer for which we had information that OAB's U.S. subsidiary paid some of the freight costs from independent U.S. warehouses to the customer, but for which we had received no information on these freight costs, we used the reported ocean freight expenses as best information available (BIA). Because the respondent did not report exact commission rates for closed consignment sales, we used the highest rate in the respective period as BIA. For the sales that OAB's U.S. subsidiary further processed, where the shipping date from the subsidiary was not reported, we used the shipping date from Sweden as BIA. For ESP transactions, where indirect selling expenses were not reported, we used the rate reported for the commissions as BIA. When sales dates preceded the review period, we used the commission rate of the first year of the period as BIA.

Foreign Market Value

In calculating the foreign market value (FMV), the Department used home market price as defined in section 773(a) of the Act, because sufficient quantities of such or similar merchandise were sold in the home market to provide a reliable basis for comparison. Home market price was based on the delivered price to unrelated purchasers. We made adjustments, where applicable, for inland freight and insurance, and for differences in indirect selling expenses, credit, warranty, and packing, as well as for post-sale warehousing expenses incurred in the United States.

Since there were no commissions paid in the home market during the March 1, 1988 through February 28, 1989 period, for purchase price transactions, we deducted home-market indirect selling expenses from FMV to offset U.S. commissions. See 19 CFR 353.56(b)(1).

No indirect selling expenses were provided for the period March 1, 1989 through February 28, 1990 for both purchase price and exporter sale's price transactions. For purchase price transactions, we added the U.S. commissions to FMV and did not offset FMV for these indirect expenses. See 19 CFR 353.56(b)(1); 353.56(b)(2).

Because respondent did not report home market sales in 1987, we matched U.S. sales in 1987 to home market sales in January 1988. Because there were no sales of 1063 strip in the home market during one period, we matched U.S. sales of 1063 strip to home market sales of 1070 strip. We did not make adjustments for physical differences because no adjustment data were provided.

Preliminary Results of the Review

As a result of our comparison of United States Price to foreign market value, we have preliminarily determined that the following margins exist for OAB:

Period of review	Margin (percent)
3/1/88–2/28/89	4.56
3/1/89–2/28/90	13.76

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all entries of the subject merchandise covered by these reviews. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise from Sweden entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this review; (2) if the exporter is not a firm covered by this review or by the initial ivestigation, but the manufacturer is covered by this review or the investigation, then the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review; and (3) the cash deposit rate for all other exporters/producers shall be 13.76 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: June 24, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–15485 Filed 6–27–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–201–601]

Notice of Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers From Mexico

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Steve Alley, or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–8830, (202) 377–1766, or (202) 377–1776, respectively.

Final Results

Background

On May 2, 1991, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Mexico (56 FR 20189). On May 9, 1991, the Floral Trade Council, the petitioner, requested a public hearing in this case. On May 10, 1991, respondents Rancho Mision el Descanso (Rancho Mision), Florex, Tzitzic Tareta (Tzitzic), and Visaflor also requested a hearing. On May 10, 1991, respondents Rancho el Aguaje and Rancho el Toro indicated that they would participate in the hearing.

Case briefs were filed by petitioner and all respondents on May 24, 1991. Rebuttal briefs were filed by petitioner and all respondents on May 31, 1991. A public hearing was held on May 31, 1991.

The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The products covered by this review are standard carnations, standard chrysanthemums, and pompom chrysanthemums. Such merchandise is currently classified under item numbers 0603.10.7010 (pompom chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations) of the Harmonized Tariff Schedule (HTS). Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Best Information Available

Pursuant to section 776(c) of the Act, the Department is required to use best information available (BIA) whenever a party to the proceeding refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes the proceeding. In accordance with this section, we determined in our preliminary results that the use of BIA was appropriate for three of the six respondents: Rancho Mision, Tzitzic, and Visaflor. These respondents have argued that it is inappropriate to use BIA for the final results. However, we have determined that the use of BIA continues to be appropriate for these companies. See Comment 2 in the "Interested Party Comments" section of this notice for further discussion.

Petitioner has argued that it is appropriate to also use BIA for two other respondents: Rancho el Aguaje and Rancho el Toro. However, these respondents were able to produce information requested in a timely manner and in the form required, and they did not significantly impede the proceeding. Therefore, we have used the information submitted by these respondents in these final results. See Comment 1 in the "Interested Party Comments" section of this notice for further discussion.

United States Price

As in the original fair value investigation and in all prior administrative reviews, all U.S. prices were weight-averaged on a monthly basis in order to account for the perishability of the product. For the preliminary results, we weight-averaged U.S. prices by grade of flower. However, for purposes of the final results, we have calculated weighted-average monthly U.S. prices by type of flower, without regard to specific grades. See Comment 9 in the "Interested Party Comments" section of this notice.

Florex

We based U.S. price on both purchase price and exporter's sales price (ESP) because sales were made to unrelated purchasers both before and subsequent to importation. The sales made subsequent to importation were made through an unrelated consignment agent in the United States. When sales were made to an unrelated purchaser prior to importation and ESP methodology was not indicated by other circumstances,

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we calculated purchase price for Florex based on packed, f.o.b. Mexico City airport prices and f.o.b. farm prices. Specific adjustments to the amounts reported are fully discussed in the Preliminary Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico; 56 FR 20101 (May 2, 1991) (Preliminary Results).

Where sales were made subsequent to importation, we calculated ESP based on f.o.b. Houston airport prices. Specific adjustments to the amounts reported as well as deductions to ESP are fully discussed in the Preliminary Results.

Rancho el Aguaje

We based United States price on ESP, in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States. These sales were made through unrelated consignment agents in the United States.

To calculate ESP, we used the packed, f.o.b. prices delivered to the consignment agent's offices in the United States. Specific adjustments to the amounts reported as well as deductions to ESP are fully discussed in the Preliminary Results.

Rancho el Toro

We based United States price on ESP, in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States. These sales were made through an unrelated consignment agent in the United States.

To calculate ESP, we used the packed, ex-warehouse prices at the consignment agent's warehouse in the United States. Specific adjustments to the amounts reported as well as deductions to ESP are fully discussed in the Preliminary Results.

Foreign Market Value

Foreign market value (FMV) was calculated based on constructed value (CV) for Florex, Rancho el Aguaje and Rancho el Toro.

Florex

We found that more than 90 percent of Florex's sales of pompom chrysanthemums in Mexico were made at prices below the cost of production (COP). Accordingly, we disregarded all sales as the basis for determining FMV. In accordance with section 773(b) of the Act, we calculated FMV based on constructed value (CV). See the Preliminary Results for the calculation of COP and CV for Florex and an explanation of the deductions from CV and all circumstance of sale adjustments.

Rancho el Aguaje

Rancho el Aguaje did not have home market or third country market sales of export quality grade flowers. Accordingly, we calculated FMV based on CV, in accordance with section 773(a)(2) of the Act. See the Preliminary Results for the calculation of CV and an explanation of the deductions from CV.

Rancho el Toro

Rancho el Toro did not have home market or third country market sales of export quality grade flowers. Accordingly, we calculated FMV based on CV, in accordance with section 773(a)(2) of the Act. See the Preliminary Results for the calculation of CV and an explanation of the deductions from CV.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. We received case and rebuttal briefs from the petitioner and all respondents.

Comment 1

Petitioner contends that the final determination for Rancho el Aguaje and Rancho el Toro should be based on BIA. Petitioner argues that verification of the submissions of both companies established that these submissions were replete with inaccuracies and that substantial sales and cost data were not reported. In addition, petitioner contends that the fact that flowers grown by Rancho el Toro and the consignment agent's own ranch are routinely mingled by the consignment agent and that the Department found at verification that Rancho el Toro reported sales of flowers produced by a third grower, affect the reliability of the average U.S. price calculated by the Department. Finally, petitioner argues that the Department was unable to verify respondents' cost responses due to the lack of basic internal controls (*e.g.*, audited financial statements, bank accounts, etc.) in respondents' accounting systems.

Rancho el Aguaje and Rancho el Toro contend that the Department acted correctly and within its discretion in relying upon their responses for purposes of the preliminary results and that it should continue to do so for the final results. These respondents state that verification of the responses was exhaustive and that the verification reports show that their responses were, with the exception of the few errors found during verification, complete and accurate. These respondents further asserted that the magnitude of the errors discovered at verification was so minor as to be virtually insignificant. Regarding the sales of the subject merchandise produced by the consignment agent's own ranch reportedly "found" at verification, Rancho el Toro notes that it informed the Department of its inability to segregate individual sales at the time that the questionnaire was issued and that the Department instructed it to report these "commingled" sales. Finally, both respondents claim that their accounting systems fully capture all costs and that the Department did not find at verification that either grower had omitted any costs that were traditionally associated with flower cultivation.

DOC Position

We agree with respondents. Section 776(c) requires the Department to use BIA whenever a party to the proceeding refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes the proceeding. The administrative record in this case demonstrates that both of these respondents have provided all information requested in a timely manner and have cooperated fully with the Department. In addition, verification of respondents' data established that the vast majority of their submissions to the Department was complete and accurate and that, in those instances where data was found to be inaccurate, the errors were generally clerical in nature and easily corrected.

Regarding petitioner's assertion that Rancho el Toro's price data is unreliable because the Department found at verification that Rancho el Toro reported sales of flowers produced by the consignment agent's own ranch, we note that Rancho el Toro informed the Department, prior to submission of its questionnaire response, that its consignment agent was unable to segregate sales of flowers produced by its own ranch and that of the respondent. At that time, we allowed Rancho el Toro to submit data on all of the sales made by the consignment agent. Standard carnations are a fungible commodity, and there is no price difference between flowers produced by different growers. Therefore, because the product is fungible with no price differences, we have determined that calculating an average price using the "commingled" sales data does not skew the results. With regard to the third grower discovered at verification, we saw no evidence that this additional grower produced subject merchandise. Therefore, any argument that it is improper to include sales of this specific grower in our analysis is moot because the sales were not reported nor included in the average U.S. price.

Finally, we have considered petitioner's allegation that the Department was unable to verify the cost response due to the lack of basic internal controls in these respondents' accounting systems. As we noted in our preliminary results, we are accepting the data reported by these companies because: (1) Under Mexican law, these companies, as agricultural producers, were not required to maintain their records in a more formal manner; (2) these companies did maintain at least an internal record system which supported the questionnaire responses; and (3) at verification we found no evidence of systematic underreporting of costs.

Based on the foregoing, we have determined that it is inappropriate to reject these respondents' responses. Accordingly, we have based our final results on the data submitted by these respondents.

Comment 2

Petitioner contends that BIA for Visaflor and Tzitzic should be based on the margin received by Florex. Petitioner notes that given their failure to cooperate, the ITA would normally assign to these respondents the rate calculated for Florex. Petitioner contends that the Department inappropriately departed from its standard practice because the margin was too high. Petitioner submits that the fact that Florex's margin is high should not preclude the Department from assigning this margin to uncooperative respondents. To do otherwise, petitioner claims, would reward uncooperative respondents by placing them on equal footing with cooperative respondents and would provide no incentive for these respondents ever to cooperate with the Department if their data reflects dumping at a greater level than the level of the margins established for them in previous reviews or the original investigation.

Visaflor states that the Department is not required to use data that is least favorable to uncooperative respondents. Visaflor argues that in light of all the facts, the Department's decision to use, as BIA for Visaflor, the highest margin previously calculated for Visaflor is appropriate because it is based on the company's own prior rate. Visaflor believes that Florex's rate is an aberration, not representative of the market, and should not be used for Visaflor or any other company.

DOC Position

We agree with respondent. The Department's regulations state that "if an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is best information available" (19 CFR 353.37(b)). In this case, given the enormous disparity between the verified rate for Florex in this review and the verified rates for other companies in this review, prior reviews, and the original investigation, and Florex's extraordinarily high business expenses during this review period resulting from investment activities which are uncharacteristic of other companies subject to this review, we find it inappropriate to use Florex's rate as BIA.

Comment 3

Petitioner maintains that the Department should continue to use the "all other" rate established in the original investigation as the rate that applies to producers or exporters that have not been assigned a company specific rate as a result of participation in either the original investigation or one of the administrative reviews. Petitioner notes that the "ITA normally establishes, on the basis of the results obtained in the current review, estimated duty deposits for future entries of the merchandise by producers included in the review and new producers/exporters that are unrelated to the reviewed firms and who commence shipments after the publication of final results ('new shipper rate')."

DOC Position

The Department has changed its practice with respect to the "new shipper/all other" rate because of difficulties Customs has in determining when a producer/exporter begins shipping the subject merchandise to the United States. See Antifriction Bearings, (Other than Tapered Roller Bearings) and Parts Thereof from France, Italy, Japan, Romania, Singapore, Sweden, Thailand, the United Kingdom and West Germany; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews; 56 FR 11178–11204 (March 15, 1991). In the future, all shippers not having an individual rate in any administrative review or the original investigation, and who are not related to any firms with individual rates, regardless of when they begin exporting, will be assigned the "all other" rate, which is the highest rate calculated for any reviewed firm. (Note that this rate was formerly called the "new shipper" rate. The Department will no longer calculate a separate "new shipper" rate, but will update the "all other" rate with each administrative review.)

Comment 4

Florex maintains that interest expenses relating to its now defunct joint venture should not be included in the COP for the subject merchandise because they allegedly relate to a separate line of business. Citing to several cases, Florex argues that the Department has consistently determined that expenses from other lines of business or from the production of non-subject merchandise should not be included in the calculation of COP. Florex notes that its interest expense relates to investments concerning flowers not subject to this administrative review which were grown under significantly different conditions than the flowers under review. By including these expenses in the COP, Florex argues that both COP and the resulting CV are overstated.

Petitioner acknowledges the exception to the Department's past practice of including all interest expenses in selling, general and administrative (SG&A) expenses when it is established that the interest expenses incurred were not related to the merchandise under review. However, petitioner notes that the Department's determination that the interest expenses were related to the merchandise under review was reasonable given that the investment activities involved the production of flowers in Mexico. Petitioner also states that it is the Department's longstanding practice to accept a respondent's normal accounting practice except where to do so would distort the results. Because Florex's balance sheet listed the investment expenses as an asset being amortized, petitioner contends that the burden is on the respondent to demonstrate that the expenses were not properly carried in its own books and that Florex failed to do so. Lastly, petitioner asserts that the Department verified that the investments were related to the flowers under review.

DOC Position

We agree with petitioner. We consider interest expense to be a general expense relating to overall company operations. Accordingly, we

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include all general expenses in our COP calculation and allocate these general expenses to all products of the company based on total company cost of sales. Florex confuses the Department's practice relating to the calculation of manufacturing costs (which include only costs associated with the subject merchandise) with its practice relating to its calculation of general expenses which, by definition, relate to both subject and non-subject merchandise.

While the Department agrees that in the past it has excluded certain manufacturing costs which relate to other lines of business, Florex's interest expense is a general expense and does not relate to a separate line of business.

Comment 5

Florex maintains that shipping and other movement expenses for flowers that could not be sold should be allocated over all flowers sold during the POR and should not be allocated only over the flowers in the same shipment that were sold. Florex claims that it experienced abnormal spoilage rates during the period of review. Respondent believes that abnormal spoilage is a period cost, rather than a product cost, and, as such, should be allocated over all sales in the period.

Petitioner argues that the fact that Florex experienced spoiled flowers in several of its shipments conflicts with Florex's claim that these losses were abnormal. Given the perishable nature of flowers, spoilage in several shipments is not an unexpected event and certainly is not abnormal. Petitioner also notes that Florex's claim that its losses were abnormal is not supported by evidence and that, absent evidence showing spoilage rates in the industry, there is no way of knowing whether Florex's losses were abnormal.

DOC Position

We agree with petitioner. Florex never claimed prior to the pre-hearing brief that it experienced abnormal spoilage nor provided evidence supporting such a claim. Absent such evidence, the Department cannot determine whether Florex experienced abnormal spoilage.

Comment 6

Tzitzic claims that the Department was unjustified in initiating a COP investigation and in requiring it to respond to Section D of the questionnaire. Respondent argues that petitioner made no allegation of sales below cost in this review, and that petitioner's allegation of sales below cost in the 1988–1989 review was largely unsupported by the facts insofar as all home market sales except for standard carnations were used as the basis for FMV. Accordingly, there was no justification for the Department's decision to issue to Tzitzic a COP questionnaire, or subsequently, the Department's decision to use BIA when Tzitzic failed to answer the COP questionnaire. Moreover, Tzitzic argues that, similar to the Department decision concerning Rancho Mision, the Department should have used BIA for only standard carnations, substantial sales of which were found to have been made below cost in the 1988–1989 review, and that the Department should have verified and considered data submitted by Tzitzic for the other flower types.

Petitioner contends that because the Department determined in the previous (1988–1989) review that Tzitzic had home market sales below the cost of production, it was reasonable to initiate a sales-below-cost investigation, and that it is the Department's policy to investigate below-cost sales whenever a prior review revealed significant below-cost sales with respect to the same producer. Petitioner also notes that the statute requires the Department to use BIA whenever a respondent refuses or is unable to provide requested data. Given that Tzitzic was asked to respond to Section D several times, and never did so, petitioner contends that the Department was justified in cancelling verification and using BIA.

DOC Position

We agree with petitioner. It is the Department's standard practice to initiate sales-below-cost investigations of an entire class or kind of merchandise when sales of merchandise in some such or similar categories are found to be below cost in previous reviews or the original investigation. In the case of Tzitzic, more than 90 percent of the sales of one flower type were sold below the COP in the 1988–1989 review. Thus, absent evidence that Tzitzic changed its selling practices, the Department had reason to believe that Tzitzic was still selling subject merchandise below the COP for purposes of the 1989–1990 review.

With respect to respondent's argument that the Department should have used BIA for only one flower type as was done in the case of Rancho Mision, the situation with regard to Tzitzic is entirely different. As stated in the Preliminary Results with respect to Tzitzic, "Absent the information required in Section D, we were unable to determine whether home market sales were made at prices above the cost of production, nor could we assume that all home market sales were made at prices below the cost of production and base foreign market value on construction (sic) value." By comparison, Rancho Mision had no home market or third country sales of one flower type which accounted for a very small percentage of its total sales. Unlike Tzitzic, Rancho Mision was not involved in a COP investigation. Therefore, the fact that Rancho Mision did not respond to Section D for this one flower type did not affect the entire calculation of FMV.

Comment 7

Rancho Mision maintains that the Department's determination that it failed verification is unsupported by the record, and that the Department's verification report showed that Rancho Mision's response was in fact accurate and complete. Rancho Mision, moreover, contends that the Department acted arbitrarily and capriciously in rejecting its voluminous verified data, and should base its final results on data submitted by Rancho Mision.

Petitioner claims that the Department listed in detail in the Preliminary Results the inadequacies and deficiencies contained in Rancho Mision's questionnaire responses, and that the Department's conclusions concerning Rancho Mision are fully supported by the verification report.

DOC Position

We agree with petitioner. We have listed in detail the inadequacies and deficiencies contained in Rancho Mision's questionnaire responses in the Preliminary Results and in the verification report. Rancho Mision's case brief addresses none of the specific deficiencies listed in those documents.

Comment 8

Tzitzic, Rancho Mision, and Florex contend that the Department applied inconsistent policies and methodologies between flower companies at verification resulting in less favorable treatment for themselves. Respondents claim that the Department allowed a finding of completeness for Rancho el Toro and Rancho el Aguaje based only on partial completeness and that the Department personnel verifying these two respondents bent the rules to allow the verifications to succeed. In contrast, respondents argue that their verification team determined that Rancho Mision failed verification due to incompleteness, did not allow Rancho Mision time to make certain corrections, and adopted "a hardline and even hostile approach."

Petitioner notes that Florex, Rancho Mision, and Tzitzic allege that the Department acted in a biased and unfair manner towards them, yet failed to submit evidence to support their claim. Therefore, petitioner argues that these allegations should be ignored.

DOC Position

We agree with petitioner. The Department did not apply different verification standards to different companies. Concerning respondents' allegation that the Department applied different completeness tests, we noted in the Preliminary Results that although we were unable to utilize our normal verification techniques to test the completeness of Rancho el Aguaje and Rancho el Toro's cost responses, we were able to test completeness by examining internal records and found no evidence that these companies systematically underreported their costs. To the contrary, Rancho Mision could provide no documentation whatsoever to establish the total volume and value of ESP sales, nor could Rancho Mision explain how it arrived at the various total volume and value figures reported by it in its responses. We consider these deficiencies to be very significant. As for respondents' contention that one team applied a different set of standards to them, respondents have submitted no evidence in support of their claim, nor have they been able to explain the significant deficiencies found at verification. Also, with respect to respondent's argument that the Department did not allow Rancho Mision time to make certain corrections, we in fact did allow respondent additional time subsequent to verification to make corrections. However, on March 22, 1991, respondent informed the Department that it would not be able to supply the Department with any additional information.

Comment 9

Rancho el Aguaje and Rancho el Toro contend that the Department should compare CV to monthly U.S. prices which have been weight-averaged by type, not grade. In the absence of some type of adjustment to CV to reflect the relative cost or value differences of the flower grades produced, the Departments should use a CV based on type of flower. Finally, these respondents state that the methodology used for the preliminary results of comparing a non-grade-specific CV to grade-specific U.S. prices is inconsistent with Department precedent in earlier administrative reviews involving fresh cut flowers from Mexico as well as reviews of the antidumping duty order on fresh cut flowers from Colombia.

DOC Position

We agree with respondents. For the final results, we have calculated weighted-average monthly U.S. prices by type of flower, without regard to specific grades.

Comment 10

Rancho el Aguaje and Rancho el Toro argue that in calculating CV the Department should first convert monthly costs incurred in pesos into dollars before computing an annual CV. Respondents argue that the use of an annualized CV in effect ascribes constant peso costs to flower producers, irrespective of the inflation rate. Moreover, after converting the annualized CV on a monthly basis, this methodology results in declining CVs, expressed in dollar terms, which is contrary to the fact that peso costs were actually rising throughout the period of review.

Petitioner claims that the Department correctly used monthly exchange rates in the calculation of CV. Petitioner argues that since the Department is using a monthly average U.S. price, a monthly average exchange rate is also appropriate. Petitioner further claims that if the actual costs in dollar terms declined over the POR, then the use of the monthly U.S. exchange rate is reasonably representative of this trend. Finally, petitioner states that respondents provide no analysis to support their claim that actual costs in dollar terms did not decline.

DOC Position

This issue is moot with respect to Rancho el Aguaje and Rancho el Toro because both companies would have margins of 0.00% irrespective of this adjustment. Moreover, with respect to Florex, the other company which arguably would be entitled to such an adjustment if we were to agree with respondents, we could not adjust Florex's calculations because it did not submit monthly costs.

Comment 11

Rancho el Aguaje and Rancho el Toro claim that the Department's recalculation of the credit period overstated imputed credit expenses because the revised period included the number of days between receipt of payment and the date on which such payments were cashed or deposited in the ranch's bank account. Respondents argue that there is no basis in the record to support the Department's assumption that payment was not received until the checks were tendered to a bank. Therefore, respondents contend that the original payment dates reported, amended to incorporate corrections identified at verification, should be used to compute imputed credit costs.

Petitioner argues that the Department correctly recalculated the credit period associated with imputed credit expenses. Petitioner states that the Department considers all receivables to be financed for the period of delayed payment, which in this case would be the date on which the checks were either cashed or deposited into the respondents' bank accounts.

DOC Position

We agree with petitioner. It is the Department's practice to calculate imputed credit cost to a producer using the period between the time that the producer ships its merchandise and the time that it deposits the funds received from that sale into its bank account.

Comment 12

Rancho El Aguaje contends that the Department double-counted indirect production costs associated with its flower production in the month of April 1989. Rancho El Aguaje argues that the Department did not rely on an amended response which removed the double counting.

DOC Position

The Department agrees with Rancho El Aguaje and has revised its calculations for the final results of this review.

Final Results of the Review

As a result of our review, we determine the margins to be:

Manufacturer/exporter	Margin (percent)
Florex	264.43
Rancho el Aguaje	00.00
Rancho el Toro	00.00
Rancho Mision el Descanso	24.33
Tzitzic Tarete	39.95
Visaflor	29.40

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States prices and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions concerning all respondents directly to the Customs Service.

Furthermore, as provided for in section 751(a)(1) of the Act, the Department will require a cash deposit

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of estimated antidumping duties based on the above margins on entries of this merchandise from Mexico. The cash deposit rate for all other producers/exporters shall be 0.00 percent.

Generally, we assign the highest non-BIA rate calculated for any responding firm in the current review to future entries of the subject merchandise from all other producers/exporters not reviewed. For the reasons stated in the Preliminary Results and reiterated herein, however, we find it inappropriate to use Florex's rate as the cash deposit rate for producers/exporters not related to Florex. Therefore, we are using the 0.00 percent rate calculated for both Rancho el Aguaje and Rancho el Toro, the next highest calculated rate, as the "all other" rate. As these two companies represent the majority by volume and value of exports of the subject merchandise from Mexico during the POR, we feel it is appropriate to base the "all other" rate on their calculations.

These deposit requirements are effective for all shipments of certain fresh cut flowers from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(8)(1990).

Dated: June 21, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-15486 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-533-063]

Preliminary Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Paulo F. Mendes, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230 at (202) 377-5050.

Preliminary Results

We preliminarily determine that net subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers or exporters in India of certain iron-metal castings (castings). This review covers the period of January 1, 1987 through December 31, 1987 and the following programs:

- International Price Reimbursement Scheme (IPRS)
- Pre-Shipment Export Loans
- Post-Shipment Export Loans
- Income Tax Deduction Under Section 80HHC
- Market Development Assistance Grants
- Sale of Import Replenishment License
- Cash Compensatory Support Scheme
- Income Tax Deduction Under Section 80I
- Preferential Freight Rates
- Import Duty Exemptions Available to 100 Percent Export-Oriented Units
- Free Trade Zones

The weighted-average net subsidies are shown in the "Preliminary Results of Administrative Review" section of this notice.

Case History

On October 16, 1980, the Department published its countervailing duty order on castings from India (45 FR 68650). On January 18, 1991, the Department published the final results of its most recently completed administrative review for the period January 1, 1986 through December 31, 1986 (56 FR 1976).

Since the notice of initiation of this administrative review (53 FR 48951, December 5, 1988), the following events have occurred. On November 16, 1990, we presented a questionnaire to the Government of India and the manufacturers and exporters of castings. On February 8, 1991, we received the Government's response and all the company responses, except for Samitex Corporation (Samitex) and Commex Corporation (Commex). Samitex later responded on February 15, 1991. On April 3, 1991, we presented a supplemental questionnaire to the Government of India and the manufacturers and exporters of castings. We received responses to this supplemental questionnaire on April 22, 1991. From April 26 through May 3, 1991, we conducted verification in India of the government response and the company responses of Super Castings (India) (Super Castings), R.B. Agarwalla and Company (Agarwalla), and Crescent Foundry Co. Pvt. Ltd. (Crescent) (hereinafter collectively the verified companies). We also verified the amount of IPRS benefits received by RSI India Pvt. Ltd. (RSI). On May 22, 1991, additional information was submitted on behalf of the verified companies.

Scope of Review

The imports covered by this review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access to or drainage for public utility, water, and sanitary systems. During the review period, this merchandise was classifiable under Tariff Schedules of the United States Annotated (TSUSA) item numbers 657.0950 and 657.0990. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010 and 7325.10.0050. Although the TSUSA and HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Certification of Questionnaire Responses

Section 1331 of the Omnibus Trade and Competitiveness Act of 1988 amended the Act by requiring that:

> Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge. (19 U.S.C. 1677e(a))

Pursuant to this amendment, the Department promulgated procedural regulations which provide that:

> (i) *Certifications.* Any interested party which submits factual information to the Secretary must submit with the factual information the certification in paragraph (i)(1) and, if the party has legal counsel or another representative, the certification in paragraph (i)(2) of this section:
>
> (1) For the interested party's official responsible for presentation of the factual information: "I, (name and title), currently employed by (interested party), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate."
>
> (2) For interested party's legal counsel or other representative: "I, (name), of (law or other firm), counsel or representative to (interested party), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (interested party), I have no reason to believe that this submission contains any material misrepresentation or omission of fact." (19 CFR 355.31(i) (1) and (2))

In the present administrative review, the Department issued a questionnaire to the Indian producers of castings. This questionnaire specifically asked if the producers had received certain types of post-shipment export financing. (See, page 12 of the company questionnaire.) In their questionnaire responses, each of the companies indicated that they had not received any post-shipment financing during the period of review. These questionnaire responses were accompanied by certifications from the respondent companies and their legal counsel.

During verification, we discovered that each of the three verified companies had, in fact, clearly received post-shipment financing. No explanation was offered as to why the statements in the certified questionnaire responses were inaccurate.

The certification of factual information is a relatively new requirement, and one the Department intends have real meaning. To treat the requirement otherwise would violate our obligation to administer faithfully the provisions of the Act and would irreparably damage the integrity of Departmental procedures. Therefore, the Department intends to take the following actions. With respect to the relevant parties involved in this administrative review, the Department is referring the matter to the Department of Justice and the U.S. Customs Service to determine whether any relevant statutes within their jurisdiction have been violated and whether further action is warranted. Additionally, the Department will begin formulating a set of procedures for handling cases involving certification issues. In this way, we will continue to ensure that the responses the Department receives and uses to make its determinations are thorough and accurate. We have not, however, reached any conclusion with respect to the circumstances of this particular case.

Analysis of Programs

As mentioned above, we did not receive a response to our questionnaire from Commex. Therefore, as the best information available, for each program preliminarily determined to be countervailable, we are assigning Commex the highest company subsidy rate found for any company.

Based on verification and our analysis of the responses to our questionnaires, we preliminarily find the following:

I. Programs Preliminarily Found To Confer Subsidies

A. International Price Reimbursement Scheme (IPRS)

On February 9, 1981, the Government of India introduced the IPRS for exporters of products with steel inputs. The purpose of the program is to rebate the difference between higher domestic and lower international prices of steel. On September 28, 1983, the Government of India extended the IPRS to include pig iron, the primary input for the production of castings.

The rebate is funded through collection of a levy on all domestic purchases of steel, pig iron and scrap. The Joint Plant Committee (JPC), a government-directed organization composed largely of pig iron and steel producers, sets domestic steel and pig iron prices. The JPC also determines the specific levy for each pig iron and steel product based on the anticipated need for these inputs in exported products.

The Engineering Export Promotion Council (EEPC), a non-profit organization funded by the Government of India and private firms, processes the claims for and disburses the IPRS rebate. The IPRS rebate is based on the differential between domestic and international prices of pig iron, using a standard pig iron consumption factor of 110 percent, which includes a ten percent allowance for waste. Based on verification and our analysis of questionnaire responses, we preliminarily determine that all castings exporters covered by this review obtained IPRS rebates for pig iron.

We consider a government program that results in the provision of an input to exporters at a price lower than to producers of domestically-sold products to confer a subsidy within the meaning of section 771(5)(A) of the Act. We consider the benefit to be the entire IPRS rebate. Therefore, we preliminary determine the IPRS program to confer a countervailable export subsidy.

For any given review period, it has been our practice to consider the benefit from the IPRS program to equal the total amount of IPRS benefits received during the review period, even if some amounts received during the review period related to exports made in the previous year. In the current review all the companies, except Crescent and Uma Iron and Steel Works (Uma), only reported IPRS benefits associated with 1987 shipments. These companies did not report IPRS benefits received in 1987 which were related to 1986 shipments. We verified the IPRS information Crescent submitted, and during verification obtained the amount of IPRS benefits received in 1987 by Super Castings, Agarwalla and RSI. (These amounts received in 1987 included IPRS rebates relating to 1987 and 1986 shipments.)

For those companies that did not report the IPRS amounts associated with 1986 shipments which were received in 1987, we approximated these amounts as follows. We first calculated the amount of IPRS rebates received in 1987 which were attributable to 1986 shipments for the three verified companies, RSI and Uma. Next, we divided this amount by the total amount of all IPRS rebates received in 1987. We then used this percentage to adjust upward the reported amount of IPRS benefits which only included benefits associated with 1987 shipments.

We preliminarily determine the net subsidy from this program to be 31.08 percent *ad valorem* for all manufacturers and exporters in India of castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (percent)
1. RSI India Pvt. Ltd	7.77
2. Select Steel Ltd	35.71
3. Carnation Enterprise Pvt. Ltd	36.58
4. Uma Iron and Steel Works	20.81
5. Commex Corporation	36.58

We verified that the Government of India terminated the IPRS program with respect to castings exported to the United States effective June 30, 1987. During verification we saw evidence of two shipments of castings to the United States made in the first week of July 1987 for which IPRS rebates were received. However, we preliminarily determine that these two rebates were exceptions, granted because of shipping and handling difficulties, and that the IPRS program otherwise has been terminated for exports of castings to the United States. Therefore, for purposes of the cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero.

B. Pre-Shipment Export Loans

The Reserve Bank of India, through commercial banks, provides pre-shipment or "packing" credits to exporters. With these pre-shipment loans, exporters may purchase raw materials and packing materials based on presentation of a confirmed order or letter of credit. In general, the pre-shipment loans are granted for a period of 90 to 180 days, with penalty charges for late interest payments. Because only exporters are eligible for these pre-shipment loans, we determine that they

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are countervailable to the extent that they are provided at preferential rates.

During the review period, the interest rate on pre-shipment export loans was 9.5 percent per annum. The maximum comparable commercial interest rate during fiscal year 1986–1987 for small-scale industries with loans from 200,000 to 2,500,000 rupees, as quoted by the Reserve Bank of India in its bulletin entitled "Report on Trend and Progress of Banking in India" for fiscal year 1986–1987, was 16.5 percent from January through March, and 15.5 percent from April through December. Since all castings manufacturers and exporters subject to this review are characterized as small-scale industries and because no castings firms reported pre-shipment loans exceeding 2,500,000 rupees during the review period, we have used these two rates to calculate an interest rate benchmark for the year. We did so by weight-averaging the two interest rates based on the amount of time the two above rates were in effect. We used the resulting figure of 15.75 percent as our benchmark interest rate. We compared this benchmark to the interest rate charged on pre-shipment financing under the program and found that the interest rate charged was lower than the benchmark. Therefore, we determine that loans provided under this program are countervailable.

To calculate the benefit on those preferential loans for which interest was paid during 1987, we followed the short-term loan methodology which has been applied consistently in our past determinations and is described in more detail in the Subsidies Appendix attached to the notice of Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 18006, April 26, 1984); see also, *Alhambra Foundry* v. *United States*, 626 F. Supp. 402 (CIT, 1985).

During verification, we obtained information from each of the three companies concerning the total amount of interest paid on pre-shipment financing during the review period. For the non-verified companies, we used the reported amount of interest paid on pre-shipment financing relating to either exports of the subject merchandise to the United States or total exports to the United States.

We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. The difference between these amounts is the benefit. We allocated the benefit to either total exports, exports of the subject merchandise to the United States or total exports to the United States, depending on how the amount of pre-shipment financing was reported or verified. On this basis, we preliminarily determine the net subsidy from this program to be 0.40 percent for all manufacturers and exporters in India of castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (per-cent)
1. RSI India Pvt. Ltd	1.55
2. Select Steel Ltd	0.00
3. Carnation Enterprise Pvt. Ltd	0.00
4. Uma Iron and Steel Works	0.02
5. Commex Corporation	1.55

C. Post-Shipment Loans

As mentioned above, we discovered during verification that each of the three verified companies failed to report post-shipment financing loans. The response from the Government of India on this program only referred to the company responses. Super Castings received post-shipment financing in the form of "post-shipment advances against IPRS," and Agarwalla and Crescent received post-shipment financing in the form of "transit interest." Post-shipment advances against IPRS are loans based on expected IPRS rebates. Post-shipment financing also includes bank discounting of foreign customer receivables. Because only exporters are eligible for these post-shipment loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

We verified that the rate of interest under both types of post-shipment financing was 9.5 percent per annum. Moreover, during verification one of the companies was not able to provide documentation to prove that certain loans were, in fact, not post-shipment loans or non-preferential. Therefore, as the best information available, we are treating these loans as post-shipment loans made at the preferential rate of 9.5 percent.

For the reasons stated above in the pre-shipment loans section, we are using 15.75 percent as our short-term interest rate benchmark. We compared this benchmark to the interest rate charged on post-shipment financing under this program and found that the interest rate charged under this program was lower than the benchmark. Therefore, we determine that loans provided under this program are countervailable. To calculate the benefit, we followed the same short-term loan methodology discussed above. We then divided the benefit by the verified companies' total export sales.

As noted above, the government response on this program referred us to the company responses. Since we view the verification of the three companies with regard to post-shipment financing as constituting the overall verification of that program, we have preliminarily determined that exports of the non-verified companies also benefited from the program. As the best information available, for this purpose, we weight-averaged the rates of the three companies and applied the result to the non-verified companies.

On this basis, we preliminarily determine the net subsidy from this program to be 1.47 percent for all manufacturers and exporters in India of castings except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (per-cent)
1. RSI India Pvt. Ltd	1.41
2. Select Steel Ltd	1.41
3. Carnation Enterprise Pvt. Ltd	1.41
4. Uma Iron and Steel Works	1.41
5. Commex Corporation	2.06

D. Income Tax Deduction Under Section 80HHC

Under section 80HHC of the Finance Act of 1983, for tax returns filed in 1987, the Government of India allowed exporters to deduct one percent of export sales and five percent of the incremental increase in export sales over the previous fiscal year. Because this program is only available to exporters, we preliminarily determine it to be countervailable. To calculate the benefit, we multiplied the income tax deductions of each company claiming the benefit by the corporate income tax rate and divided the result by its total exports.

We preliminarily determine the net subsidy from this program to be 1.09 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (per-cent)
1. RSI India Pvt. Ltd	0.00
2. Select Steel Ltd	4.45
3. Carnation Enterprise Pvt. Ltd	2.74
4. Uma Iron and Steel Works	0.50
5. Commex Corporation	4.45

E. Market Development Assistance (MDA) Grants

The Federation of Indian Export Organization administers, and the Ministry of Commerce approves, all MDA grants. The purpose of the program is to provide grants-in-aid to approved organizations (*i.e.*, export houses) to promote the development of markets for Indian goods abroad. Such development projects may include market research, export publicity, and participation in trade fairs and exhibitions. Because these MDA grants are available only to exporters, we preliminarily determine that such grants are countervailable.

We verified that only Kejriwal Iron and Steel Works received MDA grants related to exports of the subject merchandise to the United States during the review period. Because the grant represented less than 0.5 percent of Kejriwal's export sales during the review period, we expensed the grant in the year of receipt (1987). To calculate the benefit, we divided the value of the grant received by the value of Kejriwal's total export sales to the United States in 1987.

We preliminarily determine the net subsidy from this program to be 0.01 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (per-cent)
1. RSI India Pvt. Ltd	0.00
2. Select Steel Ltd	0.00
3. Carnation Enterprise Pvt. Ltd	0.00
4. Uma Iron and Steel Works	0.00
5. Commex Corporation	0.04

F. Sale of a Replenishment License

The Ministry of Commerce administers India's import licensing system. One type of license in India is the replenishment license. These licenses are provided subsequent to export so that companies can replace the imported components used in the production of the exported product. Imports under these licenses are subject to customs duties and are not necessarily used in production of exports. Because exporters receive these licenses based on their status as an exporter, we consider the proceeds resulting from sales of these licenses a countervailable subsidy.

During verification, we discovered that Agarwalla sold a replenishment license during the review period. Because the proceeds from this sale represented less than 0.50 percent of Agarwalla's export sales during the review period, we expensed the amount received to the year of receipt, 1987. To calculate the benefit from this sale, we divided the amount Agarwalla received on selling the license by its total exports to all markets.

We preliminarily determine the net subsidy from this program to be 0.01 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (per-cent)
1. RSI India Pvt. Ltd	0.00
2. Select Steel Ltd	0.00
3. Carnation Enterprise Pvt. Ltd	0.00
4. Uma Iron and Steel Works	0.00
5. Commex Corporation	0.01

II. Programs Preliminarily Found Not To Confer Subsidies

A. Cash Compensatory Support (CCS) Program

In 1966, the Government of India established the CCS program to rebate indirect taxes on exported merchandise. We verified that the rebate for exports of castings was set at a maximum of five percent for the review period, and is paid as a percentage of the FOB invoice price.

To determine whether an indirect tax rebate system confers a subsidy, we must apply the following analysis. (See, Preliminary Affirmative Countervailing Duty Determination: Textile Mill Products and Apparel From Indonesia, 49 FR 49672, December 21, 1984.) First, we examine whether the system is intended to operate as a rebate of indirect taxes and/or import duties. Next, we analyze whether the government properly ascertained the level of the rebate. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid.

When the rebate system meets these conditions, the Department will consider that the system does not confer a subsidy if the amount rebated for duties and/or indirect taxes on physically incorporated inputs does not exceed the fixed amount set forth in the rebate schedule for the exported product. Based on verification, and the Department's previous examination of the CCS program (see, e.g., Certain Iron Metal Castings From India: Final Results of Countervailing Duty Administrative Review, 55 FR 1976, January 18, 1991), we preliminarily determine that the CCS rebate meets all the above-mentioned criteria. Furthermore, in this review we verified that the rebates under this program continue to reasonably reflect the incidence of indirect taxes on inputs On this basis, we preliminarily determine that the CCS program provides no overrebate and, therefore, is not countervailable.

B. Income Tax Deduction Under Section 80I

Section 80I of the Indian Finance Act generally provides for a tax deduction of 25 percent to "new industrial undertakings." We verified that this program is not limited to a specific enterprise or industry or group of enterprises or industries on either a *de jure* or *de facto* basis. Therefore, we preliminarily determine this program to be not countervailable.

III. Programs Preliminarily Determined To Be Not Used

A. Extension of the Free Trade Zones
B. Preferential Freight Rates
C. Import Duty Exemptions Available to 100 Percent Export-Oriented Units

Preliminary Results of Review

In accordance with § 355.22(d), we preliminarily determine that the following net subsidies exist for the period January 1, 1987 through December 31, 1987:

Manufacturer/exporter	Net ad valorem subsidy (per-cent)
RSI India Pvt. Ltd	10.74
Select Steel Ltd	41.57
Carnation Enterprise Pvt. Ltd	40.74
Uma Iron and Steel Works	22.75

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Manufacturer/exporter	Net ad valorem subsidy (percent)
Commex Corporation	44.73
All Other Manufacturers or Exporters	34.05

Upon completion of this administrative review, the Department will issue appraisement instructions to the U.S. Customs Service. The Department also intends to instruct the U.S Customs Service to collect 3.84 percent estimated countervailing duties on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Public Comment

In accordance with 19 CFR 355.38, we plan to hold a public hearing, if requested, on August 1, 1991, at 2 p.m. in room 3708, to afford interested parties the opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in the hearing must submit a request within ten days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of case briefs must be submitted to the Assistant Secretary no later than July 23, 1991. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than July 30, 1991. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with section 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified in this notice.

This administrative review and notice are published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 20, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-15467 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 910529-1129]

Test Method and a Validation Test Service for the Federal Information Processing Standard (FIPS 128) for Computer Graphics Metafile (CGM) and the Computer-aided Acquisition and Logistic Support (CALS) CGM Application Profile (AP

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of a test method and a one-year trial validation test service for the Federal Information Processing Standard (FIPS) 128, Computer Graphics Metafile and the CALS CGM Application Profile (MIL-D-28003).

SUMMARY: The NIST Validation Test Service will be used to assess the degree to which binary encoded CGM files conform to FIPS 128 and MIL-D-28003. The NIST will use the trial test service period to verify the accuracy and completeness of the CGM test procedures. To assess the suitability of the test method and the test procedures for testing conformance to the FIPS and CALS AP, NIST solicits the views of industry, the public, and State and local governments.

DATES: The test service started May 1, 1991, and will continue for a one-year trial period through May 1992.

ADDRESSES: Written comments concerning the test method and the establishment of the CGM Test Service should be sent to: National Institute of Standards and Technology; ATTN: CGM Test Service, Technology Building, room B154, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Ms. Lynne Rosenthal, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3265.

SUPPLEMENTARY INFORMATION:

Background

The Federal Information Processing Standard Publication (FIPS PUB) 128, Computer Graphics Metafile, was approved on March 16, 1987, and became effective August 10, 1987. The Computer-aided Acquisition and Logistics Support (CALS) CGM Application Profile (MIL-D-28003) was approved for use all departments and agencies of the Department of Defense on December 20, 1988. In accordance with FIPS PUB 128 and MIL-D-28003, the delivery of two-dimensional graphics data to Federal agencies should be in the digital format of the CGM. The purpose of the graphics software standard is to facilitate the transfer of graphical information between different graphical software systems, different graphical devices, and different computer graphics installations. Federal agencies may require conformance to FIPS PUB 128 and MIL-D-28003 whether computer graphics metafile systems are developed internally, acquired as part of an ADP system procurement, acquired by separate procurements, used under the ADP leasing arrangement, or specified for use in contracts for programming services. Testing may be required in order for agencies to determine if the CGM file conforms to the FIPS PUB and MIL-D-28003. The CGM Registered Validation Report provided from the NIST trial validation test service will be sources for Federal agencies to use in making this determination. The CGM Registered Validation Report will be listed in NISTIR 4500, "Validated Processor List", available from NIST, telephone (301) 975-2821.

Updates to the Test Method and Procedures

The NIST will use the CGM Validation Test Software as the test method for validating CGM files. The selection of the CGM Validation Test Software was announced in the Commerce Business Daily, June 18, 1990.

The Validation Test Software and Test procedures will be periodically updated and used as the basis for validating metafiles formatted according to FIPS PUB 128 and MIL-D-28003. The update process will be used to correct errors identified in the CGM Validation Test Software and to introduce new or modified programs as appropriate. Modification to the Test Software is also intended to ensure that computer graphics metafiles are being formatted according to the technical specifications of the standard. Should an interpretation of the FIPS or Military Specification be made that would affect the test software, these changes would also be reflected during the update process.

Obtaining Validation Services

The NIST provides validation test services on a cost-reimbursable basis. These services are available to both the producers and users of CGM files. Upon receipt of a request for validation, NIST will supply the client with a CGM Information Pack which will include a description of the test service and procedures, and a Testing Request form. To have a CGM tested, the client must return a completed Testing Request form along with proper payment to the NIST. The Validation Test Service Software is available from CTS, Gales Ferry, CT 06335

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

Dated: June 24, 1991.

John W. Lyons,

Director.

[FR Doc. 91-15443 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will meet on July 8-12, 1991, at the Radisson Hotel, 17001 Pacific Highway South, Seattle, WA. Except as noted below, the meetings are open to the public.

The Council will begin its meeting on July 10 at 8 a.m., in a closed session (not open to the public), to discuss litigation and personnel matters. The Council's open session begins at 9 a.m., to consider administrative and other matters and salmon management issues. Also on July 10, the Council will accept comments on issues not on the agenda. On July 11, beginning at 8 a.m., Groundfish management items will be addressed and that discussion will continue into July 12. Also on July 12, Coastal pelagic species management issues will be discussed after the completion of the groundfish items.

Salmon management items on the agenda are: (1) Sequence of events and current status of the fishery; (2) guidelines for making inseason adjustments due to unusual weather; (3) consider adjustments in the 1991 fishery off California due to unusual weather; (4) status reports on high seas drift net fisheries; (5) analysis of Columbia River Sportfishing Association proposal for determining recreational subarea allocations; (6) an update on recent actions of the National Marine Fisheries Service to propose listing of certain Columbia River salmon stocks under the Endangered Species Act; and (7) a status report on reviews underway to determine causes of stock decline for Oregon coastal natural coho salmon and certain Puget Sound chinook and coho stocks. The Council also will address habitat issues affecting fisheries in its jurisdiction after the salmon management items are completed.

Groundfish management issues: (1) Status of regulations implementing Council actions; (2) review of the 1991 Pacific whiting fishery; (3) review specifications of limited entry options and possible selection of preferred options for public review; (4) determination of the consistency of the California gill net ban with the Council's groundfish plan and applicable law; (5) inseason management measure adjustments; (6) feasibility of a comprehensive observer program for groundfish vessels; (7) summary of preliminary stock assessments; and (8) identification of issues and alternatives for 1991 management measures.

Coastal pelagic species management issues: (1) Anchovy spawning biomass and quotas for 1991-1992, and (2) status report on development of an anchovy plan amendment to add other coastal pelagic species.

The Scientific and Statistical Committee will meet on July 8 at 10 a.m., to address scientific issues on the Council's agenda, and will reconvene on July 9 at 8 a.m.

The Salmon SubCommittee will meet on July 10 at 9 a.m. to review the chinook harvest model for the fishery north of Cape Falcon.

The Legislative Committee will meet on July 9 at 10 a.m., to discuss the desirability of a fee or tax for at-sea fish processing comparable to that paid by shoreside processors.

The Groundfish Advisory Subpanel will meet on July 9 at 1 p.m., to address groundfish items on the Council's agenda and will reconvene on July 10 at 8 a.m.

The Habitat Committee will meet on July 9 at 1 p.m., to address issues affecting habitat of fish stocks managed by the Council.

The Budget Committee will meet on July 10 at 3 p.m., to review the status of the Council's 1991 budget.

The Ad Hoc Committee on Adjustments Due to Unusual Weather will meet on July 9 at 3 p.m., to recommend guidelines for making adjustments to salmon seasons due to unusual weather.

The Groundfish Stock Assessment Workshop will meet on July 9 at 7 p.m., in an informal workshop, open to the public, to review preliminary stock assessments for certain groundfish species.

The Enforcement Consultants will meet on July 10 at 7 p.m., to consider the enforcement ramifications of management issues on the Council agenda.

Detailed agendas for the above meetings will be available to the public after June 28, 1991. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: June 24, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-15496 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will meet on July 8-11, 1991, at the Reach Hotel, 1435 Simonton Street, Key West, FL.

Council: The Council will begin its meeting on July 10 at 8:30 a.m., and recess at 5 p.m. The agenda is as follows: (1) From 8:45 a.m., to 9:45 a.m., discuss the National Marine Fisheries Service Marine Mammal Program; (2) from 9:45 a.m., to 10:15 a.m., hear public testimony on the Tortugas Shrimp Sanctuary; (3) from 10:15 a.m., to 10:30 a.m., address Committee Recommendations on the Tortugas Shrimp Sanctuary; (4) from 10:30 a.m., to 2:30 p.m., review the Shrimp Amendment #6 Options Paper; and (5) from 2:30 p.m., to 5 p.m., review the Mackerel Amendment #6 Options Paper. The Council meeting will continue on July 11, as follows: (1) From 8:30 a.m., to 10:30 a.m., review Mackerel Amendment #6 Options Paper; (2) from 10:30 a.m., to 2:30 p.m., review Reef Fish Amendment #4 Options Paper; and (3) receive the Administrative Policy and Ad Hoc Limited Entry Committee Reports, followed by Law Enforcement Reports and Director's Reports. Adjournment is at 4 p.m.

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Committees: On July 8 at 1 p.m., the Administrative Policy Committee and the Reef Fish Management Committee will meet. The meeting will adjourn at 5:45 p.m. On July 9 at 8 a.m., the Shrimp Management Committee and the Mackerel Management Committee will meet. The meeting will adjourn at 5:30 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: June 24, 1991.

David S. Crestin,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–15495 Filed 6–27–91; 8:45 am]

BILLING CODE 3510–22–M

Sea Grant Review Panel; Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel Meeting in the areas of artificial intelligence, law and policy, program management and funding procedures, coastal business initiatives, long-range planning and priorities, developing new business initiatives with the Sea Grant Program for enhancement of Department of Commerce goals, and new business. A nomination and election will be held for Chair Elect.

DATES: The announced meeting is scheduled during two days: Tuesday, July 30, 1991 (10 a.m.–12 noon and 1–4 p.m.), and Wednesday, July 31, 1991, 8–10 a.m.

ADDRESSES: Denver Marriott Hotel City Center, 1701 California Street, NW., Denver, Colorado 80202–9838.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shephard, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 1335 East-West Highway, #5104, Silver Spring, Maryland 20910, (301) 427–2431.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Under Secretary, NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Tuesday, July 30, 1991—10 a.m.–12 noon—Denver 1 & 2 Rooms

Welcome to Dr. Knauss, NOAA Administrator
Dr. Knauss' Opening Remarks to the Panel
Complementary Roles for a Stronger Sea Grant Future
Open Discussion with Dr. Knauss
1. Panel Subcommittee Chairmen
2. Individual Panelists
3. Other Guests
Summary of Meeting

Tuesday, July 30, 1991—1–4 p.m.—Denver 1 Room

National Office Updates
Appropriations/Reauthorization
Budget
Personnel
Legislation
New Procedures
Planning Task Forces
States of Panel Member Terms
Fellows Update
Subcommittee Reports
Executive
New Technology
Program Management and Funding Procedures
Coastal Business Initiatives
State Advisory Committee Workshop
Long-Range Planning and Priorities
Sea Grant/Private Industry Partnership
Sea Grant Interaction with Other Agencies
Law and Policy
U.S.D.A. National Extension Committee
Other Reports
Site Visit Feedback

Wednesday, July 31, 1991—8–10 a.m.—Colorado B Room

Closeout Old Business
Nominations & Election of Vice Chair
Transition
New Business

The meeting will be open to the public.

Dated: June 24, 1991.

Ned A. Ostenso,

Assistant Administrator, Oceanic and Atmospheric Research.

[FR Doc. 91–15497 Filed 6–27–91; 8:45 am]

BILLING CODE 3510–12–M

Marine Mammals: Issuance of Permit; Dr. Randall Davis (P477)

On May 16, 1991, notice was published in the **Federal Register** (56 FR 22701) that an application had been filed by Dr. Randall W. Davis, Department of Marine Biology, Texas A&M University, P.O. Box 1675, Galveston, Texas 77553, and Dr. Patrick Butler, School of Biological Sciences, University of Birmingham, Birmingham, U.K. B15, 2TT, to obtain eight (8) rehabilitated beached or stranded California sea lions (*Zalophus californianus*) deemed suitable for release. The animals will be obtained from Sea World, San Diego to be used for scientific studies testing a data-storage system for use in determining energy budgets. Upon completion of research the animals will be released into the wild.

Notice is hereby given that on June 18, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731 (213/514–6196).

Dated: June 20, 1991.

Richard H. Schaefer,

Director, Office of Fisheries, Conservation and Management.

[FR Doc. 91–15385 Filed 6–27–91; 8:45 am]

BILLING CODE 3510–22–M

Technology Administration

[Docket No. 910525–1125]

Invitation for Proposals Under the Advanced Technology Program

AGENCY: Technology Administration, Commerce.

ACTION: Notice; invitation for proposals; notice of meeting.

SUMMARY: The Technology Administration invites applications for funding under the Advanced Technology Program (ATP), and announces a public meeting for all interested parties. Anyone interested in applying for funding under this Program must contact the ATP at the address shown below to obtain materials for applications. The Advanced Technology Program is Program Number 11.612 in the Catalog of Federal Domestic Assistance.

CLOSING DATE FOR APPLICATIONS: Proposals must be received at the address listed below no later than 3 p.m., E.D.T., on September 25, 1991.

DATE OF PUBLIC MEETING: A public meeting for parties considering making application for funding under the Advanced Technology Program will be held beginning at 9:30 a.m. on July 29, 1991, in the Red Auditorium, Administration Building, National Institute of Standards and Technology, Quince Orchard and Clopper Roads, Gaithersburg, MD, exit 10 off Interstate 270. Attendance at the public meeting is not required of potential proposers. The purpose of the meeting is to provide information regarding the ATP to potential applicants.

NUMBER OF PROPOSALS: Applicants must submit one signed original plus ten (10) copies of their proposals numbered 1 through 11, along with NIST Form 1262 (for Single Applicants) of Form 1263 (for Joint Venture Applicants) to The Advanced Technology Program at the address below. The Office of Management and Budget has approved the information collection requirements contained in this notice under provisions of the Paperwork Reduction Act (OMB control number 0693–0009).

ADDRESSES: Advanced Technology Program, Proposal Solicitation, ATP 91–01, room A430, Administration Building (Bldg. 101), National Institute of Standards and Technology, Quince Orchard and Clopper Roads, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: To receive application materials contact Gail Killen at (301) 975–2636 or write to the address shown above. The ATP facsimile number is (301) 869–1150.

SUPPLEMENTARY INFORMATION:

Background

The Advanced Technology Program (ATP) is managed by the National Institute of Standards and Technology (NIST), an element of the Technology Administration of the Department of Commerce. ATP was established by section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418, 15 U.S.C. 278n), and is operated under program procedures published in the **Federal Register**, dated July 24, 1990, on page 30140. The ATP assists U.S. businesses to improve their competitive position and promote U.S. economic growth by accelerating the development of a variety of pre-competitive generic technologies [1] by means of cooperative research agreements. A cooperative research agreement is a funding instrument to provide financial assistance when substantial involvement is anticipated between the government and the recipient. NIST intends to select proposals for funding approximately six months (actual completion date depends on the number of applications received) after the closing date for applications.

Research and development activities cover a wide spectrum, from basic research at one extreme to the development of specific new products at the other. The Advanced Technology Program is intended to foster the development of technology that is beyond basic research, but not close to the stage of new product development. Thus the ATP will include the development of laboratory prototypes intended to establish technical feasibility but not prototypes of commercial products. The ATP will not fund projects to demonstrate commercial viability or projects involving market testing of specific products.

The purpose of the ATP as stated in Public Law 100–418 is to assist U.S. companies in creating and applying "generic technology" and research results so as to commercialize new technology more quickly and improve manufacturing processes. While it is hoped and intended that new products will ultimately result from work funded by the ATP, the program will not focus on giving participating companies a competitive advantage for specific new products. Rather, the focus will be on supporting work that has great economic potential with broad benefits. Accordingly, joint ventures are emphasized in the legislation establishing the ATP. This legislation states that the ATP should "avoid providing undue advantage to specific companies." The ATP is open to proposals in all areas of precompetitive generic technology.

Invitation for Proposals: The Technology Administration invites applications for funding for two types of proposals: (1) Technology Development Proposals from individual United States businesses (see Applicant Eligibility) or independent research institutes in amounts not to exceed $2 million over three years, and, (2) Technology Development Proposals from qualified United States joint research and development ventures where ATP support will serve as a catalyst for the proposed joint venture, and provided however, that the ATP share shall be a minority share of the cost of the venture for up to five years, and subject to the availability of ATP funds. Future or continued funding for multi-year projects will be at the discretion of the Technology Administration and will be contingent on such factors as satisfactory performance and the availability of funds.

Funds Available for Cooperative Research Agreements: Between $20.0 and $25.0 million will be available for awards in the form of cooperative research agreements resulting from this solicitation. Depending on the number and quality of proposals received from this solicitation, NIST reserves the right to allocate all or a portion of the funds that may be available in the FY 1992 budget to projects selected through this competition. The actual obligation of FY 1992 funds is contingent on their appropriation. The number of awards will depend on the amount of funding requested by the selected proposals.

Applicant Eligibility: ATP funding is available to United States businesses and certain United States joint research and development ventures. Eligible joint research and development ventures are defined in section 295.2(d) of the ATP Procedures.[2] The information package for applicants contains the ATP Procedures.

An additional eligibility requirement for those applying for fiscal year 1991 ATP funding has been mandated by the following amendment to this year's ATP Appropriaiton Bill (Public Law 101–515 Sec. 105):

A company shall be eligible to receive financial assistance from the Secretary of Commerce only if-

(A) The Secretary of Commerce finds that the company's participation in the Advanced Technology Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Secretary of Commerce to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of

[1] The terms "generic technology" and "pre-competitive technology" are defined in the Advanced Technology Program Procedures (15 CFR part 295). A copy of the Procedures is included in the Proposer's Kit.

[2] An eligible joint venture must consist of at least two organizations each of which is eligible to apply as a single applicant and both of which must participate in the proposed R&D program and contribute toward the matching funds requirement.

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United States industry), and to procure parts and materials from competitive suppliers; and

(B) either—

(i) The company is a United States-owned company; or

(ii) The Secretary of Commerce finds that the company has a parent company which is incorporated in a country which affords the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those funded through the Advanced Technology Program; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

As used in this section, the term "United States-owned company" means a company that has a majority ownership or control by individuals who are citizens of the United States.

All applicants should address the requirements of section 105(A) cited above in section 7 (Broad Based Benefits) of their proposal and provide an Assurance Statement of Ownership concerning whether all participants in the proposed program are United States-owned companies as defined above. Applications from single companies or from joint ventures involving one or more companies that are not United States-owned companies as defined above should also address the requirements of section 105(B)(ii) cited above in section 3 (Special Eligiblity Requirements) of the proposal.

ATP funds may not flow directly to universities, Federal laboratories, or state agencies, although universities and federal laboratories may participate as members of an industry-led joint venture and (except for NIST) may receive funding via industry members of the joint venture. Non-profit independent research laboratories may also participate and receive funding either directly or indirectly. The participation of universities and Federal laboratories through cooperative research and development agreements in joint ventures or as subcontractors to single applicants funded by the ATP is encouraged. As a matter of policy, NIST's intramural programs cannot receive ATP funding from a joint venture (or its members), company or independent research institute funded by the ATP. However, NIST intramural programs may choose to collaborate with applicants where appropriate. Such collaboration will not increase or decrease an applicant's chances of receiving an award.

Preparation of Proposals and Reporting Requirements: The ATP application package contains detailed guidelines for the preparation of proposals. Also included is information on reporting requirements. To be accepted for review, proposals must meet the following requirements:

1. The original proposal plus ten (10) copies must be delivered to the ATP at the address specified above before the closing time and date cited previously in this document.

2. The proposal must meet the requirements for format, length, and content described in the Information Requirements Document contained in the application kit for Proposal Solicitation 91-01.

3. The information contained in the proposal should adequately address *all* of the requirements of the Information Requirements Document. These include separate sections of the proposal describing the: (1) Research and Development Program, (2) Experience and Qualifications of the proposing organization, (3) Broad Based Benefits of the proposal, (4) Technology Transfer Benefits of the proposal, (5) Proposer's Level of Commitment and Organizational Structure, (6) Plan for addressing intellectual property rights requirements, and (7) Detailed budget.

4. The original and ten (10) copies of NIST Form 1262 (for single applicants) or 1263 (for joint venture applicants) must be bound wth the proposal.

5. Single applicants must provide in their proposal a Nonpayment of Indirect Costs Assurance Statement and address the requirement that ATP funds not be used for payment of indirect costs in their budgets. Joint Venture applicants must provide in their proposal a Matching Funds Assurance Statement and address the requirement that ATP funds will cover less than 50% of the resources required to carry out the proposed project in their budgets.

6. All applicants must provide a United States-Owned Company Assurance Statement. Those proposals that involve the participation of organizations that are not United States-owned companies as defined previously must also address the requirements of section 105(B)(ii) of Public Law 101-515 noted above.

Proposals that fail to meet one or more of the above requirements will be considered non-responsive to this solicitation.

Award Criteria for Technology Development Proposals: Criteria that will be used to evaluate technology development proposals submitted in response to this notice appear in the ATP Procedures published at § 295.3(b) of title 15 of the Code of Federal Regulations. The information package for applicants contains the ATP Procedures.

The Proposal Review Process: The proposal review process is described in the ATP Procedures at § 295.3(a) of title 15 of the Code of Federal Regulations. The information package for applicants contains the ATP Procedures. The review process is expected to take approximately six months, although the process might take longer if an unusually large number of proposals is received.

Other Requirements, Requests, and Provisions: Applicants who have outstanding accounts receivable with the Federal Government will not be awarded a cooperative research agreement until the debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, cooperative agreement or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" must be submitted with any application for ATP funding. ATP Applicants are subject to Government-wide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a cooperative research agreement. A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. The Advanced Technology Program does not involve the mandatory payment of any matching funds from state or local government and does not effect directly any state or local government. Accordingly, the Technology Administration has determined that Executive Order 12372, "Intergovernmental Review of Federal Programs" is not applicable to this program. Awards under ATP shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Dated: June 7, 1991.

Robert M. White,

Under Secretary for Technology.

[FR Doc. 91-14362 Filed 6-27-91; 8:45 am]

BILLING CODE 3510-07-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: July 29, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On January 11, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 1180) of proposed additions to the Procurement List.

Comments were received from the current contractor for the portion of the Government requirement for the canteen which is the subject of this rulemaking and from a former contractor for the canteen. The former contractor objected to the cumulative impact on it of this addition and the 1985 addition of a part of the Government requirement for this canteen to the Procurement List. The former contractor also suggested that having nonprofit agencies employing persons with severe disabilities as the only source for the canteen would lead to lower quality and higher prices.

The current contractor objected to the proposed addition and another addition under consideration by the Committee on several grounds. These consisted of adverse impact on its business, including the previous and expected impacts of actions by the other mandatory source program and loss of return on recent equipment and tooling expenses; adverse impact on people with disabilities, who perform work on the canteens under a subcontract; adverse impact on its own employees, most of whom are minorities; increased prices to the Government; and the risk of having only one source for a critical defense item in an emergency situation.

According to data made available to the Committee, the former contractor has not supplied this canteen to the Government since early 1987. As this contractor cannot be dependent on arguments concerning cumulative Government sales of the canteen, its impact of the two actions adding the canteen to the Procurement List must be considered an objection to the loss of future opportunities to bid on canteen contracts. The Committee does not consider this to constitute serious adverse impact on a contractor. Nonprofit agencies producing items on the Procurement List are required by law to sell them to the Government at a fair market price set by the Committee. They cannot use their position as the only source to raise the price beyond this level. They are also required to produce the item to a specification set by the Government, which does not permit them to reduce the quality of an item.

With respect to the current contractor, the Committee has determined that adding this canteen to the Procurement List will not have a serious adverse impact on that firm. The firm has already recovered from the previous impacts on its business by the other mandatory source, which has advised the Committee that the firm will continue to have the opportunity to compete for the other type of work in which it is engaged.

In addition, the firm continues to have the opportunity to compete for canteen cap business, which involves some of the same equipment involved in furnishing the canteen proposed for addition. Even if the canteen were to remain available for competitive procurement, the firm could lose its investment in equipment and tooling because it is not guaranteed contracts in the competitive bidding system. Similarly, the individuals employed directly by the contractor and the persons with disabilities employed by the subcontractor are not assured of continued employment under the competitive procurement system and, in the case of the individuals with disabilities, there is no guarantee that evn if the current contractor obtains future contracts that it will continue to employ them through subcontracts. Under the circumstances, the Committee has determined that the assurance of employment for blind persons associated with the addition of this item outweighs the possible future employment benefits for minorities and individuals with disabilities.

The price to be paid by the Government for the canteens has been determined by the Committee to be consistent with the intent of the JWOD Act and the Committee's pricing procedures. Both require a "fair market" price and not the "lowest possible" price. The Committee has also determined that the nonprofit agency proposed to to supply the canteen has the capability to meet Government surge requirements.

After consideration of the material presented to its concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List:

Canteen, Water, Plastic (1-QT.); 8465-01-115-0026; (Remaining Government Requirement)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-15456 Filed 6-27-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procument List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: July 29, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

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SUPPLEMENTARY INFORMATION: On April 19, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 16075) of proposed additions to the Procurement List.

The current contractor objected to the proposed addition and another addition under consideration by the Committee on several grounds. These consisted of adverse impact on its business, including the previous and expected impacts of actions by the other mandatory source program and loss of return on recent equipment and tooling expenses; adverse impact on people with disabilities, who perform work on the canteens under a subcontract; adverse impact on its own employees, most of whom are minorities; increased prices to the Government; and the risk of having only one source for a critical defense item in an emergency situation.

With respect to the current contractor, the Committee has determined that adding this canteen to the Procurement List will not have a serious adverse impact on that firm, even considering the impact of the Committee's recent addition of a similar item for which the firm is the current contractor. The firm has already recovered from the previous impacts on its business by the other mandatory source, which has advised the Committee that the firm will continue to have the opportunity to complete for the other type of work in which it is engaged.

In addition, the firm continues to have the opportunity to compete for canteen cap business, which involves some of the same equipment involved in furnishing the canteen proposed for addition. Even if the canteen were to remain available for competitive procurement, the firm could lose its investment in equipment and tooling because it is not guaranteed contracts in the competitive bidding system. Similarly, the individuals employed directly by the contractor and the persons with disabilities employed by the subcontractor are not assured of continued employment under the competitive procurement system and, in the case of the individuals with disabilities, there is no guarantee that even if the current contractor obtains future contracts that it will continue to employ them through subcontracts. Under the circumstances, the Committee has determined that the assurance of employment for blind persons associated with the addition of this item outweighs the possible future employment benefits for minorities and individuals with disabilities.

The Price to be paid by the Government for the canteens has been determined by the Committee to be consistent with the intent of the JWOD Act and the Committee's pricing procedures. Both require a "fair market" price and not the "lowest possible" price. The Committee has also determined that the nonprofit agency proposed to supply the canteen has the capability to meet Government surge requirements.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List:

Canteen, Water (2–QT.); 8465–01–118–8173.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–15457 Filed 6–27–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: July 29, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, VA 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On February 25, March 1 and May 10, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 7680, 8750 and 21664) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following a commodity and services are hereby added to the Procurement List:

Commodity

Preventive Dentistry Kit, Patient, 6520–00–890–2080

Services

Commissary Shelf Stocking and Custodial, Fort Benning, Georgia

Janitorial/Custodial, Fifth Floor Restrooms, The Pentagon, Washington, DC

Janitorial/Grounds Maintenance, U.S. Army Reserve Center, Independence, Missouri

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–15453 Filed 6–27–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be provided by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 29, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following services to the Procurement List:

Janitorial/Custodial, Naval Air Station, Whiting Field, Milton, Florida

Janitorial/Custodial, Marine Corps Logistics Base, Building 7501, Albany, Georgia

Janitorial/Custodial, U.S. Army Reserve Center, 4200 Michaud Blvd., New Orleans, Louisiana

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–15454 Filed 6–27–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing the blind or other severely handicapped.

EFFECTIVE DATE: July 29, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 12, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 14931) of proposed addition to the Procurement List.

Comments were received from the current contractor for this service. The contractor stated that he did object to the addition of this service to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List: Commissary Shelf Stocking and Custodial, Fort Bliss, Texas.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–15455 Filed 6–27–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee Task Force on Soviet Military

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The location of the Defense Policy Board Advisory Committee Task Force on Soviet Military meeting announced in the **Federal Register** on Friday, June 14, 1991 (56 FR 27502) has been changed to 1710 Goodridge Drive, TI–7–2, McLean, Virginia. All other information remains the same.

Dated: June 24, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15387 Filed 6–27–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on July 15, 1991; from 8:30 a.m. to 4:30 p.m. on July 16, 1991, and from 8:30 to 4:30 p.m. on July 17, 1991. The meeting will be held at the Monterey Plaza hotel, 400 Cannery Row, Monterey, California 93940. The purpose of the meeting is to review planned changes in the Department of Defense's Student Testing Program and progress in developing paper-and-pencil and computerized enlistment tests.

Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than July 8, 1991.

Dated: June 24, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15388 Filed 6–27–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Weapon Development and Production Technology; Meeting

ACTION: Change in status from open to closed of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Weapon Development and Production Technology scheduled for 11 and 12 July, 1991, as published in the **Federal Register** (vol. 56, no. 115, page 27503, Friday, June 14, 1991, FR Doc. 91–14143) will be closed during the 12 July session.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of

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Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. During the 12 July portion of the meeting the Task Force will receive classified briefings on the development and production of the Advanced Technology Fighter and on DARPA production process investments in support of "black" programs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that the 12 July session of the DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1988), and that accordingly this session of the meeting will be closed to the public.

Dated: June 24, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15389 Filed 6–27–91; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 2, 1991; Tuesday, July 9, 1991; Tuesday, July 16, 1991; Tuesday, July 23, 1991; and Tuesday, July 30, 1991 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 93–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c) (2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c) (4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c) (2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b (c) (4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: June 24, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–15390 Filed 6–27–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Long Range Planning Task Force will meet 16 July 1991 from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions for drafting final report of long range issues regarding national security policy, and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of the meeting.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: June 19, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91–15383 Filed 6–27–91; 8:45 am]

BILLING CODE 3810–AE–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Countermine Capabilities for Amphibious Operations (Phase II) will meet on July 10, 11, and 12, 1991. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 a.m. and terminate at 4:30 p.m. on July 10, 11, and 12, 1991.

The purpose of the meeting is to provide technical briefings for the panel members pertaining to their review and update of the previous NRAC study on this subject, which was completed in 1990. This Panel will reexamine the issues raised, conclusions reached, and recommendations made by the previous Panel, and provide the Navy with reassessment of the findings in the light of Desert Shield/Storm, new knowledge of the threat and environment, and applicable advances in technology. The agenda will include briefings and discussions related to current operational capabilities and limitations; lessons learned from the Persian Gulf War related to the threat, minefield deployments, and operational plans; current U.S. Navy reactions; and promising emerging technology applicable to detection, neutralization, marking, and reporting in very shallow water, the surf zone, and on the beach. These briefings and discussions contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably interwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of meeting.

For further information concerning this meeting contact: Commander John Hrenko, USN, Office of the Chief Of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: June 19, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91–15381 Filed 6–27–91; 8:45 am]

BILLING CODE 3810–AE–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Open Systems Architecture for Command, Control and Communications (C^3) will meet on July 11 and 12, 1991. This meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 a.m. and terminate at 4:30 p.m. on July 11 and 12, 1991. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide technical briefings to the panel members to enable them to assess the ability of current Navy C^3 systems' architecture to support anticipated requirements, evaluate the performance of the present system relative to the existing threat, provide recommendations for an overall architecture to meet future needs, and provide recommendations concerning use of current and future commercial data communication systems for both interim and continuing satisfaction of Department of the Navy needs. The agenda will include briefings and discussions related to current C^4 Acquisition Policy, Standards, Guidelines, and Security Requirements; Copernicus Engineering; software technology research and development, amphibious over-the-horizon C^3 requirements and Desert Shield/Storm Lessons Learned; Navy ADA policy and implementation; Department of the Army C^3; university C^3I research and development; the integrated tactical date network; and DARPA C^3 projects. These briefings and discussions will necessarily address current C^3 capabilities and limitations, emerging C^3 technologies and anticipated limitations, and respective susceptibility to penetration or denial. These briefings and discussions contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of adminstrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of this meeting.

For further information concerning this meeting contact: Commander John Hrenko, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: June 19, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91–15382 Filed 6–27–91; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIMES: Monday, July 15, 1991, 8 a.m. to 2 p.m. (closed) and 2 p.m. until conclusion of business at approximately 5 p.m. (open).

ADDRESSES: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024. Telephone: 202/479–4000.

FOR FURTHER INFORMATION CONTACT: John Cheek, Office Manager, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/732–1353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The Council is authorized to appoint, without regard to the provisions of title 5 United States Code governing appointments in the competitive service, or otherwise obtain the services of such professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions as prescribed by law. The Council is conducting a search to appoint a permanent Executive Director to serve as the chief staff member of the Council. The full Council will convene on July 15, 1991 for a partially closed meeting to interview candidates for the Executive Director position, and conduct general business of the Council.

The full Council will meet in closed session from 8 a.m. until approximately 2 p.m. on July 15, 1991, to conclude the Executive Director search process. The agenda for the closed portion of the meeting will consist of a discussion of the Search Committee's recommendations regarding the candidates and the questions and guidelines to be used in the interviews, actual interviews with candidates, and a discussion involving a final decision on the appointment of a permanent Executive Director for the Council.

Immediately following the closed search process, the full Council will meet in open session from 2 p.m. until 5 p.m. on July 15, 1991 for an informational business meeting. This portion of the meeting is open to the public and will include a presentation on America 2000, the President's education strategy, reports of the Chairman, a discussion of the content and format of the annual report to Congress, and a report on the current activities of the White House

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Conference On Indian Education and the Indian Nations At Risk Task Force Study.

The closed portion of the meeting of the National Advisory Council on Indian Education will relate solely to the internal personnel rules and practices of an agency. Interviews with the candidates and discussions held in conjunction with the selection process will involve matters which relate solely to the internal personnel rules and practices of this Council and are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)).

A summary of activities of the closed portion of the meeting and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records shall be kept of all Council proceedings open to the public and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202–7556.

Dated: June 24, 1991. Signed at Washington, DC.

Eddie L. Tullis,

Chairman, National Advisory Council on Indian Education.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91–15464 Filed 6–27–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Determination of Noncompetitive Financial Assistance; National Academy of Public Administration

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award based on an unsolicited application under Financial Assistance Award No. DE–FG05–91ER35126 to the National Academy of Public Administration (NAPA).

PROJECT SCOPE: The funding for this financial assistance award will allow the grantee to form a Working Group on Radioactive Waste Management with the purpose of organizing one workshop and participating in another workshop. The workshops will analyze how an institutional framework can be established for managing radioactive waste in a manner that ensures public trust and confidence. NAPA will commission several papers by leading management experts and provide a summary of its proceedings to DOE. The financial assistance award is sponsored by DOE's Secretary of Energy Advisory Board (SEAB).

ELIGIBILITY: Based on receipt of an unsolicited application, eligibility of this award is being limited to NAPA. This project represents a unique idea for which a competitive solicitation would be inappropriate. This is a project with high technical merit. NAPA has unique chartered responsibility and has rendered advice on policy management issues across a range of government programs. NAPA's elected Fellows consist of more than 400 scholars and practitioners of diverse backgrounds in public administration whose practical experience comes from every level of government. The total estimated cost is $89,996. The term of the award is from the date of award for 5 months.

FOR FURTHER INFORMATION CONTACT: Daniel Metlay, Task Force on Civilian Radioactive Waste Management, Secretary of Energy Advisory Board, 7B 198, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–3903.

Issued in Oak Ridge, TN on June 20, 1991.

Robert Lynch,

Acting Director, Procurement & Contracts Division, Oak Ridge Operations.

[FR Doc. 91–15488 Filed 6–27–91; 8:45 am]

BILLING CODE 6450–01–M

Determination of Noncompetitive Financial Assistance; National Academy of Sciences

AGENCY: Department of Energy (DOE).

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award based on an unsolicited application under Financial Assistance Award No. DE–FG05–91ER35127 to National Academy of Sciences.

PROJECT SCOPE: The funding for this financial assistance award will allow the grantee to organize a 2-day workshop on civilian radioactive waste management to analyze how an institutional framework can be established for managing radioactive waste in a manner that ensures public trust and confidence. The grantee will commission several papers by social scientists and organization theorists. The grantee will also organize and pay the expenses of some workshop participants to attend a second meeting that will involve participation of individuals selected by the National Academy of Public Administration. The grantee will provide Secretary of Energy Advisory Board (SEAB) with a summary of the proceedings.

ELIGIBILITY: Based on receipt of an unsolicited application, eligibility of this award is being limited to National Academy of Sciences. This project represents a unique idea for which a competitive solicitation would be inappropriate. This is a project with high technical merit. NAS has a unique chartered responsibility and capability to reach consensus positions in the scientific community. This capability is recognized by the scientific community on a world-wide basis. The total estimated DOE cost is $70,000. The term of the award is from the date of award for 5 months.

FOR FURTHER INFORMATION CONTACT: Daniel Metlay, Task Force on Civilian Radioactive Waste Management, Secretary of Energy Advisory Board, 7B 198, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3903.

Issued in Oak Ridge, Tennessee on June 19, 1991.

Peter D. Dayton,

Director, Procurement & Contracts Division, DOE Field Office, Oak Ridge.

[FR Doc. 91–15489 Filed 6–27–91; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Final Consent Order With Eason Drilling Co. and ITT Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) has determined that a proposed Consent Order between the DOE and Eason Drilling Company (formerly Eason Oil Company) (Eason) and ITT Corporation (ITT), which was executed on May 3, 1991, and published for comment in 56 FR 22708 (May 16, 1991), shall be made final. The Consent Order resolves matters relating to Eason's compliance with the federal petroleum price and allocation regulations for the period November 1, 1973 through December 31, 1979. To resolve these matters, ITT, on behalf of Eason, will pay to the DOE $7,000,000 within 30 days from the effective date of the Consent Order. To distribute the settlement monies, the Economic Regulatory Administration (ERA) will petition DOE's Office of Hearings and Appeals (OHA) to implement Special Refund Procedures pursuant to 10 CFR part 205 subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges will have the opportunity to submit claims for payment.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Office of Enforcement Litigation, Economic Regulatory Administration, Department of Energy, room 3H–017, RG–32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1699.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comment Received
III. Analysis of Comment
IV. Decision

I. Introduction

On May 16, 1991, DOE issued a notice announcing a proposed Consent Order between Eason and ITT and the DOE, which would resolve matters relating to Eason's compliance with the federal petroleum price and allocation regulations during the period November 1, 1973 through December 31, 1979. 56 FR 22708. Specifically, the May 16 Notice provided information regarding the potential overcharge liability arising from Eason's pricing of petroleum products at issue in a Remedial Order issued by OHA on December 6, 1990; and detailed the considerations which underlay ERA's preliminary view that the settlement is favorable to the government and in the public interest.

The Notice solicited written comments from the public relating to the terms and conditions of the proposed settlement and whether the settlement should be made final. ERA received one written comment, which was considered in making the decision whether to issue the proposed Consent Order as a final order.

II. Comment Received

The one comment received on the proposed Consent Order, submitted by the Controller of the State of California, addressed the failure of the Consent Order to specify the manner in which OHA will distribute the settlement monies in a subpart V proceeding. The Controller expressed concern that silence in this respect may suggest or permit a departure from DOE's Modified Restitutionary Policy in Crude Oil Cases, issued in connection with the Final Settlement Agreement approved by the district court in *In Re the Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378. See 51 FR 27899 (August 4, 1986).

III. Analysis of Comment

The Controller's comment relating to the distribution of the overcharge funds if the Eason Consent Order is finalized is not germane to the basis or adequacy of the settlement. Rather, as DOE previously explained in, *inter alia*, the Exxon **Federal Register** Notice, 51 FR 36052 (October 8, 1986), in response to similar comments, including one by the Controller, views regarding the disbursement of Consent Order monies are appropriately presented in the subpart V proceeding to be convened by OHA. Therefore, the lack of specificity in the Consent Order does not imply any departure from applicable DOE policy.

ERA's review and analysis of the comment received in response to the May 16 Notice did not provide any information that would support the modification or rejection of the proposed Consent Order. Accordingly, ERA concludes that the Consent Order is in the public interest and should be made final.

IV. Decision

By this Notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order is made a final Order of the Department of Energy, effective the date of publication of this notice in the **Federal Register.**

Issued in Washington, DC, on June 21, 1991.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 91–15491 Filed 6–27–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES91–39–000, et al.]

The Detroit Edison Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. The Detroit Edison Company

[Docket No. ES91–39–000]

June 20, 1991.

Take notice that on June 14, 1991, The Detroit Edison Company filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to issue from time to time, on or before September 30, 1993, in an aggregate principal amount not to exceed $1.0 billion at any one time outstanding, short-term debt securities and promissory notes bearing final maturities not to exceed two years.

Comment date: July 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp Electric Operations

[Docket No. ER91–486–000]

June 20, 1991.

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on June 13, 1991, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, exhibit A (revision No. 2), exhibit C (revision No. 1) and exhibit D (revision No. 1) to Western Area Power Administration ("Western") Contract No. 87-LAO-298 ("Contract") dated July 17, 1987 with PacifiCorp (PacifiCorp's Rate Schedule FPC No. 45, Supplement No. 1 to Supplement No. 22). The revised exhibits A, C and D to the Contract represent changes due to completion of the Spence-Jim Bridger 230–kV transmission line. Exhibit A is a TOT 4A/4B Transfer Capability nomograph, exhibit C identifies transmission lines corresponding to TOT 4B power flow and Exhibit D lists transmission lines used in the development of the TOT 4A/4B nomograph of which parties to the Contract share pro rata reduction in TOT 4B transfer capability.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of April 12, 1991 be assigned to each of exhibits A, C, and D, these dates being consistent with the commerical operation date of the Spence-Jim Bridger 230 kV transmission line.

Copies of this filing were supplied to Western, the Public Service Commission of Wyoming and the Public Utility Commission of Oregon.

Comment date: July 5, 1991, in accordance with standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER91–434–000]

June 20, 1991.

Take notice that on June 13, 1991, Minnesota Power & Light Company (Minnesota Power) tendered for filing a correction to a rate schedule for Firm Power Interchange Service provided by Minnesota Power to other members of the Mid-Continent Area Power Pool (MAPP), originally filed in this docket on

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May 10, 1991. The correction changes the rate schedule designation of the MAPP Agreement, and includes as an attachment Minnesota Power's Order 84 adder which had been referenced in the rate schedule.

Minnesota Power requests waiver of the Commission's notice requirements and an effective date of May 1, 1991.

Copies of the filing have been served on MAPP, other members of MAPP, and on the state utility commissions in the MAPP region.

Comment date: July 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Cleveland Electric Illuminating Company

[Docket No. ER90-586-001]

June 20, 1991.

Take notice that on June 4, 1991, Cleveland Electric Illuminating Company tendered for filing its compliance filing in this docket pursuant to the Commission's order issued May 2, 1991.

Comment date: July 5, 1991, in accordance with Standard Paragraph E at end of this notice.

5. Southern California Edison Company

[Docket No. ER91-492-000]

June 20, 1991.

Take notice that on June 17, 1991, Southern California Edison Company (Edison) tendered for filing supplemental agreements to Edison Rate Schedules 247, 248, and 249:

Supplemental Agreement Between Southern California Edison Company and the City of Azusa for the Integration of the Idaho Power Sales Agreement (Azusa Agreement)
Supplemental Agreement Between Southern California Edison Company and the City of Banning for the Integration of the Idaho Power Sales Agreement (Banning Agreement)
Supplemental Agreement Between Southern California Edison Company and the City of Colton for the Integration of the Idaho Power Sales Agreement (Colton Agreement)

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Northwestern Public Service Company

[Docket No. ES91-40-000]

June 20, 1991.

Take notice that on June 17, 1991, Northwestern Public Service Company filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to issue not more than $25 million of short-term debt securities on or before August 1, 1993, with a final maturity date no later than August 1, 1994.

Comment date: July 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Power & Light Company

[Docket No. ES91-466-000]

June 21, 1991.

Take notice that Pennsylvania Power & Light Company (PP&L) on May 31, 1991, tendered for filing a Supplement ("Third Supplemental Agreement") ("Agreement"), dated January 28, 1988, as supplemented by a First Supplemental Agreement dated August 10, 1988, and further supplemented by a Second Supplemental Agreement dated May 31, 1989, between PP&L and Baltimore Gas and Electric Company (BG&E), which is on file with the Commission as PP&L's Rate Schedule FERC No. 92. The Third Supplemental Agreement provides for an increase in the Installed Capacity Rate contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement, which was accepted for filing by the Commission on May 10, 1991 in Docket No. ER91-339-000, and which will become effective on June 1, 1991.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and Section 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1991.

PP&L states that a copy of its filing was served on Baltimore Gas and Electric Company, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: July 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Lake Cogen, Ltd.

[Docket No. QF91-170-000]

June 21, 1991.

On June 13, 1991, Lake Cogen, Ltd. of 215 East Madison Street, P.O. Box 2562, Tampa, Florida 33601-2562, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located adjacent to the Golden Gem Growers, Inc. plant in Umatilla, Florida. The facility will consist of two combustion turbine generators, two supplementary fired boilers heat recovery boilers and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility, in the form of steam, will be used for citrus concentrate processing purposes. The net electric power production capacity of the facility will be 102 MW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in the last quarter of 1991.

Comment date: July 29, 1991 in accordance with Standard Paragraph E at the end of this notice.

9. United States Department of Energy—Southeastern Power Administration

[Docket No. EF90-3011-001]

June 21, 1991.

Take notice that on May 31, 1991, the Deputy Secretary of Energy filed on behalf of the Southeastern Power Administration of the United States Department of Energy new Rate Schedule GAMF-3-A to recover unanticipated costs of purchasing pumping energy at the Carters Project. The Deputy Secretary, by order of May 24, 1991, approved the new rate schedule on an interim basis.

Comment date: July 8, 1991 in accordance with Standard Paragraph E at the end of this notice.

10. Pasco Cogen, Ltd.

[Docket No. QF91-169-000]

June 21, 1991.

On June 13, 1991, Pasco Cogen, Ltd. of 215 East Madison Street, P.O. Box 2562, Tampa, Florida 33601, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration will be located adjacent to the Lykes Pasco plant located in Dade City, Florida. The facility will consist of two combustion turbine generators, two supplementary fired heat recovery boilers, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility, in the form of steam, will be used for citrus concentrate processing purposes. The net electric power production capacity of the facility will be 102 MW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in the last quarter of 1991.

Comment date: July 29, 1991, in accordance with Standard Paragrah E at the end of this notice.

11. York County Solid Waste and Refuse Authority

[Docket No. QF86-920-002]

June 21, 1991.

On June 13, 1991, York County Solid Waste and Refuse Authority of 2653 Blackbridge Road, York, Pennsylvania 17402 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The Small Power Production Facility is located in Manchester Township, York County, Pennsylvania. The facility consist of three (3) boilers and a fully-condensing steam turbine generator set. The primary energy source is biomass in the form of municipal solid waste.

The original certification was issued on November 3, 1986 (37 FERC 62,100 (1986)). The instant recertification is requested due to an increase in capacity form 34.7 MW to 37 MW.

Comment date: July 29, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests shoud be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15394 Filed 6-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2298-000, et al.]

ANR Pipeline Company, et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP91-2298-000]

June 20, 1991.

Take notice that on June 18, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, MI 48243, filed in Docket No. CP91-2298-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Enron Gas Marketing, Inc., a marketer, under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that, pursuant to an agreement dated June 7, 1990, under its Rate Schedule ITS, it proposes to transport up to 100,000 dt per day equivalent of natural gas. ANR indicates that it would transport 100,000 dt equivalent on an average day and 36,500,000 dt equivalent annually. ANR further indicates that the gas would be transported from Louisiana, Oklahoma, Kansas, Texas, Wisconsin, Offshore Louisiana, and Offshore Texas, and would be redelivered in Michigan, Wisconsin, Indiana, Ohio, Illinois, Louisiana, Kansas, and Kentucky.

ANR advises that service under § 284.223(a) commenced April 24, 1991, as reported in Docket No. ST91-8764.

Comment date: August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company

[Docket Nos. CP91-2301-000, CP91-2302-000, CP91-2303-000, CP91-2304-000, CP91-2305-000, CP91-2306-000]

Take notice that on June 18, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86-586,000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Trunkline and is summarized in the attached appendix.

Comment date: August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2301-000 (6-18-91)	Freeport-McMoran Oil & Gas Company (Marketer).	3,000 3,000 1,095,000	OLA	LA	6-8-90, PT, Interruptible.	ST91-8752-000, 5-1-91.
CP91-2302-000 (6-18-91)	Unifield Natural Gas Group (Marketer).	100,000 6,000 2,050,00	OLA, OTX, IL, LA, TN, TX.	IL	9-11-89, PT, Interruptible.	ST91-8760-000, 5-1-91.
CP91-2303-000 (6-18-91)	Tejas Power Corporation (Marketer).	100,000 50,000 18,250,000	OLA, OTX, IL, LA, TN, TX.	IL	9-7-89, PT, Interruptible.	ST91-8750-000, 5-1-91.
CP91-2304-000 (6-18-91)	Hadson Gas Systems, Inc, (Marketer).	100,000 100,000 36,500,00	OLA, OTX, LA, IL, TN, TX.	IL	12-17-90, PT, Interruptible.	ST91-8751-000, 5-1-91.
CP91-2305-000 (6-18-91)	Shell Gas Trading Company (Marketer).	100,000 100,000 36,500,000	OLA, OTX, LA, IL, IN, TN, TX.	OH	2-21-91, PT, Interruptible.	ST91-8755-000, 5-1-91.

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Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2306-000 (6-18-91)	V.H.C. Gas Systems, L.P. (Marketer).	200,000 200,000 73,000,000	OLA, OTX, LA, IL, TN, TX.	IL	2-14-90, PT, Interruptible.	ST91-8753-000, 5-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

3. East Tennessee Natural Gas Company

[Docket No. CP91-2284-000]

June 20, 1991.

Take notice that on June 14, 1991, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 12045, Knoxville, Tennessee 37919, filed a petition for declaratory order in Docket No. CP91-2284-000 requesting the removal of an uncertainty as to the meaning of the "on behalf of" standard under Section 311 of the Natural Gas Policy Act of 1978 (NGPA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

East Tennessee, requests the Commission to clarify whether East Tennessee, consistent with the interim rule in Docket No. RM90-14-000, as a downstream transporter can transport gas under section 311 "on behalf of" upstream intrastate pipelines which are not connected to East Tennessee's system for delivery to end-users served directly off East Tennessee system. East Tennessee seeks a declaration as to whether the lack of a direct interconnection between itself and the intrastate pipelines breaks a nexus which may be required by the interim rule in order for an interstate pipeline to transport gas under section 311 on behalf of the intrastate pipeline. East Tennessee notes that although the marketing of gas to specific end-users in downstream markets is beyond the typical function of upstream intrastate pipelines, East Tennessee also seeks a declaration as to whether it is authorized by the interim rule to transport gas under subpart B of part 284 of the Commission's Regulations for this type of marketing activity.

Comment date: July 11, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Western Gas Interstate Company

[Docket Nos. CP91-2274-000, CP91-2275-000, CP91-2276-000]

June 20, 1991.

Take notice that Western Gas Interstate Company, 9130 Jollyville Road, Suite 150, Austin, Texas 78759-7273, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP88-179-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2274-000 (6-14-91)	Gas Company of New Mexico (LDC).	444 132 48,000	various	NM	2-28-91, FT-S, Firm.	ST91-7924, 3-1-91.
CP91-2275-000 (6-14-91)	Mowfort, Inc. (End-User)	3,000 1,500 547,000	various	TX	3-27-91, IT-N, Interruptible.	ST91-8334, 4-1-91.
CP91-2276-000 (6-14-91)	Mercado Gas Services (Marketer).	10,000 2,000 730,000	various	TX, OK	2-28-91, IT-N, Interruptible.	ST91-8333, 3-23-91.

5. Transwestern Pipeline Company

[Docket Nos. CP91-2286-000, CP91-2287-000]

June 20, 1991.

Take notice that Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-133-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2286-000 (6-17-91)	Sunrise Energy Company (Marketer).	30,000 22,500 10,950,000	AZ, NM, OK, TX	OK	5-16-91, IT-1, Interruptible.	ST91-8940, 5-17-91.
CP91-2287-000 (6-17-91)	Enron Gas Marketing, Inc. (Marketer).	100,000 75,000 36,500,000	AZ, NM, OK, TX	OK, TX, NM	5-31-90, IT-1, Interruptible.	ST91-8941, 5-22-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

6. Florida Gas Transmission Company

[Docket No. CP91-2299-000]

June 20, 1991.

Take notice that on June 18, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP90-2299-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add an existing delivery point to its firm transportation service for Florida Power & Light Company (FPL), under FGT's blanket certificate issued in Docket Nos. RP89-50 *et al.*, all as more fully described in the request which is open to public inspection.

FGT proposes to add the new Martin North delivery point in Martin County, Florida, to its existing firm transportation service for FPL under FGT's FERC Rate Schedule FTS-1. FGT states that natural gas deliveries at the Martin North delivery point would be within the currently authorized maximum annual and daily transportation quantities. FGT also states that the Commission order issued May 21, 1991, in Docket No. RP91-133-000 granted it a limited waiver of the Commission's first-come, first-served policy and FGT's tariff, as necessary, to permit FPL to retain its existing place in FGT's first-come, first-served firm service queue while adding the Martin North delivery point to the firm transportation service agreement.

Comment date: August 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP91-2277-000]

June 21, 1991.

Take notice that on June 14, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP91-2277-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and conversion of abandoned field production or exploratory wells to storage field wells, and the construction and operation of related minor facilities in AER's ADA, Chiles Dome and Ruston Storage Fields in Pontotoc, Coal and Hughes Counties, Oklahoma, and in Lincoln Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER requests authorization to acquire, over a ten-year period, up to 20 production or exploratory wells which have been, are being, or may be drilled by others within the existing boundaries of AER's Ada, Chiles Dome and Ruston Storage Field, to convert and operate any wells so acquired as observation or injection/withdrawal wells; to drill, complete and operate one additional injection/withdrawal well within the existing geographic boundaries and through the gas storage zone of AER's Ruston Storage Field; and to construct and operate, as necessary, related facilities to connect such wells to the existing storage field gathering systems in the Ada, Chiles Dome and Ruston Fields.

AER states that the geographic area in which the Ada, Chiles Dome, and Ruston Storage Fields are located has received renewed interest in terms of exploration and development of new natural gas reserves. It is stated that as a result, producers have drilled and are continuing to drill wells which penetrate the underground storage formations in efforts to tap deeper formations for the production of commercially producible quantities of natural gas. It is further stated that such wells can be abandoned at any time, either because they are dry holes or the available reserves become depleted. AER states that the conversion of some of these wells to injection/withdrawal or observation well status would be useful in conducting storage field operations or to monitor the integrity of AER's storage fields. AER states that an abandoned well which penetrates AER's storage reservoir and which is improperly completed could permit substantial migration and loss of stored gas, thereby increasing costs and AER's ability to serve its customers on peak days could be threatened. AER maintains that only by acquiring abandoned wells can AER insure that its stored gas will be protected against such losses.

AER states that the requested authorization would permit it to acquire such wells as it may determine would be useful in conducting its storage operation at the time the wells are abandoned by producers. AER states that while the costs related to acquisition, conversion and attachment to its existing field gathering system of specific wells cannot be known at this time, total costs to be incurred will not exceed $8,000,000. AER also states that it will not acquire more than 20 wells in total pursuant to the requested authorization. AER further states that it will file with the Commission annual reports similar to those described in § 157.215(b)(1) of the Commission's Regulations regarding underground storage testing and development.

In addition, AER requested authorization to drill, complete and operate a new injection/withdrawal well located at the Ruston Storage facility in Lincoln Parish, Louisiana, to increase the overall operating efficiency of the Ruston Storage Field by providing increased deliverability. AER estimates the cost of the new well and related facilities to be $675,000, which will be financed from available funds and/or short-term borrowings.

Comment date: July 12, 1991, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will

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not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15395 Filed 6-27-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-12-NG]

Mobil Natural Gas Inc.; Blanket Authorization to Export Natural Gas

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Mobil Natural Gas Inc. blanket authorization to export up to a total of 100 Bef of natural gas over a two-year period beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hour of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 21, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-15490 Filed 6-27-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of May 31 Through June 7, 1991

During the Week of May 31 through June 7, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 21, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 31 through June 7, 1991]

Date	Name and location of applicant	Case No.	Type of submission
5/31/91	Texaco/Paul's Texaco, Columbus, OH	RR321-67	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 9/20/90 Decision and Order (Case No. RF321-3164 & RF321-4488) issued to Paul's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
6/3/91	John M. Seehuus, Oak Ridge, TN	LFA-0129	Appeal of an Information Request Denial. If granted: The 5/24/91 Freedom of Information Request Denial issued by the Office of Placement and Administration would be rescinded, and John M. Seehuus would receive access to a copy of organizational conflict of interest letters for all subcontractors participating in contract number DE-OC01-90NE500429.
5/31/91	Texaco/Surfside Texaco, Palm Beach, FL	RR321-66	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 8/15/90 Decision and Order (Case No. RF321-4495 & RF321-8213) issued to Surfside Texaco would be modified regarding the firms's application for refund submitted in the Texaco refund proceeding.
6/3/91	Gulf/Conner's Gulf Station, Rutledge, GA	RR300-90	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The 2/15/89 Decision and Order (Case No. RF300-3031) issued to Conner's Gulf Station would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 31 through June 7, 1991]

Date	Name and location of applicant	Case No.	Type of submission
6/3/91	Texaco/Bendel's Texaco, Cape Coral, FL	RR321-68	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 8/22/90 Decision and Order (Case No. RF321-3303 & RF321-8175) issued to Bendel's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
6/3/91	Texaco/Hiway Texaco, Wahpeton, ND	RR321-69	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 9/12/90 Decision and Order (Case No. RF321-1539 & RF321-8451) issued to Hiway Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
6/4/91	Texaco/Bill's Texaco, Daytona Beach, FL	RR321-70	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 8/10/90 Decision and Order (Case No. RF4267 & RF321-8043) issued to Bill's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
6/7/91	James L. Schwab, Spokane, WA	LFA-0130	Appeal of an Information Request Denial. If granted: The 5/24/91 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinced, and James L. Schwab would receive access to all records between E. Wayne Adams and Carol Roesomondo regarding alleged whistleblower at the Tonopah Test Range.
6/7/91	Starks Shell Service, Washington, DC	LEF-0034	Implementation of Special Refund Procedures. If granted: The Office of Hearings & Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, for money obtained through a Consent Order entered into with Starks Shell Service.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
5/31/91 thru 6/7/91	Texaco refund applications received.	RF321-15526 thru RF 321-15711
5/31/91 thru 6/7/91	Crude Oil applications received.	RF272-89378 thru RF272-89390
5/31/91 thru 6/7/91	Tesoro Petroleum Corporation applications received.	RF326-292 thru RF 326-308
6/3/91	South Prairie Construction Co.	RF300-16948
6/3/91	William's Gulf	RF300-16949
6/3/91	Mrs. Montess Robinson.	RF300-16950
6/3/91	Danby's Service Stations.	RF300-16951
6/3/91	John E. Pizzino	RF300-16952
6/3/91	System Fuels Inc	RF322-7
6/3/91	Sinclair Marketing Inc.	RF322-8
6/3/91	Arkwright Finishing.	RF336-8
6/3/91	Davis Mills Bldg.	RF336-9
6/3/91	Southern Hgts Christian Church.	RF335-15
6/3/91	Robert D. Houk	RF335-16
6/3/91	Ronald B. Lewis	RF335-17
6/3/91	Union Rock/Materials Co.	RF304-12301
6/3/91	Bride Co	RF338-1
6/4/91	Texaco Refining & Mkt.	RF338-2
6/4/91	Marathon Oil Co	RF322-9

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
6/4/91	Feather Petroleum Co.	RF330-29
6/4/91	Sid Hardwick	RF304-12302
6/5/91	Miller's Arco	RF304-12303
6/5/91	Crystal Oil Co	RF322-10
6/5/91	Reed & Barton	RF336-10
6/6/91	Tucker's Service Center.	RF300-16953
6/6/91	Essex Chemical Corp.	RF336-11
6/7/91	Max S. Phillips	RF335-18
6/7/91	Mary A. Ables	RF335-19
6/7/91	The Kiesel Co	RF300-16954
6/7/91	Tuckers Gulf Service Station.	RF300-16955

[FR Doc. 91-15492 Filed 6-27-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of April 29 Through May 3, 1991

During the week of April 29 through May 3, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

IGR Enterprises, Inc., 5/2/91, LFA-0109

IGR Enterprises, Inc. (IGR) filed an Appeal from a partial denial by the Authorizing Official of the DOE's Pittsburgh Energy Technology Center of a request for documents under the Freedom of Information Act (FOIA). The Authorizing Official had withheld certain portions of a technical proposal submitted by the Helipump Corporation in response to a program research and development announcement for Solid State Electrochemical Flue Gas Cleanup, PRDA RA22-90PC8902. The Authorizing Official justified the withholding on the ground that Helipump deemed the information to be privileged or confidential and, therefore, exempt from disclosure under Exemption b(4) of the FOIA. In considering the Appeal, the DOE found that the Authorizing Official had not adequately justified withholding the information. Therefore, the DOE remanded the matter so that the Authorizing Official could formulate an adequate determination.

Refund Applications

Atlantic Richfield Company/Domex, Inc., 4/30/91, RF304-3420, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by Domex, Inc. (Domex) in the Atlantic Richfield Company special refund proceeding. The DOE had

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previously granted refunds in three other Applications for Refund filed by Domex. All eleven applications were considered as a unit for purposes of calculating the correct presumption of injury and refund amount. As a result, Domex qualified for the 41% mid-level presumption of injury. Since the refunds previously granted were based on the full volumes claimed, the DOE reduced the volume for each of the eight remaining applications proportionately. The refunds granted in this decision totalled $3,042, including $952 in accrued interest.

Drummond Co., Inc., 4/30/91, RF272–22373, RD272–22373

The DOE issued a Decision and Order granting the Subpart V crude oil refund application of Drummond Co., Inc., based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a coal mining company, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of state governments and territories of the United States (the States) objected to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found that the States failed to submit any direct evidence to indicate that the applicant passed on increased fuel costs to its customers. The DOE also determined that absorption oil, a product claimed by Drummond but not previously considered in the crude oil refund proceeding, was eligible for a refund. Accordingly, the DOE granted Drummond a refund of $50,131. The DOE also denied the Motion for Discovery filed by the States in this case, for reasons discussed in earlier Subpart V crude oil Decisions, *See, e.g., Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Koppers Company, Inc., 5/1/91 RF272–10162, RD272–10162

The DOE issued a Decision and Order granting the Subpart V crude oil refund application of Koppers Company, Inc., based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a diversified company, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of state governments and territories of the United States (the States) objected to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found that the States failed to submit any direct evidence to indicate that the applicant passed on increased fuel costs to its customers. The DOE also determined that slurry oil, pentane, and ortho-xylene, products claimed by Koppers which had not previously been considered in the crude oil refund proceeding, were eligible for refunds. Another product, isobutylene, was found to be ineligible for refund. Accordingly, the DOE granted Koppers a refund of $1,149,086. The DOE also denied the Motion for Discovery filed by the States in this case, for reasons discussed in earlier Subpart V crude oil Decisions. *See, e.g., Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Ligon Specialized Hauler, Inc., 4/30/91, RF272–75150, RF272–75150

The DOE issued a Decision and Order denying an Application for Refund filed by Ligon Specialized Hauler, Inc. (LSH), in the Subpart V crude oil special refund proceeding. The DOE's denial was based on the fact that an LSH affiliate had applied for and had been granted a refund from the Surface Transporters Escrow and had, thereby, waived LSH's right to a refund in the crude oil proceeding. The DOE also dismissed as moot a Motion for Discovery filed by a consortium of States and two Territories of the United States.

Murphy Oil Corporation/James N. Rogers, 5/2/90, RF309–854

The DOE issued a Decision and Order denying an Application for Refund filed in the Murphy Oil Corporation (Murphy) special refund proceeding. The applicant based his purchase volume estimate solely on his memory. The applicant was not able to substantiate this estimate with his own records nor those of his petroleum supplier or Murphy. Accordingly, his application was denied.

Shell Oil Company/Cesare's Shell, 5/3/91, RF315–10137

The DOE issued a Supplemental Order rescinding the $1,255 refund granted to Cesare's Shell in a January 29, 1991 Decision and Order, *Shell Oil Co./Veterans Petroleum Service, Inc., et al.*, Case Nos. RF315–1102 *et al.* The refund was rescinded after the Decision and refund check were returned to the DOE which, after detailed searching, could not locate a proper address or telephone number for Cesare's Shell or its contact person, Hollie Cesare.

State of Delaware, 05/02/91, RF272–65433

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to the State of Delaware based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The State applied on behalf of all of its state agencies, public schools and for Delaware College and Delaware Technical College. The DOE rejected objections that were filed by Philip P. Kalodner, counsel for utilities, transporters and manufacturers. Delaware was granted a refund of $141,807.

Texaco Inc./Laurie Meadows Texaco, 4/30/91. RF321–14951

The DOE issued a Decision and Order in which it required the recipient of a previously granted refund to remit a portion of that refund. In a July 30, 1990 Decision and Order in the Texaco Inc. refund proceeding, the DOE granted a refund to Laurie Meadows Texaco, a retailer of Texaco products. That refund was based upon the applicant's claim that he operated the retail outlet from June 1975 to February 1980, and the volume of purchases at that location between those dates. Subsequently, another applicant filed an application for a refund for the same retail location for the period ending September 1978. The second applicant submitted documentary evidence to support its claim. In addition, the owner of Laurie Meadows Texaco has now stated that the dates that he gave in his application were incorrect. Accordingly, the DOE found that he should repay, with interest, that portion of the refund attributable to purchases made through September 1978 and after December 1978.

Texaco Inc./Stone & Cooper Fuel Co., 5/3/91, RF321–60372

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding by William T. Johnson based on purchases made by Stone & Cooper Fuel Co. (S&C), a reseller of Texaco residual fuel oil during the consent order period. In his application, Mr. Johnson indicated that from 1952 until 1984 he was S&C's sole owner and shareholder. On July 31, 1984, S&C was sold by Mr. Johnson through a complete stock transfer. Although DOE generally finds that the seller of a corporation's stock relinquishes all rights to oil overcharge refunds, in this case, the DOE concluded that a certain clause in the sales agreement between Mr. Johnson and the subsequent owners allowed Mr. Johnson to retain the right to receive any refund awarded to S&C in this proceeding. Accordingly, Mr. Johnson's application was approved, and he was granted a refund of $642, representing $520 in principal and $122 in interest.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Frank's Tire & Arco Service et al	RF304–2493	04/29/91
Atlantic Richfield Co./General Motors Corporation et al	RF304–4334	05/01/91
Atlantic Richfield Co./Johnny's Arco et al	RF304–6349	04/30/91
Atlantic Richfield Co./Propane Power Corp./Modern Gas Service Corp. G.R.B., Inc	RF304–4933	04/30/91
	RF304–4976	
Commercial Carriers, Inc	RF272–73133	05/03/91
M&G Convoy, Inc	RF272–73134	
Fleet Carrier Corp	RF272–73135	
Convoy Company	RF272–73137	
Dow Chemical Co. (Midland, Michigan)	RF272–67009	05/03/91
Dow Chemical Co. (Midland, Michigan)	RD272–67009	
Dow Chemical Co. (Houston, Texas)	RF272–69068	
Farmland Co-Op, Inc. et al	RF272–67794	05/01/91
Fort Pierce Utilities Authority	RF272–13182	05/01/91
Gulf Oil Corp./Angelles Gulf Service et al	RF300–11253	04/29/91
Gulf Oil Corp./Gottier Fuel Co., Inc., et al	RF300–12033	04/29/91
Gulf Oil Corp./Perhot's Gulf et al	RF300–11709	04/29/91
Gulf Oil Corp./Schaub Oil	RF300–5922	05/01/91
Leggett and Platt, Inc	RF272–360	04/30/91
Leggett and Platt, Inc	RD272–360	
Lehman-Roberts Company, Inc	RF272–11977	05/02/91
Lehman-Roberts Company, Inc	RD272–11977	
Metropolitan Dade County	RF272–72574	05/01/91
Opelika City School District et al	RF272–78808	05/03/91
Puerto Rico Marine Management, Inc	RF272–44657	05/01/91
Puerto Rico Marine Management, Inc	RD272–44657	
Ray Moore, Inc. et al	RF272–65836	05/03/91
Rosenbalm Aviation, Inc. et al	RF272–72217	05/03/91
S.D. Warren Company	RF272–24861	05/02/91
S.D. Warren Company	RD272–24861	
Scott Paper Company	RF272–64408	
Scott Paper Company	RD272–64408	
Shell Oil Company/Schust & Staeche Auto Service, Inc. et al	RF315–1069	05/01/91
State of Kansas	RF272–49898	05/01/91
Texaco Inc./Carolyn Park Texaco et al	RF321–6910	05/02/91
Texaco Inc./Continental Oil Co., Inc	RF321–6077	05/03/91
Texaco Inc./Dan's Mason Supply & Fuel Co., Inc. et al	RF321–6515	05/02/91
Texaco Inc./Doug's Texaco	RF321–8462	04/29/91
Doug's Tire Center	RF321–14568	
Texaco Inc./Ed Welborn Texaco et al	RF321–5548	04/30/91
Texaco Inc./Johnson & Son Texaco Service et al	RF321–3141	05/03/91
Texaco Inc./Leo E. Lee et al	RF321–1047	05/02/91
Wells Fargo Armored Service Corp	RF272–48244	05/01/91
Wells Fargo Armored Service Corp	RD272–49244	

Dismissals

The following submissions were dismissed:

Name	Case No.
ACME Gas & Oil	RF304–5928
Art's Texaco	RF321–3322
Bill's Texaco	RF321–3160
Blodgett Brothers Texaco	RF321–8226
Bob's Arco	RF304–7290
Booth's Texaco	RF321–3568
Broaddus Enterprises	RF300–12497
Capitol Texaco	RF321–7170
Cecil's Texaco	RF321–957
Charles R. Brown, Inc	RF321–5952
Chuck's Arco	RF304–4565
Church's Texaco	RF321–3462
Clemmon's Texaco	RF321–9886
Crooke's Texaco	RF321–14331
Delgado Texaco	RF321–186
Denny's Texaco	RF321–190
E.G. Abbott LP Gas Co	RF321–7056
Ernie's Arco	RF304–7250
Frank's Texaco	RF321–3330
Frank's Texaco	RF321–8623
Griffin Butan Co	RF304–7025
Hebo Texaco	RF321–359
Ike's Texaco Service	RF321–9738
Jeff's Texaco	RF321–1093
Jones Oil Company	RF304–4315
King Currie Co., Inc	RF238–85
Lee's Texaco & Firestone	RF321–604
Lemmon Valley Arco	RF304–7141
Leon's Country Store	RF300–15973
Leroy's Texaco	RF321–614
Lewis & Clark County	RF272–43335
Lewis Texaco of Bakersfield	RF321–620
M&M Texaco	RF321–639
Mack's Gulf	RF300–12459
Manchester Auto Wash	RF304–7080
Marino's Arco Service	RF304–6847
Mizell Gulf	RF300–15812
Mona View Service	RF321–3158
Morris Arco Company	RF304–6471
Necanicum Truck Stop	RF321–400
Noda's Texaco Service	RF321–8003
Norby's Texaco	RF321–416
Rod's Texaco	RF321–3372
Rodriquez Texaco	RF321–3677
Rooney's Texaco	RF321–6146
S.C. Johnson & Son, Inc	RF272–70906
Salt Creek Country Store	RF321–468
Salt Creek Grocery	RF321–469
Schleif Service, Inc	RF304–7048

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Name	Case No.
Scott Street Texaco	RF321-479
Shankles Texaco	RF321-485
South Wall Texaco	RF321-521
St. Louis Fuel & Supply, Inc	RF321-12522
Super Value, Inc	RF304-5000
Swift & Company	RF304-7051
Texaco on NW 50th Street	RF321-6045
Trull Pinson	RF321-4606
Unico, Inc	RF315-0979
Viator's Texaco Station	RF321-2887
Vic's Donato Texaco	RF321-3308
West Avenue Texaco	RF321-1493
Woodcock's Texaco	RF321-1291

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 21, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-15493 Filed 6-27-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3969-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 10, 1991 Through June 14, 1991, pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-BLM-K67012-CA Rating EC2, Hayden Hill Open Pit Heap Leach Gold and Silver Mine Project, Construction and Operation, Mining Plan of Operations, Ancillary Right-of-Ways and Well Permits Approval, Lassen County, CA.

Summary

EPA expressed environmental concerns regarding potential impacts to water quality and wetlands. EPA requested more information in the final EIS on existing air and water quality and wetland conditions, mitigation of water quality impacts, wetland and post-closure maintenance and monitoring procedures.

ERP No. D-COE-K36100-CA Rating 3, American River Watershed Flood Plain Protection Project, Construction, Operation and Maintenance, Implementation, Sacramento, Placer and Sutter Counties, CA.

Summary

EPA feels this document has inadequate information to fully evaluate potential environmental impacts; the Corps should revise and reissue the draft EIS. The draft EIS does not sufficiently assess the impacts of flood protection alternatives nor measures to minimize impacts to waters of the United States fisheries and wildlife. The draft EIS should address the combined impacts of temporary and permanent flood protection alternatives to determine the least pay environmentally damaging flood protection system. EPA seeks assurances that major operational changes, including conversion from a dry dam to a multipurpose dam be implemented only after Congressional approval and public review on an EIS addressing such changes.

ERP No. D-FHW-F40316-MN Rating EO2, MN-TH 14 Improvements, North Mankato-Mankato Bypass and County Road 193 to Smiths Mill, Funding and Section 404 Permit, City of Mankato, Blue Earth County, MN.

Summary

EPA expressed environmental objections based on impacts to the high quality wetlands and upland hardwoods associated with Alternatives B1 and B2, and recommended the preparation of a conceptual plan of mitigation for wetland impacts.

ERP No. D-UAF-F11019-IL Rating EC2, Scott Air Force Base Joint Military-Civilian Use, Civil Runway and Associated Airport Facilities Construction, Plan Approval, St. Clair County, IL.

Summary

EPA's concerns will be addressed when the additional information on feasible mitigation for significant noise impacts, wetlands impacts, and wetlands compensation are submitted.

Final EISs

ERP No. F-FAA-L51013-WA Bellingham International Airport Runway Extension, Construction and Operation, Airport Layout Plan, Approval and Funding, Whatcom County, WA.

Summary

EPA expressed concerns with wetland impact and requested additional information on the avoidance and minimization of impacts to wetlands through the alternatives analysis.

ERP No. F-FHW-F40298-OH OH-297/ Whipple Avenue Improvement, US-30 Interchange at Raff Road/Whipple Avenue/OH-297 to I-77 Interchange at Everhard Road, Funding, Stark County, OH.

Summary

EPA has no objections to the project as presently described.

ERP No. F-FHW-J40066-ND Washington Street Corridor Improvements, Century Avenue to Bismarck Avenue, Funding, Bismarck, Burleigh County, ND.

Summary

Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

ERP No. F-USN-L11012-WA Naval Station Puget Sound (NSPS) Sand Point Realignment to NSPS Everett, Implementation, City of Seattle, WA.

Summary

EPA feels this document has adequately addressed the identified adverse environmental consequence of Carbon Dioxide (CO) emission violations of State Implementation Plans (SIP) standards at identified intersections under the preferred alternative 2. Additionally, the final proposes an acceptable mitigation procedure to bring the project into compliance with SIP standards.

ERP No. FA-COE-L34003-OR Elk Creek Lake Project, Construction and Operation Implementation, Updated and Additional Information, Jackson County, OR.

Summary

EPA continues to have environmental concerns about the flood control "only/ no pool" preferred alternative. The outstanding issue is the effect of dam completion on Elk Creek and Rogue River fisheries. New information indicates that many of the stocks of anadromous fish in the Rogue River and Elk Creek are depleted and are at risk of further decline. The final EIS proposes hatchery mitigation; however, recent studies indicate that hatchery fish can contribute to the decline of native stocks.

Dated: June 25, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-15499 Filed 6-27-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3968-6]

Environmental Impact Statements

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed June 17, 1991 Through June 21, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910204, Final EIS, AFS, ID West Moyie Decision Area Timber Sale and Road Construction, Implementation, Idaho Panhandle National Forest, Bonners Ferry Ranger District, Boundary County, ID, Due: July 29, 1991, Contact: Mark A. Grant (208) 267-5561.

EIS No. 910205, Final EIS, COE, AR, Montgomery Point Lock and Dam Construction, McClellan-Kerr Arkansas River Navigation System, Implementation, Desha County, AR, Due: July 29, 1991, Contact: Bill Mathis (501) 324-5033.

EIS No. 910206, Draft EIS, SCS, NY, Beaver Brook Watershed Flood Control Plan, Funding and Implementation, Herkimer County, NY, Due: August 21, 1991, Contact: Paul A. Dodd (315) 423-5521.

EIS No. 910207, Draft EIS, AFS, AK, Kelp Bay Timber Harvest Project, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Baranof Islands, AK, Due: August 27, 1991, Contact: Janis S. Burns Buyarski (906) 747-4200.

EIS No. 910208, Final EIS, FHW, MI, Haggerty Road Connector Construction, I-96/I-696/ I-275 Interchange to Pontiac Trail, Funding and 404 Permit, Oakland County, MI, Due: July 29, 1991, Contact: Thomas A. Fort, Jr. (517) 377-1879.

EIS No. 910209, Final EIS, FHW, WI, US 18/151 Improvement, CTH-G to CTH-PD, City of Verona, Dane County, WI, Due: July 29, 1991, Contact: James L. Wenning (608) 264-5966.

EIS No. 910210, Final EIS, FHW, TN, TN-56 (Austin Peay) Bridge Approaches Replacement, Cumberland River, Funding, U.S. CGD Bridge Permit and Possible COE Section 404 Permit, Jackson County, TN, Due: July 29, 1991, Contact: Dennis C. Cook (615) 736-5394.

EIS No. 910211, Final EIS, AFS, MT, Lost Silver Timber Harvest Project, Timber Sale and Road Construction, Implementation, Flathead National Forest, Horse Ranger District, Flathead County, MT, Due: August 12, 1991, Contact: Allen Christopherson (406) 387-5243.

EIS No. 910212, Final EIS, AFS, CO, Elkhead Creek/Slater Creek Vegetation Management Plan, Implementation, Routt National Forest, Bears Ears Ranger District, Routt County, CO, Due: July 29, 1991, Contact: J. Christopher Comstock (303) 824-9438.

EIS No. 910213, Final EIS, AFS, AK, Shelter Cove and George Inlet Areas Timber Sale, Implementation, Tongass National Forest, Ketchikan Ranger District, AK, Due: July 29, 1991, Contact: Steven T. Segovia (907) 225-2148.

Amended Notices

EIS No. 910114, Regulatory Draft EIS, OSM, Revisions to the Permanent Program Regulations Implementing Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Addressing Valid Existing Rights (VER), Due: August 05, 1991, Contact: Andrew F. Devito (202) 343-5150.

Published FR 04-19-91—Review period extended.

Dated: June 25, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-15498 Filed 6-27-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3969-5]

Class II Underground Injection Control Program Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Advisory Committee meeting.

SUMMARY: The Class II Underground Injection Advisory Committee will meet on July 16 and 17 in Denver, Colorado.

DATES: On July 16, the meeting will begin at 11:30 a.m. and continue until completion. On July 17, the meeting will begin at 8 a.m. and end no later than 3 p.m.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel, 1881 Curtis Street, Denver, Colorado, Telephone: 303-297-8888, Toll-Free Number: 1-800-362-2779.

FOR FURTHER INFORMATION CONTACT: If you need further information on substantive issues, please contact Jeffrey Smith, EPA, Office of Water, at (202) 382-5566. If you need information on administrative matters, please contact Angela Suber, EPA, Regulatory Development Branch, at (202) 382-7205, or John Lingelbach, Committee Co-Chair, at (202) 887-1037.

Dated: June 25, 1991.

Charles Kirtz,

UIC Advisory Committee Designated Federal Official.

[FR Doc. 91-15473 Filed 6-27-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59300; FRL 3933-7]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 3 applications for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 91-21, 91-22, June 26, 1991.

T 91-23, June 30, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-59300)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW, Rm. L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received

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by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 91–21

Close of Review Period. July 12, 1991.
Manufacturer. Confidential.
Chemical. (G) Complex tall oil polyalkylene polyamide, alkali metal salt.
Use/Production. (G) Set accelerator for asphalt emulsions. Prod. range: Confidential.

T 91–22

Close of Review Period. July 12, 1991.
Manufacturer. Confidential.
Chemical. (G) Complex tall oil polyalkylene polyamide, alkali metal salt.
Use/Production. (G) Set accelerator for asphalt emulsions. Prod. range: Confidential.

T 91–23

Close of Review Period. July 14, 1991.
Manufacturer. Albright & Wilson American.
Chemical. (G) *Neutral phosphonate ester.*
Use/Production. (G) Redfactory patching additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 500 mg/kg species (rat). Acute dermal toxicity: LD50 > 1,000 mg/kg species (rabbit). Eye irritation: strong species (rabbit). Skin irritation: negligible species (rabbit).

Dated: June 24, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–15475 Filed 6–27–91 8:45 am]

BILLING CODE 6560–50–F

[FRL–3969–1]

Extension of the Period for Action on a Proposed Determination To Withdraw or Restrict the Specification of an Area for Use as a Disposal Site; Kuparuk River Unit, North Slope Borough, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an extension of the period for Regional action on a proposed section 404(c) determination.

SUMMARY: On May 14, 1991, EPA Region X published notice in the Federal Register of a Proposed Determination pursuant to section 404(c) of the Clean Water Act [33 U.S.C. 1344(c)). EPA Region X also retained a consultant to analyze the hydrologic characteristics of the site. The regulation at 40 CFR 231.5 stipulates that EPA Region X should prepare a finding on the Proposed Determination within fifteen days of the close of the public comment period (by June 28, 1991). However, in order to provide sufficient time to fully review the substantive information contained in the administrative record, submitted during the public comment period and prepared by its consultant, EPA Region X hereby extends that time period until August 13, 1991, as authorized by 40 CFR 231.8. This brief extension will not substantially delay a final EPA decision on this matter.

FOR FURTHER INFORMATION CONTACT: Robert S. Burd, Director, Water Division, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Dated: June 21, 1991.

Robert S. Burd,

Director, Water Division.

[FR Doc. 91–15474 Filed 6–27–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any charge in the substance or method of collection.

Title: Application for Consent to Exercise Trust Powers.

Form Number: 6200/09, 6200/09A.

OMB Number: 3064–0025.

Expiration Date of OMB Clearance: August 31, 1991.

Frequency of Response: On occasion.

Respondents: Insured State nonmember banks wishing to exercise trust powers.

Number of Respondents: 50.

Number of Responses per Respondent: 1.

Total Annual Responses: 50.

Average Number of Hours per Response: 15.69.

Total Annual Burden Hours: 785.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office Management and Budget, Paperwork Reduction Project (3064–0010), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before August 27, 1991.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Insured State nonmember banks must submit applications to the FDIC for consent to exercise trust powers. Applications are evaluated by the FDIC to verify the qualifications of bank management to administer a trust department, and to ensure that the bank's financial condition will not be jeopardized as a result of trust operations.

Dated: June 24, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–15429 Filed 6–27–91; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067–0180.

Title: Civil Rights Higher Education and Rehabilitation Act Survey.

Abstract: FEMA form 14–5, Civil Rights—Higher Education and Rehabilitation Act Survey, is required to annually evaluate each State emergency management agency's compliance with nondiscrimination regulations. The survey is administered by FEMA program personnel to State and territorial governments receiving Federal financial assistance from FEMA through the Comprehensive Cooperative Agreement. Areas covered in the survey include administrative procedure, training, construction, and planning. The results of the survey will be used to provide technical assistance to accomplish voluntary compliance and will be a basis for budgetary recommendations to the Director, FEMA.

Type of respondents: State and local governments.

Estimate of total annual reporting and recordkeeping burden: 138 hours.

Number of respondents: 55.

Estimated average burden hours per response: 1.5 hours to complete the survey, and 1 hour for recordkeeping burden.

Frequency of response: Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Office, Linda Borror (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: June 21, 1991.

Gail L. Kercheval,

Acting Director Office of Administrative Support.

[FR Doc. 91–15442 Filed 6–27–91; 8:45 am]

BILLING CODE 6718–01–M

Arkansas; Amendment to Notice of a Major Disaster Declaration

[FEMA–907–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–907–DR), dated May 30, 1991, and related determinations.

DATED: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Arkansas, dated May 30, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 30, 1991:

The counties of Fulton, Lafayette, Scott, and Van Buren for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–15440 Filed 6–27–91; 8:45 am]

BILLING CODE 6718–02–M

Mississippi; Amendment to Notice of a Major Disaster Declaration

[FEMA–906–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–906–DR), dated May 17, 1991, and related determinations.

DATED: June 15, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Mississippi dated May 17, 1991, is hereby amended to add Public Assistance and include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991:

The counties of Chickasaw, Hancock, and Oktibbeha for Individual Assistance and Public Assistance; and

The counties of Carroll, Clay, George, Grenada, Holmes, Issaquena, Marshall, Sharkey, Tate, Warren, Yalobusha, and Yazoo for Public Assistance (already designated for Individual Assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–15439 Filed 6–27–91; 8:45 am]

BILLING CODE 6718–02–M

Nebraska; Amendment to Notice of a Major Disaster Declaration

[FEMA–908–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska (FEMA–908–DR), dated May 28, 1991, and related determinations.

DATED: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Nebraska, dated May 28, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 28, 1991:

The counties of Colfax, Dodge, Madison, and Stanton for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–15441 Filed 6–27–91; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Extension of Deadline for Use of Certified or Licensed Appraisers in Federally Related Transactions

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice extending effective date For American Samoa ("AS") and the Commonwealth of the Northern Mariana Islands ("CNMI").

SUMMARY: Notice is hereby given that the Appraisal Subcommittee ["ASC"], with the approval of the Federal Financial Institutions Examination Council ["FFIEC"], ordered the extension until December 31, 1991, of the effective date for the use of certified or licensed appraisers for all appraisals performed in connection with federally related transactions under title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989

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["FIRREA"] [1] in AS and CNMI. This extension is now effective in 56 of the ASC's 57 jurisdictions.

DATES: This action is effective on June 28, 1991.

ADDRESSES: Copies of this notice are available upon request to the Appraisal Subcommittee, Federal Financial Institutions Examination Council, 1776 G Street, NW., suite 850B, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel to the Appraisal Subcommittee, at the address given above; telephone (202) 357–0133.

SUPPLEMENTARY INFORMATION: Title XI of FIRREA provides for the adoption and implementation by the various States of standards and procedures for the certification and licensing of appraisers. The ASC is required to monitor these State appraiser certification and licensing programs. Federally regulated depository institutions are to use these appraisers in federally related real estate transactions. However, the ASC is authorized in section 1119(a)(2) (12 U.S.C. 3346(a)(2)) to extend from July 1, 1991, to December 31, 1991, the effective date for using certified or licensed appraisers in connection with federally related transactions. That authority is premised upon "a written finding that a State has made substantial progress in establishing a State certification and licensing system that appears to conform to the provisions of this title."

Since enactment of FIRREA, the ASC has closely monitored the development of appraiser qualification standards in the various States and other jurisdictions subject to title XI. This effort has included the careful review of State legislative and regulatory proposals designed to implement title XI's requirements, as well as the providing of comments, suggestions, guidance and direction in this regard, both general and specific, oral and written. On May 1, 1991, the ASC found that each State, the District of Columbia, Puerto Rico, Guam and the Virgin Islands qualified for the December 31, 1991 extension. See 56 FR 20002 (May 1, 1991). AS, CNMI and Palau did not qualify for an extension at that time.

The ASC hereby finds that AS and CNMI have made substantial progress toward establishing an appraiser certification and licensing system in conformity with title XI. Statutes have been or are being enacted as required by title XI.[2] The ASC commends these jurisdictions and encourages each to implement its system before the end of the extension period. Moreover, the ASC encourages lenders to use appraisers certified or licensed by these systems as soon as possible.

The ASC further finds that such an extension facilitates Congress's intention to implement title XI's new regulatory scheme with minimal disruption and confusion at the state and Federal levels. The ASC recognizes that less than two years have passed since title XI was adopted on August 9, 1989, and while the States and other jurisdictions have made significant progress, they have had relatively little time to create from scratch an appraiser licensing and certification system. Many tasks are involved in that effort, including an analysis and determination of title XI's requirements, proposing and adopting legislation, creating valid testing and qualification standards, establishing agencies to administer the various aspects of the regulatory program, and coordinating these and other tasks with the ASC, other Federal agencies and entities, and various industry groups. By extending title XI's effective date for use of certified and licensed appraisers in federally related transactions until December 31, 1991, the ASC fully anticipates that, on January 1, 1992, all aspects of a nationwide, comprehensive and uniform real estate appraiser regulatory system will be in place, as contemplated by Congress when it adopted title XI.

For these reasons, the ASC, with the approval of the FFIEC, hereby extends to December 31, 1991, the deadline for use of certified or licensed appraisers in federally related transactions, pursuant to its authority in section 1119(a)(2) of FIRREA (12 U.S.C. 3348(a)(2)), in AS and CNMI.[3]

By order of the ASC, with the approval of the FFIEC.

Dated at Washington, DC this 24th day of June, 1991.

Fred D. Finke,

Chairman, Appraisal Subcommittee, Federal Financial Institutions Examination Council.

[FR Doc. 91-15308 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-M

[1] Public Law No. 101-73, 103 Stat. 811 (1989); 12 U.S.C. 3310, 3331-3351.

[2] The ASC requests that all States and other jurisdictions continue to facilitate the orderly implementation of the Title XI regulatory program by promptly forwarding to the ASC staff all pertinent proposed and enacted legislation and rules and regulations.

[3] The ASC still has not received any formal communications from Palau. Therefore, the ASC at this time has no basis to extend the effective date from July 1, 1991, for Palau.

FEDERAL RESERVE SYSTEM

Edgemark Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Edgemark Financial Corporation, Chicago, Illinois; to engage *de novo* through its subsidiary, Edgemark Mortgage Corporation, Downers Grove, Illinois, in originating, acquiring, selling and servicing residential mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-15408 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-F

Honor Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Honor Bancorp, Inc., Honor, Michigan; to acquire Honor Consultive Services, Inc., Lake Orion, Michigan, and thereby engage in providing management consulting services to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in the Midwest United States.

Board of Governors of the Federal Reserve System, June 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-15409 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-F

Saul Kaplan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 17, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Saul Kaplan, Scranton, Pennsylvania; to acquire 30.97 percent of the voting shares of Upper Valley Bancorp, Inc., Olyphant, Pennsylvania, and thereby indirectly acquire The National Bank of Olyphant, Olyphant, Pennsylvania.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Joseph M. Henry, Natchitoches, Louisiana; and Juanita B. Henry, Natchitoches, Louisiana; to each acquire 41.03 percent of the voting shares of Exchange Bancshares, Inc., Natchitoches, Louisiana, and thereby indirectly acquire Exchange Bank & Trust, Natchitoches, Louisiana.

Board of Governors of the Federal Reserve System, June 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-15410 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-F

Liberty National Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Liberty National Bancorp, Inc., Louisville, Kentucky; to engage *de novo* through its subsidiary, Liberty Investment Services, Inc., Louisville, Kentucky, in providing investment advisory services to both institutional and retail customers pursuant to § 225.25(b)(4); and providing financial advice to municipal securities issuers as incidental to its underwriting and dealing activities, or as a separate service offered to municipal securities issuers performed on a contract basis for a negotiated fee (See, *e.g.*, *Norwest Corp.*, 76 Federal Reserve Bulletin 79

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(1990)). These activities will be conducted in Kentucky and Indiana.

Board of Governors of the Federal Reserve System, June 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-15411 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-F

Swatara Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 17, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Swatara Bancorp, Inc., Jonestown, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Jonestown Bank and Trust Company, Jonestown, Pennsylvania.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Iowa State Shares, Inc., Albia, Iowa; to become a bank holding company by acquiring 94.75 percent of the voting shares of First Iowa State Bank, Albia, Iowa.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Coalwell Bancorporation, Ogema, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Ogema State Bank, Ogema, Minnesota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bushton Investment Company, Inc., Hays, Kansas; to acquire 100 percent of the voting shares of The Bank of Inman, Inman, Kansas.

2. 1st Premier Bancorp, Golden, Colorado; to become a bank holding company by acquiring 90 percent of the voting shares of Denver West Bank and Trust, Golden, Colorado.

3. MidAmerican Corporation, Prairie Village, Kansas; to merge with Kaw Valley Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire Kaw Valley Bank, Overland Park, Kansas.

Board of Governors of the Federal Reserve System, June 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-15412 Filed 6-27-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

Community-based Service Integration Projects: Announcement of the Availability of Funds and Request for Proposals

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, DHHS.

ACTION: Announcement of the availability of funds and request for proposals to establish a Resource Center for Community-based Service Integration Efforts and to facilitate local community projects.

SUMMARY: Research and program administration experience strongly indicate that the needs of individuals and families living in poverty or facing demands for long-term support are complex and often pervasive. Families with family members at-risk most often have interconnected and interdependent residential, medical, educational, nutritional, emotional, social and recreational service needs, and progress on one or more of these fronts is often seriously compromised or blocked outright by the inability of such families to gain access to all of the needed services in a coordinated and continuous fashion.

States and localities are struggling with approaches to integrate health and human services for low-income families as a means of improving the access to and effectiveness of these needed services. This grant announcement announces the availability of funds to support (1) a National Service Integration Resource Center, and (2) planning grants to three to six facilitators who are currently working with clusters of urban or rural communities who have already made a commitment to undertaking systemic change to improve access to a wide array of services to address the increasingly multiple needs of young children and their families living in poverty. These efforts are intended to assist states and localities in their service integration efforts.

Pursuant to section 1110 of the Social Security Act (as specifically authorized by the United States Congress), the Assistant Secretary for Planning and Evaluation is seeking applications to conduct two separate, but related, pieces of work as described in part II. and III. of this announcement. Applicants may apply for one or both grants (see part IV. Application Procedures). Applications will be accepted from public organizations (including institutions of higher education); from private non-profit organizations; and from for-profit organizations.

This publication combines these two grant announcements for administrative purposes; however, applicants should understand that the funding, period of performance, and evaluation criteria differ between the two projects (see parts II. and III.). Potential applicants may apply for one or both grants as described in parts II. and III.

DATES: The closing date for submittal of applications under this announcement is August 19, 1991.

FOR APPLICATION KITS OR FURTHER INFORMATION CONTACT: Grants Officer, DHHS/ASPE, Hubert H. Humphrey Bldg., room 426F, 200 Independence Ave., SW., Washington, DC 20201, (202) 245-1794.

SUPPLEMENTARY INFORMATION:

Part I. Background

A. Current Problems in the Planning and Delivery of Services

Research and program administration experience strongly indicate that the needs of individuals and families living in poverty or facing demands for long-term support are complex and often pervasive. Families with family members at-risk most often have interconnected and interdependent residential, medical, educational, nutritional, emotional, social and recreational service needs, and progress on one or more of these fronts is often seriously compromised or blocked outright by the inability of such families to gain access to all of the needed services in a coordinated and continuous fashion.

Federal agencies currently administer several hundred categorical programs that provide benefits and/or services to individuals and families. The long-terms goals underlying most of these programs seek to maximize the opportunities and choices realistically available to participating individuals and families in three major areas: (1) Personal autonomy and independence, (2) social integration, participation and interdependence, and (3) economic productivity and self-sufficiency. Viewed as a whole, the day-to-day operation of Federal categorical programs reveals several types of service integration problems which have adverse effects on large numbers of individuals and families seeking access to needed services:

(1) Individuals and families are unable to access needed services and benefits which are, in fact, available within the community because of the *absence of a single point of access at the community level* to the range of needed services.

(2) Often, usually as a result of the rigid categorical nature of programs and funding streams and of the failure to involve families directly in defining service needs and priorities, *families needs are not approached holistically* and a *family-centered service continuum is not created* within the community.

(3) Disjointed and uncoordinated service planning among community agencies and the impact of incompatible *program structures and procedures*, (e.g., geographic location, service hours, assumed literacy) are serious impediments to needed services and benefits, and fragmentation of roles within the helping professions.

(4) Individuals and families are influenced or discouraged from seeking needed services and benefits as a result of *conflicting goals, eligibility criteria and administrative procedures* both within and among programs.

(5) Disincentives inherent in the design of some categorical programs actively discourage or penalize efforts by individuals and families to assume personal responsibility, often through termination of needed services or benefits.

(6) Services and benefits needed by individual and families are delayed or inappropriately interrupted or terminated as a result of the fragmentation of agency responsibility for service planning and provision and the absence of a single point of "accountability" across the various systems.

(7) Information on successful strategies for helping individuals and families become and remain economically and socially self-sufficient is relatively undeveloped, has little theoretical basis, and is often based on weak evidence.

B. Service Integration Strategies

Service integration is a strategy for removing these barriers to effective service planning and delivery which combine to frustrate the opportunity of individuals and families to obtain effective support (in the form of employment, income support, medical insurance, services and volunteer assistance) to exercise choice and control in pursuing the maximum range of opportunities in each of these areas. As seen from the perspective of the individual or family, the current program structures are a complex web of agencies and professionals with specific roles and missions which must be navigated successfully if any help is to be obtained. Even sophisticated clients and experienced professionals may find it difficult to determine which agency has responsibility or the expertise to respond to a particular client's needs. Thus service integration seeks to create an environment that addresses the comprehensive needs of the client in a holistic way and addresses problems of improper sequencing of services, conflicting treatment goals and methodologies, conflicting eligibility requirements, etc.

From the perspective of agency administrators and political leaders, the development and use of service integration strategies offer the potential for more efficient and effective use of scarce resources, particularly when the Federal and/or State sources of funding

persons or problems. In addition, service integration strategies may also reduce duplicative administrative overhead and permit improvements in the ability of state and local jurisdictions to respond to the growing demands of political leaders for greater accountability and measurable outcomes.

A variety of attempts have been made to define operationally what is meant by service integration. The operational definition arrived at as the result of an earlier exhaustive study of the subject conducted by the Department is:

> Services integration refers primarily to ways of organizing the delivery of services to people at the local level. Services integration is not a new program to be superimposed * * * rather, it is a process aimed at developing an integrated framework * * * Its objectives must include such things as (a) the coordinated delivery of services for the greatest benefit to people; (b) a holistic approach to the individual and the family unit; (c) the provision of a comprehensive range of services locally; and (d) the rational allocation of resources at the local level so as to be responsive to local needs. (Secretary Elliot Richardson, June 1, 1971.)

Four years later, in undertaking a national survey of service integration projects, the Rand Corporation proposed a simpler definition:

> An innovative organizational effort to coordinate or consolidate human service activities at the local level in traditional agencies as a means of enhancing the effectiveness, efficiency, and/or continuity of comprehensive service delivery. (The 1975 Census of Local Services Integration, William Lucas, et al. December, 1975.)

There has been a long tradition of local institutional reform efforts within the field of health and human services which meet these definitions and many attempts to redesign the delivery of health and human services at the local level. The scope of these efforts range from major agency reorganizations and/or consolidations to community planning efforts sponsored by local United Way organizations or private foundations. Federally sponsored efforts to improve the delivery of health and human services through greater coordination and planning date back to the mid-1960s. The efforts of Department of Health and Human Services to promote services integration have their origin in the statement by Secretary Richardson in 1971 quoted above.

Between 1971 and 1975 some 35 demonstration projects and 10 technical studies were funded under the title Services Integration Targets of Opportunity (SITO). The projects had a very wide range of goals and outcomes and were independent free-standing efforts. Between 1974 and 1977 the Department funded some 78 demonstration projects under the title of Partnership Grants Program. This program of short-term discretionary grants was intended to improve the capacity of state and local governments to plan and manage their social service programs. In addition, at this time five local governments were funded to develop their own "Comprehensive Human Service Planning and Delivery

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System' that was focused both on improving services to clients and on improving accountability and rational allocation of resources mechanisms. In 1985 grants were made for Service Integration Pilot Projects (SIPP) in five states. A varity of service programs, populations, and levels of effort were represented in the projects.

C. Context of This Effort

Most recently in 1990, President Bush created the White House Economic Empowerment Task Force which, in turn, established a Service Integration Work Group. In contrast with early efforts aimed at service integration which were focused almost exclusively at the administrative process (e.g., improved government administration), current efforts reflect a new and important focus on both the outcome of service integration activities (e.g., employment, improved learning, better health) and on the dynamic, personal involvement of clients and beneficiaries in the process, itself. From the standpoint of this group, both the process and the outcomes of service integration activities should serve to increase "choice and control" by individuals and families over an expanded range of economic and social opportunities.

This new emphasis on personal responsibility and choice necessarily redirects the emphasis of service integration from caretaking to enabling. In practice, this change of emphasis requires increased attention within the service integration context to (1) the presence of a wide array of social and economic opportunities within the community, (2) support of an active and competitive market of services within the local community to assist individuals pursuing such opportunities, (3) the availability of complete and accurate information concerning both opportunities and related services within the community, and (4) access to sufficient, resources, both human and financial, for basic support and to choose (purchase) services needed to pursue opportunities. In sum, individuals and families must be able to obtain the knowledge, resources, and realistic options necessary to attain personal autonomy, social integration, and economic self-sufficiency without the need for the direct and ongoing intervention of government.

In recognition of the increasing problems families face and of the importance of supporting families, the Secretary of DHHS has identified many goals for HHS, including:

- Strengthening the family,
- Improving access to cost-effective health and human services for all Americans,
- Maximizing the opportunity for every American to participate fully in the national economy and the social mainstream.
- Making communities places where children can learn.

Based on these and other goals, the Secretary has delineated nine program directions to focus current and future policy and program development. Three of the Program Directions directly relevant to this announcement are:

Program Direction #5: Improve access of youth living in low-income families to needed support services, including employment training other transition to work services and adolescent pregnancy-related services;

Program Direction #8: Improve the integration, coordination, and continuity of various HHS-funded services potentially available to families currently living in poverty; and

Program Direction #8: Improve the access of young children and their families living in poverty to a wide array of developmental, support services and income assistance, including nutrition, foster care, health, mental health, social and child protective services.

This grant announcement supports the Secretary's goals and Program Directions, as it is aimed at assisting states and localities in their service integration efforts.

D. Current Developments

There is widespread dissatisfaction with the current fragmentation of services. As a result, efforts are underway in many communities to overcome the barriers to providing effective and accessible services. There are many different configurations of services operated under a variety of financial, organizational and political sponsorships. For example, we are aware of social and health services being organized around elementary schools, public housing projects, community health centers, and family resource centers. These are not usually systematic efforts built upon an idealized model of a delivery system, but rather creative and pragmatic responses to the needs of families and children within the constraints of the local community's resources. The purpose of these grants is to support and encourage these local efforts and thereby promote eventual changes in the systems themselves.

Part II. Resource Center for Community-Based Service Integration

A. Purposes

The Resource Center is intended to facilitate the collection and dissemination of information on attempts by Federal, State, and local organizations to redesign and integrate the delivery of a variety of health and human services, to advance the state of knowledge regarding service integration, and to facilitate the development of local initiatives for systemic change by providing technical assistance and linkages to others involved in similar efforts.

B. Core Functions

The Resource Center must carry out the following major functions: (1) Summarize and contribute to the state of knowledge by reviewing past efforts and synthesizing the lessons which have been learned, (2) provide accurate, practical, and timely information by acting as a clearinghouse for information about past, current, and planned community efforts directed at creating integrated health and human services delivery systems, (3) provide technical assistance in the development and operation of integrated service delivery systems, and (4) foster the development of local service integration efforts by periodically convening and assisting with the formation of a network of leaders and advocates of systemic change in the delivery of services at the local level.

C. Contents of the Program Narrative

In order to successfully compete for this grant, the applicant will describe how each of the following areas will be accomplished over the period of performance.

1. Development and Operation of Clearinghouse

a. Describe the methods that will be used to collect, catalog, and store documentation and other information about existing and past service integration projects so as to be retrievable. (Note that the documentation that is collected will become the property of the Government. In the event of the cancellation of this grant award or transfer of this function to another entity, the disposition of these documents shall be at the discretion of the Government.)

b. Describe how the Resource Center will have the capability of identifying, reviewing, and making other relevant information available without duplicating the work of other organizations by obtaining access privileges/rights to these resources.

c. Describe the capacity of the proposed Resource Center to undertake critical analyses of the results of previous attempts to integrate the delivery of services to discover what has been learned and to propose more effective strategies for meeting the needs of the client which can be systematically tested.

d. Describe how these documentary materials will be made available to researchers and other interested parties both through on-site examination and distribution of photocopies.

e. Describe how information about on-going and new projects and other relevant studies will be disseminated to interested parties by a variety of means, e.g., publication of a newsletter or other printed materials, participation in meetings and conferences, maintenance of a dial-in bulletin board, etc.

2. Provision of Technical Assistance

a. Describe the experience and qualifications of staff in the following core service and related program areas: public education and comprehensive schools, family dysfunction and public child welfare services, school readiness and child development and child health services, job training and employment. Knowledge and experience with other relevant systems (e.g., public housing, transition from school to work, employment, mental health, juvenile justice) and with specific populations (e.g., children and youth at-risk, individuals with disabilities) is highly desirable and will be credited.

b. Describe how the applicant will be able to offer and provide technical assistance in such areas as the preparation of funding proposals, the design of information systems, the structuring of public accounting systems to provide a service with multiple funding sources, the design of formal evaluation studies, the provision of staff training, the preparation of any legal documents, e.g., articles of incorporation, interagency agreements, etc., and any other technical skill that the applicant might expect would be requested.

c. Describe how the applicant intends to advertise the availability of technical assistance under this grant, initially respond to requests, come to an agreement about the nature, scope, and level of effort with client agencies and/or communities, and evaluate progress in satisfying the client's needs and in achieving the goal of the Resource Center.

e. Describe how the Resource Center's technical assistance resource will be coordinated with the activities of the facilitators described in Part III of this announcement.

3. Project Management

a. If appropriate, identify and provide a schedule for the execution of contracts and any other agreements necessary to carry out the activities of the Resource Center.

b. Describe how the Resource Center will plan, organize and conduct a required annual meeting of persons engaged in the development and operation of service integration projects at the state or local level.

c. Clearly describe the organizational structure of the proposed Resource Center, i.e., whether it is to be a single organization or a consortium. If a consortium arrangement is proposed, describe the legal, fiscal and organizational relationships to be established among the consortium members. Also, clearly demonstrate how the applicants will exercise leadership for the entire Resource Center.

d. Identify any advisory groups planned to assist the Resource Center's work and describe how such advisory groups will relate to the management of the Center.

e. Describe how the Resource Center will develop and submit required quarterly and annual progress reports, updated annual work plans and budgets, and a final project report which evaluates the outcome of the Center's efforts to promote changes in the way that health and human services are provided by supporting legal service integration efforts.

D. Evaluation Criteria.

Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process.

1. Undertanding of the Effort

The application discusses in detail the applicant's understanding of the need for the project, the background and current status of service integration efforts. The application also shows an understanding of the complexity and difficulty of undertaking collaborative efforts between systems. The application relates the project to the goals and objectives described in the first section of this announcement. (15 points)

2. Project Approach

The application outlines a sound and workable plan of action pertaining to the scope of the project and explains how the proposed tasks will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost of time, or extraordinary community, volunteer or private sector involvement; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and/or maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution. (40 points)

3. Staffing Utilization, Staff Background and Experience

The application identifies the background of the principal project staff members. The name, address, training, educational background, and other qualifying experience are provided for the project director and the key project staff. The applicant provides assurance that the proposed staff will be available to wrok on the project effort upon award of the grant. The principal author of the application is identified and that person's rôle in the project is identified. (30 points)

4. Organizational Experience

The application identifies the qualifying experience of the organization (or group of organizations) to demanstrate the applicant's ability to effectively and efficiently administer this project. The relationship between this project and other work planned, anticipated, or underway by the applicant is described, including a chart which lists all related Federal assistance received within the last five years. The previous Federal assistance is identified by project number, Federal agency, and grants or contracting officer. (15 points)

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E. Available Funding and Project Duration

DHHS intends to award one grant for a Resource Center in an amount not to exceed $325,000 the first year and $650,000 in each of the succeeding years, subject to a determintion by DHHS that there is continuing need for these activities. We anticipate that the Resource Center will be funded for a total of five years. However, the application should be developed to show the planned activities and accomplishments for a project period of 36 months under this announcement. After the third year, this grant may be extended on a year-to-year basis for an additional two years subject to satisfactory performance, and availability of funds, and an approved revised workplan.

Part III. Facilitation of Community-Based Service Integration Planning

A. Purposes

To promote service integration by facilitating the efforts of urban and rural communities who have already made a commitment to undertaking systemic changes to improve access to a wide array of services to address the increasingly multiple needs of young children and their families living in poverty. Accordingly DHHS intends to award two to five grants with "facilitators" to work with proposed clusters of 3–7 urban communities, and one grant with a facilitator to work with a proposed cluster of 3–7 rural communities who are committed to systems changes to meet the needs of children, youth, and their families through the integration of services.

A major goal of this effort is to provide localities with a framework, via the facilitators, to support their service integration efforts through coordinated community-based planning, providing or arranging for technical assistance, expediting any technology sharing, and convening periodic local meetings at each site. In this way, it is intended that the localities will adopt a proactive planning strategy that will enhance their likelihood of success in restructuring children and families services in the targeted site. Because localities are best suited to determine what their community needs to do to improve service delivery to families, an additional goal of this project is to allow facilitators flexibility in executing the required tasks in order to ensure that service integration approaches are locally-designed and implemented. Applicants should reflect an understanding of these goals and objectives in the proposal.

B. Definitions

1. *Facilitator.* An individual, group of individuals, or organization (including public, private non-profit, and for-profit organizations) who performs the core functions and activities described in section C. and section D.3.b.

2. *Urban Site.* A proposed target area—such as a neighborhood, school district, school, housing project, etc.—located in an urban area as defined by the Bureau of the Census.

3. *Rural Site.* A proposed target area—such as a neighborhood, school district, school, housing project, etc.—located in a rural area as defined by the Bureau of the Census.

C. Core Functions

The grantee will act as a promoter of service integration principles, a facilitator of community-based planning, an expediter of technology sharing, a broker of technical assistance, a convener of periodic meetings at each site, and one who documents this entire process.

D. Contents of Program Narrative

Although not mandatory, it is strongly recommended that applications be prepared with the format indicated by this outline. To be considered complete, the applicant should ensure that the following information is included in the application:

1. Describe the 3–7 sites to be included in the proposed cluster, documenting each site's:

a. Commitment to working toward systemic change of the delivery of children, youth, and family services (include a mission statement developed by members of the community);

b. Concentration of poverty;

c. Identified geographic area and/or population to target for specified services;

d. Current service integration efforts to serve families with children and youth with multiple needs;

e. Capability and desire to coordinate and integrate—at a minimum—the public education, public child welfare services, and health services. Efforts to integrate other relevant systems, e.g., public housing, employment, mental health, juvenile justice, are highly desirable and will be credited.

f. Provision of letters of commitment—detailing the kinds of commitment that each organization is making—from individuals, organizations, and agencies serving families in the targeted site from the public, private, and voluntary sectors of the community to work toward the stated goals; and

g. Comparability with other sites in the cluster.

2. In order to successfully compete for this grant, the applicant should describe how each of the following activities will be accomplished over the period of performance.

a. Facilitate community-based planning. Describe the composition of the community-based coalition of organizations committed to health and human service systems change; identify the roles and responsibilities of each organization in working toward the project goals. Describe how applicant will assist these organizations and individuals in the following planning activities:

i. Creating a vision for the site and its citizens;

ii. Clearly defining the objectives of the site's service integration efforts;

iii. Selecting a target population or geographic area in which to begin the service integration efforts;

iv. Assessing the problems faced and strengths possessed by the target population;

v. Specifying the client outcomes that the sites are striving to achieve for their target families;

vi. Identifying the service needs in order to achieve these client outcomes;

vii. Identifying existing mechanisms used, and problems in, delivering these services (including resource limitations, statutory and regulatory barriers; financing problems brought about by categorical funding, turf battles, professional and/or philosophical differences among human service staff, etc);

viii. Recommending creative alternative solutions;

ix. Developing a plan for implementing selected alternative strategies,

x. Building an accountability system, including developing indicators and measures, to ensure that needed services are provided and client outcomes are achieved, and

xi. Developing a plan for the continuation of the community coalition and system restructuring beyond the project period.

b. *Literature review.* Describe how applicant will review existing information on problems faced by localities attempting to restructure and integrate health and human services for children, youth, and families; current efforts to surmount these problems; and levels of success to date.

c. *Technical assistance and evaluation plan.* Describe how, based on the literature review, applicant will plan to provide technical assistance to sites to facilitate their restructuring of their health and human service systems. Describe how applicant plans to evaluate the success of his efforts.

d. *Expedite technology sharing.* Describe how applicant will act as a broker for technology transfer, that is, how applicant will facilitate the planned, systematic process by which technologies (such as innovative tools, procedures, concepts, and practices), developed by one organization or site, are adapted and implemented by another organization or site.

e. *Provide or arrange for technical assistance in the development and operation of sites' service integration activities.* Describe how applicant will link the sites to needed technical assistance. Describe mechanisms for providing sites with periodic updates and information in a proactive manner. Applicants should describe how they plan to coordinate their technical assistance efforts with those of the Resource Center described in part II. of this announcement and how the materials developed in working with sites will be systematically provided to the Resource Center.

f. *Convene one meeting with the Resource Center staff.* Describe how applicant will organize and convene a meeting between two representatives from each site and Resource Center staff. Discuss what information will be provided to sites relevant to the effective implementation of their service integration plan. Describe what (if any) and how technical assistance may be provided at this meeting.

g. *Convene at least two local meetings at each site.* Describe how applicant will provide a forum for exchange of information relevant to the effective implementation of the site's service integration plan. Describe what (if any) and how technical assistance may be provided at these meetings.

h. Prepare quarterly reports on the status of planning for and implementing of the sites' service integration strategies.

i. *Prepare a final detailed report* on all aspects of the development, implementation, and evaluation of the project which includes at least the information listed below:

i. Process information, including: (a) A description of the health and human service delivery system for children, youth, and families, prior to this project, gaps in the existing system, and changes that occurred following implementation of the planned strategy;

(b) A description of sites' service integration goals and objectives, and plans for achieving these;

(c) A description of implementation problems and (Federal, state, local, procedural) and barriers identified by sites to achieving these goals and proposed solutions;

(d) A summary status of the sites' accomplishments to date and lessons learned upon completion of the project period,

(e) A description of the technical assistance efforts in the sites prior to this project, gaps in the existing system, the types of TA requested by sites, and the changes that resulted as a consequence of the facilitator's activities;

(f) A description of the plan and funding strategy for how the sites will continue to support the systems change upon the completion of the project period.

ii. The current status of each site's efforts. Provide for the production of a final status report, which provides a practial description of the projects undertaken at each site in the cluster, including:

(a) The model or approach implemented;

(b) The clients served, among those needing services;

(c) The operation of the integrated system, including methods of coordinating and scheduling service delivery and accountability;

(d) The financing of the system; and

(e) The presentation of any available client-outcome data.

iii. Proposed next steps and future technical assistance needs. Synthesize findings from all sites' activities and highlight key factors that appear necessary to improving family outcomes via integrated health and human service systems. Propose useful next steps in the area of supporting localities' service integration efforts at the local, state, and Federal levels, including the roles of both the public and private sectors. Identify useful forms of technical assistance requested and used by sites, as well as types of technical assistance not readily available and needing development. Propose strategies for on-going effective coordination with the Resource Center.

E. Evaluation Criteria

The evaluation criteria correspond to the outline in the Content of Program Narrative section (D) of the application.

1. Understanding of the Effort (10 points)

The application discusses in detail the applicant's understanding of the need for the project, the background and evolution of the need to coordinate human services delivery, and the current activities being undertaken—beyond the proposed sites' activities—that demonstrate the pervasiveness and universality of issues being addressed by service integration efforts.

2. Overall Project Aproach (40 points)

a. Site selection (20 points). The applicant proposes a cluster (3–7) of either urban or rural sites who meet the criteria listed in section D.1.

b. Approach (20 points). The applicant proposes a plan for how s/he intends to conduct the activities described in section D.2.

3. Staff Background, Experience, and Proposed Utilization (25 points)

The application identifies the background, qualifications, and experience of the facilitator and any proposed principal project staff members. Staff have experience and qualifications in health and human services delivery related to: public education, public child welfare services, and health services. Staff have additional knowledge and experience with other relevant systems, e.g., public housing employment, mental health, juvenile justice, etc. The facilitator working directly with sties has experience in community leadership and problem-resolution at the community level. The applicant provides assurance that the proposed staff will be available to work on the project effort upon award of the grant. The principal author of the application is identified and that person's rule in the project is identified.

4. Management Capacity (25 points)

The application demonstrates the adequacy of the management plan, including:

- Overall management of the project and procedures for quality control and review;
- Work schedules for activities, timetables for deliverables;
- Personpower loading by activity which lists the person hours for each staff member;
- Evidence of ability to have sufficient staff available to accomplish the work, including letters of commitment from consultants, if utilized and the percent time for each person on the project;
- A matrix of skills for staff and consultants.

The application specifically identifies the applicant as one who has a record of assisting urban and/or rural communities with their service integration efforts. The relationship between this project and other work planned, anticipated, or underway by the applicant is described, including a

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chart which lists all related Federal, state, and local assistance received within the last five years. The previous Federal assistance is identified by project number, Federal agency, and grants or contracting officer.

F. Availability of Funds

DHHS intends to award two to five grants with "facilitators" to work with proposed clusters of 3–7 urban communities, and one grant with a facilitator to work with a proposed cluster of 3–7 rural communities who are committed to systems changes to meet the needs of children, youth, and their families through the integration of services. DHHS anticipates awarding approximately $625,000 in FY 1991 with an additional $625,000 to the same facilitators and sites for continuing activities into FY 1992, subject to DHHS's determination of satisfactory performance and of a continued need for this effort, and to the availability of funds. The size of the awards will vary depending on the level of effort proposed for meeting the technical assistance needs of the sites, however no award will exceed $200,000 per year without special justification.

G. Effective Date and Duration of Project

We anticipate that these facilitators will be funded for at least 24 months. After the second year, this grant may be extended for an additional 12 months (for a total of three years) subject to satisfactory performance of and a determination of a continued need for this effort, and the availability of funds. No additional competition will be required. However, the application should be developed to show the planned activities and accomplishments for a project period of 24 months under this announcement.

Part IV. Information on Completing an Application

A. Application Preparation

This part contains information on the preparation of an application under this announcement. Applicants are advised to read and follow this section very carefully. Applications which do not meet certain requirements of timeliness or completeness will not be considered or reviewed in the competition, and the applicant will be so informed. These requirements are to assure fair consideration for all applicants. A failure to respond to other suggestions listed here, while not required, may result in a competitive disadvantage when compared to other applications.

1. Application Requirements

Three copies of an application shall be submitted. One of the copies shall contain an original signature (preferably in blue ink) in block 18(d) of SF 424 and on the other certification forms. In addition, applications must be timely and complete as described in sections C and D below in order to be considered for the independent competitive review required by chapter 1–62 of the DHHS Grants Administration Manual.

2. Funding Information

Applicants may apply for one or both grants as described in parts II. and III. Applicants should refer to the information provided in part II. and/or part III regarding the amount of funds available and the duration of the grants. Applicants should clearly state in the opening paragraph of their application narrative which part(s) of this announcement they are applying for.

DHHS reserves the right to award the entire effort to one organization or to separate the effort into multiple projects depending on the scope and quality of the submissions. It is the intent of DHHS to make sufficient awards as to accomplish the entire scope of effort described in this announcement, if submissions of sufficient scope and quality are received to permit it. However nothing in this application should be construed so as to obligate the Assistant Secretary for Planning and Evaluation or the Department to make any award.

3. Budget

Budgets for individual projects (clusters) under section III should not exceed $200,000 per year. Describe how project funds will be expended. Include a line item for participation in at least 2 cluster group meetings over the project period to exchange information about the status of and lessons learned from their efforts. Propose a location of mutual convenience to all sites. Include a line item for at least one meeting with the Resource Center staff for the principal facilitator and for two people per site. If applicant is applying for both part II and part III grants, indicate in the budget where there may be cost-savings from conducting both activities simultaneously. Provide assurance that these grant funds will not be used for service provision.

4. Program Narrative

The Program Narrative is the most important part of the application. It should be clear, concise, and pertinent to the functions, activities, and issues of the area for which the application is being submitted. There is no specific limit on for the length of the application. However, applications that are verbose or contain superfluous material will be viewed as lacking a clarity of purpose and design and likely to result in an inefficient approach.

The outline of the application narrative should follow the evaluation criteria listed in part II or part III. The application should include: (1) A management plan, which sets forth how the project will be managed and who will be the key personnel involved, including an organization chart and other diagrams which will display the management information provided in the text; and (2) a financial plan, which specifically displays and explains the details and assumptions behind the estimated costs shown in the budget information shown on the application form (SF 424).

The narrative should be typed on one side of standard-sized (8½" x 11") plain white paper with 1" margins on all sides. All pages of the program narrative (including charts and diagrams) should be sequentially numbered. In order to facilitate handling, please do not include extraneous material such as promotional brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

5. State Single Point of Contact (E.O. No. 12372)

The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

B. Review Process

All applications that are submitted by the deadline date will be screened to ensure completeness. Applications that are incomplete will not be reviewed. Applications that pass the initial screening will be reviewed and scored competitively using the evaluation criteria listed in sections II and III to score the applications. DHHS reserves the option to discuss applications with other Federal agencies, Central or Regional Office staff, specialists, experts, States and the general public. Comments from these sources, along with those of ASPE staff, will be considered in making funding decisions.

C. Components of a Complete Application

A complete application, responding either to the Resource Center announcement in part II. or the facilitator announcement in part III., consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, REV 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424A, REV 4–88);
3. Assurances—Non-construction Programs (Standard Form 424B, REV 4–88);
4. Table of Contents;
5. Budget justification for Section B-Budget Categories;
6. Proof of non-profit status, if appropriate;
7. Copy of the applicant's approved indirect cost rate agreement, if necessary;
8. Project Narrative Statement, organized in four sections addressing the following areas:
   (a) Understanding of the effort,
   (b) Project approach,
   (c) Staffing utilization, staff background, and experience
   (d) Organizational experience;
9. Any appendices/attachments;
10. Ceritification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters; and
12. Certification and, if necessary, Disclosure Regarding Lobbying.
13. Supplement to key personnel;
14. Checklist.

D. Deadline for Submittal of Applications

The closing date for submittal of applications under this announcement is August 19, 1991.

Applications must be mailed with a post mark by midnight, or hand-delivered no later than 5 p.m. on August 19, 1991 to: Grants Officer, DHHS/ASPE, Hubert H. Humphrey Bldg., room 415F, 200 Independence Ave., SW., Washington, DC, 20201.

Hand-delivered applications will be accepted Monday through Friday prior to and on August 19, 1991 during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey Building located at 200 Independence Avenue, SW., in Washington, DC. When hand-delivering an application, call (202) 245–1794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before August 19, 1991, or (2) Postmarked before midnight of the deadline date, August 18, 1991 and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the August 19, 1991 deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all applications due to acts of God, such as floods, hurricanes or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the Government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Dated: June 24, 1991.

Martin H. Gerry,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 91–15424 Filed 6–27–91; 8:45 am]

BILLING CODE 4150–04–M

Administration on Aging

[Program Announcement No. AOA–91–3]

Fiscal Year 1991 Program Announcement; Availability of Funds and Request for Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications under the Administration on Aging's Discretionary Funds Program for research, demonstration, training, development, and related capacity-building project activities in support of the National Eldercare Campaign for older persons at risk.

SUMMARY: The Administration on Aging (AoA) announces its Discretionary Funds Program (DFP) for Fiscal Year 1991. This year the DFP is designed to strengthen knowledge building, program innovation and development, information dissemination, training, technical assistance, and other capacity-building efforts focused on eldercare service systems for older Americans at risk of losing their independence. Funding for AoA discretionary grants is authorized by Title IV of the Older Americans Act, Public Law 89–73, as amended.

This program announcement consists of three parts. Part I provides background information, discusses the purpose of the AoA Discretionary Funds Program, and documents its statutory funding authority. Part II describes the programmatic priorities under which AoA is inviting applications to be considered for funding. Part III describes, in detail, the application process and provides guidance on how to prepare and submit an application.

All of the forms necessary to submit an application are published as part of this announcement following part III. No separate application kit is necessary for submitting an application. If you have a copy of this entire announcement, you have all the information and forms required to prepare and submit an application.

Grants will be made under this announcement subject to the availability of funds for the support of these activities.

DATES: The deadline for receipt of applications under this announcement is August 9, 1991.

ADDRESSES: Application receipt point: Department of Health and Human Services, Administration for Children and Families, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue SW., room 341F.2., Washington, DC 20201, Attn: AoA–91–3.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., room 4061, Washington, DC 20201, telephone (202) 619–0441.

SUPPLEMENTARY INFORMATION:

Part I Background

A. Eldercare: Challenge for the 1990s and Beyond

Demographic trends highlight the growing numbers and importance of our older population, both now and in the future. By the year 2030, one of every four Americans, over 83 million persons, will be 60 years or older and

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approximately 8 million of them will be age 85 or older. What has been called the graying of America has captured considerable media attention and given rise to widespread concern over future economic, political, and societal trends, especially when the baby-boom generation reaches age 60+ in the early decades of the 21st century.

It is vitally important that we, as a nation, focus on the need to build our capacity to respond to the dramatic increase in our older population today and into the next century. That challenge is heightened by the growing numbers of elderly who are at risk, including those who are physically or mentally impaired; abused, neglected, or exploited; or without a caregiver to assist them when in need. At special risk are those older people who are poor; particularly women, rural Americans, and members of minority groups. For these and other older Americans, the crucial consideration is to function independently at home and in the community as long as possible. Their greatest fear is that, if and when they begin to lose that independence, there will be no one and no place to turn to for help.

The term "eldercare" is gaining broad acceptance as defining the caregiving role our society must play on behalf of older persons. Within that context, the National Eldercare Campaign focuses on care provided to older persons at risk through home and community-based services. While most care is provided by family members, friends and neighbors, eldercare can also be made available through formal social and health support systems, religious organizations, fraternal groups, national organizations and corporate benefit programs established to assist employees in carrying out their caregiver roles for at-risk family members.

The Administration on Aging recognizes that much has and is being accomplished through both the informal and formal support systems to care for older persons at risk. Federal, State, and local governments, as well as the private and voluntary sectors, have made progress to expand eldercare services. However, many prominent organizations and individuals have not yet played a role in this effort. More can be done not only to bring nontraditional resources and approaches to bear on the problem, but also to reinforce our family and community-based systems of care.

B. The National Eldercare Campaign

The U.S. Commissioner on Aging, Joyce T. Berry, Ph.D., has recently announced the start of a National Eldercare Campaign—a nationwide, multi-year effort to mobilize resources for home and community-based care for older persons at risk of losing their self-sufficiency. The cornerstone of the campaign is a national public awareness strategy. It will be directed toward making all segments of society aware of the implications of an aging society and of the role public, private, and voluntary organizations can play in ensuring the availability and accessibility of home and community-based services for older persons at risk, now and in the future.

The commitment to helping at-risk older persons encompasses both informal and formal support systems, organizations and leaders in the aging constituency as well as organizations with a new-found consciousness of eldercare issues. The eldercare campaign will be aimed at expanding the involvement of a wide variety of agencies and organizations representing government, business, labor, the voluntary, religious, and civic communities. The Administration on Aging will encourage these organizations to: (1) Develop relevant eldercare activities at the national level related to their organization's concerns; and (2) encourage their State and local affiliates to participate in State and local eldercare coalitions aimed at building systems of quality eldercare services in every community.

Because the National Eldercare Campaign is focused on how older persons at risk are served in their homes and in their communities, action at the State and local levels is critical to the success of the Campaign. State and community eldercare coalitions, in which State and Area Agencies on Aging have a catalytic leadership role, will be called on to demonstrate that the public, private, and voluntary sectors can be mobilized around an eldercare agenda and cooperate effectively in providing home and community-based services for older persons at risk.

The Administration on Aging is in the process of awarding a number of grants and contracts in conjunction with the National Eldercare Campaign. In accordance with DHHS policy governing the use of contracts and grants, activities which provide direct benefits to the Administration on Aging will be supported through the contract mechanism. Other activities which promote more generally the goals of the National Eldercare Campaign will be supported by grants and cooperative agreements.

NATIONAL ELDERCARE INSTITUTES will be established and operated as another major commitment by the Administration on Aging to achieve the objectives of the National Eldercare Campaign. The Eldercare Institutes are designed to focus on critical substantive areas closely related to the delivery of eldercare services in the home and in the community. Their roles will be to serve as a knowledge base and program resource, to promote the effective transfer, dissemination, and utilization of relevant information, and to provide needed training and technical assistance. National Eldercare Institutes are planned in the following areas:

- Long Term Care
- Elder Abuse and State Ombudsman Services
- Older Women
- Multipurpose Senior Centers and Community Focal Points
- Transportation
- Housing and Supportive Services
- Nutrition Services
- Human Resources Development
- Health Promotion
- Income Security
- Employment and Volunteerism
- Business and Aging
- Coalition Building

The National Eldercare Institutes, their functions, and their activities, were the subject of an AoA program announcement which was published in the **Federal Register** on April 29, 1991. Copies of that program announcement may be obtained by contacting AoA at (202) 619-0441.

C. Coordination With Other Federal Agencies

Under the Older Americans Act, the Administration on Aging functions as a focal point within the Federal government for aging-related concerns. In that capacity, AoA advises the Secretary of Health and Human Services in matters affecting older Americans and provides consultation and information to other Federal agencies on the characteristics, circumstances, and needs of older persons. AoA's national level program and advocacy responsibilities place major emphasis on the development of collaborative relationships with other Federal agencies aimed at coordinating diverse and wide-ranging Federal program resources and linking those resources to the similarly diverse needs of older persons.

Dating back two decades, AoA has worked hard to develop and implement a network of Interagency Agreements with such relevant Federal departments and agencies as the Departments of Transportation, Housing and Urban Development, and Labor, the Social Security Administration, the Health Care Financing Administration, ACTION, and the National Institute on Aging.

Recent examples of AoA initiatives to improve coordination with other Federal efforts include: a Housing initiative with a Memorandum of Understanding (MOU) with the Farmers Home Administration (FmHA) of the Department of Agriculture, the focus of the MOU being to promote the well-being of older persons by providing a coordinated, integrated response to the housing and supportive service needs of older persons, particularly those programs serving the rural and low-income elderly; and an employment initiative with the Employment and Training Administration (ETA) to facilitate cooperation between the two agencies, to assist States and local communities in improving linkages between human service programs, and to achieve an integrated response to increasing employment and training opportunities for older persons.

During 1990 joint efforts included *AoA/ACTION* sponsorship and funding of a three-year program to demonstrate innovative approaches to gain private sector support for expanding the number of Senior Companions providing in-home services to homebound vulnerable older persons, and a multi-purpose *Transportation* initiative, which was designed to improve the coordination of transportation services funded under the Urban Mass Transportation Act of 1964, as amended, and the Older Americans Act which relate to older persons.

AoA has recently established a Federal Interdepartmental Task Force to better identify issues for policy and program coordination and to develop collaborative interdepartmental approaches in preparation for the changing and growing elderly population. The Task Force is comprised of representatives from the Department of Education, Department of Veterans Affairs, Department of Labor, Department of Housing and Urban Development, Department of Transportation, Department of Agriculture, Social Security Administration, Health Care Financing Administration, National Institute on Aging, Administration on Families and Children, Health Resources and Services Administration, and the Food and Drug Administration. The Task Force established four work groups to address the following areas: Housing, Employment/Volunteers, Health, and In-home and Community-Based Care Services. The work groups have convened meetings to identify and select issues of major concern in the designated subject area, prioritize issues, develop action plans and report recommendations to the Task Force.

These interagency collaborations, along with the National Eldercare Campaign, represent a strategic coupling of AoA's resources to serve the nation's elderly, especially those at risk of losing their independence. AoA's Federal Interagency Agreements cover a spectrum of program efforts—in housing, transportation, health promotion, elder abuse, etc.—that closely parallels the subject areas of the National Eldercare Institutes (which, as stated above, are the subject of a previously published program announcement) as well as a number of the priority areas in this announcement. In both subject matter and functional terms, discretionary projects will serve to complement and augment the gains achieved through interagency cooperation.

The discretionary projects to be funded under this announcement and the Institutes will also serve as a technical resource in enhancing AoA's ability to play a coordination role in such complex emerging areas as, for example, Federal implementation of the Americans with Disabilities Act (ADA), which will have wide ramifications for housing, transportation, employment, rehabilitative, and other services for the disabled elderly. ADA is expected to be a focus of attention and policy consideration during the next several years and several of the projects funded under this DFP could serve as a major resource to AoA in this area.

D. The AoA Discretionary Funds Program

This Fiscal Year 1991 Discretionary Funds Program (DFP) is another element of AoA's program commitment to the National Eldercare Campaign. The DFP is the focus of this announcement and is described in detail below.

The Discretionary Funds Program, as authorized by title IV of the Older Americans Act, constitutes the major research, demonstration, training, and development effort of the Administration on Aging. The title IV program is directed, generally, toward supporting advances in knowledge, developing innovative model programs and training personnel for service in the field of aging, and matching these resources to the changing needs of older persons and their families in the coming decades. AoA's research, demonstrations, training and other discretionary programs are also focused on current issues significant to the well-being of the older population.

With its dual emphasis on contemporary aging program issues and on preparing for a future aging society, the Title IV Discretionary Funds Program is well suited to support the National Eldercare Campaign. Eldercare for older persons at risk embodies a set of salient policy issues and societal concerns that will carry through the 1990's and well into the 21st century. Underlying these issues and concerns is the recognition by AoA and the nationwide aging network that we must develop and use our resources to (1) serve the current generation of older Americans more effectively and (2) achieve a long range capacity to respond to the dramatic increases in the older population projected for the coming decades. The AoA Discretionary Funds Program for FY 1991 is directed toward building that capacity, in the near and the long term, to better serve older Americans at risk of losing their independence.

E. Technical Assistance Workshops for Prospective Applicants

Workshops will be held in Washington, DC and several other cities to provide guidance and technical assistance to prospective applicants. Please call the appropriate AoA contact person for the time and location of the technical assistance workshop you are interested in attending.

City	AoA contact person
Washington, DC	Saadia Greenberg, (202) 619-0441.
Boston, Massachusetts	Acting AoA Regional Program Director, (617) 565-1168
New York, New York	Judith Rackmill, (212) 264-2976.
Philadelphia, Pennsylvania	Paul E. Ertel, Jr., (215) 596-8891.
Atlanta, Georgia	Franklin Nicholson, (404) 331-5900.
Chicago, Illinois	Eli Lipschultz, (312) 353-9503.
Dallas, Texas	John Diez, (214) 767-2971.
Kansas City, Missouri	William Weisert, (816) 426-2955.
Denver, Colorado	Elizabeth Clinton, (303) 844-2951.
San Francisco, California	Acting AoA Regional Program Director, (415) 556-6003.
Seattle, Washington	Chiaato Kawabori, (206) 553-5341.

F. Statutory Authority

The statutory authority under which grants and cooperative agreements will be awarded through the AoA Discretionary Funds Program is Title IV of the Older Americans Act, as amended [42 U.S.C. 3001 et seq.].

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G. Public Comments on this Announcement

AoA invites comments on this Discretionary Funds Program Announcement. Please direct your comments to: Office of Program Development, Administration on Aging, 330 Independence Avenue, SW., Washington, DC 20201.

Part II—Priority Areas

The objectives of AoA's National Eldercare Campaign constitute the basic organizing framework for the FY 1991 Priority Areas included in this Discretionary Funds Program announcement. This part of the announcement provides general guidelines concerning eligible applicants as well as project costs and duration. More specific instructions regarding eligibility, costs, and duration may be found under the individual priority areas. For the convenience of prospective applicants, a listing of the FY 1991 priority areas is provided. Following the listing, each priority area is described in detail.

Applications are expected to be directly and explicitly responsive to the expressed concerns of the particular priority area under which they are submitted.

A. Eligible Applicants

As a general rule, any public or nonprofit agency, organization, or institution is eligible to apply under this Discretionary Funds Program announcement. Where there are exceptions to this rule, they are specified in the appropriate priority area description. Applications from individuals can not be considered because they are ineligible to receive a grant award under the provisions of title IV of the Older Americans Act. For-profit organizations are not eligible applicants, but they may participate as subgrantees or subcontractors to eligible public or nonprofit agencies.

Any nonprofit organization applying under this Program announcement that is not now a DHHS grantee should include with its application Internal Revenue Service or other legally recognized documentation of its nonprofit status. A nonprofit applicant can not be funded without proof of its status.

B. Project Costs and Duration

Under each priority area, AoA has estimated the number of projects to be funded and offered guidelines regarding both the duration of those projects and the anticipated Federal share of project costs. Because applications are reviewed on a competitive basis within priority areas, they are expected to be comparable in terms of cost and duration. Therefore, applicants are strongly urged to adhere to those guidelines.

C. List of Priority Areas

1. Building Public Awareness About Eldercare
2. Community Action and Coalition Building to Promote Eldercare for Older Persons At Risk
3. Human Resources Development for Quality Eldercare Services
   3.1 Promoting Academic Involvement in Eldercare
   3.2 Dissertation Program (Home and Community Based Care)
   3.3 Minority Management Training Program
   3.4 Improving the Supply of Paraprofessional Home Care Workers
4. Greater Advocacy by National Aging Organizations
5. Enhancement of Dissemination and Utilization of Information on Aging
6. National Academy on Aging

Priority Area Descriptions

1. Building Public Awareness About Eldercare (Non-Aging Organizations)

The Administration on Aging (AoA) announces the availability of funds aimed at stimulating organizations and associations, whose predominant focus is not aging, to involve their members/affiliates in concerted efforts to enhance public awareness about issues facing our increasingly aging society. The graying of our population is a concern of all segments of society—business, labor, professional organizations, religious and academic institutions, and the voluntary sector, among others. They can expect that an ever greater portion of their agenda will be concerned with the nation's older population.

Most older persons are resourceful, healthy and active. However, a significant segment of our elderly need some assistance to maintain their independence and may become increasingly vulnerable without the proper eldercare service systems.

Many aging-specific organizations have made significant inroads toward increasing public awareness of concerns relative to aging. It is our intent, however, through this solicitation to encourage national organizations and associations which have not had a predominant focus on aging to broaden their goals to include the promotion of awareness activities on behalf of older persons. Some of the areas in which greater awareness is needed include: (1) Demographic changes in American society; (2) the special needs of the at risk elderly; and (3) how individuals and organizations can assist in meeting those needs.

Applications are solicited from non-aging national organizations and associations to promote awareness among their membership as well as the general public of the need to take action now to prepare for an aging society. Such organizations and associations include, but are not limited to, business groups, labor unions, professional organizations, religious and academic institutions, and voluntary and civic associations. Greater attention must be given by all segments of society to the special needs of the vulnerable elderly; organizations funded will be promoting this goal as an activity of their organization and not as agents of AoA.

It is not the intention of AoA to specify the approach to be taken by the grantees. Examples (not requirements) of such activities might include: (1) The development and dissemination of printed or audio-visual materials both for their membership and the general public; (2) development and presentation of regional and national training both for the public and for the members of the organization or association; (3) special emphasis events at conventions and meetings; or (4) providing assistance to their local chapters or affiliates in developing local programming to make their communities more aware of the needs of older people and of how they can strengthen their services network. Of particular interest is the utilization of opportunities for organizations and associations to adopt or integrate eldercare into their ongoing agendas. Such opportunities are often presented through symposia, forums, workshops, regional and national conferences.

Where appropriate, AoA encourages applicants to promote a greater understanding of the issues associated with eldercare and develop innovative approaches to meeting the special needs of those older people at risk of loss of independence. Projects are expected to collect sufficient information on their operational activities to facilitate independent program evaluations.

Approximately ten (10) awards will be made to national associations—whose predominant focus is not on aging—which have affiliate members or chapters across the nation. Organizations must have a track record of effective dissemination and public awareness type activities. Applicants must demonstrate an institutional commitment toward establishing an agenda of action on behalf of the at risk elderly; provide information about how similar or related activities will continue following the grant award period. Grant awards of approximately $100,000 are available to successful applicants for project periods of approximately 17 months.

2. Community Action and Coalition Building to Promote Eldercare for Older Persons at Risk

Communities across the nation are currently confronted with the challenge of providing eldercare services for older persons at risk. In response to this challenge, and as a key component of the National Eldercare Campaign, the Administration on Aging has launched *Project CARE: Community Action to Reach the Elderly*. Project CARE is a nation-wide coalition building effort which combines the resources of AoA, State Agencies on Aging, Area Agencies on Aging, and other organizations committed to better meeting the needs of the vulnerable elderly. It is focused on grass-roots community action, on establishing Project CARE communities which will demonstrate that through coalition building, non-traditional approaches can and will work in providing home and community-based eldercare services for older persons at risk.

Under the funding support of a recently announced AoA Project CARE Eldercare Coalition Demonstration Program, State and Area Agencies on Aging will designate up to 150 communities which will take on a special leadership role in spearheading Project CARE. This priority area is designed to be a complementary part of Project Care. It seeks to further catalyze community action, in as many as 150 additional Project Care communities, aiming toward the building of new non-traditional coalitions to work on behalf of the at-risk elderly.

It is AoA's intent under this priority area to support coalitions in communities that are different from those communities which will be selected as part of the Eldercare Coalition Demonstration Program. To help ensure that these two programs elements of Project CARE are coordinated, State Agencies on Aging should be consulted regarding the communities selected for participation in the projects proposed for funding under this priority area. As noted below, for purposes of this priority area, applicant eligibility is limited to Area Agencies on Aging and those State Agencies on Aging with single Planning and Services Areas. (For convenience of expression only, unless otherwise noted, the Area Agency on Aging will typically be identified as the applicant organization).

Under this priority area, Area Agencies on Aging are encouraged to identify and utilize the talents of organizations (working under sub-contract to the Area Agency on Aging) which are skilled at community organizing and coalition building to assist communities in developing the leadership and plan of action necessary to meet the home and community-based service needs of increasing numbers of older persons at risk. The degree to which seniors will maintain their independence rests, in large part, with the effectiveness of our support systems at the community level. Available information makes it clear that many seniors do not receive the needed assistance from the traditional formal or informal caregiving systems. For example, many older persons following their discharge from a hospital, are in need of non-health related care to be fully able to recuperate in their own homes. Yet others have lost the ability to perform one or more of the activities of daily living which are the key to remaining independent in the home. It is critical and imperative, therefore, that we develop mechanisms, systems and procedures to assist these and other at-risk elderly.

State and Area Agencies on Aging, service providers, and senior centers have been in the forefront of helping older persons for over 25 years. The growing numbers of seniors in need of home and community based care warrant innovative approaches to complement the traditional supportive services provided through our ongoing programs. Nontraditional approaches are needed to provide services to older persons. To serve the elderly effectively, all segments of the community must join together to assess the specific needs of its seniors, examine what systems are in place; and develop a plan of action to assist the vulnerable elderly. This priority area is focused on stimulating community action on behalf of at-risk older persons through community organization and the building of broad-based coalitions to mobilize the resources of the community to develop and carry out action agendas.

Applications are solicited from, and awards will be made to, only those Area Agencies on Aging which identify, and propose to work through, a subcontractor community organization which can demonstrate to the Area Agency on Aging that it has: a capability for applying innovative approaches to community organization; a proven ability to effectively mobilize resources and services systems on behalf of a targeted population; and an appropriate understanding of the issues related to service provision on behalf of the elderly. The application must specify the community organization which will receive the subcontract and must describe the experience of that organization in community organization work.

Under the first phase of this grant, the community organization, using title IV funds, will assist at least three communities within the Area Agency's Planning and Service Area (PSA) to develop effective community coalitions to help older persons. The application must clearly identify the communities to be targeted. In the second phase of the grant the community organization will, using funds from other sources, assist at least three additional communities within the PSA. The application must clearly state that the effort supported by this grant award will be replicated in at least three additional communities with non-title IV resources to be obtained by the applicant and the communities to be assisted. The applicant must identify the other three communities as well as the potential source(s) of funding.

For purposes of carrying out both phases of activity under this priority area, the following definitions are applicable:

Community: Defined in geographic terms, a community is almost always smaller than a Planning and Service Area (PSA). Examples are a neighborhood in a large city, a medium or small city, a town or other place where people live and work.

Membership of Coalitions: Defined as comprised largely of organizations and groups without a predominant focus on aging, such as the business sector, organized labor, the civic, fraternal, and religious communities.

Objectives of Coalitions: With the defined aim of expanding home and community-based services for at-risk older persons, coalitions will identify and focus on one priority need of the community and develop and implement an action plan to meet that priority.

The methodology or process to be used to stimulate and promote the development of nontraditional approaches to service delivery to older persons at risk such as effective coalition building must be clearly defined. The use of creative approaches is strongly encouraged. The application must demonstrate the ability of the community organization, working under the direction of the Area Agency on Aging, to serve in a critical catalytic role and assist six communities to address

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the serious challenges now confronting them as a result of the growing numbers of at-risk seniors in need of eldercare services. The Area Agency on Aging community organization must strive to assist communities to strengthen or develop effective eldercare systems for older persons at-risk through the utilization of nontraditional providers such as, religious institutions, civic and fraternal organizations, business and labor, academic institutions, volunteers, professional organizations and associations, and many other segments of the community.

The Area Agency on Aging and the community organization must show an ability to assist the community to institutionalize a process which promotes an ongoing and responsive support system for its seniors. The community organization must serve as a facilitator in promoting leadership by members of the community on behalf of seniors. AoA is particularly interested in projects which show how they will utilize the best practices for carrying out effective community organization and dissemination activities. Letters of support are required from the cognizant State Agency on Aging and from an official representative agency of each community to be helped.

Only Area Agencies on Aging and State Agencies on Aging with single Planning and Service Areas, working in conjunction with qualified community organizations are eligible to apply for this grant. It is anticipated that a total of twenty-five (25) awards will be made at a Federal share of approximately $25,000 each and for approximately 17 months. Of the $25,000 to be awarded, at least $20,000 must be subcontracted to the community organization; the remainder may be used to support project related allowable costs of the Area Agency on Aging.

3. Human Resources Development

A major element of the Administration on Aging (AoA) mission is to address the critical shortages of personnel to provide eldercare services for the elderly. There is a need to attract a greater number of qualified personnel into the field of aging and to develop more highly skilled persons to improve the quality of care provided to the elderly.

AoA is encouraging academic institutions to become more involved in increasing public awareness about societal changes needed to address the greater demands for home and community based care for the elderly. Academic institutions need to become more actively involved in creating greater public awareness about the expanding aging population; in stimulating greater understanding within all relevant academic disciplines regarding the role they can play in addressing the growing need for eldercare; and in expanding efforts to educate the public about the need for more and better eldercare services.

In order to focus greater attention on the problems of older persons at risk, gerontological content should be incorporated into college curricula and the training of all professionals who work with, or on behalf of, older persons. In addition, there is a need for providing mid-level or career ladder training for those working in the human services and aging networks. Yet another concern is how to provide specialized training to attract qualified individuals to those program areas experiencing shortages of personnel.

In light of the considerations expressed above and our concerns about the growing number of "old-old" (those persons 85 years of age and older) in our society, AoA has selected priority areas under the heading of Human Resources Development that are designed to develop an expanded, more skillful, and better trained workforce capable of responding to the ever greater demands for home and community based care for the at risk elderly. Training and career development applications are solicited in four priority areas:

3.1 Promoting Academic Involvement in Eldercare;

3.2 Dissertation Program;

3.3 Minority Management Training Program; and

3.4 Improving the Supply of Paraprofessional Home Care Workers

3.1 Promoting Academic Involvement in Eldercare

The Administration on Aging (AoA) has long recognized the critical need for faculty and program development in the field of aging in institutions of higher learning. This year AoA intends to address this need by encouraging institutions to incorporate the concepts of the National Eldercare Campaign into the curricula of appropriate disciplines and professions. As described above, the National Eldercare Campaign is mobilizing new and existing resources for home and community-based care for at-risk older persons.

Institutions of higher learning are in a position to greatly benefit the elderly now and in the future. They have at their disposal information, know-how, manpower and other resources, that, when applied to the problems facing the elderly could greatly retard the loss of independence in the at-risk older population.

Manpower studies highlight the need for faculty with expertise in aging in all health and human services professional schools. Highly trained faculty members are needed to help students understand the aging process, gain sensitivity about the needs and values of older persons, and most importantly, to discover ways for our society to meet the challenges of an aging society. Faculty must assume leadership roles in inspiring students to work effectively with older persons. AoA is relying upon the formal preparation, research interests, and departmental orientation of new and tenured faculty to influence the course offerings of academic institutions. AoA endeavors to develop an experienced cadre of faculty who are adequately prepared in geriatrics and gerontology to provide leadership essential to increase the number of graduates who are prepared for employment in fields of aging.

These same studies highlight the need for faculty and institutional development in minority institutions in order to increase the numbers of minorities prepared for employment in the field of aging. Many institutions of higher education with predominantly minority enrollments, including the Historically Black Colleges and Universities (HBCUs), could benefit from assistance in developing and upgrading gerontological training programs. Assistance is needed in the areas of program and faculty development, and student support.

AoA solicits applications from institutions of higher education and education based organizations for projects to conduct program development efforts to establish and/or upgrade gerontological training programs by including the concepts of the National Eldercare Campaign in their programs. The applicant should address Eldercare concerns by focusing on such activities as:

(1) Incorporation of a community organization approach with an eldercare agenda into the teaching and internship programs of the institution. Curriculum content should focus on the home and community-based service needs of older persons at risk.

(2) New approaches to involve faculty in community level coalition building as an effective approach to enhancing home and community-based services for older persons at risk.

Programs may use a variety of approaches, including: formal programs for linking faculty and curricula to eldercare issues; curriculum replication where one institution works with three to five other institutions which are interested in developing programs, a team approach in working together; or a mentoring approach. In addition, we encourage programs which provide opportunities for faculty to undertake special assignments in developing community eldercare coalitions and initiatives.

Projects funded under this priority area may include faculty and student stipends as necessary to promote the development of their programs, especially those at minority institutions. All stipends are expected to be set at a level commensurate with the experience and qualifications of the individual supported.

Applications should include the following:

(1) Written assurances from each of the organizations and institutions involved in the collaborative effort regarding the types of activities planned and how they will be carried out; and

(2) Written commitment and plans from faculty participants and appropriate officials from participating institutions to develop and/or enhance the curriculum within one year of program completion.

AoA intends to fund approximately eight (8) projects under this priority area with a Federal share approximating $75,000 per project for a maximum duration of approximately 17 months. Applicants are encouraged to develop close linkages with State and Area Agencies on Aging as well as community level coalitions formed under the National Eldercare Campaign and other relevant community organizations in the development of the application and the implementation of the project.

3.2 Dissertation Program (Home and Community Based Care)

Our older population has increased dramatically and will continue to do so into the next century. By the year 2030 one of every four Americans, over 83 million people, will be 60 years or older and 8 million will be age 85 or older. It is vitally important, therefore, that we focus on the need to build our capacity to respond to the dramatic increase in our older population today and into the next century. That challenge is heightened by the growing numbers of elderly at risk, including those who are physically or mentally impaired; abused, neglected, or exploited; or without a caregiver to assist them when in need. For these and other older Americans, the crucial consideration is to function independently at home and in the community as long as possible.

The Administration on Aging (AoA) is interested in supporting doctoral dissertations that focus on the eldercare needs of older persons at risk and the care provided such persons through home and community-based services. It is expected that these studies will expand our knowledge base relevant to policy and program issues in this area. In evaluating doctoral dissertation applications for approval and funding by AoA, emphasis will be placed on:

(1) The objectives of the proposed research and its relevance to the problems faced by older persons at risk of losing their independence;

(2) The results and benefits to be expected from applying the findings of the research to the needs and circumstances of older persons at risk;

(3) The methodological soundness of the proposal.

Investigations, utilizing principles from the social, behavioral, and/or health oriented sciences, should examine how policies and programs in such areas as health care, adult day care, foster care, or other services affect older people in need of eldercare services. Applicants are strongly encouraged to submit proposals whose findings will have broad applicability and nationwide implications for older people. In order to both attract minority professionals to the field of aging and to advance research on minority aged, AoA actively encourages universities to submit doctoral dissertation proposals by minority students.

AoA anticipates funding approximately 8 projects for approximately 17 months at a level of approximately $15,000. The grant must be used during the year(s) designated on the notice of Financial Assistance Award and cannot be deferred. The approved doctoral dissertation will constitute the Final Report to the Administration on Aging.

The following terms apply to grants awarded under this priority area:

(1) The grant will be used to support costs incurred by the doctoral candidate in conducting the research and writing of the project outlined in the approved dissertation proposal.

(2) No indirect costs will be provided to the university. (Applicants should not fill in budget line items referring to indirect costs.)

Eligibility

(1) *Universities*

Proposals will be submitted by universities granting doctoral degrees and not by the student requesting the grant.

(2) *Doctoral Candidates*

Only doctoral candidates are eligible to participate in this program. Each candidate must have completed all the course work, written and oral examinations, language and other requirements for the doctoral degree, and received approval of the dissertation research proposal, or have met these requirements before the grant is effective.

Application Process

The applying university should include separate applications for each proposed dissertation research grant. The doctoral candidate's dissertation proposal itself should constitute the program narrative section of the application. In addition to meeting the pertinent requirements of part III of this Announcement, each application should contain a page which highlights the following:

(1) Project Director: Name, address and phone number of doctoral candidate. Candidate should sign original or master copy of the application.

(2) Sponsor: Name, position, phone number of university advisor or sponsor. Sponsor should sign original or master copy.

(3) Notice of dissertation research proposal's approval by appropriate faculty advisors and committees.

3.3 Minority Management Training Program

AoA is interested in funding special training projects to increase the number of qualified minorities in key management/administrative positions in State and Area Agencies on Aging and other agencies and organizations which impact on those older persons who are at-risk of losing their independence. Applications are solicited from State Agencies on Aging, Area Agencies on Aging where the proposal has the endorsement of the appropriate State Agency on Aging, educational institutions, Indian Tribal Organizations funded under Title VI of the Older Americans Act, and other appropriate aging related organizations to participate in the Minority Management Training Program. The objective of this program is to increase the professional credentials of minority trainees to help these individuals make the transition from a staff level position to a managerial/administrative position.

The program is designed to assist highly motivated minority professionals, preferably with advanced degrees or a bachelor's degree and several years of significant prior aging program experience, to work in settings where

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they can serve as trainees in managerial or administrative positions. It is hoped that training experience will result in either the permanent placement of the individual as a manager, supervisor or administrator in the host organization providing the training experience, or will equip participants in the program to be hired in comparable positions by other agencies or institutions upon completion of the training experience. Trainee selection should be based upon a strong commitment to work in the field of aging.

Applicants should seek commitments from host agencies which are willing to provide a varied work experience with ample opportunity for the trainee(s) to assume a managerial role. Placement in State and Area Agencies on Aging is strongly encouraged. Trainees should be given on-the-job instruction, support, counseling, and feedback about work performance. The grantee organization under this priority area must be in a position to provide administrative support to trainees and host institutions, on site monitoring of the work experience on a periodic basis and assistance in the placement of trainees once the training experience is completed.

Applications should contain information about the host agencies, procedures for selecting and recruiting trainees, a description of the traineeship itself and information about training and supervision associated with the traineeship. Applicants must include (1) a plan for assuring placement of trainees in a management or administrative position in an organization which serves older persons upon completion of the training program and (2) an evaluation component for tracking the progress of the trainees' advancement to management positions and in carrying out their managerial responsibilities. Stipends provided under this priority area are expected to be commensurate with the cost of living in a particular geographic area and the qualifications and experience of a particular trainee. Applicants should endeavor to obtain other financial support for the trainee program. Host agency cost sharing is strongly encouraged.

AoA expects to fund approximately four projects under this priority area with a Federal share of approximately $125,000 per project, and an estimated project duration of approximately 17 months.

3.4 Improving the Supply of Paraprofessional Home Care Workers

Among the challenges that the National Eldercare Campaign faces in attempting to stimulate the expansion of home and community services for the at-risk elderly is the need to increase and improve the supply of paraprofessional home care workers.

Because of expected growth of the at-risk older population between now and the year 2000, the Bureau of Labor Statistics is projecting that home care paraprofessionals, such as homemakers and home health aides, will become the third fastest growing occupational category over the next ten years. Nationally, home care providers are averaging a 60% turnover rate per year among paraprofessional home care workers and many States are now reporting serious workforce shortages. As the need for in home care expands, there is growing concern about how to both provide a sufficient number of in-home workers and assure that the services they provide are of high quality.

The purpose of this priority area is to demonstrate innovative, collaborative approaches for increasing and improving the supply of paraprofessional home care workers. The expected outcome is to develop and disseminate several model approaches which State Agencies on Aging, Area Agencies on Aging and others may use to promote the provision of in home services for the at-risk elderly, especially through State and local eldercare coalitions around the country.

Applicants are encouraged to develop collaborative efforts with all the major parties concerned with improving the supply of qualified paraprofessional home care workers, e.g., aging network agencies, community college and vocational training institutions, employment and training programs, and health care provider coalitions.

Applicants also are encouraged to demonstrate as many program elements as possible to maximize the impact of the project. These may include:

- Improving the training and supervision offered to workers;
- Developing improved and alternative wage and benefit packages;
- Strengthening the understanding of possible cultural differences between workers and their clients;
- Stabilizing work hours;
- Developing alternative approaches to restrictive task and job requirements;
- Establishing career paths within and beyond the home care industry; and
- Improving public understanding about the vital role in home workers fill.

Proposals should be based on knowledge of: (1) Existing State and local programs whose operation depends significantly on the availability and use of in home workers; (2) the results of pertinent AoA and other agency supported research and demonstration projects, and; (3) approaches utilized by the private sector. Wherever possible, proposals should build upon successfully tested policies, procedures and materials and not duplicate existing efforts. Applicants may contact the National Aging Resource Center on Long Term Care at Brandeis University (1–800–456–9966) for more information about recent activities that address the supply of in home workers.

Proposals should contain an evaluation component that effectively measures project outcomes for all proposed program elements and the impact of the project on improving worker supply and quality of patient care. They also should include a nation-wide effort to disseminate practical project results and program recommendations to State and Area Agencies on Aging and other relevant public and private agencies and organizations.

All State and Area Agencies on Aging and public and private non-profit organizations, institutions and agencies are eligible to submit an application under this priority area. Because the priority area has great interest to the aging network, all applications must provide clear evidence of consultations with the leadership of appropriate State and Area Agency(ies) on Aging in the development of the proposal.

AoA expects to fund approximately five (5) projects under this priority area, with a Federal share of approximately $100,000 per project and a project duration of approximately 17 months.

4. Greater Advocacy by National Aging Organizations for Older Persons at Risk

As stated in part I above, the Administration on Aging (AoA) has launched a National Eldercare Campaign which is a nationwide, multi-year effort to mobilize resources for home and community-based care for older persons at risk of losing their independence. Such persons include those who are physically or mentally impaired; abused, neglected, or exploited; or without a caregiver to assist them when in need. At special risk are the poor, women, residents of rural areas, and minority individuals.

The intent of this priority area is to involve nationa aging organizations significantly in the National Eldercare Campaign, with an emphasis on new initiatives designed to address the home and community-based care needs of older persons at risk and to expand public awareness relevant to the problems and issues concerning eldercare. Therefore, applicants must demonstrate familiarity with all aspects of the Campaign and clearly state how the organization seeking funds can contribute to the overall Campaign goals and objectives. Information about the National Eldercare Campaign can be obtained by contacting AoA.

National aging organizations have successfully advocated on behalf of older persons in a number of areas including housing, employment, legal services, and health care. It is AoA's intent to build upon this track record by encouraging this network of organizations to focus its advocacy related activities on issues related to the eldercare needs of the at risk population of older people. Applications are solicited from national aging organizations that propose to develop new initiatives which give special attention to eldercare for older persons at risk. Projects should focus on innovative and non-traditional approaches to greater advocacy on behalf of this population and such projects should, where appropriate, heighten visibility of the issues related to the eldercare needs of vulnerable older persons.

Activities to be undertaken should include, but are not limited to: (1) Efforts to open or expand a dialogue on aging with other organizations such as religious institutions, academia, business, labor, fraternal, civic and professional organizations and associations; (2) undertaking public awareness campaigns through appropriate use of the media, and; (3) working with eldercare coalitions to gain greater leverage for the advocacy effort. Activities supported under this priority area are to be new initiatives, above and beyond what the organization is already doing. Applicants should describe current activities that may be related to the National Eldercare Campaign and how their proposed activities present a significant departure from past work.

Eligibility to apply for funds under this priority area is limited to national aging organizations. AoA intends to support approximately eight (8) projects at a level of approximately $100,000 per project for a period of approximately 17 months. The applicant must, at a minimum, match the Federal share of project costs. Thus, this priority area requires a grantee share of at least 50% of total project costs.

5. Enhancement of Dissemination and Utilization of Information on Aging

The purpose of the Title IV Research, Demonstration, and Training Program is to provide results, products, and findings which can be used by all those in the field of aging to help older people. Dissemination is the key to appropriate utilization. A recent study suggested that while Title IV dissemination is having a positive impact, a more comprehensive dissemination strategy is needed. The purpose of this priority area is to develop and implement a comprehensive and cooperative approach (involving the awardee, AoA, and others in the field of aging) to improving the dissemination and utilization of Title IV results, products, and findings in a manner which will increase their usefulness to State and Area Agencies on Aging as well as others in the field of aging.

Current interest centers not only on the dissemination and utilization of Title IV project findings, products, and results. An even larger issue, which cuts across the entire field of aging, is how to bridge the gaps between research, demonstration, training, and practice. The central questions which need to be resolved are:

- How can dissemination and utilization be built into research, demonstration, training, and development projects from the very outset?
- How can we assure that support for dissemination activities is related to the quality of the material to be disseminated?
- How can the potential for utilization be included as a consideration in discretionary grants planning and review?
- What practical and feasible dissemination and utilization efforts can Federal, State, foundation, and other funding agencies in the field of aging undertake, singly and jointly, to transfer knowledge into program policy and practice?
- AoA is interested in funding one (1) project which will address these issues. Applicants should propose a comprehensive approach, including both strategy development and implementation, which will include, but is not limited to, the following components:
- Review current dissemination and utilization strategies and activities and suggest improvements covering, for example, more effective techniques for incorporating dissemination into all stages of the projects, rather than at their completion;
- Evaluate the utilization of a sample of completed projects including such factors of how utilization correlated with the effectiveness of dissemination activities;
- Provide advice and assistance to funded projects on how to improve project dissemination and support activities such as work in progress sessions to increase joint dissemination activities by related grantees;
- Develop and implement a systematic evaluation process for the products, results, and findings of Title IV projects including review of promising products by experts and potential users in the aging network and others in the field of aging;
- Identify, and implement a variety of dissemination techniques (with particular attention to use of technology to assist in dissemination and utilization) for use with materials which are found to have the potential for use by those serving older people. Some possible techniques include computer bulletin boards, teleconferencing, and CD Rom distributions;

The following features will characterize this project:

- This award will be made as a cooperative agreement. The statutory authority under which AoA awards cooperative agreements is found in Title II and Title IV of the Older Americans Act as amended (42 U.S.C. 3001 *et seq.*);
- An Advisory Committee will be established to ensure that the organization will be responsive to the needs of the aging network;
- An evaluation process will be developed and implemented to ensure that systematic, objective information is available about the utilization and effectiveness of the products of this project. Specific outcomes must be built into the project for evaluation. The evaluation should be performed by an *independent* evaluator; and
- The organization receiving the award will not be conducting this project on behalf of AoA. However, AoA and the awardee will work cooperatively in the development and implementation of the project's agenda as described below.

Under the cooperative agreement mechanism, AoA and the awardee will share the responsibility for managing this project. The awardee will have the primary responsibility for developing and implementing the activities of the project. AoA will jointly participate with the awardee in such activities as clarifying the specific issue areas to be addressed, through periodic briefings and ongoing consultation—sharing with the awardee its knowledge of the issues being addressed by past and current projects, providing feedback to the awardee about the usefulness to the field of its written products and information sharing activities, and participating as much as possible in the deliberations of the project's advisory

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committee. The details of this relationship will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

AoA expects to fund one project under this priority area, with an approximate total Federal share of $300,000 per year for an estimated duration of approximately 36 months.

6. National Academy on Aging

The Administration on Aging is soliciting proposals for the creation of a National Academy on Aging. The Academy will bring together leaders in American society to discuss and debate emerging trends and issues, as well as strategies regarding how they and their organizations can better address the challenges of an aging society.

Leaders and decision makers are constantly facing, directly or indirectly, the growth and change in the nation's older population. Our country's leadership at all levels—from public, private, and voluntary sectors alike—will have to become more knowledgeable about the transformations now taking place toward an aging society and be in a position to provide wise and timely decisions affecting the elderly. Decision makers will be especially challenged by the growing numbers of older persons at risk. These vulnerable older persons, whose continued independence depends upon adequate and accessible home and community based services, are the focus of the AoA National Eldercare Campaign described earlier in this document.

The goals of the Academy are to encourage greater national leadership in aging issues through the clarification of critical issues in the field of aging for analysis and discussion by those participating in Academy sponsored programs. The Academy is to promote discussion of nationwide approaches to these issues for the use and benefit of the Academy participants. Participants in Academy events should be better informed and equipped to advocate for the needs of the elderly.

Applications should include plans for curricula development and for the conduct of symposia, seminars, public forums, research, and analysis relative to emerging national issues on aging. The program design should encourage the exchange of ideas and information that will encourage creativity and innovation in programs and methods for meeting the needs of the elderly. Attention should be devoted to bringing together participants with diverse points of view.

Participants in the program activities developed by the Academy should be drawn from aging as well as non-aging organizations, from both the private and public sectors. They should, however, share both an interest in aging issues and a capacity for shaping future aging programs and policies. Participants from the field of aging may include executives of State and Area Agencies on Aging, leaders in service provision, executives of national aging organizations, as well as researchers, educators, and others in the field of aging. Participants drawn from outside the field of aging are expected to be composed of individuals with an impact on and interest in eldercare issues and the needs of older persons at risk. This second group includes subject matter and policy area experts, business leaders, executives from national organizations (non-aging), and leaders of public and voluntary agencies, elected and appointed public officials, labor unions, religious bodies, civic groups, and educational institutions. Through the programs offered by the Academy, these leaders will gain an enriched, more comprehensive understanding of the elderly and the challenges of shaping national, State, community, and organizational responses to their needs.

Applicants for the National Academy on Aging award must be qualified to provide a level of knowledge and information synthesis appropriate to the high ranking officials for whom the Academy is planned. The applicant should propose a faculty of experts in aging-related matters with particular knowledge in a variety of topic areas. It should set forth a plan to undertake a range of activities tailored to the distinct needs of its participants. In particular, it should describe how the Academy program will assist decision makers whose organizations are part of the National Eldercare Campaign for older persons at risk. In that regard, the Academy will be expected to coordinate its curriculum and program, as appropriate, with the work being undertaken by the AoA supported National Eldercare Institutes.

Other features of the Academy include the following:

- The applicant selected will be awarded a Cooperative Agreement for a three-year project period.
- AoA and the organization selected to serve as the National Academy on Aging will work cooperatively in the development of the Academy's agenda. The Academy will not conduct its activities on behalf of AoA but on a cooperative basis with AoA as described below.
- The National Academy on Aging shall have its own organizational identity within the structure of the performing organizations.
- The National Academy on Aging shall have a Director with an appropriate background who will devote full time to this position. Appropriately qualified individuals shall be appointed to the Academy's faculty.
- An Advisory Committee will be established to ensure that the Academy is responsive to the needs of those participating in its activities.

AoA expects to fund one cooperative agreement under this priority area with a Federal share of approximately $300,000 per year for a project duration of approximately three years. Initially, AoA funds will support in whole or in part the administration of the Academy, the cost of conducting core activities, including educational programs and living expenses of those attending. As the Academy becomes more established, it is anticipated that the agencies sponsoring the participants will bear a larger portion of the costs.

Under the cooperative agreement mechanism AoA and the awardee organization will share the responsibility for managing the Academy. The awardee organization will have the primary responsibility for developing and implementing the activities of the Academy. AoA will jointly participate with the Academy in such activities as clarifying the specific issues and audiences to be addressed by the Academy, through periodic briefings and ongoing consultation—sharing with the Academy its knowledge of the issues being addressed by the Academy as well as information about relevant activities being undertaken by others, providing feedback to the Academy about the usefulness to the field of its programs, and participating as much as possible in the deliberations of the Academy's advisory committee. The details of this relationship will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

Part III. Information and Guidelines for the Application Process and Review

This part contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal. General guidelines on applicant eligibility are provided in part I. Specific eligibility guidelines are provided in part II under certain priority areas.

A. General Information

1. Review Process and Considerations for Funding

Within the limits of available Federal funds, the Administration on Aging (AoA) makes financial assistance awards consistent with the purposes of the statutory authorities governing the AoA Discretionary Funds Program and this announcement. The following steps are involved in the review process.

a. Notification: All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it.

b. Screening: To insure that minimum standards of equity and fairness have been met, applications which do not meet the screening criteria listed in section D below, will not be reviewed and will receive no further consideration for funding.

c. Expert Review: Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the evaluation criteria specified in Section F, below, by review panels consisting of qualified persons from outside the Federal government and knowledgeable non-AoA Federal Government officials. The scores and judgments of these expert reviewers are a major factor in making award decisions.

d. Other Comments: AoA solicits comments from other Federal Departments, State Agencies on Aging, interested foundations, national organizations, specialists, experts, and others. These comments are considered by the Commissioner on Aging in making funding decisions.

e. Other Considerations: In making funding award decisions, AoA will pay particular attention to applications which focus on older persons with the greatest economic and social need, with particular attention to the low-income minority elderly. Final decisions will also reflect the equitable distribution of assistance among geographical areas of the nation, and rural and urban areas. The Commissioner on Aging also guards against wasteful duplication of effort in making funding decisions.

f. Other Funding Sources: AoA reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

g. Decision-Making Process: After the panel review sessions, applicants may be contacted by AoA staff to furnish additional information. Applicants who are contacted should not assume that funding is guaranteed. An award is official only upon receipt of the Financial Assistance Award (Form DGCM 3–785).

h. Timeframe: Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant may be several months in duration. This length of time is required to review and process grant applications.

2. Notification Under Executive Order 12372

This is not a covered program under Executive Order 12372.

B. Deadline for Submission of Applications

The closing date for submission of applications is August 9, 1991. Applications must be either sent or hand-delivered to the address specified in section D, below. Hand-delivered applications are accepted during the normal working hours of 9 a.m. to 5:30 p.m., Eastern Time, Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received at the mailing address on or before the deadline date; or

2. Sent before midnight of the deadline date as evidenced by either (1) a U.S. Postal Service receipt or postmark or (2) a receipt from a commercial carrier. The application must also be received in time to be considered under the competitive independent review mandated by chapter 1–62 of the DHHS Grants Administration Manual. Applicants are strongly advised to obtain proof that the application was sent by the deadline date. If there is a question as to when an application was sent, applicants will be asked to provide proof that they have met the deadline date. Private metered postmarks are not acceptable as proof of a timely submittal.

Applications which do not meet the above deadline are considered late applications. The Acquisition and Assistance Management Branch will notify each late applicant that its application will not be considered in the current competition.

AoA may extend the deadline for all applicants because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail or when AoA determines an extension to be in the best interest of the government. However, if AoA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant(s).

C. Grantee Share of the Project

Under the Discretionary Funds Program, AoA does not make grant awards for the entire project cost. Applicants must, at a minimum, contribute one (1) dollar, secured from non-Federal sources, for every three (3) dollars received in Federal funding. The non-Federal share must equal at least 25% of the entire project cost. (Except for Priority Area 4 which requires, at a minimum, a 50% non-Federal Share.) Applicants should note that, among applications of comparable technical merit, the greater the non-Federal share the more favorable the application is likely to be considered.

The one exception to this cost sharing formula is for applications originating from American Samoa, Guam, the Virgin Islands or the Northern Mariana Islands. Applicants from these territories are covered by Section 501(d) of Public Law 95–134, as amended, which requires the Department to waive "any requirement for local matching funds under $200,000."

The non-Federal share of total project costs for each budget period may be in the form of grantee-incurred direct or indirect costs, third party in-kind contributions, and/or grant related income. Indirect costs may not exceed those allowed under Federal rules established, as appropriate, by OMB Circulars A–21, A–87, and A–122. If the required non-Federal share is not met by a funded project, AoA will disallow any unmatched Federal dollars. A frequent error is to match 25% of the Federal share rather than 25% of the entire project cost. Applicants should be sure that they have met the match requirement before submitting their budgets.

D. Application Screening Requirements

All applications will be screened to determine completeness and conformity to the requirements of this announcement. These screening requirements are intended to assure a level playing field for all applicants. Applications which fail to meet one or more of the criteria described below will not be reviewed and will receive no further consideration for funding. Complete, conforming applications will be reviewed and scored competitively.

In order for an application to be reviewed, it must meet the following screening requirements:

1. The application must not exceed forty-five (45) pages, double-spaced, exclusive of certain required forms and

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assurances which are listed below. Applications whose typescript is single-spaced or space-and-a-half will be considered only if it is determined the applicant has not thereby gained a competitive advantage.

The following documents are excluded from the 45 page limitation: (1) Standard Forms (SF) 424, 424A (including up to a four page budget justification) and 424B; (2) the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements; (3) proof of non-profit status; and (4) indirect cost agreements. Within the forty-five (45) page limitation, the following guidelines are suggested:

—Summary description (one page);
—Narrative (approximately thirty pages);
—Applicant's capability statement, including an organization chart, and vitae for key project personnel (approximately ten pages) and;
—Letters of commitment and cooperation (approximately four pages).

2. Applications must be either postmarked by midnight, August 9, 1991, or hand-delivered by 5:30 p.m., Eastern Time, on August 9, 1991 to:

Department of Health and Human Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., Room 341F.2, Washington, D.C. 20201, Attn: AoA–91–3.

3. Applicants must meet any eligibility requirements specific to the priority area under which they are applying.

Under No Circumstances Will Applications That Do Not Meet These Screening Requirements Be Assigned To Reviewers.

E. Funding Limitations on Indirect Costs

1. Training projects awarded to institutions of higher education, hospitals, and other non-profit institutions, are limited to a Federal reimbursement of indirect costs of eight (8) percent of the total allowable direct costs or, where a current agreement exists, the organization's negotiated indirect cost rate, whichever is lower. See section J–2, item 6j.

2. For all other applicants, indirect costs generally may be requested only if the applicant has a negotiated indirect cost rate with the Department's Division of Cost Allocation or with another Federal agency. Applicants who do not have a negotiated indirect cost rate may apply for one in accordance with DHHS procedures and in compliance with relevant OMB Circulars.

F. Evaluation Criteria

Applications which pass the screening will be evaluated by an independent review panel of at least three individuals. These reviewers will be primarily experts from outside the Federal government. Based on the specific programmatic considerations set forth in the individual priority area under which an application has been submitted, the reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

1. Objectives and Need for Assistance: 25 points

a. Does the application pinpoint relevant economic, social, financial, institutional or other problems requiring a solution?

b. Is the need for the proposed project clearly demonstrated and supported by documentation? Are the needs of low income and minority elderly included and discussed?

c. Are the principal and subordinate objectives, functions, and activities of the project clearly stated, justified, innovative (as appropriate), and relevant to the issue/problem area?

d. Does the application include any relevant data based on planning studies in providing a thorough discussion of the current state of knowledge relevant to the proposed project?

2. Results or Benefits Expected: 20 points

a. Are the expected project benefits and/or results clearly identified, realistic, and consistent with the objectives of the project? Are important anticipated contributions to policy, practice, theory and/or research clearly indicated?

b. Does the application clearly indicate how the expected results will be of direct and tangible benefit to older people? Does the application describe how its products will be disseminated to and utilized by appropriate, well-chosen audiences?

3. Approach: 30 points

a. Does the application provide a sound and workable plan of action pertaining to the scope of the project and detail how the proposed work will be accomplished?

b. Are persuasive reasons offered for taking the proposed approach as opposed to others? Does the application clearly explain the methodology for determining if the results and benefits identified are being achieved?

c. Does the proposed work/task schedule offer a logical and realistic projection of accomplishments to be achieved? Is a time-line chart or its equivalent employed to list project activities in chronological order and show the target dates for the projected accomplishments?

d. Has the application clearly identified the kinds of data to be collected and analyzed, and discussed the criteria to be used in evaluating the success of the project?

e. Has the application identified and secured the commitment of each of the key cooperating organizations, groups, and individuals who will work on the project and provided an adequate description of the nature of their effort or contribution?

4. Level of Effort: 25 points

a. Are the project management, staff resources and time commitments adequate to carry out the proposal effectively and efficiently? Is the staff chart consistent with the project plan expressed in the Approach section of the Program Narrative?

b. Are the key staff well qualified for this project? Are consultants and advisors used appropriately? If volunteers will be used, is there adequate supervision and support from project staff?

c. Does the budget justification adequately describe the resources necessary to conduct the project? Is the budget reasonable in terms of the intended results?

d. Are the authors of the proposal, their relationship with the applicant agency and their intended role in the project, if any, identified?

G. The Components of an Application

To expedite the processing of applications, we request that you arrange the components of your application, the original and two copies, in the following order:

- SF 424, Application for Federal Assistance; SF 424A, Budget, accompanied by your budget justification; SF 424B (Assurances); and the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements.

Note: The original copy of the application must have an original signature in item 18d on the SF 424.

- Proof of nonprofit status, as necessary;
- A copy of the applicant's indirect cost agreement, as necessary;
- Project summary description;
- Program narrative;
- Organizational capability statement and vitae;
- Letters of Commitment and Cooperation.
- A copy of the Check List of Application Requirements (See Section K, below) with all the completed items checked.

The original and each copy should be stapled securely (front and back if necessary) in the upper left corner. Pages should be sequentially numbered. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

H. Communications with AoA

Do not include a self-addressed, stamped acknowledgment card. All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it. This number and the priority area should be referred to in all subsequent communication with AoA concerning the application. If acknowledgment is not received within seven weeks after the deadline date, please notify the Acquisition and Assistance Management Branch by telephone at (202) 245–9016.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number for quick retrieval. It will not be possible for AoA staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants are advised that, prior to reaching a decision, AoA will not release information relative to an application other than that it has been received and that it is being reviewed. Unnecessary inquiries delay the process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

I. Background Information and Guidance for Preparing the Application

1. Current Projects and Previous Project Results

In the Program Narrative of the application (see section J below), applicants are expected to demonstrate familiarity with recent and ongoing activity related to their project proposal. With respect to AoA-supported discretionary grant projects, information on Current AoA Projects may be obtained by contacting the Office of Program Development at 202/619–0441.

Regarding Completed AoA Projects, copies of all AoA discretionary grant final reports and printed materials are sent to: the National Technical Information Service (NTIS), an abstract clearinghouse and document source for Federally sponsored reports; AgeLine, a bibliographic database service sponsored by the AARP; and the U.S. Government Printing Office Library Program, a catalog and microfiche service for 1400 depository libraries located throughout the United States.

Information concerning access to the bibliographic and document referral services provided by these clearinghouses can be obtained through most public and academic libraries. For direct information use the following addresses and telephone numbers:

National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4600.

AgeLine Database, BRS Customer Services, 1200 Route 7, Latham, NY 12110, (800) 345–4277.

Acquisition Unit, Library Programs Service, U.S. Government Printing Office, North Capital and H Streets, NW., Washington, DC 20401, (202) 275–1070.

2. Dissemination and Utilization

The purposes and expectations associated with Title IV discretionary projects extend well beyond the immediate confines of a particular project's local impact. Projects should have a ripple effect in the field of aging in terms of replicating their design, utilizing their results, and applying their benefits to a widening circle of older persons. This section suggests certain principles of dissemination to be considered in developing your application:

- The most useful projects make dissemination and utilization a central, not peripheral, component of the project;
- Dissemination starts at the beginning of a project not when it is completed;
- Potential users should be involved in planning the project, if possible, and products developed with the needs of potential users in mind;
- Dissemination is a networking process;
- At a minimum, dissemination includes getting your final products into the hands of appropriate users and making presentations at conferences; and
- Coordination with other related projects may increase the chances of your products being used.

J. Completing the Application

In completing the application, please recognize that the set of standardized forms and instructions prescribed by the Office of Management and Budget (approved under OMB control number 0348–0043) is not perfectly adaptable to the particulars of AoA's Discretionary Funds Program. (The narrative guidance and checklist reporting form are approved under OMB control number 0937–0189). Wherever possible, we have attempted to provide clarification. If you encounter a problem in completing the application, please call (202) 619–0441 for assistance.

Forms SF 424, SF 424A, SF 424B, and the certification forms (regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements) have been reprinted as part of this **Federal Register** announcement for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You should reproduce single-sided copies from the reprinted form and type your application on the copies. Please do not use forms directly from the **Federal Register** announcement as they are printed on both sides of the page.

To assist applicants in completing Forms SF 424 and SF 424A correctly, samples of these forms have been provided as part of this announcement. These samples are to be used as a guide only. Please submit your application on the blank copies. When specific information is not required under this program, N/A (not applicable) has been preprinted on the form.

Please prepare your application consistent with the following guidance:

1. SF 424, Cover Page:

Complete only the items specified in the following instructions:

Top Left of Page. In the box provided, enter the number of the priority area under which the application is being submitted.

Item 1. Preprinted on the form.

Item 2. Fill in the date you submitted the application. Leave the applicant identifier box blank.

Item 3. Not applicable.

Item 4. Leave blank.

Item 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, applicant address, and name and telephone number of the person to contact on matters related to this application.

Item 6. Enter the employer identification number (EIN) of the

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applicant organization as assigned by the Internal Revenue Service. Please include the suffix to the EIN, if known.

Item 7. Enter the appropriate letter in the box provided.

Item 8. Preprinted on form.

Item 9. Preprinted on form.

Item 10. Preprinted on form.

Item 11. The title should describe concisely the nature of the project. It should not exceed 10 to 12 words and 120 characters including spaces and punctuation. It should not repeat the title of the priority area or the name of the applicant institution.

Item 12. Not applicable.

Item 13. Enter the desired start date for the project, beginning on or after September 1, 1991 and the desired end date for the project. Projects are generally 12 to 36 months in duration. Check the description of the priority area under which you are applying for the expected project duration.

Item 14. List the applicant's Congressional District and the District(s), if any, directly affected by the proposed project.

Item 15. All budget information entered under item #15 should cover: (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period exceeds 17 months. The applicant should show the Federal grant support requested under sub-item 15a. Sub-items 15b–15e are considered cost-sharing or "matching funds". The value of third party in-kind contributions should be entered in sub-items 15c–15e, as applicable. It is important that the dollar amounts entered in sub-items 15b–15e total at least 25 percent of the total project cost (total project cost is equal to the requested Federal funds plus funds from non-Federal sources).

Check: Does all information entered in items 15a to 15f cover: (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period exceeds 17 months?

Item 16. Preprinted on form.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by an authorized representative of the applicant organization. A document attesting to that sign-off authority must be on file in the applicant's office.

2. SF 424A—Budget Information

This form is designed to apply for funding under more than one grant program; thus, for purposes of this AoA program, most of the budget item blocks are superfluous and have been marked not applicable (N.A.). The applicant should consider and respond to only the budget items for which guidance is provided below. Sections A, B, and C should include the Federal as well as non-Federal funding for the proposed project covering (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period exceeds 17 months.

Section A—Budget Summary

This section includes a summary of the budget. On line 5, enter total Federal Costs in column (e) and total Non-Federal Costs (including third party in-kind contributions but not program income) in column (f). Enter the total of columns (e) and (f) in column (g).

Section B—Budget Categories

Under column (5) enter the total requirements for funds (both Federal and non-Federal) by object class category.

A separate *budget justification* should be included to fully explain and justify major items, as indicated below. The budget justification should not exceed four typed pages and should immediately follow SF 424A.

Line 6a—Personnel: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included under 6h - Other.

Justification: Identify the principal investigator or project director, if known. Specify the key staff, their titles, and time commitments in the budget justification.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Line 6c—Travel: Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation.

Justification: Include the total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other grantees, the threshold for equipment is $500 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified as necessary for the conduct of the project. The equipment, or a reasonable facsimile, must not be otherwise available to the applicant or its sub-grantees. The justification also must contain plans for the use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

Line 6f—Contractual: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance.

Do not include payments to individuals on this line.

Justification: Attach a list of contractors indicating the name of the organization, the purpose of the contract, and the estimated dollar amount. If the name of the contractor, scope of work, and estimated costs are not available or have not been negotiated, indicate when this information will be available. Whenever the applicant/grantee intends to delegate all or part of the project work to another agency, the applicant/grantee must provide a completed copy of Section B, Budget Categories for each contractor, along with supporting information.

Line 6g—Construction: Leave blank since new construction is not allowable and Federal funds are rarely used for either renovation or repair

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to: insurance, medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments; and staff development costs.

Line 6i—Total Direct Charges: Show the totals of Lines 6a through 6h.

Line 6j—Indirect Charges: Enter the total amount of indirect charges (costs), if any. If no indirect costs are requested, enter "none." Indirect charges may be requested if: (1) The applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency; or (2) the applicant is a State or local government agency.

Applicants other than State and local governments are requested to enclose a copy of this agreement. Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be also charged as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in 45 CFR part 74), Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations. As part of the justification, applications subject to this limitation should specify that the Federal reimbursement will be limited to 8%.

For training grant applications, the entry for line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, alterations and renovations.

(c) Subtract b* from a*. The remainder is what the applicant can claim as part of its matching cost contribution.

Line 6k—Total: Enter the total amounts of Lines 6i and 6j.

Line 7—Program Income: Estimate the amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature, source, and expected use of income in the Level of Effort section of the Program Narrative.

Section C—Non-Federal Resources

Line 12—Totals: Enter amounts of non-Federal resources that will be used in carrying out the proposed project. If third-party in-kind contributions are included, provide a brief explanation in the budget justification section.

Section D—Forecasted Cash Needs

Not applicable.

Section E—Budget Estimate of Federal Funds Needed for Balance of the Project

This section should be completed only if the total project period exceeds 17 months.

Line 20—Totals: Enter the estimated required *Federal* funds (exclude estimates of the amount of cost sharing) for the period covering months 13 through 24 under column "(b) First;" and, if applicable, for months 25 through 36 under "(c) Second."

Section F—Other Budget Information

Line 21—Direct Charges: Not applicable.

Line 22—Indirect Charges: Enter the type of indirect rate (provisional, predetermined, final or fixed) to be in effect during the funding period, the base to which the rate is applied, and the total indirect costs.

Line 23—Remarks: Provide any other explanations or comments deemed necessary.

3. SF 424B—Assurances

SF 424B, Assurances—Non-Construction Programs, contains assurances required of applicants under the Discretionary Funds Program of the Administration on Aging. Please note that a duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances.

With the possible exception of an Assurance of Protection of Human Subjects, no other assurances are required. For research projects in which human subjects may be at risk, an Assurance of Protection of Human Subjects may be needed. If there is a question regarding the applicability of this assurance, contact the Office of Research Risks of the National Institutes of Health at (301) 496–7041.

4. Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (3) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

5. Project Summary Description

On a separate page, provide a project summary description headed by two identifiers: (1) the name of the applicant organization as shown in SF 424, item 5 and (2) the priority area as shown in the upper left hand corner of SF 424. Please limit the summary description to a maximum of 1,200 characters, including words, spaces and punctuation.

The description should be specific and succinct. It should outline the objectives of the project, the approaches to be used and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as manuals, data collection instruments, training packages, audio-visuals, software packages). The project summary description, together with the information on the SF 424, becomes the project "abstract" which is entered into AoA's computer data base. The project description provides the reviewer with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal.

6. Program Narrative

The Program Narrative is the most important part of the application. It should be clear, concise, and pertinent to the priority area under which the application is being submitted. In describing your proposed project, make certain that you respond fully to the evaluation criteria set forth in section F above. The format of the narrative should, in fact, parallel the criteria, beginning with a discussion of (a) the project's objectives and the need for assistance; leading to an account of (b) the results/benefits that you expect the project to accomplish; followed by a detailed explanation of (c) the approach(es) the project would take to achieve its objectives; and ending with (d) the level of effort the project would undertake, in terms of staff, funding, and other resources.

Please have the narrative typed on one side of 8½" x 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) should be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. (Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement).

The narrative should conclude by identifying the author(s) of the proposal, their relationship with the applicant,

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and the role they will play, if any, should the project be funded.

7. Organizational Capability Statement and Vitae for Key Project Personnel

The organizational capability statement should describe how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized, the nature and scope of its work and/or the capabilities it possesses. This description should cover capabilities of the applicant not included in the program narrative. It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its track record for preparing cogent and useful reports, publications, and other products. An organization chart showing the relationship of the project to the current organization should be included.

Vitae should be included for key project staff only.

K. Checklist for a Complete Application

The checklist below should be typed on 8½" x 11" plain white paper, completed and included in your application package. It is for use in ensuring proper preparation of your application.

CHECKLIST

I have checked my application package to ensure that it includes or is in accord with the following:

—One original application plus two copies, each stapled securely (no folders or binders) with the SF 424 as the first page of each copy of the application;
—SF 424; SF 424A—Budget Information (and accompanying Budget Justification); SF 424B—Assurances; and Certifications;
—SF 424 has been completed according to the instructions, signed and dated by an authorized official (item 18);
—The number of the priority area under which the application is submitted has been identified in the box provided at the top left of the SF 424;
—As necessary, a copy of the current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency;
—Proof of nonprofit status, as necessary;
—Summary description;
—Program narrative;
—Organizational capability statement and vitae for key personnel;
—Letters of commitment and cooperation, as appropriate.

L. Points to Remember

1. There is a forty-five (45) double-spaced page limitation for the substantive parts of the application. Before submitting your application, please check that you have adhered to this requirement which is spelled out in section D.

2. You are required to send an original and two copies of an application.

3. Designate a priority area in the box provided at the top left hand corner of the SF 424.

4. The summary description (1,200 characters or less) should accurately reflect the nature and scope of the proposed project.

5. To meet the cost sharing requirement (see section C above), you must, at a minimum, match $1 for every $3 requested in Federal funding to reach 25% of the *total* project cost (the Federal share plus your cost share). For example, if your request for Federal funds is $90,000, then the required minimum match or cost sharing is $30,000. The total project cost is $120,000, of which you $30,000 share is 25%.

6. Indirect costs of training grants may not exceed 8%.

7. In following the required format for preparing the program narrative, make certain that you have responded fully to the four (4) evaluative criteria which will be used by reviewers to evaluate and score all applications.

8. Do *not* include letters which endorse the project in general and perfunctory terms. In contrast, letters which describe and verify tangible commitments to the project, e.g., funds, staff, space, should be included.

9. If duplicate applications are submitted under different priority areas, AoA reserves the right to select the single priority area under which it will be reviewed.

10. If more than one application is submitted, each should be submitted under separate cover.

11. Before submitting the application, have someone other than the author(s): (1) Apply the screening requirements to make sure you are in compliance; and (2) carry out a trial run review based upon the evaluative criteria. Take the opportunity to consider the results of the trial run and then make whatever changes you deem appropriate.

12. Applications must be mailed by midnight, or hand delivered (by 5:30 p.m., Eastern Time), by August 9, 1991 to: Department of Health and Human Services, Grants and Contracts Management Division, Acquisition and Assistance Management Branch, 200 Independence Avenue SW., room 341F.2, Washington, DC 20201, Attn: AoA–91–3.

Dated: June 24, 1991.

Joyce T. Berry,

U.S. Commissioner on Aging, Administration on Aging.

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OMB Approved No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier: Not Applicable
	3. DATE RECEIVED BY STATE: N.A.	State Application Identifier: N.A.
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)
6. EMPLOYER IDENTIFICATION NUMBER (EIN):	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify):
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision. If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (Specify):	9. NAME OF FEDERAL AGENCY: Administration on Aging
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 9 3 . 6 6 8 TITLE: Special Programs for the Aging–Title IV	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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APPLICATION FOR FEDERAL ASSISTANCE 7.7

2. DATE SUBMITTED: May 23, 1991	Applicant Identifier: Not Applicable (N/A)
3. DATE RECEIVED BY STATE: N/A	State Application Identifier: N/A
4. DATE RECEIVED BY FEDERAL AGENCY:	Federal Identifier:

1. TYPE OF SUBMISSION: Application — ☐ Construction ☒ Non-Construction; Preapplication — ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: ABC Organization

Organizational Unit: Division on Aging

Address (give city, county, state, and zip code): 1234 Jones Avenue, Smithville, Kansas

Name and telephone number of the person to be contacted on matters involving this application (give area code): John Doe (456) 789-0123

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 12-3456789

7. TYPE OF APPLICANT: (enter appropriate letter in box) N

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify):

9. NAME OF FEDERAL AGENCY: Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 93.662

TITLE: Special Programs for the Aging-Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Improved Services to At-Risk Elderly

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Nation-wide applicability

13. PROPOSED PROJECT: Start Date: 09/30/91; Ending Date: 09/29/92

14. CONGRESSIONAL DISTRICTS OF: a. Applicant: 4; b. Project: 1-5

15. ESTIMATED FUNDING:

a. Federal	$ 75,000 .00
b. Applicant	$ 25,000 .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 100,000 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative: Jane Roe	b. Title: Executive Director	c. Telephone number: (555) 666-7777
d. Signature of Authorized Representative:		e. Date Signed: 05/20/91

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BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. N.A.	N.A.	$ N.A.	$ N.A.	$ N.A	$ N. A.	$ N.A.
2. N.A.	N. A.	N.A.	N.A.	N.A.	N. A.	N.A.
3. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
4. N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
5. TOTALS	93.668	$ N.A.	$ N.A.	$ 75,000	$ 25,000	$ 100,000

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total ($)
a. Personnel	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ 50,000
b. Fringe Benefits	N.A.	N.A.	N.A.	N.A.	15,000
c. Travel	N.A.	N.A.	N.A.	N.A.	4,000
d. Equipment	N.A.	N.A.	N.A.	N.A.	1,000
e. Supplies	N.A.	N.A.	N.A.	N.A.	2,000
f. Contractual	N.A.	N.A.	N.A.	N.A.	3,000
g. Construction	N.A.	N.A.	N.A.	N.A.	N.A.
h. Other	N.A.	N.A.	N.A.	N.A.	10,000
i. Total Direct Charges (sum of 6a - 6h)	N.A.	N.A.	N.A.	N.A.	85,000
j. Indirect Charges	N.A.	N.A.	N.A.	N.A.	15,000
k. TOTALS (sum of 6i and 6j)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ 100,000
7. Program Income	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
9. N.A.	N.A.	N.A.	N.A.	N.A.
10. N.A.	N.A.	N.A.	N.A.	N.A.
11. N.A.	N.A.	N.A.	N.A.	N.A.
12. TOTALS (sum of lines 8 and 11)	$ 25,000	$	$	$ 25,000

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
14. Non-Federal	N.A.	N.A.	N.A.	N.A.	N.A.
15. TOTAL (sum of lines 13 and 14)	$ N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16. N.A.	$ N.A.	$ N.A.	$ N.A.	$ N.A.
17. N.A.	N.A.	N.A.	N.A.	N.A.
18. N.A.	N.A.	N.A.	N.A.	N.A.
19. N.A.	N.A.	N.A.	N.A.	N.A.
20. TOTALS (sum of lines 16-19)	$ 100,000	$	$ N.A.	$ N.A.

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
N.A.	

23. Remarks

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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____
Organization

_____
Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

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Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services(HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction. " provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions
(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(Continued on reverse side of this sheet)

HHS--Certification Regarding Drug-Free Workplace Requirements--continued from reverse page

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature_____ Date_____

Title_____

Organization_____

DGMO Form#2 Revised May 1990

[FR Doc. 91-15399 Filed 6-27-91; 8:45 am]
BILLING CODE 4150-01-C

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Centers for Disease Control

Availability of DCD Bacterial Isolates for Evaluating Antimicrobial Susceptibility Testing Devices

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of availability.

SUMMARY: CDC bacterial isolates for quality control of antimicrobial susceptibility testing devices are available. Charges are listed under supplementary information.

EFFECTIVE DATE: June 15, 1991.

FOR FURTHER INFORMATION CONTACT: Fred C. Tenover, Ph.D., or Carolyn Baker, Antimicrobics Investigation Branch, Center for Infectious Diseases (G07), CDC, Atlanta, GA 30333. Telephone: FTS: 236-3246, Commercial: (404) 639-3246.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the availability from CDC of two sets of bacterial isolates, one set of gram-positive organisms and one set of gram-negative organisms, of known antimicrobial susceptibility patterns. These organisms could be used by manufacturers to fulfill the requirements for testing antimicrobial susceptibility testing devices as part of Food and Drug Administration 510(k) or pre-market approval (PMA) submissions.

The charge for the set of 100 gram-positive organisms will be $1500.00, and the charge for the set of 200 gram-negative organisms will be $2500.00. These charges were derived from the cost of materials and labor required by CDC to acquire, test, maintain, and prepare each set for shipment. The gram-positive set is currently available. The gram-negative set will be available as of June 28, 1991.

These sets can be obtained by writing to Connie Flowers, Scientific Resources Program, Technical Services Branch (C21), Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Orders may also be sent by facsimile (FAX) to (404) 639-3037. Telephone orders will not be accepted. The catalog number for the gram-positive set is GPO100; the number for the gram-negative set is GNO250. No individual organisms or partial sets will be made available. The sets will be sent frozen on dry ice by overnight express shipping.

Orders for sets should include the purchase order number, catalog number, the name and account number of the company's overnight express shipping service, the name and telephone number of the contact person who will receive the isolates, and the company's shipping and billing address. The materials will be provided only after the company executes a Non-disclosure Agreement which will be provided by CDC once the order has been made. Companies will be billed the month after the isolates are shipped.

Disk diffusion and broth microdilution susceptibility testing results will be sent with the sets, and agar dilution results will follow.

Dated: June 21, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-15403 Filed 6-27-91; 8:45 am]

BILLING CODE 4160-18-M

[Announcement Number 162]

A Cooperative Agreement Demonstration Project to Determine the Morbidity and Mortality After Measles Vaccine Administered at Six Months of Age

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for research concerning morbidity and mortality following administration of high-dose Edmonston-Zagreb (EZ) and Schwarz vaccines administered at 6 months of age.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under the Public Health Service Act, sections 301 [42 U.S.C. 241] and 317K [42 U.S.C. 247b(k)], as amended.

Eligible Applicant

The Ministry of Health, Mexico, alone has data on an existing cohort of children who received different doses of EZ and Schwarz measles vaccines 4 years ago which meets the needs of this proposed program. The necessary relationships with the Mexican government and local health systems are in place. Qualified epidemiologists have worked with CDC and with the study participants. These pre-existing conditions ensure the most timely and cost-effective start up of the proposed project. Assistance will only be provided to the Ministry of Health, Mexico. No other applications are solicited or will be accepted.

Availability of Funds and Project Period

Approximately $60,000 is available in Fiscal Year 1991 to fund one award. It is expected that award will begin on or about September 1, 1991, for one 12-month budget period within a 1-year project period. Funding estimates may vary and are subject to change.

Purpose

As a result of the studies in West Africa, this program is proposed to follow up on children to determine differences in mortality or other indicators between children who received the EZ and Schwarz vaccines and children who were not vaccinated before the age of 1 year.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activites under A, below, and CDC will be responsible for conducting activities under B, below.

A. Recipient Activities

1. Develop a protocol to assess the mortality and severe morbidity in all children who were enrolled in 1987 measles vaccine study and persistence of antibody as a subsample.
2. Implement the protocol.
3. Collaborate with CDC in analysis and publication of the results.

B. Centers for Disease Control Activities

1. Collaborate in protocol development and study design.
2. Assist in monitoring the collection of data.
3. Collaborate in data entry, analysis and publication of results.

Evaluation Criteria

The application will be reviewed and evaluated according to the following major criteria (Maximum 100 points):

A. The extent to which the proposed objectives are measurable, specific and related to the required recipient activities and program purpose. (40 points)

B. The quality of the plan for conducting program activities and the potential effectiveness of the proposed methods in meeting its objectives. (50 points)

C. The qualifications of the project personnel and evidence of their experience in related activities. (10 points)

In addition, consideration will also be given to the extent that the budget request is clearly justified and consistent with the intended use of the funds (no weight).

Other Requirements

A. Confidentiality

All information obtained on any person by any program that is acting with funds awarded through this cooperative agreement shall not be disclosed unless that person provides written consent. Information may be released only as necessary to provide services to that person or as may be required by a law of Mexico or a political subdivision of Mexico. Information derived from any such program may be disclosed (a) in summary, statistical, or similar form that maintains the person's anonymity, or (b) for clinical or research purposes, but only if the persons who received diagnoses or care under such programs are not identified. The recipient of CDC funds that must obtain and retain identifying information as a part of the CDC-approved work plan must: (a) Maintain the physical security of such records and information at all times; (b) have procedures in place and staff trained to prevent unauthorized disclosures of client identifiers; (c) obtain informed consent by explaining the possible risk of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure; and (d) provide written assurance to this effect. The applicant must have in place systems to ensure the confidentiality of all patient records at each study site.

B. Human Subjects

This project, which involves human subjects, will not be awarded until an acceptable assurance has been given that the human subjects protocol will be subject to initial and continuing review by an appropriate institutional committee(s) as described in 45 CFR part 46.

E.O. 12372 Review

The application for this program is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.185, Immunization Research, Demonstration, Public Information, and Education-Education, Training, and Clinical Skills Improvement Projects.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161-1) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, on or before August 1, 1991.

A. Deadline

The application shall be considered as meeting the deadline if it is either:

1. Received on or before the deadline date, or
2. Sent on or before the deadline date and received in time for submission to the independent review group. The applicant must request a legibly dated postmark or obtain a legibly dated receipt from a commercial carrier or postal service. Private metered postmarks shall not be accepted as proof of timely mailing.

B. Late Application

An application which does not meet the criteria in A.1 or A.2 above is considered a late application. A late application will not be considered and will be returned to the applicant.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, please reference announcement number 162 and contact the following:

Business management technical assistance: Eddie L. Wilder, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA, 30305, telephone (404) 842-6640.

Programmatic technical assistance: Lauri E. Markowitz, M.D., Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-1864.

A copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Dated: June 24, 1991.

Ladene H. Newton,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-15404 Filed 6-27-91; 8:45 am]

BILLING CODE 4160-18-M

National Institutes of Health

Lung Biology and Pathology Study Section; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6)), the Director, National Institutes of Health (NIH), announces the establishment of the Lung Biology and Pathology Study Section.

The Lung Biology and Pathology Study Section will provide review of research concerned with physiology, pathology, and immunology of the pulmonary system with a focus on the airways, pulmonary vascular system, interstitium, immune system, and lung fluids, and using cellular, biochemical, molecular biological, and immunological approaches to normal and pathological processes.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: June 20, 1991.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 91-15391 Filed 6-27-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting

Notice is hereby given of a change in the meeting of the National Digestive Diseases Advisory Board on July 22, 1991, Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22032, which was published in the **Federal Register** on May 31 (56 FR 24827).

The conference on liver transplantation will not be held. The meeting which will be open to the public, is being held to discuss the Board's activities and will focus specifically on somatic gene therapy and digestive diseases.

Dated: June 20, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-15392 Filed 6-27-91; 8:45 am]

BILLING CODE 4140-01-M

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Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on June 21, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of request)

1. Intraocular Lens (IOL) Investigational Device Exemption Application (21 CFR part 813)—0910-0057—The Intraocular Lens Investigational Device Exemption Application exempts devices from several provisions of the Federal Food, Drug and Cosmetic Act. The application contains information necessary to evaluate potential and continuing safety of the lenses during the investigational stage. Respondents: Businesses or other for-profit; Small businesses or organizations.

	Number of respondents	Number of responses per respondent	Number of hours per response
Reporting	18	35	23.12
Recordkeeping	18	1	80

Estimated Annual Burden.....16,920 hours

2. Employee Vital Status Letter—0920-0035—The Vital Status Letter is sent to members of retrospective studies to determine if an employee who was exposed to a toxic substance in the workplace that is suspected of causing long-term adverse health effects is deceased or alive. This letter is used as a last resort, after all other methods have been exhausted. Respondents: Individuals or households; Number of Respondents: 252; Number of Responses Per Respondent: 1; Average Burden per Response: .167 hour; Estimated Annual Burden: 42 hours.

3. Indian Health Service Loan Repayment Program—New—Respondents are health professionals applying to the Indian Health Service (IHS) Loan Repayment Program (LRP). The application provides information on training status in compliance with program requirements. Respondents: Individuals or households, State or local governments, Businesses or other for profit.

	Number of respondents	Number of responses per respondent	Number of hours per response
Applicant	1,200	1	1.5
Lender	1,000	1	.25

Estimated Annual Burden.....2,200 hours

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: June 21, 1991.

Sandra K. Mahkorn,

Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91-15333 Filed 6-27-91; 8:45 am]

BILLING CODE 4160-17-M

Secretary's Council on Health Promotion and Disease Prevention Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet Wednesday, July 24, 1991.

Name: Secretary's Council on Health Promotion and Disease Prevention.

Date and Time: July 24, 1991, 9 AM to 5 PM; United Way of America, Board Room, 701 North Fairfax Street, Alexandria, Virginia 22314-2045.

Open, except for working lunch.

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion and to provide a link to the private sector regarding health promotion activities.

Agenda: This will be the eighth meeting of the Secretary's Council, the theme of this meeting is "Innovations in Health Education and Health Information Systems."

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Linda M. Harris, PhD., Staff Director for the Council, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, Washington, DC 20201, Telephone (202) 472-5370.

Agenda items are subject to change as priorities dictate.

James A. Harrell,

Deputy Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 91-15435 Filed 6-27-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3236; FR-2953-N-03]

Clarification to FY 91 Notice of Fund Availability (NOFA), Invitation for Applications: Public Housing Development/Major Reconstruction of Obsolete Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Clarification of published Notice of Fund Availability (NOFA).

SUMMARY: This notice clarifies the procedure for the correction of deficient applications submitted in response to the NOFA announcing FY 1991 funding for public housing development and for the Major Reconstruction of Obsolete Projects (MROP).

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for the PHA's jurisdiction.

SUPPLEMENTARY INFORMATION: On March 28, 1991 (56 FR 13240), the Department published a notice in the Federal Register announcing the availability of FY 1991 funding for public housing development and for the Major Reconstruction of Obsolete Projects (MROP), and invited eligible Public Housing Agencies (PHAs) to submit applications. Paragraph 2b contained a submission checklist and paragraph 2c provided a process for determining whether applications met certain eligibility thresholds and the circumstances under which missing or incomplete information could be submitted after the application submission deadline of May 28, 1991.

Some of the items included in the paragraph 2b submission checklist were asterisked, while other items were not. The significance of whether or not an item was asterisked was explained in paragraph 2c: "If items, other than those identified with an asterisk in paragraph 2b above, are missing from the application, the PHA's application will be considered substantially incomplete and, therefore, ineligible for further processing." The intent was that non-asterisked items that were missing in their entirety from an application would serve as the basis for determining the application to be substantially incomplete and ineligible for further processing. All other items could be corrected or cured within a fourteen day period following notification from HUD, so long as they consisted of technical deficiencies related only to items that were not necessary for HUD review under the ranking factors, and the correction action did not improve the substantive quality of the application.

Recent queries have suggested that paragraph 2c of the NOFA has been interpreted in a manner inconsistent with the Department's intention, specifically with regard to the non-asterisked items in the paragraph 2b submission checklist. The intent of the NOFA is that only if non-asterisked items are wholly missing would the application be considered substantially incomplete and ineligible for further processing. The correction of technical omissions and mistakes in non-asterisked items is permissible, and non-asterisked items that are included in part, or by reference, in the application are also in the category of curable technical deficiencies subject to the 14-calendar-day correction process described in the NOFA, in the same manner as are the asterisked items in the submission checklist of paragraph 2b.

This clarification has been brought to the attention of the appropriate Field Office staff, and applications with deficiencies are being re-examined accordingly. Any additional 14-day technical deficiency letters that result from the reexamination will be expeditiously issued.

Dated: June 25, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-15483 Filed 6-27-91; 8:45 am]

BILLING CODE 4210-33-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2834-N-32]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 28, 1991.

ADDRESSES: For further information, contact James N. Forsberg, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to PHIS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including ZIP code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P, Rm. 1E671, Pentagon, Washington, DC 20310-2600; (202) 693-4583; Dept. of Agriculture: Marsha Pruitt, Realty Officer, USDA, South Bldg. Rm. 1566, 14th and Independence Ave. SW., Washington, DC 20250; (202) 447-3338; Corps of Engineers: Bob Swieconek, Army Corps of Engineers, Civilian Facilities, Rm. 5136, 20 Massachusetts Ave. NW., Washington, DC 20314-1000; (202) 272-1750; FSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10007, Washington, DC 20590; (202) 366-5801;

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Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080. (These are not toll-free numbers.)

Dated: June 21, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 06/28/91

SUITABLE/AVAILABLE PROPERTIES

Buildings (by State)

Florida

Naval Reserve Center
2610 Tigertail Avenue
Miami, Co: Dade, FL 33133–
Landholding Agency: GSA
Property Number: 549120062
Status: Excess Comment: 4600 sq. ft., 2 story, concrete and wood siding, most recent use—offices/training rooms/vehicle maintenance
GSA Number: FL–P–192

Idaho

Bldg. 705, Ditchrider House
Boise Project
Notus, Co: Cayon, ID 83656–
Location: T5N, R3W, Sec 2, SE¼, SW¼, SW¼
Landholding Agency: Interior
Property Number: 619120010
Status: Unutilized
Comment: 586 sq. ft., one story residence, needs major repair, off-site use only

Bldg. 506—Warehouse
Black Canyon Dam
Emmett, Co: Gem, ID 83611–
Landholding Agency: Interior
Property Number: 619120011
Status: Unutilized
Comment: 4625 sq. ft., needs major rehab. most recent use—storage, off-site use only

Bldg. 510—Carpenter Shop
Black Canyon Dam
Emmett, Co: Gem, ID 83611–
Landholding Agency: Interior
Property Number: 619120012
Status: Unutilized
Comment: 4625 sq. ft., needs major rehab, most recent use—storage, off-site use only

New York

Bldg. 2
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120009
Status: Excess
Base closure
Comment: 35537 sq. ft., 3 story; bay brick frame; pres. of asbestos on pipe insula.; most recent use—office, storage, auto shop; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 3
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120010
Status: Excess
Base closure
Comment: 2700 sq. ft., 2 story; brick frame; most recent use—office, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 5
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120012
Status: Excess
Base closure
Comment: 3330 sq. ft., 2 story; brick frame; most recent use—office, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 10
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120015
Status: Excess
Base closure
Comment: 3100 sq. ft., 1 story; concrete & fiberglass frame; no utilities; most recent use—storage; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 306
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120016
Status: Excess
Base closure
Comment: 8364 sq. ft., 1 story; brick frame; presence of asbestos on pipe insulation; most recent use—storage; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 316
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120019
Status: Excess
Base closure
Comment: 3952 sq. ft., 1 story; brick frame; needs heating system repairs; potential utils.; presence of asbestos on pipe insulation; most recent use—storage; sched. to be vacated 10/92.
GSA Number: 2–N–NY–797

Bldg. 353
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120020
Status: Excess
Base closure
Comment: 670 sq. ft., 1 story; brick frame; limited utilities; needs heating system repairs scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 670
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120021
Status: Excess
Base closure
Comment: Concrete block gasoline station; no sanitary or heating facilities; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 672
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120023
Status: Excess
Base closure
Comment: 400 sq. ft.; 1 story; wood frame; most recent use—pool house scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R1
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120025
Status: Excess
Base closure
Comment: 5274 sq. ft.; 2 story single family housing; brick veneer/wood frame; presence of asbestos on pipe insulation; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R2
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120026
Status: Excess
Base closure
Comment: 2400 sq. ft.; 2 story single family hsg; cement asbestos/wood frame; needs heating system repairs; presence of asbestos on pipe insulation; scheduled to be vacated 10/92.
GSA Number: 2–N–NY–797

Bldg. R3
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120027
Status: Excess
Base closure
Comment: 2400 sq. ft.; 2 story single family hsg; cement asbestos/wood frame; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R4
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120028
Status: Excess
Base closure
Comment: 2517 sq. ft.; 3 story four-family housing; brick asbestos/tile frame; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R5
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120029
Status: Excess
Base closure
Comment: 2140 sq. ft.; 1 story single family residence; brick frame; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R6
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120030
Status: Excess
Base closure
Comment: 2140 sq. ft.; 1 story single family residence; brick frame; needs rehab; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R7
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120031
Status: Excess
Base closure
Comment: 2140 sq. ft.; 1 story single family housing; brick frame; needs rehab; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R103
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120032
Status: Excess
Base closure
Comment: 1650 sq. ft.; 2 story; brick frame; needs heating system repairs; limited utils.; most recent use—storage; presence of asbestos on pipe ins.; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R103A
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120033
Status: Excess
Base closure
Comment: 2620 sq. ft.; 1 story; concrete block frame; limited utils.; most recent use—garage; presence of asbestos on pipe insulation; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R104
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120034
Status: Excess
Base closure
Comment: 712 sq. ft.; 2 story; brick frame; most recent use—bachelor officers quarters; scheduled to be vacated Oct. 1992.

GSA Number: 2–N–NY–797

Bldg. R109
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120035
Status: Excess
Base closure
Comment: 2 story; brick frame; limited utilities; needs heating syst. repairs; most recent use—storage & garage; presence of asbestos on pipe insul.; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R426
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120036
Status: Excess
Base closure
Comment: 2400 sq. ft.; 1 story; brick frame; needs heating system repairs; most recent use—storage; presence of asbestos on pipe ins.; limited utils; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R448
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120037
Status: Excess
Base closure
Comment: 969 sq. ft.; 1 story; concrete & glass frame; limited utilities; needs major rehab; most recent use—greenhouse; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R475
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120039
Status: Excess
Base closure
Comment: 1789 sq. ft.; 1 story; concrete block frame; most recent use—auto hobby shop; presence of asbestos on pipe insulation scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R476
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120040
Status: Excess
Base closure
Comment: 36 sq. ft.; 1 story; metal frame; most recent use—security gate house; needs heating system repairs; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. RG
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120041
Status: Excess
Base closure
Comment: 15490 sq. ft.; 3 story; brick & stucco frame; needs heating system repairs; needs major rehab; presence of asbestos on pipe ins.; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R5R9
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120042
Status: Excess
Base closure
Comment: 2800 sq. ft.; 2 story; brick frame; most recent use—residential duplex; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. R95
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 779010256
Status: Excess
Base closure
Comment: 41809 sq. ft.; 2 story, stone frame, needs heating system repairs, pres. of asbestos on pipe ins., needs major rehab, NYS Historical Landmark, sched. to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. RD
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 779010257
Status: Excess
Base closure
Comment: 14120 sq. ft.; 2 story, brick & stone frame, needs heating system repairs, pres. of asbestos on pipe ins., needs major rehab sched. to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 305
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 779010258
Status: Excess
Base closure
Comment: 18020 sq. ft., 2 story, brick frame, limited utils., needs major rehab, presence of asbestos on pipe insulation, needs heating system repairs, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Land (by State)

New York

Land 671
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120022
Status: Excess
Base closure
Comment: 50 ft. by 25 ft.; most recent use—swimming pool concrete frame; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

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Playing Field—675
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120024
Status: Excess
Base closure
Comment: 67974 sq. ft.; limited utilities; most recent use—baseball field; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Land R464/R474
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120043
Status: Excess
Base closure
Comment: 90' × 45' each; concrete over gravel; most recent use—tennis courts; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Summary of Suitable/Available Properties

Total number of Properties = 36

SUITABLE/UNAVAILABLE PROPERTIES

Buildings (by State)

Missouri

Bldg. 208–C
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120047
Status: Excess
Comment: 2210 sq. ft., most recent use—general storage, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 208–D
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120048
Status: Excess
Comment: 750 sq. ft., most recent use—general storage, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 222
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120049
Status: Excess
Comment: 16150 sq. ft., most recent use—medical/dental, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 223–A
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120050
Status: Excess
Comment: 77340 sq. ft., most recent use—dormitory, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 223–B
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120051
Status: Excess
Comment: 21380 sq. ft., most recent use—education bldg., permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 230
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120052
Status: Excess
Comment: 1840 sq. ft., most recent use—facility maintenance, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 230–A
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120053
Status: Excess
Comment: 1890 sq. ft., most recent use—facility maintenance, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 232–A–H
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120054
Status: Excess
Comment: 29280 sq. ft., most recent use—vocational training shop, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 234
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120055
Status: Excess
Comment: 44620 sq. ft., most recent use—admin/food service, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 237
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120056
Status: Excess
Comment: 300 sq. ft., most recent use—storage, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 244
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120057
Status: Excess
Comment: 7480 sq. ft., most recent use—weld/automotive shop, permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 223C
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120058
Status: Excess
Comment: 123 sq. ft., permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 224B
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120059
Status: Excess
Comment: 100 sq. ft., permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 233A
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120060
Status: Excess
Comment: 837 sq. ft., permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

Bldg. 233F
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120061
Status: Excess
Comment: 837 sq. ft., permitted to Dept. of Labor.
GSA Number: 7–D–MO–460–F

New York

Bldg. 1
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120006
Status: Excess
Base closure
Comment: 31519 sq. ft.; 7 story brick frame; presence of asbestos on pipe insulation; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 4
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120011
Status: Excess
Base closure Comment: 60400 sq. ft.; 1 story; bay brick frame; most recent use—warehouse & rec. center; presence of asbestos on pipe insulation; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Bldg. 311
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120017

Status: Excess
Base closure Comment: 9720 sq. ft.; 2 story; brick frame; needs heating system repairs; needs rehab; presence of asbestos on pipe insulat.; most recent use—ofc/storage; sched. to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Land (by State)

New York

Parking Lot
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120044
Status: Excess
Base closure Comment: 425 ft. long by 300 ft. wide; potential utilities; most recent use—paved parking lot; scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797

Summary of Suitable/Unavailable Properties

Total number of Properties = 19

UNSUITABLE PROPERTIES

Building (by State)

Alaska

Bldg. No. 10, Firehouse
Jct. of 5th St. & Ave. B
Kodiak, Co: Kodiak Island, AK 99619–
Landholding Agency: DOT
Property Number: 879120100
Status: Unutilized
Reason: Other
Comment: extensive deterioration

Alabama

Bldg. 8311 Redstone Arsenal
Redstone Arsenal, Co: Madison, AL 35898–5340
Landholding Agency: Army
Property Number: 219120247
Status: Unutilized
Reason: Secured Area

Bldg. 8328 Redstone Arsenal
Redstone Arsenal, Co: Madison, AL 35898–5340
Landholding Agency: Army
Property Number: 219120248
Status: Unutilized
Reason: Secured Area

Bldg. 8500 Redstone Arsenal
Redstone Arsenal, Co: Madison, AL 35898–5340
Landholding Agency: Army
Property Number: 219120249
Status: Unutilized
Reason: Secured Area

Bldg. 8521 Redstone Arsenal
Redstone Arsenal, Co: Madison, AL 35898–5340
Landholding Agency: Army
Property Number: 219120250
Status: Unutilized
Reason: Secured Area

Bldg. 8934 Redstone Arsenal
Redstone Arsenal, Co: Madison, AL 35898–5340
Landholding Agency: Army
Property Number: 219120251
Status: Unutilized
Reason: Secured Area

Arizona

Bldg. 311-Navajo Depot Activity
12 Miles West of Flagstaff on I–40
Bellemont, Co: Coconino, AZ 86015–5000
Landholding Agency: Army
Property Number: 219120175
Status: Unutilized
Reason: Secured Area

Bldg. 313-Navajo Depot Activity
12 Miles West of Flagstaff on I–40
Bellemont, Co: Coconino, AZ 86015–5000
Landholding Agency: Army
Property Number: 219120176
Status: Unutilized
Reason: Secured Area

Bldg. 316-Navajo Depot Activity
12 Miles West of Flagstaff on I–40
Bellemont, Co: Coconino, AZ 86015–5000
Landholding Agency: Army
Property Number: 219120177
Status: Unutilized
Reason: Secured Area

Bldg. 318-Navajo Depot Activity
12 Miles West of Flagstaff on I–40
Bellemont, Co: Coconino, AZ 86015–5000
Landholding Agency: Army
Property Number: 219120178
Status: Unutilized
Reason: Secured Area

Bldg. 319-Navajo Depot Activity
12 Miles West of Flagstaff on I–40
Bellemont, Co: Coconino, AZ 86015–5000
Landholding Agency: Army
Property Number: 219120179
Status: Unutilized
Reason: Secured Area

Bldg. 321-Navajo Depot Activity
12 Miles West of Flagstaff on I–40
Bellemont, Co: Coconino, AZ 86015–5000
Landholding Agency: Army
Property Number: 219120180
Status: Unutilized
Reason: Secured Area

Bldg. 350-Navajo Depot Activity
12 Miles West of Flagstaff on I–40
Bellemont, Co: Coconino, AZ 86015–5000
Landholding Agency: Army
Property Number: 219120181
Status: Unutilized
Reason: Secured Area

California

Bldg. 13 Riverbank Ammun Plant
5300 Claus Road
Riverbank, Co: Stanislaus, CA 95367–
Landholding Agency: Army
Property Number: 219120162
Status: Underutilized
Reason: Secured Area

Bldg. 171 Riverbank Ammun Plant
5300 Claus Road
Riverbank, Co: Stanislaus, CA 95367–
Landholding Agency: Army
Property Number: 219120163
Status: Underutilized
Reason: Secured Area

Bldg. 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank, Co: Stanislaus, CA 95367–
Landholding Agency: Army
Property Number: 219120164
Status: Underutilized
Reason: Secured Area

Bldg. 81
Los Alamitos Armed Forces Reserve Center
Los Alamitos, Co: Orange, CA 90720–5001
Location: Main entrance on Lexington Dr.
Landholding Agency: Army
Property Number: 219120276
Status: Unutilized
Reason: Other
Comment: Detached latrine

Georgia

Bldg. 5397
Fort Benning
Ft. Benning, Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120268
Status: Unutilized
Reason: Other
Comment: Detached lavatory bldg.

Iowa

Bldg. 5A–137–1
Iowa Army Ammunition Plant
Middletown, Co: Des Moines, IA 52638–
Landholding Agency: Army
Property Number: 219120172
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material Secured Area

Bldg. 5A–137–2
Iowa Army Ammunition Plant
Middletown, Co: Des Moines, IA 52638–
Landholding Agency: Army
Property Number: 219120173
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 5A–137–3
Iowa Army Ammunition Plant
Middletown, Co: Des Moines, IA 52638–
Landholding Agency: Army
Property Number: 219120174
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Indiana

Bldg. 716–2
Indiana Army Ammunition Plant
Charlestown, Co: Clark, IN 47111–
Landholding Agency: Army
Property Number: 219120168
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 717
Indiana Army Ammunition Plant
Charlestown, Co: Clark, IN 47111–
Landholding Agency: Army
Property Number: 219120169
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 725 (portion of)
Indiana Army Ammunition Plant
Charlestown, Co: Clark, IN 47111–
Landholding Agency: Army
Property Number: 219120170
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 2558
Indiana Army Ammunition Plant
Charlestown, Co: Clark, IN 47111–
Landholding Agency: Army
Property Number: 219120171

Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Kentucky
6-Room Dwelling
Green River Lock and Dam No. 3
Rochester, Co: Butler, KY 42273-
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 219120010
Status: Unutilized
Reason: Floodway
2-Car Garage
Green River Lock and Dam No. 3
Rochester, Co: Butler, KY 42273-
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 219120011
Status: Unutilized
Reason: Floodway
Office and Warehouse
Green River Lock and Dam No. 3
Rochester, Co: Butler, KY 42285-
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 219120012
Status: Unutilized
Reason: Floodway
2 Pit Toilets
Green River Lock and Dam No. 3
Rochester, Co: Butler, KY 42273-
Landholding Agency: COE
Property Number: 219120013
Status: Unutilized
Reason: Floodway

Louisiana
Staff Residences
SR002, 008, 009, 014, 015, 018, 023
Louisiana Army Ammunition Plant
Doyline, Co: Webster, LA 71023-
Landholding Agency: Army
Property Number: 219120224
Status: Excess
Reason: Secured Area
Staff Residences
SR008, and 018
Louisiana Army Ammunition Plant
Doyline, Co: Webster, LA 71023-
Landholding Agency: Army
Property Number: 219120225
Status: Excess
Reason: Secured Area
Staff Residences
Self-Help Storage Bldg. SR037
Louisiana Army Ammunition Plant
Doyline, Co: Webster, LA 71023-
Landholding Agency: Army
Property Number: 219120226
Status: Excess
Reason: Secured Area
Bldg. D1208, Area D
Louisiana Army Ammunition Plant
Doyline, Co: Webster, LA 71023-
Landholding Agency: Army
Property Number: 219120227
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. D1243, Area D
Louisiana Army Ammunition Plant
Doyline, Co: Webster, LA 71023-
Landholding Agency: Army
Property Number: 219120228
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. F1820, Area F
Louisiana Army Ammunition Plant
Doyline, Co: Webster, LA 71023-
Landholding Agency: Army
Property Number: 219120229
Status: Excess
Reason: Secured Area
Bldg. F1834, Area F
Louisiana Army Ammunition Plant
Doyline, Co: Webster, LA 71023-
Landholding Agency: Army
Property Number: 219120230
Status: Excess
Reason: Secured Area
Bldg. X3017, Area X
Louisiana Army Ammunition Plant
Doyline, Co: Webster, LA 71023-
Landholding Agency: Army
Property Number: 219120008
Status: Excess
Reason: Secured Area

Massachusetts
Material Technology Lab
405 Arsenal Street
Watertown, Co: Middlesex, MA 02172-
Landholding Agency: Army
Property Number: 219120261
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Maryland
Bldg. 2538 Ft. Geo. G. Meade
8th & Z Streets
Fort Meade, Co: Anne Arundel, MD 20755-
Landholding Agency: Army
Property Number: 219120152
Status: Unutilized
Reason: Secured Area
Bldg. 2529 Ft. Geo. G. Meade
8th & Z Streets
Fort Meade, Co: Anne Arundel, MD 20755-
Landholding Agency: Army
Property Number: 219120153
Status: Unutilized
Reason: Secured Area
Bldg. 2536 Ft. Geo. G. Meade
8th & Z Streets
Fort Meade, Co: Anne Arundel, MD 20755-
Landholding Agency: Army
Property Number: 219120154
Status: Unutilized
Reason: Secured Area
Bldg. 2539 Ft. Geo. G. Meade
8th & Z Streets
Fort Meade, Co: Anne Arundel, MD 20755-
Landholding Agency: Army
Property Number: 219120155
Status: Unutilized
Reason: Secured Area
Bldg. 2547 Ft. Geo. G. Meade
8th & Z Streets
Fort Meade, Co: Anne Arundel, MD 20755-
Landholding Agency: Army
Property Number: 219120156
Status: Unutilized
Reason: Secured Area
Bldg. 2558 Ft. Geo G. Meade
8th & Z Streets
Fort Meade, Co: Anne Arundel MD 20755-
Landholding Agency: Army
Property Number: 219120157
Status: Unutilized
Reason: Secured Area
Bldg. 2559 Ft. Geo G. Meade
8th & Z Streets
Fort Meade, Co: Anne Arundel MD 20755-
Landholding Agency: Army
Property Number: 219120158
Status: Unutilized
Reason: Secured Area
Bldg. 8499 Ft. Geo G. Meade
Located inside Motor Park on Cross Road
Fort Meade, Co: Anne Arundel MD 20755-
Landholding Agency: Army
Property Number: 219120159
Status: Unutilized
Reason: Secured Area

Minnesota
Bldg. 113
Twin Cities Army Ammunition Plant
New Brighton, Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219120165
Status: Unutilized
Reason: Secured Area
Bldg. 575
Twin Cities Army Ammunition Plant
New Brighton, Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219120166
Status: Unutilized
Reason: Secured Area
Bldg. 606
Twin Cities Army Ammunition Plant
New Brighton, Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219120167
Status: Unutilized
Reason: Secured Area

Nevada
62 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne, Co: Mineral NV 89415-
Location: North Mag. Area
Landholding Agency: Army
Property Number: 219120150
Status: Unutilized
Reason: Secured Area
259 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne, Co: Mineral NV 89415-
Location: South & Central Mag. Areas
Landholding Agency: Army
Property Number: 219120151
Status: Unutilized
Reason: Secured Area

South Carolina
Bldg. 1560—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120291
Status: Unutilized
Reason: Other
Comment: extensive deterioration
Bldg. 1570—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120292
Status: Unutilized
Reason: Other
Comment: extensive deterioration
Bldg. 2503—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120293
Status: Unutilized
Reason: Other
Comment: extensive deterioration
Bldg. 2504—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120294
Status: Unutilized
Reason: Other
Comment: extensive deterioration
Bldg. 2507—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120295
Status: Unutilized
Reason: Other
Comment: extensive deterioration
Bldg. 9602—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120296
Status: Unutilized
Reason: Other
Comment: extensive deterioration
Bldg. 9606—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120297
Status: Unutilized
Reason: Other
Comment: extensive deterioration
Bldg. 9609—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120298
Status: Unutilized
Reason: Other
Comment: extensive deterioration
Bldg. 9626—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120299
Status: Unutilized
Reason: Other
Comment: extensive deterioration
Bldg. 9700—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120300
Status: Unutilized
Reason: Other
Comment: extensive deterioration
Bldg. 9701—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120301
Status: Unutilized
Reason: Other
Comment: extensive deterioration
Bldg. 10–414—Ft. Jackson
Ft. Jackson, Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219120302
Status: Unutilized
Reason: Other
Comment: extensive deterioration

Tennessee
Bldg. A–0804
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120182
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. A–800
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120183
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. A–1005
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120184
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. A–1101
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120185
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. B–201
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120186
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. B–304
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120187
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. B–410
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120188
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. B–0504
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120189
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. B–701
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120190
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. C–0701
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120191
Status: Underutilized
Reason: Secured Area
Bldg. C–901
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120192
Status: Underutilized
Reason: Secured Area
Bldg. C–1004
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120193
Status: Underutilized
Reason: Secured Area
Bldg. C–3104
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120194
Status: Underutilized
Reason: Secured Area
Bldg. D–0101
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120195
Status: Underutilized
Reason: Secured Area
Bldg. D–0204
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120196
Status: Underutilized
Reason: Secured Area
Bldg. D–0304
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120197
Status: Underutilized
Reason: Secured Area
Bldg. D–0404
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120198

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Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. D-406
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120139
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. D-0411
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120300
Status: Underutilized
Reason: Secured Area
Bldg. D-606
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120301
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. D-607
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120302
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. D-0707
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120268
Status: Underutilized
Reason: Secured Area
Bldg. E-0605
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120204
Status: Underutilized
Reason: Secured Area
Bldg. E-0710
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120205
Status: Underutilized
Reason: Secured Area
Bldg. E-807
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120206
Status: Underutilized
Reason: Secured Area
Bldg. E-0611
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120207
Status: Underutilized
Reason: Secured Area
Bldg. E-905
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120208
Status: Underutilized
Reason: Secured Area
Bldg. E-0808
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120209
Status: Underutilized
Reason: Secured Area
Bldg. E-1101
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120210
Status: Underutilized
Reason: Secured Area
Bldg. E-1202
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120211
Status: Underutilized
Reason: Secured Area
Bldg. E-1203
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358-
Landholding Agency: Army
Property Number: 219120212
Status: Underutilized
Reason: Secured Area
Bldg. F-0210
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120213
Status: Underutilized
Reason: Secured Area
Bldg. F-0307
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120214
Status: Underutilized
Reason: Secured Area
Bldg. F-0603
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120215
Status: Underutilized
Reason: Secured Area
Bldg. F-0702
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120216
Status: Underutilized
Reason: Secured Area
Bldg. F-0704
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120217
Status: Underutilized
Reason: Secured Area
Bldg. F-0705
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120218
Status: Underutilized
Reason: Secured Area
Bldg. F-0706
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120219
Status: Underutilized
Reason: Secured Area
Bldg. F-0903
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120220
Status: Underutilized
Reason: Secured Area
Bldg. G-0103
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120221
Status: Underutilized
Reason: Secured Area
Bldg. G-0305
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120222
Status: Underutilized
Reason: Secured Area
Bldg. G-0401
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120223
Status: Underutilized
Reason: Secured Area
Bldg. G-0603
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120224
Status: Underutilized
Reason: Secured Area
Bldg. G-0701
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120225
Status: Underutilized

Reason: Secured Area
Bldg. G-0801
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120228
Status: Underutilized
Reason: Secured Area
Bldg. G-0805
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120227
Status: Underutilized
Reason: Secured Area
Bldg. G-0902
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120226
Status: Underutilized
Reason: Secured Area
Bldg. G-1101
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120229
Status: Underutilized
Reason: Secured Area
Bldg. G-1205
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120230
Status: Underutilized
Reason: Secured Area
Bldg. G-1302
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120231
Status: Underutilized
Reason: Secured Area
Bldg. H-0403
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120232
Status: Underutilized
Reason: Secured Area
Bldg. H-0503
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120233
Status: Underutilized
Reason: Secured Area
Bldg. H-0901
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120234
Status: Underutilized
Reason: Secured Area
Bldg. H-0806
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120235
Status: Underutilized
Reason: Secured Area
Bldg. H-0904
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120236
Status: Underutilized
Reason: Secured Area
Bldg. H-1003
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Gibson TN 38358-
Landholding Agency: Army
Property Number: 219120237
Status: Underutilized
Reason: Secured Area
Bldg. L-0011
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll, TN 38358-
Landholding Agency: Army
Property Number: 219120238
Status: Underutilized
Reason: Secured Area
Bldg. L-0013
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll, TN 38358-
Landholding Agency: Army
Property Number: 219120239
Status: Underutilized
Reason: Secured Area
Bldg. L-0018
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll, TN 38358-
Landholding Agency: Army
Property Number: 219120240
Status: Underutilized
Reason: Secured Area
Bldg. L-0020
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll, TN 38358-
Landholding Agency: Army
Property Number: 219120241
Status: Underutilized
Reason: Secured Area
Bldg. L-0027
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll, TN 38358-
Landholding Agency: Army
Property Number: 219120242
Status: Underutilized
Reason: Secured Area
Bldg. L-0037
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll, TN 38358-
Landholding Agency: Army
Property Number: 219120243
Status: Underutilized
Reason: Secured Area
Bldg. M-0006
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll, TN 38358-
Landholding Agency: Army
Property Number: 219120244
Status: Underutilized
Reason: Secured Area
Bldg. M-0008
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll, TN 38358-
Landholding Agency: Army
Property Number: 219120245
Status: Underutilized
Reason: Secured Area
Bldg. P-0035
Mod—Igloo Area
Milan Army Ammunition Plant
Milan, Co: Carroll, TN 38358-
Landholding Agency: Army
Property Number: 219120246
Status: Underutilized
Reason: Secured Area

Utah

Bldg. 504
Tooele Army Depot—North Area
Tooele, Co: Tooele UT 84074-5008
Landholding Agency: Army
Property Number: 219120277
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area
Bldg. 637A
Tooele Army Depot—North Area
Tooele, Co: Tooele UT 84074-5008
Landholding Agency: Army
Property Number: 219120278
Status: Underutilized
Reason: Secured Area
Bldg. 637B
Tooele Army Depot—North Area
Tooele, Co: Tooele UT 84074-5008
Landholding Agency: Army
Property Number: 219120279
Status: Underutilized
Reason: Secured Area
Bldg. 637C
Tooele Army Depot—North Area
Tooele, Co: Tooele UT 84074-5008
Landholding Agency: Army
Property Number: 219120280
Status: Underutilized
Reason: Secured Area
Bldg. 654
Tooele Army Depot—North Area
Tooele, Co: Tooele UT 84074-5008
Landholding Agency: Army
Property Number: 219120281
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area
Bldg. 700
Tooele Army Depot—North Area
Tooele, Co: Tooele UT 84074-5008
Landholding Agency: Army
Property Number: 219120282
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area
Bldg. 753
Tooele Army Depot—North Area
Tooele, Co: Tooele UT 84074-5008
Landholding Agency: Army
Property Number: 219120283
Status: Underutilized

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Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Virginia

Bldg. T-9512
U.S. Army Combined Arms Support Command & Fort Lee
Fort Lee, Co: Prince George VA 23801-
Location: "A" Avenue
Landholding Agency: Army
Property Number: 219120160
Status: Underutilized
Reason: Other
Comment: Extensive deterioration.

Land (by State)

Kentucky

Barren River Lock & Dam No. 1
Richardsville, Co: Warren KY 42270-
Landholding Agency: COE
Property Number: 319120006
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 3
Rochester, Co: Butler KY 42273-
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120009
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 4
Woodbury, Co: Butler KY 42288-
Location: Off State Hwy 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 319120014
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 5
Readville, Co: Butler KY 42275-
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 319120015
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 6
Brownsville, Co: Edmonson KY 42210-
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 319120016
Status: Underutilized
Reason: Floodway

Vacant Land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural, Co: Greenup KY 41144-
Landholding Agency: COE
Property Number: 319120017
Status: Unutilized
Reason: Floodway

Pennsylvania

Land—Tioga-Hammond Lakes
Mansfield, Co: Tioga PA 16933-
Location: 2 miles northeast of Mansfield on State Route 58044
Landholding Agency: COE
Property Number: 319120001
Status: Excess
Reason: Floodway

Tennessee

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon, Co: Wilson TN 37087-
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 319120007
Status: Underutilized
Reason: Floodway

Summary of Unsuitable Properties

Total number of Properties = 144

PROPERTIES TO BE EXCESSED

Buildings (by State)

Oregon

Bldgs. 1044 and 1525
Union Compound Administrative Site
Highway 203
Union, Co: Union OR 97883-
Landholding Agency: Agriculture
Property Number: 159120001
Status: Unutilized
Comment: 1575 sq. ft. 1 story wood frame residence with 560 sq. ft. garage, presence of asbestos.

Bldgs. 1045 and 1526
Union Compound Administrative Site
Highway 203
Union, Co: Union OR 97883-
Landholding Agency: Agriculture
Property Number: 159120002
Status: Unutilized
Comment: 1395 sq. ft. 1 story wood frame residence with 560 sq ft. garage, presence of asbestos.

Bldg. 2004
Union Compound Administrative Site
Highway 203
Union, Co: Union OR 97883-
Landholding Agency: Agriculture
Property Number: 159120003
Status: Unutilized
Comment: 1344 sq. ft. 1 story wood frame, most recent use—bunkhouse.

Bldg. 2206
Union Compound Administrative Site
Highway 203
Union, Co: Union OR 97883-
Landholding Agency: Agriculture
Property Number: 159120004
Status: Unutilized
Comment: 1820 sq. ft. 1 story wood frame, most recent use—warehouse.

Bldg. 2305
Union Compound Administrative Site
Highway 203
Union, Co: Union OR 97883-
Landholding Agency: Agriculture
Property Number: 159120005
Status: Unutilized
Comment: 1820 sq. ft. 1 story wood frame, most recent use—machine storage.

Bldg. 2507
Union Compound Administrative Site
Highway 203
Union, Co: Union OR 97883-
Landholding Agency: Agriculture
Property Number: 159120006
Status: Unutilized
Comment: 288 sq. ft. 1 story wood frame, most recent use—gas house.

Storage Bldg.
Union Compound Administrative Site
Highway 203
Union, Co: Union OR 97883-
Landholding Agency: Agriculture
Property Number: 159120007
Status: Unutilized
Comment: 488 sq. ft. 1 story wood frame.

Summary of Properties to be Excessed

Total number of Properties = 7

[FR Doc. 91-15242 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-29-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Central Arizona Project (CAP) Water Allocations and Water Service Contracting with Indian Tribes

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed modifications to CAP water allocation decision.

SUMMARY: The purpose of this action is to provide advance notice of the Department's intent to modify the existing CAP water allocation decisions to facilitate deletion of the following contractual provisions from existing CAP water service contracts with Indian tribes and from the proposed CAP water service contract with the Gila River Indian Community (GRIC): (1) The requirement in the 1983 allocation decision for a "mandatory substitute" water (non-potable effluent water) provision and (2) the requirement in the 1980 allocation decision for crediting the CAP water allocation against the tribes' Winters rights. A document summarizing the Department's environmental review is available on request.

DATES: All comments and material relevant to these proposed modifications that are received within 30 calendar days following the publication of this notice will be considered. Additionally, depending on the level of interest in the proposed changes, the Department may conduct public meetings or hearings on the proposed modifications. In that event, the dates and places of the meetings or hearings would be published in newspapers of general circulation in Arizona and in the Federal Register.

FOR FURTHER INFORMATION: Interested parties should contact Mr. Timothy W. Glidden, Chairman, Water Policy Working Group, U.S. Department of the Interior, Office of the Secretary, 1849 C Street, NW., Washington, DC 20240, Mail Stop 6217. Telephone: 202-208-7351.

SUPPLEMENTARY INFORMATION: Previous Departmental notices concerning CAP water allocations were published in the Federal Register (FR) volumes 37 FR 28662, December 28, 1972; 40 FR 17298, April 18, 1975; 41 FR 45886, October 18, 1976; 43 FR 51098, August 8, 1978; 45 FR 81285, December 10, 1980; and 48 FR 12446, March 24, 1983. These decisions were made pursuant to the authority vested in the Secretary by the Reclamation Act of 1902, as amended and supplemented (32 Stat. 388, 43 U.S.C. 391), the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501), the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR part 1505), the Implementing Procedures of the U.S. Department of the Interior (516 Departmental Manual (DM) 5.4), and in recognition of the Secretary's trust responsibility to Indian tribes.

On October 18, 1976 (41 FR 45886), Acting Secretary Frizzel published the Department's allocation of CAP water made on October 12, 1976, to Indian tribes in central Arizona (1976 Decision). Under the 1976 Decision, 257,609 acre-feet of CAP water per year was allocated to the tribes for use prior to year 2005. Under that decision, the amount of water allocated to Indians after year 2005 would be decreased to either 10 percent of the CAP supply or to 20 percent of the agricultural supply, whichever was to their advantage.

During the Carter Administration, Secretary Andrus concluded that the 1976 Decision was unfair to the Indian tribes because the abrupt reduction in the Indian water supply after year 2005 would mean that the economic growth permitted on the reservations in the early years of CAP operations would be temporary, and both the Government and the tribes would be faced with the costs of a return to depressed economic conditions. Also, Secretary Andrus believed that the Indian allocation should be increased because (1) some tribes which should have received an allocation of CAP water were not included in the 1976 Decision and (2) CAP water should be allocated to tribes for support of permanent tribal homelands.

On December 10, 1980 (45 FR 81285), Secretary Andrus published allocations made on December 5, 1980, of 300,825 acre-feet of CAP water per year to 10 Indian tribes in central Arizona (1980 Decision). The 1980 Decision stated in part:

> In an effort to make the M&I supply as dependable as possible, these allocations permit the substitution of non-CAP water for Indian CAP water, and provisions addressing such substitutions will be included in the Indian water service contracts.

Substitute water included treated municipal effluent or ground water. Secretary Andrus recognized that by improving the Indian supply in later years of CAP operations, the position of the non-Indian municipal and industrial (M&I) users would be less favorable than under the 1976 Decision. Responding to suggestions by Governor Babbitt of Arizona, Secretary Andrus incorporated the mandatory substitute water provision into the CAP water allocation decision as a means of ameliorating the concern of the non-Indian M&I entities that the increased allocation to the Indian tribes had occurred at the non-Indian M&I entities' expense. Substitute water exchanges were viewed as a means of firming the non-Indian M&I water supply in CAP water shortage years.

On December 11, 1980, the Department executed CAP water service contracts with 9 of the 10 Tribes which had received allocations of CAP water. The mandatory substitute water provision was included in the contracts offered to four tribes because they were in close proximity to municipal areas and were considered capable of taking delivery of municipal effluent in lieu of CAP water. CAP water service contracts containing the mandatory substitute water provision were executed with three of the tribes. Those tribes included the Salt River Pima-Maricopa Indian Community, the Ak-Chin Indian Community, and the Papago Tribe, now known as the Tohono O'odham Nation. The mandatory substitute water provision was also included in a contract offered to GRIC. However, GRIC elected to not sign the CAP water service contract because of its strong objections to the mandatory substitute water provision.

After the year 2005, the substitute water provision provided for the exchange of up to one-half of the tribes' CAP water allocation. The substitution was to be accomplished under criteria intended to assure that the quality, quantity, suitability, and delivery facilities of the substitute water would be appropriate for the beneficial uses to which the water was to be put. All costs of the substitution were to be borne by the Central Arizona Water Conservation District (CAWCD) or the benefitting non-Indian subcontractor, and any favorable cost differential was to inure to the benefit of the tribes or the Federal Government. The substitute water provision reserved unto the Secretary the right to approve a substitution if he or she determined that the tribe's agreement to the substitution was being unreasonably withheld.

The 1980 Decision also provided that the allocation of CAP water would be credited against a tribe's Winters rights, as and when finally adjudicated or finally determined by Federal legislative action. The 1980 Decision also required that this stipulation be included in the Indian CAP water service contracts. The stipulation was included in all of the executed Indian contracts.

Secretary Andrus did not allocate CAP water to non-Indian entities in the 1980 Decision. However, that decision facilitated the submission of recommendations by the Arizona Department of Water Resources (ADWR) to the Secretary for allocations of CAP water to non-Indian entities. On March 24, 1983 (48 FR 12446), Secretary Watt issued a CAP water allocation decision (1983 Decision) that allocated CAP Water to the non-Indian entities and reaffirmed Secretary Andrus's allocation to the Indian tribes with one significant modification. The 1983 Decision provided that GRIC would have to accept a 25 percent reduction in its CAP water allocation during shortage years in lieu of the 10 percent reduction that was required in the 1980 Decision. The 1983 Decision reaffirmed (1) the mandatory substitute water provisions in the existing contracts with Indian entities and (2) the allocation of water to Indian entities for tribal homeland purposes. The requirement for crediting the CAP allocation toward a tribe's Winters rights was not changed by the 1983 Decision.

Proposed Deletion of the Mandatory Substitute Water Provision

The Department has been attempting to negotiate a CAP water service contract with GRIC since 1980. Over the last 10 years, circumstances have changed in central Arizona and the Department now believes that the requirement for a mandatory substitute water provision in the CAP water service contracts with Indian tribes is no longer critical to management of water supplies in central Arizona. The Department now proposes to amend the 1980 and 1983 Decisions to delete the requirement for mandatory substitute water exchanges, to allow those tribes with the provision in their contracts opportunity to amend their contracts to delete the provision, and to delete the provision from the proposed contract with GRIC.

The Department's reasons for proposing to delete the mandatory substitute water provision include the following:

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(1) The Department is now aware of any substitute water that has been or is being proposed for exchange with Indian tribes.

(2) Under the 1983 Decision and the existing CAP M&I water service subcontracts, there is no apparent incentive for a municipality to exchange substitute water with an Indian tribe. The 1983 Decision was based on a "pooling" concept whereby all non-Indian M&I entities would benefit on a pro rata basis from CAP water made available because of substitute water exchanges. Under the pooling concept, a municipality would make its effluent water available to CAWCD. CAWCD, through its water users, would finance the capital cost of facilities to transport the substitute water to a point of use on the reservation, and pay for the cost of operation, maintenance and replacements (OM&R) associated with delivery of the substitute water. If a municipality exchanges its effluent on its own with an Indian tribe, the M&I water service subcontracts provide that the municipality must incur all of the capital and OM&R costs to convey the effluent to a point of use on the reservation and the municipality's entitlement to CAP water under the subcontract must be reduced by the amount of CAP water received under the exchange. The municipalities opposed the pooling concept during the decision process leading up to the 1983 Decision, and it is the Department's understanding that they do not consider the potential benefits adequate to justify entering into future effluent exchange arrangements under the pooling concept.

(3) Because there is little or no incentive for municipalities to exchange effluent directly with Indian tribes, the municipalities are using or making plans to use effluent within their own service areas. The municipalities now view effluent as a valuable resource to be used in their service areas.

(4) Since the 1983 Decision, Arizona law has been enacted which requires that effluent be used on golf courses and in artificial lakes in lieu of potable water. The effect of this law is to create a new demand for effluent within the municipalities' service areas.

(5) Since the 1983 Decision, the municipalities have taken steps to augment their water supplies by other means. Several of the municipalities have purchased water ranches to obtain ground water or surface supplies. Further, the municipalities are considering introducing such non-Project water into the CAP aqueduct for conveyance to their service areas. They are also considering augmenting their water supplies by recharging CAP water into the ground in the early years of CAP operations for subsequent recovery and use during future shortage years or for future demands.

(6) Deletion of the mandatory substitute water provision would not preclude the execution of voluntary substitute water agreements between the tribes and municipalities. If there are water shortages in the future, the Department believes that there will be strong pressures for all water users in Arizona, including the tribes, to work together to make the most effective use of all water resources, including effluent.

(7) As a practical matter, the cooperation of the tribes would be necessary to implement any substitute water exchange. The imposition of a substitute water exchange on a tribe without its consent would be inconsistent with the Secretary's trust responsibility to the tribe.

Proposed Deletion of the Requirement for Crediting CAP Water Against a Tribe's Winters Rights

At the time of execution of the existing CAP water service contracts, concern was expressed that the Indian tribes might end up with a windfall; that is, the tribes could get all or most of their claimed water rights decreed to them in litigation, and in addition they could get CAP entitlements. To prevent this possible windfall, the following provision was included in the Indian water service contracts:

As such time as Contractor's Water Rights are finally determined, the Project Water delivered to the Contractor under this contract will be credited against those Water Rights on such terms and conditions as may be agreed upon between the Secretary and Contractor at that time. Thereafter, Contractor may use that Project Water for any and all uses consistent with such Water Rights or the uses described in this contract. Until such time as Contractor's Water Rights are finally determined, the Project Water delivered to Contractor is supplemental water and is not credited against, or in any way related to, Contractor's Water Rights.

Experience has shown this article to be unnecessary and confusing. Accordingly, based on the following reasons, the Department intends to eliminate this article from the proposed contract with GRIC and to offer to remove it from the other Indian contracts via amendments. First, the underlying justification for the provision has not happened. No tribe has received an adjudicated entitlement to water which would make the CAP water appear to be a windfall. In fact, of the CAP tribes within the area of the Gila River adjudication, many have reached settlements of their water right claims (the Ak-Chin Indian Community, the Tohono O'odham Nation, the Salt River Pima-Maricopa Indian Community, and the Fort McDowell Indian Community), and others are moving in the direction of settlement (GRIC, the San Carlos Apache Tribe, the Yavapai Prescott Tribe, and the Camp Verde Tribe). Moreover, in the context of settlements, the CAP entitlements are important building blocks in regard to arriving at water budget goals, as opposed to posing threats as windfalls. In other words, the fear which resulted in the development of the contract provision has not materialized and therefore the need for the provision has been eliminated.

Secondly, the contract provision is confusing and subject to a variety of interpretations. As a result, the Indian tribes are not clear as to the meaning of the provision, and other water users cannot know with certainty what the Secretary and Contractor have agreed upon. Given this confusion, the contract provision does not serve a useful purpose in the administration of CAP.

Compliance with the National Environmental Policy Act of 1969 (NEPA)

The Department prepared an Environmental Impact Statement (EIS) on Water Service Allocations and Water Service Contracting for the Central Arizona Project. The Final EIS for which a notice of availability was published on March 24, 1982 (47 FR 12689), examined a number of allocation alternatives, two of which required effluent exchanges for tribal entities. The Department's Record of Decision published on March 24, 1983 (48 FR 12446), discussed these alternatives and options for effluent exchanges.

With respect to the current proposal, the Department has reviewed earlier NEPA documents and evaluated the impacts of removing the mandatory substitute water provision on effluent exchanges from the contracts. As a result of the NEPA review and environmental evaluation, it was determined that the relative differences in environmental impacts among the allocation alternatives, with and without the effluent exchange options would not have a significant effect on the human environment; and that there were no significant new circumstances or information relative to environmental concerns bearing on the proposed action that require supplemental NEPA compliance.

A document summarizing the Department's environmental review and analysis is available upon request (see

"FOR FURTHER INFORMATION" for source). Accordingly, the Department does not anticipate any further environmental compliance activities; however, should new and significant information relevant to environmental concerns arise during the review and comment period on this proposal, then a supplemental NEPA review will be carried out, as appropriate, prior to the Secretary's final decision on the proposed action.

Deletion of the contractual provision regarding Winters rights is an administrative change which is not anticipated to cause any significant environmental impacts; however, appropriate NEPA clearance will be completed for Indian contractors desiring to delete this provision from their contracts. Comments on any potential environmental impacts associated with these actions may also be made during the review and comment period on this proposal.

Effect on Previous Decisions:

In effect this **Federal Register** notice proposes to amend the decisions published by Secretary Andrus on December 10, 1980, and by Secretary Watt on March 24, 1983. Following the review and comment period, and following consideration of the comments received, a final decision in line with the proposals contained herein will be published in the **Federal Register** that officially modifies the CAP water allocation policies.

Dated: June 24, 1991.

Manuel Lujan Jr.,

Secretary of the Interior.

[FR Doc. 91-15370 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-06-M

White House Conference on Indian Education Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed schedule of the forthcoming meeting of the White House Conference on Indian Education Advisory Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The White House Conference on Indian Education Advisory Committee is established by Public Law 100-297, part E. The Committee is established to assist and advise the Task Force in the planning and conducting the conference.

DATE, TIME AND PLACE: July 18, 1991, at 9 A.M. to 5 P.M. and July 19, 1991, at 9 A.M. to 5 P.M. at the Sheraton Denver Airport Hotel, 3535 Quebec Street, Denver, Colorado, 80207.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin Atencio, Deputy Director, White House Conference on Indian Education, U.S. Department of Interior, 1849 C St., NW., MS 7026-MIB, Washington, DC 20240; telephone 202-208-7167; fax 208-4868.

Agenda: The Advisory Committee for the White House Conference on Indian Education will discuss and advise the Task Force on all aspects of the Conference and actions which are necessary for the conduct of the Conference. Summary minutes of the meeting will be made available upon request. The meeting of the Advisory Committee will be open to the public.

Items to be discussed: Pre-Conference activities; selection process for participants; budget and administrative matters; election of Conference Chairperson; Indian Nations-At-Risk status, Subcommittee activities, report on activities for preconference reporting in October 1991, Conference topics and writers and other matters related to the Conference.

Dated: June 21, 1991.

Selma Sierra,

Assistant to the Secretary and Director of External Affairs.

[FR Doc. 91-15437 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[Ca-060-01-4410-06]

Availability of Draft South Coast Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: A draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared for the South Coast Planning Area. The RMP/EIS describes and analyzes alternatives for future management of approximately 296,000 acres of public land located in portions of the California Counties of San Diego, Riverside, Los Angeles, San Bernardino and Orange; these public lands include 167,000 acres of split-estate lands where there are federally-owned minerals but the land surface is privately owned. Copies of the draft RMP/EIS may be obtained from the Palm Springs-South Coast Resource Area, 400 South Farrell Drive, suite B-205, Palm Springs, CA 92262; phone (619) 323-4421. Copies will be available for review at public libraries within the five county planning area and at the following additional BLM locations:

Office of Public Affairs, Main Interior Bldg., rm. 5600, 18th and C Streets NW., Washington, DC 20240

California State Office, 2800 Cottage Way, Sacramento, CA 95825

California Desert District Office, 6221 Box Springs Boulevard, Riverside, CA 92507.

DATES: Written comments on the draft RMP/EIS must be submitted or postmarked no later than October 4, 1991. Comments may also be presented at public meetings to be held:

6:30 p.m. Monday July 29, Ramona Community Center, 434 Aqua Lane, Ramona, CA.

6:30 p.m. Tuesday July 30, Barrett Cafe, 1020 Barrett Road at Barrett Junction, San Diego County, CA.

6:30 p.m. Wednesday July 31, Hemet City Council Chambers, 450 E. Latham Ave., Hemet, CA.

6:30 p.m. Thursday September 12, Sierra Vista Junior High School, 19425 West Stillmore Street, Canyon Country, CA

6:30 p.m. Wednesday September 18, Walnut School, 625 N. Walnut, La Habra, CA.

ADDRESSES: Written comments should be addressed to Russell L. Kaldenberg, Area Manager, Palm Springs-South Coast Resource Area, Bureau of Land Management, 400 South Farrell Drive, suite B-205, Palm Springs, CA.

FOR FURTHER INFORMATION CONTACT: Duane Winters, RMP Team Leader, Palm Springs-South Coast Resource Area; phone (619) 323-4421.

SUPPLEMENTARY INFORMATION: The draft RMP/EIS describes and analyzes five alternatives to resolve the following issues: (1) Land ownership and use authorization, (2) threatened, endangered and other sensitive species, (3) Open Space, (4) recreation and public access, and (5) oil and gas leasing and sand and gravel development. The alternatives being considered can be summarized as: (1) No action or continuation of present management, (2) administrative adjustments, (3) sensitive species, open space and recreation, and (4) use opportunities. The preferred alternative is (3) sensitive species, open space and recreation except for the Los-Angeles-Orange County Management Area where it is (1) continuation of present management.

The RMP/EIS proposes seven Areas of Critical Environmental Concern (ACEC's). The preferred alternative would designate:

The Cedar Canyon ACEC (705 acres) for preservation of populations of Mexican flannelbush. Cedar Canyon is near Otay Mountain in San Diego County. The ACEC would be a right-of-

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way avoidance area, not available for mineral material sales or livestock grazing and closed to motorized vehicle use. Acquisition of 280 acres for addition to the ACEC would be pursued.

Lands surrounding Tecate Peak (355 acres) and Little Tecate Peak (280 acres) as the Kuchamaa ACEC for the protection of Native American religious heritage. The ACEC would be a right-of-way avoidance area, not available for mineral material sales or livestock grazing. Motorized vehicle use within the ACEC would be limited. The feasibility of relocating or removing the existing communication site facilities on Tecate Peak would be explored. Acquisition of approximately 500 acres for addition to the ACEC would be pursued.

Steele Peak (1,340 acres) for preservation of Stephens' kangaroo rat habitat. The ACEC would be a right-of-way avoidance area and unavailable for mineral material sales. The area outside the existing allotment boundary would be unavailable for livestock grazing pending completion of an activity plan. Withdrawal of the ACEC from mineral leasing and entry under the 1872 mining law would be pursued. Acquisition of approximately 2,000 acres for addition to the ACEC would be pursued.

The Santa Ana River Wash ACEC, totalling of 700 acres, for protection of Santa Ana River woolly-star and slender-horned spineflower. The ACEC would be a right-of-way avoidance area, unavailable for mineral material sales, closed to motorized vehicle use and unavailable for livestock grazing.

Public land (1,200) acres within the Santa Margarita Ecological Reserve as the Santa Margarita Reserve ACEC for protection for sensitive species and natural values. The ACEC would be a right-of-way avoidance area, unavailable for mineral material sales and livestock grazing. Withdrawal of the ACEC from mineral leasing and entry under the 1872 mining law would be pursued. A portion of the ACEC, 360 acres, would be closed to motorized vehicle use. Acquisition of 308 acres for addition to the ACEC would be pursued.

The Million Dollar Spring ACEC, approximately 5,830 acres of public lands within the eastern part of the Beauty Mountain Wilderness Study Area; for the protection of watershed and sensitive natural values. The ACEC would be a right-of-way avoidance area and not available for material sales. Acquisition of 510 acres for addition to the ACEC would be pursued.

The Johnson Canyon ACEC, involving 1,160 acres currently leased to the San Diego State University Systems Ecology Group; for the protection of unique vegetation resources. The ACEC would not be available for mineral material sales or livestock grazing and would be a right-of-way avoidance area. Acquisition of 510 acres for addition to the ACEC would be pursued.

The draft RMP contains a determination of eligibility for three segments of the Santa Margarita River as a potential unit of the National Wild and Scenic River System. The 1.5 miles under BLM management meet the classification of "wild river". Interim protective measures are identified in the draft RMP.

Dated: June 19, 1991.

Gerald E. Hiller,

District Manager.

[FR Doc. 91-15316 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-40-M

Issuance of Land Exchange Conveyance Document; Colorado

5 1899; Exchange of Public and Private Lands in Routt and Moffat Counties, Colorado

The United States issued an exchange conveyance document to John Wittemyer on May 23, 1991 for the following described lands under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Sixth Principal Meridian, Colorado.

T. 3 N., R. 89 W.,
Sec. 13, lot 1.
comprising 42.41 acres as public lands.

In the exchange for these lands, the United States acquired the following described lands from John Wittemyer:

Sixth Principal Meridian, Colorado.

T. 6 N., R. 99 W.,
Metes and bounds parcel within lot 2 of section 6, at Center Street and Victory Way in the town of Craig, Colorado.
comprising 1.376 acres of public lands.

The purpose of this exchange was to acquire the nonfederal lands for an administrative site. The public interest was served through this exchange. The values of the Federal public lands and the nonfederal land in the exchange were appraised at $22,500 and $23,000, respectively.

Dated: June 21, 1991.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 91-15372 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-JB-M

[UT-020-01-4212-13; U-45654 and U-65499]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of Public Lands in Tooele and Utah Counties.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The land will be exchanged after a 60 day waiting period from the publication of this notice.

Township	Range	Meridian	Section	Subdivision	Acres
1S.	11W.	Salt Lake	28	S½SW¼NW¼,NW¼SW¼NW¼	5.000
				W½NW¼SW¼NW¼	5.000
			29	S½,S½NE¼NE¼	90.000
				SE¼NE¼	40.000
				E½SE¼	80.000
			14	NE¼SW¼	40.000
2S.	6W.	Salt Lake	6	E½SE¼	80.000
9S.	2E.	Salt Lake	2	Lots 5 through 12	466.820
			23	Tract C	0.705
8S.	1E.	Salt Lake	23	E½SE¼SW¼SW¼	5.000
9S.	1E.	Salt Lake		W½E½SE¼SW¼ 2661%	7.000
Total Acres					746.525

In exchange for these lands, the United States will acquire the following described lands:

Township	Range	Meridian	Section	Subdivision	County tract No.	Acres
2S.	4W.	Salt Lake	11	NE¼NE¼	5-29-26	33.860
				SE¼NE¼	5-29-27	33.380
				SW¼NE¼	5-29-24	17.000
				N½NE¼SE¼	5-29-28	25.000
				SE¼SE¼	5-29-21	20.775
				SE¼SE¼	5-29-25	15.000
				SW¼SE¼	5-29-22	40.000
				NW¼SE¼	5-29-30	27.000
				E½SW¼	5-29-29	76.330
						288.345
			12	Lots 1,2,3,4	5-30-4	158.720
				NW¼	5-30-3	160.000
				W½SW¼	5-30-5	80.000
						398.720
			14	E½NW¼	5-32-5	80.000
				SW¼NW¼	5-32-6	39.000
						119.000
Total Acres						806.065

The purpose of this exchange is to acquire the non-Federal lands which have high public value for wildlife and access to an isolated block of public land. The exchange will give the public and the Bureau of Land Management access to the northwest side of the Oquirrh Mountains where the private landowners have blocked the access to thousands of acres of public land.

There is a large elk herd on the Oquirrh Mountains and the Department of Wildlife Resources can't get onto the northwest part of the mountain to manage the herd. The public interest will be served by completing the exchange.

The values of the lands are believed to be approximately equal. Full equalization of value will be achieved after a formal appraisal has been completed.

Lands to be transferred from the United States will be subject to the following reservation: A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945 (1982).

Publication of this notice segregates the above described public land from appropriation under all other public land laws, including the general mining laws, for a period of 2 years from the date of first publication.

Further information concerning the exchange, including the EA, is available for reveiw at the Salt Lake District Office.

For a period of 45 days from the date of first publication, interested parties may submit comments to the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91-15406 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-DQ-M

DEPARTMENT OF THE INTERIOR

[WY-060-4212-14; WYW81452]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands in Natrona County, Wyoming.

SUMMARY: The Bureau of Land Management has determined the lands described below are suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1713 and 1917:

Sixth Principal Meridian

T. 40 N., R. 87 W.,
Section 13: SE¼SE¼SW¼NE¼.

The above lands aggregate 2.5 acres in Natrona County, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bill Mortimer, Area Manager, Platte River Resource Area, P.O. Box 2420, 815 Connie Street, Mills, Wyoming 82644, (307) 261-7500.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface and mineral estate, other than oil and gas, to Wayne A. and Carolyn M. Steinberg, pursuant to sections 203 and 209 of FLPMA, 43 U.S.C. 1713 and 1719. The Steinbergs wish to acquire the property to secure their equity in two A-frame cabins and other improvements. The Steinbergs have occupied this land for over 21 years under appropriate leases, and have developed and improved the lands in accordance with all the terms and conditions of the leases.

The proposed direct sale is scheduled for August 29, 1991. The land parcel is to be offered at fair market value. In addition to this sale amount, the Steinbergs will be required to submit a nonrefundable application fee of $50.00 in accordance with 43 CFR subpart 2720 for conveyance of all unreserved mineral interests in the lands.

Because of the existing improvements, the land is difficult and uneconomic to manage as part of the public land system, and is not suitable for management by another federal agency. The land is specifically identified in the Platte River Resource Area Resource Management Plan for sale to the Steinbergs, and Natrona County officials have been notified of the proposal. Detailed information concerning the proposed sale, including planning documents, land and mineral reports, and the environmental assessment, is available at the Bureau of Land Management, Platte River Resource Area Office, 815 Connie Street, P.O. Box 2420, Mills, Wyoming 82644.

Conveyance of the above lands will be subject to:

1. Reservation of the right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of oil and gas to the United States with the right to prospect for, mine, and remove the same.

3. Reservation of an easement 100 feet wide along the southern boundary of the parcel.

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4. A wetlands covenant to protect and preserve the wetland area in and along the Middle Fork of Buffalo Creek.

5. Oil and gas lease WYW89005.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws upon publication of this notice in the Federal Register. The segregative effect will end upon issuance of the patent or 270 days from the date of this sale, whichever comes first.

For a period of 45 days from the date of issuance of this notice in the Federal Register, interested parties may submit comments to the District Manager, Casper District, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify the realty action. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

Dated: June 21, 1991.

James W. Monroe,

District Manager.

[FR Doc. 91-15378 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-DQ-M

[G-040-G1-0420-4210-14; KS RMP]

Tulsa District Office; Availability of the Proposed Kansas Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, announces the availability of the Proposed Kansas Resource Management Plan (RMP) and Final Environmental Impact Statement (FEIS). This document identifies and analyzes land use planning options for BLM managed Federal lands and minerals throughout the state of Kansas. The Draft Kansas RMP/Draft EIS was made available for public review and comment on October 1, 1990. Comments received on the Draft were considered in preparing the Proposed RMP/FEIS. Any person who participated in the planning process and has an interest that is or may be affected by approval of the Proposed RMP may file a protest.

DATES: Protests must be received no later than July 31, 1991.

ADDRESSES: Comments should be sent to: Director, Bureau of Land Management, Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION OR COPIES OF THE PROPOSED RMP/FEIS, CONTACT: Brian Mills, RMP Team Leader, Oklahoma Resource Area, 221 North Service Road, Moore OK 73160-4046, Telephone: (405) 794-9624.

SUPPLEMENTARY INFORMATION: The Proposed RMP/EIS identifies and analyzes the future options for managing the Federal mineral estate situated within Kansas administered by the BLM. The planning area for the Kansas RMP includes all BLM managed Federal minerals under private or State surface and minerals under other Federal surface and mineral estate within Kansas. The Federal mineral estate encompasses over 744,000 acres of both split estate minerals (Federal minerals under private or State surface) and minerals under other Federal surface management agencies lands. (Not included are Federal minerals under the U.S. Forest Service managed Cimarron National Grassland). The issue addressed by this RMP/EIS effort is the leasing and development of the Federal oil and gas mineral resource. The Proposed RMP was prepared using the BLM planning regulations issued under the authority of the Federal Land Policy and Management Act of 1976. The RMP provides a comprehensive framework for managing and allocating Federal minerals within Kansas over the next 15 years. Three RMP alternatives were developed to describe the different management options available to BLM in response to the issue of administering Federal oil and gas in Kansas. Each alternative presented a different level of oil and gas leasing stipulation application. Together with the Continuing Management Guidance each of the alternatives formed a separate, feasible land-use plan. The "Continuing Management Guidance" section of the Proposed RMP describes those aspects of current management which are not at issue and will continue after the RMP is approved. The Continuing Management Guidance was developed primarily from laws, regulations, and manuals, as well as from previous land use plans.

The Proposed Plan is the Preferred Alternative (Alternative B), Intensive Surface Protection presented in the RMP/EIS. This alternative places primary emphasis on protecting important environmental values through the use of additional oil and gas leasing stipulations. The goal of this alternative is to change present management direction so that identified surface resource values are protected in a manner that gives priority to the surface resource.

Dated: June 24, 1991.

Jim Sims,

District Manager.

[FR Doc. 91-15405 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-FB-M

[NV-030-01-4214-10; GACA 24052]

Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposed to withdraw 2,104.42 acres of public land in Alpine County, California, to protect the Indian Creek Recreation Area. This notice closes the lands for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

EFFECTIVE DATE: June 28, 1991. Comments and requests for a public meeting must be reviewed by July 29, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Carson City District Manager, BLM, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706.

FOR FURTHER INFORMATION CONTACT: Steep Weiss or John Matthiessen, BLM, Carson City District Office, 1535 Hot Springs Road, Carson City, Nevada 89706, Telephone (702) 885-6000.

SUPPLEMENTARY INFORMATION: On April 15, 1991, the assistant Secretary of the Interior for Lands and Minerals Management approved an application which the Bureau of Land Management filed to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian, California.

T. 10 N., R. 20 E.

Sec. 3, W½ lot 5, W½ lot 6, lot 7, E½ lot 8, E½W½ lot 8, W½ lot 9, W½E½ lot 9, lots 10, and 11, E½ lot 12, E½W½ lot 12, W½SW¼, W½E½SW¼, E½SE¼, E½SE¼, E½W½SE¼;

Sec. 4, S½W½ lot 5, S½N½E¼ lot 6, S½E½ lot 9, W½ lot 6, lots 7 and 8, E½ lot 9, E½ lot 10, E½ lot 11, lots 17 and 18, SW¼, S½SE¼;

Sec. 8, NE¼NE¼, NE¼SE¼, N½SE¼ SE¼, SE¼SE¼SE¼;

Sec. 9, NE¼NE¼, SW¼NE¼, N½SE¼ NE¼, N½NW¼, SW¼, NW¼, NW¼ SE¼;

Sec. 10, W½E½NE¼, E½W½NE¼, NW¼ NW¼, E½SW¼NW¼, W½NE¼SE¼, E½NW¼, SE¼.

The area described aggregates 2,104.42 acres of public lands in Alpine County California.

The purpose of the withdrawal is to protect the Indian Creek Recreation Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of two years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved before the end of two years. Temporary uses which may be permitted during this segregative period include licenses, permits, cooperative agreements, and discretionary land-use authorizations of a temporary nature.

Dated: June 18, 1991.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 91-15423 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-HC-M

[UT-942-4214-10; U-60685]

Proposed Withdrawal and Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,570 acres of public land in Millard County to protect a crucial raptor nesting habitat for the peregrine falcon, golden eagle, and the prairie falcon. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by September 26, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Utah State Director, BLM, P.O. Box 45155, Salt Lake City, Utah 84145-0155.

FOR FURTHER INFORMATION CONTACT: Michael Barnes, BLM, Utah State Office (801) 539-4119.

SUPPLEMENTARY INFORMATION: On June 12, 1991, an application was approved allowing the Bureau of Land Management to withdraw the following described public land temporarily from settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights:

Salt Lake Meridian

T. 19 S., R. 6 W.,

Sec. 28, NW¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, W½SE¼SW¼;

Sec. 29, SW¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, S½NW¼, S½;

Sec. 30, E½SE¼NE¼, E½SE¼;

Sec. 31, E½NE¼, E½W½NE¼, NE¼SE¼, NE¼NW¼SE¼, NE¼SE¼SE¼;

Sec. 32, All; *

Sec. 33, W½NE¼NW¼, NW¼NW¼, N½SW¼NW¼, SW¼SW¼NW¼.

*Indicates Utah State lands.

The area described contains 1,570.00 acres in Millard County, Utah.

The purpose of the withdrawal is to protect the crucial ratpor nesting habitat for the peregrine falcon, golden eagle, and the prairie falcon. The withdrawal would also protect the unique geological features of Pavant Butte for scientific and geologic studies.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Utah State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Utah State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

James M. Parker,

State Director.

[FR Doc. 91-15407 Filed 6-27-91; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

Kennesaw Mountain National Battlefield Park, Georgia; Acceptance of Concurrent Jurisdiction

AGENCY: National Park Service, Interior.

ACTION: Notice of correction.

SUMMARY: This notice corrects the Supplementary Information section in a notice previously published in the Federal Register on June 6, 1991, (56 FR 26143) regarding the conveyance by the Governor of Georgia of concurrent jurisdiction over lands and roadways situated within the administrative boundaries of Kennesaw Mountain National Battlefield Park in the State of Georgia. The Notice of June 6, 1991 is correct except for the Supplementary Information which should have read as follows:

SUPPLEMENTARY INFORMATION: On December 14, 1962, the United States, acting under the authority of 16 U.S.C. 1a-3 and 40 U.S.C. 255, and the State of Georgia, acting in accordance with the provisions of sections 15-302.1 and 15-308 of the Georgia Code, entered into an agreement whereby concurrent jurisdiction was established over lands and waters within certain specified units of the National Park System within the State of Georgia. This agreement also extended concurrent jurisdiction to all lands owned by the United States within the exterior boundaries of the Kennesaw Mountain National Battlefield Park, but excluded three tracts of land owned by Cobb County and the State of Georgia.

It was recently determined that the National Park Service did not have concurrent jurisdiction on Old Highway 41 (Tract 01-119, Cobb County, 1.10 acres); Dallas Road (Tract 01-120, State of Georgia, 3.80 acres); and Powder Springs Road (Tract 01-130, State of Georgia, 0.01 acres) which are within the administrative boundaries of the

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Kennesaw Mountain National Battlefield Park.

This current transfer document amends the 1982 agreement by "extending concurrent jurisdiction over all lands and roadways within the administrative boundaries of Kennesaw Mountain National Battlefield Park" to include but not limited to: lands owned by the United States; lands located on Old Highway 41 (Tract 01–119, Cobb County, 1.10 acres); Dallas Road (Tract 01–120, State of Georgia, 3.80 acres); and Powder Springs Road (Tract 01–130, State of Georgia, 0.61 acres) which are within the administrative boundaries of the Kennesaw Mountain National Battlefield Park; and all roadways encompassed by the administrative boundaries of the park including, but not limited to, jurisdiction over the following roads: Old Highway 41, Ridenhour Road, White Circle, White Road Court, Stilesboro Road, Mossy Rock Road, Kennesaw Mountain Drive, Gilbert Road, Old Mountain Road, Burnt Hickory Road, Dallas Road, Cheatham Hill Drive, John Ward Road, Cheatham Hill Road, and Powder Springs Road.

Frank Catroppa,

Regional Director, National Park Service, Southeast Region.

[FR Doc. 91–15376 Filed 6–27–91; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0098), Washington, DC 20503, telephone 202–395–7340.

Title: Adoption of State Standards, 30 CFR part 718.

OMB Approval Number: 1029–0098.

Abstract: Information collected in part 718 of the regulations of the Office of Surface Mining Reclamation and Enforcement are used to determine whether State laws or regulations contain more stringent standards than the Federal requirements in 30 CFR parts 715, 716 or 717.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: State regulatory authorities.

Annual Responses: One.

Annual Burden Hours: One.

Average Burden Hours Per Response: One.

Bureau Clearance officer: Richard L. Wolfe (202) 343–5143.

Dated: May 24, 1991.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 91–15374 Filed 6–27–91; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0099), Washington, DC 20503, telephone 202–395–7340.

Title: Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs 30 CFR part 733.

OMB Number: 1029–0099.

Abstract: This part establishes requirements for maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs. The information requested is needed by OSM to verify the allegations in a citizen request to evaluate a State program and to determine whether an evaluation should be undertaken.

Bureau Form Number: 1029–0099.

Frequency: On Occasion.

Description of Respondents: Any interested person (individuals, businesses, institutions, organizations).

Annual Responses: 2.

Annual Burden Hours: 1.

Estimated Completion Time: 0.5 hour.

Bureau clearance officer: Richard L. Wolfe (202) 343–5143.

Dated: May 24, 1991.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 91–15375 Filed 6–27–91; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–77 (Sub-No. 6X)]

Bangor and Aroostook Railroad Co.—Abandonment Exemption—in Aroostook County, ME; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 15.89-mile line of railroad between milepost W6.86, near Washburn and milepost W22.75, near Westmanland, in Aroostook County, ME.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 28, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 8, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by July 18, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Eric M. Hocky, 510 Walnut Street, 1800 Penn Mutual Tower, Philadelphia, PA 19106.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report with addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 3, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, see at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 19, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–15329 Filed 6–27–91; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987)

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 30, 1991, Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 29, 1991.

Dated: June 18, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–15427 Filed 6–27–91; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated April 16, 1991, and published in the Federal Register on April 18, 1991 (56 FR 15383), Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, Raw (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (CPS) (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 18, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–15428 Filed 6–27–91; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated April 8, 1991, and published in the Federal Register on April 22, 1991 (56 FR 16346), Noramco of Delaware, Inc., Division McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, Raw (9600)	II
Poppy Straw Concentrate (CPS) (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 18, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–15429 Filed 6–27–91; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated May 16, 1991, and published in the Federal Register on May 28, 1991, (56 FR 24096), Stepan Chemical Company, Natural Products, Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances

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Import and Export Act in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated June 18, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-15430 Filed 6-27-91; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS No. 1275-91]

English Language, American History and Civics, Standardized Naturalization Test

AGENCY: Immigraton and Naturalization Service, Justice.

ACTION: Notice of program.

SUMMARY: The Immigration and Naturalization Service (Service) is pursuing the development and implementation of a standardized test for naturalization applicants as an alternative means of meeting certain requirements for naturalization as United States Citizens. This notice is to request written proposals from capable entities who are interested in participating in this program. The Service expects the standardized test will facilitate the naturalization of persons who might be otherwise hesitant to apply for naturalization.

DATES: Written proposals from parties interested in developing and administering an alternative testing process based on the criteria in the supplementary information will be accepted on or after June 28, 1991.

ADDRESSES: Written proposals should be mailed in triplicate to Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Stella Jarina, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 514-5014.

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act (Act) provides for the naturalization of certain qualified aliens to United States citizenship. Section 312 of the Act provides in pertinent part that applicants for naturalization must demonstrate an understanding of ordinary English literacy and a knowledge and understanding of the history and form of government of the United States. The Immigration Reform and Control Act of 1986 (IRCA) required the Service to implement a similar test for applicants for permanent residence under section 245a of the Act.

In response to a public notice published in the **Federal Register** on July 13, 1990 (55 FR 28836), to announce the Service's consideration of implementation of a standardized English Language/Citizenship test for naturalization purposes, a total of 11 comments were received from both outside and inside the Service. Upon review and careful consideration of these comments, the following changes were made to clarify and expand on the selection criteria which appeared in draft form in the **Federal Register** on Criterion (3) has been amended to clarify that the "approval"of individual test results relates to the manner in which the results are transmitted to the Service.

Criterion (6) has been amended to enable a testing entity capable of administering a test in more than one state, or operating within or under the supervision of a public school system, to be approved to administer the standardized test.

Criterion (8) has been amended to include the requirement that the testing entity provide the applicant with evidence of having taken the test if results are not provided the same day as the test. The results provided to the Service in individual cases related only to those persons passing the test. The Service will not be advised of the identities of those persons who do not pass the test, and failure of this test will have no effect on a person's ability to retake this alternative test or be separately tested by a Service officer.

Six commenters requested clarification of what would constitute fraud or misrepresentation on the part of the applicant or testing agency and how fraud would be determined. We have determined that it would be inappropriate to specify in advance what specific type of actions would constitute fraud, as this would be seen as limiting the authority of the Service.

Two commenters wished clarification as to the scoring of the written portion of the test, as two sentences were being required to be written, as opposed to only one required for the test under legalization. While approval of scoring methods will be based upon individual proposals submitted, it is intended that the applicant must pass on one of the two sentences.

One commenter requested that the test answers be read to the applicant in addition to the questions. However, we have determined that the only way to adequately test the applicant's ability to read, would be if he/she made the choice of the answers based upon what is read, not what is also read to him/her. Also the long term integrity of the test requires that there be no question of the tester having influenced the answers of the applicant by the manner in which the answers are read, whether intentional or not.

Five commenters requested that the test either be not restricted to school environments or requested that voluntary agencies be allowed to provide the test. The "environment" in which the test is given is not restricted under the criteria, but will be a factor to be considered in the approval of a testing entity, as it relates to the security of the test. Also, the requirement in criterion (6) that the testing entity have management control of the testing site, personnel and supplies, does not preclude the testing entity from contracting specific services from various local entities provided that control and oversight are maintained.

Four commenters indicated concern either for the amount of the fee or reimbursement for local voluntary agencies. The Service will have no financial liability or stake in the administration of any test. The Service's approval of the fee is solely to insure the reasonableness of the fees charged.

One commenter raised the issue of the length of time for which test results would be valid. An applicant for naturalization must establish eligibility under section 312 at the time of the examination on the application. It is felt that one year is a reasonable amount of time in which to continue to accept the results of a standardized test. Therefore, the test results will be considered valid in connection with a Form N-400 submitted within one year of the date the test is passed.

Any qualified entity may apply to the Service for acceptance as an approved testing entity. The agreement between the Service and the testing entity will be nonfinancial. The Service shall incur no financial liability and intends to make no payments to any entity under this program. The Service agrees to accept the test results from an approved entity as evidence of a naturalization applicant's ability to read and write English and knowledge of the government and history of the United States as required by section 312 of the Act, when said applicant submits an application to file a petition for naturalization within one year of successfully passing an approved test. The passage of the approved test will not be construed as evidence of ability to speak English.

Criteria:

The following criteria and requirements are provided for submission of proposals:

(1) The testing entity must demonstrate experience in developing and administering reliable standard examinations in the English language and civics areas (for example, tests are currently recognized and accepted by an established public or private institution of learning recognized as such by a qualified state certifying agency).

(2) The written test will be constructed in English as a twenty (20) question multiple choice pass/fail test, with two dictated sentences to be written in English. The test will be constructed so as to be completed in no more than forty-five (45) minutes. The test questions and the dictated sentences will be read aloud in English to the applicants by a qualified proctor in person, or audio cassette or video tape. The answers will not be read to the applicants.

(3) The test questions and scoring standards for test scores will be approved by the Service. The scoring standard must provide that the minimum passing score for the multiple choice questions will be not less than 60 percent. The scoring standard must also provide for satisfactory completion of one of the two sentences. The test questions or scoring standards will not be changed by the testing entity unless approved or directed by the Service. The test results submitted by applicants to the Service are not valid until verified by the Service. The testing entity must develop, and the Service must concur in any form of electronic or manual transfer of test result data from the entity to the Service.

(4) The content of the test questions, with the exception of current political office holders, must come from the latest edition of the Service's Federal Citizenship Textbook Series. Only the M-287, M-289, M-291 and English as a Second Language Textbook Versions (M-302, M-303, M-304) are to be used. These textbooks can be purchased from the U.S. Government Printing Office.

(5) Testing entities are required to field test the examination, in cooperation with the Service, prior to implementation. The testing entity shall notify the Service of the opening of a new site or closing of a site within ten business days of such action.

(6) The testing entity must be capable of administering the examination in more than one state (to include U.S. Virgin Islands, Guam, and Puerto Rico), or operate within or under the supervision of a public school system. In administering the examination the entity must have management control over the testing schedule, test location procurement and management, hiring authority over testing personnel, and responsibility for needed supplies. Service approval cannot be transferred to an unapproved entity for administration of tests. The testing entity must ensure, if concurrently providing test preparation instruction, that test standards are strictly followed. The fee charged will be determined by the approved entity with the concurrence of the Service. Justification of the fee amount must be submitted with any proposal. If the applicant fails the test he or she will be given the opportunity to retest one time at no additional costs. The retest shall be a variation of the initial test.

(7) The Service will maintain a list of approved testing entities and will make such listing available to the public upon request. The testing entity is required to provide reasonable public notice of the test location and schedule. At least fifteen days prior to the beginning of each month, the testing entity shall provide the Service with a report of the scheduled test dates by location for the coming month.

(8) The approved testing entity is responsible for scoring the examination and shall provide the results to the applicant and the Service by the fifteenth business day from the date of the test. If test results are not provided to the applicant on the day of the test, a receipt or other evidence of having taken the test will be provided.

(9) The testing entity shall provide test security and test integrity subject to review and approval by the Service.

(10) The testing entity will be responsible for verifying the identity of the person taking the test.

(11) The Service reserves, without notice, the right of onsite inspection to determine the continued realiability and integrity of the test and testing procedures.

(12) The Service reserves the right to remove an entity from the approved register for good cause. The testing entity will be notifed in writing of its removal from the approved register, and must cease examination immediately upon receipt of such notice. No appeal lies from the decision to remove, but a request for reconsideration may be entertained by the Assistant Commissioner for Adjudications, Examinations Branch, Central Office, Washington, DC.

(13) The testing entity must provide the Service with quarterly management reports throughout participation in the program. The reports shall include, but are not limited to, monthly statistics by a testing site on the number of applicants who take the test, and the number of persons who pass and fail.

Dated: April 30, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-15393 Filed 6-27-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

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An abstract describing the need for and uses of the information collection.

Comments and Questions:

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics, Hours at Work—Response Analysis Survey, One Time Only, Businesses and other private establishments: Small businesses or organizations, 600 responses, 150 hours, 15 minutes per response, no written forms.

Ratios of hours at work to hours paid are needed to measure labor input for productivity statistics. A response analysis survey assesses the conceptual accuracy of ratios. This information is used in BLS labor and multifactor productivity measures published annually and quarterly. Respondents are randomly selected from private non-agricultural establishments.

Revision

Occupational Safety and Health Administration, Accident Prevention Tags, State or local governments; Businesses or other for-profit; Federal agencies or employees; small businesses or organizations.

As the result of the February 21, 1990, Supreme Court Decision, 110 S. Ct. 929, 58 U.S.L.W. 4200, OSHA is no longer seeking Office of Management and Budget (OMB) clearance for paperwork activities involving the employer and the third party (employee) disclosure contained in 29 CFR 1910.145(f)(3).

Powered Platform, Businesses or other for-profit.

As the result of the February 21, 1990, Supreme Court Decision, 110 S. Ct. 929, 58 U.S.L.W. 4200, OSHA is no longer seeking Office of Management and Budget (OMB) clearance for those paperwork activities involving the employer and the third party (employee) disclosure contained in:

29 CFR 1910.66 (e)(9),
29 CFR 1910.66(f)(5)(i)(c),
29 CFR 1910.66(f)(5)(ii)(N),
29 CFR 1910.66(f)(7)(vi),
29 CFR 1910.66(f)(7)(vii),
29 CFR 1910.66(f)(7)(viii),
29 CFR 1910.66(f)(7)(ix).

Reinstatement

Assistant Secretary for Occupational Safety and Health, Initial and Renewal Application for Training and Education Grants, 1218-0020, Annually, Non-profit institutions, 78 respondents; 4,811 total burden hours; 63.3 average hours per response.

Applications are submitted by non-profit organizations interested in participating or continuing in OSHA training and education grants programs. It is used by OSHA staff to select organizations which can effectively carry out the objectives of the program. The application becomes part of the grant award document for successful applicants.

Signed at Washington, DC this 25th day of June, 1991.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 91-15476 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-23-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Baxon Act. the prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

District of Columbia, DC91-1(Feb. 22, 1991).	p.79, pp.84-86
Florida, FL91-28(Feb. 22, 1991).	p.165, p.166
Georgia, GA91-33(Feb. 22, 1991).	p.291, p.292
Maryland,	
MD91-2(Feb. 22, 1991)..	p.475, pp.476-477
MD91-15(Feb. 22, 1991).	p.507, p.508
New Jersey, NJ91-2(Feb. 22, 1991).	p.701, p.702
New York:	
NY91-9(Feb. 22, 1991)...	p.869, p.870
NY91-10(Feb. 22, 1991).	p.873, p. 874
NY91-13(Feb. 22, 1991).	p.901, pp.902-903.
Pennsylvania, PA91-6(Feb. 22, 1991).	p.1029, pp.1030-1033
Tennessee, TN91-2(Feb. 22, 1991).	p.1195, p.1196

Volume II

Iowa IA91-13(Feb. 22, 1991).	p.63, p.64
Illinois	
IL91-16(Feb. 22, 1991)...	p.215, pp.216-218, 224
IL91-17(Feb. 22, 1991)...	p.225, pp.226, 229-232
IL91-16(Feb. 22, 1991)...	p.236, p.237, pp.238-240
Kansas:	
KS91-6(Feb. 22, 1991)...	p.363, p.364
KS91-8(Feb. 22, 1991)...	p.373, p.376
Michigan, MI91-4(Feb. 22, 1991)	p.491, p.492
Nebraska NE91-2(Feb. 22, 1991).	p.749, p.750
Texas:	
TX91-2(Feb. 22, 1991)...	p.1017, p.1018
TX91-19(Feb. 22, 1991).	p.1076, pp. 1068
TX91-51(Feb. 22, 1991).	p.1167, p.1168

Volume III

Alaska AK91-1(Feb. 22, 1991).	p.1, pp.2-3
Idaho:	
ID91-1(Feb. 22, 1991)....	p.207, pp.208-209
ID91-3(Feb. 22, 1991)....	p.221, p.222
Montana, MT91-6(Feb. 22, 1991).	p.273, pp.274-275
Nevada NV91-1(Feb. 22, 1991).	p.298, pp.300,302
Washington, WA91-1(Feb. 22, 1991).	p.451, pp.452-476

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Act's". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage deteminations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 24th day of June 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 15370 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,708; Gray Envelope Manufacturing, Avenel, NJ

TA-W-25,606; Rockwell International Corp, T/A Div., New Castle, PA

TA-W-25,725; Twin Disc, Inc., Racine, WI

TA-W-25,662; Connecticut Manufacturing Co., Inc., Waterbury, CT

TA-W-25,645; F.L. Smith Co., Inc., Duncansville, PA

TA-W-25,730; American Nickeloid, Peru, IL

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,686; Snap-On Tools Corp., Mt. Carmel, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,720; P.I.E. Nationwide, Inc., Kansas City, MO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,864; Electronic Services, Inc. (DBA ESI), Portland, OR

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,751; Maxwell House Coffee Co., Hoboken, NJ

Increased imports did not contribute importantly to worker separations at the firms.

TA-W-25,728; Weyerhaeuser Co., North Bend, OR

U.S. imports of Logging (Softwood & hardwood) declined in 1990 compared with 1989 & in the first two months of 1991 compared with the same comparable time period in 1990.

TA-W-25,705; Chicago Cutlery Co., New Hope, MN

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Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,721; Reading & Bates Drilling Co., Sovereign Explorer Rig, Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,759; Unibar Drilling Fluids, Inc., Rocky Mountain Div., Denver, CO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,743; DST Systems, Inc., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,739; Chapparel Coal Corp., Pikesville, KY

U.S. imports of coal are negligible.

Affirmative Determinations

TA-W-25,633; S & M Manufacturing (SERBIN), Fayetteville, TN

A certification was issued covering all workers separated on or after March 4, 1990.

TA-W-25,678; Liz Ann Manufacturing Co., New Braunfels, TX

A certification was issued covering all workers separated on or after April 3, 1990 and before September 30, 1990.

TA-W-25,746; INMAC Datacom Div., San Jose, CA

A certification was issued covering all workers separated on or after April 19, 1990.

TA-W-25,688; Straits Forest Product, Inc., Amanda Park, WA

A certification was issued covering all workers separated on or after March 19, 1990 and before December 31, 1990.

TA-W-25,686; Straits Forest Products, Inc., Port Angeles, WA

A certification was issued covering all workers separated on or after March 19, 1990 and before December 31, 1990.

TA-W-25,737; Cable Electric Products, Inc., Providence, RI

A certification was issued covering all workers separated on or after April 8, 1990.

TA-W-25,660; Atlas Powder Co., Tamaqua, PA

A certification was issued covering all workers separated on or after April 2, 1990.

TA-W-25,723; Sullcraft Industries, Rahway, NJ

A certification was issued covering all workers separated on or after April 6, 1990 and before December 31, 1990.

I hereby certify that the aforementioned determinations were issued during the month of June, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 24, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-15477 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23, 530]

Hawkins Oil and Gas, Inc., Tulsa, OK; Negative Determination on Reconsideration

By order dated April 9, 1991, the United States Court of International Trade (USCIT) in *Former Employees of Hawkins Oil & Gas.* v. *U.S. Secretary of Labor* (USCIT 90-02-00063) remanded this case to the Department for further investigation.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated by a survey of the workers' firm' customers. The Department's surveyed the major customers of Hawkins in 1988 and 1989. The survey revealed that none of the respondents imported crude oil or natural gas during the period applicable to the petition. A response from another investigation was added to the record for one of the customers who did not respond in the subject survey. That customer indicated that no natural gas was imported but crude oil was imported during the survey period.

On reconsideration the Department obtained audited financial statements for the years 1988 and 1989. The audited financial statements show most of Hawkins' 1989 revenues came from management fees. The audited statements also show that Hawkins had increased revenues from management fees, oil and gas sales, rental income and lease and equipment sales in 1989 compared to 1988. The oil and gas revenues accounted for about 34 percent of total revenues in 1989 and only about 15 percent of the oil and gas revenues are attributable to oil. Only oil and gas sales would provide a basis for a worker group certification and the audited statements show an increase in oil and gas revenues. Further, the company reported an increase in crude oil sales in the first nine months of 1989 compared to the same period in 1988.

The Department reviewed its initial customer survey and found that it had correctly contacted the appropriate contact persons for each customer provided by Hawkins. On reconsideration, the Department surveyed the two non-responding customers and found that they did not import natural gas and either did not import crude oil or had increased purchases of crude oil from Hawkins during the relevant period. Therefore, such a finding could not provide a basis for certification for Hawkins.

To summarize then, none of the major customers imported natural gas and only one imported crude oil but that respondent had increased purchases from Hawkins during the period applicable to the petition. Also, Hawkins had increased oil and gas sales revenues in 1989 compared to 1988 and increased oil revenues in 1989 compared to 1988.

Conclusion

After reconsideration, I affirm the original notice of negative determination to apply for adjustment assistance to workers and former workers of Hawkins Oil & Gas, Inc., Tulsa, Oklahoma.

Signed at Washington, DC this June 24, 1991.

Robert O. Deslongchamps

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-15478 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,691]

Lightolier, Inc., Norwich, CT; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 21, 1991, applicable to all workers of Lightolier, Inc., Norwich, Connecticut. The notice was published in the Federal Register on June 5, 1991 (56 FR 25699).

At the request of the State Agency the Department reviewed the subject certification and found that several workers are being retained for close down operations beyond the March 31, 1991 termination date. Therefore, the certification is amended by deleting the

old termination date and inserting a new termination date of September 1, 1991. The amended notice applicable to the subject firm is hereby issued as follows:

"All workers of the Norwich, Connecticut plant of Lightolier, Inc., engaged in the production of track lighting fixtures who became totally or partially separated from employment on or after January 1, 1991 and before September 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 20th day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-15479 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Michigan

This notice announces the ending of the Extended Benefit Period in the State of Michigan, effective on June 15, 1991.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to recieve up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the code of Federal Regulations (20 CFR part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reached the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Michigan on March 10, 1991, and has now triggered off.

Determination of an "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on May 25, 1991, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for the week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending June 15, 1991.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits, 20 CFR 615.13(c)(4).

Persons who wish information about their rights to Extended Benefits in the State named above would contact the nearest State employment service office in their locality.

Signed at Washington, DC on June 20, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-15480 Filed 6-27-91; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law pertaining to unemployment insurance as part of the fulfillment of its role in administration of the Federal-State unemployment insurance system. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to State Employment Security Agencies (SESAs). The UIPLs described below are published in the Federal Register in order to inform the public.

UIPL No. 1-86, Change 1

This directive provided additional information regarding the Department of Labor's (Department) interpretation of the phrase "permanently residing in the United States under color of law" as used in section 3304(a)(14)(A) of the Federal Unemployment Tax Act (FUTA).

UIPL 26-90

This directive advised SESAs of the Department's concerns regarding the increasing technicality and complexity of Unemployment Insurance (UI) Appeals hearings and provided draft legislation which might assist the SESAs in resolving the problem.

UIPL 28-90

This directive advised the States of the Department's position on the issuance of subpoenas in interstate appeals.

UIPL 13-91

This directive advised the State agencies of the provisions of the Omnibus Budget Reconciliation Act of 1991, Public Law 101-508, which affect the Federal-State Unemployment Compensation Program.

UIPL 14-91

This directive informed States of the amendment made to section 3304(a)(14)(A), FUTA, by Section 162(e)(4) of Public Law 101-649, the Immigration Act of 1990.

Dated: 6/20/91

Roberts T. Jones

Assistant Secretary of Labor.

CLASSIFICATION: UI
CORRESPONDENCE SYMBOL: TEURL
DATE: February 16, 1989.
EXPIRATION DATE: June 30, 1991
DIRECTIVE: Unemployment Insurance Program Letter No. 1-86 Change 1
TO: All State Employment Security Agencies
FROM: Donald J. Kulick, Administrator for Regional Management
SUBJECT: Aliens Permanently Residing in the United States Under Color of Law (PRUCOL)

1. *Purpose.* To provide additional information regarding the Department of Labor's interpretation of the phrase "permanently residing in the United States under color of law" as used in section 3304(a)(14)(A) of the Federal Unemployment Tax Act (FUTA).

2. *References.* Section 3304(a)(14)(A), FUTA; UIPL 1-86, dated October 28, 1985 (51 FR 29713, August 20, 1986); UIPL 12-87, dated March 11, 1987 (52 FR 3880, February 2, 1987); UIPL 12-87, Change 1, dated September 28, 1988; UIPL 6-89, dated December 2, 1988; Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976—P.L. 94-566 (including Supplement #3, Questions and Answers, issued May 6, 1977).

3. *Background.* Section 3304(a)(14)(A), FUTA, requires, as a condition for the

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Secretary of Labor's certification of a State to the Secretary of the Treasury, that the State law provide that:

compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

Simply put, base period wages may not be used in a monetary determination on a claim for unemployment benefits unless the wages were earned while the alien was in one of the three eligible categories specified in section 3304(a)(14)(A) and the State law. The three categories of aliens are:

- Aliens lawfully admitted for permanent residence at the time the services were performed.
- Aliens lawfully present for purposes of performing the services.
- Aliens permanently residing in the United States (U.S.) under color of law at the time the services were performed.

A State unemployment compensation law is not required to contain any of the three categories of eligible aliens. However, a State may not broaden the definition of any of the three categories of eligible aliens.

UIPL 1–86 set forth the Department of Labor's interpretation of these three eligible categories of aliens. Since the issuance of UIPL 1–86, the Department has noted continuing problems with the interpretation of the third category, aliens "permanently residing in the United States under color of law" (PRUCOL). The purpose of this program letter is to supplement UIPL 1–86 by providing additional information, based on cases which have come to the Department's attention, to ensure that this third category is uniformly interpreted and applied.

4. *Interpretation.* The phrase "permanently residing in the United States under color of law" applies only to the following classes of aliens:

a. Aliens admitted to the U.S. as conditional entrants under section 203(a)(7) or as parolees under section 212(d)(5) of the Immigration and Nationality Act (INA). Section 3304(a)(14)(A), FUTA, specifically includes these aliens in the PRUCOL category. Note: Section 203(a)(7) was repealed by section 203(c)(3) of the Refugee Act of 1980 (P.L. 96–212) and replaced under Section 201(b) of the Refugee Act with sections 207 and 208. Under section 203(h) of the Refugee Act, section 203(a)(7) is applicable prior to April 1, 1980. In addition, section 203(h) provides that, effective April 1, 1980, any reference in Federal law to section 203(a)(7) is considered a reference to new sections 207 and 208. INA section 207 relates to refugees and INA section 208 to asylees, both of which are, therefore, considered PRUCOL under section 3304(a)(14)(A), FUTA.

b. Aliens presumed to have been lawfully admitted for permanent residence even though they lack documentation of their admission to the United States. See Immigration and Naturalization Service (INS) regulations at 8 CFR part 101. A list of these groups and the documents that are issued to them by the INS are provided in Supplement #3 of the Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976–P.L. 94–566.

c. Aliens who, after a review of their circumstances under INS statutory or regulatory procedures, have been granted a lawful immigration status that allows them to remain in the U.S. for an indefinite period of time.

To be in PRUCOL status, an alien must meet a two-part test. First, the alien must be residing in the U.S. "under color of law." For an alien to be residing "under color of law," the INS must know of the alien's presence, and must provide the alien with written assurance that enforcement of deportation is not planned. Second, the alien must be "permanently residing" in the U.S. This term is not defined in FUTA. However, "permanent" is defined in section 101(a)(31), INA:

The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

Under the INA, authority for determining the alien's status is vested in the Attorney General. The "relationship" in the definition of "permanent" therefore contemplates permission by the INS for the alien to remain in the U.S. for an indefinite period of time. An alien cannot be residing permanently without this relationship. Therefore, an alien living in the U.S. who has not received assurance from the INS that departure will not be enforced is not permanently residing. INS inaction is *not* sufficient to show that an alien is in PRUCOL status and States may not interpret it as such. As stated in UIPL 1–86:

* * * without affirmative action by the INS, any alien, regardless of the legality of entry, could become eligible to receive unemployment compensation simply by filing an application for permanent residence or suspension of deportation. Congress has indicated no intent to include such aliens under the provisions of section 3304(a)(14)(A), FUTA. In short, the filing of an application alone cannot change an alien's resident status. The INS must affirmatively determine each alien's status in accordance with its authority and the alien's specific circumstances.

That the mere filing of an application does not make an alien a permanent resident under color of law was confirmed in *Sudomir* v. *McMahon*, 767 F. 2d 1458 (9th Cir. 1985). In that case, the United States Court of Appeals for the Ninth Circuit upheld as reasonable and permissible California and Federal positions that an "applicant" for asylum status is not in PRUCOL status. The Court noted that the requirement of permanency "does not embrace transitory, inchoate, or temporary relationships in a process that gives rise to the possibility of * * * authorization [to remain in the U.S.] reside temporarily." *Id.* Finally, "Their presence is tolerated during the period necessary to process their applications; it has not been legitimated by any affirmative act." *Id.* Whether the alien is applying for a lawful immigration status for the first time, or is applying for adjustment of an existing status, the principle is the same: the mere filing of an application does not confer PRUCOL status.

This principle was further confirmed in *Esparza* v. *Valdez*, 612 F. Supp. 241 (D. Colo. 1985), appeal dismissed, No. 85–2187 (10th Cir. Nov. 29, 1988). In that case, the United States District Court for Colorado dismissed the claim that aliens are in PRUCOL status if the alien's presence in the U.S. is known to the INS and the INS has acquiesced in the continued residence of the alien by some action or inaction. The Court stated that aliens are not in PRUCOL status simply "by the filing of some application." 612 F. Supp. at 244.

5. *Discussion of Specific Groups of Aliens.* In addition to those groups of aliens specifically cited in Section 3304(a)(14)(A) and those groups treated in Supplement #3 of the Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976–P.L. 94–566, other groups of aliens have been identified which may or may not be in PRUCOL status. Following is a decision of these groups.

a. *Aliens Possessing Work Authorization.* Aliens who possess work authorization fall under the second category of Section 3304(a)(14)(A), FUTA, "lawfully present for purposes of performing such services." These aliens may also be in PRUCOL status, but only if they independently meet the two-part test explained above. If State law contains the category "lawfully present for purposes of performing such services," the State agency need not determine whether aliens in this category are also in PRUCOL status. However, if State law does not contain the second category, but does contain the PRUCOL category, or if the alien does not possess work authorization, then it will be necessary to determine if the alien is in PRUCOL status. In reaching this determination, the State may not expand the definition of PRUCOL to include aliens who merely possess work authorization. (Evidence of authorization to work is, however, required to establish legal availability for work subsequent to the enactment of the Immigration Reform and Control Act on November 6, 1986; see UIPL 12–87.)

b. *Aliens Granted Voluntary Departure or Extended Voluntary Departure.* Aliens granted voluntary or extended voluntary departure are usually assigned a definite date for departure from the U.S. Although the departure date may be subject to extension, or actually extended, these aliens are not "permanent" residents because their presence is limited in duration. As the court stated in the *Sudomir* case, a deferred or extended voluntary departure by definition is a "transitory, inchoate, or temporary" relationship. *Sudomir* at 1461.

Aliens who receive extensions of voluntary departure dates while their applications for legal residence are pending with the INS also do not become permanent residents. The

administrative process which may culminate in authorization to remain in the U.S. does not in itself confer any status or right to reside in the U.S. permanently. AS with the aliens in the *Sudomir* case, these aliens' "presence is tolerated only during the period necessary to process their applications; it has not been legitimated by any affirmative act." *Sudomir* at 1462. While these aliens may be residing under "color of law," they are not "permanently residing" and may not be considered PRUCOL.

c. *Applicants for Adjustment of Status.* Aliens do not become PURCOL by virtue of applying for adjustment of their status. An alien applying for adjustment of status under sections 245, 245A, or 210 of the INA also would not qualify as PRUCOL since the application itself does not constitute a change or improvement of status. If these applicants are eligible for unemployment benefits, it must be because of their present status, which they are applying to have adjusted.

d. *Asylees, Refugees and Applicants for such Status.* Aliens granted the status of asylee or refugee are PRUCOL, but, as discussed above, applicants for a particular status do not receive the benefits of that status. To be granted asylum under section 208, INA, the INS must make a specific determination that the alien faces persecution or has a well-founded fear of persecution. As noted in *Sudomir* at 1462, the presence of applications for asylum is "tolerated during the period necessary to process their applications; it has not been legitimated by any affirmative act." This principle applies also to applicants for refugee status under section 207, INA.

e. *Applicants for and Persons Who Have Received Withholding of Deportation.* As with other applicants for a particular status, aliens do not become PRUCOL by applying for withholding of deportation under section 243(h), INA. The temporary nature of their residence during the application process is underscored by the fact that an alien is not entitled to relief under section 243(h) if the INS finds that he committed certain acts of persecution; was convicted of a particularly serious crime constituting a danger to the U.S.; committed a serious neopolitical crime prior to arrival in the U.S.; or constitutes a danger to the security of the U.S. However, aliens who have been notified in writing by the INS that deportation action will not be taken against them or that such action is indefinitely delayed, may be considered PRUCOL.

f. *Cuban and Haitian Entrants.* Citizens of Cuba or Haiti who entered the United States at the time of the Mariel boat lift (and before January 1, 1982) and afforded the status of "Cuban/Haitian Entrant (Status Pending)" are in PRUCOL status because they are treated as parolees. However, not all Cuban and Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, P.L. 96–422, are afforded the status of Cuban/Haitian Entrant (Status Pending). Those aliens not granted this status may be the subject of exclusion or deportation proceedings or may be applicants for asylum. If they are in any of the three categories specified under section 3304(a)(14)(A), FUTA, it is by virtue of other INS actions (such as the granting of work authorization or the adjustment of status to that of an alien lawfully admitted for permanent residence under section 202 of the Immigration Reform and Control Act of 1986, P.L. 99–603, (IRCA)), not by simply being Cuban or Haitian entrants.

g. *Visa Applicants and Beneficiaries of Visa Petitions.* As with other applicants for a particular status, aliens do not become PRUCOL by apply for a visa.

Beneficiaries of approved or pending visa petitions are not PRUCOL. The INA provides that preference consideration be given to persons with close family ties in the U.S. and to persons with certain job skills. However, the mere filing of a petition on an alien's behalf does not create a lawful status. Indeed, some beneficiaries may not even be in the U.S. at the time the petition is filed. Moreover, "approval" of a visa petition on behalf of an alien merely verifies a relationship between the petitioner and the beneficiary; approval is merely the first step in the application process. Therefore, even an alien with an "approved" petition is simply participating in a process that ultimately may result in authorization to remain permanently in the U.S. A pending petition may be meritless and cannot be the basis for determining the alien's immigration status.

Once the visa petition has been approved, some aliens are required to go to the American consul in their country of origin for an interview. At that juncture, the visa is either issued or denied. See 22 CFR part 42. If the visa is issued, the individual is required to appear at the port of entry for admission. Admission may be disapproved for a number of reasons. If admitted, the individual is "lawfully admitted for permanent residence," the first category of eligible aliens under section 3304(a)(14)(A). Other beneficiaries of approved visa petitions are allowed to stay in the U.S. and file an application for adjustment of status under section 245, INA. As with other applicants for a particular status, these aliens are not in PRUCOL status. Finally, if the application is granted, the beneficiary is adjusted to the status of "lawfully admitted for permanent residence" and since the alien is already in the U.S., the alien need not be "admitted."

h. *Applicants for Suspension of Deportation.* As with applicants for a particular status, aliens do not become PRUCOL by applying for suspension of deportation under Section 244(a), INA. As with other applicants, the presence of these aliens is temporary, as they merely are participating in an administrative process with the possibility of receiving authorization to remain in the U.S. Further, these aliens are not present under color of law while in deportation status.

In contrast, aliens whose deportation is suspended under section 244(a) have their status adjusted to "lawfully admitted for permanent residence." Such aliens are, therefore, in the first category of section 3304(a)(14)(A), FUTA, effective upon issuance of the adjustment of status by the INS.

i. *Persons under Orders of Supervision.* Aliens subject to orders of supervision under section 242(d), INA, are not in a lawful immigration status and have already been issued a final order of deportation. They are subject to deportation when appropriate arrangements are completed. These aliens are neither "permanently residing" nor residing "under color of law" and are therefore not in PRUCOL status.

j. *Persons Subject to INS Orders to Show Cause, But Not Under a Final Order of Deportation.* Orders to show cause under 8 CFR 242.1 are used by the INS to commence the deportation process. Such an alien is neither "permanently residing" nor residing under "color of law" solely by reason of being in such status. If such aliens are in PRUCOL status, it is by virtue of the status which may be revoked during this process.

k. *Persons under Deferred Action Status.* Aliens under deferred action status who have been notified by the INS in writing that deportation will not be pursued at the present time are in PRUCOL status, but only from the date such notification is effective and until such notification is revoked or superseded by further INS action.

l. *Aliens in the U.S. With the "Knowledge and Acquiescence" of the INS.* INS knowledge of, and acquiescence to, an alien's presence in the U.S. is insufficient to render the alien either permanently residing or residing under color of law. Rather, an alien is in PRUCOL status only if the INS has affirmatively exercised its discretion against deportation and granted permission to the alien in writing to reside in the U.S. indefinitely. As the *Esparza* court stated in rejecting the "knowledge and acquiescence" test, an alien is not in PRUCOL status simply "by the filing of some application." *Esparza* at 244.

m. *Aliens Who Applied for, or Who Intended to Apply for Legalization Under Section 245A or Section 210, INA, as Added by the Immigration Reform and Control Act of 1986 (IRCA).* The IRCA amendments to the INA had no effect on the definition of PRUCOL. As with other applicants for a particular status, aliens do not become PRUCOL by applying for, or intending to apply for, adjustment of status under the legalization programs established by the IRCA.

Sections 245A(e) and section 210(d) of the INA, as amended by IRCA, prohibit the Attorney General from deporting certain aliens who intend to apply for or who have applied for adjustment of status under the legalization programs established by IRCA for limited periods. These aliens are not PRUCOL. The temporary nature of these aliens' residence is underscored by the fact that if the application is denied the alien is subject to deportation. Appliants for amnesty under Section 245A(a), INA, may obtain a new status, lawfully admitted for temporary residence (LTR). In addition, special agricultural workers may apply for status as lawfully admitted for temporary residence under Section 210(a)(1), INA. Aliens in LTR status are not PRUCOL because they are not permitted to remain in the U.S. indefinitely. Under the INA, these aliens will either have their status adjusted to that of lawfully admitted for permanent residence or they will be subject to deportation. Further, aliens who have been lawfully admitted for temporary

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residence cannot be said to be permanently residing. Aliens applying for status under these legalization programs may, however, be lawfully present for purposes of performing services under section 3304(a)(14)(A), FUTA. Refer to UIPL 12–87 and UIPL 12–87, Change 1, for a discussion of these aliens. Also, refer to UIPL 6–89, which discusses provisions of the Foreign Relations Authorization Act, P.L. 100–204, which establishes another class of aliens who are eligible to apply for temporary residence status.

6. *Action Required.* State administrators are requested to take necessary action to assure that the State law is applied consistently with section 3304(a)(14)(A), FUTA, as interpreted in this program letter.

7. *Inquiries.* Please direct questions to the appropriate Regional Office.

Classification: UI
Correspondence Symbol: TEURL
Date: April 26, 1990
Expiration Date: April 30, 1991
Directive: Unemployment Insurance Program Letter No. 28–90
To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator for Regional Management
Subject: Requirement that Unemployment Insurance (UI) Appeals Hearings be Simple, Speedy and Inexpensive

1. *Purpose.* To advise State Employment Security Agencies (SESAs) of the Department of Labor's (DOL) concerns regarding the increasing technicality and complexity of UI Appeals hearings and to provide draft legislation which may assist the SESAs in resolving this problem.

2. *References.* Sections 302(a), 303(a)(1), and 303(a)(3) of the Social Security Act (SSA), and A Guide to Unemployment Insurance Benefit Appeals.

3. *Background.* A number of courts and administrative bodies have issued decisions precluding an individual in a non-UI case from relitigating an issue previously decided in a UI case. These decisions have been based on the doctrine of collateral estoppel, also called issue preclusion. Also, some courts and administrative bodies have permitted findings of fact or decisions in a UI case to be used as evidence of a finding in subsequent non-UI proceedings. Because the parties are concerned that the results of the UI hearing will either affect or be binding in subsequent non-UI proceedings, the UI hearing becomes more technical and complex, and therefore most costly and time consuming, than is needed for purposes of determining UI issues. Because UI hearings are intended to be simple, speedy and inexpensive, such technical and complex proceedings could create issues under Federal law requirements. This UIPL addresses this problem and provides draft language should a State determine that legislation is necessary to preclude conflicts with Federal law requirements.

4. *Definitions.* The doctrine of collateral estoppel prevents a party from relitigating an issue which has already been decided in a prior action, generally between the same parties. For example, an individual is dismissed from employment and files a claim for UI benefits. The State agency denies benefits based on its determination that the individual was discharged for misconduct. The individual appeals the denial of UI benefits, a hearing is held and the denial is affirmed. The individual also files a civil rights action under Title VII of the United States Civil Rights Act of 1964. The court hearing the civil rights action then rules that the issue of the reason for the individual's discharge has already been decided in another forum and therefore cannot be relitigated.

5. *Federal Law Requirements.* Section 303(a)(1), SSA, requires that the UI law of a State provide for "[s]uch methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." Section 303(a)(3), SSA, requires that a State law provide for "[o]pportunity for a fair hearing before an impartial tribunal for individuals whose claims for unemployment compensation are denied." These provisions have been interpreted to require that appeals hearings are to be simple and that a claimant should be able to understand the appeals procedures without the need of securing legal representation to protect his or her rights. (See page 5 of A Guide to Unemployment Insurance Benefit Appeals.) Because of the relatively small amount of money involved, it would place a financial burden on most claimants if a State's appeals hearing became so complex that claimants would have to secure legal representation to protect their rights to benefits.

Therefore, to comply with the requirements of sections 303(a)(1) and 303(a)(3), appeals hearings must be simple, speedy, and inexpensive.

Finally, under section 302(a), the Secretary of Labor is required to provide to States only such amounts as are necessary for the proper and efficient administration of the State's UI law. In this regard, the funding formulas utilized for appeals functions contemplate only the informal hearings required by section 303(a) (1) and (3).

6. *Effect on the UI Program.* The UI appeals hearing will likely occur prior to other hearings concerning employer-employee disputes. Therefore, participants in the UI hearing may be concerned about the effects of the UI hearing on subsequent non-UI litigation since collateral estoppel may be applied in a non-UI forum or findings of fact made by the hearing officer or the officer's decision may be introduced as evidence. In anticipation of this, parties to a UI claim may feel obligated to assure that issues are addressed in far greater depth than is normally required for a UI hearing. This results in complex and lengthy hearings in which both claimants and employers may require legal representation and which slow down the appeals process. Consequently, formal and technical hearings may occur inconsistent with sections 303(a)(1) and 303(a)(3), SSA.

SESAs which find that appeals hearings have become more complex and technical than is required to determine a UI claim should take action to assure that UI hearings remain simple, speedy, and inexpensive. One approach the SESAs may take is to seek legislation prohibiting the application of collateral estoppel to subsequent non-UI proceedings, or to prohibit the introduction as evidence of any appellate decision or finding of fact made by the UI agency. Several States have already taken this approach. To this end, the following draft language is provided:

No finding of fact or law, judgment, conclusion, or final order made with respect to a claim for unemployment compensation under this Act may be conclusive or binding or used as evidence in any separate or subsequent action or proceeding in aonther forum, except proceedings under this Act, regardless of whether the prior action was between the same or related parties or involved the same facts.

7. *Action Required.* SESAs are requested to examine their appeals process to determine whether UI hearings are speedy, inexpensive and informal. If they are not, the State should take appropriate action.

8. *Inquiries.* Questions should be directed to the appropriate Regional Office.

Classification: UI
Correspondence Symbol: TEURL
Date: May 30, 1990
Expiration Date: June 30, 1991
Directive: Unemployment Insurance Program Letter No. 28–90
To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator for Regional Management
Subject: Interstate Appeals and the Issuing of Subpoenas

1. *Purpose.* To advise States of the Department of Labor's position on the issuance of subpoenas in interstate appeals.

2. *References.* Sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA), Section 3304(a)(9)(A) of the Federal Unemployment Tax Act (FUTA), and the Interstate Benefit Payment Plan.

3. *Background.* In a case pending in Federal court (*Saltz v. Tennessee Department of Employment Security et al.* No. DR–89–CA–45 (W.D. Texas)), an unemployment insurance claimant is alleging, among other things, that due process was denied when the liable State in an interstate claim advised him it had no power to enforce a subpoena to an employer in another State concerning separation information the claimant believed relevant. (It should be noted the State also determined the information at issue was irrelevant to the claim for unemployment insurance.) Although one State cannot enforce a subpoena in another, it is otherwise possible to obtain necessary evidence for interstate claims. This UIPL is issued to advise States of relevant Federal law requirements and the procedures to follow when the liable State determines that information relevant to a hearing on appeal is necessary.

The applicable Sections of Federal law are:

a. Section 303(a)(1), SSA, requires, as a condition of a State receiving administrative grants, "[s]uch methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due."

b. Section 303(a)(3), SSA, which requires "[o]pportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

c. Section 3304(a)(9)(A), FUTA, which requires, as a condition of employers in a State receiving credit against the Federal unemployment tax, that "compensation shall not be denied or reduced to an individual solely because he files a claim in another State * * * or because he resides in another State * * * at the time he files a claim for unemployment compensation."

Read together, Sections 303(a)(1) and 303(a)(3), SSA, require the State agency to conduct an informal hearing complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with its unemployment compensation law. The official conducting the hearing must assist the parties in the discovery of facts and, if necessary, take the initiative in the discovery of information. Further, to receive the "fair hearing" required by Section 303(a)(3), it is evident that a claimant must have means of requesting production of evidence which affects eligibility and the State must have means of compelling the production of this evidence. These requirements apply equally to interstate and intrastate claims and to both lower and higher authority appeals.

A subpoena may be required to obtain the information necessary to fulfill these requirements. A subpoena is a legal order requiring a person to appear at a hearing or to produce specific material. Subpoenas represent a compulsory process for obtaining evidence. A party's request for issuance of a subpoena should be granted, unless it is clear that such a request is unreasonable, frivolous, made for the purpose of harassment, not relevant to a determination of unemployment insurance eligibility, or is not needed to secure attendance of a witness or production of material. If it is clear to the State that production of necessary evidence must be compelled, the State should not wait for a party's request for a subpoena before taking steps to obtain the information.

In addition, section 3304(a)(9)(A), FUTA, requires that benefits shall not be denied to a claimant solely because he resides in another State at the time of filing. If a claimant is denied benefits because the liable State has failed to obtain subpoenaed information in the belief that it has no power to obtain such information from another State, the failure could result in a denial of benefits simply because the claim was an interstate claim.

4. *Application.* If a claimant or employer in an interstate claim requests a subpoena be issued, the liable State hearing officer (or other appropriate official) will rule on the necessity of obtaining such information for a determination under its law. If the information is not necessary, the hearing officer should so advise the party. If it is determined that the material or witness is necessary, the liable State hearing officer should explore the possibility of obtaining the needed testimony (which may be by telephone) or material voluntarily. If this approach is not successful, the hearing officer must make arrangements with the appropriate official in the State where the witness or material is located to compel, through issuance of a subpoena or other means, the witness to testify or for the evidence to be produced. Methods of obtaining the testimony or evidence will need to be tailored to the circumstances of the specific case.

Agent States should already have authority for issuing a subpoena for a liable State under the provisions of State law or regulation implementing section 9(a) of the proposed regulation contained in the Interstate Benefit Payment Plan. This regulation requires the agent State to "afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims when so requested by a liable state."

5. *Action.* State agency administrators are requested to review existing State law provisions and agency practices involving interstate appeals to ensure that Federal law requirements as set forth in this program letter are met concerning responsibilities as a liable, agent or other State. If necessary, prompt action should be taken to assure Federal requirements are met.

6. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

Classification: UI
Correspondence symbol: TEURA.
Date: February 15, 1991.
Expiration date: March 31, 1992.
Directive: Unemployment Insurance Program Letter No. 12–91
To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator for Regional Management
Subject: The Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508)—Provisions Affecting the Federal-State Unemployment Compensation Program

1. *Purpose.* To advise State agencies of the provisions of the Omnibus Budget Reconciliation Act of 1990, P.L. 101–508, which affect the Federal-State Unemployment Compensation Program.

2. *References.* Sections 5021, 11333, 11403, and 11404 of P.L. 101–508.

3. *Background.* On November 5, 1990 the President signed into law the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), P.L. 101–508. OBRA 90 contains four provisions which affect the Federal-State unemployment compensation (UC) program. Following is a summary of the changes made.

Section 5021 amends sections 903(a)(2) and 903(c)(2) of the Social Security Act (SSA). Section 903(a)(2), SSA, is amended to specify that future Reed Act distributions will be based on the Federal taxable wage base rather than the State taxable wage base, and to change the basis upon which determinations concerning such distributions are to be made by the Secretary of Labor. Section 903(c)(2)(D), SSA, is amended to delete the 35-year limitation on the obligation of Reed Act funds for administration. In practical effect, this means Reed Act funds may be appropriated and obligated for administrative purposes indefinitely. However, because this provision is not effective until October 1, 1991, all States will experience a period during which some Reed Act funds may not be obligated. In addition, a clarification concerning the time when a charge against Reed Act funds must be made was added, as was a requirement that States account for Reed Act money in accordance with standards established by the Secretary of Labor.

Section 11333 amends section 3301 of the Federal Unemployment Tax Act (FUTA) to extend the 0.2 percent temporary tax under FUTA through December 31, 1995. The gross FUTA tax remains at 6.2 percent, the maximum offset at 5.4 percent, and the net tax at 0.8 percent. OBRA 90 did not extend section 901(g)(1) of the Social Security Act which governed the transfer from the Employment Security Administration Account (ESAA) of an amount equal to the 0.2 percent temporary tax for calendar years 1988, 1989, and 1990, with fifty (50) percent allocated to the Extended Unemployment Compensation Account (EUCA) and fifty (50) percent allocated to the Federal Unemployment Account (FUA). Therefore, for calendar years 1991 through 1995, there will be no special rule for transfers from the ESAA. Instead, 10 percent of the 0.8 percent net tax will be transferred to the EUCA pursuant to section 905(b)(1) of the Social Security Act.

Sections 11403 and 11404 amend the Internal Revenue Code (IRC) to extend, with certain changes, until December 31, 1991, exclusions from an employee's gross income for amounts paid by an employer for certain educational assistance and amounts contributed by an employer to a qualified group legal services plan for an employee. Such amounts excluded from an employee's gross income are excluded from the definition of "wages" under sections 3306(b)(12) and 3306(b)(13), FUTA.

4. *Action Required.* SESAs are requested to notify appropriate staff of these provisions.

5. *Inquiries.* Inquiries should be directed to your Regional Office.

6. *Attachments.*

I. Text, explanation and interpretation of changes affecting the Federal-State Unemployment Compensation program

II. Draft Language for State Laws

Attachment I to UIPL No. 12–91

Text, Explanation and Interpretation of Changes Affecting the Federal-State Unemployment Compensation Program Made by Public Law 101–508 (Sections 5021, 11333, 11403, and 11404)

I. Section 5021. *Amendments to Sections 903(a)(2) and 903(c)(2), SSA*

A. *Text of Amendment.*

SEC. 5021. AMOUNTS TRANSFERRED TO STATE UNEMPLOYMENT COMPENSATION PROGRAM ACCOUNTS.

(a) ALLOCATION OF AMOUNTS.—Paragraph (2) of section 903(a) (42 U.S.C. 1103(a)(2)) is amended to read as follows:

"(2) Each State's share of the funds to be transferred under this subsection as of any October 1—

"(A) shall be determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury before such date, and

"(B) shall bear the same ratio to the total amount to be so transferred as—

"(i) the amount of wages subject to tax under section 3301 of the Internal Revenue

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Code of 1986 during the preceding calendar year which are determined by the Secretary of Labor to be attributable to the State, bears to

"(ii) the total amount of wages subject to such tax during such year."

(b) USE OF TRANSFERRED AMOUNTS.—Paragraph (2) of section 903(c) (42 U.S.C. 1103(c)(2)) is amended—

(1) by striking "and" at the end of subparagraph

(c), and

(2) by striking so much of such paragraph as follows subparagraph (C) and inserting the following:

"(D)(i) the appropriation law limits the total amount which may be obligated under such appropriation at any time to an amount which does not exceed, at any such time, the amount by which—

"(I) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b), exceeds

"(II) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State, and

"(ii) for purposes of clause (i), amounts used by a State for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into, and

"(E) the use of the money is accounted for in accordance with standards established by the Secretary of Labor."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fiscal years beginning after the date of the enactment of this Act.

B. *Discussion.*

1. Section 903, SSA, provides for the transfer (or "distribution") of certain amounts commonly called Reed Act funds, to the States when the balances in certain accounts in the Unemployment Trust Fund reach the ceiling levels specified in Title IX, SSA. Section 903(a)(2), SSA, provides the formula for allocating Reed Act funds to the States. Prior to amendment this formula provided that each State's share of the Reed Act funds to be transferred was based on a ratio relating to State taxable wages as defined in that section. Section 5021 of the OBRA 90 amended section 903(a)(2), SSA, to provide that future Reed Act distributions will be based on Federal taxable wages instead of State taxable wages.

2. Prior to amendment, Section 903(c)(2)(A), SSA, required the Secretary of Labor to determine the amount to be transferred to the States "on the basis of reports furnished by the States to the Secretary of Labor before September 1." Because the determination of the amount to be transferred is no longer based on the State's taxable wage base, there is no need for States to furnish these reports. Accordingly, section 5021(a) of the OBRA 90 amended section 903(a)(2)(A) to delete reference to State reports.

3. Prior to the amendment to section 903(c)(2), SSA, Reed Act funds transferred to the States were available for obligation for specified administrative purposes only within a limited number of years (specified in section 903(c)(2)(D), SSA) from the date of the transfer. Depending on the State's 12-month period for Reed Act purposes, this period has varied from slightly more than 34 years up to 35 years. As a result of this "35-year limitation," authority to obligate Reed Act funds transferred in 1956 has expired in some States and is due to expire in all States by June 30, 1991. Section 5021, OBRA 90, amended Section 903(c)(2)(D) to remove the 35-year limitation on the obligation of Reed Act funds, effective October 1, 1991.

Section 5021(c), OBRA 90, sets the effective date of the amendments in subsections (a) and (b) of Section 5021 as applying to fiscal years beginning after the date of enactment of OBRA 90. Consistent with the use of the term "fiscal year" elsewhere in Section 903, SSA, "fiscal year" means the Federal fiscal year beginning October 1. OBRA 90 was enacted on November 5, 1990, and the first Federal fiscal year beginning after this date begins on October 1, 1991. Therefore, the effective date for the amendments to sections 903(a) and 903(c) is October 1, 1991. As a result of this effective date, all States will experience a "gap" between the expiration of the 35-year period and October 1, 1991, during which Reed Act funds transferred in 1956 may not be obligated for any administrative purpose, and some States will also experience a similar "gap" with respect to obligation of Reed Act funds transferred in 1957.

States using 12-month periods beginning on October 1 (for purposes of accounting for Reed Act obligations) lost the authority to obligate Reed Act funds transferred in 1956 as of September 30, 1990. States using 12-month periods beginning on January 1 lost the authority to obligate such Reed Act funds as of December 31, 1990, and States using 12-month periods that begin on July 1 will lose such authority to use such funds on June 30, 1991. Similarly, any State using 12-month periods beginning of September 1, lost the authority to obligate Reed Act funds transferred in 1956 as of August 31, 1990, and will also lose the authority to obligate Reed Act funds transferred in 1957 as of August 31, 1991. The States' authority to obligate Reed Act funds transferred in 1956 and 1957 will be restored upon the amendments made by section 5021, OBRA 90, becoming effective on October 1, 1991.

Although the 35-year limitation will expire as of September 30, 1991, section 903(c)(2)(D)(i) will continue to limit the amount of Reed Act funds which may be obligated at any time. In effect, a State may not obligate an amount in excess of the amount that equals the difference between the total amount transferred to the State under section 903 and amounts previously used and charged against transferred amounts. Thus, in regard to calculating the amount available for obligation at any time, there is no substantive change from prior law. However, new Section 903(c)(2)(D)(ii) expresses a charging rule that is merely implicit in the last sentence of present section 903(c)(2). Thus, clause (ii) specifies that (in determining the amounts available for obligation) amounts used by a State for administration shall be chargeable against the transferred amounts "at the exact time the obligation was entered into." Therefore, at no time may a State enter into an obligation of Reed Act funds in an amount which exceeds the amount of unused Reed Act funds then standing to the credit of the State in the Unemployment Trust Fund at the exact time any such obligation is entered into.

4. Section 5021, OBRA 90, added a new subparagraph (E) to section 903(c)(2), SSA, which requires that the use of Reed Act funds be accounted for in accordance with standards established by the Secretary of Labor. We will provide more information regarding the Secretary's accounting standards in the future. In the meantime, those accounting rules set forth in Section 3040 of Part IV of the Employment Security Manual shall continue to be followed.

C. *Amendments to State Law and Reed Act Appropriations.*

1. A State which desires to take advantage of the removal of the 35-year time limit made by section 5021 of OBRA 90 should amend the provision in its law authorizing the use of Reed Act money which may still be available. Otherwise, if the law retains the previous 35-year limitation, the law will conflict with any appropriation act which correctly refers to the new language included in OBRA 90 and will raise issues under Federal law. These amendments should be made effective no earlier than October 1, 1991.

2. In the past we have found that some States enacting Reed Act appropriation bills have not included all of the requirements contained in section 903(c)(2) of the Social Security Act. In doing so, these States have raised issues as to the consistency of such bills with those requirements. To help prevent such issues from arising in the future, we are including two draft appropriation bills in Attachment II which include all of the provisions necessary to satisfy the requirements of section 903(c)(2) of the Social Security Act for Reed Act appropriations authorizing the obligation of money on and after October 1, 1991. We strongly urge that States make use of these draft bills.

3. Reed Act appropriation acts which authorize obligation prior to October 1, 1991, must continue to contain the 35-year limitation. For these appropriations, States should use the recommended Reed Act appropriation language found in Attachment III to UIPL 4–83. States wishing to regain authority to obligate Reed Act funds immediately on October 1, 1991, without enacting a new appropriations act, should add a sentence to the section containing the 35-year limitation. This sentence should state that the 35-year limitation is not in force, effective October 1, 1991.

For example, a State wishes to appropriate and obligate $300,000 of Reed Act funds, $100,000 of which was transferred in 1956. This State has a fiscal year beginning July 1. Therefore, the authority to obligate 1956 Reed Act money expires June 30, 1991. The State may appropriate the entire $300,000, but, due to the 35-year limitation, the State may not obligate the $100,000 transferred in 1956 after June 30, 1991. However, if the appropriation law limits the applicability of the 35-year requirement to the period ending September 30, 1991, the $100,000 in 1956 Reed Act money previously appropriated will again become available for obligation on October 1, 1991.

D. *Effective Date.* Under section 5021(c) of OBRA 90, the amendments made by section 5021 apply to fiscal years beginning after the date of enactment. In other words, as discussed above in Section B.2., these amendments will be effective October 1, 1991. Until then, the present law, including the 35-year limitation on obligation, will remain in effect.

II. Section 11333. *Amendments to Section 3301, FUTA.*

A. *Text of Amendment.*

SEC. 11333. EXTENSION OF FUTA SURTAX

(a) IN GENERAL.—Section 3301 (relating to rate of FUTA tax) is amended—

(1) by striking "1988, 1989, and 1990" in paragraph (1) and inserting "1988 through 1998", and

(2) by striking "1991" in paragraph (2) and inserting "1998".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid after December 31, 1990.

B. *Discussion.* Section 3301, FUTA was amended by section 11333(a) of OBRA 90 to extend the 0.2 percent temporary tax through December 31, 1998. However, in extending the 0.2 percent temporary tax, Congress did not extend section 901(g), SSA, which established special rules for calendar years 1988, 1989, and 1990, for the distribution of the amount equal to the amount raised by the 0.2 percent temporary tax.

OBRA 90 did not extend section 901(g)(1) of the Social Security Act which governed the transfer from the Employment Security Administration Account (ESAA) of an amount equal to the 0.2 percent temporary tax for calendar years 1988, 1989, and 1990, with fifty (50) percent allocated to the Extended Unemployment Compensation Account (EUCA) and fifty (50) percent allocated to the Federal Unemployment Account (FUA). As a result of the expiration of Section 901(g), SSA, there will be no special distribution of the amount equal to the revenue generated by the 0.2 percent temporary tax on wages paid after December 31, 1990. As to wages paid after December 31, 1990, therefore, distributions of the amounts appropriated to the ESAA under section 901(b)(1), SSA, will be as provided in Title IX, SSA, without consideration of the special rules in section 901(g). Of the amount equal to the net tax of 0.8 percent, which is appropriated under section 901(b)(1) and transferred to the ESAA under section 901(b)(2) (less repayments under section 901(b)(3)), ten (10) percent of such amount is transferred from time to time from the ESAA to the EUCA in accordance with section 905(b)(1), SSA. There is no other distribution of the amount of the net 0.8 percent which is appropriated and transferred to the ESAA.

C *Effective Date.* The amendments made by section 11333(a) shall apply to wages paid after December 31, 1990.

D. *Implementation.* The Internal Revenue Service is responsible for collecting the temporary tax.

III. Section 11403. *Amendments to Section 127 of the Internal Revenue Code of 1986 and Section 7101 of the Revenue Reconciliation Act of 1989 (P.L. 101–239).*

A. *Text of Amendment.*

SEC. 11403. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) REPEAL OF LIMITATION ON GRADUATE LEVEL ASSISTANCE.—Section 127(c)(1) is amended by striking the last sentence.

(c) CONFORMING AMENDMENT.—Subsection (a) of section 7101 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1989.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1990.

B. *Discussion.* Section 3306(b)(13), FUTA, excludes from the definition of wages "any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 * * * *" of the IRC. Prior to the amendments made by section 11403 of OBRA 90, Section 127, IRC, which excludes from gross income of the employee certain amounts paid, or expenses incurred, by the employer for educational assistance to the employee, did not apply to taxable years beginning after September 30, 1990.

Section 11403(a) of OBRA 90 amended section 127, IRC, to extend the exclusion from income of employer-provided educational assistance benefits through taxable years beginning before January 1, 1992 (effective for taxable years beginning after December 31, 1989). In addition, Section 11403(b) struck the last sentence of Section 127(c)(1), IRC, repealing the exclusion of graduate level assistance from the definition of educational assistance. Finally, section 11403(c) repealed section 7101(a)(2) of the Revenue Reconciliation Act of 1989 (Title VII of the Omnibus Budget Reconciliation Act of 1989), which provided that, for taxable years beginning in 1990, only those amounts paid prior to October 1, 1990 by the employer for educational assistance to the employee were to be taken into account in determining the amount excludable from the employee's income under section 127.

C. *Effective Dates.* The amendments made by subsections (a) and (c) of section 11403, OBRA 90, apply to taxable years beginning after December 31, 1989. The amendment made by subsection (b) of section 11403, repealing the provision on graduate level assistance, applies to taxable years beginning after December 31, 1990.

D. *Implemention.* Because the Internal Revenue Service has primary authority for interpreting IRC tax provisions, it will be responsible for interpreting and applying these amendments.

IV. Section 11404. *Amendment to Section 120 of the Internal Revenue Code of 1986 and Section 7102 of the Revenue Reconciliation Act of 1989 (P.L. 101–239).*

A. *Text of Amendment.*

SEC. 11404. GROUP LEGAL SERVICES PLANS:

(a) IN GENERAL.—Subsection (e) of section 120 (relating to amounts received under qualified group legal services plans) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) CONFORMING AMENDMENT.—Subsection (a) of section 7102 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

B. *Discussion.* Section 3306(b)(12), FUTA, excludes from the definition of wages "any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120, IRC, (relating to amounts received under qualified group legal services plans)." Prior to amendment, section 120, which excludes from an employee's gross income amounts contributed by an employer to a qualified group legal services plan for an employee or amounts reimbursed to an employee for legal services under such plan, did not apply to taxable years ending after September 30, 1990.

Section 1140(a) of OBRA 90 amended section 120, IRC, to extend the exclusion for employer-provided group legal services through taxable years beginning before January 1, 1992. In addition, section 11404(b) repealed Section 7102(a)(2) of OBRA 89 which provided that, for taxable years beginning in 1990, the exclusion is limited to "amounts paid before October 1, 1990, by the employer for coverage for the employee, his spouse, or his dependents under a qualified group legal services plan" for periods before October 1, 1990.

C. *Effective Date.* The amendments made by section 11404, OBRA 90, apply to taxable years beginning after December 31, 1989.

D. *Implementation.* Because the Internal Revenue Service has primary authority for interpreting IRC tax provisions, it will be responsible for interpreting and applying this amendment.

Attachment II to UIPL No. 12–91

Draft Language for State Laws

I. Draft Statutory Language.

States will need to amend their unemployment insurance laws if they currently address Reed Act appropriations. The following language will allow States to use either of the Reed Act appropriation alternatives provided below and should be effective no earlier than October 1, 1991. (This language is intended to replace Section 10(f) of the Draft Language provided with UIPLs 745 and 987.)

(f) *Money credited under Section 903 of the Social Security Act.*—

(1) Money credited to the account of this State in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to Section 903 of the

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Social Security Act may not be requisitioned from this State's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this Act. Such money may be requisitioned pursuant to Section [insert section referring to withdrawals from the Unemployment Trust Fund] for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this Act but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which specifies the purpose(s) for which such money is appropriated and the amount(s) appropriated therefor. Such appropriation is subject to the following conditions:

(A) The period within which such money may be obligated is limited to a period ending not more that two years after the date of the enactment of the appropriation law; and

(B) The amount which may be obligated is limited to an amount which does not exceed the amount by which (i) the aggregate of the amounts transferred to the account of this State pursuant to Section 903 of the Social Security Act exceeds, (ii) the aggregate of the amounts used by this State pursuant to this Act and charged against the amounts transferred to the account of this State.

(2) For purposes of subsection (B), amounts obligated for administrative purposes pursuant to an appropriation shall be chargeable against transferred amounts at the exact time the obligation is entered into. The appropriation, obligation, and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor.

(3) Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the employment security administration fund from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment fund and, if it will not be expended, shall be returned promptly to the account of this State in the Unemployment Trust Fund.

II. Draft Appropriation Language.

Two suggested Reed Act appropriation bills are presented. Either bill may be used with the draft statutory language presented earlier. The first permits States with statutory Reed Act provisions to incorporate the requirements of section 903(c)(2) by simply referencing these statutory provisions. This approach may be better for States where the Reed Act appropriation may be contained in a larger appropriation act or where State appropriation law limits the content of any single appropriation bill. The second details the requirements of section 903(c)(2) and is similar to Reed Act appropriations recommended by this Department in the past.

Alternative 1.

APPROPRIATING MONEY FOR ERECTING A BUILDING FOR USE BY (Name of State employment security agency)

SEC. 1 There is hereby appropriated out of funds made available to this State under Section 903 of the Social Security Act, as amended, the sum of $_____, or so much thereof as may be necessary, to be used, under the direction of the [name of State employment security agency or the agency responsible for building construction] and subject to the requirements of Section [reference section of State code containing Reed Act provisions] of the State Code, for the purpose of acquiring land at [location] and erecting a building thereon for the use of [name of State employment security agency] and for such improvements, facilities, paving, landscaping, and fixed equipment [1] as may be required for its proper use and for operation by the [name of State employment security agency].

SEC. 2 Section 1 shall take effect and be in force from and after passage.

Alternative 2.

AN ACT APPROPRIATING MONEY FOR ERECTING A BUILDING FOR USE BY (Name of State employment security agency)

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [Name of State]

SEC. 1 There is hereby appropriated out of funds made available to this State under section 903 of the Social Security Act, as amended, the sum of $_____, or so much thereof as may be necessary, to be used, under the direction of the [name of State employment security agency or the agency responsible for building construction], for the purpose of acquiring land at [location] and erecting a building thereon for the use of [name of State employment security agency] and for such improvements, facilities, paving, landscaping, and fixed equipment [1] as may be required for its proper use and for operation by the [name of State employment security agency].

SEC. 2 No part of the money hereby appropriated may be obligated after the expiration of the 2-year period beginning on the date of enactment [2] of this act.

SEC. 3 The amount obligated [3] pursuant to this act shall not exceed at any time the amount by which (a) the aggregate of the amounts transferred to the account of this State pursuant to Section 903 of the Social Security Act exceeds (b) the aggregate of the amounts obligated for administration and paid out for benefits and required by law to be charged against the amounts transferred to the account of this State.

SEC. 4 This Act shall take effect and be in force from and after passage.

[1] "Fixed equipment" refers to such things as central heating and/or air conditioning plant which becomes an integral part of the building and may be included in the cost of the building reimbursable out of granted funds. Personalty, such as furniture and other furnishings, should be specifically and separately authorized. Though costs of personalty may, of course, be met from Reed Act money, such costs are not reimbursable from granted funds.

[2] The Department of Labor recommends that the phrase "date of enactment" be used here, since section 903(c)(2)(B) of the Social Security Act requires that use of the appropriated money be limited to a 2-year period beginning with such date.

[3] Section 903(c)(2)(D) requires that this limitation be applied to money obligated, even though a State may choose to apply the 2-year limitation to expenditures.

Classification: UI/FUTA
Correspondence Symbol: TEURL
Date: March 6, 1991.

Directive: Unemployment Insurance Program Letter no. 14-91

To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator for Regional Management
Subject: Amendment to section 3304(a)(14)(A), FUTA, Made by Section 162(e)(4) of P.L. 101-649, the Immigration Act of 1990

1. *Purpose.* To inform States of the amendment made to section 3304(a)(14)(A) of the Federal Unemployment Tax Act (FUTA) by section 162(e)(4) of P.L. 101-649.

References. Section 3304(a)(14)(A), FUTA; UIPL 1-88, dated October 23, 1986; UIPL 1-88, Change 1, dated February 19, 1988; sections 162(e)(14) and 161(a) of P.L. 101-649; Sections 201(b), 203(c)(3), and 203(h) of P.L. 96-212; and Sections 207 and 208 of the Immigration and Nationality Act.

3. *Background.* P.L. 101-649, the Immigration Act of 1990, was enacted into law on November 29, 1990. Section 162(e)(4) of P.L. 101-649 amends section 3304(a)(14)(A), FUTA, effective October 1, 1991.

Section 3304(a)(14)(A), FUTA, requires, as a condition for the Secretary of Labor's certification of a state to the Secretary of the Treasury, that the State law provide that:

compensation shall not be payable on the basis of services performed by all alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

Section 162(e)(4) of P.L. 101-649 amended section 3304(a)(14)(A), FUTA, by striking "section 203(a)(7) or". This amendment takes effect on October 1, 1991 as provided in section 161(a) of P.L. 101-649.

4. *Discussion.* Prior to the amendment made by section 162(e)(4) of P.L. 101-649 becoming effective, section 3304(a)(14)(A), FUTA provides that the category of aliens "permanently residing in the United States under color of law" [PRUCOL] includes aliens lawfully present in the United States as a result of the application of section 203(a)(7) of the Immigration and Nationality Act (INA). Section 203(a)(7), INA, which related to conditional entrants, was repealed by section 203(c)(2) of the Refugee Act of 1980 (P.L. 96-212 and replaced under section 201(b) of the Refugee Act by the addition of sections 207 and 208 to the INA. Under section 203(h) of the Refugee Act, section 203(a)(7), INA, is applicable prior to April 1, 1980. In addition, Section 203(h) of the Refugee Act provides that, effective April 1, 1980, any reference in Federal law to section 203(a)(7), INA, is considered a reference to Sections 207 and 208, INA. Section 207 relates to refugees and Section 208 to asylees, both of which are, therefore, considered to be in PRUCOL status under section 3304(a)(14)(A), FUTA. See Unemployment Insurance Program Letters (UIPL) 1-88 and 1-88, Change 1.

Section 162(e)(4) of P.L. 101-649 amended section 3304(a)(14)(A), FUTA, to delete the reference to obsolete section 203(a)(7), INA. The amendment does not make any reference to refugee and asylees. Since PRUCOL status is no longer automatic for refugees and asylees, the Department of Labor's interpretation of the two-part test of section 3304(a)(14)(A) for determining PRUCOL status must be satisfied. Aliens granted refugee and asylee status will continue to be considered in PRUCOL status for the purpose of determination of eligibility for unemployment compensation because aliens in this status satisfy the Department's two-part test.

Under the two-part test, the alien must first be residing under "color of law." As stated in UIPL 1-88, Change 1, for an alien to be residing "under color of law," the Immigration and Naturalization Service (INS) must know of the alien's presence and must provide the alien with written assurance that enforcement of deportation is not planned. Second, to be "permanently residing", the INS must give the alien permission to remain in the U.S. for an indefinite period of time.

Specifically, in the case of refugees and asylees, the INS has affirmatively acted to grant status under the relevant provisions of the INA. The granting of such status in either case gives "color of law" to the alien's presence in the United States for an indefinite period of time. Therefore both groups of aliens are residing under "color of law" and are also "permanently residing" because they retain such status until revoked by the INS.

5. *Action required.* It is recommended that States delete any reference in State law to obsolete section 203(a)(7), INA. If Congress addes a new provision designated as section 203(a)(7) to the INA and aliens admitted under section are subsequently deemed by the Department of Labor not to have PRUCOL status, States will be required to delete reference to section 203(a)(7) from State law to assure consistency of State law with section 3304(a)(14)(A), FUTA. Please inform appropriate staff of the change in section 3304(a)(14)(A), FUTA, made by P.L. 101-649.

6. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

[FR Doc. 91-15481 Filed 6-27-91; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL COMMISSION ON MIGRANT EDUCATION

National Commission on Migrant Education; Meeting

ACTION: Notice of meeting.

SUMMARY: The National Commission on Migrant Education will hold its tenth meeting on July 16, 1991, for the purpose of holding a hearing. The Commission was established by Public Law 100-297, April 28, 1988.

Date, Time, and Place: Tuesday, July 16, 1991, 2 to 5:15 p.m. and 6:30 to 8:30 p.m., Starlight School, 225 Hammer Drive, Watsonville California 95076.

Status: Open—public hearing.

Agenda

2 to 5:15 p.m.: Scheduled testimony from recruiters, educators, health coordinators, and other concerned members of the migrant community.

6:30 to 7:35 p.m.: Scheduled testimony from parent involvement groups, parents, and students.

7:35 to 8:30 p.m.: Open for testimony from the public.

All testimony will be relevant to migrant education.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Skiles (301) 492-5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Linda Chavez,
Chairman.

[FR Doc. 91-15425 Filed 6-27-91; 8:45 am]
BILLING CODE 6820-06-M

NATIONAL SCIENCE FOUNDATION

Materials Research Special Emphasis Panel; Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research.

Date: July 17, 1991.

Location: Princeton University, Princeton, New Jersey.

Time: 8 a.m.–5:30 p.m.

Type of Meeting: Closed.

Contact Person: Dr. Adriaan M. de Graaf, Deputy Division Director, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550 Telephone: (202) 357-9794.

Purpose of Meeting: To provide advice and recommendations concerning the support for the proposal, "An Ultra-Long (Quasistatic) 65 Telsa Pulsed Magnet".

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Gail A. McHenry,
Acting Committee Management Officer.

[FR Doc. 91-15387 Filed 6-27-91; 8:45 am]
BILLING CODE 7555-01-M

Mechanical and Structural Systems Special Emphasis Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date: July 17–18, 1991.

Location: 1800 G Street, NW., Washington, DC.

Time: July 17th, 9 a.m.–5 p.m., July 18th, 1 p.m.–5 p.m.

Type of Meeting: Closed.

Contact Person: Dr. John B. Scalzi, Program Director, Structures and Building Systems Program, Room 1108, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9542.

Purpose of Meeting: To review unsolicited proposals for consideration of support.

Reason for Closing: The proposals being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Gail A. McHenry,
Acting Committee Management Officer.

[FR Doc. 91-15368 Filed 6-27-91; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-3070]

Louisiana Energy Services, L.P., Claiborne Enrichment Center; Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process

1. Description of Proposed Activity

Louisiana Energy Services, L.P. (LES) has submitted an application, dated January 31, 1991, for a license to receive, possess, use, deliver, and transfer byproduct, source, and special nuclear material for its Claiborne Enrichment Center. The facility would be constructed near Homer, Louisiana, in Claiborne Parish, and would be used to enrich natural uranium hexafluoride to a maximum of 5 percent U-235 by the gas centrifuge process. A notice of receipt of application, availability of applicant's environmental report and other documents, consideration of issuance of license, hearing, and Commission order was published in the Federal Register on May 21, 1991 (56 FR 23310).

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2. Environmental Report

LES has submitted an Environmental Report in accordance with the requirements specified in 10 CFR part 51 and pursuant to the National Environmental Policy Act of 1969. The Environmental Report, which discusses environmental considerations related to the construction and operation of the Claiborne Enrichment Center, is available for public inspection at the Commission's Public Document Room in the Gelman Building, 2120 L Street, NW., Washington, DC, and the Local Public Document Room at the Claiborne Parish Library, 901 Edgewood Drive, Homer, Louisiana 71040.

3. Environmental Impact Statement

Public Law 101–575 requires that the NRC prepare an Environmental Impact Statement (EIS) in connection with the licensing of a uranium enrichment plant, and that the EIS be prepared before the hearing on the application for a license is completed. Accordingly, the NRC will prepare an EIS on the construction and operation of the Claiborne Enrichment Center.

The NRC will first conduct a scoping process for the EIS, and as soon as practicable thereafter, prepare a draft EIS for agency and public comment. The draft EIS will be the subject of a separate notice in the **Federal Register**. After receipt and consideration of comments, the NRC will prepare a final EIS.

4. Scoping Process

The scoping process for the EIS will be used to: a. Define the scope of the proposed action which is to be the subject of the EIS.

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study issues that are peripheral or are not significant.

d. Identify any environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the EIS under consideration.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies, and as appropriate, allocate assignments for preparation and schedules for completion of the EIS to the NRC and any cooperating agencies.

h. Describe the means by which the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following persons to participate in the scoping process: a. The applicant, Louisiana Energy Services, L.P.

b. Any person who has petitioned for leave to intervene or who has been admitted as a party in the proceeding on the license application.

c. Any other Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards.

d. Affected State and local agencies, including those authorized to develop and enforce relevant environmental standards.

e. Any affected Indian tribe.

f. Any person who requests or has requested an opportunity to participate in the scoping process.

Participants may submit written comments on the scoping process for the EIS to Mr. Charles J. Haughney, Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Submittals of comments should be postmarked by August 14, 1991, to be considered in the scoping process.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. Participation in the adjudicatory proceeding is governed by the procedures specified in 10 CFR 2.714 and 2.715, and in the aforementioned **Federal Register** notice (56 FR 23310).

5. Public Scoping Meeting

In the preparation of an EIS and in accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has determined to hold a public scoping meeting as part of the scoping process for the Claiborne Enrichment Center EIS. This public scoping meeting will be held at the Homer High School cafeteria in Homer, Louisiana, on Tuesday, July 30, 1991, at 7 p.m. The meeting will include a briefing by Louisiana Energy Services on the proposed Claiborne Enrichment Center, a briefing by the NRC on the environmental review process and the proposed scope of the EIS, and the opportunity for interested agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or proposed scope of the EIS. Persons may register to present oral comments by writing to Mr. Charles J. Haughney at the aforementioned address, or they may register at the meeting. Individual oral comments may be limited in time, depending on the number of persons who register. Comments presented at the meeting will be considered in the scoping process for the EIS.

6. Summary

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process.

Additional information about the proposed activity, the EIS, and the scoping process may be obtained from Dr. Edward Y.S. Shum, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or by telephone at (301) 492–0607.

Dated at Rockville, Maryland, this 21st day of June 1991.

For the Nuclear Regulatory Commission.

John T. Greeves,

Deputy Director Division of Industrial and Medical Nuclear Safety Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91–15466 Filed 6–27–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co. (Palisades Plant); Exemption

I

The Consumers Power Company, (the licensee) is the holder of Facility Operating License No. DPR–320, which authorizes operation of the Palisades Plant at a steady-state power level not in excess of 2530 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Covert Township, Van Buren County, Michigan. The licensee provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

On November 18, 1980, the Commission published a revised Section 10 CFR 50.48 and a new appendix R to

10 CFR part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and appendix R became effective on February 17, 1981. Section III of appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these 15 subsections, III.G, is the subject of this exemption request. Specifically, subsection III.G.2.c and d provides that, "* * * where cables or equipment, including associated non-safety circuits that could prevent operation or cause maloperation due to hot shorts, open circuits, or shorts to ground, of redundant trains of systems necessary to achieve and maintain hot shutdown conditions are located within the same fire area * * * inside noninerted containments * * *, one of the following means of ensuring that one of the redundant trains is free of fire damage shall be provided:

d. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards;"

III

Consumers Power Company's (CPCo) letter dated October 4, 1985, requested an exemption from the separation criteria of 10 CFR part 50, appendix R, section III.G.2.d, for the pressure and level transmitters in the Containment Air Room. Following staff review and deliberations with CPCo, the licensee submitted a January 11, 1989, letter proposing appendix R compliance for the Containment Air Room using post-fire safe shutdown methodology similar to that methodology which could be used after a Main Steam Line Break (MSLB) inside containment. If used as an appendix R compliance strategy, this methodology would have required exemptions from two other appendix R criteria (III.G.3 and III.L.2).

After further review, the staff determined that neither the October 4, 1985, nor the January 11, 1989, exemption request contained enough substantiation to allow an exemption. CPCo then decided to install fixed suppression to bring the area into compliance with section III.G.2, committing to install the suppression system during the 1990 Refueling Outage. During the engineering and design phase of the project, questions arose concerning the potential for the suppression system actuating during several postulated transients, resulting in the potential for large volumes of water being sprayed into the containment air room and draining to the containment sump. Intricate shutoff controls of the fire water system were evaluated, resulting in significantly higher project costs than previously estimated. Following extensive discussions between the licensee and the staff, it was decided that if CPCo further analyzed the effect of a fire using state-of-the-art methods and could conclude that a credible worst-case fire would not prevent post-fire safe shutdown, the staff would reevaluate CPCo's October 4, 1985, exemption request.

CPCo reanalyzed the effect of a Containment Air Room using methodology approved by the National Institute of Standards and Technology. This reanalysis was submitted to the staff by CPCo letter dated August 8, 1990, in support of the original request that the Containment Air Room redundant instrumentation be exempted from the minimum 20-Foot separation criteria of 10 CFR part 50, appendix R, section III.G.2. This request was made under the provisions of 10 CFR 50.12(a)(2)(ii) in that application of the requirements of appendix R, section III.G.2.d, is not necessary to achieve the underlying purpose of the rule when considering the particular design and circumstances of the Containment Air Room.

IV

The purpose of section III.G.2 to appendix R is to ensure that redundant components of a safety system, required to achieve and maintain post-fire hot shutdown, are protected in such a way that at least one such component will remain free of damage which could prevent the completion of the safety function. One such means of protecting these redundant safety components is provided for in section III.G.2.d, that is, separate the components by at least 20 feet without intervening combustibles or fire hazards. The following discussion summarizes Consumers Power Company's basis for an exemption from the requirements of section III.G.2d for the Containment Air Room.

Containment Air Room

The Containment Air room is an oddly shaped room on the lowest level of containment (590' elevation). The room has a 13½ foot high ceiling, extending up to 34 feet in the vicinity of the metal staircase in the northeast corner of the room. Total room volume is approximately 14,420 cubic feet. The walls, floor, and ceiling are constructed of poured reinforced concrete. There are two unrated, but substantial, steel doors in the room that lead to other areas of containment. The room is well ventilated by natural circulation supplemented by forced circulation. Fire protection equipment maintained operable in the room includes three smoke detectors which have automatic control room alarm functions, a fire hose at the top of the stairs, adjacent to the personnel air lock, and two fire extinguishers.

The room is essentially the containment electrical penetration room, which contains process monitoring instrumentation for the pressurizer and steam generators. The instruments of concern are located on the east wall opposite the 480V pressurizer heater load centers and are listed below:

Equipment Under Consideration

Steam Generator A Pressure (PT–0751 A, B, C, and D); Steam Generator "B" Pressure (PT–0752 A, B, C, and D), Steam Generator A Level (LT–0751 A, B, C, and D; LT–0757 A and B; LT–701; LT–702) Steam Generator B Level (LT–0752 A, B, C, and D; LT–0758 A and B; LT–703; LT–704) Pressurizer Level (LT–0101 A, B; LT–0102; LT–0103) Pressurizer Pressure (PT–0101 A, B; PT–0102 A, B, C, and D, PT–0104A and B; PT–0105 A and B).

The licensee's original exemption request, dated October 4, 1985, listed five additional instruments that were not discussed in the licensee's most recent evaluation of the effects of a worst case fire in the Containment Air Room. The staff discussed this discrepancy with the licensee. Pressurizer level instruments LT–0102 A, B, C, and D were removed by modification in 1987, leaving two sets of redundant indication: LT–0101 A and B, and LT–0102 and 0103. Also, according to the licensee, pressurizer level instrument LT–0105 should not have been referenced in the original submittal since it is a non-environmental qualified instrument used primarily for mid-loop indication and not necessary for safe shutdown.

Assumptions

Consumers Power Company fire protection engineers based their reanalysis of a Containment Air Room Fire on the following assumptions:

1. A cable tray fire is the only type of fire that needs to be considered for the following reasons:

Access to this area is severely limited during operations. Personnel entering containment dress and undress outside of containment. There are no step-off pads and no discarded anti-contamination clothing inside of containment during operation.

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Everything is stored or discarded outside of containment when the plant is operating.

Strict administrative controls dictate that all loose material be removed from containment prior to start-up to prevent containment sump plugging and transient fires.

Since controls are in place to remove the risk of transient fires during operation and the only major fixed combustible is cable, a cable tray fire is the only fire that needs to be considered.

2. Fires that occur during plant operations are considered worst case since that is the time the instruments would be needed to safely shut down.

3. A worst-case fire involves the cables in one channel of cable trays only. By the use of cable tray fire stops and other protective features and controls, it can be assumed that one train of instrumentation circuits will be free of fire damage for anticipated fires inside containment. This position is documented in an appendix R exemption request dated July 23, 1985.

4. Narrow range (0–100%) steam generator level indication is sufficient for safe shutdown. This is acceptable because a loss-of-coolant accident (LOCA) or main steam line break (MSLB) is not considered to be occurring at the same time as a fire.

5. Level indication in one steam generator is sufficient for safe shutdown. (Again, because a LOCA or MSLB is not occurring simultaneously.)

The validity of these assumptions is discussed in section V.

Likelihood and Type of a Potential Fire

The licensee's fire protection engineers researched self-initiated cable tray fires and found that for #12 AWG cables currents of from 120 to 130 amperes were required to induce open flaming. In full-scale testing, the intense period of fire activity persisted for between 40 and 240 seconds after which rapid reduction to self-extinguishment of the fire was observed. In no case involving electrically initiated fire in rated low flame spread cables was propagation of the fire beyond the tray of fire origin observed.

In other tests conducted, locked rotor amperes (LRA) were applied to test cables to judge their impact on target cables. One of the design criteria for the test program was that the worst-case electrically induced fault would be on a motor feeder circuit, because the majority of large loads, and the more potentially damaging ones, are motor loads. The most credible worst-case fault would be the sustained application of LRA to the test cables. This type of fault was selected because it is a typical condition, it can be postulated as having an extended duration, and its magnitude is large enough to cause damage to the fault cable and adjacent cables. To select the test cable, typical plant cable feeder sizes were tabulated along with the corresponding maximum LRA for each feeder and the corresponding motor pigtail conductor size. Based on preliminary screening test data, a relationship was developed between LRA duration and fusing (open circuit) of the motor pigtail conductors. Using this relationship in conjunction with data obtained from the screening tests, the worst-case fault cable was selected and was used in the subsequent configuration tests. The selected worst-case cable was the cable with the highest temperature at the time its corresponding motor pigtails fused (open circuited).

The tests demonstrated that when ignition occurred, the fire never propagated to an adjacent target cable even when both were touching. The fires that occurred were self-extinguishing when the electrical fault was interrupted. The amount of smoke created by the overload was extremely dense and would be readily detected by the plant fire detection system.

Although, the most likely type of fire would be a small self-extinguishing fire that would generate a lot of smoke, CPCo personnel assumed a much worse fire for the purpose of analysis (one which would be most likely initiated by an external source). Using accepted heat release equations, the fire of analysis burns for fifteen minutes and generates 2674.1 KW of heat.

This fire of analysis represents over 68 feet of 12-inch wide cable tray with 50% fill. The assumed total volume of combustibles for this fire of analysis exceeds the volume of either right or left channel trays in the Containment Air Room. This is considered a worst-case fire. A slower burning fire is more likely, however, a slower fire would not produce as high a temperature as a faster fire.

The worst-case fire data was then used in a fire modeling program called Hazard I developed by the National Institute of Standards and Technology. Two models were run; the first placing the fire in the center of the Containment Air Room, the second, against a wall near the stairway at a height of 9.8 feet. The Hazard I model separates the air in the rooms into upper and lower thermal layers. In the main part of the room, equipment below elevation 601'4" will be in the cooler part of the room. In the stairway, equipment below elevation 607' will be in the cooler part of the room.

The majority of instruments in the Containment Air Room are environmentally qualified (EQ) and will be exposed to the lower thermal layers in the event of a fire in the room. (The four instruments not environmentally qualified will be discussed in section V.) Temperatures seen in the lower layers of a fire in the room and stairway (126 °F) are significantly lower than the temperature the EQ instruments are qualified for (408 °F). Therefore, the licensee maintains that the instruments will operate satisfactory in the event of a worst-case fire in the room.

Finally, after assuming the type and location of a worst-case fire in the Containment Air Room, the licensee assessed the impact this fire would have on instruments the operators would need to safely shut down the plant. Two instrument matrices were developed. The first lists right and left channel instruments, showing the distance between the redundant instrumentation. The second matrix shows instrument elevation relative to the hot thermal layer of gases that will be experienced in a worst-case fire. The licensee reviewed the effects of a fire initiating in either the right or left channel cable trays, and the resulting impact on redundant instrumentation in the room, and concluded that sufficient instrumentation is available to the operators to safely shut down the plant. The licensee's discussion of various fire scenarios has been incorporated in the staff's evaluation in the following section.

V

The staff has reviewed the information supplied by the licensee and has had numerous discussions with Consumers Power Company concerning the design and circumstances of the Containment Air Room. Additionally, staff personnel have toured the Containment Air Room on several occasions, noting instrument and cable tray locations and independently assessing the combustible loading in the room.

The staff agrees with the licensee's determination that a cable tray fire is the most probable fire considering the design of the room and the strict administrative controls preventing the local storage of loose combustibles. Written guidance in three procedures call for the removal of transient combustibles from safety-related areas such as the Containment Air Room. An Administrative Procedure on plant housekeeping requires a thorough containment inspection for unnecessary debris and material which could pose a

fire threat. Particular attention is drawn to the 590' level of containment (the Containment Air Room Level).

The staff also accepts the licensee's assumption that a worst-case fire involves one channel of cable trays during plant operation. A previous Appendix R exemption (dated July 23, 1985) recognizes the use of cable tray fire stops and other protective features, thereby assuming that one train of instrumentation circuits will be free of fire damage for anticipated fires in containment. Instrumentation in the Containment Air Room is necessary to safely shut down the plant. Therefore, a fire during plant operation is considered to be the worst case, even though transient combustible material control is much tighter during plant operation than in an outage situation where room access and maintenance (and, therefore, combustible material) would be more prevalent.

The likelihood of a fire in the Containment Air Room during operation is remote. External sources of ignition are unlikely due to:

1. The administrative controls covering combustible material in safety-related spaces, and

2. The controls over access to containment during operation (e.g., access is limited, material is discarded outside containment, and flammable liquids are not brought into containment).

Therefore, the staff concurs with the licensee that the most probable fire would be a self-initiated cable tray fire.

Consumers Power Company analyzed a cable tray fire that lasted for fifteen minutes and which consumed 11.4 cubic feet of cable. There are two cable trays present in the room. The right tray contains the larger total volume of cable at 7.62 cubic feet. The licensee, therefore, conservatively input a larger combustible loading into the fire model (approximately 150 percent of the combustible material present in the larger tray). Also, although a slower burning fire is considered more likely due to the nature of self-initiated cable tray fire scenarios, the licensee was conservative in assuming a relatively fast burning fire for the fire of analysis. A slower fire would not produce as high upper and lower room air temperatures as this model provided and, therefore, would not have as significant an impact on room instrumentation. This relatively fast burning fire is, therefore, considered the worst-case fire for the room.

The Hazard I model does not provide a totally realistic assessment of air temperatures in a room during a fire. The model basically separates the room into upper layer temperatures (Hot Gases) and lower layer temperatures (Cooler Gases). However, the model, (which is approved by the National Institute of Standards and Technology) is a useful tool in determining operability of instruments remaining in the "cool gas" region.

The lower layer height (cool gas region) starts at approximately the 601.5' elevation in the Containment Air Room and the 607' elevation in the adjoining stairway. These elevations correspond to approximately two feet below the ceiling elevation in the main room and seventeen feet below ceiling level in the stairway region. Lower layer air temperatures in both regions are calculated to be below 56 °C (132.8 °F) for the duration of the fire (as compared to upper layer air temperatures in the 400 °C range (approximately 750 °F)).

The licensee chose a location for the fire of analysis to be at a height of 9.8 feet in the center of the room. Staff review of drawings supplied by the licensee show the lower cable tray at a height of approximately 8.4 feet, or 1.4 feet below the assumed fire location. The licensee was questioned concerning this apparent non-conservative selection of fire location. Consumers Power Company responded that a fire location roughly corresponding to the actual cable tray locations was chosen. A value of 3 meters (9.8 feet) was selected simply because it was a round number. The Hazard I model was re-run using the more conservative fire height corresponding to the lower instrument tray. The reanalysis had minor affects on the thermal layer heights and temperatures. The upper layer region was expanded by five inches. This lowering of the Hot Gas region did not envelope additional instrumentation; the majority of instruments are still located approximately two feet below the upper layer Hot Gas region. Room air temperatures experienced a trade-off as fire locations was lowered. Upper air temperature decreased approximately 50 °F and lower air temperature increased 11 °F. This reanalysis, and its effect on fire parameters, is acceptable.

The safety-related instruments in the Containment Air Room were reviewed to verify adequate instrumentation would be available to safely shut down the plant. Not only was instrument elevation reviewed relative to the Hot Gas region, but also process tubing and cabling elevations. All but four of the thirty-eight instruments located in the room are EQ, which means they have been tested to operate properly in temperatures up to 408 °F. The temperatures calculated for the lower air layer are significantly lower than such accident scenario temperatures; therefore, it is appropriate to assume instrument operability for lower air layer instruments.

The licensee states that the four instruments which are not EQ are qualified for temperatures up to 160 °F. This rating, although much lower than the EQ rated instrumentation, still provides adequate margin to the highest temperatures seen in the lower air layer. Additionally, all instruments have steel noncombustible cases surrounding them, which to a certain degree act as radiant energy shields. All wiring is run in conduit from cable trays. The cases and conduit assist in blocking the radiant energy from the fire to the instrument of concern.

The following discussion addresses the operator's ability to safety shut down the plant with available instrumention in the case of either a right or left cable fire. Instruments that have conduit, process tubing, or the instruments themselves located in the "Hot Gas" region are, in general, not credited for operation.

Steam Generator Pressure

For a right channel cable tray fire, left channel steam generator pressure instruments are available for both steam generators (PT–0751C and PT–0752C).

For a left channel cable tray fire, PT–0751D and its cables are located in the hot layer. However, the corresponding instrument for Steam Generator B (PT–0752D) is not affected. Since steam generator pressure would be the same in both steam generators, PT–0752D can be used as sufficient indication for steam generator pressure.

Steam Generator Level

For a right channel cable tray fire, left channel steam generator level instruments are available for both steam generators (LT–0751C and LT–0752C). Wide range steam generator level is available using LT–0757A and LT–0758A.

For a left channel cable tray fire, the cables for LT–0751D are located in the hot layer. In addition, wide range steam generator level instruments LT–0757B and LT–0758B have cables that extend into the hot layer in the stairwell area.

Regarding the wide range steam generator level instruments, the licensee states that during normal shutdowns, steam generator levels do not usually go below the narrow range instrumentation. Therefore, shutdown can be accomplished without wide range steam generator level indication.

Regarding LT–0751D, the corresponding instrument for Steam Generator B, LT–0752D, located a

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minimum of 15 feet from LT-0751D, is not affected by the fire. In addition, the operators have other indications as to the adequacy of the Steam Generator function; e.g., primary coolant temperatures, main steam flows, and feedwater flow.

Pressurizer Pressure

For a right channel cable tray fire, left channel wide range and narrow range pressurizer pressure instruments are available (PT-0104A and PT-0106A).

For a left channel cable tray fire, right channel wide range and narrow range pressurizer pressure instruments are available (PT-0104B and PT-0105B).

For a right channel cable tray fire, left channel pressurizer level instrument LT-0102 has instrument tubing that extends into the hot layer. There is a possibility that the water in the process tubing will flash to steam since the upper layer temperature is above the saturation temperature at this pressure. However, it is expected that the heat will be conducted away by the tubing during the short period of time the process tubing is exposed to the hot layer. This is based on several considerations:

1. Only a short section of the tubing (approximately 2 feet) is in the "Hot Gas" layer.

2. The section of tubing in the hot layer is mounted on the wall, thus its temperature will more closely approximate the wall temperature.

3. The tubing is only in the hot layer for approximately 1 minute.

4. The upper layer air temperature is only above saturation for a maximum of 200 seconds.

Even if some flashing would occur, it is expected that transmitter accuracy would recover after approximately one minute as the hot layer rises. In addition, LT-0101A is available to provide pressurizer level indication should LT-0102 fail.

For a left channel cable tray fire, right channel pressurizer level instrument LT-0103 has cables that extend into the hot layer. LT-0101B is available to provide pressurizer level indication should LT-0103 fail. This provides adequate information to safely shut down the plant.

A plant review and walkdown of the control room panels was conducted by the NRC staff to ensure that all instrumentation credited to be available for safely shutting down the plant is readily accessible by the operators. The results of this review were acceptable.

The licensee has shown that sufficient instrumentation is available to safely shut down. However, two issues were not addressed in the licensee's evaluation which have the potential to complicate a shutdown. Both of these issues were discussed with the licensee. First, the impact of having certain instruments out-of-service for maintenance was not addressed. It is possible, especially in the case of pressurizer level, to have a backup instrument (that is being relied on for indication in the event of a worst-case fire), out-of-service for maintenance. In such an instance, the operator would have to rely on secondary indications (e.g., charging flow, core exit thermocouples) to assist in assessing proper plant parameters. The licensee responded that the combination of Technical Specification Limiting Conditions for Operation, coupled with a high priority for returning control room indications to service, will result in a negligible probability that necessary instrumentation will not be available if needed. The staff reviewed the Technical Specification limits on removing instrumentation from service. Also, a review of the work order history for pressurizer level instruments LT-0101 A and B was conducted by the licensee for the time period from 1986 to present. No work orders were found indicating these instruments were inoperable during power operation. Additionally, the licensee does have an approved procedure for performing a safe shutdown in the event containment instrumentation is unreliable; Emergency Operating Procedure (EOP) 9.0, Functional Recovery. The NRC staff finds the licensee's response acceptable.

Secondly, the control room operator's ability to recognize and assess the effects of a fire in the Containment Air Room was not adequately addressed in that no procedural guidance is available. The staff reviewed the licensee's procedure entitled Fire Which Threatens Safety Related Equipment, ONP25.1, and found that it does not address a fire in the Containment Air Room. The licensee committed to address a Containment Air Room fire in both this procedure and Emergency Maintenance Procedure PFM-E-1, Emergency Post Fire Maintenance Guideline Repair Procedure in a Safe and Expedient Manner. These procedures were updated prior to start-up from the recent refueling outage. The NRC staff finds this acceptable.

VI.

Consumers Power Company has shown that based on the amount and type of combustibles, and type of ignition source, a fire in the Containment Air Room is extremely unlikely. If a fire were to occur it would most likely be a small self-extinguishing fire that would generate dense smoke. If a much larger fire were to occur, the licensee has analyzed for its effect on safety-related instrumentation in the room and shown that sufficient instruments would be operable to safely shut down the plant. The staff agrees with the licensee's determination and considers the Containment Air Room configuration, coupled with the administrative controls to minimize combustibles and provide procedural guidance to operators in case of fire, acceptable.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that (1) this exemption as described in Section IV is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are present for this exemption in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purposes of appendix R to 10 CFR part 50. Specifically, the underlying purpose of appendix R, section III.G.2.d is to assure that a suitable complement of safe-shutdown equipment will be available, post-fire, to achieve and maintain hot shutdown of the reactor. The analysis of worst-case fire in the Containment Air Room indicates that instrumentation will be capable of performing their post-fire shutdown role without additional fire protection enhancements. Therefore, the Commission hereby grants the Exemption request identified in section IV. above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (55 FR 50063).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 21st day of June 1991.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-15407 Filed 6-27-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272 and 50-311]

Public Service Electric & Gas Co., et al.; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-70 and DPR-75 issued to Public Service Electric & Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atalantic City Electric Company (the licensees) for operation of Salem Nuclear Generating Station, Unit Nos. 1 and 2, located in Salem County, New Jersey.

The proposed amendments would revise Technical Specifications (TS) sections 5.3.1 and 5.6.3 by removing the current maximum U-235 enrichment limit. TS 5.6.1 would be revised to allow storage of Westinghouse Standard or Vantage 5H (V5H) fuel with a maximum enrichment limit of 4.55 weight percent (w/o) U-235 provided that the reference infinite multiplication factor (Kinf) for the fuel assemblies is less than or equal to 1.453 in unborated water at 68 degrees F, in core geometry. The uncertainty values contained in TS 5.6.1.a would be updated to include an uncertainty for Westinghouse Standard and V5H fuel assemblels containing Integral Fuel Burnable Absorber pins. This is in response to the licensees' application for amendment dated November 19, 1990 as supplemented April 1, 1991, May 20, 1991 and June 14, 1991. This was previously noticed on June 12, 1991 (56 FR 27047). This notice supersedes the previous notice in its entirety.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. Because of the conservative methods and assumptions used to evaluate the maximum possible assembly multiplication factor, there is more than reasonable assurance that no significant hazard based on critcality safety is invovled in storing fuel assemblies with enrichments of up to 4.55 w/o U-235, with sufficient IFBAs [Integral Fuel Burnable Assembly], in the spent fuel storage racks under both normal and postulated accident conditions. The calculations used to determine the minimum number of IFBA rods required as a function of enrichment assured an assembly Kinf less than or equal to that of a fresh 4.05 w/o U-235 assembly with no IFBA under 0 ppm soluble boron conditions. The criticality accidents for 4.05 w/o U-235 fuel have been analyzed previously and there will be no increase in assembly Kinf.

Additionally, evaluations of reload core designs (using any enrichment) will be performed on a cycle by cycle basis as part of the Reload Safety Evaluation (RSE) process to ensure that the reactor operation is consistent with the current safety analysis. Therefore, there is no increase in the probability or consequences of any accident previously analyzed.

2. Create the possibility of a new or different kind of accident. The increase in enrichment to 4.55 w/o U-235 involved the performance of evalautions to envelope the corresponding changes in reactivity. Use of the reactivity equivalencing procedures ensures that the spend fuel pool criticality limits are not exceeded. Additionally, there are no proposed changes to the spent fuel rack geometry. (Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.)

3. Involve a significant reduction in a margin of safety. As discussed above, for worst case assumptions the assembly Kinf values for a maximum enrichment of 4.55 w/o U-235, with a sufficient number of IFBA rods do not exceed thsoe for the previously analyzed 4.05 w/o U-235. Therefore there are no reductions in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 29, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's Rules of practice for Domestic Licensing Proceedings in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the

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Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street NW., Washington, DC, 20005-3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 19, 1990, as supplemented April 1, 1991, May 20, 1991 and June 14, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 25th day of June 1991.

James C. Stone,

Project Manager, Project Directorate I-2 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-15468 Filed 6-27-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection Submitted to OMB for Expedited Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (chapter 35 of title 44, United States Code), this notice announces a request submitted by the Office of Personnel Management (OPM) to the Office of Management and Budget (OMB) for expedited clearance of two new information collections: Nonforeign Area Cost-of-Living Allowance Background Survey and Nonforeign Area Cost-of-Living Allowance Price Survey. These information collections will be used for annual living cost surveys and for background surveys that will be conducted approximately once every 5 years to evaluate the program. Selected retail, service, realty, and other businesses and local governments will be surveyed in nonforeign allowance areas and in the Washington, DC, area to obtain living cost data. OPM will use these data to develop cost-of-living allowances as authorized by section 5941 of title 5, United States Code. Approximately 300 establishments will be contacted in the background survey, and approximately 5,600 establishments will be contacted in the price survey. OPM estimates that the average background survey interview will take approximately 10 minutes, for a total burden of 50 hours. The average price survey interview will take approximately 7 minutes, for a total burden of 650 hours. A copy of this proposal is reproduced below.

OPM is requesting that OMB approve these information collections within 14 days after the date of publication in the Federal Register.

DATES: Comments on this proposal should be received on or before July 8, 1991.

ADDRESSES: Send or deliver comments to:

Phyllis G. Foley, Chief, Wage Systems Division, U.S. Office of Personnel Management, room 7H30, 1900 E Street, NW., Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley (202) 606-2848.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

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Nonforeign Area Cost-of-Living
Background Survey Information Collection

Contact Date: _____ **Allowance Area:** _____

Contact
Name:
Address:
Phone #:

Purpose of Contact	
Product/Service Info.	
Outlet Availability/Usage	
Transportation Info.	
Local Taxes and Fees	
Mortgage Information	
Real Estate Information	
Other: (specify)	

Findings:

Remarks:

BILLING CODE 6325-01-C

Nonforeign Area Cost-of-Living Allowances Background Survey Data Collection Procedures—Survey Description

The following information will be provided to the participants verbally or in writing. Participants who are familiar with the program and the survey may be provided with less information as appropriate.

Purpose

The Federal Government pays Cost-Of-Living-Allowances (COLA) in Alaska, Hawaii, and certain U.S. territories and possessions. Living cost differences are determined by comparing cost of goods, services, housing, transportation, and other items in the allowance area with the cost of the same or similar items and services in the Washington, DC, area. The U.S. Office of Personnel Management (OPM) is responsible for the operation of the COLA program. OPM, or its representative, conducts annual surveys to determine living cost differences. OPM conducts fullscale Background Surveys approximately once every five years to review the appropriateness of items, services, and businesses covered in the annual Price surveys. Elements of the Background Survey may be repeated annually on a limited basis as part of the maintenance of and preparation for the annual Price Surveys.

OPM uses the Background Survey to identify the services, items, quantities, outlets, and locations that will be surveyed to collect living cost data within the allowance areas and the Washington, DC, area. The Background Survey also is used to collect information on local trade practices, consumer buying patterns, taxes and fees, and other economic characteristics related to living costs.

Data Collection

Full-scale Background Surveys are conducted approximately once every five years. OPM identifies major manufacturers, local governments, retail outlets, realty firms, and businesses providing professional services to be surveyed on the basis of business volume and local prominence. Participation is voluntary. Data are collected by telephone and/or personal interview.

Confidentiality

All data collected are used only for the purposes described above. The Government pledges to hold all micro or raw data collected in confidence. Names of participating businesses and institutions may be released. Names of individuals are not released. Summary data will be made available to the public only to the extent that micro data cannot be associated with data sources.

Public Burden Information

Public burden reporting for this collection of information is estimated to vary from 5 minutes to 30 minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestion for reducing this burden to Reports and Forms Management Officer, U.S. Office of Pesonnel Management, 1900 E Street NW., room CHP 500, Washington, DC, 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206-xxxx), Washington, DC, 20503.

Nonforeign Area Cost-of-Living Allowances Background Survey Data Collection Procedures—Interview Guidelines

Seven types of information are collected in background surveys. Information is collected on products and services, outlet availability and usage, transportation, local taxes and fees, mortgage, real estate, and other topics related to the measurement of living costs (e.g., specialized information from local chambers of commerce, colleges, and universities). The following are the typical interview questions used to collect these data.

Product or Service Information

1. As a major manufacturer/supplier of _____ (a specific product or service, e.g., women's apparel), please identify your items/services that are most popular (e.g., your 'volume sellers').

2. Which of these items are apt to be readily available in the following geographic locations: Alaska (i.e., Anchorage, Fairbanks, and Juneau); Hawaii; Guam; Puerto Rico; the Virgin Islands; and Washington, DC, and suburbs?

3. If the items or services are not universally available, are there other items or services that are of similar function, quality, quantity, size, and type that can be substituted?

4. Is there anything else we should know about your product or service? Are there recommendations you wish to make that would help us in our data collection?

Outlet Availability and Usage (Retail)

1. What is your product or service? What is the address(es) of your establishment(s)? If you have multiple locations, which locations have the greatest sales volumes (i.e., are most utilized by consumers)?

2. What are your store/office hours? Do these vary by location?

3. Is your full line of products or services available at all locations?

4. Is there anything else we should know about your outlet(s) or recommendations you wish to make?

Transportation Information—Private and Public Services

1. What type of transportation services do you provide (e.g., taxi, bus, subway)?

2. What geographic areas do you service? Which routes are 'typical' or most heavily utilized?

3. What is your rate structure? Does it vary by time of day or season?

4. Is there anything else we should know about transportation usage and services in your area? Are there recommendations you wish to make about our data collection?

Transportation Information—Private Use and Maintenance

1. What types of driving are most common in your area? What is the annual distance driven?

2. What types roads and highways are common in your area? What are the road surfaces and conditions?

3. Are there unusual climatic or other factors that affect the fuel economy, maintenance, and depreciation of vehicles?

4. Is there anything else we should know about private transportation usage and maintenance in your area? Are there suggestions or recommendations you wish to make?

Local Taxes and Fees

1. What types of taxes, licenses, or fees does your State, territory, or local jurisdiction levy on real estate; personal property; sales (including sales of property); automobiles; utilities; or other goods, services, or transactions?

2. Who levies these taxes, licenses or fees (i.e., State, territory, county, city, other jurisdiction)?

3. What are the rates or schedules for these? How often and when are they levied? Do the rates/schedules vary by location, season, or other factors?

4. Is there anything else we should know about taxes and fees in your area? Are there suggestions or recommendations you wish to make?

Mortgage Information

1. What forms of home financing are most common in _____ (the allowance area or Washington DC metropolitan area)? (Do not include second mortgages.)

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2. What are the typical conditions and limitations on loans?

3. What is the typical amount(s) of down payment required? What are the terms and rates?

4. Are there special subsidies or other practices that influence home financing in your area?

5. Looking back 6 years, what types of changes have occurred that affect home financing?

6. Is there anything else we should know about the housing market in your area? Are there suggestions or recommendations you wish to make that would help us in our data collection?

Real Estate Information

1. What is the availability of housing in _____ (the allowance area or Washington DC metropolitan area)? Of principal interest is housing for typical salary and wage earners (as distinguished from retirees, tourists, or other special groups) for persons with low, moderate, and high incomes.

2. Describe the communities within your area in which persons _____ (specify occupation/income characteristics) typically live. If appropriate, identify separate communities for renters and home owners. Where are these communities located relative to the major Federal activities in the area?

3. Describe the type of housing (e.g., apartment, condominium, town house, detached house).

4. For each type of housing, what are the usual number of rooms, bedrooms, baths, total square footage, lot size, type of construction, and similar characteristics?

5. What types of utilities are available and typically used in these communities: sewer, water, natural gas, electricity, other?

6. Are there any unusual factors that might affect maintenance requirements in your area?

7. Looking back 6 years, describe the changes that significantly affected the housing market (both rental and owner markets).

8. Is there anything else we should know about the housing market in your area? Are there suggestions or recommendations you wish to make that would help us in our data collection?

Other Types of Information

Occasionally, it is necessary to collect information from colleges, universities, chambers of commerce, trade associations, and other groups on specific subjects relating to the analysis of living costs. For example, a university known to be involved in home energy research may be contacted to determine whether there are consumption data by region or allowance area that could have application in the COLA program.

When such data are collected, the purpose and basic structure of the interview will follow the patterns shown above. The substance, however, will vary with the subject matter.

BILLING CODE 6325-01-M

Nonforeign Area Cost-of Living Price Information Collection

Survey Date: _____ Allowance Area: _____

Survey Item: _____

Description:

Outlet	Price	Quantity	Comments

Remarks:

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Nonforeign Area Cost-of-Living
Housing Component - Information Collection for Comparable Sales

Location: _____ Community: _____ Collection Date: _____

Address	Selling Price	Sale Date	Room Count			Square Feet	Price/ Sq Foot	Taxes	Other
			Total	Bed	Bath				

Appreciation Rate:

Current Market Conditions:

Remarks:

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BILLING CODE 6325-01-C

Nonforeign Area Cost-of-Living
Housing Component - Rental Information Collection

Location: _____ Community: _____ Date: _____

Complex Address Phone #	Rental Type	Bedroom Count	Monthly Rent	Total Room Count	Square Feet	Security Deposit	Utilities	Monthly Heating Cost	Amenities	Restrictions	Total Units	Other

Remarks:

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Nonforeign Area Cost-of-Living Allowances Price Survey Data Collection Procedures—Survey Description

The following information will be provided to the participants verbally or in writing. Participants who are familiar with the program and the survey may be provided with less information as appropriate.

urpose

The Federal Government pays Cost-of-Living Allowances (COLA) in Alaska, Hawaii, and certain U.S. territories and possessions. Living cost differences are determined by comparing costs of goods, services, housing, transportation, and other items in the allowance area with the cost of the same or similar items and services in the Washington DC area. The U.S. Office of Personnel Management (OPM) is responsible for the operation of the COLA program.

Data Collection

OPM, or its representatives, conducts annual Price Surveys to determine living cost differences. Local governments, retail outlets, realty firms, and businesses providing professional and other services to be surveyed are identified through the use of full-scale Background Surveys, conducted approximately once every five years. Participation in the Price Surveys is voluntary. Data are collected by telephone and/or personal interview.

Wherever practical and appropriate, the price of each good or service is obtained from at least three outlets in each allowance area and at least six outlets in the reference area (i.e., the Washington, DC, area). Realty data may be obtained from one or multiple sources, as appropriate.

Confidentiality

All data collected are used only for the purposes described above. The Government pledges to hold all micro or raw data collected in confidence. Names of participating businesses and institutions may be released. Names of individuals are not released. Summary data will be made available to the public only to the extent that micro data cannot be associated with data sources.

Public Burden Information

Public burden reporting for this collection of information is estimated to vary from 1 to 20 minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestion for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, NW., room 6410, Washington, DC, 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206-xxxx), Washington, DC, 20503.

Nonforeign Area Cost-of-Living Allowances Price Survey Data Collection Procedures—Interview Guidelines

Three types of information are collected in price surveys: price of goods and services, rental prices and related information, and home owner prices and related information. The following are the typical interview questions used to collect these data.

Price Information Collection

1. What is the regular (non-sale) price of _____ (a specific item or service)?

Examples of items include, but are not limited to:

Chuck Roast, Bone In.
- Price per pound. Average size package (e.g., not a 'family' or 'bonus' pack).
- 1st Choice: Arm pot roast.
- 2nd Choice: Eye roast.

Peas, Frozen.
- Price for 10 ounce package.
- 1st Choice: Bird's Eye
- 2nd Choice: Major brand of equivalent quality.

Men's Jeans.
- Price for one pair of blue jeans.
- 1st Choice: Levi's # 501 jeans.
- 2nd Choice: Equivalent quality jeans.

Automobile, New.
- 'Sticker' price of current year model Honda Civic DX, four door sedan, 1.5 liter, four cylinder engine (Price options, fees, financing, and taxes separately.)

Example of services include, but are not limited to:

Restaurant Service.
- Price of seafood platter—mixed seafood (e.g., not 'steak and lobster' or 'crab leg' platter). If salad and side dish not included with entree, price house salad and baked potato or order of french fries. Include price of coffee, tax, and 15 percent tip.

Film Developing.
- Price to process and print 35 millimeter, 24 exposure, 100 ASA color roll film. Single prints only, standard size and finish.

Doctor, Office Visit.
- Typical fee, after the initial visit, for an office visit when medical advice or simple treatment is all that is needed. Do not include the charge for a complete physical examination, injections, medication, laboratory tests, or similar services.

Oil Change.
- Price of a regular oil change including oil and filter for a current year model Honda Civic DX sedan, 1.5 liter, 4 cylinder engine.

2. Prices of many of the items can be obtained "off-the-shelf" without assistance. Occasionally, when a specific item is not available, assistance from sales or other personnel may be required to identify and price substitution items of comparable quality and quantity.

3. Prices of cost services are obtained by telephone or personal interview. A few services are priced with little or no assistance. For example prices may be obtainable from a displayed price schedule, list, and menu.

Housing Component—Rental Information Collection

1. Describe the location, size, layout, number and types or rooms, and square footage of your rental units.

2. Are they apartments, duplexes, town houses, detached houses, or other types of units? Describe.

3. Are there additional amenities (e.g., pool, sauna, tennis courts, gym)? If so, describe.

4. What is the monthly rent? What is the amount of the security deposit (if any)? What other kinds of fees or assessments are there?

5. Are utilities included? Which ones? If you can, please provide information on average monthly or annual costs of utilities paid by tenants.

6. Are term leases usually required? What are the conditions and penalties associated with the lease?

7. Are there any special restrictions or other factors we should know about (e.g., seasonal tourist trade)?

Housing Component—Information Collection for Comparable Sales

1. Describe the location, size, layout, number and types or rooms, and square footage of some your recent home sales.

2. Were they condominiums, duplexes, town houses, detached houses, or other types of dwellings? Describe.

3. Were there any atypical characteristics (e.g., extra large lot sizes, beach front, desirable/undesirable locations)?

4. Are there additional amenities provided by the developer, homeowners association, or similar community group (e.g., pool, sauna, tennis courts, gym)? If so, describe facilities and charges.

5. What was the selling price and date of sale?

6. What are the real estate taxes?

7. Do you have any data on utilities relating to these homes?

8. In the past year or so, what has been the average appreciation rate of property in this community? Looking back over the past six years, has this rate changed? How?

9. Describe current market conditions (e.g., soft, booming, so-so). How has this affected housing prices? Describe the housing market over the past six years.

10. Are there any special considerations or other factors we should know about (e.g., retirement/tourist trade) that might affect the housing market in this community?

[FR Doc. 91-15463 Filed 6-27-91; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended June 21, 1991

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47609.
Date filed: June 21, 1991.
Parties: Members of the International Air Transport Association.
Subject: MV/PSC/076 dated May 2, 1991; MV S053 (Reso 740—Interline baggage tag).
Proposed Effective Date: August 1, 1991.

Phyllis T. Kaylor,
Chief, Documentary Service Division.
[FR Doc. 91-15447 Filed 6-27-91; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 21, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47603
Date filed: June 18, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 16, 1991.
Description: Application of Air Outre Mer, S.A., pursuant to section 402 of the Act and subpart Q of the regulations requests a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of persons, property and mail between Paris, France, and Miami, Florida, and in charter air transportation between points in France and points in the United States, subject to the regulations of the Department.

Docket Number: 47605
Date filed: June 19, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 17, 1991.
Description: Application of Jetall Holdings Corporation, pursuant to section 402 of the Act and subpart Q of the regulations, applies for a charter-only foreign air carrier permit to operate charter foreign air transportation of property with Convair 580 or equivalent aircraft on routes between Canada and the United States, each of which would be between one or more coterminal points in Canada, on the one hand, and a terminal point in the United States, on the other.

Docket Number: 47606
Date filed: June 21, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 19, 1991.
Description: Application of Southeast Airlines Corporation, pursuant to section 401(d)(1) of the Act and subpart Q of the regulations, applies for a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation.

Docket Number: 47607
Date filed: June 21, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 19, 1991.
Description: Application of Viscount Air Service, Inc., pursuant to section 401(d) of the Act and subpart Q of the regulations applies for a certificate of public convenience and necessity authorizing in interstate and overseas charter air transportation of persons, property and mail.

Docket Number: 47608
Date filed: June 21, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 19, 1991.
Description: Application of Viscount Air Service, Inc., pursuant to section 401(d) of the Act and subpart Q of the regulations applies for a certificate of public convenience and necessity authorizing it to engage in foreign charter air transportation of persons, property, and mail between a point or points in the United States, its territories and possessions (including the District of Columbia) and a point or points in the Caribbean Basin, Mexico, and Central America as far south as Panama.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91-15448 Filed 6-27-91; 8:45 am]
BILLING CODE 4910-62-M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on June 24, 1991

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on June 24, 1991, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the

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proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on June 24, 1991.

DOT No: 3502.
OMB No: New.
Administration: Federal Aviation Administration.
Title: FAA Research and Development Grants.
Need for Information: To administer the FAA grants program for research and development.
Proposed Use of Information: Information is required from grantees for the purpose of grant administration and review in accordance with applicable OMB circulars.
Frequency: On occasion, quarterly, and semi-annually.
Burden Estimate: 2,800 hours.
Respondents: State and local governments, Businesses, Non-profit institutions.
Form(s): FAA Forms 9550–VV, 9550–XX, 9550–YY, 9550–ZZ, and SF–269, 270, and 272.
Average Burden Hours Per Response: 3 hours (Form 9550–VV); 2 hours (Form 9550–XX); 3 hours (Form 9550–YY); 1 hour (Form 9550–ZZ); 2 hours (SF–269); 1 hour (SF–270); and 2 hours (SF–272).
DOT No: 3503.
OMB No: 2120–0043.
Administration: Federal Aviation Administration.
Title: Recording of Aircraft Conveyances and Security Documents.
Need for Information: Information is needed for security conveyances such as mortgages submitted by the public for recording against aircraft, engines, propellers and spare parts locations.
Proposed Use of Information: To maintain a system for the recording of security conveyances affecting title to or interest in U.S. civil aircraft.
Frequency: On occasion.
Burden Estimate: 60,973 hours.
Respondents: Anyone.
Form(s): AC Form 8050–41.
Average Burden Hours Per Response: 1 hour.
DOT No: 3504.
OMB No: New.
Administration: Federal Railroad Administration.
Title: Qualification of Locomotive Engineers.
Need for Information: To determine a person's qualifications to be a locomotive engineer.
Proposed Use of Information: To evaluate the qualifications and fitness of locomotive engineers.
Frequency: On occasion and recordkeeping.
Estimated Number of Respondents: 605 Railroads.
Burden Estimate: 218,280 hours.
Respondents: 361 hours.
Form(s): None.
DOT No: 3505.
OMB No: 2106–0023.
Administration: Department of Transportation, Office of the Secretary.
Title: Procedures and Evidence Rules for Air Carrier Authority Applications.
Need for Information: Regulatory Compliance.
Proposed Use of Information: For review of an air carrier's fitness to provide passenger and cargo service.
Frequency: On occasion.
Burden Estimate: 8,048 hours.
Respondents: U.S. air carriers.
Form(s): None.
Average Burden Hours Per Response: 39 hours, 48 minutes.
DOT No: 3506.
OMB No: 2138–0009.
Administration: Research and Special Programs Administration.
Title: Form 298–C Report of Financial and Operating Statistics for Small Aircraft Operators.
Need for Information: To analyze airline enplanement data and financial statistics.
Proposed Use of Information: Monitor air carrier fitness, set Essential Air Service subsidy levels, set Alaska mail rates and administer airport development.
Frequency: Quarterly.
Burden Estimate: 7,092 hours.
Respondents: Small certificated/commuter air carriers.
Form(s): Form 298–C.
Average Burden Hours Per Respondent: 9 hours per commuter air carrier and 13 hours, 30 minutes per small certificated air carrier (quarterly).
DOT No: 3507.
OMB No: 2130–0035.
Administration: Federal Railroad Administration.
Title: Railroad Operating Rules.
Need for Information: To determine the condition of operating rules and practices with respect to trains and the instructions railroads provide their employees.
Proposed Use of Information: This information is utilized to consider waiver and petition applications, and to conduct accident investigations involving operating practices.
Frequency: Recordkeeping, on occasion and annually.
Burden Estimate: 88,285 hours.
Respondents: 605 Railroads.
Form(s): FRA–F–6180.77.
Average Burden Hours Per Response: 146 hours.
DOT No: 3508.
OMB No: 2130–0524.
Administration: Federal Railroad Administration.
Title: Transmission of Train Orders by Radio.
Need for Information: To assure safe operating practices in the use of radio communications in railroad operations.
Proposed Use of Information: FRA uses this information to assure safe uniform procedures covering the use of radio phone technology in railroad operations.
Frequency: Recordkeeping.
Burden Estimate: 240,000 hours.
Respondents: 400 Railroads.
Form(s): None.
Average Burden Hours Per Respondent: 600 hours
DOT No: 3509.
OMB No: 2130–0532.
Administration: Federal Railroad Administration.
Title: Railroad User Fees.
Need for Information: To determine a railroad's equitable share of the total industry user fee.
Proposed Use of Information: To assure that each railroad is assessed their fair share of the industry-wide user fee.
Frequency: On occasion, annually and recordkeeping.
Burden Estimate: 2,279 hours.
Respondents: 586 Railroads.
Form(s): FRA–F–6180.89 and FRA–F–6180.90.
Average Burden Hours Per Respondent: 4 hours.
DOT No: 3510.
OMB No: 2130–0004.
Administration: Federal Railroad Administration.
Title: Railroad Locomotive Safety Standards.

Need for Information: To provide a written record that a locomotive has been inspected and is in proper condition for service.
Proposed Use of Information: This information is utilized to assure and promote safe and suitable locomotives and as the written record in post-accident investigations.
Frequency: Recordkeeping and on occasion.
Burden Estimate: 1,114,661 hours.
Respondents: 605 Railroads.
Form(s): FRA–F–6180.49A.
Average Burden Hours Per Respondent: 1.824 hours.
DOT No: 3511.
OMB No: 2125–0019.
Administration: Federal Highway Administration.
Title: Federal-aid Highway Construction Equal Employment Opportunity.
Need for Information: For the FHWA to carry out its responsibility to ensure equal opportunity in contractors' employment practices on Federal-aid projects.
Proposed Use of Information: For FHWA to determine patterns and trends of equal employment in the highway construction industry, and for State highway agencies to report to FHWA a summary of Federal-aid highway construction information.
Frequency: Annually.
Burden Estimate: 6,560 hours.
Respondents: State highway agencies.
Form(s): PR–1391 and PR–1392.
Average Burden Hours Per Respondent: 1 hour (Form PR–1391) and 40 hours (Form PR–1392).
DOT No: 3512.
OMB No: 2137–0034.
Administration: Research and Special Programs Administration.
Title: Hazardous Materials Shipping Papers.
Need for Information: Shipping papers are used in transportation to identify the presence of hazardous materials, their quantity, and identification. This information is used to promote transportation safety by assuring that carriers are properly loaded and identifies hazardous cargo to emergency response personnel in case of incident.
Proposed Use of Information: To assist emergency response personnel in mitigation actions at hazardous materials incidents, and to inform carriers and transportation facility operators of the risks and precautions associated with the materials.
Frequency: Each shipment (hazardous materials).
Burden Estimate: 6,288,750 hours.
Respondents: Shippers and carriers.
Form(s): None.
Average Burden Hours Per Respondent: 2 hours, 15 minutes.
DOT No: 3513.
OMB No: 2137–0022.
Administration: Research and Special Programs Administration.
Title: Recordkeeping and Information Collection for Cylinders.
Need for Information: To verify that charged cylinders are safe for shipment in interstate commerce.
Proposed Use of Information: To verify that cylinders are properly marked, restested, and repaired, and safely charged so as to maintain the safety standards set forth in the Federal regulations for hazardous materials transportation.
Frequency: As required in 49 CFR 173.34 and 173.303(d) for various cylinders.
Burden Estimate: 122,064 hours.
Respondents: Businesses, Farmers, Individuals, State and Local Governments.
Form(s): Application for Registration of Cylinder Requalification Facility.
Average Burden Hours Per Respondent: 1 hour, 12 minutes.
DOT No: 3514.
OMB No: 2125–0034.
Administration: Federal Highway Administration.
Title: Certification of Enforcement of Vehicle Size and Weight Laws.
Need for Information: For each State to annually certify that it is enforcing all size and weight law regulations.
Proposed Use of Information: For FHWA to evaluate the effectiveness of a State's vehicle size and weight law program.
Frequency: Annually.
Burden Estimate: 4,160 hours.
Respondents: State highway agencies.
Form(s): None.
Average Burden Hours Per Respondent: 40 hours.
DOT No: 3515.
OMB No: 2132–0529.
Administration: Urban Mass Transportation Administration.
Title: Unified Planning Work Program (UPWP), Transportation Plan and the Transportation Improvement Program (TIP).
Need for Information: To describe transportation planning activities to be funded during the next two-year period using FHWA and UMTA funds.
Proposed Use of Information: The information is used for the grant review and approval process by State and Metropolitan Planning Organizations as the basis for making investment decisions and as a management tool regarding the use of Federal and non-Federal capital funds.
Frequency: Annually and biennially.
Burden Estimate: 294,768 hours.
Respondents: State and local governments and Metropolitan Organizations.
Form(s): None.
Average Burden Hours Per Respondent: 482 hours.
DOT No: 3516.
OMB No: 2133–0006.
Administration: Maritime Administration.
Title: Request for transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen-Owned Documented Vessels.
Need for Information: To comply with section 9, Shipping Act, 1916, as amended, which requires MARAD's approval of transfers.
Proposed Use of Information: To assist in determination as to whether vessel proposed for transfer is needed for retention under U.S. Flag.
Frequency: On occasion.
Burden Estimate: 550 hours.
Respondents: Businesses and Individuals.
Form(s): MA–29, MA–29A, and MA–29B.
Average Burden Hours Per Respondent: 2½ hours.
DOT No: 3517.
OMB No: New.
Administration: National Highway Traffic Safety Administration.
Title: Drug Offender's License Suspension Certification.
Need for Information: To encourage States to enact and enforce drug offenders's driver's license suspension.
Proposed Use of Information: To provide procedures to State highway construction grant recipients on how to certify compliance with the provisions of Public Law 101–215. The law requires a driver's license suspension, or revocation, for individuals convicted of any drug-related offense.
Frequency: Annually.
Burden Estimate: 260 hours.
Respondents: States.
Form(s): Forms HS–62, 62A, and 217 may be used; these forms are cleared under 2127–0003.
Average Burden Hours Per Respondent: 5 hours.
DOT No: 3518.
OMB No: 2127–0044.
Administration: National Highway Traffic Safety Administration.
Title: Names and Addresses of First Purchasers of Motor Vehicles.
Need for Information: To directly notify first purchasers of new motor vehicles in case there is a recall of their vehicle.
Proposed Use of Information: Motor vehicle manufacturers are required to

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record and retain the names and addresses of first purchasers of new motor vehicles, so that the manufacturer can directly notify those persons if their vehicle is recalled.

Frequency: On occasion.
Burden Estimate: 950,000 hours.
Respondents: Businesses.
Form(s): None.
Average Burden Hours Per Respondent: 3 minutes.

Issued in Washington, DC on June 24, 1991.

Cynthia C. Reed,
Director of Information Resource Management.

[FR. Doc. 91-15448 Filed 6-27-91; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

[File No. AC 21-XX]

Proposed Advisory Circular: Application Procedures for Alteration Approvals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Proposed Advisory Circular 21-XX and request for comments.

SUMMARY: This notice announces the availability of and requests comment on a proposed Advisory Circular (AC) 21-XX which describes the application procedures for alteration approvals performed using the field approval process. It also provides a method that may be used by applicants and FAA flight standards and type certification personnel to accomplish field approvals. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before August 27, 1991.

ADDRESSES: Comments on proposed AC 21-XX may be mailed or delivered to: Federal Aviation Administration; Policy and Procedures Branch (AIR-110); 800 Independence Avenue SW.; Washington, DC 20591. A copy of proposed AC 21-XX, Application Procedures for Alteration Approvals, may be obtained by writing to the above address.

FOR FURTHER INFORMATION CONTACT: Ms. T. Lynn Brown, Policy and Procedures Branch, AIR-110, at the address above, telephone (202) 267-9589.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the AC number and be submitted to the address specified above. All communications received on or before the closing date for comments will be considered before issuing AC 21-XX. Comments may be inspected at the above address between 8 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

The Federal Aviation Act of 1958 directs the Federal Aviation Administration (FAA) to promote safety of flight of civil aircraft in air commerce by prescribing and revising minimum standards governing the design, materials, workmanship, construction, and performance of aircraft, aircraft engines, and propellers. The Aircraft Certification Regulatory Program (ACRP) was developed to accomplish this mission. As part of the ACRP, the Aircraft Certification Service administers the aircraft alteration program to find compliance with the prescribed standards and to maintain certificate integrity (continued airworthiness).

Proposed AC 21-XX describes the alteration approval process. It also provides a method for accomplishing aircraft alternations. The draft AC is intended to provide guidance to the general public and to FAA flight standards and type certification personnel for administering the alteration approval process. The method of accomplishing the alteration approval process described in the AC is not mandatory. As such, the terms "shall" and "must" used in the AC pertain to an applicant who chooses to follow the method.

Issued in Washington, DC, on March 8, 1991.

John K. McGrath,
Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 91-15413 Filed 6-27-91; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-91-24]

Petitions for Exemption, Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior positions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 18, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 20, 1991.

Annette Pitts,
Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25918.
Petitioner: AFM Corporation dba Executive Jet Westfield.
Sections of the FAR Affected: 14 CFR 91.511(a)(2) and 135.165(b).
Description of Relief Sought: To extend Exemption No. 5112, which allows petitioner to operate specific aircraft in extended overwater operations using one long-range navigation system and one high-frequency communication system.

Dispositions of Petitions

Docket No.: 23465.
Petitioner: Everts Air Fuel, Inc.
Sections of the FAR Affected: 14 CFR 91.9(a) (old 91.31(a)).
Description of Relief Sought/Disposition: To extend Exemption No. 4296, as amended, which allows the operation of Douglas DC-6 cargo-only aircraft, N151 and N251CE, at a 5 percent increase of zero fuel weight and landing weight. *Grant, June 12, 1991, Exemption No. 4296C.*

Docket No.: 26169.
Petitioner: Clackamas County Sheriff's Department.
Sections of the FAR Affected: 14 CFR 61.113.
Description of Relief Sought/Disposition: To allow petitioner's Aero Squadron members to be reimbursed for fuel, oil, and maintenance while serving as pilot in command during Aero Squadron missions. *Grant, June 10, 1991, Exemption No. 5321.*

Docket No.: 26194.
Petitioner: Northeast Jet Company dba Private Jet Services.
Sections of the FAR Affected: 14 CFR 91.511(a)(1)(iv), 135.165 (a)(5) and (a)(6), and 135.165 (b)(5), (b)(6), and (b)(7).
Description of Relief Sought/Disposition: To allow petitioner to operate certain extended overwater flights with only one long-range navigation system and one high-frequency communications system. *Grant, May 23, 1991, Exemption No. 5314.*

Docket No.: 26200.
Petitioner: Security Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/Disposition: To allow pilots employed by petitioner to remove or replace passenger seats and/or medivac beds for aircraft used in part 135 operations. *Grant, June 5, 1991, Exemption No. 5319.*

Docket No.: 26440.
Petitioner: Falcon Jet Corporation.
Sections of the FAR Affected: 14 CFR 47.65 and 47.69(b).
Description of Relief Sought/Disposition: To allow petitioner to obtain a Dealer's Aircraft Registration Certificate without meeting the U.S. citizenship requirements and to conduct limited flights outside of the United States under a Dealer's Aircraft Registration Certificate. *Grant, May 30, 1991, Exemption No. 5315.*

Docket No.: 26464.
Petitioner: Av Atlantic Airline.
Sections of the FAR Affected: 14 CFR 121.359(c)(1).
Description of Relief Sought/Disposition: To allow petitioner to submit a request for approval of a retrofit schedule for approved windshear equipment after the June 1, 1990, deadline. *Grant, May 23, 1991, Exemption No. 5313.*

Docket No.: 26467.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 135.152(b).
Description of Relief Sought/Disposition: To allow U.S. regional airlines to operate the Shorts 330 aircraft in revenue service until May 1, 1991, without requiring those aircraft to be retrofitted with flight data recorders. *Denial, June 7, 1991, Exemption No. 5320.*

Docket No.: 26507.
Petitioner: Llano Estacado Soaring Society.
Sections of the FAR Affected: 14 CFR 61.3 and 91.203.
Description of Relief Sought/Disposition: To allow foreign-built gliders and foreign pilots to practice for and participate in the 15-meter National Soaring Championships from June 12 through 28, 1991, in Hobbs, New Mexico. *Partial Grant, May 23, 1991, Exemption No. 5306.*

Docket No.: 26510.
Petitioner: Enstrom Helicopter Corporation.
Sections of the FAR Affected: 14 CFR 47.65.
Description of Relief Sought/Disposition: To allow petitioner to obtain a Dealer's Aircraft Registration Certificate without meeting the U.S. citizenship requirements. *Grant, May 30, 1991, Exemption No. 5316.*

[FR Doc. 91-15414 Filed 6-27-91; 8:45 am]
BILLING CODE 4910-13-M

Emergency Evacustion Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on July 23, 1991, at 9 a.m. Arrange for oral presentations by July 16, 1991.

ADDRESSES: The meeting will be held in the Boardroom, Air Transport Association of America, 5th floor, New York Avenue NW., Washington, DC 20006-5206.

FOR FURTHER INFORMATION CONTACT: Ms. Marge Ross, Aircraft Certification Service (AIR-1), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Emergency Evacuation Subcommittee to be held on July 23, 1991, at the Air Transport Association of America Headquarters, 1709 New York Avenue NW., Washington, DC 20006-4000. The agenda for this meeting will include:

(1) A briefing from the Chair of the Performance Standards Working Group, which is considered whether new or revised standards for emergency evacuation can and should be stated in terms of safety performance, rather than as specific design requirements. The Chair will report on the organization and membership of the working group, the tasks completed thus far, the tasks planned for the future, and the timetable for completion of those tasks.

(2) A discussion of the presentation, consideration of new tasks resulting from those discussions, and the formation or modification of working groups to perform existing or new tasks identified during the discussion.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by July 16, 1991, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on June 21, 1991.

William J. Sullivan,
Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-15416 Filed 6-27-91; 8:45 am]
BILLING CODE 4910-13-M

Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory

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Committee Air Carrier/General Aviation Maintenance Subcommittee.

DATES: The meeting will be held on July 17, 1991, at 9 a.m. Arrange for oral presentations by July 10, 1991.

ADDRESSES: The meeting will be held in the DOT Headquarters building, 400 Seventh Street, SW., Washington, DC 20509, room 4234/36/38.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Renaud, Meeting Coordinator, Aircraft Maintenance Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-7461.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Carrier/General Aviation Maintenance Subcommittee to be held on July 17, 1991. The agenda for the committee will include discussions on rulemaking and/or guidance relating to establishment of current standard weights for passengers and baggage, development of a notice of proposed rulemaking (NPRM) for part 65 of the Federal Aviation Regulations (FAR), development of a NPRM for reporting requirements of §§ 121.703 and 121.705 of the FAR, development of an advisory circular for Special Federal Aviation Regulation (SFAR 36), and development of an NPRM and advisory circular for maintenance recordkeeping and retention of records.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before July 10, 1991, to present oral statements at the meeting. Written statements (75 copies) may be presented to the committee at any time through the meeting coordinator. Arrangements may be made by contacting the meeting coordinator listed under the heading "FOR FURTHER INFORMATION CONTACT."

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on June 24, 1991.

William J. White,

Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-15415 Filed 6-27-91; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket A-182]

Central Gulf Lines, Inc.; Remand of April 24, 1991 Decision of the Maritime Subsidy Board on Section 615 of the Merchant Marine Act, 1936, as Amended

Section 615 of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1185, temporarily enabled the grant of authorization to operators receiving or applying for operating-differential subsidy to construct, reconstruct, or acquire vessels of over five thousand deadweight tons in a foreign shipyard.

On November 10, 1961, the Maritime Subsidy Board (Board) made certain determinations with respect to implementation of section 615 among which was:

IX. Determined that the meaning of "acquire" as set forth in section 615 pertains to a vessel already under construction in a foreign shipyard or not yet delivered to the original vessel purchaser, e.g., a vessel on which title has not passed from the shipyard.

The Board authorized the assignment of three section 615 authorizations to Central Gulf Lines, Inc. (CGL) on April 1, 1987. On April 24, 1991, the Board modified its November 10, 1961, action to determine, with regard to the proposed use of the section 615 authorizations by CGL, that the term "acquire" in section 615 of the Act, does not preclude acquisition in a foreign shipyard of a modern technologically advanced existing vessel not more than 10 years of age that has been reconstructed or modified.

Parties objecting to the Board's April 24, 1991 decision—Liberty Maritime Corporation; Marine Transport Lines, Inc.; Afram Lines (USA), Ltd.; OMI Corp.; the Equity companies—requested Secretarial review.

The Secretary of Transportation on June 17, 1991, found that the petitioners raised issues that were not before the Board at the time of its decision and remanded the matter to the Board for further development of the record of the Board's action of April 24, 1991. The remand is without prejudice to the Board in whatever decision it may decide to make.

Any person, firm, or corporation having any interest in the subject matter and desiring to submit comments must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. The petitions for Secretarial review submitted by the above-named parties will be placed in this docket and considered by the Board on remand. Comments or further comments must be received no later than 5 p.m. on July 9, 1991. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

Dated: June 25, 1991.

By Order of the Maritime Subsidy Board.

James E. Saari,

Secretary.

[FR Doc. 91-15559 Filed 6-27-91; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 19-91]

Treasury Notes of June 30, 1993, Series AC-1993

June 20, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $12,500,000,000 of United States securities, designated Treasury Notes of June 30, 1993, Series AC-1993 (CUSIP No. 912827 B3 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 1, 1991, and will accrue interest from that date, payable on a semiannual basis on December 31, 1991, and each subsequent 6 months on June 30 and December 31 through the date that the principal becomes payable. They will mature June 30, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketplace securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Tuesday, June 25, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, June 24, 1991, and received no later than Monday, July 1, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g. 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price of each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, July 1, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, June 27, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the per

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amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-15400 Filed 6-25-91; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 20-91]

Treasury Notes of June 30, 1996, Series Q-1996

June 20, 1991.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $8,250,000,000 of United States securities, designated Treasury Notes of June 30, 1996, Series Q-1996 (CUSIP No. 912827 B4 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 1, 1991, and will accrue interest from that date, payable on a semiannual basis on December 31, 1991, and each subsequent 6 months on June 30 and December 31 through the date that the principal becomes payable. They will mature June 30, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, June 26, 1991, prior to 12:00 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1:00 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, June 25, 1991, and received no later than Monday, July 1, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par

4 Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, July 1, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, June 27, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-15401 Filed 6-25-91; 11:29 am]

BILLING CODE 4810-40-M

[Number: 102-12]

Delegation of Authority to the Senior Official

Date: June 21, 1991.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b) and 44 U.S.C. 3506, and pursuant to 5 CFR 1320.8, the Deputy Assistant Secretary for Information Systems is designated as the Department's senior official to carry out the Department's responsibilities under chapter 35 of title 44, United States Code.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 91-15396 Filed 6-27-91; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1990-Rev., Supp. No. 14]

Surety Companies Acceptable on Federal Bonds, Termination of Authority; United Southern Assurance Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to United Southern Assurance Company of Melbourne, Florida, under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 55 FR 27369, July 2, 1990.

With respect to any bonds currently in force with United Southern Assurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

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Dated: June 25, 1991.
Diane E. Clark,
Assistant Commissioner, Financial Information, Financial Management Service.
[FR Doc. 91-15470 Filed 6-27-91; 8:45 am]
BILLING CODE 4810-35-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of priority topics for the 1992 amendment cycle.

SUMMARY: The Commission is continuing its ongoing study of the implementation of the sentencing guidelines and has designated specific issues and projects for priority consideration over the course of the next year. Comment is requested on these issues. Additionally, in preparation for the 1992 amendment cycle that culminates in the submission to Congress of proposed guideline amendments no later than May 1, 1992, the Commission solicits comment on: (1) Additional areas of Commission study; (2) specific problem areas in guideline application; and (3) the adequacy of current training programs and informational materials.

DATES: Public comment for this information-gathering phase of the 1992 amendment cycle should be received by the Commission no later than August 31, 1991.

ADDRESSES: Comment should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue NW., suite 1400, Washington, DC 20004. Attn: Michael Courlander.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist (202) 628-8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise promulgated guidelines and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p).

The Commission is beginning the formal 1992 amendment process by soliciting comment on guideline issues and potential amendments early in the amendment cycle. This solicitation is in addition to the Commission's traditional formal publication of proposed amendments and amendment issues in the **Federal Register** that occurs after January 1st of each year.

To assist in setting priorities and allocating resources, the Commission requests comment on the following topics: (1) Problem areas in guideline application; (2) issues identified by the Commission and assigned to staff working groups; (3) additional issues for Commission study; (4) specific suggestions for amendments to the guidelines; and (5) adequacy of current training programs and informational materials.

As in past amendment cycles, the Commission intends to utitlize interdisciplinary staff working groups to comprehensively analyze designated priority issues using legal, research, monitoring, and training resources. The working groups will present the Commission with recommendations that may include improved training, amendments, statutory changes, and areas for further research and study. Because of the nature and scope of the issues under review, not every working group is designed to complete its work in time for action during the 1992 amendment cycle.

Currently, the Commission has formed working groups to study the following priority areas: (1) Acceptance of responsibility; (2) alternatives to imprisonment; (3) criminal history; (4) departures; (5) drug offenses (focusing primarily on the appropriateness of the role in the offense adjustment for less culpable offenders); (6) the Congressionally mandated four-year evaluation of the guidelines; (7) mandatory minimum sentencing statutes; (8) fine guidelines for organizations committing environmental offenses (and review of the environmental guidelines for invividual offenders); (9) and sexual offenses involving child victims.

As resources permit, the Commission also intends to establish working groups to address the following issues: fine guidelines for food and drug offenses committed by organizations; directives to the Commission concerning prison sentence implementation, immigration offenses, fraud offenses and other guidelines employing similarly-structured monetary tables, and review of the probation and supervised release revocation policy statements.

The Commission also intends to study discrete guideline topics such as money laundering and the Chapter Three grouping rules, but does not presently contemplate establishing formal staff working groups to address these issues.

Authority: 28 U.S.C. 994(o), (p).

William W. Wilkins, Jr.
Chairman.
[FR Doc. 91-15444 Filed 6-27-91; 8:45 am]
BILLING CODE 2210-40-M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee; Meetings

The Department of Veterans Affairs (VA) in accordance with Public Law 92-463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, July 10, 1991, at 2 p.m.
Wednesday, July 24, 1991, at 2 p.m.
Wednesday, August 7, 1991, at 2 p.m.
Wednesday, August 21, 1991, at 2 p.m.
Wednesday, September 4, 1991, at 2 p.m.
Wednesday, September 18, 1991, at 2 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 19, 1991.

By Direction of the Secretary.
Sylvia Chaves Long,
Committee Management Officer.
[FR Doc. 91-15465 Filed 6-27-91; 8:45 am]
BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 125
Friday, June 28, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:02 p.m. on Tuesday, June 25, 1991, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: FDIC Appointment of FDIC as Receiver of Insured State Depository Institutions.

The Board further determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum re: Changes to the Section 19 Policy Statement and Guidelines.

By the same majority vote, the Board further determined that no notice earlier than June 20, 1991, of these changes in the subject matter of the meeting was practicable.

Dated: June 26, 1991.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 91-15546 Filed 6-26-91; 10:24 am]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2), notice is hereby given that at its meeting held at 2:44 p.m. on Tuesday, June 25, 1991, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Director), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr. and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of a matter relating to the Corporation's corporate activities.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(2) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552 (b)(c)(2) and (c)(9)(B)).

Dated: June 26, 1991.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 91-15540 Filed 6-26-91; 10:24 am]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:03 a.m. on Wednesday, June 26, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the probable failure of a certain insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Mr. Jonathan Fiechter, acting in the place and stead of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 26, 1991.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 91-15506 Filed 6-26-91; 1:55 pm]
BILLING CODE 6714-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Office of the Inspector General Oversight Committee Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 28957.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on July 9, 1991. The meeting will commence at 9:30 a.m. in the Bryce Room of the Hyatt Regency Washington Hotel, 525 New Jersey Avenue, N.W., Washington, D.C.

CHANGES IN THE MEETING:

The meeting will commence at 8:15 a.m. on July 9, 1991;

The meeting will be held at the Hyatt Regency Washington Hotel at 400 New Jersey Avenue, N.W., Washington, D.C., not at 525 New Jersey Avenue, N.W. as previously announced;

The meeting will commence in the Concord Room; and

The minutes of the Office of the Inspector General Oversight Committee meeting of June 24, 1991 will be subject to approval, not the minutes of the June 3, 1991 meeting as previously announced.

PLACE: Hyatt Regency Washington, 400 New Jersey Avenue, N.W., The Concord Room, Washington, D.C. 20001, (202) 737-1234.

STATUS OF MEETING: Open [A portion of the meeting will be closed, pursuant to the following vote by a majority of the Board of Directors, to discuss personnel-related and personal matters as authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. 552b(c) (2) and (6)], and the corresponding regulations of the Legal Services Corporation [45 C.F.R. Sections 1622.5 (a) and (e)].

Board member	Vote
Howard Dana, Jr.	Yes.
J. Blakeley Hall	Yes.
Jo Betts Love	Yes.
Penny L. Pullen	Yes.
Thomas D. Rath	Yes.
Basile Uddo	Yes.
George W. Wittgraf	Yes.
Jeanine E. Wolbeck	Yes.

A portion of the meeting will be closed to preserve the applicants' personal privacy and to discuss strictly internal personnel rules and practices. Specifically, the Committee will interview candidates for the position of Inspector General in the closed session. Additionally, the Committee may resolve to recommend certain candidates interviewed by the Committee to the Board of Directors for further consideration by the Board of Directors for the position of Inspector General.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of June 24, 1991 Meeting.

Closed Session

3. Interview of Applicants for the Position of Inspector General of the Legal Services Corporation and Consider and/or Settle on Possible Recommendation to the Board of Directors Regarding Applicants to be Considered by the Board of Directors for Position of Inspector General.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863-1839.

Date Issued: June 26, 1991.
Patricia D. Batie,
Corporate Secretary.
[FR Doc. 91-15636 Filed 6-26-91; 3:31 pm]
BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Meeting Notice

TIME AND DATE: A meeting of the Board of Directors will be held on July 8, 1991. The meeting will commence at 9:00 a.m.

PLACE: Hyatt Regency Washington, 400 New Jersey Avenue, N.W., The Columbia "A" Room, Washington, D.C. 20001, (202) 737-1234.

STATUS OF MEETING: Open [A portion of the meeting will be closed pursuant to the following vote by a majority of the Board of Directors, to discuss personnel, privileged or confidential, personal, investigatory and litigation matters as authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. 552b (c)(2), (4), (5), (7), and (10), and the corresponding regulations of the Legal Services Corporation [45 C.F.R. Sections 1622.5 (a), (c), (d), (e), (f) and (h)].

Board Member	Vote
Howard Dana, Jr.	Yes
J. Blakeley Hall	Yes
Jo Betts Love	Yes
Penny L. Pullen	Yes
Thomas D. Rath	Yes
Basile Uddo	Yes
George W. Wittgraf	Yes
Jeanine E. Wolbeck	Yes

A portion of the meeting will be closed to preserve the personal privacy of the employees and applicants for positions, to discuss strictly internal personnel rules and practices, and to discuss matters related to ongoing investigations and litigation. Specifically, the Board of Directors will hear the Corporation's Acting General Counsel's report on pending litigation to which the Corporation is a party, and may discuss pending personnel actions, to include the status of the recruitment effort related to the position of Inspector General of the Legal Services Corporation. In addition, the Board of Directors may discuss matters related to current investigations being undertaken by the Corporation's Office of the Inspector General, as well as matters related to litigation in which the Corporation is involved.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes—April 29, 1991.
3. Chairman's Report.
4. President's Report.
5. Consideration of A Motion to Amend Resolution on Board Compensation Adopted on March 25, 1991.
6. Consideration of Report by Office of the Inspector General Oversight Committee.
7. Consideration of Legislative Report and Report by Special Reauthorization Committee.
8. Consideration of Report by Staff on Status of the Competition Study Authorized by the Board of Directors at its March 25, 1991 Meeting.
9. Consideration of Report by Staff on Status of Pending Regulations.
10. Consideration of Annual Meeting with Legal Services Project Representatives.
11. Consideration of Meeting Schedule of the Board of Directors for the Remainder of 1991.
12. Consideration of and, if necessary, Vote on Closure of a Portion of All or Some Meetings Scheduled in Item 11 of this Agenda.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863-1839.

Date Issued: June 26, 1991.
Patricia D. Batie,
Corporate Secretary.
[Fr Doc. 91-15637 Filed 6-26-91; 3:31 pm]
BILLING CODE 7050-01-M

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Corrections

Federal Register
Vol. 56, No. 125
Friday, June 28, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

7 CFR Part 1c

DEPARTMENT OF ENERGY

10 CFR Part 745

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1230

DEPARTMENT OF COMMERCE

15 CFR Part 27

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1028

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 225

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 60

DEPARTMENT OF JUSTICE

28 CFR Part 46

DEPARTMENT OF DEFENSE

32 CFR Part 219

DEPARTMENT OF EDUCATION

34 CFR Part 97

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 16

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 26

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

NATIONAL SCIENCE FOUNDATION

45 CFR Part 690

DEPARTMENT OF TRANSPORTATION

49 CFR Part 11

Federal Policy for the Protection of Human Subjects

Correction

In rule document 91-14258 beginning on page 28003, in the issue of Tuesday, June 18, 1991, make the following corrections:

§ ———.101 [Corrected]

1. On page 28012, in the third column, in § ———.101(b)(5), in the third line "of" should read "or".

§ ———.103 [Corrected]

2. On page 28014, in the third column, in § ———.103(f), in the ninth line"§ ———.03" should read "§ ———.103".

3. On page 28019, in the second column, in the first line "Dated: January 21, 1991.> should read "Dated: December 20, 1990.".

4. On page 28023, in the first column, in the second line from the bottom "need" should read "end".

5. On pages 28018-28023, the footnote reference (1) is added at the end of each separate agency's adopting statement (following the word "document." and preceding the CFR part heading). On page 28023 the footnote text set forth below is added at the end of the first column.

[1]Due to an error in the order of the document pages submitted to the Office of the Federal Register, the text of the common rule appears at the end of the common preamble for this document at page 28012.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 56

[Docket No. 87N-0032]

RIN 0905-AC52

Protection of Human Subjects; Informed Consent; Standards for Institutional Review Boards for Clinical Investigations

Correction

In rule document 91-14260 beginning on page 28025, in the issue of Tuesday, June 18, 1991, make the following corrections:

§ 56.107 [Corrected]

1. On page 28028, in the third column, in § 56.107(a), in the third line from the bottom "the" should read "and".

§ 56.108 [Corrected]

2. On page 28028, in the third column, in § 56.108, between the section heading and paragraph (a) insert "* * * * *".

BILLING CODE 1505-01-D

45 CFR Part 46

Federal Policy for the Protection of Human Subjects: Additional Protections for Children Involved as Subjects in Research

Correction

In rule document 91-14262 appearing on page 28032, in the issue of Tuesday, June 18, 1991, make the following correction:

§ 46.401 [Corrected]

On page 28032, in the third column, the section heading should read "§ 46.401 To what do these regulations apply?"

BILLING CODE 1505-01-D

[Docket No. 88N-0402]

Guidelines for the Assessment and Management of Iron Deficiency in Women of Childbearing Age; Report; Availability

Correction

In notice document 91-13987 beginning on page 27025, in the issue of Wednesday, June 12, 1991, make the following correction:

On page 27025, in the third column, in the "ADDRESSES", in the ninth line after "5285" insert "Port".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 86-496; FCC 91-136]

Satellite Communication Services

Correction

In rule document 91-12437 beginning on page 24014, in the issue of Tuesday, May 28, 1991, make the following correction:

§ 25.118 [Corrected]

On page 24019, in the second column, in the first line, the section heading "§ 25.188" should read "§ 25.118".

BILLING CODE 1505-01-D

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Part II

Committee for Purchase from the Blind and Other Severely Handicapped

41 CFR Part 51-1 et al.
Committee Regulations; Revisions; Proposed Rule

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COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Parts 51–1, 51–2, 51–3, 51–4, 51–5, 51–6, 51–7, 51–8, 51–9, and 51–10 (Ch. 51)

Revisions to Committee Regulations

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is intended to clarify and update the language of regulations governing the Committee for Purchase from the Blind and Other Severely Handicapped and its administration of the Javits-Wagner-O'Day (JWOD) Act. The rule states Government and Committee policy on implementation of the JWOD Act and the duties and responsibilities of the Committee, central nonprofit agencies, nonprofit agencies employing persons who are blind or have severe disabilities, and Government agencies in connection with the JWOD Program. Procedures for environmental analysis are revised in accordance with current guidance from the Council on Environmental Quality. The minimum figure below which fees will not be charged for processing requests under the Freedom of Information Act is changed. The proposed rule will lessen the administrative burden of operating the JWOD Program without increasing the burden on its participants.

DATES: Comments must be submitted on or before August 27, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly L. Milkman, (703) 557–1145. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: This proposed regulation is the result of an extensive review and update by the Committee of its regulations. The regulations have not been reviewed in this comprehensive a fashion since they were promulgated in 1973.

The proposed regulation reflects a general attempt to clarify regulatory language and reflect actual practice at this time. Obsolete references have been updated: e.g., "Department of Health, Education and Welfare" and "Defense Supply Agency" are now "Department of Education" and "Defense Logistics Agency." Except where quoting the Javits-Wagner-O'Day (JWOD) Act, terminology referring to the community the JWOD Program serves has been modernized as well and changed to reflect a "people first" orientation. "Workshop for the blind" and "workshop for the other severely handicapped," are now "nonprofit agency for the blind" and "nonprofit agency employing persons with severe disabilities." "National Industries for the Severely Handicapped" has been changed to "NISH" to reflect a name change effective May 1, 1991. The term "ordering office" has been deleted in favor of the more broadly defined "contracting activity."

Among the more significant changes made by this proposed regulation, part 51–1, General, has been revised to state at the very beginning of the regulations that it is the policy of the Government to increase employment and training opportunities for persons who are blind or have other severe disabilities through the JWOD Program, and that it is the policy of the Committee to encourage all Federal entities and employees to provide the necessary support to ensure that the JWOD Act is implemented in an effective manner. Part 51–1 has also been rearranged to put the discussion of mandatory source priorities ahead of the list of definitions.

Part 51–2 on Committee responsibilities has been expanded and rearranged to relate more clearly to the steps in the Procurement List addition process. A time limitation on submitting reconsideration requests has been added to § 51–2.6 on Committee reconsideration of Procurement List decisions. A new § 51–2.9 has been added to inform the public of the procedure for presentations at Committee meetings by persons interested in proposed additions to the Procurement List. This information is currently contained in an internal memorandum. In part 51–3 on central nonprofit agencies (CNAs), a new provision has been added to the list of CNA responsibilities under the JWOD Act to permit them to perform other administrative functions reasonably related to the JWOD Program but not specifically mentioned in the list (§ 51–3.2(m)).

Several changes have been made in part 51–4 on nonprofit agency responsibilities. The responsibility of a nonprofit agency to maintain assessments of a direct labor individual's ability to engage in normal competitive employment has been clarified in § 51–4.3. Section 51–4.4 on subcontracting has been changed to encourage subcontracting to other nonprofit agencies, as well as small businesses, and to provide additional guidance on the permissible limits of subcontracting portions of production processes for commodities on the Procurement List. Former § 51–4.5 on production of commodities has been deleted because the matter is addressed in one of the expanded provisions on suitability of an item for addition to the Procurement List, at § 51–2.4(c). Former § 51–4.6 has been renumbered to § 51–4.5 and changed to clarify the procedure for dealing with violations of nonprofit agency responsibilities and to state that removal from the JWOD Program is a possible penalty.

Part 51–5, Procurement Requirements and Procedures, which addresses requirements placed on Government contracting and ordering personnel by the JWOD Program, has been split into two parts reflecting the two areas it covers. The new part 51–5, Contracting Requirements, deals with general requirements, mandatory procurement, purchase exceptions, pricing, and related matters. A new part 51–6, Procurement Procedures, provides more order-specific guidance on matters such as orders and allocations, complaints and disputes, and specification changes for individual commodities and services.

Among the changes in the new part 51–5, the mandatory nature of JWOD procurements has been made clearer in § 51–5.2. Granting of purchase exceptions has been slightly restricted and the threshold for Committee approval of CNA action has been raised from $2,500 to $25,000, the current Government small purchase limitation (§ 51–5.4). Section 51–5.7 on payments for orders, which predates the Prompt Payment Act, has been brought into line with that Act. A new § 51–5.8 has been added to permit the Committee to investigate alleged violations of the JWOD Act or these regulations by Government entities.

The new part 51–6 clarifies guidance on the direct order and allocation processes, waivers of specifications, orders in excess of nonprofit agency capability, and deletions from the Procurement List. A new § 51–6.3 encourages the use of long-term ordering agreements. A new § 51–6.14 expands a former provision giving the Committee a role in quality complaints not resolved at a lower level to cover any disputes arising under the new part 51–6.

Creation of a new part 51–6 has required a renumbering of existing parts 51–6 through 51–9 as parts 51–7 through 51–10. The new part 51–7, Procedures for Environmental Analysis, is a complete rewrite of the existing part 51–6 following a model provided by the Council on Environmental Quality. It is expected to lessen the administrative burden in this area connected with Procurement List additions.

The only change in the text of the last three parts of the regulations appears at § 51–8.44(c), where the threshold for charging fees for requests under the Freedom of Information Act is lowered from $20 to $10, the threshold used by the General Services Administration, and the rationale for the threshold is stated in terms consistent with that Act.

I certify that this proposed revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revisions basically update and clarify program policies and procedures and do not essentially change the impact of the regulations upon small entities.

Paperwork Reduction Act

Sections 51–4.2 and 51–4.3 contain information collection and record keeping requirements. Although these requirements are unchanged from those in the current Committee regulations, which have been approved by the Office of Management and Budget (OMB), the Committee will submit a copy of these sections to OMB for its review as required by the Paperwork Reduction Act, 44 U.S.C. 3504(h).

Nonprofit agencies employing persons with severe disabilities throughout the United States may qualify to participate in the JWOD Program, which currently provides employment for nearly 19,000 Americans with severe disabilities. The Committee needs and uses the information submitted by these agencies and the records maintained by them to determine that they meet the regulatory requirements contained in the sections listed above. The annual public reporting and record keeping burden for this information collection by each nonprofit agency entering or participating in the JWOD Program is estimated at approximately six hours per agency, including the time for gathering the data needed and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection and record keeping requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

List of Subjects

41 CFR Part 51–1

Government procurement, Handicapped.

41 CFR Part 51–2

Organization and functions (Government agencies).

41 CFR Part 51–3

Government procurement, Handicapped.

41 CFR Part 51–4

Reporting and recordkeeping requirements.

41 CFR Part 51–5

Government procurement, Handicapped.

41 CFR Parts 51–6 and 51–7

Environmental impact statements.

41 CFR Part 51–8

Freedom of information.

41 CFR Part 51–9

Privacy.

41 CFR Part 51–10

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Handicapped.

Chapter 51 of title 41 of the Code of Federal Regulations is proposed to be amended as follows:

1. Parts 51–1 through 51–5 are revised to read as follows:

PART 51–1—GENERAL

Sec.

51–1.1 Policy.
51–1.2 Mandatory source priorities.
51–1.3 Definitions.

Authority: 41 U.S.C. 46–46c.

§ 51–1.1 Policy.

(a) It is the policy of the Government to increase employment and training opportunities for persons who are blind or have other severe disabilities through the purchase of commodities and services from qualified nonprofit agencies employing persons who are blind or have other severe disabilities. The Committee for Purchase from the Blind and Other Severely Handicapped (hereinafter the Committee) was established by the Javits-Wagner-O'Day Act, Public Law 92–28, 85 Stat. 77 (1971), as amended, 42 U.S.C. 46–48c (hereinafter the JWOD Act). The Committee is responsible for implementation of a comprehensive program designed to enforce this policy.

(b) It is the policy of the Committee to encourage all Federal entities and employees to provide the necessary support to ensure that the JWOD Act is implemented in an effective manner. This support includes purchase of products and services published on the Committee's Procurement List through appropriate channels from nonprofit agencies employing persons who are blind or have other severe disabilities designated by the Committee; recommendations to the Committee of new commodities and services suitable for addition to the Procurement List; and cooperation with the Committee and the central nonprofit agencies in the provision of such data as the Committee may decide is necessary to determine suitability for addition to the Procurement List.

§ 51–1.2 Mandatory source priorities.

(a) The JWOD Act mandates that commodities or services on the Procurement List required by Government entities be procured, as prescribed in this regulation, from a nonprofit agency employing persons who are blind or have other severe disabilities, at a price established by the Committee, if that commodity or service is available within the normal period required by that Government entity. Except as provided in paragraph (b) of this section, the JWOD Act has priority, under the provisions of 41 U.S.C. 48, over any other supplier of the Government's requirements for commodities and services on the Committee's Procurement List.

(b) Federal Prison Industries, Inc. has priority, under the provisions of 18 U.S.C. 4124, over nonprofit agencies employing persons who are blind or have other severe disabilities in furnishing commodities for sale to the Government. All or a portion of the Government's requirement for a commodity for which Federal Prison Industries, Inc. has exercised its priority may be added to the Procurement List. However, such addition is made with the understanding that procurement under the JWOD Act shall be limited to that portion of the Government's requirement for the commodity which is not available or not required to be procured from Federal Prison Industries, Inc.

(c) The JWOD Act requires the Committee to prescribe regulations providing that, in the purchase by the Government of commodities produced and offered for sale by qualified nonprofit agencies employing persons who are blind and nonprofit agencies employing persons who have other

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severe disabilities, priority shall be accorded to commodities produced and offered for sale by qualified nonprofit agencies for the blind. In approving the addition of commodities, to the Procurement List, the Committee accords priority to nonprofit agencies for the blind. Nonprofit agencies for the blind and nonprofit agencies employing persons with severe disabilities have equal priority for services.

§ 51-1.3 Definitions.

As used in this chapter:

Agency and *Federal agency* mean *Entity of the Government*, as defined herein.

Blind means an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle no greater than 20 degrees.

Central nonprofit agency means an agency organized under the laws of the United States or of any State, operated in the interest of the blind or persons with other severe disabilities, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual, and designated by the Committee to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for commodities and services on the Procurement List among nonprofit agencies employing persons who are blind or have other severe disabilities, to provide information required by the Committee to implement the JWOD Program, and to otherwise assist the Committee in administering these regulations as set forth herein by the Committee.

Committee means the Committee for Purchase from the Blind and Other Severely Handicapped.

Contracting activity means any element of an entity of the Government that has responsibility for identifying and/or procuring Government requirements for commodities or services. Components of a contracting activity, such as a contracting office and an ordering office, are incorporated in this definition, which includes all offices within the definitions of "contracting activity," "contracting office," and "contract administration office" contained in the Federal Acquisition Regulation, 48 CFR 2.101.

Direct labor means all work required for preparation, processing, and packing of a commodity or work directly related to the performance of a service, but not supervision, administration, inspection or shipping.

Fiscal year means the 12-month period beginning on October 1 of each year.

Government and *Entity of the Government* mean any entity of the legislative branch or the judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, and any nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

Interested person means an individual or legal entity affected by a proposed addition of a commodity or service to the Procurement List or a deletion from it.

JWOD Program means the program authorized by the JWOD Act to increase employment and training opportunities for persons who are blind or have other severe disabilities through Government purchasing of commodities and services from nonprofit agencies employing these persons.

Military resale commodities means commodities on the Procurement List sold for the private, individual use of authorized patrons of Armed Forces commissaries and exchanges, or like activities of other Government departments and agencies.

Nonprofit agency (formerly workshop) means a nonprofit agency for the blind or a nonprofit agency employing persons with severe disabilities, as appropriate.

Other severely handicapped and *severely handicapped individuals* (hereinafter persons with severe disabilities) mean a person other than a blind person who has a severe physical or mental impairment (a residual, limiting condition resulting from an injury, disease, or congenital defect) which so limits the person's functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is unable to engage in normal competitive employment over an extended period of time.

(1) Capability for normal competitive employment shall be determined from information developed by an ongoing evaluation program conducted by or for the nonprofit agency and shall include as a minimum, a preadmission evaluation and a reevaluation at least annually of each individual's capability for normal competitive employment.

(2) A person with a severe mental or physical impairment who is able to engage in normal competitive employment because the impairment has been overcome or the condition has been substantially corrected is not "other severely handicapped" within the meaning of the definition.

Participating nonprofit agency (formerly participating workshop) means any nonprofit agency which has been authorized by the Committee to furnish a commodity or service to the Government under the JWOD Act.

Procurement List means a list of commodities (including military resale commodities) and services which the Committee has determined to be suitable to be furnished to the Government by nonprofit agencies for the blind or nonprofit agencies employing persons with severe disabilities pursuant to the JWOD Act and these regulations.

Qualified nonprofit agency for other severely handicapped (hereinafter nonprofit agency employing persons with severe disabilities) (formerly workshop for other severely handicapped) means an agency organized under the laws of the United States or any State, operated in the interests of persons with severe disabilities who are not blind, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs persons with severe disabilities (including blind) for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services.

Qualified nonprofit agency for the blind (hereinafter nonprofit agency for the blind (formerly workshop for the blind) means an agency organized under the laws of the United States or of any State, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs blind individuals for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services.

State means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory remaining under the jurisdiction of the Trust Territory of the Pacific Islands.

PART 51-2—COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Sec.

51-2.1 Membership.
51-2.2 Powers and responsibilities.
51-2.3 Notice of proposed addition.
51-2.4 Determination of suitability.
51-2.5 Committee decision.
51-2.6 Reconsideration of Committee decision.
51-2.7 Fair market price.
51-2.8 Procurement list.
51-2.9 Oral presentations by interested persons at Committee meetings.

Authority: 41 U.S.C. 46-48c.

§ 51-2.1 Membership.

Under the JWOD Act, the Committee is composed of 15 members appointed by the President. There is one representative from each of the following departments or agencies of the Government: The Department of Agriculture, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Education, the Department of Commerce, the Department of Justice, the Department of Labor, the Department of Veterans Affairs, and the General Services Administration. Four members are private citizens: One who is conversant with the problems incident to the employment of blind individuals; one who is conversant with the problems incident to the employment of persons with other severe disabilities; one who represents blind individuals employed in qualified nonprofit agencies for the blind; and one who represents persons with severe disabilities (other than blindness) employed in qualified nonprofit agencies employing persons with severe disabilities.

§ 51-2.2 Powers and responsibilities.

The Committee is responsible for carrying out the following functions in support of its mission of providing employment and training opportunities for persons who are blind or have other severe disabilities and, whenever possible, preparing those individuals to engage in competitive employment:

(a) Establish rules, regulations, and policies to assure effective implementation of the JWOD Act.

(b) Determine which commodities and services procured by the Federal Government are suitable to be furnished by qualified nonprofit agencies employing persons who are blind or have other severe disabilities and add those items to the Committee's Procurement List. Publish notices of addition to the Procurement List in the **Federal Register**. Disseminate information on Procurement List items to Federal agencies. Delete items no longer suitable to be furnished by nonprofit agencies.

(c) Determine fair market prices for items added to the Procurement List and revise those prices in accordance with changing market conditions to assure that the prices established are reflective of the market.

(d) Monitor nonprofit agency compliance with Committee regulations and procedures.

(e) Inform Federal agencies about the JWOD Program and the statutory mandate that items on the Procurement List be purchased from qualified nonprofit agencies, and encourage and assist entities of the Federal Government to identify additional commodities and services that can be purchased from qualified nonprofit agencies. To the extent possible, monitor Federal agencies' compliance with JWOD requirements.

(f) Designate, set appropriate ceilings on fee paid to these central nonprofit agencies by nonprofit agencies selling items under the JWOD Program, and provide guidance to central nonprofit agencies engaged in facilitating the distribution of Government orders and helping State and private nonprofit agencies participate in the JWOD Program.

(g) Conduct a continuing study and evaluation of its activities under the Act for the purpose of assuring effective and efficient administration of the Act. The Committee may study, independently, or in cooperation with other public or nonprofit private agencies, problems relating to:

(1) The employment of the blind or individuals with other severe disabilities.

(2) The development and adaptation of production methods which would enable a greater utilization of these individuals.

(h) Provide technical assistance to the central nonprofit agencies and the nonprofit agencies to contribute to the successful implementation of the JWOD Act.

(i) Assure that nonprofit agencies employing persons who are blind will have priority over nonprofit agencies employing persons with severe disabilities in furnishing commodities.

§ 51-2.3 Notice of proposed addition.

At least 30 days prior to the Committee's consideration of the addition of a commodity or service to the Procurement List, the Committee publishes a notice in the **Federal Register** announcing the proposed addition and providing interested persons an opportunity to submit written data or comments on the proposed addition.

§ 51-2.4 Determination of suitability.

The Committee has established the following criteria, each of which must be satisfied, for determining if a commodity or service is suitable for addition to the Procurement List:

(a) *Employment potential.* The proposed addition must demonstrate a potential to generate employment for persons who are blind or have other severe disabilities.

(b) *Nonprofit agency qualifications.* The nonprofit agency (or agencies) proposing to furnish the item must qualify as a nonprofit agency serving persons who are blind or have other severe disabilities, as set forth in part 51-4 of this chapter.

(c) *Capability.* The nonprofit agency (or agencies) desiring to furnish a commodity or service under the JWOD program must satisfy the Committee as to the extent of the labor operations to be performed and that it will have the capability to meet Government quality standards and delivery schedules by the time it assumes responsibility for supplying the Government.

(d) *Fair market price.* The commodity or service will be provided at a fair market price under the procedures established by § 51-2.7.

(e) *Level of impact on the current or most recent contractor for the commodity or service.* In deciding whether or not a proposed addition to the Procurement List would have a severe adverse impact on the current or most recent contractor for the specific commodity or service, the Committee gives particular attention to:

(1) The possible impact on the contractor's sales. In addition, the Committee considers the effects of previous Committee actions.

(2) Whether that contractor has been a continuous supplier to the Government of the specific commodity or service proposed for addition and is, therefore, more dependent on the income from such sales to the Government.

(3) Any substantive comments received as the result of the notice of the proposed addition in the **Federal Register**.

§ 51-2.5 Committee decision.

The Committee considers the particular facts and circumstances in each case in determining if a commodity

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or service is suitable for addition to the Procurement List. When the Committee determines that a proposed addition to the Procurement List would have a severe adverse impact on a particular company, it takes this fact into consideration in deciding whether or not the commodity or service in question, or a portion of the Government requirement for it, should be added to the Procurement List. If the Committee decides to add a commodity or service to the Procurement List, that decision is announced in the Federal Register with a notice that includes information on the effective date of the addition.

§ 51-2.6 Reconsideration of Committee decision.

The Committee may reconsider its decision to add items to the Procurement List if it receives pertinent information which was not before it when it initially made the decision. Unless otherwise provided by the Committee, requests for reconsideration from interested persons must be received by the Committee within 60 days following the effective date of the addition in question. A request for reconsideration must include the specific facts believed by the interested person to justify a decision by the Committee to modify or reverse its earlier action.

§ 51-2.7 Fair market price.

The Committee is responsible for determining the fair market prices, and changes thereto, for commodities or services on the Procurement List. The Committee considers recommendations from the contracting activities and the central nonprofit agency concerned. Recommendations for fair market prices or changes thereto shall be submitted by the nonprofit agencies to the central nonprofit agency representing the nonprofit agency. Contracting activities should submit recommendations directly to the Committee. The central nonprofit agency shall analyze the data and submit a recommended fair market price to the Committee along with the detailed justification necessary to support the recommended price.

§ 51-2.8 Procurement list.

(a) The Committee maintains a Procurement List which includes the commodities and services which shall be procured by Government departments and agencies under the JWOD Act from the nonprofit agency(ies) designated by the Committee. Copies of the Procurement List, together with information on procurement requirements and procedures, are available to contracting activities upon request.

(b) For commodities, including military resale commodities, the Procurement List identifies the name and national stock number or item designation for each commodity, and where appropriate, any limitation on the portion of the commodity which must be procured under the JWOD Act.

(c) For services, the Procurement List identifies the type of service to be furnished, the Government department or agency responsible for procuring the service, and, where appropriate, the activity or item to be serviced.

(d) Additions to and deletions from the Procurement List are published in the Federal Register as they are approved by the Committee.

§ 51-2.9 Oral presentations by interested persons at Committee meetings.

(a) Upon written request from an interested person, that person may, at the discretion of the Committee Chair, be permitted to appear before the Committee to present views orally. Generally, only those persons who have raised significant issues which, if valid, could influence the Committee's decision in the matter under consideration will be permitted to appear.

(b) When the Chair has approved the appearance before the Committee of an interested person who has made a written request:

(1) The name of the spokesperson and the names of any other persons planning to appear shall be provided to the Committee staff by telephone at least three working days before the meeting.

(2) In the absence of prior authorization by the Chair, only one person representing a particular agency or organization will be permitted to speak.

(3) Oral statements to the Committee and written material provided in conjunction with the oral statements shall be limited to issues addressed in written comments which have previously been submitted to the Committee as the result of notice of proposed rulemaking in the Federal Register.

(4) Written material to be provided in conjunction with the oral presentation and an outline of the presentation shall be submitted to the Committee staff at least three working days before the meeting.

(c) The Committee may also invite other interested persons to make oral presentations at Committee meetings when it determines that these persons can provide information which will assist the Committee in making a decision on a proposed addition to the Procurement List. Terms of appearance of such persons shall be determined by the Chair.

PART 51-3—CENTRAL NONPROFIT AGENCIES

Sec.
51-3.1 General.
51-3.2 Responsibilities under the JWOD Program.
51-3.3 Assignment of commodity or service.
51-3.4 Distribution of orders.
51-3.5 Fees.
51-3.6 Reports to central nonprofit agencies.

Authority: 41 U.S.C. 46-48c.

§ 51-3.1 General.

Under the provisions of section 2(c) of the JWOD Act, the following are currently designated central nonprofit agencies: (a) To represent nonprofit agencies for the blind: National Industries for the Blind.

(b) To represent nonprofit agencies employing persons with other severe disabilities: NISH.

§ 51-3.2 Responsibilities under the JWOD Program.

Each central nonprofit agency shall:

(a) Represent its participating nonprofit agencies in dealing with the Committee under the JWOD Act.

(b) Evaluate the qualifications and capabilities of its nonprofit agencies and provide the Committee with pertinent data concerning its nonprofit agencies, their status as qualified nonprofit agencies, their manufacturing or service capabilities, and other information concerning them required by the Committee.

(c) Obtain from Federal contracting activities such procurement information as is required by the Committee to determine the suitability of a commodity or service being recommended to the Committee for addition to the Procurement List.

(d) Recommend to the Committee, with appropriate justification including recommended prices, suitable commodities or services for procurement from its nonprofit agencies.

(e) Distribute within the policy guidelines of the Committee (by direct allocation, subcontract, or any other means) orders from Government activities among its nonprofit agencies.

(f) Maintain the necessary records and data on its nonprofit agencies to enable it to allocate orders equitably.

(g) Oversee and assist its nonprofit agencies to insure contract compliance in furnishing a commodity or a service.

(h) As market conditions change, recommend price changes with appropriate justification for assigned commodities or services on the Procurement List.

(i) Monitor and inspect the activities of its nonprofit agencies to ensure compliance with the JWOD Act and appropriate regulations.

(j) When authorized by the Committee, enter into contracts with Federal contracting activities for the furnishing of commodities or services provided by its nonprofit agencies.

(k) At the time designated by the Committee, submit a completed, original copy of the appropriate Initial Certification (Committee Form 401 or 402) for the nonprofit agency concerned. This requirement does not apply to a nonprofit agency that is already authorized to furnish a commodity or service under the JWOD Act.

(l) Review and forward to the Committee by December 15 of each year a completed, original copy of the appropriate Annual Certification (Committee Form 403 or 404) for each of its participating nonprofit agencies covering the fiscal year ending the preceding September 30.

(m) Perform other JWOD administrative functions, including activities to increase Government and public awareness of the JWOD Act subject to the oversight of the Committee.

§ 51-3.3 Assignment of commodity or service.

(a) The assignment of a commodity or service to a central nonprofit agency for the purpose of evaluating its potential for possible future addition to the Procurement List shall be as agreed between the two central nonprofit agencies, except for commodities proposed by NISH when the National Industries for the Blind has exercised its priority. The Committee shall initially assign these commodities to the National Industries for the Blind.

(b) NISH, at the time it requests a decision from the National Industries for the Blind on the waiver or exercise of the blind priority for a commodity, shall provide to the National Industries for the Blind the procurement information necessary for the National Industries for the Blind to make a determination on the waiver or exercise of its priority. The National Industries for the Blind shall normally provide its decision within 30 days, but not later than 60 days after receipt of the essential procurement information it requires. The time for this decision may be extended beyond 60 days by mutual agreement between the two central nonprofit agencies. Disagreements on extensions shall be referred to the Committee for resolution.

(c) The National Industries for the Blind shall notify NISH and the Committee of its decision to exercise the blind priority and shall complete the essential steps to place the commodity on the Procurement List within nine months after the Committee is notified. The Committee may extend the nine-month period when the National Industries for the Blind has been delayed by conditions beyond its control. Upon expiration of the assignment period, the Committee shall reassign the commodity to NISH for development by its nonprofit agencies.

(d) The appropriate central nonprofit agency shall obtain a decision from the Federal Prison Industries on the waiver or exercise of its priority for commodities. Procurement information required by the Federal Prison Industries to make a determination on the waiver or exercise of its priority shall be provided by the central nonprofit agency at the time it requests the waiver. The Federal Prison Industries shall provide its decision to the central nonprofit agency within 30 days, but not later than 60 days after it receives the essential procurement information. The period for the decision may be extended beyond 60 days by mutual agreement between the Federal Prison Industries and the central nonprofit agency. Disagreements on extensions shall be referred by the central nonprofit agency to the Committee for resolution with the Federal Prison Industries.

(e) The central nonprofit agency shall provide to the Committee written documentation from the Federal Prison Industries indicating its decision on the waiver or exercise of its priority at the time it requests the addition of the commodity to the Procurement List. NISH shall also include the written decision from the National Industries for the Blind indicating its waiver of the blind priority.

§ 51-3.4 Distribution of orders.

Central nonprofit agencies shall distribute orders from the Government only to nonprofit agencies which the Committee has approved to furnish the specific commodity or service. When the Committee has approved two or more nonprofit agencies to furnish a specific commodity or service, the central nonprofit agency shall distribute orders among those nonprofit agencies in a fair and equitable manner.

§ 51-3.5 Fees.

The fees the central nonprofit agency shall charge nonprofit agencies for facilitating participation by their nonprofit agencies under the JWOD Act shall not exceed the fee limit approved by the Committee.

§ 51-3.6 Reports to central nonprofit agencies.

Any information, other than that contained in the Annual Certification required by § 51-4.3(a) of this chapter, which a central nonprofit agency requires its nonprofit agencies to submit on an annual basis, shall be requested separately from the Annual Certification. If the information is being sought in response to a request by the Committee, nonprofit agencies shall be advised of that fact and the central nonprofit agency shall, prior to distribution, provide to the Committee a copy of each form which it plans to use to obtain such information from its nonprofit agencies.

PART 51-4—NONPROFIT AGENCIES

Sec.
51-4.1 General.
51-4.2 Initial qualification.
51-4.3 Maintaining qualification.
51-4.4 Subcontracting.
51-4.5 Violations.

Authority: 41 U.S.C. 46-48c.

§ 51-4.1 General.

To participate in the program established by the JWOD Act, a nonprofit agency shall be represented by the central nonprofit agency assigned by the Committee on the basis of the nonprofit agency's articles of incorporation and bylaws.

§ 51-4.2 Initial qualification.

(a) To qualify for participation under the JWOD Act:

(1) Except as provided in paragraph (a)(2) of this section, a nonprofit agency shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the corporation or chief executive:

(i) A legible copy (preferably a photocopy) of the articles of incorporation showing the date of filing and the signature of an appropriate State official.

(ii) A copy of the bylaws certified by an officer of the corporation.

(iii) If the articles of incorporation or bylaws do not include a statement to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual, one of the following shall be submitted:

(A) A certified true copy of the State statute under which the nonprofit

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agency was incorporated which includes wording to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual.

(B) A copy of a resolution approved by the governing body of the corporation, certified by an officer of the corporation, to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual.

(2) A State-owned or State-operated nonprofit agency for persons who are blind or have other severe disabilities, or a nonprofit agency established or authorized by a State statute other than the State corporation laws and not privately incorporated, shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the wholly-owned State corporation or an official of the agency that directs the operations of the nonprofit agency, as applicable:

(i) A certified true copy of the State statute establishing or authorizing the establishment of nonprofit agency(ies) for persons who are blind or have other severe disabilities.

(ii) In the case of a wholly-owned State corporation, a certified true copy of the corporation bylaws; and, in the case of a State or local government agency, a certified true copy of implementing regulations, operating procedures, notice of establishment of the nonprofit agency, or other similar documents.

(b) The Committee shall review the documents submitted and, if they are acceptable, notify the nonprofit agency by letter, with a copy to its central nonprofit agency, that the Committee has verified its nonprofit status under the JWOD Act.

(c) A nonprofit agency shall submit two completed copies of the appropriate Initial Certification (Committee Form 401 or 402) to its central nonprofit agency at the time designated by the Committee. This requirement does not apply if a nonprofit agency is already authorized to furnish a commodity or service under the JWOD Act.

§ 51–4.3 Maintaining qualification.

(a) To maintain its qualification under the JWOD Act, each nonprofit agency authorized to furnish a commodity or a service shall continue to comply with the requirements of an "nonprofit agency for other severely handicapped" or a "nonprofit agency for the blind" as defined in § 51–1.3 of this chapter. In addition, each such nonprofit agency must submit to its central nonprofit agency by November 15 of each year, two completed copies of the appropriate Annual Certification covering the fiscal year ending the preceding September 30.

(b) In addition to paragraph (a) of this section, each nonprofit agency participating under the JWOD Act shall:

(1) Furnish commodities or services in strict accordance with Government orders.

(2) Comply with the applicable compensation, employment, and occupational health and safety standards prescribed by the Secretary of Labor.

(3) Comply with directives or requests issued by the Committee in furtherance of the objectives of the JWOD Act or its implementing regulations.

(4) Make its records available for inspection at any reasonable time to representatives of the Committee or the central nonprofit agency representing the nonprofit agency.

(5) Maintain records of direct labor hours performed in the nonprofit agency by each worker.

(6) Maintain a file on each blind individual performing direct labor which contains a written report reflecting visual acuity and field of vision of each eye, with best correction, signed by a person licensed to make such an evaluation.

(7) Maintain in the file for each blind individual performing direct labor annual reviews of ability to engage in normal competitive employment. These reviews must be signed by an individual qualified by training and/or experience to make this determination.

(8) Maintain an ongoing placement program operated by or for the nonprofit agency to include liaison with appropriate community services such as the State employment service, employer groups and others. Those individuals determined capable and desirous of normal competitive employment shall be assisted in obtaining such employment.

(9) Establish written procedures to encourage, where appropriate, filling of vacancies within the nonprofit agency by promotion of qualified employees who are blind or have other severe disabilities.

(10) Upon receipt of payment by the Government for commodities or services furnished under the JWOD Act, pay to the central nonprofit agency the fee not to exceed the limit authorized by the Committee under the authority of § 51–3.5 of this chapter.

(c) Each nonprofit agency employing persons with severe disabilities participating under the JWOD Act shall, in addition to the requirements of paragraphs (a) and (b) of this section, maintain in each individual with a severe disability's file:

(1) A written report signed by a licensed physician, psychiatrist, or qualified psychologist, as appropriate, reflecting the nature and extent of the disability or disabilities that cause such person to qualify as a person with a severe disability.

(2) Reports which state whether that individual is capable of engaging in normal competitive employment. These reports shall be signed by a person or persons qualified by training and experience to evaluate the work potential, interests, aptitudes, and abilities of persons with disabilities and shall normally consist of preadmission evaluations and reevaluations prepared at least annually. The file on individuals who have been in the nonprofit agency for less than two years shall contain the preadmission report and, where appropriate, the next annual reevaluation. The file on individuals who have been in the nonprofit agency for two or more years shall contain, as a minimum, the reports of the two most recent annual reevaluations.

(d) The information collection requirements of § 51–4.2 and § 51–4.3 and the record keeping requirements of § 51–4.3 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The information collection requirements have been assigned the following OMB control numbers:

Committee form	OMB control No.
Committee form 401	3037–0004
Committee form 402	3037–0003
Committee form 403	3037–0001
Committee form 404	3037–0002

The record keeping requirements have been assigned OMB control number 3037–0005.

§ 51–4.4 Subcontracting.

(a) Nonprofit agencies shall seek broad competition in the purchase of materials and components used in the commodities and services furnished to the Government under the JWOD Act. Nonprofit agencies shall inform the Committee, through their central nonprofit agency, before entering into multiyear contracts for materials or components used in the commodities and services furnished to the Government under the JWOD Act.

(b) Each nonprofit agency shall accomplish the maximum amount of subcontracting with other nonprofit agencies and small business concerns that the nonprofit agency finds to be consistent both with efficient performance in furnishing commodities or services under the JWOD Act and maximizing employment for persons who are blind or have other severe disabilities.

(c) Nonprofit agencies may subcontract a portion of the process for producing a commodity on the Procurement List provided that the portion of the process retained by the prime nonprofit agency generates employment for persons who are blind or have other severe disabilities.

(d) A nonprofit agency may not subcontract the entire production process for all or a portion of an order without the Committee's prior approval.

§ 51–4.5 Violations.

(a) Any alleged violations of these regulations by a nonprofit agency shall be investigated by the appropriate central nonprofit agency which shall notify the nonprofit agency concerned and afford it an opportunity to submit a statement of facts and evidence. The central nonprofit agency shall report its findings to the Committee, together with its recommendation. In reviewing the case, the Committee may request the submission of additional evidence or may conduct its own investigation of the matter. Pending a decision by the Committee, the central nonprofit agency concerned may be directed by the Committee to temporarily suspend allocations to the nonprofit agency.

(b) If a nonprofit agency fails to correct its violations of these regulations, the Committee, after affording the nonprofit agency an opportunity to address the Committee on the matter, may terminate the nonprofit agency's eligibility to participate in the JWOD Program.

PART 51–5—CONTRACTING REQUIREMENTS

Sec.

51–5.1 General.
51–5.2 Mandatory procurement.
51–5.3 Scope of requirement.
51–5.4 Purchase exceptions.
51–5.5 Prices.
51–5.6 Shipping and packing.
51–5.7 Payments.
51–5.8 Violations.

Authority: 41 U.S.C. 46–48c.

§ 51–5.1 General.

(a) Contracting activities are encouraged to assist the Committee and the central nonprofit agencies in identifying suitable commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities so that the Committee can attain its objective of increasing employment and training opportunities for individuals who are blind or have other severe disabilities. For items which appear to be suitable to be furnished by nonprofit agencies, the contracting activity should refer the candidate commodities and services to the Committee or a central nonprofit agency.

(b) Contracting activities shall provide the Committee and designated central nonprofit agencies with information needed to enable the Committee to determine whether a commodity or service is suitable to be furnished by a nonprofit agency. For commodities, information such as the latest solicitation and amendments, bid abstracts, procurement history, estimated annual usage quantities, and anticipated date of next solicitation issuance and opening may be needed. For services, similar information including the statement of work and applicable wage determination may be required. In order to assist in evaluating the suitability of an Office of Management and Budget Circular No. A–76 conversion, contracting activities should provide a copy of the draft statement of work and applicable wage determination to the central nonprofit agency upon its request.

§ 51–5.2 Mandatory procurement.

(a) Nonprofit agencies designated by the Committee are mandatory sources of supply for all Federal entities for commodities and services listed on the Procurement List, as provided in § 51–1.2 of this chapter.

(b) Purchases by Federal agencies shall be accomplished from sources listed in the Procurement List unless exception is authorized by the Committee.

(c) The Defense Logistics Agency (DLA), the General Services Administration (GSA), and the Department of Veterans Affairs (VA) are responsible for buying broad categories of common commodities from a central nonprofit agency or nonprofit agency(ies) and serve as the distribution agents thereof. Unless otherwise provided by the Committee, when a commodity is identified on the Procurement List as being available from DLA, GSA, or VA, Federal agencies shall order, and shall require other persons providing such commodities to them by contract to order, those commodities from the appropriate contracting agency in accordance with the requisitioning procedures of their agency.

(d) The Procurement List also identifies other Federal agencies with responsibility for purchasing commodities for contracting activities in their own agencies and, in some cases, contracting activities in other agencies and serving as the distribution agent thereof. In such cases, these contracting activities shall order, and shall require other persons providing such commodities to them by contract to order, the commodities from the appropriate contracting agency in accordance with the requisition procedures of their agency(ies).

(e) Commodities not available through paragraphs (c) or (d) of this section shall be ordered from the designated central nonprofit agency or nonprofit agency(ies).

(f) Procedures for obtaining military resale commodities are contained in § 51–6.4 of this chapter.

§ 51–5.3 Scope of requirement.

(a) When a commodity is included on the Procurement List, only the National Stock Number or item designation listed is covered by the mandatory requirement. In some instances, only a portion of the Government requirement for a National Stock Number or item designation is specified by the Procurement List. Where geographic areas, quantities, percentages or specific supply locations for a commodity are listed, the mandatory provisions of the JWOD Act apply only to the portion or portions of the commodity indicated by the Procurement List.

(b) For services, where an agency and location or geographic area are listed on the Procurement List, only the service for the location or geographic area listed must be procured from the nonprofit agency. Where no location or geographic area is indicated by the Procurement List, it is mandatory that the total Government requirement for that service be procured from a nonprofit agency.

§ 51–5.4 Purchase exceptions.

(a) A central nonprofit agency will normally grant a purchase exception for a contracting activity to procure from commercial sources commodities or services on the Procurement List when both of the following conditions are met:

(1) The central nonprofit agency or its nonprofit agency(ies) cannot furnish a commodity or service within the period specified, and

(2) The commodity or service is available from commercial sources in the quantities needed and significantly sooner than it will be available from the nonprofit agency(ies).

(b) The central nonprofit agency may grant a purchase exception when the quantity involved is not sufficient to be

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furnished economically by the nonprofit agency(ies).

(c) The Committee may also grant a purchase exception for the reasons set forth in paragraphs (a) and (b) of this section.

(d) The central nonprofit agency shall obtain approval of the Committee before granting a purchase exception when the value of the procurement is $25,000 or more.

(e) When the central nonprofit agency grants a purchase exception under the above conditions, it shall do so promptly and shall specify the quantities and delivery period covered by the exception.

(f) When a purchase exception is granted under paragraph (a) of this section:

(1) Contracting activities shall initiate purchase actions within 15 days following the date of the purchase exception. The deadline may be extended by the central nonprofit agency with, in cases of procurements of $25,000 or more, the concurrence of the Committee.

(2) Contracting activities shall furnish a copy of the solicitation to the appropriate central nonprofit agency at the time it is issued, and a copy of the annotated bid abstract upon awarding of the commercial contract.

(g) Any decision by a central nonprofit agency regarding a purchase exception may be appealed to the Committee by the contracting activity.

§51-5.5 Prices.

(a) The prices for items on the Procurement List are fair market prices established by the Committee.

(b) Prices for commodities, except for military resale commodities, are for delivery aboard the vehicle of the initial carrier at point of production (f.o.b. origin), and include applicable packaging, packing, and marking.

(c) Price changes for commodities and services shall usually apply to orders received by the nonprofit agency on or after the effective date of the change. In special cases, after considering the views of the contracting activity, the Committee may make price changes applicable to orders received by the nonprofit agency prior to the effective date of the change.

(d) To assist the Committee in revising the fair market prices for services on the Procurement List, upon request from the central nonprofit agency, the contracting activity should take the following actions:

(1) Submit to the Department of Labor in a timely fashion a request for wage determination rate.

(2) Provide a copy of the new wage determination rate or the Department of Labor document stating that the wage determination rate is unchanged and a completed Standard Form 98, "Notice of Intention to Make a Service Contract and Response to Notice," to the central nonprofit agency at least 90 days before the beginning of the new service period.

(3) Provide to the central nonprofit agency at least 90 days before the beginning of the new service period a copy of the statement of work applicable to the new service period.

(e) If a contracting activity desires packing, packaging, or marking of products other than the standard pack or as provided in the Procurement List, the difference in cost thereof, if any, shall be added as a separate item on the purchase order.

§51-5.6 Shipping and packing.

For commodities, except for military resale commodities, delivery is accomplished when a shipment is placed aboard the vehicle of the initial carrier. Time of delivery is the date shipment is released to and accepted by the initial carrier. Method of transportation to destination shall normally be by Government bills of lading. However, for small shipments, the contracting activity may designate another method of transportation on its order. When shipments are under Government bills of lading, the bills of lading may accompany orders or be otherwise furnished, but they shall be supplied promptly. Failure by a contracting activity to furnish bills of lading promptly, or to designate a method of transportation, may result in an excusable cause for delay in delivery. When the nonprofit agency pays for transportation to destination, these costs shall be included as a separate item on the nonprofit agency's invoice and the nonprofit agency shall be reimbursed by the contracting activity for these costs.

§ 51-5.7 Payments.

Payments for products or services of persons who are blind or have other severe disabilities shall be made within 30 days after shipment or receipt of a proper invoice or voucher.

§ 51-5.8 Violations.

Any alleged violations of the JWOD Act or these regulations by entities of the Government shall be investigated by the Committee, which shall notify the entity and afford it an opportunity to submit a statement.

PARTS 51-7—51-10 [REDESIGNATED FROM PARTS 51-6—51-9]

2. Parts 51-6 through 51-9 are redesignated as parts 51-7 through 51-10 and the cross references revised accordingly.

3. A new part 51-6 is added to read as follows:

PART 51-6—PROCUREMENT PROCEDURES

Sec.
51-6.1 Direct order process.
51-6.2 Allocation process.
51-6.3 Long-Term Ordering Agreements.
51-6.4 Military resale commodities.
51-6.5 Adjustment and cancellation of orders.
51-6.6 Request for waiver of specification requirement.
51-6.7 Orders in excess of nonprofit agency capability.
51-6.8 Deletion of items from the Procurement List.
51-6.9 Correspondence and inquiries.
51-6.10 Quality of merchandise.
51-6.11 Quality complaints.
51-6.12 Specification changes and similar actions.
51-6.13 Replacement commodities.
51-6.14 Disputes.

Authority: 41 U.S.C. 46-48c.

§ 51-6.1 Direct order process.

(a) Once a commodity or service is added to the Procurement List, the central nonprofit agency may authorize the contracting activity to issue orders directly to a nonprofit agency without requesting an allocation for each order. This procedure is known as the direct order process.

(b) In these cases, the central nonprofit agency shall specify the normal leadtime required for orders transmitted directly to the nonprofit agencies. This method shall be used whenever possible since it eliminates double handling and decreases the time required for processing orders.

(c) An order for commodities or services shall provide leadtime sufficient for purchase of materials, production or preparation, and delivery or completion.

(d) The central nonprofit agency shall keep the contracting activity informed of any changes in leadtime experienced by its nonprofit agencies in order to keep to a minimum requests for extensions once an order is placed. Where, due to unusual conditions, an order does not provide sufficient leadtime, the central nonprofit agency or the individual nonprofit agency may request an extension of delivery or completion date which should be granted, if feasible. If extension of delivery or completion date is not feasible, the contracting activity shall:

(1) Notify the central nonprofit agency and the individual nonprofit agency(ies) as appropriate.

(2) Request the central nonprofit agency to reallocate or to issue a purchase exception authorizing procurement from commercial sources as provided in 51-5.4 of this chapter.

(e) The contracting activity shall promptly provide to the central nonprofit agency concerned a copy of all orders issued to nonprofit agencies.

(f) The written direct order authorization remains valid until it is revoked by the central nonprofit agency.

§ 51-6.2 Allocation process.

(a) In those cases where a direct order authorization has not been issued as described in § 51-6.1, the contracting activity shall submit written requests for allocation to the appropriate central nonprofit agency indicated by the Procurement List at the address listed below:

Agency	Agency symbol
National Industries for the Blind, 1901 North Beauregard Street, Suite 200, Alexandria, Virginia 22311-1727.	IB
NISH, 2235 Cedar Lane, Vienna, Virginia 22182-5200.	SH

(b) Requests for allocations shall contain, as a minimum:

(1) For commodities. Name, stock number, latest specification, quantity, unit price, and place and time of delivery.

(2) For services. Type and location of service required, latest specification, work to be performed, estimated volume, and time for completion.

(c) Contracting activities shall request allocations in sufficient time for the central nonprofit agency to reply, for the order(s) to be placed, and for the nonprofit agencies to furnish the commodity or service (see paragraph (i) of this section).

(d) When a commodity on the Procurement List also appears on the Federal Prison Industries' "Schedule of Products," the contracting activity shall obtain clearance from the Federal Prison Industries prior to requesting an allocation or placing an order directly to the nonprofit agency(ies).

(e) The central nonprofit agency shall make allocations to the appropriate nonprofit agency(ies) upon receipt of a request from the contracting activity and instruct that the orders be forwarded to the central nonprofit agency or direct to the nonprofit agency(ies) with a copy provided promptly to the central nonprofit agency.

(f) Central nonprofit agencies shall reply promptly to requests for allocation. When a request for allocation provides a delivery schedule (based on established lead times and time required for processing the allocation request) which cannot be met, the central nonprofit agency shall request a revision, which the contracting activity should grant, if feasible, or the central nonprofit agency shall issue a purchase exception authorizing procurement from commercial sources as provided in § 51-5.4 of this chapter.

(g) An allocation is not an obligation to supply a commodity or service, or an obligation for the contracting activity to issue an order. Nonprofit agencies are not authorized to commence production until receipt of an order.

(h) Upon receipt of an allocation, the contracting activity shall promptly submit an order to the appropriate central nonprofit agency or designated nonprofit agency(ies). Where this cannot be done promptly, the contracting activity shall advise the central nonprofit agency and the nonprofit agency(ies) immediately.

(i) An order for commodities or services shall provide leadtime sufficient for purchase of materials, production or preparation, and delivery or completion.

(j) The central nonprofit agency shall keep the contracting activity informed of any changes in leadtime experienced by its nonprofit agency(ies) in order to keep to a minimum requests for extensions once an order is placed. Where, due to unusual conditions, an order does not provide sufficient leadtime, the central nonprofit agency or nonprofit agency may request an extension of delivery or completion date which should be granted, if feasible. If extension of delivery or completion date is not feasible, the contracting activity shall:

(1) Notify the central nonprofit agency and nonprofit agency(ies) as appropriate.

(2) Request the central nonprofit agency to reallocate or to issue a purchase exception authorizing procurement from commercial sources as provided in § 51-5.4 of this chapter.

(k) In those instances where the central nonprofit agency is the prime contractor rather than the nonprofit agency, the central nonprofit agency will designate the nonprofit agency(ies) authorized by the Committee to furnish definite quantities of commodities or specific services upon receipt of an order from the contracting activity.

§ 51-6.3 Long-term ordering agreements.

Contracting activities are encouraged to investigate long-term ordering agreements for commodities listed on the Procurement List to level off demand, thereby helping ensure stability of employment and development of job skills for persons who are blind or have other severe disabilities.

§ 51-6.4 Military resale commodities.

(a) Purchase procedures for ordering military resale commodities are contained in instructions issued by the designated central nonprofit agency and are available upon request from that agency. Military commissary stores, Armed Forces exchanges and like activities of other Government departments and agencies (authorized resale outlets) shall request the central nonprofit agency to designate the nonprofit agency to which orders will be forwarded.

(b) Authorized resale outlets shall stock military resale commodities in as broad a range as is practicable. Authorized resale outlets may stock items procured from commercial sources which are comparable to a military resale commodity, provided the military resale commodity is also stocked, except that in military commissary stores military resale commodities in the 900-series normally shall be stocked exclusively. The stocking of commercial items in military commissary stores which are comparable to 900-series military resale commodities shall be restricted to those individual items, on a store-by-store basis, for which there is a significant customer demand.

(c) The Defense Commissary Agency shall, after consultation with the Committee:

(1) Establish mandatory lists of military resale commodities to be stocked in commissary stores.

(2) Require the stocking in commissary stores of military resale commodities in both the 500-, 600- and 900-series in as broad a range as is practicable.

(3) Issue guidance to commissary store personnel to take those actions required to achieve the maximum sales potential of military resale commodities.

(4) Establish policies and procedures which reserve at a level not lower than its miltary commissary headquarters the authority to grant exceptions to the exclusive stocking of 900-series military resale commodities.

(d) The Defense Commissary Agency shall provide the Committee a copy of each directive which relates to the stocking of military resale commodities in commissary stores, including

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exceptions authorising the stocking of commercial items in competition with 900-series military resale commodities.

(e) The prices of military resale commodities include delivery to destination or, in the case of destinations overseas, to designated depots at ports of embarkation. Zone pricing is used for delivery to Alaska, Hawaii and Puerto Rico.

§ 51-6.5 Adjustment and cancellation of orders.

When the central nonprofit agency or an individual nonprofit agency fails to comply with the terms of a Government order, the contracting activity shall make every effort to negotiate an adjustment before taking action to cancel the order. When a Government order is canceled for failure to comply with its terms, the central nonprofit agency shall be notified, and, if practicable, requested to reallocate the order. The central nonprofit agency shall notify the Committee of any cancellation of an order and the reasons for that cancellation.

§ 51-6.6 Request for waiver of specification requirement.

(a) Nonprofit agencies and central nonprofit agencies are encouraged to recommend changes to specification requirements or request waivers where there are opportunitities to provide equal or improved products at a lower cost to the Government.

(b) A nonprofit agency shall not request a waiver of a specification requirement except when it is not possible to obtain the material meeting the specification or when other requirements contained in the specification cannot be met.

(c) Requests for waiver of specification shall be transmitted by the nonprofit agency to its central nonprofit agency.

(d) The central nonprofit agency shall review the request and the specification to determine if the request is valid and shall submit to the contracting activity only those requests which it has determined are necessary to enable the nonprofit agency to furnish the item.

(e) The central nonprofit agency request for waiver shall be transmitted in writing to the contracting activity. In addition, a copy of the request shall be transmitted to the Committee, annotated to include a statement concerning the impact on the cost of producing the item if the waiver is approved.

§ 51-6.7 Orders in excess of nonprofit agency capability.

(a) Nonprofit agencies are expected to furnish commodities on the Procurement List within the timeframes specified by the Government. The nonprofit agency must have the necessary production facilities to meet normal fluctuations in demand.

(b) Nonprofit agencies shall take those actions necessary to ensure that they can ship commodities within the time frames specified by the Government. In instances where the nonprofit agency determines that it cannot ship the commodity in the quantities specified by the required shipping date, it shall notify the central nonprofit agency and the contracting activity. The central nonprofit agency shall request a revision of the shipping schedule which the contracting activity should grant, if feasible, or the central nonprofit agency shall issue a purchase exception authorizing procurement from commercial sources as provided in 51-5.4 of this chapter.

§ 51-6.8 Deletion of items from the Procurement List.

(a) When a central nonprofit agency decides to request that the Committee delete a commodity or service from the Procurement List, it shall notify the Committee staff immediately. Before reaching a decision to request a deletion of an item from the Procurement List, the central nonprofit agency shall determine that none of its nonprofit agencies is capable and desirous of furnishing the commodity or service involved.

(b) Except in cases where the Government is no longer procuring the item in question, the Committee shall, prior to deleting an item from the Procurement List, determine that none of the nonprofit agencies of the other central nonprofit agency is desirous and capable of furnishing the commodity or service involved.

(c) Nonprofit agencies will normally be required to complete production of any orders for commodities on hand regardless of the decision to delete the item. Nonprofit agencies shall obtain concurrence of the contracting activity and the Committee prior to returning a purchase order to the contracting activity.

(d) For services, a nonprofit agency shall notify the contracting activity of its intent to discontinue performance of the service 90 days in advance of the termination date to enable the contracting activity to assure continuity of the service after the nonprofit agency's discontinuance.

§ 51-6.9 Correspondence and inquiries.

Routine contracting activity correspondence or inquiries concerning deliveries of commodities being shipped from or performance of services by nonprofit agencies employing persons who are blind or have other severe disabilities shall be with the nonprofit agency involved. Major problems shall be referred to the appropriate central nonprofit agency. In those instances where the problem cannot be resolved by the central nonprofit agency and the contracting activity involved, the contracting activity or central nonprofit agency shall notify the Committee of the problem so that action can be taken by the Committee to resolve it.

§ 51-6.10 Quality of merchandise.

(a) Commodities furnished under Government specification by nonprofit agencies employing persons who are blind or have other severe disabilities shall be manufactured in strict compliance with such specifications. Where no specifications exist, commodities furnished shall be of a quality equal to or higher than similar items available on the commercial market. Commodities shall be inspected utilizing nationally recognized test methods and procedures for sampling and inspection.

(b) Services furnished by nonprofit agencies employing persons who are blind or have other severe disabilities shall be performed in accordance with Government specifications and standards. Where no Government specifications and standards exist, the services shall be performed in accordance with commercial practices.

§ 51-6.11 Quality complaints.

(a) When the quality of a commodity received is not considered satisfactory by the using activity, the activity shall take the following actions as appropriate:

(1) For commodities received from Defense Logistics Agency supply centers, General Services Administration supply distribution facilities, Department of Veterans Affairs distribution division or other central stockage depots, or specifically authorized supply source, notify the supplying agency in writing in accordance with that agency's procedures. The supplying agency shall, in turn, provide copies of the notice to the nonprofit agency involved and its central nonprofit agency.

(2) For commodities received directly from nonprofit agencies employing persons who are blind or have other severe disabilities, address complaints to the nonprofit agency involved with a copy to the central nonprofit agency with which it is affiliated.

(b) When the quality of a service is not considered satisfactory by the contracting activity, it shall address

complaints to the nonprofit agency involved with a copy to the central nonprofit agency with which it is affiliated.

§ 51-6.12 Specification changes and similar actions.

(a) Specifications or other descriptions for commodities on the Procurement List may undergo a series of changes to keep current with industry changes and agency needs. Since it is not feasible to show the latest revision as of the publication date, only the basic specification or description is referenced in the Procurement List. Contracting activities shall notify the nonprofit agency and the central nonprofit agency concerned of any change to the applicable specification or description.

(b) When a Government entity is changing the specification or description of a commodity on the Procurement List, including a change that involves the assignment of a new national stock number or item designation, the office assigned responsibility for the action shall obtain the comments of the Committee and the central nonprofit agency concerned on the proposed change and shall notify the nonprofit agency and the central nonprofit agency concerned at least 90 days prior to placing an order for a commodity covered by the new specification or description.

(c) Similarly for services, the contracting activity shall notify the nonprofit agency and the central nonprofit agency concerned at least 90 days prior to the date that any changes in the statement of work or other conditions will be required.

(d) When, in order to meet emergency needs, a contracting activity is unable to give the 90-day notification required in paragraphs (b) and (c) of this section, the contracting activity shall, at the time it places the order or change notice, inform the nonprofit agency and the central nonprofit agency in writing of the reasons it cannot meet the 90-day notification requirement.

§ 51-6.13 Replacement commodities.

When a commodity on the Procurement List is replaced by another commodity which has not been previously procured, and a qualified nonprofit agency can furnish the replacement commodity in accordance with the Government's quality standards and delivery schedules at a fair market price, the replacement commodity is automatically considered to be on the Procurement List and shall be procured from the nonprofit agency designated by the Committee. The commodity being replaced shall continue to be included on the Procurement List until there is no longer a requirement for that commodity.

§ 51-6.14 Disputes.

Disputes between a nonprofit agency and a contracting activity arising out of matters covered by this part 51-6 should be resolved, where possible, by the contracting activity and the nonprofit agency, with assistance from the appropriate central nonprofit agency. Disputes which cannot be resolved by these parties shall be referred to the Committee for resolution.

4. Newly redesignated part 51-7 is revised to read as follows:

PART 51-7—PROCEDURES FOR ENVIRONMENTAL ANALYSIS

Sec.

51-7.1 Purpose and scope.
51-7.2 Early involvement in private, State, and local activities requiring Federal approval.
51-7.3 Ensuring environmental documents are actually considered in agency determinations.
51-7.4 Typical classes of action.
51-7.5 Environmental information.

Authority: 42 U.S.C. 4321 et seq.

§ 51-7.1 Purpose and scope.

(a) *Purpose.* This part implements the National Environmental Policy Act of 1969 (NEPA) and provides for the implementation of those provisions identified in 40 CFR 1507.3(b) of the regulations issued by the Council on Environmental Quality (CEQ) (40 CFR parts 1500-1508) published pursuant to NEPA.

(b) *Scope.* This part applies to all actions of the Committee for Purchase from the Blind and Other Severely Handicapped which may affect environmental quality in the United States.

§ 51-7.2 Early involvement in private, State, and local activities requiring Federal approval.

(a) 40 CFR 1501.2(d) requires agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some sort of Federal approval. Pursuant to the JWOD Act (41 U.S.C. 46-48c), the Committee for Purchase from the Blind and Other Severely Handicapped makes the determination as to which qualified nonprofit agency serving persons who are blind or have other severe disabilities will furnish designated products and services to the Government.

(b) To implement the requirements of 40 CFR 1501.2(d) with respect to these actions, the Committee staff shall consult as required with other appropriate parties to initiate and coordinate the necessary environmental analysis. The Executive Director shall determine on the basis of information submitted by private agencies and other non-Federal entities or generated by the Committee whether the proposed action is one that normally does not require an environmental assessment or environmental impact statement (EIS) as set forth in § 51-7.4, or is one that requires an environmental assessment as set forth in 40 CFR 1501.4.

(c) To facilitate compliance with these requirements, private agencies and other non-Federal entities are expected to:

(1) Contact the Committee staff as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their request;

(2) Conduct any studies which are deemed necessary and appropriate by the Committee to determine the impact of the proposed action on the human environment;

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;

(4) Submit applications for all Federal, regional, State and local approvals as early as possible in the planning process;

(5) Notify the Committee as early as possible of all other Federal, regional, State, local and Indian tribe actions required for project completion so the Committee may coordinate all Federal environmental reviews; and

(6) Notify the Committee of all known parties potentially affected by or interested in the proposed action.

§ 51-7.3 Ensuring environmental documents are actually considered in agency determinations.

(a) 40 CFR 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, the Committee staff shall:

(1) Consider all relevant environmental documents in evaluating proposals for agency action;

(2) Ensure that all relevant environmental documents, comments and responses accompany the proposal through the agency review processes;

(3) Consider only those alternatives discussed in the relevant environmental documents when evaluating proposals for agency action; and

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(4) Where an EIS has been prepared, consider the specific alternative analysis in the EIS when evaluating the proposal which is the subject of the EIS.

(b) For each of the Committee's actions authorized by the JWOD Act, the following list identifies the point at which the NEPA process begins, the point at which it ends, and the key agency official or office required to consider the relevant environmental documents as a part of their decision-making:

(1) Action: Request.

(2) Start of NEPA process: Upon receipt of request.

(3) Completion of NEPA process: When the deciding official reviews the proposal and makes a determination.

(4) Key official or office required to consider environmental document: When a positive determination is made under § 51-7.2(b), the applicant in conjunction with the Committee staff will prepare the necessary papers.

§ 51-7.4 Typical classes of action.

(a) 40 CFR 1507.3(b)(2) in conjunction with 40 CFR 1508.4 requires agencies to establish three typical classes of action for similar treatment under NEPA. These typical classes of action are set forth below:

(1) Actions normally requiring EIS: None.

(2) Actions normally requiring assessments but not necessarily EISs: Requests for actions for which determinations under § 51-7.2(b) are found to be affirmative.

(3) Actions normally not requiring assessments or EISs: Request for actions by nonprofit agencies through the central nonprofit agencies to add a commodity or service to the Committee's Procurement List.

(b) The Committee shall independently determine, by referring to 40 CFR 1508.27, whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, but where the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 51-7.5 Environmental information.

Interested parties may contact the Executive Director at (703) 557-1145 for information regarding the Committee's compliance with NEPA.

PART 51-9—PUBLIC AVAILABILITY OF AGENCY MATERIALS

5. The authority citation for newly redesignated part 51-6 continues to read as follows:

Authority: 5 U.S.C. 552.

6. Newly redesignated § 51-6.14 is amended by revising paragraph (c) to read as follows:

§ 51-6.14. Fee waivers and reductions.

* * * * *

(c) Fees shall be waived in all circumstances where the amount of the fee is $10 or less as the cost of collection would be greater than the fee.

Dated: June 17, 1991.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-14830 Filed 6-27-91; 8:45 am]

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Friday
June 28, 1991

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784, 816 and 817
Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784, 816 and 817

RIN 1029-AB40

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend portions of its permanent program regulations governing permanent and temporary impoundments at surface and underground mining operations. The revisions are in response to a court action, and for clarification.

The proposed rule, which concerns the design, construction and inspection requirements that apply to impoundments, would: (1) Incorporate by reference the U.S. Department of Agriculture, Soil Conservation Service publications, Technical Release No. 60 and Practice Standard 378; (2) Require stability and margin of safety requirements to be compatible with Technical Release No. 60; and (3) Relocate several related definitions.

DATES: Written comments: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on August 27, 1991.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; in Denver, Colorado, and in Knoxville, Tennessee on August 22, 1991. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on July 29, 1991. Individuals wishing to attend but not testify at any hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

ADDRESSES: Written comments: Hand-deliver to the OSM, Administrative Record, room 5131, 1100 L Street NW., Washington, DC; or mail to the OSM, Administrative Record, room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado; and the Hyatt, 500 Hill Avenue SE., Knoxville, Tennessee. The addressees for any hearings scheduled in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Robert A. Wiles, P.E., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1502 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures.
II. Background.
III. Discussion of Proposed Rule.
IV. Procedural Matters.

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "DATES") or delivered to an address other than those listed above (see "ADDRESSES") may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "DATES" and "ADDRESSES"). The dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the Federal Register at least 7 days prior to any hearings held in those locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Wiles (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5 p.m. Eastern time July 29, 1991. If no one has contacted Mr. Wiles to express interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act, or SMCRA), 30 U.S.C. 1201 *et seq.*, sets forth general regulatory requirements governing surface coal mining and the surface impacts of underground coal mining. Environmental protection performance standards for permanent water impoundments constructed during surface mining activities appear in section 515(b)(8) of the Act, 30 U.S.C. 1265(b)(8); provisions governing the construction of siltation structures, a type of impoundment, appear in section 515(b)(10)(B), 30 U.S.C. 1265(b)(10)(B). Sections 516(b) (9) and (10) of the Act, 30 U.S.C. 1266(b) (9) and (10), impose similar requirements for water impoundments and siltation structures that are used for underground mining activities, but provide that the Secretary shall make such modifications in the requirements as are necessary to accommodate the distinct differences between surface and underground mining.

In regulating impoundments OSM must coordinate its requirements with two other Federal agencies, the U.S. Soil Conservation Service (SCS) and the Mine Safety and Health Administration (MSHA).

SCS is part of the Department of Agriculture and has authority under the Watershed Protection and Flood Prevention Act (Pub. L. 83–566 (16 U.S.C. 1006)). SCS is responsible for cooperating with other agencies in the planning and carrying out works of improvement for soil conservation, and other purposes.

MSHA is part of the Department of Labor and has authority under the Federal Mine Safety and Health Amendments Act of 1977 (91 Stat. 1290; 30 U.S.C. 801). MSHA is responsible for developing, promulgating, and enforcing safety and health standards aimed at preventing and reducing mine accidents and occupational diseases in the mining industry.

OSM's regulations governing the design, construction and inspection of impoundments call upon criteria established by SCS and MSHA. SMCRA at section 515(b)(8)(B) specifically references SCS's Public Law 83–566 as a performance requirement that must be met in the design and construction of permanent impoundments. Numerous OSM regulations governing impoundments currently include MSHA regulations by reference.

OSM has defined "impoundment" at 30 CFR 701.5 to be any holding structure containing water, sediment, slurry, or other liquid or semi-liquid. OSM rules regulate both temporary and permanent impoundments. Sediment ponds and siltation structures are by current OSM definition specific types of impoundments.

The permanent regulatory program for surface coal mining and reclamation operations was promulgated on March 13, 1979 (44 FR 15312). Requirements for sedimentation ponds and siltation structures at surface mining activities were established at 30 CFR 816.46 (44 FR 15400), while those for underground mining at 30 CFR 817.46 (44 FR 15426) to implement the provisions of section 515(b)(10)(B) of the Act.

Requirements for permanent and temporary impoundments at surface mining activities and underground mining activities were established in the 1979 rules at 30 CFR 816.49 (44 FR 15401) and 30 CFR 817.49 (44 FR 15428), respectively to implement provisions of 515(b)(8) of the Act.

Permitting requirements for reclamation and operation plans for impoundments at surface mining activities and underground mining activities were established in the 1979 rules at 30 CFR 780.25 (44 FR 15360) and 30 CFR 784.25 (44 FR 15368), respectively.

During revisions to the permanent regulatory program in 1983, OSM replaced most of the specific design criteria in § 816.46 (48 FR 44051) and § 816.49 (48 FR 44004) with performance standards, thereby providing regulatory authorities greater flexibility in the details of impoundment design. Furthermore, section 816.46 was renamed "Hydrologic balance: Siltation Structures," to be consistent with the wording of section 515(b)(10)(B)(ii) of the Act and to reflect rule changes which provided for the use of certain siltation structures other than sedimentation ponds, such as chemical treatment facilities or mechanical structures that have a point-source discharge.

Upon issuance, the 1983 rulemaking for §§ 816.46 and 816.49 was challenged in the U.S. District Court for the District of Columbia in In Re: Permanent Surface Mining Regulation Litigation (II), No. 79–1144 (D.D.C. July 15, 1985) (In Re: Permanent (II)). The court remanded: (1) §§ 816.49(a)(3) and (a)(5)(i) on the basis that they included requirements for a static safety factor and for foundation investigation and laboratory testing of small sedimentation ponds without having included such requirements when the rule was proposed on June 21, 1982, as required by the Administrative Procedure Act; and (2) § 816.49 to the extent that they relied only on MSHA impoundment size classification standards when OSM had not justified reliance solely on such standards. Slip op. at 30–32 and 102–117. In addition, in response to plaintiff's challenge of the combination spillway requirement of § 816.49(a)(8), the Secretary of the Interior agreed to reexamine the issue and consider proposing a rule specifying that one spillway that can safely pass the design precipitation event may serve as a combination principal and emergency spillway. (*Id.* at 1538 and 1571–1572.)

On October 27, 1988 (53 FR 43584), OSM amended the permanent program regulations governing permanent and temporary impoundments at surface and underground mining operations. The 1988 rules incorporated design and performance requirements for impoundments and spillways that were based on MSHA criteria and SCS classification for class B and C structures. The 1988 rules also authorized the approval of sediment ponds that rely primarily on storage to control the runoff from the design precipitation event, as opposed to relying on both principal and emergency spillways.

30 CFR 816.49 of the 1988 rules on impoundments was challenged by environmental groups who incorrectly interpreted that the 1988 rules were based only on MSHA criteria. In its decision (United States District Court for the District of Columbia, Civil Action No. 88–3345, August 30, 1990), the Court noted the issue involved the interplay of two laws in addition to SMCRA. The laws are: (1) The Watershed Protection and Flood Prevention Act and rules issued under it by the U.S. SCS, including technical standards for the design and construction of impoundments found in Technical release (TR) 60 "Earth, Dams, and Reservoirs," and TR 378 "Ponds", and (2) the Federal MSHA and rules issued under it by the MSHA. SMCRA has a mandate to ensure that impoundments are as safe as those constructed under the watershed and flood law.

The Court found that the SCS standards referred to in the preamble to § 816.49(a)(3)(i) are the SCS class B and C dams. Furthermore, the Court stated "Indeed, in the Secretary's view, he has provided greater protection in this rule than does SCS because he mandated the stricter design standard when an impoundment meets either SCS's qualitative standard for B and C dams or the MSHA's size standard, which covers more impoundments than does the SCS's looser size standard."

The Court did note that a plain reading of the preamble may result in some ambiguity. Given that some misunderstanding of the requirements for impoundments existed, OSM now wishes to clarify the issue for all water impoundment's design, construction, and performance. In this context alone, OSM is proposing to reference specifically both SCS class B and C impoundments and MSHA impoundments in all rules at 30 CFR 780.25 and 816.49 where impoundment-related criteria are found.

Section 780.25 contains permit application requirements for reclamation plans dealing with impoundments and it is essential for these requirements to be consistent with the performance requirements in § 816.49.

III. Discussion of Proposed Rule

After consideration of the administrative record of these regulations; as well as the legislative history of the Act; the August 30, 1990, decision in the United States District Court for the District of Columbia; other opinions of the court; and in light of current technical information on impoundment design, construction, and inspection, OSM is proposing the following revisions to its permanent regulatory program. Consistent with its findings when promulgating the 1979, 1983, and 1988 rules, OSM has not identified any differences between impoundments for surface and underground mines that would appear to necessitate different regulatory provisions under this proposed rulemaking. Therefore, the proposed permitting rule applicable to impoundments for surface mining activities at 30 CFR 780.25 and the proposed rule for underground mining activities at 30 CFR 784.16 are identical. Similarly, the proposed performance rules for surface mining activities at 30

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CFR 816.46 and 816.49 are identical to the proposed rules for underground mining activities at 30 CFR 817.46 and 817.49, respectively.

Section 701.5 Definitions: Siltation Structure

The definition of siltation structure is being relocated to 30 CFR 701.5 and is identical to the definition previously found in 30 CFR 816.46(a)(1). The proposal would delete the definition of siltation structure at 30 CFR 816.46(a)(1) and establish the same definition for siltation structures at 30 CFR 701.5—Definitions. This would be an organizational change only. Section 701.5 already includes definitions of interrelated terms such as, impounding structure, impoundments, and sedimentation pond. Moving the definition of siltation structure from § 816.46(a)(1) to § 701.5 will centralize the location of these related definitions.

Section 701.5 Definitions: Other Treatment Facilities

The proposed definition of other treatment facilities, a term related to siltation structures, is similar to the definition currently found in 30 CFR 816.46(a)(3). The proposal would delete the definition at 30 CFR 816.46(a)(3) and establish a similar definition of other treatment facilities at 30 CFR 701.5. The proposed rule would also revise the definition by adding the words "neutralization" and "precipitators", to indicate common water quality treatment processes, and the phrase to comply with all applicable State and Federal water-quality laws and regulations. The addition of these words and the phrase to the definition will clarify that the purpose of other treatment facilities is for compliance with applicable water quality laws, as well as specifically for the prevention of additional contributions of dissolved or suspended solids to streamflow or off-site runoff. Changing the definition does not change the thrust of the OSM performance standards in 30 CFR 816.41–49. Moving the definition of other treatment facilities from § 816.46(a)(3) to § 701.5 centralizes OSM's definitions and logically follows the relocation of the definition of siltation structure.

Sections 780.25/784.16 Permitting Requirements for Reclamation Plans: Siltation Structures, Impoundments, Banks, Dams, and Embankments

Section 780.25 of OSM's permanent program regulations establishes permitting requirements applicable to the design of each siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. The proposed revisions to § 780.25 include editorial changes as described below and the addition of specific reference to the SCS criteria for dam classification found in their Technical Release No. 60 (TR–60). These changes are needed to ensure that the permitting requirements for impoundments are consistent with the performance standards for impoundments that are tied both to SCS standards and MSHA requirements.

For editorial purposes OSM proposes to revise § 780.25 and 780.25(a) by removing the word "Ponds" and replacing it with "Siltation structures". This revision makes the section title consistent with the broader classification of structures intended to be covered by § 780.25 and with similar changes proposed at § 816.46 that will be discussed later.

In § 780.25(a)(2) OSM proposes to reference the SCS dam classification in TR–60. This additional language will clarify the need for structures to be classified with respect to SCS criteria as well as the MSHA criteria already referenced in § 780.25(a)(2). This approach will insure that impoundments that do not meet the MSHA criteria in § 77.216(a) of this Chapter, but are determined to be Class B or C impoundments by SCS criteria in TR–60, shall comply with the more rigorous standards that apply to all impoundments that meet the above MSHA criteria.

OSM proposes to revise § 780.25(a)(3) by removing the reference to § 77.216(a) of this title and by replacing it with a reference to § 780.25(a)(2), where the SCS and MSHA impoundment classification criteria would both be located.

In § 780.25(b) OSM proposes to replace the phrase "sedimentation ponds" with "siltation structures" to be consistent with the revised title for the section. OSM also proposes to remove the last two sentences of § 780.25(b) because the same requirements already exist in 30 CFR 780.25(c) (1) and (2).

OSM proposes to revise § 780.25(c)(3) by removing the reference to section 77.216(a) of this title and the phrase "located where failure would not be expected to cause loss of life or serious property damage," and by replacing it with a reference to § 780.25(a)(2), where equivalent MSHA standards and SCS impoundment classification criteria are now located. This would be consistent with changes described above.

In § 780.25(f), OSM proposes to replace the phrase "is 20 feet or higher or impounds more than 20 acre-feet" with the phrase "meets the SCS Class B or C criteria for dams in TR–60 or meets the MSHA size or other criteria of § 77.216(a) of this chapter." This proposed revision will have the same effect as the existing regulations and make § 780.25(f) consistent with the regulation changes referencing structure classification previously discussed.

Sections 816.46/817.46 Hydrologic Balance: Siltation Structures

Section 816.46 of OSM's permanent program regulations establishes performance standards applicable to siltation structures. The proposed revisions would delete the definitions of siltation structures and other treatment facilities at § 816.46 (a)(1) and (a)(3) and establish similar definitions at § 701.5. This relocation of the definitions is an organizational change, the reason for which has been previously discussed.

In § 816.46(c)(2), OSM proposes to remove the spillway design requirements at § 816.46(c)(2) (i) through (iii) and replace those with reference to equivalent spillway design requirements in redesignated § 816.49(a)(9). The spillway design requirements in proposed § 816.49(a)(2) are the same as those in existing § 816.46(c)(2) (i) through (iii). Therefore, for clarity and conciseness, OSM is revising § 816.46(c)(2) to reference § 816.49(a)(9) and removing § 816.46(c)(2) (i) through (iii) instead of duplicating the same design requirements.

Section 816.49/817.49 Impoundments

Section 816.49 of OSM's permanent program regulations establishes performance standards for impoundments. The proposed revisions are to incorporate by reference specific criteria in the SCS Technical Release No. 60 (TR–60) and require impoundments meeting SCS Class B or C criteria in TR–60 to meet the same stability, spillway, foundation investigation, freeboard hydrography, inspection, and examination requirements as impoundments meeting MSHA criteria in § 77.216(a). The specific sections revised in 30 CFR 816.49 are summarized below. The rationale for those revisions as previously discussed is based on the August 30, 1990, decision in NWF v. Lujan and would achieve the necessary clarification.

OSM proposes to add new paragraph § 816.49(a)(1) which will incorporate by reference the SCS guidance document TR–60 as it specifically relates to minimum emergency spillway hydrologic criteria. This change requires the redesignation of existing paragraphs

in § 816.49(a). Paragraphs (a)(1) through (a)(12) will be redesignated as paragraphs (a)(2) through (a)(13) respectively.

Existing § 816.49(a)(1) would be redesignated as proposed § 816.49(a)(2).

Existing § 816.49(a)(2) would be redesignated as proposed § 816.49(a)(3).

Existing § 816.49(a)(3) would be redesignated as proposed § 816.49(a)(4). Proposed § 816.49(a)(4)(i) would add that impoundments meeting the SCS Class B or C criteria for dams in TR–60 would be subject to the requirements of this section. OSM also proposes to remove the phrase "located where failure would be expected to cause loss of life or serious property damage" because it would be a duplication of the SCS criteria.

In redesignated § 816.49(a)(4)(ii), OSM proposes to remove the reference to § 77.216(a) and replace it with a reference to § 816.49(a)(4)(i). This clarifies which safety factors are related to specific types of impoundment classification.

Existing § 816.49(a)(4) would be redesignated as proposed § 816.49(a)(5). OSM proposes to revise redesignated § 816.49(a)(5) by specifying that impoundments meeting the SCS Class B or C criteria for dams in TR–60 shall comply with the freeboard hydrography criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60, in order to be compatible with SCS requirements.

Existing § 816.49(a)(5) would be redesignated as proposed § 816.49(a)(6). In redesignated § 816.49(a)(6)(i), OSM proposes to conform the scope of this provision to the other paragraphs in this section by adding the phrase, "Class B or C for dams in TR–60, or" to the final sentence.

Existing § 816.49(a)(6) would be redesignated as proposed § 816.49(a)(7).

Existing § 816.49(a)(7) would be redesignated as proposed § 816.49(a)(8).

Existing § 816.49(a)(8) would be redesignated as proposed § 816.49(a)(9). OSM proposes to revise redesignated § 816.49(a)(9)(ii) by re-lettering paragraphs (a)(9)(ii) (A) and (B) to be paragraphs (a)(9)(ii) (B) and (C), respectively, and adding the spillway requirements for impoundments meeting the SCS Class B or C criteria for dams in TR–60 as paragraph (a)(9)(ii)(A).

Existing § 816.49(a)(9) would be redesignated as proposed § 816.49(a)(10).

Existing § 816.49(a)(10) would be redesignated as proposed § 816.49(a)(11). OSM proposes to revise redesignated § 816.49(a)(11)(iv) to clarify that impoundments meeting the SCS Class B or C criteria for dams in TR–60 like those meeting MSHA criteria may not be inspected by a registered land surveyor.

Existing § 816.49(a)(11) would be redesignated as proposed § 816.49(a)(12). OSM proposes to revise redesignated § 816.49(a)(12) to add the requirement that impoundments meeting the SCS Class B or C criteria for dams in TR–60 be examined in accordance with the requirements at § 77.216–3 of the MSHA rules. MSHA has proposed revisions to 30 CFR 77.216–3 (June 15, 1990 (55 FR 24526)) to allow water, sediment, or slurry impoundments and impounding structures to be inspected less frequently than once every 7 days as currently required. The MSHA proposal would allow the MSHA District Manager to approve alternate inspection frequencies. MSHA proposes to extend the time between inspections for low hazard potential structures with a demonstrated history of structural stability. OSM agrees with MSHA's proposed revisions to 30 CFR 77.216–3 but does need to modify its proposed regulatory text for 30 CFR 816.49(a)(12) to be consistent with the MSHA proposal at this time. If MSHA promulgates final regulations, OSM would allow the regulatory authorities in lieu of MSHA District Managers to approve alternate inspection frequencies for SCS Class B or C impoundments not regulated by MSHA. OSM also intends to have the regulatory authority use the same criteria (low hazard potential and a demonstrated history of structural stability) adopted by MSHA. A final OSM rule would reflect such a procedure. Existing § 816.49(a)(12) would be redesignated as proposed § 816.49(a)(13).

OSM proposes to revise § 816.49(c)(2)(i), dealing with requirements for temporary impoundments, by adding the requirement that impoundments meeting the SCS Class B or C criteria for dams in TR–60 as well as impoundments meeting the size or other criteria of § 77.216(a) of this title, shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour or greater event specified by the regulatory authority.

OSM proposes to revise § 816.49(c)(2)(ii) by referencing paragraph (c)(2)(i) and thus identify which impoundments must meet the requirements of paragraph (c)(2)(ii).

IV. Procedural Matters

Federal Paperwork Reduction Act

The proposed rule does not contain new information collection requirements which require approval by the Office of Management and Budget in accordance with 44 U.S.C. 3501 *et seq.*

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule would affect a relatively small number of surface coal mining operations. The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor, and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made a tenative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSM Administrative Record at the address specified previously (see "ADDRESSES"). An EA of the final rule will be completed and a final finding made on the significance of any impacts prior to promulgation of the final rule.

Author

The principal author of this rule is Donald E. Stump Jr., P.E., OSM, Ten Parkway Center, Pittsburgh, PA 15220; Telephone: 412–937–2164 (Commercial); 726–2164 (FTS 2000).

List of Subjects

30 CFR Part 701

Law Enforcement, Surface mining, Underground mining.

30 CFR Part 780

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

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Accordingly it is proposed to amend 30 CFR parts 701, 780, 784, 816, and 817 as set forth below.

Dated: April 25, 1991.

David C. O'Neal,

Assistant Secretary for Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 et seq.), and Pub. L. 100–34.

2. Section 701.5 is amended by adding the definition "other treatment facilities" and transferring the definition "siltation structure" from § 816.46(a)(1).

§ 701.5 Definitions.

* * * * *

Other treatment facilities means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(1) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(2) To comply with all applicable State and Federal water-quality laws and regulations.

* * * * *

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

3. The authority citation for part 780 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 et seq., as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; 16 U.S.C. 470 et seq.; and Pub. L. 100–34.

4. Section 780.25 is amended by revising the section heading and introductory text of paragraph (a), and by revising paragraphs (a)(2) introductory text, (a)(3) introductory text, (b), (c)(3), and the first sentence of paragraph (f) to read as follows:

§ 780.25 Reclamation plan: Siltation structures, impoundments, banks, dams, and embankments.

(a) *General.* Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) * * *

(2) Each detailed design plan for a structure that meets the U.S. Soil Conservation Service Class B or C criteria for dams in SCS Technical Release No. 60 (TR–60), or meets or exceeds the size or other criteria of the Mine Safety and Health Administration, § 77.216(a) of this title shall:

* * * * *

(3) Each detail design plan for structures not included in paragraph (a)(2) of this section shall:

* * * * *

(b) *Siltation structures.* Siltation structures shall be designed in compliance with the requirements of § 817.46 of this chapter.

(c) * * *

(3) For impoundments not included in paragraph (a)(2) of this section the regulatory authority may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in § 816.49(a)(3)(ii) of this chapter.

* * * * *

(f) If the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of § 77.216(a) of this title, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of the structure.* * *

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

5. The authority citation for part 784 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 et seq., as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; 16 U.S.C. 470 et seq.; and Pub. L. 100–34.

6. Section 784.16 is amended by revising the section heading and introductory text of paragraph (a), and by revising paragraphs (a)(2) introductory text, (a)(3) introductory text, (b), (c)(3), and the first sentence of paragraph (f) to read as follows:

§ 784.16 Reclamation plan: Siltation structures, impoundments, banks, dams, and embankments.

(a) *General.* Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) * * *

(2) Each detailed design plan for a structure that meets the U.S. Soil Conservation Service Class B or C criteria for dams in SCS Technical Release No. 60 (TR–60), or meets or exceeds the size or other criteria of the Mine Safety and Health Administration, § 77.216(a) of this title shall:

* * * * *

(3) Each detailed design plan for structures not included in paragraph (a)(2) of this section shall:

* * * * *

(b) *Siltation structures.* Siltation structures shall be designed in compliance with the requirements of § 817.46 of this chapter.

(c) * * *

(3) For impoundments not included in paragraph (a)(2) of this section the regulatory authority may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in § 816.49(a)(3)(ii) of this chapter.

* * * * *

(f) If the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of § 77.216(a) of this title, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of the structure.* * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

7. The authority citation for part 816 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 et seq., as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; and Pub. L. 100–34.

§ 816.46 [Amended]

8. In § 816.46, the following changes are made:

a. The designation (a)(1) and paragraph (a)(3) are removed;

b. The designation (a)(2) is removed and the text is added to the existing text of paragraph (a); and

c. New paragraphs (a) (i) and (ii) are redesignated as paragraphs (a) (1) and (2).

9. Section 816.46 is amended by revising paragraph (c)(2) to read as follows:

§ 816.46 Hydrologic balance: Siltation structures.

* * * * *

(c) * * *

(2) *Spillways.* A sedimentation pond shall include either a combination of principal and emergency spillways or single spillway configured as specified in § 816.49(a)(9).

* * * * *

10. Section 816.49 is amended by redesignating paragraphs (a)(1) through (a)(12) as paragraphs (a)(2) through (a)(13), respectively, and adding new paragraph (a)(1) to read as follows:

§ 816.49 Impoundments.

(a) * * *

(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (TR–60), 'Earth Dams and Reservoirs,' 1985 shall comply with 'Minimum Emergency Spillway Hydrologic Criteria' table in TR–60 and the requirements of this section. The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal, Springfield, Virginia 22161, order No. PB 87–1517509/AS. Copies can be inspected at the OSM Headquarters Office, Administrative Records, U.S. Department of the Interior, 1100 L Street NW., room 5131, Washington, DC, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

* * * * *

11. Section 816.49 is amended by revising newly designated paragraph (a)(4) to read as follows:

§ 816.49 Impoundments.

(a) * * *

(4) *Stability.* (i) An Impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of § 77.216(a) of this title shall have a minimum static safety factor of 1.5 for normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not included in paragraph (a)(4)(i) of this section, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 780.25(c)(3) of this chapter.

* * * * *

12. Section 816.49 is amended by adding the following sentence to end of newly designated paragraph (a)(5) to read as follows:

§ 816.49 Impoundments.

(a) * * *

(5) * * * Impoundments meeting the Class B or C criteria for dams in TR–60 shall comply with the freeboard hydrograph criteria in the Minimum Emergency Spillway Hydrologic Criteria table in TR–60.

* * * * *

13. Section 816.49 is amended by revising the second sentence of newly designated paragraph (a)(6)(i) to read as follows:

§ 816.49 Impoundments.

(a) * * *

(6) * * * (i) * * * For an impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of § 77.216(a) of this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

* * * * *

14. Section 816.49 is amended by revising newly designated paragraphs (a)(9)(ii) (A) and (B) and by adding a new paragraph (a)(9)(ii)(C) as follows:

§ 816.49 Impoundments.

(a) * * *

(9) * * *

(ii) * * *

(A) For an impoundment meeting the Class B or C criteria for dams in TR–60, the emergency spillway hydrograph criteria in the Minimum Emergency Spillway Hydrologic Criteria table in TR–60, or greater event as specified by the regulatory authority.

(B) For an impoundment meeting or exceeding the size or other criteria of § 77.216(a) of this title, a 100-year 6-hour event, or greater event as specified by the regulatory authority.

(C) For an impoundment not included in paragraphs (a)(9)(ii) (A) and (B) of this section, a 25-year 6-hour or greater event as specified by the regulatory authority.

* * * * *

15. Section 816.49 is amended by revising the first sentence of newly designated paragraph (a)(11)(iv) to read as follows:

§ 816.49 Impoundments.

(a) * * *

(11) * * *

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in TR–60, or the size or other criteria of § 77.216(a) of this title and certify and submit the report required by paragraph (a)(11)(ii) of this section, except that all coal mine waste impounding structures covered by § 816.84 shall be certified by a qualified registered professional engineer. * * *

* * * * *

16. Section 816.49 is amended by revising newly designated paragraph (a)(12) to read as follows:

§ 816.49 Impoundments.

(a) * * *

(12) Impoundments meeting the SCS Class B or C criteria for dams in TR–60, or the size or other criteria of § 77.216 of this title must be examined in accordance with § 77.216–3 of this title. Impoundments not meeting the SCS Class B or C criteria for dams in TR–60, or subject to § 77.216 of this title, shall be examined at least quarterly. All examinations must be done by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions.

* * * * *

17. Section 816.49 is amended by revising paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 816.49 Impoundments.

* * * * *

(c) * * *

(2) * * *

(i) Impoundments meeting the SCS Class B or C criteria for dams in TR–60, or the size or other criteria of § 77.216(a) of this title shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the regulatory authority.

(ii) Impoundments not included in paragraph (c)(2)(i) of this section shall be designed to control the precipitation of the 100-year 6-hour event, or greater event specified by the regulatory authority.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

18. The authority citation for part 817 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 et seq., as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; and Pub. L. 100–34.

§ 817.46 [Amended]

19. In § 817.46, the following changes are made:

a. Paragraphs (a)(1) and (a)(3) are removed;

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b. The designation (a)(2) is removed and the text is added to the existing text of paragraph (a); and

c. New paragraphs (a)(i) and (ii) are redesignated as paragraphs (a)(1) and (2).

20. Section 817.46 is amended by revising paragraph (c)(2) to read as follows:

§ 817.46 Hydrologic balance: Siltation structures.

* * * * *

(c) * * *

(2) *Spillways.* A sedimentation pond shall include either a combination of principal and emergency spillways or single spillway configured as specified in § 817.49(a)(9).

21. Section 817.49 is amended by redesignating paragraphs (a)(1) through (a)(12) as paragraphs (a)(2) through (a)(13), respectively and adding new paragraph (a)(1) to read as follows:

§ 817.49 Impoundments.

(a) * * *

(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (TR–60), 'Earth Dams and Reservoirs,' 1985 shall comply with the, 'Minimum Emergency Spillway Hydrologic Criteria,' table in TR–60 and the requirements of this section. The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87–1517509/AS. Copies can be inspected at the OSM Headquarters Office, Administrative Records, U.S. Department of the Interior, 1100 L Street NW., room 5215 Washington, DC, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

* * * * *

22. Section 817.49 is amended by revising newly designated paragraph (a)(4) to read as follows:

§ 817.49 Impoundments.

(a) * * *

(4) *Stability.* (i) An Impoundment meeting the SCS Class B or C criteria for dams in TR–60, or the size or other criteria of § 77.216(a) of this title shall have a minimum static safety factor of 1.5 for normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not included in paragraph (a)(4)(i) of this section, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 784.16(c)(3) of this chapter.

* * * * *

23. Section 817.49 is amended by adding a new sentence to the end of newly designated paragraph (a)(5) to read as follows:

§ 817.49 Impoundments.

(a) * * *

(5) * * * Impoundments meeting the SCS Class B or C criteria for dams in TR–60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60.

* * * * *

24. Section 817.49 is amended by revising the last sentence of newly designated paragraph (a)(6)(i) to read as follows:

§ 817.49 Impoundments.

(a) * * *

(6) * * *

(i) * * * For an impoundment meeting the SCS Class B or C criteria for dams in TR–60, or the size or other criteria of § 77.216(a) of this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

* * * * *

25. Section 817.49 is amended by revising newly designated paragraphs (a)(9)(ii)(A) and (a)(9)(ii)(B); and by adding a new paragraph (a)(9)(ii)(C) as follows:

§ 817.49 Impoundments.

(a) * * *

(9) * * *

(ii) * * *

(A) For an impoundment meeting the SCS Class B or C criteria for dams in TR–60, the emergency spillway hydrograph criteria in the Minimum Emergency Spillway Hydrologic Criteria table in TR–60, or greater event as specified by the regulatory authority.

(B) For an impoundment meeting or exceeding the size or other criteria of § 77.216(a) of this title, a 100-year 6-hour event, or greater event as specified by the regulatory authority.

(C) For an impoundment not included in paragraph (a)(9)(ii) (A) and (B) of this section, a 25-year 6-hour event, or greater event as specified by the regulatory authority.

* * * * *

26. Section 817.49 is amended by revising the first sentence of newly designated paragraph (a)(11)(iv) to read as follows:

§ 817.49 Impoundments.

(a) * * *

(11) * * *

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 784.16(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in TR–60, or the size or other criteria of § 77.216(a) of this title and certify and submit the report required by paragraph (a)(11)(ii) of this section, except that all coal mine waste impounding structures covered by § 817.84 shall be certified by a qualified registered professional engineer. * * *

* * * * *

27. Section 817.49 is amended by revising newly designated paragraph (a)(12) to read as follows:

§ 817.49 Impoundments.

(a) * * *

(12) Impoundments meeting the SCS Class B or C criteria for dams in TR–60, or the size or other criteria of § 77.216 of this title must be examined in accordance with § 77.216–3 of this title. Impoundments not meeting the SCS Class B or C criteria for dams in TR–60, or subject to § 77.216 of this title, shall be examined at least quarterly. All examinations must be done by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions.

* * * * *

28. Section 817.49 is amended by revising paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 817.49 Impoundments.

* * * * *

(c) * * *

(2) * * *

(i) Impoundments meeting the SCS Class B or C criteria for dams in TR–60, or the size or other criteria of § 77.216(a) of this title shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the regulatory authority.

(ii) Impoundments not included in paragraph (c)(2)(i) of this section shall be designed to control the precipitation of the 100-year 6-hour event, or greater event specified by the regulatory authority.

[FR Doc. 91–15201 Filed 6–27–91; 8:45 am]
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Part IV

Department of Commerce

International Trade Administration

Consortia of American Businesses in Eastern Europe; Notice

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DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 910637-1137]

Consortia of American Businesses in Eastern Europe

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a New Business Consortia Grant Program to assist U.S. firms establishing a commercial presence in Eastern Europe.

SUMMARY: A pilot program has been designed to assist U.S. firms in establishing a commercial presence in Eastern Europe through the formation of Consortia of American Businesses in Eastern Europe (CABEE). CABEEs are private and public non-profit organizations which will be formed to promote U.S. goods and services in Eastern Europe. The participants in these consortia will be for-profit U.S. firms interested in trade with Eastern Europe. CABEEs will establish offices and staff in Eastern Europe to provide a broad range of services for their member firms, including market research, sales promotion, and other trade facilitation services. Grant funds will be awarded as seed money to pay the start-up costs of establishing and operating CABEE offices in Eastern Europe. CABEEs can be organized along a single industry line or represent more than one business sector. There is no limitation on the number of for-profit firms that a consortium may represent.

SUPPLEMENTARY INFORMATION:

Program Objectives: CABEEs are intended to strengthen the U.S. business presence in Eastern Europe. They will provide direct trade facilitation support for their member firms, stimulating increased U.S. exports, joint ventures, and U.S. direct investment in Eastern Europe. CABEEs will promote two-way trade and will be expected to support development of counterpart host country trade associations and/or other organizations that can respond to the business opportunities represented through the consortia.

Funding Availability: Pursuant to the provision headed section (a)(6) under the heading "Assistance for Eastern Europe" of title II of the Foreign Operations, Export Financing and Related Programs Appropriation Act, 1991, Public Law 101-513 and section 632(a) of the Foreign Assistance Act of 1961, as amended, funding for the program will come from the Agency for International Development. Commerce will administer the program on a pilot basis pursuant to the authority contained in section 635(b) of the Foreign Assistance Act of 1961, as amended. The total amount of grant funds available for the pilot program is $2.5 million.

Funding Instrument and Project Duration: The Federal grant contribution will not exceed 50 percent of proposed eligible project costs with a maximum grant amount of $500,000 per consortium. Applicants are expected to provide the remaining share, preferably in cash. Federal funding will be a one-time injection with a grant period not to exceed three years. Assistance will be available for the period of time required to complete the scope of work but not to exceed three years from the date of the grant offer.

Request for Applications

Competitive Application kits (Application Kits) #180-0028-1 will be available from Commerce starting June 28, 1991.

To obtain a copy of the Application Kit #180-0028-1, please send a written request with two self-addressed mailing labels to Mr. George Muller, Director, Office of Export Trading Company Affairs, room 1800 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Only written requests will be honored; telephone, fax, or walk-in requests will not be accepted. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. Applications (Standard Form 424 (Rev. 4-88)) are to be received at the address designated in the Application Kit no later than 3 p.m. e.d.t. August 13, 1991. Subject to the availability of funds, awards will be made prior to the end of 1991.

Eligibility: Eligible applicants for the Business Consortia Grant Program will be private and public non-profit U.S. organizations including non-profit corporations, associations and public sector entities. Within the industry or industries represented by the consortium, membership in a consortium must be available on a non-discriminatory basis. For example, membership in a trade association cannot be a requirement for membership in a consortium. Only applicants proposing to open an office in one or more of the following East European countries are eligible for this program: Poland, Hungary, Czechoslovakia, Bulgaria, Romania, and Yugoslavia. Each application will receive an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the program. Applications will be evaluated on a competitive basis in accordance with the selection criteria set below.

Selection Criteria: Priority consideration will be given to those CABEE proposals which:

1. Focus on Poland, Hungary, and Czechoslovakia as the geographic target of commercial activities.
2. Involve or relate to the following industries: Environment, energy, telecommunications, agriculture and agribusiness, and housing. Marketability of the products and/or services in the applicable East European countries will be taken into account in evaluating applications.
3. Are proposed by applicants with the capacity, qualifications and staff necessary to successfully undertake the intended activities.
4. Demonstrate the capability and intent of enlisting small and mid-sized U.S. firms as CABEE members.
5. Provide a reasonable assurance that the proposed project can be continued on a self-sustained basis after expiration of the Federal grant.
6. Contain a commitment to encourage, support and assist development of indigenous counterpart organizations (e.g. trade associations) and a well reasoned explanation as to how that will be accomplished.
7. Present a realistic work plan detailing the services it will provide to the CABEE members.
8. Present a reasonable, itemized budget for the proposed activities.

Selection criteria 1-3 will be weighted equally but will be accorded a greater degree of importance than the remaining criteria. Selection criteria 4-8 will be weighted equally.

Notifications: All applicants are advised of the following:

1. Applicants that have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.
2. 15 CFR part 28 prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or cooperative agreement. A "Certification Regarding Lobbying" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required for awards exceeding $100,000.
3. Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.
4. A false statement on the application may be grounds for denial or termination of funds.
5. Awards under this program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.
6. All recipients are advised of the applicability of Executive Order 12372, "Intergovernmental Review of Federal Programs."
7. The Standard Form 424 (Rev. 4-88) mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348-0006.

Dated: June 25, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-15436 Filed 6-27-91; 8:45 am]

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Part V

The President

Proclamation 6307—Agreement on Trade Relations Between the United States of America and the Republic of Bulgaria

Proclamation 6308—Agreement on Trade Relations Between the United States of America and the Mongolian People's Republic

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Presidential Documents

Title 3—

The President

Proclamation 6307 of June 24, 1991

Agreement on Trade Relations Between the United States of America and the Republic of Bulgaria

By the President of the United States of America

A Proclamation

1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of the Republic of Bulgaria to conclude an agreement on trade relations between the United States of America and the Republic of Bulgaria.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").

3. As a result of these negotiations, an "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Republic of Bulgaria," including exchanges of letters which form an integral part of the Agreement, the foregoing in English and Bulgarian, was signed on April 22, 1991, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.

4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Article XVII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405, and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of the Republic of Bulgaria, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the **Federal Register**.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) of the Harmonized Tariff Schedule of the United States, enumerating those countries

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whose products are subject to duty at the rates set forth in rate of duty column 2 of the tariff schedule, is modified by striking out "Bulgaria".

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

Billing code 3195-01-M

AGREEMENT ON TRADE RELATIONS BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA

The Government of the United States of America and the Government of the Republic of Bulgaria (hereinafter referred to collectively as "Parties" and individually as "Party"),

Desiring to adopt mutually advantageous and equitable rules governing their trade and to ensure a predictable commercial environment,

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Recognizing that the development of bilateral trade will contribute to better mutual understanding and cooperation, and can contribute to the general well-being of the peoples of each

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Party and promote respect for internationally recognized workers' rights,

Taking into account Bulgaria's membership in the International Monetary Fund and the International Bank for Reconstruction and Development and the prospects for economic reform and restructuring of the economy, and taking into account Bulgaria's request for Contracting Party status in the General Agreement on Tariffs and Trade (hereinafter referred to as "GATT"), and Bulgaria's intention to become a Party to the European Patent Convention of October 1973,

Desiring to create a mutually beneficial framework which will foster the development and expansion of commercial ties between their respective nationals and companies,

Having agreed that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Have agreed as follows:

ARTICLE I

MOST FAVORED NATION AND NONDISCRIMINATORY TREATMENT

1. Each Party shall accord unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in or exported to the territory of any third country in all matters relating to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

(b) methods of payment for imports and exports, and the international transfer of such payments;

(c) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;

(d) taxes and other internal charges of any kind applied directly or indirectly to imported products; and

(e) laws, regulations and requirements affecting the sale, offering for sale, purchase, transportation, distribution, storage and use of products in the domestic market.

2. Each Party shall accord to products originating in or exported to the territory of the other Party nondiscriminatory treatment with respect to the application of quantitative restrictions and the granting of licenses.

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3. Each Party shall accord to imports of products and services originating in the territory of the other Party most-favored-nation treatment with respect to the availability of and access to the currency needed to pay for such imports.

4. The provisions of paragraphs 1 and 2 shall not apply to:

(a) advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area;

(b) advantages accorded to adjacent countries for the facilitation of frontier traffic; and

(c) actions by either Party which are required or specifically permitted by the GATT (or by any joint action or decision of the Contracting Parties to the GATT) during such time as such Party is a Contracting Party to the GATT, including advantages accorded to developing countries; equivalent advantages accorded to developing countries under other multilateral agreements; and special advantages accorded by virtue of the GATT.

5. The provisions of paragraph 2 of this Article shall not apply to trade in textiles and textile products.

ARTICLE II

MARKET ACCESS FOR PRODUCTS AND SERVICES

1. Each Party shall administer all tariff and nontariff measures affecting trade in a manner which affords, with respect to both third country and domestic competitors, meaningful competitive opportunities for products and services of the other Party.

2. Accordingly, neither Party shall impose, directly or indirectly, on the products of the other Party imported into its territory, internal taxes or charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

3. Each Party shall accord to products originating in the territory of the other Party treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, storage or use.

4. The charges and measures described in paragraphs 2 and 3 of this Article should not be applied to imported or domestic products so as to afford protection to domestic production.

5. The Parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade. Furthermore, each Party shall accord products imported from the territory of the other Party treatment no less favorable than that accorded to

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like domestic products and to like products originating in any third country in relation to such technical regulations or standards, including conformity testing and certification.

6. The Government of the Republic of Bulgaria shall accede to the International Convention on the Harmonized Commodity Description and Coding System and shall take all necessary measures to implement such Convention with respect to the Republic of Bulgaria. The Government of the United States of America shall endeavor to provide technical assistance, as appropriate, for the implementation of such measures.

7. The Parties agree to maintain a satisfactory balance of market access opportunities, including through concessions in trade in products and services and through the satisfactory reciprocation of reductions in tariffs and nontariff barriers to trade resulting from multilateral negotiations.

ARTICLE III

GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. Trade in products and services shall be effected by contracts between nationals and companies of the United States and nationals and companies of the Republic of Bulgaria concluded on the basis of nondiscrimination and in the exercise of their independent commercial judgment and on the basis of customary commercial considerations such as price, quality, availability, delivery and terms of payment.

2. Neither Party shall require or encourage nationals or companies of the United States or nationals or companies of the Republic of Bulgaria to engage in barter or countertrade transactions. Nevertheless, where nationals or companies decide to resort to barter or countertrade operations, the Parties will encourage them to furnish to each other all necessary information to facilitate the transaction.

ARTICLE IV

EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term development and diversification of trade between their respective nationals and companies.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Government of the Republic of Bulgaria expects that, during the term of this Agreement, nationals and companies of the Republic of Bulgaria shall increase their purchases of products and services from the United States, while the Government of the United States expects that the effect of this Agreement shall be to encourage increased purchases by nationals and companies of the United States of

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products and services from the Republic of Bulgaria. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals and companies in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE V

GOVERNMENT COMMERCIAL OFFICES

1. Subject to its laws and regulations governing foreign missions, each Party shall allow government commercial offices to hire directly host-country nationals and, subject to immigration laws and procedures, third-country nationals.

2. Each Party shall ensure unhindered access of host-country nationals to government commercial offices of the other Party.

3. Each Party shall encourage the participation of its nationals and companies in the activities of the other Party's government commercial offices, especially with respect to events held on the premises of such commercial offices.

4. Each Party shall encourage and facilitate access by government commercial office personnel of the other Party to host-country officials at both the national and subnational level, and representatives of nationals and companies of the host Party.

ARTICLE VI

BUSINESS FACILITATION

1. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

2. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit the establishment within its territory of commercial representations of nationals and companies of the other Party and shall accord such representations treatment at least as favorable as that accorded to commercial representations of nationals and companies of third countries.

3. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms and in a currency that is mutually agreed between the parties, consistent with such Party's minimum wage laws.

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4. Each Party shall permit commercial representations of the other Party to import and use in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and telefax machines in connection with the conduct of their activities in the territory of such Party.

5. Subject to laws and procedures regarding foreign missions, each Party shall permit, on a nondiscriminatory basis and at market prices, commercial representations of the other Party access to and use of office space and living accommodations.

6. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit nationals and companies of the other Party to engage agents, consultants and distributors of either Party and of third countries on prices and terms mutually agreed between the parties.

7. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit nationals and companies of the other Party to serve as agents, consultants and distributors of nationals and companies of either Party and of third countries on prices and terms mutually agreed between the parties.

8. Each Party shall permit nationals and companies of the other Party to advertise their products and services (a) through direct agreement with the advertising media, including television, radio, print and billboard, and (b) by direct mail,

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including the use of enclosed envelopes and cards preaddressed to that national or company.

9. Each Party shall encourage direct contact, and permit direct sales, between nationals and companies of the other Party and end-users and other customers of their goods and services, and with agencies and organizations whose decisions will affect potential sales.

10. Each Party shall permit nationals and companies of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party shall, upon request, make available non-confidential, non-proprietary information within its possession to nationals and companies of the other Party engaged in such efforts.

11. Each Party shall provide nondiscriminatory access to governmentally-provided products and services, including public utilities, to nationals and companies of the other Party at fair and equitable prices (and in no event at prices greater than those charged to any nationals or companies of third countries where such prices are set or controlled by the government) in connection with the operation of their commercial representations.

12. Each Party shall permit commercial representations to stock an adequate supply of samples and replacement parts for aftersales service on a non-commercial basis.

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13. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals and companies of the other Party.

ARTICLE VII

TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws, regulations, judicial decisions and administrative rulings of general application related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor. Each Party shall make such information available in reading rooms in its own capital and shall endeavor to make such information available in the capital of the other Party.

2. Each Party shall provide nationals and companies of the other Party with access to available non-confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Each Party shall allow nationals and companies of the other Party the opportunity, to the extent practicable, to comment on the formulation of rules and regulations which affect the conduct of business activities.

ARTICLE VIII

FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between nationals and companies of the Parties shall be made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency.

2. Neither Party shall restrict the export from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in connection with trade in products and services by nationals and companies of the other Party.

3. Expenditures in the territory of a Party by nationals and companies of the other Party may be made in local currency received in an authorized manner.

4. Without derogation from paragraphs 2 or 3 of this Article, in connection with trade in products and services, each Party shall grant to nationals and companies of the other Party the better of most-favored-nation or national treatment with respect to:

(a) opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

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(b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country;

(c) rates of exchange and related matters; and

(d) the receipt of local currency and its use for local expenses.

ARTICLE IX

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets, and layout designs for integrated circuits as set forth in the text of a side letter attached hereto.

ARTICLE X

AREAS FOR FURTHER ECONOMIC AND TECHNICAL COOPERATION

1. For the purpose of further developing bilateral trade and providing for a steady increase in the exchange of products and services, both Parties shall strive to achieve mutually acceptable agreements on taxation and investment issues, including the repatriation of profits and transfer of capital.

2. The Parties shall take appropriate steps to foster economic and technical cooperation on as broad a base as possible

in all fields deemed to be in their mutual interest, including with respect to statistics and standards.

3. The Parties, taking into account the growing economic significance of service industries, agree to consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

ARTICLE XI

IMPORT RELIEF SAFEGUARDS

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports into the territory of one of the Parties of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. Determination of market disruption or threat thereof by the importing Party shall be based upon a good faith application of its laws and on an affirmative finding of relevant facts and on their examination. The importing Party, in determining whether market disruption exists, may consider, among other

factors: the volume of imports of the merchandise which is the subject of the inquiry; the effect of imports of the merchandise on prices in the territory of the importing Party for like or directly competitive articles; the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and evidence of disruptive pricing practices or other efforts to unfairly manage trade patterns.

3. The consultations provided for in paragraph 1 of this Article shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruption. Such consultations shall be concluded within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

4. Unless a different solution is mutually agreed upon during the consultations, and not withstanding paragraphs 1 and 2 of Article I, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures to such an extent and for such time as it deems necessary to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions. In this event, the other Party shall be free to deviate from its obligations

under this Agreement with respect to substantially equivalent trade.

5. Where in the judgment of the importing Party, emergency action, which may include the existence of critical circumstances, is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that such consultations shall be requested immediately thereafter.

6. In the selection of measures under this Article, the Parties shall endeavor to give priority to those which cause the least disturbance to the achievement of the goals of this Agreement.

7. Each Party shall ensure that its domestic procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

8. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply its laws and regulations applicable to trade in textiles and textile products and its laws and regulations applicable to unfair trade, including antidumping and countervailing duty laws.

ARTICLE XII

DISPUTE SETTLEMENT

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all courts

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and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards, or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States and nationals or companies of the Republic of Bulgaria. Such arbitration may be provided for by agreements in contracts between such nationals or companies, or in separate written agreements between them.

3. The parties may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules of 15 December 1976 and any modifications thereto, in which case the parties should designate an Appointing Authority under said rules in a country other than the United States or the Republic of Bulgaria.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States or the Republic of Bulgaria, that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or on the law to be applied in such arbitration, or other form of dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

ARTICLE XIII

NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIV

CONSULTATIONS

1. The Parties agree to set up a Joint Commercial Commission which will, subject to the terms of reference of its establishment, foster economic cooperation and the expansion of trade under this Agreement and review periodically the operation of this Agreement and make recommendations for achieving its objectives.

2. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretations or implementation of

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this Agreement or other relevant aspects of the relations between the Parties.

ARTICLE XV

DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meaning:

(a) "company," means any kind of corporation, company, association, sole proprietorship, state or other enterprise, cooperative or other organization legally constituted under the laws and regulations of a Party or a political subdivision thereof, whether or not organized for pecuniary gain or privately or governmentally owned;

(b) "commercial representation," means a representation of a company of a Party; and

(c) "national," means a natural person who is a national of a Party under its applicable law.

ARTICLE XVI

GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of:

(a) measures necessary to secure compliance with laws or regulations which are not contrary to the purposes of this Agreement;

(b) measures for the protection of intellectual property rights and the prevention of deceptive practices as set out in Article IX (and the related side letter) of this Agreement, provided that such measures shall be related to the extent of any injury suffered or the prevention of injury; or

(c) any other measure referred to in Article XX of the GATT.

2. Nothing in this Agreement limits the application of any agreement in force or which enters into force between the Parties on trade in textiles and textile products.

3. Both Parties reserve the right to deny any company the advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations.

ARTICLE XVII

ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement (including its side letters which are an integral part of the Agreement) shall enter into force on the

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date of exchange of written notices of acceptance by the two Governments and it shall remain in force as provided in paragraphs 2 and 3 of this Article.

2. (a) The initial term of this Agreement shall be three years, subject to subparagraph (b) and (c) of this paragraph.

(b) If either Party encounters or foresees a problem concerning its domestic legal authority to carry out any of its obligations under this Agreement, such Party shall request immediate consultations with the other Party. Once consultations have been requested, the other Party shall enter into such consultations as soon as possible concerning the circumstances that have arisen with a view to finding a solution to avoid action under subparagraph (c).

(c) If either Party does not have domestic legal authority to carry out its obligations under this Agreement, either Party may suspend the application of this Agreement or, with the agreement of the other Party, any part of this Agreement. In that event, the Parties will, to the fullest extent practicable and consistent with domestic law, seek to minimize disruption to existing trade relations between the two countries.

3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, D.C. on this twenty-second day of April 1991, in duplicate, in the English and Bulgarian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Carla A. Hills

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA:

Ognian Raytchev Pishev

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THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

Washington, April 22, 1991

Dear Mr. Ambassador:

I have the honor to confirm receipt of your letter which reads as follows:

Dear Madam Ambassador:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Republic of Bulgaria (the "Agreement"), I have the honor to confirm the understanding reached by our Governments regarding the protection of intellectual property as set forth in Article IX of the Agreement.

1. Each Party reaffirms its commitments to those international agreements relating to intellectual property to which both Parties are signatories. Specifically, each Party reaffirms the commitments made with respect to the Paris Convention for the Protection of Industrial Property as revised at Stockholm in 1967, the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris in 1971, and the Universal Copyright Convention of September 6, 1952 as revised at Paris on July 24, 1971. The Parties agree to adhere to the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (1971).

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, inter alia observe the following commitments:

(a) Copyright and related rights

(i) Each Party shall protect the works listed in Article 2 of the Berne Convention (Paris 1971) and any other works now known or later developed, that embody original expressions within the meaning of the Berne Convention, not limited to the following:

His Excellency
Ognian Raytchev Pishev
Ambassador of the Republic of Bulgaria

(1) all types of computer programs (including application programs and operating systems) expressed in any language, whether in source or object code which shall be protected as literary works and works created by or with the use of computers; and

(2) collections or compilations of protected or unprotected material or data whether in print, machine readable or any other medium, including data bases, which shall be protected if they constitute intellectual creation by reason of the selection, coordination, or arrangement of their contents.

(ii) Rights in works protected pursuant to paragraph 2(a)(i) of this letter shall include, inter alia, the following:

(1) the right to import or authorize the importation into the territory of the Party of lawfully made copies of the work as well as the right to prevent the importation into the territory of the Party of copies of the work made without the authorization of the right-holder;

(2) the right to make the first public distribution of the original or each authorized copy of a work by sale, rental, or otherwise; and

(3) the right to make a public communication of a work (e.g., to perform, display, project, exhibit, broadcast, transmit, or retransmit a work); the term "public" shall include:

(A) communicating a work in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(B) communicating or transmitting a work, a performance, or a display of a work, in any form, or by means of any device or process to a place specified in clause 2(a)(ii)(3)(A) or to the public, regardless of whether the members of the public capable of receiving such communications can receive them in the same place or separate places and at the same time or at different times.

(iii) Each Party shall extend the protection afforded under paragraph 2(a)(ii) of this letter to authors of the other Party, whether they are natural persons or,

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where the other Party's domestic law so provides, companies and to their successors in title.

(iv) Each Party shall permit protected rights under paragraph 2(a)(ii) of this letter to be freely and separately exploitable and transferable. Each Party shall also permit assignees and exclusive licensees to enjoy all rights of their assignors and licensors acquired through voluntary agreements, and be entitled to enjoy and exercise their acquired exclusive rights.

(v) In cases where a Party measures the term of protection of a work from other than the life of the author, the term of protection shall be no less than 50 years from authorized publication or, failing such authorized publication within 50 years from the making of the work, 50 years after the making.

(vi) Each Party shall confine any limitations or exceptions to the rights provided under paragraph 2(a)(ii) of this letter (including any limitations or exceptions that restrict such rights to "public" activity) to clearly and carefully defined special cases which do not impair an actual or potential market for or the value of a protected work.

(vii) Each Party shall ensure that any compulsory or non-voluntary license (or any restriction of exclusive rights to a right of remuneration) shall provide means to ensure payment and remittance of royalties at a level consistent with what would be negotiated on a voluntary basis.

(viii) Each Party shall, at a minimum, extend to producers of sound recordings the exclusive rights to do or to authorize the following:

(1) to reproduce the recording by any means or process, in whole or in part; and

(2) to exercise the importation and exclusive distribution and rental rights provided in paragraphs 2(a)(ii)(1) and (2) of this letter.

(ix) Paragraphs 2(a)(iii), 2(a)(iv) and 2(a)(vi) of this letter shall apply mutatis mutandis to sound recordings.

(x) Each Party shall:

(1) protect sound recordings for a term of at least 50 years from publication; and

(2) grant the right to make the first public distribution of the original or each authorized sound recording by sale, rental, or otherwise except that the first sale of the original or such sound recording shall not exhaust the rental or importation right therein (the "rental right" shall mean the right to authorize or prohibit the disposal of the possession of the original or copies for direct or indirect commercial advantage).

(xi) Parties shall not subject the acquisition and validity of intellectual property rights in sound recordings to any formalities, and protection shall arise automatically upon creation of the sound recording.

(b) Trademarks

(i) Protectable Subject Matter

(1) Trademarks shall consist of at least any sign, words, including personal names, designs, letters, numerals, colors, or the shape of goods or of their packaging, provided that the mark is capable of distinguishing the goods or services of one national, company or organization from those of other nationals, companies or organizations.

(2) The term "trademark" shall include service marks, collective and certification marks.

(ii) Acquisition of Rights

(1) A trademark right may be acquired by registration or by use. Each Party shall provide a system for the registration of trademarks. Use of a trademark may be required as a prerequisite for registration.

(2) Each Party shall publish each trademark either before it is registered or promptly after it is registered and shall afford other parties a reasonable opportunity to petition to cancel the registration. In addition, each Party may afford an opportunity for the other Party to oppose the registration of a trademark.

(3) The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

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(iii) Rights Conferred

(1) The owner of a registered trademark shall have exclusive rights therein. He shall be entitled to prevent all third parties not having his consent from using in commerce identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected, where such use would result in a likelihood of confusion.

(2) Each Party shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known. A Party may not require that the reputation of the trademark extend beyond the sector of the public which normally deals with the relevant goods or services.

(3) The owner of a trademark shall be entitled to take action against any unauthorized use which constitutes an act of unfair competition or passing off.

(iv) Term of Protection

The registration of a trademark shall be indefinitely renewable for terms of no less than 10 years when conditions for renewal have been met. Initial registration of a trademark shall be for a term of at least 10 years.

(v) Requirement of Use

(1) If use of a registered mark is required to maintain trademark rights, the registration may be cancelled only after an uninterrupted period of at least two years of non-use, unless legitimate reasons for non-use exist. Use of the trademark with the consent of the owner shall be recognized as use of the trademark for the purpose of maintaining the registration.

(2) Legitimate reasons for non-use shall include non-use due to circumstances arising independently of the will of the trademark holder (such as import restrictions on or other government requirements for products protected by the trademark) which constitute an obstacle to the use of the mark.

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(vi) Other Requirements

The use of a trademark in commerce shall not be encumbered by special requirements, such as use which reduces the function of a trademark as an indication of source or use with another trademark.

(vii) Compulsory Licensing

Compulsory licensing of trademarks shall not be permitted.

(viii) Transfer

Trademark registrations may be transferred.

(c) Patents

(i) Patentable Subject Matter

(1) Patents shall be available for all inventions, whether products or processes, in all fields of technology.

(2) Parties may exclude from patentability:

(A) any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon; and

(B) plant and animal varieties.

(3) If a Party does not grant patents for plant and/or animal varieties the Party shall provide effective protection through a sui generis system.

(4) Notwithstanding paragraphs 2(c)(i)(2) and 2(c)(i)(3),

(a) patents shall be available for microbiological processes and the products thereof, and

(b) Parties may exclude plant and animal varieties from patent protection only until protection for such inventions becomes an obligation under an international agreement to which both Parties adhere.

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(ii) Rights Conferred

(1) A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented process, the patent confers the right to prevent others not having consent from using that process and from using, selling, or importing at least the product obtained directly by that process.

(2) Where the subject matter of a patent is a process for obtaining a product, each Party shall provide that the burden of establishing that an alleged infringing product was not made by the process shall be on the alleged infringer, at least in one of the following situations:

(A) the product is new; or

(B) a substantial likelihood exists that the product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In gathering and evaluation of evidence to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

(3) A patent may only be revoked on grounds that would have justified a refusal to grant the patent.

(iii) Exceptions

Each Party may provide limited exceptions to the exclusive rights conferred by a patent, such as for acts done for experimental purposes, provided that the exceptions do not significantly prejudice the economic interests of the right-holder.

(iv) Term of Protection

Each Party shall provide a term of protection of at least 20 years from the date of filing of the patent application or 17 years from the date of grant of the patent. Each Party is encouraged to extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

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(v) Transitional Protection

A Party shall provide transitional protection for products embodying subject matter deemed to be unpatentable under its patent law prior to its implementation of the provisions of this letter, where the following conditions are satisfied:

(1) the subject matter to which the product relates will become patentable after implementation of the provisions of this letter;

(2) a patent has been issued for the product by the other Party, or an application is pending for the product with the other Party, prior to the entry into force of this letter; and,

(3) the product has not been marketed in the territory of the Party providing such transitional protection.

The owner of a patent, or of a pending application, for a product satisfying the conditions set forth above shall have the right to submit a copy of the patent or provide notification of the existence of a pending application with the other Party, to the Party providing transitional protection. These submissions and notifications shall take place any time after the signing of this Agreement and the exchange of letters and before the implementation of the new Bulgarian patent law. This period, however, shall not be less than nine months. In the case of a pending application, the applicant shall notify the competent Bulgarian authorities of the issuance of a patent based on his application within six months of the date of grant by the other Party. The Party providing transitional protection shall limit the right to make, use, or sell the product in its territory to such owner for a term to expire with that of the patent submitted.

(vi) Compulsory Licenses

(1) Each Party may limit the patent owner's exclusive rights through compulsory licenses but only:

(A) to remedy an adjudicated violation of competition laws;

(B) to address, only during its existence, a declared national emergency;

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(C) to address a failure to meet the reasonable demands of the domestic market, however importation shall constitute a means of meeting the demands of the domestic market; and

(D) to enable compliance with national air pollutant standards, where compulsory licenses are essential to such compliance.

(2) Where the law of a Party allows for the grant of compulsory licenses, such licenses shall be granted in a manner which minimizes distortions of trade, and the following provisions shall be respected:

(A) Compulsory licenses shall be non-exclusive and non-assignable except with that part of the enterprise which exploits such license.

(B) The payment of remuneration to the patent owner adequate to compensate the patent owner fully for the license shall be required, except for compulsory licenses to remedy adjudicated violations of competition laws.

(C) Each case involving the possible grant of a compulsory license shall be considered on its individual merits.

(D) Any compulsory license shall be revoked when the circumstances which led to its granting cease to exist, taking into account the legitimate interests of the patent owner and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the right-holder.

(E) Judicial review shall be available for:

1. decisions to grant compulsory licenses, except in the instance of a declared national emergency,

2. decisions to continue compulsory licenses, and

3. the compensation provided for compulsory licenses.

(d) Layout-Designs of Semiconductor Chips

(i) Subject Matter for Protection

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(1) Each Party shall provide protection for original layout-designs incorporated in a semiconductor chip, however the layout-design might be fixed or encoded.

(2) Each Party may condition protection on fixation or registration of the layout-designs. If registration is required, applicants shall be given at least two years from first commercial exploitation of the layout-design in which to apply. A Party which requires deposits of identifying material or other material related to the layout-design shall not require applicants to disclose confidential or proprietary information unless it is essential to allow identification of the layout-design.

(ii) Rights Acquired

(1) Each Party shall provide to right-holders of integrated circuit lay-out designs of the other Party the exclusive right to do or to authorize the following:

(A) to reproduce the layout-design;

(B) to incorporate the layout-design in a semiconductor chip; and

(C) to import or distribute a semiconductor chip incorporating the layout-design and products including such chips.

(2) The conditions set out in paragraph 2(c)(vi) shall apply, mutatis mutandis, to the grant of any compulsory licenses for layout-designs.

(3) Neither Party is required to extend protection to layout-designs that are commonplace in the industry at the time of their creation or to layout-designs that are exclusively dictated by the functions of the circuit to which they apply.

(4) Each Party may exempt the following from liability under its law:

(A) reproduction of a layout-design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout-design that is itself original;

(B) importation and distribution of semiconductor chips, incorporating a protected layout-design, which were sold by or with the consent of the owner of the layout-design; and

(C) importation or distribution up to the point of notice of a semiconductor chip incorporating a protected layout-design and products incorporating such chips by a person who establishes that he did not know, and had no reasonable grounds to believe, that the layout-design was protected; provided that, with respect to stock on hand or purchased at the time notice is received, such person may import or distribute only such stock, but is liable for a reasonable royalty on the sale of each item after notice is received.

(iii) Term of Protection

The term of protection for the lay-out design shall extend for at least ten years from the date of first commercial exploitation or the date of registration of the design, if required, whichever is earlier.

(e) Acts Contrary to Honest Commercial Practices and the Protection of Trade Secrets

(i) In the course of ensuring effective protection against unfair competition as provided for in Article 10 bis of the Paris Convention, each Party shall provide in its domestic law and practice the legal means for nationals, companies and organizations to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the trade secret owner in a manner contrary to honest commercial practices, insofar as such information:

(1) is not, as a body or in the precise configuration and assembly of its components, generally known or readily ascertainable;

(2) has actual or potential commercial value because it is not generally known or readily ascertainable; and

(3) has been subject to reasonable steps under the circumstances to keep it secret.

(ii) Neither Party shall limit the duration of protection for trade secrets so long as the conditions in paragraph 2(e)(i) of this letter exist.

(iii) Licensing

Neither Party shall discourage or impede voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions which dilute the value of trade secrets.

(iv) Government Use

(1) If a Party requires, as a condition of approving the marketing of pharmaceutical or agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, that Party shall protect such data against unfair commercial use. Further, each Party shall protect such data against disclosure except where necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

(2) Unless the national or company submitting the information agrees, the data may not be relied upon for the approval of competing products for a reasonable period of time, taking into account the efforts involved in the origination of the data, their nature, and the expenditure involved in their preparation, and such period of time shall generally be not less than five years from the date of marketing approval.

(3) Where a Party relies upon a marketing approval granted by the other Party or a country other than the United States or Bulgaria, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied upon shall commence with the date of the first marketing approval relied upon.

(f) Enforcement of Intellectual Property Rights

(i) Each Party shall protect intellectual property rights covered by this letter by means of civil law, criminal law, or administrative law or a combination thereof in conformity with the provisions below. Each Party shall provide effective procedures, internally and at the border, to protect these intellectual property rights against any act of infringement, and effective remedies to stop and prevent infringements and to effectively deter further infringements. These procedures shall be applied in such a manner as to avoid the creation of obstacles to legitimate trade and provide for safeguards against abuse.

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(ii) Procedures concerning the enforcement of intellectual property rights shall be fair and equitable.

(iii) Decisions on the merits of a case shall, as a general rule, be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay.

(iv) Each Party shall provide an opportunity for judicial review of final administrative decisions on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in national laws concerning the importance of a case, an opportunity for judicial review of the legal aspects of initial judicial decisions on the merits of a case concerning the protection of an intellectual property right shall also be provided.

(v) Remedies against a Party

Notwithstanding the other provisions of paragraph 2(f), when a Party is sued for infringement of an intellectual property right as a result of the use of that right by or for the government, the Party may limit remedies against the government to payment of full compensation to the right-holder.

3. Each Party agrees to submit for enactment, no later than December 31, 1992, the legislation necessary to carry out the obligations of this letter and to exert its best efforts to enact and implement this legislation by that date.

4. For purposes of this letter:

(a) "right-holder," means the right-holder himself, any other natural or legal person authorized by him who are exclusive licensees of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights;

(b) "A manner contrary to honest commercial practice" is understood to encompass, inter alia, practices such as theft, bribery, breach of contract, inducement to breach, electronic and other forms of commercial espionage, and includes the acquisition of trade secrets by third parties who knew, or had reasonable grounds to know, that such practices were involved in the acquisition.

(c) Unless otherwise indicated by the context, all terms in this letter shall have the same meaning as in the Agreement.

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5. Nothing in this letter shall be construed to diminish the rights of nationals and companies of a Party under the Agreement.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

Carla A. Hills

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THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

Washington, April 22, 1991

Dear Mr. Ambassador:

I have the honor to confirm receipt of your letter which reads as follows:

Dear Madam Ambassador:

In connection with the signing on this date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Republic of Bulgaria (the "Agreement"), I have the honor to confirm the following understanding reached by our Governments:

Financial Matters

As part of its economic liberalization process, the Government of the Republic of Bulgaria intends to make its currency convertible as soon as possible. Until the Bulgarian currency becomes freely convertible, the Government of the Republic of Bulgaria, for purposes of this Agreement, will provide access to freely convertible currencies, including through auctions, on a most-favored-nation basis.

Business Facilitation

Any permission required for commercial representations to establish and operate in the Republic of Bulgaria and any registrations required in the Republic of Bulgaria in order for nationals of either Party to engage or serve as agents, consultants or distributors in the territory of the Republic of Bulgaria will be accomplished through a simple registration process pursuant to which the permission or registration will be automatically and expeditiously granted, normally within 30 days of application, subject, of course, to regulations consistent with the exceptions set forth in Articles XIII and XVI of the Agreement.

His Excellency
Ognian Raytchev Pishev
Ambassador of the Republic of Bulgaria

Customs Unions or Free Trade Areas

With respect to Paragraph 4(a) of Article I of the Agreement, a Party may invoke this exception with respect to a customs union, free trade area, or an interim agreement necessary for the formation of the same, which is consistent with Article XXIV of the GATT, and only if such Party informs the other Party of its plans with respect to such customs union or free trade area and affords such other Party adequate opportunity for consultation.

Consultation

In the event of Bulgaria's accession to the GATT, the Parties agree to consult to determine whether any changes to this Agreement are necessary or desirable.

I have the honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

Carla A. Hills

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UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Travel and Tourism
Washington, D.C. 20230

Washington, April 22, 1991

Dear Mr. Ambassador:

I have the honor to confirm receipt of your letter of today's date which reads as follows:

"In connection with the signing on this date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the People's Republic of Bulgaria (the 'Agreement'), I have the honor to confirm the understanding reached by our Governments (the 'Parties') regarding tourism and travel-related services as follows:

1. The Parties recognize the need to encourage and promote the growth of tourism and travel-related investment and trade between the United States of America and the People's Republic of Bulgaria. In this regard, the Parties recognize the desirability of exploring the possibility of negotiating a separate bilateral agreement on tourism.

2. The Parties recognize the benefits to both economies of increased tourism and travel-related investment in and trade between their two territories.

Official Tourism Promotion Offices

3. Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory.

4. Permission to open tourism promotion offices or field offices, and the status of personnel who head and staff such offices, shall be as agreed upon by the Parties and subject to the applicable laws and regulations of the host country.

5. Tourism promotion offices opened by either Party shall be operated on a non-commercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with private sector travel agents or tour operators of the host country.

His Excellency
Ognian Raytchev Pishev
Ambassador of the Republic of
Bulgaria

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6. Official governmental tourism offices shall engage in activities related to the facilitation of development of tourism between the United States and the People's Republic of Bulgaria, including:

a) providing information about the tourism facilities and attraction in their respective countries to the public, and travel trade and the media;

b) conducting meetings and workshops for representatives of the travel industry;

c) participating in trade shows;

d) distributing advertising materials such as posters, brochures and slides, and coordinating advertising campaigns; and

e) performing market research.

7. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other Party.

Commercial Tourism Enterprises

8. Commercial tourism enterprises, whether privately or governmentally-owned, shall be treated as private commercial enterprises, fully subject to all applicable laws and regulations of the host country.

9. Each Party shall ensure within the scope of its legal authority and in accordance with its laws and regulations that any company owned, controlled or administered by that Party or any joint venture therewith or any private company or joint venture between private companies, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to national and companies of the other Party on a fair and equitable basis.

10. Nothing in this letter or in the Agreement shall be construed to mean that tourism and travel-related services shall not receive the benefits from the Agreement as fully as all other industries and sectors.

I have the honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government."

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I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

Kyle H. Whisonant, Jr.
Acting Under Secretary

TERMS OF REFERENCE:
THE UNITED STATES-BULGARIA JOINT COMMERCIAL COMMISSION

The United States-Bulgaria Joint Commercial Commission is established by the Governments of the United States and Bulgaria to facilitate the development of commercial relations and related economic matters between the United States of America and the Republic of Bulgaria.

The Commission shall work and shall formulate recommendations on the basis of mutual consent.

The Commission shall:

-- Review the operation of the U.S.-Bulgaria Trade Agreement and make recommendations for achieving its objectives in order to obtain the maximum benefit therefrom;

-- Exchange information about amendments and developments in the regulations of the United States and Bulgaria affecting trade under the U.S.-Bulgaria Trade Agreement;

-- Consider measures which would develop and diversify trade and commercial cooperation. These measures shall include, but are not limited to encouraging and supporting contracts and cooperation between businesses of both countries, and between firms established in the United States and Bulgaria;

-- Monitor and exchange views on U.S.-Bulgaria commercial relations; identify and where possible recommend solutions to issues of interest to both Parties;

-- Provide a forum for exchanging information in areas of commercial, industrial and technological cooperation, where they have an impact on commercial relations; and

-- Consider other steps which could be taken to facilitate and encourage the growth and development of commercial relations and related economic matters between the two countries.

The Commission shall be comprised of two sections, a U.S. section and a Bulgarian section. Each section shall be composed of a chairman and other government officials as designated by each Party.

The Commission shall meet as often as mutually agreed by the Parties, alternatively in Washington and Sofia.

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Appropriate senior-level officials from the U.S. Department of Commerce and the Bulgarian Ministry of Foreign Economic Relations shall act as co-chairmen of the Commission, and shall head their respective sections; each section of the Commission shall include other government officials as designated by each Party.

The Commission shall work on the basis of mutual agreement. The Commission shall, as necessary, adopt rules of procedure and work programs. The Commission may, as mutually agreed, establish joint working groups to consider specific matters. These working groups shall function in accordance with the instructions of the Commission.

Each section shall have an Executive Secretary, named by the chairman, who shall arrange the work of their respective section of the Commission. The Executive Secretary shall arrange the work of their respective section of the Commission, and perform the tasks of an organizational or administrative nature connected with the meetings of the Commission.

The Executive Secretaries shall communicate with each other as necessary to arrange Commission meetings and to perform other functions. Agendas for Commission meetings shall be agreed upon not later than one month prior to the meeting. The meeting shall consider matters included in this agenda, as well as further matters which may be added to the agenda by mutual agreement.

The Commission and its working groups shall work on the basis of mutual agreement. Agreed minutes signed by the co-chairmen of the Commission shall be kept for each meeting of the Commission, and shall be made public by each side. The Parties shall advise each other whenever measures and recommendations agreed to are subject to the subsequent approval of their respective governments.

Any document mutually agreed upon during the work of the Commission shall be in the English and Bulgarian languages, each language being equally authentic.

Expenses incidental to the meetings of the Commission and any working group established by the Commission shall be borne by the host country. Travel expenses from one country to the other, as well as living and other personal expenses of representatives participating in meetings of the Commission and any working group of the Commission shall be borne by the Party which sends such persons to represent it.

Each section may invite advisers and experts to participate at any meeting of the Commission or its working groups, except that such participation must be mutually agreed by the Parties in advance of the meeting.

The terms of reference of the Commission may be amended by mutual agreement of the Parties at any meeting or during the periods between meetings of the Commission.

Done in Washington, D.C., April 22, 1991, in two copies, in the English and Bulgarian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Thomas J. Duesterberg
Assistant Secretary
U.S. Department of Commerce

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA:

Ognian R. Pishev
Ambassador to the United States

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Federal Register
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Friday, June 28, 1991

Presidential Documents

Title 3—

The President

Proclamation 6308 of June 24, 1991

Agreement on Trade Relations Between the United States of America and the Mongolian People's Republic

By the President of the United States of America

A Proclamation

1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of the Mongolian People's Republic to conclude an agreement on trade relations between the United States of America and the Mongolian People's Republic.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").

3. As a result of these negotiations, an "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic," including exchanges of letters which form an integral part of the Agreement, the foregoing in English and Mongolian, was signed on January 23, 1991, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.

4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Article XVII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405, and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of the Mongolian People's Republic, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the Federal Register.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) of the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in rate of duty column 2 of the tariff schedule, is modified by striking out "Mongolia".

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

Billing code 3195-01-M

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AGREEMENT ON TRADE RELATIONS BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE MONGOLIAN PEOPLE'S REPUBLIC

The Government of the United States of America and the Government of the Mongolian People's Republic (hereinafter referred to collectively as "Parties" and individually as "Party"),

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Acknowledging that the development of trade relations and direct contact between nationals and companies of the United States and nationals and organizations of the Mongolian People's Republic will promote openness and mutual understanding,

Considering that expanded trade relations between the Parties will contribute to the general well-being of the peoples of each Party,

Recognizing that development of bilateral trade may contribute to better mutual understanding and cooperation and promote respect for internationally recognized worker rights,

Having agreed that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Being convinced that an agreement on trade relations between the two Parties will best serve their mutual interests, and

Desiring to create a framework which will foster the development and expansion of commercial ties between their respective nationals, companies and organizations,

Have agreed as follows:

ARTICLE I

MOST FAVORED NATION AND NONDISCRIMINATORY TREATMENT

1. Each Party shall accord unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in or exported to the territory of any third country in all matters relating to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

(b) methods of payment for imports and exports, and the international transfer of such payments;

(c) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;

(d) taxes and other internal charges of any kind applied directly or indirectly to imported products; and

(e) laws, regulations and requirements affecting the sale, offering for sale, purchase, transportation,

distribution, storage and use of products in the domestic market.

2. Each Party shall accord to products originating in or exported to the territory of the other Party nondiscriminatory treatment with respect to the application of quantitative restrictions and the granting of licenses.

3. Each Party shall accord to imports of products and services originating in the territory of the other Party nondiscriminatory treatment with respect to the allocation of and access to the currency needed to pay for such imports.

4. The provisions of paragraphs 1 and 2 shall not apply to:

(a) advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area;

(b) advantages accorded to adjacent countries for the facilitation of frontier traffic;

(c) actions by either Party which are required or permitted by the General Agreement on Tariffs and Trade (the "GATT") (or by any joint action or decision of the Contracting Parties to the GATT) during such time as such Party is a Contracting Party to the GATT; and special advantages accorded by virtue of the GATT; and

(d) actions taken under Article XI (Market Disruption) of this Agreement.

5. The provisions of paragraph 2 of this Article shall not apply to Mongolian exports of textiles and textile products.

ARTICLE II

MARKET ACCESS FOR PRODUCTS AND SERVICES

1. Each Party shall administer all tariff and nontariff measures affecting trade in a manner which affords, with respect to both third country and domestic competitors, meaningful competitive opportunities for products and services of the other Party.

2. Accordingly, neither Party shall impose, directly or indirectly, on the products of the other Party imported into its territory, internal taxes or charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

3. Each Party shall accord to products originating in the territory of the other Party treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, storage or use.

4. The charges and measures described in paragraphs 2 and 3 of this Article should not be applied to imported or domestic products so as to afford protection to domestic production.

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5. The Parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade or to protect domestic production. Furthermore, each Party shall accord products imported from the territory of the other Party treatment no less favorable than that accorded to like domestic products and to like products originating in any third country in relation to such technical regulations or standards, including conformity testing and certification.

6. The Government of the Mongolian People's Republic shall accede to the Convention Establishing the Customs Cooperation Council and the International Convention on the Harmonized Commodity Description and Coding System, and shall take all necessary measures to implement entry into force of such Conventions with respect to the Mongolian People's Republic.

ARTICLE III

GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. The Parties agree to maintain a satisfactory balance of market access opportunities, including through concessions in trade in products and services and through the satisfactory reciprocation of reductions in tariffs and nontariff barriers to trade resulting from multilateral negotiations.

2. Trade in products and services shall be effected by contracts between nationals and companies of the United States and nationals and organizations of the Mongolian People's

Republic concluded on the basis of nondiscrimination and in the exercise of their independent commercial judgment and on the basis of customary commercial considerations such as price, quality, availability, delivery, and terms of payment.

3. Neither Party shall require or encourage nationals or companies of the United States or nationals or organizations of the Mongolian People's Republic to engage in barter or countertrade transactions. Nevertheless, where nationals, companies or organizations decide to resort to barter or countertrade operations, the Parties will encourage them to furnish to each other all necessary information to facilitate the transaction.

ARTICLE IV

EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term development of trade relations between their respective nationals, companies and organizations.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Government of the Mongolian People's Republic expects that, during the term of this Agreement, nationals and organizations of the Mongolian People's Republic

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shall increase their orders in the United States for products and services, while the Government of the United States anticipates that the effect of this Agreement shall be to encourage increased purchases by nationals and companies of the United States of products and services from the Mongolian People's Republic. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Partv shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals, companies and organizations in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE V

GOVERNMENT COMMERCIAL OFFICES

Upon agreement of the Parties, each Party may establish government commercial offices as integral parts of its diplomatic mission in the territory of the other Party.

ARTICLE VI

BUSINESS FACILITATION

1. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

2. Subject to its laws and procedures governing immigration, each Party shall permit the establishment within its territory of commercial representations of nationals, companies and organizations of the other Party and shall accord such representations treatment at least as favorable as that accorded to commercial representations of nationals, companies and organizations of third countries.

3. Subject to its laws and procedures governing immigration, each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms and in a currency that is mutually agreed between the parties, consistent with such Party's minimum wage laws.

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4. Each Party shall permit commercial representations of the other Party to import and use in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and telefax machines in connection with the conduct of their activities in the territory of such Party.

5. Each Party shall permit, on a nondiscriminatory basis and at nondiscriminatory prices (where such prices are set or controlled by the government), commercial representations of the other Party access to and use of office space and living accommodations, whether or not designated for use by foreigners. The terms and conditions of such access and use shall in no event be on a basis less favorable than that accorded to commercial representations of nationals, companies and organizations of third countries.

6. Subject to its laws and procedures governing immigration, each Party shall permit nationals, companies and organizations of the other Party to engage agents, consultants and distributors of either Party and of third countries on prices and terms mutually agreed between the parties.

7. Subject to its immigration laws and procedures, each Party shall permit nationals, companies and organizations of the other Party to serve as agents, consultants and distributors of nationals, companies and organizations of either Party and of third countries on prices and terms mutually agreed between the parties.

8. Each Party shall permit nationals, companies and organizations of the other Party to advertise their products and services (a) through direct agreement with the advertising media, including television, radio, print and billboard, and (b) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national, company or organization.

9. Each Party shall encourage direct contact, and permit direct sales, between nationals, companies and organizations of the other Party and end-users and other customers of their goods and services, and with agencies and organizations whose decisions will affect potential sales.

10. Each Party shall permit nationals, companies and organizations of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party shall upon request make available non-confidential, non-proprietary information within its possession to nationals, companies and organizations of the other Party engaged in such efforts.

11. Each Party shall provide nondiscriminatory access to governmentally-provided products and services, including public utilities, to nationals, companies and organizations of the other Party in connection with the operation of their commercial representations.

12. Each Party shall permit commercial representations to stock an adequate supply of samples and replacement parts for aftersales service on a non-commercial basis.

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13. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals, companies and organizations of the other Party.

ARTICLE VII

TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor. Each Party shall also make such information available in reading rooms in its own capital and in the capital of the other Party.

2. Each Party shall provide nationals, companies and organizations of the other Party with access to available non-confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Each Party shall allow the other Party the opportunity to comment on the formulation of rules and regulations which affect the conduct of business activities.

ARTICLE VIII

FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between nationals, companies and organizations of the Parties shall be

made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency.

2. Neither Party shall restrict the export from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in connection with trade in products and services by nationals, companies and organizations of the other Party.

3. Nationals, companies and organizations of a Party holding currency of the other Party received in an authorized manner may deposit such currency in financial institutions located in the territory of the other Party and may maintain and use such currency for local expenses.

4. Without derogation from paragraphs 2 or 3 of this Article, in connection with trade in products and services, each Party shall grant to nationals, companies and organizations of the other Party the better of most-favored-nation or national treatment with respect to:

(a) opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as

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between the territory of that Party and that of any third country;

(c) rates of exchange and related matters, including access to freely usable currencies, such as through currency auctions; and

(d) the receipt and use of local currency.

ARTICLE IX

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets, industrial designs and layout designs for integrated circuits. Each Party reaffirms its commitments to those international agreements relating to intellectual property to which both Parties are signatories. Specifically, each Party reaffirms the commitments made with respect to industrial property in the Paris Convention for the Protection of Industrial Property of March 29, 1883, as revised at Stockholm on July 14, 1967.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, inter alia observe the following commitments:

(a) Copyright and related rights

(i) Each Party shall adhere to the Berne Convention for the Protection of Literary and Artistic

Works (Paris 1971) ("Berne Convention"). In addition, it shall comply with the provisions set forth below.

(ii) Works protected by copyright means any original, intellectual creative work of literary or artistic character, irrespective of their value, their literary or artistic merits or their purpose, and include, inter alia, the following:

(1) all types of computer programs;

(2) collections or compilations of protected or unprotected material or data whether in print, machine readable or any other medium, including data bases, which shall be protected if they constitute intellectual creation by reason of the selection, coordination, or arrangement of their contents.

(iii) The rights protected pursuant to paragraph 2(a) this Article include, inter alia, the following:

(1) the right to import or authorize the importation into the territory of the Party of lawfully made copies of the work as well as the right to prevent the importation into the territory of the Party of copies of the work made without the authorization of the right-holder;

(2) the right to make the first public distribution of the original or each authorized

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copy of a work by sale, rental, or otherwise; and

(3) the right to make a public communication of a work (e.g., to perform, display, project, exhibit, broadcast, transmit, or retransmit a work).

(iv) Each Party shall extend the protection afforded under this section to authors (as defined under the Berne Convention) of the other Party, whether they are natural persons or, where the other Party's domestic law so provides, companies and organizations, and to their successors in title.

(v) Protected rights under paragraph 2(a) of this Article shall be freely and separately exploitable and transferable.

(vi) Each Party shall confine any limitations or exceptions to the rights provided under paragraph 2(a) of this Article (including any limitations or exceptions that restrict such rights to "public" activity) to clearly and carefully defined special cases which do not impair an actual or potential market for or the value of a protected work.

(vii) If either Party has afforded no protection to works of foreign origin, it shall provide protection, consistent with this section, for all works of the other Party that are not in the public

domain in their country of origin at the time of entry into force of this Agreement in its territory.

(viii) Translation and reproduction licensing systems permitted in the Appendix to the Berne Convention:

(1) shall not be established where legitimate local needs are being met by voluntary actions of copyright holders or could be met by such action but for intervening factors outside the copyright holder's; and

(2) shall provide an effective opportunity for the copyright holder to be heard prior to the grant of any such licenses.

(ix) Any compulsory or non-voluntary license (or any restriction of exclusive rights to a right of remuneration) shall provide means to ensure payment and remittance of royalties at a level consistent with what would be negotiated on a voluntary basis.

(x) The Parties shall, at a minimum, extend to producers of sound recordings the exclusive rights to do or to authorize the following:

(1) to reproduce the recording by any means or process, in whole or in part;

(2) to exercise the importation and exclusive distribution and rental rights provided in paragraph (iii)(1) and (2) of this section.

(xi) The provisions of paragraphs iv, v, and vii of this section shall apply mutatis mutandis to the producers of sound recordings.

(xii) Paragraph viii of this section shall apply mutatis mutandis to sound recordings.

(xiii) Each Party shall:

(1) adhere to the Geneva Convention for the Protection of Producers of Phonograms and protect sound recordings first fixed or published in the territory of the other Party;

(2) protect sound recordings for a term of at least 50 years from publication;

(3) protect sound recordings published in the territory of a Party within thirty days of their publication elsewhere and recordings produced by a national, company or organization of a Party; and

(4) grant the right to make the first public distribution of the original or each authorized sound recording by sale, rental, or otherwise except that the first sale of the original or such sound recording shall not exhaust the rental or importation right therein (the "rental right" shall mean the right to authorize or prohibit the disposal of the possession of

the original or copies for direct or indirect commercial advantage).

(xiv) The acquisition and validity of intellectual property rights in sound recordings shall not be subject to any formalities, an protection shall arise automatically upon creation of the sound recording.

(b) Trademarks

(i) Protectable Subject Matter

(1) Trademarks shall consist of at least any sign, words, including personal names, designs, letters, numerals, colors, the shape of goods or of their packaging, provided that the mark is capable of distinguishing the goods or services of one national, company or organization from those of other nationals, companies or organizations.

(2) The term "trademark" shall include service marks, collective and certification marks.

(ii) Acquisition of Rights

(1) A trademark right may be acquired by registration or by use. A system for the registration of trademarks shall be provided. Use of a trademark may be required as a prerequisite for registration.

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(2) Each Party shall publish each trademark either before it is registered or promptly after it is registered and shall afford other parties a reasonable opportunity to petition to cancel the registration. In addition, each Party may afford an opportunity for the other Party to oppose the registration of a trademark.

(3) The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

(iii) Rights Conferred

(1) The owner of a registered trademark shall have exclusive rights therein. He shall be entitled to prevent all third parties not having his consent from using in commerce identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected, where such use would result in a likelihood of confusion.

(2) Each Party shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known. A Party may not require that

the reputation of the trademark extend beyond the sector of the public which normally deals with the relevant goods or services.

(3) The owner of a trademark shall be entitled to take action against any unauthorized use which constitutes an act of unfair competition or passing off.

(iv) Term of Protection

The registration of a trademark shall be indefinitely renewable for terms of no less than 10 years when conditions for renewal have been met. Initial registration of a trademark shall be for a term of at least 10 years.

(v) Requirement of Use

(1) If use of a registered mark is required to maintain trademark rights, the registration may be cancelled only after an uninterrupted period of at least two years of non-use, unless legitimate reasons for non-use exist. Use of the trademark with the consent of the owner shall be recognized as use of the trademark for the purpose of maintaining the registration.

(2) Legitimate reasons for non-use shall include non-use due to circumstances arising independently of the will of the trademark holder (such as import restrictions on or other

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government requirements for products protected by the trademark) which constitute an obstacle to the use of the mark.

(vi) Other Requirements

The use of a trademark in commerce shall not be encumbered by special requirements, such as use which reduces the function of a trademark as an indication of source or use with another trademark.

(vii) Compulsory Licensing

Compulsory licensing of trademarks shall not be permitted.

(viii) Transfer

Trademark registrations may be transferred.

(c) Patents

(i) Patentable Subject Matter

Patents shall be granted for all inventions, whether they concern products or processes, in all fields of technology, with the exception of any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon.

(ii) Rights Conferred

(1) A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented

process, the patent confers the right to prevent others not having consent from using that process and from using, selling, or importing at least the product obtained directly by that process.

(2) Where the subject matter of a patent is a process for obtaining a product, each Party shall provide that the burden of establishing that an alleged infringing product was not made by the process shall be on the alleged infringer at least in one of the following situations:

(A) the product is new, or

(B) a substantial likelihood exists that the product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In gathering and evaluation of evidence to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

(iii) Term of Protection

The term of protection shall be at least 20 years from the date of filing of the patent application or 17 years from the date of grant of the patent. Each Party is encouraged to extend the term of patent protection, in

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appropriate cases, to compensate for delays caused by regulatory approval processes.

(iv) Transitional Protection

A Party shall provide transitional protection for products embodying subject matter deemed to be unpatentable under its patent law prior to its implementation of this Agreement, where the following conditions are satisfied:

(1) the subject matter to which the product relates will become patentable after implementation of this Agreement;

(2) a patent has been issued for the product by the other Party prior to the entry into force of this Agreement; and

(3) the product has not been marketed in the territory of the Party providing such transitional protection.

The owner of a patent for a product satisfying the conditions set forth above shall have the right to submit a copy of the patent to the Party providing transitional protection. Such Party shall limit the right to make, use, or sell the product in its territory to such owner for a term to expire with that of the patent submitted.

(v) Compulsory Licenses

Each Party may limit the patent owner's exclusive rights through compulsory licenses only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. Where the law of a Party allows for the grant of compulsory licenses, such licenses shall be granted in a manner which minimizes distortions of trade, and the following provisions shall be respected:

(1) Compulsory licenses shall be non-exclusive and non-assignable except with that part of the enterprise or goodwill which exploits such license.

(2) The payment of remuneration to the patent owner adequate to compensate the patent owner fully for the license shall be required, except for compulsory licenses to remedy adjudicated violations of competition law.

(3) Each case involving the possible grant of a compulsory license shall be considered on its individual merits.

(4) Any compulsory license shall be revoked when the circumstances which led to its granting cease to exist, taking into account the legitimate interests of the patent owner and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the patent owner.

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(5) Decisions to grant or to continue compulsory licenses and the compensation provided for compulsory licenses shall be subject to review by a distinct higher authority.

(d) Layout-Designs of Semiconductor Chips

(i) Subject Matter for Protection

(1) Each Party shall provide protection for original layout-designs incorporated in a semiconductor chip, however the layout-design might be fixed or encoded.

(2) Each Party may condition protection on fixation or registration of the layout-designs. If registration is required, applicants shall be given at least two years from first commercial exploitation of the layout-design in which to apply. A Party which requires deposits of identifying material or other material related to the layout-design shall not require applicants to disclose confidential or proprietary information unless it is essential to allow identification of the layout-design.

(ii) Rights Acquired

(1) Each Party shall provide to owners of rights in integrated circuit lay-out designs of the other Party the exclusive right to do or to authorize the following:

(A) to reproduce the layout-design;

(B) to incorporate the layout-design in a semiconductor chip; and

(C) to import or distribute a semiconductor chip incorporating the layout-design and products including such chips.

(2) The conditions set out in paragraph (c)(v) of this Article shall apply, *mutatis mutandis*, to the grant of any compulsory licenses for layout-designs.

(3) Neither Party is required to extend protection to layout-designs that are commonplace in the industry at the time of their creation or to layout-designs that are exclusively dictated by the functions of the circuit to which they apply.

(4) Each Party may exempt the following from liability under its law:

(A) reproduction of a layout-design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout-design that is itself original;

(B) importation and distribution of semiconductor chips, incorporating a protected layout-design, which were sold by or with the consent of the owner of the layout-design; and

(C) importation or distribution up to the point of notice of a semiconductor chip incorporating a protected layout-design and products incorporating such chips by a person who establishes that he did not know, and had no reasonable grounds to believe, that the layout-design was protected, provided that, with respect to stock on hand or purchased at the time notice is received, such person may import or distribute only such stock but is liable for a reasonable royalty on the sale of each item after notice is received.

(iii) Term of Protection

The term of protection for the lay-out design shall extend for at least ten years from the date of first commercial exploitation or the date of registration of the design, if required, whichever is earlier.

(e) Industrial Designs and Models

(i) Each Party shall provide, at a minimum, protection for industrial designs which are new, original, ornamental and non-obvious. Each Party may condition such protection on registration or other formality. The term of protection of such designs shall extend for at least ten years.

(ii) Each Party shall provide to the owner of a protected design the right to prevent others from making, copying, using, or selling that industrial design.

(iii) Neither Party shall issue compulsory licenses for industrial designs except to remedy adjudicated violations of competition law to which the conditions set out in paragraph (c)(v) of this Article shall apply, mutatis mutandis.

(f) Acts Contrary to Honest Commercial Practices and the Protection of Trade Secrets

(i) In the course of ensuring effective protection against unfair competition as provided for in Article 10 bis of the Paris Convention, each Party shall provide in its domestic law and practice the legal means for nationals, companies and organizations to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the trade secret owner in a manner contrary to honest commercial practices insofar as such information:

(1) is not, as a body or in the precise configuration and assembly of its components, generally known or readily ascertainable;

(2) has actual or potential commercial value because it is not generally known or readily ascertainable; and

(3) has been subject to reasonable steps under the circumstances to keep it secret.

(ii) Neither Party shall limit the duration of protection for trade secrets so long as the conditions in paragraph 2(f)(i) of this Article exist.

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(iii) Licensing

Neither Party shall discourage or impede voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions which dilute the value of trade secrets.

(iv) Government Use

(1) A Party which requires that trade secrets be submitted to carry out governmental functions, shall not use the trade secrets for the commercial or competitive benefit of the government or of any person other than the owner of the trade secret except with the trade secret owner's consent, on payment of the reasonable value of the use, or if a reasonable period of exclusive use is given the owner of the trade secret.

(2) Each Party may disclose trade secrets to third parties, only with the trade secret owner's consent or to the degree required to carry out necessary government functions. Wherever practicable, owners of trade secrets shall be given an opportunity to enter into confidentiality agreements with any non-government entity to which the Party is disclosing trade secrets to carry out necessary government functions.

(3) Each Party may require owners of trade secrets to disclose their trade secrets to third parties to protect human health or safety or to protect the environment only when the trade secret owner is given an opportunity to enter into confidentiality agreements with any non-government entity receiving the trade secrets to prevent further disclosure or use of the trade secret.

(g) Enforcement of Intellectual Property Rights

(i) Each Party shall protect intellectual property rights covered by this Article by means of civil law, criminal law, or administrative law or a combination thereof in conformity with the provisions below. Each Party shall provide effective procedures, internally and at the border, to protect these intellectual property rights against any act of infringement, and effective remedies to stop and prevent infringements and to effectively deter further infringements. These procedures shall be applied in such a manner as to avoid the creation of obstacles to legitimate trade and provide for safeguards against abuse.

(ii) Procedures concerning the enforcement of intellectual property rights shall be fair and equitable.

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(iii) Decisions on the merits of a case shall, as a general rule, be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay.

(iv) Each Party shall provide an opportunity for judicial review of final administrative decisions on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in national laws concerning the importance of a case, an opportunity for judicial review of the legal aspects of initial judicial decisions on the merits of a case concerning the protection of an intellectual property right shall also be provided.

(v) Remedies against a Party

Notwithstanding the other provisions of this Article, when a Party is sued for infringement of an intellectual property right as a result of the use of that right by or for the government, the Party may limit remedies against the government to payment of full compensation to the right-holder.

3. Each Party agrees to submit for enactment no later than December 31, 1992 the legislation necessary to carry out the obligations of this Article and to exert its best efforts to enact and implement this legislation by that date.

4. For purposes of this Article:

(a) "right-holder," means the right-holder himself, any other natural or legal persons authorized by him who are exclusive licensees of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights; and

(b) "A manner contrary to honest commercial practice" is understood to encompass, inter alia, practices such as theft, bribery, breach of contract, inducement to breach, electronic and other forms of commercial espionage, and includes the acquisition of trade secrets by third parties who knew, or had reasonable grounds to know, that such practices were involved in the acquisition.

ARTICLE X

AREAS FOR FURTHER ECONOMIC AND TECHNICAL COOPERATION

1. For the purpose of further developing bilateral trade and providing for a steady increase in the exchange of products and services, both Parties shall strive to achieve mutually acceptable agreements on taxation and investment issues, including the repatriation of profits and transfer of capital.

2. The Parties shall take appropriate steps to foster economic and technical cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including with respect to statistics and standards.

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3. The Parties, taking into account the growing economic significance of service industries, agree to consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

ARTICLE XI

MARKET DISRUPTION SAFEGUARDS

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. The consultations provided for in paragraph 1 of this Article shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruptions. Such consultations shall be concluded

within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

3. Unless a different solution is mutually agreed upon during the consultations, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures it deems appropriate to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

4. Where in the judgment of the importing Party, emergency action is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that such consultations shall be requested immediately thereafter.

5. Each Party shall ensure that its domestic procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

6. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply its laws and regulations applicable to trade in textiles and textile products and its laws and regulations applicable to unfair trade, including antidumping and countervailing duty laws.

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ARTICLE XII

DISPUTE SETTLEMENT

1. Nationals, companies and organizations of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards, or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States and nationals or organizations of the Mongolian People's Republic. Such arbitration may be provided for by agreements in contracts between such nationals, companies or organizations, or in separate written agreements between them.

3. The parties may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules in which case the parties should designate an Appointing Authority under said rules in a country other than the United States or the Mongolian People's Republic.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States or the Mongolian People's Republic, that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 1958.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

ARTICLE XIII

NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIV

CONSULTATIONS

1. The Parties agree to consult periodically to review the operation of this Agreement.

2. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of

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this Agreement and other relevant aspects of the relations between the Parties.

ARTICLE XV

DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meaning:

(a) "company," means any kind of corporation, company, association, sole proprietorship or other organization legally constituted under the laws and regulations of a Party or an political subdivision thereof, whether or not organized for pecuniary gain or privately or governmentally owned; provided that, either Party reserves the right to deny any company the advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations;

(b) "commercial representation," means a representation of a company or organization of a Party;

(c) "national," means a natural person who is a national of a Party under its applicable law; and

(d) "organization," means, with respect to the United States, a company of the United States and, with respect

to the Mongolian People's Republic, any economic entity or enterprise (including a company) whether privately or governmentally owned.

ARTICLE XVI

GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of:

(a) measures necessary to secure compliance with laws or regulations which are not contrary to the purposes of this Agreement;

(b) measures for the protection of intellectual property rights and the prevention of deceptive practices as set out in Article IX of this Agreement; or

(c) any other measure referred to in Article XX of the GATT.

2. Nothing in this Agreement limits the application of any existing or future agreement between the Parties on trade in textiles and textile products.

3. Nothing in this Agreement shall preclude a Party from applying its laws relating to entities substantially owned or effectively controlled by the government of the other Party.

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ARTICLE XVII

ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement (including its side letters which are an integral part of the Agreement) shall enter into force on the date of exchange of written notices of acceptance by the two governments and shall remain in force as provided in paragraphs 2 and 3 of this Article.

2. (a) The initial term of this Agreement shall be three years, subject to subparagraph (b) and (c) of this paragraph.

(b) If either Party encounters or foresees a problem concerning its domestic legal authority to carry out any of its obligations under this Agreement, such Party shall request immediate consultations with the other Party. Once consultations have been requested, the other Party shall enter into such consultations as soon as possible concerning the circumstances that have arisen with a view to finding a solution to avoid action under subparagraph (c).

(c) If either Party does not have domestic legal authority to carry out is obligations under this Agreement, either Party may suspend the application of this Agreement or, with the agreement of the other Party, any part of this Agreement. In that event, the Parties will, to the fullest extent practicable and consistent with domestic law,

seek to minimize disruption to existing trade relations between the two countries.

3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

DONE at Washington on this twenty-third day of January, 1991, in duplicate, in the English and Mongolian languages. In the event of any conflict between the two texts, the English language text shall control.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Carla A. Hills

FOR THE GOVERNMENT OF THE MONGOLIAN PEOPLE'S REPUBLIC:

Sed-Ochiryn Bayarbaatar

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THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

January 23, 1991

Dear Mr. Minister:

I have the honor to acknowledge receipt of your letter of today's date concerning benefits under the Generalized System of Preferences ("GSP") which reads as follows:

> During the course of the negotiation of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic, the delegation of the Government of the Mongolian People's Republic requested that the Government of the United States of America accord benefits to products of the Mongolian People's Republic under the Generalized System of Preferences.
>
> I wish to reiterate this request and ask that your government give it due consideration.

Please be assured that the Government of the United States will give your request due consideration. In this regard, we trust that the explanation provided by the U.S. delegation concerning the eligibility requirements for GSP were useful to your delegation.

Sincerely,

Carla A. Hills

The Honorable Sed-Ochiryn Bayarbaatar
Minister of Trade and Industry
Mongolian People's Republic

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

January 23, 1991

Dear Mr. Minister:

In connection with the signing on this date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") regarding the establishment of commercial representations in the Mongolian People's Republic as follows:

The Government of the Mongolian People's Republic intends to liberalize the procedure to establish a commercial representation. Pending a formal change in applicable legislation, the Government of the Mongolian People's Republic intends to administer the procedure as a simple registration process.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement on Trade Relations. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Carla A. Hills

The Honorable Sed-Ochiryn Bayarbaatar
Minister of Trade and Industry
Mcngolian People's Republic

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UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Travel and Tourism
Washington, D.C. 20230

Washington, January 23, 199?

Dear Mr. Minister:

In connection with the signing on this date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") regarding cooperation in the field of tourism services as follows:

The Parties recognize the need to encourage and promote the growth of tourism and travel-related investment and trade between the United States of America and the Mongolian People's Republic.

The Parties recognize the benefits to both economies of increased tourism and travel-related investment in and trade between their two territories.

Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory. Permission to open official tourism promotion offices or field offices shall be as agreed upon by the Parties, and subject to the applicable laws, regulations and policies of the host country. Official tourism promotion offices opened by either Party shall be operated on a non-commercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with private sector travel agents or tour operators of the host country. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other.

Private and governmentally-owned commercial tourism enterprises shall be treated as private commercial enterprises fully subject to all applicable laws and regulations of the host country.

The Honorable Sed-Ochiryn Bayarbaatar
Minister of Trade and Industry
Mongolian People's Republic

Each Party shall ensure, within the scope of its legal authority, that any company owned, controlled or administered by that Party, or any joint venture therewith, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to nationals and companies of the other Party in a fair and equitable manner and on a most-favored-nation basis.

Nothing in this letter or in the Agreement shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

The Parties will consider negotiating a separate agreement on tourism and travel-related services.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Rockwell A. Schnabel

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Part VI

The President

Proclamation 6309—To Modify Duty-Free Treatment Under the Generalized System of Preferences

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Presidential Documents

Title 3—

The President

Proclamation 6309 of June 26, 1991

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to section 504(c) of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2464(c)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the 1974 Act, are subject to limitations on the preferential treatment afforded under the Generalized System of Preferences (GSP). Pursuant to section 504(c)(3) of the 1974 Act, the President may waive the application of section 504(c) of the 1974 Act with respect to any eligible article if the President determines, based on the considerations described in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)) and advice from the United States International Trade Commission (USITC), that such waiver is in the national economic interest of the United States. Further, pursuant to section 504(c)(5) of the 1974 Act, a country that is no longer treated as a beneficiary developing country with respect to an eligible article by reason of section 504(c) of the 1974 Act may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of paragraph (c)(2)) during the preceding calendar year.

2. Pursuant to subsection 504(c)(3) of the 1974 Act, I have determined that it is appropriate to waive the application of section 504(c) of the 1974 Act with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the USITC on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act, as amended (19 U.S.C. 2461 and 2462(c)), that such waivers are in the national economic interest of the United States. Further, I have determined that it is necessary and appropriate to subdivide and amend the nomenclature of the Harmonized Tariff Schedule of the United States (HTS) in order to provide for one such waiver. Last, I have determined, pursuant to section 504(c)(5) of the 1974 Act, that certain countries should be redesignated as beneficiary developing countries with respect to specified previously designated eligible articles. These countries have been previously excluded from benefits of the GSP with respect to such eligible articles pursuant to sections 504(c)(1) or 504(c)(2) of the 1974 Act.

3. In order to clarify a change in general note 3(c)(ii)(C) to the HTS made by Proclamation 6245 of February 4, 1991, to correct a typographical error in Proclamation 6282 of April 25, 1991, and to modify the designation of eligibility of Peru with respect to HTS subheading 7113.19.10 due to new information as to the value of imports under such subheading, I have determined it is necessary and appropriate to modify the HTS.

4. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 501, 502, 504, and 604 of the 1974 Act, do proclaim that:

(1) The waivers of the application of section 504(c) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and the beneficiary developing countries opposite such HTS subheadings set forth in Annex I(a).

(2) In order to provide in the nomenclature of the HTS for a waiver under the GSP for a specified designated eligible article when imported from Mexico, the HTS is modified as provided in Annex I(b) to this proclamation.

(3) In order to provide preferential tariff treatment under the GSP to certain countries which have been excluded from the benefits of the GSP for certain eligible articles imported from such countries, following my determination that a country previously excluded from receiving such benefits should again be treated as a beneficiary developing country with respect to such article, the Rates of Duty 1 Special subcolumn for each of the HTS provisions enumerated in Annex II(a) to this proclamation is modified: (i) by deleting from such subcolumn for such HTS provisions the symbol "A*" in parentheses, and (ii) by inserting in such subcolumn the symbol "A" in lieu thereof.

(4) In order to provide that one or more countries which have not been treated as beneficiary developing countries with respect to an eligible article should be redesignated as beneficiary developing countries with respect to such article for purposes of the GSP, general note 3(c)(ii)(D) to the HTS is modified as provided in Annex II(b) to this proclamation.

(5) In order to provide for the continuation of previously proclaimed staged reductions on Canadian goods in the HTS provisions modified in Annex I(b) to this proclamation, effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex I(c) to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1 Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in such Annex I(c) shall be deleted and the rate of duty provided in such Annex I(c) inserted in lieu thereof on the dates specified.

(6) In order to clarify a change in general note 3(c)(ii)(C) to the HTS, to correct a typographical error, and to modify the eligibility of Peru with respect to subheading 7113.19.10, the HTS is modified as provided in Annex III.

(7) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(8)(a) The waivers granted by Annex I(a) of this proclamation shall be effective on or after the date of signature of this proclamation.

(b) The amendments made by Annexes I(b), II, and III(b) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991.

(c) The amendments made by Annex I(c) of this proclamation shall be effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the dates indicated in the respective Annex I(c) columns.

(d) The amendments made by Annex III(a) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

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Annex I

(a) The waiver of the application of section 504(c) of the 1974 Act shall apply to:

0802.90.15	Mexico	8504.32.00	Mexico
0804.50.40	Mexico	8505.19.00	Mexico
2005.20.00pt.	Mexico1/	8507.90.40	Mexico
2529.22.00	Mexico	8511.10.00	Mexico
2836.92.00	Mexico	8536.69.00	Mexico
2917.37.00	Mexico	8536.90.00	Mexico
3907.60.00	Mexico		
4409.10.40	Mexico	8544.30.00	Mexico; Philippines
4818.40.40	Mexico		
7901.11.00	Mexico		
8414.59.80	Mexico	8544.51.40	Mexico
8418.10.00	Mexico	8708.70.80	Mexico
8418.21.00	Mexico	8708.99.50	Mexico
8418.40.00	Mexico	9401.90.10	Mexico
8475.20.00	Mexico	9503.70.80	Mexico
8504.10.00	Mexico	9503.90.60	Mexico

1/ Waiver for Mexico on 2005.20.00pt. only applies to 2005.20.0020 (potato chips).

(b) The HTS is modified as provided below effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991.

Note: Bracketed matter is included to assist in the understanding of proclaimed modifications. The following supersedes matter now in the HTS. The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

Subheading 2005.20.00 is superseded by:

	[Other vegetables...:]				
"2005.20	Potatoes:				
2005.20.20	Potato chips.....	10%	Free (A,E,IL) 7% (CA)	55%	
2005.20.60	Other.....	10%	Free (A,E,IL) 7% (CA)	35%"	

(c) The HTS is modified effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation. For each of the following subheadings created by Annex I(b) to this proclamation, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1 Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof on the dates specified below.

HTS Subheading	1992	1993	1994	1995	1996	1997	1998
2005.20.20	6%	5%	4%	3%	2%	1%	Free
2005.20.60	6%	5%	4%	3%	2%	1%	Free

Annex II

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991:

(a) For the following HTS subheadings, in the Rates of Duty 1 Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof:

0802.90.15	8414.59.80	8536.90.00
0804.50.40	8418.10.00	8544.30.00
2836.92.00	8504.10.00	8708.99.50
4409.10.40	8504.32.00	
7901.11.00	8536.69.00	

(b) General note 3(c)(ii)(D) to the HTS is modified by deleting the following HTS subheadings and the countries opposite such subheadings:

0802.90.15	Mexico	8504.32.00	Mexico
0804.50.40	Mexico	8536.69.00	Mexico
2836.92.00	Mexico	8536.90.00	Mexico
4409.10.40	Mexico		
7901.11.00	Mexico	8544.30.00	Mexico; Philippines
8414.59.80	Mexico		
8418.10.00	Mexico		
8504 10.00	Mexico	8708.99.50	Mexico

Annex III

(a) General note 3(c)(ii)(C) to the HTS is modified by striking out the phrase "from such country or territory," and inserting "from such country or territory listed in subdivision (c)(ii)(A) of this note," in lieu thereof effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.

(b) Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1991:

(1) For HTS subheadings 7113.19.10 and 8520.20.00, in the Rates of Duty 1 Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof.

(2) General note 3(c)(ii)(D) to the HTS is modified by deleting "7113.19.10 Peru".

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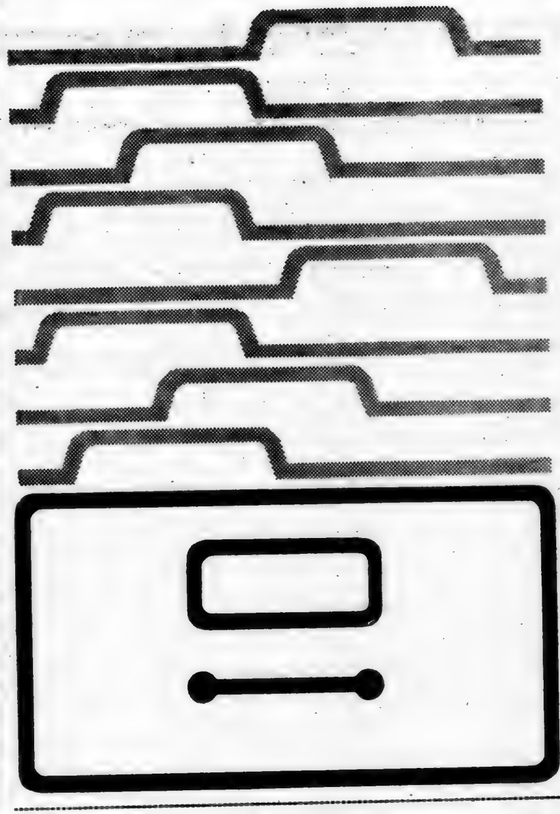
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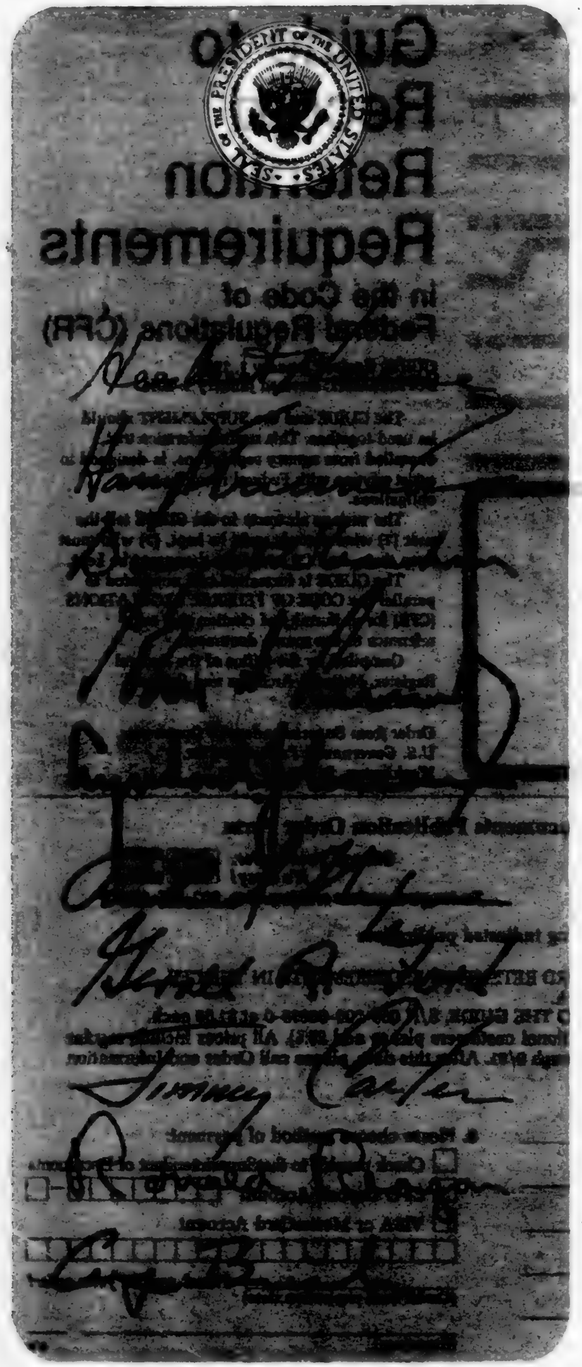
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Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

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137 Appendix C regulation at 54 FR 4950, 4954 confirmed; revised 21690, 21693
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208 Appendix C regulation at 54 FR 4950, 4955 confirmed; revised...21690, 21693

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420 Authority citation revised...35402

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658 Appendix A revised 17953
Corrected 19145

Title 23—*Proposed Rules:*

140 49902
625 49903
630 27250
635 ..... 22812, 36289
646 49902
655 ..... 17634, 33325
658 ..... 25673, 25850
770 34283
1204 20471
1327 ..... 12509, 27251

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development

8 Authority citation revsied 920
8.22 (a) amended 920
8.25 Heading, (a), (3), (b), and (c) introductory text amended 920
8 Appendix A amended 920
24.600—24.635 Regulation at 54 FR 4950, 4956 confirmed; revised 21688, 21695
24 Appendix C regulation at 54 FR 4950, 4956 confirmed; revised 21690, 21695
25 Authority citation revised 18872
25.9 (x) added 18872
(b) revised 33286
35.24 (b)(4) amended 920
49 Added 18492
50 Authority citation revised 27608
50.20 (p) added 27608
(n) added 38962

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development

103 Authority citation revised 53293
103.200 (a)(3) revised 53293
103.300 (a) revised 53294
103.400 Revised 53294
109 Authority citation revised 53294
109.16 (a) revised 53294

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development

200 Authority citation revised 18875, 27221
200.27 Removed 18875
200.163 (a)(1), (2), and (3), (b)(2), (5) introductory text, and (xi)(A) through (H), and (c)(1) through (5) and (7) revised 27221
(b)(5)(x) revised 41021
200.164 (c)(2) revised 27222
(d) revised 41021
200.944 Added 38785
200.1005 Amended 920
200.1105 Amended 920
201 High-cost limits...24076, 37463, 40168
High-cost correction 39353
202.3 (b) revised 33286
202.4 (b) revised 33286
203 High-cost limits...24076, 37463, 40168
Authority citation revised 34803
High-cost correction 39353
203.3 (b)(1) revised 33286
203.4 (b)(3) revised 33286
203.8 Added 18873
(b) effective date pending 18873
203.18 (a), (2), (3), (c), (d), (e)(1), and (f) revised; (a)(4) added 34803
(a) introductory text, (2) introductory text, (3) introductory text, (c), (d), (e)(1) and (f) correctly revised; (a)(4) correctly added 40830

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(a)(2)(iii) revised 41021
203.29 (c) revised 34804
203.31 Revised 34804
203.43 (c) introductory text, (1)(i), (ii), and (k) revised 34805
(c)(3) revised 38033
203.43a (d) added 18493
203.43b (a) introductory text, (2) and (b)(2) revised 34805
203.43c (g) revised 34805
203.43d Introductory text, (a)(3) and (4) revised 34805
203.43g (a)(1) revised 34805
203.43j (e) revised 34805
203.45 (g) revised 34805
203.49 (h) revised 34805
203.50 (f) and (j) revised; (k) added 34806
203.51 Added 34806
203.200—203.209 Undesignated center heading and sections added 41021
203.258 Revised 27222
Revised 34806
203.401 (c) added 3215
203.404 (c) added 3215
205.2 Added 18875
205.5—205.249 Removed 18875
207.31a (d) added 18493
213.45a (d) added 18493
213.510 (a) revised 34807
213.751 (b) amended 34807
213.752 Added 34807
215 Authority citation revised 920
215.22 (i)(4) amended 920
220.1 (a) amended 34807
220.30 (a) introductory text and (3), (1), (2), (4), (5), and (c) revised; (a)(6), (d), and (e) added 34807
220.249 Center heading and section added 34808
220.251 (a) amended 34808
220.253 Added 34808
221.1 (a) amended 34809
221.10 Introductory text revised 34809
221.12 Removed 34809
221.20 (a)(1) introductory text and (b) revised; (a)(4) and (c) added 34809
(a)(2)(iv) revised 41024
221.30 (b) revised 34809

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221.50 (b)(1) introductory text, (2) revised; (b)(3) and (4) added 34809
221.60 (b)(1), (c), and (j) revised 34809
221.65 (b) and (d)(4) revised 34810
221.70 Center heading and section added 34810
221.251 (a) amended 34810
221.252 Added 34810
221.524 (a)(1) introductory text revised; (e) added 38957
221.531 (b) introductory text and (3) amended 38957
221.532 Revised 38957
221.537 (f) added 18493
221.753 Added 38958
222 Heading revised 34810
222.1 (a) amended 34810
222.2 (b), (c), and (d) revised 34811
222.4 (c) removed 34811
(a)(4) revised 41024
222.6 (a) introductory text and (b) revised 34811
222.7 Revised 34811
222.8 Revised 34811
222.50 Revised 34811
222.52 Added 34811
222.251 (a) amended 34811
222.254 Added 34811
226.1 (a) amended 34812
226.8 Revised 34812
226.5 (a)(1)(iii) revised 41024
226.251 (a) amended 34812
226.252 Added 34812
233 Authority citation revised 34812
233.5 (a)(5) removed 34812
234 High-cost limits...24076, 37463, 40168
High-cost correction 39353
234.25 (c)(2) revised 34812
234.26 (e)(2) and (3) revised 34812
234.27 (a) introductory text, (2) introductory text, (3) introductory text, and (d) revised; (a)(4) and (e) added 34812
(a)(2)(iii) revised 41024
234.49 (a) revised 34813
234.51 Revised 34813
234.52 Introductory text and (a) revised 34813
(c) revised 38033
234.68 (d) added 18494
234.75 (g) revised 34813

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234.79 (h) revised 34813
234.85 Center heading and section added 34814
234.255 (a) amended 34814
234.256 Added 34814
235.1 (a) revised 34814
235.2 (c) revised 34814
235.9 (a) revised 50174
235.15 (a)(2) revised 41025
235.32 Revised 34814
235.201 (a) amended 34814
235.206 Added 34814
235.540 (a) revised 50174
236.10 (e) added 38958
236.30 (a)(1) revised; (f) added 38958
236.50 (a) revised 38958
236.55 (b) introductory text revised; (c) introductory text added 38958
236.60 Revised 38958
236.254 Added 38958
237.5 Amended 18494
241.1000—241.1120 (Subpart E) Added 38958
241.1200—241.1250 (Subpart F) Added 38958
248 Added 38952
251 Revised 41318
252 Revised 41319
255 Revised 41320
280.207 (e)(2)(iii) corrected 20240

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development

510.51 Added 18494
511 Revised 20050
511.10 Amended (OMB number); (e) regulation at 55 FR 20052 eff. 9-6-90 36612
511.15 Amended (OMB number); (c)(7) regulation at 55 FR 20058 eff. 9-6-90 36612
511.20 Amended (OMB number); (b)(5) and (11) regulation at 55 FR 20060 eff. 9-6-90 36612
511.40 Amended (OMB number); regulation at 55 FR 20063 eff. 9-6-90 36612
511.50 Amended (OMB number); (a) regulation at 55 FR 20064 eff. 9-6-90 36612
570.201 (i) revised 29308
570.301 (b)(1)(iv) amended 29308
570.303 (h) revised 29308
570.403 (i)(2) revised 29309
570.410 (f) revised 29309
570.457 Revised 29309
570.458 (c)(14)(ix)(I) amended 29309
570.496 (h) added 18494
570.496a Revised 29309
570.511 Added 32369
570.606 Revised 29312
570.613 Added 18494
570.702 (f) revised 29316
571 Authority citation revised 920
571.606 Revised 920
577.10 Added 34154
578.10 Added 34154
579.10 Added 34155

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs)

750 Authority citation revised 921
750.1 (a)(1) revised 921
750.5 Amended 921

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program)

813.101 Amended 921
880.613 (i)(4) amended 921
881 Authority citation revised 921
881.613 (i)(4) amended 921
882 Authority citation revised 28608, 28546
Authority citation revised 921
882.118 (b)(4) added 28546
882.210 (b) revised 28546
882.216 (a)(2) and (b)(6)(v) revised; (c) added 28546
882.219 (i)(4) amended 921

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882.413 Revised 28546
882.514 (a)(2) redesignated as (a)(3); new (a)(2) and (g) added; (f) revised 28547
882.517 (i)(4) amended 921
882.720 Amended (OMB number); (b)(2) regulation at 55 FR 9257 eff. 4-17-90 14243
(b)(1) revised 28608
882.723 Amended (OMB number); (b) regulation at 55 FR 9257 eff. 4-17-90 14243
882.725 Amended (OMB number); regulation at 55 FR 9257 eff. 4-17-90 14243
882.733 Amended (OMB number); (b) regulation at 55 FR 9257 eff. 4-17-90 14243
883 Authority citation revised 921
883.714 (i)(4) amended 921
884 Authority citation revised 921
884.226 (i)(4) amended 921
885.230 Amended (OMB number); (b) regulation at 55 FR 9257 eff. 4-17-90 14244
885.416 (b) introductory text and (c) revised 27224
886 Authority citation revised 921
886.132 (i)(4) amended 921
886.337 (i)(4) amended 921
887 Authority citation revised 28547
Authority citation revised 921
887.157 (i)(4) amended 921
887.401 (b)(5) added 28547
887.403 (b) revised; (d) added 28547
887.405 (a)(2) and (b)(6)(v) revised 28548
888 Schedule A amended 25301
Schedule A amended 38985, 38986
Schedules B and D revised 40044
Schedule C revised 51996

Chapter IX—Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development

904 Authority citation revised 921
904.101 (b) introductory text revised 922
905 Revised; interim 24741
Comment time extended; interim 31178
905.220 (b)(3)(iii) and (iv) introductory text amended 922
912 Authority citation revised 922
912.1 (b)(1) amended 922
913 Heading revised 922
913.101 Revised 922
913.102 Amended 922
913.104 (b) amended 922
913.105 (a) and (d) amended 922
913.109 (b) amended 922
961 Added 27608
Authority citation corrected 28987
966 Authority citation revised 922
966.1 Amended 922
968 Authority citation revised 922
968.101 (a) and (b)(2) amended 922
968.105 Amended 922
968.110 (a) amended 922
969 Authority citation revised 922
969.102 Revised 922
970.1 Amended 923
970.2 Introductory text and (a) revised 923
990 Authority citation revised 923
990.103 (b) revised 923
990.105 (g) amended 923

Title 24—*Proposed Rules:*

4 49012
12 25036
30 37290
86 22722
100 ..... 24370, 31191, 37072
200 ..... 19895, 40399, 46632
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201 3302
202 3302
203 21620
207 48863
221 ..... 34988, 48863
231 48863
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255 ..... 21621, 22887
511 20070
570 ..... 32356, 52938
791 23670
888 ..... 20682, 25054, 27251, 28413, 28776
3282 27252

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

61 Authority citation revised 41519
61.4 (j) added 41519
143 Added; interim 19621
176.51 Revised 42956
176.52 Revised 42956
176.54 Revised 42956
176.55 (b), (c)(1) and (4) revised 42957
177.51 (b) revised 20456
177.52 (b) revised 20456
226 Authority citation revised 33114
226.1 (h) revised 33114
226.6 (a) and (c) amended 33114
226.11 (a)(2) revised; (b)(1) amended 33114
226.13 (a) amended 33114
226.14 (b) revised 33114
226.15 (e) added 33115
226.18 Introductory text and (e) revised 33115
226.19 (a), (b) and (d) amended 33115
226.21 (f) amended 33115
226.22 (b) amended; (e) revised 33115
226.23 Amended 33115
226.25 Amended 33115
226.28 Introductory text and (a) amended; (c) added 33115
226.29 (a) revised 33115
226.33 Amended 33116
226.34 Revised 33116
226.36 Revised 33116
226.42 Amended 33116
226.43 (a), (b), (d), (g), (h) amended; (j) added 33116
226.44 Revised 33116
226.45 Revised 33116
226.46 Added 33116
286 Authority citation revised; nomenclature change 36273
286.1 Revised 36273
286.5 Added 36273
286.11 (a) revised 36274
286.17 (a), (c), and (g) revised; (j) added 36274

Chapter IV—Navajo and Hopi Indian Relocation Commission

700.701—700.729 (Subpart Q) Revised; interim 37871

Title 25—*Proposed Rules:*
20 42406
39 53312
61 18128
143 19637
175 28229
176 28229
177 28229
244 52264
256 37492
286 37887

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

1 Authority citation amended 21189, 33674, 35587, 41665, 41670, 42004, 49031, 50176, 50553, 51284, 51691
Authority citation amended 1362, 3034
1.42-0 Added 21189
1.42-1 Removed 21189
1.42-2 Added 21189
(c)(1) corrected 25973
1.42-2T Removed 21191
1.56-0 Redesignated from 1.56-0T and revised 33675
1.56-0T Redesignated as 1.56-0 and revised 33675
1.56-1 Redesignated from 1.56-1T and revised 33675, 33676
1.56-1T Redesignated as 1.56-1 and revised 33675, 33676
1.62-1T (c)(2) revised 51691
1.62-2 Added 51691
1.62-2T Removed 51691
1.149(b)(3)-1T Added (temporary) 41665
1.162-17 (e)(3) revised 51695
1.163-5 (c)(2)(i) introductory text and (A) amended; (c)(2)(i)(B) introductory text revised; (c)(3) redesignated as (c)(3)(i) and heading added; (c)(2)(i)(D) and new (c)(3)(ii) added 19624
1.163-5T (e) added (temporary) 19626
1.170A-1 (h)(5) and (i) revised; (h)(11) added 35587
1.216-1 (a) introductory text, (c)(1) and (d)(1) amended; (c)(2) redesignated as (c)(3) and amended; new (c), (2) and (3) *Examples* added; (d)(2) and (e) revised; (c) through (g) redesignated as (d) through (h); and 42004
1.216-2 (c) revised 42006
1.267(f)-3T Added (temporary) 49038
1.280F-7T (a)(2)(i), (ii), and (iv) text and table heading revised; (a)(2)(v) added (temporary) 13769
1.337(d)-1 Added 49031
1.337(d)-1T Removed 49031
1.337(d)-2T Added (temporary) 49034
1.412(c)(1)-3T Added (temporary) 42707
1.414(s)-1T Revised (temporary) 19878
(c)(2), (3), (e)(1)(i), (g)(1) and (2) corrected 25601
1.415-2 (d)(1) and (4) revised; (d)(6) amended; (d)(8) redesignated as (d)(10); (d)(11) and (12) added (temporary) 19880
(d)(1)(i) correctly revised 25601
1.448-1T (g)(1), (2)(i), (ii)(A), (3)(ii), (h)(2) and (3)(i) revised; (g)(2)(iii) and (h)(4) added 485
1.451-6T (a)(1) corrected 19423
1.460-0 Added 41670
1.460-6 Added 41670
1.469-1T (h)(2) revised 49038
1.469-2T (f)(5)(i)(B), (ii), (iii)(C), and (iv) revised 48108
(f)(5)(ii)(A) corrected 51688
1.501(c)(3)-1 (b)(3) and (c)(3)(ii) amended 35587
1.501(c)(4)-1 (a)(2)(ii) amended 35588
1.501(h)-1 Added 35588
1.501(h)-2 Added 35588
1.501(h)-3 Added 35589
1.504-1 Revised 35592
1.504-2 Added 35592
1.852-11 Redesignated from 1.852-11T; heading, (e)(2)(i), (ii), (3), (f)(3)(i), (ii)(A), (B), (iii), (iv), (v), (vi), (h) *Examples (2), (5), (8)* and *(11)* and (j)(1) amended; (a), (c), (d)(1), (f)(4), (j)(2)(i), (4) and (5) revised 50176, 50177
(f)(4) corrected 2868
1.852-11T Redesignated as 1.852-11; heading, (e)(2)(i), (ii), (3), (f)(3)(i), (ii)(A), (B), (iii), (iv), (v), (vi), (h) *Examples (2), (5), (8)* and *(11)* and (j)(1) amended; (a), (c), (d)(1), (f)(4), (j)(2)(i), (4) and (5) revised 50176, 50177
1.863.7 Added 1362
1.863.7T Removed 1362
1.874-1 Revised 50828
(a) and (d)(2) corrected 1361
1.882-4 Revised 50830
1.904(f)-12 Added 31381
1.904(f)-13T Removed 31381
1.952-1 (a)(2) amended 2846
1.954A-1 (a), (b)(3)(i), (c), (e) introductory text, (f) introductory text and (3) amended; (f)(4) added 2846
1.954-8 Added 2847
1.964-4 (d)(4) through (10) redesignated as (d)(5) through (11); new (d)(4) added 2849
1.1445-5 (c)(3)(i) revised; (c)(3)(v) removed; (c)(3)(vi) redesignated as (c)(3)(v) 50553
1.1445-8 Added 50553
1.1445-8T Removed 50553
1.1502-1 (h) redesignated from 1.1502-1T 49038
1.1502-1T Redesignated as 1.1502-1(h); heading removed 49038
1.1502-12 (r) revised 49038
1.1502-20T Removed 49038
1.1502-32 (a) amended 49038
1.1502-33 (c)(6) amended 49038
1.1502-79 (a)(1)(iii) removed 49038

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1.1502-75T Heading revised; (c) and (d) added 36276
(d)(5)(ii), (iii)(B)(*1*), and (v) corrected 41310
1.5060M-1(b)(2)(iv) revised 13522
1.6001-1 (c) amended 35593
1.6033-2 (a)(2)(ii)(*k*) added 35593
1.6041-3 (i) revised 51695
1.6045-3T Heading and (p) revised (temporary) 51284
1.6045-4 Added 51284
(d)(3)(iii), (e)(1) introductory text and (f)(2) corrected 559
(m)(1), (r) *Examples* 2 and 4 corrected 3419
1.6050I-1T Revised 28022
1.6050M (d)(5)(i)(A) corrected 13522
1.6081-4T Removed 37227
1.6081-5 Added 37227
(a)(1) corrected 41310
1.6655-7 Redesignated from 1.6655-7T and revised 33689
1.6655-7T Redesignated as 1.6655-7 and revised 33689
1.6851-2 (a)(2)(ii) revised 3034
1.6851-2T Added (temporary) 3034
7.0 (c)(4) removed; (d) amended 35593
20.2055-1 (a)(2) revised 35593
25.2522(a)-1 (a)(2) and (b)(2) revised 35594
31.3121(a)-1 (h) amended 51696
31.3121(a)-2T Redesignated as 31.3121(a)-3 and revised 51696
31.3121(a)-3 Redesignated from 31.3121(a)-2T and revised 51696
31.3231(e)-1 (a)(3)(iv) amended 51696
31.3231(e)-3 Redesignated from 31.3231(e)-3T and revised 51696
31.3231(e)-3T Redesignated as 31.3231(e)-3 and revised 51696
31.3306(b)-1 (h) amended 51697
31.3306(b)-2 Redesignated from 31.3306(b)-2T and revised 51697
31.3306(b)-2T Redesignated as 31.3306(b)-2 and revised 51697
31.3401(a)-1 (b)(2) amended 51697
31.3401(a)-2T Redesignated as 31.3401(a)-4 and revised 51698
31.3401(a)-4 Redesignated from 31.3401(a)-2T and revised 51698
35a Authority citation amended 39401
35a.3406-1 (f) correctly removed 37874
(a)(1), (b)(2), (5)(i)(B), (c)(1)(ii), (2)(i), (3) introductory text, (vii), (viii) and (d)(2)(i) amended; (c)(3)(ix) removed 39401
(a)(3)(x) added; (b)(3), (5)(i) introductory text, (ii), (c)(3)(xi), (d)((1), (f)(1) introductory text, (i) through (iii), (2)(iv), (3) and (j) revised; (f)(2)(ii), (iii), (4)(i), (g) and appendix amended 39402
35a.9999-5 Amended (temporary) 19627
40 Added (temporary) 181
43 Added 41520
43.0-1T Added (temporary) 188
43.6071(a)-1T (c) corrected 46667
44.4402-1 Removed 188
44.4402-1T Added (temporary) 188
45 Removed 189
46 Heading revised 189
46.0-1 Removed 189
46.0-1T Added (temporary) 189
46.0-3 Removed 189
46.0-4 Removed 189
46.4371-1—46.4375-1 (Subpart A1) redesignated as Subpart B 189
46.4371-4 Redesignated from 46.6001-4 189
46.4375-1 Removed 189
46.4501-1—46.4504-1 (Subpart B) Removed 189
46.4701-1 (b)(5) revised 19627
46.4881-1—46.4884-1 (Subpart D) Removed 189
46.6001-4 Redesignated as 46.4371-4 189
47 Removed 41522
48 Authority citation amended 23077
48.0-1 Removed 189
48.0-1T Added (temporary) 189

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48.4041-21T Redesignated as 48.4041-21 and heading amended 23077
48.4041-21 Redesignated from 48.4041-21T and heading amended 23077
49.0-1 Removed 189
49.0-1T Added (temporary) 189
49.0-3 Removed 189
49.0-4 Removed 189
49.4241-1—49.4243-3 (Subpart B) Removed 189
49.4271-1T Redesignated from 154.2-1; heading and (f) revised; (a) amended 190
49.4286-1—49.4287-1 (Subpart E) Heading revised and sections removed 189
49.9000—49.9000-1 Undesignated center heading and sections removed 189
52 Heading and authority citation revised 36615
52.0-1T Added (temporary) 189
52.4681-0T Added (temporary) 36615
Amended 20
52.4681-1T Added (temporary) 36616
(c)(9) added; (d) revised 20
52.4682-1T Added (temporary) 36617
(b)(2)(ii) and (iii) revised 20
52.4682-2T Added (temporary) 36618
(b)(1)(i), (2)(i), (d)(2)(i), (ii), (3)(i) and (ii) amended 21
52.4682-3T Added (temporary) 36621
(a) introductory text and (b)(2)(i)(B) revised; (a)(3) added 21
52.4682-4T Added (temporary) 36626
(b)(2)(i)(B), (d)(1)(ii), (2)(iii), (e) and (g) revised; (d)(1)(iii) amended 21
52.6011(a)-1 Removed 36628
52.6011(a)-1T Added (temporary) 36628
52.6011(a)-2 Removed 36628
52.6011(a)-2T Added (temporary) 36628
52.6071(a)-1 Amended 36629
52.6071(a)-2T Added (temporary) 36629
52.6071(a)-3T Added (temporary) 36629
(b)(1) revised 22
52.6091-1 Removed 36630
52.6091-1T Added (temporary) 36630
52.6101-1T Added (temporary) 36630
Correctly added 48955
52.6109a-1T Added (temporary) 36630
52.6151-1 Removed 36630
52.6151(a)-1T Added (temporary) 36630
(b) revised 22
52.6302(c)-2T Added (temporary) 36630
(b)(3) revised 22
53.4945-2 (a)(1), (2), (5)(i), (d)(1)(i), (ii), and (4) revised; (d)(1)(v) redesignated as (d)(1)(vii); new (d)(1)(vii), (1)(iv) and (2)(iii) amended; (a)(6), (7), (d)(1)(v) and (vi) added; (a)(5)(iii), (b) and (c) removed 35594
56 Added 35598
138 Removed 190
142 Removed 190
145.1-1 Removed 190
145.1-2 Removed 190
145.1-3 Removed 190
145.1-4 Removed 190
145.1-5 Removed 190
145.1-6 Removed 190
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145.2-1 Removed 190
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145.4-6 Removed 190

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146 Removed 190
147 Removed 190
148.1–6 Removed 190
154.2–1 Redesignated as 49.4271–1T; heading and (f) revised; (a) amended 190
154 Removed 190
301 Authority citation amended 12346, 14245
301.6103(j)(1)–1 Technical correction 21742
301.6114–1 (b)(4)(ii), (b)(5) introductory text, (c)(1), (7)(i), and (ii) revised; (c)(7)(iii) concluding text, (d)(4)(v) concluding text, and (e) amended 28609
301.6621–3T (d) corrected (temporary) 2433
301.6404–0 Redesignated from 301.6404–0T and revised 14245
301.6404–0T Redesignated as 301.6404–0 and revised 14245
301.6404–3 Redesignated from 301.6404–3T and heading revised 14245
301.6404–3T Redesignated as 301.6404–3 and heading revised 14245
301.6621–3T Added (temporary) 52043
301.7216–2T Added (temporary) 53296
301.7605–1 Heading and (a) removed 12346
301.7605–1T Added (temporary) 12346
(a)(1) corrected 21862
602.101 (c) table amended (OMB numbers) 14245, 19627, 21191, 23077, 28022, 33690, 35620, 36631, 41686, 42006, 49038, 50179, 50554, 51290, 51698, 53296
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4.10 Amended 24938
4.21 (a)(1)(iii) concluding text designated as (a)(1)(iv); new (a)(1)(iv), (d)(1)(ii), (e)(1)(ii), (f)(1)(ii), and (h)(2)(ii) revised 24988
4.24 (c)(2) and (3) revised; (c)(4) removed 17967
4.37 (b)(1) revised 42713
4.73 (a) revised 42713
5.23 (a)(3)(ii) revised 49996
9.53 (c)(37) through (42) revised; (c)(43) and (44) removed; (c)(45) and (46) redesignated as (c)(43) and (44) 32402
9.70 (b) and (c)(10) through (26) revised; (c)(27) and (28) removed 32402
9.130 Added 47749
9.131 Added 47747
9.132 Added 2435
9.135 Added 24
12 Added 17967
18.11 Amended 24989
19 Authority citation revised 18061
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19.21 Undesignated center heading and section revised 18061
19.26 Redesignated from 19.36 and revised 18062
(a) and (b) corrected 23634
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19.35 Added 18062
19.36 Undesignated center heading removed; redesignated as 19.26 and revised; new 19.36 added 18062
19.37 Added 18063
19.38 Added 18063
19.42 (c) redesignated as (d); new (c) added 18063
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19.92 (a) revised 18063
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19.241 (a) amended 24989
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19.520 Amended 47605
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19.748 (a)(16) and (17) revised; (a)(18) added 18064
19.761 Revised 18064
19.762 Revised 18064
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19.765 Revised 18065
19.770 (a)(6)(iv), (vi), and (vii) revised; (a)(6)(viii) added 18065
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19.1010 (b) table amended (OMB numbers) 18065
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24.270 Concluding text added 52737
24.278 Added 52737
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53 Added 303
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70.31 Redesignated from 70.26 47606
70.32 Redesignated from 70.27 47606
70.33 Redesignated from 70.28 47606
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70.35 Redesignated as 70.40 47606
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1910.26 (c)(3)(viii) revised 32014
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1910.67 (b)(4) revised 32014
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1910.176—1910.190 (Subpart N) Authority citation correctly revised 46054

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1926.300—1926.305 (Subpart I) Authority citation revised 42328
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This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being removed from Table I as a result of documents published in the **Federal Register** during January 1991.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1991. Removals during 1990 are in the December 1990 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

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List of CFR Sections Affected

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LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
17–27—as of April 1
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42–50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

Boldface entries are used to distinguish current month amendments from previous entries. Example: **1413.23 Amended.....12345.** **Boldface** page numbers under a particular title indicate that the page numbers span 2 years.

Cite a page reference from this publication using the volume number (i.e. 55 FR for 1990) and the page number. Example: 24727 cite as 55 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1990.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

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INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

(Comprising a complete CFR set)

Title	*Price*	*Revision Date*
1, 2 (2 Reserved)	$11.00	Jan. 1, 1990
3 (1989 Compilation Parts 100 to 102)	11.00	Jan. 1, 1990
4	15.00	Jan. 1, 1991
5 (Parts 1-699)	17.00	Jan. 1, 1991
(Parts 700-1199)	13.00	Jan. 1, 1990
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7 (Parts 0-26)	15.00	Jan. 1, 1991
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12 (Parts 1-199)	12.00	Jan. 1, 1990
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30 (Parts 1-199)	22.00	July 1, 1990
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CFR Index and Findings Aids	30.00	Jan. 1, 1990
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2 Authority citation revised 50321
2.28 (d)(1) revised 50321

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321.1 (f) revised; (g) through (o) redesignated as (h) through (p) and revised; new (g) and (q) added 35395
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36.4324 (f) revised 37477
36.4330 Heading revised; (b) redesignated as (c) and revised; new (b) and authority citation added 34913
36.4335 (h) added 37477
36.4360a (b)(2) revised and authority citation added 34913
36.4502 Revised 40657
36.4503 (a) and (a) authority citation amended 40657
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36.4511 (d) added 37478

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52.50 (c)(52) added 38996
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52.120 (c)(63), (65)(i)(A)(*2*) and (66)(i)(D) revised 3221
52.124 Added 5478
52.136 Added 5478
52.137 Added 5482
52.138 Added 5485
52.220 (c)(168)(i)(A)(*2*), (C)(*2*), (E)(*2*), (F), (G), and (H) added 28624
(c)(159)(iv)(B), (v)(C), (D), (vii), (160)(i)(D), and (E) added 28625
(c)(177) added 31833
(c)(177)(i)(A)(*2*), (B)(*1*), and (C)(*1*) added 31835
(c)(179) added 49283
52.237 (a)(4) and (5) revised 2853
52.279 (a)(2) revised 31835
52.520 (c)(71) added 46790
52.720 (c)(81) added 29203
(c)(79) added 40661
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52.1323 (e) added 46206
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52.2070 (c)(36) added 35625
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60.30b—60.32b (Subpart Cb) Added 5525
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60.34 Removed 5525
60.40c—60.48c (Subpart Dc) Added 37683
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60.106 (a) through (d) revised; (e) through (h) redesignated as (g) through (j); new (e), (f) and (k) added 40176
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60.455 (b) revised; (c) redesignated as (d); new (c) added (OMB number) 51383
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61.68 (b) amended 28349
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Table I is in the CFR Index and Finding Aids revised as of January 1, 1991. Removals during 1990 are in the December 1990 LSA (List of CFR Sections Affected).

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The CFR is revised annually according to the following schedule:

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To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

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PARALLEL TABLE OF AUTHORITIES AND RULES

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INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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1.56-1 Redesignated from 1.56-1T and revised....33675, 33676
1.56-1T Redesignated as 1.56-1 and revised....33675, 33676
1.56A-1—1.56A-5 Undesignated center heading added....11083
1.56(g)-0 Added....11083
1.56(g)-1 Added....11084

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1.57—1.60 Undesignated center heading added 11083
1.62-1T (c)(2) revised 51691
1.62-2 Added 51691
(m) corrected 8911
1.62-2T Removed 51691
1.149(b)(3)-1T Added (temporary) 41665
1.162-17 (e)(3) revised 51695
1.163-5 (c)(2)(i) introductory text and (A) amended; (c)(2)(i)(B) introductory text revised; (c)(3) redesignated as (c)(3)(i) and heading added; (c)(2)(i)(D) and new (c)(3)(ii) added 19624
1.163-5T (e) added (temporary) 19626
1.170A-1 (h)(5) and (i) revised; (h)(11) added 35587
1.216-1 (a) introductory text, (c)(1) and (d)(1) amended; (c)(2) redesignated as (c)(3) and amended; new (c), (2) and (3) *Examples* added; (d)(2) and (e) revised; (c) through (g) redesignated as (d) through (h) 42004
1.216-2 (c) revised 42006
1.267(f)-3T Added (temporary) 49038
1.280F-7T (a)(2)(i), (ii), and (iv) text and table heading revised; (a)(2)(v) added (temporary) 13770
1.337(d)-1 Added 49031
1.337(d)-1T Removed 49031
1.337(d)-2T Added (temporary) 49034
1.338-6T Added 11095
1.412(c)(1)-3T Added (temporary) 42707
1.414(s)-1T Revised (temporary) 19878
(c)(2), (3), (e)(1)(i), (g)(1) and (2) corrected 25601
1.414(q)-1T (b)(1) introductory text and (2)(iii) revised; (g) added (temporary) 3977
1.415-2 (d)(1) and (4) revised; (d)(6) amended; (d)(8) redesignated as (d)(10); (d)(11) and (12) added (temporary) 19880
(d)(1)(i) correctly revised 25601

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1.448-1T (g)(1), (2)(i), (ii)(A), (3)(ii), (h)(2) and (3)(i) revised; (g)(2)(iii) and (h)(4) added 485
(g)(3)(ii) corrected 5062
1.451-6T (a)(1) corrected 19423
1.460-0 Added 41670
1.460-1 Heading added 41670
1.460-2 Heading added 41670
1.460-3 Heading added 41670
1.460-4 Heading added 41670
1.460-5 Heading added 41670
1.460-6 Added 41670
1.460-7 Heading added 41686
1.460-8 Heading added 41686
1.469-1T (h)(2) revised 49038
1.469-2T (f)(5)(i)(B), (ii), (iii)(C), and (iv) revised 48108
(f)(5)(ii)(A) corrected 51688
1.501(c)(3)-1 (b)(3) and (c)(3)(ii) amended 35587
1.501(c)(4)-1 (a)(2)(ii) amended 35588
1.501(h)-1 Added 35588
1.501(h)-2 Added 35588
1.501(h)-3 Added 35589
1.504-1 Revised 35592
1.504-2 Added 35592
1.852-11 Redesignated from 1.852-11T; heading, (e)(2)(i), (ii), (3), (f)(3)(i), (ii)(A), (B), (iii), (iv), (v), (vi), (h) *Examples* (2), (5), (8) and (11) and (j)(1) amended; (a), (c), (d)(1), (f)(4), (j)(2)(i), (4) and (5) revised 50176, 50177
(f)(4) corrected 2808
(c)(3)(i) corrected 8130
1.852-11T Redesignated as 1.852-11; heading, (e)(2)(i), (ii), (3), (f)(3)(i), (ii)(A), (B), (iii), (iv), (v), (vi), (h) *Examples* (2), (5), (8) and (11) and (j)(1) amended; (a), (c), (d)(1), (f)(4), (j)(2)(i), (4) and (5) revised 50176, 50177
1.861-8T (e)(6) removed; (g) introductory text and *Examples* (25) through (29) removed 10369
1.861-8 (e)(6) revised; (g) introductory text and *Examples* 25 and 26 revised; *Examples* 27 through 33 added 10369
1.863-7 Added 1362
1.863-7T Removed 1362
1.874-1 Revised 50828
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1.882-4 Revised 50830
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1.904(f)-12 Added 31381
1.904(f)-13T Removed 31381
1.907-0 Revised 11063
1.907(a)-0 Added 11065
1.907(a)-0T Removed 11065
1.907(a)-1 Added 11066
1.907(a)-1T Removed 11065
1.907(b)-1 Added 11066
1.907(b)-1T Removed 11065
1.907(c)-1 Added 11067
1.907(c)-1T Removed 11065
1.907(c)-2 Added 11071
1.907(c)-2T Removed 11065
1.907(c)-3 Added 11073
1.907(c)-3T Removed 11065
1.907(d)-1 Added 11075
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1.907(e)-1 Added 11076
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1.907(f)-1 Added 11079
1.907(f)-1T Removed 11065
1.907(a)-0A (a) revised 11080
1.907(a)-0AT Removed 11080
1.907(c)-1A (d)(3) revised 11080
1.907(c)-1AT Removed 11080
1.926(a)-1 Added 11093
1.926(a)-1T (b)(1) revised 11093
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1.954A-1 (a), (b)(3)(i), (c), (e) introductory text, (f) introductory text and (3) amended; (f)(4) added 2846
1.954-8 Added 2847
(c)(4) *Example* 4 corrected 11511
1.964-4 (d)(4) through (10) redesignated as (d)(5) through (11); new (d)(4) added 2849
1.1445-5 (c)(3)(i) revised; (c)(3)(v) removed; (c)(3)(vi) redesignated as (c)(3)(v) 50553
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1.1502-1 (h) redesignated from 1.1502-1T 49038
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1.1502-12 (r) revised 49038
1.1502-20T Removed 49038
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1.1502-79 (a)(1)(iii) removed 49038
1.1502-75T Heading revised; (c) and (d) added 36276
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1.5060M-1(b)(2)(iv) revised 13522
1.6001-1 (c) amended 35593
1.6033-2 (a)(2)(ii)(*k*) added 35593
1.6041-3 (i) revised 51695
1.6045-3T Heading and (p) revised (temporary) 51284
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1.6655-7 Redesignated from 1.6655-7T and revised 33689
1.6655-7T Redesignated as 1.6655-7 and revised 33689
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1.6851-2T Added (temporary) 3034
7.0 (c)(4) removed; (d) amended 35593
20.2055-1 (a)(2) revised 35593
25.2522(a)-1 (a)(2) and (b)(2) revised 35594
31 Authority citation corrected 8911
31.3121(a)-1 (h) amended 51696
31.3121(a)-2T Redesignated as 31.3121(a)-3 and revised 51696
31.3121(a)-3 Redesignated from 31.3121(a)-2T and revised 51696
31.3231(e)-1 (a)(3)(iv) amended 51696

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Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury

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4.24 (c)(2) and (3) revised; (c)(4) removed 17967
4.37 (b)(1) revised 42713
4.73 (a) revised 42713
5.23 (a)(3)(ii) revised 49996
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9.53 (c)(37) through (42) revised; (c)(43) and (44) redesignated as (c)(45) and (46) revised; (c)(45) and (46) redesignated as (c)(43) and (44) 32402
9.70 (b) and (c)(10) through (26) revised; (c)(27) and (28) removed 32402
9.130 Added 47749
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12 Added 17967
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19.35 Added 18062
19.36 Undesignated center heading removed; redesignated as 19.26 and revised; new 19.36 added 18062
19.37 Added 18063
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19.770 (a)(6)(iv), (vi), and (vii) revised; (a)(6)(viii) added 18065
(a)(6)(iv) corrected 23635
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52.1670 (c)(82) added....12453
52.1673 (b) removed....12453
52.1679 Table amended....12454
52.1820 (c)(19) added....32405
(c)(20) added....12849
52.1870 (c)(87)....46208
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52.1880 (d)(1) removed and (i) added....29846
52.1885 (n) added....39272
52.1920 (c)(34) added....33907
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(c)(39) added....3781
(c)(38) added....5655
52.1925 Table revised....5655
52.1929 Revised....5656
52.1934 Added....5656
52.2070 (c)(36) added....35625
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52.2081 Table amended....35625
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52.2120 (c)(33) added....27228
52.2182 Added....40834
52.2220 (c)(103) added....10173
52.2225 Added....10173
52.2270 (c)(72) added....31587
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52.2370 (c)(20) added 9177
52.2381 Table amended 9177
52.2420 (c)(92) added 33905
52.2570 (c)(59) added 49619
52.2584 (b) added 33120
52.2620 (c)(20) added 28199
52 Appendix B corrected 31982
60 Authority delegation notices 28393, 48233
Authority delegation notices 8280
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60.1 Introductory text designated as (a); (b) added 51382
60.2 Amended 51382
60.4 (c) table revised 29016
(c) table revised 39406
60.7 (c) introductory text and (1) revised; (d) through (f) redesignated as (e) through (g); new (d) and Figure 1 added 51382
60.17 (a)(1), (10), and (50) revised 37683
(a)(6), (38), and (40) revised; (a)(60) and (61) added 51053
(a)(56) through (59) amended 40175
(h) revised; eff. 8-12-91 5507
60.30 Revised 5523
60.30a—60.39a (Subpart Ca) Added 5523
60.30b—60.32b (Subpart Cb) Added 5525
60.32 Removed 5525
60.33 Removed 5525
60.34 Removed 5525
60.40c—60.48c (Subpart Dc) Added 37683
60.45 (g) introductory text revised 51382
60.50a—60.59a (Subpart Ea) Added; eff. 8-12-91 5506
60.103 (a) amended 40175
60.104 (a)(1), (2)(i) and (ii) revised 40175
60.105 (a)(1) through (7), (13)(i), (d) and (e) revised; (a)(14) removed 40175
60.106 (a) through (d) revised; (e) through (h) redesignated as (g) through (j); new (e), (f) and (k) added 40176
(h)(3) through (5), (i) introductory text, (2)(i) and (7) amended 40178
(j)(3)(ii) amended 40178
(b)(2) revised 4176
60.107 (b)(1)(ii), (2), (c)(1)(i) through (iii) amended 40178
60.108 (d) amended 40178
60.109 (b)(2) amended 40178
60.315 (b) revised; (c) redesignated as (d); new (c) added (OMB number) 51383
60.395 (b) and (c) revised (OMB number) 51383
60.447 (b) revised; (c) redesignated as (d); new (c) added 51383
60.455 (b) revised; (c) redesignated as (d); new (c) added (OMB number) 51383
60.465 (c) redesignated as (e); new (c) and (d) added (OMB number) 51383
60.495 (b) revised; (c) and (d) redesignated as (d) and (e); new (c) added 51384
60.560—60.566 (Subpart DDD) Added 51035
60.561 Corrected 9178
60.562–1 (a)(1)(i)(A), (ii) Table 3, (iii) introductory text, (c) introductory text and (1)(i)(B) corrected 9178
60.564 (e)(1) and (j)(1)(iii) corrected 9178
60.565 (a)(3)(i), (c)(2)(ii), (e)(2), (f)(1)(i), (ii), (2), (3) and (h) introductory text corrected 9178
60.604 (a)(2) revised 51384
60.611 Corrected 36932
60.614 (e)(2) table corrected 36932
60.615 (b)(3) corrected 36932
60.665 (g)(4) corrected 36932
60 Appendix B amended 40178, 47474
Appendix A amended 47472–47474
Appendix A corrected 48208
Appendix B amended 5526
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61 Authority delegation notices 28393, 31593, 32077, 48233
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61.18 (a)(7) removed; (a)(11) added 32914
61.61 (o) and (w) through (z) revised 28348
61.65 (a) and (b)(6) introductory text revised; (d) added 28348
61.68 (b) amended 28349
61.100—61.108 (Subpart I) Effective date stayed to 9–11–90 29205
Effective date stayed to 3–10–91 38057
Effective date stayed to 4–15–91 10514
61.140—61.156 (Subpart M) Authority citation revised 48414
61.140 Revised 48414
61.141 Amended 48415
Corrected 1669
61.142 Revised 48416
61.143 Revised 48419
(b) corrected 1669
61.144 (a)(9), (b)(1) and (2) revised; (b)(3) through (8) added 48419
(b)(3) corrected 1669
61.145 Revised 48419
(a)(2)(i) corrected 1669
61.146 Removed 48419
Redesignated from 61.148; (a), (b) intorductory text, (2) and (d) revised 48424
61.147 Removed 48419
Redesignated from 61.149; (b)(1) and (2) revised; (b)(3) through (8) added 48424
61.148 Redesignated as 61.146; (a), (b) introductory text, (2) and (d) revised; new 61.148 redesignated from 61.150 and revised 48424
61.149 Redesignated as 61.147; (b)(1) and (2) revised; (b)(3) through (8) added; new 61.149 redesignated from 61.151; (a), (b), (c) introductory text, (1)(ii), (iii) and (2) revised; (d) through (f) added 48424
(c)(1)(ii) corrected 1669
61.150 Redesignated as 61.148 and revised 48424
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(b) corrected 1669

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61.151 Redesignated as 61.149; (a), (b), (c) introductory text, (1)(ii), (iii) and (2) revised; (d) through (f) added 48424
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61.152 Redesignated as 61.150 and revised 48429
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61.153 Redesignated as 61.151; introductory text, (a)(2), (4) and (b)(3) revised; (d) and (e) added 48429
Redesignated from 61.155; (a)(3) and (4) redesignated (a)(4) and (5); (a) introductory text, (2), (4) introductory text, (ii), (iii), (5) introductory text and (b) revised; (a)(3) added 48430
(a) corrected 1669
61.154 Redesignated as 61.152; (a)(1)(i) removed; (a)(1)(ii) through (iv) and (b)(2) redesignated as (a)(1)(i) through (iii) and (b)(3); (a) introductory text, (b)(1) and (3) revised; (a)(3) and (b)(2) added 48430
Redesignated from 61.156; introductory text, (c) and (d) revised; (e) through (j) added 48431
(e)(1)(iv) corrected 1669
61.155 Redesignated as 61.153; (a)(3) and (4) redesignated (a)(4) and (5); (a) introductory text, (2), (4) introductory text, (ii), (iii), (5) introductory text and (b) revised; (a)(3) added 48430
Added 48431
61.156 Redesignated as 61.154; introductory text, (c) and

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(d) revised; (e) through (j) added 48431
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61.157 Added 48433
61.242-2 (d) introductory text, (5), and (6) revised; (d)(4)(i) through (iii) added 28349
61.300 (a) and (e) revised 45804
61.340 (b) revised 37231
61.346 (b)(2)(ii)(A) amended 37231
61.348 (b)(2)(ii)(B) amended 37231
61.349 (a)(2)(i)(B) amended 37231
61.351 (a)(2) amended 37231
61.355 (a)(1) amended 37231
61.357 (a)(4) added; (b) amended 37231
61 Appendix IX amended 29359
62.4845 (b)(2) and (c)(2) added 38548
62.4925 Undesignated heading and section added 38548
80 Interpretative rule 5352
81 Attainment status designations 28199
Attainment status designations 11101
81.314 Table amended 43126, 43127
81.315 Table amended 38328
81.319 Table amended 35628
81.337 Table amended 3782
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81.343 Amended 38997
81.344 Table amended 37714
81.350 Table amended 29579
82 Authority citation revised 9528
82.1 (a) revised 9528
82.2 Revised 9528
82.3 (f), (g), (k), (m), (r) and (s) revised; (e) and (t) amended 9528
(t) corrected 10660
82.4 (a), (b) and (d) revised 9528
82.5 Introductory text revised; (c) through (e) added 9529
82.6 Introductory text revised; (c) through (e) added 9529
82.7 Revised 9529
82.8 Revised 9529
82.9 (a) revised; (b) removed; (c) through (e) redesignated as (b) through (d); new (e) added; new (b)(1) introductory text, new (b)(2) introductory text, new (b)(3), new (c)(1), new (d) introductory text and new (d)(3) amended; new (b)(1)(v) and new (c)(2)(v) revised 9529
82.10 (b) removed; (a) introductory text, (1), (i) through (ix) and (2) redesignated as introductory text, (a), (1) through (9) and (b); new introductory text revised 9530
82.11 Introductory text revised 9530
82.12 (a)(5) revised; (a)(6) removed; (a)(7) redesignated as (a)(6) 9530
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(a) introductory text, (f) introductory text, (1) introductory text, (2)(iii), (iv), (3)(ii), (g) introductory text and (2)(iii) revised 9530
82 Appendix E revised 47755
86.090-2 Revised 30612
86.090-3 Revised 30613
86.090-7 Added 30613
86.090-10 (a)(1)(i)(C), (ii)(C), (iii)(C), and (iv)(C) revised 30616
86.090-11 (a)(1)(iii) and (iv) revised 30616
86.090-15 Added 30616
86.090-21 (b)(5)(iii) added 30618
86.090-23 (h) and (i) added 30618
86.090-24 (a)(16) and (17) added 30618
86.090-30 (a)(1)(i), (10), (11), (b)(3), (c)(1)(iii) introductory text, (iv), and (4) revised 30618
86.090-35 (a)(3)(iii)(L) and (M) added 30619
86.091-2 Revised 30619
86.091-7 Added 30619
86.091-9 (a)(1)(iii)(C) and (iv)(C) revised 46627
86.091-10 (a)(1)(i)(C)(*2*), (iii)(C)(*2*), (iv)(C)(*2*) revised 30622
86.091-11 (a)(1)(iii)(B) and (iv)(C) revised 30622
86.091-15 Added 30622
(g)(2) and (3) revised 46628

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86.091-21 (b)(6)(i)(A), (B), (ii)(A), (ii)(B) revised; (b)(6)(iii) added 30625
86.091-23 (f) and (g) revised; (h), (i), (j), and (k) added 30625
86.091-30 (a)(1)(i), (10), (11), (b)(3), (c)(1)(iii) introductory text, (iv), and (4) revised 30625
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86.092-24 (a)(16) added 30626
86.092-35 (a)(3)(iii)(L) and (M) revised 30627
(a)(3)(iii)(N) added 46628
86.094-11 (a)(1)(iv)(B) revised 30627
86.094-15 Added 30627
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86.1104-90 Added 30629
86.1104-91 Added 30629
86.1105-87 (c) and (d) revised 46628
86.1106-87 (a)(2) revised 46629
86.1113-87 (a)(3)(iv), (6), (g)(3) introductory text and (i) revised; (g)(5) and (6) added 46629
86.1115-87 (z) removed; new (z) redesignated from (aa) 46630
122.1 (b)(2)(iv) revised 48062
122.21 (j)(1) through (4) added 30128
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122.42 (c) added 48073
122 Appendixes E through I added 48073
123.25 (a)(9) revised 48075
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135 Authority citation revised 11515
135.1 Revised 11515
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135.5 Added 11515
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136 Appendix C amended 33440
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141.21 (f)(5) revised; (f)(6) redesignated as (f)(7); new (f)(6) added 642
(f)(7) amended 643
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141.32 (a)(1)(iii)(B) revised; (e)(15), (17) through (24), (28) through (45) and (47) through (52) added; eff. 7-30-92 3587
141.40 Heading revised; (n) added (effective date pending) 3592
141.50 (a)(6) through (14) and (16) through (18) added; (b) table amended; eff. 7-30-92 3592
141.51 (b) table amended; eff. 7-30-92 3593
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141.62 Revised; eff. 7-30-92 3594
141.110—141.111 (Subpart K) Added; eff. 7-30-92 3594
142.14 (a)(6), (c), (d) introductory text and (f) revised; (d)(4) through (7) added; eff. 7-30-92 3595
142.15 (c)(3) added; eff. 7-30-92 3595
142.16 (e) added; eff. 7-30-92 3595
142.18 Added; eff. 7-30-92 3595
142.57 Revised; eff. 7-30-92 3596
142.62 Revised; eff. 7-30-92 3596
142.63 Existing text designated text as (a); (b) added 1557
142.201—142.208 (Subpart J) Added 3755
143.3 Table revised; eff. 7-30-92 3597

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HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

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Boldface entries are used to distinguish current month amendments from previous entries. Example: **1413.23 Amended.....12345. Boldface** page numbers under a particular title indicate that the page numbers span 2 years.

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There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1-16; the MARCH issue is the ANNUAL for Titles 17-27; the JUNE issue is the ANNUAL for Titles 28-41; the SEPTEMBER issue is the ANNUAL for Titles 42-50. ANNUAL ISSUES to be saved are clearly designated on the cover.

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INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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941.101 (a) introductory text amended; eff. 5–1–91..... 13282
941.103 Amended; eff. 5–1–91..... 13282
941.208 (a) and (c) revised; (i) added; eff. 5–1–91..... 13282
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941.404 Introductory text revised; (m) and (n) added; eff. 5–1–91..... 13282
941.405 (b) introductory text and (2) revised; (d) added; eff. 5–1–91..... 13283
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965.703 (a) and (b) headings revised; (c) added; interim..... 15174
965.705 Removed; interim..... 15175
965.706 (c) and (d)(2) revised; interim..... 15175
965.707 Revised; interim..... 15175
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965.709 Amended; interim..... 15175
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968.203 Amended; interim..... 15176
968.205 (h) and (i) added; interim..... 15176
968.210 (c)(1), (2), (e)(2), (h)(1) through (3) revised; interim..... 15176
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1.148–1T (b)(1), (2)(iv)(A) and (3)(ii)(C) revised (temporary)..... 19030
1.148–2T (b)(4)(ii), (iii), (c)(2) *Example* 3 and (e)(4) revised; (c)(2) *Example* 1, *Example* 2 and (e)(2)(i) amended; (e)(2)(iii) removed (temporary)..... 19030
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1.148–4T (c)(2) and (e)(2)(ii)(D) revised; (e)(1)(iii) and (2)(ii)(C) amended; (e)(3) added (temporary)..... 19036
1.148–5T (b) revised; (c)(2) removed; (c)(3) and (4) redesignated as (c)(2) and (3); newly designated (c)(3) *Example* 1 amended (temporary)..... 19036
1.148–8T (c)(1) amended; (c)(2)(ii) removed; (c)(2)(iii) and (iv) redesignated as (c)(2)(ii) and (iii); (b)(2), new (c)(2)(ii) and (d)(3) revised (temporary)..... 19037
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1.1031(j)–1 Added..... 14855
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0.34 (g) added...32403
0.50 (i) added...40654
0.85 (m) added...28610
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8.8 Heading revised; (a) amended...8687
14 Appendix amended...4943, 12846
20 Authority citation revised...32075
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20 Appendix amended...32075
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540 Authority citation revised; subpart authority citations removed...4159
540.14 (b) introductory text amended; (c) revised; interim...4159
540.41 (a) and (b) revised; interim...4159
540.44 (c)(1) and (2) amended; interim...4159
541 Authority citation added; subpart authority citations removed...4159
541.22 (a)(6)(i), (iii) and (iv) amended; interim...4159
543 Authority citation revised; subpart and sectional authority citations removed...29991
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549.10—549.20 (Subpart A) Added...52826
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1 Withdrawal of regulations at 47 FR 23644 confirmed 50149
1.7 (d) republished; effective date confirmed 50149
5.1—5.17 (Subpart A) Withdrawal of regulations at 47 FR 23665 confirmed 50149
5.2 (n) introductory text and (4) republished; effective date confirmed 50149
5.5 (a)(1)(ii)(A) and (4)(iv) republished; effective date confirmed 50150

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510.20 (d) revised; interim 30454, 39959
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510.23 Revised; interim 30454, 39959
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510 Appendix A amended 39575
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511.8 (a), (b) and (c) revised 53298
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511.16 Revised 53299
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522.35 (a) revised 46467
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522.43 (a) and (d) revised 46467
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522.65 (a) revised 46468
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541 Authority citation revised 8251
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697.3 Revised 5946
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801.3 (b) corrected 14469
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801.13 (b)(2) corrected 14469
801.42 (a)(1) and (b)(8) corrected 14469
801.53 (a) corrected 14469
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1601 Nomenclature change; authority citation revised 9624
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1601.2 Revised 9624
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1601.6 (a) amended 9624
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1601.16 (a) introductory text amended 9624
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1601.30 (a) amended 9625
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1601.31 Redesignated as 1601.91 and revised 9625
1601.32 Redesignated as 1601.92; introductory text and (c) amended 9625
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1601.35—1601.36 (Subpart F) Redesignated as Subpart E 9625
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1601.70 (a)(1) and (b) through (d) amended 9625
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1613.234 (a) amended 6983
1613.235 (b) introductory text and (c)(2) amended 6983
1613.237 (a) amended 6983
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1613.414 (b) amended 6983
1613.416 (b) amended 6983
1613.609 (d) and (e) amended 6983
1613.612 (e) amended 6983
1613.614 (g) amended 6983
1613.631 Heading, (a) introductory text, (b) introductory text, and (d) amended 6983
1613.641 (a)(3) and (4) amended 6983
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1910.21—1910.32 (Subpart D) Authority citation correctly revised 46054
1910.26 (c)(3)(viii) revised 32014
1910.66—1910.70 (Subpart F) Authority citation correctly revised 46054
1910.67 (b)(4) revised 32014
1910.68 (b)(4) and (c)(5)(iv)(c) revised 32014
1910.94—1910.100 (Subpart G) Authority citation correctly revised 46054
1910.94 (a)(2)(iii) amended 32015
1910.101—1910.120 (Subpart H) Authority citation revised 32015
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1910.103 (b)(3)(iii)(e) revised 32015
1910.106 Tables H-18 and H-19 amended; (h)(7)(iii)(a) revised 32015
1910.110 Table H-28 amended 32015
1910.120 (a)(3) corrected; (e)(9) correctly revised 15832
1910.147 (b) amended, (c)(1), (2)(iii), (6)(i)(B), (7)(i) introductory text, (8), (d) intro-

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1910.176—1910.190 (Subpart N) Authority citation correctly revised 46054
1910.178 (c)(2) introductory text revised 32015
1910.179 (g)(1)(i) revised 32015
1910.180 (j) revised 32015
1910.181 (j)(5) revised 32015
1910.252 (f)(4)(iv)(B) revised 32015
Heading correctly designated; (f)(4)(iv)(B) correctly revised 46053
1910.261—1910.275 (Subpart R) Authority citation revised 32015
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1910.265 (c)(12) removed 32015
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1910.301—1910.399 (Subpart S) Authority citation revised 32015
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1910.1101 Note revised 50687
1926.58 (k)(4)(iii) OMB numbers approved; eff. to 4-30-93 34710
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1926.300—1926.305 (Subpart I) Authority citation revised 42328
1926.305 (b) removed 42328
1926.450—1926.452 (Subpart L) Heading revised 47687
1926.450 Removed 47687
1926.452 (a) removed 47687
1926.500—1926.502 (Subpart M) Heading revised 47687
1926.500 (e) and (f)(2) removed 47687
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1926.700—1926.706 (Subpart Q) Authority citation revised 42328
1926.700 (b)(9) added 42328
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1926.1050 (b) corrected 2585
1926.1052 (c)(5) corrected 2585
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2570.35 (c)(4)(i)(B) corrected 14861
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2610 Authority citation revised 27810
2610.8 (a)(1) table corrected 31027
2610.21 Amended 27810
2610.23 (c) introductory text, (1), (2) introductory text, (ii), (iii), (vi), and (vii) amended 27810
2610.24 (d), (e) and (f) redesignated as (e), (f) and (g); (a) introductory text, (c)(3), and new (e) revised; (a)(5) and new (d) added 27810
2610 Appendixes A and B amended 28756, 41687
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2610 Appendix A amended 15045
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2619 Authority citation revised 33287, 37876, 41688
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44 Authority citation revised 53440
44.1 (a) revised 53440
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44.4 (b) revised 53440
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44.52 Revised 53443
44.53 Added 53443
49 Authority citation revised 1478
49.6 (b) revised 1478
56 Authority citation revised 37218
56.6000—56.6904 (Subpart E) Revised 2089
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56.6000 Stayed in part 14470
56.6130 (b) stayed in part 14470
56.6131 (a)(1) stayed 14470
56.6306 (b) stayed 14470
56.6501 (a) stayed 14470
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56.7055 Added 2096
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56.9300 (d) revised 37218
57 Authority citation revised 37218
57.6000—57.6960 (Subpart E) Revised 2096
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57.6000 Stayed in part 14470
57.6130 (b) stayed in part 14470
57.6131 (a)(1) stayed 14470
57.6306 (b) stayed 14470
57.6501 (a) stayed 14470
57.6000—57.6960 (Subpart E) Appendix I stayed 14470
57.7055 Added 2104
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57.7056 Added 2104
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57.9300 (d) revised 37218
75.1101-23 (c)(1) revised 1478
75.1713-3 Revised 1478
75.1714-3 (e) revised 1478
77 Authority citation revised 1478
77.1703 Revised 1478
104 (Subchapter Q and Part) Added 31136

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206 Training seminars 51413
206 Authority citation revised 35433
206.251 Amended 35433
206.257 (b)(5) removed; (b)(6) redesignated as (b)(5); (b)(1), (5), (c)(3) and (g) revised 35433
218 Authority citation revised 37230
218.50—218.57 (Subpart B) Authority citation removed 37230
218.54 Heading and (b) revised 37230
218.55 (c) revised 37230

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218.103 (b) revised 37230
228.100 (c) added 10512
228.103 Existing text designated as (a) and revised; (b) added 10512
228.105 (a) revised; (c) added 10512
228.107 (a) revised 10512
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(x) added 2685
250.1 (c)(5) and (d)(1) revised 37710
(d)(3) amended 47752
(d)(2) and (15) revised 51415
250.19 (a) amended 47752
250.20 (c) added 47752
250.32 (c) added 47752
250.34 (t) amended 47752
250.51 (g) removed; (h) and (i) redesignated as (g) and (h) 47752
250.57 (g) revised; (h) added 1914
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250.86 (b)(2) amended 47752
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250.87 (d) amended 47753
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250.107 (d) amended 47753
250.123 (b)(1)(iii) and (7) amended 47753
250.124 (a)(1)(ii) amended 47753
250.126 (c)(2), (e)(1) and (3) revised 37710
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250.142 (a) revised 51415
250.159 (c)(7)(i) amended 47753
250.210—250.215 (Subpart O) Revised 2685
250.214 (c)(3) corrected 12423
256.7 (d) amended; (e) removed; (f) through (i) redesignated as (e) through (h) 32908
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710 Authority citation revised 6227
710.10 Revised 6227
710.11 (e) added 6227
723.18 (b)(1) revised 10062
723.19 (a) revised 10063
736 Authority citation revised 29548
736.25 Added 29548
750.12 (a) revised 29548
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845.18 (b)(1) revised 10063
845.19 (a) revised 10063
901.15 (e) revised 27225
(j) added 4557
(k) added 8279
901.16 Added 4559
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(e)(18) added 42369
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(a)(9)(i)(C) added; (a)(9)(iv) revised; eff. 10-1-91 7302
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(h) corrected 16006
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(b)(3)(iii) through (v) redesignated as (b)(3)(iv) through (vi); new (b)(3)(iii), (4)(x)(B)(*1*)(v), and (c)(3)(iv)(A)(*7*) added; (c)(1) introductory text, (1)(i), (3)(iii)(A), (G)(*2*), (iv)(A)(*4*)(i), and (*6*) revised 43340
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360 Revised 52169
381 Revised 6274
382 Revised 49888
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518.54 (d)(25) added 33289
556.22 (c) revised 32243
589 Added 47042
589.4 (a)(1), (b)(4), (5), (f) and (g) revised; (b)(6) added 371
619 Added 52976
619.2 Revised 2850
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626 Added 3186
Authority citation revised 13759
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626.7 (i)(1) revised 13759
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232.48 Introductory text and (g) revised (effective date pending in part) 8931
232.49 (a), (c) and (d) revised 8931
232 Appendix A revised 8931
234 Authority citation revised 8932
234.60 (a)(1) and (13) revised 8932
235 Authority citation revised; sectional authority citations removed 8932
235.70 Heading, (a) introductory text and (b)(2) revised 8933
235.111 Correctly revised 43343
251 Added 2639

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301.1 Amended 8002
302.31 (a)(1) and (b) revised; (a)(2) and (c) amended; (a)(4) added; OMB number 8003
302.32 (b) amended 8003
302.33 Heading, (a), (d)(1)(ii), (5) and (e) revised; OMB number 8003
302.50 (a) and (e) revised 8003
302.51 (e) and (f)(4) revised; OMB number 8004
302.70 (a)(3) revised 8004
302.75 (b)(4) revised 8004
303.10 (b)(2) revised 8004
303.11 (b)(9) through (12) revised 8004
303.30 (a) introductory text and (b) introductory text revised; OMB number 8004
303.31 (b) introductory text and (c) revised; OMB number 8004
303.71 (b) amended; (c)(5) revised 8004
303.72 (a)(1), (3) introductory text, (h)(1), (3), (4) and (i)(2) revised 8005
303.102 (a)(1), (c), (f) and (g)(1)(i) through (iii) revised; (g)(1)(iv) added 8005
304.12 (a) amended 8005
304.20 (a)(1) revised; (a)(2) and (b)(4)(ii) removed; (a)(3) and (4) redesignated as (a)(2) and (3); (b)(4)(iii) through (vi) redesignated as (b)(4)(ii) through (v); (b)(1)(ix) and new (b)(4)(vi) added 8005

Chapter IV—Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services (Parts 400—499)

402 Authority citation revised 19807
402.2 Amended 19808

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402.24 Revised.....19808
402.26 (a) and (b) amended.....19808
402.33 Revised.....19808

Chapter VI—National Science Foundation (Parts 600—699)

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605.23 (c) revised.....52142, 52138

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801 Appendix A amended.....9180

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1170 Authority citation revised.....52142
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1215 Authority citation revised.....50330
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1232 Authority citation revised.....52142
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38.01-3 Regulation at 54 FR 50962 confirmed.....41917
38.25-1 Regulation at 54 FR 50962 confirmed.....41917
38.25-3 Regulation at 54 FR 50963 confirmed.....41917
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54.01-5 Regulation at 54 FR 50963 and 50964 confirmed; Table 54.01-5(b) revised.....41917
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56.50-50 (k) corrected.....39968
56.50-55 (e)(1) corrected.....39968
56.50-60 (j) and (l) corrected.....39968
56.60-1 (b) table 56.60-1(b) corrected.....39968, 39969
56.70-15 Table 56.70-15 corrected.....39969

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67.33-1 (a) revised.....963
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91.55-5 (i) correctly designated.....40260
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98.33-5 (b) corrected.....47477
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(q) through (s) redesignated as (r) through (t); new (q) added 41918
151.50-32 Regulation at 54 FR 50966 confirmed 41917
151.50-35 Regulation at 54 FR 50966 confirmed 41917
153 Table 1 amended 50331

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308 Authority citation revised 52995
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308.3 (c) revised (OMB number) 52995
308.5 Amended 52995
308.6 Revised 52995
308.102 Revised 52996
308.202 Amended 52996
308.302 Amended 52996
310.56 (d) revised 46952
380.10—380.12 (Subpart B) Added 3980

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502 Authority citation revised 42194
502.27 (a) redesignated as (a)(1); (a)(2) added 42194
510 Authority citation revised 42194
510.12 (a) redesignated as (a)(1); (a)(2) added 42194
580 Authority citation revised 1498
580.5 (d)(24) and (25) added; interim 1498
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580.5 Clarification; (d)(25)(i) stayed; interim 14207
581 Authority citation revised 1498
581.3 (e) added; interim 1499
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581.4 (a)(3) added; interim 1499
Regulation at 56 FR 1499 effective date stayed to 4-15-91; interim 6809
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581.11 Added; interim 1499
Regulation at 56 FR 1499 effective date stayed to 4-15-91; interim 6809
Clarification 14207
583 Added; interim 1497
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583.91 Added; interim 18739
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580 ..... 40996, 42416, 50334, 53315
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0 Technical correction 9752
0.251 (f)(12) added 792
0.331 (a)(1) amended 6583
0.341 (d) and (e) added 792
1.221 (f), (g), and Note removed; (c)(1) added 792
1.227 (b)(4) revised 46008
Technical correction 46514
1.229 (a) and (b) revised; (e) and (f) added 792
1.244 Added 793
1.248 (d)(4) added 793
1.277 (c) revised 793
1.311 (c) revised 794
1.313 Introductory text revised 794
1.315 (e) added 794
1.325 (a) revised; (c) added 794
1.1102 Amended 19599
1.1111 (c) revised 795
1.1306 Amended 13414
1.1307 (b) amended 46008
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(b) Note 1 revised 50692
1.1312 (d) redesignated as (e) and revised; new (d) added 13414
2 Memorandum and order 6991
2.106 Table amended 3782
Table amended 9883
2.806 (c)(2) revised 18082
2.995 (a)(2) revised 11682
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15 Reconsideration petition 50181, 52172
15.31 (f)(1) and (3) revised; (p) added 13083
15.37 (e) added 3785
15.109 (e) revised 373
15.205 (b) and (c) revised; (e) added 46791
(a) table amended 6288
15.207 (b) revised 373
15.214 Added 3785
15.221 Revised 373
15.233 (h) through (k) removed; new (h) added 3785
(b) and (d) revised; (e) republished 5659
15.245 (b) revised 46792
21 Technical correction 46514
21.2 Amended 46008
21.13 (a)(6) revised 46008
21.20 (b)(9) revised 46009
21.28 (e) added 46009
21.30 (a)(4) revised 46009
21.33 (a) revised; (b) amended 46009
21.41 (c)(1)(i) revised 46009
21.101 (a) table amended 46009
21.107 (b) table amended 46009
21.701 (d)(3) and (4) added 9697
21.901 (d)(1) and (2) revised 46009
21.902 (f)(2) and (i) revised; (j) added 46010
21.904 Revised 46010
21.905 (c) added 46011
21.908 Revised 46011
21.911 Added 46011
21.912 Added 46011
21.913 Added 46012
21.914 Added 46012
22.6 (d)(2) revised 50004
22.31 (i) added 47335
22.43 (d)(3)(iii) removed; (d)(3)(iv) through (vii) redesignated as (d)(3)(iii) through (vi); (d)(1) introductory text, (i) through (iii), (vi), (vii), new (d)(3)(iii), (v) and (4)(iii) revised; (d)(1)(viii) added 46453
(d)(1)(viii) correctly added 14317
22.501 (k)(6) added 47335
22.521 (b) table amended 14866
36.601—36.641 (Subpart F) Heading revised 27
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36.621 Heading, (a) introductory text and (4) revised 27
36.622 Heading revised 27
43.72 Removed 46012
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61.3 (u), (w) and (x) revised 42382
61.38 (a) amended 42382
61.39 (a) amended 42382
61.41 Revised 42382
(c)(3) correctly revised 50558
61.42 (d) redesignated as (g) and amended; new (d), (e) and (f) added 42382
(d)(4) correctly added 50558
(b)(2) and (c)(3) revised; (c)(4) redesignated as (c)(8); new (c)(4) through (7) added 5956
61.43 Amended 42383
61.44 Heading revised; (a) and (b) amended 42382
61.45 Added 42383
(c) corrected; (d)(4) correctly added 50558
61.46 (a) amended; (d) through (f) added 42383

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(d) introductory text correctly revised; (d) corrected 50558
61.47 (h) added 42384
61.48 (c) through (f) added 42384
61.49 (a) revised; (g) amended 42384
(d) revised 5956
61.58 (c)(1), (5) and (6) revised 42384
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63.07 (c) added 13414
64 Authority citation revised 18523
64.703 Added 18523
64.704 Added 18523
64.705 Added 18523
64.706 Added 18524
64.707 Added 18524
64.708 Added 18524
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65.1 Revised 42384
65.600 (b) revised; (d) added 42385
65.701 (d) added 42385
65.703 (g) amended; (h) added 42385
68 Authority citation revised 18524
68.200 (k) added 3785
68.314 (h) added 46066
68.318 (d) added 18524
69 Report and order 9898
69.1 (b) amended; (c) added 42385
69.3 (a) and (e)(4) revised; (h) and (i) added 42385
(i) introductory text, (1), (2), and (3) correctly added 50558
69.101 Revised 42386
69.105 (b)(7) and (8) added 42386
69.111 (a) revised 42386
69.112 (b)(1) and (d)(1) revised; (c) amended 42386
69.113 (c) revised 42386
(c) corrected 50559
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69.205 (c) revised 42387
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73.202 (b) table amended 39969, 39970, 40390–40392, 40837–40839, 41086–41088, 41338, 41692, 41693, 42012–42015, 42570, 42571, 42720, 42721, 42961, 42195, 42196, 42854, 45608, 45609, 45806, 45807, 46067, 46213, 46792–46794, 46954, 47336, 47477, 47765, 47879, 47880, 48239–48241, 48845, 48846, 49046, 49389, 49390, 49523, 49524, 49525, 49898, 49899, 50005, 51104–51106, 51296–51298, 51906–51908, 52048, 52049, 52173–52175, 52845, 52846, 53306, 53307
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(b) table amended 13415, 14212, 14480, 15051, 15509, 15510, 16011–16014, 18739–18741, 19039, 19298–19300, 19808, 19809
73.606 (b) table amended 52174
(b) table amended 1373
(b) table amended 14027, 16280
73.660 Added 19616
73.661 Added 19616
73.1620 (g) added (effective date pending) 795
73.3525 (b) through (h) redesignated as (c) through (i); (a) introductory text revised; (a)(1) and (2) amended; (a)(3), (4), (5), (6), new (b), (j), (k), and (l) added 375
73.3526 (a)(8) redesignated as (a)(8)(i); (a)(8)(ii) and (iii) added; (e) amended 19616
73.3571 (c)(1) and (2) added 795
73.3572 (c)(1) and (2) added 795
73.3573 Heading revised; (a)(1) amended; Note redesignated as Note 1; Note 2 added 50692
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74 Technical correction 46514
74.501 (b) revised 50692
74.531 (c) through (g) redesignated as (d) through (h); new (c) added 50693
74.532 (a) revised 50693
74.832 (a)(6) added 46012
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74.903 (a)(2) revised 46013
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74.950 (b) revised 46014
74.961 Revised 46014
74.985 Added 46014
74.1201 (g) through (l) added 50693
74.1202 (b) introductory text, (1) and (2) revised; (c), (d) and Note removed; (e) redesignated as (c) and revised 50693
74.1203 Revised 50693
74.1204 Added 50694
74.1205 Added 50695
74.1231 (b), (c), (e), (g), (h) and (h) Note revised; (b) Note added; (i) removed 50695
74.1232 (b) and (d) revised; (e) through (g) redesignated as (f) through (h) and revised; new (e) and (b) Note added; (d) Notes removed 50696
74.1233 Added 50697
74.1235 Revised 50697
74.1236 (a) introductory text revised 50698
74.1237 (d) revised 50698
74.1250 Revised 50698
74.1251 Heading, (b) introductory text, (7) and (8) revised; (b)(9) removed; (c) added 50698
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74.1263 Revised 50699
74.1269 Revised 50699
74.1283 Revised 50699
76.225 Added 19616
76.305 (a) and (c) revised 19617
78 Technical correction 46514
78.3 Revised 46014
78.5 (j) added 46015
78.11 (a) and (c) through (g) revised 46015
78.13 (d) added 46015
78.27 (a) revised 46015
78.33 (b) revised 46015
80.5 Amended 3783
80.29 (a) table amended 3783
80.54 Added 3783
80.203 (a) amended; (c) through (k) redesignated as (d) through (l); new (c) added 3787
80.205 (a) table amended 11516
80.207 (d) table amended 11516
80.211 (e) redesignated as (g); new (e) added 11516
80.215 (h)(3) introductory text revised; (h)(5) removed; (h)(6) redesignated as (h)(5) 3783
80.223 (d) revised 11516
80.355 (c)(2) revised 9887
(d)(2) revised 11516
80.357 (a)(3), (b)(1) introductory text and (2)(ii) revised; (b)(1) table amended 9887
80.359 (a) and (b) revised 9890
(a) table and (b) corrected 14150
80.361 (a) introductory text revised; undesignated paragraph, (a)(1) through (3) added 40181
(a) and (b) revised; (c) added 9890
80.363 (a) and (b) revised 9893
80.369 (b) and (d) revised 9893
80.371 (b) and (d) revised 9894
80.373 (f) table amended; footnote 14 added 4734
(c)(1) and (i) revised 9896
80.374 Added 9896
80.383 (a) table and footnote 1 revised 46514
80.385 (a)(1) revised 3783
80.475 (a) removed; (b) and (c) redesignated as (a) and (b); new (a) introductory text revised 3783
80.514 (b) added 6563
80.836 Heading and (a) revised 19301
80.905 Heading and (a)(1) revised; (a)(2), (b) and (c) redesignated as (b), (c) and (d); new (a) introductory text, (2) and (3) added 19301
80.909 Revised 19302
80.913 (b) through (f) redesignated as (c) through (g); new (b) added; new (e) and new (f) revised 19302
80.923 Amended 19302
80.931 Amendd 19302
80.1053 (a)(4) through (8), (12), (b)(3), (c) and (e) revised 11517
80.1055 (a)(3) revised 11517
80.1059 (d)(3) and (4) revised 1517

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80.1061 (b) revised; (e) and (f) amended 11517
80.1169—80.1171 Undesignated center heading removed 3783
80.1169 Removed 3783
87.137 (a) table amended 11518
87.139 (a) introductory text revised; (h) added 11518
87.141 (g) through (i) revised 11518
87.147 (b) and (c) redesignated as (c) and (d); new (b) added 11518
87.187 (k) revised 11518
(z) revised; (aa) added 18525
87.195 (a) and (b) amended 11518
90 Memorandum and order 6991
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Authority citation revised 19600
90.17 (b) table amended 19600
(c)(4) added 19602
90.19 (d) table amended 19600
(e)(4) added 19602
90.21 (b) table amended 19600
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90.65 (b) table amended 19600
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(c)(37) added 19602
90.69 (b) table amended 19601
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90.71 (b) table amended 19601
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90.73 (c) table amended 19601
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90.75 (c)(10) revised 4178
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(c)(44) added 19602
90.79 (c) table amended 19601
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90.81 (c) table amended 19601
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90.89 (b) table amended 19601
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90.91 (b) table amended 19601
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90.93 (b) table amended 19601
(c)(16) added 19602
90.95 (c) table amended 19602
(d)(19) added 19602
90.149 (a) revised; (c) added 19602
90.175 (f)(14) added 19602
90.205 (b) table amended 19602
90.209 (b)(8) and (j) revised; (l) added 19602
90.211 (d)(2) revised 19602
90.213 Table amended 19602
90.233 (c) revised 19602
90.238 (f) added 19603
90.243 (a) revised 19603
90.419 (a) revised 19603
90.425 (d)(8) added 19603
90.494 (a) table footnote 1 revised 4179
90.555 (b) table amended 19603
90.619 (b) introductory text revised; (c) and (d) added 42571
90.701—90.741 (Subpart T) Added 19603
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NOTE 1: Boldface page numbers indicate 1991 changes.
NOTE 2: Boldface entries indicate April changes.

Additions to Table I, April 1991

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being added to Table I as a result of authority citations carried in the **Federal Register** during January through April 1991. Recent legislation is carried by public law number.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1991. Additions during 1990 are in the December 1990 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

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This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being removed from Table I as a result of documents published in the **Federal Register** during January through April 1991.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1991. Removals during 1990 are in the December 1990 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

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INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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511.14 (b) revised....53299

511.16 Revised....53299

511.17 Revised....53300

511.19 Revised....53300

522 Authority citation revised; sectional authority citations removed....46466

522.24 (a) through (d) revised....46466

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522.35 (a) revised....46467

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522.43 (a) and (d) revised....46467

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522.65 (a) revised....46468

522.85 (a) revised....46468

541 Authority citation revised....8251

541.5c Added; interim....8251

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579.5 Technical correction....9252

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579.8 Technical correction....9252

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579.9 Technical correction....9252

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580.1 Technical correction....9252

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801.3 (b) corrected....14469

801.4 (d) corrected....14469

801.13 (b)(2) corrected....14469

801.42 (a)(1) and (b)(8) corrected....14469

801.53 (a) corrected....14469

801.67 (g) corrected....14469

801.69 (a) corrected....14469

801.71 (c) corrected....14469

801 Appendix A corrected....14469

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1601 Nomenclature change; authority citation revised....9624

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1601.1 Revised....9624

1601.2 Revised....9624

1601.3 (a) revised....9624

1601.6 (a) amended....9624

1601.7 (a) amended....9624

1601.10 Amended....9624

1601.11 (b) amended....9624

1601.13 (a)(3)(i) and (4)(i) amended....9624

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1601.16 (a) introductory text amended....9624

1601.17 (a) amended....9624

1601.18 (a) amended....9624, 9625

1601.19 (b) through (d) removed; (e) redesignated as (b); (a) revised....9625

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1601.21 (a) and (e)(2)(iii) amended....9624

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1601.22 Amended....9624, 9625

1601.24 (c) amended....9624

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1601.26 (a) amended....9625

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(b)(1) introductory text and (e)(1) amended 9625
1601.30 (a) amended 9625
1601.31—1601.33 (Subpart D) Redesignated as Subpart H; heading revised 9625
1601.31 Redesignated as 1601.91 and revised 9625
1601.32 Redesignated as 1601.92; introductory text and (c) amended 9625
1601.33 Redesignated as 1601.93 9626
1601.34 (Subpart E) Redesignated as Subpart D 9625
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1601.35—1601.36 (Subpart F) Redesignated as Subpart E 9625
1601.70—1601.80 (Subpart H) Redesignated as Subpart G; subpart authority citations removed 9625
1601.70 (a)(1) and (b) through (d) amended 9625
1601.74 (a) footnote 7 amended 9625
1601.75 (a) amended 9625
1601.79 Amended 9624
1601.91 Redesignated from 1601.31 and revised 9625
1601.92 Redesignated from 1601.32; introductory text and (c) amended 9625
1601.93 Redesignated from 1601.33 9626
1602 Records and reports deadline extension 18698
1613.232 Amended 6983
1613.234 (a) amended 6983
1613.235 (b) introductory text and (c)(2) amended 6983
1613.237 (a) amended 6983
1613.238 (a) through (d) amended 6983
1613.414 (b) amended 6983
1613.416 (b) amended 6983
1613.609 (d) and (e) amended 6983
1613.612 (e) amended 6983
1613.614 (g) amended 6983
1613.631 Heading, (a) introductory text, (b) introductory text, and (d) amended 6983
1613.641 (a)(3) and (4) amended 6983
1613.806 (a) amended 6983

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1910 Interpretation 52840
1910.21—1910.32 (Subpart D) Authority citation correctly revised 46054
1910.26 (c)(3)(viii) revised 32014
1910.66—1910.70 (Subpart F) Authority citation correctly revised 46054
1910.67 (b)(4) revised 32014
1910.68 (b)(4) and (c)(5)(iv)(c) revised 32014
1910.94—1910.100 (Subpart G) Authority citation correctly revised 46054
1910.94 (a)(2)(iii) amended 32015
1910.101—1910.120 (Subpart H) Authority citation revised 32015
Authority citation correctly revised 46054
1910.103 (b)(3)(iii)(e) revised 32015
1910.106 Tables H-18 and H-19 amended; (h)(7)(iii)(a) revised 32015
1910.110 Table H-28 amended 32015
1910.120 (a)(3) corrected; (e)(9) correctly revised 15832
1910.147 (b) amended, (c)(1), (2)(iii), (6)(i)(B), (7)(i) introductory text, (8), (d) introductory text, (2), (e)(2)(ii), (f)(2)(ii), (4) and Appendix A revised 38685
1910.176—1910.190 (Subpart N) Authority citation correctly revised 46054
1910.178 (c)(2) introductory text revised 32015
1910.179 (g)(1)(i) revised 32015
1910.180 (j) revised 32015
1910.181 (j)(5) revised 32015
1910.252 (f)(4)(iv)(B) revised 32015
Heading correctly designated; (f)(4)(iv)(B) correctly revised 46053
1910.261—1910.275 (Subpart R) Authority citation revised 32015
Authority citation correctly revised 46054
1910.261 (g)(1)(iv) and (r)(16) revised 32015

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1910.265 (c)(12) removed 32015
1910.266 (c)(6)(xxii) removed 32015
1910.301—1910.399 (Subpart S) Authority citation revised 32015
Authority citation correctly revised 46054
1910.304 (b)(1) removed 32015
1910.331 Added 32016
1910.332 Added; eff. 8-6-91 32016
1910.333 Added 32016
(b)(2)(i) and (v) corrected 46053
(c)(3) and table corrected 46054
1910.334 Added 32019
(a)(2)(ii) and (c)(2) corrected 46054
1910.335 Added 32020
1910.399 Designations removed; text amended 32020
(a) correctly amended; (b) through (d) correctly removed 46054
1910.1000 Table Z-1-A note revised 46950
1910.1001 (j)(5)(iv)(C) OMB numbers approved; eff. to 4-30-93 34710
Note revised 50687
1910.1025 Appendixes A through C amended 24686
1910.1048 (m)(1)(i) through (4)(ii) stayed to 12-11-90 32616
(m)(1)(i) through (4)(ii) stayed to 3-11-91 51699
(m)(1)(i) through (4)(ii) stayed to 6-6-91 10378
1910.1101 Note revised 50687
1926.58 (k)(4)(iii) OMB numbers approved; eff. to 4-30-93 34710
Note revised 50687
1926.300—1926.305 (Subpart I) Authority citation revised 42328
1926.305 (b) removed 42328
1926.450—1926.452 (Subpart L) Heading revised 47687
1926.450 Removed 47687
1926.452 (a) removed 47687
1926.500—1926.502 (Subpart M) Heading revised 47687
1926.500 (e) and (f)(2) removed 47687
1926.501 Removed 47687
1926.700—1926.706 (Subpart Q) Authority citation revised 42328
1926.700 (b)(9) added 42328
1926.705 Revised 42328

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1926.1050—1926.1060 (Subpart X) Revised 47687
1926.1050 (b) corrected 2585
1926.1052 (c)(5) corrected 2585
(c)(5) corrected 5061
1926.1053 (a)(5), (6)(i) and (20)(v) and (vi) corrected 2585
1952 Authority citation revised 37467
1952.122 Revised 37467
1952.125 (b) added 37467
1952.172 Revised 28613

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2570 Authority citation revised 32847
2570.30—2570.52 (Subpart B) Added 32847
2570.35 (c)(4)(i)(B) corrected 14861
2585 Removed 32853

Chapter XXVI—Pension Benefit Guaranty Corporation (Parts 2600—2699)

2610 Authority citation revised 27810
2610.8 (a)(1) table corrected 31027
2610.21 Amended 27810
2610.23 (c) introductory text, (1), (2) introductory text, (ii), (iii), (vi), and (vii) amended 27810
2610.24 (d), (e) and (f) redesignated as (e), (f) and (g); (a) introductory text, (c)(3), and new (e) revised; (a)(5) and new (d) added; 27810
2610 Appendixes A and B amended 28756, 41687
Appendixes A and B amended 1489, 15045
2619 Authority citation revised 33287, 37876, 41688
2619 Appendix B amended 33287, 37876, 41688, 47750, 51410
Appendix D amended 51411
Appendix B amended 6265
Appendix B amended 22332
2621 Appendix A amended 51412
2622 Appendix A amended 28757, 41688

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2625 Added 42715
2644 Appendix A amended 41689
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2676.15 (c) table amended ... 28757, 33288, 37877, 41690, 47750, 51413
(c) table amended ... 1490, 6266, 11098, 15047
(c) table amended 22333

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1602 ..... 9185, 13790
1610 10847
1611 10850
1630 31192
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1910 ..... 28728, 29150, 29224, 29712, 30720, 32736, 37902, 38703, 40676, 42406, 45616, 46074, 46958, 47074, 47487, 50722,
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1926 ..... 28728, 29712, 38703, 40676, 46958, 47487
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TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

44 Authority citation revised 53440
44.1 (a) revised 53440
44.2 (f) removed 53440
44.4 (b) revised 53440
44.6 (b), (e) and (f) revised 53440
44.7 Revised 53440
44.8 Revised 53440
44.10 Revised 53440
44.12 (a) and (b) revised 53440
44.13 Revised 53440
44.14 (c) added 53441
44.15 Revised 53441
44.16 Revised 53441
44.20 Revised 53442
44.22 (e) added 53442
44.24 Revised 53442
44.27 (a) and (b)(2) revised 53442
44.31 Revised 53442
44.32 (a) revised 53442
44.33 (d) removed 53442
44.34 Revised 53442
44.35 Revised 53442
44.50 Revised 53443
44.52 Revised 53443
44.53 Added 53443
49 Authority citation revised 1478
49.6 (b) revised 1478
56 Authority citation revised 37218
Meetings 19948
56.6000—56.6904 (Subpart E) Revised 2089
Regulation at 56 FR 2089 effective date delayed to 5-20-91 9626
Regulation at 56 FR 2089 stayed in part to 7-16-91 22825
56.6000 Stayed in part 14470
56.6130 (b) stayed in part 14470
56.6131 (a)(1) stayed 14470
56.6306 (b) stayed 14470
56.6501 (a) stayed 14470
56.6000—56.6904 (Subpart E) Appendix I stayed 14470
56.7055 Added 2096
Regulation at 56 FR 2096 effective date delayed to 5-20-91 9626
Regulation at 56 FR 2096 stayed to 7-16-91 22825
56.7056 Added 2096
Regulation at 56 FR 2096 effective date delayed to 5-20-91 9626
Regulation at 56 FR 2096 stayed to 7-16-91 22825
56.9300 (d) revised 37218
57 Authority citation revised 37218
Meetings 19948
57.6000—57.6960 (Subpart E) Revised 2096
Regulation at 56 FR 2096 effective date delayed to 5-20-91 9626
Regulation at 56 FR 2096 stayed in part to 7-16-91 22825
57.6000 Stayed in part 14470
57.6130 (b) stayed in part 14470
57.6131 (a)(1) stayed 14470
57.6306 (b) stayed 14470

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57.6501 (a) stayed 14470
57.6000—57.6960 (Subpart E) Appendix I stayed 14470
57.7055 Added 2104
Regulation at 56 FR 2104 effective date delayed to 5-20-91 9626
Regulation at 56 FR 2104 stayed to 7-16-91 22825
57.7056 Added 2104
Regulation at 56 FR 2104 effective date delayed to 5-20-91 9626
Regulation at 56 FR 2104 stayed to 7-16-91 22825
57.9300 (d) revised 37218
75.1101-23 (c)(1) revised 1478
75.1713-3 Revised 1478
75.1714-3 (e) revised 1478
77 Authority citation revised 1478
77.1703 Revised 1478
104 (Subchapter Q and Part) Added 31136

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

202 Training seminars 51413
203 Training seminars 51413
206 Authority citation revised 35433
Training seminars 51413
206.251 Amended 35433
206.257 (b)(5) removed; (b)(6) redesignated as (b)(5); (b)(1), (5), (c)(3) and (g) revised 35433
216 Authority citation revised 20127
216.16 Added 20127
218 Authority citation revised 37230
218.50—218.57 (Subpart B) Authority citation removed 37230
218.54 Heading and (b) revised 37230
218.55 (c) revised 37230
218.103 (b) revised 37230
228.100 (c) added 10512
228.103 Existing text designated as (a) and revised; (b) added 10512
228.105 (a) revised; (c) added 10512
228.107 (a) revised 10512
243.3 Added 5949
243.4 Added 5949
(b)(1) and (8) corrected 9251
250.0 (a) amended 47752
Introductory text added; (d) through (f) revised 1914
(x) added 2685
(n) revised 21954
250.1 (c)(5) and (d)(1) revised 37710
(d)(3) amended 47752
(d)(2) and (15) revised 51415
250.19 (a) amended 47752
250.20 (c) added 47752
250.25 Added 20129
250.32 (c) added 47752
250.34 (t) amended 47752
250.51 (g) removed; (h) and (i) redesignated as (g) and (h) 47752
250.57 (g) revised; (h) added 1914
250.60 (e) amended 47752
250.72 Amended 47752
250.86 (b)(2) amended 47752
(d) revised; (e) added 1915
250.87 (d) amended 47753
250.106 (d) revised; (e) added 1915
250.107 (d) amended 47753
250.123 (b)(1)(iii) and (7) amended 47753
250.124 (a)(1)(ii) amended 47753
250.126 (c)(2), (e)(1) and (3) revised 37710
(e)(2) amended 47753
250.142 (a) revised 51415
250.159 (c)(7)(i) amended 47753
250.200 (a)(1) and (b) revised; (c) redesignated as (d); new (c) added 21954
250.203 (a) revised; (b) redesignated as (c); new (b) added 21955
250.206 Heading and (a)(1) revised 21955
250.210—250.215 (Subpart O) Revised 2685
250.214 (c)(3) corrected 12423
256.7 (d) amended; (e) removed; (f) through (i) redesignated as (e) through (h) 32908
256.70 Amended 32908
260.110 (b) amended 23648
265 Removed 32908
266 Removed 32908
267 Removed 32908
268 Removed 32908

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Chapter VI—Bureau of Mines, Department of Interior (Parts 600—699)

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652.12 Amended 35300
652.18 Correctly designated 35301

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

710 Authority citation revised 6227
710.10 Revised 6227
710.11 (e) added 6227
723.18 (b)(1) revised 10063
723.19 (a) revised 10063
736 Authority citation revised 29548
736.25 Added 29548
750.12 (a) revised 29548
750.25 Added 29548
845.18 (b)(1) revised 10063
845.19 (a) revised 10063
901.15 (e) amended 27225
(j) added 4557
(k) added 8279
(e) corrected 23800
901.16 Added 4559
901.25 Existing text designated as (a); (b) added 35621
904.10 (b)(19), (21) through (24), (26), (31), (32) and (35) removed 48837
904.15 (g) added 48837
906.15 (j) removed; (k) through (m) redesignated as (j) through (l); new (m) added 1371
906.16 Revised 1372
913.10 Amended 20538
913.15 (k) added 35313
(k) amended; (l) added 20539
913.16 Introductory text, (e) and (f) added 35313
(g) through (k) added 20540
913.17 (d) added 35314
913.20 Revised 46204
913.25 Revised 46204
914.15 (aa) added 32618
Technical correction 46054
(bb) added 38989
(cc) added 1921
(dd) added 11099
(ee) added 11934
914.16 (d) and (e) added 1921
(c) removed 11100
(a) removed 11934
916.15 (j) added 6564
917 Corrected 31829
917.15 (dd) added 32623
(ee) added 46063
(ff) added 53510
(gg) added 4729
(gg) corrected 11934
(hh) added 15280
917.16 (d) added 53510
918 Authority citation revised 21280
918.10 Revised 21280
918.15 Added 21280
(a) and (b) redesignated as (a)(1) and (2); introductory text designated as new (a) introductory text; new (b) added 23223
918.16 (a) revised; (b) through (i) added 21281
920.15 (h) added 1108
(i) added 11938
(j) added 19282
(k) added 23512
920.16 (a) added 19282
925.15 (k) added 27816
(l) added 45606
(l) correctly designated 46888
(m) added 196
(n) added 21299
925.16 (c) added; (k) removed 27816
(d) added; (m) removed 45606
(e) revised; (f) added; (l) removed 196
(e) and (f) correctly designated 11665
(g) added 21299
926 State mine land reclamation grant approval 28022
926.15 (i) added 11671
931.12 (e) and (p) removed 48841
931.15 (l) added 48841
(m) added 7810
931.16 Added 48841
935.12 (a) removed 38325
935.15 (oo) added 29571
(pp) added 30221
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(ss) added 38326
(rr) added 38993

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(tt) added 6985
(uu) added 7811
(tt) corrected 13211
(vv) added 16006
(ww) added 23224
(xx) added 24345
935.16 (a) revised; (b) removed 38326
(d) removed 6985
(a) removed 24345
936.15 (k) added 51904
(l) added 783
(j) added 6268
936.16 (b), (c), (e) and (f) removed 51905
(a) removed 6268
936.20 Revised 29573
938.15 (a) added 24718
938.16 Heading revised; (c) through (e) removed; (g) through (jj) added 24719
944.15 (o) added 32911
(p) added 3217
946.15 (bb) added 50556
(cc) added 52992
(dd) added 370
946.16 (a) removed 370
950.10 Revised 3219
950.15 (k) added 30233
(i)(1)(ii) and (iii) removed; (l) added 3219
950.16 (o), (p), (q), and (r) removed; (a) through (e), (g), and (j) revised 30234

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TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.36 Amended 12447
2 Authority citation revised 50321
2.28 (d)(1) revised 50321

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

100.5 (a) introductory text amended 10170
100.7 (d) amended 10170
100.9 Amended 10170
100.17 Amended 10170

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

317 Authority citation revised 39960
317.6 (b) redesignated as (b)(1); (b)(2) added 39960
321 Authority citation revised 35395
Authority citation revised 39960
321.1 (f) revised; (g) through (o) redesignated as (h) through (p) and revised; new (g) and (q) added 35395
321.3 (a) revised 35395
321.7 (a) amended; (e) redesignated as (g) and revised; new (e) and (f) added 35396
321.8 (b)(2) and (3) revised 35396
321.9 (e), (f), (h), and (i) revised 35396
321.10 (a) revised 35396
321.11 (d) and (e) redesignated as (e) and (f); new (e) revised; (d) added 35396
321.23 (a)(3) added 39960
321 Appendix amended 35396

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

Page
500.311 Amended 31179
500.563 (a)(2) amended 31179
(a)(2) amended 49997
500.565 (g) added 5351
Revised 20349
500.566 (a)(1) amended 31179
500.569 Amended 31179
515 Specially designated nationals list 31179, 38326
515.560 (l) added 32076
515.570 Added 13284
535.222 Revised 6546
535.441 Added 40831
535.568 (k) added 6546
540.599 Added 28614
550 Authority citation revised 20541
Appendix A added 20541
560.513 Added 11100
570 Added 49857
570.205 Amended 5351
570.301 Amended 5352
570.408 (a) amended 5352
570.504 (a)(1) amended 5352
570.507 (a)(1) amended 5352
570.512 (b)(2) revised 5352
570.518 (a)(2)(ii) amended 5352
570.522 Added 10356
570.523 Added 12450
570.701 (b) and (c) redesignated as (c) and (d); new (b) added 5352
570.801 (b)(2) and (3) amended 5352
570.901 Added 5352
575 Added 2113
575.322 Added 5636
575.503 (i) removed 5636
575.507 (a)(1) amended 5636
575.604 Added 5637
575.605 Added 5637
575 Appendix A added 13585
Appendix B added 13587

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1 30005
10 14389
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TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (1—399)

Page
1—39 Removed 14643
40a Revised 53301
40b Added 6565
58 Revised 15281
69 Removed 19577
114 Revised 18699
146.6 (a) introductory text amended 34555
164 Removed 15499
168 Removed 19577
168a Added 29844
188 Removed 19577
191.1 (c) amended 10170
191.2 (c) Footnote 1 revised 10170
191.5 (a)(9) and (b)(5) revised 10170
192 Removed 15499
195 Removed 15499
196 Removed 15499
199.1 (p)(1)(i) amended 43338
199.2 Amended 43338
(b) amended; interim 6270
(b) amended 13759
199.3 (b)(2)(ii) revised 27634
199.4 (e)(7), (8)(ii)(A) and (D), (iv)(P), (Q), and (R), (g)(29), and (30) revised; (e)(8)(i)(E) redesignated as (e)(8)(i)(F); new (e)(8)(i)(E) added 32913
(e)(18) added 42369
(a)(11)(iii) redesignated as (a)(11)(iv); new (a)(11)(iii), (g)(42) and (43) added; (a)(11)(ii), (c)(3)(iii) introductory text, (vi), (ix) introductory text, (d)(1) introductory text, (3)(ii)(A) introductory text, (vi) introductory text, (e)(2), (3)(i)(B)(3), (g)(34) and (39) revised; (c)(3)(x)(A) and (f)(2)(i)(D) amended 43339
(d)(3)(v) introductory text revised and note added 46668
(a)(10) redesignated as (a)(10)(i) and amended; (b)(4)(vii), (viii), (ix), (x) and (xi) revised; (a)(10)(ii) added; (b)(5)(ix) and (g)(72) amended; (g)(73) redesignated as (g)(74); new (g)(73) added; interim 6271
(a)(9)(i)(C) added; (a)(9)(iv) revised; eff. 10-1-91 7302
(a)(10)(i) redesignated as (a)(10) and amended; (a)(10)(ii), (b)(4)(vii) through (xi), (b)(5)(x) and (g)(73) removed; (b)(5)(ix) and (g)(72) amended; (g)(74 redesignated as (g)(73) 13759
(h) corrected 16006
199.6 (c)(3)(iii)(H) redesignated as (c)(3)(iii)(I); new (c)(3)(iii)(H) added 31180
(b)(3)(iii) through (v) redesignated as (b)(3)(iv) through (vi); new (b)(3)(iii), (4)(x)(B)(*1*)(*v*), and (c)(3)(iv)(A)(*7*) added; (c)(1) introductory text, (1)(i), (3)(iii)(A), (G)(*2*), (iv)(A)(*4*)(*i*), and (*6*) revised 43340
(a)(9) added 23801
199.10 (a)(1)(i)(C) through (E) redesignated as (a)(1)(i)(D) through (F); new (a)(1)(i)(C) added; (a)(1)(ii), (8) introductory text, (i) introductory heading, (A), (B), (b) introductory text, (1) through (3), (4) introductory text, and (c) revised; (a)(7)(iv)(C) amended 43341
199.13 (a)(2)(i) and (e)(1)(v)(B) revised 43342
199.14 (g)(1)(iii) added 31180
(a)(1)(i)(D) and (ii)(C)(*10*) added; (a)(1)(iii)(E)(*1*)(*i*)(*B*) and (ii) revised 42562
(g)(1)(i)(B) amended 43342
199.16 Added 23801
204 Removed 15499
206 Removed 15499
207 Removed 15499
209 Removed 15499
210.1 Footnote 1 revised 13285
210.3 (d) removed; (c) redesignated as (d); new (c) and footnote 2 added 13285
221 Added 50321
Effective date corrected 6711
247 Removed 6273
255 Removed 15499
275 Removed 15499

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284 Transferred to Subchapter O 24133
285 Transferred to Subchapter O 24133
Subchapter N Heading revised 24133
Subchapter O (Parts 284—285) Heading revised; Parts 284 and 285 transferred from Subchapter M 24133
286 Revised 43093, 53104
Heading revised 21300
286.7 (h)(7)(iii) corrected 46950
(i)(9) revised 48231
286.9 (a) corrected 46950
286.13 (a)(1)(i), (4), (6)(ii)(A), (7)(ii)(C), (v) introductory text and (v)(B) corrected; (a)(1)(iii) correctly removed 46950
(a)(5) introductory text and (i)(F) amended 21300
286.27 (b)(6) corrected 46950
(b)(2) through (6) revised 21300
286.29 Heading correctly designated and (f) corrected 46950
(a) amended 21300
286.33 (c)(1) and (d)(3)(i)(B) corrected 46950
286.37 (a)(1) and (3)(ii) corrected 46950
286 Appendix B corrected 46950, 48231
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286h Added 28614
287 Revised 31829
289 Revised 27225
291 Revised 9942
299 Authority citation revised 13047
299.1 Revised 13047
299.4 (d) revised 13047
299.5 Revised 13047
299a.10 (b)(14) through (17) added 34907
(b)(18) added 16087
350 Revised 28193
352a Added 50179
356 Revised 23802
360 Revised 52169
367 Revised 21077
367a Added 21079
381 Revised 6274
382 Revised 49888
383.4 (z) and (aa) added 49279
383 Appendix amended 49279
383a Added 49279

Chapter V—Department of the Army (Parts 400—699)

507 Revised 23513
518.54 (d)(25) added 33289
556.22 (c) revised 32243
589 Added 47042
589.4 (a)(1), (b)(4), (5), (f) and (g) revised; (b)(6) added 371
619 Added 52076
619.2 Revised 2850
619.4 Revised 5651
626 Added 3186
Authority citation revised 13759
626.4 (g)(3) and (4) revised 13759
626.7 (i)(1) revised 13759
626.8 (b) revised 13759
626.15 (b) revised 13759
627 Added 9424
634 Revised 3930
651 Appendix A amended 35905

Chapter VI—Department of the Navy (Parts 700—799)

701.119 (a) removed; (m) heading revised 35140
(k)(2) added 6986
706.2 Table One amended 27817, 29199
Table Two amended 27817, 27819
Table Three amended 27817
Table Four amended 27817, 38687
Table Five amended 27817, 27818, 27819, 29200, 35314, 38687, 45596
Table One and Table Three amended 7566
Table Five amended 12847
Table One and Table Three amended 23021
706.3 Table One revised 27818
720.40—720.47 (Subpart D) Added 47876
775 Revised 33899
775.6 (c) correctly revised 39960

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Chapter VII—Department of the Air Force (Parts 800—1099) Page

806b.13 (b)(6)(iii) revised 31384
(a)(5) revised 42370
807 Revised 36631
811 Revised 953
811.8 (a) table corrected 10945
Corrected 12583
842.2 (e) amended 1574
842.11 (d) removed; (e) redesignated as (d) 1574
842.23 (a)(2) amended 1574
842.42 (f)(11) added 1574
842.49 (f) revised 32076
842.57 (a)(4) amended; (b) revised; (c) removed; (d) and (e) redesignated as (c) and (d) 32076
(a)(5) introductory text revised; (a)(6) amended; (e) added 1574
842.84 (a)(2) introductory text, (iv), (b)(3) introductory text, and (iv) amended 32077
(b)(3) introductory text revised 1574
842.88 (e) introductory text revised; (e)(6) added 1574
842.89 (a) and (d) revised 32077
842.95 (b) revised 32077
842.109 (d) revised 32077
842.136 (a) revised; (c)(1) amended 1575
852 Removed 13589
884 Revised 1733
953 Removed 371

Chapter XII—Defense Logistics Agency (Parts 1200—1299)

1286 Appendix H amended 32913

Chapter XX—Information Security Oversight Office (Parts 2000—2099)

2001.44 (c)(1) revised 38030
2003.20 (h)(4) added; (j) revised 2645

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169a 46959
199 ..... 41107, 49091
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240 12493
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TITLE 33—NAVIGATION AND NAVIGABLE WATERS

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3.85-15 (b) revised 52047
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3.85-20 (b) revised 52047
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52 Revised 31045
53 Added 13405
80 Authority citation revised 31831
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80.735 (c) revised 31831
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80.825 (a) through (c) revised 31831
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100.35-T0517 Added (temporary) 23226
100.35-T0524 Added (temporary) 24347
100.35-0537 Added (temporary) 28617

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117.255 (a)(1) and (2) revised; (a)(3) through (7) added (temporary)....31385, 39962
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Table I is in the CFR Index and Finding Aids revised as of January 1, 1991. Removals during 1990 are in the December 1990 LSA (List of CFR Sections Affected).

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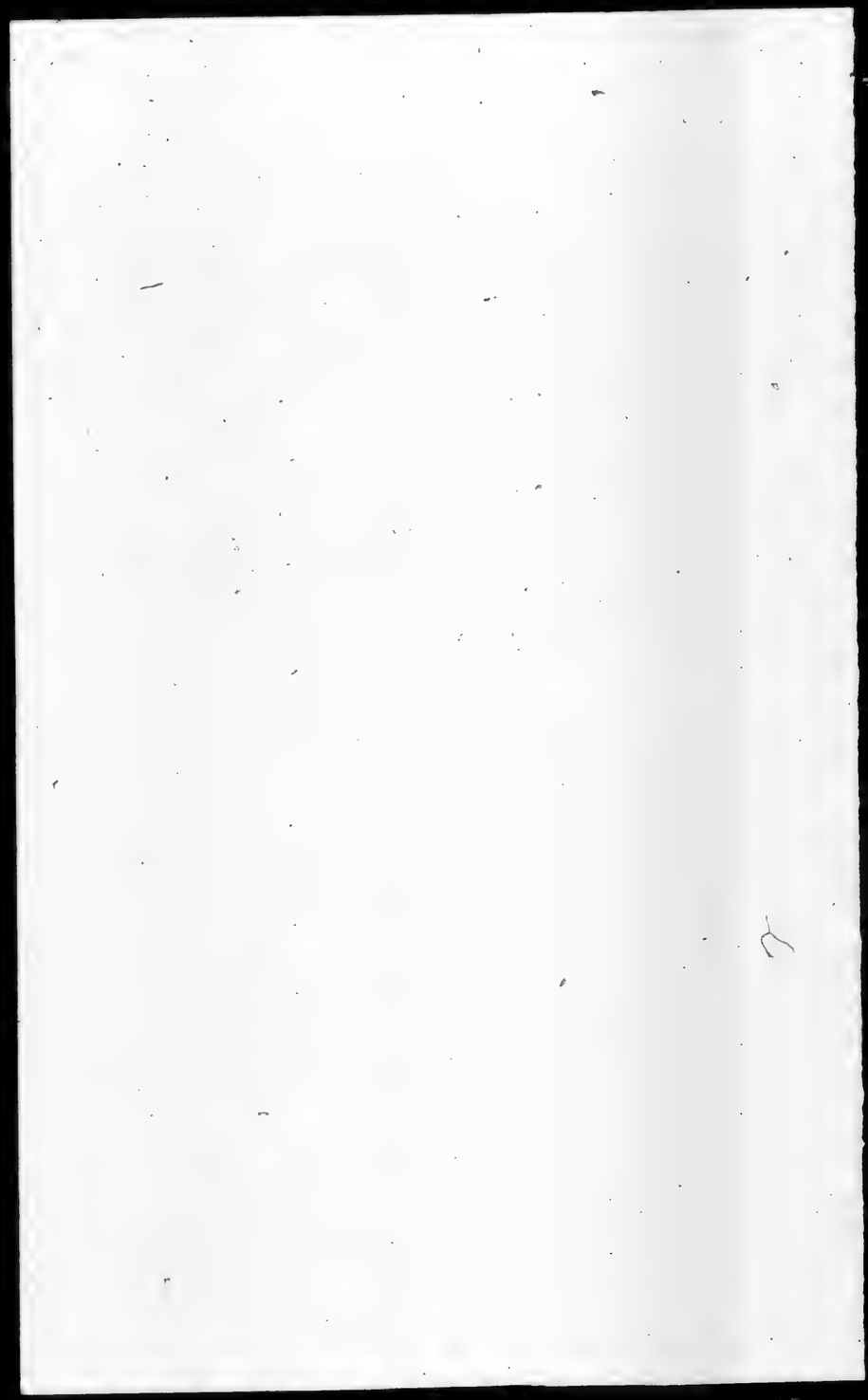
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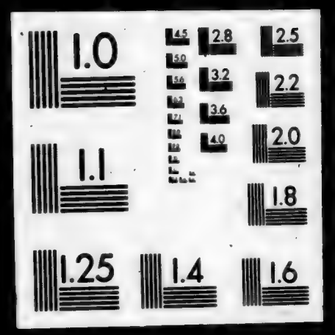
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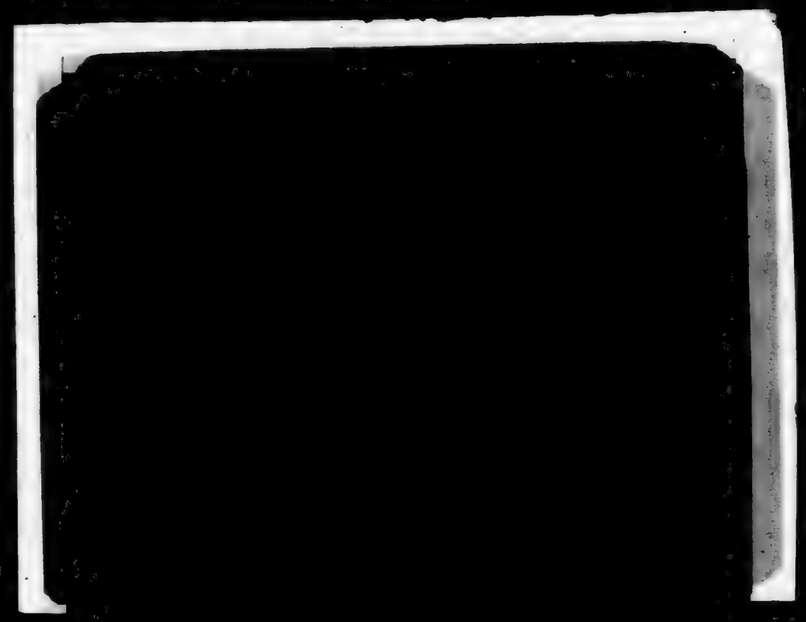
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Additions to Table I, May 1991

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being added to Table I as a result of authority citations carried in the **Federal Register** during January through May 1991. Recent legislation is carried by public law number.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1991. Additions during 1990 are in the December 1990 LSA (List of CFR Sections Affected).

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Table I is in the CFR Index and Finding Aids revised as of January 1, 1991. Removals during 1990 are in the December 1990 LSA (List of CFR Sections Affected).

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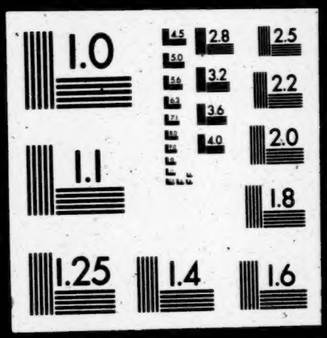
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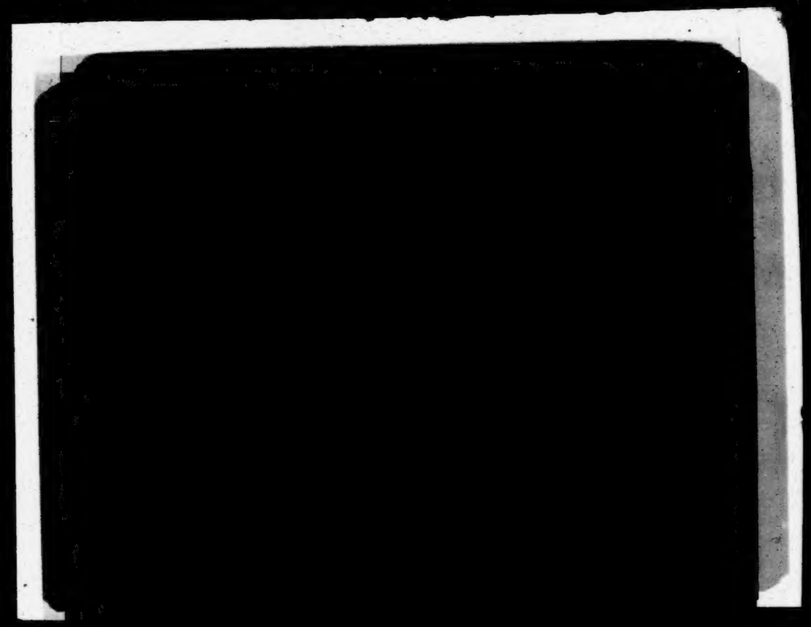
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